

**UNITED  
NATIONS**



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

Case No.: IT-04-74-A  
Date: 29 November 2017  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius, Presiding  
Judge Liu Daqun  
Judge Fausto Pocar  
Judge Theodor Meron  
Judge Bakone Justice Moloto

**Registrar:** Mr. John Hocking

**Judgement of:** 29 November 2017

**PROSECUTOR**

v.

**JADRANKO PRLIĆ  
BRUNO STOJIĆ  
SLOBODAN PRALJAK  
MILIVOJ PETKOVIĆ  
VALENTIN ČORIĆ  
BERISLAV PUŠIĆ**

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**JUDGEMENT  
Volume III**

**The Office of the Prosecutor:**

Mr. Douglas Stringer  
Ms. Laurel Baig  
Ms. Barbara Goy  
Ms. Katrina Gustafson

**Counsel for the Accused:**

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić  
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić  
Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak  
Ms. Vesna Alaburić and Mr. Davor Lazić for Mr. Milivoj Petković  
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Čorić  
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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## **K. Third Category of JCE**

### **1. Introduction**

2833. The Trial Chamber found that the following crimes were not part of the CCP: (1) murders and wilful killings committed during evictions, or closely linked thereto (Counts 2 and 3); (2) murders and wilful killings committed during the detention of Muslims (Counts 2 and 3); (3) rapes and inhuman treatment through sexual assaults (Counts 4 and 5) (collectively or individually referred to as “sexual abuse” or “sexual violence” by the Trial Chamber and in the present Judgement); (4) extensive appropriation of property and plunder (Counts 22 and 23) (collectively or individually referred to as “thefts” by the Trial Chamber and in the present Judgement); and (5) the destruction – before June 1993 – of institutions dedicated to religion or education (Count 21).<sup>9243</sup> In the sections of the Trial Judgement devoted to their responsibility pursuant to JCE III liability, the Trial Chamber expressly discussed the Appellants’ responsibility for a number of incidents involving these crimes and found Prlić, Stojić, Praljak, Petković, and Čorić responsible pursuant to JCE III liability for some of these discussed incidents<sup>9244</sup> while acquitting the Appellants for others.<sup>9245</sup> In relation to their JCE III liability, the Trial Chamber did not specifically discuss a number of other incidents that the Trial Chamber had otherwise established amounted to these crimes.<sup>9246</sup>

2834. Prlić, Stojić, Praljak, Petković, and Čorić have appealed their convictions pursuant to JCE III liability,<sup>9247</sup> while the Prosecution has appealed the Appellants’ acquittals for incidents discussed by the Trial Chamber, as well as a number of other incidents that the Trial Chamber did

<sup>9243</sup> Trial Judgement, Vol. 4, paras 70-73, 281, 433, 632, 822, 1008, 1213. See *supra*, fn. 2. The Trial Chamber held that certain murders and wilful killings formed part of the CCP, while others did not. More specifically, it found that murders and wilful killings committed during attacks on villages or in the context of the systematic use of detainees for labour on the front line or as human shields were part of the CCP, whereas murders and wilful killings committed during evictions (or closely linked thereto), or as a result of mistreatment or poor conditions of confinement during detention, were not. Compare Trial Judgement, Vol. 4, paras 59, 61, 66, 68, with Trial Judgement, Vol. 4, paras 70-71, 281, 433, 632, 822, 1008, 1213. With regard to the destruction of institutions dedicated to religion, the Appeals Chamber notes that, although the Trial Chamber expressly noted that the destruction of mosques in Sovići and Doljani in Jablanica Municipality in April 1993 was not part of the CCP, it did not explicitly state that the destruction of Baba Bešir Mosque in Mostar Municipality and the Skrobućani mosque in Prozor Municipality fell outside of the CCP. See Trial Judgement, Vol. 4, paras 70-73, 632. However, noting that the Trial Chamber repeatedly found that the crime of destruction or wilful damage to institutions dedicated to religion as a violation of the laws or customs of war (Count 21) was not part of the CCP before June 1993, the Appeals Chamber understands the Trial Chamber to have considered the destruction of Baba Bešir Mosque and the Skrobućani mosque, which were destroyed in May and “May or June” 1993, respectively, to be outside the scope of the CCP. See Trial Judgement, Vol. 4, paras 342, 433, 1213. See also Trial Judgement, Vol. 4, para. 59; *supra*, paras 799, 814, 2448-2449.

<sup>9244</sup> Trial Judgement, Vol. 4, paras 282-284, 288 (Prlić), 437, 439, 445-447, 450 (Stojić), 635, 638, 644 (Praljak), 830, 834, 837, 840, 845, 848, 852-853 (Petković), 1009, 1011, 1014, 1020, 1021 (Čorić). Pušić was not convicted for any crimes pursuant to JCE III liability. See Trial Judgement, Vol. 4, paras 1214-1216.

<sup>9245</sup> Trial Judgement, Vol. 4, paras 286-287 (Prlić), 440-441, 443, 448-449 (Stojić), 643 (Praljak), 824-825, 841, 849 (Petković), 1016, 1019 (Čorić), 1214-1216 (Pušić).

<sup>9246</sup> See *infra*, fn. 9851.

not specifically discuss in relation to JCE III liability.<sup>9248</sup> The Appeals Chamber will address the appeals of Prlić, Stojić, Praljak, Petković, and Čorić first before turning to the appeal of the Prosecution.<sup>9249</sup>

2835. Before embarking on this analysis, the Appeals Chamber recalls that, as a result of the Duša Reversal,<sup>9250</sup> it has set aside the Trial Chamber's finding that murders and wilful killings committed during attacks and linked to forced labour (Counts 2 and 3) were part of the CCP in the period from January until June 1993,<sup>9251</sup> while it has found that there is no impact on the Trial Chamber's conclusion that such murders and wilful killings were part of the CCP as of June 1993.<sup>9252</sup> The Appeals Chamber further notes that the Trial Chamber's conclusions that other crimes, such as persecution (Count 1), deportation and forcible transfer (Counts 6-9), extensive or wanton destruction (Counts 19 and 20), unlawful imprisonment or confinement (Counts 10 and 11), inhumane conditions of confinement (Counts 12-14), mistreatment in detention and during evictions (Counts 15-17), and unlawful labour (Count 18), formed part of the CCP throughout the entire JCE period from January 1993 remain unaffected.<sup>9253</sup> Mindful of all these findings, in the relevant sections below, the Appeals Chamber will also assess the impact of the exclusion of murder and wilful killing from the CCP before June 1993 on the Trial Chamber's findings concerning the Appellants' JCE III liability.

## 2. Applicable Law on the Third Category of JCE

2836. The Appeals Chamber recalls that, under JCE III, an accused can be held responsible for a crime outside the common criminal purpose if, under the circumstances of the case: (1) it was

<sup>9247</sup> Prlić's Appeal Brief, paras 630-641; Stojić's Appeal Brief, paras 370-385; Praljak's Appeal Brief, paras 346-357, 523-534; Petković's Appeal Brief, paras 365-409; Čorić's Appeal Brief, paras 186-210.

<sup>9248</sup> Prosecution's Appeal Brief, paras 21-277. With the exception of thefts in Uzričje in Gornji Vakuf Municipality, the factual and legal findings underpinning the incidents at issue here (*i.e.* the incidents subject to the JCE III-related appeals of the Appellants and the Prosecution) are not challenged by the Parties. See *supra*, paras 383-579. The Appeals Chamber has dismissed Petković's challenge to the factual findings underpinning incidents of theft in Uzričje in Gornji Vakuf. See *supra*, paras 498-501.

<sup>9249</sup> In the sections below dealing with the Parties' factual challenges to the Trial Chamber's conclusions on the respective Appellants' JCE III responsibility, the Appeals Chamber will consider and rely on various underlying findings made by the Trial Chamber. See *infra*, paras 2841-2848, 2856-2861, 2865-2874, 2877-2879, 2887, 2891-2897, 2912-2915, 2921-2930, 2935-2939, 2945-2950, 2954-2959, 2964-2966, 2980-2982, 2987-2988, 2991-2992, 2997-2999, 3046-3054, 3067-3076. Unless otherwise noted, these underlying findings are undisturbed on appeal.

<sup>9250</sup> Namely, the Appeals Chamber's decision to overturn the Trial Chamber's finding that the killing of seven civilians during the shelling in Duša, Gornji Vakuf Municipality, in January 1993 constituted the crime of murder and wilful killing. See *supra*, paras 441-443, 866.

<sup>9251</sup> See *supra*, paras 875, 882, 886.

<sup>9252</sup> See *supra*, para. 886. As explained above, the Trial Chamber found that the other categories of murder and wilful killing fell outside of the CCP throughout the entire JCE period. See *supra*, para. 2833 & fn. 9243.

<sup>9253</sup> Trial Judgement, Vol. 4, paras 66-68. See *supra*, paras 883, 885. With regard to the crime of destruction or wilful damage to institutions dedicated to religion or education (Count 21), unlawful attack on civilians (Count 24), and unlawful infliction of terror on civilians (Count 25), the Trial Chamber found that they were not part of the CCP before June 1993 and fell within the scope of the CCP only from June 1993 onwards. See Trial Judgement, Vol. 4, paras 59, 342, 433, 1213. See *supra*, paras 799, 814. See also 2833 & fn. 9243.

foreseeable to the accused that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common criminal purpose; and (2) the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.<sup>9254</sup> The Appeals Chamber further recalls that the JCE III *mens rea* standard requires that the possibility a crime could be committed be sufficiently substantial as to be foreseeable to the accused.<sup>9255</sup> This question must be assessed in relation to the knowledge of a particular accused, as what is natural and foreseeable to one person might not be natural and foreseeable to another, depending on the information available to them.<sup>9256</sup> The Appeals Chamber also recalls that it is not necessary for the purpose of JCE III liability that an accused be aware of the past occurrence of a crime in order for the same crime to be foreseeable to him.<sup>9257</sup> Rather, knowledge of factors such as the nature of the conflict, the means by which a JCE is to be achieved, and how the JCE is implemented on the ground may make the possibility that such a crime might occur sufficiently substantial as to be foreseeable to members of the JCE.<sup>9258</sup> While situations of widespread violence against the civilian population are conducive to the commission of a wide range of criminal acts, for JCE III liability to arise, it nevertheless must be established that the possibility of a crime being committed was sufficiently substantial as to be foreseeable to the relevant accused.<sup>9259</sup> Lastly, the Appeals Chamber recalls that an inference that an accused “willingly took the risk” may be drawn from the fact that the accused was aware that the crime was a possible consequence of the JCE but nevertheless decided to join or continued to participate in that enterprise.<sup>9260</sup>

<sup>9254</sup> *Stanišić and Župljanin* Appeal Judgement, paras 595, 614; *Šainović et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557. See *Popović et al.* Appeal Judgement, para. 1431; *Dorđević* Appeal Judgement, para. 906; *Brđanin* Appeal Judgement, paras 365, 411. See also *Tadić* Appeal Judgement, para. 228. The Appeals Chamber also recalls that, under the third category of JCE, an accused may incur criminal responsibility for crimes committed by non-members of the JCE “provided that it had been shown that the crimes could be imputed to at least one member of the JCE and that this member, when using a principal perpetrator, acted in accordance with the common plan”. *Stanišić and Župljanin* Appeal Judgement, para. 994; *Popović et al.* Appeal Judgement, para. 1679; *Dorđević* Appeal Judgement, para. 911; *Brđanin* Appeal Judgement, paras 413, 430.

<sup>9255</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1055; *Popović et al.* Appeal Judgement, para. 1432; *Šainović et al.* Appeal Judgement, paras 1081, 1538, 1557; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.4, Decision on Prosecution’s Motion Appealing Trial Chamber’s Decision on JCE III Foreseeability, 25 June 2009 (“*Karadžić* JCE III Decision”), para. 18.

<sup>9256</sup> *Stanišić and Župljanin* Appeal Judgement, para. 621, quoting *Kvočka et al.* Appeal Judgement, para. 86. See *Stakić* Appeal Judgement para. 65, referring to *Tadić* Appeal Judgement, para. 220.

<sup>9257</sup> *Stanišić and Župljanin* Appeal Judgement, para. 627; *Šainović et al.* Appeal Judgement, para. 1081.

<sup>9258</sup> *Stanišić and Župljanin* Appeal Judgement, para. 627. See *Šainović et al.* Appeal Judgement, para. 1089.

<sup>9259</sup> See *Šainović et al.* Appeal Judgement, para. 1575, referring to *Karadžić* JCE III Decision, para. 18.

<sup>9260</sup> *Stanišić and Župljanin* Appeal Judgement, paras 688, 705. See *Brđanin* Appeal Judgement, para. 411; *Vasiljević* Appeal Judgement, para. 101. See also *Tolimir* Appeal Judgement, para. 514; *Dorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557.



### 3. Defence Appellants' challenges to JCE III convictions

#### (a) Prlić's appeal (Ground 17)

2837. The Trial Chamber found Prlić responsible, pursuant to JCE III, for the crimes of murder (Count 2) and rape (Count 4) as crimes against humanity, wilful killing (Count 3), inhuman treatment (sexual assaults) (Count 5), and extensive appropriation of property (Count 22) as grave breaches of the Geneva Conventions, and destruction or wilful damage done to institutions dedicated to religion or education (Count 21) and plunder (Count 23) as violations of the law or customs of war.<sup>9261</sup>

2838. The Trial Chamber found that thefts, sexual abuse, as well as murders committed during the eviction operations and detentions, and the destruction – before June 1993 – of institutions dedicated to religion, were the natural and foreseeable consequence of the implementation of the CCP.<sup>9262</sup> With regard to the crimes committed in the municipalities of Gornji Vakuf and Jablanica, the Trial Chamber found that Prlić “must have foreseen” the “possible” commission (“*ne pouvait que prévoir la possible réalisation*”) of: (1) thefts in Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality after the attack of 18 January 1993;<sup>9263</sup> and (2) murders linked to detentions, thefts, and the destruction of mosques in Sovići and Doljani in Jablanica Municipality in April 1993.<sup>9264</sup> In arriving at these conclusions, the Trial Chamber considered Prlić's participation in the attack on Gornji Vakuf, his awareness of and/or contribution to the climate of violence in Gornji Vakuf and Jablanica, and his failure to prevent the commission of the crimes or to punish the perpetrators.<sup>9265</sup> Similarly, the Trial Chamber found that Prlić “must have foreseen” the “possible” commission (“*ne pouvait que prévoir la possible réalisation*”) of the murders, rapes, sexual abuse, and thefts during the eviction campaigns in Mostar Municipality<sup>9266</sup> and that these crimes were foreseeable<sup>9267</sup> from

<sup>9261</sup> Trial Judgement, Vol. 4, para. 288. See Trial Judgement, Vol. 4, paras 280-287.

<sup>9262</sup> Trial Judgement, Vol. 4, paras 72-73. See Trial Judgement, Vol. 4, paras 70, 281. See also Trial Judgement, Vol. 4, paras 59, 342, 433, 822, 1213; *supra*, para. 2833 & fn. 9243.

<sup>9263</sup> Trial Judgement, Vol. 4, para. 282. See Trial Judgement, Vol. 4, paras 129, 131, 135.

<sup>9264</sup> Trial Judgement, Vol. 4, para. 283. See Trial Judgement, Vol. 4, paras 144, 148. The Appeals Chamber notes that the Trial Chamber reached these conclusions using the terminology that reflects the application of the correct standard of foreseeability, while it stated, at the beginning of Prlić's JCE III section, that it would analyse whether Prlić knew or could reasonably foresee that the relevant crimes not forming part of the CCP *might* be committed (“*étaient susceptibles d'être commis*”) by the HVO members as the *probable* consequence (“*étant la conséquence probable*”) of the implementation of the common goal and “knowingly” took that risk. Trial Judgement, Vol. 4, para. 281 (in the English version of paragraph 281, Volume 4, the expression “*étaient susceptibles d'être commis*” was incorrectly translated as “were likely to be committed”). See *supra*, para. 2836; *infra*, para. 3022. Cf. *infra*, paras 3029-3030. With regard to the term “knowingly”, see *infra*, fn. 9316.

<sup>9265</sup> Trial Judgement, Vol. 4, paras 282-283.

<sup>9266</sup> Trial Judgement, Vol. 4, para. 284.

<sup>9267</sup> The French original corresponding to this term in paragraph 284 of Volume 4 of the Trial Judgement reads “*prévisible*”. This phrase was incorrectly translated as “predictable” in the English version of the Trial Judgement.

at least June 1993.<sup>9268</sup> It found that Prlić willingly took the risk and accepted the commission of the above crimes.<sup>9269</sup>

(i) Prlić's challenges

2839. Prlić argues that the Trial Chamber erred in concluding that he could have foreseen that crimes not intended by the CCP would occur and that he willingly accepted the risk.<sup>9270</sup> In addition, Prlić argues that the Trial Chamber erroneously found that he: (1) significantly contributed to the JCE and that the clashes in Gornji Vakuf were JCE-related;<sup>9271</sup> (2) participated in the Gornji Vakuf attack;<sup>9272</sup> (3) drafted the 4 April 1993 Ultimatum;<sup>9273</sup> (4) did nothing to prevent crimes in Gornji Vakuf and Mostar;<sup>9274</sup> and (5) was informed of the climate of violence in Gornji Vakuf and knowingly contributed to such a climate in Gornji Vakuf, Jablanica, and Mostar.<sup>9275</sup> Prlić asserts that these errors should result in the Appeals Chamber quashing and reversing his JCE III convictions for Counts 2, 3, 21, 22, and 23.<sup>9276</sup>

2840. The Prosecution responds that Prlić shows no error in the Trial Chamber's findings and that his unsupported assertions are coupled with "unexplained cross-references to other grounds".<sup>9277</sup>

2841. The Appeals Chamber finds that Prlić has failed to articulate any error with respect to the Trial Chamber's findings that he must have foreseen the possible commission of the relevant crimes in the municipalities of Gornji Vakuf, Jablanica, and Mostar and willingly took that risk.<sup>9278</sup> Regarding his remaining arguments, the Appeals Chamber notes that Prlić merely repeats general arguments made in other sections of his appeal brief and that in support he only provides cross-references to those other sections. The Appeals Chamber has considered and dismissed these arguments elsewhere.<sup>9279</sup>

(ii) Impact of the Duša Reversal

2842. The Appeals Chamber recalls that it has overturned the Trial Chamber's finding that the killing of seven civilians during the shelling in Duša, Gornji Vakuf Municipality, in January 1993

<sup>9268</sup> Trial Judgement, Vol. 4, para. 284. See Trial Judgement, Vol. 4, para. 170.

<sup>9269</sup> Trial Judgement, Vol. 4, paras 282-284.

<sup>9270</sup> Prlić's Appeal Brief, paras 631, 635, 638, 640. See also Prlić's Appeal Brief, paras 630, 641, 650; Appeal Hearing, AT. 791-795, 798-799 (28 Mar 2017).

<sup>9271</sup> Prlić's Appeal Brief, paras 632, 634, referring to Prlić's Appeal Brief, Sub-grounds 10.2-10.4, 16.1.

<sup>9272</sup> Prlić's Appeal Brief, paras 633-634, referring to Prlić's Appeal Brief, Sub-grounds 16.1, 16.12-16.15.

<sup>9273</sup> Prlić's Appeal Brief, para. 636, referring to Prlić's Appeal Brief, Sub-grounds 16.1-16.2, 16.12-16.15.

<sup>9274</sup> Prlić's Appeal Brief, paras 636, 638-639, referring to Prlić's Appeal Brief, Sub-grounds 16.12-16.15.

<sup>9275</sup> Prlić's Appeal Brief, paras 631, 635-636, 638.

<sup>9276</sup> Prlić's Appeal Brief, para. 641.

<sup>9277</sup> Prosecution's Response Brief (Prlić), para. 399. See also Appeal Hearing, AT. 223 (20 Mar 2017).

<sup>9278</sup> See Trial Judgement, Vol. 4, paras 282-284.

<sup>9279</sup> See *supra*, paras 829-831, 845-849, 888-890, 898-900, 1146-1208, 1377-1390, 1400.

constituted the crime of murder and wilful killing.<sup>9280</sup> Therefore, the Appeals Chamber now turns to examine the impact of this finding – the Duša Reversal – on the Trial Chamber’s conclusions concerning Prlić’s JCE III liability.<sup>9281</sup>

2843. In relation to Prlić’s JCE III liability in Gornji Vakuf Municipality, the Trial Chamber found that he must have foreseen the possible commission of thefts in Hrasnica, Uzričje, and Ždrimci in this municipality after the attack of 18 January 1993 and willingly took that risk.<sup>9282</sup> In arriving at this conclusion, the Trial Chamber considered: (1) Prlić’s participation in the attack on Gornji Vakuf, including by signing the 15 January 1993 Ultimatum; (2) his awareness of the climate of violence in which the HVO operations were carried out in Gornji Vakuf as of 19 January 1993; and (3) his failure to prevent the commission of the crimes or to punish the perpetrators.<sup>9283</sup> The Appeals Chamber notes that the Trial Chamber’s finding on Prlić’s awareness of the climate of violence in Gornji Vakuf was based, *inter alia*, on its finding that he knew of the course of the operations and the crimes committed there, including murder.<sup>9284</sup> The Trial Chamber’s finding on Prlić’s knowledge of murder there was, in turn, based solely on his awareness of the reference to the killing of seven Muslim “civilians” during the shelling in the village of Duša in Željko Šiljeg’s 29 January 1993 report.<sup>9285</sup> However, as recalled above, the Appeals Chamber has overturned the Trial Chamber’s finding that this killing in Duša constituted the crime of murder and wilful killing.<sup>9286</sup> As a result, the Appeals Chamber also sets aside the Trial Chamber’s finding that Prlić was aware of murder committed in Gornji Vakuf. However, the Appeals Chamber considers that

<sup>9280</sup> See *supra*, paras 441-443, 866.

<sup>9281</sup> In so doing, the Appeals Chamber takes into account the Parties’ submissions in response to its specific question concerning the impact of the Duša Reversal on the *mens rea* of Prlić for murder under JCE III liability at the Appeal Hearing. See Order for the Preparation of the Appeal Hearing, p. 6. In particular, the Prosecution argued that the Trial Chamber’s conclusion that Prlić was responsible under JCE III for murder committed during an eviction operation in Mostar Municipality in July 1993 was based solely on his knowledge of and involvement in crimes in Mostar, and would therefore be unaffected by the Duša Reversal. Appeal Hearing, AT. 223 (20 Mar 2017). The Prosecution further submitted that the Trial Chamber’s conclusion that Prlić was responsible under JCE III for murders linked to detentions in Jablanica Municipality in April 1993 would also be unaffected, because, irrespective of the killings in Duša, Prlić was clearly informed of the climate of violence in Gornji Vakuf through three reports of Željko Šiljeg, including his report of 29 January 1993 (Exhibit P01351), which reported not only the killings in Duša but also torching of Muslim houses in the villages of Uzričje, Duša, and Trnovača in Gornji Vakuf Municipality. Appeal Hearing, AT. 223-225 (20 Mar 2017). The Prosecution added that this report also mentioned the execution of two civilians in Pajić Polje and the mistreatment of prisoners in Trnovača, both in Gornji Vakuf Municipality, and noted that the ABiH side asked for investigations into those incidents. Appeal Hearing, AT. 224 (20 Mar 2017). Further, the Prosecution averred that Prlić’s ability to foresee JCE III crimes should not depend on his knowledge of specific crimes in specific locations and that it rather arose from his central role in planning and implementing a campaign of violence against the Muslim population in the HZ(R) H-B. Appeal Hearing, AT. 225-226 (20 Mar 2017). On the other hand, Prlić asserted that there was no evidence showing that Šiljeg’s reports reached him or the HVO HZ H-B. Other than this contention, he made no specific submissions as to whether and how the Duša Reversal would affect the Trial Chamber’s conclusions on his JCE III liability. Appeal Hearing, AT. 174-175, 240-241 (20 Mar 2017).

