



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

Case No. IT-95-9-T  
Date: 17 October 2003  
Original: English

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**IN TRIAL CHAMBER II**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Sharon A. Williams  
Judge Per-Johan Lindholm

**Registrar:** Mr. Hans Holthuis

**Judgement:** 17 October 2003

**PROSECUTOR**

v.

**BLAGOJE SIMIĆ  
MIROSLAV TADIĆ  
SIMO ZARIĆ**

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**JUDGEMENT**

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Mr. Gramsci Di Fazio  
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Mr. David Re

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## I. INTRODUCTION

1. Blagoje Simić, Miroslav Tadić and Simo Zarić (“Accused”) are jointly charged under the Fifth Amended Indictment (“Amended Indictment”), dated 30 May 2002, with individual criminal responsibility pursuant to Article 7(1) of the Statute of the Tribunal (“Statute”), for two counts of crimes against humanity under Article 5 of the Statute, and one count of a grave breach of the Geneva Conventions of 1949 under Article 2 of the Statute.

2. The Accused were initially charged together with three others, namely Slobodan Miljković, Milan Simić and Stevan Todorović, in the First Indictment brought against them on 21 July 1995. The First Indictment was amended four times,<sup>1</sup> and during this period of time, the accused Slobodan Miljković, Milan Simić, and Stevan Todorović were separated from the proceedings of Blagoje Simić, Miroslav Tadić and Simo Zarić.<sup>2</sup>

3. The Prosecution alleges that on 17 April 1992, Serb military forces from Bosnia and Herzegovina and elsewhere in the former Yugoslavia seized control of the town of Bosanski Šamac by force, and within a few days controlled the entire Municipality of Bosanski Šamac.<sup>3</sup> The Serbs then announced that the government of the Municipality of Bosanski Šamac had been replaced by the “Serbian Municipality of Bosanski Šamac”.<sup>4</sup> Immediately after the forcible takeover, Serb authorities established the “Serbian Municipality of Bosanski Šamac Crisis Staff” (“Crisis Staff”), which took the place of the duly-elected municipal assembly and controlled all aspects of the municipal government. The Serb authorities then unlawfully arrested and detained Bosnian Croats, Bosnian Muslims, and other non-Serb civilians; forced many non-Serb residents to leave their homes, and transferred many to other villages where they were detained against their will; expelled and deported them; and required many to participate in forced labour projects and the wide-scale looting of private and commercial property belonging to non-Serbs.<sup>5</sup>

4. The Prosecution alleges that the 1<sup>st</sup> Krajina Corps of the Bosnian Serb Army seized control of the neighbouring Municipality of Odžak, on or about 13 July 1992.<sup>6</sup> The Crisis Staff in Bosanski Šamac also assumed control over the civilian government of the Odžak Municipality. The majority

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<sup>1</sup> The following indictments preceded the Fifth Amended Indictment of 30 May 2002: First Indictment, 21 July 1995; First Amended Indictment, 25 August 1998; Second Amended Indictment, 11 December 1998; Third Amended Indictment, 24 April 2001; Fourth Amended Indictment, 9 January 2002.

<sup>2</sup> Slobodan Miljković was separated from the case as a result of his death on 7 August 1998; Stevan Todorović was separated from the case by the Trial Chamber’s order of separation on 24 January 2001; and Milan Simić was separated from the case by an oral order of the Trial Chamber on 28 May 2002. See “Annex II: Procedural Background”.

<sup>3</sup> The Municipalities of Bosanski Šamac and Odžak are located along the northern border of Bosnia and Herzegovina in the Posavina region, just across the Sava River from the Republic of Croatia. See Amended Indictment, para. 1.

<sup>4</sup> Amended Indictment, para. 27.

<sup>5</sup> Amended Indictment, para. 31.

<sup>6</sup> Amended Indictment, para. 29.

of non-Serbs in Odžak had fled before the takeover, while those who had not fled were killed or forced to leave.<sup>7</sup> Those who remained were subjected to similar acts of discrimination and oppression as those imposed on the non-Serb residents in the Bosanski Šamac Municipality. Many of the non-Serb residents working on forced labour projects in Bosanski Šamac were ordered to take part in looting the private and commercial property of the non-Serb residents of the Odžak Municipality.<sup>8</sup>

5. The Prosecution alleges that on or about 17 April 1992 to at least 31 December 1993 Blagoje Simić was appointed President of the Bosanski Šamac Crisis Staff, which was renamed the War Presidency on or about 21 July 1992.<sup>9</sup> In these positions he was responsible for issuing orders, policies, decisions and other regulations in the name of the Crisis Staff and War Presidency. It is also alleged that from 1991 to 1995 he was President of the Serbian Democratic Party (SDS) in Bosanski Šamac; from 1991 to 17 April 1992, Vice-Chairman of the Municipal Assembly; and from 4 November 1991 to at least 30 November 1992, Deputy of the Assembly of the self-declared “Serb Autonomous Region of Northern Bosnia,” later called the “Serb Autonomous Province of Semberija and Majeвица”. On or about 22 January 1993 he was elected President of the “Šamac Municipal Assembly” and served in this position until after the announcement of the First Indictment. He was the highest ranking civilian official in the municipality of Bosanski Šamac.<sup>10</sup>

6. The Prosecution alleges that after 17 April 1992 Miroslav Tadić became Chairman of the Exchange Commission. He was responsible for organising and carrying out the majority of so-called prisoner “exchanges” through which non-Serb civilians were expelled from their homes. He remained a member of the Exchange Commission until at least 1995. While serving in the capacity of Chairman of the Exchange Commission, he was also a member of the Crisis Staff. He was a member of the 4<sup>th</sup> Detachment, from 1991, a JNA-organised territorial defence unit, in the position of Assistant Commander for Logistics.<sup>11</sup>

7. The Prosecution alleges that in 1991 Simo Zarić began to organise and supervise a JNA-sponsored territorial defence unit known at first as the 4<sup>th</sup> Detachment and later renamed the 5<sup>th</sup> Battalion of the 2<sup>nd</sup> Posavina Brigade. Upon creation of the 4<sup>th</sup> Detachment, Simo Zarić was appointed “Assistant Commander for Intelligence, Reconnaissance, Morale and Information.” On 29 April 1992, he was appointed “Chief of National Security Service” for Bosanski Šamac by the Crisis Staff. After the Serb takeover of Odžak in July 1992, he was appointed by the Bosanski

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<sup>7</sup> Amended Indictment, para. 29.

<sup>8</sup> Amended Indictment, para. 32.

<sup>9</sup> See Amended Indictment, para.1.

<sup>10</sup> Amended Indictment, para. 1.

<sup>11</sup> Amended Indictment, para. 2.

Šamac Crisis Staff “Deputy to the President of the War Council for Security Matters” of the Odžak municipality. In these positions of authority Simo Zarić reported directly to, and took orders from, the Serb Crisis Staff in Bosanski Šamac. On 1 September 1992 he was appointed “Assistant Commander of the 2<sup>nd</sup> Posavina Brigade for Morale and Information” of the Bosnian Serb Army. Between April and July 1992, he worked with Miroslav Tadić to arrange so-called prisoner “exchanges” through which non-Serb civilians were expelled from their homes. He remained a member of the Bosnian Serb Army until 1995.

8. The Accused are charged under Count 1 of the Amended Indictment with persecutions on political, racial, or religious grounds, as a crime against humanity, punishable under Article 5 (h) of the Statute. The Accused, acting in concert together, and with other Serb civilian and military officials, are alleged to have planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of a crime against humanity, that is persecution of the Bosnian Croat, Bosnian Muslim and other non-Serb civilians through the means of forcible takeover of cities, towns and villages; unlawful arrest, detention or confinement; cruel and inhumane treatment including beatings, torture, forced labour assignments and confinement under inhumane conditions; deportation, forcible transfer and expulsion by force, intimidation and coercion; plundering and looting of property, including dwellings, businesses, personal property and livestock, throughout the Municipalities of Bosanski Šamac, Odžak and elsewhere in the territory of Bosnia and Herzegovina.

9. The Prosecution alleges that from about 17 April 1992 to at least 31 December 1992, Blagoje Simić, both prior to, and while serving as President of the Bosanski Šamac Crisis Staff, and as President of the War Presidency, acting in concert with others, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of the crime of persecutions as described in paragraphs 11 and 12 of the Amended Indictment.<sup>12</sup> He is additionally charged with persecutions as a crime against humanity, through his participation in the issuance of orders, policies, decisions and other regulations in the name of the Crisis Staff and War Presidency and the authorisation of other official actions which violated the rights of the Bosnian Croats, Bosnian Muslims and other non-Serb civilians to equal treatment under the law and infringed upon their enjoyment of basic and fundamental rights.<sup>13</sup>

10. The Prosecution alleges that from about September 1991 to at least 31 December 1993, Miroslav Tadić, both prior to and while serving as a member of, and as Chairman of, the Exchange Commission, and as a member of the Crisis Staff, acting in concert with others, planned, instigated,

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<sup>12</sup> Amended Indictment, para. 13.

ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of the crime of persecutions as described in paragraphs 11 and 12 of the Amended Indictment.<sup>14</sup>

11. The Prosecution alleges that from about September 1991 to about 31 December 1992, Simo Zarić, both prior to and while serving in various positions such as the “Assistant Commander for Intelligence, Reconnaissance, Morale and Information” of the 4<sup>th</sup> Detachment, “Chief of National Security Service” in Bosanski Šamac, “Deputy to the President of the War Council for Security Matters” in Odžak, and “Assistant Commander of the 2<sup>nd</sup> Posavina Brigade for Morale and Information”, acting in concert with others, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of the commission of the crime of persecutions as described in paragraphs 11 and 12 of the Amended Indictment.<sup>15</sup> He is additionally charged with persecutions as a crime against humanity through his participation in the interrogation of Bosnian Croats, Bosnian Muslims and other non-Serb civilians who had been arrested and detained and by forcing them to sign false and coerced statements.<sup>16</sup>

12. Under Counts 2 and 3 the Accused Blagoje Simić and Miroslav Tadić are charged with deportation as a crime against humanity, punishable under Article 5 (d) of the Statute, and with unlawful deportation or transfer as a grave breach of the Geneva Conventions of 1949, punishable under Article 2 (g) of the Statute, for planning, instigating, ordering, committing or otherwise aiding and abetting the planning, preparation or execution of the unlawful deportation and forcible transfer of hundreds of Bosnian Croats, Bosnian Muslims and other non-Serb civilians, including women, children and the elderly, from their homes in the Bosanski Šamac Municipality to other countries or to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces, during the period of about the 17 April 1992 to about the 31 December 1993. Simo Zarić is similarly charged during the period of about the 17 April 1992 to at least 31 December 1992.

13. Blagoje Simić is aged 43 and was born on 1 July 1960 in Kruškovo Polje, in the Bosanski Šamac Municipality.<sup>17</sup> He completed medical school in Tuzla in 1984 and in that same year started to work as a physician at the Medical Centre in Bosanski Šamac. In 1991 he obtained his residency in the field of internal medicine, which he then changed to epidemiology due to the war necessities.<sup>18</sup> Blagoje Simić became a member of the SDS in the summer of 1990,<sup>19</sup> and was the

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<sup>13</sup> Amended Indictment, para. 13.

<sup>14</sup> Amended Indictment, para. 14.

<sup>15</sup> Amended Indictment, para. 15.

<sup>16</sup> Amended Indictment, para. 15.

<sup>17</sup> Agreed Facts, para. 90.

<sup>18</sup> Blagoje Simić, T. 12181.

<sup>19</sup> Blagoje Simić, T. 12191-92.

President of SDS Municipal Board in Bosanski Šamac from 1991 to 1995.<sup>20</sup> He was heading the SDS list in the elections of 1990. He was Vice-Chairman of the Municipal Assembly from 1991 through 17 April 1992. Blagoje Simić is married and has three children.<sup>21</sup>

14. Miroslav Tadić, also known as “Miro Brko”, is aged 66 and was born on 12 May 1937 in Novi Grad, in the Odžak Municipality.<sup>22</sup> In 1958 he went to Egypt with the UN forces for about 6 and a half months.<sup>23</sup> After going to university in 1961, from 1963 to 1983 he worked as a high school teacher in Šamac.<sup>24</sup> After retiring from teaching, Miroslav Tadić ran a shop at his home in Bosanski Šamac, which he transformed into Café AS in 1987.<sup>25</sup> Miroslav Tadić was never engaged politically.<sup>26</sup> He is married and has two children.<sup>27</sup>

15. Simo Zarić, also known as “Šolaja”, is aged 55 and was born on 25 July 1948 in the village of Trnjak Zorice, in the Odžak Municipality.<sup>28</sup> In 1979 he obtained a full degree in economics from the School of Economics in Brčko.<sup>29</sup> From 1969 to 1985 he worked in three different companies,<sup>30</sup> except from 1975 to 1979 when he was Chief of the SUP in Bosanski Šamac. In 1985 Simo Zarić worked in the Security Services Centre in Doboj, at the State Security Service (SDB), as Senior Inspector. He was then appointed by the Ministry of Interior as Chief of the Department of State Security in Modriča, a Department which covered the municipalities of Modriča, Odžak and Šamac.<sup>31</sup> He became Chief of the SDB in Modriča in 1986, and remained in this position until 1 September 1991, when he retired.<sup>32</sup> Simo Zarić joined the Socialist Democratic Party of Bosnia and Herzegovina (SDP) in October 1991,<sup>33</sup> and he has been a member of the SDP of Republika Srpska since 1993.<sup>34</sup> He was actively involved in sports and performed folk songs. Simo Zarić is married and has three children.<sup>35</sup>

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<sup>20</sup> Agreed Facts, para. 90.

<sup>21</sup> Blagoje Simić, T. 12179-80.

<sup>22</sup> Agreed Facts, para. 93.

<sup>23</sup> Miroslav Tadić, T. 15151, Photograph Exhibit D143/3.

<sup>24</sup> Miroslav Tadić, T. 15147.

<sup>25</sup> Miroslav Tadić, T.15194.

<sup>26</sup> Miroslav Tadić, T. 15154.

<sup>27</sup> Miroslav Tadić, T. 15149-50.

<sup>28</sup> Agreed Facts, para. 94.

<sup>29</sup> Simo Zarić, T. 19019.

<sup>30</sup> Simo Zarić, T. 19020. Simo Zarić was first employed in a state-owned company called Bosanka, a trading company, where he worked from 1969 to 1975. In 1979 he went to work for the Budućnost manufacturing company, which was part of the large Šipad company from Sarajevo, as a director. He remained in that post until 1982, when he became the Šipad Company representative in Belgrade until 1985. (Zarić Prosecution Interview I, p. 690578)

<sup>31</sup> Zarić Prosecution Interview I, p. 690578.

<sup>32</sup> Zarić Prosecution Interview I, p. 690581.

<sup>33</sup> Simo Zarić, T. 19034.

<sup>34</sup> Simo Zarić, T. 19036.

<sup>35</sup> Zarić Prosecution Interview I, pp. 690579-80.

16. The Introduction is followed by Parts II and III on General Considerations Regarding the Evaluation of Evidence, and Expert Demographers Reports. Parts IV, V, VI and VII outline the applicable law. Parts VIII to XV consist of sections on evidence, subject by subject, following the allegations and charges in the Amended Indictment. Within each part on evidence, the first section consists of a summary of the salient features of the evidence presented to the Trial Chamber by both parties, using, where possible, the witnesses' own language. The second section of each part on evidence outlines the evidence available on participation of the Accused in the events discussed. The last section consists of the Trial Chamber's findings on the evidence outlined in the first section. The findings on the general requirements of Article 5 of the Statute (Part XVI) follow the last part on evidence. The findings on responsibility of the Accused are at the end of the judgement in Part XVII, starting with findings on the existence of a joint criminal enterprise, and moving on to set out findings on the relevant underlying acts of persecution (Count 1) and Count 2. Part XVIII relates to sentencing, starting with considerations concerning cumulative convictions. The applicable law on sentencing is set out next. Specific sections on the determination of sentence for each Accused, setting out the relevant circumstances, follow. The disposition in Part XIX concludes the Judgement which is followed by the separate and partly dissenting opinion of Judge Per-Johan Viktor Lindholm. A glossary, a list of witnesses for the Prosecution and the Defence, and an overview of the procedure in this case, and the Amended Indictment are included in this Judgement as annexes.

## II. GENERAL CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

17. The Trial Chamber has assessed the evidence in this case in accordance with the Tribunal's Statute and the Rules of Procedure and Evidence ("Rules"), and where no such guidance was provided by those sources, in such a way as will best favour a fair determination of the case against the Accused and is consonant with the spirit of the Statute and the general principles of law.<sup>36</sup>

18. Given that this is a joint trial of three accused, the Trial Chamber has been diligent to evaluate the charges against each of the Accused in the Amended Indictment in light of all of the evidence put forth by the Prosecution and each of the Defendants, not just the evidence of the Prosecution and the Defendant under consideration.

19. Pursuant to Article 21 (3) of the Statute, the Accused are entitled to a presumption of innocence, which entails a corollary burden on the Prosecution to establish each and every element of the offences charged against the Accused. Pursuant to Rule 87 (A) the standard of proof required is guilt beyond reasonable doubt.

20. Although pursuant to Article 21 (4)(g) of the Statute an accused is not compelled to testify, the Accused in this case chose to testify before the Trial Chamber. Their election to give evidence does not connote that they accepted any onus to prove their innocence. Their evidence has been taken into account by the Trial Chamber in determining whether the Prosecution has made its case.<sup>37</sup> The Trial Chamber considered whether the facts alleged were established beyond reasonable doubt by the Prosecution, notwithstanding the evidence of the Accused and other Defence witnesses.<sup>38</sup> The Trial Chamber notes that Blagoje Simić chose to give evidence prior to hearing the witnesses for his and his co-Accused's Defence.<sup>39</sup> This factor has been considered in favour of Blagoje Simić when assessing the weight to be afforded to his testimony.<sup>40</sup>

21. Stevan Todorović was initially a co-Accused in this case, until he pleaded guilty and became a witness for the Prosecution. The Trial Chamber acknowledges the problems that may be associated with his testimony – noting in particular the incentive for him to testify in a manner

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<sup>36</sup> Rule 89 (B).

<sup>37</sup> *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 ("*Vasiljević* Trial Judgement"), para. 13; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgment, 15 March 2002 ("*Krnojelac* Trial Judgement"), para. 68; *Prosecutor v. Dragoljub Kunarac*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001 ("*Kunarac* Trial Judgement"), para. 560.

<sup>38</sup> See *Krnojelac* Trial Judgement, para. 68; *Kunarac* Trial Judgement, para. 560; *Vasiljević* Trial Judgement, para. 13 .

<sup>39</sup> In contrast, Miroslav Tadić testified very near the close of his case and Simo Zarić at the close of his case and the trial.

<sup>40</sup> See *Vasiljević* Trial Judgement, para. 13.

favourable to the Prosecution case and the hostile relations between him and his former co-Accused - but it does not consider his testimony inherently unreliable. When assessing the probative value and reliability of Stevan Todorović's evidence, the Trial Chamber viewed in his favour the fact that he was sentenced prior to giving his oral testimony. The Trial Chamber has also treated the testimony of the remaining co-Accused with caution and subjected it, as all other evidence, "to the tests of relevance, probative value and reliability" according to Rule 89.

22. Many witnesses testified to events that occurred around 10 years prior to their appearance before the Trial Chamber. The Trial Chamber accepts that where a significant period of time has elapsed between the acts charged in the Amended Indictment and the trial, or where the witness is testifying in relation to repetitive, continuous or traumatic events, it is not always reasonable to expect witnesses to recall with precision the details, such as exact date or time, and/or sequence of the events to which they testify.<sup>41</sup> The Trial Chamber has taken these factors into account when assessing the credibility of witnesses, and finds that the lack of precision does not necessarily discredit their evidence,<sup>42</sup> provided that the discrepancies relate to matters peripheral to the charges in the Amended Indictment.<sup>43</sup>

23. Evidence of facts outside the testifying witness' own knowledge constitutes hearsay evidence. Hearsay evidence "is not inadmissible *per se*, even when it cannot be examined at its source or when it is not corroborated by direct evidence."<sup>44</sup> The Trial Chamber has carefully scrutinised hearsay evidence, taking into account that the source has not been the subject of a solemn declaration and that its reliability may be affected by a potential compounding of errors of perception and memory, before determining whether or not to rely on it.<sup>45</sup>

24. In cases where witnesses had given statements prior to their oral testimony in court, the Trial Chamber has considered to what extent such evidence was consistent. The Trial Chamber is of the view that any oral testimony will not necessarily be exactly parallel to that given in earlier statements; in some instances the prior statements had been made several years before the trial, or

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<sup>41</sup> *Prosecutor v. Dragoljub Kunarac*, Case No. IT-96-23, Appeal Judgement, 12 June 2002 ("Kunarac Appeal Judgement"), para. 267; *Kunarac* Trial Judgement, para. 564; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-T, Judgement, 31 March 2003 ("Naletilić Trial Judgement"), para. 10; *Vasiljević* Trial Judgement, para. 21; *Krnjelac* Trial Judgement, para. 69; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 ("Furundžija Trial Judgement"), para. 113.

<sup>42</sup> *Čelebići* Appeal Judgement, para. 497; *Kunarac* Appeal Judgement, para. 254.

<sup>43</sup> *Krnjelac* Trial Judgement, para. 69.

<sup>44</sup> *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Trial Judgement, 27 January 2000 ("Musema Trial Judgement"), para. 51; See also *Krnjelac* Trial Judgement, para. 70; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15; *Prosecutor v. Dušan Tadić*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996, paras 15-19; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 26 January 1998, paras 7-19.

<sup>45</sup> *Naletilić* Trial Judgement, para. 11; *Krnjelac* Trial Judgement, para. 70.



questions posed may have been put differently and additional details remembered. In this context, the Trial Chamber has not treated minor inconsistencies or irrelevant discrepancies as discrediting such evidence, provided that the witness has testified to the essence of the incident charged in sufficient detail.<sup>46</sup> The same principle has been applied with respect to discrepancies between the testimonies of different witnesses.<sup>47</sup> Where there are inconsistencies between out of court evidence and trial testimony, the Trial Chamber duly considered the weight to be given to the prior statement.

25. In some instances, the evidence of only one witness was available in relation to certain material facts. Although in some circumstances the evidence of a single witness may not be sufficient for the Trial Chamber to make a determination, a single witness' testimony may gain strength from corroborating evidence, and the Appeals Chamber has held that the "converse also holds true".<sup>48</sup> However, the established jurisprudence is clear that corroboration is not a legal requirement for a finding to be made.<sup>49</sup> Therefore, where the Trial Chamber has relied upon the evidence of a single witness, it has carefully scrutinised that evidence before making a finding on the basis of it.

26. In circumstances where a witness followed some of the evidence of witnesses who had already testified, for example by monitoring the trial via the internet, the Trial Chamber has assessed the weight to be given to the later testimony on the basis of the circumstances surrounding the testimony as a whole, and in light of the testimony of the earlier witnesses. The Trial Chamber also scrutinized the in-court identification of the Accused by witnesses, noting that evidence on identification is generally viewed with caution,<sup>50</sup> but also acknowledging, given the close knit community from which both the Accused and witnesses come, that identification evidence may carry more weight when considering its reliability where witnesses have prior knowledge of the Accused.<sup>51</sup>

27. The Trial Chamber notes that in some instances it relied upon circumstantial evidence in order to determine whether or not certain conclusions could be drawn. Circumstantial evidence is

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<sup>46</sup> *Naletilić* Trial Judgement, para. 10; *Vasiljević* Trial Judgement, para. 21; *Kunarac* Trial Judgement, para. 564; *Krnjelac* Trial Judgement, para. 69.

<sup>47</sup> *Furundžija* Trial Judgement, para. 113; see also *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement"), para. 498.

<sup>48</sup> *Prosecutor v. Dušan Tadić*, Judgment on Allegations of Contempt Against Prior Counsel Milan Vujin, 31 January 2000, para. 92.

<sup>49</sup> *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1, Appeal Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement"), para. 62; *Kunarac* Appeal Judgement, para. 268; *Prosecutor v. Zoran Kupreškić*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("*Kupreškić* Appeal Judgement"), para. 33, *Čelebići* Appeal Judgement, para. 506; *Krnjelac* Trial Judgement, para. 71; *Vasiljević* Trial Judgement, para. 22; *Naletilić* Trial Judgement, para. 11.

<sup>50</sup> See generally, *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T, Decision on Motion for Acquittal, 3 July 2000, paras 8 and 19.

<sup>51</sup> *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Appeal Judgement, para. 233.

admissible where it is in the interests of justice to do so.<sup>52</sup> The Trial Chamber has followed the approach of the Appeals Chamber in *Čelebići*:<sup>53</sup>

A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him – here that he participated in the second beating of Gotovac. Such a conclusion must 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 open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.

28. Documentary evidence agreed to by both parties has been duly considered by the Trial Chamber. The Trial Chamber has carefully evaluated the testimony of seven expert witnesses, two for the Prosecution and five for the Defence. When assessing the probative value of the expert witnesses' evidence, both oral and written, the Trial Chamber "has carefully considered the professional competence of the expert, the methodologies used by the expert and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber."<sup>54</sup>

29. The Trial Chamber has also considered the evidentiary value of a book written by the co-defendant Simo Zarić and published in 1999. The Trial Chamber has assessed the probative value of this book, in the context of Simo Zarić's interviews with the Prosecution and his oral testimony in the trial.

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<sup>52</sup> Rule 93 (A)

<sup>53</sup> *Čelebići*, Appeal Judgement, para. 458; See also *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement"), para. 220; *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Appeal Judgement, 5 July 2001 ("*Jelisić* Appeal Judgement"), para. 47; *Prosecutor v. Miroslav Kvočka*, Case No. IT-98-30/1-T, Judgement, 2 November 2001 ("*Kvočka* Trial Judgement"), para. 272 with reference to the *Tadić* Appeal Judgement, para. 220.

<sup>54</sup> *Vasiljević* Trial Judgement, para. 20.

### III. DEMOGRAPHICS EXPERTS REPORTS

30. Both the Prosecution and the Defence submitted expert demographic Reports,<sup>55</sup> intended to assist the Trial Chamber in understanding the ethnic makeup of the Municipalities of Bosanski Šamac and Odžak during the Amended Indictment period. The expert witness for the Prosecution, Dr. Ewa Tabeau, taught at the Warsaw School of Economics between 1983 and 1991. Thereafter, she was employed at the Netherlands Interdisciplinary Demographic Institute in The Hague. At the time of her testimony, she had been working for the OTP for about two years. At the time of her testimony, the expert witness for the Defence, Dr. Svetlana Radovanović, was the head of the Department for Demography at the Faculty of Geography at the University of Belgrade. She teaches demography, basic statistics of the population, and ethnodemography.

31. Dr. Ewa Tabeau used the post-Dayton boundaries of 1995 of the Municipalities of Odžak, Bosanski Šamac/Šamac and Domaljevac/Šamac to analyze the 1991 census data, and she interpreted it as if the municipalities had already been divided along the post-Dayton lines at the time of the census. Also, her Report did not take into consideration the people who were living in those villages within the boundaries of the Municipality of Bosanski Šamac in 1991 that were later divided between the two new Municipalities of Bosanski Šamac/Šamac and Domaljevac/Šamac after the Dayton Agreement: these villages could not be assigned to either political entity (Federation of Bosnia and Herzegovina and Republika Srpska). Thus, the data was not sufficiently comparable to the movement of non-Serbs alleged in paragraph 28 of the Amended Indictment. Furthermore, the Report does not address the number of people who were counted in the 1991 census as living in the Municipalities of Bosanski Šamac and Odžak, although they were living abroad. However, Dr. Ewa Tabeau submitted that the fact that after the armed conflict in Bosanski Šamac Croats and Muslims had largely left “clearly” shows that ethnic cleansing had been committed.

32. Dr. Svetlana Radovanović submitted that it was not possible to state from the data when a migration of the population occurred between 1991 and 1997. She concluded in her Report that there were no significant changes in the ethnic structure of the Municipalities of Odžak and Bosanski Šamac between 1991 and 1997.

33. After careful consideration of the Reports submitted by both experts and of their oral testimony, the Trial Chamber is of the opinion that the source material used by them, namely the 1991 census and the Organisation for the Security and Cooperation in Europe voters registration lists from 1997 and 1998, do not allow for conclusions to be drawn regarding ethnic cleansing, or

the forcible displacement of people, or the movements of people for other reasons, during the Indictment period as pleaded in paragraph 28 of the Amended Indictment.

34. The Trial Chamber finds that the period covered by the OSCE lists is too far removed from the close of the Amended Indictment period for the Trial Chamber to assume that the information contained in them is representative of the situation four years earlier. Additionally, neither Report draws any conclusions regarding the methods and motives of those people who did leave the Municipalities of Bosanski Šamac and Odžak during the Amended Indictment period. The evidence presented by both expert witnesses did not allow the Trial Chamber to distinguish between voluntary or involuntary departures of civilians.

35. Instead, the Trial Chamber relies on the evidence and testimony given by fact witnesses to determine whether or not non-Serb civilians left Bosanski Šamac and Odžak in 1992 and 1993 against their will and on unlawful grounds, and what role the Accused played in these events.

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<sup>55</sup> Exhibits P133 and D196/3.

## IV. RELEVANT LAW ON ARTICLE 5 OF THE STATUTE

### A. Law on general requirements of Article 5

36. Under Article 5 of the Statute, certain crimes are justiciable in the Tribunal as crimes against humanity, where such crimes are committed in the context of an armed conflict, whether international or internal in character, and directed against any civilian population.

37. The Appeals Chamber in *Kunarac* confirmed that the following elements must be satisfied in order for the crimes listed in Article 5 (a) to (i) of the Statute to be classified as crimes against humanity:<sup>56</sup>

- (i) There must be an attack.
- (ii) The acts of the perpetrator must be part of the attack.
- (iii) The attack must be directed against any civilian population.
- (iv) The attack must be widespread or systematic.
- (v) The perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.

38. Article 5 of the Statute imposes a prerequisite that the crime be “committed in an armed conflict”. This Chamber refers to the Appeals Chamber’s determination that the existence of an armed conflict is a “purely jurisdictional prerequisite which is satisfied by proof that there was an armed conflict and that objectively the acts of the accused are linked geographically as well as temporally with the armed conflict.”<sup>57</sup>

39. An “attack” can be described as “a course of conduct involving the commission of acts of violence.”<sup>58</sup> The concepts of “attack” and “armed conflict” are necessarily separate and distinct; the former being an element of a crime against humanity and the latter a jurisdictional requirement pursuant to the Statute.<sup>59</sup> Although the “attack” may be part of the “armed conflict”, under customary international law it need not be:

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<sup>56</sup> *Kunarac* Appeal Judgement, para. 85; *Krnjelac* Trial Judgement, para. 53.

<sup>57</sup> *Kunarac* Appeal Judgement, para. 83; see also *Krnjelac* Trial Judgement, para. 53; *Tadić* Appeal Judgement, para. 251; *Prosecutor v. Duško Tadić*, case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para. 141.

<sup>58</sup> *Krnjelac* Trial Judgement, para. 54; *Vasiljević* Trial Judgement, para. 29.

<sup>59</sup> *Tadić* Appeal Judgement, para. 249; *Kunarac* Appeal Judgement, para. 86; *Vasiljević* Trial Judgement, paras 30, 38.

“Under customary international law the attack could precede, outlast or continue during the armed conflict, but need not be part of it.”<sup>60</sup>

The attack need not be part of the armed conflict because (i) the concept of “attack” is not limited to the use of armed force, but has been held to encompass any mistreatment of the civilian population,<sup>61</sup> and (ii) it is conceivable that where the existence of an armed conflict satisfies the jurisdictional requirement, an attack unconnected to the armed conflict, but nonetheless directed against a civilian population, could satisfy the customary international law requirements for a crime against humanity.

40. Once an “attack” is established in the context of an armed conflict, it is irrelevant whether another side to the armed conflict is also involved in an attack upon a civilian population. Such other attacks would not amount to justification for the attack in question,<sup>62</sup> and any crimes committed in the course of such an attack by another side to the armed conflict would themselves be subject to prosecution as crimes against humanity.<sup>63</sup>

41. The acts of the perpetrator must be objectively part of the “attack” against the civilian population.<sup>64</sup> The acts of the accused need not be committed in the midst, or at the height of the attack, however they must also not be random or isolated acts, or the conduct of an individual acting alone.<sup>65</sup> “Isolated acts” are defined as those acts “so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.”<sup>66</sup> The acts of the accused are less likely to be considered random or isolated where they amount to a course of conduct against a civilian population.<sup>67</sup>

42. Both the primary object of the attack and its victims must be “any civilian population”, a phrase that pertains to any predominantly civilian population, notwithstanding the presence of non-civilians.<sup>68</sup> The Chamber must therefore be satisfied that “a sufficient number of individuals were targeted in the course of an attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian population and not only against a limited number of individuals who were randomly selected.”<sup>69</sup> In determining whether the civilian

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<sup>60</sup> *Kunarac* Appeal Judgement, para. 86; *Vasiljević* Trial Judgement, para. 30; see also *Krnjelac* Trial Judgement, para. 54.

<sup>61</sup> *Kunarac* Appeal Judgement, para. 86; *Vasiljević* Trial Judgement, para. 29, *Kunarac* Trial Judgement, para. 416.

<sup>62</sup> *Vasiljević* Trial Judgement, para. 31; *Kunarac* Appeal Judgement, para. 87.

<sup>63</sup> *Kunarac* Appeal Judgement, para. 87.

<sup>64</sup> *Kunarac* Appeal Judgement, para. 99; *Vasiljević* Trial Judgement, para. 32.

<sup>65</sup> *Kunarac* Appeal Judgement, para. 100; *Krnjelac* Trial Judgement, para. 55.

<sup>66</sup> *Kunarac* Appeal Judgement, para. 100.

<sup>67</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Opinion and Judgment, 7 May 1997 (“*Tadić* Trial Judgement”), para. 644.

<sup>68</sup> *Kunarac* Appeal Judgement, para. 91; *Naletilić* Trial Judgement, para. 235; *Krnjelac* Trial Judgement, para. 56.

<sup>69</sup> *Naletilić* Trial Judgement, para. 235; see also *Kunarac* Appeal Judgement para. 90.

population is the primary object of the attack, the Chamber will consider *inter alia* “the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.”<sup>70</sup>

43. The acts which form the attack must be either “widespread or systematic”, where “widespread” connotes “the large-scale nature of the attack and the number of victims”<sup>71</sup>, and “systematic” refers to “the organised nature of the acts of violence and the improbability of their random occurrence.”<sup>72</sup> In order to determine whether an attack is widespread or systematic, the Trial Chamber must “first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic.”<sup>73</sup> The Trial Chamber may also consider factors such as “the consequences of the attack on the targeted population, the number of victims, the nature of the attack, the possible participation of officials and authorities or any patterns of crimes” when assessing whether the attack is properly characterised as either “widespread” or “systematic”.<sup>74</sup> It is only the attack and not the individual acts of the accused that are required to be widespread or systematic. Provided that the acts of the individual are sufficiently linked to the widespread or systematic attack, and are not found to be random or isolated, it is possible that a single act could be found to be a crime against humanity.<sup>75</sup>

44. There is no requirement in customary international law that the acts which form the attack be connected to a policy or plan.<sup>76</sup> However, a plan or policy may be relevant in an evidential sense, in proving whether or not the attack is properly characterised as either “widespread” or “systematic”, and whether the acts of the accused were part of that attack.<sup>77</sup>

45. To satisfy the subjective or *mens rea* element of the nexus between the acts of the accused and the attack, the perpetrator must know of the wider context in which his acts occur, and know that his acts are part of the attack. It is well established that the accused need not know the details of the attack, nor share the motive, intent, or purpose of those involved in the attack:

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<sup>70</sup> *Kunarac* Appeal Judgement, para. 91.

<sup>71</sup> *Kunarac* Appeal Judgement, para. 94; see also *Tadić* Trial Judgement, para. 648.

<sup>72</sup> *Kunarac* Appeal Judgement, para. 94, citing the *Kunarac* Trial Judgement, para. 429 and the *Tadić* Trial Judgement, para. 648.

<sup>73</sup> *Kunarac* Appeal Judgement, para. 95, citing the *Kunarac* Trial Judgement, para. 430.

<sup>74</sup> *Kunarac* Appeal Judgement, para. 95.

<sup>75</sup> *Tadić* Trial Judgement, para. 649; *Kunarac* Appeal Judgement, para. 96.

<sup>76</sup> *Kunarac* Appeal Judgement, para. 98; *Vasiljević* Trial Judgement, para. 36.

<sup>77</sup> *Kunarac* Appeal Judgement, para. 98; *Vasiljević* Trial Judgement, para. 36; *Krnjelac* Trial Judgement, para 58.

It is the attack, not the acts of the accused, which must be directed against the target population, and the accused need only know that his acts are part thereof.<sup>78</sup>

46. The requirement is therefore that the intention of the accused be “to commit the underlying offence or offences with which the accused is charged”,<sup>79</sup> and also that the accused has the knowledge that “there is an attack on the civilian population and that his acts comprise part of that attack, or at least [that the accused took] the risk that his acts were part of that attack”.<sup>80</sup>

## **B. Law on persecution**

### **1. General requirements: chapeau elements**

47. The *Kupreškić* Trial Chamber defines persecution as “the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5.”<sup>81</sup> The Trial Chamber considers the crime of persecution comprises an act or omission which:<sup>82</sup>

1. discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary law or treaty law (the *actus reus*); and
2. was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion, or politics (the *mens rea*).

48. Not every denial of a fundamental human right is serious enough to constitute a crime against humanity.<sup>83</sup> It is clear that, for the purposes of this Tribunal, persecution may encompass acts which are listed in the Statute,<sup>84</sup> as well as acts which are not listed in the Statute.<sup>85</sup> Acts or omissions enumerated under other sub-paragraphs of Article 5 of the Statute are by definition

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<sup>78</sup> *Kunarac* Appeal Judgement, para. 103; see also *Vasiljević* Trial Judgement, para. 37.

<sup>79</sup> *Kunarac* Appeal Judgement, para. 102.

<sup>80</sup> *Kunarac* Appeal Judgement, para. 102.

<sup>81</sup> *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-T, Judgement, 14 January 2000 (“*Kupreškić* Trial Judgement”), para. 621.

<sup>82</sup> See *Kupreškić* Trial Judgement, para. 621; *Prosecutor v. Dario Kordić and Mario Čerkez.*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (“*Kordić* Trial Judgement”), paras 189, 195; *Krnjelac* Trial Judgement, paras 431-436; *Vasiljević* Trial Judgement, para. 244; *Naletilić* Trial Judgement, para. 634; as submitted by the Prosecution in its Final Brief, para. 89; and submitted in the Tadić Final Brief, para. 27.

<sup>83</sup> *Kordić* Trial Judgement, para. 196; *Kvočka* Trial Judgement, para. 185; *Krnjelac* Trial Judgement, para. 434. To reiterate the words of the *Kupreškić* Trial Chamber, “[a]lthough the realm of human rights is dynamic and expansive, not every denial of a human right may constitute a crime against humanity”, para. 618; as submitted by the Simić Final Brief, para. 156; The Trial Chamber notes the submissions of the Simić Pre-Trial Brief, para. 51, and Simić Final Brief para. 154; of the Tadić Pre-Trial Brief, para. 40, and the Zarić Pre-Trial Brief, para. 9; however in light of the settled jurisprudence on this issue the Trial Chamber will not address these submissions.

<sup>84</sup> *Kupreškić* Trial Judgement, para. 605; *Kvočka* Trial Judgement, para. 185; as submitted by the Prosecution Pre-Trial Brief, para. 110.

<sup>85</sup> *Tadić* Trial Judgement, para. 703; *Kupreškić* Trial Judgement, paras 581, 614; *Kordić* Trial Judgement, paras 193-194; *Kvočka* Trial Judgement, para. 185; *Naletilić* Trial Judgement, para. 635; as submitted by the Prosecution in its Final Brief, para. 90.



serious enough. Others (either listed under other Articles of the Statute or not listed in the Statute at all) must meet an additional test:<sup>86</sup>

Such acts or omissions must reach the same level of gravity as the other crimes against humanity enumerated in Article 5 of the Statute. This test will only be met by gross or blatant denials of fundamental human rights.

When invoking this test, acts or omissions should not be considered in isolation but rather, in their context by looking at their cumulative effect.<sup>87</sup> The *Krnojelac* Trial Chamber went on to state that, jointly or severally, “the acts must amount to persecution, though it is not required that each alleged underlying act be regarded as a violation of international law”.<sup>88</sup>

49. In relation to the targeted group’s possession of the religious, racial or political characteristics required for the crime of persecution, the Trial Chamber refers to the *Naletilić* Trial Judgement:

... the targeted group does not only comprise persons who *personally* carry the (religious, racial, or political) criteria of the group. The targeted group must be interpreted broadly, and may, in particular include such persons who are *defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group*.<sup>89</sup>

50. The act(s) or omission(s) constituting the crime of persecution may assume diverse forms<sup>90</sup> but the principle of legality requires that the Prosecution must identify and prove particular acts amounting to persecution rather than charge persecution in general.<sup>91</sup> The persecutory act(s) or omission(s) may encompass physical and mental harm, infringements upon individual freedom, as well as acts which appear less serious, such as those targeting property, provided that the victimised persons were specially selected or discriminated on political, racial, or religious grounds.<sup>92</sup> The *Krnojelac* Trial Chamber held that “although persecution usually refers to a series of acts, a single act may be sufficient”.<sup>93</sup>

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<sup>86</sup> *Krnojelac* Trial Judgement, para. 434; *Kupreškić* Trial Judgement, para. 621; *Naletilić* Trial Judgement, para. 635; as submitted in the Prosecution Final Brief, para. 90.

<sup>87</sup> *Kupreškić* Trial Judgement, paras 615(e), 622; *Kvočka* Trial Judgement, para. 185.

<sup>88</sup> *Krnojelac* Trial Judgement, para. 434; *Kvočka* Trial Judgement, para. 186.

<sup>89</sup> *Naletilić* Trial Judgement, para. 636 (emphasis in the original); *Kvočka* Trial Judgement, para. 195. The Appeals Chamber in *Krnojelac* found that the Trial Chamber’s adopting of a “discriminatory consequences” interpretation was wrong and constituted an erroneous interpretation of the requirement of a discriminatory act in the definition of persecution, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Arrêt, 17 September 2003 (“*Krnojelac* Appeal Judgement”), para. 185. Discriminatory intent is sufficient even if some of the victims are targeted wrongly.

<sup>90</sup> *Kupreškić* Trial Judgement, para. 568; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 (“*Blaškić* Trial Judgement”), para. 218.

<sup>91</sup> *Kupreškić* Trial Judgement, para. 626.

<sup>92</sup> *Blaškić* Trial Judgement, para. 233; In its Final Brief the Prosecution asserts that the discriminatory acts may also include non-physical acts of an economic or a judicial nature, including the destruction of property of persons belonging to the targeted group, paras. 91-92 and 95.

<sup>93</sup> *Krnojelac* Trial Judgement, para. 433; *Kupreškić* Trial Judgement, para. 624; The Trial Chamber notes the view of Blagoje Simić’s Defence that the crime of persecution encompasses the commission of many crimes within a single

51. The crime of persecution is uniquely distinguishable from the other Article 5 crimes by the requirement of an intent to discriminate on racial, religious or political grounds.<sup>94</sup> It is not sufficient for the accused to be aware that he is in fact acting in a way that is discriminatory; he must consciously intend to discriminate.<sup>95</sup> The *Krnjelac* Trial Chamber stated that “there is no requirement under persecution that a discriminatory policy exist or that, in the event that such a policy is shown to have existed, the accused has taken part in the formulation of such discriminatory policy or practice by a governmental authority.”<sup>96</sup> Trial Chambers have inferred discriminatory intent through a perpetrator’s knowing participation in a system or enterprise that discriminates on political, racial or religious grounds.<sup>97</sup> The discriminatory intent must relate to the specific act or omission underlying the charge of persecution as opposed to the attack in general, notwithstanding the fact that the attack may also in practice have a discriminatory aspect.<sup>98</sup>

52. Although the Statute refers to the listed grounds in the conjunctive, it is settled in the jurisprudence of the Tribunal that the presence of discriminatory intent on any one of these grounds is sufficient to fulfil the *mens rea* requirement for persecution.<sup>99</sup>

## 2. Law on underlying acts

### (a) Forcible takeover of the Municipality of Bosanski Šamac as persecution

53. The forcible takeover of a city or town does not constitute a separate crime under Article 5 or any other Article of the Statute.

54. The Tribunal has held that an attack on cities, towns or villages is analogous to an “attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings,” and thus constitutes “a violation of the laws or customs of war enumerated under Article 3 (c) of the Statute.”<sup>100</sup> As a violation of the laws or customs of war under Article 3 of the Statute, the attack

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coordinated campaign of crimes that are committed with a specific intent to discriminate (Simić Final Brief, para. 156), but in light of the existing jurisprudence on the matter finds no requirement to elaborate further on the issue.

<sup>94</sup> *Naletilić* Trial Judgement, para. 638; *Kordić* Trial Judgement, para. 217; *Blaškić* Trial Judgement, para. 235; *Tadić* Appeal Judgement, para. 305; as submitted in *Zarić* Final Brief, para. 469.

<sup>95</sup> *Kordić* Trial Judgement, para. 217; *Krnjelac* Trial Judgement, para. 435; as submitted in the Prosecution Final Brief, para. 94; and submitted in the *Tadić* Final Brief, para. 28.

<sup>96</sup> *Krnjelac* Trial Judgement, para. 435; *Kupreškić* Trial Judgement, para. 625; as submitted by the Prosecution in its Final Trial Brief, para. 94; However, a determination as to a discriminatory intent may require a careful analysis of the underlying policies of the regime.

<sup>97</sup> *Kvočka* Trial Judgement, para. 201.

<sup>98</sup> *Krnjelac* Trial Judgement, para. 436; as submitted in the *Tadić* Final Brief, para. 29.

<sup>99</sup> *Naletilić* Trial Judgement, para. 638; *Tadić* Trial Judgement, para. 713; as submitted in the Prosecution Final Brief, para. 94.

<sup>100</sup> *Kordić* Trial Judgement, para. 203.

“must have caused deaths and/or serious bodily injury within the civilian population or damage to civilian property.”<sup>101</sup>

55. The Trial Chamber notes that a forcible takeover, as an illegal *coup d'état*,<sup>102</sup> is a political move to overthrow an existing government by force,<sup>103</sup> and does not necessarily encompass all the elements and the gravity associated with an attack on cities, towns or villages. The Trial Chamber notes the *Kordić* Trial Judgement finding that the exclusion of Bosnian Muslims from the government does not rise to the level of gravity as the other crimes against humanity and consequently does not constitute persecution. The *Kordić* Trial Chamber held further that the criminal prohibition of removal of members of government on discriminatory grounds has not reached the level of customary international law.<sup>104</sup>

56. In view of the above the Trial Chamber finds that a forcible takeover, *per se*, does not reach the level of gravity as the other crimes against humanity and on its own does not amount to persecution. The Trial Chamber notes however that a forcible takeover may serve as the basis for perpetration of other persecutory acts as it provides the conditions necessary for adoption and enforcement of policies infringing upon basic rights of citizens on the basis of their political, ethnic, or religious background.

(b) Issuance of orders, policies, decisions and other regulations in the name of the Serb Crisis Staff and War Presidency, and the authorisation of other official actions which violate the rights of the Bosnian Croat, Bosnian Muslim and other non-Serb civilians to equal treatment under the law and infringe upon their enjoyment of basic and fundamental rights

57. As held in the *Kupreškić* Trial Judgement, persecution can involve a variety of discriminatory acts, involving violations of political, social, and economic rights.<sup>105</sup> The Judgement of the International Military Tribunal at Nürnberg found that persecution may take, among others, the form of adoption of discriminatory laws, exclusion of members of a group from certain aspects of social, political and economic life, restriction of their movement, requirement that the members of the group mark themselves out by wearing a yellow star, and discriminatory economic acts.<sup>106</sup>

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<sup>101</sup> *Blaškić* Trial Judgement, para. 180.

<sup>102</sup> *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003 (“*Stakić* Trial Judgement”), para. 84.

<sup>103</sup> Black’s Law Dictionary, 6<sup>th</sup> Edition, 1990.

<sup>104</sup> *Kordić* Trial Judgement, para. 210.

<sup>105</sup> *Kupreškić* Trial Judgement, para. 615 (c).

<sup>106</sup> IMT Judgement, pp. 248-249, cited in *Kupreškić* Trial Judgement, para. 610.

The U.S. Military Tribunal held that lesser forms of persecution included the adoption of decrees expelling Jews from public service, educational institutions, and from many business enterprises.<sup>107</sup>

58. The Trial Chamber finds that the issuance of discriminatory orders, policies, decisions or other regulations may constitute the *actus reus* of persecution, provided that these orders infringe upon a person's basic rights and that the violation reaches the level of gravity of the other crimes against humanity listed in Article 5 of the Statute. Such a determination has to be made on a case by case basis, taking account of the specific factual circumstances, and of the cumulative effect of such decisions or regulations.

(c) Unlawful arrest, detention, and confinement of Bosnian Croats, Bosnian Muslims, and other non-Serb civilians

59. Unlawful arrest and detention do not appear as separate offences under Article 5 or other provisions of the Statute. However, the *Blaskić* Trial Chamber has considered unlawful detention as a form of the crime of persecution, defining unlawful detention as “unlawfully depriving a group of discriminated civilians of their freedom”.<sup>108</sup> The *Kupreškić* Trial Chamber also held that the organised detention of civilians may constitute persecution.<sup>109</sup> Unlawful confinement of civilians is a grave breach of the Geneva Conventions of 1949 found in Article 2 (g) of the Statute, and the crime of imprisonment is listed as a crime against humanity in Article 5 (e) of the Statute.

60. Unlawful arrest has not been defined in the jurisprudence of the Tribunal. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”), defines an arrest as “the act of apprehending a person for the alleged commission of an offence or by the action of an authority.”<sup>110</sup> International Conventions enshrine the right to be free from arbitrary arrest and imprisonment. Article 5 of the European Convention of Human Rights provides for the right to liberty and security and that no one shall be deprived thereof except in particular cases detailed in that Convention and in accordance with a procedure prescribed by law.<sup>111</sup> Article 9 of the International Covenant on Civil and Political Rights provides that everyone has the right to liberty and security of the person and no one shall be subjected to arbitrary arrest or

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<sup>107</sup> U.S. Military Tribunal, Indictment, *Justice* trial, NMT Vol. III, pp. 1063-64, cited in *Kupreškić* Trial Judgement, para. 612.

<sup>108</sup> *Blaskić* Trial Judgement, para. 234.

<sup>109</sup> *Kupreškić* Trial Judgement, para. 629.

<sup>110</sup> The Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, as adopted by General Assembly Resolution 43/173, 9 December 1988.

<sup>111</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), 213 U.N.T.S. 221, E.T.S. 5, Article 5.

detention, except in accordance with procedures established by law.<sup>112</sup> The Trial Chamber considers, therefore, that the act of unlawful arrest means to apprehend a person, without due process of law.

61. While unlawful detention, confinement and imprisonment have each been considered acts of persecution and constituting crimes against humanity, the Trial Chamber must consider whether unlawful arrests, may also constitute the crime of persecution as a crime against humanity.

62. The Trial Chamber is of the opinion that while unlawful arrest may in itself not constitute a gross or blatant denial of a fundamental right reaching the same level of gravity as the other acts prohibited under Article 5, when considered in context, together with unlawful detention or confinement, such acts may constitute the crime of persecution as a crime against humanity.

63. Unlawful confinement has been considered by the Tribunal to constitute persecution and a crime against humanity.<sup>113</sup> The Trial Chamber in *Kordić* held that the elements of the crime of unlawful confinement under Article 2 of the Statute, and the elements of the crime of imprisonment under Article 5 of the Statute are identical.<sup>114</sup> The Trial Chamber in the *Krnjelac* Judgement shared this view, but also considered that as a crime against humanity, the definition of imprisonment was not restricted by the grave breaches provisions of the Geneva Conventions.<sup>115</sup>

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<sup>112</sup> Article 9 of the International Covenant on Civil and Political Rights (1976), 999 U.N.T.S. 171, sets out the rights of the arrested person that include:

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

<sup>113</sup> *Krnjelac* Trial Judgement, para. 111; *Kordić* Trial Judgement, paras 301-302.

<sup>114</sup> *Kordić* Trial Judgement, para. 292.

<sup>115</sup> *Krnjelac* Trial Judgement, para. 111; The Trial Chamber in *Kordić* held that imprisonment of civilians will be unlawful where:

(a) civilians have been detained in contravention of Article 42 of the Geneva Convention IV, i.e. they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary;

64. The Trial Chamber in *Kordić* concluded that imprisonment in Article 5 (e) of the Statute should be understood as arbitrary imprisonment, defined as “deprivation of liberty of the individual without due process of law, as part of a widespread or systematic attack directed against the civilian population”.<sup>116</sup> The Trial Chamber in *Krnojelac* held that “any form of arbitrary physical deprivation of liberty of an individual may constitute imprisonment under Article 5 (e) as long as the other requirements of the crime are fulfilled”.<sup>117</sup> The Trial Chamber considered that deprivation of an individual’s liberty is arbitrary if imposed without due process of law.<sup>118</sup> The Trial Chamber outlined the following elements to establish a crime of imprisonment (or unlawful confinement) as a crime against humanity under Article 5 (e) of the Statute:

1. An individual is deprived of his or her liberty.
2. The deprivation of liberty is imposed arbitrarily, that is, no legal basis can be invoked to justify the deprivation of liberty.
3. The act or omission by which the individual is deprived of his or her physical liberty is performed by the accused or a person or persons for whom the accused bears criminal responsibility with the intent to deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty.<sup>119</sup>

65. Based upon the above reasoning, the Trial Chamber adopts the elements of the crime of imprisonment under Article 5 (e) of the Statute, as set out in the *Krnojelac* Trial Judgement, and applies this test to the charge of unlawful detention and confinement in the Amended Indictment.

66. The Trial Chamber considers that the elements of the offence of unlawful detention are the same as those for unlawful confinement and imprisonment as set out in the *Krnojelac* Judgement above. It has noted that the Body of Principles refers to the terms detention and imprisonment interchangeably, and defines detention and imprisonment as the condition of detained or imprisoned persons, which is further described as “any person deprived of personal liberty except as a result of conviction for an offence”.<sup>120</sup>

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- (b) the procedural safeguards required by Article 43 of the Geneva Convention IV are not complied with in respect of detained civilians, even where initial detention may have been justified; and
  - (c) they occur as part of a widespread or systematic attack directed against a civilian population. (para. 303)

<sup>116</sup> *Kordić* Trial Judgement, para. 302.

<sup>117</sup> *Krnojelac* Trial Judgement, para. 112.

<sup>118</sup> *Krnojelac* Trial Judgement, para. 113.

<sup>119</sup> *Krnojelac* Trial Judgement, para. 115.

<sup>120</sup> *Supra* note 109.

(d) Interrogation of Bosnian Croats, Bosnian Muslims and other non-Serb civilians who had been arrested and detained, and forcing them to sign false and coerced statements

67. Acts of interrogation of detainees, and forcing them to sign false and coerced statements, do not appear as separate offences in the Statute. In addition, interrogations alone have not been considered by the Tribunal to be of sufficient gravity to constitute offences charged in the Statute, such as persecution or torture, as crimes against humanity. The Tribunal has considered acts of interrogation, however, in conjunction with other acts, such as beatings; as charges of torture,<sup>121</sup> inhuman treatment,<sup>122</sup> cruel treatment,<sup>123</sup> wilfully causing great suffering,<sup>124</sup> and outrages upon personal dignity.<sup>125</sup>

68. The Trial Chamber considers that the underlying conduct of interrogation and forcing non-Serb civilians to sign false and coerced statements, is relevant to the consideration of whether non-Serbs who were arrested and detained were deprived of their liberty arbitrarily, without any legal basis. When making findings on the charge of imprisonment in *Krnjelac*, the Trial Chamber considered that the detainees were not criminals under suspicion of having committed a crime or ever accused of having committed a crime under national and/or international law, and found no lawful basis for their imprisonment.<sup>126</sup>

69. The Trial Chamber concludes that the interrogation of Bosnian Croats, Bosnian Muslims and other non-Serb civilians who had been arrested and detained, and forcing them to sign false and coerced statements, *as alleged in themselves*, do not meet the seriousness requirement to constitute persecution and a crime against humanity. They may, however, form part of a series of acts which comprise an underlying persecutory act, for example, when considered with the charge of persecution on political, racial or religious grounds for the acts of unlawful arrest or confinement of Bosnian Croats, Bosnian Muslims and other non-Serb civilians, pursuant to Count 1, paragraph 12(b) of the Amended Indictment; and specifically, when considering the legality of the alleged unlawful arrest or confinement. Such acts are also related to the charge of persecution for acts of cruel and inhumane treatment, that include beatings and torture, pursuant to Count 1, paragraph 12 (c) of the Amended Indictment; and may be considered cumulatively with the acts listed in this paragraph of the Amended Indictment.

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<sup>121</sup> *Krnjelac* Trial Judgement, paras 179, 181, 185; *Naletilić* Trial Judgement, paras 368-369.

<sup>122</sup> *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgement, 14 June 1999 (“*Aleksovski* Trial Judgement”), para. 210.

<sup>123</sup> *Krnjelac* Trial Judgement, paras 179, 181, 185; *Naletilić* Trial Judgement, paras 368-369.

<sup>124</sup> *Aleksovski* Trial Judgement, para. 210; *Krnjelac* Trial Judgement, paras 179, 181, 185; *Naletilić* Trial Judgement, paras 368-369.

<sup>125</sup> *Aleksovski* Trial Judgement, para. 210.

<sup>126</sup> *Krnjelac* Trial Judgement, para. 122.

(e) Cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including beatings, torture, forced labour assignments, and confinement under inhumane conditions

(i) Preliminary considerations

70. The Prosecution pleads in the Amended Indictment that “the crime of persecution was perpetrated [...] *through* [...] the *cruel and inhumane treatment* of [...] non-Serb civilians *including* beatings, torture, forced labour assignments, and confinement under inhumane conditions” (emphasis added).<sup>127</sup> This wording appears to imply that beatings, torture, forced labour assignments, and confinement under inhumane conditions are pleaded as *underlying acts* of cruel and inhumane treatment.

71. The Trial Chamber notes that the words “cruel and inhumane treatment” appear to be superfluous with regard to torture, as it is well-established that torture may in itself constitute a persecutory act pursuant to Article 5 (h) of the Statute. It is also generally accepted that cruel and inhumane treatment is a lesser included offence of torture, and that the latter is considered *lex specialis* in relation to cruel and inhumane treatment. Thus, the Trial Chamber is satisfied that torture was not pleaded as an *underlying act* of cruel and inhumane treatment, but rather, that cruel and inhumane treatment and torture were pleaded *on the same level*, i.e. as underlying acts of persecution. Therefore, the Trial Chamber will consider whether any occurrence of torture amounts to a persecutory act in itself, without first considering whether it constitutes cruel and inhumane treatment.

72. The Trial Chamber notes that the Prosecution in its Final Brief submits that “forced labour may constitute an underlying act to prove a crime against humanity if ordered with the requisite discriminatory intention”.<sup>128</sup> This seems to suggest that the Prosecution did not intend to plead forced labour assignments as underlying acts of cruel and inhumane treatment. However, as no amendment to the Amended Indictment was sought by the Prosecution, the Trial Chamber follows the logic of the Amended Indictment and will consider whether beatings, forced labour assignments and confinement under inhumane conditions may constitute cruel and inhumane treatment as persecution.

73. Additionally, the Trial Chamber notes the vagueness of pleading “cruel and inhumane treatment [...] *including* beatings, torture, forced labour assignments and confinement under

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<sup>127</sup> Amended Indictment, paras 12-15.

<sup>128</sup> Prosecution Final Brief, para. 226.



inhumane conditions” (emphasis added). The Trial Chamber finds that this wording is too vague and unspecific to have provided notice to the Defence of the incidents not explicitly set out in the Amended Indictment, which would have materially impaired the ability of the Accused to effectively prepare their defence.<sup>129</sup> Therefore, the Trial Chamber does not consider any cruel and inhumane treatment falling outside the categories of beatings, forced labour assignments, and confinement under inhumane conditions.

(ii) Cruel and inhumane treatment

74. In assessing the content of cruel and inhumane treatment, the Trial Chamber finds that it is assisted by the Tribunal’s jurisprudence regarding other inhumane acts under Article 5 (i) of the Statute, inhuman treatment under Article 2 (b) of the Statute, and cruel treatment under Article 3 of the Statute.<sup>130</sup> The elements of these offences are the same, namely:

- (a) an intentional act or omission of similar gravity to the other enumerated acts under the Article concerned;
- (b) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and
- (c) the act or omission was performed deliberately by the accused or a person or persons for whose acts and omissions he bears criminal responsibility.<sup>131</sup>

75. Consideration must be given to all the factual circumstances in the determination of the seriousness of the act, including the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim, including age, sex and health, as well as the physical, mental and moral effects of the act upon the victim.<sup>132</sup> While there is no requirement that the suffering imposed by the act has long term effects on the victim, the fact that an act has had long term effects may be relevant to the determination of the seriousness of the act.<sup>133</sup>

76. The *Vasiljević* Trial Chamber held that the *mens rea* for inhumane acts is met “where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that

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<sup>129</sup> See *Kupreškić* Appeal Judgement, para. 122.

<sup>130</sup> “Cruel treatment” is included in Common Article 3 of the Geneva Conventions of 1949, and it is accepted in the jurisprudence of the Tribunal that violations of Common Article 3 are covered by Article 3 of the Statute; *Naletilić* Trial Judgement, para. 228 with further references.

<sup>131</sup> *Krnjelac* Trial Judgement, para. 130; *Vasiljević* Trial Judgement, para. 234; *Čelebići* Appeal Judgement, para. 426.

<sup>132</sup> *Vasiljević* Trial Judgement, para. 235; *Krnjelac* Trial Judgement, para. 131.

<sup>133</sup> *Krnjelac* Trial Judgement, para. 144; *Kunarac* Trial Judgement, para. 501.

his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless thereto”.<sup>134</sup> The Trial Chamber accepts this definition.

(iii) Beatings

77. The Trial Chamber emphasises that the mere description of bodily assaults as “beatings” does not by itself establish that these beatings constitute the *actus reus* of cruel and inhumane treatment as persecutory acts. Instead, the beatings have to amount to a “gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5”.<sup>135</sup>

78. Taking into consideration the requirements of Article 5 (i) of the Statute as set out above, the Trial Chamber finds that beatings constitute cruel and inhumane treatment if the following elements can be proved:

- (a) the beatings caused serious mental or physical suffering or injury or constituted a serious attack on human dignity, and
- (b) the beatings were performed deliberately.

(iv) Torture

79. Torture is contained in Article 5 (f) of the Statute, and as such, is of sufficient gravity to constitute an underlying offence of persecution. The definition of the offence of torture is the same regardless of the Article of the Statute under which the acts of the accused have been charged.<sup>136</sup> It comprises the following elements:

- (i) the infliction, by act or omission, of severe pain or suffering, whether physical or mental.
- (ii) the act or omission must be deliberate.
- (iii) the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.<sup>137</sup>

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<sup>134</sup> *Vasiljević* Trial Judgement, para. 236; *Krnjelac* Trial Judgement, para. 132; Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-T, Judgement, 21 May 1999 (“*Kayishema* Trial Judgement”), para. 153; *Aleksovski* Trial Judgement, para. 56.

<sup>135</sup> Cf. *Kupreškić* Trial Judgement, paras 621, 627; *Naletilić* Trial Judgement, para. 635.

<sup>136</sup> *Krnjelac* Trial Judgement, para. 178; *Kvočka* Trial Judgement, para. 158 (referring to torture pursuant to Articles 3 and 5 of the Statute); see also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, 1465 U.N.T.S 113-14.

<sup>137</sup> *Krnjelac* Trial Judgement, paras 178-179, 185; *Kunarac* Trial Judgement, paras 485, 497; *Kunarac* Appeal Judgement, paras 142 and 144; *Čelebići* Trial Judgement, paras 470-472; *Prosecutor v. Jean Paul Akayesu*, case No. ICTR-96-4-T, Judgement, 2 September 1998 (“*Akayesu* Trial Judgement”), para. 594. “Humiliation” is not regarded as having reached customary status. “In particular, the purpose to ‘humiliate’ the victim, mentioned in *Furundžija* and

80. The expression “severe pain or suffering” requires that “only acts of substantial gravity may be considered to be torture”; therefore, “[n]either interrogation by itself, nor minor contempt for the physical integrity of the victim, satisfies this requirement”.<sup>138</sup> As stated in the *Krnjelac* Trial Judgement, when assessing the seriousness of the acts charged as torture, a Trial Chamber must consider:

[a]ll the circumstances of the case, including the nature and context of the infliction of pain, the premeditation and institutionalization of the ill-treatment, the physical condition of the victim, the manner and method used, and the position of inferiority of the victim. In particular, to the extent that an individual has been mistreated over a prolonged period of time, or that he or she has been subjected to repeated or various forms of mistreatment, the severity of the acts should be assessed as a whole to the extent that it can be shown that this lasting period or the repetition of acts are inter-related, follow a pattern or are directed towards the same prohibited goal.<sup>139</sup>

81. The act of torture must have been committed deliberately and for one of the prohibited purposes outlined in the definition as stated above.<sup>140</sup> It is sufficient that one of the prohibited purposes forms part of the motivation behind the conduct, and it need not be the “predominant or sole purpose.”<sup>141</sup>

82. The presence or involvement of a state official or any other authority-wielding person in the process of torture is not necessary for the offence to be regarded as “torture”.<sup>142</sup>

83. The Trial Chamber notes that beatings committed on discriminatory grounds and causing severe pain or suffering, physical or mental, constitute cruel and inhumane treatment as an underlying act of persecution. The deliberate infliction of severe physical or mental pain or suffering through beatings in order to discriminate a victim constitutes torture. However, the Trial Chamber will follow the wording and the logic of the Amended Indictment – “[...] cruel and inhumane treatment [...] including beatings [...]”<sup>143</sup> – and will consider whether beatings may constitute cruel and inhumane treatment as an underlying act of persecution.

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more recently in *Kvočka*, is not expressly mentioned in any of the principal international instruments prohibiting torture. Nor is there a clear jurisprudential disposition towards its recognition as an illegitimate purpose. There may be a tendency, particularly in the field of human rights, towards the enlargement of the list of prohibited purposes, but the Trial Chamber must apply customary international humanitarian law as it finds it to have been *at the time when the crimes charged were alleged to have been committed*. In light of the principle of legality, the proposition that ‘the primary purpose of [humanitarian law] is to safeguard human dignity’ is not sufficient to permit the court to introduce, as part of the *mens rea*, a new and additional prohibited purpose, which would in effect enlarge the scope of the criminal prohibition against torture beyond what it was at the time relevant to the indictment under consideration”, *Krnjelac* Trial Judgement, para. 186; cf. also *Naletilić* Trial Judgement, para. 338.

<sup>138</sup> *Krnjelac* Trial Judgement, para. 181.

<sup>139</sup> *Krnjelac* Trial Judgement, para. 182.

<sup>140</sup> *Krnjelac* Trial Judgement, para. 184.

<sup>141</sup> *Krnjelac* Trial Judgement, para. 184.

<sup>142</sup> *Krnjelac* Trial Judgement, para. 187; *Kunarac* Trial Judgement, paras 488-496.

<sup>143</sup> Paras 12, 13-15 of the Amended Indictment.

(v) Forced labour assignments

84. Forced labour assignments infringe upon a number of norms of international human rights and humanitarian law. In time of peace the international and regional human rights treaties provide for certain prohibitions against forced or compulsory labour.<sup>144</sup> The discussion below focuses on the prohibition of unlawful labour during an armed conflict as defined by the norms of international humanitarian law.

85. Trial Chambers of the Tribunal have held that the charge of “forced labour assignments” may constitute the basis of the crime of enslavement<sup>145</sup> as a crime against humanity under Article 5 (c), and the offence of slavery as a violation of the laws or customs of war under Article 3<sup>146</sup> of the Statute,<sup>147</sup> and as such this offence is of sufficient gravity to support a charge of persecution.

86. The underlying acts of the charge of “forced labour assignments” infringe upon certain provisions of Geneva Conventions III and IV,<sup>148</sup> and as such may constitute a violation of the laws or customs of war other than grave breaches of the Geneva Conventions, falling within the scope of Article 3 of the Statute.<sup>149</sup> It is settled case-law of the Tribunal that the law of the Geneva Conventions is part of customary international law.<sup>150</sup> As a crime against humanity under Article 5 of the Statute, the definition of forced labour is not restricted by the jurisdictional requirements applicable to grave breaches of the Geneva Conventions under Article 2 of the Statute, including the characterization of the conflict as international and the victims as “protected persons”.

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<sup>144</sup> Most of the global and regional international human rights treaties explicitly outlaw forced or involuntary labour. Article 8, para. 3 (a) of the ICCPR, Article 4, para. 2 of the ECHR, Article 6, para. 2 of the American Convention on Human Rights. With respect to Article 8 of the ICCPR, it has been noted that “involuntariness is the fundamental definitional feature of forced or compulsory labour.” (Bossuyt, Guide to the “*Travaux Préparatoires*” of the *International Covenant on Civil and Political Rights*, 1987, p. 167) cited in *Krnjelac* Trial Judgement, para. 359.

<sup>145</sup> *Krnjelac* Trial Judgement, para. 471.

<sup>146</sup> *Krnjelac* Trial Judgement, para. 356.

<sup>147</sup> The Tribunal has established that the offence of slavery under Article 3 of the Statute is the same as the offence of enslavement under Article 5. Both offences require proof of the same elements and both terms can be used interchangeably. (*Kunarac* Trial Judgement, para. 523; endorsed in *Krnjelac* Trial Judgement, para. 356).

<sup>148</sup> Article 51, Geneva Convention IV and Articles 49, 50 and 52, Geneva Convention III. Geneva Convention IV generally prohibits civilians to be compelled to work unless certain conditions are met. (See para. 88 below). Article 51, para. 2, Geneva Convention IV reads:

The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in the military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

<sup>149</sup> The *Naletilić* Trial Judgement held that alleged violations of this provision clearly infringe upon a rule of international humanitarian law serious enough to fall within the scope of Article 3 of the Statute. (para. 250).

<sup>150</sup> *Krnjelac* Appeal Judgement, para. 220; *Čelebići* Appeal Judgement, paras 112 and 113; *Naletilić* Trial Judgement, para. 250.

87. International humanitarian law generally prohibits forced or involuntary labour in international,<sup>151</sup> as well as internal armed conflicts.<sup>152</sup> As held in the *Krnjelac* Trial Judgement, the determination of whether protected persons laboured involuntarily is a factual question, which has to be considered in light of all factual circumstances on a case by case basis.<sup>153</sup>

88. Not all types of forced or compulsory labour are *per se* unlawful under international humanitarian law.<sup>154</sup> Article 51 of Geneva Convention IV, applicable in international armed conflicts, sets out the circumstances under which civilians may be made to work. It allows persons above 18 years of age to be subjected to compulsory labour in two narrowly defined categories and only if strict conditions are met.<sup>155</sup> Compulsory labour may be lawful only if required for the needs of the army of occupation<sup>156</sup> for maintaining public services, and for the feeding, sheltering, clothing, transportation or health, for the benefit of the population of the occupied country.<sup>157</sup> Civilians however cannot be requisitioned for such work as “the construction of fortifications, trenches, or aerial bases,” nor can forced labour be performed for strategic or tactical interests of the army.<sup>158</sup> It should be noted that international humanitarian law has endorsed the principle of narrow interpretation of this provision. A commentary noted that:

the stringent interpretation of the kinds of work permitted as compulsory labour is intended to protect individuals against abuse and injury. It proscribes all types of modern slavery for the benefit of the occupying power. It is also intended to prevent the assignment of inhabitants to locations that might be military objectives, since they would then be exposed to dangers associated with attacks against military targets.<sup>159</sup>

89. Similarly, under Geneva Convention III, prisoners of war may be subjected to certain types of involuntary labour.<sup>160</sup> The Convention however proscribes compelling prisoners of war to do dangerous or unhealthy work, or assigning a prisoner of war to “labour that would be looked upon as humiliating for a member of the detaining power’s own forces.”<sup>161</sup> While the text of the

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<sup>151</sup> Article 51 Geneva Convention IV; Articles 49, 50 and 52 Geneva Convention III.

<sup>152</sup> Additional Protocol II contains further prohibitions of forced or involuntary labour in internal armed conflicts. (Article 4, para. 2).

<sup>153</sup> *Krnjelac* Trial Judgement, para. 359; Affirmed by *Krnjelac* Appeal Judgement, para. 191.

<sup>154</sup> *Kunarac* Trial Judgement, para. 530 *in fine*, and para. 542; see also *Naletilić* Trial Judgement, para. 253.

<sup>155</sup> Article 51, para. 2, Geneva Convention IV.

<sup>156</sup> The Commentary to Geneva Convention IV defines these needs as *inter alia* “those connected with billeting and the provision of fodder”, see Commentary to Geneva Convention IV, p. 294.

<sup>157</sup> The Commentary to Geneva Convention IV notes that the expression “public utility services” referred to in Article 51, para. 2 should be understood as including water, gas and electricity services, transport, health and similar services. (Commentary to Geneva Convention IV, p. 295)

<sup>158</sup> Article 51, para. 2, Geneva Convention IV; see also Commentary to Geneva Convention IV, p. 294, and Dieter Fleck, Ed., *Humanitarian Law in Armed Conflicts, The Handbook of*, Oxford University Press, New York, 2d Edition, 1999; section 564, para. 3, p. 264.

<sup>159</sup> Dieter Fleck, Ed., *Humanitarian Law in Armed Conflicts, The Handbook of*, Oxford University Press, New York, 2d Edition, 1999, section 564, para. 1, p. 264.

<sup>160</sup> Prisoners of war may be compelled to do agricultural work, work connected with the camp administration and maintenance or work in some industries, but they cannot be forced to do work of military character. (Articles 50 and 52, Geneva Convention III, *Naletilić* Trial Judgement, paras 255 and 256).

<sup>161</sup> Article 52, Geneva Convention III.

Convention refers to the removal of mines as an example of dangerous work, the Commentary to the Convention notes that the ban on forced dangerous work is intended to cover labour done “in the vicinity either of key military objectives or [...] of the battlefield.”<sup>162</sup>

90. If persons protected under Geneva Conventions III and IV are made to work, international humanitarian law sets out the conditions under which this may be done. Under Geneva Convention III, prisoners of war are entitled to “suitable working conditions, especially as regards to accommodation and food.”<sup>163</sup> Geneva Convention IV requires that working conditions for civilians in occupied territories, such as payment, working hours, safety, and others, should comply with the legislation in force in the occupied country.<sup>164</sup> In the context of a non-international armed conflict, civilians deprived of liberty, if made to work, shall have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.<sup>165</sup>

91. The Trial Chamber notes that certain types of forced labour may amount to cruel and inhumane treatment if the conditions under which the labour is rendered are such as to create danger for the life or health of the civilians, or may arouse in them feelings of fear, and humiliation. It should be noted here that the principle of humane treatment enshrined in the Geneva Conventions implies an obligation for the occupying powers to protect civilians against inhumane acts.<sup>166</sup> Forcing protected persons to work in life-threatening circumstances fails to meet the obligation for protection against acts of violence and may result in inflicting upon these persons physical and mental suffering. It has been held that placing detainees in life-threatening situations constitutes cruel and inhuman treatment.<sup>167</sup>

92. It is important to emphasize that inhumane treatment encompasses not only acts or omissions that cause serious mental or physical suffering, but also acts or omissions that constitute a serious attack on human dignity.<sup>168</sup> Among the provisions prohibiting humiliating and degrading

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<sup>162</sup> Commentary to Geneva Convention III, pp. 274-275, endorsed in *Naletilić* Trial Judgement, para. 257.

<sup>163</sup> Article 51, para. 1, Geneva Convention III.

<sup>164</sup> Article 51, para. 3, Geneva Convention IV:

Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force ... concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training, and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

<sup>165</sup> Article 5, para. 1(e), Additional Protocol II. The Trial Chamber in *Krnjelac* has held that, “while working conditions and safeguards need not be exactly the same as those enjoyed by the local civilian population”, and “such persons need not necessarily be remunerated by wages for all work they are made to do,” it will be necessary to “determine on a case by case basis whether labour performed should have been compensated in some way.” (*Krnjelac* Trial Judgement, para. 360)

<sup>166</sup> *Čelebići* Trial Judgement, para. 528.

<sup>167</sup> *Blaškić* Trial Judgement, para. 700.

<sup>168</sup> *Čelebići* Trial Judgement, para. 543.

treatment,<sup>169</sup> Article 52, paragraph 2 of Geneva Convention III explicitly proscribes compelling prisoners of war to do humiliating labour. The Commentary to Geneva Convention III notes that the prohibition is against making the prisoner “the laughing stock of those around him.”<sup>170</sup> An inquiry into the specific circumstances in each case will be necessary in order to determine whether the conditions under which civilians were forced to work constituted a serious attack on human dignity.

93. The Trial Chamber finds that forced labour assignments which require civilians to take part in military operations violate the fundamental norms of international humanitarian law as defined above. The Trial Chamber is also satisfied that forced labour assignments which result in exposing civilians to dangerous or humiliating conditions amount to cruel and inhumane treatment. These acts reach the same level of gravity as the other crimes against humanity and if performed with the requisite discriminatory intent may constitute persecution.

(vi) Confinement under inhumane conditions

94. When discussing “confinement under inhumane conditions”, the *Kvočka* Trial Chamber found that:

Confinement in camps under inhumane conditions can be included under sub-clauses (e) and (i) prohibiting “imprisonment” and “other inhumane acts” and also meets the definition of a persecutory act.<sup>171</sup>

95. The Trial Chamber went on to examine harassment, humiliation and psychological abuse stating that “these acts are not explicitly listed under Article 5 nor do they appear as specific offences under other Articles of the Statute”,<sup>172</sup> and concluded that:

the horrendous conditions of detention and the demoralizing treatment of detainees in Omarska camp were sufficiently degrading and traumatizing to constitute per se an outrage upon personal dignity, which qualifies as persecution since it was clearly committed on discriminatory grounds.

In addition to the harassment, humiliation, and psychological trauma endured by the detainees as part of their daily life in the camp, psychological abuse was also inflicted upon them through having to see and hear torturous interrogations and random brutality perpetrated on fellow

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<sup>169</sup> Common Article 3 of the Geneva Conventions provides that protected persons in an armed conflict not of international character shall in all circumstances be treated humanely and prohibits outrages upon personal dignity, in particular humiliating and degrading treatment. Article 27 of Geneva Convention IV requires that protected persons are treated humanely at all times and protects them against insults and public curiosity. The Commentary to Geneva Convention IV notes that “the aim of the Convention is certainly to grant civilians in enemy hands a protection which will preserve their human dignity and prevent them from being brought down to the level of animals.” (Commentary to Article 147, Geneva Convention IV, p. 598) Similarly, Article 13 of Geneva Convention III, providing for humane treatment of prisoners of war, explicitly requires that the prisoners of war be protected, among others, against insults and public curiosity.

<sup>170</sup> Commentary to Geneva Convention III, p. 277.

<sup>171</sup> *Kvočka* Trial Judgement, para. 189.

<sup>172</sup> *Kvočka* Trial Judgement, para. 190.

inmates. The Trial Chamber is satisfied that the harassment, humiliation, and psychological abuses fall under the *actus reus* of persecution.<sup>173</sup>

96. The *Krnjelac* Trial Chamber further observed:

The establishment and perpetuation of inhumane conditions is separately charged as inhumane acts, a crime against humanity pursuant to Article 5(i) of the Statute, and as cruel treatment, a violation of the law or customs of war pursuant to Article 3 of the Statute, and as such is of sufficient gravity to constitute persecution.

The Trial Chamber is satisfied that the establishment and perpetuation of inhumane conditions, constituting inhumane acts and cruel treatment of the non-Serb detainees, was carried out with the intent to discriminate against the non-Serbs detainees because of their religious or political affiliations. Accordingly, the Trial Chamber is satisfied that the crime of persecution has been established.<sup>174</sup>

97. The Trial Chamber finds that harassment, humiliation, the creation of an atmosphere of fear through torture and other forms of physical and psychological abuse, an insufficient supply of food and water, lack of space, unhygienic detention conditions, and an insufficient access to medical care are circumstances that may constitute confinement under inhumane conditions and meet the *actus reus* of cruel and inhumane treatment as a persecutory act.

(f) Plundering and looting of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians, including dwellings, businesses, personal property and livestock

98. The acts of plundering infringe upon a number of norms of international humanitarian law<sup>175</sup> and constitute a violation of the laws and customs of war under Article 3 (e) of the Statute. Unlike plunder, the acts of looting, also alleged in the Amended Indictment, are not specifically defined by the Statute, or other sources of international humanitarian law. The Trial Chamber notes that the question of whether the acts of looting constitute the specific offence of plunder is largely a terminological one. Linguistic and comparative legal sources indicate that the two terms are generally used synonymously.<sup>176</sup> The Trial Chamber also refers to the *Čelebići* Trial Judgement finding that the terms “pillage,” “plunder,” and “spoliation” varyingly have been used to describe the unlawful appropriation of public and private property during armed conflicts and that “plunder”

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<sup>173</sup> *Kvočka* Trial Judgement, paras 191-192

<sup>174</sup> *Krnjelac* Trial Judgement, paras 439, 443.

<sup>175</sup> The crime of pillage, defined by the Tribunal as synonymous to plunder (*see Prosecutor V. Zejnil Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998 (“*Čelebići* Trial Judgement”), para. 591), is outlawed by a number of conventions and jurisprudence, which include: Articles 47 and 28 of The Hague Convention (IV); Article 33 of Geneva Convention IV; Article 15 of Geneva Convention III with respect to the property of the prisoners of war; Article 18 of Geneva Convention II; Article 4 para. 2 (g) of Additional Protocol II. The prohibition of pillage is a part of customary international law. (*Čelebići* Trial Judgement, para. 587).

<sup>176</sup> The Oxford English Dictionary defines the term “to loot” as synonymous to “to plunder,” “to sack,” and refers to recorded usage of the term in this context since 1845 (W.H. Smith in Colburn’s United Service Magazine of II. 10), The Oxford English Dictionary, Volume IX, Clarendon Press, Oxford, 1998. The US Uniform Code for Military Justice (UCMJ) also uses the term “looting” as synonymous to “plundering.” Article 103 of the Uniform Code for Military Justice provides for a punishment of persons engaged in “looting or pillaging.” (10 USCS §§ 801).



should be understood as encompassing acts traditionally described as “pillage.”<sup>177</sup> Considering the above, the Trial Chamber is of the view that “looting” is likewise a form of unlawful appropriation of property in armed conflict and is therefore embraced within “plunder” as incorporated in the Statute.

99. It has been held that plunder within the meaning of the Statute encompasses “all forms of unlawful appropriation of property in armed conflicts for which individual criminal responsibility attaches under international law” and extends to both cases of “organized” and “systematic” seizure of property from protected persons in occupied territories, as well as to “acts of looting committed by individual soldiers for their private gain.”<sup>178</sup>

100. The Trial Chamber notes that in certain circumstances, property may be requisitioned lawfully under international humanitarian law. These circumstances are defined by The Hague Regulations and are limited to the following: taxes and dues imposed within the purview of the existing laws,<sup>179</sup> or requisitions for the needs of the army of occupation, which shall be proportional to the resources of the country.<sup>180</sup> Private property also may be seized if it is needed for the conduct of military operations and should be returned and compensated upon termination of the conflict.<sup>181</sup> Monetary contributions may be collected only under a written order issued by the commander-in-chief in accordance with the tax rules in force and for every contribution a receipt should be issued.<sup>182</sup>

101. As a serious violation of the laws or customs of war falling under the jurisdiction of the Tribunal, the acts of plunder must involve great consequences for the victims.<sup>183</sup> This will be the case when the property is of sufficient monetary value,<sup>184</sup> or when property is appropriated from a large number of people, in which case the scale and the overall impact of the acts of looting will amount to a serious violation of the laws and customs of war.<sup>185</sup>

102. Plunder and looting in the present case are not charged as violations of the laws or customs of war pursuant to Article 3 (e) of the Statute but rather as underlying acts of persecution. The

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<sup>177</sup> *Čelebići* Trial Judgement, para. 591.

<sup>178</sup> *Čelebići* Trial Judgement, para. 590; endorsed in *Blaškić* Trial Judgement, para. 184, and *Prosecutor v. Goran Jelisić*, Case No. IT-95-10 –T, Judgement, 14 December 1999 (“*Jelisić* Trial Judgement”), para. 48.

<sup>179</sup> Articles 48 and 49, The Hague Convention (IV).

<sup>180</sup> Article 52, The Hague Convention (IV).

<sup>181</sup> Article 53, para. 2, The Hague Convention (IV).

<sup>182</sup> Article 51 reads: (1) No contribution should be collected except under a written order, and on the responsibility of the commander-in-chief. (2) The collection of the said contributions shall only be effected as far as possible in accordance with the rules of assessment and incidence of taxes in force. (3) For every contribution a receipt shall be given to the contributors. For lawful appropriation of property see also *Naletilić* Trial Judgement, para. 616.

<sup>183</sup> *Čelebići* Trial Judgement, para. 1154.

<sup>184</sup> *Čelebići* Trial Judgement, para. 1154.

<sup>185</sup> *Naletilić* Trial Judgement, para. 614.

jurisprudence of the Tribunal, as well as previous war crimes jurisprudence<sup>186</sup> has established that the acts of plundering if carried out with the requisite discriminatory intent may form the basis of the crime of persecution.<sup>187</sup> As held in *Blaškić* Trial Judgement, in the context of persecution, plunder will involve unlawful, extensive and wanton appropriation of private or “quasi-state” public property belonging to a particular population.<sup>188</sup> The *Kordić* Trial Chamber held:

[i]n the context of an overall campaign of persecution, rendering a people homeless and with no means of economic support may be the method used to coerce, intimidate, terrorise and forcibly transfer civilians from their homes and villages. Thus when the cumulative effect of ...[these acts] is the removal of civilians from their homes on discriminatory grounds, the “wanton and extensive destruction or plundering of Bosnian Muslim civilian dwellings, buildings, businesses, and civilian personal property and livestock” may constitute the crime of persecution.<sup>189</sup>

103. The Trial Chamber finds no reason to disagree with the above jurisprudence and accepts that the acts of plundering and looting, as defined above, may constitute persecution.

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<sup>186</sup> See for instance *Attorney General of Israel v. Eichmann*, 36 International Law Reports 5 (1968), cited in *Tadić* Trial Judgement, para. 707.

<sup>187</sup> *Tadić* Trial Judgement, para. 707; *Kupreškić* Trial Judgement, para. 631, *Blaskić* Trial Judgement, para. 227; *Kordić* Trial Judgement, para. 205.

<sup>188</sup> *Blaškić* Trial Judgement, para. 234.

<sup>189</sup> *Kordić* Trial Judgement, para. 205.

## V. GENERAL REQUIREMENTS OF ARTICLE 2 OF THE STATUTE

### A. Introduction

104. Blagoje Simić, Miroslav Tadić and Simo Zarić are charged under Article 2 (g) of the Statute with the crime of unlawful deportation or transfer as a grave breach of the Geneva Conventions of 1949 (Count 3). Article 2, entitled “Grave Breaches of the Geneva Conventions of 1949” provides in relevant parts:

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

...

(g) unlawful deportation or transfer or unlawful confinement of a civilian;

...

105. A precondition to the applicability of Article 2 is the existence of an armed conflict in the territory where the crimes are alleged to have occurred. The Parties have agreed that there existed an armed conflict in the Bosanski Šamac Municipality at the time relevant to the offences charged in the Amended Indictment.<sup>190</sup> A further precondition to the applicability of Article 2 is the existence of a nexus between the crimes alleged and the armed conflict, i.e. of a sufficient link between them. In this regard, the Appeals Chamber has held that “[i]t is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.”<sup>191</sup>

106. The jurisprudence of the Tribunal has established two further requirements for the application of Article 2 of the Statute: (i) it must be demonstrated that the crimes occurred in the context of an international armed conflict; (ii) the victims of the crimes must qualify as “protected persons” under the applicable provision of the Geneva Conventions.<sup>192</sup>

107. A preliminary issue concerning the form of the Amended Indictment in relation to the pleading of the armed conflict needs to be addressed. The Simić Defence submits in its Final Trial Brief that “the Prosecution failed to plead in the Indictment the existence of an international armed conflict in the area during the time period relevant to the Amended Indictment.”<sup>193</sup>

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<sup>190</sup> See Agreed Facts, para. 80.

<sup>191</sup> *Tadić* Jurisdiction Decision, para. 70.

<sup>192</sup> *Tadić* Appeal Judgement, para. 80; *Čelebići* Appeal Judgement, paras 8, 26, 36.

<sup>193</sup> Simić Final Brief, para. 390.

## B. Pleading principles

### 1. General

108. The Appeals Chamber in *Kupreškić* held that, “the question whether an Indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.”<sup>194</sup>

109. In accordance with this jurisprudence, Trial Chambers have held that

[a]ll legal prerequisites to the application of the offences charged constitute material facts, and must be pleaded in the indictment. The materiality of other facts (facts not directly going to legal prerequisites), which also have to be pleaded in the Indictment, cannot be determined in the abstract. [...] Each of the material facts must usually be pleaded expressly, although it may be sufficient in some circumstances if it is expressed by necessary implication. This fundamental rule of pleading, however, is not complied with if the pleading merely assumes the existence of a prerequisite.<sup>195</sup>

110. In the words of the Appeals Chamber, “generally, an Indictment, as the primary accusatory instrument, must plead with sufficient detail the essential aspect of the Prosecution case. If it fails to do so, it suffers from a material defect. [...] The Appeals Chamber, however, does not exclude the possibility that, in some instances, a defective Indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her.”<sup>196</sup> Moreover, the jurisprudence emphasises that the Prosecution is expected to know its case, and inform the accused of the nature and cause of that case, before it goes to trial.

It is not acceptable for the Prosecution to omit the material aspects of its main allegations in the Indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds.<sup>197</sup>

111. Where the evidence at trial turns out differently than expected, the Indictment may be required to be amended, and a Trial Chamber may grant an adjournment for this purpose, or certain evidence may be excluded as not being within the scope of the Indictment.<sup>198</sup>

112. In cases where an Indictment provides insufficient details as to the essential elements of the Prosecution case, the jurisprudence of the Tribunal accepts that a defendant may not be prejudiced

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<sup>194</sup> *Kupreškić* Appeal Judgement, para. 88.

<sup>195</sup> *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001 (“*Hadžihasanović* Decision on Form of the Indictment”), para. 10, footnotes omitted; see also *Prosecutor v. Mile Mksić*, Case No. IT-95-13/1-PT, Decision on Form of the Indictment, 19 June 2003, para. 11.

<sup>196</sup> *Kupreškić* Appeal Judgement, para. 114.

<sup>197</sup> *Kupreškić* Appeal Judgement, para. 92.

<sup>198</sup> *Kupreškić* Appeal Judgement, para. 92.

where the defence is put on reasonable notice of the Prosecution case before trial, i.e. in the Prosecution Pre-Trial Brief, or at the latest, in the Prosecution opening statement.

## 2. Pleading that an armed conflict was of an international character

113. Following the *Kupreškić* guidelines, the Appeals Chamber has clarified that what an Indictment needs to plead in relation to an allegation that an armed conflict was international is the fact that the armed conflict was international in character, and the basis upon which such an assertion is made: “the Prosecution would be obliged to identify the foreign entity under whose overall control one of the parties to that conflict is alleged to have been acting.”<sup>199</sup> The Trial Chamber in *Hadžihasanović* held that the Indictment in that case, which referred to a “state of international armed conflict” without more was defective, and ordered the Prosecution “to amend the Indictment to clearly state between which states it is alleging an international armed conflict existed.”<sup>200</sup>

### C. The Amended Indictment

114. Paragraphs 6 and 7 of the Amended Indictment, included in the “General Legal Allegations” section, read:

6. At all times relevant to this Indictment, a state of armed conflict and partial occupation existed in the Republic of Bosnia and Herzegovina.

7. At all times relevant to this Indictment, all of the persons described in this Indictment as victims were protected by the Geneva Conventions of 1949

Paragraph 27 in the “Additional Factual Allegations” generally refers to “Serb military forces from Bosnia and Herzegovina and elsewhere in the former Yugoslavia seiz[ing] control of the town of Bosanski Šamac by force”.

115. No further details as to the armed conflict are provided in the remainder of the Amended Indictment. In light of the pleading requirements set out above, the question arises whether these paragraphs are sufficient to inform the accused of the material facts of the case. In the Trial Chamber’s view, pleading a “state of armed conflict”, that victims are “protected” by the Geneva Conventions, and that the town of Bosanski Šamac was seized by Serb military forces from Bosnia

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<sup>199</sup> *The Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR72, Decision pursuant to Rule 72 (E) as to Validity of Appeal, 21 February 2003, para. 11 (“*Hadžihasanović* Appeal Decision”); see also *The Prosecutor v. Radislav Brđanin and Momir Talić*, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001 (“*Brđanin* Decision on Form of the Indictment”), paras 52, 55(iv)(b). Similarly as to “partial occupation”, the identity of the occupying forces, the area or areas occupied, and the dates when that occupation is alleged to have existed, would, depending on the nature of the case against the accused in relation to the pleading of partial occupation, be material facts that have to be pleaded.

<sup>200</sup> *Hadžihasanović* Decision on Form of Indictment, para. 29.

and Herzegovina and elsewhere in the former Yugoslavia, without more, does not clearly, either expressly or by necessary implication, inform the Defence of the material facts of the charge based on Article 2 of the Statute. The Amended Indictment is thus defective in this respect.

116. The Prosecution Pre-Trial Brief does not, in the Trial Chamber's opinion, cure the defect in the Amended Indictment. As noted above, the material facts of an allegation of the existence of an international armed conflict entail stating which states were parties to the armed conflict, either through direct intervention, or through the "overall control" of the armed forces of another state, as well as the dates when it is alleged the armed conflict took place.<sup>201</sup> The Prosecution in its Pre-Trial Brief asserts that "Bosnia and herzegovina was the scene of an international armed conflict from the day that it declared its independence up to the conclusion of the Dayton Peace Agreement, as noted, *inter alia*, by the Trial Chambers in the *Tadić* and *Čelebići* cases."<sup>202</sup> The Prosecution Pre-Trial Brief further submits:

In the present case, it is sufficient to establish the international nature of the conflict between 6 March 1992 (the day on which BiH declared its independence), or 6 April 1992 (when BiH was recognised by the European Community) and 19 May 1992, when the JNA allegedly withdrew from the territory of BiH.

Therefore, the Prosecution asserts that it is not required on the facts of this case to establish that the conflict was of an international character after 19 May 1992. However, the Prosecution emphasises the findings of the Trial Chambers in the *Tadić* and *Čelebići* cases where it was held that the armed conflict taking place in Bosnia and Herzegovina *after* 19 May 1992 was international because the FRY remained the controlling force behind the Bosnian Serb armed forces. If the Chamber requires the Prosecution to establish at trial that the armed conflict in Bosnia and Herzegovina was international after 19 May 1992, the Prosecution will be in a position to offer the requisite proof.<sup>203</sup>

117. Even though the Prosecution makes clear in its Pre-Trial Brief that it intended to plead the existence of an international armed conflict,<sup>204</sup> the Trial Chamber is not satisfied that the general references in the Brief to the findings in *Tadić* and *Čelebići* provide sufficient notice of the requisite material facts, as, each Trial Chamber is required to determine whether an international armed conflict existed at a particular time and place based upon the specific circumstances of the case before it.<sup>205</sup> In addition, the Prosecution Pre-Trial Brief is ambiguous as to whether the Prosecution intended to prove the existence of an international armed conflict after 19 May 1992.<sup>206</sup> The Trial

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<sup>201</sup> *Tadić* Appeal Judgement, paras 84, 131.

<sup>202</sup> Prosecution Pre-Trial Brief, para. 52 (footnote omitted).

<sup>203</sup> Prosecution Pre-Trial Brief, paras 53-54 (emphasis in the original, footnotes omitted).

<sup>204</sup> This was also made clear in the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia and Herzegovina, filed on 16 December 1998, which requested the Trial Chamber to take judicial notice of the international character of the armed conflict in BiH at least for the period starting on 6 March 1992, or at the latest by 6 April 1992, and ending at the earliest on 19 May 1992. See also Trial Chamber Decision on the Motion, 25 March 1999.

<sup>205</sup> *Tadić* Jurisdiction Decision, para. 77.

<sup>206</sup> See Prosecution Pre-Trial Brief, para. 54.

Chamber notes that the Prosecution's Opening Statement did not shed any more light on this issue.<sup>207</sup>

118. The Trial Chamber further notes the following submission in the Prosecution Final Trial Brief:

The evidence indisputably establishes that the offence alleged in the Indictment was connected with an international armed conflict being fought between the regular army of the Republic of Croatia (the HV) and other forces under its control, such as the HVO, on the one side, and the JNA and the VRS on the other. Both armies were also involved in an armed conflict with the ABiH in different parts of the territory of Bosnia and Herzegovina.<sup>208</sup>

119. The fact that the Trial Chamber heard evidence from both parties in the course of trial on the existence of an armed conflict in Croatia and its consequences in Bosnia and Herzegovina, including the frequent shelling of Bosanski Šamac at the time relevant to the facts alleged in the Amended Indictment does not detract from the conclusion that the Defence was not put on notice of this scenario of international conflict which the Prosecution intended to rely upon in the presentation of its case. Assuming, *arguendo*, that it was the Prosecution's intention to plead the same factual scenario as found in the *Tadić* and *Čelebići* cases, by merely referring to findings in those cases in its Pre-Trial Brief, the Trial Chamber cannot ignore the fact that the Prosecution case appears to have shifted by the end of the trial, as explicitly set out in the Prosecution closing submissions. The Indictment in this case, although one of the first issued, was amended several times, including after the start of trial. It would thus have been expected of the Prosecution to apply to amend the Indictment, once it became clear that the evidence supported a different basis for the existence of an international armed conflict than that initially envisaged, in addition to being defectively pleaded.

120. The importance of adequate pleadings before trial is to allow the Defence to conduct a search for material evidence and potential witnesses before trial to enable them to fully prepare cross-examination of the Prosecution witnesses during the Prosecution case. This level of preparation allows the Defence to elicit evidence which supports the Defence case during their cross-examination of Prosecution witnesses as envisaged by Rule 90 (H). The Trial Chamber concludes that the defect in the Amended Indictment in relation to the pleading of the existence of an international armed conflict was not cured by the Prosecution before the start, and during trial, and that the preparation of the Defence of the Accused was materially impaired. Consequently, the Trial Chamber considers that the evidence presented on the existence of an international armed conflict shall be excluded as being outside the scope of the Amended Indictment. As proof of the existence of an international armed conflict is one of the requisite jurisdictional elements for a

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<sup>207</sup> The statement refers to the existence of a conflict in neighbouring Croatia without, however, linking it to the armed conflict in Bosanski Šamac, T. 926, T. 936-37, T. 948.

charge based on Article 2 of the Statute, the Trial Chamber concludes that Count 3 is untenable and is therefore dismissed.

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<sup>208</sup> Prosecution Final Brief, para. 80. See also Closing Arguments, T. 20322-23.



## VI. LAW ON DEPORTATION AND FORCIBLE TRANSFER UNDER ARTICLE 5 (D) AND (H) OF THE STATUTE<sup>209</sup>

121. While Article 5 (d) of the Statute prohibits “deportation”, forcible transfer is not explicitly mentioned in Article 5 (d) and (h) of the Statute. Thus, forcible transfer can only constitute a persecutory act if it amounts to a “gross and blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5” of the Statute.<sup>210</sup> Both deportation and unlawful or forcible transfer relate to the involuntary and unlawful displacement, or movement, or relocation, or removal<sup>211</sup> of persons from the territory in which they reside.<sup>212</sup>

122. Trial Chambers of the Tribunal have held in several judgements that deportation is defined as the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, across a national border, without lawful grounds.<sup>213</sup> Forcible transfer has been defined as a forced removal or displacement of people from one area to another which may take place within the same national borders.<sup>214</sup> In *Krnjelac* the Trial Chamber found that the

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<sup>209</sup> See Judgement paras 36-46 for chapeau requirements applicable to persecution.

<sup>210</sup> *Kupreškić* Trial Judgement, para. 621; *Krnjelac* Trial Judgement, paras 433-434; see *Naletilić* Trial Judgement where the forcible transfer of about 400 civilians within Bosnia and Herzegovina on discriminatory grounds was found to amount to persecution pursuant to Article 5 (h) of the Statute (para. 671). See also *Krnjelac* Appeal Judgement, para. 222.

<sup>211</sup> The terms “displacement”, “movement”, “relocation”, or “removal” are used interchangeably to cover both deportation and transfer. “Forced”, “forcible”, and “under duress” are also used interchangeably.

<sup>212</sup> Cf. *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“*Krstić* Trial Judgement”), para. 521; Article 7 of the ICC Statute defines deportation or forcible transfer of a population as the forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law. The ICC Statute has been ratified by 92 states (as of 5 September 2003) and signed by 139 states. Although it does not constitute binding international treaty law for the ICTY, it may be regarded in many areas as expressing the *opinio iuris* of the States Parties (see *Tadić* Appeal Judgement, para. 223). The Trial Chamber is mindful, however, that the ICC Statute was adopted on 17 July 1998, i.e. several years after the time period covered in the Amended Indictment.

<sup>213</sup> *Naletilić* Trial Judgement, para. 670; *Krnjelac* Trial Judgement, para. 474, 476; *Krstić* Trial Judgement, paras 521, 531, 532. In *Stakić*, the Trial Chamber held that deportation pursuant to “Article 5 (d) of the Statute must be read to encompass forced population displacements both across internationally recognized borders and *de facto* boundaries, such as constantly changing frontlines, which are not internationally recognized”. Thus, the *Stakić* Trial Chamber defined deportation in this context “as the forced displacement of persons by expulsion or other coercive acts for reasons not permitted under international law from an area in which they are lawfully present to an area under the control of another party”, *Stakić* Trial Judgement, para. 679. See also *Krnjelac* Appeal Judgement, Separate Opinion of Judge Schomburg, para. 15.

<sup>214</sup> *Krnjelac* Trial Judgement, paras 474 (with references), 476; *Krstić* Trial Judgement, para. 521, defines both deportation and forcible transfer as “the involuntary and unlawful evacuation of individuals from the territory in which they reside” and finds that Bosnian Muslim civilians who were assembled in Potočari (BiH) and forcibly transferred to Kladanj (BiH) “were not subjected to deportation but rather to forcible transfer”, paras 531-32. See also *Naletilić* Trial Judgement, paras 516-521, 670. The wording of Article 49 of Geneva Convention IV indicates that forcible transfers refer to displacement within national borders, mentioning in paragraph 1 “individual or mass forcible transfers, *as well as* deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not” (emphasis added).

concept of expulsion formed part of the definition of deportation, and may be treated in the same way as deportation.<sup>215</sup> The Trial Chamber agrees with these findings.

123. From the jurisprudence of the Tribunal it is clear that the elements of the offences of deportation and forcible transfer are substantially similar. As noted by the Trial Chamber in *Krstić*, “any forced displacement is by definition a traumatic experience which involves abandoning one’s home, losing property and being displaced under duress to another location”.<sup>216</sup> Accordingly, the Trial Chamber is satisfied that deportation and forcible transfer share the same substantial elements, apart from deportation requiring that a national border must be crossed.

124. Upon the basis of the foregoing, the following common elements need to be ascertained for a finding that an act of deportation or forcible transfer has occurred: (i) the unlawful character of the displacement; (ii) the area where the person displaced lawfully resided and the destination to which the person was displaced; and (iv) the intent of the perpetrator to deport or forcibly transfer the victim.

#### **A. Unlawful character of the displacement**

125. The displacement of persons is only illegal where it is forced, i.e. not voluntary,<sup>217</sup> and “when it occurs without grounds permitted under international law”.<sup>218</sup> In other words, displacement motivated by an individual’s own genuine wish to leave an area is lawful.<sup>219</sup> The requirement that the displacement be forced or forcible has been interpreted broadly by Trial Chambers. The term “forced” is not limited to physical force; it may also include the “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological

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<sup>215</sup> *Krnojelac* Trial Judgement, para. 476 (“insofar as it requires the forcible displacement of persons across a national border, expulsion may be treated in the same way as deportation”). In the *Krnojelac* Appeal Judgement, the Appeals Chamber held, “qu’il n’est pas nécessaire de se prononcer, ni pour l’infirmier ni pour la confirmer, sur la définition donnée par la Chambre de première instance des termes ‘déportation’ et ‘expulsion’,” *Krnojelac* Appeal Judgement, para. 224.

<sup>216</sup> *Krstić* Trial Judgement, para. 523. This statement was made in the context of a discussion of forcible displacement within or between national borders as an inhumane act pursuant to Article 5 (i) of the Statute, but is also apposite, in the Trial Chamber’s opinion, to “deportation” pursuant to Article 5 (d) of the Statute and “deportation” and “forcible transfer” as possible persecutory acts pursuant to Article 5 (h) of the Statute.

<sup>217</sup> *Naletilić* Trial Judgement, para. 519; *Krstić* Trial Judgement, para. 528.

<sup>218</sup> *Krnojelac* Trial Judgement, para. 475; Article 49 of Geneva Convention IV explicitly allows the “total or partial evacuation of a given area if the *security of the population or imperative military reasons* so demand” (emphasis added). However, “persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”, cf. *Krnojelac* Trial Judgement, para. 475, footnote 1436 (also mentioning Article 17 of Additional Protocol II). Note, however, that Article 17(2) states that “civilians cannot be compelled to leave their own territory for reasons connected with the conflict.” According to these provisions, the forced relocation of persons for their safety or for imperative military reasons may be lawful. The substance of these requirements have been found to be applicable to deportation or forcible transfer pursuant to Article 5 (h) of the Statute, forcible transfer pursuant to Article 5 (i) of the Statute, and deportation pursuant to Article 5 (d) of the Statute – *Krstić* Trial Judgement, paras 524, 526. The Trial Chamber finds that in view of the drastic nature of a forced displacement of persons, recourse to such measures would only be lawful in the gravest of circumstances and only as measures of last resort.

<sup>219</sup> *Naletilić* Trial Judgement, para. 519.

oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment”.<sup>220</sup> The essential element is that the displacement be *involuntary* in nature, that “the relevant persons had *no real choice*”.<sup>221</sup> In other words, a civilian is involuntarily displaced if he is “not faced with a genuine choice as to whether to leave or to remain in the area”.<sup>222</sup> As noted by the *Krnojelac* Trial Chamber, an apparent consent induced by force or threat of force should not be considered to be real consent.<sup>223</sup>

126. The Trial Chamber is of the view that in assessing whether the displacement of a person was voluntary or not, it should look beyond formalities to all the circumstances surrounding the person’s displacement, to ascertain that person’s genuine intention. For instance, in situations where persons are relocated following detention in one or several places, coupled with various forms of mistreatment, an expression of consent does not necessarily reflect a person’s genuine desire to leave, as the person may not be faced with a real choice. Whether a person would have wished to leave the area absent circumstances of discrimination or persecution may also be considered as indicative of a person’s wish. A lack of genuine choice may be inferred from, *inter alia*, threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will, such as the shelling of civilian objects, the burning of civilian property, and the commission of – or the threat to commit – other crimes “calculated to terrify the population and make them flee the area with no hope of return”.<sup>224</sup>

127. Whether the adoption and implementation of agreements for “exchanges”<sup>225</sup> supervised by the ICRC, and the presence of members of international organisations (ICRC, UNPROFOR), may have an impact on the voluntary nature and the lawfulness of a person’s displacement arises in the present case. The jurisprudence of the Tribunal indicates that agreements concluded by military commanders or other representatives of parties in a conflict cannot make a displacement lawful. In relation to the existence of an agreement between two military commanders or other representatives

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<sup>220</sup> *Krnojelac* Trial Judgement, para. 475, and *Krstić* Trial Judgement, para. 529 (both quoting the Report of the Preparatory Commission for the International Criminal Court, Finalised Draft Text of the Elements of the Crimes, UN Doc PCNICC/2000/INF/3/Add.2, 6 July 2000, p. 11); *Naletilić* Trial Judgement, para. 519 (referring to Article 31 of Geneva Convention IV which *inter alia* provides that “[no] physical or moral coercion shall be exercised against protected persons [...]”); see also *Krnojelac* Appeal Judgement, para. 229.

<sup>221</sup> *Krnojelac* Trial Judgement, para. 475; *Krnojelac* Appeal Judgement, para. 233.

<sup>222</sup> *Krstić* Trial Judgement, para. 147.

<sup>223</sup> *Krnojelac* Trial Judgement, para. 475, footnote 1435. In the specific circumstances of this case, the *Krnojelac* Trial Chamber found that the fact that detainees selected for a so-called exchange wanted to be exchanged could not be characterised as deportation because they freely exercised their choice to go, and did not have to be forced, para. 483. The Trial Chamber in *Krstić* appears to have adopted a broader approach, holding that “despite the attempts by the VRS to make it look like a voluntary movement, the Bosnian Muslims of Srebrenica were not exercising a genuine choice to go, but reacted to a certainty that their survival depended on their flight”, *Krstić* Trial Judgement, para. 530.

<sup>224</sup> *Krstić* Trial Judgement, para. 147.

<sup>225</sup> The term “exchanges” characterizes a situation in which, pursuant to an agreement concluded between national and/or international organisations or authorities, a person leaves an area and, reciprocally, another person comes to the area that the former person is leaving.

of the parties to the armed conflict, the *Naletilić* Trial Chamber held that such agreement did “not have any implications on the circumstances under which a transfer is lawful. Military commanders or political leaders cannot consent on behalf of the individual.”<sup>226</sup> It further concluded that “an agreement as such does not in itself alter the conditions rendering a transfer lawful.”<sup>227</sup> The Trial Chamber agrees that the adoption of similar agreements, such as those concluded under the auspices of the ICRC in the present case, as well as the presence of ICRC or UNPROFOR members, has no impact on whether the persons’ displacement was voluntary.<sup>228</sup> Article 49 of Geneva Convention IV only mentions the security of the population and imperative military reasons as grounds permitting the displacement of civilian population. Furthermore, the Trial Chamber notes the humanitarian nature of the mandate of these organisations. As noted by the Trial Chamber in a previous decision, one of the fundamental tasks of the ICRC, to protect and assist the victims of armed conflicts, derives from the 1949 Geneva Conventions and 1977 Additional Protocols.<sup>229</sup> Of particular relevance to the issue at hand are the principles of neutrality and impartiality upon which the ICRC operates. The principle of impartiality “calls on the ICRC to perform its functions *without taking sides*”, while neutrality requires that the ICRC “not engage in controversies, in particular of a political, racial or religious nature.”<sup>230</sup> An analysis of the ICRC’s mandate can only lead to the conclusion that the ICRC’s involvement in “exchanges” was only based on humanitarian considerations and may not be interpreted as “legalising” such procedures.

128. It follows, that what matters is the *personal* consent or wish of an individual, as opposed to collective consent as a group, or a consent expressed by official authorities, in relation to an individual person, or a group of persons.

### **B. Displacement from the area in which they are lawfully present**

129. To establish deportation under Article 5 of the Statute, the crossing of a national border needs to be shown. The Republic of Bosnia and Herzegovina was recognised as an independent state by the European Union on 6 April 1992. Any forced displacement of persons going across the

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<sup>226</sup> *Naletilić* Trial Judgement, para. 523.

<sup>227</sup> *Naletilić* Trial Judgement, para. 548, in reference to an agreement concluded between the HVO and the ABiH, agreed to, monitored and escorted by SPABAT, UNPROFOR; see also *Krstić* Trial Judgement, para. 148.

<sup>228</sup> See also *Stakić* Trial Judgement, para. 683.

<sup>229</sup> Decision on the Prosecution Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness, 27 July 1999, paras 46-47 (“Decision of 27 July 1999”). This decision was initially issued on a confidential and *ex parte* basis, which was lifted on 1 October 1999 (Order Releasing Ex Parte Confidential Decision of the Trial Chamber).

<sup>230</sup> Decision of 27 July 1999, para. 53 (emphasis added). The Trial Chamber referred to the ICRC’s view that, to comply with the principle of impartiality, “it must avoid behaving in a way that could be perceived by one of the warring parties (...) as adopting a position opposed to it.”

borders of Bosnia and Herzegovina after 6 April 1992 would thus have involved the crossing of a national border.<sup>231</sup>

130. Whether the location to which persons are displaced has to be at least another municipality, or some more distant part of a territory, in order to fulfill the definition of forcible transfer, is not clear. Some definitions refer to the area or territory where the persons reside, thereby implying that they would at least need to be removed from such “area” or “territory”.<sup>232</sup> In this context, the Trial Chamber notes that among the legal values protected by deportation and forcible transfer are the right of the victim to stay in his or her home and community and the right not to be deprived of his or her property by being forcibly displaced to another location. Therefore, the Trial Chamber finds that the location to which the victim is forcibly displaced is sufficiently distant if the victim is prevented from effectively exercising these rights.

131. The Trial Chamber notes, however, that Count 2 of the Amended Indictment charges “the unlawful deportation and forcible transfer of [...] non-Serb civilians [...] from their homes in the Bosanski Šamac municipality to other countries or *to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces*”.<sup>233</sup> The inclusion of this phrase imposes a factual requirement – not controlled by Serb forces – that the Prosecution is not obliged to prove under the offence. However, it forms part of the allegations in the Amended Indictment, and the Trial Chamber will accordingly consider whether this requirement is made out on the evidence. The Trial Chamber notes that the Amended Indictment, in Count 1, charges deportation, forcible transfer and expulsion of Bosnian Croats, Bosnian Muslims and other non-Serb civilians from their homes and villages, without restricting the relocation to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces.<sup>234</sup>

### **C. The intent of the perpetrator to deport or forcibly transfer the victim**

132. Whether the intent to forcibly displace a person requires an element of permanency has not been extensively discussed in the jurisprudence of the Tribunal. An indication arguing in favour of this requirement may be found in the ICRC Commentary to Geneva Convention IV, which states that “unlike deportation and forcible transfer, evacuation is a *provisional measure* [and] moreover, often taken in the interests of the protected persons themselves” (emphasis added).<sup>235</sup> The *Naletilić*

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<sup>231</sup> The Amended Indictment refers to deportation and transfer to “other countries”. In *Krnojelac*, the Trial Chamber found that it could not determine whether detainees taken out of a detention centre and never heard of again had been deported or expelled, as it could not satisfy itself that they had crossed a national border (Trial Judgement, para. 480).

<sup>232</sup> *Stakić* Trial Judgement, paras 677, 679; *Naletilić* Trial Judgement, para. 519; *Krnojelac* Trial Judgement, para. 474.

<sup>233</sup> Amended Indictment, paras 17-19 (emphasis added).

<sup>234</sup> Amended Indictment, paras 11, 12.

<sup>235</sup> Commentary to Geneva Convention IV, p. 280.

Trial Chamber endorsed this view, holding that the Prosecution needs to prove “the intent to have the person (or persons) removed, which implies the aim that the person is not returning.”<sup>236</sup> The *Stakić* Trial Chamber agreed with this view.<sup>237</sup>

133. The Trial Chamber finds that both deportation and forcible transfer are closely linked to the concept of “ethnic cleansing”.<sup>238</sup> In this context, the Appeals Chamber found that, “c’est le caractère forcé du déplacement et le *déracinement forcé* des habitants d’un territoire qui entraînent la responsabilité pénale de celui qui le commet, et non pas la destination vers laquelle ces habitants sont envoyés” (emphasis added).<sup>239</sup> The Trial Chamber finds that the term “déracinement” indicates that the *mens rea* of a forcible displacement comprises the intent of the perpetrator that the victim is not returning.

134. Therefore, the Trial Chamber accepts that a finding of forced displacement, either as deportation or forcible transfer, requires an element of permanency in relation to the intention of the accused. An important consideration in this context will be the intended goal of the relocation. In this context, the Trial Chamber finds that whether persons forcibly displaced were able to return to their former place of residence at a later time has no bearing on the assessment of the legality of the original displacement; thus, the duration of the displacement has no impact on its illegality. Otherwise, the perpetrator who had the intent to permanently displace the victim would unjustifiably benefit from such return.

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<sup>236</sup> *Naletilić* Trial Judgement, para. 520. The Trial Chamber interpreted the ICRC Commentary as “indicative that deportation and forcible transfer are not by their nature provisional, which implies an intent that the transferred persons should not return” (footnote 1362).

<sup>237</sup> *Stakić* Trial Judgement, para. 687. See also *Krnojelac* Appeal Judgement, Separate Opinion of Judge Schomburg, para. 16.

<sup>238</sup> Cf. M. Cherif Bassiouni/Peter Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* (1996), pp. 616-631.

<sup>239</sup> *Krnojelac* Appeal Judgement, para. 218.

## VII. INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 7(1) OF THE STATUTE

135. Article 7(1) of the Statute provides:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

Article 7(1) reflects the principle of criminal law that criminal liability does not attach solely to individuals who physically commit a crime but may also extend to those who participate in and contribute to the commission of a crime in various ways, when such participation is sufficiently connected to the crime, following principles of accomplice liability.<sup>240</sup>

136. As noted by the Simić Defence,<sup>241</sup> the Prosecution pleads Article 7(1) in its entirety in the Amended Indictment against the three Accused, and in addition in respect of Count 1 (Persecution), included the criminal responsibility of the Accused as “acting in concert together and with other Serb civilian and military officials”.<sup>242</sup> In the words of the Appeals Chamber, “[a]lthough greater specificity in drafting Indictments is desirable, failure to identify expressly the exact mode of participation is not necessarily fatal to an Indictment if it nevertheless makes clear to the accused ‘the nature and cause of the charge against him’”.<sup>243</sup> The Trial Chamber observes that the Accused did not make any complaint prior to trial that they did not know the case they had to meet. As the Prosecution has relied on Article 7(1) without specification, the Trial Chamber has proceeded to make findings upon those parts of Article 7(1) which it considers to be relevant.<sup>244</sup> Having reviewed the evidence, the Trial Chamber is of the view that the following heads of responsibility could apply to the acts charged in the Indictment: “committing”, including “joint criminal enterprise,”<sup>245</sup> and “aiding and abetting.”

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<sup>240</sup> *Čelebići* Appeal Judgement, para. 338.

<sup>241</sup> Simić Final Brief, paras 133-136. The Simić Defence claims that Blagoje Simić was not able to anticipate and prepare his defence for trial properly as the Prosecution relied on all heads of liability under Article 7(1).

<sup>242</sup> Amended Indictment, para. 11.

<sup>243</sup> *Čelebići* Appeal Judgement, para. 351; *Krnjelac* Appeal Judgement, para. 138.

<sup>244</sup> *Krstić* Trial Judgement, para. 602; *Kunarac* Trial Judgement, paras 388-89; *Furundžija* Trial Judgement, para. 189. The Prosecution argues that the Trial Chamber “is free to apply any theory it finds applicable to the facts of the case as long as it falls within the confines of Article 7(1)”, referring to para. 189 of the *Furundžija* Trial Judgement (Pre-Trial Brief, at para. 31).

<sup>245</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić*, IT-99-37-AR72, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, paras 20 and 31 (“*Ojdanić* Decision on Joint Criminal Enterprise”).

## A. Committing

137. The meaning to be attached to “committed”, the highest degree of participation in a crime, is not controversial. Any finding of commission requires the personal or physical, direct or indirect, participation of the accused in the relevant criminal act, or a finding that the accused engendered a culpable omission to the same effect, where it is established that he had a duty to act, with the requisite knowledge.<sup>246</sup> An accused person will be held criminally responsible if he actually carries out the *actus reus* of the enumerated crimes.<sup>247</sup> There can be several perpetrators in relation to the same crime where the conduct of each of them fulfils the elements of the definition of the substantive offence.<sup>248</sup> The requisite *mens rea* is that the accused intended that a criminal offence occur as a consequence of his conduct.

138. The Appeals Chamber recently confirmed that an accused found criminally liable for his participation in a joint criminal enterprise should be regarded as having “committed” that crime, as opposed to having aided and abetted the crime; in other words, participation in a joint criminal enterprise is a form of co-perpetration.<sup>249</sup> The Trial Chamber is thus addressing issues in relation to joint criminal enterprise in the context of this section.

### 1. Preliminary consideration on form of the Amended Indictment

#### (a) Form of liability

139. The Amended Indictment charges under Count 1 (Persecutions) that the Accused “acting in concert together, and with other Serb civilian and military officials, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of a crime against humanity”.<sup>250</sup>

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<sup>246</sup> *Stakić* Trial Judgement, para. 439; *Naletilić* Trial Judgement, para. 62; *Vasiljević* Trial Judgement, para. 62; *Kvočka* Trial Judgement, paras 250-251; *Krstić* Trial Judgement, para. 601; *Kunarac* Trial Judgement, para. 390; *Kordić* Trial Judgement, para. 376.

<sup>247</sup> In relation to the offence of unlawful confinement, the Appeals Chambers in *Čelebići* held that a finding of “committed” required “something more [...] than mere knowing ‘participation’ in a general system or operation pursuant to which civilians are confined. [...] Such liability is reserved for persons responsible in a more direct or complete sense for the civilian’s unlawful detention.” (paras 342 and 343) The Appeals Chamber further held that a finding of liability pursuant to Article 7(1) for detention requires a demonstration that the accused had the authority to detain or release the persons detained, or that his acts or omissions had a substantial effect on the continued detention. A greater degree of involvement than the mere awareness that some persons were detained without reasonable grounds to suspect that they posed a security risk is required to establish primary responsibility. (*Čelebići* Appeal Judgement, para. 364)

<sup>248</sup> *Naletilić* Trial Judgement, para. 62; *Kunarac* Trial Judgement, para. 390.

<sup>249</sup> *Ojdanić* Decision on Joint Criminal Enterprise, para. 20; *Krnojelac* Appeal Judgement, para. 29.

<sup>250</sup> Amended Indictment, para. 11; see also para. 33. Paragraphs 13, 14, 15 and 16 of the Amended Indictment read slightly differently: the Accused “acting in concert with others” (paras. 13-15); the Accused “acting in concert together and with others” (para. 16).



140. On one hand, the Prosecution argues that the Accused are charged with participating in a joint criminal enterprise in relation to Count 1 of the Amended Indictment. The Prosecution refers to a terminological shift of phrases referring to the concept of “joint criminal enterprise” in support of its submission that the phrase “acting in concert together” puts the Accused on notice that they are charged with participating in a common purpose or joint criminal enterprise to persecute non-Serbs in Bosanski Šamac, Odžak, and elsewhere in Bosnia and Herzegovina between September 1991 and December 1993.<sup>251</sup> The Prosecution submits that the accused are liable as participants in a joint criminal enterprise under the three categories identified in the *Tadić* Appeal Judgement.<sup>252</sup>

141. The Defence on the other hand, submits that the Amended Indictment does not charge the Accused with participation in a joint criminal enterprise. It argues that the Amended Indictment violates the principles set out by the Appeals Chamber in *Kupreškić* as it fails to plead explicitly a joint criminal enterprise, and fails to plead sufficient facts to provide adequate notice of the joint criminal enterprise alleged, including individuals who are alleged to have participated in the enterprise, the scope of the enterprise, and the alleged conduct of the accused in the enterprise.<sup>253</sup> The Defence further argues that, although in numerous cases before the Tribunal the Prosecution used the term “joint criminal enterprise” to describe co-perpetratorship, the Prosecution did not use the words “joint criminal enterprise” in any of the Indictments brought against the accused. The Defence emphasises that the Fourth Amended Indictment only, and for the first time, used the terms “acting in concert with others”, and the concept of joint criminal enterprise was never mentioned in the Pre-Trial Brief and Opening Statement of the Prosecution, and for the first time was submitted in its Response to the Defence Motion to Acquit.<sup>254</sup>

142. The matter in issue is thus whether the words “in concert together” may be interpreted as referring to participation in a joint criminal enterprise. The Appeals Chamber determined in *Tadić* that Article 7(1) includes within its terms the criminal responsibility of the accused as a participant in a joint criminal enterprise, and identified three different categories of collective criminal activity, which may be characterised as joint criminal enterprise. The first and second categories are

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<sup>251</sup> Prosecution Final Brief, para. 8. See also T. 20289-92. The Prosecution refers to the *Ojdanić* Decision on Joint Criminal Enterprise.

<sup>252</sup> Prosecution Final Trial Brief, para. 13. The three categories identified are: (i) where all co-defendants acting pursuant to a common design, possess the same criminal intention; (ii) in concentration camp cases; (iii) where one of the perpetrators acting pursuant to a common design commits an act which, while outside the common design, was a natural and foreseeable consequence of the common design.

<sup>253</sup> Simić Final Brief, p. 222.

<sup>254</sup> Simić Final Brief, pp. 225-26; *Tadić* Final Brief, pp. 154-162; Simo Zarić did not make submissions on this issue, but his Final Brief states that he “retains its right to accede to certain positions [sic]” of Blagoje Simić and Miroslav Tadić”, Zarić Final Brief, p. 3. See also Closing Arguments, T. 20437-45, T. 20511-12, T. 20598.

commonly referred to as “basic” forms of joint criminal enterprise, while the third one is referred to as an “extended” form of joint criminal enterprise.<sup>255</sup>

143. The issue which the Trial Chamber is faced with is whether, in the absence of any details as to the form of joint criminal enterprise that the Prosecution seeks to rely upon in the Indictment, the Trial Chamber may find the Accused guilty of any of the crimes alleged on this basis.<sup>256</sup> Based on the jurisprudence of the Appeals Chamber on the form of an Indictment, this turns on whether the Amended Indictment may be considered as having put the Defence on notice of the case it had to meet and whether the Defence was in a position to prepare adequately for trial.

(b) Applicable law

144. The basic function of an Indictment is to inform an accused of the case he has to meet, i.e. to provide enough details to inform a defendant clearly of the charges against him, as required by Articles 18(4) and 21(4) of the Statute, and Rule 47 (C) of the Rules.<sup>257</sup> The Appeals Chamber in *Kupreškić* held that these requirements include:

an obligation on the part of the Prosecution to state the material facts underpinning the charges in the Indictment, but not the evidence by which such material facts are to be proven. Hence, the question whether an Indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.<sup>258</sup>

145. In the case of a joint criminal enterprise, the following elements need to be pleaded: the nature or essence of the joint criminal enterprise; the period over which the enterprise is said to have existed; the identity of those engaged in the enterprise, at least by reference to a group; and the nature of the participation of the accused in the enterprise.<sup>259</sup> In *Brdanin*, the Trial Chamber held that the relevant state of mind of the accused may be pleaded, either by pleading the evidentiary facts from which the state of mind is to be inferred from, or by pleading the relevant state of mind itself as the material fact.<sup>260</sup>

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<sup>255</sup> *Tadić* Appeal Judgement, paras 190-228. The second form of joint criminal enterprise may also be described as a “basic form” of joint criminal enterprise.

<sup>256</sup> Written Reasons for Decision on Motions for Acquittal, 11 October 2002, para. 3.

<sup>257</sup> Article 18 (4) of the Statute states that the “Prosecutor shall prepare an indictment containing a precise statement of the facts and the crime or crimes with which the accused is charged under the Statute”; Article 21 (4)(a) sets out the right of the accused “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”; Article 21 (4)(b) provides for the right of the accused to have adequate time to prepare his defence. Rule 47 (c) provides: “The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.”

<sup>258</sup> *Kupreškić* Appeal Judgement, para. 88.

<sup>259</sup> See *Brdanin* Decision on Form of the Amended Indictment; *Prosecutor v. Brdanin and Talić*, IT-99-36-T, Decision on form of further amended indictment and prosecution application to amend of 26 June 2001 (“*Brdanin* Decision on Form of Further Amended Indictment”).

<sup>260</sup> *Brdanin* Decision on Form of Further Amended Indictment, para. 33.

146. There is no injustice to the accused if he is given an adequate opportunity to prepare an effective defence. The Appeals Chamber in *Kupreškić* further held that a fundamental defect in an Indictment could be considered harmless only if it could be demonstrated that the defendant's ability to prepare his defence was not materially impaired.<sup>261</sup> The Appeals Chamber held that a Pre-Trial Brief may go towards curing a defective Indictment.<sup>262</sup> Trial Chambers of the Tribunal have held that, although not explicitly pleaded in the Indictment, certain forms of joint criminal enterprise may be applied.<sup>263</sup> Following the *Kupreškić* jurisprudence, the Trial Chamber in *Krnojelac* held that even where a particular crime is not specifically pleaded in the Indictment as part of a joint criminal enterprise, a case based upon the accused's participation in a *basic* joint criminal enterprise to commit that crime may still be considered by the Trial Chamber if it is one of the crimes charged in the Indictment and such a case is included within the Prosecution's Pre-Trial Brief.<sup>264</sup> Trial Chambers have refused to rely on an *extended* form of joint criminal enterprise in the absence of an amendment to the Indictment expressly pleading it.<sup>265</sup>

147. In accordance with this jurisprudence, the Trial Chamber turns to the issue of whether the accused were properly notified that the Amended Indictment against them includes forms of participation in a joint criminal enterprise enabling them to adequately prepare their defence.

(c) Discussion

(i) Whether acting in concert together and with others refers to joint criminal enterprise

148. The Defence takes issue concerning the terminology of the theory of "joint criminal enterprise", arguing that that phrase cannot be inferred from "acting in concert together".

149. Various labels have been used by the Appeals Chamber and Trial Chambers of the Tribunal to refer to a theory of criminal liability based on the participation of more than one person in the execution of a common criminal plan. "Joint criminal enterprise", however, appears to have been preferred.<sup>266</sup> The Appeals Chamber in *Ojdanić et al.* held:

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<sup>261</sup> *Kupreškić* Appeal Judgement, para. 122.

