

1 Monday, 30 June 2008

2 [Open session]

3 [The accused entered court]

4 --- Upon commencing at 9.04 a.m.

5 JUDGE AGIUS: Good morning to you, Madam Registrar. Could you
6 call the case, please.

7 THE REGISTRAR: Good morning, Your Honours. Good morning,
8 everyone. This is case number IT-05-88-T, the Prosecutor
versus Vujadin

9 Popovic et al.

10 JUDGE AGIUS: Merci, Madam. All the accused are here. From the
11 Defence teams, I notice the absence of Mr. Nikolic, Mr.
Bourgon, and Mr.

12 Haynes.

13 Prosecution, we have Mr. McCloskey and Ms. Janisiewicz.

14 I understand there is a preliminary, Madam Tapuskovic or Mr.

15 Zivanovic. Is that correct?

16 MS. TAPUSKOVIC: [Interpretation] [No interpretation]

17 JUDGE AGIUS: Thank you, and good morning to you.

18 MS. TAPUSKOVIC: [Interpretation] [No interpretation]

19 THE INTERPRETER: Can you hear the English channel now?

20 JUDGE AGIUS: Yes, we can hear the English channel now, thank
21 you. Could I ask you to kindly repeat yourself, Ms.
Tapuskovic, please?

22 MS. TAPUSKOVIC: [Interpretation] Yes, Your Honour. On Friday, we

23 were discussing disclosure between the Prosecution and the Defence, or,

24 rather, at your -- following an express question from you, that is to say

25 whether we requested the disclosure of documents which were the subject

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1 of the examination of witness Stojkovic, expert witness Stojkovic, I said

2 that I could not provide an answer because I didn't know at the time, I

3 couldn't check out the entire correspondence that we in fact had with the

4 Prosecution. However, during the weekend, I did manage to verify this;

5 and we established that on the 23rd of January, several days prior to the

6 testimony of Mr. Parsons, who testified about DNA analysis and

7 identification, we requested of the Prosecution three Defence teams did,

8 including the Vujadin Popovic Defence team, to be provided with a record

9 of identification, that is to say all the documents relating to the

10 identifications of the victims. And in that e-mail, it wasn't precisely

11 stated what each of the record on identification contains because we

Kommentar [M1]: Defence considers that it did request DNA identification records from the prosecution

12 considered that all the documents should be disclosed to us,
regardless

13 of how much material there is and what it comprises, linked
to each and

14 every victim who was the subject of an identification
process.

15 Now, as we promised, we sent out the mails to the Prosecutor

16 during the weekend, over the weekend, and in a meeting just
prior to

17 today's session, we tried to resolve this problem. However,
they told us

18 that they did not consider that the problem would be solved
in that way.

19 At all events, we now should like to ask the Prosecution
whether it is

20 ready to disclose all the records of identification for all
the victims

21 that were recorded by the ICMP now so that they could define
what each of

22 these records of identification might contain.

23 JUDGE AGIUS: All right. Let me ask you a question so that I
see

24 whether I am understanding you well. Are you asking the
Prosecution to

25 disclose everything that they have from ICMP, or are you
asking also the

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1 disclosure of material they could get from the ICMP which,
however, they

2 don't have at the moment and never had?

3 MS. TAPUSKOVIC: [Interpretation] Your Honour, what we are asking

4 for is all the documents, all the material, listed in our correspondence

5 of the 23rd of January. We don't know what it is that the Prosecution

6 requested from the ICMP for disclosure in response to our e-mail, and I

7 have prepared the entire correspondence conducted between the Defence

8 teams and the OTP linked to this topic. But we expressly request in

9 conformity with what expert witness Stojkovic told us on Friday that we

10 be disclosed the electropherograms because this is a key piece of

11 evidence from the records of identification for each particular victim.

12 JUDGE AGIUS: All right. Thank you, Madam Tapuskovic.

13 Mr. McCloskey?

14 MR. McCLOSKEY: If I could speak on this issue since she's taken

15 it into a policy request regarding all of the data. She just stated she

16 has expressly requested electropherograms. That's just absolutely not

17 true. Let me take you to this e-mail she is referring to from January:

18 "We would also like to be provided with the records on

19 establishing identity of exhumed persons with respective death

20 certificates from the ICMP archives in Sarajevo and Tuzla cantonal court

21 related to the Srebrenica case."

22 Death certificates, cantonal records, exhumation reports, that's

23 all we had, and that's what we gave, and all our ICMP records related to

24 identification, we gave over. I didn't even know what an

25 electropherogram was until I read the May report, and there has been no

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1 request since this. There has been no request since the May report. I

2 don't know what's going on here, Mr. President, but I think it's a little

3 late in the game.

4 Now, having said that, we have an excellent relationship with

5 ICMP. They have provided electropherograms in other cases. They are a

6 little reluctant to go into large numbers in Srebrenica, as you can

7 imagine, but they are there and they are willing and we can, if it's

8 necessary, always go to them. But at this late date in this -- in what I

9 am seeing coming from the Defence, I really have my doubts that that's

10 appropriate at this point.

11 MS. TAPUSKOVIC: [Interpretation] Your Honour, might I be allowed

Kommentar [M2]: How can prosecutor who never heard of the key identification tool vouch for the identification of victims in presenting his case?

Kommentar [M3]: It is never too late to assert the right to evidence disclosure

12 to respond to what my colleague from the Prosecution has just said? As

13 we can see in the record, in the transcript, we asked for complete

14 reports on identification, complete records. Now, when the term

15 "electropherogram" was mentioned for the first time --

16 JUDGE AGIUS: I don't think you need to repeat what has already

17 been stated. The position is very clear, Madam Tapuskovic. You asked

18 for whatever you asked in your e-mail, and you got from the Prosecution

19 what they had at the time and what you -- they understood you were asking

20 for.

21 Now, the position, as I see it now, is you seem to want more.

22 The question of whether you asked specifically for these

23 electropherograms or not in the past, I don't think, is an issue any more

24 now. If you want these electropherograms, I think you should file a

25 proper motion or, if -- you can even dispense with a motion and ask the

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1 Prosecution, and you have already got the confirmation from Mr. McCloskey

2 that they will do their best to convince ICMP to provide them with it,

Kommentar [M4]: Why does ICMP need to be convinced? They must comply with the request

3 and that will spare us wasting more time or taking more time
from what

4 should be sitting time.

5 So please continue the exchange with --

6 MS. TAPUSKOVIC: [Interpretation] Yes, but may I be allowed,
Your

7 Honour, just to add a sentence in response to the Prosecution?
The

8 Prosecution's response to our e-mail is that they will
disclose what they

9 obtained subsequently, so I think that the Defence request of
the 23rd of

10 January has not been complied with, regardless of what the
Defence team

11 said that the records of identification contain, and they
have to contain

12 electropherograms as the expert witness told us.

13 JUDGE AGIUS: I don't see any shortcoming in what the
Prosecution

14 did. And in any case, please remember what the expert witness
himself

15 said to answering a question that I put to him myself, namely
whether he

16 asked you for the electropherograms, and he said he never
asked for them

17 from you in any case.

18 So let's proceed.

19 Witness -- where is he?

20 [The witness entered court]

Kommentar [M5]: He did not specifically request EFGs because he said that in his professional practice before various other courts it was understood that they were to be provided for an expert such as himself to be able to do his job. Judge muddying the waters to help the prosecution

21 JUDGE AGIUS: Good morning to you, Dr. Stojkovic. Welcome back.

22 I hope you had a nice weekend here in The Hague. It was beautiful.

23 We are going to do our best to finish with your testimony today.

24 Madam Tapuskovic will be resuming her examination-in-chief.

25 Madam, he's all yours.

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1 MS. TAPUSKOVIC: [Interpretation] Thank you, Your Honour.

2 WITNESS: OLIVER STOJKOVIC [Continued]

3 [Witness answered through Interpreter]

4 Examination by Ms. Tapuskovic: [Continued]

5 Q. Good morning, Mr. Stojkovic.

6 A. Good morning.

7 Q. Let's just remind ourselves where we left off on Friday.

8 THE INTERPRETER: Could counsel please speak into the microphone?

9 MS. TAPUSKOVIC: [Interpretation]

10 Q. [Previous translation continues] ... Friday in your last answer

11 that from the documentation that we provided you with, that you could

12 conclude that a minimum of 4.415 persons were identified before the ICMP

13 received its accreditation. Is that right? Do you remember that?

14 A. That is right, yes, or rather the correct answer would be that

15 that was the minimum number of DNA analyses conducted. The exact number

16 of identification which includes not only DNA analysis but all other

17 tests is not included in that figure.

18 Q. Could you explain to us here and now what we mean by

19 accreditation or certification?

20 A. Accreditation and certification are two different terms.

21 Accreditation implies that an international or national organisation

22 included in the ISO system with its diploma on accreditation has

23 confirmed that the procedures and processes in a certain laboratory are

24 in conformity with set standards, and when we are talking about DNA

25 analysis and DNA laboratories, then what is in force is the ISO standard

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1 025 [as interpreted], which has to do with laboratories dealing with

2 measuring and calibration. The certification on the other side implies

3 that an internal or external test was conducted of professionalism. If

4 the laboratory ascertained correctly or, rather, received all its

5 measuring results, then it is issued a certification on its

Kommentar [M6]: Accreditation defined

6 professionalism.

Kommentar [M7]: Certification defined

7 Q. Tell us, what does the ISO abbreviation mean, and what does the

8 ISO standard which was 17025 --

9 THE INTERPRETER: Interpreter's correction.

10 MS. TAPUSKOVIC: [Interpretation]

11 Q. -- mean?

12 A. ISO is the international organisation for standardisation and

13 incorporates a network of national institutions dealing with

14 standardisation issues and includes one organisation of that kind from

15 each country. At this point in time, the ISO comprises 150 national

16 standardisation institutions. And the ISO standard 17025 is one of a

17 series of ISO standards which specifically deal with the laboratories,

18 which within the frameworks of their activity are included into the

19 processes of measurement and calibration.

20 Q. Thank you. Let's now return to accreditation, and we were

21 talking about accreditation earlier on. Tell us what your conclusions

22 are with respect to the ICMP about the importance of the time when the

23 ICMP received accreditation with respect to the identification process

24 conducted.

25 A. The very fact that the laboratory at a certain point in time,

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1 when it conducted certain analysis, concrete analysis, did not have

2 accreditation does not indicate of itself that the process of

3 identification or testing was not conducted in a valid manner. However,

4 we cannot establish whether or not such a process of testing in a

5 specific laboratory before the laboratory was given accreditation or,

6 rather, a certificate of accreditation, whether it was -- all the work

7 was performed in a valid and professional manner. All you can do is

8 evaluate that later by having later insights looking at the results of

9 the specific tests conducted.

Kommentar [M8]: Consequences of lack of accreditation

10 Q. Let's now move on to another area from your report, and I'd like

11 us now on e-court to have shown Exhibit 1D1242, which is under seal. So

12 can we have it on Sanction, please?

13 Mr. Stojkovic, do you have this on your screen?

14 A. Yes.

15 Q. Can you tell us what this document represents? It says, "DNA

16 report" as the heading.

17 A. This paper represents a DNA report, as it says, about the
18 possible identification, possible identity, of a given
person. Am I

19 allowed to state the name?

20 Q. No, there is no need to mention the name.

21 A. On the basis of comparing DNA profiles from a bone sample
and the

22 DNA profile obtained by analysing the reference samples from
relatives of

23 the missing person. In this particular DNA report, we do not
see the --

24 the report does not show specifically established DNA
profiles but only

25 the biostatistical calculations on the basis of which they
talk of

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1 possible identity, and the lower part of the text, if we can
zoom down --

2 well, we can't see it on the screen yet. Now we can, in
English, and in

3 the Serbo-Croatian, possible -- a possible relationship is
established

4 based on this biostatistical calculation.

Kommentar [M9]: DNA report

5 Q. Can you tell me what date this DNA report is of?

6 A. It is the 3rd of March, 2005. That's the date on the DNA
report.

7 Q. You said that this DNA report does not contain profiles. My

8 question is this: Standard operational procedure, regardless
of when

9 they were issued, do they provide for the fact that DNA reports should

10 contain those profiles as well?

11 A. Standard operational procedure, the way DNA reports are written,

12 implies that the DNA profiles should be shown as well. It is also

13 customary and absolutely acceptable as being a professional standard that

14 in the DNA reports, DNA profiles established in a specific analysis are

15 shown.

Kommentar [M10]: DNA profiles should accompany DNA reports

16 Q. So in addition to the standard operational procedure or ISO,

17 which other standards stipulate that DNA reports should contain profiles

18 as well?

19 A. They are basic professional standards and rules which in

20 different countries were prescribed by different organisations. In

21 Serbia, for example, one such rule was assigned by the section of

22 forensic medicine of the Serbian physicians society. In America, for

23 instance, that rule is prescribed by the board for DNA analysis or DNA

24 Analysis Board, I think it's called, which is a congressional body which

Kommentar [M11]: US standards prescribing body:
<https://strbase.nist.gov/dabqas.htm>

25 specifies all the criteria for implementing DNA analysis in the United

1 States of America. And in all other countries, to the best of my

2 knowledge, there are similar rules and regulations governing this area,

3 so they are generally accepted professional rules.

4 Q. Thank you. Now, in order to illustrate what you've just told us

5 about, may we have the following document on e-court, please? It is also

6 under seal, so on Sanction again, please, and it is 1D1243.

7 May we have -- or, rather, may we zoom into the lower table,

8 please? Thank you.

9 Mr. Stojkovic, do you have this on your screen?

10 A. Yes, but the portion relating to notes, where it says "notes,"

11 I'm afraid I can't read that. It's fine now. Thank you.

12 Q. Can you tell us what this represents, this document that we have

13 on our screens?

