

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-04-74-T

TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Arpad Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Filed: 28 March 2011

THE PROSECUTOR
v.
JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ

- Public Redacted -

VALENTIN ĆORIĆ'S FINAL TRIAL BRIEF

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VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

TABLE OF CONTENTS

I.	INTRODUCTION	-1-
	A. STANDARDS OF PROOF	-3-
	1. Presumption of Innocence	-3-
	2. Reasonable Doubt	-3-
	B. EVIDENTIARY MATTERS	-4-
	1. Hearsay Evidence must be Scrutinized with Due Care	-4-
	2. Circumstantial Evidence must be Scrutinized with Due Care	-5-
II.	THE STRUCTURE AND DUTIES OF THE MPA– THE <i>DE JURE</i> AND <i>DE FACTO</i> TASKS AND RESPONSIBILITIES OF CORIC AS MILITARY POLICE ADMINISTRATION CHIEF, AND FUNCTIONING OF THE MP BATTALIONS	-5-
	A. Overview	-5-
	B. Coric's Position in the Military Police Administration	-6-
	C. Formation of the Military Police on the basis of HVO Municipal Councils, and the Limited Role of the Military Police Administration	-6-
	1. Changes in the Structure of the Military Police did not Change the System of Command and Control, which was exercised at the level of the HVO military commanders in the Field.	-8-
	2. The Changes in the Structure of the Military Police only further degraded the already limited involvement of the Military Police Administration in the operation of the Military Police in the field.	-11-
	3. Reporting System in place and functioning among Military Police units in the Field and the Military Police Administration.	-13-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

D.	Position of the Military Police Administration within the HVO	-15-
III.	THE OTP HAS FAILED TO ESTABLISH THE RESPONSIBILITY OF CORIC AS A COMMAND-SUPERIOR OF ANY ALLEGED PERPETRATORS UNDER ARTICLE 7(3)	-16-
A.	The Law of Command Responsibility	-16-
B.	Coric cannot be considered a Command-Superior of any principal perpetrators found to be HVO/Herceg-Bosna personnel who were NOT Military Police	-19-
C.	Coric cannot be considered a Command-Superior of any perpetrators found to be HVO Brigade Military Police engaged in Combat Actions or otherwise engaged upon orders of the HVO Brigades.	-20-
D.	Coric cannot be considered a Command-Superior of any perpetrators found to be members of the HVO Home Guard Units ("Domobranstvo") engaged in Combat Actions or otherwise engaged upon orders of the HVO Brigades.	-23-
E.	Coric cannot be considered a Command-Superior of any perpetrators found to be HVO Military Police engaged in Combat Actions or otherwise engaged in Daily Duties upon orders of the HVO Military Commanders.	-24-
	1. HVO Military Police were subordinated to HVO Army Commanders, including in the performance of Combat Operations in the Field	-26-
	2. HVO Military Police were subordinated to the HVO Army Commanders, including in the performance of Regular Policing Duties in the Field	-30-
	a. Confirmation from HVO military commanders	-30-
	b. Confirmation from Military Police Witnesses	-33-
F.	Command-Superior Liability is improper as Coric did not have the requisite State of Mind due to a lack reporting that would have imparted actual knowledge of crimes committed by alleged subordinates	-35-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

IV.	THE PROSECUTION HAS FAILED TO SHOW A JOINT CRIMINAL ENTERPRISE	-37-
A.	Allegations of the Indictment	-37-
B.	Relevant Legal Standards for JCE Liability	-38-
1.	OVERBROAD PLURALITY OF PERSONS	-40-
2.	NO COMMON PLAN OR PURPOSE	-41-
	a. Witnesses Uniformly Denied Knowledge of a Criminal Plan or Participation in a plan	-42-
	b. Documentary evidence runs counter to any Criminal Plan or JCE on the part of the HVO	-43-
	c. Formation of the HVO was for defensive, not offensive purposes.	-47-
	d. The Operation of the HZ-HB showed no discriminatory intent against Bosnian Muslims	-48-
3.	CORIC ISSUED NO ORDERS OR OTHERWISE CONTRIBUTED TO FURTHERANCE OF ANY JCE	-49-
4.	CORIC HAD NO KNOWLEDGE OF ANY JCE ON THE PART OF OTHERS.	-57-
V.	CORIC AND THE MPA DID NOT FAIL TO PREVENT OR PUNISH CRIMES.	-58-
A.	Coric undertook reasonable efforts to provide proper training of HVO MP in order that crimes could be prevented.	-58-
B.	Coric reasonably relied on domestic law structures in place in order to determine his obligations such that cooperating with these structures would be sufficient so that crimes could be punished and prevented.	-60-
	1. Relationship of the MPA to the Military Judicial System	-60-
C.	The MPA promoted compliance on the part of the MP for performance of their law enforcement duties.	-62-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

- | | | |
|-----|--|------|
| 1. | The lack of personnel and Delegation of Crime Prevention Authority to the Operative Zones limited what role Coric and the MPA had in preventing and punishing crimes | -65- |
| 2. | HVO MP in the field were subject to discipline and punishment from the HVO army commanders they were subordinated to | -66- |
| 3. | Duty of Military Commanders in Field to take steps to initiate criminal investigations and criminal reports for crimes occurring within their Area of Responsibility. | -68- |
| | a. Brigade Military Police | -71- |
| | b. Military Police In Operative Zones | -72- |
| 4. | Objective obstacles existed, outside of the control of Coric, hindering proper investigations from being undertaken | -73- |
| 5. | Obstacles due to the significant interference of Municipal Authorities. | -77- |
| VI. | CORIC'S KNOWLEDGE WAS THAT CHECKPOINTS WERE OPERATED FOR LEGITIMATE PURPOSES AND WERE NOT INTENDED FOR ANY CRIMINAL PURPOSE | -78- |
| A. | THE OPERATION OF CHECKPOINTS WAS THE TYPE OF DAILY POLICING DUTIES PERFORMED UNDER THE AUTHORITY AND COMMAND OF HVO COMMANDERS, OR OTHERWISE WAS BEYOND THE COMPETENCY OF CORIC | -80- |
| B. | CHECKPOINTS WERE OPERATED IN ACCORDANCE WITH LEGITIMATE LAW ENFORCEMENT PURPOSES | -84- |
| C. | HUMANITARIAN CONVOYS WERE LEGITIMATELY CONTROLLED | -86- |

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

VII.	CORIC IS NOT RESPONSIBLE FOR CRIMINAL ACTS ALLEGEDLY COMMITTED IN DETENTION FACILITIES	-87-
A.	FORMATION OF THE PRISONS	-87-
B.	THE SITUATION IN 1993	-88-
C.	DETENTION OF MUSLIM HVOS IS OUTSIDE OF THE JURISDICTION OF THIS CHAMBER	-90-
	1. MHVOS Were Incorporated Into And Owed Allegiance To The HVO.	-90-
	2. MHVOS Not Eligible For Protection For Grave Breaches Or War Crimes	-92-
	3. MHVOS Not Eligible For Protection For Crimes Against Humanity	-93-
	4. The HVO were entitled to detain MHVOS	-93-
	5. There were legitimate reasons to detain MHVOS	-94-
	6. The acts do not amount to an 'attack' as to qualify as a crime against humanity	-95-
D.	ROLE OF THE MILITARY POLICE ADMINISTRATION AS TO PRISONS	-96-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

E.	THE MILITARY POLICE ADMINISTRATION DID NOT HAVE ANY AUTHORITY OVER PROZOR DETENTION FACILITY	-98-
1.	Prozor Detention facilities were under the Authority of the HVO Brigade Commanders Who issued the orders to arrest persons detained at Prozor based on the orders of the Main Staff	-98-
2.	The MPA did not have a Role in Appointment of Wardens at Prozor Prison	-99-
3.	The MPA had no role in Maintenance of the Prozor Detention Facilities	-100-
4.	Security was provided at Prozor detention facilities upon order of the HVO Military Commanders	-101-
5.	The MPA did not have authority over the Release or Transfer of Detainees at Prozor	-102-
6.	The MPA was not informed about the conditions of detention in the Prozor detention facilities and therefore, the actual conditions of detention were unknown to Coric	-103-
7.	Coric was not aware of the criminal acts allegedly committed in Crni Vrh and he bears no responsibility for those acts	-105-
8.	Conclusions concerning detention facilities at Prozor	-106-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

F.	THE MPA DID NOT HAVE ANY AUTHORITY OVER THE HELIODROM CENTRAL MILITARY REMAND PRISON, AND CORIC DOES NOT BEAR ANY RESPONSIBILITY FOR THE INCIDENTS AT HELIODROM	-106-
	1. The MPA and Coric did Not Have a Role in the Establishment of Heliodrom Central Military Prison or in the Appointment of the Warden of the Prison	-106-
	2. No plan existed for the establishment of the detention centre at Heliodrom	-108-
	3. Temporary Evacuation of Civilians cannot be Qualified as Unlawful	-109-
	4. The Military Police and the MPA did not have any direct authority over Heliodrom	-111-
	5. The MPA had no role in the Overall Maintenance of the Heliodrom Prison	-114-
	6. The Military Police had a solely Administrative Function concerning the Release of Prisoners	-115-
	7. The MPA is Not Responsible for Taking Prisoners out for Labour	-117-
	a. The Law	-117-
	b. The Facts	-117-
	8. Coric did not know and did not have reason to know about incidents that allegedly occurred at the Heliodrom Prison	-124-
	9. Conclusions concerning the Heliodrom Central Military Prison	-126-
G.	VALENTIN CORIC DOES NOT BEAR ANY RESPONSIBILITY FOR THE ALLEGED INCIDENTS AT VOJNO	-126-
	1. The OTP failed to identify specifically the victims of the alleged incidents therefore it failed to prove that the victims were protected persons under the laws and customs of war.	-128-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

H.	THE MPA DID NOT HAVE ANY AUTHORITY OVER LJUBUSKI AND OTOK PRISONS, AND CORIC DOES NOT BEAR ANY RESPONSIBILITY FOR THE INCIDENTS AT LJUBUSKI AND OTOK	-129-
1.	The MPA did Not Have any Authority over Detention at Ljubuski and Otok	-129-
2.	Detention was Maintained and Secured by the Brigade at Ljubuski and Otok	-130-
3.	Valentin Coric did Not Play any Role in the Removal of Prisoners for Forced Labour	-132-
4.	Valentin Coric did Not Play any Role in the Release or Transfer of Detainees	-133-
5.	Coric had No Knowledge about the Events at Ljubuski and Otok	-134-
6.	Conclusions concerning Detention at Ljubuski and Otok	-134-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

I.	THE MILITARY POLICE ADMINISTRATION DID NOT HAVE ANY AUTHORITY OVER DRETELJ AND GABELA DETENTION FACILITIES	-135-
	1. Dretelj and Gabela Detention facilities were under the Authority of the HVO Brigade Commanders	-135-
	2. The HVO Brigade Commanders issued the orders to arrest persons detained at Dretelj and Gabela based on the orders of the Main Staff	-135-
	3. The MPA did not have a Role in the Establishment of Dretelj and Gabela Detention Facilities	-136-
	4. The MPA did not have a Role in Appointment of Wardens at Dretelj and Gabela Prison facilities	-137-
	5. The MPA had no role in Maintenance of Dretelj and Gabela Detention Facilities	-137-
	6. Security was provided at Dretelj and Gabela upon order of the HVO Military Commanders	-139-
	7. The Interrogation of Detainees at Dretelj and Gabela was undertaken under the Authority of HVO Military Commanders	-140-
	8. The MPA did not have authority over the Release of Detainees at Dretelj and Gabela	-140-
	9. The Military Police Battalion accomplished its duties falling within its authority	-141-
	10. When Coric received notice of Problems at Dretelj he took reasonable steps, within his limited authority to ameliorate the condition of detainees.	-142-
	11. Conclusions concerning Dretelj and Gabela prisons	-144-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

J.	THE MILITARY POLICE ADMINISTRATION DID NOT HAVE ANY AUTHORITY OVER DETENTION AT THE KOSTANA HOSPITAL	-145-
	1. Patients of the Kostana Hospital were Transferred by the Order of Brigade Commander Nedjeljko Obradovic	-145-
	2. The 1st Knez Domagoj Brigade and the Stolac Battalion were Responsible for Maintenance and Security within the Kostana Hospital	-145-
	3. The Military Police was Not Involved in the Management of Detention at the Kostana Hospital	-146-
	4. Conclusions concerning the Events at Kostana Hospital	-147-
VIII.	THE PROSECUTION HAS FAILED TO PROVE THE ALLEGATIONS OF CRIMES IN PROZOR FOR WHICH CORIC CAN BE FOUND CRIMINALLY LIABLE.	-147-
IX.	THE PROSECUTION HAS FAILED TO PROVE THE ALLEGATIONS OF CRIMES IN GORNJI VAKUF FOR WHICH CORIC CAN BE FOUND CRIMINALLY LIABLE.	-151-
X.	THE MPA AND VALENTIN CORIC DID NOT PLAY ANY ROLE IN THE EVENTS THAT TOOK PLACE IN JABLANICA MUNICIPALITY (SOVICI AND DOLJANI)	-156-
XI.	THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR MOSTAR	-157-
XII.	THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR LJUBUSKI MUNICIPALITY	-163-
XIII.	THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR STOLAC MUNICIPALITY	-165-
XIV.	THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR CAPLJINA MUNICIPALITY	-168-
XV.	THE OTP HAS FAILED TO PROVE THE ALLEGATIONS OF CRIMES IN VAREŠ FOR WHICH CORIC CAN BE FOUND CRIMINALLY LIABLE.	-171-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

XVI.	KEY EVIDENCE RELIED UPON BY THE OTP CANNOT BE GIVEN ANY WEIGHT OR CREDIBILITY	-173-
A.	Documents of Questionable authorship and authenticity cannot be relied upon to assert criminal responsibility of Coric	-173-
B.	Witnesses with Credibility issues cannot be relied upon to assert criminal responsibility of Coric	-180-
	1. Witness E	-180-
	2. Josip Praljak	-184-
	3. Suad Cupina	-187-
	4. Christopher Beese	-188-
C.	Other Problems with Documents	-191
XVII.	THE OTP HAS FAILED TO MEET ITS BURDEN OF PROOF TO ESTABLISH THE DEATHS OF ALLEGED MURDER VICTIMS	-192-
XVIII.	CONCLUSION	-198-
XIX.	RELIEF REQUESTED	-199-

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

I. INTRODUCTION

1 Pursuant to Rule 86(B) of the Rules of Procedure and Evidence of the Tribunal, and the scheduling order of the Trial Chamber, the Defense of Valentin Coric hereby files its Final Brief. This brief will discuss the burden of proof, the application of the prevailing jurisprudence of the Tribunal as it regards to criminal liability, and the law of individual and command responsibility under Articles 7(1) and 7(3) of the Statute of the Tribunal, and Joint Criminal Enterprise.

2. Coric is charged with criminal responsibility under Art. 7(1)/(3) of the Statute, based on his position within the HVO MPA;¹ and alleged membership in a JCE.² The evidence as adduced at trial and analyzed in this submission, clearly establishes that Coric did not plan, instigate, order, commit (in any form whatsoever) or otherwise participate in the planning, preparation or execution of any such crimes, either under Art. 7(1) or 7(3). The defense will present a true picture of the functioning of the HVO MP and HVO MPA during the relevant time period, showing the limited authority of Coric and that he and the MPA and MP fulfilled all duties within their limited abilities, according to the information available to him. The Analysis will show that Coric did not have classic command-superior authority over MP and other units operating out in the field. However, within his limited authority he tried to influence behavior of others to be in compliance with the law. The simple exercise of influence does not constitute "effective control" and is insufficient to establish Art. 7(3) liability.³

3. Given the voluminous size of the record, page limitations imposed upon this filing, and the over-expansive scope and size of the Indictment the Defense is not equipped to address in detail each and every exhibit or witness in this filing. This brief will highlight the most significant evidence and arguments that demonstrate that acquittal of Mr. Coric is appropriate. The Defense reserves the right to present additional analysis, including analysis of briefs filed by other parties in a closing statement, pursuant to Rule 86 (A) of the Rules of Procedure and Evidence.

4. Additionally, the Defense encourages and invites the Trial Chamber to review, in conjunction with this filing, the totality of the evidence and record in its deliberations as it will underscore the minimal role played by Coric in events during the indictment period and the entirely legitimate and commendable

¹ e.g. Indictment, paras 12, 218-220, 228-229, 233, 234, 236-238

² e.g. Indictment, paras. 15-17, 39, 41, 221-227, 229

³ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 80

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

efforts he undertook under difficult times to promote peace, and adherence to law and order, as well as a complete absence of responsibility for the crimes alleged.

5. Lastly, it must be taken into account the Prosecution's voluminous Indictment is very broad and generally pleaded, and differs somewhat from the case that the Prosecution has presented at trial, especially as to identities of alleged perpetrators and victims. We would remind of the logic set forth in Hadzihasanovic, when determining if the Prosecution has met its burden of proof :

“[...]When the material facts pleaded in the Indictment do not correspond with those presented by the Prosecution during the trial, there is an error. [...] In that case, the Prosecution must request leave of the Chamber to amend the Indictment, failing which the Chamber does not consider itself seized of the facts pleaded by the Prosecution during the trial. Should the Prosecution fail to make such a request, the Chamber would rule only on the facts pleaded in the Indictment. As the Prosecution made no attempt to prove those facts, but different ones not pleaded in the Indictment, the Chamber would have to acquit the Accused of the facts alleged therein.”⁴

6. Under the prevailing jurisprudence the prosecution is required to plead in the indictment all material facts underpinning the charges in the indictment.⁵ Whether an indictment is pled with sufficient particularity depends on whether it sets out the material facts of the prosecution's case with enough detail to inform the accused clearly of the charges against him or her so that the accused person may prepare a defence.⁶ The Trial Chamber should bear in mind that the Indictment very generally and without specificity refers to “prisoners, detainees, and other persons”⁷, “Bosnian Muslims”⁸, “prisoners and detainees”⁹, “Bosnian Muslim Detainees,”¹⁰ “military aged Bosnian Muslim men.”¹¹ The evidence led at trial did not further illuminate the identities of these victims so as to adequately put the Accused on notice what legal standards applied, whether the victims were civilian, combatant, or own forces.

⁴ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 269

⁵ *Prosecutor v Natelic & Martinovic*, No. IT-98-34-A, *Judgement* (3 May 2006) at para. 23; *Prosecutor v Simic*, No. IT-95-9-A, *Judgement* (28 November 2006) at para. 20

⁶ *Prosecutor v Natelic & Martinovic*, No. IT-98-34-A, *Judgement* (3 May 2006) at para. 23; *Prosecutor v Simic*, No. IT-95-9-A, *Judgement* (28 November 2006) at para.20

⁷ Indictment para. 12

⁸ Indictment para. 17.5 (d)(e)(f)(j)(k)(l)(n); 47; 54; 67; 70; 77; 78; 79; 80; 81; 96; 104; 132; 138; 139; 148; 149; 174; 188; 189; 191; 196; 197

⁹ Indictment para. 17/5(h)

¹⁰ Indictment para. 17.5(e)(j); 55; 56. 125; 128; 129; 130; 131; 133; 191; 192

¹¹ Indictment para. 94; 95; 103; 108; 121

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

A. STANDARDS OF PROOF

1. Presumption of Innocence

7. All proceedings before this tribunal must be held in consonance with the rights of the Accused enumerated in the Statute.¹² Under these standards, “the Accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.”¹³ Likewise, all persons are equal before the Tribunal.¹⁴

8. Pursuant to the foregoing, Coric should be afforded the same rights and permissions in the presentation of his case as other accused. In the present matter then Coric must be tried at first instance – separately on each count and mode of liability alleged, without regard to the findings on evidence adduced at other trials pertaining to indictments arising out of the same geographic or temporal scope. While there are 5 co-Accused being tried jointly, in no way can any determination of culpability of his co-Accused be perceived as a likewise assertion against him. “In this connection it should be emphasized that it is the duty of the Trial Chamber to consider the case against each accused separately and to consider each count in the Indictment separately.”¹⁵

2. Reasonable Doubt

9. Another right afforded to the Accused by the Tribunal is a standard of reasonable doubt. This standard unequivocally mandates that “*A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.*”¹⁶

10. The Defense does not have the burden to prove anything. At all times the Prosecution bears the burden of proving every element of their case according to the applicable standard. This standard is such that “a Trial Chamber may only find an accused guilty of a crime if the Prosecution has proved each element of that crime and of the mode of liability, and any fact which is indispensable for the conviction, beyond reasonable doubt.”¹⁷ If at this stage there is any doubt that the Prosecution has

¹² ICTY Statute, Article 20 and 21

¹³ ICTY Statute, Article 21(3)

¹⁴ ICTY Statute, Article 21(1)

¹⁵ *Prosecutor v. Kordić & Cerkez*, No. IT-95-14/2-T, *Judgement*, (26 February 2001) at para. 17

¹⁶ ICTY Rules of Procedure and Evidence, Rule 87(A)

¹⁷ *Prosecutor v Blagojevic & Jokic*, No. IT-02-60-A, *Judgement* (9 May 2007) at para. 226

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

established the case against the Accused, the Accused is entitled to the benefit of the doubt and an acquittal on that charge.¹⁸

11. The standard is one that is high and the Trial Chamber must determine that the conclusion reached is the only reasonable conclusion such that it cannot be called into question by another rational conclusion.¹⁹ Any ambiguity must be resolved in favor of the accused pursuant to *in dubio pro reo*.²⁰ It is not sufficient that guilt is a reasonable conclusion under the evidence, it must be the only reasonable conclusion. If there is another conclusion which is also reasonable from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.²¹

B. EVIDENTIARY MATTERS

1. Hearsay Evidence must be Scrutinized with Due Care

12. The probative value of hearsay evidence is usually less than the weight given to a witness who testified under oath and was cross-examined.²² The OTP must establish the relevance and probative value of documentary hearsay evidence beyond a reasonable doubt, whereas the defense is only required to prove the relevance and probative value of such evidence on a balance of probabilities.²³

13. It is important to consider the individual situation in which hearsay is offered. It is one thing to use hearsay for background information, it is another to accept hearsay as evidence of a critical and decisive fact in the case. Probative value must depend on the fact that is being sought to be shown, particularly when it is purely by hearsay.

14. Many factors affect probative value of hearsay evidence. This includes whether "the source has not been the subject of solemn declaration and that its reliability may be affected by a potential compounding of errors of perception and memory."²⁴ Additional factors relevant to the probative value of such evidence are "[t]he absence of the opportunity to cross-examine the person who made the

¹⁸ *Prosecutor v. Kupreskić et al*, No. IT-95-16-T, *Judgement*, (14 January 2000) at para. 339(a); *Prosecutor v Delalic et al*, No. IT-96-21-T, *Judgement* (16 November 1998) at para. 601-603

¹⁹ *Prosecutor v. Delalic*, No. IT-96-21-A, *Judgement* (20 February 2001) at para. 458

²⁰ *Prosecutor v Blagojevic & Jokic*, No. IT-02-60-T, *Judgement* (17 January 2005) at para. 18; *Prosecutor v Halilovic*, No. IT-01-48-T, *Judgement* (16 November 2005) at para. 12

²¹ *Prosecutor v. Delalic*, No. IT-96-21-A, *Judgement* (20 February 2001) at para. 458

²² *Prosecutor v. Kordić & Cerkez*, No. IT-95-14/2-T, *Judgement*, (26 February 2001) at para 787

²³ *Prosecutor v Oric*, No. IT-03-68-T, *Judgement* (30 June 2006) at para.. 23

²⁴ *Prosecutor v. Simić et al*, No. IT-95-9-T, *Judgement*, (17 October 2003) at para. 23.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

statements” and whether the same is first hand or otherwise more removed.²⁵ In any event, all hearsay evidence must be weighed and scrutinized with due care to ensure fairness to the accused at all times, especially where the Prosecution’s case is in large part or entirely based on such hearsay evidence.

2. Circumstantial Evidence must be Scrutinized with Due Care

15. The Appeals Chamber has set a high threshold for conviction by determining that in order to base a finding of guilt on circumstantial evidence, such evidence must be proven beyond reasonable doubt. Any conclusion must be “the **only** reasonable conclusion available,” and that “another conclusion which is also reasonably open from the evidence and which is consistent with the innocence of the accused” must lead to acquittal.²⁶

16. In any event, all circumstantial evidence must be weighed and scrutinized with due care to ensure fairness to the accused at all times, especially where the Prosecution’s case is in large part or entirely based on such circumstantial evidence.

II. THE STRUCTURE AND DUTIES OF THE MPA– THE *DE JURE* AND *DE FACTO* TASKS AND RESPONSIBILITIES OF CORIC AS MILITARY POLICE ADMINISTRATION CHIEF, AND FUNCTIONING OF THE MP BATTALIONS

A. Overview

17. A review of the normative documents pertaining to the HVO MPA and the HVO MP Battalions demonstrates that the MPA did not in fact have a classic *De Jure* command-superior position relative to the MP operating in the OZ’s. Rather, from their very inception the MP Battalions were established separate and apart from the MPA, and rather were established at the Municipal or OZ level.

18. A review of the evidence and facts demonstrate that in the manner this normative structure functioned, the MPA likewise did not have a *De Facto* command-superior position relative to the MP Battalions operating in the Operative Zones either. Rather it is demonstrated that the normative structure was implemented at all times at the Zone level, irrespective of organizational changes, and the operative command over MP Battalions was held by the HVO Commanders.

²⁵ *Prosecutor v Brdjanin*, No. IT-99-36-T, *Judgement*, (1 September 2004) at para 28

²⁶ *Prosecutor v. Delalic*, No. IT-96-21-A, *Judgement* (20 February 2001) at para 458 (emphasis in original)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

B. Coric's Position in the Military Police Administration

19. On 13 April 1992, Coric was appointed Assistant Commander of the Security and Information Service (SIS).²⁷ All HVO MP units were initially foreseen to go under his command, and the commanders of the MP were to be subordinated to him and obliged to carry out his orders.²⁸ However, as set forth below, the MP were instead established based on a territorial rather than central model, at the levels of municipal staffs of the HVO, due to the way in which the HVO military units functioned. Coric's position eventually was re-styled as Chief of the MPA. Given the following normative analysis, in that position Coric undertook performance of the limited, "cadre policy" functions of that office in regards to MP units operating in OZs. Concurrently "operative command" of the HVO MP battalions was undertaken by the HVO Military Commanders in the OZs, both as to regular policing duties and combat. This division of competencies in the context of command and control remained the same throughout the relevant time period, despite changes in the organizational structure of the MP.

20. Coric ceased performing functions as Chief of the MPA upon his appointment within the Ministry of Interior. Mr. Coric left for the Ministry of Interior some time prior to November 1993.²⁹

C. Formation of the Military Police on the basis of HVO Municipal Councils, and the Limited Role of the Military Police Administration

21. The beginning of the war and the formation of the units of the HVO, as the only military force for the defence of the area, necessarily required the formation of MP units. From April 1992 onwards, there were rules and regulations in place governing the functioning of the MP, signed by Mate Boban.³⁰ These were known as "Provisional Instructions" and organized the MP on the basis of local brigades in given areas (HVO Municipal Staffs).³¹

22. Under these initial rules, the Command of the MP was undertaken by the brigade command in the area where the MP was active, while the MPA, was formed to be responsible only for "Cadre Policy."³² This meant the MP units were to carry out tasks at the request of the commanders of the HVO units in the zones.³³ The MPA was limited to a role in appointments, dismissals, discipline of MP

²⁷ 2D1333

²⁸ 2D1333

²⁹ Biskic (T.15061/5-12)

³⁰ Andabak (T.50905/17-22); P143

³¹ Andabak (T.50906/1-15); P143

³² Andabak (T.50906/16-50907/4); P143

³³ P142, pg. 6

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

and providing equipment, and uniforms, and professional training for the MP.³⁴ In pertinent part the Instructions said the MPA was responsible for:

- a) The level of professional training and combat readiness of MP units;³⁵
- b) The provision of MP personnel;³⁶
- c) For providing MP units with equipment and insignia, but not for the acquisition of weapons, material and other equipment, which was the responsibility of the command of the parent unit of which the MP unit was a part.³⁷

Such a limited competency of the MPA is seen in practice by the fact that the orders issued by the MPA, few and far between, strictly related to regulations, training and instructions, and were of a cadre policy not of an operative nature.³⁸ All daily operative orders to MP Battalions came from the Commanders of the OZ, based on orders from the Main Staff and the MPA generally issued orders to the MP Battalions in the nature of point 9 from P143, namely:

The Military Police Administration of the HVO shall be responsible the level of professional training and combat readiness of the military police units.

It shall monitor, and study the organisation and formation of military police units, and control, and evaluate the level of training and combat readiness of military police units, and the HVO shall proposes measures for their improvement and replenishment.

The Military Police Administration shall also draw conclusions from experiences in the work of military police units incorporate them into the training of the military police units.³⁹

23. The MPA was given the competence to appoint commanders of companies and smaller units, but could only make proposals for HVO-appointment of commanders of the MP battalions.⁴⁰

24. Since MP battalions were attached to the brigades of the HVO municipal headquarters, the OZ commander was the factual commander of the MP - but at that moment, the MP units in the field were subordinate to the brigades.⁴¹ Brigades thus had operative command over MP that were to carry out all daily policing jobs, extraordinary tasks, and combat tasks in an area of responsibility.⁴² [Redacted].⁴³ Each HVO Brigade also had within its composition a platoon of Brigade MP drawn from

³⁴ Andabak (T.50906/16-50907/4); P143

³⁵ P142, pg. 6 ; Petkovic (T.50232/13-50235/3)

³⁶ P708, item X. ; Petkovic (T.50232/13-50235/3)

³⁷ P142, pg. 7; Petkovic (T.50232/13-50235/3)

³⁸ Andabak (T.50910/7-16); P2970; P1629; P1444; P2189; P573; P277; P129; P1416

³⁹ Andabak (T.51149/22-51151/6; 51151/7-51153/16)

⁴⁰ P143, pg.5; P1420; P1422; P1780; P2230

⁴¹ Andabak (T.50907/19-50908/2)

⁴² Andabak (T.50908/4-9)

⁴³ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

the manpower of the brigade and directly subordinated under the brigade.⁴⁴ This Brigade MP, as discussed in greater detail herein, was separate and distinct from the police battalions and had no link to the MPA, save for provision of belts and badges and professional training.⁴⁵

25. MP units had three specialities: general, criminal investigation and technical, traffic.⁴⁶ Other HVO units and members of the Ministry of Interior were to co-operate with MP in carrying out tasks from the sphere of activity of the MP as required by the unit commander in question.⁴⁷

1. Changes in the Structure of the Military Police did not Change the System of Command and Control, which was exercised at the level of the HVO military commanders in the Field.

26. The evidence showed that the organization and structure of the MP was amended multiple times.⁴⁸ However, while the composition and designation of battalions and companies may have changed, the system of control and command exercised by the HVO brigades over battalions of MP on the one hand and the limited competencies of the MPA toward those same battalions on the other hand, stayed the same.⁴⁹ The command and control system in place had the OZ and Brigade commanders of the HVO directly commanding the MP in both combat operations and ordinary police duties.⁵⁰

27. In early May 1992, an organisational integration of municipal MP units into four operative groups was conducted. Commands of the operative groups were established.⁵¹ Services for general administrative affairs, military investigation, inspection, personnel training and logistics were formed within the MPA.⁵²

28. In July and August 1992, further re-organisation took place. Besides the MP units (2nd-5th Battalions), territorially organised in zones of operation, the 1st Battalion of the active MP was formed, consisting of two companies.⁵³ The 2nd, 3rd, 4th, and 5th Battalions of MP were responsible for all MP work in the OZ where they were situated, and were available for use in combat operations, all under the

⁴⁴ P4262; P957

⁴⁵ See, herein, Sec. III. C.

⁴⁶ P142, pg. 4

⁴⁷ P142, pg. 4-5

⁴⁸ e.g. P3000; P837

⁴⁹ Andabak (T.50909/17-50910/6; 50913/23-50914/2; 50915/15-50916/1; 50937/12-50938/12; 51153/17-51155/7)

⁵⁰ See, herein Sec. III. E.

⁵¹ P128, p9

⁵² P128, p9-11

⁵³ P128, p10

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

command and authority of the HVO Commander of the OZ.⁵⁴ The 1st Battalion was called “active” and linked to the MPA, meaning that it was not permanently linked to a particular OZ, and was available for carrying out its duties over the whole of HZ-HB, and thus could be sent by the MPA to any OZ when so ordered by the HVO Main Staff.⁵⁵ It is this relationship that is coined as “direct command” of the MPA over the 1st Battalion,⁵⁶ [Redacted]⁵⁷ Likewise, once an element of the 1st Battalion arrived in a particular OZ, it was subordinated directly to the HVO commander in that Zone for all further purposes.⁵⁸

29. From 1 October 1992, the MP operated under a new organisational scheme regulated by the Instructions for the Work of the MP of the HVO HZ H-B, such that the MPA was organised through the Department of General and Traffic MP and the Crime Prevention Department.⁵⁹

30. As of 17 October 1992, it was decided by the Department of Defence that the MPA would be a part of the security section under the responsibility of the Deputy Head for Security.⁶⁰ The MPA was included in the Security Sector. Chief of General, Traffic and Military Police and Chief of Crime Prevention. At that time, commanders of the 1st-5th MP battalions, were appointed by the Head of Defence Department at the proposal of the Chief of MPA with approval of Assistant Head for Security.⁶¹ It is important to note that the Chief of the MPA did not even have the power to appoint members of the Administration itself, rather they to were appointed by the head of Defense Department based on recommendation from Coric.⁶²

31. As of 30 November 1992, the MPA was organised within the framework of the HVO and the Head of the Defense Department appoints, at the proposal of the Chief of the MPA, the commanders of battalions. The commanders of lower units were responsible for their work and execution of tasks to the commander of the battalion MP, who answers to the MPA. MP units execute all military tasks at the demand of the commander of the HVO unit to which they attached, and not at the demand of the MPA.⁶³ The MPA is responsible for the professional training and combat readiness of MP units, and for equipping MP with MP equipment and insignia.⁶⁴ [Redacted].⁶⁵

⁵⁴ [Redacted] P957; See generally herein Sec. III. E.

⁵⁵ [Redacted]Andabak (T.50911/11-50912/3; 51154/2-51155/7); [Redacted] P2982; P2988; P5478; 5D4282

⁵⁶ Andabak (T.50912/4-8)

⁵⁷ [Redacted]

⁵⁸ Andabak (T.50912/9-17); [Redacted]

⁵⁹ Tomljanovic (T.6348/21-25 ; 6349/1-13) ; Biskic (T.15265/13-19) ; P128 pg.11

⁶⁰ P586, pg. 3

⁶¹ 2D567, Part IV

⁶² 5D2164

⁶³ P837, pg. 4-5

⁶⁴ P837, pg. 6

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

32. On 26 December 1992, the establishment of the HVO MP was passed.⁶⁶ According to Exhibit P957, as of this date, the MPA was divided into two departments and five MP battalions. Two departments were the general and traffic department, and the second was the crime prevention department. The 1st Battalion was still directly linked to the MPA (in the same manner as previously) and the other four were directly linked to operative zones.⁶⁷ The penultimate paragraph of this document states: "The commanders of the battalions of the Military Police in operation zones in performing their daily duties is directly subordinate to the operation zone commander and carry out all orders relating to MP work in accordance with the powers and responsibilities of military police".⁶⁸

33. As of July – August 1993, because of the complex situation in the HZ H-B and the isolation of individual OZ, it was planned to form light assault MP battalions that would operate on the whole of HZ-HB. Existing MP battalions in the OZs continued to operate, but under different names. The integration of the MP activities of the light assault battalions and the MP battalions in the corresponding OZ was carried out by the Assistant Chief of the MPA responsible for the zone, who is also authorised to command the battalions.⁶⁹ Assistant chiefs were appointed for all OZ.⁷⁰ Said Assistant Chiefs were subordinated to the HVO military commanders of the OZ, and the command and control functioned the same as previously.⁷¹ On one interpretation this may have been an attempt to try and link the units in a more functional manner so that they were in a chain of command linking them with the chiefs of OZs due to the communication problems.⁷²

34. Thus at all times the Operative Command of the MP was exercised by the HVO Military Commanders, and the role of the MPA was rather limited. This is in line with the fact that the MPA had only about 35 personnel during the relevant time, including secretaries and staff.⁷³

⁶⁵ [Redacted]

⁶⁶ P957; [Redacted]

⁶⁷ P957; [Redacted]

⁶⁸ P957

⁶⁹ P3000

⁷⁰ P4699, pg12.

⁷¹ Andabak (T.50915/15-50916/2-18)

⁷² Biskic (T.15270/14-15271/12-21)

⁷³ P936

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

2. The Changes in the Structure of the Military Police only further degraded the already limited involvement of the Military Police Administration in the operation of the Military Police in the field.

35. MP units included battalions, companies and platoons which in accordance with the territorial principle, covered individual OZ. According to P957, the 1st Battalion was formed exclusively from active officers, was directly tied to the MPA (as previously defined) and was active in the entire territory of the HZ HB. It had three companies: the First based in Vitez, the Second based in Ljubuski, and the Third based in Livno (Sturbe). The 2nd Battalion had its headquarters in Tomislavgrad and was based in Livno and covered the area of N-W Herzegovina. It had four companies. The 3rd Battalion had its headquarters in Mostar covered the operative zone of Eastern Herzegovina. It had five companies. The 4th Battalion had its headquarters in Travnik, Vitez and covered the operative zone of Central Bosnia. The 5th Battalion was for the Posavina operative zone, operated in the area of Orasje and Bosanska Bijela, and was functionally integrated into the MP force.⁷⁴

36. It was described during trial how MP reinforcements were effectuated. The involvement of the MPA was not required to move reinforcements within the same OZ, and this was done at the Battalion level upon order of the HVO OZ Commander.⁷⁵ For movement of MP between zones, the HVO commander of a OZ would make request upon the HVO Main Staff for a MP unit to be removed from one zone and sent to another where it was need; the HVO Main Staff would then order the MPA to effectuate the transfer; the MPA would comply with transferring the unit, and the unit once transferred was resubordinated to the HVO Commander in the new OZ.⁷⁶

37. The system functioned in this manner until 28 July 1993, at which time the Department of Defense issued an order formally "re-subordinating" all light assault battalions of the MP to the Military Commanders in the OZ such that the Military Command could re-deploy them directly, both within the zone and to another zone, without going through the MPA.⁷⁷ This was done to remove red-tape and delay from the previous procedure, where the MPA was duty-bound to implement what had been decided at the Main Staff already.⁷⁸ In this sense from 28 July 1993 on, the MPA ceased even to perform the limited administrative logistical task of "sending" units to the terrain.

⁷⁴ P128, pg12; P957

⁷⁵ Andabak (T.50919/10-50920/13)

⁷⁶ Andabak (T.50934/7-22; 50935/17-50937/11; 51147/1-51149/21); P5478

⁷⁷ Andabak (T.50937/12-24; 50937/25-509838/12); P3778

⁷⁸ Andabak (T.50938/13-50939/13)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

38. [Redacted]

39. The MPA was further degraded in its functioning when the powers of the CPD were transferred down to the operative zone level⁷⁹ such that "The crime prevention unit in the MPA has been transformed in that its authority has been delegated to the level of the operative zone/has been transferred to that level".⁸⁰ This degraded further the competencies of the MPA making them even more limited and token in nature than set out in previous normative documents.

40. From the foregoing history of the structure and function of the MPA and the MP Battalions, it is clear that the MPA (during 1992-1993), already with a very limited scope of responsibility and competencies as to the Battalions, experienced a further degradation of the same, and that most competencies and authority were exercised at the level of the Operative Zone.⁸¹

41. At the end of 1993 a new organizational structure of the HVO MP was implemented, and came into force 1 December 1993,⁸² by which: a) 4 MP battalions were founded; b) an independent MP company at the Orasje Military district was founded; c) an MP company for guarding POWs and the military detention facility was founded; and d) a MP company for training of recruits was founded. With this new organization the system of command and control of the MP was changed also, envisaging that all MP units were under command of the MPA but in performance of daily tasks within their competence, the said units were subordinated to HVO military commanders. This new organization disbanded Brigade MP platoons, thus creating conditions for more efficient working of the MP.

⁷⁹ Tomljanovich (T.6373/19-25; 6374/1-25)

⁸⁰ P4699, pg13.

⁸¹ See, generally herein Sec. III.

⁸² P07018; Tomljanovich (T.6374/22-6378/2); Biskic (T.15058/1-15060/9);

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

3. Reporting System in place and functioning among Military Police units in the Field and the Military Police Administration.

42. Under the organizational structure in place, the manner of reporting between MP battalions in the field and the MPA was of a limited nature, in line with the limited competencies, described above, for the Administration. Coric issued an instruction on how these reports should look.⁸³

43. Colonel Andabak of the 2nd Light Assault Battalion testified that he and other MP battalion commanders in the OZ were duty-bound to send daily, weekly, monthly and quarterly reports to both the Command of the OZ and the Duty Operations Service of the MPA.⁸⁴ Colonel Andabak confirmed that P970 is an example of one such quarterly report he sent.⁸⁵

44. The evidence is that any such reports sent to the MPA duty service were reviewed and compiled by the duty officer for a summary of items of interest to be prepared for presentation to Coric as Head of the MPA, and also the Main Staff and Ministry of Defense, SIS, and others.⁸⁶ We do not have and the Prosecution has not presented the MPA log-book such as would permit us to know precisely which reports or more accurately which summary compilations actually were presented to Coric. However the other evidence demonstrates the nature of such reports to be a benign nature, dealing with logistics, etc. and not providing any information that would alert of any criminal plan or propensity for criminal activity. To the contrary, such reports would demonstrate that law enforcement authorities were doing their job and investigating crimes and punishing perpetrators.⁸⁷

45. [Redacted]

It can be seen the reports were primarily concerned with available personnel, casualties and locations of MP, ie issues in line with the "cadre policy" responsibilities of the MPA towards the battalions (combat readiness and replenishment of equipment and personnel).

46. Andabak testified that he and other MP commanders from the Operative Zones attended monthly meetings at the MPA where problems of MP on the ground and logistics were discussed, including care for wounded members and benefits for families of killed members.⁸⁸ Minutes of such meetings are of record and demonstrate the type of benign information being presented, again in line

⁸³ P277; 2D1395

⁸⁴ Andabak (T.50931/1-8); P970

⁸⁵ Andabak (T.50932/8-23)

⁸⁶ Andabak (T.50931/9-21); [Redacted]

⁸⁷ P420; P423

⁸⁸ Andabak (T.50916/19-50917/20)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

with the minimal competencies of the MPA, and the primacy of OZ and Brigade commands to the everyday tasking of the battalions.⁸⁹

47. [Redacted]⁹⁰

Communication between the MPA and MP units also revolve around the same topics.⁹¹ Units requiring anything more in combat could only rely on the Administration to pass along the information to HVO Commanders.⁹² Colonel Andabak also confirmed regular combat reports were required of him by the HVO OZ Commander and were given in briefings.⁹³ Indeed the independent evidence is that HVO commanders required combat reporting to them by the MP battalions.⁹⁴

48. Likewise, where HVO military commanders tasked MP with ordinary police duties, they were duty-bound to report on their completion of those activities to the HVO military commanders in their area of responsibility.⁹⁵ The duty to report to the Brigade or OZ Commander was essential insofar as these commanders had the ability to enact discipline for failure to carry out orders, or other misconduct of MP subordinated to them.⁹⁶

49. From the foregoing we see that the nature of the reporting sent to the MPA was limited to questions of logistics, replenishment and equipment – in line with the limited “Cadre Policy” competency of the MPA towards the MP battalions. Knowing that only summaries of the most “vital” information were selected by the duty service administration for forwarding to the MPA the information available to Coric at the relevant time would have been rather limited. Unfortunately, insofar as the log book of the office of the MPA Chief has not been introduced, we have no way of seeing precisely what limited information was available to Coric at the relevant time period. However from the other evidence cited above, we see the type of information would not have been in the nature of post-combat reports and rather would have been in the nature of logistical or statistical communications from the battalions. We have examples of the type of information contained therein from the bulletins that the MPA prepared based on such summaries.⁹⁷

⁸⁹ P5869; P4947

⁹⁰ [Redacted]

⁹¹ P2784

⁹² 5D4092; 5D4094

⁹³ Andabak (T.50932/24-50933/18)

⁹⁴ 5D4385

⁹⁵ [Redacted] Andabak (T.50940/2-11; 50942/7-23; 50950/25-50951/18; 51158/2-10; 51158/11-51159/3); P4063; P2836; P1359; P377; P458

⁹⁶ Andabak (T.50910/17-50911/10); [Redacted] 5D4039; 5D4031

⁹⁷ P420; P423; P6722

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

D. Position of the Military Police Administration within the HVO

50. The MPA fell under the jurisdiction of the Security Sector of the Department of Defense within the composition of HVO.⁹⁸ The Department of Defense was established by decree of the session of the Presidency of HZ-HB 15th May 1992 and the Department of Defense, including the MPA, became operational 3 July 1992.⁹⁹

51. The Security Sector of the Department of Defense was established by Decree of the President of the HR-HB formally on 17 October 1992.¹⁰⁰ Specifically, pursuant to P586, "The deputy head for security shall be responsible for the security section which shall encompass the SIS and the MPA. The deputy for security shall also perform the duties of the chief of the security administration."¹⁰¹ This role was confirmed by Marijan Biskic.¹⁰²

52. Ivica Lucic was appointed as the Deputy Head of the Department of Defense for the Security Sector also in October 1992.¹⁰³ He served in this capacity until 9 October 1993, at which time he was replaced by Marijan Biskic.¹⁰⁴

53. Although Biskic claimed not to know who his predecessor was in the position of Deputy Head of Department of Defense, he did confirm that from October 1992 onwards the Chief of the MPA was subordinate to the Deputy Head of Defense Department for the Security Sector.¹⁰⁵ The powers and authority of the Deputy Head of Defense Department for the Security Sector remained the same when the Department became a Ministry.¹⁰⁶

⁹⁸ 2D567; P2477; [Redacted]

⁹⁹ P128; Biskic (T.15265/22-15266/12)

¹⁰⁰ P586; 2D567

¹⁰¹ P586, pg3

¹⁰² Biskic (T.15258/2-10)

¹⁰³ P615.

¹⁰⁴ Biskic (T.15257/1-15261/3)

¹⁰⁵ Biskic (T.15258/11-14)

¹⁰⁶ Biskic (T.15259/15-22)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

**III. THE OTP HAS FAILED TO ESTABLISH THE RESPONSIBILITY OF CORIC AS A
COMMAND-SUPERIOR OF ANY ALLEGED PERPETRATORS UNDER ARTICLE 7(3)**

A. The Law of Command Responsibility¹⁰⁷

54. The OTP has alleged that Coric is criminally responsible as a superior for the criminal acts or omissions of subordinates or other persons about or over whom he had effective *de jure* and/or *de facto* control for failing to prevent such acts or punish, remove or discipline such persons.¹⁰⁸

55. To hold a commander responsible for the crimes of subordinates, it must be established beyond reasonable doubt that: (1) there existed a superior-subordinate relationship between the superior and the perpetrator; (2) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (3) the superior failed to take the necessary and reasonable measures to prevent the criminal act or to punish the perpetrator thereof.¹⁰⁹

56. The critical factor that must be established to find a superior-subordinate relationship is that the superior had "effective control" over the persons committing the offences. Effective control means the "material ability to prevent or punish the commission of the offences". "Substantial influence" over subordinates that does not meet the threshold of "effective control" is not a sufficient basis for imputing criminal liability under customary law.¹¹⁰ A superior must be aware that he has effective control over those committing or who had committed crimes.¹¹¹ Effective control means more than having general influence over the behavior of others.¹¹²

57. As a preliminary matter it should be pointed out that the OTP has failed to meet its burden in the indictment or during the course of the trial to specifically identify the subordinates over whom it is alleged that Coric had effective *de jure* or *de facto* control for whom it is alleged they performed criminal acts for which Coric is supposed to be responsible. Likewise the OTP has impermissibly asserted

¹⁰⁷ As a preliminary matter, the Prosecution has failed to adequately plead in the Indictment Article 7(3) Command-Superior Responsibility as to Coric, as set out below.

¹⁰⁸ Indictment, para. 228 OTP PTB para. 228.

¹⁰⁹ *Prosecutor v Blagojevic & Jokic*, No. IT-02-60-T, *Judgement* (17 January 2005) at para. 790; *Prosecutor v Kordic & Cerkez*, No. IT-65-14/2-A, *Judgement* (17 December 2004) at para. 827; *Prosecutor v Halilovic*, No. IT-01-48-T, *Judgement* (16 November 2005) at para. 56; *Prosecutor v Limaj et al.*, No. IT-03-66-T, *Judgement* (30 November 2005) at para. 520; *Prosecutor v Oric*, No. IT-03-68-T, *Judgement* (30 June 2006) at para. 294

¹¹⁰ *Prosecutor v Delalic*, No. IT-96-21-A, *Judgement* (20 February 2001) at para 266, 300; *Prosecutor v Blagojevic & Jokic*, No. IT-02-60-T, *Judgement* (17 January 2005) at para. 791; *Prosecutor v Halilovic*, No. IT-01-48-T, *Judgement* (16 November 2005) at para. 59; *Prosecutor v. Limaj et al.*, No. IT-03-66-A, *Judgement* (27 September 2007) at para. 273

¹¹¹ *Prosecutor v Oric*, No. IT-03-68-T, *Judgement* (30 June 2006) at para. 316

¹¹² *Prosecutor v Oric*, No. IT-03-68-T, *Judgement* (30 June 2006) at para. 311

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

command responsibility arising out of the MP's jurisdiction over investigation of crimes by members of HVO Armed Forces. Coric cannot be considered a command-superior of personnel not within the MP, and thus cannot be held liable for acts committed by, among others, prison staff, civilians and members of HVO military brigades.

58. The evidence demonstrated that even within the MP, Coric's command-superior position was restricted to very few personnel directly under the MPA, and that his effective control did not extend to: a) brigade MP; and b) MP operating in and subordinated to the commanders of OZs .

59. Nothing under international law (nor, under the law of the HZ H-B) obliges the commander, once he has learned of crimes having been committed by subordinates, to take care of the investigation himself. Instead, the central question will be whether the superior took such necessary and reasonable measures as could be taken given the superior's degree of effective control over his or her subordinates.¹¹³ A superior may discharge his duty to punish by reporting the matter to the competent authorities.¹¹⁴ A proper review of the evidence will demonstrate that crimes when known of, were properly reported to judicial organs for prosecution.

60. International law cannot oblige a superior to perform the impossible. Hence, a superior may only be held criminally responsible for failing to take measures that are within his powers.¹¹⁵

61. IHL treaties, especially the Geneva Conventions do not prescribe to states the manner in which they must ensure compliance. The ways in which the treaties are implemented within an individual state are left to the discretion of that state. A commander cannot be blamed for relying on his domestic law for the purposes of determining what his obligations are in relation to his subordinates. The Trial Chamber pointed out in the Hadzihasanovic case, that there is no rule, either in customary or in positive international law, which obligates States to prosecute acts which can be characterized as war crimes solely on the basis of international humanitarian law, completely setting aside any characterizations of their national criminal law.¹¹⁶

¹¹³ *Prosecutor v. Blaskic*, IT-95-14-A, Appeal Judgement, p. 29: 72

¹¹⁴ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-A, *Judgement* (22 April 2008) at para. 154

¹¹⁵ *Prosecutor v. Stakic*, IT-97-24-T, Trial Judgement, p. 138: 461

¹¹⁶ *Prosecutor v. Hadzihasanovic/Kubura*, IT-01-47-T, Trial Judgement, p. 72: 260

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

62. The evidence¹¹⁷ demonstrates that Coric took all necessary and reasonable measures, to the best of his abilities and during difficult times, and within the limited authority available to him. Likewise due to the nature of the situation, other entities were actually tasked with enforcement and efforts to prevent and punish, apart from the MP. Thus it cannot be said that Coric knew of crimes that occurred that went unpunished, or that he failed to prevent or punish perpetrators.

63. Additionally, for Article 7(3) liability the conduct of the accused, from which knowledge and failure to act required to establish his superior responsibility may be inferred, constitutes a material fact which must be pleaded in the indictment.¹¹⁸ This too has not been done by the OTP.

64. All the OTP has done in the Indictment is to plead the position of Coric, within the MPA, and plead the participation of MP in alleged crimes. An accused's position of authority cannot lead to an automatic presumption, that he or she knew or had reason to know of the crimes for which a conviction is sought.¹¹⁹ The mental element "had reason to know" as articulated in the Statute, does not automatically imply a duty to obtain information -- responsibility can be imposed for deliberately refraining from finding out but not for negligently failing to find out.¹²⁰ Essentially the OTP has neither properly pled a sustainable case for the command-responsibility element "had reason to know" nor has the evidence established a sustainable case for the same.

65. The evidence is that Coric left the MPA some time prior to November 1993.¹²¹ Where a crime is committed under one commander, but reports of the crime only reach the command when a second commander has assumed the command, the first commander has no duty to punish, since he no longer has the ability to exercise effective control.¹²² Thus to the extent that the OTP is seeking to assert Art. 7(3) liability for crimes that were unknown at the time and which were only made known after Coric left his position, command-superior liability would be inappropriate.

¹¹⁷ See, generally herein Sec. V.

¹¹⁸ *Prosecutor v. Blaskic*, IT-95-14-A, Appeal Judgement para. 218.; *Prosecutor v Pavkovic et al*, No. IT-03-70-PT, *Decision on Sreten Lukic's Preliminary Motion on the Form of the Indictment* (8 July 2005); *Prosecutor v Boskoski & Tarculovski*, No. IT-04-82-PT, *Decision on Prosecution Motion for Leave to Amend the Original Indictment and Defence Motions Challenging the Form of the Amended Indictment* (1 November 2005) at para. 26; *Prosecutor v Delic*, No. IT-04-83-PT, *Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment* (13 December 2005) at para. 8

¹¹⁹ *Prosecutor v. Delalic*, No. IT-96-21-A, *Judgement* (20 February 2001) at para 313.

¹²⁰ *Prosecutor v. Blaskic*, No.:IT-95-14-A, *Judgement* (29 July 2004) at para. 406

¹²¹ Biskic (T.15061/5-12)

¹²² *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 197

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

66. For the foregoing and following reasons it is therefore appropriate to acquit Coric of Art. 7(3) command-superior responsibility for any and all crimes charged in the indictment.

B. Coric cannot be considered a Command-Superior of any principal perpetrators found to be HVO/Herceg-Bosna personnel who were NOT Military Police

67. Indictments are required to plead "subordinates sufficiently identified,"¹²³ except that it is sufficient to identify the persons who committed the alleged crimes "by means of the category or group to which they belong."¹²⁴ As per the Trial Chamber in Delalic "The law does not know of a universal superior without a corresponding subordinate."¹²⁵ Per the Trial Chamber in Hadzihasanovic the bare minimum requirement for Article 7(3) is at least identification of the group to which the perpetrators belong.¹²⁶ Thus in order for Coric to be liable as a superior, it must be established over which perpetrators he legally had command/control.

68. The Second Amended Indictment identifies (with regard to Coric) ONLY that he had de jure/de facto command and control over the HVO Military Police¹²⁷ yet improperly asserts that his responsibility also extended to "investigate alleged crimes by Herceg-Bosna/HVO Armed Forces" by virtue of the fact such is the duty of the MP.¹²⁸

69. Per the decisional authority cited above, the only "subordinates" or "category" or "group" properly pleaded in the Indictment for purposes of Article 7(3) responsibility are the HVO MP.

