

**UNITED  
NATIONS**

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International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-06-90-A  
Date: 10 August 2012

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**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Carmel Agius  
Judge Patrick Robinson  
Judge Mehmet Güney  
Judge Fausto Pocar

**Registrar:** Mr. John Hocking

**THE PROSECUTOR**

v.

**ANTE GOTOVINA  
MLADEN MARKAČ**

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**PUBLIC**

**PROSECUTION SUPPLEMENTAL BRIEF ON ALTERNATIVE  
MODES OF LIABILITY FOR MLADEN MARKAČ**

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**The Office of the Prosecutor:**

Ms. Helen Brady  
Mr. Douglas Stringer

**Counsel for Ante Gotovina:**

Mr. Gregory Kehoe, Mr. Luka Mišetić, Mr. Payam Akhavan, Mr. Guénaél Mettraux

**Counsel for Mladen Markač:**

Mr. Goran Mikuličić, Mr. Tomislav Kuzmanović, Mr. John Jones, Mr. Kai Ambos

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

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**I. OVERVIEW**

1. If the Chamber erred in finding Markač “liable for unlawful artillery attacks or [...] a member of a [JCE]”,<sup>1</sup> the Appeals Chamber should still find Markač liable under Counts 1-2, 4-7 of the Indictment for the crimes of persecutions, deportation, murder, wanton destruction and plunder. While the Chamber did not make express findings on modes of liability other than JCE,<sup>2</sup> its findings (and the evidence it relied upon) establish Markač’s liability for these crimes under aiding and abetting and Art.7(3).

2. The Chamber found that the fear instilled by the shelling attack during Operation Storm (“Storm”) was the primary and direct cause<sup>3</sup> of the mass flight of more than 20,000 Serb civilians from the Krajina and that the HV and SP committed deportation.<sup>4</sup> Tuđman and other senior leaders shared the intent to drive the Serb civilians out of the Krajina,<sup>5</sup> and used the HV and SP to implement their criminal

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<sup>1</sup> Order.

<sup>2</sup> Judgement, para.2587.

<sup>3</sup> Judgement, paras.1743-1744.

<sup>4</sup> Judgement, paras.1710, 1751, 2305.

<sup>5</sup> Judgement, para.1995; *generally* Section 6.2.3.

objective through Storm.<sup>6</sup> Markač knew that the intent behind the attack was to force the Serbs out, that the crimes of deportation and persecutions would probably occur and that his acts would assist the commission of those crimes. Nonetheless, Markač participated in planning the shelling attack<sup>7</sup> and specifically ordered the attack on Gračac.<sup>8</sup> As such, Markač's actions had a substantial effect on the crimes of deportation and persecutions. Markač's guilt for aiding and abetting these crimes does not depend on the categorisation of the artillery attack<sup>9</sup> nor on Markač's membership in the JCE.

3. Markač also aided and abetted further crimes of plunder, destruction, murder and persecutions, by ordering his subordinates into the Krajina after the initial attack, knowing they would probably commit such crimes, and creating a permissive environment that encouraged their commission. In failing to prevent or punish these crimes, he is also responsible under Art.7(3).

4. This Brief addresses only aiding and abetting and Art.7(3) liability.<sup>10</sup> However, the Prosecution also maintains that the findings which establish Markač's aiding and abetting also establish the modes of planning, ordering and instigating.<sup>11</sup>

<sup>6</sup> Judgement, paras.2316, 2320.

<sup>7</sup> Judgement, paras.1971, 1978-1979, 1982, 1995, 2580.

<sup>8</sup> Judgement, paras.2555, 2560-2561.

<sup>9</sup> The underlying act used to carry out a deportation need not be unlawful in itself: *See* AT.83, 100-101. *Also* AT.94-95.

<sup>10</sup> In accordance with the Order.

<sup>11</sup> *See* FTB, paras.387-393; Response Brief (Markač), fn.958. In the Appeals Hearing, the Prosecution referred to aiding and abetting, Art.7(3) liability and instigation only as examples of alternative modes of liability: AT.102. By planning and ordering the attack on Gračac, Markač planned, ordered and instigated acts with the awareness of the substantial likelihood that deportation and persecutions would be committed and is thus liable for planning, ordering and instigating deportation and persecutions (*see Kordić* AJ, paras.30-31). Further, Markač's deployment of vengeful troops and failure to prevent and punish their crimes amounted to planning, ordering and instigating post-shelling crimes.

## II. MARKAČ IS GUILTY OF DEPORTATION (THROUGH SHELLING) AND PERSECUTIONS (DEPORTATION)

### A. Through the shelling attack, Markač aided and abetted deportation and persecutions

#### *1. Deportation and persecutions (deportation) were committed*

5. The Chamber's findings that deportation and persecutions (deportation) were committed<sup>12</sup> stand even without the unlawful attack and Markač's JCE membership findings. Tudman and other senior leaders shared the intent to force the Serb civilian population out of the Krajina and repopulate it with ethnic Croats.<sup>13</sup> They used the HV and SP to carry out the attack in Storm to achieve their goals.<sup>14</sup> They committed deportation and persecutions.

6. The Chamber made clear findings on Tudman's policies, plans and intentions regarding the Krajina Serbs.<sup>15</sup> For its overall findings, the Chamber relied in part on the evidence of US Ambassador Galbraith,<sup>16</sup> who frequently dealt with Tudman<sup>17</sup> and other senior leaders. It also relied upon "concrete manifestations [of intent], such as decrees, laws and political programs."<sup>18</sup> These were consistent with Galbraith's evidence. Galbraith recalled that Tudman saw Serbs as a threat to Croatia.<sup>19</sup> Tudman espoused an ideology of ethnic homogeneity and population transfers, and aimed to redress the ethnic balance in the Krajina.<sup>20</sup> He had plans to repopulate the Krajina and other liberated territories with ethnic Croats.<sup>21</sup> These views and policies were long-standing. In 1992<sup>22</sup> and 1993,<sup>23</sup> Tudman expressed his preference for ethnic homogeneity and his view that ethnically mixed societies were unsustainable.

