

## Judge Hits Out at ‘Confusing, Extremely Problematic’ Acquittal of Croatian Generals

By [Karl Stagno-Navarra](#)

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*Maltese Judge Carmel Agius has distanced himself from the appeals judgement which acquitted two Croatian generals from their convictions on war crimes during the Croatia-Yugoslavia conflict in the 1990s.*

Mr. Justice Carmel Agius’s dissenting opinion was hard-hitting to the extent that he questioned whether his colleagues’ position remained “tenable” following the acquittal.



In a written dissenting opinion attached to the judgment which last Friday acquitted and released Croatian generals Ante Gotovina and Mladen Markac from 24 and 18 year jail terms respectively, presiding ICTY Judge and Appeals Court member Carmel Agius stressed that he “strongly disagreed” with almost all of the conclusions reached by the majority in the appeals judgement. He added that he was “distancing himself” from the decision to acquit, and together with his Italian colleague Fausto Pocar, expressed his concern at the way fellow judges handled the appeal.

The decision by a 3-2 majority in the UN court’s five-judge appeals chamber, is one of the most significant reversals in the court’s 18-year history and overturns a verdict that dealt a blow to Croatia’s self-image as a victim of atrocities, rather than a perpetrator, during the Balkan wars in the 1990s.

Judges Theodor Meron (US), Patrick Robinson (Jamaica) and Mehmet Guney (Turkey) decided to quash the findings of the trial judgment that there was a joint criminal enterprise whose aim was to permanently remove Serb civilians from Krajina during and after Operation Storm in the summer of 1995.

The ruling triggered scenes of rapture in court and among Croat war veterans watching the ruling on big screens in the Croatian capital, Zagreb, but also produced fury in Serbia where it was seen as further evidence of anti-Serb bias at the tribunal. Even liberal Serbs warned it created a sense of injustice and could stir nationalist sentiments.

While Italian Judge Fausto Pocar stressed that he fundamentally disagreed with the judgement, “which contradicts any sense of justice,” Mr. Justice Agius’s dissenting opinion was equally hard-hitting to the extent that he questioned whether his colleagues position remained “tenable” following the acquittal.

“The majority, which – unlike the Trial Chamber – did not have the benefit of hearing all of the evidence, simply discards the considerations and assessments of the Trial Chamber in a manner which I consider to be unorthodox and unacceptable,” Agius said, adding that Judges Meron, Robinson and Guney seem to have “lost sight” of the essential question in the appeal case, where the ‘majority’ seems to have also taken an “overly compartmentalised and narrow view.”

He stressed that he disagreed with almost all of the conclusions reached by the majority in the Appeal Judgement, and also registered his disagreement with the approach taken by his colleagues throughout, and declared that he was distancing himself from that approach.

“Apart from being completely unjustified, the majority’s approach also amounts to an unjustified departure from the jurisprudence of the Tribunal, which establishes that factual findings of a trial chamber should not be lightly disturbed,” Agius charged.

### **Ethnic cleansing**

Gotovina served as the commander of the Croatian army’s Split Military District, and Markac was Operation Commander of the Special Police in Croatia.

Gotovina was on the run until December, 2005, when he was arrested in Spain and transferred to the ICTY detention unit in Scheveningen. Markac and Cermak voluntarily surrendered in March 2004, after which they were released pending trial.

Nearly 2,000 Serbs went missing, and around 220,000 were expelled during Operation Storm that was carried out by the Croatian armed forces in the territory of the former Republic of Serb Krajina.

Operation Storm represents one of the most severe cases of ethnic cleansing that was conducted in the wars in the territories of the former Socialist Federal Republic of Yugoslavia (SFRY). Civilians accounted for 62 percent of the victims of this operation.

According to the data of the Veritas Documentation and Information Centre, out of 1,922 victims in the area of Krajina, 546 or 28 percent were women, two-thirds of them aged over 60.

Moreover, 19 people under 18 years of age were killed, nine of them under 14, while 1,772 children were left parentless.

Light is yet to be shed on the destiny of 975 people, 674 of them civilians, including 331 women, while Croatia still avoids exhumation of even known graves, with at least 413 remains.

Storm was the final operation in the 1991-95 war, during which nearly 7,000 Serbs went missing and 404,887 were expelled from Croatia, 141,887 of them from cities in which there were no armed conflicts.

### **Hero’s welcome**

Acquitted generals Ante Gotovina and Mladen Markac returned to Zagreb late Friday night to a hero’s welcome, with crowds chanting “Victory, Victory” and waving red and white chequered flags.

Croatians viewed the decision to release Gotovina and Markac as vindication that they were the victims in the Balkan wars in the 1990s, but neighbouring Serbia denounced the ruling as a scandalous injustice toward tens of thousands of its compatriots who were expelled from Croatia after an offensive led by the two.

The deep division over the generals could set back efforts to reconcile the two wartime enemies – the most bitter rivals in the Balkans.

A red carpet was laid out as a Croatian government plane carrying Gotovina and Markac from the Hague, touched down in Zagreb, and the two were welcomed by Prime Minister Zoran Milanovic and other top officials.

“This is our joint victory,” Gotovina told the cheering crowd at Zagreb’s main Bane Jelacic square. “We have won, the war is over and let’s turn to the future.”

The generals later attended a packed Mass held in Zagreb’s large gothic cathedral “to thank God” for their release.

Tens of thousands of people, including Croatian war veterans, celebrated in Zagreb’s main square. Some sobbed with joy while others ignited flares, sipping beer and drinking wine from bottles.

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