<sup>262</sup> *Kupreškić* Appeal Judgement, para. 117.

<sup>263</sup> See *Kvočka* Trial Judgement, para. 247, and *Krstić* Trial Judgement, para. 602.

<sup>264</sup> *Krnojelac* Trial Judgement, para. 85.

<sup>265</sup> *Vasiljević* Trial Judgement, para. 63; *Krnojelac* Trial Judgement, para. 86. The Appeals Chamber in *Krnojelac* upheld the Trial Chamber's refusal to rely upon an extended form of joint criminal enterprise, based on the specific circumstances in that case. *Krnojelac* Appeal Judgement, para. 144. Pursuant to the theory of an *extended* joint criminal enterprise, a person may be held criminally responsible for a crime which went beyond the agreed object of the enterprise if the crime was a natural and foreseeable consequence of the execution of that enterprise.

<sup>266</sup> See *Brdanin* Decision on Form of Further Amended Indictment, para. 24, with references to *Tadić* Appeal Judgement, and para. 37: "The Appeals Chamber has treated the expression "joint criminal enterprise" as synonymous with common purpose. That label does not produce the confusion which "common purpose" produces in relation to the

First, concerning the terminological matter raised by the Defence, the phrases “common purpose” doctrine on the one hand, and “joint criminal enterprise” on the other, have been used interchangeably and they refer to one and the same thing. The latter term – joint criminal enterprise – is preferred, but it refers to the same form of liability as that known as the common purpose doctrine or liability.<sup>267</sup>

Although there is no mention of “acting in concert together and with others”, the Trial Chamber is of the view that these phrases all refer to the participation of several persons in a collective commission of a crime. “Acting in concert together” plainly means acting jointly, and on the face of it in a criminal context, would refer to co-perpetratorship.<sup>268</sup> It is commonly accepted that a reference to “acting in concert together” means acting pursuant to a joint criminal enterprise.

(ii) Whether the Defence was notified that joint criminal enterprise was included in the Amended Indictment

150. The Trial Chamber turns to a consideration of when and how the Indictment was amended to include the words “acting in concert together”.

151. The Trial Chamber notes that the First Indictment in the present case was issued on 21 July 1995 against six Accused, including the three Accused currently standing trial.<sup>269</sup> It was one of the first Indictments ever issued by the Tribunal at a time when the jurisprudence of the Tribunal on the form of Indictment had not yet developed. The Initial Indictment, however, was amended four times, in 1998, 1999, 2001 and 2002.<sup>270</sup> The Second Amended Indictment included the words “together with” in the chapeau paragraph of Count 1 (Persecutions). The words “acting in concert” were added to the corresponding paragraph in the Third Amended Indictment but not in the paragraphs charging each accused specifically.<sup>271</sup> The final paragraph of the “Additional Factual Allegations” section introduced the words “common purpose”, specifying the purpose as “ridding the Bosanski Šamac and Odžak Municipalities of all non-Serbs.”<sup>272</sup> The Prosecution’s motion seeking leave to amend the Second Amended Indictment claimed that “the charges against Blagoje

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relevant state of mind which must be established, depending upon whether the crime charged fell within the agreed object of the enterprise or was merely a foreseeable consequence of its execution.”

<sup>267</sup> *Ojdanić* Decision on Joint Criminal Enterprise, para. 36.

<sup>268</sup> See *Krnjelac* Trial Judgement, para. 84. The words “joint criminal enterprise” and “participation in a common plan, design or purpose” are used interchangeably. See *Ojdanić* Decision on Joint Criminal Enterprise, para. 36.

<sup>269</sup> The First Indictment was issued against Slobodan Miljković, Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović and Simo Zarić. It included 56 counts.

<sup>270</sup> The First Indictment was confirmed on 25 August 1998, against Milan Simić, Miroslav Tadić and Simo Zarić only, and included 13 counts. The Second Indictment was confirmed on 25 March 1999, against the five initial indictees minus Slobodan Miljković, and included 37 counts. The Third Indictment, following Stevan Todorović’s plea of guilty, was issued on 24 April 2001 and included 9 counts. The Fourth Indictment, amended at the request of the Trial Chamber, was issued on 8 January 2002, and also included 9 counts. The Fifth Amended Indictment, amended following Milan Simić’s plea of guilty, was issued on 30 May 2002, and includes 3 counts.

<sup>271</sup> Second Amended Indictment, para. 29; Third Amended Indictment, para. 13.

<sup>272</sup> The words “common purpose” in the last paragraph of the Indictment were used for the first time in the Third Amended Indictment, dated 24 April 2001. Paragraphs 15, 17, 18, equivalent to paragraphs 13, 14, 15, did not include the words “acting in concert together and with”.

Simić, Miroslav Tadić and Simo Zarić remain the same as those alleged in the Second Amended Indictment”, and only requested the authorisation to delete certain charges concerning Blagoje Simić and Milan Simić, stating that “the only changes to the Indictment are the dismissal of counts and the 7(3) responsibility of Blagoje Simić”.<sup>273</sup> Based on this language, the Trial Chamber, when granting leave to amend, stated in its Decision that “the amendments relate solely to the dismissal of counts and the deletion of charges of responsibility.”<sup>274</sup>

152. Although the Trial Chamber has observed that these additions were made *after* the filing of the Prosecution Pre-Trial Brief,<sup>275</sup> the Trial Chamber turns to a consideration of the Prosecution Pre-Trial Brief in light of the fact that the amendments and the brief were both filed in April 2001. The Prosecution in its Pre-Trial Brief did not refer specifically to a joint criminal enterprise or any of its possible scenarios, or to any of the material basis upon which it is based. While it does contain some mention of the role of the Accused, the information is very general and largely a repetition of what is in the Amended Indictment.<sup>276</sup> The Prosecution Pre-Trial Brief seemed rather to be directed at a discussion of the elements of aiding and abetting.<sup>277</sup> The matter was not clarified at the Pre-Trial Conference.<sup>278</sup> Neither did the Prosecution refer in its Opening Statement to any form of joint criminal enterprise. The Trial Chamber observes that the Defence never raised any challenge to the form of any of the Amended Indictments, including the inclusion of “acting in concert”, and “common purpose” in April 2001.<sup>279</sup>

153. That the Prosecution intended to rely on the theory of joint criminal enterprise was further confirmed at the time of the third amendment to the Indictment. The Trial Chamber in its Decision on the Prosecution’s Motion for Leave to Amend the Indictment held: “As paragraph 13 is an introductory paragraph to the charge of persecution, the fact that the words “acting in concert together” are in paragraph 13 serves as notice that the accused are alleged to have acted in concert together.” The Trial Chamber allowed amendments including the words “acting in concert together” ... only when prior notice of those words was present under the respective counts.” The Trial

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<sup>273</sup> Prosecutor’s Motion for Leave to Amend the Indictment, 24 April 2001, paras 5 and 8.

<sup>274</sup> Decision Granting Leave to Amend Indictment, 15 May 2001.

<sup>275</sup> The Prosecution Pre-Trial Brief was filed on 9 April 2001.

<sup>276</sup> The Prosecution Pre-Trial Brief states that “when the evidence establishes that there was a pre-arranged scheme or plan to engage in criminal conduct, anyone who knowingly participated may be held criminally responsible under Article 7(1) of the Statute.” (para. 33)

<sup>277</sup> The paragraphs dealing with the Accused do not refer to the existence of a joint criminal enterprise (concerning Tadić and Zarić, the Prosecution submits that they “aided and abetted a pre-arranged plan”, para. 35. This interpretation would be supported by the reference to the *Tadić* Trial Judgement in the footnote as the portion of that judgement addresses aiding and abetting.

<sup>278</sup> See *Vasiljević* Trial Judgement, para. 63.

<sup>279</sup> Trial Chambers have consistently held that it is not their function to review the form of indictments for themselves in the absence of a complaint brought by the Defence. See *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-PT, Decision on Prosecution’s Response to Decision of 24 February 1999, 20 May 1999, para. 18; *Brdanin* Decision on Form of Amended Indictment, para. 23.

Chamber therefore authorised the Prosecution to amend the paragraphs alleging the responsibility of each Accused specifically to include the words “acting in concert together”. Similarly, the Prosecution was authorised to include these words in the final paragraph of the “Additional Factual Allegations” concerning the charge of persecution.<sup>280</sup> The Trial Chamber is satisfied that the Amended Indictment, together with the Prosecution Pre-Trial Brief, provide sufficient notice of the nature or purpose of the common plan.

154. Although it is generally expected that the Prosecution case should be made clear to a defendant before his trial starts, the relevant test, regarding whether a defendant was properly notified of the nature of the case against him, is whether the preparation of his defence was materially impaired. Although the Prosecution did not include the words “joint criminal enterprise” in the Fourth Amended Indictment, reference by the Prosecution to a joint criminal enterprise was explicitly clarified at the time of the third amendment of the Indictment in December 2001.

(d) Conclusion

155. The Trial Chamber is satisfied that, although the Prosecution does not appear to have exercised the diligence which could have been expected on this matter, the ability of the Accused to prepare their defence was not materially impaired. The Amended Indictment and the Prosecution’s further submissions on the matter before, or at the beginning of trial, however, do not appear to be detailed and specific enough to have put the Defence on notice that the Prosecution intended to rely on a joint criminal enterprise theory *beyond* a basic form of joint criminal enterprise.<sup>281</sup> In the absence of an explicit reference in the Amended Indictment to an extended form of joint criminal enterprise, and in other filings before the commencement of trial, the Trial Chamber considers that only the basic form of joint criminal enterprise forms a proper part of the Prosecution case on Count 1.

2. Applicable law on joint criminal enterprise

156. The Appeals Chamber in *Tadić* held that persons who contribute to the commission of crimes by a group in execution of a common criminal purpose are subject to criminal liability subject to certain conditions.<sup>282</sup> For joint criminal enterprise to be constituted, the existence of the following elements need to be proved:<sup>283</sup>

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<sup>280</sup> Decision on the Prosecution’s Motion for Leave to Amend the Indictment, 20 December 2001, paras 22-23, 25.

<sup>281</sup> The Prosecution Response to the Defence’s Motion for a Judgement of Acquittal, filed on 27 September 2002, *after* the completion of the presentation of the Prosecution case, stated that the Prosecution case was “one of common purpose or joint criminal enterprise” (para. 13). It went on to refer explicitly to an extended form of joint criminal enterprise, submitting that the Trial Chamber “may find each of the Accused liable for those acts which were a natural and foreseeable consequence of effecting the common purpose.” (para. 25)

<sup>282</sup> *Tadić* Appeal Judgement para. 190. The Trial Chambers in *Kvočka* and *Krnjelac* did not follow the categorisation made in *Tadić* regarding the *mens rea* (*Kvočka* Trial Judgement, para. 273; *Krnjelac* Trial Judgement, para. 78). In

- a plurality of persons, not necessarily organised;
- a common plan, design or purpose (involving the commission of a crime proscribed in the Statute);
- the participation of the accused in the common plan or design to perpetrate a crime under the Statute;
- a shared intent between all the participants to further the common plan or design involving the commission of a crime;<sup>284</sup>
- that the accused, even if not personally effecting the crime, intended the result.

In addition, in the case of persecution, that all the participants in the common plan, including the Accused, had a discriminatory intent needs to be demonstrated.

157. The Trial Chamber only addresses the basic form of joint criminal enterprise, relevant to the present case.<sup>285</sup> The first category is where all the participants in the joint criminal enterprise share the same criminal intent. To be established, it must be shown that the accused must have (i) voluntarily participated in one of the aspects of the common criminal design; and (ii) intended the criminal result, even if not personally effecting it.<sup>286</sup> Pursuant to the second category, the Prosecution needs to demonstrate that the accused (i) personally knew of the system to ill-treat the detainees, and (ii) had the intent to further this system.<sup>287</sup>

158. An understanding or arrangement amounting to an agreement between two or more persons that they will commit a crime must be proven. The common plan or design need not have been previously arranged; the plan may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect the plan; the understanding or agreement need not be express and may be inferred from all the circumstances.<sup>288</sup> The circumstances in which two or more persons are participating together in the commission of a particular crime may themselves

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*Kvočka*, the Trial Chamber held that “it is possible to co-perpetrate and aid or abet a joint criminal enterprise, depending primarily on whether the level of participation rises to that of sharing the intent of the criminal enterprise. An aider or abetter of a joint criminal enterprise, whose acts originally assist or otherwise facilitate the criminal endeavor, may become so involved in its operations that he may graduate to the status of co-perpetrator of that enterprise.” (para. 249)

<sup>283</sup> *Čelebići* Appeal Judgement, para. 366; *Tadić* Appeal Judgement, paras 227-228.

<sup>284</sup> The Appeals Chamber in *Krnjelac* held that a co-perpetrator who shares the criminal intent in a joint criminal enterprise does not need to be enthusiastic about it. *Krnjelac* Appeal Judgement, para. 100.

<sup>285</sup> Referred to as the “first category” of joint criminal enterprise in the *Tadić* Appeal Judgement, para. 196. See also *Vasiljević* Trial Judgement, para. 64.

<sup>286</sup> *Tadić* Appeal Judgement para. 196. The Appeals Chamber in *Čelebići* held that awareness that there existed no reasonable grounds to believe that the detainees constituted a security risk is similarly not enough for a finding that an accused participated in a joint criminal enterprise to detain persons. (*Čelebići* Appeal Judgement, para. 366)

<sup>287</sup> *Tadić* Appeal Judgement, paras 202-203; *Krnjelac* Appeal Judgement, paras 89, 96. The co-perpetrator’s knowledge of the system may be deduced from his powers.

establish an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that crime.<sup>289</sup> Regarding the second category of joint criminal enterprise, the Appeals Chamber in *Krnojelac* held that proof of the existence of a formal or informal agreement between the participants is not crucial.<sup>290</sup> It also confirmed that presence at the time of the crime is not necessary. A person can still be held liable for criminal acts carried out by others without being present – all that is necessary is that the person forms an agreement with others that a crime will be carried out.<sup>291</sup> A joint criminal enterprise requires, in addition to a showing that several individuals agreed to commit a crime, that the parties to the agreement took action in furtherance of that agreement.<sup>292</sup> Joint criminal enterprise is not a liability for mere membership of a criminal enterprise as it is concerned with the *participation* in the commission of a crime as part of a joint criminal enterprise.<sup>293</sup>

159. The Trial Chamber in *Kvočka* held that the degree of participation required must be “significant”, i.e. make an enterprise “efficient or effective”:

It may be that a person with significant authority or influence who knowingly fails to complain or protest automatically provides substantial assistance or support to criminal activity by their approving silence, particularly if present at the scene of criminal activity. [...] The level of participation attributed to the accused and whether that participation is deemed significant will depend on a variety of factors, including the size of the criminal enterprise, the functions performed, the position of the accused, the amount of time spent participating after acquiring knowledge of the criminality of the system, efforts made to prevent criminal activity or to impede the efficient functioning of the system, the seriousness and scope of the crimes committed.<sup>294</sup>

160. To prove the basic form of joint criminal enterprise, the Prosecution must demonstrate that each of the persons charged, and (if not one of those charged) the principal offender or offenders, had a common state of mind, that which is required for that crime. As compared with the requisite *mens rea* for aiding and abetting, “[t]he participant in the basic form of joint criminal enterprise must share with the person who physically carried out the crime the state of mind required for that crime; the person who merely aids and abets must be aware of the essential elements of the crime committed, including the state of mind of the person who physically carried it out, but he need not

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<sup>288</sup> The inference must be the only reasonable inference available on the basis of the evidence.

<sup>289</sup> *Vasiljević* Trial Judgement, para. 66; *Krnojelac* Trial Judgement, para. 80; *Tadić* Appeal Judgement, para. 227; *Furundžija* Appeal Judgement, para. 119.

<sup>290</sup> *Krnojelac* Appeal Judgement, para. 96: “Suivant ces critères, il s’agit moins de prouver l’existence d’un accord plus ou moins formel entre l’ensemble des participants que leur adhésion au système.”

<sup>291</sup> *Krnojelac* Appeal Judgement, para. 81; *Krnojelac* Trial Judgement, footnote 236.

<sup>292</sup> *Ojdanić* Decision on Joint Criminal Enterprise, para. 23. The Appeals Chamber held that it was this requirement which distinguished “joint criminal enterprise” from “conspiracy”.

<sup>293</sup> *Ojdanić* Decision on Joint Criminal Enterprise, para. 26. As compared to conspiracy, “a joint criminal enterprise requires, in addition [...] a showing [that several individuals have agreed to commit a certain crime] and that the parties to that agreement took action in furtherance of that agreement”, para. 23. See also *Stakić* Trial Judgement, para. 433.

<sup>294</sup> *Kvočka* Trial Judgement, paras 309 and 311.



share that state of mind.”<sup>295</sup> A joint criminal enterprise may be aided and abetted, where it is demonstrated that the aider and abetter knew the shared intent of the participants in the joint criminal enterprise.<sup>296</sup>

## **B. Aiding and abetting**

161. Aiding and abetting may be defined as all acts directed at assisting, encouraging, or lending moral support to, the perpetration of a certain specific offence, and which have a *substantial* effect on the perpetration of the offence.<sup>297</sup> The acts of the principal(s), which the accused is alleged to have aided and abetted, must be established.<sup>298</sup> The Appeals Chamber in *Tadić* held that the principal may not even be aware of the accomplice’s contribution.<sup>299</sup>

162. The acts of aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals in the commission of the crime.<sup>300</sup> The *actus reus* of aiding and abetting may be perpetrated through an omission, based on a duty to act, provided that the failure to act had a substantial effect on the commission of the crime and that it was coupled with the requisite *mens rea*.<sup>301</sup> No proof of a plan or agreement is required. There is no requirement that the act of assistance caused the crime of the principal in the sense that it was a *conditio sine qua non* for the principal’s acts.<sup>302</sup> Participation may occur before, during or after the act is committed and be geographically separated therefrom.<sup>303</sup>

163. The Trial Chambers in *Kunarac* and *Krnjelac* explained the *mens rea* of aiding and abetting as consisting of the knowledge (or awareness) that the acts performed by the aider and abettor assist in the commission of a *specific* crime by the principal.<sup>304</sup> The Trial Chambers in *Furundžija*, *Blaškić*, *Kvočka*, and *Naletilić*, however, took the view that it is not necessary that the aider and abettor know the precise crime that was intended or which was actually committed, as

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<sup>295</sup> Separate Opinion of Judge David Hunt to *Ojdanić* Decision on Joint Criminal Enterprise, para. 29, referring to *Aleksovski* Appeal Judgement, para. 162.

<sup>296</sup> *Vasiljević* Trial Judgement, para. 68; *Krnjelac* Trial Judgement, para. 83; *Kvočka* Trial Judgement, para. 273; *Tadić* Appeal Judgement, para. 196.

<sup>297</sup> *Čelebići* Appeal Judgement, para. 352; *Aleksovski* Appeal Judgement, paras 162-164; *Tadić* Appeal Judgement, para. 229. See also *Naletilić* Trial Judgement, para. 63; *Vasiljević* Trial Judgement, para. 70; *Krstić* Trial Judgement, para. 601; *Kordić* Trial Judgement, par. 399; *Kunarac* Trial Judgement, para. 391; *Furundžija* Trial Judgement, paras 235 and 249.

<sup>298</sup> *Aleksovski* Appeal Judgement, para. 165.

<sup>299</sup> *Tadić* Appeal Judgement, para. 229.

<sup>300</sup> *Furundžija* Trial Judgement, paras 196, 199, 209, referring to “*Schonfeld*” case, LRWC, Vol. XI.

<sup>301</sup> *Krnjelac* Trial Judgement, para. 88; *Kunarac* Trial Judgement, para. 391; *Blaškić* Trial Judgement, paras 284-285; *Aleksovski* Trial Judgement, para. 129.

<sup>302</sup> *Naletilić* Trial Judgement, para. 63; *Kvočka* Trial Judgement, para. 255; *Krnjelac* Trial Judgement, para. 88; *Furundžija* Trial Judgment, paras. 217, 233-235, 249, referring to “*Einsatzgruppen*” case, LRWC, Vol. IV.

<sup>303</sup> *Naletilić* Trial Judgement, para. 63; *Vasiljević* Trial Judgement para. 70; *Kvočka* Trial Judgement, para. 256; *Blaškić* Trial Judgement, paras 284-285; *Krnjelac* Trial Judgement, para. 88; *Kunarac* Trial Judgement, para. 391; *Aleksovski* Trial Judgement, para. 129; *Blaškić* Trial Judgement, para. 285.

long as he was aware that one of a number of crimes would probably be committed, including the one actually perpetrated.<sup>305</sup> The Trial Chamber finds the stricter definition set out in *Kunarac* and *Krnojelac* persuasive and endorses it. Further, the aider and abettor must have been aware of the essential elements of the crime ultimately committed by the principal, including his *mens rea*.<sup>306</sup>

164. The aider and abettor of persecution must be aware not only of the crime he is assisting but also that it is committed with a discriminatory intent. He does not need to share the discriminatory intent but must be aware of the broader discriminatory context.<sup>307</sup>

165. Whether mere physical presence of an accomplice at the scene of the offence may constitute adequate encouragement or support for a finding of “aiding and abetting” has been discussed in the Tribunal’s jurisprudence. Trial Chambers have held that presence, when combined with authority,<sup>308</sup> can constitute assistance in the form of moral support, including tacit approval, that is, the *actus reus* of the offence.<sup>309</sup> However, an individual’s presence and position of authority alone are not conclusive of aiding and abetting unless it is shown to have a significant legitimising or encouraging effect on the principal. It is necessary to consider the relevant facts to assess the impact of the accused’s presence at the scene to determine whether it had a substantial effect on the perpetration of the crime.<sup>310</sup> The presence of a superior may, however, be perceived as an important *indicium* of encouragement and support.<sup>311</sup>

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<sup>304</sup> *Krnojelac* Trial Judgement, para. 90; *Kunarac* Trial Judgement, para. 392.

<sup>305</sup> *Naletilić* Trial Judgement, para. 63; *Kvočka* Trial Judgement, para. 255; *Blaškić* Trial Judgement, para. 287; *Furundžija* Trial Judgement, para. 246.

<sup>306</sup> *Naletilić* Trial Judgement, para. 63; *Vasiljević* Trial Judgement, para. 71; *Aleksovski* Appeal Judgement, para. 162; *Kunarac* Trial Judgement, para. 392.

<sup>307</sup> *Kvočka* Trial Judgement, para. 262.

<sup>308</sup> As noted in the *Furundžija* Trial Judgement, the “supporter must be of a certain status for this to be sufficient criminal responsibility.” (para. 209) See also para. 65 in *Aleksovski* Trial Judgement.

<sup>309</sup> *Aleksovski* Trial Judgement, para. 87.

<sup>310</sup> The Appeals Chamber in *Čelebići* held that for a finding of aiding and abetting, the Prosecution needs to establish that the accused’s assistance to the principal must have had a substantial effect on the commission of the crime. (para. 364) The Appeals Chamber found that the participation of an accused in the classification and releasing of prisoners, where he had no authority to do so, may not be sufficient to establish a degree of participation sufficient to constitute a substantial effect on the continuing detention of persons (as aiding and abetting). The fact that an accused publicly justified and defended the purpose of the camps may also not be regarded as adequate to support a finding of aiding and abetting. (*Čelebići* Appeal Judgement, paras 357-359)

<sup>311</sup> *Naletilić* Trial Judgement, para. 63; *Kvočka* Trial Judgement, para. 257; *Krnojelac* Trial Judgement, para. 89; *Kunarac* Trial Judgement, para. 393; *Aleksovski* Trial Judgement, para. 64; *Čelebići* Trial Judgement, para. 327; *Tadić* Trial Judgement, para. 689.

## VIII. BACKGROUND ON EVENTS LEADING TO THE “FORCIBLE TAKEOVER ON 17 APRIL 1992”

### 1. Developments leading to the break-up of the Former Yugoslavia

166. In early 1990, the ruling Federal League of Communists of Yugoslavia to all intent and purpose had collapsed and nationalist political parties emerged in a contest for power at the Republican level. On 18 November 1990 elections were held in Bosnia and Herzegovina.<sup>312</sup> Most of the seats in the Assembly were won by three political parties associating themselves with the interests of the three major ethnic groups - the Croatian Democratic Party (HDZ) associated with ethnic Croats, the SDS associated with ethnic Serbs, and the Party of Democratic Action (SDA) associated with Muslims.<sup>313</sup> In accordance with an inter-party pre-election agreement, the three national parties divided among themselves the key offices in the State administration.<sup>314</sup>

167. From the first sessions of the Assembly, however, severe disagreements began to develop between the SDS on one hand, and the HDZ and the SDA on the other.<sup>315</sup> While the HDZ and the SDA began to endorse more pro-secessionist positions, the SDS took the opposite stance.<sup>316</sup> The division was exacerbated by declarations of independence by both Croatia and Slovenia on 25 June 1991 and the protracted war in Croatia. On 15 October 1991, after heated debates, the Bosnian Assembly, by a majority of the SDA and the HDZ votes, adopted a resolution proclaiming the sovereignty of Bosnia and Herzegovina. The SDS delegates withdrew from the Assembly in reaction to being outvoted.<sup>317</sup>

168. On 24 October 1991, SDS delegates met separately and established the National Assembly of the Serbian People in Bosnia and Herzegovina.<sup>318</sup> In November 1991 the SDS organized a referendum of Bosnian Serbs on the issue of whether Bosnia and Herzegovina should remain part of Yugoslavia. The majority of the Bosnian Serb population voted against independence.<sup>319</sup>

169. On 19 December 1991 the Main Board of the SDS in Bosnia and Herzegovina issued “Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina under Extraordinary Circumstances” (also known as “Variant A and B”) to all SDS

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<sup>312</sup> Agreed Facts, para. 62; Robert Donia, T. 1061.

<sup>313</sup> Robert Donia, T. 1066. The SDA won 86 seats, the SDS 72 and the HDZ 44 of the total of 240 seats. The remaining 38 seats were divided between eight different political groups, Report on Bosanski Šamac and the Territory of Bosnia and Herzegovina, prepared by Dr. Robert Donia, (Exhibit P1), para. 119.

<sup>314</sup> Robert Donia, T. 1066, Blagoje Simić, T. 12197.

<sup>315</sup> Robert Donia, T. 1067; Božo Ninković, T. 13301.

<sup>316</sup> Robert Donia, T. 1060-70; Branislav Marušić, Rule 92bis Statement, para. 2.

<sup>317</sup> Stanko Pivašević, T. 19686; Božo Ninković, T. 13302; Exhibit P1, paras 143-144.

<sup>318</sup> Exhibit P1, para. 144; Blagoje Simić, T. 12222; Dušan Tanasić, T. 13747.

municipal boards instructing them to form a crisis staff in their respective territories.<sup>320</sup> According to these instructions, the newly established crisis staffs were to seize power in municipalities where the Serbs were in a majority (Variant A) or to form parallel institutions where they were not (Variant B).<sup>321</sup>

170. The Assembly of the Serbian People ratified the results of the Serb plebiscite, and on 9 January 1992, it proclaimed the Serbian Republic of Bosnia and Herzegovina, later named Republika Srpska.<sup>322</sup> The National Assembly of the Serbian People also adopted a recommendation on the establishment of Serbian municipalities.<sup>323</sup>

171. In order to meet the requirements for international recognition of Bosnia and Herzegovina, the Bosnian government scheduled a referendum on independence. The referendum, boycotted by the SDS, took place on 29 February 1992, and resulted in an overwhelming vote for independence.<sup>324</sup> Independence was subsequently declared on 3 March 1992.

172. The European Community recognised the independence of Bosnia and Herzegovina on 6 April 1992, followed by the United States on 7 April.<sup>325</sup> On 7 April 1992 the Serbian Assembly declared the Serbian Republic of Bosnia and Herzegovina to be an independent state. These events coincided with the commencement of military operations in Sarajevo and elsewhere in Bosnia and Herzegovina.<sup>326</sup>

173. The parties agree that “[a]t all times relevant” to the Amended Indictment, a state of armed conflict existed in the Republic of Bosnia and Herzegovina.<sup>327</sup> The existence of an armed conflict is relevant to the charges under Article 5 of the Statute.

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<sup>319</sup> Blagoje Simić, T. 12222; Dušan Tanasić, T. 13747; Božo Ninković, T. 13303; Exhibit P1, para. 144.

<sup>320</sup> Exhibit P3; Exhibit P1, para. 152.

<sup>321</sup> Exhibit P1, para. 152; Radovan Karadžić, in a statement made at the 50<sup>th</sup> session of the National Assembly of Republika Srpska on 15 and 16 May 1995 (Exhibit P46/11) referred to Variant A and B thus: “In the municipalities where we were in the minority, we set up secret government, municipal boards, municipal assemblies, presidents of executive boards. You will remember, the A and B variants. In the B variant, where we were in the minority – 20%, 15% - we had set up a government and a brigade, a unit, no matter what size, but there was a detachment with a commander....”, p. 2.

<sup>322</sup> Exhibit P1, para. 148; Blagoje Simić, T. 12223.

<sup>323</sup> Stanko Pivašević, T. 19688.

<sup>324</sup> Exhibit P1, para. 151; Stanko Pivašević, T. 19719.

<sup>325</sup> Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 25 March 1999, p. 5.

<sup>326</sup> Exhibit P1, para. 159 – “Instructions for the Organization and Activity of Organs of the Serbian People in Bosnia and Herzegovina under Extraordinary Circumstances”.

<sup>327</sup> Agreed facts, para. 80.

## 2. Geographic location of Bosanski Šamac

174. The Municipality of Bosanski Šamac is located in the north eastern part of the then Republic of Bosnia and Herzegovina. Situated on the banks of the Bosna and the Sava Rivers, on the border between Bosnia and Croatia, the town of Bosanski Šamac was an important commercial centre in an industrial region that contained ports, oil refineries and duty-free zones. The bridge over the Sava River was vital for the exchange of goods and services between Croatia and Bosnia and Herzegovina.<sup>328</sup> The Municipality of Odžak is similarly located, immediately to the west of Bosanski Šamac, on the Sava River and on the border with Croatia.

175. The town of Bosanski Šamac was of strategic importance for the conduct of military operations. The Municipality formed part of the so-called Posavina Corridor, a narrow strip of flat land along the Sava River connecting the Serb-controlled areas within Croatia to the Bosnian Serb territories and the Republic of Serbia.<sup>329</sup> The Corridor was the easiest and shortest way to establish a ground route between the Serb-controlled areas within Croatia to the west (Republika Srpska Krajina), and Serbia to the east.<sup>330</sup> The Municipalities comprising the Posavina Corridor were inhabited by a population of mixed ethnic background, the Croats and the Muslims together forming a majority of the population.<sup>331</sup> According to the 1991 census, the Municipality of Bosanski Šamac was an ethnically diverse community of 32,960 people; Serb (41.3%), Croat (44.7%), Muslim (6.8%), Others (7.2%).<sup>332</sup>

## 3. Developments in the Bosanski Šamac Municipality prior to the takeover

### (a) Political developments

176. The political situation in Bosanski Šamac in the period 1990 to 1992 was a reflection, at the local level, of the general political situation in Bosnia and Herzegovina. In the elections of 1990, the national parties won the majority of the 50 seats at the Municipal Assembly, the HDZ being the leading party, followed by the SDS, the SDP, and the SDA.<sup>333</sup> Similar to the practice at the Republican level, the parties shared power in accordance with the results from the elections.<sup>334</sup>

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<sup>328</sup> Exhibit P1, para. 168; Sulejman Tihić, T. 1249.

<sup>329</sup> Exhibit P1, para. 171.

<sup>330</sup> T. 1102.

<sup>331</sup> Exhibit P1, paras 172-174.

<sup>332</sup> Exhibit P133, Changes in the ethnic composition of Bosanski Šamac and Odžak, Table 3. Paragraph 28 of the Amended Indictment states that before the armed conflict, the Municipality of Bosanski Šamac was inhabited by about 33,000 people, almost 17,000 of which were Bosnian Muslims and Croats. The Defence does not challenge these figures, see Tadić Final Brief, para. 645.

<sup>333</sup> Sulejman Tihić, T. 1243.

<sup>334</sup> Izet Izetbegović, T. 2143-44.

177. As part of the Serb referendum of November 1991, the vast majority of Serbs participated in a referendum held in Bosanski Šamac.<sup>335</sup> The People's Assembly of the Serb People recommended the establishment of Serbian municipalities, following which meetings were held in all local Serb communes in the area, where residents were asked to vote on whether they supported the creation of Serbian municipalities in the Serb areas. On the basis of such voting, representatives of the local communes established the Serb Municipality of Bosanski Šamac and Pelagićevo in formation.<sup>336</sup>

178. The SDA formed a Security Safety Commission in Bosanski Šamac in late 1991, which was referred to as a Crisis Staff.<sup>337</sup> The Commission had three members, held public sessions and Alija Fitozović was the President.<sup>338</sup> Prosecution witnesses testified that the intentions of the Commission were to monitor security issues and the situation in Croatia, investigate incidents of ethnic-related conflicts and to protect property.<sup>339</sup>

179. The creation of the Croatian Community of Bosanska Posavina at the end of 1991, and the Serbian municipality of Šamac and Pelagićevo on 29 February 1992, added to political polarisation on an ethnic basis.<sup>340</sup> Defence witnesses also testified that the integrity of the local administration was damaged by the violation of the inter-party agreement (the basis for multi-ethnic government) by Muslim and Croats on at least two occasions, and the resulting constitutional crisis.<sup>341</sup>

180. During the period prior to the takeover many meetings were held to discuss the increase of tensions. Meetings between representatives of the SDA, HDZ, and SDS, and of the military occurred prior to 17 April 1992. The purpose of these meetings was to resolve current issues, in particular those concerning incidents with patrols and checkpoints.<sup>342</sup>

181. Ibrahim Salkić testified that a rally for peace was held in Bosanski Šamac a few days before the conflict started.<sup>343</sup> Simo Zarić spoke at the rally, asserting that the 4<sup>th</sup> Detachment would defend Šamac from Serbs and Croats and appealed to citizens to stay in town and make all efforts to avert a civil war.<sup>344</sup>

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<sup>335</sup> Stanko Pivašević, T. 19687.

<sup>336</sup> Blagoje Simić, T. 12225.

<sup>337</sup> Sulejman Tihčić, T. 3872-74; Izet Izetbegović, T. 2397-98; Alija Fitozović testified that the Commission for Security was established in September 1991, T. 8542-43, and that there was a SDA Crisis Staff in April 1992, T. 8477-78.

<sup>338</sup> Alija Fitozović, T. 8383-84; Sulejman Tihčić, T. 3692-93, T. 3817-20, T. 3872-75.

<sup>339</sup> Izet Izetbegović, T. 2417; Alija Fitozović, T. 8384.

<sup>340</sup> Blagoje Simić, T. 12216-17, T. 12283-84; Čedomir Simić, Rule 92bis Statement, para. 4; Aleksandar Janković, Rule 92bis Statement, para. 5; Simo Jovanović, Rule 92bis Statement, para. 2; Witness DW 1/3, T. 14871; Simo Zarić, T. 19113-14, T. 19155.

<sup>341</sup> T. 12198-202; Blagoje Simić, T. 12211; Aleksandar Janković, Rule 92bis Statement, para. 8.

<sup>342</sup> Witness N, T. 6036; Dragan Delić, T. 6629-34, T. 6747, T. 6750.

<sup>343</sup> Ibrahim Salkić, T. 3199-200, T. 3221; Witness K, T. 4791-92.

<sup>344</sup> Ibrahim Salkić, T. 4401; Hašim Foćaković, Rule 92bis Statement, para. 15; Fatima Zarić, Rule 92bis Statement, para. 16.

(b) Atmosphere of increasing tension

182. Witnesses for both the Prosecution and Defence testified to the escalation of tensions in Bosanski Šamac in the months prior to the takeover, starting in autumn 1991.

183. Prosecution and Defence witnesses testified to the increase of shootings, grenade explosions, sabotage and violence in Bosanski Šamac. However Prosecution witnesses emphasised that Bosnian Muslim and Croat property was the target of much of the violence, whilst Defence witnesses asserted that sabotage was conducted against public and private property.<sup>345</sup> Many witnesses testified that the Bridge over the Sava River was mined,<sup>346</sup> power lines were cut,<sup>347</sup> the kiosk of Grga Zubak, a Croat, was mined,<sup>348</sup> and the weekend house of Hasan and Mirsada Čeribasić was torched.<sup>349</sup> Simo Zarić referred to Šamac as “a little Beirut”, because of the almost daily sabotage and terrorist actions of all sorts.<sup>350</sup> These incidents led to suspicion and blame on all sides as to the responsibility for the attacks.<sup>351</sup>

184. In autumn 1991 and March 1992 Croatian paramilitaries attacked JNA barracks and garrisons in areas around Bosanski Šamac.<sup>352</sup> On another occasion two JNA officers had their weapons removed at the Grebnice checkpoint by the Croatian National Guard.<sup>353</sup>

185. On 27 January 1992, a Serb orthodox chapel was mined.<sup>354</sup>

186. On 14 February 1992, two young Muslim men were killed when they accidentally detonated a grenade in Café Valentino. The situation was volatile as Serbs from the JNA, or the 4<sup>th</sup>

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<sup>345</sup> Sulejman Tihić, T. 1338-40, T. 3680-83; Dragan Lukač, T. 1584-88; Izet Izetbegović, T. 2186-87; Ibrahim Salkić, T. 3524-27; Dragan Delić, T. 6808-09; Witness N, T. 6031-32; Alija Fitozović, T. 8444, T. 8867; Stevan Todorović, T. 9068; Witness O, Rule 92bis Statement, para. 11; Miroslav Tadić, T. 15169; Simo Zarić, T. 19068-74; Džemal Jasenica, Rule 92bis Statement, para. 15; Petar Karlović, Rule 92bis Statement, para. 18; Mirko Pavić, Rule 92bis Statement, para. 8; Fadil Topčagić, Rule 92bis Statement, paras 14, 20-21; Fatima Zarić, Rule 92bis Statement, para. 12 and T. 15169; Witness DW 2/3, T. 14429; Maksim Simeunović, T. 15855; Exhibit P21, a communication sent by the 2<sup>nd</sup> Military District Command of the JNA to the Operational Centre of the General Staff in Belgrade on 17 April, refers to “numerous incidents and excesses along inter-ethnic lines” before the attack in Bosanski Šamac.

<sup>346</sup> Sulejman Tihić, T. 1338; Dragan Lukač, T. 1584-85; Witness K, T. 4766-70; Witness N, T. 6031-32; Stevan Todorović, T. 9069; Osman Jašarević, T. 10650.

<sup>347</sup> Sulejman Tihić, T. 1338; Dragan Lukač, T. 1584-85; Muhamed Bičić, T. 3048; Witness K, T. 4766-70; Witness N, T. 6031-32; Alija Fitozović, T. 8444.

<sup>348</sup> Sulejman Tihić, T. 3680-84; Dragan Lukač, T. 1586; Witness K, T. 4766-70; Alija Fitozović, T. 8444; Witness A, Rule 92bis Statement, paras 18-19; Witness O, Rule 92bis Statement, para. 11.

<sup>349</sup> Sulejman Tihić, T. 1338; Izet Izetbegović, T. 2186-87, Witness L, T. 4249-57, T. 4371; Witness O, Rule 92bis Statement, para. 11.

<sup>350</sup> T. 19065-66.

<sup>351</sup> Sulejman Tihić, T. 1340; Dragan Lukač, T. 1586; Stevan Todorović, T. 9069-77; Fadil Topčagić, Rule 92bis Statement paras. 15-16.

<sup>352</sup> Simo Zarić, T. 19112-13.

<sup>353</sup> Maksim Simeunović, T. 15852-53; Stevan Nikolić, Rule 92bis Statement, para. 22; Kosta Simić, T. 16935-36; see also Dušan Gavrić, T. 17297; Džemal Jasenica, Rule 92bis Statement, para. 15.

<sup>354</sup> Sulejman Tihić, T. 3680-84; Dragan Lukač, T. 1864; Witness K, T. 4766-70; Stevan Todorović, T. 9075-76; Simo Zarić, T. 19073-74; Witness DW 2/3, T. 14427, T. 14429; Fadil Topčagić, Rule 92bis Statement, para. 19.

Detachment, or Croats from Orašje, “Ustashas”, were initially blamed. People from Bosanski Šamac gathered at the police station and then rallied at a local cinema the following day. The atmosphere at the rally was highly charged. Sulejman Tihić, president of the local branch of the SDA, and Simo Zarić spoke at the rally.<sup>355</sup>

187. These tensions were exacerbated by the war underway in neighbouring Croatia.<sup>356</sup> Citizens of Bosanski Šamac could hear explosions, battles and the movement of tanks, units and military vehicles in the surrounding area.<sup>357</sup> Stanko Bojić testified that the town was abuzz with talk of the imminent attack.<sup>358</sup>

188. Defence witnesses testified that in late 1991 prisoner exchanges between Croatia and Bosnia and herzegovina were conducted largely through Bosanski Šamac.<sup>359</sup> Refugees of all ethnicities arrived in Bosanski Šamac as a result of the war in neighbouring Croatia.<sup>360</sup>

189. All these incidents jeopardised the security situation and contributed to political instability and polarisation in the territory of Posavina and across Bosnia and herzegovina.<sup>361</sup> Defence witnesses submitted that the situation in Bosanski Šamac was tense and that ordinary people were mostly very scared, insecure and frightened of war and bloodshed.<sup>362</sup>

190. According to Defence witnesses a gradual separation and segregation started to set in where, for example, Muslims and Croats would each group together according to ethnic or national affiliations in cafes, schools, enterprises, sporting events and each group increasingly supported its own national party.<sup>363</sup>

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<sup>355</sup> Sulejman Tihić, T. 3680-84; Dragan Lukač, T. 1853-54; Muhamed Bičić, T. 3049; Ibrahim Salkić, T. 3524-25; Witness N, T. 6301-04; Jelena Kapetanović, T. 10357-58; Osman Jašarević, Rule 92bis Statement, paras 25-26, T. 10495-97; Hasan Subašić, T. 10930; Ediba Bobić, T. 11248, T. 11306-10; Vladimir Šarkanović, T. 16497; Jovo Savić, T. 17010-12; Hašim Foćaković, Rule 92bis Statement, para. 16.

<sup>356</sup> Sulejman Tihić, T. 1343; Hasan Bičić, T. 2617, Snjezana Delić, T. 6387-88; Kemal Mehinović, T. 7386, T. 7629; Witness C, T. 7951-52; Alija Fitozović, T. 8365, T. 8444; Osman Jašarević, Rule 92bis Statement, para. 19; Stevan Todorović, T. 9669-72; Witness O, Rule 92bis Statement, paras 5, 10.

<sup>357</sup> Blagoje Simić, T. 12187-89; Simeon Simić, T. 12989; Stanko Dujković, Depositions T. 287; Miroslav Tadić, T. 15186.

<sup>358</sup> Stanko Bojić, Rule 92bis Statement, para. 10; see also Sulejman Tihić, T. 1342; Hasan Bičić, T. 2631. Muhamed Bičić, T. 3069-70; Mithat Ibralić, Rule 92bis Statement, para. 6; Miroslav Tadić, Rule 92bis Statement, para. 7, T. 15173; Djordje Tubaković, Rule 92bis Statement, para. 5.

<sup>359</sup> Blagoje Simić, T. 12187-89; Miroslav Tadić, T. 15140, T. 15172; Velimir Maslić, T. 14123-24.

<sup>360</sup> Blagoje Simić, T. 12187-89, T. 12212; Simeon Simić, T. 12968; Nedžvija Avdić, Rule 92bis Statement, para. 4; Miroslav Tadić, T. 15172-3; Djordje Tubaković, Rule 92bis Statement, para. 5; Milka Petković, Rule 92bis Statement, para. 6.

<sup>361</sup> Ibrahim Salkić, T. 3527; Simo Zarić, T. 19065-66.

<sup>362</sup> Pelka Andrić, Rule 92bis Statement, para. 2; Vladimir Šarkanović, T. 16487; Djordje Tubaković, Rule 92bis Statement, para. 5; Milka Petković, Rule 92bis Statement, para. 6; Hasan Pištoljević, Rule 92bis Statement, para. 2; Stanko Bojić, Rule 92bis Statement, para. 10; Witness DW 8/3, Rule 92bis Statement, para. 2.

<sup>363</sup> Veselin Blagojević, T. 13950; Nedžvija Avdić, Rule 92bis Statement, para. 2; Mijo Babić, Rule 92bis Statement, para. 2; Mithat Ibralić, Rule 92bis Statement, para. 4; Aleksandar Janković, Rule 92bis Statement, para. 3; Jovo Lakić, Rule 92bis Statement, para. 2; Amir Nukić, Rule 92bis Statement, para. 5; Dario Radić, T. 15059; Ljubomir Vuković,



191. Blagoje Simić characterised the polarisation as a divide between those who thought that Yugoslavia should collapse, and the “patriotic side” who believed that Yugoslavia should remain united.<sup>364</sup> Others felt that peoples’ political views and the ethnic tensions stemmed directly from their belonging to a particular ethnic group.<sup>365</sup>

192. Defence witnesses also attributed the increase in ethnic tensions to the work of political parties and extremists from all ethnic groups who used negative or pejorative symbolism associated with past ethnic conflict. Rivalries increased between the three ethnic groups, culminating in a provocative display of nationalist flags, symbols and songs.<sup>366</sup> Miroslav Tadić testified that “the propaganda itself was worse than war”, and that the press played a major role in spreading fear and escalating tensions.<sup>367</sup>

193. Witnesses for both the Prosecution and the Defence testified that a substantial number of residents of Bosanski Šamac were evacuating themselves and their families in the period prior to the takeover. Although some claimed that it was mostly Serbs and Croats who did this, witnesses testified that Muslims were also leaving town where possible.<sup>368</sup> Defence evidence tended to show that it was members of all ethnic groups who left Bosanski Šamac in the year prior to the conflict.<sup>369</sup>

(c) Military preparations in Bosanski Šamac

(i) Establishment of the 4<sup>th</sup> Detachment

194. The 4<sup>th</sup> Detachment was established by an order of Lt. Col. Stevan Nikolić, Commander of the 17<sup>th</sup> Tactical Group, on 5 January 1992, following the issuing of mobilisation summonses by the

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T. 14564; Mladen Borbeli, T. 14700; Velimir Maslić, T. 14125-26; Witness DW 2/3, T. 14428; Vladimir Šarkanović, T. 16492-93; Jovo Savić, T. 17010-11; Petar Karlović, Rule 92bis Statement, para. 9; Ljubomir Vuković, T. 14569-70; Stanko Bojić, Rule 92bis Statement, para. 6.

<sup>364</sup> T. 12218.

<sup>365</sup> Božo Ninković, T. 13314-15.

<sup>366</sup> Veselin Blagojević, T. 13949; Nedžvija Avdić, Rule 92bis Statement, para. 2; Čedomir Simić, Rule 92bis Statement, para. 3; Simo Jovanović, Rule 92bis Statement, para. 2; Jovo Lakić, Rule 92bis Statement, para. 2; Amir Nukić, Rule 92bis Statement, para. 2; Simo Zarić, T. 19138-40; Savo Popović, T. 16226.

<sup>367</sup> Miroslav Tadić, T. 15166.

<sup>368</sup> Sulejman Tihić, T. 1342; Dragan Lukač, T. 1932; Izet Izetbegović, T. 2485, T. 2592; Muhamed Bičić, T. 3069-70; Witness G, T. 4040-41, T. 4126-27; Safet Dagović, T. 7313; Jelena Kapetanović, T. 8890; Izet Izetbegović, T. 2485; Hasan Bičić, T. 2631; Muhamed Bičić, T. 2926, T. 3069-70.; Esad Dagović, T. 5864-67; Witness G, T. 4128; Witness K, T. 4589-90, Witness P, T. 11631, T. 11634; Osman Jašarević, Rule 92bis Statement, para. 31; Witness Q, T. 11837-44; Čedomir Simić, Rule 92bis Statement, para. 5; see also Mladen Borbeli, T. 14702; Aleksandar Janković, Rule 92bis Statement, para. 7; Kosta Simić, T. 16936; Džemal Jasenica, Rule 92bis Statement, para. 16.

<sup>369</sup> Milka Petković, Rule 92bis Statement, para. 6; Ljubomir Čordašević, Depositions T. 370; Simo Jovanović, Rule 92bis Statement, para. 3; Mladen Borbeli, T. 14702; Ljubomir Vuković, T. 14574; Velimir Maslić, T. 14140; Witness DW 2/3, T. 14432-33; Simeon Simić, T. 13102.

Secretariat for National Defence.<sup>370</sup> The 4<sup>th</sup> Detachment was part of the JNA's 17<sup>th</sup> Tactical Group.<sup>371</sup>

195. Two meetings were held at the Mitar Trifunović Memorial Centre prior to establishment of the 4<sup>th</sup> Detachment, in or around December 1991.<sup>372</sup> Prosecution and Defence witnesses testified that all reserve officers were invited to attend the meetings, and that those who attended were invited to join the 4<sup>th</sup> Detachment, regardless of ethnicity.<sup>373</sup>

196. Radovan Antić became the Commander of the 4<sup>th</sup> Detachment,<sup>374</sup> and Jovo Savić, the Assistant Commander.<sup>375</sup> Commander Antić testified that all Detachment Commanders were exclusively subordinated to the Commander of the 17<sup>th</sup> Tactical Group.<sup>376</sup> The Commander of the 4<sup>th</sup> Detachment could not independently engage the Detachment or part thereof without an order from the Commander of the 17<sup>th</sup> Tactical Group.<sup>377</sup>

197. Simo Zarić became the Assistant Commander for Intelligence and Security also known as Assistant Commander for Security and Information Affairs and for Information and Morale.<sup>378</sup> He was subordinated to Commander Antić, and also to the Chief of Intelligence and Security for the

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<sup>370</sup> Tadić Prosecution Interview I, p. 17; Simo Zarić, T. 19055; Stevan Nikolić, Rule 92*bis* Statement, para. 14; see also Radovan Antić, T. 16999-700; Witness DW 2/3, T. 14436, T. 14499; Teodor Tutnjević, T. 17406; Džemal Jasenica, Rule 92*bis* Statement, para. 6; Đjuro Prgomet, Rule 92*bis* Statement, para. 6; Stanko Bojić, Rule 92*bis* Statement, para. 10; Mustafa Omeranović, T. 18123; Vladimir Šarkanović, T. 16488; Petar Karlović, Rule 92*bis* Statement, para. 10; Sulejman Tihic, T. 3678; Dragan Lukač, T. 1893; Ibrahim Salkić, T. 3197; Witness L, T. 4292, T. 4489; Safet Dagović, T. 7283.

<sup>371</sup> Sulejman Tihic, T. 3680, T. 3900-01; Dragan Lukač, T. 1555; Izet Izetbegović, T. 2461; Witness N, T. 6324-25; Osman Jašarević, Rule 92*bis* Statement, para. 14; Simo Zarić, T. 19193; Fadil Topčagić, Rule 92*bis* Statement, para. 5; Vladimir Šarkanović, T. 16490; Džemal Jasenica, Rule 92*bis* Statement, para. 8; Petar Karlović, Rule 92*bis* Statement, para. 10; Mihajlo Topolovac, Rule 92*bis* Statement, para. 8; see also Mladen Borbeli, T. 14703; Aleksandar Janković, Rule 92*bis* Statement, para. 9.

<sup>372</sup> Alija Fitozović, T. 8412; Simo Zarić, T.19045-46, T. 19054; Marko Kurešević, Rule 92*bis* Statement, para. 7; Teodor Tutnjević, T. 17410; Vladimir Šarkanović, T. 16491; Stevan Nikolić, Rule 92*bis* Statement, para. 15, T. 18493; Jovo Savić, T. 16993-94; Petar Karlović, Rule 92*bis* Statement, para. 13.

<sup>373</sup> Alija Fitozović, T. 8412, T. 8598-99; Radovan Antić, T. 16696, T. 16999-700; Simo Zarić, T. 19045-46, T. 19050-54; Stevan Nikolić, Rule 92*bis* Statement, para. 15; Jovo Savić, T. 16993-95, T. 16996-97; Vladimir Šarkanović, T. 16491; Marko Kurešević, Rule 92*bis* Statement, para. 7; Petar Karlović, Rule 92*bis* Statement, para. 13; Džemal Jasenica, Rule 92*bis* Statement, para. 10.

<sup>374</sup> Ljubomir Vuković, T. 14573; Mladen Borbeli, T. 14704; Velimir Maslić, T. 14132; Witness DW 2/3, T. 14436-37; Mihajlo Tovirac, Depositions T. 45; Goran Buzaković, T. 17680; Mustafa Omeranović, T. 18123; Stevan Arandjić, Depositions T. 165; Džemal Jasenica, Rule 92*bis* Statement, para. 7; Petar Karlović, Rule 92*bis* Statement, para. 15; Fadil Topčagić, Rule 92*bis* Statement, para. 9; Radovan Antić, T. 16699-700; Mihajlo Topolovac, Rule 92*bis* Statement, para. 7; Stevan Nikolić, T. 18508; Jovo Savić, T. 16999; Miroslav Tadić, T. 15541.

<sup>375</sup> Nusret Hadžijusufović, T. 6981; Jelena Kapetanović, T. 10359-60; Ljubomir Vuković T. 14573, Stevan Arandjić Page 165, Džemal Jasenica, Rule 92*bis* Statement para. 7; Petar Karlović Rule 92*bis* Statement, para. 15; Fadil Topčagić Rule 92*bis* Statement para. 9; Radovan Antić, T. 1699-700; Mihajlo Topolovac, Rule 92*bis* Statement para. 7; Simo Zarić, T.19056; Jovo Savić, T. 16999; Miroslav Tadić, T. 15541.

<sup>376</sup> Radovan Antić, T. 16702.

<sup>377</sup> Maksim Simeunović, T. 15828; Radovan Antić T. 16702-03

<sup>378</sup> Witness DW 2/3, T.14436-37; Stevan Arandjić, Deposition T. 165; Petar Karlović Rule 92*bis* Statement para. 15; Fadil Topčagić Rule 92*bis* Statement para. 9; Simo Zarić, T.19055; Simo Zarić, T.19056; Jovo Savić, T. 16999; Miroslav Tadić, T. 15543-4; Radovan Antić, T. 16701; Đjuro Prgomet, Rule 92*bis* Statement, para 6; Teodor Tutnjević, T. 17449; Džemal Jasenica, Rule 92*bis* Statement, para. 7; Stevan Todorović, T. 9038-39.

17<sup>th</sup> Tactical Group, Maksim Simeunović.<sup>379</sup> He gathered intelligence and submitted both written and oral reports to Maksim Simeunović.<sup>380</sup> Simo Zarić gave any intelligence he considered vital to the 4<sup>th</sup> Detachment directly to Commander Antić.<sup>381</sup>

198. Miroslav Tadić was the Assistant Commander for Logistics for the Rear, also known as the Deputy Commander for Logistics.<sup>382</sup> He was replaced some ten days after the war broke out by Mihajlo Tovirac.<sup>383</sup>

199. Miroslav Tadić testified that prior to 17 April 1992 he had no duties in the 4<sup>th</sup> Detachment.<sup>384</sup> Although he was officially in charge of logistics, the 4<sup>th</sup> Detachment had no warehouse, and as such the logistics unit of the 17<sup>th</sup> Tactical Group serviced the 4<sup>th</sup> Detachment.<sup>385</sup> As a result, Miroslav Tadić did not supply the 4<sup>th</sup> Detachment with weapons, ammunition, food or clothing.<sup>386</sup>

200. There were around 450 soldiers in the 4<sup>th</sup> Detachment.<sup>387</sup> Defence witnesses testified that the members of the 4<sup>th</sup> Detachment were drawn from the local population of Bosanski Šamac and the surrounding villages.<sup>388</sup>

201. Prosecution and Defence witnesses testified that the 4<sup>th</sup> Detachment was a multi-ethnic unit, but composed mostly of Serbs from Bosanski Šamac.<sup>389</sup> The Secretariat for National Defence in Šamac mobilised the reserve forces using a list of all people eligible for military service that was

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<sup>379</sup> Simo Zarić, T.19058-59.

<sup>380</sup> Simo Zarić, T. 19057-59; Radovan Antić, T. 16704.

<sup>381</sup> Simo Zarić, T.19057-59; Maksim Simeunović testified that Simo Zarić was not obliged to convey to the Detachment Commander all the information he had, but was obliged to send all his information to the Chief of Intelligence and Security of the 17<sup>th</sup> Tactical Group, T. 15829-30. Simo Zarić testified that although Simeunović was under no obligation to give Simo Zarić feedback on the reports he submitted, he might discuss some significant intelligence, or assign a new task that stemmed from his intelligence, T.19059.

<sup>382</sup> Witness DW 2/3, T. 14436-37; Stevan Arandjić, Deposition T. 165; Petar Karlović Rule 92*bis* Statement, para. 15; Fadil Topčagić, Rule 92*bis* Statement, para. 9; Fatima Zarić, Rule 92*bis* Statement, para. 11; Simo Zarić, T. 19056, T.19200; Jovo Savić, T. 16999; Radovan Antić, T. 16701; Miroslav Tadić, T. 15543-44; Džemal Jasenica, Rule 92*bis* Statement, para. 7.

<sup>383</sup> Mihajlo Tovirac, Deposition T. 45.

<sup>384</sup> Miroslav Tadić, T. 15595.

<sup>385</sup> Miroslav Tadić, T. 15551.

<sup>386</sup> Miroslav Tadić, T. 15546.

<sup>387</sup> Sulejman Tihić, T. 3711; Alija Fitozović, T. 8605; Osman Jasarević, Rule 92*bis* Statement, para. 15; Miroslav Tadić, T. 15587; Radovan Antić, T. 16785; Simo Zarić, T. 19089.

<sup>388</sup> Mihajlo Tovirac, Deposition T. 50-51; Stanko Bojić, T. 17981-82; Stevan Arandjić, Deposition T. 164-65; Maksim Simeunović, T. 15822; Mihajlo Topolovac, Rule 92*bis* Statement, para. 8; Džemal Jasenica, Rule 92*bis* Statement, para 7.

<sup>389</sup> Sulejman Tihić, T. 3711; Dragan Lukač, T. 1559-60; Izet Izetbegović, T. 2190; Ibrahim Salkić, T. 3199; Witness N, T. 6325; Safet Dagović, T. 7290; Miroslav Tadić, T. 15185; Stevan Nikolić, Rule 92*bis* Statement, para. 11; Simeon Simić, T. 12078; Simo Jovanović, T. 18963; Slobodan Sjenčić, Deposition T. 283; Velimir Maslić, T. 14131; Dario Radić, T. 15086; Ljubomir Vuković, T. 14573; Marko Kurešević, Rule 92*bis* Statement, para. 5; Goran Buzaković, T. 17670-71; Maksim Simeunović, T. 15821; Fatima Zarić, Rule 92*bis* Statement, para. 11; Mihajlo Topolovac, Rule 92*bis* Statement, para. 8; Vladimir Šarkanović, T. 16489; Petar Karlović, Rule 92*bis* Statement, para. 14; Đjuro

not ethnically based.<sup>390</sup> According to Simo Zarić, immediately before the outbreak of war there were 154 Muslims in the 4<sup>th</sup> Detachment, 44 Croats and 250 Serbs.<sup>391</sup>

202. Members of the 4<sup>th</sup> Detachment often gathered at Café AS, owned by Miroslav Tadić. The 4<sup>th</sup> Detachment's headquarters were located in the textile, or Šit factory, across the street from Café AS.<sup>392</sup>

203. The area of responsibility of the 4<sup>th</sup> Detachment was exclusively the town of Bosanski Šamac.<sup>393</sup> Its stated purpose was the prevention of inter-ethnic conflicts and the spread of war from Croatia.<sup>394</sup> Prosecution and Defence witnesses testified that the 4<sup>th</sup> Detachment's purpose was to defend Bosanski Šamac, its citizens and property.<sup>395</sup> Miroslav Tadić testified that the 4<sup>th</sup> Detachment did not make any plans against a takeover by Croat forces, although for about 15 days prior to 16-17 April there were indications that such a takeover could occur.<sup>396</sup>

204. Sulejman Tihić testified that the 4<sup>th</sup> Detachment patrolled along the embankment of the Bosna and Sava Rivers, to guard against attacks from Croatia.<sup>397</sup> According to Defence witnesses, starting in February 1992, the 4<sup>th</sup> Detachment organised armed patrols, composed of people from each ethnic group.<sup>398</sup> Although they were armed, the patrols were only authorised to observe, collect information and report to the command.<sup>399</sup>

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Prgomet, Rule 92bis Statement, para 9; Fadil Topčagić, Rule 92bis Statement, para. 7; Radovan Antić, T. 16702; T. 18231; Simo Zarić, T. 19088-89; Teodor Tutnjević, T.17411, Jovo Savić, T. 17002.

<sup>390</sup> Tadić Prosecution Interview I, p. 17; Velimir Maslić, T. 14129; Amir Nukić, Rule 92bis Statement, para. 3; Djordje Tubaković, T. 17941; Stevan Nikolić, Rule 92bis Statement, para. 11; Jovo Savić, T. 16999-700; Simo Zarić, T. 19192.

<sup>391</sup> Simo Zarić, T. 19089.

<sup>392</sup> Hasan Bičić, T. 2850; Esad Dagović, T. 5752; Nusret Hadžijusufović, T. 6859-61; Witness C, T. 7882-84, T. 7899; Alija Fitozović, T. 8435; Jelena Kapetanović, T. 8891-92; Osman Jašarević, Rule 92bis Statement, para. 12; Hasan Subašić, T. 10931. Dragan Lukač, T. 1562, T.1564, T.1894; Sulejman Tihić, T. 3678-79; Witness N, T. 6325; Dragan Delić, T. 6755; Jelena Kapetanović, T. 10380; Miroslav Tadić, T. 15182; Dario Radić, T. 15086; Marko Kurešević, Rule 92bis Statement, para. 4; Velimir Maslić, T. 14131; Witness DW 2/3, T. 14436; Mihajlo Tovirac, Deposition T. 45; Stanko Bojić, Rule 92bis Statement, para. 10; Goran Buzaković, T. 17670; Maksim Simeunović, T. 15814; Radovan Antić, T. 16706; Teodor Tutnjević, T. 17406-07; Vladimir Šarkanović, T. 16489-90; Džemal Jasenica, Rule 92bis Statement, para. 9; Fadil Topčagić, T. 18323; Simo Zarić, T. 19198; Jovo Savić, T. 17002.

<sup>393</sup> Jelena Kapetanović, T. 10359-60; Alija Fitozović, T. 8601-03; Miroslav Tadić, T. 15182-83; Fadil Topčagić, Rule 92bis Statement, para. 10; Radovan Antić, T. 16700.

<sup>394</sup> Dragan Lukač, T. 1565-66, T. 1893-94; Stevan Nikolić, T. 18494, T. 18530; Vladimir Šarkanović, T. 16492; Džemal Jasenica, Rule 92bis Statement, para 10; Petar Karlović, Rule 92bis Statement, para. 12; Đjuro Prgomet, Rule 92bis Statement, para. 8; Radovan Antić, T. 16821; Marko Kurešević, T. 17866-67; Miroslav Tadić, T. 15185-86.

<sup>395</sup> Ibrahim Salkić, T. 3197; Dragan Delić, T. 6634; Osman Jašarević, T. 10488; Hasan Subašić, T. 10931-32; Marko Kurešević, Rule 92bis Statement, para. 2, T. 17866-67; Ivan Cukić, Deposition T. 18-19; Fatima Zarić, Rule 92bis Statement, para. 13; Radovan Antić, T. 16822-3.

<sup>396</sup> Miroslav Tadić, T. 15613-4.

<sup>397</sup> Sulejman Tihić, T. 1332. See also Radovan Antić, T. 16732; Džemal Jasenica, Rule 92bis Statement, para. 9

<sup>398</sup> Radovan Antić T. 16734, T.16824, T.16911-12; Jovo Savić, T. 17019-20; Džemal Jasenica, Rule 92bis Statement, para. 9.

<sup>399</sup> Radovan Antić, T. 16734-36, T.16824-25; Simo Zarić, T.19201; Džemal Jasenica, Rule 92bis Statement, para. 9.

205. The establishment of the 4<sup>th</sup> Detachment was public knowledge.<sup>400</sup> Simo Zarić, among others, undertook active publicity of the 4<sup>th</sup> Detachment through appearances on radio programmes and at public gatherings.<sup>401</sup>

206. The SDA and the HDZ did not recognise the 4<sup>th</sup> Detachment or co-operate with it.<sup>402</sup> Sulejman Tihić said that “we condemned the Muslims who joined the 4<sup>th</sup> Detachment, as we did not think it was a good thing and tried to talk ‘them’ out of it”.<sup>403</sup> Defence witnesses testified that Muslim and Croat people were under pressure from political groups not to join the 4<sup>th</sup> Detachment.<sup>404</sup>

(ii) Paramilitaries<sup>405</sup>

207. In or around mid-March 1992 a group of local Serb men from Bosanski Šamac were sent for training at a camp near Ilok, in Western Slavonia geographically in Croatia, but under the control of Serbia, close to the border with Serbia.<sup>406</sup>

208. According to Stevan Todorović, later Chief of police, he advised Miloš Bogdanović,<sup>407</sup> who was the Chief of the Municipal Section of the Ministry of Defence at that time, and in charge of recruiting trainees to attend the camp, about the selection of appropriate trainees. Stevan Todorović and Mico Ivanović also known as “Mijak”, the Commander of the 1<sup>st</sup> Detachment, recommended 6 to 8 men from the 1<sup>st</sup> Detachment to attend the training.<sup>408</sup>

209. Aleksandar Janković, member of the 1<sup>st</sup> Detachment and trainee at Ilok, testified that at the end of March 1992 a request arrived at the 1<sup>st</sup> Detachment to prepare several soldiers for a brief infantry training course on handling contemporary weapons.<sup>409</sup> Simo Jovanović, another trainee

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<sup>400</sup> Sulejman Tihić, T. 3677-78; Izet Izetbegović, T. 2189; Osman Jašarević, Rule 92bis Statement, paras 15, 17; Witness A, Rule 92bis Statement, para. 38, and T. 10912; Stevan Todorović, T. 9960; Miroslav Tadić, T. 15182-83; Stevan Nikolić, Rule 92bis Statement, paras 15-16; Radovan Antić, T. 16712-13; see also Đjuro Prgomet, Rule 92bis Statement, para. 6; Petar Karlović, Rule 92bis Statement, para. 16; Džemal Jasenica, Rule 92bis Statement, para. 10; Andrija Petrić, T. 17587; Simo Zarić, T. 19063.

<sup>401</sup> Dragan Lukač, T. 1565-66, T. 1893-94; Witness K, T. 4775; Simo Zarić, T. 19063-64; Radovan Antić, T. 16712-14; Džemal Jasenica, Rule 92bis Statement, para 10; Stevan Nikolić, Rule 92bis Statement, para. 16; Andrija Petrić T. 17588; Petar Karlović, Rule 92bis Statement, para. 16.

<sup>402</sup> T. 2192.

<sup>403</sup> T. 3841.

<sup>404</sup> Petar Karlović, Rule 92bis Statement, para. 17; Stevan Arandjić, Depositions T. 187; Fadil Topčagić, Rule 92bis Statement, para. 27; Aleksander Janković, Rule 92bis Statement, para. 6; Maksim Simeunović, T. 15847-48.

<sup>405</sup> Witnesses used a range of terms to refer to paramilitary formations, including Specials, Special Forces, Volunteers, Camouflaged Ones, Multi-coloured, Special Purpose Policemen and Paramilitaries, The Grey Wolves and “Lugar”’s men.

<sup>406</sup> Dušan Tanasić, T. 13767; Aleksandar Janković, Rule 92bis Statement, para. 10. There was some discrepancy in the testimony of witnesses as to how many men were sent for training in Ilok, the figures ranged from 15 to 30 men.

<sup>407</sup> Stevan Todorović testified that Miloš Bogdanović was the Chief of the Municipal Section of the Ministry of Defence at the time and was also a member of the Crisis Staff, T. 9048.

<sup>408</sup> Stevan Todorović, T. 9910, T. 9049.

<sup>409</sup> Aleksandar Janković, Rule 92bis Statement, para. 10.

from the 1<sup>st</sup> Detachment, testified that the training was organised by the JNA command and the Secretariat for National Defence.<sup>410</sup> Miloš Savić, another 1<sup>st</sup> Detachment member who trained at Ilok, testified that those selected to attend the training, were chosen by the company command pursuant to the orders of the 1<sup>st</sup> Detachment of the 17<sup>th</sup> Tactical Group.<sup>411</sup>

210. Lt. Col. Stevan Nikolić testified that there was collusion between Stevan Todorović, Mico Ivanović, and Miloš Bogdanović who issued summonses and arranged the call-up to combat units.<sup>412</sup>

211. Defence witnesses and 1<sup>st</sup> Detachment members Simo Jovanović, Aleksandar Janković and Miloš Savić attended the training for approximately 15 days.<sup>413</sup> The trainees at Ilok were instructed by highly skilled men in camouflage uniforms, members of special units, whom they knew only by their nicknames.<sup>414</sup>

212. Prior to 11 April 1992, Stevan Todorović took orders from Miloš Bogdanović and Mirko Jovanović, President of the Executive Board of the Municipal Assembly in Šamac, to obtain blue berets and the insignia for the berets.<sup>415</sup> Stevan Todorović visited the trainees at Ilok once, at the request of Miloš Bogdanović, when he went to Belgrade to purchase the blue berets for the paramilitaries.<sup>416</sup> Todorović was guided to the location of the training at Ilok by a vehicle that contained a number of people, including a man known as “Frenki” from the Ministry of the Interior of Serbia.<sup>417</sup>

213. On 11 April 1992 paramilitaries arrived in Batkuša in JNA helicopters.<sup>418</sup> Batkuša was within the zone of responsibility of the 1<sup>st</sup> Detachment.<sup>419</sup> Among the group of 50 men, 30 came exclusively from Serbia and the others were people from the Šamac municipality who trained in Ilok.<sup>420</sup>

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<sup>410</sup> Simo Jovanović, Rule 92*bis* Statement, para. 7.

<sup>411</sup> Miloš Savić, Deposition T. 377.

<sup>412</sup> Stevan Nikolić, T. 18505.

<sup>413</sup> Aleksandar Janković, Rule 92*bis* Statement, para. 11; see also Miloš Savić, Deposition T. 378.

<sup>414</sup> Aleksandar Janković, Rule 92*bis* Statement, para. 10; Miloš Savić, Deposition T. 378.

<sup>415</sup> Stevan Todorović, T. 9899. Various types of headgear were allegedly worn by the paramilitaries.

<sup>416</sup> Stevan Todorović visited them when he went to buy the blue berets, in Belgrade. He contacted Prodanić (a man who worked at Ministry of Interior Affairs in Serbia, a contact given to him by Miloš Bogdanović) who directed him to the location of the training, T. 9050-51.

<sup>417</sup> Stevan Todorović, T. 9050-52 (referring to “Simatović” or “Stomatović”). T. 9056 refers to “Simatović”.

<sup>418</sup> Sulejman Tihić, T. 1343; Dragan Lukač, T. 1612-14; Stevan Todorović, T. 9040; Blagoje Simić, T. 12518; Veselin Blagojević, T. 14030-31; Miroslav Tadić, T. 15190-91; Maksim Simeunović, T. 15856-58; Jovan Erletić, T. 19660; Jovo Savić, T. 17016-17; Radovan Antić, T. 16826-27; Simo Zarić, T. 19156-57.

<sup>419</sup> Radovan Antić, T. 16830.

<sup>420</sup> Stevan Todorović, T. 9042-43.

214. Miloš Bogdanović notified Stevan Todorović that the paramilitaries were arriving on 11 April 1992. Stevan Todorović testified that Miloš Bogdanović arranged the transport by helicopter.<sup>421</sup> Some Defence witnesses testified that Todorović was responsible for the arrival of Serbian paramilitaries.<sup>422</sup> There was some debate as to whether Stevan Todorović had signed a request for use of the JNA helicopters on behalf of Mirko Jovanović.<sup>423</sup>

215. Maksim Simeunović, Chief of Intelligence and Security for the 17<sup>th</sup> Tactical Group, Mico Ivanović, Commander of the 1<sup>st</sup> Detachment, Stevan Todorović and small group of villagers from Batkuša were present for the arrival of the paramilitaries.<sup>424</sup> Stevan Todorović testified that Major Brajković, the Chief of Staff of the 17<sup>th</sup> Tactical Group was also present.<sup>425</sup>

216. Between 11 and 16 April, the paramilitaries stayed in Batkuša and Obudovac, another predominantly Serb village. The command of the 1<sup>st</sup> Detachment made some of the practical arrangements.<sup>426</sup>

217. Dragan Đorđević, also known as “Crni”, Slobodan Milković, also known as “Lugar”, and Srećko Radovanović, also known as “Debeli”, were part of the group that arrived.<sup>427</sup> “Crni” had the highest position amongst the 30 men from Serbia. “Crni”’s assistant was “Debeli”. Stevan Todorović denied knowing “Crni”, “Lugar” and “Debeli” before 11 April 1992.<sup>428</sup>

218. Stevan Nikolić and Maksim Simeunović informed Simo Zarić and Commander Antić on 13 April 1992 of the men’s arrival.<sup>429</sup>

219. Simo Zarić said that a day or two after he learned that the paramilitaries had arrived, rumours started going around about their activities on the ground, which upset people in Bosanski Šamac.<sup>430</sup>

220. Stevan Todorović testified that the key people from February 1992 onwards, in relation to contacts with the paramilitaries were Miloš Bogdanović and Mirko Jovanović.<sup>431</sup> Commander Antić

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<sup>421</sup> Stevan Todorović, T. 10091, T. 10093.

<sup>422</sup> Dušan Tanasić, T. 13767; Radovan Antić, T. 16896; Stevan Nikolić, T. 18484, T. 18563.

<sup>423</sup> Simo Zarić, T. 19948.

<sup>424</sup> Maksim Simeunović, T. 15850; Stevan Todorović, T. 9041, T. 10095-96.

<sup>425</sup> Stevan Todorović, T. 10095-96.

<sup>426</sup> Stevan Todorović, T. 9041, T. 9953-54, T. 10094-96; Radovan Antić, T. 16907.

<sup>427</sup> Stevan Todorović, T. 9040. T. 9042-43.

<sup>428</sup> T. 9949-50; Reference was made to P120 (Lugar’s statement before the military court, Banja Luka) where Lugar stated that before going to Posavina, there were contacts with “the Šamac police chief, Stevan Todorović” – Stevan Todorović disagreed and stood by his evidence that he did not know the men before 11 April 1992, T. 9950-51.

<sup>429</sup> Simo Zarić, T. 19168.

<sup>430</sup> Simo Zarić, T. 19160.

<sup>431</sup> Stevan Todorović, T. 9898-99.

and Maksim Simeunović testified that Stevan Todorović was involved in bringing the paramilitaries to Batkuša.<sup>432</sup>

221. The paramilitaries wore camouflage uniforms, face paint, red berets, black knitted hats or hats of various shapes and were recognisable by a grey wolf insignia.<sup>433</sup> Some testified that they had a five-pointed star on their caps.<sup>434</sup> They spoke in the *Ekavski* dialect.<sup>435</sup>

222. Whether the paramilitaries came under the command or control of Lt. Col. Nikolić was debated. Stevan Nikolić testified that he scheduled a meeting with Dragan Đorđević (“Crni”) and Srećko Radovanović (“Debeli”), the leaders of the paramilitaries who had arrived in Batkuša on 11 April 1992, in order to establish who the new arrivals were, their purpose, and the authority that had sent them.<sup>436</sup> The meeting took place on 12 April 1992 in Donji Žabar. Stevan Nikolić testified that Stevan Todorović, Mico Ivanović (“Mijak”), Mirko Jovanović and Blagoje Simić were also present.<sup>437</sup>

223. At that time, Blagoje Simić, Mirko Jovanović, and Stevan Todorović did not have any official capacity in relation to policing in Bosanski Šamac, however Todorović said at the meeting that he would be the head of the MUP in the future Serb Municipality of Bosanski Šamac and Pelagićevo in the process of formation.<sup>438</sup> Blagoje Simić introduced himself as the Vice-President of the Municipality of Bosanski Šamac, and Mirko Jovanović as the President of the Executive Board of the Municipality of Bosanski Šamac.<sup>439</sup> Stevan Todorović was present as Assistant Commander for Security and Intelligence in the 1<sup>st</sup> Detachment and Mico Ivanović as Commander of the 1<sup>st</sup> Detachment.<sup>440</sup>

224. Stevan Nikolić testified that the paramilitaries stated that they were members of the police of Republika Srpska Krajina, and another group said that they were members of the police of Republika Srpska.<sup>441</sup>

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<sup>432</sup> Radovan Antić, T. 16846-47; T. 16896; Maksim Simeunović, T. 15999. Simo Zarić in his Prosecution Interview stated that Stevan Todorović and Blagoje Simić were involved in bringing the paramilitaries (Zarić Prosecution Interview III, p. 74).

<sup>433</sup> Stevan Todorović, T. 9042; Simo Zarić, T. 20089-90; Radovan Antić, T. 16906; Stojan Damjanović, T. 17780; Željko Volašević, Rule 92*bis* Statement, para. 19; Velimir Maslić, T. 14390; Simeon Simić, T. 13037-39.

<sup>434</sup> Milutin Grujičić, T. 16184; Exhibit P14-67, Emblem of the Grey Wolves.

<sup>435</sup> Željko Volašević, Rule 92*bis* Statement, para. 19.

<sup>436</sup> Stevan Nikolić, Rule 92*bis* Statement, para. 28, T. 18452-3, T. 18604; Maksim Simeunović, T. 15999.

<sup>437</sup> Stevan Todorović, T. 9909, T. 9044; Stevan Nikolić, T. 18453, T. 18562-3; Simo Zarić, T. 19178.

<sup>438</sup> Stevan Nikolić, T. 18564, T. 18605.

<sup>439</sup> Stevan Nikolić, T. 18595.

<sup>440</sup> Stevan Nikolić T. 18605.

<sup>441</sup> Stevan Nikolić, T. 18453.



225. Lt. Col. Stevan Nikolić asserted that he had no jurisdiction over the paramilitaries but he asked questions about their objectives and tasks. He was only told that they would be accommodated at the football stadium in Obudovac.<sup>442</sup>

226. Lt. Col. Stevan Nikolić testified that Stevan Todorović did most of the talking. Todorović said that he invited the paramilitaries and that they were within the police's jurisdiction. Stevan Nikolić testified that Todorović was responsible for the paramilitaries' accommodation, engagement, police work and conduct.<sup>443</sup>

227. Lt. Col. Stevan Nikolić testified that he was told in no uncertain terms that he had no jurisdiction over members of the Serbian police or members of the Republic of Serbian Krajina MUP, that they were under the jurisdiction of the Serbian municipality of Bosanski Šamac and Pelagićevo in the process of formation and that it had the overall responsibility for their accommodation and food, and control over them.<sup>444</sup>

228. Blagoje Simić testified that he was not present at the meeting on 12 April at the Agro Posavina company in Donji Žabar.<sup>445</sup>

229. Simo Zarić testified that in early April Todorović had links to Vojislav Šešelj and the Radicals.<sup>446</sup> Simo Zarić said that he was not interested in "those kind of people and their connections with the Radicals". He concluded that Stevan Todorović had already established contacts "with people from this important unit within the JNA", i.e. the paramilitaries.<sup>447</sup>

230. Lt. Col. Stevan Nikolić testified that the paramilitaries were not under his control, although he did engage them in operations by submitting a special request to his command and receiving authorisation.<sup>448</sup> Lt. Col. Stevan Nikolić maintained that he never put the paramilitaries under his command, and that they did not come under the authority of the 17th Tactical Group.<sup>449</sup>

231. Simo Zarić testified that on 13 April 1992 Lt. Col. Stevan Nikolić knew that the paramilitaries were causing problems in the town and told Simo Zarić that he would do everything to keep this under a certain control and that he would monitor their behaviour. He told the 4th

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<sup>442</sup> Stevan Nikolić, Rule 92bis Statement, para. 31, T. 18453-54; Maksim Simeunović, T. 15862.

<sup>443</sup> Stevan Nikolić, T. 18602, T. 18605.

<sup>444</sup> Stevan Nikolić, Rule 92bis Statement, para. 31; see also Simo Zarić, T. 19178-79; Maksim Simeunović, T. 15861-62.

<sup>445</sup> Blagoje Simić, T. 12445-46.

<sup>446</sup> Serbian Radical Party.

<sup>447</sup> Simo Zarić, T. 19184-85.

<sup>448</sup> Stevan Nikolić, T. 18486, T. 18514-15, T. 18588.

<sup>449</sup> Stevan Nikolić, Rule 92bis Statement, para. 27; Stevan Nikolić, T. 18588.

Detachment to stay away from the paramilitaries, who would be accommodated in the area of the village of Obudovac.<sup>450</sup>

232. In an interview with the OTP, Simo Zarić stated that: "...after a couple of days, that changed and he said that he was putting them under his command" to which Simo Zarić added: "I saw that he couldn't possibly keep them under his control."<sup>451</sup> Simo Zarić states that he still abides by what he stated in his interview, including that Stevan Nikolić had said that he was putting the paramilitaries under his "command".<sup>452</sup>

233. However, Simo Zarić also testified that he did not mean "under command" in the prosecution interview, but "under control".<sup>453</sup> To Simo Zarić, these are two different concepts:

No. I didn't say under command. I said under control. And these are two quite different things. He [Stevan Nikolić] said he would try to put this under control. This does not mean that he was supposed to command them. He explained what his idea was. He invited them for an interview. He wanted to see them. He informed his superior command and received certain instructions and orders as to how he should treat them.<sup>454</sup>

234. Aleksandar Janković, Miloš Savić and Blagoje Simić testified that the paramilitaries and trainees from Ilok came under the command of the 17th Tactical Group at the end of April 1992.<sup>455</sup>

235. In contrast, Jovo Savić testified that the paramilitaries never received any orders from the 17<sup>th</sup> Tactical Group.<sup>456</sup> Commander Antić testified that the paramilitaries were not under the command of the 4<sup>th</sup> Detachment or the JNA, either before or after 17 April 1992.<sup>457</sup>

236. Other witnesses testified that the paramilitaries were under the control of the MUP and Stevan Todorović. Savo Popović testified that the paramilitaries were under the authority of the MUP, the public security station or the police, and of Stevan Todorović.<sup>458</sup> Simo Zarić testified that that "Crni" was always very close to Stevan Todorović and the Serbian police.<sup>459</sup> Commander Antić testified that the paramilitaries from Serbia were under the leadership of the civilian authorities, by that meaning the authorities of the Interior, and the chief of the Interior was Stevan Todorović.<sup>460</sup>

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<sup>450</sup> Simo Zarić, T. 19179.

<sup>451</sup> Zarić Prosecution Interview I, p. 53; Simo Zarić T. 19893-4.

<sup>452</sup> Simo Zarić, T. 19894-95.

<sup>453</sup> Zarić Prosecution Interview I, p. 54. says "under his control".

<sup>454</sup> Simo Zarić, T. 19895.

<sup>455</sup> Aleksandar Janković, Rule 92*bis* Statement, para. 11, T. 12315; Miloš Savić, Deposition T. 379.

<sup>456</sup> Jovo Savić, T. 17230; see also Marko Tubaković, T. 19361.

<sup>457</sup> Radovan Antić, T. 16907.

<sup>458</sup> Savo Popović, T. 16267; Stevan Nikolić testified that on 11 April 1992 Dragan Đorđević, "Crni" said that they were members of the Republic of Serbian Krajina MUP special units. "Crni" showed Nikolić an ID issued by the Republic of Serbian Krajina MUP, and a few others with him did the same, Rule 92*bis* Statement, para. 27, T. 18458-9; Marko Tubaković, T. 19362-63.

<sup>459</sup> Simo Zarić, T. 19908.

<sup>460</sup> Radovan Antić, T. 16755-7, T. 16907, T. 16839.

Stevan Nikolić testified that the paramilitaries were professional policemen, police officers that dealt with the civilian structure of society.<sup>461</sup>

237. Exhibit P127, “The 13 Signatories Document”,<sup>462</sup> states that the paramilitaries were endorsed by Stevan Nikolić and the 17<sup>th</sup> Tactical Group five or six days after they arrived:

Second, even while the TG-17 existed and Lt. Col. Nikolić was here, a group of so-called “Serbian commandos” led by “Crni” and “Debeli”, arrived in this area in a military helicopter. Nikolić and the TG-17 Command initially branded it as a “paramilitary group” and a “group of bandits and mercenaries”, but after only five or six days they endorsed it and explained it as a “legal elite unit of Serbian Commandos”, whose arrival had been legalised through the official organs of government and the army both at the level of Šamac Municipality and at the highest level in Serbian and Yugoslavia. A platoon-size unit of “local commandos” trained in Serbia to carry out special war assignments arrived with the same group. According to official information, this unit was sent by Todorović and Mijak.

238. Simo Zarić testified that the 13 Signatories document states that “Lugar”, “Crni”, “Debeli” and their men were re-subordinated to the command of the 17<sup>th</sup> Tactical Group, for a particular operation or operations, but after that, they regained their former status.<sup>463</sup>

239. Marko Tubaković testified that the paramilitaries did not come at the invitation of the military. He thought that this group was being accepted by the civilian authorities, the Public Security Station and that the army should not interfere in this in any way.<sup>464</sup> Simo Zarić also refers in his book and testified to the arrival of paramilitaries and that they were treated as “a legitimate Serb elite unit of specially trained men”.<sup>465</sup>

240. Commander Antić testified that he and Simo Zarić informed the command about the problems with the volunteers.<sup>466</sup> The command of the 17<sup>th</sup> Tactical Group told them that they already had that information, and as it was not within the zone of responsibility of the 4<sup>th</sup> Detachment. The 4<sup>th</sup> Detachment was explicitly ordered by Nikolić not to take any steps. This was before 16 April 1992.<sup>467</sup> Antić did not have information that any of the other Detachments took measures or had received orders to deal with the activities of the paramilitaries before 16 April.<sup>468</sup>

241. Stanko Dujković testified that if there are armed forces operating against a common enemy, military doctrine requires that they should be co-ordinated. There must be a joint command.<sup>469</sup> To

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<sup>461</sup> Stevan Nikolić, T. 18459.

<sup>462</sup> Simo Zarić, T. 19551-53.

<sup>463</sup> Simo Zarić, T. 19911.

<sup>464</sup> Marko Tubaković, T. 19361.

<sup>465</sup> Referring to pages 297 and 298 of Simo Zarić’s book. Simo Zarić, T. 19912-13.

<sup>466</sup> Radovan Antić, T. 16832-4.

<sup>467</sup> T. 16834-5.

<sup>468</sup> Radovan Antić, T. 16836-37.

<sup>469</sup> Stanko Dujković, Deposition T. 308-09.

his knowledge, “Lugar” acted autonomously. No one was able to control him. He was not part of the paramilitary group.<sup>470</sup>

242. Simo Zarić testified that the paramilitaries from Serbia were never under the command of the civilian authorities in Šamac, excluding the public security station.<sup>471</sup>

(iii) Muslim-Croat units and patrols

243. In the first half of 1992 there was a marked increase in the presence of soldiers in Bosanski Šamac and the nearby villages, variously dressed and armed. JNA units were located mainly in the Serbian villages, while in the Croatian villages there were mostly self-organised guards of the local population.<sup>472</sup>

244. A number of Prosecution witnesses testified about the existence of Serbian checkpoints in Bosanski Šamac and in the nearby villages.<sup>473</sup> Evidence was also led regarding the existence of Croat checkpoints in the Croat populated areas.<sup>474</sup>

245. From September 1991 until the end of the year Alija Fitozović’s independent armed unit guarded two checkpoints during the night. During the day it observed the town to gather information of movement of JNA units, the reservists and members of the 4<sup>th</sup> Detachment.<sup>475</sup>

246. Bosnian Muslim patrols existed in Bosanski Šamac from autumn of 1991 until 17 April 1992.<sup>476</sup> Alija Fitozović testified that the Bosnian Muslim patrols reported to him and were under his control.<sup>477</sup>

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<sup>470</sup> Stanko Dujković, Deposition, T. 310-11.

<sup>471</sup> Simo Zarić, T. 19805.

<sup>472</sup> Amir Nukić, Rule 92bis Statement, para. 4; Sulejman Tihić, T. 3833; Witness P, T. 11539-40; Witness Q, T. 11689.

<sup>473</sup> Alija Fitozović, T. 8405-08; see also Sulejman Tihić, T. 1337; Witness Q, T. 11684-85; Osman Jašarević, Rule 92bis Statement, para. 20; Hasan Bičić, T. 2617-18; Witness A, Rule 92bis Statement, paras 21, 23; Dragan Lukač, T. 1566-69; Kemal Mehinović, T. 7388-89; Witness M, T. 5014-15; Alija Fitozović, T. 8433.

<sup>474</sup> Sulejman Tihić, T. 1337; Osman Jašarević, Rule 92bis Statement, para. 21; Dragan Lukač, T. 1870; Witness Q, T. 11685.

<sup>475</sup> Alija Fitozović, T. 8396. Alija Fitozović was presented with Exhibit D42/1, a Sketch of the Structure of the Unit for the Defence of the Town. He stated that it was not an original but a photocopy, that he saw it for the first time and that it could be a forgery. It was not his handwriting on the document (T. 8835-36). He stated that Exhibit D50/3, a document to the TO from the Town Command of Bosanski Šamac was a forgery and that the original was P67 (T. 8735-38). He stated that Exhibit D50/3 was a forgery. It did not have a stamp (T. 8861). He identified Exhibit P67 which he stated was the original document and he was the author of the upper portion of the document, but not the lower part where there was no stamp or signature (T. 8736-39). The Defence, in contrast, stated that Exhibit D50/3 was the original, obtained from the TO headquarters (T. 8741). Alija Fitozović stated that the difference between D50/3 and P67 is that D50/3 is signed and P67 is unsigned. Also that the stamp of the SDA from 16 April 1992 was no longer with the SDA, and it was with the police or some other institution. After that, many documents had the stamp of the SDA. P67 did not have a signature as there was no one to sign on behalf of the command of the town and the town board (T. 8744-46).

<sup>476</sup> Sulejman Tihić, T. 1332-33; Dragan Lukač, T. 1584; Izet Izetbegović, T. 2443, T. 2585; Ibrahim Salkić, T.3202; Alija Fitozović T. 8397-98, T. 8400-05; Osman Jašarević, Rule 92bis Statement, paras 27-28.

247. There were a number of incidents between the JNA and the Bosnian Muslim patrols. In March 1992 an SDA patrol was disarmed by members of the 4<sup>th</sup> Detachment, and in response the SDA set up barricades of buses and other public transport vehicles, blocking the entrances to the town.<sup>478</sup>

248. Then, on 3 April 1992, just following the appearance of the leaflet denouncing the Muslim members of the 4<sup>th</sup> Detachment as local traitors, three Muslim members of the 4<sup>th</sup> Detachment were shot and wounded outside Café Molla.<sup>479</sup> Following the shooting an agreement was reached between the 4<sup>th</sup> Detachment and the SDA to divide the town into zones for patrols.<sup>480</sup>

249. Croatian and Muslim paramilitary groups were also active in the region.<sup>481</sup> Croatian armed forces, often wearing ZNG uniforms, were present in the Croatian populated villages in Bosanski Šamac Municipality.<sup>482</sup>

(iv) Muslim-Croat arming and mobilisation

250. Evidence was led suggesting that all three ethnic groups were arming themselves illegally. Some Defence witnesses testified that the Serbs did not need to arm themselves illegally as the JNA was considered to be sufficient and legitimate protection of their interests, and civilians were being armed through the mobilisation process.<sup>483</sup> However, according to Simo Zarić, the SDS was arming its members illegally on a much smaller scale, and not in an organised way as were the other two groups.<sup>484</sup>

251. Prosecution witnesses gave evidence that starting in autumn 1991, Muslim and Croats started to arm themselves, either through political parties, or privately. Sulejman Tihić, Izet Izetbegović and Alija Fitozović were involved in procuring arms.<sup>485</sup> There was some debate as to

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<sup>477</sup> Alija Fitozović T. 8609.

<sup>478</sup> Alija Fitozović, T. 8430-1; Sulejman Tihić, T. 3685-90; Dragan Lukač, T. 1572, T. 1861-62; Ibrahim Salkić, T. 3524-28; Witness K, T. 4766-67; Witness N, T. 6304-05; Stevan Todorović, T. 9766.

<sup>479</sup> Ibrahim Salkić, T. 3527; Alija Fitozović, T. 8440-42, T. 8621-22, T. 8829-31, T. 8866; Dragan Lukač T. 1571; Witness K, T. 4768; Nusret Hadžijusufović, T. 6862-64, T. 6992; Osman Jašarević, Rule 92bis Statement, para. 18, T. 10559, T. 10644-45; Božo Ninković, T. 13306; Simo Zarić, T. 19118-19, T. 19092-93; Mladen Borbeli, T. 14701; Mirko Pavić, Rule 92bis Statement, para 8; Simeon Simić, T. 12986-87; Radovan Antić, T. 16718-19; Vladimir Šarkanović, T. 16496; Jovo Savić, T. 17014-15; Džemal Jasenica, Rule 92bis Statement, para. 13; Stevan Nikolić, Rule 92bis Statement, para. 25; see Exhibit D21/1 "List of Local Traitors" which calls on Muslim members of the 4<sup>th</sup> Detachment to leave the unit and made derogatory remarks about individual members.

<sup>480</sup> Sulejman Tihić, T. 1333; Osman Jašarević, T. 10621.

<sup>481</sup> Sulejman Tihić, T. 3800-01.

<sup>482</sup> Simo Zarić, T. 19111-13, T. 19134; Mirko Lukić, T. 12947-48; Savo Popović, T. 16228; Stanko Pivašević, T. 19686; Mithat Ibralić, Rule 92bis Statement, para. 5; Simo Jovanović, Rule 92bis Statement, para. 2; Miroslav Tadić, T. 15166-67; Velimir Maslić, T. 14126-28.

<sup>483</sup> Savo Popović, T. 16233-34; Maksim Simeunović, T. 15846-47; Simo Zarić, T. 19154; Miroslav Tadić, T. 15520; Perica Krstanović, Rule 92bis Statement, para. 8.

<sup>484</sup> Simo Zarić, T. 19154; Maksim Simeunović, T. 15846-47.

<sup>485</sup> Sulejman Tihić, T. 3655, T. 3823-24, T. 3889-90; Stevan Todorović, T. 10113-14.

the degree to which the arming of Muslim and Croat groups was organised – descriptions ranged from military-style organisation to a piecemeal procurement of arms.<sup>486</sup> Alija Fitozović testified that he obtained 100kg of explosives in mid-October 1991.<sup>487</sup>

252. Stevan Todorović testified that he knew of documents, receipts for ammunition, grenades and weapons, which he came across after 17 April 1992, during investigations.<sup>488</sup> Alija Fitozović also testified regarding various documents which related to the receipt and distribution of weapons by his armed unit.<sup>489</sup>

253. Defence witnesses testified that Croatia assisted the local arming and mobilisation and that Croat volunteers from Bosanski Šamac were going *en masse* to the front line in Croatia, where they were trained to participate in the war, and obtained uniforms and weapons.<sup>490</sup>

254. Alija Fitozović established an armed unit in late September 1991, and by December 1991 there were around 200 men in the unit.<sup>491</sup> The unit's members were not all Muslim, or members of the SDA, although there were joint activities with the SDA town board and the command of the unit.<sup>492</sup> There were not enough weapons for all members, and Alija Fitozović stated that he sought weapons from Izet Izetbegović and Sulejman Tihić.<sup>493</sup> Alija Fitozović testified that the unit did not belong to other armies or have links with any parties. The armed unit was to be multi-ethnic and all citizens of Bosanski Šamac would be invited to join.<sup>494</sup>

255. Alija Fitozović was the Commander of the independent armed unit, however the link between this unit and the SDA was debated.<sup>495</sup> Sulejman Tihić, Izet Izetbegović, Safet

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<sup>486</sup> Dragan Lukač, T. 1588-89, T. 1868-71, T. 1878; Witness O, Rule 92*bis* statement, para. 12; Witness A, T. 11203-05; Exhibit P18A contains a balance sheet of money collected in a local Croat village to procure arms; Izet Izetbegović, T. 2202, T. 2205-06, T. 2209-10; Exhibit D3/2, SDA certificate dated 13 April 1992 is an authorisation by the SDA for Hasan Bičić to transfer necessary equipment and material; Ibrahim Salkić, T. 3208-09, T. 3567, T. 3591; Esad Dagović, T. 3906, T. 3913; Safet Dagović, T. 7169, T. 7306-07; Blaz Paradžik, T. 82818; Alija Fitozović, T. 8389, T. 8391-96, T. 8420, T. 8568-72, T. 8699, T. 8811-13; Exhibit D38/1 was tendered, a document constituting a list of the armed unit which received ammunition, produced in March 1992; Exhibit D6/4 was also tendered, confirming the issuing of certain weaponry to Ratif Atić.

<sup>487</sup> T. 8421-27, T. 8589-91, T. 8793. (Exhibit D4/4, original receipt dated 10 January 1992; after issuing it Alija Fitozović put it in his briefcase; the document was found when his apartment was searched, T. 8421-22).

<sup>488</sup> Stevan Todorović, T. 9705-06; Documents included Exhibit D4/4, a receipt of 20 kg of explosives.

<sup>489</sup> Alija Fitozović, T. 8803-06, T. 9708-09, T. 9716-17, T. 9768-69; Exhibits D5/4, Exhibit D6/4, Exhibit D20/4, Exhibit D36/1, Exhibit D37/1 & Exhibit D38/ 1.

<sup>490</sup> Blagoje Simić, T. 12212; Bozo Ninkovic, T. 13333-34; Čedomir Simić, Rule 92*bis* Statement, paras 4-5; Aleksandar Janković, Rule 92*bis* Statement, paras 5-7; Simo Zarić, T. 19140-41; Simeon Simić, T. 12989.

<sup>491</sup> Alija Fitozović, T. 8387, T. 8551-55.

<sup>492</sup> Alija Fitozović, T. 8551-55, T. 8387-88, T. 8849.

<sup>493</sup> Alija Fitozović, T. 8388-89, T. 8543-44.

<sup>494</sup> Alija Fitozović, T. 8839-41.

<sup>495</sup> Witness N, T. 6292, T. 6295; Alija Fitozović, T. 8477-78; Witness L, T. 4421-24; D31/3, entitled "Municipal Military Staff". The name of Alija Fitozović appears as president or chairman of the Municipal Military Staff. Alija Fitozović testified that he had never heard of the Municipal Military Staff before or served as its president or been notified that he was president. He was surprised to hear that he was president of the Municipal Military Staff on television and finds the document unusual (T. 8481-82); Blagoje Simić, T. 12286; Božo Ninković, T. 13305-06, T.

Hadžialijagić, Hasan Bičić, Salko Porobić, Reuf Hadziabdić, Hasan Čeribasić, Safet Dagović and Esad Dagović, Ibrahim Salkić and Izet Ramusović joined the self organised unit on a voluntary basis.<sup>496</sup>

256. Defence witness Maksim Simeunović testified that “they” had information about the illegal arming and military organising of Muslims in Bosanski Šamac, and that military units were formed. These units had their commanders, and had a military structure, with different groups for communications, intelligence, reconnaissance, and sabotage groups.<sup>497</sup> They also knew that instructors from Sarajevo came to train soldiers and that was organised by the SDA.<sup>498</sup> Simo Zarić claimed that his service and intelligence information showed that the SDA was arming illegally.<sup>499</sup>

257. According to Izet Izetbegović and Stevan Todorović, the SDA had compiled a mobilisation plan for the members of Muslim Military units.<sup>500</sup>

258. Alija Fitozović testified that there was a plan to disrupt the distribution of electricity in response to any similar Serb attempt.<sup>501</sup> He stated that the text of the plan was drafted in the case of outbreak of war. The plan was that if Serbs cut off the electricity supply to Muslim and Croat

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13338; Simo Zarić, T. 19067, T. 19130-31; Nevenka Grbić, Depositions T. 37; Veselin Blagojević, T. 13953; Čedomir Simić, Rule 92*bis* statement, para. 4; Simo Jovanović, Rule 92*bis* Statement, para. 3; Maksim Simeunović, T. 15840-42.

<sup>496</sup> Alija Fitozović, T. 8726, T. 8733-35.

<sup>497</sup> Maksim Simeunović, T. 15840-42; Božo Ninković, T. 13328; Božo Ninković testified that Exhibit D 25/4 – Organisational and establishment structure of paramilitary Muslim formations under the SDA - fully develops the formation structure of the armed formation of a paramilitary nature consisting of Muslims under the leadership of the SDA, T. 13415-17. Božo Ninković also referred to D42/1 and stated that it showed that the military unit, a paramilitary unit, was prepared to carry out the task that was ordered to do, as it had a fully developed internal structure, and a system of command. Along with the mobilisation document, this is a fully completed structure of units of paramilitary nature in Šamac, consisting of Muslims. There were weapons, a unit, a mobilisation plan, and the only remaining thing was to put a task before them, T. 13420; Exhibit D26/4, the “Organisation and method of receiving transmitting and conveying orders for mobilisation”, was tendered by the Defence, in support of the call-up scheme for the SDA. It is a chart showing the flow of information from the President of the SDA (who is responsible for authorising any mobilisation) to couriers who will transmit the mobilisation call-up and culminating in all the units gathering at the mobilisation point. The second chart shows that Sulejman Tihić and Alija Fitozović were able to order the mobilisation and that the mobilisation point would be the park. T. 13423-24.

<sup>498</sup> Maksim Simeunović, T. 15844-45.

<sup>499</sup> Simo Zarić, T. 19128-29.

<sup>500</sup> Izet Izetbegović, T. 2396: Defence Exhibits D25/4, “The Organisational and Establishment Structure of the Unit for Defence of the Town”, and Exhibit D26/4 “The Organisation and Method of Receiving, Transmitting and Conveying Orders for Mobilisation (SDA)”, were presented. According to Stevan Todorović these are the mobilisation plans of illegal SDA units. Stevan Todorović testified that he encountered these documents at the SUP. Stevan Todorović, T. 9703-04. Exhibit 43/1, Guidelines for formulating a plan for the Crisis Staff, was presented. Stevan Todorović testified that he had seen the document after 17 April 1992, until around 10 May 1992. His personal conclusion and that of his colleagues was that, in addition to the SDA, the Croats were hurriedly being armed and organised. Stevan Todorović, T. 9781-83 He believed that this document dealt with the military formation which was in creation. Stevan Todorović, T. 10192. He agrees that the police investigations were also carried out on the matter, for example, members in high positions of the HDZ forming their units like the SDA. Stevan Todorović, T. 9781-83.

<sup>501</sup> Alija Fitozović, T. 8787-89; Exhibit D34/1, gives a diagram representing the one polar scheme for the distribution of electricity for around 6 areas- the local communes of Domaljevac, Brvnik, Obudovac, Grebnice, Kornica, Batkusa and Slatina. The sketch was drawn in April 1992 by Alija Fitozović. He does not have the title of an engineer. He did not complete his plan to disrupt the power going to Obudovac to cut off the supply to the Serbs, T. 8792-93.

villages, then Alija Fitozović's unit would cut the supply to Serbs as well.<sup>502</sup> Stevan Todorović testified that explosives were found in Alija Fitozović's apartment, and the police believed Alija Fitozović intended to destroy some of the power lines.<sup>503</sup>

259. Prosecution witnesses testified that there was no coalition between the SDA and the HDZ,<sup>504</sup> whereas Defence witnesses testified that a coalition existed.<sup>505</sup> Simo Zarić testified that there was a coalition between the SDA and the HDZ, and they tried in connection with the reserve police station of Šamac and its surrounding area, to have the greatest number of reserve policemen from the Muslim and Croatian communities.<sup>506</sup>

(v) The new Territorial Defence

260. A new TO was established in the week prior to the takeover, following a decision to revive the TO in all municipalities taken by the Bosnia and Herzegovina Presidency after the recognition of Bosnia and Herzegovina by the EU on 6 April.<sup>507</sup>

261. On 13 April 1992, at a meeting in the premises of the Municipal Assembly in Bosanski Šamac, the SDS opposed the revival of the TO, whilst the other two political parties accepted the decision. Regardless of SDS opposition, decisions relating to the TO staff were made at that meeting.<sup>508</sup> Čedomir Simić testified that the establishment of the new Republican TO was part of cooperation between Muslim and Croats to take over important organs of authority.<sup>509</sup>

262. As a result of the meeting in the Municipal Assembly building earlier that day, the President of the Assembly, Mato Nujić, issued an order on 13 April 1992 for the establishment of the TO.<sup>510</sup>

263. A group of SDA and HDZ leaders, including Sulejman Tihić, agreed on a proposal to the Ministry of Defence that Marko Bozanović should become Commander of the new TO and Alija Fitozović should become the new Chief of Staff.<sup>511</sup>

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<sup>502</sup> Alija Fitozović, T. 8862-65.

<sup>503</sup> Stevan Todorović, T. 9974-75.

<sup>504</sup> Sulejman Tihić, T. 3692-93, T. 3817-20; Izet Izetbegović, T. 2435, T. 2582-84; Blaz Paradžik, T. 8258; Dragan Lukač, T. 1910 Alija Fitozović, T. 8615-20.

<sup>505</sup> Čedomir Simić, Rule 92bis Statement, para. 9; Blagoje Simić, T. 12285-86.

<sup>506</sup> Simo Zarić, T. 19134.

<sup>507</sup> Sulejman Tihić, T. 1350; See Exhibit P13, Letter from SDA to TO, Bosanski Šamac municipal command, 13 April 1992; Dragan Lukač T. 1616-18; Alija Fitozović, T. 8446; Izet Izetbegović, T. 2251; Exhibit D51/3, dated 16 April 1992, Communication from the Municipal Staff of the TO of Bosanski Šamac municipality to the Republican Staff of the TO, Sarajevo, that the TO had been established on 15 April 1992 signed by Marko Bozanović; Alija Fitozović, T. 8753-54; Radovan Antić, T. 16730; Simo Zarić, T. 19150.

<sup>508</sup> Alija Fitozović, T. 8630-31.

<sup>509</sup> Rule 92bis Statement, para. 5.

<sup>510</sup> Alija Fitozović, T. 8630-35; see also Witness M, T. 5311; Witness N, T. 6309; Muhamed Bičić, T. 2925; Ibrahim Salkić, T. 3203-04; Osman Jašarević, Rule 92bis Statement, para. 29; Witness A, T. 11198.



264. The new TO was made public, and attempted to recruit as widely as possible.<sup>512</sup> The public invitation to all citizens of Bosanski Šamac to join the TO included Serbs but not SDS members.<sup>513</sup> As a policy, the SDA put its people under the control of the newly established TO.<sup>514</sup>

265. Between 10-16 April 1992, Alija Fitozović made a framework of units in the new TO.<sup>515</sup> The Defence claim that Exhibit D25/4, a 17 page document titled “Organisational and Establishment Structure of the Unit for the Defence of the Town” is evidence of the organisation of an SDA unit. Alija Fitozović testified that much of this document was originally the organisational structure for the new TO, but it has been partly forged to make it appear as if it was an SDA defence unit structure.<sup>516</sup> Alija Fitozović also testified that D26/4 “The Organisation and Method of Receiving, Transmitting, and Conveying Orders for the Mobilisation”, which the Defence lead as evidence of SDA mobilisation is tainted by forgery, and was also prepared for the TO, not for SDA armed groups.<sup>517</sup>

266. From 13-16 April 1992, a large number of new members joined the new TO.<sup>518</sup> However, of the 150 to 250 people who reported to the new TO, most were ethnic Muslims.<sup>519</sup>

267. Exhibit D14/4, a list of people of Bosanski Šamac who organised themselves for the defence of the town, was tendered into evidence. Alija Fitozović testified that the list was prepared around 7-8 April 1992 and contained future members of the TO. Alija Fitozović received the list as a member of the Commission for Security.<sup>520</sup> Ninety eight percent of people on the list were Muslims. It was not a military list when it was created, as they did not have weapons. He said it was organised secretly.<sup>521</sup>

268. There was a shortage of weapons with which to arm the new TO.<sup>522</sup> Alija Fitozović testified that, on 15 April 1992, he procured 50 automatic rifles, 7000 rounds of ammunition for the rifles,

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<sup>511</sup> Sulejman Tihić, T. 3694, T. 3829-30; Muhamed Bičić, T. 3120; Alija Fitozović, T. 1620; Witness A, Rule 92bis Statement, para. 27; Dragan Lukač, T. 1618; Blagoje Simić, T. 12185-86, T. 12211; Radovan Antić, T. 16730; Simo Zarić, T. 19150; Witness L, T. 4418-19; Izet Izetbegović, T. 2251.

<sup>512</sup> Dragan Lukač, T. 1619; Alija Fitozović, T. 8452-53; Muhamed Bičić, T. 2925.

<sup>513</sup> Alija Fitozović, T. 8852-53.

<sup>514</sup> Sulejman Tihić, T. 1355-57.

<sup>515</sup> Alija Fitozović, T. 8453, T. 8579; Alija Fitozović testified that he drafted D22/2, a document showing the plan for the medical squad consisting of members of the TO, in April 1992, T. 8453-56. He also drafted D17/1 “Hunters Squad” prepared on 14 or 15 April 1992, D16/1 “Communications Squad”, D8/2 “Anti Sabotage Squad”, and D24/2 “Supply Squad”, T. 8458-59, T. 8459-60, T. 8463-64. These were the new squads planned for the TO.

<sup>516</sup> T. 8651.

<sup>517</sup> T. 8686-90.

<sup>518</sup> Alija Fitozović, T. 8466.

<sup>519</sup> Dragan Lukač, T. 1620; Ibrahim Salkić, T. 3203-06.

<sup>520</sup> Alija Fitozović, T. 8466-67.

<sup>521</sup> Alija Fitozović, T. 8558-62.

<sup>522</sup> Alija Fitozović, T. 8493; Ibrahim Salkić, T. 3206-08; Witness L, T. 4215-19.

two RPG's (hand held launchers) and 18 rounds of ammunition for the hand held launchers. He got 30 hand defensive grenades.<sup>523</sup>

269. On 16 April 1992, weapons were distributed publicly at the TO.<sup>524</sup>

270. Alija Fitozović testified that the weapons distribution ended at 4.00-5.00 p.m. on 16 April 1992. At 6.00 p.m., a meeting of the coordination body took place, attended by Marko Bozanović, Dragan Lukač, Safet Hadžialijagić, Simo Zarić and representatives from the political parties, at which the 4<sup>th</sup> Detachment was invited to join the new TO and Simo Zarić stated that there would be no attack. Alija Fitozovic told the meeting that they had received weapons and were publicly distributing them.<sup>525</sup> Alija Fitozović testified that distributing the weapons publicly may have expedited the takeover.<sup>526</sup>

(d) Last developments before 17 April 1992

(i) Multi-party meeting one week before 17 April

271. Blagoje Simić testified that a meeting was held on 14 or 15 April 1992, called by the President of the Municipal Board of the SDS for the municipalities of Šamac, Odžak, Gradačac and Orašje. Representatives of all three parties attended this meeting.<sup>527</sup>

272. Blagoje Simić testified that the only military person present was retired Colonel Mico Djurdjević.<sup>528</sup> However, Marko Bozanović, the newly appointed Commander of the Territorial Defence was also present.<sup>529</sup> Dušan Tanasić testified that apart from Djurdjević there were three or four military persons present.<sup>530</sup>

273. They discussed the implementation of the Lisbon Agreement, which envisaged the division of Bosnia Herzegovina into three cantons along ethnic lines in a state where all decisions would be passed by consensus, resembling Switzerland. There was some opposition to the proposal, but the meeting was calm and constructive. They agreed to meet the following Wednesday and, thereafter, once a week.<sup>531</sup>

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<sup>523</sup> Alija Fitozović, T. 8469-72, T. 8591-92.

<sup>524</sup> Alija Fitozović T. 8832-33, T. 8475; Osman Jašarević, T. 10597; Witness M, T. 5016-19; Witness L, T. 4215-19, T. 4434, T. 4530-31; Simo Zarić, T. 19218; Radovan Antić, T. 16730.

<sup>525</sup> Simo Zarić, T. 19218.

<sup>526</sup> T. 8832-33.

<sup>527</sup> Blagoje Simić, T. 12432; see also Dušan Tanasić, T. 13762; Simeon Simić, T. 12996.

<sup>528</sup> Blagoje Simić, T. 12432-34.

<sup>529</sup> Simeon Simić, T. 12996.

<sup>530</sup> T. 13762.

<sup>531</sup> Blagoje Simić, T. 12432-34; Dušan Tanasić, T. 13763.

274. Simeon Simić thinks the meeting occurred on 14 or 15 April 1992.<sup>532</sup> Mato Nujić, Mirko Jovanović and Colonel Mico Djurdjević were at the head of the meeting table.<sup>533</sup> Simeon Simić stated that Mato Nujić said that there would be some territorial division. The Croatian community of Bosanski Posavina had been formed and Orašje, Šamac, Gradačac, Modriča, Odžak and Brod should become part of it. The Croatian community would be operative and none would have to fear for their freedom as it would be based on democratic rule.<sup>534</sup> Representatives of the Serbian Democratic Party opposed this, particularly Mirko Jovanović and Blagoje Simić was of the same opinion.<sup>535</sup> The Croatian Democratic Union from Šamac insisted on the Bosanski Posavina plan in fairly aggressive terms but the representatives from Odžak and Orašje did not.<sup>536</sup>

(ii) Meeting at the local commune on 16 April 1992 and proposal made to the 4<sup>th</sup> Detachment to integrate the TO

275. Prosecution witnesses testified that a meeting was held on 16 April in the local commune, attended by representatives of all political parties in the municipality. The leadership of the local commune was present, including Sulejman Tihčić, Marko Bozanovic, Dragan Lukač, Alija Fitozović, Boro Pisarević, Mato Jasarević and Simo Zarić. Simo Zarić arrived late because he was discussing the establishment of the new TO with the Lt. Col. Nikolić.<sup>537</sup>

276. Dragan Lukač testified that the purpose of this meeting, and other meetings during this time period, was to discuss the security situation in Bosanski Šamac and agreements related to how certain incidents could be resolved.<sup>538</sup>

277. Izet Izetbegović testified that Lt. Col. Nikolić attended and introduced Simo Zarić as the commander of the 4<sup>th</sup> Detachment. Izet Izetbegović testified that all the representatives of the respective parties, and Marko Bozanović and Alija Fitozović as representatives of the TO, were present.<sup>539</sup>

278. Alija Fitozović also testified to the occurrence of the meeting and that Safet Hadžialijagić also known as “Pop”, president of the commission for security of the town, presided over the meeting.<sup>540</sup>

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<sup>532</sup> Simeon Simić, T. 12993.

<sup>533</sup> Simeon Simić, T. 12995.

<sup>534</sup> T. 12995.

<sup>535</sup> T. 12996.

<sup>536</sup> Simeon Simić, T. 12996.

<sup>537</sup> Sulejman Tihčić, T. 1348-49; see also Dragan Lukač, T. 1638; Alija Fitozović, T. 8489-90; Simo Zarić, T. 19212.

<sup>538</sup> Dragan Lukač, T. 1639.

<sup>539</sup> Izet Izetbegović, T. 2252-53.

<sup>540</sup> Alija Fitozović, T. 8488-89.

279. Simo Zarić testified that Council members were present at the meeting; representatives of political parties, Reformists and SDP were there. There was also a representative of the Radical Party. Sulejman Tihić was present, on behalf of the SDA; Dragan Lukač, who had been appointed chief of the SUP in Bosanski Šamac; Izet Izetbegović; and Mr. Evic, a representative of the HDZ. As far as he remembers, representatives of the SDS were not there. Marko Bozanović and Alija Fitozović were there.<sup>541</sup>

280. Izet Izetbegović testified that for the most part the members of the 4<sup>th</sup> Detachment spoke. There were some unrealistic statements, threats, quarrels, intimidations and things like that.<sup>542</sup> Alija Fitozović testified that they discussed the general situation in the town and agreed that it was very difficult. They tried to find a way to alleviate the situation, which deteriorated due to the creation of the TO.<sup>543</sup>

281. Simo Zarić testified that Marko Bozanović announced his official appointment as the Commander of the TO of Šamac municipality, and that similarly Alija Fitozović was appointed as Chief of Staff. He said their nomination had been established at a meeting on 13 April 1992, a joint meeting of the HDZ and SDA parties in Grebnice.<sup>544</sup>

282. There was a dispute as to the legality of the appointment as it was authorised without approval of the Assembly and in the absence of the Serbian people.<sup>545</sup> Marko Bozanović stated that Serbs would not have attended the meeting in Grebnice, even if they had been invited. Sulejman Tihić said that they knew that this was not really a legitimate decision, but they decided upon it because “you Serbs have opted for the Yugoslav People’s Army.”<sup>546</sup>

283. Sulejman Tihić testified that Simo Zarić was opposed to the establishment of the new TO HQ, although they were set up with the approval of the Secretariat of National Defence of Bosnia and Herzegovina and the Minister of Defence.<sup>547</sup> Simo Zarić was concerned that there were not any Serbs in the TO and about distribution of weapons. Simo Zarić then said a time was coming when he would not be able to have any influence on the events.<sup>548</sup>

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<sup>541</sup> Simo Zarić, T. 19213.

<sup>542</sup> T. 2252-53.

<sup>543</sup> Alija Fitozović, T. 8489-90.

<sup>544</sup> Simo Zarić, T. 19214.

<sup>545</sup> Simo Zarić, T. 19214.

<sup>546</sup> Simo Zarić, T. 19215.

<sup>547</sup> Sulejman Tihić, T. 1349.

<sup>548</sup> Sulejman Tihić T. 1349

284. Prosecution witnesses testified that an invitation was made to Simo Zarić for the 4th Detachment to join the TO.<sup>549</sup> According to Simo Zarić, Marko Bozanović informed them that the TO was already active and that nearly all local communes inhabited by Croats had agreed to have their units join the new TO staff. The new staff of the TO had about 1600 men on their records. He addressed Simo Zarić saying, “It would be a good thing if everything were done for the members of the 4<sup>th</sup> Detachment to join the new staff and the new TO.”<sup>550</sup>

285. Simo Zarić rejected the invitation.<sup>551</sup> According to Prosecution witnesses, Simo Zarić said the 4<sup>th</sup> Detachment was a unit of the JNA,<sup>552</sup> the TO was irregular, illegal and he did not accept the decision of the President and government of Bosnia-Herzegovina to create it.<sup>553</sup> Simo Zarić said that the only unit that was regular and in accordance with the laws of Yugoslavia and would defend everyone was the 4<sup>th</sup> Detachment.<sup>554</sup>

286. Simo Zarić testified that he had no authority within the JNA structure to make decisions concerning the 4<sup>th</sup> Detachment joining the new TO.<sup>555</sup> Bozanović told Simo Zarić at the meeting that he would inform the Commander of the 17<sup>th</sup> Tactical Group of this newly arisen situation.<sup>556</sup>

287. At the end of the meeting, Simo Zarić made assurances that the 4<sup>th</sup> Detachment would not attack Bosanski Šamac or participate in the occupation of Bosanski Šamac. The picture was clearer and tensions lower.<sup>557</sup>

288. Simo Zarić testified that later he made comments to Sulejman Tihić and Alija Fitozović, who had arrived at the meeting drunk.<sup>558</sup> Alija Fitozović told him that he might be surprised that 800 people from the town of Šamac had already joined the TO and that there were over 80 Serbs among them.<sup>559</sup> Alija Fitozović told him that they had received weapons and were publicly distributing them to their members as of the day before.<sup>560</sup>

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<sup>549</sup> Dragan Lukač, T. 1639; Sulejman Tihić, T. 1350, T. 1353, T. 1356; Alija Fitozović, T. 8490-91.

<sup>550</sup> Simo Zarić, T. 19216.

<sup>551</sup> Sulejman Tihić, T. 1352; Dragan Lukač, T. 1641.

<sup>552</sup> Dragan Lukač, T. 1913.

<sup>553</sup> Alija Fitozović, T. 8490-91.

<sup>554</sup> Alija Fitozović, T. 8635-36.

<sup>555</sup> Simo Zarić, T. 19216.

<sup>556</sup> Simo Zarić, T. 19217.

<sup>557</sup> Alija Fitozović, T. 8491; T. 8832-33.

<sup>558</sup> Simo Zarić, T. 19216.

<sup>559</sup> Simo Zarić, T. 19217.

<sup>560</sup> Simo Zarić, T. 19218.

## IX. ESTABLISHMENT OF THE SERBIAN MUNICIPALITY OF BOSANSKI ŠAMAC AND OF ITS CRISIS STAFF

### A. Serbian institutions established prior to the takeover of Bosanski Šamac.

289. Prior to the outbreak of hostilities in Bosanski Šamac, the Serb Autonomous Region for Northern Bosnia<sup>561</sup> and the Serb Autonomous Region of Semberija and Majevica<sup>562</sup> were established.<sup>563</sup>

290. In December 1991, a meeting attended by Radovan Karadžić took place in Bosanski Šamac where the formation of a Serbian Municipality of Šamac was discussed. Alija Fitozović testified that Radovan Karadžić came to Bosanski Šamac to make preparations for the creation of a Serbian Municipality of Šamac. Alija Fitozović testified that he saw Blagoje Simić with Radovan Karadžić. At the meeting, Radovan Karadžić explained how the conversion of the borders would take place, and that it was to be done by political negotiations with other parties in Bosanski Šamac. If it could not be done in such a way, then a date would be set as a condition for the parties to agree to the formation of Sprski Šamac.<sup>564</sup>

291. On 19 December 1991, the SDS Executive Board issued the "Variant A and B" instructions to its municipal boards. The instructions ordered the local boards to form Crisis Staffs and seize power in areas in which Serbs were in a majority (pursuant to Variant "A"), and to form separate parallel institutions of government where they were not (pursuant to Variant "B"). The instructions contemplated two levels of preparation for Serb takeovers according to whether the municipality fell within Variant A or Variant B. Within Variant A, at the first level, the SDS municipal boards were to form Crisis Staffs and establish Serb municipal assemblies and begin preparations for taking over the security organs. The second level called for the mobilisation of Serb police and their subordination into the JNA, the mobilisation of TO and JNA reserve forces, and the takeover of the security and municipal organs. The second level of Variant B instructed the election of Serb

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<sup>561</sup> Blagoje Simić, T. 12544-47, T. 12499.

<sup>562</sup> The Serbian Municipality of Bosanski Šamac joined the SAO of Semberija and Majevica in 21 May 1992, Exhibit P100, Crisis Staff Decision on the joining of the Serbian Municipality of Bosanski Šamac with the SAO of Semberija and Majevica. Blagoje Simić was designated by the Crisis Staff to represent the Serbian Municipality of Bosanski Šamac in the bodies and institutions of SAO Semberija and Majevica, Exhibit P101. Blagoje Simić testified that his nomination was never accepted by the SAO Semberija and Majevica, T. 12499; Simeon Simić, T. 13063.

<sup>563</sup> Sulejman Tihić testified that the SAOs included not only municipalities where Serbs were in the majority, but also municipalities where Serbs were in minority. The SAOs were first declared in the summer 1991, and the SAO in Šamac was declared in November 1991. He testified that the forming of the SAO in Northern Bosnia was published in the mass media. The SDA condemned the forming of these areas. The Serbs justified the creation of these areas by stating that it was to protect the Serbs. Sulejman Tihić described the SAOs as an "embryo" for future Serb institutions: police, TO and Republic, T. 1305-08; Simeon Simić testified that the purpose of the SAOs was to link up the administrations and various institutions in one entity, as they were not able to exist separately. In the hierarchy of levels, the SAO, which was a kind of canton, was the next level up from Bosanski Šamac. The next level was the State level, T. 13063.

officials to posts within the local Serb Assemblies, same mobilisation of Serb police and their cooperation with the JNA, and the same mobilisation of the JNA reserves and TOs “through competent organs”.<sup>565</sup>

292. Defence witnesses (members of the Crisis Staff) testified that they never saw the “Variant A and B instructions”. The witnesses gave evidence that the Crisis Staff never had the instructions under its custody and that they were not discussed by the Crisis Staff.<sup>566</sup>

293. The Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo was founded on 29 February 1992.<sup>567</sup> Deputies from the Serbian municipalities of Šamac, Gradačac, and Orašje attended the founding session on 29 February, including Blagoje Simić. The elected President was Dr. Ilija Ristić, and Dušan Tanasić was the Vice-President.<sup>568</sup>

294. Dušan Tanasić testified that as far as he could remember, Blagoje Simić was not elected to discharge certain duties and that none of the decisions that might have been taken in this session were implemented.<sup>569</sup>

295. In the meantime a meeting was being held in Struke on 29 February 1992 by the representatives of the population of Struke. Blaz Paradžik testified that the reason for convening the meeting was to calm the ethnic tensions that existed between the Croat and Serb population.<sup>570</sup>

296. According to Blaz Paradžik, at the end of the meeting in Struke, Miroslav Tadić and Blagoje Simić arrived unexpectedly. Blaz Paradžik recalls that Blagoje Simić announced that he had just left another meeting where the Serbian Municipality of Bosanski Šamac was proclaimed and said that the municipality encompassed all the villages of the municipality with a Serb population.<sup>571</sup> Blagoje Simić said that the JNA would enter the Serb villages and protect the Serb population when

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<sup>564</sup> Alija Fitozović, T. 8854-56.

<sup>565</sup> Exhibit P1 – Report of expert witness Dr. Robert Donia “Bosanski Šamac and the History of Bosnia-Herzegovina; see Exhibit P3 – Translation of Variant A and B: documents entitled “Instructions for the organisation and activity of organs of the Serbian people in Bosnia and Herzegovina in extraordinary circumstances”, 19 December 1991; Exhibit P45.

<sup>566</sup> Blagoje Simić, T. 12428; Dušan Tanasić, T. 13766; Božo Ninković, T. 13479; Maksim Simeunović, T. 15934; Mitar Mitrović, T. 18711; Simeon Simić, T. 13032-33; Mirko Lukić, T. 12933.

<sup>567</sup> Agreed Facts, para. 86; Decision on the establishment of the Serbian municipality of Bosanski Šamac, signed by Ilija Ristić, President of the Serbian Assembly of Bosanski Šamac, on 29 February 1992 (Exhibit P11). The Decision to Establish an Assembly of Serbian People of the Municipality of Bosanski Šamac (and Pelagićevo Under Formation) is also contained in the Official Gazette of Šamac Municipality No.1, issued on 3 June 1994 (Exhibit P124).

<sup>568</sup> Stevan Todorović, T. 9029-30; Savo Popović, T. 16231-32; Dušan Tanasić, T. 13755-6; Mirko Lukić, T. 12945; Blagoje Simić, T. 12225-26.

<sup>569</sup> Dušan Tanasić, T. 13755-6.

<sup>570</sup> Mitar Nijemčević, Deposition T. 405-406.

<sup>571</sup> Blaz Paradžik, T. 8224.

necessary.<sup>572</sup> Blagoje Simić testified that he did not talk about any plan of annexing the villages to the Municipality of Šamac.<sup>573</sup>

297. The establishment of the Municipal Assembly was formed pursuant to the recommendation of the National Assembly of Republika Srpska and in accordance with the “will expressed by the Serbian people in the territory of the municipal assemblies of Bosanski Šamac, Gradačac, Orašje and Odžak”.<sup>574</sup> Its leadership consisted of the deputies of the Serbian Democratic Party of Bosanski Šamac, Orašje and Odžak and of “other deputies of Serbian ethnicity”.<sup>575</sup>

298. The Serbian Municipality of Šamac operated within the legislative system of Republika Srpska as provided in Article 6 of the Decision to Establish the Assembly of the Serb Municipality which states: “The Assembly shall recognise all federal regulations, as well as those of the Republic...”.<sup>576</sup>

299. The competencies of the Serbian Municipality of Bosanski Šamac were set out in its Statute and Rules of Procedure.<sup>577</sup> According to Blagoje Simić, at the time of its establishment, the Municipal Assembly had very little authority. It was not allowed to interfere in financial matters, healthcare, education, agriculture, waterworks, forestry, economy and in the affairs of the Ministry of Interior as they were regulated at the Republican level.<sup>578</sup> Decisions within the Municipal Assembly were adopted by a simple majority vote. If a decision was adopted, the Secretariat of the Assembly put in on paper. The lawyers from the staff had the duty to keep everything in accordance with the law. The written decision required the signature of the President of the Municipal Assembly.<sup>579</sup>

300. The Statute of Šamac Municipality provides in Article 1 that Bosanski Šamac “shall be a Municipality of the Serbian people and other citizens living there”.<sup>580</sup> However, Lt. Col. Nikolić testified that the self-proclaimed Serbian Municipality concentrated power in the hands of Serbs

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<sup>572</sup> Blaz Paradžik, T. 8228.

<sup>573</sup> Blagoje Simić, T. 12443-44. See also Mitar Nijemčević, Deposition T. 409-13.

<sup>574</sup> Preamble of the Decision on the Establishment of the Assembly of the Serb Municipality published in the Official Gazette of Šamac Municipality, No.1 (Exhibit P124).

<sup>575</sup> Article 5 of the Decision on the Establishment of the Assembly of the Serb Municipality, published in the Official Gazette of Šamac Municipality, No.1 (Exhibit P124). Mirko Lukić, T. 12945.

<sup>576</sup> Decision on the Establishment of the Assembly of the Serb Municipality, published in the Official Gazette of Šamac Municipality, No. 1 (Exhibit P124).