<sup>12</sup> Judgement, paras.1710, 2305.

<sup>13</sup> Judgement, paras.1991-1995, 2053-2057, 2097-2098, 2310, 2314.

<sup>14</sup> Judgement, paras.2316, 2320.

<sup>15</sup> See Judgement, paras.2048-2058.

<sup>16</sup> E.g. Judgement, paras.2048-2049, 2053, 2057, 2091, 2098.

<sup>17</sup> Judgement, para.1998.

<sup>18</sup> Judgement, para.2048. *Further* paras.2049-2058.

<sup>19</sup> Judgement, para.1999.

<sup>20</sup> Judgement, para.1999.

<sup>21</sup> Judgement, paras.2001, 2028-2033, 2035-2041, 2053-2054, 2060, 2316.

<sup>22</sup> E.g. Exh.P459, pp.6, 16 (cited at Judgement, para.1999).

<sup>23</sup> Exhs.P444, paras.68, 70 (cited at Judgement, paras.1998-2003 (hereinafter "cited")); also P452, pp.2-4.

7. Tudman ensured his ideas were transformed into policy and action.<sup>24</sup> He was actively involved in implementing discriminatory property laws, which were central to ensuring that once Serbs had left, they did not return.<sup>25</sup> Before Storm, Tudman advocated bringing Croat émigrés from abroad into the many thousands of Serb homes abandoned in Western Slavonia after Operation Flash.<sup>26</sup> He discussed populating deserted homes and areas with ethnic Croats to address “Croatia’s demographic situation”.<sup>27</sup> By the time of Storm, enabling legislation was already at an advanced stage in Parliament.<sup>28</sup>

8. The Chamber found that Tudman wanted the Serb population to leave the Krajina permanently.<sup>29</sup> The Chamber also found, based on the content alone, that the Croatian leadership’s discussions at Brioni were “not about the protection of civilians but about civilians being forced out.”<sup>30</sup> In July 1995, Galbraith recognised, and warned of, the threat to Krajina Serb civilians given his knowledge of Tudman’s policies, “and because Serbian civilians had been attacked in previous Croatian military operations, such as Medak and Flash.”<sup>31</sup> These previous operations had resulted in the forced displacement of Serbs from those territories.<sup>32</sup>

9. The Chamber’s findings on Tudman’s intent and plans for the Krajina were further confirmed by his statements and actions after Storm. On 26 August 1995, he addressed a public gathering in Knin, declaring it “Croatian Knin”, and calling the Serbs a “cancer” that had previously plagued the Croatian nation.<sup>33</sup> On 5 August 1996, Tudman boasted, “we have returned [King] Zvonimir’s Croatian town [Knin] to the fold of its motherland, Croatia, as pure as it was in Zvonimir’s time.”<sup>34</sup>

10. Tudman also made clear that Serbs who had fled could not return.<sup>35</sup> Galbraith concluded that since this was Tudman’s policy, it was also Croatia’s policy.<sup>36</sup>

<sup>24</sup> Judgement, paras.2049 (“chief decision maker”), 2316.

<sup>25</sup> Judgement, paras.2001, 2093-2098, 2308-2309.

<sup>26</sup> Judgement, paras.2060 *citing* Exh.P2711, 2093.

<sup>27</sup> Judgement, para.2055. *Also* paras.2028-2033, 2035-2041, 2054. *E.g.* Exh.P462. pp.14-16 (cited at Judgement, para.2061), where members discuss the property laws and how to ensure the Serbs’ “final removal”.

<sup>28</sup> Judgement, para.2060 (*citing* Radić, T.27238). *Also* Exh.P2711, pp.7-9; Bagić, T.26496-26498 (cited at Judgement, para.2073).

<sup>29</sup> *E.g.* Judgement, paras.2056-2057, 2098, 2312, 2314.

<sup>30</sup> Judgement, paras.1991-1995 (quote at para.1995). *Also* AT.98-99, 167-181.

<sup>31</sup> Judgement, para.2003.

<sup>32</sup> Judgement, para.2003 *citing* Exh.P444, paras.22-24.

<sup>33</sup> Judgement, paras.2009, 2306; *also* Exh.P473, pp.3-4.

<sup>34</sup> Judgement, para.2006.

Immediately following the Krajina Serbs' flight, Tuđman and Croatian officials did "everything they conceivably could to not have [the Serbs] back."<sup>37</sup> In August 1995, when US envoy Holbrooke repeatedly pressured Tuđman to give Krajina Serbs the right to return, Tuđman refused to change his policies and responded he "would be very content if about 10% of them returned".<sup>38</sup>

11. Tuđman planned for the Croatian diaspora to resettle in the Krajina.<sup>39</sup> Tuđman sought to house 380,000 refugees and displaced persons in Serb homes, to correct the "historical injustice" of Serb settlement.<sup>40</sup> Immediately following Storm, development projects to re-settle the Krajina began.<sup>41</sup> "These measures aimed at ensuring the removal of the Krajina Serb population became permanent".<sup>42</sup>

12. The Chamber found that other senior Croatian figures, such as Šarinić, Šušak, Červenko and Radić, shared and participated in achieving Tuđman's persecutory objective to permanently remove the Serb population by force, or threat of force.<sup>43</sup> "Around him Tuđman gathered a group of political and military officials who worked together with him to achieve the objective [of the JCE]."<sup>44</sup> Šarinić also described Serbs as "a cancer on the stomach of Croatia".<sup>45</sup> Šušak and Červenko participated in important meetings with Tuđman where population demographics and the plan to remove the Serb population were discussed.<sup>46</sup> Šušak boasted to Galbraith that the Croatian use of psy-ops in Storm got the Serb civilian population out of the Krajina.<sup>47</sup> Radić used his governmental position to further Tuđman's goal of repopulating the Krajina with Croats.<sup>48</sup>

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<sup>35</sup> Judgement, para.2000.