<sup>9282</sup> Trial Judgement, Vol. 4, para. 282.

<sup>9283</sup> Trial Judgement, Vol. 4, para. 282. See Trial Judgement, Vol. 4, paras 125-134.

<sup>9284</sup> Trial Judgement, Vol. 4, para. 134. See also Trial Judgement, Vol. 4, para. 132.

<sup>9285</sup> Trial Judgement, Vol. 4, paras 130-132, referring to Ex. P01351.

<sup>9286</sup> See *supra*, paras 441-443.



the remainder of the Trial Chamber's findings<sup>9287</sup> are sufficient for a reasonable trier of fact to conclude that Prlić was made aware of other crimes – such as the destruction of Muslim houses, the forcible removal of inhabitants, and thefts – committed in Gornji Vakuf Municipality in January 1993<sup>9288</sup> and was also informed, as of 19 January 1993, of the climate of violence in which the HVO operations were carried out in this municipality.<sup>9289</sup> Consequently, the Trial Chamber's conclusion that Prlić was responsible pursuant to JCE III liability for the thefts in Gornji Vakuf Municipality, which was primarily based on his awareness of the commission of crimes other than murder and the climate of violence in this municipality, remains unaffected.<sup>9290</sup>

2844. With regard to Prlić's JCE III liability in Jablanica Municipality, the Trial Chamber found that he must have foreseen the possible commission of murders linked to detentions, thefts, and the destruction of mosques in Sovići and Doljani in this municipality in April 1993 and willingly took that risk.<sup>9291</sup> In reaching these conclusions, the Trial Chamber considered that Prlić "continued to contribute to the climate of violence in April 1993" by: (1) drafting the 4 April 1993 Ultimatum, formulated in the same terms as the 15 January 1993 Ultimatum; (2) being informed of the climate of violence against the Muslim population in Gornji Vakuf in January 1993; and (3) failing to prevent the commission of the crimes or to punish the perpetrators.<sup>9292</sup> The Trial Chamber more concretely explained the first two points of this consideration in an earlier part of the Trial Judgement where it found that the HVO operations in the municipalities of Prozor and

<sup>9287</sup> Trial Judgement, Vol. 4, paras 125, 127, 130-132, 282. In particular, the Trial Chamber found that Prlić: (1) attended a 19 January 1993 meeting in which representatives of international organisations drew attention to the "harassment of the civilian population" in Gornji Vakuf Municipality by the HVO Military Police and "special forces"; (2) was informed of the contents of various reports by Željko Šiljeg as to the situation in the municipality in January 1993, including: (a) his report of 19 January 1993, which stated that buildings in Gornji Vakuf town and in the villages were "on fire"; (b) his report of 23 January 1993, which specified that most buildings in Donja Hrasnica had been burned down and that there was no "civilian population" left in Gornja Hrasnica and Donja Hrasnica; and (c) his report of 29 January 1993, which detailed thefts and torching of Muslim houses in the villages of Uzričje, Duša, and Trnovača, in addition to the killing of seven Muslim "civilians" during the shelling on the village of Duša. Trial Judgement, Vol. 4, paras 127, 130-132, referring to Exs. P01206, p. 1, P01357, p. 6, P01351. The Appeals Chamber notes that in paragraphs 127 and 332, Volume 4 of the Trial Judgement, the Trial Chamber describes Exhibit P01357, one of Šiljeg's three reports in question here, as dated 23 January 1993. However, in paragraph 412, Volume 2 and paragraph 707, Volume 4 of the Trial Judgement, the Trial Chamber describes it as dated 30 January 1993. Based on the content of this report, it appears to be dated 30 January 1993. See Ex. P01357, pp. 1, 6. However, this does not affect the Appeals Chamber's analysis here. The Appeals Chamber further recalls that Prlić's challenges to the Trial Chamber's finding on his awareness of the contents of Šiljeg's reports are dismissed elsewhere. See *supra*, para. 1172; *infra*, fn. 10012.

<sup>9288</sup> See Trial Judgement, Vol. 4, para. 134.

<sup>9289</sup> See Trial Judgement, Vol. 4, para. 282.

<sup>9290</sup> Further, the Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusion concerning Prlić's JCE III liability for the thefts committed in Gornji Vakuf Municipality in the aftermath of the attack of 18 January 1993, since the Trial Chamber's findings that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, and mistreatment during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, have been undisturbed, and Prlić was found to have participated in this JCE. See *supra*, paras 882-883, 885-886, 2835; Trial Judgement, Vol. 4, paras 66-68. See also *supra*, fns 3681, 3717, 4322.

<sup>9291</sup> Trial Judgement, Vol. 4, para. 283.

<sup>9292</sup> Trial Judgement, Vol. 4, para. 283. See Trial Judgement, Vol. 4, paras 143-147. See also Trial Judgement, Vol. 4, para. 282.

Jablanica “had to be the result of a preconceived HVO plan” to implement the 4 April 1993 Ultimatum by force<sup>9293</sup> and that:

by drafting and formulating the [4 April 1993 Ultimatum] in the same terms as [the 15 January 1993 Ultimatum] and fully aware that the HVO had committed crimes against the Muslim population in the Municipality of Gornji Vakuf following the [15 January 1993 Ultimatum], [Prlić] had reasons to know that a repetition of the same ultimatum would have the same outcome, that is, the commission of crimes by the HVO against the Muslim population.<sup>9294</sup>

Recalling that the Appeals Chamber has set aside the Trial Chamber’s finding that Prlić was aware of murder committed in Gornji Vakuf as a result of the Duša Reversal,<sup>9295</sup> the Appeals Chamber considers that the Trial Chamber’s finding that Prlić had reasons to know that a repetition of the same ultimatum would result in “the same outcome, that is, the commission of crimes by the HVO against the Muslim population” should also be vacated to the extent that the Trial Chamber meant to include murder in the phrase “the commission of crimes”.<sup>9296</sup> This finding is sustained insofar as the Trial Chamber found that Prlić had reasons to know that a repetition of the same ultimatum would result in the commission of crimes by the HVO against the Muslim population other than murder, such as the destruction of Muslim property and the arrests and removal of the Muslim population.<sup>9297</sup>

2845. Additionally, the Appeals Chamber recalls that, as a result of the Duša Reversal, it has also reversed the Trial Chamber’s finding that murder and wilful killing were part of the CCP before June 1993.<sup>9298</sup> The Appeals Chamber further notes that the Trial Chamber’s conclusions that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, unlawful imprisonment or confinement, inhumane conditions of detentions, and mistreatment in detention and during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, remain undisturbed.<sup>9299</sup>

2846. Consequently, the Appeals Chamber considers that, on the basis of the sustained findings of the Trial Chamber, including those on: (1) the CCP excluding murder and wilful killing before June 1993; (2) Prlić’s knowledge of the climate of violence and crimes other than murder – such as

<sup>9293</sup> Trial Judgement, Vol. 4, para. 146. In this paragraph, the Trial Chamber inadvertently referred to “the ultimatum of 15 April 1993”. However, in light of the Trial Chamber’s description of this ultimatum elsewhere, the Appeals Chamber understands that the Trial Chamber meant to refer to the 4 April 1993 Ultimatum. See Trial Judgement, Vol. 4, paras 138-140, 142.

<sup>9294</sup> Trial Judgement, Vol. 4, para. 146.

<sup>9295</sup> See *supra*, para. 2843.

<sup>9296</sup> The Appeals Chamber notes that, even if this is what the Trial Chamber meant, it subsequently only concluded that Prlić accepted the commission of crimes committed against Muslims in the municipalities of Prozor and Jablanica, “namely, the destruction of Muslim property and the arrests and removal of the Muslim population”, making no mention of murder (or wilful killing). Trial Judgement, Vol. 4, para. 147. See *supra*, para. 876 & fn. 2790.

<sup>9297</sup> See Trial Judgement, Vol. 4, paras 146-147. See *supra*, fn. 3792.

<sup>9298</sup> See *supra*, paras 882, 886, 2835.

<sup>9299</sup> See *supra*, paras 883, 885, 2835; Trial Judgement, Vol. 4, paras 66-68.

thefts and the destruction of Muslim houses – committed in Gornji Vakuf as of January 1993; (3) his issuance of the 4 April 1993 Ultimatum in the same terms as the 15 January 1993 Ultimatum despite this knowledge; and (4) his failure to take measures to suppress crimes, a reasonable trier of fact could have concluded that Prlić could foresee that the thefts and the destruction of mosques in Sovići and Doljani in Jablanica Municipality might occur in April 1993 and that he took that risk. However, the Appeals Chamber considers that these findings are insufficient for a reasonable trier of fact to conclude, as the only reasonable inference, that Prlić could foresee that the murders linked to detentions might be committed in Jablanica Municipality in April 1993.<sup>9300</sup> Accordingly, the Appeals Chamber finds that the Trial Chamber erred in finding Prlić responsible pursuant to JCE III liability for these murders.

2847. With regard to Prlić's JCE III liability in Mostar Municipality, the Trial Chamber found that Prlić must have foreseen the possible commission of murders, rapes, sexual abuse, and thefts during the campaigns to evict the Muslim inhabitants in this municipality, that these crimes were foreseeable from at least June 1993, and that he willingly took that risk.<sup>9301</sup> In reaching these conclusions, the Trial Chamber considered that Prlić: (1) knowingly contributed to the climate of violence in Mostar as he was informed on several occasions in the summer of 1993 that the evictions of Muslims in West Mostar were being carried out with much violence<sup>9302</sup> and approved the HVO HZ H-B practice of appropriating the apartments of the Muslims expelled from West Mostar by signing the Decree of 6 July 1993 on the use of abandoned apartments;<sup>9303</sup> and (2) failed

<sup>9300</sup> As the Prosecution pointed out, Željko Šiljeg's 29 January 1993 report (Exhibit P01351), which was one of the bases for the Trial Chamber's conclusion on Prlić's awareness of the climate of violence in Gornji Vakuf Municipality, referred to several more incidents in this municipality in addition to what is explicitly recounted in the Trial Judgement. Compare Appeal Hearing, AT. 224 (20 Mar 2017); *supra*, fn. 9281, with Trial Judgement, Vol. 4, paras 130, 132, 134; *supra*, para. 2843 & fn. 9287. In particular, Šiljeg described in this report that: (1) Branko Šapina in "P. Polje" had removed two civilians and executed them in front of local inhabitants; (2) "before the situation in Gornji Vakuf" Vlatko Raić had decapitated and abused an invalid but was nevertheless released and returned to Gornji Vakuf, where he "contributed to such a situation"; and (3) Ante Rezo had abused prisoners in Trnovača. Ex. P01351, p. 4. Šiljeg added that Muslims wanted all these incidents investigated. Ex. P01351, p. 4. However, given that the Trial Judgement is silent about these portions of the report, the Appeals Chamber understands that the Trial Chamber did not place significant weight on them. Without any further submissions by the Parties, the Appeals Chamber finds no reason to take a different approach from that of the Trial Chamber.

<sup>9301</sup> Trial Judgement, Vol. 4, para. 284.

<sup>9302</sup> Trial Judgement, Vol. 4, para. 284. See Trial Judgement, Vol. 4, paras 167-168, 171, in which the Trial Chamber described evidence showing that Prlić received this information in June and July 1993 and found that he was repeatedly alerted to the forcible evictions of Muslims from West Mostar, at least from June 1993. See also Trial Judgement, Vol. 2, paras 872 (where the Trial Chamber found that "[HVO soldiers, Military Police and members of an ATG] beat a considerable number of Muslims while evicting them from their homes [in West Mostar], stole from these homes, 'raped' Muslim women and moved all these people to East Mostar") (internal footnotes omitted), 873 (where the Trial Chamber stated that members of the Military Police were informed of these events and relayed the information to the Military Police Administration; and that the representatives of the international community informed Prlić, Stojić, Ćorić, and Pušić of these events on 16 June 1993), 876 (in which the Trial Chamber summarised its findings, referred to, *inter alia*, the Muslims being "subjected to intimidation, threats and blows" and HVO soldiers forcing Muslim women "to have sexual relations", confiscating the Muslims' goods, and forcing them "to cross the confrontation line towards East Mostar", and concluded that Prlić, Stojić, Ćorić, and Pušić were informed of "these events").

<sup>9303</sup> Trial Judgement, Vol. 4, para. 284. See Trial Judgement, Vol. 4, paras 169-170.

to prevent the commission of the crimes or to punish the perpetrators.<sup>9304</sup> Since the Trial Chamber primarily based its analysis on Prlić's awareness of and involvement in the events in Mostar Municipality, and recalling that the Duša Reversal has no impact on the Trial Chamber's conclusion that murder and wilful killing were part of the CCP as of June 1993,<sup>9305</sup> the Appeals Chamber considers that the Trial Chamber's conclusions that Prlić was responsible pursuant to JCE III liability for murders, rapes, sexual abuse, and thefts committed during the eviction campaigns in Mostar Municipality as of June 1993 remain unaffected by the Duša Reversal.

(iii) Conclusion

2848. For the foregoing reasons, the Appeals Chamber dismisses Prlić's ground of appeal 17. However, as a result of the Duša Reversal, it concludes that the Trial Chamber erred in finding him responsible pursuant to JCE III liability for the murders linked to detentions committed in Jablanica Municipality in April 1993,<sup>9306</sup> and reverses his convictions in this respect for murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3).<sup>9307</sup> The impact of this reversal on Prlić's sentence, if any, will be addressed below.<sup>9308</sup>

(b) Stojić's appeal (Grounds 39, 40, and 41)

2849. The Trial Chamber found Stojić responsible, pursuant to JCE III, for the crimes of rape (Count 4) as a crime against humanity, inhuman treatment (sexual assault) (Count 5) and extensive appropriation of property (Count 22) as grave breaches of the Geneva Conventions, and plunder (Count 23) as a violation of the law or customs of war.<sup>9309</sup>

2850. The Trial Chamber found that thefts and sexual abuse committed during the eviction operations were natural and foreseeable consequences of the implementation of the CCP.<sup>9310</sup> The Trial Chamber then proceeded to determine Stojić's JCE III responsibility for thefts committed in, *inter alia*: (1) the villages of Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality after the

<sup>9304</sup> Trial Judgement, Vol. 4, para. 284.

<sup>9305</sup> See *supra*, paras 886, 2835.

<sup>9306</sup> See *supra*, para. 2846.

<sup>9307</sup> As it has not been asked to do so by the Parties, the Appeals Chamber will not engage in the analysis of whether Prlić is responsible for this murder incident pursuant to an alternative mode of liability, including superior responsibility, particularly taking into account that all the Trial Chamber's findings on Prlić's responsibility for and knowledge of crimes were made in the context of JCE liability. See also *infra*, para. 3152.

<sup>9308</sup> See *infra*, para. 3360.

<sup>9309</sup> Trial Judgement, Vol. 4, para. 450. While the Trial Chamber additionally found Stojić responsible, pursuant to JCE III, for the crimes of murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3) in relation to killings in the Heliodrom, it did not discuss any killing incident in Stojić's JCE III section. Compare Trial Judgement, Vol. 4, para. 450, with Trial Judgement, Vol. 4, paras 433-439. In this regard, the Appeals Chamber recalls its finding that the Trial Chamber inadvertently found Stojić responsible for these killings under JCE III and that his conviction for the same is reversed. See *infra*, fn. 10171.

<sup>9310</sup> Trial Judgement, Vol. 4, para. 72. See also Trial Judgement, Vol. 4, para. 433.

operations conducted there in 1993; and (2) West Mostar in Mostar Municipality between May and June 1993 as well as between August 1993 and February 1994.<sup>9311</sup> It considered that as the HVO military operations in these locations “took place in a climate of extreme violence”, Stojić could have foreseen that HVO members “would” commit (“*commettent*”) thefts there.<sup>9312</sup> In this respect, the Trial Chamber also took account of the fact that Stojić: (1) was one of the officials who ordered the capture of Gornji Vakuf by force;<sup>9313</sup> (2) intended to have acts of violence committed during the arrest campaigns that followed the HVO operations in West Mostar on 9 May 1993;<sup>9314</sup> and (3) contributed to organising and carrying out the eviction campaigns in Mostar and knew that they were being conducted in a climate of extreme violence.<sup>9315</sup> It found that, as Stojić continued to exercise his functions, he “knowingly”<sup>9316</sup> took the risk that thefts “would” be committed (“*ces crimes soient commis*” / “*les membres du HVO commettent des vols*”).<sup>9317</sup>

2851. Moreover, the Trial Chamber found that HVO members, including the Vinko Škrobo ATG unit, sexually abused Muslim women during the eviction operations in West Mostar in June, July, and September 1993.<sup>9318</sup> It concluded that Stojić: (1) accepted the sexual abuse; (2) could reasonably have foreseen that the HVO members “would” commit (“*commettraient*”) sexual abuse during the Mostar operations; and (3) “knowingly” accepted the risk as he continued to exercise his functions.<sup>9319</sup>

2852. Stojić challenges these JCE III convictions by arguing both legal and factual errors, which he asserts should result in the Appeals Chamber quashing and reversing his JCE III convictions.<sup>9320</sup>

<sup>9311</sup> Trial Judgement, Vol. 4, paras 438-439, 444-447.

<sup>9312</sup> Trial Judgement, Vol. 4, paras 439, 445-446.

<sup>9313</sup> Trial Judgement, Vol. 4, para. 439.

<sup>9314</sup> Trial Judgement, Vol. 4, para. 445.

<sup>9315</sup> Trial Judgement, Vol. 4, para. 446.

<sup>9316</sup> Trial Judgement, Vol. 4, paras 439, 447. The Appeals Chamber notes that the Trial Chamber frequently used the terms “*sciemment*” and “*en connaissance de cause*” (both translated as “knowingly” in the English version of the Trial Judgement) to qualify the phrases “took the/that/this risk” or “accepted the/that/this risk” (Trial Judgement, Vol. 4, paras 281, 437, 439, 447, 635, 638, 822, 830, 834, 837, 840, 845, 848, 852, 1009, 1011). The Trial Chamber also used “*délibérément*” (translated as “willingly” or “deliberately” in the English version of the Trial Judgement) for this purpose (Trial Judgement, Vol. 4, paras 283-284, 1014, 1020). For the reasons set out elsewhere, the Appeals Chamber understands that, whether the Trial Chamber used the term “*sciemment*”, “*en connaissance de cause*”, or “*délibérément*”, in all cases, it applied the well-established standard of JCE III liability requiring that an accused “willingly” took the risk of the occurrence of a crime (see *infra*, para. 2896). Thus, in all instances, the Appeals Chamber will use the term “willingly” – which would reflect this understanding – to recount the Trial Chamber’s relevant findings, unless a specification of the term used is necessary in the context of relevant analysis.

<sup>9317</sup> Trial Judgement, Vol. 4, paras 439, 447. The phrase “*soient commis*” in the French original was incorrectly translated as “might be committed” in the English version of paragraph 439, Volume 4, of the Trial Judgement. With regard to the term “knowingly”, see *supra*, fn. 9316.

<sup>9318</sup> Trial Judgement, Vol. 4, para. 434.

<sup>9319</sup> Trial Judgement, Vol. 4, para. 437. See *supra*, fn. 9316.

<sup>9320</sup> Stojić’s Appeal Brief, heading before para. 370, paras 370-385.

The Prosecution responds that the Trial Chamber did not err in convicting Stojić for these crimes under JCE III and that his arguments should be dismissed.<sup>9321</sup>

2853. As a preliminary matter, the Appeals Chamber notes that, in assessing Stojić's JCE III responsibility for thefts in Gornji Vakuf and Mostar and sexual assault in Mostar, the Trial Chamber referred to a higher standard of foreseeability, *i.e.* whether it was foreseeable to him that these crimes *would* occur and that he willingly took that risk.<sup>9322</sup> The Appeals Chamber recalls, however, that the *mens rea* for JCE III is whether it was foreseeable to the accused that such a crime *might* be committed and that he willingly took that risk.<sup>9323</sup> The Appeals Chamber therefore bears this correct legal standard of foreseeability in mind when addressing Stojić's submissions. In assessing Stojić's challenges to factual findings which formed the basis for the Trial Chamber's conclusions that he could foresee that the crimes in question would occur and that he took that risk, the Appeals Chamber will apply the standard of reasonableness.<sup>9324</sup> When an error of fact or an error of law is identified, the Appeals Chamber will assess whether this error occasioned a miscarriage of justice or invalidates the Trial Chamber's ultimate conclusion on Stojić's JCE III liability, applying the correct legal standard of foreseeability, *i.e.* whether it was foreseeable to him that the crime in question *might* be committed and that he willingly took that risk.<sup>9325</sup>

(i) Alleged errors in finding that there was a climate of extreme violence in the municipalities of Gornji Vakuf and Mostar and that Stojić knew of this climate (Stojić's Ground 40)

a. Arguments of the Parties

2854. Stojić argues that the Trial Chamber erred in finding that there was a climate of extreme violence in Gornji Vakuf and Mostar and that he knew of such a climate.<sup>9326</sup> Stojić submits that the Trial Chamber: (1) failed to define a "climate of extreme violence"; (2) simply stated that one existed without referring to any evidence and no equivalent finding was made elsewhere; (3) made arbitrary findings that such a climate existed in each locality for which it considered JCE III liability; and (4) failed to explain how the existence of such a climate necessarily led to the

<sup>9321</sup> Prosecution's Response Brief (Stojić), paras 337-352. See Appeal Hearing, AT. 753-754 (28 Mar 2017).

<sup>9322</sup> Trial Judgement, Vol. 4, paras 437, 439, 445-447. See *supra*, paras 2850-2851. The Trial Chamber also stated, at the beginning of Stojić's JCE III section, that it would analyse whether Stojić could reasonably have foreseen that the crimes in question "would" be committed ("*allaient être commis*") and took that risk. Trial Judgement, Vol. 4, para. 433. With regard to the Trial Chamber's findings on Stojić's JCE III responsibility for other incidents appealed by the Prosecution under its sub-ground of appeal 1(A), the Appeals Chamber recalls that it has found that the Trial Chamber erred by applying a higher standard of foreseeability than required. See *infra*, paras 3029-3030. See also *supra*, fns 9316-9317.

