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Tribunal Pénal
International pour
l'ex-Yugoslavie

JUDGEMENT SUMMARY

CHAMBERS

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The Hague, 15 April 2011

Judgement Summary for Gotovina et al.

Please find below the summary of the Judgement read out today by Judge Orie:

This Chamber is sitting today to deliver its Judgement in the case of the Prosecutor versus Ante Gotovina, Ivan Čermak, and Mladen Markač.

For the purposes of this hearing, the Chamber will briefly summarize its findings. I stress that this is a summary only. The authoritative account of the Chamber's findings can be found in the written Judgement, which will be made available at the end of this session.

This case concerns crimes allegedly committed from at least July 1995 to about 30 September 1995 against the Krajina Serb population and property owned or inhabited by Serbs in various municipalities of the Krajina region. The crimes alleged by the Prosecution include deportation and forcible transfer, plunder of public or private property, wanton destruction, murder, inhumane acts and cruel treatment. The crimes alleged further include persecution, including through unlawful attacks on civilians and civilian objects, unlawful detentions, and the imposition of restrictive and discriminatory measures.

Ante Gotovina, Ivan Čermak, and Mladen Markač stood trial as alleged participants in a joint criminal enterprise. The objective of this alleged criminal enterprise was the permanent removal of the Serb population from the Krajina region. According to the Prosecution, the enterprise amounted to or involved the commission of the crimes of persecution, deportation and forcible transfer, plunder, and destruction. Alternatively, these crimes were a natural and foreseeable consequence of the execution of the enterprise. In addition, the crimes of murder, inhumane acts, and cruel treatment were also a natural and foreseeable consequence of the execution of the alleged joint criminal enterprise.

According to the Prosecution, the members of this joint criminal enterprise included, in addition to the three Accused, Croatian President Franjo Tuđman, Minister of Defence Gojko Šušak, and the successive Chiefs of the Main Staff of the Croatian Army, Janko Bobetko and Zvonimir Červenka. These members of the joint criminal enterprise allegedly used, or cooperated with, others to facilitate or carry out the crimes. These other participants included government officials and members of the Croatian army, the military police, the Special Police, and the civilian police. According to the Prosecution, the Accused participated in and acted in furtherance of the joint criminal enterprise in various ways.

According to the Indictment, the Accused were responsible for having planned, instigated, ordered, or aided and abetted these crimes. Finally, the Prosecution alleged that the Accused were criminally liable for having knowingly failed to prevent or punish criminal acts or omissions of their subordinates.

This Chamber heard and considered this case over a period of more than three years. All the parties, as well as the Chamber itself, called witnesses during different phases of

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the case. In total, 145 witnesses were called to give evidence, and the Chamber admitted written evidence of another 38 witnesses. In addition, the parties introduced a vast amount of documentary evidence for the Chamber's consideration. This included military documentation, reports from international organizations active in Croatia during the Indictment period, and reports from various experts.

The parties and the Chamber dealt with numerous procedural matters during the trial. One such procedural matter was the Prosecution's request on 13 June 2008 to order the Republic of Croatia to produce certain documents or information, in particular a number of artillery documents. The Prosecution's search for documents was initiated by requests for assistance to Croatia and was followed up with extensive litigation in which the parties and Croatia were involved. The Chamber also invited Croatia to a number of meetings in an attempt to clarify whether certain artillery documents existed and, if so, where they could be found. During this process, some documents were provided to the satisfaction of the Prosecution, while others surfaced only gradually. Others still were never provided. On 26 July 2010, the Chamber, although recognizing that a number of questions with regard to the missing artillery documents remained without definite answers, denied the Prosecution's request to order the Republic of Croatia to produce certain documents. The Chamber stressed that Croatia was still under an obligation to co-operate with the Tribunal.

The Chamber notes that the events in this case took place in the context of many years of tension between Serbs and Croats in the Krajina. In this regard, the Parties agreed that a considerable number of crimes had been committed against Croats in the Krajina. The events in this case also took place in the context of an armed conflict in the territory of the former Yugoslavia that had been ongoing for years. However, this case was not about crimes happening before the Indictment period. Nor was it about the lawfulness of resorting to and conducting war as such. This case was about whether Serb civilians in the Krajina were the targets of crimes, and whether the Accused should be held criminally liable for these crimes.