<sup>36</sup> Judgement, para.2000 *citing* Exh.P445, para.15; *also* Exh.P444, para.33: "President Tuđman was very much focused and very clear that they should not come back."

<sup>37</sup> Exh.P444, para.33, Galbraith, T.5115-5119 (cited at Judgement, para.2001); *also* Judgement, para.2312, Exh.P445, para.15, Galbraith, T.5113, Exh.P599, para.4 (cited at Judgement, paras.1711, 2080, 2102).

<sup>38</sup> Judgement, para.2004 *citing* Exh.P449, p.17.

<sup>39</sup> Judgement, paras.2001, 2305. *Also* para.2316.

<sup>40</sup> Judgement, para.2008; Exh.P2712. p.1.

<sup>41</sup> Radić, T.27210 (Radić's evidence cited at Judgement, paras.2093, 2425).

<sup>42</sup> Judgement, para.2312.

<sup>43</sup> Judgement, paras.2314, 2317-2318.

<sup>44</sup> Judgement, para.2317.

<sup>45</sup> Judgement, para.2000.

<sup>46</sup> Judgement, para.2317.

<sup>47</sup> Exh.P444, para.61, Galbraith, T.4941-4942 (cited). *Also* Exh.P598, pp.4-6 (cited at Judgement, paras.1711-1712, 2080-2081, 2102, 2287) - Rehn considered Jarnjak and Šušak also did everything they could to keep the Serbs from coming back.

<sup>48</sup> Judgement, para.2318.

13. A 31 August 1995 US embassy cable reported that Croatia's aim was to "ethnically cleanse" the Krajina to make room for 1,000,000 Croatian refugees.<sup>49</sup> Galbraith confirmed this reflected the thinking of Croatian officials.<sup>50</sup> Tudman and other senior leaders used the HV and SP to implement their criminal objective through Storm.<sup>51</sup>

**2. Markač aided and abetted deportation and persecutions (deportation)**

(a) Markač knew the intent behind the attack was to force the Serbs out of the Krajina and that deportation and persecutions would probably occur

14. The Chamber made all the necessary findings to establish Markač's *mens rea* for aiding and abetting deportation and persecutions (deportation). Markač knew of the senior leadership's intent to deport the Serb population *via* Storm, and that deportation and persecutions would probably result from the artillery attack.<sup>52</sup> When he planned and ordered the shelling, he knew this would assist deportation and persecutions of the Krajina Serbs. These findings remain intact irrespective of the unlawful attack finding or Markač's JCE membership.

15. Tudman and the senior leadership's aims were no secret. Tudman openly discussed his opinions on ethnic homogeneity. He "did not feel he had to mask these views";<sup>53</sup> he would say what he thought and did.<sup>54</sup> Other Croatian officials were also direct in stating that the Croatian goal was to ethnically cleanse the region.<sup>55</sup>

16. Markač was privy to the Croatian leadership's objectives because of his position as Assistant Minister of Interior and Commander of SP, and his interactions with them.<sup>56</sup> Tudman's beliefs on repopulating the Krajina formed part of his public political statements, making them impossible to ignore.

<sup>49</sup> Judgement, para.2002 *citing* Exh.P446, p.1.

<sup>50</sup> Judgement, para.2002.

<sup>51</sup> Judgement, paras.2316, 2320.

<sup>52</sup> *See Simić* AJ, para.86; *Mrkšić* AJ, para.49. *Also Martić* TJ, para.79, fn.150.

<sup>53</sup> Exh.P444, para.32 (cited).

<sup>54</sup> Exh.P444, para.74 (cited).

<sup>55</sup> Exh.P444, para.65 (cited).

<sup>56</sup> *See* Judgement, paras.168, 172, 175-176, 181, 194-195, 606, 1971, 1982, 1987, 1989, 2213, 2554, 2573, 2583, 2586.



17. Markač's knowledge of the leadership's aims was further augmented during Operation Flash which "liberated" Western Slavonia.<sup>57</sup> On 11 May 1995, Galbraith publicly raised concerns about Serbs being removed from their homes during Flash.<sup>58</sup> By mid-May, Croatia's senior leadership estimated that no more than a thousand Serb civilians remained in Western Slavonia, thereby solving the "Serb problem" there.<sup>59</sup> Prior to Storm, Tudman had discussed repopulating abandoned houses in Western Slavonia<sup>60</sup> and the necessary legislation was at an advanced stage.<sup>61</sup> On 2 August, Markač and others discussed the experiences in Flash.<sup>62</sup>

18. With this knowledge, Markač participated in Brioni, to plan Storm. The Chamber found that, from the content of the Brioni discussions alone, the participants were aware of the difficult situation of the Krajina Serbs, in particular in Knin, and that they knew that it would not require much effort to force them out.<sup>63</sup> The discussion was "about civilians being forced out."<sup>64</sup> Furthermore, Tudman's comments during that meeting—regarding demoralisation and panic among Serb civilians,<sup>65</sup> the need for a pretext to strike with artillery<sup>66</sup> and his proposals to use propaganda to show the civilian population the road out<sup>67</sup>—must be considered in light of Markač's prior knowledge of Tudman's policies and plans. Gotovina's words at the meeting explicitly confirmed that an attack would cause civilian flight which would not be temporary.<sup>68</sup> Markač knew that deportation would result, just as Tudman and others intended.

(b) Markač's actions substantially contributed to the crimes

19. The Chamber found that the fear instilled by the shelling attack (lawful or not) was the primary and direct cause of the civilian flight from the Krajina towns.<sup>69</sup> It also

<sup>57</sup> Exh.D1932, para.63 (cited at Judgement, para.173), *also* Repinc, T.26699. Markač commanded the SP in Flash.