70. Likewise there has been no evidence presented by the OTP to suggest let alone prove Coric's Article 7(3) Responsibility over non MP personnel.¹²⁹ Additionally, the OTP's method of asserting Coric's responsibility for not investigating crimes committed by other HVO units, based on the jurisdictional competence of the MP is contrary to the prevailing decisional authority found in Halilovic, where the Appeals Chamber directed:

¹²³ *Prosecutor v Boskoski & Tarculovski*, No. IT-04-82-T, "Decision on Prosecution Motion for Leave to Amend the Original Indictment and Defense Motions Challenging the Form of the Proposed amended Indictment" (1 November 2005), para. 26; *Prosecutor v Blaskic*, No. IT-95-14-A, *Judgement* (29 July 2004) at para. 218

¹²⁴ *Prosecutor v Rajic*, No. IT-95-12-T, "Decision on the Defense Motion on the Form of the Amended Indictment" (27 April 2004), para. 13.

¹²⁵ *Prosecutor v. Delalic*, No. IT-96-21-T *Judgement* (16 November 1998) para. 647

¹²⁶ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 90

¹²⁷ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. Para. 12

¹²⁸ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. Para. 12

¹²⁹ including but not limited to: a) The HVO armed forces; b) The so-called Convicts Battalion; c) Civilians, including civilian prison guards or prison interlopers; d) The home guard units; e) Unknown Outsiders

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

The ability to exercise effective control in the sense of material power to prevent to punish, which the Appeals Chamber considers to be a minimum requirement for the recognition of a superior-subordinate relationship for the purpose of superior responsibility, will almost invariably not be satisfied unless such a relationship of subordination exists. The Appeals Chamber considers that a material ability to prevent and punish may also exist outside a superior-subordinate relationship relevant for Article 7(3) of the Statute. ***For example, a police officer may be able to “prevent and punish” crimes under his jurisdiction, but this would not as such make him a superior (in the sense of Article 7(3) of the Statute) vis-à-vis any perpetrator within the jurisdiction.***¹³⁰ [Emphasis Added]

71. The OTP is therefore impermissibly attempting to assert Article 7(3) responsibility for Coric's alleged failure to investigate and punish alleged crimes by Herceg-Bosnia/HVO armed forces, for which there is no command-superior relationship, solely based upon the jurisdiction of the MP. Similarly, to the extent that the OTP's case is that the MP aided and abetted others who performed the actual crimes who came from different structures, it should be recalled the Blagojevic Trial Judgment expressly rejected that the superior can be held criminally responsible if his subordinates “render practical assistance” (ie aid and abet) rather than commit crimes themselves.¹³¹ Likewise the ICTR jurisprudence has also rejected Art. 7(3) liability unless the subordinates are the principal offenders.¹³²

72. Thus, to the extent that criminal responsibility as a command-superior is being asserted against Coric for perpetrators of crimes who were not members of the HVO MP (such as prison staff, home guard units, civilians, etc), such would be impermissible under the aforesaid authorities, and accordingly Coric should be acquitted of any and all such charges.

C. Coric cannot be considered a Command-Superior of any perpetrators found to be HVO Brigade Military Police engaged in Combat Actions or otherwise engaged upon orders of the HVO Brigades.

73. Each HVO military brigade included a compliment of MP (hereinafter “Brigade MP”) under its composition directly subordinated to the Brigade Commander, and considered part of the brigade formation, with the same status as other brigade units.¹³³ A schematic illustration of the brigade introduced in trial showed a platoon of MP within the elements of a HVO brigade.¹³⁴ Colonel Andabak confirmed that this was the same organization for every brigade in the OZ.¹³⁵

¹³⁰ *Prosecutor v Halilovic*, No. IT-01-48-A, *Judgement* (16 October 2007) at para. 59

¹³¹ *Prosecutor v Blagojevic & Jokic*, No. IT-02-60-T, *Judgement* (17 January 2005) at para. 794

¹³² *Prosecutor vs. Bagilishema, ICTR-95-1A-A*, *Judgment* (3 July 2002) at para. 50

¹³³ [Redacted]P4262

¹³⁴ P1099; Andabak (T.50926/1-9)

¹³⁵ Andabak (T.50927/17-50928/6)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

74. A document by Zeljko Siljeg of the OZ of NW Herzegovina demonstrated that the Brigade MP was formed by each brigade which supplies and trains them in accord with the brigade's chain of command.¹³⁶

[Redacted].¹³⁷

75. The duties of the Brigade MP included providing security of barracks, security of transport, securing the entry/exit of the battlefield, and taking persons into custody.¹³⁸

76. General Miliovoj Petkovic's testimony confirmed that upon formation of brigades, the commanders of those brigades were given command over MP units attached directly to them, known as the Brigade MP.¹³⁹ This fact was also demonstrated by evidence.¹⁴⁰ Namely Petkovic issued a "warning" to his brigade commanders relative to the inefficiency seen in Brigade MP, affirming their exclusive authority and command over the Brigade MP, stating in pertinent part:

1. **Brigade Military Police is directly subordinate to the Brigade Commanders.** *It is also a part of the brigade formation and has the same status as other units within the brigade.*
2. *Recruiting manpower is to be carried out only from the military structure of a brigade and the **commander has the right to replace every military policeman.***
3. **Chief of the Military Police can only be asked for professional assistance.**
4. **All problems within the brigade police are your problems and should be solved through the command system.**¹⁴¹*[Emphasis added]*

77. There is evidence that this order was adopted by OZ Commanders who directed identical orders towards their subordinated units.¹⁴² Many witnesses confirmed the above was practiced throughout the HZ-HB. Tokic, himself a brigade commander for Gornji Vakuf confirmed that the brigade's MP were under his command.¹⁴³

[Redacted].¹⁴⁴

78. The consistent testimony by both OTP and defense witnesses is that the Brigade MP had the same status as other Brigade units and was under the exclusive command of the brigade

¹³⁶ 5D538

¹³⁷ [Redacted]

¹³⁸ P957

¹³⁹ Petkovic (T.50226/5-50227/3); P4262

¹⁴⁰ Petkovic (T.50229/11-12); P1099

¹⁴¹ P4262

¹⁴² P4413

¹⁴³ Tokic (T.45507/14-18)

¹⁴⁴ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

commander¹⁴⁵; also the only responsibility of the MPA towards the Brigade MP was in fact this "Professional Assistance" which meant providing logistical instruction and MP equipment, such as belts and badges.¹⁴⁶ Indeed, after Petkovic issued his order, Coric sent a document directly to all brigades rendering "professional assistance" as to the norms for functioning of Brigade MP.¹⁴⁷

79. In a document on the Organization of the MP, authored by Coric and Stojic as the Head of the Defense Department, it is clearly stated "VP Platoons in the brigades carry out orders given by the Brigade Commander within the scope of their competence."¹⁴⁸ P2832 was an example of a MP Brigade undertaking a crime scene investigation upon the order of brigade commander.¹⁴⁹

80. Colonel Andabak, confirmed the Brigade MP was under the command of the HVO brigade commander, and further stated the MPA was only duty bound, logistically, to ensure MP equipment and professional training were provided to Brigade MP.¹⁵⁰

[Redacted].¹⁵¹

81. Per Colonel Andabak the 6 Brigade MP Platoons included in the same OZ as him were drawn from the brigade's strength and were responsible only to the Brigade for their work.¹⁵² Appointments of Brigade MP commanders came from within the brigade's own manpower¹⁵³ and were undertaken by the Brigade Commander directly, who could also dismiss such personnel if they failed to carry out assignments.¹⁵⁴ Neither Andabak (as Commander of the Battalion of MP sent to the OZ) nor the MPA had no role in the assignment. Documents introduced into evidence relating to such appointments and disciplinary acts corroborate the foregoing testimony.¹⁵⁵

82. There was no reporting obligation on the part of the Brigade MP towards the MPA. The evidence of Colonel Andabak is clear that the Brigade MP was not duty bound to send reports to him as the Commander of the 2nd Light Assault Battalion of the MP and in fact did not send reports, instead it

¹⁴⁵ [Redacted] Andabak (T.50921/6-50922/5; 50923/6-16); [Redacted]

¹⁴⁶ [Redacted] Andabak (T.50921/6-50922/5)

¹⁴⁷ P4922

¹⁴⁸ P957

¹⁴⁹ Andabak (T.50951/19-50952/5)

¹⁵⁰ Andabak (T.50906/24-50907/23)

¹⁵¹ [Redacted]

¹⁵² Andabak (T.50913/2-22)

¹⁵³ Andabak (T.50921/19-24)

¹⁵⁴ Andabak (T.50918/11-50919/8)

¹⁵⁵ P990; P2595; 5D5106; 5D5107

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

reported directly to the Brigade Commander.¹⁵⁶ This was demonstrated by reports entered into evidence authored by Brigade MP commanders and directed only to the Brigade Command.¹⁵⁷

83. [Redacted],¹⁵⁸

[Redacted]¹⁵⁹

[Redacted].¹⁶⁰ Thus, even this instance demonstrates the Command of the HVO Brigade, and not the MPA, had effective control over the Brigade MP.

84. Also of assistance to the Chamber in this matter is the fact that the Brigade MP were restructured in December 1993, at which time the Minister of Defense issued a decree by which the Brigade MP ceased to exist within the brigade and instead became a part of the 2nd and 3rd Light Assault Battalions.¹⁶¹ This demonstrates that prior to that time, the Brigade MP were in fact separate from the Battalions of MP, as is consistent with the other evidence recited above.

85. No superior-subordinate relationship existed between Coric and the Brigade MP. As such command-superior liability for acts committed by the Brigade MP cannot be attributed to Coric.

D. Coric cannot be considered a Command-Superior of any perpetrators found to be members of the HVO Home Guard Units ("Domobranstvo") engaged in Combat Actions or otherwise engaged upon orders of the HVO Brigades.

86. [Redacted]¹⁶²

[Redacted].¹⁶³

87. Exhibit P680 is an excerpt from the Official Gazette of the HZ-HB from November 1992 dealing with the Decision on the structure of the Home Guard, dictates that the Home Guard Unit and headquarters will be subordinated to the commands of the OZ and Main Staff.¹⁶⁴

¹⁵⁶ Andabak (T.50929/16-50930/12)

¹⁵⁷ P4110

¹⁵⁸ [Redacted]

¹⁵⁹ [Redacted]

¹⁶⁰ [Redacted]

¹⁶¹ Andabak (T.51155/16-51156/10); Biskic (T. 15058/1-15060/9); P7018; P7419, pg. 3

¹⁶² [Redacted]

¹⁶³ [Redacted]

¹⁶⁴ P680.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

88. An order issued by Commander Siljeg of the OZ of NW Hercegovina, hands over competencies and resubordinates the Home Guard to his brigade commanders, based on the general principle that the unit that is the strongest according to its establishment in a territory commands all units existing upon that territory, and is regulated by orders of the OZ Commander.¹⁶⁵

[Redacted]¹⁶⁶

[Redacted]¹⁶⁷

89. [Redacted].¹⁶⁸ No credible evidence was led tending to assert that the Home Guard Units were ever a constituent part of the MPA.

90. From the foregoing, it cannot be said that a superior-subordinate relationship existed between Coric and the Home Guard. As such command-superior liability for acts committed by the Home Guard Units cannot be attributed to Coric.

E. Coric cannot be considered a Command-Superior of any perpetrators found to be HVO Military Police engaged in Combat Actions or otherwise engaged in Daily Duties upon orders of the HVO Military Commanders.

91. The OTP has impermissibly asserted command responsibility for Coric based upon MP who were engaged upon orders of and effectively re-subordinated to the HVO Armed Forces in the territory where they were sent. These MP units were placed beyond the authority and effective control of the MPA. Therefore, it would be improper to assert the liability of Coric for these units.

92. Owing to the specific structure and organizational scheme of the HVO MPA as described previously, 5 Light Assault Battalions of MP were present in and operating within the various OZ of the HZ-HB during the time period of the Indictment.¹⁶⁹ Andabak, and other witnesses, uniformly confirmed that the four battalions of MP that were assigned to particular OZ, and the one active battalion that rotated through various of the OZ were fully and exclusively subordinated under the operative command of the OZ commander and his brigade commanders on whose territory they operated, for the duration of their deployment.¹⁷⁰ By "Operative Command" it was understood to mean in regards to carrying out all

¹⁶⁵ 5D2001

¹⁶⁶ [Redacted]

¹⁶⁷ [Redacted]

¹⁶⁸ [Redacted]

¹⁶⁹ See herein Sec. II.

¹⁷⁰ [Redacted] Andabak (T.50906/16-50908/2; 50912/4-17; 50915/1-14; 50917/21-50918/10; 50920/14-20); [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

daily policing jobs, extraordinary tasks, and combat tasks in an area of responsibility.¹⁷¹ Any MP unit transferred to another brigade or Operative Zone would immediately become subordinated to the command of that brigade or zone who would issue orders to it.¹⁷² According to the testimony of Andabak, despite various revisions on the Instructions governing functioning of the MP, the system of command and control over these units and the competencies of the MPA towards the same remained unchanged.¹⁷³ Andabak stated that this organization and manner of functioning of the command and control system operated uniformly in all operative zones of HR-HB,¹⁷⁴ as is readily apparent from reviewing the testimony of witnesses from various zones.¹⁷⁵ The MPA, had no command ability to generate operative orders of its own, and served merely to convey orders already issued by other organs (such as the Defense Department and Main Staff) relating to transfer of personnel, instructions for adherence to measures relating to peace and public security and replenishment of units, etc.¹⁷⁶

93. A thorough review of the evidence will reveal that multiple witnesses from the HVO Armed Forces testified in these proceedings that the MP was utilized for Combat under the command of HVO brigade commanders;¹⁷⁷ and came under the command of the Military Commander in whose zone of responsibility they operated for everyday police tasks.¹⁷⁸ In such instances Coric did not have effective control over these personnel, who were effectively under control of the HVO military commanders. Much documentary evidence also corroborates that MP units were sent and subordinated to the OZ Commander and/or brigade commanders for the use of the HVO brigades, including combat operations and everyday MP tasks.¹⁷⁹

94. [Redacted].¹⁸⁰ [Redacted].¹⁸¹

95. Lastly, Defense witnesses from within the MP also confirmed in detail the manner and operation by which MP units were subordinated to commanders of OZ and brigades for their use in both combat

¹⁷¹ Andabak (T.50908/4-9)

¹⁷² Andabak(T.50912/9-7; 50920/14-20; 51147/1-51149/21); [Redacted]

¹⁷³ Andabak (T.50909/17-50910/6; 50913/23-50914/2; 50915/15-50916/18; 51146/2-25; 51154/2-51155/7; 51156/14-51157/19)

¹⁷⁴ Andabak (T.50923/20-50924/1)

¹⁷⁵ Andabak, [Redacted]

¹⁷⁶ P1121; P1517; P1562; P4174; P2020; P3077; P323; P5478; 5D4282; 3D419

¹⁷⁷ e.g. Zvonimir Skender; [Redacted], Bozo Pavlovic; Slobodan Praljak; Milivoj Petkovic

¹⁷⁸ e.g. [Redacted]; Zvonimir Skendar; Milivoj Petkovic; Bozo Pavlovic

¹⁷⁹ e.g. P957; P1888; P1913; P1972; P3135; 5D3046; 5D3048; 5D3052; 5D2195; 5D3019; 5D1054; 5D4392

¹⁸⁰ Witness CC (T.10458/8-13; Witness EA (T.24876/16-24877/18; 24879/13-24880/2; 24885/1-24886/5); Witness C (T.22520/3-17; T.22540/8-22541/21)

¹⁸¹ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

and regular duties.¹⁸² Essentially, battalions of MP were subordinated to and under the effective control of the brigade command in the area where they were located, whereas the MPA retained responsibility only for cadre policy and equipment and uniforms.¹⁸³ "Cadre Policy" can be further understood by looking at the role of the MPA as set forth in P143, in monitoring, training and replenishing.¹⁸⁴ Again, this is in line with what witnesses in all zones described.

96. As will be seen with this overwhelmingly consistent evidence from all sides, the only reasonable conclusion available supports acquittal of Coric from any Article 7(3) command responsibility, as MP units were subordinated to HVO commanders in OZs.

1. HVO Military Police were subordinated to HVO Army Commanders, including in the performance of Combat Operations in the Field

97. Apparently the sole argument on which the OTP wishes to rely to assert the authority of Coric over MP units engaging in combat is P3792, a handwritten report by Col. Andabak reciting what a HVO commander misquoted.¹⁸⁵ However, P3792 itself is clear on its face that Andabak received the order to reconnoiter the terrain from General Praljak, not Coric. Likewise, the report of HVO commander Vucica makes it clear that the entire dispute arose not over who had command of Andabak and the MP, but rather concerns he and Andabak had because General Praljak and Filipovic were insisting on a combat plan that ignored the realities on the ground and significant enemy forces.¹⁸⁶ As Andabak explained to the judges, Praljak was within his authority institute proceedings to dismiss Andabak,¹⁸⁷ such that authority over the MP was not in question ever. Indeed, the one thing General Praljak was clear on is that MP in combat were under operational control of himself and subordinate HVO commanders.¹⁸⁸

98. Essentially all witnesses who were asked to comment on the use of MP in combat were agreed that such units were subordinated under the exclusive command of the HVO military commanders rather than the MPA. The MPA remained tied to these units only in regards to logistics, uniforms, and other cadre policy matters. Indeed, when a MP unit required reinforcements in combat, the only matters within the power of the Coric was indirect, and relating to logistics (ie. to refer the matter to General

¹⁸² e.g. Zdenko Andabak, Zvonimir Vidovic, [Redacted]

¹⁸³ Andabak (T.50906/16-50907/4; 50907/17-23); P143

¹⁸⁴ See herein Sec. II.

¹⁸⁵ Andabak (T.51101/2-51104/22)

¹⁸⁶ P3821

¹⁸⁷ Andabak (T.51105/1-10)

¹⁸⁸ Praljak (T.42692/6-18)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Praljak or another HVO Commander and plead for the HVO to undertake reinforcement of the besieged MP unit).¹⁸⁹ The other communications with MP units all centered around logistics, obtaining information on wounded/killed.¹⁹⁰

99. This is true even of General Praljak (Commander of the HVO Main Staff, from 24 July 1993 to 9 November 1993)¹⁹¹, who attempted to disavow command over MP units in any other sphere of activity and likewise attempted to link the command-superior relationship with the MP in combat only upon the time that Mate Boban authorized him to use MP for operative tasks, because of the military situation that prevailed.¹⁹² Praljak went on to state that in the case of combat operations the MP were his subordinates, under operational command of the commander in charge of the operation in question.¹⁹³ [Redacted].¹⁹⁴ Praljak's denial of operative control of the MP outside of combat stands alone and at odds, as the overwhelming counter-evidence is discussed later herein.¹⁹⁵ Likewise the counter evidence demonstrates that, rather than being only after a certain date, the subordination of MP to brigade commanders existed at all times.

100. General Petkovic (who also served as Chief and Deputy Commander of the HVO Main Staff¹⁹⁶) likewise did not deny that MP units engaged in combat fell under the command of his brigade commanders, and only initially disputed command of such units outside of combat.¹⁹⁷ At times both Generals Praljak and Petkovic appeared to present confusing and contradictory evidence attempting to limit how the MP was subordinated to their OZ and brigade commanders, but this confusion is limited to them. Documents, and witnesses clearly and unequivocally demonstrate a consistent story.

101. Colonel Bozo Pavlovic was the most authoritative and consistent member of the HVO armed forces that testified. It should be recalled that Pavlovic's career path in the HVO during the relevant time period was as follows: a) Commander of the Municipal Staff and later forward command post of the HVO at Stolac (from 1 July 1992 – 3 July 1993);¹⁹⁸ b) Operative Section of OZ Southeast Herzegovina

¹⁸⁹ 5D4092; 5D4094

¹⁹⁰ P2784

¹⁹¹ Praljak (T.39655/3-14); P3683

¹⁹² Praljak (T.42526/13-17)

¹⁹³ Praljak (T.42692/6-18)

¹⁹⁴ [Redacted]

¹⁹⁵ See, herein Sec. III. E. 2.

¹⁹⁶ Petkovic (T.48287/9-49288/14)

¹⁹⁷ Petkovic (T.49791/7-49794/1; 49795/3-13)

¹⁹⁸ Pavlovic (T.46788/4-24; 46942/20-46943/2)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

(from 3 July 1993 – 20 July 1993);¹⁹⁹ c) Commander of the 3rd HVO Brigade (from 20 July 1993 to 4 October 1993);²⁰⁰ and d) Staff of the 3rd HVO Brigade (from 4 October 1993 to June 1994).²⁰¹

102. Pavlovic confirmed MP operated under his command and that of Brigade Commander Obradovic and that upon further order from his HVO commanders, were deployed into combat.²⁰²

103. [Redacted].²⁰³

[Redacted].²⁰⁴ This fact corresponded to the realities on the ground as was confirmed by Colonel Andabak.²⁰⁵ [Redacted]

[Redacted].²⁰⁶

104. Zvonimir Skender, who served as a senior officer in the French Legion, the HVO, and the Croatian Army, confirmed that in administrative terms, the MP were still part of the MPA, whereas as far as their work on the ground “they are part of the brigade, it is only the brigade commander who tells them what they must do on the battle-field.”²⁰⁷

105. [Redacted].²⁰⁸ [Redacted].²⁰⁹

106. [Redacted].²¹⁰

107. Colonel Andabak Commander²¹¹ of the 2nd MP Battalion testified that he reported to and was subordinate to the Command of the OZ NW Herzegovina, under Zeljko Siljeg.²¹² In this capacity, Andabak served as the liason, receiving orders from the OZ Commander on behalf of the 2nd

¹⁹⁹ Pavlovic (T.46788/4-24)

²⁰⁰ Pavlovic (T.46788/4-24; 46934/5-8)

²⁰¹ Pavlovic (T.46788/4-24)

²⁰² Pavlovic (T.46894/10-46895/16; 46905/6-11)

²⁰³ [Redacted]

²⁰⁴ [Redacted]

²⁰⁵ [Redacted]

²⁰⁶ [Redacted]

²⁰⁷ Skender (T.45241/8-15)

²⁰⁸ [Redacted]

²⁰⁹ [Redacted]

²¹⁰ [Redacted]

²¹¹ until 28 June 1993 when became Assistant head of the MPA for the same Operative Zone, see Andabak (T.50915/15-50916/18); P3000

²¹² Andabak (T.50910/17-23)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Battalion.²¹³ Andabak testified that he received orders for combat personally from the HVO commander of the OZ (Siljeg).²¹⁴

108. Andabak confirmed his MP unit was engaged in combat once outside of the OZ it was assigned to.²¹⁵ For that engagement the procedure followed was that the Command of the SE Herzegovina OZ sent a request to the Main Staff for assistance, the Main Staff issued an order to the MPA to move the required MP from one zone into another, which the MPA complied with, and then upon arrival at the new zone the Commander of that OZ issues all further orders to the MP so transferred.²¹⁶ From the foregoing it is clear the MPA is serving merely a logistical role and is not in command of the battalions during combat.

109. Further demonstrating the lack of command authority over MP in combat, is the fact Coric did not receive post-combat reports. Rather, Andabak testified that Siljeg required regular combat reports from the MP.²¹⁷ Andabak testified that he both participated in combat and submitted regular combat reports to the HVO commander of the Operative Zone at briefings.²¹⁸ [Redacted]²¹⁹ P712 was sent to the MPA, but was described by Andabak as not being a combat report, but rather an explanation of why he was unable to arrive at the location where his unit had been told to proceed to.²²⁰

110. Based on the foregoing the only reasonable conclusion available under the evidence supports acquittal of Coric from any Article 7(3) liability, as to MP units engaged in combat.

²¹³ Andabak (T.50916/2-18)

²¹⁴ Andabak (T.50934/2-6)

²¹⁵ NW Herzegovina OZ

²¹⁶ Andabak (T.50934/7-22)

²¹⁷ Andabak (T.50933/19-24); 5D4385

²¹⁸ Andabak (T.50932/24-50933/18)

²¹⁹ [Redacted]

²²⁰ Andabak (T.50961/23-50964/7)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

2. HVO Military Police were subordinated to the HVO Army Commanders, including in the performance of Regular Policing Duties in the Field

111. Members of the MP accomplished their duties according to the orders of their respective military commander, not the MPA, and these duties included daily MP duties. Colonel Andabak at trial confirmed that Exhibit P957, which entered into force January 1993, stipulated that commanders of MP battalions within operation zones, in performing their everyday tasks, would be immediately subordinated to the commander of the operations zone and would carry out all orders concerning the execution of MP tasks that are within the purview of the MP.²²¹

[Redacted].²²²

a. Confirmation from HVO military commanders

112. [Redacted].²²³ [Redacted].²²⁴ [Redacted].²²⁵

113. Most significantly, after initially denying that the MP performing ordinary police duties were subordinate to HVO army commanders,²²⁶ after being shown his documents and prior testimony, General Petkovic, Commander of the Main Staff of the HVO Armed Forces essentially recanted and confirmed his prior testimony in Blaskic as being true. Petkovic confirmed his testimony in the Blaskic case that a battalion of MP was assigned to every area covered by a military district.²²⁷ With regard to these MP:

“the commander to whom a unit has been subordinated takes over all the obligations and responsibilities towards that unit, just as if it was within the composition of his own organizational entity [...] they are responsible exclusively to the commander to whom they are subordinated, and he is duty-bound, for all orders that he gives and instructions that he gives, to carry them out and implement them.”²²⁸

²²¹ Andabak (T.5091/11-50914/2)

²²² [Redacted]

²²³ [Redacted]

²²⁴ [Redacted]

²²⁵ [Redacted]

²²⁶ Petkovic (T.49791/7-49794/1; 49795/3-13)

²²⁷ Petkovic (T.50232/13-50235/3)

²²⁸ Petkovic (T.50255/20-50256/17)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Petkovic also confirmed as he testified in Blaskic that MP remained subordinated to the MPA chief only in terms of personnel, organizational, logistics and training activities, and for carrying out their regular police tasks these MP were subordinate to the commander of the OZ or to another military territorial commander, including as regards to discovery of punishable acts.²²⁹

114. The daily duties of the MP were demonstrated by General Petkovic's testimony in regard to HVO documents, which confirmed that MP were under the command and control of HVO military commanders in their OZs for tasks such as, including, among other things: a) providing security for facilities;²³⁰ b) providing security and protection to the lives of people in the zone;²³¹ c) assigning soldiers to provide security as part of the MP battalion;²³² d) enforcing a ban on movement of military aged men in Mostar;²³³ e) arrest and detention of military deserters in Ljubuski Prison;²³⁴ f) blocking exits from zones of responsibility;²³⁵ g) maintaining a ceasefire and obtaining approval to open fire.²³⁶

115. Petkovic also confirmed that as far as Prozor is concerned, all HVO forces, inclusive of the MP were placed under command of the HVO Rama Brigade as of 24 October 1992 onwards.²³⁷

116. The structure foreseen by P957 was essentially corroborated to be accurate as to the state of affairs in force in the field upon the testimony of both HVO Colonel Pavlovic, as well as Colonel Andabak of the MP. [Redacted].²³⁸

117. Colonel Pavlovic confirmed that the 3rd Battalion of the 3rd Company of the MP took measures of custody following the order of his superior, Colonel Nedjeljko Obradovic.²³⁹ Moreover, he admitted that he as battalion commander, issued orders to members of the MP for police assignments following the orders of his superior, Colonel Obradovic.²⁴⁰ Pavlovic was cross-examined on a number of exhibits, which prove that the usual practice was that members of the MP were acting according to the orders of

²²⁹ Petkovic (T.50232/13-50236/7)

²³⁰ Petkovic (T.50249/7-25) (dealing with 5D5095)

²³¹ Petkovic (T.50250/1-12) (dealing with 5D4374)

²³² Petkovic (T.50250/13-50251/6) (dealing with 5D4375)

²³³ Petkovic (T.50252/7-50253/1) (dealing with P2534)

²³⁴ Petkovic (T.50252/2-22) (dealing with P4063)

²³⁵ Petkovic (T.50253/17-50254/2) (dealing with 3D2584)

²³⁶ Petkovic (T.50260/5-50261/7)(dealing with 3D1785)

²³⁷ Petkovic (T.50259/12-50260/4) (dealing with P645)

²³⁸ [Redacted]

²³⁹ Pavlovic (T.46899/17 – 46900/10)

²⁴⁰ Pavlovic (T.46905/6-11)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

both himself and Obradovic.²⁴¹ This fact was confirmed *expressis verbis* by the witness,²⁴² and proven by other exhibits. As succinctly and clearly stated by Col. Pavlovic:

"I've already said that the police in the zone carried out military police assignments pursuant to **our** orders, and that is precisely the job they should do; that is to say, to control the area."²⁴³ [emphasis added]

118. Faced with this very precise evidence from both his contemporary in the Main Staff²⁴⁴, as well as a subordinate HVO commander,²⁴⁵ it is difficult to understand General Praljak's denial in regards to the subordination of MP for ordinary police duties. This is especially true given that documents issued by Praljak demonstrate control over MP and even an ability to reassign members of the MP to other HVO units for his needs.²⁴⁶ A review of remaining witnesses corroborates Col. Pavlovic and the revisited testimony of General Petkovic, making General Praljak's position a solitary and unsupportable one.

²⁴¹ 5D2195; 5D4380; 5D1054; P2548; P2640; P3135; 5D4392; 5D3052; 5D3046; P1913; P1972; 5D3044; 5D3019

²⁴² Pavlovic (T.46907/9-13)

²⁴³ Pavlovic (T.46907/9-12)

²⁴⁴ General Milivoj Petkovic ([Redacted])

²⁴⁵ Colonel Bozo Pavlovic

²⁴⁶ P5366; P5030

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

b. Confirmation from Military Police Witnesses

119. [Redacted]

120. [Redacted].²⁴⁷

[Redacted]²⁴⁸

[Redacted]²⁴⁹

[Redacted]²⁵⁰

121. Defense witnesses had similar accounts of the work of MP in the OZ as to general policing duties. Colonel Andabak, served as: a) Commander of the 2nd Light Assault Battalion of MP; b) Assistant Head of MPA for OZ NW Herzegovina. He clearly and succinctly stated:

“At that time in 1992, command of the military police was carried out through the brigade command in the area where the military police was active. [...] Since military police units were attached to the brigades of the municipal headquarters of the HVO, that means that the OG commander was the factual commander of the military police. But at that moment, the military police units in the field were subordinate to the brigades.²⁵¹”

122. Andabak testified in relation to several military documents that he used to show that MP battalions, such as his own, were resubordinated to the commander of the OZ for carrying out all assignments and tasks, inclusive of police work.²⁵² Of significance, Andabak also confirmed orders received by his MP Battalion to perform general police duties, which he then implemented including:

- a) General Petkovic's order to locate and bring back deserters.²⁵³
- b) General Petkovic's order to provide freedom of movement to the UN.²⁵⁴
- c) General Petkovic's order lifting road blockade.²⁵⁵
- d) Order issued by 3rd Battalion of Herceg Stjepan brigade to establish Checkpoint.²⁵⁶
- e) Order by Siljeg to prevent acts violative of International Law and prevent pilfering.²⁵⁷

In all the foregoing instances enumerated, Andabak stated he reported back to the HVO military commander on his actions. Under cross-examination Andabak confirmed that he at all times was under

²⁴⁷ [Redacted]

²⁴⁸ [Redacted]

²⁴⁹ [Redacted]

²⁵⁰ [Redacted]

²⁵¹ Andabak (T.50906/24 – 50907/23)

²⁵² Andabak (T.50917/21-50918/10 (regarding P781); 50934/23-50935/16 (regarding 5D2102))

²⁵³ Andabak (T.50940/2-11 (regarding P4063))

²⁵⁴ Andabak (T.50939/20-50940/1 (regarding P4251))

²⁵⁵ Andabak (T.50941/1-11 (regarding P1238))

²⁵⁶ Andabak (T.50942/7-23 (regarding P2836))

²⁵⁷ Andabak (T.50950/25-50951/18 (regarding P1359))

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

the command of the OZ Commander Siljeg, for both combat and performance of daily police duties, and did not need the prior consent of the MPA to do so.²⁵⁸

123. [Redacted]

[Redacted].²⁵⁹

[Redacted].²⁶⁰

124. The fact that the foregoing was a common rule and practice throughout all Operative Zones was confirmed by Witness Vidovic, who also was a member of the military police CPD:

Q. [...] This is a document from Central Bosnia, P00453. That's not your zone. I just ask you for the sake of principle. Here, the commander from Central Bosnia, the commander of the zone of operations, orders the military police that based on the evidence and the existing need, go and arrest a person with a patrol and take that person to prison because there is information that that person committed a crime. You told us that you received daily orders from the zone of operations and that you assisted military commanders. Did you receive such orders? Is this what you had in mind?

A. This order was sent down to the battalion that I was a member of, the military police battalion to which I belonged. As I said, first of all, the 3rd Battalion, then it was the 5th Battalion, and then, through the daily briefings, we would be given this kind of order. If the commander of the operative zone were to issue it, we would have to act upon his orders, carry them out.²⁶¹

125. There can be no other reasonable interpretation or conclusion under the overwhelming evidence of General Petkovic and Col. Pavlovic from the HVO on the one hand, and Col. Andabak, Vidovic from the HVO MP and from [Redacted]. Especially since it is corroborated by the OTP "insider" Witnesses. Namely, in the OZ, MP were subordinated to and under the command of the HVO army commanders even as to performance of regular policing duties. Thus, it was these HVO army commanders, and not Coric who had "effective control".

²⁵⁸ Andabak (T.51146/2-25)

²⁵⁹ [Redacted]

²⁶⁰ [Redacted]

²⁶¹ Vidovic (T.51512/10-25)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

F. Command-Superior Liability is improper as Coric did not have the requisite State of Mind due to a lack reporting that would have imparted actual knowledge of crimes committed by alleged subordinates

126. In addition to the fact that a superior-subordinate relationship did not exist between Coric and any potential perpetrators, as set forth herein above, Coric also cannot be found liable as a command-superior due to his lack of the necessary state of mind for such liability.

127. The superior's position alone is insufficient to prove knowledge of the crimes committed by his subordinates.²⁶² It must be established that the superior knew of the crimes committed by subordinates, knowledge that crimes were committed is not sufficient.²⁶³ A superior's actual knowledge cannot be presumed, but it may be established through circumstantial evidence.²⁶⁴ It must be proven either that (i) the superior had actual knowledge ('he knew'); established through either direct or circumstantial evidence, that his subordinates were committing or about to commit such a crime, or that (ii) he had in his possession information which would at least put him on notice of the risk of such offences, such information alerting him to the need for additional investigation to determine whether such crimes were or were about to be committed by his subordinates (he 'had reason to know').²⁶⁵

128. Despite his position as chief of the MPA, the evidence established that a reporting system did not exist in his direction, and hence it is not reasonable to assume, nor did Coric have reason to know of the commission of crimes. There was a multitude of evidence establishing general communications difficulties with various portions of HZ-HB, caused by the war-time conditions.²⁶⁶

129. Due to the fact that MP personnel, according to the structure and functioning of the HVO during the relevant time period, were removed from Coric's effective authority and control in one way or another subordinated to HVO military commanders, Coric did not have access to reporting from these personnel that would put him on notice of any crimes that needed to be punished.

130. It was established that as far as the Brigade MP were concerned they did not submit reports to the MPA.²⁶⁷ Likewise Colonel Andabak confirmed that his reports to the OZ commander of activities of

²⁶² *Prosecutor v Oric*, No. IT-03-68-T, *Judgement* (30 June 2006) at para. 319

²⁶³ *Prosecutor v Oric*, No. IT-03-68-A, *Judgement* (3 July 2008) at para. 59

²⁶⁴ *Prosecutor v. Halilovic*, IT-01-48-T, Trial *Judgement*, p. 27: 66

²⁶⁵ *Prosecutor v. Delalic et. al*, IT-96-21-A, Appeal *Judgement*, p. 65-67: 223-226

²⁶⁶ Praljak (T.40149/24-40150/13; 43698/18-24; 43573/20-25); Vegar (T.36989/2-5); Filipovic (T.47637/2-7; 45817/2-4); Kljuic (T.4002/1-8); Maric (T.48299/1-14); Petkovic (T.49951/4-7); [Redacted]

²⁶⁷ Andabak (T.50929/5-10)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

MP under his command did not include information about what the brigade MP did in his zone.²⁶⁸
[Redacted]²⁶⁹

131. As far as MP under the authority of and operating within OZ of HVO brigades, their reports to the MPA were of a limited nature, because their main reporting was directly to the HVO commander they were subordinated to. [Redacted]

[Redacted].²⁷⁰

132. [Redacted].²⁷¹ [Redacted]²⁷² Colonel Andabak also confirmed regular combat reports were required of him by the HVO OZ Commander and were given in briefings.²⁷³

133. Colonel Andabak testified that he reported on the activities of MP units under his command only to the OZ Commander.²⁷⁴ Further, Andabak attended only one meeting where Coric was present as well, and not a single word was mentioned at the meeting that members of the MP had committed unlawful acts²⁷⁵. Andabak testified that the monthly meetings between MP battalion commanders and the MPA discussed logistical problems on the ground, and care of wounded personnel and assistance to families of deceased personnel.²⁷⁶ Two minutes of such meetings were presented and accurately reflect the same.²⁷⁷ This is entirely consistent with the previously described competency of the MPA, and its limited authority as to logistics and cadre policy.²⁷⁸

134. Vidovic confirmed that when information was discovered of a crime perpetrated by a soldier, such information was not sent to the MPA, but rather to military commanders and the MP in the OZ.²⁷⁹

135. Based on the foregoing evidence, it is abundantly clear that Coric cannot be considered as a command-superior, and that the liability being asserted under the Indictment should be rejected.

²⁶⁸ Andabak (T.50931/5-25)

²⁶⁹ [Redacted]

²⁷⁰ [Redacted]

²⁷¹ [Redacted]

²⁷² [Redacted]

²⁷³ Andabak (T.50932/24-50933/18)

²⁷⁴ Andabak (T.50910/17-23)

²⁷⁵ Andabak (T.50966/21 – 50967/24)

²⁷⁶ Andabak (T.50916/19-50917/9)

²⁷⁷ Andabak (T.50917/10-20 (regarding P5869 and P4947))

²⁷⁸ See, herein Sec. II.

²⁷⁹ Vidovic (T.51464/9-20)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

IV. THE PROSECUTION HAS FAILED TO SHOW A JOINT CRIMINAL ENTERPRISE

A. Allegations of the Indictment

136. The Indictment alleges a Joint Criminal Enterprise, (hereinafter "JCE") in existence from 18 November 1991 to April 1994 and thereafter to politically and militarily subjugate, permanently remove and ethnically cleanse Bosnian Muslims and other non-Croats in the aim of a "Greater Croatia."²⁸⁰ It is alleged that to achieve this goal the participants of the JCE utilized acts constituting or involved in the commission of crimes.²⁸¹

137. Coric, along with the co-accused (all said to be leading figures in the HVO or HZ-HB), is alleged to have participated in the JCE through various forms of direct/indirect participation.²⁸² Although the OTP admits that not every member of the HVO or HDZ-BiH was part of the JCE, it is claimed these structures were essential instruments of the JCE.²⁸³ All three variants of JCE liability are asserted.²⁸⁴

138. In essence, the Prosecution asserts a wholesale strict liability against all persons holding positions in the structures of HDZ-BiH and the HVO, including Coric of the HVO MPA, irrespective of their knowledge of any JCE or its plan, let alone any participation in the same.

139. The Defence submits that the OTP has failed to meet any of the elemental burdens required to identify any group of persons who were involved in a joint criminal enterprise with these intents or actions. Even further, the OTP has failed in showing how Coric made any contribution to such alleged goals or in what way he possessed any of the requisite intent or knowledge.

²⁸⁰ Indictment, para. 15

²⁸¹ Indictment, para. 15

²⁸² Indictment, para. 17(a-l); 17.5

²⁸³ Indictment, para. 25.

²⁸⁴ Indictment, para. 221-227

B. Relevant Legal Standards for JCE Liability

140. When creating the Statute of the ICTY, the doctrine of Joint Criminal Enterprise (“JCE”) was not found in Customary International Law (‘CIL’),²⁸⁵ and thus was not explicitly included as a mode of liability.²⁸⁶ Recognizing the legality problems of JCE, the later-created Rome Statute of the ICC explicitly limited group liability to co-perpetration and definitively linked accessorial liability, in order to comply with the principle of *nullum crimen sine lege*.²⁸⁷ Very recently, the Extraordinary Chambers in the Courts of Cambodia recognized that the third form of the doctrine of joint criminal enterprise does not reflect customary international law and thereby refused to incorporate it into its jurisprudence.²⁸⁸

141. The steadfast refusal by national courts and legislative bodies to apply ‘JCE’, over a period of ten years and regardless of the authoritativeness of ICTY practice, shows these branches reject the concept. As to the actions of the executive branches, the careful drafting of modes of international criminal liability by States Party to the Rome Statute shows States have dismissed ‘JCE’ in favor of a doctrine based on functional perpetratorship. This doctrine is distinct from JCE.²⁸⁹ In short, State practice on modes of criminal responsibility for international crimes does not reflect ‘JCE’ doctrine, or that it is customarily engaged in.²⁹⁰ Several renowned Judges have expressed their dissatisfaction with the JCE concept,²⁹¹ and one Trial Chamber outright refused to apply it.²⁹² In short, over fifty years of relevant State *opinio juris* shows no support for ‘JCE’, with 148 States²⁹³ forwarding a different doctrine.

142. At the ICTY, however, a jurisprudentially-created doctrine of joint criminal enterprise was created and has developed. It is now established at the ICTY that in order to show that an Accused is liable each element of the specific JCE charge must be proven beyond a reasonable doubt to impute Article 7(1) individual responsibility.

²⁸⁵ Report of the Secretary General, S/25704, para. 7,8.

²⁸⁶ Report of the Secretary General, S/25704, para. 7,8.

²⁸⁷ Rome Statute of the ICC, Art.25.

²⁸⁸ ECCC, Case File No.: 002/19-09-2007-ECCC/OCIJ, Pre-Trial Chamber, Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010

²⁸⁹ ICC Pre-trial Chamber, Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007, par. 323, 334-8. See also Héctor Olásolo, *The Criminal Responsibility of Senior Political and Military Leaders as Principals to International Crimes*, Hart, Oxford (2009), page 270 *et seq.*

²⁹⁰ Extensive references to relevant domestic practice is provided by: ICC Pre-Trial Chamber, The Prosecutor v. Katanga et al. (ICC-01/04-01/07), Decision on the Confirmation of Charges, 30 September 2008, par. 510.

²⁹¹ See *inter alia* Separate Opinion of Judge Schomburg, Prosecutor v. Martić (IT-95-11-A), Appeal Judgement, 8 October 2008, paras. 3-9; Separate and partly dissenting opinion of Judge Per-Johan Lindholm, Simić et al. (IT-95-9-T), Trial Judgment, 17 October 2003, par. 4.

²⁹² Prosecutor v. Stakić, (IT-97-24-T). Trial Judgement, 31 July 2003, paras. 437-442.

²⁹³ The ICC currently has 114 State Parties and 34 State Signatories.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

143. In order to find liability under an alleged JCE of either type, the Trial Chamber must establish the following base elements of the *actus reus*: a) A plurality of persons; b) The existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute; and, c) A significant contribution of the Accused to the common plan.²⁹⁴

144. The OTP also must prove an Accused's *mens rea* based on the type of JCE alleged. The OTP must not only show that the accused possessed the required intent, but that this intent was the only reasonable inference based on the evidence.²⁹⁵

145. For liability under JCE I, the evidence must show that the accused shared the requisite intent to perpetrate a certain crime.²⁹⁶ For JCE II the Accused must have intended to further a system of ill-treatment.²⁹⁷ For JCE III charges, the Accused must have the *intent* to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or, in any event, to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, in the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*.²⁹⁸

146. If the principal perpetrator is not a member of the JCE, the Chamber must further establish that the crime can be imputed to at least one of the members of the JCE and that the member of the JCE, while using the principal perpetrator, acted in accordance with the common criminal plan.²⁹⁹

²⁹⁴ *Prosecutor v Brdjanin*, No. IT-98-36-A, *Judgement* (3 April 2007) at para.430; *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para.227.

²⁹⁵ *Prosecutor v Vasiljevic*, No. IT-98-32-A, *Judgement* (25 Feb 2004) at paras. 120, 131; *Prosecutor v Brdjanin*, No. IT-98-36-A, *Judgement* (3 April 2007) at para. 429.

²⁹⁶ *Prosecutor v Brdjanin*, No. IT-98-36-A, *Judgement* (3 April 2007) at para. 365.

²⁹⁷ *Prosecutor v Krnojelac*, No. IT-97-25, *Judgement* (17 September 2003) at para. 32

²⁹⁸ *Prosecutor v Krnojelac*, No. IT-97-25, *Judgement* (17 September 2003) at para. 32

²⁹⁹ *Prosecutor v Brdjanin*, No. IT-98-36-A, *Judgement* (3 April 2007) at para. 365.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

1. OVERBROAD PLURALITY OF PERSONS

147. The OTP alleges that a JCE came into existence “on or before 18 November 1991 to about April 1994”³⁰⁰ and encompassed crimes alleged in counts 1-26.

148. “A trier of fact must find beyond a reasonable doubt that a plurality of persons shared the common criminal purpose.”³⁰¹ To establish JCE liability it must be shown “that a plurality of persons participated in the joint criminal enterprise.”³⁰² In the present matter the Indictment’s description of the JCE that it alleges should form the basis for attributing crimes to the Accused is impermissibly wide. Unfortunately, matters have not been clarified over four years of trial. It is a basic right of an Accused to by now know which of his actions would prove he intended and contributed *to each specific Count that he is charged with*. Again, it should at least have been explained how the conduct through which the Indictment alleges the Accused participated in the Enterprise is linked to every specific count.

149. The OTP did not only fail to appropriately explain what crimes formed part of the JCE and which were ‘foreseeable consequences’. It in addition is impermissibly vague in its description of the relevant JCE participants. Recently the Appeals Chamber found a Trial Chamber erred when it in broad terms described the identity of participants in a JCE.³⁰³ The Indictment requests the Accused to defend himself against broader terms than those erroneously employed by the before mentioned Trial Chamber. There is no plurality of persons defined by the OTP other than the totality of all governmental functions, organs, bodies and members of the HZ-HB. Certainly those holding the alleged intent of a JCE must be defined more strictly than simply to cast a web over the entire HZ-HB’s governmental structure.

150. It is respectfully submitted that it is abundantly clear the OTP cannot succeed in proving a JCE unless the OTP can prove the liability of Coric under Article 7(3) of the Statute. Coric’s liability under the JCE, as alleged, turns on his position within the HVO MPA and his ability to command and control members of the HVO MP.

151. Thus, the fundamental question for purposes of both JCE and Art. 7(3) liability is whether Coric took reasonable steps to prevent the commission of crimes and to punish crimes when and if made

³⁰⁰ Indictment, para. 15

³⁰¹ *Prosecutor v Brdjanin*, No. IT-98-36-A, *Judgement* (3 April 2007) at para.430.

³⁰² *Prosecutor v Blagojevic & Jokic*, No. IT-02-60-T, *Judgement* (17 January 2005) at para 708; see also *Prosecutor v Vasijjevic*, No. IT-98-32-A, *Judgement* (25 Feb 2004) at paras.. 100.

³⁰³ *Prosecutor vs. Krajisnik*, No. 00-39-A, *Judgment* (17 March 2009) at par. 157.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

known to him. Respectfully, the link that needs to be established between Coric and perpetrators of crimes cannot be anything less than a relationship of "effective control." Thus the discussion in this brief pertaining to Art. 7(3) liability³⁰⁴ must be considered alongside and as part and parcel of the considerations of JCE liability. Without Art. 7(3) liability, there cannot be JCE liability of Coric.

2. NO COMMON PLAN OR PURPOSE

152. As a second element, the OTP must establish the "existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute."³⁰⁵ As is clear in the language, the common plan must be criminal.³⁰⁶

153. Despite the graphic charges of the OTP, the evidence proffered fails to show any JCE with a plan to expel the ethnic non-Croat population. The bulkhead of evidence, on the contrary, shows affirmatively that there was no such plan that Coric could have known of, let alone participated in. No such plan is shown to exist in the many documents, orders, and meeting notes introduced. It is not in the evidence of witnesses who were involved in the HZ-HB or HVO at the relevant time. Quite simply, a plan as alleged did not exist.

³⁰⁴ See, herein Sec. III.

³⁰⁵ *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para. 227

³⁰⁶ See *Prosecutor v. Brđjanin*, No. IT-98-36-A, *Judgement* (3 April 2007) at para. 430: The Brđjanin Appeals Chamber stated that it has to be established "beyond reasonable doubt that a plurality of persons shared the common criminal purpose" and "that the accused made a contribution to this common criminal purpose" (emphasis added).

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

a. Witnesses Uniformly Denied Knowledge of a Criminal Plan or Participation in a plan

154. A thorough review of the relevant evidence demonstrates that no one knew of such a plan or otherwise testified no such plan could exist.

155. OTP witness Colonel Nissen testified that it was illogical to infer the existence of a plan on the part of the HVO to imprison Muslims on the territory of HZ-HB, stating that if they had such a plan in place events would have been different and the HVO would have intervened at an earlier stage to limit their casualties.³⁰⁷ Nissen further confirmed that international observers had no information of any preparations underway for either mass arrest of Muslims or their mass-deportation.³⁰⁸

156. Another OTP witness, General Andrew Pringle, opined that from the documents he reviewed, there was no logistical support or pre-plan in place for incarcerating and isolating Muslim soldiers.³⁰⁹

157. Under questioning of the Trial Chamber, Witness Radmilo Jasak testified that there was no plan for even offensive activities to be carried out against Mostar by the HVO, and was never provided any orders by the Main Staff of any such plan.³¹⁰ He further testified that the BiH army's attack upon the HVO on 30 June 1993 with a planned aim to link its territories would have been the death knell to the HVO if it had been left unopposed.³¹¹

158. General Praljak of the HVO Main Staff likewise emphatically negated and denied the existence of any plan among the HVO to attack anywhere, Mostar, Vakuf, in Central Bosnia or anywhere else.³¹² Witness Dragan Curcic also testified that he knew of no HVO plan to attack Muslims in Mostar.³¹³

159. [Redacted].³¹⁴ [Redacted].³¹⁵ [Redacted].³¹⁶ To understand how this demonstrates the lack of criminal liability of Coric, it should be recalled the testimony that this Chamber heard from Vidovic that according to the legal structures and procedures that were in place, by submitting said criminal reports

³⁰⁷ Nissen (T.20649/4-20650/3)

³⁰⁸ Nissen (T.20648/20-20649/3)

³⁰⁹ Pringle (T.24259/1-9)

³¹⁰ Jasak (T.48682/21-46863/22)

³¹¹ Jasak (T.48684/7-48685/25)

³¹² Praljak (T.41832/9-41833/4)

³¹³ Curcic (T.45809/18-19.)

³¹⁴ [Redacted]

³¹⁵ [Redacted]

³¹⁶ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

to the prosecutor's office, the job of the MP was completed and all further efforts were within the competency of the prosecutors and courts.³¹⁷ The criminal procedure law confirms this.³¹⁸ This same system was acknowledged by the Court in Hadzihasanovic, which found "once the proceedings were opened by the district military prosecutors, no other military, police or judicial institution could influence them."³¹⁹

160. Colonel Andabak testified that there was no organized attack of the HVO against Bosniak Muslims in Prozor, to disarm them or anything like that, and described that many of his men were socializing with Muslims and making future social plans when the conflict broke out without warning.³²⁰

161. Simply put, the foregoing evidence demonstrates the lack of any plan or known JCE being in effect for whom Coric could be said to have the requisite knowledge or to have participated in.

b. Documentary evidence runs counter to any Criminal Plan or JCE on the part of the HVO

162. While the OTP would like the Chamber to find a "reasonable inference" that there was a plan, the evidence shows there simply was no plan of attack upon Bosnian Muslims or other non-Croats.

163. The public documents and declarations between 1991 and 1993 - which necessarily influence the perception of Coric and others of events - paint a consistent picture of lawful intent. The HZ-HB was established by way of a decision dated 18 November 1991, not as part of any criminal plan, but rather as a temporary community as a reaction to aggression.³²¹ The latest Decision on the HZ-HB's establishment (September 1992) contains 10 Articles, with one stating that the 'authority of the Republic of BiH' will be 'respected'. Another reads that it 'will honor all valid international laws which are the basis for modern, civilized relations in society.'³²² The latter provision is repeated in various forms in core Decrees pertaining to military conduct and the operation of prisons.³²³ The governing bodies are temporary³²⁴, whilst the inability of the BiH Government to protect its people necessitated the

³¹⁷ Vidovic (T.51462/3-22)

³¹⁸ 4D1105

³¹⁹ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para 937

³²⁰ Andabak (T.50965/1- 19.)

³²¹ P79; P81

³²² P78 (translation in P302), Articles 5 and 6.

³²³ See P289: Decree on the Armed Forces of the HZ H-B, 3 July 1992, Article 23. Similar is Article 1 of P292: Decree on the Treatment of Persons Captured in Armed Fighting in the HZ H-B, 3 July 1992.

³²⁴ P303, revised Statutory Decision on the Temporary Organization of Executive Authority and Administration on the Territory of the HZ H-B, Article 2.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

establishment of HVO.³²⁵ The HVO's stated objective is to protect 'the Croatian peoples as well as other peoples in the Community that are attacked by an aggressor [emphasis added]'.³²⁶

164. The principles of the HDZ BiH were neither hidden nor criminal: "The Croatian Democratic Union of Bosnia and Herzegovina has been advocating from its inception an independent, sovereign, and indivisible Bosnia and Herzegovina in its existing borders within a six-member confederal Yugoslav community. We do not recognize any violent change of Bosnia and Herzegovina's borders nor a violent annexation of Bosnia and Herzegovina to some rump Yugo-Federation. The Croats in Bosnia and Herzegovina can and will defend the territories they live in."³²⁷

165. Thus, the HDZ BiH's aim from the very inception of the crisis in Bosnia-Herzegovina was constantly to defend a unitary Bosnia-Herzegovina together with all others in favor of the same.³²⁸

166. The association of HDZ BiH regional organizations developed as a response to the threat of potential aggression.³²⁹ In this regard this was a legitimate act, following from the constitutional responsibilities of municipalities. The Constitution of SRBiH in Article 256 proposed that the municipality organize territorial defence and civilian protection, and implement preparation of the population, enterprises, institutions and state bodies for defence. Article 63 of the Law on All Peoples' Defence regulated that the municipalities assure unity of organizing and preparing of Defence and social protection in Municipality in accordance to organization, preparing and plans of Republics, neighboring municipalities and JNA. Municipalities in the Croatian communities tried to fulfill their constitutional rights and duties.³³⁰ Municipalities that coordinated their defence activities through the HZHB first established control points on the borders with other municipalities, in order to control the movement of goods and people. An identical system of control points was also adopted by other municipalities on the free territories of BiH. It means that the municipalities whether in the HZHB or not, as a basic social and political units in the former constitutional and legal system, were taking over all state functions. Therefore, after the war began in 1992, all the power came from the level of municipality.³³¹ This caused a very complicated situation as municipalities had issued their own, different laws.³³²

³²⁵ P152; Decision on the Creation of the Croatian Defence Council, September 1992, preamble.

³²⁶ P152; Decision on the Creation of the Croatian Defence Council, September 1992, Article 2.