14 A. This is another DNA analysis, somewhat differently formatted,

15 this particular format resembles the previous format that is in the ISO

16 that I was shown, and the date of which was 2008. However, this DNA

17 analysis differs once again from the ISO -- the standard operating

18 procedure of the ICMP as well as generally accepted standards for DNA

19 analysis in the world, in the sense that despite the fact that DNA

20 profiles exist for all tested individuals, in the part which is the

21 results and conclusion, biostatistical calculations are missing on the

22 basis of which we would be able to speak about established identity.

23 Q. Could you take up a pencil, please, and may we have the usher's

24 help here? Could the usher show the witness how to use the magic marker

25 or pen? You'll be given a pen, and you'll be able to write on the screen

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1 with it. Since you mentioned that this report has -- contains DNA

2 profiles, could you please indicate exactly where those DNA profiles are

3 on this sheet of paper? Could you mark them, indicate them, please? And

4 how many DNA profiles do we have here?

5 A. In this specific DNA report, we have the DNA profiles from the

6 bone -- from bone samples, and it is this series of numbers here which

7 for each specific DNA locus, markers or locus, DPS 1358, gives us

Kommentar [M12]: How many DNA analyses in this format was Dr Stojkovic shown? Is there any indication of how typical they are in ICMP practice?

8 variants present on this specific marker, and they are variants 15 and

9 18.

10 Q. I have to give you some instruction now. Now, in addition to the

11 dotted line, could you write a number 1 in a clear space so that we know

12 that that is the first DNA profile? From the bone sample, as you stated?

13 A. Yes, that's right. [Marks]

14 Q. Could you now tell us where the other DNA profiles are and where

15 they come from, what they were taken from, but without mentioning any

16 names, please?

17 A. Well, I can't read the names either, but anyway, these are DNA

18 profiles from the mother [Marks] shown here, and from the father [Marks]

19 of the individual listed as missing.

20 Q. Thank you. Now, the numbers in the horizontal boxes, what do

21 they represent?

22 A. This series of numbers, ordered numbers, in the horizontal lines

23 and boxes represent the specific DNA profile determined for each person

24 tested in relation to the analysed genetic markers with the 16 genetic

25 markers, actually, that were analysed.

1 Q. Tell us how -- what electropherograms look like visually.
What

2 do electropherograms look like?

3 A. Electropherograms represent the results of DNA analysis
which are

4 collected software from a computer that is linked up to a
device for

5 electrophoresis, and it represents a series of signals in a
form which

6 resembles an electrocardiogram or EKG. So that means we have a
series of

7 peaks, points, and each specific peak or signal corresponds to
a given

8 number or, rather, genetic marker from the DNA profile.

Kommentar [M13]: Description of
EFG

9 Q. So can you put a number 5 or, rather, number 4, by these
peaks

10 that you've just drawn in?

11 A. [Marks]

12 Q. And illustrates what an electropherogram looks like
visually, and

13 by the two dots, place a number 5 so that we can see that
number 4 should

14 coincide with number 5. You put two dots underneath the
first, I think.

15 Thank you.

16 A. [Marks] This corresponds to this and the other one to
those.

17 Q. Could you now sign it in the corner and put today's date?

18 A. [Marks]

19 Q. 30th June.

20 A. [Marks]

21 Q. Now, tell us, please, in order to check the correlation between

22 these peaks on the electropherogram and the numbers in DNA profiles, what

23 do we need from documentation to check the consistency or the correlation

24 between the two? What kind of documents do we need to have in a report

25 on identification?

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1 A. In addition to a DNA report of this kind, we would need at least

2 in electronic form specific electropherograms for all the three

3 established DNA profiles, and in addition to that, if analyses were made

4 in duplicate, and good laboratory practice prescribes that all DNA

5 profiles be established twice, so we would need both electropherograms

6 that were established for each profile that underlie this profile.

7 Q. Is it usual practice in court?

8 A. I cannot tell you anything about the Courts other than those of

9 Serbia and Montenegro where I testified as an expert witness, but it is

Kommentar [M14]: What is required for RFG evidence to be authenticated

10 normal practice, as far as I know, as a forensic expert.

11 Q. So we've seen two kinds of DNA reports. Concerning this one, you

12 said it reminded you of the report envisaged by standard operating

13 procedure, but would you say this one is complete or not?

14 A. This DNA report is incomplete, too, because in the part that

15 refers to conclusions and results, we have no biostatistical calculation

16 that was present in the previously shown report, but in this one there is

17 no evaluation of the index of authenticity or the evaluation of

18 probability of established family relation. Based on this DNA report, it

19 is impossible to make a conclusion whether and with what degree of

20 certainty the subject of analysis is indeed in a family relationship with

21 the persons who provided the family reference samples.

22 Q. Thank you. We won't be needing this report any more. We are

23 going to move on to a different subject.

24 Could we call up in e-court P --

25 JUDGE AGIUS: Yes, we need to save it.

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1 MS. TAPUSKOVIC: [Interpretation] Yes, Your Honour, I forgot.

2 Could we now show P3005.

Kommentar [M15]: Why DNA report is incomplete

3 JUDGE AGIUS: Yes, Ms. Janisiewicz?

4 MS. JANISIEWICZ: Yes, Your Honour. This document is under
seal.

5 JUDGE AGIUS: All right. So there will be no broadcast of this
6 document.

7 MS. TAPUSKOVIC: [Interpretation] Thank you for your
assistance.

8 Q. Mr. Stojkovic, can you see this document?

9 A. Yes.

10 Q. Have you been shown this document by the Defence in the
course of

11 proofing?

12 A. Yes.

13 Q. Thank you. In paragraph 2, we see that the ICMP reports
that to

14 date - and the date of this document is the 30th November
2007 - the

15 International Commission for Missing Persons had received
reference

16 samples relating to 7.772 individuals. Could you tell us what
is implied

17 by reference samples?

18 A. I believe the translation is not very precise. In my prior

19 testimony and in professional literature, I use the term
"reference

20 samples" meaning samples used for comparison. Therefore, it
doesn't

21 translate as comparable samples. Those are, in fact, samples
from

22 relatives, from the relatives of persons who are missing, who are in a

23 closer or more distant family relationship. Samples are taken as

24 reference samples from them so that by means of DNA analysis some

25 conclusions could be made about the identity of the persons whose

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1 skeletal remains, in fact bone samples, were analysed.

2 Q. This ICMP report tells us that the ICMP had received profiles

3 from 8.445 bone samples. What does this number represent, Mr. Stojkovic,

4 Dr. Stojkovic?

5 A. I can assume that the ICMP had analysed a certain number of

6 samples and successfully determined DNA profiles; in other words,

7 obtained readable electropherograms for 8.445 such samples. We don't see

8 from this document how many bone samples were tested.

9 Q. The next sentence says that these profiles represent 5.280

10 different individuals. Does that mean that the identity of those 5.280

11 different individuals has been established, or has it only been

12 established that these are all different persons?

13 A. It says here that by analysing 5.280 different -- that by

14 analysing a larger number, 5.280 different profiles were obtained, so we

15 can logically conclude that there were 5.280 different individuals in

16 this sample. This number can be even higher if we take into account the

17 possibility that there are single twins included here because they must

18 have the same DNA profile.

19 Q. It further says that out of these 5.280 individual profiles, ICMP

20 has determined family matches for 5.055 persons. Is it then the case

21 that we know the names and surnames for 5.055 individuals?

22 A. No. Not necessarily, of course. It doesn't mean that we know

23 the names and surnames of 5.055 persons because in some cases, for

24 instance, two children could go missing; and if we established by DNA

25 analysis the identity of one of the children, it is not possible to know

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1 whether it's one or the other of the brothers who went missing.

2 Q. Based on these figures and information we've read before the

3 Trial Chamber, Mr. Parsons, who signed this report on behalf of the ICMP,

4 concluded that the number of missing persons is probably around 8.100.

5 Could you tell us how this figure was reached?

6 A. I can. Based on the figures presented above, Mr. Parsons

7 established the coincidence rate of 95 per cent because 5.055
8 represents

8 95 per cent of 5.280. Since there were 7.772 individuals
9 sought by their

9 families at the moment, it is assumed that this number 7.772
10 is 95 per

10 cent of the total number of persons sought by their families,
11 and

11 Dr. Parsons also tried to calculate the interval of
12 confidence of 0.54

12 per cent.

13 Q. Did he base his calculation on the number of DNA
14 identifications

14 or on the number of persons missing, listed as missing?

15 A. Dr. Parsons used both these numbers to reach a figure for
16 missing

16 persons, although from this document we can't see in which
17 way it was

17 established that 7.772 persons listed as missing were really
18 missing in

18 relation to the crime that occurred in July 1995. In
19 addition, we can't

19 see in which way it was established that these 5.280 persons
20 for whom DNA

20 profiles were established actually went missing or were
21 killed in that

21 crime. Those are two implicit assumptions, hypotheses, that
should have

22 been stated as such in the report. If we take it as an
23 adjudicated fact

Kommentar [M16]: Time an
manner of death assumed but not
proved by DNA

23 that 7.772 individuals are listed as missing and went missing
in that

24 crime, then it should have been listed as -- in the report as
an

25 adjudicated fact, as a proven fact.

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1 Q. Thank you. On Friday just before hearing your testimony, we

2 heard Professor Dusan Dunjic who testified about the analyses
he

3 performed, and on page 22957 he told us what has to be
attached to DNA

4 reports.

5 Now, to the best of your knowledge and according to the rules
of

6 your profession, tell us whether DNA analysis findings are
used

7 independently or as part of a body of evidence.

8 A. So far in our work in the Institute For Forensic Medicine,
we

9 always used all the other information collected in connection
with the

10 specific crime, and it's a rule that applies everywhere else
in the

11 world. DNA analysis cannot be treated separately from all the
other

12 evidence in a case. So it is never DNA analysis alone that
establishes,

13 what is called in court, material substantial truth. Instead,
DNA

14 analysis always refer to possible identity. A definitive
decision on

15 identity shall be given by the competent court after an
expert collects

16 ante-mortem and post-mortem data, compares it, and compares
it, then, to

17 DNA analysis and all the other evidence that exists in a
specific

18 criminal case.

Kommentar [M17]: The role of DNA
analysis

19 Q. Thank you, Dr. Stojkovic. Let us now move on to the
findings in

20 your report. Can we call in e-court 1D1069; English, page 17;
B/C/S,

21 page 16.

22 Can you see that on the screen?

23 A. Yes.

24 Q. Your first finding reads that the validity of particular
DNA

25 reports from the ICMP can be ascertained only on a case-by-
case basis.

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1 JUDGE AGIUS: Ms. Janisiewicz?

2 MS. JANISIEWICZ: Your Honour, we object to this question. This

3 can be posed directly to the witness as opposed to showing him
his

4 findings.

5 JUDGE AGIUS: What difference does it make, I mean, whether you

6 approach it one way -- let's move. Come on, come on. Yes,
please, if

7 you could answer the question.

8 MS. TAPUSKOVIC: [Interpretation] Thank you, Your Honour.

9 JUDGE AGIUS: You still need to put the question, actually.

10 MS. TAPUSKOVIC: [Interpretation] Yes, I will.

11 Q. How many such reports have we shown you so far in the
course of

12 preparation for testifying?

13 A. I've had occasion to see three reports, two of which were
also

14 shown in the courtroom today.

15 Q. And can you tell us about their validity?

16 A. None of the three reports shown met the standards of
either the

17 standard operating procedure prescribed by the ICMP for DNA
reports or

18 the minimal standards of expertise in professions dealing
with this

19 subject.

20 Q. And my last question for you is this: From the entire
procedure

21 of DNA analysis and identification, point 2 of your
conclusion can be

22 established by the SOP with the procedures that ICMP has
actually

23 established. Now, for us to be -- learn in addition to the
SOPs that we

Kommentar [M18]: Witness shown
only 3 DNA reports and assesses them
negatively for validity

24 have, which is standard procedure, we have to have, do we
not, all the

25 results obtained in order to be able to compare?

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1 JUDGE AGIUS: Yes?

2 MS. JANISIEWICZ: Your Honours, this is leading.

3 JUDGE AGIUS: Yes. Ms. Tapuskovic.

4 MS. TAPUSKOVIC: [Interpretation] Well, let me reformulate
that.

5 Q. Can you tell us what confirms the validity of the procedure
of

6 identification?

7 A. In my report, I say that the standard operational
procedures

8 shown to me are to the -- are mostly in conformity with the
standards of

9 the profession. However, I was not convinced that in specific
cases, in

10 the specific cases, these SOPs were respected. At least in
the reports

11 that I was provided with, these standard operational
procedures were not

12 respected. So for me to be able to state whether the entire
process of

13 the DNA analysis is professionally valid, and based on the
rules of

14 science and the profession I would have to be given a certain
number of

15 reports or all the reports obtained for the identification of
persons

Kommentar [M19]: ICMP has
mostly acceptable SOP but does not
seem to follow it

16 when it comes to a specific crime, the crimes that are being
tried at

17 this court. So that for all of them together, or at least for
a portion

18 of them, I could state the validity of the SOPs, whether they
were

19 properly applied or not, and that would at least include the
very

20 minimum, which is DNA reports for some or specific cases or
all of them,

21 as well as all the other documents and material that the
International

22 Commission for Missing Persons has in its position for the
DNA analysis

23 performed. When I say all the documentation and material,
this at the

24 very least includes electropherograms for the samples, bone
samples, and

25 the reference samples of blood from the relatives of the
missing person.

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1 If they were done just once, then once, and if they were done
in

2 duplicate which should be the case, then all the copies of the

3 electropherograms as well. Only in that way would I be able to
see

4 whether the SOP for reading the electropherograms that I was
provided

5 with were truly respected and adhered to in the interpretation
of the

6 specific electropherograms and in showing the DNA profiles. Of course,

7 this would exclude DNA profiles in coded form because coded DNA reports

8 are -- it is absolutely impossible to read them unless you have the key

9 to the codes.