<sup>58</sup> Exh.P444, para.66 (cited). *Also* Granić, T.24665 (cited at Judgement, para.2013).

<sup>59</sup> Exh.P2495, p.9; Bagić, T.26496-26498; Galbraith, Exh.P444, para.24 (cited).

<sup>60</sup> Judgement, paras.2060 (*citing* Exh.P2711), 2073, 2093.

<sup>61</sup> *Above* fn.28.

<sup>62</sup> Lausić, Exh.P2159, paras.146, 153-156, 160 (cited at Judgement, para.2146).

<sup>63</sup> Judgement, paras.1995, 2310-2311 (the finding in this paragraph is independent of the Chamber's subsequent reference to an unlawful attack). On the discussions at Brioni, *also* AT.98-99, 167-181.

<sup>64</sup> Judgement, para.1995.

<sup>65</sup> Judgement, paras.1974-1975, 2311.

<sup>66</sup> Judgement, para.1975 *citing* Exh.P461, p.10.

<sup>67</sup> Judgement, paras.1981, 1983, 1991; Exh.P461, pp.23, 29.

<sup>68</sup> Judgement, paras.1977, 2304 *citing* Exh.P461, p.15.

<sup>69</sup> Judgement, paras.1743-1745.

found that Markač participated in planning the shelling and ordered the attack on Gračac.<sup>70</sup> These findings establish that Markač's actions substantially contributed to deportation and persecutions (deportation), at least with respect to the Gračac Serbs. These findings apply irrespective of whether the order and the attack were unlawful themselves.<sup>71</sup>

20. Markač made these contributions knowing that deportation and persecutions would probably result and that his actions were assisting those crimes. Markač is guilty of aiding and abetting deportation and persecutions (deportation).

**B. Markač aided and abetted deportation (through post-shelling crimes) and persecutions (deportation)**

21. Markač also aided and abetted deportation and persecutions caused by SP crimes committed after the initial attack (collectively the “post-shelling crimes”). The Chamber found that the SP committed those crimes with “the intent to forcibly displace the Krajina Serb victims and witnesses”<sup>72</sup> and that the crimes “created an environment in which [the civilians] had no choice but to leave”.<sup>73</sup> Markač knew that the crimes would probably occur<sup>74</sup> and that similar crimes in past Croatian operations had resulted in deportation.<sup>75</sup>

22. Markač substantially contributed to the deportation and persecutions by ordering his subordinates into the Krajina knowing that they would probably commit these offences, and by creating a permissive environment for the crimes to occur.<sup>76</sup> He knew these acts would assist and encourage these crimes. His failure to prevent deportation and persecutions by his subordinates or punish the perpetrators' crimes also establishes his liability under Art.7(3).<sup>77</sup>

<sup>70</sup> Judgement, paras.2560-2561.

<sup>71</sup> See *Blagojević* AJ, paras.196, 202; *Popović* TJ, paras.2010-2012.

<sup>72</sup> Judgement, para.1757.

<sup>73</sup> Judgement, para.1756.

<sup>74</sup> See Part IV.B.1.

<sup>75</sup> Above paras.8, 17.

<sup>76</sup> See Parts IV.B.2, IV.C.3.

<sup>77</sup> See Part IV.C.3.

### **III. ALTERNATIVE MODES OF LIABILITY WERE DROPPED FOR PERSECUTIONS THROUGH DISCRIMINATORY MEASURES**

23. For Markač, at trial the Prosecution dropped the charge of persecutions through imposition of restrictive and discriminatory measures for all modes of liability except commission.<sup>78</sup>

### **IV. MARKAČ IS GUILTY OF PLUNDER, DESTRUCTION, MURDER AND PERSECUTIONS AS AN AIDER AND ABETTOR AND UNDER ART.7(3)**

#### **A. Markač's subordinates committed the post-shelling crimes**

24. The Chamber found that Markač's subordinates in the SP committed the post-shelling crimes. These findings, including the perpetrators, victims, locations and dates of their commission, are set out in the Annex.

25. As detailed below, the Chamber made all the findings necessary to hold Markač liable for aiding and abetting these crimes and for failing to prevent or punish the commission of these crimes under Art.7(3).<sup>79</sup>

#### **B. Markač is guilty of aiding and abetting the post-shelling crimes**

26. Along with Šušak, Gotovina and others, Markač participated in planning operations that followed the artillery attack.<sup>80</sup> He ordered his SP into the area,<sup>81</sup> where they engaged in an unchecked campaign of violence and destruction in Gračac, Oraovac, Donji Lapac, Grubori and Ramljane. This campaign included looting in Gračac, wanton destruction of property in Donji Lapac, Gračac, Grubori and Ramljane, and murder of Serb civilians in Oraovac and Grubori.<sup>82</sup>

<sup>78</sup> Judgement, para.2578.

<sup>79</sup> For all modes of liability except commission, at trial the Prosecution also dropped the charge of persecutions through inhumane acts and cruel treatment (other than by shelling of civilians), discriminatory expropriation of property, unlawful detentions and disappearances, and Counts 8-9: Judgement, para.2578.

<sup>80</sup> Judgement, paras.2560-2561, 2583.

<sup>81</sup> Judgement, para.2561.

<sup>82</sup> See Annex.

