

1 Wednesday, 23 February 2011
2 [Coric Defence Closing Statement]
3 [Open session]
4 [The accused entered court]
5 [The accused Pusic not present]
6 --- Upon commencing at 2.16 p.m.
7 JUDGE ANTONETTI: [Interpretation] Madam Registrar, could you
8 please call the case.
9 THE REGISTRAR: Good afternoon, Your Honours.
10 This is case number IT-04-74-T, the Prosecutor versus Prlic
11 et al.
12 JUDGE ANTONETTI: [Interpretation] Thank you, Madam Registrar.
13 On Wednesday, I would like to welcome everybody, the accused, the
14 counsel, members of the OTP, anybody who is assisting us.
15 I would like to give the floor to Ms. Tomic, the Defence counsel
16 for Mr. Coric. She's going to continue presenting her final arguments.
17 MS. TOMASEGOVIC TOMIC: [Interpretation] Good afternoon, Your
18 Honours. Good afternoon to everybody in the courtroom and around the
19 courtroom who are observing these proceedings.
20 At the beginning of today's argument, I would like to correct two
21 numbers that I read out incorrectly. I would like to do it for the
22 transcript. The mistake is on transcript page 52, lines 5 and 6. In
23 connection with Witness Skender, the following transcript pages should be
24 referred to: 45210 through 45283, and not 45310 and 45283. Likewise, on
25 transcript page 76, line 4, instead of P2574, there should be P2754.

1 Your Honours, the Prosecutor, in their final brief,
2 paragraph 1041, as well as in their closing argument, assert that the HVO
3 tolerated crimes because it was the HVO policy. It tolerated war crimes
4 and crimes against humanity, and thus it did not instigate proceedings
5 for such crimes. Instead, and only rarely, it prosecuted perpetrators of
6 minor offences. The Prosecutor furthermore alleges that the accused
7 Valentin Coric is directly responsible for such doings and that in that
8 way, he directly contributed to the joint criminal enterprise.
9 The Prosecutor asserts that there was an obligation for
10 proceedings to be instigated against perpetrators of such crimes and that
11 that was regulated by the International Humanitarian Law. The fact that
12 proceedings were instigated for crimes regulated by domestic laws does
13 not diminish the responsibility of the accused.
14 In order to support their thesis, the Prosecutor invoked the
15 first-instance judgement in the Milutinovic case. It should be pointed
16 out that that judgement is a first-instance judgement and that the
17 appeals judgement is still pending. Furthermore, the Milutinovic case
18 arose from Serbia and Yugoslavia, and the Penal Code of those states is
19 different from the Penal Code that was in effect in the area and at the
20 time relevant for the Prlic et al case.
21 The Coric Defence would like to draw the Trial Chamber's
22 attention to a more relevant legal authority, and those are the final
23 conclusions from the first-instance decision in the Hadzihasanovic/Kubura
24 case, because that judgement and those conclusions are relative to the
25 same space and the same time as our case. In paragraph 261 of that

1 judgement, it says:

2 "Consequently, at the time the acts alleged in the indictment
3 were committed, there was no binding obligation on states and, therefore,
4 on the Courts in the Republic of Bosnia and Herzegovina, to prosecute
5 individuals for war crimes under customary International Law."

6 Your Honours, it stems from this that national judiciary bodies
7 had the right and had the authority to decide whether crimes should be
8 qualified as war crimes or, alternatively, they would be qualified as
9 regular crimes, so to speak. In other words, the Prosecutor is not right
10 when he claims that the fact that crime reports were filed for regular
11 crimes, and not for war crimes, leads to one and only conclusion, and
12 that is that there was a criminal intent beyond any reasonable doubt and,
13 hence, that there was also criminal responsibility. In any case, the
14 Prosecutor didn't do anything to investigate or lead evidence about the
15 types of criminal reports filed. That did not prevent him from
16 misinterpreting the facts and saying that such criminal reports did not
17 even exist.

18 Your Honours, a more detailed analysis of a limited number of
19 pieces of evidence that the Defence has managed to obtain demonstrates
20 that such reports were indeed filed by appropriate bodies pursuant to the
21 Penal Code of the SFRY. The Coric Defence tendered into evidence
22 log-books and registers of some prosecutor offices. They are on the file
23 as Exhibit 5D4288. Due to its limited resources, the Defence was not in
24 a position to obtain the registries of all courts and all prosecutors'
25 offices. If we had been able to do so, that would certainly help the

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1 Trial Chamber to create an integral picture of what really went on.
2 These registers, in the part that concerns proceedings against unknown
3 perpetrators, there is a reference to four proceedings that were
4 instigated for crimes pursuant to Article 142 of the Penal Code of the
5 SFRY. These cases may be located under the following numbers: KTN-3/95,
6 KTN-99/95, KTN-101/95, and KTN-103/95. In all of the cases, the criminal
7 reports were filed in 1993, which is also visible in the register. It
8 has also been noted that one case, under number KTN-98/95, was instigated
9 for a crime pursuant to Article 144 of the same law. In all the five
10 cases, the agreed parties or victims were Muslims.

11 Article 142 of the Penal Code of the SFRY concerns the crime
12 known as a war crime against civilian population. Article 144 of the
13 same Code concerns a crime of war crime against prisoners of war. Your
14 Honours, this clearly shows that the Prosecutor is wrong when he claims
15 that no single proceedings were instigated for war crimes.

16 With regard to the quantity of the pieces of evidence that the
17 Coric Defence has managed to obtain and tender into evidence, I would
18 like to draw the Trial Chamber's attention to another paragraph from the
19 aforementioned judgement in the Hadzihasanovic/Kubura case,
20 paragraph 239. In that sense, Hadzihasanovic's Defence, in its own
21 interests, has to answer charges against the accused Hadzihasanovic, and
22 it can present documents that testify to the measures that the accused
23 Hadzihasanovic undertook in order to, for example, elucidate the context
24 of the case or the fact that the military disciplinary system was in
25 place, it was up and running. However, the fact that the Defence

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1 presented such documents should certainly not be at its detriment.

2 There is one thing to take into account the necessity for the

3 accused to answer the charges against him. However, burden of proof
4 cannot be transferred onto the Hadzihasanovic Defence and thus put it in
5 a hopeless situation. On the one hand, if the Defence presents a certain
6 number of documents which show that measures were indeed taken, the
7 Prosecutor will reap benefits from the lack of evidence in its case. On
8 the other hand, if the Hadzihasanovic Defence opts for a passive defence
9 and it doesn't present documents that demonstrate that measures were
10 indeed taken, the Prosecutor can use such a situation in order to
11 establish that the accused Hadzihasanovic did not take any measures at
12 all, since his own Defence failed to locate a single document that might
13 have proven that he had.

14 The Prosecutor, as I've already stated, by its allegations,
15 implies that Valentin Coric was responsible for the fact that
16 perpetrators of various crimes were not prosecuted and punished, and I'm
17 going to quote another part of the Hadzihasanovic and Kubura judgement.

18 Paragraph 137:

19 "To determine measures a superior must take, an examination of
20 national law is relevant."

21 139, paragraph 139:

22 "Besides, in order to determine the scope of the measures a
23 superior could take to determine his own responsibility under
24 Article 7(3), the Tribunal's case law has relied on the national law
25 and/or regulations of one of the armed forces in conflict."

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1 At the time relevant for the indictment, across the entire
2 Bosnia-Herzegovina, including the HZ-HB, the area was regulated by the
3 same laws and regulations; the Law on Criminal Proceedings, the Penal
4 Code of Bosnia and Herzegovina, and the Penal Code of the SFRY. This is
5 corroborated by documents P449, P592, 2D908, 2D909 and 2D910.
6 The Law on Criminal Proceedings, which is also Exhibit 4D1105,
7 regulated the rights and obligations of authorised bodies in the
8 following way: In keeping with Articles 158 and 161, investigations were
9 instigated at the request of the prosecutor, and the person in charge of
10 investigations was the investigating judge. An investigating judge was
11 duty-bound to inform the prosecutor if, during the investigation, it was
12 established that the proceedings had to be expanded to include another
13 crime or other persons. This is regulated by Article 165 of the same
14 law.

15 According to Article 170, an investigating judge could stop an
16 investigation at the request of a prosecutor. In special cases regulated
17 by Article 171, that could be done by a trial chamber. Once an
18 investigation was completed, the investigating judge in charge would
19 refer the case to the prosecutor, and that was regulated by Article 174.
20 Article 261 stipulated that the proceedings before a court were
21 conducted based on an indictment issued by the public prosecutor or by
22 the victim of the crime. The prosecutor was the one who qualified a
23 crime, who gave it a legal name, referring to a provision in the Penal
24 Code, which also meant that those provisions had to be applied upon the
25 prosecutor's proposal. That was prescribed by Article 262.

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1 A judgement was handed down by the court. When handing down a
2 judgement, the court did not have to abide by the prosecutor's proposals
3 about the legal qualification of the crime. This is regulated in
4 Article 346.

5 Your Honours, it arises from all of that that Valentin Coric, the

6 Military Police Administration, or any member of the military police did
7 not have the authority to issue indictments, to conduct investigations,
8 or to stop criminal proceedings. They also did not have the authority to
9 qualify crimes or issue judgements. This means that Valentin Coric, the
10 Military Police Administration and military policemen did not have a say
11 in deciding what kind of proceedings would be conducted. They didn't
12 decide about who will be punished, whether they will be punished, and how
13 they will be punished. It was the judiciary that had all those
14 authorities, both the military and civilian prosecutors as well as
15 judges, including investigating judges.
16 None of the aforementioned judiciary bodies were part of the
17 structures of the Military Police Administration or the military police
18 units. Valentin Coric did not have any authority over those judiciary
19 bodies. He was also not in a position to control them, either de jure or
20 de facto. The military police was just one of the bodies who could file
21 a criminal report with a competent prosecutor's office after the end of a
22 police investigation, and that is where all the obligations, authorities
23 and possibilities given to the military police to contribute to the
24 prosecution of criminals stopped.
25 Under the same factual circumstances, by studying and reviewing

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1 the same regulations, the Trial Chamber in the Hadzihasanovic and Kubura
2 case, in paragraph 1061, concluded as follows:

3 "The Chamber finds that the accused Hadzihasanovic was unable to
4 carry out his own criminal investigation or to influence how the case was
5 dealt with by Judge Mirsad Strika or the competent prosecutor. Given
6 that the 3rd Corps military police informed the investigating judge of
7 the arrival of the bodies at the Zenica Morgue, thereby referring the
8 matter to the appropriate military judicial authority, it cannot be
9 concluded that the accused Hadzihasanovic did not take the necessary and
10 reasonable measures under Article 7(3) of the Statute."

11 Your Honours, in this case there is evidence that numerous
12 criminal reports were submitted against perpetrators of crimes, including
13 those crimes where the victims were Muslims. By far, the largest
14 percentage of those were initiated by the military police by submitting
15 those very criminal reports.

16 Tomljanovich, who was a Prosecution expert, at pages 6368 and
17 6369 of the transcript, as well as the OTP Witness Biskic at transcript
18 pages 15277 and 15278, confirmed that the military police submitted over
19 1.000 criminal reports in 1992 alone. It is also confirmed by document
20 P950. The Defence Witness NO, in his testimony at page 51215 and 51216
21 of the transcript, stated that according to his knowledge, the military
22 police submitted over 2.000 criminal reports.

23 Valentin Coric's Defence would like to remind the Trial Chamber
24 that during our examination of Witness Vidovic at transcript
25 pages 51438 to 51535, and its examination of Witness Buntic at transcript

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1 pages 30516 to 30568, presented those witnesses a number of documents
2 which had to do with around 40 criminal proceedings held against various
3 perpetrators for crimes the victims of which were Muslims; inter alia, it
4 included the crimes of murder, rape, theft, et cetera.

5 Due to limited time, this Defence is not in a position to present
6 all those documents yet again to the Trial Chamber. Besides, in
7 Exhibit 5D4288, that is to say, in the KTN prosecution registers, one can
8 see that during the period of time relevant to this indictment, 296

9 criminal reports were submitted in total for various crimes committed
10 against Muslims. Most of them were submitted by the military police.
11 Your Honours, in their closing arguments at page 52132 of the
12 transcript, the Prosecution stated that they agree that in the Military
13 Police Administration, the various companies, and the 5th Military Police
14 Battalion, there were good men who were trying to perform their jobs
15 well. The Prosecution also stated that they were trying to do something
16 against this widespread criminal behaviour in the field. The Prosecution
17 also said that it was for that reason that they drafted all the reports
18 we watched, we saw. Your Honours, the Coric Defence asserts that
19 evidence shows that the position to prosecute perpetrators of crimes, and
20 a general condemnation of unlawful conduct, was the only plan
21 Valentin Coric had as well as the only plan that existed within the
22 Military Police Administration and the military police of the HVO as a
23 whole. It was not a position of a few good men.
24 I'd like to remind you of the words of Witness Andabak at
25 transcript pages 50953 to 50954:

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1 [In English] "Yes, I do know about that, and it was the position
2 of the military police, from the top man, Mr. Coric, was that any such
3 perpetrators should be persecuted and the criminal report filed, and for
4 them to be dismissed from the unit. And those who upset law and order,
5 that disciplinary measures be taken against them and, if need be, to
6 eliminate them from our units. So at all briefings and all my contacts
7 with the Military Police Administration also told us that anybody who
8 besmirched the name of the military police on battlegrounds throughout
9 Bosnia-Herzegovina, that they should be thrown out of the units."
10 [Interpretation] Your Honours, I'd also like to invite you to pay
11 your attention to document P3571. Valentin Coric had the following to
12 say concerning a case of rape of two Muslim girls by military policemen:
13 "The named persons defamed the military police, and their further
14 retention in the unit would be detrimental."
15 The entire case file is handed over to the competent Military
16 Prosecutor's Office.
17 I'd like to move on to my next topic.
18 In their final brief, the Prosecution asserted that
19 Valentin Coric established and controlled check-points throughout
20 Herceg-Bosna, using them in order to control movement, and to render
21 delivery of international assistance, including humanitarian assistance,
22 impossible. They seek to corroborate this thesis of theirs in paragraphs
23 1000 to 1015 of their final brief. Your Honours, not a single document
24 the Prosecutor referred to in those paragraphs proves that Valentin Coric
25 in any way disrupted the movement of humanitarian organisations as well

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1 as their lending assistance. Also, contrary to the Prosecution thesis,
2 these documents show that Valentin Coric had no exclusive authority over
3 check-points. The military police didn't have any either.
4 The Coric Defence, in our final brief in paragraphs 324 to 337,
5 dealt with the topic of check-points. Therefore, in this presentation I
6 will simply briefly comment on certain allegations made by the
7 Prosecutor.
8 In paragraph 1000, the Prosecutor asserts that Petkovic, in his
9 order number P1673, confirmed that the military police was responsible
10 for roads. This document shows only that Petkovic did order the military
11 police without informing the Military Police Administration about this

12 order, as the assertion stands. The Coric Defence asserts that the
13 check-points were not manned by military policemen and that the personnel
14 at those check-points were not under the control of the Military Police
15 Administration. This is shown in document P1548, which shows that
16 operational zone commanders commanded the check-points through their
17 brigade commanders. Also, in addition to military policemen, those
18 check-points were manned by soldiers. Both were commanded by operational
19 zone commanders.