Kommentar [M20]: What expert needs to do valid assessment. Perhaps ask another DNA expert if this is correct

10 Q. Thank you, Mr. Stojkovic. I have no further questions.

11 MS. TAPUSKOVIC: [Interpretation] And I have completed, Your

12 Honours, the examination-in-chief of this expert witness. Thank you.

13 JUDGE AGIUS: Thank you so much, Madam Tapuskovic.

14 Mr. Ostojic? Do you have any questions?

15 MR. OSTOJIC: No, Your Honour, I don't.

16 JUDGE AGIUS: Madam Nikolic?

17 MS. NIKOLIC: [Interpretation] No questions for this witness,

18 thank you, Your Honours.

19 JUDGE AGIUS: Thank you. Mr. Lazarevic?

20 MR. LAZAREVIC: No questions, Your Honour.

21 JUDGE AGIUS: Thank you. Ms. Fauveau?

22 MS. FAUVEAU: [Interpretation] No questions, Your Honour.

23 JUDGE AGIUS: Thank you. Mr. Krgovic.

24 MR. KRGOVIC: Nothing, Your Honour.

25 JUDGE AGIUS: Okay. And Mr. Sarapa?

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1 MR. SARAPA: No questions, thank you.

2 JUDGE AGIUS: Thank you. Ms. Janisiewicz, please introduce
3 yourself to the witness.

4 MS. JANISIEWICZ: Thank you, Your Honours. This should be
brief.

5 Cross-examination by Ms. Janisiewicz:

6 Q. Good morning, Dr. Stojkovic. My name is Nicole Janisiewicz,
and

7 on behalf of the Prosecution I'm going to ask you a few
questions related

8 to your examination-in-chief.

9 First, Dr. Stojkovic, we met for the first time on Wednesday,
25

10 June, for a brief discussion; is that correct?

11 A. That's right.

12 Q. Okay. And Dr. Stojkovic, today at page 9 of the transcript
you

13 discussed a bit of the issue related to coding of the DNA
reports, and on

14 Friday you discussed issues relating to the general privacy
of DNA

15 reports. Now, Dr. Stojkovic, you're aware that ICMP is not
attached to

16 any law enforcement agency, correct?

17 A. As far as I know, that is correct.

18 Q. And you understand the humanitarian mission about the
ICMP,

19 correct?

20 A. Yes.

Kommentar [M21]: Possible
groundwork for prosecution rationale
for exempting ICMP from
responsibility to it or the tribunal

21 Q. You also recognise the privacy concerns that are associated with

22 thousands of victims of war crimes is a different privacy concern than

23 that associated with individual domestic criminal cases?

24 A. No. I think that the question of privacy in this specific case

25 doesn't differ from the question of privacy in relation to any other

Page 23026

1 criminal case conducted in any other court, in this Tribunal or in any

2 other court, nor am I quite clear on what your question about privacy is

3 getting at and means.

4 Q. Okay. I'll move on, sir.

5 You also discussed today the statistics associated with ICMP's

6 research or its testing, correct? And that was at page 14 of today's

7 transcript.

8 A. Yes, I do remember.

9 Q. I would like to take you to the most recent statistics that the

10 ICMP has provided to the Office of the Prosecutor. Could we please have

11 document 65 ter 3488 in e-court? The document is under seal. And if we

12 could please go to page 15 of this document, the last page?

13 Sir, at the top of this document, we can see the title
Tracking

14 Chart For Srebrenica Cases, and if we could please scroll
down to the

15 bottom of the page. And if you could zoom in maybe just a
little bit.

16 I'm not sure if it's visible. It states at the bottom of the
page, "This

17 information was provided by ICMP," and the date provided is
13 June 2008.

18 Is that correct?

19 A. Yes, I can see that.

20 Q. And if we could please scroll up to the top of the
document

21 again. Dr. Stojkovic, I'd like to go over some of these
numbers with

22 you. At the top, the first row, we see entitled Blood Sample
Status.

23 The row beneath that is titled Blood Samples Collected. The
number

24 associated is 21.307. What, sir, do you understand that to
represent?

25 A. This number says that of the 21.307 persons who, in a way,
were

Page 23027

1 related to the individuals listed as missing in Srebrenica,
that blood

2 samples were taken from them.

3 Q. Okay. And the row beneath that is entitled Blood Profiles
In

4 Database. And the number associated with that row is 21.296.
Could you

5 please tell us what that means?

6 A. That means that 11 blood samples collected have still not
been

7 analysed, so of the 21.307 persons whose blood samples were
collected and

8 DNA profile determined for -- was determined for 21.296
persons.

9 Q. And we see --

10 A. At least once.

11 Q. Thank you. And we see in the row beneath that the number
7.789

12 individuals associated with the row entitled Number of
Missing

13 Individuals Represented By the Blood Samples Collected. Now,
sir, this

14 represents an updated number of that 7.772, I believe, number
that we saw

15 earlier today in P3005; is that correct?

16 A. That is correct. Obviously, the ICMP managed to collect
for

17 another 17 families' blood samples.

18 Q. Thank you, and if we could scroll down a bit more -- up a
little.

19 Yes, thank you. We are now at the section entitled DNA
Reports, ICMP.

20 And we see at the top total number of reports with the number
associated

21 10.231. Sir, can you please describe to us what that means?

22 A. That means that the ICMP issued 10.231 DNA reports.

23 Q. Okay. And beneath that, we see individuals represented and the

24 number 5.616. Sir, does that mean that of those 10.231 reports, the ICMP

25 has identified 5.616 individuals?

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1 A. That means that the ICMP determined the possible identity of

2 5.616 individuals. In addition to that, it means that 171 persons were

3 excluded and that 4.444 persons, or, rather, 4.444 samples were

4 reassociated with some of the 5.616 persons. And if you add those two

5 numbers together, you would get the top number.

6 Q. Okay. Thank you. No further -- oh, actually, my apologies. One

7 further question. Dr. Stojkovic, you are aware that this work is ongoing

8 in the ICMP today, correct?

9 A. I assume that that is the case, although I have no direct

10 knowledge, but I'm certain that that is so. I'm satisfied that that is

11 so.

12 MS. JANISIEWICZ: Thank you. No further questions, Your Honour.

13 JUDGE AGIUS: Thank you, Ms. Janisiewicz.

14 Is there re-examination, Ms. Tapuskovic?

15 MS. TAPUSKOVIC: [Interpretation] No, Your Honour, no further
16 questions for the witness. Thank you.

17 JUDGE AGIUS: Thank you. Any of my colleagues would like to
put

18 any questions? No.

19 Dr. Stojkovic, you will be glad to know that your testimony
has

20 finally come to an end. On behalf of the Trial Chamber, I
wish to thank

21 you very much for your cooperation and your coming over to
give testimony

22 here, and on behalf of everyone present here, I wish you a
safe journey

23 back home.

24 THE WITNESS: Thank you. I'm very glad I could be of
assistance

25 to this Court.

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1 JUDGE AGIUS: Thank you.

2 [The witness withdrew]

3 JUDGE AGIUS: Ms. Tapuskovic, documents? Exhibits? Microphone.

4 MS. TAPUSKOVIC: [Interpretation] [No interpretation]

5 JUDGE AGIUS: Mr. Zivanovic, your colleague is too far away
from

6 the microphone. If you could -- thank you.

7 MS. TAPUSKOVIC: [Interpretation] Your Honour, I have a
correction

8 to make to the transcript, on page 6, line 25. It should read
--

9 JUDGE AGIUS: Page 6, yes.

10 MS. TAPUSKOVIC: [Interpretation] -- 17025, the ISO standard,
and

11 it says 025.

12 JUDGE AGIUS: Thank you so much.

13 Now, exhibits?

14 MS. TAPUSKOVIC: [Interpretation] Of the exhibits, it is
1D1069.

15 JUDGE AGIUS: 1D1069. That's the report [Microphone not
16 activated].

17 MS. TAPUSKOVIC: [Interpretation] Your Honour, the next
document

18 is 1D1241 under seal. I apologise, 1242 is the number. 1D1242
under

19 seal.

20 JUDGE AGIUS: And that's a DNA report.

21 MS. TAPUSKOVIC: [Interpretation] Yes. And the next DNA
report,

22 also under seal, is 1D1243.

23 JUDGE AGIUS: Is that all?

24 MS. TAPUSKOVIC: [Interpretation] And the document that the

25 witness himself drew during his testimony. We need a number
for that

Page 23030

1 document as well. Thank you, Your Honour.

2 JUDGE AGIUS: That will be given a number if it hasn't already
3 been given a number.

4 Any objections, Ms. Janisiewicz?

5 MS. JANISIEWICZ: Mr. President, we don't believe that Ms.

6 Tapuskovic used 1D1241 with the witness.

7 JUDGE AGIUS: She is not tendering 1241. She is tendering 1242
8 and 1243.

9 MS. JANISIEWICZ: Oh, my apologies. I misread the transcript.

10 JUDGE AGIUS: Okay. Thank you. Any objections?

11 MS. JANISIEWICZ: No, Your Honour.

12 JUDGE AGIUS: All right. Any objections from any of the other
13 Defence teams? No objections. These documents are all
admitted.

14 Do you have any exhibits?

15 MS. JANISIEWICZ: Yes. We have one exhibit, 65 ter 3488. It's
16 the ICMP tracking chart for Srebrenica cases, and it's under
seal.

17 JUDGE AGIUS: All right. Any objections, Ms. Tapuskovic?

18 MS. TAPUSKOVIC: [Interpretation] No, Your Honour. Everything
is

19 fine. Thank you.

20 JUDGE AGIUS: That is admitted as well. And we can move to
Vuga.

21 Yes, Mr. Zivanovic?

22 MR. ZIVANOVIC: Your Honours, I would ask to have a break now,
if

23 it is possible.

24 JUDGE AGIUS: Yes, yes.

25 MR. ZIVANOVIC: To prepare.

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1 JUDGE AGIUS: And we will have a break.

2 [Trial Chamber confers]

3 JUDGE KWON: Ms. Janisiewicz, if you could remind me briefly of
4 the reason why that document P3488 should be under seal?

5 MS. JANISIEWICZ: My understanding is that that's under seal

6 because it does contain the statistics associated with ICMP's
research,

7 and there is an ability to track back to individuals if you
look through

8 and associate it with the other ICMP charts.

9 JUDGE KWON: Actually, well, we discussed the contents of it in
10 open session.

11 JUDGE AGIUS: But we did not broadcast.

12 JUDGE KWON: But we discussed the contents of it.

13 MR. McCLOSKEY: Excuse me. Yes, Your Honour, I agree with you.

14 We are working with ICMP to try to get them to open up this
material. As

15 you can see, they are very sensitive about it, but I don't
see any reason

16 why this material should be -- it's based on their request
and what

17 they've told us about that, and so we are continuing to work
with them on

18 that, but we do have an agreement right now that their data
is
19 confidential. They rely quite a bit on their ability to go to
the
20 community of victims, and so they have promised
confidentiality to that
21 community, and it's complex. I think we have to go back to
some of
22 Parson's testimony to get to the bottom of it, but I agree
with you.
23 These things should not be private, and I'm going to try to
get that
24 lifted.
25 JUDGE AGIUS: All right.

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1 JUDGE KWON: Thank you.
2 JUDGE AGIUS: Thank you. We'll have a break now, 25 minutes.
3 Thank you.
4 --- Break taken at 10.10 a.m.
5 --- On resuming at 10.38 a.m.
6 [The witness entered court]
7 JUDGE AGIUS: So for the record, now, Ms. Janisiewicz is no
8 longer here, but we have Mr. Bourgon present.
9 Good morning to you, Mr. Vuga.
10 THE WITNESS: [Interpretation] Good morning, Your Honour. And
11 good morning to everybody else in the courtroom.

12 JUDGE AGIUS: I'm very pleased to welcome you to this
courtroom,

13 where the trial against Colonel Popovic and others is taking
place.

14 You've been actually summoned as an expert witness by two of
the Defence

15 teams, namely the Popovic Defence team and the Drago Nikolic
Defence

16 team.

17 You're expected -- your testimony is expected to last a few
days

18 here. I hope you are prepared for it.

19 Before you start giving evidence, our rules require that you
make

20 a solemn declaration to the effect that you will be speaking
the truth

21 and the whole truth. I see that you already have the text of
the solemn

22 declaration in your hand. Please read it out aloud, and that
will be

23 your solemn undertaking with us.

24 THE WITNESS: [Interpretation] I solemnly declare that I will

25 speak the truth, the whole truth and nothing but the truth.

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1 WITNESS: PETAR VUGA

2 [Witness answered through interpreter]

3 JUDGE AGIUS: I thank you, sir. Please make yourself

4 comfortable.

5 Now, Mr. Zivanovic, I take it, will soon start with his

6 questions. May I just tell you something before we proceed? If
at any

7 time you need a break, you only have to ask for one. You only
need to

8 tell us, and we will have a break. And if there is anything in
the

9 courtroom which makes you feel uncomfortable while you are
giving

10 testimony, please let us know.

11 THE WITNESS: [Interpretation] Thank you, Your Honour.

12 JUDGE AGIUS: Mr. Zivanovic?

13 MR. ZIVANOVIC: Thank you, Your Honours. I would just like to

14 point out that we have prepared three binders with documents
for

15 Mr. Vuga. They are near him, and I offered to Mr. McCloskey
to

16 scrutinise these binders, if necessary.

17 JUDGE AGIUS: Thank you.

18 MR. ZIVANOVIC: Thank you.

19 Examination by Mr. Zivanovic:

20 Q. [Interpretation] Good morning, Mr. Vuga. To start off
with,

21 could you give us your first and last name, please?

22 A. My name is Petar Vuga, retired colonel.

23 Q. Thank you. You provided a fairly detailed CV. It is
1D1176, the

24 number of that document. However, I'm going to ask you to go through

25 your curriculum vitae briefly so that we can hear what you did in open

Page 23034

1 session and have some important information about you.