³²⁷ 1D480

³²⁸ P52

³²⁹ P47, P50, Kljuic (T.3937/16-3938/4)

³³⁰ 1D2994, 1D897

³³¹ 1D2337, 1D1399

³³² 1D316; 1D782; 1D780; 1D1121; 1D1150; P180; 1D3016; 1D1129; 1D1202; 1D161

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

167. The Presidency of the HDZ BiH, at its meeting held October 8, 1991, promoted peace:

«The Croatian Democratic Union of Bosnia and Herzegovina shall continue to advocate an independent and indivisible Bosnia and Herzegovina if that is possible, but in the event of the break-up of Bosnia and Herzegovina our recommendation to the leaders of the Muslim people is after the secession of the so-called Serbian territories in Bosnia and Herzegovina that the Muslims remain together with the Croats territorially, and that we link our territories with the Republics of Croatia and Slovenia confederally or by treaty.»³³³

168. The referendum on the independence of BiH took place 29 February to 1 March 1992, and supported by the HDZ-BiH and the Croat peoples of Bosnia-Herzegovina won independence.³³⁴ That there was no criminal plan to attack Bosnian Muslims is seen from the fact that an invitation was sent by the HDZ BiH to the Bosnian Muslim leadership to organize a joint defence.³³⁵

169. Indeed the formation of the HZ-HB arose only after as the pre-war central government of in Sarajevo showed its inability to defend the territory of Bosnia-Herzegovina and its peoples, especially Croats, from Serb aggression.³³⁶ The establishment of HZ-HB must be considered in the context of events immediately before - namely the Draft Convention of November 4, 1991 by the European Community Conference on Yugoslavia. In Chapter B of the second Article, provisions were made for rights of special national groups. Chapter C defined the special status in its annex: "Areas in which people belong to a national or ethnic groups form majority shall enjoy special status of autonomy. Such a status will provide for: the right to have and show national emblems of that area, an educational system which respects the values and needs of that group, legislative body, administrative structure, including regional police forces, judiciary responsible for matters concerning the area, which reflects the composition of the population in the area, provisions for appropriate international monitoring."³³⁷

170. The published legal instruments of the HZHB did not adopt a Constitution nor seek independence, showing there was no intent to attack or separate from Bosnia-Herzegovina. The HZ-HB was not an effort to create a separate state nor a «Greater Croatia», instead all documents demonstrated that the HZ-HB respected the democratically elected bodies of the Republic of Bosnia-Herzegovina and very explicitly expressed the desire for an independent BiH, rather than its own

³³³ P60

³³⁴ 1D410; P117

³³⁵ P60

³³⁶ P128; Kljuic (T.4216/21-4217/17)

³³⁷ 1D893

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

independence.³³⁸ The name Republic of Bosnia and Herzegovina of which this community was a part was always visibly placed.

171. All proposed international peace accords stemmed from the fact that BiH was always a community of three constituent nations, which was simply stated in the changes to the Decision on the Foundation of the HZHB from July 1992.³³⁹ The aims of the HZ-HB leadership can be described from their own words as «[...] forming and ordering of Bosnia and Herzegovina in accordance with the principles of the European Community. That is, the constituting of Bosnia and Herzegovina through three national units.»³⁴⁰

172. The evidence demonstrates that at all periods, rather than pursuing a policy of war, the HZ-HB consistently was supportive of and participated in all peace negotiations and the peace process.³⁴¹

173. The Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia-Herzegovina was accepted by HZ-HB and the other 2 parties and it envisaged that Bosnia and Herzegovina would be a state, composed of three constituent units, based on national principles and taking into account economic, geographic and other criteria.³⁴² It was the Bosnian Muslim leader Izetbegovic that reneged on his signature, and thus prevented this peace initiative.³⁴³

³³⁸ P81; P543; Ribicic (T.25462/22-25463/5)

³³⁹ 1D1338, 1D1536, 4D1234, 1D1536, P78

³⁴⁰ P498

³⁴¹ 1D2314; 2D93; P1467; 1D2908; P1798; P2088

³⁴² 1D398

³⁴³ 1D2720

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

c. Formation of the HVO was for defensive, not offensive purposes.

174. On May 29, 1991 the Presidency of the HDZ, tasked the Secretariat to offer „a proposal of the party regional municipal communities to facilitate coordination in the field“ and this was the beginning of the preparations for defence. Every municipality had units on the level of a battalion. Based on the military order of the GS HVO HZ-HB most municipalities established brigades. Municipal staffs were transformed into brigade commands by the end of 1992. Crisis Staffs in Capljina (Pero Markovic), Stolac (Zeljko Raguz) and Neum (Ivan Bender) were established on July 15, 1991, and the first volunteer companies were established in local communities in September of that year. The MP began operating in Neum in February 1992. The Crisis Staff in Ljubuski was established in March 1991. On April 8, 1992, it was re-named the Crisis Staff HVO to be dissolved and later transformed into the HVO brigade „Stjepan Radic“. The first military unit in Livno was organized in June 1991 and in March 1992 an artillery unit was formed. The Wartime Presidency of Livno established the brigade „Petar Kresimir IV“ and the MP in May 1992. The first units were organized in the municipalities of Fojnica, Kiseljak and Kresevo early 1992.

175. This aforementioned shows that even before the official foundation of the HVO as a territorially based army on April 8, 1992 a network of smaller or larger units was being established throughout BiH, and they began defence activities, as confirmed by Stjepan Kljuic.³⁴⁴

176. [Redacted].³⁴⁵

177. There were no plans by the HVO to attack the Bosnian Muslims. In fact, close cooperation with the Army BH was stressed at all relevant times, such that the HVO was regarded as an integral part of the Armed Forces of Bosnia-Herzegovina.³⁴⁶ The Presidency and Government of RBiH were informed at all times that the HVO considered itself as a constitutive part of the RBiH forces. In the Decree on the Manufacture and Trade of Arms and Military Equipment in Times of the Immediate Threat of War of the HZ-HB Article 7, stipulates: „When working for the armed forces of the Croatia Defence Council ... and the Army of Bosnia and Herzegovina...“ It is thus clear that the legislation of the HZ-HB viewed the HVO and Army BH as equal partners in the joint defense.

³⁴⁴ Kljuic (T.8010/21-8011/16)

³⁴⁵ [Redacted]

³⁴⁶ e.g. 1D2432; P339; 1D507; 4D410

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

178. Despite the efforts of the HVO to work together with the Army BH on the common defense of Bosnia-Herzegovina, and the repeated efforts of the HVO to adhere to ceasefires, the Army BH was planning attacks against the HZ-HB, even as its leaders participated in negotiations.³⁴⁷ The Army BH was shown to have committed attacks on Croat settlements in Travnik and Kakanj³⁴⁸.

179. The HVO feared an all out attack by the Army BH, according to intel that was in its possession.³⁴⁹ Ultimately, the HVO fears of an attack were proven true, as on 30 June 1993 the Army BH attacked the Mostar barracks, after Muslim HVO mutinied and joined the Army BH attack.³⁵⁰

d. The Operation of the HZ-HB showed no discriminatory intent against Bosnian Muslims.

180. A wide variety of facts demonstrate that there was no policy of discriminatory intent in the operation of the HZ-HB, such that it could be considered a JCE.

181. Other evidence demonstrated that rather than being targetted or otherwise subjugated, Bosnian Muslims were appointed to posts at all institutional levels of the HZ-HB.³⁵¹

182. Despite all of the ongoing problems with the Central BiH government and the SDA, and Army BH, the evidence demonstrates that the HZ-HB still adhered to a joint judicial system, with the SDA appointing Muslim Judges for the judicial organs in the territory of the HZ-HB, and that, for instance, 8 of 13 of the Judges at the Mostar Basic Court were SDA Muslim appointments.³⁵²

183. The Oath for judges in HZ-HB did not show any discriminatory intent, insofar as it existed in 3 language variants, and referred to the Consitution of RBiH as being the supreme authority.³⁵³

184. Steps taken by the HVO within the HZ-HB during the war demonstrate a sincere effort to oppose any demographic changes, including decisions as to maintenance of voting rolls and restricting transfers of ownership in real-estate.³⁵⁴

³⁴⁷ P1240; 1D2729; P1305; P1317; 1D1652; P2346

³⁴⁸ 3D00837; 1D01264; P03337; P02849

³⁴⁹ P2760

³⁵⁰ P3038

³⁵¹ 1D442; P672; P824

³⁵² 1D2001; 1D2124; 1D2381

³⁵³ P1264

³⁵⁴ 1D669; P1652; 1D1153; P7279

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

185. The evidence demonstrates that HVO Municipal leaders and other HZ-HB officials had discussions on how to enforce law and order and to prevent criminal activity of all sorts.³⁵⁵ Meetings of the HZ-HB government likewise demonstrate that, rather than planning any type of criminal enterprise, participants were planning how to implement law and order.³⁵⁶ Efforts of the law enforcement organs of HZ-HB to combat crime and investigate wrongdoing by individuals, including rogue HVO members are discussed in greater detail later.³⁵⁷ Indeed a working meeting was held 11 August 1993 (attended by Coric) with the proposal to have the MP and civilian police work more closely together especially against armed criminal groups.³⁵⁸ This led to among other things, the Operation Pauk in Mostar.³⁵⁹

186. Further demonstrating an intent and activities contrary to the alleged JCE, the HZ-HB and HVO set up a commission to investigate and deal with war crimes allegations.³⁶⁰

187. The evidence demonstrates that the disarming and detention of Muslim members of the HVO were not part of any JCE arising out of discriminatory intent, but rather were ordered by Military Commanders of the HVO as a military necessity, following security concerns that arose from the aforementioned attack by the Army BH, assisted by Muslim HVO members who betrayed their posts.³⁶¹ We have discussed the Muslim HVO members and functioning of prisons in greater detail elsewhere.³⁶²

3. CORIC ISSUED NO ORDERS OR OTHERWISE CONTRIBUTED TO FURTHERANCE OF ANY JCE

188. As to Coric the OTP has alleged a wide variety of conduct³⁶³ as participation in the JCE, all arising out of the fact "As Chief of the HVO Military Police Administration, VALENTIN CORIC was a central figure in administrating and operating the HVO Military Police" and his "*de jure* and *de facto* command and control of the HVO Military Police."³⁶⁴ The precise lack of any command-superior authority is discussed elsewhere.³⁶⁵ The Chamber has before it significant documentary evidence of the

³⁵⁵ P4008

³⁵⁶ P4111, P128, P1097, P1439, P1511, P1536, P1563, P1627, P4699, P4735

³⁵⁷ See, herein Sec. V.

³⁵⁸ P4111

³⁵⁹ 1D1249, 1D1252, Biskic (T.15338/2-19)

³⁶⁰ P128, P1536, P1652, P4699, P7674

³⁶¹ P3673

³⁶² See, herein Sec. VII.

³⁶³ Indictment para. 17.5(a)-(n)

³⁶⁴ Indictment par. 17.5(a)

³⁶⁵ See, herein Sec. III.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

operation of the MPA demonstrating that no such plan existed or was participated in by Coric. There is no mention to any criminal plan in any of the documentation to/from the MPA.

189. Indeed, it should be recalled that the direct competence of the MPA was limited to cadre policy and personnel administrative matters.³⁶⁶ Within this area of competence, the MPA, headed by Coric, did not pursue a cadre/personnel policy that could in any way be referred to as being discriminatory toward or aimed at perpetrating crimes against Bosnian Muslims. Several Commanders of MP Battalions confirmed that Muslims throughout the conflict made up a considerable part of their unit.³⁶⁷ Documentary evidence confirms this.³⁶⁸ At the height of the conflict Coric officially recommends that the Head of the Defence Department appoint a Muslim, Mr. Muamer Jašarevic, as commander of an entire MP battalion.³⁶⁹ In fact, other command positions for Muslims within the MP existed.³⁷⁰ By way of example, through the relevant time period 25-30% of the 2nd MP Battalion remained staffed by Muslims,³⁷¹ demonstrating that there was no discriminatory intent on the part of Coric's administration. In addition, it should be noted Muslims remained in the HVO brigades, with Bozo Pavlovic promoting a Muslim to a command position.³⁷²

190. With regard to the OTP's claim relating to the training instituted by Coric while at the MPA,³⁷³ there is no indication of a criminal intent on his part arising out of the training. Evidence led during the trial demonstrated that, contrary to any plan to commit or instigate crimes, military policemen from HZ-HB were instructed on adherence to the rules of international humanitarian law. Specifically Coric instituted professional training for MP, using instructors and texts geared for the work of the police during war-time as well as rules of war.³⁷⁴ Witness Desnica testified that, while employed by the MUP of Croatia he was engaged to help in a professional sense in educating military and civilian policemen in BiH.³⁷⁵ Desnica confirmed that in 1992 these first courses were held in Mostar, Ljubuški and Neum, whereas in October 1992, an Educational Centre for MP Training was established in Neum.³⁷⁶ Desnica stated the training facility in Ljubuški was established in April 1993, and from the summer of the same

³⁶⁶ See, herein Sec. II. and Sec. III

³⁶⁷ [Redacted]Andabak (T.50949/2 – 50950/6).

³⁶⁸ P4850

³⁶⁹ P2970 (26 June 1993); 5D4094

³⁷⁰ Andabak (T.50950/5-6).

³⁷¹ Andabak (T.50949/12-50950/6)

³⁷² P314

³⁷³ Indictment 17.5(b)

³⁷⁴ See, herein Sec. V. A.

³⁷⁵ Desnica (5D5109 para. 3)

³⁷⁶ Desnica (5D5109 para. 4)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

year, he and others began with specialists training of criminalistic MP.³⁷⁷ Desnica confirmed the intent of the training was to insure that the MP procedure would be coordinated with the International Law.³⁷⁸

191. During the training, attendees were trained on the legalities of procedures applicable to civilians and military, as well as international laws of war and the Geneva Conventions (with successful learning of the Conventions being a requisite for successful completion of the course).³⁷⁹ Desnica testified that among the texts utilized for training were 5D5113 (“Command and Combat tactics in the Police”) and 5D5114, 5D5115, 2D751 and P7.³⁸⁰ A careful review of these documents demonstrates that an appropriate coverage of relevant topics is set forth therein and there are no instructions in these texts authorizing the type of conduct alleged by the Indictment to have been instigated, committed, or otherwise condoned or aided by members of the military and civilian police against non-Croats.

192. Among the additional areas of training that was instructed to MP by Desnica and other instructors from Croatia were³⁸¹: a) to humanely treat prisoners;³⁸² b) ensuring detainees were not subjected to cruel treatment or torture;³⁸³c) ensuring detainees were protected from physical violence;³⁸⁴ d) ensuring detainees were provided access to food and water;³⁸⁵ and e) ensuring detainees were not compelled to do dangerous work.³⁸⁶

193. [Redacted].³⁸⁷ [Redacted].³⁸⁸

194. Colonel Andabak testified that personnel from the 2nd MP battalion underwent training at the Center in Neum and that he himself organized education courses on the same topics at the battalion command and individual companies, with the help of the ICRC, where booklets were distributed on the conduct of soldiers during combat.³⁸⁹

³⁷⁷ Desnica (5D5109 para. 4)

³⁷⁸ Desnica (5D5109 para. 6)

³⁷⁹ Desnica (5D5109 para. 6); Desnica (T.50889/21-25.)

³⁸⁰ Desnica (T.50875/8-50877/7)

³⁸¹ Desnica (T.50890/22-24)

³⁸² Desnica (T.50890/7-9)

³⁸³ Desnica (T.50890/10-13)

³⁸⁴ Desnica (T.50890/14-15)

³⁸⁵ Desnica (T. 50890/16-7)

³⁸⁶ Desnica (T.50890/18-21)

³⁸⁷ [Redacted]

³⁸⁸ [Redacted]

³⁸⁹ Andabak (T.5092/9-17)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

195. Coric and the MPA issued the decision to set up such training centers and were involved in certifying persons completed the same.³⁹⁰ Coric and other officials in the MPA had a reasonable expectation, based upon the foregoing training, that MP would adhere to the principles expressed in the training and conduct themselves in accord with the same whilst performing their duties out in the field. As such, there is simply not any notice to Coric, from this training, that crimes would be committed or condoned, as alleged in the Indictment. Further, by promoting such training, Coric's actions are contrary to the participation in a JCE as alleged by the OTP. As such Coric could not have had the *mens rea* to commit crimes by any form as alleged in the Indictment.

196. During the whole years of 1992 and 1993, both Muslims and Croats attended the training,³⁹¹ showing that there was no nefarious plan in place directed against non-Croats. The training center in Neum was run by the MP, and in one instance of an instructor showing ethnic intolerance toward ethnic Muslims by using a derogatory word, the center's authorities took the appropriate step of disciplining the instructor and shipping him back to Croatia with a demotion.³⁹² Such a serious response by the organizers of the training center demonstrate that they certainly were not part of any alleged criminal plan aimed against non-Croats, and their act in disciplining the instructor is inconsistent and cannot be reconciled with the allegations of a plan to create a "Greater Croatia" through a JCE as presented in the OTP's Indictment.

197. It is clear that the "cooperation"³⁹³ with the Republic of Croatia as to training was not undertaken with any discriminatory or criminal intent, but rather was meant to obtain the best possible resources to fulfill the duty of properly training MP in the conduct of their duties during war.

198. Likewise there was significant evidence that other "cooperation" with the Republic of Croatia was in the direction of obtaining necessary assistance and expertise that was lacking among the CPD.³⁹⁴ Such "cooperation" in no way can be considered indicative of participation in a JCE, but rather was legitimate and reasonable under the circumstances.

³⁹⁰ Desnica (T.50891/18-50892/24); P1629; P2189

³⁹¹ Desnica (5D5109 para. 9)

³⁹² Desnica (T.50887/15-25)

³⁹³ Indictment 17.5(b)

³⁹⁴ Vidovic (T.51469/16-51470/2-15)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

199. The Indictment cites to checkpoints³⁹⁵ as another source of alleged criminal responsibility of Coric. The evidence is that checkpoints were conducted in accordance with tasking of military commanders, and for the legitimate purpose of crime prevention.³⁹⁶ Within the, albeit, limited competency Coric had as to checkpoints, specific documents issued by him whilst at the MPA demonstrate a lack of any knowledge of or criminal intent to participate in or contribute to a JCE.

200. P355 was issued by Coric 1 August 1992, instructing those carrying out checkpoints under orders of military commanders to adhere to checking even HVO vehicles and to enforce vehicle registration laws. Clearly the only intent was to prevent crime and enforce law and order, aimed at everybody, such that there was no discriminatory intent aimed at civilians or non-Croats.

201. That this legitimate understanding of the purpose and tasking of checkpoints remained in place is shown by a later document. Namely, a work program of the HVO MP dated 4 February 1993³⁹⁷, demonstrates that MP were to enforce stricter controls at checkpoints on HVO vehicles and military transports. As such there is not any discriminatory intent aimed at civilians, and that the checkpoints served a wholly legitimate purpose.

202. Also relating to checkpoints, we see that Coric actually undertook efforts to enter into an agreement with the Red Cross to assist humanitarian convoys in passing through checkpoints on the territory of HZ-HB.³⁹⁸ Other documents demonstrate that, within his limited authority, he did all he could to clear up misunderstandings caused by legitimate security concerns and worked with humanitarian organizations to adhere to the commitment to assist properly registered and announced aid convoys get where they were going.³⁹⁹ Contrary to the Indictment⁴⁰⁰ [Redacted].⁴⁰¹ That Coric issued an authorization at the very beginning shows that Coric did not intend to conceal or hinder. If it was not carried out at that time, that demonstrates his overall lack of significant authority as to prisons. In any event, 20 July 1993 the HVO decided to permit the ICRC access to all facilities, such that it too had nothing to conceal.⁴⁰²

³⁹⁵ Indictment 17.5(c)-(e); (l)

³⁹⁶ See, herein Sec. VI.

³⁹⁷ P1416

³⁹⁸ 5D524

³⁹⁹ P1451; 5D526; 5D529

⁴⁰⁰ Indictment para 193

⁴⁰¹ [Redacted]

⁴⁰² P3573

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

203. In regards to the functioning of MP at border crossings, Coric issued P1095, which makes clear that he is neither participating in a criminal enterprise, nor facilitating a spreading of violence:

‘in keeping with UN Resolutions on the demarcation of the territory of the former SR / Socialist Republic/ of BH [...] all foreign nationals who intend to join military units in order to fight be refused entry to the HZ HB. They must be registered, disarmed if they are armed, and returned to [Croatia].’⁴⁰³

204. Documents originating from Coric, demonstrate a similar dedication to legitimate law enforcement, demonstrating that Coric neither knew of any JCE, nor did he knowingly participate in one.

205. The OTP next refers to Coric’s alleged responsibility arising out of prisons.⁴⁰⁴ We have discussed in detail the issue of Coric’s lack of authority over prison facilities, as well as his legitimate efforts within that limited authority to effect the functioning of prisons in compliance with the law.⁴⁰⁵

206. The OTP next refers to Coric’s alleged responsibility arising out of ordinary criminal activity in populated settlements.⁴⁰⁶ The evidence and arguments demonstrating that Coric did not fail to prevent or punish, within his limited competency is set out elsewhere herein.⁴⁰⁷ [Redacted].⁴⁰⁸ The defense presented copies of the military prosecution office registers that it was able to obtain from several offices.⁴⁰⁹ A large number of “unfinished” cases were transferred by the judicial organs to the new courts after the Washington Agreements.⁴¹⁰

207. The evidence is that Coric did not try to hinder or prevent such investigations, but rather that he encouraged and supported the same, encouraging cooperation between the MP and civilian police.⁴¹¹

A HVO report dealing with the MP activities from July-December 1993 stated:

An effort has been made to prevent and solve crimes by setting up check points and organising patrols. A meeting attended by military prosecutors, military judges, representatives of the ministry of justice and MUP /Ministry of Interior/ resulted in agreement on joint work of the VP and HR HB MUP. Several operations to increase traffic security and identify perpetrators of crimes were carried out. Work in Rama and Uskoplje was intensified.⁴¹²

⁴⁰³ P1095.

⁴⁰⁴ Indictment 17.5(f)-(j); (m)

⁴⁰⁵ See, herein Sec. VII.

⁴⁰⁶ Indictment 17.5(k) & (n)

⁴⁰⁷ See, herein Sec. V.

⁴⁰⁸ [Redacted]

⁴⁰⁹ 5D4288

⁴¹⁰ Vidovic (T.51562/18-51569/23); 5D5027; 5D5032; 5D5024

⁴¹¹ 5D4110

⁴¹² P7419 pg. 2; see also 2D138; 1D2577

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

208. The record is clear that within his limited competencies, Coric sought to have the behavior of the MP comply with the utmost degree of professionalism. There is evidence that Coric sent MP units in the field Rules of Discipline that they should follow.⁴¹³ P1444 was a set of instructions from Coric advising MP of severe pay decreases to be enforced for disciplinary proceedings arising out of misconduct, and which was even stricter than the military's standard pay-cut regulations.⁴¹⁴ Likewise Coric's personal attitude was described by Colonel Andabak a very stringent policy as to discipline of MP found to have engaged in misconduct, such that:

“[...] any such perpetrators should be persecuted and a criminal report filed [...] anybody who besmirched the name of the military police on battlegrounds throughout Bosnia and Herzegovina, that they should be thrown out of the unit”.⁴¹⁵

209. The evidence is that when crimes were committed by MP, and made known to Coric, he adhered to the stringent policy stated above, and dismissed the perpetrators from their duties, and called for criminal reports to be forwarded to prosecutors, because in his words – “the above-named have sullied the honor of the MP and their further presence in this unit is DETRIMENTAL.”⁴¹⁶

210. Two very clear indicators of Coric's lack of any criminal intent and genuine belief that he was participating in legitimate practices to enforce law and lawful orders, arise from requests he issued when combat operations were resulting in military commanders sending MP and civilian police to the front lines. While at the MPA, Coric took the reasonable measures within his authority by addressing a request to the competent authorities to reconsider the engagement of members of the MP at the front-line so that they could accomplish their duties of crime prevention in an appropriate way, as follows:

“Terror and all kinds of crime are increasing in worrying numbers and threaten to lead to anarchy and lawlessness in the free territories.
I claim with responsibility that we are not able to perform even regular military police tasks with the forces remaining after the deployment of the military police on frontlines, not to mention complex interventions and other significant military police tasks. In view of the above, we request that the engagement of the military police on frontlines in this scope be reconsidered and propose that military police units be withdrawn from frontlines to perform military police duties and be sent to the lines only to intervene in exceptional situations.”⁴¹⁷

211. Similarly, when Coric became Minister of the Interior, he issued a similar request aimed at the civilian police that were being used by the HVO military commanders in the front lines:

⁴¹³ P129

⁴¹⁴ P1444

⁴¹⁵ Andabak (T.50953/19-50954/9)

⁴¹⁶ P3571

⁴¹⁷ P5471, p. 3

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

[...] this engagement of our employees has slowed down our activities relating to efficient enforcement of basic police operations, which resulted in deterioration of the state of public law and order, traffic security and detection of criminal acts. In order to prevent such dangerous developments, which could threaten the whole defence of the Croatian people, and the very existence of the HZ-HB, we have decided to withdraw our officers from the first line of defense [...]⁴¹⁸

212. In both instances Coric demonstrated an intent to enforce the law and prevent crimes, rather than to engage in any crimes or assist others in the engagement of crimes.

213. It is respectfully submitted that it is inconceivable that such a plan could have existed and that Coric participated in the same, without even alluding to it in the documentation of the MPA. This is particularly true in that the documentation demonstrates a devotion to the opposite behavior, namely a devotion to law-abiding behavior.

214. Given the absence of any specific evidence that a criminal plan against non-Croat civilians existed, the OTP can only invite the Trial Chamber to infer the existence of such a plan from circumstantial evidence. For the Trial Chamber to be able to draw an inference of a common criminal plan, the OTP must prove the circumstantial evidence beyond reasonable doubt and also demonstrate that this is the only reasonable inference available from the evidence.⁴¹⁹ Under the principle of *In Dubio Pro Reo*, where more than one inference is reasonably open on the facts, one of which is consistent with innocence, an acquittal must be entered.⁴²⁰

215. The OTP has simply failed to take into account the possibility that the crimes that regrettably occurred bore no relation to any criminal plan at the level of the MPA or elsewhere, but rather wholly legitimate actions were taken in the face of a state of war. Indeed, the most reasonable inference that can be drawn from the evidence is that there was no central plan to expel or subjugate non-Croats and that the killings and instances of abuse and expulsion were the result of individuals or small groups acting out of unknown reasons, or perhaps on the unauthorized orders by local military commanders or through lack of diligence in deterrence and punishment by these same local military commanders. The

⁴¹⁸ P6837, p. 1

Prosecutor v Brdjanin, No. 99-36-T, *Judgement* (1 September 2004) at para; *Prosecutor v Martić*, No. IT-95-11-T, *Judgement* (12 June 2007) at para. 24.

⁴²⁰ *Prosecutor v Delalić*, No. IT-96-21-A, *Judgement* (20 February 2001) at para.458; *Prosecutor v Galić*, No. IT-98-29-A, *Judgement* (30 November 2006) at para 218; *Prosecutor v Limaj et al*, No. IT-03-66-T, *Judgement* (30 November 2005) at para. 10.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

OTP has simply failed to rule out the possibility that the crimes that supposedly provide a basis on which to infer the existence of a Joint Criminal Enterprise were in reality a horrific by-product of the war.

4. CORIC HAD NO KNOWLEDGE OF ANY JCE ON THE PART OF OTHERS.

216. The OTP has not produced a single order issued to Coric to commit any crime in furtherance of a JCE, nor has it established he was put on notice that he was participating with others in a JCE.

217. The limited reporting available to Coric was discussed in other sections.⁴²¹ As to crimes that were reported to him that he had notice of, he was put on notice that the relevant authorities were investigating, arresting, and submitting criminal reports to prosecute the perpetrators.⁴²² As a response to these reports we see first of all 5D2113, a report from Coric to the Defense Department (his superiors) that outlines anti-crime measures that have been implemented in Mostar with “noticeable results,” namely when the MP undertook control of parts of the city to prevent looting. Similarly we see in 5D4110 Coric taking those steps within his limited domain to contribute to law-enforcement efforts in Mostar, trying to increase the effectiveness of anti-crime measures, supporting training of additional crime technicians and encouraging the MP to work more closely with the civilian police.

218. It should be noted in this regard that even a high-level official in the government with knowledge of crimes committed by government forces has been acquitted in another case, of JCE liability, where the information available to him was that appropriate law enforcement and judicial organs were handling things to prosecute perpetrators.⁴²³

219. From the foregoing, it is reasonable to conclude that: a) There was no JCE in existence on the part of the HZ-HB organs, let alone known to Coric; b) The conduct and behavior of Coric within the MPA cannot be considered as evidencing a JCE, or substantially contributing to any JCE.

⁴²¹ See, herein Sec. III. F.

⁴²² e.g. P4058

⁴²³ *Prosecutor v. Milutinovic et al*, No. IT-05-87-T, *Judgement* (26 February 2009) [acquitting President Milutinovic or any form of liability]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

V. CORIC AND THE MPA DID NOT FAIL TO PREVENT OR PUNISH CRIMES.

220. The MPA did not have exclusive authority regarding crime prevention where the perpetrators were soldiers. Given the overlapping authority, problems with communication, problems with staffing, and chaotic wartime situation, Coric's ability to prevent and punish was limited.

A. Coric undertook reasonable efforts to provide proper training of HVO MP in order that crimes could be prevented.

221. As set forth by the evidence, the role of the MPA was limited. Providing fundamental training for MP members was a core function of the MPA. It is not accurate that Coric "failed to act" to prevent crimes, as alleged by the OTP. A fundamental condition of crime prevention is the proper dissemination of knowledge on the law of armed conflicts. Indeed, providing appropriate training was one of the few core competencies of the MPA.⁴²⁴

222. The evidence demonstrates that the training conducted by the MPA was undertaken jointly with the Republic of Croatia MUP.⁴²⁵ This training was undertaken of MP, and about 400 participants completed the training by 1993.⁴²⁶ Likewise the evidence showed that said training was proper, professional, and included instruction on legality of procedures towards civilians and adherence to International laws of war.⁴²⁷ The evidence demonstrates such instruction was performed in the field at Neum and Ljubuski, as well, through seminars.⁴²⁸ No one could successfully complete the course without learning the Geneva Conventions and International Laws of War.⁴²⁹

223. Specifically, Miroslav Desnica, one of the instructors, testified the following texts were utilized:

- a) "Command and Combat Tactics of the Police" (covering use of police forces during times of war)⁴³⁰
- b) Handbook for Training Policemen (linked to lawfulness of activities)⁴³¹
- c) Constitutional Law of Croatia (to show human rights and freedoms)⁴³²
- d) Handbook regarding Rules of Behavior for Combatants.⁴³³
- e) Rules on Application of Laws of International War in the Armed Forces of the SFRY.⁴³⁴

⁴²⁴ See, herein Sec. II.

⁴²⁵ 5D5109, para. 3

⁴²⁶ Desnica (T.50889/3-20)

⁴²⁷ 5D5109, para. 4-8

⁴²⁸ 5D5109, para. 4-8; [Redacted]

⁴²⁹ Desnica (T.50889/21-58890/24)

⁴³⁰ Desnica (T.50815/6-22); 5D5113

⁴³¹ Desnica (T.50875/23-50876/2); 5D5114

⁴³² Desnica (T.50876/3-15); 5D5115

⁴³³ Desnica (T.50876/18-22); 2D751

⁴³⁴ Desnica (T.50876/23-50877/7); P7

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

All of these texts demonstrate a proper regard for compliance with applicable laws while performing duties. Coric had a reasonable belief participants would employ the lessons learned in their work.

224. Miroslav Desnica also testified that small booklets were distributed to attendees on the Rules of Conduct for Combatants and a simplified overview of the International Laws of War.⁴³⁵ [Redacted]⁴³⁶ and Witness Andabak.⁴³⁷ Independent of the MPA the HVO Army also were given a guideline which explained the Geneva Conventions, at the training sessions.⁴³⁸

225. Andabak testified that he organized additional training, at the Battalion command, and with the assistance of the ICRC distributed booklets to military policeman about conduct during combat.⁴³⁹

226. Instructors were sought to be qualified in all aspects.⁴⁴⁰ Coric required that Battalion commanders sent assistants to the training, giving priority to those that had not been through training previously.⁴⁴¹ From the foregoing it can be seen that the training was proper and in no way led to the promulgation of crimes. Indeed, the evidence is that a Croatian MUP Instructor who used a derogatory term for a Muslim was removed from his position as an instructor (demoted) and sent back to Croatia.⁴⁴² Promulgation of this type of proper training, which was within the core competency of the MPA shows that Coric undertook reasonable efforts to it prevent crimes.

227. Likewise there is evidence that Coric sent MP units in the field Rules of Discipline that they should follow.⁴⁴³ It should be noted that Coric sent out instructions for strict pay decreases to be instituted against any MP guilty of misconduct,⁴⁴⁴ which were even stricter than those in place with the HVO.⁴⁴⁵

⁴³⁵ 5D5109, para. 8

⁴³⁶ [Redacted]

⁴³⁷ Andabak (T.50952/9-13)

⁴³⁸ Skender (T.45189/1-7)

⁴³⁹ Andabak (T.50952/6-17)

⁴⁴⁰ P1629

⁴⁴¹ P2189

⁴⁴² Desnica (T.50886/19-50888/8)

⁴⁴³ P129

⁴⁴⁴ P1444

⁴⁴⁵ P293

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

B. Coric reasonably relied on domestic law structures in place in order to determine his obligations such that cooperating with these structures would be sufficient so that crimes could be punished and prevented.

228. Coric did not have command over military prosecutors and courts. Rather, he was the Chief of the MPA, which had within it a CPD that issued referrals to military prosecutors after conducting preliminary investigations, before its competences were transferred to the Operative Zone level.

1. Relationship of the MPA to the Military Judicial System

229. In his Report dated 9 March 1993, addressed to Mate Boban, Coric identified, among other problems affecting the work of the MP, the non-functioning of the military prosecutor's office and the military courts.⁴⁴⁶ A Report on the work of the HVO in 1992 also identified the non-functioning of judicial organs as limiting and substantially affecting efficiency.⁴⁴⁷

230. Vidovic testified that at the level of the CPD in OZ's meetings were held and attempts were made to work with SIS, civilian MUP and judicial authorities to try and resolve problems.⁴⁴⁸

231. A commander cannot be blamed for relying on domestic law for the purposes of determining what his obligations are in relation to subordinates. Likewise a superior need not dispense punishment personally and may discharge his duty by reporting the matter to the competent authorities.⁴⁴⁹ In Hadzihasanovic, where a commander had referred murder allegations to the appropriate military judicial authority, he had taken the necessary measures required under Article 7(3).⁴⁵⁰

232. When the MP dealt with crimes (through the CPD) its role was reduced to filing criminal reports, uncovering the perpetrators, and bringing them to justice.⁴⁵¹ This duty was accomplished by referring the cases to the office of the military prosecutor and then to the military courts.⁴⁵² Then the Prosecutor would request a court ruling from the District Military Court to allow an investigation to proceed. Naturally the Prosecution had the discretionary power to drop charges, and the courts were entitled to dismiss a case, over which the MP had no influence.⁴⁵³ Tomljanovic testified that military courts were

⁴⁴⁶ P1635

⁴⁴⁷ P128, pg. 8-9

⁴⁴⁸ Vidovic (T.51503/16-51504/17)

⁴⁴⁹ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-A, *Judgement* (22 April 2008) at para. 154

⁴⁵⁰ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 1061

⁴⁵¹ Vidovic (T.51447/7-51448/2; 51440/12-51441/1)

⁴⁵² Biskic (T.15270/1-9)

⁴⁵³ Vidovic (T.51500/13 – 51501/20)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

not established until 17 October 1992 and that the military justice system was not working until the end of 1992 and beginning of 1993.⁴⁵⁴

233. According to Article 27 of the Decree on District Military Courts, the commander of a military unit was obliged to take all necessary measures to prevent the perpetrator of a crime from escaping, the preservation of evidence and the acquisition of all information relevant to the criminal proceedings. A commander was obliged to inform the district military prosecutor or superior commander immediately of any information mentioned above.⁴⁵⁵

234. Article 12 of the same decree provides that District Military Courts shall be invested with the authority to try all crimes involving persons who have participated in armed combat and over which they have jurisdiction by virtue of the provisions of the Geneva Convention on the Protection of War Victims, of 12 Aug 1949, and the protocol supporting the said convention.⁴⁵⁶ District Military Courts had jurisdiction over POWs where crimes committed during their imprisonment are concerned, as well as for crimes against humanity and international law.⁴⁵⁷

235. As was confirmed by Vidovic, once a criminal report is submitted to the prosecutor with jurisdiction over the matter, the MP has completed its job and has no other obligations, except they can update the Prosecutor if they come across relevant facts whilst investigating another matter.⁴⁵⁸ Indeed, as confirmed by Witness Buntic, once a prosecutor receives a criminal report from the police the prosecutor is duty bound to keep the file, and the court also gets a copy.⁴⁵⁹

236. From the foregoing, it is clear that the obligation of the MP under the then prevalent legal framework concerning crime prevention extended only until it informed the military prosecutor or military investigation judge about the crime that had been committed and submitted its criminal report to them. The MP could not control the work of military prosecution or court.

237. Regarding such a situation, the Trial Chamber in the *Hadzihasanovic* case stressed that:

Once the proceedings were opened by the district military prosecutors, no other military, police or judicial institution could influence them. In addition, military organs did not have the power to give orders to investigating judges. As soon as a case was in the hands of

⁴⁵⁴ Tomljanovic (T.6361/12-6362/4)

⁴⁵⁵ P595, Art 27

⁴⁵⁶ P595, Art 12

⁴⁵⁷ P595, Art 6; 11

⁴⁵⁸ Vidovic (T.51462/13-25)

⁴⁵⁹ Buntic (T.30527/12-30528/8)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

the military courts, the military authorities did not have the right to act contrary to the instructions of the judicial authorities or to conduct parallel criminal investigations.⁴⁶⁰

238. Coric therefore reasonably relied upon and fulfilled his duties by instructing MP to report crimes to the Prosecutor and judicial authorities. It is well settled jurisprudence that where a commander had referred crime allegations to the appropriate military judicial authority, he has taken the reasonable and necessary measures to punish required under Article 7(3).⁴⁶¹

239. The evidence from OTP expert is that at least over 1000 criminal reports against perpetrators were submitted by the MP to the Prosecutors, but that the same were not acted on due entirely to the failings of the judicial system.⁴⁶² This was shown by Minutes of Meeting of December 28, 1992 of a Session of the HVO Defence Council to refer only to 1992.⁴⁶³ [Redacted].⁴⁶⁴ By comparison, in the Hadzihasanovic case the Trial Chamber noted:

The military police units filed numerous criminal complaints with the military prosecutors for offences committed by members of the ABiH, HVO or civilians. The 3rd Corps Military Police Battalion was responsible for filing most of the complaints with the district military prosecutors. From 14 September 1992 to 1 March 1994, the 3rd Corps Military Police Battalion filed 377 criminal reports involving 804 identified and 20 unidentified persons. The 17th Brigade filed some 30 complaints for crimes committed by its members.⁴⁶⁵

240. If HVO institutions failed to punish perpetrators, it was due to the inoperability of military courts and prosecutors during the state of war that existed at the time, and this cannot be attributed to Coric.

C. The MPA promoted compliance on the part of the MP for performance of their law enforcement duties.

241. The MPA promoted dutiful adherence to proper law enforcement tasks by MP, irrespective of the identity of perpetrators. There is evidence that Coric, promoted a very stringent policy as to discipline of MP found to have engaged in misconduct.⁴⁶⁶ As discussed herein below, the ability to enforce such a position was limited by the fact that MP units were subordinated to HVO military commanders, and thus came under the disciplinary power of the HVO commanders in the field.

⁴⁶⁰ *Prosecutor v. Hadzihasanovic/Kubura*, IT-01-47-T, Trial Judgement, p. 259: 937; 4D1105 Criminal Procedure Law, Art 154, 162

⁴⁶¹ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 1061

⁴⁶² Tomljanovic (T.6368/17-6369/5); Biskic (T.15277/9-15278/9)

⁴⁶³ P950, para. 129

⁴⁶⁴ [Redacted]

⁴⁶⁵ *Prosecutor v. Hadzihasanovic/Kubura*, IT-01-47-T, Trial Judgement, p. 247: 897

⁴⁶⁶ Andabak (T.50953/19-50954/9)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

242. Coric was informed about the general practice of the MP to conduct investigations and to react promptly whenever a crime was committed by members of a military unit.⁴⁶⁷ He was aware of the fact that the MP accomplished its duties under law.⁴⁶⁸

243. Coric's general approach to the prevention and sanctioning of crimes was well-known:

A. Yes, I do know about that, and it was the position of the military police, from the top man, Mr. Coric, was that any such perpetrators should be persecuted and a criminal report filed, and for them to be dismissed from the unit. And those who upset law and order, that disciplinary measures be taken against them and, if need be, to eliminate them from our units. So at all briefings and all my contacts with the Military Police Administration, also told us that anybody who besmirched the name of the military police on battlegrounds throughout Bosnia and Herzegovina, that they should be thrown out of the units.⁴⁶⁹

244. [Redacted].⁴⁷⁰ This is evidenced by documentary evidences.⁴⁷¹

245. [Redacted]⁴⁷²

246. [Redacted].⁴⁷³ [Redacted] Similarly, a number of incidents connected to perpetrators who were soldiers or members of the MP, were discussed by Vidovic who was examined on numerous exhibits,⁴⁷⁴ and confirmed that the cases were thoroughly investigated, the perpetrators were arrested/convicted. Furthermore, the witness stated that these documents illustrate well the usual procedure no matter if the crimes were committed by MP or soldiers of the HVO.⁴⁷⁵ Further exhibits demonstrate that whenever additional information got into the possession of the MP, the information was provided to the office of the prosecutor.⁴⁷⁶

247. [Redacted].⁴⁷⁷ Likewise when criminals were caught in the act, HVO police did their job, arresting them and returning property.⁴⁷⁸ However, nothing could be done when victims did not report crimes to the authorities.⁴⁷⁹

⁴⁶⁷ P1635

⁴⁶⁸ P3508

⁴⁶⁹ Andabak (T.50953/22 – 50954/9)

⁴⁷⁰ [Redacted]

⁴⁷¹ P7419, pages 5,6,7

⁴⁷² [Redacted]

⁴⁷³ [Redacted]

⁴⁷⁴ P1503; P3483; P3508; P3482; P3497; P3523; P3571; 5D4243; 5D4248; 5D4249; 5D4255; P6893

⁴⁷⁵ Vidovic (T.51473/14-18)

⁴⁷⁶ P4143; P6727; 5D4168; 5D4169; 5D2092

⁴⁷⁷ [Redacted]

⁴⁷⁸ Forbes (T.21426/12-23)

⁴⁷⁹ Forbes (T.21422/12-21423/22)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

248. Vidovic testified about numerous cases in Mostar demonstrating how the CPD performed their duties and investigated, processed, detained, and/or filed criminal charges with the military prosecutor against perpetrators of crimes who were HVO members.⁴⁸⁰ Vidovic likewise confirmed that even when a perpetrator was found to be a member of the MP, all proper investigations and arrests were undertaken, and not only were criminal reports filed, but these persons were thrown out of the MP.⁴⁸¹ Similarly Vidovic testified about the presence of criminals and criminal groups who committed crimes against non-Croats in Mostar, who were investigated, arrested and criminally processed by the cooperation of the CPD, and other law enforcement organs of the HVO.⁴⁸² [Redacted]⁴⁸³, including anti-crime Operation "Pauk."⁴⁸⁴

249. If we look closer at the reporting that was available to Coric, we see that he reasonably could believe that organs were functioning the best they could under the circumstances to fight crime. P4058 was a report sent to, among others, Coric relative to Mostar. This report gives a comprehensive overview of the work of the CPD during the relevant period (July-August 1993), including crime trends and statistics and anti-crime measures being employed to arrest perpetrators and prevent crime. The report also highlights problems with lack of equipment and personnel. As a response to these reports we see first of all 5D2113, a report from Coric to the Defense Department that outlines anti-crime measures that have been implemented in Mostar with "noticeable results," namely when the MP undertook control of parts of the city to prevent looting. Similarly we see in 5D4110 Coric taking those steps within his limited domain to contribute to law-enforcement efforts, trying to increase the effectiveness of anti-crime measures, supporting training of additional crime technicians and encouraging the MP to work closely with the civilian police.

250. Despite all the objective obstacles, the MP and prior to March 1993, when the authority of the CPD was delegated to the level of Operative Zones, the CPD took the reasonable measures in order to prevent crimes and conduct investigations.

⁴⁸⁰ Vidovic (T.51477/3-51481/14; 51495/12-51499/13; 515002/5-51503/15); 5D2095; 5D2097; P6727; 5D4169; 5D4168; 5D4154; 5D4165; 5D4231

⁴⁸¹ Vidovic (T.51471/20-51473/25; 51474/1-6); P3571; P3483; P3523; P3508; P3513; P3482; P3497

⁴⁸² Vidovic (T.51487/17-51492/18; 51504/18-51505/7; 51507-51509/10); 5D4183; 5D4240; 5D4242; 5D4243; 5D4248; 5D4249; 5D4255; 5D4212; 5D4194; P9465; 5D4199; P3118; 5D4207; P4139; 5D4201; 5D4203; 5D4200

⁴⁸³ [Redacted]

⁴⁸⁴ Bandic (T.38212/21-38213/22)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

1. The lack of personnel and Delegation of Crime Prevention Authority to the Operative Zones limited what role Coric and the MPA had in preventing and punishing crimes

251. As is discussed in greater detail herein⁴⁸⁵ eventually the HVO military commanders in OZs began utilizing the MP in combat and other operations. OTP expert Tomljanovic affirmed that the MP had staffing problems affecting its ability to prevent crimes, especially in 1993 when MP were engaged in combat and fighting was at its worst.⁴⁸⁶

252. When the engagement of the MP at the front-lines fundamentally hindered their activity of crime prevention, Coric took the reasonable measures within his authority. He addressed a request to the competent authorities to reconsider the engagement of members of the MP at the front-line so that they could accomplish their duties of crime prevention in an appropriate way, as follows:

“Terror and all kinds of crime are increasing in worrying numbers and threaten to lead to anarchy and lawlessness in the free territories.

I claim with responsibility that we are not able to perform even regular military police tasks with the forces remaining after the deployment of the military police on frontlines, not to mention complex interventions and other significant military police tasks.

In view of the above, we request that the engagement of the military police on frontlines in this scope be reconsidered and propose that military police units be withdrawn from frontlines to perform military police duties and be sent to the lines only to intervene in exceptional situations.”⁴⁸⁷

253. Coric could not order that these MP be returned, as demonstrated when General Praljak declined to return these units from front lines.⁴⁸⁸ Thus the material ability of the MP to investigate, prevent and punish crimes was severely decreased as a direct result thereof.

254. Vidovic, who at the relevant time period was head of the CPD within the 5th MP battalion in Mostar, agreed with Coric's warning⁴⁸⁹ that sending MP to the front lines was hampering the regular police duties of the MP.⁴⁹⁰ Vidovic confirmed that pursuant to the orders of the HVO OZ Commander staff of the CPD were pulled from their duties to be sent to the front lines,⁴⁹¹ and that although the CPD didn't like this policy it had to respect the order of the OZ commander.⁴⁹²

⁴⁸⁵ See, herein Sec. III. E. 1.

⁴⁸⁶ Tomljanovic (T.6347/23-6348/11); also P128

⁴⁸⁷ P5471, pg. 3

⁴⁸⁸ Praljak (T.40988/9-40989/16, 42523/9-19, 42525/16-42527/15)

⁴⁸⁹ P5471

⁴⁹⁰ Vidovic (T.51518/2-18)

⁴⁹¹ Vidovic (T.51444/4-13)

⁴⁹² Vidovic (T.51517/4-51518/1); 5D2146

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

255. Another factor to be taken into account is the fact that both the SIS of the brigade and the civilian MUP shared concurrent jurisdiction and took the primary role in investigating crimes. This led to a further diminishment in the ability of Coric or the MPA to prevent and punish crimes.

2. HVO MP in the field were subject to discipline and punishment from the HVO army commanders they were subordinated to

256. MP personnel operating in the operational zones were far removed from the effective control of Coric and were under the effective control of HVO military commanders. Coric had neither the authority nor ability to investigate, punish or discipline them for crimes. It has been held by the relevant jurisprudence that the material ability to punish or control subordinates is the threshold/minimum requirement in establishing a command-superior relationship and thus liability under Art. 7(3).⁴⁹³ The Delalic Trial Chamber warned: "While the Trial Chamber must at all times be alive to the realities of any given situation and be prepared to pierce such veils of formalism that may shield those individuals carrying the greatest responsibility for heinous acts, great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where **the link of control is absent or too remote**."⁴⁹⁴ Respectfully, under the instant circumstances Coric's control is rightly considered absent or too remote.

257. Coric's orders/instructions never condoned nor authorized MP personnel to commit any criminal acts against Bosnian Muslim civilians whilst operating under the effective control of the Army. To the contrary all the proclamations of Coric demonstrate a desire to prohibit and punish such misconduct. Coric even instructed HVO Commanders to enforce discipline over MP subordinated to them in the field, and exclude those committing crimes, or whose behavior was seriously criticized.⁴⁹⁵ Likewise Coric confirmed that MP were removed from his authority by military commanders and that this was causing a shortage of personnel to deal with policing tasks, and warned of an inability of the police to perform its functions if personnel were not returned by brigade commanders.⁴⁹⁶

⁴⁹³ *Prosecutor v Halilovic*, No. IT-01-48-A, *Judgement* (16 October 2007) at para. 59

⁴⁹⁴ *Prosecutor v. Delalic*, No. IT-96-21-A, *Judgement* (20 February 2001) at para 377.

⁴⁹⁵ P1145; P1148

⁴⁹⁶ 5D548

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

258. It was demonstrated that even where Coric sought to discipline and remove military policeman for misconduct, his ability to do so was prevented by the intervention of HVO commanders to whom this personnel was subordinated. Just to recall, Coric's efforts to discipline MP commander Turajlija from Prozor were denied by General Praljak, insofar as Turajlija was under Praljak's operative command.⁴⁹⁷ Praljak continued to utilize Turajlija under his operative command even after the attempted disciplinary action.⁴⁹⁸ When HVO commanders didn't interfere, Coric executed swift discipline of matters known to him where MP committed violations of discipline or law. In one instance of rape, 4 military policemen were immediately relieved of duty, placed in 30 day military detention, and their file turned over to the military prosecutor for charges to be filed, with the notation that "[...]the above-named have sullied the honor of the MP and their further presence in this unit is DETRIMENTAL."⁴⁹⁹

259. As such Coric cannot be held criminally responsible under the mode of Article 7(3) liability if such crimes were indeed committed by MP units removed from his effective control and placed under the effective control of military brigade commanders in the field.

⁴⁹⁷ 5D4394

⁴⁹⁸ Praljak (T.42640/16-42643/10); P3934

⁴⁹⁹ P3571

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

3. Duty of Military Commanders in Field to take steps to initiate criminal investigations and criminal reports for crimes occurring within their Area of Responsibility.

260. In addition to being the command-superior of all military units (inclusive of MP), the HVO military commanders also had ultimate authority within a given Area of Responsibility, such that all matters occurring fell within his purview, even crime detection and prevention.

261. Within a designated Area of Responsibility HVO Military Commanders had a proscribed duty to look after the security of that zone, including: to make sure that no crimes are committed; that there's no breaches of discipline; no thefts; and to protect the population that resides therein.⁵⁰⁰

262. We heard evidence that the Area of Responsibility was defined as follows:

The area of responsibility of a commander is the front-line; for example, from one elevation to another, from one trig point to another, and it is determined by width and in depth. That zone of responsibility can be 300 to 500 metres in depth, not more. But if there is a village behind the front-line, whether abandoned or a village with mixed Bosniak Croatian or Serb Muslim population, the commander will put his troops behind the village in order to have the control of the entire village. [...] And the zone of responsibility in depth could be anything up to 10 or even 15 kilometres.⁵⁰¹

The Commander of the HVO brigade in Gornji Vakuf, Zrinko Tokic, confirmed that his unit, in addition to defending the front line, was responsible for settlements deeper in the territory, "normally about 3 kilometers deep."⁵⁰² This is confirmed by P4819 and P3135 that regulate the military commander's zone of responsibility.

263. Col. Andabak explained that the Brigade MP (subordinated to the brigade commander) was in charge of "policing" this Area of Responsibility.⁵⁰³ The duties of a commander who learns of a crime were described by Andabak as follows:

A. If he received the information about a crime that happened, together with his brigade police, he will go to the crime scene. He will secure the crime scene. He will preserve any clues and traces, if such clues and traces existed. If they found the perpetrator on the spot, he will keep them, and he can keep them -- keep him on the premises until the arrival of the military police. And if a crime was committed, he can, himself, file a criminal report, or it can be done by his assistant for security, but he can file the criminal report himself.

⁵⁰⁰ Andabak (T.50943/19-24)

⁵⁰¹ Andabak (T.50943/2-18)

⁵⁰² Tokic (T.45343/13-23)

⁵⁰³ Andabak (T.50943/9-14)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Q. If I understand you properly, he can do it on his own, or he can inform the military police and ask them to do that. If I understand you properly, there are two possibilities in that case.

A. Yes. If a crime requires the presence of the Criminal Department of the Military Police, they will come to the scene and do everything necessary to file a criminal report.⁵⁰⁴

264. The exercise of these above duties in the field was demonstrated by Andabak with reference to multiple documents, where law enforcement was conducted by such military commanders.⁵⁰⁵ Similarly, Tokic⁵⁰⁶ and Bandic⁵⁰⁷ and 5D4350 also confirmed the application of these principles to the field.

265. Article 151 of the SFRY Law on Criminal Proceedings creates a duty upon the civilian police authorities undertake traditional measures when there is probable cause to suspect someone has committed a crime.⁵⁰⁸ Identical duties were imposed on military commanders by way of Art. 27 of the Decree on Military Courts as follows:

The commander of a military unit and of a military institution must take all necessary measures to prevent the perpetrator of a crime under official prosecution from hiding or escaping, and must attempt to preserve all the traces of the criminal act and all objects that may serve as evidence. He must also obtain all information relevant to the criminal proceedings.⁵⁰⁹

266. Military commanders were duty-bound to inform the District Military Prosecutor.⁵¹⁰ The foregoing applied equally to all military commanders, at the level of platoon or larger,⁵¹¹ such that every upon learning of a crime (whether at front line or outside combat zone) he was obligated as follows:

[...] he must secure the site, using two of his soldiers, and undertake all the other necessary steps which come under his authority, to secure the traces, prevent them being destroyed and so on. If the perpetrator was known to him, then he could file a criminal report straight away with the competent military prosecutor's office. If the perpetrator or perpetrators were unknown, then he could have informed us in the Crime Department so that we could then take the necessary steps to apprehend the perpetrators, because there are a lot of professional work -- there's a lot of professional work involved. But it was up to the commander of a military unit to secure the site where the crime had taken place and to take all the other necessary steps under Article 27.⁵¹²

⁵⁰⁴ Andabak (T.50944/2-15)

⁵⁰⁵ Andabak (T.50944/16-50953/16); P4110; P3135; P778; P1359; P2832

⁵⁰⁶ Tokic (T.45356/13-22; 45377/5-45378/13; 45410/11-45418/5; 45546/4-45547/8) P1344; P778; P768; 2D889; 2D3052; P366; 2D3051

⁵⁰⁷ Bandic (T.38105/12-19)

⁵⁰⁸ 4D1105; Vidovic (T.51449/3-14)

⁵⁰⁹ P592 (art. 27); Vidovic (T.51453/1-20)

⁵¹⁰ P592 (art. 27); Vidovic (T.51453/22-51454/3)

⁵¹¹ Vidovic (T.51453/12-17)

⁵¹² Vidovic (T.51454/25-51455/10)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

267. Art. 27 included the ability to file a criminal report against “unknown” perpetrators, as well as to arrest/detain a suspect.⁵¹³ Investigations of “unknown” perpetrators would then continue until the identity was determined.⁵¹⁴ Curcic also confirmed the ability of the military to arrest even civilians.⁵¹⁵ Brigade commanders had appropriate organs at their disposal for enforcement of their aforementioned duty, namely the assistant commander for Security (SIS) and the brigade military police.⁵¹⁶ The documentary evidence also confirms that the brigade’s assistant commander for security is authorized to lead an investigation and submit criminal reports against perpetrators.