20 The Prosecutor puts forth document P1331 as a key example of
21 Coric's order, proving that Coric controlled entry to Mostar. The only
22 thing you can see on the basis of that document is that it came about due
23 to a deteriorating security situation, and that because of that, searches
24 of persons, vehicles, and cargo were ordered. There is no mention
25 whatsoever of any ban on movement of international assistance or

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1 international organisations. This order was issued based on an order of
2 the commander of the South-East Herzegovina Operational Zone, which is
3 document P1272. In the order, he clearly states that it was being issued
4 because there were check-points formed inside the town without the
5 knowledge of the Command of South-Eastern Herzegovina Operational Zone,
6 and because armed groups appeared, threatening the security of all, as
7 well as because of the attack on a police check-point in Grabovica.

8 Document P1134, referred to by the Prosecutor in paragraph 1001,
9 also has nothing to do with humanitarian assistance or with international
10 agencies. It is specifically mentioned that Valentin Coric did not
11 personally sign the document, because at the time he was not in Bosnia
12 and Herzegovina. This is something we discussed in our final brief in
13 paragraph 625.

14 The Prosecutor also refers to document P1654, P1654. Your
15 Honours, this document also has nothing to do with humanitarian
16 assistance or with representatives of the international organisations.
17 It is clear from the document that its author focused his attention on
18 law and public order and the prevention of crime. The last sentence of
19 the document clearly indicates that the operational zone commanded the
20 military police in the town of Mostar.

21 In order to corroborate their thesis, the Prosecution referred to
22 document P1868, the so-called plan of increased control of the town of
23 Mostar. The Coric Defence, first and foremost, wishes to stress that it
24 is clear from the document that the plan was drafted jointly by some
25 other organs, including the command of the operational zone, and not the

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1 Military Police Administration or its head. It is clear, on the basis of
2 the document, that a dedicated task force was put together, on whose
3 behalf Lavric signed the plan. Therefore, Lavric did not sign the
4 document about this plan as Coric's deputy. It doesn't say that in the
5 document either. He signed this on his own behalf and on behalf of the
6 task force. All important telephone numbers are specified in the
7 document, including the telephone numbers of the chief of the Main Staff,
8 the commander of the operational zone, the deputy commander of the
9 operational zone, as well as commanders of certain military police units.
10 However, Your Honours, there is no number that would be Valentin Coric's
11 number.

12 Also, at the end of the document, there is a list of people who
13 were supposed to receive the document. Next to the name of each body
14 specified, we have a specific person that was to receive the plan; for

15 example, to the operational zone commander, to the Police Administration
16 and its head, to the head of the Department of Internal Affairs. Your
17 Honours, there is nothing written next to the "Military Police
18 Administration," no functional title, no name. The Coric Defence asserts
19 that there is no evidence that Coric was part of this plan or that he was
20 acquainted with it. The Coric Defence furthermore asserts that a few
21 days following the document, Valentin Coric issued an order on the
22 establishment of joint police patrols between the Army of
23 Bosnia-Herzegovina and the HVO, following an order issued by the
24 commander of the South-Eastern Herzegovina Operational Zone commander.
25 This is indicated in documents P2030 and P2020.

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1 The documents referred to by the Prosecutor in paragraph 1004,
2 there is no mention of the military police.
3 In paragraph 1006, the Prosecution states that the military
4 police, during the siege of Mostar, prevented international organisations
5 from entering Mostar. They refer to several documents, of which not one
6 refers to the military police. By the same token, they also invoke an
7 adjudicated fact, which also makes no reference to the military police.
8 Your Honours, the Coric Defence asserts that out of all of the
9 evidence referred to by the Prosecutor, none of them show that Coric was
10 in any way controlling the check-points or that the military police was
11 the one preventing the distribution of humanitarian assistance. This is
12 further corroborated by the evidence presented by this Defence. The
13 Coric Defence asserts that the freedom of movement in a particular area
14 was decided upon solely by military commanders in their respective areas
15 of responsibility.
16 It is visible, from documents P2108, P2461, P2531, P2680, P4027,
17 and P4623 that various military commanders met from various levels,
18 starting with the chief of the Main Staff and other people from the
19 Main Staff, as well as different commanders from the Command of the
20 Operational Zone of South-East Herzegovina, as well as commanders of
21 local brigades. They met 27 times in total in order to negotiate with
22 the international organisations or with their mediation concerning the
23 issue of the freedom of movement. All these meetings and talks took
24 place between the 26th of April, 1993, and the 2nd of September, 1993.
25 All the documents I listed are documents of representatives of

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1 international organisations. Your Honours, neither Valentin Coric nor
2 anyone else from the Military Police Administration or military police
3 was present at any of these negotiations.
4 As for the freedom of movement, I direct your attention to the
5 following documents: P2421, P6825, P3923, P3895, P3835 and P5104.
6 Your Honours, a protected witness testified here, a
7 representative of an international organisations, DZ. His statement is
8 admitted as P10367.
9 Just in case, I wish us to move to private session just for two
10 minutes.
11 JUDGE ANTONETTI: [Interpretation] I asked the secretary for us to
12 move to private session.
13 [Private session]
14 (redacted)
15 (redacted)
16 (redacted)
17 (redacted)

18 (redacted)
19 (redacted)
20 (redacted)
21 (redacted)
22 (redacted)
23 (redacted)
24 (redacted)
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1 (redacted)
2 (redacted)
3 (redacted)
4 (redacted)
5 (redacted)
6 (redacted)
7 (redacted)
8 (redacted)
9 [Open session]

10 THE REGISTRAR: We are in open session.

11 MS. TOMASEGOVIC TOMIC: [Interpretation] The Petkovic Defence, in
12 paragraph 387 of its final brief, deals with snipers in the Mostar area
13 in the relevant period, as they say, between the 30th of June until the
14 24th of July, and claims that the Prosecution failed to prove that in
15 this period, civilians were targeted by snipers who belonged to the
16 regular HVO forces. It is noted in footnote 690 that the HVO military
17 police also had snipers in its units, thus insinuating that they were the
18 ones who may have targeted civilians. In this, the Petkovic Defence
19 refers to the semi-annual report of the Military Police Administration
20 for the first half of 1993. Your Honours, this semi-annual report for
21 the first half of 1993 is the sole document which connects the Military
22 Police Administration in any way whatsoever with snipers. As for
23 snipers, the document only says that the Military Police Administration
24 organised sniper training and that the result of sniper combat after the
25 training is 6:1.

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1 Your Honours, there is nothing bad in training snipers,
2 particularly not training which included the Geneva Conventions and which
3 was organised and implemented by the Military Police Administration. And
4 likewise, Your Honours, sniper combat does not mean targeting civilians,
5 but rather combat among the snipers.

6 In response to the claims made by the Petkovic Defence, the Coric
7 Defence, first of all, wishes to say that this document does not relate
8 to the period for which the Petkovic Defence claims it is relevant, that
9 is to say, the period between the 30th of June and the 24th of July, but
10 rather to an earlier period. Further, the Coric Defence would like to
11 remind Your Honours that General Praljak, testifying before this
12 Tribunal, confirmed that the snipers in Mostar belonged to the
13 2nd Brigade of the HVO, which is recorded on the following transcript
14 pages: 42892 through to 42898.

15 The Coric Defence also invites Your Honours to examine document
16 P1307. It is a document dated the 26th of January, 1993. It is an order
17 from the chief of Main Staff, which says:

18 "Due to the newly-arisen situation, it is necessary to collect
19 urgently 40 sniper rifles as follows: Citluk, 10; Grude, 10; Ljubuski,
20 10; Siroki Brijeg, 10. The dead-line for carrying out this order is the

21 26th of January. The rifles, with listed numbers, shall be submitted by
22 the said dead-line to the Main Staff of the Mostar HVO. If necessary,
23 also engage military police for the collection of rifles."
24 The document was sent to the South-Eastern Herzegovina
25 Operational Zone, the 4th Brigade of the HVO in Ljubuski, the Citluk

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1 Battalion, Ljubuski, Grude, Siroki Brijeg Battalion.
2 Your Honours, the Coric Defence claims that there is no evidence
3 that Valentin Coric is responsible for incidents connected with civilians
4 being targeted by snipers in Mostar.
5 We'll now move to our next topic.
6 In its closing arguments, the Prosecution alleges that the
7 Military Police Administration participated in illegal moving in into the
8 apartments from which the earlier tenants were previously evicted by
9 force, and these tenants were ethnic Muslims, and refers to documents
10 P2879 and P6232.
11 Document P2879, which the Prosecution refers to, does not show
12 that these were Muslim apartments. Likewise, it does not show what were
13 the dates at which members of military police moved into these
14 apartments, whether that happened in 1993 or whether it could have taken
15 place in 1992. During 1992, many Serbs left Mostar, and they made up
16 almost 20 per cent of the population, and, therefore, they had at their
17 disposal a proportionate segment of the housing stock. In addition to
18 that, there were also many apartments which used to belong to the JNA and
19 which, according to the decree, were placed at the disposal of the
20 municipal authorities, which is testified to by the document 1D03016. In
21 addition to that, the document that the Prosecution refers to does not
22 show that the apartments were forcibly occupied. Likewise, document
23 P62332 does not show that these were apartments from which their previous
24 users were forcibly evicted, nor can this be seen from any other
25 document.

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1 The Decree on the Use of Abandoned Apartments, dating from July
2 1993, which is document P03089, Article 2 defines what is to be
3 considered as an abandoned apartment, and Article 1 states when the right
4 to use the apartment expires for the previous tenancy rights holder.
5 Article 7 notes the conditions under which an apartment, for which it was
6 established by a decision that it can be considered abandoned, can be
7 given for use to a member of HVO or a person who, due to actions caused
8 by war, was left without his or her apartment. The temporary use of an
9 apartment may last up to one year from the day of the termination of
10 immediate threat of war. Article 9 of this decree says that the body of
11 the municipal HVO administration in charge of housing issues is the body
12 which gives an abandoned apartment for use. Before this decree, the
13 municipal authorities would adopt regulations on their own by which they
14 established the manner of temporary use of apartments, as testified by
15 the documents 1D01127, 1D03016, 1D00435, 1D00717, and 1D1152. The issue
16 of military apartments was regulated by a decree on the temporary use of
17 military apartments.
18 It follows from this that in both documents which the Prosecution
19 refers to in its closing arguments, the Military Police Administration
20 acted in accordance with the procedure as prescribed by the quoted
21 decree. It would submit a request to the relevant body, and the subject
22 of the requests were the apartments which were covered by the conditions
23 noted in this decree.

24 Additionally, we note that Rade Lavric, for whom the Prosecution
25 also says that he signed the above two documents on behalf of the

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1 Military Police Administration, held the position of president for
2 control and monitoring of the use of military apartments at the level of
3 the South-Eastern Herzegovina Operational Zone, in which a housing
4 commission was formed and chaired by Stipe Maric. We note that the
5 housing commission submitted reports to the commander of the
6 South-Eastern Herzegovina Operational Zone. An example of such a report
7 is P6860.

8 In the report, the chairman of the commission says that the
9 military police shall evict all persons who illegally moved into such
10 apartments, that is to say, all those who do not have a decision
11 permitting them to use these apartments and which was issued to them by
12 the said commission. We can see from all this that the Prosecution
13 claim, from the closing arguments, about the greediness of the military
14 police for Muslim apartments, is only insulting and nothing more. The
15 existence of abandoned apartments is the subject of decreed laws, and the
16 fact that someone submitted a request to be issued a decision on
17 temporary use of those apartments, in accordance with the legal
18 regulations which were then in force, does not justify anyone to draw a
19 conclusion that the previous tenants were evicted by force from these
20 precise apartments and that these were automatically criminal acts.
21 Abandoned apartments were allocated to members of various HVO units; for
22 example, documents P2538 and P2608 talk about this. Likewise, the
23 municipal HVO authorities allocated apartments to Muslims who met the
24 criteria set out in the decree; for example, P3444 and 1D641 show that.
25 Additionally, the Coric Defence notes that such practice of

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1 allocating abandoned apartments to certain categories of military
2 officials and expellees and refugees, based on the same legal institutes
3 using apartments which were abandoned by their previous users without a
4 valid basis, was something that was also applied in the Army of Bosnia
5 and Herzegovina, as seen from document 3D734. The basis for acting in
6 the organs of the Republic of Bosnia and Herzegovina was the relevant
7 decree law on abandoned apartments, and that is document 1D530. I still
8 owe you the number of the decree on the temporary use of abandoned
9 apartments. That is P1384. The decree was issued on the 1st of
10 February, 1993.