27. Prior to Storm, Markač knew that these crimes would probably be perpetrated.<sup>83</sup> He ordered his troops into the civilian towns despite knowing of the heightened ethnic tensions,<sup>84</sup> the revenge motivations harboured by Croatian military forces and SP<sup>85</sup> and the vulnerable position of the remaining Serbs in the area.<sup>86</sup>

28. The risk of crimes was realised in Gračac when Markač's subordinates began destroying the town while he was there.<sup>87</sup> Markač knew crimes were being committed and would continue.<sup>88</sup> He permitted the crimes to continue unabated, perpetuating a climate of impunity that substantially contributed to the commission of further crimes.<sup>89</sup> These contributions were supplemented by Markač's active role in covering up the SP's crimes in Grubori and Ramljane when he participated in the falsification of reports to his superiors.<sup>90</sup>

**1. Markač knew that the post-shelling crimes would probably be committed**

29. Before ordering his troops into the Krajina for the search operations, Markač knew that his subordinates would probably commit the post-shelling crimes.<sup>91</sup>

30. Markač knew of the ethnic tensions between Croat and Serbs "based in part on the past commission of violent crimes in the former RSK area."<sup>92</sup> "Since this context was common knowledge to those present in Croatia at the time, the Trial Chamber considers that Markač was aware of this context at the outset of Operation Storm."<sup>93</sup>

31. Markač was warned that Croatian forces would probably commit crimes of this nature.<sup>94</sup> Markač was present at the 2 August 1995 meeting when Šušak emphasised the risk of uncontrolled conduct by Croatian forces, including torching and looting.<sup>95</sup> "This put Markač on further notice of the possibility of the commission of crimes during and following Operation Storm."<sup>96</sup> The Chamber found that Markač

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<sup>83</sup> Judgement, paras.2584-2586.

<sup>84</sup> Judgement, para.2585.

<sup>85</sup> Judgement, para.2586.

<sup>86</sup> Judgement, paras.2585-2586.

<sup>87</sup> Judgement, para.2571.

<sup>88</sup> Judgement, paras.2573-2574.

<sup>89</sup> Judgement, para.2583.

<sup>90</sup> Judgement, para.2583.

<sup>91</sup> Judgement, para.2586.

<sup>92</sup> Judgement, para.2585.

<sup>93</sup> Judgement, para.2585.

<sup>94</sup> Judgement, para.2586.

<sup>95</sup> Judgement, para.2586.

<sup>96</sup> Judgement, para.2586.

“was aware of the possibility that members of the [HV] and [SP] would perpetrate acts of revenge.”<sup>97</sup> Markač also knew of the vulnerable state of the Serb civilians. At the Brioni meeting, Gotovina said that “the only civilians left would be those who had no possibility of leaving”.<sup>98</sup> While these findings were framed in the context of JCEIII liability, the strong underlying findings are equally apposite to meeting the aiding and abetting probability standard.<sup>99</sup>

32. Markač also had actual knowledge of those crimes. He was present in Gračac on 6 August when the SP destroyed a substantial part of the town.<sup>100</sup> The Chamber found that he knew of the crimes there.<sup>101</sup> On 7 August he accompanied the SP into Donji Lapac following which a substantial part of that town was also destroyed.<sup>102</sup> The Chamber found that Markač learnt of this destruction and plunder “in the days immediately following the commission of the crimes.”<sup>103</sup>

33. Markač was constantly apprised of the events on the ground. Under Markač’s orders, the SP Staff established an effective and continuous system of command and control for the duration of Storm,<sup>104</sup> including the post-shelling operations.<sup>105</sup> Markač was able to follow everything through his communication and reporting system.<sup>106</sup> Markač knew where his commanders were deployed and they would report to him every five or ten minutes.<sup>107</sup> Markač would also receive continuous updates and reports on the developments on the ground from Sačić, who was in direct communication with ground commanders<sup>108</sup> and Janić.<sup>109</sup>

34. Operative reports were required twice a day and had to include the development of any situation and emergence of problems.<sup>110</sup> The Chamber found that possible problems on the ground were of particular interest to Markač, as he was duty

<sup>97</sup> Judgement, para.2586.

<sup>98</sup> Judgement, para.2603; *also* para.1977.

<sup>99</sup> Judgement, paras.2585-2586.

<sup>100</sup> Judgement, paras.2569-2671.

<sup>101</sup> Judgement, para.2571.

<sup>102</sup> Judgement, para.2569.

<sup>103</sup> Judgement, para.2573.

<sup>104</sup> Judgement, paras.194-195.

<sup>105</sup> Judgement, para.2570.

<sup>106</sup> Judgement, para.195.

<sup>107</sup> Judgement, para.184.

<sup>108</sup> Judgement, paras.175, 2573.

<sup>109</sup> Judgement, para.195.

<sup>110</sup> Judgement, para.176.

bound to include them in his daily reports to Červenko.<sup>111</sup> Indeed, Markač stated that if anything happened during a SP operation, it would have been reported to him.<sup>112</sup> The findings establish that throughout this period, crimes would have been reported to Markač.<sup>113</sup>

35. The Chamber found that Markač “favour[ed] the creation of an environment conducive to the commission of crimes and reconcile[d] himself with the possibility that the [...] crimes could be committed.”<sup>114</sup>

## **2. Markač substantially contributed to the commission of the crimes**

36. The Chamber’s findings establish that Markač substantially contributed to the commission of the post-shelling crimes knowing that his contributions would assist their perpetration.

37. In the knowledge that his subordinates would probably perpetrate crimes in the Krajina, Markač planned and prepared their deployment in Storm and its subsequent operations.<sup>115</sup> He then ordered these troops to enter Gračac, thereby creating the environment in which crimes would occur.<sup>116</sup> Immediately upon being sent into Gračac, Markač’s subordinates embarked upon a campaign of violence and destruction.<sup>117</sup> The Chamber noted that by failing to take any steps to prevent, report or punish these crimes, “Markač created a climate of impunity which encouraged the commission of further crimes against Krajina Serbs.”<sup>118</sup> On 7 August, only one day after the crimes in Gračac, members of the SP *en route* to Donji Lapac murdered four Serb civilians in Oraovac<sup>119</sup> and destroyed substantial parts of Donji Lapac.<sup>120</sup> Again “there was no effort to identify and punish the perpetrators of the crimes” permitting “members of the Special Police [to continue] to commit crimes.”<sup>121</sup> On 25 and 26 August, members of the Lučko Unit committed several more murders and burned

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<sup>111</sup> Judgement, para.2573.