<sup>577</sup> The Statute of Šamac Municipality was published in the Official Gazette of Šamac Municipality, No. 2 (Exhibit P125); The Provisional Rules of Procedure of the Šamac Municipal Assembly were published in the Official Gazette of Šamac Municipality, No. 1 (Exhibit P124). Blagoje Simić, T. 12204-05.

<sup>578</sup> Blagoje Simić, T. 12204-05.

<sup>579</sup> Blagoje Simić, T. 12206.

<sup>580</sup> See Exhibit P125.



only, and that non-Serbs could not participate as elected representatives although the Municipality had a non-Serb majority.<sup>581</sup>

## **B. The Establishment of the Crisis Staff**<sup>582</sup>

301. The self-declared Serbian Municipal Assembly of Bosanski Šamac and Pelagićevo established a “Serbian Municipality of Bosanski Šamac Crisis Staff”, referred to as the Crisis Staff, with Blagoje Simić as its President.

302. Blagoje Simić attended the meetings of the Municipal Assembly held on 28 March and 15 April 1992, in which the establishment of a Crisis Staff of the Serbian Municipality of Bosanski Šamac was discussed.<sup>583</sup> He testified that during the meetings he “took initiatives for the establishment of Crisis Staff”.<sup>584</sup>

303. During a meeting of the Municipal Assembly held in Obudovac on 28 March 1992 the Serb Assembly of Bosanski Šamac elected the representatives of the Executive Board of the Serbian Municipality of Bosanski Šamac. Stevan Todorović was elected chief of police.<sup>585</sup>

304. Stevan Todorović testified that he was elected chief of police on 28 or 29 March 1992.<sup>586</sup> He testified that, at the meeting that took place in Obudovac in late March 1992, the legally elected deputies of the Municipal assemblies of Šamac, Orašje, Odžak and Gradačac, asked Blagoje Simić to form the Crisis Staff, and if the need arose, to become President of the Crisis Staff.<sup>587</sup> Blagoje Simić did not oppose this.<sup>588</sup>

305. Blagoje Simić stated that during one of the sessions of the Serbian Municipal Assembly held in March, it was decided that a Crisis Staff should be established in case the war broke out in

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<sup>581</sup> Blagoje Simić, T. 18528.

<sup>582</sup> The terms Crisis Staff, War Presidency and Šamac Municipal Assembly were often used interchangeably by the witnesses that gave evidence before this Court.

<sup>583</sup> Blagoje Simić, T. 12238.

<sup>584</sup> Blagoje Simić, T. 12238.

<sup>585</sup> Dušan Tanasić, T. 13758; Savo Popović testified that during the meeting eleven members of the Executive Board were elected. Mirko Jovanović was elected President of the Executive Board and Miloš Bogdanović was elected Secretary of the Municipal Secretariat of National Defence. Lazar Mirkić was elected Secretary of the Municipal Secretariat for Economy on 28 March 1992. Mico Ivanović was elected Commander of the TO and Stevan Todorović was named Chief of the Public Security Station, T. 16231-34.

<sup>586</sup> Stevan Todorović, T. 9010.

<sup>587</sup> Stevan Todorović, T. 9053-55.

<sup>588</sup> Stevan Todorović, T. 9037-38.

the territory of Bosanska Posavina.<sup>589</sup> The task was assigned to the President and Vice-President of the Municipality and the chairman of the Municipal Board of the SDS.<sup>590</sup>

306. The members of the Municipal Assembly and its Executive Board also met on the night of 15 April 1992 in Obudovac. Stevan Todorović testified that Blagoje Simić arrived late from Pelagićevo from a meeting with Lt. Col. Nikolić. According to Stevan Todorović, Blagoje Simić told those present at the meeting in Obudovač, that Lt. Col. Nikolić had informed Blagoje Simić of an impending attack on Bosanski Šamac and that the 17<sup>th</sup> Tactical Group intended to prevent this incursion. The attack would be carried out by Croat and Muslim forces from the direction of Croatia, with the assistance of local Croat and Muslim units from Bosanski Šamac. Blagoje Simić referred to the fact that Lt. Col. Nikolić had told him that he and the army would jointly “with the mobilised soldiers from this area” prevent the incursion. Moreover, Lt. Col. Nikolić had insisted that the Crisis Staff make Fadil Topčagić a member. Lt. Col. Nikolić had also requested that the “members of the Crisis Staff” meet at the youth centre in Crkvina the following day, on 16 April 1992. Upon completion of the military action, the representatives of the newly formed Serbian Municipality of Bosanski Šamac and Pelagićevo were to make a proclamation in order to show that it was not “a military putsch” and to avoid the mistake made in Modriča six or seven days earlier.<sup>591</sup> Blagoje Simić testified that he was present at a meeting on 15 April 1992 in Obudovac attended by Miloš Bogdanović, Savo Popović, Dušan Tanasić, Mico Ivanović and Mirko Jovanović but denied stating to those present that there would be an attack by Croat and Muslim forces against Šamac and telling them to meet in Crkvina on 16 April in the evening hours.<sup>592</sup>

307. According to the first volume of the Official Gazette of Šamac Municipality, the Crisis Staff was formed on 15 April 1992.<sup>593</sup> Blagoje Simić testified that when the war broke out on 17 April the Crisis Staff did not exist. He testified that the Crisis Staff was established on 19 April 1992.<sup>594</sup> Mirko Lukić and Simeon Simić confirmed that the Crisis Staff was established on 19 April.<sup>595</sup>

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<sup>589</sup> Blagoje Simić, T. 12239.

<sup>590</sup> Blagoje Simić, T. 12239-40; According to Blagoje Simić a series of meetings followed: subsequent to the one in March mentioned above, a meeting of the Executive Board of the Serb Municipality of Bosanski Šamac and Pelagićevo was held. During the meeting the situation was described as dramatic. Based on that information, at another meeting on 14 and 15 April, the participants insisted on the establishment of a Crisis Staff if there were to be any war operations in the area, T. 12440.

<sup>591</sup> Stevan Todorović, T. 9078-81; Stevan Todorović, explains the “mistake” in Modriča was in relation to Lt. Col. Nikolić’s failure to get the co-operation of the civilian authorities in Modriča after taking over some vital facilities in the town. This resulted in the withdrawal of Lt. Col. Nikolić’s 17<sup>th</sup> Tactical Group from Modriča or “he was thrown out by the Croat or Muslim armed units”, T. 9079.

<sup>592</sup> Blagoje Simić, T. 12448.

<sup>593</sup> Exhibit P124 dated 3 June 1994.

<sup>594</sup> Blagoje Simić, T. 12240-41.

<sup>595</sup> Mirko Lukić, T. 12874; Simeon Simić, T. 13025.

308. Paragraph 1 of the “Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People” signed by the incumbent Prime Minister of Republika Srpska, Branko Đerić on 26 April 1992, provides that “in a State of war, the Crisis Staff shall assume all prerogatives and functions of the municipal assemblies, when they are unable to convene.”<sup>596</sup>

309. On 19 April, the President of the Crisis Staff, Blagoje Simić declared a state of emergency in the region. The decision on “the Introduction of a State of Emergency” held that “all bodies and institutions of Bosanski Šamac Municipality shall cease to operate in their current mandate” and “the Crisis Staff of the Serbian Municipality of Bosanski Šamac shall take up their functions, rights and obligations”.<sup>597</sup>

310. Stevan Todorović testified that soon after the takeover, a state of emergency was imposed in Bosanski Šamac.<sup>598</sup> He testified that the aim of the decision was the “protection of Šamac, regardless of ethnicity, due to incursions of enemy formations, and for the introduction of a certain degree of order in extraordinary times”.<sup>599</sup>

311. Blagoje Simić stated that the Crisis Staff was actually the Municipal Assembly under conditions of war. Crisis Staffs were established whenever there was an emergency, such as an earthquake, a flood, a fire. The purpose of the establishment of a Crisis Staff was to go through the period of crisis until the normal conditions were created to convene the entire assembly.<sup>600</sup>

312. Mirko Lukić also testified that on 19 April 1992 the Crisis Staff took the place of the Municipal Assembly and performed all assembly authorities.<sup>601</sup> He testified that as of 17 April 1992, the Municipal Assembly of Bosanski Šamac could no longer be convened because some deputies were no longer there. This was the reason why a state of emergency was declared.<sup>602</sup> However he stressed that the constitution of Bosnia and Herzegovina and other regulations like the Statute of the Municipal Assembly provided for the creation of a Crisis Staff in cases of emergency like an earthquake or war. Its task was to normalise the situation.<sup>603</sup> The Crisis Staff substituted for the deputies of the Municipal Assembly.<sup>604</sup>

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<sup>596</sup> Exhibit P128, Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People dated 26 April 1992.

<sup>597</sup> Decision on the Introduction of a State of Emergency on the Territory of the Municipality, 19 April 1992 (Exhibit P89).

<sup>598</sup> Stevan Todorović, T. 9208.

<sup>599</sup> Stevan Todorović, T. 9836.

<sup>600</sup> Blagoje Simić, T. 12239.

<sup>601</sup> Mirko Lukić, T. 12857, T. 12873.

<sup>602</sup> Mirko Lukić, T. 12872.

<sup>603</sup> Mirko Lukić, T. 12684.

<sup>604</sup> Mirko Lukić, T. 12685; Lazar Mirkić, T. 18900.

313. According to Božo Ninković, by taking the position of the Municipal Assembly, the Crisis Staff had full authority to govern the Municipality of Bosanski Šamac.<sup>605</sup>

314. The functions of the Crisis Staff are set out in the “Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian people” dated 26 April 1992 and signed by the incumbent Prime Minister of Republika Srpska.<sup>606</sup> Paragraph 3 of the “Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian people” provides that the Crisis Staff:

“Coordinates the functions of authorities in order to ensure the defence of the territories, the safety of the population and property, the establishment of government and the organisation of all other areas of life and work. In so doing, the Crisis Staff provides the conditions for the Municipal Executive Committee to exercise legal executive authority, run the economy and other areas of life.”<sup>607</sup>

315. Moreover, paragraph 6 provides that:

“The work of the Crisis Staff is based on constitutional and legal provisions and on decisions reached by the Assembly, the Presidency and the Government of the Serbian Republic of Bosnia and Herzegovina.”<sup>608</sup>

316. Mirko Lukić testified that the powers of the Crisis Staff derived from authorisation from the Government of Republika Srpska.<sup>609</sup> He stated that the Crisis Staff also liaised with the National Assembly and the Government of Republika Srpska. It implemented the government policy in the form of national assembly decisions, government decrees, and presidency decrees.<sup>610</sup> Mirko Lukić testified that the document on instructions for the work of the Municipal Crisis Staffs sets out at the highest level of the Republika Srpska what the Crisis Staffs were supposed to do.<sup>611</sup>

317. Blagoje Simić gave evidence that the Crisis Staff was duty-bound to respect everything that was in accordance with the law, such as the “Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People”. The Crisis Staff respected the laws of Republika Srpska.<sup>612</sup>

318. Paragraph 2 of the “Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People” provides that:

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<sup>605</sup> Božo Ninković stated that the Crisis Staff substituting the Municipal Assembly was the highest civilian authority in Šamac. The Crisis Staff had responsibilities for the health, safety and welfare of citizens in area it administered. During the war, the civilian authorities had significantly fewer possibilities to take care of the welfare of the residents of the municipality, T. 13578-81; Vladimir Šarkanović testified that the Crisis Staff was responsible for everything, T. 16583.

<sup>606</sup> Exhibit P128, Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People dated 26 April 1992.

<sup>607</sup> *Ibid.*

<sup>608</sup> *Ibid.*

<sup>609</sup> Mirko Lukić, T. 12916.

<sup>610</sup> Mirko Lukić, T. 12858-59.

<sup>611</sup> Mirko Lukić, T. 12897.

<sup>612</sup> Blagoje Simić, T. 12577-80.

“The Crisis Staff consists of members, each of whom has his own responsibilities: the President, Deputy President, commander of the TO Staff, President of the Executive Committee, Head of MUP and members responsible for the economy, humanitarian and medical care, information and propaganda, procurement and food supplies, refugees, war crimes and damage, communications, coordination etc.”<sup>613</sup>

319. According to some witnesses the Crisis Staff had a multiparty composition.<sup>614</sup> Simeon Simić, also gave evidence that the Crisis Staff was established as a body with two segments: the “fixed section” and the “variable section”.<sup>615</sup> He stated that the fixed section of the Crisis Staff was composed of Blagoje Simić, as President; Mitar Mitrović, as Secretary of the Crisis Staff; Savo Popović who was in charge of contacts with local communities, and Simeon Simić as head of the Information Service. Mirko Jovanović and Milos Bogdanović<sup>616</sup> who were also in the fixed section had no specific assignment. The permanent members had the right to vote and other people who would attend meetings when certain issues were discussed also had the right to vote. For example, when “people from the economy, the Red Cross” or from “different branches” attended a Crisis Staff meeting they had the right to vote.<sup>617</sup>

320. Blagoje Simić testified that the membership of the Crisis Staff in April 1992, when it started functioning, is reflected in the Payroll List of the Crisis Staff for the month of May 1992.<sup>618</sup> According to the Payroll List, the members of the Crisis Staff were: “Blagoje Simić (President), Mitar Mitrović<sup>619</sup>, Savo Popović<sup>620</sup>, Simeon Simić<sup>621</sup>, Miroslav Tadić (members) Čedo Milicević, Jovan Ostojić, Miloš Ilić, Branko Šljokić (Security), Saja Tešić (Cook), Božo Ninković<sup>622</sup> (Information), and Fadil Topčagić<sup>623</sup> (member, added by handwriting).”<sup>624</sup>

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<sup>613</sup> Exhibit P128, Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People dated 26 April 1992.

<sup>614</sup> Stevan Todorović, T. 9938-39; Simeon Simić testified that within the Crisis Staff there was multiparty representation. Blagoje Simić was a member of the SDS party. Savo Popović was a member of the SDP and Simeon Simić belonged to the Liberal Party, T. 13013; Savo Popović asserts the Crisis Staff was not a single-party establishment. Blagoje Simić, Mirko Jovanović and Mitar Mitrović were members of the SDS party. Simeon Simić and Božo Ninković were members of the Liberal Party. Miroslav Tadić, Fadil Topčagić and Savo Popović were not members of any party, T. 16306, T. 16392-93.

<sup>615</sup> Simeon Simić, T. 13010-12.

<sup>616</sup> Stevan Todorović testified that Miloš Bogdanović was a member of the Crisis Staff. Miloš Bogdanović remained a member of the Crisis Staff, even after being replaced by Božo Ninković, T. 9175.

<sup>617</sup> Simeon Simić, T. 13012. Stevan Todorović’s cross-examination suggests that the permanent members did not have expertise on all issues and others were called if necessary, T. 9875.

<sup>618</sup> Blagoje Simić, T. 12243. Exhibit D55/1-information on Method, Conditions and Funds for Salary Payments According to Established Coefficients for the month of May 1992.

<sup>619</sup> Stevan Todorović testified that Mitar Mitrović was a member of the Crisis Staff in the beginning, and later, became the Secretary of the Crisis Staff and dealt with the legal issues of the municipality, T. 9082. On the contrary Mitar Mitrović denied having been a member of the Crisis Staff, T. 18695, T. 18720-21.

<sup>620</sup> Stevan Todorović, T. 9178-79.

<sup>621</sup> Stevan Todorović, T. 9083. Slobodan Sjenčić, Deposition T. 281-82.

<sup>622</sup> Stevan Todorović testified that Božo Ninković automatically became a member of the Crisis Staff when he replaced Miloš Bogdanović at the Secretariat for National Defence, T. 9175. On the contrary, Božo Ninković denies being a member of the Crisis Staff. He worked for the public relations and information service, set up for the civilian authorities in the municipality of Bosanski Šamac. His superior was Simeon Simić, T. 13501-02, T. 13513.

<sup>623</sup> Stevan Todorović, T. 9068, T. 13016.

321. Blagoje Simić was President of the Crisis Staff. He was appointed President on 17 April 1992 by Decision of the Crisis Staff.<sup>625</sup> His position in the Crisis Staff is confirmed by numerous witnesses.<sup>626</sup> Blagoje Simić testified that the decision to appoint him as the president of the Crisis Staff was actually adopted on 19 April 1992 when the Crisis Staff was formed.<sup>627</sup> However the decision was pre-dated to 17 April 1992 as it was decided that this period of two days should be covered and that all the documents should be dated 17 April. He admits signing the decision with the title “President of the Crisis Staff”.<sup>628</sup> Blagoje Simić asserts that the members of the Crisis Staff decided amongst themselves who their chairman would be. He was therefore voted as President.<sup>629</sup>

322. According to various witnesses, including Lt. Col. Nikolić and Commander Antić, Stevan Todorović was an *ex-officio* member of the Crisis Staff.<sup>630</sup> Moreover, paragraph 2 of the “Excerpt from Instructions” provides that the head of the MUP is a member of the Crisis Staff.<sup>631</sup>

323. Stevan Todorović testified that he became a member of the Crisis Staff between 15 and 17 April 1992. His membership in the Crisis Staff continued throughout 1992.<sup>632</sup> Stevan Todorović’s sphere of authority within the Crisis Staff was public law and order and police tasks at the Šamac level.<sup>633</sup>

324. On the contrary, Blagoje Simić testified that Stevan Todorović was not a member of the Crisis Staff,<sup>634</sup> even though he was occasionally invited to attend the sessions of the Crisis Staff. He stated that Stevan Todorović often came uninvited, and “usurped” the meetings of the Crisis Staff.<sup>635</sup>

325. Simeon Simić also testified that Stevan Todorović was neither a member of the Crisis Staff nor of the War Presidency.<sup>636</sup> He reported directly to the Minister for his actions.<sup>637</sup> He attended

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<sup>624</sup> Exhibit D55/1-Information on Method, Conditions and Funds for Salary Payments According to Established Coefficients for the month of May 1992.

<sup>625</sup> Exhibit P109 – Decision on the Appointment of the President of the Crisis Staff, 17 April 1992. Blagoje Simić testified that he was President of the SDS, T. 12996.

<sup>626</sup> Witness N, T. 6052-53; Witness P, T. 11545; Ediba Bobić, T. 11247-48; Osman Jašarević, T. 10627; Slobodan Sjenčić, Deposition T. 281-82; Stevan Nikolić, T. 18562; Čedomir Simić testified that Blagoje Simić was elected President of the Municipal Assembly on the 14 April 1992, at the initiative of the SDS party municipal board, T. 18840.

<sup>627</sup> Blagoje Simić, T. 12247-48.

<sup>628</sup> Blagoje Simić, T. 12393.

<sup>629</sup> Blagoje Simić, T. 12248.

<sup>630</sup> Stevan Nikolić, T. 18562; Radovan Antić testified that the position occupied by Stevan Todorović is indicative that he was a member of the Crisis Staff, T. 16897; Vladimir Šarkanović, T. 16661.

<sup>631</sup> Exhibit P128, Excerpt from Instruction for the Work of the Municipal Crisis Staffs of the Serbian People, dated 26 April 1992.

<sup>632</sup> Stevan Todorović, T. 9010.

<sup>633</sup> Stevan Todorović, T. 9012.

<sup>634</sup> Blagoje Simić, T. 12269; see Exhibit P124.

<sup>635</sup> Blagoje Simić, T. 12269.

<sup>636</sup> Simeon Simić, T. 13120.

<sup>637</sup> Simeon Simić, T. 13120.

sessions of the Crisis Staff, because he was the kind of person who liked to impose himself and go to places where he was not desired or not a member of a certain group.<sup>638</sup>

326. According to both Prosecution and Defence witnesses Simo Zarić was not a member of the Crisis Staff.<sup>639</sup>

327. Miroslav Tadić confirms that he was a member of the Crisis Staff when he was appointed head of the Civilian Protection Staff on 23 April 1992.<sup>640</sup>

328. Stevan Todorović testified that Miroslav Tadić was a member of the Crisis Staff and that he attended the meetings of the Crisis Staff.<sup>641</sup> Stevan Todorović testified that Miroslav Tadić attended the meetings with less frequency than he did. Stevan Todorović agreed that, due to Miroslav Tadić's engagement as the commander of the Civilian Protection Staff<sup>642</sup> and in the exchanges, he was frequently in the field. Therefore, Miroslav Tadić was absent from the meetings of the Crisis Staff more frequently than the other members.<sup>643</sup>

329. Blagoje Simić asserts that Miroslav Tadić was appointed a member of the Crisis Staff of the Municipality of Šamac on 23 April 1992.<sup>644</sup> As a member of the Exchange Commission and as a member and head of the Civilian Protection Staff, Miroslav Tadić would come to the Presidency from time to time and submit reports.<sup>645</sup>

330. The Headquarters of the Crisis Staff was located in the Pik factory farm for the first one or two days after its establishment and then it moved to Uniglas for another day or two. Later the headquarters was moved to the heating plant.<sup>646</sup>

331. On 31 May 1992, the Presidency of Republika Srpska issued a Decision on the "Formation of War Presidencies in Municipalities in Times of War or the Immediate Threat of War".<sup>647</sup> According to Article 3 of the Decision, a War Presidency shall:

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<sup>638</sup> Simeon Simić, T. 13120.

<sup>639</sup> Stevan Todorović, T. 10120; Blagoje Simić, T. 12486.

<sup>640</sup> Miroslav Tadić, T. 15243; Exhibit D59/3 - Crisis Staff Decision Appointing Miroslav Tadić as Commander of the Municipal Civilian Protection Staff, 23 April 1992; Numerous witness testified that Miroslav Tadić was a member of the Crisis Staff: Simeon Simić, T. 13015-16; Savo Popović states that the members of the Crisis Staff agreed a few days later after their appointment that the head of the civilian protection staff should also be on the Crisis Staff, T. 16253; Slobodan Sjenčić, Deposition T. 281-282; Božo Ninković, T. 13615. Some witnesses testified that even though Miroslav Tadić was a member of the Crisis Staff he was not a member of the War Presidency: Simeon Simić, T. 13089; Blagoje Simić, T. 12481.

<sup>641</sup> Stevan Todorović, T. 9308.

<sup>642</sup> The terms Civil Protection, Civil Protection Staff or Civil Defence Staff are used interchangeably.

<sup>643</sup> Stevan Todorović, T. 9609.

<sup>644</sup> Blagoje Simić, T. 12480.

<sup>645</sup> Blagoje Simić, T. 12481.

<sup>646</sup> Stevan Todorović, T. 9134-35; Simon Simić, T. 13017-19, T. 16255; Blagoje Simić, T. 12259; Mirko Lukić, T. 12674-76.

“Organise, co-ordinate and adjust activities for the defence of the Serbian people and for the establishment of the lawful municipal authorities, perform all the duties of the Assembly and the executive body until the said authorities are able to convene and work, create and ensure conditions for the work of military bodies and units in defending the Serbian nation, carry out other tasks of state bodies if they are unable to convene”.

332. Subsequently, on 21 July 1992, the Crisis Staff issued a decision renaming the Municipal Crisis Staff to War Presidency.<sup>648</sup> Article 3 of the Decision provides that “in conformity with the positive regulations of the Serbian Republic of Bosnia and Herzegovina, the War Presidency shall operate in wartime as the highest body of authority in the Serbian Municipality of Bosanski Šamac.”<sup>649</sup>

333. Stevan Todorović testified that the membership of the War Presidency, when it was established, was different from the composition of the Crisis Staff. Stevan Todorović testified that as far as he remembered, Miroslav Tadić did not take part in the decision making of the War Presidency. Miroslav Tadić only went to the Presidency sessions to inform the Presidency about the duties that were in his jurisdiction.<sup>650</sup>

334. Savo Povović, testified that the only members of the War Presidency were Blagoje Simić, Simeon Simić and himself.<sup>651</sup>

335. Blagoje Simić, Simeon Simić and Savo Popović confirmed that Miroslav Tadić was not a member of the War Presidency.<sup>652</sup>

### **C. Relations between the Crisis Staff, War Presidency, and other Actors**

#### **1. Relations between the Crisis Staff and the Executive Board**<sup>653</sup>

336. The Crisis Staff set up bodies to assist it in carrying out its policies. On 30 May 1992 the Crisis Staff adopted the “Decision on the Executive Board and Administrative Bodies”.<sup>654</sup>

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<sup>647</sup> Exhibit P72, Decision on the Formation of War Presidencies in Municipalities in Times of War or the Immediate threat of War dated 31 May 1992 and published in the Official Gazette of the Serbian People in Bosnia and Herzegovina dated 8 June 1992.

<sup>648</sup> P73, Decision on Renaming the Municipal Crisis Staff dated, 31 May 1992.

<sup>649</sup> According to the Official Gazette of Šamac Municipality issued on 3 June 1994 the War Presidency was relieved of its duties on 23 January 1993 (Exhibit P124, Article 2 of the Decision to Confirm the Decisions and other Legislations of the War Presidency of the Šamac Municipal Assembly, p. 16). Stevan Todorović, T. 9577.

<sup>650</sup> Stevan Todorović, T. 9645-46.

<sup>651</sup> Savo Povović, T. 16284-85.

<sup>652</sup> Blagoje Simić, T. 12480; Simeon Simić, T. 13168; Savo Povović, testified that the only members of the War Presidency were Blagoje Simić, Simeon Simić and himself. The other men worked on the Executive Board of the municipality headed by Milan Simić and the others, T. 16285.

<sup>653</sup> Defence witnesses have used the terms “Executive Board,” “Executive Council” and “Executive Committee” to refer to the same institution. For clarity and consistency the Trial Chamber accepts the term Executive Board to refer to this institution.

<sup>654</sup> Exhibit P112 - Crisis Staff Decision on the Executive Board and Administrative Bodies, 30 May 1992.



According to Article 1 of the Decision, the Executive Board had to report to the Crisis Staff.<sup>655</sup> The Executive Board prepared drafts of decisions and other regulations for the Crisis Staff and gave advice as to their adoption. Stevan Todorović testified that representatives of the Executive Board would occasionally report to or brief the Crisis Staff on how its policies were being implemented.<sup>656</sup>

337. Slobodan Sjenčić stated that the President of the Executive Board was, when necessary, invited to attend Crisis Staff sessions. The Executive Board, if asked so, would implement decisions of the Crisis Staff.<sup>657</sup> Slobodan Sjenčić testified that one of the tasks of the Executive Board was to secure the provisioning of the population and the army.<sup>658</sup>

338. Blagoje Simić testified that the Municipal Executive Board was responsible to the Serbian Assembly of Bosanski Šamac as well as to Republika Srpska and its Ministries.<sup>659</sup> As far as Čedomir Simić knew, the Executive Board worked according to the orders that were given from the government at that time, and it was an independent institution.<sup>660</sup>

339. Defence witnesses testified that the Executive Board was responsible for issues related to welfare and social policy concerning housing, employment, education, transport, economy, agricultural policies, and fire.<sup>661</sup> Mirko Lukić gave evidence that the Executive Board was an executive body in so far as economy and social work was concerned.<sup>662</sup>

340. Milan Simić was the President of the Executive Board and Mirko Lukić his Deputy.<sup>663</sup> They were both appointed by decisions of the Crisis Staff on 30 May 1992.<sup>664</sup> When Stevan Todorović was appointed chief of police on 28-29 March 1992, he automatically became a member of the Executive Board.<sup>665</sup>

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<sup>655</sup> Article 1 paragraph 2 of the document reads as follows: “The Executive Board shall report to the Assembly, that is to the Crisis Staff of the Serbian Municipality of Bosanski Šamac, on the situation in all aspects of social life, the implementation of policies, decisions, and other regulations of the Assembly, that is, the Crisis Staff of the Serbian Municipality of Bosanski Šamac.” Exhibit P112.

<sup>656</sup> Stevan Todorović, T. 9298-99.

<sup>657</sup> Slobodan Sjenčić, Deposition T. 267.

<sup>658</sup> Slobodan Sjenčić, Deposition T. 256-257.

<sup>659</sup> Blagoje Simić, T. 12208.

<sup>660</sup> Čedomir Simić, T. 18830.

<sup>661</sup> Mirko Lukić, T. 12865-66; Čedomir Simić, Rule 92bis Statement, para. 19.

<sup>662</sup> Mirko Lukić, T. 12898.

<sup>663</sup> Simeon Simić stated that Blagoje Simić was unhappy of the appointment of Milan Simić as President of the Executive Board and that they both supported the other candidate Mirko Lukić. There was disagreement within the Crisis Staff as to who should be appointed, T. 13072, T. 12395. Mirko Lukić testified that he had heard from Milan Simić that they were both candidates for the Presidency of the Executive Board and that Blagoje Simić supported his candidacy, T. 12706.

<sup>664</sup> Exhibit P110 – Crisis Staff Decision on the appointment of Milan Simić as President of the Executive Board, 30 May 1992; P111 - Crisis Staff Decision on the appointment of Mirko Lukić as Deputy President of the Executive Board, 30 May 1992.

<sup>665</sup> Stevan Todorović, T. 9010.

## 2. Relations between the War Presidency and the Committee for Exchange<sup>666</sup>

341. The War Presidency of the Šamac Municipality issued a Decision on the Appointment of a Committee for Exchange of Prisoners on 2 October 1992.<sup>667</sup> Miroslav Tadić's name was included among the members of the Committee<sup>668</sup> as were Velimir Maslić and Simo Nikolić.<sup>669</sup> They were in charge of the prisoner exchanges and other exchanges.<sup>670</sup>

## 3. Relations between the Crisis Staff, War Presidency and the Police

342. Defence witnesses testified that the Crisis Staff was powerless to control the police.<sup>671</sup> It could not appoint or dismiss police officials.<sup>672</sup> Blagoje Simić testified that the Crisis Staff was not allowed to interfere in the affairs of the Ministry of Interior.<sup>673</sup>

343. Commander Antić stated that he was familiar with the structure of the police in peacetime, as he had been the head of the police in Šamac. The police was organized according to a vertical chain of command. The "organ of internal affairs" was answerable to the Assembly and would each year report about its work to the Assembly.<sup>674</sup>

344. Stevan Todorović testified that the War Presidency was aware of the murder of Anto Brandić, aka "Antesa," which occurred on 29 July 1992, as he reported Antesa's death verbally to members of the War Presidency<sup>675</sup> and that the incident was discussed among some of its members, including Blagoje Simić.<sup>676</sup> During cross-examination he testified that at the actual time he made the report he could not confirm that Blagoje Simić was there,<sup>677</sup> and further that it was an informal

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<sup>666</sup> The terms Committee of Exchange or Exchange Commission or Exchange Committee are used interchangeably.

<sup>667</sup> Exhibit P83- Decision on the Appointment of a Commission for the Exchange of Prisoners and Other Persons, dated 2 October 1992.

<sup>668</sup> Stevan Todorović, T. 9167-68.

<sup>669</sup> Simeon Simić, T. 13045. Velimir Maslić is referred to as the President in the Decision on the Appointment of a Commission for the Exchange of Prisoners and Other persons, dated 2 October 1992, Exhibit P83. Stevan Todorović, T. 9167-68.

<sup>670</sup> Velimir Maslić is referred to as the President in the Decision on the Appointment of a Commission for the Exchange of Prisoners and Other Persons, dated 2 October 1992, Exhibit P83.

<sup>671</sup> Savo Popović, T. 16253; Slavko Paleksić, T. 13835-37.

<sup>672</sup> Slavko Paleksić gave evidence that police officials could only be appointed and dismissed by the Minister of the Interior. The Crisis Staff or War Presidency could not pass a decision dismissing the Chief of the SUP. The Municipality could ask the Public Security Station to regulate matters, such as the traffic within the area, to reinforce the control of public law and order, and so forth. The Chief of the Public Security Station would then have to ask for the consent and approval of the Head of the Centre for Regional Security. The police worked on the basis of the law of the interior and the relevant by-laws, T. 13835-37. Mirko Lukić, T. 12933-34.

<sup>673</sup> Blagoje Simić, T. 12204-05.

<sup>674</sup> Radovan Antić, T. 16898-9.

<sup>675</sup> Stevan Todorović, T. 9930-31. It must be noted that erroneously the terms Crisis Staff and War Presidency are used interchangeably.

<sup>676</sup> Stevan Todorović, T. 9140-41.

<sup>677</sup> Stevan Todorović, T. 9930.

discussion and not an official session. Blagoje Simić, on the contrary, testified that Stevan Todorović did not inform him of the killing.<sup>678</sup>

345. Blagoje Simić testified that he had a very bad relationship with Stevan Todorović, which would culminate in fierce arguments.<sup>679</sup> Stevan Todorović harassed Mirko Ivanović, a member of the Executive Board, invented stories about Fadil Topčagić and “generally laughed at every move he made”. According to Blagoje Simić, Miroslav Tadić insisted a few times that Stevan Todorović be replaced.<sup>680</sup>

#### 4. Relations between the Crisis Staff, War Presidency and the Paramilitaries

346. Defence witnesses testified that members of the Crisis Staff were harassed by the paramilitaries.<sup>681</sup> On several occasions the paramilitaries caused trouble in Miroslav Tadić’s Café AS and forced him to “perform improper acts”.<sup>682</sup> Blagoje Simić testified that he did not have any contact with the paramilitaries.<sup>683</sup>

347. Božo Ninković testified that the civilian authorities feared the paramilitaries from Serbia.<sup>684</sup> The Crisis Staff, and later the War Presidency, were unable to do anything with regard to the behaviour of the paramilitaries.<sup>685</sup> He also testified that “Lugar” would have carried out an act of reprisal against Blagoje Simić had he informed higher authorities.<sup>686</sup> Miroslav Tadić asserted that the relations between Blagoje Simić and the paramilitaries were quite bad and that Blagoje Simić issued no orders to the paramilitaries.<sup>687</sup>

348. Savo Popović asserted that a group of paramilitaries was active in Šamac Municipality and had links to both the police and the army.<sup>688</sup> Savo Popović proposed to Blagoje Simić to request the assistance of General Talić because “we could no longer put up with what “Crni” was doing.”<sup>689</sup> Savo Popović and Blagoje Simić met with General Talić who promised to send Mile Beronja, the

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<sup>678</sup> Blagoje Simić, T. 12452-53.

<sup>679</sup> Blagoje Simić, T. 12316.

<sup>680</sup> Blagoje Simić, T. 12482.

<sup>681</sup> Blagoje Simić, T. 12423; Dušan Tanasić, T. 13760.

<sup>682</sup> Blagoje Simić, T. 12316.

<sup>683</sup> Blagoje Simić, T. 12422-23.

<sup>684</sup> Božo Ninković, T. 13533.

<sup>685</sup> Božo Ninković, T. 13610-11.

<sup>686</sup> Božo Ninković, T. 13619-20.

<sup>687</sup> Miroslav Tadić, T. 15526.

<sup>688</sup> Savo Popović, T. 16291-92.

<sup>689</sup> Savo Popović, T. 16267-68.

head of the 1<sup>st</sup> Tactical Group in Odžak.<sup>690</sup> As far as Savo Popović knew, the paramilitaries were “purged” from the battalions when Mile Beronja assumed his position.<sup>691</sup>

349. At its session on 6 May 1992, the Crisis Staff issued an order to all the Crisis Staffs of the local communes ordering them “to organise within the Local Communes the feeding of soldiers and members of the Special Battalion.”<sup>692</sup> According to Stevan Todorović, as far as he could remember, this decision was discussed by the Crisis Staff members<sup>693</sup> and the signature on the order appeared to be that of Blagoje Simić.<sup>694</sup> Blagoje Simić testified that this decision was passed in order to improve the nutrition of soldiers.<sup>695</sup>

(a) Removal from office of Mico Djurdjević and appointment of “Crni”

350. Stevan Todorović was shown Exhibit P127 (“Thirteen Signatories Report”) that refers to the dismissal of Col. Mico Djurdjević, the Commander of the 2<sup>nd</sup> Posavina Infantry Brigade, and his replacement by “Crni”, following an incident and interview with Blagoje Simić at the office of the President of the War Presidency.<sup>696</sup> He did not quite agree with the paragraph.<sup>697</sup> He testified that after Lt. Col. Nikolić left for Serbia on 18 May 1992, Col. Mico Djurdjević expressed his intention to take over temporarily the command of the 17<sup>th</sup> Tactical Group. About a few days or a week later there was a meeting in the heating plant where Blagoje Simić, Stevan Todorović and some other members of the Crisis Staff were present.<sup>698</sup> According to Stevan Todorović, several commanders of the local platoons demonstrated support for “Crni”,<sup>699</sup> and “under the circumstances” Blagoje

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<sup>690</sup> Savo Popović, T. 16268.

<sup>691</sup> Savo Popović, T. 16269.

<sup>692</sup> Stevan Todorović, T. 9057-58; Exhibit P74 – Document entitled: Order to all Crisis Staffs of Local Communes, 6 May 1992. Stevan Todorović explained that reference to “local communes” meant the villages within the territory of Bosanski Šamac. The “Special Battalion” consisted of the youngest people from the territory of the municipality of Šamac, approximately 300 men, and the 50 paramilitaries from Batkuša who formed part of the 17th Tactical Group. The 300 local men had no training but they were the offensive battalion and everyone called it the “Special Battalion”, T. 9058.

<sup>693</sup> Stevan Todorović, T. 9059.

<sup>694</sup> Stevan Todorović, T. 9058-59; Stevan Todorović stated that, from 1992 onwards, he had, on a few or a number of occasions, seen Blagoje Simić signing documents. Therefore, Blagoje Simić’s signature became familiar to him, T. 9059.

<sup>695</sup> Blagoje Simić, T. 12362.

<sup>696</sup> “Colonel Djurdjević tried to introduce more military order and discipline in the Brigade, and dismiss “Crni” from the post of commander of the Special Battalion and appoint a new commander, and after he garnered unqualified support for this from the members of the Command, Battalion officers and some members of the Government and Crisis Staff, a sudden reversal took place, with an incident staged in the office of the President of the War Presidency, where an interview was first held with Colonel Djurdjević in the presence of an armed group of “commandos”, to be followed by an interview attended by Blagoje Simić, President of the War Presidency, Stevan Todorović, chief of the Public Security Station, “Crni” and Colonel Djurdjević and resulting in their joint agreement that Colonel Djurdjević be dismissed. Dragan Djordević, aka “Crni”, was soon appointed commander of the Brigade and was promoted overnight from private to lieutenant colonel for his post”, Exhibit P127, third point.

<sup>697</sup> Stevan Todorović, T. 9462.

<sup>698</sup> Stevan Todorović, T. 9463.

<sup>699</sup> Stevan Todorović, T. 9462-64. Stevan Todorović also supported “Crni”, although he would have preferred Col. Mico Djurdjević to lead the Brigade. He stated that the members of the platoons present who had originally come from Šamac had said that if “Crni” was dismissed that they would go with him to Serbia, T. 9463.

Simić thought that it would be better that “Crni” became the brigade commander.<sup>700</sup> Blagoje Simić, Col. Mico Djurdjević, “Crni” and Stevan Todorović travelled to Ugljevik in Republika Srpska where the corps commander, Col. Dencić, “arbitrarily but according to the law”, made “Crni” the Brigade Commander.<sup>701</sup> However, at the meeting Blagoje Simić stated that such an appointment was exclusively within Col. Dencić’s competence and within his sphere of duties.<sup>702</sup>

351. Defence witnesses testified that the Crisis Staff was not involved in this appointment. According to Simeon Simić, the Crisis Staff was never involved in the appointment of certain military commanders in Šamac and it did not have the authority to do that.<sup>703</sup> Blagoje Simić testified that neither he nor the Crisis Staff tried to impose any personnel decisions regarding Colonel Djurdjević’s replacement as the head of the JNA units.<sup>704</sup> Miroslav Tadić also gave testimony that the Crisis Staff did not appoint people at the command level of the 2<sup>nd</sup> Posavina Brigade.<sup>705</sup>

352. Simo Zarić gave evidence as to a meeting at the Crisis Staff headquarters attended by Col. Djurdjević, Captain Jovo Savić, Blagoje Simić, Stevan Todorović, Simeon Simić, and Božo Ninković, among others.<sup>706</sup> At the meeting Stevan Todorović told Col. Mico Djurdjević that the army, and especially people from the Special Battalion, were not pleased with his attitude as a commander.<sup>707</sup> Mico Djurdjevic suggested to Blagoje Simić that those present leave except for Blagoje Simić, Stevan Todorović and himself. After about an hour, or even less, Simo Zarić saw that “Crni” arrived by car and joined the meeting.<sup>708</sup> Simeon Simić also testified that such meeting took place.<sup>709</sup>

353. Simo Zarić stressed that Commander Djurdjević was replaced about seven days after he had expressed openly in a meeting that the paramilitaries be placed under the command of the military or police, and if they refused, they should leave the territory.<sup>710</sup>

354. Maksim Simeunović stated that he accompanied Commander Djurdjević to the premises of the Crisis Staff for a meeting.<sup>711</sup> After the meeting Command Djurdjević told him that he had been dismissed by the Crisis Staff and that Dragan Djordjević, “Crni”, was appointed commander of the

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<sup>700</sup> Stevan Todorović, T. 9468-69.

<sup>701</sup> Stevan Todorović, T. 9471.

<sup>702</sup> Stevan Todorović, T. 9910.

<sup>703</sup> Simeon Simić, T. 13111.

<sup>704</sup> Blagoje Simić, T. 12299.

<sup>705</sup> Miroslav Tadić, T. 15522.

<sup>706</sup> Simo Zarić, T. 19461.

<sup>707</sup> Simo Zarić, T. 19462.

<sup>708</sup> Simo Zarić, T. 19463-64.

<sup>709</sup> Simeon Simić, T. 13179-81.

<sup>710</sup> Simo Zarić, T. 19458.

2<sup>nd</sup> Posavina Brigade. The next day, Commander Djurdjević reported to his Superior Command and left the post of Commander of the 2<sup>nd</sup> Posavina Brigade.<sup>712</sup> After Commander Djurdjević left, Colonel Dencić came from the command of the Eastern Bosnian Corps, with the order appointing “Crni” as commander and promoting him to the rank of Lieutenant Colonel.<sup>713</sup>

(b) Crisis Staff and War Presidency informed of killings by paramilitaries

355. Stevan Todorović testified that the people in power in the civilian authorities, the Crisis Staff and the War Presidency, knew about the murders committed by “Lugar” and the other paramilitaries.<sup>714</sup>

(i) Death of “Dikan”

356. Stevan Todorović testified that Ante Brandić “Dikan” was killed in the TO and that his death was known and discussed by some members of the Crisis Staff, including Blagoje Simić.<sup>715</sup>

357. Simo Zarić testified that a few minutes after the killing of “Dikan” he telephoned Blagoje Simić to inform him of what had occurred, and of his intention to contact immediately his commander. Simo Zarić suggested that as the President of the Crisis Staff, Blagoje Simić, should do his utmost to prevent any situations like this from happening.<sup>716</sup> Blagoje Simić said that he would talk to Stevan Todorović.<sup>717</sup>

(ii) Crkvina massacre

358. Prosecution<sup>718</sup> and Defence<sup>719</sup> witnesses testified that the Crkvina massacre of 16 people was a matter of common knowledge in Bosanski Šamac. Blagoje Simić testified that he knew about the killing of non-Serbs by “Lugar” in Crkvina.<sup>720</sup> Simeon Simić stated that he did not know about the killings until “Lugar” was detained in Banja Luka. He did not receive official information on the Crkvina massacre<sup>721</sup> nor did he hear about it in town.<sup>722</sup>

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<sup>711</sup> Maksim Simeunović, T. 15911-12.

<sup>712</sup> Maksim Simeunović, T. 15915.

<sup>713</sup> Maksim Simeunović, T. 15915-16.

<sup>714</sup> Stevan Todorović, T. 10112.

<sup>715</sup> Stevan Todorović, T. 9139.

<sup>716</sup> Simo Zarić, T. 19334.

<sup>717</sup> Simo Zarić, T. 19334.

<sup>718</sup> Stevan Todorović, T. 9144.

<sup>719</sup> Radovan Antić, T. 16843; Petar Karlović, T. 18442-43.

<sup>720</sup> Blagoje Simić, T. 13105-07.

<sup>721</sup> Simeon Simić, T. 13107-08.

<sup>722</sup> Simeon Simić, T. 13106.

359. Stevan Todorović testified that he heard about the “unfortunate event” the next day when Savo Čančarević informed him.<sup>723</sup> He was told that “Lugar” had insisted that all traces be removed. He testified further that on “Lugar’s” orders Savo Čančarević had found villagers to take away the bodies.<sup>724</sup> He informed the Crisis Staff.<sup>725</sup> Stevan Todorović testified that the members of his police station did not conduct an investigation.<sup>726</sup> According to the lawyers in charge of the criminal investigation department of the police station, it was the duty of the military investigators of the 17<sup>th</sup> Tactical Group to investigate the crime, as “Lugar” was a member of the 17<sup>th</sup> Tactical Group. He thought that this information was also conveyed to the Crisis Staff.<sup>727</sup> Vladimir Šarkanović was told about the crimes committed by “Lugar” in Crkvina by the commander of the police station, Savo Čančarević.<sup>728</sup> They wanted to conduct an on-site investigation but Stevan Todorović ordered them not to go.<sup>729</sup> Petar Karlović testified that everybody in town was afraid of “Lugar”, including the civilian and military organs.<sup>730</sup>

360. Simo Zarić testified that he was informed of the massacre on the night between 8 and 9 May 1992 by a police officer at the crossroads to Crkvina.<sup>731</sup> Around 1.00 or 2.00 a.m., Simo Zarić saw Blagoje Simić at the command of the 2<sup>nd</sup> Detachment in Crkvina in a group of people from the command.<sup>732</sup> Simo Zarić informed Blagoje Simić of the murders in Crkvina, who was amazed.<sup>733</sup> Blagoje Simić told Simo Zarić that he was going to the Crisis Staff to do something about it. Similar evidence was given by Teodor Tutnjević, Simo Zarić’s driver who was driving him that night<sup>734</sup> and Maksim Simeunović, who on the following day, 9 May 1992, received a call from Simo Zarić informing him of the events of the night before.<sup>735</sup>

361. Lt. Col. Nikolić testified that he learned about the Crkvina massacre from Simo Zarić.<sup>736</sup> He then wrote a report.<sup>737</sup> Lt. Col. Nikolić called Stevan Todorović who did not know anything about it. He then talked with “Debeli” and “Crni” and said that steps had to be taken to prevent any such

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<sup>723</sup> Stevan Todorović, T. 9142.

<sup>724</sup> Stevan Todorović, T. 9142-43.

<sup>725</sup> Stevan Todorović, T. 9144-45.

<sup>726</sup> Stevan Todorović, T. 9144-45.

<sup>727</sup> Stevan Todorović, T. 9479.

<sup>728</sup> Vladimir Šarkanović, T. 16554.

<sup>729</sup> Vladimir Šarkanović, T. 16554.

<sup>730</sup> Petar Karlović, T. 18443.

<sup>731</sup> Simo Zarić, T. 19435-36.

<sup>732</sup> Simo Zarić, T. 19437.

<sup>733</sup> Simo Zarić, T. 19438.

<sup>734</sup> Teodor Tutnjević, T. 17424-25.

<sup>735</sup> Maksim Simeunović, T. 15888-90, T. 15950-51.

<sup>736</sup> Stevan Nikolić, T. 18468. See also Simo Zarić, T. 19444-45.

<sup>737</sup> Stevan Nikolić, T. 18581-82.

thing happening again.<sup>738</sup> Lt. Col. Nikolić also told Stevan Todorović that he should investigate the matter, as he represented the police at this time.<sup>739</sup>

362. After he was informed about the massacre on 9 May 1992 Lt. Col. Nikolić ordered Simo Zarić to collect more information and had a meeting with Simo Zarić and Makso Simeunović, the chief of security.<sup>740</sup> As Simo Zarić knew influential people in Belgrade, Lt. Col. Nikolić sent Simo Zarić to Belgrade to address the issue and to look for measures to prevent any such thing happening again.<sup>741</sup>

363. Maksim Simeunovic asserted that Simo Zarić went to Belgrade to convey the information of the Crkvina killings to the highest authorities in the army of Yugoslavia. On his return from Belgrade Simo Zarić told the command that he had informed General Vasiljević, deputy head of security in the General Staff of the JNA.<sup>742</sup>

364. Simo Zarić testified that he wanted to go to Belgrade to inform the people who had sent the paramilitaries about their activities in Šamac.<sup>743</sup> In Belgrade Simo Zarić talked with Col. Jugoslav Maksimović, among others, and informed them about the crime in Crkvina. Everybody was aghast and nobody approved of the act.<sup>744</sup> Simo Zarić returned from Belgrade on 11 May 1992 and immediately informed Lt. Col. Nikolić and the security officer, Maksim Simeunović of his meetings in Belgrade.<sup>745</sup> Lt. Col. Nikolić gave similar evidence regarding Simo Zarić's trip to Belgrade of which Simo Zarić informed him after his return.<sup>746</sup>

365. Defence witnesses testified about whether and when the Crisis Staff was informed of the killings in Crkvina. Simeon Simić testified that Stevan Todorović never reported the killings,<sup>747</sup> and the Crisis Staff as a body did not have any information about it.<sup>748</sup> He could not remember a meeting convened by the Crisis Staff on this topic.<sup>749</sup> Savo Popović testified that he and the Crisis

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<sup>738</sup> Stevan Nikolić, T. 18468-69.

<sup>739</sup> Stevan Nikolić, T. 18468-69.

<sup>740</sup> Stevan Nikolić, T. 18469.

<sup>741</sup> Stevan Nikolić, T. 18469-70, T. 18561.

<sup>742</sup> Maksim Simeunović, T. 15891-92.

<sup>743</sup> Simo Zarić, T. 20075-76.

<sup>744</sup> Simo Zarić, T. 19445-46.

<sup>745</sup> Simo Zarić, T. 19447.

<sup>746</sup> Stevan Nikolić, T. 18609. In Belgrade Simo Zarić saw Col. Jugoslav Maksimović and through him talked with the security administration of the JNA, at that time headed by General Vasiljević. Simo Zarić informed Stevan Nikolić that an official record of the meeting was made, which record, as Simo Zarić was told would go through all relevant bodies and measures would be taken to avoid such situations from happening again. According to Stevan Nikolić Simo Zarić could not have done more concerning the Crkvina massacre. He stated that he did not initiate criminal proceedings against "Lugar" as he did not have the authority to do that.

<sup>747</sup> Simeon Simić, T. 13107-09.

<sup>748</sup> Simeon Simić, T. 13138.

<sup>749</sup> Simeon Simić, T. 13136.



Staff were informed about the killings a few days after their occurrence.<sup>750</sup> The massacre was kept secret by “Stevan Todorović’s police” and “the other men who were involved in this.”<sup>751</sup> The Crisis Staff and people from the civilian authorities including Blagoje Simić<sup>752</sup> demanded that the crime be “established precisely” and the perpetrators be brought to justice.<sup>753</sup> The Crisis Staff discussed the crime at one or two meetings<sup>754</sup> and condemned the crime.<sup>755</sup> However, there was no mourning or public statement made about this massacre.<sup>756</sup>

(c) Request for the return of the paramilitaries to Šamac in autumn 1992

366. Stevan Todorović gave evidence that “Crni” and the paramilitaries were asked to come back to Bosanski Šamac a second time in October 1992. Stevan Todorović stated that the Crisis Staff<sup>757</sup> had requested the return of “Crni” and the paramilitaries in late 1992, on the insistence and oral request of the Commander of the East Bosnia Corps, Colonel Novica Simić.<sup>758</sup> The members of the Crisis Staff and himself were not willing to invite the paramilitaries again, but they had to choose between “two evils”, and ended up choosing the initiative of Col. Novica Simić.<sup>759</sup> The meeting at the War Presidency when the decision to call the paramilitaries from Serbia was made, was attended by Milan Simić, Simeon Simić, Mitar Mitrović, Blagoje Simić, Cvijetin Josipović, and Stevan Todorović, among others.<sup>760</sup> According to Stevan Todorović, the idea of the second return of the paramilitaries was of Col. Novica Simić and the decision was of the Crisis Staff.<sup>761</sup>

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<sup>750</sup> Savo Popović, T. 16386-88.

<sup>751</sup> Savo Popović, T. 16258.

<sup>752</sup> Savo Popović, T. 16388.

<sup>753</sup> Savo Popović, T. 16259-60.

<sup>754</sup> Savo Popović, T. 16388.

<sup>755</sup> Savo Popović, T. 16389.

<sup>756</sup> Petar Karlović, T. 18443.

<sup>757</sup> Stevan Todorović erroneously mentioned the Crisis Staff, although it was the War Presidency.

<sup>758</sup> Stevan Todorović, T. 9338-39, T. 9343-44, T. 10251-52; Stevan Todorović remembers well that it was Col. Novica Simić, the commander of the East Bosnian Corps that had asked them to ask for the return of the Special Units, and he specifically mentioned “Crni”’s name, T. 9913. Stevan Todorović confirmed his OTP interview, 6 November 2000, p. 46-47 in which he gave the same evidence. It should be noted that although the Crisis Staff is referred to, it was the War Presidency at that time.

<sup>759</sup> Stevan Todorović, T. 10251-52. They initially thought that “Crni” would come with the “top guns” of the Special Forces. They did not think that “Lugar” and his men would come instead. “Crni”’s “top league men” did not turn up, therefore Major Beronja talked with some people from Kragujevac in Serbia. “Lugar” finally came with “that small group” and was directly under command of Major, then Lt. Col. Beronja.

<sup>760</sup> Stevan Todorović, T. 9914.

<sup>761</sup> Stevan Todorović, T. 9360-61. In his statement to the OTP on 3 April 2001, Stevan Todorović stated that there was a letter emanating from the Crisis Staff that had the Crisis Staff seal. He thought that Blagoje Simić had signed it. During the OTP interview in July 2001, he confirmed that Blagoje Simić had signed the letter, T. 10237-39. During examination in chief he stated that Blagoje Simić had signed the letter, T. 9364. In cross examination he was reminded that at that time Blagoje Simić was wounded and was undergoing treatment and was not at many meetings of the War Presidency. He was asked whether some other person signed it. He responded that “everything is possible”, T. 9913. In re-examination he stated that he thought that Blagoje Simić had signed but having been reminded of Simić’s absence at that time he could not claim that with full certainty. He was not one hundred per cent sure if Blagoje Simić signed the letter, but he did not exclude that possibility, T. 10239-40.

367. As “Crni” wanted an official letter of invitation, Stevan Todorović had to take a letter of request to the MUP in Serbia on behalf of the Crisis Staff.<sup>762</sup> Ten or fifteen days later, “Crni” arrived in Bosanski Šamac in his car and 20 of his “men” came later.<sup>763</sup>

368. Simeon Simić asserted that the War Presidency did not send a letter to the Ministry of the Interior in the fall of 1992 concerning the arrival of paramilitaries from Serbia to Šamac.<sup>764</sup> Savo Popović contended he was not aware of any document from the War Presidency of Šamac requesting the return of paramilitaries from Serbia via the Serbian MUP, including “Lugar”, “Crni” and others. He thought any idea of this could “simply be Stevan Todorović’s propaganda.”<sup>765</sup>

369. The record of Blagoje Simić’s interview for the Military Court in Banja Luka of 14 December 1992 (Exhibit P116) stated that “Crni” had arrived for the second time on the invitation of the Šamac Municipality War Presidency and with the approval of the Command and Colonel Novica Simić.<sup>766</sup> Stevan Todorović identified the signature of Blagoje Simić on the document<sup>767</sup> and confirmed that the statement about “Crni”’s arrival on the invitation of the War Presidency and with the approval of the command and Colonel Novica Simić was true.<sup>768</sup>

370. Blagoje Simić denied the accuracy or authenticity of his statement.<sup>769</sup> He felt under pressure while he was giving the statement as he did not know whether he would be arrested. Blagoje Simić gave the statement under abnormal conditions<sup>770</sup> and did not remember what he signed.<sup>771</sup> He was not able to follow what the investigative military judge was dictating to the typist, as his health was very poor at that time. He did not have a legal counsel who would have been able to assist him in giving that statement.<sup>772</sup>

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<sup>762</sup> Stevan Todorović, T. 9339-40, T. 9345-46. Stevan Todorović thought that it was also possible or likely that “Crni” had a reason to come back since his wife and child were in Šamac.

<sup>763</sup> Stevan Todorović, T. 10252. “Lugar” was one of the paramilitaries who came back. Stevan Todorović was not aware of the assertion in Mile Beronja’s witness statement that “Crni” came “offering” 350 to 450 men.

<sup>764</sup> Simeon Simić, T. 13078.

<sup>765</sup> Savo Popović, T. 16290.

<sup>766</sup> Exhibit P116-Record of Witness Interview of Blagoje Simić before the Military Court of Banja Luka compiled on 14 December 1992, page 3. Note: Exhibit P117, Record of Witness Interview of Novica Simić before the Military Court of Banja Luka compiled on 14 December 1992, at page 3 states: “At the request of the president of Šamac municipality, Crni came in the middle of October, promising to bring around 500 people.” Exhibit P127, known as the “Thirteen Signatories” document also refers to the arrival of the paramilitaries in Bosanski Šamac and their involvement with the civilian authorities.”

<sup>767</sup> Stevan Todorović, T. 9357; Stevan Todorović confirmed that the record of the witness interview of Blagoje Simić, dated 14 December 1992 (Exhibit P116) was taken on the premises of the Šamac heating plant, where the War Presidency was based at the time. Immediately after that, in January 1993 the Assembly was constituted and started to work, T. 9856.

<sup>768</sup> Stevan Todorović, T. 9360-61.

<sup>769</sup> Blagoje Simić, T. 12399. Exhibit P116.

<sup>770</sup> Blagoje Simić, T. 12529-31.

<sup>771</sup> Blagoje Simić, T. 12529-31.

<sup>772</sup> Blagoje Simić, T. 12613-15.

371. Simeon Simić testified that at that time Blagoje Simić, as a member of the civilian authority, was under strong pressure from the military circles, resulting in the convening of an illegal session of the Assembly.<sup>773</sup>

(d) Trip to Belgrade

372. Stevan Todorović testified that in June or July 1992 he travelled to Belgrade at the invitation of Blagoje Simić along with Milos Bogdanović, Simo Zarić and Miroslav Tadić. They met with Andjelko Maslić, the Secretary General of the SFRY Presidency.<sup>774</sup> At the meeting they discussed the situation in general, how they were managing as well as “Crni” and the paramilitaries and “the way they operated in the war”.<sup>775</sup>

373. Blagoje Simić testified that together with Miloš Bogdanović, Miroslav Tadić, Stevan Todorović and Simo Zarić, he went to Belgrade to see Andjelko Maslić. The reasons for his visit were exclusively of a humanitarian nature. They addressed the issue of refugees from Šamac in Serbia and the question of wounded individuals who were in rehabilitation centres and hospitals in Serbia. Another reason for their visit was the detention of Serbs in the territory of Odžak. They tried to have these people assisted through international organisations.<sup>776</sup>

5. Relations between the Crisis Staff, War Presidency and the JNA

374. Defence witnesses testified that the Crisis Staff was a civilian body and could not participate in any military decision and that Blagoje Simić did not have control over the military.<sup>777</sup> Lazar Mirkić testified that the civilian authorities ensured food and accommodation for the army in villages. The army was dominant with regard to the question of security, movement, the conduct of combat operations and the engagement of citizens in these affairs and the civilian authorities had nothing to do with this. The jurisdiction and spheres of activity of the army and civilian authorities were strictly separated and they did not interfere in each other’s work.<sup>778</sup>

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<sup>773</sup> Simeon Simić, T. 13283-84.

<sup>774</sup> Stevan Todorović, T. 9469-70.

<sup>775</sup> Stevan Todorović, T. 9470, T. 10237.

<sup>776</sup> Blagoje Simić, T. 12305-06.

<sup>777</sup> Simeon Simić, T. 13182-85. Dušan Tanasić, T. 13767, Lazar Mirkić, T. 13176-77.

<sup>778</sup> Lazar Mirkić, Rule 92bis Statement, para. 19. Stanko Dujković stated that the competence between the military and civilian authorities was strictly divided and defined, Deposition T. 298. Slobodan Sjenčić testified that the relations between the civilian authorities and the army were clearly set out by regulations, that there was contact between them through the Municipal Department of the Ministry of Defence, but that it was impossible for civilian authorities to interfere in the army’s authority, Deposition T. 266. Simo Jovamović, a soldier also testified that the army had priority and greater jurisdiction in their zone of responsibility, Rule 92bis Statement, para 18.

375. Simeon Simić testified that during the war severe conflicts occurred between the army and civilian authorities.<sup>779</sup> According to Blagoje Simić in December 1992 the conflict between the civilian and the military authorities escalated. Events that occurred at that time, including the closing of the Posavina corridor, arrests of security officials of brigades, arrival of paramilitaries, and a major concentration of brigades of the Army of Republika Srpska in a small area, led to incidents every day.<sup>780</sup>

376. Slobodan Sjenčić also testified about some minor conflicts between the Military and the civilian authorities related to issues concerning foodstuffs, fuel and other goods that were needed by the military. The civilian authorities managed or did the best they could under wartime conditions to help the army to the best of its abilities.<sup>781</sup>

377. Commander Antić, claimed that around 18 April 1992 the 4<sup>th</sup> Detachment did not have contacts with the Crisis Staff. Throughout this period, he only had contacts with his superior commander, Lt. Col. Nikolić.<sup>782</sup>

378. As far as Miroslav Tadić knew the Crisis Staff was not able to influence the decisions of the army as they were two parallel systems.<sup>783</sup> According to his knowledge, the Crisis Staff did not issue orders to the 17<sup>th</sup> Tactical Group, the 4<sup>th</sup> Detachment, or the 2<sup>nd</sup> Posavina Brigade of the Army of Republika Srpska after the withdrawal of the 17<sup>th</sup> Tactical Group. The Crisis Staff did not appoint people at the command level of the 2<sup>nd</sup> Posavina Brigade<sup>784</sup> and had no authority to issue orders to the military administration in Odžak.<sup>785</sup>

## **D. Findings**

### **1. Serbian Institutions established prior to the takeover of Bosanski Šamac**

379. The Trial Chamber is satisfied that prior to the forcible takeover of Bosanski Šamac, Serbian institutions, including the Serb Autonomous Region for Northern Bosnia and the Serb Autonomous Region of Semberija and Majevica, were established for the purpose of assuming power and consolidating Serb authority over the municipality of Bosanski Šamac. The Trial Chamber is satisfied that Radovan Karadžić came to Bosanski Šamac in December 1991 to discuss the

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<sup>779</sup> Simeon Simić, T. 13176. Savo Popović testified that Blagoje Simić, as President of the Municipal Assembly, did not influence the work of the military administration in Odžak, T. 16288.

<sup>780</sup> Blagoje Simić, T. 12403-04.

<sup>781</sup> Slobodan Sjenčić, Deposition T. 266.

<sup>782</sup> Radovan Antić, T. 16751.

<sup>783</sup> Miroslav Tadić, T. 15729-30.

<sup>784</sup> Miroslav Tadić, T. 15522.

<sup>785</sup> Miroslav Tadić, T. 15523

formation of a Serbian municipality of Bosanski Šamac. Blagoje Simić, as President of the SDS Municipal Board, attended the meeting.<sup>786</sup>

380. The Trial Chamber is satisfied that subsequently on 29 February 1992, the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo under formation was founded.<sup>787</sup> Serb representatives of the Serbian municipalities of Šamac, Gradačac, and Orašje, including Blagoje Simić attended the founding session. The elected President of the Assembly of the Serbian Municipality of Bosanski Šamac and Pelagićevo was Dr. Ilija Ristić, and Dušan Tanasić was the Vice-President.<sup>788</sup>

381. The Trial Chamber accepts that the leadership of the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo consisted of the deputies of the Serbian Democratic Party of Bosanski Šamac, Orašje and Odžak and of “other deputies of Serbian ethnicity”.<sup>789</sup> The Trial Chamber finds that the competencies of the Assembly were set out in its Statute and Rules of Procedure.<sup>790</sup> Although the Statute provides in Article 1 that Bosanski Šamac, “shall be a Municipality of the Serbian people and other citizens living there”,<sup>791</sup> the Trial Chamber finds that the self-proclaimed Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo concentrated power in the hands of Serbs only and that non-Serbs could not participate as elected representatives although the municipality had a non-Serb majority.<sup>792</sup>

382. The Trial Chamber is satisfied that the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo was established according to recommendations of the leadership of Republika Srpska, but does not accept that it was formed in accordance with the so-called “Variant A and B” instructions issued by the SDS Executive Board on 19 December 1991.<sup>793</sup> Furthermore, the Trial Chamber finds that the Prosecution has not established that the “Variant A and B” instructions were given to the Serbian Municipality of Bosanski Šamac or to Blagoje Simić

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<sup>786</sup> Alija Fitozović, T. 8855-56.

<sup>787</sup> Agreed Facts, para. 86; Decision on the establishment of the Serbian municipality of Bosanski Šamac, signed by Ilija Ristić, president of the Serbian Assembly of Bosanski Šamac, on 29 February 1992 (Exhibit P11). The Decision to Establish an Assembly of Serbian People of the Municipality of Bosanski Šamac (and Pelagićevo Under Formation) is also contained in the Official Gazette of Šamac Municipality No.1, issued on 3 June 1994 (Exhibit P124).

<sup>788</sup> Stevan Todorović, T. 9031; Savo Popović, T. 16231-32; Dušan Tanasić, T. 13755-56; Mirko Lukić, T. 12945; Blagoje Simić, T. 12225-26.

<sup>789</sup> Article 5 of the Decision on the on the Establishment of the Assembly of the Serb Municipality, published in the Official Gazette of Šamac Municipality, No. 1 (Exhibit P124).

<sup>790</sup> The Statute of Šamac Municipality was published in the Official Gazette of Šamac Municipality, No. 2 (Exhibit P125); The Provisional Rules of Procedure of the Šamac Municipal Assembly were published in the Official Gazette of Šamac Municipality, No. 1 (Exhibit P124); Blagoje Simić, T. 12206.

<sup>791</sup> *Ibid.*

<sup>792</sup> Stevan Nikolić, T. 18528.

<sup>793</sup> Exhibit P1 – Report of expert witness Dr. Robert Donia “Bosanski Šamac and the History of Bosnia-Herzegovina; see Exhibit P3 – Translation of Variant A and B: documents entitled “Instructions for the Organisation and Activity of Organs of the Serbian people in Bosnia and Herzegovina in Extraordinary Circumstances”, 19 December 1991; Exhibit P45.

and is therefore not satisfied on the chain of custody of the document.<sup>794</sup> The Trial Chamber considers that the establishment of the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo on 29 February 1992 was the first declaration of Serb authority over the territory of Bosanski Šamac.

## 2. The Establishment of the Crisis Staff

383. The Trial Chamber finds that the subsequent step to consolidate power was by means of the formation of a Crisis Staff. The Trial Chamber accepts that various meetings were held under the auspices of the self-declared Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo in order to establish the “Serbian Municipality of Bosanski Šamac Crisis Staff”, otherwise referred to as Crisis Staff.<sup>795</sup> During a meeting of 28 March 1992 in Obudovac, the Serb Assembly of Bosanski Šamac elected the representatives of the Executive Board of the Serbian Municipality of Bosanski Šamac, among these Stevan Todorović, who was elected chief of the public security station.<sup>796</sup> The Trial Chamber accepts that during the meeting in Obudovac, the legally elected deputies of the Municipal assemblies of Šamac, Orašje, Odžak and Gradačac, asked Blagoje Simić to form the Crisis Staff, and if the need arose, to become President of the Crisis Staff.<sup>797</sup>

384. The Trial Chamber accepts that on the night of 15 April 1992, members of the Municipal Assembly and its Executive Board met in Obudovac. The Trial Chamber is satisfied that Blagoje Simić arrived late at the meeting in Obudovac as he was returning from a meeting with Lt. Col. Nikolić at Pelagićevo and accepts that Lt. Col. Nikolić had informed Blagoje Simić of an impending attack in Bosanski Šamac of Croat and Muslim units and that the 17<sup>th</sup> Tactical Group intended to prevent this incursion. The Trial Chamber accepts that Lt. Col. Nikolić had also requested that the “members of the Crisis Staff” meet at the youth centre in Crkvina the following evening, on 16 April 1992 and that upon completion of the military action, the representatives of

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<sup>794</sup> Members of the Crisis Staff testified that the “Variant A and B instructions” were never under the Crisis Staff’s custody and that the Crisis Staff never discussed this document, Blagoje Simić, T. 12428; Dušan Tanasić, T. 13766; Božo Ninković, T. 13479; Mitar Mitrović, T. 18711.

<sup>795</sup> Blagoje Simić, T. 12238.

<sup>796</sup> Stevan Todorović, T. 9010; Dušan Tanasić, T. 13758; Savo Popović testified that during the meeting eleven members of the Executive Board were elected. Mirko Jovanović was elected President of the Executive Board and Miloš Bogdanović was elected Secretary of the Municipal Secretariat of National Defence. Lazar Mirkić was elected secretary of the municipal Secretariat for Economy on 28 March 1992. Mico Ivanović was elected commander of the TO, municipal staff, and Stevan Todorović was named chief of the Public Security Station, T. 16231-34.

<sup>797</sup> Stevan Todorović, T. 9053-55.

the newly formed Serbian Municipality of Bosanski Šamac and Pelagićevo were to make a proclamation.<sup>798</sup>

385. The Trial Chamber finds that members of the self-declared Serbian Municipal Assembly of Bosanski Šamac and Pelagićevo established the Serb Crisis Staff at the meeting held in Obudovac on 15 April 1992.<sup>799</sup> The establishment of the Crisis Staff on the date of 15 April 1992 in Obudovac is furthermore reflected in the first volume of the Official Gazette of the Šamac Municipality.<sup>800</sup> The Trial Chamber therefore, accepts that the Crisis Staff was established in anticipation of the forcible takeover of the town of Bosanski Šamac which took place in the early morning of 17 April 1992 and does not accept the submission of the Defence that the Crisis Staff was established after the takeover, on 19 April 1992 in order to address the emergency situation produced by the forcible takeover of the town.<sup>801</sup>

386. The Trial Chamber finds that Blagoje Simić was nominated President of the Crisis Staff on 17 April 1992 as evidenced by the Decision on the Appointment of the President of the Crisis Staff dated 17 April 1992.<sup>802</sup> His position in the Crisis Staff is confirmed by numerous witnesses.<sup>803</sup> The Trial Chamber does not accept the submission of the Defence that the decision to appoint Blagoje Simić as the President of the Crisis Staff was actually adopted on 19 April 1992 when the Crisis Staff was formed and was pre-dated to 17 April in order to guarantee continuity with the former institutions that had ceased to operate due to the forcible takeover of the town of Bosanski Šamac in the early morning of 17 April 1992.<sup>804</sup>

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<sup>798</sup> Stevan Todorović, T. 9078-81; Stevan Todorović, explains the “mistake” in Modriča was in relation to Lt. Col. Nikolić’s failure to get the co-operation of the civilian authorities in Modriča after taking over some vital facilities in the town. This resulted in the withdrawal of Lt. Col. Nikolić’s 17<sup>th</sup> Tactical Group from Modriča or “he was thrown out by the Croat or Muslim armed units”, T. 9079.

<sup>799</sup> The position of the Prosecution has changed with regard to the date of establishment of the Serb Crisis Staff. In paragraph 31 of the Amended Indictment the Prosecution stated that the Serbian Municipality of Bosanski Šamac Crisis Staff was established “immediately after the forcible takeover of Bosanski Šamac municipality”. The Prosecutor’s Pre-Trial Brief also states that “once the takeover of the town was secured, Bosnian Serb leaders” replaced “the lawfully elected local government.” (Prosecutor’s Pre-Trial Brief pursuant to Rule 65ter (E) (i), para. 14) However, the Prosecutor in its Final Brief states that the Crisis Staff was established on 15 April 1992, two days prior to the forcible takeover of the town of Bosanski Šamac as required by the “Variant A and B” instructions. (Prosecution Final Brief, para. 116).

<sup>800</sup> Exhibit P124 dated 3 June 1994.

<sup>801</sup> Mirko Lukić, T. 12857, T. 12873, T. 12922-23; Simeon Simić, T. 13025; Blagoje Simić, T. 12240-41.

<sup>802</sup> Exhibit P109-Decision on the Appointment of the President of the Crisis Staff dated, 17 April 1992.

<sup>803</sup> Witness P, T. 11545; Osman Jasarević, T. 10627; Slobodan Sjenčić, Deposition T. 281-82; Stevan Nikolić, T. 18562; Stevan Todorović, T. 10222-23; Blagoje Simić, T. 12248; Čedomir Simić testified that Blagoje Simić was elected President of the Municipal Assembly on the 14 April 1992, at the initiative of the SDS municipal board, T. 18840.

<sup>804</sup> Blagoje Simić, T. 12247-48, T. 12393; Simić Final Brief, para. 165.

387. The Trial Chamber accepts that most members enumerated in the Payroll list, including Blagoje Simić and Miroslav Tadić, were permanent members of the Crisis Staff<sup>805</sup> and accepts that occasionally the Crisis Staff would employ additional staff who had expertise in specific fields.<sup>806</sup>

388. Furthermore, the Trial Chamber finds that Stevan Todorović as head of the MUP and member of the Executive Board was an *ex-officio* member of the Crisis Staff<sup>807</sup> and attended Crisis Staff meetings.<sup>808</sup> The Trial Chamber is also satisfied that Miroslav Tadić became an *ex-officio* member of the Crisis as soon as he became Commander of the Civilian Protection Staff on 23 April 1992.<sup>809</sup>

389. The Trial Chamber accepts the position of both the Prosecution and the Defence that Simo Zarić was not a member of the Crisis Staff.<sup>810</sup>

390. The Trial Chamber finds that the Crisis Staff took over the functions of the Municipal Assembly of Bosanski Šamac.<sup>811</sup> By assuming the position of the Municipal Assembly, the Crisis Staff had full authority to govern the Municipality of Bosanski Šamac and was the highest civilian authority in the Municipality.<sup>812</sup>

391. The Trial Chamber accepts that as a result of the decision originating from the Presidency of Republika Srpska,<sup>813</sup> the Crisis Staff issued a Decision renaming the Municipal Crisis Staff to War Presidency, on 21 July 1992.<sup>814</sup> Furthermore the Trial Chamber is satisfied that there was no change

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<sup>805</sup> Blagoje Simić, T. 12243-44. Exhibit D55/1-Information on Method, Conditions and Funds for Salary Payments According to Established Coefficients for the month of May 1992.

<sup>806</sup> Simeon Simić, T. 13010-12; Stevan Todorović, T. 9875.

<sup>807</sup> Paragraph 2 of the "Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian people." (Exhibit P128); Stevan Todorović, T. 9010, T. 9938; Stevan Nikolić, T. 18562; Radovan Antić testified that the position occupied by Stevan Todorović is indicative that he was a member of the Crisis Staff, T. 16897-98; Vladimir Šarkanović, T. 16661.

<sup>808</sup> Blagoje Simić, T. 12269.

<sup>809</sup> Miroslav Tadić, T. 15243; Exhibit D59/3 - Crisis Staff Decision Appointing Miroslav Tadić as Commander of the Municipal Civilian Protection Staff, dated 23 April 1992; Simeon Simić, T. 13015-16; Savo Popović, T. 16253; Slobodan Sjenčić, Deposition T. 281-282; Božo Ninković, T. 13613-15. Some witnesses testified that even though Miroslav Tadić was a member of the Crisis Staff he was not a member of the War Presidency: Simeon Simić, T. 13089; Blagoje Simić, T. 12480-81.

<sup>810</sup> Stevan Todorović, T. 10120; Blagoje Simić, T. 12486.

<sup>811</sup> Blagoje Simić, T. 12239; Mirko Lukić, T. 12684-85; Lazar Mirkić, T. 18900.

<sup>812</sup> Paragraph 3 of the "Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian people" (Exhibit P128); Božo Ninković, T. 13578-81; Vladimir Šarkanović, T. 16583.

<sup>813</sup> Exhibit P72, Decision on the Formation of War Presidencies in Municipalities in Times of War or the Immediate threat of War dated 31 May 1992 and published in the Official Gazette of the Serbian People in Bosnia and Herzegovina dated 8 June 1992.

<sup>814</sup> P73, Decision on Renaming the Municipal Crisis Staff dated, 31 May 1992.



of competencies of the Crisis Staff<sup>815</sup> but that the membership did change. Miroslav Tadić was not a member of the War Presidency.<sup>816</sup>

### 3. Relations between the Crisis Staff and War Presidency, and other Actors

392. The Trial Chamber accepts that the Crisis Staff and the War Presidency set up bodies to assist it in carrying out its functions.

393. The Trial Chamber is satisfied that on 30 May 1992 the Crisis Staff, by means of a Decision, formally established the Executive Board<sup>817</sup> and accepts that the Executive Board had to report to the Crisis Staff.<sup>818</sup> The Executive Board was responsible for issues related to welfare and social policy concerning housing, employment, education, transport, economy, agricultural policies, and fire.<sup>819</sup> The Trial Chamber finds that when Stevan Todorović was appointed chief of police on 28 March 1992 in Obudovac he automatically became a member of the Executive Board.

394. The Trial Chamber is satisfied that the War Presidency with a Decision established the Committee for Exchange of Prisoners on 2 October 1992.<sup>820</sup> The Committee was in charge of the prisoner exchanges and other exchanges.<sup>821</sup> The Trial Chamber finds that Miroslav Tadić was one of its members.<sup>822</sup>

395. The Trial Chamber accepts that the Crisis Staff did not have direct control over the police.<sup>823</sup> However, the Trial Chamber finds that the War Presidency was aware of the murder of “Antesa,” on 29 July 1992.<sup>824</sup>

396. The Trial Chamber finds that the paramilitary units, commanded by “Crni” and “Lugar” were under the command structure of the 17<sup>th</sup> Tactical Group. Although the Crisis Staff did not have the paramilitary units under its direct command, the Crisis Staff was aware of the crimes that

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<sup>815</sup> Article 3 of the Decision provides that “in conformity with the positive regulations of the Serbian Republic of Bosnia and Herzegovina, the War Presidency shall operate in wartime as the highest body of authority in the Serbian Municipality of Bosanski Šamac.”(Exhibit P73).

<sup>816</sup> Stevan Todorović, T. 9645-46; Savo Popović, T. 16284-85; Blagoje Simić, T. 12480; Simeon Simić, T. 13168-69.

<sup>817</sup> Exhibit P112 - Crisis Staff Decision on the Executive Board and Administrative Bodies, 30 May 1992.

<sup>818</sup> Article 1 paragraph 2 of Exhibit P112 reads as follows: “The Executive Board shall report to the Assembly, that is to the Crisis Staff of the Serbian Municipality of Bosanski Šamac, on the situation in all aspects of social life, the implementation of policies, decisions, and other regulations of the Assembly, that is, the Crisis Staff of the Serbian Municipality of Bosanski Šamac.” Exhibit P112.

<sup>819</sup> Mirko Lukić, T. 12865-67; Čedomir Simić, Rule 92*bis* Statement, para. 19.

<sup>820</sup> Exhibit P83- Decision on the Appointment of a Commission for the Exchange of Prisoners and Other persons, dated 2 October 1992.

<sup>821</sup> Velimir Maslić is referred to as the President in the Decision on the Appointment of a Commission for the Exchange of Prisoners and Other persons, dated 2 October 1992, Exhibit P83.

<sup>822</sup> Stevan Todorović, T. 9167-68; Velimir Maslić is referred to as the President in the Decision on the Appointment of a Commission for the Exchange of Prisoners and Other persons, dated 2 October 1992, Exhibit P83.

<sup>823</sup> Savo Popović, T. 16253; Slavko Paleksić, T. 13835-37. Mirko Lukić, T. 12933-34.

<sup>824</sup> Stevan Todorović, T. 9930-31.

were being committed by the paramilitary units in Bosanski Šamac and did not take sufficient measures to prevent their occurrence and repetition.

397. The Trial Chamber finds that the Crisis Staff influenced the removal of Colonel Djurdjević, the Commander of the 2<sup>nd</sup> Posavina Infantry Brigade, and in his replacement by “Crni”. Furthermore, the Trial Chamber finds that the Crisis Staff and the War Presidency, had knowledge of the murders committed by “Lugar”, “Crni” and the other paramilitaries. The Trial Chamber is satisfied that on the night of 7 May 1992 non-Serb civilians were killed by “Lugar” in Crkvina and that the Crisis Staff was informed of the massacre. The Trial Chamber finds that the Crisis Staff requested the return of “Crni” and other paramilitaries to Bosanski Šamac in October 1992.

## X. THE FORCIBLE TAKEOVER OF THE MUNICIPALITY OF BOSANSKI ŠAMAC

### A. Forcible takeover of the town of Bosanski Šamac

398. A number of Prosecution and Defence witnesses testified that the town of Bosanski Šamac was attacked in the early morning of 17 April 1992.

399. In the early morning of 17 April 1992, the police station and other key facilities in town were secured by the paramilitaries and by the Serb police.<sup>825</sup> Numerous witnesses testified hearing gunfire and explosions at around 2.00 or 3.00 a.m. coming from within the town.<sup>826</sup>

400. Witnesses gave evidence that the paramilitaries were involved in the takeover of Bosanski Šamac and recalled seeing them in the early morning of 17 April. The paramilitaries wore camouflage uniforms and black caps. They had painted their faces and spoke Ekavian, a Serbian dialect.<sup>827</sup>

401. Some paramilitaries were led to the key facilities of Bosanski Šamac by Fadil Topčagić.<sup>828</sup> Fadil Topčagić testified that on the night between 16 and 17 April, Savo Savić, a policeman, and “Lugar” forced him to go to Crkvina.<sup>829</sup> Upon his arrival at Crkvina, he saw Stevan Todorović and “Crni”, who was grouping around 50 paramilitaries. “Crni” told Fadil Topčagić to guide some

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<sup>825</sup> Stevan Todorović, T. 9083-85; Mirko Pavić, Rule 92*bis* Statement, para. 9; Vladimir Šarkanović, T. 16572-73; Simo Zarić, T. 20048-49. See also Zarić Prosecution Interview I. Simo Zarić stated that during the night, between 16 and 17 April, members of the Serbian police and paramilitaries from Serbia, on orders from the Crisis Staff, chaired by Blagoje Simić, took over some of the most important buildings in town, Exhibit P142, page 9. Radovan Antić, T. 16868; Andrija Petrić, T. 17589; Dario Radić, T. 15061; Mihajlo Topolovać, Rule 92*bis* Statement, para. 11; Naser Sedjić, T. 17528-29; Jusuf Arnautović, T. 18094-95; Jovo Savić, T. 17195; Simo Jovanović, T. 18979-80.

<sup>826</sup> Witness C, T. 7951; Izet Izetbegović, T. 2254; Sulejman Tihić, T. 1365; Esad Dagović, T. 3909-10; Safet Dagović, T. 7169; Kemal Bobić, T. 11382; Witness K, T. 4220; Snježana Delić, T. 6389; Dragan Delić, T. 6637; Hajrija Drljačić, T. 8023-24; Witness O, Rule 92*bis* Statement, para. 14; Dragan Lukač, T. 1653-54; Witness L, T. 4220; Kemal Mehinović, T. 7389-90; Witness M, T. 5022; Osman Jasarević, Rule 92*bis* Statement, para. 34; Witness A, Rule 92*bis* Statement, para. 30; Jelena Kapetanović, T. 8897; Hasan Bičić, T. 2636; T. 2926; Ibrahim Salkić, T. 3218-19; Witness G, T. 4044; Nusret Hadžijusufović, T. 6864-65; Alija Fitozović, T. 8503; Andrija Petrić, T. 17589; Božo Ninković, T. 13507-08; Kosta Simić, T. 16490-1; Mustafa Omeranović, T. 18139; Naser Sedjić, T. 17525-26; Ozren Stanimirović, T. 13881-82; Ljubomir Vuković, T. 14574-76; Veselin Blagojević, T. 13954-55; Vladimir Šarkanović, T. 16497-98; Mladen Borbeli, T. 14075; Mihajlo Topolovac, Rule 92*bis* Statement, para. 9; Petar Karlović, T. 18434; Mirko Pavlić, Rule 92*bis* Statement, para. 9; Džemal Jasenica, Rule 92*bis* Statement, para 17; Stevan Arandjić, Deposition T. 166; Simo Jovanović, T. 18989-90; Jovo Savić, T. 17021-23; Marko Kurešević, Rule 92*bis* Statement para. 10; Stanko Bojić, T. 17962; Vaso Antić, Rule 92*bis* Statement, para. 12; Fadil Topčagić, Rule 92*bis* Statement, para. 40; Radovan Antić, T. 16731-32, T. 16806, T. 16848-49; Miroslav Tadić, T. 15210-11.

<sup>827</sup> Sulejman Tihić, T. 1362-64; Esad Dagović, T. 3920-21; Kemal Bobić, T. 11392; Witness K, T. 4597; Izet Izetbegović, T. 2227-72; Alija Fitozović, T. 8515-56; Jelena Kapetanović, T. 8930-33; Andrija Petrić, T. 17589; Dario Radić, T. 15061; Mihajlo Topolovać, Rule 92*bis* Statement, para. 11; Naser Sedjić, T. 17528-29; Jusuf Arnautović, T. 18094-95; Jovo Savić, T. 17195; Simo Jovanović, T. 18979-80; Radovan Antić, T. 16868.

<sup>828</sup> Jovo Savić, T. 17026; Radovan Antić, T. 16799-16880; Stevan Todorović testified that since the paramilitaries didn't know the town of Bosanski Šamac, Dimitri Ivanovski and Fadil Topčagić guided them to “certain buildings” in town, T. 9084.

<sup>829</sup> Fadil Topčagić stated that “Lugar” had slapped him, T. 18353-56.

paramilitaries to the SUP building in Bosanski Šamac, given that he had good knowledge of how to get there.<sup>830</sup> The targets of the remaining groups were the other vital facilities in town such as the radio station and the post office.<sup>831</sup> Fadil Topčagić was told by “Lugar” not to ask too many questions because “it is not good for your health”.<sup>832</sup> Fadil Topčagić testified that when they arrived in town, “Lugar” and other paramilitaries took over the SUP building.<sup>833</sup>

402. Blagoje Simić testified that in the morning of 17 April, he was called by the army duty officer to work as a doctor in Crkvina.<sup>834</sup> Stevan Todorović and Fadil Topčagić confirmed Blagoje Simić’s presence in Crkvina in the early morning of 17 April. Stevan Todorović gave evidence that when he arrived in Crkvina around 1.00 a.m. on 17 April, Blagoje Simić and other members of the Crisis Staff were there.<sup>835</sup> Fadil Topčagić testified that after the taking of the SUP building on 17 April, at around 03.00 a.m., “Debeli” ordered Fadil Topčagić to take him back to Crkvina to get medical treatment as “Debeli” was wounded in the shoulder.<sup>836</sup> Upon their arrival at Crkvina, Blagoje Simić gave medical care to “Debeli”.<sup>837</sup>

403. Some witnesses gave evidence that some units of the 17<sup>th</sup> Tactical Group were in Bosanski Šamac in the early morning of 17 April 1992. Stevan Todorović testified that in the early morning of 17 April, somebody, who “might have been Crni”, gave him a map of the town of Bosanski Šamac. There were some arrows on the map and there was a stamp of the 17<sup>th</sup> Tactical Group together with the signature of Lt. Col. Nikolić. He also noticed that it was indicated on the document that it was sent to the 1<sup>st</sup> and 2<sup>nd</sup> Detachments and the police. He was told that Lt. Col. Nikolić sent one copy to him personally and he kept that copy. In the early morning of 17 April, before “Crni” and the other paramilitaries left for the town, he said that they were going to takeover some of the vital buildings in town, such as the police station and the Sava Bridge.<sup>838</sup> Stevan Todorović stated that the map indicating the movements of the 17<sup>th</sup> Tactical Group, also included indications concerning the movements of the 4<sup>th</sup> Detachment.<sup>839</sup>

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<sup>830</sup> Fadil Topčagić, Rule 92bis Statement, para. 35.

<sup>831</sup> Fadil Topčagić, T. 18372.

<sup>832</sup> Fadil Topčagić, Rule 92bis Statement, para. 35.

<sup>833</sup> Fadil Topčagić, T. 18386.

<sup>834</sup> Blagoje Simić, T. 12254.

<sup>835</sup> Stevan Todorović testified that Mirko Jovanović, the president of the Executive Board, Blagoje Simić, Mitar Mitrović and Miloš Bogdanović were in Crkvina on 17 April at around 1.00 a.m, T. 9082. Stevan Todorović testified that on 15 April at the meeting in Obudovac, Blagoje Simić said that Lt. Col. Nikolić insisted that the members of the Crisis Staff meet in the evening of 16 April in Crkvina, T. 9079-80. Stevan Todorović stated that on the night between 16 and 17 April he was given the instruction to be in Crkvina where “Lt. Col. Nikolić suggested we all should be”, T. 9080.

<sup>836</sup> Fadil Topčagić, T. 18354-70, Rule 92bis Statement, paras 38-39.

<sup>837</sup> Fadil Topčagić, T. 18382-84, T. 18430.

<sup>838</sup> Stevan Todorović, T. 9084-85.

<sup>839</sup> Stevan Todorović, T. 10097.

404. Stevan Todorović also testified that he had received information that prior to the takeover, 4<sup>th</sup> Detachment members had changed the locks of the doors of a building in Bosanski Šamac named “Silos” and brought weapons there. According to his testimony Simo Zarić had also discussed this issue with him in late May, June of 1992.<sup>840</sup>

405. Moreover, members of the 1<sup>st</sup> Detachment, Aleksandar Janković, Miloš Savić, and Simo Jovanović gave evidence that prior to the forcible takeover of Bosanski Šamac on 17 April, the Command of the 17<sup>th</sup> Tactical Group had received information about the preparations of Croatian and Muslim forces to take the town of Bosanski Šamac. The Croatian Army was expected to cross the Sava Bridge with armoured vehicles. As a result, after midnight of 16 April, the 17<sup>th</sup> Tactical Group deployed members of the 1<sup>st</sup> Detachment and other units on the defence lines close to the Sava Bridge. The units had to give support to members of the 4<sup>th</sup> Detachment that were already deployed in that area. Members of the 1<sup>st</sup> Detachment were also deployed in the building called “Silos”. The three witnesses gave evidence that the units had been deployed in support of the 4<sup>th</sup> Detachment. However, Simo Jovanović stated that he did not see members of the 4<sup>th</sup> Detachment that day.<sup>841</sup> Aleksandar Janković stated that he found members of the 4<sup>th</sup> Detachment at around 02.00 a.m. on 17 April 1992, at the “Silos”.<sup>842</sup> Miloš Savić when testifying about the men that he found in the “Silos” stated: “I think they were members of the 4th Detachment”. Moreover the three members of the 1<sup>st</sup> Detachment testified that at around 2.00 a.m. a column of armoured vehicles coming from Croatia was seen approaching the Sava Bridge. Soon after artillery fire coming from the direction of Prud, Domaljevac and Croatia began. Several mortar shells fell in the vicinity of the “Silos”.<sup>843</sup>

406. Stanko Pivašević also testified that in the afternoon of 16 April 1992, his unit went into combat position close to the Bridge on the Sava River. His unit was informed that armed units were supposed to come across the River from Croatia. Stanko Pivašević testified that he stayed in this position until 17 April 1992.<sup>844</sup>

407. Lt. Col. Nikolić stated that the 17<sup>th</sup> Tactical Group tried to prevent the incursion of Croat troops in Šamac, but did not participate in the forcible takeover of Bosanski Šamac.<sup>845</sup> Lt. Col.

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<sup>840</sup> Stevan Todorović, T. 9088-99.

<sup>841</sup> Miloš Savić, Deposition T. 380-384; Aleksandar Janković, Rule 92*bis* Statement, paras 13, 16; Simo Jovanović, T. 18974.

<sup>842</sup> Aleksandar Janković, Rule 92*bis* Statement, para. 13.

<sup>843</sup> Miloš Savić, Deposition T. 380-384; Aleksandar Janković, Rule 92*bis* Statement, paras 13, 16; Simo Jovanović, T. 18974.

<sup>844</sup> Stanko Pivašević, T. 19697.

<sup>845</sup> Stevan Nikolić stated: “When I raised combat preparedness and it started at about 11.00 a.m. in the morning of the 17<sup>th</sup> but before that, we had not taken any positions in Bosanski Šamac, nor had we had any part in the takeover of power in Bosanski Šamac”, T. 18503.

Nikolić testified that in the afternoon of 17 April, he placed members of the 17<sup>th</sup> Tactical Group on the “Silos” to see what was going on the other side of the Sava River. Due to its height, the “Silos” was a good observation point.<sup>846</sup> Other Defence witnesses testified that the 4<sup>th</sup> Detachment was not involved in the takeover of the town.<sup>847</sup>

408. Simo Zarić was at home in the early morning of 17 April until he received orders from Commander Antić to go to the Command of the 4<sup>th</sup> Detachment.<sup>848</sup> Simo Zarić testified that he met with other members of the 4<sup>th</sup> Detachment at the Command at about 5.00 a.m.<sup>849</sup> Other witnesses testified that between 3.30 and 5.00 a.m. in the morning of 17 April members of the 4<sup>th</sup> Detachment met at the headquarters of the 4<sup>th</sup> Detachment, upon orders of Commander Antić. Commander Antić contacted Lt. Col. Nikolić by radio and briefed him on what had occurred in town. Lt. Col. Nikolić subsequently ordered Commander Antić and Simo Zarić to drive to the 17<sup>th</sup> Tactical Group headquarters in Pelagićevo.<sup>850</sup> As Commander Antić and Simo Zarić left for the headquarters, they spoke briefly with Fadil Topčagić who had returned from Crkvina. He informed them that the paramilitaries had taken the SUP. They seemed surprised and concerned.<sup>851</sup>

409. Commander Antić and Simo Zarić arrived at the Command of the 17<sup>th</sup> Tactical Group around 5.30 or 6.00 a.m., at which time Lt. Col. Nikolić stated that he had been informed by Blagoje Simić that the Serb paramilitaries and Serb police had taken over the town of Bosanski Šamac and that the Crisis Staff of the Serb Municipality of Bosanski Šamac had been established.<sup>852</sup>

410. Lt. Col. Nikolić testified that when Commander Antić and Simo Zarić arrived, they were “quite worked up” and wanted to know what the position of the 4<sup>th</sup> Detachment was. Lt. Col. Nikolić also testified that they “wanted to get involved in some way”. Lt. Col. Nikolić gave evidence that he told them that the military would not get involved with the takeover and therefore would not interfere in government “affairs.”<sup>853</sup> Lt. Col. Nikolić ordered them to raise the combat readiness of the 4<sup>th</sup> Detachment and await further orders.<sup>854</sup>

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<sup>846</sup> Stevan Nikolić, T. 18532-33.

<sup>847</sup> Petar Karlović, T. 18436; Radovan Antić, T. 16816.

<sup>848</sup> Simo Zarić, T. 19223-24; Fatima Zarić, T. 18014-15.

<sup>849</sup> Simo Zarić, T. 19225-29.

<sup>850</sup> Radovan Antić, T. 16732, T. 16738-39, T. 16852-53, T. 16912-13; Simo Zarić, T. 19225-29; Maksim Simeunović, T. 15951-52; Jovo Savić, T. 17023-25.

<sup>851</sup> Simo Zarić, T.19225-29; Radovan Antić, T. 16852-3; Maksim Simeunović, T. 15951-52; Jovo Savić, T. 17023-25; Fadil Topčagić, T. 18386.

<sup>852</sup> Radovan Antić, T. 16739-40; Maksim Simeunović, T. 15865-67; Simo Zarić, T. 19231.

<sup>853</sup> Stevan Nikolić, T. 18615; Maksim Simeunović, T. 15865-67.

<sup>854</sup> Simo Zarić, T.19232-33; Marko Tubaković, T. 19353-54; Teodor Tutnjević, T. 17413-14; Maksim Simeunović, T. 15867-68; Jovo Savić, T. 17026-27.

411. Commander Antić and Simo Zarić returned to the headquarters of the 4<sup>th</sup> Detachment and discussed with members of the 4<sup>th</sup> Detachment the events that had occurred in town.<sup>855</sup> Defence witnesses testified that in accordance with the orders of Lt. Col. Nikolić in the early morning of 17 April, part of the 4<sup>th</sup> Detachment was deployed on the embankments on the right bank of the Bosna and Sava Rivers, in order to defend the perimeter of the town.<sup>856</sup>

412. Defence witnesses testified that on 17 April some civilians left town across the Bridge until around 5.00 a.m. when the shooting from the direction of Prud intensified.<sup>857</sup> Commander Antić testified that in the morning of 17 April, the town was subjected to mortar attack from the Republic of Croatia.<sup>858</sup> Defence witnesses testified that in the morning of 18 April 1992, there was an attempted attack from the HVO from Prud, over the Bridge on the Bosna River. The 4<sup>th</sup> Detachment responded by opening fire with light infantry weapons. Several enemy soldiers were killed on the Bridge.<sup>859</sup>

413. Defence witnesses stated that a group of armed men of Muslim ethnicity were in town in the early morning of 17 April. They were subsequently disarmed by the members of the 4<sup>th</sup> Detachment.<sup>860</sup>

## **B. Announcement of the takeover of power**

414. Following the seizure of the vital facilities in town by the Serb paramilitaries and Serb police, the establishment of the Crisis Staff of the Serbian Municipality of Bosanski Šamac, was announced. According to Lt. Col. Nikolić, on 17 April 1992 at around 03.00 a.m., Blagoje Simić called him at the headquarters of the 17<sup>th</sup> Tactical Group in Pelagićevo. Blagoje Simić informed Lt. Col. Nikolić that the Crisis Staff of the Serbian Municipality of Bosanski Šamac had been established and that with the assistance of the Serb paramilitaries and the Serb TO, the Crisis Staff had taken the most important facilities in town in order to takeover authority in Bosanski Šamac.<sup>861</sup>

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<sup>855</sup> Maksim Simeunović, T. 15867-68; Radovan Antić, T. 16741, T. 16857, T. 16849-52; Simo Zarić, T.19234; Fadil Topčagić, T. 18327, Jovo Savić, T. 17026-28.

<sup>856</sup> Stevan Nikolić, T. 18461; Radovan Antić, T. 16860, T. 16744, T. 16816; Simo Zarić, T. 19239-445; Čedomir Simić, T. 18832; Džemal Jasenica, Rule 92*bis* Statement, para. 18; Stevan Arandžić, Deposition T. 168; Jovo Savić, T. 17116-17, T. 17029; Marko Tubaković, T. 19347-48; Teodor Tutnjević, T. 17413-14; Stanko Dujković, Deposition T. 303-304; Stanko Bojić, Rule 92*bis* Statement, para. 13, T. 17985-87; Simo Zarić, T. 19245.

<sup>857</sup> Simo Zarić, T. 19236-38; Džemal Jasenica, Rule 92*bis* Statement, para. 18; Fadil Topčagić, T. 18329.

<sup>858</sup> Radovan Antić, T. 16916-17.

<sup>859</sup> Radovan Antić, T. 16916-17; Simo Zarić, T. 19301; Jovo Savić, T. 17035-36.

<sup>860</sup> Željko Volašević, Rule 92*bis* Statement, paras 12-15; Simo Zarić, T. 19242; Fadil Topčagić, T. 18392; Ibrahim Salkić, T. 3578-79; Safet Dagović, T. 7170; Simo Zarić, T. 19251; Stevan Nikolić, T. 18498-99.

<sup>861</sup> Stevan Nikolić, T. 18456-57, T. 18513-15; Simo Zarić, T. 19231-32.

Blagoje Simić was calling as President of the newly formed Crisis Staff of Bosanski Šamac.<sup>862</sup> Blagoje Simić denied making the telephone call to Lt. Col. Nikolić.<sup>863</sup>

415. However, some Prosecution<sup>864</sup> and Defence<sup>865</sup> witnesses testified that during the night between the 16 to 17 April 1992 until 05.00 a.m. the telephone lines in town were not working. Commander Antić and Simo Zarić, on the contrary, testified that they made, and received, telephone calls during the night of 16 until the early morning of 17 April.<sup>866</sup> However, Simo Zarić stated that when he was at the command at around 5.00 a.m., the telephone lines were not working. Nevertheless, the Commander managed to establish contact with the Command of the 17<sup>th</sup> Tactical Group through the signals officers and the radio set they used for communication with the 17<sup>th</sup> Tactical Group.<sup>867</sup> Other witnesses also testified that the telephone lines resumed from 5.00 a.m. onwards.<sup>868</sup>

416. Prosecution witnesses testified that they heard Simo Zarić speaking on the radio on 17 and 18 April stating that a new government had been set up.<sup>869</sup>

417. Sulejman Tihić testified that Blagoje Simić called him on 17 April, at around 12.00 a.m. Sulejman Tihić asked Blagoje Simić if they could “sit down and negotiate”. Blagoje Simić responded: “No way we are going to negotiate. The Serbian people are at war with Muslims. Turn your weapons over. There will be no negotiation or agreement.”<sup>870</sup> Blagoje Simić also added that the “Serbian people are at war with Croatian and Muslim people ... until our final victory, there will be no negotiation.” Blagoje Simić did not give any details about where people should surrender or turn over their weapons.<sup>871</sup> Blagoje Simić denied speaking with Sulejman Tihić on 17 April.<sup>872</sup>

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<sup>862</sup> See Exhibit P109, Decision on the Appointment of the president of the Crisis Staff, 17 April 1992. Blagoje Simić was appointed President of the Crisis Staff on 17 April 1992.

<sup>863</sup> Blagoje Simić, T. 12535.

<sup>864</sup> Osman Jašarević, Rule 92*bis* Statement, para. 34; Alija Fitozović, T. 8503; Witness K, T. 4592; Dragan Lukač, T. 1653-54; Witness A, Rule 92*bis* Statement, para. 30.

<sup>865</sup> Naser Sedjić, T. 17526; Vladimir Šarkanović, T. 16498; Goran Buzaković, T. 17668-69; Stevan Arandjić, Deposition T. 166; Mirko Pavlič, Rule 92*bis* Statement, para. 9; Džemal Jasenica, Rule 92*bis* Statement, para. 17; Stanko Bojić, T. 17962.

<sup>866</sup> Radovan Antić, T. 16738, T.16806; Simo Zarić, T. 19223-24.

<sup>867</sup> Simo Zarić, T. 19225; Teodor Tutnjević, T. 17411-13.

<sup>868</sup> Stevan Arandjić, Deposition T. 166; Džemal Jasenica, Rule 92*bis* Statement, para. 18; Maksim Simeunović, T. 15956-63; Vladimir Šarkanović, T. 16498-501; Fatima Zarić, T. 18015-16.

<sup>869</sup> Hajrija Drljačić T. 8034; Kemal Bobić, T. 11382-83; Nusret Hadžijusufović, T. 6867-70; Witness K, T. 4599; Esad Dagović, T. 3914.

<sup>870</sup> Sulejman Tihić testified that he wanted to negotiate for peace, “my idea was to stop this attack on Šamac, to sit down and talk because information had reached me that those units were killing people, looting. My main idea was to stop this attack”. He also testified that Blagoje Simić had the “army backing him”, T. 1368-69.

<sup>871</sup> Blagoje Simić, T. 1368-69.

<sup>872</sup> Blagoje Simić, T. 12434-35.



### C. Collection of weapons

418. Lt. Col. Nikolić gave evidence that he ordered the 4<sup>th</sup> Detachment to disarm the population on 17 April 1992.<sup>873</sup> Commander Antić relayed the Order to the members of the 4<sup>th</sup> Detachment. The 4<sup>th</sup> Detachment collected weapons from the 4<sup>th</sup> District, the neighbourhood that was closest to the defence line in order to avoid that armed civilians would shoot at the back of the soldiers positioned on the embankment of the Bosna and Sava Rivers.<sup>874</sup>

419. The 4<sup>th</sup> Detachment carried out the order in the days following the takeover. Prosecution<sup>875</sup> and Defence<sup>876</sup> witnesses testified that they saw the 4<sup>th</sup> Detachment collecting weapons on 17, 18 and 19 April.

420. Miroslav Tadić and Simo Zarić testified that only members of the 4<sup>th</sup> Detachment were in the area of the 4<sup>th</sup> District, collecting weapons.<sup>877</sup> Miroslav Tadić testified that about 30 members of the 4<sup>th</sup> Detachment collected weapons.<sup>878</sup>

421. Prosecution<sup>879</sup> and Defence<sup>880</sup> witnesses testified that paramilitaries were also involved in collecting weapons on 17 and 18 April in Bosanski Šamac. The paramilitaries searching for weapons were wearing camouflage uniforms and black berets. Their faces were painted and they

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<sup>873</sup> Stevan Nikolić, T. 18559; Radovan Antić, T. 16747; Goran Buzaković, T. 17682-83; Maksim Simeunović, T. 15869; Miroslav Tadić, T. 15213; Jovo Savić, T. 17034, T. 17209; Fadil Topčagić, T. 18330-31; Simo Zarić, T. 19254.

<sup>874</sup> Miroslav Tadić, T. 15588; Simo Zarić, T. 20095-96; See also Exhibit P77 which is an Order dated 17 April 1992 stating: "All members of paramilitary Ustasha and Muslim formations on the territory of the municipality are to surrender all the weapons and equipment in their possession regardless of their origin or the manner in which they received them by 17.00 hours 18 April 1992". Paragraph 3 of the Order states: "Persons who do not comply with the Order for the hand over of the weapons and equipment within the indicated deadline, shall be disarmed forcefully and remanded in custody at the Public Security Station and authorised bodies shall initiate proceedings to determine responsibility".

<sup>875</sup> Dragan Delić, T. 6661-62; Safet Dagović, T. 7172-73; Jelena Kapetanović, T. 8911-16; Esad Dagović, T. 3915-16; Sulejman Tihic, T. 1366; Witness C, T. 7982-83. Other Prosecution witnesses testified seeing "soldiers" without specifying the unit to which they belonged; Dragan Delić, T. 6662; Witness E, T. 7660-63; Alija Fitozović, T. 8424-25; Nusret Hadžijusufović, T. 6866; Snježana Delić, T. 6390-91; Hasan Bičić, T. 2638; Jelena Kapetanović, T. 8930; Witness DW 2/3, T. 14438-39; Fatima Zarić, T. 18044, Rule 92bis Statement, para. 29; Radovan Antić, T. 16867; Pašaga Tihic, T. 18190; Fadil Topčagić, Rule 92bis Statement, para. 50, T. 18335; Jusuf Arnautović, T. 18094-95.

<sup>876</sup> Witness DW 2/3, T. 14438-39; Fatima Zarić, T. 18044, Rule 92bis Statement, para. 29; Radovan Antić, T. 16867; Pašaga Tihic, T. 18190; Fadil Topčagić, Rule 92bis Statement para. 50, T. 18335; Jusuf Arnautović, T. 18094-95; Maksim Simeunović, T. 15872-73; Milka Petrović, Rule 92bis Statement, para. 11; Radovan Antić, T. 16865-66; Jovo Savić, T. 17030-32.

<sup>877</sup> Miroslav Tadić, T. 15597, T. 15230-33; Simo Zarić, T. 19257.

<sup>878</sup> Miroslav Tadić, T. 15588.

<sup>879</sup> Witness E, T. 7660; Stevan Todorović, T. 9110; Hajrija Drljačić, T. 8025-26; Witness N, T. 6050, T. 6334, T. 6062-63; Hasan Bičić, T. 2693-41; Muhamed Bičić, T. 2640-41; Snježana Delić, T. 6390-91; Witness L, T. 4226; Witness M, T. 5022-24.

<sup>880</sup> Fatima Zarić, T. 18043; Petar Karlović, T. 18434-36; Jusuf Arnautović, T. 18094-95; Mladen Borbeli, T. 14708-09; Naser Sedjić, T. 17532-33; Ljubomir Vuković, testified that on 18 April, two men in camouflage uniforms walked into his yard. They asked him whether somebody came to see him yesterday morning. They asked him whether there were any Muslim houses around and who was the head of the household, T. 14576-77, T. 14580-81, T. 14584; Stojan Damjanović, T. 17785; Željko Volašević, T. 17751-52.

spoke Ekavian, a Serb dialect. Many witnesses also testified that the collection of weapons was carried out by paramilitaries and the police jointly.

422. Simo Zarić gave evidence that in the early morning of 17 April, the reason why the 4<sup>th</sup> Detachment did not collect weapons in the other districts was because during the collection of weapons by the paramilitaries and the police a lot of unpleasant situations had arisen there and therefore it was not advisable for the 4<sup>th</sup> Detachment to collect weapons in those areas.<sup>881</sup> Simo Zarić testified that the paramilitaries and the police entered the houses to look for weapons. They confiscated weapons even from members of the 4<sup>th</sup> Detachment and civilians who had licences to carry them. Simo Zarić heard that they also arrested citizens during the collection of weapons.<sup>882</sup> Simo Zarić reported the information he received on these occurrences to Maksim Simeunović who immediately informed the Command of the 17<sup>th</sup> Tactical Group. He stated, “what was happening in the town of Šamac, without control, was known by my Superior Command in the 17<sup>th</sup> Tactical Group from the very beginning.”<sup>883</sup> Miroslav Tadić testified that he found out later that the paramilitaries collected weapons and entered houses.<sup>884</sup>

423. Commander Antić testified that some members of the police and the paramilitaries “expropriated” property, seized vehicles and weapons of their own initiative.<sup>885</sup> There were a number of cases where weapons were taken from members of the 4<sup>th</sup> Detachment by members of the police.<sup>886</sup>

424. Commander Antić testified that he ordered Miroslav Tadić and Simo Zarić to go personally with the members of the 4<sup>th</sup> Detachment to search for weapons.<sup>887</sup>

425. Lt. Col. Nikolić confirmed the participation of Simo Zarić and Miroslav Tadić in the collection of weapons on both 17 and 18 April. Lt. Col. Nikolić testified that on 17 April 1992, Commander Antić delegated the supervision of the collection of weapons to Simo Zarić and Miroslav Tadić, “who have it as part of their job description”. On 17 April, they were both involved in the supervision of the weapons collection in Bosanski Šamac.<sup>888</sup>

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<sup>881</sup> Simo Zarić, T. 19253.

<sup>882</sup> Simo Zarić, T. 19247.

<sup>883</sup> Simo Zarić, T. 19248.

<sup>884</sup> Miroslav Tadić, T. 15597.

<sup>885</sup> Radovan Antić, T. 16866.

<sup>886</sup> Radovan Antić, T. 16754.

<sup>887</sup> Radovan Antić, T. 16926.

<sup>888</sup> Stevan Nikolić, T. 18559.

426. Fadil Topčagić testified that members of the 4<sup>th</sup> Detachment were told that Miroslav Tadić and Simo Zarić would monitor the performance of the collection of weapons.<sup>889</sup> He recalls that Simo Zarić and Miroslav Tadić came to see them collecting the weapons and communicated with Ljubo Simić to see if there were any problems.<sup>890</sup>

427. Miroslav Tadić testified that he was involved in the collection of weapons on 18 April 1992 but that he did not participate on 17 April, as he had been told to stay at home.<sup>891</sup> He stated that he did not have a concrete task in the collection of weapons, as it was done by the units.<sup>892</sup> However, Commander Antić had told him to see how the collection of the weapons went in the 4<sup>th</sup> District, while he was touring town and looking for people for the kitchen he was supposed to set up.<sup>893</sup>

428. Simo Zarić recalls that the orders to collect weapons were given to him and Miroslav Tadić.<sup>894</sup> Commander Antić told them both to meet from time to time in the area where collection was under way to make sure that his orders were correctly obeyed.<sup>895</sup> Simo Zarić testified that he was not accompanied by Miroslav Tadić on 18 April 1992. However, he saw him passing in a street near the fire brigade headquarters. They never walked together for a single moment.<sup>896</sup>

429. According to Commander Antić, Miroslav Tadić had the task of registering all the weapons and depositing them in the warehouse. Commander Antić testified that in the order, he instructed Miroslav Tadić, as the logistics officer, to get together a list with the weapons collected.<sup>897</sup> Commander Antić testified that in addition to the order regarding the collection of weapons, Commander Antić ordered Miroslav Tadić to take care of the moving of equipment from the command post to the new location, and to set up a kitchen for the 4<sup>th</sup> Detachment.<sup>898</sup>

430. Jovo Savić confirmed that Simo Zarić's and Miroslav Tadić's task was to record all the weapons collected and to take them to the TO warehouse, at the TO headquarters. They merely had to record the serial number of the rifle. Their orders were to control this activity and monitor it. Miroslav Tadić was entrusted with the task of recording all weapons, drawing up lists and taking

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<sup>889</sup> Fadil Topčagić, T. 18332. See also Djordje Tubaković, T. 17901-02.

<sup>890</sup> Fadil Topčagić, T. 18340.

<sup>891</sup> Miroslav Tadić, T. 15212-14. He made a telephone call at around 8.00 or 9.00 a.m. to the command of the 4<sup>th</sup> Detachment. Someone told him that the Commander, Radovan Antić, had gone to Pelagićevo without saying anything regarding his activity, T. 15231.

<sup>892</sup> Miroslav Tadić, T. 15213.

<sup>893</sup> Miroslav Tadić, T. 15227.

<sup>894</sup> Simo Zarić, T. 19255.

<sup>895</sup> Simo Zarić, T. 19255.

<sup>896</sup> Simo Zarić, T. 19257.

<sup>897</sup> Radovan Antić, T. 16748.

<sup>898</sup> Radovan Antić, T. 16779.

the weapons to the storage.<sup>899</sup> Simo Zarić and Commander Antić testified that collected weapons had to be taken to the TO.<sup>900</sup>

431. The collection of weapons carried out on the 17 and 18 April was, according to Prosecution witness Hasan Bičić, carried out in a coercive manner. Hasan Bičić testified that on 18 April 1992 people in military uniform kicked the door of his house. They hit his brother with a rifle making his brother fall to the ground and they also pushed him so that he fell. They ordered Hasan Bičić to get up and they put a knife to his throat.<sup>901</sup>

432. According to Defence witnesses citizens were not mistreated during the collection of weapons. The citizens of Bosanski Šamac handed in their weapons freely without any coercion. The members of the 4<sup>th</sup> Detachment collecting weapons were not allowed to enter the houses of citizens to search for weapons. They were supposed to put the weapons outside their houses.<sup>902</sup>

433. Miroslav Tadić testified that the surrender of weapons to the 4<sup>th</sup> Detachment members was done on a voluntary basis; no force was used. The 4<sup>th</sup> Detachment members were not checking whether somebody possessed weapons, they only went from door-to-door, and if people had weapons, they would surrender them without force. If the people had none, they would move along.<sup>903</sup> This information was based on orders he heard being given, on 18 April 1992.<sup>904</sup>

434. Miroslav Tadić testified that the soldiers were not authorised to enter apartments. They did not in fact enter apartments. Miroslav Tadić does not know whether other soldiers entered other apartments or entrances later on. As they were told to go through all the entrances, they probably did go into the apartments, but Miroslav Tadić did not, as there was no need for him to follow them.<sup>905</sup> The soldiers of the 4<sup>th</sup> Detachment were not authorised to enter the apartments and they did not do it. If someone told them that there were no weapons, they moved on.<sup>906</sup>

435. Fatima Zarić testified that when the members of the 4<sup>th</sup> Detachment came into her hallway, they did not go into anyone's flat and only took weapons if someone brought them out to them.<sup>907</sup>

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<sup>899</sup> Jovo Savić, T. 17207-08.

<sup>900</sup> Simo Zarić, T. 19257-58; Radovan Antić, T. 16748.

<sup>901</sup> Hasan Bičić, T. 2640-41.

<sup>902</sup> Radovan Antić, T. 16746, T. 16864-65; Goran Buzaković, T. 17680-83, T. 17688-89, T. 17695; Maksim Simeunović, T. 15869; Jovo Savić, T. 17029-30; Simo Zarić, T. 19253-54; Fadil Topčagić, Rule 92*bis* Statement, paras 47-48, 50, T. 18332-40.

<sup>903</sup> Miroslav Tadić, T. 15228, T. 15588-89.

<sup>904</sup> Miroslav Tadić, T. 15590.

<sup>905</sup> Miroslav Tadić, T. 15232-23.

<sup>906</sup> Miroslav Tadić, T. 15232.

<sup>907</sup> Fatima Zarić, Rule 92*bis* Statement, para. 29.

436. Commander Antić testified that according to the information he received throughout the two days the collection of weapons went on, members of the 4<sup>th</sup> Detachment did not have a single incident in the course of their activity, which meant that the order regarding the behaviour of those who collected the weapons was being strictly complied with.<sup>908</sup>

437. Both Prosecution and Defence witnesses testified that members of the 4<sup>th</sup> Detachment were armed when collecting weapons.<sup>909</sup> Moreover, Prosecution and Defence witnesses recalled that the men collecting weapons were escorted by an armoured vehicle.<sup>910</sup>

438. Miroslav Tadić gave a different account stating that during the collection of weapons they were not escorted by any vehicles.<sup>911</sup>

439. Ibrahim Salkić was ordered to collect weapons from Muslims and Croats. He testified that he was arrested on 18 April 1992 and taken to the MUP. On the same day, he was taken into a police vehicle equipped with a loudspeaker and a microphone. He was driven through town accompanied by two soldiers. One of them explained to him that he had to speak into the microphone and tell the citizens to surrender their weapons. The soldier threatened Ibrahim Salkić that if he did not say what was dictated to him, he would pay for it with his life. Ibrahim Salkić asked the people of Šamac, through a loudspeaker, to surrender their weapons. Ibrahim Salkić was also ordered to go with them from house to house and ask Muslims and Croats to get their weapons out and to hand them over. They took away all their weapons, regardless of whether they were legal or not.<sup>912</sup>

440. Defence witnesses, on the contrary, gave evidence that the collection of weapons was carried out indiscriminately, regardless of the ethnicity of the citizens. However, Defence witnesses testified that the men that came to collect weapons on 17 April 1992 asked the citizens for their identity cards.<sup>913</sup>

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<sup>908</sup> Radovan Antić, T. 16867.

<sup>909</sup> Safet Dagović testified that the soldiers of the 4<sup>th</sup> Detachment were armed with automatic rifles. There was also a tank in the street facing the front yard, T. 7176-77; Miroslav Tadić, T. 15595; Goran Buzaković, T. 17672-73.

<sup>910</sup> The evidence as to the type of vehicle is inconsistent. Pašaga Tihić, T. 18191; Jusuf Arnautović, T. 18118; Safet Dagović, T. 7174-77; Esad Dagović, T. 3915-17; Fadil Topčagić, T. 18333-39; Djordje Tubaković, T. 17950-51.

<sup>911</sup> Miroslav Tadić, T. 15595-96.

<sup>912</sup> Ibrahim Salkić, T. 3252-54.

<sup>913</sup> Mladen Borbeli, T. 14706; Ljubomir Vuković, testified that when members of the 4<sup>th</sup> detachment came to collect weapons, they asked for his son's identity card. He gave him his ID. Then Ljubomir Vuković was asked whether he had any personal identity card. He showed him his identity card, T. 14577.

441. Prosecution<sup>914</sup> and Defence<sup>915</sup> witnesses testified that on both 17 and 18 April soldiers were driving around town calling out from a megaphone, ordering people to hand in their weapons. Similarly, announcements on Radio Šamac were made, telling people to surrender their weapons<sup>916</sup>

#### **D. Findings**

442. The Trial Chamber is satisfied that in the early morning of 17 April 1992, the town of Bosanski Šamac was subject to a forcible takeover by members of the paramilitaries and Serb police. During the takeover, the Serb police and the paramilitaries secured the key facilities in town, including the police station, the post office and the Radio Station.<sup>917</sup> The Trial Chamber accepts that in the early morning of 17 April, the paramilitaries were “guided” into town by the 4<sup>th</sup> Detachment member, Fadil Topčagić.<sup>918</sup> However, the Trial Chamber does not accept that he was acting in his capacity as a 4<sup>th</sup> Detachment member and finds that Fadil Topčagić had been forced to “guide” the paramilitaries into town by “Crni”.<sup>919</sup> The Trial Chamber accepts that Blagoje Simić and other members of the Crisis Staff met in Crkvina in the early hours of 17 April 1992.<sup>920</sup>

443. The Trial Chamber accepts that the takeover of the town occurred without any significant resistance.<sup>921</sup>

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<sup>914</sup> Kemal Mehinović, T. 7392; Snježana Delić, T. 6390-91; Witness M, T. 5022-24; Dragan Delić, T. 661-62; Hasan Bičić heard loud yelling through a speaker, ordering them to open the door and that people were coming for the weapons, T. 2639; Sulejman Tihic, T. 1366; Witness L, T. 4223; Witness N, T. 6334-36, T. 6062-63; Hajrija Drljajić, T. 8186.

<sup>915</sup> Vladimir Šarkanović, T. 16503; Željko Volašević asserted that an armoured personnel carrier made the rounds of town, announcing over the loud speaker that weapons should be left in front of the doors, Rule 92bis Statement, para. 18; Witness DW 2/3, T. 14438-39; Ljubomir Vuković, T. 14580-81. Other Defence witnesses testified seeing “soldiers” without specifying the unit to which they belonged. Djordje Tubaković, T. 17901-05; Amir Nukić, Rule 92bis Statement, para. 6; Exhibit D159/1.

<sup>916</sup> Stevan Todorović testified that an order to surrender weapons was announced through the local radio and also through a loud speaker on 17 April. It announced that whoever handed over their weapons in the next two hours, would not have any problems and that members of the Croatian and Muslim formations should hand over their weapons, T. 9090; Esad Dagović, T. 3914; Witness L, T. 5805; Simo Zarić testified that he heard Sulejman Tihic on the radio asking the citizens to hand over their armaments to the legal organs of the municipality. He said that the Serbian government had been introduced in the territory of Šamac and that he had been promised that after the arms were handed over a new democratic order would be established, and that the situation would become normal, T. 19272-73.

<sup>917</sup> Stevan Todorović, T. 9083-85; Mirko Pavić, Rule 92bis Statement, para. 9; Vladimir Šarkanović, T. 16572-73; Simo Zarić, T. 20048-49. See also Zarić Prosecution Interview I. Simo Zarić stated that during the night, between 16 and 17 April, members of the Serbian police and paramilitaries from Serbia, on orders from the Crisis Staff, chaired by Blagoje Simić, took over some of the most important buildings in town, Exhibit P142, page 9. Radovan Antić, T. 16868; Andrija Petrić, T. 17589; Dario Radić, T. 15061; Mihajlo Topolovać, Rule 92bis Statement, para. 11; Naser Sedjic, T. 17528-29; Jusuf Arnautović, T. 18094-95; Jovo Savić, T. 17195; Simo Jovanović, T. 18979-80.

<sup>918</sup> Jovo Savić, T. 17026; Radovan Antić, T. 16799-80; Stevan Todorović, T. 9084.

<sup>919</sup> Fadil Topčagić, T. 18353-56, Rule 92bis Statement, para. 35.

<sup>920</sup> Blagoje Simić, T. 12254; Stevan Todorović, T. 9079-80; Fadil Topčagić, T. 18382-84, T. 18430.

<sup>921</sup> Witness C, T. 7951; Izet Izetbegović, T. 2254; Sulejman Tihic, T. 1365; Witness K, T. 4220; Simo Jovanović, T. 18989-90; Jovo Savić, T. 17021-23; Marko Kurešević, Rule 92bis Statement para. 10; Stanko Bojić, T. 17962; Vaso Antić, Rule 92bis Statement, para. 12; Radovan Antić, T. 16731-32, T. 16806, T. 16848-49; Miroslav Tadić, T. 15210-11.

444. The Trial Chamber is satisfied that some units of the 17<sup>th</sup> Tactical Group were in town in the early morning of 17 April as there was information about the preparations by Croatian and Muslim forces to take the town of Bosanski Šamac.<sup>922</sup> As a result, the Trial Chamber accepts that some units of the 17<sup>th</sup> Tactical Group, including some members of the 4<sup>th</sup> Detachment, had been deployed, prior to the forcible takeover, in vantage points, such as the “Silos” to observe whether the Croatian or Muslim forces would enter town.<sup>923</sup>

445. The Trial Chamber accepts that the command of the 4<sup>th</sup> Detachment met in its headquarters in Bosanski Šamac between 3.30 and 5.00 a.m. on 17 April 1992<sup>924</sup> and that subsequently Commander Antić and Simo Zarić went to the headquarters of the 17<sup>th</sup> Tactical Group in Pelagićevo to meet with Lt. Col Nikolić.<sup>925</sup>

446. The Trial Chamber is satisfied that Blagoje Simić telephoned Lt. Col. Nikolić in the early morning of 17 April to inform him that the Crisis Staff of the Serbian Municipality of Bosanski Šamac had been established and that, with the assistance of the Serb paramilitaries and the police, the Crisis Staff had taken the most important facilities in town in order to takeover authority in Bosanski Šamac.<sup>926</sup> Although telephone lines were occasionally down between the night of 16 April and the early morning on 17 April 1992, the Trial Chamber is satisfied that for a considerable period overnight the telephone lines were working.<sup>927</sup>

447. The Trial Chamber finds that, as a result of the telephone conversation between Blagoje Simić and Lt. Col. Nikolić, Lt. Col. Nikolić ordered the 4<sup>th</sup> Detachment at 6.00 a.m. to be in a state of combat readiness.<sup>928</sup>

448. The Trial Chamber finds that the 4<sup>th</sup> Detachment became aware of the takeover of the town and did not participate in the taking of the vital facilities in town.<sup>929</sup>

449. The Trial Chamber is satisfied that in the morning of 17 April 1992, the 4<sup>th</sup> Detachment was deployed along the embankments of the Bosna and Sava Rivers, in defensive positions.<sup>930</sup>

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<sup>922</sup> Miloš Savić, Deposition T. 380-384; Aleksandar Janković, Rule 92*bis* Statement, paras 13, 16; Simo Jovanović, T. 18974; Stanko Pivašević, T. 19697.

<sup>923</sup> Stevan Nikolić, T. 18503.

<sup>924</sup> Simo Zarić, T. 19225-29; Radovan Antić, T. 16732, T. 16738-39, T. 16852-53, T. 16912-13; Maksim Simeunović, T. 15951-52; Jovo Savić, T. 17023-25.

<sup>925</sup> Radovan Antić, T. 16739-40; Maksim Simeunović, T. 15865-67; Simo Zarić, T. 19231.

<sup>926</sup> Stevan Nikolić, T. 18456-57, T. 18513-15; Simo Zarić, T. 19231-32.

<sup>927</sup> Radovan Antić, T. 16738, T.16806; Simo Zarić, T. 19223-24.

<sup>928</sup> Simo Zarić, T.19232-33; Marko Tubaković, T. 19353-54; Teodor Tutnjević, T. 17413-14; Maksim Simeunović, T. 15867-68; Jovo Savić, T. 17026-27.

<sup>929</sup> Petar Karlović, T. 18436; Radovan Antić, T. 16816.

<sup>930</sup> Stevan Nikolić, T. 18461; Radovan Antić, T. 16860, T. 16744, T. 16816; Simo Zarić, T. 19239-445; Čedomir Simić, T. 18832; Džemal Jasenica, Rule 92*bis* Statement, para. 18; Stevan Arandjić, Deposition T. 168; Jovo Savić, T. 17029;

450. The Trial Chamber is satisfied that on 17 April 1992 the town of Bosanski Šamac was subject to a mortar attack from Croatia.<sup>931</sup> Furthermore, the Trial Chamber finds that in the morning of 18 April 1992 the 4<sup>th</sup> Detachment engaged in some combat activities on the Bridge on the Bosna River, in response to an attack from the Croatian side.<sup>932</sup>

451. The Trial Chamber is satisfied that Lt. Col. Nikolić ordered the 4<sup>th</sup> Detachment to collect weapons on 17 April 1992.<sup>933</sup> The order was carried out by the 4<sup>th</sup> Detachment on 17, 18 and 19 April 1992 in the 4<sup>th</sup> District.<sup>934</sup> The Trial Chamber is satisfied that paramilitaries and the police also participated in the collection of weapons in Bosanski Šamac.<sup>935</sup>

452. The Trial Chamber accepts that Miroslav Tadić and Simo Zarić were ordered by the command of the 4<sup>th</sup> Detachment on 17 April to supervise the collection of weapons.<sup>936</sup>

453. The Trial Chamber accepts that those collecting weapons were armed and accompanied by a military vehicle in the 4<sup>th</sup> District.<sup>937</sup> The Trial Chamber is satisfied that generally the members of the 4<sup>th</sup> Detachment collecting weapons did not use force when collecting weapons and were instructed not to enter apartments or houses. The Trial Chamber accepts that the paramilitaries and the police did use force when collecting weapons.<sup>938</sup>

454. The Trial Chamber finds that the weapons were predominantly collected from Muslim and Croat civilians.<sup>939</sup>

455. Although the evidence considered concerns the forcible takeover of the town of Bosanski Šamac on 17 April 1992, the Trial Chamber accepts that the forces that took control of Bosanski Šamac within a few days controlled most of the Municipality of Bosanski Šamac.

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Marko Tubaković, T. 19347-48; Teodor Tutnjević, T. 17413-14; Stanko Dujković, Deposition T. 303-304; Jovo Savić, T. 17116-17; Stanko Bojić, Rule 92*bis* Statement, para. 13, T. 17985-87; Radovan Antić, T. 16810-15.

<sup>931</sup> Radovan Antić, T. 16916-17.

<sup>932</sup> Simo Zarić, T. 19301; Jovo Savić, T. 17035-36.

<sup>933</sup> Stevan Nikolić, T. 18559; Radovan Antić, T. 16747; Goran Buzaković, T. 17682-83; Maksim Simeunović, T. 15869; Miroslav Tadić, T. 15213; Jovo Savić, T. 17034, T. 17209; Fadil Topčagić, T. 18330-31; Simo Zarić, T. 19254.

<sup>934</sup> Miroslav Tadić, T. 15588; Simo Zarić, T. 20095-96; Dragan Delić, T. 6661-62; Safet Dagović, T. 7172-73; Sulejman Tihić, T. 1366; Witness C, T. 7982-83.