11 I'm moving on to a new topic.

12 In their closing argument, the Prosecution said that Mr. Coric
13 contributed to the joint criminal enterprise by approving and subscribing
14 to the administrative system of deportations, according to which
15 detainees could be released from prisons on a condition that together
16 with their families, they left Bosnia and Herzegovina. The Coric Defence
17 already dealt with the matter in their final brief, so today I'm going to
18 refer only to what Mr. Stringer said in his closing argument.

19 Your Honours, most of the presentation from now on will be
20 concerning a protected witness, so can we go into private session to
21 protect the witness?

22 JUDGE ANTONETTI: [Interpretation] Madam Registrar, private
23 session.

24 [Private session]

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11 Pages 52701-52707 redacted. Private session.
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5 [Open session]
6 THE REGISTRAR: We're back in open session, Your Honours.
7 JUDGE ANTONETTI: [Interpretation] Very well.
8 Madam Tomic, you have about one hour after the break, according
9 to my calculations.
10 MS. TOMASEGOVIC TOMIC: [Interpretation] Thank you, Your Honour.
11 JUDGE ANTONETTI: [Interpretation] Very well. We are going to
12 take a 20-minute break.
13 --- Recess taken at 3.42 p.m.
14 --- On resuming at 4.04 p.m.
15 JUDGE ANTONETTI: [Interpretation] Very well. We are continuing.
16 Ms. Tomic, you have the floor.
17 MS. TOMASEGOVIC TOMIC: [Interpretation] The Prosecution, in their
18 closing arguments, asserted that the Coric Defence, in our final brief,
19 disputed the authenticity of document P3220 solely based on the
20 allegation of a forged signature. This is incorrect. Your Honours, the
21 Valentin Coric Defence, in paragraph 699 to 702, disputes the
22 authenticity of documents P3220 and P3216. In both these documents,
23 there's an alleged response by Valentin Coric to an order issued by
24 Colonel Nedjeljko Obradovic. It is clear, on the basis of the document,
25 that it was sent to the prison wardens in Gabela, Dretelj, Heliodrom, and

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1 Ljubuski.
2 The Coric Defence, in our final brief, put forth a number of
3 reasons due to which we believe this document is a counterfeit. I will
4 only mention a few. In order to be able to be more precise while doing
5 that, I'm afraid we'll have to go back into closed or private session.
6 JUDGE ANTONETTI: [Interpretation] Madam Registrar.

7 [Private session]

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8 [Open session]

9 THE REGISTRAR: We're in open session, Your Honours.

10 MS. TOMASEGOVIC TOMIC: [Interpretation] The Prosecutor, in their
11 closing arguments, imply that Colonel Obradovic did not have real
12 authority at Heliodrom. The Coric Defence dealt with Colonel Obradovic
13 and his authority over prisons in detail in our final brief. Therefore,
14 I will specify but one example here.

15 On the 8th of July, 1993, Valentin Coric approved for UNHCR
16 representatives to visit the prisons of Dretelj, Ljubuski, and Heliodrom.
17 The document number is P3292.

18 On the 10th of July, UNHCR representatives, together with a
19 representative of the ODPR, visited the Heliodrom. During the visit,
20 Mr. Herceg told the UNHCR representatives that the ODPR was responsible
21 for the civilians and that the HVO was responsible for the detainees.
22 During that visit, the UNHCR, together with the ODPR, visited the persons
23 accommodated in the gym and the school building. As for the detainees,
24 they were told that they were in the prison building which was also at
25 the Heliodrom. The ODPR representative, as well as the military

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1 officials present during that occasion, informed the UNHCR that the
2 International Committee of the Red Cross had visited the prison building
3 previously. It was because of that and some other reasons that UNHCR did
4 not insist on visiting the prison themselves. Beside that, UNHCR was
5 also told that no repeated visits were granted to the ICRC, following
6 which UNHCR withdrew. It is all seen in document P9843.

7 Both documents were referred to by the Prosecution in their final
8 brief, and the Prlic Defence also invited the Chamber to view the
9 documents.

10 Your Honours, in the approval issued by Valentin Coric, there
11 were no restrictions contained. He didn't specify which buildings were
12 open to access and which were not. He simply approved that prison visit.
13 I'd like to draw your attention to document 5D3008 to that end. It
14 concerns a meeting called by Colonel Obradovic on the 6th of July, 1993,
15 with his subordinates in attendance. That was a few days before the
16 visit at the Heliodrom. Among other people, there were also
17 representatives of the 3rd Brigade present at the meeting, and the
18 3rd Brigade was located at the Heliodrom. The commander of the military
19 police company located in the barracks in Dretelj was also present. On
20 that occasion, Colonel Obradovic provided instructions for the work in
21 prisons, and among other things, he prohibited access to all
22 international organisations to the Heliodrom.
23 Your Honours, as we could see in document P3292, Valentin Coric,
24 without restriction, approved the visit of the representatives of
25 international organisations in order to visit the detainees at the

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1 Heliodrom, in Dretelj, and in Ljubuski. Still, at the Heliodrom, that
2 approval was not taken into account. Why not? Because Obradovic, on the
3 6th of July, prohibited any international organisations' visits.
4 Your Honours, in paragraph 193 of the indictment, the OTP assert
5 that until August, international organisations failed to enter Dretelj.
6 Your Honour, Valentin Coric issued his approval to go to Dretelj as early
7 as the 8th of July. Only two conclusions can be drawn from this. First,
8 Valentin Coric in no way hindered access to international organisations
9 to prisons and detainees. Second, Valentin Coric was not a person of
10 authority, be it at Dretelj or at the Heliodrom. The Coric Defence
11 submits that the de facto authority in all prisons in Sector South,
12 including the Heliodrom, lay with Colonel Obradovic, who was the sector
13 commander.
14 In paragraph 213 of their final brief, the Petkovic Defence
15 stated that any army obligations vis-a-vis the prisoners cease at the
16 moment of their hand-over to the Department of Defence, including the
17 military police. The Coric Defence submit that military commanders never
18 handed over those prisoners to the Military Police Administration. When
19 the military police take part in providing security of POWs or conducts
20 internal security of military prisons, such tasks fall under regular
21 daily tasks, and in such situations the military police is under the
22 command of the operational zone commander. I discussed that and the
23 system of command for the military police. Therefore, there is no need
24 for me to repeat myself today.
25 In addition to that, the Coric Defence submits that the military

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1 commanders never surrendered their authority to any other organ over the
2 persons they had taken prisoner or arrested. It was the military
3 commanders who decided on their fate.
4 Your Honours, if we look at the documents issued by international
5 observers, P2108, P2461, P2512, P2531, P2547, P2675, and P2680 we see
6 that various senior military commanders, in the periods between May and
7 September 1993, participated in different talks and meetings 14 times.
8 The release and exchanges of prisoners were discussed at those meetings.
9 However, at those meetings, no one from the Military Police
10 Administration was present. At those meetings, those commanders did not
11 declare themselves unauthorised or incompetent to negotiate. The
12 military commanders decided on the exchanges and release of prisoners.

13 They had the lists of those who were taken prisoner, and they decided on
14 their fate.
15 Your Honour, I'd like to draw your attention to the document
16 P2108 issued by the international observers. At page 38, it reads that
17 the lists of all detainees at the Heliodrom, as of the 18th of August,
18 1993, were handed over to that international organisation by Zarko Keza.
19 Your Honours, he is a member of the Military Intelligence Service of the
20 Main Staff.
21 While we're on the topic of prisoner lists: The Prosecution, in
22 paragraph 1089 of their final brief, assert that Valentin Coric was
23 informed that on the 9th of May, at the Heliodrom, there were civilians
24 who had been arrested. They refer to a list from that document. It is
25 clear, by perusing the document, that the Military Police Administration

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1 received that document as late as the 22nd of June, 1993; that is to say,
2 a full month after those persons had already left the Heliodrom.
3 Valentin Coric and the Military Police Administration did not decide on
4 the arrival and departure of those people to and from the Heliodrom. Not
5 only that, but the Military Police Administration received the list a
6 full month later, after everything had been over.
7 Regarding who took over prisoners after they were taken prisoner,
8 and who were they handed over to de facto, I wish to quote the page
9 transcript 51323 and 51324. It is the testimony of Witness NO. For that
10 person, I'd like to ask that we go into closed session briefly.
11 JUDGE ANTONETTI: [Interpretation] Madam Registrar.

12 [Private session]

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6 [Open session]

7 THE REGISTRAR: We are in open session, Your Honours.

8 MS. TOMASEGOVIC TOMIC: [Interpretation] In connection with this
9 topic, the Coric Defence directs Your Honours' attention to the following
10 documents: P1959, in which the commander of the Main Staff orders that
11 the exchange of all prisoners begin at once, this order he addresses to
12 operational zones; document P1351, which shows that the commander of the
13 operational zone and the commander of the brigade have lists of those who
14 were taken prisoner and are deciding on the exchanges; document P3958 is
15 the number of prisoners in Dretelj, addressed to the brigade; document

16 4D347, order of the operational zone commander, addressed to all his
17 units, to release arrested civilians; document P1994, Main Staff
18 commander orders all operational zones how they are to treat arrested
19 civilians and soldiers, telling them that they must report the identity
20 of all prisoners to the ICRC and enable the ICRC to visit the prisoners;
21 P4156, the brigade commander issues an order relating to the
22 accommodation and living conditions for prisoners of war.
23 The Military Police Administration did not decide on the release
24 or exchange of prisoners. At the request of relevant bodies, the
25 Military Police Crime Investigation Department provided information

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1 whether criminal proceedings were being conducted against the person or
2 not. Documents P4379, 6D169, and P4450 show this.
3 Your Honours, the International Committee of the Red Cross
4 addressed high-ranking military commanders on a number of occasions
5 concerning the issue of treatment of prisoners of war, including forced
6 labour. They also addressed Mr. Petkovic among these. None of them ever
7 told the International Committee of the Red Cross to address the Military
8 Police Administration, nor that the Military Police Administration was
9 responsible for the treatment of prisoners. In connection with this,
10 Your Honours, please review the following documents: P284, P2950, P7629,
11 P7636, P7660, P5308, and P5967.
12 Why am I saying this? Because in its final brief, the
13 Prosecution uses, as the only documents that connect the Military Police
14 Administration with forced labour, the following documents: P4020 and
15 P4030. The former is a document signed by Mr. Petkovic, which says that
16 the Military Police Administration is responsible for the use of
17 prisoners, and the latter document is a document from the Posusje
18 Brigade, which supposedly acts on Mr. Petkovic's instructions and
19 requests prisoners for labour from, as the document says, the VPHB Coric.
20 Document P4068 is a report of the brigade military police from
21 the very same Posusje Brigade, which says that they acted on the request
22 from the brigade and took the prisoners from the Otok Prison.
23 Your Honours, there is no evidence that Valentin Coric or anyone
24 else from the Military Police Administration ever received or saw any of
25 these three documents, nor that anyone from the Military Police

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1 Administration or Valentin Coric ever acted on this request. Concerning
2 these two documents which are connected with the Posusje Brigade, the
3 Defence particularly points out something else that is illogical. The
4 Posusje Brigade is located in the North-Western Herzegovina
5 Operational Zone. The Otok Prison was located in the South-Eastern
6 Herzegovina Operational Zone. It is not logical that the
7 Posusje Brigade, when the war operations were in full swing, should come
8 to fetch prisoners for labour from the North-Western Herzegovina
9 Operational Zone to another operational zone, particularly when, at the
10 same time in the area of the North-Western Herzegovina Operational Zone,
11 there were prisoners which were under the control of the Prozor Brigade
12 and the joint commander of all brigades in this area, Mr. Siljeg, from
13 the North-Western Herzegovina Operational Zone. And there are documents
14 which show that.
15 Now I will just say a few short remarks on the subject of prison
16 from the Prosecution final brief.
17 In paragraph 1071, the Prosecution, in order to prove that
18 Valentin Coric established the rules of conduct at the Ljubuski Prison,

19 refers to document P234. Your Honours, document P234 is a document from
20 a prison in Croatia, the Kerestinac Prison. This document has really
21 nothing to do with Ljubuski, nor with the HVO military police, nor with
22 the HVO Military Police Administration, except that an unidentified
23 person scribbled on the document, crossed out words, and added other
24 words such as, for example, "Ljubuski" and "Valentin Coric." The
25 document has not been shown to any witness, nor is there any other piece

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1 of evidence that would connect this document with the Ljubuski Prison.
2 Paragraph 1161 of the Prosecution's final brief says that on the
3 23rd of September, 1993, the Muslim civilians tried to prevent the
4 transfer of prisoners who were being sent from Dretelj to Croatia. The
5 Prosecution refers to document P5322. Your Honours, this document does
6 not deal with Muslim civilians. These were not the Muslim civilians who
7 were protesting. The Croats were protesting, Croats who tried to prevent
8 the release of these prisoners from the prison. This was confirmed by
9 Prosecution Witness C. In connection with this, the Defence refers Your
10 Honours to paragraphs 590 and 591 of its final brief.
11 The Coric Defence claims that Valentin Coric never, not even
12 after the incidents on the 30th of June, 1993, issued an order on
13 disarming, arresting, or isolating Muslim members of the HVO. The Coric
14 Defence claims that according to the information which Valentin Coric had
15 at his disposal, he knew about the attack of the Army of Bosnia and
16 Herzegovina launched on the 30th of June, 1993, and the role of Muslim
17 members of the HVO in this attack.
18 After the 30th of June, 1993, within the military police, and due
19 to this security situation, a security check of military policemen of
20 Muslim ethnicity was carried out, and that was repeated in the fall of
21 1993, but not a single Muslim from the military police was arrested or
22 interned. The Military Police Administration assessed that this was not
23 necessary.
24 According to the information that could have reached the Military
25 Police Administration, Valentin Coric could only have known that the

