

 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-T
		Date:	15 April 2011
		Original:	English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķinis
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Judgement of: 15 April 2011

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

JUDGEMENT

VOLUME II OF II

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1787. In assessing whether all incidents of plunder had grave consequences for the victims, the Trial Chamber considered in particular evidence from witnesses who either observed the incidents, or otherwise could provide information about the circumstances surrounding the acts of plunder. The Trial Chamber finds that certain incidents had in themselves grave consequences for the victims. Moreover, considering the overall effect of the various incidents of plunder on the civilian population, and the multitude of offences committed, the Trial Chamber finds that the plunder concerns property of a large number of people, and that the cumulative effect of the various incidents constitutes grave consequences.

1788. The Trial Chamber further finds, based on the affiliation of the perpetrators and the time, place, and manner in which the plunder took place, that there was a close relationship between the acts of plunder and the armed conflict.

1789. Therefore, the Trial Chamber finds that the incidents referred to in the latter list above constitute plunder as violations of the laws or customs of war.

5.7 Inhumane acts and cruel treatment

5.7.1 Applicable law

1790. Counts 3 and 8 of the Indictment charge the Accused with inhumane acts as crimes against humanity, punishable under Article 5 (i) of the Statute. Count 3 covers forcible transfer as a form of inhumane acts. The Trial Chamber has dealt with forcible transfer in chapter 5.4.1, above. Count 9 charges the Accused with cruel treatment as a violation of the laws or customs of war, punishable under Article 3 of the Statute. Counts 8 and 9 specify the inhumane acts and cruel treatment as acts “including [...] humiliation and/or degradation, by firing upon (including by aerial attack), assaulting, beating, stabbing, threatening and burning [Krajina Serb civilians and persons taking no part in hostilities]”.⁸⁷⁷ The general elements and jurisdictional requirements for these crimes have been discussed in chapter 5.2.1, above.

1791. Cruel treatment and inhumane acts require proof of the same set of elements,⁸⁷⁸ namely:

⁸⁷⁷ Indictment, para. 53.

⁸⁷⁸ *Krnjelac* Trial Judgement, para. 130.

- (a) an act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity;⁸⁷⁹ and
- (b) the act or omission was committed with intent, or alternatively with knowledge that the act or omission was likely to cause serious mental or physical suffering or a serious attack on human dignity and the perpetrator was indifferent as to whether such consequences would result from his act or omission.⁸⁸⁰

5.7.2 Legal findings

1792. In chapters 4.3, the Trial Chamber decided to further consider the following incidents of alleged inhumane acts and cruel treatment against the backdrop of the applicable law:

Benkovac municipality: Konstantin Drča;

Gračac municipality: Bogdan Brkić;

Knin municipality: Dušan, Djuka and Milica Drpa; Ilija Mirković; unidentified man in Knin; Predrag Šare; wife of Živko Stojakov; Witness 67 (Judge Ćinić dissenting); Witness 1; Witness 13; Pera Bilbija;

Orlić municipality: Đurdija Amanović.

1793. Counts 8 and 9 of the Indictment are limited to inhumane acts and cruel treatment committed against Krajina Serbs. Based on the factual findings made in chapters 4.1 and 4.3, the Trial Chamber finds that all of the victims in the incidents referred to above, with the exception of the unidentified man in Knin, were Krajina Serbs. The mentioned incident will not be further considered.

1794. When assessing whether the acts directed against the victims in those incidents caused serious mental or physical suffering or injury, the Trial Chamber considered the circumstances under which the acts were carried out, in particular where the victims were at the time, as well as the victims' age and gender. The Trial Chamber further considered the number of perpetrators, whether the perpetrators were armed, and whether they used some kind of weapon for the ill-treatment. The Trial Chamber finds

⁸⁷⁹ *Čelebići* Appeal Judgement, para. 424; *Blaškić* Appeal Judgement, para. 595; *Haradinaj et al.* Appeal Judgement, para. 94.

⁸⁸⁰ *Krnojelac* Trial Judgement, para. 132; *Vasiljević* Trial Judgement, para. 236; *Simić et al.* Trial Judgement, para. 76; *Haradinaj et al.* Trial Judgement, para. 126.