<sup>935</sup> Witness E, T. 7660; Stevan Todorović, T. 9110; Hajrija Drljačić, T. 8025-26; Witness N, T. 6050, T. 6334, T. 6062-63; Muhamed Bičić, T. 2640-41; Witness L, T. 4226; Witness M, T. 5022-24; Fatima Zarić, T. 18043; Petar Karlović, T. 18434-36; Jusuf Arnautović, T. 18094-95; Naser Sedjić, T. 17532-33; Stojan Damjanović, T. 17785; Željko Volašević, T. 17751-52.

<sup>936</sup> Radovan Antić, T. 16926; Stevan Nikolić, T. 18559; Miroslav Tadić, T. 15227; Simo Zarić, T. 19255.

<sup>937</sup> Safet Dagović, T. 7176-77; Miroslav Tadić, T. 15595; Goran Buzaković, T. 17672-73; Pašaga Tihić, T. 18191; Jusuf Arnautović, T. 18118; Fadil Topčagić, T. 18333-39; Djordje Tubaković, T. 17950-51.

<sup>938</sup> Radovan Antić, T. 16746, T. 16864-65; Goran Buzaković, T. 17680-83, T. 17688-89, T. 17695; Maksim Simeunović, T. 15869; Jovo Savić, T. 17029-30; Simo Zarić, T. 19253-54; Miroslav Tadić, T. 15232.

<sup>939</sup> Ibrahim Salkić, T. 3252-54.



456. The Trial Chamber is satisfied that the forcible takeover of the Municipality of Bosanski Šamac, in and of itself, does not reach the level of gravity to constitute persecution.

# **XI. ORDERS, POLICIES, DECISIONS, AND OTHER REGULATIONS IN THE NAME OF THE SERB CRISIS STAFF AND WAR PRESIDENCY VIOLATING THE RIGHTS OF NON-SERB CIVILIANS TO EQUAL TREATMENT AND INFRINGING UPON THEIR ENJOYMENT OF BASIC AND FUNDAMENTAL RIGHTS**

## **A. Evidence**

457. According to the “Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People”, in a state of war, the Crisis Staff assumes “all prerogatives and functions of the municipal assemblies when they are unable to convene.”<sup>940</sup> As a result, the Crisis Staff had the power to issue decisions and other regulations.<sup>941</sup> Furthermore, the “Excerpt of Instructions” required that decisions of the Crisis Staff be adopted “in the presence of all its members”.<sup>942</sup>

458. Prosecution<sup>943</sup> and Defence<sup>944</sup> witnesses testified that the Crisis Staff of the Serbian Municipality of Bosanski Šamac, had a democratic decision making procedure. It was based on a one-man one-vote principle and legislation had to be passed by a simple majority vote.

459. Once established the Crisis Staff, later renamed War Presidency, acting as the highest civilian authority in Bosanski Šamac, issued a number of orders, policies, decisions and other regulations.

460. Blagoje Simić, as President of the Crisis Staff, signed most of the written documents.<sup>945</sup>

### **1. Decision on the Isolation of Croats**<sup>946</sup>

461. Exhibit P71 is a Decision adopted on 15 May 1992, providing that “all people of Croatian nationality on the territory of the Serbian Municipality of Bosanski Šamac shall be isolated and

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<sup>940</sup> Exhibit P128, Excerpt from Instructions for the work of the municipal Crisis Staffs of the Serbian people, dated 26 April 1992, para. 1.

<sup>941</sup> Exhibit P128, para. 14 states: “The Crisis Staff shall convene and make decisions in the presence of all its members, take official minutes, issue written decisions, and submit weekly reports to the regional and State organisations of the Serbian Republic of Bosnia and Herzegovina”.

<sup>942</sup> Exhibit P128, para. 14.

<sup>943</sup> Stevan Todorović, T. 9308-09. Stevan Todorović testified that, quite often, in an exchange of arguments, Blagoje Simić would be outvoted. As an example, he remembered how Blagoje Simić proposed Mirko Lukić for the post of President of the Executive Board, however Stevan Todorović and a few others nominated Milan Simić. Blagoje Simić did not agree, but the proposal of the majority was adopted, and Milan Simić was appointed, T. 9876-77.

<sup>944</sup> Simeon Simić, T. 13033; Božo Ninković, T. 13693; Blagoje Simić, T. 12261-62, T. 12301.

<sup>945</sup> Božo Ninković testified that according to the procedure, the President had to sign the documents, T. 13693. Most Exhibits originating from the Crisis Staff and War Presidency have Blagoje Simić’s typewritten signature with the reference to his title, “President of the Crisis Staff”.

<sup>946</sup> The Decisions, Orders and other Regulations mentioned in this section do not have a title.

taken to vital facilities in the town and in villages”. According to the Preamble of the decision, the Crisis Staff of the Serbian Municipality of Bosanski Šamac issued the decision.<sup>947</sup>

462. Stevan Todorović testified that the stamp on the decision was that of the Crisis Staff and that Blagoje Simić had told him that he had authored the decision on the insistence of “Lugar.” However, Stevan Todorović stated that the Crisis Staff never discussed the decision on the isolation of non-Serbs in Šamac.<sup>948</sup>

463. Blagoje Simić testified that the Crisis Staff did not pass the decision to isolate people of Croatian ethnicity. Crisis Staff decisions were written in the Cyrillic alphabet, whereas this decision was typed using the Latin alphabet. Furthermore, he denied that the signature on the document was his and stated that he did not speak to Stevan Todorović about the decision.<sup>949</sup> Numerous Defence witnesses also testified that the Crisis Staff did not issue such a decision.<sup>950</sup>

464. Simo Zarić testified that he saw the decision at the Public Security Station. There were “a couple of copies” on Stevan Todorović’s desk. Simo Zarić spoke about the decision with Savo Cancarević. Savo Cancarević told Simo Zarić that Stevan Todorović had said, “that the police were supposed to do this, that there was a decision of the Crisis Staff regarding this”. Simo Zarić testified “that according to what I was able to observe, there was a signature of Dr. Blagoje Simić, as far as I can recall”. His conclusion was that the Crisis Staff was behind the decision.<sup>951</sup>

## 2. Prohibition of political activities and political representation

465. Exhibit P91 is a Crisis Staff Order prohibiting political activities, dated 12 June 1992. Article 1 prohibits “the work or activities of any political party and other political organisations and associations” on the territory of the Bosanski Šamac Municipality. Article 2 states that anyone engaged in a political activity or party, “shall be arrested by security officers and shall face measures set out by law”.

466. Stevan Todorović testified that he could not recall making arrests based on the order prohibiting political activities.<sup>952</sup> Furthermore, he gave evidence that during this period, Radovan Karadžić or the Assembly of Republika Srpska passed a decision that the work of all political

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<sup>947</sup> The Preamble of Exhibit P71 states: “Because of incessant bombardment, reasonable grounds to suspect that aircraft are being guided, that there is collaboration with criminals and subversive conduct, the Crisis Staff of the Serbian Municipality of Bosanski Šamac, at its session of 15 May 1992, rendered the following Decision”.

<sup>948</sup> Stevan Todorović, T. 9268, T. 9279-80, T. 9285-86.

<sup>949</sup> Blagoje Simić, T. 12358-59. The signature on the decision is not clear.

<sup>950</sup> Miroslav Tadić, T. 15309-12; Savo Popović, T. 16302; Simeon Simić, T. 13104-05; Mirko Lukić, T. 12905; Velimir Maslić, T. 14219-21; Witness DW 2/3, T. 14488-89; Dario Radić, T.15104-08; Teodor Tutnjević, T. 17497-501; Mitar Mitrović, T. 18725.

<sup>951</sup> Simo Zarić, T. 19755.

parties should be frozen and recommence after the war. As a result, the work of all political parties was frozen in Republika Srpska.<sup>953</sup>

467. Blagoje Simić testified that the SDS was not active during the armed conflict because of a decree issued by the government of Republika Srpska that required political parties to freeze their activities “in times of imminent threat of war and in a state of war”.<sup>954</sup> Dušan Tanasić also testified that as soon as the conflict broke out all the political parties were banned by the “Republic”.<sup>955</sup> Other Defence witnesses gave evidence that the decision of the Crisis Staff was directed at all political parties, including the SDS.<sup>956</sup>

### 3. Prohibition on gatherings of three or more non-Serbs

468. Exhibit P40 is an Order prohibiting the gathering of Muslims and Croats in public places, dated 4 August 1992. The Order provides in paragraph 1 that “it is forbidden for three or more Muslims or Croats to gather together in public places”.<sup>957</sup> Paragraph 2 states: “Any such group should be first warned, and if the offence is repeated the participants should be apprehended and arrested.” Furthermore, paragraph 3 provides that for the fulfilment of this order, “the commander of the military police platoon and the commander of the public security station are personally responsible”. The Order is signed by Stevan Todorović, as head of the “Public Safety Station”.

469. Stevan Todorović testified that he made the Order and signed the document. The Order was published in the Crisis Staff’s “Bulletin” and was posted on shop windows and buildings in town.<sup>958</sup>

470. Prosecution witnesses testified that the Order prohibiting the gathering of non-Serbs in public places was broadcasted on the radio and disseminated via posters placed throughout the town.<sup>959</sup> However, Ljubomir Čordašević, who worked in Radio Šamac during the conflict, denied that the Order was broadcasted on the Radio.<sup>960</sup>

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<sup>952</sup> Stevan Todorović, T. 9212-13.

<sup>953</sup> Stevan Todorović, T. 9212.

<sup>954</sup> Blagoje Simić, T. 12372.

<sup>955</sup> Dušan Tanasić, T. 13761.

<sup>956</sup> Savo Popović, T. 16435; Dragoljub Stefanović, Deposition T. 325; Stanko Pivašević, T. 19695.

<sup>957</sup> Exhibit P40, Order prohibiting three or more Muslims or Croats to gather together in public places.

<sup>958</sup> Stevan Todorović, T. 9256-57.

<sup>959</sup> Snjezana Delić, T. 6410-14; Jelena Kapetanović, T. 8928-29; Esad Dagović, T. 3918; Witness L, T. 4331-32; Witness M, T. 5213; Safet Dagović, T. 7344; Kemal Mehinović, T. 7396; Witness C, T. 7894-96; Hajrija Drljačić, T. 8039; Ediba Bobić, T. 11251-57; Witness P, T. 11546-47.

<sup>960</sup> Ljubomir Čordašević, Deposition T. 347.

#### 4. Curfew imposed in Bosanski Šamac

471. Prosecution witnesses testified that with the outbreak of hostilities, a curfew on civilians of non-Serb ethnicity was imposed in Bosanski Šamac. The curfew was disseminated through the media.<sup>961</sup> Snjezana Delić testified that Radio Šamac, announced a curfew from 9.00 p.m. to 6.00 a.m. The announcement indicated that it was imposed by the Crisis Staff.<sup>962</sup>

472. Other witnesses testified that a curfew had been imposed from 10.00 p.m. until the morning on all citizens of Bosanski Šamac, regardless of their ethnicity.<sup>963</sup>

#### 5. Prohibition of leaving Bosanski Šamac without a “special permit”

473. Evidence was led that the Crisis Staff and the Police also restricted the freedom of civilians to leave and enter the municipality of Bosanski Šamac.

474. On 17 April 1992, a “Prohibition Order to enter or exit Bosanski Šamac without prior consent” was issued by the Chief of the Public Security Station of Bosanski Šamac. Stevan Todorović signed the Order.<sup>964</sup> As a result checkpoints were established throughout the territory of Bosanski Šamac.<sup>965</sup>

475. On 21 May 1992, the Crisis Staff issued a “Decision on a general ban on leaving the territory of the Serbian Municipality of Bosanski Šamac”. The Decision stated: “No individual is to leave the territory of the Serbian Municipality of Bosanski Šamac without a special permit.”<sup>966</sup> It was adopted by the Crisis Staff in compliance with a decision of the SAO Semberija and Majevisa.<sup>967</sup>

476. Numerous witnesses testified that the general ban on leaving Bosanski Šamac applied to all citizens regardless of their ethnicity. In order to leave the territory a permit had to be obtained by a relevant authority. Generally the Public Security Station was in charge of issuing permits for civilians and the army issued permits to the conscripts or soldiers.<sup>968</sup> Prosecution witnesses and two

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<sup>961</sup> Witness G, T. 4049-50; Witness L, T. 4330-31; Witness C, T. 7891.

<sup>962</sup> Snjezana Delić, T. 6405-14.

<sup>963</sup> Andrija Petrić, T. 17589; Witness M, T. 5213-14.

<sup>964</sup> Exhibit P36, Prohibition Order to enter or exit Bosanski Šamac without prior consent, 17 April 1992. Stevan Todorović, T. 9094.

<sup>965</sup> Witness L, T. 4256- 65; Witness K, T. 4609-16; Witness P, T. 11547-48.

<sup>966</sup> Exhibit P90, Decision on the General Ban on leaving the Territory of the Serbian Municipality of Bosanski Šamac, 21 May 1992.

<sup>967</sup> Blagoje Simić testified that the SAO of Semberija and Majevisa passed a similar decision and that at that time the civilian authorities were duty-bound to respect the decisions of the SAO Semberija and Majevisa, T. 12371-72.

<sup>968</sup> Article 2 of Exhibit P90 states: “The Public Security Station shall issue permits to civilians and the authorised military commands shall issue them to conscripts”. See also Stevan Todorović, T. 9564-67, T. 9208-11, T.10145-47; Witness Q, T. 11722; Simeon Simić, T. 13049-50; Slobodan Sjenčić, Deposition T. 263; Nedžvija Avdić, Rule 92bis

Defence witnesses testified that the Crisis Staff also issued permits,<sup>969</sup> although Blagoje Simić denied it.<sup>970</sup> The stated purpose of the prohibition to leave the territory was to prevent desertification.<sup>971</sup>

477. Prosecution Witness L and Defence witness Fadil Topčagić testified that the general ban applied only to non-Serbs.<sup>972</sup>

## 6. White armbands or ribbons<sup>973</sup>

478. Prosecution witnesses testified that shortly after the forcible takeover of Bosanski Šamac, citizens of Muslim and Croat ethnicity were ordered by the Crisis Staff to wear white armbands.<sup>974</sup> Witness C testified that after 17 April 1992, Witness C heard the order to wear white armbands broadcasted over the radio. It applied only to Muslims and Croats. Hajrija Drljačić testified that on 18 April, she saw a notice posted on her front door stating that Muslims and Croats had to wear white armbands. She was told by her neighbours that the Crisis Staff had issued the decision.<sup>975</sup>

479. Stevan Todorović, on the contrary testified that he never saw non-Serb citizens wearing white armbands. He stated that neither the police nor the Crisis Staff ever issued a decision to this effect.<sup>976</sup> Defence witnesses also gave evidence that non-Serb citizens were not ordered to wear white armbands.<sup>977</sup>

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Statement, para. 8; Božo Ninković, T. 13562-63; Ljubomir Čordašević, Deposition T. 356; Mirko Lukić stated that everybody with a work obligation needed a permit to move around. The Public Security Station issued permits to members of the Executive Board, employees, and to everybody else. The permit for army members was issued by the relevant command. In order to prevent the uncontrolled transport of goods, every military conscript had to have a pass in order to leave the zone and to export goods in a controlled manner, T. 12750; Miloš Čulapović, Deposition T. 236-239; Amir Nukić, Rule 92*bis* Statement, para. 10; Mithat Ibralić, Rule 92*bis* Statement, para. 9; see also Exhibit D82/3, which is the approval and permit to travel abroad issued to a Muslim, Samir Okić, by the Department of Defence in Bosanski Šamac.

<sup>969</sup> Osman Jašarević, T. 10627; Witness L, T. 4259-65; Witness K, T. 4609-16; Witness P, T. 11548; Simeon Simić testified that the Crisis Staff would occasionally issue permits, T. 13049-50; Dušan Gavrić, T. 17346-47.

<sup>970</sup> Blagoje Simić, T. 12372.

<sup>971</sup> Stevan Todorović, T. 9097; Blagoje Simić, T. 12371-72.

<sup>972</sup> Witness L, T. 4384; Fadil Topčagić testified that during the war it was almost impossible for someone with a Muslim name to enter Serbia from Bosnia and Herzegovina since the policemen on the Serbian border would not allow them to pass. For this reason, Fadil Topčagić, a Muslim, used the identity cards of his friends to cross the border to Serbia and to return to Bosanski Šamac, Rule 92*bis* Statement, para. 66.

<sup>973</sup> "Armbands" and "ribbons" were often used interchangeably by witnesses.

<sup>974</sup> Ibrahim Salkić, T. 3577; Esad Dagović, T. 3918-19; Witness G, T. 4048-49; Witness M, T. 5215-28; Witness N, T. 6056-60; Snjezana Delić, T. 6393; Dragan Delić, T. 6665-66; Nusret Hadžijusufović, T. 6869-80; Safet Dagović, T. 7178-79; Kemal Mehinović, T. 7393-97; Witness E, T. 7669-74; Witness C, T. 7891-95; Jelena Kapetanović, T. 8928-29; Osman Jašarević, Rule 92*bis* Statement, para. 46; Ediba Bobić, T. 11251-55; Kemal Bobić, T. 11382-83; Witness P, T. 11546-47.

<sup>975</sup> Hajrija Drljačić, T. 8029-30.

<sup>976</sup> Stevan Todorović, T. 9920-21.

<sup>977</sup> Nedžvija Avdić, a Muslim, stated that he never had to wear a white armband to move about town. He heard that at the beginning of the war some citizens did wear armbands on their sleeves for security reasons, Rule 92*bis* Statement, para. 10; Simeon Simić, T. 13059-60; Andrija Petrić, T. 17589.

480. Prosecution<sup>978</sup> and Defence<sup>979</sup> witnesses testified that during the first days of the conflict civilians of all ethnic backgrounds wore white armbands or ribbons in order to distinguish themselves from members of the other warring party. The civilians used the armbands only as a means of protection and had not been ordered to do so.

481. Furthermore, numerous Prosecution<sup>980</sup> and Defence<sup>981</sup> witnesses testified seeing soldiers, including members of the 4<sup>th</sup> Detachment, wearing white ribbons on their epaulette or on their forearms after the takeover in Bosanski Šamac. Ibrahim Salkić gave evidence that he saw Miroslav Tadić and Simo Zarić wear a white shoulder band, or ribbon on their epaulette.<sup>982</sup>

482. Simo Zarić testified that the command of the 17<sup>th</sup> Tactical Group ordered the members of the 4<sup>th</sup> Detachment who were on the defence lines, to put a patch and a white ribbon on their uniforms. In order to implement the order Simo Zarić went to a textile shop in Bosanski Šamac to buy white cloth to make ribbons.<sup>983</sup>

## 7. Restrictions on alcohol and fuel

483. The Crisis Staff issued a number of decisions restricting the use of alcohol and fuel.

484. Exhibit P93 is an Order issued by the Crisis Staff on 28 April 1992, banning the public sale of alcohol in all shops or public facilities on the territory of the Serbian Municipality of Bosanski Šamac. Exhibit D45/1, dated 9 May 1992, is a Crisis Staff Decision directing all businesses serving alcohol on the territory of the Serbian Municipality of Bosanski Šamac to close down. A number of witnesses testified that the purpose of the issuance of these orders was to improve the public safety in the municipality, and that both the Order and the Decision were indiscriminately enforced.

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<sup>978</sup> Witness DW 2/3, T.14450-51.

<sup>979</sup> Vladimir Šarkanović, T. 16512-13, T. 16565; Nedžvija Avdić, Rule 92*bis* Statement, para. 10; Ljubomir Čordašević, Deposition T. 346-347; Amir Nukić, Rule 92*bis* Statement, para. 11.

<sup>980</sup> Stevan Todorović, T. 9920-21; Osman Jašarević, testified that members of the TO wore white armbands and that “whoever moved about had to wear a white armband”, T. 1062.

<sup>981</sup> Miroslav Tadić, T. 15240; Blagoje Simić, T. 12318-19; Mirko Lukić, T. 12841-42; Velimir Maslić, T. 14150-51; Mladen Borbeli, T. 14711-15; Ljubomir Čordašević, Deposition T. 346-47; Vladimir Šarkanović, T. 16512-13; Jovo Savić, T. 17030; Kosta Simić, T. 16968-69; Goran Buzaković, T. 17672; Teodor Tutnjević, T. 17438; Fadil Topčagić, Rule 92*bis* Statement, para. 45.

<sup>982</sup> Ibrahim Salkić, T. 3242, T. 3250-52, T. 3576.

<sup>983</sup> Simo Zarić, T. 19243. Radovan Antić recalls that on 17 April 1992, the command of the 4<sup>th</sup> Detachment received an order from the superior commander, to give members of the 4<sup>th</sup> Detachment a distinctive mark to wear. The reasoning behind this was that a considerable number of members of the 4<sup>th</sup> Detachment did not have regular uniforms and would go to their shift in civilian clothes and carrying military weapons, therefore risking clashes with the police. He decided to mark them with white armbands, which they wore on the left or right shoulder strap, or on the sleeve, T. 16748-49.

Blagoje Simić stated that the decision was adopted in order to prevent further incidents related to alcohol consumption from occurring during the conflict period.<sup>984</sup>

485. Exhibit D44/1 is a Crisis Staff Decision dated 8 May 1999, ordering “every petrol station in the Municipality of Bosanski Šamac to deliver 10 litres of fuel once a week.”

486. While, Prosecution Witness K testified that the decision affected only non-Serb citizens,<sup>985</sup> Stevan Todorović and Mirko Lukić testified that the decision was adopted to save fuel during the conflict and that it was applied indiscriminately to all citizens, regardless of their ethnicity.<sup>986</sup>

#### 8. Sporadic services power cuts, telephone lines, water

487. Prosecution witnesses testified that with the outbreak of hostilities, the telephone lines of non-Serb civilians in Bosanski Šamac were cut off, whereas the telephones of Serbs were still functioning.<sup>987</sup> Kemal Bobić testified that Serb civilians would generally allow non-Serbs to use their telephones.<sup>988</sup>

488. However, both Prosecution and Defence witnesses testified that the shortages of electricity and water were not the result of a deliberate policy of the civilian authorities but were due the shelling of the town. Moreover, the shortages affected everyone regardless of the ethnic background.<sup>989</sup> Božo Ninković gave evidence that due to the aerial bombing of the water works, Bosanski Šamac did not have water for several days and it was impossible to chlorinate the water for a longer period of time.<sup>990</sup>

#### 9. Supply of basic necessities

489. The civilian population suffered from shortages of food and medical supplies.

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<sup>984</sup> Stevan Todorović, T. 9463, T. 9792-94; Blagoje Simić, T. 12374; Simeon Simić, T. 13052; Jovo Savić, T. 17009-10; Mirko Lukić, T. 12709.

<sup>985</sup> Witness K testified that one day, while her son was working at the petrol station, “Crni” came and told her son that from that time on the petrol station belonged to him. The former owner was a Muslim who was married to a Serb. During the time her son had worked there after 17 April, he was only able to give gasoline based on certificates and not money. The vehicles from the Crisis Staff and the military had such certificates. Muslims and Croats did not have the right to certificates. Witness K’s son worked at the gas station until about mid-May. He was not paid during this time as the gas station only took in petrol coupons and not money after 17 April, T. 4616-18.

<sup>986</sup> Stevan Todorović, T. 9787-91; Mirko Lukić, T. 12708-09.

<sup>987</sup> Safet Dagović, T. 7252-54; Ediba Bobić, T. 11361-62; Hajrija Drljačić, T. 8039-41.

<sup>988</sup> Kemal Bobić, T. 11383-84.

<sup>989</sup> Blagoje Simić, T. 12280; Slobodan Sjenčić, Deposition T. 256-72; Nedžvija Avdić, Rule 92*bis* Statement, paras 11-12. See also Exhibits D132/1 and D133/1- Records of the water and sewage company in Bosanski Šamac dated 24 September 1992; Mirko Lukić, T. 12799-12871; Perica Krstanović, Rule 92*bis* Statement, paras 14-17; Čedomir Simić, Rule 92*bis* Statement, para. 12.

<sup>990</sup> Božo Ninković, T. 13460-61.



490. Prosecution witnesses gave evidence that non-Serbs were discriminated in the access and distribution of food.<sup>991</sup>

491. Numerous Defence witnesses testified that in order to deal with the scarcities of food, the Executive Board of the Serb Municipality of Bosanski Šamac established public kitchens and distributed food to the population, regardless of ethnicity. The Executive Board also organised a marketplace and a livestock market, so that those with surplus food supplies would be able to sell it at the market.<sup>992</sup> Civilians also obtained food through the Red Cross.<sup>993</sup>

492. Furthermore, Defence witnesses testified that medical treatment was delivered on a non-discriminatory basis during the conflict.<sup>994</sup> Blagoje Simić testified that he made sure that all citizens in Bosanski Šamac had access to the kidney dialysis services and to vaccines.<sup>995</sup> Mirko Lukić stated that the haemodialysis worked throughout the war for all patients irrespective of their ethnicity.<sup>996</sup> Moreover, Blagoje Simić testified that the Crisis Staff helped the Ministry of Health to take care of funds and procurement of medicine.<sup>997</sup>

#### 10. Temporary housing

493. Exhibit P85 is an “Order on the Implementation of the Decision of the Crisis Staff on Temporary Housing of Exchanged Persons from the Territory of Odžak Municipality”, dated 9 June 1992.

494. According to some Defence witnesses, the Crisis Staff, the War Presidency and the Executive Board helped coordinate the housing of Serb refugees coming from neighbouring villages to Bosanski Šamac.<sup>998</sup> Moreover, they helped accommodate the citizens of Bosanski

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<sup>991</sup> Hajrija Drljačić, T. 8033-34; Jelena Kapetanović, T. 10297-98; Ediba Bobić, T. 11301.

<sup>992</sup> Blagoje Simić, T. 12279-80, T. 12406-11; Miroslav Tadić, T. 15215-19; Nedžvija Avdić, Rule 92bis Statement, para. 7; Božo Ninković, T. 13599; Stanko Dujković, Deposition T. 292-296; Amir Nukić, Rule 92bis Statement, para. 8; Mithat Ibralić, Rule 92bis Statement, para. 10; Lazar Mirkić, Rule 92bis Statement, para. 10; Mijo Babić, Rule 92bis Statement, para. 4; Ljubomir Čordašević, Deposition T. 346.

<sup>993</sup> The Municipal Red Cross provided basic foodstuffs for residents of Šamac: Exhibit D99/3 (Document entitled “Providing flour for Zasavica inhabitants”, 29 September 1992); Exhibit D22g/2 (under seal) and Exhibit D22h/2 (under seal) (Municipal Red Cross certifications-aid for the local population); Exhibit D42/3 (Municipal Red Cross List of Persons receiving humanitarian aid); Exhibit D43/3 (Municipal Red Cross criteria for the distribution of basic foodstuffs); Exhibit D44/3, Exhibit D45/3, Exhibit D87/3 (Municipal Red Cross Lists of persons receiving bread and milk); Exhibit D85/3 (List of Municipal Red Cross volunteers).

<sup>994</sup> Hajrija Drljačić, T. 8086-87; Nedžvija Avdić, Rule 92bis Statement, para. 9; Amir Nukić, Rule 92bis Statement, para. 9; Mithat Ibralić, Rule 92bis Statement, para. 13; Desanka Cvijetić, Rule 92bis Statement, para. 10; Čedomir Simić, Rule 92bis Statement, para. 11; T. 18825.

<sup>995</sup> Blagoje Simić, T. 12274-79; Jovo Lakić, Rule 92bis Statement, para. 8.

<sup>996</sup> Mirko Lukić, T. 12804-05, Exhibit D106/1.

<sup>997</sup> Blagoje Simić, T. 12455-56.

<sup>998</sup> Mirko Lukić, T. 12691-95, T. 12774-77; Exhibit D 111/1, Municipal Executive Board, Decision on the Establishment of Commission for the Assignment of Houses for Temporary Use, 19 July 1992; Exhibit D149/1, War Presidency Decision of appointment of Veselin Blagojević as Secretary for Housing, Public Utilities and Spatial and Urban Planning, 16 September 1992; Exhibit D150/1, War Presidency, Decision on the Assignment of Residential and

Šamac, irrespective of their ethnic backgrounds in abandoned apartments, since their houses had been destroyed during the conflict.<sup>999</sup>

495. Simeon Simić testified that Exhibit P85 is an Order concerning the accommodation of Serb civilians from the Odžak Municipality to Bosanski Šamac.<sup>1000</sup> The Order states that the refugees had to report to Kruškovo Polje where accommodation for them would be organised. This wasn't easy due to the large number of displaced persons in Šamac who had lost their homes and who had to be accommodated.<sup>1001</sup>

496. Veselin Blagojević stated that during the period 1992 and 1993 the Secretariat for housing and communal affairs,<sup>1002</sup> which reported to the Executive Board, accommodated five and a half thousand people. Some people were given accommodation repeatedly because their houses were repeatedly damaged.<sup>1003</sup> The Secretariat for housing mainly repaired houses. A street named Vijenac along the Sava River where a lot of Muslims lived was very badly damaged when bombed by a plane from Croatia. Three out of five severely damaged houses belonged to Muslims, which they repaired. They belonged to Nurija Arapovic, Anto Sebisic and he cannot remember the other names.<sup>1004</sup> Veselin Blagojević states that facilities were always assigned to persons for temporary use. Assigned facilities were houses and apartments that were abandoned as well as apartments that had not been abandoned but where there was extra space that could be occupied by these individuals.<sup>1005</sup> Most inhabitants that were given accommodation were Serbs. However, there was no ethnic discrimination with regards to accommodation. When a request came to the Secretariat,

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Other Space for Temporary Use, 16 September 1992; Exhibit D151/1, D152/1, Municipal Executive Board Commission for taking inventory and allocation housing and other premises for temporary use, Record of establishing, identifying and allocating housing and other premises for temporary use, 3 December 1992; Exhibit D154/1, Municipal Executive Board, Secretariat For Housing, Spatial and Urban Planning, Report on Activities from 19 September; Exhibit D118/1, Municipal Executive Board, Decision on the establishment of a sub-commission for the reception and temporary accommodation of refugees, 26 December 1992; Exhibit D156/1 A-D, Citizen's Application for Temporary Housing filed to the Municipal Executive Board; Exhibit D157/1, 46 Citizen's Application for Accommodation filed to the Secretariat for Housing; Exhibit D63/3, Civilian Protection Staff, Letter to the Municipal Board, Re: Request for temporary accommodation of three families due to destruction of their homes caused by shelling, 14 June 1992; Exhibit D136/1, Municipal Department of Ministry of Defense, Letter to Secretariat for Housing, Re: Availability of socially-owned apartment, 29 October 1993.

<sup>999</sup> Exhibit D150/1, War Presidency, Decision on the Assignment of Residential and Other Space for Temporary Use, 16 September 1992; Exhibit D151/1, D152/1, Municipal Executive Board Commission for taking inventory and allocation housing and other premises for temporary use, Record of establishing, identifying and allocating housing and other premises for temporary use, 3 December 1992; Exhibit D118/1, Municipal Executive Board, Decision on the establishment of a sub-commission for the reception and temporary accommodation of refugees, 26 December 1992; Exhibit D154/1, Municipal Executive Board, Secretariat For Housing, Spatial and Urban Planning, Report on Activities from 19 September; Exhibit D156/1 A-D, Citizen's Application for Temporary Housing filed to the Municipal Executive Board; Exhibit D157/1, 46, Citizen's Application for Accommodation filed to the Secretariat for Housing.

<sup>1000</sup> Simeon Simić, T. 13047.

<sup>1001</sup> Simeon Simić, T. 13047-48.

<sup>1002</sup> Exhibit D18/2, is the decree which was at the basis for work in the Secretariat, T. 1396.

<sup>1003</sup> Veselin Blagojević, T. 13966.

<sup>1004</sup> Veselin Blagojević, T. 13973-74.

<sup>1005</sup> Veselin Blagojević, T. 13974-75.

they would study it in order to see who the person involved was and how large was the family, where it had come from and whether they had any movable property.<sup>1006</sup>

497. According to the Defence, the Crisis Staff provided a building for the displaced elementary school children, which included children of all ethnicities.<sup>1007</sup> The Crisis Staff also attempted to establish a public construction company that would repair damage in Bosanski Šamac for all citizens regardless of their ethnicity.<sup>1008</sup>

498. Nedžvija Avdić stated that the municipal authority took care of the damages of the houses caused by the shelling and tried to render them habitable as soon as possible.<sup>1009</sup>

## 11. Other orders

499. The Crisis Staff decided that the date of the forcible takeover of Bosanski Šamac, should become a public holiday. Accordingly, Article 4 of the Statute of the Serb Municipality of Šamac provided that “The Municipal holiday shall be 17 April.”<sup>1010</sup>

500. On 2 October 1992, the War Presidency adopted a decision renaming the Municipality of Bosanski Šamac to Šamac.<sup>1011</sup> The preamble to this decision stated that its aim was “the expungement of all undesirable and imposed symbols and values.”

501. Prosecution witness Stevan Todorović gave evidence that the decision was passed because in the 18<sup>th</sup> Century, Bosanski Šamac was called “Šamac”.<sup>1012</sup> Blagoje Simić and Simeon Simić testified that the purpose of renaming the municipality was to avoid confusion with the town of Slavonski Šamac and the Croatian Municipality of Bosanski Šamac-Domaljevac.<sup>1013</sup> Blagoje Simić underlined that had there been the intent to discriminate against non-Serbs the Municipality would have been called “Serb Šamac”.<sup>1014</sup>

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<sup>1006</sup> Veselin Blagojević, T. 13986.

<sup>1007</sup> Exhibit D135/1, Municipal Department of Ministry of Defence, Decision on assigning housing premises for Elementary School, 28 April 1993.

<sup>1008</sup> Simo Zarić, T. 12333-34; Exhibit D64/1, War Presidency, Conclusion on the Establishment of Public Construction Enterprise, 6 November 1992; Exhibit D153/1, Record on Type and Extent of Damage to Buildings; Exhibit D79/1, Request of Local Commune Srpska Tišina to Municipal Executive Board, Re: Building damage caused by shelling, 24 June 1992.

<sup>1009</sup> Nedžvija Avdić, Rule 92*bis* Statement, paras 11, 12.

<sup>1010</sup> The Statute of the Šamac Municipality was published in the Official Gazette of the Šamac Municipality, No. 2, released on 8 August 1994 (Exhibit P125). Stevan Todorović testified that as far as he knew 17 April 1992 was the day Bosanski Šamac was “liberated”, T. 9431.

<sup>1011</sup> Exhibit P108.

<sup>1012</sup> Stevan Todorović, T. 9853.

<sup>1013</sup> Simeon Simić, T. 13069-70; Blagoje Simić, T. 12391.

<sup>1014</sup> Blagoje Simić, T. 12392.

502. Furthermore, on 30 September 1993, the Šamac Municipal Assembly adopted a Decision to rename the streets in the town of Šamac.<sup>1015</sup> Stevan Todorović testified that most of the names of the streets listed in Article 1 of the Decision were changed into names of important figures in Serb history whereas the old names of the streets referred to people or events concerning all ethnic groups.<sup>1016</sup>

503. On 30 December 1993 the Šamac Municipal Assembly issued a Decision to change the coat of arms of the Šamac Municipality. The latter decision provides that the municipalities' coat-of-arms be redesigned to incorporate features illustrating the "Orthodox identity of the people populating this region" and "the struggle of the Serbian people for independence and biological survival".<sup>1017</sup>

## **B. Findings**

504. The Trial Chamber accepts that the Crisis Staff of the Serbian Municipality of Bosanski Šamac, by substituting the Municipal Assembly of Bosanski Šamac in all its functions, had full powers to legislate.<sup>1018</sup> Furthermore, it finds that the decision making process of the Crisis Staff was based on a one-man one-vote principle and legislation had to be passed by a simple majority vote.<sup>1019</sup> In consideration of the above evidence, the Trial Chamber finds that all members of the Crisis Staff had the right to vote and therefore, to participate in the adoption of decisions and regulations in the name of the Crisis Staff and the War Presidency.

505. The Trial Chamber is not convinced that the Crisis Staff of the Serbian Municipality of Bosanski Šamac issued the Decision to isolate Croatian nationals as there is no evidence to identify conclusively the signature of its President Blagoje Simić.<sup>1020</sup> The Trial Chamber finds that the mere resemblance to other documents issued by the Crisis Staff is insufficient to determine its authorship.<sup>1021</sup>

506. The Trial Chamber accepts that political parties were not active during the period of war operations because of a Decision adopted by Republika Srpska requiring political parties to freeze

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<sup>1015</sup> The Decision is contained in the Official Gazette of the Šamac Municipality, No. 3, dated 1 November 1994 (Exhibit 126).

<sup>1016</sup> Stevan Todorović, T. 9450-51.

<sup>1017</sup> The Decision is contained in the Official Gazette of the Šamac Municipality, No.3, dated 1 November 1994 (Exhibit 126), see Article 4 of the Decision. Stevan Todorović, T. 9452-53.

<sup>1018</sup> Exhibit P128, paras 1, 14.

<sup>1019</sup> Stevan Todorović, T. 9308-09; Simeon Simić, T. 13033; Božo Ninković, T. 13693; Blagoje Simić, T. 12261-62, T. 12301.

<sup>1020</sup> Exhibit P71.

<sup>1021</sup> Blagoje Simić, T. 12358-59.

their activities.<sup>1022</sup> The Trial Chamber finds that as a result of the Decision of Republika Srpska, the Crisis Staff adopted the Order prohibiting political activities on the territory of Bosanski Šamac Municipality.<sup>1023</sup>

507. The Trial Chamber does not accept that the Order prohibiting the work and activities of political parties was discriminatory.<sup>1024</sup> The evidence shows that all political parties including the SDS were not active in Bosanski Šamac.<sup>1025</sup> Furthermore, the Trial Chamber finds that the Order is legitimate under International Law. The suspension of the activity of political parties, if required by special circumstances, is in fact contemplated both by the ICCPR and by the ECHR. According to Article 22 of the ICCPR, the right to freedom of association with others may be derogated from in times of emergency provided that such measures “do not involve discrimination” as provided in Article 4 of the ICCPR.<sup>1026</sup> Similarly Article 11 of the ECHR regarding the right to freedom of association with others may be derogated from in cases of emergency as provided in Article 15 of the Convention, which states: “In time of War or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law”.

508. The Trial Chamber finds that the civilian police by means of an Order signed by Stevan Todorović, banned meetings of more than three non-Serbs in public places.<sup>1027</sup> The Trial Chamber accepts that the order was disseminated in radio-broadcasts and on posters placed throughout the town.<sup>1028</sup> Since the Crisis Staff coordinated the administration of the municipality with the civilian police, the Trial Chamber finds that the Crisis Staff had knowledge of the issuance of this Order.

509. The Trial Chamber is satisfied that restrictions on the freedom of movement imposed on the civilian population after the forcible takeover of Bosanski Šamac affected all civilians, regardless of

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<sup>1022</sup> Stevan Todorović, T. 9212; Blagoje Simić, T. 12372.

<sup>1023</sup> Exhibit P91.

<sup>1024</sup> *Ibid.*

<sup>1025</sup> Blagoje Simić, T. 12372; Dušan Tanasić, T. 13761; Savo Popović, T. 16435; Dragoljub Stefanović, Deposition T. 325; Stanko Pivašević, T. 19695.

<sup>1026</sup> Article 4(1) of the ICCPR provides, “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

<sup>1027</sup> Exhibit P40.

<sup>1028</sup> Witness L, T. 4331-32; Witness M, T. 5213; Kemal Mehinović, T. 7396; Witness C, T. 7894-96; Hajrija Drljačić, T. 8039; Witness P, T. 11546-47.

their ethnicity.<sup>1029</sup> The Trial Chamber is not convinced that the curfew imposed in Bosanski Šamac with the outbreak of hostilities, applied only to civilians of non-Serb ethnicity.

510. The Trial Chamber is satisfied that the Decision on the general ban to leave the territory of the Serbian Municipality of Bosanski Šamac was adopted by the Crisis Staff in compliance with a decision of the SAO Semberija and Majevisa.<sup>1030</sup> The Trial Chamber is not convinced that the general ban to leave the territory without a permit, applied only to non-Serbs. The Trial Chamber therefore finds that all civilians, regardless of their ethnicity were affected by the general ban to leave Bosanski Šamac issued by the Crisis Staff.<sup>1031</sup>

511. Moreover, the Trial Chamber is not satisfied that civilians of Muslim and Croat ethnicity were ordered to wear white armbands even though there is evidence that at the beginning of the conflict some civilians voluntarily wore them.<sup>1032</sup> However, the Trial Chamber finds that with the outbreak of hostilities in Bosanski Šamac, members of the 4<sup>th</sup> Detachment, among others, wore ribbons on their epaulettes or on their forearms in order to identify themselves from other warring parties and from the civilian population as required by International Humanitarian Law.<sup>1033</sup> Article 44(3) of Additional Protocol I in fact provides that combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.<sup>1034</sup>

512. The Trial Chamber accepts that the Crisis Staff, by means of the decisions contained in Exhibits P93 and D45/1, restricted the consumption of alcohol in order to improve public safety in the Municipality of Bosanski Šamac. The Trial Chamber finds that both decisions applied indiscriminately to all places where alcohol was sold.<sup>1035</sup> Furthermore the Trial Chamber accepts that the Crisis Staff adopted Exhibit D44/1 to save fuel during the conflict. The Trial Chamber is

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<sup>1029</sup> Andrija Petrić, T. 17589; Witness M, T. 5213-14.

<sup>1030</sup> Exhibit P90.

<sup>1031</sup> Stevan Todorović, T. 9564-67, T. 9208-11, T.10145-47; Witness Q, T. 11722; Simeon Simić, T. 13049-50; Slobodan Sjenčić, Deposition T. 263; Nedžvija Avdić, Rule 92*bis* Statement, para. 8; Božo Ninković, T. 13562-63; Ljubomir Čordašević, Deposition T. 356; Mirko Lukić, T. 12750; Miloš Čulapović, Deposition T. 236-239; Amir Nukić, Rule 92*bis* Statement, para. 10; Mithat Ibralić, Rule 92*bis* Statement, para. 9.

<sup>1032</sup> DW 2/3, T.14450-51; Vladimir Šarkanović, T. 16512-13, T. 16565; Nedžvija Avdić, Rule 92*bis* Statement, para. 10; Ljubomir Čordašević, Deposition T. 346-347; Amir Nukić, Rule 92*bis* Statement, para. 11.

<sup>1033</sup> Stevan Todorović, T. 9920-21; Osman Jašarević, T. 1062; Miroslav Tadić, T. 15240; Blagoje Simić, T. 12318-19; Mirko Lukić, T. 12841-42; Velimir Maslić, T. 14150-51; Ljubomir Čordašević, Deposition T. 346-47; Vladimir Šarkanović, T. 16512-13; Jovo Savić, T. 17030; Goran Buzaković, T. 17672; Teodor Tutnjević, T. 17438; Fadil Topčagić, Rule 92*bis* Statement, para. 45.

<sup>1034</sup> Article 13 of both Geneva Convention I and Geneva Convention II, Article 4 of Geneva Convention III and Articles 4, 13, 27-34 of Geneva Convention IV deal with the criteria which distinguish civilians from combatants. Accordingly, combatants would have to: (a) be commanded by a person responsible for his subordinates; (b) have a fixed distinctive sign recognizable at a distance; (c) carry arms openly; (d) conduct their operations in accordance with the laws and customs of war. These requirements apply both to regular armed forces and irregular ones.

<sup>1035</sup> Stevan Todorović, T. 9463, T. 9792-94; Blagoje Simić, T. 12374; Simeon Simić, T. 13052; Jovo Savić, T. 17009-10; Mirko Lukić, T. 12709.

not convinced that the decision affected only non-Serb civilians. In view of the above, the Trial Chamber is satisfied that the Crisis Staff was concerned with the welfare of all citizens, regardless of their ethnic background.<sup>1036</sup>

513. The Trial Chamber accepts that due to the shelling of Bosanski Šamac the civilian population suffered from shortages of electricity and water. The Trial Chamber does not accept that only non-Serbs were affected by the shortages of electricity and water.<sup>1037</sup>

514. The Trial Chamber is satisfied that there were also shortages of food and medical supplies. The Trial Chamber finds that the Crisis Staff, the Executive Board and the Municipal Red Cross tried to assist the civilian population by distributing basic food stuffs to all civilians, regardless of their ethnicity.<sup>1038</sup> The Trial Chamber is also satisfied that the civilians were provided with medical care, regardless of their ethnicity, with the exception of the detainees who were deliberately denied adequate medical care.<sup>1039</sup>

515. The Trial Chamber does not accept that the War Presidency by renaming the Municipality Šamac adopted a discriminatory policy towards non-Serb civilians.<sup>1040</sup> However, the Trial Chamber finds that the Crisis Staff by deciding that the date of the forcible takeover of Bosanski Šamac should become public holiday, by changing the symbols of the coat of arms and changing the street names to depict Serb symbols and personalities only, was discriminatory and infringed the rights of the non-Serbs to their heritage in a territory where their forefathers had made contributions.<sup>1041</sup>

516. Although the aforementioned findings lead the Trial Chamber to the conclusion that the Crisis Staff of the Serbian Municipality of Bosanski Šamac issued some decisions violating the right to equal treatment of non-Serb civilians the Trial Chamber is satisfied that such decisions are not of sufficient gravity to constitute persecution.

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<sup>1036</sup> Stevan Todorović, T. 9787-91; Mirko Lukić, T. 12708-09.

<sup>1037</sup> Blagoje Simić, T. 12280; Slobodan Sjenčić, Deposition T. 256-72; Nedžvija Avdić, Rule 92*bis* Statement, paras 11-12. See also Exhibits D132/1 and D133/1- Records of the water and sewage company in Bosanski Šamac dated 24 September 1992; Mirko Lukić, T. 12799-12871; Perica Krstanović, Rule 92*bis* Statement, paras 14-17; Čedomir Simić, Rule 92*bis* Statement, para. 12; Božo Ninković, T. 13460-61.

<sup>1038</sup> The Municipal Red Cross provided basic foodstuffs for residents of Šamac: Exhibit D99/3(Document entitled "Providing flour for Zasavica inhabitants", 29 September 1992); Exhibit D22g/2 (under seal) and Exhibit D22h/2 (under seal) (Municipal Red Cross certifications-aid for the local population); Exhibit D42/3 (Municipal Red Cross List of Persons receiving humanitarian aid); Exhibit D43/3 (Municipal Red Cross criteria for the distribution of basic foodstuffs); Exhibit D44/3, Exhibit D45/3, Exhibit D87/3 (Municipal Red Cross Lists of persons receiving bread and milk); Exhibit D85/3 (List of Municipal Red Cross volunteers).

<sup>1039</sup> Hajrija Drljačić, T. 8086-87; Nedžvija Avdić, Rule 92*bis* Statement, para. 9; Amir Nukić, Rule 92*bis* Statement, para. 9; Mithat Ibralić, Rule 92*bis* Statement, para. 13; Desanka Cvijetić, Rule 92*bis* Statement, para. 10; Čedomir Simić, Rule 92*bis* Statement, para. 11, T. 18825; Blagoje Simić, T. 12274-79; Jovo Lakić, Rule 92*bis* Statement, para. 8; Mirko Lukić, T. 12804-05.

<sup>1040</sup> Exhibit P108. Stevan Todorović, T. 9853; Simeon Simić, T. 13069-70; Blagoje Simić, T. 12391.

<sup>1041</sup> Exhibits P125, P126.

## **XII. UNLAWFUL ARREST, DETENTION AND UNLAWFUL CONFINEMENT OF CIVILIANS AND INTERROGATIONS**

### **A. Arrest of Bosnian Croats, Bosnian Muslims and other non-Serb Civilians**

#### **1. Circumstances of arrest**

517. Prosecution witnesses gave testimony of the circumstances of their arrests and the arrests of others; testifying how following the takeover of the town of Bosanski Šamac on 17 April 1992, they were arrested from their homes,<sup>1042</sup> or by other means, that included being phoned at their homes and told to go to the SUP for interviews and then being subsequently arrested.<sup>1043</sup>

518. Defence witnesses testified how they themselves or others were arrested in the initial days after war broke out on 17 April 1992 in the town of Bosanski Šamac,<sup>1044</sup> and that arrests continued into May 1992,<sup>1045</sup> and throughout the year.<sup>1046</sup> They testified that Bosnian Muslim and Bosnian Croats were arrested during the conflict,<sup>1047</sup> and that some Serbs were also arrested.<sup>1048</sup> Miroslav Tadić testified that the mass arrests of non-Serbs was common knowledge. He knew that Serbs were arrested, but from the stories he heard, the majority were non-Serbs.<sup>1049</sup> Defence witnesses also testified how members of the 4<sup>th</sup> Detachment were arrested in the days following the outbreak of the war.<sup>1050</sup>

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<sup>1042</sup> Hasan Bičić, T. 2643; Ibrahim Salkić, T. 3240-43; Muhamed Bičić, T. 2929-33; Osman Jašarević, Rule 92bis Statement, paras 47-49; Witness G, T. 4050-51; Esad Dagović, T. 3930-31; Witness E, T. 7676-77; Kemal Mehinović, T. 7404-07; Jelena Kapetanović, T. 8939-44; Witness L, T. 4333-35; Witness K, T. 4692-93; Witness M, T. 5216-17; Stevan Todorović, T. 10003.

<sup>1043</sup> Witness N, T. 6062-64; Dragan Delić, T. 6666-67; Snjezana Delić, T. 6395; Witness C, T. 7913-15; Kemal Bobić, T. 11394-96. Some Defence witnesses testified about civilians being required to report to the SUP. Savo Đurđević testified that he knew that Nuska Piskarevic was required to report to the SUP twice a day at 8.00 a.m. and at 8.00 p.m. This measure of reporting was imposed by police chief Stevan Todorović. There were four other persons that Stevan Todorović required to report regularly to the SUP. These were Limija Hadžialijagić, Delista Persić, Hasan Izetbegović, and Pašaga Tihić (Savo Đurđević, T. 17628-29).

<sup>1044</sup> Pašaga Tihić, T. 18183, T. 18192; Vladimir Šarkanović, T. 16505; Milan Jekić, Deposition T. 153-54; Svetozar Vasović, T. 14964; Radovan Antić, T. 16843.

<sup>1045</sup> Naser Sejdić testified that the arrests or visits to people's houses lasted until late April / early May 1992 (T. 17571-72).

<sup>1046</sup> Witness DW8/3 testified that he was arrested by the police on 27 June 1992 (Rule 92bis Statement, para. 11). Naser Sejdić testified that on 7 September 1992, he took Mirsada Čeribasić, Jelena Kapetanović, and Rusa Masić to Zasavica (T. 17573).

<sup>1047</sup> Gordana Pavlović, Deposition T. 76; Željko Volašević, T. 17761; Muharem Bičakčić, T. 98-9; Mirko Pavić, Rule 92bis Statement, para. 14; Naser Sejdić, T. 17549; Miroslav Tadić, T. 15644-65; Fadil Topčagić, Rule 92bis Statement, para. 53.

<sup>1048</sup> Željko Volašević, T. 17761; Naser Sejdić, T. 17556-57; Savo Đurđević, T. 17638-39.

<sup>1049</sup> Miroslav Tadić, T. 15644-45, T. 15673-74.

<sup>1050</sup> Maksim Simeunović, T. 15870-73; Radovan Antić, T. 16753-54; Stevan Nikolić, T. 18462-64; Jovo Savić, T. 17041-42.



519. Prosecution and Defence witnesses testified that some of those arrested were taken to other areas in the Municipality of Bosanski Šamac, such as Crkvina<sup>1051</sup> and Zasavica.<sup>1052</sup>

(a) Persons carrying out the arrests

520. Prosecution witnesses testified that arrests were conducted by Serb police and soldiers,<sup>1053</sup> paramilitary forces,<sup>1054</sup> and also by members of the 4<sup>th</sup> Detachment.<sup>1055</sup>

521. Defence witnesses testified that the police conducted arrests in areas that included Bosanski Šamac,<sup>1056</sup> Pelagićevo,<sup>1057</sup> Crkvina,<sup>1058</sup> and Zasavica,<sup>1059</sup> and that paramilitaries also conducted arrests.<sup>1060</sup> Defence witnesses testified that the chief of police, Stevan Todorović, determined who was to be arrested in Bosanski Šamac and taken to facilities there, and to Zasavica and Crkvina.<sup>1061</sup> Mihajlo Topolovac testified that Stevan Todorović gave orders to duty officers to assemble squads of mixed paramilitaries and local police to go out and search for particular people.<sup>1062</sup> Mirko Pavić testified that as far as he knew, the warrants for arresting people were issued by the Chief of Police and he decided who would stay and who should go. He testified that paramilitaries, Dragan Dorđević “Crni” and Slobodan Mijlković “Lugar”, also had a say in this.<sup>1063</sup>

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<sup>1051</sup> Vladimir Šarkanović, T. 16555-56; Kosta Simić, T. 16958; Simo Zarić, T. 19448-49; Andrija Petrić, T. 17590-92; Witness P, T. 11565-66, T. 11588-93; Jelena Kapetanović, T. 8943-46; Dragan Lukač, T. 1659-60; Witness O, Rule 92*bis* Statement, para. 24.

<sup>1052</sup> Witness M, T. 5077-78, T. 5089; Ediba Bobić, T. 11272; Snjezana Delić, T. 6479-80; Safet Dagović, T. 7235; Naser Sejdić, T. 17536; Muharem Bičakčić, Deposition T. 99.

<sup>1053</sup> Ediba Bobić, T. 11265-67; Witness G, T. 4050-51; Esad Dagović, T. 3930-31; Witness O, Rule 92*bis* Statement, paras 21-22; Witness M, T. 5216, T. 5078-79; Witness L, T. 4233-35; Witness K, T. 4676-77; Kemal Mehinović, T. 7405-06; Ibrahim Salkić, T. 3242-43.

<sup>1054</sup> Muhamed Bičić, T. 2932; Osman Jašarević, Rule 92*bis* Statement, paras 47-49; Milan Jekić, Deposition T.153.

<sup>1055</sup> Stevan Todorović, T. 9108-09; Osman Jašarević, Rule 92*bis* Statement, paras 47-49; Ibrahim Salkić, T. 3241; Witness M, T. 5029.

<sup>1056</sup> Radovan Antić, T. 16752-53; Simeon Simić, T. 13157. Nedžvija Avdić, Rule 92*bis* Statement, para. 6; Witness DW 2/3, T. 14462-64; Dario Radić, T. 15071, T. 15105-06; Mustafa Pištoljević, T. 16354-55; Witness DW8/3, Rule 92*bis* Statement, para. 11; Naser Sejdić, T. 17542, T. 17571-72; Savo Đurđević, T. 17629-30, T.17634-35, T. 17652-53; Pašaga Tihić, T. 18204-06; Fadil Topčagić, T. 18404; Petar Karlović, Rule 92*bis* Statement, para. 26; Stevan Arandjić, Rule 92*bis* Statement, para. 27; Miroslav Tadić, T. 15527-28, T. 15274; Milan Jekić, Deposition T. 151-153.

<sup>1057</sup> Marko Kurešević testified that he was arrested by the Military Police of Republika Srpska at the orders of Stevan Todorović, and taken to the prison in Pelagićevo (T. 17884-85, T. 17893-94).

<sup>1058</sup> Andrija Petrić, T. 17590-92; Vladimir Šarkanović, T. 16555.

<sup>1059</sup> Naser Sejdić testified that people were isolated in Zasavica upon the orders of Stevan Todorović (T. 17574, T. 17536).

<sup>1060</sup> Radovan Antić, T. 16755, T. 16889, T. 16869; Fadil Topčagić, Rule 92*bis* Statement, para. 53; Jovo Savić, T. 17040; Mirko Pavić, Rule 92*bis* Statement, para. 15; Mihajlo Topolovac, T. 18277; Dario Radić, T. 15060-61; Naser Sejdić, T. 17529-33; Pašaga Tihić, T. 18183.

<sup>1061</sup> Vladimir Šarkanović, T. 16522; Naser Sejdić, T. 17538; Milan Jekić, Deposition T. 145; Mihajlo Topolovac, T. 18247, T. 18300-02; Miroslav Tadić, T. 15272; Naser Sejdić, T. 17542; Milan Jekić, Deposition T. 145; Savo Đurđević (T. 17622-23); Exhibit D39/4.

<sup>1062</sup> Mihajlo Topolovac, T. 18302.

<sup>1063</sup> Mirko Pavić, Rule 92*bis* Statement, para. 15.

522. Defence witnesses testified that the 4<sup>th</sup> Detachment did not conduct arrests of anyone in Bosanski Šamac.<sup>1064</sup>

523. Prosecution witness, Dragan Lukač, gave evidence that he was informed by Dragan Stefanovic, present at the time of his arrest, that the Crisis Staff had ordered his arrest and that its President was Blagoje Simić.<sup>1065</sup> Stevan Todorović testified that the decision to arrest and interrogate Bosnian Croats and Muslims with weapons, and who were preparing armed insurgencies, was approved by the Crisis Staff from “the first day”. The Crisis Staff *de facto* supported this activity, although he did not remember any strict written instruction on this.<sup>1066</sup> Mirko Lukić testified that the Crisis Staff had the power to exchange people who were in detention and could hold people until they were exchanged.<sup>1067</sup> He gave evidence that the Crisis Staff must have heard about the mass arrest of about 300 Muslim and Croat civilians and their detention in the schools of Bosanski Šamac, and about arrests in Crkvina and Zasavica.<sup>1068</sup>

524. Blagoje Simić testified that the Crisis Staff never made the decision to isolate Croats pursuant to Exhibit P71.<sup>1069</sup> Simeon Simić, a member of the Crisis Staff, also stated that he was not aware of this decision.<sup>1070</sup> Savo Popović, a member of the Crisis Staff, stated that the Crisis Staff had never made discriminatory decisions or any decision on isolation of Croats.<sup>1071</sup> Secretary of the Crisis Staff, Mitar Mitrović, said that he had never seen the decision.<sup>1072</sup> Miroslav Tadić also testified that he had never seen the document or attended the meeting of the Crisis Staff when the document had been allegedly adopted, or heard about any adoption of such decision.<sup>1073</sup> Mirko Lukić also said he had not seen the document.<sup>1074</sup> Branislav Marušić testified that he was not aware of this decision.<sup>1075</sup> Naser Sejdić testified that he did not know about the detention of Croats in Crkvina,<sup>1076</sup> while others mentioned names of people detained there.<sup>1077</sup>

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<sup>1064</sup> Witness DW 2/3, T. 14498-500; Mirko Pavić, Rule 92bis Statement, para. 17; Fadil Topčagić, T. 18404; Mihajlo Topolovac, T. 18277-78.

<sup>1065</sup> Dragan Lukač, T. 1661-62.

<sup>1066</sup> Stevan Todorović, T. 9114.

<sup>1067</sup> Mirko Lukić, T. 12919.

<sup>1068</sup> Mirko Lukić, T. 12922-24.

<sup>1069</sup> Blagoje Simić, T. 12457-59.

<sup>1070</sup> Simeon Simić, T. 13139.

<sup>1071</sup> Savo Popović, T. 16302.

<sup>1072</sup> Mitar Mitrović, T. 18724-25.

<sup>1073</sup> Miroslav Tadić, T. 15309.

<sup>1074</sup> Mirko Lukić, T. 12904-05.

<sup>1075</sup> Branislav Marušić testified that he was not aware of the decision of the Crisis Staff to isolate Croats (T. 18956).

<sup>1076</sup> Naser Sejdić testified that he did not know about “Crkvina” or whether Jelena Kapetanović was detained there (T. 17583).

<sup>1077</sup> Simo Zarić, T. 19450; Mladen Borbeli, T. 14723-24, T. 14743; Kosta Simić, T. 16958; Andrija Petrić, T. 17590-94; Vladimir Šarkanović, T. 16555; Radovan Antić, T.16889.

525. Simo Zarić testified that he learnt about the isolation of Croat citizens in Crkvina in two ways. He saw people being rounded up, put into trucks, and taken to Crkvina. This took place in front of his building. The second way he learnt about their isolation was when he saw a decision taken by the Crisis Staff to isolate Croats at the SUP. A copy of the decision was in Stevan Todorović's office, and also with people who worked in the criminal investigation department, namely, Miloš Savić and Vladimir Šarkanović.<sup>1078</sup>

(b) Reasons for arrests

526. Prosecution witnesses testified that they were arrested without being charged.<sup>1079</sup> Some Defence witnesses testified that they did not know the reasons for their arrests.<sup>1080</sup> Miroslav Tadić testified that he was surprised to learn about some of the persons who were arrested.<sup>1081</sup>

527. Some Prosecution witnesses testified that they or others were arrested, or could have been, for the reason of allegedly possessing or using weapons.<sup>1082</sup> According to Stevan Todorović, people were arrested if they had illegal weapons or explosives, or if it was known that they had planned armed insurgence or participated in the procurement of illegal weapons.<sup>1083</sup> Stevan Todorović further testified that a document of the SDA on the Organisational and Establishment Structure of the Unit for Defence of the Town,<sup>1084</sup> was acquired by crime inspectors for the police, who initiated the procedure of questioning and interrogations based upon this.<sup>1085</sup>

528. Prosecution witness Alija Fitozović, president of the SDA Security Committee, testified that he formed an independent military unit for protection of all citizens in Bosanski Šamac, which comprised 80 members in the beginning and approximately 200 by December 1991.<sup>1086</sup> He stated that in the autumn of 1991, Sulejman Tihić, Izet Izetbegović, Safet Hadžialijagić "Coner", Hasan Bičić, Muhamed Bičić, Salko Porobić, Izet Ramusović, Reuf Hadžiabdić, Hasan Čeribasić, Esad Dagović and Safet Dagović had voluntarily joined a paramilitary unit of the SDA organized by

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<sup>1078</sup> Simo Zarić, T. 19448-49. He did not go to Crkvina, he only heard that there had been a large group of people isolated there from neighbouring Croat villages and the town of Šamac (T. 19449).

<sup>1079</sup> Snjezana Delić, T. 6397-98; Sulejman Tihić, T. 1456; Witness C, T. 7994; Kemal Bobić, T. 11404; Kemal Mehinović, T. 7406; Mladen Borbeli, T. 14745-48.

<sup>1080</sup> Andrija Petrić, T. 17607-09; Mustafa Omeranović, T. 18129-30, T. 18136-37; Miroslav Tadić, T. 15314-15.

<sup>1081</sup> Miroslav Tadić, T. 15270-71.

<sup>1082</sup> Stevan Todorović, T. 9109, T. 9964-65; Witness A, Rule 92*bis* Statement, para. 42; T. 11224; Snjezana Delić, T. 6611-12; Dragan Delić, T. 6667-68; Witness M, T. 5028-29; Witness K, T. 4679-80; Esad Dagović, T. 3930-31.

<sup>1083</sup> Stevan Todorović, T. 9110.

<sup>1084</sup> Exhibit D 25/4.

<sup>1085</sup> Stevan Todorović, T. 9698, T. 9770-72.

<sup>1086</sup> Alija Fitozović, T. 8384-87.

him.<sup>1087</sup> Prosecution Witness P testified that an armed unit, headed by him, existed in his village,<sup>1088</sup> and that after being arrested he was interrogated in connection with weapons.<sup>1089</sup>

529. Defence witnesses testified that people were arrested in Bosanski Šamac for possessing weapons and for membership in paramilitary groups.<sup>1090</sup>

530. Defence witnesses testified that they saw an armed group of Muslims on the morning of 17 April 1992 in the town of Bosanski Šamac.<sup>1091</sup> Vladimir Šarkanović gave evidence that he had seen Muhamed and Hasan Bičić, Esad Dagović, and Fadil Sabanović that morning.<sup>1092</sup> Naser Sejdić testified that on 17 April 1992, a group of 15 to 20 armed Muslims came to his street and included Muhamed and Hasan Bičić, Esad Dagović, Ibrahim Salkić, and Izet Ramusović (“Dasa”).<sup>1093</sup>

531. Miroslav Tadić testified that the arrest of Croats from Asići and Donji Asići and from Novo Selo and Hrvatska Tišina after 15 May 1992 was connected to an ambush of some 30 soldiers of the 4<sup>th</sup> Detachment that took place on the road through Srpska Tišina and Hrvatska Tišina via Novo Selo towards Grebnice.<sup>1094</sup>

532. Dario Radić testified that he had been released after interrogation, when it had been cleared that he had no connections with the armed formations. He was released from detention a day after his friend Jasmin Pelešević, a Muslim, who had been arrested together with him.<sup>1095</sup>

## **B. Detention or Unlawful Confinement of Bosnian Croats, Bosnian Muslims and other non-Serb Civilians**

### **1. Places of detention**

533. Stevan Todorović testified that the detention facilities in the town of Bosanski Šamac functioned from April 1992, until they were abolished in autumn 1992, by a decision of Andrija Bjelosević, the Chief of the Regional Security Centre in Doboj.<sup>1096</sup> From this point on, all persons

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<sup>1087</sup> Alija Fitozović, T. 8733-34, T. 8816, T. 8671-72.

<sup>1088</sup> Witness P, T. 11534-35.

<sup>1089</sup> Witness P, T. 11559.

<sup>1090</sup> Simo Zarić, T. 19602-04; Gordana Pavlović, Deposition T. 76; Miroslav Tadić, T. 15273; Hasan Bičić, T. 2689, Exhibit D1/4; Mustafa Omeranović, T. 18129-30, T. 18167-68; Petar Karlović, Rule 92*bis* Statement, para. 26; Naser Sejdić, T. 17551-52, T. 17535; Savo Đurđević, T. 17638-39. Vladimir Šarkanović, T. 16507-08; Stevan Todorović, T. 9993-94; Izet Izetbegović, T. 2272; Nevenka Grbic, Deposition T. 30; Witness P, T. 11559, Exhibit D1/4.

<sup>1091</sup> Naser Sejdić, T. 17526; Exhibit D116/3, paras 13-14.

<sup>1092</sup> Vladimir Šarkanović, T. 16500.

<sup>1093</sup> Naser Sejdić, T. 17527-28; Mladen Borbeli, T. 14704, T. 14720.

<sup>1094</sup> Miroslav Tadić, T. 15311-15.

<sup>1095</sup> Dario Radić, T.15103, T. 15061-63, T. 15065.

<sup>1096</sup> Stevan Todorović, T. 10087-88.

remaining in the SUP, TO, and schools were transferred to Batković in a collection centre run by the army.<sup>1097</sup>

534. Defence witnesses testified that in the initial days after war broke out in Bosanski Šamac, people were detained in detention facilities within the Municipality of Bosanski Šamac and in other areas that included the SUP, TO, primary and secondary schools, Zasavica, Crkvina, Brčko, and Bijeljina.<sup>1098</sup> Some witnesses testified how hundreds of non-Serbs, including Muslim and Croat women and children, were held in detention centres,<sup>1099</sup> and that some non-Serbs were detained in these facilities.<sup>1100</sup> Miroslav Tadić testified that between 500 and 600 persons could have passed through the detention facilities. There were about 50 persons in the TO and primary school as well, and about 300 in the secondary school.<sup>1101</sup>

(a) SUP<sup>1102</sup>

535. Many Prosecution witnesses testified to being detained in the SUP building during April<sup>1103</sup> and May 1992,<sup>1104</sup> and throughout the year.<sup>1105</sup> Witness M testified that new prisoners, Muslims and Croats, were brought every day to the SUP.<sup>1106</sup> Some non-Serbs were arrested and detained for one day at the SUP, then released, but required to report to the SUP several times a day, or re-arrested within several days.<sup>1107</sup>

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<sup>1097</sup> Stevan Todorović, T. 9610.

<sup>1098</sup> Svetozar Vasović, T. 14964; Radovan Antić, T. 16843; Velimir Maslić, T. 14189, T. 14208-09; Miroslav Tadić, T. 15532-33. One witness, Branislav Marušić, testified that he had no knowledge that hundreds of non-Serb civilians including men, women, children, and elderly were isolated at facilities in Šamac. He did not know about the situation in the prisons and detention facilities (T. 18956). The Trial Chamber notes that it will not take into consideration liability of the accused with respect to detainees held at Batković, on the basis that this detention centre is not covered within the scope of the Amended Indictment or the Prosecution Pre-trial Brief.

<sup>1099</sup> Muharem Bičakčić, Deposition T. 98-99; Željko Volašević, T. 16592-93, T. 17760-61; Teodor Tutnjević, T. 17446-48; Stevan Arandjić, Deposition T. 179; Simo Zarić, T. 20073.

<sup>1100</sup> Željko Volasević, T. 17761; Naser Sejdić, T. 17556-57; Savo Đurđević, T. 17638-39.

<sup>1101</sup> Miroslav Tadić, T. 15533-34.

<sup>1102</sup> Interchangeably referred to by witnesses as SUP, MUP, police station and public security station.

<sup>1103</sup> Sulejman Tihiić, T. 1376, T. 1418; Hasan Bičić, T. 2653; Muhamed Bičić, T. 2932-35, T. 2937; Ibrahim Salkić, T. 3242-43, T. 3261-64; Witness A, Rule 92*bis* Statement, paras 30-46, T. 10741; Osman Jašarević, Rule 92*bis* Statement, paras 47-51; Dragan Delić, T. 6666-69; Hasan Subašić, T. 10942-43; Witness N, T. 6341-44, T.6063, T. 6067-68; Ibrahim Salkić, T. 3243-44.

<sup>1104</sup> Witness P, T. 11557-58; Esad Dagović, T. 3931-32; Witness C, T. 7913-15, T. 7926; Witness E, T. 7676, T. 7715; Witness Q, T. 11723-25, T. 11750-52; Kemal Bobić, T. 11394-95, T. 11400; Kemal Mehinović, T. 7405-07. Kemal Bobić testified that he was arrested on 23 May 1992 and taken to the SUP. There were 12 to 16 Muslim and Croat men in the room with him. He remained there until 28 June 1992 (Kemal Bobić, T. 11395).

<sup>1105</sup> Witness L, T. 4333-38, T. 4341-44; Witness M, T. 5107, T. 5216-18, T. 5235-36.

<sup>1106</sup> Witness M, T. 5233.

<sup>1107</sup> Witness G was arrested and taken to the SUP where she was slapped, ordered to take off her clothes, and beaten. She was released the same day, but required to report to the SUP each morning and evening (T. 4050-51, T. 4067); Nusret Hadžijusufović testified that after his arrest he was released for two days to return home, and then was arrested again and taken to Pelagićevo (T. 6963-65).

536. Prosecution witnesses testified that they were detained in cells,<sup>1108</sup> and garages in the yard of the SUP,<sup>1109</sup> where they were guarded.<sup>1110</sup> Hasan Bičić testified that when he was detained at the SUP on 18 April 1992, the entrance to the building was surrounded by two lines of soldiers.<sup>1111</sup>

537. Izet Izetbegović testified that all the detainees were civilians and that there were no soldiers.<sup>1112</sup> There were also elderly people and women held at the SUP. Both Esad Dagović and Kemal Mehinović testified that they saw Nihada Ademović and Behka, both Bosniak Muslim women, detained at the SUP.<sup>1113</sup> Ibrahim Salkić testified how men of approximately 70 years of age were detained in the SUP, being brought from a Croat village. They stayed there until their transfer to Batković.<sup>1114</sup>

538. Witness M testified that when they could not fit into the SUP, those that had been already “processed” were transferred to the TO building.<sup>1115</sup> Large numbers of detainees were transferred from the SUP to other facilities. Dragan Lukač testified that in approximately May or June 1992, about 100 detainees were transferred from the SUP to the TO.<sup>1116</sup> Stevan Todorović testified that many detainees were also transferred from the SUP to Batković, because it was a safer place.<sup>1117</sup>

539. A number of Defence witnesses testified to being arrested in the first days following the takeover of Bosanski Šamac and being detained in the SUP,<sup>1118</sup> continuing in June and July 1992.<sup>1119</sup> They testified that those detained in the SUP were Bosnian Muslims and Croats.<sup>1120</sup> Defence witnesses also testified that some members of the 4<sup>th</sup> Detachment were detained at the SUP.<sup>1121</sup> Simo Zarić testified that he received an order from Lt. Col. Stevan Nikolić to go and release members of the 4<sup>th</sup> Detachment detained at the SUP. When he arrived at the SUP he saw

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<sup>1108</sup> Izet Izetbegović, T. 2279; Sulejman Tihić, T.1410-11, T. 1414; Witness C, T. 7918-19; Witness Q, T. 11724-25; Osman Jašarević, Rule 92*bis* Statement, para. 56.

<sup>1109</sup> Esad Dagović, T. 3994-96; Exhibit P14a (n. 56); Witness A, Rule 92*bis* Statement, para. 86.

<sup>1110</sup> Detainees were guarded by persons with camouflage paint on their faces (Hasan Bičić, T. 2650). Sulejman Tihić stated that when he was arrested and taken to the SUP on 18 April 1992, he saw people in all kinds of uniforms including Grey Wolves, JNA, Serb Territorial Defence, Police, Red Berets and different camouflage uniforms (Sulejman Tihić, T. 1374, T. 1377).

<sup>1111</sup> Hasan Bičić, T. 2644.

<sup>1112</sup> Izet Izetbegović, T. 2310.

<sup>1113</sup> Esad Dagović, T. 3982-84; Kemal Mehinović, T. 7437-38, T. 7440.

<sup>1114</sup> Ibrahim Salkić, T. 3386-88.

<sup>1115</sup> Witness M, T. 5233.

<sup>1116</sup> Dragan Lukač, T. 1741-42; Kemal Mehinović, T. 7441-42.

<sup>1117</sup> Stevan Todorović, T. 10156.

<sup>1118</sup> Dario Radić, T. 15060-61, T. 15101; Mustafa Omeranović, T. 18130-31.

<sup>1119</sup> Nevenka Grbić, Deposition T. 30-32; Muharem Bičakčić, T. 17815; Hasan Pištoljević, Rule 92*bis* Statement, para. 11.

<sup>1120</sup> Witness DW 2/3, T. 14470, T. 14472; Teodor Tutnjević, T. 17447-48; Fadil Topčagić, Rule 92*bis* Statement, para. 53; Mirko Pavić, Rule 92*bis* Statement, para. 14.

<sup>1121</sup> Mustafa Omeranović, T. 18132-33; Jovo Savić, T. 17040-41.

the names of 30 to 40 persons who were held in detention, of whom there were about six or seven members of the 4<sup>th</sup> Detachment.<sup>1122</sup>

(b) TO

540. Prosecution witnesses testified that after the takeover of the town of Bosanski Šamac on 17 April 1992, non-Serb civilians were detained at the TO. Many were transferred the day of their arrest from the SUP, or placed directly in the TO detention facilities following their arrest.<sup>1123</sup> They continued to be detained at the TO throughout 1992.<sup>1124</sup>

541. Detainees were held in several rooms at the TO, one large and one small, and were also held in a room referred to as a storage room, where they were guarded.<sup>1125</sup> Dragan Lukač testified that two armed Serbian policemen from Bosanski Šamac guarded the locked door to the storage room where people were detained.<sup>1126</sup> Some of the policemen were locals, dressed in camouflage uniforms; while others were from Serbia and wore red berets.<sup>1127</sup>

542. In the middle of April 1992, there were between 40-50 people detained at the TO.<sup>1128</sup> The detainees were Bosnian Muslim and Bosnian Croat civilians,<sup>1129</sup> with the exception of a few policemen.<sup>1130</sup> Witness E testified that in the summer, one small room contained 25 persons, and a large room held approximately 180 persons. Later there was a smaller number because some were exchanged, mostly of Croat ethnicity.<sup>1131</sup> In late August 1992, there were approximately 100 to 120 people held in two rooms at the TO.<sup>1132</sup> In November 1992, Witness N was held together with approximately 52 to 54 Muslim and Croat civilians at the TO.<sup>1133</sup>

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<sup>1122</sup> Simo Zarić, T. 19303-04; T. 19263.

<sup>1123</sup> Sulejman Tihić, T. 1395; Dragan Lukač, T. 1662, T. 1677, T. 1685; Hasan Bičić, T. 2653; Muhamed Bičić, T. 2933, T. 2937, T. 2964, T. 2967; Ibrahim Salkić, T. 3261, T. 3263, T. 3265-66; Witness A, T. 10741, Rule 92*bis* Statement, paras 52-59; Osman Jašarević, Rule 92*bis* Statement, para. 64; Hasan Subašić, T. 10944-45; Izet Izetbegović, T. 2312-13, T. 2328, T. 2355; Witness N, T. 6066-67, T. 6154; Dragan Delić, T. 6666-69.

<sup>1124</sup> Witness P, T. 11551-55, T.11559, T. 11562, T. 11593; Witness Q, T. 11750-52, T. 11771-72; Kemal Mehinović, T. 7441-42, T. 7446; Witness C, T. 7926, T. 7932; Kemal Bobić, T. 11400-04; Witness E, T. 7715.

<sup>1125</sup> Witness E, T. 7717; Dragan Lukač, T. 1735.

<sup>1126</sup> Dragan Lukač, T. 1678.

<sup>1127</sup> Witness A, Rule 92*bis* Statement, para. 52.

<sup>1128</sup> Sulejman Tihić, T. 1395, T. 1401, T. 3641; Dragan Lukač, T. 1677; Hasan Subašić, T. 10944-45.

<sup>1129</sup> Sulejman Tihić, T. 1401; Dragan Delić, T. 6673-75; Witness A, Rule 92*bis* Statement, para. 47.

<sup>1130</sup> Hasan Bičić, T. 2689-90.

<sup>1131</sup> Witness E, T. 7717.

<sup>1132</sup> Muhamed Bičić, T. 3026.

<sup>1133</sup> Witness N, T. 6156.

543. Some people were brought to the TO for shorter periods of time and others for around 10 days.<sup>1134</sup> Witness E spent three and a half months in the TO before he was transferred to Batković.<sup>1135</sup>

544. Witnesses testified how groups of detainees were transferred from the SUP to the TO; from the TO to Brčko; and also from the primary school gym to the TO.<sup>1136</sup> Detainees in the TO were transferred to Brčko towards the end of April 1992,<sup>1137</sup> and from the TO to Batković.<sup>1138</sup> In November 1992, all the prisoners in Šamac were transferred to the Batković camp.<sup>1139</sup>

545. Witness N testified that transfers were made from the primary school gym to the TO at the end of summer.<sup>1140</sup> Ibrahim Salkić testified that in late September 1992, all detainees in the primary school gym were transferred to the TO. At this point there were approximately 200 people held in the TO.<sup>1141</sup> The numbers then rose to between 230 and 250 detainees, who were kept in two rooms in a small living space. The detainees were all Muslim and Croat civilians.<sup>1142</sup> Hasan Subasić testified that at the end of summer a group was transferred to the TO building, and that at this time approximately 60 Muslims and Croats were detained there.<sup>1143</sup>

546. Defence witnesses testified that in the first days following the takeover in Bosanski Šamac, people were arrested and detained at the TO.<sup>1144</sup> Petar Karlović testified that in the first few days of the war, 40 or so people were arrested and detained in the TO building.<sup>1145</sup>

547. Defence witnesses testified how detainees were held in small rooms at the TO and in garages in the yard. Naser Sejdić testified that at the TO building, across the road from the SUP building, people were also held in garages outside the yard. He entered the TO building several times.<sup>1146</sup>

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<sup>1134</sup> Muhamed Bičić, T. 2943.

<sup>1135</sup> Witness E, T. 7715; Witness Q, T. 11754-55.

<sup>1136</sup> Hasan Bičić, T. 2653, T. 2685; Witness N, T. 6067-68; Muhamed Bičić, T. 2937; Ibrahim Salkić, T. 3265-66.

<sup>1137</sup> Witness N, T. 6074-75, T. 6079-80; Dragan Delić, T. 6682.

<sup>1138</sup> Witness C, T. 7926, T. 2967-68.

<sup>1139</sup> Hasan Subašić, T. 10980.

<sup>1140</sup> Witness N, T. 6154.

<sup>1141</sup> Ibrahim Salkić, T. 3368.

<sup>1142</sup> Ibrahim Salkić, T. 3373-74.

<sup>1143</sup> Hasan Subašić, T. 11017.

<sup>1144</sup> Pašaga Tihić, T. 18183; Milan Jekić, Deposition T. 153-54; Vladimir Šarkanović, T. 16519.

<sup>1145</sup> Petar Karlović, Rule 92*bis* Statement, para. 26. Dario Radić testified that he was transferred to the TO with 20 or 30 others (T. 15064-65).

<sup>1146</sup> Naser Sejdić, T. 17533-34.



548. Defence witnesses testified how Bosnian Muslims and Bosnian Croats were detained in the TO building in Bosanski Šamac.<sup>1147</sup>

(c) Primary and Secondary Schools

549. Prosecution witnesses testified how a group of detainees were transferred from Bijeljina to the primary and secondary school in Bosanski Šamac on 13 May 1992.<sup>1148</sup> During the spring and summer of 1992, detainees were placed in the primary<sup>1149</sup> and secondary school gymnasiums in Bosanski Šamac,<sup>1150</sup> and guarded there.<sup>1151</sup> The camp in the secondary school building was used to hold detainees until 30 January 1993.<sup>1152</sup> The gym was the only part of the secondary school left intact, as the school had burnt down.<sup>1153</sup> The guards would rotate their duties from the secondary and elementary school to the TO and the SUP building.<sup>1154</sup> Snjezana Delić stated that the secondary school, where there was a large number of Croats waiting to be exchanged, was referred to as an “isolation camp.”<sup>1155</sup>

550. Witnesses testified that the detainees were Bosnian Muslims and Bosnian Croats, and were dressed in civilian clothes.<sup>1156</sup> Muhamed Bičić testified that there were many elderly people from Bosanski Šamac in the primary school gymnasium, including people over 80 years old.<sup>1157</sup>

551. Witness O testified that men from the Dom in Crkvina were brought to the secondary school gym,<sup>1158</sup> he also stated that there were people from Zasavica there.<sup>1159</sup> Hasan Subašić testified that when he was detained at the elementary school in May 1992, the guards told him that approximately 500 Croats had been rounded up and put on trucks and that they were “in some kind of isolation.”<sup>1160</sup> Simo Zarić testified that some of the men who were taken from the youth club in Crkvina were isolated in two gymnasiums; one belonging to the elementary school in Bosanski Šamac, and the other to the gymnasium in the secondary school in Bosanski Šamac.<sup>1161</sup>

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<sup>1147</sup> Teodor Tutnjević, T. 17446; Mustafa Pištoljević, T. 16367; Stoko Sekulić, T. 18076-77.

<sup>1148</sup> Muhamed Bičić, T. 2977-78, T. 2981; Ibrahim Salkić, T. 3320, T. 3324, T. 3368; Dragan Delić, T. 6688-89, T. 6701; Hasan Subašić, T. 10957-58, T. 10960; Witness N, T. 6101-04; Hasan Bičić, T. 2710-11, T. 2715, T. 2719-21; Witness O, Rule 92*bis* Statement, paras 23, 35.

<sup>1149</sup> Primary and elementary school are used interchangeably by some witnesses.

<sup>1150</sup> Witness O, Rule 92*bis* Statement, para. 32; Nusret Hadžijusufović, T. 6952-53.

<sup>1151</sup> Ibrahim Salkić, T. 3361-62.

<sup>1152</sup> Nusret Hadžijusufović, T. 7077.

<sup>1153</sup> Muhamed Bičić, T. 2980; Witness N, T. 6110.

<sup>1154</sup> Hasan Subašić, T. 10965.

<sup>1155</sup> Snjezana Delić, T. 6422; Osman Jašarević, Rule 92*bis* Statement, paras 112-117.

<sup>1156</sup> Muhamed Bičić, T. 2980-81; Hasan Subašić, T. 10970.

<sup>1157</sup> Muhamed Bičić, T. 3074.

<sup>1158</sup> Witness O, Rule 92*bis* Statement, para. 32.

<sup>1159</sup> Witness O, Rule 92*bis* Statement, para. 32.

<sup>1160</sup> Hasan Subašić, T. 10960-65.

<sup>1161</sup> Simo Zarić, T. 19449-50.

552. Witnesses testified how they were detained in a group at the primary school gym for an extended period of time, from about 15-17 May 1992, until late September 1992.<sup>1162</sup> Dragan Delić was taken from Bijeljina on 13 May 1992 back to Bosanski Šamac. He was detained at the primary school until 4 September 1992.<sup>1163</sup> Witness N was detained at the primary school from May until 4 September 1992.<sup>1164</sup>

553. Some Defence Witnesses testified that they did not know people were detained at the primary and secondary schools in Bosanski Šamac,<sup>1165</sup> while others testified that they were detained in these facilities, or knew about others detained there.<sup>1166</sup> Defence witnesses testified that Bosnian Croats and Bosnian Muslims were detained in the primary and secondary schools.<sup>1167</sup> Witnesses testified to varying numbers being detained in the schools. Vladimir Šarkanović testified that he thought there were about 100 people detained in the secondary school.<sup>1168</sup> Pašaga Tihić testified that he was detained at the secondary school with between 300 to 400 Croat men from the villages Hasići, Donja Hasići, Zasavica, Novo Selo, Tišina, Tursinovać, and Šamac.<sup>1169</sup>

554. Miroslav Tadić testified that a number of Croats from the areas of Asići and Donji Asići, Novo Selo, and Hrvatska Tišina, were arrested after 15 May 1992, and detained in the secondary school.<sup>1170</sup> Petar Karlović testified that the secondary school held around 200 Croats in detention. He stated that in the autumn of 1992 in Bosanski Šamac, there were no more detainees or prisoners.<sup>1171</sup>

(d) Crkvina<sup>1172</sup>

555. Witnesses testified that non-Serb civilians were detained in various locations in Crkvina, that included the Youth Centre,<sup>1173</sup> a warehouse,<sup>1174</sup> the Culture Hall,<sup>1175</sup> and the Sport Stadium.<sup>1176</sup>

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<sup>1162</sup> Ibrahim Salkić, T. 3328; Dragan Delić, T. 6689.

<sup>1163</sup> Dragan Delić, T. 6689, T. 6700.

<sup>1164</sup> Dragan Delić, T. 6689-90, T. 6700.

<sup>1165</sup> Simeon Simić, T. 13141-42.

<sup>1166</sup> Naser Sedjić, T. 17534; Andrija Petrić, T. 17607-08; Petar Karlović, T. 18440.

<sup>1167</sup> Witness DW 2/3, T. 14475, T. 14483; Teodor Tutnjević, T. 17447-48; Stoko Sekulić, T. 18077; Mirko Lukić, T. 12868, T. 12942.

<sup>1168</sup> Vladimir Šarkanović, T. 16559.

<sup>1169</sup> Pašaga Tihić, T. 18207; Mladen Borbeli, T. 14724, T. 14744. Petar Karlović testified that the secondary school held around 200 Croats in detention. He stated that in the autumn of 1992 in Bosanski Šamac, there were no more detainees or prisoners (T. 18439, T. 18448).

<sup>1170</sup> Miroslav Tadić, T. 15311.

<sup>1171</sup> Petar Karlović, T. 18439, T. 18448.

<sup>1172</sup> Blagoje Simić testified that the culture hall in Crkvina and the sport stadium were right next to each other. The culture hall was a covered area and the stadium was an outdoor field (T. 12295).

<sup>1173</sup> Dragan Lukač, T. 1660.

<sup>1174</sup> Witness P testified that on 7 May 1992, he was transferred from the TO to a warehouse in Crkvina, together with 51 other people. He was then transferred back to the TO on the same day (T. 11555-66).

<sup>1175</sup> Blagoje Simić, T. 12294.

556. Snjezana Delić testified how a group of Croat women and children were arrested at the market in Bosanski Šamac around 13 May 1992, and taken to Crkvina, where they were housed in rooms with bare floors.<sup>1177</sup> Jelena Kapetanović, testified that she was detained in a sport stadium in Crkvina, together with men and old people, and that there were several hundred people held there.<sup>1178</sup> She testified that people continued to arrive and the number of detainees rose to about five hundred.<sup>1179</sup> Armed men came and took away some of the men. On 16 May 1992, there were a little under three hundred persons left detained there.<sup>1180</sup>

557. Witness O testified how detainees were taken from the Kultur Dom, where trucks were waiting, to the Omladinski Dom in Crkvina, by armed Serb soldiers, together with a group of people. There were already a lot of people there who had been taken from other villages and from Bosanski Šamac itself. They were all non-Serbs and predominately Croats. They spent the night in the Dom. One hundred and seventy six people had been taken from Zasavica.<sup>1181</sup> Witness O stated how there were about 800 to 1000 people kept in the hall, guarded by armed men in uniform.<sup>1182</sup> After questioning, Witness O was taken to the elementary school gymnasium in Šamac.<sup>1183</sup>

558. Blagoje Simić, and Miroslav Tadić, as members of the Crisis Staff, denied knowledge of the existence of a decision to isolate persons of Croat nationality and stated that they never saw this decision.<sup>1184</sup> Blagoje Simić testified that the Crisis Staff got information that a small number of Croat civilians were imprisoned in the culture hall in Crkvina. Soon after they received information that all of them had been sent home with apologies.<sup>1185</sup> Stevan Todorović reported to the Crisis Staff in May 1992 that non-Serb civilians from Šamac were detained in Crkvina only for an afternoon.<sup>1186</sup>

559. Miroslav Tadić testified that he knew nothing about the detention of Croats in Crkvina at the alleged time, but a few days later he learned that a number of armed Croats from areas of Asići and Donji Asići, and from Novo Selo and Hrvatska Tišina, were arrested after 15 May 1992. They were

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<sup>1176</sup> Jelena Kapetanović, T. 8943-46.

<sup>1177</sup> Snjezana Delić, T. 6429, T. 6432-33.

<sup>1178</sup> Jelena Kapetanović, T. 8943-46.

<sup>1179</sup> Jelena Kapetanović, T. 8951.

<sup>1180</sup> Jelena Kapetanović, T. 8956.

<sup>1181</sup> Witness O, Rule 92*bis* Statement, para. 24.

<sup>1182</sup> Witness O, Rule 92*bis* Statement, para. 25.

<sup>1183</sup> Witness O, Rule 92*bis* Statement, para. 31.

<sup>1184</sup> Blagoje Simić, T. 12358; Miroslav Tadić, T. 15309-10.

<sup>1185</sup> Blagoje Simić, T. 12294.

<sup>1186</sup> Blagoje Simić, T. 12297-98.

then detained in the secondary school.<sup>1187</sup> He also knew people were brought to the cultural centre in Crkvina at that time.<sup>1188</sup>

560. Simo Zarić testified that he learnt about the isolation of Croat citizens in Crkvina in two ways. He saw people being rounded up, put into trucks, and taken to Crkvina. This took place in front of his building. The second way was when he saw at the SUP copies of a decision taken by the Crisis Staff to isolate Croats. Simo Zarić testified that people were kept at the youth club in the village of Crkvina for approximately four to five days. He heard from them that they were then returned to their homes, and that some men were isolated in the gymnasiums of the elementary school and the secondary school in Bosanski Šamac.<sup>1189</sup>

561. Branislav Marušić testified that he was not aware of the decision to isolate persons of Croat Nationality.<sup>1190</sup> Naser Sejdić testified that he did not know about the detention of Croats in Crkvina.<sup>1191</sup> Some Defence witnesses testified that they knew that people were taken to Crkvina.<sup>1192</sup>

(e) Zasavica<sup>1193</sup>

562. Witness M stated that the day after his escape, in late June 1992, military trucks took the families of all those who managed to escape to Zasavica. The truck went from house to house picking up women and children and elderly people of Bosnian Muslim and Bosnian Croat ethnicity, with only the clothes they had on.<sup>1194</sup> Serbian police officers drove the trucks. They were all armed and most of them were local Serbs from the municipality of Šamac.<sup>1195</sup>

563. Stevan Todorović testified how Bosnian Croats and Bosnian Muslims were sent to Zasavica, and occupied homes there.<sup>1196</sup> Witness K stated that she was detained in Zasavica in a private home from 7 September 1992 until 5 November 1992 when she was exchanged.<sup>1197</sup> Esad Dagović stated that over 90 percent of detainees in Zasavica were family members of persons who were detained elsewhere.<sup>1198</sup> Witness K testified that many were families of men detained at the SUP or TO in

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<sup>1187</sup> Miroslav Tadić, T. 15310-14.

<sup>1188</sup> Miroslav Tadić, T. 15314.

<sup>1189</sup> Simo Zarić, T. 19448-49.

<sup>1190</sup> Branislav Marušić, T. 18956.

<sup>1191</sup> Naser Sejdić, T. 17583.

<sup>1192</sup> Mladen Borbeli, T. 14723-24, T. 14743; Kosta Simić, T. 16958; Andrija Petrić, T. 17592-94; Vladimir Šarkanović, T. 16555; Radovan Antić, T. 16889.

<sup>1193</sup> Note that Zasavica is also spelt as Zasovica.

<sup>1194</sup> Witness M, T. 5076-79, T. 5089; See also Nusret Hadžijusufović, T. 6954-56; Safet Dagović, T. 7234-35; Osman Jašarević Rule 92*bis* Statement, para. 127-128; Ediba Bobić, T. 11272.

<sup>1195</sup> Witness M, T. 5078-79.

<sup>1196</sup> Stevan Todorović, T. 9285-89.

<sup>1197</sup> Witness K, T. 4699, T. 4701-07.

<sup>1198</sup> Esad Dagović, T. 3985-86.

Bosanski Šamac, or who had been exchanged.<sup>1199</sup> Jelena Kapetanović testified that she was detained in Zasavica from September 1992 until 5 November 1992 when she was exchanged.<sup>1200</sup> Witness K stated that men who had formerly been non-Serb members of the 4<sup>th</sup> Detachment, and refused to carry a rifle after hostilities began, were also detained in Zasavica.<sup>1201</sup>

564. Nusret Hadžijusufović testified that people did not go voluntarily to Zasavica and were not free to leave.<sup>1202</sup> Witness O stated that people were only allowed to leave Zasavica for work. They were guarded and there were checkpoints at both exits from the village.<sup>1203</sup> Witness K testified that they were told that the surrounding area was mined.<sup>1204</sup> Hajrija Drljačić stated that people could not leave Zasavica unless they wanted to be exchanged.<sup>1205</sup>

565. Some witnesses testified that people were taken to Zasavica to be “isolated,”<sup>1206</sup> and referred to being detained in a “concentration camp”.<sup>1207</sup> People were unable to leave the village without a permit, and police officers or troops would move along the road.<sup>1208</sup> Teodor Tutnjević testified that non-Serbs, Bosnian Croats and Muslims, were isolated or detained there. He stated that women, children, elderly, and entire households were put up in individual houses in Zasavica and they led a normal life there.<sup>1209</sup> Some witnesses referred to people being isolated, but said in essence they were free. Željko Volašević testified that he recalled the term “isolated” but he could not really interpret its true sense because many people left Zasavica, they would come to his aunt’s house for lunch in his father’s village, so they were free. He said Barjaktarević would come there practically every day, but he could not say in which period this was.<sup>1210</sup>

566. Witness O testified that his wife was required to stay in Zasavica until she was “expelled” at “Christmas” in 1993, and taken by bus to Dragalić.<sup>1211</sup>

567. Defence witnesses testified that Zasavica was not a prison and that people were held there for security reasons. Lazar Mirkić testified that part of the population of the Šamac municipality and a large number of Serbian refugees were “put up” in Zasavica for security reasons, because the

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<sup>1199</sup> Witness K, T. 4696-99.

<sup>1200</sup> Jelena Kapetanović, T. 10335-36.

<sup>1201</sup> Witness K, T. 4695-99.

<sup>1202</sup> Nusret Hadžijusufović, T. 6955-56.

<sup>1203</sup> Witness O, Rule 92*bis* Statement, para. 33.

<sup>1204</sup> Witness K, T. 4701.

<sup>1205</sup> Hajrija Drljačić, T. 8062-63.

<sup>1206</sup> Naser Sejdić, T. 17536; Džemal Jasenica, Rule 92*bis* Statement, para. 30; Božo Ninković, T. 13542-43.

<sup>1207</sup> Witness O, Rule 92*bis* Statement, para. 33.

<sup>1208</sup> Božo Ninković, T. 13542-43; Blagoje Simić, T. 12618.

<sup>1209</sup> Teodor Tutnjević, T. 17495-97.

<sup>1210</sup> Željko Volašević, T. 17762.

<sup>1211</sup> Witness O, Rule 92*bis* Statement, para. 26.

village had not been shelled by the enemy.<sup>1212</sup> Blagoje Simić testified that Zasavica was never a prison. It was not possible to turn such a large territory into a prison, and two policemen could not guard such a vast territory.<sup>1213</sup> Blagoje Simić testified that at that time, “they” got information that two civilian policemen were stationed at one entrance of Zasavica, in order to protect the operation of farms in that local commune, which continued operating even “in the state of war and imminent threat of war”, providing food for the army and civilian residents in Šamac. There was only one checkpoint in Zasavica, at an entry point. Zasavica had four to five entry or exit points and a large territory. In order to protect a village of that size, one would need at least 100 people.<sup>1214</sup> Velimir Maslić testified that Zasavica was never shelled and that some Muslim and Croat residents from Šamac were housed in Zasavica in the autumn of 1992. At the entrance to the village were police guards controlling the traffic in and out of the village.<sup>1215</sup>

(f) Brčko

568. Prosecution witnesses testified that they were transferred from detention in the TO to the JNA barracks in Brčko<sup>1216</sup> at the end of April 1992.<sup>1217</sup> Sulejman Tihić,<sup>1218</sup> Hasan Subašić,<sup>1219</sup> Witness N,<sup>1220</sup> Dragan Lukač,<sup>1221</sup> Muhamed Bičić,<sup>1222</sup> Hasan Bičić,<sup>1223</sup> Ibrahim Salkić,<sup>1224</sup> Dragan Delić,<sup>1225</sup> Osman Jašarević,<sup>1226</sup> and Witness A,<sup>1227</sup> all testified that they were transferred from the TO in Bosanski Šamac, to Brčko.

569. Prosecution witness Dragan Lukač testified how he was brought to Brčko with about 47 other people.<sup>1228</sup> Witness N described how the detainees were Bosnian Muslim and Bosnian Croat

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<sup>1212</sup> Lazar Mirkić, T. 18917-20.

<sup>1213</sup> Blagoje Simić, T. 12573, T. 12413-14.

<sup>1214</sup> Blagoje Simić, T. 12406-08.

<sup>1215</sup> Velimir Maslić, T. 14266-67.

<sup>1216</sup> Hasan Bičić, T. 2685, T. 2701, T. 2890.

<sup>1217</sup> Prosecution witnesses gave dates of their transfer to Brčko that varied from 28 April 1992 to 1 May 1992. Osman Jašarević testified that he was transferred from the TO to Brčko on the day “Dikan” was killed (Rule 92*bis* Statement, paras 85-86, 97).

<sup>1218</sup> Sulejman Tihić, T. 1376, T. 1450, T. 1478.

<sup>1219</sup> Hasan Subašić, T. 10953, T. 11167.

<sup>1220</sup> Witness N, T. 6074-75, T.6079-80.

<sup>1221</sup> Sulejman Tihić, T. 1376, T. 1450.

<sup>1222</sup> Muhamed Bičić, T. 2962-64, T. 2967.

<sup>1223</sup> Hasan Bičić, T. 2683-85, T. 2701.

<sup>1224</sup> Ibrahim Salkić, T. 3266, T. 3295-96.

<sup>1225</sup> Dragan Delić, T. 6682.

<sup>1226</sup> Osman Jašarević, Rule 92*bis* Statement, paras 85-86, 97.

<sup>1227</sup> Witness A, T. 10755, T. 10994, Rule 92*bis* Statement, paras 61-64.

<sup>1228</sup> Dragan Lukač, T. 1685, T. 1699-70; Ibrahim Salkić, T. 3293; Osman Jašarević, Rule 92*bis* Statement, para. 86.

civilians,<sup>1229</sup> with the exception of a few policemen. The policemen wore regular police uniforms.<sup>1230</sup>

570. Muhamed Bičić testified that detainees' names were called out at the TO and they were boarded onto JNA trucks.<sup>1231</sup> The trucks were escorted by APCs and the men were told not to try and run away.<sup>1232</sup>

571. Hasan Subašić stated that the detainees were guarded by JNA soldiers.<sup>1233</sup> There were about 10 prisoners held in the same cell as Hasan Bičić in Brčko.<sup>1234</sup>

572. Muhamed Bičić stated that the detainees stayed at the barracks in Brčko until the conflict broke out there on 2 May 1992.<sup>1235</sup> Witness N also referred to the bridge in Gunja being blown up in Brčko.<sup>1236</sup> Sulejman Tihić testified that detainees were then put on a bus and transferred to Bijeljina.<sup>1237</sup>

573. Defence witnesses testified how detainees were transferred from the TO in Bosanski Šamac to the JNA barracks in Brčko, following the killing of a detainee, "Dikan", on 26 April 1992 at the TO. The detainees were Bosnian Muslims and Croats.<sup>1238</sup> Simo Zarić testified that the transfer was conducted for humanitarian reasons. He was convinced that the non-Serbian population of the Municipality of Bosanski Šamac was being treated improperly and on that basis transferred them.<sup>1239</sup> Other Defence witnesses also testified that detainees were transferred because of humanitarian<sup>1240</sup> and safety reasons.<sup>1241</sup>

574. Simo Zarić testified that he contacted Lt. Col. Stevan Nikolić and asked him to do whatever was possible to help the detainees out of the "inferno". He stated that a man had been killed for no reason and that he had information that people were exposed to all sorts of torture and maltreatment. In addition, the building they were in was not secure. Lt. Col. Stevan Nikolić then contacted Captain Petrović, who was previously a security officer in the 17<sup>th</sup> Tactical Group and in the garrison of Brčko, and they agreed to transfer the people to the JNA barracks in Brčko. Lt. Col. Stevan Nikolić then advised Simo Zarić of this. They carried this out on 26 April 1992 after

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<sup>1229</sup> Witness N, T. 6081-82.

<sup>1230</sup> Hasan Bičić, T. 2690.

<sup>1231</sup> Muhamed Bičić, T. 2964; Witness N, T. 6072-81; Dragan Delić, T. 6682; Hasan Subašić, T. 1166-67.

<sup>1232</sup> Muhamed Bičić, T. 2965.

<sup>1233</sup> Hasan Subašić, T. 10956-57.

<sup>1234</sup> Hasan Bičić, T. 2687.

<sup>1235</sup> Muhamed Bičić, T. 2967.

<sup>1236</sup> Witness N, T. 6092-94.

<sup>1237</sup> Sulejman Tihić, T. 3713-14; Hasan Subašić, T. 10957-58.

<sup>1238</sup> Maksim Simeunović, T. 16015-16, T. 16023.

<sup>1239</sup> Simo Zarić, T. 19989-90.

<sup>1240</sup> Stevan Nikolić, T. 18465; Mihajlo Topolovac, T. 18279-81; Fadil Topčagić, T. 18406.

loading the detainees onto trucks with the assistance of Makso Simeunović, Savo Čančarević and Mihajlo Topolovac.<sup>1242</sup> Simo Zarić testified that he insisted for the transfer of detainees to be conducted immediately, as he knew that Lugar had gone out for a coffee.<sup>1243</sup> After the detainees had left the TO, Simo Zarić left immediately, fearing that Stevan Todorović, with the police and the “multicoloureds” would return.<sup>1244</sup>

575. Mihajlo Topolovac testified that he received a list of detainees from Savo Čančarević. He took the list and along with Simo Zarić, they went to the TO. There were around 50 detainees on the list that they called out and they were boarded on the truck to take to Brčko.<sup>1245</sup> Simo Zarić testified that the list was compiled by the Public Security Station Commander, Savo Čančarević, and Mihajlo Topolovac.<sup>1246</sup> Detainees transferred to Brčko included Osman Jasarević,<sup>1247</sup> Dr. Ante, Dr. Keljagic, Franjo Barukcic, Dragan Lukač, Sulejman Tihić,<sup>1248</sup> and Grga Zubak.<sup>1249</sup>

(g) Bijeljina

576. Prosecution witnesses testified how Bosnian Croats and Bosnian Muslims were transferred from detention in Brčko to the JNA barracks in Bijeljina on 1 or 2 May 1992, following the outbreak of war in Brčko.<sup>1250</sup> Sulejman Tihić,<sup>1251</sup> Dragan Lukač,<sup>1252</sup> Hasan Bičić,<sup>1253</sup> Muhamed Bičić,<sup>1254</sup> Ibrahim Salkić,<sup>1255</sup> Witness N,<sup>1256</sup> Dragan Delić,<sup>1257</sup> Osman Jašarević,<sup>1258</sup> all testified that they were transferred from Brčko and detained in Bijeljina. Hasan Subasić<sup>1259</sup> and Kemal Mehinović<sup>1260</sup> testified that they were taken from Batković to Bijeljina for court proceedings.

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<sup>1241</sup> Teodor Tutnjević, T. 17420-21.

<sup>1242</sup> Simo Zarić, T. 19390-92.

<sup>1243</sup> Simo Zarić, T. 19337.

<sup>1244</sup> Simo Zarić, T. 19390.

<sup>1245</sup> Mihajlo Topolovac, T. 18280-82.

<sup>1246</sup> Simo Zarić, T. 19992.

<sup>1247</sup> Fadil Topčagić, T. 18346.

<sup>1248</sup> Simo Zarić testified that Dr. Ante, Dr. Keljagic, Franjo Barukčić, Dragan Lukač and Sulejman Tihić were taken to the Brčko barracks (T. 19994).

<sup>1249</sup> Simo Zarić, T. 19395.

<sup>1250</sup> Dragan Lukač, T. 1706; Osman Jašarević, Rule 92bis Statement, para. 97.

<sup>1251</sup> Sulejman Tihić, T. 1376, T. 1451, T. 1480.

<sup>1252</sup> Dragan Lukač, T. 1706, T. 1708-13.

<sup>1253</sup> Hasan Bičić, T. 2701-03, T. 2705-06.

<sup>1254</sup> Muhamed Bičić, T. 2972-73, T. 2977.

<sup>1255</sup> Ibrahim Salkić, T. 3313, T. 3316, T. 3320-21, T. 3394-95.

<sup>1256</sup> Witness N, T. 6092-96, T. 6098.

<sup>1257</sup> Dragan Delić, T. 6682, T. 6685, T. 6689.

<sup>1258</sup> Osman Jašarević, Rule 92bis Statement, paras 97-100, 110.

<sup>1259</sup> Hasan Subašić, T. 11026-27.

<sup>1260</sup> Kemal Mehinović, T. 7555-56, T. 7472.



577. The detainees were transferred from Brčko in a bus with military police, and escorted by two military vehicles with anti-aircraft machine guns.<sup>1261</sup> The barracks in Bijeljina were guarded by military officers, including reserve forces and officers. There were no “specials” there.<sup>1262</sup>

578. Those detainees who were not transferred by helicopter to Batajnica<sup>1263</sup> remained in Bijeljina for approximately two weeks before being transferred again. Muhamed Bičić testified that the detainees stayed in the sports hall in Bijeljina until 13 May 1992. On 13 May 1992, the same policemen who had guarded the detainees in Brčko arrived in Bijeljina with a bus and took them towards Brčko to Bosanski Šamac.<sup>1264</sup> Osman Jašarević,<sup>1265</sup> Hasan Bičić,<sup>1266</sup> Muhamed Bičić,<sup>1267</sup> Ibrahim Salkić,<sup>1268</sup> and Dragan Delić,<sup>1269</sup> were then taken back to the secondary school gym in Bosanski Šamac.<sup>1270</sup> Witness N testified that he was transferred back to the primary school in Bosanski Šamac.<sup>1271</sup>

579. Hasan Subasić testified that after his trial at the military court in Bijeljina was concluded and he had been sentenced, he was taken back to Batković.<sup>1272</sup> Kemal Mehinović testified that after being detained in the correctional centre in Bijeljina for a month or more, during the course of court proceedings there, he was taken back to Batković.<sup>1273</sup>

## 2. Trials before Military Courts

### (a) Ibrahim Salkić

580. Ibrahim Salkić testified that he was tried in the Military Court in Bijeljina in approximately April 1993.<sup>1274</sup> He was told by the Judge, who had been a friend of his before, not to worry, and that “the more you get, the sooner you’ll leave, because they will ask for one of their own in exchange for you”.<sup>1275</sup> During the trial he was confronted with the statement he had written in the

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<sup>1261</sup> Dragan Lukać, T. 1707; Osman Jašarević, Rule 92bis Statement, para. 99.

<sup>1262</sup> Sulejman Tihić, T. 1480.

<sup>1263</sup> Stevan Todorović, T. 10036; Osman Jašarević, Rule 92bis Statement, para. 106; Dragan Delić, T. 6688; Sulejman Tihić, T. 1376, T. 1481; Witness A, Rule 92bis Statement, para. 66; Dragan Delić, T. 6689; Witness N, T. 6096, T. 6101.

<sup>1264</sup> Muhamed Bičić, T. 2975; Witness N, T. 6102-03.

<sup>1265</sup> Osman Jašarević, Rule 92bis Statement, paras 97-100, 110.

<sup>1266</sup> Hasan Bičić, T. 2711.

<sup>1267</sup> Muhamed Bičić, T. 2978-81.

<sup>1268</sup> Ibrahim Salkić, T. 3316, T. 3320-21.

<sup>1269</sup> Dragan Delić, T. 6682, T. 6685, T. 6689.

<sup>1270</sup> Osman Jašarević, Rule 92bis Statement, para. 110.

<sup>1271</sup> Witness N, T. 6098.

<sup>1272</sup> Hasan Subašić, T. 11026-27.

<sup>1273</sup> Kemal Mehinović, T. 7556, T. 7472.

<sup>1274</sup> T. 3394.

<sup>1275</sup> Ibrahim Salkić, T. 3395.

TO during his first week of detention.<sup>1276</sup> The charges brought against him by the Court were insurrection, rebellion against the system and the authorities. The Indictment charges and counts were read out to him.<sup>1277</sup> He learned later from others who were sentenced, that he was sentenced to death, which was commuted to 20 years' imprisonment, and that he was also forbidden to go to Republika Srpska for the duration of his life.<sup>1278</sup> After the trial he was taken back to Batković.<sup>1279</sup>

(b) Witness L

581. Witness L testified that court proceedings were initiated against him in early 1993, in a Military Court in Bijeljina.<sup>1280</sup> He had given a statement to the investigating judge at the SUP during the first seven days of his detention.<sup>1281</sup> An Indictment was then prepared by Serb soldiers.<sup>1282</sup> He was told at the Military Court in Bijeljina that he had committed armed insurrection in Bosanski Šamac on 16 and 17 April 1992.<sup>1283</sup> He was told that the charges related to the gun that he was given at the TO on 16 April 1992,<sup>1284</sup> and the enemy army with which he had fought in was the army of the TO of Bosanski Šamac.<sup>1285</sup> He explained to the court that he did not know if a state of war had been proclaimed in the territory of Republika Srpska, and that he did not know there was a Republika Srpska, nor that Bosanski Šamac was a part of it.<sup>1286</sup> He also explained to the court how he received a rifle on 16 April 1992, held on to it for 16 hours, and then returned it to a Serbian soldier.<sup>1287</sup> He was shown an Indictment in court, but this was not Exhibit P41, which he had never seen before.<sup>1288</sup> The Indictment was read out to him as if he were guilty of the charges.<sup>1289</sup>

582. While at the hangar, he had neither the opportunity nor the facilities to conduct his defence. He had a lawyer assigned to him, but the lawyer did not support him. There was no prior

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<sup>1276</sup> Ibrahim Salkić, T. 3395.

<sup>1277</sup> Ibrahim Salkić, T. 3397.

<sup>1278</sup> Ibrahim Salkić, T. 3398.

<sup>1279</sup> Ibrahim Salkić was shown Exhibit D8/2 called "Anti-sabotage section". He said that he saw this document for the first time in the SUP (T. 3470). He was shown Exhibit D9/2, concerning a certificate by which he and Fuad Jasenica were authorised to communicate with the organs in Croatia in order to procure equipment. He said that he had never seen this document before and was not involved in the process of bringing weapons from Croatia (T. 3474-75, T. 3478-79).

<sup>1280</sup> Witness L, T. 4346-47.

<sup>1281</sup> Witness L, T. 4447.

<sup>1282</sup> Witness L, T. 4346-47.

<sup>1283</sup> Witness L, T. 4515-17, T. 4533. Exhibit D16/3, Judgement of the Military Supreme Court of Republika Srpska, 31 May 1993, outlines that Witness L was accused of the crime of armed rebellion in Article 124, paragraph 1 of the Criminal Code of the former SFRY.

<sup>1284</sup> Witness L, T. 4346-47.

<sup>1285</sup> Witness L, T. 4522-23.

<sup>1286</sup> Witness L, T. 4527, T. 4528.

<sup>1287</sup> Witness L, T. 4347.

<sup>1288</sup> Indictment Republika Srpska, Military Prosecutor's Office, attached to the Command of the Bosnian Corps Bijeljina No. 109/02, 14 January 1993, (T. 4515-16).

<sup>1289</sup> Witness L, T. 4533-35.

consultation with the defence or any papers.<sup>1290</sup> The judgement was read to him in court, and he was told that the decision, once typed out, would be delivered to him at the hangar.<sup>1291</sup> He was sentenced to three and a half years imprisonment for “aggression against Serbian people and Serbian territory”, in February or March 1993,<sup>1292</sup> after six or seven months of detention.<sup>1293</sup> He also did not have the time or possibility to appeal the remand order within the 24 hour period with which to do so as stated in D15/3.<sup>1294</sup> Without his knowledge, the appeal was sent and the decision delivered to him later, at the hangar.<sup>1295</sup> The guards told him that since the army was holding many Serbs, it was a mere formality so that he and others could be exchanged for Serbs.<sup>1296</sup>

(c) Kemal Mehinović

583. Kemal Mehinović testified that he was given no intimation of the trial until his name was called out and a military police officer came to take him to the trial in approximately January 1993.<sup>1297</sup> He was taken to a private house in Bijeljina, where the military court was located.<sup>1298</sup> He was not served with a charge sheet, or Indictment, nor was he given any information regarding the reason for summoning him. He was not advised regarding what would happen to him.<sup>1299</sup> He did not meet with a lawyer prior to attending court, and he was not told he would be assigned a lawyer.<sup>1300</sup> The judge asked him if he knew the reason why he was taken to the courtroom. When he said no, the judge responded, “Well, you will”. That is the only conversation he had with the judge.<sup>1301</sup> The judge did not ask him to make a statement, nor to answer any charges. He was also not asked to sign any documents.<sup>1302</sup>

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<sup>1290</sup> Witness L, T. 4501, T. 4503, T. 4347, T. 4518, T. 4523; D17/3, Republika Srpska, Supreme Military Court number 37/93, Han Pijesak dated 31<sup>st</sup> May, 1993 (Sentence). The document contains reference to Ziko Krunic as military defence counsel. However, Witness L was not familiar with the name (T. 4475).

<sup>1291</sup> Witness L, T. 4506; Exhibit D16/3, Judgement of Supreme Military Court of Republika Srpska, 31 May 1993, T. 4467-70.

<sup>1292</sup> Witness L, T. 4346-47, Exhibit D17/3, Sentencing Judgement of Supreme Military Court of Republika Srpska.

<sup>1293</sup> Witness L, T. 4447.

<sup>1294</sup> Witness L, T. 4523, T. 4508-09.

<sup>1295</sup> Witness L, T. 4515-16.

<sup>1296</sup> Witness L, T. 4485-86.

<sup>1297</sup> Kemal Mehinović, T. 7467, T. 7476.

<sup>1298</sup> Kemal Mehinović, T. 7467-68.

<sup>1299</sup> Kemal Mehinović, T. 7468, T. 7470-71.

<sup>1300</sup> Kemal Mehinović, T. 7468. Kemal Mehinović was shown D39/3, Decision on the appointment of Defence Counsel, dated 9 January 1993, which notifies the assignment of Ziko Krunic as defence counsel. Kemal Mehinović had not seen the document before (T. 7554-55).

<sup>1301</sup> Kemal Mehinović, T. 7470.

<sup>1302</sup> Kemal Mehinović, T. 7470-71; Exhibit P55 -A document dated 19 January 1993, which purports to be a record of hearing in the courthouse in Bijeljina. Kemal Mehinović recognised the signature at the bottom of each page of the document as his. He did not give a statement to the judge at the courthouse in Bijeljina. The judge did not make any notes. He does not remember signing a statement but he might have been so afraid that he signed it without remembering (T. 7555-56). He was also shown Exhibit P56, dated 27 March 1993, which purports to be a receipt of documents in the proceedings. Kemal Mehinović stated that he did not sign this receipt and does not remember receiving this while in Batković (T. 7496-98; T. 7555-56).

584. After the proceedings, he was taken to the correctional centre in Bijeljina. He was detained at the correctional centre for about a month or more, although he is not sure about the duration.<sup>1303</sup> Thereafter, he was transferred back to Batković. The transfer was possibly in February 1993.<sup>1304</sup>

585. He received the court decision declaring him guilty, while in detention.<sup>1305</sup> He was not advised that he had a right to appeal.<sup>1306</sup> The statement records that he waived his right to appeal, which Kemal Mehinović disputed, as the crime carried the death penalty and he would not have agreed to waive this right.<sup>1307</sup>

586. He was shown Exhibit P57, dated 22 March 2000, which is a decision terminating the criminal proceedings against him for the crime of armed insurgency. He had not been advised that criminal proceedings had been terminated against him and the first time he learnt of the decision was in The Hague.<sup>1308</sup>

(d) Hasan Subašić

587. Hasan Subašić testified that he was brought to the Military Court in Bijeljina in the summer of 1993. He gave a statement to an investigating judge in an office. He was asked about weapons, whether he had killed anybody, and if he had ever been a SDA member. After answering these questions, he was taken back to Batković. A few days later, some military policemen came with his statement. This statement was totally different from the one he had given and the facts had been changed.<sup>1309</sup> The criminal offence was armed insurrection or armed rebellion.<sup>1310</sup> He was read the judgement at the court in Bijeljina.<sup>1311</sup>

588. A few days later, he was taken back to Bijeljina for sentencing. He had a lawyer but he did not do anything to help him. He was not able to meet his lawyer prior to the trial. His lawyer never advised him concerning the legal issues involved.<sup>1312</sup> He was convicted of armed rebellion in the territory of the SFRY, and sentenced to 12 years imprisonment. After sentencing, he was taken back to Batković. He could not call any witness to testify on his behalf.<sup>1313</sup> He did not appeal this

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<sup>1303</sup> Kemal Mehinović, T. 7471-72.

<sup>1304</sup> Kemal Mehinović, T. 7472; T. 7557-7563.

<sup>1305</sup> Kemal Mehinović, T. 7541.

<sup>1306</sup> Kemal Mehinović, T. 7489-91.

<sup>1307</sup> Kemal Mehinović, T. 7489-91.

<sup>1308</sup> Kemal Mehinović, T. 7496-98.

<sup>1309</sup> Hasan Subasić, T. 11026-27.

<sup>1310</sup> Hasan Subasić, T. 11133.

<sup>1311</sup> Hasan Subasić, T. 11143.

<sup>1312</sup> Hasan Subasić, T. 11026-27.

<sup>1313</sup> Hasan Subasić, T. 11026-27.

sentence as he believed his life was in danger.<sup>1314</sup> He was exchanged in June 1994, in Satorović, BiH, and went to Slavonia.

(e) Witness M

589. Witness M testified that he was placed on trial in June 1993 when he was held at the Batković camp.<sup>1315</sup> He was sentenced in June 1993 by the military court in Bijeljina to 12 years imprisonment. Allegedly, he had wounded Stevo Arandjić. He did not see Stevo Arandjić at all until the trial took place in Bijeljina.<sup>1316</sup> He served his sentence in the Batković camp until June 1994, when he was exchanged.<sup>1317</sup>

(f) Witness P

590. Witness P testified that he was tried in Batajnica, Serbia. He was asked some questions and “some kind” of Indictment was presented. He did not have any counsel during the hearing and no witnesses were presented. He was informed that he was charged with organising a rebellion in Posavina, raping several Serbian women, slaughtering a Serb child and being a manufacturer of weapons. He thought the Indictment came from Stevan Todorović. He was not convicted or sentenced, and no record was made of the hearing.<sup>1318</sup>

(g) Nusret Hadžijusufović

591. Nusret Hadžijusufović testified that he was convicted and sentenced to one year of imprisonment for violation of the borders of Republika Srpska. He was never notified of any charges being brought against him, nor was he served with a complaint or advised of his rights. He never appeared at any hearing or trial, was not provided with legal counsel, and did not receive official notice of any court judgment or sentence.<sup>1319</sup>

(h) Izet Izetbegović

592. Izet Izetbegović testified that he was detained and interrogated in Batajnica. He was handcuffed and blindfolded, and taken to a room. These restraints were then removed and he was interviewed by two or three people on three occasions. He was told that he was charged with having overthrown and taken part in the breakdown of the Yugoslav system. He was informed of

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<sup>1314</sup> Hasan Subasić, T. 11136.

<sup>1315</sup> Witness M, T. 5341.

<sup>1316</sup> Witness M, T. 5378, T. 5341.

<sup>1317</sup> Exhibit D24/3, Judgement rendered by the Military Court in Bijeljina, was shown to the witness, (T. 5341).

<sup>1318</sup> Witness P, T. 11597-601, T. 11615-17.

<sup>1319</sup> Nusret Hadžijusufović, T. 7147-48.

these charges in Bosanski Šamac by Vladimir Šarkanović, who was interviewing him.<sup>1320</sup> Nine prisoners from Bosanski Šamac were then lined up and Sulejman Tihić was told to read out the sentence. The death sentence was pronounced on “us two”.<sup>1321</sup> He said that this was not real sentencing, but a means of intimidation.<sup>1322</sup> He testified that he was not provided access to a lawyer, nor was he given any facilities to defend himself.<sup>1323</sup>

(i) Izet Ramusović

593. Defence witness Stevan Arandjić testified that in 1993, the military court in Bijeljina started proceedings against Izet Ramusović. The defendant was defended by a Major, as appointed Counsel, who took advantage of all legal provisions available to him in order to defend his client. At the time he did not know what the final outcome of the trial was, but heard about it later in the media, when it was announced that Izet Ramusović had been exchanged.<sup>1324</sup>

3. Responsibility for detention

594. Blagoje Simić testified that a few days after 17 April 1992 he talked with Simo Zarić and Sulejman Tihić by telephone about the release of Sulejman Tihić from detention. He told Simo Zarić that that was the responsibility of the Ministry of Interior. Blagoje Simić said that it was not within his terms of reference either to arrest him or to set him free.<sup>1325</sup>

595. Defence witness Mirko Lukić testified that civilians detained by the SUP would be released by the same body, and military persons were detained and released by military authorities.<sup>1326</sup>

596. Defence witnesses testified how the police were on guard duty for detainees in the detention facilities in Bosanski Šamac. Naser Sejdić spent some time on guard duty at the gym in the elementary school. A schedule was made by the assistant commander for providing security for the school, the waterworks, or any other facility. Milan Jekić was the person who said they would go to perform guard duties. He testified that the police controlled the schools, and the detention facilities, and provided security for the detention facilities.<sup>1327</sup>

597. Teodor Tutnjević testified that the TO and SUP were guarded by the police. The Chief of Police was Stevan Todorović, and the Commander of Police was Milan Jekić, from Batkuša. For a

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<sup>1320</sup> Izet Izetbegović, T. 2371-73.

<sup>1321</sup> Izet Izetbegović, T. 2374.

<sup>1322</sup> Izet Izetbegović, T. 2529.

<sup>1323</sup> Izet Izetbegović, T. 2375.

<sup>1324</sup> Stevan Arandjić, Deposition T. 174-176.

<sup>1325</sup> Blagoje Simić, T. 12438-39.

<sup>1326</sup> Mirko Lukić, T. 12939.

<sup>1327</sup> Naser Sejdić, T. 17569, T. 17570.

while the Commander of Police was Savo Čancarević. Detainees were under the jurisdiction of the police.<sup>1328</sup>

598. Savo Djurdjević testified that Stevan Todorović decided who would be detained or released. He stated that the police officers were responsible for guarding the people held in detention.<sup>1329</sup> Mihajlo Topolovac testified that Stevan Todorović was in charge of the SUP. He was the person who governed the access to the station. Stevan Todorović gave orders in relation to arrests and imprisonment.<sup>1330</sup> Mirko Pavić testified that as far as he knew, the warrants for bringing in these persons were issued by the Chief of Police who decided who was going to stay, and who would be let go.<sup>1331</sup>

599. Džemal Jasenica testified that he knew that the Serbian police of Bosanski Šamac municipality and members of the Šareni, in camouflage uniforms arrested Muslims and Croats and “locked them up” in the SUP, the TO, the primary school and sports hall of the secondary school.<sup>1332</sup>

600. Prosecution witness Jelena Kapetanović testified that the transfer of civilians to the stadium in Crkvina in early May 1992 was organised by the “military”.<sup>1333</sup>

601. Commander Antić testified that the 4<sup>th</sup> Detachment did not have any orders to interfere with the series of arrests, detention, and ethnic takeover, but it was shaken by those events.<sup>1334</sup>

602. Defence witness Naser Sejdić testified that the paramilitaries were present at the school detention facilities, but they did not assist to guard detainees.<sup>1335</sup>

603. Defence witness Commander Antić testified that Serb paramilitaries conducted arrests and detentions of non-Serbs.<sup>1336</sup>

604. Defence witness Vladimir Šarkanović testified that the detention centres could only have been established by the Serb authorities in conjunction with Stevan Todorović.<sup>1337</sup> He testified that although he did not know whether the Serb authorities knew about the beatings, torture and brutal treatment of the detainees, they allowed the establishment of detention centres that housed hundreds

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<sup>1328</sup> Teodor Tutnjević, T. 17510.

<sup>1329</sup> Savo Đurđević, T. 17621-23.

<sup>1330</sup> Mihajlo Topolovac, T. 18300-02.

<sup>1331</sup> Mirko Pavić, Rule 92*bis* Statement, para. 15.

<sup>1332</sup> Džemal Jasenica, Rule 92*bis* Statement, para. 27.

<sup>1333</sup> Jelena Kapetanović, T. 8935-36, T. 8940-41.

<sup>1334</sup> Radovan Antić, T. 16869.

<sup>1335</sup> Naser Sejdić, T. 17569.

<sup>1336</sup> Radovan Antić, T. 16869.

<sup>1337</sup> Vladimir Šarkanović, T. 16592.

of non-Serbs, including Bosnian Muslim and Bosnian Croat women and children. They allowed them to be rounded up and detained at different times.<sup>1338</sup> He testified that the “new system” also tolerated or permitted those who had been arrested to be detained in horrific conditions in a number of detention centres.<sup>1339</sup>

605. Defence witness Commander Antić testified that the Serb paramilitaries and the Serb municipal government conducted the arrest and detention of non-Serbs.<sup>1340</sup>

#### 4. Evidence on role of accused

##### (a) Blagoje Simić

606. Prosecution witness Sulejman Tihić testified that Blagoje Simić ordered his arrest.<sup>1341</sup> Blagoje Simić gave evidence that it was not within his jurisdiction or terms of reference to arrest or release Sulejman Tihić, when approached by Simo Zarić about his release. He said it was within the jurisdiction of the Ministry of Interior.<sup>1342</sup> Dragan Lukač testified that he asked Dragan Stefanović about who gave the order to arrest him, to which he replied that it was done on the orders of the Crisis Staff. When he asked him who was heading the Crisis Staff, he responded that this was Blagoje Simić.<sup>1343</sup> Blagoje Simić testified that he did not order the arrest of Dragan Lukač in Crkvina on 17 April 1992.<sup>1344</sup>

607. Simo Zarić testified that Lt. Col. Stevan Nikolić called Stevan Todorović and Blagoje Simić in relation to the detention of 4<sup>th</sup> Detachment members in the SUP. Lt. Col. Stevan Nikolić told Simo Zarić that Blagoje Simić had told him he was surprised that there were 4<sup>th</sup> Detachment members imprisoned at the SUP and that he had nothing against something being done to release these people. Blagoje Simić also told Lt. Col. Stevan Nikolić that the subject was within the jurisdiction of Stevan Todorović, as chief of the public security station.<sup>1345</sup>

608. Blagoje Simić testified that he was not aware of any arrests except where Stevan Todorović informed the Crisis Staff and War Presidency.<sup>1346</sup> Savo Djurdjević testified that he did not know if the Crisis Staff ordered the arrest of people.<sup>1347</sup>

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<sup>1338</sup> Vladimir Šarkanović, T. 16592-93.

<sup>1339</sup> Vladimir Šarkanović, T. 16586. He stated that what he meant by the term “new system”, was Stevan Todorović and the paramilitaries as authoritative figures (T. 16660).

<sup>1340</sup> Radovan Antić, T. 16869.

<sup>1341</sup> Sulejman Tihić, T. 1372.

<sup>1342</sup> Blagoje Simić, T. 12437-40.

<sup>1343</sup> Dragan Lukač, T. 1661-62.

<sup>1344</sup> Blagoje Simić, T. 12442.

<sup>1345</sup> Simo Zarić, T. 19773-74.

<sup>1346</sup> Blagoje Simić, T. 12418-19, T. 12570-71.



