

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

Case No. IT-06-90-T

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Kinis
Judge Elisabeth Gwaunza

Registrar: Mr. John Hocking

Date: 13 September 2010

**PROSECUTOR
v.
ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

IVAN ČERMAK'S PUBLIC REDACTED FINAL BRIEF

The Office of the Prosecutor

Mr. Alan Tieger

For the Accused Ivan Čermak

Mr. Steven Kay QC
Ms. Gillian Higgins

For the Accused Ante Gotovina

Mr. Luka Mišetić
Mr. Gregory Kehoe
Mr. Payam Akhavan

For the Accused Mladen Markač

Mr. Goran Mikuličić
Mr. Tomislav Kuzmanović

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-06-90-T

THE PROSECUTOR
v.
ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

IVAN ČERMAK'S PUBLIC REDACTED FINAL BRIEF

1. Ivan Čermak hereby submits his Public Redacted Final Brief with Annexes.
Ivan Čermak's Final Brief was originally filed confidentially on 16 July 2010.

Signed

A handwritten signature in black ink that reads "Steven Kay QC." The signature is written in a cursive style with a horizontal line underneath the name.

Steven Kay QC

Lead Counsel for Ivan Čermak

Word count: 24

CONTENTS

INTRODUCTION	1
 PART I: LEGAL DIRECTIONS	 2
I. THE PRESUMPTION OF INNOCENCE	2
II. PROOF OF GUILT	2
III. SEPARATE CONSIDERATION	3
IV. RIGHT OF SILENCE OF AN ACCUSED	4
V. EQUAL TREATMENT OF WITNESSES	4
VI. DELAY	4
 PART II: THE LAW - MODES OF CRIMINAL LIABILITY	 6
I. ARTICLE 7(1) JOINT CRIMINAL ENTERPRISE (JCE)	6
II. ARTICLE 7(3) SUPERIOR RESPONSIBILITY	6
A. Superior-Subordinate Relationship	7
1. EFFECTIVE CONTROL	7
2. INFLUENCE NOT ENOUGH	7
3. APPEARANCE OF CONTROL NOT ENOUGH	8
4. DE FACTO AND DE JURE AUTHORITY	9
5. EFFECTIVE CONTROL FOR NON-MILITARY AUTHORITIES	9
6. ISSUING ORDERS	11
7. POWER TO DISCIPLINE	12
8. OFFICIAL POSITION	13
9. BEHAVIOUR OF ALLEGED SUBORDINATES IN PRESENCE OF ACCUSED	13
10. IDENTITY OF PERPETRATORS	14
11. EFFECTIVE CONTROL BEYOND REASONABLE DOUBT AND IN DUBIO PRO REO	14

B. The Knowledge Requirement	15
1. NOT A STRICT LIABILITY CRIME	15
2. ACTUAL KNOWLEDGE	15
3. CONSTRUCTIVE KNOWLEDGE	16
4. KNOWLEDGE OF CRIMES OF NON-SUBORDINATES NOT SUFFICIENT	16
C. Necessary and Reasonable Measures	17
1. MATERIAL ABILITY	17
2. DUTY TO PREVENT OR PUNISH	17
3. REPORTING CRIMES TO AUTHORITIES MAY SUFFICE	18
III. OTHER MODES OF LIABILITY UNDER ARTICLE 7(1)	19
A. Aiding and Abetting	19
B. The Distinction Between Aiding and Abetting and Co-Perpetration in a JCE	24
C. Omission under Article 7(1)	25
IV. NO CRIMINAL LIABILITY AS A CONDUIT	26
 PART III: APPOINTMENT, ROLE AND ESTABLISHMENT OF THE KNIN GARRISON	 29
I. BACKGROUND	29
II. APPOINTMENT	30
III. DE FACTO ROLE OF CERMAK IN THE NORMALISATION OF LIFE	34
IV. THE ESTABLISHMENT OF THE KNIN GARRISON, MANPOWER AND RESOURCES	39
 PART IV: JOINT CRIMINAL ENTERPRISE: FACTUAL ANALYSIS	 43
I. INTRODUCTION	43
II. DID A JOINT CRIMINAL ENTERPRISE EXIST?	43
A. No Plurality of Persons Involving Cermak	44

B. No Common Criminal Purpose	53
C. No Mens Rea	56
III. NO PARTICIPATION BY CERMAK IN A JCE	57
A. Indictment Paragraphs 17(a), 19(a) and 19(b)	60
B. Indictment Paragraph 17(b)	61
1. CERMAK DID NOT HAVE ANY POSITION OR AUTHORITY TO FORMULATE POLITICAL, GOVERNMENTAL OR MILITARY POLICY	61
2. BRIJUNI: NO INVOLVEMENT IN THE PLANNING, PREPARATION OR EXECUTION OF OPERATION STORM	61
3. NO INVOLVEMENT IN DISCUSSIONS IN THE PRESIDENTIAL TRANSCRIPTS	62
4. HOUSING LAWS	62
5. CERMAK TOOK POSITIVE ACTION TO ASSIST THE SERBS IN THE UN CAMP AND PROTECT THEIR HUMAN RIGHTS	62
(a) Cermak's Attempts to Encourage People to Stay	63
(b) Cermak and the Departure of Serbs From the UN Compound	67
(c) Cermak and the Suspected War Criminals in the UN Compound	69
6. CONTRARY TO PARAGRAPH 17(B) CERMAK TOOK ACTION IN HIS ROLE AS GARRISON COMMANDER TO POSITIVELY ASSIST THE SERBS	75
C. Indictment Paragraphs 17(c) and 19(c)	77
1. CONTRARY TO PARAGRAPH 19(C) OF THE INDICTMENT, CERMAK ADMITTED THAT CRIMES WERE TAKING PLACE	85
2. CONTRARY TO PARAGRAPH 19(C) OF THE INDICTMENT, CERMAK PASSED ON INFORMATION ABOUT CRIMES TO THE RELEVANT AUTHORITIES	88
D. Indictment Paragraph 19(c): Incident in Grubori	95
1. PLAVNO VALLEY 25 AUGUST 1995	95
2. CERMAK'S KNOWLEDGE AND THE REPORTING OF THE GRUBORI INCIDENT	96
<u>25 AUGUST</u>	
(a) Report to the Garrison and Cermak's Attempts to get	96

Information	
(b) Attempts of the Kotar-Knin PU to Locate Grubori	98
<u>26 AUGUST</u>	
(c) Information in Possession of Cermak During the UNTV Interview	100
(d) Report to the Knin Police by UNCIVPOL	103
(e) Attempts by the Garrison to get Information on 26 August	103
(f) Visit to Grubori by Karolj Dondo	104
(g) Report to the Knin Police by Karolj Dondo on the Evening of 26 August	104
<u>27 AUGUST</u>	
(h) Information in Possession of Cermak During the HRT Interview of 27 August	106
3. ALLEGED COVER-UP OF THE CRIMES BY "SPREADING FALSE INFORMATION"	107
(a) The False Information did not Originate From Cermak	107
(b) Cermak had no Reason not to Trust the Reports	108
4. EFFORTS TO ENSURE OR OBSTRUCT AN ON-SITE INVESTIGATION	109
(a) The Meetings Prior to the Visit to Grubori on 27 August	110
The Meeting at the Knin Garrison	111
The Meeting at the Knin Police Station	112
The Meeting at Cermak's Office	114
(b) The Visit to Grubori Hamlet on 27 August	114
(c) The Lunch and/or Coffee Meeting at the Knin Garrison Following the Visit to Grubori	116
5. KNOWLEDGE OF PROSECUTING AUTHORITIES AND OTHER RESPONSIBLE AUTHORITIES OF CROATIA	119
(a) Information Supplied to the Zadar-Knin PU	119
(b) Information Supplied to the Crime Police Section of Zadar-Knin PU	120
(c) Information Supplied to the Highest Levels of the Croatian	120

Government	
5. CONCLUSIONS	122
E. Indictment Paragraph 17(d)	123
F. Indictment Paragraphs 17(e) and 19(d)	123
1. NO FAILURE TO INVESTIGATE OR FOLLOW UP ON INVESTIGATIONS	124
2. NO FAILURE TO PREVENT, PUNISH OR DISCIPLINE SUBORDINATES AND OTHERS IN THE CROATIAN AUTHORITIES OVER WHOM IVAN CERMAK ALLEGEDLY POSSESSED EFFECTIVE CONTROL	125
3. NO FAILURE TO ESTABLISH AND MAINTAIN LAW AND ORDER AMONG HIS SUBORDINATES OR TO DISCIPLINE THEM	126
G. Indictment Paragraphs 17(f), 19(c) and 19(e)	129
1. CERMAK DID NOT CONCEAL CRIMES BY RESTRICTING THE MOVEMENT OF INTERNATIONALS	129
(a) The Need for Restrictions on FOM was Agreed Between Croatia and the UN in the Akashi-Sarinic Agreement	130
(b) Between 4-15 August, the UN Restricted the Movement of its Own Staff for Security Reasons	131
(c) The Agreement was not Efficiently Implemented Because Sarinic had no Authority to Make a Binding Agreement on Behalf of the Government	131
(d) The Agreement was not Communicated to those Responsible for its Implementation	132
(e) Cermak Made Attempts to try to Ensure that the Spirit of the Agreement was Implemented	133
(f) Cermak Tried to Assist the Internationals with FOM but was Only a Mere Conduit/Interlocutor	134
(g) Others Possessed the Authority to Determine FOM and ROM	139
(h) Objective Security Concerns were a Permissible and Reasonable Basis for Restricting Movement	143
(i) Cermak was not Involved in the Ad-hoc Decisions of the MUP and VP Which led to ROMs	145
(j) Despite Protests about ROMs, UNCRO, ECMM and HRAT Teams were Able to Patrol Areas Within the Former Sector	148

South and Report on Events	
(k) Cermak had no Power to Decide upon the ROMs which Took Place at the End of August/Beginning of September due to Special Police Operations	150
2. CERMAK WAS NOT RESPONSIBLE FOR SANITATION OF THE TERRAIN OR FOR ACCESS TO THE KNIN GRAVEYARD: <i>DE JURE</i> AND <i>DE FACTO</i>	152
(a) <i>De Jure</i> and <i>De Facto</i> Sanitation of the Terrain	152
(b) The Garrison and its <i>De Facto</i> Role	160
PART V: SUPERIOR RESPONSIBILITY - FACTUAL ANALYSIS	169
I. INTRODUCTION	169
A. No Superior-Subordinate Relationship: No Effective Control	169
1. NO <i>DE JURE</i> SUPERIOR POSITION	170
2. NO FORMAL OR INFORMAL HIERARCHY TO THE PERPETRATORS	170
3. NO REPORTING TO CERMAK	171
4. NATURE OF ROLE AND TASK	171
5. NO MILITARY EDUCATION, TRAINING OR EXPERIENCE	171
6. APPEARANCE OR BELIEF NOT ENOUGH	171
7. MERE INFLUENCE NOT ENOUGH	172
8. NO AUTHORITY TO ISSUE AND ENFORCE ORDERS	172
9. THE TYPES OF ORDERS ISSUED WERE HUMANITARIAN OR ADMINISTRATIVE/LOGISTICAL	172
10. CERMAK'S ORDERS WERE NOT TO ALLEGED PERPETRATORS	173
11. MERE ISSUANCE OF ORDERS NOT ENOUGH	173
12. CHAOTIC SITUATION POST STORM	173
II. THE HV	174
A. The <i>De Jure</i> Authority of the Garrison Commander	174
1. CERMAK HAD NO <i>DE JURE</i> OPERATIONAL COMMAND OR CONTROL	174

OVER THE HV UNITS	
2. COORDINATION AND CO-OPERATION OF TASKS OF THE GARRISON COMMANDER	179
3. TASKS OF GARRISONS	180
4. AUTHORITY OF THE GARRISON COMMANDER TO DISCIPLINE	182
B. Cermak's Military Position and Rank	184
C. No <i>De Facto</i> Superior-Subordinate Relationship with Units of the HV	185
D. International Witnesses: Unreliable Factual Foundation in Respect of Cermak's Role, Responsibility and Authority	191
E. Cermak was not Informed of Matters Concerning Either the Mobilisation or Demobilisation of HV Troops or Units Listed in Paragraph 7 of the Indictment	202
F. Cermak had no <i>De Facto</i> Authority to Temporarily Assign, Transfer, or Subordinate HV Members	203
1. MAJOR JONJIC	203
2. 142ND HOME GUARD	205
3. DEMINING THE TERRAIN AND REQUESTS FOR HV SUPPORT	206
G. No Authority of Cermak to Recover Stolen UN Vehicles and Equipment from the HV	208
H. Cermak's Co-ordination with the Housing Commission of the Ministry of Defence is not an Indicator of Effective Control over HV Units	212
I. No Duty of Garrison Commander to Prevent Crimes	215
J. No Duty of Garrison Commander to Punish Crimes	216
III. THE VP	217
A. No <i>De Jure</i> Command and Control of the Military Police by the Garrison	217
1. THE EVIDENCE OF GENERAL LAUSIC	220
(a) OTP Witness Statement	220
(b) OTP Suspect Interview	224

2. THE <i>DE FACTO</i> RELATIONSHIP: IVAN CERMAK AND THE MILITARY POLICE	227
(a) The 6 Cermak Military Police Orders	228
(b) The Evidence of Bosko Dzolic	232
(c) The Evidence of Ivan Juric	240
IV. THE MUP	243
A. Introduction	243
B. No <i>De Jure</i> Effective Control: The Service Regulations and Organisational Order	243
C. No <i>De Jure</i> Effective Control: Cermak did not Have any <i>De Jure</i> Position Within the Structure of the MUP	244
D. No Personal Assignment of Authority to Cermak Over the Civilian Police by President Tudjman	245
E. The Knin Garrison Commander and Co-operation/Co-ordination with the MUP	247
F. No <i>De Facto</i> Effective control: Cermak did not have any de facto position within the structure of the MUP	252
G. No <i>De Jure</i> or <i>De Facto</i> Effective Control: Cermak was not Part of the Chain of Reporting Within the MUP	258
H. No <i>De Jure</i> or <i>De Facto</i> Effective Control: No Role in the Staffing of the MUP, the Sending of Additional MUP Units to the Liberated Area or the Opening of Police Stations	259
I. No <i>De Facto</i> Effective Control over the Civilian Police: P34, [REDACTED], [REDACTED], D505, [REDACTED], [REDACTED]	260
J. Seven so-called 'Orders' sent by Cermak Demonstrate his Lack of Effective Control over the Civilian Police	265
K. The Issue of the Return of the UN Vehicles Demonstrates that Cermak had no <i>De Jure</i> or <i>De Facto</i> Authority over the MUP or VP	274
L. Statements Allegedly made by Cermak to the International Community do not give Rise to either a <i>De Facto</i> or <i>De Jure</i> Authority over the Civilian Police	274
M. Cermak was not Superior to the Civilian Police: He lacked <i>De Jure</i> and <i>De Facto</i> Authority over the MUP in Relation to the Issuing of	278

Passes	
1. MOVEMENT OF CIVILIANS: THE AUTHORITY OF THE MUP	279
2. MOVEMENT OF CIVILIANS: LACK OF AUTHORITY OF THE KNIN GARRISON	281
N. No <i>De Jure</i> or <i>De Facto</i> Power or Authority to Discipline the Civilian Police	285
O. Cermak as Garrison Commander had no <i>De Facto</i> or <i>De Jure</i> Power or Authority to Investigate or Order the Investigation of Crimes	287
1. NO DE JURE POWER OR AUTHORITY TO INVESTIGATE CRIME	287
(a) The Investigating Judge	287
(b) The Police	288
(c) Citizens	290
2. NO DE FACTO POWER OR AUTHORITY TO INVESTIGATE CRIMES	291
3. THE PROSECUTION'S CASE ON CERMAK'S ALLEGED FACTUAL AUTHORITY	292
4. DE FACTO: FAILURE TO INVESTIGATE BY THE CIVILIAN POLICE CANNOT BE ATTRIBUTED TO CERMAK	295
5. DE FACTO: REPORTING OF CRIME WITHIN THE POLICE	297
PART VI: SENTENCING	299
I. THE GRAVITY OF OFFENCES AND TOTALITY OF THE CONDUCT	299
II. MITIGATING CIRCUMSTANCES	299
A. Voluntary Surrender	300
B. Substantial Co-operation and Assistance	300
C. Good Character and Conduct	301
D. Personal and Family Circumstances	303
E. Credit for Time Served	304

PART VII: ANNEXES	306
I. ANNEX I: ORDERS TO STOP CRIMES	307
II. ANNEX II: REINFORCEMENT OF CIVILIAN POLICE UNITS	313
III. ANNEX III: REINFORCEMENT OF CIVILIAN PROTECTION UNITS	316
IV. ANNEX IV: REINFORCEMENT OF VP UNITS	318
V. ANNEX V: MUP ORDERS TO REPORT ABOUT CRIMES AND FOLLOW-UP REPORTS	325
VI. ANNEX VI: CO-OPERATION BETWEEN THE MUP AND THE VP	328
VII. TABLE OF AUTHORITIES	336
VIII. GLOSSARY	344

INTRODUCTION

1. Pursuant to Rule 86, Mr Ivan Cermak submits his final written submissions. These submissions set out the legal and factual issues for his defence in these proceedings.
2. Ivan Cermak submits the Prosecution has failed to prove beyond a reasonable doubt his guilt as alleged in the Indictment and he should be acquitted of all charges.
3. This brief consists of seven parts. **Part I** provides certain legal directions. **Part II** sets out the law on relevant modes of liability. **Part III** addresses Ivan Cermak's background, appointment, role and the establishment of the garrison. **Part IV** provides a factual analysis of the allegations concerning Joint Criminal Enterprise. **Part V** provides a factual analysis of the allegations of Ivan Cermak's superior responsibility over the Croatian Army, the Military Police and the Civilian Police. **Part VI** addresses sentencing considerations. **Part VII** consists of six non-exhaustive annexes containing exhibit collections relevant to actions taken by Croatian authorities to stop and prevent crime. It also contains a Table of Authorities and the Glossary of Abbreviations.

PART I

LEGAL DIRECTIONS

I. THE PRESUMPTION OF INNOCENCE

4. Article 21(3) of the Statute presumes the innocence of the accused until he is proven guilty.

II. PROOF OF GUILT

5. Pursuant to Rule 87(A), the Prosecution must prove the case alleged against the accused beyond a reasonable doubt. This burden remains with the Prosecution throughout the trial.
6. If in deciding the charges, there is any reasonable doubt that the Prosecution has not established the case against the accused, he is entitled to the benefit of the doubt and must be acquitted.
7. Each and every element of the offences charged against an accused must be proven beyond a reasonable doubt.¹ Any ambiguity or doubt must be resolved in favour of the accused under the principle of *in dubio pro reo*.² It is not sufficient that guilt is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion and established beyond a reasonable doubt. If there is another reasonable conclusion which *may* or *might be* the case which is consistent with the innocence of the accused, a finding must be made in his favour.³

¹ *Milosevic, Dragomir* Appeals Judgement, para.21.

² *Celebici* Appeals Judgement, para.458.

³ *Celebici* Appeals Judgement, paras.458, 305.

8. A conclusion from circumstantial evidence must also be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from that evidence. It must be the only reasonable conclusion available. If there is another conclusion which is also reasonably available which is consistent with the innocence of the accused, he must be acquitted.⁴
9. It would be wrong for the Trial Chamber to have reached any conclusions against an accused during the prosecution phase of the trial before hearing all the evidence in this case. That would have the effect of placing a burden on the defence to prove their innocence and disprove a conclusion already reached by the Trial Chamber. The fact that the Defence evidence is heard after the Prosecution evidence does not mean that in the defence case the Trial Chamber is requiring the defence to rebut the case of the Prosecution.

III. SEPARATE CONSIDERATION

10. In a joint trial, it is the duty of the Trial Chamber to consider the case against each accused separately and to consider each count separately.⁵

⁴ *Celebici Appeals Judgement*, para.458.

⁵ *Kordic Trial Judgement*, para.17.

IV. RIGHT OF SILENCE OF AN ACCUSED

11. Cermak did not testify in these proceedings. Pursuant to Article 21(4)(g) of the Statute and Rule 85(C), there is an absolute prohibition against considering the silence of the accused in determining guilt or innocence.⁶

V. EQUAL TREATMENT OF WITNESSES

12. All witnesses in the trial should be treated equally. The fact that a witness is a defence witness or Croatian does not make such a witness less credible than a Prosecution witness or a witness from the international community. The Trial Chamber must apply the same standard of fairness to all.⁷

VI. DELAY

13. There has been considerable delay in bringing this case to trial.⁸ There may be a danger as a result of this of real prejudice to the Accused.⁹ The Chamber must bear this in mind when considering whether the Prosecution has proved the guilt of the Accused. The Chamber must bear in mind the effect lapse of time may have upon the memories of witnesses. There may also be an expectation that a witness has to remember something to be credible or reliable to the court, which would be unfair. A witness may give an honest and reliable account of part of an event without being able to remember all the details. Some witnesses may produce an unreliable account in part by an expectation being placed upon them to remember many details that in fact they

⁶ *Celebici* Appeal Judgement, paras.783.

⁷ JSB Specimen Directions Oct 2008, section 1 www.jsboard.co.uk.

⁸ Events largely concern the summer of 1995. The trial commenced in March 2008.

⁹ JSB Specimen Directions Oct 2008, section 37 www.jsboard.co.uk.

cannot remember but they wish to appear credible about what they can remember so they embellish their account. The Prosecution had many years in which to collect evidence and take statements from witnesses to prepare their case. The Defence had much less time in which to do so and the passage of time may inevitably have caused the loss of opportunity to interview or call witnesses for them as well as the loss of material evidence.¹⁰ An expectation that in such circumstances the defence should have produced certain evidence in the trial is wrong.

¹⁰ President Tudjman, Defence Minister Gojko Susak, and Chief of Staff Cervenko have all died since the period covered by the indictment.

PART II

THE LAW - MODES OF CRIMINAL LIABILITY

I. ARTICLE 7 (1) JOINT CRIMINAL ENTERPRISE

14. In order to avoid unnecessary repetition, the Defence for Ivan Cermak relies upon the law as set out in Gotovina's Final Brief.

II. ARTICLE 7(3) SUPERIOR RESPONSIBILITY

15. Superior responsibility is a form of liability for a commander's failure to act when he had both the duty and material ability to prevent his subordinates from committing certain crimes or to punish them for such violations.

16. The duty to act arises only if the commander has *effective control* of his subordinates. "A degree of control which falls short of the threshold of effective control is insufficient for liability to attach under Article 7(3)."¹¹

17. The essential elements for liability under Article 7(3) are well developed in the jurisprudence of the Tribunal. In order to convict under Article 7(3), the prosecution must prove beyond a reasonable doubt that:¹²

- i. a superior-subordinate relationship existed between the accused and the perpetrator of the crime;

¹¹ *Halilovic* Trial Judgement, para.59.

¹² *Oric* Appeals Judgement, para.18.

- ii. the superior either knew or had reason to know that his subordinate was about to commit, or had already committed, the underlying crime;
- iii. the superior failed to take necessary and reasonable measures to prevent the subordinate from committing the crime or to punish the subordinate for such commission.

A. Superior – Subordinate Relationship

1. EFFECTIVE CONTROL

18. Article 7(3) requires first and foremost that the perpetrator of the underlying crime was a subordinate of the accused. There can be no such relationship unless the accused exercised *effective control* over the perpetrator.¹³

19. Effective control is not merely the ability to control acts of others. The commander must specifically have “the material abilities to *prevent subordinate offences or to punish subordinate offenders*”.¹⁴

2. INFLUENCE NOT ENOUGH

20. Control must be effective. Mere influence over the behaviour of others is not effective control and therefore does not satisfy the superior-subordinate element of Article 7(3).¹⁵ Moreover, neither being “highly influential”¹⁶ nor having “substantial,”¹⁷ “tremendous,”¹⁸ “great”¹⁹ or

¹³ *Celebici Appeals Judgement*, para.196 *et seq.*

¹⁴ *Celebici Appeals Judgement*, paras.197, 266.

¹⁵ *Oric Trial Judgement*, para.311.

¹⁶ *Kordic Trial Judgement*, para.413.

¹⁷ *Celebici Appeals Judgement*, paras.257-266, 300.

¹⁸ *Kordic Trial Judgement*, para.838.

even effective influence is sufficient if it does not amount to effective control. The Appeals Chamber has made clear that this is true regardless of whether the accused was in a position of formal authority.²⁰

21. It is therefore necessary to distinguish between situations where the accused had “true powers of discipline” or “mere personal influence”.²¹ The power to convince or to otherwise impact another’s decision without the capacity to issue binding instruction is not effective control.

3. APPEARANCE OF CONTROL NOT ENOUGH

22. A finding that the accused was perceived or thought to have command authority does not lead to the conclusion that he in fact had effective control.²² Presence at high-level meetings²³ and even statements made by the accused that he was in a position of control are not proof of actual authority.²⁴
23. Likewise, evidence that an alleged subordinate acted in accordance with the wishes of the accused does not prove effective control.²⁵ The accused must have been able “to *maintain or enforce* compliance” of the perpetrators, not merely to convince or sway their decisions.²⁶

¹⁹ *Brdjanin* Trial Judgement, para.372.

²⁰ *Kvočka* Appeal Judgement, para.144.

²¹ *Limaj* Appeals Judgement, para.273.

²² *Celebici* Trial Judgement, paras.800, 810.

²³ *Celebici* Trial Judgement, paras.652 and 658.

²⁴ *Blaskic* Appeals Judgement, note 1255: it would not be reasonable to expect a commander to admit otherwise or “to disclose problems in his command structure under such [wartime] circumstances.”

²⁵ *Celebici* Trial Judgement, paras.803-806.

²⁶ *Oric* Trial Judgement, para.311.

4. *DE FACTO AND DE JURE AUTHORITY*

24. Whilst *de jure* authority is probative of the existence of effective control²⁷ it “is not synonymous with effective control.”²⁸ Thus, although an analysis of the *de jure* relationship may provide evidence of effective control, the critical inquiry concerns the *de facto* relationship between the perpetrator and the accused.²⁹
25. *De jure* authority does not necessarily imply *de facto* command, nor does it create a presumption of effective control; a *de jure* command position is merely a *prima facie* indicia of effective control. It does not shift the burden of proof.³⁰ Even where *de jure* authority is firmly established, lack of the *de facto* power to control precludes liability under the doctrine of command responsibility.³¹ A *de jure* superior-subordinate relationship results from an official and valid appointment to a position of authority that mandates command and control of subordinates.³² Appointment to a non-command position is not evidence of an Article 7(3) superior-subordinate relationship.³³

5. EFFECTIVE CONTROL FOR NON-MILITARY AUTHORITIES

26. Although command responsibility is not necessarily limited to *de jure* military commanders, non-military authorities may only be subject to

²⁷ *Oric* Appeals Judgement, para.92.

²⁸ *Oric* Appeals Judgement, para.91.

²⁹ *Celebici* Trial Judgement, paras.370, 736.

³⁰ *Oric* Appeals Judgement, paras.87-92; *Hadzihasanovic* Appeals Judgement, para.21. The Appeals Chamber in *Oric* and *Hadzihasanovic*, made clear that the *Celebici* Appeals Judgement should not be understood as reversing the burden of proof.

³¹ *Blaskic* Appeals Judgement, paras.610, 612 The Appeals Chamber endorsed this principle in *Blaskic*. After considering evidence suggesting “that the appellant had no command or control over the Military Police *even when they were nominally attached to his command*” the Chamber concluded that “the Appellant did not enjoy or exercise effective command and control over all the units nominally subordinated to him.”

³² Article 87 of Additional Protocol I of the Geneva Conventions of 12 August 1945.

³³ *Oric* Trial Judgement, para.311.

Article 7(3) liability “if they exercise a degree of control with respect to their subordinates similar to that of a military person in an analogous command position.”³⁴

27. Article 7(3) can thus reach individuals with administrative, non-military authority, but only if the authority over the perpetrators in fact reached the level of control that a *de facto* military commander would enjoy over his subordinates.³⁵ Without executive military authority, one is beyond the scope of command responsibility.

28. An individual may therefore enjoy *some* types of authority over another without being exposed to potential Article 7(3) liability for illegal acts of the other as stated in Brdanin: “...Accused’s *de facto* authority to direct the action of the police is not indicative of his alleged material ability to prevent or punish the commission of crimes by members of the police.”³⁶ “[M]erely being tasked with coordination, [for example,] does not necessarily mean to have command and control.”³⁷ The control must be of an executive military nature, not simply administrative.³⁸ “The indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had the power to prevent, punish, or initiate measures leading to proceedings against the alleged perpetrators where appropriate”³⁹

29. Factors that may indicate the presence or lack of *de facto* authority may include:

³⁴ *Celebici Appeals Judgement*, para.197.

³⁵ *Oric Trial Judgement*, para.312.

³⁶ *Brdjanin Trial Judgement*, para.374; *Blagojevic Appeals Judgement*, para.302.

³⁷ *Oric Trial Judgement*, para.311; *Halilovic Appeals Judgement*, para.73.

³⁸ *Blaskic Appeals Judgement*, paras.393-4.

³⁹ *Blaskic Appeals Judgement*, para.69.

- i. a capacity to enforce compliance with orders,⁴⁰
- ii. a power to discipline,⁴¹
- iii. a person's official position,⁴²
- iv. the behaviour of alleged subordinates in the presence of the accused.⁴³

6. ISSUING ORDERS

30. "[I]n order to make a proper determination of the status and actual powers of control of a superior, it will be necessary to look to the substance of the documents signed *and* whether there is evidence of them being acted upon."⁴⁴ Coincidental cooperation or consistency between an alleged subordinate's actions and the accused's orders is not evidence of effective control unless the alleged subordinate in fact acted as a result of having been ordered to do so by the accused.⁴⁵
31. Issuing orders may be relevant for a determination of command authority; however the fact that the accused signed an order "may not necessarily be indicative of actual authority."⁴⁶ Lack of authority to issue binding orders or power to *overcome* subordinates' resistance are strong indicators that an individual did not have effective control.⁴⁷ An order is indicative of effective control only if the accused issued it by his own independent authority and with the *ability* to enforce compliance.⁴⁸ Orders that were "purely formal or merely aimed at

⁴⁰ *Hadzihasanovic* Appeals Judgement, para.199.

⁴¹ *Delic* Trial Judgement, para.62.

⁴² *Celebici* Appeals Judgement, para.197.

⁴³ *Celebici* Appeals Judgement, para.206.

⁴⁴ *Kordic* Trial Judgement, para.421 (emphasis added).

⁴⁵ *Delic* Trial Judgement, paras.345, 355.

⁴⁶ *Kordic* Trial Judgement, para.421; *Halilovic* Appeals Judgement, para.73.

⁴⁷ *Kordic* Appeals Judgement, paras.847, 913. *Halilovic* Appeals Judgement, para.207.

⁴⁸ *Hadzihasanovic* Appeals Judgement, para.199.

implementing a decision made by others” are not evidence of effective control.⁴⁹

32. Certain types of orders are less relevant to the question of effective control than others. The Appeals Chambers has noted for example that, “the issuing of humanitarian orders does not by itself establish that the Appellant had effective control over the troops that received the orders.”⁵⁰ The ability to issue binding combat orders, on the other hand, although also not dispositive of the relationship,⁵¹ may be a stronger indicator of effective control.

7. POWER TO DISCIPLINE

33. As with issuing orders, one’s power to discipline is indicative of control only if the power is effective. The ability to impose a sanction or other disciplinary measure is only relevant if the same person can actually apply and enforce that measure.
34. The accused’s capacity to report offences to competent authorities may be a relevant indicator of effective control, if those authorities would be likely to act on the report as a direct result of the reporting individual’s *de facto* power.⁵² A superior would satisfy his obligation to punish offending subordinates by filing a report to the appropriate authorities.⁵³ It is essential to note that there cannot be effective control unless the accused was “by virtue of his position, senior in some sort of formal or informal hierarchy to the perpetrator.”⁵⁴ Without this qualification, command responsibility could potentially attach to every

⁴⁹ *Kordic* Trial Judgement, para.421; *Halilovic* Appeals Judgement, para.73.

⁵⁰ *Blaskic* Appeals Judgement, para.485-6.

⁵¹ *Halilovic* Trial Judgement, paras.749, 751; *Halilovic* Appeals Judgement, para.69.

⁵² *Aleksovski* Trial Judgement, para.78; *Boskoski* Appeals Judgement, para.235.

⁵³ *Boskoski*, Appeals Judgement, para.235.

⁵⁴ *Halilovic* Appeals Judgement, para.59.

soldier or every police officer with the ability to submit a report to the authorities.⁵⁵

8. OFFICIAL POSITION

35. The official position of the accused in a chain of command or other hierarchical structure may be probative of the question of effective control, but it is well established that such a position cannot be dispositive of effective control.⁵⁶ “[A]n analysis of the formal procedures for appointment” is no more than a “starting point” for the inquiry into *de facto* status.⁵⁷ Even if all formal procedures were complied with for an appointment to a *de jure* superior position, the critical inquiry remains that of the *de facto* relationship between the accused and the perpetrator.⁵⁸

9. BEHAVIOUR OF ALLEGED SUBORDINATES IN THE PRESENCE OF THE ACCUSED

36. The behaviour of alleged subordinates in the presence of the accused may indicate effective control.⁵⁹ Eliciting fear of punishment from an alleged subordinate for his transgressions may also indicate a level of control.⁶⁰ Evidence of such effects, however, is not conclusive.⁶¹ On the other hand, an individual’s “erratic,” insolent or disrespectful behaviour toward the accused suggests that the accused did not have effective control over those individuals.⁶²

⁵⁵ Halilovic Appeals Judgement, para.59.

⁵⁶ Hadzihasanovic Appeals Judgement, para.189.

⁵⁷ Kordic Trial Judgement, para.422.

⁵⁸ Celebici Appeals Judgement, para.197.

⁵⁹ Oric Trial Judgement, para.312.

⁶⁰ Kvocka Appeals Judgement, para.378.

⁶¹ Oric Trial Judgement, para.503.

⁶² Oric Appeals Judgement, para.159.

10. IDENTITY OF PERPETRATORS

37. The accused must have effective control *over the perpetrators* of the underlying crimes. Although it may be sufficient to show that the accused exercised effective control over a group to which the perpetrator belonged,⁶³ a finding that the accused controlled an unrelated person or group does not satisfy the requirement for effective control.⁶⁴ A finding of effective control in one setting does not lead to the inference that effective control existed in another setting.

11. EFFECTIVE CONTROL BEYOND REASONABLE DOUBT AND IN DUBIO PRO REO

38. The Prosecution must prove beyond reasonable doubt that at the relevant time the accused had effective control over the underlying perpetrator.⁶⁵ Indeed, the primary issue before the Trial Chamber is whether there is sufficient evidence to conclude, beyond a reasonable doubt, that the accused had effective control, not whether there is sufficient evidence to contradict such an allegation.⁶⁶ There can be no presumption of effective control and all evidence is assessed *in dubio pro reo*.⁶⁷

⁶³ *Oric* Trial Judgement, para.311.

⁶⁴ *Kordic* Appeals Judgement paras.924-6.

⁶⁵ *Oric* Appeals Judgement, para.91.

⁶⁶ *Oric* Appeals Judgement, paras.18, 148.

⁶⁷ *Oric* Trial Judgement, note 22 and accompanying text.

B. The Knowledge Requirement

1. NOT A STRICT LIABILITY CRIME

39. Command responsibility is not a strict liability crime.⁶⁸ An individual may only be convicted for command responsibility if he “knew or had reason to know” that a subordinate was about to commit a crime, or had already committed it.⁶⁹

2. ACTUAL KNOWLEDGE

40. It may be possible to establish knowledge by reference to circumstantial evidence,⁷⁰ but knowledge may not be presumed.⁷¹ The accused must be found to have had knowledge about the specific underlying crime charged, as opposed to knowledge about the commission of crimes generally.⁷² Though it may be possible to infer the former from the latter, the latter does not necessitate a finding of the former.⁷³
41. The nature and scope of the accused’s position at the time of the offence is just one factor to be considered; formal status alone does not compel the conclusion that one must have known or had reason to know about his subordinates’ transgressions, nor does it create a presumption of such knowledge.⁷⁴ Other factors that may be considered include the number, type and scope of illegal acts; the time during which the illegal acts occurred; the number and type of troops

⁶⁸ *Celebici Appeals Judgement*, para.239.

⁶⁹ Article 7(3) ICTY Statute.

⁷⁰ *Hadzihasanovic Appeals Judgement*, para.276.

⁷¹ *Mrksic Trial Judgement*, para.563.

⁷² *Oric Appeals Judgement*, paras.55-60.

⁷³ *Oric Appeals Judgement*, paras.59-60.

⁷⁴ *Kajelijeli Trial Judgement*, para.776.

and logistics involved⁷⁵; the geographical location of the acts relative to that of the accused at the time; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved⁷⁶; and the location of the commander at the time.⁷⁷

3. CONSTRUCTIVE KNOWLEDGE

42. The ICTY has clarified that “had reason to know,” or constructive knowledge, means the accused must have in fact possessed either conclusive information that his subordinates were about to or had committed such crimes, or specific information indicating a need for further investigation into the matter.⁷⁸ This assessment is to be done on a case-by-case basis, considering the particular circumstances.⁷⁹

4. KNOWLEDGE OF CRIMES OF NON-SUBORDINATES IS NOT SUFFICIENT

43. The mental element of command responsibility will not be satisfied unless the commander had knowledge, whether actual or constructive, about acts of *his own subordinates*.⁸⁰ Moreover, the general nature of the situation in the area, even if widespread or systematic, does not create a presumption of knowledge.⁸¹

⁷⁵ *Hadzihasanovic* Appeals Judgement, para.278, 295 (“the criminal reputation of his subordinates”).

⁷⁶ *Halilovic* Trial Judgement, para.68.

⁷⁷ *Boskoski* Trial Judgement, para.413.

⁷⁸ *Mrksic* Trial Judgement, para.564.

⁷⁹ *Hadzihasanovic* Appeals Judgement, para.28.

⁸⁰ *Oric* Appeals Judgement, paras.55-60.

⁸¹ *Bagilishema* Appeals Judgement, para.40-42.

C. Necessary and Reasonable Measures

1. MATERIAL ABILITY

44. A superior may be liable only for failure to take those measures *that are within his material ability*⁸² under the particular circumstances. In other words, whether the accused had the formal or legal capacity to act is irrelevant if he did not *de facto* have such powers. One is responsible therefore to take measures necessary and reasonable to prevent or punish subordinate crimes.⁸³
45. The duty “presupposes that a superior is in a position to take the required measures”.⁸⁴

2. DUTY TO PREVENT OR PUNISH

46. A superior who learns that a subordinate is about to commit a crime has a duty to take necessary and reasonable measures to prevent the commission of that crime. If one was not in a superior-subordinate relationship with the perpetrators at the time when preventative measures may have been appropriate, one cannot be found to have had such a duty. Likewise, a superior who first learns about a subordinate’s crime after its commission has a duty to take necessary and reasonable measures to punish the perpetrator.⁸⁵ In considering whether one fulfilled this duty, the Chamber may refer to, *inter alia*, any steps taken to investigate crimes after their commission as well as steps taken to

⁸² *Blaskic* Appeals Judgement, para.417.

⁸³ *Oric* Appeals Judgement, para.177.

⁸⁴ *Oric* Trial Judgement, para.327.

⁸⁵ *Hadzihasanovic* Trial Judgement, paras.121-2, 125-6.

bring the perpetrators to justice.⁸⁶ Disciplinary measures may be sufficient to discharge a duty to punish.⁸⁷

3. REPORTING CRIMES TO AUTHORITIES MAY SUFFICE

47. Where a superior has effective control over the perpetrator of a crime, he may discharge the duty by reporting the criminal to the competent authorities without dispensing the punishment himself.⁸⁸

⁸⁶ *Strugar* Trial Judgement, para.376.

⁸⁷ *Hadzihasanovic* Appeals Judgement, para.33.

⁸⁸ *Hadzihasanovic* Appeals Judgement, para.154.

III. OTHER MODES OF LIABILITY UNDER ARTICLE 7(1)

48. In respect of allegations of planning, instigating, ordering and committing crimes under Article 7(1), there has been no evidence called at trial alleging these forms of criminal liability against Cermak. The only relevant mode to be considered on the evidence is aiding and abetting. This section also addresses omission liability.

49. Modes of liability do not change or replace the elements of crimes defined in the Statute.⁸⁹ In particular, the requisite *mens rea* for an offence cannot be altered.⁹⁰ In order to establish the mode of liability, proof is required that the underlying crime was actually committed by the principal perpetrator.⁹¹

A. Aiding and Abetting

50. The Prosecution alleges that Cermak is responsible as an aider and abettor who knowingly assisted, encouraged, provided means and material, protected perpetrators from detection, shielded them from punishment, and lent other forms of moral support which substantially contributed to the perpetration of crimes.⁹² It is also alleged that each accused is criminally responsible for aiding and abetting the planning, preparation and/or execution of the crimes charged.⁹³

⁸⁹ *Stakic* Trial Judgement, paras.437, 442.

⁹⁰ *Stakic* Trial Judgement, para.437.

⁹¹ *Brdjanin* Trial Judgement, para.267.

⁹² Prosecution Pre-Trial Brief, para.131.

⁹³ Joinder Indictment, para.45.

51. Aiding and abetting is a form of accomplice liability defined as the act of rendering assistance, encouragement or moral support, which has a *substantial* effect on the commission of a crime.⁹⁴
52. Aiding involves the provision of assistance; whereas abetting involves facilitating the commission of an act by being sympathetic to it or encouraging it.⁹⁵ Such assistance may be provided by either an act or omission,⁹⁶ and it may occur before, during or after the principal crime has been perpetrated.⁹⁷ It could consist of providing the means to commit the crime or promising to perform certain acts once the crime has been committed.⁹⁸
53. A substantial effect exists if the crime would probably not have occurred in the same way had someone not acted in the role the accused assumed.⁹⁹ A fact-based inquiry is required to determine whether or not a particular act will constitute substantial assistance.¹⁰⁰ However, it must be noted that the assistance provided does not need to “serve as a condition precedent for the commission of the crime.”¹⁰¹ Moreover, “[t]he assistance need not have caused the act of the principal.”¹⁰²
54. The *Blagojevic* Trial Chamber determined that the “contribution of...resources made available by Blagojevic as ‘practical assistance’ to the crimes...had a substantial effect on the commission of [those]

⁹⁴ *Tadic* Appeal Judgement, para.229(iii).

⁹⁵ *Limaj* Trial Judgement, para.516.

⁹⁶ *Blaskic* Appeal Judgement, para.47.

⁹⁷ *Blaskic* Appeals Judgement, para.48.

⁹⁸ *Aleksovski* Trial Judgement, para.62.

⁹⁹ *Tadic* Trial Judgement, para.688.

¹⁰⁰ *Blagojevic*, Appeals Judgement, para.134.

¹⁰¹ *Blagojevic*, Appeals Judgement, para.134.

¹⁰² *Blagojevic* Trial Judgment para.726.

crimes.”¹⁰³ The Appeals Chamber made a similar conclusion in *Krstic* wherein it found that Krstic was aware of the genocidal intent of certain members of the VRS Main Staff and that without the assistance of the Drina Corps resources, the Main Staff would have been unable to implement any such plan.¹⁰⁴ Thus, his allowance of the use of Drina Corps resources constituted a substantial contribution to the commission of the crime.¹⁰⁵

55. Other examples of acts having a *substantial* effect on the commission of a particular crime include a superior’s presence and non-intervention during criminal acts¹⁰⁶ and taking a woman to a location where the accused knew she would be raped.¹⁰⁷
56. The requisite *mens rea* is knowledge that the acts performed by the aider and abettor assisted the principal in the commission of the specific crime.¹⁰⁸ Knowledge need not be expressed but can be inferred from all the relevant circumstances.¹⁰⁹ It is not required that the aider and abettor shared the *mens rea* of the principal offender; however, the aider and abettor must have been aware of the essential elements of the crime committed by the principal offender, including the principal’s state of mind.¹¹⁰ It is not necessary that the aider and abettor had knowledge of the precise crime that was intended or that was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually perpetrated.¹¹¹ An aider and abettor to the crime of persecution must

¹⁰³ *Blagojevic*, Appeals Judgement, para.134.

¹⁰⁴ *Krstic* Appeals Judgement, para.137.

¹⁰⁵ *Krstic* Appeals Judgement, para.137.

¹⁰⁶ *Brđjanin* Appeals Judgement para.273.

¹⁰⁷ *Kunarac*, Trial Judgement, para.653.

¹⁰⁸ *Tadic* Trial Judgement, para.688; *Blaskic* Appeals Judgement, para.45.

¹⁰⁹ *Celebici* Trial Judgement, para.328.

¹¹⁰ *Aleksovski* Appeals Judgement, para.162.

¹¹¹ *Blaskic* Appeals Judgement, para.50.

be aware not only of the crime he is facilitating but also of the discriminatory intent of the perpetrators.¹¹²

57. The Tribunal has also accepted a mode of criminal liability for *ex post facto* aiding and abetting. While it is well established that aiding and abetting can consist of assistance given “before, during or after the commission of the crime”,¹¹³ assistance given “after” the commission of a crime, cannot constitute aiding and abetting in the absence of some prior agreement. The Tribunal first mentioned this concept in *Furundzija* in referencing an International Law Commission's Commentary.¹¹⁴ The commentary states that “complicity could include aiding, abetting or assisting *ex post facto*, if this assistance had been *agreed* upon by the perpetrator and the accomplice prior to the perpetration of the crime.” The Tribunal has continued to uphold this standard in relation to *ex post facto* aiding and abetting.¹¹⁵

58. It would be impossible for a perpetrator to be encouraged to commit a crime by an *ex post facto* aider and abettor without having a *prior agreement* with that aider and abettor because the perpetrator would have no reason to believe he would receive assistance unless an agreement was in place. Assistance *ex post facto* without a prior agreement can in no way facilitate, assist, or contribute to the commission of a crime, which has already been committed.¹¹⁶ Thus liability for *ex post facto* aiding and abetting in lieu of a prior agreement would contradict the Tribunal's long-standing jurisprudence in relation to the *actus reus* element, which requires that the aider and abettor

¹¹² *Krnojelac Appeals Judgement* para.52.

¹¹³ *Mrksic Appeals Judgement*, para.81.

¹¹⁴ *Furundzija Trial Judgement*, para.229. *Report of the I.L.C.*, on the work of its forty-eighth session, G.A.Supp. No. 10 (A/51/10) 1996, p.24.

¹¹⁵ *Blagojevic Trial Judgement* para.731.

¹¹⁶ *Jokic Appeals Brief*, para.143.

assists the perpetrator to substantial effect in the *commission* of a particular crime.¹¹⁷

59. Although the Tribunal has not convicted a single accused of *ex post facto* aiding and abetting, it has provided insight as to what types of acts could constitute this type of assistance. All require a prior agreement. In *Aleksovski*, the Trial Chamber found that *ex post facto* assistance can occur by “promising to perform certain acts once the crime has been committed, that is, behaviour which may in fact clearly constitute instigation or abetment of the perpetrators of the crime.”¹¹⁸ In *Furundzija*, the Trial Chamber stated that “the knowledge that he will receive assistance during or after the event encourages the perpetrator in the commission of the crime. From this perspective, the willingness to provide assistance, **when made known to the perpetrator**, would also suffice, if the offer of help in fact encouraged or facilitated the commission of the crime by the main perpetrator.”¹¹⁹
60. In *Blagojevic*, the Court found no evidence to support the charge of aiding and abetting because the *ex post facto* acts of reburial of bodies were not the result of a prior agreement between the perpetrators of the crime and those involved in the reburial but rather, “the reburial operation was a direct result of the scrutiny of the international community...[T]he reburial operation was [...not] agreed upon at the time of the planning, preparation or execution of the crimes.”¹²⁰

¹¹⁷ *Furundzija* Trial Judgement, para.229-30.

¹¹⁸ *Aleksovski* Trial Judgement, para.62.

¹¹⁹ *Furundzija* Trial Judgement, para.230. (emphasis added)

¹²⁰ *Blagojevic* Trial Judgement, para.731.

B. The Distinction between Aiding and Abetting and Co-perpetration in a JCE

61. The Appeals Chamber has rejected the legal concept of an accused aiding and abetting a JCE. The two forms of participation are distinct.¹²¹
62. A co-perpetrator in a JCE need only “perform acts that in some way are directed to the furtherance of the common design”¹²² with the intent to pursue a common plan.¹²³ The intent required can be the intent to commit a particular crime or the “intent to pursue the common criminal design plus foresight that those crimes outside the criminal common purpose were likely to be committed.”¹²⁴
63. An accused who assists an individual in committing a crime would be liable only as an aider and abettor if he understood his act to be assisting only that person in the commission of a single crime, even if the principal was involved in a JCE.¹²⁵ If, however, “the accused knows that his assistance is supporting the crimes of a group of persons involved in a JCE and shares that intent,” he could be held liable for having committed the crime as a co-perpetrator.¹²⁶

¹²¹ *Kvočka* Appeals Judgement, para.91.

¹²² *Kvočka* Appeals Judgement, para.89.

¹²³ *Vasiljevic* Appeals Judgement, para.102.

¹²⁴ *Tadic* Appeals Judgement, para.229(iv).

¹²⁵ *Kvočka* Appeals Judgement, para.90.

¹²⁶ *Kvočka* Appeals Judgement, para.90.

C. Omission under Article 7(1)

64. A failure to act may only lead to individual criminal responsibility “where there is a legal duty to act or to prevent a crime from being brought about.”¹²⁷ In such circumstances, failure to act may constitute the *actus reus* of commission, instigation, or aiding and abetting”.¹²⁸
65. In order to hold an accused criminally responsible for an omission as a principal perpetrator, “the following elements must be established: (a) the accused must have had a duty to act mandated by a rule of criminal law; (b) the accused must have had the ability to act; (c) the accused failed to act intending the criminally sanctioned consequences or with awareness and consent that the consequences would occur; and (d) the failure to act resulted in the commission of the crime.”¹²⁹
66. In respect of aiding and abetting by omission, the *actus reus* requires a finding that “the failure to discharge a legal duty assisted, encouraged or lent moral support to the perpetration of the crime and had a substantial effect on the realisation of that crime...[A]iding and abetting by omission implicitly requires that the accused had the ability to act, such that there were means available to the accused to fulfil his duty.”¹³⁰
67. The *mens rea* requires that the aider and abettor not only knew that his omission assisted in the commission of the crime but also that he was aware of the essential elements of the crime ultimately committed by

¹²⁷ *Kalimanzari* Trial Judgement, para.20.

¹²⁸ *Ibid.*

¹²⁹ *Brdjanin* Appeals Judgement, footnote 557, citing *Ntagerura* Trial Judgement, para.659; *Ntagerura* Appeals Judgement, para.333.

¹³⁰ *Mrksic* Appeals Judgement, para.49; *Oric* Appeals Judgement, para.43, citing *Nahimana et al.* Appeals Judgement, para.482; *Simic* Appeals Judgement, para.85; *Ntagerura et al.* Appeals Judgement, para.335.

the principal.¹³¹ It is unnecessary to prove that the aider and abettor knew the precise crime intended or committed if he was aware that one of a number of crimes would probably be committed, including the one that was committed.¹³²

68. In respect of JCE, the Trial Chamber in *Mpambara* noted that it was “hard to imagine that total passivity could demonstrate the requisite intent for co-perpetratorship” and that an omission would have to be in combination with positive acts in order to have “great significance.”¹³³

IV. NO CRIMINAL LIABILITY AS A CONDUIT

69. The Defence will argue that Cermak acted as a *conduit* in matters including (i) the passing of information to the internationals; (ii) the fate of the individuals in the UN camp; (iii) freedom and restriction of movement; (iv) the investigation of crime, and (v) the incident in Grubori, and that Cermak cannot be held individually criminally responsible for his statements or actions. The issue of conduit liability was addressed in the case of *Hans Fritzsche* before the IMT in Nuremberg.¹³⁴

70. In *Fritzsche*, it was alleged that as head of the Home Press Division of the Ministry of Popular Enlightenment and Propaganda in 1942, he “incited and encouraged the commission of war crimes by *deliberately falsifying news* to arouse in the German people those passions which led them to the commission of atrocities”. The Chamber held however that

¹³¹ *Mrksic* Appeals Judgement, paras.49, 82; *Oric* Appeals Judgement, para.43.

¹³² *Mrksic* Appeals Judgement, para.49, citing *Simic* Appeals Judgement, para.86; *Blaskic* Appeals Judgement, para.50. See also *Ndindabahizi* Appeals Judgement, para.122.

¹³³ *Mpambara* Trial Judgement, para.24.

¹³⁴ *Hans Fritzsche* Judgment (Nuremberg IMT), <http://avalon.law.yale.edu/imt/judfritz.asp>.

Fritzsche was “merely a conduit to the press” of instructions he was given by his superior, Dietrich, the Reich Press Chief.

71. Fritzsche instructed the press on how the actions or wars against Bohemia and Moravia, Poland, Yugoslavia and the Soviet Union should be dealt with. Importantly, it was held that he did not control the formulation of the propaganda policies. The Chamber held that (i) Fritzsche became the sole authority within the Ministry for radio activities and he formulated and issued daily radio paroles to all Reich propaganda offices; (ii) he was present at Goebbels’s daily staff conferences and occasionally held these conferences when Goebbels and his state secretaries were absent; (iii) “his position and official duties were not sufficiently important to infer that he took part in originating or formulating propaganda campaigns”; (iv) he did not achieve sufficient stature to attend the planning conferences which led to aggressive war, neither was he informed about decisions taken at these meetings; (v) his anti-Semitic speeches did not urge persecution or extermination; (vi) he attempted unsuccessfully to have certain anti-Semitic publications suppressed; (vii) sometimes he spread false news, but it was not proved he knew it to be false;¹³⁵ (viii) sometimes he made strong statements of a propagandistic nature in his broadcasts, but these were not “intended to incite the German people to commit atrocities on conquered peoples”. His aim was to “arouse popular sentiment in support of Hitler and the German war effort”.
72. The Cermak Defence submits that Cermak was a *mere conduit* who did not possess decision-making authority. He had no control over the formulation or implementation of policies which the Prosecution alleges demonstrate a common criminal intention. Moreover, he was

¹³⁵ For example, he reported falsely that no German U-boat was in the vicinity of the “Athenia” when it was sunk.

reliant on information he received from the MUP, SP and HV in respect of freedom of movement, and the investigation/processing of crime, and the incident in Grubori.

73. Even if the Chamber determines Cermak gave out false information to the internationals, there is no evidence beyond a reasonable doubt that he *knew* such information to be false, having received it from military or police sources which he had no reason at that time to disbelieve. On occasion, Cermak's stance may have been considered to be propagandistic in nature or supportive of Croatia as a nation. Such conduct does not however create individual criminal liability under either Article 7(1) or 7(3) in accordance with the approach taken in *Fritzsche*.

PART III

APPOINTMENT, ROLE AND ESTABLISHMENT OF THE KNIN GARRISON

I. BACKGROUND

74. In 1991, Cermak was an Advisor in the Office of the President of the Republic of Croatia and in 1992 he was appointed Assistant Minister of Defence.¹³⁶ On 3 April 1993, he was appointed Minister of Industry, Shipbuilding and Energy.¹³⁷ From May to October 1993,¹³⁸ he was appointed Minister of Economy.¹³⁹ He then returned to running his private business and left government.¹⁴⁰ On 5 April 1993, President Tudjman appointed him to the rank of reserve Colonel General, administrative service.¹⁴¹ He had never been in active service in the JNA or Croatian Army.¹⁴² The awarded rank was not the consequence of acquired military knowledge or skill, but was linked to his position as an assistant defence minister.¹⁴³ Appointments of senior officials to non-operational ranks in the HV were commonplace during Tudjman's presidency and bore no relation to an individual's actual role in the Croatian military forces.¹⁴⁴ Seniority in the HV was governed by the function of the position rather than rank of the individual.¹⁴⁵

¹³⁶ See information provided in D36.

¹³⁷ D1008.

¹³⁸ D1009.

¹³⁹ D1010, D1011.

¹⁴⁰ Skegro D1679 p3; Skegro T.22198; Vedris D1772, paras.3, 5, 8-9; Vedris T.23662-3, T.23668-9.

¹⁴¹ D1007.

¹⁴² Radin D1678, para.12.

¹⁴³ Kovacevic D1676 p120, para.8.2.1.

¹⁴⁴ Deverell T.24149; Skegro T.22254; Radin D1678, para.10; Kovacevic D1676, p120, para.8.1.4.

¹⁴⁵ Kovacevic D1676, p118-120; Feldi D1673, p20, paras.1.3.16-17; P880, Art.9; D268 Major Juric in taking command of the 72 and 73 VP was inferior in rank but superior in position to the commanders. Lausic T.15606-7.

II. APPOINTMENT

*"The President appointed me to this post. He could have appointed me as the commander of the firefighters, he could have appointed me to be the commander of the Operative Zone, he could have appointed me as the commander of the units. He gave me a task and responsibility for certain tasks, which was adequate to my skills and that was a military order. Had I received any other tasks I would have formed a team and the people on it in accordance with that task. Based on the task that I received I formed the team of my logistics men. That's all I have to say."*¹⁴⁶

75. On 5 August 1995, Cermak was appointed Commander of the Knin Garrison by President Tudjman.¹⁴⁷ There is no special significance to his appointment by the President. His appointment complies with the Constitution of Croatia and the Law on Defence which requires that the President "shall appoint and dismiss Generals."¹⁴⁸ Paragraph 51 of the Service Regulations states that "the garrison commander shall be ... *designated by orders of the Main Staff*",¹⁴⁹ thus the Chief of the Main Staff was not given the right to name or appoint garrison commanders.¹⁵⁰

76. On his appointment, Cermak was given a task by President Tudjman of normalisation of the town of Knin¹⁵¹ and an additional task of helping the UN in the vicinity.¹⁵² The full responsibility for normalising life in the liberated territories lay with the civilian and political

¹⁴⁶ P2525 p146.

¹⁴⁷ D31; D36.

¹⁴⁸ P1116 Article 52(1); D1779, Article 100.

¹⁴⁹ D32.

¹⁵⁰ Feldi D1673 p43-44, para.2.2.3.

¹⁵¹ Vidosevic D1775, para.8; Skegro D1679, paras.4-5; Radin D1678, para.8; Vedris D1772, paras.10-11; P2525, pp.6-8; Rincic D1680, para.13.

¹⁵² P2532, p.52-54; P2525, p.8; Skegro D1679, para.4-5, Vedris D1772, para.13

authorities, namely the Government, its Ministers, the counties such as Knin-Zadar County and the Zupan (Prefect), the Government's Commissioners, the municipalities and the towns. The minutes of the Government session held on 4 August 1995 reflect their responsibility.¹⁵³ At that session Minister Jarnjak "informed the Government that the regular police have assumed responsibility for ensuring public peace and order and for protecting citizens and property in the liberated areas".¹⁵⁴ The Government assigned tasks to all its ministries to introduce civilian authorities into the liberated areas.¹⁵⁵ These tasks included the Ministry of Justice to establish judicial authorities; the Ministry of Administration to organise self-government and administration organs; the Ministry of Labour and Social Welfare to implement all social rights of citizens; the Ministries of Economy, Agriculture, Forestry and Tourism to be brought to "the optimum and go in accordance with the new circumstances". The minutes also stated that the Commissioners of the Government, which for Knin was Petar Pasic "which have until now functioned outside of their areas" were "now preparing for return".¹⁵⁶ Prime Minister Valentic said "we are already preparing all forms of civil authority".¹⁵⁷ In the Government Session held on 23 August 1995,¹⁵⁸ the continuing responsibility of the state was reviewed in "The Report of the State Staff for Coordination of the Activities Concerning Return, Establishment of Civilian Authorities and the Normalization of Life in the Newly Liberated Areas on the Implemented Activities with a Set of Proposed Measures."¹⁵⁹

¹⁵³ D1634.

¹⁵⁴ D1634, p2.

¹⁵⁵ D1634.

¹⁵⁶ D1634, p3.

¹⁵⁷ D1634 p11. The concept of civil authorities is outlined by expert witness Kovacevic D1676, p116-7, para.6.6.4-6.6.10.

¹⁵⁸ D426.

¹⁵⁹ See D426 p3 for the report; p9 for Dodig's comment on Cermak; p13 for Vidosevic's.

77. There were no formal terms of reference in respect of Cermak's responsibilities to normalize life in Knin.¹⁶⁰ It is reasonable to conclude that the lack of such terms indicates that Cermak was not sent to Knin to replace the civilian authorities as this would have required considerable legal and organisational changes, but rather to assist them in what were difficult circumstances at the time. Radin referred to the essentially civilian nature of Cermak's role.¹⁶¹ No additional authority beyond that of a garrison commander was stipulated in his notice of appointment and there is no evidence of any having been given in respect of the task of normalisation.¹⁶² Witnesses aware of Cermak's appointment referred to his role of normalisation as being a natural one because of his business experience and skills in logistics.¹⁶³ The uncertain nature of his role is evident from Radin's statement.¹⁶⁴ This was to cause confusion and problems for Cermak and those who dealt with him throughout his period in Knin.
78. Support for the extension of Cermak's tasks to include assisting the UN comes from a Presidential transcript of 7 August 1995. President Tudjman explained that he had "appointed as commander of the Knin Garrison Colonel General Cermak, a former minister, a serious man to solve those matters", referring to the fact that the "Americans received an official request to assist the Canadians in pulling out of Knin."¹⁶⁵ There is no evidence that the President's appointment of Cermak bestowed upon him any operational functions or duties in respect of the HV beyond that of a Garrison Commander.

¹⁶⁰ Skare-Ozbolt - Cermak "held a position of a coordinator and the area of his competence was unknown." T.18101. Feldi also agreed that there were no "service regulations...concerning the authority of a garrison commander to normalise life." T.21827.

¹⁶¹ Radin D1678 para.12

¹⁶² Radin T.22164; Feldi D1673, p49; Deverell T.24286-8; Deverell D1784, p21-3.

¹⁶³ Radin T.22160; Vedris D1772, para.4; Skegro D1679, p5; Rincic D1680, para.4; Skare-Ozbolt T.18099.

¹⁶⁴ D1678, paras.8, 10: see "civilian manager".

¹⁶⁵ D296, p20.

79. If President Tudjman as the Supreme Commander had intended to give authority¹⁶⁶ to Cermak at a greater level or for further purposes in the HV, he could have appointed him to a more senior role by function within the Split Military District or the Main Staff of the HV.¹⁶⁷ Furthermore, if it was intended that he had powers over the civilian police, the President would have done it himself or requested that the Minister of Interior Ivan Jarnjak appoint him to a role within his ministry to ensure the obedience of the police to any orders he may have given.¹⁶⁸
80. In 1999 President Tudjman and Cermak discussed the role he had in Knin and it is clear from the transcript that responsibility for **law** and order was not included, nor was he commanding the HV forces.¹⁶⁹ Instead, he described his *"assignment [as...] co-operation with the international community, infrastructure, return, life, hospitals this and that etc...keeping order, preventing disorder, mine clearance"*¹⁷⁰ and later he said *"I was in command of my part...After two days we set up a soup kitchen which was visited both by the Croats who remained in Knin and by the Serbs themselves. We engaged ourselves in humanitarian work, made tours to villages, set up power units."*¹⁷¹ This description fits precisely with his *ad hoc* role of helping to organise and establish normal living conditions after the liberation of Knin and being in a non-operational military position.

¹⁶⁶ Deverell T.24177-81

¹⁶⁷ Radin T.22166; Radin D1678, para.12; Feldi D1673 p10, 49; Skare-Ozbolt T.18098-9; Moric T.25933.

¹⁶⁸ Feldi D1673 p10, para1.1.13; Skare-Ozbolt T.18223.

¹⁶⁹ P1144 p4.

¹⁷⁰ P1144 p4.

¹⁷¹ P1144 p7.

III. DE FACTO ROLE OF CERMAK IN THE NORMALISATION OF LIFE

*"It's difficult to describe that situation. It was like a situation after military operations. It was complete chaos. The basic requirements for normal living conditions were not functioning."*¹⁷²

81. Cermak arrived in Knin on 6 August 1995.¹⁷³ The fact that his primary task was known to be non-operational in military terms is demonstrated by the words of General Gotovina at the meeting with his commanders that morning.¹⁷⁴ Many witnesses referred to this role of normalisation.¹⁷⁵ On 8 August, Cermak wrote to General Forand requesting help with repairing the waterworks in Knin with the *aim of normalising life* and returning refugees.¹⁷⁶ On 21 August he requested that General Gotovina place 65 conscripts under the command of the garrison commander to *expedite the process of getting the city back to normal*.¹⁷⁷ The request was granted for that purpose.¹⁷⁸
82. The vast number of projects with which Cermak was involved establish the nature of his normalisation role. He coordinated the regeneration of Knin¹⁷⁹ and assisted the "civil authorities"¹⁸⁰ in feeding

¹⁷² P2526 p13.

¹⁷³ D792, p1; Cermak P2525, p8; Cermak P2532, p10; Cipci D1723, para.17.

¹⁷⁴ D792 General Gotovina was speaking in the context of getting the roads in order. "Cooperation with the civilian authorities in the form of the civilian police is to be established until General Cermak, who has just arrived this morning, can take over these matters and take matters into his own hands."

¹⁷⁵ Vidosevic D1775, para.8; Skegro D1679, para.4-5; Radin D1678, para.8; Vedris D1772, para.11-12; Cermak P2525, p6-8; Rincic D1680, para.13; Deverell T.24161-2; Cipci D1723, para.17; Cipci T.23071-2, T.23163; Dondo D1695, paras.11, 16; Dondo D1696, paras.6, 11; Lukovic D1687, para.34; Lukovic D1688, para.20; Pasic D1707, paras.19, 23; Dodig, D1705, paras.7-9; Dzolic P875, para.48; [REDACTED]; P1144, p4, 7; Radin T.22160-1; Feldi T.21826; [REDACTED].

¹⁷⁶ D298.

¹⁷⁷ D762.

¹⁷⁸ D764.

¹⁷⁹ Skare-Ozbolt T.18099; Skegro, T.22200; D38.

civilians,¹⁸¹ setting up infrastructure,¹⁸² and getting utilities working.¹⁸³ His work included “reconstruction, economic revival, restoration of communication”,¹⁸⁴ “getting the trains [running], the drains working, opening the shops, getting the banks working”.¹⁸⁵ He was assisted by Major Zeljko Jonjic whose report¹⁸⁶ details the work done by him in respect of feeding civilians,¹⁸⁷ equipping the hospital,¹⁸⁸ getting water and electricity into the city,¹⁸⁹ organising cultural and artistic events, helping the church, kindergartens, the school and all other figures and institutions essential for the life of the city.¹⁹⁰ Cermak coordinated the repairs to postal and telegraph installations, the electrical and water systems,¹⁹¹ and issued orders to provide adequate fuel to both the military and the civilian population.¹⁹² Cermak “brought in a public utility team from Zagreb [who] cleaned the streets round the clock.”¹⁹³ He also ordered that pest control measures be taken¹⁹⁴ and locations determined for the disposal of refuse.¹⁹⁵ These were classically logistical projects, non-operational in a military sense but for which his

¹⁸⁰ Puhovski, T.15957; Radin D1678, para.8.

¹⁸¹ Cermak P2525, p7; Dondo, P1695, para.16; Cipci D1723, para.17; D775; D1015, p3 Pasic D1706, p4; Pasic D1707, para.19; Pasic T.22861-2.

¹⁸² Dondo, D1696, para.6, 11; Dondo, D1695, para.16; Cipci, D1723, para.17; Teskeredzic, D1732, para.7; Rincic, D1680, para.13; P1144, p4; Teskeredzic T.23273.

¹⁸³ Skegro, D1679, para.5; Vidosevic, D1775, para.9; Cipci, D1723, para.17; Teskeredzic D1732, para.8; Dondo, D1696, para.6; Dzolic, P875, para.48; Feldi, T.21826-7; D1683; Cermak P2525, p6.; [REDACTED]

¹⁸⁴ Skare-Ozbolt, T18099.

¹⁸⁵ Cipci T.123163

¹⁸⁶ D1015.

¹⁸⁷ Dondo D1695, para.16.

¹⁸⁸ Cermak P2525, p6; P1144, p4; D775; D37; D1015 p.2.

¹⁸⁹ Skegro D1679, para.5; Vidosevic D1775, para.9; Cermak P2525, p7; Dondo 1695, para.16; Dondo D1696, para.6; Dzolic P875, para.48; Teskeredzic D1732, para.8; Teskeredzic T23273; D1683; [REDACTED]; D775.

¹⁹⁰ Exhibit D775; D37.

¹⁹¹ D38, p2; D1015; Skegro D1679, para.5; Vidosevic D1775, para.9; Cipci D1723, para.17; Dondo 1695, para.16; Dondo D1696, para.6, 11; Teskeredzic D1732, para.8.

¹⁹² D1125, D1019, D1015.

¹⁹³ Pasic T23042; Exhibit D775, p3; Cermak P2525, p7; Cipci D1723, para.17; Teskeredzic D1732, para.8; [REDACTED].

¹⁹⁴ D1049.

¹⁹⁵ D609.

military rank would have been helpful to enable him to influence matters at this time.

83. Cermak also issued an order to the headquarters administration of the HV MO/Ministry of Defence to “open shops selling groceries and basics, cafes, and snackbars”¹⁹⁶ and assisted in bringing “a full medical team” to the Knin hospital.¹⁹⁷ Cermak ordered that an ambulance van and driver be provided for the hospital.¹⁹⁸ All these measures were designed to get life functioning for the civilian population and encourage better conditions in the area. In response to a report about the conditions of the fish farm, he appointed personnel to take charge so that it could function.¹⁹⁹ He ordered that the Office of the HQ Administration of the MoD take over the warehouse containing food and provide an inventory of all items.²⁰⁰
84. Crucially, these measures were for the benefit of all ethnic groups. In particular, Cermak took steps to ensure that the displaced persons in the UNCRO camp were assisted as part of the normalisation process.²⁰¹ He provided information containing various rights to those choosing to return to Knin, which included civil liberties, access to housing, food, and other humanitarian aid, employment, and the repair of damaged buildings.²⁰²
85. Cermak used his contact with the UN to further these normalisation projects.²⁰³ He asked General Forand to provide an excavator and

¹⁹⁶ D1272; Dondo D1696, para.6.

¹⁹⁷ D38, p2.

¹⁹⁸ D1022, D1015, p2.

¹⁹⁹ Teskeredzic D1732, par.a13; D149; D1033, D1034; D1119.

²⁰⁰ D1127.

²⁰¹ Skegro D1679, para.8; Dondo D1696, para.11; Lukovic D1688, para.25.

²⁰² D300, D301.

²⁰³ P1144, p4.

operator to help restore conditions around the hospital²⁰⁴ and requested his assistance “in collecting abandoned or damaged motor vehicles and other technical equipment”²⁰⁵ and to repair the water works in Knin.²⁰⁶ Forand was also asked to provide a helicopter to enable inspection of the power grids so that they could be repaired.²⁰⁷

86. Normalisation required Knin to be safe.²⁰⁸ In order to assure safety within Knin, Cermak ordered that military flats be inspected for explosives and that all such devices be removed.²⁰⁹ He requested assistance in order to organise the removal of mines, explosive devices, and ammunition effectively.²¹⁰ He authorised the HQ administration of the HV MoD to take control of the military farm, take care of the farm’s animals, and provide the machinery for its normal operation.²¹¹
87. In economic normalisation he was assisted by Zdenko Rincic²¹² who reported on the economic revival of nine out of thirteen institutions in Knin.²¹³ Among them were the Privredna bank which Cermak pushed to resume business operations;²¹⁴ Agropromerada for which Cermak issued a document enabling the production process²¹⁵ and Knin-Gips in respect of which Dalmacijacement was provided clearance to enter.²¹⁶ In dealing with economic issues Cermak received requests by companies to repossess subsidiaries as they took initial steps to protect

²⁰⁴ D1271.

²⁰⁵ D299.

²⁰⁶ D298.

²⁰⁷ D1270.

²⁰⁸ Teskeredzic D1732, para.9; D1030.

²⁰⁹ D1049.

²¹⁰ D765, D1026, D1027, Teskeredzic D1732, para.9.

²¹¹ D1035.

²¹² Rincic D1680, paras.13-15.

²¹³ D1036.

²¹⁴ D1120.

²¹⁵ D1121.

²¹⁶ D1037.

equipment²¹⁷ or establish business temporarily “to quickly as possible ensure the conditions of life without hindrance”²¹⁸ in order to normalise life.²¹⁹ He assisted HVMO Administration to approach local civil authorities with requests for business premises for “organising the life of citizens in the area”²²⁰ which were returned in due course.²²¹ Cermak also attempted to protect equipment to prevent it being stolen.²²² He later provided authorizations for individuals to return to those businesses once the HV had no use for them.²²³ Many of these initiatives were connecting original owners of businesses with their assets of which they had been deprived by the establishment of the RSK. He thereby helped the town of Knin with the objectives of providing assistance to the civilian inhabitants and the faster normalization of work and life. This precisely fits the description by him to President Tudjman of his role to prevent disorder.²²⁴

88. As Garrison Commander, Cermak also had a role in coordinating with the civilian police, the military police and the civilian authority.²²⁵ Such coordination did not equate to command and control of these groups. See sections **Co-ordination and Co-operation of Tasks of the Garrison Commander [HV]; No *De Jure* Command and Control of the Military Police by the Garrison [VP]; The Knin Garrison Commander and Co-operation/Co-ordination with the MUP [MUP]**.