<sup>9323</sup> *Šainović et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557; *supra*, para. 2836. See also *infra*, para. 3022.

<sup>9324</sup> See *Šainović et al.* Appeal Judgement, paras 1069, 1277, 1532.

<sup>9325</sup> Cf. *Šainović et al.* Appeal Judgement, paras 1069, 1078, 1277, 1532, 1536.

<sup>9326</sup> Stojić's Appeal Brief, paras 374 (referring to Trial Judgement, Vol. 4, paras 435, 437-439, 445-446), 378.

conclusion that theft or sexual offences were foreseeable to him.<sup>9327</sup> In addition, Stojić argues that the Trial Chamber erred in law because it made no finding that he knew that the Gornji Vakuf operations occurred in a climate of extreme violence and, without such a finding, there is no justification for his ability to foresee the crimes.<sup>9328</sup> Regarding Mostar, Stojić contends that the Trial Chamber inferred his knowledge of crimes from his participation in the planning and organisation of eviction operations and from a Main Staff report dated 14 June 1993, namely, the CED Report.<sup>9329</sup> He asserts that it does not follow from planning an operation at a policy level that he was necessarily aware of the manner in which the plan was implemented.<sup>9330</sup> As to the CED Report, Stojić submits that this single document does not show that all eviction operations were conducted in a climate of extreme violence or that he knew of such a climate.<sup>9331</sup>

2855. The Prosecution responds that the Trial Chamber reasonably explained why there was a climate of extreme violence in Gornji Vakuf and West Mostar.<sup>9332</sup> According to the Prosecution, it is irrelevant that the Trial Chamber did not explicitly find that Stojić knew that the Gornji Vakuf operations occurred in such a climate since he planned those operations and intended violent crimes.<sup>9333</sup> Moreover, it argues that Stojić planned the violent crimes accompanying the Mostar operations and he received information confirming those crimes during the operations, including the CED Report.<sup>9334</sup> It is clear, in the Prosecution's view, that the Trial Chamber was satisfied that Stojić knew that the operations would take place in a climate of extreme violence.<sup>9335</sup>

b. Analysis

2856. The Appeals Chamber first notes that Stojić only challenges the Trial Chamber's findings that "a climate of extreme violence" existed during various operations made in the section of the Trial Judgement addressing his JCE III liability.<sup>9336</sup> The Trial Chamber did not explain how it determined that such a climate existed in this section. However, the Appeals Chamber reiterates that

<sup>9327</sup> Stojić's Appeal Brief, para. 375. Stojić submits that the failure to sufficiently explain the finding has prejudiced his ability to understand and appeal the Trial Judgement. Stojić's Appeal Brief, para. 375.

<sup>9328</sup> Stojić's Appeal Brief, para. 376.

<sup>9329</sup> Stojić's Appeal Brief, para. 377, referring to Trial Judgement, Vol. 4, paras 435-436, 446, Ex. P02770. Stojić asserts that the Trial Chamber erred in finding that the CED Report was received and reviewed by him. Stojić's Appeal Brief, para. 377, referring to Stojić's Appeal Brief, para. 295 (Stojić's Ground 33.1).

<sup>9330</sup> Stojić's Appeal Brief, para. 377.

<sup>9331</sup> Stojić's Appeal Brief, para. 377. Stojić submits that, at best, the CED Report only establishes that specific crimes were documented on one occasion. Stojić's Appeal Brief, para. 377.

<sup>9332</sup> Prosecution's Response Brief (Stojić), para. 344. See Prosecution's Response Brief (Stojić), para. 342. The Prosecution asserts that it was unnecessary for the Trial Chamber to define a "climate of extreme violence" and that this expression was not arbitrary and refers to findings in Volumes 2 and 3 of the Trial Judgement. Prosecution's Response Brief (Stojić), para. 344 & fn. 1443.

<sup>9333</sup> Prosecution's Response Brief (Stojić), para. 346.

<sup>9334</sup> Prosecution's Response Brief (Stojić), para. 345.

<sup>9335</sup> Prosecution's Response Brief (Stojić), para. 346. See Prosecution's Response Brief (Stojić), para. 345.

<sup>9336</sup> See Trial Judgement, Vol. 4, paras 435, 439, 445-446. See Stojić's Appeal Brief, para. 374; *supra*, para. 2854.

the Trial Judgement should be read as a whole.<sup>9337</sup> In this respect, the Trial Chamber summarised the criminal incidents it considered under JCE III and referred to its factual narrative of these crimes committed in Gornji Vakuf<sup>9338</sup> and Mostar.<sup>9339</sup> Moreover, the Trial Chamber clearly explained that “in all the municipalities the evictions were accompanied in many instances by episodes of violence directed against Muslims”.<sup>9340</sup>

2857. Regarding the operations in Gornji Vakuf, the Trial Chamber described and analysed in detail the HVO attacks and the takeover of the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality on 18 January 1993.<sup>9341</sup> It concluded that thefts and destruction of property accompanied or occurred after the arrests, forcible removal, and detention of Muslims in these villages.<sup>9342</sup> In Mostar, the Trial Chamber assessed the evidence and found that: (1) in May 1993, the HVO used threats, intimidation, and physical violence to arrest and evict Muslims in West Mostar and also committed thefts;<sup>9343</sup> (2) in mid-June 1993, Muslims were subjected to thefts, intimidation, threats, blows, sexual abuse, forced to cross to confrontation lines, and that between 400 and 650 Muslims were forced to leave their homes in the course of a few days;<sup>9344</sup> (3) in July 1993, Muslims evicted from their homes were subjected to intimidation, threats, and at least one encounter of sexual abuse;<sup>9345</sup> (4) a report from an international organisation dated 30 July 1993 mentioned “considerable violence” in general terms;<sup>9346</sup> and (5) in September 1993, Muslims were beaten, sexually abused, expelled from their homes, and had their property stolen.<sup>9347</sup> In light of the Trial Chamber’s factual and legal findings regarding the events in Gornji Vakuf Municipality and Mostar Municipality at the relevant time, the Appeals Chamber finds that Stojić has failed to show that it was unreasonable for the Trial Chamber to characterise the events at those locations as occurring in a climate of extreme violence.

2858. Additionally, Stojić does not address the Trial Chamber’s finding that “in order to carry out the evictions, the armed members of the HVO engaged in acts of extreme violence”.<sup>9348</sup> Notably, the Trial Chamber also concluded that “in many cases”, the Appellants, as JCE members, knew that

<sup>9337</sup> *Stanišić and Župljanin* Appeal Judgement, para. 138; *Popović et al.* Appeal Judgement, para. 2006; *Šainović et al.* Appeal Judgement, para. 306.

<sup>9338</sup> Trial Judgement, Vol. 4, para. 438 & fn. 895. See Trial Judgement, Vol. 3, paras 1623-1627, 1657-1659.

<sup>9339</sup> Trial Judgement, Vol. 4, paras 434, 444 & fns 890-892, 900-901. See Trial Judgement, Vol. 3, paras 761-764, 775-776, 1632-1637, 1664-1666.

<sup>9340</sup> Trial Judgement, Vol. 3, para. 645. See Trial Judgement, Vol. 3, para. 646 (“these acts of violence were similar in every one of the municipalities concerned”).

<sup>9341</sup> Trial Judgement, Vol. 2, paras 356-388, 396-488.

<sup>9342</sup> Trial Judgement, Vol. 2, paras 415, 427, 432-436, 460.

<sup>9343</sup> Trial Judgement, Vol. 2, paras 822-823, 827.

<sup>9344</sup> Trial Judgement, Vol. 2, paras 864-866, 872, 875-876.

<sup>9345</sup> Trial Judgement, Vol. 2, paras 925-926, 928, 934-935.

<sup>9346</sup> Trial Judgement, Vol. 2, para. 928.

<sup>9347</sup> Trial Judgement, Vol. 2, paras 978-979, 981-983, 985-986.

<sup>9348</sup> Trial Judgement, Vol. 4, para. 72.



thefts, rapes, sexual assaults, and other crimes might be committed by the HVO “due to the atmosphere of violence to which they contributed, or for some, due to knowing the violent nature thereof, and took this risk knowingly”.<sup>9349</sup> In light of its detailed analysis of the events, it was unnecessary for the Trial Chamber to define a “climate of extreme violence”, and the Appeals Chamber finds that Stojić has failed to show that the findings that this climate existed in the relevant locations were arbitrary or unsupported by evidence.<sup>9350</sup> Similarly, the Appeals Chamber dismisses Stojić’s assertion that the Trial Chamber failed to explain how a climate of extreme violence led to the conclusion that thefts and sexual abuse were foreseeable to him. The process through which the Trial Chamber arrived at this conclusion is apparent from its findings and it was unnecessary for it to detail every step of its reasoning.<sup>9351</sup> Nonetheless, the Appeals Chamber will address this issue further in the sections below.<sup>9352</sup>

2859. Regarding his knowledge of the climate of extreme violence in which the Gornji Vakuf operations unfolded, the Trial Chamber did not make a finding on whether Stojić knew of this atmosphere in Gornji Vakuf in its JCE III analysis.<sup>9353</sup> However, as noted above, elsewhere the Trial Chamber concluded that “in many instances”, Stojić knew that JCE III crimes “might be committed [...] due to the atmosphere of violence to which [he] contributed”.<sup>9354</sup> In its JCE III analysis on thefts in Gornji Vakuf, the Trial Chamber recalled that: (1) Stojić facilitated the HVO military operations in Gornji Vakuf in January 1993 and was informed of crimes committed during these operations,<sup>9355</sup> and (2) Stojić was one of the HVO officials who ordered that Gornji Vakuf be captured by force, which led to the inference that he could have foreseen thefts.<sup>9356</sup> Thus, in the process of making this inference, the Trial Chamber considered Stojić’s contribution to the creation of the atmosphere of violence through his planning and facilitation of those operations, and not specifically his knowledge of this atmosphere.<sup>9357</sup> Therefore, the absence of an express finding that Stojić knew of the climate of extreme violence in Gornji Vakuf does not call into question the

<sup>9349</sup> Trial Judgement, Vol. 4, para. 72.

<sup>9350</sup> In this regard, the Appeals Chamber recalls the Duša Reversal, that is, its decision to overturn the Trial Chamber’s finding that the killing of seven civilians during the shelling in Duša, Gornji Vakuf Municipality, in January 1993 constituted the crime of murder and wilful killing. See *supra*, paras 441-443, 866. However, the Appeals Chamber finds the remainder of the findings recounted above sufficient for a reasonable trier of fact to conclude that a climate of extreme violence existed in Gornji Vakuf Municipality at the relevant time. See *supra*, para. 2857; Trial Judgement, Vol. 4, para. 439.

<sup>9351</sup> *Stanišić and Župljanin* Appeal Judgement, paras 378, 1063; *Popović et al.* Appeal Judgement, paras 972, 1906; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490. *Kvočka et al.* Appeal Judgement, para. 398. See also *Kvočka et al.* Appeal Judgement, para. 23.

<sup>9352</sup> See *infra*, paras 2868, 2871.

<sup>9353</sup> Trial Judgement, Vol. 4, paras 438-439.

<sup>9354</sup> Trial Judgement, Vol. 4, para. 72. See *supra*, para. 2858.

<sup>9355</sup> Trial Judgement, Vol. 4, para. 438. See also *infra*, para. 2866 & fn. 9389.

<sup>9356</sup> Trial Judgement, Vol. 4, para. 439.

<sup>9357</sup> Trial Judgement, Vol. 4, paras 72, 335, 337, 438-439.

Trial Chamber's conclusion that he could have foreseen that thefts "would" be committed during those operations.

2860. As far as it concerns the climate of extreme violence in Mostar, the Appeals Chamber notes that the Trial Chamber did not consider the CED Report in relation to the existence of this climate or Stojić's knowledge thereof.<sup>9358</sup> Instead, the Trial Chamber focused on its findings that Stojić: (1) participated in planning the Mostar operations in May 1993;<sup>9359</sup> and (2) contributed to organising and carrying out the eviction campaigns in Mostar and that he intended to have the acts of violence committed.<sup>9360</sup> On this basis, the Trial Chamber concluded that Stojić knew that the operations were being conducted in a climate of extreme violence.<sup>9361</sup> In this regard, Stojić's assertion that "planning an operation at a policy level" does not mean that he "was necessarily aware of the manner" of its implementation is unconvincing and undeveloped and ignores the Trial Chamber's relevant findings.<sup>9362</sup> Notably, the Appeals Chamber has considered and dismissed Stojić's challenges to the Trial Chamber's analysis of the evidence and determination that he "participated in planning the acts of violence which accompanied the operations" including the confiscations in Mostar on 9 May 1993,<sup>9363</sup> and the Trial Chamber's inference that he intended the acts of violence linked to the eviction campaigns in West Mostar.<sup>9364</sup> Stojić's arguments are dismissed.

2861. In light of the above, the Appeals Chamber dismisses Stojić's ground of appeal 40.

(ii) Alleged errors in finding that theft and sexual abuse were foreseeable to Stojić (Stojić's Ground 41)

a. Arguments of the Parties

2862. Stojić argues that the Trial Chamber erroneously found that theft and sexual abuse were foreseeable to him.<sup>9365</sup> He contends that the Trial Chamber disregarded factors such as his lack of knowledge on the background and past crimes of the perpetrators involved.<sup>9366</sup> As to thefts in Gornji Vakuf, Stojić argues that the Trial Chamber failed to identify any factor specific to that

<sup>9358</sup> See Trial Judgement, Vol. 4, paras 435, 445-446. The Appeals Chamber will consider the CED Report in the section below concerning whether sexual abuse in Mostar was foreseeable to Stojić. See *infra*, para. 2871.

<sup>9359</sup> Trial Judgement, Vol. 4, para. 435.

<sup>9360</sup> Trial Judgement, Vol. 4, paras 445-446. See Trial Judgement, Vol. 4, paras 349, 357-358.

<sup>9361</sup> Trial Judgement, Vol. 4, paras 435, 446.

<sup>9362</sup> Stojić's Appeal Brief, para. 377.

<sup>9363</sup> Trial Judgement, Vol. 4, para. 349. See *supra*, paras 1612-1615.

<sup>9364</sup> Trial Judgement, Vol. 4, para. 349. See *supra*, paras 1650-1652.

<sup>9365</sup> Stojić's Appeal Brief, paras 381-385. See Stojić's Appeal Brief, paras 379-380.

<sup>9366</sup> Stojić's Appeal Brief, paras 380-381, 384, referring to *Milutinović et al.* Trial Judgement, Vol. 3, paras 470-471, *Martić* Trial Judgement, para. 454.

location which would render thefts foreseeable to him.<sup>9367</sup> He submits that by merely ordering military operations, an individual cannot foresee that thefts will occur. Stojić adds that as the Gornji Vakuf operations were the first in the JCE, he could not have known about prior misconduct of the perpetrators involved as there was no prior conduct.<sup>9368</sup> Stojić further argues that the Trial Chamber offered no reasoning for its findings that thefts in Mostar and Gornji Vakuf were foreseeable to him because “there is no obvious nexus between violence and property offences such that extreme violence necessarily renders theft foreseeable”.<sup>9369</sup>

2863. Regarding sexual abuse in West Mostar, Stojić submits that the Trial Chamber failed to explain its finding that he could have foreseen its commission.<sup>9370</sup> He asserts that if this finding was based on the CED Report, it could only have established foreseeability of crimes after his receipt of the report.<sup>9371</sup> He reiterates that insofar as his foreseeability was based on the findings related to the climate of extreme violence, this was an error and that the Trial Chamber failed to explain the connection between knowledge of violence and the foreseeability of sexual offences.<sup>9372</sup>

2864. The Prosecution responds that the Trial Chamber properly found that Stojić was responsible for sexual violence in Mostar and thefts in Gornji Vakuf and Mostar.<sup>9373</sup> It argues that Stojić fails to demonstrate that the Trial Chamber disregarded relevant factors.<sup>9374</sup> Concerning thefts in Gornji Vakuf, the Prosecution argues that given Stojić’s intent to commit violent crimes, including murder, wilful killing, cruel treatment, and other property crimes such as destruction of houses, it was foreseeable to him that thefts might occur.<sup>9375</sup> In addition, it submits that as early as October 1992, Stojić knew that the HVO had committed thefts in Prozor.<sup>9376</sup> The Prosecution further argues that when the Mostar eviction operations began in May 1993 Stojić knew of the thefts and crimes against property in Gornji Vakuf.<sup>9377</sup> Regarding sexual violence in Mostar, the Prosecution submits that Stojić planned the eviction operations beginning in May 1993, and the accompanying acts of

<sup>9367</sup> Stojić’s Appeal Brief, para. 383.

<sup>9368</sup> Stojić’s Appeal Brief, para. 383.

<sup>9369</sup> Stojić’s Appeal Brief, para. 384. See also Appeal Hearing, AT. 287, 291 (21 Mar 2017).

<sup>9370</sup> Stojić’s Appeal Brief, para. 381.

<sup>9371</sup> Stojić’s Appeal Brief, para. 381.

<sup>9372</sup> Stojić’s Appeal Brief, para. 382. See also Appeal Hearing, AT. 287, 291 (21 Mar 2017). Stojić seemingly points out that he was not “exposed to first hand knowledge” of mistreatment. Stojić’s Appeal Brief, para. 380, referring to *Krstić* Trial Judgement, para. 616.

<sup>9373</sup> Prosecution’s Response Brief (Stojić), paras 342, 349-350.

<sup>9374</sup> Prosecution’s Response Brief (Stojić), para. 351. The Prosecution asserts that Stojić acknowledges that an accused’s knowledge of and contribution to a climate of violence are relevant to foreseeability. Prosecution’s Response Brief (Stojić), para. 347, referring to Stojić’s Appeal Brief, para. 380.

<sup>9375</sup> Prosecution’s Response Brief (Stojić), para. 349, referring to Trial Judgement, Vol. 4, paras 67-68, 331-333, 337, 428, 431-432.

<sup>9376</sup> Prosecution’s Response Brief (Stojić), para. 349, referring to Trial Judgement, Vol. 2, para. 59, Ex. P00648.

<sup>9377</sup> Prosecution’s Response Brief (Stojić), para. 350, referring to Trial Judgement, Vol. 4, paras 331-333, 336, 446.

violence,<sup>9378</sup> thus his knowledge of the climate of extreme violence made sexually violent crimes foreseeable to him.<sup>9379</sup>

b. Analysis

2865. Turning first to Stojić's argument that the Trial Chamber failed to consider his lack of knowledge on the background and the past crimes of the direct perpetrators, the Appeals Chamber recalls that it is not necessary for him to be aware of the past occurrence of a crime in order for the same conduct to be foreseeable to him,<sup>9380</sup> once the possibility that the crime could be committed was sufficiently substantial so as to be foreseeable to him.<sup>9381</sup> Thus, the awareness of similar prior misconduct or past crimes by the direct perpetrators is not a requirement, but, is one factor which can be taken into account when determining the foreseeability of a crime to an accused.<sup>9382</sup> Therefore, Stojić's contention that the Trial Chamber erred in not explicitly discussing this factor in its analysis on thefts in Gornji Vakuf and Mostar is dismissed. Moreover, Stojić's contention that no factor specific to Gornji Vakuf was identified to allow for the conclusion that thefts committed there were foreseeable to him is unconvincing. He fails to provide any support for this contention. Notably, for JCE III liability, the Appeals Chamber recalls that knowledge of factors – which are not specific to a particular location – such as the nature of the conflict, the means by which a JCE is to be achieved, and how the JCE is implemented on the ground may make the possibility that the crime in question might occur sufficiently substantial so as to be foreseeable to members of the JCE.<sup>9383</sup> Moreover, in this case, contrary to Stojić's assertion, the Trial Chamber identified certain factors specific to Gornji Vakuf, as described in more detail below.<sup>9384</sup> Stojić's argument is therefore dismissed.

2866. Concerning Stojić's submission that as the Gornji Vakuf operation was the first operation in the JCE, he had no awareness of prior thefts, the Appeals Chamber observes that his responsibility under JCE III for these thefts was not based on actual knowledge that similar crimes had been committed in the past; rather, it was based on whether the information available to him made it foreseeable that such crimes could be committed if he pursued the CCP.<sup>9385</sup> In this respect, the Appeals Chamber notes that the Trial Chamber determined that the military operations in Gornji

<sup>9378</sup> Prosecution's Response Brief (Stojić), para. 348.

<sup>9379</sup> Prosecution's Response Brief (Stojić), para. 348. The Prosecution further argues that Stojić was aware that Muslim women may be vulnerable to sexual violence because he planned operations in which the men and older boys were separated from the women and children. Prosecution's Response Brief (Stojić), para. 348.

<sup>9380</sup> See *supra*, para. 2836; *Stanišić and Župljanin* Appeal Judgement, para. 627.

<sup>9381</sup> See *supra*, para. 2836; *Šainović et al.* Appeal Judgement, para. 1081.

<sup>9382</sup> See *Šainović et al.* Appeal Judgement, para. 1090.

<sup>9383</sup> *Stanišić and Župljanin* Appeal Judgement, para. 627. See *Šainović et al.* Appeal Judgement, para. 1089. See also *Šainović et al.* Appeal Judgement, paras 1581-1582.

<sup>9384</sup> See *infra*, para. 2866.

Vakuf and the capture of Hrasnica, Uzričje, and Ždrimci took place in a climate of extreme violence, after which members of the HVO committed acts of theft.<sup>9386</sup> Specifically with regard to the foreseeability of these thefts to Stojić, the Trial Chamber considered that he: (1) facilitated the HVO military operations in Gornji Vakuf;<sup>9387</sup> (2) was one of the officials who ordered the capture of Gornji Vakuf by force;<sup>9388</sup> and (3) was informed of some of the crimes committed by the HVO during these operations – that is, the destruction of Muslim houses, the detention of Muslims who did not belong to any armed force, and the removal of inhabitants from the area.<sup>9389</sup> Elsewhere, the Trial Chamber concluded that Stojić planned the Gornji Vakuf military operations<sup>9390</sup> and closely followed all the HVO operations in the Gornji Vakuf area.<sup>9391</sup>

2867. Moreover, the Appeals Chamber notes that the Trial Chamber found that Stojić was aware of reports on events in the area sent by Željko Šiljeg, including a report dated 29 January 1993 stating that items were stolen in the villages of Uzričje, Duša, and Trnovača.<sup>9392</sup> In its factual narrative of the events and legal findings, the Trial Chamber considered that thefts in Hrasnica, Uzričje, and Ždrimci occurred after the attacks on the villages and, at times, in February 1993.<sup>9393</sup> Thus, Stojić's convictions for thefts in these villages extended to those committed in February 1993 after he became aware of thefts being committed by the HVO in the area. Additionally, the Trial Chamber found that Stojić was aware of two reports sent to him from Šiljeg, dated 19 and 23 January 1993, which stated that buildings in Gornji Vakuf town and in the villages were on fire or had been burned down.<sup>9394</sup> The Trial Chamber then concluded that Stojić was aware of the destruction of Muslim houses by the HVO in the area.<sup>9395</sup> This knowledge of property crimes

<sup>9385</sup> See *Šainović et al.* Appeal Judgement, para. 1545.