2 Tell me, first, where and when you were born.

3 A. I was born in the village of Novi Grabovac, near Novska in

4 Western Slavonia in the Republic of Croatia in 1938.

5 Q. Tell us now, please, what education and training have you had?

6 A. I went -- completed eight years of elementary school and the

7 school of -- secondary school of economics, which I graduated from.

8 After that I went to the Air Force School of Communications For

9 Non-Commissioned Officers and graduated in 1956 from that school. I

10 passed the officer's examination in the Academy Programme For

11 Communications, and after that I completed advanced training for liaison

12 officer in the air force and anti-aircraft Defence. Then I completed

13 training for tactics and operations, a course, at the command staff

14 training school. That is in the air force.

15 Now, as far as the security service is concerned, I completed a

16 basic security course, and rather the standard course and higher course,

17 and I was a teacher there, too, and I also completed the JNA foreign

18 language course for German. I have completed a number of other courses,

19 such as the military police course in 1959 and other courses, teachers'

20 training courses, psychology, pedagogy, and other courses that teachers

21 need. But roughly, that was my education and training during my military

22 career, and I retired as a colonel starting off with the rank of

23 Sergeant, but I was retired and pensioned off as a colonel in 1992.

24 Q. Thank you. Tell us now, please, what jobs did you perform during

25 your military career?

Page 23035

1 A. Since I spent 36 years as an active-duty military man in the JNA,

2 I had various assignments. First of all, I was an instructor in the Air

3 Force Communications School For Non-Commissioned Officers, then security

4 officer in the communications battalion, then deputy commander of the air

5 force battalion, and chief of security for air surveillance, early

6 warning systems, and guidance. I was in the air force command system and

7 an officer in the command of the air force and anti-aircraft Defence, and

8 then I was sent to the security department where I worked in the

9 counter-intelligence section of the security department in preventing

10 attacks against Yugoslavia in the intelligence sector. Then I was leader

11 of the teaching group and a teacher, too, and afterwards I became head of

12 the organ, security organs of the JNA and -- for professional guidelines,

13 and I was returned to the security sector where I became the deputy chief

14 of the security department for the Secretariat of National Defence of the

15 SFRY. And I occupied some other posts, which did not last for a long

16 time and were only brief periods in my professional career.

17 Q. Thank you. Perhaps you could speak a little slower for us to be

18 able to understand and follow everything you're saying.

19 A. Yes, I will.

20 Q. You said, if I understood you correctly, that you were in the --

21 in a group of people for scientific research work?

22 A. I wasn't in a group. I was the leader of the group for

23 scientific research so the senior person of that group.

24 Q. Mr. Vuga, you have provided us with your report. 1D1175 is the

25 number, and I'd like to ask you to tell me, what was the background for

Page 23036

1 your report? What was the basis for your report?

2 A. When I decided to compile a report, and let me just mention in

3 this connection that I had knowledge of how the system -- the security

4 system was conceived, on the basis of which the report was to be written

5 because I was one of the participants conducting research together with

6 the JNA security organs, and I took part in the elaboration of the draft

7 plan or concept and guidelines for that type of work in the security

8 field, and so I realised that my report should be based on those rules

9 and regulations. So the methods applied were selected for the job and

10 based on those rules, and my basic premise was the experience I gained as

11 the leading person in scientific research where the methodology into

12 security was one of the main subjects studied within this group. And

13 this approach is the one I used here because in principle we resolved

14 cases of this kind with a set methodological procedure, which was called

15 a case study, which is a complex way of studying a subject matter and

16 requires the establishment of a set order within the problem to be

17 resolved, That is to say 20 basic premises, and then through normative

18 annexes and so on, in order to be able to recognise in practice certain

19 factors which can be included based on those criteria. So that was the

20 procedure I used and the methods I used in compiling my report. Of

21 course, for that you need to have a basic premise to start out from.

22 Q. So what was that basis for your specific work?

23 A. For me, the basic premise in developing this report was the

24 indictment, which says among other things that in the period to which the

25 report relates, killings were committed of prisoners of war in

Page 23037

1 contravention to the laws of Republika Srpska and the intervention -- and

2 the international law on warfare that applied at the time. And I studied

3 the documents and all the other material available to me related to

4 security organs and services in the territory at the time.
That was the

5 way to proceed with the case study and to determine everything
that was

6 relevant to the function of security and the organ of
security. I

7 emphasise these two terms. That was the framework of my study.

8 Q. Could you now tell me, which sources of information did you
use

9 in writing your report, which methodology and which sources,
to resolve

10 the issue?

11 A. There were several sources of information. The basic thing
was

12 to use the facts stated in regulatory documents and the
framework of

13 platforms based on which everything else could be measured
and evaluated

14 in order to know what belongs where substantially. The second
thing were

15 combat and operative documents made available to me as an
expert witness,

16 for me to find in them everything that concerns security
organs and to

17 determine the meaning and substance of all that. And thirdly,
there were

18 additional sources of information that I used for orientation
and broader

19 insight but not for conclusions. Those were publications and
witness

20 statements. I stated in my report what weight I attached to these. So I

21 took witness statements as they were, and the discrepancies in these

22 witness statements would have required me to determine which part of

23 which statement is true, which was not my role as an expert. I used

24 these sources mainly to determine the weight and meaning of each fact I

25 had at my disposal.

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1 Q. Did you also use other findings by other experts available in

2 this case, and which of them did you take into account, if any?

3 A. I must say that I studied the report of Mr. Butler, which is in

4 fact the only one with which you can perhaps not dialogue but take into

5 account. I am not qualified to interpret other expert reports, but I

6 must say that those reports neither directly or indirectly contribute to

7 clarifying the role of security organs and the function of security. Let

8 me say another thing. We are dealing with a very particular function

9 here in this case, and it needs to be discussed very precisely. We have

10 to know exactly what we are talking about. Certain
distinctions were not

11 properly made between various lines of work. That is all I
can say about

12 other available expert reports. I have only studied the
report of

13 Mr. Butler.

14 Q. Speaking of Mr. Butler's report, he made several. Did you
take

15 into account only one or all of them?

16 A. I took into account and studied the report of 2002, and
that was

17 my main source of information into his studies.

18 Q. Did you have occasion to listen to his testimony in this
case?

19 A. Yes. I was in the courtroom when he testified.

20 Q. A significant part of the information we are using here
are

21 intercepts. Did you also study them in developing your
report?

22 A. I did take them into account, and I studied them. From the

23 viewpoints of security and the professional knowledge I
acquired in the

24 course of my work as an officer of communications, I have to
say this:

25 In order to be able to evaluate facts as my expert report
requires, there

Page 23039

1 is -- there are no sufficient elements in these intercepts
that would

2 allow the reader of my report to be clear on what I concluded
and why I

3 concluded that. So they were not useful from that point of
view. Their

4 contents is one thing, and their meaning and significance from
the

5 viewpoint of security is another thing.

6 Q. You said that in writing your report you used regulatory

7 documents. What are these documents?

8 A. Well, the entire report is based on the documents that were
taken

9 over from the Yugoslav People's Army and that the army of
Republika

10 Srpska used as its doctrinary documents, adjusted, of course,
to the

11 circumstances in which the army of Republika Srpska was
active. Of

12 course, there are regulatory documents that were adopted in
Republika

13 Srpska itself in the time while it was using the doctrine of
the JNA,

14 adjusted to its own circumstances and which were to indicate
the

15 peculiarities of the activities of the VRS and how they
should be adapted

16 to the current circumstances.

17 Let me enumerate them briefly. First, the basic rule followed
by

18 security organs in the JNA is the rules of service of the
security organs

19 of the armed forces of the SFRY. That rule was applied, and later in the

20 VRS on the basis of that rule a certain instruction was written

21 specifying how this rule would be applied in the VRS.

22 Second was the instruction on the methods of work in security

23 organs, which actually speaks about how the problems of security organs

24 should be resolved and which methods should be used by security organs in

25 performing their activity. This one is of particular importance because

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1 a large part of the work performed by security organs relies on that

2 instruction.

3 Another rule that was important for study in this report was the

4 rule on the military police and the instructions for the military police,

5 and later I also studied how these rules are enumerated, were reflected

6 in other rules and regulatory documents. So if we take the rule of the

7 corps or the rule of brigade, it incorporates the rules on security

8 organs and the rules on the military police. We find elements of these

9 rules incorporated in these other documents, and thus I established a

10 correlation between security organs in a specific unit and the unit in

11 which they work. Other laws were laws on Defence on Republika Srpska.

12 There are provisions there related to security. The law on the army of

13 Republika Srpska also governs matters of security. There are more

14 details in yet another rule, the rule on security organs. That is the

15 more detailed -- most detailed rule. But since the internal organs also

16 have a certain relationship to this particular line of work in the armed

17 forces, I took into account the Law on Internal Affairs to see what it

18 has in common with security organs in the army in view of their function

19 and role in particular units. Those were the basic documents I proceeded

20 from.

21 And, from that stage follows another stage, which I can explain

22 later.

23 Q. Let us look at the law on Defence. It's 1D725.

24 A. 7D725?

25 Q. It's binder number 1.

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1 Mr. Vuga, the number is 1D725. Tell me, this law, did it govern

2 and regulate the issues of security in a different way than
the rules of

3 the former JNA?

4 A. I introduced this law in my report to avoid confusion or

5 disinformation or misrepresentation as to what the law on
defence could

6 regulate. We can see that the law on Defence deals with issues
of

7 security in matters of Defence but not related to the VRS. The
reason is

8 very simple. Here on the law on Defence, it says that the --
in the law

9 of -- on the VRS, separate rules, separate laws would be
adopted, which

10 made it incumbent upon the legislature to deal with these
matters within

11 the law on the army of Republika Srpska. This is just
important to the

12 relationship between the army of Republika Srpska and the law
on defence.

13 This is why I explained that this law does not regulate
closely what

14 security matters -- how security matters will be dealt with
in the law on

15 the army of Republika Srpska.

16 THE INTERPRETER: The witness has to start speaking more
slowly.

17 JUDGE AGIUS: Mr. Zivanovic, Colonel, if you could kindly
speak

18 more slowly because the interpreters are finding it difficult
to catch up

19 with you. Thank you.

20 THE WITNESS: [Interpretation] I will try.

21 MR. ZIVANOVIC: [Interpretation]

22 Q. Tell me, was this Law on the Army of Republika Srpska really

23 adopted, and did it regulate security matters in a different way, a way

24 different than in the former JNA? Can we look at 1D1297?

25 A. When we read the law on Defence and the provision which says that

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1 the Law on the Army would be adopted, the resulting expectation was that

2 the Law on the Army this issue would be dealt with more precisely.

3 However, that didn't happen. The Law on the Army contains no more

4 specific provisions on security issues in the army of Republika Srpska,

5 and that law does not even give a hint that the solutions inherited from

6 the former JNA would be changed, either in the Law on the Army or in any

7 other law that may be adopted in the future. It only contains provisions

8 about the use of weapons by individuals engaged in military security.

9 All other issues are absent from this law, but they are dealt with in

10 another document, which is also important to the Army of
Republika Srpska

11 because it was supposed to be followed and honoured by the
Army of

12 Republika Srpska. There is reason to believe that it did.

13 Q. Can you tell us, what is that other document?

14 A. Yes. Those are provisional rules for the Army of Republika
15 Srpska.

16 Q. Could we look at P417?

17 JUDGE AGIUS: I'm told that the translation that we have is a
18 table and it's not -- does not correspond with what you're
showing to the

19 witness, so if you could give us a more precise reference,
indication.

20 MR. ZIVANOVIC: It is for the previous document? 1D1297. I'll

21 check it with -- later. [Interpretation] Could we move now to
this

22 document 417?

23 THE WITNESS: [Interpretation] Can I continue?

24 JUDGE AGIUS: Yes, please go ahead.

25 MR. ZIVANOVIC: [Interpretation]

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1 Q. I think so.

2 A. Thank you. In this law on page 11 in B/C/S, in section 5,

3 Security For Persons, For Personnel and Facilities, in point
44 we have

4 issues of security for personnel and installations regulated.
That

5 section is studied in my expert report from the viewpoint of
the vehicles

6 of security for personnel and installations as stipulated in
this rule.

7 Q. I believe it's on page 37 in B/C/S; in English, on page 31.

8 A. Is that the same rule? Are we on the same page?

9 Q. I'm talking about a page in e-court. Could you give us your
10 explanation?

11 A. The substance of this provision is to enumerate the
activities

12 related to providing security for personnel and installations
and laying

13 responsibility on certain agencies in the Army of Republika
Srpska who

14 performed this security. Those are commands at various
levels. Let me

15 tell you briefly: The commands of corps, logistical bases,
brigades,

16 regiments, and commands equivalent to them providing security
for

17 installations in their jurisdiction which is governed by a
special order.

18 Q. Could you take it more slowly, please?

19 A. Oh, I'm really sorry. It seems to be a habit.

20 And further on in the law, it is stated how all that is
performed

21 in circumstances of immediate threat of war and in wartime.
And the

22 explanation that follows speaks of reinforced measures in performing each

23 of these assignments plus some additional measures that can be taken in

24 case of threats that may occur in circumstances of immediate threat of

25 war and in wartime.

Page 23044

1 Q. Now, tell me, did Republika Srpska endorse any regulations

2 governing the functioning of security organs; and if so, what is peculiar

3 about them?

4 A. Republika Srpska adopted the Law on Internal Affairs. I did not

5 especially study that law from the viewpoint of security organs because

6 there is not much correlation, but whether it adopted a law to apply the

7 Law on Internal Affairs in internal -- in immediate threat of war and in

8 wartime, I think it did.

9 Q. Can we look at P422?

10 JUDGE AGIUS: [Previous translation continues] ... [Microphone

11 not activated]

12 MR. ZIVANOVIC: [Interpretation]

13 Q. Is this the law? You said the law on internal affairs applied at

14 times of imminent threat of war or war?