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1 military commanders in the Capljina and Stolac areas disarmed and
2 isolated the Muslim members of their units and able-bodied Muslims.
3 Valentin Coric had no reason to doubt the legitimacy of the decision of
4 these military commanders because they were in the position to best know
5 what the security situation in their units was, as well as in their zone
6 of responsibility. In addition to this, Valentin Coric believed, judging
7 by himself and the Military Police Administration, that everyone else
8 acted in the same manner.
9 In particular, I direct Your Honours' attention to document
10 P3960. The interpreters have it. The Coric Defence a
11 few weeks ago requested the Prosecution to provide a corrected
12 translation of this document. However, to this day we only received the
13 answer that this was in procedure. We have provided the Croatian text to
14 the interpreter's booth from which I will read only one single sentence
15 which is underlined for the sake of the interpreters. It's a report
16 personally to Valentin Coric, addressed by the commander of the 5th
17 Battalion of the Military Police, and the date is the 5th of August, 1993
18 :
19 "The order on arresting members of Muslim ethnicity for
20 preventive reasons made great difficulty and problems for us."
21 Your Honours, in the translation that the Coric Defence objected

22 against, which is the reason why we insisted that the translation be
23 corrected, lacked the word "preventive," and it is obvious that in the
24 Croatian text, this word exists.
25 Your Honours, at the moment when Valentin Coric learned what the

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1 actual situation in Dretelj was, according to the testimony of Witness C
2 on transcript page 22381 and 22382, and that was a Prosecution witness,
3 in July Valentin Coric brought Ivan Ancic, the then commander of the
4 Military Police Company in Dretelj, to a government session so that he
5 would inform the government about what was going on in Dretelj. We know
6 that the government session was held on the 19th of July, 1993, and we
7 know that a commission which was to check the situation was sent to
8 Capljina and Stolac. Your Honours, in spite of all the effort made, the
9 government was powerless here. After that, in September 1993, at the
10 Collegium of the Defence Department, it was precisely Valentin Coric who
11 warned, once again, about poor practice in running prisons.
12 Eventually, on the 15th of September, 1993, Mate Boban issued an
13 order requesting that all norms of International Law and Geneva
14 Conventions should be observed in detention centres. Mate Boban, in item
15 7 of this order, requests the Main Staff to inform all subordinate units
16 and commands with this order, and that the Main Staff should help all
17 these units to implement the order. Mate Boban requested the Main Staff
18 to implement the order. He did not request the Defence Department or the
19 Military Police Administration to do that. The document in question is
20 P5104.
21 Your Honours, the Coric Defence, due to limitations of time, is
22 unable, in its closing arguments, to address all topics connected with
23 prisons. What we have presented here is just a shorter version of what
24 is included in our final brief in paragraphs 338 through to 609.
25 Your Honours, the Coric Defence invites Your Honours to check

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1 very cautiously and with due attention every allegation of the
2 Prosecution from their final brief and compare it with the evidence which
3 are offered to corroborate these allegations. There are good reasons,
4 and the Coric Defence is not saying this just so. So far through our
5 presentation, we have showed documents which have been wrongly
6 interpreted or contents was added to them which the documents do not
7 include. Unfortunately, the Defence does not have enough time to point
8 out each and every one of such documents, but we direct Your Honours'
9 attention, for example, to paragraph 1143 of the Prosecution final brief,
10 in which it is claimed that the military police participated in an
11 incident, whereas the quotation from the witness testimony that the
12 Prosecution refers to just says the HVO police. Your Honours, it is a
13 well-known fact that the HVO had both military and civilian police. The
14 witness was here, and the Prosecutor should have, could have, and indeed
15 had to ask the witness which police this was, but the Prosecution did not
16 do that, and it's their problem.
17 In paragraph 1150, the Prosecution claims that Witness BJ said
18 that the military police was involved in the mass transfer of Muslim
19 civilians from Grude to Ljubuski. The Prosecution also refers to
20 document P3744. Your Honours, the document does not say what the
21 Prosecution claims, and Witness BJ, on transcript pages 5819 and 5820
22 during cross-examination, said that he did not know at all which persons
23 these were or where these persons were going or why. The witness was
24 unable to say whether these were Muslims, or Croats, or anything.

25 Your Honours, the Coric Defence claims that several documents in

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1 this case are forgeries. It has claimed so during this presentation and
2 also in its final brief. In case of such arguments of Defence, the
3 Prosecution took the stand which implies that such a situation is
4 impossible, particularly if a document has the stamp from archives, and
5 that the Defence makes such objections just because such documents do not
6 fit its purpose. The Prosecution takes this stand even though it claimed
7 itself that it was facing the same problem a few years ago. Even the
8 book about the former Chief Prosecutor of this Tribunal deals with the
9 same issue.

10 Your Honours, the Prosecution of this Tribunal submitted a
11 request for a reconsideration of judgement in Blaskic case. This is to
12 be found in the judicial database of this Tribunal and can be accessed by
13 everyone. In this request, the Prosecution claimed that the appeals
14 judgement in the Blaskic case was founded on an at least strange document
15 of a state organ of the Republic of Croatia; namely, there were two
16 versions of one-and-the-same document. One of them had 20 pages, the
17 other one 40 pages. The longer version contained the name of the source
18 from whom the information on incidents relating to Ahmici was obtained,
19 including information on the dual chain of command as regards military
20 police in Central Bosnia. The source of all this information was
21 Mr. Blaskic's Defence attorney, Mr. Nobilo. This is what the longer
22 version of the document says.

23 However, what was submitted to the Trial Chamber was the
24 abbreviated version, the shorter version, that had only 20 pages and from
25 which the information about the source of information was left out, so it

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1 turned out that the state organ learned everything through operative work
2 from impartial sources. It was precisely on the basis of the new
3 information that the appeals judgement in the Blaskic case was passed.
4 It was precisely on the basis of this information that the myth about the
5 dual chain of command of military police came into being.

6 Your Honours, Valentin Coric's Defence claims that Valentin Coric
7 is not guilty and that the Prosecution has not proved beyond reasonable
8 doubt that he's guilty, and, therefore, asks Your Honours to acquit
9 Valentin Coric on all counts of the indictment.

10 I have finished. Thank you.

11 JUDGE ANTONETTI: [Interpretation] Thank you, Madam. You have
12 adhered to the time, and now we can move on to Mr. Pusic's Defence.
13 Mr. Pusic is absent due to illness. He is represented by his
14 counsel. I would like to give the floor to the first speaker who is
15 going to address the Trial Chamber on behalf of Mr. Berislav Pusic.
16 You have the floor, sir.

17 [Pusic Defence Closing Statement]

18 JUDGE TRECHSEL: I'm sorry. You should approach considerably to
19 the microphone. Otherwise, you are hard to understand.

20 MR. SAHOTA: It may also help if I turn the microphone on, Your
21 Honour, which I have.

22 Your Honours, I'll start again.

23 Even in the most complicated and lengthy of criminal trials, of
24 which this is one, trials of this nature often turn on one or two
25 relatively narrow issues once all the other extraneous facts are stripped

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1 away.

2 In this particular case, in respect of Mr. Pusic, we have
3 identified two issues. The first issue is whether, in a high-level
4 leadership trial, such as this, where none of the accused are said to
5 have directly participated in any crimes, the issue is whether the
6 evidence proves beyond reasonable doubt that Mr. Pusic had any
7 decision-making powers. Our second issue follows from that. Assuming
8 that our first submission is accepted and that the Chamber find that
9 Mr. Pusic is not a direct perpetrator of any crimes and that he had no
10 decision-making powers, then, Your Honours, should he be held criminally
11 responsible for any of the offences on the indictment? We will frame our
12 submissions today around these two questions.

13 Your Honours, we hope that our Defence is crystal clear from the
14 very opening of our brief. Our defence is that the Prosecution have
15 failed to prove that Mr. Pusic had any decision-making powers, they
16 failed to prove that beyond reasonable doubt, and that, accordingly, he
17 should be acquitted of all the charges on the indictment.

18 You have indicated, Your Honours, that the purpose of closing
19 submissions, as far as you are concerned, is for the parties to answer
20 the arguments that have been raised both in writing and orally. I would
21 like to turn to some of the arguments that were advanced by the
22 Prosecution in the course of their closing submissions.

23 The Prosecution began their closing submissions in respect of
24 Mr. Pusic by stating that the Pusic Defence faced a number of dilemmas.
25 Madam Registrar, could I ask for the Sanction facility to be

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1 switched on.

2 And, Your Honours, we have a PowerPoint presentation. The first
3 slide that we would like to present to you is an extract of the
4 submissions made by Mr. Kruger.

5 It appears we're having some technical problems. I hope they can
6 be resolved.

7 So, Your Honours, during the course of submissions by the
8 Prosecution, there were two assertions made. The first, and I will
9 quote, although I don't intend to quote from all the slides that I will
10 be presenting in the course of my address to you today, but I quote:
11 "And that brings us to the third dilemma. Pusic's claim that he
12 had no power and authority is not based on any evidence, because he's put
13 none before the Court. It is based only on the bare assertions of Pusic
14 in his final trial brief."

15 And at some point later in the Prosecution's submissions, it was
16 stated that:

17 "The Prosecution respectfully submits that Mr. Pusic's simple
18 assertions of his innocence, unsupported by any sworn testimony or
19 alternative evidence from him, is not sufficient to overcome these
20 dilemmas."

21 Your Honours, we submit that those remarks display a
22 misunderstanding of the burden of proof, and we will address you in due
23 course on that particular subject.

24 And, Your Honours, it is, of course, the case that Mr. Pusic did
25 not testify in this trial, that the Pusic Defence did not call any

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1 witnesses. It is Mr. Pusic's right not to call witnesses, his right not
2 to testify, a right that's enshrined in law, and we would ask you not to

3 draw any adverse inferences from his exercise of that right.
4 The point that we would like to emphasise is that our submissions
5 on behalf of the Defence rests not just on bare assertions made by
6 Mr. Pusic's lawyers, but they rest on an analysis of the evidence that
7 has been called by the Prosecution. Importantly, we say that this is a
8 case where the Prosecution witnesses gave evidence that could be
9 interpreted to support our defence.
10 And, Your Honours, I would like to begin by referring you to the
11 evidence of three of the witnesses called by the Prosecution, three
12 important witnesses.
13 The first witness, Marijan Biskic. And may I apologise, Your
14 Honours, if I mispronounce any of the names in this case, and I do have
15 problems pronouncing the -- I'm sorry, I do have problems with the
16 pronunciation of the names in this region, Your Honour. The lack of
17 vowels and preponderance of consonants does cause me sometimes to stumble
18 over the correct pronunciation.
19 But Mr. Biskic, he said that:
20 "He, Pusic, could not issue an order to me or to anybody else, I
21 believe."
22 Quite unequivocal. Biskic is an important witness, somebody who
23 was familiar not only with Pusic's work, but also with the internal
24 mechanics of the HVO. The Prosecution called him. He was their witness.
25 They didn't challenge him on this or any other aspect of his evidence,

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1 and they called him as a witness of truth. Your Honours, I will turn to
2 the evidence of this particular witness in due course.
3 The second important witness we would ask you to consider - and,
4 Madam Registrar, perhaps we could just go into private session for a few
5 moments -- is --
6 JUDGE ANTONETTI: [Interpretation] Madam Registrar.
7 [Private session]
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11 Page 52728 redacted. Private session.

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23 [Open session]

24 THE REGISTRAR: We are in open session, Your Honours.

25 MR. SAHOTA: We submit that the analysis of these three witnesses

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1 can be fairly applied to every spear of activity that Mr. Pusic was
2 involved in.

3 Your Honours, and we don't need to remind you, as professional
4 judges, that the Defence in this case don't have to prove anything. All
5 we have to show is that there is another reasonable inference available
6 from the evidence. And given the evidence of these three witnesses,
7 given their testimony, we ask you to consider if the inference that Pusic
8 had no unilateral decision-making power can be simply set aside and
9 discarded. We submit if you cannot set aside/discard the testimony of
10 these three witnesses, then it follows -- it follows that there must be a
11 reasonable inference that Pusic, in the words of Biskic, could not give
12 orders to him or to anyone else.