268. Several military witnesses expanded upon aspects of the foregoing military security system. General Zvonimir Skender iterated that:

- a) A military commander must take steps to stop a crime and had an obligation to immediately refer the matter to the MP for it to take action;⁵¹⁷ failure to inform the MP makes the commander a culprit.⁵¹⁸
- b) A military commander had an obligation to arrest soldier perpetrators moving toward or away from the front-line.⁵¹⁹
- c) A military commander is obligated to follow up with SIS, MP or Civilian Police on matters referred to them.⁵²⁰
- d) Where other organs appear to be failing to act to arrest a perpetrator, the military commander must act, using the Brigade MP, to arrest the perpetrator.⁵²¹
- e) Upon a military commander referring a crime investigation to the military police, said MP can postpone arrest because of a pressing military situation.⁵²²
- f) There were very bad discipline problems within the HVO, due to manpower shortages the priority was to keep men available for combat.⁵²³ HVO military commanders were forced to postpone arrest and sanction of subordinates due to manpower shortages and necessities of combat.⁵²⁴

⁵¹³ Vidovic (T.51455/13-51456/2; 51457/24-51458/17)

⁵¹⁴ Vidovic (T.51466/11-20)

⁵¹⁵ Curcic (T.45874/16-23)

⁵¹⁶ Vidovic (T.51459/18-21)

⁵¹⁷ Skender (T.45210/6-45211/23; 45215/3-24; 45322/7-22)

⁵¹⁸ Skender (T.45215/25-45216/13)

⁵¹⁹ Skender (T.45213/22-45214/10; 45215/3-24)

⁵²⁰ Skender (T.45216/14-45217/2)

⁵²¹ Skender (T.45248/22-45249/11)

⁵²² Skender (T.45269/2-45270/8)

⁵²³ Skender (T.45278/3-45279/8)

⁵²⁴ Skender (T.45283/2-45285/25)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

269. Witness Tokic also spoke about problems with desertions and manpower shortages affecting his area.⁵²⁵ Further he testified that: A well defined set of regulations, in terms of discipline, existed in the HVO;⁵²⁶ b) A book of uniform rules on military discipline applying in wartime situations was passed and every commander in the field was familiar with its requirements as to perpetrators.⁵²⁷

270. When questioned specifically about the crimes that form the Prosecution's case, General Skender testified as to a lack of knowledge of the same.⁵²⁸ Witness Tokic likewise claimed not to know of certain events, or the results of investigations into conduct of subordinate soldiers.⁵²⁹ Bandic confirmed that the military prosecutor conducted the investigation into the Ahmici incident.⁵³⁰ This official note demonstrated that immediately upon being informed of potential civilian casualties in Ahmici, Col. Blaskic ordered his Assistant for SIS in the Brigade (Sliskovic) to conduct an investigation.⁵³¹ Neither Coric nor anyone at the MPA could have had access to them.

271. Whatever the reason for this lack of knowledge, it is logical if the HVO Military Commander did not have knowledge of crimes, he did not report such crimes and no further steps could be taken by the MP. Even if there was a potential lack of diligence on the part of the HVO military commanders, it cannot be imputed to Coric.

272. Accordingly, under this system of military regulations, it was reasonable and appropriate for Coric to expect that detection, prevention and punishment of crimes occurring in the OZ would be properly carried out by HVO military commanders. Coric neither could anticipate that HVO Commanders as a matter of military necessity would justify postponement of their enforcement duties, nor did he have any ability to influence or interfere with this exercise of their discretion. Neither could Coric do anything more within his limited authority when the HVO commanders themselves had no knowledge of crimes and thus did not report or refer the same to the MP for further action.

a. Brigade Military Police

273. Brigade MP were subject to direct discipline of the Brigade Commander, not the MPA. General Petkovic, of the HVO Main Staff issued an order to subordinate HVO commanders advising that

⁵²⁵ Tokic (T.45418/6-45420/17)

⁵²⁶ Tokic (T.45424/10-12)

⁵²⁷ Tokic (T.45449/11-45451/21)

⁵²⁸ Skender (T.45301/18-45310/7)

⁵²⁹ Tokic (T.45365/11-45366/15); 4D343

⁵³⁰ Bandic (T.38104/9-15)

⁵³¹ 2D3011; P4268

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

problems with the brigade MP should be solved within the brigade command structure, and that the MPA could only be asked for professional assistance in this regard.⁵³² OTP expert William Tomljanovic confirmed that his investigations corroborated that the situation in the field with brigade MP corresponded in practice to this directive from Petkovic.⁵³³ Colonel Zdenko Andabak testified the HVO brigade commander could dismiss such personnel in the Brigade MP.⁵³⁴

274. Also significant documentary evidence was adduced demonstrating that the HVO Brigade Commander had and exercised authority to appoint, promote and replace any military policeman comprising the Brigade MP, as follows: a) P4262, [item 2 – recruitment from within the brigade and commander of brigade has power to replace any personnel]; b) 5D5106 [brigade commander appointing platoon commander of Brigade MP]; c) P990 [Commander of MP in Ljubuski brigade replaced by order of HVO commander]; d) 5D5107 and P2595 [Brigade Policemen being punished/disciplined].

275. No evidence has been presented permitting the Chamber to conclude beyond reasonable doubt that Coric knew or had reason to know of such crimes committed by HVO Brigade MP. The measures taken by Coric, including the training of MP in the laws of war and the orders insisting on proper conduct were reasonable and proper and fulfilled his role to the extent he had limited authority over personnel subordinated to other organs, inclusive of the HVO armed forces.

b. Military Police In Operative Zones

276. During his testimony, General Praljak confirmed he, as the military commander, had disciplinary authority over any military policeman attached to a military unit who committed an offense.⁵³⁵

277. General Petkovic confirmed that the HVO Territorial Commander had disciplinary authority over the commanders of the MP battalions, inclusive of Pasko Ljubicic, albeit claiming such disciplinary measures were minimal.⁵³⁶ Likewise he testified that the brigade military commander's authority over MP battalions in the operative zone included as regards to discovery of punishable acts.⁵³⁷

⁵³² P4262

⁵³³ Tomljanovic (T.6340/14-24)

⁵³⁴ Andabak (T.50918/11-50919/8)

⁵³⁵ Praljak (T.42597/13-23)

⁵³⁶ Petkovic (T.50283/18-50284/19)

⁵³⁷ Petkovic (T.50232/13-50235/3)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

278. The defense denies that the Prosecution has proven any crimes from the Indictment were actually committed by MP personnel. Assuming, *arguendo*, if such crimes did occur, and are found to have been undertaken while MP units were engaged in combat operations, or in performing their Military Policing duties under the command of the army commanders, they were not subordinates of Coric, as understood by Article 7(3), based on the overwhelming evidence set forth above.

4. Objective obstacles existed, outside of the control of Coric, hindering proper investigations from being undertaken

279. In his Report on the activity of the MP dated March 9, 1993, addressed to Mate Boban, Coric identified the following problems: a) Non-functioning of MP's office and military courts; b) Attempts by civilian authorities to interfere in MP affairs (Tomislavgrad, Neum, Livno, Mostar) or the use of police for local aims of individuals (Mostar, Neum, Travnik); c) Conflicts between military and civilian authorities.⁵³⁸

280. It is clear that the work of the MP was hampered not only by the non-functioning of military courts but also by the fact that there was a state of war.⁵³⁹ The number of MP was insufficient all the more so because the intense combat meant that MP units were often engaged on the front and could not carry out the tasks that were their formal responsibility.⁵⁴⁰

281. Witness Skender described, that complaints were not filed by the victims, as follows:

Q. [...] In this document we have before us now, the document states that there was this Kinder platoon which committed a whole series of acts against civilians, amongst other people. When you were in command was this something you were aware of or not?
THE WITNESS: [Interpretation] Your Honour, I was told that things had happened just the way you have just described them, but nobody ever came to file a complaint, whether it be civilians or military. Nobody came to me to do this.⁵⁴¹

282. Vidovic, head of the CPD in the MP Battalion in Mostar, did not know of any plan to evict non-Croats from West Mostar and confirmed the CPD worked hard to prevent such criminal acts.⁵⁴² He also confirmed that nothing prevented civilians from reporting crimes to the MP, and demonstrated that in instances when such crimes were reported they were properly investigated and processed, such that perpetrators were sought and arrested.⁵⁴³ Vidovic highlighted diligent efforts of the brigade battalion and SIS to investigate and locate perpetrators when they happened upon 2 persons of Muslim descent

⁵³⁸ P1635

⁵³⁹ Skender (T.45263/10-16)

⁵⁴⁰ *Prosecutor v. Hadzihasanovic/Kubura*, IT-01-47-T, Trial Judgement, p. 243: 884

⁵⁴¹ Skender (T.45265/14-22)

⁵⁴² Vidovic (T.51477/3-51481/14)

⁵⁴³ Vidovic (T.51477/3-51482/1); P6727; 5D4169; 5D4168;

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

who had been abused by unknown persons in uniform.⁵⁴⁴ In other cases when initially the perpetrator's identity was unknown ("NN"), efforts continued and criminal reports were amended when the identity became known, so that the perpetrators could be brought to justice.⁵⁴⁵

283. Among other deficiencies plaguing the work of the military police, Vidovic testified:⁵⁴⁶

- a) The MP CPD did not have enough manpower nor equipment for its work; (confirmed by OTP Expert Tomljanovic)⁵⁴⁷
- b) The MP CPD did not have enough cars or officers;
- c) The MP CPD had to rely on the Civilian MUP which had inherited the bulk of police equipment from the previous structures; (confirmed by Tomljanovic)⁵⁴⁸
- d) The MP CPD did not have forensic experts, and relied on the civilian MUP for such services;
- e) The MP CPD did not have a ballistics expert and relied on an expert from Croatia with whom communications were disrupted by war; and
- f) The MP CPD did not have pathologists and had to seek such experts from Croatia.

284. Vidovic also confirmed that shortages made it impossible for the CPD to do its work without cooperation with the civilian MUP, especially as to crime technicians.⁵⁴⁹

285. [Redacted].⁵⁵⁰

286. Vidovic likewise confirmed that criminal groups existed in Mostar and that the CPD tried to work together with other organs as it could not deal with such criminals alone.⁵⁵¹ [Redacted].⁵⁵² Due to members of the MP being utilized at the front-lines, the efficiency of the MP to deal alone with such incidents was reduced.⁵⁵³ Both the civilian police and the MP were experiencing problems to confront this well armed group alone such that a meeting was held to coordinate efforts together with other authorities.⁵⁵⁴ [Redacted].⁵⁵⁵ Coric was justified in relying on information that the appropriate organs

⁵⁴⁴ Vidovic (T.51513/8-51514/9); 5D4350

⁵⁴⁵ Vidovic (T.51466/8-20; 51471/20-51476/8; 51502/5-51503/4); P4143; 5D2092; P3483; P3523; P3508; P3513; P3482; P3497

⁵⁴⁶ Vidovic (T.51469/16-51470/2-15)

⁵⁴⁷ Tomljanovic (T.6347/23-6348/11)

⁵⁴⁸ Tomljanovic (T.6346/7-12)

⁵⁴⁹ Vidovic (T.51483/20-51484/3; 51495/12-51496/24)

⁵⁵⁰ [Redacted]

⁵⁵¹ Vidovic (T.51487/17-51492/18; 51504/18-51505/7; 51507-51509/10); 5D4183; 5D4240; 5D4242; 5D4243; 5D4248; 5D4249; 5D4255; 5D4212; 5D4194; 5D4212; P9465; 5D4199; P3118; 5D4207; P4139; 5D4201; 5D4203; 5D4200

⁵⁵² [Redacted]

⁵⁵³ Vidovic (T.51600/15-51603/14; 51517-51518); 5D2146; P5471

⁵⁵⁴ Vidovic (T.51600/15-51603/14)

⁵⁵⁵ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

were acting against such criminals. It should be recalled that Coric himself stressed the need for organs in Mostar to cooperate closely to combat crime.⁵⁵⁶ Likewise, Coric himself noted that the MP was scattered in Mostar due to being called upon to handle civilian police matters as well as combat⁵⁵⁷ and called for the MP to be returned from the front-lines so as to permit them to prevent crime.⁵⁵⁸

287. A HVO report dealing with the MP activities from July-December 1993 stated:

An effort has been made to prevent and solve crimes by setting up check points and organising patrols. A meeting attended by military prosecutors, military judges, representatives of the ministry of justice and MUP /Ministry of Interior/ resulted in agreement on joint work of the VP and HR HB MUP. Several operations to increase traffic security and identify perpetrators of crimes were carried out. Work in Rama and Uskoplje was intensified.⁵⁵⁹

288. Bandic likewise agreed that there were cases where criminals used false identities, claiming to be MP or some other military unit.⁵⁶⁰ [Redacted]⁵⁶¹ [Redacted]⁵⁶²

289. A report of the Mostar CPD remarked that statistics demonstrated a wave of organized crime with groups of criminals falsely portraying themselves as members of police or military groups.⁵⁶³

290. The Trial Chamber in the *Hadzihasanovic* case recognized the need to take into account similar hardships affecting the functioning of the military police, stating:

The military police also lacked equipment, particularly that needed for crime investigation. The shortage of fuel affected the military police's ability to go to crime scenes and carry out an investigation. This shortage meant that the military police would sometimes reach the site with delay and not find any material proof to support their investigation.

An additional obstacle was the intense influx of refugees from different parts of Bosnia and Herzegovina who often wore uniforms without insignia, making it difficult for the military police to control the situation. A large number of houses and buildings had been abandoned after combat and there were not enough military police to protect the property from being plundered.⁵⁶⁴

Furthermore, when fires were set close to combat operations in abandoned or empty buildings, it was difficult to determine whether the fires were the result of criminal activity or combat. In addition, fires generally broke out at night when the military police were unable to verify the situation.⁵⁶⁵

⁵⁵⁶ 5D4110

⁵⁵⁷ P1654

⁵⁵⁸ P5471; 5D548

⁵⁵⁹ P7419 pg. 2; see also 2D138; 1D2577

⁵⁶⁰ Bandic (T.38216/17-38217/10); 2D515; P6908

⁵⁶¹ [Redacted]

⁵⁶² [Redacted]

⁵⁶³ P3672

⁵⁶⁴ *Prosecutor v. Hadzihasanovic/Kubura*, IT-01-47-T, Trial Judgement, p. 243: 885-886

⁵⁶⁵ *Id.* pg. 246, 895

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

291. The evidence is clear that the MP CPD and MP battalion were subordinated to the HVO OZ Commander,⁵⁶⁶ and received all daily assignments from said OZ Commander.⁵⁶⁷ The CPD complied with its duty, in that if a criminal report was filed against a known perpetrator, the daily report would identify the same and a copy was sent to the OZ Command as well as informing the perpetrator's immediate commander.⁵⁶⁸ It is also clear that an added difficulty to the work of the CPD was that personnel had report to the front-lines for combat duty.⁵⁶⁹

292. Frequently, military purposes were in the background of the slower process of crime prevention or punishment. Witness Skender said that military commanders used to decide to delay filing a report to the military court due to the lack of manpower.⁵⁷⁰ At the same time, MP conducted the relevant investigation.⁵⁷¹ This must be interpreted taking into consideration the realities of war.⁵⁷² Furthermore, the commanders were acting in these cases in accordance with the domestic law, namely, Article 105 of the Rules of Military Discipline, which obliged military commanders to prefer military necessity to crime prevention.⁵⁷³ Nevertheless, Vidovic also testified of instances where military commanders did undertake to arrest and criminally process subordinates that committed crimes.⁵⁷⁴

293. The role of the MPA in the work of the CPD was limited to analytical work compiling reports from all battalions, and rendering "professional assistance" (ie. exemplars of how forms should look).⁵⁷⁵

⁵⁶⁶ Vidovic (T.51441/18-51442/25)

⁵⁶⁷ Vidovic (T.51443/1-51444/3)

⁵⁶⁸ Vidovic (T.51464/9-20)

⁵⁶⁹ 5D2146

⁵⁷⁰ Skender (T. 45212/12-17)

⁵⁷¹ Skender (T.45270/5-10)

⁵⁷² Skender (T.45264/11-23)

⁵⁷³ P293

⁵⁷⁴ Vidovic (T.515511/23-51512/25); P1728; P453

⁵⁷⁵ Vidovic (T.51441/2-17)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

5. Obstacles due to the significant interference of Municipal Authorities.

294. Another obstacle obstructing the ability of the MPA to influence law enforcement was that Municipal officials had significant *de facto* control over HVO armed forces, including MP. It will be recalled that MP were originally formed and attached to municipal staffs, and municipal organs proposed certain appointments.⁵⁷⁶ Municipal leaders were considered part of the expanded Presidency of HZ-HB, such that *ex officio* they were superior to any other army or MP officials.⁵⁷⁷ Under such a backdrop little influence could be exercised over certain MP units who would obey the orders of municipal officials instead.

295. P3351, which is a Report on the Work of the Defence Department in the Period January –June 1993, “defence offices in municipalities shall be linked exclusively with the Brigade command not allowing the direct communication between a battalion and municipal defence offices”.⁵⁷⁸ Other evidence demonstrates municipal leaders with significant influence and authority:

- a) Municipal authorities meeting with the Commander of the HVO Knez domagoj brigade.⁵⁷⁹
- b) Municipal authorities in Mostar deciding on the use of apartments.⁵⁸⁰
- c) Municipal authorities forming a brigade.⁵⁸¹
- d) [Redacted].⁵⁸²

296. [Redacted],⁵⁸³ [Redacted].⁵⁸⁴

297. Municipal officials had the last word regarding appointment of commanders. [Redacted].⁵⁸⁵ [Redacted].⁵⁸⁶ [Redacted].⁵⁸⁷ [Redacted]

298. It should be recalled that Andabak described how the MP commander in Prozor (Franjic) was reporting directly to the municipal staff, contrary to reporting policy.⁵⁸⁸ Later, due to influence of the Municipality, Franjic was appointed Brigade commander of the HVO Rama brigade.⁵⁸⁹ The MP had to

⁵⁷⁶ See, herein Sec. II.

⁵⁷⁷ P78; [Redacted]

⁵⁷⁸ P3351, page 9.

⁵⁷⁹ 2D514

⁵⁸⁰ 1D3016

⁵⁸¹ 2D1354

⁵⁸² [Redacted]

⁵⁸³ [Redacted]

⁵⁸⁴ [Redacted]

⁵⁸⁵ [Redacted]

⁵⁸⁶ [Redacted]

⁵⁸⁷ [Redacted]

⁵⁸⁸ Andabak (T.50958/18-50960/13) [regarding 5D2139]

⁵⁸⁹ Andabak (T.50958/18-50960/13)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

bring in units from another zone to take stock of all unsolved crimes and arrest Franjic and other suspects so they could be questioned as part of the investigation into Prozor.⁵⁹⁰

299. Municipal officers financed certain units stationed on their territory. Witness Biskic testified that that the system of financing strengthened the influence of the municipal officials and, that the effective control of any central organ including the Main Staff was significantly diminished as a result.⁵⁹¹

300. Clearly the resounding picture from the forgoing is a drastically diminished ability to undertake to prevent and punish crimes occurring out in the field.

**VI. CORIC'S KNOWLEDGE WAS THAT CHECKPOINTS WERE OPERATED FOR
LEGITIMATE PURPOSES AND WERE NOT INTENDED FOR ANY CRIMINAL PURPOSE**

301. Initially, the HVO military commanders attempted to establish joint checkpoints with the BH Army, in order to establish law and order and ease tensions between the ethnic groups. In November 1992 General Praljak issued P708 jointly with the BH commander, establishing joint checkpoints with the BH Army and manning them with HVO MP and BH soldiers.⁵⁹² It was entirely legitimate for military commanders to attempt to assert authority over their area of responsibility. Coric's order implements Praljak's order in this regard and relates to manpower to be used at checkpoints and efforts to ensure representative parity between number of HVO and number of BH Army personnel.⁵⁹³ It should be recalled manpower and cadre policy fell under Coric's competency.⁵⁹⁴

302. Further efforts were undertaken to maintain Joint Checkpoints with the BH Army whenever ceasefires were effectuated, including by HVO Chief Petkovic⁵⁹⁵; and HVO OZ Commander Siljeg.⁵⁹⁶

⁵⁹⁰ Andabak (T.50960/14-50961/2)

⁵⁹¹ Biskic (T.15248/24-25; 15249/1-8, 18-25; 15250/1-2)

⁵⁹² Praljak (T.40465/8-40466/25); P708

⁵⁹³ 5D4282

⁵⁹⁴ See, herein Sec. II.

⁵⁹⁵ P1238

⁵⁹⁶ P1300

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

303. At times when fighting broke out joint checkpoints were no longer possible. For instance, in Mostar, the plan for securing control over the town was prepared pursuant to an order by the Defense Department and Department of Interior, and OZ Commander (again not involving the MPA).⁵⁹⁷ At the same time the police units, including MP to intensify control in the city were to be deployed by the OZ Commander who retained authority to directly command in the case of incidents arising.⁵⁹⁸ As can be seen in P1868, the contact numbers of all relevant authorities forming this working group are listed, and conspicuously absent is Coric. Likewise, Lavric is clearly signing on behalf of this working group and not in his capacity as Coric's deputy. Lastly, the document itself is NOT addressed to Coric as chief, but rather is sent to the MPA, whereas all other recipients list the particular office. Such that we cannot conclude it actually reached Coric.

304. The foregoing intensified control in Mostar lasted only 6 days,⁵⁹⁹ and thereafter with another ceasefire joint HVO and BH army patrols are instituted by HVO Commander Lasic⁶⁰⁰, at which time Coric is involved again, only to implement Lasic's order, with the aim of easing tensions by removing insignia.⁶⁰¹ There is thus no indication that Coric was involved except when law and order was trying to be established by joint patrols. The evidence demonstrates that whenever the MPA issued instructions related to checkpoints they were directed at control of military personnel and not treatment of civilians.

⁵⁹⁷ P1868

⁵⁹⁸ P1868, pg.2

⁵⁹⁹ P1988; [Redacted]

⁶⁰⁰ P2030

⁶⁰¹ P2020; [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

A. THE OPERATION OF CHECKPOINTS WAS THE TYPE OF DAILY POLICING DUTIES PERFORMED UNDER THE AUTHORITY AND COMMAND OF HVO COMMANDERS, OR OTHERWISE WAS BEYOND THE COMPETENCY OF CORIC

305. As has been discussed in greater detail hereinabove, daily policing tasks were assigned to the MP battalions by the HVO commanders in the zone where they were deployed.⁶⁰² Included in these daily policing tasks was the operation of checkpoints.⁶⁰³ General Petkovic confirmed that MP remained subordinated to the MPA chief only in terms of personnel, organizational, logistics and training activities, and for carrying out their regular police tasks these MP were subordinate to the commander of the operative zone or to another military territorial commander, including as regards to discovery of punishable acts.⁶⁰⁴ Likewise, the evidence is that often MP were not the only ones manning checkpoints.⁶⁰⁵ Irrespective of who was manning the checkpoints, it was clear that they all had the duty to report to the HVO brigade commander under whose command they were.⁶⁰⁶

306. It must be recalled that the Brigade MP likewise operated checkpoints for purposes of providing security, security of transport, securing the entry/exit of the battlefield.⁶⁰⁷ As has been set out previously, the Brigade MP were subordinated directly to the HVO brigade commander and were under the composition of the brigade, and thus were not subordinated under Coric.⁶⁰⁸ The only responsibility of the MPA towards the Brigade MP was "Professional Assistance" which in practicality meant providing logistical instruction and MP equipment, such as belts and badges.⁶⁰⁹

307. Lastly, other entities established checkpoints, including the civilian police and other military units.⁶¹⁰ The OTP has neither properly pleaded that Coric was the command superior of such personnel during the relevant time period, nor presented any evidence of the same, as such Coric cannot be held responsible for acts committed by these personnel at checkpoints.

⁶⁰² See, herein Sec. III. E. 2.

⁶⁰³ [Redacted]Andabak (T.50942/7-23); P2836

⁶⁰⁴ T.50232/13-50236/7

⁶⁰⁵ Zelenka (T.33272/17-23); P1487; P2548; 5D2189

⁶⁰⁶ 5D3019

⁶⁰⁷ P957

⁶⁰⁸ See, herein Sec. III. C.

⁶⁰⁹ [Redacted]Andabak (T.50921/6-50922/5)

⁶¹⁰ P1487; Praljak (T.44018/7-44020/12)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

308. The OTP has failed, to even identify with precision what structures were manning particular checkpoints where it is alleged crimes took place. The existence of culpable subordinates must be established for Art. 7(3) liability,⁶¹¹ thus the OTP cannot assert Art. 7(3) liability.

309. In addition to the official checkpoints, the evidence demonstrated illegal checkpoints that were completely beyond the control of authorities, and were run by criminals.⁶¹² For general JCE liability it must be established that the crime can be imputed to a member and that this member acted in accordance with the common plan.⁶¹³ Likewise, in the case of a third category joint criminal enterprise, the crimes must be committed by members of the joint criminal enterprise⁶¹⁴. Such a test would not be met by the OTPs case, under the foregoing facts, in either circumstance.

310. Coric's signature did not even convey sufficient authority to permit "free movement" through checkpoints.⁶¹⁵ This demonstrates that he could not have a command-superior role vis-à-vis the operation of checkpoints, whether manned by Brigade MP or members of a MP battalion.

311. It should be recalled that on 7 December 1992 a "common" order was issued based upon the authority of General Praljak and Defense Head Stojic relating to checkpoints.⁶¹⁶ It is of importance to note that this document required the signature of Praljak in order to have any command effect, as Coric did not have sufficient authority. This was essentially admitted by Praljak.⁶¹⁷ Likewise, it is evident from the document that no illegal or criminal orders were given, but rather the MP was tasked with following existing legal regulations⁶¹⁸ and behaving appropriately, with the warning that "Impolite treatment of people, rude behaviour or violation of instructions at a checkpoint shall be strictly sanctioned."⁶¹⁹

312. Every time the MPA issued any document relating to checkpoints, the same was based upon and invoked the authority of a superior organ of the HVO.⁶²⁰ From this we see the MPA did not have its own authority for the same. Likewise these all dealt with control over military travelers (and not civilians) or manpower issues that would be within the purview of the Administration.

⁶¹¹ *Prosecutor v Oric*, No. IT-03-68-A, *Judgement* (3 July 2008) at para. 35

⁶¹² Praljak (T.44020/14-23); Witness DW (T.23153/6-15); P1272

⁶¹³ *Prosecutor v Brdjanin*, No. IT-99-36-A, *Judgement* (3 April 2007) at para. 430

⁶¹⁴ *Prosecutor v. Limaj et al.*, No. IT-03-66-A, *Judgement* (27 September 2007) at para. 119

⁶¹⁵ P4529; P4527

⁶¹⁶ P875; P876

⁶¹⁷ Praljak (T.40539/8-18)

⁶¹⁸ P875, item 9

⁶¹⁹ P875, item 11

⁶²⁰ P875; P864; P355; P5350

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

313. Other evidence demonstrate the operation of checkpoints fell outside of the limited competence of the MPA and that command for such activities was exercised by the HVO military commanders.

314. P2527, issued by General Petkovic, makes clear that in regards to checkpoints and controlling movements, the transport of military equipment and weapons will be under the sole control and authority of the Department of Defense and HVO Main Staff towards the interior of Bosnia-Herzegovina, while OZ Commanders (with consent of the Department of Defense and HVO Main Staff) had sole control and authority over such transports toward the border.

315. 5D3019 established that the HVO Brigade commanders kept very strict control over the activities of checkpoints, including requiring all MP and other personnel operating checkpoints to maintain constant communications with the brigade command.⁶²¹

316. The MP did not have a role positioning checkpoints, the positions were determined either by higher military structure, or by local HVO municipal authorities.⁶²² HVO Commanders of Operational Zones and subordinate HVO military commanders were responsible for establishment of checkpoints (including those manned by MP) in their area of responsibility, as is demonstrated by various military orders, none of which were sent to the MPA:

- a) Orders of the HVO Main Staff.⁶²³
- b) Order of HVO OZ Commander Obradovic for South Herzegovina.⁶²⁴
- c) Order of HVO OZ Commander Blaskic for Central Bosnia.⁶²⁵
- d) Order of HVO OZ Commander Lasic for South-East Herzegovina.⁶²⁶
- e) Order of HVO OZ Commander Siljeg of the South-West Herzegovina Sector.⁶²⁷
- f) Order of HVO Brigade Commander Obradovic of the 1st HVO Brigade.⁶²⁸
- g) Order of Brigade Commander Sagolj of the Herceg Stjepan Brigade.⁶²⁹
- h) Order of HVO Commander Pavlovic of Forward Command Post of Stolac.⁶³⁰
- i) Order of HVO Battalion Commander Pole of the Herceg Stjepan Brigade.⁶³¹

⁶²¹ 5D3019

⁶²² P708; P360; 1D812; P2801; 5D2189

⁶²³ P602; P1153; P1487; 3D2584

⁶²⁴ 5D2009; 5D2189; 5D3019

⁶²⁵ 5D4040

⁶²⁶ P1272; P1876

⁶²⁷ P1548

⁶²⁸ P2548

⁶²⁹ P581

⁶³⁰ 5D4392; 5D3046

⁶³¹ P2836; P3548

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

317. Additionally, evidence was adduced at trial that checkpoints were established at Mostar's entrance by HVO military commanders again without any involvement of the MPA.⁶³² [Redacted]⁶³³

318. General Petkovic, a high-ranking HVO commander confirmed that MP battalions were directly subordinated to him and responsible for exercising orders of subordinate HVO military commanders for, checkpoint activities such as: a) providing security and protection to the lives of people in the zone of responsibility;⁶³⁴ b) providing security for facilities;⁶³⁵ c) enforcing a ban on movement of military aged men in Mostar;⁶³⁶ and d) blocking exits from zones of responsibility.⁶³⁷

319. Colonel Pavlovic was a high-ranking HVO military commander. He confirmed that the activities that MP performed under his subordinate command were examples of checkpoints, including:

- a) 5D3046 – April 1993 order of Col. Pavlovic sent to MP units and Police Stations governing to operation of checkpoints and disarming persons⁶³⁸
- b) 5D3019 – Another order by Col. Obradovic of the HVO tasking the MP with establishment and operation of checkpoints, including one at Stolac, and ordering subordinated MUP from Capljina and Stolac.⁶³⁹

Pavlovic, was rather clear -- “[...] the police in the zone carried out MP assignments pursuant to our orders, and that is precisely the job they should do; that is to say, to control the area.”⁶⁴⁰

320. Colonel Andabak, who at the relevant time was the Commander of the 2nd Battalion and later Assistant Head for the MP in his Operative Zone, also confirmed tasking of checkpoint activities of the MP by HVO military commander, as follows:

- a) P1238 - General Petkovic's order to MP lifting road blockade.⁶⁴¹
- b) P4251 - General Petkovic's order to provide freedom of movement to the UN.⁶⁴²
- c) P2836 - Order issued by 3rd Battalion of Herceg Stjepan brigade to establish Checkpoint.⁶⁴³

⁶³² P2249; Prajak (T.40766/2-40767/21);

⁶³³ [Redacted]

⁶³⁴ Petkovic (T.50250/1-12) (dealing with 5D4374)

⁶³⁵ Petkovic (T.50249/7-25) (dealing with 5D5095)

⁶³⁶ Petkovic (T.50252/7-50253/1) (dealing with P2534)

⁶³⁷ Petkovic (T.50253/17-50254/2) (dealing with 3D2584)

⁶³⁸ Pavlovic (T.46893/2-11)

⁶³⁹ Pavlovic (T.46900/24-46902/5)

⁶⁴⁰ Pavlovic (T.46907/9-12)

⁶⁴¹ Andabak (T.50941/1-11)

⁶⁴² Andabak (T.50939/20-50940/1)

⁶⁴³ Andabak (T.50942/7-23)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

d) P458 – Order of Main Staff that Aid Convoys are not to be stopped at checkpoints.⁶⁴⁴

321. Andabak confirmed that permits permitting passage through checkpoints could not be issued by the MP alone, but rather the consent of the OZ Commander and an order of the HVO Main Staff were required before such an order could be issued.⁶⁴⁵ [Redacted].⁶⁴⁶

322. [Redacted]⁶⁴⁷ This was confirmed by documents.⁶⁴⁸

323. As is clear from the above, the MPA was not in command over the establishment of nor operation of checkpoints manned by the MP.

B. CHECKPOINTS WERE OPERATED IN ACCORDANCE WITH LEGITIMATE LAW ENFORCEMENT PURPOSES

324. [Redacted].⁶⁴⁹ In a HVO report from July to December 1993, the purpose of checkpoints is made clear – “An effort has been made to prevent and solve crimes by setting up check points and organising patrols.”⁶⁵⁰

325. International observers reported that checkpoints helped allay fears of the local citizenry of being attacked by the other side, and that such checkpoints primarily just controlled traffic.⁶⁵¹ The evidence is clear that HVO Military Commanders who commanded MP at checkpoints issued orders to ensure that thefts and other crimes did not occur at checkpoints.⁶⁵² There is also evidence that fighting and safety concerns were often the legitimate reasons why convoys could not pass checkpoints.⁶⁵³

326. The record is clear that within his limited competencies, Coric sought to have the behavior of the MP comply with the utmost degree of professionalism and appropriateness, including duties that were assigned by HVO commanders. As dealt with before, Coric instituted professional training for MP, using instructors and texts geared for the work of the police during war-time as well as rules of

⁶⁴⁴ Andabak (T.51158/11-51159/3)

⁶⁴⁵ Andabak (T.50940/12-25)

⁶⁴⁶ [Redacted]

⁶⁴⁷ [Redacted]

⁶⁴⁸ P2527; P6825; P458

⁶⁴⁹ [Redacted]

⁶⁵⁰ P7419 page 2

⁶⁵¹ Williams (T.8502/24-8503/20)

⁶⁵² 5D4392

⁶⁵³ Raguz (T.31567/12-24)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

war.⁶⁵⁴ There is evidence that Coric sent MP units in the field Rules of Discipline that they should follow.⁶⁵⁵ Likewise his personal attitude was described by as a very stringent policy as to discipline of MP found to have engaged in misconduct:

“[...] any such perpetrators should be persecuted and a criminal report filed [...] anybody who besmirched the name of the military police on battlegrounds throughout Bosnia and Herzegovina, that they should be thrown out of the unit”.⁶⁵⁶

327. Coric sent a set of additional instructions advising MP of severe pay decreases for infractions and misconduct.⁶⁵⁷ Other documents issued by Coric during the relevant time period demonstrate appropriate instructions, within the limited competencies of the MPA to pass along cadre policy and remind about legal obligations. For example, in P1331, Coric, based upon a prior order of HVO Commander Lasic⁶⁵⁸ instructs that checkpoints should be run such that all prior instructions/orders issued should be given effect, and is aimed at establishing peace and order during a time of fighting between the HVO and BH Army. Such instructions do not demonstrate any criminal intent.

328. On 25 November 1992 Coric issued a document seeking to stress compliance with an order issued by the Defense Department on the appearance of MP, reminding them that fascist symbols and unprofessional appearance were banned at checkpoints.⁶⁵⁹

329. In December 1992, P864 was issued by Coric relaying a Defense Department order, such that all convoys of military equipment and weapons was to be inspected to ensure the proper documents authorizing the same were present. On 4 February 1993 Coric issued a “work plan” for the coming months that included, at item 8, an instruction for MP manning checkpoints to exercise stricter checks on all vehicles, including “transports, especially military, as well as checks on HVO vehicles.”⁶⁶⁰ These demonstrate that non-Croats were not singled out, and in fact that rules at checkpoints applied equally, even as to HVO vehicles, to enforce legitimate security type concerns.

⁶⁵⁴ See, herein Sec. V. A.

⁶⁵⁵ P129

⁶⁵⁶ Andabak (T.50953/19-50954/9)

⁶⁵⁷ P1444

⁶⁵⁸ P1272

⁶⁵⁹ 2D1365

⁶⁶⁰ P1416

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

330. Regarding the efforts to punish wrongdoing by MP at checkpoints, we have evidence that when such crimes were reported they were appropriately dealt with, and the responsible MP punished, and criminal reports filed against them.⁶⁶¹

331. Based on the foregoing, Coric would have no reason to know of any criminal intent behind checkpoints, and likewise his involvement with checkpoints, albeit limited, was based on legitimate regard for law and order and not intent to commit crimes.

C. HUMANITARIAN CONVOYS WERE LEGITIMATELY CONTROLLED

332. Western observers testified that checkpoints were a necessity and used legitimately by all sides.⁶⁶² All sides were particularly concerned with arms smuggling, after several incidents.⁶⁶³

333. [Redacted].⁶⁶⁴

334. Notwithstanding the foregoing, humanitarian vehicles were allowed free passage,⁶⁶⁵ so long as proper documentation was present.⁶⁶⁶ In cases where Humanitarian convoys were delayed, the evidence is that Coric acted to resolve misunderstandings that arose with such humanitarian organizations, and to apologize for the same, and that the MP had acted based on legitimate concerns of preventing smuggling of weapons and contraband.⁶⁶⁷ It should be recalled that OTP witness Beese conceded that, given the situation prevalent at the time, it was reasonable to hold back a humanitarian convoy, if they did not have the necessary documents and there was a risk that it might have been a convoy of Mujahedin forces packed with smuggled goods.⁶⁶⁸

335. An agreement on free passage of convoys signed by the HVO HDZ BiH and RBiH in Makarska on 8 July 1993 foresaw the mechanism for cooperation and organization of humanitarian convoys. This agreement envisaged an operational body functioning as a joint commission. The way in which the contents of the humanitarian convoys was to be checked was also arranged in this agreement.⁶⁶⁹

⁶⁶¹ 5D4165; Vidovic (T.51502/5-51503/4)

⁶⁶² Lane (T.23824/10-13); Arenas (T.5793/7-22; 5737/21-25)

⁶⁶³ Watkins (T.18975/1-18976/10)

⁶⁶⁴ [Redacted]

⁶⁶⁵ 3D921

⁶⁶⁶ 1D2103; 1D1854; P4470

⁶⁶⁷ P1451; 5D526; 5D529

⁶⁶⁸ Beese (T.5241/7 – 5244/16)

⁶⁶⁹ 1D1591, P3346

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

336. The ODPH (Office for Displaced Persons and Refugees) was solely responsible for issuing authorizations for passage of humanitarian convoys, not the MPA.⁶⁷⁰ The ODPH issued many permits for humanitarian organizations.⁶⁷¹ The evidence demonstrates that in cases of problems with humanitarian convoys, HVO military commanders were always able to successfully resolve the disputes and permit the convoys to pass without incident.⁶⁷²

337. From the foregoing, it is clear that the control over humanitarian convoys fell outside the jurisdiction of Coric and the MPA, and these other organs legitimately dealt with such convoys in a proper way, given the circumstances. There is no evidence of criminal intent.

**VII. CORIC IS NOT RESPONSIBLE FOR CRIMINAL ACTS ALLEGEDLY COMMITTED IN
DETENTION FACILITIES**

A. FORMATION OF THE PRISONS

338. The only previously existing prison facility in existence in the area of HZ-HB was the District Prison in Mostar.⁶⁷³

339. According to the HZHB Decree dated 3.7.1992 relating to persons captured in armed conflicts, the Head of the Department of Justice and Public Administration in cooperation with the Head of the Department of Defense and Head of the Department of the Interior shall determine the location where prisoners of war will be kept.⁶⁷⁴

340. The Central Military Prison at Heliodrom was founded in this manner.⁶⁷⁵ Heliodrom prison was planned and designed with a capacity of 500 and it was foreseen to handle all the prisoners of war, military detainees and military prisoners.⁶⁷⁶ Even this fact shows that at the time of formation it was not planned to arrest/detain a large number of persons.

341. Prior to the founding of Heliodrom the military remand prisons in Ljubuski, Mostar, Livno and Capljina were already in existence.⁶⁷⁷ In addition to prisoners of war, these prisons held convicted and

⁶⁷⁰ P93; 1D1360; Raguz (T.31353/23-31354/18)

⁶⁷¹ 1D1360

⁶⁷² Witness DV (T.22903/11-22908/20); P3923; P4466

⁶⁷³ Buntic (T.30988/12-15; 30987/19); Nikolic (T.51394/11-23)

⁶⁷⁴ P292

⁶⁷⁵ P452

⁶⁷⁶ P1635

⁶⁷⁷ P956

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

detained HVO soldiers. When it comes to prisoners of war, it is meant the captured members of the Serb armed forces.

342. In October 1992 the Geneva agreement was reached on the liberation, release and exchange of all POWs. In order to effectuate the agreement, most of the POWs were relocated to Heliodrom. After this relocation was carried out exchanges were completed in which all the prisoners of war from Heliodrom were released and exchanged, as well as those who were still found in other prisons.⁶⁷⁸

343. After the foregoing exchange Heliodrom becomes the Central military prison for military prisoners and detainees, and the prisons in Ljubuski and Capljina become brigade detention prisons, managed by the brigade to which they belong, in which soldiers are placed in custody and the for which security is provided by the Brigade Military Police or Home Guards.⁶⁷⁹

B. THE SITUATION IN 1993

344. From the beginning of the conflict with the Army of BiH, military commanders in the field take over control of prisoners of war including their arrest, detention, release and exchange.⁶⁸⁰ Insofar as the military commanders arrested them, in line with the decisional authority, these same commanders had a duty for all further well-being of these detainees:

The Appeals Chamber considers that all state agents who find themselves with custody of prisoners of war owe them a duty of protection regardless of whether the investment of responsibility was made through explicit delegation such as through legislative enactment or a superior order, or as a result of the state agent finding himself with *de facto* custody over prisoners of war such as where a prisoner of war surrenders to that agent.⁶⁸¹

345. On 30 June 1993, the Army of BiH attacks the HVO in Mostar, [Redacted].⁶⁸² It is clear that a similarly dire circumstance was in place in the second HVO brigade (at least 423 of its members were MHVOS that mutinied and joined the Army BiH attack on the HVO).⁶⁸³ After that, for security reasons, an order was issued to disarm and isolate the Muslim members of the HVO. This order was executed by the commanders of OZ or brigades with their subordinate units.⁶⁸⁴

⁶⁷⁸ 1D2435; 2D417; P677; Vidovic (T.51545/1-51548/25)

⁶⁷⁹ Vidovic (T.51737/22-51738/11)

⁶⁸⁰ P1913; 2D89; P1959; P5138; P1994; P1478; 4D1205; 5D4379; P2120; P3546; 3D525; P1333; P1636; P2182; P5138; P4862; P4432; P4217; P10164; 2D1319

⁶⁸¹ *Prosecutor v Mrksic and Sijivancanin*, Judgement, Case No. IT-95-13/1-A, 5 May 2009, para 73

⁶⁸² [Redacted]

⁶⁸³ P3614; P5526

⁶⁸⁴ P3019; P3151; P3222; P3300; P3234; P4745; P5581

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

346. These commanders in the field determine the locations where these disarmed members of the HVO are to be kept. This is how Dretelj, Gabela, Otok and Prozor come into being.⁶⁸⁵ Ljubuski Prison, which until then had been the detention facility of the brigade, is also used to accommodate these disarmed members of the HVO. In addition to disarmed members of the HVO, the prisons in Dretelj, Gabela, Prozor and Ljubuski are used to also hold captured members of the BiH Army.

347. Helidrom shared the fate of other prison, and after the events of 30.6.1993 disarmed members of the HVO are also brought and held there. All these prisons were from that point on run by local military commanders under the influence of the local municipal authorities.

348. Witness Buntic stated, as to these prisons:

Those institutions, those facilities, were not under the control of the civilian judiciary, the civilian courts, which is why I did not have any powers to enter them at all. We received information, and on the basis of this information we drafted proposals for the HVO. The proposal was that on the basis of the information we obtained in the Capljina municipality, to release half of the people immediately and to relocate the other half to facilities which would provide better conditions.⁶⁸⁶

349. The evidence of record is clear that military district courts were foreseen to be the organs that were to oversee and supervise the prisons, including the appointment of wardens, logistic support and functioning of the same.⁶⁸⁷ Coric himself stressed that interaction of the CPD in regard to prison authorities was indirect, mediated through cooperation with the district military courts.⁶⁸⁸

⁶⁸⁵ See, herein Sec. VII.

⁶⁸⁶ Buntic (T.30997/6-13)

⁶⁸⁷ Buntic (T.30655/13-30657/6); Vidovic (T.51729/9-23); P4530; P4475; 1D1797; 2D1412

⁶⁸⁸ P3651

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

C. DETENTION OF MUSLIM HVOS IS OUTSIDE OF THE JURISDICTION OF THIS CHAMBER

350. In 1992 a significant number of Muslims joined HVO ranks [hereinafter: "MHVOS"] based on common goals.⁶⁸⁹ That they formed a substantial part of some units can be seen from P1438 in which it is stated that the 1st Brigade of the HVO had a Muslim composition of over 50%.

351. The detention of MHVOS as shown⁶⁹⁰ began primarily at the end of June 1993 and continued thereafter. We respectfully request the Court to exclude acts committed against MHVOS as it does not possess the requisite jurisdiction over these crimes committed against a state's internal armed forces and as such fall exclusively within the domain of that state's domestic judiciary.

1. MHVOS Were Incorporated Into And Owed Allegiance To The HVO.

352. Allegiance is the central facet when determining whether an individual is a protected person under the GC IV. Membership in the armed forces of a party to the conflict is conclusive proof of a duty of allegiance. MHVOS owed such a duty to the HVO.

353. Article 2 of the Statute of the Tribunal provides that it has the power to prosecute persons who have committed grave breaches "against persons or property protected under the provisions of the relevant Geneva Conventions". The applicable provision to ascertain whether MHVOS can be regarded as victims of grave breaches is Article 4(1) of GC IV, which defines 'protected persons' as those in the hands of a party to the conflict or occupying power of which they are not nationals".

354. The allegiance of the MHVOS lay fundamentally with the HVO and this is again determinative of the fact that the MHVOS cannot claim protection.

355. It is settled that nationality is not wholly determinative of an individual's status as a 'protected person'.⁶⁹¹ Instead the Court in the Tadic Appeals judgement found that the question of allegiance was regarded as more important than the formal link of nationality.⁶⁹² The Court enunciated that this legal approach, "hinging on substantial relations more than on formal bonds"⁶⁹³ becomes more important "in modern inter-ethnic armed conflicts such as that in the former Yugoslavia".⁶⁹⁴ It went on that "in such

⁶⁸⁹ Military Expert Report of Milan Gorjanc ¶ 132, p.63. (4D1731)

⁶⁹⁰ P3151; P3222; P3300; P3234; P4745; P5581

⁶⁹¹ Prosecutor v Brdjanin, Trial Chamber, 1 September 2004, ¶ 125: "However, it is settled jurisprudence of this Tribunal that protected persons should not be defined by the strict requirement of nationality, as opposed to more realistic bonds demonstrating effective allegiance to a party to a conflict, such as ethnicity."

⁶⁹² *Prosecutor v Tadic*, Appeals Judgement, Case No. IT-94-1-A, App. Ch., 15 July 1999, ¶ 165.

⁶⁹³ *id.*, ¶ 166

⁶⁹⁴ *id.*

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

conflicts, [...]allegiance to a party to the conflict and, correspondingly, control by this Party over persons in a given territory, may be regarded as the crucial test".⁶⁹⁵

356. The Tribunal consistently abides by its jurisprudence on this issue,⁶⁹⁶ as confirmed in the Naletilic case in which it was stated that the Tribunal would review "on a case by case basis, the effective allegiance of the victims rather than their formal nationality".⁶⁹⁷

357. Effective allegiance must be determined by the acts of an individual and is only based on ethnicity when there is otherwise doubt as to where an individual's allegiance lies. As stated by the Court "victims are protected as long as they owe no allegiance to the party to the conflict in whose hands they find themselves and of which they are nationals."⁶⁹⁸

358. There is a sufficient line of case law to buttress the supposition that it is the acts of an individual which determines the question of where their allegiance lies.⁶⁹⁹

359. It is submitted that while the MHVOS were of a different ethnicity to their captors, ethnicity is only determinative of a protected person's allegiance when there are no other substantial relations. In this case the MHVOS having voluntarily joined the ranks of the HVO, having accepted the HVO code, had substantial ties and allegiance that lay wholly with the HVO. A further indication is the fact that MHVOS were legally entitled to the same benefits as their colleagues of Croat ethnicity.⁷⁰⁰ Coupled with this is 4D1466 which expressly outlines that time spent by HVO soldiers in detention would be recognised as time spent in a military unit for retirement.

360. Thereby as a result of the allegiance with which they were imbued, the MHVOS cannot be considered as protected persons under the GC IV and cannot be victims of grave breaches or war crimes under the laws and customs of war.

⁶⁹⁵ *id.*

⁶⁹⁶ *Prosecutor v Aleksovski*, Appeals Judgement, Case No. IT-95-14/1, App. Ch., 24 March 2000, ¶ 153. This was further supported by the *Celebici* case which endorsed the reasoning in *Tadic* and quoted from the *Aleksovski* case: *Prosecutor v Delalic et al. (Celebici case)*, Appeals Judgement, Case No. IT-96-21, App. Ch., 20 February 2001 ¶ 58 (quoting the *Aleksovski* Appeals Judgement ¶ 151); see also *Prosecutor v Kordic and Cerkez*, Judgement, Case No. IT-95-14/2, T. Ch. II, 26 February 2001, ¶ 148: "[t]hose decisions [the *Aleksovski* and *Celebici* cases] are binding on this Chamber".

⁶⁹⁷ *Prosecutor v Naletilic and Martinovic*, Judgement, Case No. IT-98-34-T, 31 March 2003, ¶ 207.

⁶⁹⁸ *Prosecutor v Kordic and Cerkez*, Appeals Judgement, Case No. IT-95-114-2/A, App. Ch., 17 December 2004 ¶ 330.

⁶⁹⁹ See cases cited in next section

⁷⁰⁰ P4756- Contains the minutes of a meeting of the collegium of Defence Department Heads held on 2 September 1993 which contains the statement "[t]he new organisation scheme for the general care administration was adopted and the conclusion was reached that the families of those Muslim members of the HVO who were killed should still receive assistance."

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

2. MHVOS not eligible for protection for grave breaches or war crimes

361. The law of armed conflict does not protect members of armed groups from acts of violence directed against them by their own forces.⁷⁰¹ As stated by Professor Cassese, “crimes committed by servicemen against their own military (whatever the nationality) do not constitute war crimes. Such offences may nonetheless fall within the ambit of the military law of the relevant belligerent”.⁷⁰²

362. That you cannot commit war crimes against your own forces has been unequivocally stated by the Special Court for Sierra Leone:

*The law of international armed conflict was never intended to criminalise acts of violence committed by one member of an armed group against another, [...]. In our view, a different approach would constitute an inappropriate re-conceptualisation of a fundamental principle of international humanitarian law.*⁷⁰³

363. It was the intention of the drafters of the Geneva Conventions to regulate conduct of combatants vis-a-vis their adversaries and persons hors de combat who do not belong to armed groups participating in the hostilities.⁷⁰⁴ For this reason the Third Convention was restricted to those ‘who have fallen into the power of the enemy.’⁷⁰⁵ Similarly the definition of protected persons under the Fourth Convention is limited to persons “in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.⁷⁰⁶

364. That war crimes cannot be committed against your own soldiers is further supported in domestic practice. In *Pilz* a Dutchman in the occupied Netherlands who enlisted in the German army was found to have placed himself under the laws of the occupying power.⁷⁰⁷

365. In the *Motosuke* case, the execution of a Dutch national who had joined a volunteer corps of the Japanese army by an officer in the Japanese army was not considered a war crime as the Court held that the victim by joining the Japanese forces had lost his nationality.⁷⁰⁸

366. In *P v Oie Hee Koi*, it was held that the Convention did not extend the protection given to POWs to nationals of the detaining power and further stated that ‘the same principle must apply as regards persons who, though not nationals of, owe a duty of allegiance to the detaining power.’⁷⁰⁹

⁷⁰¹ Special Court for Sierra Leone, RUF Judgement 2 March 2009, ¶ 1451 (page 435).

⁷⁰² A.Cassese, *International Criminal Law*, 82 (2008).

⁷⁰³ RUF judgement ¶ 1453 p.435.

⁷⁰⁴ RUF judgement ¶ 1453 p.435.

⁷⁰⁴ RUF judgement ¶ 1453 p.435.

⁷⁰⁵ GC III Article 4

⁷⁰⁶ Article 4

⁷⁰⁷ *id.*

⁷⁰⁸ *Op. cit.*, United Nations War Crimes Commission.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

367. In the US case of *re Territo*,⁷¹⁰ it was decided that the individual's choice to join the ranks of the Italian army entitled US authorities to detain him as a prisoner of war irrespective of his US citizenship.

368. These cases serve to prove that one cannot commit a war crime against their own forces, regardless of nationality.⁷¹¹

3. MHVOS not eligible for protection for crimes against humanity

369. Crimes against humanity can only be committed against civilians as expressly formulated in the Statute of this Tribunal and as is thus accepted in customary law. It has been shown here that the MHVOS were not civilians, that they were soldiers of the HVO.

370. Even taking the term 'civilian' at the broadest that it has been applied as in where there is a case of doubt then the presumption will be that an individual is a civilian.⁷¹² There is no doubt that in this case the MHVOS were soldiers and thus cannot be viewed as civilians. As enunciated in the Appeals Chamber of this Court "[r]ead together, Article 50 of Additional Protocol I and Article 4A of the Third Geneva Convention establish that members of the armed forces, and members of militias or volunteer corps forming part of such armed forces, cannot claim civilian status."⁷¹³ The Court further elaborated that "[i]f he is indeed a member of an armed organization, the fact that he is not armed or in combat at the time of the commission of crimes, does not accord him civilian status."⁷¹⁴

371. There has never been a case of an army committing a crime against humanity against its own soldiers and thus there is no basis to suggest here that such an act occurred.

4. The HVO were entitled to detain MHVOS

372. It is accepted universal practice that once a soldier enlists, they become subject to the internal rules of that armed force. It is thus hereby respectfully submitted that as soldiers of the HVO, the

⁷⁰⁹ Public Prosecutor v Oie Hee Koi, 1 All ER 829 (1968) at 858.

⁷¹⁰ 156 F.2d 142 (9th Cir. 1946)

⁷¹¹ A. Harrington, *25TH of May 2006 Massacre & War Crimes in Timor-Leste*; East Timor Law Journal, at 32 (2007).

⁷¹² Limaj et al., Trial Chamber, 30 November 2005, ¶ 223: "The Chamber recalls that Article 50, paragraph 1 of Additional Protocol I to the Geneva Conventions...states that "[i]n case of doubt whether a person is a civilian, that person shall be considered a civilian."; see also ¶186.

⁷¹³ Blaskic, Appeals Chamber, 29 July 2004 ¶ 113; see also ¶ 112 where the Court referred to the ICRC [International Committee of the Red Cross] Commentary to the Additional Protocol which includes the following category of persons, derived from Article 4A of the Third Geneva Convention which are excluded from civilian status: "(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces."