609. Blagoje Simić testified that in April-July 1992, the Crisis Staff was the co-ordinating body in Bosanski Šamac. The Crisis Staff came to the conclusion that the Ministry of Interior in Šamac was performing poorly. The Crisis Staff did not want prisoners in Šamac and they reacted. They talked to high officials of the Ministry of Interior, and one of them recommended that Stevan Todorović should resign. They called the chief of Stevan Todorović, Andrija Bilosević, to the offices of the War Presidency in Bosanski Šamac, and presented their opinion that the Ministry of Interior did not carry out its duties and that Stevan Todorović was not worthy of his job. They asked Andrija Bilosević to exercise some control over his own services in Bosanski Šamac. Andrija Bilosević was very angry and left the premises demonstratively. He turned to his branch of the Ministry of Interior in Šamac. After a few days he took all the prisoners from Šamac to Batković. They were under the control of military there and it was possible for them to be tried by a military court. He also established a Commission, as the Ministry of Interior had its own inspectors, that came to Šamac to control the work of Stevan Todorović and the Ministry of Interior.<sup>1348</sup>

610. Blagoje Simić testified that the Crisis Staff put forth a request to the Ministry of Interior to have judges demobilised. The Crisis Staff appointed a co-ordinator for creating conditions for establishing civilian courts. They also helped the military courts so that the military authority would function properly. They managed to demobilise four judges and to establish a court. There were decisions of the People's Assembly establishing a civilian court in Šamac and a prosecutor's office in Šamac. Three judges from Bosanski Šamac went to Bijeljina.<sup>1349</sup>

611. Blagoje Simić gave evidence that during the period from 17 April 1992 and the following months, he never entered the TO, SUP, elementary or high schools.<sup>1350</sup> Defence witnesses testified that they did not see Blagoje Simić at these facilities.<sup>1351</sup> Prosecution witnesses testified that Blagoje Simić witnessed the physical conditions of some of the detention facilities.<sup>1352</sup> Hasan Subašić testified that he saw him in the yard of the TO building wearing a camouflage uniform.<sup>1353</sup> Muhamed Bičić stated that he saw him visiting the secondary school, and heard him say "there's enough room here," and then left.<sup>1354</sup> He also saw him at the primary school in Bosanski Šamac. Muhamed Bičić testified that on one occasion, Blagoje Simić appeared at the entrance to the secondary school gym, then stepped inside, followed by Stevan Todorović. Blagoje Simić looked around and did not stay long. From this position, however, he could see each prisoner individually,

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<sup>1347</sup> Savo Đurđević, T. 17656.

<sup>1348</sup> Blagoje Simić, T. 12581-82.

<sup>1349</sup> Blagoje Simić, T. 12584-85

<sup>1350</sup> Blagoje Simić, T. 12569.

<sup>1351</sup> Ozren Stanimirović, T. 13935-36; Vladimir Šarkanović, T. 16568; Mihajlo Topolovac, T. 18293; Naser Sejdić, T. 17565; Teodor Tutnjević, T. 17467.

<sup>1352</sup> Stevan Todorović, T. 9518-19.

<sup>1353</sup> Hasan Subašić, T. 10927, T. 11014, T. 11053-54.

what they looked like, what they were wearing, and what state they were in.<sup>1355</sup> Ibrahim Salkić testified that he saw Blagoje Simić at the secondary school gym. He did not come into the gym hall, but was standing in the doorway. Ibrahim Salkić heard Blagoje Simić address Stevan Todorović, saying: “there is a lot of space still here.”<sup>1356</sup>

612. Blagoje Simić testified that he had no information that people from other places in Bosanski Šamac were relocated in Zasavica. As far as he knew, Stevan Todorović transferred some of the civilian population from Šamac to Zasavica, as members of those families had swum across the River Sava and divulged information about the shelling of the town of Šamac. Zasavica was not mentioned as a camp at that time.<sup>1357</sup> He did not know that anyone was ever arrested or that there was a prison there.<sup>1358</sup> He testified that he was informed of Zasavica towards the end of the year, when he came back from sick leave.<sup>1359</sup>

(b) Miroslav Tadić

613. Miroslav Tadić testified that he learnt about arrests in the town in various ways. He learnt from well or ill-intentioned citizens and from people in the Civilian Protection Staff. He sometimes tried to discuss the issue with Stevan Todorović but Stevan Todorović always answered it is not your job.<sup>1360</sup> Defence witnesses testified that they did not see Miroslav Tadić enter the places of detention, although he was sometimes seen in the yard of the facilities when conducting

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<sup>1354</sup> Muhamed Bičić, T. 2980.

<sup>1355</sup> Hasan Bičić, T. 2715-16.

<sup>1356</sup> Ibrahim Salkić, T. 3325-26.

<sup>1357</sup> Blagoje Simić, T. 12413-18.

<sup>1358</sup> Blagoje Simić, T. 12548.

<sup>1359</sup> Blagoje Simić, T. 12574, T. 12556-58, Exhibit P141, pages 40, 41, 43.

<sup>1360</sup> Miroslav Tadić, T. 15270-71.

exchanges.<sup>1361</sup> Prosecution witnesses stated that they saw Miroslav Tadić at the SUP,<sup>1362</sup> TO,<sup>1363</sup> and primary school<sup>1364</sup> in Bosanski Šamac.

614. Miroslav Tadić testified that he could not say if the Crisis Staff as a body was informed of the arrests.<sup>1365</sup> He was quite sure that the Crisis Staff never said that a person had to be arrested or released. There may have been sporadic interventions of the Crisis Staff to have detainees released, but no orders were made to arrest anyone.<sup>1366</sup>

615. Miroslav Tadić testified that he never ordered the arrest of anyone. He was never asked to give approval for an arrest, nor was he in a position to give such approval. As a human being, he would never concede to doing such things.<sup>1367</sup>

(c) Simo Zarić

616. Prosecution witnesses testified that Simo Zarić was engaged in planning and ordering their arrests. Osman Jasarević stated that the charges made against many people who were arrested were often made by Simo Zarić.<sup>1368</sup> Kemal Bobić stated that on 23 May 1992 he was visited by Naser Sejdić, accompanied by two other men, and told that Simo Zarić had ordered him to go to the SUP

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<sup>1361</sup> Dario Radić, T. 15102-03; Naser Sejdić, T. 17566; Mihajlo Topolovac, T. 18293.

<sup>1362</sup> Witness E testified that he saw Miroslav Tadić in front of the SUP building during his period of detention (T. 7714). Witness A stated that he saw Miroslav Tadić twice in the solitary confinement cell in the SUP building (T. 10761-62).

<sup>1363</sup> Miroslav Tadić visited the TO building when he was conducting exchanges and collecting people. Kemal Mehinović testified how Miroslav Tadić would come to the yard of the TO, but that he did not enter any cells. He would call out the names of people to be exchanged. In the four months he was detained at the TO, he saw Miroslav Tadić once (T. 7450-51). Sulejman Tihic stated that Miroslav Tadić entered the TO with someone else, "either a member of the special forces or someone." He shook hands with some of the detainees who were then taken out by men in camouflage uniforms and beaten. Sulejman Tihic saw the handshaking as "a sign" that Miroslav Tadić was giving to the people "who administered the beatings." (T. 3651-52). Miroslav Tadić came in either the first or second day, before Sulejman Tihic was transferred to the SUP (T. 3889). Kemal Mehinović claimed that he saw Miroslav Tadić in the yard of the TO in May 1992, when the exchange of Croats took place. This was after he was transferred from the SUP to the TO (T. 7526). Witness C claimed he saw Miroslav Tadić at the TO two or three times. Miroslav Tadić came to the TO when exchanges were to be carried out, to read the list of people to be exchanged. He carried the list of people to be exchanged and was in uniform (T. 7929-30). Witness Q remembered that Miroslav Tadić was waiting in a car outside the TO in relation to the exchanges. Witness Q said that Miroslav Tadić treated him in a humane way, which is why he greeted him sincerely on the first day of his testimony (T. 11745-46).

<sup>1364</sup> Hasan Subašić testified that he saw Miroslav Tadić at the primary school. Every time when there was an exchange he would be there. He came escorted by the local Red Cross from Bosanski Šamac. They wore bands with red crosses on their arms. He would read out the list of prisoners that were to be exchanged. The first time he came he claimed to be in charge of the exchanges. He called the prisoners Ustashas and Balijas (T. 10974-75). When Miroslav Tadić visited the primary school, the prisoners were beaten up and dirty. They had blood on their faces and clothes and had lost weight. Miroslav Tadić and the staff of the local Red Cross never inquired about the local conditions there (T. 10975-76). Miroslav Tadić paid several visits to the primary school (T. 11013). In his 1998 interview, Hasan Subašić stated that Miroslav Tadić visited the primary school in June 1992 (T. 11014). Hasan Subašić testified that Miroslav Tadić visited the primary school in Bosanski Šamac between mid-May until mid-August in 1992. Other fellow citizens with Hasan Subašić in the elementary school were Hasan Bičić, Muhamed Bičić, Dragan Delić, Ibrahim Salkić, and Safet Hadžialijagić. Miroslav Tadić came on more than two occasions (T. 11107-09).

<sup>1365</sup> Miroslav Tadić, T. 15644-45.

<sup>1366</sup> Miroslav Tadić, T. 15272, T. 15679, T. 15681-84.

<sup>1367</sup> Miroslav Tadić, T. 15272-73.

<sup>1368</sup> Osman Jašarević, Rule 92bis statement, para. 14.

building for an “informative interview”.<sup>1369</sup> Kemal Mehinović testified that he was arrested by four policemen at his home on 27 May 1992.<sup>1370</sup> While being held in detention at the SUP he witnessed detainees being called out and being told that Simo Zarić was expecting them.<sup>1371</sup> Simo Zarić was at the SUP, dressed in uniform and armed with a scorpion gun.<sup>1372</sup>

617. Stevan Todorović stated that Simo Zarić gave him a certain amount of useful suggestions as to the criminal investigations of the SUP regarding suspects for arrest.<sup>1373</sup> He worked at the SUP as a criminal investigator in the first two months. He would conduct investigations, take statements and give suggestions. He was part of the arrest process.<sup>1374</sup> Stevan Todorović stated that he arrested “Coner”, who was within an inner circle of leadership of the SDA, working on the procurement of weapons for Muslims and Croats, based upon information supplied by Simo Zarić.<sup>1375</sup> Simo Zarić spoke to him about arresting “Coner”, who was then arrested.<sup>1376</sup>

618. Defence witnesses testified that Simo Zarić did not have powers to order arrests.<sup>1377</sup>

619. Prosecution witnesses testified how they saw Simo Zarić at the TO and SUP.<sup>1378</sup> Defence witnesses testified that they saw Simo Zarić at the SUP.<sup>1379</sup> Some gave testimony that they saw him there on only one occasion,<sup>1380</sup> others said he visited every two or three days,<sup>1381</sup> while others claimed he visited there many times.<sup>1382</sup> One witness, who was detained at the SUP, testified that he had never seen him there.<sup>1383</sup>

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<sup>1369</sup> Kemal Bobić, T. 11395.

<sup>1370</sup> Kemal Mehinović, T. 7404-05.

<sup>1371</sup> Kemal Mehinović testified that Nijaz Alatović was called by a guard and told he was expected by Simo Zarić, T. 7410.

<sup>1372</sup> Kemal Mehinović, T. 7412.

<sup>1373</sup> Stevan Todorović, T. 10001.

<sup>1374</sup> Stevan Todorović, T. 9124-25, T. 10102.

<sup>1375</sup> Stevan Todorović, T. 9130-31.

<sup>1376</sup> Stevan Todorović, T. 9132.

<sup>1377</sup> Goran Buzaković, T. 17542-43; Mihajlo Topolovac, T. 18246; Savo Đurđević, T. 17631.

<sup>1378</sup> Witness G, T. 4085; Witness E, T. 7714; Osman Jašarević heard Simo Zarić at the SUP (Rule 92*bis* Statement, para. 60); Witness P, T. 11562; Izet Izetbegović, T. 2356-58; Ibrahim Salkić, T. 3245.

<sup>1379</sup> Vladimir Šarkanović, T. 16562; Milan Jekić, Deposition T. 146-147.

<sup>1380</sup> Savo Đurđević testified that Simo Zarić was not a member of the police and that he saw him come there on only one occasion. He was wearing a camouflage uniform that soldiers wore and thinks he stayed there for about half an hour (T. 17624-25).

<sup>1381</sup> Goran Buzaković testified that he saw Simo Zarić two or three times coming to the police station (T. 17677, T. 17678). Vladimir Šarkanović testified that he met Simo Zarić in the beginning of his work at the SUP every two or three days. Towards the end of his time at the station on 13 June 1992, he thinks he no longer saw Simo Zarić (T. 16562). Milan Jekić testified that he saw Simo Zarić at the station perhaps twice over the first couple of days and after that he never saw Zarić throughout the period he remained at the police station. (Deposition T. 146).

<sup>1382</sup> Mihajlo Topolovac testified that he saw Simo Zarić while he was in the SUP many times. It could have been five to six times. He worked in the back part of the building and was not able to see Simo Zarić every time he was there (T. 18242-43, T. 18296).

<sup>1383</sup> Dario Radić testified that when he was arrested in April 1992 and detained at the SUP, he did not see Simo Zarić at the TO or SUP, nor did he hear if anyone saw him there, during the days of his detention there (T. 15102).

620. Sulejman Tihić testified that none of the detainees at Brčko, who had been transferred from Bosanski Šamac in April 1992, had been formally charged or told why they had been arrested and detained; although Simo Zarić did refer to several of them, including Sulejman Tihić and Dragan Lukač, as “political prisoners.”<sup>1384</sup>

621. Vaso Antić, then editor in chief of Radio Šamac, testified that Simo Zarić had never been in the premises of Radio Šamac and therefore could not have spoken about arrests and rounding up of people.<sup>1385</sup> Simeon Simić testified that it was not true that the radio station and newspaper were broadcasting notices to the public about the persons arrested and the reasons for their arrest.<sup>1386</sup> When he was referred to Miroslav Tadić’s statement that he learned about arrests by talking in town, reading newspapers and through Radio Šamac, he responded that he thought Miroslav Tadić was confused in his recollection of those events.<sup>1387</sup>

622. Witness Q was brought to the communications centre about four times for negotiations for exchange. On the first two occasions, he was with Simo Zarić. The last two times Miroslav Tadić was there. Miroslav Tadić was in charge of exchange negotiations at the time, and asked Witness Q to attend part of the negotiations.<sup>1388</sup>

623. Stevan Todorović testified that he remembered that Simo Zarić did not ask him for permission to take Witness Q out of custody for discussion about exchanges.<sup>1389</sup>

624. Lt. Col. Stevan Nikolić testified that upon his orders, members of the 4<sup>th</sup> Detachment were taken from the SUP by Simo Zarić.<sup>1390</sup>

625. Simo Zarić testified that he had no authority to release people who he had interviewed at the SUP.<sup>1391</sup> He testified that he had asked Stevan Todorović to release Witness N from detention. There was no reason for him to be detained. As a resident of Bosanski Šamac they could always find Witness N and talk to him. Stevan Todorović did not grant the request nor did he grant similar requests for release by other people.<sup>1392</sup>

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<sup>1384</sup> Sulejman Tihić, T. 1455-56.

<sup>1385</sup> Vaso Antić, T. 18625.

<sup>1386</sup> Simeon Simić, T. 13167-68.

<sup>1387</sup> Simeon Simić, T. 13169-71.

<sup>1388</sup> Witness Q, T. 11743-44.

<sup>1389</sup> T. 9160-61.

<sup>1390</sup> Stevan Nikolić, T. 18463; See also Jovo Savić, T. 17040-42.

<sup>1391</sup> Simo Zarić, T. 20091.

<sup>1392</sup> Simo Zarić, T. 19601.

## C. Interrogations

626. Prosecution witnesses gave testimony that they were interrogated during the period of their detention by Simo Zarić, and others, including the chief of police, Stevan Todorović,<sup>1393</sup> other police investigators at the SUP, namely, Simo Božić,<sup>1394</sup> Miloš Savić,<sup>1395</sup> Vladimir Šarkanović,<sup>1396</sup> Vlado Stanisić,<sup>1397</sup> police commander Savo Čancarević,<sup>1398</sup> and members of special units from Serbia, that included “Lugar”, “Laki”, “Neso” and “Crni”.<sup>1399</sup> Stevan Todorović testified that the decision to interrogate armed non-Serbs who were preparing armed insurgencies was approved by the Crisis Staff and was underway from the “very first day”.<sup>1400</sup> Interrogations were frequently conducted in the SUP.<sup>1401</sup> Non-Serbs were brought there for the purpose of questioning from other places of detention, such as the TO,<sup>1402</sup> primary<sup>1403</sup> and secondary schools in Bosanski Šamac. Interrogations also took place at the barracks in Brčko,<sup>1404</sup> Bijeljina<sup>1405</sup> and Crkvina.<sup>1406</sup> Interrogations generally followed soon after the arrests took place.<sup>1407</sup>

### 1. Persons carrying out the interrogations

#### (a) Simo Zarić

627. Stevan Todorović testified that he informed Simo Zarić that he, Simo Zarić, would work as an investigator at the SUP, and that the chief of investigation was Miloš Savić. Simo Zarić used an office on the second floor of the SUP and went there to conduct investigations, take statements and

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<sup>1393</sup> Dragan Lukač, T. 1684; Stevan Todorović testified that he did not take any statements (T. 9988-89).

<sup>1394</sup> Muhamed Bičić, T. 3021-24; Witness L, T. 4338; Witness K, T. 4885, T. 4681; Witness C, T. 7927, T. 7987; Kemal Bobić, T. 11419-21; Ibrahim Salkić, T. 3275-76.

<sup>1395</sup> Esad Dagović, T. 4005; Kemal Mehinović, T. 7413-15; Witness E, T. 7764; Osman Jašarević, Rule 92*bis* Statement, para. 79; Witness A, T. 10747; Hasan Subašić, T. 10970-80; Witness P, T. 11559; Ibrahim Salkić, T. 3275-76; Kemal Mehinović, T. 7456; Vladimir Šarkanović, T. 16514, T. 16564.

<sup>1396</sup> Dragan Lukač, T. 1694, T. 1913; Izet Izetbegović, T. 2285-86. Vladimić Šarkanović testified himself that he conducted interrogations (T. 16524-25, T. 16549).

<sup>1397</sup> Sulejman Tihčić, T. 1402.

<sup>1398</sup> Hasan Subašić, T. 10943.

<sup>1399</sup> Sulejman Tihčić, T. 1384-86; Dragan Lukač, T. 1694-96; Esad Dagović, T. 5779-80; Witness DW 2/3, T. 14466-68; Dario Radić, T. 15062, T. 15102.

<sup>1400</sup> Stevan Todorović, T. 9114.

<sup>1401</sup> Dragan Lukač, T. 1913; Hasan Bičić, T. 2659-60; Muhamed Bičić, T. 3021-24; Ibrahim Salkić, T. 3275-76; Witness G, T. 4063-64; Dragan Delić, T. 6718; Osman Jašarević, Rule 92*bis* Statement, para. 79; Witness A, T. 10741, T. 10747; Hasan Subašić, T. 10943; Esad Dagović, T. 3932-33; Kemal Mehinović, T. 7404-07; Witness E, T. 7760-64; Witness P, T. 11559; Witness Q, T. 11766-68; Witness L, T. 4338; Witness M, T. 5222-24, T. 5226; Nusret Hadžijusufović, T. 6964-65; Stevan Todorović, T. 16674.

<sup>1402</sup> Sulejman Tihčić, T. 1383-86; Ibrahim Salkić, T. 3268, T. 3272-74; Witness C, T. 7927, T. 7987; Kemal Bobić, T. 11421.

<sup>1403</sup> Dragan Delić, T. 6718-19.

<sup>1404</sup> Hasan Bičić, T. 2701; Muhamed Bičić, T. 2968-69; Ibrahim Salkić, T. 3297-98; Dragan Lukač, T. 1706; Witness N, T. 6082; Osman Jašarević, Rule 92*bis* Statement, para. 15; Hasan Subašić, T. 10953-54.

<sup>1405</sup> Dragan Delić, T. 6688; Osman Jašarević, Rule 92*bis* Statement, para. 107.

<sup>1406</sup> Witness O testified that when he was held in the hall of the Omladinski Dom in Crkvina, he was ordered to stand up by some guards, who asked him questions about where he was from, and if he had any weapons (Rule 92*bis* Statement, para. 37).

give suggestions that certain people be taken into custody and investigated.<sup>1408</sup> He stated that in the first days, Simo Zarić questioned Bosnian Muslim and Bosnian Croat suspects quite frequently at the SUP.<sup>1409</sup> He stated that Simo Zarić had the authority to take people out from detention and interrogate them in another place. He did this on his own, but had the tacit approval of Stevan Todorović.<sup>1410</sup> People taken by Simo Zarić included Witness Q, Pavo Dragicević and some 40 detainees that he took to Brčko. Stevan Todorović did not see Pavo Dragicević again.<sup>1411</sup>

628. The Prosecution presented witnesses who testified to having been interrogated by Simo Zarić at the SUP,<sup>1412</sup> and in Brčko.<sup>1413</sup>

629. Simo Zarić testified that during informative interviews and taking of statements from persons in custody, he never applied force or threats, and that these interviews passed in a “normal” atmosphere.<sup>1414</sup> Simo Zarić testified that when he was conducting interviews in the SUP, after 29 April 1992, and into May 1992, he was not doing so in the capacity of Chief of National Security for the Bosanski Šamac Crisis Staff. He conducted a few “professional interviews” with people, for the army of Republika Srpska and under the orders of his commander. He testified that he had nothing to do with national security for the Crisis Staff. He only received a decision on his appointment to the position of Chief of National Security and then at the next session he was replaced.<sup>1415</sup>

630. Simo Zarić testified that on 20 April 1992 he went to the chief of the crime division, Miloš Savić, and to Vladimir Šarkanović, and told them the task he had been given by the army. He told them he needed some information from them, based on the interviews they had already conducted. The most important information that he needed was on the illegal arming, and whether some officers of the JNA participated in this. They gave him access to statements they had taken already. They showed him a few statements and also some material relating to the defence plan of the SDA.<sup>1416</sup> He testified that he sent all of his reports to his superior, Captain Maksim Simeunović.<sup>1417</sup>

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<sup>1407</sup> Sulejman Tihić, T. 1384-86; Hasan Bičić, T. 2659-60; Dragan Lukač, T. 1913.

<sup>1408</sup> Stevan Todorović, T. 9973.

<sup>1409</sup> Stevan Todorović, T. 9124-27.

<sup>1410</sup> Stevan Todorović, T. 9973.

<sup>1411</sup> Stevan Todorović, T. 9973-74, T. 9981.

<sup>1412</sup> Stevan Todorović, T. 9973, T. 9145-50; Sulejman Tihić, T. 1402-03; Witness G, T. 4063-64; Alija Fitozović, T. 8521-22, T. 8691-94; Esad Dagović, T. 4009.

<sup>1413</sup> Osman Jašarević, Rule 92*bis* Statement, paras 15, 95-96; Witness N, T. 6082; Hasan Bičić, T. 2701; Muhamed Bičić, T. 2968-69; Exhibit D9/4; Ibrahim Salkić, T. 3297-98. Simo Zarić testified that he conducted interrogations at the SUP and in Brčko (T. 20047, T. 19307, T. 20082).

<sup>1414</sup> Simo Zarić, T. 19404.

<sup>1415</sup> Simo Zarić, T. 20011-13.

<sup>1416</sup> Simo Zarić, T. 19306.

<sup>1417</sup> Simo Zarić, T. 20048.

631. Lt. Col. Stevan Nikolić testified that Simo Zarić made reports of his interrogations and sent them to the chief of security, Maksim Simeunović. The command of the Tactical Group then analysed the reports and sent the analysis to their superior command. Lt. Col. Stevan Nikolić testified that as far as he knew, Simo Zarić did not send any report of interviews with Serbs or SDS members on illegal arming. He stated that Simo Zarić may have mentioned a Serb or two in his reports, however, a Serb member of the JNA was later sentenced, as he had taken part in smuggling.<sup>1418</sup>

(i) Method of interrogation by Simo Zarić

a. SUP

632. Sulejman Tihić testified that he was subject to a number of interrogations, but the only one with a record was the one taken by Simo Zarić.<sup>1419</sup> He was interrogated by Simo Zarić at the SUP for about 6 to 7 hours, as there were telephone calls and interruptions. The “interview” proceeded with the objective of releasing him afterwards, as Lazar Stanisić, Vladimir Šarknović and Simo Zarić had told him this would occur.<sup>1420</sup> Simo Zarić testified that a “special” called “Laki”, interrupted his interview with Sulejman Tihić, stating that Stevan Todorović, “Crni” and “another man” wanted to meet with him, and that when he returned to the interviewing room after meeting with them, Sulejman Tihić had been beaten. Sulejman Tihić told him that it was “Laki” who had beaten him up.<sup>1421</sup>

633. Witness G testified that when she was in a room at the SUP she could hear an interrogation next door and someone shouting, “Where did that Ustasha place the minefields?” “Dilista” was also taken out of the room and when she returned was told that a man called Dragan Djordjević and Simo Zarić had interrogated her and that they had been “very correct”. Dilista was interrogated after she had received 80 lashes.<sup>1422</sup>

634. Ibrahim Salkić testified that when he was interviewed at the SUP in April 1992, various threats and beatings took place during the interrogation and afterwards; however, when Simo Zarić was present, he and other detainees were not beaten. Simo Zarić came into the interview room for a

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<sup>1418</sup> Stevan Nikolić, T. 18567-68.

<sup>1419</sup> Sulejman Tihić, T. 1386-88.

<sup>1420</sup> Sulejman Tihić, T. 1404-06, T. 1412.

<sup>1421</sup> Simo Zarić, T. 19310, T. 19314.

<sup>1422</sup> Witness G, T. 4063-64.



brief moment, glanced at him (he was covered in blood and the blood had dried all over his clothing), talked to the judges and investigators, and left.<sup>1423</sup>

635. Kemal Mehinović testified that “during these interviews”, the door of the interview room in the SUP was open and he heard Simo Zarić tell an officer on duty in the hallway to go on with the beatings. He saw Simo Zarić through the door and he was in uniform, armed with a scorpion gun. There was enough light to see him at around 5.30 p.m.<sup>1424</sup> When cross-examined he said that he did not say he saw Simo Zarić coming down the stairs but that he saw him with the police officer in the corridor.<sup>1425</sup> He could hear Simo Zarić talking to another police officer saying that he should be beaten and looking in his direction. He was sure it was him, as Simo Zarić’s voice was “coarser” than others. Immediately after he left the police officers came and beat him.<sup>1426</sup>

636. Simo Zarić testified that Sulejman Tihić was beaten after he had been called out in the middle of an interview with him by some special police from Serbia. After this, Sulejman Tihić insisted that he continue talking to him to protect him from further harm. He was not beaten while Simo Zarić was interviewing him.<sup>1427</sup> Simo Zarić testified that when he interviewed Muhamed Bičić he was able to familiarise himself with the statement in detail before signing it. Simo Zarić dictated the statement out loud. He did not have any problems with it when he signed it. No threats or use of force were used. “It was an open and simple communication”.<sup>1428</sup>

#### b. Brčko

637. Witness N testified that he was interrogated by Simo Zarić at the barracks in Brčko, and that it was more of a “chat” than an interrogation.<sup>1429</sup>

638. Hasan Bičić explained that his interrogation by Simo Zarić, when he was detained in the Brčko Barracks, was a normal conversation and he was allowed to make it in this way. He said that Simo Zarić conducted the interrogation and the giving of the statement in a very proper manner. Simo Zarić used a typewriter to type out the statement. He was acquainted with the contents and details of his statement and he signed it. He probably looked beaten up while giving his statement and confirmed that he was wearing the same bloodied clothes which he had on in Bosanski Šamac.

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<sup>1423</sup> Ibrahim Salkić, T. 3276-77.

<sup>1424</sup> Kemal Mehinović, T. 7410-12; T. 7641.

<sup>1425</sup> Kemal Mehinović, T. 7599.

<sup>1426</sup> Kemal Mehinović, T. 7411-13, T. 7641.

<sup>1427</sup> Simo Zarić, T. 19314-15.

<sup>1428</sup> Simo Zarić, T. 19402-04.

<sup>1429</sup> Witness N, T. 6082-83.

The statement took about 15 minutes to half an hour, and he was returned to his cell later.<sup>1430</sup> The statement<sup>1431</sup> was not given to Simo Zarić of his own free will as he had to give it, like all the previous ones. However, no one beat him during this interview.<sup>1432</sup>

639. Muhamed Bičić testified that his interview with Simo Zarić in Brčko lasted about half an hour. It was conducted by open and simple communication and discussion, and no one beat him during the interview. He cried during the interview and Simo Zarić asked if he could help him and his brother and if he wanted to go back to Šamac. He responded that he would like to go where he had relatives and where there was no war. He does not remember Simo Zarić giving any answer. He felt humiliated at the time of the interrogation and no one asked him about his physical condition and why he was bloodied. He signed his statement. Even if he had read it or been given an opportunity<sup>1433</sup> to read it, he was not in a state where he could have understood it.

640. Simo Zarić testified that when he interviewed Omer Nalić at Brčko, he did not intend at the time to take his statement, but just to have a coffee together with him, Mr. Arsenic, and Captain Petrović. No threats or force were used against Omer Nalić. He was given the statement to read alone; he read it, said there were no problems with it and he signed it.<sup>1434</sup> Simo Zarić testified that when he interviewed Hasan Bičić at the Brčko barracks the atmosphere was very pleasant. He signed his statement without threats or coercion.<sup>1435</sup>

(ii) Purpose of interviews

641. Lt. Col. Stevan Nikolić testified that he gave Simo Zarić the order to interrogate detainees about illegal armament of paramilitary organisations.<sup>1436</sup> Defence witness Maksim Simeunović testified that Simo Zarić received an order to conduct informative interviews at his own discretion with the persons who were potentially involved in illegal arming.<sup>1437</sup>

642. Simo Zarić testified that when he interviewed Sulejman Tihić at the SUP he asked him about illegal arming, and the issue of documents, which Simo Zarić had received from Miloš Savić,

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<sup>1430</sup> Hasan Bičić, T. 2701.

<sup>1431</sup> Exhibit D8/4 – Statement by Hasan Bičić (no date given).

<sup>1432</sup> Hasan Bičić, T. 2894-95.

<sup>1433</sup> Muhamed Bičić, T. 2968-71, T. 3067.

<sup>1434</sup> Simo Zarić, T. 19398-99.

<sup>1435</sup> Simo Zarić, T. 19401-02; Exhibit D8/4.

<sup>1436</sup> Stevan Nikolić, T. 18564-67, T. 18466-67.

<sup>1437</sup> T. 15871-72.

relating to the military or war plan of the SDA.<sup>1438</sup> Sulejman Tihić testified that he was interrogated at the SUP by Simo Zarić about the SDA, weapons, patrols, roadblocks and who did what.<sup>1439</sup>

643. Ibrahim Salkić testified that during the week he was held at the TO, he was shown some lists with people who were accused of planning to liquidate Serbs. On one occasion, Simo Zarić came in and asked him whether he was really supposed to kill Fadil Topčagić. He thinks this occurred on the Sunday they were going to be transferred to Brčko.<sup>1440</sup>

644. When Muhamed Bičić was interviewed by Simo Zarić in the Brčko barracks he made a statement that said he and his brother Hasan Bičić had purchased two Kalashnikovs and three ammunition magazines, paying 700 DM for each rifle. He also said that he had a hunting rifle and pistol with the necessary licenses. The statement also mentioned his conversation with Alija Fitozović about the 4<sup>th</sup> Detachment.<sup>1441</sup>

645. Simo Zarić testified that of the people he moved from civilian or paramilitary custody on 26 April 1992 into military custody, he interrogated some of them further in relation to the arming. The conversation was “spontaneous”.<sup>1442</sup> He testified that when he questioned Omer Nalić at the Brčko barracks their conversation touched on topics relating to illegal arming of the SDA in Šamac, and involvement of certain persons in this.<sup>1443</sup> Simo Zarić testified that when he interviewed Muhamed Bičić in the Brčko barracks he had information that he was one of the members of the militarily organised unit of Muslims in town, and that he had been present on 17 April at several places in the centre of town, near the department store and in Djure Djakovica Street. He was armed and “came back with those weapons” and many neighbours saw him. This piece of information was not “exploited” during their interview in Brčko.<sup>1444</sup>

646. Sulejman Tihić testified that he was interrogated by Simo Zarić and Vladimir Šarkanović, and that they had been interested in arms, SDA patrols and barricades.<sup>1445</sup>

647. Witness N testified that when he was questioned by Simo Zarić in the barracks in Brčko he was not asked anything in particular, since they knew each other well. The “chat” lasted 30 minutes and Simo Zarić did most of the talking. He told Simo Zarić that he hoped he would get him out and spare him from what he was going through. Simo Zarić cut him off and said that what he had said in

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<sup>1438</sup> Simo Zarić, T. 19309.

<sup>1439</sup> Sulejman Tihić, T. 1404.

<sup>1440</sup> Ibrahim Salkić, T. 3293-94.

<sup>1441</sup> Muhamed Bičić, T. 3064-67.

<sup>1442</sup> Simo Zarić, T. 19999.

<sup>1443</sup> Simo Zarić, T. 19398-99.

<sup>1444</sup> Simo Zarić, T. 19404.

<sup>1445</sup> T. 1402-04.

the local commune about the three ethnic groups working and patrolling together would help him and might save him. He spoke to him about football and encouraged him to try and bear it, as it would stop. He did not ask about his injuries. Witness N did not remember if a statement was taken.<sup>1446</sup>

648. Mihajlo Topolovac testified that Simo Zarić told him that he was coming by the “Commander’s order” and that he was to gather the data of interest for military purposes.

(b) Police and Paramilitaries

649. Prosecution witnesses testified that interrogations by police and paramilitaries were conducted in coercive and forced circumstances; not only because most of them were already held in detention, and guarded by armed policemen and soldiers,<sup>1447</sup> but also because they were often beaten during,<sup>1448</sup> before, and after interrogations took place.<sup>1449</sup> Some interviews were conducted without any records being made, and in other interviews, where records were made, many witnesses testified that they did not know the content of the records or statements that they were required to sign.<sup>1450</sup> Some witnesses were interviewed, but did not sign statements.<sup>1451</sup>

650. Defence witnesses testified that they were able to read statements before signing them.<sup>1452</sup> Stevan Todorović testified that statements were taken from suspects by authorised officials and signed by those officials. The suspect was shown what was written by the typist and they would sign every page. The statement would then be forwarded to the military prosecutor’s office in Bijeljina, where they were charged with taking part in armed rebellion.<sup>1453</sup> Defence witnesses described their interrogations as “fair” and “pleasant”. Prosecution witness Dragan Lukač testified

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<sup>1446</sup> Witness N, T. 6082-86.

<sup>1447</sup> Hasan Subašić, T. 10953-54; Witness P, T. 11559; Witness Q, T. 11766-68.

<sup>1448</sup> Hasan Bičić, T. 2659-67; Ibrahim Salkić, T. 3268, T. 3272-74; Witness N, T. 6113-15; Kemal Mehinović, T. 7588-89, T. 7413; Witness O, Rule 92*bis* Statement, paras 27, 37, 45-46; Dragan Lukač, T. 1695-96; Esad Dagović, T. 5963-64; Muhamed Bičić, T. 3001-02.

<sup>1449</sup> Esad Dagović, T. 4005, T. 5779-80; Hasan Subašić, T. 10979-80; Witness G, T. 4063-64.

<sup>1450</sup> Esad Dagović, T. 4005, T. 5779-80, T. 5787-88, T. 4005-06, T. 5963-64; Dragan Delić, T. 6718-19; Nusret Hadžijusufović, T. 6964-65; Witness P, T. 11559; Dragan Lukač, T. 1913, T. 1964, T. 2094-95.

<sup>1451</sup> Witness M, T. 5222-27, T. 5446-47; Witness C, T. 7927-28; Osman Jašarević, Rule 92*bis* Statement, paras 79.

<sup>1452</sup> Hasan Pištoljević, Rule 92*bis* Statement, para. 14; Vladimir Šarkanović, T. 16657; Witness DW 2/3, T. 14474. Witness A testified that he was interviewed by Miloš Šavić at the SUP and read questions from a paper. He signed his statement which was read to him after the interview (T. 10754).

<sup>1453</sup> Stevan Todorović, T. 9532-33; Stevan Todorović confirmed the signature of the Criminal Report of the Public Security Station against Kemal Mehinović (Exhibit D54/3). The report was submitted by the Public Security Station in Šamac, which was part of the Security Centre in Doboj, again part of the ministry of the Interior of the Serbian Republic; and it was sent to the military prosecutor’s office within the command of the East Bosnian Corps in Bijeljina. (Stevan Todorović, T. 9537-40).

that when he was interrogated by Vladimir Šarkanović, it was fair.<sup>1454</sup> Hasan Pištoljević testified that his conversation with Simo Božić, when he interrogated him at the SUP was pleasant.<sup>1455</sup>

651. Vladimir Šarkanović testified that when he conducted interviews he never used physical force, violence, or threatened anyone. He did not include anything in the statements other than what the interviewees had said.<sup>1456</sup> He would begin by asking the detainee if he wanted to give a statement, and there was not a single witness that did not want to give a statement.<sup>1457</sup> He presented to all persons interrogated by him two documents that concerned a list of self-organized citizens of Bosanski Šamac for town defence, and the organizational formation structure of the units for town defence.<sup>1458</sup> Once he had taken a statement of one of the prisoners, he would hand it over to his superior Miloš Savić at the end of the day.<sup>1459</sup> He stated that the assessment of whether a criminal offence had been committed, was decided by Stevan Todorović only.<sup>1460</sup> If there were elements of a criminal offence, then this was reported to the prosecutor's office. Stevan Todorović would sign the charges. Then on the basis of his report on the charges, and on any other documents attached to the charges, the prosecutor would assess whether he could issue an Indictment. The prosecutor would otherwise propose an investigation to be opened by an investigating judge. When the investigating judge received the statement, he would take it out of the case, place it in an envelope and he would seal it. In principle, the statement could not be used during the criminal proceedings against the person who had given the statement. This statement could be used if the accused wished to use it himself. He does not know if Stevan Todorović followed the procedure during the war. He stated that this process was applied under the Law on Criminal Procedure of the SFRY in force before the war. After the war, the same law was applied in the entire territory of Bosnia-Herzegovina.<sup>1461</sup>

652. Vladimir Šarkanović testified that there were persons who gave statements and then were released. He stated that although Fadil Sabanović was with the Bičić brothers on 17 April 1992 and had a gun, he was released. Jusuf Jusufović, Sabanović, Safet Hadžialijagić, and Hasan Izetbegović were also released. There were persons who belonged to units and had weapons that were released,

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<sup>1454</sup> Dragan Lukač, T. 1913.

<sup>1455</sup> Hasan Pištoljević, Rule 92*bis* Statement, para. 13.

<sup>1456</sup> Vladimir Šarkanović, T. 16525-26.

<sup>1457</sup> Vladimir Šarkanović, T. 16666.

<sup>1458</sup> Vladimir Šarkanović, T. 16507-09; Exhibits D14/4, D25/4.

<sup>1459</sup> Vladimir Šarkanović, T. 15526.

<sup>1460</sup> Vladimir Šarkanović, T. 16650.

<sup>1461</sup> Vladimir Šarkanović, T. 16668-73. Vladimir Šarkanović stated that between 19 April 1992 and 13 June 1992 he was acting under the Law on Criminal Procedure of the former Yugoslavia (T. 16614).

and there were also situations in which people against whom there was no evidence were still held in custody. Stevan Todorović decided on who should be released.<sup>1462</sup>

653. The questions asked during interviews often focused on the issue of possession of weapons,<sup>1463</sup> military formations of the SDA and HDZ,<sup>1464</sup> lists that included persons in defence of the town, of defendants in criminal proceedings,<sup>1465</sup> and other general topics such as the radio transmitters,<sup>1466</sup> and the hanging of Croatian flags.<sup>1467</sup>

## **D. Findings**

### **1. Arrests**

654. The Trial Chamber is satisfied that following the takeover in Bosanski Šamac Municipality on 17 April 1992, and continuing throughout 1992, large-scale arrests of Bosnian Muslims and Bosnian Croats were carried out in the Municipality. Within the first week of the conflict, up to 50 persons had been arrested and detained at the SUP.<sup>1468</sup> From May 1992 until the end of the year, numbers of those arrested and held at the SUP varied from 50 to 100 persons.<sup>1469</sup> Around 200 arrested persons were detained at the TO during this period,<sup>1470</sup> and between 300 and 500 arrested persons were brought to the secondary school in Bosanski Šamac.<sup>1471</sup> Large groups of persons were arrested and taken to facilities in Zasavica and Crkvina.<sup>1472</sup>

655. The first arrests were largely carried out by local Serb members of the police, and paramilitaries from Serbia. Methods of arrest included forming armed patrols and entering homes to arrest persons.<sup>1473</sup> Other means of arrests involved the Chief of Police, Stevan Todorović, calling persons at their homes and ordering them to go to the SUP for questioning.<sup>1474</sup> While there is no

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<sup>1462</sup> Vladimir Šarkanović, T. 16674-76.

<sup>1463</sup> Hasan Subašić, T. 10943; Witness P, T. 11559; Witness N, T. 6113-15; Kemal Mehinović, T. 7456-62, T. 7532; Witness E, T. 7760-62; Osman Jašarević, T. 10524; Witness O, Rule 92bis Statement, para. 37; Stevan Todorović, T. 9110; Dragan Lukač, T. 1694; Witness A, T. 10747-48; Vladimir Šarkanović, T. 16524-25.

<sup>1464</sup> Esad Dagović, T. 4005-09; Dragan Delić, T. 6718; Witness C, T. 7916-17, T. 7974, T. 7978; Kemal Bobić, T. 11421; Witness O, Rule 92bis Statement, paras 27, 45; Izet Izetbegović, T. 2373; Witness P, T. 11559.

<sup>1465</sup> Ibrahim Salkić, T. 3293-94; Esad Dagović, T. 5869, T. 5875-76; Witness E, T. 7760-64; Dragan Delić, T. 6718.

<sup>1466</sup> Ibrahim Salkić, T. 3385.

<sup>1467</sup> Dragan Lukač, T. 1695-96.

<sup>1468</sup> Ibrahim Salkić testified that on 18 April 1992 there were about 10 to 15 Muslim and Croat persons held at the SUP (T. 3243-4). Miroslav Tadić testified that in the first few days following the conflict, there were some 30 people arrested (T. 15664-65, T. 15744-45). Simo Zarić testified that a week after the takeover there were over 50 men in custody (T. 19396). Miroslav Tadić stated that after the period of 18 to 20 April 1992, the arrests were conducted on a more massive scale (T. 15745).

<sup>1469</sup> Dragan Lukač, T. 1742; Ibrahim Salkić, T. 3382.

<sup>1470</sup> Witness E, T. 7717; Ibrahim Salkić, T. 3368; Witness L, T. 4343; Witness M, T. 5236.

<sup>1471</sup> Hasan Subašić, T. 10960-61; Mladen Borbeli, T. 14724.

<sup>1472</sup> Snjezana Delić, T. 6419-23, T. 6429.

<sup>1473</sup> Hasan Bičić, T. 2639; Ibrahim Salkić, T. 3241-43; Muhamed Bičić, T. 2932-33; Osman Jašarević, Rule 92bis Statement, paras 47-49.

<sup>1474</sup> Witness N, T. 4679-80, T. 6062-63; Dragan Delić, T. 6666; Snjezana Delić, T. 6395.

evidence that members of the 4<sup>th</sup> Detachment conducted large-scale arrests, there is evidence from several witnesses, for example Ibrahim Salkić,<sup>1475</sup> and Osman Jašarević,<sup>1476</sup> that they were arrested by members of the 4<sup>th</sup> Detachment. Miki Jovčić, a member of the 4<sup>th</sup> Detachment, also arrested Igor Rukavina.<sup>1477</sup> The Trial Chamber accepts the testimony of these witnesses, notwithstanding the presentation of the Defence case, and the fact that some members of the 4<sup>th</sup> Detachment were themselves arrested in the first days of the conflict in Bosanski Šamac.<sup>1478</sup> The arrest of a large group of Croats in Bosanski Šamac, who were subsequently taken to Crkvina, was carried out by Serb police and military.<sup>1479</sup> The arrest of a large group of women, children and elderly, who were taken to Zasavica, was also carried out by Serb police and military.<sup>1480</sup>

656. The majority of persons arrested were non-Serb civilians in Bosanski Šamac, namely Bosnian Muslims and Bosnian Croats. One category of persons arrested, who were civilians, were the women, children, and elderly who were taken from their homes and brought to Zasavica. The Trial Chamber finds that following the escape of non-Serb men from Bosanski Šamac across the Sava River to Croatia in late June 1992, Serb police and military came and took the families of those who had escaped to Zasavica. Military trucks went from house to house rounding up Bosnian Muslim and Bosnian Croat women, children, and elderly. These arrests continued in August and September 1992.<sup>1481</sup> The Trial Chamber also finds that groups of Croat civilians, including women, children and elderly were arrested from the town of Bosanski Šamac in approximately mid-May 1992 and taken to Crkvina.<sup>1482</sup> The Trial Chamber does not accept the submission of Miroslav Tadić that these persons were arrested in connection with an ambush on a bus full of soldiers from the 4<sup>th</sup> Detachment.<sup>1483</sup> This evidence is not supported by other witness testimony and stands in contrast to the testimony of numerous Prosecution and Defence witnesses, which highlight that they were arrested because they were Bosnian Croats.

657. The Trial Chamber concludes that the arrests of groups of women, children and elderly, who were subsequently detained in Zasavica and Crkvina were arbitrary, with no lawful basis. They

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<sup>1475</sup> Ibrahim Salkić, T. 3241.

<sup>1476</sup> Osman Jašarević, Rule 92bis Statement, paras 47-49. Stevan Todorović also testified that members of the 4<sup>th</sup> Detachment were conducting arrests (T. 9108-09).

<sup>1477</sup> Witness M, T. 5029.

<sup>1478</sup> Maksim Simeunović, T. 15870-72; Radovan Antić, T. 16753-54; Stevan Nikolić, T. 18462-64; Jovo Savić, T. 17042.

<sup>1479</sup> Exhibit P71; Simo Zarić, T. 19448; Vladimir Šarkanović, T. 16555; Snjezana Delić, T. 6421-23, T. 6429. Simo Zarić testified that the decision to isolate the Croat people was in the office of Stevan Todorović and the people who worked in the criminal investigation department, Milos Savić, and Vlado Šarkanović, also had a copy (T. 19448).

<sup>1480</sup> Witness M, T. 5077-78, Snjezana Delić, T. 6479-80.

<sup>1481</sup> Witness M, T. 5077-78, T. 5089; Snjezana Delić, T. 6479-80; Safet Dagović, T. 7234-35.

<sup>1482</sup> Simo Zarić, T. 19448; Vladimir Šarkanović, T. 16555; Snjezana Delić, T. 6419-21, T. 6429-30; Andrija Petrić, T. 17590-01, T. 17606; Kosta Simić, T. 16958.

<sup>1483</sup> Miroslav Tadić, T.15312-15.

were arrested because they were non-Serbs, not because there was a reasonable suspicion that they had committed any offences, or for reasons of their safety.

658. Another category of persons arrested concerns those who were arrested from their homes and taken to the SUP and TO in Bosanski Šamac. The Trial Chamber does not accept the submission of the Defence that *all* persons were arrested upon suspicion that they were unlawfully in possession of weapons or that they were members of armed groups.<sup>1484</sup> The Trial Chamber finds that while some persons were arrested who were in possession of weapons, there were non-Serb civilians arrested from their homes and brought to detention facilities in the town of Bosanski Šamac who did not possess weapons at all,<sup>1485</sup> those who had heeded the call to surrender their weapons before their arrest,<sup>1486</sup> or those who possessed legal permits for their weapons.<sup>1487</sup> The Trial Chamber accepts testimony from the accused Simo Zarić that the detention facilities were full of people who did not have weapons and who were not on lists of people who belonged to paramilitary groups.<sup>1488</sup> The Trial Chamber also accepts evidence from Miroslav Tadić, that people were detained who had nothing to do with arming or armed groups.<sup>1489</sup> An operation was conducted to collect weapons from the non-Serb population, in the town of Bosanski Šamac on 17 and 18 April 1992, by Serb paramilitaries and police, and the 4<sup>th</sup> Detachment, which collected weapons from the 4<sup>th</sup> District of the town. They took away weapons regardless of whether they were possessed legally or illegally.<sup>1490</sup> While accepting that some of those arrested were in possession of weapons illegally, which was an offence pursuant to Article 213 of the Criminal Code of BiH,<sup>1491</sup> there is little evidence that following the arrest of non-Serbs, there was any intention to subject them to fair and lawful criminal proceedings on the basis of breach of any national or international law.<sup>1492</sup> Those arrested were not told the reason for their arrest,<sup>1493</sup> and many were beaten at the time of their arrests.<sup>1494</sup> Some were told that they were wanted for questioning but were not advised

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<sup>1484</sup> Simić Pre-Trial Brief, para. 23; Tadić Pre-Trial Brief, para. 14; Zarić Pre-Trial Brief, para. 15. The Defence of Simo Zarić submits in their Final Brief that during the period of the indictment, the Law on Criminal Proceeding of former Socialist Federative Republic of Yugoslavia was applied on the whole territory of Bosnia-Herzegovina; Exhibits D24/3, D51/4 (Zarić Final Brief, para. 305).

<sup>1485</sup> Andrija Petric never had a weapon and was a disabled person (T. 17607-09); Witness K, T. 4679-80; Mustafa Pistoljević, T. 16354-55, T. 16381.

<sup>1486</sup> Witness N, T. 6340. A large proportion of the town had been cleansed of weapons by the time of the first day of arrests (Stevan Todorović, T. 9110).

<sup>1487</sup> Witness A had a legal permit for weapons (T. 11224). Mustafa Omeranović had a licence for the weapon he held as a member of the 4<sup>th</sup> Detachment (T. 18129-30).

<sup>1488</sup> Simo Zarić, T. 19604.

<sup>1489</sup> Miroslav Tadić, T. 15270-71.

<sup>1490</sup> Ibrahim Salkić, T. 3252-53; Simo Zarić, T. 19253, T. 19257.

<sup>1491</sup> Criminal Code of the Socialist Republic of Bosnia and Herzegovina, Official Gazette SRBiH 17/77.

<sup>1492</sup> See paras 670 to 680 of Judgement.

<sup>1493</sup> Snjezana Delić, T. 6397-98; Sulejman Tihčić, T. 1456; Witness C, T. 7993-94; Ibrahim Salkić, T. 3246; Kemal Bobić, T. 11404; Kemal Mehinović, T. 7406; Andrija Petrić, T. 17607-09; Mustafa Omeranović, T. 18129-30; Miroslav Tadić, T. 15315.

<sup>1494</sup> Muhamed Bičić, T. 2932-33; Witness M, T. 5028-29; Kemal Mehinović, T. 7406; Izet Izetbegović, T. 2267, T. 2272-75; Hasan Bičić, T. 2639-43.



of the reasons of their arrest at the time of arrest. It is clear that many civilian persons were arrested without legal basis.<sup>1495</sup> These factors, considered together, render the arrests of non-Serb civilians in Bosanski Šamac, including those who may have been in possession of unlawful weapons, as discussed in this paragraph, to be unlawful.

659. The Trial Chamber does not accept that allegations about possession of weapons, in itself, creates a reasonable doubt as to the civilian status of the persons arrested and detained for possession of weapons. The evidence demonstrates that only a small number of detainees belonged to an armed SDA paramilitary formation, giving rise to consideration as to whether they could be classified as combatants.<sup>1496</sup> The fact that most of them were arrested from their homes, combined with a lack of evidence that they participated in the armed conflict, clearly shows that they were not combatants, but rather, civilians, and consequently were not taken as prisoners of war.

660. The Trial Chamber finds that in addition to the members of the civilian population that were arrested and detained in Bosanski Šamac municipality, there were a small number of Muslims who were members of an SDA paramilitary unit. The Trial Chamber accepts the evidence of Alija Fitozovic, and finds that as president of the SDA Security Committee, that he had formed a military unit comprised of 200 people in December 1991 for the defence of the town, and that the members of this unit included, Sulejman Tihić, Izet Izetbegović, Safet Hadžialijagić, Hasan Bičić, Muhamed Bičić, Salko Porobić, Izet Ramusović, Reuf Hadžiabdić, Hasan Čeribasić, Esad Dagović and Safet Dagović.<sup>1497</sup> The Trial Chamber accepts the testimony of Defence witnesses Naser Sejdić, Želko Volašević, and Mladen Borbeli, that they saw members of the SDA paramilitary unit, armed, and in the streets of the town of Bosanski Šamac at the time of the takeover on 16-17 April 1992. Naser Sejdić testified that a group of 15 to 20 armed Muslims came to his street on 17 April 1992 with

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<sup>1495</sup> In the report prepared by Simo Zarić, dated 1 December 1992, for the Command of the 2<sup>nd</sup> Posavina Infantry Brigade in Bosanski Šamac Municipality, "On certain developments undermining morale among the soldiers and increasing the complexity of the security and political situation in the 2<sup>nd</sup> Posavina Infantry Brigade and Šamac Municipality", he writes that "the massive arrests and isolation of Croats and Muslims followed, without any criteria" (Page 03013490) (Exhibit P127).

<sup>1496</sup> See para. 661 of Judgement.

<sup>1497</sup> Alija Fitozovic testified that the persons listed were members of the military unit he formed as part of the SDA. Exhibit D25/4, Organisational and Establishment Structure of the Unit for Defence of the Town, for the SDA Party in Bosanski Šamac, also refers to Sulejman Tihić as President of the Municipal Crisis Staff; Izet Izetbegović, Alija Fitozović and Omer Nalić as members of the Municipal Crisis Staff; Alija Fitozović as President of the Municipal Military Staff; Sulejman Tihić and Izet Izetbegović as members of the Municipal Military Staff; Osman Jašarević and Ibrahim Salkić as members of the anti-Sabotage section; Pašaga Tihić and Osman Jašarević as members of the Engineering and Sabotage Platoon; Safet Hadžialijagić as commander of the Communications Section; Hasan Bičić as a member of the Communications Section; Salko Porobić as member of the Reserve for the Reconnaissance Section and Izet Ramusović as a member of the Reserve of the Reconnaissance Section; Pašaga Tihić as a member of the Hunter's Section; Muhamed Bičić as a member of the Reserve of the Hunter's Section; Hasan Čeribasić as Commander of the Supplies Section, and Reuf Abdić as a member of the Supplies Section; amongst others. Exhibit D26/4 refers to the SDA Organisation Chart and Method of Receiving, Transmitting and Conveying Orders for Mobilisation, listing Sulejman Tihić and Alija Fitozović as President of the SDA Party, and Unit Commander respectively, responsible for mobilization, and Salko Porobić as a distributor reporting to Alija Fitozović.

rifles and included Muhamed and Hasan Bičić, Esad Dagović, Ibrahim Salkić and Izet Ramusović. Želko Volašević stated that both he and Grga Zubak saw an armed group of Muslims at 8.00 a.m. on 17 April 1992 in the street and that the group included Muhamed and Hasan Bičić, Ibrahim Salkić, Pašaga Tihić and Esad and Safet Dagović. Mladen Borbeli also confirmed that during the night of 16-17 April 1992 he saw a group of armed Muslims in his lobby that included Muhamed and Hasan Bičić and Esad Dagović. The Trial Chamber finds that although these witnesses were members of an armed group, namely the SDA paramilitary unit, were present in the streets of the town of Bosanski Šamac at the time of the takeover on 17 April 1992, and were armed, there is no sufficient evidence to conclude that they took part in the armed conflict within Bosanski Šamac, and that they were combatants. The Trial Chamber accepts the testimony of witnesses that there virtually was no resistance in Bosanski Šamac on the day of the takeover.<sup>1498</sup> The Trial Chamber does not consider that the members of the SDA paramilitary unit were engaged in activities hostile to the State. The Trial Chamber, however, considers that such persons fall within a special category, by virtue of their membership in a paramilitary group, which may give rise to a reasonable suspicion that they participated in activities connected to the armed conflict. For this reason, the Trial Chamber does not conclude that these arrests were unlawful. The Trial Chamber considers that while an arrest may at the outset be lawful, based upon a reasonable suspicion that a crime against national or international law has been committed, the continued detention without lawful basis may constitute the holding of that person as arbitrary and unlawful. For this reason the Trial Chamber considers collectively, the arrest and detention of this category of persons, in part two of this section, when making a finding on whether their arrest and detention was unlawful.

## 2. Unlawful detention and confinement

661. Arrested persons were detained in detention facilities within Bosanski Šamac municipality that included the SUP, TO, and primary and secondary schools. Groups of detainees were also held in Zasavica and in Crkvina, or transferred to other detention facilities in BiH that included Brčko and Bijeljina. The Trial Chamber does not take into account places of detention that were testified about, that do not fall within the scope of the Amended Indictment.

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<sup>1498</sup> Hasan Subašić, T. 10937. Fadil Topčagić testified that the Muslim side shot at Miroslav Tadić's house, although he did not see where the shots were coming from. He thought it was the stadium. He stated that the Muslims offered resistance to the Sereni in the part of town called Donja Mahala. He acknowledged that there was no major resistance in the town but guaranteed that shots could be heard around 10.00 a.m. on 17 April 1992 (T. 18389-18427, T. 18394).

(a) SUP

662. The Trial Chamber is satisfied that the SUP was used to detain many non-Serb persons taken into custody, following the takeover on 17 April 1992.<sup>1499</sup> Non-Serbs were detained in cells inside the SUP and in garages in the yard of the police station.<sup>1500</sup> They were guarded by local Serb police, and paramilitaries.<sup>1501</sup> During April 1992 people were continually brought into the SUP. This practice continued into May and throughout the year. Detainees were held for varying periods of time. Some were detained there for a day before being transferred to the TO across the street, while some were detained there for months.<sup>1502</sup>

(b) TO

663. The Trial Chamber finds that the TO, across the road from the SUP building in Bosanski Šamac, was used to detain many non-Serbs taken into custody following the takeover on 17 April 1992.<sup>1503</sup> Non-Serbs continued to be brought to the TO in April and May 1992 and throughout the year. Later in the year, detainees were transferred from other detention facilities to the TO.<sup>1504</sup> Some were brought into the TO directly upon arrest, while others were transferred there from the SUP. Detainees were held in several rooms at the TO, one large and one small, and they were also held in a storage room there.<sup>1505</sup> They were guarded by Serb policemen and paramilitaries.<sup>1506</sup> In the middle of April 1992 there were between 40 to 50 people detained in the TO.<sup>1507</sup> In the summer, the number of detainees rose to approximately two hundred and fifty detainees.<sup>1508</sup>

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<sup>1499</sup> The following persons were detained at the SUP in Bosanski Šamac following the takeover on 17 April 1992: Sulejman Tihic, T. 1365, T. 1418; Hasan Bičić, T. 2653; Muhamed Bičić, T. 2933; Ibrahim Salkić, T. 3242-43; Izet Izetbegović, T. 2276-78, T. 2281; Witness A, Rule 92bis Statement, para 41; Osman Jašarević, Rule 92bis Statement, para. 47, Dragan Delić, T. 6666-69, Hasan Subašić, T. 10942-43, Witness N, T. 6067-68, Witness P, T. 11556-58, Esad Dagović, T. 3930; Witness C, T. 7914-15, T. 7926, Witness E, T. 7676-77, Witness Q, T. 11723-25, T. 11750-52, Kemal Bobić, T. 11394-95, T. 11400, Kemal Mehinović, T. 7405-07, T. 7441-42, Witness L, T. 4334-35; Dragan Lukač, T. 1734-35; Witness G, T. 4050-51; Nusret Hadžijusufović, T. 6963-65; Witness M, T. 5217.

<sup>1500</sup> Esad Dagović, T. 3994-4000; Witness A, Rule 92bis Statement, para. 86; Dragan Lukač, T. 1735.

<sup>1501</sup> Hasan Bičić, T. 2650, T. 2644; Sulejman Tihic, T. 1374, T. 1377.

<sup>1502</sup> Esad Dagović was detained at the SUP for approximately six months. He first came into custody on approximately 5 May 1992 and was held there until 8 June 1992, then taken to hospital for a month and then continued his detention at the SUP from 8 July 1992 until 5 November 1992 (T. 3930-32, T. 3965-67, T. 3973-74, T. 4009-12, T. 5968). Witness E was detained at the SUP from between 10 to 14 May 1992 until the summer (T. 7676, T. 7715).

<sup>1503</sup> The following persons were detained at the TO in Bosanski Šamac following the takeover on 17 April 1992: Dragan Lukač, T. 1662, T. 1677, T. 1685, Hasan Bičić, T. 2653; Muhamed Bičić, T. 2937, T. 2964, T. 2967, Ibrahim Salkić, T. 3261, T. 3263, T. 3265-66, Witness A, T. 10741, Rule 92bis Statement, paras 52-59, Osman Jašarević, Rule 92bis Statement, para. 64, Hasan Subašić, T. 10944-45, Izet Izetbegović, T. 2312-13, T. 2355, Witness N, T. 6065-67, Dragan Delić, T. 6669; Witness P, T. 11551-55, T. 11562, T. 11593; Witness Q, T. 11750-52; Kemal Mehinović, T. 7441-42; Witness C, T. 7926; Kemal Bobić, T. 11400-04, Witness E, T. 7715.

<sup>1504</sup> Witness N testified that transfers were made from the primary school gym to the TO at the end of the summer (T. 6154); Ibrahim Salkić, T. 3368.

<sup>1505</sup> Witness E, T. 7717, Dragan Lukač, T. 1735.

<sup>1506</sup> Dragan Lukač, T. 1678, Witness A, Rule 92bis Statement, para. 52.

<sup>1507</sup> Sulejman Tihic, T. 1395, T. 3641; Dragan Lukač, T. 1677.

<sup>1508</sup> Witness E, T. 7717, Muhamed Bičić, T. 3026. Ibrahim Salkić testified that the number of detainees at the TO rose to between 230 and 250 detainees at the TO (T. 3377).

Detainees were held at the TO for varying periods of time, and some were held there for months at a time.<sup>1509</sup>

(c) Primary and Secondary Schools

664. The Trial Chamber finds that detainees were held at the primary and secondary school gymnasiums, several hundred metres away from the SUP and TO in Bosanski Šamac. The numbers of detainees rose to 50 at the primary school, and between 300 and 500 in the secondary school.<sup>1510</sup> The first group of detainees at the primary and secondary school were transferred there on 13 May 1992 from the JNA barracks in Bijeljina.<sup>1511</sup> Throughout the spring and summer of 1992, people were brought to the primary and secondary schools and detained there, including men from the Kultur Dom in Crkvina and from Zasavica.<sup>1512</sup> Detainees were held in the schools for months at a time.<sup>1513</sup>

(d) Crkvina

665. The Trial Chamber finds that a group of Croat women and children were taken to Crkvina in mid-May 2003. They were detained in facilities in Crkvina, together with men and the elderly, in places that included the Youth Centre,<sup>1514</sup> a warehouse,<sup>1515</sup> the Omladinski Dom<sup>1516</sup> and the Sport Stadium.<sup>1517</sup> Hundreds of non-Serbs were held in these facilities,<sup>1518</sup> for periods ranging from one night to a week.<sup>1519</sup> Women residents of Bosanski Šamac were allowed to leave the Sport Stadium and return home, while others from the neighbouring villages were taken to Zasavica.<sup>1520</sup>

(e) Zasavica

666. The Trial Chamber finds that family members of some of the men detained in other facilities, including the SUP and TO in Bosanski Šamac, or who had been exchanged, were

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<sup>1509</sup> Witness E spent three and a half months in the TO before being transferred to Batković (T. 7715).

<sup>1510</sup> Hasan Subašić, T. 10960-61. Miroslav Tadić testified that 50 men were detained in the primary school and 300 at the secondary school (T. 15533).

<sup>1511</sup> Detainees transferred to the primary and secondary schools from Bijeljina from 13 May 1992, and detained there included Muhamed Bičić, T. 2977-78, T. 2981; Ibrahim Salkić, T. 3320, T. 3324, T. 3368; Dragan Delić, T. 6688-89; Hasan Subašić, T. 10957-60, T. 10980; Witness N, T. 6098, T. 6101-04, T. 6110; Hasan Bičić, T. 2711, T. 2715, T. 2719-21.

<sup>1512</sup> Witness O, Rule 92bis Statement, paras 32, 35; Nusret Hadžijusufović, T. 6952-53.

<sup>1513</sup> Ibrahim Salkić was held in the primary school from about 15-17 May 1992 until late September 1992 (T. 3328). Dragan Delić was held there from 13 May 1992 until 4 September 1992 (T. 6688-89).

<sup>1514</sup> Dragan Lukač, T. 1660.

<sup>1515</sup> Witness P, T. 11566, T. 11588-93.

<sup>1516</sup> Witness O, Rule 92bis Statement, paras 25, 33.

<sup>1517</sup> Jelena Kapetanović, T. 8943-46; Simo Zarić, T. 19449.

<sup>1518</sup> Jelena Kapetanović, T. 8943-60; Witness O, Rule 92bis Statement, paras 24, 25.

<sup>1519</sup> Witness O, Rule 92bis Statement, paras 25, 33; Jelena Kapetanović, T. 10285-86.

<sup>1520</sup> Jelena Kapetanović, T. 8970-80.

detained in Zasavica.<sup>1521</sup> In late June 1992, family members of men who escaped across the Sava River into Croatia, to avoid the mobilization call, were rounded up in military trucks and taken to Zasavica, and detained in camps there. Women, children and elderly were held there, including some men.<sup>1522</sup> Some were held in private homes there.<sup>1523</sup> When Crkvina was evacuated, people from the neighbouring villages were detained in Zasavica.<sup>1524</sup> They were guarded and there were checkpoints at both entrances to the village.<sup>1525</sup> People did not go voluntarily to the camp in Zasavica, nor were they able to leave the village.<sup>1526</sup> People could not leave the area unless they wanted to be exchanged.<sup>1527</sup>

(f) Brčko

667. The Trial Chamber finds that a group of approximately 47 Bosnian Muslim and Bosnian Croat detainees,<sup>1528</sup> who were held in the TO in Bosanski Šamac, were transferred to the JNA barracks in Brčko at the end of April 1992 and detained there.<sup>1529</sup> The transfer was conducted as a result of Simo Zarić contacting Lt. Col. Stevan Nikolić and asking him to do whatever was possible for the security of the detainees. Lt. Col. Stevan Nikolić then contacted Captain Petrović, and they agreed to the transfer, where detainees were loaded onto trucks with the assistance of Makso Šimeunović, Savo Čancarevic and Mihajlo Topolovac, and taken to the JNA barracks in Brčko.<sup>1530</sup> They were guarded at the barracks by JNA soldiers.<sup>1531</sup> This group of detainees was held there until the conflict broke out in Brčko on 1 or 2 May 1992. They were then put on a bus and transferred to Bijeljina.<sup>1532</sup>

(g) Bijeljina

668. The Trial Chamber finds that detainees who were held in Brčko were transferred by military escort to the JNA barracks in Bijeljina on 1 or 2 May 1992, following the outbreak of war in

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<sup>1521</sup> Esad Dagović, T. 3985-86; Witness K, T. 4699, T. 4707.

<sup>1522</sup> Jelena Kapetanović, T. 8943-46; Nusret Hadžijusufović, T. 6954-56, Safet Dagović, T. 7234-35, Osman Jašarević, Rule 92bis Statement, para. 127, Ediba Bobić, T. 11271-72.

<sup>1523</sup> Witness K, T. 4707.

<sup>1524</sup> Jelena Kapetanović, T. 8978-80.

<sup>1525</sup> Witness O, Rule 92bis Statement, para. 33; Jelena Kapetanović, T. 10303-04.

<sup>1526</sup> Nusret Hadžijusufović, T. 6954-56.

<sup>1527</sup> Hajrija Drljačić, T. 8062-63.

<sup>1528</sup> Dragan Lukač, T. 1685, T. 1699-70; Ibrahim Salkić, T. 3292-93; Osman Jašarević, Rule 92bis Statement, para. 86.

<sup>1529</sup> Detainees transferred from the TO to Brčko and detained there in the JNA barracks included Sulejman Tihić, T. 1376, T. 1450, T. 1478; Hasan Subašić, T. 10953, T. 11166-67; Witness N, T. 6074-75; Dragan Lukač, T. 1685; Hasan Bičić, T. 2685-86; Ibrahim Salkić, T. 3266, T. 3295-96; Dragan Delić, T. 6682; Osman Jašarević, Rule 92bis Statement, paras 85-86, 97; Witness A, T. 10755-57, T. 10761, T. 10994, Rule 92bis Statement, paras 61-64.

<sup>1530</sup> Simo Zarić, T. 19335-39, T. 19391.

<sup>1531</sup> Hasan Subašić, T. 10956-57.

<sup>1532</sup> Muhamed Bičić, T. 2967; Sulejman Tihić, T. 3714; Hasan Subašić, T. 10957.

Brčko.<sup>1533</sup> Some detainees were transferred from Batković and detained in Bijeljina where they were subject to court proceedings.<sup>1534</sup> The barracks in Bijeljina were guarded by Serb military men, including officers and reserves.<sup>1535</sup> After a group of detainees were transferred to Batajnica in Serbia, the rest remained in Bijeljina for approximately two weeks before being taken to facilities in Bosanski Šamac that included the primary and secondary schools.<sup>1536</sup> Several witnesses were returned from Bijeljina back to Batković after court proceedings had been conducted.<sup>1537</sup>

(h) Trials in Bijeljina and Batajnica

669. Although not outlined in the Amended Indictment or in the Prosecution Pre-Trial Brief, the Trial Chamber assesses the evidence presented on trials conducted in Bijeljina and Batajnica, as they relate to its finding on the charge of unlawful arrest, detention and confinement. Five Prosecution witnesses, namely, Ibrahim Salkić, Kemal Mehinović, Hasan Subasić, Witness L and Witness M, were subject to trials during 1993 in the Military Court in Bijeljina; two witnesses were subject to trials in Batajnica, Serbia, in approximately May 1992, namely Witness P and Izet Izetbegović; and one witness, Nusret Hadžijusufović, was convicted and sentenced without the opportunity of a trial.

670. During the trial in Bijeljina, Ibrahim Salkić was confronted with the statement he had written in the TO during his first week of detention. At the time he had been severely beaten and required to write a statement on the ground by Lugar, one of the Serb paramilitaries. Blood was pouring from his head and hands onto his statement as he was forced to write it.<sup>1538</sup> When interviewed by Miloš Savić and Simo Božić, he was told that if he did not write certain things in his statement they would force him too.<sup>1539</sup> He was told the charges against him were insurrection, rebellion against the system and the authorities. He learnt later, from others who were sentenced, that he had been sentenced to death, which was commuted to 20 years imprisonment.<sup>1540</sup>

671. Kemal Mehinović had no warning that he was to be subject to trial until his name was called out by a military police officer who came to take him to trial at the Military Court in Bijeljina in

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<sup>1533</sup> Dragan Lukač, T. 1707; Osman Jašarević, Rule 92bis Statement, paras 97, 99. Detainees who were transferred from Brčko and detained in the JNA barracks in Bijeljina on 1 or 2 May 1992 included Sulejman Tihić (T. 1376, T. 1451); Dragan Lukač, T. 1706-13; Hasan Bičić, T. 2701-06, T. 2711; Muhamed Bičić, T. 2967, T. 2973, T. 2977; Ibrahim Salkić, T. 3313, T. 3316, T. 3320-21, T. 3394-95; Witness N, T. 6092-96; Dragan Delić, T. 6682, T. 6685, T. 6689.

<sup>1534</sup> Hasan Subašić, T. 11026-27; Kemal Mehinović, T. 7556-59, T. 7472.

<sup>1535</sup> Sulejman Tihić, T. 1480.

<sup>1536</sup> Osman Jašarević, Rule 92bis Statement, para. 110; Hasan Bičić, T. 2701-03, T. 2705-06, T. 2711; Muhamed Bičić, T. 2977-79, T. 2981; Ibrahim Salkić, T. 3313-16, T. 3320-21; Dragan Delić, T. 6682, T. 6685, T. 6688-89; Witness N, T. 6092-96, T. 6098.

<sup>1537</sup> Hasan Subašić, T. 11026-27; Kemal Mehinović, T. 7556, T. 7559; T. 7472.

<sup>1538</sup> Ibrahim Salkić, T. 3267-68, T. 3272.

<sup>1539</sup> Ibrahim Salkić, T. 3280-81.

approximately January 1993. He was not given a charge sheet or Indictment, nor any reason for being summonsed to court. He was not assigned any lawyer. When he received a court decision declaring him guilty, he was not advised of a right to appeal.<sup>1541</sup> At trial he was shown Exhibit P57, dated 22 March 2000 which is a decision terminating criminal proceedings against him for the crime of armed insurgency. He had not, however, been advised of this previously.<sup>1542</sup>

672. Hasan Subašić was brought to the Military Court in Bijeljina in the summer of 1993. He was required to give a statement to the investigating judge, and afterwards, when he received a copy of this, he saw that it was totally different to the one he had given. Although he had a lawyer, he was not able to meet him prior to the trial and he never advised him on the legal issues involved. He was not able to call any witness on his behalf. He was convicted of armed rebellion in the territory of the SFRY and sentenced to 12 years imprisonment.<sup>1543</sup>

673. Court proceedings were initiated against Witness L at the Military Court in Bijeljina in early 1993. He was told that he was charged with committing armed insurrection in Bosanski Šamac on 16 and 17 April 1992.<sup>1544</sup> He did not have the opportunity or the facilities to conduct his defence while detained in the hangar in Batković.<sup>1545</sup> Although presented at trial with Exhibit D17/3, a document of the Supreme Military Court of Republika Srpska, containing reference to Ziko Krunić, as military defence counsel, he did not recognise this person. The Trial Chamber finds that this document does not confirm, in the face of the witness' own testimony, and the clear evidence of lack of due process in the court proceedings conducted in the Military Court in Bijeljina, that he was assigned such counsel, or that counsel represented his case in accordance with the rights of the accused.<sup>1546</sup> He was sentenced to three and a half years imprisonment for "aggression against the Serbian people and Serbian territory", in February or March 1993. He did not receive any notice of his right of appeal.<sup>1547</sup>

674. Witness M was tried in the Military Court in Bijeljina and sentenced in June 1993 to 12 years imprisonment. He was sentenced for allegedly wounding Stevan Arandjić.<sup>1548</sup>

675. Witness P was brought to trial in Batajnica. He did not have counsel to represent him at the hearing and no witnesses were presented. He was informed that he was charged with organising a

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<sup>1540</sup> Ibrahim Salkić, T. 3397-98.

<sup>1541</sup> Kemal Mehinović, T. 7467-72, T. 7489-91.

<sup>1542</sup> Kemal Mehinović, T. 7496-98.

<sup>1543</sup> Hasan Subašić, T. 11026-27.

<sup>1544</sup> Witness L, T. 4518.

<sup>1545</sup> Witness L, T. 4501-03; T. 4517.

<sup>1546</sup> Exhibit D17/3, Republika Srpska, Supreme Military Court Number 37/93, Han Pijesak, dated 31 May 1993 (Sentence).

<sup>1547</sup> Witness L, T. 4346-47, T. 4523 (Exhibit D15/3).

rebellion in Posavina, raping several Serbian women, slaughtering a Serb child, and manufacturing weapons. No record was made of the hearing. He was not convicted or sentenced, but remained in detention.<sup>1549</sup>

676. Izet Izetbegović was interviewed by two or three people on three occasions while he was detained in Batajnica. He was told that the charges against him were overthrowing and taking part in the breakdown of the Yugoslav system. Nine prisoners from Bosanski Šamac were lined up and Sulejman Tihić was told to read out their sentence. He was not provided access to a lawyer, nor was he given any facilities to defend himself.<sup>1550</sup>

677. Nusret Hadžijusufović was never notified of the charges brought against him or advised of his rights. He never appeared at a hearing or trial, and did not receive any official notice of a court judgement or sentence. He was convicted and sentenced to one year imprisonment for violation of the borders of Republika Srpska.<sup>1551</sup>

678. The criminal proceedings outlined above by witnesses, were not conducted with full respect for their right to fair trial, and liberty and security of the person, as enshrined in Articles 5 and 6 of the ECHR, and Articles 9 and 14 of the ICCPR. These rights are encompassed in Common Article 3 of the Geneva Conventions of 1949, paragraph (d), which prohibits the passing of sentences without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees, recognizable as indispensable by civilized peoples, an article which has reached international customary law status.<sup>1552</sup> Such rights include the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to trial within a reasonable time or to release; the right for a court to decide without delay on the lawfulness of detention; the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law; to be presumed innocent until proved guilty according to law; to be informed promptly of the nature and cause of the accusation against him or her; to have adequate time and facilities for the preparation of his or her defence; to have legal assistance; to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her, amongst others.

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<sup>1548</sup> Witness M, T. 5376-78, T. 5341.

<sup>1549</sup> Witness P, T. 11597-601, T. 11615-17.

<sup>1550</sup> Izet Izetbegović, T. 2371-75, T. 2529-30.

<sup>1551</sup> Nusret Hadžijusufović, T. 7147-48

<sup>1552</sup> The Appeals Chamber in *Čelebići* confirmed the view expressed in the *Tadić* Appeal Judgement that the expression “laws and customs of war” has evolved to encompass violations of the Geneva law at the time the alleged offence was committed (para. 133).



679. In many cases witnesses were deprived of all these guarantees, and in instances where some of these rights were afforded, these measures were inadequate, for example, where Hasan Subašić was assigned a lawyer, he was not able to meet with him prior to trial and was never advised of the legal issues involved.<sup>1553</sup> The witnesses were detained for lengthy periods of time without any review of their detention, and without knowing the crimes for which they were charged.<sup>1554</sup> The witnesses were not given the opportunity to bring witnesses for their defence in the proceedings.<sup>1555</sup> They were not advised in time of any right of appeal.<sup>1556</sup>

### 3. Discussion and findings on unlawful detention and confinement

680. The Trial Chamber considers that the non-Serb civilians who were detained in the camps in Zasavica, and for the short period in Crkvina, were detained arbitrarily, with no lawful basis. Non-Serb civilians were taken to the village of Zasavica where they were guarded and unable to leave. They were not brought before a judge to challenge the legality of their detention, nor were any lawful criminal proceedings conducted. There was no reasonable suspicion that they had committed any criminal offence. They were not informed of any accusation against them, but rather forced from their homes, rounded up and taken to Zasavica where they were prevented from leaving. This treatment constitutes arbitrary deprivation of their liberty. Similarly, the deprivation of liberty of civilian women, children, elderly, in addition to men, in Crkvina, without any of the above guarantees, was unlawful.

681. The detention of non-Serb civilians in facilities within Bosanski Šamac, namely, the SUP, TO and primary and secondary schools, was also arbitrary and unlawful. Although a small number of the arrests may not have been unlawful for persons belonging to the SDA paramilitary group, in so far as their may have been a well-founded suspicion that they committed crimes during their participation in these groups, the detention of these persons became unlawful when they were subjected to continued detention without respect for their rights to liberty and security of the person, and to a fair trial. The detainees in these facilities were not given any lawful reasons for their detention, and they were confined for considerable amounts of time without being charged. The Trial Chamber does not give weight to the submission of Mirko Pavić that warrants for arrest were issued by the Chief of Police, in the face of strong testimony from those arrested that they were not given any reasons for their arrests.<sup>1557</sup> Those few who were subject to criminal proceedings, did not receive trials or procedures in accordance with international human rights standards, and the

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<sup>1553</sup> Hasan Subašić, T. 11026-27.

<sup>1554</sup> Nusret Hadžijusufović, T. 7147-48.

<sup>1555</sup> Witness P, T. 11598.

<sup>1556</sup> Kemal Mehinović, T. 7467-72, T. 7489-91; Witness L, T. 4523.

<sup>1557</sup> Mirko Pavić, Rule 92*bis* Statement, para. 15.

guarantees as set out in the Geneva Conventions.<sup>1558</sup> The legality of their detention was never reviewed by the Serb authorities.

682. Detainees who were held in other military run facilities that included Brčko and Bijeljina, were held unlawfully. There is no evidence that any of the witnesses who gave testimony as to having been detained in these facilities were held for any lawful reason. In the limited cases where there may have been a reasonable suspicion that a small number had committed a criminal offence, namely, those who were members of the SDA paramilitary group, those persons were not given a fair trial. No reasons were given for their continued detention, and no review of their detention was made.

683. The Trial Chamber is satisfied that interrogations of those detained were conducted under coercive and forced circumstances.<sup>1559</sup> Interrogations were carried out by Simo Zarić,<sup>1560</sup> and members of the police that included Simo Božić, Miloš Savić, Vladimir Šarkanović and Savo Čancarević.<sup>1561</sup> In this paragraph the Trial Chamber considers the conduct of interrogations as it relates to the legality of detention. The charge against Simo Zarić in paragraph 15(d) of the Amended Indictment is considered separately in the section that follows. Detainees were beaten as they were required to give statements,<sup>1562</sup> and many did not see the statements that they were forced to sign.<sup>1563</sup> The fact that interrogations were conducted does not render these detentions lawful, given the forceful nature of many of the interrogations, and the context in which they were carried out. In addition, the interrogations were not based upon reasonable grounds that such persons had committed any criminal offences, nor were they followed by fair criminal proceedings. Although some detainees were questioned about the offence of illegal possession of weapons, as charged in the “Law on Criminal Proceeding of former Social Federative Republic of Yugoslavia”,<sup>1564</sup> they were all non-Serbs, and were clearly singled out and questioned on the basis of their ethnicity. No witnesses were ever convicted for illegal possession of weapons. The fact that some detainees were interviewed without beatings, for example, in the instances where they

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<sup>1558</sup> See Article 75 of Protocol I; Articles 71-76, Geneva Convention IV.

<sup>1559</sup> Hasan Subašić, T. 10953-54; Witness G, T. 4063-66; Esad Dagović, T. 4005-06, T. 5779-80; Witness P, T. 11558-59.

<sup>1560</sup> Stevan Todorović, T. 9969-73, T. 10102-12; Sulejman Tihić, T. 1402-03; Alija Fitozović, T. 8521-22, T. 8691-94; Esad Dagović, T. 4009; Osman Jašarević, Rule 92bis Statement, para. 15; Witness N, T. 6082; Hasan Bičić, T. 2693-2701; Muhamed Bičić, T. 2968-69; Ibrahim Salkić, T. 3297-98; Dragan Lukač, T. 1705; Simo Zarić, T. 20011-13; T. 20047.

<sup>1561</sup> Muhamed Bičić, T. 3021-24; Witness L, T. 4338; Witness K, T. 4885, T. 4680-81; Witness C, T. 7927, T. 7987; Kemal Bobić, T. 11421; Ibrahim Salkić, T. 3275-77; Esad Dagović, T. 4005; Kemal Mehinović, T. 7413-15; Stevan Todorović, T. 9545-46; Witness E, T. 7760-64; Osman Jašarević, Rule 92bis Statement, para. 79; Witness A, T. 10743-48; Hasan Subašić, T. 10979-80; Witness P, T. 11559; Ibrahim Salkić, T. 3275-76; Vladimir Šarkanović, T. 16514, T. 16564; T. 8753-54, T. 16523-24, T. 16549; Hasan Subašić, T. 10943.

<sup>1562</sup> Muhamed Bičić, T. 3001-02; Witness O, Rule 92bis Statement, para. 27; Dragan Lukač, T. 1695-96; Esad Dagović, T. 5963-64; Ibrahim Salkić, T. 3268, T. 3272-74; Kemal Mehinović, T. 7413-15.

<sup>1563</sup> Esad Dagović, T. 5780; T. 5787-88; Nusret Hadžijusufović, T. 6964-65.

were interrogated by Simo Zarić, and were able to read their statements before signing, does not change the fact that interrogations were conducted in forced circumstances, as detainees were held in circumstances that were clearly coercive, having been locked in facilities, guarded by armed soldiers and police, and surrounded by violence, that included torture and beatings. Only a handful of detainees were released following interrogation, that included Safet Hadžialijagić, Hasan Izetbegović, Jusuf Jusufović and Fadil Sabanović, leaving the majority of detainees in continued detention following their interrogation.<sup>1565</sup> The Trial Chamber is satisfied that none of the detainees were ever advised of their procedural rights before or during their detention.

684. The Trial Chamber finds that the Bosnian Croat, Bosnian Muslims and other non-Serbs detained in the detention facilities above, namely at the SUP, TO, primary and secondary schools, Brčko, and Bijeljina, were deprived of their liberty arbitrarily. The evidence has clearly established that there was no legal basis which could be relied upon to justify their deprivation of liberty under national or international law. The small group of members of the SDA paramilitary unit, which the Trial Chamber accepted may have been arrested upon a reasonable suspicion of committing a crime, were not subject to fair or lawful criminal proceedings to justify their detention. Others who were detained were not under suspicion of having ever committed a crime, and again, were not subjected to fair and lawful proceedings to justify their continued detention.

685. The Trial Chamber is satisfied that non-Serb persons were arrested and detained because of their non-Serb ethnicity and political affiliations. The overwhelming majority of those detained were Bosnian Croats and Bosnian Muslims civilians. The Trial Chamber finds that the arrest and detention of the non-Serb civilian population in Bosanski Šamac was carried out on a discriminatory basis, as the Bosnian Muslim and Bosnian Croat population was targeted specifically, while their Serb neighbours were on the whole left unharmed. In addition, members of the SDA and HDZ, Bosnian Muslim and Croat political parties were arrested and detained, while again, members of the Serb parties were not.

#### 4. Interrogations by Simo Zarić

686. Simo Zarić is charged with interrogation of Bosnian Croat, Bosnian Muslim and other non-Serb civilians who had been arrested and detained and forcing them to sign false and coerced statements.<sup>1566</sup>

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<sup>1564</sup> Exhibits D24/3 and D51/4.

<sup>1565</sup> Vladimir Šarkanović, T. 16674.

<sup>1566</sup> Amended Indictment, para. 15 (d).

687. The evidence of Prosecution witnesses and of Simo Zarić himself, demonstrates that he was responsible for interrogating non-Serbs at the SUP and in Brčko during the armed conflict, and that they were civilians.<sup>1567</sup> Defence witnesses also testified that Simo Zarić was responsible for conducting interrogations of detainees.<sup>1568</sup> While there is evidence that Simo Zarić conducted interrogations of detainees there is no evidence that he forced them to sign false or coerced statements. When Simo Zarić interrogated Sulejman Tihić, Muhamed Bičić, Hasan Bičić, Witness G, and Ibrahim Salkić, he did not use force and the interrogations were not accompanied by beatings when he was present. Witness G described her interview with Simo Zarić as “very correct”,<sup>1569</sup> and Hasan Bičić explained that he had a “normal conversation” with Simo Zarić.<sup>1570</sup> Witness N testified that when interviewed by Simo Zarić in Brčko it was more of a chat than an interrogation.<sup>1571</sup> Sulejman Tihić stated that he was subject to a number of interrogations but the only one where a record was taken was with Simo Zarić.<sup>1572</sup> Hasan Bičić stated that Simo Zarić conducted the giving of his statement in a very proper manner.<sup>1573</sup> The Trial Chamber accepts the testimony of these witnesses and finds that Simo Zarić did not conduct interrogations with force and that he did not force or coerce false statements.

688. One witness, Kemal Mehinović, testified that the door of an interview room at the SUP was open and he saw Simo Zarić in the hallway, and that he then told an officer on duty to continue beatings.<sup>1574</sup> Upon cross-examination, counsel endeavoured to show that from the layout of the room where the witness was detained, he could not have seen the corridor where Simo Zarić was purportedly standing.<sup>1575</sup> The Trial Chamber considers that there is insufficient evidence upon which to conclude that Simo Zarić ordered these beatings. It is not clear whether the witness had a view from his detention cell to the hallway where Simo Zarić was standing; or if, he could in fact identify Simo Zarić’s voice. His testimony stands in contrast to evidence of other witnesses who stated that when Simo Zarić was present they were not subject to beatings and were interviewed without force. The Trial Chamber considers that the evidence does not prove beyond reasonable doubt, that Simo Zarić ordered any beatings.

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<sup>1567</sup> Stevan Todorović, T. 9124-27; Sulejman Tihić, T. 1402-03; Witness G, T. 4063-64; Osman Jašarević, Rule 92bis Statement, para. 15; Witness N, T. 6082; Hasan Bičić, T. 2701; Muhamed Bičić, T. 2968-69; Simo Zarić, T. 20011-13; T. 20047, T. 19309, T. 19327-38, T. 20082.

<sup>1568</sup> Vladimir Šarkanović, T. 16516; Mihajlo Topolovac, T. 18245.

<sup>1569</sup> Witness G, T. 4063-64.

<sup>1570</sup> Hasan Bičić, T. 2701, T.2693-94.

<sup>1571</sup> Witness N, T. 6082.

<sup>1572</sup> Sulejman Tihić, T. 1386-88.

<sup>1573</sup> Hasan Bičić, T. 2693-2701.

<sup>1574</sup> Kemal Mehinović, T. 7410-13.

<sup>1575</sup> Kemal Mehinović, T. 7599.

689. The Trial Chamber considers that while there is evidence that Simo Zarić conducted interrogations of detainees within an environment that could be categorized as forced circumstances, due to the nature of the facilities where detainees were held against their will, with armed guards, and surrounded by regular incidents of beatings and torture; and the fact that many detainees were subject to beatings before and following interrogations by Simo Zarić; there is no evidence that he forced or coerced detainees to sign false statements.<sup>1576</sup>

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<sup>1576</sup> Hasan Bičić, T. 2701, T. 2894-95. Hasan Bičić stated that he was acquainted with the contents of his statement and signed this, although it was not given of his own free will.

### **XIII. BEATINGS, TORTURE, FORCED LABOUR AND CONFINEMENT UNDER INHUMANE CONDITIONS**

#### **A. Beatings**

690. A large number of Prosecution witnesses gave evidence that they were beaten during their arrest and detention in the SUP, the TO, the primary school, and the secondary school in Bosanski Šamac. Such beatings also occurred in other detention facilities in Crkvina, Brčko and Bijeljina. The beatings were random and would happen several times every day.<sup>1577</sup>

691. Prosecution witnesses gave evidence that starting from 17 April 1992, screams of detainees who were being beaten could often be heard at night from the SUP building,<sup>1578</sup> the TO,<sup>1579</sup> the gym of the elementary school, and the secondary school.<sup>1580</sup>

#### **1. Beatings during arrest**

692. When Izet Izetbegović was arrested in the corridor outside the apartment of Safet Hadžialijagić on 19 April 1992, he was beaten with various objects, and threatened to be killed by Serb policemen in camouflage uniforms speaking the Ekavian dialect, among them “Laki” – Predrag Lazarević – and “Lugar” – Slobodan Miljković. Thereafter, he had to show them his daughter’s apartment, and one policeman said that he would kill him if he didn’t say where “the gold” was. Whilst in his daughter’s apartment, Izet Izetbegović was then beaten with hands and feet, and a policeman put a pillow on his head and cocked his gun. He fired and said that the bullet was “no good”. He tried another bullet and told him, “none of these bullets are any good, so you’re lucky”. After these incidents, Izet Izetbegović was taken to his own house, where he was hit with a bust of Tito so that two of his ribs were broken.<sup>1581</sup>

693. The brothers Hasan and Muhamed Bičić were beaten with rifle butts during their arrest on 18 April 1992 by people in military uniforms with painted faces, speaking in a Serbian accent. Hasan Bičić sustained injuries from these beatings.<sup>1582</sup>

694. Kemal Mehinović was beaten with a truncheon and with a knuckle-duster by two Serb policemen, Zoran Paležica and Radulović, in front of his family upon his arrest on 27 May 1992.<sup>1583</sup>

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<sup>1577</sup> Dragan Lukač, T. 1687.

<sup>1578</sup> Dragan Lukač, T. 1743; Esad Dagović, T. 3920; Witness K, T. 4688; Stevan Todorović, T. 9301; Witness E, T. 7699; Kemal Bobić, T. 11402; Witness P, T. 11558-59.

<sup>1579</sup> Sulejman Tihić, T. 1419; Dragan Lukač, T. 1698; Ibrahim Salkić, T. 3282; Witness L, T. 4339-41; Stevan Todorović, T. 9301; Witness K, T. 4688; Witness E, T. 7699; Ediba Bobić, T. 11271.

<sup>1580</sup> Witness L, T. 4339-41; Nusret Hadžijusufović, T. 6952-53.

## 2. Beatings at the SUP

695. Prosecution witnesses testified that they were beaten upon their arrival at the SUP and during their ensuing detention there. The beatings occurred on a daily basis, day and night, and all parts of the bodies were targeted, including genitals, the back of the head, the face, the arms, the hands, and the back. In addition to using hands and boots, various objects were used for the beatings, such as rifles, metal bars, baseball bats, metal chains, police batons, chair legs and any other devices the assailants could find.<sup>1584</sup> Most of the time, the beatings took place in front of the other detainees in order to instil a sense of fear.<sup>1585</sup> Some victims suffered prolonged continuous beatings.

696. Izet Izetbegović gave evidence that on the days following his arrest on 19 April 1992, he was severely beaten with objects like truncheons and metal chains. He testified further that the inmates would be taken to a dark room with just a candle in the corner, and they were beaten with whatever the assailants got their hands on. It was dangerous to fall to the ground during the beatings, as the assailants would kick their victims in the ribs. They would beat their victims unconscious, drag them back by their legs or collar, and bring in the next prisoner. On one occasion, “Laki” smashed Izet Izetbegović’s teeth out with fists.<sup>1586</sup>

697. When Kemal Mehinović was arrested on 27 May 1992, Stevan Todorović and his bodyguard Goran hit him and Hasan Hadžialijagić, Admir Džakić, and a man called Srna, nicknamed “Cuba”, with a truncheon, a baseball bat, and a metal bar for several hours all over their bodies and their heads. Several times, Kemal Mehinović had to spread his legs so that they could beat him in the crotch, and they told him that the Muslims should not propagate. Later, Stevan Todorović asked him which hand he used for shooting, and he hit him with the rifle butt on an index finger, which was broken as a result of the blow.<sup>1587</sup>

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<sup>1581</sup> Izet Izetbegović, T. 2271-77.

<sup>1582</sup> Hasan Bičić, T. 2640-41.

<sup>1583</sup> Kemal Mehinović, T. 7405-06.

<sup>1584</sup> Sulejman Tihić, Izet Izetbegović, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness L, Witness M, Witness N, Kemal Mehinović, Witness E, Witness C, Osman Jašarević, Witness A, Kemal Bobić, Witness P, and Witness Q.

<sup>1585</sup> Witness P, T. 11558-59.

<sup>1586</sup> Izet Izetbegović, T. 2282-84, T. 2310-11, T. 2324; Osman Jašarević and Witness N both testified having witnessed Izet Izetbegović being beaten. Osman Jašarević stated that on the evening of 20 April 1992 in the SUP, four or five armed people in camouflage uniforms came, grabbed Izet Izetbegović from his cell and began to beat him with batons on the face, neck, and chest. They also hit him on the top of his head and on the collar bone. He was screaming and bleeding. Osman Jašarević could see this from his cell, and he stated that it was extremely hard to watch and hear this. Osman Jašarević, Rule 92bis Statement, paras 53–58. Witness N testified that “Crni” beat Izet Izetbegović for about 30 to 40 minutes on 22 April 1992 in Izet Izetbegović’s cell on the ground floor of the SUP building, while Witness N was in the neighbouring cell. Witness N could not see “Crni” beating Izet Izetbegović, but he would see “Crni” when he came out of Izet Izetbegović’s cell, Witness N, T. 6066-67.

<sup>1587</sup> Kemal Mehinović, T. 7413-15. See for further beatings of himself and other prisoners, T. 7429-38.

698. Witness A was beaten by “Lugar” with a police rubber baton and a rifle butt on his spine, lower back, head and hands, and “Lugar” also kicked him with his boots in the stomach. Some days later, Witness A, Salko Hurtić, and Anto Simović were beaten by “Laki” with a metal bar, and Witness A’s eye was swollen shut. In mid-June, Witness A was beaten by “Lugar” with a wrench on his joints, knees, elbows and hands, and Stevan Todorović beat him with a police baton on his head and kicked him in his genital area and lower abdomen. Later, “Ekac” and “Lugar” hit him with a shock absorber and a car jack until Witness A’s forehead was torn and he fainted.<sup>1588</sup>

699. Hasan Bičić was taken to an office in the SUP with a big wooden, heavy writing desk with broken glass on it. About three men in police and JNA uniforms,<sup>1589</sup> including Stevan Todorović, started beating him. Then they ordered him to strip completely. He was told to lie down on his stomach, across the table with the broken glass on it, and the men continued to beat him all over his body.<sup>1590</sup>

700. Among those other non-Serb prisoners who were beaten and mistreated following the same patterns during their stay in the SUP were Sulejman Tihić,<sup>1591</sup> Ibrahim Salkić,<sup>1592</sup> Esad Dagović,<sup>1593</sup> Witness L,<sup>1594</sup> Witness M,<sup>1595</sup> Witness E,<sup>1596</sup> Witness C,<sup>1597</sup> Osman Jašarević,<sup>1598</sup> Witness P and Luka Gregurović,<sup>1599</sup> and Witness Q.<sup>1600</sup>

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<sup>1588</sup> Witness A, Rule 92bis Statement, paras 37, 41, 43-45, 54, 89, 94-96.

<sup>1589</sup> Muhamed Bičić, T. 2934.

<sup>1590</sup> Hasan Bičić, T. 2646-49.

<sup>1591</sup> Sulejman Tihić, T. 1370-73, T. 1379-80, T. 1382, T. 1385-86, T. 1393-94, T. 1402, T. 1410, T. 1414-15, T. 1430-31, T. 1433-38; see also Muhamed Bičić, T. 2933, T. 2935-37. Ibrahim Salkić gave evidence that he was beaten on 18 April 1992 by Stevan Todorović and other policemen, wearing either police uniforms or camouflage uniforms. Some of these policemen were locals, and some were not from the local area, speaking with the Ekavian accent, T. 3240, T. 3243-44; T. 3261-63.

<sup>1592</sup> Ibrahim Salkić, T. 3286.

<sup>1593</sup> Esad Dagović stated that “Laki” had put a screwdriver through his right hand, and he showed in court a small scar, T. 3934-40, T. 3964.

<sup>1594</sup> Witness L, T. 4335, T. 4337-39.

<sup>1595</sup> Witness M, T. 5218, T. 5220, T. 5223; he was also beaten by “Cera” and a man called “Sumadinac” with a pistol on his collarbone and head and stabbed with a knife in his right arm so that he fainted. He was then brought to the SUP, but not arrested, T. 5029-35.

<sup>1596</sup> Witness E, T. 7681-82, T. 7687.

<sup>1597</sup> Witness C, T. 7915-24.

<sup>1598</sup> Osman Jašarević, T. 10519; Rule 92bis Statement, paras 53-55, 59.

<sup>1599</sup> Witness P, T. 11558-59. Kemal Bobić also heard the screams of other prisoners in May and June 1992, T. 11400-02.

<sup>1600</sup> Witness Q, T. 11728-30, T. 11732. Defence witnesses also testified about beatings in the SUP, see Mirko Pavić, Rule 92bis Statement, para. 18; Maksim Simeunović, T. 15871-72; Naser Sejdić, T. 17553; Milan Jekić, Deposition T. 153; Witness DW8/3, T. 17839-54; Pašaga Tihić, T. 18192; Radovan Antić, T. 16869; Savo Đurđević, T. 17623-24, T. 17638-39; Mustafa Pištoljević, T. 16367, Witness DW 2/3, T. 14470-71; Vladimir Šarkanović, T. 16518; Dario Radić, T. 15063.



### 3. TO

701. Prosecution witnesses testified that in the TO building, non-Serb civilians were exposed to brutal beatings with rifles, wooden truncheons, police batons, chair legs, and other implements. These beatings carried on both day and night. Some victims sustained injuries which took a long time to heal or had not healed completely at the time of the trial.<sup>1601</sup>

702. Among the assailants were members of the Paramilitaries from Serbia including “Lugar”, “Laki” – Predrag Lazarević, “Crni” – Dragan Đorđević –, “Debeli” – Srećko Radovanović –, a man called “Beli”, “Zuti”, “Avram” and a local person called “Cera” – Nebojsa Stanković.<sup>1602</sup> Other assailants were local Serb policemen from Batkusa, Slobodan Jačimović, and Skarići – “Zvaka” Rakić, Spasoje Bogdanović, Slavko Trivunović, and “Bobo” Radulović, two villages within the municipality of Bosanski Šamac.<sup>1603</sup>

703. Dragan Lukač was beaten severely by “Lugar” on 19 April 1992 with a rubber police truncheon on the back of his head. He stated that the term “beating” was too mild for what the prisoners had to go through, “it was actually a massacre”. The paramilitaries came several times during the day or the night and beat prisoners with police truncheons, hands, and military boots. On one occasion, “Cera” made him kneel on the concrete in the TO courtyard. Then, he kicked him in the head with his military boot, and Dragan Lukač fainted. Then, “Cera” knocked out four of Dragan Lukač’s teeth. His face was cut near one eye, and he bled a lot.<sup>1604</sup>

704. Hasan Bičić described an “exemplary” beating in the TO as follows: in the beginning, the prisoners were beaten by paramilitaries. Little by little, the local guards joined in, and “Cera” was particularly cruel and brutal to the prisoners. During the close to ten days that he spent in the warehouse of the TO, Hasan Bičić was beaten at least five times under the direction of “Cera”. On one occasion, several prisoners including Hasan Bičić were beaten with rifles, wooden truncheons, and metal bars. They were kicked with boots. Hasan Bičić was beaten by three or four people at the same time. Each of them took turns to give him blows to the head. He fell down and tried to protect his head. As he crouched down, he received a blow to his spine from the kick of an army boot. This caused his hands to open up from covering his face, and he was then kicked in the face. After this,

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<sup>1601</sup> Hasan Bičić, T. 2676-78; Muhamed Bičić, T. 2948 (about Omer Nalić); Ibrahim Salkić, T. 3437-38; Witness N, T. 6065-74; Kemal Mehinović, T. 7451-52 (about Kemal Bobić); Witness E, T. 7715-20 (about other prisoners); Osman Jašarević, Rule 92bis Statement, paras 69-75 (about Silvestar Antunović); Kemal Bobić, T. 11404-06, T. 11408-11; Witness P, T. 11549-56.

<sup>1602</sup> Dragan Lukač, T. 1679-81, 1686-92; Osman Jašarević, Rule 92bis Statement, paras 69-75.

<sup>1603</sup> Kemal Bobić, T. 11404-06, T. 11408-11411.

<sup>1604</sup> Dragan Lukač, T. 1679-81, T. 1686-92.

Hasan Bičić remained lying on the concrete in the yard, all bloody. With his boots on, “Cera” jumped up and down on Hasan Bičić’s left hand and broke some of his fingers.<sup>1605</sup>

705. Between 22 and 29 April 1992, “Lugar” hit Anto Brandić, “Dikan”, aged about 60, with a wooden table leg. “Dikan” moaned and begged “don’t do this, you’ll kill me”. “Lugar” kept hitting him on the head, and at one point “Dikan” fell over a jerrycan for water. His body remained motionless and blood was gushing out his mouth. “Lugar” dragged him out into the courtyard of the TO, and then the prisoners heard one or two shots. Then “Lugar” said, “throw this dog into the Sava River”. After the murder, “Lugar” hit Osman Jašarević with the wooden table leg on the right side of his face and cracked his eye socket. “Lugar” also hit a man called Gibić and other prisoners with the wooden table leg.<sup>1606</sup>

706. Osman Jašarević was beaten by “Lugar”, “Laki”, “Beli”, “Zuti” and “Avram”, and it was “Avram” who broke his ribs which did not heal properly afterwards. He was kicked in his head and beaten with a rifle butt, splitting open the back of his head. He was also hit with batons and sticks, and “Lugar” hit him with a one meter-long pipe with a chain attached to it on his head. Silvester Antunović was hit on the head by “Lugar” and was paralyzed afterwards.<sup>1607</sup>

707. On 3 July 1992, Kemal Bobić was severely beaten by a number of people including Stevan Todorović, Slavko Trifunović, Slobodan Jačimović, Slobodan Rakić, Spaso Bogdanović, “Tubonja”, Savo Čančarević, and Bobo Radulović, using a heavy metal spring, baseball bats, a rifle butt and other instruments. Also, cigarettes were extinguished in his mouth, and a nail was then driven into his leg below the knee leaving a scar. Both his arms were broken and his right leg was fractured. He then lost consciousness.<sup>1608</sup>

708. Among the other prisoners in the TO who were similarly beaten and mistreated during their detention were Sulejman Tihčić,<sup>1609</sup> Izet Izetbegović,<sup>1610</sup> Sead Mujkanović, nicknamed “Sejo”,<sup>1611</sup> Ibrahim Salkić, Muhamed Bičić, “Roma”, and Omer Nalić,<sup>1612</sup> Witness N,<sup>1613</sup> Andrija and Andjelko

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<sup>1605</sup> Hasan Bičić, T. 2676-78; Muhamed Bičić, T. 2948-49, T. 2953-54. See also T. 2943-46, T. 3004-05

<sup>1606</sup> Dragan Delić, T. 6672-73; Osman Jašarević, Rule 92*bis* Statement, paras 80-81, T. 10530.

<sup>1607</sup> Osman Jašarević, Rule 92*bis* Statement, paras 69-75.

<sup>1608</sup> Kemal Bobić, T. 11404-11.

<sup>1609</sup> Sulejman Tihčić, T. 1395. He stated that the prisoners were beaten with truncheons on their way to the toilet, and it was very hard to relieve oneself, T. 1399-1400, T. 3646.

<sup>1610</sup> Izet Izetbegović, T. 2312-15, T. 2319, T. 2321-23, T. 2326. See also Hasan Bičić, T. 2653, T. 2655-59, T. 2669-71.

<sup>1611</sup> Muhamed Bičić, T. 2955-56; Ibrahim Salkić, T. 3282-83; Dragan Delić, T. 6675. Muhamed Bičić also described how “Avram” and “Beli” beat prisoners with police truncheons, T. 2956. Beatings of “Dikan”, Osman Jašarević, and Mersad Gibić, nicknamed “Daša”, by “Lugar” were also described, T. 2956-59, T. 2963; Ibrahim Salkić, T. 3291.

<sup>1612</sup> Ibrahim Salkić, T. 3272-73, T. 3281-85, T. 3290. He was also beaten by “Rade”, Goran Ristić and Goran Hasić, T. 3372; Muhamed Bičić, T. 2948.

<sup>1613</sup> Witness N, T. 6065, T. 6067-74. One of the prisoners, Dragan Marković, was half Serb, half Croat, T. 6074. He also described further beatings by the paramilitaries, members of the 4<sup>th</sup> Detachment, and guards. One of the members of the paramilitaries was a man called “Zec”, T. 6075-76.

Stjepanović,<sup>1614</sup> Dragan Delić, “Dikan”,<sup>1615</sup> Kemal Mehinović,<sup>1616</sup> Witness E,<sup>1617</sup> Witness C,<sup>1618</sup> Witness A and Luka Gregurović,<sup>1619</sup> Hasan Subašić,<sup>1620</sup> Witness P,<sup>1621</sup> Safet Hadžialijagić, “Coner”, Kemal Atić, Salko Hurtić,<sup>1622</sup> and Witness Q.<sup>1623</sup>

#### 4. Primary and Secondary schools

709. Prosecution witnesses testified that they were regularly and severely beaten during their detention in the primary and the secondary schools.

710. Hasan Bičić testified that as soon as he and other prisoners got off the bus at the secondary school, they were beaten by people wearing uniforms belonging to the Serb police force. During his ensuing detention in the gym, the prisoners were often beaten, mostly by locals. The assailants used rifle butts, wooden batons, metal bars, truncheons, army boots, and baseball bats, and the prisoners were beaten all over. After one beating by Stevan Todorović, Hasan Bičić did not recognize his face and his head as reflected in a windowpane.<sup>1624</sup>

711. Witness N was beaten by guards and soldiers from the frontlines almost every day with metal bars. One day it was eight times, and his ribs were broken and teeth pulled out. He was also beaten by Zvezdan Zurapović with a baseball bat. Once, he was beaten by Nikola Vuković so badly that Witness N could not move anymore, and Vuković hit him with the back side of a knife and threatened him to carve out a crescent moon and a star.<sup>1625</sup>

712. In mid-May 1992, Witness N and other prisoners were struck by two guards from the 4th Detachment, called “Icindija” and “Stevo”, with their hands and sticks. They forced “Ramadan” and “Guzac” to beat each other, and “Icindija” hit two Croatian brothers, Andjelko and Andrija Stjepanović, with a metal bar.<sup>1626</sup>

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<sup>1614</sup> Witness N, T. 6081.

<sup>1615</sup> Dragan Delić, T. 6669-73, T. 6681; Osman Jašarević, Rule 92bis Statement, paras 80-81, T. 10530.

<sup>1616</sup> Kemal Mehinović, T. 7449-52.

<sup>1617</sup> Witness E, T. 7715-20. Witness C stated that the beatings continued between June and October 1992, T. 7926-27. Such beatings were described by Osman Jašarević, Rule 92bis Statement, paras 65-68.

<sup>1618</sup> Witness C, T. 7926-27.

<sup>1619</sup> Witness A, Rule 92bis Statement, paras 49-52.

<sup>1620</sup> Hasan Subašić, T. 10944-46. He also testified how “Cera” beat Omer Nalić and other detainees, broke two of Hasan Subašić’s teeth, and how the paramilitaries beat the prisoners with guns, batons, wooden bats, iron bars and other objects, T. 10950-51; see also T. 10980-81.

<sup>1621</sup> Witness P, T. 11549-56.

<sup>1622</sup> Osman Jašarević, Rule 92bis Statement, paras 72-75.

<sup>1623</sup> Witness Q, T. 11761-62, 11781-83. Defence witnesses also testified about beatings in the TO: See Mirko Pavić, Rule 92bis Statement, para. 18; Naser Sejdić, T. 17553.

<sup>1624</sup> Hasan Bičić, T. 2714-15, T. 2724-25. See also Muhamed Bičić, T. 2978-79.

<sup>1625</sup> Witness N, T. 6110-13, T. 6126-28; T. 6145-48.

<sup>1626</sup> Ibrahim Salkić, T. 6103-07.

713. Among the assailants were also “Rade” from Novi Grad,<sup>1627</sup> local policemen like “Sole” and “Zvaka” Rakić,<sup>1628</sup> “Obad”, Pavlović and “Pendrek”,<sup>1629</sup> Dragan Džombić from Gornja Slatina and Stevan Todorović,<sup>1630</sup> Boro Stefanović,<sup>1631</sup> and “Lugar”.<sup>1632</sup>

714. Among the prisoners who were beaten and mistreated in a similar way were Hasan Bičić,<sup>1633</sup> Muhamed Bičić,<sup>1634</sup> Ibrahim Salkić,<sup>1635</sup> Dragan Delić,<sup>1636</sup> Osman Jašarević,<sup>1637</sup> Witness O,<sup>1638</sup> and Witness Q.<sup>1639</sup>

## 5. Crkvina

715. On 7 May 1992, “Lugar”, “Crni” and “Debeli” came to the warehouse, beat Jozo Antunović and hit him on the back of his head, before “Lugar” shot him dead with three shots. Also, Witness P, Josip Orsolčić, and another man were beaten with a rifle, and “Crni” shot Josip Orsolčić twice in the head. On this occasion, nine non-Serb detainees were killed by “Lugar”, “Crni” and “Debeli”. The other detainees were lined up again and beaten. Thereafter, six men from Teslić were killed. When the three men counted everyone, they realized that someone was missing. “Crni” found him hiding behind a sack, and shot him.<sup>1640</sup>

716. Witness O and other non-Serb civilians were brought to the hall of the Omladinski Dom on 15 May 1992 and beaten by “Avram” and other men with some sort of baton. Witness O was also beaten.<sup>1641</sup>

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<sup>1627</sup> Hasan Bičić, T. 2745-47.

<sup>1628</sup> Muhamed Bičić, T. 3323-25. Osman Jašarević testified that the prisoners who arrived at the secondary school were immediately beaten, Rule 92bis Statement, para. 111; Ibrahim Salkić, T. 3336-39.

<sup>1629</sup> Osman Jašarević, Rule 92bis Statement, paras 111-12, 116; T. 10531.

<sup>1630</sup> Witness O, Rule 92bis Statement, paras 37-39.

<sup>1631</sup> Witness O, Rule 92bis Statement, para. 45.

<sup>1632</sup> Witness Q, T. 11750-52.

<sup>1633</sup> Hasan Bičić, T. 2747.

<sup>1634</sup> Muhamed Bičić, T. 2979, T. 3007-08 T. 3013-15. He also described how Stevan Todorović beat a man called Antunović with a baseball bat until he lost consciousness, T. 2987-91, and how “Truman” beat prisoners with various objects like rifles, T. 3015-17; for further beatings by Stevan Todorović see T. 2984.

<sup>1635</sup> Muhamed Bičić, T. 3323-25; Osman Jašarević testified that the prisoners who arrived at the secondary school were immediately beaten, Rule 92bis Statement, para. 111; Ibrahim Salkić, T. 3336-39.

<sup>1636</sup> Dragan Delić, T. 6690-91. Todorović made a soldier hit Omer Nalić with a steel bar until he fainted, T. 6692.

<sup>1637</sup> Osman Jašarević, Rule 92bis Statement, paras 111-12, 116; T. 10530-32.

<sup>1638</sup> Witness O, Rule 92bis Statement, paras 37-39, 45; he also testified how Slobodan Jačimović badly beat Mato Senić, “Čutura”, and Salko Hurtić, “Čako”, para. 40; see also para. 41 on the beating of the Stejpanović brothers.

<sup>1639</sup> Witness Q, T. 11750-52. Defence witnesses also gave evidence on beatings and mistreatment of imprisoned non-Serbs, see Fadil Topčagić, Rule 92bis Statement, para. 62; Andrija Petrić, T. 17595; Mladen Borbeli, T. 14726-27, T. 14747-49; Svetozar Vasović, T. 14965; Witness DW 2/3, T. 14543-45.

<sup>1640</sup> Witness P, T. 11569-82; Muhamed Bičić, T. 2975-76. The Trial Chamber notes that these murders that were committed in Crkvina are not charged in the Amended Indictment.

<sup>1641</sup> Witness O, Rule 92bis Statement, paras 23, 27, 31.

## 6. Brčko

717. Prosecution witnesses gave evidence that they were subjected to mistreatment in Brčko. However, the beatings were less frequent than before they were transferred from Bosanski Šamac.<sup>1642</sup>

## 7. Bijeljina

718. In early May 1992, Sulejman Tihić, Dragan Lukač, Safet Hadžialijagić, Osman Jašarević and other prisoners were beaten in Bijeljina by JNA soldiers, including “Pekar” and “Brico”, military policemen, and guards in SMB uniforms.<sup>1643</sup>

### **B. Evidence relevant to other acts**

719. On or about 28 April 1992, Witness G was taken to a room in the SUP in which there were five men in different uniforms, among them Radulović, Nikolić, and “Zvaka”. “Lugar” ordered her to take off her clothes. She did so very slowly and placed them on the table. At that time she had her period. One of the men swore at her, and she was told to lie down on the table and spread her legs. “Lugar” stood next to the table and told her to lie in such a way that his knife was resting underneath her throat. Then they beat her repeatedly with a belt and a bat. On one side a man was beating her with a belt, and on the other side another man with a bat. During this time, they insulted her. After the first stroke, the knife slipped. She was crying, and they turned up the music very loudly. One of the men said that they should cool her off, and he urinated on her. They hit her for a long time and she felt faint. At some point, she could face the door, and she saw Simo Zarić standing in the doorway. He then left, and the men continued beating her.<sup>1644</sup>

720. Witness N testified that in the primary school in the summer of 1992, Nikola Vuković extinguished a cigarette on his tongue, and when he spat out blood, Vuković ordered him to lick it. Then Vuković pushed his head two or three times into the bucket with human excrement.<sup>1645</sup>

721. Other Prosecution witnesses gave evidence that during their detention in Bosanski Šamac they had teeth pulled out by “Lugar”<sup>1646</sup>, Slavko Trifunović, nicknamed Zubar (“Dentist”)<sup>1647</sup> and Slavko Perić.<sup>1648</sup>

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<sup>1642</sup> Dragan Lukač, T. 1704-06; Hasan Bičić, T. 2686-91. See also Muhamed Bičić, T. 2967, T. 2971-72, Ibrahim Salkić, T. 3295-96, T. 3299, T. 3572-73; Dragan Delić, T. 6683; Osman Jašarević, Rule 92*bis* Statement, paras 87, 96, 98; Witness A, Rule 92*bis* Statement, para. 62, T. 10998; Witness N, T. 6081-82.

<sup>1643</sup> Sulejman Tihić, T. 1478-79; Dragan Lukač, T. 1709-12; Hasan Bičić, T. 2708; Muhamed Bičić, T. 2972-73, T. 2975, T. 3058-59; Ibrahim Salkić, T. 3316-18; Dragan Delić, T. 6687; Osman Jašarević, Rule 92*bis* Statement, para. 99; Witness A, Rule 92*bis* Statement, para. 65; Hasan Subašić, T. 10957.

<sup>1644</sup> Witness G, T. 4122-23, T. 4055-58, T. 4061.

<sup>1645</sup> Witness N, T. 6147-49. See also Osman Jašarević, Rule 92*bis* Statement, para. 86.

722. Muhamed Bičić said that one night in the primary school in August 1992, “Zvaka” and “Zubar” beat and mistreated detainees. When, as a result of the beatings, the detainees would open their mouths, an object would be put in to keep the mouth open, and “Zubar” came with his bloody and rusty pliers and extracted teeth. Muhamed Bičić had two teeth pulled out. When the gym of the primary school was cleaned the next morning, over 100 teeth were in the main corridor outside the gym. Muhamed Bičić later learned that these same men went to the TO and pulled teeth there.<sup>1649</sup>

723. Ibrahim Salkić testified that on one occasion in the primary school gym, Stevan Todorović ordered the younger of two brothers to kneel in front of him. Todorović pointed a pistol at his forehead and pulled the trigger. There was no shot. Then he did the same with the other brother. Nobody was killed, and Ibrahim Salkić did not know whether or not the pistol was loaded. However, the psychological burden on the detainees was immense.<sup>1650</sup>

724. On one occasion in the SUP, in the presence of Simo Zarić, Miloš Bogdanović, a man from Serbia called “Bokan” placed his pistol at Sulejman Tihić’s temple, and it clicked.<sup>1651</sup>

725. Serb policemen threatened to cut off a finger of Izet Izetbegović in order to take a ring from him.<sup>1652</sup>

726. Sulejman Tihić, Dragan Lukač, Izet Izetbegović, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness N, Nusret Hadžijusufović, Osman Jašarević testified that the prisoners had to sing Chetnik songs for hours in the SUP, the TO, in the primary and secondary schools, in Brčko and in Bijeljina in the summer of 1992.<sup>1653</sup>

727. Ibrahim Salkić, Dragan Delić, Osman Jašarević, Hasan Bičić, Ibrahim Salkić, Hasan Subašić, and Witness M stated that in the SUP, the TO, the primary and the secondary schools, in

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<sup>1646</sup> Izet Izetbegović, T. 2282-83; Esad Dagović, T. 3960-61.

<sup>1647</sup> Dragan Delić, T. 6693-96; Hasan Subašić, T. 10968-69.

<sup>1648</sup> Witness N, T. 6122-23.

<sup>1649</sup> Muhamed Bičić, T. 3020-21. See also Ibrahim Salkić, T. 3342-43 (primary school gym, summer 1992); Witness M, T. 5227-28 (SUP, between September 1992 and about October 1992); Witness N, T. 6122-23 (primary school, summer 1992); Kemal Bobić, T. 11407, T. 11411 (TO, summer 1992); Witness Q, T. 11762 (TO, July 1992).

<sup>1650</sup> Ibrahim Salkić, T. 3347-49; see also Kemal Mehinović, T. 7446-48.

<sup>1651</sup> Sulejman Tihić, T. 1435-36; see with regard to “Crni” Witness N, T. 6065, with respect to Slobodan Rakić Witness Q, T. 11781-82, and with regard to “Avram” and “Dragan” Witness O, Rule 92*bis* Statement, para. 27.

<sup>1652</sup> Izet Izetbegović, T. 2274. See for another threat of mutilation T. 2284.

<sup>1653</sup> Sulejman Tihić, T. 1399, T. 1417; Dragan Lukač, T. 1686; Izet Izetbegović, T. 2316-17; Hasan Bičić, T. 2678-79; Muhamed Bičić, T. 2946, T. 2984, T. 2987-88, T. 3024, T. 3058-59; Hasan Subašić, T. 10945-46; Witness K., T. 4688; Witness M, T. 5234; Dragan Delić, T. 6671; Witness E, T. 7713-14; Witness A, Rule 92*bis* Statement, paras 48, 52; Ibrahim Salkić, T. 3274-75, T. 3282, T. 3323-25, T. 3338, T. 3350-53, T. 3370; Osman Jašarević, Rule 92*bis* Statement, para. 66; Esad Dagović, T. 3981; Zarić Prosecution Interview II, p. 690638.

Brčko, and in Bijeljina the prisoners were forced to stand for long periods, so that some of them would faint from exhaustion.<sup>1654</sup>

728. Several Prosecution witnesses gave evidence that detainees were subjected to sexual assaults. One incident involved ramming a police truncheon in the anus of a detainee. Other incidents involved forcing male prisoners to perform oral sex on each other and on Stevan Todorović, sometimes in front of other prisoners.<sup>1655</sup>

729. Sulejman Tihić testified that he, Witness N, Omer Nalić and Izet Izetbegović had to participate in an interview with a journalist from TV Novi Sad in Simo Zarić's office in the SUP on 29 April 1992. Simo Zarić, on an order by Lt. Col. Nikolić, was present during the entire interview and also answered questions.<sup>1656</sup> Sulejman Tihić stated that the interview was not of his free will, that his answers were contrary to his convictions, and that Stevan Todorović instructed him to say that the Serb police did not beat him. Prior to the interview, the detainees were allowed to change their clothes.<sup>1657</sup>

730. Izet Izetbegović testified that he was forced to participate in this interview, and that it was conducted under duress, threat and coercion. He had to wear sunglasses to cover his bruises, and he said that armed guards with bayonets were standing in front of the door. Witness N testified that Stevan Todorović threatened to kill him if he did not say in the interview who the "extremists" were.<sup>1658</sup>

### **C. Evidence related to confinement under inhumane conditions**

#### **1. Creation of an atmosphere of fear through beatings, torture, and mistreatment**

731. Prosecution witnesses Dragan Lukač, Hasan Bičić, Muhamed Bičić, Kemal Mehinović, Witness M, Dragan Delić, and Witness Q testified that they were living in a constant atmosphere of fear and intimidation that resulted from their mistreatment and that of other detainees during their detention.

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<sup>1654</sup> Ibrahim Salkić, T. 3282, T. 3325; Dragan Delić, T. 3325, T. 6687; Osman Jašarević, Rule 92bis Statement, para. 87; Hasan Bičić, T. 2707; Muhamed Bičić, T. 3058-59; Hasan Subašić, T. 10969-70; Witness M, T. 5234, T. 5239.

<sup>1655</sup> Muhamed Bičić, T. 3010-12; Ibrahim Salkić, T. 3350-53; Esad Dagović, T. 3944-46; Witness L, T. 4341; Witness M, T. 5228-30; Witness E, T. 7683; Witness C, T. 7917; Witness A, Rule 92bis Statement, para. 96.

<sup>1656</sup> Simo Zarić, T. 19406-09; Exhibit P16, Video titled "Genocide in Bosanski Samac".

<sup>1657</sup> Sulejman Tihić, T. 1459-77.

<sup>1658</sup> Witness N, T. 6086-88, T. 6353-67.

## 2. Humiliation and psychological abuse

732. During Hasan Bičić's detention in the primary school, "Rade", a man from Novi Grad, ordered Muhamed Bičić to beat his brother Hasan, and vice versa, and other prisoners were also ordered to beat each other.<sup>1659</sup>

733. During Muhamed Bičić's detention in the TO building, "Laki" beat him and Hasan Bičić with a police truncheon and ordered them to laugh. Muhamed Bičić also stated that "Zuti" was forced to eat his own excrement after having been beaten in the gym of the primary school in summer 1992.<sup>1660</sup>

734. The detainees were regularly insulted by their assailants in the detention facilities.<sup>1661</sup>

735. Several Prosecution witnesses gave evidence that they were given lard to eat. As they did not get sufficient food, they would eat it, although the Muslims would normally not eat lard for religious reasons.<sup>1662</sup>

736. Witness O testified that on or about 4 July 1992, he and other prisoners in Bosanski Šamac were told by Slobodan Jačimović that they would be executed when they were being taken away to be exchanged.<sup>1663</sup>

## 3. Space and facilities

737. Several Prosecution witnesses gave evidence that after 17 April 1992, they were held in the SUP in overcrowded cells, sometimes with not enough room to sit.<sup>1664</sup> Prisoners had often only cardboard to sleep on.<sup>1665</sup> The situation in the TO and in the primary and secondary schools was similar.<sup>1666</sup> In Crkvina<sup>1667</sup> and Bijeljina,<sup>1668</sup> the conditions were alike.

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<sup>1659</sup> Hasan Bičić, T. 2745-47; see also Sulejman Tihić, T. 1399; Witness Q, T. 11779; Muhamed Bičić, T. 3010; Osman Jašarević, Rule 92bis Statement, para. 112; Kemal Mehinović, T. 7431-32, T. 7436.

<sup>1660</sup> Muhamed Bičić, T. 2942-43, T. 3005, T. 3011. See also Witness Q, T. 11779.

<sup>1661</sup> Witness G, T. 4054-55.

<sup>1662</sup> Ibrahim Salkić, T. 3338-39; Muhamed Bičić, T. 3025; Witness M, T. 5218-19; Kemal Mehinović, T. 7442-43; Witness E, T. 7711; Witness P (Croat), T. 11558; Witness A (Croat), Rule 92bis Statement, para. 87; Witness O (Croat), Rule 92bis Statement, paras 32, 48. See also Osman Jašarević, Rule 92bis Statement, para. 112.

<sup>1663</sup> Witness O, Rule 92bis Statement, paras 55-56.

<sup>1664</sup> Sulejman Tihić, T. 1411, T. 1414, T. 3641-42; Dragan Lukač, T. 1746-47, T. 1762, T. 1769; Witness A, Rule 92bis Statement, para. 86; Esad Dagović, T. 3964; Witness L, T. 4341-43; Witness M, T. 5218-19; Ibrahim Salkić, T. 3263-64, T. 3287; Witness C, T. 7919-21; Witness Q, T. 11728-29; Witness E, T. 7679-80, T. 7740-41, T. 7822-23; Kemal Bobić, T. 11403.

<sup>1665</sup> Dragan Lukač, T. 1746, 1769; Witness A, Rule 92bis Statement, para. 86.

<sup>1666</sup> Sulejman Tihić, T. 3641-42; Izet Izetbegović, T. 2314-15; Hasan Bičić, T. 2669, T. 2714-15; Muhamed Bičić, T. 2937, T. 3026-27; Ibrahim Salkić, T. 3263-66, T. 3330; Kemal Mehinović, T. 7443; Witness E, T. 7715-17; Hasan Subašić, T. 10944-45; Witness A, Rule 92bis Statement, paras 48, 52; Witness O, Rule 92bis Statement, para. 50; Witness P, T. 11554-55.

<sup>1667</sup> Witness O, Rule 92bis Statement, para. 25.



#### 4. Adequacy of Food and Water

738. Prosecution witnesses testified that they had an insufficient supply of food and water during their detention in the SUP,<sup>1669</sup> in the TO,<sup>1670</sup> in the primary and secondary schools,<sup>1671</sup> in Crkvina,<sup>1672</sup> and in Zasavica,<sup>1673</sup> and that the situation was better in Brčko<sup>1674</sup> and Bijeljina.<sup>1675</sup>

739. Muhamed Bičić testified that he lost about 60 kilos during his detention.<sup>1676</sup> Defence witness Stoko Sekulić stated that Marko Filip, the head of the criminal investigations section, told him that two meals were being taken to each prisoner in the TO and in the primary school in May 1992, and that the food for the army was not better. Stoko Sekulić also stated that the bad prison conditions were due to the prevalent material conditions at that time.<sup>1677</sup> Svetozar Vasović testified that he brought food to the prisoners in the primary and secondary schools.<sup>1678</sup> Dr. Ozren Stanimirović testified that he was aware that prisoners in Bosanski Šamac were deprived of food.<sup>1679</sup> Mladen Borbeli testified that the provision of food in the secondary school was not enough, but no prisoner was famished. He said that he lost weight because he was upset that he was detained for no other reason than being a Croat.<sup>1680</sup> Stanko Dujković testified that the people in Zasavica were able to have normal meals.<sup>1681</sup> Witness DW 3/3 stated the living conditions in Zasavica were excellent while he was there from late July 1992 until about mid-September 1992.<sup>1682</sup> Milka Petković stated that the people in Zasavica had everything they needed.<sup>1683</sup>

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<sup>1668</sup> Hasan Bičić, T. 2706; Osman Jašarević, Rule 92bis Statement, paras 100-102.

<sup>1669</sup> Sulejman Tihić, T. 1414, T. 1416-18, T. 1431; Izet Izetbegović, T. 2294; Dragan Lukač, T. 1746, T. 1769, T. 1781-83; Hasan Bičić, T. 2653; Ibrahim Salkić, T. 3263-64, T. 3287; Esad Dagović, T. 3976, T. 4003-04; Witness L, T. 4341-43; Kemal Bobić, T. 11403; Witness M, T. 5218-19; Witness E, T. 7711; Witness P, T. 11558; Witness A, Rule 92bis Statement, para. 87; Witness Q, T. 11863-66.

<sup>1670</sup> Sulejman Tihić, T. 1400; Izet Izetbegović, T. 2314. See also Muhamed Bičić, T. 2963; Hasan Bičić, T. 2670; Ibrahim Salkić, T. 3282; Dragan Delić, T. 6675-77; Witness A, Rule 92bis Statement, para. 53; Muhamed Bičić, T. 2963; Witness N, T. 6076-77; Kemal Mehinović, T. 7442-43; Witness E, T. 7723; Osman Jašarević, Rule 92bis Statement, para. 77; Ediba Bobić, T. 11271; Witness P, T. 11556; Fadil Topčagić, T. 18345.