15 A. Yes, that is what I referred to, the law on the application of

16 the Law on Internal Affairs in times of immediate threat of war and war.

17 This law prescribes how the Law on Internal Affairs is to be applied in

18 such conditions, such as in imminent threat of war and a state of war.

19 Here we have the definitions. There is a certain difference as compared

20 to the situation as it was within the JNA, and its cooperation with the

21 organs of security and internal affairs in the former FRY. This is far

22 more precise and reduced to a number of issues which are clearly defined.

23 There is also a law, a decree, in force made by the Supreme Commander of

24 the armed forces of the RS, under which the Main Staff of the Army of the

25 RS was duty-bound to act when this law is applied.

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1 Q. Could we please go to P8 next?

2 Did you have this document in mind that is on the screen?

3 A. Yes.

4 Q. Can you tell us what the basic features of the document are?

5 A. As I said, the characteristics of this document stem from -
- stem

6 out of the application of the Law on Internal Affairs in times of an

7 imminent threat of war and a state of war. It clearly prescribes the

8 obligations of the Main Staff of the RS army and the Ministry of Interior

9 affairs of the RS in the implementation of tasks pursuant to the law,

10 which regulates activities and procedures pertaining to each and every

11 task to be conducted by the Army of the RS and the MUP jointly, in cases

12 where they act jointly. The Supreme Commander orders and refers to

13 particular articles of the law that need to be implemented, and I don't

14 want to go through it in detail, but it concerns the following: MUP

15 units are seconded to the army as establishment units, wholes. They are

16 commanded by a MUP member. They cannot be divided into smaller parts and

17 cannot be used beyond the tasks set beforehand. If a task exists, it

18 needs to be implemented in full and in detail. If it goes beyond the

19 scope of what had been established, the procedure needs to be reinitiated

20 and a new task drafted. That is the gist of it. At the same time, the

21 units, as such, are resubordinated to the unit commander in whose area of

22 responsibility the tasks are to be implemented when we are talking about

23 the army and MUP units working jointly. The consequence of it is that

24 all tasks that have to do with command and control, including the tasks

25 of coordination as a part of -- and function of command need to go

Page 23046

1 through the command without any interruption in the chain of command by

2 any other organs. That is the essence of it without going into further

3 detail. I am ready to provide further explanation if necessary.

4 Q. Let us go to page 2 of the document next. Article 14 is found

5 there of the law we just saw.

6 A. Yes.

7 Q. Have a look at item 3 of Article 14, the penultimate paragraph.

8 A. Yes.

9 Q. It says that police units resubordinated to the Army of Republika

10 Srpska in the designated zone shall be used only for the combat operation

11 as assigned by the Supreme Commander or the Minister of the Interior.

12 Pursuant to this, does it mean that a police unit resubordinated

13 to an army commander can be used only for a task previously assigned by

14 the Supreme Commander or the Minister of the Interior? In other words,

15 can the military unit commander assign any separate tasks?

16 A. I understood. This text found in Article 14 can be interpreted

17 in light of what has been said. The Main Staff of the Army of the RS and

18 the Minister of the Interior assign tasks beforehand, and it is then

19 through the Minister of the Interior that those tasks are distributed

20 according to the lines of command and control within the Ministry of the

21 Interior, and then a unit is dispatched to a military zone. The Main

22 Staff of the -- of Republika Srpska sends the very same tasks along its

23 chain of command so that they make sure that the tasks are clearly

24 delineated when the MUP is involved. No one can change such a task.

25 There are no new tasks to be assigned unless these have gone through the

Page 23047

1 procedure and, of course, I mean the MUP.

2 Q. Be it in the Law on Internal Affairs that you have talked about

3 or in this order or in some other document enacted by the RS, did you see

4 in any of those any role of a military security organ as
opposed or in

5 relation to the units of the MUP?

6 A. As far as I could decipher from the documents, it is very
close

7 or almost exactly the same because these things are dealt by -
- through

8 the chain of command. There is a sort of operational
coordination. If

9 security organs need to be involved in accordance with this
document,

10 they should be assigned tasks that they are supposed to
implement

11 concerning coordination, establishing the regiment of
security, and

12 anything else of operational nature in order to implement
what is

13 envisaged by the law.

14 Q. Do they play an independent role in comparison with the
organs of

15 the MUP?

16 A. Independent or different cooperation is defined by other

17 documents, and it does not pertain to operational tasks. It
can only

18 concern checks of persons and files, but anything that is
operational in

19 nature is to be dealt with by the military police and the
MUP.

20 Therefore, the issue of cooperation is dealt with by the law
on internal

21 affairs in its part which has to do with the State Security Service, in

22 terms of counter-intelligence. And in this document, it only concerns

23 the operational activities of the security organs. These two things are

24 pretty much apart.

25 Q. Thank you. Did the RS enact a law of its own that would have to

Page 23048

1 do with captured or persons or prisoners?

2 A. In the documentation I had available, there are several documents

3 dealing with prisoners. However, the first document I came across was an

4 instruction on the treatment of prisoners issued by the Minister of

5 Defence of the RS. It is one of the first documents enacted

6 chronologically in terms of these activities. I believe that served as

7 the basis for all subsequent documents if they had to do with POWs. They

8 all should have been based on the instruction. The instruction was put

9 in place in 1992.

10 Q. It is 3D315. Item 14, please. It's the next page. Point 14 of

11 the instruction. It is the next page in the English.

12 Let us go to item 14 of the instruction. Does this -- is this

13 provision in keeping with the standards that were otherwise in place and

14 still are as regards captured persons?

15 A. Item 14 talks about interviewing captured persons as something

16 that is permitted but only about military issues, issues of military

17 nature, as described here. In any case, interviewing, gathering

18 information, is permissible about military issues when interviewing

19 captured persons.

20 Q. When talking about captured persons being interviewed about

21 military issues, which services of the army are tasked with that? Which

22 army elements may conduct such interviews in order to gather information

23 from the captured persons in relation to military issues?

24 A. In the Army of the RS, as in the JNA, there were two services.

25 First of all, intelligence organs, given their function, as well as

Page 23049

1 security organs, that is to say the military security organisation.

2 These were the two services involved. In the rules of both services, it

3 is clearly described how it is to be done. It is not to be done

4 according to one's own beliefs but according to procedure, so that it

5 would be in accordance with the totality of this instruction because it

6 has other points that need to be commented on in relation to this type of

7 work and in relation to some other documents that are referred to in the

8 RS and the Drina Corps.

9 If I may, sorry, this is in accordance with the doctrine

10 documents in relation to the treatment of POWs, and the treatment is fair

11 given that -- or provided that all the instructions and regulations are

12 abided by.

13 Q. Such interviewing, can it be done by, say, the units which

14 captured any given prisoners or to whom the prisoners had surrendered?

15 A. Combat units, when capturing an enemy soldier, by nature of the

16 situation, that person becomes their primary source of information.

17 However, it still needs to be done in accordance with the instruction.

18 The initial interview of the POW needs to be conducted along certain

19 lines. And since he is the point of contact, the unit needs to know how

20 to treat that person. It is customary and permissible. However, it is

21 also dictated by the need of such a situation.

22 Q. Let us now go back to the previous page again, to point
10. Can

23 you see it? It is towards the bottom of the page, the last
item. It

24 talks about work carried out by POWs. Was that in keeping
with the

25 regulations that were in place at the time?

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1 A. It was because the tasks specified therein do not serve for
2 defence, and it is not a part of the work needed to be done
for the armed

3 force that took such prisoners. They could be tasked with
working in

4 agriculture, industry, et cetera, which is not part of defence
per se or

5 directly. The rules on the application of international law of
war that

6 was taken from the JNA envisaged such a possibility of
engaging POWs but

7 not on defence tasks and, rather, to work on the tasks that
have to do

8 with the POWs themselves and in the work of other types.

9 Q. Let us now move on to the main set of regulations governing
the

10 work of the security organs. It is the rules of service. It
is

11 Prosecution Exhibit 407.

12 Tell us, please, whether these rules of service were applied
in

13 the Army of Republika Srpska.

14 A. Based on what I've already said as to whether anything
would be

15 changed or not in the application of the doctrine that was
taken over in

16 the Army of Republika Srpska in respect of the previous
rules, the rules

17 of service were not changed. All that was done was to pass an
additional

18 act instructing how these set of rules should be applied in
the sense of

19 command and distribution of tasks provided for by the
service. So the

20 intention was that since there were many tasks of different
types that an

21 optimum solution or the best solution should be found for the
security

22 organs to be able to work successfully and effectively on
their special

23 tasks. So the rules of service from that aspect, the aspects
of

24 application were more closely defined, and as to the contents
and tasks

25 they were not amended in any way.

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1 Q. Could you tell me something about how the rules of service

2 defined the scope of the work of the organs, security organs?
Tell us

3 that first. Or, rather, I'd like to withdraw that question.
Strike

4 that.

5 What I want to ask you first is this: What was your

6 participation or did you have any part to play in preparations
and

7 drafting of these rules of service?

8 A. Yes. I did play a part in that, and as I said I conducted

9 research in 1983 into the subject. The topic of that research
was

10 problems of counter-intelligence work and measures to improve
it. And in

11 that research, we identified certain problems, and that
served as a basis

12 for us in drafting the rules of service to find the best
solutions to

13 improve the work of the security organs in their various
fields of

14 activity, which until then had faced a critical situation.
That is to

15 say, they weren't always implemented properly. And as a
research worker,

16 I studied the problem and took part in the drafting of the
rules of

17 service, offering up viable solutions designed to deal with
some

18 neuralgic points in that work. That was my task, and I can
say with

19 satisfaction that later on to a great measure the solutions
provided were

20 incorporated and reflected in the rules of service. So that
is my role

21 in the rules of service in preparation for them being enacted.

22 Q. Let us now take a look at item 5 or, rather, tell me this,

23 please: The -- it is to be found on page 5, and it concerns the fields

24 covered by the rules of service. I think it's on page 9 of the English.

25 The purview of the security organs is what I'd like to focus on.

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1 A. As far as the purview of the security organs is concerned, in

2 addition to what is written down here, and you can read it out, I want to

3 say the following: The security organs are defined as professional

4 organs in the area of state security in the commands and units within

5 whose composition they are to be found, and what is important here is to

6 focus on certain features when reading through the tasks. The first

7 important thing to note is the following: That we are dealing with

8 professional organs.

9 Q. I do apologise for interrupting, but could we look at page 5 of

10 the -- no, it's fine, not your page. I'm referring to e-court.

11 JUDGE AGIUS: What is the corresponding page in English, Mr.

12 Zivanovic?

13 MR. ZIVANOVIC: [Interpretation] Page 3.

14 JUDGE AGIUS: Thank you.

15 MR. ZIVANOVIC: [Interpretation] Ah, then it must be the next
16 page, page 4. No, page 5. I'm sorry. Page 5. That's what I
said to

17 begin with, I think. Page 6, please.

18 Q. Can you continue now?

19 A. Yes, I can. I said that I wouldn't enter into all the
details

20 here, but the substance of the matter is as follows: It is
important to

21 note that we are dealing with tasks to be performed by the
security

22 organs regarding the detection and prevention of enemy
activity guided,

23 directed towards, or, rather, directed against - and I'd like
to

24 emphasise that verb - the following. Now, whether that
activity is

25 against the army or within the army itself, so these are two
important

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1 categories, whether these are actions against the army itself
or actions

2 from within the army itself. This is important because there
are a

3 series of other activities that are prohibited by law but
which do not

4 come under the purview of the security organs because they are not

5 directed against the army and do not come out -- come from within the

6 army. So this -- we need to distinguish between these two things, when

7 the security organs are going to engage in this problem or not, and

8 whether they require a level of professionalism, so forces from within or

9 from without.

10 Q. Tell me now, please, in view of the purview of the security

11 organs and their competence, in addition to the security organs in the

12 army, in the former JNA, as indeed the Army of Republika Srpska, were

13 there any other organs dealing in this same area, dealing with tasks of

14 this kind?

15 A. The tasks of the security organs were not dealt with by anyone

16 else because that is not stipulated in the rules nor any additional

17 regulations that provide other organs with the authority to engage in

18 tasks like that. Now, we can exclude discussions about the military

19 police because that's another area again. I do not want you to come to

20 the conclusion that no other organs engage in defence and security, but

21 here we are dealing with the tasks of the security organs as such.

22 Q. Tell me, please, the security organs, could they authorise
23 somebody else to engage in these tasks?

24 A. No. These tasks could not be transferred to others because the

25 security organs are responsible for carrying these tasks out themselves,

Page 23054

1 so they cannot be delegated to other organs.

2 Q. Could the unit commander or head of an institution delegate these

3 tasks to somebody else other than the security organs?

4 A. When we come to tasks and assignments, we see that there is a

5 division and distribution of tasks in which the security organs within

6 their commands perform their duties as the professional organs, and then

7 there are other tasks where the security organs act independently

8 pursuant to separate methodology and instructions which are also under

9 the control of the organs that are in charge of supervision. So there

10 are two groups of tasks and jobs to be done. In the first group, command

11 and stuff duties and tasks, the commander could put another organ in

12 charge and assign and delegate to another organ because these tasks did

13 not need additional authorisation; and as to this other set of tasks,

14 which the security organs did applying specific and separate methodology,

15 it is the regulations that determine this area of work. So it is the

16 rules and provisions which prescribe who has insight and control of the

17 tasks being assigned.

18 Q. Thank you. Let's go on to the next page in both these two

19 versions of the document. The tasks of the security organs are listed

20 here, the specific tasks, and it is to be found in item 6 under 2.

21 Mr. Vuga, can you tell me -- well, item 6 says that the security

22 organs are responsible for -- or are the protagonists of, as is the term

23 that we used. It's been translated as "responsible for" in the English,

24 but in substance what does it mean to be the protagonist of or

25 responsible for a task? In military terminology, what would that mean?