<sup>112</sup> Judgement, para.184.

<sup>113</sup> Judgement, paras.195, 2573.

<sup>114</sup> Judgement, para.2586.

<sup>115</sup> Judgement, paras.2580-2583.

<sup>116</sup> Judgement, para.2586.

<sup>117</sup> Judgement, paras.690, 697. *Also* Annex.

<sup>118</sup> Judgement, para.2581.

<sup>119</sup> Judgement, para.2581; Annex.

<sup>120</sup> Judgement, para.2573.

<sup>121</sup> Judgement, para.2581.

property in Grubori and Ramljane.<sup>122</sup> Markač took no steps to bring the violence and destruction to an end.<sup>123</sup> Instead, he actively participated in covering-up these crimes: ordering Čelić to draft a new report which advanced false terrorist stories,<sup>124</sup> forwarding the false report to Červenko,<sup>125</sup> approving renewed reports to strengthen the falsified account,<sup>126</sup> and approving efforts to prevent on-site investigations into the crimes.<sup>127</sup>

### **3. Markač is guilty of aiding and abetting the SP's post-shelling crimes**

38. Markač's actions amounted to aiding and abetting his subordinates' crimes. Markač knew that the SP would probably commit the post-shelling crimes against the remaining Krajina Serb population and that these crimes would be committed with persecutory intent. Markač knowingly provided practical assistance, encouragement and moral support to the perpetrators of these crimes<sup>128</sup> and his acts substantially contributed to their perpetration.

#### **C. Markač is also guilty of the post-shelling crimes under Art.7(3)**

39. Markač had effective control over the perpetrators of the post-shelling crimes. He had the power, authority and material ability to prevent the commission of the crimes and punish the perpetrators.<sup>129</sup> Markač failed in those responsibilities. He failed to take necessary and reasonable measures to prevent and punish the commission of post-shelling crimes. As the Chamber observed, Markač's conduct "show[ed] a certain acceptance" of the crimes.<sup>130</sup>

<sup>122</sup> Judgement, para.2581.

<sup>123</sup> Judgement, para.2581.

<sup>124</sup> Judgement, paras.2240 - 2241.

<sup>125</sup> Judgement, para.2569.

<sup>126</sup> Judgement, paras.2299, 2301.

<sup>127</sup> Judgement, para.2300.

<sup>128</sup> *Blaškić* AJ, para.46.

<sup>129</sup> See *Hadžihasanović* AJ, paras.30-31 ("the Trial Chamber correctly understood that standard as requiring an assessment, in the circumstances of each case, of whether a superior had sufficiently alarming information to put him on notice *that crimes might be committed*")(emphasis added); *Strugar* AJ, paras.301-302; *Čelibići* AJ, para.238.

<sup>130</sup> Judgement, para.2586.

**1. Markač had effective control over the SP perpetrators**

40. As Assistant Minister of the Interior and Commander of the SP, Markač held *de jure* authority over the SP who committed the post-shelling crimes.<sup>131</sup>

41. This *de jure* authority was matched by Markač's *de facto* control. Throughout Storm and its related search operations, Markač had command and control over the SP, including the Lučko Anti-Terrorist Unit.<sup>132</sup> The commanders of the SP units engaged in the operations were subordinated to and answered to Markač.<sup>133</sup>

42. In addition to his general formal authority over the SP, Markač had the material ability to prevent and punish his subordinates' misconduct. The head of the Inner Control Department, responsible for, *inter alia*, disciplining SP members, reported directly to Markač.<sup>134</sup> Markač had the power to order the investigation of suspected crimes, instigate disciplinary measures or request the suspension of SP members.<sup>135</sup> In addition, the Chamber found that if Markač received information concerning crimes allegedly committed by members of the SP, he had the authority and responsibility to forward the information to the criminal police for further investigation.<sup>136</sup>

**2. Markač knew or had reason to know of SP crimes**

43. As detailed above, Markač knew that the SP might embark on crimes following Storm's artillery attack.<sup>137</sup> Markač was also on the ground when crimes were being committed. As of 6 August, he had actual knowledge of these crimes, which provided further confirmation of the risk of future crimes against Serb civilians.<sup>138</sup> He constantly received information about events and actions of his subordinates.<sup>139</sup>

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<sup>131</sup> Judgement, para.194.

<sup>132</sup> Judgement, para.174.

<sup>133</sup> Judgement, para.194.

<sup>134</sup> Judgement, para.186.

<sup>135</sup> Judgement, paras.187-189, 193, 198.

<sup>136</sup> Judgement, paras.198, 2570.

<sup>137</sup> See Part IV.B.1.

<sup>138</sup> See Part IV.B.1.

<sup>139</sup> See Part IV.B.1.



**3. Markač failed to take necessary and reasonable measures to prevent post-shelling crimes or to punish the perpetrators**

(a) Markač failed to prevent crimes

44. Despite his knowledge, Markač failed to take necessary and reasonable measures to prevent his SP subordinates from committing the post-shelling crimes.<sup>140</sup> Although he knew of the ethnic tensions and his subordinates' revenge sentiments, Markač deployed SP forces into the Serb civilian towns.<sup>141</sup> Consistent with the warnings Markač received,<sup>142</sup> his SP subordinates engaged in an unchecked campaign of violence and destruction.<sup>143</sup> The Chamber found that while Markač took some potentially preventative steps, such as prior instructions to respect IHL,<sup>144</sup> these measures were insufficient<sup>145</sup> or otherwise contradicted by Markač's subsequent actions.<sup>146</sup>

45. Even when confronted with the destruction of Gračac, Markač failed to "take any other step to prevent the commission of similar crimes in the future."<sup>147</sup> Markač's failure to punish his subordinates also represents a failure to prevent future crimes occurring in the cycle of criminal violence prevailing in the Krajina. The Chamber determined that by virtue of his position and power, either personally or through his commanders, Markač could have taken appropriate measures to address his subordinates' crimes after they were committed.<sup>148</sup> He could have ordered an investigation which could have resulted in the suspension of SP members or refer them to the criminal police for further investigation.<sup>149</sup> This could have resulted in the removal of undisciplined and criminal elements and given a clear signal that the crimes would not be tolerated.<sup>150</sup> Instead, Markač created an environment of impunity, which encouraged, rather than prevented, his subordinates' crimes.<sup>151</sup>

<sup>140</sup> Judgement, paras.2577, 2581.