89. Meetings were held in Cermak’s office for the purpose of discussing topics related to normalisation of life in Knin. The aim was to bring

²¹⁷ D1038, D1123.

²¹⁸ D1122.

²¹⁹ D1124.

²²⁰ D1039.

²²¹ D1040.

²²² D1126.

²²³ D1040.

²²⁴ P1144 p4.

²²⁵ D34.

together people from different backgrounds and with different expertise, who were involved with the administration of matters in Knin or the functioning of services so that they could benefit from mutual assistance.²²⁶ As conditions normalised, Cermak hosted these meetings only a couple of times a week.²²⁷

90. In the circumstances facing the Government of Croatia at the time, it is readily understandable that a civilian in a non-operational military position would be tasked with the role of helping the community to establish itself and to get the services and infrastructure running.

IV. THE ESTABLISHMENT OF THE KNIN GARRISON, MANPOWER AND RESOURCES

91. The Knin Garrison was established pursuant to an order from General Bobetko of the Main Staff of the Croatian MoD on 16 February 1993.²²⁸ Paragraph (e)²²⁹ sets out the municipalities within the AOR of the Knin Garrison.²³⁰ Before Operation Storm the Knin Garrison could not be established as a functioning part of the Croatian armed forces as the city was occupied by RSK forces.²³¹ The low level extent of its capability and lack of importance is reflected in documents at the time.²³² Only six months before Operation Storm, the garrison commander of Split complained about the problems he faced by the

²²⁶ [REDACTED]; Dzolic, T.9015-9017; Rincic, D1680, paras.19-21; Rincic T.22312; Dondo, D1695, para.15; Dondo D1696, para.7; Dondo T.22549; Cetina D1745, p14: "These meetings were in fact only an opportunity to communicate with each other"; Cetina D1743, para.4; Lukovic, D1687, para.49; Pasic D1706, p4-5; D1707, para.21-22; Pasic T.22859; Dodig D1705, para.18.

²²⁷ Dondo, D1696, para.7, [REDACTED].

²²⁸ D33.

²²⁹ Original second paragraph (g).

²³⁰ Theunens, T.12886; [REDACTED]; Feldi, D1673, p42-3; Kovacevic D1676, p99-100.

²³¹ Theunens T.12910, T.12945-51.

²³² D994; D995; D998; D999 (the Knin ZM was not included in documents circulated on important issues); D1000.

failure to establish the garrison properly, including his own lack of authority.²³³ On 20 August 1995, the Split MD Commander issued an order on operational deployment of HV units and commands, which was not sent to the Knin garrison, but included a request for the Home Guard Assistant Commander and Personnel Affairs to submit proposals for commanders and other officers for garrison commands including that of Knin “to be enabled to efficiently execute the logistics tasks”.²³⁴

92. Military expert General Sir Jack Deverell disagreed with Prosecution expert Theunens’ description of Cermak as the “Supreme Civil and Military Authority in the area” after analysing the resources of the garrison.²³⁵ He found that Croatian military doctrine never intended that garrison headquarters should have the responsibility or authority for such a task;²³⁶ and that it was not represented on any wider communication plan, which would have “prevented it from receiving the information flow that would have come from operational units.”²³⁷ Furthermore, garrison commands did not have operational function or the right to command HV units.²³⁸
93. In terms of manpower, Deverell concluded that a headquarters the size of the Knin garrison does not have the “numbers nor expertise to be able to deal with all the information that is available, nor analyse, plan, implement or monitor within any realistic timeframe nor to the depth required.”²³⁹ Deverell interpreted Cermak’s reply to a request from the Main Staff for an intelligence report as a sign of his inability to cope

²³³ D996.

²³⁴ D1002.

²³⁵ Deverell D1784, p29.

²³⁶ Deverell D1784, p29; D34.

²³⁷ Deverell D1784, p29; Deverell T.24159.

²³⁸ Kovacevic para.6.2.11, para.6.3.5; D34 point 2.

²³⁹ Deverell D1784, p30.

with the level of work and a lack of physical means to provide the intelligence assessment requested.²⁴⁰

94. The Knin garrison manpower was exceptionally limited.²⁴¹ On 28 June 1995, when the Garrison existed only in “shadow” form, the establishment number and current strength were officially reported as being 9 and 3 individuals respectively.²⁴² The Split MD reported an actual strength of 4 on 15 August 1995.²⁴³ Reports compiled by the Garrison for the information of the Main Staff indicate that the established strength of the garrison on 31 August 1995 was 11 and the actual strength 10;²⁴⁴ whilst on 26 September 1995, it had declined to 10 and 4 respectively.²⁴⁵ Police expert Albiston stated that it may be inferred from the manpower data available that “the tasks of the garrison were intended to be largely organisational and administrative.”²⁴⁶
95. When Cermak arrived in Knin on 6 August 1995, he attempted to work from a garrison that had not been effectively established, with the objective of providing assistance for the normalisation of life in the town and assisting the UN.²⁴⁷ He faced many difficulties in Knin as a result of the limitations of manpower and resources. On 10 August 1995, assistant commander Pavic from the security and information system in his report in the section “Establishment of civilian authorities, coordination of civilian and military authorities” wrote “the Command of the Knin ZM is overburdened with many problems

²⁴⁰ Deverell, D1784, p30 referring to P1219.

²⁴¹ Deverell D1784, p28-30; Deverell T.24157-9. Lukovic D1688, para.21; D1687, para.4;. Dondo D1696, para.8.

²⁴² D992, p2; Theunens P1113; T.12889; Feldi T.21817; Albiston T.123766-7.

²⁴³ D611, p6.

²⁴⁴ D33, p10.

²⁴⁵ D33, p11-12; Feldi T.21836.

²⁴⁶ [REDACTED]; T.24017.

²⁴⁷ Feldi D1673, p49.

and is not able to deal with them successfully".²⁴⁸ Knin had no power, water and communications system until 10 August 1995.²⁴⁹ On 11 August Cermak requested from the MoD Main Staff vehicles to assist in the normalisation of the Knin area.²⁵⁰ The Knin garrison did not even have its own logistic base to supply itself or to supply the military units in the area.²⁵¹ These crucial issues relating to the low level of manpower and resources within the garrison require careful consideration when assessing the harsh reality of the situation Cermak faced in the aftermath of Operation Storm.

²⁴⁸ P1134, p5.

²⁴⁹ D982, p1-2; Rincic D1680, para.10; Lukovic D1688 para.24; Dondo D1695 para.12, D1696 para.6; Pasic D1707, para.8; Teskeredzic D1732, para.8; Sruk D1737, para.5.

²⁵⁰ D769; Deverell D1784, p30.

²⁵¹ Feldi T.21817.

PART IV

JOINT CRIMINAL ENTERPRISE - FACTUAL ANALYSIS

I. INTRODUCTION

96. The central allegation in this case is that the Accused participated in a joint criminal enterprise (JCE)²⁵² from at least July 1995 to 30 September 1995 and that counts 1-5 were intended and within the purpose of the JCE (JCE I). In addition or in the alternative, as to any crime charged in the Indictment which was not within the purpose of the JCE, the Prosecution alleges that such crimes were the natural and foreseeable consequence of the JCE (JCE III).

II. DID A JOINT CRIMINAL ENTERPRISE EXIST?

97. The Cermak Defence denies the existence of a JCE and adopts the challenges set out in the Gotovina Final Brief. In addition, the Cermak Defence argues that even if the Trial Chamber determines that a JCE existed, at no time did Cermak participate or act in furtherance thereof or possess the requisite *mens rea* for either JCE I or III.
98. The requirements of a JCE are (i) plurality of persons, (ii) a common criminal plan, design or purpose and (iii) participation of the accused.

²⁵² Amended Indictment of 21 February 2008, para.12.
IT-06-90-T

A. No Plurality of Persons Involving Cermak

99. There must be a plurality of persons, at least two, involved in a common criminal plan, one of whom must be the Accused.²⁵³
100. The alleged JCE members are: Ante Gotovina, Mladen Markac, Mirko Norac, Rahim Ademi, Miljenko Crnjac, Mate Lausic, Ivan Jarnjak, Markica Rebic, Jure Radic, Franjo Tudjman, Gojko Susak, Janko Bobetko and Zvonimir Cervenko.²⁵⁴
101. The Prosecution has failed to prove beyond a reasonable doubt that Cermak was involved with any of the individuals named in a common criminal plan or that he shared a common state of mind that crimes forming the alleged criminal objective be carried out. In fact, there is positive evidence to the contrary. Mere contact between individuals does not *per se* establish a JCE.
102. The Chamber must examine the evidence of the nature of his relationship with these individuals.

Gen. ANTE GOTOVINA, Commander of the Split Military District

103. The relationship between Cermak and Gotovina is consistent with Cermak's non-operational role of normalising the town.²⁵⁵ Cermak met Gotovina in Knin on 6 August 1995 at the meeting in Knin Castle after the liberation.²⁵⁶ A few days later, they met and discussed informally Cermak's job.²⁵⁷ Subsequently he did not have much contact with

²⁵³ *Krstic* Trial Judgement at para.611.

²⁵⁴ Prosecution Pre-Trial Brief, para.49 and Amended Joinder Indictment, para.15.

²⁵⁵ P2526, p16, p103; P2525, p116; P2532, p22.

²⁵⁶ P2532, p10, D792, D979.

²⁵⁷ P2526, p101; P2525, p11.

Gotovina²⁵⁸ notwithstanding his assertion to Cervenko that the Split ZP and the Garrison were “in constant coordination”.²⁵⁹ Cermak was not aware of Gotovina's movements.²⁶⁰ The lack of documents between the two men was noted by Prosecution expert Theunens.²⁶¹ There were few orders by Gotovina to the Knin garrison.²⁶² Deverell summed it up by stating that “the operational command was largely uninterested in his role.”²⁶³ See section: **Appointment [Part III]**.

104. The Indictment alleges Gotovina to have been “the overall operational commander” who possessed “effective control over all units, elements and members of the HV that comprised or were attached to the Split Military District”.²⁶⁴ Cermak is alleged to have had effective control over some HV units²⁶⁵ and the Knin Garrison is among the “units or elements within and attached to the Split Military District... subordinated to the command of Ante Gotovina”²⁶⁶ listed in Annex A to the Indictment. The Prosecution alleges Gotovina was superior to Cermak in the military chain of command.²⁶⁷
105. The Prosecution does not allege²⁶⁸ that Gotovina is responsible as a superior for failing to prevent or punish Cermak in relation to his actions *as a* “representative of the Croatian Government”²⁶⁹ and as an

²⁵⁸ P2526, p102; P2532, p21, p25.

²⁵⁹ This was a statement concerning a particular intelligence gathering task rather than a statement on their overall relationship.

²⁶⁰ P2526, p103; P2525, p125; P2532, p25.

²⁶¹ P1113, PART II, p258.

²⁶² T.12989.

²⁶³ D1784 p44.

²⁶⁴ Joinder Indictment, para.4.

²⁶⁵ Joinder Indictment, para.7.

²⁶⁶ Joinder Indictment, para.4.

²⁶⁷ Prosecution's Response to Defendant Ante Gotovina's Motion to Dismiss the Proposed Joinder Indictment, 12 May 2006, para.6.

²⁶⁸ Clarification of Indictment, paras.7-9.

²⁶⁹ Joinder Indictment, para.6.

alleged superior of the civilian police and members of the Zadar Knin and Kotar-Knin Police Administrations.²⁷⁰

106. Therefore, the nature of the relationship between Gotovina and Cermak is relevant where Cermak allegedly acted in his military capacity and not when he allegedly acted as a “representative of the Croatian Government” or the “superior of the civilian police”.
107. For example, the Indictment alleges Cermak dealt “with members of the international community and media” as a “representative of the Croatian Government”²⁷¹ and that he provided false assurances to the international community that action to stop crimes was being or would be taken.²⁷² Since he is not alleged to have provided this in his military capacity, such allegations are irrelevant to the relationship with Gotovina.

De Jure Subordination

108. The relevant legislation and orders confirm the *de jure* subordination of the Garrison to the Military District,²⁷³ but it is outside the operational command.²⁷⁴

De Facto Subordination

109. The evidence demonstrates that the Knin Garrison, during Cermak’s mandate, was not *in fact* subordinated to the Split MD. Theunens did not support the allegation that Cermak was Gotovina’s subordinate in fact. Theunens opined that the functional relationship between Cermak and Gotovina was “less clear-cut than what is established in HV

²⁷⁰ Joinder Indictment, para.7.

²⁷¹ Joinder Indictment, para.6.

²⁷² Joinder Indictment, para.19(e).

²⁷³ D33, para.2; D34 para.1.

²⁷⁴ P1113 p72, p108-9.

doctrine".²⁷⁵ He testified he was unable to draw a conclusion on the nature of their relationship because *de facto*, documents did not allow a clear conclusion on the subordination of Cermak to Gotovina.²⁷⁶

110. There is no evidence Cermak participated in operations carried out by Gotovina nor that he was within the operational command structure. There is no evidence that during the time Cermak held the post of the Knin Garrison Commander, the Split MD monitored work, order and discipline in the Knin Garrison,²⁷⁷ nor was it involved in the appointments in the Knin Garrison²⁷⁸ nor did it specifically order Cermak²⁷⁹ nor receive reports from him in respect of his work.²⁸⁰ The Defence submits that the lack of aforementioned features, which were present in the other Military District-Garrison relationships, prevents the Trial Chamber from concluding beyond a reasonable doubt that Cermak was *de facto* subordinated to Gotovina.

²⁷⁵ P1113 p32-33.

²⁷⁶ T.12209, T.12448.

²⁷⁷ In contrast, there is evidence of Gotovina taking disciplinary action against the Split Garrison Commander on 5 Aug 1995 following incidents with UNCRO (P1198).

²⁷⁸ In contrast, there is evidence Gotovina assigning Gojevic to the post of Knin Garrison Commander in the period preceding Operation Storm (P1113 p140) and appointing Ashely MINAK to the position of the Commander of the Benkovac Garrison (D1005).

²⁷⁹ There are three orders from Gotovina which were delivered to the Knin Garrison. One concerns establishment of sanitation teams (P469) but it was not specifically addressed to Cermak and, according to Theunens, it did not provide a role for him. (T.13226). The second concerns compiling lists on the condition of buildings units are leaving (D1032) but there is no evidence it was complied with. The third requests information on buildings of particular interest for the state (P1146) and is the only order for which there is evidence of Cermak reporting back (P1146).

²⁸⁰ According to Theunens, Gojevic regularly reported to Gotovina while he was the Knin Garrison Commander (P1113 p110), Feldi testified he saw no reports from Cermak to Gotovina on normalisation T.21844.

Gen. MLADEN MARKAC, MUP Assistant Minister for the Special Police

111. Markac and Cermak met in 1992 or 1993 through contact in the MUP and MO.²⁸¹ In 1995, they met in person three or four times but mainly communicated over the phone.²⁸²
112. The Trial Chamber stated at the Rule 98bis stage there was “evidence of cooperation between Mr Cermak and the other two accused; for instance, with regard to.....special police mopping up operations.”²⁸³ In terms of the allegation that Cermak, Markac and Gotovina were responsible for the “realisation of “ciscenje” operations”,²⁸⁴ the Prosecution cites D561 from General Cervenko which requested the “Knin ZP” and the “Knin ZM” to submit reports to the Main Staff. There is no evidence Cermak submitted any reports. Cermak claimed the Garrison and Split MD were in constant coordination and that any report he submitted would be a repetition of work and gave no information.²⁸⁵ Military expert Deverell opined that Cermak took this position because of his lack of resources.²⁸⁶ His lack of involvement and interaction with any others regarding the “ciscenje” operations supports the Defence submission that he was not a decision-maker, nor responsible for carrying them out, nor did he contribute to them. There is no flow of information or reporting from Cermak to either General Markac or General Cervenko to support his participation. See section: **Cermak had no Power to Decide upon the ROMs Which Took Place at the End of August/Beginning of September due to Special Police Operations.**

²⁸¹ P2531, p56 of 77.

²⁸² P2531, p57 of 77; P2532, p100-101; P2525, p18.

²⁸³ T.17619.

²⁸⁴ PTB, para.73.

²⁸⁵ P1219.

²⁸⁶ D1784 p30.

113. These “ciscenje operations” were not unlawful operations. Markac’s reports on operations carried out²⁸⁷ and planned²⁸⁸ were sent to a large number of recipients²⁸⁹ that sometimes included Cermak.²⁹⁰ The first report to Cermak is dated 28 August 1995.²⁹¹ There is no evidence Markac received any unlawful information or reports from Cermak. Markac explained that he provided information to Cermak because he was responsible for co-ordinating with the international community and could therefore pass on the information for the benefit of their security.²⁹² This is entirely consistent with Cermak’s liaison role.
114. A report from Markac to Cervenko dated 21 August suggests that on that day there was a “short meeting with Generals Gotovina and Cermak.”²⁹³ However, it is not clear (a) whether Markac met with Gotovina and Cermak separately or at the same time; or (b) if the meeting was only between Gotovina and Cermak. There is no evidence of what was discussed. Markac could not confirm whether such a meeting occurred on 21 August.²⁹⁴
115. In respect of the contact between Cermak and Markac in the context of the events in Grubori, see section: **Indictment Paragraph 19(c): Indicent in Grubori.**

²⁸⁷ D2109, D562, P2376, D1100, P574, P579, P575, P576, P2379, D2120, D565, D2123, D2121, D2128, D2132, D2133, D2135, D2134, D2137, D2139, D2140, D2141, D2142, D2144, D2143, D2145, D99, P2380, D2113, D2114, D2115, D2116, D2119.

²⁸⁸ P2375, P2377, P2378, D2136, D1763, D1837, D1838, D2122, D2127, D2131, D2138, P2524.

²⁸⁹ Jarnjak, Cervenko, Gotovina, Chief of the Lika and Zadar-Knin Police Administration, Karlovac ZP Commander, Crnjac, Gospic ZP Commander, Norac.

²⁹⁰ Pre: D1763, D1837, D1838, D2122, D2127, D2131, D2138, P2524. Post: D99, P2380, D2113, D2114, D2115, D2116, D2119.

²⁹¹ D99.

²⁹² P2526, p22; P2525, p125, p179; P2531, p37-39 and p58 of 77.

²⁹³ D562.

²⁹⁴ P2530, p54.

FRANJO TUDJMAN, President of the Republic of Croatia

116. Evidence of Cermak's contact with President Tudjman contradicts the allegation that he was involved with him and others in a JCE:
- (a) Cermak was appointed commander of the Knin garrison by the President with the task of normalising life and with no political or operational control over military forces or police;
 - (b) There is no evidence that he had a duty to report to Tudjman;²⁹⁵
 - (c) Cermak's tasks were for the benefit of the whole community;²⁹⁶
 - (d) He was not a close advisor or confidante of the President as revealed by the transcripts:
 - (e) They communicated two or three times.²⁹⁷ Cermak did so as a result of personal initiative in order to inform him of the situation on the ground²⁹⁸ and to ask for police reinforcements.²⁹⁹ Cermak's public statement in a newspaper of this fact goes to its truth³⁰⁰ and his request for more police contradicts the notion of his involvement in a JCE; and
 - (f) The discussion in March 1999 reveals the nature of his work and his lack of involvement in any alleged JCE.³⁰¹

GOJKO SUSAK, Minister of Defence

117. There is no evidence Cermak had any relationship with the Minister of Defence Susak to commit any acts in furtherance of a JCE. Since 1991, he had not been on good terms with Susak because of their different

²⁹⁵ Radin, D1678 for the manner of the appointment and absence of reporting.

²⁹⁶ See section on Normalisation of life.

²⁹⁷ P2525, p176. Radin corroborates this evidence in his statement, D1678, para.11.

²⁹⁸ P2526, p19; P2532, p27; P2525, p179. See also corroborating evidence at P2355, p02931770 and OTP interviews at P2525, p178; T.18139.

²⁹⁹ P2525, p23, p49, p176; P2532, p50-51.

³⁰⁰ P2355

³⁰¹ P1144, p3-4.

views on the restructuring of the Ministry³⁰² and since 1993, he saw him once in 1995 in Knin for 30 minutes.³⁰³

MATE LAUSIC, Head of Military Police Administration

118. As to Lausic, Cermak's contact was insignificant³⁰⁴ and at its highest concerned security of a facility.³⁰⁵ The relationship of Cermak with the Military Police is addressed in section **Part V, section II [The VP]**.

IVAN JARNJAK, Minister of the Interior

119. Cermak contacted Minister Jarnjak many times to alert him to problems on the ground and to ask him for police reinforcement to prevent crime.³⁰⁶ This evidence directly contradicts the notion of Cermak's involvement in an alleged JCE.

ZVONIMIR CERVENKO, Chief of Staff of the Armed Forces from 17 July 1995

120. There were very few contacts between Cermak and Cervenko. Cermak confirmed that they only spoke once³⁰⁷ or twice.³⁰⁸ Cervenko asked about his opinion on what was happening on the ground and another time in respect of a complaint related to the Ministry of Culture.³⁰⁹

³⁰² P2525, p20, p35.

³⁰³ P2525, p20-21.

³⁰⁴ P2525, p38, p66, p69.

³⁰⁵ P2159, para.251, T.15662-15663.

³⁰⁶ P2525, p30, p49, p59, p178, p180; P2532, p27, p104-105.

³⁰⁷ P2526, p79-80.

³⁰⁸ P2526, p21; P2525, p177.

³⁰⁹ P2525, p177.

121. Significantly, on 5 November 1997, Cermak gave an interview to the Croatian *Nacional*.³¹⁰ He stated in 1995 he had condemned the commission of crimes and informed the President about them. An interview with Cervenko was published in the same newspaper a few days later in which he claimed Cermak never passed this information.³¹¹ However, Cervenko then denied giving the interview as reported the day after it was published.³¹² The interview contains contradictions but Cervenko admitted publicly that Cermak had no supervisory authority in the territory.³¹³ "He had no connection with the Main Staff before or after his arrival in Knin", he was only concerned with logistics, "that's all".³¹⁴
122. Cermak did not report to Cervenko who was not interested in his work "dealing with [the] soup kitchen and cleaning up the town and issues relating to the town itself."³¹⁵ Cermak's non-operational role would not have caused him to be working directly with the Chief of the Main Staff.

JANKO BOBETKO, Chief of Staff of the Armed Forces until 17 July 1995

123. The Prosecution did not call any evidence about a relationship or contacts between Bobetko and Cermak.

MIRKO NORAC, Commander of Gospic Military District

³¹⁰ P2355.

³¹¹ P2527.

³¹² D1306; P2525, p.178, T.15949-15951.

³¹³ P2527.

³¹⁴ P2527.

³¹⁵ P2532, p50, D1678, para.30, D1696, para.5.

124. No evidence of any contact was elicited at trial.³¹⁶

GENERAL ADEMI, Deputy Commander of the Split Military District

125. Cermak did not know whether General Ademi was one of General Gotovina's deputies.³¹⁷ Ademi was never present at garrison meetings.³¹⁸ There is no evidence of any contact.

**MILJENKO CRNJAC, Commander of Karlovac Military District,
MARKICA REBIC, Assistant Minister of Defence for Security and
JURE RADIC, Minister of Reconstruction**

126. No evidence of any contact was elicited at trial between Cermak, Crnjac, Rebic or Radic.

B. No Common Criminal Purpose

127. The Cermak Defence denies the existence of a common criminal purpose and adopts the arguments set out in the Gotovina and Markac Final Briefs. In addition, the Defence submits that the mere fact that crimes were committed does not prove the existence of a common criminal purpose, particularly in circumstances where there is evidence that crimes were committed for reasons of personal revenge, retribution and common criminality.
128. The Defence has presented *significant* evidence of crimes committed against Croats within the Krajina between 1990-1995 by Serbian military, police and paramilitary forces, Serb volunteers and Serb

³¹⁶ P2526, p29.

³¹⁷ P2525, p126.

³¹⁸ D1706, p6.

civilians. This has been presented as evidence by means of agreed facts³¹⁹, bar table documents³²⁰ and under Rule 92*quater*.³²¹ A reasonable inference to be drawn from this evidence is the motivation of individual Croats returning to the area for revenge, retribution, and a desire to compensate themselves for losses they had suffered from 1991-1995, or that this *may* be the case. The existence of these conditions among those who committed crimes is not in dispute and has been a significant theme during the trial.³²² It is of central relevance to whether or not it can be determined beyond a reasonable doubt that crimes were committed pursuant to a common criminal purpose.

³¹⁹ Joint Submission by the Defence for Ivan Cermak and the Prosecution in Respect of Agreed Facts dated 14 January 2010; Second Joint Submission by the Defence for Ivan Cermak and the Prosecution in Respect of Agreed Facts dated 15 April 2010.

³²⁰ Motion to Admit Rule 68 Documents Across the Bar Table dated 15 January 2010; Ivan Cermak's Submission of the Bar Table Spreadsheet Concerning Rule 68 Documents dated 14 June 2010. See Exhibits: D1994, D1995, D1996, D1997, D1998, D1999, D2000, D2001, D2002, D2003, D2004, D2005, D2006, D2007, D2008, D2009, D2010, D2011, D2012, D20013, D20014, D2015, D2016, D2017, D2018, D2147, D2148, D2149, D2150, D2151, D2152, D2153, D2154, D2155, D2156, D2157.

³²¹ D1736, Defendant Ante Gotovina's Motion for Admission of Evidence Pursuant to Rule 92 Quater – Testimony of Milan Babic.

³²² See P2525 at p22, 61, P2526 p45, 72, 76; P719. In relation to observations made by international witnesses, see: Hansen, T.15048 - reference is to D1277, T.15051-15053, T.15091-15092; Hayden, T.10629-10630 - reference is to P987 and to P988; Munkelein, T.1595-1597 - reference is to P61, para.37; Mauro, T.12046, reference is to P1098; Leschly, T.9217-9218 - reference is to D799; Marti, T.4638 - reference is to P416, T.4689-4690 - reference is to P154; Malm, T.8183 - reference is to P794-P796-P797-[REDACTED]; Antilla, T.2643 - reference is to P154; Liborius, T.8302-8304 - reference is to P815, T.8456-8457; Berikoff, T.7756-7757, 7906; Vesna Skare-Ozbolt, T.18213; Lazarevic, T.17947-17048 - reference is to D1461; Morneau T.3954-5; Al Alfi, P1160, 0063-3507; Hansen, P1292 p4, see also P889 "In numerous areas the deep-rooted hatred and need for revenge led to very unpleasant scenes."; Hansen, T.14955; T.15053. Pasic told Hayden that most of the destruction was being carried out by civilians taking revenge: P987, para 28; P986 (0039-7289); Boucher: P1176, para.11; In 2008, Boucher went as far as saying that "some activity (such as protecting the Orthodox Church in Knin and not burning the houses in some Serb areas)" indicated that perhaps there was no "systematic attempt to keep Serbs out of the area": P1178, 0645-2041; T.14046; Boucher, D1217, para.42: He was unable to determine whether the burnings and lootings that occurred were motivated by a desire to prevent the return of the occupants or by revenge; D56, p3; P1162. The Zadar County Prosecutor testified of former refugees accused of crimes who defended themselves by claiming they were taking back what was rightfully theirs T.19683:22-19684:4, T.19687:20-19688:10, T.19728; Borislav Skegro recounted a refugee telling him he would set fire to the house of the people who killed his parents after liberation D1679 para.17; The Trial Chamber received first hand evidence of a perpetrator who committed crimes out of revenge T.19568-19573.

129. The relevance of revenge and retribution to a JCE has been addressed in *Limaj et al.* The Trial Chamber was concerned with whether or not crimes committed in Lapusnik prison camp were within the objective of a JCE to target Serbian civilians and perceived Albanian collaborators. The Chamber held it could not be "ruled out on the available evidence that some of the perpetrators of the crimes established in, or in connection with the prison camp did so merely as visitors who came to the camp on an *ad hoc* basis and while there, for personal reasons, such as revenge, mistreated or killed old enemies."³²³
130. The Chamber held that there were instances of abductions in "which personal revenge of individual KLA members was the motivating factor"³²⁴ and "in some cases, the perpetrators of the crimes committed in, or in connection with the prison camp may have been driven by such motives." The Chamber concluded that this heightened the possibility that persons involved in the operation of the camp, or "opportunistic visitors", committed crimes for personal purposes such as retribution and that it could not be established with sufficient certainty that these crimes were in fact committed in pursuance of any KLA policy or plan of targeting Serbian civilians and perceived Albanian collaborators namely in accordance with the alleged JCE.
131. The Trial Chamber must be satisfied in the instant case beyond a reasonable doubt that the crimes were committed pursuant to the alleged common criminal purpose; and that a JCE member *used* the perpetrators to commit crimes in furtherance of that purpose.³²⁵

³²³ *Limaj, Bala and Musliu* Trial Judgement, para.667.

³²⁴ *Ibid.*, at para.668.

³²⁵ *Brdjanin* Appeals Judgment para.413; *Krajisnik* Appeals Judgement para.225; *Limaj* Appeals para.120.

132. On the evidence, the Defence submits that the Trial Chamber cannot rule out that the crimes were committed as a result of revenge, personal retribution, common criminality, or a desire by individuals to compensate themselves for losses suffered, unconnected with any alleged common criminal purpose. In the circumstances, the Trial Chamber cannot therefore be satisfied beyond a reasonable doubt that the crimes were committed pursuant to a JCE and liability must therefore fail.³²⁶ Furthermore, no evidence has been elicited at trial that Cermak *used* perpetrators to commit crimes in furtherance of a JCE as alleged.

C. No Mens Rea

133. In respect of JCE I, the Prosecution has failed to prove beyond a reasonable doubt that Cermak *shared* a *common* state of mind with other alleged members of the JCE that the statutory crime(s) forming part of the objective should be carried out”.³²⁷ Substantial evidence of his lack of *mens rea* and a lack of acceptance of the commission of crimes is set out below in the following section: **No Participation by Cermak in a JCE.**
134. For JCE III, the Prosecution has failed to prove beyond a reasonable doubt that Cermak “participated in the common criminal purpose with the requisite intent and that, in the circumstances of the case, (i) it was foreseeable that crimes in counts 1-9 might be perpetrated by one or more of the persons *used* by him (or by any other member of the JCE) in order to carry out the actus reus of the crimes forming part of the common purpose and (ii) that Cermak willingly took that risk – that is he was aware that such crimes were a possible consequence of the

³²⁶ *Krajisnik* Appeals Judgment paras.225-226.

³²⁷ *Tadic* Appeal Judgement, para.227.

implementation of that enterprise and decided to participate in that enterprise.³²⁸

III. NO PARTICIPATION BY CERMAK IN A JCE

135. The Prosecution has failed to prove beyond a reasonable doubt that Cermak took action in furtherance of the alleged criminal plan, or that he significantly contributed to the implementation of such a plan.

136. Substantial evidence of Cermak's role, actions, extent of his influence and conduct in respect of crimes committed shows that Cermak did not share the alleged common criminal purpose, or participate in a JCE or any expansion thereof. He used the *limited* influence he had, within his restricted material ability, to stop further crime as demonstrated below:

- (1) He made requests to Tudjman and Jarnjak that police reinforcements be sent to the area.³²⁹ He told the internationals about his requests.³³⁰
- (2) He did what he could within his limited material ability to prevent the recurrence of crime by passing on information about crimes which he received from the internationals to the relevant investigating authorities. See section: **Contrary to Paragraph 19(c) of the Indictment, Cermak Passed on Information about Crimes to the Relevant Authorities.**

³²⁸ *Brdjanin* Appeal Judgement, para.411.

³²⁹ Re Cermak's request to Tudjman: P2525, p23, p49, p176; P2532, p50-51; re Cermak's contact with Jarnjak to alert him to problems on the ground and to ask him for police reinforcements to prevent crime: P2525, p30, p49, p59, p178, p180; P2532, p27, p104-5.

³³⁰ D618.

- (3) He spoke publicly about the fact that crimes were being committed and who was responsible for them. See section: **Contrary to Paragraph 19(c) of the Indictment, Cermak Admitted that Crimes were Taking Place.**
- (4) He requested an on-site investigation into the events in Grubori. See section: **Indictment paragraph 19(c): Incident in Grubori.**
- (5) In garrison meetings he expressed his unhappiness about crimes being committed and implored the police to do their job. See sections: **Contrary to Paragraph 19(c) of the Indictment, Cermak Passed on Information about Crimes to the Relevant Authorities; Contrary to Paragraph 19(c) of the Indictment, Cermak Admitted that Crimes were Taking Place.**
- (6) He informed more senior figures in the Croatian leadership of the fact that crimes were taking place. See section: **No Plurality of Persons Involving Cermak** (in connection with Tudjman and Jarnjak).
- (7) He strove to improve living conditions in the area to normalize life. See section: ***De Facto* Role of Cermak in the Normalisation of Life.**
- (8) He promoted the rights of Serbs. See section: **Cermak's Attempts to Encourage People to Stay.**

137. Severe limitations on his influence have been strikingly evident throughout the trial and must be taken into account when assessing both Cermak's intent and the extent of his material ability to act. Evidence of these limitations include the following:

- (1) Cermak's lack of resources and manpower in the Garrison. See section: **The Establishment of the Knin Garrison, Manpower and Resources.**
- (2) Cermak's non-operational role and position as garrison commander. See sections: **Cermak had no *De Jure* Operational Command or Control Over HV Units [HV]; No *De Jure* Command and Control of the Military Police by the Garrison [VP]; The *De Facto* Relationship: Ivan Cermak and the Military Police [VP].**
- (3) His isolation from the command structure of and lack of effective control over members of the HV, VP and MUP. See generally sections: **HV, VP and MUP in Part V.**
- (4) His inability to order members of the MUP, VP and HV. See sections: **No *De Facto* Superior-Subordinate Relationship with Units of the HV; No *De Jure* Command and Control of the Military Police by the Garrison; The *De Facto* Relationship: Cermak and the Military Police; Seven So-Called 'Orders' Sent By Cermak Demonstrate his Lack of Effective Control over the MUP.**
- (5) His lack of authority to investigate crime. See section: **Cermak as Garrison Commander had no *De Facto* or *De Jure* Authority to Investigate or Order Investigation of Crimes [MUP].**
- (6) Rejection by the MUP, HV and VP of Cermak's authority to issue passes. See section: **Cermak was not Superior to the Civilian Police: No *De Jure* or *De Facto* Authority over the MUP in Relation to the Issuing of Passes.**

- (7) His inability to enter into binding agreements on behalf of Croatian authorities. See section: **Cermak Tried to Assist the Internationals with FOM but was only a Mere Conduit/Interlocutor.**

138. The particulars of his alleged participation in paragraphs 17 and 19 of the Indictment are addressed below.

A. Indictment Paragraphs 17(a), 19(a) and 19(b)

139. Contrary to paragraph 17(a), Cermak did not establish, organise, command, order, participate in, support, maintain and/or operate the HV, VP, SP, intelligence, security and other forces, including the MUP to pursue and implement the objectives of the alleged JCE.
140. As to orders and directions issued by Cermak from the Knin garrison to the VP and MUP, see sections: **The 6 Cermak Military Police Orders; Seven So-Called 'Orders' Sent by Cermak Demonstrate his Lack of Effective Control over the Civilian Police.** These related primarily to the normalisation of life in Knin and other humanitarian issues. Cermak's relationship with the HV, MUP and VP is examined in detail in **Part V, Sections II, III and IV.**
141. His *de facto* and *de jure* relationship with these bodies directly contradicts the allegations in paragraphs 17(a) and 19(a) and (b) of the Indictment.

B. Indictment Paragraph 17(b)

142. As to paragraph 17(b), Cermak did not act in any manner described in respect of political, governmental or military policies, programs, plans, decrees, decisions, regulations or strategies which the Prosecution alleges were used to deprive Serbs in the Krajina of their fundamental human rights.

1. CERMAK DID NOT HAVE ANY POSITION OR AUTHORITY TO FORMULATE POLITICAL, GOVERNMENTAL OR MILITARY POLICY

143. Cermak was not in a position, nor did he possess the authority to initiate, promote, plan, participate in, encourage, formulate, disseminate or implement political, governmental or military policy. He was not a member of the government or the parliament at any time relevant to the Indictment. Neither did he in his role as Garrison Commander engage in the initiation, formulation or dissemination of military policy.

2. BRIJUNI: NO INVOLVEMENT IN THE PLANNING, PREPARATION OR EXECUTION OF OPERATION STORM

144. There is no evidence Cermak took part in the planning, preparation or execution of Operation Storm.³³¹ The Prosecution alleges that the plans for Operation Storm were “finalised” at a meeting between President Tudjman and others on the island of Brijuni on 31 July 1995.³³² Cermak was not present at this meeting.³³³

³³¹ Skare-Ozbolt T.18223; Cermak P2532 p46; Cermak P2525, p5, 8-9, 35.

³³² Prosecution Pre-Trial Brief of 21 March 2007, paras.7, 16; P461.

³³³ P461.

3. NO INVOLVEMENT IN DISCUSSIONS IN THE PRESIDENTIAL TRANSCRIPTS

145. The Prosecution relies upon a number of presidential transcripts both before and after 5 August as evidence of the alleged common criminal purpose.³³⁴ Cermak was not involved in any of these discussions. The Presidential transcripts establish the non participatory role of Cermak in the alleged JCE.³³⁵

4. HOUSING LAWS

146. Cermak had no involvement in the formulation, implementation or dissemination of laws and policies which the Prosecution alleges prevented Serbs from returning to the Krajina and expropriated their property by transferring it to Croats.³³⁶ Those discussions make no reference to Cermak.

5. CERMAK TOOK POSITIVE ACTION TO ASSIST THE SERBS IN THE UN CAMP AND PROTECT THEIR HUMAN RIGHTS

147. In stark contrast to the allegations in paragraph 17(b) of the Indictment, Cermak took positive action deliberately aimed at improving the life and conditions of those Serb displaced persons in the camp and those who wished to remain in the Knin area. He was not “individually or jointly criminally responsible for the deportation and forcible transfer of Serb civilians from the Southern Krajina to BH and Serbia from the

³³⁴ For example, P449, P456, P461, P462.

³³⁵ D296, p20 P1144 p7.

³³⁶ PTB, para.46; P463; P476; P2591; P475; D422; D424.

end of July 1995 until 30 September 1995.”³³⁷ He did not cause or create any circumstance underlying decisions made by Serbs to leave Croatia.

(a) Cermak’s Attempts to Encourage People to Stay

148. The circumstances by which the civilian population of Knin during and after Operation Storm went to the UNCRO camp, was an extraordinary problem³³⁸ with which Cermak and other Croatian authorities became involved. The day-to-day dealings with UNCRO and its relationship with the Croatian authorities in Knin had to be met by Cermak as a garrison commander.³³⁹ This role was not within that remit and threw up problems and difficulties that his lack of actual authority was unable to solve. The evidence shows the good intentions of Cermak which were represented in his many public statements. However, the fact that his beliefs and good intentions were not met by the Croatian authorities was not his fault, and caused him to become the focus of the frustrations of the international community in Knin as the point of contact for them. Importantly Cermak wanted the UN to be part of the monitoring process³⁴⁰ which clearly shows his good faith and belief in the good intentions of his government.

149. Cermak attempted to assist UNCRO and the *DPs* in the camp in accordance with the Akashi-Sarinic agreement of 6 August³⁴¹ which aimed to ensure “to the maximum extent possible the full protection of civilians and their human rights”. Point 3 of the Agreement provided expressly that Croatia would allow the departure of those individuals who wanted to leave, except those who committed violations of

³³⁷ PTB para.113.

³³⁸ D296 p20.

³³⁹ *Ibid.*

³⁴⁰ P388.

³⁴¹ D28.

international criminal law.³⁴² This clearly indicates that it was envisaged at that time that due to the conflict between the territories of the former Yugoslavia groups of the population may not want to remain in a new Republic and opt to leave.³⁴³ The circumstances could only be resolved at a level higher than Cermak and Forand.³⁴⁴

150. Cermak's *objective* was to have people remain in Knin and not leave.³⁴⁵ He discussed with Akashi about assistance to DPs, human rights, security, including "complete social and humanitarian protection."³⁴⁶ He told Al-Alfi that he wanted people to remain in the villages and stated that "we will take care of them".³⁴⁷ Witness Boucher confirmed Cermak wanted the Serbs who had been displaced to remain.³⁴⁸ He sought to protect their rights while they were present in the camp, and asked them to stay.³⁴⁹ These objectives were consistent with his brief to normalise life.³⁵⁰

151. Cermak took *positive* steps to ensure people remained in Croatia as he discussed with Akashi.³⁵¹ On 8 August³⁵² he addressed problems of the DPs by trying to ensure that passes were "issued to all who want to

³⁴² *Ibid.*

³⁴³ D146.

³⁴⁴ P366 para.1.

³⁴⁵ D29 para.4; T.1161-2; T.1159; D1705 para.15; Lukovic D1688 para.26; Lukovic D1687 para.57; D1667 p34-35.

³⁴⁶ D146.

³⁴⁷ P409, p1; D1211 paras.1(f), 3: This goal was also reflected in claims by Mr Tomas of the Croatian UN and EMM Liaison office that the Government expected the return of the Serbs and encouraged those who opt to return with a simplified procedure. The evidence shows that people left the camp to return to their homes: D147, P30 p3 (100 persons); D620 (60 persons); D1211, para.1(i) ("more than 100 have already left the compound in the last two days"); [REDACTED].

³⁴⁸ T.14080. See also Forand T.4206-7: Forand confirmed Cermak wanted to provide normal conditions of life for the displaced persons in the UNCRO camp: T.4216-7. Leslie confirmed that Cermak "appeared to be quite frustrated about his inability to make decisions to make life easier for some of the Serbian displaced persons.": T.2181.

³⁴⁹ D29, para.4; D1208; D300; P934, p3 para.3(f); P369, p3.

³⁵⁰ D1208 para.3 "the Croatian Government does not want Knin as a ghost town".

³⁵¹ D1667.

³⁵² P388.

leave the camp *and go on living in the area of Knin.*" In his interview with the OTP, Cermak explained the purpose of the passes/propusnica:

*"people of Serbian nationality who had remained in Knin, or who wanted to leave from the UNCRO camp, could show that they would have some kind of paper. So if somebody stopped them, because at that point there were no identification papers, no civilian authority, they wouldn't have any problems when it came to moving around."*³⁵³

This was an *ad hoc* measure which was eventually to be overruled by the Ministry of Interior as having no validity: See section: **Cermak was not Superior to the Civilian Police: He Lacked *De Jure* or *De Facto* Authority over the MUP in Relation to the Issuing of Passes.** It was a well-intentioned measure conceived with Akashi as a means of help.³⁵⁴ Cermak saw this as the Croatian authorities making a "sincere and serious effort to treat people fairly"³⁵⁵ by putting in place measures which would "allow them to get on with their lives".³⁵⁶ He was trying to protect the people.³⁵⁷

152. On 12 August, Cermak provided a group of military aged men who were *willing*, unlike others, to be interviewed outside the UN camp with "propusnicas" so that they could remain in the Knin area and reunite with their families who were leaving the camp.³⁵⁸ He envisaged the UN being present at interviews of suspects for whom he wanted access to health care and international organisations.³⁵⁹ This shows his lack of discriminatory intent towards Serbs.

³⁵³ Cermak P2526, p86-7. See also Cermak P2525, p122.

³⁵⁴ D1667.

³⁵⁵ P359, p4.

³⁵⁶ P359, p4, para.8.

³⁵⁷ Cermak P2526, p86-7. Cermak P2525, p122.

³⁵⁸ P32, para.5.

³⁵⁹ P388, p2.

153. Positive incentives to persuade people to stay in Knin included the offer of temporary housing, welfare, pensions and food supplies.³⁶⁰ On 9 August Cermak listed human rights guarantees to “establish trust and continued coexistence”, including access to houses, provision of humanitarian aid³⁶¹, soup kitchens, repair of residential buildings and other civil rights and liberties.³⁶² Cermak was particularly involved in the introduction of a public kitchen³⁶³ and logistics support “so it goes as fast as possible”.³⁶⁴ Evidence confirms the actual establishment of a public kitchen and other acts by Cermak and his staff to re-establish the city and its facilities.³⁶⁵ His positive acts were described as the “best guarantee that the situation will be resolved very soon to mutual satisfaction.”³⁶⁶ There is evidence he spoke about “the importance of respecting the rights of Croatian citizens of Serb ethnicity assuring them that they would enjoy all civil rights and freedoms”, provision of assistance “as soon as possible”³⁶⁷ and his “good will and concrete steps” which indicated he wanted to resolve the destiny of these people “in the best possible way”.³⁶⁸ Cermak helped to procure humanitarian assistance throughout August³⁶⁹.

³⁶⁰ D1208. See also D1667, p36.

³⁶¹ Witness Dondo testified that although Cermak's responsibility was Knin town itself, humanitarian aid was also distributed to villages around Knin: D1695 para.19. Cermak organised regular delivery of blankets, food, drink, cigarettes and other necessities to the camp: D1696, para.15. See also Lukovic D1688, para.25.

³⁶² D300. See also Dodig D1705, para.17.

³⁶³ See Pasic D1707 para.23; Pasic D1706 p4.

³⁶⁴ D147.

³⁶⁵ D775.

³⁶⁶ D147.

³⁶⁷ D17505, p10.

³⁶⁸ D147, p2.

³⁶⁹ D1705, para.7: Cermak asked Dodig to visit the camp because there were sick and wounded people there and to do all he could. Dondo D1696, para.15: The provision of blankets, food and other necessities was “regular”.

(b) Cermak and the Departure of Serbs from the UN Compound

154. It was envisaged in the Akashi Sarinic agreement that due to the conflict between the territories of the former Yugoslavia groups of the population may not want to remain in a new Republic and opt to leave.³⁷⁰
155. The evidence has shown that it was the UN who secured the departure of the Serbs in cooperation with the Croatian government,³⁷¹ it being no longer viable for such numbers of individuals to remain in a UN camp.³⁷² Forand had expressed on several occasions his desire for pressure to be brought to relocate the people as otherwise, the ability of his HQ to “disband” would be “compromised”, and viewed it as his “sole remaining military task”.³⁷³ This was dealt with at Headquarters level of the UNPF and Croatian Government.³⁷⁴ The UN was logistically assisted by the MUP³⁷⁵ and the UNHCR in the transfer of the people.³⁷⁶
156. Cermak acted as a conduit in discussions between relevant Croatian authorities and the UN.³⁷⁷ The UN requested his help and cooperation to provide logistical support in escorting a humanitarian transfer of DPs from other UN compounds in Sector South to Knin³⁷⁸ and to assist in respect of 51 DPs who were brought to Knin.³⁷⁹ There is evidence of

³⁷⁰ D28 point 3; D146.

³⁷¹ D56 p3.

³⁷² D316; P40; D895; D621; D624.

³⁷³ P374 para.1(B) for complaints about resources shortage because of IDPs; P48, para.5 for concerns of “pressure on the overcrowded DP camp”; P366, para.1(C)(2); P384, para.1(D) for some items approaching “critically low levels”.

³⁷⁴ D56 p3.

³⁷⁵ [REDACTED].

³⁷⁶ D28, para.3; D622, p.2 para.5; D624; [REDACTED]: In respect of departure from the collection centres, evidence indicates this was handled by the police and/or the Red Cross.

³⁷⁷ T.4275.

³⁷⁸ P40, para.2; D1696 para.12.

³⁷⁹ D894, para.5.

international agencies being appreciative of his positive assistance³⁸⁰ and Forand specifically noted that he was looking forward to “further opportunities for close cooperation in a *common purpose*, specifically, in the transfer of DPs from SS to destinations *of their choice* in the very near future”.³⁸¹ For example, UN agencies requested additional buses from Croatian authorities through Cermak.³⁸² He provided some logistical support in the form of clothing and drinks for the journey on 16 September.³⁸³

157. Cermak was not responsible for the decisions made by Serb individuals to leave the UN camp and go to Serbia.³⁸⁴ Some made their own choice, which was also influenced by Serb propaganda urging them to leave.³⁸⁵ Two members of the local Serb leadership in the UNCRO SS camp were advising: one advising the Serb population to stay and the other to leave.³⁸⁶ In respect of P55 and P57, the forms signed by those who boarded the buses from the UN camp, there was no evidence as to who was responsible was drafting and distributing these documents. Importantly, there was no involvement of Cermak in this process or causal relationship between signing the form and the reason *why* those people left Croatia. Colonel Leslie described Cermak’s conduct in respect of the DPs as friendly and helpful.³⁸⁷ This action was corroborated by a letter of thanks sent by the acting SS commander to the Croatian defence minister in respect of Cermak’s cooperation in helping the voluntary move of the DPs to Serbia.³⁸⁸ He praised in particular Cermak’s “initiative” and “responsible actions”

³⁸⁰ D311.

³⁸¹ *Ibid.*

³⁸² P387.

³⁸³ D315, para.2.

³⁸⁴ D56 p3; D137; P480; P592; D136; D138; D139; D254; D937; D938; D326.

³⁸⁵ T.6745-6746, T.23113-6.

³⁸⁶ [REDACTED].

³⁸⁷ D315, para.2.

³⁸⁸ D316.

calling him “one of the key persons of success of this mission”.³⁸⁹ He was also thanked for his help and concern by the Head of the Refugees Committee of Sector South Camp.³⁹⁰

158. The UN requested Cermak to assist in respect of the DPs although his authority to do so was clearly limited. General Leslie testified:

*“Sir, I honestly believe General Cermak was trying to do all that he could to help us with the issue that General Al Rodan [sic] had tasked me with, which was to assist UNCRO and Sector South in moving the displaced persons out of the compound. On a variety of minor issues he was able to make decisions. On any of the ones that had any sort of political implications or wider implications, absolutely categorically not, and I could sense his frustration.”*³⁹¹

(c) Cermak and the Suspected War Criminals in the UN Compound

159. Cermak did not have a central or decision-making role in the negotiations about the fate of the Serbs in the camp. His lack of authority on this issue is demonstrated by a chronological assessment of how the matter came to be resolved.³⁹² High level involvement was required.³⁹³ This is not disputed by the Prosecution.³⁹⁴

160. The Akashi-Sarinic Agreement acknowledged the right of the Republic of Croatia to deal with those who had committed war crimes in the conflict.³⁹⁵ Members of the RSK forces had hidden amongst civilians in

³⁸⁹ *Ibid.*

³⁹⁰ D301.

³⁹¹ Leslie T.2182.

³⁹² P366.

³⁹³ *Ibid.*

³⁹⁴ T.4276.

³⁹⁵ D28 point3.

the UNCRO camp³⁹⁶ and weapons were also found hidden within it.³⁹⁷ The delivery-up of suspects was the cause of the dispute between the UN and Croatia that prevented the resolution of the issue of the civilians in the camp. The UN and Croatia also did not understand each others legal positions, although this was a matter over which the Croatian State had clear jurisdiction under its law and procedures.³⁹⁸

161. Cermak was *continually supportive* of the IOs having a role to play in the interview of suspects.³⁹⁹ He also indicated lesser number of suspects than those demanded by the Croatian authorities actually dealing with the matter, although his representations were countermanded.⁴⁰⁰ This desire indicates his good intentions towards those suspects. Despite the agreements between Cermak and the UN regarding UNCIVPOL members in the interviewing process,⁴⁰¹ the timing⁴⁰² and proposed location of the interviews in the UN SS HQ,⁴⁰³ it soon became clear that Cermak had no authority to make binding decisions.⁴⁰⁴ He had no *de facto* or *de jure* authority to determine the *number or identity* of suspected war criminals or the *procedures*.⁴⁰⁵ He acted as a conduit between the UN and the Croatian authorities.⁴⁰⁶

162. The need for high-level involvement of the UN and Croatian government was obvious.⁴⁰⁷ Upon receipt of a SIS list of 72 suspects,⁴⁰⁸

³⁹⁶ D1696, para.40; Dodig, T.22694.

³⁹⁷ D283; D1696, para.21.

³⁹⁸ D634; D1479.

³⁹⁹ D29, P388, D619 para.3, P403, D622.

⁴⁰⁰ D56, P403, D895, D151.

⁴⁰¹ D619, para.3.

⁴⁰² D1211, p4.

⁴⁰³ D620, para.5.

⁴⁰⁴ D310, para.1.

⁴⁰⁵ Penic T.26962.

⁴⁰⁶ In his role as a conduit between the UN and the Croatian authorities, he received information from the UN concerning those individuals who wanted to leave the UN camp: D621; D895, D627, D633. He also made requests on behalf of Croatian authorities: P388.

⁴⁰⁷ D56, p3.

⁴⁰⁸ D312.

Cermak commented it was too long but stated that once a list of persons “for who there is *proof* of war crimes” was provided they should be handed over.⁴⁰⁹ He accepted the UN proposition that once the list of suspects was submitted those persons would be retained in the HQSS while the remainder would be permitted to leave immediately.⁴¹⁰ The UN suggested guidelines issued by a higher HQ should be followed.⁴¹¹ Without “wish to create tension” Cermak indicated to the UN that there was no possibility of interviewing the suspects in SS HQ but UNCRO would be able to see the evidence⁴¹² and UNCIVPOL could be involved in the CroPol investigations.⁴¹³ He agreed with the UN position that this matter should be left to the UNCRO HQ and the Government of Croatia⁴¹⁴ and stated that the reasons behind the hand-over requests including charges would be identified.⁴¹⁵ The matter required “a solution at a higher level”,⁴¹⁶ although at his level, Cermak did not oppose the UN’s involvement and tried to work with them in resolving this issue.

163. On 23 August, a CALO informed UN Liaison Officer Tymchuk that no person would be permitted to depart until wanted individuals were in Croatian custody⁴¹⁷ which was contrary to the agreement with Cermak. Forand requested the “position of the Croatian government” and an explanation as to “why an agreement made with Ivan Cermak as to how to proceed in respect of the DPs cannot be carried out”.⁴¹⁸ The next day Cermak communicated the Government’s position that no

⁴⁰⁹ P403, p2 (emphasis added).

⁴¹⁰ D622, para.5.

⁴¹¹ P403, p2, D895, p1.

⁴¹² P403, p3.

⁴¹³ D622, para.3.

⁴¹⁴ *Ibid.*, para.4.

⁴¹⁵ *Ibid.*

⁴¹⁶ P45, p3; D624, p2.

⁴¹⁷ D313.

⁴¹⁸ D895.

convoy could depart until the suspects were handed over.⁴¹⁹ He stated that “this was the last order he received” and agreed⁴²⁰ to put it in writing.⁴²¹ His attempts to have the list reduced were unsuccessful. It was concluded that this matter could not be resolved at that level and needed government involvement.⁴²²

164. By 25 August, decisions as to the location for interviewing suspects and the conditions for the departure of the remaining civilians were being taken by the MoJ in Zagreb and conveyed to Akashi by Sarinic. Akashi was informed that the Croatian Government would *not allow interviews to take place in SS HQ* and that it would *not allow people to leave before suspects had been handed over*.⁴²³ Forand also acting on instructions insisted on the need for documentation in support of the charges.⁴²⁴ However, Cermak was not in a position to provide the supporting evidence as he was neither the public prosecutor, nor the investigative judge, nor an official from the Ministry of Justice. Such information could only be provided by a court.⁴²⁵ He was forced to rely on material provided to him by other agencies.⁴²⁶ He reiterated his desire for people to remain in the villages and that they would be taken care of.⁴²⁷ In contrast to the allegations in paragraph 17(b), Cermak’s lack of ability to influence, engage in, develop, promote or change the policy of how the potential war criminals in the camp would be processed is demonstrated by the evidence.

⁴¹⁹ D151, P374, paras.1(c), 3(a)(2).

⁴²⁰ D151 para.3.

⁴²¹ D628.

⁴²² The official position of the Croatian government was recorded in a letter sent later that day by Cermak to Forand as agreed: D628; D151, para.3(a)(2). See also P374, para.4 and D151, para.3.

⁴²³ D314, para.1. Akashi took the view that the position taken by Sarinic was contrary to international standards, the Akashi-Sarinic agreement and the 21 August agreement with Cermak.

⁴²⁴ D629.

⁴²⁵ D631, para.5.

⁴²⁶ D312; D632.

⁴²⁷ P409, p1; D630.

165. By 2 September the matter was being handled entirely by the Office of the President, the Ministry of Justice and the UN Secretary General's Political Unit.⁴²⁸ Assistant Minister Penic testified that the Minister of Justice, Mr Separovic spoke to him about the issue of the war criminals within 72 hours of the liberation of Knin,⁴²⁹ and that it was his "role" to implement the particular element of the Akashi-Sarinic agreement concerning war crimes suspects.⁴³⁰ He also stated that Cermak had "nothing to do with it whatsoever".⁴³¹ He was merely a host who found accommodation and accompanied Mr Penic to the camp.⁴³²
166. On 5 September Gotovina accused the UN of harbouring war criminals and told Forand that the suspects must be handed over to Croatian authorities.⁴³³ The clear obligation of the UN to hand over the suspects was an issue raised and determined within the Croatian foreign ministry.⁴³⁴ The following day, the need for high level involvement to resolve this issue was raised once again in a meeting with the UN.⁴³⁵ On 7 September, upon his return from Zagreb, Cermak informed Al-Alfi that a high level meeting was to take place between Sarinic and Akashi, during which he expected the number of suspects to be reduced to 35.⁴³⁶ His role as a conduit in passing information to the United Nations is clear.

⁴²⁸ D1479; D634.

⁴²⁹ Penic T.26958.

⁴³⁰ Penic T.26962.

⁴³¹ Penic T.26964.

⁴³² Penic T.26964.

⁴³³ P384, p4.

⁴³⁴ D634.

⁴³⁵ D635.

⁴³⁶ D618, p.1; P38, p3.

167. The next day, Akashi described the negotiations with the Croatian authorities as having reached an “impasse.”⁴³⁷ Akashi had reported to Annan the day before that the crux of the dispute concerned whether warrants would be provided and “details of the charges and supporting evidence”.⁴³⁸ He suggested “an imperfect solution” to agree to hand over men remaining after the announced reduction of the list on the basis of a “lawful arrest warrant without further details of the charges or evidence against them”.⁴³⁹ Importantly, he suggested the application of further pressure at the senior political level.⁴⁴⁰
168. The mistrust of international agencies in Croatian institutions due to experiences in Western Slavonia⁴⁴¹ was matched by their lack of knowledge of the Croatian prosecutorial system.⁴⁴² The position of the Croatian authorities was that the international community had no right in law to view the evidence, which formed part of the courts’ investigative process. Many of the differences between the Croatian authorities and the UN in respect of the documentation concerning the suspects resulted from misunderstandings of the different legal systems.
169. The procedure for hand-over of the evidence was finally agreed on 13 September with the Assistant Minister of Justice.⁴⁴³ On 14 September Akashi reported to Annan about his meeting with Sarinic on 9

⁴³⁷ D636, para.1.

⁴³⁸ D636, para.3.

⁴³⁹ D636 para.6.

⁴⁴⁰ D636.

⁴⁴¹ D314, p3, para.3.

⁴⁴² D637; see D1568, Article 165(1); D1480; D1945-D1953; D638: Vesna Skare-Ozbolt responded to Harston explaining the legal position. She also transmitted the advice received by Tomislav Penic. On 12 September Harston asked that the decisions on investigation specify the grounds upon which suspects are reasonably suspected of having committed a serious offence defined by law”: Article 8 of ICCPR, as quoted in D639. All available decisions conformed to this requirement: D1945-D1953.

⁴⁴³ D640.

September.⁴⁴⁴ On 16 September “approx 1200 refugees were evacuated from the Knin area” while 38 were taken “to prison for further interrogation”.⁴⁴⁵ The next day the convoy reached Serbia.⁴⁴⁶ Franjo Djurica of the MUP coordinated the refugee convoy and arranged the route, the buses and escort.⁴⁴⁷ UN agencies participated actively in organising the departure of persons from the camp.⁴⁴⁸ On 19 September Penic advised Sarinic that he had provided the decisions to the suspects with Vesna Skare-Ozbolt.⁴⁴⁹

170. A close analysis of the events surrounding the presence of DPs and alleged war criminals in the UN camp after Operation Storm demonstrates not only Cermak’s positive intent to assist and protect the rights of Serb civilians, but also his lack of decision-making authority and ability to determine policy in respect of how the alleged war criminals were to be processed.

6. CONTRARY TO PARAGRAPH 17(B), CERMAK TOOK ACTION IN HIS ROLE AS GARRISON COMMANDER TO POSITIVELY ASSIST THE SERBS

171. In stark contrast to the allegations in 17(b) of the Indictment, Cermak took positive action deliberately aimed at improving the life and conditions of those Serb DPs in the camp and those who wished to remain in the Knin area.

⁴⁴⁴ D641.

⁴⁴⁵ P151, p1; P892, p3.

⁴⁴⁶ P892, p3.

⁴⁴⁷ [REDACTED].

⁴⁴⁸ P387, D621, D624, D627, D633.

⁴⁴⁹ D1941.

172. Cermak told Serbs to remain in their villages and wanted them to stay in the region.⁴⁵⁰ On 9 August, Cermak listed human rights guarantees to “establish trust and continued coexistence”, including access to houses, provision of humanitarian aid⁴⁵¹, soup kitchens, repair of residential buildings and other civil rights and liberties.⁴⁵² There is evidence he spoke about “the importance of respecting the rights of Croatian citizens of Serb ethnicity assuring them that they would enjoy all civil rights and freedoms”⁴⁵³ and provision of assistance “as soon as possible”.⁴⁵⁴ Evidence shows he “was really helping the Serbs who were left there”.⁴⁵⁵ He organised a public kitchen providing meals.⁴⁵⁶ He made sure that the hospital was functioning properly⁴⁵⁷ and his people cleaned and disinfected it entirely.⁴⁵⁸ He delivered humanitarian aid and organised the setting up of a generator.⁴⁵⁹ Cermak helped even indirectly. Because of his reputation, people were encouraged to help, sometimes with “very impressive” donations.⁴⁶⁰ He helped Serbs who were victims of criminal behaviour.⁴⁶¹
173. These measures were not brought to the attention of the international community and were independent of any representations to them as to the nature of his work. This corroborates all steps and measures by Cermak as having been made in good faith.

⁴⁵⁰ Flynn, T.1159.

⁴⁵¹ Witness Dondo testified that although Cermak's responsibility was Knin town itself, humanitarian aid was also distributed to villages around Knin: D1695 para.19.

⁴⁵² D300.

⁴⁵³ D1705, para.17.

⁴⁵⁴ D1705, p17.

⁴⁵⁵ P2532, p134.

⁴⁵⁶ Pasic D1707, para.19, T.22861; Dondo D1696, para.11; D775, pL0021210.

⁴⁵⁷ [REDACTED], D775.

⁴⁵⁸ P2525, p16.

⁴⁵⁹ P2526, p82; P2525, p18; Pasic D1707, para.30, T.23040, T.22895.

⁴⁶⁰ Pasic, T.23043.

⁴⁶¹ Dondo D1695 para.22.

C. Indictment Paragraphs 17(c) and 19(c)

174. **Paragraph 17(c):** There is no evidence that Cermak instigated, supported, facilitated, encouraged or participated in the dissemination of information, false information and/or propaganda to the Krajina Serbs that caused them to leave the area. Cermak's communications with the "*Krajina Serbs*" in media reports or in the UN camp do not support paragraph 17(c). Cermak's positive relationship with Serbs and the Serb civilians in the camp contradicts the Prosecution's allegations. **See: Cermak's Attempts to Encourage People to Stay; Contrary to Paragraph 17(b), Cermak Took Action in his Role as Garrison Commander to Positively Assist the Serbs.** Furthermore, the evidence demonstrates that the overwhelming majority of Serbs who left the Krajina did so before the arrival of Cermak, for reasons associated with Milan Martić and the previous RSK regime.⁴⁶²
175. **Paragraph 19(c):** Cermak did not permit criminal activity. He had no effective control over those who committed crimes, nor the authority to enforce law and order. See generally **Part V, sections II, III and IV: HV, VP and MUP.**
176. As to him denying and/or minimising crime in paragraph 19(c), it appears⁴⁶³ that the Prosecution's Pre-Trial Brief relied only upon Soren Liborius⁴⁶⁴ and Cermak's letter to Forand on 3 September.⁴⁶⁵

⁴⁶² D137; P480; P592; D136; D138; D139; D254; D937; D938; D326. See also Gotovina Final Brief.

⁴⁶³ The PTB supports this allegation with reference to the entirety of Cermak's suspect interview: P2525. However, the footnoting here appears to be out by one number and the likely footnote in support is number 186 which refers to a statement of a witness who was not called, D309 and P801.

⁴⁶⁴ P801 at p9.

⁴⁶⁵ D309.

177. **D309/D145** is a response by Cermak to two letters dated 31 August and 1 September from Forand. It was not a denial of crime. Cermak asks for details and requests accounts based upon fact. He refers to good cooperation which had existed. This was not unreasonable as generic reports had previously been provided by the UN. Nor does it provide a basis of criminal liability in respect of the conduct of Cermak.⁴⁶⁶ See section: **Contrary to Paragraph 19(c) of the Indictment, Ivan Cermak Passed on Information about Crimes to the Relevant Authorities.**
178. **P801** is a witness statement from Liborius in which he alleges orally reporting crime to Cermak. There is only one instance of a meeting in evidence.⁴⁶⁷ Notwithstanding an invitation to provide other dates of meetings with Cermak, Liborius did not provide this information.⁴⁶⁸ His account does not fit with the totality of the evidence about Cermak's cooperative attitude. Liborius wrote to Cermak on 24 August 1995.⁴⁶⁹ In the meeting the next day Cermak confirmed receiving this information and that the police were investigating the case.⁴⁷⁰ This was double reporting by Liborius as the incident was discovered by a joint UNCIVPOL/CROPOL patrol on 22 August 1995.⁴⁷¹ Liborius also utterly misunderstood the remit of Cermak's authority as a review of his entire testimony under cross-examination reveals. Cermak took crime reports seriously, see section: **Contrary to Paragraph 19(c) of the Indictment, Ivan Cermak Passed on Information about Crimes to the Relevant Authorities.**

⁴⁶⁶ Deverell, D1784 p53, 56.

⁴⁶⁷ P821.

⁴⁶⁸ T.8619-20.

⁴⁶⁹ D757. See also P813.

⁴⁷⁰ P814.

⁴⁷¹ P12. Other examples of other double reporting include: [REDACTED]; the Grubori incident was reported to the Knin police by UNCIVPOL (Buhin T.9936-7, [REDACTED]); P268.

179. In its opening statement, the Prosecution relied upon **P1223** and **P1144** as evidence that “General Cermak worked to ensure that international pressures to stop crimes were deflected” and that the internationals would be misled “into believing that it was not the army that was committing the crimes.”⁴⁷²

180. **P1223** is a response from Cermak to Carmen Burger’s two letters of 18 September and 7 October (D1729, D1756) and a recent meeting and has been misinterpreted:

- Cermak did *not* say those responsible were *not* members of the HV.
- He refers to them as “individuals”, “criminals, who dressed in camouflage uniforms,” “cast suspicions on the honesty of the Croatian soldier and the correct policies of the Republic of Croatia”. The point is that this is not the organised work of the army.
- The possibility these individuals were HV soldiers remains as does the possibility they were not.
- Cermak states the civilian and military police had launched comprehensive operations to uncover and punish the perpetrators of criminal acts against the civilian population. The OA Varivode investigation corroborates this.⁴⁷³
- He refers to the work of the MUP maximising the presence of police forces, the setting up of checkpoints, coordination between the SP, VP and the MUP, all of which were discussed when the MUP and VP met in September at Plivice to discuss crime.⁴⁷⁴ See Annexes II, IV, V and VI.

⁴⁷² T.496-497.

⁴⁷³ P268; D215; P2189; D1784; D802.

⁴⁷⁴ D595.

- He informs all cases mentioned in her letters were registered with the police authorities and that relevant information was in the process of being gathered.
- Given the tone, cordiality and breadth of information Cermak provided to Miss Burger, the Defence submits that this document cannot be used to support the Prosecution's contention.

181. The Defence submits that this document constitutes evidence of Cermak's honest belief at that time and other evidence establishes his frankness about crime.⁴⁷⁵

182. **P1144** is a conversation between Cermak and President Tudjman in 1999 following Cermak's interview by ICTY investigators. This is evidence of Cermak's honest belief:

- He believed the Jarnjak information was accurate;
- He was trying to assist and cooperate with other agencies on the ground: "I closely collaborated with the United Nations Civilian Police"; "[In relation to General Forand]... I was prepared to discuss every single case with him and that we investigate and process all of them together"
- He did not accept the allegations of the UN at face value.
- The collective pronoun "we" is not evidence that Cermak was *personally* investigating crime – a task which the evidence has shown, he was unable to perform in fact or law.

⁴⁷⁵ D59; D731; D618.
IT-06-90-T

Letters of Protest Ignored?

183. There is no evidence to support the allegation that Cermak intentionally ignored letters of protest.⁴⁷⁶ There is substantial evidence of Cermak passing on information about crime: See section: **Contrary To Paragraph 19(c) of the Indictment, Cermak Passed on Information about Crimes to the Relevant Authorities**. The Prosecution has failed to understand the limited resources of Cermak and limit of his authority which may account for any failures of communication there may have been. Expert witnesses cite this difficulty.⁴⁷⁷

Promises of Investigations Unfulfilled?

184. For evidence of what Cermak allegedly said to the internationals as recorded in their reports about the investigation of crime and what actions were being taken by Croatian authorities to stop crime: See section: **Statements Allegedly Made by Cermak to the International Community do not give rise to Either a *De Facto* or *De Jure* Authority over the Civilian Police**.
185. In the PTB, the Prosecution cited two HRAT reports to argue Cermak “repeatedly assuaged the internationals that the Croatian authorities would respond, investigate and stop crimes; but his promises remained unfulfilled”: **P27** and **P37**.

P27:

- No promises as cited were made by Cermak.
- The evidence indicates information about the fires was given to Dondo by Mauro.

⁴⁷⁶ The footnote in support cited for this proposition in the PTB actually refers to the previous sentence.

⁴⁷⁷ Deverell, D1784, p29-30; [REDACTED].

- Romanic attempted to reach Grubori on 25th August.
- This document cannot be relied upon as an unfulfilled promise made by Cermak.

P37:

- This document does not support the proposition that Cermak made promises he did not fulfil. Cermak could only fulfil that which was in his power. He cannot be accountable for matters outside his power. Cermak is in fact denouncing crime and providing information he had.

186. If there is evidence that investigations promised or referred to by Cermak did not take place, or took place “much later” as the Trial Chamber held at the 98*bis* stage, the Chamber must go on to consider *why* that *might* have been the case. The Trial Chamber should take into account the following factors:

- (i) There is no evidence that any statements made by Cermak to the internationals that crimes would be investigated were made in bad faith.
- (ii) There is no evidence Cermak *knew* that crimes *would not be* investigated. There is much evidence Cermak passed on information he received about crimes, and he expected those responsible would do their job.⁴⁷⁸ This is evidence of good faith: See section: **Contrary to Paragraph 19(c) of the Indictment, Ivan Cermak Passed on Information about Crimes to the Relevant Authorities.**

⁴⁷⁸ P875 para.45; D1706 p5; D1745 p7; P987 para.20; D1707 para.25; P1164 p3; Dondo D1695, para.15, 17; D1696, paras.7, 25; Lukovic, D1687, para.43; D1688, para.42.

- (iii) Cermak could not compel those responsible for the investigation of crime to investigate: See section: **Cermak as Garrison Commander had no *De Facto* or *De Jure* Authority to Investigate or Order the Investigation of Crimes**. If it is proved that investigations did not take place, or took place much later, the Defence submits that a reasonable inference is that Cermak lacked the authority to ensure that such investigations took place.

The Public Face of Rectitude with Knowledge of “Vast Criminality”?

- 187. In its Pre-Trial Brief the Prosecution cites **P504** and **D300** to support the allegation that Cermak was the public face of rectitude.
- 188. **P504** is a UNTV interview conducted with Cermak in the morning of 26 August. At the time of the interview, there is no evidence that Cermak knew the information he gave to the UN to be incorrect: See section: **Indictment Paragraph 19(c): Incident in Grubori**. The UN team knew more than Cermak and informed him of something they had discovered at Grubori.
- 189. **D300** was given to the people in the UN camp on 9 August. There is no evidence that Cermak knew about extensive “criminality” at this stage, or that the document was given in bad faith. Cermak wanted people to stay and wanted to “establish trust and continued coexistence in the liberated territory”: See sections: **Cermak’s Attempts to Encourage People to Stay; Contrary To Paragraph 17(b), Cermak Took Action in his Role as Garrison Commander to Positively Assist the Serbs**.