13 And, Your Honours, I also echo the words of Mr. Khan, who was
14 standing where I'm standing a few days ago, and remind him of what he
15 said to you, which is that, If there is any doubt in your minds, that
16 doubt must be exercised in favour of the accused.
17 Your Honour, we go further than just to say that we've raised a
18 reasonable doubt. We submit that if you -- even if you are trying this
19 case on a different standard, if you are trying this case on a balance of
20 probabilities, we'd submit that you could find the facts, as interpreted
21 by us, as presented by the Prosecution, support an alternative theory,
22 and they support the theory that Pusic was a low-level civil servant who
23 had no decision-making authority.
24 Your Honours, given that the purpose of these closing addresses
25 at the end of a five-year trial are for all parties to refer to the

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1 relevant arguments advanced in written submissions, you may have found it
2 surprising that the evidence of these three witnesses, which is fairly
3 prominently highlighted in our final trial brief, was not extensively
4 referred to by the Prosecution in the course of their oral submissions.
5 We suggest that that is an omission -- a glaring omission that can only
6 be explained in one way. The Prosecution failed to address this evidence
7 because they can't explain it, because they realise that these points
8 represent an Achilles heel in their case, and that's why they seek either
9 to evade or ignore it.
10 Your Honours, I hope you have before you an outline of our
11 submissions today. In the remainder of my speech, I will move on to
12 consider what we suggest to be serious legal errors made by the
13 Prosecution in the course of their closing submissions to you. We'll
14 then outline some general points in the nature of our defence before
15 dealing with the evidence against Mr. Pusic. And I turn to deal with the
16 evidence related to Mr. Pusic within the framework of the two questions
17 that I outlined to you in the course of my introduction. We'll then move
18 on, Your Honours, to look at the question of Article 7(3), command
19 responsibility, before examining issues of JCE liability, and then
20 sentencing remarks will follow.
21 In the course of the submissions made by the Prosecution last
22 week, one of the main accusations made was that the Defence had been
23 highly selective in their use of quotes. Your Honours, my view on this
24 really originates, and my interest in this trial originates, on the
25 international criminal justice system, from my initial studies as a

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1 historian. And my first degree was in history and politics, and one of
2 the first texts that I was asked to read as a history student was a
3 treatise on historiography by a British author called E.H. Carr. And he
4 said, in a characteristically provocative way, that:
5 "The belief in a hardcore of historical facts existing
6 objectively and independently of the interpretation of the historian is a
7 preposterous fallacy, but one which it is very hard to eradicate."
8 Your Honours, I take the view that one can attempt to be
9 objective, one can attempt to take the reasoned and fair view of the
10 evidence, while still coming to a firm conclusion, but it is inevitable
11 that in the course of any analysis, legal or historical, that there will
12 be some criticism that could be laid of selectivity. Bearing this in
13 mind, it is apparent from our final trial brief that we have had the
14 luxury -- we have been in the position where we have had the luxury of
15 being able to quote extensively from the relevant witnesses. And, Your

16 Honours, I would like to emphasise that we have done so for one simple
17 reason, and that is because we have endeavoured to make sure there can be
18 no doubt as to what was actually entered in the evidence during the
19 course of this trial.

20 And, Your Honours, the Pusic Defence does not accept the
21 Prosecution's criticism that we have simply ignored incriminating
22 material. If you examine paragraphs 120 and 126 of our final trial
23 brief, you will see that we have addressed various aspects of the
24 testimony of Witness DZ that do not entirely advance the Pusic Defence,
25 and in due course, if there is a rebuttal, if the Prosecution do choose

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1 to address the points that we have raised today, it may well be that the
2 Prosecutor chooses to highlight other remarks made by DZ to ridicule the
3 submissions made by the Defence. Well, that is part and parcel of
4 adversarial proceedings.

5 We would respectfully ask the Chamber to focus on DZ's evidence
6 in the round, to take the rough with the smooth, because, in our
7 submission, it's quite clear that if you do that, it's quite clear that
8 Witness DZ considered Pusic not to be one of the main players in the HVO
9 and not to have any decision-making powers. In the same spirit, we would
10 ask the Chamber to examine the evidence of all the international experts
11 who testified against Mr. Pusic in the round, to look at their evidence
12 globally, because it's simply not possible to reconcile what certain
13 witnesses, Witness BB, BC and BD, say, to reconcile that with the
14 testimony of international witnesses DZ and DV. And where there are
15 contradictions, we suggest that the Trial Chamber should give preference
16 and weight to those witnesses who had regular direct contact with
17 Mr. Pusic, whose evidence is based on their first-hand experience and not
18 on unattributed hearsay. And, Your Honours, that is a submission that we
19 develop in more detail in paragraphs 110 to 112 of our final brief.

20 In summary, we also say this: that if you do come to the
21 conclusion that the Pusic Defence has misstated or misinterpreted the
22 evidence against Mr. Pusic, then please do not hold it against Mr. Pusic.
23 Ultimately, Your Honours, we recognise that it's up to you to
24 decide whether the conclusions that we've drawn from what we say is an
25 exhaustive and careful review of all the material, if those conclusions

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1 are fair, balanced, and justified, but we would ask, furthermore, that
2 the Chamber treat the submissions that have been advanced by the
3 Prosecution and the Defence to the same degree and level of scrutiny.
4 We have tried to be transparent with the Trial Chamber. We stand
5 by every word of our final trial brief, and we say that we have presented
6 you with a scenario that is far closer to the truth than that advanced by
7 the Prosecution.

8 Your Honours, at the beginning of my speech, I referred to an
9 extract from the Prosecution's closing submissions concerning statements
10 misstating the law relating to the burden of proof. And, Your Honours,
11 there are three legal errors in the Prosecution's opening submissions
12 that we would like to explore with you now. The first relates to that
13 very issue, the burden of proof.

14 During the course of their closing argument, there were three
15 statements that were made that we take issue with. The first: The
16 Prosecution said, and I paraphrase, that the Pusic Defence has presented
17 no evidence whatsoever that could convince the Trial Chamber to come to a
18 different conclusion. That's at transcript page 52140. They went on to

19 say:

20 "Pusic put the Prosecution to proof and responded with a passive
21 and silent defence."

22 Transcript page 52161. And then, and perhaps of most concern is
23 the following:

24 "The problem for Mr. Pusic is his silent and passive defence. He
25 did not provide the Chamber with any evidence to support his

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1 interpretation. The Trial Chamber has only his unsworn and untested word
2 in the form of his final brief and perhaps his earlier 98 bis
3 submissions."

4 Your Honours, obvious point that arises from that, the Defence do
5 not have to prove anything, and that's one point that the common law and
6 civil law jurisdictions often have in common. In France, it's recognised
7 in Article 9 of the Declaration of the Rights of Man and of the Citizen,
8 and in some national jurisdictions -- in the United States -- in parts of
9 the United States, for instance, I understand that any criticism of the
10 Defence for not testifying, for not calling evidence, would be entirely
11 prohibited and would be immediate grounds for a mistrial on the basis
12 that it violates a citizen's 5th Amendment rights.

13 So, Your Honours, it's regrettable you can't trust the
14 Prosecution to accurately state and apply the law. As far as it concerns
15 the Defence, these are basic principles of the Tribunal's jurisprudence.

16 Your Honours, the Prosecution also described another dilemma they
17 said faced the Pusic Defence, and it was stated thus :

18 "The first dilemma for the Pusic Defence, Your Honours, is that
19 the Pusic Defence has already presented all of their current arguments to
20 the Chamber previously during their 98 bis submissions in January 2008."
21 And that's transcript reference 52139.

22 Your Honours, that assertion is patently incorrect. The
23 arguments that were presented on behalf of Mr. Pusic during the 98 bis
24 submission did not address the strengths and weaknesses of the evidence
25 against him in any respect. In our 98 bis submissions, we simply

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1 asserted that there was no evidence linking Mr. Pusic to Counts 4, 5, and
2 19 to 26 inclusive of the indictment, and there was no evidence linking
3 him to other specified allegations within other individual counts. And,
4 Your Honour, this is a submission that you'll find developed in more
5 detail in Part 2 of our final trial brief at paragraphs 32 to 36. The
6 remainder of our submissions focus on the law and, in particular, a
7 discussion of JCE 3 liability.

8 Your Honours, the third error made by the Prosecution during the
9 course of their 98 bis submissions arises from what we say is a
10 fundamental misunderstanding of the test set out in Rule 98 bis. The
11 Prosecution said that the Defence faced another dilemma because, as a
12 consequence of the Chamber's 98 bis finding -- Your Honour, I'll quote
13 directly:

14 "Since that time, Your Honours, the Pusic Defence has not placed
15 any alternative evidence before this court, no evidence whatsoever which
16 could convincingly persuade the Trial Chamber to come to a different
17 conclusion.

18 "The dilemma for the Pusic Defence is that the Trial Chamber must
19 therefore assess Pusic's criminal liability for the crimes he is charged
20 with on the basis of the very same evidence they have already previously
21 found sufficient beyond reasonable doubt."

22 Your Honours, I've read that extract on a number of occasions,
23 and I have to admit to you that I struggle to understand the logic behind
24 the assertion that's made. It's an assertion that's based on the
25 following extract from the Chamber's 98 bis ruling, which states that:

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1 "Under Rule 98 bis, the Chamber needs only to determine whether
2 there is evidence on the basis of which any reasonable trier of fact
3 could enter a conviction beyond reasonable doubt. The Trial Chamber
4 believes that at this stage, the Trial Chamber is not to establish
5 whether it would enter a conviction at the end of the trial, but whether
6 it could do so."

7 Your Honours, I don't intend to lecture you on the Tribunal's
8 jurisprudence relating to Rule 98 bis. We do have some slides prepared.
9 I can summarise the position the Chamber took. The Chamber emphasised
10 that it was not part of their duty to consider the probative value of the
11 evidence in the course of determining whether the 98 bis test had been
12 met. The second point that was emphasised in your decision, Your
13 Honours, was that the Chamber only needs to find that there is evidence
14 supporting conviction on the basis of one mode of responsibility. The
15 final point in respect of this particular submission is that, Your
16 Honours, in the course of your decision, it was also emphasised that
17 there is no contradiction between a decision to dismiss a 98 bis motion
18 and a judgement of acquittal, and reference is made to the decision of
19 the Appeals Chamber in Jelic - I'm grateful to Mr. Mulalic - Jelic in
20 that particular case.

21 In summary, Your Honours, we say that the decision that you took
22 in respect of our application under Rule 98 bis should have no bearing on
23 your deliberations at this particular stage of this trial.

24 Before we move on to embark on an analysis of the evidence in
25 this case insofar as it relates to Mr. Pusic, I would also like to make a

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1 number of preliminary points, the first of which is to clarify the
2 general nature of our defence.

3 Your Honours, this is not a case where we deny that Mr. Pusic
4 signed documents or issued paperwork, and this is not a case where we
5 challenge the authenticity of all the documents the Prosecution seek to
6 rely on. Where we do challenge the authenticity of any documents, we
7 have tried to explain why it is that we object. And, Your Honours, you
8 will have heard how the Prosecution have attacked the other accused for
9 often adopting what they describe as an unrealistic stance by claiming
10 that large volumes of documents were forgeries. Well, we haven't taken
11 that approach, but it does seem, Your Honours, that the Prosecution is
12 determined to attack us nevertheless.

13 Furthermore, when we have questioned a witness's veracity, we
14 have made it clear what parts of a witness's testimony that we say are
15 unreliable. So, for instance, in relation to witnesses Masovic,
16 Josip Praljak, or Cupina, Praljak being a case in point, is discussed at
17 paragraphs 131 to 136 of our final trial brief - we have said that there
18 are certain aspects of those individuals' testimony that we deem to be
19 unreliable, and we have explained why we take that position. And, Your
20 Honours, as professional judges, you will know from your own experience
21 that an intelligent witness may not lie about everything because an
22 intelligent witness will know that a half lie is often more convincing
23 than an outright lie.

24 So in the case of Josip Praljak, while we don't accept the

25 veracity of everything he says, we do make it clear that when he's

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1 testifying about any matter that could potentially inculpate him or his
2 colleague, Bozic, then his words should not be relied on.
3 If I can turn now to the issue of documentary evidence.
4 We ask you to look beyond a literal reading of the documents. We
5 ask you to look beyond blind acceptance of the assertions made by the
6 Prosecution. One of the chief distinguishing characteristics of this
7 trial is the huge volume of documentation, and one of the striking
8 characteristics of this particular conflict is the fact that both sides
9 were armed with battalions of photocopiers, legions of secretaries, as
10 well as conventional weapons. The documents that have been produced in
11 their thousands, as a consequence, don't tell the entire story without
12 further reference to the testimony of the witnesses that have been called
13 in the course of this trial.
14 It also follows, in our submission, that where there is no
15 witness testimony to corroborate the contents of a document, that that
16 document -- the contents of that document should not be taken at face
17 value.
18 So, Your Honours, we ask you to try and place the documentary
19 evidence against Mr. Pusic in the framework of the evidence, as a whole,
20 and against the background of the testimony of all the witnesses that
21 have appeared in this trial.
22 Your Honours, at paragraph 347 of our final trial brief, we alert
23 the Chamber to the fact that there are a number of other individuals who
24 feature in this case who share the same surname as Mr. Pusic, and at
25 paragraph 347 we develop that point in more detail. Having considered

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1 the contents of the Prosecution's final trial brief, we have noted that
2 on at least two instances, it appears that the Prosecution have confused
3 Mr. Pusic with someone else.
4 At paragraph 21 of the Prosecution's final trial brief, in an
5 extract referring to a document P2293 regarding deportations, and at
6 footnote 37, and also at paragraph 28 of the Prosecution's final trial
7 brief, at footnote 51, Mr. Pusic is confused with another individual
8 called Mile Pusic. Another example of this can be found at paragraph 595
9 of the Prosecution's final trial brief in connection with footnote 1389.
10 There is a mistaken reference to Mr. Pusic when it would appear that the
11 witness who is referred to therein is referring to another individual
12 called Berislav, Berislav Soldo.
13 Your Honours, these are, we suggest, important errors. They are
14 significant because they indicate how willing the Prosecution are to make
15 assertions without checking the facts. And they also indicate, in our
16 submission, how, in the course of this five-year marathon trial,
17 indicates how the Prosecution have lost sight of Mr. Pusic. They have
18 been concentrating so hard on the other accused that the dot representing
19 Mr. Pusic has disappeared off the radar.
20 There was a clear example of this in October 2007. Five months
21 after Witness BC had testified in this courtroom, the Prosecution were
22 moved to file a motion asking for that witness to be recalled, on the
23 basis that due to an oversight of counsel, an important document had not
24 been put. And, Your Honours, you will find further information
25 concerning that particular instance in the Prosecution's motion to admit

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1 Exhibit P09848, dated the 23rd of October, 2007.
2 So, Your Honours, in our submission, this is a case where the
3 Chamber will need to subject every single assertion that the Prosecution
4 make, in both their final brief and in their closing submissions, to a
5 very detailed level of scrutiny.
6 The final point in respect to this preliminary discussion. Your
7 Honours, we suggest that it is facile for the Prosecution to say that any
8 defendant involved in these proceedings must have known what was going on
9 at the time, and this is a point that was made in the course of the 98
10 submissions by the Prosecution. And you'll find a reference at
11 transcript page 27148 to 9. It's something that we suggest is facile
12 because obviously in a large-scale case, it's this: Where essentially
13 the HZ-HB government and its policies are on trial. Almost everyone in
14 the area would have known what was going on, but that shouldn't lead to
15 an assumption that everyone connected with the HVO must be guilty of war
16 crimes.
17 In essence, the Prosecution seem to be saying that, Where there
18 is smoke, there must be fire. But in addition to smoke, there must also
19 be light. And, Your Honours, it is our hope that our submissions shine
20 some light on the evidence and shine some light on Pusic's role in this
21 case.
22 Your Honours, I'm about to move on to another substantially
23 different part of my submissions and to begin dealing with the evidence
24 against Mr. Pusic, so perhaps this is a convenient time for us to take a
25 break.