The Chamber will now give a summary of its findings.

On the basis of the evidence before it, and in accordance with an agreement between two of the defence parties and the Prosecution, the Chamber found that an international armed conflict existed throughout the Indictment period and area.

The Chamber received and considered evidence on a large number of specific incidents of alleged murders. Much of this evidence came from family members of victims and from international observers. For instance, one witness testified that on 7 August 1995, he heard the sound of shooting and saw Croatian soldiers just outside his house in Mokro Polje in Ervenik municipality. He overheard their conversation about [I quote] "*killing another one*" [end of quote] whereupon he went downstairs and found his elderly mother and his mentally-ill brother who had both been shot. The Chamber found that they were murdered by Croatian soldiers. Another witness testified that on 6 August 1995, she witnessed Croatian soldiers taking five men out of the basement of a house in or near Očestovo, where she was also being held. One of the men was her son. Shortly thereafter, gunshots could be heard and later the five men were found dead by gunshot wounds. The Chamber found that members of the Croatian army murdered the five men.

The Chamber found that members of the Croatian military forces and the Special Police committed a number of murders charged as war crimes and crimes against humanity.

The Chamber further received and considered evidence on a number of specific incidents of alleged cruel treatment and inhumane acts. One witness stated that on a morning no later than 12 August 1995 in Palanka, Croatian soldiers searched his home, asked for money, and then tied him to a tree. They then put some textiles beneath his feet, and set them alight. In pain from the fire, the witness kicked the textiles away. In this and

other incidents, the Chamber found that members of the Croatian military forces or the Special Police committed acts of cruel treatment and inhumane acts charged as war crimes and crimes against humanity.

The Chamber further received and considered evidence on a very large number of incidents of alleged plunder and destruction. As an example, the Chamber refers to incidents reported in Gračac and Knin municipalities. Witness Steenbergen testified to seeing extensive destruction, such as burnt houses, in Gračac on 6 August 1995, including houses which were at the time still on fire. Many witnesses, such as Widén and Boucher, also testified to seeing military trucks loaded with electronic equipment and furniture leaving Knin on 6 August 1995 without being stopped at Croatian checkpoints. In these and a number of other incidents, the Chamber found that members of Croatian military forces or the Special Police committed acts of destruction and plunder charged as war crimes and as elements of persecution.

With regard to the unlawful attacks on civilians and civilian objects as an act of persecution, the Chamber found that on 4 and 5 August 1995, artillery units fired artillery projectiles at the towns of Knin, Benkovac, Gračac, and Obrovac. The Chamber received evidence regarding the targets that the Croatian army had identified in these towns from the Chief of artillery of the Split Military District, Marko Rajčić, and in the form of a number of target lists and artillery reports. The Chamber notes that it may not have received in evidence all artillery documents which were compiled at the time. A number of international observers and Krajina Serb residents, who were present in these towns at the time of the shelling, testified about the locations of impacts.

The Chamber carefully compared the evidence on the locations of impacts in these towns with the locations of possible military targets. Based on this comparison, and the relevant artillery orders and reports, the Chamber concluded that the Croatian forces deliberately targeted in these towns not only previously identified military targets, but also areas devoid of such military targets. As such, the Chamber found that the Croatian forces treated the towns themselves as targets for artillery fire. The Chamber thus found that the shelling of Benkovac, Gračac, Knin, and Obrovac on 4 and 5 August 1995 constituted an indiscriminate attack on these towns and an unlawful attack on civilians and civilian objects.

With regard to the alleged forcible transfer and deportation, the Chamber considered that on 4 and 5 August 1995, large numbers of persons left the towns of Benkovac, Gračac, Knin, and Obrovac and went to Bosnia-Herzegovina and Serbia. The Trial Chamber considered that although there were Krajina Serb evacuation plans for certain municipalities, the extent to which they were implemented varied. Moreover, the population was already on the move by the time the Serb municipal authorities took action and when Serb Krajina President Martić ordered an evacuation late in the afternoon of 4 August 1995. The Trial Chamber concluded that the evacuation plans and orders of the Krajina Serb authorities had little or no influence on the departure of Krajina Serbs. With respect to Benkovac, Gračac, Knin, and Obrovac, the Chamber concluded that the fear of violence and duress caused by the shelling created an environment in which those present there had no choice but to leave. For instance, one witness 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. Many persons sought refuge at the UN compound, a number of whom were eventually transferred to Serbia.