<sup>9386</sup> Trial Judgement, Vol. 4, paras 438-439.

<sup>9387</sup> Trial Judgement, Vol. 4, para. 438. See *supra*, paras 1576-1579, fn. 5025.

<sup>9388</sup> Trial Judgement, Vol. 4, para. 439. See *supra*, paras 1562-1569, fn. 5025.

<sup>9389</sup> Trial Judgement, Vol. 4, paras 336-337, 438. The Trial Chamber also found that Stojić was aware of murder committed in Gornji Vakuf in January 1993. Trial Judgement, Vol. 4, paras 336-337. This finding was based on his awareness of the killing of seven Muslim civilians during the shelling in Duša, Gornji Vakuf Municipality, in January 1993 (mentioned in Željko Šiljeg's 29 January 1993 report). Trial Judgement, Vol. 4, paras 333 (referring to Ex. P01351), 336. However, the Appeals Chamber recalls that it has overturned the Trial Chamber's finding that these killings in Duša constituted the crimes of murder and wilful killing. See *supra*, paras 441-443, 866. As a result, the Appeals Chamber also sets aside the Trial Chamber's finding that Stojić was aware of murder committed in Gornji Vakuf. See also *supra*, paras 1570-1575, fn. 5025.

<sup>9390</sup> Trial Judgement, Vol. 4, para. 337.

<sup>9391</sup> Trial Judgement, Vol. 4, para. 335. See *supra*, paras 1576-1579, fn. 5025.

<sup>9392</sup> Trial Judgement, Vol. 4, paras 333, 336, referring to, *inter alia*, Ex. P01351. See *supra*, paras 1570-1575, fn. 5025. The Appeals Chamber notes that the date on the report from Šiljeg is ineligible as it reads "2/1/January 1993" but that its contents concern the situation in Gornji Vakuf on 28 January 1993. Ex. P01351. See *supra*, fn. 3703.

<sup>9393</sup> Trial Judgement, Vol. 2, paras 412-415, 435, 456, 459-460, Vol. 3, paras 1623-1625, 1627, 1657, 1659.

<sup>9394</sup> Trial Judgement, Vol. 4, paras 331-332 (referring to Exs. P01206, P01357), 336. The Appeals Chamber notes that in paragraphs 127 and 332, Volume 4 of the Trial Judgement, the Trial Chamber describes Exhibit P01357, one of Šiljeg's two reports in question here, as dated 23 January 1993. However, in paragraph 412, Volume 2 and paragraph 707, Volume 4 of the Trial Judgement, the Trial Chamber describes it as dated 30 January 1993. Based on the content of this report, it appears to be dated 30 January 1993. See Ex. P01357, pp. 1, 6. However, this does not affect the Appeals Chamber's analysis here.

<sup>9395</sup> Trial Judgement, Vol. 4, para. 336.

committed during the Gornji Vakuf operations formed part of the basis on which the Trial Chamber concluded that the thefts in Hrasnica, Uzričje, and Ždrimci were foreseeable to Stojić.<sup>9396</sup> By merely pointing out that the Gornji Vakuf operations were the first of the JCE and that he had no awareness of prior thefts, Stojić has not shown any error in the Trial Chamber's consideration of the factors enumerated above in assessing his ability to foresee thefts in these localities.

2868. Further, the Trial Chamber placed some emphasis on the climate of extreme violence which existed during the Gornji Vakuf operations as a factor showing that thefts were foreseeable to Stojić on the basis that he contributed to this climate.<sup>9397</sup> Stojić argues that extreme violence does not necessarily render theft foreseeable, but ignores that the Trial Chamber considered this factor in combination with his knowledge and involvement in the relevant operations.<sup>9398</sup> In this regard, the Appeals Chamber observes that knowledge of factors such as how the JCE is implemented on the ground may make the possibility that thefts might occur sufficiently substantial as to be foreseeable to Stojić.<sup>9399</sup>

2869. In light of the above considerations, the Appeals Chamber also finds no merit in Stojić's assertion that "there is no obvious nexus" between violence and property offences in Gornji Vakuf and that ordering military operations does not equate to thefts being foreseeable. For the foregoing reasons, the Appeals Chamber concludes that Stojić has failed to demonstrate any error in the Trial Chamber's finding<sup>9400</sup> that it was foreseeable to him that the thefts would be committed in Gornji Vakuf.<sup>9401</sup> Since the Trial Chamber's finding – applying a higher degree of foreseeability –

<sup>9396</sup> Trial Judgement, Vol. 4, paras 438-439, read together with Trial Judgement, Vol. 4, paras 331-332, 336.

<sup>9397</sup> Trial Judgement, Vol. 4, para. 439.

<sup>9398</sup> Trial Judgement, Vol. 4, paras 438-439. See *supra*, paras 2850, 2858-2859, 2866-2867.

<sup>9399</sup> See *supra*, para. 2836; *Stanišić and Župljanin* Appeal Judgement, para. 627.

<sup>9400</sup> Trial Judgement, Vol. 4, para. 439. The French original corresponding to this phrase in paragraph 439 of Volume 4 of the Trial Judgement reads "*soient commis*". This phrase was incorrectly translated as "might be committed" in the English version of the Trial Judgement.

<sup>9401</sup> Consequently, the Appeals Chamber need not address the Prosecution's assertion that Stojić knew of the thefts committed during the military operations in Prozor in October 1992. See Prosecution's Response Brief (Stojić), para. 349, referring to Trial Judgement, Vol. 2, para. 59, Ex. P00648. The Appeals Chamber recalls its decision to set aside the Trial Chamber's finding that Stojić was aware of murder committed in Gornji Vakuf. See *supra*, fn. 9389. However, the Appeals Chamber considers that this does not affect the Trial Chamber's conclusion on Stojić's *mens rea* under JCE III liability for thefts committed in Gornji Vakuf Municipality, since it was primarily based on his awareness of the commission of crimes other than murder and his involvement in the HVO operations in that municipality which took place in a climate of extreme violence. See *supra*, paras 2850, 2866-2868; Trial Judgement, Vol. 4, paras 438-439. See also *supra*, fn. 9350. Further, the Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusion concerning Stojić's JCE III liability for the thefts committed in Gornji Vakuf Municipality from January 1993, since the Trial Chamber's findings that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, and mistreatment during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, have been undisturbed, and Stojić was found to have participated in this JCE. See *supra*, paras 882-883, 885-886, 2835; Trial Judgement, Vol. 4, paras 66-68.

is not disturbed, the Appeals Chamber observes that a lower degree of foreseeability, required under the correct legal standard of JCE III *mens rea*,<sup>9402</sup> is necessarily satisfied.<sup>9403</sup>

2870. With regard to Stojić's ability to foresee the thefts committed in Mostar, the Appeals Chamber is also not convinced by his unsubstantiated general assertion that "there is no obvious nexus" between violence and property offences there. Specifically of note is that the Trial Chamber concluded that Stojić "knew perfectly well that thefts were being committed in Mostar in May 1993",<sup>9404</sup> referring to an order dated 31 May 1993 from Stojić and Branko Kvesić which noted that there had been an increased number of thefts of both private and public property in Mostar town.<sup>9405</sup> In this context, the Trial Chamber also considered its finding that Stojić intended to have acts of violence committed against Muslims during the arrest campaigns that followed the HVO operations in West Mostar on 9 May 1993, together with a climate of violence in which the arrest campaigns took place, to infer that he could have foreseen that the HVO troops conducting these campaigns would commit thefts.<sup>9406</sup> Thus, Stojić ignores that the Trial Chamber considered the atmosphere of violence in combination with his knowledge and involvement in the relevant operations. In this regard, the Appeals Chamber recalls that knowledge of factors such as how the JCE is implemented on the ground may make the possibility that thefts might occur sufficiently substantial as to be foreseeable to Stojić.<sup>9407</sup> Further, the Appeals Chamber observes that Stojić's challenges to the Trial Chamber's findings regarding thefts in West Mostar beginning in May 1993 have already been addressed above in relation to his more general challenges.<sup>9408</sup> Thus, Stojić has failed to show that the Trial Chamber erred in concluding that the thefts in West Mostar between May and June 1993 as well as between August 1993 and February 1994 were foreseeable to him.<sup>9409</sup> Since the Trial Chamber's finding that Stojić could foresee that these thefts "would" be

<sup>9402</sup> See *supra*, paras 2836, 2853.

<sup>9403</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9404</sup> Trial Judgement, Vol. 4, para. 446.

<sup>9405</sup> Trial Judgement, Vol. 2, para. 826, Vol. 4, para. 446, referring to Ex. P02578, p. 1.

<sup>9406</sup> Trial Judgement, Vol. 4, para. 445.

<sup>9407</sup> See *supra*, para. 2868. See also *supra*, para. 2836; *Stanišić and Župljanin* Appeal Judgement, para. 627.

<sup>9408</sup> See *supra*, para. 2865. See also *supra*, paras 2856-2860.

<sup>9409</sup> The Appeals Chamber recalls that the Trial Chamber concluded that Stojić's membership in the JCE ended on 15 November 1993 and, thus, he is not responsible for crimes occurring after that date. Trial Judgement, Vol. 4, paras 425-430, 1227, 1230-1232. See *supra*, paras 1806-1807, fn. 5395. The Appeals Chamber further recalls its decision to set aside the Trial Chamber's finding that Stojić was aware of murder committed in Gornji Vakuf. See *supra*, fn. 9389. However, this has no impact on the Trial Chamber's conclusion concerning Stojić's *mens rea* under JCE III liability for thefts in Mostar Municipality, since the Trial Chamber primarily based this conclusion on his awareness of and involvement in the events in Mostar Municipality as well as his intent to have the acts of violence committed there. See *supra*, paras 2850, 2870. Further, the Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusion concerning Stojić's JCE III liability for the thefts committed in Mostar Municipality as of May 1993, since the Trial Chamber's findings that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, and mistreatment during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, have been undisturbed, and Stojić was found to have participated in this JCE. See *supra*, paras 882-883, 885-886, 2835; Trial Judgement, Vol. 4, paras 66-68.

committed is not disturbed,<sup>9410</sup> the Appeals Chamber observes that a lower degree of foreseeability, required under the correct legal standard of JCE III *mens rea*,<sup>9411</sup> is necessarily satisfied.<sup>9412</sup>

2871. Regarding sexual abuse in Mostar, the Trial Chamber's conclusion that Stojić could reasonably have foreseen that HVO members "would" commit sexual abuse during the operations was based on its findings that he: (1) participated in planning the eviction operations in Mostar starting from May 1993;<sup>9413</sup> (2) knew that they were taking place in a climate of extreme violence;<sup>9414</sup> and (3) knew that the Vinko Škrobo ATG had raped and killed "civilians" during these operations based on the CED Report of 14 June 1993, and refused to prevent or punish – but even encouraged – these crimes.<sup>9415</sup> Thus, Stojić's contention that the Trial Chamber failed to explain its conclusion necessarily fails and is dismissed. As it relates to the Trial Chamber's alleged failure to explain the connection between the climate of extreme violence and sexual offences, the Appeals Chamber notes that this was only one of the factors the Trial Chamber considered.<sup>9416</sup> Regardless, Stojić fails to show that it was unreasonable for the Trial Chamber to have considered the climate of extreme violence, and his knowledge thereof, as a factor in determining whether he could have foreseen the occurrence of sexual abuse.<sup>9417</sup>

2872. Concerning his argument on the use of the CED Report, the Appeals Chamber notes that the report notified Stojić on 14 June 1993 of rapes committed by the Vinko Škrobo ATG unit and members of the 4<sup>th</sup> Battalion called Tihomir Mišić of the 3<sup>rd</sup> HVO Brigade on 13 June 1993 during the evictions in West Mostar.<sup>9418</sup> The Trial Chamber found that sexual abuse occurred in June, July, and September 1993 during these evictions and found Stojić responsible for sexual abuse committed during these evictions.<sup>9419</sup> Thus, the CED Report was reasonably used to support the Trial Chamber's conclusion that Stojić could have foreseen that sexual abuse would occur in July

<sup>9410</sup> Trial Judgement, Vol. 4, paras 445-446.

<sup>9411</sup> See *supra*, paras 2836, 2853.

<sup>9412</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9413</sup> Trial Judgement, Vol. 4, para. 435.

<sup>9414</sup> Trial Judgement, Vol. 4, para. 435.

<sup>9415</sup> Trial Judgement, Vol. 4, para. 436.

<sup>9416</sup> See *supra*, para. 2858.

<sup>9417</sup> See *Đorđević* Appeal Judgement, para. 926 (finding that crimes of a sexual nature were foreseeable to Vlastimir Đorđević based on the context that thousands of civilians were being forcibly displaced and mistreated by Serbian forces acting with near impunity and as women were frequently separated from the men rendering them especially vulnerable); *Šainović et al.* Appeal Judgement, para. 1581 (finding that as Nikola Šainović was aware of criminal acts and acts of violence, the context in which the forcible displacement took place, allegations of use of force, harassment of civilians, he must have been aware that sexual assaults could occur and that the "inescapable conclusion is that in light of his awareness of the atmosphere of aggression and violence that prevailed, Šainović knew that the Kosovo Albanian women forced out of their homes were rendered particularly vulnerable").

<sup>9418</sup> Trial Judgement, Vol. 2, paras 868, 873, 876, Vol. 4, para. 436. See Ex. P02770. See also Trial Judgement, Vol. 3, paras 761, 775.

<sup>9419</sup> Trial Judgement, Vol. 4, paras 434, 437. See Trial Judgement, Vol. 2, paras 868-872, 925, 935, 978, 982, 985-986, Vol. 3, paras 761-765, 775-777.



and September 1993.<sup>9420</sup> Regarding the rapes that occurred on 13 June 1993, and that are referred to in the CED Report, the Appeals Chamber finds that Stojić misunderstands the Trial Chamber's consideration of his knowledge of these rapes. The Appeals Chamber understands that the Trial Chamber did not conclude that Stojić could have foreseen that the 13 June 1993 rapes might be committed but found that he accepted them.<sup>9421</sup> Thus, the Trial Chamber's finding that Stojić could have foreseen that sexual abuse would occur concerned the sexual abuse which occurred subsequently in July and September 1993 and was based on the factors considered – namely his participation in planning the eviction operations, his knowledge of its climate of extreme violence, and his knowledge of the 13 June 1993 rapes. As a consequence, the Trial Chamber found Stojić responsible only for the sexual abuse in July and September 1993 during the eviction operation in Mostar.<sup>9422</sup> Thus, Stojić has not shown an error by the Trial Chamber and his arguments are dismissed.<sup>9423</sup>

2873. Since the Trial Chamber's finding that Stojić could foresee that the sexual violence "would" be committed during the eviction operations in West Mostar is not disturbed,<sup>9424</sup> the Appeals Chamber observes that a lower degree of foreseeability, required under the correct legal standard of JCE III *mens rea*,<sup>9425</sup> is necessarily satisfied.<sup>9426</sup>

2874. In light of the above, the Appeals Chamber dismisses Stojić's ground of appeal 41.

<sup>9420</sup> The Appeals Chamber dismisses Stojić's assertion that the Trial Chamber erred in finding that the CED Report was received and reviewed by him as he only provides a cross-reference to arguments made in his sub-ground of appeal 33.1, which have been considered and dismissed elsewhere. See *supra*, paras 1618-1624 (concerning Exhibit P02770).

<sup>9421</sup> Trial Judgement, Vol. 4, para. 437.

<sup>9422</sup> This understanding of the Trial Judgement is further supported by the fact that the Trial Chamber concluded that Stojić "knowingly" took the risk of the occurrence of sexual abuse, taking into account his acceptance of the sexual abuse committed on 13 June 1993 as well as his continued exercise of his functions in the HVO/Government of the HR H-B. Trial Judgement, Vol. 4, para. 437.

<sup>9423</sup> The Appeals Chamber again recalls its decision to set aside the Trial Chamber's finding that Stojić was aware of murder committed in Gornji Vakuf. See *supra*, fn. 9389. However, this has no impact on the Trial Chamber's conclusion concerning Stojić's *mens rea* under JCE III liability for sexual abuse in Mostar Municipality, since the Trial Chamber primarily based this conclusion on his awareness of and involvement in the events in Mostar Municipality. See *supra*, paras 2851, 2871-2872. Further, the Appeals Chamber's reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusion concerning Stojić's JCE III liability for sexual violence committed in Mostar Municipality, since the earliest incident of sexual abuse in Mostar Municipality imputed to Stojić occurred in July 1993. See *supra*, para. 2872; Trial Judgement, Vol. 2, paras 925, 935, Vol. 3, paras 762, 775, Vol. 4, para. 437. See also *supra*, paras 882, 886, 2835.

<sup>9424</sup> Trial Judgement, Vol. 4, para. 437.

<sup>9425</sup> See *supra*, paras 2836, 2853.

<sup>9426</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

(iii) Alleged errors in convicting Stojić for rape and sexual assaults committed by the members of the Vinko Škrobo ATG unit in Mostar (Stojić's Ground 39)

2875. Stojić submits that the Trial Chamber erred in finding that he accepted the commission of crimes of sexual abuse.<sup>9427</sup> Specifically, Stojić submits that, while this conclusion was based on the Trial Chamber's findings that he was informed that members of the Vinko Škrobo ATG unit had raped civilians during the eviction operations in West Mostar and that he "failed to prevent or punish these crimes", these findings were unreasonable and inconsistent with earlier findings.<sup>9428</sup> Stojić points to the Trial Chamber's earlier findings that: (1) the Vinko Škrobo ATG was under the command of Mladen Naletilić;<sup>9429</sup> (2) the ATGs reported directly to the Main Staff and were integrated into the overall chain of command which he was not part of;<sup>9430</sup> and (3) there was insufficient evidence to find that he exercised command authority over the ATGs.<sup>9431</sup> In Stojić's view, no reasonable trier of fact could have held that he failed to prevent or punish the sexual abuse,<sup>9432</sup> and this error of fact causes a miscarriage of justice because it was the sole basis for the finding that he accepted the commission of crimes of sexual abuse and therefore his convictions for Counts 4 and 5 must be overturned.<sup>9433</sup>

2876. The Prosecution responds that Stojić's responsibility for crimes of sexual violence in West Mostar was not based only on his failure to prevent or punish the rapes committed by the Vinko Škrobo ATG.<sup>9434</sup> It submits that: (1) these crimes were foreseeable to Stojić;<sup>9435</sup> (2) rapes committed by members of the 4<sup>th</sup> Battalion of the 3<sup>rd</sup> HVO Brigade in June 1993 were also reported to him;<sup>9436</sup> and (3) he continued to contribute to the JCE, including by encouraging Naletilić and his troops and by failing to punish the perpetrators of the 13 June 1993 rapes.<sup>9437</sup>

2877. The Appeals Chamber notes that the Trial Chamber found that by "refusing to act to punish" the 13 June 1993 rapes committed by members of the Vinko Škrobo ATG, which he was

<sup>9427</sup> Stojić's Appeal Brief, paras 370-373.

<sup>9428</sup> Stojić's Appeal Brief, paras 370-372, referring to Trial Judgement, Vol. 4, paras 436-437.

<sup>9429</sup> Stojić's Appeal Brief, para. 371, referring to Trial Judgement, Vol. 1, para. 818.

<sup>9430</sup> Stojić's Appeal Brief, para. 371, referring to Trial Judgement, Vol. 1, paras 565, 708, 791, 795-796, 829.

<sup>9431</sup> Stojić's Appeal Brief, para. 371, referring to Trial Judgement, Vol. 1, para. 835.

<sup>9432</sup> Stojić's Appeal Brief, para. 372. Stojić suggests that there is no evidence that he had any power to prevent or punish crimes committed by the ATG. Stojić's Appeal Brief, para. 372.

<sup>9433</sup> Stojić's Appeal Brief, para. 373.

<sup>9434</sup> Prosecution's Response Brief (Stojić), paras 337-338. The Prosecution further submits that the Trial Chamber reasonably found that Stojić had the power to prevent and punish crimes committed by Naletilić's units, including the Vinko Škrobo ATG. Prosecution's Response Brief (Stojić), para. 340, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 829, Vol. 4, paras 306, 312, 420. It asserts that it is immaterial that the Trial Chamber declined to find that Stojić exercised command authority over the KB and its ATG as he commanded and had effective control over the HVO. Prosecution's Response Brief (Stojić), para. 340, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 835, Vol. 4, para. 307.

<sup>9435</sup> Prosecution's Response Brief (Stojić), para. 338, referring to Trial Judgement, Vol. 4, para. 435.

<sup>9436</sup> Prosecution's Response Brief (Stojić), para. 338, referring to Trial Judgement, Vol. 2, paras 868, 872.

<sup>9437</sup> Prosecution's Response Brief (Stojić), para. 339.

aware of on 14 June 1993, Stojić accepted them.<sup>9438</sup> In this regard, the Appeals Chamber first observes that the Trial Chamber found that the Vinko Škrobo ATG was under the command of Vinko Martinović, alias “Štela”, which in turn was placed under the KB commanded by Mladen Naletilić, alias “Tuta”.<sup>9439</sup> The Appeals Chamber has previously considered and dismissed Stojić’s challenges to his authority over Naletilić’s troops, including arguments on the inconsistency and unreasonableness of the Trial Chamber’s finding that he had the power to prevent or punish the crimes committed by these troops.<sup>9440</sup> As Stojić fails to present any new arguments, his contentions on the issue presented here are likewise dismissed. Consequently, to the extent that Stojić argues that he did not have power to punish the members of the Vinko Škrobo ATG who committed the 13 June 1993 rapes and thus he did not accept this crime by refusing to punish them, he has failed to show an error on the part of the Trial Chamber. His argument is therefore dismissed.

2878. Regarding Stojić’s general submissions that the Trial Chamber erroneously found that he accepted the commission of sexual abuse therefore his convictions must be overturned, the Appeals Chamber notes that he only develops these submissions by unsuccessfully arguing his lack of authority and power.<sup>9441</sup> While Stojić asserts that his acceptance of sexual abuse was based solely on his failure to punish the Vinko Škrobo ATG for the rapes committed on 13 June 1993,<sup>9442</sup> he ignores the Trial Chamber’s subsequent conclusion that “[s]ince he continued to exercise his functions in the HVO/Government of the HR H-B, the Chamber holds that Bruno Stojić knowingly accepted this risk”.<sup>9443</sup> In so concluding, the Trial Chamber relied on its previous findings that Stojić: (1) “refus[ed] to act to punish” the sexual abuse he was aware of on 14 June 1993, thus accepting them; and (2) could reasonably have foreseen that HVO members “would” also commit sexual abuse during the operations to evict Muslims from West Mostar.<sup>9444</sup> Thus, considering Stojić’s involvement in the Mostar operations and the climate of extreme violence which existed, the Trial Chamber’s finding that Stojić willingly took the risk that sexual abuse would be committed was not based solely on his acceptance of the rapes committed by the Vinko Škrobo ATG unit. As Stojić has not shown any error in these considerations, he has failed to demonstrate

<sup>9438</sup> Trial Judgement, Vol. 4, para. 437. See also Trial Judgement, Vol. 4, para. 436.