⁷¹⁴ Id., ¶ 114.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

MHVOS could be legally detained as the detention of one's own soldiers is an accepted occurrence which falls within the exclusive internal competence and provenance of any armed force.⁷¹⁵

5. There were legitimate reasons to detain MHVOS

373. The security threat emanating from MHVOS had been recognised early in 1993⁷¹⁶ [Redacted]⁷¹⁷. That it was believed that the loyalties of the MHVOS did not belong to the HVO is shown⁷¹⁸, and that there was a concerted effort by the BiH Army seeking MHVOS to join its ranks as well as calls from within the Muslim community for military-able men to join the fighting are documented in the evidence.⁷¹⁹

374. If it is held that the MHVOS were civilians of the opposing nationality, then in such a case it is submitted that they could be lawfully detained under the exception of security reasons as enumerated in the GC IV, Article 5 of which provides for the limitation of rights for those 'definitely suspected of or engaged in activities hostile to the security of the State'. Article's 41 and 42 reference specifically the power of a State to detain civilians and reflect the general proviso contained in Article 27 allowing a State to "take such measures of control and security in regard to protected persons as may be necessary". The issue of deeming what constitutes a security threat is a matter for the State to determine.⁷²⁰ That a person by their qualifications may represent a real threat to the present or future security of a State has been acknowledged by the Court,⁷²¹ and is included in the Commentary to the GC IV.⁷²² That an individual is a male of military age who is able to join the enemy forces can justify the application of these measures.⁷²³

375. [Redacted].⁷²⁴ That detention was purely aimed at the men of military age as a result of a deterioration of security is evident from the evidence.⁷²⁵ These individuals possessed the requisite knowledge and qualifications as to constitute a security threat. There are documented cases of former

⁷¹⁵ See for example: National Defence Act, R.S.C. 1985, c. N-5, Section 139. (1)(f) (Canada); The Army Act, 1950 1 Act No. 46 of 1950, Section 80 (India); Armed Forces Act 2006, Chapter 52, Section 132 (United Kingdom); Title 10, Subtitle A, Part II, Chapter 47, Uniform Code of Military Justice, Section 809 Article 9 (United States);

⁷¹⁶ P1438- Report dated 08.02.93 issued by Nojko Martinovic regarding the HVO 1st Brigade which states 'the defence security is diminished due to a significant amount of Muslims in the composition of the unit'.

⁷¹⁷ [Redacted]

⁷¹⁸ P2223

⁷¹⁹ 2D281; 2D288

⁷²⁰ J. Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949 relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross, Geneva (1956) at 257.

⁷²¹ *Prosecutor v. Delalić, Mucić, Decić and Landzo* (Trial Judgement) IT-96-21-T (16 November 1998) ¶ 577.

⁷²² Commentary *supra* note 8 at 258.

⁷²³ *ibid.* at 258 fn.1.

⁷²⁴ [Redacted]

⁷²⁵ P3057; P3019

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

MHVOS who had retained their weapons participating in acts prejudicial to the HVO⁷²⁶, as there are also cases of serving MHVOS involved in collusion with the BiH Army.⁷²⁷ During a time of escalating attacks from the BiH Army, the MHVOS presented a real present and future security threat and the measures taken to detain them were entirely lawful under the provisions of the GC IV.

6. The acts do not amount to an 'attack' as to qualify as a crime against humanity.

376. In the further alternative, it is respectfully submitted that in relation to the specific charge of crimes against humanity that the detention of MHVOS cannot be held to be part of a widespread or systematic attack⁷²⁸ upon a civilian population. The status of the victim as a civilian is one of the elements which characterises a crime against humanity.⁷²⁹ As mentioned previously,⁷³⁰ the Court has looked to Article 50 of Additional Protocol I⁷³¹ as the definition of the term 'civilian' and stated it to be declarative of customary international law,⁷³² while the Trial Chamber in the Martić case found that it applies when determining the status of victims under Article 5 of the Statute.⁷³³

377. The Chamber must be satisfied that that the attack was directed against a civilian 'population', rather than against a limited and randomly selected number of individuals.⁷³⁴ In Mrksić, the Appeal Chamber held that the perpetrators of crimes committed against prisoners had selected the individuals based on their involvement in the Croatian armed forces. As a result it was precluded that they had intended their acts to form part of an attack against a civilian population such that no nexus could be established.⁷³⁵

⁷²⁶ P3546

⁷²⁷ 4D1461- Official note from 19.09.92 issued by SIS regarding activities of the BH army in the Stolac and Capljina municipalities. It states that Muharem Dizdar, a HVO commander had visited members of the HVO and told them not to leave their units to join the BH army 'until the hour strikes, and they will inform them at the time'. It also contains details of civilians arriving from Stolac for training in BH army units, with HVO members observed among them.

⁷²⁸ Prosecutor v. Deronjic, Appeals Chamber, 20 July 2005, ¶ 109: "[I]n order to constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population..."

⁷²⁹ Prosecutor v. Blaskic, Appeals Chamber, 29 July 2004, ¶107.

⁷³⁰ para. 372

⁷³¹ Article 50 Additional Protocol I: "1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians. 3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

⁷³² Blaskic AC, ¶110

⁷³³ Prosecutor v. Martić, Trial Chamber, 12 June 2007 ¶ 51.

⁷³⁴ Prosecutor v. Kunarac, Appeals Chamber, 12 June 2002 ¶ 90.

⁷³⁵ Prosecutor v. Mrksić and Slijivancanin, Case No. IT-95-13/1-A, Judgement, 5 May 2009 ¶ 42-43.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

378. Whatever acts were committed against the MHVOS, they did not form part of an attack upon a civilian population. There were reasons that the detention of the MHVOS occurred and these cannot be linked to an attack upon a civilian population.

D. ROLE OF THE MILITARY POLICE ADMINISTRATION AS TO PRISONS

379. The overwhelming evidence when analyzed demonstrates the fact that the Military Police Administration did not have authority over detention facilities that would entail criminal responsibility of Valentin Coric for any of the crimes committed in the detention facilities on the territory of North-West Herzegovina, South-East Herzegovina or Central Bosnia.

380. The Prosecution has not proven that Coric prevented, obstructed, and/or limited access to prison facilities and to prisoners and detainees by international organizations and relief groups. Three exhibits were presented at trial on this topic.⁷³⁶ 5D2008 is discussed later herein when we discuss Prozor. [Redacted].⁷³⁷ P2601 was a request sent to Coric for another visit, but the record shows that there was no for Coric to respond as the same was rendered moot because authorization was already granted to the ICRC for this visit by HVO Commander Lasic.⁷³⁸ Witness Drljevic testified that the visit in fact took place.⁷³⁹ This exhibits show that whenever visits were sought, they were granted by Coric, albeit that he was not the final authority and Military commanders on the ground had the last say.

381. Oral and documentary evidence given at the Court prove that brigade commanders were in *de facto* charge for all aspects of the maintenance and management of detention facilities under the HVO military commanders.⁷⁴⁰

382. A proper review of the evidence shows that in fact, detention facilities were managed according to the same system of command. HVO military commanders (who were not subordinated to Coric or the MPA) had the authority concerning the following factors: a) arrests;⁷⁴¹ b) food and accomodations;⁷⁴² c)

⁷³⁶ P3292; P2601; 5D2008

⁷³⁷ [Redacted]

⁷³⁸ 5D1001

⁷³⁹ Drljevic (T.1197/22-1198/10)

⁷⁴⁰ P3731; P3169

⁷⁴¹ P3019; P3222; P2132; P1913; P2120; P3546; P3234; P1359; Pavlovic (T.46851/16-46852/2)

⁷⁴² P5647; P2649; 5D1057; P3266; P4156; [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

security;⁷⁴³ d) [Redacted];⁷⁴⁴ e) transfer of prisoners and detainees;⁷⁴⁵ [Redacted] g) release of prisoners and detainees.⁷⁴⁶

383. In July 1993 Coric is first made aware of the problems of the prisons in the OZJIH and he immediately informed the HVO of the same. The HVO at its session then establishes a commission that should investigate the situation on the ground and solve the situation whatever it is found to be.⁷⁴⁷ The evidence is that the commission issued a report after its review, indicating nothing that would put Coric or others on notice of any criminal enterprise or system of ill-treatment.⁷⁴⁸

384. Here it is important to emphasize Coric's position at a meeting with members of the crime section of the MP held on 22 July 1993. Coric at that time advises participants that the crime section of the military police should deal only with those detained persons suspected of committing a criminal offense. For all other persons, insofar as the military police did not detain them, it has no authority in regard to them.⁷⁴⁹ Thus Coric's only involvement with transfers of detainees was precisely for those limited number of individuals being investigated as criminal perpetrators from the military, to transfer them to Ljubuski when the same became a military investigative prison.⁷⁵⁰ It must also be stressed that mere knowledge on the part of Coric that enemy soldiers were detained does not presume knowledge of the mistreatment of those detainees.⁷⁵¹

385. However, it is obvious that the HVO had no authority over military commanders and was unable to do anything, because by the end of July Mate Boban himself, as supreme military commander, appoints Tomo Sakota as coordinator of all the centers for prisoners of war (that is to say all prisons).⁷⁵² It is stressed that Mate Boban was the President of the Presidency HZHB, which is composed of Mayors of municipalities. This is important because these are precisely the presidents of municipalities that often have a decisive influence on the local military commanders, as seen from the evidence presented in the chapters relating to the various prisons.

⁷⁴³ P3119; P680; P3270; P3954; [Redacted]Pavlovic (T.47007/20-47008/10)

⁷⁴⁴ [Redacted]

⁷⁴⁵ P6658; P1913; P6662; P9732; P3380; [Redacted]

⁷⁴⁶ P4941; P4946; P5138; P3604; P3169; 5D2184; P3201; P1636; P4193; [Redacted]

⁷⁴⁷ P3560

⁷⁴⁸ P3573

⁷⁴⁹ P3651

⁷⁵⁰ P4838

⁷⁵¹ *Prosecutor v Hadzihasanovic & Kubura*, No. IT-01-47-T, *Judgement* (15 March 2006) at para. 1291

⁷⁵² 2D517; P7341

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

386. The situation, does not get better, and Coric again warns everyone about the functioning of military prisons at a collegium of the Department of Defense in early September 1993.⁷⁵³

387. Subsequently, in September 1993, Mate Boban again sends an order to military commanders, from the level of the Main Staff down to the lowest level HVO unit, which refers to the rules of pertaining to detained persons.⁷⁵⁴ The fact that Boban did not address the MPA by the order and that the Main Staff transferred the order to the operative zones and brigades clearly proves who was in charge of detention facilities and that Coric did not have any *de facto* authority concerning them. Already from the actions of Mate Boban (as commander in chief and president HZHB), we can draw conclusions as to the identity of persons who have the real authority over those prison facilities.

389. In December 1993, Mate Boban issues an order for disbandment of all the prisons.⁷⁵⁵

E. THE MILITARY POLICE ADMINISTRATION DID NOT HAVE ANY AUTHORITY OVER PROZOR DETENTION FACILITY

1. Prozor Detention facilities were under the Authority of the HVO Military Commanders Who issued the orders to arrest persons detained at Prozor

390. In the same way as it occurred in the case of the South-Eastern Herzegovina OZ, following the authorization given by the Main Staff by the order of Milivoj Petkovic dated on 30 June 1993,⁷⁵⁶ the Rama Brigade conducted an operation of arresting and detaining Muslim men aged between 16 and 60. The order for this operation was issued by Željko Šiljeg, commander of the North-West Herzegovina Operation Zone on 6 July 1993.⁷⁵⁷ The MP and the SIS of the Rama Brigade took the measure of arrests according to this order.

391. The same chain of command was in force until the end of 1993. Military units subordinated to the Rama Brigade due to security reasons took the measure of arrests according to an order arising from that same chain of command.⁷⁵⁸ Accordingly, the operation of arrests was reported on up through the same chain of command.⁷⁵⁹

⁷⁵³ P4756

⁷⁵⁴ P5104; P5188; 3D915; P5199; 1D1704

⁷⁵⁵ P7096

⁷⁵⁶ P3019, Item 8

⁷⁵⁷ P3234

⁷⁵⁸ P3831; P3971

⁷⁵⁹ P5590

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

392. In October 1993, Milivoj Petkovic as Deputy Commander of Main Staff issued another order addressed to all Operative Zones in which he ordered all military units to disarm and isolate Muslim HVO members.⁷⁶⁰ Željko Šiljeg acted upon this order by addressing all military units subordinated to the OZ of North-West Herzegovina accordingly.⁷⁶¹

393. Consequently, Ante Pavlovic, commander of the Rama Brigade issued an order on 4 October 1993 and addressed it to the MP, the MUP and the SIS of the Brigade to take MHVOS into custody. He based his order on the earlier order of the Commander of the Main Staff.⁷⁶² This fact was confirmed by General Praljak:

A. It's not just someone from the Main Staff. It's me. I was the one who issued this order to Mr. Pavlovic, for him to carry it out, the reason being all the protective structures had begun to cave in of the Muslim population in Rama municipality. I was fully conscious of this as well as of my responsibility in this regard.⁷⁶³

394. The MPA was neither part of the chain of command nor informed about these operations. It was not involved in the arrests and did not have effective control over the members of the MP contributing to these measures under orders of the brigade commander.

395. [Redacted].⁷⁶⁴

2. The MPA did not have a Role in Appointment of Wardens at Prozor Prison

396. [Redacted].⁷⁶⁵ Ante Pavlovic replaced Zelenika as commander of the Rama Brigade, as confirmed by General Praljak.⁷⁶⁶ [Redacted]None of the foregoing orders were delivered to the MPA, which proves that the MPA had no authority nor role concerning the appointment of wardens of Prozor detention facility.

397. At the same time, we can conclude from the fact that the warden of the Prozor detention facility submitted regular reports to the SIS of the brigade that is discussed in detail hereinafter, that the superior authority of the prison warden was the Rama Brigade.

⁷⁶⁰ P4745

⁷⁶¹ P5581

⁷⁶² P5621

⁷⁶³ Praljak (T.42772/10-16)

⁷⁶⁴ [Redacted]

⁷⁶⁵ [Redacted]

⁷⁶⁶ Praljak (T.42767/19-23)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

398. The foregoing clearly prove that the MPA had no command authority either *de jure* or *de facto* concerning the warden of the detention facility in Prozor.

3. The MPA had no role in Maintenance of the Prozor Detention Facilities

399. The same chain of command existed concerning the management of the Prozor compound from the beginning of the arrests. Documentary evidence proves the fact that HVO military commanders were responsible for the overall maintenance of the Prozor detention facility and overall control of prisoners and detainees.

400. One of the relevant exhibits is the order dated on 21 April 1993 issued by the OZ by which it approved the **visit** of the ICRC to the prisoners. The order was addressed to the MP, and at the same time, it was not delivered to the MPA.⁷⁶⁷

401. The fact that Colonel Siljeg had the authority to approve visits to the Prozor detention facilities was confirmed by Rudy Gerritsen.⁷⁶⁸ In August 1993, the visits to the detention facilities were still approved and ordered by the Operative Zone and the Main Staff. It is proven by an order addressed to Šiljeg and issued by Petkovic on 14 August 1993 about the visit of the Chief of the European Community.⁷⁶⁹ The same chain of command was in force in September 1993 as well.⁷⁷⁰

402. The Rama brigade was responsible for the overall and everyday maintenance of the Prozor detention facilities and the overall control over prisoners and detainees.⁷⁷¹ In June 1993, Brigade Commander Zelenika ordered the Dekorativa Director and the Civilian Protection Commander to provide accommodation for the prisoners.⁷⁷² The MPA or Coric were not mentioned as relevant authorities concerning the housing of prisoners, and maintenance of the facility and the orders were not delivered to them either. In the same way, Commanders of the Rama Brigade issued orders concerning the provision of **food** without mentioning or informing the MPA.⁷⁷³

⁷⁶⁷ 5D4379

⁷⁶⁸ Gerritsen (T.19206/12-15)

⁷⁶⁹ P4188

⁷⁷⁰ 3D979; 3D981

⁷⁷¹ P3604; P2649; P3266; P4156; P3286; P4156; P6569; P6662; P6658; P3380; P4285

⁷⁷² P2649

⁷⁷³ P3266; P4156

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

403. The brigade commander had the authority to issue orders concerning **medical assistance**. Commander Zelenika ordered regular visits by a physician to the places of detention.⁷⁷⁴ The Rama Brigade was the authority which could do anything to improve the conditions of detention at the Prozor Secondary School, as it is proven by the fact that prison warden Mato Zadro turned to the brigade command requesting the improvement of the situation within the detention facilities.⁷⁷⁵

404. [Redacted].⁷⁷⁶ [Redacted].⁷⁷⁷ He did not address the MPA or Coric if he wanted to raise any problematic issue related to the conditions of detention. Accordingly, the MPA and Coric were not informed about the conditions of detention at Prozor.

405. According to the testimony of Witness Gerritsen, OZ Commander Siljeg, and ultimately General Praljak had overall responsibility concerning the **exchange of prisoners** as well.⁷⁷⁸

406. Documentary evidence indicates that in addition to the commander of the Operative Zone, the commander of the Rama Brigade was in charge of exchange of prisoners.⁷⁷⁹

407. The MPA and Coric did not have any authority concerning the detentions at Prozor.

4. Security was provided at Prozor detention facilities upon order of the HVO Military Commanders

408. The system of security was organized according to the same principles in the Prozor detention facilities as in most of the other detention centres. The commander of the Rama Brigade made the Home Guards chiefly responsible for ensuring security within the Prozor compound.⁷⁸⁰ Home Guards were deployed by the brigade commander.⁷⁸¹ [Redacted]⁷⁸² [Redacted]⁷⁸³

409. Members [Redacted].⁷⁸⁴ [Redacted].⁷⁸⁵

⁷⁷⁴ P3286

⁷⁷⁵ 2D271

⁷⁷⁶ [Redacted]

⁷⁷⁷ [Redacted]

⁷⁷⁸ Gerritsen (T.19189/3-10)

⁷⁷⁹ P3604

⁷⁸⁰ P3270

⁷⁸¹ P3954

⁷⁸² [Redacted]

⁷⁸³ [Redacted]

⁷⁸⁴ [Redacted]

⁷⁸⁵ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

410. The MPA did not have any authority concerning the activity of any of military units involved in the security of detainees.

5. The MPA did not have authority over the Release or Transfer of Detainees at Prozor

411. The Rama Brigade under the command of the OZ and the Rama Municipality HVO were in charge of the **release** of detainees held in the Prozor facilities throughout the period of the Indictment.

412. The authority of the OZ of North-West Herzegovina and the brigade concerning the release of prisoners was in force already in March 1993 as is proven by a report of the OZ.⁷⁸⁶ The MPA is not mentioned by the report nor did was it a recipient of the report.

413. In relation to the release of one group of detainees the SIS of the Rama Brigade addressed themselves to the municipal organs and the Rama Brigade.⁷⁸⁷ [Redacted].⁷⁸⁸

414. A number of documents discussed above strongly suggest that the "higher level organ" mentioned above was the Main Staff. This can be concluded from the fact that the foregoing documents refer to the order of Siljeg issued on 6 July 1993 following the authorization of the Main Staff, as discussed above.⁷⁸⁹ Again, the MPA or Coric do not appear in the document as an authority which would play any role in the release of detainees, nor which would be informed of such releases.

415. A number of documents prove that under the superiority of the OZ, the commander of the Rama Brigade had overall responsibility for the **transfer** of prisoners from Prozor to other compounds.⁷⁹⁰ Special attention should be given to the operation of transfer of prisoners in mid-November 1993. The transfer of prisoners from the Prozor detention facilities to Gabela prison became necessary due to lack of space. The whole operation was conducted by the cooperation of the Rama and the 1st Knez Domagoj Brigade according to the order of General Tole and the Main Staff.⁷⁹¹ The operation was conducted undercover such that no external higher authorities were informed. This is proven by the fact

⁷⁸⁶ P1636

⁷⁸⁷ P3971

⁷⁸⁸ [Redacted]

⁷⁸⁹ P3019, P3234

⁷⁹⁰ P4156; P6569; P6662; P6658; P3380

⁷⁹¹ P6569; P6662; P6658

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

that Colonel Siljeg denied even the existence of the detention facilities in Prozor to the Health Section of the Defence Department.⁷⁹² This was not the only such incident by Colonel Siljeg.⁷⁹³

416. None of the orders issued concerning the transfer of detainees⁷⁹⁴ mentioned the MPA in any sense and they were not delivered to the MPA or Coric. Thus the document presented by the OTP, which indicates that Coric played a role with regard to transfer of detainees must be regarded with great suspicion and scrutiny as a forgery,⁷⁹⁵ as set out in detail later herein.⁷⁹⁶

417. The foregoing proves that Coric was not reported to about the release or transfer of detainees, such that he is not responsible for violations of law that occurred within the Prozor detention facilities.

6. The MPA was not informed about the conditions of detention in the Prozor detention facilities and therefore, the actual conditions of detention were unknown to Coric

418. The warden of the detention facility of the Secondary School in Prozor was sending reports about the conditions of detention to the Rama Brigade. [Redacted]⁷⁹⁷

419. [Redacted].⁷⁹⁸

420. The testimony of Andabak is an additional piece of evidence which proves that the MPA was not informed in any way about the events that occurred concerning the detainees or prisoners held in the Prozor area. He testified that he himself was not informed about these events, since the Brigade MP did not report to him, and thus he could not report to the MPA about their activities.⁷⁹⁹

421. Related to the transfer of detainees held in the Prozor detention facilities, measures were taken and were committed undercover under the command of the commanders of the Rama Brigade and the Operative Zone of Northwest Herzegovina on a regular basis. This was proven by the fact that Colonel Siljeg denied even the existence of the detention facilities in Prozor to the Health Section of the Defence Department.⁸⁰⁰

⁷⁹² P6203

⁷⁹³ See herein Sec. VIII. E.

⁷⁹⁴ P4156; P6569; P6662; P6658; P3380

⁷⁹⁵ P3551

⁷⁹⁶ See, herein para. 706

⁷⁹⁷ [Redacted]

⁷⁹⁸ [Redacted]

⁷⁹⁹ Andabak (T.50931/22-25)

⁸⁰⁰ P6203

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

422. Consequently, Coric could not be aware of the problems related to the conditions of detention at Prozor. This is proven by the fact that on the single occasion when the delegates of the ICRC turned to him on 15 October 1993 and requested him to facilitate their visit to the detention facilities in Prozor, he issued an order to Ilija Fofic to enable the delegates to enter the prison.⁸⁰¹ He did not include any condition to the visit that clearly proves the fact that he did not know about any conditions of detention that would have gone against the rules of international humanitarian law.

423. Ilija Fofic forwarded the foregoing order of Coric to the 4th MP Company already with a modified content, inserting a request that the seriously wounded prisoners should be removed to another place so that the delegates have a good impression about the conditions of detention.⁸⁰² Coric did not know about the modification of the order and he was not aware of any circumstances that would be problematic concerning the visit of the ICRC.

424. Even if there were attempts to prevent visits of non-governmental or international organizations or to hide any facts related to the conditions of detention, the MPA and Coric were not involved in those attempts but they were conducted by other authorities.⁸⁰³

425. [Redacted].⁸⁰⁴ [Redacted].⁸⁰⁵ [Redacted].⁸⁰⁶ [Redacted]⁸⁰⁷ leads to the conclusion that it was not proven beyond reasonable doubt that the MP was responsible for the commission of the discussed incident. Even if they were involved in any similar incidents, they acted under the command of the brigade as it is discussed.⁸⁰⁸

⁸⁰¹ 5D2008

⁸⁰² P9737

⁸⁰³ P9737; P6203

⁸⁰⁴ [Redacted]

⁸⁰⁵ [Redacted]

⁸⁰⁶ [Redacted]

⁸⁰⁷ [Redacted]

⁸⁰⁸ See herein Sec. III.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

7. Coric was not aware of the criminal acts allegedly committed in Crni Vrh and he bears no responsibility for those acts

426. The MPA and Coric were not informed about the crime of using prisoners as human shields that was allegedly committed on 31 July 1993 in Crni Vrh.

427. The OTP failed to prove that acts were committed by Ilija Franjic. He was the commander of the Rama Brigade in 1992, and in February 1993 the municipal authorities appointed him as a commander of the MP Company in Rama. Since his company was part of the 2nd MP Battalion, he was obliged to submit report to Zdenko Andabak, commander of the Battalion on a regular basis. However, he did not report any criminal acts to the MP Battalion.⁸⁰⁹ Zdenko Andabak did not receive any information about the incidents from any other sources either:

The SIS could write whatever they wanted to, but they never accused us. I never received a document warning me that they were committing crime that would have required me to act.⁸¹⁰

428. The resignation of Franjic from the MP was not related to the events that occurred in Crni Vrh in any way. The reasons of his resignation were explained by Andabak which clearly demonstrate the fact that he and the MPA were informed about his inappropriate acts only concerning daily MP duties connected to some passes.⁸¹¹ Apart from this, problems arose with regard to his general behavior as being bossy but nothing connected to the events that occurred in Crni Vrh.⁸¹² The discussions about these problems led to his resignation.⁸¹³

429. [Redacted]⁸¹⁴ [Redacted]⁸¹⁵ [Redacted]⁸¹⁶ [Redacted]

430. The only eyewitness, who survived the events at Crni Vrh, namely Witness BL stated specifically that the MP was not present and did not contribute to the commission of the crime.⁸¹⁷ The MPA was not informed about the incident,⁸¹⁸ and it was not involved in the commission of the crimes.

⁸⁰⁹ Andabak (T.50954/12 – 50955/17)

⁸¹⁰ Andabak (T.50956/9-11)

⁸¹¹ Andabak (T.50956/12-20)

⁸¹² Andabak (T.50958/7-9)

⁸¹³ 5D2049

⁸¹⁴ [Redacted]

⁸¹⁵ [Redacted]

⁸¹⁶ [Redacted]

⁸¹⁷ [Redacted]

⁸¹⁸ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

8. Conclusions concerning detention facilities at Prozor

431. It follows from the above evidence, that Coric is not responsible for any criminal acts committed in Prozor. Accordingly Coric should be acquitted of all counts in the Indictment relating to Prozor detention facilities, including Crni Vrh.

F. THE MPA DID NOT HAVE ANY AUTHORITY OVER THE HELIODROM CENTRAL MILITARY REMAND PRISON, AND CORIC DOES NOT BEAR ANY RESPONSIBILITY FOR THE INCIDENTS AT HELIODROM

1. The MPA and Coric did Not Have a Role in the Establishment of Heliodrom Central Military Prison or in the Appointment of the Warden of the Prison

432. Documentary evidence proves the fact that the Heliodrom prison was established by an order of the Head of the Defence Department issued on 3 September 1992. Heliodrom was in fact the only one detention facility which was established in accordance with the July 1992 Decree of Mate Boban on the treatment of detainees.⁸¹⁹ Documentary evidence proves that Coric was not involved in the appointment of Mile Pusic as warden of the prison.⁸²⁰ Therefore, the order issued by Coric on 22 September 1993 about the establishment of the prison⁸²¹ did not have any relevance. Hence, a conclusion can be drawn that neither Coric nor the MPA played any role in the establishment of the compound or in the appointment of the warden of the prison.

433. The testimony of Josip Praljak, whose credibility is highly questionable in general,⁸²² was not corroborated by any otherevidence. Contrary to his statements a number of facts clearly demonstrate the fact that Coric was not involved in the establishment of the Central Military Prison or the appointment of its warden. Praljak identified himself as a military policeman.⁸²³ This was contested by the fact that Ivan Ancic himself did not give him the salary of a military policeman because he considered Praljak a civilian.⁸²⁴ Since Ancic would have been the best person to know if Praljak were a military policeman, Praljak's statements and the December 1992 document about military prison employees⁸²⁵ cannot be taken into consideration concerning the responsibility for incidents at

⁸¹⁹ P292

⁸²⁰ P452

⁸²¹ P513

⁸²² See herein Sec. XVI.

⁸²³ Josip Praljak (T.14662/18 – 14663/3)

⁸²⁴ Josip Praljak (T.14964/7-17)

⁸²⁵ P968

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Heliodrom. Documentary evidence confirms the problem of unpaid wages to the wardens and proves that the MPA was not a superior authority of the Central Military Prison.⁸²⁶

434. Witness Vidovic testified the MPA did not have any authority to appoint wardens.⁸²⁷ That wardens of Heliodrom were not members of the MP is proven by the reports⁸²⁸ of Praljak and Stanko Bozic which had headings where different registration numbers appeared from those in use of the MP.⁸²⁹ Furthermore, prisons were not listed among the organizational units within the MPA.⁸³⁰

435. The statements of Praljak about the involvement of Coric in the construction of the Heliodrom facilities were based on a meeting, which according to his memories he, Coric and Pero Nikolic attended. Nikolic, who has been in regular contact with Praljak, not only denied such a meeting, but said Praljak never once mentioned Coric had any role in appointing him or anyone at *Heliodrom*.⁸³¹ Nikolic was steadfast when he was shown the relevant entries of Praljak's diary,⁸³² emphasizing that he did not attend any meeting with Praljak and Coric.⁸³³

436. Nikolic testified about the lack of authority of Coric to appoint the warden of Heliodrom:

Q. [...] Tell me, please, during that period of time in 1992 and 1993, did Mr. Praljak talk to you about appointments at Heliodrom?

A. Yes, he did talk to me about that. He wanted to be warden himself because he thought that he had the knowledge and ability, and I never heard him mention Mr. Valentin Coric. And he asked me who he should turn to in order to land that appointment, and then I sent him to the Crisis Staff of the city of Mostar.⁸³⁴

437. Nikolic was involved in the construction of the Heliodrom facilities and his testimony proves that Coric did not play any role in the construction.⁸³⁵

438. Coric did not play any role in the establishment or the construction of the Heliodrom detention facility and did not have any authority in the appointment of the warden of the prison.

⁸²⁶ P5812, Item 3.

⁸²⁷ Vidovic (T.51534/23 – 51535/2)

⁸²⁸ P2260; P3293; P3414; P3435; P3468; P3518; P3525; P3633; P763; P1321; P1806

⁸²⁹ P786; P4544

⁸³⁰ P4544

⁸³¹ 5D5111, para. 13

⁸³² P352

⁸³³ Nikolic (T.51402/22 – 51403/6; 51401/10-12; 51431/6-14)

⁸³⁴ Nikolic (T.51404/10-17)

⁸³⁵ Nikolic (T.51395/23 – 51396/6)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

2. No plan existed for the establishment of the detention centre at Heliodrom

439. The fact that the Central Military Prison of Heliodrom was not designed for the detention of a large number of people is proven by a report drafted in March 1993 which indicates that at that time the prison could not take more than 500 detainees.⁸³⁶ Humanitarian organizations, which were given free access to the prison, did not report about any preparation or construction which would have been under way with the purpose of designing a large detention centre.⁸³⁷ The ECMM when visiting Heliodrom albeit stating the conditions were poor, concluded detainees were "satisfactorily" nourished and detained.⁸³⁸ Thus Coric would have had not notice of any problems.

440. In October 1992, military prisoners who were under investigation as criminal suspects and POWs were transferred to Heliodrom from other detention facilities in order to facilitate the enforcement of the 1992 Geneva Agreement on exchange of POWs.⁸³⁹ From this date on, Heliodrom became the Central Military Prison, and all the other detention premises could serve the sole purpose of military detention managed by the relevant brigade.⁸⁴⁰

441. The fact that the Heliodrom compound was not designed for taking in a large number of detainees is proven also by that the prison was composed of only one building until the time when extraordinary measures had to be taken due to special compelling circumstances as explained in the following paragraphs.⁸⁴¹ This fact was confirmed by the testimony of Josip Praljak.⁸⁴²

442. The arrival of people in the prison which took place on 30 June 1993 raised unexpected challenges to the management of the Heliodrom premises. Extraordinary measures had to be taken in order to solve the problem of detention, since as discussed above, up until that time the compound was composed of only one prison building. Two facilities had to be taken over for the purpose of detention from the Heliodrom barracks, since the prison premises were not prepared for taking in more than 500 prisoners.⁸⁴³ The lack of a previous plan for taking in a large number of detainees was the reason for the usage of the Grammar School building as a detention facility as well.⁸⁴⁴

⁸³⁶ P1635

⁸³⁷ P1806

⁸³⁸ P5035 item 7

⁸³⁹ 1D2435; P677; Vidovic (T.51545/5 – 51548/25)

⁸⁴⁰ P956, pg 14; P916; P1478

⁸⁴¹ P5812, Item 3 c

⁸⁴² Josip Praljak (T.14923/13-18)

⁸⁴³ P3942; P1635

⁸⁴⁴ P4186

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

443. The aforementioned demonstrates no plan existed for the establishment of the Heliodrom compound as a detention facility for taking in a large number of detainees.

3. Temporary Evacuation of Civilians cannot be Qualified as Unlawful

444. On 9 May 1993 because of the ongoing fighting and in order to protect civilians and provide for their safety, civilians were evacuated from the zone of hostilities to Heliodrom. They were residing in Heliodrom only for a short while. The Office for Refugees and Displaced Persons was in charge of their transfer and the management of their accommodation in accordance with the regulation applicable for its internal organization and working method.⁸⁴⁵ Documentary evidence proves that the Office was in charge of all aspects of logistics of this operation and the MPA was not involved in any sense.⁸⁴⁶ The following effectively rebut the presumption behind adjudicated facts the Chamber made early in the case,⁸⁴⁷ showing the same to be unsupportable.

445. [Redacted].⁸⁴⁸ Per Vidovic, “[...]the situation escalated and there was an armed conflict between the BH Army and the HVO, which made it a war zone again.”⁸⁴⁹

446. Josip Praljak confirmed that civilians were evacuated to Heliodrom by the Office for Refugees and Displaced Persons, due to the unsecure conditions in the city of Mostar.⁸⁵⁰ This was corroborated by the open letter of Darinko Tadic, Head of the ODPR, as follows:

“women, children and elderly persons were evacuated from Mostar to the Helidrom in 1993 to save their lives and not to expel them from their comfortable apartments. To be sure, in the early morning hours on 9 May 1993, the forces of the Army of BiH attacked the right bank of Mostar, an area under the control of the HVO, with the intention of expelling the Croatian population from the right bank of Mostar too. The Mostar HVO thwarted the attack of the Army of BiH and literally picked up the entire civilian population from Santiceva Street, that is from the front line, the line of separation, and moved them to the Heliodrom. The Croats and Muslims who had somewhere to go in the direction of Siroki Brijeg and Citluk left themselves, and the remaining Muslims, who had nowhere to go, were accommodated at the reception centre at the Heliodrom, in the southern part of Mostar. [...] I personally went to the Heliodrom and on behalf of the Government of the HZ-HB, as the head of the Government Office for Displaced Persons and Refugees, assumed all responsibility for the civilians that had been admitted.”⁸⁵¹

⁸⁴⁵ P93

⁸⁴⁶ P2533, pg. 2; 5D1004; 5D2016; 6D576

⁸⁴⁷ See, Decision on Adjudicated Facts, 7 September 2006 (#80, 86, 88, 89, 90, 91, 105, 106, 150)

⁸⁴⁸ [Redacted]

⁸⁴⁹ Vidovic (T.51467/17-19)

⁸⁵⁰ Josip Praljak (T.14921/2 – 14922/9)

⁸⁵¹ 2D1321, para 2

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

447. ODPH had exclusive and overall authority over the transfer and accommodation of the civilians who moved out of their homes in May 1993 for their own safety.⁸⁵² Whoever took any additional measures in this regard, did not have the authority to interfere in these affairs. Therefore, the report of Bozic dated on 10 May 1993⁸⁵³ cannot be taken into consideration, since even if Pusic, in fact, gave the verbal order with regard to the treatment of the relevant civilians, he did it on his own initiative without any authority to do so. In addition, the credibility of the document is questionable.⁸⁵⁴

448. Documentary evidence proves that the civilians were not kept longer than a few days in Heliodrom,⁸⁵⁵ as confirmed by Josip Praljak.⁸⁵⁶ This underpins the fact that they were kept in Heliodrom only for their own safety, and therefore, their detention cannot be qualified as unlawful.

449. [Redacted]⁸⁵⁷ Due to the disorder among Muslim soldiers that escalated in July 1993 a consequent strategy of their disarmament, arrest and detainment became an urgent military necessity. This necessity was realized in the field by the brigade command and the order of disarmament and arrest was issued by the commanders of the relevant brigades.

450. As Vidovic explained, the role of the CPD in this operation was solely the composition of a list of disarmed members of the HVO following the order of the OZ.⁸⁵⁸ The fate of the lists was described by Vidovic (the list was not compiled for and was not received by the MPA):

A. Those lists were handed over, through the warden of the prison, to the Centre for Social Work and for Displaced Persons. There was a woman called Biljana Nikic, I remember, and we actually compiled those lists for her. And I state very precisely here that those lists weren't of any interest to us with respect to crime-solving.⁸⁵⁹

451. The MP was not involved in the arrest of MHVOS that was proven by the fact that Vidovic was not even present when the operation was conducted. The relevant entries of the diary of Josip Praljak, which included opposite statements were contested by the testimony of Vidovic.⁸⁶⁰

452. The main purpose behind the extraordinary measures was to isolate MHVOS who created potential security concerns joining the BH army in their military attacks. This created a reasonable ground for detention that, under such circumstances, cannot be qualified as unlawful.⁸⁶¹

⁸⁵² 5D1004; 5D2016; 6D576

⁸⁵³ P2260

⁸⁵⁴ See, herein Sec. VII. F. 6.

⁸⁵⁵ P2853; 5D2016

⁸⁵⁶ Josip Praljak (T.14921/24 – 14922/4)

⁸⁵⁷ [Redacted]

⁸⁵⁸ Vidovic (T.51742/16 – 51743/5)

⁸⁵⁹ Vidovic (T.51521/15-19)

⁸⁶⁰ Vidovic (T.51740/16 – 51741/25)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

4. The Military Police and the MPA did not have any direct authority over Heliodrom

453. The MP did not have any authority concerning the management of Heliodrom prison. They accomplished two kinds of duties, on the one hand contributing to the maintenance of security within the prison and on the other hand conducting criminal investigations. The MP platoon working on the security in Heliodrom accomplished its daily duties according to the orders of the prison warden.⁸⁶² s

454. The CPD visited certain prisoners with the sole purpose of conducting interviews with persons who were suspected of committing criminal acts.⁸⁶³

455. The CPD did not have any authority over the Heliodrom prison. It was in direct cooperation with the District Military Court but not the prison itself. The procedure of filing criminal reports was described by Vidovic, as follows:

A. The Crime Department of the Military Police then takes all necessary measures from our jurisdiction in order to carry out all preparations that come before a criminal report.

Q. Can you be more specific or give us some examples of something that you did?

A. So we collect all objects that can be used as evidence, the traces of the commitment of the crime. We conduct interviews and make official notes about them. We all take statements from persons interviewed or persons who could provide useful information. And then we use all that material for the drafting of a criminal report.

Q. Once a criminal report is drafted, to who do you submit it?

A. When a criminal report has been drafted, a person from our department, who was in charge of drafting criminal reports, submits them to the District Military Prosecutor's Office in Mostar.

Q. Once you submit that criminal report, you have found the perpetrator and submitted the report to the Military Prosecutor's Office, do you still have any obligations with regard to that case or is that case completed from your point of view?

A. By submitting the criminal report to the Prosecutor's Office, our job is done.⁸⁶⁴

456. The fact that the CPD did not have any authority over the prison of Heliodrom is proven also by other evidence. Vidovic as Head of the Department informed the head of the Military Remand Prison of Heliodrom⁸⁶⁵ about the stance of the MPA concerning the issue in his official note:

⁸⁶¹ See herein Sec. VII.

⁸⁶² P1001

⁸⁶³ Vidovic (T.51489/2-23)

⁸⁶⁴ Vidovic (T.51462/3-22)

⁸⁶⁵ Vidovic (T.51519/3 – 51520/12)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

"The activities and competence of the Crime Prevention Department were reiterated once more at the meeting. It was assessed that direct collaboration with the active police (military police and MUP /Ministry of the Interior/) and the District Military Court was good, the initiation of proceedings was wholly clear and there was no overlap, while our co-operation with officers of the Central Military Remand Prison must be indirect. Mediation is achieved through the District Military Court, for which we process crimes to the extent of evaluating whether there are grounds for bringing criminal processing, and the SIS /Information and Security Service/, inasmuch as cooperation is necessary.

Thus, all those persons detained without any criminal proceedings being brought against them (or against whom no criminal report was filed) are, on the order of the Chief of the Military Police Administration, unknown to our Department."⁸⁶⁶

457. Both the MP Platoon responsible for security and the CPD belonged to the 3rd – which was later on the 5th – MP Battalion which performed its daily duties under the command of the OZ:⁸⁶⁷

[...]through the daily briefings, we would be given this kind of order. If the commander of the operative zone were to issue it, we would have to act upon his orders, carry them out.⁸⁶⁸

458. [Redacted]

By this reorganization process, the SE Herzegovina OZ was divided into three sectors, namely the Northern, Southern and the Central Sectors. Each sector had its own commander and the prison of Heliodrom belonged to the Sector South, which was subordinated to Sector Commander Nedjeljko Obradovic. All units located in one sector were subordinated to the commander of the relevant sector.

459. [Redacted]⁸⁶⁹ [Redacted]⁸⁷⁰

460. [Redacted]Overwhelming documentary evidence proves that Colonel Obradovic had exclusive and overall authority concerning all the detention facilities located in the OZ of SE Herzegovina, including the prison of Heliodrom.⁸⁷¹ His order which prohibited any kind of visits or releases without his approval applied also to the members of the 5th Military Police Battalion.⁸⁷² Vidovic testified that members of the CPD had to turn to Colonel Obradovic to request approval for entering the prison of

⁸⁶⁶ P3651

⁸⁶⁷ See herein Sec. III.; also Vidovic (T.51442/23-25)

⁸⁶⁸ Vidovic (T.51512/20-25)

⁸⁶⁹ [Redacted]

⁸⁷⁰ [Redacted]

⁸⁷¹ P3151; P3222; P3161; P3197; P3201

⁸⁷² P3238

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Heliodrom in order to conduct interviews. Colonel Obradovic gave special permission to the Department and he submitted it to the administration of the Heliodrom prison as well.⁸⁷³

461. Before the reorganization process, in May 1993 the approval of Miljenko Lasic, Commander of the OZ concerning the visit of the ICRC to the Heliodrom⁸⁷⁴ was enforced without any obstacle.⁸⁷⁵ [Redacted]⁸⁷⁶, it was not proven that this visit occurred.

462. The foregoing shows that the MPA did not have any authority over the Heliodrom prison. The mandate of the MP was limited solely to: a) contribution to security and b) criminal investigations. MP units stationed in Heliodrom acted under the command and according to the orders of the OZ and the Commander of the Sector South. Consequently, the MPA and Coric did not play any role in the command of their daily activity at the Heliodrom premises.

⁸⁷³ Vidovic (T.51529/17 – 51530/15)

⁸⁷⁴ 5D1001

⁸⁷⁵ P2853; Josip Praljak (T.14932/7-25)

⁸⁷⁶ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

5. The MPA had no role in the Overall Maintenance of the Heliodrom Prison

463. Instructions concerning the security in the Central Military Prison were issued by Coric on 22 September 1992.⁸⁷⁷ Later on, Head of the Defence Department issued the new instructions on the house rules on 11 February 1993.⁸⁷⁸

464. From the foregoing instructions issued by Coric a number of conclusions can be drawn. Its provisions clearly demonstrate the fact that he did not draft general house rules for the prison, instead, he mainly intended to regulate the conduct of the members of the MP assisting in security of the Heliodrom prison. As such, he regulated the duties connected to specific assignments of the security platoon. Throughout the regulation he emphasized the obligation of the members of the platoon to respect the rules of IHL, ordering that treatment shall be in accordance with the Geneva Conventions that free entrance shall be guaranteed for the representatives of the ICRC and that a precise list of prisoners shall be drafted.⁸⁷⁹

465. In July 1993, the sanitary conditions became problematic in the Mostar area in general, primarily due to disturbed water supply. These problems affected all combatants, civilians and detainees who were residing in the region. The hygienic issues did not affect the prisoners of Heliodrom in a more disadvantageous way than the army itself and the local population. Special measures addressing the special needs were taken both within and outside detention facilities without distinction between detainees, prisoners and the members of the HVO military units.⁸⁸⁰ Documentary evidence and witness testimonies show that the Health Care Section of the Defence Department and the medical corps of the military units were in charge of **medical care** within the detention centers and in the Heliodrom prison as well.⁸⁸¹ The reports drafted related to medical issues were addressed to Brigade and the OZ Command, the Defence Department, the Main Staff and the warden of the prison, but the MPA or Coric never appeared among the addressees.⁸⁸² Therefore, we can conclude that the MPA and Valentin Coric did not have any authority concerning health care issues that came up within Heliodrom.

466. Medical care was only one of the **logistics** which were provided for by the brigade.⁸⁸³ The brigade provided food to the prisoners in the same way in the central kitchen as it provided food for the

⁸⁷⁷ P514

⁸⁷⁸ P1474

⁸⁷⁹ P514

⁸⁸⁰ 2D920; 2D921; 2D501; 2D915

⁸⁸¹ P3197; Bagaric (T.38992/5 – 38995/1)

⁸⁸² P4653; 2D917; P4145; 2D412;

⁸⁸³ P4186; P4153; P5008; Josip Praljak (T.14924/17-25)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

members of the brigade itself.⁸⁸⁴ Furthermore, the fact that Sector Commander Obradovic had overall authority is proven by the orders that he issued prohibiting any kind of **visit or entrance** to the compound.⁸⁸⁵ As explained above, even members of the MP CPD had to turn to Colonel Obradovic to request approval for entering the prison of Heliodrom in order to conduct interviews.⁸⁸⁶

467. MP was involved in the **maintenance of security** within the Heliodrom compound, but they were not alone mandated with that assignment. The relevant MP Platoon accomplished this duty according to the instructions of the prison warden.⁸⁸⁷ The evidence shows that the Brigade MP was involved in the maintenance of security in Heliodrom also.⁸⁸⁸ Furthermore, Josip Praljak was questioned about his report where he asked for reinforcement⁸⁸⁹ and he admitted that when he asked for the increase of personnel of security, reinforcements, both military policemen and Home Guards were sent to the compound. However, he could not identify who sent them which again proves that he was not aware of the internal structure of the HVO.⁸⁹⁰ The Home Guards could be sent only by the military commanders as explained elsewhere,⁸⁹¹ that again demonstrates the fact that the MPA did not have any overall authority concerning the security of the Heliodrom prison.

6. The Military Police had a solely Administrative Function concerning the Release of Prisoners

468. Part of the overall authority of Colonel Obradovic over the Heliodrom Prison was that he held the power to decide upon the release of prisoners.⁸⁹² Requests for release had to be addressed to him.⁸⁹³ The exclusive authority of Obradovic in this regard concerning all the detention centers and prisons of Sector South is demonstrated by the report drafted about a meeting held on 6 July 1993 where all Obradovic's subordinate commanders, including those of brigades, SIS structures in the units, and other military units belonging to his sector were instructed by him about the treatment of prisoners and the manner in which they were to be released.⁸⁹⁴

469. The CPD of the MP held only an administrative function concerning the release of prisoners, namely, to provide information at the request of various authorities about the eventual criminal

⁸⁸⁴ P4165; P4186; 2D917

⁸⁸⁵ P3161; P3238; 5D3008

⁸⁸⁶ Vidovic (T.51529/17 – 51530/15)

⁸⁸⁷ P1001

⁸⁸⁸ 5D3091

⁸⁸⁹ P3942

⁸⁹⁰ Josip Praljak (T.14946/20 – 14948/4)

⁸⁹¹ See herein Sec. VIII. F. 5.

⁸⁹² P3201

⁸⁹³ P4941

⁸⁹⁴ 5D3008

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

responsibility of prisoners who were to be released. Vidovic commented on the request of Biljana Nikic⁸⁹⁵ and the role played by the MP in the foregoing procedure of releasing prisoners:

[...]A. This is precisely an answer to the questions that were put to us by the Office for Refugees and [indiscernible]. I see that someone else signed this, Damir Cipra, I think. That is my colleague from the office; however, that is of lesser importance. This is exactly the way we issued these certificates, as to the request of the office. That is to say, once we check that certain persons, from the request that they had sent us, and when we are sure that there are no criminal proceedings against these persons, then we issue such a certificate.⁸⁹⁶

470. Documents where the intervention of Pusic and Coric in the release of prisoners is mentioned,⁸⁹⁷ cannot be given weight. They were not confirmed by any evidence, they were inconsistently drafted (once as command then as requests), and while questioned about the issue, Josip Praljak did not give any additional nor convincing information.⁸⁹⁸ The OTP did not present any original orders authored by Coric nor any witnesses to claim that such orders were ever issued or executed, so as to prove that things actually operated in the manner alleged by the foregoing documents.

471. [Redacted]⁸⁹⁹ [Redacted].⁹⁰⁰ In addition, the document does not have the stamp of the MPA. The three-digit number that is on the receiving stamp of the document was used by Heliodrom and was different from those appearing on the stamps of the MPA.⁹⁰¹ The same three-digit number appears on the stamp used in the case of the request for releasing persons from the prison,⁹⁰² which proves again the stamp does not derive from the MPA.

472. The MPA was not involved in the above explained chain of request and response, accordingly, neither the MPA nor Valentin Coric played any role in the release of detainees.

⁸⁹⁵ P5128; P5371

⁸⁹⁶ Vidovic (T.51523/14 – 51524/10)

⁸⁹⁷ P2285; P2289; P2297

⁸⁹⁸ Josip Praljak (T.14919/12-20)

⁸⁹⁹ P4263

⁹⁰⁰ See. herein Sev. XVI.

⁹⁰¹ P3970

⁹⁰² P4445

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

7. The MPA is Not Responsible for Taking Prisoners out for Labour

a. The Law

473. The relevant Articles 49, 50 and 52 of the Third Geneva Convention and Article 51 of the Fourth Geneva Convention were interpreted by the Trial Chambers in the *Simic, Naletilic and Krnojelac*:

The commander of the unit using prisoners of war to perform labour bears the chief responsibility for ensuring that the relevant provisions of the Geneva Conventions are applied in the course of this labour.⁹⁰³ However, the Chamber did not exclude the possibility that the commander of the military police may also be found responsible for allowing the release of prisoners if he knew or had reasons to know that they would be forced to perform unlawful labour.⁹⁰⁴

An inquiry into the specific circumstances in each case is necessary in order to determine whether the conditions constituted a serious threat on human dignity, and hence they constituted cruel or inhuman treatment.⁹⁰⁵

Forced labour may constitute persecution solely if it was committed with a discriminatory intent (the work would be deemed humiliating for a member of the detaining forces).⁹⁰⁶

The Prosecution must establish that the accused or the person for whose actions the accused is criminally responsible exercised any or all of the powers attaching to the right of ownership over the detainees, and that he exercised those powers intentionally.⁹⁰⁷ In order to establish the mens rea requirement, the Prosecution must prove that the perpetrator had the intent that the victim would be performing prohibited work. The intent can be demonstrated by direct explicit evidence or can be inferred from circumstantial evidences.⁹⁰⁸

b. The Facts

474. Concerning the criminal responsibility for taking prisoners out of Heliodrom for labour, two relevant factors can be considered. As established by previous judgements of the Court as discussed above, the main responsibility rests on commanders of military units who took the prisoners out of the detention facilities for labour. On the one hand, the superiors of the MP platoon who was in charge of prison security bear a secondary responsibility. The evidences and testimonies cited by the present section prove that none of these two areas of responsibility induce the command responsibility of the MPA or Coric with regard to the alleged forced labour.

475. The relevant MP platoon was subordinated to the wardens of the prison,⁹⁰⁹ who were not under the authority of the MPA as discussed above. Documentary evidence prove the responsibility of the prison wardens with regard to the labour of prisoners.⁹¹⁰

⁹⁰³ *Prosecutor v Naletilic and Martinovic*, Judgement, Case No. IT-98-34-T, 31 March 2003, para 265

⁹⁰⁴ *Prosecutor v Naletilic and Martinovic*, Judgement, Case No. IT-98-34-T, 31 March 2003, para 265, fn 714

⁹⁰⁵ *Prosecutor v Simic et al.*, Judgement, Case No. IT-95-9-T, 17 October 2003, para 91-92

⁹⁰⁶ *Prosecutor v Simic et al.*, Judgement, Case No. IT-95-9-T, 17 October 2003, para 93

⁹⁰⁷ *Prosecutor v Krnojelac*, Judgement, Case No. IT-97-25-T, 15 March 2002, para 358

⁹⁰⁸ *Prosecutor v Naletilic and Martinovic*, Judgement, Case No. IT-98-34-T, 31 March 2003, para 260

⁹⁰⁹ P1001

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

476. Documentary evidence and testimonies demonstrate the fact that prisoners were taken out for labour according to the orders of commanders of military units which were subordinated to the Operative Zone, and these military units were supposed to ensure the safety of detainees while transferred to the place of work.⁹¹¹ Orders issued by Petkovic⁹¹² indicate that the Main Staff had authority to regulate the taking of detainees for work and attempted to do so. It is seen that the warden complied with this.⁹¹³ It is seen also that units asked for such authorizations.⁹¹⁴ But all units did not comply, which was reported by Bozic.⁹¹⁵ On 2 April 1994 the Defense Minister Soljic wrote that the complete implementation of the agreement on the exchange of prisoners is made impossible by some HVO commanders who were authorized by the GS HVO to self willingly use the prisoners to forced labour and not bring them back to the detention places.⁹¹⁶

477. When questioned about the log-book of approvals for engagement of detainees in work,⁹¹⁷ Witness Pavlovic, commander of the 3rd HVO Brigade admitted that he approved members of his unit to take out prisoners for labour.⁹¹⁸

478. [Redacted].⁹¹⁹ [Redacted]⁹²⁰

479. [Redacted].⁹²¹ [Redacted].⁹²²

480. As explained previously, all units within the OZ of South-East Herzegovina were subordinated under the OZ Command, and in June 1993, this OZ was divided into several zones, but that all Zone

⁹¹⁰ P4233; P4902; P4093

⁹¹¹ P4273; P4750

⁹¹² P3592; P5873

⁹¹³ P5874

⁹¹⁴ P5882; P5895

⁹¹⁵ P6202

⁹¹⁶ P8149

⁹¹⁷ P1765

⁹¹⁸ Pavlovic (T.47020/9-11)

⁹¹⁹ [Redacted]

⁹²⁰ [Redacted]

⁹²¹ [Redacted]

⁹²² [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Commanders of these new zones were subordinated to the South-East Herzegovina OZ.⁹²³
[Redacted].⁹²⁴

481. [Redacted]⁹²⁵ [Redacted]⁹²⁶ [Redacted]⁹²⁷

482. [Redacted].⁹²⁸ This technical fact does not change his substantial position within the chain of command.

483. The [Redacted].⁹²⁹

484. [Redacted].⁹³⁰

485. [Redacted].⁹³¹ Documentary evidences prove that this chain of command was applicable also concerning removal of prisoners for labour.⁹³²

486. Documents presented by the Prosecution that include lists of people taken for labour and lists of wounded and killed while performing labour raise serious doubts concerning their authentic nature.⁹³³ In the heading of P8428 the date of 12 May 1994 is presented, while the first registered request appearing on the document is dated from 14 December 1993. This leads to the conclusion that the list was prepared months later than the alleged registration of the events.