The Chamber further found that crimes, including murder, destruction, plunder, and inhumane acts, committed by members of Croatian military forces and Special Police caused duress and fear of violence in their victims and those who witnessed them. These crimes added to the creation of an environment in which these persons had no choice but to leave. The Chamber found that the forcible displacement committed by members of the Croatian military forces and Special Police, by the unlawful attacks on towns in the Krajina on 4 and 5 August 1995 and by the commission of other crimes later in August 1995,

constituted deportation. Among the many Serbs who left the Krajina during and after Operation Storm, the Chamber concluded that at least 20,000 were deported in this manner in August 1995.

With regard to the alleged imposition of discriminatory measures as an act of persecution, the Chamber considered a number of Croatian legal instruments related to property which came into force after Operation Storm. The Chamber found that the motive underlying these legal instruments, as well as their overall effect, was to provide the property left behind by Krajina Serbs in the liberated areas to Croats, and thereby deprive these Serbs of the use of their housing and property. The Chamber found that this imposition of restrictive and discriminatory measures with regard to housing and property, considered in conjunction with deportation and other crimes against Krajina Serbs, constituted persecution.

In conclusion, the Chamber found that Croatian military forces and the Special Police committed acts of murder, cruel treatment, inhumane acts, destruction, plunder, persecution, and deportation as charged in the Indictment. Considering the large number of crimes committed against the Serb population of the Krajina region in a relatively short period of time, the Chamber further found that there was a widespread and systematic attack directed against this Serb civilian population.

As mentioned, the Prosecution charged all three Accused as participants in a joint criminal enterprise. The objective of this alleged joint criminal enterprise was the permanent removal of the Serb population from the Krajina region.

In assessing whether there was a joint criminal enterprise, the Chamber carefully considered the discussions at the Brioni meeting of 31 July 1995, a few days before the launching of Operation Storm. At this meeting President Tuđman met with high-ranking military officials to discuss the military operation. The Chamber found that the participants at this meeting also discussed the importance of the Krajina Serbs leaving as a result and part of the imminent attack. Responding to a statement by President Tuđman to this effect, Mr Gotovina stated [and I quote] “*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.*” [end of quote]

The Chamber carefully reviewed the statements of high-ranking Croatian officials at this and other meetings, and in public. The Chamber considered these statements in the context of its findings on the deportation, unlawful attacks on civilians and civilian objects, and the imposition of discriminatory measures, all of which were committed against Krajina Serbs.

The Chamber found that certain 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 deportation, forcible transfer, and persecution through the imposition of restrictive and discriminatory measures, unlawful attacks against civilians and civilian objects, deportation, and forcible transfer. The joint criminal enterprise came into existence no later than the end of July 1995 and continued throughout the Indictment period. The Chamber further found that the common objective did not amount to, or involve, the commission of the crimes of persecution through disappearances, wanton destruction, plunder, murder, inhumane acts, cruel treatment, and unlawful detentions, or destruction, plunder, murder, inhumane acts, and cruel treatment.

The Chamber found 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. Tuđman intended to repopulate the Krajina with Croats and ensured that his ideas in this respect were transformed into policy and action through his

powerful position as President and Supreme Commander of the armed forces. The Chamber further found that other members of the joint criminal enterprise included Gojko Šušak, who was the Minister of Defence and a close associate of Tuđman's, and Zvonimir Červenko, the Chief of the Croatian army Main Staff. The members of the joint criminal enterprise also included others in the Croatian political and military leadership who participated in Presidential meetings and were close associates of Tuđman's.

At the Brioni meeting, Tuđman and high-ranking military officials discussed how the military forces should be used to ensure that not only the Serb Krajina army, but also the Serb civilian population, would leave the Krajina. The Chamber found 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 Croatian army and military police, as well as Bosnian Croatian army units which had been subordinated to Croatian army commanders. The Chamber did not find that the police forces, with the exception of the Special Police, were used by members of the joint criminal enterprise to commit crimes.

The Chamber will now address whether criminal responsibility for the crimes of persecution, deportation, destruction, plunder, murder, inhumane acts, and cruel treatment is to be attributed to the accused.