Cermak made arrangements for people to be escorted to their properties.⁴⁷⁹

190. The Defence submits that none of the statements referred to above, or any other made by Cermak to the international community can be used as a basis for criminal liability for the following reasons:

- (i) None of the statements made by Cermak to *internationals* caused the commission of crimes;
- (ii) There is no evidence that any statements made by Cermak to *internationals* were part of a *prior agreement* with others to commit or conceal crimes;
- (iii) None of Cermak's statements *order, instigate or aid and abet* the commission of crimes;
- (iv) None of the statements made by Cermak to *internationals* are "*significant contributions*" to the crimes charged;
- (v) None of the statements made to *internationals* can be said to further the alleged common purpose of *permanently removing the Serb population* from the Krajina;
- (vi) None of the statements by Cermak attempt to conceal crimes from the domestic investigating authorities; and
- (vii) Statements made by Cermak to *the media* denounced crime. Such conduct directly contradicts the allegation that he participated in a joint criminal enterprise: See section: **Contrary to Paragraph 19(c) of the Indictment, Cermak Admitted that Crimes were Taking Place.**

⁴⁷⁹D620, para.5.
IT-06-90-T

1. CONTRARY TO PARAGRAPH 19(C) OF THE INDICTMENT, CERMAK ADMITTED THAT CRIMES WERE TAKING PLACE

191. Cermak admitted that crimes were taking place and denounced them in meetings with the international community and in meetings with Croatian officials and asked for it to stop.⁴⁸⁰

192. Cermak's admissions and/or condemnations of crimes are recorded in numerous international reports.⁴⁸¹ As early as 9 August, Cermak did not rule out incidents of looting by the HV in an operation the size of Operation Storm.⁴⁸² On 18 August, he expressed his "unhappiness" about the continued reports of "houses and farms set on fire in the villages and looting."⁴⁸³ Hussein Al-Alfi confirmed that Cermak shared his concern and was unhappy about crimes.⁴⁸⁴ He confirmed that Cermak did not deny that crimes were taking place⁴⁸⁵ at any instance.⁴⁸⁶ Marker-Hansen testified that Cermak condemned looting and burning in their conversations,⁴⁸⁷ while Flynn agreed that Cermak did not adopt the position of the Croatian government and conceded that there were problems which needed to be sorted out.⁴⁸⁸ Forand agreed Cermak did not deny the crimes he complained about.⁴⁸⁹

⁴⁸⁰ Rincic T.22313 ; P875, para.45; D1706, p5; D1745, p7; P987 para.20; D1707 para.25; P1164, p3.

⁴⁸¹ P829, p8, para.16; P1164, p3; D619, para.3.; P806, p3; P359, p.3 para.3B (2); P363, p5; D56, p3 para.2; P374, p3 para.6; D151, p2 para.5; P814, p1; D1214, p2 para.1, see also P404; D1277, p2; D618, p2-3; P946, p1 para.2(b); P38, p3 para.2; P39, p2 para.2; P829, p8 para.3; P684, p7 para.4; P2528.

⁴⁸² D619 para.4.

⁴⁸³ D56, p3.

⁴⁸⁴ Al-Alfi T.13860 in relation to D56.

⁴⁸⁵ Al-Alfi T.13862.

⁴⁸⁶ Al-Alfi T.13863.

⁴⁸⁷ Hansen T.14967.

⁴⁸⁸ Flynn T.1200.

⁴⁸⁹ Forand T.4248, T.4251.

193. Cermak expressed his sincere regrets about the continued looting and burning on 24 August in a meeting with members of the international community and explained that such crimes were “contrary to the policy of the Government of Croatia.”⁴⁹⁰ He accepted that crimes were occurring.⁴⁹¹
194. He continued to condemn crime including the destruction of Serb property⁴⁹² and started making public statements in the Croatian media to this effect.⁴⁹³ In a UN report dated 7 September, it is recorded that “HV General Cermak has given an order not to loot or burn...houses in his AOR about 7 days ago”, but that looting and burning was still ongoing.⁴⁹⁴ Approximately one month after Operation Storm, he gave an interview to the media, documented by international organisations,⁴⁹⁵ in which he again admitted that crimes had taken place and that the inappropriate behaviour of some members of the Croatian army brought shame upon the institution and the state. He called publicly for the urgent prevention of such acts and severe punishment.⁴⁹⁶
195. In a meeting with members of the international community, he informed them of his public television statements that “those who torch and loot have no place in the HV”,⁴⁹⁷ and requested information from international agencies so that measures could be taken.⁴⁹⁸ The international agencies reported that Cermak “did not deny the

⁴⁹⁰ P374, para.3(A)(6).

⁴⁹¹ P374, para.3(A)(6). Whether or not he told members of the international community that *his* area of responsibility was vast (P374, para. 3(A)(6)) or rather that the *area* in which crimes were taking place was “vast” is unclear (D151, para.5); See also Deverell D1784, p53.

⁴⁹² P942, para.1(b).

⁴⁹³ D59.

⁴⁹⁴ D1277.

⁴⁹⁵ D618, p3.

⁴⁹⁶ D731, p2.

⁴⁹⁷ D618, p3.

⁴⁹⁸ D618, p2.

continuation of such activities”⁴⁹⁹ and “serious lawlessness” in the Sector which he hoped would be remedied by the arrival of civilian and military police reinforcements which he *requested*.⁵⁰⁰ Cermak’s *request* for further police re-enforcements and to be notified of lawlessness demonstrate his good faith intention to stop crime but also his lack of authority, being confined to the making of mere “requests”. The authority to bring police reinforcements and prevent further crime lay with others within the MUP and VP: see Annexes I-VI.

196. In his suspect interview, Cermak explained that he often criticised the situation in the media which was bringing shame to Croatia. In particular he referred to when he told *Slobodna Dalmacija* that some members of the Croatian military were to blame and that some of that blame must be placed on their military commanders.⁵⁰¹ Even though Cermak’s statement was contradicted publicly two days later by General Tolj who stated that the Croatian military were not “doing anything” and that the culprits were “some civilians...dressed in military uniforms looting and burning”, Cermak phoned Tolj to inform him that his account was not truthful and that “hiding and lying won’t help anybody”.⁵⁰² Cermak reiterated his position in another article in *Slobodna Dalmacija*.⁵⁰³ On other occasions, he also acknowledged the role played by civilians in uniform who were engaged in crime.⁵⁰⁴ The extent of his public and private denouncement of crime directly contradicts the allegations in paragraph 19(c).

⁴⁹⁹ P1164, p3.

⁵⁰⁰ P39, p2; P1290, p11.

⁵⁰¹ Cermak P2525, p21.

⁵⁰² *Ibid.*

⁵⁰³ D59, para.2 “Referring to a text published in *Slobodna Dalmacija* under the headline ‘Apartment Safari’, General CERMAK said that the claims in the text were completely accurate, but that military and civil police units have been strengthened so as to prevent illegal actions.”

⁵⁰⁴ P1223; P2526, p41.

2. CONTRARY TO PARAGRAPH 19(C) OF THE INDICTMENT, CERMAK PASSED ON INFORMATION ABOUT CRIMES TO THE RELEVANT AUTHORITIES

“Of course, I wanted to stop all this but there was nothing I could have done, I could only send out appeals to the police, to the military to stop this. But they all came to me and complained to me. All this information...I received the information and I conveyed it to the local authorities and communicated with the internationals”⁵⁰⁵

197. As a civilian and a garrison commander, Cermak had a legal duty to report crimes under Articles 139 and 140 of the Law of Criminal Procedure.⁵⁰⁶ Once the police were informed about a crime, they were then under an obligation to forward the information to the competent prosecutor.⁵⁰⁷ There is no need for the police to receive an official criminal report from citizens, as any information that forms “reasonable suspicion” that a crime has been committed triggers the duty of the police under Article 142(1).⁵⁰⁸ Neither a citizen nor a garrison commander has any authority to conduct pre-trial criminal procedures.⁵⁰⁹ Cetina confirmed that Cermak had no role to play in relation to any of the alleged crimes cited by the ICRC to him in correspondence.⁵¹⁰ Cermak’s inability to process crime is demonstrated by his letter to the PU in Knin about the theft of Croatian property from the Vrelo Une factory in Srb in which he stated the following:

⁵⁰⁵ Cermak P2525, p50.

⁵⁰⁶ D1568; Kovacevic D1676 p55, para.3.3.38. Under Croatian law, breach of such duty does not result in criminal liability unless the law explicitly provides so. For examples see Articles 175 and 176 of the Croatian Criminal Law: D1780.

⁵⁰⁷ D1568 Article 141(3).

⁵⁰⁸ D1568; [REDACTED]; Cetina T.23617.

⁵⁰⁹ Kovacevic D1676, p55, para.3.3.37.

⁵¹⁰ Cetina T.23616-7.

“[s]ince we are not competent for these and similar problems, we hereby forward the letter to you.”⁵¹¹

198. Cermak had meetings with the UN and other international organisations and was sometimes given information about crimes being committed within the region.⁵¹² In some instances, Cermak was written to by the international agencies and given information about crimes in a letter.⁵¹³ Cermak also had meetings with the Croatian authorities in the garrison headquarters where parties relevant to the normalisation of life in Knin gave and received information and coordinated their projects. At some of those meetings crimes were also discussed and information passed on to the police by Cermak.⁵¹⁴ Where Cermak was written to by the IOs,⁵¹⁵ he passed on to the Croatian Police the information he had as it was the body with the responsibility to investigate such matters.⁵¹⁶

199. The evidence demonstrates that Cermak passed on information on crimes he received from the ICRC⁵¹⁷ or other organisations⁵¹⁸ and that

⁵¹¹ D505; D1041.

⁵¹² P27, p1; P34; P38, p3; P39, p2; D56, p3; D151, para.5; P374, para.3(A)(6); , P404, p3; P408; P409, p2; D618, p203; P691, para.9; P814; P829, paras.15, 16; P988, point 5.2; P1106, p1; D1214, p2; P1289.

⁵¹³ D144; P382, p3-4; P396; P410; D757; P1221; D1729; D1756; P2528.

⁵¹⁴ Rincic T.22328-9: re Cermak passing on information about crimes he had received in a letter from General Forand in one of the coordination meetings held in the Garrison. He asked the civilian police to make sure that these things did not happen again. He asked the police to stop the burnings and killings. See also T.22311-2; Lukovic D1687, para.43; Dondo D1695, paras.16-19; Pasic D1706, p4-5; Cetina D1745, p7; Note also the evidence of Cetina, D1743, para.5: “around fifteen days after liberation of Knin, at a meeting, Mr Cermak mentioned to us that he was having meetings with representatives of the UNCRO and that they were sending him protest letters about crimes that had been committed and he passed on to us the information that he had received from them.” Mr Cetina explained that when “Mr Cermak received protest letters from the UN and other international organisations, he had talked with Mr Cermak on the problems stated in the letters.”: Cetina D1744, para.3.

⁵¹⁵ D1729, D1756.

⁵¹⁶ D1756; Cetina T.23611-12.

⁵¹⁷ P258, D1753; D1729; [REDACTED].

⁵¹⁸ D1753.

on occasions he attempted to receive feedback information⁵¹⁹ and provided such information to the ICRC⁵²⁰ or encouraged the ICRC to provide further details to assist the investigations.⁵²¹ Such conduct contradicts not only the allegations in paragraph 19(c) of the Indictment, but also those contained in paragraphs 17(e) and (f). The culture in the garrison HQ can be seen to be one of passing on information as officer Dondo did after he had visited Grubori on 26 August 1995.⁵²² If Cermak and the people working with him were acting in this way to help to stop crimes by the passing on of information, how can the allegation be sustained that he was acting in furtherance of a JCE?

200. In many of the instances where crimes were being passed on to Cermak they were also being passed on by the same or other international organisations to the Croatian authorities who were directly responsible for the investigation of crime.⁵²³ It is misleading for the Prosecution to have presented the evidence in this case to suggest that Cermak was the only focal point for reports by the internationals of crimes. There were established procedures and reporting channels in existence between the MUP and the internationals, entirely

⁵¹⁹ [REDACTED].

⁵²⁰ P1223.

⁵²¹ P1223, p2.

⁵²² P764; D57, p61, record number 197.

⁵²³ For example: P12 and P814 re Drpa; [REDACTED]; [REDACTED]; Elleby T.3428-30 (IO's reporting to Civpol orally); Flynn T.1189-90 (UN dealing with other elements in Knin). [REDACTED]; D57 entry 279; [REDACTED]; D230; For other examples of procedures conducted independent of Cermak where he acted as a liaison channel in response to requests from international agencies see: *Slavica Borovic case* (D1729; [REDACTED]; P1223; D1730; D1731; Cipci T.23222-6); *Brgud murders case* D1729, [REDACTED], P258 (UNCIVPOL report), D1753 (Information received by Knin PU), P706 (HRAT report), P261 (UNCIVPOL report, information received by Benkovac PU), D1774 (Official note), D1757 (On-site investigation log), D1758 (Criminal report), Cipci T.23222-6; *Wounding of Simo(n) Dokic case* D57, p156, entry 398; D1766 (On-site investigation log), D1765 (Request by Civilian police to Military police to identify) and D1767 (Criminal report against an unknown perpetrator). Cetina confirmed the official regular procedures as shown by these documents and that Cermak was nothing to do with the procedure or process, T.23612-7; See D1729 and P2649; Also see D1756.

independent of Cermak.⁵²⁴ Such procedures can be seen in the case of Sava Babic. An UNMO patrol found her body on 5 September and under the UNCIVPOL/CROPOL agreement informed the Croatian civilian police.⁵²⁵ On 5 September, Forand wrote to Cermak informing him of the murder. A procedure entirely independent of Cermak was in place.

201. There are examples where Cermak was given *detailed* information of a crime, as in the case of the stolen UN vehicles, which he passed on to the police.⁵²⁶ However, for the majority of August 1995, the information he received about crimes was generic and/or anecdotal concerning incidents of looting and burning within Sector South.⁵²⁷ The generic nature of the reporting would have made it almost impossible for the police with limited resources to have satisfactorily processed such information. Deverell believed that the lack of logging and photographing by the internationals of crimes noted caused Forand to rely upon anecdotal evidence and that it was therefore unsurprising that Cermak may have accepted national reports of crime and their causes on occasion in preference.⁵²⁸
202. Cermak did not receive information on *specific* crimes until the end of August. The *first specific* incident was sent by the ECMM monitor Soren Liborius to Cermak on 24 August 1995.⁵²⁹ In a meeting the next day Cermak confirmed receiving this information and told the ECMM that the police were investigating the case.⁵³⁰ This is an example of double

⁵²⁴ Examples of direct reporting to MUP by UNCIVPOL D65, P9, P226, P223, [REDACTED], P232, P235, P234, P238, P247, P251, P253, P797, P248, P254, P260, D179, P282.

⁵²⁵ P250.

⁵²⁶ D303; [REDACTED]; D502; [REDACTED]; [REDACTED].

⁵²⁷ D56, para.2; D151, para.5; D297, p1; D619, para.4; P359, p3, para.3(2); P363, para.2, p5-6; P374, para.3(A)(6); P938; P940; P1161, para.1; P1162, para.4; P1164, p3.

⁵²⁸ Deverell D1784, p53-4; D144; D145.

⁵²⁹ D757. See also P813.

⁵³⁰ P814.

reporting as the police were already on notice as the incident had been discovered by a joint UNCIVPOL/CROPOL patrol on 22 August 1995.⁵³¹ ECMM member Hendriks affirmed crimes would sometimes be reported to Cermak or directly to the police chiefs.⁵³² Numerous UNCIVPOL incident reports record that it was the local “policija” who were to be informed, not Cermak.⁵³³

203. Following a letter from Forand on 31 August in which he referred once again to the general burning of homes,⁵³⁴ Cermak wrote to Forand and complained about “insinuations without proof”, demanding evidence.⁵³⁵ Forand wrote to his subordinates for evidence to be forwarded to the SS Headquarters to meet Cermak’s request.⁵³⁶ Specific information was crucial particularly given that “for whatever reason,...UNCRO claims were profoundly different to the Croatian versions of events.”⁵³⁷ Forand’s request for details demonstrated “poor staff work or inadequate operating procedures” within the UN.⁵³⁸ On 4 September Forand wrote to Cermak stating that he would have the proof that he had requested, which he did not have at that time.⁵³⁹

204. A significant number of witnesses testified about Cermak passing on to the relevant authorities information he received about crimes. Rincic testified Cermak would forward information about arson and looting to the chief of civilian police and the VP commander during meetings at the garrison headquarters.⁵⁴⁰ The VP and MUP were aware of such

⁵³¹ P12. [REDACTED]; the Grubori incident was reported to the Knin police by UNCIVPOL (Buhin T.9936-7, [REDACTED]).

⁵³² Hendricks T9708.

⁵³³ For example [REDACTED], P226 P232, P234, P235 P238, P247, P251, P260, P262.

⁵³⁴ D144.

⁵³⁵ D145/D309.

⁵³⁶ P404, p4.

⁵³⁷ Deverell D1784, p53.

⁵³⁸ Deverell D1784, p53.

⁵³⁹ P382, p3.

⁵⁴⁰ Rincic D1680, para.20; T.22311-13.

incidents but stated that “everything was all right and under control and that they were doing their job”.⁵⁴¹ An example of Cermak passing on information to the VP was provided during the testimony of Dzolic, following information from the international community on 8 August of “organized looting on the road between Knin and Drnis.”⁵⁴²

205. In his prosecution statement, Lukovic stated Cermak “would contact the Chiefs of Police Administrations on a regular basis to try and prevent crimes being committed”⁵⁴³.
206. Dondo also testified that Cermak relayed the complaints about looting and burning to the ranks of the military and passed them on to the VP.⁵⁴⁴ In his prosecution statement, Dondo also stated Cermak “forwarded the questions to the civilian police...and provide[d] feedback from the police to the UN”.⁵⁴⁵
207. Pasic explained that during garrison meetings there were discussions about killings, looting and destruction and it would “often be CERMAK who was telling us that these things were happening and asking what was being done about it”. The police representative would explain there were not enough policemen to deal with the situation.⁵⁴⁶ The Defence submits it is highly significant that the Prosecution decided not to call Lukovic, Pasic or Dondo. Each had provided substantial exculpatory evidence to the Prosecution regarding Cermak’s conduct in passing on of information concerning crime

⁵⁴¹ Rincic D1680, para.20.

⁵⁴² P359, p3; Kovacevic D1676, p62, para.3.4.9; Dzolic P875, paras.45-6. T.8929 Dzolic said he could not be “sent” by Cermak to see the commanders of the 142nd Brigade, but Cermak “proposed” or “recommended” to him to go and speak with the commanders.

⁵⁴³ Lukovic D1687, para.54; Lukovic D1688, para.37; Lukovic T.22380, T.22410.

⁵⁴⁴ Dondo D1695, para.19; Dondo D1696, paras.7, 24

⁵⁴⁵ Dondo D1695, para.17.

⁵⁴⁶ Pasic D1706, p4 -5, T.22896-7.

which directly contradicted the Prosecution's case theory and in particular, paragraph 19(c) of the Indictment.

208. In terms of Cermak's state of mind, in his 2001 suspect interview he emphasized that he saw no responsibility on his part to solve problems but that he was to "see what was going on and then inform the relevant authorities" and confirmed that he saw himself as a receiver of information who would then pass it on, a messenger who handed out information.⁵⁴⁷ This role has been confirmed by the evidence.
209. This substantial body of both documentary and testimonial evidence supporting his efforts to pass on information contradicts paragraph 19(c). The Chamber must exercise care not to ignore, sidestep, or minimise this wide-ranging and multi-sourced evidence when assessing the substantive truth behind the allegations that Cermak acted in furtherance of a JCE.

⁵⁴⁷ Cermak P2525, p51. See also p50, 56.
IT-06-90-T

D. Indictment paragraph 19(c): Incident in Grubori

*"If they lied, they lied to me as well"*⁵⁴⁸

1. PLAVNO VALLEY 25 AUGUST 1995

210. As part of a wider security operation relating to the "Freedom Train", the MUP participated in OA Knin.⁵⁴⁹ On 23 August the MUP Security HQ engaged the ATU Lucko.⁵⁵⁰ Zeljko Sacic⁵⁵¹ ordered Josip Turkalj (ATU Lucko) for this operation⁵⁵². On 24 August the SP HQ in Gracac decided to search the Plavno valley.⁵⁵³ The specific assignment which included the village of Grubori was issued by Zdravko Janic.⁵⁵⁴ The evidence has shown that whilst in Grubori on 25 August 1995, SP officers killed civilians and destroyed property.

211. After the operation the SP commanders allegedly reported to their commander Josip Celic⁵⁵⁵ that they did not meet with armed resistance and this was reported to Janic.⁵⁵⁶ According to Celic, he was made to write a second report which was dictated to him by Sacic on 26 August.⁵⁵⁷ On 1 September Celic claimed he was ordered by Turkalj to submit a report antedated 25 August.⁵⁵⁸

⁵⁴⁸ P2532 p103 lines 24-27.

⁵⁴⁹ See D1849, D1850, D1851, D1852, D739, D1880, D1853, D1879, D1881, D1854, [REDACTED], D1855, D1856.

⁵⁵⁰ D739 p2 and [REDACTED], [REDACTED], T.6129-6123.

⁵⁵¹ P558.

⁵⁵² [REDACTED].

⁵⁵³ [REDACTED].

⁵⁵⁴ T.8072:25.

⁵⁵⁵ P762 p.252-253, T.7942:14-15, T.7955.

⁵⁵⁶ T.6132.

⁵⁵⁷ P563, T.7954.

⁵⁵⁸ P563 (Second report - Sacic), T.7954; P564 (Third report) , T.7959:5-16, P565 (Third report - added paragraph) , T.7961-7964.

212. The SP and MUP witnesses⁵⁵⁹ have attempted to evade responsibility and deny knowledge of what happened. For the SP witnesses it has been in their interests as suspects and accused to evade responsibility due to investigations by the ICTY and Croatian legal authorities. The interviews, statements by them to the OTP, the Croatian authorities and testimony, have been tainted by its self-serving nature calculated to mislead, pass responsibility elsewhere and is inherently unreliable. Their claims of lack of knowledge of an event in their remit is incredulous.⁵⁶⁰ All are still in the MUP. It is inconceivable that Celic and Janic did not know what had happened⁵⁶¹, when they were in the area and repeated gunshots⁵⁶² were heard and a cloud of smoke⁵⁶³ visible to others.

2. CERMAK'S KNOWLEDGE AND THE REPORTING OF THE GRUBORI INCIDENT

25 August 1995

(a) Report to the Garrison and Cermak's Attempts to get Information

213. The Prosecution alleged Cermak "*knew the truth*" on 25 August.⁵⁶⁴ The evidence does not support this but indicates that at approximately 4pm on 25 August information was passed to Dondo by an UNCIVPOL⁵⁶⁵/HRAT⁵⁶⁶ team that saw the aftermath of the incident in Grubori.⁵⁶⁷ This information did not contain any reference to murders or bodies but

⁵⁵⁹ Celic, Janic, Turkalj, [REDACTED], Zinic, [REDACTED], Balunovic, Krajina.

⁵⁶⁰ See for example P691, P35, P242, P1221, P686, P2386.

⁵⁶¹ T.6138:13-15, T.7954:11-23.

⁵⁶² T.8104:15-8105:5, T.28059:21-22.

⁵⁶³ T.8097-8098, T.28062:16-17, P1099 para.36.

⁵⁶⁴ 98bis submissions, T.17459:12-13.

⁵⁶⁵ P236 para.4.

⁵⁶⁶ P1098 p5, P1099 para.36.

⁵⁶⁷ P691 para.9.

merely fires.⁵⁶⁸ It was made by a woman directly to Karolj Dondo⁵⁶⁹ and he instructed her to report the matter to the civilian police.⁵⁷⁰ Although the normal procedure was to report matters directly to the police⁵⁷¹, according to Alun Roberts they reported to Cermak's office instead to stimulate an investigation by him.⁵⁷² Roberts felt the matter needed to be "pushed" by Cermak⁵⁷³ and "wanted to see action".⁵⁷⁴ Therefore, Cermak became involved due to the mistaken perception of his authority by the internationals as a result of his liaison role. Dondo testified this happened because the Garrison was "the main point of contact for all UN issues".⁵⁷⁵ He said he informed Cermak around 4 pm.⁵⁷⁶

214. The international team returned to Grubori at approximately 6pm⁵⁷⁷ and then discovered two people had been killed.⁵⁷⁸ After this second visit they returned to Knin⁵⁷⁹ but did not pass this information on to the Knin garrison - instead Roberts wrote a report in his office.⁵⁸⁰
215. The Prosecution alleges that after Cermak learnt of the events in Grubori he telephoned Markac,⁵⁸¹ and "didn't inform the police but his friend and the commander of the units suspected of the crime".⁵⁸² The Prosecution relies on suspect interviews of Cermak and Markac, which

⁵⁶⁸ T.6923:17-19, T.6934:20-25, T.6939:8-11, D1695 para.30.

⁵⁶⁹ D1695 para.25.

⁵⁷⁰ T.22465:6-8 and T.22465:16-17.

⁵⁷¹ T.6921:2-4; UNCIVPOL reporting matters to the Croatian police, see P226, P235, P234, P260, [REDACTED], P232, P238, P247, P251, P262.

⁵⁷² T.6922:10.

⁵⁷³ Roberts T.6921:2-4.

⁵⁷⁴ T.6922:10.

⁵⁷⁵ T.22465:12-14.

⁵⁷⁶ D1695 para.25.

⁵⁷⁷ P691 para.10.

⁵⁷⁸ T.6927:23.

⁵⁷⁹ T.6929:3-4.

⁵⁸⁰ T.6929:15-6930:10.

⁵⁸¹ 98bis submissions T.17458:4-8.

⁵⁸² 98bis submissions T.17458:9-10.

in fact reveal otherwise. Cermak's interview states he first attempted to obtain information from the civilian police and VP without success and then contacted Markac.⁵⁸³ Markac's interview states: Cermak phoned to obtain information in order to report to the internationals what had happened.⁵⁸⁴ Dondo corroborated that Cermak requested information from the local police.⁵⁸⁵ It is reasonable to infer the civilian police were viewed as a likely source of information concerning the incident in Plavno and contacting them would put them on notice.⁵⁸⁶ [REDACTED].⁵⁸⁷

216. There is no evidence Cermak knew the full truth about Grubori on 25 August. There is no evidence the SP Commanders reported to Cermak and told him the truth. The SP who committed the crimes in Grubori were aware on that day it was in the public domain and from that moment had every reason to begin constructing one, or more than one, false story.⁵⁸⁸ Although dated 26 August 1995, the SP false reports could have been conceived earlier and passed on to Cermak at any time before his first public statement concerning Grubori on 26 August at 11 am to UNTV. There is no evidence that Cermak had any reason to doubt the information he received, or knew it to be false.

(b) Attempts of the Kotar-Knin PU to Locate Grubori

217. While some documentary and testimony evidence supports the proposition that the Knin police learnt of the Grubori incident only on

⁵⁸³ P2532 p66.

⁵⁸⁴ P2531 p64.

⁵⁸⁵ D1695 para.25, T.22466:10-13.

⁵⁸⁶ D1568 Article 142(1) Upon receipt of such information the police are duty bound to secure the scene (D2146 Article 348).

⁵⁸⁷ [REDACTED].

⁵⁸⁸ P575, P576, P560.

26 August,⁵⁸⁹ there is clear evidence they knew of the incident on 25 August:

- (a) The garrison telephoned them to find out what happened on that day.⁵⁹⁰ [REDACTED].⁵⁹¹
- (b) [REDACTED]."⁵⁹²
- (c) [REDACTED]."⁵⁹³
- (d) [REDACTED].⁵⁹⁴
- (e) The weather was bad on 25 August unlike the 26 August.⁵⁹⁵
- (f) On 26 August Romanic was in Knin in charge of the civilian police involved in the OA Knin ("Knin 95") security operation.⁵⁹⁶
- (g) The UNTV interviewer of Cermak at 11 am on 26 August 1995⁵⁹⁷ stated that "The Croatian Police went to the local larger village but they haven't yet been to the village where the burning took place."⁵⁹⁸ The UN visited and filmed that morning in Grubori and the weather was not bad.
- (h) Dondo visited Grubori on 26 August without difficulty.

According to Buhin, the coordinators visited UNCIVPOL HQ on 27 August to request to be taken to Grubori because it could not be found and a visit was arranged for 3pm.⁵⁹⁹ This timeline does not fit the facts as Dondo had been to Grubori in the afternoon of 26 August and

⁵⁸⁹ D57.

⁵⁹⁰ P2532; D1695 para.25, T.22466:10-13.

⁵⁹¹ [REDACTED].

⁵⁹² [REDACTED].

⁵⁹³ [REDACTED].

⁵⁹⁴ [REDACTED]; [REDACTED], [REDACTED]

⁵⁹⁵ [REDACTED]; P872, P873 (video 25 August), P1055, P2392, T.6917:19-24 (Roberts), T.1273:6-8 (Flynn), T.8868:5-7 (Lynton); [REDACTED]; T.28166:17-28167:3 (Zinic); T.28414:18-21 (Balunovic).

⁵⁹⁶ [REDACTED]; D1856, [REDACTED]; see also T.25751:3-10.

⁵⁹⁷ T.8797:21-23.

⁵⁹⁸ P504 p2, second question.

⁵⁹⁹ T.9934:15-9935:6.

reported to the Knin Police station. The Trial Chamber is invited to consider that the [REDACTED] involved in this issue in Knin have deliberately failed to be clear on the timing of events between 25-27 August because of their responsibilities and failures in this matter.

26 August 1995

(c) Information in Possession of Cermak During the UNTV Interview

218. There is no evidence Cermak was aware of civilian deaths until he was informed about them on the morning of 26 August during the UNTV interview.⁶⁰⁰ However, he was in possession of limited information provided by the SP.⁶⁰¹ In the UNTV interview Cermak exhibits this limited information and a lack of understanding of the questions posed to him:

- (i) He was unaware of two corpses in Grubori.⁶⁰²
- (ii) He repeated "I don't know" five times, as to bodies and police vehicles in Grubori.⁶⁰³
- (iii) The second response to questions about Grubori is a general description of the mopping-up operations of the SP forces which then refers to Grubori.⁶⁰⁴
- (iv) The information coincides with the report purportedly written by Markac to Cervenko on 26 August 1995.⁶⁰⁵
- (v) Cermak was in Knin away from the SP HQ in Gracac. The similarity of information indicates that the SP had conceived the exculpatory account and passed it on to him.
- (vi) There is no evidence Cermak was the author of the false exculpatory account.

⁶⁰⁰ P504.

⁶⁰¹ P2531 p64.

⁶⁰² P504 p2.

⁶⁰³ P504 p2 and 3.

⁶⁰⁴ P504, p1.

⁶⁰⁵ P576.

- (vii) Sacic had already become involved on 26 August. If Cermak was the author of this information and seeking to lie, he would easily have been able to impress the interviewer with the more detailed information found in exhibit P576 or P563.
- (viii) It was in the public domain and the SP had every incentive to use Cermak as an instrument because his role required him to inform the internationals.
- (ix) Cermak was not within the SP reporting system.
- (x) Cermak referred to a corpse found with hands tied behind the back.⁶⁰⁶ A corpse is in SP reports dealing with the events in Vundici on the same day.⁶⁰⁷ Dondo did not know who provided this false information.⁶⁰⁸
- (xi) The question was asked why the police could not attend to the people in the village. Cermak responded that the Croatian police went to the village to provide aid but referred to it being "yesterday".⁶⁰⁹ In Plavno a humanitarian meeting was scheduled for 25 August⁶¹⁰ as opposed to the hamlet of Grubori.
- (xii) Cermak confirmed he was not aware of whether someone went to see the people "this morning".⁶¹¹ Although Dondo accepted Cermak's statement that civilian authorities had been to Grubori and had helped people was factually incorrect⁶¹², the evidence indicates Cermak was at times not certain which village was being discussed.⁶¹³ Dondo was not aware of the planned meeting the day before in Plavno⁶¹⁴ which can explain Cermak's wrong answer. Moreover, there is evidence which allows for an

⁶⁰⁶ P504.

⁶⁰⁷ P607, P560, P575 and P576.

⁶⁰⁸ T.22498.

⁶⁰⁹ P504.

⁶¹⁰ [REDACTED], [REDACTED]; P46 para.2.

⁶¹¹ P504 .

⁶¹² T.22524:15-21.

⁶¹³ See P504 "Which village and which police force are you talking about?".

⁶¹⁴ T.22583:19-22.

inference that on 25 August the civilian police did attempt to reach Grubori but reached Plavno only.⁶¹⁵

219. Lyntton testified that he did not mention “six vehicles” being present at the time of the crime,⁶¹⁶ but rather “ten vehicles”.⁶¹⁷ Cermak misquoted Lyntton and asked about “six vehicles”. The Prosecution alleges this answer is probative of Cermak’s knowledge and indicates he had critical information about the perpetrators.⁶¹⁸ The Defence submit the following points to counter the drawing of such an inference:

- (i) Cermak expressly stated “I was not there, I could not see it”.⁶¹⁹
- (ii) Cermak mentions the “six vehicles” repeating the question which contained a reference to “six hours” and “ten vehicles”. A reasonable inference is that he mixed up the number of hours and vehicles in rephrasing the question.
- (iii) The SP had at least one other vehicle which Janic drove Celic in to the finish of the operation.⁶²⁰ Other commanders from whom the court has not heard may similarly have had additional transport.
- (iv) [REDACTED].⁶²¹ Romanic was in charge of the local MUP for OA Knin.⁶²²
- (v) A further example of Cermak’s lack of understanding of the questioning during the UNTV interview relates to the issue of the presence of police vehicles a kilometer away from Grubori. Cermak mistakenly assumes that the journalist is referring to a

⁶¹⁵ P504 p2 q2.

⁶¹⁶ T.8802:8-19; 6 vehicles were recorded P692, D784, P690.

⁶¹⁷ P504.

⁶¹⁸ 98bis submissions T.17565.

⁶¹⁹ P504 .

⁶²⁰ T.8098:7.

⁶²¹ [REDACTED].

⁶²² [REDACTED]; D1856; [REDACTED].

“blockade checkpoint” with police vehicles, rather than to the parked SP vehicles.⁶²³

(d) Report to the Knin Police by UNCIVPOL

220. [REDACTED]⁶²⁴ and [REDACTED].⁶²⁵ [REDACTED]. However, the note of the UNCIVPOL commander Romassev refers to one dead body, arson and a man missing; whereas the Knin log book records two bodies of different identities to that in Romassev’s note.⁶²⁶ This evidence indicates that the police learnt of the crime earlier than the UNCIVPOL report and had access to additional information.

(e) Attempts by the Garrison to get Information on 26 August

221. Dondo stated that on 26 August Cermak again attempted to get information on the Grubori incident from both the civilian and the military police but no information was available.⁶²⁷ This was a busy day due to the arrangements for the Freedom Train and the President’s visit. The pressure of the UN agencies for information grew.⁶²⁸ The Garrison “had no idea of what had gone on in Grubori” and did not have an answer to information requests.⁶²⁹ In those circumstances, Dondo visited Grubori to see what had happened.⁶³⁰ According to Cermak, the purpose of sending Dondo was because the Garrison had no information⁶³¹. [REDACTED].⁶³² [REDACTED].⁶³³ Cermak was

⁶²³ P504 p3.

⁶²⁴ P237, [REDACTED]; [REDACTED].

⁶²⁵ D57 entry 193 – “Milos Grubar”, “Jovan Grubar”.

⁶²⁶ P237 – “Marija Grubar”.

⁶²⁷ D1695 para.25, para.26.

⁶²⁸ D1696 para.31.

⁶²⁹ D1695 para.26.

⁶³⁰ D1696 para.31, D1695 para.27.

⁶³¹ P2525 p 96, 97 and 104.

⁶³² [REDACTED].

⁶³³ T.27639.

involved in meeting President Tudman when he arrived in Knin in the afternoon that day.⁶³⁴

(f) Visit to Grubori by Karolj Dondo

222. Dondo went to Grubori in the afternoon of 26 August and wrote a report.⁶³⁵ He informed the Knin PP duty officer Vrkic of the dead bodies.⁶³⁶ The report contained no information on the causes of the situation found in Grubori except the reference to “visible evidence of yesterday’s clearing operations.”⁶³⁷ As the author of the report, Dondo testified in court that it “was focused on what had happened to people, livestock” rather than an expert analysis on “what could have produced those consequences or preceded them”⁶³⁸. His report therefore does not support that what happened was part of Operation Storm. According to him, Cermak read the report only on his way to Grubori in the late morning of 27 August.⁶³⁹

(g) Report to the Knin Police by Karolj Dondo on the Evening of 26 August

223. The first full report on dead civilians to the Knin police was made by Dondo.⁶⁴⁰ The entry in the police log cites “victims of Operation Storm” and that civilian protection be sent to the village. This entry was not by Dondo but by the Duty Police Officer at Knin Police Station who was not called by the Prosecution to give evidence. Dondo testified he never stated that the deaths were linked to Operation Storm.⁶⁴¹ Dondo

⁶³⁴ P473; T.22469:14-20; D1696 para.33.

⁶³⁵ P764.

⁶³⁶ P764.

⁶³⁷ P764.

⁶³⁸ T.22537:20-25.

⁶³⁹ T.22517:4-22518:16.

⁶⁴⁰ D57, entry 197.

⁶⁴¹ T.22509:16-18.

knew the incident had occurred on 25 August as did others, and it therefore remains unclear as to why Dondo should be held responsible for the reference to “Operation Storm” in a MUP document.

224. No evidence establishes that Dondo knew of a plan to abandon the investigation. Dondo testified that on 26 August he was certain an investigation would take place the next day.⁶⁴² There is evidence that villagers requested help and bodies to be buried as confirmed by the Romashev note.⁶⁴³ Dondo stated they did not know what to do with the bodies. Due to summer conditions, the smell was spreading and Dondo viewed it as a “humanitarian situation”.⁶⁴⁴
225. The entry in the Knin Police Book⁶⁴⁵ at 197 records measures taken by the authorised employee: *“Information on this will subsequently be passed on to Civilian Protection officers for hygiene and sanitation measures”*. This is similar to the entries at 188 and 198 for recovery of a body in Strmica. It is reasonable to infer that officer Vrkic already knew from the entry at 193 that an onsite investigation was ordered for 27 August by Chief Romanic as he had followed the shift of officer Begonja. There is no suggestion of Dondo ordering the MUP to sanitise the area, and as a member of the HV, he could not. There is however evidence that the initiative for sanitation came from the SP.⁶⁴⁶
226. There is no evidence Cermak interfered with reporting the matter to the police. This contradicts the allegation of Cermak being involved in the JCE or the cover-up of the crime.

⁶⁴² T.22594:1-2.

⁶⁴³ P237, P874.

⁶⁴⁴ T.22593:15-22.

⁶⁴⁵ D57.

⁶⁴⁶ P563 records “May we request civilian protection clean the area”.

27 August 1995**(h) Information in Possession of Cermak during the HRT Interview of 27 August**

227. Whilst in Grubori on 27 August, Cermak gave an interview to HRTV.⁶⁴⁷ What he said there was intended to be recorded as evidence to the public⁶⁴⁸ of the proof of combat fighting by the SP. It was his idea to bring the media⁶⁴⁹ to the scene.⁶⁵⁰ It was a bid for transparency in the matter.
228. The information he relayed plainly relied upon the accuracy of the SP information to him which he believed the recording of the village would corroborate. [REDACTED]⁶⁵¹ and [REDACTED].⁶⁵² [REDACTED]⁶⁵³, [REDACTED]. The request to relay SP information explains the inconsistency between what Cermak said to the HRT reporter and what he learnt from the Dondo report moments earlier.⁶⁵⁴ There is no evidence that Cermak as a person who had never served in the military had any expertise to interpret events from the condition of the village as far as he saw it or from Dondo's report.⁶⁵⁵ There is evidence he did not enter the village.⁶⁵⁶ Cermak and the media were prevented from following the crime scene technicians into the village when they were doing their work.⁶⁵⁷

⁶⁴⁷ P2386.

⁶⁴⁸ P2525 p102 "Not to hide anything but to make this public".

⁶⁴⁹ P2532 p124-16 (eCourt pagination).

⁶⁵⁰ P2525 p100-101, D1696 para.35.

⁶⁵¹ [REDACTED].

⁶⁵² [REDACTED].

⁶⁵³ [REDACTED].

⁶⁵⁴ T.22527: Dondo speculated that since the Special Police arrived, Cermak could have received "another report, perhaps theirs".

⁶⁵⁵ P764.

⁶⁵⁶ P2532 p72 "I stayed at the entrance of the village". See also T.28953:1-4.

⁶⁵⁷ D2048 para.37; D2052 para.21.

3. ALLEGED COVER-UP OF THE CRIME BY “SPREADING FALSE INFORMATION”

229. Cermak did not “cover-up the crimes by spreading false information”.⁶⁵⁸ The incident in Grubori was in the public domain and known about by the MUP at the Knin level up to the Ministerial level. Contrary to the Prosecution’s allegations, what Cermak said to the media did not prevent an onsite investigation.⁶⁵⁹ Cermak wanted an onsite investigation as [REDACTED] Bilobrk testified.⁶⁶⁰

(a) The False Information did not Originate from Cermak

230. The information Cermak supplied to the international agencies and the media⁶⁶¹ was based on the reports of the SP. Cermak had no investigatory role and was not in the MUP hierarchy. Cermak’s correspondence and representations used information and verbatim expressions from a report by Mladen Markac of 26 August 1995.⁶⁶² In his suspect interview Cermak confirmed he got the information from Markac.⁶⁶³ Dondo testified the language in Cermak’s correspondence was military language which was not typical.⁶⁶⁴ [REDACTED].⁶⁶⁵ In his suspect interview, Cermak claimed he thought the information was correct.⁶⁶⁶

⁶⁵⁸ PTB, para.84

⁶⁵⁹ The Prosecution alleged that it was the false information from Cermak that “was the reason there was no investigation into the incident”: T.17459:16-17.

⁶⁶⁰ D2048 para.33; [REDACTED].

⁶⁶¹ P1222, P603, P2386, P504.

⁶⁶² P576; compare point 4 in P576 and wording and data in P603.

⁶⁶³ P2525 p92-99, P2532, P2531 p101.

⁶⁶⁴ T.22531:17-22532:8.

⁶⁶⁵ [REDACTED].

⁶⁶⁶ P2532 p113 lines 9-18.

(b) Cermak had no Reason not to Trust the Reports⁶⁶⁷

231. Except the report received from Mladen Markac,⁶⁶⁸ none of the documented reports that might have reached him by the date of his letters to UNCRO and the ICRC gave an account of what had led to the deaths of civilians. Instead, they provided information on consequences only.⁶⁶⁹ Cermak had no independent means to establish what *caused* the civilian deaths and was thus forced to rely upon the only information about the causes available to him. It was not for him in his function or role to question this. He had no responsibility to investigate.

232. Moreover, the explanation of an *armed clash with renegade groups* was not unreasonable for Cermak to pass on given the following circumstances:

- (i) Cermak was on notice of Serb forces in the area;⁶⁷⁰
- (ii) On 23 August, a SP unit “destroyed a terrorist group of three armed individuals”;⁶⁷¹
- (iii) Serb forces remained within Croatian territory;⁶⁷²
- (iv) Jarnjak, the Minister of the Interior announced that “Chetnik paramilitary terrorist groups were in some parts of the liberated territory”;⁶⁷³
- (v) Internationals recorded RSK soldiers in forests and mountains in August⁶⁷⁴ including clashes with “HV forces”;⁶⁷⁵

⁶⁶⁷ P2532 p109.

⁶⁶⁸ P576 and P2525 p94 lines 1-8.

⁶⁶⁹ P764, P504.

⁶⁷⁰ D561.

⁶⁷¹ T.26876; D1100.

⁶⁷² T.23490; D564; P939; P204 p4.

⁶⁷³ D1850.

⁶⁷⁴ P130.

⁶⁷⁵ P937 para.2a.

- (vi) On 25 August, the civilian police for the Freedom Train stated the presence and activities of rebel Serbian para-military members was still noticeable;⁶⁷⁶ and
- (vii) Plavno had also been the site of a munitions store for the RSK.⁶⁷⁷

4. EFFORTS TO ENSURE OR OBSTRUCT AN ON-SITE INVESTIGATION

233. An onsite investigation into the deaths in Grubori had been ordered by Knin PU [REDACTED].⁶⁷⁸ [REDACTED].⁶⁷⁹ [REDACTED].⁶⁸⁰ Contrary to the Prosecution's position that Cermak was taking "steps to ensure no investigation was conducted",⁶⁸¹ evidence in the case shows that Cermak had supported efforts for an investigation.⁶⁸² The on-site investigation was obstructed within police circles.⁶⁸³ [REDACTED]⁶⁸⁴ and [REDACTED].
234. Although the Prosecution's case is that Cermak gave assurances of an investigation in his UNTV interview of 26 August,⁶⁸⁵ the transcript shows that the question on conducting a personal investigation was put to him twice as a proposition *until* he accepted it. He only volunteered he would *check* the information and sent Dondo to Grubori in the afternoon the same day.⁶⁸⁶

⁶⁷⁶ D1854 p1.

⁶⁷⁷ D763, D1020.

⁶⁷⁸ D57.

⁶⁷⁹ [REDACTED].

⁶⁸⁰ [REDACTED].

⁶⁸¹ 98bis T.17458:16-17.

⁶⁸² D2048 para.33; [REDACTED].

⁶⁸³ [REDACTED], [REDACTED]; [REDACTED]; T.25764.

⁶⁸⁴ See for example [REDACTED] in respect of Janic report P575.

⁶⁸⁵ P504.

⁶⁸⁶ P2525 p104.

235. [REDACTED].⁶⁸⁷ [REDACTED].⁶⁸⁸ [REDACTED].⁶⁸⁹ [REDACTED].⁶⁹⁰ [REDACTED].⁶⁹¹ In his communications with Jarnjak, Cermak was supportive of [REDACTED]. Finally, as late as the morning of 27 August, when according to the Prosecution's case the plans to conduct an on-site investigation had been abandoned⁶⁹², Cermak insisted an on-site investigation be conducted⁶⁹³ in front of the media.⁶⁹⁴ The Trial Chamber cannot reach a finding beyond reasonable doubt that Cermak was not in favour of an on-site investigation.

(a) The Meetings Prior to the Visit to Grubori on 27 August

236. The Prosecution alleges that by the morning of 27 August Romanic and Mihic learnt there would be no investigation" and after this the chief of Kotar-Knin PU recorded there would be sanitation in Grubori although he previously recorded plans for an on-site investigation".⁶⁹⁵ [REDACTED]. [REDACTED]⁶⁹⁶ [REDACTED]. An investigating judge and public prosecutor are outside their staff in the police station.
237. There is conflicting evidence as to the timings and dates of certain meetings. Three relevant meetings were held in Knin on 26 and/or 27 August prior to Cermak's visit to Grubori. [REDACTED],⁶⁹⁷ [REDACTED]⁶⁹⁸ [REDACTED].⁶⁹⁹ The evidence on the exact dates of these meetings is inconsistent. It is a fact that on 26 August Cermak

⁶⁸⁷ [REDACTED].

⁶⁸⁸ [REDACTED].

⁶⁸⁹ T.5304:7-12.

⁶⁹⁰ T.5296:16-23.

⁶⁹¹ [REDACTED].

⁶⁹² 98bis submissions T.17450.

⁶⁹³ [REDACTED]

⁶⁹⁴ D2048 para.33.

⁶⁹⁵ 98bis submissions T.17450 in connection with [REDACTED].

⁶⁹⁶ D157.

⁶⁹⁷ [REDACTED]

⁶⁹⁸ [REDACTED] and T.10010:3-4.

⁶⁹⁹ [REDACTED], [REDACTED].

met President Tudman when the train arrived at approximately 15.00 in Knin and joined him on the journey to Split where he stayed until late.

The Meeting at the Garrison Headquarters

238. [REDACTED].⁷⁰⁰ [REDACTED]⁷⁰¹ [REDACTED]. This indicates the meeting was on 26 August. If it was 27 August, Grubori had already been visited by UNCIVPOL, [REDACTED], Dondo and they knew where it was.

239. [REDACTED].⁷⁰² [REDACTED].⁷⁰³ It would be reasonable to obtain Cermak's agreement to use a soldier from the garrison as a guide. There is no evidence the word "agreement" related to the issue of whether or not to carry out an on-site investigation.

240. [REDACTED].⁷⁰⁴ [REDACTED]⁷⁰⁵ [REDACTED].⁷⁰⁶ [REDACTED].⁷⁰⁷

241. [REDACTED].⁷⁰⁸ The evidence does not support that allegation. [REDACTED].⁷⁰⁹ [REDACTED].⁷¹⁰ [REDACTED]⁷¹¹ [REDACTED]⁷¹², [REDACTED]⁷¹³ [REDACTED].⁷¹⁴ [REDACTED].⁷¹⁵ It was recorded later

⁷⁰⁰ [REDACTED], [REDACTED].

⁷⁰¹ [REDACTED].

⁷⁰² [REDACTED].

⁷⁰³ [REDACTED].

⁷⁰⁴ [REDACTED].

⁷⁰⁵ [REDACTED].

⁷⁰⁶ [REDACTED] and [REDACTED].

⁷⁰⁷ [REDACTED].

⁷⁰⁸ 98bis submission [REDACTED].

⁷⁰⁹ [REDACTED]; [REDACTED]; [REDACTED].

⁷¹⁰ [REDACTED].

⁷¹¹ [REDACTED].

⁷¹² [REDACTED].

⁷¹³ [REDACTED].

⁷¹⁴ [REDACTED].

⁷¹⁵ [REDACTED].

in the Knin Police Daily Log Book⁷¹⁶ at 15.00 on 26 August there *would* be an onsite investigation.

242. [REDACTED]. [REDACTED].⁷¹⁷ This statement does not suggest that Cermak did not want an onsite investigation or wanted to prevent one. [REDACTED].⁷¹⁸ The remark that the corpses had to be collected from Grubori is correct given the conditions at the time. It does not state a desire for immediate burial and even suggests delay for whatever purposes such delay might achieve. The collection of the bodies does not exclude an onsite investigation as part of the procedures. [REDACTED].⁷¹⁹ [REDACTED] witness Buhin, who made contact with UNCIVPOL earlier that day,⁷²⁰ attributed the obstruction of the plans to meet UNCIVPOL at 3pm to Sacic's intervention,⁷²¹ rather than Cermak.

243. [REDACTED]⁷²² [REDACTED]. [REDACTED]⁷²³ [REDACTED]. An investigating judge and public prosecutor are outside their complement of staff in the MUP. The Team of Bilobrk, Vrticevic, Serdarovic and others, were appointed to go to Strmica, Plavno and Grubori on 27 August by Knin PP Duty Service at 11am.⁷²⁴

The Meeting at Knin Police Station

244. There are considerable [REDACTED] concerning the content, date and time of this meeting which was either on 26 or 27 August.

⁷¹⁶ D57 entry 193.

⁷¹⁷ [REDACTED].

⁷¹⁸ [REDACTED].

⁷¹⁹ [REDACTED].

⁷²⁰ T.10108:1-24.

⁷²¹ T.10108.

⁷²² [REDACTED].

⁷²³ D1573 Bilobrk, Vrticevic.

⁷²⁴ D57 entry 198, 193; Bilobrk D2048; Vrticevic D2052; Serdarevic D2053.

[REDACTED].⁷²⁵ [REDACTED]⁷²⁶ [REDACTED]⁷²⁷ [REDACTED]⁷²⁸, [REDACTED].⁷²⁹ [REDACTED].⁷³⁰ Sacic was “very angry” when told that it had been agreed to have an investigation judge come from Zadar⁷³¹ and demanded he be informed when bodies are found.⁷³² This would indicate that the investigating judge was still envisaged at a late stage on 27 August. [REDACTED].⁷³³ Buhin testified Sacic threatened he would be sent back to Zagreb⁷³⁴ and/or not work in the MUP anymore.⁷³⁵ Buhin received a phone call from Josko Moric some 15 minutes after the argument with Sacic in which Moric told him not to get involved in crime police work.⁷³⁶ None of these disputes or issues involved Cermak. They demonstrate that all matters were being dealt with within the MUP.

245. Buhin placed this meeting between 12.00 and 15.00 hours on 27 August.⁷³⁷ However, he testified his recollections about timing were not entirely reliable and also stated it was on 26 August.⁷³⁸ He had expected the investigation to proceed⁷³⁹ and planned to meet UNCIVPOL to find the crime scene. This did not happen because of Sacic’s intervention and Moric’s phone call.⁷⁴⁰ This does not fit with the timing of other events as Dondo had already reported to the Knin police station the 5 dead in Grubori in the evening of 26 August and

⁷²⁵ See for example [REDACTED].

⁷²⁶ T.5294

⁷²⁷ T.10009:15-10010:15.

⁷²⁸ P963 p4.

⁷²⁹ [REDACTED].

⁷³⁰ [REDACTED].

⁷³¹ P963 p4.

⁷³² P963.

⁷³³ [REDACTED].

⁷³⁴ T.10010:3-4 and P963.

⁷³⁵ [REDACTED].

⁷³⁶ T.10011:10-15.

⁷³⁷ T.9935:10-25.

⁷³⁸ T.10005:20-25.

⁷³⁹ T.10010:21-24.

⁷⁴⁰ T.10108:1-24.

Sacic had also visited Grubori in the afternoon of 26 August. It was known by 27 August how to locate Grubori as the CZ team had been ordered to go first to Strmica then Grubori at 11 am that day.⁷⁴¹ It is more likely therefore this meeting was on 26 August.

The Meeting at Cermak's Office

246. [REDACTED].⁷⁴² [REDACTED].⁷⁴³ [REDACTED].⁷⁴⁴ This is to be contrasted with Cermak's reaction that the killings should be investigated.⁷⁴⁵ [REDACTED].⁷⁴⁶ [REDACTED].⁷⁴⁷ [REDACTED]⁷⁴⁸ [REDACTED]. [REDACTED].⁷⁴⁹

(b) The visit to Grubori Hamlet on 27 August

247. On 27 August, Cermak, Dondo, Sacic, Celic, Balunovic, Turkalj, crime technicians, civilian protection operatives and journalists visited Grubori. The crime technicians and civilian protection must have joined them in Plavno as they first had to visit Strmica to collect a corpse.⁷⁵⁰ They were given instructions to attend Strmica and Plavno at 11am 27 August.⁷⁵¹ This itinerary established by witnesses Bilobrk,⁷⁵² Vrticevic⁷⁵³ and Serdarevic⁷⁵⁴ totally contradicts claims that in Knin whilst outside the police station, Cermak addressed the crime

⁷⁴¹ D57 entries 193 and 198 of 26 and 27 August. Bilobrk D2048; Vrticevic D2052; Serdarevic D2053.

⁷⁴² [REDACTED].

⁷⁴³ [REDACTED].

⁷⁴⁴ [REDACTED].

⁷⁴⁵ P504 p.3, D2048.

⁷⁴⁶ [REDACTED].

⁷⁴⁷ [REDACTED].

⁷⁴⁸ [REDACTED].

⁷⁴⁹ 98bis submissions [REDACTED].

⁷⁵⁰ D57; D2048; D2052; D2053.

⁷⁵¹ D57 entries 193 and 198.

⁷⁵² D2048.

⁷⁵³ D2052.

⁷⁵⁴ D2053.

technicians and suggested planting weapons against the dead bodies in Grubori. The more reliable and consistent accounts of Bilobrk in circumstances where he was accountable for what he said, resile utterly from any suggestion that Cermak made such a statement in Knin, or elsewhere, or that he had such thoughts.⁷⁵⁵ However, what the evidence does establish is that Cermak was still of the view that there was to be an on-site investigation which he wanted. Bilobrk stated he heard another person mention about placing guns, without knowing the context or being sure about what was said.⁷⁵⁶ No guns were ever placed against the deceased in order to falsify the crime scene. In these circumstances, there is reasonable doubt as to what was in fact said, where and by whom.

248. On the way to Grubori, Cermak and his group from Knin stopped in Plavno valley to wait for General Markac who did not appear. Sacic appeared with SP officers from Gracac and led the visit to Grubori. According to Cermak, the purpose of the visit was “because of the dead”⁷⁵⁷ and because they “didn’t want to hide anything”⁷⁵⁸ and wanted to see “what actually happened up there”.⁷⁵⁹ He saw no obligation or responsibility of his own to go there.⁷⁶⁰ A dispute arose at Plavno as to whether the media could record the work of the crime police. Sacic sided with the crime technician and told Cermak that it was not permissible.⁷⁶¹ Cermak did not enter the village but stayed at the entrance.⁷⁶² There is evidence indicating a person in a blue suit with

⁷⁵⁵ D2048.

⁷⁵⁶ D2048, para.32; T.28673-28674, T.28678-28679, T.28689-28696, T.28707, T.28724-28725. There is no evidence that there was in fact any tampering with the crime scene site before or during the visit to Grubori.

⁷⁵⁷ P2525 p98 13-21.

⁷⁵⁸ P2525 p103, line 5.

⁷⁵⁹ P2525 p103 lines 15-17.

⁷⁶⁰ P2525 p104 lines 8-10 “It was neither my obligation nor my responsibility”.

⁷⁶¹ T.27874:15-16.

⁷⁶² P2532 p72 .

“crime police” on his back was present at the scene.⁷⁶³ Cermak was under an impression that Grubori was attended by the “criminal service of the civilian police”⁷⁶⁴ or “criminal police”⁷⁶⁵ or the “criminal team that was part of the civilian police”.⁷⁶⁶ In his suspect interview Cermak stated he had thought that an investigation was being carried out because he saw the criminal police at work.⁷⁶⁷

(c) The Lunch and/or Coffee Meeting at the Knin Garrison Following the Visit to Grubori

249. None of the SP witnesses called to give evidence asserted that Cermak agreed to put forward a story he knew to be false concerning the deaths in Grubori.⁷⁶⁸ The Prosecution failed to establish this assertion. All of the witnesses stated that they were influenced by Sacic. Moreover, the Prosecution did not even ask certain key witnesses to describe what was actually said after the visit to Grubori. [REDACTED].⁷⁶⁹

250. According to Turkalj, at an informal gathering for lunch and/or coffee in Cermak’s office after the visit to Grubori with Sacic⁷⁷⁰ and possibly Balunovic and Celic⁷⁷¹, Cermak said to Sacic angrily “What have you done there?”⁷⁷² There was talk on how sanitation should be carried out and bodies should be removed⁷⁷³ and Turkalj “assumed”⁷⁷⁴ Sacic said to Cermak that it should be reported that fighting took place and

⁷⁶³ Dondo T.22594:12-22595:9.

⁷⁶⁴ P2525 p97 lines 17-19.

⁷⁶⁵ P2525 p97 line 21.

⁷⁶⁶ P2525 p101 line 13.

⁷⁶⁷ P2532 p101 lines 5-9; [REDACTED].

⁷⁶⁸ [REDACTED], Turkalj, Celic, Balunovic, Janic.

⁷⁶⁹ [REDACTED].

⁷⁷⁰ P1152 p11.

⁷⁷¹ P11582 p13.

⁷⁷² P1152 p20.

⁷⁷³ P1152 p24.

⁷⁷⁴ P1152 p43.

civilians got killed⁷⁷⁵ in the conflict as a “party line”.⁷⁷⁶ In his evidence in court he was unable to confirm with certainty what was said in that discussion.⁷⁷⁷ He testified that Sacic claimed there was a clash in the area “based on all information and based on the things that could be seen”.⁷⁷⁸ He testified anyone who had been to the area could have reached the same conclusion⁷⁷⁹ due to presence of bullet holes⁷⁸⁰ and the appearance of the houses.⁷⁸¹

251. This evidence needs to be treated with caution. Turkalj was the Commander of the AT Lucko Group who had been responsible for the killings in Grubori. He was interviewed as a suspect by the OTP. His evidence is unreliable and contradictory to a significant extent.⁷⁸² Significantly, the witness distanced himself from having any information from Sacic as to what had happened to bring Sacic to Plavno⁷⁸³ and he also attempted to distance himself from the command structure of which he was an integral part.⁷⁸⁴
252. The officer interviewing Turkalj used leading and unclear questions to get a version that suited his view of the facts, which the witness does not specifically adopt.⁷⁸⁵ The alleged conversation concerning the need

⁷⁷⁵ P1152 p42.

⁷⁷⁶ P1152 p45-46.

⁷⁷⁷ T.13642:5-6.

⁷⁷⁸ T.13638:6-9.

⁷⁷⁹ T.13638:18-19.

⁷⁸⁰ T.13639:6-8.

⁷⁸¹ T.13638:25-13639:2.

⁷⁸² He claimed he heard about an incident in Grubori on 27 August. Given the intense activity in Gracac HQ of the Special Police and the calling of Sacic from Zagreb, this assertion is incredulous. He did not specify where he was prior to the 27 August – “I could have been at home”. (T.13735:16) But he had telephone communications T.13735:18. He went on the morning of the 27th to Gracac HQ, a place where this incident must have been particularly important, although he was careful to put himself “in front of the building” (T.13736:7). It is also highly notable he claimed not to have met Sacic in Gracac, although all accounts show the Special Police arriving at Plavno with Sacic, having been awaited. T.13736:21.

⁷⁸³ T.13738:4.

⁷⁸⁴ P1152, p.27.

⁷⁸⁵ P1152 p.46, line 22.

to have bodies collected (in the *future*) does not make sense as the sanitation of the terrain had already taken place during the visit to Grubori which was prior to the alleged conversation. So it would not be logical to be discussing this on the return to Knin.⁷⁸⁶ The facts clearly establish the bodies had been removed by civil protection on the visit to the village.⁷⁸⁷ The only matter that is clear is the position of Sacic that the people were killed in a terrorist combat operation. This was the position that he had already informed Cermak of in Grubori. The Trial Chamber cannot rely on such evidence to reach findings which must be proved beyond a reasonable doubt.

253. The only other witness who provided evidence on this point was Celic who in his OTP statement stated that after the visit to Grubori, the SP and journalists all went to the garrison for lunch.⁷⁸⁸ In his testimony he claimed there was a meeting before lunch which was with the military and the SP and they were asked what had happened.⁷⁸⁹ In respect of this Sacic had the most to say.⁷⁹⁰ No evidence was elicited from this witness over what was actually said.⁷⁹¹ There is no allegation or assertion by Celic that at that meeting Cermak agreed to promote knowingly a false story. The Prosecution failed to use this opportunity by which to establish their primary allegation on this matter. Quite simply, they avoided it.

⁷⁸⁶ P1152, p.24; T.13641:22.

⁷⁸⁷ Serdarevic D2053; Bilobrk D2048; Vrticevic D2053.

⁷⁸⁸ P762 p.424, 426.

⁷⁸⁹ T.8005.

⁷⁹⁰ T.8006.

⁷⁹¹ T.7997:22; "it was discussed"; T.8003:10; T.8006:4; T.8126:22 "what we did", "Sacic had some other information".

5. KNOWLEDGE OF PROSECUTING AUTHORITIES AND OTHER RESPONSIBLE AUTHORITIES OF CROATIA

254. By 25 August or 26 August at the latest, the events in Grubori were known to those responsible for the police inquiry and those with effective control over the SP. [REDACTED]⁷⁹² the police were under a duty to initiate the procedure for an investigation.⁷⁹³ [REDACTED].⁷⁹⁴ [REDACTED]⁷⁹⁵ [REDACTED].⁷⁹⁶ [REDACTED].⁷⁹⁷ Kotar-Knin PU was in possession of information which would enable it to identify the perpetrators. [REDACTED].⁷⁹⁸

(a) Information Supplied to the Zadar-Knin PU

255. Zadar-Knin PU was informed of the incident directly and according to Buhin, Chief Cetina promised to set up a team with an investigating judge which would take him approximately 3 hours.⁷⁹⁹ Cetina was unable to confirm this in his evidence.⁸⁰⁰ He testified he recalled being informed of the incident by Ivo Kardum instead⁸⁰¹ a day or two after the event⁸⁰² and that the information Kardum supplied was that the incident took place in a combat area.⁸⁰³

256. Kotar-Knin PU was in contact with the Public Prosecutor on 27 August. [REDACTED]⁸⁰⁴ [REDACTED].⁸⁰⁵ [REDACTED].⁸⁰⁶

⁷⁹² [REDACTED].

⁷⁹³ D1568, Article 142(1).

⁷⁹⁴ [REDACTED].

⁷⁹⁵ [REDACTED].

⁷⁹⁶ [REDACTED].

⁷⁹⁷ [REDACTED]; see D1960.

⁷⁹⁸ [REDACTED], [REDACTED].

⁷⁹⁹ T.9981:24-9982:5, T.10078:1, [REDACTED].

⁸⁰⁰ T.23521:15-25.

⁸⁰¹ T.23522:7.

⁸⁰² D1743 para.17.

⁸⁰³ T.23518:8-10; T.23523:4-7.

⁸⁰⁴ [REDACTED].

**(b) Information supplied to the Crime Police Section of Zadar-Knin
PU**

257. [REDACTED].⁸⁰⁷ However, Kardum denied this and claimed it was later.⁸⁰⁸ Evidence in the case indicates that information had reached the police administration with the authority to conduct an investigation. Instead, victims in Grubori were listed as part of the sanitation protocol on 28 August by Cetina⁸⁰⁹ who, according to certain evidence, knew of the murders and promised to set up a team to investigate⁸¹⁰. By the morning of 27 August, Cermak was still requesting an onsite investigation from the crime police operatives on the scene,⁸¹¹ which indicates that he was outside the decision-making process to curtail investigative procedures. This directly contradicts the allegations being made against him by the Prosecutor.

(c) Information Supplied to the Highest Levels of the Croatian Government

258. Zganjer agreed that simple information about the crime in Grubori, as opposed to a formal report would have sufficed to put the Zadar prosecutor on notice to act.⁸¹² However, prosecutor Galovic denied that

⁸⁰⁵ Although the translation lists this entry under "28 August" the original document confirms this note was made on 27 August (see page with ERN 0604-3417 and compare number "27" as written there with the same number on page 0604-3416; first entry for 28 August begins on page 0604-3421 in the original which is page 46 in the translation).

⁸⁰⁶ [REDACTED].

⁸⁰⁷ [REDACTED].

⁸⁰⁸ [REDACTED], P2397 para.51.

⁸⁰⁹ D360.

⁸¹⁰ T.9981:24-9982:5, T.10078:1, [REDACTED].

⁸¹¹ D2048; [REDACTED].

⁸¹² T.11604:20-24.

any information had reached him⁸¹³ by way of public knowledge through media coverage.⁸¹⁴

259. On 27 February 1996, Elisabeth Rehn wrote to foreign minister Mate Granic about the Grubori case noting the presence of SP forces in the area, the numbers of registration plates spotted in the vicinity and the confirmation by Cermak that MUP officials were involved in the events that transpired in Grubori.⁸¹⁵ Granic testified “not much attention” was given to Grubori prior to that letter,⁸¹⁶ but the government had been on notice of the incident prior to this date. It featured in the Secretary General’s report to the Security Council in December of 1995⁸¹⁷ and a government report presented to Rehn on 2 February 1996 expressly noted this incident and claimed that “the site of the crime was inspected by police on the same day on which it was reported by the UN HRAT, on 25 August 1995”⁸¹⁸ but added that perpetrators were unknown.⁸¹⁹ Granic repeated this position late June in a letter to Rehn.⁸²⁰
260. [REDACTED]⁸²¹. Granic conceded that information in Rehn’s letter should have sufficed “to start a serious investigation”.⁸²² Under Croatian criminal law, a judge-led investigation can only be opened against an identified perpetrator⁸²³.

⁸¹³ T.19834:20-23. See also T.11515:9-19, P1048 para.10.

⁸¹⁴ T.19839:3-4, T.19837:25. Witness Galovic testified he only learned of the incident at the time of the publication of the HHO report T.19836:24-19837:5.

⁸¹⁵ P602.

⁸¹⁶ T.24941.

⁸¹⁷ P650 p6.

⁸¹⁸ This was again repeated in April 1996 in the Comments of the Government of Croatia to Rehn's report, P645 page 3 para.10.

⁸¹⁹ P600 p7.

⁸²⁰ P2674.

⁸²¹ [REDACTED], [REDACTED].

⁸²² T.24942:18-19.

⁸²³ D1568 Article 148(1), 149(3.)

261. Therefore, by keeping the perpetrator status officially “unknown” within the police structure, whose statutory duty it is to identify perpetrators of crimes,⁸²⁴ there was a guarantee that there would never be any judicial investigation. Contrary to this, as noted by Rehn, Cermak confirmed MUP officials were involved in the events.⁸²⁵ If he had intended to obstruct an opening of a judicial investigation, Cermak would similarly have maintained that the perpetrators were “unknown”.

5. CONCLUSIONS

262. Cermak became involved in the developments concerning Grubori from 25-27 August as a result of the international community contacting him with information of a serious incident. In passing on what he was told, he had to rely on information from others who had better access to information through their involvement in events on the ground. He had no reason to disbelieve the accounts of the SP. He did not decide upon how the events in Grubori would be portrayed. He had no decision-making authority. He requested an onsite investigation. There is no evidence of any agreement *prior* to the commission of the crime in Grubori, either that a crime would be committed or that in the event of crime, it would be covered up. The Defence submits that the cumulative effect of Cermak’s actions and position as a conduit of information to the internationals regarding this incident preclude a finding beyond a reasonable doubt that he was individually criminally responsible for the events on 25 August and the lack of an investigation thereafter.

⁸²⁴ D1568 Article 142(2) and D1077 Article 1(2).

⁸²⁵ P602.

E. Indictment Paragraph 17(d)

263. The Prosecution failed to call any evidence that Cermak promoted crime against the Serbs or created a climate of fear amongst those who remained. His actions to protect the rights and well-being of Serbs in the UN camp, his denouncement and acknowledgement of crime and his work to pass on information about crimes which came to his attention all serve to defeat the notion that he promoted crime against Serbs.
264. Neither has the Prosecution called evidence that Cermak instigated, facilitated, encouraged or condoned violent acts against Serbs or acted in such a manner as to create a climate of fear.

F. Indictment Paragraphs 17(e) and 19(d)

265. The Prosecution seeks to rely upon alleged omissions by Cermak to prove his participation in a JCE under Article 7(1).⁸²⁶
266. There is substantial evidence that Cermak reported and passed on information about crimes committed which came to his notice to the relevant authorities. See section **Contrary to Paragraph 19(c) of the Indictment, Cermak Passed on Information about Crimes to the Relevant Authorities.**

⁸²⁶ *Kvočka* Appeal Judgement, para.187: The Prosecution must prove beyond a reasonable doubt that the accused has "committed an act or an omission which contributes to the common criminal purpose."

1. NO FAILURE TO INVESTIGATE OR FOLLOW UP ON INVESTIGATIONS

*"You're always asking me questions about the police and investigations, that wasn't in my responsibility."*⁸²⁷

267. In order for an omission to be evidence of participation in a JCE, the Defence submits that as a prerequisite, the Prosecution must prove beyond a reasonable doubt that the legal requirements for omission liability have been fulfilled, namely that "(a) the accused must have had a duty to act mandated by a rule of criminal law; (b) the accused must have had the ability to act; (c) the accused failed to act intending the criminally sanctioned consequences or with awareness and consent that the consequences would occur; and (d) the failure to act resulted in the commission of the crime."⁸²⁸ See section: **Other Modes of Liability under Article 7(1)**.

268. In respect of paragraph 17(e), the evidence has demonstrated that Cermak had no legal duty to investigate or follow-up on investigations under national law. Such duties fell entirely within the MUP.⁸²⁹ See section: **Cermak as Garrison Commander had no De Facto or De Jure Power or Authority to Investigate or Order the Investigation of Crimes**. Mere assertions by Cermak that he would investigate cannot create a legally binding duty. As garrison commander, Cermak had no *de facto* or *de jure* power or authority to order, initiate, conduct, direct or supervise any criminal investigation. This role was reserved for the investigative judge and the public prosecutor.⁸³⁰ "Cermak was not

⁸²⁷ P2526 p49.

⁸²⁸ *Ntagerura* Trial Judgement, para.659, cited by *Ntagerura* Appeal Judgement, para.333; *Oric* Appeals Judgement para.43; *Mrksic* Appeals Judgement, para.49.

⁸²⁹ Kovacevic D1567,D1676 p55, 62.

⁸³⁰ D1567.

responsible for law and order [or] for the people who committed crimes.”⁸³¹

2. NO FAILURE TO PREVENT, PUNISH OR DISCIPLINE SUBORDINATES AND OTHERS IN THE CROATIAN AUTHORITIES OVER WHOM CERMAK ALLEGEDLY POSSESSED EFFECTIVE CONTROL

*“People who are under me per establishment, I can punish them, but not others. I agree with that totally.”*⁸³²

269. The Prosecution alleges these omissions by Cermak prove his participation in a JCE under Article 7(1).⁸³³ In law, Cermak’s duty to prevent crime was limited to taking necessary and reasonable measures to prevent *his subordinates* from committing crime under the doctrine of superior responsibility in Article 7(3) of the Statute. The *duty to punish* arises when a superior has actual or constructive knowledge that a *subordinate* has committed a crime within the jurisdiction of this Tribunal.⁸³⁴ He had no generic duty to prevent or punish crime.