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1 JUDGE ANTONETTI: [Interpretation] Very well. This will be our
2 last break for the day, and it will last 20 minutes.
3 --- Recess taken at 5.26 p.m.
4 --- On resuming at 5.47 p.m.
5 JUDGE ANTONETTI: [Interpretation] We continue with our hearing.
6 Please go ahead, Counsel.
7 MR. SAHOTA: Your Honours, I'd like to move on to consider the
8 evidence relating to Mr. Pusic. We have dealt with the evidence
9 thematically in our brief. However, in response to the arguments raised
10 by the Prosecution in their written arguments and in their oral
11 submissions, we propose to deal with those matters in a chronological
12 format. And, Your Honours, we'd like to begin by examining the evidence
13 concerning the involvement of Mr. Pusic in this so-called JCE prior to
14 the 5th of July, 1993, which is an important date because, as you will be
15 aware, it's the date of his appointment as head of the Service of
16 Exchange.
17 During the course of the Prosecution's oral submissions, it was
18 stated that the Pusic Defence's submissions that the lack of any
19 evidence, the paucity of evidence concerning Mr. Pusic's contact with
20 other senior members of the so-called JCE, and the paucity of evidence
21 suggesting that he had any role in the genesis of the purported JCE
22 between 1991 and 1993, it was said by the Prosecution that those
23 submissions were irrelevant and amounted to an irrelevant red herring.
24 The words used by the Prosecution were that:
25 "The argument of not being in the JCE because he was unknown to

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1 some witnesses and an accused, it's an irrelevant red herring."
2 We say that that statement is unsustainable. You are entitled,

3 Your Honours, to take into account the absence of any evidence of
4 association with other alleged JCE members. That is something that you
5 may consider to be relevant when you decide if Mr. Pusic was a member of
6 the JCE. And, Your Honours, we say the fact that Mr. Pusic had no
7 contact with Franjo Tudjman, the fact that Slobodan Praljak had never
8 heard of him at the time the indictments were announced, and was indeed
9 very surprised when he first heard that he had also been charged, that is
10 all relevant given the way the Prosecution put this case, because it
11 could potentially rebut any inference that Pusic was a leader or member
12 of the joint criminal enterprise. And, Your Honours, that is an area of
13 our submissions that is described in more detail in our brief -- in our
14 final trial brief submissions at paragraphs 25 to 26 and paragraphs 15 to
15 16.

16 Moving on to take matters chronologically: One of the earliest
17 references to Mr. Pusic is in a SIS report from late 1992, and that's
18 document P0663, dated the 28th of October, 1993. Your Honours, you may
19 recall that that was a report of alleged misconduct involving Mr. Pusic.
20 We query if the contents of that document are relevant to the charges in
21 this particular indictment, given that the report refers to Pusic's
22 alleged activities with the Serbs, and note also, Your Honours, you may
23 recall that the Prosecution have also clarified, in the course of their
24 closing submissions, that Mr. Pusic didn't join the JCE until April 1993,
25 yet they're relying on documentation that dates back to a point far

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1 earlier in time in October of 1992.

2 Your Honours, we are going to devote some time to this particular
3 document simply because it's highlighted by the Prosecution in their
4 closing brief at paragraphs 1026, 1193, 1247, and 1267. Our position is
5 that the assertions made by the Prosecution on the basis of this document
6 are not reliable.

7 Firstly, this document is a SIS report which is compiled on the
8 basis of sources that are unknown. And, Your Honours, I don't intend to
9 belabour this point. We have the same position that we adopted in the
10 joint Defence motion that was filed on the 7th of January, 2008, in
11 response to the documentary evidence motion filed by the Prosecution.

12 The second point that we would make in respect to this particular
13 exhibit is that this is a document that the Prosecution should have
14 tendered through a witness. We submit the Prosecution should have
15 brought a witness to testify about these allegations, given that they now
16 form a central plank of their case against Mr. Pusic.

17 May I also clarify, Your Honours, that we do not accept any of
18 the allegations made in this document. We say that no weight whatsoever
19 should be attached to them. However, we will, in the course of my
20 submissions, highlight various contradictions that arise from the
21 Prosecution's reliance on this type of material.

22 One of the characteristics of the Prosecution's presentation of
23 their case, we submit, is that as with this particular document, P0663,
24 there are a number of other critical documents that were never put to
25 witnesses in this case, yet they are now given some prominence in the

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1 course of the final arguments, either written or oral. It's a particular
2 cause for concern for the Pusic Defence, given the relatively small
3 amount of time that's been spent focusing on Mr. Pusic, and, Your Honour,
4 it's a cause for concern that the Prosecution place so much emphasis on
5 this type of material when it should have been, could have been, shown to

6 a relevant witness. And, Your Honours, the fact that it wasn't shown to
7 a relevant witness reinforces our submissions to the effect that the
8 Prosecution have failed to meet their evidential burden, that they have
9 taken their eye off the ball when it comes to Mr. Pusic. This is nothing
10 more, this document, than uncorroborated documentary hearsay.
11 And we do note that the Chamber has acknowledged in this
12 decision, in other decisions, to admit documentary evidence, that the
13 Chamber will determine how much weight to attach to this type of material
14 in its final deliberations. At this juncture, Your Honours, we would
15 respectfully ask the Chamber to reflect on the approach taken by the
16 Trial Chamber in the case of Haradinaj. And, Your Honours, you have on
17 the screens in front of you an extract from that trial judgement at
18 paragraph 18. I don't intend to recite the entire contents of that
19 particular extract, save to highlight the last sentence:
20 "As a general rule, the less the Trial Chamber knew about a
21 document, the circumstances of its creation and usage, the less weight it
22 gave to it."
23 And, Your Honours, if I may also refer to the following
24 paragraph -- the next paragraph in that particular decision from the same
25 Trial Chamber, paragraph 19. Once again, I don't intend to read out the

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1 entire extract, but, Your Honours, we would refer you to the approach
2 taken by the Haradinaj Trial Chamber, where it was held that:
3 "In general, the Trial Chamber clarified that it attached little,
4 if any, weight to unexplained opinions and untested hearsay, and that an
5 accumulation of such evidence did not necessarily make it stronger."
6 The last point I wish to make about this particular document,
7 P0663, is or relates to what you may consider, Your Honours, to be a lack
8 of consistency in the Prosecution's approach to the weight to be attached
9 to SIS documents in general. We submit that when the Prosecution have
10 adduced a SIS document, when the contents of that document tends to
11 support their case, then it has followed that the Prosecution say that
12 that document is a reliable piece of evidence. However, when, in similar
13 circumstances, the Defence have tried to rely on a SIS document, and
14 I can identify one particular instance when Mr. Karnavas presented a SIS
15 document to try and impeach the Witness Smajkic, and that's -- you will
16 find a reference to that in transcript at page 2882, there was an
17 objection raised by the Prosecution on the basis that that document may
18 have been manufactured and was not, therefore, prima facie reliable.
19 Your Honour, we say that this approach smacks of double standards.
20 Your Honours, we have no doubt that you are faced with a
21 formidable task in going through a mountain of material in the coming
22 months, and that you will go through this material and look at it with
23 great scrutiny, but we hope that you will not fall victim to the
24 Prosecution's suggestions that you find Mr. Pusic guilty based on the
25 assumption, conjecture, or speculation contained in uncorroborated

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1 documents such as these. Moreover, whatever the scenario, Your Honours,
2 I submit to you that this amounts to nothing more than a form of gossip,
3 and gossip is too unreliable to use as a basis to convict.
4 Your Honours, if I can pick up now the evidence in April 1993,
5 which is a very important date, according to the Prosecution theory of
6 the case, because it is the date when Mr. Pusic is said to enter the JCE.
7 It's also claimed in the Prosecution's brief that in April 1993,
8 Mr. Pusic held a commanding position with substantial authority in the

9 Military Police Crime Prevention Department and that he was involved in
10 processing detainees and dealing with prisoners. And, Your Honours, you
11 will find a reference to that at paragraph 1194 of the Prosecution's
12 final trial brief. We do not dispute that the evidence shows that
13 Mr. Pusic was employed by the Military Police Crime Prevention Department
14 at that time. However, we do submit that the Prosecution have failed to
15 show what position he held. And we also would like to highlight the fact
16 that the documents that the Prosecution rely on to substantiate their
17 assertion that Mr. Pusic held a commanding position all pre-date -- or
18 generally pre-date April 1993, and I will comment on three of these
19 documents very briefly.
20 The first is P1605. This is a document that we submit confirms
21 little more than the fact that Mr. Pusic was on the payroll of the
22 military police in March 1993. It doesn't tell you what post he
23 occupied. Furthermore, P1393 is a Crime Prevention Department report.
24 It's dated February 1993, and it merely shows that Mr. Pusic was one of
25 three military police personnel interviewing detainees held at the

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1 Ljubuski detention facility. The third document is dated the 14th of
2 October, 1992. Your Honours, we will provide you with the reference to
3 that document in due course. We submit that this document does not
4 establish, as the Prosecution allege -- does not establish that Pusic had
5 any powers to order inmates to undertake forced labour assignments. The
6 document refers not to prisoners of war or to detainees in the course of
7 the conflict, but to convicts that were held by the HVO.
8 And, Your Honours, we also would like to put forward this
9 proposition: that there are two recurring patterns in the Prosecution's
10 submissions that these documents highlight. The first is that, again,
11 these three documents are now said to be very important, they are now
12 said to be central to the case against Mr. Pusic, yet they have never
13 been shown to a witness. The second pattern that these documents reveal
14 is that they provide further evidence of the Prosecution making
15 assertions which do not stand up to any close scrutiny.
16 So, Your Honours, in respect to the evidence concerning
17 Mr. Pusic's role with the military police in April 1993 --
18 JUDGE ANTONETTI: [Interpretation] Please slow down, because the
19 French booth is lagging behind you. So please slow down as much as
20 possible, and now please continue.
21 MR. SAHOTA: I'll just recap, then, Your Honours, on the last
22 point that I was making, which is that: We say that the evidence, at its
23 highest, insofar as it concerns Mr. Pusic's role and function in April
24 1993, goes to show that Mr. Pusic was employed by the military police as
25 a control officer of unspecified rank and responsibility; nothing more

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1 than that.
2 Your Honours, in May 1993, the Prosecution alleged that Mr. Pusic
3 acquired another hat, that he became a permanent liaison officer to
4 UNPROFOR, and this is based on an order that is purportedly issued by
5 Bruno Stojic on the 11th of May, 1993. You'll find further particulars
6 of that allegation at paragraph 13 of the indictment. We submit that
7 this assertion is patently incorrect and it has been flatly contradicted
8 by the evidence of one of the Prosecution's own witnesses from SpaBat.
9 That's Witness BJ.
10 Witness BJ testified that what has been described as an order
11 from Bruno Stojic did not appoint Mr. Pusic to be a permanent liaison

12 officer. It simply put him in charge of contact with UNPROFOR in one
13 particular instance. And, Your Honours, you can find further
14 elaboration/discussion of that point at paragraph 80 of the Pusic Defence
15 final trial brief, and we submit this is yet another instance where the
16 Chamber simply can't rely on the assertions made by the Prosecution.
17 And, Your Honours, despite the fact that this was highlighted in our
18 written final trial brief, this is not an assertion that's been retracted
19 by the Prosecution in their closing oral submissions.
20 This allegation is also a matter of concern because we submit,
21 Your Honours, that it provides an example of the Prosecution expanding
22 their case against Mr. Pusic because it's also claimed in the
23 Prosecution's final trial brief, at paragraph 1204, that Mr. Pusic's role
24 as a liaison officer was wider than that. His dealings were restricted
25 not just to SpaBat. Your Honours, that's an allegation that's not

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1 previously -- that has not been previously advanced in the Prosecution's
2 pre-trial brief or in the course of their Rule 98 bis submissions. So
3 this allegation of a wider liaison role is not mentioned at all in the
4 indictment. Your Honours, we submit it's unfair to the accused that he
5 should have to respond to what constitutes, in reality, a fresh
6 allegation, an allegation that should have been particularised at an
7 earlier point. In summary, Your Honours, we submit that the Prosecution
8 should not be allowed to use the indictment as a moving target.
9 The next point in the chronology that we pick up on is the 22nd
10 of April, 1993. That's another key date, as far as the Prosecution is
11 concerned, because they claim that from that point onwards, Mr. Pusic had
12 primary responsibility for exchanges. And you'll find that assertion at
13 paragraph 1196 of the Prosecution's final trial brief. That allegation
14 is based on a document, P02020, which you have before you on the
15 PowerPoint presentation, which states and relays an order from
16 Valentin Coric which states that:
17 "Mr. Pusic is charged with participating on behalf of the
18 Military Police Administration in the exchange of all arrested persons."
19 The critical word there, Your Honours, is "participating." We
20 submit that that's a term that's entirely open to interpretation. And,
21 Your Honours, we raise the question of whether it's reasonable to adduce
22 from this document that Pusic had primary responsibility for exchanges or
23 whether there's another reasonable inference that arises, which is that
24 Pusic was not conferred with any decision-making powers as a consequence
25 of this particular document. Your Honours, we say that the Chamber would

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1 need to look at other corroborated evidence, if it exists, to see what
2 the true significance of that order is.
3 Your Honours, in reference to this particular allegation that
4 Mr. Pusic had primary responsibility for exchanges, you'll note that at
5 paragraph 288 of our final trial brief, we highlight the fact that there
6 were a number of other HVO bodies who were also engaged in prisoner
7 exchanges. Most prominently and most importantly -- there were four
8 bodies, but most importantly amongst those four bodies is the HVO
9 Exchange Commission headed by Maric. This is a commission - we have
10 labelled it the Maric Commission - that had been in operation and
11 existence since 1992, and it may be relevant, Your Honours, for you to
12 note that Maric was an individual, who was head of that commission,
13 attended far more sessions of the HZ-HB Cabinet than Mr. Pusic ever did.
14 And, Your Honours, that's a point that's further elaborated on in our

15 brief at paragraph 228.