<sup>1671</sup> Hasan Bičić, T. 2722; Ibrahim Salkić, T. 3338-39; Muhamed Bičić, T. 3025. See also Witness N, T. 6151-52; Witness O, Rule 92bis Statement, paras 32, 48; Andrija Petrić, T. 17595.

<sup>1672</sup> Jelena Kapetanović, T. 8952-54, T. 8959-60, T. 8966-69.

<sup>1673</sup> Jelena Kapetanović, T. 10326-28.

<sup>1674</sup> Sulejman Tihić, T. 3708; Witness N, T. 6092; Muhamed Bičić, T. 2971, T. 3057-58.

<sup>1675</sup> Witness N, T. 6096; Muhamed Bičić, T. 2977; Osman Jašarević, Rule 92bis Statement, para. 103.

<sup>1676</sup> Muhamed Bičić, T. 3037.

<sup>1677</sup> Stoko Sekulić, T. 18062, T. 18068-70.

<sup>1678</sup> Svetozar Vasović, T. 14977; Witness DW 2/3, T. 14476.

<sup>1679</sup> Ozren Stanimirović, T. 13934.

<sup>1680</sup> Mladen Borbeli, T. 14726, T. 14745-46.

<sup>1681</sup> Stanko Dujković, Deposition T. 299-300.

<sup>1682</sup> Witness DW 3/3, Rule 92bis Statement, paras 20-21.

<sup>1683</sup> Milka Petković, Rule 92bis Statement, para 37.

## 5. Unhygienic conditions

740. Prosecution witnesses testified that the conditions under which the detainees were imprisoned in the SUP,<sup>1684</sup> the TO,<sup>1685</sup> the primary and secondary schools,<sup>1686</sup> in Crkvina,<sup>1687</sup> in Brčko,<sup>1688</sup> and in Bijeljina<sup>1689</sup> were unhygienic. The floors were often bloody and very rarely cleaned. Prisoners were not able to wash themselves, or to clean their clothes. The toilet facilities were insufficient, and sometimes non-existent.

## 6. Access to Medical Care

741. Witnesses for the Prosecution gave evidence that access to medical care in the various detention facilities was insufficient, as there was only sporadic medical treatment.<sup>1690</sup>

742. Defence witness Mladen Borbeli testified that in the secondary school, there were regular visits of doctors and nurses who dispensed mostly tranquilisers and sleeping pills.<sup>1691</sup> Defence witness Dr. Ozren Stanimirović testified that he and other doctors were visiting prisoners in the various detention camps in Bosanski Šamac. He stated that he had set up clinics at the SUP, the TO and at Zasavica, and that he treated some detainees with minor complaints, but did not see severely injured detainees. He also stated that prisoners told him of the poor sanitary conditions, inadequate food and lack of clean clothes, but that he did not go inside any of the detention places as his clinics were set up in different rooms.<sup>1692</sup>

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<sup>1684</sup> Dragan Lukač, T. 1806; Ibrahim Salkić, T. 3263-64, T. 3287; Hasan Bičić, T. 2653; Esad Dagović, T. 3943, T. 4002-03; Witness E, T. 7710-11; Witness C, T. 7924; Witness Q, T. 11730-31; Witness L, T. 4341-43; Kemal Mehinović, T. 7431; Witness A, Rule 92bis Statement, paras 87, 90; Witness P, T. 11558.

<sup>1685</sup> Hasan Subasić, T. 11015-17; Izet Izetbegović, T. 2314; Sulejman Tihić, T. 1400; Hasan Bičić, T. 2669-71; Muhamed Bičić, T. 2962; Ibrahim Salkić, T. 3374; Kemal Mehinović, T. 7445, T. 7457-58; Osman Jašarević, Rule 92bis Statement, paras 67, 76; Witness P, T. 11556, 11558.

<sup>1686</sup> Muhamed Bičić, T. 3025; Hasan Bičić, T. 2722-24; Witness N, T. 6149-51; Witness O, Rule 92bis Statement, paras 32, 49.

<sup>1687</sup> Jelena Kapetanović, T. 8952-54; Witness O, Rule 92bis Statement, para. 25.

<sup>1688</sup> Hasan Bičić, T. 2685, T. 2691-93; Muhamed Bičić, T. 2971; Osman Jašarević, Rule 92bis Statement, para. 93; Dragan Delić, T. 6768.

<sup>1689</sup> Hasan Bičić, T. 2706-07; Muhamed Bičić, T. 2976.

<sup>1690</sup> Dragan Lukač, T. 1701; Sulejman Tihić, T. 1452-53; Muhamed Bičić, T. 2948-52, T. 2954-55, T. 2987-92, T. 3057-58; Esad Dagović, T. 3965-67; Witness M, T. 5241-47; Kemal Mehinović, T. 7425-27, T. 7451-52; Witness E, T. 7686; T. 7706-09; T. 2954-55; Ibrahim Salkić, T. 3284-85, T. 3297-98, T. 3318; Witness N, T. 6074, T. 6094-95, T. 6125, T. 6143, T. 6164-66; Dragan Delić, T. 6768, T. 6692; Witness Q, T. 11760-62; Witness A, Rule 92bis Statement, para. 57; Osman Jašarević, Rule 92bis Statement, paras 78, 90; Witness O, Rule 92bis Statement, para. 41; Jelena Kapetanović, T. 8973-76, T. 10326-28.

<sup>1691</sup> Mladen Borbeli, T. 14726, T. 14748-49; Witness DW 2/3, T. 14482-83.

<sup>1692</sup> Ozren Stanimirović, T. 13932-34.

## 7. Visits and contacts with outside

743. Several Prosecution witnesses gave evidence that there was very little contact with family members from outside in the detention facilities in Bosanski Šamac.<sup>1693</sup>

744. Stanko Dujković testified that there was only one checkpoint in Zasavica and that some people could leave Zasavica with permission.<sup>1694</sup> Dario Radić stated that he could enter Zasavica depending on the mood of the guards.<sup>1695</sup> Željko Volašević stated that many people left Zasavica and went to his father's village.<sup>1696</sup> Božo Ninković testified that people were isolated in Zasavica and not allowed to leave the village without a permit.<sup>1697</sup>

## 8. Red Cross visits

745. Some witnesses for the Prosecution gave evidence on sporadic visits of representatives of the ICRC to the SUP and the TO. Most of the prisoners were hidden from the ICRC, and the others did not dare to tell the truth about the detention conditions, as they were afraid of the guards.<sup>1698</sup> During one ICRC visit to the TO, Ibrahim Salkić could see Simo Zarić together with representatives of the ICRC.<sup>1699</sup> Witness O testified that the ICRC never visited the secondary school during his detention.<sup>1700</sup> Jelena Kapetanović stated that the ICRC came to Zasavica around 6 October 1992.<sup>1701</sup>

746. Defence witness Velimir Maslić stated that Svetozar Vasović, Mirka Petković and Anka Jovanović from the local Red Cross visited the detention facilities in Bosanski Šamac.<sup>1702</sup> Defence witness Milka Petković stated that the ICRC came to Bosanski Šamac and visited prisoners about every three months. He also stated that between April 1992 and September 1992, the Red Cross visited the detainees in the detention facilities with the exclusive purpose of making lists of prisoners who wanted to be exchanged or had been requested for an exchange by the HVO.<sup>1703</sup>

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<sup>1693</sup> Safet Dagović, T. 7221-23 (SUP); Witness K, T. 4685-87 (SUP); Witness Q, T. 11733-34 (SUP); Kemal Mehinović, T. 7445, T. 7563-65 (TO); Ediba Bobić, T. 11271, T. 11279 (TO); Witness N, T. 6152-53 (primary school); Snjezana Delić, T. 6511-21 (primary school); Dragan Delić, T. 6698 (primary school); Osman Jašarević, Rule 92*bis* Statement, para. 114 (primary school); Hasan Subašić, T. 10963-64 (primary school); Witness O, Rule 92*bis* Statement, para. 52 (primary school).

<sup>1694</sup> Stanko Dujković, Deposition T. 299-300; Dario Radić, T. 15082.

<sup>1695</sup> Dario Radić, T. 15073, T. 15111-12.

<sup>1696</sup> Željko Volašević, T. 17762.

<sup>1697</sup> Božo Ninković, T. 13542-43.

<sup>1698</sup> Esad Dagović, T. 3942-43; Witness Q, T. 11731-32; Witness N, T. 6158-59; Kemal Mehinović, T. 7452-53; Witness E, T. 7721-22; Hasan Subašić, T. 10981-82; Kemal Bobić, T. 11417-18; Witness P, T. 11564, 11612.

<sup>1699</sup> Ibrahim Salkić, T. 3374-83.

<sup>1700</sup> Witness O, Rule 92*bis* Statement, para. 53.

<sup>1701</sup> Jelena Kapetanović, T. 10318-28.

<sup>1702</sup> Svetozar Vasović, T. 14965, T. 14967. See also Velimir Maslić, T. 14209-10.

<sup>1703</sup> Milka Petković, Rule 92*bis* Statement, paras 21-22, 30.

Defence witness Witness DW 3/3 testified that the Red Cross provided the people in Zasavica with food, oil, washing powder, and flour.<sup>1704</sup>

747. A large number of prosecution witnesses testified that they were, and some of them still are, suffering from the severe consequences of the mistreatment they had to go through in the various detention facilities, such as a significant loss of eye vision or hearing, broken ribs and bones, damaged internal organs, lost teeth, immense loss of weight, and psychological trauma.<sup>1705</sup>

#### **D. Evidence of some of the persons who directly mistreated detainees**

##### **1. Special Forces, policemen and others**

748. Prosecution witnesses gave evidence that members of the paramilitaries from Serbia, policemen from the municipality of Bosanski Šamac, and other individuals took an active part in the beatings, torture and confinement under inhumane conditions of non-Serb civilians.

749. Among the members of the paramilitaries<sup>1706</sup> were “Debeli” (Srčko Radovanović, “Pukovnik”), “Crni” (Dragan Đorđević), “Lugar” (Slobodan Miljković), “Laki” (Predrag Lazarević), “Lazo”, “Kico”, “Japan”, “Beli”, “Zuti”, “Avram”, “Tralja”, “Rade”, “Zec”, “Smederevac”, Goran Ristić, Goran Hasić, “Pop”, and Aleksandar Vuković.

750. Some members of the 4<sup>th</sup> Detachment participated in the beatings, torture and unlawful confinement under inhumane conditions of non-Serb civilians, among them Slobodan Vakić, “Icindija”, and “Stevo”. Other JNA soldiers taking part were “Pekar”, “Brico” and a JNA cook in Brčko.

751. In addition, some local Serb policemen participated in the beatings, torture and unlawful confinement under inhumane conditions, namely Savo Čančarević, “Zvaka”, “Sole”, Slobodan Jačimović (“the Serb Inspector”), Slobodan Rakić, “Tubonja”, “Krezo”, Slavko Trifunović (“Zubar”), Stevan Todorović, his bodyguard Goran, “Obad” (“Hornet”), Dragan Džombić, a man called “Pendrek”, a man called Pavlović, and Zoran Paležica. A local Serb called Nebosja Stanković (“Cera”) was described as particularly brutal.

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<sup>1704</sup> Witness DW 3/3, Rule 92bis Statement, para. 21.

<sup>1705</sup> Izet Izetbegović, T. 2311, T. 2323-24; Hasan Bičić, T. 2679, T. 2746-47, T. 2766-67, T. 2708; Muhamed Bičić, T. 2976, T. 2988-91, T. 3045-46, Ibrahim Salkić, T. 3352, T. 3451; Esad Dagović, T. 3932-33, T. 3939, T. 4013-15; Witness G, T. 4079, T. 4123; Witness N, T. 6072, T. 6142, T. 6151-52, T. 6171-73; Dragan Delić, T. 6700-01; Kemal Mehinović, T. 7413-15, T. 7451, T. 7511-12; Witness E, T. 7676, T. 7685, T. 7715, T. 7730, T. 7734-35; Osman Jašarević, Rule 92bis Statement, paras 63, 122; Witness A, Rule 92bis Statement, paras 94, 98, 100; Hasan Subašić, T. 11015-17, T. 11033-34; Kemal Bobić, T. 11398-99, T. 11409-11; Witness P, T. 11604-05, T. 11607; Witness Q, T. 11752, T. 11777-78; Witness O, Rule 92bis Statement, paras 47, 65-66.

<sup>1706</sup> Prosecution witnesses referred to the members of the Paramilitaries with different terms, such as “people in camouflage uniforms with painted faces and speaking a Serb dialect”, or “the men from Serbia”.

752. Other assailants were “Tihi”, “Sumadinac”, Stojan Blagojević, Spasoje Bogdanović, Boban Radulović, Zvezdan Zurapović, “Musa”, Nikola Vuković (“Bato”), who came from a village close to Bosanski Šamac and was a guard at the primary school. Milan Simić was among the assailants.

## 2. Evidence on the role of the Accused

### (a) SUP

753. Stevan Todorović gave evidence that Blagoje Simić knew in the first days after the takeover in Šamac that people had been beaten and abused in the SUP. However, Stevan Todorović also stated that he has no knowledge that Blagoje Simić ever entered any of the detention facilities in Bosanski Šamac.<sup>1707</sup>

754. Stevan Todorović gave evidence that Miroslav Tadić suggested to him that he should see with his policemen that the beatings of prisoners should not happen again. That happened once or twice, when during an exchange it was noted that persons had been beaten up in Šamac.<sup>1708</sup>

755. Simo Zarić has not contested that he was aware of the mistreatment and the living under inhumane conditions of non-Serb civilians in the SUP and the other detention facilities in Bosanski Šamac. He stated that many of the Muslim and Croat detainees in Bosanski Šamac had been beaten and tortured in detention, and that these beatings and torture constituted persecutions, as the cruel and inhumane treatment was based on their ethnicity. He also said that their confinement was under inhumane conditions and that this was also based on their ethnicity. He also stated that the forced singing of Serbian songs based on discriminatory grounds was an act of humiliation.<sup>1709</sup>

### (b) TO

756. Hasan Subašić testified that he saw Blagoje Simić for about five to ten minutes in the courtyard of the TO building while he was detained there at the end of summer 1992.<sup>1710</sup>

757. Dragan Delić testified that Blagoje Simić saw prisoners from the TO at the Utva factory when they had lunch. Dragan Delić stated that Blagoje Simić was able to see all the prisoners, and some of them had difficulty walking. They had wounds on their heads and faces, and blood on their hair and clothes.<sup>1711</sup>

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<sup>1707</sup> Stevan Todorović, T. 9917-20.

<sup>1708</sup> Stevan Todorović, T. 9648-49.

<sup>1709</sup> Simo Zarić, T. 19811-13, T. 19834; T. 19989-90. See also Simo Zarić, T. 19329-32.

<sup>1710</sup> Hasan Subašić, T. 11014, T. 11053-57.

<sup>1711</sup> Dragan Delić, T. 6678-80.

758. Kemal Mehinović saw Miroslav Tadić once in the TO building between June/July and September/October in relation to an exchange.<sup>1712</sup>

(c) Primary and Secondary schools

759. During his detention in the gym of the secondary school at the end of May 1992, Hasan Bičić saw Blagoje Simić at the entrance, proceeding several metres into the gym followed by Stevan Todorović. Blagoje Simić just looked around, but did not stay long and did not address the prisoners. From his position, it was possible for Blagoje Simić to see each prisoner individually, what they looked like, and the state they were in.<sup>1713</sup>

760. Ibrahim Salkić testified that he saw Blagoje Simić in the doorway of the gym hall of the primary school on one occasion around mid-May 1992, and Blagoje Simić said to Stevan Todorović, “There’s a lot of space still here”. Then Blagoje Simić left.<sup>1714</sup>

761. Hasan Subašić testified that he saw Miroslav Tadić at the primary school in the summer of 1992 when the prisoners were beaten up and dirty and had blood on their faces and clothes.<sup>1715</sup>

762. Witness O testified that the events, the detention camps and the expulsions in 1992 were premeditated and well organised, and that it was well-known that Miroslav Tadić and Simo Zarić had the greatest role in that.<sup>1716</sup>

(d) Generally in Bosanski Šamac

763. Miroslav Tadić testified that he heard from drunk people that they would go to detention facilities and beat up people, but that he never heard it from officials.<sup>1717</sup>

(e) Crkvina

764. Stevan Todorović testified that the murder of non-Serb civilians in Crkvina in the beginning of May 1992 was a matter of common knowledge in Bosanski Šamac.<sup>1718</sup> After Stevan Todorović had received a report on these murders by Savo Čančarević, he informed the Crisis Staff about the events in Crkvina. The Crisis Staff knew that “Lugar” was responsible. Todorović received the information from the lawyers of the criminal investigation department of the police station that it

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<sup>1712</sup> Kemal Mehinović, T. 7450-51.

<sup>1713</sup> Hasan Bičić, T. 2715-16.

<sup>1714</sup> Ibrahim Salkić, T. 3325-26.

<sup>1715</sup> Hasan Subašić, T. 10973-76.

<sup>1716</sup> Witness O, T. 11933.

<sup>1717</sup> Tadić Prosecution Interview I, p. 46.

<sup>1718</sup> Stevan Todorović, T. 9142.

was the duty of the military investigators of the 17<sup>th</sup> Tactical Group to investigate, as “Lugar” was a member of the 17<sup>th</sup> Tactical Group. This information was also conveyed to the Crisis Staff.<sup>1719</sup> Stevan Todorović remembered that Blagoje Simić told him that he was concerned and that he had spoken to Lt. Col. Stevan Nikolić to have something done to prevent “Lugar” and his men from creating problems. The Crisis Staff did not directly ask the paramilitaries to leave Bosanski Šamac.<sup>1720</sup>

(f) Brčko

765. Sulejman Tihiić said that he saw Simo Zarić at the barracks in Brčko with Captain Petrović, and Simo Zarić referred to several of the detainees as political prisoners, including Sulejman Tihiić and Dragan Lukač.<sup>1721</sup>

766. Ibrahim Salkiić stated that Simo Zarić accompanied the prisoners to Brčko, and Simo Zarić was in a building in the barracks for about four hours. The day after the prisoners had arrived in Brčko, Simo Zarić came in the morning accompanied by a Captain whom he asked to provide the prisoners with medical assistance.<sup>1722</sup> Ibrahim Salkiić stated that Simo Zarić saved his life and that of 36 others when he sent them to Brčko.<sup>1723</sup>

767. Witness A stated that he saw Simo Zarić in Brčko, when Simo Zarić and Captain Petrović came on one occasion into Witness A’s room where Sulejman Tihiić and Dragan Lukač were also present.<sup>1724</sup> Hasan Subašiić testified that he saw Simo Zarić once in Brčko when he came to take prisoners to a TV interview in Šamac.<sup>1725</sup>

768. Maksim Simeunović testified that Simo Zarić asked him to provide the prisoners in Brčko with food, water, and medical treatment, and when Maksim Simeunović came to Brčko he could see that this had been done.<sup>1726</sup>

(g) Zasavica

769. Blagoje Simić testified that he had no knowledge of the mistreatment of persons temporarily placed in Zasavica. He also stated that he had no knowledge about the living conditions in Zasavica.<sup>1727</sup>

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<sup>1719</sup> Stevan Todorović, T. 9479.

<sup>1720</sup> Stevan Todorović, T. 10250-52.

<sup>1721</sup> Sulejman Tihiić, T. 1454-56.

<sup>1722</sup> Ibrahim Salkiić, T. 3297-98.

<sup>1723</sup> Ibrahim Salkiić, T. 3562.

<sup>1724</sup> Witness A, T. 10756-57.

<sup>1725</sup> Hasan Subašiić, T. 10955.

<sup>1726</sup> Miroslav Tadić, T. 15583-84.

### 3. Findings

770. The Trial Chamber is convinced that on 17 April 1992 and in the following months, a large number of non-Serb civilians were repeatedly beaten in the detention facilities in Bosanski Šamac and in Crkvina, Brčko, and Bijeljina. Some of the victims had already been beaten upon their arrest. During their imprisonment in the detention facilities, detainees were severely beaten with various objects, such as rifles, metal bars, baseball bats, metal chains, police batons, and chair legs. The detainees were beaten on all parts of their bodies, and many of them suffered serious injuries. Some prisoners were beaten while undergoing interrogation. The beatings were applied by paramilitary forces from Serbia, local policemen, and a few members of the JNA. The beatings took place on a daily basis, day and night. The Defence for all three accused did not contest that such beatings occurred as described by the witnesses.

771. The Trial Chamber is satisfied that these beatings caused severe pain and suffering, both physically and mentally, to the detainees. The Trial Chamber is also satisfied that the beatings were committed on discriminatory grounds. The evidence shows that practically all detainees who were beaten were non-Serbs. On one occasion, a victim was beaten in the crotch, and his assailants told him that Muslims should not propagate.<sup>1728</sup> Prisoners were regularly insulted on the basis of their ethnicity.<sup>1729</sup> For these reasons, the Trial Chamber finds that the beatings that were committed on discriminatory grounds constitute cruel and inhumane treatment as an underlying act of persecution.

772. The Trial Chamber is further satisfied that the other heinous acts that witnesses testified about, including sexual assaults, the extraction of teeth, and the threat of execution, constitute torture. These acts caused severe physical and mental pain and suffering and occurred in order to discriminate on ethnic grounds against the victims.

773. The Trial Chamber is also satisfied that the detainees who were imprisoned in the detention centres in Bosanski Šamac were confined under inhumane conditions. The prisoners were subjected to humiliation and degradation. The forced singing of “Chetnik” songs and the verbal abuse of being called “ustasha” or “balija” were forms of such abuse and humiliation of the detainees. They did not have sufficient space, food or water. They suffered from unhygienic conditions, and they did not have appropriate access to medical care. These appalling detention conditions, the cruel and inhumane treatment through beatings and the acts of torture caused severe physical suffering, thus attacking the very fundamentals of human dignity. The Trial Chamber finds that this confinement

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<sup>1727</sup> Blagoje Simić, T. 12417-18.

<sup>1728</sup> Kemal Mehinović, T. 7413-15.

<sup>1729</sup> Witness G, T. 4054-55.



under inhumane conditions constitutes cruel and inhumane treatment. This was done because of the non-Serb ethnicity of the detainees.

774. With regard to the TV Novi Sad interview, the Trial Chamber recalls that the Accused would appear to have been materially impaired in the preparation of their defence if the Trial Chamber accepted that incidents of cruel and inhumane treatment *other than* beatings, torture, forced labour assignments and confinement under inhumane conditions were correctly pleaded. Therefore, the Trial Chamber considered whether the participation of the victims in the interview constituted torture. As not sufficient evidence has been adduced that their participation in the interview caused the victims severe physical or mental pain or suffering, the Trial Chamber is not satisfied that the Novi Sad interview amounts to an act of torture.

775. The Trial Chamber is satisfied that during detention in the detention centres in Crkvina and Bijeljina, the prisoners did not have sufficient space and sufficient food and water supply. They were kept in unhygienic conditions and did not have access to sufficient medical care. Furthermore, detainees were subjected to beatings that constituted cruel and inhumane treatment and torture. For these reasons, the Trial Chamber finds that these prisoners were also confined under inhumane conditions that constituted cruel and inhumane treatment.

776. However, the Trial Chamber is not satisfied beyond reasonable doubt that the living conditions for the non-Serbs who were held in Zasavica amounted to confinement under inhumane conditions.

777. With regard to cruel and inhumane treatment in Batković, the Trial Chamber finds that the relevant wording in the Amended Indictment – “[...] throughout the municipalities of Bosanski Šamac, Odžak and *elsewhere in the territory of Bosnia and Herzegovina*”<sup>1730</sup> (emphasis added) – is too vague and imprecise.<sup>1731</sup> Although the Trial Chamber is satisfied that incidents of beatings and mistreatment occurred in Batković, the Trial Chamber is not satisfied that this place was meant to be taken into account as it was not properly pleaded in the Amended Indictment and in the Prosecution Pre-Trial Brief. Therefore, the Trial Chamber finds that Batković falls outside the geographical scope of the Amended Indictment.

#### **E. Forced Labour Assignments**

778. Esad Dagović, Witness L, Witness M, Nusret Hadžijusufović, and Kemal Mehinović, among other Prosecution witnesses, testified that in the second half of April, or May 1992 they

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<sup>1730</sup> Amended Indictment, para. 11.

<sup>1731</sup> See *Kupreškić* Appeal Judgement, para. 122.

were obliged to report to the Pensioner's Home<sup>1732</sup> at the local commune building in Bosanski Šamac, where they were given work assignments.<sup>1733</sup> Witness E was called on 30 April 1992 to report to Commander Antić's office, and later was given a list of 30 Muslims whom he had to call for work duty.<sup>1734</sup> Sick and old people were also called to perform forced labour assignments,<sup>1735</sup> as well as young men and children under the age of 18.<sup>1736</sup> Mothers with young children did not have to do forced labour.<sup>1737</sup> Civilians had to perform forced labour until at least October,<sup>1738</sup> or November 1992.<sup>1739</sup>

## 1. Evidence

### (a) Type of forced labour assignments

#### (i) Military assignments

779. A number of witnesses testified that they were forced to perform work on the frontline or in locations of strategic military importance. Safet Dagović<sup>1740</sup> and Nusret Hadžijusufović<sup>1741</sup> were forced to dig trenches near Grebince. Witness M<sup>1742</sup> and Safet Dagović<sup>1743</sup> had to dig trenches and clean the vegetation in front of the Serb lines in Zasavia. Safet Dagović<sup>1744</sup> and Kemal Mehinović<sup>1745</sup> dug trenches in Pisari. Nusret Hadžijusufović had to dig trenches in Lijeskovića and Brvnik.<sup>1746</sup> Safet Dagović,<sup>1747</sup> Witness L<sup>1748</sup> and Kemal Mehinović<sup>1749</sup> had to build bunkers near Prud. Esad Dagović had to carry sandbags weighing 50 kilos to the silo. The sandbags were used for the construction of shelters to protect soldiers from exchange of fire.<sup>1750</sup> Witness C had to carry sleepers to the Croatian border, where he and his co-workers had to build bunkers and shields.

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<sup>1732</sup> Also referred to as Pensioners' Home, or Retired Persons Building. In the beginning people summoned for work obligation had to assemble in front of the SDK factory building, but later their meeting point was moved to the Pensioners' Home located in the local commune building. (Witness M, T. 5066)

<sup>1733</sup> Esad Dagović, T. 3921-22; Witness L, T. 4273; Witness M, T. 5039; Nusret Hadžijusufović T. 6869; Safet Dagović, T. 7179-80; Kemal Mehinović, T. 7396.

<sup>1734</sup> Witness E, T. 7671.

<sup>1735</sup> Esad Dagović, T. 3922-23.

<sup>1736</sup> Nusret Hadžijusufović, T. 6873.

<sup>1737</sup> Stevan Todorović, T. 9292.

<sup>1738</sup> Dušan Gavrić, T. 17331; Witness K, T. 4646.

<sup>1739</sup> Jelena Kapetanović, T. 10335.

<sup>1740</sup> Safet Dagović, T. 7190.

<sup>1741</sup> Nusret Hadžijusufović, T. 6875.

<sup>1742</sup> Witness M, T. 5042-43.

<sup>1743</sup> Safet Dagović, T. 7190-91, T. 7193, T. 7200, T. 7216.

<sup>1744</sup> Safet Dagović, T. 7190-91, T. 7193, T. 7200, T. 7216.

<sup>1745</sup> Kemal Mehinović, T. 7399-400.

<sup>1746</sup> Nusret Hadžijusufović, T. 6887-89.

<sup>1747</sup> Safet Dagović, T. 7190-91, T. 7193, T. 7200, T. 7216.

<sup>1748</sup> Witness L, T. 4279.

<sup>1749</sup> Kemal Mehinović, T. 7399-400.

<sup>1750</sup> Esad Dagović, T. 3924, T. 3999.

Later Witness C was asked to place empty plastic beer crates along the road leading from Šamac to the Croatian border. It was explained that the crates would be used to place mines.<sup>1751</sup>

780. Witness G,<sup>1752</sup> Witness K,<sup>1753</sup> Snjezana Delić,<sup>1754</sup> Ediba Bobić,<sup>1755</sup> and Ibrahim Salkić<sup>1756</sup> testified that members of their families had to dig trenches. Stevan Todorović testified that people who performed forced labour were engaged in digging trenches.<sup>1757</sup>

781. Detainees were forced to work on the frontline or had other military assignments. While in Batković, Hasan Subašić was forced to dig trenches in Teočak on the frontline.<sup>1758</sup> When he was detained in Bijeljina, Osman Jašarević was brought to Patkovaca near Bijeljina, where he had to move boxes of tank grenades, weighing 74 kg, and to load ammunition into military trucks.<sup>1759</sup>

782. Defence witness Commander Antić testified that when the 4<sup>th</sup> Detachment built bunkers, they were helped by “appropriate technical and labour forces.” Two persons, a Serb and a Croat, operated the two diggers and a Muslim operated the forklift equipment. The bunkers were built in a construction company and were brought to the frontline by a forklift.<sup>1760</sup> Ten people held the concrete elements until the forklift placed them in an appropriate position. The workforce was assigned by the Secretariat for National Defence through their employee Džemal Kapetanović.<sup>1761</sup>

783. Some Defence witnesses testified that while in the army they saw civilians working on the front line or heard of occasions when civilians had to perform military tasks. Amir Nukić testified that civilians came occasionally to their positions in Grebnica to help the soldiers build shelters and worked either alone or with the soldiers.<sup>1762</sup> Fadil Topčagić testified that ten or fifteen civilians from Bosanski Šamac, usually accompanied by Mile Zoranović, known as “Pancir,” dug trenches.<sup>1763</sup> Muharem Bičakčić testified that firemen occasionally dug trenches in Brvnik.<sup>1764</sup> Stanko Pivašević heard of occasions of civilians building bunkers on the Sava River.<sup>1765</sup>

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<sup>1751</sup> Witness C, T. 7912.

<sup>1752</sup> Witness G, T. 4091.

<sup>1753</sup> Witness K, T. 4609.

<sup>1754</sup> Snjezana Delić, T. 6447-48.

<sup>1755</sup> Ediba Bobić, T. 11261-62.

<sup>1756</sup> Ibrahim Salkić, T. 3446, T. 3560, T. 3574.

<sup>1757</sup> Stevan Todorović, T. 9178.

<sup>1758</sup> Hasan Subašić, T. 11022-23.

<sup>1759</sup> Osman Jašarević, Rule 92*bis* Statement, para. 108.

<sup>1760</sup> Radovan Antić, T. 16769; Božo Ninković, T. 13397.

<sup>1761</sup> Radovan Antić, T. 16768-70.

<sup>1762</sup> Amir Nukić Rule 92*bis* Statement, para. 13.

<sup>1763</sup> Fadil Topčagić Rule 92*bis* Statement, para. 56.

<sup>1764</sup> Muharem Bičakčić, Deposition T. 95, T. 104-06.

<sup>1765</sup> Stanko Pivašević, T. 19692.

784. Božo Ninković testified that military units requested people for logistical tasks in a warehouse or in a kitchen, or for building fortification facilities, and other tasks required at that time.<sup>1766</sup> Some Defence witnesses testified that they were not aware of non-Serb civilians digging trenches or performing any work for the army.<sup>1767</sup>

(ii) Forced labour assignments related to the economy or the agriculture

785. A number of civilians from Bosanski Šamac testified that they had to perform farm work or had similar obligations in nearby villages.<sup>1768</sup> Civilians were forced to do agricultural work in Zasavica.<sup>1769</sup> Others had to work for companies.<sup>1770</sup> Women generally had to pick vegetables and do other agricultural work.<sup>1771</sup> Witness E had to tear down houses and had to do construction work.<sup>1772</sup>

786. Defence witnesses testified that people under work obligation<sup>1773</sup> were involved in jobs serving the needs of the civilian population and the economy. Čedomir Simić testified that the work platoon, comprised of people under work obligation, carried out tasks such as chopping wood for hospitals and humanitarian institutions, logistical tasks, food preparation, loading and unloading, and others.<sup>1774</sup> People under work obligation were involved in repairing and maintaining the power system<sup>1775</sup> and the water supply system.<sup>1776</sup> Some civilians were involved in preparing food for the needs of the civilians and for the army,<sup>1777</sup> in cleaning and rebuilding Odžak,<sup>1778</sup> and in repairing damage incurred in Novi Grad.<sup>1779</sup> Civilians were engaged by the Civilian Protection Staff in taking care of the dead bodies during the war.<sup>1780</sup> Prosecution witness Osman Jašarević gave similar evidence.<sup>1781</sup>

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<sup>1766</sup> Božo Ninković, T. 13395-96.

<sup>1767</sup> Stanko Bojić, T. 17987; Simo Zarić with respect to Odžak, T. 20043.

<sup>1768</sup> Witness K, T. 4726; Nusret Hadžijusufović, T. 6891-92, T. 6894.

<sup>1769</sup> Jelena Kapetanović, T. 10308-09; Ljubomir Vuković, T. 14633; Mladen Borbeli, T. 14728; Dario Radić, T. 15072, T. 15108-09.

<sup>1770</sup> Ediba Bobić, T. 11273-74; Hasan Subašić, T. 10971.

<sup>1771</sup> Witness M, T. 5066-68; Snjezana Delić, T. 6435; Stevan Todorović, T. 9289.

<sup>1772</sup> Witness E, T. 7730-31.

<sup>1773</sup> The term “work obligation” has been used by Defence witnesses consistently to refer to forced labour assignments.

<sup>1774</sup> Čedomir Simić, Rule 92*bis* Statement, para. 18.

<sup>1775</sup> Perica Krstanović, Rule 92*bis* Statement, para. 21.

<sup>1776</sup> Mirko Pavić, Rule 92*bis* Statement, para. 32; Dušan Gavrić, T. 17331-32, T. 17396.

<sup>1777</sup> Nevenka Grbić, Deposition T. 22-28.

<sup>1778</sup> Witness M, T. 5059; Dušan Gavrić, T. 17338-40; Simo Zarić, T. 19356.

<sup>1779</sup> Witness DW 3/3, Rule 92*bis* Statement, para. 24.

<sup>1780</sup> Ljubomir Vuković, T. 14610-15; Exhibit D107/3; Ahmet Sehapović (“Cifun”), Deposition T. 119.

<sup>1781</sup> Osman Jašarević Rule 92*bis* Statement, para. 83.

787. Defence witnesses, testified that their work assignments, often related to their pre-war employment,<sup>1782</sup> included jobs such as working in a hospital,<sup>1783</sup> or working in a bank.<sup>1784</sup>

788. Some Defence witnesses testified that their work assignments were to serve as managers or have leadership positions. Blagoje Simić's work assignment was to serve as a member of the Crisis Staff and/or President of the Municipal Assembly,<sup>1785</sup> and before that, to serve as the head of the medical service in the TO staff in Bosanski Šamac.<sup>1786</sup> The members of the Executive Board had no war assignments but the other employees did.<sup>1787</sup> Blagoje Simić's wife's work obligation in 1993 after her maternity leave expired, was at the Centre for Social Welfare, where she worked before the war.<sup>1788</sup> Stanko Dujković testified that his work obligation was to be the manager of the Agropromet agricultural farm and his task was to organize the agricultural work in the farm. He was appointed by the Bosanski Šamac Department of the Ministry of Agriculture.<sup>1789</sup> Djordje Tubaković's wife's work obligation during the war was to be manager of a shop.<sup>1790</sup>

(iii) Forced labour in detention centres

789. Civilians detained at the SUP, in Bijeljina, in Brčko and in Zasavica were forced to work.<sup>1791</sup> During his detention at the SUP from 8 July 1992 to 5 November 1992, Esad Dagović was compelled to clean, repair and wash the cars of the police officers. He also had to cut wood, clean weapons, clean rooms and corridors.<sup>1792</sup> Witness M had to work on a farm.<sup>1793</sup> While detained in Bijeljina, Osman Jašarević had to clean the litter.<sup>1794</sup> In Brčko detainees who were in better shape were sent to clean warehouses. Prisoners were taken to sweep the corridors and clean the bathrooms.<sup>1795</sup>

(iv) Humiliating assignments

790. Prosecution witnesses testified that they were compelled to perform humiliating tasks. Sulejman Tihović testified that while in detention at the TO he was forced to sweep the street outside

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<sup>1782</sup> Mirko Lukić testified that if a person worked for a company and was not mobilized, his work obligation was to work for the same company. (T. 12723)

<sup>1783</sup> Stanko Pivašević, T. 19692.

<sup>1784</sup> Nevenka Grbić, Deposition T. 22-28.

<sup>1785</sup> Blagoje Simić, T. 12249.

<sup>1786</sup> Blagoje Simić, T. 12551, Exhibit D56/1, Certificate issued by the Ministry of Defence, Šamac Municipality, issued on 4 July 2001 for the purpose of the proceedings before the Tribunal.

<sup>1787</sup> Mirko Lukić, T. 12746.

<sup>1788</sup> Blagoje Simić, T. 12250.

<sup>1789</sup> Stanko Dujković, Deposition T. 289-90.

<sup>1790</sup> Djordje Tubaković, T. 17926.

<sup>1791</sup> See also para. 782.

<sup>1792</sup> Esad Dagović, T. 3984.

<sup>1793</sup> Witness M, T. 5236.

<sup>1794</sup> Osman Jašarević, Rule 92bis Statement, para 109.

<sup>1795</sup> Witness A, Rule 92bis Statement, para. 97.

the municipality building and the SUP building, while people walked by.<sup>1796</sup> In Bijeljina, Sulejman Tihić had to clean the toilets with his own hands.<sup>1797</sup> While Dragan Lukač was detained at the SUP in Bosanski Šamac he was ordered to clean a room in front of two detained Bosnian women. The women were embarrassed because of his former position of chief of police. Dragan Lukač himself felt humiliated, and believed that that was the intention of the police officer who made him clean.<sup>1798</sup> Hajrija Drljačić testified that Muslims had to work in places where they were degraded the most. Ahmet Hadžialijagić, former managing director of Jugobank, had to sweep the streets nearby the bank. Mirza Vejzović, a director of the textile factory, had to sweep the compounds of the Šamac textile industry. Jusufović, the director of the secondary school centre had to load and unload trucks.<sup>1799</sup>

(v) Civilians forced to loot

791. Prosecution witnesses testified that they were ordered to participate in the looting of Muslim and Croat houses through the forced labour programme.<sup>1800</sup> They were instructed what items to take by the drivers who brought them to the place where they had to loot and by civilians who looted along with the workers.<sup>1801</sup> The messenger Dževad Celić told Nusret Hadžijusufović that persons who needed something would go to see Miroslav Tadić, who would refer them to Dževad Celić to assign them certain number of people.<sup>1802</sup>

792. In Hrvatska Tišina, Nusret Hadžijusufović had to loot the house of Marko Karalić, a craftsman and his mentor, which made him feel humiliated.<sup>1803</sup> Witness K testified that she felt humiliated when she was forced to loot in Odžak.<sup>1804</sup>

(b) Armed guards

793. Prosecution witnesses testified that while working, they were guarded by armed soldiers. Witnesses who had to dig trenches, build bunkers or work on other military sites,<sup>1805</sup> as well as witnesses who had to do farm work, to work in factories or had other non-military assignments

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<sup>1796</sup> Sulejman Tihić, T. 1414.

<sup>1797</sup> Sulejman Tihić, T. 1479.

<sup>1798</sup> Dragan Lukač, T.1755-57.

<sup>1799</sup> Hajrija Drljačić, T. 8053-54.

<sup>1800</sup> Nusret Hadžijusufović, T. 6923; Witness M, T. 5056; Jelena Kapetanović, T. 10310; Witness K, T. 4634-35, T. 4642.

<sup>1801</sup> Witness M, T. 5053; Nusret Hadžijusufović, T. 6921.

<sup>1802</sup> Nusret Hadžijusufović, T. 6919.

<sup>1803</sup> Nusret Hadžijusufović, T. 6922-23.

<sup>1804</sup> Witness K, T. 4640-41.

<sup>1805</sup> Witness L, T. 4281; Nusret Hadžijusufović, T. 6876-77; Safet Dagović, T. 7190; Kemal Mehinović, T. 7398-99.

were guarded by armed soldiers,<sup>1806</sup> often from the 4<sup>th</sup> Detachment.<sup>1807</sup> Witness G testified that sometimes the armed guards caught people who tried to escape and beat them badly.<sup>1808</sup>

(c) Working conditions

(i) Working hours

794. A number of Prosecution witnesses testified that they had to work every day for at least 10 and 12 hours, and sometimes at night.<sup>1809</sup> Defence witnesses testified that civilians with work assignments worked during the day, between 8.30-9.00 a.m. and 4.00 p.m., 6.00 p.m., or 9.00 p.m.<sup>1810</sup>

(ii) Payment and compensation

795. Prosecution witnesses testified that they were never paid for the work they did. Esad Dagović,<sup>1811</sup> Witness L,<sup>1812</sup> Witness K and her family,<sup>1813</sup> Witness M,<sup>1814</sup> Witness N and his son,<sup>1815</sup> Nusret Hadžijusufović,<sup>1816</sup> Safet Dagović,<sup>1817</sup> Kemal Mehinović,<sup>1818</sup> Witness C,<sup>1819</sup> Jelena Kapetanović,<sup>1820</sup> Ediba Bobić's son,<sup>1821</sup> and Witness G's oldest brother,<sup>1822</sup> Snjezana Delić's brother in law,<sup>1823</sup> and Hasan Subašić's mother<sup>1824</sup> were not paid for their work. Most of them were not asked to keep a record of their working hours, nor were they aware of anybody keeping a record of their work.

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<sup>1806</sup> Jelena Kapetanović, T. 10310; Ediba Bobić, T. 11277; Witness K, T. 4727.

<sup>1807</sup> Esad Dagović, T. 3925; Nusret Hadžijusufović, T. 6881, T. 6886, T. 6876-77; Safet Dagović, T. 7190, Kemal Mehinović, T. 7401; Witness C, T. 7909.

<sup>1808</sup> Witness G, T. 4091-92.

<sup>1809</sup> Esad Dagović, T. 3922-23; Witness K, T. 4646-47; Witness M, T. 5068; Safet Dagović, T. 7193, T. 7205.

<sup>1810</sup> Dušan Gavrić, T. 17330, T. 17366; Witness DW 2/3, T. 14479. Mirko Lukić, T. 12749; Exhibits D75/1, D104 A/1, D104B/1, D 104C/1, D104D/1, D 104E/1.

<sup>1811</sup> Esad Dagović, T. 3923.

<sup>1812</sup> Witness L, T. 4294.

<sup>1813</sup> Witness K, T. 4729.

<sup>1814</sup> Witness M, T 5111.

<sup>1815</sup> Witness N, T. 6196-97.

<sup>1816</sup> Nusret Hadžijusufović, T. 6926.

<sup>1817</sup> Safet Dagović, T. 7198.

<sup>1818</sup> Kemal Mehinović, T. 7402-03, T. 7465-66.

<sup>1819</sup> Witness C, T. 7913.

<sup>1820</sup> Jelena Kapetanović, T. 10291-92, T. 10310.

<sup>1821</sup> Ediba Bobić, T. 11262, T. 11276.

<sup>1822</sup> Witness G, T. 4154.

<sup>1823</sup> Snjezana Delić, T. 6448.

<sup>1824</sup> Hasan Subašić, T. 10971.

796. A number of witnesses testified that while performing forced labour they did not receive any food,<sup>1825</sup> or received one meal a day.<sup>1826</sup> One Prosecution witness, Witness G, testified that her family received “packages” from the work obligation.<sup>1827</sup>

797. Defence witnesses testified that the regulations in force at that time provided for payment to people under work obligation,<sup>1828</sup> and that payments were made to those people.<sup>1829</sup> Mirko Lukić testified that in the beginning payments for work obligation were made through a special budget for work obligation on the basis of a list of employees prepared by the enterprises’ coordinators.<sup>1830</sup> Božo Ninković,<sup>1831</sup> Slobodan Sjenčić,<sup>1832</sup> Stanko Dujković,<sup>1833</sup> Čedomir Simić,<sup>1834</sup> Marko Kurešević,<sup>1835</sup> and Perica Krstanović<sup>1836</sup> testified that people with work assignments were paid. Several Defence witnesses testified that they signed or saw documents authorising payment to people on work obligation.<sup>1837</sup> Several Defence witnesses testified that they or their relatives were paid or received some compensation in kind for the work they did on mandatory work assignment.<sup>1838</sup>

798. Defence Witness Dušan Gavrić testified that the Muslim workers who had work obligation in Odžak were not paid because there was nobody who could pay them.<sup>1839</sup>

799. Božo Ninković<sup>1840</sup> and Mirko Lukić<sup>1841</sup> testified that people on work obligation were provided with free transportation to and from their workplace. Perica Krstanović,<sup>1842</sup> Simo Zarić,<sup>1843</sup> Mirko Pavić,<sup>1844</sup> Witness DW 2/3,<sup>1845</sup> and Dušan Gavrić<sup>1846</sup> testified that people on work

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<sup>1825</sup> Esad Dagović, T. 3924-25; Witness L, T. 4294.

<sup>1826</sup> Witness K, T. 4649; Witness M, T. 5070; Nusret Hadžijusufović, T. 6881, T. 6927, T. 6928. Safet Dagović, T. 7208, T. 7238.

<sup>1827</sup> Witness G, T. 4155.

<sup>1828</sup> Božo Ninković, T. 13399; Decree on the Work Recruitment of the Population in Gathering the Harvest of July 1992 (Exhibit D19/2), Exhibit D92/1.

<sup>1829</sup> Mirko Lukić, T. 12724.

<sup>1830</sup> Mirko Lukić, T. 12716-17.

<sup>1831</sup> Božo Ninković testified that people with work obligation in Šamać were given food, flour, oil, lard, sugar, coffee, and canned food. Whether the payment would be in kind or in cash depended on the company where the work assignment was performed. (T. 13374-75)

<sup>1832</sup> Slobodan Sjenčić, Rule 92*bis* Statement, paras 260-261.

<sup>1833</sup> Stanko Dujković, Deposition T. 298-299.

<sup>1834</sup> Čedomir Simić, Rule 92*bis* Statement, para. 13; T. 18818-19.

<sup>1835</sup> Marko Kurešević, Rule 92*bis* Statement, para. 19.

<sup>1836</sup> Perica Krstanović, Rule 92*bis* Statement, para. 20.

<sup>1837</sup> Mirko Lukić, T. 12757-58; T. 12725-27; Exhibits D22A/2, D22 B/2, and D22 E/2; Božo Ninković, T. 13400, Exhibit D22/2E; Pelka Andrić, Rule 92*bis* Statement paras 4-6; Nevenka Grbić, Deposition T. 28-29, 39-40; Čedomir Simić, Rule 92*bis* Statement, para. 19.

<sup>1838</sup> Amir Nukić, Rule 92*bis* Statement, para. 8; Mijo Babić Rule 92*bis* Statement, para. 6; Witness DW 2/3, T. 14487; Nevenka Grbić, Deposition T. 28; Muharem Bičakčić, Deposition T. 87; Dario Radić, T. 15079.

<sup>1839</sup> Dušan Gavrić, T. 17331.

<sup>1840</sup> Božo Ninković, T. 13376, Exhibit D114/1.

<sup>1841</sup> Mirko Lukić, T. 12818-19, Exhibit D114/1.

<sup>1842</sup> Perica Krstanović, Rule 92*bis* Statement, para. 20.

<sup>1843</sup> Simo Zarić, T. 19536.

<sup>1844</sup> Mirko Pavić, Rule 92*bis* Statement, para. 31.



obligation were provided with cooked meals. According to Fadil Topčagić the civilians who dug trenches were treated the same way as the soldiers. They shared the same food, usually canned food and tea.<sup>1847</sup>

(iii) Dangerous conditions

800. A number of witnesses forced to dig trenches or to work on other military sites close to or on the frontline were exposed to direct gunfire, sniper fire, shelling, and other dangerous military “exchange.”<sup>1848</sup> Frequently the workers were located between the two enemy lines and were exposed to crossfire.<sup>1849</sup> Esad Dagović was not allowed to hide during the crossfire.<sup>1850</sup>

801. Non-Serb civilians performing forced labour near the frontline were injured or killed.<sup>1851</sup> Safet Dagović testified that at Grebnice his co-worker Fuad Bobić was badly injured in the stomach and the backside.<sup>1852</sup> Dževad Nukić, a 19 year old Muslim, was shot dead in front of his father while digging trenches.<sup>1853</sup>

802. Defence witnesses testified that civilians working on the front line could have been exposed to exchange of fire or to shelling. Commander Antić testified that there was a possibility that the people working on the front line could be exposed to exchange of fire or to a mortar shell.<sup>1854</sup> Fadil Topčagić testified that there were frequent firings from the enemy positions and it was possible that someone could get injured.<sup>1855</sup>

803. Several Defence witnesses testified that civilians did not work while there was exchange of fire on the frontline. Fadil Topčagić testified that when shooting occurred, the soldiers would return the fire while the civilians would wait for the exchange of fire to stop.<sup>1856</sup> According to Amir Nukić civilians never worked during combat operations or while their positions were shelled.<sup>1857</sup> Muharem

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<sup>1845</sup> Witness DW 2/3, T. 14479-80.

<sup>1846</sup> Dušan Gavrić, T. 17330.

<sup>1847</sup> Fadil Topčagić, Rule 92bis Statement, para. 56.

<sup>1848</sup> Safet Dagović, T. 7192, T. 7194; Nusret Hadžijusufović, T. 6884; Kemal Mehinović, T 7402-03; Witness C, T. 7910-12.

<sup>1849</sup> Witness M, T. 5050-51; Witness L, T. 4286; Nusret Hadžijusufović, T. 6877, T. 6885, T. 6889-90.

<sup>1850</sup> Esad Dagović, T. 3924.

<sup>1851</sup> Witness L, T.4287-88; Witness M, T. 5120-22; Kemal Bobić, T. 11389-90.

<sup>1852</sup> Safet Dagović, T. 7197.

<sup>1853</sup> Safet Dagović, T. 7202; Hasan Subašić, T. 10973.

<sup>1854</sup> Radovan Antić, T. 16771.

<sup>1855</sup> Fadil Topčagić, Rule 92bis Statement, para. 56.

<sup>1856</sup> Fadil Topčagić, Rule 92bis Statement, para. 56.

<sup>1857</sup> Amir Nukić, Rule 92bis Statement, para. 13.

Bičakčić testified that while the firemen were digging trenches there was no fighting.<sup>1858</sup> Defence witnesses testified that they did not see civilian deaths.<sup>1859</sup>

(d) Ethnicity of those performing forced labour

804. A number of Prosecution witnesses testified that the vast majority of people called to report for forced labour assignments were Bosnian Muslims and Bosnian Croats.<sup>1860</sup> Prosecution witnesses testified that the civilians forced to work on the frontline were mainly Muslims, and a few Croats, and that Serbs were never seen doing this type of labour.<sup>1861</sup> Witness E, who served as a courier, was given 5 or 6 lists of 30 people whom he had to summon for work duty. Most of the people on these lists were Muslims and there were some Croats.<sup>1862</sup>

805. Defence witnesses testified that the work obligation applied to every person who was not mobilized and to all ethnicities.<sup>1863</sup> Perica Krstanović,<sup>1864</sup> Čedomir Simić,<sup>1865</sup> Mirko Lukić,<sup>1866</sup> Marko Kurešević,<sup>1867</sup> Muharem Bičakčić,<sup>1868</sup> and Velimir Maslić<sup>1869</sup> testified that the employees of their companies, were from all ethnic groups. In addition several Defence witnesses testified that while on work obligation they worked together with employees of different ethnic backgrounds.<sup>1870</sup>

806. Several Defence witnesses testified that in some cases the workers were predominately of a non-Serb background. Commander Antić testified that the ten workers, assigned to help building bunkers on the frontline, who were not operating the diggers, were all Muslims.<sup>1871</sup> Dušan Gavrić<sup>1872</sup> and Simo Zarić<sup>1873</sup> testified that Muslims and Croats were brought to Odžak.

(e) Legal basis of the work obligation

807. Defence witnesses testified that the work obligation was established by the Law on Defence and was further defined by the Decree on Work Obligation, issued by the government of Bosnia and

<sup>1858</sup> Muharem Bičakčić, Deposition T. 95, T. 104-106.

<sup>1859</sup> Fadil Topčagić, Rule 92bis Statement, para. 56.

<sup>1860</sup> Esad Dagović, T. 5892-95; Witness L, T. 4277; Witness M, T. 5041; Jelena Kapetanović, T. 10308; Ediba Bobić, T. 11388-89; Kemal Mehinović, T. 7397.

<sup>1861</sup> Nusret Hadžijusufović, T. 6889-90; Witness L, T. 4286; Witness C, T. 7909.

<sup>1862</sup> Witness E, T. 7673.

<sup>1863</sup> Mirko Lukić, T. 12723, Exhibit D13/2; T. 12770, Exhibit D85/1; Božo Ninković, T. 13465, Exhibit D134/1; Slobodan Sjenčić, Deposition T. 275; Lazar Mirkić, Rule 92bis Statement, paras 13 and 15.

<sup>1864</sup> Perica Krstanović, Rule 92bis Statement, para. 20.

<sup>1865</sup> Čedomir Simić, Rule 92bis Statement, paras 13-15; T. 18815-17.

<sup>1866</sup> Mirko Lukić, T. 12727, T. 12432, Exhibit D22D/2, Exhibit D125/1.

<sup>1867</sup> Marko Kurešević, Rule 92bis Statement, paras 19-20.

<sup>1868</sup> Muharem Bičakčić, Deposition T. 85, T. 93, Exhibit D81 A/1 and D81 B/1.

<sup>1869</sup> Velimir Maslić, T. 14164.

<sup>1870</sup> Nevenka Grbić, Deposition T. 39; Ahmet Schapović, Deposition T. 120, 125; Witness DW 3/3, Rule 92bis Statement, para. 24.

<sup>1871</sup> Radovan Antić, T. 16772.

<sup>1872</sup> Dušan Gavrić, T. 17365-66.

Herzegovina on 26 October 1992.<sup>1874</sup> Božo Ninković testified that under the Law on Defence the citizens were obliged to carry out certain military obligations, including a work obligation. The Law on Defence and the Criminal Code provided for sanctions against individuals avoiding their military obligations, including the work obligation.<sup>1875</sup> According to Blagoje Simić the war assignments applied to public and military positions, depending on the Ministry of Defence's decisions, and were in accordance with the laws in force at the time. If a person was not engaged in active military service, he would be assigned a work obligation.<sup>1876</sup>

808. Several decrees related to the work obligation were adopted in Bosnia and Herzegovina.<sup>1877</sup> Mirko Lukić testified that according to these decrees the Secretariat for National Defence regulated the matters related to work obligation. The Municipal Assembly, the Crisis Staff, and the War Presidency had no power to change those regulations.<sup>1878</sup> Božo Ninković testified that the Executive Board of Bosanski Šamac passed a Decision on Organised Execution of Agricultural Works, which required individuals not serving in the army or the police to do agricultural work.<sup>1879</sup>

(f) Evidence on the role of the Crisis Staff

809. Stevan Todorović testified that the work obligations were under the jurisdiction of the Ministry of Defence of Republika Srpska, and that the exclusive competence to organise work duty at the municipal level was within the Municipal Secretariat for National Defence. The Head of the Secretariat for Defence was appointed,<sup>1880</sup> and dismissed,<sup>1881</sup> by the Crisis Staff. Miloš Bogdanović and Božo Ninković, who consecutively served as Secretaries for Defence, were members of the Crisis Staff during the time they served as Secretaries for Defence.<sup>1882</sup> Both men occasionally provided reports to the Crisis Staff.<sup>1883</sup>

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<sup>1873</sup> Simo Zarić, T. 19534.

<sup>1874</sup> Božo Ninković, T. 13569; Đorđe Tubaković, T. 17945.

<sup>1875</sup> Božo Ninković, T. 13365-67.

<sup>1876</sup> Blagoje Simić, T. 12248-49.

<sup>1877</sup> Decree on Organizing and Implementing the Work Obligation for Defence Requirement, issued on 8 June 1992 by the Prime Minister of the Serbian BiH Republic (Exhibit D11/2), and Decree on Work Obligation, issued on 26 October 1992 by the Government of the Republic of Bosnia and Herzegovina (Exhibit D84/3).

<sup>1878</sup> T. 12689.

<sup>1879</sup> Decision of 10 September 1992, Exhibit D92/1; T. 13370.

<sup>1880</sup> Exhibit P86, Crisis Staff decision of 8 June 1992 on the appointment of a Secretary for the Municipal Secretariat for National Defence (appointment of Božo Ninković); Stevan Todorović, T. 9175.

<sup>1881</sup> Exhibit P87, Crisis Staff decision of 14 June 1992 relieving Miloš Bogdanović of his duties as a Secretary for Defence; Stevan Todorović, T. 9175.

<sup>1882</sup> Stevan Todorović, T. 9175.

<sup>1883</sup> Stevan Todorović, T. 9177.

810. Stevan Todorović testified that although the Crisis Staff could not issue orders for work duty,<sup>1884</sup> the companies in need of labour would apply through the Crisis Staff to the Ministry of the Defence. Most often the Crisis Staff would issue its consent to these requests.<sup>1885</sup>

811. A number of Defence witnesses testified that civilians were assigned to their work obligation by the Bosanski Šamac Department of the Ministry of Defence, in coordination with the Executive Board. Božo Ninković testified that the director of a company would propose a war organization plan, including the number of workers and positions needed, which had to be approved by the Executive Board.<sup>1886</sup> The Secretariat for Economy, based on its assessment of the needs, would request the Secretariat for Defence to assign people on work obligation to a certain company.<sup>1887</sup> The director then would send a request to the Defence Ministry to be assigned specific workers.<sup>1888</sup> Mirko Lukić testified that according to the Decree on Organizing and Implementing the Work Obligation for Defence Requirements,<sup>1889</sup> a municipal institution had to request the Ministry of Defence through the Executive Board to issue a work obligation for that person.<sup>1890</sup> Similar testimony was given by Slobodan Sjenčić,<sup>1891</sup> Čedomir Simić,<sup>1892</sup> and Lazar Mirkić.<sup>1893</sup>

812. Two Defence witnesses testified about the Crisis Staff's involvement in the process of assignment of work obligations. Božo Ninković testified that companies would request the Executive Board to assign them workers and that sometimes some requests were "mistakenly" addressed to the Crisis Staff.<sup>1894</sup> Mirko Lukić testified that the Secretariat for Defence, through the Crisis Staff, appointed coordinators of enterprises who requested people for work obligations, in order to ensure that the companies' property would be preserved and that the companies would work in wartime.<sup>1895</sup>

813. Witness M testified that the Crisis Staff was mentioned on the call-up papers for their work obligation, but there was never a signature, and that Džemal Kapetanović and Božo Ninković issued the work assignments to the people gathered at the SDK building. The workers were told that they

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<sup>1884</sup> Stevan Todorović, T. 10088.

<sup>1885</sup> Stevan Todorović, T. 10256.

<sup>1886</sup> Božo Ninković, T. 13387-88.

<sup>1887</sup> Exhibit D78/1 A, B, C; Request for Work Assignment of 20 June 1992; T. 13363-13364. See also Mirko Lukić, T. 12814-12815, Request issued by the President of the Executive Board, Milan Simić, to the Secretariat for Defence for work assignment of Nikola Mikanović, Exhibit D112/1.

<sup>1888</sup> Božo Ninković, T. 13388-89.

<sup>1889</sup> Exhibit D11/2.

<sup>1890</sup> Mirko Lukić, T. 12715-12716, Exhibit D77/1; T. 12749.

<sup>1891</sup> Slobodan Sjenčić, Deposition T. 259-260.

<sup>1892</sup> Čedomir Simić, Rule 92*bis* Statement, para. 18, T. 18818.

<sup>1893</sup> Lazar Mirkić, Rule 92*bis* Statement, para. 15.

<sup>1894</sup> Request to the Crisis Staff for workers in the veterinarian station of Bosanski Šamac, Exhibit D124/1; T. 13428-13429 and Request to the Executive Board of the Šamac municipality for work permits by the director of the Textilac company, Exhibit D125/1, T. 13431.

<sup>1895</sup> Exhibit D12/2, T. 12719.

had to work on behalf of Republika Srpska.<sup>1896</sup> Several Defence witnesses testified that their call-up papers were signed by Božo Ninković, the Secretary for National Defence, or that they had to report to him.<sup>1897</sup> Božo Ninković confirmed that he signed the decision on assignment to work detail of 8 June 1993.<sup>1898</sup>

814. The Secretariat for National Defence kept records of the people assigned to work, their work place, and the type of labour performed. Djordje Tubaković's colleagues were responsible for sending people.<sup>1899</sup> The clerks and other personnel in charge of the work obligation units,<sup>1900</sup> were not employees of the Defence Ministry, their coordinator was Dževad Celić,<sup>1901</sup> and their salaries were paid by the Executive Board.

815. Two Defence witnesses gave testimony regarding the responsibility for civilians on work obligation. Božo Ninković testified that the commander of the military unit was responsible for the people working at his unit. A commander who failed to take measures to protect the people under his command would be responsible under criminal law.<sup>1902</sup> Commander Antić testified that he was in charge of the personal safety of the people working on the frontline and that he personally took measures to guarantee that they were not exposed to risk.<sup>1903</sup> According to Commander Antić the person who gave the workers the assignment to dig trenches would be responsible for their safety. Commander Antić considered himself personally responsible for the safety of these people "as a human being," and not as a military commander, as, according to him, this was not within the responsibility of the military units. The army secured the safety of its own units members.<sup>1904</sup>

816. Božo Ninković testified that if a municipal employee was injured on a work assignment, the Executive Board, would be responsible. The municipality would be responsible for injuries that occurred while workers filled sandbags and put them around the municipal building. The commander of that particular work unit would be directly responsible.<sup>1905</sup> In cases of accidental death, a special procedure had to be followed.<sup>1906</sup>

(g) Evidence on role of the Accused

(i) Blagoje Simić

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<sup>1896</sup> Witness M, T. 5059-60.

<sup>1897</sup> Ahmed Sehapović ("Cifun"), Deposition T. 125-126; Witness DW 2/3, T. 14485.

<sup>1898</sup> Exhibit D57/1.

<sup>1899</sup> Đorđe Tubaković, T. 17945-46.

<sup>1900</sup> Exhibit P39.

<sup>1901</sup> Božo Ninković, T. 13490-41.

<sup>1902</sup> Božo Ninković, T. 13398.

<sup>1903</sup> Radovan Antić, T. 16771.

<sup>1904</sup> Radovan Antić, T. 16803-04.

817. Witness K and Witness M testified that while performing forced labour they saw Blagoje Simić in a house with a swimming pool.<sup>1907</sup> Blagoje Simić testified that he was never in a house with a swimming pool in Odžak and was not aware of the existence of such a house.<sup>1908</sup> Esad Dagović, Nusret Hadžijusufović and Ediba Bobić testified that while performing forced labour they saw Blagoje Simić in front of the Pensioner's Home or the municipal building.<sup>1909</sup>

(ii) Miroslav Tadić

818. Nusret Hadžijusufović and Snjezana Delić testified about Miroslav Tadić's involvement in the administration of the work obligation. Nusret Hadžijusufović was told by Dževad Celić that if someone needed assistance with work they would approach Miroslav Tadić, who would refer them to Dževad Celić to assign a certain number of people to the particular task. Dževan Celić and Jusuf Subasić, a courier, told Nusret Hadžijusufović that Miroslav Tadić was the one who took the decision.<sup>1910</sup>

819. When Nusret Hadžijusufović was ordered to do heavy work in the "Separacija" plant and requested to be released from it as he was disabled, Dževad Celić advised him to ask permission from Miroslav Tadić.<sup>1911</sup>

820. On 27 June 1992, Snjezana Delić approached Miroslav Tadić for assistance with respect to her exemption from forced labour. Miroslav Tadić explained to her that since she had young children she was not required to perform a work obligation. He said that he personally was not in a position to decide but facilitated her exemption from a work duty by Simo Zarić.<sup>1912</sup>

821. Defence witnesses testified that the office of the Civilian Protection Staff was located in the building of the Pensioner's Home, where the offices of the work obligation coordinators were. Velimir Maslić testified that in 1992 on the ground floor of the building there were two offices occupied by the persons who assigned work obligation to civilians, Dževad Čelić and "Beg"

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<sup>1905</sup> Božo Ninković, T. 13404-05.

<sup>1906</sup> Božo Ninković, T. 13392-93.

<sup>1907</sup> Witness K, T. 4942-45; Witness M, T. 5140-41.

<sup>1908</sup> Blagoje Simić, T. 12324.

<sup>1909</sup> Esad Dagović, T. 3989; Nusret Hadžijusufović, T. 6937; Ediba Bobić, T. 11275.

<sup>1910</sup> Nusret Hadžijusufović, T. 6919-20.

<sup>1911</sup> Nusret Hadžijusufović, T. 6929.

<sup>1912</sup> Snjezana Delić, T. 6450-52.

Kapetanović.<sup>1913</sup> Similar testimony was given by Željko Volašević,<sup>1914</sup> Milka Petković,<sup>1915</sup> and Božo Ninković.<sup>1916</sup>

822. Defence witnesses testified that the only telephone line in the building was in the office of the Civilian Protection Staff and that this line was used to transmit messages regarding work assignments. When they received calls in relation to assignment of workers Ljubomir Vuković and Željko Volašević personally had to go down to convey the message to the people downstairs, usually Mr. Celić or Mr. Misić.<sup>1917</sup> Svetozar Vasović testified that from early May 1992 to about 1993 the telephone lines were not functioning in Šamac.<sup>1918</sup>

823. According to Miroslav Tadić the only connection between the Civilian Protection Staff and the work obligation was the fact that they shared the same telephone facility. The Civilian Protection Staff did not assign tasks to the people gathered in front of the Pensioner's Home. If the TO needed someone, the officers of Civilian Protection Staff would go downstairs to ask the commissioners, "Dževad" or "Debeli," whether they had workers available.<sup>1919</sup>

824. Some Defence witnesses testified that the Civilian Protection Staff occasionally requested civilians for certain types of work.<sup>1920</sup> In these cases the Civilian Protection Staff first requested the approval of the Secretariat for National Defence and then asked Beg Kapetanović and Dževad Celić to assign them workers.<sup>1921</sup> The same procedure was followed for requesting workers for bringing in the goods specified in the inventories of the shops.<sup>1922</sup>

(iii) Simo Zarić

825. After the takeover in Odžak, Savo Popović, a member of the Crisis Staff in Bosanski Šamac, was the President of the Civilian Council and Simo Zarić was his deputy. Savo Popović informed the Crisis Staff about the work that needed to be done in Odžak, such as repairing houses, agricultural work, etc., and requested help from the Crisis Staff. The Crisis Staff usually responded positively and referred Savo Popović to the Municipal Secretariat of National Defence.<sup>1923</sup>

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<sup>1913</sup> Velimir Maslić, T. 14152.

<sup>1914</sup> Željko Volašević, Rule 92*bis* Statement, para. 35.

<sup>1915</sup> Milka Petković, Rule 92*bis* Statement, para. 39.

<sup>1916</sup> Božo Ninković, T. 13549-51.

<sup>1917</sup> Ljubomir Vuković, T. 14600-01; Željko Volašević, Rule 92*bis* Statement, para. 36.

<sup>1918</sup> Svetozar Vasović, T. 14963-64.

<sup>1919</sup> Miroslav Tadić, T. 15421-22.

<sup>1920</sup> Željko Volašević, Rule 92*bis* Statement, para. 37, T. 17770-71.

<sup>1921</sup> Ljubomir Vuković, T. 14606-07, T. 14669-70.

<sup>1922</sup> Željko Volašević, Rule 92*bis* Statement, para. 37, T. 17770-71.

<sup>1923</sup> Stevan Todorović, T. 9178-80.

826. Stevan Todorović testified that after the takeover of Odžak, Simo Zarić and Savo Popović had an important role in the rebuilding of Odžak, and were involved in assigning workers for the cleaning and the reconstruction of the town. In the beginning, plumbers, electricians and special workers were essential. The need for special workers was made known to the Crisis Staff.<sup>1924</sup>

827. Witness M saw Simo Zarić in Odžak almost everyday, issuing orders and instructions to various people, and Witness M thought that Simo Zarić was in charge in Odžak. Simo Zarić was present when the workers were given their assignments in front of the hotel.<sup>1925</sup> Simo Zarić's sister Jelena gave assignments for tasks to be done at the hotel, and Witness M thought that the army ran the hotel.<sup>1926</sup> Other assignments were given by Stojan Blagojević.<sup>1927</sup> Once, while working in Odžak, Witness M was taken to the hotel to Simo Zarić, who ordered him to go to Novi Grad to repair the hydrant line under the watch of a policeman.<sup>1928</sup>

828. While working in Odžak outside the MUP or outside the hotel, Witness K saw Simo Zarić often. Once, Witness K heard that Simo Zarić was offering workers to a man from a refinery in Modriča. He replied that he did not need workers and that Simo Zarić should be “careful of what he was doing so that he would not be ashamed of himself later.”<sup>1929</sup>

829. Esad Dagović, Safet Dagović, and Nusret Hadžijusufović testified that they saw Simo Zarić in front of the Pensioner's Home or at places where they were performing forced labour.<sup>1930</sup>

830. Dušan Gavrić,<sup>1931</sup> and Simo Zarić himself,<sup>1932</sup> testified that Simo Zarić was not involved in the administration of the work obligation in Odžak. Dušan Gavrić, who was assigned by the military administration and the civilian authority in Odžak to serve as a commissioner for the local commune in Odžak,<sup>1933</sup> issued tasks to the people who were brought to Odžak on a work obligation. Simo Zarić stated that he had no authority over those people and was not in a position to issue any orders to them, as this was beyond his tasks and the needs of his service.<sup>1934</sup>

831. Simo Zarić testified that all the activities in Odžak were related to the economy and were subordinated to Republika Srpska and the executive bodies of the Municipality. The military

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<sup>1924</sup> Stevan Todorović, T. 9180-81.

<sup>1925</sup> Witness M, T. 5092-94.

<sup>1926</sup> Witness M, T. 5153.

<sup>1927</sup> Witness M, T. 5154.

<sup>1928</sup> Witness M, T. 5093-96.

<sup>1929</sup> Witness K, T. 4656.

<sup>1930</sup> Esad Dagović, T. 5755; Safet Dagović, T. 7187; Nusret Hadžijusufović, T. 6936.

<sup>1931</sup> Dušan Gavrić, T. 17353.

<sup>1932</sup> Simo Zarić, T. 19594, T. 20044.

<sup>1933</sup> Dušan Gavrić testified that the official document appointing him to that position was issued by the Ministry of Defence, Bosanski Šamac, and was signed by Božo Ninković (T. 17341-42).

<sup>1934</sup> Simo Zarić, T. 19535.



command in Odžak worked closely with the President of the Civilian-Military Council, Savo Popović.<sup>1935</sup>

832. Safet Dagović attended a meeting, organized by the 4<sup>th</sup> Detachment, between Muslims and Croats on one side, and the military on the other, at the memorial hall “Spomen Dom.” Simo Zarić, who was there with other members of the 4<sup>th</sup> Detachment, explained to the people gathered that if they agreed to take weapons and be mobilized in the army of Republika Srpska, they would receive certain privileges and would be released from work duty.<sup>1936</sup>

833. With respect to the incident involving Snjezana Delić’s release from work obligation, Simo Zarić testified that he spoke with Miloš Bogdanović who explained to Simo Zarić that Stojan Blagojević did not have the authority to order anyone to do a work obligation. Simo Zarić asked Bogdanović to tell that to Blagojević, and later heard that Snjezana Delić did go to work.<sup>1937</sup>

## 2. Findings

834. The Trial Chamber is satisfied that civilians who had to report every day in front of the Pensioner’s Home as well as civilians who were detained<sup>1938</sup> were forced to dig trenches,<sup>1939</sup> build bunkers,<sup>1940</sup> carry sandbags or railway sleepers for the construction of trenches,<sup>1941</sup> and build other fortifications<sup>1942</sup> on the frontline. It has been established that this work was not rendered voluntarily. Civilians were compelled to work under the supervision of armed guards,<sup>1943</sup> who beat, or fired at those who tried to escape.<sup>1944</sup> The Trial Chamber also accepts that the civilians who were forced to dig trenches, and to work on the frontline were not paid for their work.<sup>1945</sup>

835. The Trial Chamber is satisfied that civilians working on military assignments on the frontline were exposed to dangerous conditions and were under a high risk of being injured or killed.<sup>1946</sup> The Trial Chamber accepts that the acts of forcing civilians to work in life-threatening circumstances where they could be exposed to physical and mental suffering fail to meet the

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<sup>1935</sup> Simo Zarić, T. 19789.

<sup>1936</sup> Safet Dagović, T. 7232-34.

<sup>1937</sup> Simo Zarić, T. 19611-13.

<sup>1938</sup> Osman Jašarević, Rule 92*bis* Statement, para. 108.

<sup>1939</sup> Esad Dagović, T. 3923; Witness L, T. 4281; Witness M, T. 5042-43; Nusret Hadžijusufović, T. 6876, T. 6881-83, Safet Dagović, T. 7190-91, T. 7193, T. 7200, T. 7216; Kemal Mehinović, T. 7399-00, Exhibit P9J.

<sup>1940</sup> Nusret Hadžijusufović, T. 6875; Kemal Mehinović, T. 7400.

<sup>1941</sup> Esad Dagović, T. 5914; Witness C, T. 7909.

<sup>1942</sup> Safet Dagović, T. 7190-91.

<sup>1943</sup> Esad Dagović, T. 3925; Witness L, T. 4282; Nusret Hadžijusufović, T. 6876, T. 6881, T. 6886; Safet Dagović, T. 7201; Kemal Mehinović, T. 7398-99.

<sup>1944</sup> Witness G, T. 4091-92.

<sup>1945</sup> Esad Dagović, T. 3923; Witness L, T. 4294; Nusret Hadžijusufović, T. 6926; Safet Dagović, T. 7198; Kemal Mehinović, T. 7402; Witness C, T. 7913.

<sup>1946</sup> Safet Dagović, T. 7192, T. 7194; Nusret Hadžijusufović, T. 6884; Kemal Mehinović, T. 7401-03; Witness C, T. 7910-12.

obligation for humane treatment of civilians enshrined in the Geneva Conventions and amount to cruel and inhumane treatment. The Trial Chamber is satisfied that these assignments were made on a discriminatory basis and that they reach the level of seriousness required for persecution.

836. The Trial Chamber accepts the argument of the Defence that certain types of work even if compulsory were permissible under international humanitarian law and consequently do not amount to persecution. Civilians were forced to do agricultural work in Bosanski Šamac, Zasavica, Novi Grad, Pisari and other neighbouring villages, to chop wood, to prepare food for the army or for the civilians, to work on the water supply system, to clean and rebuild Odžak, or to work for state owned companies.<sup>1947</sup> While the civilians had no real choice as to whether to work or not, these types of labour are lawful *per se* under international humanitarian law, and in the absence of other aggravating circumstances do not amount to persecution. It has not been established beyond reasonable doubt that the conditions under which this labour was rendered were such as to amount to cruel and inhumane treatment, or that the assignments are of sufficient gravity to constitute persecution.

837. The Trial Chamber is satisfied that non-Serb civilians were subjected to humiliating forced labour. Sulejman Tihić was forced to sweep the street outside the municipality building and the SUP building, while people walked by.<sup>1948</sup> Dragan Lukač had to clean a room in front of two Bosnian women and felt humiliated.<sup>1949</sup> Ahmet Hadžialjagić had to sweep the streets in front of the bank, which he used to manage. The director of a textile company had to sweep the compounds of the Šamac textile industry.<sup>1950</sup> The Trial Chamber is satisfied that these assignments were such as to arouse feelings of fear and subordination, capable of causing the said persons psychological suffering, and of debasing them and the group to which they belonged, and as such constitute cruel and inhumane treatment. While single incidences of humiliating assignments may not reach the level of gravity required for persecution, the Trial Chamber accepts that these assignments were part of a pattern targeting the Bosnian Muslim and Bosnian Croat political and economic leadership. The Trial Chamber is satisfied that the humiliating assignments reach the level of gravity to amount to persecution.

838. The Trial Chamber accepts that the Bosnian Muslims and Bosnian Croats who were forced to loot the houses of people from their town, who sometimes they knew well and highly respected,

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<sup>1947</sup> Perica Krstanović, Rule 92bis Statement, para. 21; Mirko Pavić, Rule 92bis Statement, para. 32; Dušan Gavrić, T. 17331-32; Witness DW 3/3, Rule 92bis Statement, para. 24; Čedomir Simić, Rule 92bis Statement, paras 18-19.

<sup>1948</sup> Sulejman Tihić, T. 1414.

<sup>1949</sup> Dragan Lukač, T. 1755-57.

<sup>1950</sup> Hajrija Drljačić, T. 8053-54.

were subjected to humiliating treatment.<sup>1951</sup> The Trial Chamber is satisfied that the debasement and the psychological pain to which the non-Serb civilians forced to steal were subjected attain the level of severity required for the treatment to be considered humiliating. The Trial Chamber however is not satisfied that the evidence presented proves beyond reasonable doubt the Crisis Staff's participation in forcing civilians to loot through the forced labour programme.

839. The Trial Chamber is not satisfied that the forced labour assignments to which civilians detained at the SUP, in Bijeljina, Brčko, and Zaslavica were subjected to within those premises, amount to persecution. While prisoners were forced to wash and repair the cars of police officers,<sup>1952</sup> clean the premises,<sup>1953</sup> and do other similar assignments, the Trial Chamber is not satisfied that this labour was prohibited by international humanitarian law, nor that the conditions were such as to render the labour unlawful.

840. The Trial Chamber accepts that the Bosanski Šamac Secretariat for National Defence was responsible for administering the forced labour programme and for assigning civilians to forced labour.<sup>1954</sup> It has been established that the Secretariat for Defence was accountable to the Crisis Staff. The Crisis Staff appointed and dismissed the head of the Secretariat for the Defence,<sup>1955</sup> and the head of the Secretariat for Defence was an *ex officio* member of the Crisis Staff. Occasionally, the Secretariat provided reports to the Crisis Staff.<sup>1956</sup> In principle the Crisis Staff gave its general consent to the requests for forced labour assignments.<sup>1957</sup>

841. Defence witness Božo Ninković testified that the commander of the military unit was responsible for the people in his unit,<sup>1958</sup> and Commander Antić testified that he felt himself personally responsible for the safety of the people digging trenches, not as a part of his military responsibilities but as his obligation as a human being.<sup>1959</sup> The Trial Chamber finds however that the ultimate responsibility for sending people to work in dangerous conditions lay with those who made the decision to send civilians to the frontline and not with those who were in charge of the specific military operation. The Trial Chamber finds that through the Secretariat for National Defence the Crisis Staff was ultimately responsible for managing the forced labour program and sending civilians to work in dangerous or humiliating conditions.

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<sup>1951</sup> Nusret Hadžijusufović, T. 6923; Witness K, T. 4634; Witness M, T. 5056.

<sup>1952</sup> Esad Dagović, T. 3987.

<sup>1953</sup> Esad Dagović, T. 3984; Witness A, Rule 92*bis* Statement, para. 97.

<sup>1954</sup> Stevan Todorović, T. 9177; Mirko Lukić, T. 12814-15; Exhibit D112/1; Ahmed Schapović, Deposition T. 125; Witness DW 2/3, T. 14485.

<sup>1955</sup> Exhibit P86; Stevan Todorović, T. 9174-75.

<sup>1956</sup> Stevan Todorović, T. 9177.

<sup>1957</sup> Stevan Todorović, T. 10256; Exhibit D124/1, a request for assignment of workers mistakenly addressed to the Crisis Staff, instead of the Executive Board (T. 13428-30).

## XIV. PLUNDERING AND LOOTING

### A. Evidence

#### 1. Incidents of plunder and looting

842. Immediately after the takeover of 16-17 April 1992, widespread looting occurred in the Bosanski Šamac municipality. Witnesses testified to the occurrence of looting in the towns of Bosanski Šamac<sup>1960</sup> and Odžak,<sup>1961</sup> as well as in Kornica,<sup>1962</sup> Hrvatska Tišina, Novo Selo, Hrvatska Dubica, Zasajeka, Grebnice, Tramosnica,<sup>1963</sup> Gornji and Donji Hasići, and Gornica.<sup>1964</sup>

843. Esad Dagović,<sup>1965</sup> Dragan Lukač,<sup>1966</sup> Ediba Bobić,<sup>1967</sup> and Snjezana Delić<sup>1968</sup> testified that their personal items including cars, jewellery, or money were looted. Hasan Bičić,<sup>1969</sup> Muhamed Bičić,<sup>1970</sup> Witness L,<sup>1971</sup> Witness K,<sup>1972</sup> and Witness C,<sup>1973</sup> among others testified that their household property was taken away in the months following the takeover. When evicted residents received their apartments back, all their household belongings, house appliances, furniture, and other valuable items were missing,<sup>1974</sup> or the property was returned to them in a bad condition.<sup>1975</sup>

844. Prosecution witnesses testified that no receipts or other papers were issued to the persons whose personal property was confiscated,<sup>1976</sup> or an inventory taken, when civilians were forced to loot.<sup>1977</sup> Kemal Mehinović testified that Naser Sejdić, a military policeman and a colleague of Kemal Mehinović, made a list of his entire property, which list he could not see.<sup>1978</sup>

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<sup>1958</sup> Božo Ninković, T. 13397-98.

<sup>1959</sup> Radovan Antić, T. 16803-04.

<sup>1960</sup> Ibrahim Salkić, T. 3240; Esad Dagović, T. 3956; Osman Jašarević, Rule 92bis Statement, para. 36.

<sup>1961</sup> Witness K, T. 4642, Nusret Hadžijusufović, T. 6912; Simo Zarić, T. 19804.

<sup>1962</sup> Witness K, T. 4634.

<sup>1963</sup> Nusret Hadžijusufović, T. 6893, T. 6912.. The workers always were the first ones to enter the houses as the drivers were scared that the houses might be mined, T. 6900.

<sup>1964</sup> Witness M, T. 5056.

<sup>1965</sup> Esad Dagović, T. 4015.

<sup>1966</sup> Dragan Lukač testified that while detained in his cell at the SUP he saw a number of what appeared to be “confiscated” civilian cars in the backyard including his own car. (T. 1772)

<sup>1967</sup> Ediba Bobić, T. 11277-78.

<sup>1968</sup> Snjezana Delić, T. 6467.

<sup>1969</sup> Hasan Bičić, T. 2741; T. 2759-60.

<sup>1970</sup> Muhamed Bičić, T. 3039.

<sup>1971</sup> Witness L, T. 4365-66.

<sup>1972</sup> Witness K, T. 4750, T. 4756.

<sup>1973</sup> Witness C, T. 7942.

<sup>1974</sup> Witness M, T. 5254; Kemal Mehinović, T. 7513; Witness G, T. 4104-05; Witness O, Rule 92bis Statement, para. 61.

<sup>1975</sup> Jelena Kapetanović, T. 10344-46; Hajrija Drljačić, T. 8130.

<sup>1976</sup> Ibrahim Salkić, T. 3451; Muhamed Bičić, T. 3042; Esad Dagović, T. 3929, T. 4022; Witness C, T. 7942; Snjezana Delić, T. 6466-68; Dragan Lukač, T. 2101.

<sup>1977</sup> Witness K, T. 4637, T. 4645; Witness M, T. 5060.

<sup>1978</sup> Kemal Mehinović, T. 7512.

845. Defence witness Ljubomir Vuković testified that, immediately after the evacuation of people from Bosanski Šamac, the Civilian Protection Staff took inventories and sealed off all abandoned apartments.<sup>1979</sup> Mirko Lukić<sup>1980</sup> and Milka Petković<sup>1981</sup> gave similar evidence.

846. Shops, restaurants, small businesses, and other establishments belonging to non-Serbs were plundered, the goods were taken away and often new, usually Serb, owners were installed. Hasan Bičić<sup>1982</sup> and Muhamed Bičić's businesses were taken away from them. Their 150-160 gambling machines were destroyed or looted.<sup>1983</sup> Offices<sup>1984</sup> and cafés<sup>1985</sup> were looted. A gas station was appropriated.<sup>1986</sup> Goods were taken out from factories.<sup>1987</sup>

847. Prosecution witnesses testified that while in detention they were stripped of their valuable personal belongings, often by force or by threat of use of force. While in detention Sulejman Tihić,<sup>1988</sup> Witness Q,<sup>1989</sup> Muhamed Bičić,<sup>1990</sup> and Hasan Bičić<sup>1991</sup> were forced by "Lugar" and other members of the paramilitaries to give them their gold jewellery or money in foreign currencies. Ibrahim Salkić witnessed "Cera" asking a detainee, Omer Nalić, for 5000 DM in order to "buy his life." Ibrahim Salkić himself was asked for money while in detention. As he did not have sufficient money to satisfy the request he was beaten.<sup>1992</sup>

848. A number of witnesses testified that the paramilitaries often asked relatives or friends of persons in their custody for money, while threatening that they would kill that person. Hasan Bičić was threatened that his brother Muhamed would be killed if he did not find some money, and was taken to friends and relatives around town to look for money.<sup>1993</sup> Sulejman Tihić's brother had to give 15.000 DM to a paramilitary, through a former neighbour of Sulejman Tihić, to get him released, but Sulejman Tihić remained in custody.<sup>1994</sup>

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<sup>1979</sup> Ljubomir Vuković, T. 14617.

<sup>1980</sup> Mirko Lukić, T. 12840-41; Exhibit D63/3; Exhibit D90/1.

<sup>1981</sup> Milka Petković, Rule 92*bis* Statement, para. 34.

<sup>1982</sup> Hasan Bičić, T. 2759-60. When Hasan Bičić was transferred from one room to another at the SUP, he saw a crate of whiskey and a crate of 50 packs of cigarettes, with the name of his pizzeria and his nickname on it.

<sup>1983</sup> Muhamed Bičić, T. 3038-39; Hasan Bičić, T. 2762.

<sup>1984</sup> Alija Fitozović, T. 8511.

<sup>1985</sup> Alija Fitozović, T. 8516.

<sup>1986</sup> Witness K, T. 4616-17.

<sup>1987</sup> Hasan Subašić, T. 10940; Witness M, T. 5109-10.

<sup>1988</sup> Sulejman Tihić, T. 1434.

<sup>1989</sup> Witness Q, T. 11730.

<sup>1990</sup> Muhamed Bičić, T. 2935-36.

<sup>1991</sup> Hasan Bičić, T. 2651-52.

<sup>1992</sup> Ibrahim Salkić, T. 3284-86.

<sup>1993</sup> Hasan Bičić, T. 2673-75. See also Esad Dagović, T. 3927; Safet Dagović, T.7223-24; and Ibrahim Salkić, T. 3285-86.

<sup>1994</sup> Sulejman Tihić, T. 3840.

849. Kemal Mehinović, Witness E,<sup>1995</sup> and Witness A<sup>1996</sup> had to hand over their personal property when they were arrested, which was never returned to them. Most of the personal property of Witness Q taken away upon his arrest, however, was returned to him when he was released.<sup>1997</sup>

## 2. Civilians forced to loot

850. Witness K,<sup>1998</sup> Nusret Hadžijusufović,<sup>1999</sup> Witness M,<sup>2000</sup> and Jelena Kapetanović<sup>2001</sup> testified that through the forced labour programme they were forced to loot private houses in Bosanski Šamac, Odžak, Zasavica, and neighbouring villages. Nusret Hadžijusufović had to collect and load construction materials found in yards in Hrvatska Tišina, Tramosnica and Odžak, and deliver them to the railroad station in Bosanski Šamac Agropromet where Sejtko Pasić and Pero Travorac made an inventory. Both men used to work for Miroslav Tadić and had offices in the Pensioner's Home.<sup>2002</sup> In Odžak, Nusret Hadžijusufović had to loot furniture and household items from abandoned houses.<sup>2003</sup>

851. Civilians who were forced to loot through the forced labour programme testified that they were instructed what items to take by the drivers who brought them to the place where they had to loot and by civilians who looted along with the workers.<sup>2004</sup> The forced labourers were looting along with private Serb citizens and soldiers.<sup>2005</sup> While the trucks where the goods were loaded bore the emblems of the Army of Republika Srpska and various State-owned companies, such as Budućnost and Meboš, soldiers and drivers of state-owned companies often looted for their private purposes.<sup>2006</sup> Looted goods were loaded onto private vehicles as well. Witness M testified that the goods were taken to the Mladost and Tekstilac companies.<sup>2007</sup>

852. Nusret Hadžijusufović gave testimony about Miroslav Tadić's involvement in looting through the forced labour programme. Nusret Hadžijusufović testified that he was told by the messenger Dževad Celić, and by civilians who were looting along with him, that persons who needed something would go to see Miroslav Tadić, who would refer them to Dževad Celić to assign

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<sup>1995</sup> Witness E, T. 7407, T. 7677.

<sup>1996</sup> Witness A, Rule 92*bis* Statement, para. 61.

<sup>1997</sup> Witness Q, T. 11727-28.

<sup>1998</sup> Witness K, T. 4634.

<sup>1999</sup> Nusret Hadžijusufović, T. 6907-09, T. 6912-15, T. 6920-21.

<sup>2000</sup> Witness M, T. 5056.

<sup>2001</sup> Jelena Kapetanović, T. 10311-12.

<sup>2002</sup> Nusret Hadžijusufović, T. 6905-09.

<sup>2003</sup> Nusret Hadžijusufović, T. 6915.

<sup>2004</sup> Nusret Hadžijusufović, T. 6919; Witness M, T. 5053.

<sup>2005</sup> Witness M, T. 5071; Witness K, T. 4634.

<sup>2006</sup> Witness M, T. 5061-63; T. 5065.

<sup>2007</sup> Witness M, T. 5060.

them a certain number of people.<sup>2008</sup> According to Nusret Hadžijusufović a similar procedure was followed with respect to the distribution of firewood taken from Muslim houses in Odžak and delivered to Serbian houses in Bosanski Šamac. Dževad Celić and people to whom Nusret Hadžijusufović delivered wood told him that if they would go to see Miroslav Tadić, he would issue them a paper, after which they would go to Dževad Celić to assign them a certain number of workers. Nusret Hadžijusufović was told by the truck drivers delivering firewood that Miroslav Tadić was the one who issued orders.<sup>2009</sup> Jusuf Subašić, the courier, told Nusret Hadžijusufović that Miroslav Tadić was the one taking the decisions.<sup>2010</sup>

853. With respect to the distribution of firewood, Defence witness Mirko Lukić testified that at the request of the Executive Board, the Secretariat for Economy issued the decision on organized cutting and distribution of firewood.<sup>2011</sup> The firewood was given first to families of dead or injured soldiers and veterans, and the rest was distributed among all ethnic groups equally.<sup>2012</sup> Miroslav Tadić testified that he never ordered Nusret Hadžijusufović to collect firewood from abandoned villages, and to bring it to warehouses in Šamac. He was never asked by the three Goranović women, to whom Nusret Hadžijusufović delivered the wood, for firewood.<sup>2013</sup>

854. Witness M testified that, Stojan Blagojević and Pero Krstanović received an order from Simo Zarić to dismantle the radiators and the copper pipes in a Muslim house and ordered him to participate in the dismantling. The radiator system was extracted, placed onto a truck and taken in front of Fadil Topčagić's house.<sup>2014</sup> Fadil Topčagić testified that he had not ordered, or received a central heating system, that he had not seen such a system in his mother's house yard, and that his mother's house was built with a heating system.<sup>2015</sup>

855. Detainees were taken out and forced to loot as well. While in detention at the SUP, between 8 July and 5 November 1992, Esad Dagović was forced to loot and steal.<sup>2016</sup> Paramilitaries took him to loot the house of Dr. Anto Majić.<sup>2017</sup> On another occasion Pero Krstanović took him to loot Aziz Hacimović's house, and Rade nicknamed "Borovo" to loot Muhamed Kubrić's house and shop, located in Donja Mahala. They had to take coal and other items from the store to Rade

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<sup>2008</sup> Nusret Hadžijusufović, T. 6919.

<sup>2009</sup> Nusret Hadžijusufović, T. 6896-99.

<sup>2010</sup> Nusret Hadžijusufović, T. 6920.

<sup>2011</sup> Exhibit D83/1.

<sup>2012</sup> Mirko Lukić, T. 12763-65.

<sup>2013</sup> Miroslav Tadić, T. 15423-24.

<sup>2014</sup> Witness M, T. 5103-06.

<sup>2015</sup> Fadil Topčagić, Rule 92*bis* Statement, para. 69.

<sup>2016</sup> Esad Dagović, T. 3987.

<sup>2017</sup> Esad Dagović, T. 3947-49.

“Borovo”’s garage. After the takeover in Odžak, Esad Dagović and other detainees were taken there to loot.<sup>2018</sup>

### 3. Ethnicity of those whose property was plundered

856. Civilians performing forced labour had to loot Muslim or Croat houses.<sup>2019</sup> Shops and restaurants owned by Muslims and Croats were looted while those owned by Serbs, including Café AS, owned by Miroslav Tadić, were not touched and continued to operate as in the past.<sup>2020</sup> Non-Serb businesses were confiscated.<sup>2021</sup> Private and commercial looted property was given to Serbs.<sup>2022</sup>

### 4. Perpetrators

857. Stevan Todorović<sup>2023</sup> and Blagoje Simić<sup>2024</sup> testified to the involvement of paramilitaries in the looting of cars, gold jewellery, and money from civilians in the Bosanski Šamac municipality. Ibrahim Salkić testified that in the early hours of the morning of 17 April 1992, Bosanski Šamac was “flooded” with soldiers and men in camouflage uniforms who looted the town.<sup>2025</sup>

858. Two paramilitaries, one of whom was called “Tralja,” forced Esad Dagović to give them his car keys and car documents, gold jewellery, money, other small valuable items and Hasan Bičić’s jeep.<sup>2026</sup> In June, members of the paramilitaries came to Safet Dagović’s house, and demanded that he and his mother hand over all their jewellery and the money they had.<sup>2027</sup> Paramilitaries “Cera” and “Laki” took Ediba Bobić’s vehicle away, while threatening to kill her son.<sup>2028</sup> While in detention, Witness O saw “Avram,” a man, who was with “the men from Serbia,” collecting jewellery from the women passing by.<sup>2029</sup> Esad Dagović was forced by paramilitaries and members of the 4<sup>th</sup> Detachment to loot the property of Muhamed and Hasan Bičić.<sup>2030</sup>

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<sup>2018</sup> Esad Dagović, T. 3954-55.

<sup>2019</sup> Esad Dagović, T. 3950, T. 3955; Witness K, T. 4644; Witness M, T. 5053, and Jelena Kapetanović, T. 10311-13.

<sup>2020</sup> Nusret Hadžijusufović, T. 6908-10.

<sup>2021</sup> The gas station where Witness K’s son worked, and which was confiscated by “Crni” belonged to a Muslim (T. 4617).

<sup>2022</sup> The tobacco shed that Nusret Hadžijusufović was forced to loot from the Catholic village of Tramosnica was given to Serbs (T. 6914). Hajrija Drljačić was present when Mile “Pancir”’s mother (“Pancir” was Serb) requested certain goods to be looted from a Muslim house in Odžak (T. 8080-81).

<sup>2023</sup> Stevan Todorović, T. 9189-90, T. 9204.

<sup>2024</sup> Blagoje Simić, T. 12453.

<sup>2025</sup> Ibrahim Salkić, T. 3240; Osman Jašarević, Rule 92*bis* Statement, para. 36; Witness O, Rule 92*bis* Statement, para. 19.

<sup>2026</sup> Esad Dagović, T. 3928-29.

<sup>2027</sup> Safet Dagović, T. 7224-25.

<sup>2028</sup> Ediba Bobić, T. 11277-78.

<sup>2029</sup> Witness O, Rule 92*bis* Statement, para. 25.

<sup>2030</sup> Esad Dagović, T. 5846.



859. Prosecution witnesses testified to the involvement of soldiers from the 4<sup>th</sup> Detachment in looting.<sup>2031</sup> Esad Dagović was forced to loot by police officers or soldiers of the 4<sup>th</sup> Detachment, including Pero Krstanović, a police officer from Novo Selo and Rade nicknamed “Borovo.” The 4<sup>th</sup> Detachment or the police issued certificates, which authorised the soldiers or the police officers to take looted coal to the houses of the police officers or the soldiers.<sup>2032</sup> Witness K testified that while forced to loot in Odžak, looted items were loaded onto a truck driven by Stojan Blagojević, a soldier from the 4<sup>th</sup> Detachment, and that everything was organised by him.<sup>2033</sup>

##### 5. Evidence on the role of the Crisis Staff

860. The Trial Chamber heard evidence on the role of the Crisis Staff in organising the looting. The Report of the Thirteen Signatories stated that “with the blessing of those who had brought them in and those who had sent them, [the “Serbian commandos”] engaged in unheard-of looting of private and socially owned property, which was systematically transferred to Serbia and perhaps other parts of Yugoslavia. They were soon joined by local criminals, which made the overall moral picture of this war even more complete and clear.”<sup>2034</sup> The same document further stated that “the civilian authorities, instructed by the Presidency and some government members, decided to engage ‘volunteers’ from Serbia [...] The decision also set the fee for fighting the war, allegedly at DM 50,000 per man provided they conquered Orašje and ample war booty was found there.”<sup>2035</sup>

861. Defence witness Savo Popović testified that the Report of the Thirteen Signatories signed by 13 officers from the 2<sup>nd</sup> Posavina Brigade was prepared by Simo Zarić and that the goal of the document was to challenge the civilian authorities and to launch a coup.<sup>2036</sup> Defence witness Jovan Erlečić testified that he signed the Thirteen Signatories Report because he heard information about looting from soldiers and people at the office of the technical department, where he served as the Assistant Commander for Logistics.<sup>2037</sup>

862. The Crisis Staff’s “Order on Takeover of Goods Recovered from the Zone of Combat and Their Storage at the Bosnac DD Warehouse and the Premises of Uniglas,” dated 24 April 1992,<sup>2038</sup> authorised the Crisis Staffs of the local communities to take over goods confiscated from the zone of combat and to ensure their storage in the said warehouses. Stevan Todorović confirmed that the

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<sup>2031</sup> Esad Dagović, T. 3957, T. 5846, T. 5849; Nusret Hadžijusufović, T. 6910; Witness N, T. 6362.

<sup>2032</sup> Esad Dagović, T. 3953-54.

<sup>2033</sup> Witness K, T. 4644-45.

<sup>2034</sup> “Report on certain developments undermining morale among the soldiers and increasing the complexity of the security and political situation in the 2<sup>nd</sup> Posavina Infantry Brigade and Šamac Municipality” (Report of the 13<sup>th</sup> Signatories), Exhibit P127, p. 2, para. 3.

<sup>2035</sup> Exhibit P127, p. 4, para. 2.

<sup>2036</sup> T. 16297-301.

<sup>2037</sup> Jovan Erlečić, T. 19668.

stamp on the order is the stamp of the Crisis Staff.<sup>2039</sup> According to him, the Crisis Staff was aware of the looting and probably had tacitly accepted it, as it did not do anything to stop it.<sup>2040</sup>

863. Defence witnesses testified that the above order of 24 April 1992<sup>2041</sup> was issued by the Executive Board and that its goal was to prevent plunder.<sup>2042</sup> This evidence was corroborated by Stevan Todorović's testimony who in cross and re-examination confirmed that the aim of this order was to take away goods from civilians who had illegally appropriated them and to place the goods in storage until the question of the ownership was solved.<sup>2043</sup> Contrary to what is stated in the order, the appropriated goods were brought to ZZ Obudovac and Utva in Bosanski Šamac, and not placed in DD Bosanac and Uniglas.<sup>2044</sup>

864. Goods from the Budućnost furniture factory were taken and temporarily stored in a place called Ruma, located in Serbia, in order to protect them from damage from shells.<sup>2045</sup> These goods were then sold for money, which was used to buy supplies. According to Stevan Todorović, the furniture was taken with the knowledge of the Crisis Staff and later of the Executive Board. The goods were registered, taken away and sold.<sup>2046</sup> The Budućnost furniture factory and the goods in it were property of Republika Srpska.<sup>2047</sup> State owned goods were at the disposal of the state bodies, in this case the Executive Board.<sup>2048</sup>

865. Defence witnesses testified that the municipal authorities acted in accordance with the laws in force at that time. Pursuant to the Instructions on Implementing the Decree on the Compulsory Handover of Spoils of War,<sup>2049</sup> moveable property and assets had to be handed over to an authorised municipal or republican organ of the government of Republika Srpska, which was required to provide adequate storage space.<sup>2050</sup> Mirko Lukić testified that the Secretariat for Economy was bound by the government's instructions on compulsory handover of spoils of war. First these goods were stored in the two warehouses in Šamac, then pursuant to a decision of a

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<sup>2038</sup> Exhibit P88.

<sup>2039</sup> Stevan Todorović, T. 9182.

<sup>2040</sup> Stevan Todorović, T. 9188-89.

<sup>2041</sup> Exhibit P88.

<sup>2042</sup> Mirko Lukić, T. 12700; Blagoje Simić, T. 12367-70.

<sup>2043</sup> Stevan Todorović, T. 9834, T. 10209, T. 10212.

<sup>2044</sup> Mirko Lukić, T. 12700-01; Stevan Todorović, T. 9206, T. 9182.

<sup>2045</sup> Stevan Todorović, T. 9204-05; Blagoje Simić, T. 12456-57.

<sup>2046</sup> Stevan Todorović, T. 9205-06.

<sup>2047</sup> Blagoje Simić, T. 12457.

<sup>2048</sup> Čedomir Simić, Rule 92*bis* Statement, paras 11, 21; T. 18821.

<sup>2049</sup> Exhibit D102/1.

<sup>2050</sup> Simo Zarić, T. 19787-88. Simo Zarić testified that he had not seen the Instruction before.

civilian or military court the goods were handed over to the municipality, where they were registered and transferred to the republican commodity reserves.<sup>2051</sup>

866. Miroslav Tadić testified that the Executive Board asked the Civilian Protection Staff to draw up a list of abandoned shops and apartments. The Executive Board also set up a commission to make the lists of abandoned property. The lists of vacant property were handed over to the Executive Board.<sup>2052</sup> Defence witnesses testified that the Civilian Protection Staff was acting pursuant to instructions from the Secretariat for Economy, and that the goal of these instructions was to preserve perishable or dangerous goods,<sup>2053</sup> especially if the owners were based outside Bosanski Šamac. Ljubomir Vuković testified that, at the directions of Miroslav Tadić, in order to prevent the risk of the goods being looted, the Civilian Protection Staff took records of the goods found at companies based outside Bosanski Šamac, or abandoned companies, starting with perishable and dangerous goods. After a commission of experienced persons made the inventories, the goods were transported to the warehouses of Velepromet and Bosanka. At the warehouses, documents acknowledging the receipt of the goods were issued and a copy of these documents was taken to the municipality.<sup>2054</sup> Željko Volašević gave similar evidence.<sup>2055</sup> Inventories were made and the goods were placed in warehouses with the assistance of workers on work obligation, assigned by Beg Kapetanović and Dževad Celić, after the approval of the Secretariat for Defence.<sup>2056</sup>

867. Simo Zarić testified that from approximately 20 April 1992, goods looted from the department stores such as carpets, furniture, and other goods, were loaded onto trucks and transported in the direction of Serbia. In front of the public security station in Bosanski Šamac, the trucks were given the supporting transfer documents by Stevan Todorović. Simo Zarić testified that he saw Stevan Todorović greeting the drivers in front of the Public Security Station and that he heard that Milan Simić issued documents legitimizing the transfer of some goods.<sup>2057</sup> Goods from the companies in Šamac, such as the furniture from the Budućnost and Uzarija factories, and boilers

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<sup>2051</sup> Mirko Lukić, T. 12793-94.

<sup>2052</sup> Miroslav Tadić, T. 15325.

<sup>2053</sup> Slobodan Sjenčić testified that the Crisis Staff had mandated the Secretariat for Economy to pass an instruction on recording and creating an inventory of the spoils of war. According to that instruction certain enterprises had to collect the spoils of war, mainly cattle and perishable goods. The livestock was taken to agricultural enterprises and to farms in Zasavica, and the goods to the warehouses of state-owned companies Utva, Korpara and Sirivina Prdocut. (Deposition T. 264-265)

<sup>2054</sup> Ljubomir Vuković, T. 14593-96.

<sup>2055</sup> Željko Volašević, T. 17775.

<sup>2056</sup> Željko Volašević, T. 17769-70.

<sup>2057</sup> Simo Zarić, T. 19837-40.

from Meboš also were transferred in a similar way, until the Crisis Staff appointed coordinators of the companies, who were able to prevent to a certain extent their transfer.<sup>2058</sup>

868. With respect to his interviews with the Office of the Prosecutor,<sup>2059</sup> where Simo Zarić had mentioned the Crisis Staff in connection with the looting, Simo Zarić testified that he was referring to the fact that Milan Simić, Stevan Todorović, and Savo Popović, who might have been involved in certain criminal activities, were members of the Crisis Staff and that in his mind he was not separating the Crisis Staff from these individuals.<sup>2060</sup>

869. Snjezana Delić's family car was confiscated by Stojan Blagojević, a soldier from the 4<sup>th</sup> Detachment, who presented her with a written document issued by the Crisis Staff and signed by Blagoje Simić, stating that the car was taken away for the needs of Republika Srpska.<sup>2061</sup> Blagoje Simić testified that the signature on the order was not his signature and that the Ministry of Defence was solely responsible for the requisitions during the war. Božo Ninković gave similar evidence.<sup>2062</sup>

870. With respect to Odžak, Simo Zarić testified that there was organised looting by the civilian authorities in Odžak as well as individual cases of looting.<sup>2063</sup> Simo Zarić received information from policemen at the checkpoints that although property could not be taken out of Odžak without a certificate issued by the military authority, some goods had left Odžak in the direction of Krajina. Moveable property was taken out of Odžak disregarding the prescribed procedure, sometimes with the signature of the president of the military administration and with the signature of the President of the Military and Civilian Council Savo Popović.<sup>2064</sup> According to Simo Zarić, the Executive Board of the Municipal Assembly in Šamac and the President of the civilian-military council in Odžak, Savo Popović, who, because of the nature of his work co-operated most closely with Milan Simić, were linked to the organized looting in Odžak.<sup>2065</sup> Mirko Pavić<sup>2066</sup> and Dušan Gavrić<sup>2067</sup> gave similar evidence regarding the procedure for transportation of goods outside Odžak. According to Savo Popović no goods could have been taken out without the approval of the military administration.<sup>2068</sup>

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<sup>2058</sup> Simo Zarić, T. 19838.

<sup>2059</sup> Exhibits P141 and P142.

<sup>2060</sup> Simo Zarić, T. 19846-49.

<sup>2061</sup> Exhibit P 49 Requisition Order of 27 June 1992, reference number 12/06/92; Snjezana Delić, T. 6467.

<sup>2062</sup> Božo Ninković, T. 13491-93.

<sup>2063</sup> Simo Zarić, T. 19804, T. 19828, T. 19845.

<sup>2064</sup> Simo Zarić, T. 19538-39.

<sup>2065</sup> Simo Zarić, T. 19845.

<sup>2066</sup> Mirko Pavić, Rule 92*bis* Statement, para. 30.

<sup>2067</sup> Dušan Gavrić, T. 17345-46.

<sup>2068</sup> Savo Popović, T. 16424-25.

871. Blagoje Simić, among other Defence witnesses, testified that the civilian authorities took certain steps within their competence to prevent the looting.<sup>2069</sup> The Crisis Staff designated a coordinator of the judiciary in the Municipality and requested the Ministry of Defence to release the judges who were mobilized in the army to ensure the normal functioning of the court system. The Crisis Staff also helped the military courts so that they could function properly.<sup>2070</sup> Božo Ninković testified that the civilian authorities requested the commanders of the military units to take measures against criminal activities of their members.<sup>2071</sup> According to Mirko Lukić, the Executive Board could not undertake steps to ensure the arrest of war profiteers, but on 11 September 1992 it issued an order preventing the companies from buying cattle from illegitimate owners.<sup>2072</sup> On two occasions the civilian authorities requested measures against acts of looting committed by the military.<sup>2073</sup>

872. Defence witnesses Božo Ninković<sup>2074</sup> and Lazar Mirkić<sup>2075</sup> testified that the military was obliged to take measures to stop the plundering.

## **B. Findings**

873. The Trial Chamber accepts that immediately after the forcible takeover of Bosanski Šamac individual looting on a large scale occurred. Cars, money, and jewellery were plundered from civilians.<sup>2076</sup> Furniture, kitchen appliances, and personal belongings were removed from private houses and apartments.<sup>2077</sup> Commercial property<sup>2078</sup> and farm equipment<sup>2079</sup> belonging to civilians in Bosanski Šamac and the neighbouring villages was looted. Sometimes property was taken by force or by threat of use of force.<sup>2080</sup> Property exclusively belonging to non-Serbs was targeted.<sup>2081</sup> It has been established that paramilitaries,<sup>2082</sup> individual members of the 4th Detachment,<sup>2083</sup>

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<sup>2069</sup> Blagoje Simić, T. 12453; Čedomir Simić, T. 18866; Lazar Mirkić, Rule 92bis Statement, para. 21.

<sup>2070</sup> Blagoje Simić, T. 12453-56; T. 12584.

<sup>2071</sup> Exhibit D62/1, Request for taking measures to prevent all criminal offences by the military, T. 13361.

<sup>2072</sup> Exhibit D113/1, Mirko Lukić, T. 12899, T. 12815.

<sup>2073</sup> Blagoje Simić, T. 12329-31. Letter to the President of the Republic, Defence Minister, General Mladić, and the Commander of the First Krajina Corps, requesting measures to prevent criminal offences by the military (Exhibit D62/1), complaining of acts of looting against Serbian citizens. Mirko Lukić testified that the problem with army members cutting wood in the PiK company was discussed at the Executive Board and a letter was sent to the commander the 2<sup>nd</sup> Posavina Brigade, 5<sup>th</sup> Tactical Group, Colonel Đurkić (T. 12709-10).

<sup>2074</sup> Božo Ninković, T. 13358-59.

<sup>2075</sup> Lazar Mirkić, Rule 92bis Statement, para. 21.

<sup>2076</sup> Hasan Bičić, T. 2741; Esad Dagović, T. 4015; Dragan Lukač, T. 1772; Ediba Bobić, T. 11277-78.

<sup>2077</sup> Witness C, T. 7942; Witness M, T. 5254; Muhamed Bičić, T. 3039; Kemal Mehinović, T. 7513.

<sup>2078</sup> Hasan Bičić, T. 2759-60; Muhamed Bičić, T. 3038; Witness K, T. 4616-17; Alija Fitozović, T. 8511, T. 8516-17.

<sup>2079</sup> Witness L, T. 4365-66; Witness K, T. 4750.

<sup>2080</sup> Esad Dagović, T. 3927; Safet Dagović, T. 7223-25; Ibrahim Salkić, T. 3284-86.

<sup>2081</sup> Nusret Hadžijusufović, T. 6908; Esad Dagović, T. 3950; Witness K, T. 4617; Hajrija Drljačić, T. 8080.

<sup>2082</sup> Stevan Todorović, T. 9189-90; Ediba Bobić, T. 11277-78; Safet Dagović, T. 7224.

<sup>2083</sup> Witness N, T. 6362; Nusret Hadžijusufović, T. 6910.

policemen,<sup>2084</sup> and ordinary Serb civilians,<sup>2085</sup> were involved in acts of plundering of non-Serb property.

874. While there is extensive evidence of the occurrence of unlawful appropriation of property, the Trial Chamber is not satisfied that the role of the Crisis Staff in these acts has been proved beyond reasonable doubt. To prove the Crisis Staff involvement in the plunder of non-Serb property, the Prosecution relies on the Order of 24 April 1992.<sup>2086</sup> According to this order the Crisis Staff authorized the Crisis Staffs of the local communities to take over goods confiscated or recovered from the zone of combat, and to ensure their storage in the warehouse of Bosanac D.D. and the premises of Uniglas in Bosanski Šamac. The Trial Chamber finds that this order does not prove that the Crisis Staff was involved in unlawful appropriation of property. Moreover, Prosecution witnesses who testified that they participated in looting through forced labour, indicated that goods were transported to different warehouses, and not to the ones indicated in the order.<sup>2087</sup> While Stevan Todorović,<sup>2088</sup> and Simo Zarić,<sup>2089</sup> testified that goods from the furniture factory Budućnost, and department stores, were taken out of Bosanski Šamac by trucks, probably in the direction of Serbia, none of these witnesses gave conclusive evidence about the involvement of the Crisis Staff in unlawful appropriation of property.

875. The Prosecution alleges that plunder and looting were committed through the forced labour programme. While the Trial Chamber accepts that civilians who gathered every morning in front of the local commune building for their work assignments were involved in looting, it is not satisfied that there is conclusive evidence that the Crisis Staff ordered the looting. Witnesses who were forced to loot testified that sometimes they received instructions from Serb civilians, who were looting along with them, or from the drivers who were looting for their private purposes,<sup>2090</sup> that often looted goods were loaded onto private vehicles,<sup>2091</sup> and that there was no control of any kind.<sup>2092</sup>

876. The Trial Chamber accepts the evidence of Defence witnesses that some measures were taken by the Crisis Staff to protect property left behind by individual families or property solely

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<sup>2084</sup> Esad Dagović, T. 3957.

<sup>2085</sup> Witness M, T. 5071; Nusret Hadžijusufović, T. 6919.

<sup>2086</sup> Exhibit P88.

<sup>2087</sup> Nusret Hadžijusufović had to bring goods to Agropromet, T. 6907-08. Witness M testified that looted goods were taken to the Mladost and Textilač enterprises, T. 5060.

<sup>2088</sup> Stevan Todorović, T. 9204-06.

<sup>2089</sup> Simo Zarić, T. 19838-40. With respect to his interviews with the Office of the Prosecutor where Simo Zarić had referred to the Crisis Staff in connection to looting, he testified that he was referring to Milan Simić, Stevan Todorović, and Savo Popović (T. 19846-48). When asked in court, Simo Zarić could not confirm that anyone else from the Crisis Staff had participated in plunder (T. 19840).

<sup>2090</sup> Nusret Hadžijusufović, T. 6919.

<sup>2091</sup> Witness M, T. 5061-63.

owned by public companies. Measures aimed at limiting the looting included the issuance of an order preventing companies from buying stolen cattle and a request for demobilisation of judges serving in the army. Moreover, considering the evidence given by Defence witnesses and by the Prosecution witness Stevan Todorović, the Trial Chamber is satisfied that the Crisis Staff's order of 24 April 1992 was issued to prevent random acts of plundering.

877. The Trial Chamber heard evidence to the fact that non-Serb civilians were evicted from their homes in Bosanski Šamac. Prosecution witnesses testified that after the takeover they had to leave their homes and Serbs from the region, or from other parts of the country, moved into their apartments.<sup>2093</sup> The Trial Chamber notes that the Amended Indictment and the Prosecution Pre-Trial Brief contain no indication of the fact that the Prosecution intended to plead the evictions as a form of plunder. The Trial Chamber therefore finds that evidence presented on the evictions as a form of plunder should be excluded as being outside the scope of the Amended Indictment.

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<sup>2092</sup> Witness M, T. 5065.

<sup>2093</sup> Witness G, T. 4073; Witness K, T. 4746-48; Witness E, T. 7678; Safet Dagović, T. 7271; Esad Dagović, T. 4021; Hajrija Drljačić, T. 8064-73.

## XV. DEPORTATION AND FORCIBLE TRANSFER<sup>2094</sup>

### A. Exchanges from Bosanski Šamac municipality to Croatia

#### 1. Exchange to Lipovac on 4/5 July 1992

878. Witness A testified that the prisoners who were to be exchanged on 4 July 1992 in Lipovac were mostly Croats from Hasići and Tišina, and some Muslims from Šamac. They were placed on buses in Šamac and arrived at Lipovac at night. The exchange was postponed until the following day. Witness A testified that he was not asked whether he wanted to be exchanged. He stated that until 16 April 1992, he had never had the intention to leave Bosanski Šamac.<sup>2095</sup>

879. Hasan Bičić gave evidence that most people who were exchanged on that day in Lipovac were elderly persons, women and children. Some were from Bosanski Šamac, but most of them were Croats from the surrounding villages. About ten prisoners from the primary school gym were also exchanged. They first went to Šid, and the next day they were exchanged in Lipovac. When Hasan Bičić was asked before the Trial Chamber whether he left Bosanski Šamac of his own free will, he answered, “from the very time of my arrest, nothing was according to my free will”.<sup>2096</sup>

880. Witness O testified that he was also exchanged in Lipovac on 5 July 1992. He stated that he was not asked whether or not he wanted to leave Bosanski Šamac. He also stated that in April 1992, prior to his detention in the elementary school in Bosanski Šamac, he had no intention of leaving Zasavica.<sup>2097</sup>

#### 2. Exchange to Dragalić on 4 September 1992

881. Dragan Lukač testified that about 70-80 non-Serbs from Bosanski Šamac were exchanged on 4 September 1992 in Dragalić. They were brought by bus from Bosanski Šamac to Bosanski Gradiska, and then to Dragalić. While the bus waited in Bosanski Gradiska, another four buses arrived with people to be exchanged.<sup>2098</sup> Dragan Lukač stated that he and three other prisoners were asked by Svetozar Vasović whether they wanted to be exchanged and, “of course we said we

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<sup>2094</sup> The following section exclusively deals with the specific elements of deportation and unlawful transfer, as the requisite chapeau elements of Article 5 (d) and (h) of the Statute have been set out above (paras 36-52).

The terms “deportation” and “unlawful deportation” are used interchangeably without giving them different meanings. The same applies to the terms “transfer” and “forcible” or “unlawful” transfer.

<sup>2095</sup> Witness A, T. 10766, T. 10768, T. 10771.

<sup>2096</sup> Hasan Bičić, T. 2749, T. 2756-57.

<sup>2097</sup> Witness O, T. 11917; Rule 92*bis* Statement, para. 59.

<sup>2098</sup> Dragan Lukač, T. 1800.



did”.<sup>2099</sup> He described his desire to be exchanged as a “normal human need” after everything he had experienced; he said that “anyone under those circumstances would be happy to get away from it all and to go somewhere where he’ll be free”. If the events of 17 April 1992 had not happened, he would have stayed in Bosanski Šamac. He was never asked to sign a statement that he was voluntarily leaving Bosanski Šamac.<sup>2100</sup>

882. Similarly, Dragan Delić testified that he was not asked whether he wanted to be exchanged.<sup>2101</sup> Muhamed Bičić testified that soldiers from UNPROFOR “or whatever they were” were present.<sup>2102</sup> Snjezana Delić and Witness Q were also exchanged on this day. Snjezana Delić stated that there was no other way to normalize the life of her children, her husband, and herself in the town of Bosanski Šamac.<sup>2103</sup> Witness Q was detained in the TO when he was exchanged.<sup>2104</sup>

### 3. Exchange to Dragalić on 5 November 1992

883. Esad Dagović testified that he was not asked if he wanted to be exchanged. He was “forced” to be exchanged.<sup>2105</sup> He testified that on the way to Dragalić, the buses stopped in Zasavica where a few women, children and elderly men boarded.<sup>2106</sup> Among those non-Serbs from Zasavica was Witness K who said in her testimony that she had applied to be exchanged in Zasavica, because she was seriously abused.<sup>2107</sup>

884. Jelena Kapetanović was also exchanged on that day in Dragalić. The representative of UNPROFOR asked her whether she would be exchanged on a voluntary basis or whether she preferred to return to Bosnia. He told her that if she returned to Bosnia, she would be free there and would go to Šamac. According to Jelena Kapetanović, that would have meant “freedom within the Šamac camp town. And logically, [...] I could hardly wait to cross over to the other side, where my family and husband was. I said that I’d be going to Croatia”.<sup>2108</sup> She also stated that nobody in

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<sup>2099</sup> Dragan Lukač, T. 1792; Svetožar Vasović stated that he informed the people who were going to be exchanged that they could return if they wanted. Among the people who did this were Mladen Borbeli, Stipe Vuković and Ivica Kikić (T. 14984-85, T. 14989-90), Mato Marosević, Alojz Balogh, Ivan Lonać, and Alija Cosić (Mladen Borbeli, T. 14733). Mladen Borbeli stated that Miroslav Tadić told the people who were to be exchanged that those who did not want to be exchanged did not have to and could go home, T. 14732.

<sup>2100</sup> Dragan Lukač, T. 1814, T. 2100.

<sup>2101</sup> Dragan Delić, T. 6706.

<sup>2102</sup> Muhamed Bičić, T. 3074.

<sup>2103</sup> Snjezana Delić, T. 6400, T. 6475.

<sup>2104</sup> Witness Q, T. 11769-72.

<sup>2105</sup> Esad Dagović, T. 5792, T. 5917-20.

<sup>2106</sup> Esad Dagović, T. 4010.

<sup>2107</sup> Witness K, T. 4958. Witness K said on one occasion that she was exchanged on 5 November 1992 (T. 4723) and on another that she was exchanged on 7 November 1992 (T. 4958). She also said on one occasion that she had not applied to be exchanged (T. 4912) and on another that she had applied to be exchanged (T. 4958).

<sup>2108</sup> Jelena Kapetanović, T. 10353-54.

Bosanski Šamac was able to leave voluntarily, and that “the only path to freedom was through exchanges”.<sup>2109</sup>

885. Jelena Kapetanović testified that at this exchange, about 100 persons were involved, women and children, men and elderly men, and the number that crossed to Croatia had to correspond to the number of people entering Bosnia and Herzegovina. Representatives of UNPROFOR, the ICRC, the HVO, and the HV were present in Dragalić.<sup>2110</sup>

#### 4. Exchange to Dragalić on 24 December 1992

886. Witness C testified that the people exchanged in Dragalić on 24 December 1992 were all prisoners, not only from Šamac, but also from the surrounding villages. Witness C stated that he was not asked whether he wanted to be exchanged, and neither Miroslav Tadić nor anyone else on behalf of the exchange commission consulted with him as to whether he wanted to leave.<sup>2111</sup>

#### 5. Exchange to Lipovac on 29/30 January 1993

887. Nusret Hadžijusufović testified that citizens from Bosanski Šamac, and some detainees from Batković, were exchanged in Lipovac on 30 January 1993. He stated that he was exchanged for a Serb man, “almost as prisoners of war”, whereas civilians were not exchanged and just crossed over to the other side. Nusret Hadžijusufović stated that he would not have wanted to leave Bosanski Šamac had it not been for the conditions and the compulsory labour there.<sup>2112</sup>

#### 6. Exchange to Dragalić on 15/16 June 1993

888. Ibrahim Salkić testified that at this exchange, about 150 to 170 non-Serb civilians were exchanged in two buses. They were prisoners from detention facilities in Bosanski Šamac and other Muslims and Croats who had not been incarcerated. The buses drove from Šamac via Crkvina to Dragalić. When Ibrahim Salkić was asked in court whether or not he had participated in the decision to be exchanged, he replied, “after all this suffering that one went through, [...] it would not be fitting to ask somebody whether they wanted to or not. It was the only way to save my head. There was no other solution for me but to be exchanged”. Furthermore, Ibrahim Salkić testified that Stevan Todorović had threatened him prior to his exchange, by saying that he should not dare to

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<sup>2109</sup> Jelena Kapetanović, T. 10297.

<sup>2110</sup> Jelena Kapetanović, T. 10353. See also Esad Dagović, T. 4009.

<sup>2111</sup> Witness C, T. 7937-39.

<sup>2112</sup> Nusret Hadžijusufović, T. 6965-67, T. 6972.

come back from the exchange line. Ibrahim Salkić said that he would not have left Šamac without the war, and that he would never have left it of his own free will.<sup>2113</sup>

#### 7. Exchange to Dragalić on 24 December 1993

889. Ediba Bobić testified that she went to the Red Cross in Bosanski Šamac and had her name and the name of her son Bedrudin registered on an exchange list.<sup>2114</sup> All the people who were exchanged were Croats and Muslims, and a number of them had been imprisoned in Zasavica.<sup>2115</sup> She said that she made this decision as all the Muslims and Croats in Bosanski Šamac had a hard life, and every night they expected something bad to happen. Also, she said that her son was seriously ill and he had to go every day for the work obligation.<sup>2116</sup>

890. Hajrija Drljačić testified that during this exchange, non-Serb civilians from Bosanski Šamac and Zasavica crossed to the Croatian side. Hajrija Drljačić said that she “expected to leave for freedom, because we had no freedom where we had been before that”. Prior to the outbreak of the armed conflict in April 1992, she never wanted to leave Bosanski Šamac. She testified that she would have never left that area if it had not been for the conditions that were imposed on the Muslim and Croat population, including the beatings and the arrests.<sup>2117</sup>

891. There were other exchanges of non-Serb civilians to Dragalić on 19 September 1992,<sup>2118</sup> 7 October 1992,<sup>2119</sup> and 7 January 1993.<sup>2120</sup>

#### **B. Exchange from Batković to Croatia on or about 20 February 1993**

892. On or about 20 February 1993, Witness N and Witness E were exchanged in Lipovac.<sup>2121</sup> Together with them, about 50 other prisoners from Batković were exchanged for 32 soldiers from Pale.<sup>2122</sup> Witness N testified that he was happy to be put on an exchange list, as his “strongest desire was to reach or to cross into free territory”.<sup>2123</sup> Representatives of international organisations and TV stations were present.<sup>2124</sup>

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<sup>2113</sup> Ibrahim Salkić, T. 3439-41, T. 3449-50.

<sup>2114</sup> Ediba Bobić, T. 11344.

<sup>2115</sup> Ediba Bobić, T. 11289-90.

<sup>2116</sup> Ediba Bobić, T. 11282.

<sup>2117</sup> Hajrija Drljačić, T. 8124-28.

<sup>2118</sup> Hajrija Drljačić, T. 8172-75.

<sup>2119</sup> Jelena Kapetanović, T. 10424-28; Miroslav Tadić, T. 15452.

<sup>2120</sup> Miroslav Tadić, T. 15496.

<sup>2121</sup> Witness N, T. 6168; D30/3, List of people from the Batković collection centre to be sent for exchange, 20 February 1993. Witness N recognized some of the names on this exhibit.

<sup>2122</sup> Witness E, T. 7731, T. 7807.

<sup>2123</sup> Witness N, T. 6279-80. He did not say clearly whether he was voluntarily exchanged.

<sup>2124</sup> Witness E, T. 7807.

893. Witness E testified that he wanted to be exchanged. However, he also said that he did not want to leave Bosanski Šamac prior to April 1992. Without the war, the arrests, the beatings, and the other forms of ill-treatment, he would not have left.<sup>2125</sup>

### **C. Transfers of civilians within Bosnia and Herzegovina**

#### **1. Transfer from Bosanski Šamac to Dubica, on 25/26 May 1992**

894. Osman Jašarević gave evidence that on 25/26 May 1992, 100 detainees, the overwhelming majority being Croats, and some Muslims from Bosanski Šamac and the surrounding villages, were exchanged for Serbs in Dubica. Only a small number of the Croats and Muslims were exchanged as prisoners of war. Prior to the exchange, the detainees had been held in the secondary school in Bosanski Šamac. The exchange took place across the river from Zasavica to Dubica. The people who were exchanged were transferred in groups of about five persons across the river. Osman Jašarević testified that the ICRC asked him in the secondary school in Bosanski Šamac whether he wanted to be exchanged.<sup>2126</sup> The ICRC told him that he was a prisoner of war.<sup>2127</sup> When he gave his statement, no local Serbs were present, except for the guards who were one meter away from him. Osman Jašarević had been told by Stevan Todorović, before he was taken by trucks to the location of the exchange, that he had to accept to be exchanged, otherwise he would be killed.<sup>2128</sup>

#### **2. Transfer from Bosanski Šamac to Zasavica in September 1992**

895. Jelena Kapetanović testified that she was brought to Zasavica by Naser Sejdić and his patrol on 7 September 1992. She stayed in Zasavica from the beginning of September 1992 until her exchange on 5 November 1992.<sup>2129</sup> She stated that she had to remain in Zasavica and could only leave with an armed guard when she was taken to have injections.<sup>2130</sup>

896. Witness K stated that she was taken to Zasavica on 7 September 1992 by three men, one of them was a policeman. She said that at that point, that mostly Croat and Muslim women were housed there in empty houses, while the husbands of these women were detained in Bosanski Šamac or had been exchanged. There were also some children with their mothers in Zasavica as well as old people.<sup>2131</sup>

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<sup>2125</sup> Witness E, T. 7731-32.

<sup>2126</sup> Osman Jašarević, Rule 92*bis* Statement, paras 119-120 (“only five of us were deemed ‘POWs’”); T. 10532-33, T. 10538.

<sup>2127</sup> Osman Jašarević, T. 10537.

<sup>2128</sup> Osman Jašarević, T. 10572-75.

<sup>2129</sup> Jelena Kapetanović, T. 10299, T. 10303-04, T. 10334-36; see also Naser Sejdić, T. 17537.

<sup>2130</sup> Jelena Kapetanović, T. 10330.

<sup>2131</sup> Witness K, T. 4692-700.

897. Witness K stated that people were only allowed to leave Zasavica for work, that they were under guard and that there were checkpoints at both exits of the village. She also said that they were told that the surrounding area was mined.<sup>2132</sup>

898. Miroslav Tadić testified that in May 1992, about 100 people were sent to Zasavica, mostly older men and women; they were put in the houses of the people who were already there or entered houses that had been abandoned or were empty. Miroslav Tadić stated that he had no idea who ordered the transfer to Zasavica, and that the people were sent there as it was a Croat area and safe from shelling. He said that they had their functioning households with gardens, poultry, and pigs. They lived above the average at that time.<sup>2133</sup>

### 3. Transfer from Bosanski Šamac to Crkvina in May 1992

899. Velimir Maslić testified that in May 1992, a group of about 100 or 150 people, mostly Muslims and Croats, were taken by the police to the culture centre in Crkvina. They stayed there for about five and six days and were thereafter returned.<sup>2134</sup>

### 4. Transfer from Bosanski Šamac via Pelagićevo, Batajnica, and Pale to Sarajevo in May 1992

900. Izet Izetbegović testified that from his arrest in Bosanski Šamac onwards, and while he was transferred to various places ending up in Sarajevo, he had no choice in his movements.<sup>2135</sup>

## **D. Voluntary character of the exchanges**

901. The Prosecution argues that some of the people who were exchanged were never asked whether they wanted to be exchanged (referring to Dragan Delić, Witness A and Witness C).