270. The evidence at trial has shown the following:

- (i) Cermak’s subordinates worked within the structure and functioning of the garrison and were extremely limited in number.⁸³⁵ See section: **The Establishment of the Knin Garrison, Manpower and Resources;**

⁸³¹ Cipci, D1723, para.30.

⁸³² P2525 p127.

⁸³³ *Kvočka* Appeal Judgement, para.187.

⁸³⁴ *Celebici* Appeal Judgement, paras.223, 241; *Hadzihasanovic* Appeal Judgement, para.27.

⁸³⁵ D33, p9-12; D1688, para.21; D1687, para.44. D1696, para.8.

- (ii) There is no evidence that any of his subordinates committed or were about to commit indictment crimes;⁸³⁶
- (iii) HV units listed in paragraph 7 of the Indictment were not subordinated to Cermak,⁸³⁷ neither were members of the MUP,⁸³⁸ or the VP.⁸³⁹ See sections: **The De Jure Authority of the Garrison Commander [HV]** and generally **Part V, sections III and IV**;
- (iv) Cermak had limited and specific duties in respect of disciplining his subordinates - See section: **Authority of the Garrison Commander to Discipline [HV]**. There is no evidence that any of Cermak's subordinates required disciplining, let alone that he failed to do so in furtherance of a JCE.

3. NO FAILURE TO ESTABLISH AND MAINTAIN LAW AND ORDER AMONG HIS SUBORDINATES OR TO DISCIPLINE THEM

*"My men always worked from early in the morning till very late. They had no time for any stupidities."*⁸⁴⁰

271. No need arose for Cermak to maintain order and discipline among the limited number of his subordinates as none of them committed disciplinary offences or crimes. He had no duty to maintain law.

⁸³⁶ [REDACTED].

⁸³⁷ Feldi D1673 p49; D1688 para.19; D1695 para.16.

⁸³⁸ MUP: Cetina D1743, paras.4, 8; Cetina D1745, p7; Radin D1678, para.12; [REDACTED]; Dondo D1696, para.24; Pasic D1707, para.25; Rincic D1680, para.21; [REDACTED]; [REDACTED]; Skare-Ozbolt T.18099-90; Radin T.22164; Cipci T.23073; Cetina T.23537; Moric T.25624, T.25628-9, T.25632, T.25933.

⁸³⁹ VP: Cipci D1723, para.18; Radin D1687, para.12; Vedris D1772, para.12; Dondo D1696, para.24; Pasic D1707, para.26; Rincic D1680, para.21; Dzolic T.8929, T.9017, T.9027-8, T.9037; Skare-Ozbolt T.18099-90.

⁸⁴⁰ P2525 p47.

272. Vladimir Gojanovic was the only HV member called by the Prosecution who gave evidence about Cermak. His witness statement claimed that men “acting under the orders of General Cermak” were involved in looting,⁸⁴¹ he conceded during cross-examination that this was a “significant inaccuracy”.⁸⁴² Gojanovic described the alleged incident as a “rumour” that he was informed of by a third party whom he could not identify.⁸⁴³ He had no information about the identity of the men, how many there were, or where they came from.⁸⁴⁴ The Defence submits that Gojanovic was a thoroughly unreliable witness.⁸⁴⁵
273. Furthermore, alleged comments made by Cermak to international witnesses⁸⁴⁶ giving the impression he was a person with overall authority,⁸⁴⁷ cannot create either factual or legal authority or responsibility. Analysis of the entirety of the evidence reveals that the MUP and the VP were *de facto* and *de jure* responsible for law and order and the prevention /punishment of crime after Operation Storm, not Cermak. See **Part V, sections III and IV: VP and MUP.**

⁸⁴¹ P194, para.13.

⁸⁴² Gojanovic, T.3089.

⁸⁴³ Gojanovic, T.3091-93; T.3096.

⁸⁴⁴ Gojanovic, T.3095.

⁸⁴⁵ See evidence of witnesses Josko Babacic, Radoslav Juricev Sudac, Davor Zafranovic and Dragar Rak. D200, D193, D203, D197 and videolink of 9 September 2009.

⁸⁴⁶ Liborius P800, p2; Liborius T.8358, T.8683. However the witness proved to be unaware of a series of documents showing Ivan Cermak’s lack of authority to subordinate troops to himself (T.8632-52, reference is to D758, D759, D760, D761, D762, D763, D764, D765, D766, D767, D768, D769); Hendricks T.9803; Hansen, see T.14966 re in terms of guaranteeing law and order in this chaotic time, it would be fair to say that Hansen considered Cermak a “minor player” and “not an influential figure” and Mr. Cermak’s actions certainly did not stop looting in the region. Hansen, P1284, p3: “he at all times gave the impression of being the person-in-charge for the situation in the former UN Sector South”. Lyntton P870, para.28: “Cermak presented himself as the commander of the area...[i]t was clear from talking to him that I was talking to the man that was in charge of security for the area”.. However in the course of cross-examination, Lyntton acknowledged that such assessment was drawn merely from the fact that Ivan Cermak had a rank, was wearing a uniform and was referred to him to be the military governor of the area (T.8831). He agreed he was not in a position to deal with Ivan Cermak’s authority (T.8838).

⁸⁴⁷ Roberts T.6924-5. See also Hansen P1284, p3; Roberts P675, para.20.

274. Significant sections of the Final Brief illustrate the ways in which law and order after Operation Storm were dealt with by the VP and civilian police. At a meeting in Plivice on 15 September 1995, when the MUP and VP reviewed their performances, Lausic and Moric accepted their full responsibility for law and order⁸⁴⁸ and neither did they, nor anyone else present, attempt to shift responsibility to Cermak. Ivica Cetina confirmed that at the Plitvice coordination meeting on 15 September, the aim of which was for the MUP and VP to “agree on how to act jointly in the relevant area”⁸⁴⁹ there was no mention of Cermak when referring to the need “to sort law and order out”.⁸⁵⁰ Neither was Cermak’s name mentioned in any of the MUP-VP coordination meetings,⁸⁵¹ or communications which took place within the MUP or between the MUP and the VP with regard to crime and the setting up of joint meetings and operations to deal with crime, law and order.⁸⁵² Witnesses acknowledged that they were not privy to the fact that

⁸⁴⁸ D595, p.5-6.

⁸⁴⁹ Cetina T.23623; see notes of meeting at D595 dated 18th September 1995.

⁸⁵⁰ Cetina T.23623-4.

⁸⁵¹ Cetina T.23624. See also Annex VI.

⁸⁵² [REDACTED]; D573 (Albiston: “internal police reports going through an internal civilian police reporting structure, as would be expected in a hierarchy, within the Ministry of the Interior...although General Cermak has a coordinating role in this area, he doesn’t get a mention. He doesn’t get a copy of the documents. And I think the inference, the conclusion which can be drawn from all these documents is that when it comes to operational matters, General Cermak didn’t have a role to play.” T.23801); P498 (Albiston: “[T]he report is going through the Ministry of the Interior reporting channels and not to General Cermak”: T.23799-800); [REDACTED] (Albiston: “it is an internal civilian police, Ministry of the Interior, document which makes no reference to the garrison commander”: T.23800; D575; D576; D579; D581; D46; D48; D49 (see Cetina T.23410); P877; D586; D989; D589; D574 [Moric: T.25573]; Albiston: “You might expect that if General Cermak featured anywhere within the Ministry of the Interior hierarchy, and Mr. Moric, as the assistant minister, were not satisfied with the completeness or timeliness of the reports he were receiving from junior officers within that hierarchy, that he might see to invoke the assistance of General Cermak. But he doesn’t, and he doesn’t because General Cermak is not part of this hierarchical structure.” T.23802; D1858; D580; D594; D595; D596; P515; P493; D44; D45; D585; D50; D573; [REDACTED]; P2206; D41; D452; Cetina, D1743, para.9; See also D1744 para.1; Cetina, D1745, p11 re joint work between the MUP and VP, as well as the meeting in Plitvice.

reinforcement of resources on the ground or coordination between the VP and civilian police exceeded Cermak's remit.⁸⁵³

275. Examination of Cermak's own perspective of his role in Knin also shows his mental state of mind in respect of his lack of responsibility for law and order. In 1999, President Tudjman and Cermak discussed the role he had at that time in Knin. It is clear from the transcript that responsibility for law and order was not included, nor was he commanding the HV forces.⁸⁵⁴

G. Indictment Paragraphs 17(f), 19(c) and 19(e)

276. As relevant to paragraphs 17(F), 19(c) and 19(e), see previous submissions herein on paragraphs 17(c), 19(c).

1. CERMAK DID NOT CONCEAL CRIMES BY RESTRICTING THE MOVEMENT OF INTERNATIONALS

*"From my office there was no restriction, or non-permission of freedom of movement. I certainly did not disallow anybody to move freely. Unless it had to do with information that we were sending out regarding mopping up operations on certain parts of the territory."*⁸⁵⁵

277. Contrary to paragraph 17(f) and the PTB, Cermak did not seek to conceal crimes by restricting "International Access to Critical Areas" to

⁸⁵³ Flynn, T.1211, T.1216-1238, "I wouldn't attribute to General Cermak a leading role in dealing with these kinds of issues when assistant ministers...are exchanging correspondence on this issue" T.1229. Roberts, T.6924-6925.

⁸⁵⁴ P1144 p4.

⁸⁵⁵ P2525 p167.

“Enable his subordinates to perpetrate crimes without international detection or intervention”.⁸⁵⁶

(a) The Need for Restrictions on FOM was Agreed Between Croatia and the UN in the Akashi-Sarinic Agreement

278. Freedom of movement (“FOM”) of UNMO and human rights monitoring elements of UNCRO was agreed in Zagreb between Sarinic on behalf of Croatia and Akashi on behalf of the UN on 6 August 1995.⁸⁵⁷ In recognition of Croatian sovereignty over the territory, UNCRO did not have an unlimited right to move freely. It was subject to security issues.
279. FOM for human rights monitoring by UNMOs and elements of UNCRO was regulated under Article 5 and provided that they could carry out “surveillance immediately in all areas except where, in the opinion of the local UNCRO military commanders after consulting Croatian army commanders, the security situation does not permit for such surveillance.”
280. FOM for the humanitarian needs of the civilian population was regulated under Articles 2 and 4 which stated that UNCRO, the UNHCR and the ICRC had full access to “the extent allowed by objective security reasons.”

⁸⁵⁶ PTB, para.78, 82.

⁸⁵⁷ D28.

(b) Between 4-15 August the UN Restricted the Movement of its Own Staff for Security Reasons

281. The UN restricted the movement of its own staff for security reasons by issuing internal security codes.⁸⁵⁸ There were three levels of alert: green, amber (orange) and red.
282. On 4 August 1995, Forand issued the highest level of alert, “code red” restricting all movement of UN staff.⁸⁵⁹ On 8 August, Forand “*restricted visitors to all units and locations, and movement to the minimum essential to carry out re-supplying and assigned tasks*”.⁸⁶⁰ Leslie testified that between 5-9 August, the international staff received orders from UNCRO to stay in the camp until a variety of higher-level discussions were conducted between UNPF, UNCRO and various authorities.⁸⁶¹ It was not until 15 August that Forand reported the threat level in the former Sector South as “code green”.⁸⁶² The Defence submits that the UN’s internal assessments of the security threat must be taken into account when assessing the restrictions imposed by the Croatian authorities in this initial period.

(c) The Agreement was not Efficiently Implemented Because Sarinic had no Authority to Make a Binding Agreement on Behalf of the Government

283. Pursuant to the Croatian Constitution, international agreements can only be concluded either by the President or “in conformity with law”

⁸⁵⁸ Berikoff, T.7663-7664.

⁸⁵⁹ P341.

⁸⁶⁰ P357 para.4

⁸⁶¹ Leslie, T.1973.

⁸⁶² P367, p2 re 15 August. See also P934, p1, Liborius states that ‘UNSS alert state is now green’ on 11th August.

by the Government of Croatia⁸⁶³ and in order to be legally binding, they need to be ratified by a two-thirds majority of the Croatian Parliament.⁸⁶⁴ At the time, Sarinic was the Head of the President's Office, not a member of the Government.⁸⁶⁵ Therefore, he was not in a position of authority to be able to make an agreement on behalf of the Government that was thereafter legally binding upon all Croatian forces.

284. Sarinic's lack of authority is relevant to understanding why the Agreement was often not known about and/or implemented by troops on the ground.

(d) The agreement was not Communicated to those Responsible for its Implementation

285. No implementation plan for the agreement was devised by Sarinic. Although the MUP had clear authority over FOM in non-combat areas,⁸⁶⁶ there is evidence that it was not aware of the Agreement. Moric testified that the standard practice for implementation of the Agreement would have required Sarinic to send it to the Government, specifically the Minister of the Interior and as a follow-up the Government should have set out its position as to how the Agreement would be implemented. The Minister of Interior would have given instructions on how to proceed.⁸⁶⁷ Moric testified he was not even aware of the existence of the document.⁸⁶⁸

⁸⁶³ D1779, art. 132.

⁸⁶⁴ D1779, art. 133.

⁸⁶⁵ D1678, para.2-3, T.18105, T.25687-88.

⁸⁶⁶ See section: **Cermak was not Superior to the Civilian Police: He Lacked *De Jure* or *De Facto* Authority over the MUP in Relation to the Issuance of Passes.**

⁸⁶⁷ Moric, T.25687-88, T.25691.

⁸⁶⁸ Moric, T.25687.

286. On 6 and 7 August,⁸⁶⁹ Brigadier Plestina chief of the office of the MO for the UN and EU, tasked with “exchange of information”⁸⁷⁰ did not know about the Agreement when he refused FOM and rejected the proposition that UNCRO military units would monitor human rights,⁸⁷¹ even though this was expressly provided for in the Agreement. One of his officers, Lukovic was to meet Akashi with Cermak in Knin on 7 August and plainly had a restrictive view on the matter.⁸⁷² Cermak believed this was a matter for their responsibility.⁸⁷³ By 10 August, news of the agreement had still not reached Plestina’s office.⁸⁷⁴

(e) Cermak Made Attempts to try to Ensure that the Spirit of the Agreement was Implemented

287. Cermak met Akashi on 7 August and the Agreement was discussed. Notes reveal Cermak stated that FOM *would* be in accordance with the Agreement and directed the UN’s liaison officers to “contact HV LO” as these were the “normal channels”.⁸⁷⁵ CALO Lukovic commented that “giving FOM doesn’t mean you can have random visits to anywhere”.⁸⁷⁶

288. Although Cermak did not have the authority or responsibility to disseminate to the Croatian forces the terms of the Agreement, he made several attempts⁸⁷⁷ to increase awareness of the Agreement for

⁸⁶⁹ D319.

⁸⁷⁰ D1689.

⁸⁷¹ D318.

⁸⁷² D1667 p41.

⁸⁷³ D1667 p33-34.

⁸⁷⁴ D321.

⁸⁷⁵ D1667 p33-34.

⁸⁷⁶ D1667 p41.

⁸⁷⁷ P390, to Forand 11 August. This is an example of a humanitarian order issued by Cermak. Stating: “I allow full freedom of movement for UN members mentioned in the agreement”; P2526, p60: Cermak explains in his OTP interview this letter was because “all the IT-06-90-T

Sarinic.⁸⁷⁸ He cooperated with the IOs to ensure, within his limited influence, that the agreement was respected and acted as an interlocutor between the IOs and the Croatian authorities. There is no evidence Cermak took steps to obstruct the implementation of the Agreement. Any restrictions he communicated to the international organisations were not determined by him and were in accordance with objective security concerns.

(f) Cermak Tried to Assist the Internationals with FOM but was only a Mere Conduit/Interlocutor

289. Cermak's intention was to assist the international community and the returnees in moving around Knin and the surrounding areas, even though he had neither the *de facto* nor the *de jure* authority to ensure FOM. He had been informed about the Akashi-Sarinic Agreement by phone by Sarinic,⁸⁷⁹ and acknowledged that there was a problem with the internationals not being able to move around,⁸⁸⁰ a problem "that had to be resolved quickly."⁸⁸¹ He explained that he wanted to help, not hinder the work of the international community.⁸⁸² He understood that he had a "responsibility for cooperation with them" and "thought"

international organisations were allowed to move around": P2525, p111 that he "went a bit too far there because [he] didn't have the responsibility to send it to all these places". See also p112: "I didn't have the command power, I couldn't take it down, this was supposed to be sent to the units in the zone of command and everybody of the Ministry of Defence, and it could have been sent out as an information but not as an order. That's why General Gotovina wrote another order and that was then circulated among all units." See also P2526, p60 "I would immediately phone either the civilian police or the VP or the operative zones. I would phone them and tell them to tell units on the ground that people had FOM and to let them through and so on."

⁸⁷⁸ P2525, p114. He wrote P390 because he spoke to Sarinic and was told that he was to allow full freedom of movement in the area and possibly also because he had received a letter from General Forand complaining about ROM.

⁸⁷⁹ P2525, p.107.

⁸⁸⁰ P2526, p.62.

⁸⁸¹ P2526, p.63.

⁸⁸² P2526, p.55. See also Dondo T.22579-80.

he had the “authority to issue an order”,⁸⁸³ even though in reality, the evidence has shown otherwise.

290. He believed that the “international organisations shouldn’t have any problems moving around,”⁸⁸⁴ and wanted to be “fast” and at “their service”.⁸⁸⁵ Further circumstantial evidence of his intent to *assist* is cited below:

(a) P405 and P53/P513: Following Gotovina’s announcement at the meeting with Forand on 8 August, in which he referred to movement being subject to security concerns,⁸⁸⁶ later that day, Cermak put the relevant information in writing to the internationals and included the map which Gotovina had referred to.⁸⁸⁷ He attempted⁸⁸⁸ [REDACTED]⁸⁸⁹ was also transmitted to responsible Croatian authorities by issuing P53,⁸⁹⁰ a document written and prepared by CALO Dondo.⁸⁹¹ Had Cermak *intended* to obstruct movement of the international organisations, he would not have attempted to inform relevant Croatian agencies of the Agreement and FOM through P53.

(b) P512: On 8 August, Cermak issued an “order” stating that “the movement of UNCRO vehicles *delivering food and equipment for UNCRO needs* is to be allowed, and all these vehicles must be

⁸⁸³ P2526, p.55.

⁸⁸⁴ P2526, p.59.

⁸⁸⁵ P2526, p.62.

⁸⁸⁶ P359.

⁸⁸⁷ P405: Cermak states that it was sent to Gotovina “because he was the commander of the whole region”: P2526, p.57-59. See also his comments in his interview in respect of this letter: To allow freedom of movement immediately so we could...help out everybody...I wanted to do that, make it possible for people to...because it seemed silly to me why they couldn’t move around at all” P2526, p.58.

⁸⁸⁸ [REDACTED].

⁸⁸⁹ [REDACTED].

⁸⁹⁰ P53/P513.

⁸⁹¹ D1696 para.18.

inspected”.⁸⁹² Dondo confirmed this order was issued as a result of matters raised by the CALO office.⁸⁹³ The document also contained a provision on “unhindered movement of all humanitarian convoys delivering food and equipment to refugees” in accordance with the Agreement. The Defence submits that had Cermak possessed the intent of forcefully removing the Serb population or obstructing UN troops, he would not have attempted to communicate the message that Croatian authorities should allow humanitarian convoys and UNCRO supply routes.⁸⁹⁴

(c) On 9 August, Forand was impatient for the security concerns⁸⁹⁵ to be lifted and took the view that Cermak was “not prepared to make any progress” regarding FOM.⁸⁹⁶ However, he was unaware of the decision-making process that lay behind the scenes within the Croatian responsible authorities. On 11 August, Cermak sent a letter to UNCRO informing of complete FOM in the area from 10 August.⁸⁹⁷ He must have received information for this letter from the Split MD which knew the situation on the ground,⁸⁹⁸ by which time security had improved. He sent this letter to Forand as he did not have the authority to pass on such documents or information to the troops – a task undertaken by Gotovina who was the operational commander.⁸⁹⁹ Notwithstanding this letter, it had little or no effect on the ground.⁹⁰⁰

⁸⁹² P512.

⁸⁹³ D1696 para.20.

⁸⁹⁴ P512. For further police evidence on the P512, see **Seven So-called “Orders” sent by Cermak demonstrate his lack of Effective Control over the Civilian Police and The De Facto Relationship: Ivan Cermak and the Military Police.**

⁸⁹⁵ As agreed with Akashi on 7 August.

⁸⁹⁶ P361, p.3.

⁸⁹⁷ P41, p.2-5; P390.

⁸⁹⁸ Lukovic D1688, para.36., Dondo, T.22551; D1696, para.17, para.23.

⁸⁹⁹ P2525, p115. One of his staff must have taken it next door to Gotovina’s building. “I didnt have the command authority to send this out to the units”.

⁹⁰⁰ P363, p2.

In fact, elements of UNCRO were moving within the area during this period: See section: **Despite Protests about ROMs, UNCRO, ECOMM and HRAT Teams were able to Patrol Areas Within the Former Sector South and Report on Events.**

291. Internationals acknowledged that Cermak was an interlocutor who they could approach to report problems they were encountering concerning FOM-related difficulties “in a sense of cooperation”.⁹⁰¹ Forand explained that Cermak was a mere conduit who passed information to the international community,⁹⁰² while Berikoff acknowledged he was merely engaged in transmitting information of what had been agreed at a higher level.⁹⁰³ Flynn could not be sure that “General Cermak was ordering matters related to freedom of movement” and acknowledged that he may have “been informing” the international community “on behalf of the Croatian authorities that freedom of movement had been extended to certain areas.”⁹⁰⁴
292. His statements and assurances to members of the international community⁹⁰⁵ are not evidence that he *in fact or in law* possessed decision-making authority.
293. The promises of Cermak were not passed down to those manning the checkpoints.⁹⁰⁶ Notwithstanding a letter from Cermak, “units and engineers” were still experiencing “problems on the roads” in relation to FOM on 11 August.⁹⁰⁷ An UNMO report noted that “the message on FOM for UNMOs has not passed down to the lowest level in the

⁹⁰¹ Roberts, T.6904-6905; Flynn, T.1086, T.1133.

⁹⁰² Forand T.4322.

⁹⁰³ T.7791.

⁹⁰⁴ Flynn, T.1250-51.

⁹⁰⁵ D29, p2 para.4; D146, p1; P29, p2: P357, para.3; P1161, para.4; P806, .1-2; D300, P30, p2; D1209, p2; P934, p3; D1700; D309; P397; P2526 p43, p52; P390.

⁹⁰⁶ P806, p1-2.

⁹⁰⁷ P363, p2.

CA.”⁹⁰⁸ Although he attempted to assist and even gave the impression that he could, his attempts were largely unsuccessful due to his lack of authority to command the HV, VP and MUP.⁹⁰⁹ Those instances in which his intervention had an *influence* on the ability of internationals to move through a checkpoint were rare⁹¹⁰ and demonstrate no more than his positive intention and efforts to try to assist the international community.

294. Internationals testified that Cermak’s genuine efforts to try and assist them to move around were ineffective as his authority was not recognized on the ground.⁹¹¹ Cermak was unable to control and guarantee FOM.⁹¹² His attempts to solve this problem “never impacted the police concerned”⁹¹³ and although Cermak publicly stated that monitors could go wherever they wanted, in reality that did not happen.⁹¹⁴ Cermak had no authority in Benkovac⁹¹⁵ and according to Forand, his name did not have much power outside Knin “even though he provided...[them] with an official paper that was supposed to provide...[them] unhindered passage throughout the Sector”.⁹¹⁶ As soon as the monitors left Knin, “everyone was challenging his authority.”⁹¹⁷ Monitors were stopped at almost every small village by a different organization that did not recognise the authority of Cermak.⁹¹⁸ ECMM noted that while Cermak had been “very helpful with regards to FOM...unfortunately as you get further away from the

⁹⁰⁸ P118, p1.

⁹⁰⁹ P361, p3; Feldi T.21989-90.

⁹¹⁰ P818 p2; P1294; P809.

⁹¹¹ Berikoff T.7789; Hendriks T.9718-19; Hansen T.14969-70. Hansen stated that Cermak *gave the impression* of being the person in charge for the situation in Sector South but added that he was however not able to control and guarantee freedom of movement (P1284, p3).

⁹¹² Hansen, P1284, p3.

⁹¹³ Hansen P1284, p3.

⁹¹⁴ P1178, para.32; P1176, para.9.

⁹¹⁵ P361,p3 para.3; Forand, T.4226-4227.

⁹¹⁶ P331, p15.

⁹¹⁷ P331, p16.

⁹¹⁸ P331, p17.

town, fewer police appear to have heard of him and fewer still are inclined to follow his written clearances.”⁹¹⁹ An UNMO patrol was stopped at a police checkpoint notwithstanding Cermak’s letter which had referred to “freedom of movement”.⁹²⁰ His letter was ignored by the Croatian police.⁹²¹ Cermak’s permissions to freely move around were described by Berikoff as “a joke”⁹²² and Forand didn’t want the internationals to use the letter.⁹²³ Dangerfield stated that it was “not worth the paper it was printed on” because “some check-point would say let you through, some check-points wouldn’t”.⁹²⁴ Al-Alfi opined that it had “no effect”,⁹²⁵ while Berikoff indicated that Juric’s name was the one to be used at checkpoints.⁹²⁶

(g) Others Possessed the Authority to Determine FOM and ROM

295. The authority to determine FOM and ROM was held by operational commanders of the HV, the CALO office;⁹²⁷ officials within the MUP and MoD. These officials included Moric,⁹²⁸ Sarinic,⁹²⁹ General Cervenko,⁹³⁰ General Gotovina,⁹³¹ Brigadier Ademi,⁹³² Brigadier

⁹¹⁹P935, p1 para.2.

⁹²⁰D1694.

⁹²¹D92 p4.

⁹²²Berikoff, T.7792, D284, p00425993, T.7789.

⁹²³D284, p37, T.7792.

⁹²⁴Dangerfield, T.7261-7262.

⁹²⁵Al Alfi, P1160, p49.

⁹²⁶Berikoff, D284, p39-40. A second episode which demonstrated Cermak’s lack of authority at checkpoints occurred in Pakovo Selo: T.7902. Hill re: Major Juric: P292, p95, T.3793, whose name was “total gold”. He never used Cermak’s name at checkpoints: P292, p47, Cermak’s orders concerning freedom of movement were not respected by the military and civilian police nor by the HV: T.3799. In fact what Cermak was saying concerning freedom of movement didn’t “actually relate to what happens on the ground”: P292, p.95, T.3796.

⁹²⁷E.g. see P355, p7; P807, para.3c; P117, p4; P121, p4-5; P112, p6-7; P104, p1; P111, p8-9; P128, p7; P149, p3, para.C; P169, p4. P361, p4; D92.

⁹²⁸D499.

⁹²⁹P2526, p53-54, p61-62.

⁹³⁰P119, p7; P68, p7.

⁹³¹P805; P2146. Dangerfield stated that UN personnel met with Cermak on 10th August requesting complete freedom of movement throughout Sector South and Cermak’s response was that he was not in position to authorize it since it must have come from his higher commander (P695, para.12, T.7260-61); P830, p2; P359, p3.

Plestina,⁹³³ General Major Tolj,⁹³⁴ Major Juric,⁹³⁵ Cedo Romanic,⁹³⁶ Cetina in Zadar and Cipci in Split.⁹³⁷ The card used by Liborius to move around the region was issued by the government in Zagreb.⁹³⁸ The need for high level involvement to solve issues relating to ROM was noted as early as 10 August 1995.⁹³⁹

296. In order to answer requests from the internationals, Cermak had to contact either the office of Sarinic in Zagreb⁹⁴⁰ and/or General Gotovina⁹⁴¹ as he did not have the authority to take independent action.⁹⁴²
297. Other evidence corroborates Cermak's explanations. General Cervenko made *military district and other operational commanders* responsible for the "unobstructed departure of UNCRO"⁹⁴³ as well as "unobstructed deployment" and "supply" of UNCRO.⁹⁴⁴ At the meeting with Akashi

⁹³² P1143 Ademi order to set up a checkpoint "to control systematically that area"; D1696, para.17.

⁹³³ P364, p3: "Brig Plestina pledged full freedom of movement but indicated that the other issues were outside his competence."; see also D318; D319.

⁹³⁴ P827, p1, para.2g; P493; D1013; D1114.

⁹³⁵ P361, p5 re power and authority of Juric. Elleby confirmed that Juric was the man with whom he would discuss problems related to freedom of movement (P216, p3).

⁹³⁶ P31, p2: He provided the HRAT team directly with information as to where freedom of movement could be guaranteed demonstrating that the civilian police were taking over jurisdiction in the liberated area. Boucher gave evidence that he was directed by Gruguricin, the chief of police of the Dalmacija area, "for greater freedom of movement" to Romanic. Romanic gave him a note allowing him to access the area. (P1178, para.34; P1177, para.59; T.14075-76).

⁹³⁷ P2526, p.67-68.

⁹³⁸ Liborius T.8663.

⁹³⁹ P113: "UNMO HQ Zagreb is requested to report this fact to UNNY and consider a high level protest on this matter."

⁹⁴⁰ P2526, p.53: "I contacted the office of Mr Sarinic and then I was told that I had to immediately make sure that all international organisations and UNCRO had full access to the whole area of the former Krajina and to make that possible for them", p54: "I immediately phoned Zagreb". Ivan Cermak explained that he spoke to Sarinic because he was the "contact person for all the international organisations in the area".

⁹⁴¹ P2526, p52: Referring to the office of Gotovina: "When the international community asked for it, then we contacted the office and then it was allowed."

⁹⁴² Dondo T.22551-2.

⁹⁴³ D1693.

⁹⁴⁴ D1692.

on 7 August, Cermak stated it was Gotovina who had the information as to which areas were safe for FOM and that he would speak to him to identify safe areas.⁹⁴⁵ On 8 August, Forand met Gotovina who “spent some time talking about freedom of movement” indicating he had to limit it out of concern for their safety and stating that maps would be provided showing the areas safe to travel. He also stated that travel should be confined to main public roads due to the mine hazard. A later notification that day from Cermak to Forand attached the map referred to by Gotovina.⁹⁴⁶ Assurances on “complete FOM for all within Knin town” as of 8 August were recorded by ECMM as having been given by Gotovina.⁹⁴⁷ There is also evidence of *other* operational commanders restricting movement.⁹⁴⁸ Furthermore, in September, Gotovina barred Cermak from issuing any letters on movement of internationals in certain areas as they “remain war zones until further notice”.⁹⁴⁹ Cermak explained that he sent internationals that wanted to go to these areas to Gotovina⁹⁵⁰ who knew that Cermak did not have any authority over FOM.⁹⁵¹ This is consistent with ECMM being told that they “needed clearance from Gotovina to monitor N2 area due to presence of ARSK”⁹⁵² and being informed by police officers on checkpoints that they could only get to certain locations with “the written permission of General Gotovina”.⁹⁵³

298. Cervenko made the CALOs responsible for interpretation of the tasks concerning UNCRO’s departure.⁹⁵⁴ Cermak deferred to the CALOs as the “normal channels” for matters relating to FOM at the 7 August

⁹⁴⁵ D1667, p40.

⁹⁴⁶ P405. See also T.13088-13090.

⁹⁴⁷ P805, p1.

⁹⁴⁸ D1788.

⁹⁴⁹ D818.

⁹⁵⁰ P2525, p119.

⁹⁵¹ P2525, p119.

⁹⁵² P2146.

⁹⁵³ P830, p2.

⁹⁵⁴ D1693.

meeting with Akashi.⁹⁵⁵ According to Dondo and Lukovic, decisions on ROMs were made by the Split MD and passed on to the CALO office.⁹⁵⁶

299. In a meeting with UNCRO chief Pettis on 6 August, Brigadier Plestina refused FOM of UNCRO due to the ongoing battle and requested that such matters be raised with the CALO office.⁹⁵⁷ He confirmed to the MoD that liaison with UNCRO has been established⁹⁵⁸ and confined the need for UNCRO movement to “supply” of their “units” in the field.⁹⁵⁹
300. Many examples of the authority of the CALOs to *determine* and provide information to the internationals on ROMs were exhibited at trial.⁹⁶⁰ While ECMM teams were informed by a CALO that in order to secure FOM, they had to ask “Gen Major Tolj for FOM,⁹⁶¹ an official of the Ministry of Defence.
301. In respect of the authority of the MUP to determine FOM and ROM, Cermak had to *ask* the Minister to contact the civil police in Split to prevent future ROMs in the Vrlika area.⁹⁶² Many teams on the ground effectively resolved movement issues directly with the police.⁹⁶³ See section: **Cermak was not Superior to the Civilian Police: He Lacked *De Jure* and *De Facto* Authority over the MUP in Relation to the Issuing of Passes.**

⁹⁵⁵ D1667 p34.

⁹⁵⁶ D1696 para.17, D1688 para.36.

⁹⁵⁷ D318.

⁹⁵⁸ D319, p1.

⁹⁵⁹ *Ibid*; D321, p1, para.5.

⁹⁶⁰ P112 p6-7; P355, p5, para.7; P111, p5; P807, p2; P117, p4; P118. p1; P121, p4-5; D92, p3; Lukovic, T.22390.

⁹⁶¹ P827, p1.

⁹⁶² P957.

⁹⁶³ P356, p2; D620, p2; P31, p2; P362, p2, para.3(a) ; P111, p8; P165, p4; P169, p4.

(h) Objective Security Concerns were a Permissible and Reasonable Basis for Restricting Movement

302. Cermak explained that security concerns were the reason for ROMs⁹⁶⁴ which were already in place when he arrived in Knin on 6 August.⁹⁶⁵ The importance of security in determining FOM was acknowledged by Akashi.⁹⁶⁶ At least three objective security concerns prevented unhindered movement of civilian and military personnel in the aftermath of Storm: mines, presence of ARSK soldiers and mopping up operations.
303. The liberated territory was heavily mined and upon assuming responsibility for former Sector South, Croatian authorities had a duty to minimise loss of life by demining the territory or preventing access to such territory until mines were removed.⁹⁶⁷ International monitors were aware of this danger⁹⁶⁸ and accepted some areas were “genuinely insecure to travel on because of mines danger.”⁹⁶⁹
304. The presence of ARSK forces which had not surrendered carried an objective risk of armed clash, hostage situations and other forms of danger to civilians and international monitors. There were ROMs for security reasons due to “guerrilla activity”.⁹⁷⁰ In a HRAT report as early as 11 August, information from the Croatian authorities that

⁹⁶⁴ P2526, p52: “This is a security matter”.

⁹⁶⁵ P2526, p52.

⁹⁶⁶ Akashi, T.21738.

⁹⁶⁷ D57, Daily Log of incidents in the Kotar- Knin Police Administration – No: 18, 19, 24, 25, 26, 38, 39, 43, 46, 48, 49, 62, 68, 78, 82, 92, 93, 100, 101, 102, 103, 104, 127, 130, 134, 137, 144 (UNMO), 157, 161, 171, 176, 178, 187, D1118 Teskeredzic’s report on the noticed anti-tank mines, D1030 Teskeredzic’s report on the work of the de-mining team in the period from 6 August to 22 September 1995.

⁹⁶⁸ P936 p2.

⁹⁶⁹ P230, p3.

⁹⁷⁰ Flynn, T.1140: Munkelein, T.1642-1643. “This restriction was limited to certain areas at different times and the explanation given to us on one occasion was to keep us safe as there was guerrilla activity in the area”.

“there are still RSK fighters in the hills” was considered to be “plausible”.⁹⁷¹ In another report on 11 August, international teams recorded that there was “some indication of armed Serbian soldiers still in general areas north of Babin Potok and NE of Medak” and that accordingly, the “restriction of movement will most likely continue for UNMOs and UNCIVPOL.”⁹⁷²

305. Mopping-up operations conducted by Croatian armed forces turned limited areas into combat zones temporarily which constituted a security risk to anyone not part of the operation. Evidence has demonstrated the security concerns between 4-21 August when clearing and search operations were carried out by the 72nd MP Battalion/Anti-terrorist unit⁹⁷³ and Croatian army units.⁹⁷⁴ On 14 August, Cervenko defined mopping up as one of the “main tasks” of the Military Districts.⁹⁷⁵ Orders for such operations were issued by the operational commanders who commanded those units.⁹⁷⁶ With the aim of speeding up restoration of security, Gotovina requested a battalion of the SP to be employed for mopping up in order to “*protect human lives and material goods*”⁹⁷⁷ These operations continued between 21 August and 9 October 1995,⁹⁷⁸ during which time the SP took over

⁹⁷¹ P41; p 2 para 4. See section II, subsection D, section 3 (b) in Part IV.

⁹⁷² P116, para.2.

⁹⁷³ P879, P1208, D210/D734 – point 6/village of Otisic, P1131, D212 – point 6/villages of Koljane and Laktac, D292 – point 5.2, D837 – point 2.

⁹⁷⁴ P1270 para.2: “The mopping up of the area in the zone of responsibilities is still intensively underway”, D1925 para. 1: “In the course of today, activities continued to mop up the terrain in the Golubic-Kastel and Zegareski-Evernik areas in the direction of Velebit”, D282 – Gotovina's daily report: “...units of the Zadar OG and 142nd dp conduct clearing of the terrain in their zone of responsibility”, P1132/P2559: “during the day three of the attack operation...”, P2586 Regiment Command War Journal Extract of the 6.dp for 6-12 August and 15 August, D2095.

⁹⁷⁵ D559.

⁹⁷⁶ P1131; D2095; P1113, p404 para (i); P1113 p389 para(2) 7th HGR mops up Benkovac-Bruska-Kastel Zegarski as reported by Colonel Danijel Telesmanic, 7th HGR commander (see also p407 para 6); P1113 p395 6th HGR engaged in mopping up; P1113 p396: 126th HGR mopping up the liberated Kozjak area; P1113 p408 para(8).

⁹⁷⁷ D560 – Gotovina's request sent to Markac of 18 August.

⁹⁷⁸ Repinc D1932 – point 9.3.

search and clearing operations for remaining paramilitary units.⁹⁷⁹ They sent their reports to the Chief of the HV Main Staff, General Cervenko, on a daily basis.⁹⁸⁰ At the end of August, restrictions on FOM were largely as a consequence of these operations which were necessary to ensure the security of both the UN personnel and civilians.

(i) Cermak was not Involved in the Ad-hoc Decisions of the MUP and VP Which led to ROMs

306. In some cases, patrols were stopped at checkpoints by members of the HV, VP or MUP. In many instances, the reasons for stopping the patrols were not provided. In most cases, these situations amounted to no more than *ad-hoc* decision-making on the ground or in some cases, a demonstration of personal attitudes towards the UN Peace-Keeping forces. Importantly, no orders or documents condoning such behaviour were ever issued by superior Croatian officers. On occasions where superior officers discovered such behaviour, the problem was often promptly resolved.⁹⁸¹

307. FOM was not a right to monitor troops, or their movements for the purpose of intelligence gathering.⁹⁸² Croatian forces may have obstructed movements that they believed were for such purposes.

308. Cermak was not responsible for any undisciplined or ad-hoc behaviour of members of the MUP, VP or HV at checkpoints. His attempts to help

⁹⁷⁹ Repinc D1932 – point 184 (p68), D562, P1238, P2376, D1100, P574, P576, P575, P579, P2379, D99, P2380, D565, D566.

⁹⁸⁰ D562, P1238, P2376, D1100, P574, P576, P575, P579, P2379, D99, P2380, D565, D566.

⁹⁸¹ D94, p.5.

⁹⁸² These documents show that such activity was undertaken in contravention to the Agreement: P116; P1294; P1163; P942; P939; P889; P813; P352; P167; P166; P160; P155; P151; P150; P144; P143; P142; P138.

by sending orders which referred to the Agreement to the Croatian forces failed because of his lack of authority over these bodies.⁹⁸³

309. There was no consistent approach to FOM on the ground and evidence shows many examples of *ad hoc* and sporadic decision-making. Ermolaev referred to ROMs being at the “discretion of the HV/Policija commanders rather than being guaranteed...by the Croatian government’s obligations to the UN.”⁹⁸⁴ Flynn testified that there were “sporadic incidents in which people who seemed less disciplined...than those at the fixed checkpoint at Otric denied UN observers certain access to areas.”⁹⁸⁵

310. Diverse, contradictory and inconsistent reasons were given on the ground for restricting movement. There are examples of the VP restricting movement due to alleged orders to that effect from superior commanders⁹⁸⁶ or due to the alleged lack of any orders whatsoever in respect of FOM.⁹⁸⁷ In many instances, “special/written permission”⁹⁸⁸ by a particular individual was required, although it would often be different individuals for the same area in the same period. For example, special permission was needed from Gotovina for the Benkovac and Obrovac area⁹⁸⁹ or from Cervenko for Strmica, Sibenik and Obrovac⁹⁹⁰ while at the same time a permission from the CALO office was denied validity by the MUP because the police, and not the army was allegedly in command of the Benkovac area.⁹⁹¹ In one instance a special permission was requested because “the UN do not

⁹⁸³ P513/P53.

⁹⁸⁴ D148, p3.

⁹⁸⁵ Flynn, T.1087.

⁹⁸⁶ P112 p3 and 6, P123 p5-6.

⁹⁸⁷ P168 p2.

⁹⁸⁸ P116 p3.

⁹⁸⁹ P830 p2.

⁹⁹⁰ D391 p7.

⁹⁹¹ P114 p4.

have any position in the area”⁹⁹² while in another case a patrol was directed to the HV commander in Korenica to obtain permission.⁹⁹³

311. In some instances, the restrictions were resolved on the ground without reference to higher authority.⁹⁹⁴ In others, international monitors attempted to resolve them by approaching the CALO office⁹⁹⁵ or were referred to it only to get a confirmation of the restriction.⁹⁹⁶ Cases are also recorded of the restriction being resolved through negotiation with the civilian⁹⁹⁷ or military police.⁹⁹⁸
312. There is evidence of international teams being restricted in their movement for no cited reason.⁹⁹⁹ In cases where reasons were provided or reported, they ranged from general safety concerns¹⁰⁰⁰ to the identification of specific security concerns such as the presence of ARSK soldiers¹⁰⁰¹ and the area being a “war zone”¹⁰⁰² to the area being “in use” or “protected” by the HV.¹⁰⁰³
313. Importantly, none of these ROMs involved Cermak. In those limited cases where a letter of protest was sent to Cermak,¹⁰⁰⁴ he apologised

⁹⁹² P126 p6.

⁹⁹³ D94 p5.

⁹⁹⁴ P129 p4, P151 p8, P153 p3, P167 p5-6.

⁹⁹⁵ P374 p4, D1694.

⁹⁹⁶ P241 p3.

⁹⁹⁷ P165 p4.

⁹⁹⁸ P127 p5.

⁹⁹⁹ P117 p4, P25 p2, D1534 p5, P43 p3, D94 p5, P374 p4, P127 p5, P766, P129 p4, P241 p3, P241 p3, P143 p4, P37 p1-2, P144 p7, D391 p1, P386 p 3-4, P145 p6, P146 p3, P157 p5, P158 p8, P159 p5.

¹⁰⁰⁰ “Too dangerous to move” from Knin to Vrlika in P364 p3-4.

¹⁰⁰¹ Soldiers surrendering near Miocic P126 p4 para.D(iii), large number of RSK soldiers hiding in the Dinara area P130 p1.

¹⁰⁰² P128 p7, P958 p1, P148 p9, P138.

¹⁰⁰³ P142.

¹⁰⁰⁴ P936, p1.

and commented that he was sure that one of the “lowranking officers was acting by self-initiative”.¹⁰⁰⁵

(j) Despite Protests about ROMs, UNCRO, ECMM and HRAT Teams were Able to Patrol Areas Within the Former Sector South and Report on Events

314. There is ample evidence from daily, weekly and monthly reports that international monitoring teams moved within the former Sector South and reported on events.¹⁰⁰⁶ Even as early as 6 August, one UNMO team reported that they were able to patrol in Gracac.¹⁰⁰⁷ In a report on 8 August, the ECMM team admitted to “break[ing] a few rules by talking and pushing” and that “All teams continue to push their FOM and those suffering ROM are becoming more operational with each passing

¹⁰⁰⁵ P957, p1.

¹⁰⁰⁶ D94, P351, P356, P359, P341, P355, P806, D619, P113, P361, P114, P362, P31, P41, P116, P364, P808, P117, P25, P118, D310, P957, P511; P809, P1162, P126, P814, P142, P130, P817, P818, P2154, P943, P2157, P944, P945, P952, P955, P946, P956, P951, P2152, P954, P950, P958, P1289, P1288, P2148, P829, P2150, P816, P49, P50, P51, P37, P424, P135, P380, D1704, P386, P143, P148, P149, P150, P151, P815, D65, P226, P10, P229, [REDACTED], P233, P235, P234, P239, P237, P238, P242, P243, P244, P246, P247, P250, P789, P251, P252, P790, P248, P780, P257, P260, P259, P256, P261, [REDACTED], P791, P743, P808: “General FOM is still the rule, however a number of patrols from UN and ECMM have been restricted locally with reference to safety reasons.”; P365; See also extracts of testimony from the following witnesses: Morneau testified that he and his colleagues went *around* the checkpoints of the Croatian Army: T.3927, T.3965; P308, p3; P309, para.12; Dangerfield gave evidence that on 9 August he was able to leave the camp and go on patrol to Kistanje: T.7260; Flynn testified that on 13 August, the HRAT was allowed to go to Benkovac: T.1088; Ermolaev testified that by 10 August, the UNMO headquarters patrol was patrolling the region: T.2354; Al Alfi stated that although it was not easy, “movement continued even until the last day we left”: P1160, p48; Hayden confirmed that they were not prevented by Croatian authorities to move around but that they were recommended not to go in certain places due to lack of security: T.10625; Munkelein stated that they were restricted in moving into some areas South from Knin, but in other areas of the former sector South they could move freely more or less and even when movement was restricted they still would manage to find other roads to reach the areas they wished to visit: P61, para.43; T.1645; Marti also testified about the breadth of the area in respect of which he and other were allowed to access: T.4712: “the direction south, Drnis et cetera, Maljkovo. We could go anywhere. The only road that which was closed for us after Operation Oluja was this road after Strmica”; Tchernetsky explained how he was able to get to an area near to Podinarje before the Special police arrived, notwithstanding the closure to patrols by the Special police due to mop up operations: P204, p5.

¹⁰⁰⁷ P109, p5.

day.”¹⁰⁰⁸ Another report on 10 August recorded that ROM was becoming “less of a problem” as they pushed out their “elbows in the absence of specific restrictions.”¹⁰⁰⁹ Despite a report from Akashi to the UN SG in New York on 10 August claiming that the movement of HRAT teams was “significantly restricted”, the HRAT report for that day recorded that their operations were “proceeding smoothly”.¹⁰¹⁰ Another report for 10 August recorded that “all teams” were “operational”.¹⁰¹¹

315. By 18 August, the weekly report compiled by Al-Alfi, the coordinator of political and humanitarian issues in SS reported that “freedom of movement throughout the Sector” was “generally accorded to UNCRO components.”¹⁰¹²

316. As regards the ECMM, the true extent of their FOM in the region is reflected in the summary reports issued in relation to data on villages and hamlets which the teams visited between 9-25 August 1995¹⁰¹³ (around 150 villages) and 9 August to 6 September 1995 (255 villages).¹⁰¹⁴

317. The FOM of UNCIVPOL has also been demonstrated.¹⁰¹⁵ A weekly report shows that by 21 August, UNCIVPOL had almost total FOM.¹⁰¹⁶ Temporary restrictions were experienced at police/HV checkpoints in exceptional circumstances and certain roads, (e.g. from Glina through

¹⁰⁰⁸ P806, p3.

¹⁰⁰⁹ P362, p2.

¹⁰¹⁰ P31, p1.

¹⁰¹¹ P830, p3.

¹⁰¹² P1162, para.6.

¹⁰¹³ SUMMARY- Consequences of Operation Storm on the former RSK - author Soren LIBORIUS, P815.

¹⁰¹⁴ LIST- villages within the former RSK, ECMM RC Knin, P810.

¹⁰¹⁵ D65, P226, P10, P229, P233, P235, P234, P238, P239, P237, P242, P243, P244, P247. Elleby stated that after they got FOM he could move where he wanted: T.3454.

¹⁰¹⁶ P230, p3.

Bos.Bojna to Velika Kladusa) were “genuinely insecure to travel on because of mines danger”.¹⁰¹⁷ The report concluded however that “Almost total freedom of movement, in sharp contrast to the conditions that existed during “RSK” control of the same area, has enabled UNCivpol, supplemented by HRATs, to perform extensive human rights monitoring.”¹⁰¹⁸

(k) Cermak had no Power to Decide upon the ROMs which Took Place at the End of August/Beginning of September due to Special Police Operations

318. During SP mop-up operations¹⁰¹⁹ in late August,¹⁰²⁰ Cermak notified the international forces and agencies of ROMs due to the operation codenamed *Oluja Obruc-Storm Encirclement*.¹⁰²¹ There is no evidence that he had the power, information and/or means to decide upon or determine where or when any such restrictions would take place. He received information on the SP operations from Markac in order to inform the international community.¹⁰²²

319. The operations were pursuant to Cervenko's order.¹⁰²³ Although ordered to submit intelligence for the planning of the operations,

¹⁰¹⁷ P230, p3.

¹⁰¹⁸ P230, p2.

¹⁰¹⁹ D562, P1238, P2376, D1100, P574, P576, P575, P579, P2379, D99, P2380, D565, D566.

¹⁰²⁰ Repinc D1932 – point 9.2; Testimony of the expert Repinc – pages T.26764–26765.

¹⁰²¹ D1055. On 29 August he announced he would provide information tomorrow; P408 Cermak informed Forand he will send a map identifying areas subject to operations; see also P34 p3.

¹⁰²² Markac interview, P2531 p37-39: “I sent this information to General Cermak”; “The only reason was so he could inform the international community, because he was in charge of that and so if they asked him he could inform them and their security wouldn’t be jeopardized”; P2531 p58: “Cermak wasn’t in charge of the military. He was in charge of the internationals...Cermak was just interested to know what we would do on a certain day on the ground so he could inform the international community.”; Cermak’s interviews, P2525, p125, p179; P2526, p22.

¹⁰²³ D561.

Cermak deferred the matter entirely to the Split MD.¹⁰²⁴ This was the extent of his involvement. The SP reported to Cervenko, not Cermak.¹⁰²⁵ There is no other evidence of any kind of involvement of the Garrison in the planning of these operations.

320. The communicated ROMs caused protests from the internationals.¹⁰²⁶ The majority of international forces and agencies perceived the restrictions as having been imposed by Cermak himself.¹⁰²⁷ Initially, the language of letters signed by Cermak, which used "we"¹⁰²⁸ may have appeared to imply that he was part of the decision-making process. Evidence however demonstrates that this impression was incorrect and that Cermak was merely transmitting information he received from the SP.¹⁰²⁹
321. The mere transmission of information about restricted areas cannot support the allegation that Cermak was "shielding the perpetrators from detection and his government from further criticism".¹⁰³⁰

¹⁰²⁴ P1219.

¹⁰²⁵ D562, P1238, P2376, D1100, P574, P576, P575, P579, P2379, D99, P2380, D565, D566.

¹⁰²⁶ P34 p3, P410, D144, P381, P386.

¹⁰²⁷ P410 refers to "restriction of movement imposed by *your office*", also P134 "ROM imposed by Gen Cermak office"; P816 reports "he [Cermak] will issue Rom there".

¹⁰²⁸ For example, P411 "our intention".

¹⁰²⁹ Markac interview, P2531 p37-39: "I sent this information to General Cermak"; "The only reason was so he could inform the international community, because he was in charge of that and so if they asked him he could inform them and their security wouldn't be jeopardized"; P2531 p58: "Cermak wasn't in charge of the military. He was in charge of the internationals...Cermak was just interested to know what we would do on a certain day on the ground so he could inform the international community."; Cermak's interviews, P2525, p125, p179. P2526, p22.

¹⁰³⁰ PTB, Para.78.

2. CERMAK WAS NOT RESPONSIBLE FOR SANITATION OF THE TERRAIN OR FOR ACCESS TO THE KNIN GRAVEYARD: *DE JURE* AND *DE FACTO*

*"He (Brkic) didn't come and he wasn't part of my logistics, he was just there at a time when we all tried to pull together and take care of all."*¹⁰³¹

(a) *De jure and De facto Sanitation of the Terrain*

322. The evidence of Zdravko Zidovec and Branko Sruk was that Civilian Protection (CZ) was transferred from the jurisdiction of the MoD of the Republic of Croatia to the MUP¹⁰³² and sanitation of the terrain was exclusively within the jurisdiction of CZ.¹⁰³³ The evidence has shown that the MUP made careful preparations to perform this duty and sought coordination with the HV to carry out their tasks.¹⁰³⁴ On the other hand, the orders issued by the HV Main Staff, which relied upon earlier directives¹⁰³⁵ also gave duties to the military to perform tasks of sanitation. It can be said this led to confusion and uncertainty in respect of this work.

323. It was into this area that Cermak was drawn when he arrived in Knin after its liberation, having played no part in the planning or development of strategies for this issue, nor did he have any background or expertise. None of the documents before or after Storm from the MUP or HV included him as a participant in the tasks for sanitation of the terrain and he did not have any authority as garrison

¹⁰³¹ P2525 , p74.

¹⁰³² D1570, para.69.

¹⁰³³ Zidovec, T.19881; D1570, para.64; D1737, para.3.

¹⁰³⁴ D232, p2; D233; D444; D447; D448; D43.

¹⁰³⁵ D1056.

commander to take it on as a responsibility, beyond the role of coordination.¹⁰³⁶ However, there is evidence that he was used to support steps taken by a Dr. Brkic who was the Chief of the MORH Health Administration and who had arrived in Knin as part of his general duties “to carry out an inspection” which he did “in every event of this kind”¹⁰³⁷ and appears to have annoyed those with the responsibility on the ground for hygiene and sanitation measures.

324. On 4 August 1995, Zidovec ordered under the Activation of the Civilian Protection and Fire Services for Operation “Return”, the co-operation of the PUs with military authorities and upon their approval the removal of dead bodies in co-operation with the crime police.¹⁰³⁸ Records were to be kept and information passed to the daily operations service as well as the MUP and CZ. Clearing up units for hygiene and sanitation were to be immediately established.¹⁰³⁹ The minutes of the meeting of the Heads of Crime Investigation after the liberation of Knin on 6 August 1995 reveals their responsibilities in identifications for burials and the need for liaison of Zidovec with the HV.¹⁰⁴⁰ Zidovec appointed Boris Davidovic as the CZ co-ordinator in the Zadar-Knin PU AOR for the clearing up of bodies in the terrain. Within the Knin region the Zadar-Knin PU was the primary body with responsibility for that task.¹⁰⁴¹

325. In the HV plan of engagement of forces for Operation Storm¹⁰⁴² the Chief of the Main Staff included no strategy for sanitation of the terrain as a result of combat operations. However, in the order for Logistics of

¹⁰³⁶ D34, p2, para.3.

¹⁰³⁷ D30; D1056; D1060; P2653, p2; P543, p2; D612, p2.

¹⁰³⁸ D232, item.4.

¹⁰³⁹ D232, item.7; D233.

¹⁰⁴⁰ D234; T.19880-81.

¹⁰⁴¹ D1574.

¹⁰⁴² D956.

Operation Storm issued by the Assistant Commander for Logistics of the Split MD, the humane disposal of corpses in the battlefield was required in *co-operation* with the PUs of Split-Dalmatia, Sibenik and Zadar-Knin Counties¹⁰⁴³ in accordance with the Geneva Conventions. That order under “Clearing up the Terrain”¹⁰⁴⁴ stated the following:

- (i) The Health Service Command of the HV shall organise the clearing up of the terrain in co-operation with the health care services of units and the LoB;
- (ii) Each unit was required to clear up the terrain if it did not involve large scale involvement of troops and equipment;
- (iii) Large scale clearing up was to be submitted to the Health Care Service of the Split MD;
- (iv) Health Care Service staff shall supervise the humane disposal of corpses in accordance with the Geneva Conventions;
- (v) Veterinary staff of the LoB shall supervise the clearing up of animal remains; and
- (vi) Necessary measures of disinfection and pest-control were to be taken in clearing-up operations.

326. On 5 August, the Chief of the Main Staff issued an order to the MDs to:

- (i) Establish a mixed sanitation detachment to include criminal investigation technicians from the MUP...a pathologist or other physician trained in the causes of death;¹⁰⁴⁵
- (ii) In coordination with the PUs the detachment was to include a team from the CZ unit from the County;¹⁰⁴⁶

¹⁰⁴³ P2570, item.7.

¹⁰⁴⁴ P2570, item.11.

¹⁰⁴⁵ D598, p2; see T.19880; D1570, para.65.

¹⁰⁴⁶ D598, item.2.

- (iii) Brigadier Zlatar, Head of Health Services in Operation and Planning Logistics (OPL) Sector of HV GS was named “to coordinate, supervise and provide expert advice to the participants in the sanitisation campaign;”
- (iv) Lt. Perajica was named as Deputy, being advisor of the veterinary services in OPL Sector of HV GS;
- (v) The commander of the detachment was to coordinate *all issues*¹⁰⁴⁷ in the sanitisation task;
- (vi) The sanitation was to be conducted within the procedures of the 1993 Regulations of the Military Defence, written by the Chief of Health Care Administration, Dr. Brkic;¹⁰⁴⁸ and
- (vii) This order also included the directive that “all unclear issues” were “to be solved through the MORH Health Administration.”¹⁰⁴⁹

None of these measures involved Cermak in their implementation and performance.

327. On 8 August 1995, pursuant to the 5 August order from General Cervenko, General Gotovina “*for the purpose of complete updating of the record as well as future planning of tasks*” requested a report on sanitation by the Split ZP Health Department and a report on human sanitation.¹⁰⁵⁰ Annexed are various reports:

- (i) Colonel Zdilar reported on human sanitation recovery between 6-14 August within the Sibenik, Zadar-Knin and Split Dalmatia Counties;¹⁰⁵¹

¹⁰⁴⁷ D598, item.2.

¹⁰⁴⁸ D1056.

¹⁰⁴⁹ D598, item.7.

¹⁰⁵⁰ D1738.

¹⁰⁵¹ D1738 – Colonel Zdilar's report for the Zadar- Knin County for 6, 7, and 8 August 1995 listed under numbers 1-16 are in the report by the Zadar- Knin Police Administration, D348, p4-5; Colonel Zdilar report for 7, 8, and 9 August 1995 listed persons numbers 1-73, are in the report of the Zadar- Knin Police Administration, D351, p2-6: numbers 24-101; Colonel Zdilar's IT-06-90-T

- (ii) Colonel Fuzul requested on 19 August teams for human and animal sanitisation to the Health Dept. Chief and Veterinary Dept. Chief; and
- (iii) Captain Boris Radovic on 16 September reported as Chief of Veterinary Service.

None of these measures involved Cermak in their implementation or performance.

328. On 11 August 1995, Gotovina issued an order¹⁰⁵² implementing the 5 August Cervenko order, in which he established “a mixed platoon at Military District level” of clear-up groups and a Detachment Command. Captain Boris Radovic identified in D1738 as Chief of Veterinary Services, was the coordinator, with Boris Davidovic already appointed under the MUP CZ order of Zdravko Zidovec,¹⁰⁵³ named as the deputy. This order was sent to the MUP including Stanko Batur of Zadar-Knin PU and HV officers named in its item 3, the Knin garrison commander (Cermak) and some of the brigades of the Split MD. There was no task or duty for Cermak under the order. The order was also not sent to the senior officials of the MUP, notably Zdravko Zidovec who had never seen it and did not agree it was implemented.¹⁰⁵⁴ However, Zidovec explained that in performance of their work it was thought necessary by the CZ that due to the conditions encountered on 5 August they would need logistical support from the HV.¹⁰⁵⁵

329. Witness Sruk stated the positions of the civil and military authorities to be (a) that the HV carries out these duties in the combat phase of the

report for 6 and 7 August 1995 listed under numbers 1-20 for the Sibenik County is the report by the Sibenik Police Administration, D353.

¹⁰⁵² P496.

¹⁰⁵³ D1574.

¹⁰⁵⁴ Zidovec, T.19886-7; T.19925.

¹⁰⁵⁵ Zidovec, T.19880-81.

operations; and (b) thereafter, CZ carries it out in the second phase in the liberated areas.¹⁰⁵⁶ Therefore, for a period whilst the civilian authorities are establishing themselves it is not unreasonable to expect that the two authorities would find themselves acting in the same region at the same time as Sruk himself described with the HV giving logistical support and manpower.¹⁰⁵⁷ The Cervenko order was issued before the installation of the civilian authority in the region on the 6 August¹⁰⁵⁸ and despite Gotovina's later order there has been no evidence to support that in fact the military took over the sanitation of the terrain from the CZ and ordered them in the performance of tasks actually undertaken.

330. A Special Report for 4–8 August to Assistant Minister Zidovec dated 8 August¹⁰⁵⁹ by Cemerin, Chief of the CZ in Knin provides an insight into the situation. That report is critical of the work of Zadar Knin PU in the region and details the problems and difficulties faced upon liberation of the occupied areas as well as the timeline of events:

- (i) The MUP CZ was ready on 5 August at 19.10 to enter Kijevo, Drnis, Benkovac, Vrlika and Knin;
- (ii) But Brkic at 19.17 announced he was going in first *"in accordance with the agreement with Vice President Kostovic"*;¹⁰⁶⁰
- (iii) The CZ were to prepare units for clearing up from the morning of 6 August;
- (iv) Body bags were to be obtained from the Military Districts;

¹⁰⁵⁶ D1737, para.5; See Zadar-Knin PU Operational Reports of sanitisation of the terrain: D348, D351, D352, P2652, D367, D353, D354, D355, D356, D357, D358, D359, D360, D361, D362. Reports received from MUP CZ, D602, D603, D604, D1575, D372, D374.

¹⁰⁵⁷ D1737, para.6.

¹⁰⁵⁸ D227.

¹⁰⁵⁹ D603.

¹⁰⁶⁰ D603: This note is important as Brkic is not recorded as saying at the time anything about Cermak ordering him to undertake measures.

- (v) Boris Davidovic was sent as the coordinator due to the problems;
- (vi) Co-ordination with the HV was unsatisfactory;
- (vii) Zadar Knin PU was criticised as performing poorly;
- (viii) Brkic was criticised as causing problems and his activities were requested to be restricted¹⁰⁶¹ and was held responsible with Zadar Knin PU for having constructed a common grave.

331. The only mention of Cermak is in a collateral manner where it is stated that no communications were possible from the command. The report outlines the full responsibility for sanitation as being with the MUP CZ.

332. The second report of Cemerin to Zidovec dated 11 August 1995, details continuing problems and serious failures in the performance and delivery of tasks.¹⁰⁶² The report contains the following information:

- (i) Those responsible for sanitation and hygiene were named as: Cetina, Durica, Batur, Davidovic, Romanic, Reljic and Cicko.
- (ii) The senior Advisor for CZ Cicko stated no-one had been present from Zadar Knin PU in Knin since 7 August, but he was working with Split-Dalmatia PU officers whose work was more or less finished but apartments in Knin still needed to be inspected.¹⁰⁶³
- (iii) There was no CZ action plan organised by Knin PU and it was not interested in taking on the responsibility.
- (iv) The HV representatives committed themselves to assist from 12 August in dealing with dead and roaming livestock for which they would join the action with 3-4 excavators, lorries, 150

¹⁰⁶¹ D603: This remark is important to corroborate steps taken later to justify his presence.

¹⁰⁶² D1575.

¹⁰⁶³ D1575, p4.

soldiers and units for security. The comment is made drawing from experience in W. Slavonia– *not too much help can be expected from the Croatian Military no matter what commitments have been made (it was the same HV representatives Brigadier Zlatar and his colleagues who negotiated there to).*¹⁰⁶⁴ Brig. Zlatar is named in the Cervenko order of 5 August¹⁰⁶⁵ as having responsibility for the HV sanitization campaign.

- (v) This report does not refer to Cicko being the subject of a request signed by Cermak “for the temporary transfer of personnel from the CZ” on 10 August.¹⁰⁶⁶ D1058 is yet another demonstration of Cermak’s lack of familiarity with his powers as Cervenko commented to Kovacevic.¹⁰⁶⁷ There is no evidence that anything came from Cermak’s request, for it is not referred to in any other documents or reports. The address to MUP CZ City of Zagreb, to no institutional position, contrasts with Cicko’s correct appointment by Assistant Minister Zidovec in P2571.

In this assessment which covers civilian and military authorities Cermak is not held as having any responsibility towards the tasks of those concerned with sanitization.

- 333. On 4 September 1995, the Split MD Commander repealed his order issued on 11 August 1995¹⁰⁶⁸ and disbanded the joint sanitation units “*In order to finalise the work on sanitation and transfer it to the civilian organs*”. The order was sent to the PUs in the zone of responsibility of the Split MD. The Chief of the Veterinary Administration and sanitation coordinator of the Split MD, Boris Radovic, acted upon the

¹⁰⁶⁴ T.19938 Zidovec commented in response to cross-examination “in our dealings there were no army doctors.

¹⁰⁶⁵ D598, item.7.

¹⁰⁶⁶ D1058.

¹⁰⁶⁷ T.22128.

¹⁰⁶⁸ D1739.

said order¹⁰⁶⁹ and on 16 September 1995 compiled a report on the sanitation carried out in the period between 6 August and 5 September 1995¹⁰⁷⁰ and sent it to the Operational and Planning Logistics of the Main Staff of the Croatian Army.¹⁰⁷¹

(b) The Garrison and its *De facto* Role

334. Cermak issued an order dated 5 August 1995 concerning the establishment of a staff for the sanitation of the terrain under the command of the Knin Garrison.¹⁰⁷² The issuance of that order and its content, as well as the reliance placed upon it by Brkic named therein as "The Chief of Staff", are questionable and not to be relied upon as reflecting what actually happened in Knin in August 1995.
335. The documents and evidence of the time referred to in the first part of this section in "*De jure and De facto Sanitation of the Terrain*" demonstrate that the Knin garrison had no responsibility or authority to take command of the sanitation of the terrain after the liberation of the occupied territories. Furthermore, those documents demonstrate Brkic, as Chief of the MORH Health Administration was not authorized to be the Chief of Staff for the Knin garrison for that work but had an inspectorate role as his reports to various senior figures outlined below show.
336. The order issued by General Cervenko on 5 August 1995 appointed Brig. Marijan Zlatar as coordinator of the Main Staff of the HV for the sanitation of the terrain.¹⁰⁷³ The MORH Health Administration from

¹⁰⁶⁹ *Ibid.*, item.3.

¹⁰⁷⁰ P507.

¹⁰⁷¹ D598, item.8: D1737, para.7.

¹⁰⁷² P506.

¹⁰⁷³ D598, item.7; Kovacevic, T.22128, General Cervenko also commented to expert witness Kovacevic who was Chief of the Department for Supervision of the Implementation of IT-06-90-T

which Dr Brkic came, could only resolve unclear issues and it may well be steps taken by him to improve an initial problem with burials in Knin cemetery brought him into controversy.¹⁰⁷⁴

337. The 5 August Knin garrison order¹⁰⁷⁵ of appointment of Brkic and others has been demonstrated to be unreliable and not based in fact.

(i) The Knin garrison was not established on 5 August 1995 and Cermak arrived on 6 August.¹⁰⁷⁶ Brkic *arrived* on 5 August under the authority of Vice-President Kostovic as recorded in the Special Report for 4–8 August to Assistant Minister Zidovec dated 8 August by Cemerin, Chief of the CZ in Knin.¹⁰⁷⁷ It is reasonable to conclude this order was backdated.

(ii) The order contains appointments of individuals to the hygiene and sanitation team for the garrison, in respect of whom Cermak had no authority to subordinate, nor did he subordinate as it never happened.¹⁰⁷⁸ Witness Sruk informed the court of those named in the order who never worked with him in such a team¹⁰⁷⁹ and who worked for him and did not work under the order.¹⁰⁸⁰ He also made it clear Cermak had no authority to order him as he was within a different structure of the HV.¹⁰⁸¹

Regulations of the MO, whilst dealing with another matter: "It seems to me that General Cermak doesn't really know what his authorities actually are." T.22129 "it seemed to him that General Cermak was not aware of his authority as the garrison commander. He also said it was understandable because he was not an active serviceman and many things had changed in the armed forces."

¹⁰⁷⁴ D598, item.7.

¹⁰⁷⁵ P506.

¹⁰⁷⁶ D1737, para.9; P2526, p8 and p101.

¹⁰⁷⁷ D603, p2.

¹⁰⁷⁸ D1737, para.8; Sruk, T.23309-16.

¹⁰⁷⁹ Radovic, Samardzija, Soldic, Gotovac (arrived after 10 days), Brkic.

¹⁰⁸⁰ Sokol, Cabo, Bota, Soda (listed as workers) were part of his unit.

¹⁰⁸¹ Sruk, T.23310 "entirely different commander and entirely different orders"; D1737, para.8 "even if I had received this order back then I would not have proceeded according to it because, I was subordinated to the Commander of OG North".

(iii) The order is not sent to anyone. Such an order would need to be received by the superiors of those transferred to enable them to be assigned to a new line of authority.¹⁰⁸²

(iv) Brkic also signed his reports as "Chief of Health Administration" not as Chief of Staff Knin Garrison.¹⁰⁸³

338. The reports issued by Brkic claiming to be acting under the Knin garrison order, seek to justify his role in Knin because it is apparent a dispute arose and they also contain some false claims about his work:

(i) He claimed the continuity of his work could not have been performed without the support of collaborators within Cermak's command and he names: *Dr. Petar Gotovac, Dr. Branko Sruk, veterinarian Snezana Soldic, Dr. Boris Samardzija, veterinarian Boris Radovic, Mrs. Dajana Sokol, Mrs. Branka Cabo, Mr. Ante Cabo and Mr. Vedran Soda*¹⁰⁸⁴. None of whom worked with him as he claimed.¹⁰⁸⁵

(ii) In the Special Report for 4 – 8 August to Assistant Minister Zidovec dated 8 August¹⁰⁸⁶ by Cemerin, Chief of the CZ in Knin, Brkic was criticised as causing problems. His activities were requested to be restricted and he was held responsible with Zadar Knin PU for having constructed a common grave. This report, and the follow up report¹⁰⁸⁷ did not refer to Brkic acting

¹⁰⁸² D1737, para.8 "*this order was worthless, because Civilian protection carried out the human and animal sanitation of the terrain upon their arrival in Knin*".

¹⁰⁸³ D30; D612; D1059; D1060; P543; P2653.

¹⁰⁸⁴ D1060, p2; P2653, p2; P543, p2.

¹⁰⁸⁵ D1737, para.13: "*we never worked with Dr. Brkic in the activities that he mentioned in his report; Sruk, T.23333-34.*

¹⁰⁸⁶ D603, p6.

¹⁰⁸⁷ D1575.

under the command of Cermak at the garrison. Nor is Brkic and the Knin garrison mentioned as one of the relevant authorities.

- (iii) Brkic was justifying his presence in Knin as a relevant authority *"On 7 August....my presence was essential because of the great sensitivity of the job and other tasks. A team was formed..by Lt General Cermak we took the job over.. "* as he sought credit for resolving the alleged "mass grave" issue.¹⁰⁸⁸ Acknowledgment that he was in some way involved in that issue comes from a report dated 12 August from Ivica Cetina, Chief Zadar-Knin PU *"On 11 August on orders from ...Brkic, Chief of the RH MO Health Administration an exhumation was conducted at the town cemetery in Knin of the bodies that had been temporarily buried during the clearing of the terrain before 7 August contrary to regulations of international law."*¹⁰⁸⁹
- (iv) Brkic as Chief of the MORH Health Administration submitted reports to Cermak,¹⁰⁹⁰ to the Chief of Civilian Protection Knin, Damir Cemerin: *"I hope to have justified my presence"*,¹⁰⁹¹ to the Minister of Defence Susak: *"I hope I have justified my presence"*,¹⁰⁹² to General Cervenko: *"I hope I have justified my presence"*,¹⁰⁹³ and to General Gotovina: *"I hope I have justified my presence"*,¹⁰⁹⁴ who were not part of the line of command to which he belonged. The inaccuracies within can only have served the purpose of justifying to the recipients his work, but also seek to justify his

¹⁰⁸⁸ D30, p2; D612, p2; D1059, D1060, P543, p2; P2653, p2.

¹⁰⁸⁹ P2652.

¹⁰⁹⁰ D1057 probably 09/08/95; D1059, 12/08/95; D30 12/08/95.

¹⁰⁹¹ P2653, p3.

¹⁰⁹² D1060, p2.

¹⁰⁹³ D1061 - This report deals with *Summer 95* not Oluja but was sent on that day from the MO Health Administration in Zagreb; D612, p3.