<sup>9439</sup> Trial Judgement, Vol. 1, paras 818-819, 829. See also Trial Judgement, Vol. 4, para. 436.

<sup>9440</sup> See *supra*, paras 1496-1499.

<sup>9441</sup> See *supra*, para. 2877.

<sup>9442</sup> Stojić’s Appeal Brief, para. 373. See *supra*, para. 2875.

<sup>9443</sup> Trial Judgement, Vol. 4, para. 437. See *supra*, para. 2836; *Stanišić and Župljanin* Appeal Judgement, para. 688 (“it must be shown that the accused willingly took the risk that such a crime might be committed, *i.e.* that the accused joined or continued to participate in the joint criminal enterprise with the awareness that the crime was a possible consequence thereof”).

<sup>9444</sup> Trial Judgement, Vol. 4, para. 437.

that the Trial Chamber erred in finding that he willingly took the risk of the occurrence of sexual abuse.<sup>9445</sup>

2879. Since the Trial Chamber's finding that Stojić willingly took the risk that the sexual abuse "would" be committed during the eviction operations in West Mostar is not disturbed,<sup>9446</sup> the Appeals Chamber observes that the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9447</sup> – is necessarily satisfied.<sup>9448</sup> Accordingly, Stojić's ground of appeal 39 is dismissed.

(iv) Conclusion

2880. Based on the foregoing, Stojić's grounds of appeal 39, 40, and 41 are dismissed.

(c) Praljak's appeal (Grounds 35, 36, and 47)

2881. The Trial Chamber found Praljak responsible, pursuant to JCE III, for the crimes of extensive appropriation of property as a grave breach of the Geneva Conventions (Count 22) and plunder as a violation of the law or customs of war (Count 23).<sup>9449</sup>

2882. The Trial Chamber found that thefts committed during the eviction operations or closely linked thereto were natural and foreseeable consequences of the implementation of the CCP.<sup>9450</sup> The Trial Chamber then proceeded to consider Praljak's JCE III responsibility for thefts committed in: (1) the villages of Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality following the operations conducted there in January 1993; and (2) Raštani village in Mostar Municipality around 24 August 1993.<sup>9451</sup> The Trial Chamber noted that Praljak planned, directed, and facilitated HVO operations in these municipalities<sup>9452</sup> and considered that as the HVO operations in these villages "unfolded in an atmosphere of extreme violence", Praljak could have foreseen that HVO members "would" commit ("*commettent*") thefts in these locations.<sup>9453</sup> It also inferred that, as Praljak planned and facilitated the operations in Gornji Vakuf and Raštani, he "knowingly took the risk that thefts would take place" ("*a sciemment pris le risque que des vols soient commis*").<sup>9454</sup>

<sup>9445</sup> See also *supra*, fn. 9423.

<sup>9446</sup> Trial Judgement, Vol. 4, para. 437.

<sup>9447</sup> See *supra*, paras 2836, 2853.

<sup>9448</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9449</sup> Trial Judgement, Vol. 4, para. 644.

<sup>9450</sup> Trial Judgement, Vol. 4, para. 72.

<sup>9451</sup> Trial Judgement, Vol. 4, paras 634, 637.

<sup>9452</sup> Trial Judgement, Vol. 4, paras 633, 636.

<sup>9453</sup> Trial Judgement, Vol. 4, paras 635, 638.

<sup>9454</sup> Trial Judgement, Vol. 4, paras 635, 638. See Trial Judgement, Vol. 4, paras 633, 636. See *supra*, fn. 9316.

2883. Praljak challenges these JCE III convictions by arguing various errors, which he asserts should result in the Appeals Chamber quashing and reversing his JCE III convictions.<sup>9455</sup> The Prosecution responds that the Trial Chamber did not err in convicting Praljak for these crimes under JCE III and that his arguments should be dismissed.<sup>9456</sup>

2884. As a preliminary matter, the Appeals Chamber notes that, in assessing Praljak's JCE III responsibility for thefts in Gornji Vakuf and Raštani, the Trial Chamber referred to a higher standard of foreseeability, *i.e.* whether it was foreseeable to him that these crimes *would* occur and that he willingly took that risk.<sup>9457</sup> The Appeals Chamber recalls, however, that the *mens rea* for JCE III is whether it was foreseeable to the accused that such a crime *might* be committed and that he willingly took that risk.<sup>9458</sup> The Appeals Chamber therefore bears this correct legal standard of foreseeability in mind when addressing Praljak's submissions. In assessing Praljak's challenges to factual findings which formed the basis for the Trial Chamber's conclusions that he could have foreseen that the crimes in question would occur and that he took that risk, the Appeals Chamber will apply the standard of reasonableness.<sup>9459</sup> When an error of fact or an error of law is identified, the Appeals Chamber will assess whether this error occasioned a miscarriage of justice or invalidates the Trial Chamber's ultimate conclusion on Praljak's JCE III liability, applying the correct legal standard of foreseeability, *i.e.* whether it was foreseeable to him that the crime in question *might* be committed and that he willingly took that risk.<sup>9460</sup>

(i) Alleged errors in finding that there was a climate of extreme violence in Gornji Vakuf Municipality and in Raštani, Mostar Municipality (Praljak's Ground 35)

2885. Praljak submits that the Trial Chamber failed to give reasons for its conclusion that operations in Hrasnica, Uzričje, Ždrimci, and Raštani unfolded in an atmosphere of extreme violence.<sup>9461</sup> He argues that the Trial Chamber failed to mention extreme violence in its factual description of events,<sup>9462</sup> and did not examine any criteria, as established in case-law, regarding the

<sup>9455</sup> Praljak's Appeal Brief, paras 346-357, 523-534; Praljak's Reply Brief, paras 117-118.

<sup>9456</sup> Prosecution's Response Brief (Praljak), paras 289-303. See Appeal Hearing, AT. 753-754 (28 Mar 2017).

<sup>9457</sup> Trial Judgement, Vol. 4, paras 635, 638. See *supra*, para. 2882. The Trial Chamber also stated, at the beginning of Praljak's JCE III section, that it would analyse whether Praljak could reasonably have foreseen that the crimes in question "would" be committed ("*allaient être commis*") and took that risk. Trial Judgement, Vol. 4, para. 632. With regard to the Trial Chamber's findings on Praljak's JCE III responsibility for other incidents appealed by the Prosecution under its sub-ground of appeal 1(A), the Appeals Chamber recalls that it has found that the Trial Chamber erred by applying a higher standard of foreseeability than required. See *infra*, paras 3029-3030. See also *supra*, fn. 9316.

<sup>9458</sup> Šainović *et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557; *supra*, para. 2836. See also *infra*, para. 3022.

<sup>9459</sup> See Šainović *et al.* Appeal Judgement, paras 1069, 1277, 1532.

<sup>9460</sup> Cf. Šainović *et al.* Appeal Judgement, paras 1069, 1078, 1277, 1532, 1536.

<sup>9461</sup> Praljak's Appeal Brief, paras 346, 350. See Praljak's Appeal Brief, para. 351.

<sup>9462</sup> Praljak's Appeal Brief, para. 347. Praljak asserts that the "words violent, violence and violently" appear only on a few occasions in situations where the criminal acts occurred after the takeover of the location was completed. Praljak's Appeal Brief, para. 347, referring to Trial Judgement, Vol. 2, paras 464, 470, 968-969.

intensity of the conflict.<sup>9463</sup> Praljak contends that commission of violence against civilians is an international crime but “does not create *per se* an atmosphere which can be characterized as extremely violent in the situation of armed conflict”.<sup>9464</sup>

2886. The Prosecution responds that the Trial Chamber reasonably explained its finding and chronicled the systematic commission of violent crimes in Gornji Vakuf and Mostar as well as in other municipalities.<sup>9465</sup> It argues that Praljak conflates the Trial Chamber’s expression “climate of extreme violence” with the existence of an armed conflict.<sup>9466</sup>

2887. Regarding Praljak’s contentions that the Trial Chamber failed to explain its findings on the existence of an atmosphere of extreme violence, the Appeals Chamber recalls that it has already considered and dismissed nearly identical arguments presented by Stojić.<sup>9467</sup> In this respect, the Appeals Chamber has already concluded that, reading the Trial Judgement as a whole, the Trial Chamber’s characterisation of the events in Gornji Vakuf and Mostar as occurring in a climate of extreme violence was reasonable.<sup>9468</sup> In particular, the Trial Chamber clearly explained that “in all the municipalities the evictions were accompanied in many instances by episodes of violence directed against Muslims, some of whom were killed, [...and] property belonging to Muslims was stolen and confiscated”.<sup>9469</sup> It also concluded that, in order to carry out the evictions, the HVO “engaged in acts of extreme violence” and that “in many cases” the Appellants, as JCE members, knew that thefts and other crimes might be committed by the HVO due to the atmosphere of violence to which they contributed and knowingly took the risk that these crimes might be committed.<sup>9470</sup> Specifically with regard to Raštani, the Trial Chamber described and analysed in detail the HVO’s attack on this village which began on 23 August 1993 with heavy shelling.<sup>9471</sup> The Trial Chamber found that: (1) the attack on the village continued on 24 August 1993 with infantry fire and intense shelling; (2) threats were made to set property on fire; (3) four Muslim men who had surrendered were killed; (4) thefts were committed under threats; and (5) the women and children who sought refuge were subjected to physical and mental violence including sexual assault.<sup>9472</sup> In light of the Trial Chamber’s factual findings regarding the events in Gornji Vakuf

<sup>9463</sup> Praljak’s Appeal Brief, para. 348, referring to *Limaj et al.* Trial Judgement, para. 90, *Haradinaj et al.* Trial Judgement, para. 49.

<sup>9464</sup> Praljak’s Appeal Brief, para. 349.

<sup>9465</sup> Prosecution’s Response Brief (Praljak), para. 297.

<sup>9466</sup> Prosecution’s Response Brief (Praljak), para. 298.

<sup>9467</sup> See *supra*, paras 2854, 2856-2858.

<sup>9468</sup> See *supra*, paras 2856-2860.

<sup>9469</sup> Trial Judgement, Vol. 3, para. 645. See Trial Judgement, Vol. 3, para. 646 (“these acts of violence were similar in every one of the municipalities concerned”).

<sup>9470</sup> Trial Judgement, Vol. 4, para. 72.

<sup>9471</sup> Trial Judgement, Vol. 2, paras 948-972.

<sup>9472</sup> Trial Judgement, Vol. 2, paras 948-972.

Municipality and Raštani at the relevant time,<sup>9473</sup> the Appeals Chamber finds that Praljak has failed to show that it was unreasonable for the Trial Chamber to characterise the events at those locations as occurring in a climate of extreme violence.<sup>9474</sup> Further, Praljak misunderstands the Trial Chamber's consideration of this climate with regard to JCE III liability in citing case-law concerning the requirements for determining the intensity of a conflict or the existence of an armed conflict. Thus, Praljak's arguments, and ground of appeal 35, are dismissed.

(ii) Alleged errors concerning thefts committed in Gornji Vakuf Municipality and in Raštani, Mostar Municipality (Praljak's Grounds 36 and 47)

a. Arguments of the Parties

2888. Praljak submits that the Trial Chamber failed to explain why it considered theft to be a natural and foreseeable consequence of the JCE.<sup>9475</sup> Praljak asserts that, in holding that the Appellants knew that thefts might be committed by the HVO, due to the atmosphere of violence to which they contributed or due to knowing the violent nature thereof, the Trial Chamber applied a broader standard than required.<sup>9476</sup> According to Praljak, the Trial Chamber should have established that each JCE III crime was a natural and foreseeable consequence of the JCE's implementation – the objective element – independently from the Appellants' awareness of the possibility that the crime might occur and participation in the JCE with that awareness – the subjective element.<sup>9477</sup>

2889. Praljak further argues that the Trial Chamber did not give any reason why it considered that he should have foreseen thefts in Gornji Vakuf Municipality and Raštani as it satisfied itself by finding that these operations took place in an atmosphere of extreme violence.<sup>9478</sup> He submits that he had no knowledge about the events in Gornji Vakuf as he went there on 16 January 1993, prior to the conflict, and the HVO had no prior involvement in theft of Muslim property.<sup>9479</sup> As to Raštani, Praljak argues that there is no evidence of his knowledge about activities there, nor is there

<sup>9473</sup> See Trial Judgement, Vol. 2, paras 356-388, 396-488, 948-972.

<sup>9474</sup> Trial Judgement, Vol. 4, paras 635, 638. For the same reasons as set out above in relation to Stojić's JCE III liability, the Trial Chamber's characterisation of events in Gornji Vakuf as occurring in a climate of extreme violence is not affected by the Duša Reversal, namely, the Appeals Chamber's decision to overturn the Trial Chamber's finding that the killing of seven civilians during the shelling in Duša, Gornji Vakuf Municipality, in January 1993 constituted the crime of murder and wilful killing. See *supra*, paras 2857-2858 & fn. 9350; Trial Judgement, Vol. 4, para. 635. See also *supra*, para. 441-443, 866.

<sup>9475</sup> Praljak's Appeal Brief, paras 353, 356. See Praljak's Appeal Brief, paras 352, 357.

<sup>9476</sup> Praljak's Appeal Brief, paras 353, 523, referring to Trial Judgement, Vol. 4, para. 72.

<sup>9477</sup> Praljak's Appeal Brief, paras 354-355, referring to *Stakić* Appeal Judgement, para. 87, *Blaškić* Appeal Judgement, para. 33, *Tadić* Appeal Judgement, para. 220. See Praljak's Reply Brief, para. 117.

<sup>9478</sup> Praljak's Appeal Brief, para. 527. See Praljak's Appeal Brief, para. 525. See also Praljak's Appeal Brief, para. 526. Praljak also asserts that the events in Gornji Vakuf Municipality and Raštani were not part of the CCP thus thefts committed there cannot be considered as natural and foreseeable consequences of the CCP. Praljak's Appeal Brief, para. 524.

<sup>9479</sup> Praljak's Appeal Brief, para. 528, referring to, *inter alia*, Praljak's Appeal Brief, paras 235 (Praljak's Sub-ground 15.1), 464-465 (Praljak's Ground 42).

evidence of HVO behaviour that would have prompted him to foresee the commission of thefts.<sup>9480</sup> Thus, he asserts that these thefts were not foreseeable to him.<sup>9481</sup> Praljak further argues that the inference that he knowingly took the risk that thefts would be committed in Gornji Vakuf and Raštani was based on the erroneous finding that he planned and directed the military operations in these locations.<sup>9482</sup> Moreover, he submits that the Trial Chamber's finding that he "knowingly" took the risk is erroneous as the applicable law requires that an accused "willingly" take the risk.<sup>9483</sup> The two terms, according to Praljak, are not synonymous as "knowingly" is much broader.<sup>9484</sup>

2890. The Prosecution responds that, given Praljak's intent to commit a violent campaign of ethnic cleansing, his contribution to the JCE, his involvement in directing military operations in Gornji Vakuf and Mostar, and his knowledge of events and crimes, he was aware of the risk that thefts might be committed against the Muslim population and willingly took that risk.<sup>9485</sup> It emphasises the violent nature of the Mostar evictions and that Praljak intended the violent crimes committed during military operations, including property crimes.<sup>9486</sup> Moreover, the Prosecution submits that Praljak was on notice that the HVO had committed thefts in Prozor in October 1992.<sup>9487</sup>

b. Analysis

i. Whether JCE III crimes were natural and foreseeable consequences of the JCE

2891. The Appeals Chamber recalls that a crime committed outside of the common criminal purpose may be imputed to a JCE member provided that it is a natural and foreseeable consequence of the JCE,<sup>9488</sup> however, "it is to be emphasized that this question must be assessed in relation to the knowledge of a particular accused" and "[w]hat is natural and foreseeable to one person [...] might not be natural and foreseeable to another, depending on the information available to them".<sup>9489</sup> Moreover, a "participant may be responsible for such crimes only if the Prosecution proves that the

<sup>9480</sup> Praljak's Appeal Brief, para. 529, referring to Praljak's Appeal Brief, paras 488-489 (Praljak's Ground 44).

<sup>9481</sup> Praljak's Appeal Brief, para. 531.

<sup>9482</sup> Praljak's Appeal Brief, para. 532, referring to Praljak's Appeal Brief, paras 465-468 (Praljak's Ground 42), 488-489 (Praljak's Ground 44).

<sup>9483</sup> Praljak's Appeal Brief, para. 533. See Praljak's Reply Brief, para. 117.

<sup>9484</sup> Praljak's Appeal Brief, para. 533.

<sup>9485</sup> Prosecution's Response Brief (Praljak), paras 289, 295, 301. The Prosecution submits that the Trial Chamber properly convicted Praljak pursuant to JCE III, gave adequate reasons, and that he fails to demonstrate an error. Prosecution's Response Brief (Praljak), paras 296, 299. See Prosecution's Response Brief (Praljak), para. 300.

<sup>9486</sup> Prosecution's Response Brief (Praljak), paras 301-302.

<sup>9487</sup> Prosecution's Response Brief (Praljak), para. 301, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 1237-1239.

<sup>9488</sup> *Stanišić and Župljanin* Appeal Judgement, para. 621; *Đorđević* Appeal Judgement, paras 912, 919.

<sup>9489</sup> *Stanišić and Župljanin* Appeal Judgement, para. 621, quoting *Kvočka et al.* Appeal Judgement, para. 86. See *supra*, para. 2836.



accused had sufficient knowledge such that the additional crimes were a natural and foreseeable consequence to him”.<sup>9490</sup>

2892. The Appeals Chamber will first consider Praljak’s argument that the Trial Chamber erroneously satisfied itself with finding that thefts and other crimes were foreseeable to the Appellants due to the atmosphere of violence and thus applied a broader standard in considering what was a natural and foreseeable consequence of the JCE. The Appeals Chamber notes that the Trial Chamber concluded that thefts, murders, and sexual abuse committed during evictions, and closely linked thereto, as well as during detentions were not part of the CCP but were natural and foreseeable consequences.<sup>9491</sup> It went on to say that “in many cases”, the Appellants knew that these crimes might be committed due to the atmosphere of violence to which they contributed. The Trial Chamber then stated that it would set out this knowledge in its JCE III analysis.<sup>9492</sup> Later, the Trial Chamber addressed some JCE III crimes and incidents for each of the Appellants and assessed whether they could have foreseen the relevant crimes and in so doing considered the atmosphere of violence in conjunction with other factors.<sup>9493</sup> Therefore, the Appeals Chamber rejects Praljak’s argument that the Trial Chamber applied a broader standard by considering only the atmosphere of violence when finding that thefts and other crimes were foreseeable to the Appellants. Moreover, the Trial Chamber considered that the JCE III crimes were natural and foreseeable consequences of the JCE as the HVO armed members “engaged in acts of extreme violence, threatening and mistreating the displaced Muslims”.<sup>9494</sup> Thus, Praljak’s argument that the Trial Chamber failed to explain its reasoning on why theft was a natural and foreseeable consequence of the JCE is also dismissed.

2893. Regarding Praljak’s distinction between the alleged objective and subjective elements of the *mens rea* requirement for JCE III liability, the Appeals Chamber is unconvinced by his argument. In this respect, the Appeals Chamber recalls that in the *Stanišić and Župljanin* case, the “artificial distinction – that the subjective element of the third category of JCE contains distinct objective and subjective elements”<sup>9495</sup> was rejected.<sup>9496</sup> Further, Praljak’s reliance on case-law does not assist

<sup>9490</sup> *Stanišić and Župljanin* Appeal Judgement, para. 621, quoting *Kvočka et al.* Appeal Judgement, para. 86. See *Đorđević* Appeal Judgement, paras 912, 919-920.

<sup>9491</sup> Trial Judgement, Vol. 4, para. 72.

<sup>9492</sup> Trial Judgement, Vol. 4, para. 72.

<sup>9493</sup> See, e.g., Trial Judgement, Vol. 4, paras 632-644.

<sup>9494</sup> Trial Judgement, Vol. 4, para. 72.

<sup>9495</sup> *Stanišić and Župljanin* Appeal Judgement, paras 622, 981.

<sup>9496</sup> *Stanišić and Župljanin* Appeal Judgement, paras 622, 981, referring to *Popović et al.* Appeal Judgement, paras 1690, 1696-1698, 1713-1717, *Šainović et al.* Appeal Judgement, paras 1575-1604, *Kvočka et al.* Appeal Judgement, paras 83-86. In the *Stanišić and Župljanin* case, Mićo Stanišić referred to crimes which were natural and foreseeable consequences as “objectively foreseeable” and argued that this does not depend on an accused’s state of mind, and thus the *Stanišić and Župljanin* Trial Chamber erred in failing to enter a finding that the relevant crimes were natural and foreseeable consequences. *Stanišić and Župljanin* Appeal Judgement, para. 619. Similarly, Stojan Župljanin

him.<sup>9497</sup> The Appeals Chamber, therefore, dismisses Praljak's argument that the Trial Chamber should have established that each JCE III crime was a natural and foreseeable consequence of the JCE's implementation independently from each of the Appellants' awareness that the crime might be committed.

ii. Alleged errors in finding that Praljak could have foreseen the commission of thefts and "knowingly" took that risk

2894. For thefts in both Gornji Vakuf and Raštani, the Trial Chamber concluded that Praljak could have foreseen the commission of these thefts based on the fact that the military operations in these locations unfolded in an atmosphere of extreme violence.<sup>9498</sup> The Trial Chamber also recalled its earlier findings that Praljak: (1) planned, directed, facilitated, and was kept informed of operations in Gornji Vakuf around 18 January 1993;<sup>9499</sup> and (2) participated in directing and planning the operations in Mostar Municipality between 24 July and 9 November 1993, including in Raštani.<sup>9500</sup> Therefore, the Appeals Chamber observes that the Trial Chamber considered Praljak's involvement in and knowledge of the operations in conjunction with the atmosphere of extreme violence to conclude that the thefts were foreseeable to him. Praljak's argument that the Trial Chamber "satisfied itself by finding" that the operations unfolded in an atmosphere of extreme violence is therefore dismissed.<sup>9501</sup> Accordingly, Praljak has failed to show that the Trial Chamber erred in finding that he could have foreseen that thefts would be committed in Gornji Vakuf and Raštani.<sup>9502</sup>

2895. Concerning Praljak's arguments that he did not plan or direct, and had no knowledge of, the operations in Gornji Vakuf and Raštani, the Appeals Chamber notes that the only support he provides is cross-references to arguments made in other grounds of appeal which have been considered and dismissed.<sup>9503</sup> As Praljak does not present any new argument or evidence here, his arguments are similarly dismissed. To the extent that Praljak argues that there is no evidence of HVO behaviour or prior involvement in thefts that could have prompted him to foresee thefts, the Appeals Chamber finds that this is insufficient to show an error by the Trial Chamber. In this

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argued that the Trial Chamber failed to find an essential element, *i.e.* that the crimes were "objectively" natural and foreseeable consequences of the common purpose. *Stanišić and Župljanin* Appeal Judgement, para. 978.

