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UNITED
NATIONS



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

Case No. IT-06-90-A
Date: 16 November 2012
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Judgement of: 16 November 2012

PROSECUTOR

v.

**ANTE GOTOVINA
MLADEN MARKAČ**

JUDGEMENT

The Office of the Prosecutor

Ms. Helen Brady
Mr. Douglas Stringer
Ms. Laurel Baig
Mr. Francois Boudreault
Ms. Ingrid Elliott
Mr. Todd Schneider
Ms. Saeeda Verrall
Mr. Matthew Cross

Counsel for Ante Gotovina

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

Counsel for Mladen Markač

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

Konings and Rajčić indicated that BM-21s were less precise than 130-millimetre guns, but did not specify to what extent they were less accurate than BM-21s.¹⁸⁵

60. The Trial Chamber also failed to justify its decision to apply the 200 Metre Standard uniformly to artillery shelling in all Four Towns. This approach is not consistent with the Trial Chamber's apparent acceptance of Witness Konings's testimony that factors such as wind speed would affect range of error,¹⁸⁶ or its failure to make findings on these factors with respect to each of the Four Towns.¹⁸⁷ In addition, where the Trial Chamber made findings as to the distance of artillery weaponry from individual towns being shelled, its conclusions suggest that these distances varied by as much as eight kilometres between different towns.¹⁸⁸ The Appeals Chamber notes that the Trial Chamber appears to have accepted Witness Konings's view that increased distance from a target would increase range of error;¹⁸⁹ however this view is not consistent with the Trial Chamber's reliance on a single margin of error for the artillery shelling of all Four Towns.¹⁹⁰

61. The Trial Chamber's failure to make crucial findings and calculations may be partially explained by its observation that it did not receive detailed evidence on the factors identified by Witness Konings as affecting artillery shells' range of error.¹⁹¹ However, the Prosecution's failure to proffer relevant evidence did not justify the Trial Chamber's insufficient analysis in this regard. The Appeals Chamber finds that there was a need for an evidentiary basis for the Trial Chamber's conclusions, particularly because these conclusions relate to a highly technical subject: the margin of error of artillery weapons in particular conditions. However, the Trial Chamber adopted a margin of error that was not linked to any evidence it received; this constituted an error on the part of the Trial Chamber. The Trial Chamber also provided no explanation as to the basis for the margin of error it adopted; this amounted to a failure to provide a reasoned opinion, another error. The impact, if any, of the Trial Chamber's errors will be considered later in this section.¹⁹²

¹⁸⁵ See *supra*, paras 53-54.

¹⁸⁶ See Trial Judgement, para. 1898.

¹⁸⁷ See *generally* Trial Judgement, paras 1899-1945.

¹⁸⁸ See Trial Judgement, paras 1898, 1916, 1928.

¹⁸⁹ See Trial Judgement, paras 1165, 1898.

¹⁹⁰ In addition, the Appeals Chamber recalls that Witnesses Konings and Rajčić testified that BM-21s were found to have a broader range of error than 130-millimetre guns. The Trial Chamber's single range of error did not account for this testimony. See *supra*, paras 53-54.

¹⁹¹ Trial Judgement, para. 1898.

¹⁹² The Appeals Chamber notes that the preceding discussion is limited to analysing the specifics of the Trial Chamber's reasoning, rather than taking a position on whether use of weapons with specific ranges of error would be lawful in particular contexts.

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