⁹²³ P2846

⁹²⁴ [Redacted]

⁹²⁵ [Redacted]

⁹²⁶ [Redacted]

⁹²⁷ [Redacted]

⁹²⁸ [Redacted]

⁹²⁹ [Redacted]

⁹³⁰ [Redacted]

⁹³¹ [Redacted]

⁹³² P6202; P3474, Item 2; P6819; P7812; P5873

⁹³³ P1765; P8043; P2642; P8428

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

487. The Trial Chamber in *Hadzihasanovic* case stressed in a similar situation:

The Chamber considered that the date a document was drafted was a criterion in assessing the reliability of its content. In fact, documents written contemporaneously with the events they describe are presumed to be reliable since at the time they were written the author's knowledge of the facts had not been affected by gaps in memory and, in principle, the author had no reason to wish to distort the facts.⁹³⁴

488. There are obvious inconsistencies among the documents. While on the register No. 15⁹³⁵ the first recorded request is dated from 22 December 1993, on the following register No. 16⁹³⁶ a request from 5 June 1993 appears as the first item. Then the first request recorded in register No. 19⁹³⁷ is again from December 1993. An additional apparent problem is that the lists are not composed in a logical order of dates hence the entries compose a chaotic and eventual list of alleged requests. Notes on the documents taken apparently later than when the documents were created raises again a suspicion concerning their authentic nature. Circumstances related to the drafting and handling of the documentation of the Heliodrom result in additional serious doubt. Witness Josip Praljak testified about the issue as follows:

Q. May we have P 06626 on e-court now, please. It is in our first bundle. It is a report by Mr. Stanko Bozic sent to Mr. Branimir Tucak on the 12th of November, 1993, which is to say, 12 days prior to the conversation with you, mentioned in the previous report shown to you by Ms. Nozica, and it says: "Subject: Photocopying of SVIZ documentation. "On the 9th of November, 1993, on the basis of a written request number -- of the 8th of November from commander Mladen Naletilic aka Tuta, the documentation on the release of Muslim detainees between the 1st of July, 1993, and the 4th of November, 1993, was handed over for photocopying. "The photocopying was done by Captain Reuf Ajanovic in the presence of employees of the SVIZ, Mr. Josip Praljak and Mr. Zdenko Drljaca." Now, tell me, did you know about this report?

A. If Mr. Bozic wrote it, I -- although I can't remember it now, I must have been present.

Q. When you say you were present, does that mean that you perhaps forgot, but that you were the one who handed over the documents and not Mr. Bozic?

A. According to the report, I don't think Mr. Bozic would have wrote a report contrary to this.

Q. Is your answer to my question, yes, then?

A. Yes, it is.⁹³⁸

489. [Redacted],⁹³⁹ and due to the allegiance towards the HVO, their use for labour was a lawful act.

490. [Redacted]

[Redacted] ⁹⁴⁰

⁹³⁴ *Prosecutor v Hadzihasanovic et Kubura*, Judgement, Case No. IT-01-47-T, 15 March 2006, para 300

⁹³⁵ P8043

⁹³⁶ P2642

⁹³⁷ P8428

⁹³⁸ Josip Praljak (T.14959/24 – 14960/21)

⁹³⁹ [Redacted]

⁹⁴⁰ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

[Redacted]⁹⁴¹

491. The Muslim HVO soldiers were fully incorporated into the forces of the HVO and as such owed their allegiance to that body.⁹⁴² [Redacted]

[Redacted].⁹⁴³

492. Bozo Pavlovic had the same perception about the status of detainees taken out for labour:

Q. In all your documents that my learned friend has showed you, if I read correctly, the word "detainee" is consistently used; am I right? Do you remember that?

A. Yes.

Q. Can you tell us, then, to who did those labour orders of yours apply?

A. I seem to remember having mentioned that already. The facilities I mentioned -- at the facilities I mentioned, the people who worked were the disarmed members of our brigade, that is, the 3rd, and other brigades.

Q. So they were HVO soldiers; right?

A. Right.⁹⁴⁴

493. Since detainees taken out for labour was qualified as members of the HVO, we respectfully request the Chamber to exclude acts committed against MHVOS. The Tribunal does not have jurisdiction over crimes committed against the members of internal armed forces of a state and as such these cases fall exclusively within the domain of the domestic judiciary of the state.

494. [Redacted].⁹⁴⁵

495. [Redacted].⁹⁴⁶

[Redacted].⁹⁴⁷

Also those problems were addressed by the Main Staff which were raised in this concern by Branimir Tucak. He drafted his report on 4 October 1993,⁹⁴⁸ and several days later on 14 October 1993 Milivoj Petkovic issued his order prohibiting the removal of prisoners for labour in the entire South-East OZ.⁹⁴⁹ The order was addressed to the brigades of the OZ that again proves that the MP or the MPA did not have any authority in this regard.

496. The Defence argues that Coric did not know and did not have a reason to know about alleged forced labour. This is proven by the fact that he was not in a superior-subordinate relationship with

⁹⁴¹ [Redacted]

⁹⁴² See herein Sec. VIII. C.

⁹⁴³ [Redacted]

⁹⁴⁴ Pavlovic (T.47033/15 – 47034/1)

⁹⁴⁵ [Redacted]

⁹⁴⁶ [Redacted]

⁹⁴⁷ Witness NO (T.51328/22 – 51329/17)

⁹⁴⁸ P5619

⁹⁴⁹ P5873

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

military units taking out detainees for labour and that there is no available proof that he would have been informed about the issue by the warden of the Heliodrom detention facility.

497. [Redacted].⁹⁵⁰

Therefore, we respectfully request the Court to exclude him as a potential source of information for Coric concerning forced labour.

498. Similarly, Bozo Pavlovic can be excluded as such an information source as well. Even if Pavlovic knew about any incidents connected to the labour of detainees, he did not inform Coric about them, as the testimony of Witness Pavlovic shed light on this fact:

THE WITNESS: [...] Mr. Coric and I had practically no contacts throughout the war in Bosnia-Herzegovina, apart from meeting each other at some celebrations or festive occasions. That's where I -- that's how I know him, and those were our contacts after the war, too. So Mr. Coric and I never spoke about these events, if this is indeed an answer to your question, if I understood your question well.⁹⁵¹

499. Although there are exhibits accepted by the Court which indicate that Bozic, warden of Heliodrom sent reports⁹⁵² to Coric, the Prosecution failed to prove beyond reasonable doubt Coric received them. On most of the reports no incoming stamp appears that could prove that the MPA received them. On the few reports where an incoming stamp can be seen, the stamps do not derive from the MPA, as it is explained elsewhere.⁹⁵³ The OTP failed to present any log-book of the MPA, including any log-book where reports would be indicated as received from wardens of prisons. Doubt is raised in this regard by the testimony of Pavlovic as well, who stated that he has not received or seen a report⁹⁵⁴ which he was supposed to receive from Bozic.⁹⁵⁵ Furthermore, the fact that prisons were not listed among the organizational units within the MPA confirms that the relevant reports were not supposed to be submitted to the MPA by wardens of the prison.⁹⁵⁶

500. Reuf Ajanovic, member of the "Convicts Battalion" was responsible for criminal acts, and criminal investigation was conducted in his case.⁹⁵⁷ He was on very good terms with Josip Praljak raises again a doubt concerning the credibility of Praljak which issue is discussed elsewhere.⁹⁵⁸ Witness Vidovic testified about their relationship as follows:

⁹⁵⁰ [Redacted]

⁹⁵¹ Pavlovic (T.47027/8-13)

⁹⁵² P4004, P4016

⁹⁵³ See herein, Sec. VII. F. 8.

⁹⁵⁴ P11094

⁹⁵⁵ Pavlovic (T.47022/3-16)

⁹⁵⁶ P4544

⁹⁵⁷ 5D4233; P6908

⁹⁵⁸ See herein Sec. XVI.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Q. Do you know whether Mr. Reuf and Mr. Praljak knew each other?

A. I saw Josip Praljak several times with Mr. Reuf Ajanovic sitting together in an office.

Q. Was there an investigation underway including Mr. Ajanovic and Mr. Praljak together?

A. Sometime in the autumn of 1993, some documents went missing from the Military Investigative Prison of Heliodrom, Remand Prison of Heliodrom, and I think that an investigation was underway investigating the two men about these circumstances.⁹⁵⁹

Although a report was drafted by Tucak about the incident that prisoners were collected by Ajanovic and his company from the Heliodrom,⁹⁶⁰ this does not induce the responsibility of Coric, since it was too late for him to be informed about the incident due to the fact that soon after the submission of the report, Coric left the MPA, and was no longer in a position to take any measures.

501. The OTP failed to present any evidence that would prove that Coric was ever informed about any mistreatment of prisoners within the Heliodrom compound. This is proven by the fact that Josip Praljak, who could have reported to Coric about such incidents stated that he did not know about any maltreatment that occurred in Heliodrom.⁹⁶¹

502. In regards to P5008, it can be seen from the same that Bozic informed of mistreatment of prisoners by the 2nd battalion of the 2nd brigade the first week of August 1993. It should be stressed that other evidence, namely a request (by Coric's subordinate, Tucak) for the CPD to initiate an investigation into such allegations is in evidence.⁹⁶² Thus, the only verified complaints that could potentially have reached Coric were acted on properly and promptly, showing that Coric and the MPA did not condone such treatment of detainees, and took the measure within their purview to investigate.

503. The Prosecution failed to prove beyond reasonable doubt that the MPA or Coric played any role in taking prisoners out of Heliodrom for labour.

⁹⁵⁹ Vidovic (T.51534/2-10)

⁹⁶⁰ P5579

⁹⁶¹ Josip Praljak (T.14851/4 – 14852/3)

⁹⁶² P4553

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

8. Coric did not know and did not have reason to know about incidents that allegedly occurred at the Heliodrom Prison

504. Josip Praljak and Stanko Bozic did not have a reason to submit any reports about the situation in the Heliodrom compound to Coric. As discussed above, he did not play any role in the appointment of the warden of the prison,⁹⁶³ the wardens were not members of the MP⁹⁶⁴ and they were not in a superior-subordinate relationship with Coric. The Prosecution failed to prove that the reports drafted by Bozic and Praljak were in fact received by Coric. The overall lack of credibility of Praljak is discussed elsewhere.⁹⁶⁵ Therefore, the fact that he addressed his reports to Coric cannot be given any weight. This is clearly proven by the fact that he addressed reports to Coric even after he already left his post at the MPA.⁹⁶⁶ We know it from the minutes of the 44th session of the HVO that Berislav Pusic was appointed as Head of the Commission for the Exchange of Prisoners and Other Person on 5 July 1993.⁹⁶⁷ Nevertheless, even following this date, Praljak kept addressing his handwritten reports to him qualifying Mr. Pusic as the supervising officer of the CPD, even though he was not a member of the Military Police anymore.⁹⁶⁸ The testimony of Witness Josip Praljak confirms the allegation that he was not familiar with the different authorities within the HVO.⁹⁶⁹

505. The reports of Josip Praljak cannot be given weight concerning the position of Pusic with regard to the prison, especially since his testimony and his reports⁹⁷⁰ indicate that he was not familiar with the different positions and mandates within the HVO. Hence, the conclusion can be drawn that the statements and reports which he drafted are not reliable due to the foregoing reason.

506. Due to this dubious nature of the documents issued by the warden and Praljak these reports in themselves cannot be considered as proving any assertion of the OTP beyond reasonable doubt.

507. The report dated 4 August 1993 did not mirror the factual situation.⁹⁷¹ Neither Coric nor the MPA had any authority as to the procedure of release of prisoners as other organs had competence in this matter.⁹⁷²

⁹⁶³ P452

⁹⁶⁴ See, herein Sec. VII. F. 1.

⁹⁶⁵ P1321; See herein Sec. XVI.

⁹⁶⁶ P6552

⁹⁶⁷ 1D1669, Item 6; P3191

⁹⁶⁸ P3293; P3414; P3435; P3468; P3518; P3525; P3633

⁹⁶⁹ Josip Praljak (T.14918/18 – 14919/1)

⁹⁷⁰ [Redacted]

P1806, para 4

⁹⁷¹ P3942, para 6

⁹⁷² See herein Sec. VII. F. 6.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

508. A telling characteristic indicative of Praljak's lack of credibility is found from his response on 20 August 1993 to an inquiry from the CPD investigating an incident of ill-treatment of prisoners.⁹⁷³ Rather than provide the simple assistance asked by the CPD to allow it to proceed with a proper investigation and punishment of the offender, Praljak claims ignorance of any complaints of mistreatment by any prisoners. Perhaps most tellingly, less than one week later, at a spot check of the facility, Praljak fails to advise of this matter to those inspecting the work of the complaint.⁹⁷⁴

509. [Redacted]⁹⁷⁵ The Prosecution failed to prove that he received the report about the concerns of the Red Cross with regard to isolation cells in Heliodrom,⁹⁷⁶ in fact, it was not proven by any evidence that he was informed that anyone would have been held in isolation cell. None of the reports allegedly sent to Coric included such information. In addition, this issue did not belong in any way under his authority but that of the prison wardens, and Coric did not have the authority to influence the conditions of detention due to the lack of authority in general.

⁹⁷³ P4341

⁹⁷⁴ P4530

⁹⁷⁵ [Redacted]

⁹⁷⁶ P2853

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

9. Conclusions concerning the Heliodrom Central Military Prison

510. The foregoing effectively rebut the presumption behind adjudicated facts the Chamber made early in the case,⁹⁷⁷ showing the same to be unsupported under the evidence of record.

511. It follows from the above discussed evidence, that Coric is not responsible for any criminal acts committed in Heliodrom. Accordingly Coric should be acquitted of all counts in the Indictment relating to Heliodrom Central Prison.

G. VALENTIN CORIC DOES NOT BEAR ANY RESPONSIBILITY FOR THE ALLEGED INCIDENTS AT VOJNO

512. The OTP failed to present evidence that would induce the responsibility of Coric concerning the incidents that allegedly took place at Vojno. The MP does not appear in any of the evidence as an authority which played any role in the commission of the alleged crimes. Documentary evidence repeatedly refer only to Mario Mihalj, a member of the HVO 2nd Brigade as being responsible for alleged maltreatment of persons detained at Vojno.⁹⁷⁸ Mario Mihalj was not a member of the MP.

513. [Redacted]⁹⁷⁹

[Redacted]⁹⁸⁰

[Redacted]⁹⁸¹

[Redacted]⁹⁸²

[Redacted]⁹⁸³

⁹⁷⁷ See, Decision on Adjudicated Facts, 7 September 2006 (#165, 172)

⁹⁷⁸ P7798; P4918; P7754; P7722; P7799

⁹⁷⁹ [Redacted]

⁹⁸⁰ [Redacted]

⁹⁸¹ [Redacted]

⁹⁸² [Redacted]

⁹⁸³ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

[Redacted]⁹⁸⁴

[Redacted]⁹⁸⁵

514. [Redacted]⁹⁸⁶ [Redacted]

[Redacted].⁹⁸⁷

515. [Redacted]

[Redacted].⁹⁸⁸

516. This statement proves that Vojno did not fall under the authority of the MP or the MPA, and the fact that when the MP CPD became aware of the incidents it took all the measures that were possible under the circumstances. As the foregoing testimony indicates, the OZ had authority over the military units located in Vojno and additional evidence demonstrate that in 1994 it was Ante Roso, Chief of Main Staff who had the authority to take the necessary measures in this regard.⁹⁸⁹

⁹⁸⁴ [Redacted]

⁹⁸⁵ [Redacted]

⁹⁸⁶ [Redacted]

⁹⁸⁷ [Redacted]

⁹⁸⁸ [Redacted]

⁹⁸⁹ P8077; Biskic (T.15373/6 – 15374/21)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

1. The OTP failed to identify specifically the victims of the alleged incidents therefore it failed to prove that the victims were protected persons.

517. Notices [Redacted]⁹⁹⁰ were compiled based on the alleged statements of unidentified prisoners, the relevant memo of the Office for Exchange of Prisoners and Other Persons⁹⁹¹ was compiled based on such information received from the ICRC.

518. The OTP failed to present any witness who had direct knowledge about the crimes alleged in Vojno. At the same time, Edin Baljic who was detained in Vojno did not mention any abuse or killings that he would have been an eyewitness to.⁹⁹²

519. All the allegations of the OTP are based on statements given by unidentified victims. The above discussed reports do not have any stamp that could indicate that they were received by the addressees, and their credibility was not corroborated by any witnesses, in fact, a number of the relevant documents were not shown to any witness at all.⁹⁹³

520. Most of the documentary evidence presented by the OTP was drafted after Coric left the MPA. There was no evidence presented by the OTP which would have referred to any responsibility of Coric. None of the above-discussed reports were addressed to the MPA. The only one report⁹⁹⁴ which was allegedly addressed to him was not shown to any witnesses and did not have any received stamp that could prove that Coric actually received it. Another document⁹⁹⁵ does not have the stamp of the MPA. The three-digit number that is on the receiving stamp of the document was used by Heliodrom and was different from those appearing on the stamps of the MPA.

521. None of the witnesses stated that they in any way informed Coric about the alleged incidents at Vojno, on the contrary, Witness Vidovic explicitly testified about the fact that he did not inform him when, as discussed above, he tried to take the necessary measures in order to prevent incidents.⁹⁹⁶

522. In a similar case, the Trial Chamber emphasized in the *Hadzihasanovic* case:
The Chamber obviously attached more weight to documents witnesses explained in convincing fashion than to documents admitted in isolation, and therefore without a witness's comments or observations.⁹⁹⁷

⁹⁹⁰ [Redacted]

⁹⁹¹ P7722

⁹⁹² P9943

⁹⁹³ P5563; P7629; P7722; P7799; P7937

⁹⁹⁴ P5563

⁹⁹⁵ P4908

⁹⁹⁶ Vidovic (T.51533/1-12)

⁹⁹⁷ *Prosecutor v Hadzihasanovic et Kubura*, Judgement, Case No. IT-01-47-T, 15 March 2006, para 297

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

523. It follows from the above evidence, that Coric is not responsible for any criminal acts committed in Vojno. Accordingly Coric should be acquitted of all counts in the Indictment relating to Vojno.

H. THE MPA DID NOT HAVE ANY AUTHORITY OVER LJUBUSKI AND OTOK PRISONS, AND CORIC DOES NOT BEAR ANY RESPONSIBILITY FOR THE INCIDENTS AT LJUBUSKI AND OTOK

524. As discussed above,⁹⁹⁸ in October 1992, military prisoners under investigation as alleged criminal perpetrators and POWs were transferred to Heliodrom from all the other detention facilities, including Ljubuski, in order to facilitate the 1992 Geneva Agreement on exchange of POWs.⁹⁹⁹ From this operation on, all the other detention premises apart from Heliodrom, again including Ljubuski, could serve the sole purpose of military detention managed by the relevant brigade.¹⁰⁰⁰ [Redacted]¹⁰⁰¹

1. The MPA did Not Have any Authority over Detention at Ljubuski and Otok

525. [Redacted].¹⁰⁰² [Redacted].¹⁰⁰³

526. [Redacted].¹⁰⁰⁴ The MPA did not have any authority over his activities.

527. The OTP presented a document which indicates that Kreso Medic, warden of Otok was appointed by Kresimir Tolj, the Head of the CPD in the MPA.¹⁰⁰⁵ The content of this document is rebutted by both documentary evidence and the testimony of Witness Vidovic. The Book of Rules of duty specifications of the MPA does not have any provision which would state that the CPD Head in the MPA has the authority to appoint someone prison warden.¹⁰⁰⁶ The testimony of Vidovic confirmed the fact that neither Tolj nor the CPD had the authority to appoint a warden of a detention facility, and raised authenticity issues as to the stated document:

Q. [...] We're going to look at just one document, to P03613. Did you know that the place Otok Vitina, that there was a prison there?

A. I've just heard of it, but I was never there physically.

Q. Do you know someone called Kresimir Tolj?

⁹⁹⁸ See herein Sec. VII. F.

⁹⁹⁹ 1D2435; P677; Vidovic (T.51545/5 – 51548/25)

¹⁰⁰⁰ P956, pg 14; P916; P1478

¹⁰⁰¹ [Redacted]

¹⁰⁰² [Redacted]

¹⁰⁰³ [Redacted]

¹⁰⁰⁴ [Redacted]

¹⁰⁰⁵ P3613

¹⁰⁰⁶ P978, pg 12, point 8-18

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

A. Yes. He worked in the Crime Department of Ljubuski and later on headed the Crime Investigation Department of the Ljubuski section, like I was in Mostar, so my colleague and opposite number.

Q. Did you see him frequently, Mr. Tolj, and co-operate with him?

A. We co-operated fairly frequently in our line of business, especially after July. So throughout October -- throughout August and September we frequently co-operated.

Q. Tell me, as head of the department yourself, did you have the authority to appoint the warden of a prison? And if so, did you ever do that?

A. That was not within our remit. We never appointed any warden of any prison, nor did we have the authority to appoint prison wardens.

Q. Now look at document -- the one in front of you, which is signed by Mr. Kresimir Tolj. And it says: "Re. Appointment of the head of the Military Prison Otok." And from the document, it follows that Mr. Tolj is, in fact, appointing a man by the name of Kreso Medic. May I have your comments on that, because you've just told us he didn't have the authority to do that? Have you heard about this?

A. Never, I've never heard about this. And it's an impossible situation, as far as I'm concerned. I see that it says "Military Police Administration, Crime Prevention Department," and it doesn't say "Ljubuski," whereas Kresimir Tolj worked in Ljubuski. And then there's a handwritten number and the letters "FK." We didn't have any letters like that, no "FK." So I'm bewildered by this document. It's not clear to me at all. And I'm sure that Mr. Kresimir Tolj couldn't do anything like this, occupying the post that he occupied.¹⁰⁰⁷

528. [Redacted]¹⁰⁰⁸

[Redacted]

2. Detention was Maintained and Secured by the Brigade at Ljubuski and Otok

529. The detention facilities at Ljubuski and Otok fell under the exclusive authority of the 4th "Stjepan Radic" Brigade. Overwhelming documentary evidences prove that **all aspects of the maintenance of detention** at Ljubuski and Otok, namely accommodation, food, transport, security, work and visits of prisoners, fell under the exclusive authority of the Brigade.¹⁰⁰⁹

¹⁰⁰⁷ Vidovic (T.51534/11 – 51535/16)

¹⁰⁰⁸ [Redacted]

¹⁰⁰⁹ P1987; P3793; P3421; P3784; P3367

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

530. The MPA did not play any role in the maintenance of order and security either. **Security** was safeguarded in Ljubuski by the Brigade MP and in Otok by the Home Guards.¹⁰¹⁰ [Redacted]¹⁰¹¹

531. Similar to Ljubuski, the Otok security was ensured and detention was managed according to orders issued by Ivica Tomic and later on, by Stanko Primorac, who were the Commanders of the 4th "Stjepan Radic" Brigade.¹⁰¹² This is proven by the fact that Primorac made Gojko Nizic, the Commander of the Home Guard Company¹⁰¹³ personally responsible for carrying out his orders.¹⁰¹⁴

532. [Redacted]¹⁰¹⁵ [Redacted],¹⁰¹⁶ [Redacted]¹⁰¹⁷ [Redacted].¹⁰¹⁸

533. The OZ was in charge of the approval of **visits** to the Ljubuski and Otok detention facilities. This is proven by the fact that the visit to Ljubuski of the Mixed Commission established by an agreement between the Chiefs of Main Staff of the HVO and the BiH Army in May 1993 was conducted according to an order issued by the Commander of the South-East Herzegovina Operative Zone.¹⁰¹⁹ The MPA did not play any role in the visit.

534. The foregoing prove that neither the MP nor the MPA had any authority or responsibility concerning the maintenance or security of detention at Ljubuski or Otok until 1 September 1993, when the Ljubuski Prison became the Military Investigative Prison.¹⁰²⁰

535. Witness Zvonko Vidovic confirmed these facts testifying about the status of Ljubuski, as follows:

A. [...] As for Ljubuski, well, Ljubuski prison, towards the end of 1992, ceased to be a military investigative prison and became a prison of the brigade. And I think that sometime in September 1993 it once again became a military investigative prison. And I know that because of the man who worked there later on, that is to say, Mr. Ivica Kraljevic. So I think that Ljubuski, as of September, came under the control of the military police again. And in the period at the end of 1992 and until September 1993, that it was also under the brigade.¹⁰²¹

¹⁰¹⁰ P1987; P3421; P3784; P3367

¹⁰¹¹ [Redacted]

¹⁰¹² P3784; P3367; P1987

¹⁰¹³ P1604

¹⁰¹⁴ P3421; P3784

¹⁰¹⁵ [Redacted]

¹⁰¹⁶ [Redacted]

¹⁰¹⁷ [Redacted]

¹⁰¹⁸ [Redacted]

¹⁰¹⁹ [Redacted]

¹⁰²⁰ P5642

¹⁰²¹ Vidovic (T.51738/4-11)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

3. Valentin Coric did Not Play any Role in the Removal of Prisoners for Forced Labour

536. [Redacted].¹⁰²² [Redacted]

537. The Brigade was responsible for and commanded over the removal of prisoners for labour from Ljubuski and Otok. Brigade Commander Primorac even explicitly emphasized on 29 July 1993, that "any use of prisoners without the approval of a Brigade SIS/Security and Information Service/ or a Brigade Commander is strictly forbidden."¹⁰²³ Additional evidence proves that the orders about the removal of prisoners for labour were issued by the Commanders of the Brigade.¹⁰²⁴ The decisions of the brigade commanders could be influenced only by the OZ command and the Main Staff.¹⁰²⁵

538. [Redacted].¹⁰²⁶ This document was drafted after 1 September 1993, when Ljubuski was again a Military Investigative Prison. The affected prisoners might have been persons under criminal investigation, and the document does not provide any information that would underpin the allegation of unlawful labour.

539. From the foregoing Coric did not play any role in the removal of prisoners from the Ljubuski or Otok detention facilities for labour and he is not responsible for the alleged incidents in any way.

¹⁰²² [Redacted]

¹⁰²³ P3793; see also P3421

¹⁰²⁴ P1987; P3793; P3421; P3535

¹⁰²⁵ P5873

¹⁰²⁶ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

4. Valentin Coric did Not Play any Role in the Release or Transfer of Detainees

540. [Redacted].¹⁰²⁷

541. [Redacted].¹⁰²⁸

542. In addition, the alleged method of releasing people on condition of possession of letters of guarantee was a process conducted only at Ljubuski different than in any other detention facilities. Documentary evidence underpins the fact that this had no connection to the MPA.¹⁰²⁹

543. The OTP based its allegations concerning the release of detainees on a document referring to an order issued by Coric,¹⁰³⁰ but it failed to present any such order of Coric which would have proven that he, in fact, regulated the issue of release of prisoners with letters of guarantee. [Redacted]¹⁰³¹

544. [Redacted]¹⁰³² Evidence shows the sole purpose of these transfers was military investigation.¹⁰³³

¹⁰²⁷ [Redacted]

¹⁰²⁸ [Redacted]

¹⁰²⁹ P4620

¹⁰³⁰ P4572

¹⁰³¹ [Redacted]

¹⁰³² [Redacted]

¹⁰³³ P4838

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

5. Coric had No Knowledge about the Events at Ljubuski and Otok

545. [Redacted],¹⁰³⁴ [Redacted].¹⁰³⁵ [Redacted]¹⁰³⁶

546. [Redacted]¹⁰³⁷ [Redacted]

547. [Redacted].¹⁰³⁸

6. Conclusions concerning Detention at Ljubuski and Otok

548. It follows from the above discussed evidence, that Coric is not responsible for any criminal acts committed in Ljubuski and Otok. Accordingly Coric should be acquitted of all counts in the Indictment relating to Ljubuski and Otok Prisons.

¹⁰³⁴ [Redacted]

¹⁰³⁵ [Redacted]

¹⁰³⁶ [Redacted]

¹⁰³⁷ [Redacted]

¹⁰³⁸ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

I. THE MILITARY POLICE ADMINISTRATION DID NOT HAVE ANY AUTHORITY OVER DRETELJ AND GABELA DETENTION FACILITIES

1. Dretelj and Gabela Detention facilities were under the Authority of the HVO Brigade Commanders

549. The Dretelj and Gabela military remand prisons were under the effective authority of the 1st Knez Domagoj Brigade and its commander, Nedjeljko Obradovic.¹⁰³⁹ The evidence shows the MPA did not have such authority and Coric could not influence the conditions of detention in these two facilities.

2. The HVO Brigade Commanders issued the orders to arrest persons detained at Dretelj and Gabela based on the orders of the Main Staff

550. Members of the HVO who were under a disciplinary procedure were detained in Gabela prison, while both in Dretelj and Gabela MHVOS were detained due to extraordinary security concerns.

551. [Redacted]

[Redacted].¹⁰⁴⁰

552. [Redacted]¹⁰⁴¹ (such as the mutiny of MHVOS and Army BH attack on 30 June of 1993), an order was issued by Milivoj Petkovic, Chief of Main Staff to disarm and arrest MHVOS in HVO units.¹⁰⁴²

[Redacted].¹⁰⁴³

[Redacted].¹⁰⁴⁴

MHVOS constituted over 50% of the HVO 1st Brigade's composition,¹⁰⁴⁵ [Redacted].¹⁰⁴⁶ This created a reasonable ground for detention that, under such circumstances, cannot be qualified as unlawful.

553. On 3 July 1993, Nedjeljko Obradovic, commander of the 1st Knez Domagoj Brigade instructed the all Brigade units to select certain MHVOS in their units for disarmament and detention.¹⁰⁴⁷ On 6 July 1993 he issued an even stricter order abolishing the option of selection and ordering detention of all remaining MHVOS.¹⁰⁴⁸

¹⁰³⁹ P3731; P4253

¹⁰⁴⁰ [Redacted]

¹⁰⁴¹ [Redacted]

¹⁰⁴² P3019, Item 8

¹⁰⁴³ [Redacted]

¹⁰⁴⁴ [Redacted]

¹⁰⁴⁵ P1438

¹⁰⁴⁶ [Redacted]

¹⁰⁴⁷ P3151

¹⁰⁴⁸ P3222

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

554. [Redacted] Both arrest and transfer of MHVOS to detention facilities was by order of Colonel Obradovic who commanded all units involved.¹⁰⁴⁹

555. [Redacted].¹⁰⁵⁰

556.

3. The MPA did not have a Role in the Establishment of Dretelj and Gabela Detention Facilities

556. The Dretelj barracks were not established for purposes of detention. Their usage as such was demanded by the unexpected changes in the military situation. A previous plan did not exist concerning the establishment of the Dretelj and Gabela prisons.

557. [Redacted],¹⁰⁵¹

[Redacted]

558. The first ad hoc bringing in of detainees to Dretelj was performed in the second half of April 1993 according to an order of Colonel Obradovic.¹⁰⁵² From reports it is seen that detained persons did not stay in Dretelj but were transferred to Ljubuski and Vojarna Grabovina. Before July 1993, the Dretelj barracks had not been used prior as detention facilities.

559. [Redacted].¹⁰⁵³

560. [Redacted]

561. ¹⁰⁵⁴ The evidence established that the MP and MPA did not have a role in the formation of Gabela either.¹⁰⁵⁵

¹⁰⁴⁹ P3063

¹⁰⁵⁰ [Redacted]

¹⁰⁵¹ [Redacted]

¹⁰⁵² P2132; P1913

¹⁰⁵³ [Redacted]

¹⁰⁵⁴ [Redacted]

¹⁰⁵⁵ 1D1105; 2D1019

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

4. The MPA did not have a Role in Appointment of Wardens at Dretelj and Gabela Prison facilities

560. Brigade commander Obradovic was the command-superior of wardens of Dretelj and Gabela.¹⁰⁵⁶ In the case of Gabela, as of November 1993, the warden, Bosko Previsic, and his deputy, Nikola Andron were members of the 1st Knez Domagoj Brigade subordinated to Colonel Obradovic.¹⁰⁵⁷ This was confirmed by a judgment against Nikola Andron for the events that occurred in Gabela during 1993 and by Slobodan Praljak.¹⁰⁵⁸

5. The MPA had no role in Maintenance of Dretelj and Gabela Detention Facilities

561. Brigade Commander Obradovic was responsible not only for the arrests of detainees and the security within the Dretelj compound, but also for the overall maintenance of the detention facility, including the provision of **food, water or medical care**. [Redacted]

[Redacted].¹⁰⁵⁹

562. [Redacted]

[Redacted].¹⁰⁶⁰

563. [Redacted].¹⁰⁶¹

564. Witness Vidovic testified as well about the fact that the Dretelj and Gabela prisons were under the overall authority of the 1st Knez Domagoj Brigade.¹⁰⁶²

565. Medical assistance could be given to the detainees solely by the approval of the brigade commander. [Redacted].

¹⁰⁶³ A number of exhibits, namely orders issued by Colonel Obradovic and addressed to the Medical Corps of the 1st and 3rd HVO brigades prove that he was the person in charge of taking the necessary measures, such as the establishment of a medical commission to conduct an examination of the health condition of the detainees.¹⁰⁶⁴ Accordingly, Colonel Obradovic was addressed by the command issued

¹⁰⁵⁶ P4266; P3462

¹⁰⁵⁷ P6729, pg 3

¹⁰⁵⁸ Praljak (T.42831/1-8)

¹⁰⁵⁹ [Redacted]

¹⁰⁶⁰ [Redacted]

¹⁰⁶¹ [Redacted]

¹⁰⁶² [Redacted]

¹⁰⁶³ [Redacted]

¹⁰⁶⁴ P3129; P3197; 5D1066; 2D715

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

by the Healthcare Department of the HVO Defence Department on 28 August 1993 regarding the prevention of infectious diseases in the Gabela and Dretelj compounds.¹⁰⁶⁵

566. [Redacted].

¹⁰⁶⁶ He addressed an order 3 July 1993 to the wardens of Dretelj, Helidrom, Gabela and Ljubuski detention facilities, which prohibited all visits in the detention centers.¹⁰⁶⁷ By this order, Colonel Obradovic made prison administrators personally responsible for him. This document clearly demonstrates the exclusive power of the brigade commander even concerning entrance into the detention facility.¹⁰⁶⁸

567. In addition, Witness Vidovic commented on the order of Colonel Obradovic, as follows:

[...] Tell us, is this the order which relates to the part of your testimony in which you told us that you couldn't enter the place?

A. Yes.

Q. Can you please look at the next document now. It's P0 --

JUDGE TRECHSEL: Witness, were you not an authorised person? You had organically, by your function, you had business to do there. I would assume that you are an authorised person. Apparently that was not the case. Could you explain?

THE WITNESS: [Interpretation] Your Honours, I had an ID card of military police and also a military police badge. At the premises of the Heliodrom prison, they had a list which listed all the members of our department. By this order, Mr. Obradovic placed me and my department among the unauthorised persons.¹⁰⁶⁹

568. On 6 July 1993, Ivan Ancic attended a meeting at the forward command post in Domanovici, where Colonel Obradovic issued instructions concerning the treatment and listing of detainees.¹⁰⁷⁰ [Redacted].¹⁰⁷¹

This additionally proves the fact that the orders of Colonel Obradovic related to the treatment of detainees were enforced consistently, and in this respect he was the command-superior of the MP that performed limited assistance in securing prisons as well.

569. In November 1993, MHVO detainees were still arriving to Gabela, and their accommodation was provided and managed in the same way as during the summer of 1993, namely, by the 1st Knez Domagoj Brigade according to the orders of the Main Staff.¹⁰⁷²

¹⁰⁶⁵ 2D278

¹⁰⁶⁶ [Redacted]

¹⁰⁶⁷ P3161

¹⁰⁶⁸ P3161

¹⁰⁶⁹ Vidovic (T.51736/2-25)

¹⁰⁷⁰ 5D3008; P3232

¹⁰⁷¹ [Redacted]

¹⁰⁷² P6658

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

570. It is clearly proven by the above evidence that from July to November 1993, the Dretelj and Gabela prisons were under the overall authority of brigade commander Obradovic. The MPA did not have any authority concerning the detentions. Whenever Coric wanted to take any kind of measures related to the detainees, such as **transferring** them for an investigative procedure, he had to turn to Colonel Obradovic with a request (having no right to command).¹⁰⁷³ [Redacted]¹⁰⁷⁴ The above evidence proves that prisoners were not under the competence of the MPA.

6. Security was provided at Dretelj and Gabela upon order of the HVO Military Commanders

571. [Redacted].¹⁰⁷⁵

He ordered on 2 July 1993 the formation of a Home Guards Unit with 40 members to guard Dretelj prison.¹⁰⁷⁶ Accordingly, Home Guards were acting under his command.¹⁰⁷⁷ Moreover, the order was sent to the MP Battalion guarding the Dretelj Barracks entrance as well proving that concerning the issues of security within Dretelj Colonel Obradovic was in command over all military units.¹⁰⁷⁸ [Redacted]¹⁰⁷⁹

572. [Redacted]
[Redacted].¹⁰⁸⁰

573. [Redacted].¹⁰⁸¹

574. The Home Guards belonged under the command of the OZ and the Main Staff,¹⁰⁸² consequently, the MPA did not have any authority over the security of the Dretelj and Gabela detention facilities. The MP was not present in Gabela and in the case of Dretelj all units involved in any way into the provision of security for detainees, were commanded by Brigade Commander Obradovic both within the compound and during the transfer of prisoners.¹⁰⁸³ This fact was confirmed by General Petkovic.¹⁰⁸⁴

¹⁰⁷³ P4838

¹⁰⁷⁴ Redacted]

¹⁰⁷⁵ [Redacted]

¹⁰⁷⁶ P3119

¹⁰⁷⁷ See, herein Sec. III. D.

¹⁰⁷⁸ P3119

¹⁰⁷⁹ [Redacted]

¹⁰⁸⁰ [Redacted]

¹⁰⁸¹ [Redacted]

¹⁰⁸² P680, Art 5

¹⁰⁸³ P4750

¹⁰⁸⁴ Petkovic (T.50278/11 – 50279/19)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

7. The Interrogation of Detainees at Dretelj and Gabela was undertaken under the Authority of HVO Military Commanders

575. The fact that the MP did not have authority concerning the detainees held in Dretelj and Gabela is proven also by the exclusive mandate of the SIS of the 1st Knez Domagoj Brigade, the security division of the MUP and the VOS (Military Intelligence Service) for interrogating prisoners. The VOS was part of the military chain of command, and its chief was directly subordinated to the brigade commander.¹⁰⁸⁵ Accordingly, the interrogating authorities could enter the Dretelj and Gabela compounds only by the approval of Colonel Obradovic.¹⁰⁸⁶

576. [Redacted]¹⁰⁸⁷

8. The MPA did not have authority over the Release of Detainees at Dretelj and Gabela

577. With regard to the release of detainees, the system worked the same way as all other functional issues within the Dretelj and Gabela. The 1st Knez Domagoj Brigade had sole authority.¹⁰⁸⁸ The brigade commander had *de facto* power to approve the release of prisoners with the agreement of the SIS of the brigade.¹⁰⁸⁹

[Redacted]¹⁰⁹⁰

This practice was in conformity with the order of Colonel Obradovic issued on 5 July 1993, where he ordered the wardens of Dretelj, Gabela and Heliodrom detention facilities not to release anyone from the prisons without his personal signature.¹⁰⁹¹

578. The procedure was established in an overall manner at the level of the brigade in August 1993 due to the fact that the OZ of South-Eastern Herzegovina failed to adopt a regulation on the issue. The establishment of the procedure was reported by Zara Pavlovic, Deputy Security Commander of the 1st Brigade to the Main Staff.¹⁰⁹²

¹⁰⁸⁵ Praljak (T.42792/24 – 42793/5)

¹⁰⁸⁶ 5D4096

¹⁰⁸⁷ [Redacted]

¹⁰⁸⁸ P3169

¹⁰⁸⁹ 5D2184

¹⁰⁹⁰ [Redacted]

¹⁰⁹¹ P3201

¹⁰⁹² P4496

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

579. The MPA did not have any authority with regard to the release of prisoners. Coric was not entitled to issue any order to the prison warden for such purposes, he could send only requests which were then forwarded to Colonel Obradovic who had the power to approve or deny it.¹⁰⁹³

9. The Military Police Battalion accomplished its duties falling within its authority

580. The evidence shows the sole duty of the MP Battalion within Dretelj was to assist the brigade in security issues under the command of the brigade commander and to report on eventual criminal incidents connected to members of the MP.

581. [Redacted]

582. The first case involved Frano Vulic, a Military Policeman, who killed one and wounded two detainees while trying to prevent a escape from a hangar where detainees were held. [Redacted]

[Redacted]

[Redacted].¹⁰⁹⁴

583. [Redacted].¹⁰⁹⁵

[Redacted].¹⁰⁹⁶

584. [Redacted]

[Redacted].¹⁰⁹⁷

585. [Redacted]

¹⁰⁹³ P3883

¹⁰⁹⁴ [Redacted]

¹⁰⁹⁵ [Redacted]

¹⁰⁹⁶ [Redacted]

¹⁰⁹⁷ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

[Redacted]

[Redacted].¹⁰⁹⁸

10. When Coric received notice of Problems at Dretelj he took reasonable steps, within his limited authority to ameliorate the condition of detainees.

586. [Redacted].¹⁰⁹⁹

587. [Redacted].¹¹⁰⁰

[Redacted].¹¹⁰¹

588. The working group did not succeed in improving the situation due to the fact that Colonel Obradovic was under a much stronger influence of the municipal authorities like Pero Markovic, the president of Čapljina municipality. The significant influence and strong authority of the municipal authorities was described by Witness Buntic, one of the members of the working group:

[...] we went to Capljina at the request of Capljina municipality that was addressed to the HVO. This group formed at this government session, immediately visited Capljina municipality, and we found there the deputy, I believe, of the president of Capljina municipality, Mr. Kordic. And he met us with the members of his office, and they familiarized us with the difficulties they were experiencing in making arrangements and providing accommodation for the large number of persons that found themselves in Capljina municipality, I believe from Gabela and Dretelj, and the very hard conditions there. They asked for assistance.¹¹⁰²

589. Coric once again cast attention on the situation in Dretelj and Gabela at a collegium meeting of the heads of Defence Department on 2 September 1993.¹¹⁰³

590. In the end, Mate Boban himself had to intervene in order to change the situation that proves again that Coric could not have any significant influence on the management of the Dretelj Centre. Boban appointed Tomo Sakota Coordinator for Centres for POWs and Isolated Persons.¹¹⁰⁴

[Redacted] ¹¹⁰⁵

¹⁰⁹⁸ [Redacted]

¹⁰⁹⁹ [Redacted]

¹¹⁰⁰ [Redacted]

¹¹⁰¹ [Redacted]

¹¹⁰² Buntic (T.30576/19 – 30577/3)

¹¹⁰³ P4756, Item 3

¹¹⁰⁴ 5D2090; P7341

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

The brigade took measures even against the orders of Mate Boban, as it happened in the case of the action directed by Tomo Sakota to release detainees from Dretelj according to the orders of Mate Boban. Local authorities and the 1st HVO Brigade attempted to hinder the accomplishment of the action.¹¹⁰⁶

591. [Redacted]

[Redacted].¹¹⁰⁷

592. The reason why the MP might appear in documents as having authority and as being responsible for any kind of mismanagement of Dretelj or Gabela detention facilities is the result of a negative campaign conducted from August 1993 on.¹¹⁰⁸ The main purpose behind the campaign was to put the blame on the MP and conceal the responsibility of the relevant military and civilian authorities.

593. At the same time, on 15 September 1993 Mate Boban addressed the Defence Department and the Main Staff ordering them to enforce the provisions of the Geneva Convention within detention centres.¹¹⁰⁹ Based on this order, Slobodan Praljak ordered all commands of operative zones and of brigades to implement the order of Boban.¹¹¹⁰ The fact Boban did not address the MPA by the order and that Praljak transferred the order to the OZs and brigades clearly proves which were the units in charge of detention facilities and that the MPA did not have any *de facto* authority concerning them.

¹¹⁰⁵ [Redacted]

¹¹⁰⁶ P7341, Item 2-3

¹¹⁰⁷ [Redacted]

¹¹⁰⁸ P3960; P5647

¹¹⁰⁹ P5104

¹¹¹⁰ P5188

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

594. [Redacted].¹¹¹¹

[Redacted]

595. Since the OTP failed to prove the allegation that Coric received regular reports about the condition of detainees, there is reasonable doubt whether he had knowledge about the situation in the Dretelj and Gabela apart from the occasional information that he reacted upon as described above.

11. Conclusions concerning Dretelj and Gabela prisons

596. It follows from the above discussed evidence, that Coric is not responsible for any criminal acts committed in the Dretelj or Gabela compounds, irrespective of who perpetrators were. Accordingly Coric should be acquitted of all counts in the Indictment relating to these facilities.

¹¹¹¹ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

**J. THE MILITARY POLICE ADMINISTRATION DID NOT HAVE ANY AUTHORITY
OVER DETENTION AT THE KOSTANA HOSPITAL**

**1. *Patients of the Kostana Hospital were Transferred by the Order of
Brigade Commander Nedjeljko Obradovic***

597. Documentary evidence proves that the arrests and the action of transferring patients from the Kostana Hospital in May 1993 was ordered by the commander Obradovic.¹¹¹² Arrests both in May and in late June-July 1993 were conducted by the same chain of command as in the case of other operative zones, which descended through the command of the OZ and the 1st Knez Domagoj Brigade to all military units concerned.¹¹¹³

598. Pavlovic, Commander of the Municipal Staff and later forward command post of the HVO at Stolac (from 1 July 1992 – 3 July 1993)¹¹¹⁴ testified the order to disarm Muslim Soldiers in Stolac was given to him by Brigade Commander Obradovic.¹¹¹⁵

599. Overwhelming documentary evidence proves that the involvement of the MP in Stolac was pursuant to the orders issued by Colonel Obradovic and transferred by Pavlovic.¹¹¹⁶ Whenever the MP in Stolac was performing police assignments, it acted according to the orders of Pavlovic.¹¹¹⁷

600. Even though Bozo Pavlovic left his post in July 1993, Colonel Obradovic remained in overall power concerning security issues in the Stolac area.¹¹¹⁸

**2. *The 1st Knez Domagoj Brigade and the Stolac Battalion were
Responsible for Maintenance and Security within the Kostana
Hospital***

601. The fact that brigade commander was in charge of security in the Kostana Hospital is confirmed by the testimony of Bozo Pavlovic.¹¹¹⁹

[Redacted].¹¹²⁰

This fact is proven by the testimony of Pavlovic himself, who described his meeting with the EC Monitor and how he clarified some basic facts concerning the conditions of detention:

¹¹¹² P2215; P1913; P2790

¹¹¹³ P3019; P2120; P3546

¹¹¹⁴ See herein Sec. III., para. 101

¹¹¹⁵ Pavlovic (T.46851/16 – 46852/2)

¹¹¹⁶ 5D3044; 5D3046; 5D3048; 5D3052; 5D1054; P2548; P1972 with regard to P1913; 5D4392 with regard to P3135; See generally herein Sec. III.

¹¹¹⁷ Pavlovic (T.46894/21-23; 46904/18-23; 47042/5-6)

¹¹¹⁸ P3160

¹¹¹⁹ Pavlovic (T.47007/20 – 47008/10)

¹¹²⁰ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

After the informal introductory conversation, the gentleman from the international community asked me to leave him to speak to Dr. Kacic in four hours, and I said, No problem, but I would like to ask a few questions of the doctor before I leave you. And then I did so, because I had heard that we were treating the patients badly, and I asked him whether our command had offered him to provide food to the hospital, fuel for the ambulances, and all other provisions that our services had, and the doctor answered in the affirmative.¹¹²¹

602. The foregoing sentences of Pavlovic clearly demonstrate the fact that the Stolac HVO unit under his command was responsible not only for security but for providing food, visits and medical care as well.¹¹²² Concerning visits of international and non-governmental organizations he acted according to the general instructions issued by the Main Staff.¹¹²³

603. [Redacted]¹¹²⁴

604. The testimony of Witness CQ provided unquestionable evidence about the fact that Nedjeljko Obradovic and Bozo Pavlovic were in charge of detention at the Kostana Hospital.¹¹²⁵

605. The foregoing clearly demonstrates the fact that the 1st Knez Domagoj Brigade and the Stolac Battalion had overall authority concerning detention at the Kostana Hospital. The MPA did not have any kind of authority, and it was not involved in any way in the management of Kostana Hospital.

3. The Military Police was Not Involved in the Management of Detention at the Kostana Hospital

606. The OTP failed to prove that the MP was involved in the activities related to detention at Kostana. Eye-witnesses were not able to clearly distinguish between different units of the HVO. Witness CF described the perpetrators were in military uniforms,¹¹²⁶ with rifles, with black scarves.¹¹²⁷ Witness CM testified however was quite explicit that they were HVO and not MP.¹¹²⁸ One witness who was shown a list of members of MP, specifically excluded their participation.¹¹²⁹ The testimony of Witness CD is not for any more help either with regard to the exact identification of soldiers:

Q. The people who were dragging this man, were they in uniform or not?

A. Yes, of course. Soldiers, they had soldiers' uniforms.

Q. Do you know of which army?

¹¹²¹ Pavlovic (T.47011/8-15)

¹¹²² 5D1057

¹¹²³ P1994

¹¹²⁴ [Redacted]

¹¹²⁵ Witness CQ (T.11518/14-25)

¹¹²⁶ Witness CF (T.10691/3)

¹¹²⁷ Witness CF (T.10692/2-3)

¹¹²⁸ Witness CM (T.11161/16-20)

¹¹²⁹ Rizvanbegovic (T.2362/11-19)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

A. HVO. There was no other army there. What other army could it be?¹¹³⁰

607. Only Witness CE identified perpetrator Pero Raguz as a member of the MP,¹¹³¹

[Redacted]¹¹³²

[Redacted].¹¹³³

608. Consequently, the OTP failed to prove beyond reasonable doubt that the MP contributed in any way to the maintenance of detention at the Kostana Hospital. This fact, in addition to the lack of authority of the MPA, clearly proves Coric cannot be convicted for crimes committed at Kostana.

4. Conclusions concerning the Events at Kostana Hospital

609. It follows from the above evidence, that Coric is not responsible for any criminal acts committed in Kostana Hospital. Accordingly Coric should be acquitted of all counts relating to Kostana Hospital.

VIII. THE PROSECUTION HAS FAILED TO PROVE THE ALLEGATIONS OF CRIMES IN PROZOR FOR WHICH CORIC CAN BE FOUND CRIMINALLY LIABLE.

610. A review of the evidence of record shows the OTP has not proven that the conflict in Prozor was part of any earlier planned operation, it was an isolated incident that lasted a short period of time (2 days). Coric and MPA were not involved in planning nor commanding the combat nor committing crimes. Even when there was the investigation about the start of the conflict, MP was not part of the investigation and Coric was not involved. OZ Commander Siljeg assigned a commission, (based upon an order from General Petkovic) consisting in part of Rama Brigade Commander Ilija Franjic and other local authorities to investigate and report back to him.¹¹³⁴ HVO President in Prozor likewise sent to the Muslim authorities a proposal for cessation to the conflict and mutual work together.¹¹³⁵ After the conflict both the HVO and ABiH cooperate to determine and reduce the harm that was done, they have mutual actions to establish law and order in Prozor.

¹¹³⁰ Witness CD (T.10550/2-6)

¹¹³¹ Witness CE (T.10624/9-13)

¹¹³² [Redacted]

¹¹³³ [Redacted]

¹¹³⁴ 4D901; 4D903

¹¹³⁵ P628

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

611. Coric did not exhibit any criminal intent. Rather he demonstrated a desire for the sides to peacefully work together, and gave an order, based on the order of Main Staff and Defence Department, to set up permanent mixed checkpoints composed of both members of HVO and ABiH MP, with composition based on ethnic parity.¹¹³⁶ Further, the MP unit led by Andabak was on its way to assist in the defense of Jajce from Serb forces, when it was denied passage at a ABiH checkpoint at Karamustafic.¹¹³⁷ Thus far from being sent in to participate in anything pre-planned in Prozor, this MP unit was resting in Prozor waiting to try and re-pass the checkpoint when the conflict in Prozor began, when the news came of the death of a Croat soldier who was allegedly killed by Army BiH in the area between Prozor and Gornji Vakuf. Andabak sent a report to the MPA to explain why he did not arrive where he had been sent/deployed, and to explain how his unit got caught up in conflict.¹¹³⁸

612. Andabak's unit was not even under the operative command of Coric at the time of the conflict. This was true for any MP situated in Prozor during the relevant time. As stated elsewhere¹¹³⁹ MP were directly subordinated to OZ Commanders and Brigade commanders in the field.¹¹⁴⁰ [Redacted]¹¹⁴¹ Witness Hauenstein testified that there was a direct military link between military police in Prozor and the OZ commander.¹¹⁴² All military operations in Prozor area were conducted under the command of Command of OZ SZH.¹¹⁴³ Ilija Franjic, who was first the HVO Brigade Commander of the Rama Brigade, became the commander of the elements of the 2nd MP Battalion, and then later again became Rama Brigade Commander.¹¹⁴⁴ Franjic sends reports to the municipal leaders and obtains material support from the municipal leaders.¹¹⁴⁵ At a critical moment when Andabak asks Franjic to report to him regarding complaints of Franjic's "bullying" and abuse of position – Franjic instead writes his resignation to the MPA and again becomes Rama Brigade Commander.¹¹⁴⁶ Franjic and the HVO OZ Commander Siljeg continue to engage in personal attacks against Andabak¹¹⁴⁷ whereas Siljeg has nothing bad to say about Franjic.¹¹⁴⁸ From the foregoing it is seen that the MP in Prozor did not even respect the formal subordination to the 2nd MP Battalion, let alone any to the MPA.

¹¹³⁶ 5D4282

¹¹³⁷ P712; Andabak (T.50962/18, 50963/3), Agic (T.9492/2-4), P628

¹¹³⁸ P712

¹¹³⁹ See, herein Sec. III.

¹¹⁴⁰ P1107, 4D356, P1206, P1209, P1300

¹¹⁴¹ [Redacted]

¹¹⁴² Hauenstein (T.576/7-8)

¹¹⁴³ Andabak 50910/20-23

¹¹⁴⁴ 4D901; 4D903, 5D2077

¹¹⁴⁵ Andabak (T.50957/19-50958/2); 5D2139

¹¹⁴⁶ 5D2049

¹¹⁴⁷ 5D2049

¹¹⁴⁸ P648

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

613. As far as any notice of crimes is concerned, criminal liability cannot attach under this evidence. Andabak, the commander of the 2nd MP Battalion testified that neither Franjic nor the Brigade SIS reported to him of any crimes in Prozor.¹¹⁴⁹

[Redacted]¹¹⁵⁰

Thus, it is clear that, when faced with knowledge of a crime, the MP acted properly and legitimately under the circumstances.

614. A look at specific incidents likewise brings us to the same result. [Redacted].¹¹⁵¹

Further, movement of persons on the territory was handled by the MP in Prozor pursuant to orders from the HVO in Prozor and the Rama Brigade.¹¹⁵² Witness Hauenstein mentioned that Colonel Siljeg, Commander of OZ NW Herzegovina was the person who ultimately decided in which way, when and how he would talk to the imam in Prozor.¹¹⁵³ According to witness Praljak, while questioning Gerritsen, he was the one who put imam in Prozor under guard to protect him of possible retaliation.¹¹⁵⁴ Neither Coric nor the MPA were involved in either aspect, nor were they informed of the same.

615. With regards to various Brigade SIS reports¹¹⁵⁵

[Redacted];¹¹⁵⁶

c) These crimes were isolated incidents not approved not ordered by authorities; d) These reports were sent by SIS to the HVO military units they belonged to, and were not sent to the MP or MPA; e) Many of the documents are of the general hearsay type that crimes have not been established nor the identity of perpetrators known; f) Brigade and OZ SIS were both involved in issuing criminal reports when evidence was sufficient; and g) HVO organs were operating to properly investigate crimes and uncover perpetrators, despite problems such as failure to report, failure to identify units troops belonged to, etc.¹¹⁵⁷

[Redacted]¹¹⁵⁸

¹¹⁴⁹ Andabak (T.50954/10-50956/20)

¹¹⁵⁰ [Redacted]

¹¹⁵¹ [Redacted]

¹¹⁵² P2999

¹¹⁵³ Hauenstein (T.7843/18-7844/1)

¹¹⁵⁴ Gerritsen (T.19343/3-6)

¹¹⁵⁵ P2544; P2597; P721; P4177; P3831; P5590

¹¹⁵⁶ [Redacted]

¹¹⁵⁷ Bandic (T.38211/7-38219/8), see also herein Sec. V.