<sup>141</sup> Judgement, paras.2585-2586.

<sup>142</sup> See Part IV.B.1.

<sup>143</sup> See Part IV.B.

<sup>144</sup> Judgement, para.2577. Also para.2567.

<sup>145</sup> Judgement, para.2577.

<sup>146</sup> Judgement, para.2574.

<sup>147</sup> Judgement, para.2574.

<sup>148</sup> Judgement, para.2581.

<sup>149</sup> Judgement, para.2581.

<sup>150</sup> Judgement, para.2581.

<sup>151</sup> Judgement, para.2581.

46. In fact, Markač actively encouraged such crimes by failing to punish the perpetrators and, in relation to the Grubori and Ramljane incidents, covering them up by advancing false terrorist stories in reports sent to Červenko.<sup>152</sup>

(b) Markač failed to punish crimes

47. For Gračac, Markač failed to take any steps “to stop the destruction or the plunder, identify who amongst his subordinates were responsible for these crimes, or punish or report the crimes.”<sup>153</sup> Similarly, Markač failed to take any measures to ascertain whether any of his subordinates were involved in the burning of Donji Lapac and other crimes there.<sup>154</sup> Markač also failed to pursue any investigations into the incidents in Grubori and Ramljane.<sup>155</sup> Rather, he approved efforts to prevent on-site investigations into these crimes<sup>156</sup> and actively participated in their cover-up.<sup>157</sup> The findings establish that Markač did not take necessary and reasonable measures to investigate and punish his subordinates’ crimes.<sup>158</sup>

48. In the context of its general findings on Markač’s failures, the Chamber found that Markač’s only acts in relation to the SP crimes were his “general instruction to respect the law and an isolated order to investigate a suspected arson”.<sup>159</sup> Markač did not take necessary or reasonable steps to punish the SP perpetrators of the Oraovac murders.

**4. Markač is guilty under Art.7(3) for the post-shelling crimes**

49. The Chamber made all the necessary findings to convict Markač under Art.7(3) for destruction, plunder, murder and persecutions committed by his SP subordinates.

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<sup>152</sup> Judgement, para.2569.

<sup>153</sup> Judgement, para.2572.

<sup>154</sup> Judgement, paras.2574, 2581.

<sup>155</sup> Judgement, para.2569.

<sup>156</sup> Judgement, para.2300.

<sup>157</sup> Judgement, paras.2240, 2299, 2301, 2569.


<sup>158</sup> Judgement, paras.2240, 2299, 2301, 2569. *See Mrkšić* TJ, para.568; *Strugar* TJ, para.376. The Chamber’s findings that Markač actively covered up the crimes and inhibited on-site investigations necessarily mean that Markač failed to take necessary and reasonable measures to punish the Grubori and Ramljane crimes.

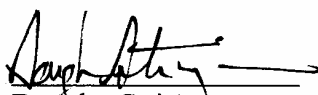
<sup>159</sup> Judgement, para.2577. *Also* para.2575.

## V. CONCLUSION

50. For the foregoing reasons, if the Chamber erred in finding Markač liable for an unlawful attack and Markač's membership in a JCE, Markač should be convicted of aiding and abetting persecutions (through deportation), deportation, murder, wanton destruction and plunder under Counts 1-2, 4-7 of the Indictment. His concurrent guilt under Art.7(3) for the post-shelling crimes and deportation through crimes should be taken into account for sentencing.<sup>160</sup> Given the serious nature of the crimes and Markač's role, the Prosecution submits that the same 18-year sentence imposed by the Chamber would be warranted.

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 Helen Brady  
 Senior Appeals Counsel

  
 Douglas Stringer  
 Senior Appeals Counsel

Dated this 10<sup>th</sup> day of August 2012  
 At The Hague, The Netherlands

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<sup>160</sup> See *Blaškić* AJ, paras.91-92.

## VI. GLOSSARY

**Pleadings, Orders, Decisions etc. from *Prosecutor v. Ante Gotovina & Mladen Markač*, Case No. IT-06-90**

Abbreviation used in Supplemental Briefing	Full citation
Appeals Hearing	<i>Prosecutor v. Ante Gotovina &amp; Mladen Markač</i> , Case No. IT-06-90-A, AT.12-AT.225, 14 May 2012
FTB	<i>Prosecutor v. Ante Gotovina, Ivan Čermak &amp; Mladen Markač</i> , Case No. IT-06-90-T, Prosecution's Public Redacted Final Trial Brief, 2 August 2010
Indictment	<i>Prosecutor v. Ante Gotovina, Ivan Čermak &amp; Mladen Markač</i> , Case No. IT-06-90-T, Amended Joinder Indictment, 12 March 2008
Judgement	<i>Prosecutor v. Ante Gotovina, Ivan Čermak &amp; Mladen Markač</i> , Case No. IT-06-90-T, T.Ch., Judgement, 15 April 2011 (public with confidential appendix)
Order	<i>Prosecutor v. Ante Gotovina and Mladen Markač</i> , Case No.IT-06-90-A, Order for Additional Briefing, 20 July 2012
Prosecution Response Brief (Markač)	<i>Prosecutor v. Ante Gotovina &amp; Mladen Markač</i> , Case No. IT-06-90-A, Prosecution Response to Mladen Markač's Appeal Brief, 29 September 2011 (public redacted version)