<sup>9497</sup> See *Stakić* Appeal Judgement, paras 87, 91-98 (considering together that the crimes were a natural and foreseeable consequence and that the participant in the joint criminal enterprise was aware that the crimes were a possible consequence); *Blaškić* Appeal Judgement, para. 33; *Tadić* Appeal Judgement, para. 220.

<sup>9498</sup> Trial Judgement, Vol. 4, paras 635, 638.

<sup>9499</sup> Trial Judgement, Vol. 4, para. 633. See Trial Judgement, Vol. 4, paras 553-562, 635. See also *supra*, paras 1945-1957.

<sup>9500</sup> Trial Judgement, Vol. 4, para. 636. See Trial Judgement, Vol. 4, paras 577, 579-586, 638. See also *supra*, paras 1973-2003.

<sup>9501</sup> See Praljak's Appeal Brief, para. 527.

<sup>9502</sup> See Trial Judgement, Vol. 4, paras 635, 638.

respect, the Appeals Chamber recalls that it is not necessary for the purposes of JCE III liability that an accused be aware of the past occurrence of a crime in order for the same conduct to be foreseeable to him.<sup>9504</sup> Further, the Trial Chamber, in its discussion of Praljak's superior responsibility for thefts committed in Prozor in October 1992, referred to an order issued on 14 November 1992 by Praljak and Ćorić to Zdenko Andabak, among others, for the return of the vehicles stolen in Prozor to their owners ("14 November 1992 Order")<sup>9505</sup> and concluded that "Praljak knew about the fact that members of the HVO Military Police committed thefts in Prozor in October 1992".<sup>9506</sup> Therefore, the Appeals Chamber dismisses Praljak's contention that there was no evidence that he had knowledge of thefts committed prior to the events in Gornji Vakuf and Raštani.

2896. Turning to Praljak's argument that the Trial Chamber applied a broader standard than required by finding that he "knowingly" took the risk that thefts might occur,<sup>9507</sup> the Appeals Chamber notes that the Trial Chamber used the term "*sciemment*" (knowingly)<sup>9508</sup> in the relevant paragraphs of the French version of the Trial Judgement,<sup>9509</sup> which is the authoritative text. The Appeals Chamber recalls that the applicable standard is that an accused "willingly" – translated as "*délibérément*" in French<sup>9510</sup> – took the risk that a crime might occur by joining or continuing to participate in a JCE.<sup>9511</sup> The word "*sciemment*" (knowingly) is defined as "[e]n connaissance de cause", "*exprès*", and as "*volontairement*".<sup>9512</sup> The definition of "willingly" is, *inter alia*, "[w]ith a ready will, consentingly, without reluctance".<sup>9513</sup> While "willingly" is more accurate as it emphasises the will of an accused to accept that risk, "*sciemment*" (knowingly) suffices as it refers

<sup>9503</sup> See *supra*, paras 1945-1957, 1973-2003, fn. 6603. See also *supra*, paras 862-867 (dismissing Praljak's arguments that an alternative reasonable inference was that HVO attacks occurred in response to military operations initiated by the ABiH and that the Gornji Vakuf events were not part of the CCP).

<sup>9504</sup> See *supra*, para. 2836; *Stanišić and Župljanin* Appeal Judgement, para. 627.

<sup>9505</sup> Trial Judgement, Vol. 2, para. 59, Vol. 4, paras 1247-1248, referring to Ex. 3D00424. See *infra*, para. 3156.

<sup>9506</sup> Trial Judgement, Vol. 4, para. 1239. See Trial Judgement, Vol. 2, para. 59, Vol. 4, paras 1237-1238; Slobodan Praljak, T. 43865-43866 (private session) (26 Aug 2009).

<sup>9507</sup> See Praljak's Appeal Brief, para. 533.

<sup>9508</sup> Beryl T. Atkins, Alain Duval, Rosemary C. Milne, Pierre-Henri Cousin, Hélène M.A. Lewis, Lorna A. Sinclair, Renée O. Birks, and Marie-Noëlle Lamy (eds.), Collins Robert Unabridged French-English, English-French Dictionary, (5th ed., Harper Collins Publishers, 1998), p. 832; Le Grand Robert & Collins, Français-Anglais, Anglais-Français (Online), <http://grc.bvdep.com/> (Le Robert / Harper Collins Publishers).

<sup>9509</sup> Trial Judgement, Vol. 4, paras 635, 638.

<sup>9510</sup> See, e.g., *Dorđević* Appeal Judgement, para. 906 (French translation); *Brdanin* Appeal Judgement, para. 411 (French translation).

<sup>9511</sup> *Stanišić and Župljanin* Appeal Judgement, paras 595, 614, 688; *Tolimir* Appeal Judgement, para. 514; *Šainović et al.* Appeal Judgement, paras 1061, 1525, 1536, 1557; *Dorđević* Appeal Judgement, para. 906; *Brdanin* Appeal Judgement, para. 411.

<sup>9512</sup> Paul Robert, Josette Rey-Debove, Alain Rey (eds.), *Le Petit Robert: dictionnaire alphabétique et analogique de la langue française*, édition 2016 (Dictionnaires Le Robert, 2015), p. 2326. The equivalent term in English, "knowingly", is defined "[w]ith knowledge or awareness (of what one is doing, of a fact, etc.); consciously, intentionally." Oxford English Dictionary (Online), <http://www.oed.com/view/Entry/104167> (Oxford University Press). See Black's Law Dictionary (9th ed., West, 2009) ("knowingly" is the adverb pertaining to the adjective "knowing", which is defined as both "having or showing awareness or understanding; well-informed" and "deliberate; conscious").

<sup>9513</sup> Oxford English Dictionary (Online), <http://www.oed.com/view/Entry/229078> (Oxford University Press).

to an accused's knowledge or awareness of the risk, and therefore also his acquiescence in taking that risk.<sup>9514</sup> Even though, in order to avoid any ambiguity and for the sake of consistency, the Trial Chamber should have used the language already established in the jurisprudence, the Appeals Chamber finds that by using "*sciemment*" (knowingly) instead of "willingly" in this context, the Trial Chamber did not apply a broader, incorrect standard. Praljak's argument is therefore dismissed.

2897. Since the Trial Chamber's findings that Praljak could have foreseen, and willingly took the risk, that the thefts "would" be committed in Gornji Vakuf and Raštani are not disturbed,<sup>9515</sup> the Appeals Chamber observes that the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9516</sup> – is necessarily satisfied.<sup>9517</sup> Accordingly, the Appeals Chamber dismisses Praljak's grounds of appeal 36 and 47.

### (iii) Conclusion

2898. Based on the foregoing, Praljak's grounds of appeal 35, 36, and 47 are dismissed.

<sup>9514</sup> See *Dorđević* Appeal Judgement, para. 906 ("the accused willingly took that risk (*i.e.* the accused participated in the joint criminal enterprise with the awareness that such crime was a possible consequence thereof"); *Brdanin* Appeal Judgement, para. 411 ("the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise"). The Appeals Chamber considers that the same observation can be made with regard to the Trial Chamber's usage of the expression "*en connaissance de cause*" (in lieu of "*sciemment*") in the same context elsewhere in the Trial Judgement. See, *e.g.*, Trial Judgement, Vol. 4, paras 281, 822, 830, 834, 845, 848, 852.

<sup>9515</sup> Trial Judgement, Vol. 4, paras 635, 638. With regard to possible implications of the Duša Reversal, the Appeals Chamber observes that the Trial Chamber's finding that Praljak planned, directed, and facilitated, and was kept informed of HVO operations in Gornji Vakuf Municipality which took place in an atmosphere of extreme violence is undisturbed for the reasons set out above. See *supra*, fn. 9474; Trial Judgement, Vol. 4, para. 633. See also *supra*, para. 2894-2895. Thus, the Trial Chamber's conclusion on Praljak's JCE III liability for thefts committed in Gornji Vakuf Municipality, which was primarily based on this finding, is also unaffected. See *supra*, paras 2882, 2894-2895; Trial Judgement, Vol. 4, paras 633-635. Further, the Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusion concerning Praljak's JCE III liability for the thefts committed in Gornji Vakuf Municipality from January 1993, since the Trial Chamber's findings that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, and mistreatment during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, have been undisturbed, and Praljak was found to have participated in this JCE. See *supra*, paras 882-883, 885-886, 2835; Trial Judgement, Vol. 4, paras 66-68. Moreover, the Duša Reversal and the ensuing exclusion of murder and wilful killing from the CCP before June 1993 have no impact on the Trial Chamber's conclusion on Praljak's JCE III liability for thefts committed in Raštani, Mostar Municipality. These thefts were committed around 24 August 1993, and the Trial Chamber's conclusion was primarily based on its finding that he participated in directing and planning HVO operations in Mostar Municipality which took place in an atmosphere of extreme violence. See *supra*, paras 2882, 2894-2895; Trial Judgement, Vol. 4, paras 636-638. See also *supra*, paras 882, 886, 2835.

<sup>9516</sup> See *supra*, paras 2836, 2884.

<sup>9517</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

(d) Petković's appeal (Ground V)<sup>9518</sup>

2899. The Trial Chamber found Petković responsible, pursuant to JCE III, for the crimes of rape (Count 4) as a crime against humanity, inhuman treatment (sexual assault) (Count 5) and appropriation of property (Count 22) as grave breaches of the Geneva Conventions, and plunder (Count 23) and destruction or wilful damage done to institutions dedicated to religion or education (Count 21) as violations of the laws or customs of war.<sup>9519</sup>

2900. The Trial Chamber found that thefts and sexual abuse, as well as murders committed during the eviction operations and detentions, and the destruction – before June 1993 – of institutions dedicated to religion, were natural and foreseeable consequences of the implementation of the CCP.<sup>9520</sup> The Trial Chamber then proceeded to examine Petković's responsibility for, *inter alia*: (1) sexual abuse committed during eviction operations in West Mostar from June 1993 and during military operations in Vareš Municipality in October 1993;<sup>9521</sup> (2) thefts committed in Gornji Vakuf Municipality following the attack of 18 January 1993, in Jablanica Municipality following the attack of 17 April 1993, and in West Mostar from June 1993, as well as during military operations in Vareš Municipality in October 1993;<sup>9522</sup> and (3) the destruction of mosques in Jablanica Municipality following the attack of 17 April 1993.<sup>9523</sup> The Trial Chamber concluded that Petković could foresee that these specific incidents of sexual violence, thefts, and destruction of religious institutions "would" occur and that he nevertheless "knowingly" took that risk.<sup>9524</sup>

2901. Petković challenges these JCE III convictions by arguing both legal and factual errors, which he asserts should result in the Appeals Chamber quashing and reversing his JCE III convictions.<sup>9525</sup> The Prosecution responds that the Trial Chamber did not err in convicting Petković for these crimes under JCE III.<sup>9526</sup>

<sup>9518</sup> The Appeals Chamber recalls that Petković uses Roman numerals to number his grounds of appeal and Arabic numerals to number the sub-headings pertaining thereto. See *supra*, fns 55, 7142. For ease of reference, although the Appeals Chamber uses "Petković's Ground V" in this sub-heading, it will follow the numbering of the sub-headings throughout this section of the Judgement.

<sup>9519</sup> Trial Judgement, Vol. 4, para. 853, Disposition, p. 431.

<sup>9520</sup> Trial Judgement, Vol. 4, paras 72-73. See Trial Judgement, Vol. 4, paras 70, 822. See also Trial Judgement, Vol. 4, paras 59, 342, 433, 1213; *supra*, para. 2833 & fn. 9243.

<sup>9521</sup> Trial Judgement, Vol. 4, paras 826-834.

<sup>9522</sup> Trial Judgement, Vol. 4, paras 835-848.

<sup>9523</sup> Trial Judgement, Vol. 4, paras 850-853.

<sup>9524</sup> Trial Judgement, Vol. 4, paras 830 (sexual abuse in West Mostar), 834 (sexual abuse in Vareš), 837 (thefts in Gornji Vakuf), 840 (thefts in Jablanica), 845 (thefts in West Mostar), 848 (thefts in Vareš), 852 (destruction of mosques in Jablanica). See *supra*, fn. 9316; *infra*, paras 2909, 2916, 2932, 2940, 2951, 2961.

<sup>9525</sup> Petković's Appeal Brief, paras 369-370, 378, 389, 393, 400, 403, 409. See also Petković's Reply Brief, paras 81-82.

<sup>9526</sup> Prosecution's Response Brief (Petković), paras 262, 269, 282. See also Prosecution's Response Brief (Petković), paras 261, 263-268, 270-281.

2902. As a preliminary matter, the Appeals Chamber notes that, in assessing Petković's JCE III responsibility for sexual abuse in the municipalities of West Mostar and Vareš; thefts in the municipalities of Gornji Vakuf, Jablanica, West Mostar, and Vareš; and the destruction of mosques in Jablanica Municipality, the Trial Chamber referred to a higher standard of foreseeability, *i.e.* whether it was foreseeable to Petković that these crimes *would* occur and that he willingly took that risk.<sup>9527</sup> The Appeals Chamber recalls, however, that the *mens rea* for JCE III is whether it was foreseeable to the accused that such a crime *might* be committed and that he willingly took that risk.<sup>9528</sup> The Appeals Chamber therefore bears this correct legal standard of foreseeability in mind when addressing Petković's submissions. In assessing Petković's challenges to factual findings which formed the basis for the Trial Chamber's conclusions that he could foresee that the crimes in question would occur and that he took that risk, the Appeals Chamber will apply the standard of reasonableness.<sup>9529</sup> When an error of fact or an error of law is identified, the Appeals Chamber will assess whether this error occasioned a miscarriage of justice or invalidates the Trial Chamber's ultimate conclusion on Petković's JCE III liability, applying the correct legal standard of foreseeability, *i.e.* whether it was foreseeable to him that the crime in question *might* be committed and that he willingly took the risk.<sup>9530</sup>

(i) Alleged error regarding the *mens rea* standard for JCE III liability (Petković's Sub-Ground 6.1)

a. Arguments of the Parties

2903. Petković argues that the Trial Chamber erred in applying a *mens rea* standard that was lower than required for JCE III liability.<sup>9531</sup> Specifically, he contends that the Trial Chamber erred in assessing his knowledge that the relevant crimes might be committed "in general" and not as the result of the implementation of the JCE.<sup>9532</sup> Petković argues that the Trial Chamber was required to find that Petković "had foresight" of the JCE III crimes being a natural and foreseeable

<sup>9527</sup> Trial Judgement, Vol. 4, paras 830, 834, 837, 840, 845, 848, 852. See *supra*, para. 2900; *infra*, paras 2909, 2916, 2932, 2940, 2951, 2961. This is despite the fact that the Trial Chamber stated, at the beginning of Petković's JCE III section, that it would analyse whether Petković knew that the relevant crimes *might* be committed ("*pourraient être commis*") by the HVO members and "knowingly" took this risk. See Trial Judgement, Vol. 4, para. 822. With regard to the Trial Chamber's findings on Petković's JCE III responsibility for other incidents appealed by the Prosecution under its sub-ground of appeal 1(A), the Appeals Chamber recalls that it has found that the Trial Chamber erred by applying a higher standard of foreseeability than required. See *infra*, paras 3029-3030. See also *supra*, fn. 9316.

<sup>9528</sup> *Šainović et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557; *supra*, para. 2836. See also *infra*, para. 3022.

<sup>9529</sup> See *Šainović et al.* Appeal Judgement, paras 1069, 1277, 1532.

<sup>9530</sup> *Cf. Šainović et al.* Appeal Judgement, paras 1069, 1078, 1277, 1532, 1536.

<sup>9531</sup> Petković's Appeal Brief, paras 367, 369.

<sup>9532</sup> Petković's Appeal Brief, para. 367, referring to Trial Judgement, Vol. 4, paras 822, 830, 834, 837, 840, 844, 848, 852. See Petković's Appeal Brief, para. 366.

consequence of the implementation of the JCE.<sup>9533</sup> He contends that the “causal” requirement between the implementation of the CCP and the foreseeability of the crimes at the *mens rea* level is “the critical element justifying an accused’s liability” for JCE III crimes.<sup>9534</sup> He further submits that as a result of these errors, his convictions for JCE III crimes should be quashed and reversed.<sup>9535</sup>

2904. The Prosecution responds that “causation” is not a *mens rea* requirement of JCE III.<sup>9536</sup> It contends that the Trial Chamber correctly found that the JCE III crimes for which Petković was convicted were committed during the implementation of the CCP and that a trial chamber’s finding that an accused knowingly took the risk connects his acceptance of JCE III crimes with an accused’s participation in the JCE.<sup>9537</sup>

b. Analysis

2905. The Appeals Chamber recalls that the *mens rea* of JCE III requires establishing that: (1) it was foreseeable to the accused that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common criminal purpose; and (2) the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.<sup>9538</sup>

2906. With regard to Petković’s submissions that, when considering whether he had the requisite *mens rea* pursuant to JCE III, the Trial Chamber failed to determine whether it was foreseeable to him that the crimes might be perpetrated as a consequence of the JCE’s implementation, the Appeals Chamber considers that these contentions are not supported by a plain reading of the Trial Judgement. Rather, reading the Trial Judgement as a whole, it is clear that the Trial Chamber considered whether the JCE III crimes were foreseeable to Petković as a natural and foreseeable consequence of the JCE. Indeed, the Trial Chamber found that the sexual abuse committed in the municipalities of West Mostar and Vareš, the thefts committed in the municipalities of Gornji Vakuf, West Mostar, Jablanica, and Vareš, and the destruction of mosques in Jablanica

<sup>9533</sup> Petković’s Appeal Brief, para. 366. In addition, Petković submits that the Trial Chamber’s failure to apply the correct *mens rea* standard is also apparent from the Trial Chamber’s failure to correctly apply the second tier of the *mens rea* for JCE III, namely whether the accused willingly took the risk that such crime might occur by joining or continuing to participate in the JCE. Petković’s Appeal Brief, para. 368. He adds that instead of this standard, the Trial Chamber “merely sought to establish whether Petković took the risk that certain crimes might be committed irrespective of any established and reasoned connection to the implementation of the JCE”. Petković’s Appeal Brief, para. 368, referring to Trial Judgement, Vol. 4, paras 830, 834, 837, 840, 844, 848, 852.

<sup>9534</sup> Petković’s Appeal Brief, para. 367, referring to *Stakić* Appeal Judgement, para. 87.

<sup>9535</sup> Petković’s Appeal Brief, paras 367, 369. See also Petković’s Appeal Brief, para. 409; Petković’s Reply Brief, para. 82.

<sup>9536</sup> Prosecution’s Response Brief (Petković), para. 264.

<sup>9537</sup> Prosecution’s Response Brief (Petković), para. 264.

<sup>9538</sup> *Stanišić and Župljanin* Appeal Judgement, paras 614, 621. See also *Tolimir* Appeal Judgement, para. 514; *Dordević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brdanin* Appeal Judgement, paras 365, 411.



Municipality were committed by HVO members as part of evictions and military operations that took place in these municipalities.<sup>9539</sup> The Trial Chamber further found that these crimes were foreseeable to Petković because of the information he received about these military and eviction operations and/or his involvement in them.<sup>9540</sup> Finally, the Appeals Chamber recalls that the Trial Chamber also found that the implementation of the JCE entailed the military and eviction operations that took place in the municipalities of West Mostar, Vareš, Gornji Vakuf, and Jablanica.<sup>9541</sup> In light of the foregoing, it is clear that the Trial Chamber considered whether the sexual abuses, thefts, and destruction of mosques committed in these municipalities were, to Petković, a natural and foreseeable consequence of implementing the JCE.<sup>9542</sup>

2907. In light of the foregoing, Petković's argument that the Trial Chamber applied a lower *mens rea* standard for JCE III liability than is required is without merit. The Appeals Chamber therefore dismisses Petković's sub-ground of appeal 6.1.

(ii) Alleged factual and legal errors regarding categories of crimes (Petković's Sub-ground 6.2)

a. Alleged errors concerning rape and sexual assault in the municipalities of Mostar and Vareš (Petković's Sub-grounds 5.2.2.6 in part and 6.2.1)

2908. The Trial Chamber found Petković responsible pursuant to JCE III for the crimes of rape as a crime against humanity (Count 4) and inhuman treatment (sexual assault) as a grave breach of the Geneva Conventions (Count 5) in relation to incidents of sexual violence in West Mostar and in Vareš town.<sup>9543</sup> Petković submits that the Trial Chamber committed a number of errors in finding him responsible for these incidents.<sup>9544</sup> The Appeals Chamber will address these submissions in turn.

<sup>9539</sup> Trial Judgement, Vol. 4, paras 826 (sexual abuse in West Mostar), 831-832 (sexual abuse in Vareš), 835 (thefts in Gornji Vakuf), 838 (thefts in Jablanica), 842 (thefts in West Mostar), 846-847 (thefts in Vareš), 850, 852 (destruction of mosques in Jablanica).

<sup>9540</sup> Trial Judgement, Vol. 4, paras 827-830 (sexual abuse in West Mostar), 831, 833-834 (sexual abuse in Vareš), 836-837 (thefts in Gornji Vakuf), 839-840 (thefts in Jablanica), 843-844 (thefts in West Mostar), 846, 848 (thefts in Vareš), 851-852 (destruction of mosques in Jablanica). The Appeals Chamber observes that in paragraph 840, Volume 4, of the Trial Judgement concerning Petković's responsibility pursuant to JCE III liability for thefts committed in Jablanica Municipality, the Trial Chamber referred to HVO operations in "Jablanica", although this was incorrectly rendered in the English translation as a reference to HVO operations in "Gornji Vakuf".

<sup>9541</sup> Trial Judgement, Vol. 4, paras 45-46, 48, 56-57, 61, 64, 66-67.

<sup>9542</sup> For these same reasons, the Appeals Chamber dismisses Petković's similar argument that the Trial Chamber failed to apply the correct *mens rea* standard in determining whether he willingly took the risk. See *supra*, fn. 9533.

<sup>9543</sup> Trial Judgement, Vol. 4, paras 826-834, 853.