¹⁰⁹⁴ P543, p3.

good work and supervision. Brkic did not have an obligation to submit reports to them.¹⁰⁹⁵

- (v) Examination of Brkic's reports clearly indicate that he had compiled them on the basis of the reports he had received from the Sector for Operational and Planning Logistics of the Main Staff of the HV.¹⁰⁹⁶ That Sector received reports from the field.¹⁰⁹⁷ They were based on reports by the PUs. He informed Cermak¹⁰⁹⁸ on the tasks which were carried out by the MUP CZ. As regards the issue of identification, Sruk said *"this is odd to me, because Dr Brkic did not have the authority for it nor did he have subordinated employees who would do that for him and he also lacked the resources (equipment) for performing it."*¹⁰⁹⁹ That leads to the controversial parts which are identical in all three Brkic' reports,¹¹⁰⁰ in which he refers to the work of witness Sruk and his subordinates, under his command. Witness Sruk stated that this was not true and that neither he, nor his subordinates, had ever cooperated with Colonel Brkic in the tasks of sanitation of the terrain.¹¹⁰¹

¹⁰⁹⁵ D1737, para.13: *"I am very surprised with Mr. Brkic sending his report to all these people, because it was not common to report to the people who were not in the line of reporting. Assistant Minister of Defence for Logistics, General Zagorec, was his superior back then, and he was obliged to report to him, but he had no obligation to report to the other mentioned persons in the document...."*

¹⁰⁹⁶ D598, item.8: *"Daily reports on sanitization progress shall be sent by 22:00 hours to the OPL Sector of the HV GS detailing the situation at 20:00 hours and a final report shall be delivered no later than seven days upon completion of the sanitization. The OPL Sector of the HV GS shall forward reports of appropriate scope to the MORH Health Administration via regular channels."*

¹⁰⁹⁷ D598, item.8.

¹⁰⁹⁸ D1057; D1059; D30.

¹⁰⁹⁹ D1737, para.12.

¹¹⁰⁰ D1060, p2; P2653, p2; P543, p2: *"You can notice the continuity of our work in the report in the attachment. Surely enough, the task could not have been performed without/the support of/ CZ (Mr. Cicko and Mr. Olujic) and other collaborators, mentioned in the Colonel General Ivan Cermak's command.; Dr. Petar Gotovac, Dr. Branko Sruk, veterinarian Snezana Soldic, Dr. Boris Samardzija, veterinarian Boris Radovic, Mrs. Dajana Sokol, Mrs. Branka Cabo, Mr. Ante Cabo i Mr. Vedran Soda, together with Eng. Jelcic."*

¹¹⁰¹ D1737, para.13: *"I am very surprised that Dr Brkic referred to my work and the work of my employees, because it's not true. We never worked together with Dr Brkic on the activities that he mentioned in his report."*

339. [REDACTED]:

- (a) [REDACTED]¹¹⁰²
- (b) [REDACTED].¹¹⁰³ The Prosecution is plainly seeking to link all this activity to Cermak.
- (c) [REDACTED] [REDACTED]¹¹⁰⁴

340. As the evidence has shown, the matters raised in the above paragraph reflects one of many problems with OTP witness statements. Has this statement been (i) erroneously recorded? (ii) wrongfully put into the witness's mouth to build a case against Cermak? (iii) or made by the witness to mislead the OTP and avoid responsibility?:

- (a) Dr. Brkic was not a pathologist, carrying out forensic examinations and neither did he have information on the causes of death. There were no reports on the causes of death that could have been sent to him and then given as details in garrison meetings. Brkic had left Knin by the 12 August. [REDACTED]¹¹⁰⁵
- (b) Brkic was not engaged in the burial of bodies, such a description is misleading. It was the responsibility of the MUP CZ and the reports show they carried out that responsibility.
- (c) The Police kept extensive records on the collection of bodies in the sanitation of the terrain. The Zadar-Knin PU CZ section had

¹¹⁰² [REDACTED].

¹¹⁰³ [REDACTED].

¹¹⁰⁴ [REDACTED].

¹¹⁰⁵ [REDACTED].

responsibility for the hygiene and sanitation of the terrain in the region, [REDACTED]. This was discussed with Knin PU by CZ Chief Cemerin: *"the PU is not particularly interested either in taking over civilian protection activities as a part of its regular activities."*¹¹⁰⁶ Units from the Split-Dalmatia PU were also doing the sanitation in the region.¹¹⁰⁷ The Civilian Protection teams were travelling to Knin every day to carry out their tasks.¹¹⁰⁸ [REDACTED].¹¹⁰⁹ These reports were not sent to Cermak.¹¹¹⁰

- (d) [REDACTED].¹¹¹¹
- (e) [REDACTED].
- (f) Cicko is mentioned as clearing-up the terrain, Davidovic in Zadar is the main coordinator (p.3).
- (g) [REDACTED]¹¹¹² and it does not establish that Cermak or Brkic was in possession of lists of buried people or bodies. [REDACTED]. [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. [REDACTED]. There is no evidence this matter was in fact ever discussed with Cermak and [REDACTED] indicates that the contact with Davidovic would have provided all the answers that were needed.
- (h) [REDACTED].

¹¹⁰⁶ D1575, p3, para.3.

¹¹⁰⁷ D1575, p3, para.2.

¹¹⁰⁸ D57 Entries 193, 198.

¹¹⁰⁹ [REDACTED].

¹¹¹⁰ [REDACTED]; See D351-371 documents from Zadar-Knin PU.

¹¹¹¹ [REDACTED].

¹¹¹² [REDACTED].

341. Knin cemetery was not under the control of Cermak and the garrison. The CZ department of the MUP held the responsibility, which they discharged for the running and provision of burials in Knin cemetery.¹¹¹³ Internationals did raise the matter of the Knin cemetery with Cermak and he provided them with information available to him that burials were in accordance with the Geneva Conventions as he was concerned with allegations being made as to the nature of burials in Knin.¹¹¹⁴ This was consistent with his liaison role with the international community. He explained he passed on information about the cemetery¹¹¹⁵ which did not make him responsible for the work going on there which was the responsibility of others.¹¹¹⁶
342. Access to the cemetery appears to have been permitted or prevented by the CZ staff, who were not under the command of Cermak as the evidence clearly demonstrates.¹¹¹⁷ When witness Boucher wrote to Cermak concerning access to the cemetery, he was referred to the Chief of Knin Police Cedo Romanic whose responsibility it was and who granted him access.¹¹¹⁸ Boucher and others were clearly not aware that CZ came under the MUP and were unaware of the CZ uniforms.¹¹¹⁹ [REDACTED].¹¹²⁰ Access did take place by 15 August 1995¹¹²¹, when the site “gave an impression” of a mass grave, although that has never been an allegation supported by evidence.¹¹²² [REDACTED].¹¹²³ The fact CALO Dondo took an international delegation to the cemetery did not

¹¹¹³ D1737, paras.5,6,7; [REDACTED].

¹¹¹⁴ P2526 p112.

¹¹¹⁵ P2525 p77.

¹¹¹⁶ P2525 p83.

¹¹¹⁷ P675 paras.11, 45 et seq; P2525 p81; The Civilian Protection Department of the MUP appears not to have been understood by the OTP interviewer. Cermak explained they “come under the police” p105.

¹¹¹⁸ P1180, P1181.

¹¹¹⁹ W-82, T.14077, who could have turned them away on the 15 August although access was gained later the same day – see P33.

¹¹²⁰ [REDACTED].

¹¹²¹ P43, p3.

¹¹²² Munkelien, P61, para.25.

¹¹²³ [REDACTED].

make the Knin Garrison responsible for it.¹¹²⁴ Likewise Cermak giving information passed on by him as to numbers buried does not make him responsible for the same.¹¹²⁵

343. The evidence now reveals there were lists of names and places of burials held by the MUP through the Zadar-Knin PU signed by Police Chief Cetina.¹¹²⁶ These were not handed over to the internationals by MUP officials such as Cetina or the Kotar-Knin Police Chief, Cedo Romanic.¹¹²⁷ Romanic would certainly have been able to pass such information on and help as he was part of the MUP system, although whether he or Cetina could pass on such information has never been established. Romanic introduced the Helsinki Federation for Human Rights delegation to Jukic the Civilian Protection Officer in charge of the cemetery, who would certainly have been able to supply data which he was passing on to the Zadar-Knin PU from which they compiled their records for the MUP in Zagreb.¹¹²⁸ The internationals were frustrated by the division of authority between Zadar and Knin which they did not understand at the time but probably saw as obstruction.¹¹²⁹

¹¹²⁴ P2402, p72; Hayden, T.10658-60 Cermak merely assisted by sending Dondo with Hayden's delegation.

¹¹²⁵ Hayden, T.10661.

¹¹²⁶ See Zadar-Knin PU Operational Reports of sanitisation of the terrain: D348, D351, D352, P2652, D367, D353: This is signed by MATIC (Sibenik PU); D354, D355, D356, D357, D358, D359, D360, D361, D362. Reports received from MUP CZ D602, D603, D604, D1575, D372, D374.

¹¹²⁷ P216 p4, para.4; P675 para.56.

¹¹²⁸ See D57, p61, entry198.

¹¹²⁹ P675 para.56 to whom it was explained the lists were in Zadar; Marti T.4720-21.

¹¹²⁹ See D57 entry 198 – Jukic.

PART V

SUPERIOR RESPONSIBILITY - FACTUAL ANALYSIS

I. INTRODUCTION

344. The Prosecution alleges that the Knin garrison included the following HV units which were comprised or operated in the garrison and adjacent areas:

*the 4th and 7th HV Brigades; the 1st Croatian Guards Brigade (1 Hrvatski Gardijski Zdrug); the 113th Infantry Brigade; 142nd Infantry Brigade; 144th Infantry Brigade; 126th Home Guard Regiment ("126 domobranska pukovnija, 126 dp") ("HGR"); the 6th HGR; the 7th HGR; the 134th HGR.*¹¹³⁰

345. It is alleged that Cermak participated in various structures of power and responsibility and possessed effective control over those units. Cermak is also alleged to have possessed effective control over "civilian police who operated in the Garrison area and areas adjacent to it,"¹¹³¹ and a "Military police company".¹¹³²

A. No Superior-Subordinate Relationship: No Effective Control

346. The Prosecution has failed to prove beyond a reasonable doubt the first pre-requisite of Article 7(3) liability: the existence of a superior-subordinate relationship between Cermak and the alleged perpetrators of crime. Cermak had no effective control over the HV, VP or MUP.

¹¹³⁰ Joinder Indictment para.7.

¹¹³¹ *Ibid.*

¹¹³² See Prosecution Pre-Trial Brief at para.74.

347. The Prosecution has failed to prove beyond a reasonable doubt that Cermak was responsible for crimes committed by perpetrators who were alleged to have been either members of the HV, individuals dressed in HV uniform, or civilians.
348. An analysis of the relationship between Cermak and the HV, VP and MUP demonstrates clearly that he did not possess effective control over members of these institutions.

1. NO *DE JURE* SUPERIOR POSITION

349. As garrison commander, Cermak did not occupy a position of authority for the purpose of *commanding or leading* other persons who are to be legally considered his subordinates.¹¹³³ Any appointment which falls short of a *commanding assignment or leadership role vis-à-vis* those who are alleged to have committed the crimes is no evidence of a *de jure* relationship within the doctrine of command responsibility. Cermak occupied a non-command/non-operational position and was not therefore in a vertical superior-subordinate relationship with the perpetrators of crimes.

2. NO FORMAL OR INFORMAL HIERARCHY TO THE PERPETRATORS

350. In his non-operational position as garrison commander, he had no formal or informal position of hierarchy in relation to the perpetrators of crime, who were either civilians, civilians in uniform or members of the HV. In relation to effective control, the critical inquiry remains that of the *de facto* relationship between the accused and the perpetrators. A superior can only be held criminally responsible in relation to the

¹¹³³ *Strugar* Trial Judgement, para.142.

culpable conduct of his subordinates. Neither the HV, VP nor MUP were Cermak's subordinates, as demonstrated in **Part V, sections II, III and IV** herein.

3. NO REPORTING TO CERMAK

351. Neither the HV, nor VP nor MUP were under any obligation to report to Cermak.

4. NATURE OF ROLE AND TASK

352. The nature of Cermak's tasks to normalize life in Knin and assist the international community was not indicative of any degree of authority over the perpetrators of crime.

5. NO MILITARY EDUCATION, TRAINING OR EXPERIENCE

353. Cermak had never been in active service in the JNA or Croatian Army. He has never been in a position of operational command.

6. APPEARANCE OR BELIEF NOT ENOUGH

354. The existence of a position of authority has to be based upon an assessment of the reality of the authority of the accused.¹¹³⁴ The belief by some international witnesses, even if held in good faith, that Cermak held a position of authority or that he had effective control over certain individuals does not make him a superior under the law of superior responsibility, unless that belief is supported by *concrete*

¹¹³⁴ *Kordic* Trial Judgement, para.418.
IT-06-90-T

evidence that he *in fact* held such position or exercised such control.¹¹³⁵

In this case, there is no concrete evidence that Cermak exercised effective control as alleged. The reality of Cermak's limited authority has been addressed in **Part V, sections II, III and IV**.

7. MERE INFLUENCE NOT ENOUGH

355. The fact that Cermak may have had *influence* over certain individuals or situations does not equate to effective control. Effective control must be distinguished from lesser forms of influence or authority which certain individuals may be able to exercise, such as persuasion or the ability to convince, or prompt. These types of influence or authority allow the individual to disagree or decline to act without facing sanction.

8. NO AUTHORITY TO ISSUE AND ENFORCE ORDERS

356. Cermak had no authority to enforce the orders he sent to either the MUP or the VP. There is evidence that these orders were not received, not acted upon, or treated as information only.

9. THE TYPES OF ORDERS ISSUED WERE HUMANITARIAN OR ADMINISTRATIVE/LOGISTICAL

357. Cermak's orders were humanitarian, administrative or logistical. None of them were operational command orders or orders to commit crimes.

¹¹³⁵ *Halilovic* Trial Judgement, paras.342.
IT-06-90-T

10. CERMAK'S ORDERS WERE NOT TO ALLEGED PERPETRATORS

358. To be relevant to establishing effective control, an order must be an order from the accused to or binding upon those whom he is said to have had effective control over, i.e. the alleged perpetrators. The orders Cermak sent were to the VP and MUP, not to alleged perpetrators. The power of the accused to issue orders generally or to issue orders to third persons and the fact that such orders were obeyed by anyone other than the alleged perpetrators is thus of limited or no relevance to the issue of effective control.

11. MERE ISSUANCE OF ORDERS NOT ENOUGH

359. The existence of an order is in itself evidence of nothing other than the fact that it has been issued.

12. CHAOTIC SITUATION POST STORM

360. The Chamber must also consider the chaotic circumstances post Operation Storm when assessing the issue of effective control.

II. THE HV

A. The *De Jure* Authority of the Garrison Commander

1. CERMAK HAD NO *DE JURE* OPERATIONAL COMMAND OR CONTROL OVER THE HV UNITS

*"I didn't have any kind of authority over the Croatian Army."*¹¹³⁶

361. The role, obligations and authorities of garrison commanders in peacetime conditions are defined in Articles 50-59 of the Service Regulations of the Armed Forces adopted in 1992.¹¹³⁷ These provisions must be read in the context of the Organisational Order Regarding Work, Order and Discipline at Garrison Headquarters 27 August 1993¹¹³⁸ ("Organisational Order") and the "Instructions on regulating some issues within the jurisdiction of garrisons" ("Instructions").¹¹³⁹

362. The purpose of the Organisational Order was to set up a comprehensive system of command, cooperation and coordination at the level of the garrisons and to ensure comprehensive work, order and discipline.¹¹⁴⁰ The Prosecution expert witness Theunens failed to make any detailed analysis of these crucial provisions in his report.¹¹⁴¹ Contrast this with the reports of the Defence expert witnesses: General Feldi who was responsible, *inter alia*, for the Service Regulations and control and functioning of garrison commands in the HV;¹¹⁴² Pero

¹¹³⁶ P2526 p47.

¹¹³⁷ D32.

¹¹³⁸ D34.

¹¹³⁹ D34.

¹¹⁴⁰ D34, Introduction.

¹¹⁴¹ P1113 p65-67.

¹¹⁴² Feldi D1673 p44-48, p4-5.

Kovacevic an author of the Service Regulations;¹¹⁴³ and General Sir Jack Deverell who in the preparation of his report brought “40 years of military operational command and staff experience to bear”. In his opinion, the “Service Regulations...confirmed that garrisons in the Croatian Armed Forces existed to fulfil the same role as garrisons in other armed forces...”¹¹⁴⁴

363. Garrisons have no operational function, nor do the commanders have a right to command HV units. The garrisons organise supply services for the Croatian Army units.¹¹⁴⁵ The function of the garrison commander is to command those troops subordinated to him in such a way that ensures that the resources and capabilities within the garrison are available to those authorised to use them as and when required.¹¹⁴⁶

364. The Service Regulations provide for the responsibilities of a garrison commander as follows:

Article 50: delimits the garrison to a specific geographical area with clearly defined borders;

Article 52: a garrison commander is “responsible for placement, order, discipline and service in the garrison” and that “all units and institutions within the garrison are subordinate to the garrison commander in matters of order, discipline and service”.

Article 54(a): garrison commanders have responsibility to “issue rules on order, discipline and supervision of the behaviour of military personnel in the garrison”.

¹¹⁴³ Kovacevic D1676 p99-117, p4.

¹¹⁴⁴ Deverell D1784 p21-25, 5, 23.

¹¹⁴⁵ D34 point.2; Feldi D1673 p43, Kovacevic p110, Deverell D1784 p23.

¹¹⁴⁶ Deverell D1784 p25.

365. Other Articles within paragraphs 54-59 of the Regulations further qualify the responsibilities of a garrison commander by limiting his role to logistical tasks,¹¹⁴⁷ such as defining the billeting of units,¹¹⁴⁸ establishing training,¹¹⁴⁹ logistic and administrative facilities,¹¹⁵⁰ ceremonies,¹¹⁵¹ and responding to natural disasters and fire protection.¹¹⁵²
366. The Organisational Order 1993 found that the situation concerning garrisons was not satisfactory.¹¹⁵³ It provided that “Commanders of the Military District, the Croatian Navy and the Croatian Air Force and Anti-Aircraft Defence are superior and responsible for the entire work, order and discipline in garrisons in their areas”¹¹⁵⁴ and prescribed the general norms of relations, command and functioning for all garrisons in the HV.¹¹⁵⁵
367. Paragraph 2 of the Organisational Order explicitly states that “The garrison commands do not have an operational function or the right to command HV units, except precisely prescribed authorities regarding work, order and discipline outside of barracks and other military facilities, within the tasks provided by the Rules of Service of the Armed Forces”.¹¹⁵⁶ A correct understanding of paragraph 2 is critical to a proper comprehension of the limits of the garrison commander’s duties in respect of HV members passing through the garrisons. Feldi explained that paragraph 2 confirms the responsibility of the “garrison

¹¹⁴⁷ D32 Articles 54(b), (c), 59.

¹¹⁴⁸ *Ibid.* Articles 54(b), 56.

¹¹⁴⁹ *Ibid.* Article 54(c).

¹¹⁵⁰ *Ibid.* Articles 54(b), (c), 58.

¹¹⁵¹ *Ibid.* Article 57.

¹¹⁵² *Ibid.* Article 55.

¹¹⁵³ Feldi D 1673 p46.

¹¹⁵⁴ D34 para.1; Kovacevic D1676 p110.

¹¹⁵⁵ Feldi D1673 p46.

¹¹⁵⁶ D34, para.2.

commander as being limited on matters of work, order and discipline.”¹¹⁵⁷ Garrison commanders could only issue rules and instructions on work, order and discipline in the garrison as defined within the tasks provided in point 54 of the Service Regulations. These *precisely prescribed authorities* were also restricted to outside of barracks and other military facilities.¹¹⁵⁸ Such a restriction of the garrison commander’s authority is consistent with the specific duties of the barracks commander under Article 63 of the Service Regulations which is to “lay down order and discipline” within barracks. It is also consistent with paragraph 2 of the Organisational Order whereby garrison commanders could not issue orders to HV units as they had no right to operationally command them.¹¹⁵⁹ This evidence was not challenged by the Prosecution during the cross-examination of experts Feldi, Kovacevic or Deverell. This evidence contradicts the Prosecution’s allegations in paragraphs 74 and 75 of their Pre-Trial Brief.¹¹⁶⁰

368. Kovacevic explained that the basic principle in paragraph 2 of the Organisational Order is essential for understanding all garrison relations, and in particular those related to the VP.¹¹⁶¹ Deverell stated that the authority and responsibility of garrison commanders was “deliberately constrained in order to protect the principle and practice of unity of command” whilst giving the garrison commander “the necessary powers to maintain good order and military discipline within his garrison”.¹¹⁶² This was “irrespective of the rank of the commander.”¹¹⁶³ This is also further demonstrated in the Instructions

¹¹⁵⁷ Feldi D1673 p46-47; Deverell D1784 p23.

¹¹⁵⁸ Feldi D1673 p46-47.

¹¹⁵⁹ D1673, paras.2.3.10-2.3.11.

¹¹⁶⁰ PTB, paras.74 and 75.

¹¹⁶¹ Kovacevic D1676 p110-111.

¹¹⁶² Deverell D1784 p27.

¹¹⁶³ Deverell D1784 p27.

attached to the Organisational Order at item 11: if the garrison command is not located within secured facilities the Commander of the Military District “shall issue an order assigning one of the units from the area of the garrison to provide physical security of the garrison command”.¹¹⁶⁴ The garrison commander does not have that authority over the units himself.

369. The Prosecution’s interpretation of Article 52 of the Service Regulations that all units and institutions *within* the garrison were subordinated to the garrison commander in matters of order, discipline and service without limitation, would mean that a unit simply transiting through the garrison area or not permanently based there, would be automatically subordinated to the garrison command. Such an interpretation results in a garrison commander being held responsible for actions of individuals over whom he had no command authority or any influence over their standards of training and discipline. This would require a garrison commander to re-task units during the period they were in the garrison. Deverell confirmed that such an interpretation “would make a mockery of the principle of unity of command and the practice of subordination.” It would also “undermine paragraph 2 of the Organisational Order”.¹¹⁶⁵ Deverell stressed throughout his report that the concept of subordination is a crucial element in the doctrine of effective command and control in the armed forces.¹¹⁶⁶ Subordination reflects the principle of unity of command according to which no man can serve two masters.¹¹⁶⁷ Commanders must know who is under their command and units and individuals must know who commands them.¹¹⁶⁸

¹¹⁶⁴ D34 Instructions Item 11; See also D770, D790 on the limitation of the ZM commander as to security.

¹¹⁶⁵ Deverell D1784 p24.

¹¹⁶⁶ *Ibid.* p19.

¹¹⁶⁷ *Ibid.* p11.

¹¹⁶⁸ *Ibid.* p11-12.

2. CO-ORDINATION AND CO-OPERATION OF TASKS OF THE GARRISON COMMANDER

370. The Service Regulations 1992 stipulate the non-operational tasks of the garrison. Certain aspects of the garrison's responsibilities necessitate contact with institutions outside the armed forces in order enable the garrison to perform its tasks.¹¹⁶⁹ Consequently, the 1993 Organisational Order point 3 requires the garrison commands "to establish coordination and cooperation of the tasks of the garrison with administrations and departments for defence, departments for care, stationary telecommunications and information systems, departments of the MORH headquarters administrations and other bodies and institutions of the MORH, MUP and other government administration organs".¹¹⁷⁰ The Instructions to the Organisational Order at item 5 also require the garrison commander to establish cooperation and coordination with the police administration or the police stations in conjunction with the arrangement and reciprocal exchange of information regarding the maintenance of work, order and discipline and the conduct of military personnel in public.¹¹⁷¹

371. This relationship of coordination and cooperation between the garrison and the institutions does not establish or "grant the right of command".¹¹⁷² Deverell clarified that "coordinating authority aims to facilitate collaboration, cooperation, coordination and de-confliction between different elements of a force or other structures."¹¹⁷³ Coordinating authority also means that "A task cannot be imposed by one headquarters on the other. If there is disagreement, it has to be

¹¹⁶⁹ D32 see Articles 54, 55, 56, 57, 58.

¹¹⁷⁰ D34; Deverell D1784 p14; Feldi D1673 p47.

¹¹⁷¹ D34; Kovacevic D1676 p116-117; Feldi D1673 p47, 52.

¹¹⁷² Feldi D1673 p47; Deverell D1784 p23.

¹¹⁷³ Deverell D1784 p14.

referred up the separate chains of command to the next higher headquarters to be resolved. One headquarters cannot issue orders to another though they may issue coordinating instructions in the form of an order.”¹¹⁷⁴

3. TASKS OF GARRISONS

372. The Service Regulations 1992¹¹⁷⁵ and the Organisational Order 1993 with the Instructions¹¹⁷⁶ set out the *de jure* tasks of garrisons. The Instructions also contain duties of the military authorities superior to the garrison.¹¹⁷⁷ The duties of the MDs are set out in the Instructions at: Items 1; 6; 11; 20. ¹¹⁷⁸ Kovacevic stated: “The Commander of the Split Military District...never acted in accordance with Item 4 of this order and set out specific tasks for the Knin Garrison, precisely due to the fact that the units which were located in the area of the Knin Garrison were engaged in combat tasks and operational actions....”¹¹⁷⁹

373. The *Service* responsibilities of Articles 54 (b) and (c)¹¹⁸⁰ to provide services and facilities in the garrison to enable units to function and operate¹¹⁸¹ are set out in the Instructions at items 2; 3; 4; 7; 15; 16; 19; 21 and 27.

374. *Discipline* is defined in Article 54(a) and obliges all HV members to respect and implement the prescribed instructions and rules of the garrison for which purpose they are subordinate.¹¹⁸² The matters

¹¹⁷⁴ *Ibid.* p21.

¹¹⁷⁵ D32.

¹¹⁷⁶ D34.

¹¹⁷⁷ D34 Items 1, 6.

¹¹⁷⁸ Kovacevic D1676 p110.

¹¹⁷⁹ *Ibid.*; See D34 Instructions item 1.

¹¹⁸⁰ D32.

¹¹⁸¹ Feldi D1673 p46; Deverell D1784 p27 “tasks and duties”.

¹¹⁸² Feldi D1673 p45; Deverell D1784 p22 l.31-p23 l.3, p23 l.31- p24 l.10; Kovacevic D1676 p109.

requiring instructions and rules are in the Instructions at items 3; 4; 5; 14; and 17.

375. *Order* is defined in Article 54(a) and is the responsibility of the garrison commander to provide rules for order and conduct in the garrison.¹¹⁸³ The garrison commander is responsible for imposing such regulations as are required to achieve this: for example: establish vehicle speed limits, allocate routes, determine the opening times for facilities, define the services available.¹¹⁸⁴ The relevant items are: 5; 10; 12; 18; 19; 20; 22; 23; 24; 25; 26; and 28.
376. *Placement* is the responsibility to provide placement or accommodation in buildings or other places for units and institutions in the garrison.¹¹⁸⁵ The relevant items are: 7; 8; 9; and 13.
377. The *de jure* tasks of the garrison commander are clearly non-operational and of a scope limited to ensure that units of the Croatian armed forces were placed, serviced, and followed the rules of the garrison with good order and military discipline. As Deverell stated: "The garrison exists to support the deployable and operational elements of the army. It provides facilities and manages resources often for the armed forces as a whole. It establishes links with civilian support infrastructure; it manages the military civil interface for public utilities, the law and government, and social services. The commander is selected based upon his experience to meet these challenges."¹¹⁸⁶

¹¹⁸³ Feldi D1673 p45; Deverell D1784 p23 l.33-p24 l.10.

¹¹⁸⁴ Feldi D1673 p45; Deverell D1784 p22 l.31-p23 l.3, p24; Kovacevic D1676 p109.

¹¹⁸⁵ Feldi D1673 p45.

¹¹⁸⁶ Deverell D1784 p22.

4. AUTHORITY OF THE GARRISON COMMANDER TO DISCIPLINE

378. In the Croatian Armed Forces, superior officers decide the disciplinary responsibility of their subordinates and hand down disciplinary measures as authorised by the Code of Military Discipline.¹¹⁸⁷ The Code of Military Discipline is the *lex specialis* as regards issues of military discipline.¹¹⁸⁸ A garrison commander has such authority over his subordinates under Article 19 of the Code of Military Discipline to issue disciplinary measures as defined in Articles 3, 10 and 21.¹¹⁸⁹
379. Under Article 26 of the Code of Military Discipline the commanders of garrisons, *inter alia*, shall issue disciplinary measures to offenders who are not members of their *organic* unit if such measures are necessary and required for maintaining order and discipline. If the commander decides it is not necessary for an offender who does not belong to his organic unit to be punished immediately, the matter is forwarded to the offender's superior officer.¹¹⁹⁰ Kovacevic, an author of the Code of Military Discipline 1992,¹¹⁹¹ described what would be required for a garrison commander to exercise Article 26 authority:¹¹⁹² knowledge that a minor offence of discipline had been committed within the garrison area; the perpetrator was known; the perpetrator's unit was known; the superior officer had taken no steps to discipline the perpetrator and prompt sanctioning was necessary by the garrison commander to deal with the matter. A garrison commander is restricted to disciplining minor violations.¹¹⁹³ Examples of minor violations would be "failing to obey administrative instructions (failing

¹¹⁸⁷ P1007 Article 19; Deverell D1784 p34.

¹¹⁸⁸ Kovacevic D1676 pp 39, 109.

¹¹⁸⁹ Feldi D1673 p45.

¹¹⁹⁰ Kovacevic D1676 p37, 39; P1007 Article 26.

¹¹⁹¹ Kovacevic D1676 p4.

¹¹⁹² *Ibid.* p39.

¹¹⁹³ Deverell D1784, p34.

to observe traffic regulations, failing to hand over equipment in proper condition) or for behavioural offences (creating a disturbance, excessive drinking etc). Examples of major violations would be more serious offences such as murder, looting, burning, as well as serious examples of undisciplined behaviour such as threatening a senior officer or refusal to carry out an order during combat operations.”¹¹⁹⁴ In the case of major violations committed by officers and non-commissioned officers, it was the Military District Commander who had the responsibility and authority to bring charges before a military disciplinary court.¹¹⁹⁵ Article 31 determines that “in situations where the authorised officer finds that the offence against military discipline is also a criminal offence, the case shall be sent via regular channels to the authorised prosecutor; if he thinks that it is in the interest of the service, he shall also initiate disciplinary procedures. Where the offence against military discipline has the characteristics of a crime against the armed forces, which under the provisions of the Criminal Code may be dealt with in disciplinary proceedings, the superior officer shall send the matter to the officer authorised to decide on the disciplinary offence.”¹¹⁹⁶

380. As Deverell explained, even if there had been “a view that those accused of...criminal offences should be subject to disciplinary as well as criminal proceedings” Cermak had no authority to discipline major violations.¹¹⁹⁷ Consequently Cermak had no legal authority under the code to *discipline* any HV member or unit cited in paragraph 7 of the Indictment for the commission of crimes. Units of the HV listed in paragraph 7 were not subordinated to Cermak.

¹¹⁹⁴ *Ibid.* p32.

¹¹⁹⁵ Deverell D1784 p32 and P1007 at Article 69.

¹¹⁹⁶ P1007.

¹¹⁹⁷ Deverell D1784 p33.

381. Feldi speaks from a clear position of authority on this subject and stated that Article 52 of the Service Regulations make the garrison commander only responsible for discipline in the garrison to the extent defined by Article 54 (a) which requires the commander to issue rules and instructions for discipline in the garrison. Members of the HV are obliged to respect and implement them. Article 26 gives the garrison commander authority to discipline HV members who are not subordinated to him, but behave in an undisciplined manner and breach the rules and instructions for order and discipline.¹¹⁹⁸
382. The Organisational Order 1993 confirms at point 2 the limitation of the garrison commander as not having an overarching authority over all the units in his area to command and control their conduct. He has no authority within barracks and military facilities to issue rules or instructions so the limitations of his role are apparent.¹¹⁹⁹ The establishment size of the garrison in Knin would have rendered it incapable of exercising adequate command and control over operational forces.¹²⁰⁰

B. Cermak's Military Position and Rank

383. In spite of "being a Colonel General, Cermak's authority and responsibility was that of a garrison commander, an appointment normally filled by a Major".¹²⁰¹ Cermak had never been a soldier and "had never done any of the jobs that an officer would normally have done before being promoted to General Officer".¹²⁰² Authority "within

¹¹⁹⁸ Feldi D1673 p45; Deverell D1784 p34.

¹¹⁹⁹ Feldi D1673 p47, Deverell D1784 p34.

¹²⁰⁰ Deverell D1784 p29.

¹²⁰¹ D1784, p38.

¹²⁰² *Ibid.*

a military command system is invested by the **appointment** an officer fills, not by his rank.”¹²⁰³

384. See Part III of this brief: **Background, Appointment, Role and Establishment of Knin Garrison.**

C. No *De Facto* Superior-Subordinate Relationship with Units of the HV

385. Witnesses who were in Knin during the relevant period of the Indictment and had direct knowledge of the facts confirmed that Cermak did not have command and/or control over HV units. Witnesses Pasic (OTP statement and Defence statement), Rincic, Lukovic (OTP and Defence statement), Dondo (OTP and Defence statement), Teskeredzic, Cipci, Sruk and Feldi (OTP witness statement taken in 2003 before he became a defence expert) all explained that in his position as garrison commander, Cermak did not have operational command over HV units.¹²⁰⁴ This evidence was deliberately excluded from the Prosecution case and demolishes the notion that Cermak was an operational commander in a superior-subordinate relationship with effective control over the units in paragraph 7 of the Indictment. As the law of command responsibility states, a *de jure* superior-subordinate relationship results from an official and valid appointment to a position of authority that mandates command and control of subordinates. In his position as garrison commander, Cermak had no such command and control.

¹²⁰³ *Ibid.*

¹²⁰⁴ Pasic, D1707, para.25; D1706 p4; Rincic, D1680, para.12; Lukovic; D1688, para.19; D1687, para.44; Dondo, D1696 para.17; D1695 para.16, T.22545, T.22552; Teskeredzic, D1732, para.10; T.23273; Cipci, D1723, para.18, T.23072, T.23076, T.23166-23167; Sruk, D1737, para.9; Feldi, D1674 p.9, T.21817, T.21821-21822, T.21989.

386. This direct evidence was confirmed by the Prosecution expert witness Theunens and the Defence expert witnesses Feldi,¹²⁰⁵ Kovacevic¹²⁰⁶ and Deverell.¹²⁰⁷ This evidence was not challenged in cross-examination by the Prosecution and amounts to a clear contradiction of the allegations in the indictment.¹²⁰⁸ Prosecution expert Theunens stated that he had not addressed the central issue of effective control in his report and that during his review of documentation, he had not seen any material or documents “on that aspect concerning the role of General Cermak as the commander of the Knin garrison.” Theunens agreed that paragraph 7 concerning Cermak’s alleged command and control over HV units did not fit with the tenor of his expert’s report.¹²⁰⁹ In the “thousands” of Split MD documents he considered, Cermak was only copied in on a “handful of matters”.¹²¹⁰ There were “very few orders by General Gotovina to the Knin garrison command or the Knin garrison commander during the time-period” Cermak was commander of the Knin Garrison.¹²¹¹ The dearth of communications and orders from the Split MD to the garrison is compelling evidence of the lack of a *de facto* subordination of the garrison to the Split MD and confirms once again the clear non-operational role of Cermak as garrison commander. Examples include the following: Cermak was not sent a copy of the order issued by Gotovina for an “active defence” on 9 August 1995;¹²¹² nor the organisational chart of the order.¹²¹³ On 11 August 1995, Gotovina issued orders to set up the Knin Forward Command Post¹²¹⁴ This order was not sent to Knin garrison. On 13 August, Gotovina issued the Communications Plan from the FCP Knin which contained

¹²⁰⁵ Feldi, D1673, p43-49, paras.2.2.1-3.1.6; T.21817; T.21821-21822; T.21989.

¹²⁰⁶ Kovacevic, D1676, p109 and 111, paras.6.3.3 and 6.4.3.

¹²⁰⁷ Deverell, D1784, p19, 26, 29, 34-35, 39; T.24155; T.24298-24300.

¹²⁰⁸ Para.7.

¹²⁰⁹ Theunens, T.12989-1.

¹²¹⁰ *Ibid.*

¹²¹¹ *Ibid.*

¹²¹² D281.

¹²¹³ *Ibid.*, p19.

¹²¹⁴ D772.

no reference to the Knin garrison.¹²¹⁵ These documents are examples of the lack of importance and authority of Knin garrison within the Split Military District.¹²¹⁶

387. The Defence submits that it is highly significant that the Trial Chamber has not heard any other evidence called by the Prosecution from any other member of the HV that Cermak was their operational commander or that he exercised effective control over any of the HV units listed in paragraph 7. The evidence has demonstrated overwhelmingly that a garrison commander is not an operative commander;¹²¹⁷ he has a logistical duty to service all units within his garrison area but he has no authority to issue orders to them.¹²¹⁸
388. There has been no evidence of Cermak being part of the chain of reporting of HV units listed in paragraph 7 of the Indictment. Cermak was not a recipient of operative reports or orders that would have been sent to him had he been a commander with effective control over the HV units listed in paragraph 7.¹²¹⁹ He did not have the rights of a superior within a hierarchical command structure to “issue orders, decisions and commands which must be carried out by a subordinate without reservation, correctly and in a timely manner.”¹²²⁰ The principle of military subordination as defined by the Law on Defence, the Law on Service in the Armed Forces and secondary regulations

¹²¹⁵ D774.

¹²¹⁶ D1784, p39.

¹²¹⁷ D34, point.2; Rincic, D1680, para.12; Lukovic, D1688, para.19; Teskeredzic, D1732, para.10; Theunens P1113, p68, Feldi, D1673, p43-49, paras.2.2.1-3.1.6; Kovacevic, D1676, p102, para.6.2.11 ; p.110-111, paras.6.4.1-6.4.5; Deverell, D1784 p23, 28-29, 38; Deverell, T.24159.

¹²¹⁸ Rincic, D1680, para.12; Lukovic, D1688, para.19; Dondo, D1695, para.16; Sruk, D1737, para.9; Theunens, P1113, p65-67, PART I; Feldi, D1674, p9; D1673, p43-45, paras.2.2.1-2.3.5; Deverell, D1784, p21-23, 40-41; Kovacevic D1676, p110-111, para.6.4.3-6.4.5.

¹²¹⁹ E.g. D983, D984, D1002, D1003, D828 and D987 (report on inspection of ZP Split dated 30-10-95 – there is no mention of the Knin garrison); D559, 113th Infantry Brigade: D652, D651, D192; 134th HGR: P1200, D985, D885. P2325, P2350, D969/P1125, P1129, D281 (see Deverell at T.24172-3); D204, D772, D773, P1131.

¹²²⁰ Feldi, D1673, p20, para.1.3.16.

shows “the garrison commander in the chain of command, as a commander lacking the right of operative command.”¹²²¹ Any subordination of the units in paragraph 7 to the Knin Garrison would have “undermined the whole concept of the unity of command”.¹²²² The key issue in respect of whether an officer is within a functioning chain of command is whether or not he has a “commanding duty.”¹²²³ It is “wrong and incorrect to determine the place and position” of commanders on the basis of their personal rank.¹²²⁴

389. In terms of the identity of the troops listed in paragraph 7, it is highly significant that no exhibits have been tendered of reports or orders sent to Cermak by any of the units, e.g. 126th dp, 142nd Infantry Brigade, 144th Inf Brig, 1st HGR, 4th HGR, 6th HGR, 7th HGR, 7th Guards Brigade.
390. It is highly significant that Cermak was not even informed about the appointments of other garrison commanders.¹²²⁵ Neither did the Knin garrison receive orders from the MD Command which were sent to other garrisons within the district.¹²²⁶ Cermak appeared “to have been largely left out of the loop, in spite of the Knin garrison being subordinated to [the] Split Military District.”¹²²⁷ The “operational chain of command was largely uninterested in his role.”¹²²⁸
391. One of the few HV documents which was sent to Cermak was also addressed to Gotovina and emanates from General Cervenko, Chief of the Main Staff of the HV on 21 August 1995.¹²²⁹ General Cervenko

¹²²¹ Kovacevic, D1676, p75, para.4.3.11.

¹²²² Deverell, T.24161.

¹²²³ Kovacevic, D1676, p118, para 7.1.3.

¹²²⁴ Kovacevic, D1676, p75, para 4.3.15.

¹²²⁵ D1004 and D1005.

¹²²⁶ E.g. P1184, D1006, D772, D1639.

¹²²⁷ Deverell, D1784, p42.

¹²²⁸ Deverell, D1784, p42 and p44.

¹²²⁹ D561.

orders *inter alia* the provision of intelligence reports on the presence of “enemy groups” in the liberated territories. In his response,¹²³⁰ Cermak explains that “the Split Military District Command and Knin Garrison are in constant co-ordination” and that the “intelligence assessment” was made by the Chief of the Intelligence Department of Split Military District Command and that submission of the same would be a repetition of work. Deverell interpreted this reply as a sign of Cermak’s inability to cope with the level of work which would have been required and a lack of physical means to provide the intelligence assessment requested.¹²³¹ His response is not *indicia* of effective control over HV units. His absence from the chain of reporting of troops within the Split MD, and the absence of the Knin garrison from any communication plan,¹²³² meant that he did not receive, and was therefore not in a position to pass on, act upon or order others in respect of the flow of information he would otherwise have received from operational units.¹²³³

392. Cermak could not command units that he had no superior authority over and were not subordinated to him.¹²³⁴ “The principle of determining position in the military chain of command according to the principle of superiority does not include the criterion of an officer’s or commander’s personal rank but is rather a criterion of commanding duty”.¹²³⁵ “Commanders must know who is under their command, and units and individuals must know who commands them”.¹²³⁶ “Thus no officer has the authority to task or re-task a person of inferior rank

¹²³⁰ P1219.

¹²³¹ Deverell, D1784, p30 re: P1219.

¹²³² Deverell, D1784, p29.

¹²³³ Deverell, D1784, p29.

¹²³⁴ Rincic, D1680, para.12; Lukovic, D1688, para.19; Teskeredzic, D1732, para.10; Sruk, D1737, para.9; Kovacevic, D1676, p111, para.6.4.5; Feldi, D1673, p47, para.2.3.11; p55-56, para.3.4.5; Deverell, D1784, p11-13, 19.

¹²³⁵ Kovacevic, D1676, p118, para.7.1.3.

¹²³⁶ Deverell, D1784, p11.

unless they are formally subordinated to him".¹²³⁷ "A commander can only subordinate to others that which he has authority to command."¹²³⁸

393. Irrespective of his rank, Cermak could not have had any higher authority than the garrison commander of the garrison in Split which was much larger and comprised several combat units.¹²³⁹ The units in Knin which "were not permanently stationed in the garrison"¹²⁴⁰ were not even in "direct communication with garrison commander".¹²⁴¹
394. Finally, the Trial Chamber must take into account evidence that Cermak did not understand military hierarchy or military relations in general according to the analysis by General Deverell, which may have caused misunderstandings as to his actual authority.¹²⁴² Deverell stated during his testimony that in his analysis he never came across orders from Cermak to any of the HV units listed in the Indictment, nor reports from those units to Cermak, which to him were clear indicators of Cermak's lack of operational control over those units.¹²⁴³ Deverell also never saw evidence that these units were either part of the garrison or attached to it.¹²⁴⁴ This demonstrates the factual truth of Cermak's authority and caused the prosecution expert Theunens to concede the absence of effective control.

¹²³⁷ *Ibid.*, p19.

¹²³⁸ *Ibid.*, p40.

¹²³⁹ Cipci, T.23072.

¹²⁴⁰ Feldi, T.21822.

¹²⁴¹ Feldi, T.21822.

¹²⁴² Deverell, T.24149-50.

¹²⁴³ Deverell, T.24158-60.

¹²⁴⁴ Deverell, T.24160-61.

D. International Witnesses: Unreliable Factual Foundation in Respect of Cermak's Role, Responsibility and Authority

*"I never introduced myself as a governor. I always said 'Commander of the Garrison Headquarters'. I don't know what other people called me."*¹²⁴⁵

395. The Prosecution relies on evidence of international witnesses to prove that Cermak possessed effective control and bore superior responsibility for the acts and omissions of the HV troops listed in paragraph 7 of the indictment.¹²⁴⁶ None of those witnesses were

¹²⁴⁵ P2525 p173.

¹²⁴⁶ Prosecution witnesses testified that according to their understanding, belief, or impression, Ivan Cermak was "the highest military authority in Knin": Elleby, P217; the "Head of the military in the Knin area": Elleby, T.3379; "the military governor": Roberts, P675, para.9, para.76; P677, p.7; Flynn, T.1133; Leslie, T.2176-77; Forand, P330, p10, P331, p17, p25; Mauro, P1098, p3; Dangerfield, P695, para.11; Al-Alfi, P1160, p66, p76; Liborius P800, p2; P801, p8; Hansen P1283, p3; P1284, p2-3; Lyntton, P870, para.24; a representative of the "authority of Croatia": Roberts, P675, para.24; "the mayor of the area": Berikoff, P739, p2; "the overall commander": D284, p60-61; "the HV military commander": Hayden, P986, para.5; P987, para.13; "the head military authority for the Croatian army": Hill, P292, p95; "military commander of the Croatian army in charge of Knin": Al-Alfi, P1160, p49; and "a figurehead appointed by President Tudjman": Berikoff, P741, para.10.

International witnesses described how they *believed* that Ivan Cermak was "responsible for all military activities and all civilian activities": Flynn, P20, p9; that he had "the authority to take action with regard to all matters, including operational matters, freedom of movement, concerns about security, concerns about the continuing presence in the zone of particular military units and other matters.": Flynn, T.1133; Others stated that they had been "told that General Cermak as the military governor of Knin, had responsibility for the governor's troops..." Leslie, T.2190; and "led to *believe* [that Ivan Cermak] commanded all the military assets in Sector South": Hill, P292, p95.

Several witnesses stated that Ivan Cermak told them that he was responsible for law and order until political figures were elected: Liborius, P800, p2; T.8358; T.8683. However the witness proved to be unaware of a series of documents showing Ivan Cermak's lack of authority to subordinate troops to himself (T.8636-43, reference is to D760, D761, D762, D763, D764, D765, D766, D767, D768, D769); Hendriks, T.9803; Hansen, T.14966 re in terms of guaranteeing law and order in this chaotic time, it would be fair to say that Hansen considered Cermak a "minor player" and "not an influential figure" and Mr. Cermak's actions certainly did not stop looting in the region; Hansen, P1284, p3: "he at all times gave the impression of being the person-in-charge for the situation in the former UN Sector South"; Lyntton, P870, para.28: "Cermak presented himself as the commander of the area", "and it was clear from talking to him that I was talking to the man that was in charge of security for the area". However in the course of cross examination, Lyntton acknowledged that such

Croatian or had worked within the Croatian government, civilian or military authorities.

396. The opinions of international witnesses often lacked factual foundation or were based upon incorrect assumptions as to Cermak's authority and role. In the context of Article 7(3), such evidence is insufficient, unreliable and cannot be used to support the allegation of a superior-subordinate relationship between Cermak and those who are alleged to have committed crimes.
397. Throughout the trial, the Chamber has expressed the importance of establishing facts based upon evidence as opposed to impressions¹²⁴⁷ or beliefs¹²⁴⁸ from factual witnesses. Opinions or conclusions from a non expert witness should be given little, if any weight.¹²⁴⁹
398. The Trial Chamber must also consider evidence called by the defence which objectively had a stronger foundation in fact and which the Prosecution elected not to call or investigate. If the Defence evidence *may* be true then the Trial Chamber has a duty to reject the Prosecution interpretation of authority.
399. The Prosecution chose not to call key witnesses some of whom they had taken statements from, who contradicted the Prosecution's case

assessment was drawn merely from the fact that Ivan Cermak had a rank, was wearing a uniform and was referred to as the military governor of the area (T.8831); Roberts agreed he was not in a position to deal with Ivan Cermak's authority; and that he gave the impression of being a person with overall authority: T.6924-5

¹²⁴⁷ T.8882: HHJ Orić: "May I invite the parties - to seek facts rather than impressions".

¹²⁴⁸ T.14060-61: HHJ Orić: "He has not asked for any knowledge. He is asked for his belief, as a matter of fact. Belief is usually not that relevant."

¹²⁴⁹ E.g. *Prosecutor v. Ramush Haradinaj et al*, Case No. IT-08-84-T, Decision on the Admission of Zoran Stijović's Rule 92 ter Statement and its Annexes, 29 November 2007, para. 4 (portions of statement containing opinion evidence from a fact witness must be redacted before statement is admissible as evidence).

theory namely: Lukovic,¹²⁵⁰ Dondo¹²⁵¹, Pasic¹²⁵², Cetina¹²⁵³, Moric¹²⁵⁴, and Feldi.¹²⁵⁵ The Prosecution failed to interview other key witnesses who were able to speak to the issue of Cermak's authority, namely Rincic,¹²⁵⁶ Teskeredzic,¹²⁵⁷ Sruk,¹²⁵⁸ Cipci,¹²⁵⁹ Dodig,¹²⁶⁰ and Penic,¹²⁶¹ all of whom were in Knin at the time and had relevant information to provide. The Prosecution also failed to interview relevant Croatian witnesses who had knowledge of the appointment of Cermak, such as Radin¹²⁶², Skegro¹²⁶³, Skare-Ozbolt¹²⁶⁴ and Vidosevic¹²⁶⁵ and who were able to assist with this fundamental issue.

400. The Defence submits that the Prosecution impression evidence presented through their international witnesses is significantly flawed and unreliable for the following reasons:

- (i) The international witnesses did not have a detailed or adequate knowledge of the Croatian military, political or civil systems. This lack of knowledge caused them to make conclusions which were not based on facts. The international witnesses rightly conceded their lack of knowledge of (a) the actual functioning and structure of the Croatian Army at the relevant time;¹²⁶⁶ (b)

¹²⁵⁰ D1687.

¹²⁵¹ D1695.

¹²⁵² D1706.

¹²⁵³ D1745.

¹²⁵⁴ D1841.

¹²⁵⁵ D1674.

¹²⁵⁶ D1680.

¹²⁵⁷ D1732.

¹²⁵⁸ D1737.

¹²⁵⁹ D1723.

¹²⁶⁰ D1705.

¹²⁶¹ D1935.

¹²⁶² D1678.

¹²⁶³ D1679.

¹²⁶⁴ D1471.

¹²⁶⁵ D1775.

¹²⁶⁶ Elleby, T.3379-3380; T.3392; Hill, T.3803; Forand, T.4198; Mauro, T.12043-44; Al-Alfi, T.13868; Lyntton, T.8813; Ermolaev, T.2342; Flynn did not know the affiliation or unit of the IT-06-90-T

the actual position of Cermak as Knin garrison commander (as opposed to military governor);¹²⁶⁷ and (c) and the meaning of “ZM”.¹²⁶⁸ The absence of knowledge of Croatian systems at the time prevents the internationals from providing definitive evidence as to Cermak’s factual authority or effective control on the ground.

- (iii) Members of the international community erroneously based their understanding of Cermak’s position and authority on presumptions, expectations, beliefs, impressions, hearsay and assumptions.¹²⁶⁹

Croatian military personnel, P20, p18-19; Forand did not know that Cermak had no power to issue orders to divisions within the Split Military District but acknowledged after seeing relevant documentation that “that seemed to be the case” (T.4232, referring to D302, D303, D304, D305 and D306). Forand also accepted that Cermak was not within the chain of command in respect of orders sent to particular HV units: T.4234; Roberts, T.6902-03; Berikoff, T.7813-4; Liborius, T.8621 “The full understanding of the entire complexity of the military and civilian structure would require a significant large knowledge I did not have. The military governor, his tasks, subordination and the like, such detailed knowledge was not available to me at the start of the conflict”.

¹²⁶⁷ Flynn, P20, p9; T.1130-3; T.1171-6; T.1180-6; Leslie, T.2198-9; T.2203; Hill, T.3804-5; Hendriks, T.9720-1; Mauro did not know when he had been assigned to his position in Knin: T.12041-42; she did not know he was a garrison commander: T.12045; Al-Alfi, T.13864; Ermolaev, T.2323; T.2342; T.2368; Lyntton, T.8817; Leslie T.2198; Forand, T.4203-4; Roberts, T.6898, T.6900, T.6903; Berikoff gave evidence that when Cermak was appointed he was an unknown entity, T.7770.

¹²⁶⁸ Berikoff, T.7774-5.

¹²⁶⁹ Berikoff *assumed* that Cermak was in charge of the military, T.7804-5, referring to P745; Flynn, T.1130-3, T.1181-2; Al-Alfi *expected* that Cermak would be in command of the military units as a military governor; he *expected* that Cermak would know where the troops were in the region and where they were in the barracks; he *expected* that activities of those units and soldiers would be reported through a chain to Mr Cermak and that Cermak would be involved in planning what the units were to do next; he *expected* that Cermak would be informed of everything; T.13833-4, T.13868, T.13874-6; Re Al-Alfi’s assumption on Mr. Cermak’s authority, see T.13865; Forand stated that he was told by Gotovina that Cermak “was the individual responsible for the Knin area”, T.4125-6; Lyntton, T.8874-5; Ermolaev: “I was *informed* that General Cermak is in charge of general activities in the territory for sure”, T.2324; Mauro stated that she was told by the chief of police that “General Cermak would have authority to influence the situation when it comes to problems with the looting, burning, criminal acts of sorts, including killings”, T.12092; However, this alleged conversation was not recorded anywhere, not in any HRAT report, neither in the OTP statement or in the course of the proofing with the Prosecution and Mauro failed to recall substantial parts of the alleged conversation, T.12098-99; Leslie had no other information about Mr Cermak other than that *provided to him* from others within the UN system, T.2190, T.2202-3; Hill was *led to believe* that Cermak commanded all military assets of the HV, P292; He gave evidence he based his understandings concerning all the military assets of the HV as being commanded IT-06-90-T

- (iv) Some international witnesses had limited¹²⁷⁰ or no contact¹²⁷¹ with Cermak, yet the Prosecution insisted on adducing their evidence on his authority. These witnesses were so remote from the issue that their evidence cannot be described as probative. Instead, such evidence reveals the weak foundation of the Prosecution's allegations.
- (v) Many of the international witnesses were only in the region for very short periods of time¹²⁷², or left soon after Cermak arrived.¹²⁷³ None spoke the Croatian language.
- (vi) There was confusion within the international community as to the role of Cermak.¹²⁷⁴ There was also confusion as to his exact

by Cermak at the meetings he was having every day with Colonel Tymchuk, Colonel Leslie, and General Forand, T.3803-4; Hendriks T. 9718-9; Dangerfield, P695, para.11.

¹²⁷⁰ Roberts, T.6902; Leslie, T.2176; Mauro, T.12037-38; T.12097; T.12100; Ermolaev, P95, para.15; T.2343: his only meeting with Cermak lasted 30 minutes; Lyntton, P870, para.29 refers to "the first and last time I saw Cermak"; Liborius could only remember having two meetings with Cermak, although he maintained he had had more, a position unsupported by documentary evidence: T.8619.

¹²⁷¹ Elleby stated that he never met Cermak, T.3379; Berikoff did not attend one-on-one meetings with Cermak, T.7770; T.7793; Hill, P292, p45; T.3797; Mauro, T.12038-9; Tchernetsky, P204, p6.

¹²⁷² Berikoff (7 weeks, 1 day), T.7776-7; Hayden was in Knin town only half a day, P987, para.3, para.26; T.10620-22; Lyntton (2 days), T.8808; T.8815. He acknowledged that it was a fair assessment that during the two days he spent in Knin he never came to know what Ivan Cermak was in charge of and what his real title was: T.8821.

¹²⁷³ Leslie, T.1936, T.1953, T.2004; Hendriks, T.9644; Hansen, P1285, para.8, T.14923.

¹²⁷⁴ Berikoff, re "unknown entity" and "mayor" and "commander of Knin", T.7771-2; T. 7776-7; Forand, P333, p8; Al-Alfi, "I do believe that maybe Cermak was not a military officer as such": P1160, p68; "his main task was public relations": P1160, p82; Al Alfi also testified that he was not aware of the fact that Mr. Cermak was sent to Knin: a) as a point of contact to help the UN: T.13869; b) to perform normalization of life in town: T.13870; c) not to perform military task: T.13870; Roberts, "He was a person with authority who could coordinate and guide things": T.6924-25; Leslie, "Im not an expert on General Cermak's Croatian command and control architecture or his terms of reference": T.2203; Forand was unaware of the responsibility of Cermak in "the sense of his overall responsibility": T.4198; Ermolaev, "I never discussed who was in charge of this or that structure within the governmental authority of Croatia....I was informed that General Cermak is in charge of general activities in the territory for sure": T.2324; Lyntton did not know that Cermak had been assigned to deal with normalisation in the area, T.8821. He did not know what Cermak was in charge of or what his real title was, T.8821; Forand, "I think General Cermak was overwhelmed by his

title.¹²⁷⁵ Many witnesses testified that they understood his role in the context of civilian rebuilding, housekeeping and non-operational matters.¹²⁷⁶ His precise role and remit, in particular whether or not he was an operational commander is crucial to determining his level and type of responsibility including identifying those over whom he had effective control.

(vii) None of the witnesses had ever seen the document appointing Cermak as Knin garrison commander or any terms of reference in respect of his responsibilities and authority.¹²⁷⁷

(viii) Military Governor was the term wrongly used and passed around among the internationals.¹²⁷⁸ Witnesses did not know

responsibilities....with Gotovina, it was never clear exactly after the war what was his responsibility. What was the delineation of responsibility between Cermak and Gotovina...In my view General Gotovina was the general of the troops that came into Knin": P331, p20; Hayden didn't know what role Cermak had, T.10678; Hansen: There was confusion about Ivan Cermak's role and responsibilities: T.14959-60; P1285, para.15; P2153, p1; P1286, p2.

¹²⁷⁵ Hansen referred to Cermak as the civilian governor. He acknowledged that Ivan Cermak was also referred to as the commander of the operation zone, the military commander, the administrator of Knin: T.14959; P1285, para.15; P2153, p1; P1286, p2. Hendriks referred to him as the "supreme commander of the liberated territory" but admitted that he may not have been that: P937, p1; T.9724-5; Hansen: "civilian in uniform": T.14960; Leslie: "administrator": T.2190; Berikoff stated that Ivan Cermak had a number of titles including mayor and commander of Knin: T.7771-2; T.7777.

¹²⁷⁶ Liborius, "Cermak was "in charge of housekeeping, not the operational military figure", T.8358; Hansen, "he was acting as the civilian governor", P1285, para.15, even though he had previously described Cermak as the military governor; Hansen, "he was responsible for rebuilding the civilian infrastructure": T.14964; he was a "civilian in uniform": T.14960; Ermolaev, "he was particularly in charge to carry out...water supply and some other functions": T.2342; Forand, P330, p10: an HV reserve officer told him that his job was to "administer and revitalize in the newly conquered areas."; "It seems to me that General Cermak's tasks were mostly administrative....General Gotovina was responsible for the military people in the area and General Cermak was the administrator, they had different responsibilities": P331, p18; Flynn, T.1204: Cermak's function was "to coordinate the establishment of the civil authority and the running of all systems necessary for a normal life in the town" (referring to D38); Buhin explained that it was Cermak's role to bring together the civilian authorities, the civilian police, the role of the army in the area. His role was one of coordination": T10044; see also T.10049-50.

¹²⁷⁷ Flynn, T.1171; Berikoff, T.7778; Forand, T.4195; T.4204; Mauro, T.12042-45; Lyntton, T.8820; Liborius, T.8625-7; Roberts, T. 6902-3; Al Alf, T.13864; Hansen, T.14960; Hill, T.3804-5; Ermolaev, T.2368.

¹²⁷⁸ Flynn, T.1133; T.1156; T.1355-6; Leslie, T.2190; T.2199; Forand, T.4121; "I met what I thought was the military governor": T.4123; "I got the information that...a military governor IT-06-90-T

whether the position existed in Croatia¹²⁷⁹ neither did they ever investigate it or know what Cermak's actual role was.¹²⁸⁰

- (ix) Cermak never introduced himself to others as the Military Governor of Knin, either in person or in the course of his correspondence with the international community.¹²⁸¹ The position "ZM" Zborni Mjesto was clear on the face of his documents.¹²⁸²
- (x) Members of the international community did not know the identity or number of Cermak's subordinates. International witnesses did not know that he had no more than 10 subordinates as garrison commander.¹²⁸³ International witnesses did not know the extent of his resources.¹²⁸⁴ While one witness proffered mere impression evidence as to his alleged influence over a large number of people,¹²⁸⁵ another testified that they had the impression that he had very limited resources at this disposal.¹²⁸⁶ The inability to factually identify Cermak's

would be coming into Knin to take over the responsibility of my area"; T.4177; T.4183-4; Liborius, T.8357; Lyntton found out "from UN people": P870, para.24. He then stated that it was Flynn who told him, T.8811; Leslie, T.2199; Berikoff, T.7790; Mauro, T.12041; T.12044-5; T.12096-7; Roberts, "I recall discussions at Sector South headquarters about the terms of reference of General Cermak": T.6904.

¹²⁷⁹ Flynn, T.1171; Hendriks, T.9719; Leslie, T.2197; Forand, T.4185; Berikoff, T.7777; Mauro, T.12044; Al-Alfi, T.13864; Hansen, T.14960; Lyntton, T.8814.

¹²⁸⁰ Leslie, T.2199; Lyntton, T.8813; Flynn, T.1133-4; Berikoff, T.7770; Liborius, T.8653.

¹²⁸¹ Flynn, T.1133; Forand testified that he didn't recall Gotovina using the term "military governor" to address Mr. Cermak, T.4127-8; T.4185-6, see also Exhibits P405, D298, P388, D616, P390, D625, D628, P411, D309, D626, D1106 containing 5 letters; Berikoff, T.7778; Lyntton, T.8814; Hansen, T.14960.

¹²⁸² P2525 p174.

¹²⁸³ Berikoff, T.7781-2; he was not in a position to be able to identify any troops as subordinates of Mr Cermak: T.7917-8; Roberts, T.6923-4; Hendriks did not know about Mr. Cermak's 9 subordinates: T.9723; Mauro, T.12041; Liborius didn't know that Mr. Cermak had under ten people working for him under his control and authority. T.8628; Al-Alfi, T.13865-6.

¹²⁸⁴ Al-Alfi, T.13868; Berikoff, D284, p51-52; T.7780; Mauro, T.12040.

¹²⁸⁵ Flynn, T.1177.

¹²⁸⁶ Hansen, T.14961; Lyntton, T.8820-21.

subordinates is devastating in terms of potential Article 7(3) liability.

- (xi) Many witnesses did not know that Cermak had been a mere civilian before his appointment as Knin garrison commander on 5 August 1995.¹²⁸⁷ His non-operational role before and after Operation Storm is relevant to his lack of authority and effective control over HV units. As the law of Article 7(3) dictates, appointment to a non-command position is no evidence of an Article 7(3) superior-subordinate relationship.
- (xii) Several of the international witnesses made assumptions as to Cermak's authority based on the fact that he wore a uniform and had a rank.¹²⁸⁸

¹²⁸⁷ Roberts, T.6898; Lyntton, T.8817.

¹²⁸⁸ Flynn, T.1356; Berikoff, T.7821-2; Mauro, P1098, p3; Lyntton, T.8831, T.8874; "It was clear from talking to him that I was talking to the man that was in charge of security for the area. He was wearing a green army shirt at the time of the interview.": P870, para.28; Hansen, T.14960.

(xiii) International witnesses gave contradicting evidence as to Cermak's alleged area of responsibility.¹²⁸⁹ There is evidence that not even Cermak knew his AOR.¹²⁹⁰

¹²⁸⁹ Hendriks described Cermak in one of his reports as the apparently overall commander of the former occupied areas of Sector South: P935, p.1; however in court was unable to distinguish geographically between the Knin garrison area and Sector South: T.9720-1; Al-Alfi stated that Cermak was "in charge of the Knin area and the suburbs. Not the whole South Sector", P1160, p48; see also p67, p96; Flynn, T.1132-3 (He assumed that Cermak was responsible for a geographical area which coincided with Sector South. He later stated that Ivan Cermak had no direct link to responsibility for Sector South); Roberts, "Knin and the surrounding area": P677, p12; Berikoff, the authority he ascribed to Cermak ranged from a limited number of villages to the whole of Sector South: T.7786-7; Flynn, "I believe that General Cermak's authority extended to all of what was called until then, Sector South, although I'm not sure if the limit of his geographical responsibility coincided exactly with the UN protected area": P20, p9; T.1132-1133; Forand, P330, p10 (Cermak's AOR as UN Sector South); "What I remember is that he told me that he was the individual responsible for the Knin region, which, in my view, was my whole area of responsibility": T.4204; However, he also stated that the authority of General Cermak "was only within the city of Knin because as soon as you got out of Knin, his name did not have too much power:" P331, p15; "We were also given the authority to circulate throughout the Sector, but we were stopped at almost every small village that we encountered by a different organization that did not recognise the authority of General Cermak": P331, p17; Re the definition of the "area" (and not area of responsibility) as being vast, see D151, p2 and T.4227-8; Ermolaev stated that he was told that Cermak was in charge of general activities in the territory: T.2342; T.2502; and that it was his "conclusion, assessment and understanding that General Cermak was in charge of the whole territory": T.2368; Hendricks could not identify the area Mr Cermak had command over, he did not know the territorial scope of the garrison and could not say whether that area would have corresponded to Sector South or not, T.9721.

¹²⁹⁰ Skare-Ozbolt, D1471, p4: "the territory Cermak was responsible for remained undefined, this type of undefined territory in a geographical sense caused him to call and complain on numerous occasions as he did not know what his area of responsibility was."

- (xiv) Several witnesses openly queried the extent of his power¹²⁹¹ and admitted that they had neither seen nor heard Cermak giving orders or exercising command and control over the army.¹²⁹² Some of them gave evidence that they heard he had some

¹²⁹¹ Flynn, Cermak was not a "commanding officer": P20, p9; "I never believed that General Cermak had direct command responsibility over those units but my impression was that he considered that he might be able to influence the removal or not of those units": T.1177; "... I was not entirely clear on his operational authority. I did not understand Cermak to have direct command authority over the large part of the military units in Knin...but...he gave me the impression that he had the ability to influence the presence or removal of military and police units in the area": T.1180; "I don't think I ever said he was directly in control of the police": T.1184; T.1200-01; T.1354; "General Cermak was introduced as the official responsible for an area which roughly coincided with Sector South but he certainly had no direct link to responsibility for Sector South as such": T.1132; "I can't speak very authoritatively with regard to General Cermak's actual authority. I can only speak with respect to what he indicated to us and seemed to indicate on what I believed": T.1109; Flynn had no inside information with regard to how things operated once information was transmitted to Cermak, T.1130-1; He was not 100% sure what authority Cermak did have, T.1131-2; Roberts, "My impression was that General Cermak was not a full time military official. He gave the impression of someone aware of his title.": P675, para.17; Roberts did not know what Cermak's official authorities were, T.6903; Forand, "Whether he did not have the authority or not, I cannot tell you": T.4538-9; "it seems to me that General Cermak's tasks were mostly administrative": P331, p18; "it was never clear exactly after the war what was his responsibility. What was the delineation of responsibility between Cermak and Gotovina": P331, p20; "I was never clear about the delineation of responsibility between Generals Cermak and Gotovina": P333, p8; "I am sure that he is very frustrated to find that his authority is limited in certain areas": P375, p3; T.4235-6; "I cannot accept that these soldiers, a few minutes from Knin, do not obey your orders": D308; T.4246-7; Hendriks, "...as you get further away from the town, fewer police appear to have heard of him and fewer still are inclined to follow his written clearances (ECMM has not requested or used any such clearances": P935, p1; Al-Alfi, re Cermak's authority: "Question was how far he could implement it": T.13866; "could you tell me what Cermak actually had control over and how far this authority stretched? A: I don't know exactly how": P1160, p65; Hansen, "I don't know if Cermak really had the power to stop the burning and looting": P1285, para.17; Berikoff, "I believe that General Ivan Cermak was a figurehead appointed by President Tudjman, and that there were others in the area, in particular Major Ivan Juric who had more authority amongst the military personnel on the ground than General Cermak...I believe that General Cermak either did not have the authority to stop the burning and looting or did not want to stop it": P741, para.10; See also D284, p61: "he was the military governor in Knin and the surrounding area"; D284, p49: "General Cermak had the authority and the responsibility but he may not have had the capability of telling the local warlords to stop"; Berikoff, "I believe at the time his authority, people just disregarded it in many instances": T.7802; see also T.7787; Boucher: "Cermak did not appear to be a military man... he did not have an aura of authority about him": T.14086; Boucher did not know what Cermak was responsible for: T.14091.

¹²⁹² Berikoff, T.7917-8; T.7791; Al-Alfi, P1160, p61; Leslie could only give one example of what he said demonstrated "command" by Cermak. However, crucially he was unable to explain whether it was civilians or the military who Cermak stopped from small arms fire over the compound. Neither did he see what Cermak did to stop it nor did he have any information from the soldiers who stopped firing as to why they stopped: T.2200-01; Leslie did not know Cermak's tasks and responsibilities and never saw Cermak commanding any troops in the Knin area: T.2200.

authority but admitted they relied on hearsay.¹²⁹³ Other Croatian individuals were identified as the individuals responsible for giving orders to the HV.¹²⁹⁴

(xv) Some international witnesses based their assessment of Cermak's authority on what he told them he would do.¹²⁹⁵ However, as the law of command responsibility provides, statements made by an accused that he was in a position of control are no proof of actual authority.

(xvi) International witnesses contradict the allegations of the Prosecution in their testimony relating to Cermak's lack of authority on the ground at checkpoints,¹²⁹⁶ and by stating that his orders were not effective.¹²⁹⁷ Evidence of a lack of authority to issue binding orders are strong indicators that an individual did not have effective control.

¹²⁹³ Leslie, T.2202

¹²⁹⁴ Berikoff, P741, para.10: "I personally saw Major Ivan Juric giving orders to military personnel, including HV troops, military and special police, all over Sector South which were followed immediately"; Flynn, T.1108-9.

¹²⁹⁵ Al-Alfi, T.13867-8; Flynn, T.1108-9; T.1200-1; Forand, T.4125; T.4148; T.4186.

¹²⁹⁶ Berikoff, T.7787; T.7789; T.7792; see re incident in Pakovo Selo at T.7901-2; Hill, "I never used Cermak's name at a checkpoint. I didn't have to when I used Juric's name": P292, p47; see also p97; T.3793; T.3799; Re Cermak's authority not being respected on the ground: P292, p94-95; T.3796. He knew that Cermak's orders concerning freedom of movement were not being respected by the military police, civilian police, and the military: T.3799; Berikoff, permission granted by Juric, not Cermak: D284, p39-40; Ermolaev gave evidence that Cermak's authority was on occasion not recognized or accepted: T.2366; Hansen, "He informed us at all times that we had necessary freedom of movement. However, meeting the police at check points, specially in the southern area, we were severely restricted in our movement": P1284, p3; Ermolaev, P94, p6; T.2355; T. 2366.

¹²⁹⁷ Forand, when asked about Cermak's orders, he stated "Obviously, they were not effective": T.4538-9; "Whether he did not have the authority or not, I cannot tell you": T.4539; It was put to Al-Alfi that Cermak couldn't even order troops to clean up the town for him, or order units in the HV to recover UN vehicles. Al-Alfi stated that he was not aware of that at the time, T.13866.

E. Cermak was not Informed of Matters Concerning either the Mobilisation or Demobilisation of HV Troops or Units Listed in Paragraph 7 of the Indictment

401. Cermak was not informed of decisions or orders concerning either the mobilization or demobilization of HV units within the Split Military District.¹²⁹⁸ Mobilisation of the armed forces was to be ordered by the President of the Republic as the Supreme Commander.¹²⁹⁹ Mobilisation in peacetime must be ordered by the Defence minister or commanders authorized by him.¹³⁰⁰ It is the MoD which carries out the mobilisation and replenishment of the armed forces.¹³⁰¹ Demobilisation is also carried out based on a decision of the President of the Republic and is implemented by unit commanders under the MoD, Chief of the Main Staff or Commanders of the Military Districts.
402. The fact that Cermak was not informed about decisions or orders on mobilization or demobilization by the Commander of the Split MD indicates his lack of effective control over HV units. It demonstrates he was not treated or regarded as an operational commander. Cermak was only informed about those decisions concerning individuals who were mobilized to assist the Knin garrison.¹³⁰² He could not by his own authority mobilize or demobilize HV troops or units.¹³⁰³

¹²⁹⁸ D882; D883; D611; D887; D884; D885; D886; P199; P1124; D1384; D883; P1216; D611; D887; P200 and D1382.

¹²⁹⁹ P1116, Articles 53, 54 and 55.

¹³⁰⁰ P1116, Article 54.

¹³⁰¹ P1116, Article 22.

¹³⁰² D767; D1029.

¹³⁰³ See the section above entitled “ No *de jure* or *de facto* authority to temporarily assign, transfer, subordinate, mobilise or order HV members”, eg D767; See also P1116, Articles 54, 55 and Article 22, para.2, point 9; D1676, para.2.5.5 under 9.

F. Cermak had no *De Facto* Authority to Temporarily Assign, Transfer or Subordinate HV Members

403. An important indicator of Cermak's lack of effective control over members of the HV is his inability to temporarily assign, transfer or subordinate them. This is demonstrated by his relationship with Major Jonjic, the 142nd Home Guard Brigade and his attempts to secure members of the HV to assist with the demining of the terrain.