**Other ICTY authorities**

Abbreviation used in Supplemental Briefing	Full citation
Čelibići AJ	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No.IT-96-21-A, Judgement, 20 February 2001
Blaškić AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
Blagojević AJ	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No.IT-02-60-A, Judgement, 9 May 2007
Hadžihasanović AJ	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No.IT-01-47-A, Judgement, 22 April 2008

<i>Kordić AJ</i>	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No.IT-95-14/2-A, Judgement, 17 December 2004
<i>Martić TJ</i>	<i>Prosecutor v. Milan Martić</i> , Case No.IT-95-11-T, Judgement, 12 June 2007
<i>Mrkšić AJ</i>	<i>Prosecutor v. Mile Mrkšić and Veselin Šljivančanin</i> , Case No.IT-95-13/1-A, Judgement, 5 May 2009
<i>Mrkšić TJ</i>	<i>Prosecutor v. Mile Mrkšić et al.</i> , Case No.IT-95-13/1-T, Judgement, 27 September 2007
<i>Popović TJ</i>	<i>Prosecutor v. Vujadin Popović et al.</i> , Case No.IT-05-88-T, Judgement, 10 June 2010
<i>Simić AJ</i>	<i>Prosecutor v. Blagoje Simić</i> , Case No.IT-95-9-A, Judgement, 28 November 2006
<i>Strugar AJ</i>	<i>Prosecutor v. Pavle Strugar</i> , Case No.IT-01-42-A, Judgement, 17 July 2008
<i>Strugar TJ</i>	<i>Prosecutor v. Pavle Strugar</i> , Case No.IT-01-42-T, Judgement, 31 January 2005

**Other Abbreviations**

<b>Abbreviation used in Supplemental Briefing</b>	<b>Full citation</b>
Art.	Article
AT.	Appeals Transcript
Chamber	Trial Chamber in <i>Prosecutor v. Ante Gotovina, Ivan Čermak &amp; Mladen Markač</i> , Case No. IT-06-90-T
Croatia	Republic of Croatia
Exh.	Exhibit
Exhs.	Exhibits
Flash	Operation Flash
HV	<i>Hrvatska Vojska</i> – Croatian Army
IHL	International Humanitarian Law

JCE	Joint Criminal Enterprise
Medak	Operation Medak Pocket
p.	Page
pp.	Pages
para.	Paragraph
paras.	Paragraphs
RSK	Republika Srpska Krajina (Republic of Serb Krajina)
SP	Special Police of the Ministry of the Interior of Croatia / Collective Special Police Forces
Storm	Operation Storm
T.	Trial Transcript
US	United States

*Public*  
Annex

**CRIMES ATTRIBUTED TO MARKAČ IN THE TRIAL CHAMBER JUDGEMENT<sup>1</sup>**

<b>Related Count(s)</b>	<b>Crime(s)</b>	<b>Date</b>	<b>Municipality / Town</b>	<b>Perpetrator(s)</b>	<b>Victims</b>	<b>Citation to Relevant Factual and Legal Findings<sup>2</sup></b>	<b>Applicable Schedule to Indictment</b>
Counts 1 & 5	Persecution (destruction), Wanton destruction	5-6 August 1995	Gračac municipality, Gračac	HV and Special Police	Not applicable	Paras.697, 1772, 1775, 1890	Not applicable
Counts 1 & 4	Persecution (plunder), Plunder of public or private property	6-8 August 1995	Gračac municipality, Gračac	Special Police	Not applicable	Paras.691-695, 1785, 1789, 1881	Not applicable
Counts 1, 6 & 7	Persecution (murder), Murder	7 August 1995	Donji Lapac municipality, Oraovac	Special Police	Marko Ilić Rade Bibić Ruža Bibić Stevo Ajduković	Paras.218, 1726, 1731, 1736, 1855	Schedule 10
Counts 1 & 5	Persecution (destruction), Wanton destruction	7-8 August 1995	Donji Lapac municipality, Donji Lapac	HV and Special Police	Not applicable	Paras.623-625, 1772, 1775, 1890	Not applicable

<sup>1</sup> As noted at fn.79 of the Supplemental Brief, this chart does not deal with Markač's convictions for cruel treatment and inhumane acts (Counts 8 and 9) or the following underlying acts of persecutions: inhumane acts and cruel treatment other than by shelling of civilians; imposition of restrictive and discriminatory measures, including the imposition of discriminatory laws; discriminatory expropriation of property; unlawful detentions; and disappearances. These crimes were dropped by the Prosecution for all modes of liability except for commission.

<sup>2</sup> All citations relate to the Trial Chamber Judgement.



<b>Related Count(s)</b>	<b>Crime(s)</b>	<b>Date</b>	<b>Municipality / Town</b>	<b>Perpetrator(s)</b>	<b>Victims</b>	<b>Citation to Relevant Factual and Legal Findings<sup>2</sup></b>	<b>Applicable Schedule to Indictment</b>
Counts 1 & 5	Persecution (destruction), Wanton destruction	25 August 1995	Knin municipality, Grubori	Lučko unit of the Special Police	Not applicable	Paras.389-390, 1772, 1890	Not applicable
Counts 1, 6 & 7	Persecution (murder), Murder	25 August 1995	Knin municipality, Grubori	Special Police	Miloš Grubor Jovo Grubor Marija Grubor Mika Grubor Đuro Karanović	Paras.390, 1726, 1731, 1736, 1855	Schedule 4
Counts 1 & 5	Persecution (destruction), Wanton destruction	26 August 1995	Orlić municipality, Ramljane	Lučko unit of the Special Police	Not applicable	Paras.1077, 1772, 1775, 1890	Not applicable
Counts 1, 2 & 3	Persecution (deportation), deportation and forcible transfer	28 August 1995	Knin municipality, Grubori	Special Police	Jovan Grubor	Paras.1587, 1756, 1758, 1761, 1863	Not applicable