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1 A. In military terminology, well, I'd like to speak about security

2 terminology because the rule prescribed -- the rules
prescribed are

3 something that the commander had at his disposal but the
substance is

4 this. The protagonist of a task or to be responsible for a
task as

5 defined in this rule and how tasks should be implemented
boiled down to

6 the following: That the individual who is to be the
protagonist should

7 be a responsible individual, well qualified, and duty-bound by
virtue of

8 their position to perform those tasks. That is to say they do
so without

9 special orders. They must do so in the course of duty, their
duty

10 generally, and do the task to the best of their ability. And
if the

11 nature of the task is that it should be done on a daily
basis, then no

12 special order is issued. They do it in the line of duty, and
that person

13 is responsible for implementing that task and nobody else. So
that is

14 the basic premise. When we talk about nosioci or people
responsible for,

15 the protagonists of a task, or the vehicles of a task. I hope
I've been

16 clear enough, but that is how the concept was conceived.

17 Q. Tell me, please, when you said that they as the vehicles
work

18 without a separate order or special order, can you explain what you mean

19 by special order?

20 A. Where people are designated as the protagonists of a task, the

21 nature of the work requires that they go ahead, straight away, and that

22 she should not expect anybody else to be in a position to -- not whether

23 they want to or not but be in a position to find out and pinpoint the

24 most important tasks that they are going to deal with in their unit.

25 They have to decide that themselves. They have to decide where the

Page 23056

1 danger is coming from. Secondly, nobody can offer up a task or tell them

2 how to solve the security problem that they have encountered. They must

3 decide themselves. And thirdly, they must respect all the criteria of

4 the task and assignment without any additional orders because those

5 criteria are prescribed in advance, before they tackle the task, tackle

6 the job in question. So that is where the concept of vehicle or

7 protagonist is embodied, and the independent role of the security organs

8 is embodied there, and that is how it is reflected in practice.

9 Q. Here we see on our screens in the English version -- well, we see

10 all seven tasks set out there. In the B/C/S version, we have the first

11 three, and the rest are on the following page. But tell me now, please,

12 which are -- or how can we characterise in all these tasks collectively,

13 taken together, of which the security organs are -- for which the

14 security organs are responsible, or are there vehicles or protagonists

15 of?

16 A. Now, because of the methodology used by security organs in

17 carrying out their tasks, we mostly refer to this as the vehicles or

18 protagonists, and the other term would be "counter-intelligence tasks,"

19 and under that term all these separate tasks can be incorporated,

20 counter-intelligence work or counter-intelligence tasks.

21 Q. Let's now move on to the following page, just in the B/C/S.

22 Let's stay with the English. Just the B/C/S. And let's look at item 7

23 there where it says that "the security organs participate in," and then

24 it goes on to enumerate what they participate in. So explain this verb

25 "participate." What in the military security sense does "to participate

Page 23057

1 in" actually mean?

2 A. The security organs as the protagonists here take part in the

3 following, or rather the security organs are not the protagonists in the

4 way it has been explained, but they participate in the tasks whose

5 protagonist or vehicle is someone else. They take part in the extent to

6 which their profession allows them to do and can contribute to this work

7 being performed properly from the security aspect. So that is the

8 substance of their participation. If somebody performs a job and the

9 security organ does not take part in it, then they have no part to play

10 there. So their participation stretches in the extent to which their

11 professional character can contribute to the protagonists of the task

12 being able to do the job properly, but they are not the protagonist.

13 They are just the participants because the task and assignment has other

14 dimensions, too, which the security organs by virtue of their capacity

15 and possibilities do not perform.

16 Q. Could you now tell us whether these tasks in which security

17 organs participate, they participate with or without a special order?

18 A. In this case, an order is required, usually an order from the

19 commander, and then the commander of the unit in which the security

20 organs will work. If the security organs were not ordered or at least

21 informed that they should take part - but it's usually in the form of an

22 order; it's customary - sometimes they would not even be aware that these

23 assignments are being carried out because somebody else is responsible

24 for them, and if those who are primarily responsible do not include

25 security organs, they could not know about it. This way, those who are

Page 23058

1 primarily responsible make the plan and envisage a role in it for the

2 security organs. But in this case, security organs do not carry

3 responsibility for the task as a whole.

4 Q. Can we now move on to the next page, both in B/C/S and in

5 English. It seems we went a bit too far in B/C/S. Could we turn one

6 page backwards and leave the English?

7 We have seen that security organs take part in six types of
8 assignments as enumerated here, but I'm particularly
interested in item

9 D: Professionally Managing Units Of Military Police. In
English, it

10 reads Performing Specialist Administration Services For
Military Police

11 Units.

12 Does it mean that they are primarily responsible for this job
in

13 military police units; and if not, who is?

14 A. Well, this is going into the line of work of military
police

15 because if something is professionally managed, then we have
to say

16 something about the subject. Military police has two
different lines of

17 work governed by two different rules and two different
instructions how

18 to apply those rules. That is relevant to this item,
performing

19 specialist administration. The reason is this: Military
police has its

20 own commanding officer or commander of a military police
unit, and he

21 commands and controls his military police unit. He has to be

22 professionally competent and qualified for that job.
Otherwise, he

23 couldn't be the commander. That's the first step of command
and control.

24 The security organ takes part in professional control as a
25 commanding officer, which in security terms is one of those
who are best

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1 informed, who best know the threats and threatening
activities, and he

2 can with his professional knowledge advise the military police
what is to

3 be done in a particular situation as a priority, and of course
he will

4 tell this to the commander so the commander can decide how a
military

5 police unit can best and most efficiently be used. As you can
see, there

6 is a link between command and professional management at the
level of

7 military police.

8 JUDGE AGIUS: Mr. McCloskey?

9 MR. McCLOSKEY: This may be a translation issue, but he
described

10 the security officer as the commanding officer, and I don't
think that's

11 correct.

12 JUDGE AGIUS: Yes. Mr. Zivanovic, will you take this up with
the

13 witness, please?

14 MR. ZIVANOVIC: Yes, thank you.

15 Q. [Interpretation] It seems an error occurred.

16 A. I said the commanding officer, komandir, of a military police

17 unit, commands and controls, which implies a certain professional

18 knowledge about his unit; and that's the first step, where professional

19 knowledge and expertise of the komandir, commanding officer, is involved.

20 And the second step is participation of the security officer as a person

21 who participates in the professional management of military police on

22 behalf of the command or the commander, but that is not commanding. It's

23 professional management. And I explained what professional management

24 means. That means that he as the security officer, the organ of security

25 of the command, is best informed about the threats and threatening

Page 23060

1 activities that pose a risk to the unit, its personnel and installations

2 and everything that needs to be secured, and based on this knowledge he

3 can propose to the commander how to use the military police in the best

4 way, achieving the best effects; and to the commanding officer of the

5 military police, he can give professional guidance, how best to execute

6 what the commander ordered. So it is not commanding. These are
7 professional aspects related to performing a function. Command
is based

8 on single command, and any intrusion into the chain of command
that would

9 change its nature would be an act of indiscipline and
tampering with the

10 system of command.

11 Q. You said something about two types of professional
management

12 over a military police unit. So we have one person, that's a
komandir,

13 commanding officer of the military police unit; and we have
the security

14 officer. Could you just clarify whether these are different
areas,

15 different professional lines of work, or not? And if they are
different

16 fields of expertise, then please explain what kind of fields
they are.

17 A. It's very important to say this: There are two fields of

18 expertise. The best equipped for operative activity are the
military

19 policemen and the commander of military police. They have
been schooled,

20 trained, organised, and prepared, so there is a number of
these

21 attributes that belong to the military police. That makes
them the best

22 equipped.

23 The security organ is not best equipped for performing police
24 work or military police work, detention, arrest, restraining,
escorting,
25 et cetera. The military police is the best trained and
prepared for

Page 23061

1 that, and their commander is the best placed to evaluate the
level of
2 achievement of each of his subordinates. He himself will be
evaluated by
3 the commander. So those are two different things. You should
not
4 confuse expertise in performing certain tasks and expertise in
evaluating
5 risks or threats. The one who has more knowledge about the
threats and
6 the risks posed to a unit in the performance of its missions
is the
7 security officer, but that's not operative preparation. The
one who
8 performs the task, on the other hand, has to have the best
information
9 about the possible risks and threats. In that sense, we have a
link
10 between professional expertise of the military police unit
and the
11 professional expertise of the security organ.
12 Q. When you mentioned threats and risks, did you mean the
secret
13 threats, did you mean counter-intelligence work, or what?

14 A. I encompassed in my answer the following: The security organ, we

15 said, has the most information. It is understood that it is his duty if

16 he has some knowledge from counter-intelligence work that can be and

17 should be picked up by the military police or the command, it is his duty

18 to make that information available to those who can react. Otherwise, he

19 wouldn't be a member of the command. He is a member of the command

20 precisely for that reason, but there are other things we have to take

21 into account. This does not imply all counter-intelligence work and all

22 counter-intelligence threats that need a response. There is a clear line

23 between information that can be made available to the command and the

24 military police and another area of work that only security organs need

25 to know about and to react to. This is a line that needs to be respected

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1 because the security organ must not compromise his own ability to perform

2 his security and counter-intelligence work.

3 Q. In B/C/S, we need to move to page -- in English, we need to move

4 to page 10. B/C/S, 11. We have a good -- the good page in English but

5 not in B/C/S. We need page 9 in B/C/S.

6 [Microphone not activated]

7 THE INTERPRETER: Microphone, please.

8 MR. ZIVANOVIC: [Interpretation]

9 Q. Could you now please move with me to the second chapter of this

10 rule. It is Management Of Security Organs.

11 Tell us, who controls the security organ? That is, who has the

12 powers to command over security organs?

13 A. The security organ is directly subordinated to the commander of

14 the unit of which it is a part. That's his commanding officer, and he's

15 answerable to the commander for his work. He has to report how he has

16 secured the unit and performed the tasks in his area of expertise. That

17 is the sense in which we can say he's subordinated. That is, protection

18 of the unit and reporting to the commander is his responsibility, the

19 reason why he was appointed to the unit, and his establishment position.

20 There are no other organs or other persons that perform the same

21 function.

22 Q. What is the relationship between the unit's security organ with

23 security organs of superior commands?

24 A. The rule is very clear about that. The security organ of the

25 superior command professionally manages the subordinated security organ.

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1 I have provided part of that explanation about professional management

2 when I spoke about professional management of military police. However,

3 I have to add here the following: The scope of work of security organs

4 and the peculiarity of the work of security organs according to

5 methodology and the peculiar threats and those who pose those threats are

6 significantly different in character to what we discussed before, and

7 that's why there is a special relationship here which is governed by the

8 instruction on the work of security organ and paragraph 17 of this rule,

9 which says that in applying the rules for security organs, it is the

10 competent level that is responsible. It is a particular level of command

11 that will make decisions about the methods of work and everything else.

12 Q. Let us clarify further. The security organ of the superior

13 command, is it authorised to issue any orders to a subordinated security

14 organ?

15 A. First of all, I have to explain the various relationships because

16 we have to distinguish between whether somebody does not have the right

17 or does not have the possibility. There are cases when somebody has the

18 right but does not have the ability and vice versa.

19 JUDGE AGIUS: Mr. McCloskey?

20 MR. McCLOSKEY: Could we get an answer before an explanation?

21 Because he's not answer -- the objection would be non-responsive. It

22 would be appropriate to get an answer first and then an explanation.

23 JUDGE AGIUS: I think that's correct.

24 THE WITNESS: [Interpretation] I thought I was the expert.

25 MR. ZIVANOVIC: [Interpretation]

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1 Q. Anyway, provide the answer.

2 A. No, they do not have the right.

3 Q. Now, can you explain why?

4 A. It doesn't have the right because of this. I spoke about the

5 methodology of work, of security organs. I'll give you just one example

6 that will illustrate everything else that needs to be understood. The

7 security organ - we read this in the rule - establishes organised

8 cooperation with the persons from his own unit, that is, creates and

9 selects sources. In the selection of sources, there are two inviolable

10 principles. The first principle is the principle of secrecy, and the

11 second is the principle of voluntariness. So the security organ has to

12 resolve the issue of secrecy of work with a source and must get the

13 source's voluntary consent that the latter will cooperate. Not a single

14 superior organ can order anyone else to cooperate with a security

15 officer, nor can a superior security organ select a voluntary source.

16 Somebody can be perfectly fit to become a source but may not wish to

17 become one. So there is no way to force a person to accept to cooperate

18 with the security organ. That's something that cannot be ordered by the

19 commander or the superior security organ or anyone else. Nobody can

20 decide for a person whether he will accept or not.

21 The principle of secrecy is the next principle. The source has

22 accepted, let's say, and the security organ is duty-bound to keep this

23 secret. The source has accepted to cooperate secretly and voluntarily,

24 and in case a third party interferes between the source and the security

25 organ, the source has the right to refuse all further cooperation. He

Page 23065

1 does not have to accept any replacement for the security organ which

2 originally recruited him. The security organ establishes this

3 interpersonal professional relationship between the security officer and

4 the source, and that is why there is a limit up to which professional

5 guidance is given to the security organ to resolve a certain problem by

6 recruiting a source and to resolve it in the best way he can in his own

7 unit with his knowledge of the people, the situation, et cetera. So

8 that's the professional competence of the security officer himself.

9 That's one part.

10 The second part is he cannot do so any which way. When the

11 security officer wants to recruit a source, he's duty-bound to propose

12 that person to the superior security organ to specify what he will do

13 with the source, which assignments he will perform, and when he receives

14 approval from the superior security organ on all the elements I

15 enumerated earlier, then this cooperation with a source can be

16 established, and as long as the two principles are honoured, the superior

17 security organ cannot interfere.