902. The Tadić Defence states that all of the people that were to be exchanged had to state at the exchange line whether they wanted to cross over to the other side (Dragan Lukač, Witness M, and Svetozar Vasović). It further states that the choice was there and real, that it was an option that was offered and not a threat or a menace. The Tadić Defence argues that the motives for non-Serb civilians to be exchanged were the fear of war, the reunification of families, and the desire to fight for the opposite side.<sup>2136</sup>

903. Witness DW 8/3 stated that he was supposed to be exchanged during the exchange to Lipovac on 29/30 January 1993 while he was imprisoned in Batković. When it was his turn to cross

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<sup>2132</sup> Witness K, T. 4701.

<sup>2133</sup> Tadić Prosecution Interview II, pp. 12-18.

<sup>2134</sup> Velimir Maslić, T. 14220-21.

<sup>2135</sup> Izet Izetbegović, T. 2386.

over on the site of the exchange, he told Miroslav Tadić that he did not want to go to the exchange. Miroslav Tadić told him, “if you don’t want to go, stay on the bus, and if you want to go, then go”. Witness DW 8/3 also stated that he and other prisoners in Batković knew that if a person did not want to leave, that person would return home. However, he stated that there were not too many who returned, and among those who did were Safet Hasanefendić, Mijo Radić and a young man he only knows by sight.<sup>2137</sup>

904. Petar Karlović, a defence witness for Simo Zarić, stated that the non-Serbs in Bosanski Šamac had no choice but to leave or were forced to leave.<sup>2138</sup>

905. Miroslav Tadić stated that it was a necessity for these people to leave, this necessity deriving from the war, the shelling, the economic situation, the separation of families, and better medical treatment. He said, however, that the necessity did not at all derive from ethnical discrimination.<sup>2139</sup>

906. Miroslav Tadić testified that it was not up to the Exchange Commission to ask people whether they wanted to cross over. His evidence was that the relatives who asked for their exchange caused them to be brought to the separation line. He stated that these relatives would never understand that some did not want to come over. Therefore, after some time, the Exchange Commission had to bring the people to the separation line so that they could tell their relatives that they did not want to cross over.<sup>2140</sup>

#### **E. Evidence on the role of the Crisis Staff**

907. Mirko Lukić testified that the Crisis Staff had the power to exchange people who were in detention.<sup>2141</sup> Simeon Simić, however, stated that the Crisis Staff did not deal with exchanges except for nominating and appointing the Exchange Committee on 2 October 1992.<sup>2142</sup> According to him, the Crisis Staff never discussed or passed any decisions on any matters related to the forced removal of non-Serb residents from their apartments in Šamac.<sup>2143</sup> He said that the Committee’s President would come to inform the Crisis Staff from time to time about their work.<sup>2144</sup>

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<sup>2136</sup> Tadić Closing Argument, T. 20588-89.

<sup>2137</sup> Witness DW 8/3, T. 17827-28.

<sup>2138</sup> Petar Karlović, T. 18445. Defence witness Veselin Blagojević stated that no Serbs were exchanged via the system of exchanges, T. 14063.

<sup>2139</sup> Miroslav Tadić, T. 15504-08.

<sup>2140</sup> Miroslav Tadić, T. 15492.

<sup>2141</sup> Mirko Lukić, T. 12919.

<sup>2142</sup> Mirko Lukić, T. 13046; P83, Decision Appointing a Committee for the Exchange of Prisoners, dated 2 October 1992.

<sup>2143</sup> Simeon Simić, T. 13119.

<sup>2144</sup> Simeon Simić, T. 13044-46.

908. Simeon Simić stated that the Crisis Staff wrote a letter to the federal Executive Council in Belgrade, stating that, “the Crisis Staff of our municipality has constantly been trying to reach an agreement on the resolution of the issue of the detained Serbs, and in that respect we have proposed that they be exchanged”.<sup>2145</sup> Blagoje Simić testified that this letter was discussed within the Crisis Staff, and they called it “a cry for help to be provided to the imprisoned Serbs” in Odžak.<sup>2146</sup>

909. Simo Zarić testified that he informed the Crisis Staff about his first conversation with Ivan Čukić with respect to the exchange of Witness Q and others prior to the exchange of 25/26 May 1992 in Dubica. When he arrived, several members of the Crisis Staff were in the room, namely Blagoje Simić, Milan Simić, Simeon Simić, Božo Ninković, Savo Popović and Stevan Todorović. He first spoke to the President, Blagoje Simić. Simo Zarić testified that he knew that the majority of the Crisis Staff members had nothing against an “all for all” exchange.<sup>2147</sup>

910. Velimir Maslić, who became the President of the Exchange Committee in Bosanski Šamac,<sup>2148</sup> testified that he never went to the Crisis Staff, the War Presidency or the Municipal Assembly to ask for any permission for any of the exchanges, but as a representative of the local Red Cross he had the obligation to inform the Executive Board of the Municipal Assembly on these matters.<sup>2149</sup>

## **F. Evidence on role of the Accused**

### **1. Blagoje Simić**

#### **(a) General**

911. Stevan Todorović testified that Blagoje Simić looked at some of the lists that Miroslav Tadić had prepared for the exchanges and that Blagoje Simić consulted with Miroslav Tadić on this.<sup>2150</sup>

912. Sulejman Tihić stated that Blagoje Simić’s intentions to get rid of the non-Serb population even before the takeover of Bosanski Šamac were apparent when he announced at a meeting in the building of the Municipal Assembly in Bosanski Šamac just prior to the takeover, that Orašje and Odžak should become Croat municipalities, Gradačac a Muslim municipality, and Bosanski Šamac

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<sup>2145</sup> T. 1355-61, referring on T. 1360 to Exhibit P99, Letter dealing with the situation of Serbs in Odžak, dated 17 May 1992. The letter also states that the efforts of the Bosanski Šamac Crisis Staff to have the Serbs exchanged brought no results.

<sup>2146</sup> Blagoje Simić, T. 12382-83.

<sup>2147</sup> Simo Zarić, T. 19506-07.

<sup>2148</sup> P83, Decision Appointing a Committee for the Exchange of Prisoners, dated 2 October 1992.

<sup>2149</sup> Velimir Maslić, T. 14242, T. 14259.

<sup>2150</sup> Stevan Todorović, T. 9165-66.

a Serb municipality. According to Sulejman Tihić, Blagoje Simić said at this meeting, “I’m giving you time to decide, but if you don’t decide, the Serbs will know what to do”.<sup>2151</sup>

913. Izet Izetbegović testified that Blagoje Simić stated at the same meeting, “[...] that if we didn’t agree on a concept [of the re-organisation of the municipalities], that the Serbs would use force”, and that, “we have the JNA on our side, we have weapons, and if you don’t agree to those talks, you will lose everything”.<sup>2152</sup>

914. Simeon Simić testified that the Crisis Staff never discussed or passed any decisions on any matters related to the forced removal of non-Serb residents from their apartments in Šamac, and that Blagoje Simić never advocated such ideas.<sup>2153</sup>

915. Ediba Bobić stated that when she spoke to Blagoje Simić about her exchange, he said, “why, ma’am, are you leaving Bosanski Šamac? This will pass. Everything will be fine.”<sup>2154</sup>

916. Blagoje Simić stated that the exchange procedure was under the control of the Ministry of Justice and the security services in the field, both military and police, and that he did not decide personally who was eligible to be exchanged.<sup>2155</sup> He also stated that in Šamac Municipality, only three percent of residents were exchanged.<sup>2156</sup>

917. Miroslav Tadić testified that he and Blagoje Simić never talked about exchanges officially. If Blagoje Simić asked how it was going, Miroslav Tadić would tell him that it was not proceeding without difficulty but that it was coming along.<sup>2157</sup>

918. Simeon Simić stated that Blagoje Simić never advocated the idea of forced removal of non-Serb residents from their apartments in Šamac.<sup>2158</sup>

(b) Transfer of non-Serb civilians to Dubica on 25/26 May 1992

919. With respect to the exchange on 25/26 May 1992 in Dubica, Blagoje Simić knew that it was organised by the International Red Cross. He thought 100 people were exchanged on the Serb side and 100 on the Croat side, and he stated that without the approval of all security services, both civilian and military organs and all three warring parties, the exchanges could not have taken place.

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<sup>2151</sup> Sulejman Tihić, T. 1346-47.

<sup>2152</sup> Izet Izetbegović, T. 2244-45.

<sup>2153</sup> Simeon Simić, T. 13119.

<sup>2154</sup> Blagoje Simić, T. 11283.

<sup>2155</sup> Blagoje Simić, T. 12449-52.

<sup>2156</sup> Blagoje Simić, T. 12589-92.

<sup>2157</sup> Miroslav Tadić, T. 15536-37.

<sup>2158</sup> Simeon Simić, T. 13119.



<sup>2159</sup> He also testified that he is familiar with P99 (Letter dealing with the situation of Serbs in Odžak, dated 17 May 1992) that had been prepared by the professional staff of the Municipal Assembly. He said that the signature on the document looks like his signature, and that he discussed this document with other members of the Crisis Staff during its sessions. They called it a cry for help to be provided to the imprisoned Serbs.<sup>2160</sup>

920. Blagoje Simić testified that the Crisis Staff proposed to the Republic Commission to participate in the exchange process, in order to exchange the Serb prisoners in Odžak. He stated that the exchange was defined by an agreement signed between the three warring parties in Geneva and Budapest under the auspices of the ICRC, and that the agreement had a stipulation which said that there must be a consensus reached between all three when the exchange would be carried out. He said that to establish for whom the Serbs of Odžak would be exchanged was within the scope of the authorities of the exchange commission, within the Ministry of Justice of all three sides. He also said that the Crisis Staff wanted the Serbs in Odžak to be released without any exchange at all, and that all these people wanted to leave.<sup>2161</sup>

## 2. Miroslav Tadić

### (a) General

921. Miroslav Tadić stated that altogether, the military Exchange Committee and the civilian Exchange Committee exchanged about 1100 people who left Šamac, whereas about 1100 or 1080 people came to Šamac. He also stated that there were considerably fewer Serbs who left Šamac than non-Serbs.<sup>2162</sup>

922. Miroslav Tadić stated that he organised exchanges of many prisoners from Bosanski Šamac who were of Croat and Muslim ethnicity.<sup>2163</sup> Similarly, Ediba Bobić testified that Miroslav Tadić was the main man in charge of the exchanges.<sup>2164</sup> Vaso Antić stated that he knew about exchanges that were going on, presided over by Miroslav Tadić,<sup>2165</sup> and Svetozar Vasović testified that Miroslav Tadić was working on exchanges.<sup>2166</sup>

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<sup>2159</sup> Blagoje Simić, T. 12314-15.

<sup>2160</sup> Blagoje Simić, T. 12382-83.

<sup>2161</sup> Blagoje Simić, T. 12599-600.

<sup>2162</sup> Miroslav Tadić, T. 15504-07.

<sup>2163</sup> Miroslav Tadić, T. 15754.

<sup>2164</sup> Ediba Bobić, T. 11282.

<sup>2165</sup> Vaso Antić, T. 18659-60.

<sup>2166</sup> Svetozar Vasović, T. 14979-80. See also Witness DW 1/3, T. 14793. Witness DW 1/3 also testified that during June 1992, he and Miroslav Tadić had spoken with each other on exchanges two or three times per week, T. 14795.

923. Miroslav Tadić stated that prior to 2 October 1992, no exchange committee had been formally established, “but because I did the most work on these tasks, I seemed to be the President of the commission”.<sup>2167</sup>

924. Velimir Maslić stated that it was in practice Miroslav Tadić and himself who worked for the Exchange Committee of Bosanski Šamac from the time of its inception on 2 October 1992.<sup>2168</sup>

925. Miroslav Tadić testified that he was not given free rein in the exchanges, but was restricted by the Croatian side which was a part of the negotiating team, and nothing could be achieved without agreement. He said that he was also restricted by the police and the army who had to give approvals. If he had had a free hand, he would have exchanged all prisoners at once and he would have completed his job.<sup>2169</sup>

926. Ljubomir Vuković stated that during the first months of the war, Miroslav Tadić was the president of the commission for exchanges;<sup>2170</sup> very soon, Miroslav Tadić told him that this duty had been taken over by Velimir Maslić, the head of the Red Cross and the social welfare services. Ljubomir Vuković said that Miroslav Tadić always went to Velimir Maslić for negotiations that had to do with exchanges. Ljubomir Vuković heard Miroslav Tadić say a few times to Velimir Maslić that the other side was looking for such-and-such a person and giving them such-and-such a person.<sup>2171</sup> Ljubomir Vuković stated that Miroslav Tadić had to go to various consultations and negotiations with regard to exchanges, up to four or five times for a single exchange.<sup>2172</sup>

927. Milutin Grujičić, who was appointed as President of the Commission for the Exchange of Prisoners of the 1<sup>st</sup> Krajina Corps on 29 May 1992,<sup>2173</sup> testified that he met Velimir Maslić and Miroslav Tadić and that they agreed that the civilian Exchange Committee would talk with the other side on the reunification of families and passage of civilians whereas the military commission dealt with the exchange of prisoners.<sup>2174</sup> Milutin Grujičić also stated that at his request Velimir Maslić and Miroslav Tadić received passes and permits from the Ministry of Justice of the Republika Srpska to move around on the territory of the 1<sup>st</sup> Krajina Corps, and the entire Republika Srpska.<sup>2175</sup>

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<sup>2167</sup> Miroslav Tadić, T. 15399.

<sup>2168</sup> Velimir Maslić, T. 14260-61.

<sup>2169</sup> Miroslav Tadić, T. 15536.

<sup>2170</sup> Miroslav Tadić testified that after July 1992, an official Exchange Committee was established, and although he had not been the President of an Exchange Committee up to then, he seemed to be the president as he did most of the work, T. 15399-401.

<sup>2171</sup> Ljubomir Vuković, T. 14625.

<sup>2172</sup> Ljubomir Vuković, T. 14634.

<sup>2173</sup> D169/3, Order 29 May 1992 from the Command of the 1<sup>st</sup> Krajina Corps re exchange of prisoners.

<sup>2174</sup> Milutin Grujičić, T. 16104.

<sup>2175</sup> Milutin Grujičić, T. 16104-05; Exhibit D175/3, Memo of 12 November 1992 from President, Milutin Grujičić, Captain First Class to the 1<sup>st</sup> Krajina Corps Commission for the Exchange of Prisoners of War re: enclosed are names of the Commission workers who worked on exchanges in the municipality.

Milutin Grujičić also stated that it sometimes happened that, with the presence of the East Bosnia commission, either Miroslav Tadić or Velimir Maslić would collect persons who were to be exchanged, and he said that the cooperation of the military Exchange Commission with Velimir Maslić and Miroslav Tadić was correct and successful.<sup>2176</sup>

928. Simeon Simić stated that Velimir Maslić and Miroslav Tadić were members of the civilian Exchange Committee that was established on 2 October 1992, and that they were in charge of the prisoner exchanges and exchanges of other people. As far as he can remember and from talking to Velimir Maslić,<sup>2177</sup> they also conducted exchanges of captured soldiers. Simeon Simić stated that they needed the permission of the military for the exchange of soldiers, and of the police for people who were detained by the police.<sup>2178</sup>

(b) The exchange in Dubica on 25/26 May 1992

929. With regard to the exchange in Dubica on 25/26 May 1992, Božo Ninković said that in order to get some information about how many Serbs were detained in Odžak in May 1992, the Crisis Staff designated Miroslav Tadić, who was from Novi Grad, Simo Zarić, from Trnjak Zorice, and Božo Ninković, from Donja Dubica, to put together lists of these people.<sup>2179</sup> Božo Ninković stated that this working group was of a temporary nature and that they compiled this list on the basis of records of the family members of those Serbs. When these lists were compiled, Miroslav Tadić handed them over to the Red Cross. Božo Ninković said that the centre for reporting and monitoring was the only means of communication.<sup>2180</sup>

930. Miroslav Tadić stated that he was engaged in the negotiations on the exchange of Serbs from Odžak to Šamac in Dubica on 25/26 May 1992.<sup>2181</sup> Miroslav Tadić knew the two Croats on the other side – Stjepan Mikić and Pero Zecević – very well, and he said this as an answer to the question why he was going to the communications centre to talk to the other side.<sup>2182</sup> Miroslav Tadić testified that Stjepan Mikić from the Odžak side proposed to agree with the ICRC on a certain number of people to be exchanged, that the Red Cross would help them, that their role would be to provide for the technical conditions for the exchange and that it would be best done in Zasavica. Miroslav Tadić stated that they talked through the communications centre, and that they had to ask

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<sup>2176</sup> Milutin Grujičić, T. 16117-18. See also Velimir Maslić, T. 14277-78.

<sup>2177</sup> Velimir Maslić is referred to as the president of the exchange commission in Bosanski Šamac, Exhibit P83, Decision Appointing a Committee for the Exchange of Prisoners, dated 2 October 1992, T. 13045.

<sup>2178</sup> Simeon Simić, T. 13044.

<sup>2179</sup> Božo Ninković, T. 13503-04; Miroslav Tadić, Exhibit P139, Interview of Miroslav Tadić 27 March 1998, p. 25-27; Miroslav Tadić, T. 15287-88. See also Simeon Simić, T. 13056-57.

<sup>2180</sup> Božo Ninković, T. 13503-04.

<sup>2181</sup> Tadić Prosecution Interview II, pp. 33-35.

<sup>2182</sup> Miroslav Tadić, T. 15308-09.

for a cease-fire and to organise a boat. He said that at the exchange site, there were ten people who did not want to cross over. The man at the desk asked them again, but they did not want to go. Miroslav Tadić said that on the other side were also ten who did not want to cross. When he asked the man at the desk why these ten people did not come over, he answered that they possibly not wanted to. There was no way to find out. According to Miroslav Tadić, the Serbs who had come over and the Croats who had stayed behind were put on trucks and taken to Šamac. Miroslav Tadić stated that he learned from the representatives of the ICRC that the people who did not want to be exchanged were free and, “it was particularly this principle that we applied in our work from then on”. He stated that he continued negotiations with the Odžak side after this exchange.<sup>2183</sup>

931. The presence of Miroslav Tadić during the exchange on 26 May 1992 in Dubica was confirmed by Osman Jašarević. Osman Jašarević testified that Miroslav Tadić organised the exchange, in which the ICRC was involved, and the transport of the prisoners. He held the list and read out the names. Together with Simo Zarić, he stood by a truck and formed the groups of five or six people to be exchanged. Osman Jašarević gave further evidence that Miroslav Tadić said that everybody had to be exchanged, and later Miroslav Tadić shouted that nobody should be allowed not to be exchanged. He also said that the exchange would be immediately stopped if someone did not want to cross to the other side.<sup>2184</sup>

(c) The exchange in Lipovac on 5 July 1992

932. Miroslav Tadić testified that he went to the federal exchange commission of Yugoslavia in Belgrade to organise the exchange on 5 July 1992 in Lipovac. He was told there that he needed a document on the basis of which he could ask for approval to enter Yugoslavia, the UNPA zone, and to address UNPROFOR in Belgrade. When a man from the commission asked Miroslav Tadić whether there was an exchange commission in Bosanski Šamac to make this request, he answered, “formally we are working, but we have no commission”. The man then asked Miroslav Tadić about a civilian body, to which he replied that there is a Crisis Staff. Thus, the request was written on behalf of the Crisis Staff, “to give this some weight”.<sup>2185</sup>

933. Prior to this exchange, Miroslav Tadić had some lists, and people would ask him about exchanges, so that Hasan Bičić assumed “that he was in the organisation for this exchange in one

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<sup>2183</sup> Miroslav Tadić, T. 15328-34, T. 15338, T. 15347.

<sup>2184</sup> Osman Jašarević, T. 10533-37; Rule 92*bis* Statement, para. 120.

<sup>2185</sup> Miroslav Tadić, T. 15347-48, T. 15763-64.

way or another”. Hasan Bičić asked Miroslav Tadić to help his brother being released, and Miroslav Tadić said he would do his best.<sup>2186</sup>

934. Witness A testified that during the exchange, Miroslav Tadić and Simo Zarić escorted the buses to the exchange site in a separate car. He also testified that on 5 July 1992, when the exchange took place, Miroslav Tadić said to Witness A, “let’s make sure that these people are exchanged”.<sup>2187</sup>

935. Fadil Topčagić testified that Miroslav Tadić was the official representative at this exchange, and that Miroslav Tadić was present during the exchange the whole time.<sup>2188</sup>

936. Simo Zarić stated that Miroslav Tadić, Ivo Maslić and Svetozar Vasović were organizing this exchange.<sup>2189</sup>

937. Witness DW 1/3 testified that this was the first exchange in which Witness DW 1/3 and Miroslav Tadić worked together. Miroslav Tadić told him that he (MT) had to get permission from the local police and the military authorities in Šamac municipality. Witness DW 1/3 stated that the persons who were exchanged were registered as prisoners and civilians who had stated that they wanted to be exchanged.<sup>2190</sup> He also stated that in later exchanges, Witness DW 1/3 and Miroslav Tadić trusted each other so that they asked the persons themselves whether or not they wanted to cross over; Miroslav Tadić – and later Velimir Maslić – would address the Serbs and Witness DW 1/3 the Croats. According to Witness DW 1/3, only Velimir Maslić and Miroslav Tadić took part in the negotiations on behalf of the Exchange Committee of Šamac municipality.<sup>2191</sup>

938. Witness DW 1/3 also testified that Miroslav Tadić told Witness DW 1/3 that he wanted to have exchanged as many Serbs from Odžak as possible who were his acquaintances and relatives.<sup>2192</sup>

(d) The exchange in Nemetin on 14 August 1992

939. Witness P testified that the exchange in Nemetin, Croatia on 14 August 1992 was organised by Milan Panić, the then President of the FRY, and Franjo Gregurević from the Croatian side.<sup>2193</sup> Miroslav Tadić testified that he had no influence on this exchange.<sup>2194</sup>

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<sup>2186</sup> Hasan Bičić, T. 2750-51, T. 2756.

<sup>2187</sup> Witness A, T. 10768, T. 10770.

<sup>2188</sup> Fadil Topčagić, T. 18349, T. 18412.

<sup>2189</sup> Simo Zarić, P141, Interview of Simo Zarić 2 April 1998, p. 690667.

<sup>2190</sup> Witness DW 1/3, T. 14795-97, T. 14808.

<sup>2191</sup> Witness DW 1/3, T. 14799, T. 14804, T. 14834.

<sup>2192</sup> Witness DW 1/3, T. 14855.

(c) The exchange in Dragalić on 4 September 1992

940. Snjezana Delić testified that prior to the exchange in Dragalić on 4 September 1992, at which Miroslav Tadić was present,<sup>2195</sup> she went four or five times to Miroslav Tadić in order to get her husband and herself on an exchange list.<sup>2196</sup> Witness Q testified that Miroslav Tadić negotiated this exchange twice in the communications centre where he spoke with the Croat side.<sup>2197</sup> He told Witness Q that he had taken over the task of negotiating exchanges from Simo Zarić.<sup>2198</sup> Witness Q thanked him for his humaneness and for his role in the exchange.<sup>2199</sup>

941. Miroslav Tadić stated that Witness Q, when he was exchanged, had no other choice in order to leave the town, although he also stated that Witness Q could have returned to Šamac as he was well regarded by the citizens there.<sup>2200</sup>

942. Miroslav Tadić testified that before this exchange in September, two exchanges had not taken place because Zvonko Susak, a man from Korenica in the Šamac municipality, who was at that time at a military clinic in Bijeljina, had not been brought. Miroslav Tadić stated that he went to Bijeljina with a civil policeman, that they found Zvonko Susak and brought him to Šamac. Miroslav Tadić left Zvonko Susak with Simo Krunić, a policeman, and told him to keep an eye on him. Otherwise, he said, Krunić's brother would not be exchanged the following day. After that, Miroslav Tadić went to the communications centre and confirmed that everything was organised for the exchange on the following day.<sup>2201</sup>

943. Ilija Mihalj stated that Mijo Matanović and Marko Miloš told him to go and negotiate with Miroslav Tadić about the exchange of Ivo Došlić, who had been detained at that time in the secondary school gym in Šamac.<sup>2202</sup> Ilija Mihalj knew that by September 1992 the exchanges had been going on for some months and that Miroslav Tadić had been involved in them in that area.<sup>2203</sup> Ilija Mihalj also stated that he offered Miroslav Tadić 5.000 DM in order to have Ivo Došlić exchanged, and that Miroslav Tadić firmly rejected the money.<sup>2204</sup> Ilija Mihalj said that the person

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<sup>2193</sup> Witness P, T. 11620-21.

<sup>2194</sup> Miroslav Tadić, T. 15478-79.

<sup>2195</sup> Dragan Lukač, T. 1810; Dragan Delić, T. 6708; Muhamed Bičić, T. 3034; Snjezana Delić, T. 6488; Mladen Borbeli, T. 14733.

<sup>2196</sup> Snjezana Delić, T. 6478.

<sup>2197</sup> Witness Q, T. 11744.

<sup>2198</sup> Witness Q, T. 11748.

<sup>2199</sup> Witness Q, T. 11774.

<sup>2200</sup> Miroslav Tadić, T. 15768-69.

<sup>2201</sup> Miroslav Tadić, T. 15378-80.

<sup>2202</sup> Ilija Mihalj, Rule 92*bis* Statement, para. 10.

<sup>2203</sup> Ilija Mihalj, T. 17732-34.

<sup>2204</sup> Ilija Mihalj, T. 17725, 17730.

who was in charge of this exchange was Milutin Grujičić, “this is what we heard and this is what we read about”.<sup>2205</sup>

(f) The exchange in Dragalić on 5 November 1992

944. Esad Dagović stated that prior to the exchange in Dragalić on 5 November 1992, Miroslav Tadić called out the names of the people who were to be exchanged, and they boarded the buses in that order.<sup>2206</sup> According to Witness K, Miroslav Tadić was present when the buses stopped in Zasavica and took more people.<sup>2207</sup> Esad Dagović and Jelena Kapetanović stated that Miroslav Tadić escorted the column in a civilian car and was also present during the actual exchange. Esad Dagović testified that at the site of the exchange, Miroslav Tadić read out names from a list, and the persons crossed to the other side.<sup>2208</sup>

(g) The exchange in Dragalić on 24 December 1992

945. Witness C stated that at the exchange in Dragalić on 24 December 1992, Miroslav Tadić read out the names on the list of people to be exchanged in the hangar where about 30 to 40 Croats and two or three Muslims were detained.<sup>2209</sup>

(h) The exchange in Dragalić on 7 January 1993

946. Mustafa Pištoljević testified that at the exchange in Dragalić on 7 January 1993, Miroslav Tadić told him – several times – that he could go home and that he could even proceed to Croatia. Mustafa Pištoljević said to him that he wanted to stay at home. Mustafa Pištoljević arrived back in Bosanski Šamac the same day.<sup>2210</sup>

(i) The exchange in Lipovac on 29/30 January 1993

947. Nusret Hadžijusufović testified that Miroslav Tadić was the man who told people who to release at the exchange in Lipovac on 29/30 January 1993, “he was the big boss”.<sup>2211</sup> Miroslav Tadić stated that he was present at this exchange and negotiated with the Croat side.<sup>2212</sup>

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<sup>2205</sup> Milutin Grujičić, T. 17737.

<sup>2206</sup> Esad Dagović, T. 4010.

<sup>2207</sup> Witness K, T. 4745.

<sup>2208</sup> Esad Dagović, T. 4011-12; Jelena Kapetanović, T. 10341-42.

<sup>2209</sup> Witness C, T. 7969-70.

<sup>2210</sup> Mustafa Pištoljević, T. 16357-58, T. 16361, T. 16364.

<sup>2211</sup> Nusret Hadžijusufović, T. 6967.

<sup>2212</sup> Miroslav Tadić, T. 15475-77.

(j) The exchange in Lipovac on 20 February 1993

948. At the exchange in Lipovac on or about 20 February 1993, none of the accused was present.

(k) The exchange in Dragalić on 15/16 June 1993

949. Ibrahim Salkić stated that prior to the exchange from Bosanski Šamac to Dragalić on 15/16 June 1993, Miroslav Tadić read out in Batković the names of people on a list who were to be exchanged later.<sup>2213</sup> Milutin Grujičić testified that he had agreed with the Bijeljina Corps that Miroslav Tadić should go to collect the prisoners. Due to technical problems the exchange could not take place on 15 June 1993 and had to be postponed to the following day. Miroslav Tadić brought the prisoners at around 11.00 a.m. to Dragalić. Then he told Milutin Grujičić that prisoners had been beaten in the SUP in Bosanski Šamac, and Ibrahim Salkić showed to Milutin Grujičić, Miroslav Tadić, the representatives of the international community, and the representatives of Croatia what had happened to him.<sup>2214</sup>

(l) The exchange in Dragalić on 24 December 1993

950. Prior to the exchange at Dragalić on 24 December 1993, Ediba Bobić testified that she had given Miroslav Tadić 12.000 DM in order to be exchanged.<sup>2215</sup> Miroslav Tadić testified that this testimony was a complete fabrication.<sup>2216</sup> Miroslav Tadić testified that he and the entire exchange commission were present at the negotiations with the other side, and that Milutin Grujičić conducted the negotiations in Dragalić sometime in early December.<sup>2217</sup> In Dragalić, Miroslav Tadić was one of the persons escorting the people who had to be exchanged.<sup>2218</sup> Hajrija Drljačić also testified that Miroslav Tadić was part of the escort.<sup>2219</sup> She stated that he entered a bus on the Croatian side.<sup>2220</sup>

951. Miroslav Tadić stated that he never even subconsciously wished that some of his fellow citizens left Šamac forever. He thinks that he has helped the people who were exchanged.<sup>2221</sup> He also stated that there was always a possibility to return.<sup>2222</sup> He said that all of the people exchanged

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<sup>2213</sup> Ibrahim Salkić, T. 3448.

<sup>2214</sup> Milutin Grujičić, T. 16120-23; Miroslav Tadić, T. 15479-81.

<sup>2215</sup> Ediba Bobić, T. 11284; Kemal Bobić confirmed that his wife had told him that she had given that money to the accused Miroslav Tadić, T. 11430. Kemal Bobić did not know whether she indeed gave him the money, T. 11430.

<sup>2216</sup> Miroslav Tadić, T. 15501.

<sup>2217</sup> Miroslav Tadić, T. 15496.

<sup>2218</sup> Ediba Bobić, T. 11291. Miroslav Tadić stated that he followed the escort to the exchange site, without being part of the escort, T. 15497-98.

<sup>2219</sup> Hajrija Drljačić, T. 8165.

<sup>2220</sup> Hajrija Drljačić, T. 8124.

<sup>2221</sup> Miroslav Tadić, T. 15504, 15506, 15786.

<sup>2222</sup> Miroslav Tadić, T. 15796.



returned later on, that their property was restored, and that they could choose whether to return to Šamac or live elsewhere.<sup>2223</sup>

### 3. Simo Zarić

#### (a) The exchange in Dubica on 25/26 May 1992

952. With respect to the compilation of the lists of Serbs who remained in the municipality of Odžak in May 1992, Božo Ninković testified that in order to get some information about how many Serbs were detained in Odžak in May 1992, the Crisis Staff designated Miroslav Tadić, who was from Novi Grad, Simo Zarić from Trnjak Zorice and Božo Ninković from Donja Dubica to put together lists of these people.<sup>2224</sup>

953. With regard to the negotiations preceding the exchange on 25/26 May 1992 in Dubica, Kosta Simić testified that a member from the Odžak Crisis Staff called him via the radio link in the Bosanski Šamac communications centre, and asked him to inform Simo Zarić to be available at the radio link the following day at 10.00 a.m., together with Witness Q.<sup>2225</sup> Simo Zarić testified that the Odžak side had asked for Witness Q in order to have him talk to Father Ivo Simić.<sup>2226</sup> Witness DW 1/3 said that the next day, Ivan Čukić asked Simo Zarić via the radio link to assist him with the transfer of two of his brothers-in-law from Zasavica to the territory of Odžak municipality.<sup>2227</sup> Simo Zarić stated that he answered that he had no authority to transfer people to Odžak, as he was in charge of totally different tasks,<sup>2228</sup> but that he would be able to ask about these people and inform Ivan Čukić later about this.<sup>2229</sup> Witness DW 1/3 testified that Father Ivo Simić told him that after he had asked Witness Q whether he wanted to come to Odžak, Witness Q had replied that he wanted to share the fate of his people;<sup>2230</sup> according to Simo Zarić, Witness Q then suggested to Father Ivo Simić to find out whether some people could be exchanged.<sup>2231</sup> Thus, the Zarić Defence argues that

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<sup>2223</sup> Miroslav Tadić, T. 15504.

<sup>2224</sup> Božo Ninković, T. 13503-04; Zarić Prosecution Interview II, p. 690656.

<sup>2225</sup> Kosta Simić, T. 16948-49; Simo Zarić, T. 19501-02; P141, Interview of Simo Zarić 2 April 1998, p. 690660. Witness Q was brought to the Monitoring and Reporting Centre by Mirko Pavić on an order by the Police Commander. Mirko Pavić was present when Simo Zarić, Kosta Simić and Witness Q talked to the representatives of Odžak municipality and he knew that they talked about releasing some people. Simo Zarić stated that he could not avoid getting involved in the talk on exchanges, as the Crisis Staff from Odžak asked for him personally and he knows the Catholic priest Ivo Simić from the territory of Odžak as a friend (Interview of Simo Zarić 3 June 1998, p. 660719). After the talks, Mirko Pavić took Witness Q back to the Police Station, Mirko Pavić, Rule 92bis Statement, para. 20.

<sup>2226</sup> Simo Zarić, P141, Interview of Simo Zarić 2 April 1998, p. 690660.

<sup>2227</sup> Witness DW 1/3, T. 14868-9; Zarić Prosecution Interview II, p. 690661.

<sup>2228</sup> Simo Zarić, T. 19503-06. Witness DW 1/3 confirmed that when he got in contact with Simo Zarić with regard to exchanges, Simo Zarić was not entrusted with this task, "and practically the two of us never agreed or negotiated about a single name", T. 14889.

<sup>2229</sup> Kosta Simić, T. 16947-51.

<sup>2230</sup> Witness DW 1/3, T. 14869. See also Zarić Prosecution Interview II, p. 690662.

<sup>2231</sup> Simo Zarić, T. 19506-12; Kosta Simić, T. 16951-52. See also Ivan Čukić, Deposition T. 7; Teodor Tutnjević, T. 17432-33.

it was for the first time in the conversation of these two persons that the possibility of Croats crossing to the Odžak side and Serbs coming to the Bosanski Šamac side was discussed.<sup>2232</sup>

954. Witness Q, however, testified that Simo Zarić had asked him to appeal to the Odžak side to agree to an all for all-exchange. Simo Zarić was supposed to establish contact with the Odžak side – which was difficult at the time –, and Witness Q stated that he “was the ticket for such contacts”. Thus, he testified that in the beginning of the first conversation, it was said that he – Witness Q – wanted to talk to Father Ivo Simić. When Father Ivo Simić asked Simo Zarić whether Witness Q could be exchanged, Simo Zarić answered that Witness Q could not be released or exchanged until an all for all-exchange had been agreed upon. Witness Q also stated that Simo Zarić misrepresented the number of Croats and Muslims detained in Bosanski Šamac when he talked to the Odžak side.<sup>2233</sup>

955. Witness Q also testified that “Mr. Pisarević [Counsel for Simo Zarić] is trying to convince both me and all of us present here that Mr. Simo Zarić was not in charge of negotiations concerning the exchange. Mr. Simo Zarić was in charge of that, and he did that. [...] He agreed and he proposed, actually a few days later, that they should agree on an exchange. [...] One can also see that Mr. Simo Zarić was indeed in charge of negotiations concerning the exchange”. Witness Q also testified that an exchange took place just after the radio communications of Simo Zarić and the Odžak side, “and it may or must have been a result of those negotiations”.<sup>2234</sup>

956. Simo Zarić stated that he only attended one meeting at the communications centre and that he was asked to attend by members of the Crisis Staff from Odžak, one of whom was Mijo Knežević and Ivan Čukić. Simo Zarić stated that it was the Crisis Staff and other people who were in charge of exchanges.<sup>2235</sup>

957. Simo Zarić subsequently informed the President of the Crisis Staff about the proposed exchange as well as Todorović; they told him that if he spoke to this man again he could say that the Crisis Staff had nothing against a full exchange, “all for all”. Simo Zarić stated that they were talking like it would just be a temporary measure until the “madness abated”. A few days later, Simo Zarić went again with Witness Q to the communications centre after having been asked to do so by Ivo Čukić and Mijo Knežević. When Ivo Čukić asked him about the two relatives, he answered that he had no authorisation, that he had heard that they were alive, but that he could not do anything about them being exchanged. Then Mijo Knežević told him that he had authorisation

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<sup>2232</sup> Zarić Final Brief, para. 415.

<sup>2233</sup> Witness Q, T. 11737, T. 11741-42, T. 11749.

<sup>2234</sup> Witness Q, T. 11821-22, T. 11745.

from the Crisis Staff to exchange Simo Zarić's family members, but Simo Zarić did not accept that. At the end of the conversation, Simo Zarić said to Blagoje Simić that he had put the proposals to the Crisis Staff and that they had nothing in principle against it. According to Simo Zarić, this is the only involvement he had in exchanges and negotiations on exchanges throughout the war.<sup>2236</sup>

958. Osman Jašarević testified that Simo Zarić stood together with Miroslav Tadić by a truck and called out names of the people who were exchanged, and then they formed groups of five or six people.<sup>2237</sup> Simo Zarić testified that he learned of the exchange "in a spontaneous conversation with Mr. Tadić", and that the main reason why he was on the exchange site was that he had received information that the exchange would involve members of his family arriving from the municipality of Odžak.<sup>2238</sup> Andrija Petrić stated that Simo Zarić told him at the exchange site that he had come to meet his family from Trnjak and Dubica who would arrive in this exchange. When Andrija Petrić told Simo Zarić that he did not want to be exchanged, Simo Zarić answered that he could not help him and that he should ask the representatives of the ICRC instead.<sup>2239</sup>

959. Božo Ninković testified that on a second occasion some two or three days later, Simo Zarić told Ivan Čukić via radio link that his brothers-in-law were in detention and that he did not have the authority to transfer them to Odžak; then, Mijo Knezević spoke to Simo Zarić via radio link, and there was a verbal exchange between the two in the course of which Simo Zarić was threatened to be hanged when the HVO would come to Šamac.<sup>2240</sup> After that, Simo Zarić broke off the connection and said that he did not want to talk with this man anymore.<sup>2241</sup> After that conversation, the Odžak side never asked for Simo Zarić again, and he never came to the communication centre again.<sup>2242</sup>

960. Stevan Todorović stated that Simo Zarić participated in the creation of the first two or three lists of prisoners who were to be exchanged.<sup>2243</sup>

961. Ivan Čukić testified that Simo Zarić was involved in the discussions about exchanges with the other side, but he was not the only one. Altogether, Ivan Čukić spoke to him on three occasions.<sup>2244</sup> Witness DW 1/3 stated that Stjepan Mikić had told him around the end of May 1992

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<sup>2235</sup> Zarić Prosecution Interview II, pp. 690660-61.

<sup>2236</sup> Zarić Prosecution Interview II, pp. 690663-64.

<sup>2237</sup> Osman Jašarević, T. 10768.

<sup>2238</sup> Simo Zarić, T. 19475-76, T. 19482-84.

<sup>2239</sup> Andrija Petrić, T. 17597-60; Simo Zarić, T. 19488-89.

<sup>2240</sup> Božo Ninković, T. 13505, Teodor Tutnjević, T. 17437.

<sup>2241</sup> Teodor Tutnjević, T. 17438.

<sup>2242</sup> Simo Zarić, T. 19514-18; Kosta Simić, T. 16955-57; D154/3, Notebook of the Communication Centre: "The work book of the communications centre".

<sup>2243</sup> Stevan Todorović, T. 9127-28.

<sup>2244</sup> Ivan Čukić, Deposition T. 18.

that he had often talked to the municipality of Šamac and that the man he often talked to was Simo Zarić.<sup>2245</sup>

(b) The exchange in Lipovac on 4/5 July 1992

962. Simo Zarić stated that he was present during the exchange on 4/5 July 1992 in Lipovac.<sup>2246</sup> Witness A stated that Simo Zarić escorted the buses to the exchange site in a separate car.<sup>2247</sup> Simo Zarić stated that he went there to see off friends of his who were going to be exchanged,<sup>2248</sup> especially the Prgomet family, as his daughter Nataša was married to one of their family members. He also went to see some friends related to that family, and he had information that a large number of his “nearest and dearest” friends and relatives would be arriving from Odžak. Simo Zarić stated that the Prgomet family had asked him to see them off, because they would feel safer if he was with them. Simo Zarić and his driver Teodor “Toso” Tutnjević came to the house of the Prgomet family and he helped them take their belongings to the playing field in front of the secondary school where the buses were prepared to take people to the exchange. Afterwards “Toso” went and collected the rest of the family as there were over thirty of them.<sup>2249</sup>

963. Fadil Topčagić testified with regard to this exchange that Velimir Maslić and Svetozar Vasović worked on the exchanges, and that it was Stevan Todorović who made the decision as to who was allowed to be exchanged.<sup>2250</sup>

964. The Zarić Defence submits that Simo Zarić did not participate in the exchange of 4/5 July 1992, and that mere presence at the exchange site does not signify participation in the negotiations or organisation of the exchange.<sup>2251</sup>

965. Witness A testified that his wife had told him that she once overheard a conversation between Simo Zarić and Miloš Bogdanović over the radio transmitter. They were discussing exchanges, and Simo Zarić asked that two JNA pilots be exchanged for Witness A. Then, the conversation was disrupted and the exchange was not discussed anymore.<sup>2252</sup>

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<sup>2245</sup> Witness DW 1/3, T. 14783-84.

<sup>2246</sup> Simo Zarić, T. 19490; Zarić Prosecution Interview II, pp. 690656, 690665-66; Witness O, T. 11909; Fadil Topčagić, T. 18348, T. 18412.

<sup>2247</sup> Witness A, T. 10768.

<sup>2248</sup> Miroslav Tadić, T. 15360.

<sup>2249</sup> Simo Zarić, T. 19490-92; Đuro Prgomet, Rule 92bis Statement, para. 15; also, Đuro Prgomet testified that Simo Zarić told him that he could not help him with the exchange, as he and the Army had nothing to do with exchanges. Simo Zarić tried to persuade Đuro Prgomet to stay and not to report to the Red Cross, Rule 92bis Statement, para. 13.

<sup>2250</sup> Fadil Topčagić, T. 18412.

<sup>2251</sup> Zarić Closing Argument, T. 20640; Simo Zarić, T. 19493; this has also been stated by Fadil Topčagić, T. 18349, and Teodor Tutnjević, T. 17452-53.

<sup>2252</sup> Witness A, T. 10897-98.

966. Witness M testified that in 1992, he overheard a conversation between Simo Zarić and Fadil Mustafić, who is related to Simo Zarić's wife, in which Fadil Mustafić asked Simo Zarić, "Simo, when are you going to let me go?" Simo Zarić then replied, "Brother, be good and I'll let you be exchanged".<sup>2253</sup>

## **G. Findings**

### **1. Voluntary character of the exchanges**

967. The Trial Chamber accepts the evidence that some of the non-Serb civilians who were to be exchanged were asked whether they wanted to cross over to the other side.<sup>2254</sup> This, however, does not necessarily indicate that these persons voluntarily agreed to be exchanged, as they could have been left without a genuine choice as to whether to leave or to remain in the area when they made their statement. In this context, the Trial Chamber notes the atmosphere of terror and fear created for the non-Serbs who were taken from their homes and held in various detention centres in the municipality of Bosanski Šamac and in other locations. When these detainees had to state whether or not they wanted to be exchanged, they were not given guarantees that they would not be mistreated again. The Trial Chamber also accepts the evidence that some of the non-Serb civilians who were exchanged were not asked whether they wanted to be exchanged. In the view of the Trial Chamber, this is a strong indicator that these civilians were not voluntarily exchanged.

### **2. Exchanges from Bosanski Šamac to Croatia**

968. The Trial Chamber accepts the evidence on the seven exchanges from Bosanski Šamac and Batković to Croatia referred to in paras 878-893. The Trial Chamber finds that the displacement of the witnesses involved in these exchanges constitutes unlawful deportation, as the witnesses were forcibly relocated. In this respect, the Trial Chamber reiterates that the term "force" is not limited to physical force. Instead, the essential requirement is that the relocation is involuntary in nature, i.e., that the victim does not have a real choice. The Trial Chamber notes that Prosecution witnesses Dragan Lukač, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness K, Dragan Delić, Nusret Hadžijusufović, Witness C, Jelena Kapetanović, Witness A, Witness O, and Witness Q were in detention when they were exchanged to Croatia. The detention conditions constituted a coercive environment that left the detainees without a real choice as to whether or not they wanted

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<sup>2253</sup> Witness M, T. 5102-03.

<sup>2254</sup> See Dragan Lukač, T. 1792; Abdulah Arslanović, Rule 92*bis* Statement, para. 11; Andrija Petrić, T. 17596, 17600-01; Dario Radić, T. 15076; Mladen Borbeli, T. 14727; Mustafa Pištoljević, T. 16357-58. Among the people from Bosanski Šamac who returned were Muharem Bičakčić (Deposition T. 93), Stipe Vuković, Ivica Kikić (Svetozar Vasović, T. 14984-85, T. 14989-90), Mladen Borbeli, Mato Marosević, Alojz Balogh, Ivan Lonač, Alija Cosić (Mladen Borbeli, T. 14732-33), and Mustafa Pištoljević, T. 16357-58, T. 16361, T. 16364.

to be exchanged. The Trial Chamber is also satisfied that Ediba Bobić, Hajrija Drljačić and Snjezana Delić did not voluntarily agree to be exchanged, as the conditions under which they had to live did not provide them with a free choice. The Trial Chamber is satisfied that there was no justification for the deportation of the above-mentioned witnesses.

969. With regard to the exchanges of non-Serb civilians to Dragalić on 19 September 1992, 7 October 1992, and 7 January 1993, the Trial Chamber finds that insufficient evidence has been adduced to prove beyond reasonable doubt that an unlawful deportation has been committed.

### 3. Exchange from Batković to Lipovac on or about 20 February 1993

970. With respect to the relocation of Witness E and Witness N from Batković to Lipovac, the Trial Chamber is mindful of the fact that the Amended Indictment charges unlawful deportation under Count 2 only if the relocation was from the victims' *homes* in the Bosanski Šamac Municipality to other countries or to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces. However, the Trial Chamber finds that the words "homes in the Bosanski Šamac Municipality" refer to the notion of *residence* rather than *physical presence* in the actual home: thus, the relocation of *residents* of Bosanski Šamac – temporarily detained in Batković and thereafter exchanged to Croatia – is within the geographical scope of the Amended Indictment.

971. The Trial Chamber is satisfied that the displacement of Witness E and Witness N constitutes unlawful deportation. Both witnesses were detained at the time of their exchange, and the Trial Chamber is satisfied that the detention conditions constituted a coercive environment that did not provide the witnesses with a real choice as to whether or not they wanted to be exchanged. Thus, the Trial Chamber is satisfied that both witnesses were forcibly deported without lawful grounds.

### 4. Transfers of civilians within Bosnia and Herzegovina

#### (a) Transfer from Bosanski Šamac to Dubica, on or about 26 May 1992

972. The Trial Chamber is satisfied that Osman Jašarević was transferred to Dubica during this exchange. At the time of the exchange, Osman Jašarević was detained in the primary school in Bosanski Šamac. The Trial Chamber is satisfied that the detention facilities in the primary school constituted a coercive environment that made it impossible for Osman Jašarević to decide according to his own genuine will whether or not he wanted to leave Bosanski Šamac.

(b) Transfers of non-Serb prisoners between detention centres within Serb-held territory in Bosnia and Herzegovina

973. When deciding upon whether or not the transfer of non-Serb prisoners from one detention centre to another within Serb held territory in Bosnia and Herzegovina constituted forcible transfer, the Trial Chamber notes that the Prosecution pleaded deportation and forcible transfer in the context of ethnic cleansing. The Prosecution Pre-trial Brief states, that “the Serb authorities in Bosanski Šamac made life so intolerable for most Bosnian Croat, Bosnian Muslim and other non-Serb residents of the municipality that they were forced to leave the area”; according to the Prosecution, this constituted a “successful” campaign of “ethnic cleansing”.<sup>2255</sup> Similarly, the Prosecution Final Brief reads, that “the final stage in the plan to ethnically cleanse the Serb-held territory was the expulsion of the remaining Muslim and Croat inhabitants. [T]he Serb authorities deported them to Croatia or forcibly transferred them to Croat and Muslim held areas within Bosnia and Herzegovina. [...] The effect of these expulsions – together with other acts undertaken by the Crisis Staff and its organs to ensure that Muslims and Croats would flee *and not return* – was the thoroughly [sic] cleansing of the municipality” (emphasis added).<sup>2256</sup>

974. For these reasons, the Trial Chamber finds that relocations of non-Serb prisoners from one detention centre to another within Serb-held territory in Bosnia and Herzegovina do not constitute forcible transfer unless the Accused had the intent that the victims did not return.

(c) Transfer from Bosanski Šamac to Zasavica in September 1992

975. The Trial Chamber is satisfied beyond reasonable doubt that Jelena Kapetanović and Witness K were transferred to Zasavica. The Trial Chamber finds that at the material time the living conditions in Bosanski Šamac constituted a coercive environment that did not allow both witnesses to make a voluntary decision, based on their own free will, as to whether or not they wanted to go to Zasavica. However, the Trial Chamber is not satisfied beyond reasonable doubt that the reason for taking Jelena Kapetanović and Witness K to Zasavica was to permanently displace them. Therefore, the Trial Chamber is not satisfied beyond reasonable doubt that they were forcibly transferred.

(d) Transfer to Crkvina in May 1992

976. The Trial Chamber is satisfied that a group of non-Serb civilians were detained in Crkvina in May 1992. After a few days, they were allowed to go home to Bosanski Šamac while others had

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<sup>2255</sup> Prosecution Pre-Trial Brief, para. 29. “[...] the ultimate aim of the joint criminal enterprise to persecute in Bosnia [...] is the ethnic cleansing, the deportation, the removal of the non-Serbs from their homes, from the municipality [...] from their territory”, Prosecution Closing Arguments, T. 20287. See also Amended Indictment, para. 31.

to go to Zasavica. The Trial Chamber is not satisfied beyond reasonable doubt that the reasons for taking these people to Crkvina were to forcibly transfer them, as the Prosecution did not adduce sufficient evidence that the victims were relocated with the intention to permanently displace them.

(e) Transfer from Bosanski Šamac via Pelagićevo, Batajnica, and Pale to Sarajevo in May 1992

977. The Trial Chamber is satisfied that the relocation of Izet Izetbegović from Bosanski Šamac to Pelagićevo, by two Serb policemen, and then via Batajnica and Pale to Sarajevo in the end of May 1992, constitutes a forcible transfer.<sup>2257</sup>

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<sup>2256</sup> Prosecution Final Brief, para. 294; see also T. 20325.

<sup>2257</sup> Izet Izetbegović, T. 2355, T. 2358-61, T. 2363, T. 2376, T. 2382, T. 2386.



## XVI. FINDINGS ON GENERAL REQUIREMENTS OF ARTICLE 5 OF THE STATUTE

978. The Trial Chamber finds that the events, which took place in Bosanski Šamac and Odžak between 17 April 1992 and 31 December 1993, constituted an attack on the civilian population. This attack included the forcible takeover of power in Bosanski Šamac, and the subsequent acts of persecution and deportation against non-Serb civilians. The Trial Chamber is satisfied that a state of armed conflict existed in the Republic of Bosnia and Herzegovina during the above mentioned period<sup>2258</sup> and that there was a nexus between the armed conflict and the acts of the Accused.

979. While Article 5 of the Statute requires that the attack must be either widespread or systematic, the Trial Chamber finds that the attack against non-Serb civilians in the Bosanski Šamac and Odžak Municipalities was both systematic and widespread. The attack was preceded by a series of acts, which indicate that it was planned and carried out in an organized fashion. These acts include military training of Serb men from Bosanski Šamac at a camp near Ilok in mid March 1992,<sup>2259</sup> securing the presence of Serb paramilitary forces who arrived in Batkuša on 11 April 1992,<sup>2260</sup> and the establishment of the Crisis Staff on 15 April 1992.<sup>2261</sup> The forcible takeover on 17 April 1992 was followed by acts of systematic persecution against non-Serb civilians which included the arbitrary arrests of Bosnian Muslim and Bosnian Croat civilians and their unlawful detention in various facilities in Bosanski Šamac, and in camps in Zasavica and Crkvina. Many were subjected to repeated beatings and other cruel and inhumane acts, in addition to deportation and forcible transfer.

980. The Trial Chamber finds that the attack in Bosanski Šamac and Odžak was also widespread. It affected the vast majority of the residents of the Municipality. Approximately 250 non-Serb civilians were detained at the Territorial Defence Building in Bosanski Šamac,<sup>2262</sup> the number of people detained at the secondary schools in Bosanski Šamac was between 300 and 500.<sup>2263</sup> In May 1992 almost 1000 people were detained at the Omladinski Dom in Crkvina.<sup>2264</sup> A large number of them were subjected to torture or to cruel and inhumane treatment. Hundreds of non-Serbs were deported or forcibly transferred.

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<sup>2258</sup> Agreed Facts, para. 80.

<sup>2259</sup> Dušan Tanasić, T. 13767; Alexander Janković, Rule 92*bis* Statement, paras 9-10; Stevan Todorović, T. 9048.

<sup>2260</sup> Sulejman Tihić, T. 1343; Dragan Lukač, T. 1612-16; Stevan Todorović, T. 9040; Blagoje Simić, T. 12518; Veselin Blagojević, T. 14030-31; Miroslav Tadić, T. 15190-91; Maksim Simeunović, T. 15856-57; Jovan Erletić, T. 19666; Jovo Savić, T. 17016-17; Radovan Antić, T. 16827; Simo Zarić, T. 19162-63.

<sup>2261</sup> Exhibit P124, Official Gazette of the Šamac Municipality, Vol. 1.

<sup>2262</sup> Witness E, T. 7717, Muhamed Bičić, T. 3026; Ibrahim Salkić, T. 3377.

<sup>2263</sup> Hasan Subašić, T. 10960-61.

<sup>2264</sup> Witness O, Rule 92*bis* Statement, paras 25, 33.

981. The Trial Chamber is satisfied that the three Accused knew of the attack against the non-Serb civilians in Bosanski Šamac and that their acts were part of this attack. Blagoje Simić telephoned Lt. Col. Stevan Nikolić on 17 April 1992 to inform him that the Crisis Staff of the Serbian Municipality of Bosanski Šamac has been established and that with the assistance from members of the Serb police and the paramilitaries had taken over the vital facilities in town.<sup>2265</sup> As the head of the *de facto* government, in the following months, Blagoje Simić was informed of the persecutory acts against non-Serb civilians, often organized or greatly facilitated by members of the Crisis Staff.

982. The Trial Chamber also accepts that, as a member of the Crisis Staff and as the member of the Exchange Commission, Miroslav Tadić became aware of the forcible takeover and of the following events. Simo Zarić was a member of the 4<sup>th</sup> Detachment since its establishment and served as the Assistant Commander for Intelligence, Reconnaissance, Morale and Information. In this capacity he was aware of the acts of mistreatment of non-Serb civilians. In view of the above, the Trial Chamber is satisfied that the general requirements of Article 5 are met with respect to each of the Accused.

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<sup>2265</sup> Stevan Nikolić, T. 18456-57; T. 18513-15; Makxim Simeunović, T. 15929; Simo Zarić, T. 19231-32.

## **XVII. FINDINGS ON ROLE OF THE ACCUSED**

### **A. COUNT 1: PERSECUTIONS**

#### **1. Joint Criminal Enterprise**

983. The Accused are charged under Article 7(1) of the Statute with respect to Count 1 (persecutions), which is pleaded in its entirety, and includes participation in a joint criminal enterprise. The Trial Chamber proceeds first to consider whether any of the Accused participated in a joint criminal enterprise to commit the crime of persecution, punishable under Article 5 (h) of the Statute. Given the Trial Chamber's finding that the third category of joint criminal enterprise was not sufficiently pleaded in the Amended Indictment, the Trial Chamber proceeds to consider whether the Accused may be liable for commission of the crime of persecution with respect to category one and two of the joint criminal enterprise (basic form of joint criminal enterprise).

984. The Trial Chamber is satisfied upon the evidence that members of the Crisis Staff, including Blagoje Simić as President; the Serb police, including the Chief of Police, Stevan Todorović, who was also a member of the Crisis Staff; Serb paramilitaries, including "Debeli" (Srčko Radovanović, "Pukovnik"), "Crni" (Dragan Đorđević), "Lugar" (Slobodan Miljković), and "Laki" (Predrag Lazarević); and the 17<sup>th</sup> Tactical Group of the JNA; were participants in a joint criminal enterprise, responsible for executing the common plan to persecute non-Serb civilians in the Bosanski Šamac Municipality.

985. The Trial Chamber is not satisfied that it is possible, upon the evidence, to extend the common plan to the political leadership of Republika Srpska, and to demonstrate that the Instructions for the Organisation and Activity of the Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances, published on 19 December 1991 by the SDS Main Board,<sup>2266</sup> outlining a plan to divide the municipalities of Bosnia and Herzegovina into two categories, depending on whether the Serbs were in the majority, referred to as "Variant A", or not, referred to as "Variant B", were formally delivered from the SDS Executive Board on the national level to the municipal authorities in Bosanski Šamac, as alleged by the Prosecution. The Trial Chamber is not satisfied beyond reasonable doubt that the civilian authorities took notice of it and acted accordingly. Thus, the Trial Chamber is not satisfied beyond reasonable doubt that the existence of a common plan to persecute non-Serbs in Bosanski Šamac Municipality can be vertically extended to the political leadership of Republika Srpska.

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<sup>2266</sup> Exhibit P3.

986. The Trial Chamber finds, however, that the events that unfolded in Bosanski Šamac before and after the takeover bear close similarity to what was envisaged in the above-mentioned instructions. The Trial Chamber is thus satisfied that, on a horizontal level, the participants in the joint criminal enterprise acted pursuant to a common plan to set up institutions and authorities to persecute non-Serb civilians in Bosanski Šamac Municipality. On 29 February 1992, the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo was established, pursuant to the recommendation of the National Assembly of Republika Srpska.<sup>2267</sup> In a meeting of the Municipal Assembly of Bosanski Šamac and Pelagićevo in Obudovac on 28 March 1992, the Assembly elected the representatives of the Executive Board of the Serbian Municipality and Stevan Todorović as the head of police. Also, in a meeting in March 1992, the Serbian Municipal Assembly decided that the President and the Vice-President of the Municipality and the President of the Municipal Board of the SDS should establish a Crisis Staff in case the war broke out. On 15 April 1992, a Crisis Staff was duly appointed in Bosanski Šamac, and Blagoje Simić, the President of the SDS Municipal Board in Bosanski Šamac, became its President. After the takeover it became clear that the Crisis Staff issued decisions and orders in accordance with decisions adopted by the Republika Srpska, that included an Order prohibiting political activities on the territory of Bosanski Šamac Municipality,<sup>2268</sup> and implementation of Instructions for the Work of the Municipal Crisis Staffs of the Serbian People.<sup>2269</sup>

987. The Trial Chamber does not consider it necessary to make a finding on when the common plan at first was conceived, but instead infers the common plan from all the circumstances. There is sufficient evidence to conclude that participants in the joint criminal enterprise acted in unison to execute a plan that included the forcible takeover of the town of Bosanski Šamac, taking over of vital facilities and institutions in the town, and persecuting non-Serb civilians in the Municipality of Bosanski Šamac, within the period set forth in the Amended Indictment. This common plan was aimed at committing persecution against non-Serbs, including acts of unlawful arrest, detention or confinement, cruel and inhumane treatment, deportation and forcible transfer, and the issuance of orders, policies and decisions that violated fundamental rights of non-Serb civilians.

988. Prior to the takeover, members of the joint criminal enterprise worked together in preparation of the takeover of the town of Bosanski Šamac as part of the common plan of persecution. The municipal section of the Ministry of Defence (Secretariat for National Defence), represented by Miloš Bogdanović, together with Stevan Todorović, as a member of the command of the 1<sup>st</sup> Detachment, pursuant to an order of the 1<sup>st</sup> Battalion of the 17<sup>th</sup> Tactical Group, participated

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<sup>2267</sup> Exhibit P124.

<sup>2268</sup> Exhibit P91.

<sup>2269</sup> Exhibit P128.

in sending young men for military training to Ilok in mid-March 1992.<sup>2270</sup> The trainees at Ilok were instructed by highly skilled members of “special units”.<sup>2271</sup> On 11 April 1992 the paramilitaries arrived in Batkuša in JNA helicopters.<sup>2272</sup> Among the group of 50 men, 30 came exclusively from Serbia and the other 20 people were from Šamac Municipality who were trained in Ilok.<sup>2273</sup> “Crni”, “Lugar” and “Debeli” were a part of this group.<sup>2274</sup> Maksim Simeunović, Chief of Intelligence and Security for the 17<sup>th</sup> Tactical Group, Mico Ivanović, Commander of the 1<sup>st</sup> Detachment, Major Brajković, the Chief of Staff of the 17<sup>th</sup> Tactical Group, and Stevan Todorović, were present for the arrival of the paramilitaries.<sup>2275</sup> The command of the 1<sup>st</sup> Detachment then made practical arrangements for them.<sup>2276</sup> When a meeting was held on 12 April 1992 in Donji Žabar, Stevan Nikolić, Stevan Todorović, Mico Ivanović, Blagoje Simić, Simo Jovanović “Crni” and “Debeli” were present to discuss the arrival of the paramilitaries.<sup>2277</sup>

989. On 15 April 1992, the members of the Municipal Assembly and its Executive Board met in Obudovac, among them Stevan Todorović, Blagoje Simić, Miloš Bogdanović, Savo Popović, Dušan Tanašić, Ivan Ivanović, “Crni”, and Mirko Jovanović. Blagoje Simić informed the others that he had arrived from a meeting with Lt. Col. Stevan Nikolić who had informed him about an impending attack by Croat and Muslim forces from Croatia with the assistance of local Croat and Muslim units from Bosanski Šamac, and that the 17<sup>th</sup> Tactical Group intended to prevent this attack. Blagoje Simić related to them that Lt. Col. Stevan Nikolić said that he would jointly with the army prevent this incursion. Lt. Col. Stevan Nikolić also insisted that the Crisis Staff meet in Crkvina the following night on 16 April 1992. The Trial Chamber is satisfied beyond reasonable doubt that Blagoje Simić was in Crkvina in the early morning hours of 17 April 1992.

990. The takeover was conducted on 17 April 1992 in the town of Bosanski Šamac by Serb police, paramilitaries. Members of the 17<sup>th</sup> Tactical Group of the JNA were present in town. Blagoje Simić telephoned Lt. Col. Stevan Nikolić on the morning of 17 April 1992 to inform him that the Crisis Staff of the Serbian Municipality of Bosanski Šamac had been established, and that with the assistance of the Serb paramilitaries and the police, the Crisis Staff had occupied the most important facilities in town in order to takeover authority in Bosanski Šamac. After this telephone

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<sup>2270</sup> Simo Jovanović, Rule 92bis Statement, para. 7; Miloš Savić, Deposition T. 378; Aleksandar Janković, Rule 92bis Statement, paras 9-10.

<sup>2271</sup> Aleksandar Janković, Rule 92bis Statement, para. 10; Miloš Savić, Deposition T.378.

<sup>2272</sup> Sulejman Tihčić, T. 1343; Dragan Lukač, T. 1612-16; Stevan Todorović, T. 9040; Blagoje Simić, T. 12518; Veselin Blagojević, T. 14030-01; Miroslav Tadić, T. 15190-91; Maksim Simeunović, T. 15856-57; Jovan Erletić, T. 19666; Jovo Savić, T. 17016-17; Radovan Antić, T. 16827; Simo Zarić, T. 19162-63.

<sup>2273</sup> Stevan Todorović, T. 9042-43.

<sup>2274</sup> Stevan Todorović, T. 9040.

<sup>2275</sup> Maksim Simeunović, T. 15995-56; Stevan Todorović, T. 9041, T. 10095-96.

<sup>2276</sup> Stevan Todorović, T. 9041, T. 9953-54, T. 10094-96; Radovan Antić, T. 16907.

<sup>2277</sup> Stevan Nikolić, T. 18452, T. 18604; Maksim Simeunović, T. 15999-16001.

conversation, Lt. Col. Stevan Nikolić ordered the 4<sup>th</sup> Detachment at 6.00 a.m. to be in a state of combat readiness, and to participate in the collection of weapons.

991. Following the takeover of the town of Bosanski Šamac, non-Serbs were arrested and detained by Serb police and paramilitaries, with the assistance of some members of the 4<sup>th</sup> Detachment, where they were subject to cruel and inhumane treatment, and interrogations. Non-Serbs were further subjected to acts of deportation and forcible transfer. The common goal to commit these acts of persecution could not have been achieved without the joint actions of the police, paramilitaries, 17<sup>th</sup> Tactical Group of the JNA and Crisis Staff: No participant could have achieved the common goal on their own. The Crisis Staff was responsible for coordinating the administration of the Municipality with the civilian police. The Crisis Staff implemented orders and decisions throughout its term that supported the system of persecution of non-Serbs. The cooperation between Blagoje Simić and the paramilitaries is exemplified by Blagoje Simić's travel to Ugljevik in order to discuss with the Corps Commander the replacement of Colonel Đurđević by "Crni", and in October 1992, the War Presidency requested the return of "Crni" and the paramilitaries.<sup>2278</sup> The cooperation of the War Presidency that had been established on 21 July 1992, pursuant to a decision of the Presidency of Republika Srpska,<sup>2279</sup> and Miroslav Tadić, is proven by the fact that on 2 October 1992 it established the Committee for the Exchange of Prisoners, and Miroslav Tadić was a member of the Committee.<sup>2280</sup>

992. Blagoje Simić, as President of the Crisis Staff, was at the apex of the joint criminal enterprise at the municipal level. Blagoje Simić knew that his role and authority were essential for the accomplishment of the common goal of persecution. As the President of the Crisis Staff and later the War Presidency and the Municipal Assembly, he was the highest-ranking civilian in Bosanski Šamac Municipality, and the Crisis Staff was responsible for, *inter alia*, the economy, humanitarian and medical care, information and propaganda, procurement of food supplies, and communications.<sup>2281</sup> This means that the decisions and orders of the Crisis Staff provided for the legal, political, and social framework in which the other participants of the joint criminal enterprise worked and from which they profited. An example of this is an order of the Crisis Staff of 6 May 1992 pursuant to which all Crisis Staffs in local communes were to organise the feeding of soldiers and members of the paramilitaries.<sup>2282</sup> Thus, Blagoje Simić and the Crisis Staff supported the work of the Serb police, paramilitaries, and 17<sup>th</sup> Tactical Group. The Trial Chamber is convinced that Blagoje Simić and the other participants acted with the shared intent to pursue their common goal.

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<sup>2278</sup> T. 9471.

<sup>2279</sup> Exhibit P72. The Decision was taken on 31 May 1992, however, it was implemented on 21 July 1992.

<sup>2280</sup> T. 9167-68, Exhibit P83.

<sup>2281</sup> Exhibit P128.

The Trial Chamber finds on the evidence available that this category of joint criminal enterprise falls within the description of the first category, where all participants in the joint criminal enterprise share the same intent to discriminate against non-Serbs on account of racial, political, or religious grounds.

993. The Trial Chamber proceeds now to consider the individual criminal responsibility of Blagoje Simić, Miroslav Tadić and Simo Zarić with respect to the underlying acts of persecution as charged in Count 1 of the Amended Indictment.

## 2. Underlying Acts of Persecution

### (a) Unlawful Arrests, Detention, Interrogations

#### (i) Blagoje Simić

994. Blagoje Simić, as President of the SDS Municipal Board, and President of the Serb Crisis Staff in the Municipality of Bosanski Šamac (later renamed the War Presidency), was the highest ranking civilian official in the Municipality. He oversaw the key objectives of the Crisis Staff that included consolidating Serb institutions and coordinating the functions of the authorities in Bosanski Šamac, and presided over meetings of the Crisis Staff where operations of authorities in the Municipality were discussed. At these meetings, Stevan Todorović, the Chief of Police, reported on the situation of arrests and detention in Bosanski Šamac.<sup>2283</sup> Although he did not have authority over the police, he was in a position of strong influence and control as President of the Crisis Staff, and did not take any significant steps in this position to prevent the continued arrests and detentions. His testimony that the Crisis Staff contacted the Ministry of Interior to complain about Stevan Todorović not being worthy of his job, and made a written request to the Ministry of Defence to demobilise judges and establish courts, were insufficient steps taken, for someone in his position, to stop the system of unlawful arrests and detention continuing. Taking into consideration that the Crisis Staff had the responsibility to ensure the safety of the population,<sup>2284</sup> Blagoje Simić, as the President of the Crisis Staff, was obliged to try every possible measure to prevent non-Serb citizens from being persecuted. As instructions for the work of the municipal crisis staffs came from the Prime Minister of Republika Srpska, he could have turned towards this authority by stating that due to the persecution of non-Serb citizens, he could not ensure the safety of all citizens. As a last resort, Blagoje Simić could have resigned, for instance after his he wounded himself accidentally in

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<sup>2282</sup> Exhibit P74.

<sup>2283</sup> Blagoje Simić, T. 12571.

<sup>2284</sup> Exhibit P128 (paragraph 3).

the leg on 23 July 1992 and subsequent medical treatment in Brčko and Belgrade.<sup>2285</sup> However, he undertook no further steps to protect effectively non-Serb prisoners.

995. The Trial Chamber is satisfied that Blagoje Simić was aware of the persecution of non-Serbs in Bosanski Šamac Municipality. The Report of the Command of the 2<sup>nd</sup> Posavina Infantry Brigade, 1 December 1992,<sup>2286</sup> was disclosed to Blagoje Simić, and he attended a meeting in Pelagićevo where this was discussed.<sup>2287</sup> The Report recorded that “(t)he massive arrests and isolation of Croats and Muslims followed, without any criteria.” Blagoje Simić was informed of the continued arrests and detention of non-Serbs during the conflict, and was in a position to express persuasive opinions at meetings with principal actors in the joint criminal enterprise. The fact that he was contacted by Simo Zarić to release Sulejman Tihić,<sup>2288</sup> and also by Lt. Col. Stevan Nikolić, about the release of members of the 4<sup>th</sup> Detachment,<sup>2289</sup> demonstrates his strong influence over the arrest and detention of individuals, although it was the role of the chief of police to determine this.

996. Although the Trial Chamber cannot conclude beyond a reasonable doubt that Blagoje Simić ever entered any of the places of detention, he had to be aware of civilians being detained in facilities that included the SUP, TO, and primary and secondary schools in Bosanski Šamac. He was also aware that detainees were held in camps in Zasavica and Crkvina, and transferred from the TO to Brčko and detained in other facilities presided over by the JNA in Bijeljina. The arrest and detention of civilians within the Municipality of Bosanski Šamac was widely known. The police, paramilitaries, Crisis Staff and JNA, worked together to maintain the system of arrests and detention, and detainees were transferred amongst these facilities. While the Trial Chamber accepts that there is insufficient evidence to conclude that the Crisis Staff was responsible for ordering the isolation of Croats in Crkvina, it finds that once informed about the detention of civilians in Crkvina and Zasavica, Blagoje Simić did nothing to assist or release them. He continued to act as President of the Crisis Staff and at no point sought to resign due to the acts of persecution that were going on around him. He did not take any measures to impede the functioning of the joint criminal enterprise.

997. The Trial Chamber finds that the only reasonable inference that can be drawn from these facts is that Blagoje Simić shared the intent of the other participants in the joint criminal enterprise, executing the common plan of persecution, and participated in this joint criminal enterprise. Blagoje Simić could not have accepted the continued arrest and detention of non-Serb civilians, in his key position in the Municipality, without exercising discriminatory intent. Blagoje Simić shared the

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<sup>2285</sup> Blagoje Simić, T. 12320-23.

<sup>2286</sup> Exhibit P127.

<sup>2287</sup> Simo Zarić, T. 19561, T. 19564.

<sup>2288</sup> Sulejman Tihić, T. 1408.

<sup>2289</sup> Simo Zarić, T. 18773-74.



intention of other participants in the joint criminal enterprise to arrest and detain non-Serb civilians in the Municipality of Bosanski Šamac and in Brčko and Bijeljina.

(ii) Miroslav Tadić

998. The Trial Chamber is not satisfied that there is sufficient evidence that Miroslav Tadić participated in the persecution of non-Serb prisoners through unlawful arrest and detention. While there is evidence that he was present at the detention facilities in Bosanski Šamac, and had knowledge of their existence and conditions, he rarely entered the facilities, and visited these sites only in his role of conducting exchanges. Unlike Blagoje Simić, he did not hold a leading position in the Crisis Staff. His position as member of the Exchange Commission, did not afford him authority or influence over the arrest and detention of non-Serb civilians, nor did it require that he attend all meetings of the Crisis Staff. There is no evidence that he was contacted to make any decisions on the arrest or detention of non-Serbs. While the Trial Chamber is not satisfied beyond reasonable doubt that he shared the discriminatory intent of the joint criminal enterprise to persecute non-Serb civilians through their unlawful arrest and detention, his continued participation in conducting exchanges and transferring detainees, his attendance at meetings of the Crisis Staff and with some of the other direct perpetrators in the joint criminal enterprise in Belgrade, where the role of the paramilitaries was discussed, shows that he had knowledge of the discriminatory intent towards non-Serbs who were arrested and detained in facilities in Bosanski Šamac, at the SUP, TO, primary and secondary schools, and in Brčko and Bijeljina.

999. While Miroslav Tadić had knowledge of the discriminatory intent of the joint criminal enterprise, the actions or omissions of Miroslav Tadić cannot be considered to have had a substantial effect on the perpetration of the offence of unlawful arrests and detention, and as such did not aid and abet the joint criminal enterprise. He was not in a position with power to prevent the work of the joint criminal enterprise and the corresponding criminal activity.

(iii) Simo Zarić

1000. The Trial Chamber is not satisfied that Simo Zarić aided and abetted the joint criminal enterprise to commit acts of unlawful arrest or detention as persecution. In his position as Assistant Commander for Intelligence, Reconnaissance, Morale and Information in the 4<sup>th</sup> Detachment, he was responsible for conducting interrogations of some detainees at the SUP and in Brčko. The Trial Chamber does not find that these acts gave substantial assistance to the commission of acts of unlawful arrest, detention and confinement of non-Serbs, committed by the joint criminal enterprise. The Trial Chamber does not place any weight on his appointment as Chief of National Security, and finds that he did not conduct any interrogations of detainees during the brief period of

this appointment.<sup>2290</sup> Simo Zarić took steps to obtain the release of detainees, advocating the release of Sulejman Tihić,<sup>2291</sup> Witness N,<sup>2292</sup> and members of the 4<sup>th</sup> Detachment.<sup>2293</sup>

1001. Testimony that Stevan Todorović ordered his policemen at the checkpoint in Gorice to arrest Simo Zarić on a trip to Belgrade,<sup>2294</sup> and that he was mistreated by paramilitaries at the time that he advocated release of members of the 4<sup>th</sup> Detachment held at the SUP, is also consistent with Simo Zarić's testimony that he did not share the objectives of the police and paramilitaries to unlawfully arrest and detain non-Serb civilians, and that he did not possess their discriminatory intent. While evidence was presented that he ordered the arrest of detainees Osman Jašarević, Kemal Bobić, and Witness N, the Trial Chamber concludes that there is insufficient evidence that he ordered these arrests.

1002. In his role of conducting interrogations of detainees, Simo Zarić was frequently present at the detention facilities, that included the SUP, TO and Brčko, where he saw detainees and the conditions that they were held in. He could see how the police, paramilitaries and JNA soldiers were unlawfully arresting and detaining people in these facilities.<sup>2295</sup> Although Simo Zarić had knowledge of the unlawful arrest and detention of non-Serbs in Bosanski Šamac and in Brčko and Bijeljina, his acts, that included conducting interrogations of detainees, did not give substantial assistance to the joint criminal enterprise committing these crimes.

(b) Cruel and inhumane treatment

(i) Blagoje Simić

1003. The Trial Chamber is satisfied that Blagoje Simić participated in a joint criminal enterprise to persecute non-Serb prisoners in the detention facilities in Bosanski Šamac through cruel and inhumane treatment, including beatings, torture, and confinement under inhumane conditions.

1004. The Trial Chamber finds that the police, the military and the Crisis Staff were working hand in hand together in steering the Municipality of Bosanski Šamac. The Crisis Staff, the War Presidency and the Municipal Assembly in succession, were the highest authority in the Municipality, and Blagoje Simić was the President of all three bodies. Stevan Todorović, the Chief of Police, was a member of the Crisis Staff and frequently attended Crisis Staff meetings. Although Blagoje Simić and the Crisis Staff were not formally responsible for the police, the Trial Chamber

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<sup>2290</sup> Simo Zarić, T. 20009-10.

<sup>2291</sup> Simo Zarić, T. 19320.

<sup>2292</sup> Simo Zarić, T. 19601.

<sup>2293</sup> Simo Zarić, T. 19263-64.

<sup>2294</sup> Simo Zarić, T. 19445-46, T. 20075-76.

<sup>2295</sup> Simo Zarić, T. 19425.

is satisfied that they bore responsibility for the health, safety and welfare of all citizens in the area it administered, regardless of their ethnicity.<sup>2296</sup> Such responsibility has been demonstrated in the “Instruction for the Work of Municipal Crisis Staffs of the Serbian people”,<sup>2297</sup> signed by the incumbent Prime Minister of the Republika Srpska, Branko Đerić, and in several decisions of the Crisis Staff.<sup>2298</sup> When the Crisis Staff was replaced by the War Presidency and later by the Municipal Assembly, these bodies had the responsibility for the health and welfare of all citizens of the Municipality of Bosanski Šamac. This responsibility especially lay with Blagoje Simić who was the President of these bodies.

1005. The Trial Chamber has considered the submission of the Simić Defence that a comparison of Blagoje Simić’s role in the Crisis Staff with the position of *bourgmestre* of the accused in the *Bagilishema* case<sup>2299</sup> shows that Blagoje Simić should be acquitted. The Simić Defence argues that Ignace Bagilishema had effective authority and control over the police,<sup>2300</sup> while the police in Bosanski Šamac was under the authority of the Ministry of Interior of Republika Srpska and not under Blagoje Simić’s authority. In this context, the Trial Chamber notes the finding in the *Bagilishema* Trial Judgement that Ignace Bagilishema had spoken on so-called “pacification” meetings in order to prevent the crimes he was charged with from happening.<sup>2301</sup> Furthermore, the Trial Chamber in *Bagilishema* held that Ignace Bagilishema could not be held criminally responsible “for not having done enough to punish crimes [...]”<sup>2302</sup> In the present case, however, the Trial Chamber is not satisfied that Blagoje Simić undertook sufficient measures to prevent the persecutory acts against non-Serb civilians. The Trial Chamber reiterates that although Blagoje Simić was not directly responsible for the police or the military, his position as the highest-ranking civilian in Bosanski Šamac Municipality gave him the opportunity and responsibility to take measures to protect the non-Serb civilian population.

1006. The responsibility of the Crisis Staff and its successor bodies included the health, the safety and the welfare of the non-Serb citizens who were imprisoned in the detention facilities in Bosanski Šamac. This means that, although the primary responsibility for the detention centres was with the police, the Crisis Staff and later the War Presidency and the Municipal Assembly had an obligation

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<sup>2296</sup> Božo Ninković, T. 13578-81.

<sup>2297</sup> Exhibit P128, Excerpt from instructions for the work of the municipality crisis staff of the Serbian people.

<sup>2298</sup> Exhibit P85, Order on the Implementation of the Decision of the Crisis Staff on Temporary Housing of Exchanged Persons from the Territory of Odžak Municipality, 9 June 1992; Exhibit P93, Order Prohibiting Sale of Alcoholic Drinks, 28 April 1992; Exhibit D71/1, Crisis Staff Decision to provide 21 tons of livestock feed to Croat farmers from Zasavica, 13 May 1992; Exhibit D150/1, War Presidency Decision on the Assignment of Residential and Other Space for Temporary Use, 16 September 1992.

<sup>2299</sup> *The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgement, 7 June 2001 (“*Bagilishema* Trial Judgement”).

<sup>2300</sup> Simić Closing Arguments, T. 20435.

<sup>2301</sup> *Bagilishema* Trial Judgement, para. 302.

to provide for appropriate detention facilities in order to prevent the non-Serb citizens from being treated in a cruel and inhumane manner. The involvement of Blagoje Simić and his influence in detention matters is further demonstrated by the fact that Simo Zarić stated that he could not release Sulejman Tihić without Blagoje Simić's approval.

1007. In this context, the Trial Chamber is satisfied that Blagoje Simić, as the President of the Crisis Staff, worked hard to get medical supplies as required in the Municipality. The Trial Chamber infers from this that the detainees were deliberately denied adequate medical care. This also contributed to the unacceptable conditions deliberately created to force the non-Serb detainees to leave the Municipality. The Trial Chamber accepts the evidence of Dr. Ozren Stanimirović who stated that he had the possibility to transfer those detainees who needed hospital care to the hospital, but that no such cases were referred to him.<sup>2303</sup> In sum, the Trial Chamber is satisfied that Blagoje Simić failed to act according to this responsibility by not taking sufficient steps to avoid the cruel and inhumane treatment of non-Serb prisoners in the detention facilities in Bosanski Šamac.

1008. The Trial Chamber is satisfied beyond reasonable doubt that Blagoje Simić knew about the cruel and inhumane treatment, including the beatings, the torture and the inhumane confinement conditions of the non-Serb prisoners in detention facilities in Bosanski Šamac. Stevan Todorović, the Chief of Police, informed Blagoje Simić in the first days after the takeover about detainees who had been beaten and abused in the SUP. In this respect, the Trial Chamber notes that Bosanski Šamac is a small town and that the cruel and the inhumane treatment of non-Serb prisoners was extensive and took place over a period of several months. The cries and moans of prisoners in the detention centres in Bosanski Šamac and their forced singing of Serb nationalistic songs could be heard outside these premises. The fact that the Trial Chamber is not satisfied beyond reasonable doubt that Blagoje Simić ever visited any of the detention facilities is irrelevant in this respect. The Trial Chamber does not accept Blagoje Simić's testimony that he did not know about such mistreatment.

1009. The Trial Chamber is also satisfied that Blagoje Simić not only was aware of the discriminatory intent of the paramilitaries and the other perpetrators of the cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions of non-Serb prisoners in the detention facilities in Bosanski Šamac, but that he shared this discriminatory intent. In this context, the Trial Chamber has carefully considered the testimonies of Sulejman Tihić and Izet Izetbegović on statements made by Blagoje Simić in a meeting in the Municipal Assembly building in Bosanski Šamac. Sulejman Tihić stated that Blagoje Simić referred to the partition of

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<sup>2302</sup> *Bagilishema* Trial Judgement, para. 683.

municipalities along ethnic lines by saying, “if you don’t decide, the Serbs will know what to do”. Izet Izetbegović testified that Blagoje Simić said at the same meeting, that if the non-Serbs would not agree on the re-organisation of the municipalities, “the Serbs would use force”.

1010. The Trial Chamber is satisfied that the only conclusion that can be drawn from the above-mentioned evidence and from the fact that Blagoje Simić continued to act as the highest-ranking civilian during the Indictment period is that he shared the discriminatory intent of the other participants in the joint criminal enterprise to persecute the non-Serb population of the Municipality of Bosanski Šamac through cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions.

1011. The Trial Chamber is not satisfied beyond reasonable doubt that sufficient evidence has been adduced to prove that Blagoje Simić was aware of the cruel and inhumane treatment of non-Serb prisoners in the detention facilities in Crkvina, in Brčko and in Bijeljina.

(ii) Miroslav Tadić

1012. The Trial Chamber has observed that Miroslav Tadić played a prominent role in Bosanski Šamac during the period of the Amended Indictment. He was Assistant Commander of the 4<sup>th</sup> Detachment, commander of the Civil Protection Staff, member of the Crisis Staff, and he held a leading position in the process of exchanging non-Serb civilians from the Municipality of Bosanski Šamac. He was also a respected person in Bosanski Šamac and the owner of the Café AS. As a member of the Crisis Staff, he bore responsibility for the health, the safety and the welfare of the prisoners in the detention facilities in the Municipality of Bosanski Šamac. Taking into consideration that the cruel and inhumane treatment in the above-mentioned detention centres was extensive and took place over several months, the Trial Chamber is satisfied that Miroslav Tadić must have been aware of it. The Trial Chamber also notes that Miroslav Tadić stated that he learned from drunken people that they would go to the detention camps in Bosanski Šamac and beat prisoners.

1013. However, the Trial Chamber is not satisfied that the Prosecution has adduced sufficient evidence to prove that Miroslav Tadić's conduct – acts or omissions – had a substantial impact on the principals who committed the mistreatment. The Trial Chamber is not satisfied that Miroslav Tadić had the authority to restrain any perpetrator from committing persecutory acts including beatings, torture, and confinement under inhumane conditions against the non-Serb prisoners in the detention centres in Bosanski Samac, Crkvina, Brčko, or Bijeljina.

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<sup>2303</sup> Dr. Ozren Stanimirović, T. 13904-05.

1014. The Trial Chamber is not satisfied beyond reasonable doubt that Miroslav Tadić contributed to the joint criminal enterprise to persecute non-Serb prisoners in the detention facilities in Bosanski Šamac, Crkvina, Brčko and Bijeljina through cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions.

(iii) Simo Zarić

1015. The Trial Chamber is satisfied that Simo Zarić aided and abetted the joint criminal enterprise to persecute non-Serb prisoners in the detention facilities in Bosanski Šamac through cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions.

1016. Simo Zarić conducted interrogations with non-Serb prisoners who had been beaten. The Trial Chamber accepts that he did not take part in the beatings and that he did not approve of them. However, the Trial Chamber finds that his participation in the interrogations and in the interview of non-Serb prisoners by TV Novi Sad gave encouragement and moral support to the perpetrators of the cruel and inhumane treatment of non-Serb prisoners. In this context, the Trial Chamber takes into consideration that Simo Zarić was a former chief of the SUP in Bosanski Šamac, Assistant Commander for Intelligence in the 4<sup>th</sup> Detachment, and a person highly engaged and respected in the social and cultural life in Bosanski Šamac. The Trial Chamber finds that these characteristics of Simo Zarić prove beyond reasonable doubt that his participation in interrogations had a supportive effect on the perpetrators of the mistreatment. For these reasons, the Trial Chamber is satisfied beyond reasonable doubt that Simo Zarić substantially contributed to the cruel and inhumane treatment of non-Serb prisoners in the detention facilities in Bosanski Šamac. His criminal responsibility covers cruel and inhumane treatment committed until July 1992 when he was appointed Assistant President of the Civilian Military Council in Odžak Municipality.

1017. The Trial Chamber is satisfied that Simo Zarić was aware of the cruel and inhumane treatment of non-Serb prisoners in the detention facilities in Bosanski Šamac. The Prosecution evidence<sup>2304</sup> and his own admissions show that Simo Zarić knew that non-Serbs were mistreated because of their non-Serb ethnicity. He therefore knew of the perpetrators' discriminatory intent.

1018. However, the Trial Chamber is not satisfied that Simo Zarić shared or was aware of the discriminatory intent of the perpetrators of persecution through cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions, in Brčko and Bijeljina. The evidence adduced by the Prosecution does not prove beyond reasonable doubt that Simo Zarić

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<sup>2304</sup> See Exhibit P127.

had such awareness. Simo Zarić himself only acknowledged that he knew of persecutions against non-Serb civilians in the detention facilities in Bosanski Šamac.

1019. The Trial Chamber is not satisfied beyond reasonable doubt that Simo Zarić made a substantial contribution to the persecution of non-Serb prisoners through cruel and inhumane treatment, including beatings, torture, and confinement under inhumane conditions, in Crkvina.

(c) Forced Labour

1020. The Trial Chamber is satisfied that the dangerous and humiliating forced labour assignments to which Bosnian Muslims and Bosnian Croats were subjected were part of the joint criminal enterprise to persecute non-Serb civilians in the municipalities of Bosanski Šamac and Odžak.

(i) Blagoje Simić

1021. The Trial Chamber is satisfied that in view of his position as President of the Crisis Staff, Blagoje Simić knew that Bosnian Muslims and Bosnian Croats were forced to perform dangerous or humiliating work. As the head of the *de facto* government, concerned with the welfare and the safety of the citizen, Blagoje Simić was aware of the existence of the forced labour programme. The Trial Chamber accepts the evidence that the Accused was seen at various locations where civilians performed forced labour.

1022. The Trial Chamber is satisfied that Blagoje Simić intended to subject Bosnian Muslims and Croats to dangerous or humiliating work. Blagoje Simić, as the President of the Crisis Staff, participated in the appointment and the dismissal of the head of the Municipal Department for Defence, the body managing the forced labour programme, and occasionally heard reports from the head of this Department. He was aware of the overall situation in the Municipality and of the fact that civilians were used for trench digging and other dangerous military assignments. He did not take any measures within his authority to stop this practice. In view of his position as President of the Crisis Staff, he was aware of the fact that Bosnian Muslims and Bosnian Croats in detention were subjected to humiliating assignments, among other acts of cruel and inhumane treatment, and did not take sufficient action to prevent these incidents from happening. Noting the fact that only Bosnian Muslims and Bosnian Croats were subjected to these assignments, the Trial Chamber is satisfied that Blagoje Simić through his role in the appointment of the head of the Department administering the forced labour programme, and by his failure to take measures preventing the said acts from taking place, participated in the forced labour programme with the intent to discriminate against Bosnian Croats and Bosnian Muslims.

(ii) Miroslav Tadić

1023. The Trial Chamber is satisfied that Miroslav Tadić was aware of the existence of the forced labour programme. The office of the Civilian Protection Staff, which he directed, was located in the same building where the coordinators of the forced labour programme were and where civilians had to report every morning for their forced labour assignments. The telephone line of the Civilian Protection Staff was used to transmit messages to the forced labour coordinators, and the employees of the Civilian Protection Staff sometimes personally delivered messages to the coordinators.

1024. The Trial Chamber is not satisfied that Miroslav Tadić shared or was aware of Blagoje Simić's intent and that of the other participants in the joint criminal enterprise to subject Bosnian Muslim and Bosnian Croats to dangerous or humiliating work. The Trial Chamber notes that not all types of forced labour assignments amount to persecution. While the evidence supports the fact that Miroslav Tadić was involved in the forced labour programme, the Trial Chamber is not satisfied that he participated in forcing non-Serbs to do dangerous or humiliating work. The Trial Chamber notes the testimony given by Nusret Hadžijusufović regarding Miroslav Tadić's participation in the use of the forced labour programme for looting. The Trial Chamber however is not satisfied that this evidence proves beyond reasonable doubt the fact that Miroslav Tadić committed or aided and abetted the crime of persecution in this respect.

(iii) Simo Zarić

1025. The Trial Chamber is satisfied that in view of his position as a senior officer in the 4<sup>th</sup> Detachment and as Deputy to the President of the Civilian Council in Odžak, Simo Zarić was aware of the existence of the forced labour programme and of the fact that civilians were forced to perform dangerous work on the frontline and at other locations of strategic military importance. The Trial Chamber accepts the evidence of the witnesses who testified seeing Simo Zarić at various locations in Odžak while performing forced labour. Moreover, he personally saw civilians performing forced labour in Odžak.

1026. The Trial Chamber is not satisfied that the evidence presented supports a finding that Simo Zarić substantially contributed to the dangerous or humiliating forced labour assignments. While the Trial Chamber accepts that Simo Zarić issued work assignments to civilians who were brought to Odžak, it is not satisfied that these assignments amount to cruel and inhumane treatment as a persecutory act. The Trial Chamber further finds that Simo Zarić's omission to take measures preventing civilians being brought to the frontline for trench digging under the escort of soldiers from the 4<sup>th</sup> Detachment does not constitute a substantial contribution to persecution through forced labour assignments.



(d) Plunder

1027. The Trial Chamber is not satisfied that the widespread plundering and looting of the property of Bosnian Muslims and Croats was part of the common plan to persecute non-Serb civilians. While the Accused's knowledge of the occurrence of acts of looting is not contested in this case, the Trial Chamber is not satisfied that the Accused's intentional participation in any form has been proved beyond reasonable doubt.

(i) Blagoje Simić

1028. To prove Blagoje Simić's participation in the plunder of non-Serb property, the Prosecution relies on the Crisis Staff Order of 24 April 1992 (Exhibit P88), authorizing the Crisis Staffs of the local communities to take over goods confiscated or recovered from zone of combat, and to ensure their storage in the warehouse of Bosanac D.D. and the premises of Uniglas in Bosanski Šamac. The Trial Chamber is not satisfied that this order was issued with the goal to aid and abet the acts of plundering. With respect to the order for the requisition of Dragan Delić's car for the needs of the Crisis Staff (Exhibit P49), the Trial Chamber notes that the authenticity of Blagoje Simić's signature on this document is disputed and that this evidence is not supported by other evidence. While Stevan Todorović and Simo Zarić, testified to the possible participation of Crisis Staff members in the removal of goods from the furniture factory Budućnost, and from department stores, none of these witnesses gave conclusive evidence about Blagoje Simić's involvement in this practice.

1029. The Trial Chamber accepts the arguments of the Defence that the Crisis Staff and Blagoje Simić personally took certain measures to limit the looting. These measures included the issuance of an order preventing companies from buying cattle from illegitimate owners, Exhibit D113/1, and a request for demobilization of judges serving in the military. The Trial Chamber accepts that the Crisis Staff Order of 24 April 1992 was issued to prevent random acts of plundering.

(ii) Miroslav Tadić

1030. The Prosecution alleges that Miroslav Tadić participated in the looting through the forced labour programme. While some civilians who gathered every morning in front of the Retirement Home to perform forced labour had to participate in looting of private houses and shops, the Trial Chamber finds that Miroslav Tadić's participation in these acts is not proven beyond a reasonable doubt. The Trial Chamber does not accept that Nusret Hadžijusufović's testimony regarding the fact that he was informed by Dzevad Celić about Miroslav Tadić's authority to assign people for looting, or regarding Miroslav Tadić's involvement in the distribution of firewood, proves beyond a reasonable doubt that Miroslav Tadić participated in the acts of plundering through the forced

labour programme. The Trial Chamber notes that witnesses who were forced to loot testified that they received instructions from Serb civilians who were looting alongside with them, from the drivers who brought them to the respective locations or from the armed guards, and that looted goods were loaded onto private vehicles.

1031. While the Trial Chamber accepts that goods found in abandoned shops were stored in the Agropromet warehouse and inventories of these goods were made by employees of the Civilian Protection Staff directed by Miroslav Tadić, it accepts the arguments of the Defence that this was done to protect perishable goods.

(iii) Simo Zarić

1032. The Trial Chamber accepts that individual members of the 4<sup>th</sup> Detachment committed acts of plundering, sometimes directly, sometimes by forcing detainees or civilians to loot for them. The Trial Chamber notes that no direct evidence of Simo Zarić's participation in these acts was presented. It further notes that Simo Zarić was one of the senior officers of the 4<sup>th</sup> Detachment who initiated and signed the Report of the Thirteen Signatories, Exhibit P127, requesting measures to be taken against the widespread looting in Bosanski Šamac. In view of the above the Trial Chamber is not satisfied that Simo Zarić's intent to commit or to aid and abet the acts of plundering of non-Serb property, on discriminatory grounds, has been proved beyond reasonable doubt.

(e) Deportation and Forcible Transfer

1033. The Trial Chamber finds that none of the Accused is criminally responsible for forcibly transferring non-Serb prisoners from one detention facility to another, as the Trial Chamber is not satisfied that the Accused had the intent to permanently displace these prisoners.

(i) Blagoje Simić

1034. The Trial Chamber is not satisfied beyond reasonable doubt that Blagoje Simić is criminally responsible for the unlawful deportation of Witness N and Witness E in Lipovac on 20 February 1992. Both witnesses were in Batković at the time of the exchange, outside the Municipality of Bosanski Šamac. The Trial Chamber finds that it has not been proven that Blagoje Simić participated in this deportation.

1035. The Trial Chamber is satisfied that Blagoje Simić took part in the joint criminal enterprise to persecute non-Serb civilians by deporting and forcibly transferring them.

1036. With regard to the forcible transfer of Osman Jašarević on 25/26 May 1992 in Dubica, the Trial Chamber finds that Blagoje Simić and other members of the Crisis Staff were informed by

Simo Zarić about the negotiations Simo Zarić had with the Odžak side prior to this exchange. Simo Zarić told the Odžak Exchange Commission that he could put proposals for this exchange to the Bosanski Šamac Crisis Staff, and after he had informed Blagoje Simić about this proposed exchange, Blagoje Simić had nothing against an “all-for-all”-exchange. Blagoje Simić also testified that the Crisis Staff proposed to the Republic Exchange Commission to participate in the exchange. The Trial Chamber also accepts that the Crisis Staff ordered Miroslav Tadić, Simo Zarić and Božo Ninković to compile lists with Serbs who were detained in Odžak prior to this exchange.

1037. The Trial Chamber is satisfied that Miroslav Tadić informed the Crisis Staff regularly about the exchanges, and that on 2 October 1992 Blagoje Simić signed P83 as the President of the War Presidency, thereby appointing the civilian Exchange Committee that reported on its activities on a monthly basis to the War Presidency. The Trial Chamber notes that the system of exchanges took place over a period of about one and a half years, and that Blagoje Simić did not take sufficient measures to prevent non-Serbs from being unlawfully displaced. Therefore, the Trial Chamber is satisfied that Blagoje Simić participated in the unlawful deportation of Dragan Lukač, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness K, Dragan Delić, Snjezana Delić, Nusret Hadžijusufović, Witness C, Hajrija Drljačić, Jelena Kapetanović, Witness A, Ediba Bobić, Witness O, and Witness Q, and in the forcible transfer of Osman Jašarević.

1038. The Trial Chamber has carefully considered the testimonies of Sulejman Tihić and Izet Izetbegović on statements made by Blagoje Simić in a meeting in the Municipal Assembly building in Bosanski Šamac. Sulejman Tihić stated that Blagoje Simić referred to the partition of municipalities along ethnic lines by saying, that “if you don’t decide, the Serbs will know what to do”. Izet Izetbegović testified that Blagoje Simić said at the same meeting, that if the non-Serbs would not agree on the re-organisation of the municipalities, “the Serbs would use force”. The Trial Chamber is also satisfied that Blagoje Simić was aware of the non-Serb ethnicity of the above persons who were unlawfully displaced, and he participated in the exchange procedure and was informed about it over a period of many months. The Trial Chamber is convinced that the extensive and continuing mistreatment of non-Serb civilians and their subsequent displacement proves that the participants in the joint criminal enterprise to persecute them had the shared intent to permanently displace them. The only reasonable inference from all these persecutory acts is that the perpetrators intended that the victims should not return. Thus, the Trial Chamber is satisfied that Blagoje Simić had a discriminatory intent with regard to the unlawful displacement of the persons mentioned above. For these reasons, the Trial Chamber finds that Blagoje Simić participated in the joint criminal enterprise to persecute the above-mentioned non-Serb civilians through deportation and forcible transfer, respectively.

(ii) Miroslav Tadić

1039. The Trial Chamber finds that it has not been proven beyond reasonable doubt that Miroslav Tadić participated in the exchange in Nemetin on 14 August 1992.

1040. The Trial Chamber further finds that the Prosecution did not prove beyond reasonable doubt that Miroslav Tadić is criminally responsible for the participation in the unlawful deportation of non-Serb civilians in the exchange from Batković to Lipovac on or about 20 February 1993.

1041. The Trial Chamber is not satisfied that Miroslav Tadić participated in a joint criminal enterprise to persecute non-Serb civilians by unlawfully displacing Dragan Lukač, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness K, Dragan Delić, Snjezana Delić, Nusret Hadžijusufović, Witness C, Hajrija Drljačić, Jelena Kapetanović, Witness A, Ediba Bobić, Witness O, and Witness Q, and by forcibly transferring Osman Jašarević.

1042. The Trial Chamber is, however, satisfied beyond reasonable doubt that Miroslav Tadić substantially contributed to the deportation of Dragan Lukač, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness K, Dragan Delić, Snjezana Delić, Nusret Hadžijusufović, Witness C, Hajrija Drljačić, Jelena Kapetanović, Witness A, Ediba Bobić, Witness O, and Witness Q, and the forcible transfer of Osman Jašarević, as acts of persecutions. Miroslav Tadić participated in the exchange procedure throughout the period of the Amended Indictment. He stated that prior to 2 October 1992, when no exchange committee had been formally established, “[...] I did the most work on these tasks, I seemed to be the President of the commission”. The Trial Chamber finds that not only Miroslav Tadić, but also numerous witnesses proved beyond reasonable doubt that he participated in the deportation of the witnesses mentioned above.

1043. With regard to the *mens rea*, the Trial Chamber is not satisfied beyond reasonable doubt that Miroslav Tadić shared the discriminatory intent of the participants in the joint criminal enterprise. However, the Trial Chamber is satisfied that sufficient evidence has been adduced to prove beyond reasonable doubt that Miroslav Tadić was aware that the participants in the joint criminal enterprise to persecute non-Serb civilians through deportation and forcible transfer acted with a discriminatory intent. In this context, the Trial Chamber takes into account that Miroslav Tadić knew of the non-Serb ethnicity of the prisoners in Bosanski Šamac who were later displaced, and he knew about their arrest, detention, and cruel and inhumane treatment in the detention facilities in Bosanski Šamac. Taking into consideration that Miroslav Tadić was engaged in exchanges during almost the whole Indictment period, the Trial Chamber finds that he was aware of the discriminatory intent of the participants in the joint criminal enterprise to displace the above-mentioned non-Serb civilians from Bosanski Šamac, thereby incurring criminal responsibility as an aidor and abettor.

1044. However, the Trial Chamber is not satisfied that Miroslav Tadić was aware of this discriminatory intent already at the time of the forcible transfer of Osman Jašarević to Dubica on 25/26 May 1992. As the Trial Chamber infers to a considerable extent Miroslav Tadić's awareness of the perpetrators' discriminatory intent from the repeated practice of exchanges, it is not satisfied beyond reasonable doubt that Miroslav Tadić already at the first exchange on 25/26 May 1992 was aware of such discriminatory intent. Furthermore, the Trial Chamber does not accept the testimony of Osman Jašarević that Miroslav Tadić shouted on this occasion that everybody had to be exchanged. The Trial Chamber notes that no other witness of this or any other exchange testified about such a behaviour of Miroslav Tadić, and it is not satisfied beyond reasonable doubt that he made such a statement.

(iii) Simo Zarić

1045. The Trial Chamber finds that it has not been established beyond reasonable doubt that Simo Zarić was involved in any exchange of non-Serb civilians after the exchange on 4/5 July 1992 in Lipovac.

1046. The Trial Chamber is not satisfied that Simo Zarić participated in a joint criminal enterprise to persecute Osman Jašarević by forcibly transferring him from Bosanski Šamac to Dubica on 25/26 May 1992. With respect to the preparations for this exchange, the Trial Chamber has carefully considered the testimony of the persons involved in the conversations between the Serb and the Croat side, and prefers the testimony of Witness Q, to that of Simo Zarić. The Trial Chamber notes that Witness Q stated that Simo Zarić "was indeed in charge of negotiations concerning the exchange".

1047. The Trial Chamber further notes that during his testimony in open court, Witness DW 1/3 gave evidence that was partly inconsistent with what he had stated in an interview given to the Office of the Prosecutor in March 1996. In the latter he had said, "I know for certain that two of the Serb negotiators were Zarić and Veljko Maslić. Stjepan Mikić told me that he had spoken with Simo Zarić. Zarić arranged the exchange."<sup>2305</sup> During his testimony before the Trial Chamber, he stated that, "perhaps that sentence [sc. "Stjepan Mikić told me"] should have been placed before all of this [...] because I heard that from Stjepan Mikić so I don't know for certain".<sup>2306</sup> The Trial Chamber notes that Witness DW 1/3 had signed P162 after it had been read out to him in the Croatian language, and he had been informed at that time that the statement might be used in legal proceedings before the Tribunal. He was also informed that he might be called to give evidence in

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<sup>2305</sup> Witness DW 1/3, P162, Witness statement of DW 1/3 given to OTP in March, 1996, Under Seal.

<sup>2306</sup> Witness DW 1/3, T. 14887-88.

public before the Tribunal. The Trial Chamber also notes that between the date of the interview and the date of the trial testimony almost seven years had passed. For these reasons, the Trial Chamber relies on what Witness DW 1/3 said in P162 about Simo Zarić being one of the two “Serb negotiators” mentioned above in this paragraph.

1048. The Trial Chamber notes that Simo Zarić, together with Miroslav Tadić and Božo Ninković, was designated by the Crisis Staff to be involved in compiling lists with the names of Serbs who were detained in Odžak prior to this exchange, as he hailed from Trnjak Zorice in Odžak Municipality and could provide information on many of these detained Serbs. Therefore, the Trial Chamber is satisfied that Simo Zarić contributed to the forcible transfer of Osman Jašarević.

1049. However, the Trial Chamber is not satisfied that the Prosecution did adduce sufficient evidence to establish beyond reasonable doubt that Simo Zarić acted with a discriminatory intent or was aware of the persecutory intent of the participants in the joint criminal enterprise to persecute non-Serb civilians through forcible transfers, including that of Osman Jašarević. The Trial Chamber refers to what has been stated above with regard to Miroslav Tadić’s awareness of the discriminatory intent of the participants in the joint criminal enterprise to persecute Osman Jašarević by forcibly transferring him on 25/26 May 1992 to Dubica. Likewise, the Trial Chamber is not satisfied beyond reasonable doubt that Simo Zarić already at the first exchange on 25/26 May 1992 was aware of such discriminatory intent. Therefore, the Trial Chamber finds that Simo Zarić is not criminally responsible for the persecution of Osman Jašarević through his forcible transfer.

1050. The Trial Chamber is not satisfied that Simo Zarić participated in the unlawful deportation of Hasan Bičić, Witness A and Witness O on 4/5 July 1992 in Lipovac. Although the Trial Chamber accepts the evidence that Simo Zarić was present at the exchange site, the Trial Chamber finds that the Prosecution has not adduced sufficient evidence to prove beyond reasonable doubt that Simo Zarić’s presence or any other activity constituted a participation in the exchange. Instead, the Trial Chamber accepts that his presence was due to the request of the Prgomet family and was also to welcome friends and relatives.

## **B. COUNT 2: DEPORTATION**

1051. Taking into consideration what has been stated above, the Trial Chamber is satisfied beyond reasonable doubt that Blagoje Simić is criminally responsible as a perpetrator of the deportation of Dragan Lukač, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness K, Dragan Delić, Snjezana Delić, Nusret Hadžijusufović, Witness C, Hajrija Drljačić, Jelena Kapetanović, Witness A, Ediba Bobić, Witness O, and Witness Q.

1052. The Trial Chamber is also satisfied that it has been proven beyond reasonable doubt that Miroslav Tadić is criminally responsible as a perpetrator for the deportation of Dragan Lukač, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness K, Dragan Delić, Snjezana Delić, Nusret Hadžijusufović, Witness C, Hajrija Drljačić, Jelena Kapetanović, Witness A, Ediba Bobić, Witness O, and Witness Q. The Trial Chamber finds that sufficient evidence has been adduced to prove that Miroslav Tadić had the *actus reus* of deportation of the above-mentioned non-Serb civilians.

1053. With regard to his *mens rea*, the Trial Chamber does not accept Miroslav Tadić's statements that he never wished that some of his fellow citizens would leave forever, and that there was always a possibility to return.<sup>2307</sup> The Trial Chamber is satisfied beyond reasonable doubt that the Prosecution has adduced sufficient evidence to prove that Miroslav Tadić had the intent to permanently displace non-Serb civilians from their homes in the Municipality of Bosanski Šamac. The Majority is satisfied that the only inference from his substantial and continuing activity in the exchange of non-Serb civilians is that Miroslav Tadić had the intent that these non-Serb civilians are not returning, or that he at least knew that his actions were likely to permanently displace these non-Serb civilians and was reckless thereto.

1054. With regard to the allegations that Miroslav Tadić had accepted bribes of non-Serb civilians who wanted to be exchanged, the Trial Chamber finds that such allegations have not been proved beyond reasonable doubt.

1055. As Osman Jašarević was not forcibly displaced over a national border, Simo Zarić can not be held criminally responsible for this offence pursuant to Article 5 (d) of the Statute.

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<sup>2307</sup> Miroslav Tadić, T. 15504, T. 15506, T. 15786, T. 15796.

## XVIII. SENTENCING CONSIDERATIONS

### A. Preliminary consideration: cumulative convictions

1056. In accordance with the Appeals Chamber jurisprudence on cumulative convictions, the Trial Chamber takes into consideration in the determination of sentence the test applicable to cumulative convictions. In the present case, Blagoje Simić, stands convicted of persecutions, for, among others, deportation. Based on the same conduct, he is also found guilty of deportation as a crime against humanity. Miroslav Tadić is convicted of the crime of persecution through deportation, and is also found guilty of deportation as a crime against humanity, based on the same conduct.

1057. Cumulative convictions, i.e. convictions for different crimes under the Statute based on the same conduct, are permissible only if each crime involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other. Where this test is not met, the Chamber must enter the conviction only for the crime with a materially distinct element, as being the more specific crime.<sup>2308</sup>

1058. Both persecution and deportation as crimes against humanity require a demonstration that they were committed within the context of a widespread or systematic attack directed against a civilian population. A charge of persecution, in addition, requires proof that the acts supporting the charge were committed with a discriminatory intent. The crime of deportation as a crime against humanity does not contain an element which is materially distinct from the crime of persecution. As persecution requires the materially distinct element of discriminatory intent, it is the more specific provision. Therefore, a conviction is entered for persecution, but not for deportation, concerning the relevant conduct found to constitute the persecution charge.

### B. Applicable law: sentencing factors<sup>2309</sup>

1059. The jurisprudence of the Tribunal emphasises deterrence and retribution as the main general sentencing factors.<sup>2310</sup> Following these principles, the penalty imposed must be proportionate to the gravity of the crime and the degree of responsibility of the offender, and such penalty must have sufficient deterrent value to ensure that those who would consider committing like crimes will be dissuaded from so doing. The principle of retribution also allows a Trial Chamber to express the outrage of the international community at the commission of heinous crimes such as those

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<sup>2308</sup> *Čelebići* Appeal Judgement, paras 412-413 (as worded in *Krnjelac*).

<sup>2309</sup> The Trial Chamber has noted the arguments of the Prosecution and the Defence on the law applicable to sentencing and observes that they accept the existing jurisprudence of the Tribunal.



adjudicated before the Tribunal.<sup>2311</sup> Both these general sentencing factors form the backdrop against which the sentences of Blagoje Simić, Miroslav Tadić and Simo Zarić will be determined.

1060. The factors to be taken into account in determining the sentence for an individual accused are expressed in Article 24 of the Statute and in Rule 101 (B) of the Rules. These include the gravity of the crime, the individual circumstances of the Accused, any aggravating or mitigating circumstances, and the general practice regarding prison sentences in the courts of the former Yugoslavia. The relevant provisions are set forth below:

#### Article 24

##### Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

#### Rule 100

#### Sentencing Procedure on a Guilty Plea

- (A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
- (B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Sub-rule 102 (B).

#### Rule 101

##### Penalties

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
  - (i) any aggravating circumstances;
  - (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
  - (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

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<sup>2310</sup> *Todorović* Sentencing Judgement, paras 28-29; *Krnojelac* Trial Judgement, para. 508; *Kunarac* Trial Judgement, para. 838; *Čelebići* Appeal Judgement, para. 806; *Furundžija* Trial Judgement, para. 288; *Tadić* Sentencing Judgement (1999), para. 9.

<sup>2311</sup> *Stakić* Trial Judgement, para. 899-902.

- (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

1061. When determining a sentence, the Trial Chamber must take into account the totality of the criminal conduct of the convicted persons. The details of the criminal conduct forming the basis of the convictions of the Accused, including the form and degree of participation of the Accused, have already been set out above, and will not be repeated in the context of this section.

(a) The gravity of the crime

1062. Trial Chambers have consistently viewed the gravity of the offence as “the primary consideration in imposing sentence”.<sup>2312</sup> The Appeals Chamber endorsed the following statement by the Trial Chamber in *Kupreškić*:

The sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.<sup>2313</sup>

1063. Crimes against humanity are inherently very serious crimes. In addition, persecution, is the only crime listed in Article 5 which requires a discriminatory intent.<sup>2314</sup> As set out above, acts found to constitute persecution are acts of the utmost gravity which entail the gross or blatant violations of fundamental human rights with the intention to discriminate on racial, religious or political grounds. All the constitutive acts of the persecutorial campaign found to be made out on the evidence are serious in themselves.<sup>2315</sup> The Trial Chamber has taken into account their scale and cumulative effect within the Municipality of Bosanski Šamac. Further, for Persecutions to qualify as a crime against humanity, proof of the following elements is required: that “objectively the acts of the accused are linked geographically as well as temporally with the armed conflict”;<sup>2316</sup> that the acts of the accused were related to a widespread or systematic attack directed against any civilian population.<sup>2317</sup> In addition, the accused must have known that his acts were part of the attack, or at least have taken the risk that his acts were part of the attack. The Appeals Chamber accepted that this does not entail knowledge of the details of the attack.<sup>2318</sup> When charged as a crime against humanity, these offences are one element of an extensive criminal conduct. As the elements of these

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<sup>2312</sup> *Čelebići* Appeal Judgement, para. 731.

<sup>2313</sup> *Ibid*, (citing *Kupreškić* Trial Judgement, para. 852).

<sup>2314</sup> *Stakić* Trial Judgement, para. 907; *Todorović* Sentencing Judgement, para. 32.

<sup>2315</sup> *Stakić* Trial Judgement, para. 907.

<sup>2316</sup> *Kunarac* Appeal Judgement, para. 83.

<sup>2317</sup> *See Kunarac* Appeal Judgement, paras 85-100.

<sup>2318</sup> *Kunarac* Appeal Judgement, para. 102.

offences, such as the civilian character of the victims, and the discriminatory intent, form part of the requisite elements for the crimes charged to be made out, they will not be considered separately as aggravating factors.<sup>2319</sup>

(b) Aggravating circumstances

1064. The Appeals Chamber in *Čelebići* held that “only those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused’s sentence or taken into account in aggravation of that sentence.”<sup>2320</sup> Only the circumstances directly related to the commission of the offence charged may be seen as aggravating.<sup>2321</sup>

(c) Mitigating circumstances

1065. Rule 101 (B)(ii) of the Rules provides that the Trial Chamber, in determining the sentence, shall take into account “any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction.” Mitigating circumstances need only be proven on the balance of probabilities and not beyond a reasonable doubt.<sup>2322</sup>

1066. A Trial Chamber has the discretion to consider any factors that it considers to be of a mitigating nature.<sup>2323</sup> Mitigating factors will vary with the circumstances of each case. In previous cases, Chambers of the Tribunal have found the following factors to be mitigating: voluntary surrender, guilty plea, co-operation with the Prosecution, youth, expression of remorse, good character with no prior criminal conviction, family circumstances, acts of assistance to victims, diminished mental capacity, and duress.<sup>2324</sup> Remorse has been considered as a mitigating factor in a

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<sup>2319</sup> *Stakić* Trial Judgement, para. 903-04.

<sup>2320</sup> *Ibid*, para. 763.

<sup>2321</sup> *Stakić* Trial Judgement, para. 911.

<sup>2322</sup> *Sikirica* Sentencing Judgement, para. 110 (referring to *Kunarac* Trial Judgement, para. 847).

<sup>2323</sup> *Krstić* Trial Judgement, para. 713.

<sup>2324</sup> Voluntary surrender: *Kupreškić* Trial Judgement, paras 853, 860, 863; *Kupreškić* Appeal Judgement, para. 430; *Kunarac* Trial Judgement, para. 868. Admission of guilt: *Kupreškić* Appeal Judgement, para. 464; *Jelišić* Appeal Judgement, para. 122; *Sikirica* Sentencing Judgement, paras 148-151, 192-93, 228; *Todorović* Sentencing Judgement, paras 75-82; *Erdemović* Sentencing Judgement (1998), para. 16(ii). Cooperation with OTP: *Kunarac* Trial Judgement, para. 868; *Kupreškić* Appeal Judgement, para. 463; *Todorović* Sentencing Judgement, paras 83-88; *Tadić* Sentencing Judgement (1999), paras 21-22; *Aleksovski* Trial Judgement, para. 238; *Erdemović* Sentencing Judgement (1998), para. 16(iv). Young age: *Jelišić* Appeal Judgement, paras 129, 131; *Furundžija* Trial Judgement, para. 284; *Blaškić* Judgement, para. 778; *Erdemović* Sentencing Judgement (1998), para. 16(i). Remorse: *Sikirica* Sentencing Judgement, paras 152, 194, 230. *Todorović* Sentencing Judgement, paras. 89-92; *Erdemović* Sentencing Judgement (1998), para. 16(iii). Character: *Krnojelac* Trial Judgement, para. 519; *Kupreškić* Trial Judgement, para. 478. *Kupreškić* Appeal Judgement, para. 459. *Aleksovski* Trial Judgement, para. 236; *Erdemović* Sentencing Judgement (1998), para. 16(i). Family circumstances: *Kunarac* Appeal Judgement, paras 362 and 408; *Tadić* Sentencing Judgement (1999), para. 26; *Erdemović* Sentencing Judgement (1998), para. 16(i). Acts of assistance to victims: *Krnojelac* Judgement, para. 518; *Sikirica* Sentencing Judgement, paras 195 and 229; *Kupreškić* Trial Judgement, para. 860. Diminished mental capacity: *Čelebići* Appeal Judgement, paras 590, 841. Duress: *Erdemović* Sentencing Judgement (1998), para. 17.

number of cases before the Tribunal.<sup>2325</sup> In order to accept remorse as a mitigating factor, a Trial Chamber must be satisfied that the expressed remorse is sincere.

1067. A circumstance that the Trial Chamber is specifically required to consider in mitigation of the sentence pursuant to Rule 101 (B)(ii) is the “substantial co-operation with the Prosecution by the convicted person before or after conviction”. In the *Blaškić* case, the Trial Chamber laid down the conditions under which an accused’s co-operation with the Prosecution may qualify as a mitigating factor:

Co-operation with the Prosecutor is the only circumstance explicitly provided for within the terms of the Rules. By this simple fact, it takes on a special importance. The earnestness and degree of co-operation with the Prosecutor decides whether there is reason to reduce the sentence on this ground. Therefore, the evaluation of the accused’s co-operation depends both on the quantity and quality of the information he provides. Moreover, the Trial Chamber singles out for mention the spontaneity and selflessness of the co-operation which must be lent without asking for something in return. Providing that the co-operation lent respects the aforesaid requirements, the Trial Chamber classes such co-operation as a “significant mitigating factor”.<sup>2326</sup>

(d) The general practice regarding prison sentences in the courts of the former Yugoslavia

1068. Article 24(1) of the Statute and Rule 101 (B)(iii) of the Rules require the Trial Chamber, in determining a sentence, to take into account the general practice regarding prison sentences in the courts of the former Yugoslavia. The Appeals Chamber interpreted these provisions as follows:

It is now settled practice that, although a Trial Chamber should “have recourse to” and should “take into account” this general practice regarding prison sentences in the courts of the former Yugoslavia, this “does not oblige the Trial Chambers to conform to the practice; it only obliges the Trial Chambers to take account of that practice.” ... Trial Chambers are not *bound* by the practice of courts in the former Yugoslavia in reaching their determination of the appropriate sentence for a convicted person.<sup>2327</sup>

1069. Article 34 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (“SFRY Criminal Code”), which was in force when the offences were committed, provides for imprisonment, among other forms of punishment.<sup>2328</sup>

1070. Although there is no provision in the SFRY Criminal Code relating to crimes against humanity specifically,<sup>2329</sup> Article 142 (“War Crimes against the Civilian Population”) prohibits criminal conduct which corresponds to the offence of which the Accused stand convicted, namely, Persecution as a crime against humanity. This Article provides that “whoever in violation of rules

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<sup>2325</sup> *Todorović* Sentencing Judgement, para. 89; *Milan Simić* Sentencing Judgement, para. 94; *Erdemović* Sentencing Judgement, para. 16 (iii).

<sup>2326</sup> *Blaškić* Trial Judgement, para. 785; *Todorović* Sentencing Judgement, para. 86.

<sup>2327</sup> *Čelebići* Appeal Judgement, paras 813 and 816 (internal citations omitted).

<sup>2328</sup> Article 34 (Types of Punishment): The following punishments may be imposed on the perpetrators of criminal acts: (1) capital punishment; (2) imprisonment; (3) fine; (4) confiscation of property.

<sup>2329</sup> Chapter 16 of the SFRY Criminal Code, in which Article 142 is found, is entitled “Crimes against Humanity and International Law”.

of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to ... torture, inhuman treatment... causing great suffering or serious injury to body and health..." shall be punished by imprisonment for not less than five years, and up to the death penalty.

1071. Article 38 sets out the terms of imprisonment that may be imposed under the SFRY Criminal Code. It provides that for criminal acts for which a fifteen year sentence can be imposed, when the offence was perpetrated under particularly aggravating circumstances or caused especially grave consequences, a punishment of twenty years can be imposed. Additionally, where criminal acts are eligible for the death penalty, the court may impose a maximum sentence of 20 years' imprisonment in lieu thereof.<sup>2330</sup>

1072. Thus, under the criminal provisions in effect in the former Yugoslavia at the time the offences for which the Accused stand convicted were committed, the crime of Persecution would have attracted a sentence of between 5 and 20 years' imprisonment.

1073. Article 41 of the SFRY Criminal Code lays down the "general rules for determining sentence", and states, in part, that:

A court shall determine sentence for the perpetrator of a crime within the boundaries prescribed by the code for this crime, bearing in mind the purpose of punishment and taking into account all circumstances influencing the degree of severity (mitigating and aggravating circumstances, and, in particular: the level of criminal responsibility, the motive for the crime, the level of threat to or violation of protected assets, the circumstances under which the crime was committed, the previous character of the perpetrator, his/her personal circumstances and conduct after the commission of the crime, and other circumstances relating to the personality of the perpetrator.

1074. In accordance with the jurisprudence of the Tribunal, the Trial Chamber will consider the sentencing practice of the courts of the former Yugoslavia, although it is not bound by such practice, in the determination of a sentence.<sup>2331</sup>

(e) Pattern of sentences

1075. The Trial Chamber notes that a range or pattern of sentences within the Tribunal does not exist as yet.<sup>2332</sup> The Appeals Chamber held that a Trial Chamber may only have regard to sentences pronounced in other cases before the Tribunal in substantially similar circumstances.<sup>2333</sup>

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<sup>2330</sup> See *Stakić* Trial Judgement, para. 890.

<sup>2331</sup> *Čelebići* Appeal Judgement, paras 813 and 820; *Kupreškić* Appeal Judgement, para. 418; *Kunarac* Appeal Judgement, para. 349.

<sup>2332</sup> *Čelebići* Appeal Judgement, para. 758.

<sup>2333</sup> *Čelebići* Appeal Judgement, para. 758.

### C. Determination of sentences

1076. The Prosecution generally submits that the Trial Chamber should take into account “at least three aggravating circumstances” in determining the appropriate sentence for each Accused: (1) the willingness of the Accused’s participation in the persecutory campaign;<sup>2334</sup> (2) the duration of the criminal conduct, which is longer than two months and therefore, according to the *Kunarac* Appeals Chamber, is long enough to aggravate the sentence for the offence;<sup>2335</sup> (3) the personality, responsibility, educational background and intelligence of each Accused.<sup>2336</sup>

1077. The Prosecution requests that Blagoje Simić’s be sentenced to between 20 and 25 years in prison,<sup>2337</sup> Miroslav Tadić between 15 and 20 years,<sup>2338</sup> and Simo Zarić between 10 and 15 years.<sup>2339</sup>

#### 1. Blagoje Simić

##### (a) Aggravating circumstances

##### (i) Gravity of the offence and manner in which the crimes were committed

1078. Based on the above findings in relation to the criminal responsibility of Blagoje Simić, the Trial Chamber is satisfied that Blagoje Simić was a leading member of the joint criminal enterprise, which purpose was the taking of power in the Bosanski Šamac Municipality, and entailed the removing of Bosnian Muslims and Bosnian Croats, regardless of whether they opposed the takeover or not. Blagoje Simić was the most prominent representative of the civilian authorities to take part in the enterprise. The Trial Chamber accepts that occurrence of an armed conflict in neighbouring Croatia, and the atmosphere of increasing tensions within the Municipality were difficult times and a “time of great uncertainty”<sup>2340</sup>. These circumstances, however, do not account for Blagoje Simić’s deliberate participation in the unfolding criminal events.

1079. Even though he had a demanding work as a medical doctor, Blagoje Simić chose to become involved at the highest level of the civilian authorities within the Bosanski Šamac Municipality, and assumed an active role, encompassing all aspects of life in the Municipality. Even though Blagoje Simić wounded himself accidentally in July 1992, and claimed to have played a minor role in the months following because of his injury, the Trial Chamber is not satisfied that his role in the

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<sup>2334</sup> Prosecution Final Brief, para. 380

<sup>2335</sup> Prosecution Final Brief, para. 381.

<sup>2336</sup> Prosecution Final Brief, para. 382.

<sup>2337</sup> Prosecution Final Brief, para. 394.

<sup>2338</sup> Prosecution Final Brief, para. 394.

<sup>2339</sup> Prosecution Final Brief, para. 408.

campaign of persecution became less important, as there is no evidence that he was replaced as President. Had Blagoje Simić had doubts as to the propriety of events taking place in the Municipality, in particular as to the mistreatment meted out to the persons detained, which was brought to the attention of the Crisis Staff, he could have used the period after his injury to distance himself from the activities of the authorities in the Municipality.

1080. Further, there is no evidence that Blagoje Simić expressed concern as to the developments taking place or that he tried to alleviate the plight of those who were detained and subjected to mistreatment, including forced labour assignments. On one occasion, Sulejman Tihić, a political leader, asked for Blagoje Simić's assistance in order to be released. Blagoje Simić ignored the request. The Trial Chamber accepts the evidence that Blagoje Simić, through his activities with the Crisis Staff, helped to improve the daily life conditions of some inhabitants of Bosanski Šamac, regardless of their ethnicity. This, however, does not detract from the fact that he was actively participating in the persecution of Bosnian Muslims and Croats at the same time.

1081. Blagoje Simić chose to be associated with members of the military, the police, and Serbian paramilitaries. In particular, he chose to continue to be involved in activities along with paramilitaries, and members of the police, who were known for their violent and brutal behaviour. In particular, despite having had strong disagreements with Stevan Todorović, and generally disapproving of his behaviour, Blagoje Simić chose to be involved with him as a member of the same joint criminal enterprise. All these elements lead the Trial Chamber to consider Blagoje Simić as one of the principal participants in the campaign of persecution which befell non-Serbs in the Municipality of Bosanski Šamac.

(ii) Position of Blagoje Simić as President of the Crisis Staff/War Presidency

1082. The Trial Chamber agrees with the Prosecution submission<sup>2341</sup> that Blagoje Simić's position as the President of the Crisis Staff, and later of the War Presidency should be considered as an aggravating factor, particularly as he headed these institutions throughout their entire existence.<sup>2342</sup> As noted above, as the most important civilian leader within the Municipality, he had a particular responsibility towards the entire population, even in times of armed conflict. As noted in Stakić, the "commission of offences by a person in such a prominent position aggravates the sentence substantially."<sup>2343</sup>

(iii) Status of the victims and effects of the offences on the victims

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<sup>2340</sup> Simić Final Brief, para. 679.

<sup>2341</sup> Prosecution Final Brief, para. 388.

1083. The Trial Chamber finds that the victims were in a position of acute vulnerability, being in the custody and control of the Bosanski Šamac authorities: they all had been in detention for several months, in several detention places, and suffered extensive and brutal beatings at the hands of others; they were defenceless and had no possibility to protect themselves. In addition, most of the victims were personally known by Blagoje Simić.

(iv) Personal circumstance: education

1084. The Trial Chamber agrees with the Prosecution<sup>2344</sup> that the fact that Blagoje Simić is intelligent, educated and a member of the medical profession constitute an aggravating circumstance. This is especially so in light of the fact that the systematic brutal mistreatment of Bosnian Muslim and Bosnian Croat detainees was brought to his attention, and he appears to have done nothing to alleviate their hardship. The Trial Chamber agrees with the approach taken in cases before the ICTR, and in *Stakić* that the professional background of Blagoje Simić as a medical doctor is an aggravating factor, although not a significant one.<sup>2345</sup>

(b) Mitigating circumstances

1085. The Prosecution submits that no mitigating factors exist in his favour.<sup>2346</sup>

(i) Voluntary surrender

1086. The Trial Chamber accepts that Blagoje Simić surrendered voluntarily on 12 March 2001 to the custody of the Tribunal. However, although this fact is a mitigating circumstance in itself, the Trial Chamber notes that Blagoje Simić, surrendered approximately three years after Miroslav Tadić and Simo Zarić, who also lived in Bosanski Šamac up until their surrender. The Trial Chamber does not find that the weight given to Blagoje Simić's surrender should be significant.