<sup>9544</sup> Petković's Appeal Brief, paras 371-389.



i. Incidents in West Mostar

2909. In assessing Petković's liability, pursuant to JCE III, for incidents of sexual violence in West Mostar, the Trial Chamber recalled its previous findings that members of the HVO, including the Vinko Škrobo ATG, sexually abused Muslim women during the eviction operations in West Mostar in June, July, and September 1993.<sup>9545</sup> The Trial Chamber further recalled that Petković was informed of the eviction operations in West Mostar in June 1993 as well as the atmosphere of violence surrounding them and that, at the very least, he allowed these abuses to continue.<sup>9546</sup> It observed that on 14 June 1993, Petković received the CED Report indicating that during the eviction operation of 13 June 1993, members of the Tihomir Mišić Battalion and the Vinko Škrobo ATG had raped several women in West Mostar.<sup>9547</sup> In addition, the Trial Chamber observed that: (1) Petković had been on notice since the operations in Sovići and Doljani, Jablanica Municipality, in April 1993 that the KB and its ATGs "were committing crimes"; and (2) he not only failed to take measures against them but also agreed to their continued deployment.<sup>9548</sup> In light of these considerations, the Trial Chamber concluded that:

Petković knew from April 1993 onwards that the eviction operations were taking place in an atmosphere of extreme violence in Mostar and that the sexual abuse was a natural and foreseeable consequence of deploying the KB and its ATGs, whose criminal conduct he had been aware of since April 1993. Nevertheless, Milivoj Petković knowingly took the risk that these crimes *would* be committed.<sup>9549</sup>

a- Arguments of the Parties

2910. Petković submits that the Trial Chamber erred in finding him responsible, pursuant to JCE III, for the incidents of sexual violence in West Mostar.<sup>9550</sup> In relation to the incidents that occurred on 13 June 1993, he argues that the Trial Chamber erred in concluding that the eviction operations were taking place since April 1993, as the first operation occurred on 13 June 1993.<sup>9551</sup> As to the instances of rape committed by HVO members in Mostar in July 1993, and on 4 and 29 September 1993, Petković submits that there is no evidence that he was informed about

<sup>9545</sup> Trial Judgement, Vol. 4, para. 826.

<sup>9546</sup> Trial Judgement, Vol. 4, para. 827.

<sup>9547</sup> Trial Judgement, Vol. 4, para. 828, referring to, *inter alia*, Ex. P02770. See also Trial Judgement, Vol. 4, para. 843, referring to Ex. P02770.

<sup>9548</sup> Trial Judgement, Vol. 4, para. 829.

<sup>9549</sup> Trial Judgement, Vol. 4, para. 830 (emphasis added). In the French original of paragraph 830, Volume 4, the portion corresponding to the emphasised term as well as the following verbs reads "*soient commis*". See also *supra*, fn. 9316.

<sup>9550</sup> Petković's Appeal Brief, paras 371-378. See also Petković's Reply Brief, paras 81-82.

<sup>9551</sup> Petković's Appeal Brief, para. 373(i). Additionally, Petković argues that the Trial Chamber erred in: (1) concluding that the rapes that occurred on 13 June 1993 were a natural and foreseeable consequence of the deployment of the KB and its ATGs; (2) inferring that Martinović's criminal action on 13 June 1993 was a "planned military 'eviction operation' and that Petković 'deployed' Štela's ATG in that 'operation'"; and (3) failing to consider that Petković learned of rapes on 14 June 1993. Petković's Appeal Brief, para. 373(ii)(a)-(c), 373(iii)-(iv).

any of these rapes, or that he was linked to them in any way.<sup>9552</sup> In his view, it was therefore unreasonable for the Trial Chamber to conclude that these crimes were foreseeable for Petković and that he willingly took the risk that they would be committed.<sup>9553</sup>

2911. The Prosecution responds that the Trial Chamber properly held Petković responsible for the sexual violence crimes committed in Mostar in June, July, and September 1993.<sup>9554</sup> According to the Prosecution, the 13 June 1993 operation in Mostar was not the first such operation as Muslims were systematically expelled from West Mostar from mid-May 1993.<sup>9555</sup> It further highlights that by 13 June 1993, Petković knew that in April and May 1993, the KB had committed violent crimes against Muslims in Sovići and Doljani, and he nonetheless allowed the HVO to use this unit in subsequent actions.<sup>9556</sup> It further submits that by failing to take any measures against the relevant units or commanders, Petković signalled his acceptance of violent crimes.<sup>9557</sup> The Prosecution adds that the 14 June 1993 CED Report made further sexual crimes committed by the Vinko Škrobo ATG even more foreseeable to Petković.<sup>9558</sup>

#### b- Analysis

2912. With respect to Petković's contention concerning the sexual violence incidents during the 13 June 1993 operation, the Appeals Chamber finds that a careful review of the Trial Judgement shows that the Trial Chamber did not in fact convict him for those incidents,<sup>9559</sup> but only for incidents of sexual violence which occurred in Mostar thereafter, *i.e.* the incidents in July and September 1993.<sup>9560</sup> In this regard, the Appeals Chamber recalls that the Trial Chamber concluded that Petković contributed to the JCE I crimes stemming from the eviction operations in West Mostar subsequent to the 13 June 1993 operation.<sup>9561</sup> While Petković's lack of contribution to the 13 June 1993 operation is not necessarily determinative of his JCE III responsibility for the incidents of sexual violence which took place therein, the Appeals Chamber observes that the Trial Judgement reflects the Trial Chamber's consideration that Petković learned about the involvement of the KB and its ATGs in the 13 June 1993 operation only on the following day.<sup>9562</sup> Moreover, the

<sup>9552</sup> Petković's Appeal Brief, paras 375-377.

<sup>9553</sup> Petković's Appeal Brief, paras 374-377.

<sup>9554</sup> Prosecution's Response Brief (Petković), para. 265.

<sup>9555</sup> Prosecution's Response Brief (Petković), para. 266.

<sup>9556</sup> Prosecution's Response Brief (Petković), para. 266. The Prosecution contends that neither whether the KTB and its ATGs committed sexual violence crimes prior to 13 June 1993 nor whether Vinko Martinović and the Vinko Škrobo ATG participated in prior KB/ATG crimes affects the foreseeability of sexual violence crimes to Petković. Prosecution's Response Brief (Petković), para. 268.

<sup>9557</sup> Prosecution's Response Brief (Petković), para. 266.

<sup>9558</sup> Prosecution's Response Brief (Petković), para. 266.

<sup>9559</sup> See Trial Judgement, Vol. 2, paras 868-872, Vol. 3, paras 761, 775.

<sup>9560</sup> See Trial Judgement, Vol. 2, paras 925, 935, 978, 982, 985-986, Vol. 3, paras 762-764, 775-776.

<sup>9561</sup> See *supra*, para. 2222.

<sup>9562</sup> Trial Judgement, Vol. 4, paras 732, 734-736.

Trial Chamber considered Petković's subsequent failure to take measures against crimes committed by these units and his agreement to their continued deployment to reach the conclusion that he willingly took the risk that the crimes would be committed.<sup>9563</sup>

2913. In addition, the Appeals Chamber considers that although the Trial Chamber stated that Petković "knew from April 1993 onwards that the eviction operations were taking place in an atmosphere of extreme violence in Mostar",<sup>9564</sup> it was in fact referring to June 1993, when he first learned about the eviction operations and the crimes committed by the HVO in that context.<sup>9565</sup> This interpretation is further confirmed by the facts that: (1) the eviction operations in West Mostar started only in May 1993;<sup>9566</sup> and (2) when assessing his responsibility pursuant to JCE III for thefts during eviction operations in West Mostar, the Trial Chamber concluded that he was aware of the atmosphere of violence surrounding the eviction operations in West Mostar "from June 1993 onwards".<sup>9567</sup> Accordingly, the Appeals Chamber finds the reference to "April 1993 onwards"<sup>9568</sup> to be reflective of a typographical error. Based on the above considerations, the Appeals Chamber considers that Petković's challenges concerning the sexual violence incidents that occurred during the 13 June 1993 operation are moot, and dismisses them as such.

2914. With respect to Petković's argument that there is no evidence that he was informed about the sexual violence incidents which occurred in July and September 1993 or that he "was associated with" these crimes, the Appeals Chamber finds that Petković fails to explain why the Trial Chamber was required to find that he was informed of or "associated with" a certain crime in order to conclude that he foresaw it. In this regard, the Appeals Chamber recalls that for an accused to incur JCE III liability, it is not necessary to establish that he was aware that the crimes in question occurred; it is sufficient that their occurrence was foreseeable to him.<sup>9569</sup> Moreover, a trial chamber need not find that an accused was informed of previous sexual violence incidents in order to find that he could foresee these crimes.<sup>9570</sup> In addition, the Appeals Chamber observes that Petković does not appreciate that the Trial Chamber identified the factors which formed the basis of its conclusion that he was responsible pursuant to JCE III for these crimes as it found that he: (1) was informed of both the climate of the extreme violence during the West Mostar eviction operations since June 1993 and the specific rapes already committed; (2) failed to take any measures against

<sup>9563</sup> Trial Judgement, Vol. 4, paras 829-830.

<sup>9564</sup> Trial Judgement, Vol. 4, para. 830 (emphasis added).

<sup>9565</sup> Trial Judgement, Vol. 4, para. 830. See *supra*, para. 2221.

<sup>9566</sup> See Trial Judgement, Vol. 2, paras 805, 815, 818, 827-828, Vol. 3, paras 782, 811, 853, 911.

<sup>9567</sup> Trial Judgement, Vol. 4, para. 844.

<sup>9568</sup> Trial Judgement, Vol. 4, para. 830 (emphasis added).

<sup>9569</sup> *Šainović et al.* Appeal Judgement, para. 1583.

<sup>9570</sup> See *supra*, para. 2836.

the relevant commanders and units involved; and (3) agreed to their continued deployment.<sup>9571</sup> Moreover, the Trial Chamber convicted Petković for the JCE I crimes that were committed in the context of the same eviction operations.<sup>9572</sup> Petković does not explain why those factors are insufficient to support the Trial Chamber's conclusion that he could foresee and willingly took the risk of the July and September 1993 incidents of sexual violence. His unsupported arguments that there is no evidence that he was either informed of or "associated with" these crimes therefore fail.

2915. Accordingly, the Appeals Chamber finds that Petković has failed to show any error in the Trial Chamber's finding that the incidents of sexual violence in West Mostar were foreseeable to him and that he willingly took the risk that they "would" occur.<sup>9573</sup> Since the Trial Chamber's finding that a higher degree of foreseeability was met is not disturbed, the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9574</sup> – is necessarily satisfied.<sup>9575</sup>

ii. Incidents in Vareš town

2916. In assessing his liability for JCE III crimes in Vareš, the Trial Chamber recalled its previous findings that: (1) on 22 October 1993, Petković ordered Ivica Rajić to deploy to "Vareš" with HVO troops, including soldiers from the Maturice and Apostoli units; and (2) on 23 October 1993 and on the night of 24 to 25 October 1993, HVO soldiers – including members of the Maturice unit – sexually abused Witnesses DF and DG in Vareš town.<sup>9576</sup> The Trial Chamber further recalled that on 23 October 1993, Petković was informed that all able-bodied Muslims in Vareš town had been placed "under surveillance", and that HVO soldiers – including members of the Maturice unit – insulted, threatened, and beat Muslim men who were arrested, and stole property and money belonging to the Muslim population.<sup>9577</sup> Based on these considerations, the Trial Chamber found that, as of 23 October 1993, Petković knew that the military operations in Vareš town were occurring in an atmosphere of violence and that sexual abuse was a natural and foreseeable consequence thereof.<sup>9578</sup> It also concluded that by continuing to exercise his functions and failing to

<sup>9571</sup> See Trial Judgement, Vol. 4, para. 829.

<sup>9572</sup> Trial Judgement, Vol. 4, paras 734-735.

<sup>9573</sup> Trial Judgement, Vol. 4, para. 830. The Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 has no impact on the Trial Chamber's conclusion concerning Petković's JCE III liability for the sexual violence committed in West Mostar, Mostar Municipality, since the earliest incident of sexual violence in this location imputed to Petković occurred in July 1993. See *supra*, paras 2909, 2912-2913; Trial Judgement, Vol. 2, paras 925, 935, Vol. 3, paras 762, 775, Vol. 4, paras 826-830. See also *supra*, paras 882, 886, 2835. Further, given that the Trial Chamber's conclusion on his JCE III liability for the sexual violence committed in West Mostar, Mostar Municipality, was primarily based on his awareness of and involvement in the events in this municipality, the Appeals Chamber considers that this conclusion remains undisturbed by the Duša Reversal. See *supra*, paras 2909, 2914; Trial Judgement, Vol. 4, paras 826-830. See also *supra*, 2842.

<sup>9574</sup> See *supra*, paras 2836, 2902.

<sup>9575</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9576</sup> Trial Judgement, Vol. 4, paras 831-832.

<sup>9577</sup> Trial Judgement, Vol. 4, para. 833.

<sup>9578</sup> Trial Judgement, Vol. 4, para. 834.

take any measure to prevent the commission of new crimes, Petković “knowingly” took the risk that these crimes “would” be committed (“*soient commis*”).<sup>9579</sup>

a- Arguments of the Parties

2917. Petković contends that the Trial Chamber erred in finding that he could foresee the possibility of sexual abuse by members of the Maturice unit in Vareš town and that he knowingly took that risk.<sup>9580</sup> In particular, he submits that the evidence on the record does not support the Trial Chamber’s conclusion that members of the Maturice unit were involved in the sexual violence incidents in Vareš town.<sup>9581</sup>

2918. Petković also argues that the Trial Chamber erroneously found that he was aware of the atmosphere of extreme violence surrounding the military operations in Vareš town on the basis of his receipt of Rajić’s Report on 23 October 1993.<sup>9582</sup> In this context, highlighting that the Trial Chamber accepted evidence that Rajić’s Report was sent to Mostar via packet communication while he was in Kiseljak, Petković argues that the Trial Chamber erred in concluding that such report could be forwarded to him by the duty officer in the Main Staff in Mostar without any support from the record.<sup>9583</sup> Moreover, according to Petković, Rajić’s Report did not refer to an atmosphere of extreme violence or insults, threats, and beatings committed by HVO soldiers.<sup>9584</sup>

2919. Finally, Petković submits that the Trial Chamber erred in inferring that he knowingly took the risk that these crimes would be committed on the basis that he continued to exercise his functions within the Main Staff and failed to take measures to prevent new crimes as: (1) no reasonable trier of fact could infer from the fact that an officer continued his professional functions

<sup>9579</sup> Trial Judgement, Vol. 4, para. 834. See *supra*, fn. 9316.

<sup>9580</sup> Petković’s Appeal Brief, paras 379-389. See also Petković’s Reply Brief, paras 81-82.

<sup>9581</sup> Petković’s Appeal Brief, paras 381-384. Specifically, he asserts that Witness DF did not identify the “soldiers” who raped her as members of the Maturice unit, and although Witness DG testified that the HVO soldiers were members of that unit, she explained that she considered all HVO soldiers who were not members of the Vareš Brigade to be members of the Maturice unit. Petković’s Appeal Brief, paras 381-382. According to Petković, because members of other units besides the Vareš Brigade and the Maturice unit were present in Vareš, no reasonable trier of fact could have concluded, on the basis of Witness DG’s testimony, that members of the Maturice unit committed sexual abuse in Vareš town. Petković’s Appeal Brief, para. 383.

<sup>9582</sup> Petković’s Appeal Brief, para. 385, referring to Petković’s Appeal Brief, para. 289 (sub-ground of appeal 5.2.2.6).

<sup>9583</sup> Petković’s Appeal Brief, para. 289, referring to Trial Judgement, Vol. 3, para. 341.

<sup>9584</sup> Petković’s Appeal Brief, para. 385. According to Petković, Witness EA testified that Rajić sent two documents to him, neither of which referred to any crimes committed by HVO soldiers. Petković’s Appeal Brief, para. 385, referring to Witness EA, T. 24732 (closed session) (19 Nov 2007). In addition, Petković contends that he had no information prior to these rapes that would have rendered them foreseeable to him, as “an awareness of [a] general and unspecific phenomenon of sexual crimes” cannot justify such conclusion. Petković’s Appeal Brief, para. 386.

in times of war that he intended such crimes; and (2) there is no evidence that he knew these crimes were planned or that he could prevent their commission but failed to do so.<sup>9585</sup>

2920. The Prosecution argues that the Trial Chamber reasonably concluded that Petković was responsible, pursuant to JCE III, for the acts of sexual violence in Vareš town.<sup>9586</sup> With respect to Petković's arguments concerning Rajić's Report, the Prosecution contends that the Trial Chamber reasonably found that although Petković was in Kiseljak, the communication system permitted him to receive such report.<sup>9587</sup> The Prosecution also contends that the Trial Chamber reasonably concluded that Petković knew that the operations in Vareš town were surrounded by an atmosphere of extreme violence since Rajić's Report put him on notice that HVO soldiers "mopped up" Vareš town and placed "under surveillance" all able-bodied Muslim men, and that some civilians were killed in Stupni Do.<sup>9588</sup> In addition, the Prosecution contends that Petković "did not have to wait for a report to confirm that there was a risk of sexual violence occurring in Vareš [town]" in light of more than ten months of a violent campaign of expulsions which involved separation of men and women and had resulted in sexual violence in Mostar.<sup>9589</sup>

#### b- Analysis

2921. With respect to Petković's submission that the Trial Chamber erred in finding that the Maturice unit was involved in the rapes, the Appeals Chamber observes that the Trial Chamber found that Witnesses DF and DG were forced to engage in sexual relations by "HVO members, some of whom belonged to the Maturice special unit".<sup>9590</sup> Accordingly, the Appeals Chamber fails to see how Petković's argument would impact the impugned conclusion. The Appeals Chamber thus dismisses this argument.

2922. As to Petković's assertion that he did not receive Rajić's Report,<sup>9591</sup> as a preliminary matter, the Appeals Chamber observes that in concluding that Petković was informed that HVO soldiers arrested, insulted, threatened, and beat Muslim men as well as stole property and money belonging to the Muslim population, the Trial Chamber did not refer directly to Rajić's Report, but simply

<sup>9585</sup> Petković's Appeal Brief, paras 387-388. Petković adds that the risk for a crime to be committed must be taken before the commission of the crime. Petković's Appeal Brief, para. 387.

<sup>9586</sup> Prosecution's Response Brief (Petković), paras 265, 268-269. See also Prosecution's Response Brief (Petković), para. 267.

<sup>9587</sup> Prosecution's Response Brief (Petković), para. 224.

<sup>9588</sup> Prosecution's Response Brief (Petković), para. 268. The Prosecution also adds that Petković misunderstands Witness EA's testimony since the latter gave evidence that Rajić sent reports to Petković that referred to crimes which occurred in Vareš town. Prosecution's Response Brief (Petković), para. 268, referring to Witness EA, T. 24423 (closed session) (13 Nov 2007), T. 24964 (closed session) (21 Nov 2007).

<sup>9589</sup> Prosecution's Response Brief (Petković), para. 267.

<sup>9590</sup> Trial Judgement, Vol. 4, para. 832 (emphasis added).

<sup>9591</sup> Petković's Appeal Brief, para. 385; *supra*, para. 2918.

recalled its previous findings where, based on that document, it concluded that Petković was on notice of the HVO conduct in Vareš town.<sup>9592</sup>

2923. Having reviewed the Trial Chamber's assessment of the evidence in reaching this conclusion,<sup>9593</sup> the Appeals Chamber elsewhere dismisses Petković's contention that the evidence on the record does not show that a duty officer forwarded the report from Mostar to Kiseljak where Petković was at the time, since he merely reiterates his argument already raised and rejected at trial without showing any error.<sup>9594</sup>

2924. Turning to Petković's contention that the Trial Chamber erred in relying on Rajić's Report to conclude that he was informed that the military operations occurred in an atmosphere of extreme violence, the Appeals Chamber observes that, indeed, the only evidence underpinning this conclusion appears to be Rajić's Report.<sup>9595</sup> Apparently, on the sole basis of this report, the Trial Chamber found that Rajić informed Petković that HVO soldiers insulted, threatened, and beat the arrested Muslim men, and that HVO soldiers stole property and money from the Muslim inhabitants of Vareš town.<sup>9596</sup> This led the Trial Chamber to conclude that Petković was informed that the military operations in Vareš town took place in an atmosphere of extreme violence.<sup>9597</sup> However, the Appeals Chamber notes that Rajić's Report does not provide any information that the HVO soldiers insulted, threatened, or beat the arrested Muslim men, nor does it suggest that they stole property and money from the Muslim inhabitants.<sup>9598</sup> By contrast, it indicates only that: (1) the town of Vareš had been "mopped up"; (2) all Muslims of military age had been placed "under surveillance"; and (3) civilians were killed during the operation in Stupni Do.<sup>9599</sup>

2925. Based on these considerations, the Appeals Chamber finds that the Trial Chamber erred in concluding that Petković knew that the military operations in Vareš town were occurring in an

<sup>9592</sup> Trial Judgement, Vol. 4, para. 833, referring to Trial Judgement Vol. 3, paras 339-348.

<sup>9593</sup> See, in particular, Trial Judgement, Vol. 1, paras 732-735, Vol. 3, paras 340-342, Vol. 4, para. 761.

<sup>9594</sup> See *supra*, paras 2281-2283.

<sup>9595</sup> Trial Judgement Vol. 3, paras 340 (referring to, *inter alia*, Ex. P06026, p. 3), 341-342, 348, Vol. 4, paras 833-834.

<sup>9596</sup> Trial Judgement, Vol. 3, paras 340 (referring to, *inter alia*, Ex. P06026, p. 3), 341-342, 348. See also Trial Judgement, Vol. 4, para. 833.

<sup>9597</sup> Trial Judgement, Vol. 4, paras 833-834.

<sup>9598</sup> Ex. P06026, pp. 2-3. Moreover, a careful review of the portion of the Trial Judgement concerning the crimes committed in Vareš town shows that the Trial Chamber did not provide any further support for its conclusion that Petković was informed by Rajić that during the arrests, HVO soldiers "insulted, threatened and beat the arrested Muslim men and stole property and money from the Muslim inhabitants of the town of Vareš". Trial Judgement, Vol. 3, para. 348. See also Trial Judgement, Vol. 3, paras 339-347. Indeed, in that section the Trial Chamber acknowledged that the information provided by Rajić's Report was limited to the fact that Vareš town was "mopped up" and all able-bodied Muslim men were placed under surveillance. See Trial Judgement, Vol. 3, para. 340, referring to Ex. P06026, Witness EA, T(F). 24422-24423 (closed session) (13 Nov '2007), 24731-24732 (closed session) (19 Nov 2007), T(F). 24963 (closed session) (21 Nov 2007).