The Chamber found that Ante Gotovina held the rank of Colonel General in the Croatian army and was the Commander of the Split Military District during the Indictment period. By virtue of this position, Mr Gotovina commanded all units of the Split Military District as well as those attached to it. Units of the military police in the Split Military District were subordinated to Mr Gotovina in relation to regular military police tasks. The Chamber further found that crime prevention and crime processing were not excluded from Mr Gotovina's authority over the military police.

The Chamber found that the shelling of Benkovac, Knin, and Obrovac on 4 and 5 August 1995, which were ordered by Mr Gotovina, constituted unlawful attacks on civilians and civilian objects. The unlawful attacks formed an important element in the execution of the joint criminal enterprise. The Chamber further found that Mr Gotovina participated in the Brioni meeting and contributed to the planning and preparation of Operation Storm. Moreover, Mr Gotovina failed to make a serious effort to prevent and follow up on crimes reported to have been committed by his subordinates against Krajina Serbs. Mr Gotovina's failures had an impact on the general attitude towards crimes in the Split Military District. Based on these considerations, the Chamber found that Mr Gotovina's conduct amounted to a significant contribution to the joint criminal enterprise. The Chamber further found that Mr Gotovina's order to unlawfully attack civilians and civilian objects amounted, in and of itself, to a significant contribution to the joint criminal enterprise.

Based on Mr Gotovina's acts and conduct and his participation in, and statements at, the Brioni meeting, the Chamber found that Mr Gotovina had the state of mind that the crimes forming part of the objective should be carried out. The Chamber therefore established that Mr Gotovina was a member of the joint criminal enterprise, and thus intended that his actions contribute to this enterprise. The Chamber further found that other charged crimes, although not part of the common purpose, were natural and foreseeable consequences of the execution of the joint criminal enterprise, and foreseeable also for Mr Gotovina.

The Chamber now turns to Ivan Čermak.

The Chamber found that the formal appointment and title of Mr Čermak was Commander of the Knin Garrison, but that his responsibilities went beyond those of a garrison commander. The evidence established that Mr Čermak had some influence over the civilian and military police, but not that he was in charge of, and had legal authority for,

maintaining law and order. Mr Čermak did not have effective control over Croatian army units outside of his own subordinates at the garrison, and the Chamber found no reliable evidence that those subordinates committed any crimes.

The Chamber found that the activities of Mr Čermak included dealing with members of the international community, 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 did not establish that Mr Čermak knew or intended that his activities contribute to any goal of populating the Krajina with Croats rather than Serbs.

As for Mr Čermak's conduct with regard to crimes committed on the ground, the Chamber found that he denied and concealed the crimes committed in Grubori on 25 August 1995. It further found that Mr Čermak, in general, provided misleading assurances to the international community that action to stop the crimes against Serbs were being or would be taken. However, apart from this, the Chamber found that the Prosecution did not prove its allegations that Mr Čermak permitted, minimised, denied or concealed crimes against Serbs, nor that he provided false, incomplete or misleading information or false assurances to the international community.

The Chamber concluded that the evidence did not establish that Čermak was a member of the joint criminal enterprise, or made any intentional and significant contribution to it. The Chamber also found that Mr Čermak was not liable under any other mode of liability charged against him.

Finally, the Chamber turns to Mladen Markač.

The Chamber found that, during the Indictment period, Mr Markač held the position of Assistant Minister of Interior in charge of Special Police matters. While the Special Police was normally part of the Croatian Ministry of Interior, during Operation Storm and the following search operations approximately 2,200 Special Policemen, including members of the Lučko Anti-Terrorist Unit, were subordinated to the Croatian army Main Staff and took part in the military operations. By virtue of his position, Mr Markač had overall control of the Special Police forces, and throughout Operation Storm and the following search operations he commanded them in accordance with the orders of the Chief of the Main Staff. Mr Markač also commanded part of the artillery assets of the Croatian army artillery group TS-5, which were attached to the Special Police on 3 August 1995 for operational purposes.