(ii) Remorse

1087. The Trial Chamber is not satisfied that Blagoje Simić demonstrated any genuine remorse.

(iii) Personal circumstances (age, character, family circumstances)

1088. The Trial Chamber does not challenge the truthfulness of the statements on Blagoje Simić's "good character" and behaviour before the armed conflict. It does not, however, find that such

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<sup>2342</sup> Prosecution Final Brief, para. 388.

<sup>2343</sup> *Stakić* Trial Judgement, para. 913.

<sup>2344</sup> Prosecution Closing Statement, T. 20406.

<sup>2345</sup> *Stakić* Trial Judgement, para. 915, referring in footnote 1626 1627 to two ICTR cases.

<sup>2346</sup> Prosecution Final Brief, para. 391.



statements are sufficient to counter the fact that at the time for which he stands convicted he exercised discriminatory intent. The Trial Chamber takes into account the age of Blagoje Simić at the time he committed the offences, 33 years old, and the fact that he is married and has three young children.

(iv) No prior criminal convictions

1089. The Trial Chamber accepts that Blagoje Simić has no prior criminal convictions, and this is taken into consideration as a mitigating factor.

(v) Comportment in the Detention Unit and general attitude towards the proceedings

1090. The Trial Chamber considers as a mitigating factor Blagoje Simić's consent on 27 March 2002 that a new Judge be appointed pursuant to Rule 15*bis*. The fact that Blagoje Simić chose to testify at the beginning of the Defence case is taken into account as a mitigating factor.

1091. The Trial Chamber accepts the Report submitted by the Deputy Commander of the Detention Unit testifying to the good conduct of Blagoje Simić while in detention.

(c) Comparison with other cases before the Tribunal or the ICTR

1092. The Trial Chamber finds that the cases referred to by the Defence may not be considered as substantially similar. The Defence rightly noted that, at the time of the written and oral closing arguments, there were no cases by either of the Tribunals that adjudge a civilian leader who did not directly engage in crimes.<sup>2347</sup> In relation to the *Bagilishema* case, the Trial Chamber observes that the Trial chamber in that case found that the accused had attempted all he could in order to change the course of events. In addition, he appears to have had more powers than Blagoje Simić.

## 2. Miroslav Tadić

(a) Aggravating circumstances

(i) Gravity of the offence and manner in which the crimes were committed

1093. The Trial Chamber has found Miroslav Tadić guilty of aiding and abetting the joint criminal enterprise of persecution, because of his role in the exchanges. Miroslav Tadić was an actively involved in the process of exchanges, and in particular in drawing up lists of people who would be exchanged, and negotiating with the other side. His participation as an aider and abetter in

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<sup>2347</sup> Simić Final Brief, para. 693.

the process of exchanges started in April 1992 and lasted until 31 December 1993, namely, more than one and a half year.

(ii) Status of the victims and effects of the offences on the victims

1094. As noted in relation to Blagoje Simić, the victims of the campaign of persecution were particularly vulnerable and defenceless. Not all persons exchanged were detained under inhumane conditions and found to have been unable to consent freely to their exchange. Other civilians, although not detained, also found themselves in an environment which did not allow them to exercise a genuine choice. Miroslav Tadić was aware of these circumstances, and nonetheless chose to participate in the process of exchanges, which in practice removed their victims from their homes and community against their will.

(iii) Personal circumstance: education

1095. The Trial Chamber finds that the fact that Miroslav Tadić, as a school teacher, is an intelligent and educated man is an aggravating factor. Miroslav Tadić was 56 at the time of the offences.

(b) Mitigating factors

(i) Benevolent acts

1096. The Trial Chamber accepts the evidence showing that Miroslav Tadić helped some Bosnian Muslims during the war. Further, although Miroslav Tadić is found to have substantially contributed to exchanges found to constitute deportation, his motives were to help “the other side to find their relatives so that the other side would do the same for the Serbs”.<sup>2348</sup>

(ii) Voluntary surrender

1097. Although Miroslav Tadić surrendered on 14 February 1998, and thus arguably, a significant period of time after becoming aware of the existence of an Indictment against him, the Trial Chamber finds this to constitute a mitigating circumstance, as at the time, he was one of the first accused persons to voluntarily surrender to the custody of the Tribunal.

(iii) Remorse

1098. The Trial Chamber accepts that Miroslav Tadić expressed genuine remorse and finds this to be a mitigating circumstance.

(iv) Personal circumstances (age, character, family circumstance)

1099. The Trial Chamber accepts that the statements submitted by the Tadić Defence show his prior good character, and notes that Prosecution witnesses also testified to his prior positive personality. The Trial Chamber heard evidence from both Prosecution and Defence witnesses that he was a popular local figure in Bosanski Šamac and that people from all ethnicities frequented his café before the armed conflict. The Trial Chamber also takes into account Miroslav Tadić's age, 66 years old. The Trial Chamber notes the medical report submitted on 26 June 2003 indicating poor health.

(v) No prior criminal conviction

1100. The Trial Chamber accepts that Miroslav Tadić was never criminally convicted and finds this to be a mitigation circumstance.

(vi) Comportment in the Detention Unit and general attitude towards the proceedings

1101. The Trial Chamber finds that the fact that Miroslav Tadić chose to testify on his own behalf a mitigating circumstance, although it would have been accorded more weight if he had chosen to do so earlier in the presentation of his case. The Trial Chamber agrees with the Defence submission that Miroslav Tadić demonstrated a cooperative attitude towards the Prosecution, by contacting the Office of the Prosecutor first, and by giving two interviews after his surrender, and finds that these factors are mitigating. The Trial Chamber further considers as a mitigating factor Miroslav Tadić's consent on 27 March 2002 that a new Judge be appointed pursuant to Rule 15*bis*.

1102. The Trial Chamber takes into account the Report submitted by the Commander of the Detention Unit testifying to the good conduct of Miroslav Tadić while in detention.

### 3. Simo Zarić

(a) Aggravating circumstances

(i) Gravity of the offence and manner in which the crimes were committed

1103. The intrinsic gravity of the crime of persecution has been outlined above. The Trial Chamber has found Simo Zarić guilty of having aided and abetted several of the criminal acts forming the underlying acts of persecution pursuant to a joint criminal enterprise. Simo Zarić admitted himself that there was a campaign of persecution in Bosanski Šamac pursuant to which

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<sup>2348</sup> T. 15303.

Bosnian Muslim and Croats were targeted. Simo Zarić's conduct's constituted a significant participation.

1104. Simo Zarić has been found by the Trial Chamber to have been an active member of the 4<sup>th</sup> Detachment. In particular, Simo Zarić participated in the establishment of the Detachment and advocated it publicly. Although members of the 4<sup>th</sup> Detachment were not found to have been members of the joint criminal enterprise, it was under the authority of the 17<sup>th</sup> Tactical Group which participated actively in the events forming the basis of the joint criminal enterprise.

1105. By accepting to conduct interrogations of detainees he knew were subjected to brutal mistreatment, Simo Zarić allowed such mistreatment to continue and prolonged the unlawful detention of detainees. The Trial Chamber has accepted that Simo Zarić's initiative to transfer a group of detainees from the TO in Bosanski Šamac to JNA barracks in Brčko may have temporarily allowed for an improvement of their detention conditions. This act, however, may also be regarded as indicative that Simo Zarić had the power, due to his status within the 4<sup>th</sup> Detachment, to influence the course of events, and did not use it at other times, or later when most of the same detainees were brought back to Bosanski Šamac, to the schools for further detention.

1106. The Trial Chamber takes into account that Simo Zarić's criminal conduct lasted for three months, a comparably short period.

(ii) Status of victims and effect of the offences on the victims

1107. As noted above, the victims of the crime which Simo Zarić aided and abetted were defenceless and subjected to systematic and brutal mistreatment.

(iii) Personal circumstances: education and status

1108. The Trial Chamber finds Simo Zarić's education and background to be aggravating circumstances. The Trial Chamber accepts, that due to the various positions he occupied, including that of chief of the Public Security Station in Bosanski Šamac prior to the armed conflict, Simo Zarić was a respected community leader, whose conduct influenced or supported others.

(b) Mitigating circumstances

(i) Benevolent acts during the time-period of the Amended Indictment

1109. There is some evidence before the Chamber that Simo Zarić attempted to change the course of events. Although this conduct had been taken into consideration in the determination of Simo Zarić's criminal liability, the Trial Chamber feels that some of these acts at the time also ought to be

taken into account in mitigation: (1) that in April 1992, Simo Zarić advocated the release of Sulejman Tihić, Witness N, and of Muslim members of the 4<sup>th</sup> Detachment who had been arrested and were detained at the SUP and TO; (2) that Simo Zarić initiated and organised the transfer of a group of detainees from the TO to the Brčko barracks, which some of the detainees testified saved their lives; (3) that Simo Zarić, as soon as he heard about the Crkvina massacre, took steps to report the matter to higher authorities within the Municipality and in Serbia; (4) that Simo Zarić conducted his interrogations humanely in that no beatings accompanied them, and proper records of interviews were made; (5) that Simo Zarić authored the “Thirteen Signatories” Report which documented some of the problems happening at the time, in an attempt to improve the situation.

(ii) Voluntary surrender

1110. The Trial Chamber accepts that Simo Zarić’s voluntary surrender to the custody of the Tribunal on 24 February 1998 constitutes a mitigating factor, as even though it occurred some time after the Indictment against him had come to his attention, Simo Zarić was one of the first accused from Republika Srpska to surrender.

(iii) Remorse

1111. The Trial Chamber accepts that Simo Zarić’s acceptance of remorse is genuine and qualifies as a mitigating circumstance.

(iv) Personal circumstances (age, character, family)

1112. The Trial Chamber accepts the evidence concerning Simo Zarić’s good character. The Trial Chamber has noted Simo Zarić’s family circumstances.

(v) No prior criminal conviction

1113. The Trial Chamber finds that the evidence demonstrating Simo Zarić’s lack of prior criminal conviction is a mitigating circumstance.

(vi) Comportment in detention and general attitude towards the proceedings

1114. The Trial Chamber accepts that Simo Zarić cooperated to a certain extent with the Office of the Prosecutor by accepting to undertake three interviews, after his surrender. The Trial Chamber considers as a mitigating factor Simo Zarić’s consent on 27 March 2002 that a new Judge be appointed pursuant to Rule 15*bis*. The Trial Chamber also notes the Report of the Deputy Commander of the Detention Unit testifying to the good conduct of Simo Zarić in detention. The Trial Chamber has however taken into consideration the incident referred to in the report.

## **XIX. DISPOSITION**

### **A. Sentence**

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, the Trial Chamber finds as follows.

#### **1. Blagoje Simić**

1115. A conviction is entered for Count 1 – Crime against humanity for persecutions based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians, cruel and inhumane treatment including beatings, torture, forced labour assignments, and confinement under inhumane conditions, and deportation and forcible transfer.

1116. No conviction is recorded for Count 2, as the Trial Chamber finds it to be impermissibly cumulative with Count 1.

1117. Count 3 is dismissed due to defects in the form of the Amended Indictment.

1118. The Trial Chamber by a majority, Judge Per-Johan Lindholm dissenting, sentences Blagoje Simić to a sentence of imprisonment for seventeen (17) years.

#### **2. Miroslav Tadić**

1119. The Trial Chamber by a majority, Judge Per-Johan Lindholm dissenting, enters a conviction for Count 1 – Crime against humanity for persecutions based upon deportation and forcible transfer.

1120. No conviction is recorded for Count 2, as the Trial Chamber finds it to be impermissibly cumulative with Count 1.

1121. Count 3 is dismissed due to defects in the form of the Amended Indictment.

1122. The Trial Chamber by a majority, Judge Per-Johan Lindholm dissenting, sentences Miroslav Tadić to a sentence of imprisonment for eight (8) years.

#### **3. Simo Zarić**

1123. The Trial Chamber by a majority, Judge Per-Johan Lindholm dissenting, enters a conviction for Count 1 – Crime against humanity for persecutions based upon cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions.

1124. The Trial Chamber acquits Simo Zarić of Count 2.

1125. Count 3 is dismissed due to defects in the form of the Amended Indictment.

1126. The Trial Chamber by a majority, Judge Per-Johan Lindholm dissenting, sentences Simo Zarić to a sentence of imprisonment for six (6) years.

**B. Credit for time served**

1127. Pursuant to Rule 101 (C), following his voluntary surrender to the custody of the Tribunal on 12 March 2001, and his subsequent detention at the Tribunal's Detention Unit, Blagoje Simić is entitled to credit for 949 days towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103 (A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

1128. Pursuant to Rule 101 (C), following his voluntary surrender to the custody of the Tribunal on 14 February 1998, and his subsequent detention at the Tribunal's Detention Unit, Miroslav Tadić is entitled to credit for 1568 days towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103 (A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

1129. Pursuant to Rule 101 (C), following his voluntary surrender to the custody of the Tribunal on 24 February 1998, and his subsequent detention at the Tribunal's Detention Unit, Simo Zarić is entitled to credit for 1558 days towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103 (A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

Judge Per-Johan Lindholm appends a separate and partly dissenting opinion.

Done in English and French, the English text being authoritative.

Dated this seventeenth day of October 2003,

At The Hague,

The Netherlands.

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Judge Florence Ndepele Mwachande Mumba  
Presiding

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Judge Sharon A. Williams

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Judge Per-Johan Lindholm

**[Seal of the Tribunal]**





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

Case No. IT-95-9-T  
Date: 17 October 2003  
Original: English

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**IN TRIAL CHAMBER II**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Sharon A. Williams  
Judge Per-Johan Lindholm

**Registrar:** Mr. Hans Holthuis

**Judgement:** 17 October 2003

**PROSECUTOR**

v.

**BLAGOJE SIMIĆ  
MIROSLAV TADIĆ  
SIMO ZARIĆ**

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**SEPARATE AND PARTLY DISSENTING OPINION OF JUDGE  
PER-JOHAN LINDHOLM**

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The Office of the Prosecutor:

Mr. Gramsci Di Fazio  
Mr. Philip Weiner  
Mr. David Re

Counsel for the Accused:

Mr. Igor Pantelić and Mr. Srdjan Vuković for Blagoje Simić  
Mr. Novak Lukić and Mr. Dragan Krgović for Miroslav Tadić  
Mr. Borislav Pisarević and Mr. Aleksandar Lazarević for Simo Zarić

## I. JOINT CRIMINAL ENTERPRISE

1. The Prosecution pleaded on 27 September 2002 that “the Prosecution case is one of a common purpose or joint criminal enterprise to persecute non-Serbs.”<sup>2349</sup> Likewise, the Prosecution stated in its Final Brief that “the Accused are jointly charged with participating in a common purpose to persecute non-Serbs in Bosanski Šamac, Odžak and elsewhere in Bosnia and Herzegovina [...]”,<sup>2350</sup> and in their Closing Arguments that “the words ‘acting in concert together’ [...] simply [mean] complicity in a joint criminal enterprise [...] to persecute”.<sup>2351</sup> The pleading was accepted as based on the so-called basic form of joint criminal enterprise.<sup>2352</sup> The majority of the Trial Chamber (“Majority”) states that certain persons, including, *inter alia*, Blagoje Simić and the 17<sup>th</sup> Tactical Group of the JNA, were participants in a joint criminal enterprise responsible for executing the common plan to persecute non-Serb civilians in Bosanski Šamac Municipality.<sup>2353</sup> The common plan is inferred from all the circumstances.<sup>2354</sup>

2. I dissociate myself from the concept or doctrine of joint criminal enterprise in this case as well as generally. The so-called basic form of joint criminal enterprise does not, in my opinion, have any substance of its own. It is nothing more than a new label affixed to a since long well-known concept or doctrine in most jurisdictions as well as in international criminal law, namely co-perpetration. What the basic form of a joint criminal enterprise comprises is very clearly exemplified by Judge David Hunt in his Separate Opinion in *Milutinović, Šainović and Ojdanić*.<sup>2355</sup> The reasoning in the *Kupreškić* Trial Judgement is also illustrative.<sup>2356</sup> The acts of – and the furtherance of the crime by – the co-perpetrators may of course differ in various ways.<sup>2357</sup> If something else than participation as co-perpetrator is intended to be covered by the concept of joint criminal enterprise, there seems to arise a conflict between the concept and the word “committed” in Article 7(1) of the Statute. Finally, also the *Stakić* Trial Judgement limited itself to the clear wording of the Statute when interpreting “committing” in the form of co-perpetration. *Stakić* requires that co-perpetrators “can only realise their plan insofar as they act together, but each individually can ruin the whole plan if he does not carry out his part. To this

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<sup>2349</sup> Confidential Prosecutor’s Response to the Motion of the Accused Blagoje Simić, Miroslav Tadić, and Simo Zarić for Judgement of Acquittal, 27 September 2002, para. 12.

<sup>2350</sup> Prosecution Final Brief, para. 7.

<sup>2351</sup> Prosecution Closing Arguments, T. 20290.

<sup>2352</sup> *Supra*, para. 155.

<sup>2353</sup> *Supra*, para. 984.

<sup>2354</sup> *Supra*, para. 987.

<sup>2355</sup> *Prosecutor v. Milutinović, Šainović and Ojdanić*, IT-99-37-AR72, Separate Opinion of Judge David Hunt on Challenge by Ojdanić to Jurisdiction *Joint Criminal Enterprise*, 21 May 2003, (“Separate Opinion in *Ojdanić*”), para. 13.

<sup>2356</sup> *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Judgement, 14 January 2000, paras 772, 782.

<sup>2357</sup> Judge Hunt, Separate Opinion in *Ojdanić*, para. 13.

extent he is in control of the act.”<sup>2358</sup> The *Stakić* Trial Judgement can, based on the doctrine of “power over the act” (“Tatherrschaft”), be read as distancing itself from the concept of joint criminal enterprise.<sup>2359</sup>

3. The so-called extended form of joint criminal enterprise is also in a clear manner exemplified in the Separate Opinion in *Ojdanić* by Judge Hunt.<sup>2360</sup> This form of joint criminal enterprise contains neither anything new. It defines the kind of *mens rea* regarded as sufficient to hold co-perpetrator A liable for a crime committed by co-perpetrator B going beyond their common plan. The *mens rea* according to the extended form of joint criminal enterprise is known in Civil Law countries as *dolus eventualis* and in several Common Law countries as (*advertent*) *recklessness*. Whether especially the latter form of *mens rea* was foreseen in the Statute and laid down in customary international law, as stated in the *Tadić* Appeal Judgement,<sup>2361</sup> is a question I leave aside.

4. In the Amended Indictment in this case the three accused are charged with persecutions “acting in concert together, and with other Serb civilian and military officials”,<sup>2362</sup> and “acting in concert with others”.<sup>2363</sup> Although the expressions are not linguistically identical and differ in meaning, it seems as if the expression “acting in concert together” should be the one agreed upon by the parties.<sup>2364</sup> The Prosecution submits that those words “cover exactly the same things” as the concept of “joint criminal enterprise”.<sup>2365</sup> The Defence argues that joint criminal enterprise cannot be inferred from “acting in concert together”.<sup>2366</sup> The stand taken by the Defence is partly correct, partly wrong. “Acting in concert together” and the basic form of joint criminal enterprise have exactly the same meaning, namely co-perpetration, whereas the extended form of joint criminal enterprise under no conditions can be inferred from the words “acting in concert together”.

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<sup>2358</sup> Quoting *Roxin, Claus*, Täterschaft und Tatherrschaft (Perpetration and control over the act), 6<sup>th</sup> ed. Berlin, New York, 1994, p. 278.

<sup>2359</sup> *Prosecutor v. Stakić*, IT-97-24-T, Judgement, 31 July 2003, paras 436-438.

<sup>2360</sup> Judge Hunt, Separate Opinion in *Ojdanić*, para. 13. See *Tadić* Appeal Judgement, para. 228 (“with regard to the third category [the extended form of joint criminal enterprise], what is required is the *intention* to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused willingly took that risk”). See also *Prosecutor v. Brdanin and Talić*, IT-99-36 PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 30.

<sup>2361</sup> *Tadić* Appeal Judgement, paras 224-229.

<sup>2362</sup> Amended Indictment, para. 11.

<sup>2363</sup> Amended Indictment, para. 13 (Blagoje Simić), para. 14 (Miroslav Tadić), and para. 15 (Simo Zarić).

<sup>2364</sup> *Supra*, paras 150-153.

<sup>2365</sup> T. 20290-91. The submission by the Prosecution (T. 20291) must be a mistake. It makes sense only if understood as referring to the basic form of joint criminal enterprise.

<sup>2366</sup> *Supra*, para. 148.

5. Having said this, I have given the reasons for my dissociation from the concept of “joint criminal enterprise”. The concept or “doctrine” has caused confusion and a waste of time, and is in my opinion of no benefit to the work of the Tribunal or the development of international criminal law.

## II. ABOUT DIFFERENT PLANS

6. The Majority concludes “that participants in the joint criminal enterprise acted in unison to execute a plan that included the forcible takeover of the town of Bosanski Šamac. [...] This common plan was aimed at committing persecution against non-Serbs [...]”<sup>2367</sup> In the following paragraph, the Majority states: “Prior to the takeover, members of the joint criminal enterprise worked together in preparation of the takeover of the town of Bosanski Šamac as part of the common plan of persecution”. A careful reading cannot lead to any other conclusion than that the takeover was planned and carried out with a persecutory intent, to make it possible for the Serbs to persecute the non-Serbs.

7. I fully agree that the takeover of power in Bosanski Šamac was planned and that it was carried out on 17 April 1992 by Serb police and the paramilitaries. However, I cannot agree with the finding by the Majority that the 17<sup>th</sup> Tactical Group of the JNA was involved in the takeover.<sup>2368</sup> On the contrary, the commander Lt. Col. Stevan Nikolić, Captain Radovan Antić and Simo Zarić expressed their surprise when they were informed about the takeover.<sup>2369</sup>

8. Neither can I agree with the Majority that the takeover was planned and implemented with the purpose of persecuting the non-Serb population. It might well be that some of the persons involved in the planning had such evil intentions, but there is no evidence to the effect that there existed a persecutory plan between the three accused or between any two of them or between any of them and any other persons. I view the evidence adduced and connected with the takeover in a different and broader way. Not to repeat what is already found in this judgement I only want to point out the most important relevant facts, and add a few others. The following facts are established:

- Since autumn 1991, there were growing tensions between the ethnic groups all over Bosnia and Herzegovina.
- The ethnic groups were more and more arming themselves.

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<sup>2367</sup> *Supra*, para. 987.

<sup>2368</sup> *Supra*, para. 990.

<sup>2369</sup> Stevan Nikolić, T. 18456-67, T. 18513-14; Radovan Antić, T. 16731; Simo Zarić, T. 19223-24.

- In Bosanski Šamac, the non-Serb population in the town, mostly Muslims under the leadership of Alija Fitozović, were arming themselves. He stated that he at one point had about 200 men under his command, but not enough weapons for all of them.<sup>2370</sup>
- A new TO was set up in the week prior to the takeover, mainly manned by Muslims.<sup>2371</sup>
- The Serb community in Bosanski Šamac was surrounded by hostile armed forces, either paramilitaries or regular Croatian armed forces, to the West, the North and the East.
- Among the Serbs in Bosanski Šamac there was a widespread and grave fear of an attack from outside the municipality, and as a result great numbers of Serbs fled the municipality or the men transferred their families to other, safer parts of Bosnia and Herzegovina.
- There was reliable intelligence about the risk of an imminent armed attack from outside the municipality in which the armed non-Serbs within the municipality would have participated.<sup>2372</sup>
- After the takeover, there was frequent shelling of Bosanski Šamac from Croatia at the time relevant to the facts alleged in the Amended Indictment.

9. In light of all these facts I regard the takeover by the Serbs and the disarming of the non-Serbs as a pre-emptive armed operation, justified by avoiding an inter-ethnic bloodshed or even bloodbath.<sup>2373</sup> I agree with the Majority that the takeover *per se* did not constitute any crime.<sup>2374</sup> The tragedy that followed the takeover was in my view according to the evidence presented at the trial not a result of any previous plan amongst certain individuals. The situation went out of control due to the activities of a number of criminals who opened the sluice-gate to evil, which thereafter was willingly accepted and used by malicious and easily-led people.

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<sup>2370</sup> Alija Fitozović, T. 8387. See *supra*, para. 254.

<sup>2371</sup> *Supra*, para. 260 (with references).

<sup>2372</sup> See Čedomir Simić, Rule 92*bis* Statement, paras 4-5.

<sup>2373</sup> Simo Zarić, T. 20095-98.

<sup>2374</sup> *Supra*, para. 456.

### III. THE LIABILITY OF THE ACCUSED

#### Blagoje Simić

##### 1. Count 1 (persecutions as a crime against humanity) – Underlying omissions

10. I am satisfied that Blagoje Simić was aware of the unlawful arrests and detention of non-Serb civilians, the cruel and inhumane treatment, the forced labour, and the deportation and forcible transfer as these acts are described in the findings of the Trial Chamber. He did not order these acts to be carried out, nor did he personally take part in them. With the exception of deportation and forcible transfer, I don't find any evidence showing that he explicitly accepted the aforementioned acts. As the highest-ranking civilian official in Bosanski Šamac, however, it was his duty to do his utmost to prevent these acts and to protect the non-Serb civilian population. Instead of resorting to effective measures through the help of other high authorities, or to resign from office, he remained rather passive. He clearly omitted to do his duty.

11. As far as *mens rea* is concerned, I find that Blagoje Simić was aware of the discriminatory intent of the perpetrators of the above-mentioned acts, but, with exception for deportation and forcible transfer, he did not share this intent. His omissions to act had a substantial effect on the perpetration of the acts in question. As far as deportation and forcible transfer are concerned, I find *actus reus* in the form of omission to prevent the act. Like the Majority, I am satisfied that Blagoje Simić had the necessary *mens rea*, the intent to permanently displace the persons mentioned in the judgement on discriminatory grounds.<sup>2375</sup> I find him therefore guilty of persecutions as a co-perpetrator.

##### 2. Count 2 (deportation as a crime against humanity)

12. I am satisfied beyond reasonable doubt on the grounds I have mentioned above that Blagoje Simić is guilty as a co-perpetrator of the deportation of the persons named in the judgement as a crime against humanity.<sup>2376</sup>

#### Miroslav Tadić

13. The Majority finds Miroslav Tadić guilty on Count 1 and Count 2, entering a conviction for Count 1 only.

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<sup>2375</sup> *Supra*, para. 1038.

<sup>2376</sup> *Supra*, para. 1051.

14. I concur with this finding of the Majority insofar as I am also convinced that Miroslav Tadić substantially contributed to the deportation of Dragan Lukač, Hasan Bičić, Muhamed Bičić, Ibrahim Salkić, Esad Dagović, Witness K, Dragan Delić, Snjezana Delić, Nusret Hadžijusufović, Witness C, Hajrija Drljačić, Jelena Kapetanović, Witness A, Ediba Bobić, Witness O, and Witness Q. In his interviews with the Prosecution and throughout his testimony given before this Trial Chamber, Miroslav Tadić has never tried to conceal or underestimate his involvement in the practical arrangements for exchanges. In this context, I want to emphasize that Miroslav Tadić was not the inventor of the exchanges. I am convinced that the evidence showed that it was other members of the Crisis Staff who initially set the wheels of exchanges turning, and that such engagement of the Crisis Staff materialized in the Decision appointing a committee for the exchange of prisoners, dated 2 October 1992.<sup>2377</sup>

15. I also concur with the finding of the Majority that Miroslav Tadić did not share the discriminatory intent of the perpetrators, but that he was aware of their discriminatory intent to persecute non-Serb civilians through their deportation.

16. While I agree with the finding of the Majority that Miroslav Tadić had the *actus reus* and the *mens rea* of an aider and abettor of the crime of persecutions through deportation, after having heard the testimony of Miroslav Tadić and taken into consideration all other relevant evidence, I am convinced that Miroslav Tadić was acting in a situation of duress<sup>2378</sup> when he took part in the deportation of the above-mentioned non-Serb civilians to Croatia.

#### 1. Legal considerations

17. While the Statute remains silent with regard to grounds for excluding criminal responsibility, the Appeals Chamber thoroughly examined in the *Erdemović* case the concept of duress. Although this examination mainly dealt with the question of whether duress can afford a complete defence to a statutory crime when the underlying offence of this crime is the killing of an innocent human being, while in the present case, the deportation of non-Serb civilians was directed against their protected legal values of freedom and property, the considerations of the Appeals Chamber are also valid for making the argument that the participation of Miroslav

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<sup>2377</sup> Exhibit P82.

<sup>2378</sup> The notions of duress and necessity have not always been clearly distinguished from each other. In his Separate and Dissenting Opinion in *Erdemović*, Judge Cassese held that, “duress is often termed ‘necessity’ both in national legislation and in cases relating to war crimes or crimes against humanity.” Taking into consideration the different sources of danger coming from another person or from natural circumstances, he stated that, “necessity is a *broader* heading than duress, encompassing threats to life and limb generally and not only when they emanate from another person” (emphasis added; *Prosecutor v. Erdemović*, Separate and Dissenting Opinion of Judge Cassese, 7 October 1997, para. 14.).

Tadić in the deportation of non-Serb civilians fulfils the prerequisites of duress in international customary law.

18. In their Joint Separate Opinion, Judge Mc Donald and Judge Vohrah quoted the United Nations War Crimes Commission (“UNWCC”) when referring to the requirements of duress under customary international law:

“The general view seems therefore to be that duress may prove a defence if (a) the act charged was done to avoid an immediate danger both serious and irreparable; (b) there was no other adequate means of escape; (c) the remedy was not disproportionate to the evil.”<sup>2379</sup>

19. The UNWCC had reviewed about 2.000 decisions of post-World War II international military case-law stemming from military tribunals of nine nations before it stated that the above-mentioned three requirements have to be met for duress to constitute a defence for a violation of international humanitarian law, and I am satisfied that this definition is part of international customary law.<sup>2380</sup> Although these requirements do not explicitly refer to situations in which a person commits a criminal act in order to preserve *another person* from an immediate danger both serious and irreparable, I am persuaded that such action is covered by the concept of duress as set out in the above-mentioned definition. With regard to the first requirement, the UNWCC speaks of an “immediate danger both serious and reparable”, without specifying that such danger has to refer to legal values of the person who commits an act under duress, and not to a third person. I am convinced that such legal values of a third person must be equally protected, as no valid reason can be put forward to make a distinction between the protected legal values of the person acting under duress and those of a third person.<sup>2381</sup>

20. It has to be noted that the present case differs from a “normal” case of a perpetrator acting under duress in order to protect another person. In “normal” cases of duress, the

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<sup>2379</sup> *Law Reports of Trials of War Criminals*, U.N. War Crimes Commission (H.M. Stationery Office, London, 1949), vol. XV, p. 174 (quoted in *Prosecutor v. Erdemović*, IT-96-22-A, Joint and Separate Opinion of Judge McDonald and Judge Vohrah, 7 October 1997, para. 42).

<sup>2380</sup> See *Prosecutor v. Erdemović*, IT-96-22-T, Sentencing Judgement, 29 November 1996, para. 17. See also Geert-Jan Knoops, *Defenses in Contemporary International Criminal Law*, Ardsley, New York (2001), p. 97: “[International Criminal Law], however, is in itself not primarily concerned with the relativity of different harms but, like most domestic criminal laws, endorses the principle that no one should be punished ‘for doing what any reasonable person would have done’. This is exactly why common law doctrines accepts ‘a defense if it can be established as a matter of law that the actor’s conduct, in the only way that seemed reasonably possible under the circumstances, avoided greater harm than it caused,’ this being the so-called requisite ‘choice of evils’ element of the defense of necessity. [...] This leads us to consider three thresholds or prerequisites as to the admissibility of the defense of necessity regarding war crimes charges: The act charged must have been done to prevent a significantly greater evil than inflicted; there must have been no adequate alternative; and the harm inflicted must not have been disproportionate to the harm avoided. The defense of necessity in [international criminal law] should be available if the accused *reasonably* believed at the time of acting that the first and second elements were present, even if that belief was mistaken.”



perpetrator commits an act against a legal value of the assailant A in order to protect victim B from an immediate danger to a protected legal value. In our situation, Miroslav Tadić infringed protected legal values of the very same persons – who were displaced from their homes and had to leave behind their property – that he was protecting by doing this. However, I am satisfied that the present situation is covered by the above-mentioned definition, as the wording of its requirements allows for this scenario to fall under duress. I am convinced that undue results that could result from the application of this finding in other cases will be avoided by the requirement that the crime committed has to be proportionate to the evil threatened.

## 2. Factual considerations

21. I have no doubt that the persecutions against non-Serb civilians in the detention centres in Bosanski Šamac through cruel and inhumane treatment, including beatings, torture, and confinement under inhumane conditions, constituted an immediate danger, both serious and irreparable, to the life and limb as well as the mental health of the prisoners. I am also convinced that Miroslav Tadić participated in the deportation of these civilians in order to avoid such danger. During his trial testimony, he stressed on many occasions the humanitarian aspect of his involvement in exchanges: the goal of (re-)uniting families, of getting people out of distress, and of gathering information about relatives. He also stated that he had helped the people who had been exchanged.<sup>2382</sup> I am convinced that these statements have to be interpreted in such a way that the reason for Miroslav Tadić's participation in the deportation of non-Serb prisoners was to spare them the persecutory acts they were exposed to in the municipality of Bosanski Šamac, especially in the detention facilities. It must also be noted that the exchanges to a considerable degree were arranged in collaboration with the local Red Cross.

22. The exchanges were the only possibility of getting safely through the battle lines surrounding Bosanski Šamac, and there was no other adequate means of escaping the horrors of the detention facilities in Bosanski Šamac than by exchange. Miroslav Tadić did not have the authority to release any prisoner from the detention facilities, and the Prosecution did not adduce sufficient evidence to prove beyond reasonable doubt that he could have influenced the persons who were responsible for the detention to have the prisoners released.

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<sup>2381</sup> See in this respect Antonio Cassese, *International Criminal Law*, Oxford (2003), p. 242: "Necessity or duress may be urged as a defence when a person, acting under a threat of severe and irreparable harm to his life or limb, or to life and limb of a third person, perpetrates an international crime".

<sup>2382</sup> Miroslav Tadić, T. 15506, 15786; "My only wish was to deliver these people from the situation they were in, whatever side they were on"; "whatever I did to them, I want to be done to me under certain circumstances"; "Had I been in their situation, I would have been happy had they done this for me"; he also stated that "this was the most humane work to be done at the time".

23. I am also convinced that the participation of Miroslav Tadić in the deportation was not disproportionate to the evil avoided. Through the exchange process, the prisoners lost their property that they had to leave behind in Bosanski Šamac. On the other hand, however, they gained their freedom to move, albeit restricted by the – in hindsight, temporary – impossibility to return to Bosanski Šamac. In this context, it is also important to note that Miroslav Tadić by no means caused the inhumane and appalling conditions under which the Bosnian Muslim and Bosnian Croat civilians were kept.

24. With regard to the deportations of Snjezana Delić, who was living in Bosanski Šamac not being imprisoned, and Witness K and Jelena Kapetanović, who were detained in Zasavica, I am also convinced that the requirements for the application of the defence of duress are met. Although these three women were not suffering from the same horrendous conditions prevailing in the detention centres, their freedom to move was significantly restricted. As Snjezana Delić has stated, her and her family's exchange was the only way to normalise their life.<sup>2383</sup> Her husband was detained in Bosanski Šamac,<sup>2384</sup> and there had been two attempts to arrest her.<sup>2385</sup> These incidents constituted an immediate danger to the little freedom she had left. Witness K and Jelena Kapetanović were both held in captivity in Zasavica, without opportunity to leave the village at free will. Witness K's husband was detained in Bosanski Šamac,<sup>2386</sup> and she testified that she had been seriously abused.<sup>2387</sup> I am convinced that Miroslav Tadić participated in the deportation of these three women in order to relieve them from the distress they were in.

25. I am also convinced that there was no other adequate means available for Miroslav Tadić for getting Snjezana Delić, Witness K and Jelena Kapetanović out of Bosanski Šamac and Zasavica, respectively, than to deport them. As I already stated above, Miroslav Tadić did not have any authority to permit citizens to leave, and insufficient evidence has been adduced to prove that he could have helped them in any other way.

26. As in the case of the non-Serb detainees, I find that the remedy was not disproportionate to the harm avoided. Although the three women were deported to Croatia, the freedom of movement they gained through this exchange was greater than the loss of the property that Witness K and Jelena Kapetanović already had to leave behind when they were transferred from Bosanski Šamac to Zasavica and that Snjezana Delić left behind in Bosanski Šamac. Again, it is

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<sup>2383</sup> Snjezana Delić, T. 6475.

<sup>2384</sup> Snjezana Delić, T. 6422-25.

<sup>2385</sup> Snjezana Delić, T. 6419-21, T. 6428-29, T. 6479-80.

<sup>2386</sup> Witness K, T. 4645.

<sup>2387</sup> Witness K, T. 4958.

important to note that Miroslav Tadić was not responsible for the three women being held under the circumstances they were in.

27. For all these reasons, I am convinced that Miroslav Tadić sincerely believed that the exchanges were the only means to get the non-Serb civilians out of their miserable and – in many cases – terrifying living conditions, and that he helped them to a better life. As Miroslav Tadić stated at the closure of the case: “I thought I was doing something humane, helping people in distress.”<sup>2388</sup> His participation in their deportation helped them to exercise their right to freedom to a greater degree than during their detention and avoided the constant danger to the life and limb of the non-Serb prisoners in the detention facilities in Bosanski Šamac. Furthermore, it has not been made out on the evidence that any other adequate means was available to Miroslav Tadić to free the non-Serb civilians from the situation they were in.

28. I am convinced beyond all doubts that Miroslav Tadić should be found not guilty in respect of Count 1 and Count 2.

### Simo Zarić

29. The Majority finds Simo Zarić guilty on Count 1 as an aider and abettor of the joint criminal enterprise to persecute non-Serb civilians through cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions.

30. I concur with the Majority insofar as the evidence has proven beyond reasonable doubt that Simo Zarić was present on several occasions in the SUP and in the detention facility in Brčko, that he conducted interrogations of non-Serb detainees in both locations, and that he did not use any forceful means during these interrogations.<sup>2389</sup> I also agree with the finding of the Majority that Simo Zarić did not share the discriminatory intent of the perpetrators who committed the crime of persecutions against these non-Serb detainees, but that he was aware of their mistreatment in the SUP, and that he also knew that prisoners who had been interrogated by him were beaten.

31. I respectfully disagree, however, with the finding of the Majority that the interrogations conducted by Simo Zarić constituted acts that had a substantial effect on the perpetration of persecutions through cruel and inhumane treatment.

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<sup>2388</sup> Miroslav Tadić, T. 20723.

<sup>2389</sup> Sulejman Tihić, T. 1386-88; Witness G, T. 4063-64; Hasan Bičić, T. 2701; Witness N, T. 6082. Simo Zarić was ordered to carry out the interrogations, four in total, in the SUP by his superiors Lt. Col. Stevan Nikolić and the head of intelligence and security affairs in the 17<sup>th</sup> Tactical Group, Maksim Simeunović, T. 20603, 19306, 19317, 18596.

32. I am not satisfied that Simo Zarić's position in the interrogations and his status in the community gave moral support and encouragement amounting to a substantial assistance to the commission of the crime of persecutions. Quite to the contrary, Simo Zarić openly and strongly condemned the ill-treatment of non-Serb detainees.<sup>2390</sup> When he saw that Sulejman Tihić had been beaten, while Simo Zarić had interrupted his interrogation and was not present, he immediately complained about the mistreatment to Stevan Todorović and "Crni".<sup>2391</sup> Their disdainful reaction is a clear indication that they did not feel any moral support or legitimizing effect from Simo Zarić's conduct of interrogations.

33. No evidence has been adduced by the Prosecution as to whether the perpetrators of the persecutions felt any reassuring and encouraging effect from Simo Zarić's presence in the detention facilities or his participation in the interrogations. The appalling conditions in the SUP had been set up and orchestrated by the Chief of Police, Stevan Todorović and his henchmen, the paramilitaries, brought in by him among others from Serbia and consisting of a group of ruthless thugs like "Lugar", "Crni", and "Debeli" and others of the same kind which by Stevan Todorović were given free access to the different places of detention, day and night, in order to be able to beat up and torture, even kill, the detainees whenever they found themselves in the mood to do so. I fail to see how these people and their co-perpetrators could have been encouraged and morally supported to a substantial degree by the interrogations and presence of Simo Zarić, who on more than one occasion publicly denounced the mistreatment of detainees.

34. Therefore, I arrive at the conclusion that the presence of Simo Zarić and the conduct of interrogations at the SUP did not in any way affect the prevalent terror regime in the SUP or in the other detention facilities. It continued after his presence in the same manner as before. In the eyes of the paramilitaries, who were the worst torturers, Simo Zarić did not have any air of authority, which perhaps is best depicted by the way he was treated by some of them.<sup>2392</sup>

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<sup>2390</sup> This is exemplified by his main authorship of the "13 signatories document", dated 1 December 1992 (Exhibit P127), and by his assistance in transferring non-Serb civilian detainees from the TO to Brčko in order to alleviate their suffering.

<sup>2391</sup> Simo Zarić, T. 19314-16.

<sup>2392</sup> Simo Zarić testified how he and Jovo Savić should be arrested by "Lugar", Đorđe Tesić and five other paramilitaries on the road to Gornja Slatina, T. 19588-91. Simo Zarić also testified that after he and Rajko Ilisković had drafted an anti-nationalistic public announcement of the 4<sup>th</sup> Detachment which was read over the radio on 19 April 1992 (Exhibit D28/4), he was told to meet "Debeli", "Crni" and Aleksandar Vuković, "Vuk", in the SUP. They accused him of broadcasting "Communist pamphlets", and "Vuk" grabbed Simo Zarić's hair from behind, told him to open his mouth, and put the barrel of a Roda pistol in Simo Zarić's mouth (Simo Zarić, T. 19276-79). When Simo Zarić was about to leave the SUP building, "Vuk" took him to "Lugar" who stood in front of about 50 or 60 paramilitaries. "Lugar" told them that "while we're getting killed and dying out here, he's defending the Turks and the Usthas", and some of the paramilitaries swore at Simo Zarić (Simo Zarić, T. 19283-84). Stevan Todorović, who had witnessed the incident involving the 50 or 60 paramilitaries, later told Simo Zarić, that "it doesn't surprise me if you're going around pretending to be some kind of Commie and you're defending the Turks. [...] You are pulling them out of jail, while our brothers, Serbs, are dying here on the front" (Simo Zarić, T. 19288).

35. For these reasons, I find that the Prosecution has failed to prove its case against Simo Zarić beyond reasonable doubt, and that therefore Simo Zarić should have been found not guilty in respect of Count 1.

#### **IV. DETERMINATION OF SENTENCE OF BLAGOJE SIMIĆ**

##### **Aggravating circumstances**

36. I accept the aggravating circumstances the Majority agreed upon in paragraphs 1082-84.

##### **Mitigating circumstances**

37. I concur with what has been stated by the Majority in paragraphs 1088 to 1091. In addition, I want to mention that Blagoje Simić was subjected to heavy pressure by such ruthless persons as Stevan Todorović and “Lugar”. Božo Ninković testified, that “Lugar” would have carried out an act of reprisal against Blagoje Simić if Blagoje Simić had informed higher authorities.<sup>2393</sup>

##### **Proportionality**

38. In sentencing, proportionality usually means reaching a reasonable balance between the gravity of the offence and the punishment to be meted out. This is proportionality on the individual level. But there are other instances or relations in which proportionality is of importance, namely (i) the proportionality between punishments meted out in different cases, (ii) between punishments meted out to several defendants in one case, and (iii) between a punishment already meted out and another or others to be meted out in the same case.

39. In this context, I take into account the sentence passed on Stevan Todorović, Chief of the Police in Bosanski Šamac during the time covered by the Amended Indictment and a former co-accused. He was one of the main architects, if not the main architect of the terror regime in Bosanski Šamac following the takeover on 17 April 1992. He was charged with a series of grave crimes (27 counts) including murder, rape, sexual assaults, and severe beatings. On 13 December 2000 he pleaded guilty to Count 1, namely persecutions, including beatings and murder, sexual assaults, ordering of torture, interrogation of detained persons and forcing them to sign false and coerced statements, participation in deportation etc. All these crimes were

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<sup>2393</sup> Božo Ninković, T. 13619-20.

committed by Stevan Todorović, a person holding a position in Bosanski Šamac which obliged him to protect and defend all citizens of the municipality. On 31 July 2001, Stevan Todorović was sentenced to ten years' imprisonment.

39. Weighing all the relevant circumstances I come to the conclusion that seven years' imprisonment is a proportionate and reasonable penalty for Blagoje Simić.

## **V. DISPOSITION**

In agreement with the considerations of the Trial Chamber with regard to cumulative convictions,

(a) I agree with the Majority's conviction of Blagoje Simić upon

Count 1: persecutions as a crime against humanity.

I find a sentence to seven (7) years' imprisonment proportionate and just.

(b) I further find that Miroslav Tadić and Simo Zarić are not guilty of Count 1 and Count 2.

(c) I concur with the Majority in dismissing Count 3.

Done in English and French, the English text being authoritative.

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Judge Per-Johan Lindholm

Dated this seventeenth day of October 2003,  
At The Hague,  
The Netherlands

**[Seal of the Tribunal]**

## XX. ANNEX I - GLOSSARY

ABiH	Armed Forces of the Government of Bosnia and Herzegovina
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
Agreed Facts	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, Annex to Joint Statement of Admission by the Parties and Matters which are not in Dispute, 27 April 2001
<i>Akayesu</i> Trial Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No.: ICTR-96-4-T, Judgement, 2 September 1998
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No.: IT-95-14/1-A, Judgement, 24 March 2000
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No.: IT-95-14/1-T, Judgement, 25 June 1999
Amended Indictment	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-I, Fifth Amended Indictment, 30 May 2002
BCS	Bosnian Croatian Serbian language
BiH	Bosnia and Herzegovina
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No.: IT-95-14-T, 3 March 2000
Bosnia and Herzegovina	Republic of Bosnia and Herzegovina
Bosniak	Bosnian Muslim
<i>Brdanin</i> Decision on Form of the Amended Indictment	<i>Prosecutor v. Brdanin and Talić</i> , Case No.: IT-99-36-T, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001
<i>Brdanin</i> Decision on Form of	<i>Prosecutor v. Radislav Brdanin and Momir Talić</i> , Case No.: IT-99-36-T, Decision on Form of Further

	Amended Indictment and Prosecution Application to Amend, 26 June 2001
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No.: IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No.: IT-96-21-T, Judgement, 16 November 1998
Chamber	Trial Chamber II Section B of the Tribunal
Closing Arguments	Oral closing arguments of the parties
Commentary to Geneva Convention III	Commentary, III Geneva Convention Relative to the Treatment of Prisoners of War (1949), International Committee of the Red Cross, Geneva, 1960
Commentary to Geneva Convention IV	Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), International Committee of the Red Cross, Geneva, 1958
Common Article 3	Article 3 of Geneva Conventions I through IV
Croat	Bosnian Croat
Croatia	Republic of Croatia
Deposition Transcript	Transcript of depositions of Defence witnesses taken in Belgrade, 4-7 February 2003
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms adopted in Rome on 4 November 1950
Exhibits DX/1	Exhibits tendered by the Defence for Blagoje Simić and admitted into evidence by the Chamber
Exhibit DX/3	Exhibits tendered by the Defence for Miroslav Tadić and admitted into evidence by the Chamber
Exhibit DX/4	Exhibits tendered by the Defence for Simo Zarić and admitted into evidence by the Chamber
Exhibit PX	Prosecution's exhibits admitted into evidence by the Chamber
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No.: IT-95-17/1-A, Judgement, 21 July 2000
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No.: IT-95-17/1-T, Judgement, 10 December 1998



Geneva Convention II	Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949
Geneva Convention III	Geneva Convention III Relative to the Treatment of Prisoners of War of 12 August 1949
Geneva Convention IV	Geneva Convention IV Relative to the Protection of Civilian Person in Time of War of 12 August 1949
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
<i>Hadžihasanović</i> Appeal Decision	<i>Prosecutor v. Enver Hadžihasanović et al.</i> , Case No. IT-01-47-AR72, Decision pursuant to Rule 72 (E) as to Validity of Appeal, 21 February 2003
Hague Convention IV	The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land of 18 October 1907
Hague Regulations	Regulations Respecting the Laws and Customs of War on Land annexed to Hague Convention IV of 18 October 1907
HDZ	Croatian Democratic Union
HV	Army of the Republic of Croatia
HVO	Croatian Defence Council (army of the Bosnian Croats)
ICC	International Criminal Court
ICC Statute	Statute of the International Criminal Court, adopted in Rome, 17 July, 1998.
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 31 December 1994
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

IMT	International Military Tribunal sitting at Nuremberg, Germany
<i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No.: IT-95-10-A, Judgement, 5 July 2001
<i>Jelisić</i> Trial Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No.: IT-95-10-T, Judgement, 14 December 1999
JNA	Yugoslav Peoples' Army
<i>Kayishema</i> Trial Judgement	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No.: ICTR-95-T, Judgement, 21 May 1999
<i>Kordić</i> Trial Judgement	<i>Prosecutor v. Dario Kordić &amp; Mario Čerkez</i> , Case No.: IT-95-14/2-T, Judgement, 26 February 2001
<i>Krnjelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No.: IT-97-25-T, Judgement, 15 March 2002
<i>Krnjelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No.: IT-97-25-A, Judgement, 17 September 2003
<i>Krstić</i> Trial Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No.: IT-98-33-T, Judgement, 2 August 2001
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-T, Judgement, 22 February 2001
<i>Kunarac</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-T, Judgement, 12 June 2002
<i>Kupreškić</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No.: IT-95-16-A, Judgement, 23 October 2001
<i>Kupreškić</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No.: IT-95-16-T, Judgement, 14 January 2000
<i>Kvočka</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No.: IT-98-30-T, Judgement, 2 November 2001
MUP	Ministry of the Interior Police, also referred to as SUP, police station, public security station
<i>Musema</i> Trial Judgement	<i>Prosecutor v. Alfred Musema</i> , Case No.: ICTR-96-13-T, Judgement, 27 January 2000
Muslim	Bosnian Muslim
<i>Naletilić</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No.: IT-98-34-T, Judgement, 31 March 2003

Nuremberg Charter	Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals, Berlin, 6 October 1945
<i>Ojdanić</i> Decision on Joint Criminal Enterprise	<i>Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić</i> , IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003
Prosecution	The Office of the Prosecutor (OTP)
Prosecution Final Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, Prosecution's Revised Public (Redacted) Final Trial Brief, filed on 4 July 2003.
Prosecution Pre-trial Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, filed 9th April 2001
Rules 92bis Statement	Statement admitted pursuant to Rule 92bis of the Rules of Procedure and Evidence of the Tribunal
Statute	Statute of the Tribunal
SAO	Serb Autonomous Region
SDA	Party of Democratic Action
SDB	State Security Service
SDP	Social Democratic Party, Reformed Communist Party
SDS	Serbian Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
Simić Defence	Counsel for Blagoje Simić
Simić Final Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, Dr. Blagoje Simić,s Public (Redacted and Corrected) Final Trial Brief, filed on 7 July 2003
Simić Pre-Trial Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, filed on 7 May 2001
SPABAT	Spanish Battalion of UNPROFOR

<i>Stakič</i> Trial Judgement	<i>Prosecutor v Milomir Stakič</i> , Case No.:IT-97-24-T, Judgement, 31 July 2003
SUP	Secretariat of the Interior, also referred to as MUP, police station, public security station
T.	Transcript of hearing in the present case. All transcript pages referred to in this judgement are taken from the unofficial, uncorrected version of the transcript. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public
Tadić Defence	Counsel for Miroslav Tadić
Tadić Final Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, Defendant Miroslav Tadić Final Brief (Public Redacted Version), filed on 7 July 2003
Tadić Pre-Trial Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, filed on 7 May 2001
Tadić Prosecution Interview I	Interview of Miroslav Tadić by the OTP on 26 March 1998 (Exhibit P138)
Tadić Prosecution Interview II	Interview of Miroslav Tadić by the OTP on 27 March 1998 (Exhibit P139)
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No.: IT-94-1-A, Judgement, 15 July 1999
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No.: IT-94-1-T, Judgement, 7 May 1997
<i>Tadić</i> Jurisdiction Decision	<i>Prosecutor v. Duško Tadić</i> , Case No.: IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
TO	Territorial Defence, and Territorial Defence building or headquarters
Tokyo Charter	Charter of the International Military Tribunal for the Far East, Tokyo, 19 January 1946
Torture Convention	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984
Transcript witness	Testimony of witness in another case before the Tribunal and admitted into this case by decision of the Chamber

Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
UNPROFOR	United Nations Protection Forces
<i>Vasiljević</i> Trial Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 2 November 2002
VJ	Army of the Federal Republic of Yugoslavia
VRS	Army of Republika Srpska
Zarić Defence	Counsel for Simo Zarić
Zarić Final Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, Defendant Simo Zarić's Final Brief (Public Version), filed on 7 July 2003
Zarić Pre-Trial Brief	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić</i> , Case No.: IT-95-9-T, filed on 7 May 2001
Zarić Prosecution Interview I	Interview of Simo Zarić by the OTP on 1 April 1998 (Exhibit P140)
Zarić Prosecution Interview II	Interview of Simo Zarić by the OTP on 2 April 1998 (Exhibit P141)
Zarić Prosecution Interview III	Interview of Simo Zarić by the OTP on 3 June 1998 (Exhibit P142)
ZNG	Croatian National Guard Corps

## **XXI. ANNEX II - *DRAMATIS PERSONAE***

Radovan Antić	Commander of 4 <sup>th</sup> Detachment
Miloš Bogdanović	Secretary of the Municipal Section of the Ministry of Defence, in charge of recruiting trainees at Ilok. Member of the Crisis Staff
Alija Fitozović	President of the SDA Safety Commission in Bosanski Šamac
Izet Izetbegović	Founder of the SDA branch in Bosanski Šamac and its President until 1991
Aleksandar Janković	Member of the 1 <sup>st</sup> Detachment, trainee at Ilok.
Simo Jovanović	Member of the 1 <sup>st</sup> Detachment, trainee at Ilok. Formed the Rapid Reaction Company under TG 17
Dragan Lukač	Acting Chief of the Public Security Station in Bosanski Šamac, appointed by the Republican Ministry of the Interior on 11 April 1992. Formerly, in charge of the criminal investigation police in Bosanski Šamac.
Mirko Lukić	Vice-President of the Executive Board of the Municipal Assembly of the Serb Municipality of Bosanski Šamac and Pelagicevo in formation. Member of the Crisis Staff.
Velimir Maslić	Member of the Exchange Committee
Lazar Mirkić	Secretary of the Municipal Secretariat for Economy
Mitar Mitrović	Secretary of the Crisis Staff.
Lt. Col. Stevan Nikolić	Commander of the 17 <sup>th</sup> Tactical Group of the JNA
Božo Ninković	Secretary of the Municipal Secretariat for National Defence. Member of the Crisis Staff.
Savo Popović	President of the Military and Civilian Council in Odžak. Member of the Crisis Staff and the War Presidency.
Jovo Savić	Deputy Commander of the 4 <sup>th</sup> Detachment
Maksim Simeunović	Chief of Intelligence and Security of the 17 <sup>th</sup> Tactical Group
Blagoje Simić	Vice-President of Municipal Assembly; President of Crisis Staff and later of the War Presidency; President of SDS Municipal Board
Čedomir Simić	Brother of Blagoje Simić. Business coordinator of Bosanka company appointed by the Executive Board

Milan Simić	President of the Executive Board appointed by the Crisis Staff on 30 May 1992
Simeon Simić	Head of the Information Service of the Crisis Staff. Member of the Crisis Staff and the War Presidency
Miroslav Tadić	Assistant Commander for Logistics of the 4 <sup>th</sup> Detachment; Head of Exchange Commission; ex officio member of Crisis Staff
Dušan Tanasić	Head of communications in the 2 <sup>nd</sup> Posavina Brigade and Vice-President of the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo
Stevan Todorović	Chief of Police in Bosanski Šamac. Member of the Crisis Staff
Sulejman Tihic	President of the SDA branch in Bosanski Šamac elected in 1991
Fadil Topčagić	Member of the 4 <sup>th</sup> Detachment and Member of the Crisis Staff
Djordje Tubaković	Worked for the Secretariat for National Defence. His job at the Secretariat for National Defence was the mobilisation and reinforcement of units. He formed the “Special Battalion”
Svetozar Vasović	President of the Municipal Committee of the Red Cross of the Municipality of Šamac
Ljubomir Vuković	Member of the Civilian Protection Staff
Simo Zarić	Assistant Commander for Intelligence, Reconnaissance, Morale and Information of the 4 <sup>th</sup> Detachment; Chief of National Security Service for Bosanski Šamac; Deputy to the President of the War Council for Security Matters in Odžak; Assistant Commander for Morale and Information of 2 <sup>nd</sup> Posavina Brigade

## XXII. ANNEX III – LIST OF WITNESSES

### PROSECUTION WITNESSES

BICIĆ, Hasan  
BICIĆ, Muhamed  
BOBIĆ, Ediba  
BOBIĆ, Kemal  
DAGOVIĆ, Esad  
DAGOVIĆ, Safet  
DELIĆ, Dragan  
DELIĆ, Snjezana  
DONIA, Robert (expert)  
DR. GOW (expert)  
DRLJAČIĆ, Hajrija  
FITOZOVIĆ Alija  
HADŽIJUSUFOVIĆ, Nusret  
IZETBEGOVIĆ, Izet  
JASAREVIĆ Osman  
KAPETANOVIĆ Jelena  
LUKAČ, Dragan  
MEHINOVIĆ, Kemal  
O'DONNELL, Bernard (OTP  
INVESTIGATOR)  
PARADŽIK, Blaz  
ROY, Yves (OTP INVESTIGATOR)  
SALKIĆ, Ibrahim  
SUBASIĆ, Hasan  
TABEAU, Ewa (expert)  
TIHIĆ, Sulejman  
TODOROVIĆ Stevan  
Witness A  
Witness C  
Witness E  
Witness G  
Witness K  
Witness L  
Witness M  
Witness N  
Witness O  
Witness P  
Witness Q

### DEFENCE WITNESSES

#### *Viva Voce Witnesses*

#### Blagoje Simić

BLAGOJEVIĆ, Veselin  
LUKIĆ, Mirko  
NINKOVIĆ, Božo  
PALEKSIĆ, Slavko  
POPOVIĆ, Savo  
SIMIĆ, Blagoje  
SIMIĆ, Simeon  
STANIMIROVIĆ, Ozren  
TANASIĆ, Dušan

#### Miroslav Tadić

BORBELI, Mladen  
GRUJIČIĆ, Milutin  
MASLIĆ, Velimir  
PIŠTOLJEVIĆ, Mustafa  
RADIĆ, Dario  
TADIĆ, Miroslav  
VASOVIĆ, Svetozar  
VUKOVIĆ, Ljubomir  
Witness DW 1/3  
Witness DW 2/3

#### Simo Zarić

ANTIĆ, Radovan  
ARNAUTOVIĆ, Jusuf  
BUZAKOVIĆ, Goran  
DJURDJEVIĆ, Savo  
GAVRIĆ, Dušan  
OMERANOVIĆ, Mustafa  
PETRIĆ, Andrija  
SAVIĆ, Jovo  
SEJDIĆ, Naser  
SEKULIĆ, Stoko  
SIMEUNOVIĆ, Maksim  
SIMIĆ, Kosta  
ŠARKANOVIĆ, Vladimir  
TIHIĆ, Pašaga  
TUTNJEVIĆ, Teodor  
ZARIĆ, Simo



**DEFENCE WITNESSES**

(continued)

**Deposition Witnesses**

Blagoje Simić

ČORDAŠEVIĆ, Ljubomir  
DUJKOVIĆ, Stanko  
NIJEMČEVIĆ, Mitar  
SAVIĆ, Miloš  
SJENČIĆ, Slobodan  
STEFANOVIĆ, Dragoljub

Miroslav Tadić

BIČAKČIĆ, Muharem  
GRBIĆ, Nevenka  
LAZIĆ, Djoko  
PAVLOVIĆ, Gordana  
TOVIRAC, Mihajlo  
ŠEHAPOVIĆ, Ahmet

Simo Zarić

ARANDJIĆ, Stevan  
ĆULAPOVIĆ, Miloš  
ČUKIĆ, Ivan  
ERLETIĆ, Jovan  
JEKIĆ, Milan  
TUBAKOVIĆ, Marko

**Rule 92bis Witnesses**

Blagoje Simić

ANDRIĆ, Pelka  
AVDIĆ, Nedžmija  
BABIĆ, Mijo  
BRALIĆ, Mithat  
CVIJETIĆ, Desanka  
JANKOVIĆ, Aleksandar  
JOVANOVIĆ, Simo  
KRSTANOVIĆ, Perica  
LAKIĆ, Jovo  
MARUŠIĆ, Branislav  
MIRKIĆ, Lazar

NUKIĆ, Amir  
PIVAŠEVIĆ, Stanko  
SIMIĆ, Čedomir

Miroslav Tadić

ARSLANOVIĆ, Abdulah  
ATIĆ, Muhamed  
BOJIĆ, Stanko  
DAMJANOVIĆ, Stojan  
DUJKOVIĆ, Djordje  
KUREŠEVIĆ, Marko  
MIHALJ, Ilija  
PETKOVIĆ, Milka  
TUBAKOVIĆ, Djordje  
VOLAŠEVIĆ, Željko  
Witness DW 3/3  
Witness DW8/3

Simo Zarić

ANTIĆ, Vaso  
ANTUNOVIĆ, Mato  
FOČAKOVIĆ, Hašim  
JASENICA, Džemal  
KARLOVIĆ, Petar  
NIKOLIĆ, Stevan  
PAVIĆ, Mirko  
PRGOMET, Djuro  
RAMUSOVIĆ, Nizam  
TOPČAGIĆ, Fadil  
TOPČAGIĆ, Viktorija  
TOPOLOVAC, Mihajlo  
ZARIĆ, Fatima

**JOINT EXPERT WITNESSES**

ALEKSIĆ, Živojin (expert)  
KECMANOVIĆ, Nenad (expert)  
NIKOLIĆ Pavle (expert)  
RADOVANOVIĆ, Svetlana (expert)  
WILMOT, Richard General (expert)

**WITNESS CALLED BY THE TRIAL  
CHAMBER**

MITROVIĆ, Mitar

## XXIII. ANNEX IV – AMENDED INDICTMENT

### THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

CASE NO. IT-95-9

#### THE PROSECUTOR OF THE TRIBUNAL

AGAINST

**BLAGOJE SIMIC**  
**MIROSLAV TADIC**  
**SIMO ZARIC**

#### FIFTH AMENDED INDICTMENT

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the Tribunal charges:

**Blagoje SIMIC,**

**Miroslav TADIC**

**Simo ZARIC**

with **crimes against humanity** and a **GRAVE BREACH** of the **GENEVA CONVENTIONS** of 1949 as set forth below:

#### The Accused

1. **Blagoje SIMIC**, born in 1960, is a medical physician from Kruskovo Polje, Bosanski Samac municipality. From 1991 to 1995, **Blagoje SIMIC** was president of the Serbian Democratic Party (SDS) in Bosanski Samac. **Blagoje SIMIC** was Vice-Chairman of the town assembly from 1991 to the 17<sup>th</sup> of April 1992, and from the 4<sup>th</sup> of November 1991 to at least the 30<sup>th</sup> of November 1992, he was the Deputy of the Assembly of the self-declared "Serb Autonomous Region of Northern Bosnia," later called the "Serb Autonomous Province of Semberija and Majevisa," of the "Serb Republic of Bosnia and Herzegovina." On or about the 17<sup>th</sup> of April 1992, **Blagoje SIMIC** was appointed President of the Serb Crisis Staff in the "Serbian Municipality of Bosanski Samac." On or about the 21<sup>st</sup> of July 1992, the Crisis Staff was re-named the "War Presidency of the Serbian Municipality of Bosanski Samac," and **Blagoje SIMIC** was named President of the War Presidency. On or about the 22<sup>nd</sup> of January 1993, **Blagoje SIMIC** was elected President of the "Samac Municipal Assembly" and served in that position until after the announcement of the original indictment in this case. In each of these positions beginning on or about the 17<sup>th</sup> of April 1992, and at all times material to this indictment, **Blagoje SIMIC** was the highest ranking civilian official in the municipality of Bosanski Samac.
2. **Miroslav TADIC**, also known as Miro Brko, born on the 12<sup>th</sup> of May 1937 in the village of Novi Grad, Odzak municipality, worked as a high school teacher and later ran the cafe "AS" at his home in Bosanski Samac. In 1991 **Miroslav TADIC** became a member of the Fourth Detachment, a JNA-organised territorial defence unit. As the Assistant Commander for Logistics, he worked closely with **Simo ZARIC** in their respective roles within the Fourth Detachment. After the 17<sup>th</sup> of April 1992, **Miroslav TADIC** became Chairman of the Bosanski Samac "Exchange Commission" and was responsible for organising and carrying out the majority of so-called prisoner "exchanges" through which non-Serb civilians were

expelled from their homes. He remained a member of the Exchange Commission until at least 1995. While serving in the capacity of Chairman of the Exchange Commission, **Miroslav TADIC** also was a member of the Serb Crisis Staff.

3. **Simo ZARIC**, also known as Solaja, born on the 25<sup>th</sup> of July 1948, in the village of Trnjak, Odzak municipality, is a former police chief of Bosanski Samac and a former intelligence agent for the State Security Service (SDB). In 1991, **Simo ZARIC** began to organise and supervise a JNA-sponsored territorial defence unit known at first as the Fourth Detachment and later renamed the 5th Battalion of the 2nd Posavina Brigade. Upon creation of the Fourth Detachment, **Simo ZARIC** was appointed the "Assistant Commander for Intelligence, Reconnaissance, Morale and Information." On the 29<sup>th</sup> of April 1992, **Simo ZARIC** was appointed "Chief of National Security Service" for Bosanski Samac by the Serb Crisis Staff. After the Serb take-over of Odzak in July 1992, **Simo ZARIC** was appointed by the Bosanski Samac Crisis Staff to be the "Deputy to the President of the War Council for Security Matters" of the Odzak municipality. In these positions of authority, **Simo ZARIC** reported directly to and took orders from the Serb Crisis Staff in Bosanski Samac. On the 1<sup>st</sup> of September 1992, **Simo ZARIC** was appointed "Assistant Commander of the 2nd Posavina Brigade for Morale and Information" of the Bosnian Serb Army. Between April and July 1992, **Simo ZARIC** worked with **Miroslav TADIC** to arrange so-called prisoner "exchanges" through which non-Serb civilians were expelled from their homes. **Simo ZARIC** remained a member of the Bosnian Serb Army until 1995.

#### **INDIVIDUAL CRIMINAL RESPONSIBILITY**

4. Each of the above accused is individually responsible for the crimes alleged against him in this indictment, pursuant to Article 7(1) of the Tribunal Statute. Individual criminal liability includes planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of any crime referred to in Articles 2 to 5 of the Statute of the Tribunal.

#### **GENERAL LEGAL ALLEGATIONS**

5. Unless otherwise set forth above, all acts and omissions alleged in this indictment took place between about September 1991 and about the 31<sup>st</sup> of December 1993 in the Republic of Bosnia and Herzegovina in the territory of the former Yugoslavia.
6. At all times relevant to this indictment, a state of armed conflict and partial occupation existed in the Republic of Bosnia and Herzegovina.
7. At all times relevant to this indictment, all of the persons described in this indictment as victims were protected by the Geneva Conventions of 1949.
8. Each of the accused in this indictment was required to abide by the laws and customs governing the conduct of war, including the Geneva Conventions of 1949.
9. All acts and omissions charged as crimes against humanity were part of a widespread or systematic attack against the Bosnian Croat and Bosnian Muslim civilian residents of the municipalities of Bosanski Samac and Odzak.
10. Paragraphs 5 to 9 are re-alleged and incorporated into each of the charges set forth below.

#### **CHARGES**

##### **COUNT 1** (Persecutions)

11. Beginning in, or about September 1991 and continuing to at least the 31<sup>st</sup> of December 1993, **Blagoje SIMIC**, **Miroslav TADIC**, and **Simo ZARIC**, acting in concert together, and with other Serb civilian and military officials, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of a crime against humanity, that is, the persecutions of Bosnian Croat, Bosnian Muslim and other non-Serb civilians on political, racial, or religious grounds, throughout the municipalities of Bosanski Samac, Odzak and elsewhere in the territory of Bosnia and Herzegovina.
12. The crime of persecutions was perpetrated, executed, and carried out by or through the following means:
  - a. the forcible take-over by Serb forces of cities, towns and villages inhabited by Bosnian Croat, Bosnian Muslim and other non-Serb civilians;
  - b. the unlawful arrest, detention or confinement of Bosnian Croats, Bosnian Muslims and other non-Serb civilians on political, racial or religious grounds and not for their protection and safety;
  - c. the cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including beatings, torture, forced labour assignments and confinement under inhumane conditions;
  - d. the deportation, forcible transfer and expulsion of Bosnian Croats, Bosnian Muslims and other non-Serb civilians from their homes and villages by force, intimidation and coercion; and
  - e. the wanton and extensive destruction, plundering and looting of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock.
  - f. the destruction or willful damage of institutions dedicated to religion, namely two Catholic churches, one in the town of Bosanski Samac about and between August 1992 and January 1993 and the other in the village of Hrvatska Tisina, about and between April 1992 and August 1992, and two mosques, one in the town of Bosanski Samac about and between August 1992 and November 1992 and the other in the town of Odzak, in or about July 1992.
13. From about the 17<sup>th</sup> of April 1992 to at least the 31<sup>st</sup> of December 1993, **Blagoje SIMIC**, both prior to, and while serving as President of the Bosanski Samac Serb Crisis Staff, and as President of the War Presidency, acting in concert with others, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of the crime of persecutions as described in paragraphs 11 and 12 above, through his participation in the following acts or omissions, among others:
  - a. the forcible take-over of the municipality of Bosanski Samac by Serb forces;
  - b. the issuance of orders, policies, decisions and other regulations in the name of the Serb Crisis Staff and War Presidency and the authorisation of other official actions which violated the rights of the Bosnian Croat, Bosnian Muslim and other non-Serb civilians to equal treatment under the law and infringed upon their enjoyment of basic and fundamental rights;
  - c. the unlawful arrest, detention or confinement of Bosnian Croats, Bosnian Muslims and other non-Serb civilians on political, racial or religious grounds and not for their protection and safety;

- d. the cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including beatings, torture, forced labour assignments and confinement under inhumane conditions;
  - e. the deportation, forcible transfer and expulsion of Bosnian Croats, Bosnian Muslims and other non-Serb civilians from their homes and villages by force, intimidation and coercion; and
  - f. the wanton and extensive destruction, plundering and looting of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock.
  - g. the destruction or willful damage of institutions dedicated to religion, namely two Catholic churches, one in the town of Bosanski Samac about and between August 1992 and January 1993 and the other in the village of Hrvatska Tisina, about and between April 1992 and August 1992, and two mosques, one in the town of Bosanski Samac about and between August 1992 and November 1992 and the other in the town of Odzak, in or about July 1992.
14. From about September 1991 to at least the 31<sup>st</sup> of December 1993, **Miroslav TADIC**, both prior to and while serving as a member of, and as Chairman of, the Exchange Commission, and as a member of the Serb Crisis Staff, acting in concert with others, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of the crime of persecutions as described in paragraphs 11 and 12 above, through his participation in the following acts or omissions, among others:
- a. the forcible take-over of the municipality of Bosanski Samac by Serb forces;
  - b. the unlawful arrest and confinement of numerous Bosnian Croat, Bosnian Muslim and other non-Serb civilians on political, racial or religious grounds and not for their protection and safety;
  - c. the cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including beatings, torture, forced labour assignments and confinement under inhumane conditions;
  - d. the deportation, forcible transfer and expulsion of Bosnian Croats, Bosnian Muslims and other non-Serb civilians, including women, children and the elderly, from their homes and villages by force, intimidation and coercion; and
  - e. the wanton and extensive destruction, plundering and looting of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock.
  - f. the destruction or willful damage of institutions dedicated to religion, namely two Catholic churches, one in the town of Bosanski Samac about and between August 1992 and January 1993 and the other in the village of Hrvatska Tisina, about and between April 1992 and August 1992, and two mosques, one in the town of Bosanski Samac about and between August 1992 and November 1992 and the other in the town of Odzak, in or about July 1992.
15. From about September 1991 to about the 31<sup>st</sup> of December 1992, **Simo ZARIC**, both prior to and while serving in various positions such as the "Assistant Commander for Intelligence, Reconnaissance, Morale and Information" of the Fourth Detachment, "Chief of National Security Service" in Bosanski Samac, "Deputy to the President of the War Council for Security Matters" in Odzak, and "Assistant Commander of the 2nd Posavina Brigade for Morale and Information," acting in concert with others, planned, instigated, ordered,

committed, or otherwise aided and abetted the planning, preparation, or execution of the commission of the crime of persecutions as described in paragraphs 11 and 12 above, through his participation in the following acts or omissions, among others:

- a. the forcible take-over of the municipality of Bosanski Samac by Serb forces;
  - b. the unlawful arrest and confinement of numerous Bosnian Croat, Bosnian Muslim and other non-Serb civilians on political, racial or religious grounds and not for their protection and safety;
  - c. the cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including beatings, torture, forced labour assignments and confinement under inhumane conditions;
  - d. the interrogation of Bosnian Croats, Bosnian Muslims and other non-Serb civilians who had been arrested and detained and forcing them to sign false and coerced statements;
  - e. the deportation, forcible transfer and expulsion of Bosnian Croats, Bosnian Muslims and other non-Serb civilians, including women, children and the elderly, from their homes and villages by force, intimidation and coercion; and
  - f. the wanton and extensive destruction, plundering and looting of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock.
  - g. the destruction or willful damage of institutions dedicated to religion, namely two Catholic churches, one in the town of Bosanski Samac about and between August 1992 and January 1993 and the other in the village of Hrvatska Tisina, about and between April 1992 and August 1992, and two mosques, one in the town of Bosanski Samac about and between August 1992 and November 1992 and the other in the town of Odzak, in or about July 1992.
16. By these actions **Blagoje SIMIC**, **Miroslav TADIC**, and **Simo ZARIC**, acting in concert together and with others, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation, or execution of:

**Count 1:** Persecutions on political, racial and religious grounds, a **CRIME AGAINST HUMANITY**, punishable under Article 5(h) of the Statute of the Tribunal.

### **COUNTS 2 and 3** (Deportation and Transfer)

17. From about the 17<sup>th</sup> of April 1992 to about the 31<sup>st</sup> of December 1993, Blagoje SIMIC planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the unlawful deportation and forcible transfer of hundreds of Bosnian Croat, Bosnian Muslim and other non-Serb civilians, including women, children and the elderly, from their homes in the Bosanski Samac municipality to other countries or to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces.
18. From about the 17<sup>th</sup> of April 1992 to about the 31<sup>st</sup> of December 1993, Miroslav TADIC planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the unlawful deportation and forcible transfer of hundreds of Bosnian Croat, Bosnian Muslim and other non-Serb civilians, including women, children and the elderly, from their homes in the Bosanski Samac municipality to other countries or to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces.

19. From about the 17<sup>th</sup> of April 1992 to at least the 31<sup>st</sup> of December 1992, **Simo ZARIC** planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation, or execution of the unlawful deportation and forcible transfer of hundreds of Bosnian Croat, Bosnian Muslim, and other non-Serb civilians, including women, children and the elderly, from their homes in the Bosanski Samac municipality to other countries or to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces.
20. By these actions **Blagoje SIMIC, Miroslav TADIC, and Simo ZARIC** planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation, or execution of:

**Count 2:** Deportation, a **CRIME AGAINST HUMANITY**, punishable under Article 5(d) of the Statute of the Tribunal; and

**Count 3:** Unlawful deportation or transfer, a **GRAVE BREACH** of the Geneva Conventions of 1949 (hereafter Grave Breach), punishable under Article 2(g) of the Statute of the Tribunal.

### **ADDITIONAL FACTUAL ALLEGATIONS**

21. The municipalities of Bosanski Samac and Odzak are located along the northern border of Bosnia and Herzegovina just across the Sava River from the Republic of Croatia. The municipalities are located within an area referred to as the "Posavina Corridor" which links western Bosnia and Herzegovina with Serbia to the east.
22. In 1991, after Slovenia and Croatia declared their independence from the Socialist Federative Republic of Yugoslavia (SFRY), the citizens of Bosnia and Herzegovina were forced to consider whether to declare their independence or to remain a part of Yugoslavia. For the most part Bosnian Croats and Bosnian Muslims favoured independence, while the Bosnian Serbs, led by the Serbian Democratic Party (SDS) and the Yugoslav National Army (JNA) favoured remaining a part of Yugoslavia.
23. Bosnia and Herzegovina declared its independence from Yugoslavia on the 29<sup>th</sup> of February 1992. Long before this, however, the SDS and the JNA had been making plans for the probability of a war, which included the creation of separate Serb-controlled municipalities throughout Bosnia and Herzegovina. The Republic of Bosnia and Herzegovina was recognised as an independent nation by the United States and countries of the European Community on the 7<sup>th</sup> of April 1992.
24. A significant aspect of the plans of the SDS and the JNA was to establish exclusive Serb control over large segments of territory in western, northern and eastern Bosnia and Herzegovina, much of which had large populations of Bosnian Croats, Bosnian Muslims and other non-Serb civilians. In order to achieve control over this territory, the Bosnian Serbs planned to isolate and expel as many non-Serbs as possible in a process that became known as "ethnic cleansing."
25. Because of their location on the northern edge of the "Posavina Corridor," control over the municipalities of Bosanski Samac and Odzak was vital to Bosnian Serb efforts to create a Serb-controlled land bridge between Serbia in the east and the Krajina Serbs in Croatia and other parts of western Bosnia and Herzegovina.
26. On the 29<sup>th</sup> of February 1992, the Serb authorities announced the formation of a separate "Serbian Municipality of Bosanski Samac."

27. On the 17<sup>th</sup> of April 1992, Serb military forces from Bosnia and Herzegovina and elsewhere in the former Yugoslavia seized control of the town of Bosanski Samac by force and, within a few days, controlled the entire municipality of Bosanski Samac. The Serbs then announced that the government of the municipality of Bosanski Samac had been replaced by the "Serbian Municipality of Bosanski Samac."
28. Prior to the 17<sup>th</sup> of April 1992, almost 17,000 Bosnian Croats and Bosnian Muslims, of a total population of about 33,000, lived in the municipality of Bosanski Samac. Following the forcible take-over of the Bosanski Samac municipality by Serb forces, the majority of the non-Serb residents fled, or were forced to leave the area, so that by May 1995, fewer than 300 of the 17,000 Bosnian Croat and Bosnian Muslim residents remained.
29. On or about the 13<sup>th</sup> of July 1992, the 1st Krajina Corps of the Bosnian Serb Army seized control of the neighbouring municipality of Odzak by force. As the Serb military forces advanced on Odzak, the majority of the non-Serb residents fled from the area. Those non-Serbs who had not fled before the take-over fled, were killed, or were forced to leave.
30. Prior to July 1992, approximately 22,500 Bosnian Croat and Bosnian Muslim residents, out of a total population of 30,000, lived in the Odzak municipality. In November 1995, at the time of the signing of the Dayton Peace Agreement, virtually all of the 22,500 Bosnian Croat and Bosnian Muslim residents had fled or were forced to leave the Odzak municipality.
31. Immediately after the forcible take-over of the Bosanski Samac municipality, Serb authorities established the "Serbian Municipality of Bosanski Samac Crisis Staff" (Serb Crisis Staff) which took the place of the duly-elected municipal assembly and maintained control over all aspects of the municipal government. In accordance with their plan for "ethnic cleansing," Serb authorities arrested and detained a large number of the non-Serb men, forced many of the non-Serb residents to leave their homes, transferred many non-Serb residents to other villages where they were detained against their will, instituted a number of discriminatory laws and regulations directed against the non-Serbs, required most of the non-Serbs to participate in forced labour projects, undertook the wide-scale looting of the private and commercial property belonging to the non-Serbs, expelled and deported a significant number of the non-Serb residents, and otherwise made life so impossible and oppressive that most Bosnian Croat, Bosnian Muslim and other non-Serb residents of the municipality fled, or were forced to leave the area.
32. After the military take-over of the Odzak municipality, the Serb Crisis Staff in Bosanski Samac also assumed control over the civilian government of the Odzak municipality. Although most of the non-Serb residents had fled from the Odzak municipality before the Serb military forces took control, those who remained were subjected to similar acts of discrimination and oppression as those imposed on the non-Serb residents in the Bosanski Samac municipality. Many of the non-Serb residents working on forced labour projects in Bosanski Samac were ordered to take part in looting the private and commercial property of the non-Serb residents of the Odzak municipality.
33. From approximately the 1<sup>st</sup> of September 1991 to the 31<sup>st</sup> of December 1993, **Blagoje SIMIC, Miroslav TADIC, and Simo ZARIC**, acting in concert together and with various individuals on the Serb Crisis Staff and other political, municipal and administrative bodies, the police force, and the army, committed, planned instigated, ordered or otherwise aided and abetted a campaign of persecutions for the common purpose of ridding the Bosanski Samac and Odzak municipalities of all non-Serbs and in furtherance of the campaign committed other serious violations of international humanitarian law directed against the Bosnian Croat, Bosnian Muslim and other non-Serb civilians residing in the Bosanski



Samac and Odzak municipalities in the territory of Bosnia and Herzegovina. Any reference to the words "acting in concert together" shall be restricted to Count 1.

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Graham T. Blewitt  
Deputy-Prosecutor

Dated this 30<sup>th</sup> day of May 2002,  
In The Hague, The Netherlands

## XXIV. ANNEX V- PROCEDURAL BACKGROUND

### A. Pre-Trial proceedings

#### 1. Indictment, surrender of the accused and composition of the Trial Chamber

1130. Blagoje Simić, Miroslav Tadić and Simo Zarić were originally indicted together with Stevan Todorović, Slobodan Miljković, aka “Lugar”, and Milan Simić. The initial Indictment was confirmed by Judge Lal Chand Vohrah on 21 July 1995.

1131. Miroslav Tadić voluntarily surrendered on 14 February 1998. At his initial appearance on 17 February 1998 he pleaded “not guilty” to the charges against him. The same day the case was brought before Trial Chamber I composed of Judge Claude Jorda (Presiding), Judge Fouad Riad and Judge Almiro Rodrigues.<sup>2394</sup> Simo Zarić voluntarily surrendered to the Tribunal on 24 February 1998. At his initial appearance the next day he pleaded “not guilty” to the charges against him.

1132. On 15 June 1998 the Prosecution filed a motion for leave to amend the initial Indictment, which was granted by Judge Lal Chand Vohrah on 25 August 1998.<sup>2395</sup> On 1 September 1998, Judge Almiro Rodrigues was designated Pre-Trial Judge pursuant to Rule 65*ter* of the Rules.<sup>2396</sup> Milan Simić, Miroslav Tadić and Simo Zarić had a further appearance on 3 September 1998 where they again pleaded “not guilty” to the charges in the First Amended Indictment. A Second Amended Indictment was confirmed on 11 December 1998.

1133. On 18 December 1998, the case was assigned to Trial Chamber III composed of Judge Richard May (Presiding), Judge Mohamed Bennouna and Judge Patrick Lipton Robinson.<sup>2397</sup> Judge Robinson was appointed Pre-Trial Judge on 26 January 1999.<sup>2398</sup> On 31 March 1999, Judge David Hunt was temporarily assigned to Trial Chamber III, replacing Judge Richard May.<sup>2399</sup>

1134. On 13 December 2000, Stevan Todorović appeared before Judge Patrick Lipton Robinson and entered a guilty plea to Count 1 (persecutions) of the Second Amended Indictment, which he confirmed before the full Trial Chamber on 24 January 2001. The same day the Trial Chamber

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<sup>2394</sup> Order of the President Assigning a Case to a Trial Chamber, 17 February 1998.

<sup>2395</sup> It listed only the three accused then present in the facilities of the Tribunal, namely Milan Simić, Miroslav Tadić and Simo Zarić.

<sup>2396</sup> Order designating Pre-trial Judge, 1 September 1998.

<sup>2397</sup> Order of the President Assigning a Case to a Trial Chamber, 18 December 1998.

<sup>2398</sup> Order Appointing Pre-trial Judge, 26 January 1999.

<sup>2399</sup> Order of the President for the Temporary Assignment of a Judge to the Trial Chamber, 31 March 1999.

entered a finding of guilt and ordered the proceedings against Stevan Todorović to be separated from those against the other accused.<sup>2400</sup>

1135. On 12 March 2001, Blagoje Simić surrendered voluntarily to the Tribunal. At his initial appearance on 15 March 2001, he pleaded “not guilty” to the charges against him as contained in the Second Amended Indictment. The same day, Judge Mohamed Fassi Fihri was assigned to Trial Chamber III replacing Judge Mohamed Bennouna.<sup>2401</sup> By 20 March 2001 Trial Chamber III consisted of Judge Patrick Lipton Robinson (Presiding), Judge Richard May and Judge Mohamed Fassi Fihri.<sup>2402</sup>

1136. The Third Amended Indictment was confirmed on 15 May 2001, and on 7 August 2001, the President ordered the case to be assigned to Trial Chamber II composed of Judge Florence Ndepele Mwachande Mumba (Presiding), Judge Amarjeet Singh and Judge Sharon A. Williams.<sup>2403</sup>

1137. After the start of trial on 10 September 2001, the Prosecution sought leave to amend the Third Amended Indictment on 5 December 2001.<sup>2404</sup> The motion dealt with, *inter alia*, the insertion of the words “acting in concert together” in paras 14 to 19 and 20 to 23 of the Third Amended Indictment, and the clarification of “property” referred to in paras 14(e), 15(f), 17(e), and 18(f) as comprising the destruction or wilful damage of institutions dedicated to religion. The Joint Defence objected to this motion on 11 December 2001.<sup>2405</sup> The Trial Chamber granted the motion on 20 December 2001.<sup>2406</sup>

1138. By order of the President on 11 April 2002, Judge Per-Johan Viktor Lindholm was assigned to Trial Chamber II, replacing Judge Amarjeet Singh.<sup>2407</sup>

1139. On 13 May 2002, Milan Simić and the Prosecution filed a “Joint Motion for Consideration of Plea Agreement by Milan Simić and the Office of the Prosecutor”. The Trial Chamber granted leave for the Prosecution to withdraw the remaining counts against Milan Simić on 15 May 2002.<sup>2408</sup>

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<sup>2400</sup> Order Separating Proceedings and Scheduling Order, 24 January 2001.

<sup>2401</sup> Order of the President Assigning a Judge to a Trial Chamber, signed on 15 March 2001 and filed on 22 March 2001.

<sup>2402</sup> Order of the President Assigning Judges to the Trial Chamber, 20 March 2001.

<sup>2403</sup> Order of the President Assigning a Case to a Trial Chamber, 7 August 2001.

<sup>2404</sup> Prosecution’s Motion for Leave to Amend the Indictment, 5 December 2001; Addendum to the Prosecution’s Motion for Leave to Amend the Indictment, 10 December 2001.

<sup>2405</sup> Joint Defense Response to the Prosecution’s Motion for Leave to Amend the Indictment, 11 December 2001.

<sup>2406</sup> Decision on the Prosecution’s Motion for Leave to Amend the Indictment, 20 December 2001.

<sup>2407</sup> Order of the President Assigning an *Ad Litem* Judge to a Trial, 11 April 2001.

<sup>2408</sup> T. 8013.

1140. On 28 May 2002, the Trial Chamber separated the trial of Milan Simić from the trial of Blagoje Simić, Miroslav Tadić and Simo Zarić, and ordered the Prosecution to file the Fifth Amended Indictment, in which the charges against Milan Simić were struck out.<sup>2409</sup> The Fifth Amended Indictment was filed on 30 May 2002.

## 2. Assignment of Counsel

1141. On 18 March 1998, the Registrar assigned Borislav Pisarević as defence counsel for the accused Simo Zarić pursuant to Rule 45(B).<sup>2410</sup> Aleksandar Lazarević was appointed co-counsel for Simo Zarić on 1 August 2001.

1142. At the request of Blagoje Simić, Igor Pantelić was assigned as counsel for Blagoje Simić on 21 March 2001, after Miroslav Tadić had agreed to the replacement of his then lead counsel Igor Pantelić by his then co-counsel Novak Lukić. On 19 July 2001, Dragan Krgović was assigned co-counsel for Miroslav Tadić, and on 7 September 2001, Srdjan Vuković was assigned co-counsel for Blagoje Simić.

## 3. Status Conferences and Pre-Trial case management

1143. The Pre-Trial proceedings in this case lasted for more than three and a half years. In 1999, Status Conferences were held on 21 January, 4 March, 30 July, and 23 November; in 2000, on 1 March, 28 June, and 11 October; and in 2001, on 8 February, 15 May and 10 September 2001. Moreover, legal issues arising in this case necessitated the holding of several hearings on specific matters.<sup>2411</sup> A first Pre-Trial Conference was held on 29 April 1999. As the trial was then adjourned until 10 September 2001, another Pre-Trial Conference was held on 26 June 2001.

## 4. Conflict of interest

1144. On 16 December 1998, the Prosecution filed a motion seeking to resolve the issue of potential conflict of interest regarding defence counsel for Simo Zarić, Borislav Pisarević. The motion was filed prior to the commencement of the trial to determine whether Borislav Pisarević was likely to be called as a witness at trial.<sup>2412</sup>

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<sup>2409</sup> T. 8419.

<sup>2410</sup> Mr. Pisarević was assigned pursuant to Rule 45 (B) of the Rules, which at that time provided: “In particular circumstances, upon the request of an indigent suspect or accused, the Registrar may be authorised, by a Judge or a Trial Chamber seised of the case, to assign counsel who speaks the language of the suspect or the accused but does not speak either of the two working languages of the Tribunal.”

<sup>2411</sup> Hearings were held on 23 February 1999, 4 March 1999, 9 March 1999 (*ex parte* regarding ICRC), 8 and 9 June 1999, 23 and 34 November 1999, 25 July 2000, 19 January 2001, 15 May 2001 and 25 July 2001.

<sup>2412</sup> Prosecution Motion to Resolve Conflict of Interest Regarding Attorney Borislav Pisarević, 16 December 1998.

1145. After hearing the parties, the Trial Chamber concluded that there was a potential for a conflict arising at trial between Borislav Pisarević and his client Simo Zarić. However, the Trial Chamber found that Article 9(5) of the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal (“Code of Professional Conduct”) constituted an appropriate mechanism for dealing with the conflict at the Pre-Trial stage. Article 9(5)(b)(ii) of the Code of Professional Conduct provided that “where a conflict of interest does arise, counsel must obtain the full and informed consent of all potentially affected clients to continue the representation, so long as counsel is able to fulfil all other obligations under this Code”. Simo Zarić gave his consent in writing to Borislav Pisarević continuing as his counsel on 13 April 1999.

1146. The issue of a potential conflict of interest was revisited during trial, as a number of witnesses mentioned in their evidence the name of Borislav Pisarević. In light of the fact that the Prosecution team had changed since 1999, the Trial Chamber requested the Prosecution to inform the Trial Chamber which future witnesses would refer to Borislav Pisarević during their testimony. The Trial Chamber advised Borislav Pisarević that he would only be allowed to conduct cross-examination of such witnesses if permitted by the Trial Chamber. The Trial Chamber’s view was that it retained the final discretion as to whether Borislav Pisarević was allowed to carry out the cross-examination, or whether his co-counsel Aleksandar Lazarević would be requested to proceed instead.

## 5. Provisional Release

1147. Miroslav Tadić and Simo Zarić sought their provisional release on 19 January 1999. Their application was denied on 15 February 1999 by the Trial Chamber on the ground that they had failed to establish the existence of exceptional circumstances to justify their release.<sup>2413</sup> Both accused appealed the decisions. The Appeals Chamber issued its decision on 28 July 1999,<sup>2414</sup> vacating the Trial Chamber’s decision on the ground that, contrary to the expectations of the accused, the decision had been issued solely on the basis of written submissions. At the same time the Appeals Chamber also directed that an oral hearing on the accused’s application for provisional release be held, and that the host country be heard, as required by Rule 65(B) of the Rules. The hearing was held on 23 November 1999, and was followed by written submissions from both sides.<sup>2415</sup> The Trial Chamber issued its decisions for both accused on 4 April 2000.<sup>2416</sup> It considered

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<sup>2413</sup> Decisions on Provisional Release for Miroslav Tadić and Simo Zarić, 15 February 1999.

<sup>2414</sup> Decision Relating to the Trial Chamber’s Ruling on the Basis of Written Submissions Prior to Holding Oral Arguments as Scheduled, 28 July 1999.

<sup>2415</sup> Prosecution’s Brief in Opposition to Provisional Release, 30 November 1999; Addendum to Prosecution’s Brief in Opposition to Provisional Release, 1 December 1999; Response by Miroslav Tadić and Simo Zarić to the Prosecution’s Brief in Opposition to Provisional Release, 7 December 1999; Addendum to the Response by Miroslav Tadić and Simo Zarić to the Prosecution’s Brief in Opposition to Provisional Release, 8 December 1999.

that Rule 65(B) of the Rules, as amended, no longer required an accused to demonstrate exceptional circumstances before the release might be ordered, and rejected the Prosecution's contention that the amendment to Rule 65(B) of the Rules was *ultra vires*. It found Rule 65(B) of the Rules, as amended, to be consistent with any provision in the Statute and, "with the internationally recognised standards regarding the rights of the accused which the International Tribunal is obliged to respect". As a result, Miroslav Tadić and Simo Zarić were provisionally released from 19 April 2000 until 3 September 2001.

1148. The Prosecution filed an application for leave to appeal the Trial Chamber's decisions on provisional release pursuant to Rule 65(D) of the Rules. The Appeals Chamber rejected the application on 19 April 2000.<sup>2417</sup> During his provisional release, Miroslav Tadić filed seven motions to provisionally leave his residence for medical treatment and therapy. The Trial Chamber allowed the accused to travel to the Clinical Hospital Centre in Banja Luka four times.<sup>2418</sup>

1149. On 26 July 2001, the Trial Chamber ordered the termination of the provisional release of Milan Simić, Miroslav Tadić and Simo Zarić and their return to the Tribunal on 3 September 2001.<sup>2419</sup>

## 6. Separation of Trials

1150. On 8 July 1999, Simo Zarić filed a motion seeking to have his trial separated from the trial of the other co-accused pursuant to Rule 82(B) of the Rules. The Trial Chamber denied the relief sought after having heard the oral arguments of the parties on 23 November 1999.<sup>2420</sup> It issued its reasoning on 3 February 2000.<sup>2421</sup> The Trial Chamber considered that it was not satisfied that any such conflict of interest for granting a separate trial under Rule 82(B) of the Rules existed. It stated that a joint trial avoided the duplication of evidence, minimised hardship to witnesses and was generally in the interests of judicial economy. Additionally, the Trial Chamber was of the view that the separation of the accused's trial was unlikely to yield an earlier date for the commencement of his trial.

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<sup>2416</sup> Decisions on Miroslav Tadić's and Simo Zarić's Applications for Provisional Release, 4 April 2000.

<sup>2417</sup> Decision on Application for Leave to Appeal, 19 April 2000.

<sup>2418</sup> Decisions on Miroslav Tadić's Applications to Provisionally Leave his Residence for Medical Examination, 11 September 2000, 16 October 2000, 19 January 2001 and 27 March 2001, respectively; see also Decision on Application of the Accused Mr. Miroslav Tadić to Provisionally Leave his Residence for Medical Examination, 29 June 2000; Decision on de novo Application of the Accused Mr. Miroslav Tadić to Provisionally Leave his Residence for Medical Examinations, 27 July 2000; Decision on Application of the Accused Mr. Miroslav Tadić to Provisionally Leave his Residence for Medical Treatment and Physical Therapy, 26 July 2001.

<sup>2419</sup> Decision for the Attendance of Accused and Termination of Provisional Release, 26 July 2001.

<sup>2420</sup> Case No. IT-95-9-PT, 23 November 1999, T. 644.

<sup>2421</sup> Decision on Motion for Separate Trial for Simo Zarić, 3 February 2000.

## 7. Contempt proceedings

1151. On 9 June 1999, the Trial Chamber ordered the date set for the commencement of the trial to be vacated and the trial to be adjourned, due to contempt allegations against the accused Milan Simić and defence counsel Branislav Avramović and Igor Pantelić.<sup>2422</sup> On 7 July 1999, the Trial Chamber found that it did not have good reason to believe that Igor Pantelić may be in contempt of the Tribunal, but found that it did have good reason to believe so with regard to Milan Simić and Branislav Avramović. On 30 June 2000, the Trial Chamber rendered its judgement and decided that the allegations of contempt against Branislav Avramović and Milan Simić had not been proven beyond reasonable doubt and that they were not in contempt of the Tribunal.<sup>2423</sup>

## 8. ICRC Decision

1152. On 10 February 1999, the Prosecution sought a ruling from the Trial Chamber under Rule 73 of the Rules as to whether a former employee of the International Committee of the Red Cross (“ICRC”) may be called to give evidence of facts that came to his knowledge by virtue of his employment.<sup>2424</sup> The same day, the ICRC filed an “Application for Leave to Appear as *Amicus Curiae* under Rule 74”,<sup>2425</sup> which was granted by the Trial Chamber on 16 March 1999, on an *ex parte* and confidential basis.<sup>2426</sup> The Prosecution filed its written submissions on 23 March 1999,<sup>2427</sup> and the ICRC on 13 April 1999.<sup>2428</sup> In addition, the ICRC, in support of its position, provided the Trial Chamber with the opinions of two experts.

1153. The Trial Chamber delivered its decision on 27 July 1999 on an *ex parte* and confidential basis.<sup>2429</sup> It held that “the ICRC’s principled position of non-testimony before courts can be regarded as a consequence of the principles which underlie its activities, in particular the principles of neutrality, impartiality and independence”.<sup>2430</sup> It concluded that:

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<sup>2422</sup> Status Conference, 9 June 1999, T. 612.

<sup>2423</sup> Judgement in the Matter of Contempt Allegations Against an Accused and his Counsel, 30 June 2000.

<sup>2424</sup> *Ex parte* and confidential Prosecutor’s Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness 10 February 1999.

<sup>2425</sup> Application for Leave to Appear as *Amicus Curiae* Under Rule 74 on Behalf of the ICRC, 10 February 1999.

<sup>2426</sup> *Ex parte* and confidential Order Granting Leave to Appear as *Amicus Curiae* and Scheduling Order, 16 March 1999.

<sup>2427</sup> *Ex parte* and confidential Prosecution Submission Concerning the Proposal to Call a Former Employee of the ICRC as a Prosecution Witness, 23 March 1999.

<sup>2428</sup> *Ex parte* and Confidential Submission by the ICRC Concerning the Proposal to Call a Former Employee of the ICRC as a Prosecution Witness, 13 April 1999.

<sup>2429</sup> *Ex parte* and Confidential Decision on the Prosecution Motion under Rule 73 for a Ruling Concerning the Testimony of a Witness, 27 July 1999.

<sup>2430</sup> *Ibid.*, para. 64.

the ratification of the Geneva Convention by 188 States can be considered as reflecting the *opinio juris* of these State Parties, which [...] leads the Trial Chamber to conclude that the ICRC has a right under customary international law to non-disclosure of the Information.<sup>2431</sup>

1154. As to whether the ICRC's confidentiality interest should be balanced against the interests of justice, the Trial Chamber found that it was bound "by this rule of customary international law, which, in its content, does not admit of, or call for, any balancing of interest."<sup>2432</sup> With regard to the question as to whether protective measures could adequately meet the ICRC's confidentiality interest, the Trial Chamber stated that where "there is a rule of customary international law barring it from admitting the Information [...] the question of the adoption of protective measures does not arise."<sup>2433</sup> Judge David Hunt appended a Separate Opinion to this decision.<sup>2434</sup> The confidentiality of that decision was lifted by an order of the Trial Chamber on 1 October 1999.<sup>2435</sup>

### 9. Judicial Notice

1155. On 16 December 1998, the Prosecution requested the Trial Chamber to take judicial notice of the international character of the conflict in Bosnia-Herzegovina starting on 6 March 1992, or at the latest by 6 April 1992, and ending at the earliest on 19 May 1992.<sup>2436</sup> The Prosecution based its request alternatively on Rule 94(A) of the Rules (facts of common knowledge), or Rule 94(B) of the Rules (adjudicated facts or documentary evidence from other proceedings of the Tribunal).

1156. The Trial Chamber issued its decision on 25 March 1999.<sup>2437</sup> It dismissed the motion on the ground that each Trial Chamber, based on the specific circumstances of each case, is required to make its own determination on the nature of the armed conflict upon the specific evidence presented to it. It took *proprio motu* judicial notice of the fact that Bosnia and Herzegovina proclaimed its independence on 6 March 1992, and that its independence was recognised by the European Community and by the United States on 6 and 7 April 1992, respectively.

### 10. Protective Measures

1157. On 8 April 1999, the Prosecution asked the Trial Chamber for protective measures, including the use of pseudonyms, for eight witnesses.<sup>2438</sup> As the Defence did not object, the Trial

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<sup>2431</sup> Ibid., para. 74.

<sup>2432</sup> Ibid., para. 76.

<sup>2433</sup> Ibid., para. 80.

<sup>2434</sup> *Ex parte* and confidential Separate Opinion of Judge David Hunt on Prosecution Motion for a Ruling concerning the Testimony of a Witness, 27 July 1999.

<sup>2435</sup> Order Releasing *Ex Parte* Confidential Decision of the Trial Chamber, 1 October 1999.

<sup>2436</sup> Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 16 December 1998.

<sup>2437</sup> Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 25 March 1999.

<sup>2438</sup> Prosecutor's Motion for Protective Measures for Trial Witnesses, 8 April 1999.



Chamber granted the motion on 26 May 1999.<sup>2439</sup> It ordered in addition to the use of pseudonyms A, B, C, E, F, G H and I, *inter alia*, that the witnesses shall testify with facial image distortion, and where requested by the witness, with voice distortion. The Trial Chamber ordered the Prosecution, on 23 May 2001, to disclose to the Defence the identity of each protected witness, not less than six weeks prior to the date on which it was anticipated that each protected witness would testify.<sup>2440</sup>

#### 11. Disclosure

1158. The Tadić Defence, the Zarić Defence and the Prosecution agreed upon reciprocal disclosure pursuant to Rules 66(B) and 67(C) of the Rules.<sup>2441</sup> The disclosure procedure between the Simić Defence and the Prosecution followed Rule 66(A) and (C) of the Rules.

#### 12. Pre-Trial Briefs and admitted facts

1159. The final version of the Prosecution Pre-Trial Brief as well as its list of witnesses and exhibits was filed on 9 April 2001 pursuant to Rule 65ter (E)(i),(ii),(iii) of the Rules. All accused filed their Pre-trial Briefs on 7 May 2001 pursuant to Rule 65ter (F) of the Rules. On 27 April 2001, the Prosecution filed a statement with a list of facts and admissions agreed upon by all parties.<sup>2442</sup>

#### 13. Evidentiary matters

1160. On 25 July 2001, the Trial Chamber admitted the transcript of the testimony of Prosecution expert witness Dr. Gow in the *Tadić* and *Čelebići* cases, ruling that Dr. Gow would not be called for further cross-examination by the Defence in the present case, as it was satisfied that Dr. Gow had been extensively cross-examined by counsel in the previous cases.<sup>2443</sup>

1161. On 3 September 2001, Blagoje Simić filed a motion to exclude evidence relating to acts committed by former co-accused Stevan Todorović,<sup>2444</sup> in which he sought the exclusion of “detailed” evidence of witnesses in relation to acts committed by Stevan Todorović. The motion was joined by the other accused on 10 September 2001. The Prosecution objected to the motion on 6 September 2001. The Trial Chamber, pursuant to Rules 73 and 89 of the Rules, denied the motion

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<sup>2439</sup> Order for Protective Measures, 26 May 1999.

<sup>2440</sup> Order for Disclosure of Identities of Protected Witnesses, 23 May 2001.

<sup>2441</sup> Status Conference on 3 September 1998, p. 179.

<sup>2442</sup> Joint Statement of Admissions by the Parties and Matters Which are not in Dispute, 27 April 2001.

<sup>2443</sup> T. 900.

<sup>2444</sup> Motion of Blagoje Simić to Exclude Evidence Relating to Acts Committed by Stevan Todorović, 3 September 2001.

on 11 September 2001, holding that evidence in relation to acts committed by Stevan Todorović may be relevant to the charges against the accused and therefore admissible.<sup>2445</sup>

1162. On 6 September 2001, the Prosecution filed a motion to add further exhibits to the confidential Prosecution exhibit list filed on 9 April 2001. The Prosecution asked the Trial Chamber to be allowed to add transcripts from three telephone interviews with Miroslav Tadić, and one with Simo Zarić, all conducted in April or May 1996, to the exhibit list, and to admit the transcript of the interviews into evidence. Miroslav Tadić objected to the motion, arguing that, *inter alia*, the accused had not been presented with the Indictment prior to the first telephone interview. The Trial Chamber denied the motion pursuant to Article 21 of the Statute, and Rules 53*bis* and 89(D) of the Rules on 11 September 2001.<sup>2446</sup> It found that it was not satisfied that effective service of the Indictment was made prior to any of the telephone interviews, and that, consequently, the accused did not fully appreciate the seriousness of the Indictment at the material time nor understand fully the nature of the Indictment against them.

1163. On 10 September 2001, the Trial Chamber orally granted a Prosecution motion of 3 July 2001 to maintain the deportation charges under Article 5 (d) and Article 2 (g) of the Statute.<sup>2447</sup> The Trial Chamber held that such approach did not violate the right of the accused to a fair trial, as was argued by Blagoje Simić in a motion on the issue.<sup>2448</sup>

## **B. TRIAL PROCEEDINGS**

### **1. General**

1164. The trial started on 10 September 2001 and ended on 4 July 2003. Altogether, the Trial Chamber sat 234 trial days. The number of witnesses the Prosecution and the Defence intended to call was reduced by the Trial Chamber at the Pre-Trial Conference and the Pre-Defence Conference. The Prosecution presented 36 live witnesses, among them two expert witnesses. Seven witness statements were admitted pursuant to Rule 92*bis* of the Rules, and three of these witnesses gave live testimony. In total, 190 Prosecution exhibits were admitted. The Prosecution case ended on 3 September 2002. The Defence case started on 12 November 2002 and ended on 4 June 2003.

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<sup>2445</sup> Decision on Blagoje Simić's Motion to Exclude Evidence Relating to Acts Committed by Stevan Todorović, 11 September 2001.

<sup>2446</sup> Decision on Prosecutor's Request to Add Further Exhibits to the Confidential Prosecution Exhibit List filed on the 9<sup>th</sup> of April 2001, 11 September 2001.

<sup>2447</sup> T. 904-05.

<sup>2448</sup> Motion of Blagoje Simić Based on the Principle of Judicial Economy and Right to a Fair Trial to Preclude the Prosecution to Proceed with Cumulative Charging, 30 August 2001.

1165. On 17 October 2002, the Joint Defence filed their pre-defence briefs pursuant to Rule 65ter (G) of the Rules.<sup>2449</sup> The Trial Chamber ordered the accused to provide additional information with respect to the witnesses and documents mentioned in the pre-defence briefs,<sup>2450</sup> whereupon the accused filed additional motions.<sup>2451</sup> On 7 November 2002, the Trial Chamber decided on the number of witnesses for each accused both testifying *viva voce* and pursuant to Rule 92bis of the Rules, and on the amount of hours for the presentation of the case of each accused.<sup>2452</sup> The Simić Defence was granted 80 hours, the Tadić Defence 70 hours, and the Zarić Defence 90 hours, excluding character witnesses and expert witnesses for all three accused.<sup>2453</sup> The Simić Defence called in total 29 witnesses. Nine witnesses gave live evidence and six witnesses gave deposition evidence pursuant to Rule 71 of the Rules. Fourteen witnesses gave statements pursuant to Rule 92bis of the Rules, and five of them testified before the Trial Chamber. The Tadić Defence called in total 28 witnesses. Ten witnesses gave live evidence and six witnesses gave deposition evidence according to Rule 71 of the Rules. Twelve witnesses gave statements pursuant to Rule 92bis of the Rules, seven of which testified before the Trial Chamber. The Zarić Defence called in total 35 witnesses. Sixteen witnesses gave live evidence and six witnesses gave deposition evidence pursuant to Rule 71 of the Rules. Thirteen witnesses gave statements pursuant to Rule 92bis of the Rules, six of which testified before the Trial Chamber. All three accused elected to testify on their own behalf. The Simić Defence tendered 183 exhibits into evidence, the Tadić Defence 196 exhibits, and the Zarić Defence 56 exhibits. The Joint Defence presented five expert witnesses, three of them testified in court. The Trial Chamber called one witness *proprio motu*.

## 2. Evidentiary Issues

1166. On 10 September 2001, the Prosecution tendered a document, entitled “Instructions for the organisation and activity of organs of the Serbian people in Bosnia and Herzegovina in extraordinary circumstances, dated 19 December 1991”. On 11 September 2001, the Joint Defence objected to the admission of this document into evidence.<sup>2454</sup> On 11 and 12 February 2002, the Trial Chamber heard the evidence of Bernard O’Donnell, an investigator with the Office of the Prosecutor, who testified to matters related to the authenticity and reliability of the document. On 2

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<sup>2449</sup> Confidential Blagoje Simić Defence List of Witnesses and Exhibits Pursuant to Rule 65ter; Confidential Miroslav Tadić Pre-Defence Brief; Brief Pursuant to Rule 65ter (G) Submitted by the Defense of Mr. Simo Zarić, all filed on 17 October 2002.

<sup>2450</sup> Order in Respect of Pre-Defence Filings and Scheduling, 23 October 2002.

<sup>2451</sup> Confidential Defense Response on Trial Chamber’s Order in Respect of Pre-Defense Filing and Scheduling of October 23, 2002; Confidential Miroslav Tadić’s Addendum to the Pre Defense Brief, 1 November 2002; Confidential Motion in Respect of Pre-Defense Filing Submitted by the Defense of Mr. Simo Zarić, 31 October 2002.

<sup>2452</sup> T. 12019-21.

<sup>2453</sup> T. 12020-21, T. 12045.

<sup>2454</sup> T. 1078-79, T. 6005.

May 2002, the Trial Chamber orally admitted the document referred to as “Variant A and B”<sup>2455</sup> into evidence, after having heard the submissions of the Parties on 18 February and 2 May 2002. The Trial Chamber held that the evidence it had heard to that date showed that there were sufficient indicia of reliability in relation to this document to warrant its admissibility.<sup>2456</sup>

1167. On 23 July 2002, the accused filed a motion to strike the testimony of Hasan Subašić who had been following the testimonies of other witnesses on the internet, arguing that this violated Rule 90(C) of the Rules.<sup>2457</sup> The Prosecution opposed the motion.<sup>2458</sup> The Trial Chamber denied the motion and found, *inter alia*, that it falls to the Trial Chamber to determine the probative value of the witness’ evidence, taking into account all the relevant factors.<sup>2459</sup>

1168. In an oral decision on 7 November 2002, the Trial Chamber granted the Prosecution’s motion<sup>2460</sup> to exclude the proposed Defence expert evidence of Oliver Nikolić.<sup>2461</sup> In another oral decision on 7 November 2002, the Trial Chamber rejected *proprio motu* the report of the proposed Joint Defence expert Colonel Ostoja Barasin, filed on 20 September 2002.<sup>2462</sup> The request of the Joint Defense for Certification pursuant to Rule 73 of the Rules – in respect to the latter expert – was dismissed in an oral decision on 4 December 2002.<sup>2463</sup>

1169. On 11 December 2002, the Joint Defense filed the expert opinion of Prof. Dr. Zivojin Aleksić.<sup>2464</sup> On 29 January 2003, the Trial Chamber granted the motion of the Prosecutor to exclude the expert evidence of Dr. Leposava Kron.<sup>2465</sup> On 5 February 2003, the Joint Defense asked for certification of this decision,<sup>2466</sup> which was denied by the Trial Chamber on 28 February 2003.<sup>2467</sup>

1170. On 19 February 2003, the Joint Defence asked the Trial Chamber to issue an order to the government of the Federation of Bosnia and Herzegovina for the production of materials for the preparation of the report of expert witness Dr. Svetlana Radovanović.<sup>2468</sup> The Trial Chamber

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<sup>2455</sup> P3.

<sup>2456</sup> Reasons for Decision on Admission of “Variant A&B” Document, 22 May 2001.

<sup>2457</sup> Joint Defense Motion to Strike the Testimony of Hasan Subašić, 23 July 2002.

<sup>2458</sup> Response of the Prosecutor to the Joint Defense Motion to Strike the Testimony of Hasan Subašić, 26 July 2002.

<sup>2459</sup> Decision on Joint Defence Motion to Exclude Evidence, 1 August 2002.

<sup>2460</sup> Motion to Exclude the Proposed Defence Expert Evidence of Oliver Nikolić, PhD, 29 October 2002; Joint Defense Response to the Prosecution’s Motion to Exclude the Proposed Defence Expert Evidence of Oliver Nikolić, PhD, 4 November 2002.

<sup>2461</sup> T. 12008.

<sup>2462</sup> T. 12042-43.

<sup>2463</sup> T. 13286-88.

<sup>2464</sup> Filing of Prof. Dr. Zivojin Aleksić, Expert Witness Opinion Pursuant to Rule 94*bis*, 11 December 2002.

<sup>2465</sup> T. 14941-42.

<sup>2466</sup> Joint Defense Request for Rule 73 Certification, 5 February 2003.

<sup>2467</sup> Decision on Joint Defence Request for Rule 73 Certification (Expert Report), 28 February 2003.

<sup>2468</sup> The Defense Application Pursuant to Rule 54*bis*, 19 February 2003.

ordered the government of the Federation of Bosnia and Herzegovina to produce data of the 1991 census of Bosnia and Herzegovina to the Defence as soon as possible.<sup>2469</sup>

1171. On 17 March 2003, the Joint Defence requested the Trial Chamber to assign a military expert,<sup>2470</sup> and the Prosecution orally replied on 24 March 2003.<sup>2471</sup> On 4 April 2003, the Trial Chamber orally denied the request of the Joint Defence.<sup>2472</sup> On 8 April 2003, the Joint Defence asked for the expert report of General Wilmot admitted in the *Stakić* case to be admitted into evidence.<sup>2473</sup> On 28 April 2003, the Trial Chamber allowed the motion and admitted the expert opinion of General Wilmot and the transcripts of his testimony in the *Stakić* case into evidence.<sup>2474</sup>

1172. On 20 February 2003, the Prosecution orally sought leave to cross-examine Miroslav Tadić on issues contained in the three telephone interviews mentioned in the “Decision on Prosecutor’s Request to Add Further Exhibits to the Confidential Prosecution Exhibit List Filed on the 9<sup>th</sup> of April 2001” of 11 September 2001. The Prosecution intended to cross-examine Miroslav Tadić as to inconsistencies between the three telephone interviews and his live testimony before the Trial Chamber. The Prosecution submitted that these inconsistencies would only go to his credibility, not to his guilt.<sup>2475</sup> On 11 March 2003, the Trial Chamber issued its reasons for the oral decision on 20 February 2003,<sup>2476</sup> which denied the oral Prosecution motion to cross-examine Miroslav Tadić as to his credibility with regard to inconsistencies contained in three telephone interviews given by the accused to the Prosecution.<sup>2477</sup>

1173. On 2 April 2003, the Prosecution applied to cross-examine a witness about material inconsistencies between matters contained in his statement given pursuant to Rule 92*bis* of the Rules and his evidence given before the Trial Chamber on 1 April 2003.<sup>2478</sup> On the same day, the Trial Chamber rejected the application, holding that “paragraphs that are struck off [in statements given pursuant to Rule 92*bis* of the Rules] are not to be resurrected by being referred to at all.”<sup>2479</sup> On 3 April 2003, the Prosecution filed a motion asking the Trial Chamber to redetermine its decision of 2 April 2003, and to allow the Prosecution to cross-examine Defence witnesses as to

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<sup>2469</sup> Order for the Production of Documents, 21 February 2003.

<sup>2470</sup> Joint Defense Motion for Leave to Assign New Military Expert Pursuant to Rule 94*bis*, 17 March 2003.

<sup>2471</sup> T. 17244-48.

<sup>2472</sup> T. 18150.

<sup>2473</sup> T. 18262-63; see also Prosecution’s Response to Joint Defence Proposal to Tender Report of General Richard W. Wilmot Tendered in *Prosecutor v. Stakić*, 24 April 2003.

<sup>2474</sup> T. 18685-86.

<sup>2475</sup> T. 15561-76.

<sup>2476</sup> T. 15580.

<sup>2477</sup> Reasons for Decision on Prosecution’s Motion to Use Telephone Interviews, 11 March 2003.

<sup>2478</sup> T. 17930-31.

<sup>2479</sup> T. 17959.

inconsistencies between their Rule 92*bis* statements and their trial testimony.<sup>2480</sup> The Trial Chamber granted certification on 28 April 2003.<sup>2481</sup> On 11 April 2003, the Prosecution filed a motion asking the Trial Chamber to redetermine its oral decision of 15 April 2003<sup>2482</sup> against a Prosecution application to allow a witness to refresh his memory from parts of a statement containing a declaration pursuant to Rule 92*bis* of the Rules not admitted into evidence.<sup>2483</sup> The Trial Chamber granted certification on 2 May 2003.<sup>2484</sup> Following both certifications, the Prosecution filed two interlocutory appeals.<sup>2485</sup> On 26 May 2003, the Appeals Chamber granted both appeals and quashed both decisions of the Trial Chamber.<sup>2486</sup>

1174. On 4 April 2003, the Trial Chamber issued a *Subpoena ad testificandum* to one witness.<sup>2487</sup>

### 3. Depositions

1175. On 14 November 2002, the Joint Defence filed a motion to allow the taking of depositions of 44 witnesses,<sup>2488</sup> to which the Prosecution replied on 29 November 2002.<sup>2489</sup> The Trial Chamber ordered on 11 December 2002 that, *inter alia*, some of those witnesses testify *viva voce*, and that some others testify pursuant to Rules 92*bis* or 71 of the Rules.<sup>2490</sup> On 22 January 2003, the Joint Defence submitted a list of witnesses whose testimonies were to be given pursuant to Rule 71 of the

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<sup>2480</sup> Prosecutor's Motion for Trial Chamber's Redetermination of its Decision of 2 April 2003 Relating to Cross-Examination of Defence Rule 92*bis* Witnesses, or Alternatively Certification Under Rule 73 (B) of the Rules of Procedure and Evidence, 3 April 2003.

<sup>2481</sup> Decision on Prosecutor's Motion for Trial Chambers Redetermination of its Decision of 2 April 2003 Relating to Cross-Examination of Defence Rule 92*bis* Witnesses or Alternatively Certification Under Rule 73 (B) of the Rules of Procedure and Evidence, 28 April 2003.

<sup>2482</sup> T. 18646.

<sup>2483</sup> Prosecutor's Motion for Redetermination of Decision of 15 April 2003 Preventing Witnesses from Refreshing Memory From a Statement Declared Pursuant to Rule 92*bis* (B) of the Rules of Procedure and Evidence, or alternatively Certification under Rule 73 (B) and a Variation of Time for Filing of Rule 73 (B) Motion Pursuant to Rule 127, 25 April 2003.

<sup>2484</sup> Decision on Prosecutor's Motion for Redetermination of Decision of 15 April 2003 Preventing Witnesses from Refreshing Memory from a Statement Declared Pursuant to Rule 92*bis* (B) of the Rules of Procedure and Evidence, or Alternatively Certification Under Rule 73 (B) and a Variation of Time for Filing of Rule 73 (B) Motion Pursuant to Rule 127, 2 May 2003.

<sup>2485</sup> Prosecution's Interlocutory Appeal Against the Trial Chamber's 28 April 2003 Decision on Prosecutor's Motion for Trial Chambers Redetermination of its Decision of 2 April 2003 Relating to Cross-Examination of Defence Rule 92*bis* Witnesses or Alternatively Certification Under Rule 73 (B) of the Rules of Procedure and Evidence, 5 May 2003; Prosecution's Interlocutory Appeal Against the Trial Chamber's 2 May 2003 Decision on Prosecutor's Motion for Redetermination of Decision of 15 April 2003 Preventing Witnesses from Refreshing Memory from a Statement Declared Pursuant to Rule 92*bis* of the Rules of Procedure and Evidence, or Alternatively Certification Under Rule 73 (B) and a Variation of Time for Filing of Rule 73 (B) Motion Pursuant to Rule 127, 9 May 2003.

<sup>2486</sup> Decision on Prosecution Interlocutory Appeals on the Use of Statements not Admitted into Evidence Pursuant to Rule 92*bis* as a Basis to Challenge Credibility and to Refresh Memory, 23 May 2003.

<sup>2487</sup> Confidential Subpoena ad Testificandum, 4 April 2003.

<sup>2488</sup> Confidential Joint Defense Motion in Respect to Rule 71, 14 November 2002.

<sup>2489</sup> Confidential Prosecution Response to Joint Defense Motion Made in Respect to Rule 71, 29 November 2002.

<sup>2490</sup> Confidential Decision on the The Joint Defense Motion in Respect to Rule 71, 11 December 2002.

Rules, indicating the estimated time for their examination-in-chief.<sup>2491</sup> The depositions of 18 witnesses – six for each accused – were taken in Belgrade between 4 and 7 February 2003.

1176. On 7 February 2003, the Joint Defense requested a certification of the Trial Chamber's decision<sup>2492</sup> that other Defenses would not be allowed to cross-examine witnesses called by the Defense of a particular accused.<sup>2493</sup> The Trial Chamber denied the motion on 28 February 2003.<sup>2494</sup>

#### 4. Protective measures

1177. On 20 November 2001, the Trial Chamber granted orally a motion by the Prosecutor for protective measures for Witnesses K and L.<sup>2495</sup> On 24 June 2002, the Trial Chamber held that the pseudonyms O, P, and Q should be used when referring to the respective Prosecution witnesses.<sup>2496</sup>

1178. On 25 July 2002, the Trial Chamber granted a Prosecution Request<sup>2497</sup> permitting the Prosecution to provide closed session testimony of Stevan Todorović to the accused, the appointed lawyers and the *amici curiae* in the proceedings *Prosecutor v. Milošević*.<sup>2498</sup> On 26 July 2002, President Jorda granted a motion<sup>2499</sup> by the Prosecution to vary the protective measures orders issued in the proceedings *Prosecutor v. Simić et al.* to the extent necessary to permit the Prosecution to provide the statements, transcripts of testimony, and related exhibits of the relevant witnesses to the Accused, the appointed lawyers and the *Amici Curiae* in *Prosecutor v. Milošević*.<sup>2500</sup>

1179. In an oral decision on 9 December 2002, the Trial Chamber granted a motion<sup>2501</sup> by Miroslav Tadić to allow that the testimony of one witness be received via video-link.<sup>2502</sup> On 29 January 2003, the Zarić Defence asked, *inter alia*, for safe conduct for eight witnesses, protective measures for three witnesses, and to allow one witness to testify via video-link.<sup>2503</sup> On 31 January 2003, the defence for Blagoje Simić and Miroslav Tadić filed a motion to allow two witnesses to

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<sup>2491</sup> The Joint Defense Submission Pursuant to Trial Chamber's Decision on The Joint Defense Motion in Respect to Rule 71 of 11 December 2002, 22 January 2003.

<sup>2492</sup> T. 15049.

<sup>2493</sup> Joint Request for Rule 73 Certification, 6 February 2003.

<sup>2494</sup> Decision on Joint Defence Request for Rule 73 Certification (Procedure under Rule 71 for Depositions), 28 February 2003.

<sup>2495</sup> Order for Protective Measures for Witnesses, 4 December 2001 (entailing the written reasons for the oral decision).

<sup>2496</sup> Confidential Order for Protective Measures for Witnesses, 24 June 2002.

<sup>2497</sup> Confidential and Partially *Ex Parte* Prosecution Request Pursuant to Rule 75 (D) for Variation of Protective Measures, 18 July 2002.

<sup>2498</sup> Order Varying Protective Measures, 25 July 2002.

<sup>2499</sup> Prosecution Request Pursuant to Rule 75 (D) for Variation of Protective Measures, 14 May 2002.

<sup>2500</sup> Ordonnance du Président Relative à la Requête du Procureur aux Fins de Modification des Mesures de Protection des Témoins, 26 July 2002.

<sup>2501</sup> The Defendant Miroslav Tadić's Request Pursuant to Rule 71bis, 6 December 2002.

<sup>2502</sup> T. 13518.

<sup>2503</sup> Mr. Simo Zarić's Defense Request for Protective Measures, filed confidentially on 29 January 2003; Prosecution Response to the Request of the Accused Simo Zarić for Protective Measures Filed 29 January 2003, filed confidentially on 3 February 2003.

testify via video-link, and on 14 February 2003, the Trial Chamber granted these motions.<sup>2504</sup> For the Prosecution, Hasan Subašić testified via video-link.<sup>2505</sup>

## 5. Judgement of acquittal

1180. On 12 and 13 September 2002, all accused filed a motion for a judgement of acquittal pursuant to Rule 98*bis* of the Rules.<sup>2506</sup> The Prosecution filed its response on 27 September 2002.<sup>2507</sup> In its oral decision on 9 October 2002, the Trial Chamber rendered a judgement of acquittal on (i) the aspect of “destruction” of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock as contained in paras 13(f), 14(e) and 15(f) of the Indictment (Count 1, persecutions), and on (ii) the whole offence of destruction or wilful damage to institutions dedicated to religion as contained in paras 13(g), 14(f) and 15(g) of the Indictment.<sup>2508</sup>

## 6. Miscellaneous

1181. On 20 February 2003, Dr. Falke stated that due to health problems of Simo Zarić, shorter sitting hours were advisable.<sup>2509</sup> On 17 April 2003, Simo Zarić underwent surgery and was in good physical condition afterwards.<sup>2510</sup> On 15 May 2003, Dr. Falke advised the Registrar that there was no medical reason why Simo Zarić could not attend full days in court. Dr. Falke also stated that full days in court were not ideal for Miroslav Tadić.<sup>2511</sup>

1182. On 9 and 10 January 2003, Miroslav Tadić waived his right to be present during the court proceedings on 10 January 2003.<sup>2512</sup> On 2 April 2003, Simo Zarić waived his right to be present during the court proceedings in the morning session of the same day.<sup>2513</sup> On 11 April 2003, Simo

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<sup>2504</sup> Confidential Order to Receive Testimony via Video-Conference Link Pursuant to Rule 71 *bis*, 14 February 2003. The request for safe conduct was granted in the Confidential Order for Safe Conduct of Witnesses for Simo Zarić, 18 February 2003.

<sup>2505</sup> Order to Receive Testimony via Video-Conference Pursuant to Rule 71*bis*, 24 June 2002.

<sup>2506</sup> Confidential Motion for Judgment of Acquittal Filed by the Accused Simo Zarić Pursuant to Rule 98 *bis*, 12 September 2002; Confidential Motion for Judgment of Acquittal of the Accused Miroslav Tadić, 13 September 2002; Defendant Blagoje Simić’s Motion for Judgment of Acquittal, 13 September 2002. The confidentiality of the first two motions were lifted in the Trial Chamber’s Decision on 19 September 2002.

<sup>2507</sup> Confidential Prosecutor’s Response to the Motion of the Accused Blagoje Simić, Miroslav Tadić, and Simo Zarić for Judgement of Acquittal, 27 September 2002; Motion Pursuant to Rule 127 (A) (ii) to File Public Redacted Version of the Prosecutor’s Response to the Accused’s Motions for Acquittal Pursuant to Rule 98 *bis* and Corrigendum to the Confidential Prosecutor’s Response to the Motions for Judgement of Acquittal Made by the Accused Pursuant to Rule 98 *bis* and Filed on the 27<sup>th</sup> September 2002, 30 September 2002.

<sup>2508</sup> See Written Reasons for Decision on Motions for Acquittal, 11 October 2002.

<sup>2509</sup> Letter of Paulus T. Falke, Medical Officer, UNDU, to the Registrar, 20 February 2003.

<sup>2510</sup> Report of Paulus T. Falke, Medical Officer, UNDU, to the Registrar, 9 May 2003.

<sup>2511</sup> Letter of Paulus T. Falke, Medical Officer, UNDU, to the Registrar, 15 May 2003.

<sup>2512</sup> Waivers of Miroslav Tadić, 9 and 10 January 2003.

<sup>2513</sup> Waiver of Simo Zarić, 2 April 2003.



Zarić gave his consent for three witnesses of the Simić Defence to be examined in his absence; he did not consent for another witness to be examined in his absence.<sup>2514</sup>

1183. The Prosecution and the Defence for the three accused filed their confidential Final Trial Briefs on 18 and 19 June 2003, respectively.<sup>2515</sup> Redacted public versions of the briefs were filed by the Prosecution on 24 June 2003,<sup>2516</sup> by the Simić Defence and Tadić Defence on 7 July 2003, and by the Zarić Defence on 19 June 2003. Closing arguments were heard between 30 June and 4 July 2003. The hearing was closed on 4 July 2003.

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<sup>2514</sup> Authorization by Simo Zarić, 11 April 2003.

<sup>2515</sup> Prosecution Final Brief, 19 June 2003; Dr. Blagoje Simić's Final Trial Brief, 19 June 2003; Defendant Tadić Final Brief, 18 June 2003; Zarić Final Brief, 19 June 2003.

<sup>2516</sup> A revised public redacted version was filed on 4 July 2003.

**XXV. ANNEX VI - MAP**