1. MAJOR JONJIC

404. On 9 August, Cermak ordered the temporary transfer of Major Jonjic, of the 306th Split LoB to the Knin Garrison for logistic support.¹³⁰⁴ Cermak's order was described by Sir Jack Deverell¹³⁰⁵ as an example of him having "overstepped the mark" and demonstrated that he was "unused to the military subordination procedure during his first few days in command."¹³⁰⁶ On 11 August, Cermak sent an order to Major Jonjic to carry out a pyrotechnical inspection of MoD apartments.¹³⁰⁷

405. On 12 August, the Commander of the Sibenik LoB Major Ivan Pavic issued a temporary order in D758 to replace Major Jonjic "till the emerged situation is solved" and in which he noted that Jonjic had left his duties of his "own will". He stated that Cermak's order had "seriously disrupted" the "system of command in 306th Logistic Base".¹³⁰⁸ The tone and content of Pavic's order is evidence of Cermak's lack of *de jure* and *de facto* authority. Cermak in a notice, to Pavic on 16 August stated that the Split MD Commander had agreed to the

¹³⁰⁴ D759.

¹³⁰⁵ Deverell, T.24333.

¹³⁰⁶ D1784, p41.

¹³⁰⁷ D1048.

¹³⁰⁸ D758.

temporary assignment of Jonjic.¹³⁰⁹ Such an explanation confirms that Cermak did not issue the order to temporarily transfer Jonjic by his own independent authority – another strong indicator of his lack of effective control.¹³¹⁰ Deverell, perceived Cermak's original order of 9 August as one which ran "*counter to the process and procedures of subordination and superiority.*"¹³¹¹ In D758, Pavic does not order Jonjic to transfer to the Knin garrison which indicates that he was not sending him from his command to comply with Cermak's order.

406. The most likely reason for the issuance of D758 by Pavic is that he had the responsibility to place in the vacant post "somebody with the legal authority to continue the work of the base" as a necessity".¹³¹² Pavic's reference to a "possible disciplinary procedure" demonstrates he considered Jonjic to be his subordinate.¹³¹³
407. In response to a question as to why Pavic did not state that Cermak had no authority to order him, Deverell explained that the absence of such wording from Pavic's order was not surprising. It is "quite difficult, as a major, to write an angry letter to a general, even though that general may not have the military background or indeed the authority of other generals."¹³¹⁴ He interpreted the fact that Pavic forwarded his order to Gotovina as an act of raising a complaint with Gotovina about the inappropriate conduct of Cermak.¹³¹⁵

¹³⁰⁹ D760.

¹³¹⁰ *Delic* Trial Judgement, para.62; *Hadzihasanovic* Appeal Judgement, para.199; *Halilovic* Appeal Judgement, para.207; *Oric* Trial Judgement, para.312; *Naletilic* Trial Judgement, para.67; *Kordic* Trial Judgement, para.421.

¹³¹¹ Deverell, T.24338-39.

¹³¹² Deverell, T.24334.

¹³¹³ D758.

¹³¹⁴ T.24334.

¹³¹⁵ T.24334.

408. Expert witness Kovacevic referred to Article 159 of the Law on Service in the HV which states as follows: "Appointments, demotions...of senior officers and generals shall be the responsibility of the Supreme Commander. The Minister of Defence and officers acting on his behalf shall decide...transfers, appointments and other statutory matters up to the level of a company to a person with equal duties."¹³¹⁶ Cermak as the commander of the garrison had no such authority devolved to him by the Minister of Defence, his authority being limited by the Organisational Order of 1993.¹³¹⁷
409. Jonjic sent two documents to the Knin garrison which clearly indicate the non-operational and logistic nature of the work he was engaged in. Such work in cooperation with the Knin garrison is entirely consistent with the nature and scope of Cermak's appointment to Knin.¹³¹⁸

2. 142ND HOME GUARD

410. Cermak's first formal attempt to assign soldiers to the Knin garrison is dated 11 August 1995 when he wrote an order to the Commander of the 142nd Homeguard Regiment for the *temporary* assignment of seven soldiers.¹³¹⁹ As garrison commander, Cermak had no authority to issue operational orders to the Regiment, nor task it to provide assistance for administration and security: See section **The *De jure* Authority of the Garrison Commander**. Deverell confirmed that "General Cermak commanded only those staff in his headquarters, he had no authority to subordinate a unit to his headquarters" or temporarily assign soldiers.¹³²⁰ There is no evidence that Cermak's order of 11 August was

¹³¹⁶ Kovacevic, D1676, p122; p121.

¹³¹⁷ D34.

¹³¹⁸ D775; D1015.

¹³¹⁹ D761.

¹³²⁰ Deverell, D1784, p40-41; Feldi, D1673, p19 organigram of subordination.

ever implemented by the Commander of the 142nd or followed by any of the named men.

411. By 21 August, Cermak had stopped issuing orders and started making requests for assistance. In one he requested 65 conscripts from Gotovina “to expedite the process of getting the city back to normal”.¹³²¹ On 22 August Gotovina ordered the Commander of the 142nd HG Regiment to “temporarily single out” and “re-subordinate” 68 soldiers from Knin and 79 soldiers from Kijevo to Cermak “for the purpose of faster and more effective organization of a normal life in the town of Knin.”¹³²² This demonstrates the lack of *de jure* and *de facto* authority of Cermak. As Deverell observed, Gotovina’s order also shows that the “overall task was limited in nature, in time and in numbers” and was a “clear example of the formal subordination process” to be used.¹³²³ There is no evidence that any of these individuals committed crimes during the period in which they were re-subordinated to Cermak.

3. DEMINING THE TERRAIN AND REQUESTS FOR HV SUPPORT

412. On 9 August, Cermak issued an order for the temporary assignment of Colonel Frkic to the Knin garrison “for logistical support at the Knin Garrison”.¹³²⁴ The response of the Commander of the 113th Brigade is not recorded.
413. On 12 August, Cermak issued an order for Colonel Frkic, Lieutenant Vuk, Major Gojevic and Colonel Teskeredzic, to clear the military depot in Plavno “with the aim of making the return of the population

¹³²¹ D762.

¹³²² D764, p1.

¹³²³ D1784, p.41.

¹³²⁴ D1023. Member of 113th Sibenik Brigade.

to this settlement as flexible and fast as possible".¹³²⁵ The extent of the Frkic order and the subsequent task, reflect *de facto* the nature of Cermak's appointment to normalise life and do not support any involvement with operational tasks and forces.

414. By 15 August, Cermak had stopped issuing orders and started making *requests* for the temporary transfer of HV members.¹³²⁶ On 19 August, he made similar *requests* to the MoD Mobilisation Administration in Zagreb.¹³²⁷ In the absence of a reply, on 22 August Cermak sent a further *request* for the *temporary transfer* of four individuals to the Commander of the 1st Croatian Guards Corps.¹³²⁸ On 6 September, Cermak's 19 August *request*,¹³²⁹ which had been forwarded to the Main Staff of the Croatian Army for "operative appraisal" was denied by Defence Minister Susak.¹³³⁰ This denial was followed by another *request* from Cermak to Minister Susak.¹³³¹
415. The *mobilization* of five individuals was eventually ordered by Gotovina on 20 September,¹³³² on the basis of the approval of the Minister of Defence, and an order from the Department of administration for compulsory Military Service and Mobilisation in Zagreb.¹³³³ The act of mere *mobilization* did not *subordinate* these individuals to Cermak.¹³³⁴ These individuals worked in cooperation

¹³²⁵ D763.

¹³²⁶ D1116; D1024; D1117; D1025: re Plemencic, Perkovic, Vuk and Halas. These requests were made to the Human Resources Department of the 1st Guards Corps.

¹³²⁷ D1026; D1027; see D1030; 01031; D1118; D1020.

¹³²⁸ D765 re Vuk, Plemencic, Perkovic, and Tibor Halas.

¹³²⁹ D1026.

¹³³⁰ D1028.

¹³³¹ D1733. Cermak's list contained the names of Emin Teskerdzic, Jerko Domancic, Gordan Tomsic, Ivo Maljur and Drago Margus.

¹³³² D767 refers to Emin Teskeredzic, Jerko Domancic, Gordan Tomsic, Maljur, and Margus.

¹³³³ D1734.

¹³³⁴ Teskeredzic, T.23271-2; D1732, para.9.

with Cermak to normalize life and enable the return of civilians,¹³³⁵
non-operational and administrative/logistical matters.

416. *De facto*, there is evidence that Teskeredzic, Domancic, Vuk, Plemencic, Tomsic, Perkovic, Maljur and Margus began their work as members of the demining team at the Knin Garrison as early as 6 August.¹³³⁶ From the testimony of Teskeredzic, it is clear that Domancic, Tomsic, Maljur and Vuk *volunteered* to come to Knin at the initiative of Teskerdzic.¹³³⁷
417. Even if the Chamber determines that Cermak exercised effective control over these individuals, such effective control did not extend beyond these individuals to any units of the HV listed in paragraph 7.

G. No Authority of Cermak to Recover Stolen UN Vehicles and Equipment from the HV

418. Another striking example of Cermak's lack of *de facto* authority over members of the HV was his inability to ensure the recovery of UN vehicles and equipment.
419. On 9 August, Forand sent a letter¹³³⁸ to Cermak complaining about the theft of three UN vehicles by the HV.¹³³⁹ The same day Cermak issued an order to immediately set up a mixed team of Military and Civilian police to find the missing vehicles.¹³⁴⁰

¹³³⁵ Teskeredzic, T.23272.

¹³³⁶ D1030.

¹³³⁷ Teskeredzic, D1732 paras.4 and 5.

¹³³⁸ P389.

¹³³⁹ D302. This document refers to a Nissan pick up, Nissan Pajero and a Toyota Landcruiser.

¹³⁴⁰ D303. See also Albiston: He stated that "just by writing the word "order" on a piece of paper it doesn't, in fact, give the piece of paper the status of an order any more than if I wrote on a piece of paper "royal proclamation" it would be a royal proclamation. T.23971-2.

420. [REDACTED].¹³⁴¹ Such evidence is corroborated by other witnesses.¹³⁴² Dzolic, Commander of the Knin Independent Company within the 72nd Military VP, testified he had no recollection of receiving the order or acting upon it.¹³⁴³ There is no record in the MUP and VP log books concerning the implementation of Cermak's order.¹³⁴⁴
421. Forand sent a second letter to Cermak on 11 August 1995¹³⁴⁵ in which he listed additional vehicles and UN equipment as stolen.¹³⁴⁶ It is noteworthy that Forand asked Cermak to use his "considerable influence" and not his authority over the HV. On 12 August 1995, Forand also demanded from Gen. Plestina the immediate return of all UN equipment and property taken by the HV. In contrast to Cermak, Plestina evaded the request by alleging that most of the equipment was taken by the Serbs whilst retreating.¹³⁴⁷
422. On 12 August, Cermak issued a further order to the military and civilian police for the recovery of the UN vehicles and equipment.¹³⁴⁸ [REDACTED],¹³⁴⁹ a position confirmed by other evidence.¹³⁵⁰
423. The [REDACTED] attitude to Cermak's order [REDACTED].¹³⁵¹ [REDACTED].¹³⁵² [REDACTED].¹³⁵³ This clearly demonstrates that Cermak had no authority to issue a search warrant, nor to take other necessary procedural measures which were entirely a matter for the

¹³⁴¹ [REDACTED].

¹³⁴² Cipci, D1723, para.28, Cetina, D1743, para.12.

¹³⁴³ Dzolic, T.9023-24.

¹³⁴⁴ D57, D1684.

¹³⁴⁵ P391.

¹³⁴⁶ *Ibid.*

¹³⁴⁷ D1211, p3.

¹³⁴⁸ D503.

¹³⁴⁹ [REDACTED].

¹³⁵⁰ Cipci, D1723, para.28; Cetina, D1743, para.13.

¹³⁵¹ D502.

¹³⁵² D500.

¹³⁵³ [REDACTED].

police. There is no evidence of the MUP reporting any result to Cermak.

424. From the Knin Company, Military Police witness Dzolic also testified that he never received this order. He had left Knin by the time it was issued.¹³⁵⁴ No further evidence was called by the Prosecution to establish any causal behaviour in respect of the orders issued by Cermak.
425. Witness Dondo said that it was a decision of the liaison officers' department to formulate some of Cermak's communications (including his two UNCRO vehicles orders) in the form of "orders" as this was perceived to be an important issue in the context of cooperation with the UN. The wording "this order is effective immediately" was not dictated by Cermak but included in the text as part of the customary formulation used in orders which Cermak simply signed.¹³⁵⁵ Dondo was asked whether he could give a "specific instance" where Cermak had issued an order to the civilian or military police which they refused to carry out. He cited the UNCRO vehicles orders as such an example.¹³⁵⁶
426. An indicator that Cermak himself perceived his lack of authority on the matter is clear from his behaviour that on 12 August 1995 when he sent a *report* and not an order to the Split Military District Chief of Staff, Gen. Ademi. Cermak refers to having *requested* assistance from the MUP, not ordering them and indicates that he was not successful.¹³⁵⁷ Albiston concluded that this document was "tantamount to an admission by General Cermak that actually he [was] not getting

¹³⁵⁴ Dzolic, T.9025.

¹³⁵⁵ D1696, para.18 Re: P53/P513; T.22543-22544.

¹³⁵⁶ Dondo, T.22545-6; D1696 para.24.

¹³⁵⁷ D304, p2.

anywhere with the steps which he ha[d] taken.¹³⁵⁸ Therefore Cermak *asked* for assistance from the operational command.

427. On 13 August 1995, Gotovina met the request and issued an order on the return of the missing vehicles to the HV units under his command.¹³⁵⁹ The operational group commander, Kotromanovic, immediately issued a follow-up order which was sent to HV units under his command.¹³⁶⁰

428. The Prosecution mischaracterized the evidence concerning the missing equipment in the cross-examination of Dondo by stating that it was recovered by the military police at the behest of Cermak.¹³⁶¹ Dzolic's testimony was that on 8 August 1995 Cermak "*told* him that he had been informed by the International Red Cross about two missing trucks and that he passed on the *information* to the military crime police and some eight hours later the trucks were found.¹³⁶² The evidence was that the trucks were not found as a consequence of Cermak's "UNCRO" order but because of the information he passed on to the VP. These were Red Cross vehicles and not the UNCRO vehicles that were the subject of the so-called orders cited above.

429. By the end of the month, Forand himself realized that he needed to seek the assistance of Gotovina to recover the stolen vehicles and the equipment. On 26 August 1995, he sent a letter to Gotovina stating that in spite of the good level of cooperation shown by Cermak, he was sure that Cermak was frustrated by his limited authority in certain areas.¹³⁶³ Cermak admitted this in a conversation with Al Alfi where he

¹³⁵⁸ Albiston, T.23835.

¹³⁵⁹ D305; See Albiston T.23835-6.

¹³⁶⁰ D306.

¹³⁶¹ Dondo, T.22548-49.

¹³⁶² P875, para.44.

¹³⁶³ D150, p2; P375.

confessed embarrassment at not having been able to resolve the matter.¹³⁶⁴ Reality demonstrated that his power was not to the extent he had claimed.

430. Albiston¹³⁶⁵ and Deverell¹³⁶⁶ confirm that Cermak lacked command and control over HV units. Kovacevic describes the steps taken by Cermak as having been appropriate within the context of the Croatian legal procedures and opined that whatever description he used to convey the information to the law enforcement authorities, "General Cermak's orders have the nature of notification of commission of [a] criminal offence".¹³⁶⁷

H. Cermak's Co-ordination with the Housing Commission of the Ministry of Defence is not an Indicator of Effective Control over HV Units

431. Cermak's co-ordination with the Housing Commission of the MoD concerning the allocation of temporary accommodation to the HV is not an indicator of his effective control over HV units.
432. Garrison commands are required to "establish cooperation and coordination of tasks of the garrison with *inter alia* departments of the MORH headquarters administrations and other bodies and institutions of the MORH."¹³⁶⁸ Merely being tasked with co-ordination does not equate to command and control.¹³⁶⁹ Control must also be of an

¹³⁶⁴ P409, p2.

¹³⁶⁵ [REDACTED]; T.24080-82.

¹³⁶⁶ D1784, p42; T.24182-84.

¹³⁶⁷ D1676, p65-66.

¹³⁶⁸ D34, point 3; Feldi, D1673, p60.

¹³⁶⁹ *Oric* Trial Judgement, para.311, citing *Tadic* Trial Judgement, paras.597 et seq.

executive, military nature, not simply administrative.¹³⁷⁰ In the former Yugoslavia, institutions of the State owned apartments and property that they administered for their employees. Upon the liberation of the formerly occupied territories, the Government of Croatia was for the first time in possession of land and property over which it had never previously exercised its authority, this included property owned by the JNA.¹³⁷¹

433. On 9 August 1995, the head of the Housing Commission within the MoD, Vinko Adzic issued a decision ("Adzic Decision") pursuant to Article 5 of the Law on Temporary usage of apartments¹³⁷² which required the inspection of all "empty, vacant or abandoned apartments in the property of the Republic of Croatia entrusted with the Ministry of Defence to manage it." The decision required an inventory of "furniture and other movables found when inspecting the apartment" which was to be sealed or secured to prevent illegal entry and was sent, inter alia to the HV Main Staff and "responsible persons". The listing of apartments was to be carried out "with another person from [the] housing sub-commission and in cooperation with [the] Department for Construction, military and civilian police." Attention was to be paid to possible mining of the apartments.

434. On 10 August, Cermak issued a decision to "assign a number of empty accommodation units for temporary use as needed to the staff of the Headquarters Administration of the MO HV so they can carry out their tasks".¹³⁷³ The decision was made "in order to organize a large number

¹³⁷⁰ In concluding that an accused did not have the requisite effective control, the Appeals Chamber in *Blaskic* pointed to evidence given by a witness that "the commander of the operational zone would be able to direct the military police to control the traffic, roads, and the like, but would have *no responsibility for operational deployment, or offensive actions.*" *Blaskic* Appeals Judgement, paras.393-394 (emphasis added).

¹³⁷¹ D1634; D426 Minutes of Government Sessions 4 August, 23 August 1995.

¹³⁷² D1047.

¹³⁷³ D1054.

of personnel of the Headquarters Administration of the Ministry of Defence of the Croatian Army in the area of the Knin Garrison HQ." It was sent to Brigadier Vukina who was the Commander of the HQ Administration of the HV¹³⁷⁴ and the HQ Administration of the MO HV. This non-operational decision was not sent to commanders or individual units of the HV. There is no evidence that the accommodation which was the subject of the order was not property owned by the MoD, nor is there any evidence that Vukina assigned accommodation to which he was not entitled. This is supported by an order issued on 11 August by Cermak for the pyrotechnical inspection of apartments based upon the "need of taking over of apartments owned by the Ministry of Defence and with the aim to prevent the appearance of contagious diseases."¹³⁷⁵ Cermak was attempting to assist and "create conditions for the unobstructed work" of the housing sub-commission as he did again on 16 August in an order forwarded to the commission concerning the inspection of military flats, the removal of all explosive devices, weapons and ammunition, the removal of rubbish and carrying out of pest control.¹³⁷⁶

435. Theunens did not deal with the fact that these were non-operational, not addressed to units or commanders of the HV, civilian police or VP. Theunens did not refer to these documents in the context of the original Adzic Decision dated 9 August.¹³⁷⁷ Theunens accepted the existence of a Knin Housing Sub-Commission headed by Veljko Banek¹³⁷⁸ of which he had not previously been aware.¹³⁷⁹ He

¹³⁷⁴ P2525, p17

¹³⁷⁵ D1048: This order was sent to the Building Administration Sector Zadar, Mr Grgic; Major Jonjic; Commander of the Engineering Battalion and Archives.

¹³⁷⁶ D1049. This order was sent to the Assistant Commander for Logistics; Chief of Technical Support; Chief of Material Supplies; Civilian Protection; Chief of the Knin Housing Sub-Commission.

¹³⁷⁷ D1047.

¹³⁷⁸ D1051. Banek was cited in the original order dated 9 August: D1047.

¹³⁷⁹ Theunens, T.13176-7.

acknowledged that to *achieve* the allocation of apartments to individuals within the Knin garrison command, the documents show that in fact Cermak had no authority to make this allocation himself.¹³⁸⁰ In order to be effective he had to *request* the allocation from the MoD Housing Commission in Zagreb as he did in respect of the needs of the garrison command on 25 August¹³⁸¹ and in a further request for the garrison to the Housing Commission on 20 September 1995.¹³⁸² The fact that he had to request for the garrison clearly contradicts Prosecution allegations. When the SZUP likewise requested accommodation¹³⁸³ this was passed on to the civilian authorities.¹³⁸⁴ In a letter from Veljko Banek to Cermak on 6 September, it is clear that in Knin, the power to allocate housing within the Knin garrison was held by Banek and his sub-commission.¹³⁸⁵

436. In September 1995, Cermak also coordinated with the civilian police¹³⁸⁶ in respect of the illegal occupation of MUP and other flats by members of the HV which he condemned publicly in newspapers¹³⁸⁷ and on television.¹³⁸⁸ Such public condemnation contradicts the allegations of his involvement in a JCE.

I. No Duty of Garrison Commander to Prevent Crimes

437. The Prosecution alleges that “in his position of superior authority, Ivan Cermak should have taken necessary and reasonable measures to

¹³⁸⁰ Theunens, T.13174-9.

¹³⁸¹ D1050.

¹³⁸² D1053. Another example of a request being made to the housing sub-commission for the allocation of apartments can be seen in D1052 which is a request from the Security and Information Service within the Ministry of Defence dated 15 September 1995.

¹³⁸³ D1043.

¹³⁸⁴ D1044.

¹³⁸⁵ D1051.

¹³⁸⁶ [REDACTED].

¹³⁸⁷ D59 .

¹³⁸⁸ D731 p1.

prevent his subordinates from committing crimes.”¹³⁸⁹ This allegation is based upon the Prosecution’s erroneous contention that Cermak possessed effective control over the HV units listed in paragraph 7 of the Indictment under Article 7(3).

438. Under Article 7(3), Cermak’s duty to prevent crime was limited to taking necessary and reasonable measures to prevent *his subordinates* from committing crimes. Cermak’s subordinates in the Knin garrison Headquarters were extremely limited in number,¹³⁹⁰ and no evidence has been called to demonstrate that any of them committed or were about to commit crimes in the Indictment.

J. No Duty of Garrison Commander to Punish Crimes

439. The duty to punish under Article 7(3) arises when a superior has actual or constructive knowledge that a subordinate has committed a crime within the jurisdiction of this Tribunal.
440. Under Article 7(3), Cermak’s duty was limited to taking necessary and reasonable measures to punish *his subordinates* after the commission of a crime. Importantly, the number of Cermak’s subordinates was extremely limited¹³⁹¹ and there is no evidence that any of them committed crimes. The HV units listed in paragraph 7 of the Indictment were not subordinated to Cermak. He had no effective control over these units. Consequently, there is no evidence that Cermak failed to fulfil his duty to punish crimes in respect of his subordinates.

¹³⁸⁹ Prosecution Pre-Trial Brief para.81.

¹³⁹⁰ D33, p10-12; Lukovic D1688, para.21, D1687 para.44. Dondo D1695, para.8.

¹³⁹¹ D33, p10 -12; Lukovic D1688, para.21, D1687 para.44. Dondo D1695, para.8.

III. THE VP

A. No *De jure* Command and Control of the Military Police by the Garrison

*"And I never sent the military police...anywhere. They had their normal regular tasks, that they had from their commanders, not from me."*¹³⁹²

441. The relationship of a garrison with the Military Police is regulated by the 1993 Organisational Order points 2 and 3 and the Instructions items 4, 17, 28.¹³⁹³ This relationship was described by General Feldi as an obligation to cooperate.¹³⁹⁴ The VP cannot become subordinate to the garrison commander due to the provisions of point 2 which explicitly state that the garrison commander has no operational function and power to command the units of the armed forces.¹³⁹⁵
442. The Rules Governing the Structure and Operation of the Military Police of the HV 1994¹³⁹⁶ removed the VP from its subordination to the RH Main Staff, Military District commands and units of the HV. The Rules transferred the VP to the Minister of Defence and the Military Police Administration.¹³⁹⁷ General Sir Jack Deverell pointed out that "there were sound reasons for this...[it] is to separate the chain of command from the investigating police function and the legal prosecuting function...at some stage it is almost certain that it is the chain of

¹³⁹² P2532 p69.

¹³⁹³ D34.

¹³⁹⁴ Feldi D1673 p50; Deverell D1784 p20.

¹³⁹⁵ D34; Kovacevic D1676 p98.

¹³⁹⁶ P880.

¹³⁹⁷ Kovacevic D1676 p79-80; Feldi OTP witness statement D1674 p7 "local commanders did not have any authority to command military police"; p9 "Even though Military Police were based within the Military District, the local commander could not command them".

command that will be investigated.”¹³⁹⁸ Kovacevic states that the two relevant secondary regulations issued by the Minister of Defence do not mutually conflict.¹³⁹⁹ It must also be noted that the order of the Chief of VP Administration 17 December 1992¹⁴⁰⁰ subordinating VP commanders operating away from the HQs of their battalions, to garrison commanders, was explicitly revoked when the new 1994 Rules were adopted.¹⁴⁰¹

443. Item 4 of the Instructions¹⁴⁰² explicitly avoids the use of the word “order” and limits the garrison commander to being only able to *arrange* a *procedure* with the VP. The garrison commander can only *arrange* for the *occasional* employment of VP patrols to supervise military personnel in public places. The garrison commander has no right of command in either case over the VP which is not a subordinated unit to the garrison.¹⁴⁰³

444. Item 5 of the Instructions requires the garrison commander to cooperate and coordinate with the police administrations and police stations in the area of the garrison and to arrange the reciprocal exchange of information regarding the maintenance of work, order and discipline of military personnel in public. This does not give a right of command to the garrison commander over the *civilian* police.¹⁴⁰⁴

¹³⁹⁸ Deverell D1784 p44.

¹³⁹⁹ Kovacevic D1676 p98.

¹⁴⁰⁰ P1206.

¹⁴⁰¹ Feldi D1673 p34-33; Article 77 of the Rules 1994 revokes the “Temporary instruction for the Work of the Military Police” of January 1992. Note P1113 p86, Report of Prosecution expert witness Theunens, who did not state this fact and relied on its content to form his opinion.

¹⁴⁰² D34.

¹⁴⁰³ Feldi D1673 p47.

¹⁴⁰⁴ Feldi D1673 p47.

445. Item 17 of the Instructions¹⁴⁰⁵ obliges the garrison commander to lay down “*instructions on order, discipline and supervision of the conduct of military personnel at the garrison*” and to send them to all units and institutions in the area of the garrison. It is required that the instructions prescribe uniform schedule of working hours; conduct of military personnel in public places; type of supervision of the conduct of people at the ZM (through patrols from the units, the ZM duty service, VP patrols, etc.); restricted locations and the use of public transport. These matters of order, discipline and service “are those non-operational rules and instructions of the garrison which the HV units . . . must respect to enable the garrison to function with order and discipline.”¹⁴⁰⁶ These *instructions* do not give the garrison commander a right of command over the military units in the garrison.¹⁴⁰⁷
446. Item 28 of the Instructions obliges the garrison commander to supervise the work, order and discipline in the garrison by a monthly review with the commanders of all the units and bodies and institutions of the MORH in the garrison. This review does not constitute a subordination of the units and bodies to the garrison commander, but is rather a discussion of the operations and functions of the garrison to enable the garrison commander to perform his tasks and obligations as prescribed.¹⁴⁰⁸
447. The non-operational role of the garrison command in peace time is shown by the requirement to supervise on holidays and week-ends.¹⁴⁰⁹
448. The Prosecution did not challenge any of the evidence of Defence Military experts General Feldi, Pero Kovacevic, or General Deverell in

¹⁴⁰⁵ D34.

¹⁴⁰⁶ Feldi D1673 p46.

¹⁴⁰⁷ Feldi D1673 p48.

¹⁴⁰⁸ *Ibid.*

¹⁴⁰⁹ *Ibid.*

respect of the meaning and/or remit of the Organisational Order and the attached Instructions.

449. The Prosecution has relied upon the evidence of General Lausic, the Chief of the VP Administration for the proposition that the VP were *de jure* subordinated to the garrison commands. Additionally, the Trial Chamber also called Brigadier Juric, appointed by Lausic as a coordinator with command over the 72nd and 73rd VPb. He stated: "I had the right to issue orders to them, but I don't think I was their superior in the formal or legal sense of the word".¹⁴¹⁰

1. THE EVIDENCE OF GENERAL LAUSIC

(a) OTP Witness Statement

450. General Lausic, the Chief of VP Administration gave a witness statement to OTP investigators which contained the following:

- (i) Lausic's limited knowledge of Cermak when he was appointed Knin garrison commander: "Cermak did not expand on his duties or his appointment..."¹⁴¹¹
- (ii) "The company of the 72nd VPb in Knin was subordinated first of all to the commander of the 72nd battalion, and that commander was subordinated to the Commander of the Military District. Horizontally the Military Police in Knin were subordinated, to the highest ranking commander of the HV in its area of responsibility. So in Knin at that time it would be General Cermak."¹⁴¹²

¹⁴¹⁰ T.27412-3.

¹⁴¹¹ P2159 p49.

¹⁴¹² P2159 p41-42.

- (iii) Cermak's responsibilities as a General in the HV and commander of a garrison were contained within the Service Rules of the Armed Services Item 54.¹⁴¹³
- (iv) If Cermak was notified about a crime outside his AOR suspected to have been committed by the HV then he should have informed the Commander of the MD and "under normal circumstances" if a crime was committed by the HV within Knin then his responsibility was to report that to the Commander of the MD and "notify" the VP and it would be his responsibility to "direct" the VP which were under his command for day-to-day activities to investigate it.¹⁴¹⁴

451. Under cross-examination by the Cermak Defence, his evidence changed substantially:

- (i) In his Prosecution witness statement and OTP interview Lausic did not refer to the Order on Organisation and Work in the Garrisons 1993.¹⁴¹⁵ This is a fundamental document that must be read to understand the Service Regulations. The first occasion General Lausic saw and considered exhibit D34 was when the OTP investigator Mr Foster gave it to him the night before he was due to testify. The first discussion with him for the purposes of the trial was in cross-examination by the Cermak Defence.¹⁴¹⁶ It is quite clear from the witness that he had overlooked or was not previously aware of its fundamental point of the non-operational nature of garrison commanders and their inability to command units.

¹⁴¹³ D32; P2159 p51.

¹⁴¹⁴ P2159 p52.

¹⁴¹⁵ D34. What is notable about this fact is that the Prosecution military expert Theunens also paid very little regard to this Order.

¹⁴¹⁶ T.15649.

- (ii) He admitted that his “knowledge of the workings of the garrisons was quite superficial”¹⁴¹⁷ and said elsewhere that his “opinion should not be taken as an opinion of a legal expert...”¹⁴¹⁸ The Defence submit that this testimony undermines the Prosecution’s reliance upon his witness statement as a reliable source on the authority of the garrison commander.
- (iii) The question of what Cermak was to do with crimes notified to him and suspected to have been committed by HV¹⁴¹⁹ was clarified on cross-examination. Lausic agreed “absolutely” that in fact Cermak’s duty would be fulfilled if either he or a subordinate of his or an officer working with him reported it to the VP or the civilian police.¹⁴²⁰ This was the obligation in Croatia of every citizen.¹⁴²¹ He also corrected his position on the duty of Cermak to investigate crimes himself if crimes were committed by subordinates: “He was not under any obligation to carry out a proper crime investigation. He only had to – report his suspicion that somebody was involved in the commission of a crime and then the investigation is carried out by – either by military police or civil police if the suspect is a civilian.”¹⁴²²
- (iv) The issue of whether or not the VP Knin Company reported horizontally to the “Highest ranking HV commander in their zone of responsibility...[which] would be General Cermak”,¹⁴²³ carried with it one of the most alarming errors in the trial. The

¹⁴¹⁷ T.15652 “I gave my statement on the basis of the Rules.”; T.15654.

¹⁴¹⁸ T.15660.

¹⁴¹⁹ P2159 p52.

¹⁴²⁰ T.15662.

¹⁴²¹ T.15661.

¹⁴²² T.15662.

¹⁴²³ P2159 p41-42.

Rules Governing the Structure and Operations of the Military Police¹⁴²⁴ were originally translated so as to read in Article 9 “highest ranking commander of the HV”. This translation was used by the OTP investigators in their questioning of Lausic. This translation was questioned by the Cermak Defence and it was revised to read: “highest ranking commander *by function* of the HV”.¹⁴²⁵ The definitions are entirely different – General Lausic accepted that a garrison commander as a non-operational commander has an inferior rank in the military structure.¹⁴²⁶ The issue of the “highest ranking commander” is relevant to two orders issued by Lausic to the VP battalions on the 5 August¹⁴²⁷ and the 14 August.¹⁴²⁸ In those orders he had in fact used the phrase “most senior commander in their zone of responsibility”, although as he agreed that was not the authority contained within Article 9.¹⁴²⁹ These orders to the battalion commanders including Budimir, commander of the 72VPb, required a positive act by them subordinating units or companies to their new commanders.¹⁴³⁰ The orders were not sent to the garrison commanders and there is no evidence that Cermak ever received them or that the VP Knin company were ever subordinated to Cermak as a result.¹⁴³¹ Further, the Knin Company did not report to Cermak.¹⁴³² Lausic assumed the Knin Company reported to the highest ranking commander and that the commander of the garrison was the most senior officer

¹⁴²⁴ P880.

¹⁴²⁵ Emphasis added.

¹⁴²⁶ T.15646.

¹⁴²⁷ P881.

¹⁴²⁸ D47.

¹⁴²⁹ T.15605.

¹⁴³⁰ T.15606-7.

¹⁴³¹ T.15607.

¹⁴³² T.15642.

in the area.¹⁴³³ As has been shown above, his assumption was in fact based upon an erroneous knowledge of the duties and responsibilities of garrison commanders.

- (v) As to evidence of how the VP Knin company was operating in fact see section: **The *De facto* Relationship: Ivan Cermak and the Military Police.**

(b) OTP Suspect Interview

452. Lausic was first interviewed as a suspect in May 2004 and his interview was made into a witness statement for the OTP in August 2004.¹⁴³⁴ That interview throws light upon how the written statement P2159, page 41 concerning Cermak came into being. It was the subject of cross-examination by the Cermak Defence and a comparison was made.¹⁴³⁵

- (i) The OTP investigator asked the *leading question* to Lausic on the issue of "the highest ranking commander" – "So in Knin that would be Cermak would it?"¹⁴³⁶
- (ii) That was not affirmed by Lausic who gave an answer of the lines of subordination of the Knin Company being to the commander of the 72nd VPb which was subordinated to the commander of the Military District and in a horizontal line to the most supreme commander of the Croatian military in their area of responsibility.¹⁴³⁷

¹⁴³³ T.15644.

¹⁴³⁴ P215.

¹⁴³⁵ T.15638.

¹⁴³⁶ T.15640.

¹⁴³⁷ T.15641.

- (iii) Later the investigator suggested again: "In Knin it would be General Cermak, would it not?" To which Lausic replied "Yes that's true".¹⁴³⁸
- (iv) There was no discussion by the investigator of the Article 9 provision that required subordination to the highest ranking commander *by function*.
- (v) Nor did the investigator ask the question whether General Lausic knew to whom the Knin Military Police Company was reporting.¹⁴³⁹
- (vi) Lausic gave answers based upon a hypothetical issue. This was not made clear in his witness statement.¹⁴⁴⁰

453. In the circumstances there is clear evidence that the OTP case on this issue has been based upon an incorrect translation of an important document¹⁴⁴¹ and an unreliable foundation of a witness statement¹⁴⁴² compiled from a suspect interview with a witness who had a self-serving interest that contained suggestive questioning on an erroneous assumption. Lausic was not aware of, or overlooked, or even concealed, the Organisational Order for garrisons¹⁴⁴³ which fundamentally altered the authority of a garrison commander.

454. Feldi in his expert report explained that it is not possible to find any document in which the authority of garrison commanders to command VP units under Article 9 of the Rules Governing the Structure and

¹⁴³⁸ T.15641.

¹⁴³⁹ T.15642-3; Lausic stated "As you can see from the transcript the answer is no".

¹⁴⁴⁰ T.15643.

¹⁴⁴¹ P880.

¹⁴⁴² P2159.

¹⁴⁴³ D34.

Operations of the MP¹⁴⁴⁴ was granted. Neither are there any reports in which garrison commanders are cited as being the highest HV commanders in their area of responsibility. The example he cites which establishes the correctness of his opinion, is the order issued by Lausic on 18 August 1995 to prevent crime.¹⁴⁴⁵ This is issued to battalion commanders and states in point 2 that commanders of the VP are to “immediately get in contact with the highest ranking HV commander in their area of responsibility”. This order is not copied to or sent for information to the garrison commands, but instead, it was sent to the MD Commanders.¹⁴⁴⁶

455. Kovacevic in his expert report made it clear that Article 9 of the Rules Governing the Structure and Operations of the VP do not produce direct legal effects but require the adoption of implementing orders.¹⁴⁴⁷ In cross-examination Lausic agreed with this.¹⁴⁴⁸ Kovacevic cited the method to achieve this which properly follows the principles of unity of command and subordination.¹⁴⁴⁹ In the case of the two orders which refer to the “highest commander” (namely P881 and D47), these were delegated to the battalion commander Budimir to implement and there is no evidence that he did so by issuing an order, or in the actual work and duties of the Knin Company as carried out.¹⁴⁵⁰

456. There is clear evidence that Lausic as the Chief of the VP issued orders on all aspects of the use and responsibilities of VP units. General Feldi cites numerous examples.¹⁴⁵¹ The reasonable inference to be drawn from this evidence is that Lausic as a suspect and with the clear

¹⁴⁴⁴ Feldi D1673 p32; P880.

¹⁴⁴⁵ P877.

¹⁴⁴⁶ Feldi D1673 p32.

¹⁴⁴⁷ Kovacevic D1676 p96.

¹⁴⁴⁸ T.15606-7.

¹⁴⁴⁹ Kovacevic D1676 p96-7.

¹⁴⁵⁰ Kovacevic D1676 p97.

¹⁴⁵¹ Feldi D1673 p33-34.

direction steered to him by the OTP investigator had most to gain by claiming that responsibility for the VP lay with someone else, other than himself. He also had a reason to follow the chosen line of the OTP to appear to be cooperating with them and become a witness rather than an accused by agreeing that Cermak had command and control in some form over the Knin VP.

457. At the meeting in Plitvice on 15 September 1995, when the MUP and VP reviewed their performances, Lausic and Moric accepted their full responsibility for the control of law and order and neither did they, nor anyone else present, shift responsibility in any aspect to Cermak.

2. THE *DE FACTO* RELATIONSHIP: IVAN CERMAK AND THE MILITARY POLICE

458. Cermak was appointed the garrison commander of Knin on 5 August 1995.¹⁴⁵² A garrison command exists within the structure of the HV subordinate to the Commander of the MD. The VP has a different line of authority, with its component parts being subordinated to the VP Administration above which is the Minister of Defence and thereafter the President as Supreme Commander.

459. The Defence for Cermak submit that the evidence in the case has established that he had no authority of command and control over the VP in law and had no such authority in fact.

460. The Prosecution alleges that Cermak commanded the VP in Knin on the basis of:

¹⁴⁵² D31.

- (a) Six orders signed by him as the garrison commander;¹⁴⁵³
- (b) Reliance upon the witness statement given to the Prosecution investigators by the commander of the Knin Joint company, Bosko Dzolic;¹⁴⁵⁴ and
- (c) The fact Cermak told internationals he would order the VP to investigate crime.¹⁴⁵⁵

(a) The 6 Cermak Military Police Orders

461. Of the six Cermak VP orders, five relate to UNCRO,¹⁴⁵⁶ of which three were issued on 8 August, one on 9 August and one on 12 August. The non-UNCRO order is dated 15 August and refers to the entry of civilians into Knin.¹⁴⁵⁷
462. No further written orders exist after this date, nor is there any wider range of orders. There is no evidence of any wider involvement by Cermak in the operations of the Military Police¹⁴⁵⁸ and there is positive evidence that he was not a superior to the VP, due to orders issued to provide him with security, which would not have been necessary if he had possessed the authority alleged.¹⁴⁵⁹ There are no reports back to Cermak from the Knin Company or the 72 VPb indicating that the documents he issued were acted upon as orders and/or carried a

¹⁴⁵³ P53 (P513 duplicate) - 8 August, D788 - 8 August, P512 - 8 August, D303 - 9 August, 12 August, D503 - 12 August, P509 - 15 August. Prosecution military expert witness Theunens relied upon these orders T.13059.

¹⁴⁵⁴ P875.

¹⁴⁵⁵ P1147.

¹⁴⁵⁶ P53 (P513 duplicate), [REDACTED], P512, D303, D503, D788.

¹⁴⁵⁷ P509.

¹⁴⁵⁸ P883, 1995 Annual Report of the 72VPb; D1301, 14 August 1995 Report after liberation of territories 72VPb SIS; D47, 14 August 1995 Order Chief Military Police Administration to Commanders of VPbs to report to most senior commander; P879, 5 August 1995 Report Major Juric 72VPb; See also D732; D734; D789; D1134; D1146. Deverell D1784 p47 "it is difficult to find many documents of substance copied by the Military police to General Cermak". In fact he does not name any.

¹⁴⁵⁹ D770; D790.

responsibility to report.¹⁴⁶⁰ The opinion of Feldi is that these six orders “were received only as notifications-information and that the VP were not obliged to act accordingly”, which is why they do not feature in a reporting system.¹⁴⁶¹ Neither is there consistency in the way in which the recipients of the orders are named.¹⁴⁶² None of the orders are stamped to show they were received or who received them.

463. The Prosecution called three VP Witnesses during the trial and the Trial Chamber called the commander/coordinator Juric. The evidence called does not support the Prosecution’s allegations. It is significant that the Prosecution avoided putting their case on the Cermak VP Orders to the relevant military police witnesses on such a core issue:

- (i) Lausic did not have the six orders put to him for his opinion in his OTP interview.¹⁴⁶³ In his direct examination the Prosecution again did not put the orders to him to ascertain whether his evidence would support their case.¹⁴⁶⁴
- (ii) Dzolic was the commander of the VP Knin Company from 5-12 August 1995. He would have been the intended recipient of the first 5 orders and could have given evidence as to whether they established the allegation of the Prosecution. In his OTP interview, Dzolic did not have the six orders put to him,¹⁴⁶⁵ neither did the Prosecution ask Dzolic about them when he gave

¹⁴⁶⁰ Theunens P1113, T.13295.

¹⁴⁶¹ Feldi D1673 p52; Kovacevic D1676 p65-66 also describes them as notifications; Deverell D1784 p47 “instructions”.

¹⁴⁶² 8 August 1995: D788 is to the “Military Police”; P53 is to “Knin Military Police”; P512 is to “Military Police”. No commander or superior officer is identified as a subordinate to whom the order is sent. 9 August 1995: D303 “Commander of the Knin Military Police”. 12 August 1995: D503 “Commander of the Knin Military Police”. 15 August 1995 : P509 “Knin Military Police”.

¹⁴⁶³ P2159.

¹⁴⁶⁴ [REDACTED].

¹⁴⁶⁵ P875.

his direct evidence on 17 September 2008.¹⁴⁶⁶ The Cermak Defence cross-examined him and put the evidence to him for the first time on this issue.¹⁴⁶⁷ Dzolic did not recognise nor remember the Orders P513 (duplicate of P53); D788; P512; D303; D503 nor did he accept that they could be orders he was obliged to follow:

"As far as I remember and recall the work and coordination of work, while I was the company commander in Knin, it's my opinion that I was not obliged to follow orders of this kind as orders, however as information that something had occurred, that is certain vehicles had been stolen, I was supposed to take steps in accordance with my possibilities to have these vehicles found...Why this is entitled "order" is something I can't say. I can't go into that." "As an order, this was not something I had to report about..."¹⁴⁶⁸

The Prosecution has relied upon these orders, but has in fact hidden behind a disputed paragraph of Dzolic's statement¹⁴⁶⁹ in an attempt to establish authority, rather than testing with the witnesses directly the validity of its argument concerning the orders.

- (iii) Damir Simic of the Crime Police from the 72VPb who transferred to Knin was not asked any questions in his witness statement¹⁴⁷⁰ by the OTP investigators nor in his testimony on this matter.¹⁴⁷¹

¹⁴⁶⁶ T.8887.

¹⁴⁶⁷ T.9021-9028.

¹⁴⁶⁸ T.9028.

¹⁴⁶⁹ P875 para.37. This paragraph is analysed comprehensively below.

¹⁴⁷⁰ P967.

¹⁴⁷¹ T.10177-10378.

- (iv) Ivan Juric stated of D503¹⁴⁷² and D303¹⁴⁷³ that these were tasks arising in the same way that passing on information to the civilian police occurs under the Croatian law of criminal procedure.¹⁴⁷⁴ He did not regard them as orders.¹⁴⁷⁵
- (v) The Prosecution did not call evidence from Lt Orsulic who was the commander of the VP Knin Company and succeeded Dzolic after 12 August as its commander, to try to establish its case in relation to P509.¹⁴⁷⁶

464. The Prosecution investigators also failed to put these six documents before other key witnesses whom they interviewed who were based in the Knin garrison and to whom they asked questions about the VP and Cermak's authority.¹⁴⁷⁷ The Defence submits that this further demonstrates the determination of the Prosecution to ignore evidence and to pursue only their theory of this case. Witness Dondo in his evidence stated as follows:

- (i) Exhibit P53/P513 dated 8 August was in fact written by him and it was the idea of his unit (the Office for Cooperation with the UN/EU) "as it was important to assist UNCRO".¹⁴⁷⁸ "The aim was to inform about the movements of UNCRO members."

¹⁴⁷² T.27531.

¹⁴⁷³ T.27532.

¹⁴⁷⁴ T.27535. Counsel was stopped putting all the Cermak orders to the VP for comment to the witness by the President of the Court.

¹⁴⁷⁵ T.27531-2.

¹⁴⁷⁶ T.9029.

¹⁴⁷⁷ Dondo D1695 OTP statement; Lukovic D1687 OTP statement.

¹⁴⁷⁸ Dondo D1696 p7.

(ii) Exhibits D303 dated 9 August and D503 dated 12 August: "We did the same when Mr Cermak told us to write a request for the return of the stolen UN vehicles. We also wrote it in the form of an order."¹⁴⁷⁹

(iii) P512 dated 8 August: the order to check helicopters was also the idea of Dondo's office who thought it would be a good idea if the CALOs supervised the inspection of the helicopters by the VP. Cermak agreed with the idea.¹⁴⁸⁰

(b) The Evidence of Bosko Dzolic

465. Dzolic was the commander of the VP Knin Company from 5-12 August 1995. He gave a witness statement in the English language to OTP investigators on 17-18 May 2004.¹⁴⁸¹ The same investigators had interviewed Lausic on 13-14 May and the Defence submits that the Dzolic interview was a wrongful attempt by them to make a case against Cermak to show that he had authority over the VP in Knin. On 20 August 2008, Dzolic gave a second statement also in the English language.¹⁴⁸² Of these statements he said "they were more or less true"¹⁴⁸³ and "I would probably respond in the same way"¹⁴⁸⁴ and "I think so".¹⁴⁸⁵

466. Dzolic established the VP in Knin on 5 August by order of Lausic to commander Budimir of the 72VPb.¹⁴⁸⁶ He was under the command of Juric of the VP Administration and Colonel Budimir, Commander of the

¹⁴⁷⁹ Dondo D1696 p7-8.

¹⁴⁸⁰ T.22542-3; T.22587.

¹⁴⁸¹ P875.

¹⁴⁸² P881, P887.

¹⁴⁸³ T.8891.

¹⁴⁸⁴ T.8894.

¹⁴⁸⁵ T.8932.

¹⁴⁸⁶ P875 p5.

72nd VPb from whom he said in his statement he took his orders.¹⁴⁸⁷ By an order issued on 2 August 1995, Lausic had appointed Juric to assist in commanding and organizing the activities of the 72nd VPb and ordered that the commanders of the 72nd VPb were to be subordinated to him.¹⁴⁸⁸ In his OTP witness statement Dzolic mentions Juric only three times and in very general terms:

- Para 28 – Juric was the VP coordinator and he went with him to meet the civilian police;
- Para 43 – He saw Juric everyday as he slept in the same office as him;
- Para 48 – He went to 3 briefings at Cermak's Office and thinks Juric was also there.

467. The Defence submit this is a striking omission in the context of events in Knin between 5-12 August and arises either because:

- the witness was concealing the truth in his OTP interview; and/or
- the investigators of the OTP did not have sufficient knowledge of the true facts of the case and were unable to ask relevant questions; and/or
- the investigators of the OTP were too concerned to construct a statement against Cermak that they did not ask relevant questions to establish the truth of the command and control structure of the VP in Knin.

¹⁴⁸⁷ P875 p5,6.

¹⁴⁸⁸ T.8991; D267.

In his supplemental statement dated 20 August 2008,¹⁴⁸⁹ Dzolic said that he did not know what role Juric had, and that it seemed to be one of command and that of a co-ordinator. The true nature of Juric's role and his command and control of the VP has only materialised during the course of the trial through Defence cross-examination.

468. In cross-examination, Dzolic testified that he would meet with Juric at least once a day but sometimes five or six times a day.¹⁴⁹⁰ An example of Dzolic reporting to Juric was a report compiled by Juric on the execution of tasks on 5 August 1995 in which Dzolic's Knin Company had established checkpoints, security of facilities of special importance, received prisoners of war, and prevented violations of public law and order.¹⁴⁹¹

469. Dzolic testified that Budimir remained his immediate superior whilst he was in Knin and that he also met with him almost every day.¹⁴⁹² Besides Juric he was also reporting to Budimir about the incidents that were occurring and the tasks of the company in Knin.¹⁴⁹³ Budimir issued orders in which he assigned Dzolic tasks.¹⁴⁹⁴ The Daily Order book of the Knin Company sets out the daily tasks of the VP Knin, patrols, check points and security of buildings etc.¹⁴⁹⁵

470. The investigation of crimes was not included in the daily activities carried out by the joint company.¹⁴⁹⁶ Dzolic stated that from 8 August 1995, certain officers from the crime police department in the 72nd VPb were attached to the Knin company and as of that moment they existed

¹⁴⁸⁹ P876.

¹⁴⁹⁰ T.9003-9004.

¹⁴⁹¹ T.9002-9003; P879, p2.

¹⁴⁹² T.8974, T.9008.

¹⁴⁹³ T.9007.

¹⁴⁹⁴ T.9008.

¹⁴⁹⁵ T.9014; D787.

¹⁴⁹⁶ T.9009-10.

as an independent section of the company.¹⁴⁹⁷ They were still subordinated to Dzolic “in the sense that they were supposed to carry out their everyday tasks in the company; for example, lining up at lunch-time, their appearance, their conduct had to be the same as that of every other member of the company. However, in their professional work, they were subordinated to the military crime police department...and this was under the leadership of Corporal Milas”.¹⁴⁹⁸

471. At paragraph 37 of his witness statement taken by OTP investigators Dzolic was alleged to have said the following:

- (i) “On 7 August 1995 I was introduced to General Cermak by Colonel Budimir and I was told to be at Cermak’s disposal in case that he needed anything”.
- (ii) “Cermak was introduced to me as a General and Government Commissioner for the town of Knin and that he was responsible for the town and we had to help him in anyway he wanted”. In his supplemental statement Government Commissioner was changed to Garrison Commander for Knin.¹⁴⁹⁹
- (iii) “The way I understood it was that I was still under the command of Colonel Budimir but that I was also under the command of General Cermak and I was to obey any order that General Cermak gave me.”

¹⁴⁹⁷ T.9010.

¹⁴⁹⁸ T.8990; T.9030; D789.

¹⁴⁹⁹ P876 para15. T8895 There was no audio record of this interview to assist as to how this change in title came about.

472. Before further analysis of Dzolic's evidence, the following points about paragraph 37 and its relationship with the rest of the statement need to be made:

- (i) The "introduction" on 7 August is not an effective subordination for the regular tasks of the military police.
- (ii) To be at someone's "disposal" in case he needs anything can not be construed as an effective subordination for the regular tasks of the VP.
- (iii) In paragraph 38, he stated "For our daily duties we came under the command of the local military commander because we were dependant on their logistics support." The local military commander is not identified or elaborated upon in this stand alone sentence. It would be a curious omission by Dzolic if it was Cermak. Cermak as the garrison commander had no logistics brigade under his command. The 306 was not subordinated to him as the attempts by him to employ Major Jonjic demonstrate.¹⁵⁰⁰
- (iv) "The way I understood it was..." falls short of specifying that Dzolic was subordinated to Cermak for his regular military police tasks.¹⁵⁰¹

¹⁵⁰⁰D759, D758, D760.

¹⁵⁰¹ T.9018 during Defence cross-examination on these issues, interestingly, Prosecution counsel interrupted and selectively quoted this passage, by omitting "The way I understood it..." and also omitted the statement made in the Rule 92^{ter} procedure at T.8929, where Dzolic made it clear that Cermak could not order him. At T.9018-9 it is clear the Prosecution did not want the Defence for Cermak to challenge and test this evidence. At T.9036 this happened again, as Dzolic stated "I don't think that's the way I put it" and it was wrong in part.

- (v) Dzolic does not in any part of his statement explicitly say that Cermak ordered him as a superior officer to whom he was subordinated. Throughout the witness statement, Dzolic does not use the words “order” or “command” in relation to Cermak:

Para 44 - “he told me that he had been informed....I informed the Military Crime Police”;

Para 45 - “I was called to Cermak’s office like this on 2 or 3 occasions” he told me to go and visit the reserve units” he told me to record any incidents of burning”;

Para 47 - “I was again called to see Cermak either on the 9th of August or the 10th August 1995 and he asked me to provide security for a civilian factory. I told him that we did not have enough Military Police...”

In essence, the whole statement is devoid of *indicia* demonstrating that a superior-subordinate relationship existed between the two.

- (vi) Dzolic does not in his statement seem to have been questioned about the duties of a garrison commander which is the authority alleged by the Prosecution as the basis for his authority over the VP.
- (vii) In his supplemental witness statement to the OTP of 20 August 2008 at paragraph 25, Dzolic is shown the VP Rules and states that Articles 8 and 9 are consistent with what he understood the subordination of the VP to be, “in performing their regular Military Police tasks (corrected to daily operational tasks in his

Rule 92ter procedure)¹⁵⁰² under the command of the Military District Commander.”¹⁵⁰³ There is no assertion that he was subordinated and reporting to Cermak as the highest ranking HV commander (by function omitted). In paragraph 26 this goes further and he says “I can confirm that this order was my understanding of the command structure and that Colonel Budimir was under the command of General Gotovina for the day to day activities (corrected to daily operational tasks in the Rule 92ter procedure)¹⁵⁰⁴ of the 72VPb”.

(viii) In cross-examination, the Defence confronted Dzolic with his statement that he was under the command of Cermak.¹⁵⁰⁵ He stated “I don’t think that’s the way I put it” and the statement was wrong in part. “I was not under the command of General Cermak; I was under the command of colonel Budimir”. He agreed it was wrong to say that he was to obey any order that Cermak gave him.¹⁵⁰⁶

473. In his evidence in chief, Dzolic was unaware whether company commanders of the VP were in fact reporting to the “senior most ranking HV officer in the area”.¹⁵⁰⁷ As to D47, the Lausic order of 14 August requesting company commanders to report to the “most senior army commander in their area”¹⁵⁰⁸, he was unfamiliar with this order. This explicitly confirms the issues raised in cross-examination of Lausic as to implementation. The practice in reporting was that the 72 VPb could only send reports to the commander of the Military District “and

¹⁵⁰² T.8930.

¹⁵⁰³ P876 para.25.

¹⁵⁰⁴ T.8930.

¹⁵⁰⁵ T.9036.

¹⁵⁰⁶ T.9037.

¹⁵⁰⁷ T.8911.

¹⁵⁰⁸ T.8916.

the ones on the ground could send it to the corps commander or the commander of the brigade who was on the ground.”¹⁵⁰⁹ In describing the procedure it is clear that the garrison command was excluded from the reporting system.¹⁵¹⁰ Attempts to make the innocuous significant such as contacting the Knin garrison for a doctor’s telephone number in order to construct a command and control system indicate the lack of evidential support for the Prosecution case.¹⁵¹¹ The reference to taping part of the street to prevent parking in front of the IZM is classically a non-operational exercise by the garrison command to enable order within the garrison.¹⁵¹²

474. Dzolic attended several daily briefings at Cermak’s office whilst he was in Knin and to which he was invited.¹⁵¹³ At these meetings were civilians concerned with the town’s services as well as others and Cermak was coordinating the different people and interests.¹⁵¹⁴ He “could not remember” crimes being discussed, but Cermak stressed such things as it being important for the VP to do their job.¹⁵¹⁵

475. When amending his witness statement, Dzolic made it clear that Cermak could not order him.¹⁵¹⁶ In his testimony he also agreed that Cermak could not order him to investigate crimes.¹⁵¹⁷ Throughout his testimony his evidence was that he was reporting to his superiors Budimir and Juric. It is the Defence case that Cermak was inserted into the picture by the OTP investigators in the same way that he was with

¹⁵⁰⁹ T.8918.

¹⁵¹⁰ T.8932-34.

¹⁵¹¹ T.8935-41.

¹⁵¹² T.8952-3.

¹⁵¹³ T.9020.

¹⁵¹⁴ T.9015-6.

¹⁵¹⁵ T.9017.

¹⁵¹⁶ T.8929.

¹⁵¹⁷ T.9017.

Lausic. In respect of both witnesses this artifice unravelled under cross-examination.

(c) The Evidence of Ivan Juric

476. Juric was appointed as the commander/coordinator of the 72nd and 73rd VPb by Lausic.¹⁵¹⁸ The commanders of both battalions were explicitly subordinated to him in the order on 2 August 1995. His evidence clearly demonstrated that he carried out his orders from Lausic, to whom he sent his reports¹⁵¹⁹ and ran the VP under his own initiative without regard to Cermak: *"he was not my superior"*.¹⁵²⁰ As commander of the Knin garrison, Cermak did not have operative authority over the HV units in any capacity and did not have authority over any of the installations used by the HV in Knin.¹⁵²¹

477. Juric was in daily contact with the commanders of the VP units and commanders of the civilian police stations.¹⁵²² Questioning by the Trial Chamber revealed that contact with Cermak was limited to the meetings Cermak organised involving *"large groups of people"*, including internationals, and not considered by him to be either of an operational nature or command and control level but at a general level.¹⁵²³

478. Juric's reporting line and that of the commanders of the VP was to the highest ranking *operative* commander in their zone of responsibility and with whom they coordinated.¹⁵²⁴ He excluded Cermak from the

¹⁵¹⁸ T.27413; D267.

¹⁵¹⁹ T.27439.

¹⁵²⁰ T.27457.

¹⁵²¹ T.27485; this reflects the evidence from expert witnesses Feldi, Kovacevic and Deverell.

¹⁵²² T.27427, T.27437.

¹⁵²³ T.27430, T.27457.

¹⁵²⁴ T.27438-9.

reporting line with which they engaged.¹⁵²⁵ He was not aware as alleged of Cermak “*receiving regular reports about the work of the VP in Knin*”.¹⁵²⁶ “*I don’t remember to this very day seeing a single report sent by the VP to General Cermak*” he said.¹⁵²⁷

479. Juric claimed Cermak as the garrison commander had the limited rights of any officer to issue *tasks* to the VP implementing security details (an escort), checks and similar things.¹⁵²⁸ These tasks, were implemented only if within the scope of their work. The orders¹⁵²⁹ issued by Cermak to the VP to recover UN equipment he considered as tasks, because it was information received by him and passed on that was within the scope of their work.¹⁵³⁰ He did not describe these as “*orders*” as was put to him,¹⁵³¹ and he made a clear distinction between tasks and orders.¹⁵³²

480. It is clear from Juric that in passing information or a circumstance to the VP, as Cermak had done as in the case of guarding the UNCRO camp entrance, he was not issuing orders as a superior commander, but rather referring them to a task within the scope of their work that the VP determined whether it came within that scope or not.¹⁵³³ Any officer or soldier in the Croatian Armed Forces could do that.¹⁵³⁴ As to the order of freedom of movement dated 8 August 1995,¹⁵³⁵ Juric did not consider the Cermak document as being relevant as he was aware the UN had freedom of movement and had already issued such an

¹⁵²⁵ T.27530.

¹⁵²⁶ T.27488.

¹⁵²⁷ T.27488.

¹⁵²⁸ T.27457-8.

¹⁵²⁹ D503.

¹⁵³⁰ T.27459.

¹⁵³¹ T.27460-1.

¹⁵³² T.27527-8.

¹⁵³³ T.27461.

¹⁵³⁴ T.27535.

¹⁵³⁵ P53.

order to his subordinates.¹⁵³⁶ The inspection of helicopters did not take place in the form described and the VP carried out their duties differently.¹⁵³⁷

481. In summary, Juric never described in his evidence that he felt duty bound to do anything tasked by Cermak *because* it was an order by Cermak, as put by the President of the court.¹⁵³⁸ Juric in fact did not remember any of the Cermak orders *"I don't think he played any major roles with regard to the military police."*¹⁵³⁹

¹⁵³⁶ T.27462.

¹⁵³⁷ T.27463.

¹⁵³⁸ T.27458, T.27463.

¹⁵³⁹ T.27458.

IV. THE MUP

"It wasn't my task to go after criminals and handle security issues".¹⁵⁴⁰

A. Introduction

482. Cermak's *de facto* and *de jure* relationship with the civilian police was one of cooperation and co-ordination, not effective control.¹⁵⁴¹ He was not in a position of superiority over the civilian police.¹⁵⁴² His function was administrative, not operative.¹⁵⁴³ He did not occupy a position within the police hierarchy.¹⁵⁴⁴ MUP officials did not believe that he had authority over the civilian police.¹⁵⁴⁵

B. No *De Jure* Effective Control: The Service Regulations and Organisational Order

483. The Service Regulations of the Armed Forces do not provide a *de jure* basis for command and control by a garrison commander over the civilian police.¹⁵⁴⁶ [REDACTED]¹⁵⁴⁷ [REDACTED].¹⁵⁴⁸ The purely administrative function of the garrison is also clear from an analysis of its staffing strength.¹⁵⁴⁹ Neither is there any provision within the

¹⁵⁴⁰ P2525 p43.

¹⁵⁴¹ [REDACTED]. Cermak had neither *de facto* nor *de jure* effective control over the civilian police: Albiston: T.23948-9; T.23837-8; T.23992; T.24002. Witness Buhin testified Cermak was in charge of coordination (T.10049).

¹⁵⁴² The Prosecution alleges that "Cermak was the superior of the civilian police": Clarification of Indictment, para.8, 28 March 2007. See also Theunens P1113, p244-245.

¹⁵⁴³ Albiston T.23766-7.

¹⁵⁴⁴ Albiston T.23786-7; T.23825.

¹⁵⁴⁵ Albiston T.23786-7; T.23825, T.25949-50

¹⁵⁴⁶ D32; Albiston, T.23769-70.

¹⁵⁴⁷ [REDACTED].

¹⁵⁴⁸ [REDACTED].

¹⁵⁴⁹ Albiston T.23767.

Organisational Order 1993¹⁵⁵⁰ to support a contention that a garrison commander has *de jure* command or control over the civilian police.¹⁵⁵¹ D34 clearly defines the relationship between the garrison commander and the civilian police as one of cooperation, not command and control.¹⁵⁵² Both “formally and *de facto*”, the military could not command the police.¹⁵⁵³ Military commanders had no powers or competences over the civilian police.¹⁵⁵⁴ The civilian police hierarchy was completely separate from the military hierarchy.¹⁵⁵⁵

C. No *De Jure* Effective Control: Cermak did not Have any *De Jure* Position within the Structure of the MUP

484. Cermak did not have any *de jure* position within the structure of the MUP,¹⁵⁵⁶ including the Kotar-Knin¹⁵⁵⁷ and Zadar Knin PUs.¹⁵⁵⁸ Importantly, the “Prosecution doesn’t take issue with any...conclusions [from Albiston’s report] about General Cermak’s role in the formal structure” of the MUP.¹⁵⁵⁹ The *de jure* and *de facto* hierarchy, functioning and resources of the administrations, sectors, stations,¹⁵⁶⁰ police coordinators and Operation Povratak (Operation

¹⁵⁵⁰ D34; Albiston explains that D34 describes the functions of a garrison commander in peacetime; T.23770.

¹⁵⁵¹ [REDACTED].

¹⁵⁵² Albiston T.23770; See also [REDACTED].

¹⁵⁵³ Cetina T.23536.

¹⁵⁵⁴ Moric T.25942, D1841 para.9. See also Moric at T.25945 re no interference as between the Ministry of Defence and the Ministry of the Interior.

¹⁵⁵⁵ [REDACTED]. [REDACTED].

¹⁵⁵⁶ See MUP organigrams: D231; [REDACTED]; P962; [REDACTED]; See also the Directive Governing the Internal Structure and Operating Methods of the Ministry of Internal Affairs of the Republic of Croatia: D527; See also D1077; Albiston T.23772-5; T.23798.

¹⁵⁵⁷ D442.

¹⁵⁵⁸ D229.

¹⁵⁵⁹ Albiston T.23914.

¹⁵⁶⁰ Re police stations and initial resources: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Re lack of police resources and not enough personnel: Buhin T.9983, T.10021-10022, T.10024, P963, p4; Cetina T.23402-23403; Kardum, T. 9458; [REDACTED].

Return)¹⁵⁶¹ have been the subject of extensive evidence at trial.¹⁵⁶² The individuals who commanded the MUP and held positions of responsibility in and around Knin have also been clearly identified.¹⁵⁶³ Croatian civilian police witnesses denied that Cermak was superior to the civilian police.¹⁵⁶⁴

D. No Personal Assignment of Authority to Cermak over the Civilian Police by President Tudjman

485. The Prosecution alleges that President Tudjman as the Head of State and Supreme Commander granted authority to Cermak over the civilian police. The Prosecution relies on P1144, a presidential transcript from 1999.¹⁵⁶⁵ This transcript referred to the scope of Cermak's assignment as being one of cooperating with the

¹⁵⁶¹ Cipci, T.23065; Explanation as to what Operation Povratak was: Cipci T.23143-4; T.23145-6; P497; Cetina, D1743, para.2; [REDACTED]; [REDACTED]; [REDACTED]; T.25533-4; Moric D1841 para.7; Moric T.25527-8; T.25540.

¹⁵⁶² Cipci D1723, paras.2, 11, 12, 13, 15; T.23081-2; T.23091-2; Cetina D1745, p4, 5; Re coordinators, see Cetina D1745, p5, 6, 14 and T.23399; structure of the MUP: T.23503; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Moric on functioning of the MUP: T.25508-11; T.25551-3; re crime prevention police sector: T.25579-580.

¹⁵⁶³ [REDACTED]; re several roles of authority within the MUP, Cetina D1745, p4; re Krvavica T.11337; [REDACTED]; [REDACTED], Cetina D1745, p5-6, D1743, para.6 on Romanic, Buhin only on coordinators P963, p3, T.9920-9921, [REDACTED]; re Franjo Djurica's role: T.11173-5, [REDACTED], T.10023-10024, P963, p3, [REDACTED], Pavlovic T.25288, Cetina D1745, p5-6, p11, D1743, para.4, T.23402, [REDACTED]; [REDACTED]; re Tomurad, Buhin, T.9929, P963, p3-4, [REDACTED], Cetina D1745, p5, T.23425; re Cetina saying about himself he was the chief of the Zadar Police Administration, D1745, p1, Buhin T.10034, Cipci about Cetina and Romanic D1723, para.11; re Reljic [REDACTED], Cetina D1745, p14; re Gledec, [REDACTED]; [REDACTED]; [REDACTED]; Moric was in daily contact with his police officers in Knin: T.25624. Moric and Djurica were sending written notes about meetings held in Zagreb to the coordinators, Buhin T.10045; Moric visited Knin at least once in August. He went there when the police station was opened. The next day, the President was there so Moric coordinated duties relating to the Knin 95 action: T.25625. Positive evidence about the hierarchy of responsibility within the MUP was provided by several Croatian witnesses: Buhin stated that his superiors were Djurica and Tomurad: P963, p3. [REDACTED]. [REDACTED]. [REDACTED]. Kardum stated that Cetina was his chief, T.9457.

¹⁵⁶⁴ Cetina T.23537; [REDACTED]; Cipci D1723, para.27, T.23073; Moric T.25624 and T.25933.

¹⁵⁶⁵ Albiston T.23895-900.

international community, dealing with the infrastructure, return, life, hospitals, keeping order, preventing disorder and mine clearance.¹⁵⁶⁶

486. P1144 does not support the proposition that authority was conferred in 1995 to Cermak over the civilian police. During the trial, HHJ Orie noted that “nothing specifically....[was] said about authority over the civilian police” in this exhibit.¹⁵⁶⁷
487. Albiston explained that *if* the provisions of the prevailing law enabled the President to assign additional tasks (such as assigning Cermak authority over the civilian police), he had not seen any document giving him an authority over the civilian police.¹⁵⁶⁸ He stated categorically that during his review of between 2-4000 documents, he did not see any additional authorities ascribed to Cermak.¹⁵⁶⁹ D296, in which Tudjman states he had sent a “serious man” to Knin, did not state Tudjman gave authority to Cermak over the civilian police.¹⁵⁷⁰
488. Crucially, if such an authority had been conferred upon Cermak by the President, Albiston would have expected the police to have been informed about Cermak’s authority, if it existed, “at all levels.”¹⁵⁷¹ In particular he would have expected Jarnjak, Moric, [REDACTED] to have been aware of “what General Cermak’s special authority was.” In this regard, Moric stated that he had never received an order from anyone that would show that Cermak had any authority over the civilian police.¹⁵⁷² Moreover, Cermak did not have access to the police system.¹⁵⁷³

¹⁵⁶⁶ P1144, p4.

¹⁵⁶⁷ Albiston T.24012

¹⁵⁶⁸ Albiston T.23894-900.

¹⁵⁶⁹ Albiston T.24005-6; Albiston T.24080-1.

¹⁵⁷⁰ Albiston T.24082-3.

¹⁵⁷¹ [REDACTED]; T.24081-2.

¹⁵⁷² Moric T.25933.

¹⁵⁷³ Moric T.25933.

489. Importantly, the Prosecution was asked to state whether or not they relied on *any other exhibit* in the case to support their *specific* assertion that the President assigned Cermak authority and/or tasks in relation to the civilian police.¹⁵⁷⁴ No such other exhibit was cited.¹⁵⁷⁵

E. The Knin Garrison Commander and Co-operation/Co-ordination with the MUP

490. In his role as garrison commander, Cermak was “duty-bound to establish quality cooperation with the civilian authorities and the civilian police.”¹⁵⁷⁶ Item 5 of the “Instructions” requires the garrison commander to cooperate and coordinate with the police administrations and police stations in the area of the garrison and to arrange the reciprocal exchange of information regarding the maintenance of work, order and discipline of military personnel in public.¹⁵⁷⁷ These instructions do not give a right of command to a garrison commander over the civilian police.¹⁵⁷⁸ The defendant¹⁵⁷⁹ and Prosecution police witnesses referred to his co-ordinating function in Knin, and explained that he had no authority to issue binding orders to the civilian police, the military police or the army.¹⁵⁸⁰

¹⁵⁷⁴ Albiston T.24004-5.

¹⁵⁷⁵ See the legal argument from Albiston T.24005-24015.

¹⁵⁷⁶ Cipci, T.23094; The distinction between cooperation/coordination and command/control has been addressed by both [REDACTED]; T.23771-2; re operational and non-operational policing; T.23792 and Deverell: D1784.

¹⁵⁷⁷ D34, p4.

¹⁵⁷⁸ Feldi D1673 p47.

¹⁵⁷⁹ See also D38. Cermak also referred to the duty of the civilian police and the military police to “bring life back to normal and to keep law and order”: D37. See also Cermak’s interviews with the Prosecution: P2526, p21-22: “we had good cooperation with the civilian police”; p51: “I cooperated with commanders of the civilian police and the commander of the military police...So that I got information that was necessary for my work from the commanders of the civilian police and the military police”; P2525, p12: “I had no authority over the civilian police, over the military police, nothing, but everything went through me.”

¹⁵⁸⁰ Buhin - Cermak was having daily meetings which were meant to *coordinate* all the different authorities, such as civilian authorities, civilian police and the army. T.10049-50. IT-06-90-T

491. [REDACTED] illustrates Cermak's cooperation with the civilian police.
Defence expert Albiston noted key indicators:¹⁵⁸¹

(i) [REDACTED];¹⁵⁸² [REDACTED].¹⁵⁸³

(ii) [REDACTED].¹⁵⁸⁴

(iii) [REDACTED]. [REDACTED]¹⁵⁸⁵

492. [REDACTED].¹⁵⁸⁶ [REDACTED].¹⁵⁸⁷ [REDACTED].¹⁵⁸⁸

493. Cipci explained that it was clear that Cermak had "received an inquiry by the ICRC" and "in order to comprehensively and appropriately respond....he *had* to be informed, and this he could only be if he *requested* appropriate information from the Zadar-Knin police chief."¹⁵⁸⁹ Prosecution expert Theunens also acknowledged that information was sent following a *request* from Cermak.¹⁵⁹⁰ The *official* crime reports in respect of the incidents [REDACTED] were not sent to Cermak.¹⁵⁹¹

[REDACTED]; Cipci, T.23094: Referring to the fact that Cermak's "authorities did not entail any right to command over the civilian police"; T.23093: "I can say with certainty that Mr. Cermak, in respect of the civilian police, did not have any authority whatsoever because the commander of the Split Garrison also did not have any jurisdiction over the military police, let alone the civilian police." T.23094: Cipci never heard that Cermak was attempting to influence the police in any way.