The Chamber found that Mr Markač participated in the Brioni meeting, contributing to the planning and preparing of Operation Storm. It also found that he ordered the Special Police's shelling of Gračac on 4 and 5 August 1995, which constituted an unlawful attack on civilians and civilian objects, and brought about the forcible displacement of persons. The order to shell Gračac amounted, in and of itself, to a significant contribution to the joint criminal enterprise.

The Chamber also found, Judge Kinis dissenting, that Special Police members took part in the destruction of a substantial part of Gračac on 5 and 6 August. The Chamber found that they also participated in the destruction and looting of Krajina Serb property in Donji Lapac on 7 and 8 August 1995. The Chamber found that Mr Markač knew about the involvement of his subordinates in the commission of these crimes, but that he did not take any steps to identify the perpetrators in order to take appropriate action against them, nor did he take any step to prevent the commission of further crimes.

On 25 August 1995, members of the Special Police murdered several elderly villagers in the hamlet of Grubori. On that and the following day, the same unit also burned property in Grubori and in Ramljane village. Mr Markač advanced false stories and participated in the

cover-up of crimes committed by his subordinates against Krajina Serb persons and property.

With regard to the commission of crimes by Special Police members, the Chamber found that, if Mr Markač received information concerning crimes allegedly committed by his subordinates, he was duty-bound to inform the criminal police for further investigation. Mr Markač could also request the suspension of Special Police members from duty.

The Chamber has concluded that, through his acts and omissions, Mr Markač created a climate of impunity amongst his subordinates which encouraged the commission of crimes against Krajina Serb persons and property.

Based on these considerations, the Chamber found that Mr Markač's conduct amounted to a significant contribution to the joint criminal enterprise.

Based on his acts in relation to the preparation of Operation Storm, as well as his acts and omissions with regard to crimes committed by members of the Special Police, the Chamber concluded that Mr Markač had the state of mind that the crimes forming part of the joint criminal enterprise's objective should be carried out. The Chamber therefore found that Mr Markač was a member of the joint criminal enterprise, and that through his acts and omissions he intended to contribute to it. The Chamber further found that other crimes charged, although not part of the common purpose, were natural and foreseeable consequences of the execution of the joint criminal enterprise, and foreseeable also for Mr Markač.

Having summarized its findings, the Chamber will now give its verdict.

Mr Gotovina, will you please stand.

For the reasons summarised above, this Chamber, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, finds you guilty, as a member of a joint criminal enterprise, of the following charges:

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; and
Count 9, cruel treatment as a violation of the laws or customs of war.

The Chamber finds you not guilty on Count 3, inhumane acts (forcible transfer) as a crime against humanity.

With respect to sentencing, the Chamber considered as aggravating circumstances the gravity of the offences, particularly the large number of crimes in a wide geographical area, the vulnerability of the victims, and the abuse of your position of authority. In mitigation, the Chamber considered your behaviour in detention and in the courtroom. The Chamber further took into consideration factors relating to sentencing practices in the former Yugoslavia.

For having committed these crimes, the Chamber sentences you, Mr Gotovina, to a single sentence of 24 years of imprisonment.

You are entitled to credit for the period of time you have been in custody, which amounts to 1956 days.

You may be seated.

Mr Čermak, will you please stand.

This Chamber, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, finds you not guilty on all Counts in the Indictment. The Chamber orders that you be released from the United Nations Detention Unit after the necessary practical arrangements are made by the Registrar.

You may be seated.

Mr Markač, will you please stand.

For the reasons summarised above, this Chamber, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, finds you guilty, as a member of a joint criminal enterprise, of the following charges:

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; and
Count 9, cruel treatment as a violation of the laws or customs of war.

The Chamber finds you not guilty on Count 3, inhumane acts (forcible transfer) as a crime against humanity.

With respect to sentencing, the Chamber considered as aggravating circumstances the large number of crimes that occurred in a wide geographical area and over an extended period of time and the vulnerability of the victims. The Chamber further considered the abuse of your position of power in aggravation. In mitigation, the Chamber considered your medical condition. The Chamber further took into consideration factors relating to sentencing practices in the former Yugoslavia.

For having committed these crimes, the Chamber sentences you, Mr Markač, to a single sentence of 18 years of imprisonment.

You are entitled to credit for the period of time you have been in custody, which amounts to 1477 days.

You may be seated.

This concludes the delivery of the Judgement, which will now be made publicly available. The Chamber stands adjourned.