16 Any examination of Mr. Pusic's role in releases and exchanges,
17 which also form one of the most important limbs of the Prosecution's
18 case, we submit, cannot be -- cannot take place without some
19 consideration of the political context at the time. We take the position
20 that the -- that an examination of the facts reveals that decisions
21 regarding prisoner exchanges and prisoner releases, particularly
22 decisions regarding HVO policy in those areas, those decisions were taken
23 at a far higher level than Mr. Pusic's modest station.
24 And, Your Honours, we would like at this juncture to look at
25 Mr. Pusic's role in an exchange meeting that took place on the 4th of

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1 May, 1993, at Jablanica, because careful examination of Mr. Pusic's role
2 in that particular event shows that his input was clearly insignificant.
3 According to the Prosecution, this was a high-level meeting where
4 Mr. Pusic played an important role. And, Your Honours, we've examined
5 this meeting. Our submissions are outlined at paragraph 223 of our final
6 trial brief.
7 You may recall during the course of the Prosecution's final
8 submissions that they played clips from two video-recordings, the first
9 from a video, Exhibit P02187, where it was said that Mr. Pusic could be
10 seen sitting on the same table as other senior members of the BiH Army.
11 However, Your Honours, you may have noticed or you may recall that in the
12 course of that clip, there was no dispute -- there can be no dispute that
13 Pusic was only engaged in a discussion concerning the exchange of the
14 sick and wounded. And this meeting is also important in respect of
15 Pusic's Defence because it does appear to be the first occasion when
16 Mr. Pusic comes across General Petkovic. General Petkovic gave evidence
17 in regards to this meeting, and, Your Honours, you'll see from the
18 PowerPoint presentation screen in front of you that he made it clear, in
19 the course of his evidence, that the first time he came into direct
20 contact with Mr. Pusic was during the course of these talks.
21 General Petkovic also made it clear that his job was such that he didn't
22 have any further contact with Mr. Pusic. And His Honour the
23 Presiding Judge, Judge Antonetti, went on to say:
24 "Very well. Then there's no point in my asking you whether he
25 referred to Greater Croatia, et cetera, talking to you, because you said

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1 you hardly ever saw him, so the question doesn't arise."
2 Your Honour, that extract from the trial record can be found at
3 page 49799.
4 Petkovic also gave further evidence about this meeting when he
5 confirmed that Mr. Pusic's role was wholly insignificant, as Pusic's role
6 was restricted to dealing with the sick and injured from Sovici and
7 Doljani. And, Your Honours, you'll find the reference to that would be
8 transcript record page 49501. Your Honours, we submit that
9 General Petkovic had no reason to lie and no reason to minimise
10 Mr. Pusic's role at that particular meeting.
11 The Prosecution say that this was a high-level meeting, but, on
12 the contrary, General Petkovic makes it clear that Mr. Pusic's presence
13 was not considered significant by him.
14 The Chamber may also recall that the same footage from that
15 particular video also contains footage of a dispute between a
16 representative of the HVO, Bagaric, and General Halilovic. There was a
17 heated discussion, and it's clear from that that Mr. Pusic does not

18 feature prominently in that exchange. And, Your Honours, if you -- if
19 you were to examine the Exhibit P02187, between -- from 3:31 to 4:20 or
20 transcript pages 1 to 32 relating to the same exhibit, you would find
21 that there is very little, if no reference to Mr. Pusic in the contents
22 of that particular document.
23 The second video that the Prosecution relied in the course of
24 their submissions concerning the 4th of May meeting in Jablanica was
25 Exhibit P0999. In the course of that video, you may recall that the

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1 Prosecution highlighted a reference to Mr. Pusic from a television
2 journalist, where Mr. Pusic was described as a negotiator. Now, Your
3 Honours, we don't necessarily agree that Mr. Pusic was a HVO
4 representative or negotiator, but even if it was -- even if he was, it
5 does not follow that he necessarily had decision-making powers.
6 Your Honours, it's up to the Trial Chamber to decide what the
7 truth is beyond reasonable doubt, but we would ask you to take heed of
8 the careful forensic approach taken by the Milutinovic Trial Chamber when
9 determining the significance and weight to be attached to evidence
10 concerning Milutinovic's participation in numerous meetings. I'm not
11 saying that there were any obvious parallels that can be drawn between
12 the case against Mr. Milutinovic and that against Mr. Pusic. I would
13 only merely suggest that the forensic approach taken by the Milutinovic
14 Trial Chamber should be adopted in this case.
15 At paragraph 25 of the Milutinovic trial judgement, the
16 Trial Chamber noted that Mr. Milutinovic had given two morale-boosting
17 speeches at meetings that he'd attended. However, in the Trial Chamber's
18 view, his conduct did not constitute a significant contribution to the
19 joint criminal enterprise. Nor did the Milutinovic Trial Chamber take
20 the view that Milutinovic's conduct at other meetings had a substantial
21 effect on the commission of other crimes. And, Your Honours, if I can
22 refer you to paragraph 281 of the Milutinovic trial judgement, there is
23 further reference to Milutinovic's conduct in providing a number of
24 morale-boosting speeches to officials, and the trial judgement reads
25 that:

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1 "These two factors on their own, however, in the context of such
2 a large case with a multiplicity of players, cannot be said to have had a
3 substantial effect on the commission of the crimes of displacement which
4 were committed from late March 1999 onwards."
5 I would like to turn now to discuss the evidence concerning the
6 events in Mostar that took place between the 7th and 9th of May, 1993.
7 The evidence indicates that Mr. Pusic was still employed by the military
8 police at this time. If we accept the testimony of Josip Praljak,
9 Mr. Pusic's role in the arrest and detention of Muslim residents in
10 Mostar, and their delivery to the Heliodrom, was restricted to their
11 release or to the release of some of the detainees interned between those
12 dates and thereafter in the course of May.
13 Josip Praljak testified that Pusic would regularly telephone him
14 with lists of detainees to be released. The Prosecution seek to draw the
15 inference from that testimony that Pusic had the power to decide who
16 could be released. We question whether that is the only reasonable
17 inference that can be drawn from Josip Praljak's evidence, given that
18 Praljak had no knowledge of the internal procedures that Pusic had to
19 follow. And we submit that even if this evidence is taken at its
20 highest, even if Praljak is accepted as credible on this issue, all the

21 evidence shows is that Pusic transmitted lists, lists containing names of
22 detainees to be released, from the military police to Mr. Praljak. And,
23 in any event, even if you were to find that Mr. Pusic was involved in
24 expediting the release of these detainees, we submit that Mr. Pusic acted
25 entirely correctly in doing so.

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1 And if I may refer the Chamber to Josip Praljak's testimony on
2 this point in relation to a document P02260. This is a note prepared by
3 Stanko Bozic, recording a call from Pusic, with a request for the release
4 of detainees held at the Heliodrom. In responses to questions from His
5 Honour Judge Antonetti, Josip Praljak confirms that the people that had
6 been detained at this time at the Heliodrom had no place there and should
7 have been released. To be more precise, he's asked:
8 "What I'm saying is, if Mr. Pusic acted as is written down in the
9 Official Note, was that the right decision when he said --"
10 JUDGE ANTONETTI: [Interpretation] Mr. Praljak, what is the
11 problem?
12 THE ACCUSED PRALJAK: [Interpretation] Your Honours, could
13 everyone please say "Josip Praljak," because later on a confusion might
14 arise, because there's Slobodan Praljak and there's Josip Praljak.
15 MR. SAHOTA: I apologise to General Praljak. I'll try and take
16 heed of his observation.
17 Josip Praljak testified, in response to the question from His
18 Honour Judge Antonetti, that:
19 "Well, not only those people, but none of the other people either
20 should have been there."
21 He was then asked:
22 "And then you testified that the people left Heliodrom very
23 quickly after that, these people?"
24 He answered: "Yes."
25 Your Honours, the evidence shows that almost all those civilians

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1 that were detained between the 7th to the 9th of May, 1993, were released
2 by the end of that month. Subsequent to that, subsequent to the events
3 of the 7th to the 9th of May, there were meetings, a number of
4 negotiations between HVO and BiH representatives that continued until the
5 end of June. In our final brief, we have examined the evidence
6 concerning Mr. Pusic's role at these meetings, and we submit that
7 although Mr. Pusic may have been present at some of these exchange
8 meetings, the facts of his involvement do not support the Prosecution's
9 case that he had primary responsibility for prisoner exchanges. Indeed,
10 the evidence indicates that at the high-level meetings that took place
11 after the 12th of May, 1993, meetings that were to arrange the release of
12 those Muslims arrested in Mostar and other issues such as humanitarian
13 aid, the evidence suggests that General Petkovic and Halilovic were the
14 main negotiators until Delic replaced Halilovic in June 1993.
15 Your Honours, we also submit that there is a valid distinction to
16 be made between high-level negotiations that were taking place at this
17 time and low-level talks that were also occurring, and the distinction is
18 one that is identified by the Prosecution Witness Watkins and also by
19 Prosecution Witness Masovic. Our case is that Mr. Pusic was involved
20 primarily in low-level talks, where he dealt with lower-ranking BiH
21 officials such as Alikadic. And, Your Honours, we have developed those
22 submissions in more detail at paragraphs 56 to 58 of our final trial
23 brief and also at paragraphs 74 to 81. But there is one point that

24 highlights our submissions, and this is the fact that there is no
25 evidence that Mr. Pusic attended any of the highest-level talks in Geneva

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1 throughout 1993 or any of the highest-level talks in Sarajevo, talks that
2 normally took place at Sarajevo Airport.
3 Your Honours, any discussion of exchange negotiations in 1993
4 must also include some reference to political machinations occurring at
5 the various highest diplomatic and political levels. We submit that
6 there is very little evidence to link Mr. Pusic to key events and
7 meetings at those levels throughout the entire indictment period. There
8 is, for instance, no link between Mr. Pusic and the talks that took place
9 on the 20th of July, 1993, between Galbraith and Boban, and on the same
10 date, Izetbegovic issues a decision for the release of all captured
11 soldiers and civilians. And, Your Honours, that's a point that is
12 developed at paragraph 243 of our final trial brief. There's also no
13 link between Mr. Pusic and the joint agreement signed by Tudjman and
14 Izetbegovic on the 14th of September, 1993, one of the major milestones
15 in the course of the negotiations between the HVO and the ABiH during the
16 course of that summer.
17 It's also relevant to note, we submit, that on the following day,
18 on the 15th of September, 1993, Mate Boban issues an order to ensure that
19 the conditions at the detention centres run by the HVO are compatible
20 with the requirements of International Humanitarian Law. The order also
21 requires ICRC to have access to all facilities. What is particularly
22 relevant about this order is -- as far as the Pusic Defence is concerned,
23 is the fact that it's not circulated to Berislav Pusic. And again, Your
24 Honours, we would refer you to paragraphs 240 and 243 of our final trial
25 brief. The document in question is P5104.