¹⁵⁸¹ [REDACTED]. In respect of the incident of rape, see also the request from the ICRC, D1729.

¹⁵⁸² Albiston T.23786: "This is indicative of someone from outside a hierarchy, seeking the assistance of someone who is inside the hierarchy."

¹⁵⁸³ Albiston T.23838.

¹⁵⁸⁴ [REDACTED]; Albiston T.23787.

¹⁵⁸⁵ [REDACTED]; Albiston T.23786; T.23838.

¹⁵⁸⁶ [REDACTED].

¹⁵⁸⁷ [REDACTED].

¹⁵⁸⁸ [REDACTED].

¹⁵⁸⁹ Cipci T.23225; See P1223 re passing on of the information Cermak received to the ICRC.

¹⁵⁹⁰ T.13326-27.

¹⁵⁹¹ D1730; Cipci T.23221-2; D1731; Cipci T.23223-4.

494. In coordinating with the civilian police, Cermak *received* information regarding crimes and was requested to *supply* information by the international community.¹⁵⁹² Contrary to the Prosecution's assertion,¹⁵⁹³ this information did not constitute reports on crimes, but rather provided examples of the sharing of information. As Cipci explained, "it was General Cermak's duty to establish quality co-operation with both the civilian police and the governmental commissioner so as to be able to do his work".¹⁵⁹⁴
495. Cermak's relationship of cooperation is also clear from P957 which records that he "*asks*" Jarnjak, the Minister of Internal Affairs, to contact the civilian police in Split to establish coordination to avoid restrictions of movement of internationals in the future.¹⁵⁹⁵ Cipci explained Cermak "would not have *asked* Mr. Jarnjak to help him with having the police do what the police were supposed to do, because only Mr. Jarnjak could issue orders" to him, Cetina, Matic and other chiefs, not Cermak: "That's why Mr Cermak says 'I had excellent co-operation with the civilian police, and I spoke to my friend Minister

¹⁵⁹² **P2649**: Information required by the ICRC. T.23196. Cipci T.23196: "within the framework of quality cooperation". Cetina D1745, p8: "in response to a request by the International Red Cross for information about an incident that took place in that area." Albiston explained that "the civilian police recognized that General Cermak had a role in relation to the international community." T.23789. **P2650**: ([REDACTED]), Cipci: "[i]t is quite certain that General Cermak wanted to be informed ...so as to be able to provide relevant information to the international monitors and international organization": T.23203. Cetina: "due to a request from an international institution": T.23619. Cetina was aware that the internationals were putting great pressure on Cermak for information to assist with particular crimes: T.23620. The writing of such a letter would not be part of any *official procedure of reporting*: T.23619. "[I]ts information being supplied again to the Knin garrison for the information of the garrison commander" - it informs "the General that the correct investigative and judicial procedure has been initiated." Albiston T.23790. **P2645**: a note by Zvonko GAMBIROZA on an investigation into offences alleged to involve police employees who were based in Knin; [REDACTED]. [REDACTED]. Contrary to the Prosecution's assertion [REDACTED]. [REDACTED].

¹⁵⁹³ Cipci T.23195.

¹⁵⁹⁴ Cipci T.23196.

¹⁵⁹⁵ Cipci T.23189-90.

Jarnjak, because I wanted to see more things resolved, things that fell within the purview of the civilian police.’ ”¹⁵⁹⁶

496. [REDACTED]”¹⁵⁹⁷

497. Another example of Cermak’s relationship of cooperation with the civilian police is demonstrated by the meetings held in the Garrison in Knin attended by representatives of the civilian police.¹⁵⁹⁸ In these co-ordination meetings, in addition to dealing with matters concerning normalisation of life, Cermak passed on information about crimes which he received from the UN to the members of police present¹⁵⁹⁹ and questioned how such acts could be continuing.¹⁶⁰⁰ He was angry that crimes were still taking place.¹⁶⁰¹ The civilian police were not reporting to him, but all parties were sharing information as part of the coordination process.¹⁶⁰²

¹⁵⁹⁶ Cipci T.23212; Cipci was presented with portions of Cermak’s interview to the OTP: T.23206-11.

¹⁵⁹⁷ [REDACTED].

¹⁵⁹⁸ Dzolic T.9016: Cermak tried to “coordinate between different people and interests to help them.”; Dzolic P875, paras.48, 51; [REDACTED]; [REDACTED]; Cetina D1744, para.3, para.4; D1745, p14: “These meetings were in fact only an opportunity to communicate with each other.”; Cipci, T.23204: “all those who were duty-bound to deal with the situation in Knin were supposed to have regular briefings in order to coordinate their activities. Mr. Pasic had whole quality co-operation with the civilian police and others, and the same applied to Mr. Cermak.”

¹⁵⁹⁹ [REDACTED]; Rincic D1680, paras.19-20, Rincic T.22311-12; Dondo D1695, para.15, D1696, para.7; Lukovic D1688, para.42. Lukovic explained that crimes were discussed in the effort to prevent them from happening by organising patrols (D1687, para.49); Pasic, “...there were discussions about killings, looting and destruction, often it would be CERMAK who was telling us that these things were happening and asking what was being done about it. It would have been the Internationals that would have reported these crimes to CERMAK and myself at a different meeting.” (D1706, p4-5); D1706, p8; Pasic D1707, para.25; Cetina, D1743, para.4.

¹⁶⁰⁰ Dondo, D1696, para.28, T.22604.

¹⁶⁰¹ Pasic stated “He would be angry, outraged and worried...and demanded that the perpetrators be punished.” (D1707, para.25). Cetina stated “General CERMAK, he openly showed his dissatisfaction because of these negative incidents” (D1745, p7). Dzolic P875, para.45: Cermak: “the burning of houses was not to be tolerated and [he asked that...] action [be taken] against the perpetrators.”

¹⁶⁰² Cetina didn’t have an obligation to inform Cermak.: T.23510; Cipci: “mutual assistance between the representative of the government, Mr. Cermak, the civilian protection, the Red IT-06-90-T

498. Higher level coordination and cooperation concerning lawlessness in Knin and surrounding areas was undertaken *outside the Knin garrison meetings*, through the offices of the Assistant Minister of the Interior, Moric, and Chief of the Military Police Administration, Lausic.¹⁶⁰³ [REDACTED]¹⁶⁰⁴ or include him in the reporting chains within the PUs or from the PUs to the Assistant Minister of Interior at this higher level.¹⁶⁰⁵ Albiston explained that when it came to “the operational business on the ground...of dealing with the problems that existed”, it was the “civilian police answering through a chain of command to Mr. Moric, and the military police detachments who were answering through a chain of command to Major-General Lausic...”¹⁶⁰⁶ There was “no role...for General Cermak”¹⁶⁰⁷ in the coordination meetings between the VP and the MUP “at which there [were] discussions about patrolling patterns, joint patrolling, check-points, joint check-points”.¹⁶⁰⁸ As Lausic poignantly observed at the Plitvice VP-MUP coordination meeting on 15 September 1995:

*“Members of the MUP and the Military Police are the promoters of the state policy and the only people responsible for its implementation are present at this meeting. The objective is clear: protection of people and property and creation of positive security situation in the entire area of the Republic of Croatia.”*¹⁶⁰⁹

Cross, the police, had to function if they wanted to do their job well and if they wanted to accomplish the mission for which they had been sent to the liberated area.”: T.23204.

¹⁶⁰³ P877, P2186, P2191, P2200, P2206, D46 (Albiston T.23796), D48 (Albiston T.23796), D269 (See Albiston at T.23795), D586 (Albiston T.23798), D592, [REDACTED]³, D595, D596, D800, D801, D1072, and D1287; Cipci, D1723, para.16; T.23078; D794.

¹⁶⁰⁴ [REDACTED].

¹⁶⁰⁵ P498, [REDACTED], [REDACTED], D575, D576, D580, D581, D584, D585.

¹⁶⁰⁶ Albiston T.23946.

¹⁶⁰⁷ Albiston T.23946-7.

¹⁶⁰⁸ Albiston T.23946.

¹⁶⁰⁹ D595, p5.

Cermak was not present at the Plitvice meeting or any other MUP-VP coordination meeting, neither was his deputy.¹⁶¹⁰

F. No *De Facto* Effective Control: Cermak did not have any *De Facto* Position within the Structure of the MUP

499. “[F]ormally, legally, or in fact, [Cermak] was not within the subordination and organised police structure...more specifically, he could not affect the work of the civilian police”.¹⁶¹¹ Moric testified that none of his subordinates reported that they had to defer to Cermak in any way.¹⁶¹²

500. Moric took prevention measures in anticipation of Operation Storm by issuing an instruction on 4 August 1995 directed at all PUs with the aim of countering the “threat of...unrest” which was to be generated by military operations.¹⁶¹³ [REDACTED]¹⁶¹⁴ [REDACTED].¹⁶¹⁵ Minister of the Interior Jarnjak had extensive discussions about the MUP obligations to prevent crimes on several occasions after the start of Operation Storm.¹⁶¹⁶ Jarnjak set out in a statement that the MUP would be involved in policing, civil protection, fire fighting, securing communications and traffic control.”¹⁶¹⁷ In an effort to curb crime, Moric attempted to achieve cooperation and requested that police

¹⁶¹⁰ Albiston T.23946-7; see [REDACTED].

¹⁶¹¹ Moric T.25624.

¹⁶¹² Moric T.25628-9.

¹⁶¹³ D41; [REDACTED]; Cipc D1723, para.4-7.

¹⁶¹⁴ D583.

¹⁶¹⁵ [REDACTED].

¹⁶¹⁶ “The legal provisions task the police with securing law and order, as well as protecting the lives and property of people in that area. In keeping with the Law on the Interior, we were duty-bound, upon liberation, to enter the area with the necessary number of police in order to meet our legal obligations”: Cipci T.23101.

¹⁶¹⁷ D411; [REDACTED].

administer actions send him reports so that he would know the progress.¹⁶¹⁸

501. Factual operational responsibility to prevent crime was a task of the civilian and military police. For example, evidence demonstrates how the MUP dealt with preventing the “torching” and “looting”.¹⁶¹⁹ This was considered as primarily a matter for the Ministry with the assistance of the Military Police where the involvement of members of the HV, or persons in HV uniforms was suspected.¹⁶²⁰ Fire prevention specifically fell within the portfolio of Assistant Minister Zidovec.¹⁶²¹ On 17 August, Assistant Minister Josko Moric turned to the Chief of the Military Police Administration Lausic to achieve better results in pursuing this goal.¹⁶²²
502. Moric testified he was in charge of general prevention.¹⁶²³ He was fully apprised of the situation and was of the opinion that the police were not taking sufficient measures.¹⁶²⁴ Through reports he was aware of an increase in crime in mid-August¹⁶²⁵ and of burning and looting¹⁶²⁶ being committed by people in uniform.¹⁶²⁷ Because of this he ordered a meeting of PU chiefs with the military police battalions.¹⁶²⁸ He reported to the Minister of Interior on the problems preventing the police from

¹⁶¹⁸ D1847.

¹⁶¹⁹ D49; Moric: T.25733-4; and D50; [REDACTED]; re D46, see Moric T.25635-7; re D48 see Moric T.25637-9; re efforts re MUP re crime, see T.25637-8; T.25643 re efforts by Moric; re damage to the reputation of Croatia and the desire to stop the crimes, see Moric: T.25561. See also D481; D574, Albiston T.23802; D575, Moric T.25574-75, T.25653-55; D576; [REDACTED]; D578; D579; D581; D582; D583; D585; D586; D587; D591; D594; D595, Albiston T.23947, T.24071; D597; D600; D794. There is also evidence of the police conducting on-site investigations into cases of torching D1833-D1892.

¹⁶²⁰ D48; [REDACTED].

¹⁶²¹ T.19923, D1570, D600.

¹⁶²² D48; [REDACTED].

¹⁶²³ T.25509.

¹⁶²⁴ Moric T.25927-28.

¹⁶²⁵ Moric T.25561.

¹⁶²⁶ Moric T.25561.

¹⁶²⁷ Moric T.25561, D48

¹⁶²⁸ Moric T.25561.

implementing measures they were bound by law to implement.¹⁶²⁹ He directed the reporting system on cooperation with the Military Police in preventing crime¹⁶³⁰ which was a “coordination” matter, but one in which he did not see fit to involve Cermak or the garrison.¹⁶³¹ He sought to anticipate and avert problems which might arise with the forthcoming demobilisation of HV personnel¹⁶³² and in one instance directed that there would be no retrospective investigations so that future crimes could to be prevented.¹⁶³³ He lambasted the chiefs of the PUs for the quality and timeliness of their reports in response to his directions regarding the prevention of burning and looting.¹⁶³⁴

503. The “higher echelons of the MUP did not consider General Cermak to fall within their chain of command”¹⁶³⁵ as demonstrated by D589, a report prepared by Senior Police Coordinator Marijan Tomurad to Moric on 28 August.¹⁶³⁶ This document detailed the need to:

“achieve an agreement according to which the chief of the Zadar-Knin Police Administration, or the Knin District PU/Police Administration/, or persons authorised by them, may be present” at meetings General Cermak held with members of UNCRO, UNCIVPOL and other IOs in Knin, so as to ensure that the police were “informed about all agreements and conclusions reached, which [would] enable them to plan tasks and duties from their purview accordingly”.¹⁶³⁷

¹⁶²⁹ Moric T.25928.

¹⁶³⁰ D50; [REDACTED], D579.

¹⁶³¹ [REDACTED].

¹⁶³² D586; [REDACTED].

¹⁶³³ [REDACTED].

¹⁶³⁴ D574; D591; [REDACTED].

¹⁶³⁵ [REDACTED].

¹⁶³⁶ D589.

¹⁶³⁷ D589.

504. The Prosecution's suggestion that the inference to be drawn from this document was that Cermak was "able to enter into agreements directly with members of international organisations" that the MUP would then have "to implement on the ground"¹⁶³⁸ is erroneous. As Albiston observed, the presence of the MUP at the meetings "would not have been considered necessary if General CERMAK had *in fact* been within the MUP hierarchy or had any effective control over elements of the MUP."¹⁶³⁹ [REDACTED].¹⁶⁴⁰
505. Furthermore, there is no evidence that Cermak was in fact entering into such agreements on behalf of the MUP. Cetina confirmed that Tomurad's proposal demonstrated merely that the "police [were] very much interested in receiving all manner of information about crimes and, by the same token, information from UNCRO and UNCIVPOL."¹⁶⁴¹ Although Cermak was holding meetings attended by internationals, he "did not have any authorisation to manage police procedure".¹⁶⁴² It was therefore necessary for the police "to be there and to take over the information from members of UNCRO and UNCIVPOL. And that was the sole motive."¹⁶⁴³ As Moric explained, some of his associates believed it would be a good idea for police representatives to attend the meetings Cermak held with representatives of the international organizations so that the police could determine what they could do to help with the security situation.¹⁶⁴⁴ In this way, police would know about the agreements made and could organise and plan accordingly.¹⁶⁴⁵ This document directly supports the defence case that Cermak had no position within

¹⁶³⁸ Albiston T.23903.

¹⁶³⁹ [REDACTED]; Albiston T.23783-4.

¹⁶⁴⁰ [REDACTED].

¹⁶⁴¹ Cetina T.23426-7.

¹⁶⁴² Cetina T.23427.

¹⁶⁴³ Cetina T.23427.

¹⁶⁴⁴ Moric T.25623-24, T.25629-30.

¹⁶⁴⁵ Moric T.25630.

the hierarchy or structure of the MUP or effective control over the civilian police.

506. Although the OTP investigator put to Moric during his interview that coordinators and the chief of PU had to attend meetings and *report* to Cermak, Moric testified that they were not obliged to do so.¹⁶⁴⁶ Cermak was not their boss, and they did not have to cooperate with his requests.¹⁶⁴⁷ The evidence has shown that civilian police coordinators had a distinct *de facto* and *de jure* power and authority *within* the structure of the Ministry of the Interior¹⁶⁴⁸ unconnected to Cermak.
507. Cermak's *de facto* lack of authority over the civilian police has also been demonstrated by his non-involvement in the preparation, planning and/or implementation of OA Knin 1995, a "highly organised, coordinated security operation providing security for the liberty train" that reached Knin on 26 August.¹⁶⁴⁹ OA Knin was the responsibility of the MUP and involved all security services, including the military police.¹⁶⁵⁰ It was a joint security action of the Ministry of the Interior and Ministry of Defence.¹⁶⁵¹ Moric coordinated MUP duties relating to the Knin 95 action while the President was in Knin¹⁶⁵² and Lausic coordinated the VP.
508. Cermak did not receive any of the documentation relating to the planning, engagement of forces,¹⁶⁵³ protection of the Knin railway

¹⁶⁴⁶ Moric D1842, p79, Moric T.25632.

¹⁶⁴⁷ *Ibid.*

¹⁶⁴⁸ [REDACTED]; [REDACTED]; Buhin P963, p3, 4; Buhin T.9920-1, T.9931; [REDACTED]; Pasic T.23008; Cipci T.23092-3; Cetina T.23394-5; Moric D1841, para.8; Moric T.25551-2. See P963 (Buhin), T.10018, T.10060-61.

¹⁶⁴⁹ Moric T.25750, D1850, D1851.

¹⁶⁵⁰ Moric T.25750, D1850, D1851, para.1, D1879, p1.

¹⁶⁵¹ Moric T.25604; D1850.

¹⁶⁵² Moric T.25625.

¹⁶⁵³ D773.

station,¹⁶⁵⁴ security preparation, organisation and implementation¹⁶⁵⁵ of OA Knin, neither was he part of the reporting chain. Jarnjak informed the PUs that the MUP staff were in charge of “planning, implementing, and monitoring the implementation of the measures and activities that” fell under the jurisdiction of internal affairs.¹⁶⁵⁶ Moreover, the security plan involving the entire PU¹⁶⁵⁷ was sent to the Zadar Knin PU and other police stations – but not to the Knin garrison.¹⁶⁵⁸ Cermak did not receive security assessments,¹⁶⁵⁹ or reports on tasks carried out in relation to OA Knin.¹⁶⁶⁰ A report dated 25 August from General Cuk (head of security and the operation) stated clearly that “[a]ll Ministry of Defence and Ministry of Interior units in their areas of responsibility will be subordinated to the security staff for the duration of Knin 95.”¹⁶⁶¹ Moric testified that from the point of view of internal security matters, Cermak “was not an important player in the area, when it came to the matters of security”.¹⁶⁶² He was an outsider.¹⁶⁶³ The VP, MUP and security services all operated according to their own lines¹⁶⁶⁴ – none of which included Cermak. Each ministry “coordinated its own organisational units in the field” and there was “mutual coordination and cooperation at the level of the various services and ministries”¹⁶⁶⁵ – which, once again, did not involve Cermak.

509. Cermak’s lack of involvement in OA Knin¹⁶⁶⁶ directly contradicts the Prosecution’s assertion that he was the *de facto* superior of the MUP. If

¹⁶⁵⁴ D1877.

¹⁶⁵⁵ D1879; see also D1855 which outlines the security plan.

¹⁶⁵⁶ Moric T.25605.

¹⁶⁵⁷ Moric T.25615.

¹⁶⁵⁸ Moric T.25615.

¹⁶⁵⁹ D1856; D1853; [REDACTED].

¹⁶⁶⁰ D1852; D1880; D1881.

¹⁶⁶¹ Moric T.25617.

¹⁶⁶² Moric T.25949.

¹⁶⁶³ Moric T.25950.

¹⁶⁶⁴ Moric T.25617.

¹⁶⁶⁵ Moric T.25617.

¹⁶⁶⁶ Moric T.25618-9.

the allegations were accurate, it is inconceivable that Cermak would have been outside the command and control system in respect of such a major event.

G. No *De Jure* or *De Facto* Effective Control: Cermak was not Part of the Chain of Reporting within the MUP

510. Cermak did not receive decisions, orders, reports or any other communications circulated within the MUP between Moric and the PUs.¹⁶⁶⁷ If Cermak had been in *de facto* and/or *de jure* command of the police, Albiston stated that he would have expected to have seen his name on many different types of documents.¹⁶⁶⁸ These would have included instructions, policy documents, orders transferring or appointing senior police officers, and reports going up the MUP chain of command for the information of senior personnel in Zagreb.¹⁶⁶⁹ The majority of documents reviewed by Albiston “in relation to matters which might impact upon policing which General Cermak was involved in...were simply administrative matters.”¹⁶⁷⁰ Furthermore, Cermak was not included in the communications which took place within the MUP or between the MUP and the VP with regard to crime and the setting up of joint meetings and operations.¹⁶⁷¹ Cetina explained that at the Plitvice coordination meeting on 15 September, the aim of which was for the MUP and VP to “agree on how to act jointly in the relevant area”¹⁶⁷² there was no mention of Cermak when

¹⁶⁶⁷ D50; D574; D481.

¹⁶⁶⁸ Albiston T.23783.

¹⁶⁶⁹ Albiston T.23783.

¹⁶⁷⁰ Albiston T.23793.

¹⁶⁷¹ [REDACTED]; D573 Albiston: General Cermak didnt have a role to play: T.23801; P498 Albiston: T.23799-800; [REDACTED] Albiston: T.23800; D575; D576; D579; D581; D46; D48; D49 (see Cetina T.23410); P877; D586; D989; D589; D574 [Moric: T25573]; D1858; D580; D594; D595; D596; P515; P493; D44; D45; D585; D50; D573; [REDACTED]; P2206; D41; D452; Cetina, D1743, para.9.; See also D1744 para.1; Cetina, D1745, p11 re joint work between the MUP and VP, as well as the meeting in Plitvice.

¹⁶⁷² Cetina T.23623; see notes of meeting at D595 dated 18th September 1995.

referring to the need “to sort law and order out”.¹⁶⁷³ Cermak’s name was not mentioned in any of the MUP-VP coordination meetings.¹⁶⁷⁴

511. Cetina also testified about the process of vertical reporting within the MUP¹⁶⁷⁵ and explained that even if Cermak expressed his view that “something should be done”, it was not expected “that he would...be informed about the action taken”.¹⁶⁷⁶ Cetina was not under an obligation to report back to him.¹⁶⁷⁷ Moreover, the sending of a letter containing information from the ICRC by Cermak to a civilian police officer such as Cetina, did not amount to the “tasking” of that officer.¹⁶⁷⁸ The “joint work of the police and the military police was agreed at the highest level, in the MUP and in the Military Police of the Ministry of Defence.”¹⁶⁷⁹ Such probative evidence from a high-ranking Croatian member of the MUP directly contradicts the notion put forth by Theunens that Cermak was superior to the civilian police.

H. No *De Jure* or *De Facto* Effective Control: No Role in the Staffing of the MUP, the Sending of Additional MUP Units to the Liberated Area or the Opening of Police Stations

512. Cermak did not have any role as regards the staffing of the MUP. Orders regulating staffing issues were not sent or forwarded to him.¹⁶⁸⁰ He had no involvement in the sending of additional police assistance,

¹⁶⁷³ Cetina T.23623-4.

¹⁶⁷⁴ Cetina T.23624.

¹⁶⁷⁵ Cetina referring to D46, T.23409-10.

¹⁶⁷⁶ Cetina T.23550.

¹⁶⁷⁷ Cetina T.23558-9. If Cermak asked Cetina “to inform him and if it was important to him, then yes...Otherwise, in principle, I would not have.”: T.23559-60. No obligation to report back to Cermak: T.23616.

¹⁶⁷⁸ Cetina T.23616.

¹⁶⁷⁹ Cetina D1743, para.9.

¹⁶⁸⁰ P497; D446; D450; D452.

securing official positions,¹⁶⁸¹ civilian protection conscripts, setting up of checkpoints,¹⁶⁸² establishing an operative duty service,¹⁶⁸³ upgrading general security,¹⁶⁸⁴ sending the separate police units to the Zadar Knin PU or in the general work of the separate police units.¹⁶⁸⁵ When the establishment of civil authority took place on 5-6 August,¹⁶⁸⁶ Cermak had no involvement in the opening of the police stations in the liberated territory, a matter which was regulated within the MUP.¹⁶⁸⁷

I. No De Facto Effective Control over the Civilian Police: P34,
[REDACTED], [REDACTED], **D505**, [REDACTED], [REDACTED],

P34: HRAT REPORT 29 AUGUST 1995

513. The Prosecution relies on P34 as evidence of Cermak believing that he was *in fact* able to issue oral orders to the civilian police.¹⁶⁸⁸ This report states that:

“While denying that anyone is being urged to leave their homes, the HRAT stressed to the general the necessity of providing a stronger Croatian police presence in outlying area. The general stated he is giving an order to that effect today to Knin chief of police Romanic”.

¹⁶⁸¹ [REDACTED]; [REDACTED].

¹⁶⁸² [REDACTED]; [REDACTED]4; [REDACTED]; [REDACTED]; [REDACTED].

¹⁶⁸³ [REDACTED].

¹⁶⁸⁴ [REDACTED]; [REDACTED].

¹⁶⁸⁵ D42; D582; D43; D445, [REDACTED], D447, D448, D449, D450, D451, D454, D455, D465, D466, D467, D468, D469, [REDACTED], D471, D472, D473, D474, [REDACTED], [REDACTED], D477, D478, D479, D480, D482, D483, D484, D485; Cipci D1723, para.9; Cipci T.23106-7; [REDACTED]; Witness [REDACTED]; [REDACTED].

¹⁶⁸⁶ Cipci T.23109-10; Cetina T.23396-7; [REDACTED].

¹⁶⁸⁷ D507; P544; D227; D40; Cipci T.23073; D1725; Cipci T.23102-3; T.23105; D1726; Cetina D1745, p5; T.23396-7; T.23399-23400; D411 re police administrations dated 8.8.95: “all services of the Ministry of the Interior have become operational”: [REDACTED].

¹⁶⁸⁸ Albiston T.23988-9; see P34.

514. Police expert Albiston concluded that this document reflected “a desire on the part of General Cermak to persuade the people whom he is addressing that he will take strong executive action”¹⁶⁸⁹, and was no more than an “indication of what General Cermak wanted the people he was with to believe rather than what he believed himself.”¹⁶⁹⁰ Albiston explained that:

*“If General Cermak had any genuine de facto command over the police in this area over this period of time...I would expect to see a significant volume of orders, instructions, requirements for reports as to what exactly was being done about it.”*¹⁶⁹¹

515. No such collection has been exhibited at trial. Even if Cermak believed that he could issue orders to the civilian police, such self-belief reflected in statements made to others cannot create either a *de facto* or *de jure* authority over such a body. Statements made by an accused that he was in a position of control are no proof of actual authority.¹⁶⁹²

[REDACTED]

516. The Prosecution also seeks to rely on [REDACTED] as evidence of Cermak’s *de facto* authority over the civilian police.¹⁶⁹³ [REDACTED], the Trial Chamber must bear the following important factors in mind which impact directly on the reliability and probative value of the document:

¹⁶⁸⁹ Albiston T.23988.

¹⁶⁹⁰ Albiston T.23989.

¹⁶⁹¹ Albiston T.24080.

¹⁶⁹² The Appeals Chamber in *Blaskic*, in assessing a statement made by the accused that he did indeed exercise command over the units in questions, stated that it would not be reasonable to expect a commander to admit otherwise or “to disclose problems in his command structure under the circumstances.” *Blaskic* Appeals Judgement, note 1255.

¹⁶⁹³ [REDACTED].

- (i) [REDACTED] was never called by the Prosecution [REDACTED] and no application was made in respect of him as an unavailable witness;
- (ii) the original document is entirely handwritten and virtually every page of the translation has one or more question marks within the text indicating that the translator was unable to decipher the handwriting; and
- (iii) there are over 70 instances of “illegible” text.

The Defence submits therefore that the exact meaning of [REDACTED] cannot be ascertained beyond a reasonable doubt by the Chamber.

517. When asked about [REDACTED],¹⁶⁹⁴ [REDACTED]¹⁶⁹⁵ [REDACTED].¹⁶⁹⁶ As with Juric of the VP, communications to him could obviously be interpreted by him as a task or not, depending upon whether the communication fell within the scope of his responsibility.

518. [REDACTED]¹⁶⁹⁷ Importantly, [REDACTED]¹⁶⁹⁸ [REDACTED].¹⁶⁹⁹ There is no evidence as to *who* gave the tasks, *who* was present at the meeting, *whether* any of the tasks were carried out, and if so, *to whom* reports, if any were sent. [REDACTED]. [REDACTED].¹⁷⁰⁰ In these circumstances, the Defence submits that the Trial Chamber cannot rely upon this entry in [REDACTED] to establish Cermak’s *de facto* authority over the civilian police.

[REDACTED]

¹⁶⁹⁴ [REDACTED]

¹⁶⁹⁵ [REDACTED].

¹⁶⁹⁶ [REDACTED]; [REDACTED].

¹⁶⁹⁷ [REDACTED].

¹⁶⁹⁸ [REDACTED].

¹⁶⁹⁹ [REDACTED]3.

¹⁷⁰⁰ [REDACTED]35.

519. The Prosecution also seeks to rely on [REDACTED]:¹⁷⁰¹

[REDACTED]¹⁷⁰² [REDACTED].¹⁷⁰³

520. [REDACTED].¹⁷⁰⁴ [REDACTED].¹⁷⁰⁵

521. [REDACTED].¹⁷⁰⁶ [REDACTED],¹⁷⁰⁷ [REDACTED].¹⁷⁰⁸ [REDACTED]¹⁷⁰⁹
[REDACTED]¹⁷¹⁰ [REDACTED]¹⁷¹¹

522. [REDACTED]¹⁷¹² [REDACTED]¹⁷¹³ [REDACTED].¹⁷¹⁴ [REDACTED]¹⁷¹⁵
[REDACTED].¹⁷¹⁶

523. [REDACTED]¹⁷¹⁷ [REDACTED].¹⁷¹⁸ [REDACTED]¹⁷¹⁹ [REDACTED].

¹⁷⁰¹ [REDACTED].

¹⁷⁰² [REDACTED].

¹⁷⁰³ Emphasis added.

¹⁷⁰⁴ *Oric* Trial Judgement, para.311; *Semanza* Trial Judgement, para.402; *Ntagerura* Trial Judgement, para.628. See generally *Limaj* Trial Judgement, paras.590, 602; *Kordic* Trial Judgement, paras. 415, 424.

¹⁷⁰⁵ *Kvočka* Appeal Judgement, para.144, stating “Not every position of authority and influence necessarily leads to superior responsibility under Article 7(3) of the Statute.”

¹⁷⁰⁶ [REDACTED].

¹⁷⁰⁷ [REDACTED].

¹⁷⁰⁸ [REDACTED].

¹⁷⁰⁹ [REDACTED].

¹⁷¹⁰ [REDACTED].

¹⁷¹¹ [REDACTED].

¹⁷¹² [REDACTED].

¹⁷¹³ [REDACTED].

¹⁷¹⁴ [REDACTED].

¹⁷¹⁵ [REDACTED].

¹⁷¹⁶ [REDACTED].

¹⁷¹⁷ [REDACTED].

¹⁷¹⁸ [REDACTED].

¹⁷¹⁹ [REDACTED].

D505: "DEAR GENTLEMEN"

524. Cermak's lack of authority over the civilian police is reinforced by a letter dated 19 August from him to the PU in Knin: D505. Albiston concluded that the language used clearly deals with a crime matter and was not indicative of a hierarchical chain of command. Moreover, it was an "unambiguous declaration" by Cermak that he did not deal with crime matters because he had no authority to do so.¹⁷²⁰
525. Although the location of the theft in Srb was not within the Knin garrison territorial area,¹⁷²¹ Albiston explained that the language of the letter which referred to Cermak not being authorized for "this and similar problems" suggested that he "was saying, Look, I don't deal with crime" in general.¹⁷²²

[REDACTED]: THE CAR RALLY

526. [REDACTED]¹⁷²³ [REDACTED]¹⁷²⁴ [REDACTED].¹⁷²⁵
527. This is symptomatic of the problems within some of the OTP witness statements where they have sought evidence in their investigations on an important matter, and recorded it ambiguously ([REDACTED], Dzolic, Lausic) in order to further the aims of the Prosecution case.

¹⁷²⁰ [REDACTED]; T.23825.

¹⁷²¹ Albiston T.24025.

¹⁷²² Albiston T.24028.

¹⁷²³ [REDACTED].

¹⁷²⁴ W[REDACTED].

¹⁷²⁵ [REDACTED].

J. Seven So-Called 'Orders' Sent by Cermak Demonstrate his Lack of Effective Control over the Civilian Police

528. [REDACTED].¹⁷²⁶ He did not command them.¹⁷²⁷ The civilian police in Knin were subordinated to Romanic,¹⁷²⁸ who was not subordinated to the command of Cermak.¹⁷²⁹ In his interview with the OTP, Cermak explained that he "didn't order the military police or civilian police what to do."¹⁷³⁰ He could not issue compulsory binding orders to the police.¹⁷³¹ Orders in respect of work to be carried out by the MUP came from within the hierarchy of the MUP.¹⁷³²

529. The Prosecution relies on seven documents bearing the title "order" ¹⁷³³ addressed to the civilian police as evidence of Cermak's *de facto* effective control. ¹⁷³⁴ Six of these orders were issued between 8-15 August. The Defence submits that their subject matter, number¹⁷³⁵ and lack of receipt/implementation on the ground demonstrate that he did not possess effective control over the civilian police. As the law dictates, "in order to make a proper determination of the status and actual powers of control of a superior, it...[is] necessary to look at the substance of the documents signed and whether there is evidence of

¹⁷²⁶ [REDACTED].

¹⁷²⁷ Cipci D1723, para.27-28.; T.23093-4; [REDACTED]; Cipci, T.23225; Cetina, D1743, para.8; Cetina, D1745, p7: "General CERMAK did not have command authority over me because I was not part of the military. My chain of command was towards the MUP Central Office in Zagreb."

¹⁷²⁸ Cipci, T.23073.

¹⁷²⁹ Cipci, T.23073; T.23095; [REDACTED]

¹⁷³⁰ P2532, p48.

¹⁷³¹ [REDACTED]. [REDACTED]; [REDACTED]; Cipci T.23095; Buhin T.10050-10051; [REDACTED]; Cetina D1745, p7; T.23537.

¹⁷³² [REDACTED]. [REDACTED]; T.9979 re P509.

¹⁷³³ P512 (8.8.95); P53 (8.8.95); D303 (9.8.95); [REDACTED]; D503(12.8.95); P509(15.8.95); D504 (7.10.95).

¹⁷³⁴ 98bis submissions T.17453.

¹⁷³⁵ Albiston T.23987.

them being acted upon.”¹⁷³⁶ Moreover, the fact that an accused signed an order “may not necessarily be indicative of actual authority”.¹⁷³⁷ Ultimately, the lack of authority to issue binding orders is a strong indicator that an individual does not have effective control.¹⁷³⁸ All these orders issued in the name of the garrison lacked the authority they sought to espouse.

530. Croatian police witnesses interpreted Cermak’s orders as “information”,¹⁷³⁹ “notifications”,¹⁷⁴⁰ or criminal complaints.¹⁷⁴¹ He could only make *requests* of the civilian police.¹⁷⁴² [REDACTED],¹⁷⁴³ [REDACTED]¹⁷⁴⁴ [REDACTED].¹⁷⁴⁵ Cermak did not issue any operational or combat orders or orders to commit crime. Each of the documents is addressed in turn below.

¹⁷³⁶ Kordic Trial Judgement, para.421 (emphasis added); see also *Strugar Appeals Judgement*, para.195, 254, 256; *Blaskic Appeals Judgement*, paras.397 and 421.

¹⁷³⁷ Kordic Trial Judgement, para.421; In *Halilovic*, the Trial Chamber’s decision finding the defendant not guilty was informed in part by evidence showing that “the orders issued by Sefer Halilovic were all within the ‘framework’ of the orders issued by Rasim Delic,” Halilovic’s superior. *Halilovic Trial Judgement*, para.742; see also *Oric Trial Judgement*, para.312.

¹⁷³⁸ Boas, Gideon, Bischoff, James L., Reid, Natalie L., *International Criminal Law Practitioner Library, Volume I, Forms of Responsibility in International Criminal Law*, p.195 (Cambridge U. Press 2007), citing *Kordic Appeals Judgement*, paras.847, 913. See also *Halilovic Appeals Judgement*, para.207.

¹⁷³⁹ See [REDACTED]; [REDACTED]; [REDACTED]; See the testimony of Buhin at T.9979 re P509; Moric testified that had he known about the “orders” Cermak issued to the police, he would have told the police to view them as pieces of information: T.25944; Moric T.25933.

¹⁷⁴⁰ Cipci T.23096.

¹⁷⁴¹ D503; See also D500 and D502: Albiston at T.23822-3 explains that Cermak is engaged in passing on information re crimes and “complying with his obligation as a state official that crime is brought to the attention of the proper authorities.” Albiston re D502: T.23837 [REDACTED].

¹⁷⁴² Cermak P2526, p39: “When we’d have meetings with them, we would make requests to the civilian police and the military police vis-a-vis lifting blockades on the checkpoints, stopping arson attacks, looting and also we’d ask them for reports to be presented to the media.”

¹⁷⁴³ [REDACTED].

¹⁷⁴⁴ [REDACTED].

¹⁷⁴⁵ [REDACTED].

531. **P512: 8 August**

- (i) The evidence shows that it was CALO Dondo's idea to have helicopters inspected, with which Cermak simply agreed.¹⁷⁴⁶ Dondo's office had also discussed with Forand the FOM regarding supply of UNCRO units.¹⁷⁴⁷
- (ii) This order was not relevant to the work of the MUP alone but also concerned the VP. There was no reason why the helicopter inspection routine should have been included in an order sent to the Knin police station. The MUP aspect of the order concerns the humanitarian need for supplies to refugees and UNCRO. It arises from Cermak's meeting with Akashi the day before and follows the terms of what he agreed to do to help. It indicates his good faith in his commitments to Akashi.
- (iii) The order was sent unspecifically to "the Knin Police Station", which had a very limited authority, as it was subordinate to the Kotar-Knin PU, which was in turn supported by the Zadar-Knin PU. There was no evidence it was received and became part of its duties. [REDACTED].¹⁷⁴⁸
- (iv) No individual or functionary in authority in the MUP is named and therefore it does not demonstrate a superior-subordinate relationship by its issue.¹⁷⁴⁹ It demonstrates Cermak's lack of understanding of the MUP organisation, his poorly defined role within the Croatian authorities and his good intention to assist.
- (v) [REDACTED].¹⁷⁵⁰ [REDACTED]¹⁷⁵¹
- (vi) [REDACTED].¹⁷⁵² The police station, may not even have been functioning so as to deal with this matter.

¹⁷⁴⁶ T.22587, D1696, para.20.

¹⁷⁴⁷ D319.

¹⁷⁴⁸ [REDACTED].

¹⁷⁴⁹ Contrast the many Moric, Cipci, Cetina orders identifying the recipient by function to carry out an order.

¹⁷⁵⁰ [REDACTED].

¹⁷⁵¹ [REDACTED].

¹⁷⁵² [REDACTED].

- (vii) There is no evidence that humanitarian convoys were inspected by the VP or MUP under this order.
- (i) Those who were actually carrying out the helicopter inspections were CALOs often in the presence of the VP who were there to provide security, a military police task. Dondo in fact gave evidence that he “personally inspected” about 10 to 15 helicopters.¹⁷⁵³ P381 and D1684 corroborate that evidence. It was a CALO matter for which they used the garrison. At this time there was concern for the security risk in the UNCRO camp posed by ARSK soldiers hiding with civilians.
- (viii) In a letter sent to the CALO in Knin dated 1 September, Tymchuck complains that a UN helicopter inspection was not possible because although a VP officer was present, the CALO officer was not.¹⁷⁵⁴ The entry for 17/18 August in the log book of first company of 72nd VPb states that two VP members were to be dispatched to the garrison the day after to look at an UNCRO helicopter with a liaison officer.¹⁷⁵⁵ No other entries are contained in the VP log book about the involvement of the military police in relation to UNCRO helicopters.
- (ix) Knin VP commander Dzolic testified that not only could he not remember whether this specific order was ever implemented but that they “neither could nor did carry out inspection of UNCRO men”. He stated that their only job was to provide security for taking off and landing.¹⁷⁵⁶ The lack of specificity of the addressee “Military Police” also carries with it the same issues described above.
- (x) The Commander of the 72nd VPb Juric did not remember receiving this order and stated that they were providing security

¹⁷⁵³ D1696, para.20.

¹⁷⁵⁴ P381, pR003-8037.

¹⁷⁵⁵ D1684.

¹⁷⁵⁶ T.9133.

of VIP persons arriving in the region or carrying out anti-sabotage checks.¹⁷⁵⁷

532. P53/P513: 8 August

- (i) Dondo as the CALO formulated the information on movement of UNCRO members in the form of an “order”.¹⁷⁵⁸ Freedom of movement had been raised with the CALOs on the previous day.¹⁷⁵⁹ It was a temporary measure whilst security in the region was stabilised, as agreed with Akashi.¹⁷⁶⁰ Its purpose was to inform of the UNCROs right of movement. Dondo testified that such orders were ignored, which was not the fault of Cermak who had attempted by his best endeavours to assist the internationals, even though he had no authority to do so as garrison commander.¹⁷⁶¹
- (ii) The order was sent unspecifically to “the Knin Police Station”, which had a very limited authority, as it was subordinate to the Kotar-Knin PU, which was in turn supported by the Zadar-Knin PU.
- (iii) No individual or functionary in authority in the MUP is named and therefore it does not demonstrate a superior-subordinate relationship by its issue.¹⁷⁶² It demonstrates Cermak’s lack of understanding of the MUP organisation, his poorly defined role within the Croatian authorities and his good intention to assist UNCRO. [REDACTED].¹⁷⁶³

¹⁷⁵⁷ T.27463.

¹⁷⁵⁸ D1696 para.18 and T.22543.

¹⁷⁵⁹ D319.

¹⁷⁶⁰ D1667, p40.

¹⁷⁶¹ T.22544.

¹⁷⁶² Contrast the many Moric, Cipci, Cetina orders identifying the recipient by function to carry out an order.

¹⁷⁶³ [REDACTED].

- (iv) [REDACTED]¹⁷⁶⁴ [REDACTED].¹⁷⁶⁵ [REDACTED]¹⁷⁶⁶
[REDACTED].¹⁷⁶⁷
- (v) [REDACTED].¹⁷⁶⁸
- (vi) Cetina testified that the police station in Knin would have treated this as information and that no-one would have understood it as an “order”¹⁷⁶⁹ because “a military serviceman could not issue orders to the police,”¹⁷⁷⁰ nor was there any basis in law to permit such “military orders” to the police.¹⁷⁷¹ Importantly however, the MUP issued its own orders concerning movement of UNCRO by mid August.¹⁷⁷² Had the order by Cermak been sufficient, there would have been no need for orders within the MUP hierarchy.

533. D303: 9 August

- (i) This order was issued by Cermak to assist UNCRO and demonstrates his intention to help as discussed with Akashi and Forand. It is not an order that he had any authority to issue as a command to the “Commander of the Knin Police Station”.
- (ii) [REDACTED]¹⁷⁷³ [REDACTED]¹⁷⁷⁴
- (iii) Cetina, chief of Zadar Knin PU would have also treated D303 as “information” had he received it.¹⁷⁷⁵
- (iv) [REDACTED],¹⁷⁷⁶ and did not have to report back to Cermak.¹⁷⁷⁷
He pointed to a lack of specificity as to how the order was to be

¹⁷⁶⁴ [REDACTED].

¹⁷⁶⁵ [REDACTED].

¹⁷⁶⁶ [REDACTED].

¹⁷⁶⁷ [REDACTED].

¹⁷⁶⁸ [REDACTED]

¹⁷⁶⁹ D1743, para.10.

¹⁷⁷⁰ D1743, para.10. He had not seen the order before testifying.

¹⁷⁷¹ D1743, para.10.

¹⁷⁷² D499.

¹⁷⁷³ [REDACTED].

¹⁷⁷⁴ [REDACTED].

¹⁷⁷⁵ Cetina D1743, para.12.

¹⁷⁷⁶ D1743, para.12.

complied with, multiple addressees and general appearance of the document, all of which indicated it was not a standard order.¹⁷⁷⁸

- (v) [REDACTED].¹⁷⁷⁹ [REDACTED],¹⁷⁸⁰ [REDACTED]¹⁷⁸¹
[REDACTED]¹⁷⁸²
- (vi) [REDACTED].¹⁷⁸³ [REDACTED].
- (vii) Cipci stated "These documents...do not represent anything for the police apart from information."¹⁷⁸⁴

534. [REDACTED]: **10 August**

- (i) This document is a decision rather than an order. It concered the relocation of the police and was sent to the "commander of the MUP". The lack of specificity as to who the commander was demonstrates Cermak's lack of understanding and familiarity with the MUP. The document appears to relate to a billeting issue in which the MO and MUP are to assist each other.
- (ii) [REDACTED].¹⁷⁸⁵
- (iii) The significance of this document has not been established at trial.
- (iv) Whether or not the police did in fact relocate from the Spas Hotel has not been established.

¹⁷⁷⁷ D1743, para.12.

¹⁷⁷⁸ Albiston T.23833.

¹⁷⁷⁹ [REDACTED]

¹⁷⁸⁰ [REDACTED]

¹⁷⁸¹ [REDACTED]

¹⁷⁸² [REDACTED].

¹⁷⁸³ [REDACTED].

¹⁷⁸⁴ D1723, para.28.

¹⁷⁸⁵ [REDACTED].

535. **D503: 12 August**

- (i) This is an order issued by Cermak to assist UNCRO. The theft of equipment was a source of much trouble to Forand and Cermak. Cermak was under great pressure to resolve this issue.
- (ii) [REDACTED].¹⁷⁸⁶
- (iii) [REDACTED].¹⁷⁸⁷ [REDACTED].¹⁷⁸⁸
- (v) [REDACTED].¹⁷⁸⁹
- (vi) Cetina testified that it amounted to "information".¹⁷⁹⁰ He pointed out the lack of legal provisions relied upon, the action to be taken.¹⁷⁹¹ In Cetina's view, Cermak had no authority to demand that the "commanders of the Knin Police Station and Knin Military Police" were to be "personally answerable" to him for the carrying out of the order, as the police were not subordinated to him. The "document did not put the police under an obligation."¹⁷⁹²
- (vii) Cipci stated "These documents...do not represent anything for the police apart from information."¹⁷⁹³

536. **P509: 15 August**

- (i) This order was issued because the MUP had determined Cermak had no authority over citizens in relation to their freedom of movement. It had to be sent by him as a member of the armed forces because the MUP viewed any order by him as applying only to MO staff. It had the effect of publicly cancelling his passes. [REDACTED]¹⁷⁹⁴ See section: **Cermak was not**

¹⁷⁸⁶ D502.

¹⁷⁸⁷ T.5691.

¹⁷⁸⁸ T.5691

¹⁷⁸⁹ [REDACTED]

¹⁷⁹⁰ Cetina D1743, para.13.

¹⁷⁹¹ D1743, para.13.

¹⁷⁹² Cetina D1743, para.13.

¹⁷⁹³ D1723, para.28.

¹⁷⁹⁴ [REDACTED].

Superior to the Civilian Police: He Lacked *De Jure* and *De Facto* Authority over the MUP in Relation to the Issuing of Passes.

- (ii) The order was sent unspecifically to “the Knin Police Station”, which had a very limited authority, as it was subordinate to the Kotar-Knin PU, which was in turn supported by the Zadar-Knin PU. [REDACTED]¹⁷⁹⁵ [REDACTED].¹⁷⁹⁶
- (iii) [REDACTED].¹⁷⁹⁷ [REDACTED].¹⁷⁹⁸ [REDACTED].¹⁷⁹⁹
[REDACTED]¹⁸⁰⁰ [REDACTED]¹⁸⁰¹
- (ii) [REDACTED].¹⁸⁰²
- (iii) Buhin did not consider this to be a direct order to the police.¹⁸⁰³
- (iv) Cetina stated that it was merely “information”.¹⁸⁰⁴
- (v) Cipci stated he had never seen the document.¹⁸⁰⁵

537. D504: 11 October

- (i) [REDACTED].
- (ii) No other evidence as to its significance was called.

¹⁷⁹⁵ [REDACTED].

¹⁷⁹⁶ [REDACTED].

¹⁷⁹⁷ [REDACTED].

¹⁷⁹⁸ [REDACTED].

¹⁷⁹⁹ [REDACTED]; [REDACTED].

¹⁸⁰⁰ [REDACTED].

¹⁸⁰¹ [REDACTED].

¹⁸⁰² [REDACTED].

¹⁸⁰³ Buhin, T.9979.

¹⁸⁰⁴ Cetina D1743, para.14; T.23539: “Such a document could not be issued by the police because the preamble for the document should contain the basis pursuant to which the document is issued.”

¹⁸⁰⁵ Cipci, T.23178.

K. The Issue of the Return of the UN Vehicles Demonstrates that Cermak had no *De Jure* or *De Facto* Authority over the MUP or VP

538. The role of Cermak in attempting to assist the UN to recover their stolen vehicles and equipment has previously been addressed: see section **No Authority of Cermak to Recover Stolen UN Vehicles and Equipment From the HV**. This sequence of events demonstrates Cermak's lack of *de jure* and/or *de facto* effective control over the MUP.

L. Statements Allegedly Made by Cermak to the International Community do not Give Rise to Either a *De Facto* or *De Jure* Authority over the Civilian Police

539. The Prosecution asserts that a UN report dated 8 September 1995 suggested that Cermak had the "authority to commit the civilian police to take certain operational actions at his meetings with internationals". P38 recorded the following:

*"Gen. Cermak agreed to give his instructions for more joint patrolling between UNCivPol and the Croatian police, particularly in the remote villages."*¹⁸⁰⁶

This allegation relies upon evidence of a statement of authority and has not been supported by evidence of what in fact happened. It must be considered that if there was such evidence it would have been called by the Prosecution as it would have supported the contention.

¹⁸⁰⁶ P38, p3, Albiston T.23904. See also P34 which records that Ivan Cermak would give an order to "Knin COP Romanic" in respect of the "necessity of providing a stronger CROPOL presence in outlying areas."

540. Such a statement does not of itself create an authority by him over the civilian police, especially in light of other evidence as to how joint patrolling between UNCIVPOL and the Croatian police was established.¹⁸⁰⁷ No evidence has been elicited at trial that:

- (i) Cermak had the *de facto* or *de jure* authority to give instructions for more joint patrolling; or
- (ii) that such an instruction was *in fact* given to the police and the police reaction thereto.

541. As police expert Albiston observed:

*"If he is performing an international liaison role and matters are being drawn to his attention, the natural result of which ought to be increased or more effective patrolling or check-points by the civilian police, then, irrespective of whether General Cermak had any genuine established authority over the civilian police, I would expect him to say, Yes I will get something done about this. I wouldn't expect him to say, Well, I'll ask the police what they think and whether they can do it, or anything like that. I mean, that's not the way people behave in these circumstances in my experience."*¹⁸⁰⁸

542. Neither did Albiston agree that such statements were "deliberate misrepresentations".¹⁸⁰⁹ Such statements were merely "an overinflated representation of his actual position."¹⁸¹⁰ This document did not impact on the conclusions reached by Albiston concerning Cermak's lack of *de*

¹⁸⁰⁷ P240 (Strategy in Joint Work with the Croatian Police by UNCIVPOL) set up liaison patrolling (para.3) as of 26 August 1995 without any involvement of Cermak; P282 (Operation directives for joint work of MUP and UNCIVPOL) provided for joint patrols (para.10) in late September; D1751 Order by Marijan BITANGA to all police stations regarding work with UNCIVPOL as envisaged in document of 30 August requesting "strict adherence" to joint patrolling (para.2).

¹⁸⁰⁸ Albiston T.23905.

¹⁸⁰⁹ Albiston T.23905-6.

¹⁸¹⁰ Albiston T.23907.

jure authority over the civilian police.¹⁸¹¹ At most, Albiston acknowledged that given Cermak's rank, liaison position, charisma and position as a source of information, such factors *may* indicate that what he said would *influence* the conduct of the police in the discharge of their duties.¹⁸¹² In law, influence cannot however equate to effective control.¹⁸¹³ Other statements made by Cermak fall into the same category and cannot be used as a basis or platform from which to assert that he had effective control over the civilian police. His statements included the following:

- (i) certain crimes would be investigated;¹⁸¹⁴
- (ii) that action was being taken by the authorities to stop crime¹⁸¹⁵
[For examples of action taken, see **Annexes 1-6**];
- (iii) that tough action would be taken against those who commit crimes¹⁸¹⁶ [For examples of action that was being taken, see **Annexes 1-6**];
- (iv) that he would follow up on UN stolen engineering equipment and vehicles¹⁸¹⁷ [For actions taken by Cermak see section: **No Authority of Cermak to Recover Stolen UN Vehicles and Equipment from the HV**];
- (v) that he provided information about crimes¹⁸¹⁸ [For actions taken by Cermak see section: **Contrary to Paragraph 19(c) of the Indictment, Cermak Passed on Information about Crimes to the Relevant Authorities**];

¹⁸¹¹ Albiston T.23909.

¹⁸¹² Albiston T.23909.

¹⁸¹³ *Celebici* Appeal Judgement, para.266; *Halilovic* Trial Judgement, paras.59, 752. *Kordic* Trial Judgement, paras.838-841, finding that Kordic's substantial influence as a political leader was insufficient to conclude that he had effective control, a finding which was not challenged by the Prosecutor on appeal.

¹⁸¹⁴ P806: Nikola Banic: Cermak told the ECMM that this would be investigated.

¹⁸¹⁵ P32.

¹⁸¹⁶ D56.

¹⁸¹⁷ P372; P408.

¹⁸¹⁸ P829: "General Cermak said to ECMM Head of Mission on 10 August that the military authorities had received strict orders to prevent burning and looting and that a special police unit had been sent to the affected areas to carry out an investigation."; P814.

- (vi) that civilian and military police would step up controls to stop crime¹⁸¹⁹ [see **Annex 1: Orders to Stop Crimes And Annex 2: Reinforcement of Civilian Police Units**];
- (vii) that he had given an order not to loot or burn;¹⁸²⁰
- (viii) that Cermak had launched a media campaign to stop illegal occupation of flats, looting and arson¹⁸²¹ and stated “we can arrest those who cause trouble.”¹⁸²² [See section: **Contrary to Paragraph 19(c) of the Indictment, Cermak Admitted that Crimes were Taking Place**];
- (ix) that he had issued an order to the military police to investigate and discover a perpetrator;¹⁸²³
- (x) that he had requested police reinforcements and could dispatch police to investigate¹⁸²⁴ [For examples, see (Tudjman), P1144, P2525, page 23, 49, 176, P2532, page 50-51; (Jarnjak) P2525, page 30, 40, 59, 178, P2532, page 27, 104-105; (Sarinic) P2525, page 23; D618];
- (xi) that he had ordered an investigation in respect of threats against military observers;¹⁸²⁵ and
- (xii) that it is the civilian and military police services who have launched comprehensive operations to uncover and punish live perpetrators of criminal acts against civilians.¹⁸²⁶ [see **Annex 1: Orders to Stop Crimes**; For an example of an operation launched, see Operation Varivode¹⁸²⁷].

¹⁸¹⁹ P37.

¹⁸²⁰ D1277.

¹⁸²¹ P829; P946.

¹⁸²² D618.

¹⁸²³ P1147.

¹⁸²⁴ P39, p2; see also P639 “General Cermak gave numerous assurances to United Nations officials in August and September 1995 that patrolling by Croatian civilian police would soon be increased throughout the former sectors.”; D618, pL0017306; P2355, p02931770.

¹⁸²⁵ P2520.

¹⁸²⁶ P1223.

¹⁸²⁷ P268; D215; P2189; D1784; D802.

There is no evidence that he made any of these statements in bad faith or with the purpose of misleading the international community.

M. Cermak was not Superior to the Civilian Police: He Lacked *De Jure* and *De Facto* Authority over the MUP in Relation to the Issuing of Passes

543. A central example of Cermak's lack of *de jure* and *de facto* authority over the MUP is his involvement in the issuing of passes to civilians and the consequent reaction of the MUP. Evidence confirms that Cermak was acting *ultra vires* by issuing passes to civilians and that these had no effect on how the civilians were treated by the MUP.
544. The movement of persons and any restrictions on such movement fell squarely within the competence of the MUP¹⁸²⁸ or in some cases the MoD. In both instances, Cermak had no authority over the setting up, implementation or abolition of procedures.
545. At the Rule 98*bis* stage, the Trial Chamber erroneously determined that "Mr Cermak issued documents allowing or denying free movement of civilians or members of international organisations."¹⁸²⁹ The allegation that he allowed or denied the movement of civilians is addressed below. The allegations in respect of Cermak's conduct towards the movement or restriction of movement of internationals has previously been addressed: See section: **Cermak did not Conceal Crimes by Restricting the Movement of Internationals.**

¹⁸²⁸ See Law on Internal affairs, D1077, Article 19.

¹⁸²⁹ T.17619.

1. MOVEMENT OF CIVILIANS – AUTHORITY OF THE MUP

546. Prior to Operation Storm, the Assistant Minister of the Interior Moric established procedures to be applied to allow “journalists, foreign statesmen and so on” to enter the liberated territory, “through...checkpoints in the operations area only upon producing a pass signed jointly by General Tolj and Colonel Rebic.”¹⁸³⁰ Such Rebic-Tolj permits were indeed issued¹⁸³¹ and the Split-Dalmatia PU followed the procedure set out by Moric.¹⁸³² Moric’s order formed the basis for Albiston’s conclusions that it was Moric rather than Cermak who was the man responsible for FOM.¹⁸³³ A further “indicator of Mr Moric’s authority in this area”¹⁸³⁴ was a document in which Moric gives instructions to PUs about the movement of reporters and public figures in the liberated area.¹⁸³⁵

547. Cipci confirmed the exclusive authority of the MUP in respect of movement. He explained that it was at a meeting held in the MUP, prior to Operation Storm that it was “agreed that every Chief of a Police Administration, which adjoined the Krajina, would permit the entrance of civilians into Knin after the liberation only if they had passes which had been signed by the Chief of the Police Administration.”¹⁸³⁶ The passes should “have been issued in a very restrictive manner”.¹⁸³⁷ Cipci explained that the MoD was the only body authorised to allow access to certain areas *during wartime* conditions and that Rebic and Tolj were the individuals who would

¹⁸³⁰ P493.

¹⁸³¹ D1012.

¹⁸³² D1114, D1111.

¹⁸³³ T.23998-23999.

¹⁸³⁴ D1769, T.24095-6.

¹⁸³⁵ D1769.

¹⁸³⁶ D1723, para.22; T.23081; T.23156-7; T.23169.

¹⁸³⁷ T.23089.

issue those approvals.¹⁸³⁸ Moric testified that restrictions of movement were within the purview of MoD only in combat areas.¹⁸³⁹

548. Cipci also gave instructions to facilitate the free movement of journalists, politicians and UNHCR officials¹⁸⁴⁰ through the MUP chain of command without reference to Cermak, even though the journeys involved travel in the Knin garrison area. He issued passes to people who had a job to do in Knin.¹⁸⁴¹ There is evidence of individuals approaching the PU and not the Knin garrison to obtain permission to visit Drnis or Knin.¹⁸⁴² Cipci explained that he had authority to issue passes for people to cross checkpoints in his PU area. This authority came from an order issued by the Minister of the Interior as well as the fact that Cipci was the chief of the PU.¹⁸⁴³ In his statement, Cipci stated unequivocally that “Mr Cermak was not authorized to issue passes to civilians.”¹⁸⁴⁴

549. When Cipci wrote to the MUP on 8 August seeking advice due to the great pressure to visit the liberated areas of Vrlika, Knin, Drnis by refugees, citizens, various associations, political parties and other institutions, he requested advice and precise instructions as to “who to give passes to”.¹⁸⁴⁵ Cipci sought this advice from within the Ministry and did not address Cermak.¹⁸⁴⁶ On the same day, the Ministry provided advice to the PUs in respect of allowing entry into the liberated area for “reporters”, “distinguished and generally known

¹⁸³⁸ T.23084.

¹⁸³⁹ T.25878.

¹⁸⁴⁰ D1111; Albiston, T.23813; D1112, T.23814, D1113 and D1114; see also D1723, para.22; and para.16; “civilian police were responsible for control of civilians and civilian vehicles.”; T.23089.

¹⁸⁴¹ T.23089; D1724.

¹⁸⁴² D488.

¹⁸⁴³ T.23170.

¹⁸⁴⁴ D1723, para.23; T.23067.

¹⁸⁴⁵ D1014.

¹⁸⁴⁶ Albiston, T.23804.

public persons” and “all other persons”.¹⁸⁴⁷ This document made “it clear that the Ministry of the Interior ..[was] the body which [had] the authority for dealing with this matter.”¹⁸⁴⁸

2. MOVEMENT OF CIVILIANS – LACK OF AUTHORITY OF THE KNIN GARRISON

550. Freedom of movement of both the civilian population and the UN was discussed in a meeting between Akashi and Cermak as early as 7 August as recorded in the notes taken by Akashi’s assistant, Mr Banbury.¹⁸⁴⁹ Cermak issued passes on a good faith basis to assist the security and free passage of Serbs in the region. Evidence indicates that around 8 August,¹⁸⁵⁰ the Knin garrison started issuing passes (“propusnica”). The passes were intended to provide people who had lived in the RSK but who had no Croatian identification card/documents with a form of temporary identification until they could obtain ID cards.¹⁸⁵¹ [REDACTED].¹⁸⁵²

551. Between 9 and 14 August, passes were distributed by Pasic, the Government’s commissioner, having been provided by the garrison commander and signed by Marko Gojevic.¹⁸⁵³ Passes were initially being given predominantly to DPs in the UNCRO camp¹⁸⁵⁴ in order to facilitate their movement in an attempt to bring normal conditions of life.

¹⁸⁴⁷ D1769.

¹⁸⁴⁸ T.23805.

¹⁸⁴⁹ D1667.

¹⁸⁵⁰ See P388.

¹⁸⁵¹ P2526, p86-7 and P2525, p122. See also T.9950 (Witness P-84).

¹⁸⁵² [REDACTED].

¹⁸⁵³ D489; D490; D491; D492; D493; [REDACTED].

¹⁸⁵⁴ D620 (60 DPs given passes on 10 August), [REDACTED]; [REDACTED].

552. By 15 August, Cipci sent a letter to the Operation Povratak Operations Staff and attached a pass “for entering the Knin Garrison issued by the HV Knin Garrison Command”.¹⁸⁵⁵ He asked specifically the Operations Staff to “confirm in writing the validity of the passes for” civilians¹⁸⁵⁶ “considering that they were contradictory to the agreement we had”.¹⁸⁵⁷ A handwritten note at the end of the document was added by Moric:¹⁸⁵⁸ “Cermak will issue an order on the annulment of /illegible/ and free movement of civilians adding this must come in writing from the Ministry of Defence.” Cermak issued exactly such an order.¹⁸⁵⁹ The reply Cipci received was that “Mr Cermak could no longer issue passes for civilians but only for military personnel and for civilians serving in the Croatian Army.”¹⁸⁶⁰ Albiston concluded that the implication was that “the officials of the Ministry of the Interior did not believe that General Cermak had authority to issue passes to or deal with this particular issue.”¹⁸⁶¹
553. The Chief of Split-Dalmatia PU accorded no value to Cermak’s passes. [REDACTED].¹⁸⁶² Cipci even told Cermak that he would “expel everyone who came with this pass” from his area of responsibility¹⁸⁶³ and warned him that such passes “were not in compliance” with MUP procedures which envisaged exclusive authority of the chiefs of PUs for the passage through their respective check-points.¹⁸⁶⁴ Cipci explained that it was his intervention that made Cermak stop issuing

¹⁸⁵⁵ D494; See Cipci’s statement D1723 at para.24; T.23085.

¹⁸⁵⁶ T.23171.

¹⁸⁵⁷ D1723, para.24.; T.23171; When asked in cross-examination as to why he didn’t write stating that “General Cermak was not entitled to issue passes”, Cipci stated that he didn’t see a great difference between that approach and his, T.23173.

¹⁸⁵⁸ D1723, para.24.; T.23086.

¹⁸⁵⁹ P509.

¹⁸⁶⁰ T.23171-2.

¹⁸⁶¹ D495; D1723, para.24; Albiston, T.23807-8. “The clear inference from these documents is that so far as the people in the Ministry of the Interior were concerned, General Cermak didn’t have that authority.”

¹⁸⁶² [REDACTED].

¹⁸⁶³ D1723, para.23; T.23080; T.23085; T.23172; T.23174-5; T.23177-8.

¹⁸⁶⁴ T.23170 and T.23175.

passes¹⁸⁶⁵ particularly after receiving a notification from Povratak HQ of the absence of his right to issue passes to civilians.¹⁸⁶⁶ The authority to decide when civilians would be allowed to come to Knin without passes was under the jurisdiction of the MUP".¹⁸⁶⁷

554. Following the direct challenge mounted by members of the MUP to the system of passes issued by the garrison, these passes were abolished on or around 15 August.
555. The un-sustainability of the system is evident from a request by Cipci to the MUP on 15 August for urgent guidance as to how to deal with pressure created by citizens and DPs wanting to visit the liberated areas due to the reopening of the Split-Knin railway and announcements of free travel in the next 10 days.¹⁸⁶⁸ [REDACTED].¹⁸⁶⁹ A handwritten note on the document indicates a call is to be made to the Split-Dalmatia PU to inform them that Cermak will annul the passes. This is consistent with the handwritten note on a document of the same date stating that "Cermak will issue an order on the annulment of /illegible/ and free movement of the civilians"¹⁸⁷⁰ and a note on another document stating that passes are to be revoked because they are valid only for military personnel and civilians in the HV.¹⁸⁷¹
556. Pursuant to decisions made by the MUP, on 15 August Cermak issued an "order" in writing that from that date and pursuant to a "large number of requests by the civilian population to enter the town" civilians must be allowed "unhindered entry into the town of Knin at

¹⁸⁶⁵ D1723, para.24.

¹⁸⁶⁶ T.23088.

¹⁸⁶⁷ D1723, para.26.; T.23081.

¹⁸⁶⁸ D496; Cipci, T.23065-6.

¹⁸⁶⁹ [REDACTED].

¹⁸⁷⁰ D494.

¹⁸⁷¹ D495.

all checkpoints of the military and civilian police on all access roads to the town".¹⁸⁷² [REDACTED].¹⁸⁷³ Albiston opined that Cermak was not "seeking to exercise authority or restrict freedom of movement of citizens in the Knin area."¹⁸⁷⁴ He was merely putting into effect the information/message which had been handwritten onto D494 earlier that day. The information had clearly been passed to the garrison commander.

557. The Prosecution relies on [REDACTED] as an example of [REDACTED]. The following factors indicate however that this conclusion is not warranted:

- a) The letter acknowledged *receipt* of an "order" but did not explicitly state it considered it *to be* an order directed at the police in particular. [REDACTED].¹⁸⁷⁵ [REDACTED].¹⁸⁷⁶ The Prosecution relied on an erroneous translation [REDACTED].¹⁸⁷⁷
- b) The decision on the abolition of passes was not made by Cermak but by the MUP which would imply that the Knin chief was acting in accordance with a MUP decision which Cermak simply passed on in a document titled "order". [REDACTED].¹⁸⁷⁸
- c) [REDACTED].¹⁸⁷⁹
- d) [REDACTED],¹⁸⁸⁰ [REDACTED]¹⁸⁸¹ [REDACTED]¹⁸⁸²

¹⁸⁷² P509.

¹⁸⁷³ [REDACTED].

¹⁸⁷⁴ T.23809.

¹⁸⁷⁵ [REDACTED].

¹⁸⁷⁶ [REDACTED].

¹⁸⁷⁷ [REDACTED].

¹⁸⁷⁸ [REDACTED].

¹⁸⁷⁹ [REDACTED].

¹⁸⁸⁰ [REDACTED].

e) [REDACTED],¹⁸⁸³ [REDACTED].¹⁸⁸⁴ [REDACTED]¹⁸⁸⁵
[REDACTED].¹⁸⁸⁶ [REDACTED].¹⁸⁸⁷

f) Moric testified that had he seen [REDACTED]. Under the Law on Internal Affairs and based on the factual situation...Mr Cermak did not have access to...that system."¹⁸⁸⁸

g) [REDACTED].¹⁸⁸⁹

In essence, the Prosecution's reliance on [REDACTED] as an example of [REDACTED] acting pursuant to Cermak's order is unsustainable.

N. No *De Jure* or *De Facto* Power or Authority to Discipline the Civilian Police

558. Cermak had no *de jure* or *de facto* authority to discipline members of the MUP.¹⁸⁹⁰ A *de jure* disciplinary system within the MUP is set out in the Law on Internal Affairs,¹⁸⁹¹ the Rules Governing Employment Relations of Staff Members of the MUP,¹⁸⁹² and the Decree on internal organisation and operation of the Ministry of Interior.¹⁸⁹³ No provision in these legal instruments accorded any role to individuals outside the MUP, such as garrison commanders.

¹⁸⁸¹ [REDACTED].

¹⁸⁸² [REDACTED].

¹⁸⁸³ [REDACTED].

¹⁸⁸⁴ [REDACTED].

¹⁸⁸⁵ [REDACTED].

¹⁸⁸⁶ [REDACTED].

¹⁸⁸⁷ [REDACTED].

¹⁸⁸⁸ T.25933.

¹⁸⁸⁹ [REDACTED].

¹⁸⁹⁰ Cipci, T.23097; Albiston, T.23831-2; T.24038.

¹⁸⁹¹ D1077 Articles 80-92.

¹⁸⁹² P2370.

¹⁸⁹³ D1781, Articles 8, 10, 12, 28, 408. See also D527.

559. The *de facto* procedure for the disciplining of MUP officers has been demonstrated at trial.¹⁸⁹⁴ Immediate supervision of police officers was performed by their superior station commanders.¹⁸⁹⁵ [REDACTED]¹⁸⁹⁶ and it was Moric who issued orders to PUs regarding discipline.¹⁸⁹⁷ A specialised body within the MUP called “Inner control of the Ministry of Interior” dealt with discipline, disciplinary breaches, and work.¹⁸⁹⁸ Article 8¹⁸⁹⁹ of D527,¹⁹⁰⁰ defined the work of the internal control office and provided for the activities of the office.¹⁹⁰¹ The internal control office had jurisdiction over all the sectors of the MUP.¹⁹⁰² Its competence was to safe-guard legality and enforce discipline among the ministry’s employees.¹⁹⁰³ The inner control would receive information from citizens or colleagues that someone had breached discipline then it would investigate.¹⁹⁰⁴ Moric personally notified inner control of such cases.¹⁹⁰⁵ The chiefs of police had authority to initiate disciplinary proceedings, and cases were heard by the disciplinary courts.¹⁹⁰⁶ There is no evidence of Cermak’s factual involvement in the MUP disciplinary system.

¹⁸⁹⁴ [REDACTED]. See also D1764. [REDACTED]; re disciplinary courts Moric T.25581.

¹⁸⁹⁵ T.11181-82.

¹⁸⁹⁶ D577.

¹⁸⁹⁷ D587.

¹⁸⁹⁸ Moric T.25789; D1842, p17 (pdf 131).

¹⁸⁹⁹ T.25913.

¹⁹⁰⁰ See D1781 for a better translation.

¹⁹⁰¹ T.25913.

¹⁹⁰² T.25914.

¹⁹⁰³ T.25914.

¹⁹⁰⁴ T.25789, D1842, p18.

¹⁹⁰⁵ T.25789, D1842, p19.

¹⁹⁰⁶ T.25790.

O. Cermak as Garrison Commander had no *De Facto* or *De Jure* Power or Authority to Investigate or Order the Investigation of Crimes

1. NO *DE JURE* POWER OR AUTHORITY TO INVESTIGATE CRIMES

(a) The Investigative Judge

560. An investigation is a formal judicial process carried out by an investigative judge exclusively on the basis of the request of a public prosecutor.¹⁹⁰⁷ The request for an investigation is submitted by the public prosecutor to the investigating judge.¹⁹⁰⁸ A judicial investigation can be requested only against a known perpetrator.¹⁹⁰⁹ When the perpetrator is unknown, a criminal report can be filed¹⁹¹⁰ but the process cannot go further.