¹¹⁵⁸ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

616. [Redacted]¹¹⁵⁹,

and thus the authorities were not even given proper notice so as to attempt to locate and punish perpetrators. Much of the evidence was hearsay in nature¹¹⁶⁰,

[Redacted]¹¹⁶¹

[Redacted].¹¹⁶²

HVO Authorities also let the international observers talk freely with Muslims in Prozor, showing that there was no intent to deceive or condone/hide these rapes.¹¹⁶³

[Redacted]¹¹⁶⁴

Accordingly Coric cannot be held liable for the same.

617. Another factor that must be taken into account when evaluating the evidence is the fact that OZ Commander Siljeg, responsible for the Prozor area, as discussed previously, was very critical of Andabak, yet almost protective over Franjic, despite being in possession of numerous SIS reports critical of Franjic as MP Commander in Prozor. We have already analyzed Siljeg's propensity to give false information and pass blame onto others for actions of himself and subordinates in relation to fuel trucks taken from International Organizations¹¹⁶⁵, and this must be taken into account when reviewing for instance, P648, making allegations against Andabak and the MP as to 30 "illegally seized vehicles." Witness Andabak says something like this never happened, or he would be arrested and processed.¹¹⁶⁶ It must be recalled Andabak went on after the war to have an honorable career in the Bosnia-Herzegovina Armed Forces, which surely would not have been possible if he was suspected of such serious crimes. In fact, Andabak demonstrated his unit had seized vehicles from criminals and those vehicles were subsequently being returned to their rightful owners after the conflict, in Jablanica if they left there or in Prozor.¹¹⁶⁷ These vehicles were taken on checkpoints from criminals who took them, not from Prozor inhabitants.¹¹⁶⁸ Further, Siljeg's claims were not ignored, a commission was formed in MPA, after receiving Šiljeg's report, and that commission, in cooperation with Andabak's MP made a list of the cars and the cars had been returned to the owners, so certain legitimate measures were taken based on the information from document P648.¹¹⁶⁹ The joint Order signed by Praljak and Coric, 14

¹¹⁵⁹ [Redacted]

¹¹⁶⁰ Witness BR (T.8156/18-8157/2); Witness BK (T.5526/15-17)

¹¹⁶¹ [Redacted]

¹¹⁶² [Redacted]

¹¹⁶³ Gerritsen (P10030 pg. 10)

¹¹⁶⁴ [Redacted]

¹¹⁶⁵ See, herein Sec. XVI.

¹¹⁶⁶ Andabak (T.51069/10)

¹¹⁶⁷ Andabak (T.51069/10); 3D424

¹¹⁶⁸ Andabak (T.51072/16-23)

¹¹⁶⁹ Andabak (T.51070/1-12)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

November 1993, confirms that, and in particular in the Croat original, Praljak directly order Siljeg to comply with the order.¹¹⁷⁰ Thus the incident is viewed differently by everyone else except for Siljeg.

618. From the foregoing it has not been proven that Coric would have known of acts of others in Prozor that could be qualified as crimes that went unpunished. At most he could have known of legitimate actions taken by organs beyond his effective control, to try and address legitimate concerns.

IX. THE PROSECUTION HAS FAILED TO PROVE THE ALLEGATIONS OF CRIMES IN GORNJI VAKUF FOR WHICH CORIC CAN BE FOUND CRIMINALLY LIABLE.

619. As a preliminary matter, as to the claim of inhumane treatment of confinement due to the harsh conditions in Uzričje ¹¹⁷¹ the same must fail insofar as witness Basic described the conditions and heating facilities as being the same as those normally enjoyed by residents in their homes. ¹¹⁷²

620. There is no credible OTP evidence linking the MP, the MPA, or Coric as being involved in any of the crimes alleged to have taken place in Gornji Vakuf. [Redacted] ¹¹⁷³, BY¹¹⁷⁴, BV¹¹⁷⁵, BX¹¹⁷⁶, Muamer Trkic¹¹⁷⁷, Zijada Kurbegovic¹¹⁷⁸, Nedžad Causevic,¹¹⁷⁹ Senada Basic¹¹⁸⁰ were examined and none of them identified MP as perpetrators of any Indictment crimes.¹¹⁸¹ Property destruction was mainly as a result of artillery action,¹¹⁸² which cannot be attributed to the MP who did not have artillery.

¹¹⁷⁰ 3D424

¹¹⁷¹ Indictment para. 71

¹¹⁷² Bašić (T.8902/22-25)

¹¹⁷³ [Redacted]

¹¹⁷⁴ Witness BY (T.9051-9136)

¹¹⁷⁵ Witness BV (T.8708-8761)

¹¹⁷⁶ Witness BX (T.8838-8886)

¹¹⁷⁷ Trkić (T.9153-9214)

¹¹⁷⁸ Kurbegović (T.8947-9030)

¹¹⁷⁹ P9201

¹¹⁸⁰ P9711

¹¹⁸¹ P7350

¹¹⁸² P1174; P1209; P1221

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

621. A specific incident where the MP is mentioned is in a village called Hrasnica.¹¹⁸³ Witness Williams based his testimony based on a report - "The HVO soldiers responsible were believed to be wearing blue helmets and to be equipped with three BTR-40s, armoured vehicles. A blue BRDM-2 was reported to be located on the main road junction GR 0272. Comment. Gornji Vakuf believe that these soldiers may have been from a Herzegovinian military police unit."¹¹⁸⁴ During cross-examination, Williams confirmed he was basing the report on hearsay and could not identify the unit in question. Williams could not refute other evidence from which it is obvious that MP does not have armoured vehicle, helmets, and and that no trousers were distributed in that time to MP.¹¹⁸⁵ He saw the armoured vehicle from a distance of 150 or 200 yards, and he did not see any insignia on them.¹¹⁸⁶ There was no any other witness who saw MP in blue helmets, or in blue armoured vehicles. To the contrary, Senad Zahirovic,¹¹⁸⁷ saw 20 HVO soldiers, 90% dressed in black uniform, 10% in camouflage olive green uniform, faces disguised by black caps. Zahirovic said that the unit that came to Hrasnica and arrested the villagers was called "Garavi" and the commander was nicknamed Klica. Thus the testimony of Williams cannot be considered as credible to prove the involvement of MP in this incident.

622. Kemal Šljivo¹¹⁸⁸ was a Rule 92 bis witness who claimed arrests were conducted by soldiers, but identified MP abusing his military commander from ABiH in the house of Grga Pilic. This alleged MP's wore camouflage uniforms and they introduced themselves as MP. The only indication they were military policemen is that they told it to the witness – he did not remember any insignia, he was not educated to precisely identify members of particular units. As a 92 bis witness he could not be cross-examined and is thus untested hearsay evidence. In any event, Rule 92bis disallows written statements of evidence that go towards the acts/conduct of the Accused as alleged in the indictment¹¹⁸⁹and has been ruled by the Appeals Chamber to include conduct of alleged subordinates of the accused.¹¹⁹⁰ Similarly, evidence inappropriate under Rule 92bis scrutiny, cannot be admissible and relied upon under rule 89 as a means of escaping the strict scrutiny of 92bis.¹¹⁹¹ Thus reliance on lists as the sole evidence to prove deaths is also not permitted under the rules and jurisprudence. Accordingly, this cannot be considered credible evidence of MP involvement in crimes.

¹¹⁸³ Williams (T.8546/8 – 8547/10); P1250

¹¹⁸⁴ P1250; Williams (T.8546/8 – 8547/10)

¹¹⁸⁵ Williams (T.8680/2-8682/7)

¹¹⁸⁶ Williams (T.8582/18-8583/21)

¹¹⁸⁷ P9198

¹¹⁸⁸ P10108

¹¹⁸⁹ Rules of Procedure and Evidence, Rule 92 bis

¹¹⁹⁰ Prosecutor vs. Galic, IT-98-29-AR73.2 "Decision on Interlocutory Appeal Concerning Rule 92 bis (c)" 7 June 2002.

¹¹⁹¹ Prosecutor vs. Galic, IT-98-29-AR73.2 "Decision on Interlocutory Appeal Concerning Rule 92 bis (c)" 7 June 2002; Prosecutor vs. Milosevic, IT-02-54-AR73.2, "Decision on Admissibility of Prosecution Investigator's Evidence" 30 Sept. 2002.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

623. [Redacted],¹¹⁹²

so any actions would have been the responsibility of HVO commanders not the MPA

[Redacted]¹¹⁹³

624. As stated elsewhere¹¹⁹⁴ MP were directly subordinated to OZ Commanders and Brigade commanders in the field.¹¹⁹⁵ Evidence confirmed in Gornji Vakuf, the MP was subordinated to HVO Commander Šiljeg.¹¹⁹⁶ Tokic, himself the HVO brigade commander for Gornji Vakuf confirmed that the brigade's MP were under his command.¹¹⁹⁷ HVO Military commanders had responsibility for conducting investigations arresting perpetrators.¹¹⁹⁸ Tokic, confirmed that his unit was responsible for settlements

¹¹⁹² [Redacted]

¹¹⁹³ [Redacted]

¹¹⁹⁴ See, herein Sec. III.

¹¹⁹⁵ P1107; 4D356; P1206; P1209; P1300; P1135

¹¹⁹⁶ Andabak (T.50910/20-23, 50913/23-50914/2, 50967/15-18); P1359

¹¹⁹⁷ Tokic (T.45507/14-18)

¹¹⁹⁸ See, herein Sec. V.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

deeper in the territory, "normally about 3 kilometers deep"¹¹⁹⁹, which means that inhabited settlements fell within the military commander's zone of responsibility. There was evidence in Gornji Vakuf that HVO military commanders did undertake such actions when apprised of crimes: a) ordering to arrest any pilferers, keep them in detention, record all the items looted and stolen;¹²⁰⁰ b) [Redacted]¹²⁰¹ and c) ordering Brigade MP investigation of murder of Ramiz Abazovic.¹²⁰² Likewise a HVO soldier who killed a Muslim was arrested, and apologies were sent out along with calls to the Muslims not to let this murder stir up divisions and divide the community.¹²⁰³

625. From the foregoing, Coric could not have had any notice of an intent on the part of others outside of his control to commit crimes, or that crimes went unpunished. Before the conflict in Gornji Vakuf, there were sporadic incidents between Croat and Muslim forces, there were plans inside the ABiH,¹²⁰⁴ which led to feeling of insecurity among the Croat population, which resulted with the fact that MP of Gornji Vakuf asked for help from MPA, and after that MPA sent MP to preserve law and order, protect the population and populated areas, restore road traffic and defuse fear among the Croat population.¹²⁰⁵ During the events in Gornji Vakuf, in January 1993, Coric is not present at all in the territory of BiH. He is hospitalized in Zagreb in Croatia, during the month of January, which includes all days covered by the Indictment's time frame in Gornji Vakuf.¹²⁰⁶

626. Coric, after he returns from hospital in Zagreb, is not put on notice of any crimes. Andabak states that when MP was in Gornji Vakuf, nobody mentioned that their members committed any unlawful acts, such as setting fire to houses or looting property.¹²⁰⁷ On 27th January there was meeting held, convened by General Praljak,¹²⁰⁸ on which Coric was also present –Andabak says that they saw Coric for the first time after long time - and that was his first meeting after he returned from hospital treatment, the purpose of the meeting was to explain such a big losses of members of MP, and the role of MP was seen as of combat type MP units were predominantly situated in town, not in the surrounding

¹¹⁹⁹ Tokic (T.45343/17-23); P4819; P3135

¹²⁰⁰ P1359

¹²⁰¹ [Redacted]

¹²⁰² P2832

¹²⁰³ P778

¹²⁰⁴ P430; P687

¹²⁰⁵ P1053; Williams (T.8503/3)

¹²⁰⁶ Andabak (T.50967/6-13; 51082/15-51083/1; 51087/11-51088/23); P1350

¹²⁰⁷ Andabak (T.50967/19-25); P1350

¹²⁰⁸ Andabak (T.50967); P1350

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

villages.¹²⁰⁹ It is said, on the meeting, by K. Tolj, that the task of the MP was to protect the the population and to protect traffic. No crimes were mentioned¹²¹⁰.

627. From the foregoing it has not been proven that Coric would have known of acts of others in Gornji Vakuf that could be qualified as crimes that went unpunished. At most he could have known of legitimate actions taken by organs beyond his effective control, to try and address legitimate concerns.

¹²⁰⁹P1350, Praljak (T.41601; 42519); P3889

¹²¹⁰ Andabak (T.50967)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

X. THE MPA AND VALENTIN CORIC DID NOT PLAY ANY ROLE IN THE EVENTS THAT TOOK PLACE IN JABLANICA MUNICIPALITY (SOVICI AND DOLJANI)

628. The military operations in the Jablanica area in April 1993 were conducted under the command of the OZ.¹²¹¹ Documentary evidence and witness testimonies prove that the HVO brigade was in charge of the interrogations, and the MPA did not have any authority concerning the attacks or the arrests, detention or interrogation of civilians.¹²¹²

629. Eye-witnesses of the events at Sovici and Doljani could not clearly identify the military units the people involved in the incidents belonged to,¹²¹³ but testified that while the men were arrested they were ordered to surrender their weapons¹²¹⁴ what indicates that the arrests were driven by military necessity.

630. Prosecution failed to present any evidence that would have proven unlawful labour.

631. Concerning the alleged killings, Witness Poljarevic could not identify the perpetrators, but defined their status as HVO soldiers.¹²¹⁵ This does not induce any responsibility of Coric.

632. There is no evidence the MPA or Coric played any role in the destruction of Muslim homes and the two buildings dedicated to Muslim religion in Sovici and Doljani and no evidence that Coric or the MPA was informed about these actions.

633. The evidences suggest that international observers and peace-keeping forces were blocked from entering the Sovici-Doljani area by irregular armed forces and not regular HVO military units.¹²¹⁶ There is no evidence the MP, MPA or Coric were involved in hindering the entrance of international observers in the area.

634. Witnesses could not identify the perpetrators of confiscation of their property.¹²¹⁷ Only Poljarevic referred to the allegation that MP was involved. At the same time, he admitted that he could not distinguish the uniforms and insignia of the different military units.¹²¹⁸

635. There is no evidence the MPA/Coric were involved in or informed about the transfer of civilians from Sovici and Doljani in May 1993.¹²¹⁹

¹²¹¹ P1915; P1933; P1932; P1866; P1954; P1881; P2037

¹²¹² P2218; P1968; P2182; Poljarevic (T.11595/2-23); Witness BZ (T.9933/18 – 9934/8); Filipovic (T.47519/22 – 47522/11)

¹²¹³ Witness CA (T.10006/8-15; 10019/8-20); Witness CB (T.10117/13-23)

¹²¹⁴ Witness CA (T.10067/5-9)

¹²¹⁵ Poljarevic (T.11572/1-8)

¹²¹⁶ Beese (T.3218/ 4-7)

¹²¹⁷ Witness CA (T.10034/13 – 10035/14)

¹²¹⁸ Poljarevic (T.11661/5-21)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

636. There are two documents which could mislead that the MPA was informed about events in Jablanica Municipality.¹²²⁰ None of them has a receiving stamp of the MPA therefore they cannot be taken into consideration as evidences for the eventual allegation that the MPA or Coric was, in fact, informed. At the same time, Coric could gain the sole information from the documents that investigations were under way which would not have raised in him any suspicion concerning unlawful detention.

637. From the foregoing evidences, the OTP has not proved the MPA played any role concerning the events at Sovici and Doljani, or that Coric bears any responsibility.

XI. THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR MOSTAR

638. As a preliminary matter the following evidence effectively rebut the presumption behind adjudicated facts the Chamber made earlier,¹²²¹ showing the same to be unsupported.

639. As stated elsewhere, the OTP has failed to prove the identities of perpetrators with specificity. This is a critical flaw for the OTP has only pled Coric's command superior authority over MP. As discussed previously, the MPA did not have any authority, let alone command superior over HVO personnel such as the Brigade MP, Domobrani, or soldiers, who operated under the structure of HVO brigades.¹²²² Likewise, the MPA only had limited authority, but not command superior authority, in regards to MP battalions operating under orders of HVO military commanders.¹²²³

640. With regards to Mostar, the evidence is rather clear that overall authority over all units, including MP was held by HVO military commanders appointed by and subordinated to the OZ Commander.¹²²⁴ [Redacted].¹²²⁵ [Redacted]
[Redacted].¹²²⁶

641. The foregoing demonstrates explicitly and without doubt who commanded MP in Mostar, and the OTP has thus failed to meet its case of Coric had effective control over the same. Other evidence demonstrates OZ Commanders controlled what the MP did even in town:

¹²¹⁹ P2825; P2218; Filipovic (T.47505/25 – 47506/8; 47508/13-19)

¹²²⁰ P1974; P2372

¹²²¹ See, Decision on Adjudicated Facts, 7 September 2006 (# 128, 168)

¹²²² See, herein Sec. III.

¹²²³ See, herein Sec. III. E.

¹²²⁴ See, herein Sec. III. E.

¹²²⁵ [Redacted]

¹²²⁶ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

... Because of the above, we consider claims that VP units do not exercise full control within the Town of Mostar to be false, and such an opinion may be checked with the OZ /Operations Zone/ command, which is competent and authorized to judge it.¹²²⁷

642. Likewise it has not been established that Coric had any role in or knowledge of checkpoints in Mostar being used for criminal or non-legitimate activity. Coric's lack of effective control over checkpoints is discussed previously.¹²²⁸ The evidence is that Coric's orders and declarations in regards to Checkpoints in Mostar were always based on implementing decisions reached at a higher authority, and that those were always in the vein of implementing peace agreements reached.¹²²⁹ P4174 and P4258 are examples of such orders for Mostar based upon an order of the Main Staff of the HVO, and based on prevailing security concerns at the time. The text of both demonstrates that there is no criminal intent behind in the orders and that Humanitarian organizations are exempt. In implementing those peace agreements and orders, Coric exhibited a desire to establish law and order rather than to promote or condone crimes. For instance, in implementing OZ Commander Lasic's order as to joint HVO and ABIH patrols, Coric tries to ease tensions by advocating the removal of insignia, so that patrols could not be identified as HVO or ABIH, and exchanges of detainees between the HVO and ABIH¹²³⁰ Witness CV testified that such joint patrols were agreed to, but that they were not carried out in full due to the fact he and other Muslims did not carry out the order of Arif Pasalic to do so.¹²³¹ Other documents demonstrate the goal of checkpoints, as understood by Coric, was to prevent crimes.¹²³²

643. The evidence is clear that Coric did not have material ability to control persons entering/exiting Mostar, as this authority was held and exercised by the HVO OZ commander Lasic.¹²³³ Police units, including MP used to intensify control in the city were to be deployed by Lasic who retained authority to directly command in the case of incidents arising.¹²³⁴ Coric is excluded from the formulation of P1868, and is neither a recipient of the same, nor is his telephone number even listed among those with authority for its implementation. The foregoing intensified control in Mostar lasted only 6 days,¹²³⁵ and thereafter with another ceasefire joint HVO and BH army patrols are instituted by HVO Commander Lasic.¹²³⁶ Based upon Lasic's order Coric brought an order for joint HVO MP and ABiH patrols.¹²³⁷

¹²²⁷ P1654

¹²²⁸ See, herein Sec. VI.

¹²²⁹ P1988; P2002; 2D470; 2D313; P2030; 3D676; 3D16

¹²³⁰ P2020; Witness A (T.14011/12-14012/7)

¹²³¹ Witness CV (T.12531/15-25; 12532/1-3; 12592/23-25; 12593/3-12; 12594/14-18; 12601/20-25; 12602/3-7; 12652/10-25; 12653/1-14)

¹²³² P2575; P2578; 5D2113

¹²³³ P5007 pg. 2 point 3

¹²³⁴ P1868

¹²³⁵ P1988; Witness A (T.14011/4-9)

¹²³⁶ P2030

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Again Coric could only bring an order on the basis of the authority of a higher organ, and nothing in the same demonstrates a discriminatory intent or illegal purpose. Coric thus had a very limited role and certainly not as a command-superior.

644. Indeed the evidence is that based on what was potentially available to Coric he could have had no knowledge of any criminal intent on the part of HVO military commanders, if any. He would only have known of a legitimate security threat in Mostar resulting from the attack by the ABiH, and that steps were taken by the appropriate law enforcement authorities to enforce law and order in difficult times. Reports sent to him spoke of legitimate anti-crime measures being taken.¹²³⁸ His response to such reports was to encourage greater cooperation amongst civilian MUP and MP and try to increase the effectiveness of anti-crime measures.¹²³⁹

[Redacted].¹²⁴⁰

The evidence demonstrates these authorities, including the MP acted accordingly and legitimately to fight crime in Mostar and apprehend perpetrators. The difficulties encountered by these organs in Mostar, including: a) criminals misusing the situation where many persons in unmarked uniforms were moving around; b) lack of equipment; c) lack of manpower; d) MP, and MUP being sent to the front lines by HVO military commanders; d) and other difficulties are all discussed in greater detail elsewhere.¹²⁴¹ It is clear from documents that both the HVO and the ABiH were experiencing criminals breaking into homes and looting the same, and that a joint commission was established to try and prevent this, demonstrating both sides were interested in preventing such acts.¹²⁴² P5893 demonstrates a legitimate desire on the part of the MP to prevent and punish such acts, when a home of a Croat was searched on suspicion stolen goods were being stored there. P5841 demonstrates again the MP is acting to return a Muslim lady to her apartment, and to investigate the criminal acts of others for evictions. P2749 demonstrates that the rogue elements of the Convicts Battalion were even breaking into homes of ethnic Croats to commit crimes, and that the MP reported unlawful evictions of both Muslims and Croats to the Main Staff. P2754 evidences the MP investigated these rogue elements further as criminal perpetrators, and did not approve of the behavior. P2769 demonstrates the MP is investigating the same incident, and did not use force against perpetrators due to concerns for the safety of its outnumbered men, but again reported the matter to the HVO military commander, and investigates the perpetrators. P2770 demonstrates this information was made known to military commanders. Finally,

¹²³⁷ P2020

¹²³⁸ P4058

¹²³⁹ 5D4110

¹²⁴⁰ [Redacted]

¹²⁴¹ See, herein Sec. V.

¹²⁴² P2146

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

P2802 and P2871 demonstrate the MP eventually discovered the identities of the foregoing perpetrators and detained and arrested these individuals. From this it is seen the MP did not tolerate nor participate in evictions or displacements, but rather worked to arrest and detain perpetrators.

645. Other documents also show the persons performing the evictions were opportunistic criminals rather than operating per some plan, and the Brigade SIS undertook to investigate and document such cases.¹²⁴³ Witness Forbes confirmed many of the difficulties testified to by defense witnesses, including: a) many persons who did not belong to military units wearing uniforms without insignia;¹²⁴⁴ b) victims reporting perpetrators wearing uniforms without insignia who misrepresented themselves as members of units;¹²⁴⁵ c) such persons wearing unmarked uniforms were practically impossible to identify;¹²⁴⁶ d) that because victims did not report incidents, many were unknown to HVO authorities;¹²⁴⁷ and e) [Redacted].¹²⁴⁸

646. Other evidence demonstrates that when victims of rape reported the same to the authorities, and perpetrators could be identified, the MP took steps to locate the same and arrest them for questioning.¹²⁴⁹ [Redacted].¹²⁵⁰ In any event there was no evidence Coric was made aware of these crimes. The evidence is clear where information of rapes by 4 MP members reached him that Coric acted appropriately and swiftly in calling that the perpetrators immediately be relieved of duty, placed in 30 day military detention, and their file turned over to the military prosecutor for charges to be filed, with the notation that "[...]the above-named have sullied the honor of the MP and their further presence in this unit is DETRIMENTAL."¹²⁵¹ Thus his intent definitely was not to condone rapes.

647. It is also clear from the evidence Coric did not have notice of crimes that went unpunished. If we look closer at the reporting that was potentially available to Coric, we see that he reasonably could believe that organs were functioning the best they could under the circumstances to fight crime, and in no way could he foresee any deportation of the populace.¹²⁵² P4058 gives a comprehensive overview of the work of the CPD during the relevant period (July-August 1993), including crime trends and statistics and anti-crime measures being employed to arrest perpetrators and prevent crime, including

¹²⁴³ P5721

¹²⁴⁴ Forbes (T. 21421/23-25; 21422/1-6)

¹²⁴⁵ Forbes (T. 21422/19-24)

¹²⁴⁶ Forbes (T. 21422/25; 21423/1-9)

¹²⁴⁷ Forbes (T.21423/10-22)

¹²⁴⁸ [Redacted]

¹²⁴⁹ 5D2113

¹²⁵⁰ [Redacted]

¹²⁵¹ P3571

¹²⁵² P3527; P3249

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

20 criminal reports. The report also highlights problems with lack of equipment and personnel. As a response to these reports we see Coric outlining anti-crime measures that have been implemented in Mostar with "noticeable results," namely when the MP undertook control of parts of the city to prevent looting.¹²⁵³ Similarly we see in 5D4110 Coric taking those steps within his limited domain to contribute to law-enforcement efforts, trying to increase the effectiveness of anti-crime measures, supporting training of additional crime technicians and encouraging the MP to work closely with the civilian police.

648. Likewise Coric took the reasonable measures within his authority by addressing a request to the competent authorities to reconsider the engagement of members of the MP at the front-line so that they could accomplish their duties of crime prevention in an appropriate way.¹²⁵⁴ That he did not have authority to effectuate the return of MP from the front lines where they were subordinated to HVO military commanders to Mostar cannot be used against him. Vidovic, who at the relevant time period was head of the CPD within the 5th MP battalion in Mostar confirmed that pursuant to the orders of the HVO OZ Commander staff of the CPD were pulled from their duties to be sent to the front lines,¹²⁵⁵ and that although the CPD didn't like this policy it had to respect the order of the OZ commander.¹²⁵⁶

649. Despite the difficulties encountered by the law enforcement authorities, including the MP in Mostar, the evidence demonstrates legitimate efforts on their part resulting in multiple criminal reports being filed and procedures implemented against HVO members for crimes committed against Muslims.¹²⁵⁷ These demonstrate an intent to engage in legitimate law enforcement and anti-crime activities, contrary to any criminal plan or JCE.

650. The OTP has failed to prove the allegations of criminal responsibility as to Coric arising out of Mostar. In relation to para. 95 of the indictment, it has not been established beyond reasonable doubt who perpetrators were and when and how they committed the murders, let alone that Coric would have had effective control over these persons so as to cause criminal liability to attach. Multiple sources of evidence point to the possibility the perpetrators of the crime were members of the Juka Prazina unit¹²⁵⁸ who would be outside of the effective control of Coric. P3249 only identifies that the MP arrested Masic and Hebibovic, and does not demonstrate any criminal intent or purpose behind their detention.

¹²⁵³ 5D2113,

¹²⁵⁴ P5471, p. 3

¹²⁵⁵ Vidovic (T.51444/4-13)

¹²⁵⁶ Vidovic (T.51517/4-51518/1); 5D2146

¹²⁵⁷ 5D4194, P4139, 5D4168, P9465, 5D4199, P3118, P3513, P3483, P3508, P3482, P3497, P3523, P3571, 5D4173, 5D4164, 5D4180, 5D4179, P6764, P7027, 5D4352, 5D2098, 5D2019, P2080, P2070, 5D4255, 5D4242, 5D4243, 5D4183

¹²⁵⁸ Witness CV (T.12546/22-25; 12547/1-2); Masovic (T.25060/5-14); P8595;

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Further, the log-book reference on the "received" stamp indicates that this document was not delivered to Coric.¹²⁵⁹ Other witnesses did not give reliable evidence linking the crime to any MP. Witness Saric only heard second-hand that some persons met their demise in the Mechanical Faculty.¹²⁶⁰ He did not see the beatings or deaths, and did not identify perpetrators that could be linked to the MP.¹²⁶¹ Witness CW gave a variety of contradictory and different statements, and in the end also turned out not to have been an eyewitness to the crime.¹²⁶² CW likewise gives differing accounts of the perpetrators, but seems to also identify Juka Prazina¹²⁶³ such that the same cannot be attributed to a person over whom Coric had effective control. CW also gives testimony as to the transfer of court files in relation to the Pedagogical faculty which contradicts other facts of record, showing his testimony to be unreliable.¹²⁶⁴ [Redacted]¹²⁶⁵

No evidence was presented by the OTP that would have put Coric on notice of the crimes alleged, so as to cause liability to attach to him for failing to take any steps to investigate.

651. In relation to para. 104 of the Indictment, the witnesses likewise gave very unspecific hearsay testimony that is insufficient to establish the perpetrators were persons under the effective control of Coric or of whose acts he would be put on notice of. Ismet Poljarevic gave contradictory statements about the events such that he could not differentiate the uniforms of persons, admits he does not recall of the MP were involved, could not recall the specifics of when he was beaten, and seemed to identify contradictory locations of where he was and where he was beaten.¹²⁶⁶ As such his testimony cannot establish liability of Coric beyond reasonable doubt. Saric is a witness giving a constantly changing picture of his testimony, so as to lack credibility. Throughout his testimony Saric claimed to have seen Hebibovic's dead body, then that he only heard from others, then that he never saw Hebibovic nor knows who that is, and lastly, that the same died before the witness even arrived at the facility.¹²⁶⁷ There is no way for Saric's varying testimony to be reconciled with itself, and thus the witness cannot be relied upon to meet the OTP's burden of proof. As was the case in para. 95, Witness CW also gave varying testimony that was not credible.

¹²⁵⁹ see, P4548; P786

¹²⁶⁰ Saric (T.5078/9-17, 22-5079/1)

¹²⁶¹ Saric (5D515)

¹²⁶² Witness CW (T.12663; 12664; 12666; 12667; 12668)

¹²⁶³ Witness CW (T.12679)

¹²⁶⁴ Witness CW (T.12680/18-22; see P4878 contra

¹²⁶⁵ [Redacted]

¹²⁶⁶ Poljarevic (T.11611/11-11612/16; 11659/1-11660/25; 11661/1-21); P9726; 2D285

¹²⁶⁷ Saric (T.5097/20-25; 5098/1-2; 5140/1-5147/23); 2D84; 5D515

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

652. In regards to the allegations of para. 106 of the Indictment, it must be stressed that Witness CY confirmed that he never reported the same to any authorities until 1996.¹²⁶⁸ As such there is nothing that could have put Coric on notice of the same while he was still at the MPA to investigate or punish/prevent if investigation revealed perpetrators within his authority.

653. Various documents underpinning the Prosecution's case against Coric as to Mostar were in fact shown to be forgeries. P3666 and P3179 are discussed in detail elsewhere in this regard.¹²⁶⁹

654. P3302 and P5554 are both unsigned documents.

[Redacted].¹²⁷⁰

Further, the SIS did not send the report to Coric or the MPA so that there is no evidence that Coric was ever apprised of the same. In fact not a single witness linked Coric to this incident. P3302 does not even show the document was sent to ANYONE, and P5554 purports to have been addressed to the "HRHB Administration" – an entity that does not exist.

655. P5057 relates to an investigation of criminal behavior, and from the document it is not possible to ascertain to whom it was sent. Thus in any event it cannot be said Coric was shown to have knowledge of the same.

656. P619 was presented by the OTP to attempt to show Coric's knowledge of certain public buildings being taken over by the HVO in Mostar. But in fact, Witness CV testified that this was a joint action undertaken by the HVO and ABiH as a legitimate police action to secure vital buildings and protect them and establish law and order.¹²⁷¹ This was also confirmed by Vidovic.¹²⁷²

657. From the foregoing it has not been proven that Coric would have known of acts of others in Mostar that could be qualified as crimes that went unpunished. At most he could have known of legitimate actions taken by organs beyond his control, to try and address legitimate security concerns.

XII. THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR LJUBUSKI MUNICIPALITY

¹²⁶⁸ Witness CY (T.13073/21-25; 13074/1-22; 13086/13-22)

¹²⁶⁹ See, herein Sec. XVI

¹²⁷⁰ [Redacted]

¹²⁷¹ Witness CV (T.12588/19-25; 12589; 12590/1-20)

¹²⁷² Vidovic (T.51549, 51550, 51551/1-9, 51552/21-25, 51553, 51554/1-6)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

658. Prosecution failed to present any evidence that would induce the responsibility of Coric with regard to the events that occurred in the Ljubuski Municipality.¹²⁷³

659. [Redacted]¹²⁷⁴

[Redacted]

[Redacted]¹²⁷⁵

These statements were not sufficient to define specifically the military unit which the alleged perpetrators belonged to. None of the witnesses could identify members of the MP as perpetrators.

660. [Redacted]¹²⁷⁶

[Redacted]¹²⁷⁷

[Redacted]¹²⁷⁸

661. The CPD of the MP took all the necessary measures in order to accomplish its sole duty namely to investigate the alleged criminal acts,¹²⁷⁹ including responding to reports of illegal entries into apartments.¹²⁸⁰ P4058 demonstrates investigations against crimes in Ljubuski for a two month period. The MPA and Valentin Coric were informed about these investigations that were part of the regular operation of the MP. Destruction of civilian properties and objects fell under the authority of the civilian MUP and was of no interest of the MP or the MPA.¹²⁸¹ Crimes against Muslim victims were properly investigated and perpetrators sought out.¹²⁸²

662. Prosecution based its allegations concerning the release of detainees with letters of guarantee on a document referring to an order issued by Coric,¹²⁸³ but it failed to present any such order.

[Redacted]¹²⁸⁴ [Redacted]¹²⁸⁵

[Redacted]

[Redacted].¹²⁸⁶

¹²⁷³ See, herein Sec. VII. H.

¹²⁷⁴ [Redacted]

¹²⁷⁵ [Redacted]

¹²⁷⁶ [Redacted]

¹²⁷⁷ [Redacted]

¹²⁷⁸ [Redacted]

¹²⁷⁹ P2412; P2607

¹²⁸⁰ P5893

¹²⁸¹ P2412

¹²⁸² 5D2097; 5D2147; 5D2095; P6901; P6893; 5D2020

¹²⁸³ P4572

¹²⁸⁴ [Redacted]

¹²⁸⁵ [Redacted]

¹²⁸⁶ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

663. [Redacted]

[Redacted]¹²⁸⁷

[...]
[Redacted].¹²⁸⁸

[Redacted].

Prosecution failed to provide any reliable evidence that would indicate that the MPA or Valentin Coric was involved in or was informed about this practice.

664. The foregoing evidences prove that the alleged incidents in Ljubuski Municipality do not induce the responsibility of Valentin Coric.

XIII. THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR STOLAC MUNICIPALITY

665. As stated elsewhere, the OTP has failed to prove the identities of perpetrators with specificity. This is a critical flaw for the OTP has only pled Coric's command superior authority over military police.

666. As discussed previously, the MPA did not have any authority, let alone command superior over HVO personnel such as the Brigade MP, Home Guard, or soldiers, who operated under the structure of HVO brigades.¹²⁸⁹ Likewise, the MPA only had limited authority, but not command superior authority, in regards to MP battalions operating under orders of HVO military commanders.¹²⁹⁰

667. With regards to Stolac, the OTP has failed to meet its burden of establishing perpetrators were Military Police, let alone that they could be linked to Coric. Witnesses presented: a) did not personally see who perpetrators were¹²⁹¹; b) [Redacted]¹²⁹²; c) did not identify insignia on uniforms or could not differentiate between MP and others in uniform;¹²⁹³ d) [Redacted];¹²⁹⁴ or e) [Redacted]¹²⁹⁵

¹²⁸⁷ [Redacted]

¹²⁸⁸ [Redacted]

¹²⁸⁹ See, herein Sec. III

¹²⁹⁰ See, herein Sec. III

¹²⁹¹ Witness BI (T.2405/12-19; 2422/17-20; 2426/21-2427/9; 2447/25-2449/12)

[Redacted]

¹²⁹³ Hikmeta Rizvanovic (P9947)

[Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

668. [Redacted].¹²⁹⁶

[Redacted].¹²⁹⁷

669. [Redacted].¹²⁹⁸ Likewise, those identified by Fahrudin Rizvanbegovic¹²⁹⁹ as MP turned out not to be.¹³⁰⁰

670. The foregoing demonstrates the OTP has failed to meet its case of proving subordinates of Coric participated in the arrests and any crimes that occurred during arrests.

671. Likewise there was insufficient evidence of any reporting of these crimes to Coric that would have given him Notice of the same. [Redacted].¹³⁰¹

From this information the reasonable assumption is the appropriate law enforcement authorities are preventing the types of crimes alleged. With regard to mosques, [Redacted].¹³⁰²

¹²⁹⁵ [Redacted]

¹²⁹⁶ [Redacted]

¹²⁹⁷ [Redacted]

¹²⁹⁸ [Redacted]

¹²⁹⁹ Rizvanbegovic (T.2200/13-24)

¹³⁰⁰ 5D1056

¹³⁰¹ [Redacted]

¹³⁰² [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

672. Indeed the evidence is that based on what was potentially available to Coric he could have had no knowledge of any criminal intent on the part of HVO military commanders, if any. He was not sent any of the orders pertaining to arrests of Muslim HVO and members of the Army BH.¹³⁰³ Indeed even the Military Commanders issued orders to prevent crimes.¹³⁰⁴

[Redacted]¹³⁰⁵

Even if he had been apprised of the same, it could have been understood reasonably to be necessary and legitimate measures in light of the security risk caused by the Army BH attack on the HVO.

673. [Redacted],¹³⁰⁶

including those hiding in the woods armed,¹³⁰⁷ [Redacted]¹³⁰⁸ The evidence is that the HVO brigades in the Stolac vicinity had Muslims outnumbering the Croats.¹³⁰⁹

[Redacted]¹³¹⁰

There was significant evidence of the Army BH planning to attack and take over Stolac and surrounding areas by linking up with Muslim HVO.¹³¹¹ It was even demonstrated that OTP witnesses who were presented as "victims": a) actively worked on errands for the Army BH;¹³¹² b)[Redacted]¹³¹³ c)[Redacted]¹³¹⁴ Persons Izetbegovic identified in a letter¹³¹⁵

[Redacted]¹³¹⁶

Witness CB of SpaBat confirmed that such actions and an attack on the HVO by Muslim HVO occurred¹³¹⁷ and would constitute high treason under Spanish law.¹³¹⁸

¹³⁰³ P3962; P3063; P3300; P3940; P3962; P2640; 5D3046; 5D3052; 5D4380; P1913; 5D1054

¹³⁰⁴ P3135; P3160; 5D4392

¹³⁰⁵ [Redacted]

¹³⁰⁶ [Redacted]

¹³⁰⁷ Witness CH (T.10868/15-10869/6; 10871/22-10872/10; 10874/9-14); Witness CH (T.10868/15-10869/15)

¹³⁰⁸ [Redacted]

¹³⁰⁹ Witness CQ (T.11424/18-25)

¹³¹⁰ [Redacted]

¹³¹¹ 3D165; 4D34; 4D36

¹³¹² Witness CQ (T.11495/8-11498/12)

¹³¹³ [Redacted]

¹³¹⁴ [Redacted]

¹³¹⁵ P7785

¹³¹⁶ [Redacted]

¹³¹⁷ Witness CB (T.10237/10-19)

¹³¹⁸ Witness CB (T.10238/24-10239/6)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

XIV. THE OTP HAS FAILED TO PROVE ITS ALLEGATIONS OF CRIMINAL RESPONSIBILITY FOR CAPLJINA MUNICIPALITY

674. As stated elsewhere, the OTP has failed to prove the identities of perpetrators with specificity. This is a critical flaw for the OTP has only pled Coric's command superior authority over MP. As discussed previously, the MPA did not have any authority, let alone command superior over HVO personnel such as the Brigade MP, Home Guard, or soldiers, who operated under the structure of HVO brigades.¹³¹⁹ Likewise, the MPA only had limited authority, but not command superior authority, in regards to MP battalions operating under orders of HVO military commanders.¹³²⁰

675. With regards to Capljina, the OTP has failed to meet its burden of establishing perpetrators of crimes were MP, let alone that they could be linked to Coric. Ale Sakoc was rather clear his unit commander came and told all Muslim troops they had to report to Dretelj[Redacted]¹³²¹ b) did not personally see who perpetrators were¹³²²; b) [Redacted] c[Redacted]¹³²³ d) could not differentiate between civilian and MP.¹³²⁴

676. [Redacted].¹³²⁵

[Redacted]¹³²⁶

[Redacted].¹³²⁷

With the order contained in P3160 as Commander of the HVO South Sector, Obradovic is ordering that the civilian police exert authority over Capljina and Stolac and protect civilians and their property. P3135 is another such order of Obradovic.

677. The foregoing demonstrates the OTP has failed to meet its case of Coric had effective control over those that participated in the arrests and potentially committed any crimes that occurred as alleged in the Indictment in Capljina.

678. Likewise there was insufficient evidence of any reporting of these crimes to Coric that would have given him notice of the same. [Redacted].

¹³¹⁹ See, herein Sec. III

¹³²⁰ See, herein Sec. III

¹³²¹ [Redacted]

¹³²² Witness CO (T.11283/11-21)

¹³²³ [Redacted]

¹³²⁴ Witness CO (T.11310/17-11311/2); Witness CK (T.11007/14-11009/3)

¹³²⁵ [Redacted]

¹³²⁶ [Redacted]

¹³²⁷ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

1328 From this information the reasonable assumption is the appropriate law enforcement authorities are preventing the types of crimes alleged.

[Redacted].¹³²⁹ It is confirmed by P2889 that civilian police had jurisdiction over damage to civilian objects.

679. Indeed the evidence is that based on what was potentially available to Coric he could have had no knowledge of any criminal intent on the part of HVO military commanders, if any. He was not sent any of the orders pertaining to arrests of Muslim HVO and members of the Army BH.¹³³⁰ Indeed even the Military Commanders issued orders to prevent crimes.¹³³¹

[Redacted].¹³³² Even if Coric had been apprised of the arrests, it could have been understood reasonably to be necessary and legitimate measures in light of the security risk caused by the Army BH attack on the HVO. Other documents show that the law enforcement organs were doing their job to prevent crimes and bring perpetrators to justice. [Redacted]

[Redacted].¹³³³

680. P2889 was a CPD report into on-site investigations carried out in Capljina by the investigative Judge and civilian MUP as to explosions that damaged various properties belonging to Bosnian Muslims. P2412 is another report talking about civilian MUP investigating incidents in other municipalities but that the situation in Capljina was calm and without incident. P1972 only discussed detention of 2 persons pursuant to the HVO army's orders to detain Army BH personnel. There is also evidence of a joint commission consisting of HVO and BH Army being formed to visit Muslim detainees and assess their conditions, the same being sent to the CPD of the MPA but not Coric.¹³³⁴ None of the foregoing would put Coric on notice of crimes he would have to undertake additional measures against.

681. That there was a legitimate security risk in Capljina caused by armed Muslims is shown by:

- a) [Redacted],¹³³⁵ taking some 20 Croat HVO captive.¹³³⁶

¹³²⁸[Redacted]

¹³²⁹ [Redacted]

¹³³⁰ P3962; P3063; P3300; P3940; P3962; P2640; 5D3046; 5D3052; 5D4380; P1913; 5D1054

¹³³¹ P3135; P3160; 5D4392

¹³³² [Redacted]

¹³³³ [Redacted]

¹³³⁴ P2177

¹³³⁵ [Redacted]

¹³³⁶ Aldijana Trbonja (P9937)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

- b) evidence of a 13 July-15 July Muslim attack at the HVO barracks in Capljina (Gubavica/Pijesak/Bivolje Brdo) at the Dubrava Plateau which resulted in 18-23 HVO killed and 10-25 injured.¹³³⁷
- c) Evidence of an attack on a HVO ambulance killing the driver, in Domanovici 13 July.¹³³⁸
- d) Evidence of Bosnian Muslim males (including MHVOS) participating in sabotage and attacks.¹³³⁹
- e) Significant evidence of the Army BH planning to attack and take over Stolac and surrounding areas by linking up with Muslim HVO.¹³⁴⁰
- f) evidence that MHVOS were trying to link up with 700 Army BH from Blagaj and infiltrate the Lines, infiltration by Muslim forces would lead to a collapse of the 1st HVO Brigade¹³⁴¹
- g) evidence of an infiltration by 30 muslims of Lokve-Kevcici and a planned detonation of the Domanovici HQ.¹³⁴²
- h) Orders from the Army BH for full combat readiness of all units and plans to take over Stolac and surrounding area.¹³⁴³

682. Witness CB of SpaBat confirmed that such actions and an attack on the HVO by MHVOS occurred¹³⁴⁴ and would constitute high treason under Spanish law.¹³⁴⁵ [Redacted].¹³⁴⁶ Witness CB confirmed seing massacred Croat HVO from the attack on the barracks in Capljina.¹³⁴⁷

683. The evidence of several OTP witnesses established that the arrested Bosnian Muslims were actually HVO members. Witness CP testified that the HVO was established for defensive purposes and that 99.9 % of the people from Visici were HVO, including the Muslims.¹³⁴⁸ Many, if not all persons detained thus could be considered a legitimate security threat due to their status as armed Muslim HVO or Army BH members,¹³⁴⁹

¹³³⁷ Hasan (T.10774/1-10779/8); P8648

¹³³⁸ 2D276; Witness CG (T.1832/14-1833/18)

¹³³⁹ Witness CG (T.10830/13-10832/13); Witness CN (T.11216/24-11217/11)

¹³⁴⁰ 3D165; 4D34; 4D36;

¹³⁴¹ P3546

¹³⁴² P3546

¹³⁴³ 3D165; 3D14

¹³⁴⁴ Witness CB (T.10237/10-19)

¹³⁴⁵ Witness CB (T.10238/24-10239/6)

¹³⁴⁶ [Redacted]

¹³⁴⁷ Witness CB (T.10238/4-23)

¹³⁴⁸ Witness CP (T.11398/10-20)

¹³⁴⁹ Witness CO (T.11328/16-22); Witness CG (T.10800/16-21); Witness CN(T.11214/12-21); Hasan (T.10754/16-10755/2); Sadeta Ciber (P9929)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

[Redacted]¹³⁵⁰

including those that left the HVO and disregarded HVO orders,¹³⁵¹ and those that were members of the "Patriotic League" of the SDA.¹³⁵² The evidence is that the HVO soldiers were engaged in searching for concealed weapons in houses, which is a legitimate activity.¹³⁵³ Witness CG confirmed that her husband had hidden weapons buried in their garden which were given to several Muslims.¹³⁵⁴

684. Lastly, the evidence is that crimes committed against Muslim victims were appropriately investigated by HVO authorities, including the MP and perpetrators sought out to be punished.¹³⁵⁵

685. From the foregoing it has not been proven that Coric would have known of acts of others in Capljina that could be qualified as crimes that went unpunished. At most he could have known of legitimate actions taken by organs beyond control, to try and address legitimate security concerns.

XV. THE OTP HAS FAILED TO PROVE THE ALLEGATIONS OF CRIMES IN VAREŠ FOR WHICH CORIC CAN BE FOUND CRIMINALLY LIABLE.

686. Not a single OTP witness nor exhibit linked the MP, the MPA, or Coric as being involved in any of the crimes alleged to have taken place in Vares and Stupni Do.

687. Salem Cerenic, was a member of the BiH army who was present in Vareš October 23rd 1993, when he was arrested by soldiers in camouflage uniforms, with HVO insignias on their sleeves.¹³⁵⁶ He was taken to the gymnasium of the secondary school in Vareš.¹³⁵⁷ He did not describe MP uniforms of those arresting or those detaining him in the first two locations.

¹³⁵⁰ [Redacted]

¹³⁵¹ Witness CN (T.1128/16-11219/13)

¹³⁵² Witness CN (T.11218/9-15)

¹³⁵³ Witness CG (T.10827/22-10828/2)

¹³⁵⁴ Witness CG (T.10828/6-10829/12)

¹³⁵⁵ 5D4259; 5D4154; 5D4258; 5D4350; 5D4231

¹³⁵⁶ Čerenić (T.15876/11-21)

¹³⁵⁷ Čerenić (T.15878/3-16)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

688. When moved to another location, Ceric did identify MP, but was very clear no beatings or abuse occurred at this location.¹³⁵⁸ In any event, these MP would have been following the order dated 28 October 1993 from the brigade commander of the Bobovac brigade sent to the MP, in which physical mistreatment of those placed in detention is prohibited.¹³⁵⁹

689. [Redacted]¹³⁶⁰

[Redacted]¹³⁶¹

[Redacted]¹³⁶²

[Redacted]¹³⁶³

690. [Redacted]¹³⁶⁴ The HVO Bobovac brigade even had its own Brigade MP which was fully incorporated into the composition of brigade, according to rules and practice in HVO¹³⁶⁵. There were reports from Brigade MP to the commander of HVO Bobovac brigade - these reports were not sent to MPA, so that Coric neither received them, nor was aware of reports from the Brigade MP of the Bobovac brigade.¹³⁶⁶

¹³⁵⁸ Ceric (T.15944/4-9)

¹³⁵⁹ 5D2017

¹³⁶⁰ [Redacted]

¹³⁶¹ [Redacted]

¹³⁶² [Redacted]

¹³⁶³ [Redacted]

¹³⁶⁴ [Redacted]

¹³⁶⁵ P4262

¹³⁶⁶ P5988

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

691. Investigation towards events in Stupni Do on 23th October 1993 was conducted by SIS of the Brigade Ban Jelačić¹³⁶⁷. [Redacted]¹³⁶⁸

691. From the foregoing it has not been proven that Coric would have known of acts of others in Vares or Stupni Do that could be qualified as crimes that went unpunished.

XVI. KEY EVIDENCE RELIED UPON BY THE OTP CANNOT BE GIVEN ANY WEIGHT OR CREDIBILITY

693. The evidence the OTP has presented in many instances is defective, relying on documents and witnesses of dubious credibility. Due to the page limitations, we will only address the most serious dubious documents and witnesses, and this should not be construed as a concession as to the validity of remaining OTP evidence. The defense maintains an objection to all OTP assertions as to the criminal liability of Coric, and steadfastly calls for rejection of the same.

A. Documents of Questionable authorship and authenticity cannot be relied upon to assert criminal responsibility of Coric

694. At least one other case has ruled that even where there is no conclusive evidence that a signature on a document is indeed forged, the proper course is that the existing doubt must go to the benefit of the Accused.¹³⁶⁹ The following analysis establishes as a minimum, certain documents are forgeries and should be disregarded, as the doubt must therefore go to the benefit of the Accused.

695. Forged documents exist, authored by unknown persons for unknown reasons, but which have made their way into these proceedings. [Redacted]

[Redacted].¹³⁷⁰

[Redacted].¹³⁷¹

696. [Redacted]

[Redacted].¹³⁷²

Col. Andabak also testified that the document itself was illogical, as NO, would never have to sign on behalf of a MP company commander¹³⁷³ and likewise at the time could not use the MP stamp, insofar as

¹³⁶⁷ 4D499

¹³⁶⁸ [Redacted]

¹³⁶⁹ *Prosecutor v Oric*, No. IT-03-68-T, *Judgement* (30 June 2006) at para. 35

¹³⁷⁰ [Redacted]

¹³⁷¹ [Redacted]

¹³⁷² [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

his function as commander of the defense of Mostar was outside of the MP structure.¹³⁷⁴ Further, the document on its face purports that the MPA sent the document to itself.¹³⁷⁵ Lastly, as explained by Andabak, the asserted premise, that a brigade commander is not competent to dismiss a Brigade MP, is patently false.¹³⁷⁶ It is apparent someone forged 4D2041.

697. The Trial Chamber cannot base any findings of criminal responsibility that arise from allegations or arguments arising from such documents. To do so would endanger the validity of the proceedings, due to their dubious provenance. A wide variety of documents of this nature underpin the Prosecution's case, including: a) P3179/P3666; b) P3220; c) P3216; d) P3630; e) P3345; f) P3551; g) P2706; h) P5376; i) P3668; j) P3665; k) P3670; l) P3659.

698. Exhibit P3179 was referred to by Prosecutor Laws as "an entirely truthful document"¹³⁷⁷, which purports to be a unsigned report by a MP commander relating to the participation of his forces in evictions of civilians in Mostar. It is a document without stamp or signature, and bearing the logbook sequence beginning with "06" which is not in use in the MP during the relevant time period.¹³⁷⁸ [Redacted].¹³⁷⁹ [Redacted]¹³⁸⁰ [Redacted]¹³⁸¹

The fact that criminal reports exist¹³⁸², filed contemporaneous with the events demonstrates that this Witness' testimony is credible. P3179 is thus cast into serious doubt. P3666 is a similar document again with no signature or stamp, and with the "06" logbook reference, there is no way that two MP could both have the same logbook code, which again did not exist in the structure of the MP at the time. Rather, both are forgeries.

699. [Redacted].¹³⁸³ It is purported to be in response to HVO Col. Obradovic's order asserting his authority over the detained persons and their release. The signature on the face of the Croatian original is not of Coric, but rather purports to be on his behalf by V. Lavric (who was Coric's assistant)[Redacted].¹³⁸⁴

¹³⁷³ Andabak (T.51030/23-25; 51032/13-19)

¹³⁷⁴ Andabak (T.51035/1-4.)

¹³⁷⁵ Andabak (T.51032/22-51033/1)

¹³⁷⁶ Andabak (T.51033/5-9)

¹³⁷⁷ T.51290/8-12

¹³⁷⁸ P4548; P786

¹³⁷⁹ [Redacted]

¹³⁸⁰ [Redacted]

¹³⁸¹ [Redacted]

¹³⁸² E.g.5D5074; 5D5075; 5D5077

¹³⁸³ [Redacted]

¹³⁸⁴ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

700. Exhibit P3220 was relied upon by the Trial Chamber in denying the Rule 98 *bis* motion:

[...]The evidence could also enable the Trial Chamber to conclude that he played a determining role in the decision to release Muslim detainees detained in various HVO detention facilities and to deport them to third countries. For instance, on the 6th of July 1993, the Accused Coric sent a notice to Colonel Obradovic and to the wardens of the Dretelj, Gabela, and heliodrom prisons, and also to the Ljubuski prison, reminding them that the police military administration was the only administration with jurisdiction over military prisoners and was the only authority to decide as to the release of detainees. This notice was admitted as Exhibit P03220.¹³⁸⁵

However P3220 is a forgery that should be disregarded in its entirety. Slobodan Bozic not only testified that he was familiar with the signatures of both Coric and Lavric¹³⁸⁶ and that this signature is not either, he had independent evidence from Lavric:

[...] he told me, "You are not the only one who has forgeries, there are forgeries with my own signature," and he was talking about those two days when he --- when documents appeared related to the defense office in Jablanica because at that time we worked together at the office in Mostar. **And he told me that in talks with you somebody from the Coric team mentioned a document allegedly sent to Colonel Obradovic relating to prisons, and he said he had not signed that document** and some other details which he repeated to me recently when we met, and he knew I was coming here; and he said they had no communication, they from the military police, they had no communications from the prisons in Gabela and Dretelj and the only connection between the military in Dretelj was through the barracks, which is physically separate from the prison compound, something that I wouldn't know because I haven't been there myself. And I'm stating here before the Court what Mr. Lavric told me. **And he also told me that that was not his signature** and that a certain document that your team has presented bears his forged signature.¹³⁸⁷

701. Vidovic, testified that P3220 was a fake.¹³⁸⁸ Vidovic's testimony shows that the factual situation at the time was NOT as P3220 purports to present.¹³⁸⁹ Vidovic's testimony is supported by other evidence, that the MPA did not have authority over detention facilities.¹³⁹⁰ The only conclusion is that P3220 is neither authentic nor authored by Coric, but rather is a clever forgery.

702. P3216, is identical to P3220, against which the defense objected on the basis of its authenticity.¹³⁹¹ [Redacted].¹³⁹²

¹³⁸⁵ T.27228/17-27229/2

¹³⁸⁶ Bozic (T.36412/18-36413/2)

¹³⁸⁷ Bozic (T.36413/6-36414/2)

¹³⁸⁸ Vidovic (T.51738/25-51739/4) [emphasis added]

¹³⁸⁹ Vidovic (T.51732/10-51738/11)

¹³⁹⁰ See, herein Sec. VII.

¹³⁹¹ T.22051/6-12; and 44282/16-44283/6.