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1 One of the Prosecution's main witnesses in relation to
2 Mr. Pusic's role concerning prisoner release and exchanges is Cupina.
3 Cupina claimed that Pusic was the Alpha and Omega of release and exchange
4 matters, and that's a quote, Your Honours, that's cited in the
5 Prosecution's final trial brief at paragraph 1209, and it's a quote that
6 was repeated in the course of -- it's repeated in the course of their
7 closing submissions, and that's transcript reference 44908.
8 Cupina's evidence is dealt with in our trial brief at paragraphs
9 188 to 197, and we've dealt with his evidence in some detail. In
10 summary, we say that his testimony is incapable of belief. And we note
11 that the Chamber has already recognised that they have reservations about
12 his credibility that may seriously affect the reliability of his
13 testimony, and we rely on a decision rendered by the Trial Chamber on the
14 3rd of November, 2006, in response to a request from the Defence for
15 General Praljak. Your Honours, we suggest that no weight should be given
16 to the evidence of Mr. Cupina.
17 Your Honour, in relation to events before the 5th of July, the
18 last document that I want to refer to briefly is P02546. This was
19 referred to in the course of the Prosecution's closing oral submissions,
20 and that reference can be found at transcript page 52148. The document
21 is a report on the activities of the HVO military police, dated the 28th
22 of May, 1993. It records that an order had been received from
23 Berislav Pusic and Coric to transfer the prisoners to the prisons on the
24 Heliodrom. In their interpretation of this document in their closing
25 submissions, the Prosecution put Mr. Coric and Mr. Pusic on the same

1 footing, and, Your Honours, we highlight that because we suggest and
2 submit it's important for the Trial Chamber to know that there are
3 contradictions in both the Prosecution's final brief and in their closing
4 arguments in regard to what they claim the positions are taken by each of
5 the co-accused, and we raise the question of whether the only inference
6 that can be drawn from this document is the inference that Mr. Pusic had
7 decision-making authority, or whether there is any other reasonable
8 inference available from this material; namely, that Mr. Pusic's role was
9 restricted to that of a messenger in this scenario.

10 I would now like to move on to the second phase of our
11 submissions, which deals with the evidence concerning events after the
12 5th of July, 1993, which is the date that Mr. Pusic is appointed head of
13 the Service of Exchange. Your Honours, if I could briefly make a general
14 observation about the Service of Exchange and also the 6th of August,
15 1993, commission.

16 Our position is that Mr. Pusic had no de jure or de facto powers
17 arising as a consequence of either appointment. The titles that he was
18 given may sound grand, but we would remind you of a quote from
19 George McGovern, the American politician, who said that:

20 "The longer the job title, the less important the job."

21 Your Honour, the Service for Exchange was conceived on the 5th of
22 July, 1993, and we submit that from that very moment onwards, there is no
23 evidence that Mr. Pusic was conferred with any de jure authority over any
24 limb of the HVO military apparatus, that he had no de jure authority over
25 any military personnel as a consequence of that appointment, and, Your

1 Honours, we also submit that the evidence suggests that the Service for
2 Exchange was not part of the civilian structure either. The evidence
3 does not show that the Service for Exchange was required to report to the
4 HVO HZ-HB Cabinet, and that's a point that we have outlined at
5 paragraph 85 of our closing submissions. The evidence does not show
6 that, as a consequence of his appointment to the Service for Exchange,
7 Mr. Pusic was subordinated and required to report to Jadranko Prlic. The
8 evidence suggests that the Service for Exchange was a stand-alone body,
9 and we say that that conclusion is entirely consistent with its role as a
10 service providing technical advice.

11 It was the Prosecution's expert, Tomljanovich, who confirmed that
12 the Service for Exchange's remit was strictly defined at the time it was
13 created, and it was strictly defined, in his words, so that the service
14 was:

15 "... charged with providing the technical support for the HVO
16 HZ-HB, in particular the Commission for Exchange of Prisoners and Other
17 Persons ."

18 Your Honours, it's up to you to decide if you consider our use of
19 a selective quote from the Prosecution's own expert to be unfair.
20 Turning now to the 6th of August, 1993, commission, this is
21 another important moment in the Prosecution's case. The Prosecution
22 allege that as a consequence of this appointment, Mr. Pusic began
23 releasing detainees. And, Your Honours, you'll find a reference to that
24 at paragraph 595 of the Prosecution's final trial brief. The Prosecution
25 also contend that Mr. Pusic's appointment amounts to a natural expansion

1 of his role. Further elaboration of that can be found at paragraph 1202

2 of the Prosecution's final trial brief. During their oral closing
3 submissions, the Prosecution said as follows:
4 "Bruno Stojic, he placed the responsibility and power to release
5 and exchange prisoners upon Mr. Pusic's shoulders when he set up the
6 commission on the 6th of August, 1993. And that's Exhibit P03995.
7 Mr. Pusic exercised this responsibility throughout the rest of 1993. He
8 often did this without following the outlined procedures, as we have
9 seen, of engaging with the SIS and military police concurrence or
10 involving other commission members."
11 Your Honours, that's transcript reference 52156.
12 Your Honours, we submit that the evidence of Josip Praljak points
13 to the fact that the commission never took effect and existed only on
14 paper. Josip Praljak gave evidence about his role in the commission,
15 because he was appointed as one of its five members, and said as follows.
16 He was asked:
17 "But let me go back. When you received this order," this is an
18 order notifying him of his appointment to the commission, "you said that
19 you talked to Mr. Pusic over the telephone about the work of that
20 commission and that Mr. Pusic said, 'We'll do the work.'"
21 He answered: "Yes."
22 "After that, had you no further contact with Mr. Pusic in respect
23 to this commission, did you, nor do you mention this in your diary at
24 all? I find no entry to that effect."
25 He answered: "No, we never had a meeting."

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1 And that's transcript reference 14974.
2 Josip Praljak went on to say that he had no further contact with
3 Mr. Pusic regarding the work of the commission and that Mr. Pusic never
4 wrote to him concerning the commission. Praljak continued and confirmed
5 that he never spoke to or met with any other members of the commission in
6 an official capacity. And, Your Honours, that's a point that we've
7 explored in further detail at paragraph 96 of our final trial brief.
8 Other factors that the Trial Chamber may wish to take into
9 account when considering what weight to attach to this evidence
10 concerning the commission relates to the absence of any documentation
11 produced by it and to the fact that the commission is never referred to
12 in any HVO HZ-HB Cabinet meetings. And, Your Honours, that is a point
13 that we have outlined at paragraphs 100 to 103 of our final trial brief.
14 It's also interesting to note that the Prosecution's position on
15 the 6th of August commission seems to be somewhat contradictory. At
16 paragraph 319 of the final trial brief, the Prosecution assert that:
17 "In fact, Pusic's commission never convened, a fact commission
18 member made known to Stojic."
19 Your Honours, it's not clear, in light of that reference, whether
20 the Prosecution agree with the submissions advanced by the Defence, that
21 the commission never functioned at all, or whether they don't. It's also
22 correct to say that the Prosecution never challenged the evidence of
23 Josip Praljak on this point. We submit the Prosecution can't have it
24 both ways and that this evidence goes to show, once again, that the
25 Prosecution have failed to discharge their evidential burden, that they

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1 have taken their eye off their ball when they're dealing with Mr. Pusic.
2 On the 12th of August, 1993, the Prosecution allege that
3 Mr. Pusic prepared a proposal concerning the work of the commission, and
4 this document is Exhibit P04141, and it's a document that's referred to

5 in the indictment at paragraph 17.6(G). Your Honours, we don't intend to
6 dwell on this particular document, because we say that far too much
7 significance has been given to it by the Prosecution. It is just a
8 proposal. There is no evidence that proposal was ever acted on. This
9 document does not, in our submission, establish that Pusic had any
10 decision-making powers. And, Your Honours, a review of the evidence
11 concerning, for instance, the categorising and cataloging of prisoners
12 suggests that there were other HVO bodies that were actually responsible
13 for those tasks.

14 Concerning prisoner exchanges in the latter half of 1993, there
15 are two inter-connected limbs of the Prosecution's case that we would
16 like to address.

17 At paragraph 1249 of the Prosecution's final trial brief, it said
18 that Mr. Pusic obstructed and frustrated exchanges, and one of the ways
19 he is alleged to have achieved this is through advocating -- insisting on
20 "one for one" exchanges. We will deal with the wider allegation of
21 obstruction first.

22 And, Your Honours, may I ask that we go into private session.

23 JUDGE ANTONETTI: [Interpretation] Yes, Madam Registrar.

24 [Private session]

25 (redacted)

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11 Page 52765 redacted. Private session.

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1 [Open session]

2 THE REGISTRAR: We're in open session, Your Honours.

3 MR. SAHOTA: Our submissions in respect of "one for one"

4 exchanges are outlined in detail in our final trial brief at paragraphs

5 62 to 70. In short, we say that the evidence demonstrates that both

6 sides had fluid negotiating positions when it came to discussing the

7 terms of prisoner exchanges. And this is a submission that we haven't

8 ventilated in our final trial brief, but our argument, Your Honours, is

9 that both sides in these negotiations contributed to their failure, and

10 thus it is, therefore, unfair to attribute responsibility to Mr. Pusic,

11 particularly in light of evidence that suggests that he had no unilateral

12 powers, that he was simply passing on instructions from above. Your
13 Honours, in this respect we refer you to the approach taken by the
14 Milutinovic Trial Chamber when considering Milutinovic's responsibility
15 for the collapse of negotiations. Again, I'm not drawing any parallels
16 between the two cases, but respectfully drawing your attention to an
17 approach that was taken when examining evidence by another Trial Chamber.
18 The judgement states:
19 "Addressing his contribution first, the Chamber is of the view
20 that a number of examples of Milutinovic's participation in the joint
21 criminal enterprise alleged by the Prosecution have not been proved
22 beyond reasonable doubt. For example, the Chamber found that, during the
23 negotiations between Kosovo Albanians and the FRY/Serbian authorities,
24 all sides contributed to their failure. As a result, the Chamber was
25 unable to find that Milutinovic obstructed the negotiating process."

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1 And that's paragraph 274.
2 The Prosecution try and link Mr. Pusic's role in prisoner
3 exchanges and releases with their claim that at the heart of the JCE lay
4 the desire to ethnically cleanse parts of Bosnia-Herzegovina. And, Your
5 Honours, they make this allegation a number of different ways, using very
6 imaginative and fluid language. In paragraph 1231 of the Prosecution's
7 final trial brief, it said that Mr. Pusic is a demographic engineer who
8 had the power to give permission for people to depart. At paragraph 1243
9 of the final trial brief, it said that Mr. Pusic launched a deportation
10 scheme with Valentin Coric. And there are a number of other variations
11 on this theme, as if reformulation and repetition will improve the
12 Prosecution's case.
13 Our position is that while Mr. Pusic may have had some
14 involvement in issuing discharge letters for some, but not all, detainees
15 in this time-frame in the latter half of 1993, the evidence does not show
16 that Mr. Pusic had any say in determining where those detainees went
17 after they left custody. In particular, we submit that the Prosecution
18 has failed to prove beyond reasonable doubt that Mr. Pusic had any
19 involvement in issuing letters of guarantees or transit visas for those
20 leaving HVO detention.
21 In our final trial brief at paragraphs 151 to 154, we have
22 examined the evidence as to who was actually responsible for issuing
23 transit visas and letters of guarantee, and I do not intend to rehash
24 those submissions here. I will, however, refer the Chamber to the
25 evidence of Josip Praljak which we submit shows that Mr. Pusic's role was

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1 strictly limited to checking whether a detainee had the approval of SIS
2 and the CPD before he could issue a discharge letter.
3 At transcript reference 14713, and unfortunately we don't have a
4 slide for this quote, Josip Praljak was asked:
5 "What approvals were required, to your knowledge, to have a
6 prisoner release from the Heliodrom in July/August 1993? You can just
7 walk us through whatever steps were taken, if you can help us, please."
8 "The document that would reach us in the prison was formulated
9 like this, approximately. There is no reason to hold the prisoner of war
10 such and such, and it would be signed by Miroslav Music on behalf of the
11 SIS and Vidovic on behalf of the Crime Investigation Service. They would
12 issue approvals enabling Mr. Pusic to release somebody. I believe
13 without these two signatures above, Mr. Pusic would have been unable to
14 release anyone."

15 Your Honours, that's a transcript reference that can be found at
16 paragraph 303 of our final trial brief.
17 You may also recall, Your Honours, that you heard from another
18 witness, Vidovic, who confirmed that the Crime Prevention Department had
19 to issue a certificate certifying that they had no objection to the
20 release of a detainee. And, Your Honours, that reference can be found at
21 transcript pages 51690.
22 Your Honours, in the course of their closing submissions, the
23 Prosecution referred to a number of documents emanating from the SIS
24 service that they claim prove that Mr. Pusic had the power to order
25 releases unilaterally without obtaining consent from SIS and the CID.

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1 I'd like to consider one of these documents. The first document is
2 P6170. This is a document that doesn't emanate from SIS. It's a report
3 from Josip Praljak, where he acknowledged that he was mistaken in his
4 evidence concerning Pusic's role in the release of a number of detainees.
5 Your Honours, Josip Praljak's evidence can be found at transcript
6 reference 14980, and our submissions are outlined in our final trial
7 brief at paragraph 312.
8 The second document the Prosecution referred to, again, is not a
9 SIS document. It's a newspaper article dated the 19th of October, 1993,
10 and that's Exhibit reference P5945. In the course of this article, Pusic
11 is said to contrast his powers to make decisions on prisoner exchanges
12 with that of his BiH counterparts, who had no such powers. Your Honours,
13 you may find it interesting to contrast, yourselves, what Pusic says
14 about the extent of his own influence in that interview, P5945, with what
15 another witness says.
16 If I may ask, Your Honours, for the Chamber to go into private
17 session.
18 JUDGE ANTONETTI: [Interpretation] Yes. Madam Registrar.
19 [Private session]
20 (redacted)
21 (redacted)
22 (redacted)
23 (redacted)
24 (redacted)
25 (redacted)

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1 (redacted)
2 (redacted)
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12 (redacted)
13 (redacted)
14 (redacted)
15 (redacted)
16 [Open session]
17 JUDGE ANTONETTI: [Interpretation] I'd like to thank Madam

18 Registrar.

19 We will continue with Mr. Pusic's closing arguments tomorrow
20 morning. We begin at 9.00.

21 Until then, I wish you all a nice evening.

22 --- Whereupon the hearing adjourned at 6.57 p.m.,

23 to be reconvened on Thursday, the 24th day of

24 February, 2011, at 9.00 a.m.

25