561. After reviewing the files and the request, the investigative judge delivers a decision on the opening of a judicial investigation after hearing the accused.¹⁹¹¹ The investigation is conducted by the judge.¹⁹¹² The judge decides on particular investigative actions to be taken¹⁹¹³ and terminates the investigation when the situation has been investigated sufficiently for an indictment to be brought by the public prosecutor¹⁹¹⁴ or in other circumstances¹⁹¹⁵

¹⁹⁰⁷ D1568, Articles 149(1)-(2), Article 152(1).

¹⁹⁰⁸ D1568, Article 149(2), Article 149(3): The request should include the name of the crime, the circumstances which form the basis of the suspicion, the existing evidence and the person(s) against whom an investigation is requested.

¹⁹⁰⁹ D1568, Article 148(1).

¹⁹¹⁰ D390.

¹⁹¹¹ D1568, Articles 150(1)-(2).

¹⁹¹² D1568, Article 152(1).

¹⁹¹³ Eg. D1568, Article 158(1); Article 201(2).

¹⁹¹⁴ D1568, Article 165(1).

¹⁹¹⁵ D1568, Article 160(1)-(2).

562. A garrison commander enjoys the status of an ordinary citizen and is not authorised to participate in the procedure.¹⁹¹⁶

(b) The Police

563. The *Law on Criminal Procedure* places an obligation on the police to forward any crime reports received from citizens to the public prosecutor¹⁹¹⁷ and regulates the role of the police in pre-investigation inquiries in Articles 142 and 143.
564. Prior to the opening of a judicial investigation, the police are required by law to take the necessary measures to find the perpetrator.¹⁹¹⁸ Several witnesses testified to the police duties as establishing the identity of the perpetrator,¹⁹¹⁹ securing the crime scene¹⁹²⁰ before an on-site investigation,¹⁹²¹ conducting preliminary inquiries before a judicial investigation¹⁹²² and informing the public prosecutor and the investigative judge of a crime.¹⁹²³
565. If the perpetrator is unknown (and a judicial investigation cannot therefore be requested), the police can undertake any formal investigative action before a judicial investigation is opened but only at the request of the public prosecutor.¹⁹²⁴ Similarly, the police can

¹⁹¹⁶ D1676 p55, para 3.3.37-38. See also paras 3.4.11, 3.4.33, 3.4.43.

¹⁹¹⁷ D1568, Article 141(1); [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

¹⁹¹⁸ D1568, Article 142(1); Article 143(1); Article 142(2). Article 142(3) but the law prohibits interviewing citizens as witnesses, suspects or experts by the police outside a judicial investigation: Such information is excluded from the case file by the investigative judge in accordance with the provision of Article 78(1)-(2) of LCP. See also the statement of Galovic: D1553, p2.

¹⁹¹⁹ T.9469, [REDACTED].

¹⁹²⁰ T.9411.

¹⁹²¹ T.11584, D2146; Example of securing D1320 para.3.

¹⁹²² T.19722, T.11596.

¹⁹²³ T.19834, T.11640, [REDACTED].

¹⁹²⁴ D1568, Article 146(1).

conduct an on-site investigation before the judicial investigation if the investigative judge cannot attend the scene¹⁹²⁵ and if the judge authorises this.¹⁹²⁶ This excludes an autopsy or exhumation – an investigative judge always needs to be present for such procedures to take place.

566. The information collected during the preliminary inquiries forms the basis of a criminal report¹⁹²⁷ which the police are obliged to file with the public prosecutor. If he requests an investigation, the public prosecutor forwards this material to the investigative judge¹⁹²⁸ who later rules on the exclusion of certain material.¹⁹²⁹

567. In the period during the judicial investigation the police are under an obligation to assist the investigative judge¹⁹³⁰ and perform “investigative actions” entrusted to them by the investigative judge based on his initiative or the request by the public prosecutor.¹⁹³¹ They are the sole executor of a decision to bring the accused before an investigative judge.¹⁹³² They are entitled to detain a person.¹⁹³³ In exceptional circumstances and at the request of the public prosecutor, the police can be given full judicial investigation authority by the investigative judge.¹⁹³⁴

568. If during the course of an investigation by the civilian police it was determined that the individual was a member of the military, the

¹⁹²⁵ D1568, Article 145(2). For example see Moric T.25657-8 re on-site investigations.

¹⁹²⁶ T.11587.

¹⁹²⁷ D1568, Article 142(6).

¹⁹²⁸ D1568, Article 149(5).

¹⁹²⁹ D1568, Article 78.

¹⁹³⁰ D1568, Article 168.

¹⁹³¹ T.20742. See for example D918 for request of Public Prosecutor for additional interviews at p2.

¹⁹³² D1568, Article 175(2).

¹⁹³³ D1568, Article 186(1).

¹⁹³⁴ D1568, Article 153(4).

military police would take over the criminal processing.¹⁹³⁵ If an employee of the MUP is suspected of a crime, the same rules apply as would apply to ordinary citizens.¹⁹³⁶ Police would gather information, and the case would be given to an investigating judge.¹⁹³⁷

(c) Citizens

569. The only duty Cermak had was to report crimes that came to his notice as a garrison commander or as a citizen¹⁹³⁸ under Article 139¹⁹³⁹ or Article 140 of the LCP.¹⁹⁴⁰ Failure to report would not expose him to criminal liability unless the criminal law so provided. Other than this, Cermak could not “personally...do anything” in respect of the crimes reported to him by the international community.¹⁹⁴¹ He could not order the investigation of crimes.¹⁹⁴²

570. A report on a crime is formally to be filed with the public prosecutor since he is the only one who can request a judicial investigation. However, crimes are usually reported to the police by citizens as they do not have access to the public prosecutor.¹⁹⁴³ In such a case, the police are under an obligation to forward the information to the competent prosecutor.¹⁹⁴⁴ There is no need for the police to receive an official criminal report from citizens as any information that forms “reasonable suspicion” that a crime prosecuted *ex officio* has been committed triggers the duty of the police under Article 142(1). An

¹⁹³⁵ Bajic D1626, p7, para 14; Moric T.25719.

¹⁹³⁶ Moric T.25583.

¹⁹³⁷ Moric T.25583.

¹⁹³⁸ Cetina T.23617.

¹⁹³⁹ D1568; Cipci T.23095-6.

¹⁹⁴⁰ D1568, Article 140(1) .

¹⁹⁴¹ Cipci, D1723, para.29.

¹⁹⁴² Cetina T.23617; D1768 and Cetina T23623-4; [REDACTED].

¹⁹⁴³ See for example P2646 or Knin Police Log Book D57. For an example of citizen approaching the public prosecutor directly see P993.

¹⁹⁴⁴ D1568, Article 141(3).

example of such information which would trigger an inquiry are the letters from Jan Elleby of UNCIVPOL to Cetina on 19 September 1995¹⁹⁴⁵ and 23 September 1995¹⁹⁴⁶ containing a list of murders committed since 4 August 1995. The police were also informed of crimes by international monitors,¹⁹⁴⁷ and informed them of what was happening on the terrain.¹⁹⁴⁸ The law does not however provide for the possibility of an individual outside the police being able to order that such an inquiry be launched.¹⁹⁴⁹

2. NO *DE FACTO* POWER OR AUTHORITY TO INVESTIGATE CRIMES

571. Albiston rejected the Prosecution's suggestion that he had "only considered Cermak's *legal* role within the MUP structure in relation to investigating crime" and did not address "whether or not General Cermak could, *in fact*, initiate an investigation into a criminal incident."¹⁹⁵⁰ After studying the "*de jure* situation and also...the *de facto* situation", Albiston concluded that "garrison commanders don't play a role within the criminal justice system."¹⁹⁵¹ Albiston's review covered between 2-4000 documents¹⁹⁵² which he considered in terms of both Cermak's *de facto* and *de jure* authority.¹⁹⁵³

¹⁹⁴⁵ D179 UNCIVPOL - LIST OF MURDERS committed from 4 August 1995 through 15 September 1995 in Sector South.

¹⁹⁴⁶ P923 Memo by I.Kardum to I.Nad of 27 September 1995 Communication of UNCIVPOL materials.

¹⁹⁴⁷ Cetina D1743, para.5; [REDACTED]; [REDACTED]; [REDACTED].

¹⁹⁴⁸ Cetina D1743, para.6; [REDACTED].

¹⁹⁴⁹ Moric T.25582.

¹⁹⁵⁰ Albiston T.24017.

¹⁹⁵¹ *Ibid.*

¹⁹⁵² Albiston T.25075.

¹⁹⁵³ Albiston T.24077.

3. THE PROSECUTION'S CASE ON CERMAK'S ALLEGED FACTUAL AUTHORITY

572. The Prosecution alleges that Cermak had *de facto* power and authority to investigate crimes, relying on [REDACTED] and P39. The Prosecution has also sought to rely on an incident concerning the theft of sheep from Luka Pasic. The Prosecution's reliance on Cermak's involvement in trying to assist with the recovery of stolen UN vehicles and equipment has already been addressed.

[REDACTED]

573. In respect of [REDACTED], Albiston rejected the Prosecution's suggestion that [REDACTED].¹⁹⁵⁴ [REDACTED].

574. Any citizen has the ability to *initiate* an investigation by reporting a crime. This is another example of [REDACTED]. The language [REDACTED] is hypothetical and does not address the *de facto* situation or Cermak's actual authority in respect of crime investigation. [REDACTED]. Furthermore, it does not relate to "initiating an investigation in the sense of General Cermak conducting an investigation." [REDACTED].¹⁹⁵⁵ In respect of Cermak's *de facto* position, he accepted the latter but not the former interpretation. He opined that any impetus to "initiate" would be limited to "putting information into the criminal justice system which enables the police to initiate an investigation" or in this particular case "passing the information to the witness and that the witness is conducting his duties accordingly."¹⁹⁵⁶ [REDACTED].¹⁹⁵⁷

¹⁹⁵⁴ [REDACTED].

¹⁹⁵⁵ [REDACTED]

¹⁹⁵⁶ [REDACTED].

¹⁹⁵⁷ [REDACTED].

575. [REDACTED]. Secondly, there is no evidence that Cermak knew about the crimes in Uzdolje on 6th August.

P39

576. [REDACTED].¹⁹⁵⁸ The Prosecution relies on this document as evidence of *de facto* authority but at the same time suggests Cermak was merely “saying it to appease” Flynn and the international monitors, “sort of to get away from this situation”.¹⁹⁵⁹ [REDACTED]¹⁹⁶⁰ [REDACTED].¹⁹⁶¹ It does not indicate “any interference in or participation in the criminal justice system by General Cermak.” He was not of the opinion that Cermak could “dispatch on his own authority [police to investigate and arrest]”, but rather that he could “communicate with the police about the requirement for police action in relation to crimes being reported or disorder taking place and that *they* will attempt to deal with the issues.”¹⁹⁶²
577. Albiston did not accept that a “third party’s view” about what Cermak said about dispatching police could “actually impact on what authority General Cermak really had. Certainly not in the *de facto* sense”.¹⁹⁶³ Further, there is no evidence to corroborate the accuracy of the report, a matter which was raised by HHJ Orie and Mr Albiston.¹⁹⁶⁴ For the reasons cited, P39 does not and cannot substantiate the Prosecution’s allegation that Cermak had the *de facto* authority to initiate investigations.

¹⁹⁵⁸ [REDACTED].

¹⁹⁵⁹ T.1106:11-16.

¹⁹⁶⁰ [REDACTED].

¹⁹⁶¹ [REDACTED].

¹⁹⁶² Albiston T.24020.

¹⁹⁶³ Albiston T.24021.

¹⁹⁶⁴ Albiston T.24021-2.

Luka Pasic and the Theft of Sheep

578. The Prosecution relies on Cermak's reaction to notice of theft of televisions and sheep from Oton Bender (which occurred in the afternoon of 19 October¹⁹⁶⁵) and a report sent *inter alia* to Cermak from Gambiroza on 21 October¹⁹⁶⁶ as evidence of Cermak's *de facto* ability to initiate a police investigation. According to Cermak's recollection provided many years later, upon learning of the theft he called Gambiroza wanting the culprits to be found and "got everyone going" and after two or three hours the culprits were captured.¹⁹⁶⁷

579. The evidence does not permit a conclusion beyond a reasonable doubt that Cermak could initiate a police investigation:

- (i) Firstly, Pasic provided notice of the theft to Cermak while his uncle was at the police station¹⁹⁶⁸ *on the day of the theft*.¹⁹⁶⁹ According to the 21 October report, those responsible were *not* captured until a day later while loading cattle in the same village.¹⁹⁷⁰ It was during the investigation of *that incident* that the police discovered there were reasonable grounds to suspect the same individuals had perpetrated the crime against Luka Pasic.¹⁹⁷¹ This evidence casts reasonable doubt on the accuracy of Cermak's recollection that "two or three hours" after his call the culprits were captured.

¹⁹⁶⁵ P2645.

¹⁹⁶⁶ P2645.

¹⁹⁶⁷ P2526 p82.

¹⁹⁶⁸ T.22926:7-9.

¹⁹⁶⁹ T.22924:24-25. Pasic excluded the possibility of the uncle coming back to the police station on another day because he needed to be driven there by Pasic T.22925:8-11.

¹⁹⁷⁰ Pasic: P2645, p3.

¹⁹⁷¹ P2645.

- (ii) The police were already on notice of the crime through the criminal report filed by Luka Pasic,¹⁹⁷² who reported the crime *before* he spoke to Cermak.¹⁹⁷³
- (iii) The Prosecution called no evidence to establish the 21 October report was provided to Cermak as part of a superior-subordinate reporting system. Cetina had no explanation why the 21 October report was sent to Cermak.¹⁹⁷⁴ He denied Cermak needed to be informed about the action taken by the police pursuant to the information he provided.¹⁹⁷⁵

580. In respect of the marginal relevance of this incident, HHJ Orie has opined that the event was so specific it could not be considered as indicative of either a coordinating or commanding function by Cermak.¹⁹⁷⁶

4. *DE FACTO: FAILURE TO INVESTIGATE BY THE CIVILIAN POLICE CANNOT BE ATTRIBUTED TO CERMAK*

581. There is a significant amount of evidence that the authorities in charge of detection, investigation and prosecution of crime in the aftermath of Operation Storm failed to discharge their duties due to a widespread assumption that virtually any body recovered in the aftermath of the operation died in combat or was not killed unlawfully. There has been no evidence that Cermak had the material ability to change this policy.

582. There is evidence Josko Moric had both the *de facto* and *de jure* authority to order PUs not to investigate or to investigate crime. In his

¹⁹⁷² P2646.

¹⁹⁷³ T.22903:13-25 and T.22905:7-20.

¹⁹⁷⁴ T.23548:23.

¹⁹⁷⁵ T.23550:15-19.

¹⁹⁷⁶ T.23945.

instruction to commanders of civilian PUs¹⁹⁷⁷ he directed that there would be no retrospective investigations into burning and looting, but that all future crimes were to be stopped¹⁹⁷⁸ and that they would be subject to full investigation, including the application of forensic techniques.

583. Subsequently, he directed that reports should be submitted by civilian police commanders on their performance in these matters and on the level of cooperation provided by the Military Police.¹⁹⁷⁹ Problems with the setting up of joint checkpoints and cooperation between the MUP and VP were testified to by several [REDACTED] witnesses.¹⁹⁸⁰
584. The MUP did not investigate soldier casualties due to an assumption that they died in combat.¹⁹⁸¹ There was an assumption (by the Chief of Zadar PU) that bodies recovered from combat areas died in combat.¹⁹⁸² [REDACTED]¹⁹⁸³ [REDACTED].¹⁹⁸⁴ [REDACTED].¹⁹⁸⁵
585. Furthermore, the public prosecutor in Zadar did not treat crimes committed after 7 August as war crimes due to the conclusion of combat activities.¹⁹⁸⁶ Finally, on-site investigations were not conducted into every body that was discovered in the aftermath of Operation

¹⁹⁷⁷ D49.

¹⁹⁷⁸ [REDACTED].

¹⁹⁷⁹ D50; [REDACTED].

¹⁹⁸⁰ Cetina T.23412: "It was difficult to come to an agreement with the military police because their forces were far weaker"; also at T.23422-3 re lack of proper cooperation with the VP; T.23430 re D499; T.23433-5. Cetina explains that the MUP would have included the military police if they had provided the necessary men (dealing with criticism of the MUP cited in P2206 and D581) at T.23434-6; [REDACTED]; Moric T.25566-7; T.25574; D584; D575; [REDACTED]; D589 p2; [REDACTED].

¹⁹⁸¹ T.9332.

¹⁹⁸² T.23528.

¹⁹⁸³ [REDACTED].

¹⁹⁸⁴ [REDACTED].

¹⁹⁸⁵ [REDACTED].

¹⁹⁸⁶ T.19850.

Storm on instruction of Zidovec.¹⁹⁸⁷ None of these policy decisions were made with or by Cermak.

586. [REDACTED]¹⁹⁸⁸ [REDACTED].

587. Defence expert Albiston concluded that the “*operational responsibility* for addressing the problems, and in particular the prevention of crimes, fell to men such as Josko MORIC, Ivica CETINA and Cedo ROMANIC, all of whom were in the chain of command which ran from the Minister of the Interior, Ivan JARNJAK down to the police officers on patrol and manning checkpoints¹⁹⁸⁹, outside of which lay General CERMAK and the Ministry of Defence’s Knin Garrison.”¹⁹⁹⁰ General Cermak’s scope for action in this regard was limited both by law and by a lack of resources.¹⁹⁹¹ As Albiston explained, he had “no legal duty or role in the prevention of crime, a matter which clearly fell to the MUP. As in law he had *no operational role* and as in practice he had *no operational command*, it cannot...be concluded that any failure to prevent crime through the more effective deployment of police or military resources can [legally] be attributed to him.”¹⁹⁹²

5. **DE FACTO: REPORTING OF CRIME WITHIN THE POLICE**

588. There is no evidence that Cermak received any of the internal reports on crimes from the police. This is a further indicator of his factual remoteness from the functioning of the MUP in respect of crime processing. In terms of the procedures in place concerning the *de facto*

¹⁹⁸⁷ T.23596; D235, D234.

¹⁹⁸⁸ [REDACTED].

¹⁹⁸⁹ [REDACTED].

¹⁹⁹⁰ [REDACTED].

¹⁹⁹¹ [REDACTED].

¹⁹⁹² [REDACTED].

reporting of crime post Operation Storm, police stations would report events to their PU.¹⁹⁹³ The PU would then send reports to the ministry. The reports would be “addressed to either one of the departments within the police sector or to the sector itself and its head, Mr. Franjo”, or to Mr Moric.¹⁹⁹⁴ “In the police reporting methodology, an addressee is chosen, depending on the assessment of the person sending the report and to which level that report should be sent to, depending on the significance and the scope of the problem...being reported.”¹⁹⁹⁵ [REDACTED].¹⁹⁹⁶

¹⁹⁹³ Moric T.25634.

¹⁹⁹⁴ Moric T.25634.

¹⁹⁹⁵ Moric T.25634-35.

¹⁹⁹⁶ [REDACTED].

PART VI

SENTENCING

589. The Defence maintain that Cermak is not guilty of any of the charges in the Indictment. If the Trial Chamber should however find Cermak guilty of any of the charges, the Defence requests the opportunity to address the Chamber orally at an appropriate stage in the proceedings. The Defence makes the following general written submissions.

I. THE GRAVITY OF OFFENCES AND TOTALITY OF THE CONDUCT¹⁹⁹⁷

590. It is unhelpful for the Defence to attempt to address these matters *in abstracto*. Meaningful submissions must be based upon any factual findings which may be made by the Trial Chamber.

II. MITIGATING CIRCUMSTANCES

591. Mitigating factors need only be established on the balance of probabilities and not beyond a reasonable doubt.¹⁹⁹⁸ A judge in the former Yugoslavia has the discretion to apply mitigating circumstances to reduce the sentence below its tariff if the objective of the sentence may be achieved equally well by a reduced sentence.¹⁹⁹⁹

¹⁹⁹⁷ *Blaskic* Appeals Judgement, paras.679, 683; *Celebici* Appeals Judgement. para. 731; *Kupreskic* Appeals Judgement, para.442; *Kupreskic* Trial Judgement, para. 852.

¹⁹⁹⁸ *Simic*, Sentencing Judgement, paras.40, 41; *Sikirica*, Sentencing Judgement, para.110; *Kunarac* Trial Judgement, para.847; *Krstic* Trial Judgement, para.713, *Kupreskic* Appeal Judgement, para.464.

¹⁹⁹⁹ *Krstic* Judgement, para.713.

1. VOLUNTARY SURRENDER

592. Voluntary surrender has been held to be a significant mitigating factor.²⁰⁰⁰ Upon hearing of the Indictment, Cermak contacted the Tribunal through the Croatian government to arrange for his immediate surrender.²⁰⁰¹ On 11 March 2004, three days after the Indictment was unsealed, Cermak voluntarily surrendered to the Tribunal and made an initial appearance on 12 March 2004. After each period of provisional release, he has returned back to UNDU pursuant to the orders of the Trial Chamber or Appeals Chamber.

2. SUBSTANTIAL CO-OPERATION AND ASSISTANCE

593. Cermak gave three interviews to the Prosecution,²⁰⁰² the majority of which were given prior to any Indictment against him and at a time when co-operation with the Tribunal was viewed as national betrayal in Croatia carrying a significant risk of retribution. He answered all questions and provided the OTP with new information as well as corroboration of existing information. He provided over a hundred documents, previously unavailable to the Prosecutor, many of which were exhibited at trial and are relied upon by both the Defence and the Prosecution.²⁰⁰³

²⁰⁰⁰ *Kupreskic* Trial Judgement, paras.853, 860 , 863; *Kupreskic* Appeal Judgement, para.30; *Kunarac* Trial Judgement, para.868; *Simic* Sentencing Judgement, para.107.

²⁰⁰¹ Ivan Cermak's Motion for Provisional Release, 12 March 2004, para.5.

²⁰⁰² The first interview was conducted in March 1998 over several days and without assistance of counsel; the second interview was conducted in March 2001 and the third in July 2004.

²⁰⁰³ According to Cermak's then counsel Mr. Prodanovic, Cermak provided 132 documents to the Prosecution (1 April 2004 hearing). The following exhibits have been identified as having been provided to the investigators by counsel for Mr. Cermak on 26 May 2000: P567, P512, P509, P53, P1181, P2650, P2645, P1181, P764, P409, P1222, P411, P603, P2520, P918, P506, P2649, P1223, D1129, D765, D1039, D1040, D503, D1020, D299, D1271, D1270, D304, D1128, D1701, D1130, D1131, D1059, D30, D31, D37, D1033, D994.

3. GOOD CHARACTER AND CONDUCT

594. An accused's good character,²⁰⁰⁴ his conduct during the proceedings,²⁰⁰⁵ on provisional release²⁰⁰⁶ and in detention²⁰⁰⁷ are all mitigating factors. ²⁰⁰⁸ Evidence of his good character during the indictment period is also a significant mitigating factor.²⁰⁰⁹
595. Cermak has no previous convictions. He attended trial proceedings daily and even appeared when other accused refused to do so.²⁰¹⁰ The Trial Chamber has noted frequently his exemplary and co-operative behaviour.²⁰¹¹ With the exception of one isolated incident, he has complied fully with the terms and conditions of his provisional release.²⁰¹²
596. In respect of the indictment period, the Defence submits the following factors constitute significant mitigation which the Chamber must take into consideration if Cermak is convicted:

²⁰⁰⁴ *Erdemovic* Second Sentencing Judgement, para.16(i); *Kupreskic* Appeal Judgement, para.459, *Miodrag Jokic*, Trial Judgement, para.90-1,103; *Blaskic* Appeal Judgement, para.706; *Nzabrinda* Trial Judgement, para.92

²⁰⁰⁵ *Blaskic* Appeal Judgement, para.728.

²⁰⁰⁶ *Plavsic* Trial Judgement, para.109; *Hadzihasanovic* Trial Judgement, para.2078; *Strugar* Trial Judgement, para.472.

²⁰⁰⁷ *Kordic* Appeal Judgement, para.1053.

²⁰⁰⁸ *Simic* Sentencing Judgement, para.112; *Krstic* Trial Judgement, para.715; *Krnojelac* Trial Judgment, para.520.

²⁰⁰⁹ See *Erdemovic* Second Sentencing Judgment, para.16(i); *Kupreskic* Appeal Judgment, para.459.

²⁰¹⁰ 10-11 December 2009.

²⁰¹¹ "The Chamber also considers that Mr Cermak's proper and cooperative behaviour in court is a relevant factor when considering his flight risk", Decision on Ivan Cermak's Motion for Provisional Release, 2 December 2008, para.11. See also Decision on Motion for Provisional Release of Ivan Cermak, 27 February 2009, para.7; Decision on Motion for Provisional Release of Ivan Cermak, 14 July 2009, para.9; Decision on Motion for Provisional Release of Ivan Cermak, 14 December 2009, para.7

²⁰¹² See for example State reports on Provisional Release filed on 14 April 2010, 13 April 2010, 7 April 2010, 5 January 2010, 4 January 2010, 18 August 2010, 13 August 2010, 9 January 2009, 6 January 2009, 2 January 2009.

- (i) His cooperative, professional, hard-working and courteous character as noted by both Prosecution and Defence witnesses;²⁰¹³
- (ii) His significant contribution to the normalisation of life and improvement of living conditions in and around Knin after Operation Storm. See section: ***De Facto Role of Cermak in the Normalisation of Life;***
- (iii) His requests to Tudjman and Jarnjak for police reinforcements to be sent to the area;²⁰¹⁴
- (iv) His actions within his material ability to prevent the recurrence of crime by passing on information he received from the internationals to the relevant investigating authorities. See section: **Contrary to Paragraph 19(c) of the Indictment, Cermak Passed on Information about Crimes to the Relevant Authorities;**
- (v) His public denouncement of crime. See section: **Contrary to Paragraph 19(c) of the Indictment, Cermak Admitted that Crimes were Taking Place;**
- (vi) His conduct in garrison meetings in which he expressed his unhappiness about crimes being committed and implored the police to do their job. See sections: **Contrary to Paragraph 19(c)**

²⁰¹³ Forand: Cermak's door was always open to him: T.4236, and he was very civilised: T.4236, T.4256; Leslie: Cermak was very pleasant and very cooperative: T.2177, T.2181 and was trying to do all that he could to help the UN with the issue of displaced persons: T.2182; Flynn: Cermak was virtually always cooperative and generally encouraging about the possibility of helping HRAT with their requests: T.1177; Mauro also gave evidence about Cermak's cooperative behaviour and his intention to help: P1098, p. 00934965, T.12039-12040); Lyntton acknowledged that Cermak wanted to please and cooperate: T.8829, P870, para.31; Dondo: Cermak presented himself as being at the disposal of the UN for everything they needed: D1695, para.11. Vedris gave evidence that Cermak tried to help using his personal contacts in individual ministries and in Zagreb and that pursuant to his requests for help, some of the necessary equipment was sent to Knin: D1722, para.15; Rincic stated that everybody went to Cermak asking for help with everything they needed for life and work in Knin. Cermak established communication with all representatives of civilian authorities in town in order to learn where problems were and tried to organise solutions to problems: D1680, para.16.

²⁰¹⁴ Re Cermak's request to Tudjman: P2525, p23, p49, p176; P2532, p50-51; re Cermak's contact with Jarnjak to alert him to problems on the ground and to ask him for police reinforcements to prevent crime: P2525, p30, p49, p59, p178, p180; P2532, p27, p104-5.

of the Indictment, Cermak Passed on Information about Crimes to the Relevant Authorities; Contrary to Paragraph 19(c) of the Indictment, Cermak Admitted that Crimes were Taking Place;

- (vii) The fact that he informed more senior figures in the Croatian leadership of the fact that crimes were taking place. See section: **No Plurality of Persons Involving Cermak** (in relation to Tudjman and Jarnjak);
- (viii) His promotion of the rights of Serbs: See section: **Cermak's Attempts to Encourage People to Stay**; and
- (x) The Chamber must also take into account his lack of resources and manpower in trying to carry out the tasks he had been given in the post-conflict Krajina: See section: **The Establishment of the Knin Garrison, Manpower and Resources.**

4. PERSONAL AND FAMILY CIRCUMSTANCES

597. Cermak is a distinguished, respected and successful businessman. He has built his companies entirely by his own endeavours and has introduced modern business techniques to counter archaic state monopolies. He has held several positions at state level responsibility including his appointment as the Minister of Industry, Shipbuilding and Energy²⁰¹⁵, the Minister of Economy²⁰¹⁶ and the Assistant Minister of Defence for Logistics.²⁰¹⁷ He has never been in active service in the JNA or the Croatian Army. He is married with three children, the youngest of whom is 14 years of age. The Chamber is acutely aware of

²⁰¹⁵ D1008.

²⁰¹⁶ D1010.

²⁰¹⁷ See information provided in D36.

the substantial impact of his detention on his youngest son's mental health²⁰¹⁸ and the consequent relocation of part of his family.

5. CREDIT FOR TIME SERVED

598. Pursuant to Rule 101(C), credit is to be given for the period during which an accused is in custody pending surrender to the Tribunal or pending trial or appeal. During pre-trial proceedings, Cermak was detained for almost nine months at the UNDU from 11 March 2004 to 4 December 2004 after which he was provisionally released.²⁰¹⁹ He was again detained from 8 February 2007²⁰²⁰ to 16 February 2007²⁰²¹ and between 26 and 27 October 2007.²⁰²² His pre-trial provisional release ended on 5 March 2008²⁰²³ and thereafter he has remained in the UNDU throughout the trial proceedings, except for those periods of provisional release.²⁰²⁴

²⁰¹⁸ Decision on Ivan Cermak's Appeal Against Decision on his Motion for Provisional Release, 3 August 2009

²⁰¹⁹ Prosecutor v. Ivan Cermak and Mladen Markac, Case No IT-03-73-AR65.1, Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release, 02 December 2004.

²⁰²⁰ Order suspending Provisional Release, 26 January 2007.

²⁰²¹ Decision to Reinstate the Provisional Release of Ivan Cermak, 15 February 2007.

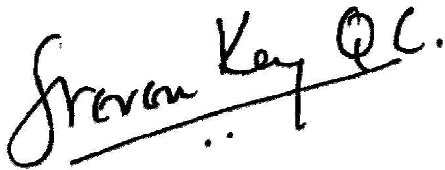
²⁰²² Scheduling Order and Incorporated Order suspending Provisional Release, 10 October 2007; Order reinstating Provisional Release, 26 October 2007.

²⁰²³ Order Scheduling Start of Trial and Terminating Provisional Release, 6 February 2008.

²⁰²⁴ See Decision on Ivan Cermak's Motion for Provisional Release of 18 July 2008; Decision on Ivan Cermak's Motion for Provisional Release of 2 December 2008; Decision on Ivan Cermak's Appeal Against Decision on his Motion for Provisional Release of 3 August 2009; Decision on Motion for Provisional Release of Ivan Cermak of 14 December 2009; Decision on Ivan Cermak's Motion for Provisional Release pursuant to Rules 54 and 65 of 24 October 2010 and Decision on Ivan Cermak's Motion for Provisional Release Pursuant to Rules 54 nad 65, 9 July 2010.

Public redacted version

Respectfully submitted,

A handwritten signature in black ink that reads "Steven Kay QC." The signature is written in a cursive style with a horizontal line drawn through the middle of the text.

Steven Kay QC

Lead Counsel

A handwritten signature in black ink that reads "Gillian Higgins". The signature is written in a cursive style.

Gillian Higgins

Co-counsel

Done in London, this 16 July 2010.

Word count: 87 094

PART VII
ANNEXES 1 - 6

ANNEX 1

ORDERS TO STOP CRIMES

Date	Exhibit number	Issued by	Ordered to
04/08/1995	D41	Moric	All PUs
05/08/1995	P887 – duplicate of P881	Lausic	- 66th Battalion of the VP/ Military Police/ Zagreb - 67th Battalion of the VP Zagreb - 68th attalion of the VP Osijek - 69th Comany of the VP Bjelovar - 70th Company of the VP Karlovac - 71st Battalion of the VP Rijeka - 72nd Battalion of the VP Split - 73rd Battalion of the VP Split - 74th Battalion of the VP Zagreb
06/08/1995	D323	Cervenko	Commanders of the Military Districts
06/08/1995	D643	Gotovina	- SibenikOG - Zadar OG - 72nd Military Police Battalion - 306th Lob - Sibenik Section - 307th Lob Zadar - Archives
07/08/1995	D324	Cervenko	Commanders of the Military Districts

10/08/1995	D204	Gotovina	- OG/Operative Group/Zadar - OG/Operative Group/ Sibenik - Files
10/08/1995	D841 duplicate is D325	Vukic - MOD	- 11 pbr/Infantry brigade/ - 142nd dp/Home Guard Regiment/ - 15lh dp - TS -4/? Tank company/ - 4/72nd battalion of the Military police - for information - 73rd battalion of the Military police - Sibenik - for information - Sienik LOB /logistics base/ - for information - Archives
10/08/1995	D644	Nakic	- All units, - Chief of Staff, - OPP
12/08/1995	D645	Tomasovic - MOD	- OG SajkoviC - OG OtriC - OG Vrba - Split Military District Commander - Head of HR HB MO PU / Police Administration in the MOD of HR HB/ - Commander of Knin Military District - Split SIS Assistant Commander - Archives - here
12/08/1995	D205	Kotlar - MOD	- All units of the 113th pbr - Assistants to

			Commanders - Files
13/08/1995	D646	Radotic - MOD	PZ/ Assistant Commander/for PD/ political activity
14/08/1995	D47	Lausic	- 68 th battalion or the Zagreb VP/Military Police - 69 th company of the Bjelovar VP - 70 th company of the Karlovac VP - 71 st battalion of the Rijeka VP - 72 nd battalion of the Split VP - 73 rd battalion of the Split VP
14/08/1995	D648	Ivkovic - MOD	112 th Zadar Brigade
14/08/1995	D647	Supe - MOD	All Assistant Commanders for Political Acitivity of the 142 nd dp/Home Guard Regiment
15/08/1995	D649	Nakic - MOD	- Chief of Staff - all units of the 142 nd Home Guard Regiment
18/08/1995	P877	Lausic	- 67 th Military Police Battalion - 68 th Military Police Battalion - 69 th Military Police Company - 70 th Military Police Company - 71 st Military Police Battalion - 72 nd Military Police Battalion

18/08/1995	D49	Moric	To PUs: - Sisak-Moslavina - Karlovac - Lika-Senj - Zadar-Knin - Sibenik
18/08/1995	D888	Gotovina	72 th bMP
19/08/1995	D650	Fuzul - MOD	- 112 th brigade - 113 th brigade - 7 th home guard regiment - 134 th home guard regiment - 142 nd home guard regiment - 15 th home guard regiment - archives
19/08/1995	P1140	Fuzul	112 th br, 113 th br, 7 th dp, 134 th dp, 142 th dp, 15 th dp
20/08/1995	D653	Nakic- MOD	- 142 Drnis Brigade - 142 nd Home Guard Regiment - Drnis
20/08/1995	D651	Kotlar - MOD	All units of the 113 th Infantry Brigade
20/08/1995	D889	Ivkovic	- 1 th , 2 nd . and 3 rd pb - TRD, RPOTB - Engineering Company - Logistic Company - Div. Platoon - Communications Platoon - Command Centre - 2/7 th dp - OMS
20/08/1995	D585	Cetina	- Zadar-Knin PU - District of Knin PU

22/08/1995	D50	Moric	To PUs: - Sisak - Moslavina - Karlovac - Lika - Senj - Zadar - Knin - Sibenik - Split - Dalmatia - Knin - Glina
22/08/1995	D587	Moric	To PUs: - Sisak - Moslavina - Karlovac - Lika - Senj - Zadar - Knin - Sibenik - Split - Dalmatia - Knin - Glina
30/08/1995	D481	Moric	To all PUs
13/09/1995	D655	Gotovina	- Operations Group West - Operations Group South - 72 nd Battalion of the VP - Archives
17/09/1995	D656	Gotovina	- Colonel A. KOTROMANOVIC - Operative Group West, for their information - Operative Group South, for their information - GospiC Military District, for their information - Assistant Commander for SIS Information and Security Service1

			- Assistant Commander for /? Political Activity/ - 1 X Assistant Commander for Logistics
18/09/1995	D657	Fuzul - MOD	-112th Brigade - 7th dp/Home Guard Regiment/ - 15th dp - 142nd dp - 134th dp - TS- 1 /?Technical Service/ - Files
21/09/1995	D1067	Mihael Budimir – MOD	MP Knin Att. First Lieutenant L. Orsulic
06/10/1995	P2189	Lausic	- 71st Rijeka MP Battalion - 72nd Split MP Battalion - Chiefs of MP Administration Sectors

ANNEX 2

REINFORCEMENT OF CIVILIAN POLICE UNITS

Date	Exhibit no	Issued by	Ordered to
03/08/1995	D465	Moric	To PUs of: - Bjelovar-Bilogora - Dubrovnik- Neretva - Krapina-Zagora - Medimurje - Istria - Primorje-Gorski Kotar - Varazdin - Virovotica- Podravina - Zagreb - Koprivnika- Krizevac - Split-Dalmatia - Sibenik - Zadar-Knin - Lika-Senj - Karlovac - Sisak-Moslavina
03/08/1995	P492	Moric	To PUs of: - Bjelovar-Bilogora - Krapina-Zagora - Medimurje - Istria - Primorje-Gorski Kotar - Split-Dalmatia - Varazdin - Virovotica- Podravina - Zagreb - Sisak-Moslavina - Karlovac - Lika-Senj - Zadar-Knin

			- Sibenik
03/08/1995	P497	Moric	To the PUs of: - Split-Dalmatia - Sibenik - Zadar-Knin - Lika-Senj - Karlovac - Sisak-Moslavina - Zagreb - Brod-Posavina - Osijek-Baranja - Vukovar-Srijem
05/08/1995	D42	Moric	To PUs: - Primorje-Gorski Kotar - Zagreb - Zadar-Knin
05/08/1995	D466	Moric	To PUs: - Zagreb - Zadar-Knin
05/08/1995	D445	Katalinic	Operation Povratak Ivan Nadj, for information
06/08/1995	D446	Unkown	Operation Povratak
08/08/1995	D467	Moric	To PUs: - Dubrovnik-Neretva - Zadar-Knin
14/08/1995	D472	Moric	To PUs: - Bjelovar-Bilogora - Dubrovnik-Neretva - Krapina-Zagorje - Medimurje - Istria - Primorje-Gorski Kotar - Varazdin - Virovotica-Podravina

			- Zagreb - Koprivnika-Krizevac - Split-Dalmatia - Sibenik - Zadar-Knin - Lika-Senj - Karlovac - Sisak-Moslavina
22/08/1995	D479	Moric	PU Krapina-Zagorje
22/08/1995	D1573	Nad	- Operation Povratak To PUs: - Split-Dalmatia - Varazdin
30/08/1995	D481	Moric	To all PUs
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11/09/1995	D453	Nad	Split Dalmatia PU
5/10/1995	D484	Moric	- To PUs: - Krapina-Zagorje - Slavonski Brod-Posavina
20/10/1995	D485	Moric	- To PUs: - Zagreb - Split-Dalmatia - Primorje-Gorski Kotar - Krapina-Zagorje - Dubrovnik-Neretva - Slavonski Brod-Posavina - Bjelovar-Bilogora
No date	D1577		

ANNEX 3

REINFORCEMENT OF CIVILIAN PROTECTION UNITS

Date	Exhibit	Issued by	Ordered to
05/08/1995	D444	Zidovec	To Zagreb PU
05/08/1995	D599	Zidovec	To Zagreb, Karlovac, Primorje- Goranska, Ličko- senjska, Zadarsko- Kninska PU's
06/08/1995	D447	Zidovec	To Primorje- Gorski Kotar PU
06/08/1995	D448	Zidovec	To Zadar-Knin PU
07/08/1995	D43	Zidovec	To Split-Dalmatia PU
07/08/1995	D601	Zidovec	To Sisak- Moslavačka, Karlovac, Ličko- senjska, Šibenska, Zadarsko- Kninska Split- Dalmatia PU's
08/08/1995	D449	Zidovec	To Istria PU
08/08/1995	D605	Zidovec	To Split-Dalmatia PU
05/09/1995	D451	Zidovec	To Primorje- Gornji Kotar PU
10/08/1995	D608	Zidovec	To Zagreb PU

16/08/1995	D464	Zidovec	To Karlovac, Sisak- Moslavacka, Licko-Senjska, Zadarsko- Kninska Split- Dalmatia, Šibenska, PUs
01/09/1995	D614	Zidovec	Virovitica – Podravlje PU
06/09/1995	D1572	Zidovec	Krapina-zagorje PU
20/09/1995	D615	Zidovec	To Medimurje PU

ANNEX 4

REINFORCEMENT OF VP UNITS

Date	Exhibit	Issued by	Ordered to
02/08/1995	D267- duplicate is P2171	Lausic	- 66 th VP Battalion-Zagreb - 67 th VP Battalion-Zagreb - 68 th Battalion-Osijek - 69 th VP Company-Bjelovar - 70 th VP Company-Karlovac - 71 st VP Battalion-Rijeka - 72 nd VP Battalion-Split - 73 rd VP Battalion-Split -74 th VP Company-Zagreb - NSVP/Military Police Training Centre/-Zagreb For attention to: - Susak - Cervenko - Rebic - UVP departments and sections - commanders of ZPs of Split, Gospic, KArlovac, Zagreb, Bjelovar and Osijek - HRM Commander - HRZ

			Commander - GSHV Operative Administration - Ogulin GSHV IZM Commander
02/08/1995	D268	Lausic	73 rd VP Battalion For information to: - Split ZP commander - Split 72 nd VPb commander - Split 73 rd VPb commander
05/08/1995	P881 – duplicate of P887	Lausic	- 66 th Battalion of the VP Military Police/ Zagreb - 67 th Battalion of VP Zagreb - 68 th Battalion of VP Osijek - 69 th Company of VP Bjelovar - 70 th Company of VP Karlovac - 71 st Battalion of VP Rijeka - 72 nd Battalion of VP Split - 73 rd Battalion of VP Split - 74 th Battalion of VP Zagreb
16/08/1995	D1602	Peljic	1 st OVP Company – 72 nd VP Battalion
16/08/1995	D1603	Dzolic	2 nd OVP/Common VP/ Company – 72 nd Battalion
17/08/1995	D789	Budimir	Att. Commander: - 1 st Company of OVP/ General VP/ Split

			- 2nd Company of OVP/ General VP/ Split - 3rd Company of OVP/ General VP/ Zadar - Chief of crime investigation VP/ Military Police - Leader of OD/ Operational Duty/ service of 72nd - Battalion of VP Traffic Company
29/08/1995	D1135	Cudina Begovic	Traffic Police Company - 72 nd VP Battalion
29/08/1995	D1137	Džolić	2 nd OVP/Common VP/ Company - 72 nd Battalion
30/08/1995	D1138	Jejić	Command of the 72 nd bVP Battalion-5 th VP Company
12/09/1995	D1140	Budimir	- 1st Company of OVP/ General VP/ Split - 2nd Company of OVP/ General VP/ Split - 5th Company of OVP/ General VP/ Zadar - 7th Company Knin - Chief of crime investigation VP/ Military Police - Assistant of Logistics Commander - Leader of OD/ Operational Duty/ service of 72nd

			- Battalion of VP - Traffic Company
12/09/1995	D1143	Dzolic	2 nd OVP/Common VP/ Company - 72 nd Battalion
13/09/1995	D1145	Pejic	OVP/ Common VP/ 1 st Company
25/09/1995	D1147	Ćudina Begović	Traffic Police Company - 72 nd VP Battalion
26/09/1995	D1148	Dzolic	- Platoon commanders of the 2 nd OVP Company - Assistant Commander Josip Bonacic
27/09/1995	D1149	Pejic	1 st OVP Company - 72 nd VP Battalion
27/09/1995	D1150	Lubina	5 th VP Company - 72 VP Battalion
10/10/1995	D1153	Pejic	1 st OVP Company - 72 nd VP Battalion
10/10/1995	D1152	Budimir	- 1 st Company of OVP/ General VP/ Split - 2 nd Company of OVP/ General VP/ Split - 5 th Company of OVP/ General VP/ Zadar - 7 th Company Knin - Chief of crime investigation VP/ Military Police - Assistant of Logistics

			Commander - Leader of OD/ Operational Duty/ service of 72 nd - Battalion of VP - Traffic Company
10/10/1995	D1154	Dzolic	2 nd OVP/Common VP/ Company - 72 nd Battalion
10/10/1995	D1155	Cudina Begovic	Traffic Police Company - 72 nd VP Battalion
25/10/1995	D1159	Cudina Begovic	Traffic Police Company - 72 nd VP Battalion
27/10/1995	D1158	Budimir	- 1 st Company of OVP/ General VP/ Split - 2 nd Company of OVP/ General VP/ Split - 5 th Company of OVP/ General VP/ Zadar - 7 th Company Knin - Chief of crime investigation VP/ Military Police - Assistant of Logistics Commander - Leader of OD/ Operational Duty/ service of 72 nd - Battalion of VP - Traffic Company
31/10/1995	P2213	Gotovina	-72 nd Battalion VP - Sipovo forward Command Post (Staff Brigadier Rajcic) - commander of

			the Split Military District Command Headquarters
09/11/1995	D1164	Budimir	- 1st Company of OVP/ General VP/ Split - 2nd Company of OVP/ General VP/ Split - 5th Company of OVP/ General VP/ Zadar - 7th Company Knin - Chief of crime investigation VP/ Military Police - Assistant of Logistics Commander - Leader of OD/ Operational Duty/ service of 72nd - Battalion of VP - Traffic Company
21/11/1995	D1169	Budimir	- 1st Company of OVP/ General VP/ Split - 2nd Company of OVP/ General VP/ Split - 5th Company of OVP/ General VP/ Zadar - 7th Company Knin - Chief of crime investigation VP/ Military Police - Assistant of Logistics Commander - Leader of OD/

			Operational Duty/ service of 72 nd - Battalion of VP - Traffic Company
06/12/1995	D1174	Budimir	- 1 st Company of OVP/ General VP/ Split - 2 nd Company of OVP/ General VP/ Split - 5 th Company of OVP/ General VP/ Zadar - 7 th Company Knin - Chief of crime investigation VP/ Military Police - Assistant of Logistics Commander - Leader of OD/ Operational Duty/ service of 72 nd - Battalion of VP - Traffic Company
12/12/1995	D01176	Jenjić	72 nd bVP Battalion- ONP Department Att. Assistanat Commander for ONP

ANNEX 5

MUP ORDERS TO REPORT ABOUT CRIMES AND FOLLOW UP REPORTS

ORDERS FROM MORIC			
Date	Exhibit	Issued by	Ordered to
22/08/1995	D50 - DUPLICATE is D1847	Moric	To PUs: - Sisak-Moslavina - Karlovac - Lika-Senj - Zadar-Knin - Sibenik - Split-Dalmatia - Knin - Glina
22/08/1995	D588	Moric	To all PUs
30/08/1995	D574	Moric	To PUs: - Sisak - Moslavina - Karlovac - Lika - Senj - Zadar - Knin - Sibenik - Split - Dalmatia - Knin - via the Zadar-Knin PU - Glina - via the Sisak-Moslava PU
30/08/1995	D591	Moric	To PUs: - Sisak - Moslavina - Karlovac - Lika - Senj - Zadar - Knin - Sibenik - Split - Dalmatia - Knin - via the Zadar-Knin PU

			- Glina - via the Sisak-Moslava PU
11/09/1995	D579	Moric	To PUs: - Sisak - Moslavina - Karlovac - Lika - Senj - Zadar - Knin - Sibenik - Split - Dalmatia - Knin - via the Zadar-Knin PU - Glina - via the Sisak-Moslava PU
FOLLOW UP REPORTS			
Date	Exhibit	From	To
24/08/1995	P498	Cetina	Moric
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
24/08/1995	D573	Matic	Moric
24/08/1995	D989	Cipci	Moric
24/08/1995	D1889	Kardum attc: Cetina/ Kardum signed report for Moric	Moric
01/09/1995	D1857	Cipci	Moric
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
01/09/1995	D575	Matic	Moric

02/09/1995	D1858	Bijelic	Moric
02/09/1995	D1859	Dasovic	MUP
02/09/1995	D576	Cetina	Moric
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/09/1995	D578	Cetina	Moric
12/09/1995	D580	Matic	MUP
12/09/1995	D581	Cetina	To MUP: - Moric - Department of the Police
12/09/1995	D1860	Dasovic	MUP

ANNEX 6

COOPERATION BETWEEN THE MUP AND VP

Date	Exhibit number	Issued by	Ordered to	Comment
02/08/1995	D267 – duplicate is P2171	Lausic	- 66th Battalion of the VP/ Military Police/ Zagreb - 67th Battalion of the VP Zagreb - 68th Battalion of the VP Osijek - 69th Comany of the VP Bjelovar - 70th Company of the VP Karlovac - 71st Battalion of the VP Rijeka - 72nd Battalion of the VP Split - 73rd Battalion of the VP Split - 74th Battalion of the VP Zagreb - For attention to: - Susak - Cervenko - Rebic - UVP departments and sections - commanders of ZPs of Split, Gospic, KARlovac, Zagreb, Bjelovar and Osijek - HRM Commander - HRZ Commander - GSHV Operative Administration - Ogulin GSHV IZM Commander	
			73 rd VP Battalion	

02/08/1995	D268	Lausic	For information to: - Split ZP commander - Split 72 nd VPb commander - Split 73 rd VPb commander	
03/08/1995	D269	Lausic	- 66 th Battalion of the VP/ Military Police/ Zagreb - 67 th Battalion of the VP Zagreb - 68 th Battalion of the VP Osijek - 69 th Company of the VP Bjelovar - 70 th Company of the VP Karlovac - 71 st Battalion of the VP Rijeka - 72 nd Battalion of the VP Split - 73 rd Battalion of the VP Split - 74 th Battalion of the VP Zagreb - NSVP/ Military Police Training Centre/ Zagreb - UVP/ Military Police Administration/Departments and Sections	
03/08/1995	P515 – duplicate is D794			Notes of a coordination meeting MUP/VP
03/08/1995	D44 – duplicates are P915, D269	Lausic	- 71 st MP BATC Rijeka - 72 nd MP BAT Split - 73 rd MP BAT Split - Gospic Military District - Split Military District	
03/08/1995	P493	Moric	To PUs: - Split – Dalmatia - Sibenik	

			- Zadar – Knin - Lika – Senj - Karlovac - Sisak - Moslavina	
04/08/1995	D45			Notes of a coordination meeting MUP/VP by Lausic
04/08/1995	P2200	Budimir	- 3 rd OVP Company, Zadar - 4 th OVP Company, Sibenik - 5 th OVP Company, Sinj - 6 th OVP Company, Dubrovnik	
05/08/1995	P881 – duplicate is P887	Lausic	To be delivered to: - Susak - NGSHV/ Chief of the Croatian Army Main Staff/ Army General - Cervenko - Rebic - ZP/ military district/ commanders(all) - UVP/Military Police Administration/ departments	
05/08/1995	P879			Reports on coordinated activity MUP/VP by Juric
08/08/1995	P1211			Report from Grancaric to Juric
10/08/1995	D46			Letter from Moric to Lausic
10/08/1995	D1749			Report from Grancaric to Juric
			- 68 th battalion or the	

14/08/1995	D47	Lausic	Zagreb VP/Military Police - 69 th company of the Bjelovar VP - 70 th company of the Karlovac VP - 71 st battalion of the Rijeka VP - 72 nd battalion of the Split VP - 73 rd battalion of the Split VP	
17/08/1995	D48			Letter from Moric to Lausic
18/08/1995	D49	Moric	To PUs: - Sisak-Moslavina - Glina - Karlovac - Lika – Senj - Zadar – Knin - Sibenik - Split – Dalmatia - Knin - Glina	
18/08/1995	P877	Lausic	- 67 th Military Police Battalion - 68 th Military Police Battalion - 69 th Military Police Company - 70 th Military Police Company - 71 st Military Police Battalion - 72 nd Military Police Battalion	
19/08/1995	D584			Report from Cetina to Moric
19/08/1995	D1071			Report from Budimir to

				Lausic
22/08/1995	D586			Letter from Moric to Lausic
24/08/1995	D1889	Kardum	To PUs: - Sisak - Karlovac - Lika – Senj - Zadar – Knin - Sibenik - Split – Dalmatia - Knin - Glina	
28/08/1995	D589			Report from Tomurad to Moric
30/08/1995	D1072	Lausic	- 66 th Battalion of the VP/ Military Police/ Zagreb - 67 th Battalion of the VP Zagreb - 68 th Battalion of the VP Osijek - 69 th Comany of the VP Bjelovar - 70 th Company of the VP Karlovac - 71 st Battalion of the VP Rijeka - 72 nd Battalion of the VP Split - 73 rd Battalion of the VP Split - 74 th Battalion of the VP Zagreb Forwarded to: - Moric - Rebic - Chiefs of departments of the VP Administrations	
06/09/1995	D592			Letter from Moric to

				Lausic
07/09/1995	P2600	Moric	- To all VP units - to all the departments and Military Police Administration - to the attention of Lausic	
12/09/1995	P2206	Lausic	- 66th Battalion of the VP/ Military Police/ Zagreb - 67th Battalion of the VP Zagreb - 68th Battalion of the VP Osijek - 69th Comany of the VP Bjelovar - 70th Company of the VP Karlovac - 71st Battalion of the VP Rijeka - 72nd Battalion of the VP Split - 73rd Battalion of the VP Split - 74th Battalion of the VP Zagreb	
12/09/1995	D1287	Lausic	- 66th Battalion of the VP/ Military Police/ Zagreb - 67th Battalion of the VP Zagreb - 68th Battalion of the VP Osijek - 69th Comany of the VP Bjelovar - 70th Company of the VP Karlovac - 71st Battalion of the VP Rijeka - 72nd Battalion of the VP Split - 73rd Battalion of the VP Split	

			- 74th Battalion of the VP Zagreb - c/c: - VP Administration departments- for further actions/Traffic Military Police Department - VP Administrations Sections – for further actions - Moric	
12/09/1995	P2296	Lausic	- 66th Battalion of the VP/ Military Police/ Zagreb - 67th Battalion of the VP Zagreb - 68th Battalion of the VP Osijek - 69th Comany of the VP Bjelovar - 70th Company of the VP Karlovac - 71st Battalion of the VP Rijeka - 72nd Battalion of the VP Split - 73rd Battalion of the VP Split - 74th Battalion of the VP Zagreb	
13/09/1995	D594	Presumably Moric	To PUs: - Sisak-Moslavina - Glina - Karlovac - Lika – Senj - Zadar – Knin - Knin - Sibenik - Split – Dalmatia	
14/09/1995	P2565			Simic's report to the Milas, 72 nd VP Battalion

18/09/1995	D595			Biskic's report from the meeting in Plitvice on coordinative meeting MUP/VP
19/09/1995	D596	Moric	To PUs: - Split – Dalmatia - Sibenik - Zadar – Knin - Lika – Senj - Karlovac - Sisak-Moslavina - Knin - Glina	
03/10/1995	D1760			Report by Cetina on coordination MUP/VP
03/10/1995	P2186			Report on coordination meeting MUP/VP by Eljuga
06/10/1995	P2189	Lausic	- 71 st Rijeka MP Battalion - 72 nd Split MP Battalion - Chiefs of MP Administration Sectors For information to: - Susak - Rebic - Moric	
11/10/1995	D802			Report from Kozic to Lausic
25/10/1995	D1180			Coordination report from Gambiroza to Budimir

Table of authorities

<i>Aleksovski Appeals Judgement</i>	<i>Prosecutor v. Aleksovski</i> , Case No.: IT-95-14/1-A, Judgement, 24 March 2000.
<i>Aleksovski Trial Judgement</i>	<i>Prosecutor v. Aleksovski</i> , Case No.: IT-95-14/1-T, Judgement, 25 June 2009.
<i>Amended Indictment</i>	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-PT, Amended Indictment, 21 February 2008.
<i>Amended Joinder Indictment</i>	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-PT, Amended Joinder Indictment, 17 May 2007.
<i>Article 7(3), ICTY Statute</i>	Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, September 2009.
<i>Article 87, Additional Protocol I</i>	Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977.
<i>Bagilishema Appeals Judgement</i>	<i>Prosecutor v. Bagilshema</i> , Case No.: ICTR-95-1A-A, Judgement (Reasons), 3 July 2002.
<i>Blagojevic Appeals Judgement</i>	<i>Prosecutor v. Blagojevic</i> , Case No.: IT-02-60-A, Judgement, 9 May 2007.
<i>Blagojevic Trial Judgment</i>	<i>Prosecutor v. Blagojevic</i> , Case No.: IT-02-60-T, Judgement, 17 January 2005.
<i>Blaskic Appeals Judgement</i>	<i>Prosecutor v. Blaskic</i> , Case No.: IT-95-14-A, Judgement, 29 July 2004.
<i>Boas, Gideon, Bischoff, Reid</i>	Boas, Gideon, Bischoff, Reid, <i>International Criminal Law Practitioner Library, Volume I, Forms of Responsibility in International Criminal Law</i> , Cambridge U. Press 2007.

<i>Boskoski Appeals Judgement</i>	<i>Prosecutor v. Boskoski & Tarculovski</i> , Case No.: IT-04-82-A, Judgement, 19 May 2010
<i>Boskoski Trial Judgement</i>	<i>Prosecutor v. Boskoski & Tarculovski</i> , Case No.: IT-04-82-A, Judgement, 10 July 2008.
<i>Brdanin Appeals Judgement</i>	<i>Prosecutor v. Brdanin</i> , Case No.: IT-99-36-A, Judgement, 3 April 2007.
<i>Brdanin Trial Judgement</i>	<i>Prosecutor v. Brdanin</i> , Case No.: IT-99-36-T, Judgement, 1 September 2004.
<i>Celebici Appeals Judgement</i>	<i>Prosecutor v. Delalic, Mucic, Delic, & Landzo</i> (aka "Celebici"), Case No.: IT-96-21-A, Judgement, 20 February 2001.
<i>Celebici Trial Judgement</i>	<i>Prosecutor v. Delalic, Mucic, Delic, & Landzo</i> (aka "Celebici"), Case No.: IT-96-21-T, Judgement, 16 November 1998.
<i>Decision on Admission</i>	<i>Prosecutor v. Haradinaj, et al.</i> , Case No.: IT-08-84-T, Decision on the Admission of Zoran Stijovic's Rule 92ter Statement and its Annexes, 29 November 2007.
<i>Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release</i>	<i>Prosecutor v. Cermak & Markac</i> , Case No.: IT-03-73-AR65.1, Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release, 2 December 2004.
<i>Decision on Ivan Cermak's Appeal Against Decision on his Motion for Provisional Release</i>	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-AR65.3, Decision on Ivan Cermak's Appeal Against Decision on his Motion for Provisional Release, 3 August 2009.
<i>Decision on Ivan Cermak's Motion for Provsional Release</i>	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-T, Decision on Ivan Cermak's Motion for Provisional Release, 2 December 2008.
<i>Decision on Ivan Cermak's Motion for Provisional Release pursuant to Rules 54 and 65</i>	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-T, Decision on Ivan Cermak's Motion for Provisional Release pursuant to

	Rules 54 and 65, 24 October 2010.
Decision on Motion for Provisional Release of Ivan Cermak	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-T, Decision on Motion for Provisional Release of Ivan Cermak, 14 December 2009.
Decision to Reinstate the Provisional Release of Ivan Cermak	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-T, Decision to Reinstate the Provisional Release of Ivan Cermak, 15 February 2007.
Decision on Motions on Form of Indictment	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-PT, Pre-Trial Chamber's Decision on Ivan Cermak's and Mladen Markac's Motions on Form of Indictment, 8 March 2005.
Decision on Preliminary Motions	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-T, Decision on Ante Gotovina's Preliminary Motions Alleging Defects in the Form of the Joinder Indictment, 19 March 2007.
Delic Trial Judgement	<i>Prosecutor v. Delic</i> , Case No.: IT-04-83-T, Judgement, 15 September 2008.
Erdemovic Second Sentencing Judgement	<i>Prosecutor v. Erdemovic</i> , Case No.: IT-96-22-Tbis, Sentencing Judgement, 5 March 1998.
Fritzsche Judgement	<i>Hans Fritzsche</i> , Judgment of the International Military Tribunal, Nuremberg 30 September and 1 October 1946 (http://avalon.law.yale.edu/imt/judfritz.asp).
Furundzija Trial Judgement	<i>Prosecutor v. Furundzija</i> , Case No.: IT-95-17/1-T, Judgement, 10 December 1998.
Hadzihasanovic Appeals Judgement	<i>Prosecutor v. Hadzihasanovic</i> , Case No.: IT-01-47-A, Judgement, 22 April 2008.
Hadzihasanovic Trial Judgement	<i>Prosecutor v. Hadzihasanovic</i> , Case No.: IT-01-47-T, Judgement, 15 March 2006.

Halilovic Appeals Judgement	<i>Prosecutor v. Halilovic</i> , Case No.: IT-01-48-A, Judgement, 16 October 2007.
Halilovic Trial Judgement	<i>Prosecutor v. Halilovic</i> , Case No.: IT-01-48-T, Judgement, 16 November 2005.
ILC Report	Report of the International Law Commission on the work of its forty-eighth session, G.A. Supp. No. 10 (A/51/10), 1996.
Joinder Indictment	<i>Prosecutor v. Gotovina, Cermak & Markac</i> , Case No.: IT-06-09-PT, Joinder Indictment, 21 July 2006.
Joint Submission in Respect of Agreed Facts	<i>Prosecutor v. Gotovina, Cermak & Markac</i> Case No.: IT-06-09-T, Joint Submission by the Defence for Ivan Cermak and the Prosecutor in Respect of Agreed Facts, 14 January 2010
Jokic Trial Judgement	<i>Prosecutor v. Jokic</i> , Case No.: IT-96-22/1-S, Judgement, 5 March 1998.
Jokic Appeal Brief	<i>Prosecutor v. Blagojevic & Jokic</i> , Case No.: IT-02-60-A, Public Redacted Version, Third Amended Appellate Brief of Dragan Jokic, 6 July 2006.
JSB Specimen Directions	Judicial Studies Board, Specimen Directions, October 2008 (www.jsboard.co.uk).
Kajelijeli Trial Judgement	<i>Prosecutor v. Kajelijeli</i> , Case No.: ICTR-98-44A-T, Judgement and Sentence, 1 December 2003.
Kalimanzari Trial Judgement	<i>Prosecutor v. Kalimanzari</i> , Case No.: ICTR-05-88-T, Judgement, 22 June 2009.
Kordic Appeals Judgement	<i>Prosecutor v. Kordic and Cerkez</i> , Case No.: IT-95-14/2-A, Judgement, 17 December 2004.
Kordic Trial Judgement	<i>Prosecutor v. Kordic and Cerkez</i> , Case No.: IT-95-14/2-T, Judgement, 26 February 2001.

<i>Krajisnik Appeals Judgement</i>	<i>Prosecutor v. Krajisnik</i> , Case No.: IT-00-39-A, Judgement, 17 March 2009.
<i>Krnojelac Appeals Judgement</i>	<i>Prosecutor v. Krnojelac</i> , Case No.: IT-97-25-A, Judgement, 17 September 2003.
<i>Krnojelac Trial Judgement</i>	<i>Prosecutor v. Krnojelac</i> , Case No.: IT-97-25-T, Judgement, 15 March 2002.
<i>Krstic Appeals Judgement</i>	<i>Prosecutor v. Krstic</i> , Case No.: IT-98-33-A, Judgement, 19 April 2004.
<i>Krstic Trial Judgement</i>	<i>Prosecutor v. Krstic</i> , Case No.: IT-98-33-T, Judgement, 2 August 2001.
<i>Kunarac Trial Judgement</i>	<i>Prosecutor v. Kunarac</i> , Case No.: IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001.
<i>Kupreskic Appeals Judgement</i>	<i>Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic, & Stantic</i> , Case No.: IT-95-16-A, Judgement, 23 October 2001.
<i>Kupreskic Trial Judgement</i>	<i>Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic, & Stantic</i> , Case No.: IT-95-16-T, Judgement, 14 January 2000.
<i>Kvocka Appeals Judgement</i>	<i>Prosecutor v. Kvocka, Radic, Zigic, & Prcac</i> , Case No.: IT-98-30/1-A, 28 February 2005.
<i>Limaj Appeals Judgement</i>	<i>Prosecutor v. Limaj, Bala, & Musliu</i> , Case No.: IT-03-66-A, Judgement, 27 September 2007.
<i>Limaj Trial Judgement</i>	<i>Prosecutor v. Limaj, Bala, & Musliu</i> , Case No.: IT-03-66-T, Judgement, 30 November 2005.
<i>Milosevic Appeals Judgement</i>	<i>Prosecutor v. Milosevic</i> , Case No.: IT-98-29/1-A, Judgement, 12 November 2009.
Motion for Admission of Evidence Pursuant to Rule 92 Quater	<i>Prosecutor v. Gotovina, Cermak & Markac</i> Case No.: IT-06-09-T, Defendant Ante Gotovina's Motion for Admission of Evidence Pursuant to Rule 92, 15 May 2009.

Motion for Provisional Release	<i>Prosecutor v. Gotovina, Cermak & Markac</i> , Case No.: IT-06-09-T, Ivan Cermak's Motion for Provisional Release, 12 March 2004.
Motion to Admit Rule 68 Documents	<i>Prosecutor v. Gotovina, Cermak & Markac</i> Case No.: IT-06-09-T, Motion to Admit Rule 68 Documents Across the Bar Table, 15 January 2010.
Mpambara Trial Judgement	<i>Prosecutor v. Mpambara</i> , Case No.: ICTR-01-65-T, Judgement, 11 September 2006.
Mrksic Appeals Judgement	<i>Prosecutor v. Mrksic and Sljivancanin</i> , Case No.: IT-95-13/1-A, Judgement, 5 May 2009.
Mrksic Trial Judgement	<i>Prosecutor v. Mrksic, Radic & Sljivancanin</i> , Case No.: IT-95-13/1-T, Judgement, 27 September 2007.
Naletilic Trial Judgement	<i>Prosecutor v. Naletilic and Martinovic</i> , Case No.: IT-98-34-T, Judgement, 31 March 2003.
Ndindabahizi Appeals Judgement	<i>Prosecutor v. Ndindabahizi</i> , Case No.: ICTR-01-71-A, Judgement, 16 January 2007.
Ntagerura Appeal Judgement	<i>Prosecutor v. Ntagerura, Bagambiki, & Imanishimwe</i> , Case No.: ICTR-99-46-A, Judgement, 7 July 2006.
Ntagerura Trial Judgement	<i>Prosecutor v. Ntagerura, Bagambiki, & Imanishimwe</i> , Case No.: ICTR-99-46-A, Judgement, 25 February 2004.
Nzabrinda Trial Judgement	<i>Prosecutor v. Nzabrinda</i> , Case No.: ICTR-2001-77-T, Judgement, 23 February 2007.
Order Suspending Provisional Release	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> Case No.: IT-06-09-T, Order suspending Provisional Release, 26 January 2007.
Oric Appeals Judgement	<i>Prosecutor v. Oric</i> , Case No.: IT-03-68-A, Judgement, 3 July 2008.

Oric Trial Judgement	<i>Prosecutor v. Oric</i> , Case No.: IT-03-68-A, Judgement, 30 June 2006.
Plavsic Trial Judgement	<i>Prosecutor v. Plavsic</i> , Case No.: IT-00-39 & 40/1-S, Sentencing Judgement, 27 February 2003.
Pros PTB	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> Case No.: IT-06-09-PT, Prosecutor Pre-Trial Brief, 23 March 2007.
Prosecution's Response to Defendant Ante Gotovina's Motion to Dismiss the Proposed Joinder Indictment	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> Case No.: IT-06-09-PT, Prosecution's Response to Defendant Ante Gotovina's Motion to Dismiss the Proposed Joinder Indictment, 12 May 2006.
PTB	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> Case No.: IT-06-09-PT, Pre-Trial Brief of Ivan Cermak, 5 April 2007.
Response to Motion to Dismiss Proposed Joinder Indictment	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-PT, Prosecutor's Response to Defendant Ante Gotovina's Motion to Dismiss the Proposed Joinder Indictment, 12 May 2006.
Second Joint Submission in Respect of Agreed Facts	<i>Prosecutor v. Gotovina, Cermak, & Markac</i> , Case No.: IT-06-09-T, Second Joint Submission by the Defence for Ivan Cermak and the Prosecutor in Respect of Agreed Facts, 15 April 2010.
Semanza Trial Judgement	<i>Prosecutor v. Semanza</i> , Case No.: ICTR-97-20-T, Judgement and Sentence, 15 May 2003.
Sikirica Sentencing Judgement	<i>Prosecutor v. Sikirica, Dosen, Kolundzija</i> , Case No.: IT-95-8-S, Sentencing Judgement, 13 November 2001.
Simic Appeals Judgement	<i>Prosecutor v. Simic</i> , Case No.: IT-95-9-A, Judgement, 28 November 2006.

<i>Simic</i> Sentencing Judgement	<i>Prosecutor v. Simic</i> , Case No.: IT-95-9/2-S, Sentencing Judgement, 17 October 2002.
<i>Stakic</i> Trial Judgement	<i>Prosecutor v. Stakic</i> , Case No.: IT-97-24-T, Judgement, 31 July 2003.
<i>Strugar</i> Appeals Judgement	<i>Prosecutor v. Strugar</i> , Case No.: IT-01-42-A, Judgement, 17 July 2008.
<i>Strugar</i> Trial Judgement	<i>Prosecutor v. Strugar</i> , Case No.: IT-01-42-T, Judgement, 31 January 2005.
Submission of Bar Table Spreadsheet	<i>Prosecutor v. Gotovina, Cermak & Markac</i> , Case No.: IT-06-09-T, Ivan Cermak's Submission of Bar Table Spreadsheet Concerning Rule 68 Documents, 14 June 2010.
<i>Tadic</i> Appeal Judgement	<i>Prosecutor v. Tadic</i> , Case No.: IT-94-1-A, Judgement, 15 July 1999.
<i>Tadic</i> Trial Judgement	<i>Prosecutor v. Tadic</i> , Case No.: IT-94-1-T, Opinion and Judgement, 7 May 1997.
<i>Vasiljevic</i> Appeals Judgement	<i>Prosecutor v. Vasiljevic</i> , Case No.: IT-98-32-A, Judgement, 25 February 2004.

Glossary of terms and abbreviations

Term in English (BCS term)	Abbreviation
Anti-terrorist (Unit) (<i>Anti-teroristička jedinica</i>)	AT(J)
Area of responsibility	AOR
Army of the Republic of Serbian Krajina (Armija Republike Srpske Krajine)	ARSK
Battalion of the Military Police	VPb
Civilian Police	CIVPOL
Civilian Protection (<i>Civilna zaštita</i>)	CZ
Croatian Army (<i>Hrvatska vojska</i>)	HV / CA
Croatian Army Liaison Office / Croatian Army Liaison Officer(s)	CALO(s)
Croatian Police	CROPOL
Croatian Radio-Television (<i>Hrvatska Radiotelevizija</i>)	HRT(V)/HTV
(Internally) Displaced persons	(I)DPs
English translation	ET / ENG
European Community Monitoring Mission	ECMM
European Union	EU
Forward Command Post (<i>Istureno zapovjedno mjesto</i>)	FCP / IZM
Freedom of movement / Restriction(s) of movement	FOM/ROM(s)
Garrison (<i>Zborni mjesto</i>)	ZM
Headquarters	HQ
Home Guard (Regiment)	HG(R)
Human Rights Action Team	HRAT
International Committee of the Red Cross (<i>Međunarodni komitet crvenog kriza</i>)	ICRC
International organisation(s)	IO(s)
Joint Criminal Enterprise	JCE
Jugoslav People's Army (<i>Jugoslavenska Narodna Armija</i>)	JNA
Kosovo Liberation Army	KLA
Law on Criminal Procedure (<i>Zakon o kaznenom postupku</i>)	LCP
Liaison Office	LO
Logistics Base	LoB
Main Staff (<i>Glavni stab</i>)	GS
Military District (<i>Zborni područje</i>)	MD / ZP
Military Police (<i>Vojna policija</i>)	VP
Ministry of Defence (<i>Ministarstvo obrane</i>)	MO / MoD
Ministry of Interior (<i>Ministarstvo unutarnjih poslova</i>)	MUP
Ministry of Justice (<i>Ministarstvo pravosuđa</i>)	MoJ
Office of the Prosecutor	OTP

Operation and Planning Logistics	OPL
Operative Action (<i>Operativna akcija</i>)	OA
Police Administration (<i>Policijska uprava</i>)	PU
Police station (<i>Policijska postaja</i>)	PP
Prosecution's Pre-Trial Brief	PTB
Republic of Serbian Krajina	RSK
Secretary General	SG
Sector South	SS
Service for the Protection of the Constitutional Order (<i>Sluzba za zastitu ustavnog poretka</i>)	SZUP
Special Police (<i>Specijalna policija</i>)	SP
United Nations	UN
United Nations Civilian Police	UNCIVPOL
United Nations Confidence Restoration Operation	UNCRO
United Nations High Commissioner for Refugees	UNHCR
United Nations Military Observers	UNMO(s)
United Nations Protection Force	UNPF / UNPROFOR
United Nations Television	UNTV