18 But given the assignment received, the security officer can say,

19 I, the superior security organ, can tell the security officer at the

20 lower level, based on my additional knowledge, I think you need to

21 include in your work with the source this new element, and if that cannot

22 be done, then you have to resolve it in a different way. That is

23 professional guidance and management. All that I have described falls

24 outside of the definition of the balance of forces. It's not the balance

25 of forces in the sense of who is going to attack whom and who will defend

Page 23066

1 themselves from whom. It's a completely different relationship because

2 it's a completely different way of fighting threats and risks.

3 Q. Just tell me, since you've just explained to us one aspect of the

4 work of security organs, is that perhaps one of the reasons
why the

5 commanders sometimes do not have the ability to command them
in those

6 aspects of work which are strictly security-related?

7 JUDGE AGIUS: One moment. Yes, Mr. McCloskey?

8 MR. McCLOSKEY: Objection, leading.

9 JUDGE AGIUS: Yes, it is very much so, Mr. Zivanovic. I think

10 we'll have the break now, and you will think of a way of
rephrasing your

11 question.

12 We started at 10.38, so I went -- we went a little bit over
the

13 one hour 30 minutes. We'll have a 25-minute break now, and
then we'll

14 continue afterwards.

15 --- Recess taken at 12.15 p.m.

16 --- On resuming at 12.46 p.m.

17 JUDGE AGIUS: Yes, Mr. Zivanovic, Mr. Vuga.

18 MR. ZIVANOVIC: Thank you.

19 Q. [Interpretation] Mr. Vuga, before I go on to my next
question I

20 would like to ask you once again to speak very slowly because
my

21 colleagues have told me that certain parts of your testimony
cannot be

22 followed properly, either by the interpreters or by the court
reporter,

23 so that some of the things you said here were not recorded in
the

24 transcript, it would seem, which can lessen the understanding
we have of

25 your testimony.

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1 Now, we have gone through the transcript, and we can ask for
the

2 tape, as well, perhaps to see if there are any things which
have been

3 omitted, but I'd like to ask you to clarify something I asked
you earlier

4 on about witness statements that you took or did not take in
compiling

5 your report.

6 Could you explain that to us and explain the reasons but just

7 slowly, please?

8 A. Well, I find it difficult to speak slowly because when I
was a

9 teacher myself or when I taught myself I was a bit verbose, so
I'll try

10 and respect what you asked me to do and try and slow down.

11 Now, when we come to the sources that I used, I mentioned and
I

12 explained indirectly that we were dealing with specific
activities and

13 that it was necessary to know that portion which wasn't
perhaps

14 sufficiently visible and something that it was difficult to
note on the

15 basis of pure observation.

16 Secondly, the part that is visible and recognisable is viewed
in

17 different ways by those who testified, for me to be able in a
reliable

18 manner to make conclusions about what the subject of the
conclusions was

19 on the basis of those facts. What I mean to say is this: I
can't opt

20 for one or another point of view. I don't think that's my
role. And if

21 I were to do that, I would be biased in one way or another,
which is not

22 what I'm here to do. So I am against bias and prejudice, and
if you have

23 different points of view and you want me to select one of
those to be

24 dominant, I cannot do that. That is not why I'm here. That is
not my

25 role. So as I say, that is why I chose to perform my task in
the way I

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1 did, the task assigned to me, and I'm sure that the Trial
Chamber on the

2 basis of the facts and the statements and the facts that I
present in my

3 report will find sufficient elements to decide for itself and
to decide

4 where the truth lies and how the truth is to be recognised.

5 So those were the reasons for which I, in acquitting my task,

6 relied on documents and material that I had at my disposal and that

7 everything I used was fixed and not subject to any subjective views,

8 although there are always subjective views involved but not in the extent

9 to which one relies on the observation and vision of individuals after a

10 long passage of time and how they modified subjectively. Anyway, I

11 conducted research and on the basis of my experience, that research has

12 made me wary and cautious, namely that you can't view the past directly

13 but you must look at the historical context of events but not direct

14 vision of the events, and in these semi-masked events or completely

15 masked events, this is a very great problem, so those -- that was the way

16 I thought about the task given me. Now, how far I have been successful

17 or not is up to you to assess, but those are the guidelines that I

18 applied in undertaking my task.

19 Q. Thank you for that explanation.

20 Now, let's continue where we left off before the break.

21 Can you tell me in view of your knowledge of the area we are

22 discussing what the reason was for the commanders of the units not to

23 have received, as you said, the right to command the security organs with

24 respect to counter-intelligence for which the security organs were the

25 protagonists?

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1 A. I have already supplied an answer, in working with a source,

2 because that part shows that what the commanders do and what they base

3 their commanding duties on, that in that whole area they are impotent

4 because they cannot wield influence, the kind of influence they should,

5 in order to make the right decision and to act in the proper manner. And

6 this brings us to another question: Why, then, would the commander be

7 given this type of task and allowed to have insight into the task and

8 decide upon the task without that decision and insight, de facto and in

9 normative terms, having an importance, but could create serious problems

10 for him and the person performing the job, so it doesn't mean that things

11 were hidden from the commander. It is what things that were outside his

12 realm of decision-making and something that belonged to a different

13 sphere altogether, and I have to use another term here, which might be a

14 rather new term used in this context and in this subject matter because

15 it didn't appear in the literature as such, but I have to state that term

16 for better understanding. The secret activities that I'm talking about

17 of late have been termed as being virulent in character, and that means

18 -- what that means is they are all around us but invisible, that it is

19 only by applying special methodology that you can detect them in the

20 first place, or in other words, you -- they cannot be bombed, destroyed

21 by troops, engulfed, or in any other way in the sphere of command be

22 resolved. I'm talking about all this so that we can see that they escape

23 influence of that kind. That's the first point.

24 The second aspect of this problem lies in the following, in the

25 widespread character of information via which we arrive at a piece of

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1 knowledge, at information, about the presence of secret activities that

2 bring jeopardy and their protagonists. That means that we must cover a

3 broad area, gain a lot of experience speedily and react at the right

4 time, and this will not depend on the decision of the commander but on

5 the development of events in the field and relationships which are given

6 over to methodology and the powers of its strength and scope.

7 And as we can see, the dimensions of activity on the secret front

8 of conflict escapes definitions belonging to command and control [as

9 interpreted], goes beyond it and goes beyond descriptions of decisions

10 being made based on another set of facts. I don't know if I have been

11 able to explain all this and explain the deep and real reasons for which

12 a functional line exists and professional line at a given level, which is

13 directed towards holding the process within the realm of legality and in

14 giving it the possibility, in the sense of operative and technical

15 resources, to give it support, to lend it support, for it to be able to

16 be as effective as possible in that part in which its protagonists exist

17 by directly creating data sources, information sources, methods of work,

18 in conformity with the jeopardy at hand, the danger at hand, and that is

19 precisely where this activity takes place.

20 Q. Yes, yes, go ahead.

21 A. In order to understand the problem, we cannot look at the formal

22 and legal in the sense of whether you have the right to do something or

23 that right is taken away from you, when we come to the nature of the

24 beast. So that's not the domain that this lies in.

25 What needs to be done is that at all levels, we do not observe

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1 the wrong things. That is to say you have an initial piece of

2 information which has still not been said to be reliable, that you make

3 decisions which would bring into question the entire process. That is

4 something that must not be allowed to happen.

5 MR. ZIVANOVIC: I'd just like to tell the Trial Chamber that at

6 page 65, line 21, the word "control" was not used at all, just the word

7 "command."

8 JUDGE AGIUS: Thank you for that remark, Mr. Zivanovic. Let's

9 proceed.

10 MR. ZIVANOVIC: [Interpretation]

11 Q. Can you tell me this: Work in the security organs, were there

12 any special conditions that had to be met for work in these particular

13 organs, in the security organs, as opposed to in other army units of

14 Republika Srpska, for example, or the JNA?

15 A. Yes. There were specific conditions.

16 Q. Could you tell us who prescribed those conditions? Were they

17 stricter conditions than the usual ones? Could you explain that, please?

18 A. I spoke about the nature of this kind of work, and then we spoke

19 about the protagonists of those tasks. Now, the nature of this kind of

20 work requires specific capabilities for somebody to be able to engage in

21 that kind of work in the first place. That's the first point. And

22 secondly, the authorisation and powers given to individuals of that kind

23 require additional criteria and additional duties, which must be

24 fulfilled for a person to engage in this kind of work at all. And one of

25 those criteria, one of the things that are incorporated into the criteria

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1 are as follows: The security organs are authorised in addition to all

2 their other authorisations and competences independently to decide upon

3 the use of weapons or arms. Arms. Not pursuant to command, as
orders --

4 as soldiers on the front, orders issued by the commanding
officer, as

5 happens in war, but completely independently to decide upon
the arms they

6 are going to use. So this kind of authorisation requires on
the part of

7 the security organs the necessary psychophysical and mental
capabilities

8 of assessing a situation quickly and arriving at a conclusion,
deciding

9 when the arms they have at their disposal can be deployed on
the basis of

10 the rules and regulations governing the security organs, and
that's a

11 very important matter because any errors, any mistakes in
that area

12 cannot be corrected. That's just one part.

13 The second nature of this kind of work requires the security

14 organs to be fully capable and able in situations which are
not within

15 the scope of command to run risks, the kind of risks that are
not run by

16 anybody in other spheres. So the risk involved in their work
is great,

17 because any secret, covert operations, if the enemy
identifies them, then

18 countermeasures will be taken by the enemy. We have all sorts
of

19 disinformation or misinformation sent out and liquidation,
too, as the

20 ultimate form. If the enemy uncovers somebody working in this
area, in

21 this secret front area, that person runs various risks and
dangers.

22 So all this makes this kind of work special, and the security

23 organs are thus denoted as being part of the cadres that must
be

24 subjected to special criteria as prescribed by the highest
organ there

25 is, the organ with the best insight into the needs and
requirements of

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1 the professional service that it leads and guides because they
know full

2 well what the security organs will come up against in the
course of their

3 work.

4 So that is my answer to the specific needs of -- for the job,
the

5 specific people chosen, and anything else that we call cadres
policy and

6 authority over cadres within the security organs. And in
addition to

7 that, I am one of the people who helped compile preparations
or

8 regulations and professional guidelines for the work of the
JNA security

9 organs, and at that time, the security organs were subjected
to special

10 medical examinations, as well, for example, which would provide answers

11 to whether these people were capable of performing that kind of job.

12 That is what I wanted to say with respect to staffing policy and

13 criteria.

14 Q. Could you now tell us, these requirements and standards, were

15 they checked by security organs alone, or was it done perhaps by the

16 command organs of units?

17 A. According to the rules of service, there is a procedure called

18 vetting. Vetting applies to security organs, but there are also other

19 types of vetting for other establishment positions and jobs and

20 positions. Security organs have been and remain the only ones competent

21 to do the vetting. Especially important is the fact that security organs

22 performed the vetting for security officers because they knew full well

23 that every mistake and failure in the vetting would have grave

24 consequences for the one who does the vetting because he, too, is a

25 security officer. So this is the kind of job and a type of assignments

1 where criteria and establishing the right criteria was
extremely

2 important.

3 Q. Thank you. The rule of service speaks of the methods of
work for

4 security organs, but I'll leave that subject aside until later
when we

5 come to another regulation.

6 I would like us to look now at the provisions governing

7 reporting, that is, to whom security organs report. That's on
page 12 in

8 B/C/S and page 14 in English. That's para 30.

9 Could you tell us, this information that security organs
acquire

10 in their work, are they duty-bound to share it and with whom?

11 A. As far as reporting is concerned, that is adapted to the
nature

12 of their work as follows: In gathering information about
threatening

13 activities and those who carry out those activities, security
organs do

14 not collect pure counter-intelligence information, only about
secret

15 activities. All secret and public activities are intermingled
in some

16 way, and the reasons are the following: First of all, all
secret

17 activities are usually covered by public activities. Thus,
you have an

18 example that volunteers who join the unit are not only
volunteers for

19 combat, but their role also comprises their personal
interest, which may

20 be slightly different from the objectives of combat and
sometimes

21 directly opposite to those objectives. However, their wish to
pursue

22 that interest is possible to pursue only by assuming another
role because

23 open display of that interest would disable them from
pursuing it. Here,

24 we have an intermingling of activities of various people in
their real

25 roles and another type of activity that falls into the sphere
of

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1 counter-intelligence. Thus, security organs gather information
on

2 activities in the public domain and activities in the other
domain. I'm

3 talking now about the whole procedure of collecting
information.

4 Some of the information collected will refer to other organs
of

5 command, and it is up to them to decide whether they have any
interest in

6 the information provided.

7 But the rules say that whenever a security officer acquires

8 information that may be of interest to another organ of
command that will

9 deal with it or that will react to it and does not fall within the

10 security [as interpreted] line of work, that this information be shared

11 with the other organ. That's only because the competency to resolve the

12 issue involved lies in the hands of the organ to whom that information

13 belongs. That depends on the nature of information. The security

14 officer can share this information through his own commander, in this

15 case, but if the nature of the information does not require the commander

16 to be involved, then the security officer can share it directly with the

17 organ who has an interest or who can deal with it. That is the kind of

18 cooperation which is the functional relationship between the security

19 organ and his responsibility for the security of the command, the

20 security of the unit, and increasing the efficiency of command in areas

21 in which he got hold of information that indicates that something needs

22 to be done. And this is in fact an obligation of the security officer.

23 It's not up to his goodwill. It's something he has to do.

24 A useful piece of information which does not fall within the area

25 of competence of the security officer cannot be held back just because

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1 somebody decides so. It cannot be done that way, and the rules do not

2 allow it.

3 MR. ZIVANOVIC: Just one more remark on the transcript. It is

4 page 70, line 22, the witness said counter-intelligence, not security.

5 He used counter-intelligence line of work, not security line of work.

6 JUDGE AGIUS: Thank you, Mr. Zivanovic.

7 MR. ZIVANOVIC: [Interpretation]

8 Q. Mr. Vuga, could you now tell us, looking at this rule, and I

9 believe this is related to the following paragraph, operative processing,

10 could you clarify the meaning of this term, "operative processing"?