¹³⁹² [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Other Prosecution witnesses, all of whom were in positions where they ought to have been in receipt of P3216, as addressed, likewise never saw it prior to OTP interviews.¹³⁹³ Specifically, Josip Praljak also testified that the signature on P3216 did not look like Coric's.¹³⁹⁴

[Redacted]¹³⁹⁵ which certainly is a strong indication that P3216 was NOT in fact created and sent during the relevant time period.

703. [Redacted]¹³⁹⁶ and intended to prove a political decision was made to arrest Bosnian Muslims. It neither has a signature nor any stamp that would act as indicia of authenticity. Secondly, the OTP's own investigation revealed that one of the purported authors denied its authenticity.¹³⁹⁷ Further there is no delivery stamp indicating receipt by anyone. Lastly, multiple other documents authored by Kraljevic (the purported author) demonstrate a stark contrast to this document, in terms of appearance, stamps and signature.¹³⁹⁸

704. Exhibit P3345 purports to demonstrate that Coric is ordering transfer of prisoners from Ljubuski Prison to Split. No witness was asked to comment on the document, but the OTP nonetheless relied on it at 98 *bis* to prove its case.¹³⁹⁹ The following irregularities reveal this document as a forgery. First, the header of the document indicates the wrong department. Secondly, there is no signature, and the stamp used bears the number "2" whereas documents authentically signed by Coric bear the stamp number "1"¹⁴⁰⁰ (as would be logical for his position in the Administration). It is illogical that Coric would use the wrong header and the wrong stamp and then forget to sign the document. Further, the log number in the upper left corner of the document (handwritten) begins with the wrong sequence. The official reference call number for communications from the MPA Chief begin "02-4/3-01"¹⁴⁰¹ which is not the sequence used here. The sequence does contain an unusual code "FK" – which at least one other document of questionable authenticity has, and which Vidovic of the CPD testified was never a code or abbreviation used in the MPA.¹⁴⁰² The document is also inconsistent with the large body of evidence that Coric did not have the authority over prisons.¹⁴⁰³ Lastly, although not addressed to anyone, it bears

¹³⁹³ Josip Praljak(T.15009/24-15010/2); Witness C(T.22397/15-22399/19)

¹³⁹⁴ Josip Praljak (T.15010/3-11)

¹³⁹⁵ [Redacted]

¹³⁹⁶ [Redacted]

¹³⁹⁷ T.38372/18-38374/25

¹³⁹⁸ P2607; P2889; P2961; P5214; P6349; P2412

¹³⁹⁹ T.27183/25-27184/15

¹⁴⁰⁰ e.g. 2D1365; 5D4110

¹⁴⁰¹ P786; P4544; P4548

¹⁴⁰² Vidovic (T.51535/3-16) [about P3613]

¹⁴⁰³ See, herein Sec. VII.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

a “received” stamp purporting to be from the MPA in Mostar, in essence, if this document is believed, Coric would be sending it to himself.

705. Another such document is P2706, which on its face is indicative of forgery. Again we have a document with no signature and the wrong department heading (showing that the document purports to originate from the 3rd company of the 1st MP battalion, as if Coric was a Company commander). As with the previous document the call number in the upper left is showing the wrong origin (ie it is not Coric's official code of “02-4/3-01”). Again the stamp at the signature line is the wrong one, this time numbered “#6” instead of Coric's “#1.” Lastly, the document is not addressed to anyone, and in fact is not stamped as having been received by anyone either.

706. Another such document is P3551, which purports to deal with a report from the SIS of the Rama Brigade on transfer of detained persons of Muslim ethnicity and purports to have Coric reject the admission of these detainees into Heliodrom. First, the evidence is clear that Coric had no role in the running of Heliodrom.¹⁴⁰⁴ The document itself has no letterhead at the top, and has no heading whatsoever to demonstrate that it originated from the MPA, let alone from Coric. The log-book reference call number in the upper left not only is wrong (“3-01-1690” instead of “02-4/3-01”) it does not comport to any reference code sequence in use within the MPA,¹⁴⁰⁵ and the date is also incomplete (19 July but with no year). Other documents in evidence demonstrate that the transfer of these detainees was completed the 16 of July and pertained to Ljubuski NOT Heliodrom.¹⁴⁰⁶ The report¹⁴⁰⁷ this document purports to respond to was not addressed at all to the MPA, nor was the follow-up report from the Rama Brigade in Prozor.¹⁴⁰⁸ It defies logic that Coric would issue such a incomplete looking document, asserting authority he did not possess to decline transfers to Heliodrom, when: a) the original report from the Brigade SIS and Rama Brigade report on transfer were not sent to him; b) the transfer of detainees was to Ljubuski and no one mentioned Heliodrom; c) the transfer was undertaken internally by the Rama Brigade and not the MP; d) the transfer being “declined” was already in fact completed 3 days prior. Lastly, the signature does not resemble exemplars of Coric's signature, and in fact the signature stamp bears “#4” instead of “#1”. In the end this is a not so clever forgery that falls apart with

¹⁴⁰⁴ See, herein Sec. VII. F.

¹⁴⁰⁵ see P786; and P4544

¹⁴⁰⁶ P3498 and P9732.

¹⁴⁰⁷ P3498

¹⁴⁰⁸ P9732

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

a cursory much less detailed review. All the foregoing inconsistencies were ignored by the OTP and it was presented as the key evidence for their claim Coric had authority over Heliodrom prison.¹⁴⁰⁹

707. Another document of questionable authenticity is P5376, purporting to deal with the assignment of police duties to the 6th MP Battalion by the OZ Commander. Both the section on structure¹⁴¹⁰ and command of MP units¹⁴¹¹ show there would be no need for Coric to tell any MP whom they should take orders from in the field. Again as with the above documents, the log-book reference code is the incorrect sequence for documents originating from Coric's office ("02-4/3-04"), and the stamp used to stamp the document is the wrong number (#28 instead of #1), and the signature does not resemble Coric's. Another telling inconsistency is that the sequence number in the upper left is too low, because a document sent on 27.08.1993 (P4838) already has a higher sequence number ("2151/93") than this document ("76/93") allegedly issued one month later, 25.09.1993. Further, P5471, dated 4 days later (29.09.1993) has the higher sequence ("2379/93").

708. P3668, P3665, P3670, P3659 all deal with the same topic and appear to be forgeries generated in the same manner. As a preliminary matter, it should be noted that none of the foregoing documents evidence a stamp in the upper right corner indicating that the same was sent from the HVO archives to the OTP. Instead, P3668 denotes a stamp from the Republic of BiH Institute for Investigation of Crimes against Humanity, dated 18.11.1993. Thus it can be concluded that none of these documents exist in official HVO archives. P3668 itself is handwritten, with no logbook reference number of the sender (as is required), and purporting to have two signatures, but both appearing to be in the same handwriting (with the signature of "Stipe Pole" looking entirely different from exemplars of his signature of record¹⁴¹²). It purports to be sent to Coric but has no received stamp from the MPA. P3665 purports to be a response to P3668, but is unsigned, and does not denote a proper sender from the MPA (ie. it only states it comes from the MPA with no correlating title, function, or name of person "signing", albeit unsigned). The MPA stamp on the document is "#10" which in any event would not correlate to Coric's "#1." Further, the title of the document in the original is "NAREDBA" which is a B/C/S variant of "ORDER" which is NOT used in Croatian, the proper Croatian term would be "ZAPOVJED." The "sender" identified at the top left is the Posusje MP, which is an organizational unit that does not exist, according to the organizational structure of the MP at the time.¹⁴¹³ It is also different from the sender

¹⁴⁰⁹ T.27176/20-23 (Rule 98 bis submission)

¹⁴¹⁰ See, herein Sec. II

¹⁴¹¹ See, herein Sec. III. E.

¹⁴¹² P2836

¹⁴¹³ P2997

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

“signing” (the same un-named MPA department). Under the same organizational structure (P2997) we see the recipient (MP Doljani) also does not exist as an organizational unit of the HVO MP. The log-book reference code in the upper left of the document does not correlate to ANY codes in use by the MPA during the relevant time period.¹⁴¹⁴

[Redacted].¹⁴¹⁵ There is no way that two documents can have the same identical code, and the topics and alleged senders of the two documents are completely different. Besides, it is inconceivable for the MPA unit to be using the HVO Main Staff's log-book and code. P3670 and P3659 purport to originate from the non-existent MP Doljani to the non-existent MP Posusje, and again continue the wrong log book sequence that does not exist in the MP, and with a sequence (“194” and “195”) in the received stamp, as if these documents arrived (with no originating log book number) simultaneous to the sending of P3665 (before any other documents were sent/received), and were recorded at the MPA (instead of the non-existent recipient) but in the log book of the Main Staff (which the MPA would not have) with a reference code that would be 6 months out of date at the Main Staff log-book, and which would be unknown and unfamiliar to the MPA. Again no stamps nor signatures of the “sender” are present, nor is either document addressed to the MPA, but they bear unsigned “Received” stamps from the MPA. Again neither document bears a stamp showing it came from the official HVO archives.

709. Respectfully, all the foregoing documents must be considered forgeries. The motives behind the forgers are unknown, but it is significant to take into account that the foregoing demonstrates a very concerted effort to create false documents bearing Coric's name. This has to be considered very seriously when reviewing the documentary evidence, especially that which not subjected to live testimony. That person(s) felt the compelling need to engage in such efforts to implicate Coric should demonstrate that he in fact was not culpable in any criminal activity.

¹⁴¹⁴ P786

¹⁴¹⁵ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

B. Witnesses with Credibility issues cannot be relied upon to assert criminal responsibility of Coric

710. A number of the witnesses that were called by the OTP to assert the criminal liability of Coric are rightly to be disregarded due to serious credibility issues including: a) Witness E; b) Josip Praljak; c) Suad Cupina; and d) Christopher Beese.

1. Witness E

711. [Redacted]¹⁴¹⁶,

[Redacted].¹⁴¹⁷

712. [Redacted]¹⁴¹⁸,

[Redacted].¹⁴¹⁹

[Redacted]¹⁴²⁰

713. [Redacted],¹⁴²¹

[Redacted]¹⁴²²

[Redacted]¹⁴²³

¹⁴¹⁶ [Redacted]

¹⁴¹⁷ [Redacted]

¹⁴¹⁸ [Redacted]

¹⁴¹⁹ [Redacted]

¹⁴²⁰ [Redacted]

¹⁴²¹ [Redacted]

¹⁴²² [Redacted]

¹⁴²³ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

714. [Redacted]¹⁴²⁴[Redacted].¹⁴²⁵ [Redacted]¹⁴²⁶ [Redacted]¹⁴²⁷ [Redacted].¹⁴²⁸

715. [Redacted].¹⁴²⁹ [Redacted]¹⁴³⁰

716. [Redacted].¹⁴³¹
[Redacted].¹⁴³²

717. [Redacted]¹⁴³³ [Redacted].¹⁴³⁴ [Redacted][Redacted]¹⁴³⁵ [Redacted]¹⁴³⁶ [Redacted]¹⁴³⁷
[Redacted]

¹⁴²⁴ [Redacted]
¹⁴²⁵ [Redacted]
¹⁴²⁶ [Redacted]
¹⁴²⁷ [Redacted]
¹⁴²⁸ [Redacted]
¹⁴²⁹ [Redacted]
¹⁴³⁰ [Redacted]
¹⁴³¹ [Redacted]
¹⁴³² [Redacted]
¹⁴³³ [Redacted]
¹⁴³⁴ [Redacted]
¹⁴³⁵ [Redacted]
¹⁴³⁶ [Redacted]
¹⁴³⁷ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

718. The [Redacted],¹⁴³⁸
[Redacted].¹⁴³⁹

719. [Redacted].¹⁴⁴⁰
[Redacted].¹⁴⁴¹
[Redacted].¹⁴⁴²
[Redacted]

720. [Redacted].¹⁴⁴³
[Redacted]¹⁴⁴⁴
[Redacted].¹⁴⁴⁵
[Redacted].¹⁴⁴⁶
[Redacted];¹⁴⁴⁷
[Redacted]¹⁴⁴⁸

¹⁴³⁸ [Redacted]
¹⁴³⁹ [Redacted]
¹⁴⁴⁰ [Redacted]
¹⁴⁴¹ [Redacted]
¹⁴⁴² [Redacted]
¹⁴⁴³ [Redacted]
¹⁴⁴⁴ [Redacted]
¹⁴⁴⁵ [Redacted]
¹⁴⁴⁶ [Redacted]
¹⁴⁴⁷ [Redacted]
¹⁴⁴⁸ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

721. [Redacted]¹⁴⁴⁹

[Redacted]¹⁴⁵⁰

[Redacted]¹⁴⁵¹

722. [Redacted]¹⁴⁵² [Redacted]¹⁴⁵³

[Redacted]

[Redacted]¹⁴⁵⁴

723. [Redacted]¹⁴⁵⁵ [Redacted]

¹⁴⁴⁹ [Redacted]

¹⁴⁵⁰ [Redacted]

¹⁴⁵¹ [Redacted]

¹⁴⁵² [Redacted]

¹⁴⁵³ [Redacted]

¹⁴⁵⁴ [Redacted]

¹⁴⁵⁵ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

2. Josip Praljak

724. Praljak testified that Coric selected and appointed him deputy warden and also appointed the warden(s) of Heliodrom;¹⁴⁵⁶ that he and other staff at Heliodrom were MP;¹⁴⁵⁷ that Coric had authority over the warden at Heliodrom;¹⁴⁵⁸ that Heliodrom was under the command of the MP;¹⁴⁵⁹ that the Coric exercised authority to order the release of civilian persons detained at Heliodrom.¹⁴⁶⁰

725. This witness denied his culpability for crimes that are alleged by the OTP to have been committed by him. Certainly one who is a suspect, attempting to cast responsibility away from himself must be considered with caution, as his motive to lie for self-preservation is high. The evasiveness of Praljak's testimony was even noted by Judge Antonetti.¹⁴⁶¹ On the other hand, Judge Trechsel was frustrated that he could not get a logical and clear answer from the witness as to dates when prisoners were released and concurrence between Praljak's diary and official documents.¹⁴⁶²

726. The testimony of this witness was in several respects inconsistent with itself, such as when Praljak testified about mass releases from Heliodrom referring consistently to September of 1993.¹⁴⁶³ At the same time, he connected the event with the closure of HVO prisons in October or November.¹⁴⁶⁴ However, independent evidence demonstrates that the closure of HVO prisons and mass prisoner release took place in December of 1993.¹⁴⁶⁵

727. Despite testifying that he lacked "experience" in Prison affairs¹⁴⁶⁶, Praljak testified of his decades of work at the District prison in Mostar¹⁴⁶⁷ and about his proficient knowledge of the 'higher up' authorities responsible for Heliodrom,¹⁴⁶⁸ and that "What I know best is the prison system."¹⁴⁶⁹

¹⁴⁵⁶ Josip Praljak (T.14643/23-14645/4; 14654/18-21; 14657/2-24)

¹⁴⁵⁷ Josip Praljak (T.14661/19-24; 14662/23-14663/3)

¹⁴⁵⁸ Josip Praljak (T.14662/8-9)

¹⁴⁵⁹ Josip Praljak (T.14668/13 and 14943/7-13)

¹⁴⁶⁰ Josip Praljak (T.14690/2-14691/9); P2260; P2285

¹⁴⁶¹ Josip Praljak (T.14930/4-7)

¹⁴⁶² Josip Praljak (T.14934/14-14935/10)

¹⁴⁶³ Josip Praljak (T.14722/16-19)

¹⁴⁶⁴ Josip Praljak (T.14722/8 – 14723/5)

¹⁴⁶⁵ Biskic (T.15091/2-24)

¹⁴⁶⁶ Josip Praljak (T.14660/22-23)

¹⁴⁶⁷ Josip Praljak (T.14638/18-14639/10)

¹⁴⁶⁸ Josip Praljak (T.14653/20-23; 14643/23-14645/4; 14654/18-21; 14690/2-14691/9; 14662/8-9; 14668/13)

¹⁴⁶⁹ Josip Praljak (T.14917/21-22)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

728. Praljak several times testified that he was a received a salary from the MPA.¹⁴⁷⁰ However, he also testified that Ivan Ančić, did not give him, the whole salary of a military policeman because Ančić considered him a civilian.¹⁴⁷¹ It should be noted that Ančić, as the MP Commander of the Battalion on whose territory Heliodrom is located, would have been best-placed to know if Praljak was a military policeman. In any event Praljak contradicted his earlier testimony when he confirmed that the only reason he received any part of his salary from the MP (albeit at the rate of a civilian) was to ensure he received something pending resolution of the prison's status by the authorities.¹⁴⁷²

729. Pero Nikolic, a witness who knew Praljak very well testified that he appointed Praljak as his deputy in the prison during construction because Praljak was a construction technician.¹⁴⁷³ Nikolic went on to state Praljak was never a military policeman¹⁴⁷⁴ and he personally never saw Praljak wearing a MP uniform while at Heliodrom.¹⁴⁷⁵ Vidovic also testified that he was under the impression that Praljak was an employee of the military judiciary.¹⁴⁷⁶

730. After initially stating that neither he nor others working at Heliodrom knew the classification of prisoners until June 30, 1993¹⁴⁷⁷ Praljak then changed his testimony to state that they did not know even after June 30, 1993.¹⁴⁷⁸ Despite earlier testifying that he knew of not a single instance where any detainees from Heliodrom were mistreated¹⁴⁷⁹ or died,¹⁴⁸⁰ Praljak later testified that he heard detainees had sustained wounds or were killed.¹⁴⁸¹ Lastly, Praljak admitted to falsely telling investigators that he gave reports to Ivo Lucic, confirming that no reports were ever generated.¹⁴⁸²

731. Praljak's claim of having met with and been appointed by Coric, is unsupported. This claim is based on the one hand, on a phone call¹⁴⁸³ and on the other hand, on a meeting, which he, Coric and Pero Nikolic attended.¹⁴⁸⁴ Mr. Nikolic clearly stated Josip Praljak never once mentioned Coric had any

¹⁴⁷⁰ Josip Praljak (T.14642/13-18; 14661/19-24; 14662/23-14663/3)

¹⁴⁷¹ Josip Praljak (T.14964: 7-17)

¹⁴⁷² Josip Praljak (T.14964/12-25)

¹⁴⁷³ Nikolic (T.51395/23-51396/2)

¹⁴⁷⁴ Nikolic (5D5111 para. 12)

¹⁴⁷⁵ Nikolic (T.51413/20-51415/20)

¹⁴⁷⁶ Vidovic (T.51729/17-23)

¹⁴⁷⁷ Josip Praljak (T.14710/17-14712/6)

¹⁴⁷⁸ Josip Praljak (T.14724/17-21)

¹⁴⁷⁹ Josip Praljak (T.14658/18-25)

¹⁴⁸⁰ Josip Praljak (T.14678/11-17)

¹⁴⁸¹ Josip Praljak (T.14951/23-14952/4)

¹⁴⁸² Josip Praljak (T.14965/1-17)

¹⁴⁸³ Josip Praljak (T.14657/2-24)

¹⁴⁸⁴ Josip Praljak (T.14639/25-14640/6)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

role in appointing him or anyone else at *Heliodrom*.¹⁴⁸⁵ Nikolic unequivocally denied any meeting either.¹⁴⁸⁶ Nikolic has a close relationship with Praljak being the godfather of his children.¹⁴⁸⁷ Nikolic therefore has no reason to lie.

732. Contrary to the statements of Praljak that the MP was involved in the practice of taking prisoners out of the detention facilities for labor;¹⁴⁸⁸ a significant amount of evidence demonstrated the MPA was not at all involved in decisions of brigade commanders to take these prisoners out.¹⁴⁸⁹ The fact that the brigade commanders were ordered by the Main Staff to stop their prior practice and not to use prisoners for labour, without special permits,¹⁴⁹⁰ confirms that the HVO brigades were involved in this practice, as Praljak even conceded in the case of Mostar.¹⁴⁹¹

733. Whereas Praljak attributed to Pusic the authority to release detainees due to his status within the MP¹⁴⁹² other evidence demonstrated Pusic was head of the Service for exchange of detained persons.¹⁴⁹³

734. Praljak's diary¹⁴⁹⁴ was shown to be false. Vidovic testified that an entry wherein Praljak claimed to have a meeting with him could not be true as Vidovic was searching for the fate of his uncle at the front-line during those days and could not have been at Heliodrom.¹⁴⁹⁵ Other witnesses, such as Nikolic¹⁴⁹⁶ [Redacted]¹⁴⁹⁷ [Redacted]. Respectfully, based upon the foregoing indications that this witness's credibility is doubtful, the Chamber ought not to rely on the same.

¹⁴⁸⁵ Nikolic (5D5111, para. 13)

¹⁴⁸⁶ Nikolic (T.51431/6-21)

¹⁴⁸⁷ Nikolic (5D5111 par. 14)

¹⁴⁸⁸ Josip Praljak (T.14742/4-13)

¹⁴⁸⁹ P3793; P4750; [Redacted] Pavlovic (T. 47020/5-17); Petkovic (T.50277/19 –50279/19)

¹⁴⁹⁰ P5881

¹⁴⁹¹ Josip Praljak (T.14949/3-21)

¹⁴⁹² Josip Praljak (T.14690/2-14691/9; 14696/4-14699/9)

¹⁴⁹³ P3191

¹⁴⁹⁴ P352

¹⁴⁹⁵ Vidovic (T.51740/14-51741/25)

¹⁴⁹⁶ Nikolic (T.51401/13-51403/6)

¹⁴⁹⁷ [Redacted]

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

3. Suad Cupina

735. The demeanor of Suad Cupina while he was testifying denoted a lack of candor. Cupina was consistently reluctant to address the specific questions posed instead presenting long, irrelevant monologues.¹⁴⁹⁸ He made even unreasonable statements, such as that he was appointed to commander, but he did not have any subordinates.¹⁴⁹⁹

736. In addition, he mentioned several different dates regarding his appointment as a commander, as follows: a) 6 June 1992;¹⁵⁰⁰ b) 12 June 1992;¹⁵⁰¹ c) not until 1996;¹⁵⁰² and d) 20 June 1992.¹⁵⁰³ Such a wide-ranging uncertainty of dates denotes a level of dishonesty. He frequently had serious difficulties concerning the chronology of events as well.¹⁵⁰⁴

737. Cupina stated that although he was the president of the Commission of the Exchange of Soldiers and Civilians of the 4th Corps, as far as he knew there were not any HVO prisoners being detained.¹⁵⁰⁵ The lie was proven later when it was revealed HVO members were detained in the SDK building which was located across the road from his the headquarters and office, and that among those detained was Igor Kapor, whose exchange was arranged by Cupina himself.¹⁵⁰⁶ Cupina admitted knowing of exchanges of prisoners and being present when Kapor was exchanged, but incredibly still denied knowing that his side had any such prisoners to exchange.¹⁵⁰⁷ Most importantly, Cupina could not explain away the apparent contradiction with his report.¹⁵⁰⁸

738. Cupina also demonstrated a great deal of animosity/hatred towards Croats. Specifically, Cupina published a book in which he equates Serbian fascism and the fascism of Tudjman.¹⁵⁰⁹ Specifically with regard to Coric, it should be noted Cupina held a personal grudge against him, as in his book Cupina claimed Coric wrote a letter as "a political attempt in the difficult military and political circumstances to exert psychological pressure and political pressure upon me."¹⁵¹⁰ He also made the

¹⁴⁹⁸ Cupina (T.4902/13 – 4904/19; 4893/8 – 4894/23)

¹⁴⁹⁹ Cupina (T.4795/13-23)

¹⁵⁰⁰ Cupina (T.4787/6-7)

¹⁵⁰¹ Cupina (T.4790/1-3)

¹⁵⁰² Cupina (T.4790/16-22)

¹⁵⁰³ Cupina (T.4791/11-14)

¹⁵⁰⁴ Cupina (T.4856/8-22; 4912/13-19)

¹⁵⁰⁵ Cupina (T.4846/5-11)

¹⁵⁰⁶ Cupina (T.5000/1 – 5002/11)

¹⁵⁰⁷ Cupina (T.5001/13-5003/13)

¹⁵⁰⁸ Cupina (T.5004/21-5005/5)

¹⁵⁰⁹ Cupina (T.4782/6-13)

¹⁵¹⁰ Cupina (T.5019/23-5020/1)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

bold claim that Coric was the main destroyer of all bridges on the Neretva River, albeit with no evidence to back that up.¹⁵¹¹ It is thus obvious that there is a personal motive to lie against Coric. Cupina also admitted to using the OTP's Indictment as the basis for writing his book.¹⁵¹² As such he has a very personal motive to tailor his testimony in favor of the indictment.

4. Christopher Beese

739. [Redacted].¹⁵¹³ Presumably these notes would have offered insight into his state of mind, given that Beese could not account for significant differences between his testimony of an incident near Stolac, and the official ECMM report.¹⁵¹⁴

[Redacted]¹⁵¹⁵

whereas Beese's testimony invoked images of wounded Bosnian Muslim civilians, including one dead female,¹⁵¹⁶ and the lack of any response by Coric, among others, to complaints of this incident.¹⁵¹⁷ The report is clear that the event was not as described by Beese and that the authorities did respond.

740. Beese stated that he arrived as a monitor of the ECMM "with an open mind",¹⁵¹⁸ however, his testimony revealed otherwise, namely that Beese shared a personal prejudice against Croats, which gives him a strong personal motive to tilt his testimony. Quite possibly this lack of objectivity is merely the result of lacking any in-depth knowledge about the political context in Bosnia-Herzegovina.¹⁵¹⁹ Regarding the structure of military units the same lack of in-depth knowledge became apparent.¹⁵²⁰ Beese even omitted gathering more information by minimal effort.¹⁵²¹

741. Beese expressed what could be regarded as apparent disdain for the HVO, as being "obstructive" to the peace process.¹⁵²² Beese stated that the Bosnian party adhered better to the cease-fire. However, on the very day of the agreement Sefer Halilovic made a statement for a Spanish

¹⁵¹¹ Cupina (T.5023/9-17)

¹⁵¹² Cupina (T.5023/2-7)

¹⁵¹³ [Redacted]

¹⁵¹⁴ Beese (T.3100/30-3101/10)

¹⁵¹⁵ [Redacted]

¹⁵¹⁶ Beese (T.3094/5-3095/24)

¹⁵¹⁷ Beese (T.3097/16-3099/4)

¹⁵¹⁸ Beese (T.5190/13)

¹⁵¹⁹ Beese (T.5269/22 – 5272/5; 5278/16 – 5280/22; 5375/20-25)

¹⁵²⁰ Beese (T.5281/21 – 5282/12; 5285/16 – 5286/7)

¹⁵²¹ Beese (T.3137/4-14)

¹⁵²² Beese (T.3105/11-13; 5379/7-21)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

newspaper about his intent to go on fighting, which would logically lead to the opposite conclusion.¹⁵²³ Beese insisted that the Bosnian Muslims seemed to be “more enthusiastic” at the negotiating table, even when confronted with Halilovic’s statements.¹⁵²⁴ Additionally, Beese affirmed his view condoning atrocities committed by Muslim forces.¹⁵²⁵ He prepared his ECMM reports without even trying to be impartial, disregarding atrocities committed by the Muslim army.¹⁵²⁶

742. Beese’s diary demonstrated a prejudice against Croats, whom he sees in general as arrogant, radical nationalistic, primitive.¹⁵²⁷ His diary makes derogatory statements, as follows: a) “[...] relatively well-off, arrogant, and fiercely nationalistic.”¹⁵²⁸; b) “[...] considered themselves to be superior to their neighbours, the Muslims and Serbs, more civilised and more Westernised. Their links to Germany were exceptionally strong during World War II, [...]”¹⁵²⁹;

c) [Redacted]

d) [Redacted].¹⁵³⁰

743. Contradictions in Beese’s testimony create credibility issues. Beese described Coric’s complaints about the presence of the Mujahedin as deceptive “propaganda”, which aimed to convince the people that Muslims were extreme so that they leave their homes.¹⁵³¹ From such a description one would expect Coric’s statements were false. However Beese essentially admitted that there was a legitimate factual basis for Coric’s statements.¹⁵³² Beese even confirmed that preventive acts taken were reasonable.¹⁵³³ Indeed Beese was ill-placed to make any negative conclusion as to Coric’s motives, insofar as they met less than 5 times.¹⁵³⁴ Rather than depicting Coric as deceptive or propagandistic, Beese described Coric as “straightforward”.¹⁵³⁵ These contradictions clearly show Beese was exaggerating his testimony to be negative toward Coric.

¹⁵²³ 2D48; Beese (T.5378/6-5379/15)

¹⁵²⁴ Beese (T.5377/15 – 5380/3)

¹⁵²⁵ Beese (T.5207/18 – 5208/12)

¹⁵²⁶ Beese (T.5397/8 – 5398/16)

¹⁵²⁷ Beese (T.5221/11-22)

¹⁵²⁸ Beese (T.5225/18-19)

¹⁵²⁹ Beese (T.5225/20-25)

¹⁵³⁰ [Redacted]

¹⁵³¹ Beese (T.3247/20 – 3248/11; 3257/21 – 3258/1)

¹⁵³² Beese (T.5239/17 – 5240/7)

¹⁵³³ Beese (T.5241/7 – 5244/16)

¹⁵³⁴ Beese (T.3213/16-19)

¹⁵³⁵ Beese (T.3215/7-10)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

744. Beese drew overreaching conclusions that overstated his evidence. For instance, he testified that the carriage of prisoners in ambulances was "routine" for the HVO.¹⁵³⁶ But it was revealed that there was only one occasion when he saw an ambulance from a distance of approximately 25 meters, and he could not identify the uniform.¹⁵³⁷

745. Another issue with Beese's credibility is his lack of appropriate training/expertise. Beese admitted his primary knowledge of the region was garnered from TV.¹⁵³⁸ He conceded his only preparations covered how to use communications equipment, first aid, and the general situation.¹⁵³⁹

746. The OTP wished to present Beese almost as a quasi-expert to opine upon these very same things he admittedly lacked qualification for: a) the functioning of the MP;¹⁵⁴⁰ and b) the command and control within the HVO.¹⁵⁴¹ Beese drew conclusions without any regard to relevant military doctrines. Beese lacked knowledge as to the functioning of the All Peoples Defense military doctrine.¹⁵⁴² Indeed, the Beese's conclusions as to the MP run contrary to other evidence.¹⁵⁴³

747. The cumulative effect of all the foregoing deficiencies relating to Beese's testimony is to render that testimony wholly unreliable.

¹⁵³⁶ Beese (T.3214/8-11)

¹⁵³⁷ Beese (T.5237/1 – 5238/12)

¹⁵³⁸ Beese (T.3056/17-23)

¹⁵³⁹ Beese (T.3057/4-11)

¹⁵⁴⁰ Beese (T.3214/15-24)

¹⁵⁴¹ Beese (T.3215/11-3218/11)

¹⁵⁴² Beese (T.5269/22-5283/15)

¹⁵⁴³ See. herein Sec. III.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

C. Other Problems with Documents

748. Some documents require closer scrutiny for other reasons. P2697 is a document that attempts to present a false picture. Dated 9.6.1993, it is a report from Siljeg purporting to complain of misconduct of the MP, including the misappropriation of fuel trucks that were part of a UNPROFOR convoy. This document has no signature, has no stamp, and no other information suggesting that it left the Main Staff or arrived at the MPA. Likewise, other evidence contradicts the story contained therein. Specifically, P2709, a contemporaneous report of the UNPROFOR states that the fuel trucks in question were found in possession of Siljeg who refused to return them and vocally disagreed with the decision to return them. Haunstein confirmed the UNPROFOR report and incident.¹⁵⁴⁴ Further, a MP extraordinary report dated 2.6.1993 clearly identifies that vehicles/supplies were confiscated in Grabovine, after the vehicles were stopped by the brigade police.¹⁵⁴⁵ It should be recalled Grabovine was where Col. Obradovic of the HVO was situated, and that the Brigade MP fell under his authority. Obviously Siljeg is trying to pass responsibility by way of P2697, thus in no way can it be said this is misconduct of the MP. There was other evidence of Siljeg's involvement in trying to create a false impression of MP misconduct.¹⁵⁴⁶

749. P2295 is another document from a HVO commander (Blaskic) that complains of the actions of MP but in vague terms, calling for an investigation into some incident relative to a convoy, and attempting to assign a new commander. Coric rightly responds to this document in P3728, reminding Blaskic to follow proper procedure and liase with the MP assistant head in the Zone on any appointments, and responds to the vague complaints asking for a detailed report and analysis of the work of MP in the zone, which the MPA will wait for. There is no evidence of such a report being sent by Blaskic following this date to allow the MPA to act.

750. P3060 is a document that purports to be a report of Coric on behalf of the MPA, however a cursory much less detailed review of the document demonstrates that the cover page is of the MP report, but the text is a report from the administrations of the Defense Department, which in pertinent part refers to a MP report being attached separately, but which is not present.¹⁵⁴⁷ Clearly someone has jumbled the pages such that what is presented is not accurately described. In fact the relevant MPA report that should accompany the cover page is in evidence as 2D1366.

¹⁵⁴⁴ Haunstein (T.7853/12-7854/2)

¹⁵⁴⁵ P2961

¹⁵⁴⁶ P4792

¹⁵⁴⁷ P3060, pg 37

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

751. P9329 is a handwritten document for which the second page is missing, and whose title in e-court is incorrect/misleading. Likewise there is no signature so its provenance is very suspect. Lastly the Croat original does not comport to the translation. It was not shown to any witness and thus was not explained at all. For those reasons this document should not be relied upon in.

XVII. THE OTP HAS FAILED TO MEET ITS BURDEN OF PROOF TO ESTABLISH THE DEATHS OF ALLEGED MURDER VICTIMS

752. According to the Appeals Chamber, the OTP must establish that 'the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.'¹⁵⁴⁸ Whilst the criminal responsibility of the Accused is subject of other parts of this Final Brief, this section will focus on instances in which the OTP has failed to establish an alleged victim has, in fact, died. For the following persons named in the Confidential Amended Annex to the Indictment¹⁵⁴⁹, the OTP has failed to prove the deaths of victims beyond a reasonable doubt, let alone that these deaths were the proximate and direct result of criminal acts that would be known of or attributable to Coric. As a preliminary matter, the OTP list of victims contains many duplicate names. Surely that in itself belies the unreliable nature of the same.

753. For no fewer than 49 alleged victims, no evidence of their death was provided whatsoever, and thus it must be considered that their death was not proven adequately.¹⁵⁵⁰ Significantly 5 such persons are listed multiple times: a) Saša Grabović (§ 130.16)¹⁵⁵¹; b) Muhamed Muminagić (§ 130.38)¹⁵⁵²; c)

¹⁵⁴⁸ *Prosecutor v Kvočka et al.*, case No. IT-98-30/1-A, Appeals Chamber judgement, of 28 feb 05, para. 260

¹⁵⁴⁹ (p. 18810-18839).

¹⁵⁵⁰ Adem Avdić (§ 114.2), Samija Bucman (§ 114.4), Remzo Čenan (§ 114.5), (Jure) Nedeljko Cvitanović (§ 114.6), Nijaz Fazlagić (§ 114.8), Mithat Hebib (§ 114.9), Haso Jugo (114.10), Šaćir Jusufović (§ 114.12), Adis Kelecija (§ 114.13), Adisa Mahmutović (§ 114.14), Emela Merzić (§ 114.15), Sadeta Merzić (§ 114.16), Đani Oručević (§ 114.17), Šaćir Rahimić (§ 114.18), Fatima Sabljic (§ 114.19), Hidajif Šikalo (§ 114.20), Stjepan Sforcan (§ 114.21), Bajko Baštić (§ 130.1), Hasan Cevra (§ 130.5), Mujo Čilić (§ 130.7), Miro Colić (§130.9), Aziz Čolaković (§ 130.10), Hamdija Čolaković (§ 130.11), Saša Grabović (§ 130.16), Ibro Hodžić (§ 130.25), Zikret Karso (§ 130.29), Muhamed Muminagić (§ 130.38)¹⁵⁵⁰, Alija Polčić, Elvis Pajo (§ 130.41), (§ 130.43), Senad Šafro (§ 130.46), Čedo Sijeković (§130.48), Elven Šuta (§ 130.50), Afan Torla (§ 130.55), Muhamed Alić (§ 138.1), Bajro Alić (§ 138.2), Željko Čakalović (§ 138.3), Saša Fejzić (§ 138.5), Salih Halilović (§ 138.8), Edin Kaltak (§ 138.12), Arif Omanović (§ 138.13), Haris Turković (§ 138.14), Želimir Čokalović (§ 139.5), Sudo Dedajić (§ 139.6), Rasim Lulić (§ 139.11), Nijaz Nurko (§ 139.12), Džemal Sabitović (§ 139.13), FNU Začinović (§ 139.16), Sead aka Esad Kasim Kahrmanović (§ 192.2) Alija Čolaković (§ 200.1), Sreten Kapetanović (§ 200.4) and Enver Šabanović (§ 200.6).

¹⁵⁵¹ The same person as Saša Grabovac (§ 130.17)

¹⁵⁵² The same person as Mehmed Muminagić (§ 130.39)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

Afan Torla (§ 130.55)¹⁵⁵³; d) Sudo Dedajić (§ 139.6)¹⁵⁵⁴; and e) Sead aka Esad aka Kasim Kahrmanović (§ 192.2)¹⁵⁵⁵

754. For other alleged victims some evidence is available, but this evidence is grossly insufficient to prove 'beyond a reasonable doubt' that they have died. For a significant amount of victims, the *only* evidence of their death is that their names are included on certain lists. No indicia of credibility or other evidence was led about the manner in which the lists were prepared. Reliance on these lists to prove death and assert criminal liability would be violative of *in dubio pro reo*, and Rules 92 *bis* and *ter* as they relate to written statements alleging death whose author has not been subjected to cross-examination.

755. Lists prepared by out of court declarants used as the sole evidence to prove deaths for which the accused is charged with criminal liability violate Rule 92*ter* insofar as the author of the lists is not present in court to be confronted and cross-examined by the parties.

756. On the other hand Rule 92*bis* disallows written statements of evidence that go towards the acts/conduct of the Accused as alleged in the indictment¹⁵⁵⁶ and has been ruled by the Appeals Chamber to include conduct of alleged subordinates of the accused.¹⁵⁵⁷ Similarly, evidence inappropriate under Rule 92*bis* scrutiny, cannot be admissible and relied upon under rule 89 as a means of escaping the strict scrutiny of 92*bis*, as two Appeal Chambers have held.¹⁵⁵⁸ Thus reliance on lists as the sole evidence to prove deaths is also not permitted under the rules and jurisprudence.

757. The deaths of a few persons on these lists are based upon a single witness, but as will be demonstrated below, little probative value can be attached to such evidence. For some other alleged victims mentioned below, the only evidence of their death is a single witness statement, which furthermore is often based on uncorroborated hearsay. These do not, and cannot, beyond a reasonable doubt prove that a person died, let alone in the criminal manner attributable to the accused.

¹⁵⁵³ The same person as Irfan Terlo (§ 130.53) and Irfan Tole (§ 130.54)

¹⁵⁵⁴ The same person as Mensud Dedajić (§ 139.7)

¹⁵⁵⁵ No link was established between this alleged victim and the deaths reported in the Dretelj District Military Prison.

¹⁵⁵⁶ Rules of Procedure and Evidence, Rule 92 *bis*

¹⁵⁵⁷ Prosecutor vs. Galic, IT-98-29-AR73.2 "Decision on Interlocutory Appeal Concerning Rule 92 bis (c)" 7 June 2002.

¹⁵⁵⁸ Prosecutor vs. Galic, IT-98-29-AR73.2 "Decision on Interlocutory Appeal Concerning Rule 92 bis (c)" 7 June 2002; Prosecutor vs. Milosevic, IT-02-54-AR73.2, "Decision on Admissibility of Prosecution Investigator's Evidence" 30 Sept. 2002.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

758. [Redacted].¹⁵⁵⁹ This document does not list any details of the death of these three alleged victims, and states nothing beyond that the persons on them were listed as missing or killed on the above-mentioned date.

759. Emir Šabić (§ 56.17) is listed in a similar way. The additional evidence on his death is based on hearsay.¹⁵⁶⁰ Importantly, his body was not found in a grave that contained other victims the witness spoke about.¹⁵⁶¹

760. [Redacted] ¹⁵⁶² [Redacted].¹⁵⁶³

761. [Redacted] ¹⁵⁶⁴ The mere fact they were detained there does not prove they died. In addition and importantly, their DNA was not found in the Goranci secondary Grave, in which the DNA of all other alleged victims in this paragraph were found. The only evidence rendered for the alleged victim (Osman) Edina Elezović (§ 114.7) mentions him as wounded, but offers no proof on his death.¹⁵⁶⁵

762. For a large number of the alleged victims¹⁵⁶⁶ the only evidence for their death comes from a number of reports¹⁵⁶⁷ and lists¹⁵⁶⁸ of prisoners who allegedly died during work or, for some, in the camps. The lists were based exclusively on reports drafted by the prison warden, Stanko Božić. Therefore, while multiple listings are possible, they are *all* based on one single source: reports by or in the name of Božić. Mr. Božić was not present at the scene where the labor took place, and based his submissions on who had died only on what he was told. Most importantly, Božić was not brought as a witness so as to be cross-examined on the information upon which these reports are based or so that

¹⁵⁵⁹ [Redacted]

¹⁵⁶⁰ Witness BL (T.5878/8-10)

¹⁵⁶¹ Witness BL (T.5878/8-10) - "Emir Sabic, he was also killed. Behaim confirmed this when we spoke to each other and compiled a list of those who had survived and those who had been killed"

¹⁵⁶² [Redacted]

¹⁵⁶³ [Redacted]

¹⁵⁶⁴ [Redacted]

¹⁵⁶⁵ P7787

¹⁵⁶⁶ Semir Berić (§ 130.2), Adis Brković (§ 130.3), Ašim Drljević (§ 130.12), Vahid Durkić (§ 130.13), Ašim Drljević (§ 130.14), Ibrahim Filandra (§ 130.15), Saša Grabovac (§ 130.17), Muharem Gudić (§ 130.18), Zahid Hadžić (§ 130.19), Ahmet Hajrić (§ 130.21), Zuka Hajrović (§ 130.22), Nesib Halilović (§ 130.23), Zahid Hadžić (§ 130.24), Salem Hurseinović (§ 130.26), Ahmet Kajrić (§ 130.28), Azim Karadžuz (130.30), Zuka Hajrović (§ 130.31), Sakib Malahasić (§ 130.34), Ramiz Mehmedović (§ 130.35), Veleidin Mezetović (§ 130.36), Sakib Mulahasić (§ 130.37), Mehmed Muminagić (§ 130.39), Nedžad Nožić (§ 130.40), Semir Perić (§ 130.42), Avdo Selimanović (§ 130.47), Irfan Terlo (§ 130.53), Irfan Tole (§ 130.54), Memhed Tumbić (§ 130.56), Husnija Čorojević (§ 138.3), Havdo Jelin (§ 138.6), Mustafa LNU (§ 138.7), Mustafa Kahvić aka Mujo (§ 138.9)¹⁵⁶⁶, FNU Kajtaz ((§ 138.11), Haris Začinagić (§ 138.15), Salim Alilović (§ 139.1), Haris Balić (§ 139.2), Asif Čakram (§ 139.3), Mensud Dedajić (§ 139.7), Mujo Kahvić (§ 139.8), Mustafa Kahvić (§ 139.9), Salem Kladušak (§ 139.10) Menso Salman (§ 139.14) and Kemal Zuhrić (§ 139.17).

¹⁵⁶⁷ E.g. P4393; P4675; P4725; P4754; P4779; P4883; P5132; P5242; P5280; P5343; P5430

¹⁵⁶⁸ P7498

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

his credibility can be assessed. Accordingly it would be improper to rely on his reports by themselves for proof of death.

763. Besides the documents referred to above, other documents in which the names of the alleged victims are mentioned are P7498, which is a "list of prisoners of war and civilians who have died during work" of 6 January 1994, and P8428, which is a document containing "reports concerning the mistreatment, deaths, wounding and escape of prisoners of war while working" of 12 August 1994. Both documents are compilations of earlier reports. P7498, for example, is report number 139 taken up in Exhibit P8428. Because this is the case, these lists cannot provide any further evidence on the death of the alleged victims. They are merely restatements of the kind of unreliable reports mentioned earlier.

764. Illustrative of the unreliability and one-on-one copying of the various lists is that quite often the names of alleged victims are misspelled, resulting in double or even triple listings – under different names - of the same alleged victim.¹⁵⁶⁹ A clear example of such double listing is the case of Saša Grabovac and Ahmet Hajrić mentioned as reported dead on the 21st of August 1993 in Exhibit P8428, number 91. They are both mentioned again as dead on a list of the 4th of September 1993 as Saša Grabovac and Ahmet Kajrić in P8428, number 67 and in P8428 in number 46. The Confidential Annex lists both an Ahmet Hajrić and an Ahmet Kajrić as alleged victims. The OTP has often made such double or triple listings – under different names - of alleged victims¹⁵⁷⁰ as follows: a) Semir Berić (§ 130.2)¹⁵⁷¹; b) Ašim Drljević (§ 130.12)¹⁵⁷²; c) Ašim Drljević (§ 130.14)¹⁵⁷³; d) Saša Grabovac (§ 130.17)¹⁵⁷⁴; e) Zahid Hadžić (§ 130.19)¹⁵⁷⁵; f) Ahmet Hajrić (§ 130.21)¹⁵⁷⁶; g) Zuka Hajrović (§ 130.22)¹⁵⁷⁷; h) Zahid Hadžić (§ 130.24)¹⁵⁷⁸; i) Ahmet Kajrić (§ 130.28)¹⁵⁷⁹; j) Zuka Hajrović (§ 130.31)¹⁵⁸⁰; k) Sakib Malahasić (§ 130.34)¹⁵⁸¹; l) Sakib Mulašasić (§ 130.37)¹⁵⁸²; m) Mehmed Muminagić (§ 130.39)¹⁵⁸³; n) Semir Perić (§ 130.42)¹⁵⁸⁴; o) Irfan Terlo (§ 130.53)¹⁵⁸⁵; p) Irfan Tole (§

¹⁵⁶⁹ The alleged victim being the person named by the Prosecution in the Confidential Annex to the indictment.

¹⁵⁷⁰ See Mehmed Muminagić (§ 130.39) and Muhamed Muminagić (§ 130.38); Afan Torla (§ 130.55) and Irfan Terlo (§ 130.53) or Irfan Tole (§ 130.54); Mensud Dedajić (§ 139.7) and Sudo Dedajić (§ 139.6)

¹⁵⁷¹ The same person as Semir Perić (§ 130.42)

¹⁵⁷² The same person as Ašim Drljević (§ 130.14)

¹⁵⁷³ The same person as Ašim Drljević (§ 130.12)

¹⁵⁷⁴ The same person as Saša Grabović (§ 130.16)

¹⁵⁷⁵ The same person as Zahid Hadžić (§ 130.24)

¹⁵⁷⁶ The same person as Ahmet Kajrić (§ 130.28)

¹⁵⁷⁷ The same person as Zuka Hajrović (§ 130.31)

¹⁵⁷⁸ The same person as Zahid Hadžić (§ 130.19)

¹⁵⁷⁹ The same person as Ahmet Hajrić (§ 130.21)

¹⁵⁸⁰ The same person as Zuka Hajrović (§ 130.22)

¹⁵⁸¹ The same person as Sakib Mulašasić (§ 130.37)

¹⁵⁸² The same person as Sakib Malahasić (§ 130.34)

¹⁵⁸³ The same person as Muhamed Muminagić (§ 130.38)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

130.54)¹⁵⁸⁶ ; q) Mustafa LNU (§ 138.7)¹⁵⁸⁷; r) Mustafa Kahvić aka Mujo (§ 138.9)¹⁵⁸⁸; s) FNU Kajtaz ((§ 138.11);¹⁵⁸⁹ t) Mensud Dedajić (§ 139.7)¹⁵⁹⁰; u) Mujo Kahvić (§ 139.8)¹⁵⁹¹; v) Mustafa Kahvić (§ 139.9)¹⁵⁹²; w) Salem Kladušak (§ 139.10)¹⁵⁹³

765. Mustafa Hadrović provided evidence that a number of alleged victims mentioned in reports or lists were taken for work and did not come back.¹⁵⁹⁴ Alleged victims mentioned by this witness are Samir Čehajić (§ 130.4), Huso Ljević (§ 130.33), Enver Puzić (§ 130.44), Remza Sablijić (§ 130.45) and Enver Kajtaz (§ 138.10). Importantly, the testimony only corroborates the fact that these alleged victims were taken for work, *not* that they were killed. In addition, the witness was a detainee residing in a large facility during chaotic times. He can only guess as to where prisoners were to be taken. After all, as the facility was large, people were kept there for a limited period, and where often transferred or released. That he did not see a person return does not prove the person did not, in fact, return, let alone died. Therefore, the evidence on the actual death of these alleged victims remains limited to that based on reports by the Heliodrom warden, who was not present during the work and, by his own submission, had serious difficulties in keeping track of the whereabouts of detainees.

765. Senad Tasić testified that he saw Mustafa Ćilić (§ 139.4) in Heliodrom.¹⁵⁹⁵ Similar to the above, this does not provide proof that the only reasonable conclusion is a death chargeable to the Accused. Lastly, El Memhed Musić testified on the alleged death of Hamija Tabaković. However, in cross-examination it was shown that the witness was not present in the place of detainment at the time of the alleged death.¹⁵⁹⁶ Therefore, again, the only and insufficient evidence pertaining to the alleged deaths of these persons remain the warden reports that were discussed above.

766. The following paragraphs focus on persons who, in all likelihood have died. However, information on the cause and circumstances of their deaths is either seriously contradictory, or absent. The Defence submits that the lack of such crucial data by definition precludes a finding that 'the only

¹⁵⁸⁴ The same person as Semir Berić (§ 130.2)

¹⁵⁸⁵ The same person as Irfan Tole (§ 130.54) and Afan Torla (§ 130.55)

¹⁵⁸⁶ The same person as Irfan Terlo (§ 130.53) and Afan Torla (§ 130.55)

¹⁵⁸⁷ Assumed to be referring to the same person as Mustafa Kahvić aka Mujo (§ 138.9), Mujo Kahvić (139.8) and Mustafa Kahvić (§ 139.9)

¹⁵⁸⁸ The same person as Mujo Kahvić (§ 139.8) and Mustafa Kahvić (§ 139.9)

¹⁵⁸⁹ Assumed to be the same person as Enver Kajtaz (§ 138.10)

¹⁵⁹⁰ The same person as Sudo Dedajić (§ 139.6)

¹⁵⁹¹ The same person as Mustafa Kahvić aka Mujo (§ 138.9) and Mustafa Kahvić (§ 139.9)

¹⁵⁹² The same person as Mustafa Kahvić aka Mujo (§ 138.9) and Mujo Kahvić (§ 139.8)

¹⁵⁹³ The same person as Salim Kladušak (§ 130.32)

¹⁵⁹⁴ Hadrović (T.14591/6- 14596/2)

¹⁵⁹⁵ Tasic (T.9930/20 – 9931/22)

¹⁵⁹⁶ Witness EI (T.26139/18 – 26143/3)

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.¹⁵⁹⁷

767. During the examination of Ibrahim Silić, who testified on the death of Uzeir Jugo (§ 114.11), the witness stated he did not see where Uzeir Jugo was shot from. Even though he suggested several hypotheses on who shot the victim from where, the witness could not reach any firm conclusions.¹⁵⁹⁸ [Redacted].¹⁵⁹⁹

768. For a number of alleged victims, the Death Certificates issued and witness statement(s) on their death contradict on the crucial point of where/when the person had died. The *Krnojelac* Trial Chamber was confronted with exactly such a contradiction and held that it could not be satisfied beyond reasonable doubt that the victim was murdered in the manner alleged in the indictment and thus could not hold the Accused liable for the same¹⁶⁰⁰

769. [Redacted].¹⁶⁰¹ [Redacted] ¹⁶⁰² place their deaths at different dates. This raises a reasonable possibility that the victims may have died at the time specified in these Death Certificates, which would mean that evidence provided by the witnesses on the circumstances of the victim's death are unreliable. Therefore there is no proof beyond a reasonable doubt on how the victims died and who was responsible for their death.

770. The Death Certificate¹⁶⁰³ issued for Adem Hebibović (§ 104.1) places his death two days *before* the witness who testified to his death even arrived at the Mechanical Faculty. In relation to the alleged victims Dženita Hasić (§ 176.1)¹⁶⁰⁴ and Rifa Likić (§ 211.21),¹⁶⁰⁵ the only evidence submitted are their Death Certificates, which however do not list a cause of death. Without reliable information on something as basic as the cause of death, no finding of criminal responsibility can be made.

771. For the alleged victims Sanela Hasić (§ 176.2)¹⁶⁰⁶, Hivzija Dizdar (§ 200.2)¹⁶⁰⁷ and Nusret Elezović (§200.3)¹⁶⁰⁸ the Death Certificate forms the *only* evidence on both their death and cause of

¹⁵⁹⁷ *Prosecutor v Kvočka et al.*, case No. IT-98-30/1-A, Appeals Chamber judgement, of 28 feb 05, para. 260

¹⁵⁹⁸ Silić (T.13589/20 – 13643/23)

¹⁵⁹⁹ [Redacted]

¹⁶⁰⁰ *Prosecutor v Krnojelac*, case No. IT- 97-25, Trial Chamber Judgement of 15 March 2002, para. 340

¹⁶⁰¹ [Redacted]

¹⁶⁰² Exh. P8436, [Redacted] P8608, [Redacted] (Exh. P8715); P8903 [Redacted] P8900, [Redacted]

¹⁶⁰³ Exh P8534 Death Certificate

¹⁶⁰⁴ Exh P9748 Death Certificate

¹⁶⁰⁵ Exh P8688 Death Certificate

¹⁶⁰⁶ Exh P9747 Death Certificate on the basis of information given by Kadira Češko, the alleged victim's mother in law, issued by the Cantonal Commission for Locating Detained and Missing Persons of the Federation of Bosnia and Herzegovina.

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

death. These Death Certificates were however not issued by a Court and are not corroborated by other sources. They cannot therefore establish beyond a reasonable doubt that these persons died as a result of actions that involve the criminal responsibility of an Accused.

XVIII. CONCLUSION

772. Overall the OTP has failed to establish any plan on the part of the HVO or known of or participated in by Coric to commit the crimes charged in the Indictment. Further they have failed to show how Coric shared any intent of a criminal plan or made significant contribution to such a criminal plan. The OTP has not shown that he had effective control over any perpetrators of unpunished crimes made known to him, or that such subordinates were used by him to implement a criminal plan or JCE.

773. The defense reserves the right to make further submissions on character, and sentencing in final submissions, pursuant to and as required by ICTY Rule 86 (c).

774. The defense makes reference to Annex "B" containing the medical documents of Coric's family members that have previously been part of the record of these proceedings and requests that the same be viewed as a mitigating factor.

¹⁶⁰⁷ Exh P8783 Death Certificate issued by Military Unit 5268, part of the Fourth Corps of the Army of the Republic of Bosnia and Herzegovina

¹⁶⁰⁸ Exh P8782 Death Certificate issued by Military Unit 5268, part of the Fourth Corps of the Army of the Republic of Bosnia and Herzegovina

VALENTIN CORIC'S FINAL TRIAL BRIEF
PUBLIC

XIX. RELIEF REQUESTED

775. The Defense submits that the OTP has failed to prove Mr. Valentin Coric is criminally responsible for the crimes charged and requests entry of a Judgment of full acquittal of Mr. Valentin Coric for all charges and counts contained in the Indictment.

Respectfully Submitted by:



Ms. Dijana Tomašegović Tomić
Counsel for Valentin Čorić

Dated this 28th day of March 2011
Zagreb, Republic of Croatia