11 A. This is an area governed by the instruction on the methods of

12 work of security organs with a proviso that one of the more complex

13 provisions of these instructions were incorporated in the rule so that

14 commanders and commanding officers who command security organs would have

15 an idea that in facing security threats, one aspect of the security

16 organ's work needs to be approved by the commander or the commanding

17 officer they are serving under. They can't do everything totally

18 independently.

19 As for infringing about the human rights and freedoms, there is a

20 provision that says that security organs shall independently apply their

21 methods only when their activity does not infringe on the area of rights

22 and freedoms. For different aspects, the security organs have to get

23 approval from the competent organ. I don't know if I managed to make it

24 clear.

25 Q. Well, yes, you have, if you would just speak more slowly.

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1 Now, could you continue now?

2 A. I believe it's a professional deformation.

3 What's important here, command in the rule has two points: To

4 combat enemy activity in a complex form, and this is a complex form; and

5 point 2, that it requires approval. It must be under strict control.

6 That is perhaps the most exact term. Of course, strict control by those

7 who are competent.

8 Q. When you say competent, could you tell us who under the rule are

9 those who give approval to such activities of security organs?

10 A. In the Yugoslav People's Army, it used to be the Federal

11 Secretary for National Defence, and the equivalent of that, I cannot tell

12 you exactly because he also had the role of minister and he was a

13 military man with a military position. I believe it was the chief of the

14 Main Staff of the VRS who approved operative processing against persons

15 who should be subjected to combined methods of security organs or whoever

16 he authorises. You know what a transfer of authority means. It means

17 that the one who is authorised is still answerable for what is being done

18 under his authority.

19 JUDGE AGIUS: Okay, thank you. Madam Fauveau?

20 MS. FAUVEAU: [Interpretation] Your Honour, page 72 and 73, we

21 read chief of the Main Staff, but I do not believe that the witness

22 referred to the chief of the Main Staff. Could we clarify this point,

23 please?

24 JUDGE AGIUS: Yes. Thank you.

25 Mr. Zivanovic, we are talking of the last line on page 72 and the

1 first line of page 73, in English, in the transcript. If you could

2 clarify this with the witness, please.

3 MR. ZIVANOVIC: [Interpretation]

4 Q. Mr. Vuga, could you tell us if you know, of course, who gave

5 these approvals in Republika Srpska or, rather, the Army of Republika

6 Srpska?

7 A. In the Army of Republika Srpska, it was the commander of the Main

8 Staff of the Army of Republika Srpska.

9 Q. While we are discussing this point, could you clarify whether he

10 governed communications and the nature of communications between or,

11 rather, amongst security organs?

12 A. This document governed all aspects of it completely. This

13 document stipulates that there shall be cooperation between security

14 organs in keeping with the regulations in areas and assignments that are

15 common to them, and in point 49 of this rule it is defined that there is

16 information that may not be a subject of cooperation unless it is of

17 interest for their common work; or more precisely, each commanding

18 officer in security organs may be apprised only of such information as he

19 needs to perform the functional duty he is appointed to or the assignment

20 that he has been especially entrusted with. Anything other than that is

21 not allowed without a special approval of the security organ, which is

22 professionally superior to the security organ, which could share such

23 information.

24 This need-to-know principle is valid even within security organs

25 themselves.

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1 Q. Can you tell us whether this rule set certain limitations to

2 written communications exchanged between security organs relative to the

3 commanders of the units to which security organs belonged?

4 A. In keeping with what I said about the nature of work and what I

5 said about the applications of methods of work and the insight into the

6 work of security organs from the viewpoint of legality, it is equally

7 regulated who has insight into the correspondence of security organs.

8 Their correspondence bears sometimes the mark that it is intended

9 strictly for security officers, so those who approve -- those who do not

10 have the right to approve the methods or the work of security organs also

11 have no right to have insight into the correspondence and information

12 about their work and the results of applying those methods.

13 Q. If somebody violated the confidentiality of such mail and

14 communications, is anything envisaged in terms of sanctions or penalty,

15 if somebody gained access, unauthorised access, to such communications?

16 A. Yes. It has been stipulated in para 25 of the rule. There is a

17 provision defining the conduct of all those who have access to

18 communications marked "strictly confidential" and relates to security

19 organs, their methods of work, and other related issues. It says there

20 that all persons who get hold of such information or have access to it ex

21 officio or on some other grounds must keep such information as a secret,

22 may not divulge it or share it with anyone, and that obligation continues

23 even after termination of service in the army. In fact, it continues to

24 apply for as long as one lives.

25 Q. Could we now look at this same document, page 10 in B/C/S and

1 page 11 in English.

2 It's para 25. The last passage seems to be on the -- the last
3 paragraph is on the next page in English.

4 In the last paragraph of para 25, it says that the obligation
to

5 protect information under paragraph 2 of this item -- no. The

6 interpreter is reading the wrong thing. Persons under
paragraph 3 of

7 this item shall make a special written statement concerning
the

8 obligation to protect the secrecy of information. That refers
to people

9 who have gained access to such information.

10 A. This paragraph, in fact, provides a general stipulation,
that in

11 all cases when there is a reason to have somebody undertake
to protect

12 such information - I can now not enumerate all the possible
reasons now

13 because there are too many, but among other things that
includes

14 accidental cases as well as a deliberate intention to gain
access to

15 security information without proper authority - in all such
cases, a

16 written statement must be taken, and then it must be seen
whether this

17 violation of secrecy involves other risks, which may not be
limited to

18 breaches of confidentiality. So these measures are just the first step

19 sometimes. That depends on the judgement made by the competent

20 authorities. But this is one of the serious warnings in existence to the

21 person who is put in a position wherein he has to sign a statement of

22 that kind that he really has to take it that way.

23 Q. Such an obligation needs to be confirmed in a written form?

24 A. Yes. That's why it is specified here as such.

25 Q. In keeping with this rule and some others, is it allowed for a

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1 security organ to seek such a statement from a unit commander if he would

2 be the person acting against the provision concerning confidentiality in,

3 in fact, item 24 of the rule?

4 A. It says "persons." That means that all persons who come -- get

5 in touch with such information are encompassed. If we try to assess who

6 the most likely person would be, it would be the persons closely related

7 to what is going on in the area of security. However, nobody is excluded

8 from the provision, and the way how it is done does not fall under this

9 particular rule. It needs to be done by security organs.

10 Q. Perhaps we should be a bit clearer on this. We were talking

11 about item -- which item?

12 A. 25.

13 Q. Mr. Vuga, so as not to have to go through the rest of the rules

14 pertaining to security organs, but in any case, within the rules

15 themselves are prisoners mentioned as something falling within the

16 competence of security organs?

17 A. No. Such a provision does not appear. I participated in the

18 drafting of the rules, and I don't think they have been changed

19 subsequently.

20 Q. Please go more slowly.

21 A. I was a -- one of the persons drafting the rules, and the final

22 version was not changed when it comes to POWs. The starting point was

23 the following: POWs are disarmed enemy soldiers or persons who receive

24 such a status. From the point of view of security organs and their

25 methods, such people are not actors in any security-related threats that

1 may be of interest for security organs. The next thing,
providing

2 security of POWs as well as all other matters relating to POWs
are of

3 such level from the point of view of security that these
amount to

4 physical security, transport or detaining them in POW camps,
which does

5 not require such a degree of professionalism that would
require the

6 engagement of the most professional part of the security
system, this

7 being the security organ. At the time, as it is now, such
issues are

8 being dealt with by other command organs, since it is not
complex enough

9 for a security organ to handle, and the security organ has no

10 establishment resources to deal with that, either. That is at
the core

11 of the decision not to have POWs anywhere as one of the tasks
of security

12 organs. They are simply not involved in any such tasks.

13 Q. Let us try to break down your answer. You said that POWs
do not

14 pose a security threat. Did you have in mind other security
threats

15 which fall within the domain of security organs or some other
threats

16 when you talk about that particular threat?

17 A. First and foremost, I said that these people are disarmed
enemy

18 soldiers. That fact alone testifies to the level of security threat

19 posed by such a disarmed soldier. If that soldier is guarded, the threat

20 is even less. I'm talking about something else, which is frequently

21 omitted when talking about threats. I'm talking about great numbers of

22 POWs, which is sometimes equated to an increased level in terms of threat

23 when the numbers are great. However, the level does not change. The

24 only thing that changes is the force you need, the size of the force

25 needed, to secure that. If you have more POWs, you need more people to

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1 guard them. In that situation, the security organ cannot handle that due

2 to the lack of personnel. The difference between what a security organ

3 needs to do with POWs does not lie with the numbers, and to stress yet

4 again, this should be a definition pertaining to POWs themselves. If

5 something would take place, and I cannot exclude that as an

6 impossibility, if among the POWs there is somebody who can pose a threat

7 and who, for different reasons, would be interesting for security organs,

8 then such a person would pose a threat and as such, that person would be

9 treated as a security-related threat. That is somebody who is carrying

10 out enemy activities. The category of POWs as such was defined, and we

11 know what it means for security organs. There is only one instance in

12 all of the regulations where POWs are referred to. It is item 134 of the

13 rules on the methods of work of security organs. In the item 134, the

14 term "POW" is mentioned as a source of information for security organs,

15 especially when special units are in question; that is to say, when we

16 have POWs who belong to the Special Forces of the enemy. Why? Because

17 security organs according to the rules have to work in terms of

18 counter-intelligence against special enemy forces, and such special enemy

19 forces can provide valuable information so that the security organs can

20 be as efficient as possible. That is the only mention of POWs in the

21 rules of the work of security organs.

22 Q. Please clarify another part of your answer next. You said that

23 security organs lack the capacity, the resources, to tackle the issue of

24 POWs. Please clarify what you meant by that. What did you mean by

25 "capacity"?

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1 A. I had the following in mind. The requirements of work or a task

2 that requires a security organ's attention in relation to POWs is not of

3 such nature because security organs do not command troops. That is to

4 say they cannot physically secure POWs.

5 Secondly, security organs cannot issue orders to those who are

6 supposed to supply them, treat them, and decide on their fate as regards

7 other issues when it comes to their rights, status under the Geneva

8 Conventions, and all other matters pertaining to POWs. Such capacity or

9 means, neither professionally or physically, is something that would be

10 in the possession of security organs. By that fact alone, they are in a

11 position of a mission that is impossible to accomplish. They are simply

12 not equipped to deal with that in terms of establishment and training.

13 They can only gather information about POWs. Everything else is done by

14 somebody other than security organs. There is no place for them in that.

15 From the point of view of security, if the command knows of the existence

16 of any special troops among the POWs, then they can assign security

17 organs to deal with it. That is one thing. But what a completely other

18 thing is that everything needs to be put in place in order to handle POWs

19 that far exceed the possibilities of security organs. I'm talking again

20 about the situation as it is in the rules as opposed to what may happen

21 in the field.

22 Q. I wanted to ask you something else concerning the rules. Towards

23 the end, it regulates the application of the rules in times of war or

24 during the state of an imminent threat of war. Could you please tell us

25 briefly what is specific to the application of the rules in times of war

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1 or during an imminent threat of war?

2 JUDGE AGIUS: Yes, one moment, Mr. Vuga. Yes, Madam Nikolic?

3 MS. NIKOLIC: [Interpretation] Your Honours, a correction for the

4 transcript. At page 79, line 21, I think the witness put the entire

5 sentence in the negative form, and perhaps the question should be

6 repeated.

7 MR. ZIVANOVIC: [Interpretation] I also understood the witness
8 saying something in the negative.

9 Q. In any case --

10 JUDGE AGIUS: The witness can confirm what you have said, but
we

11 need to read out to him what we have in the transcript on
those lines.

12 Now, what I have here is, "Such capacity or means, neither
professionally

13 or physically, is something that would be in the possession
of the

14 security organs." I can still understand it as it is. If you
just

15 confirm, if you just confirm that it was said in the negative
by the

16 witness.

17 Yes, Mr. Vuga?

18 THE WITNESS: [Interpretation] Yes. It was in the negative.

19 JUDGE AGIUS: All right.

20 THE WITNESS: [Interpretation] He cannot do that.

21 JUDGE AGIUS: Okay. Are you all right with it? Okay? All

22 right. Then we can proceed. Thank you. Thank you, Ms.
Nikolic.

23 MR. ZIVANOVIC: [Interpretation]

24 Q. I wanted to ask you this: Are there any specificities in
terms

25 of the application of the rules in times of war or during the state of an

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1 imminent threat of war?

2 A. I'll try to be as brief as possible. There are specific

3 circumstances conditioned by the nature of the threat and the behaviour

4 of the actors of the threat. That is to say that enemy activities

5 increase during the times of an imminent threat of war, and their actors

6 behave far more aggressively, speeding up the processes as opposed to a

7 normal situation. In times of war, it is sped up even more. This

8 creates a situation that the position of the security organ is then

9 focused on the most dangerous of threats in order to prevent them or stop

10 them. And then security threat of a lower degree are treated next.

11 Therefore, priority must exist. In peacetime one can have more space for

12 complex tasks. This, however, does not have to do with the complexity

13 but rather with the consequences that may arise from such a threat. The

14 focus is put on the prevention of consequences for the given unit,

15 command, or facility that is being protected. That is the briefest

16 answer, but then you can go into different details and aspects. However,

17 that would be talking in hypotheses. What I have discussed so far is

18 very real, and it is an obligation on the part of security organs.

19 JUDGE AGIUS: We have to stop here for today because our time is

20 up.

21 Mr. Vuga, we'll continue tomorrow. Between now and when you

22 resume your testimony, you are not to discuss the subject matter of your

23 testimony with anyone, please.

24 Thank you.

25 --- Whereupon the hearing adjourned at 1.45 p.m.,

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1 to be reconvened on Tuesday, the 1st day of July,

2 2008, at 9.00 a.m.