<sup>9599</sup> Ex. P06026, pp. 2-3. Similarly, the portion of Witness EA's testimony referred to by the Prosecution does not demonstrate that Rajić informed Petković that during the arrests, HVO members, including members of the Maturice

atmosphere of extreme violence insofar as Rajić's Report reflected that HVO soldiers insulted, threatened, and beat the arrested Muslim men, and stole property and money belonging to the Muslim population.<sup>9600</sup> It was therefore also erroneous for the Trial Chamber to have relied on this conclusion to find that sexual violence in Vareš town was foreseeable to him.<sup>9601</sup> However, the Appeals Chamber finds that this error did not occasion a miscarriage of justice, as a review of the Trial Judgement reveals a number of findings that support Petković's conviction, pursuant to JCE III, for the sexual violence committed by HVO members in Vareš town.<sup>9602</sup>

2926. In this regard, the Appeals Chamber notes that the Trial Chamber found that in June 1993, Petković could already foresee the sexual violence incidents in West Mostar during eviction operations.<sup>9603</sup> In reaching this conclusion, the Trial Chamber relied on his receipt of the CED Report of 14 June 1993, which indicated that HVO members had committed rapes during the evictions in West Mostar on the previous day.<sup>9604</sup> Based on this finding, a reasonable trier of fact could have concluded that, by the time of the HVO operations in Vareš Municipality, Petković was already on notice of the risk that the same crimes might also be committed in the context of similar, subsequent operations during the implementation of the JCE.<sup>9605</sup> These considerations are also supported by the Trial Chamber's conclusions that Petković: (1) significantly contributed to the JCE and shared the intent to further its CCP, which involved the expulsion of the Muslim population through various forms of mistreatment in multiple municipalities; and (2) was informed by Rajić's Report that HVO members were involved in the arrests of Muslim men in Vareš town and in the killings of civilians in Stupni Do.<sup>9606</sup> The Appeals Chamber considers that these findings provide

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unit, insulted, threatened, and beat Muslim men and stole property belonging to the Muslim inhabitants of Vareš town. Witness EA, T. 24423 (closed session) (13 Nov 2007), T. 24964 (closed session) (21 Nov 2007).

<sup>9600</sup> Trial Judgement, Vol. 4, paras 833-834.

<sup>9601</sup> Trial Judgement, Vol. 4, para. 834.

<sup>9602</sup> In assessing whether this error occasioned a miscarriage of justice, the Appeals Chamber applies the correct legal standard which requires that it was foreseeable to the accused that the crime in question *might* be committed and that he willingly took the risk. See *supra*, para. 2902.

<sup>9603</sup> Trial Judgement, Vol. 4, para. 830. See also *supra*, paras 2912-2913.

<sup>9604</sup> Trial Judgement, Vol. 4, paras 732, 828, 830, 843. See *supra*, paras 2912-2913.

<sup>9605</sup> See Trial Judgement, Vol. 4, paras 44-48, 55-58, 61-65. In particular, according to the Trial Chamber's findings, the sexual crimes committed in Vareš were committed by the same category of perpetrators that committed the crimes in Mostar and in similar circumstances, *i.e.* by HVO soldiers and members of the Military Police in the execution of the CCP while the Muslim population was particularly vulnerable. See Trial Judgement, Vol. 2, paras 169-170, 233-237, 250, 252-253, 258-262, 268-272, 283-292, Vol. 3, paras 401-402, 404, 426-429, 757-760, 767-774, 779-780 (Prozor and Vareš). See also Trial Judgement, Vol. 2, paras 868, 872, 876, 925, 935, 978, 982, 985-986, Vol. 3, paras 761-765, 775-777 (Mostar). Accordingly, the Appeals Chamber rejects Petković's argument that he had no information prior to these rapes that would have rendered them foreseeable to him. See Petković's Appeal Brief, para. 386. In this regard, the Appeals Chamber recalls that the awareness of similar past crimes committed by the direct perpetrators is a factor which can be taken into account when determining the foreseeability of a crime to an accused. See, *e.g.*, *Šainović et al.* Appeal Judgement, para. 1090; *Stakić* Appeal Judgement, para. 232.

<sup>9606</sup> Trial Judgement, Vol. 3, paras 339-342, 348, Vol. 4, paras 66-67, 691, 694, 696, 703-708, 712-716, 718, 720-721, 723, 732, 734, 738, 747-750, 754-755, 758-759, 761-763, 765, 778, 780, 782, 789, 794, 796-799, 801-802, 817-818. See *supra*, paras 2136-2442, 2468. With respect to Petković's knowledge on the basis of Rajić's Report, see *supra*, paras 2281-2284; Ex. P06026, pp. 2-3. With regard to the scope of the CCP, the Appeals Chamber recalls that it has vacated the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993. See *supra*,



additional indications that Petković was aware of the vulnerability of the civilian population during the expulsion campaign in the context of the military operations in Vareš town, and that he could thus foresee the possibility that HVO members might commit these crimes in such context.

2927. In light of the foregoing, the Appeals Chamber finds that the Trial Chamber's erroneous reliance on Rajić's Report did not impact its conclusion that Petković was responsible, pursuant to JCE III, for the incidents of sexual violence in Vareš town.

2928. Moreover, Petković's remaining challenges to the Trial Chamber's finding that he willingly took the risk of the commission of rapes also fail. In this regard, the Appeals Chamber notes that the Trial Chamber did not simply rely on the mere fact that he continued to exercise his functions within the Main Staff, but also on the fact that he failed to take any measure to prevent the commission of new crimes.<sup>9607</sup> Petković fails to explain why no reasonable trier of fact could have relied on this omission to conclude that he accepted the risk of these crimes.<sup>9608</sup> Lastly, the Appeals Chamber dismisses Petković's contention that there is no evidence that he knew that "certain crimes" were planned or that he could prevent their commission but failed to do so as vague and undeveloped.<sup>9609</sup>

2929. Accordingly, the Appeals Chamber dismisses Petković's challenges to the Trial Chamber's findings concerning his responsibility, pursuant to JCE III, for the sexual violence incidents in Vareš town.

### iii. Conclusion

2930. Based on the foregoing, Petković's sub-ground of appeal 6.2.1 is dismissed.

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paras 882, 886, 2835. However, this has no impact on the current analysis in relation to the incidents of sexual violence in Vareš Municipality, which occurred in October 1993.

<sup>9607</sup> See Trial Judgement, Vol. 4, para. 834.

<sup>9608</sup> With respect to Petković's argument that the risk for a crime to be committed must be taken before the commission of the crime, the Appeals Chamber finds that Petković misrepresents the Trial Judgement. Petković's Appeal Brief, para. 387. In reaching the impugned conclusion, the Trial Chamber considered Petković's conduct following the moment when he could foresee the rapes, before rather than after the commission of the rapes themselves. Trial Judgement, Vol. 4, para. 834. Moreover, the Appeals Chamber finds no error in the Trial Chamber's reliance on Petković's conduct which continued after the crimes, in order to infer that he willingly took the risk prior to the commission of crimes in Vareš town. Trial Judgement, Vol. 4, para. 834. In this regard, the Appeals Chamber recalls that a trial chamber may rely on circumstantial evidence to underpin its findings, provided that they are the only reasonable conclusions available from that evidence. See *Stanišić and Župljanin* Appeal Judgement, paras 172, 375; *Popović et al.* Appeal Judgement, paras 971, 1277-1278; *Stakić* Appeal Judgement, para. 219. Accordingly, Petković's argument is dismissed.

<sup>9609</sup> See Petković's Appeal Brief, paras 387-388.

b. Alleged errors concerning thefts in the municipalities of Gornji Vakuf, Jablanica, Mostar, and Vareš (Petković's Sub-ground 6.2.2)

2931. The Trial Chamber found Petković responsible, pursuant to JCE III, for the crimes of appropriation of property as a grave breach of the Geneva Conventions (Count 22) and plunder as a crime against humanity (Count 23), in relation to incidents of theft which were committed by HVO members in the municipalities of Gornji Vakuf, Jablanica, Mostar, and Vareš.<sup>9610</sup> Petković submits that the Trial Chamber committed a number of errors in finding him responsible for these incidents.<sup>9611</sup> The Appeals Chamber will address these contentions in turn.

i. Municipalities of Gornji Vakuf and Jablanica (Sovići and Doljani)  
(Petković's Sub-ground 6.2.2.1)

2932. The Trial Chamber found that Petković could have reasonably foreseen that HVO soldiers "would" commit ("*commettent*") thefts following attacks on Gornji Vakuf Municipality and on Sovići and Doljani, Jablanica Municipality, in January and April 1993, respectively, and that he "knowingly" took the risk that these thefts "would" be committed ("*soient commis*").<sup>9612</sup> In so finding, it relied upon Petković's planning, facilitation, and direction of the military operations in these locations and on the atmosphere of extreme violence in which they took place.<sup>9613</sup>

a- Arguments of the Parties

2933. Petković submits that no reasonable trier of fact could have inferred that he could have foreseen thefts in Gornji Vakuf as well as Sovići and Doljani and knowingly took the risk that they be committed.<sup>9614</sup> He argues that there is no evidence that he was aware, prior to those incidents, that operations would take place in an atmosphere of violence and that, in any case, awareness of "such generic, unspecific, state of affair[s]" is insufficient to establish foresight.<sup>9615</sup> Petković further asserts that: (1) the fact that he planned the military operations does not support an inference that he was aware of the risk of thefts being committed and willingly took that risk;<sup>9616</sup> and (2) the Trial Chamber "failed to address the evidence [...] demonstrat[ing] Petković's strict and unqualified

<sup>9610</sup> Trial Judgement, Vol. 4, paras 835-849, 853, Disposition, p. 431. See *infra*, para. 2945.

<sup>9611</sup> Petković's Appeal Brief, paras 390-402. See also Petković's Reply Brief, paras 81-82.

<sup>9612</sup> Trial Judgement, Vol. 4, paras 835-840. See *supra*, fn. 9316.

<sup>9613</sup> Trial Judgement, Vol. 4, paras 836-837, 839-840. See *supra*, fn. 9540 (finding that paragraph 840 of Volume 4 of the Trial Judgement, concerning thefts committed in Jablanica Municipality, contains a typographical error as it states that Petković "planned and facilitated the HVO operations in Gornji Vakuf", rather than Jablanica).

<sup>9614</sup> Petković's Appeal Brief, paras 391-393.

<sup>9615</sup> Petković's Appeal Brief, para. 391(i)-(ii). More generally, Petković asserts that he had no information prior to the commission of these crimes that could reasonably have given him foresight thereof. Petković's Appeal Brief, para. 391(iii).

<sup>9616</sup> Petković's Appeal Brief, para. 391(v)-(vi).

opposition to such acts”.<sup>9617</sup> Finally, Petković submits that the Trial Chamber erred in law by failing to render a reasoned opinion on these matters.<sup>9618</sup> With respect to foreseeability specifically, he contends that the Trial Chamber failed to make a reasoned finding as to which instances of thefts he could foresee and which units he could foresee might commit such crimes.<sup>9619</sup>

2934. The Prosecution responds that the finding that Petković could foresee thefts did not rest on a “generic, unspecifi[c] state of affair[s]”, but on his intent to commit violent crimes.<sup>9620</sup> Additionally, it submits that Petković misunderstands the Trial Judgement insofar as the fact that he participated in the attacks – while having foresight of the risk of thefts – demonstrated willingness to take that risk.<sup>9621</sup> It further argues that the Trial Chamber was “mindful” of the exhibits Petković cites in support of his claim that he opposed theft and that, nevertheless, the fact that he occasionally condemned thefts or ordered an arrest does not undermine the fact that he facilitated crimes.<sup>9622</sup> Lastly, the Prosecution argues, in response to Petković’s allegation of a failure to provide a reasoned finding, that the Trial Chamber’s determination of foreseeability covers all thefts by the HVO during the implementation of the JCE.<sup>9623</sup>

#### b- Analysis

2935. Concerning Petković’s assertion that there is no evidence that he was aware, prior to the incidents, that operations took place in an atmosphere of violence, the Appeals Chamber preliminarily notes the Trial Chamber’s finding that, in many cases, the Appellants including him, as members of the JCE, knew that thefts might be committed due to the atmosphere of violence to which they contributed.<sup>9624</sup> In particular, the Trial Chamber’s assessment of Petković’s ability to foresee these incidents relied on, *inter alia*, his planning and facilitation of military operations that took place in an atmosphere of violence.<sup>9625</sup> Petković fails to demonstrate an error in the

<sup>9617</sup> Petković’s Appeal Brief, para. 391(vii), referring to Exs. P01445, P01598, P02599, P04055/3D01146.

<sup>9618</sup> Petković’s Appeal Brief, paras 391(iii)-(iv), 391(vi), 392-393. According to Petković, this legal error prejudices his ability “to establish the unreasonableness of the [Trial] Chamber’s findings”. Petković’s Appeal Brief, para. 391(iv).

<sup>9619</sup> Petković’s Appeal Brief, para. 391(iv).

<sup>9620</sup> Prosecution’s Response Brief (Petković), para. 272. See also Prosecution’s Response Brief (Petković), para. 270. The Prosecution further notes that: (1) as early as October 1992, Petković was on notice of destruction of Muslim homes during operations in Prozor; and (2) thefts occurred during these operations. Prosecution’s Response Brief (Petković), para. 271, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 53, 56-60.

<sup>9621</sup> Prosecution’s Response Brief (Petković), para. 273, referring to Petković’s Appeal Brief, para. 391(v).

<sup>9622</sup> Prosecution’s Response Brief (Petković), para. 274. The Prosecution also contends that these exhibits in fact demonstrate Petković’s awareness of the possibility of thefts as well as his authority over the perpetrators. Prosecution’s Response Brief (Petković), para. 274.

<sup>9623</sup> Prosecution’s Response Brief (Petković), para. 272, referring to Trial Judgement, Vol. 4, para. 72, Petković’s Appeal Brief, para. 391(iv).

<sup>9624</sup> Trial Judgement, Vol. 4, para. 72.

<sup>9625</sup> Trial Judgement, Vol. 4, paras 836-837, 839-840. See *supra*, fn. 9540 (finding that paragraph 840 of Volume 4 of the Trial Judgement, concerning thefts committed in Jablanica Municipality, contains a typographical error as it states that Petković “planned and facilitated the HVO operations in Gornji Vakuf”, rather than Jablanica). In relation to this assessment by the Trial Chamber (particularly, concerning Gornji Vakuf Municipality), the Appeals Chamber recalls its

Trial Chamber's reasoning. With respect to his argument that awareness of "such generic, unspecific, state of affair[s]" is insufficient to establish foresight, the Appeals Chamber recalls that knowledge of factors such as the nature of the conflict, the means by which a JCE is to be achieved, and how the JCE is implemented on the ground may make the possibility that such a crime might occur sufficiently substantial as to be foreseeable to members of the JCE.<sup>9626</sup> For the above reasons, his arguments are dismissed.<sup>9627</sup> Petković's general claim that the Trial Chamber thus failed to render a reasoned opinion in this regard – specifically, by failing to provide a reasoned finding that theft was a crime that he could have reasonably foreseen in these municipalities<sup>9628</sup> – lacks merit in light of the above analysis and is accordingly dismissed.

2936. Turning to Petković's assertion that the fact that he planned the military operations does not support the inference that he was aware of and willingly took the risk of thefts being committed,<sup>9629</sup> the Appeals Chamber recalls that an accused willingly takes the risk that a crime might occur by joining or continuing to participate in a JCE.<sup>9630</sup> Accordingly, insofar as Petković's involvement in the military operations in the municipalities of Gornji Vakuf and Jablanica reflects his contribution to the JCE,<sup>9631</sup> the Appeals Chamber finds no error in the Trial Chamber's reliance on these factors to infer Petković's *mens rea*. Based on this same consideration, the Appeals Chamber also dismisses Petković's argument that the Trial Chamber failed to explain *how* planning or facilitating the operations could reasonably have been said to demonstrate that he knowingly took the risk of such crimes being committed,<sup>9632</sup> as he fails to explain how such omission would impact the finding.

2937. Regarding his submission that the Trial Chamber "failed to address the evidence [...] demonstrat[ing] Petković's strict and unqualified opposition to such acts",<sup>9633</sup> the Appeals Chamber recalls the presumption that a trial chamber has evaluated all the evidence presented to it as long as

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decision to overturn the Trial Chamber's finding that the killing of seven civilians during the shelling in Duša, Gornji Vakuf Municipality in January 1993, constituted the crime of murder and wilful killing. See *supra*, paras 441-443, 866. The Appeals Chamber notes, however, that for the same reasons as set out above in relation to Stojić's JCE III liability, the remainder of the Trial Chamber's findings are sufficient for a reasonable trier of fact to conclude that the HVO operations in Gornji Vakuf took place in a climate of violence. Trial Judgement, Vol. 4, paras 710, 835, 837. See *supra*, paras 2857-2858, fn. 9350. Moreover, the Trial Chamber's finding that Petković planned and facilitated those operations remains undisturbed. Trial Judgement, Vol. 4, paras 708, 710, 836. See *supra*, paras 2157-2177.

<sup>9626</sup> *Stanišić and Župljanin* Appeal Judgement, para. 627. See *Šainović et al.* Appeal Judgement, para. 1089. The Appeals Chamber further recalls that it is not necessary for the purposes of JCE III liability that an accused be aware of the past occurrence of a crime in order for the same crime to be foreseeable to him. *Stanišić and Župljanin* Appeal Judgement, para. 627; *Šainović et al.* Appeal Judgement, para. 1081.

<sup>9627</sup> Likewise, the Appeals Chamber dismisses Petković's more general assertion that he had no information prior to the commission of these crimes that could reasonably have given him foresight thereof.

<sup>9628</sup> See Petković's Appeal Brief, para. 391(iii).

<sup>9629</sup> Petković's Appeal Brief, para. 391(v).

<sup>9630</sup> *Šainović et al.* Appeal Judgement, para. 1557.

<sup>9631</sup> Trial Judgement, Vol. 4, paras 708, 710, 716, 815, 817-818. See *supra*, paras 2157-2210, fn. 7454.

<sup>9632</sup> See Petković's Appeal Brief, para. 391(vi).

<sup>9633</sup> Petković's Appeal Brief, para. 391(vii).

there is no indication that it completely disregarded any particular piece of evidence.<sup>9634</sup> There may be an indication of disregard when evidence which is clearly relevant to the findings is not addressed in the trial chamber's reasoning.<sup>9635</sup> The Appeals Chamber notes that the Trial Chamber considered this evidence on Petković's opposition to criminal acts when assessing Petković's effective control over the HVO.<sup>9636</sup> Despite its consideration of this evidence, the Trial Chamber ultimately concluded on the basis of other evidence, when assessing Petković's JCE I liability, that he did not make serious efforts to put an end to the commission of crimes by HVO soldiers insofar as he failed to prevent and punish, but rather encouraged, the commission of subsequent crimes.<sup>9637</sup> Accordingly, the Appeals Chamber finds that the Trial Chamber did not disregard this evidence, but rather assessed it and concluded that it did not prevent the Trial Chamber from reaching its conclusion. As to Petković's general assertion that the Trial Chamber erred in law by failing to render a reasoned opinion, he specifically asserts, in this regard, that the Trial Chamber omitted to address the aforementioned evidence, thereby failing to render a reasoned opinion.<sup>9638</sup> However, the Appeals Chamber reiterates that a reasoned opinion does not require a trial chamber to articulate every step of its reasoning,<sup>9639</sup> as long as it indicates clearly the legal and factual findings on the basis of which it reached the decision either to convict or acquit an individual.<sup>9640</sup> In light of all these reasons, Petković's arguments are dismissed.

2938. Turning to his particular assertion that there is a lack of reasoned finding as to which instances of thefts he could foresee, the Appeals Chamber notes that when analysing Petković's JCE III responsibility for thefts in the municipalities of Gornji Vakuf and Jablanica, the Trial Chamber expressly referred to its factual findings in Volume 2 of the Trial Judgement on specific theft incidents and the perpetrators thereof, namely HVO members.<sup>9641</sup> Insofar as he alleges a lack of a reasoned finding as to which units he could foresee might commit such crimes, the Appeals Chamber recalls that the Trial Chamber was not required to determine the *specific* units

<sup>9634</sup> *Kvočka et al.* Appeal Judgement, paras 23-24. See *Stanišić and Župljanin* Appeal Judgement, para. 138; *Popović et al.* Appeal Judgement, paras 306, 925.

<sup>9635</sup> *Kvočka et al.* Appeal Judgement, paras 23-24. See *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 926, 1017.

<sup>9636</sup> See Trial Judgement, Vol. 4, paras 667, 670 (referring to, *inter alia*, Ex. P02599), 675 (referring to, *inter alia*, Ex. P01598), 676 (referring to Ex. P01445), 677 (referring to, *inter alia*, Ex. P01598), 678 (referring to, *inter alia*, Exs. P04055/3D01146). See Trial Judgement, Vol. 4, para. 682 (regarding Petković's power to negotiate and order cease-fires and referring to, *inter alia*, Ex. P02599).

<sup>9637</sup> Trial Judgement, Vol. 4, paras 806-813, 816. See *supra*, paras 2172-2176, 2193-2198, 2338-2349, 2353-2361, 2410-2416, 2468.

<sup>9638</sup> See Petković's Appeal Brief, para. 392.

<sup>9639</sup> *Stanišić and Župljanin* Appeal Judgement, paras 378, 1063; *Popović et al.* Appeal Judgement, paras 972, 1906; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490; *Kvočka et al.* Appeal Judgement, para. 398. See also *Kvočka et al.* Appeal Judgement, para. 23.

<sup>9640</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137; *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Hadžihasanović and Kubura* Appeal Judgement, para. 13.

<sup>9641</sup> See Trial Judgement, Vol. 4, paras 835 & fn. 1551 (referring to Trial Judgement, Vol. 2, paras 412-415, 432-437, 456-460), 838 & fns 1553-1554 (referring to Trial Judgement, Vol. 2, paras 651-655).

whose acts could be foreseeable to Petković, but rather whether it was foreseeable to him that a crime outside the CCP might be perpetrated by one or more of the persons used by him or another member of the JCE.<sup>9642</sup> Thus, his arguments are dismissed.

2939. Based on the foregoing, the Appeals Chamber concludes that Petković has failed to demonstrate that the Trial Chamber erred in finding that he could have foreseen, and willingly took the risk, that the thefts in the municipalities of Gornji Vakuf and Jablanica “would” occur.<sup>9643</sup> Since the Trial Chamber’s finding that a higher degree of foreseeability was met is not disturbed, the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9644</sup> – is necessarily satisfied.<sup>9645</sup> Petković’s sub-ground of appeal 6.2.2.1 is therefore dismissed.

ii. Mostar Municipality (Petković’s Sub-ground 6.2.2.2)

2940. When considering Petković’s responsibility, pursuant to JCE III liability, for thefts in Mostar Municipality, the Trial Chamber referred to its previous finding that in addition to threatening, intimidating, and beating Muslims during eviction operations in West Mostar, which took place from May 1993, HVO soldiers “took all the[ir] valuables [...] and also appropriated items” from them.<sup>9646</sup> The Trial Chamber further recalled that such expulsions continued until February 1994 and “were accompanied by thefts”.<sup>9647</sup> The Trial Chamber then noted that on 14 June 1993, Petković received the CED Report, which informed him that members of the Tihomir Mišić Battalion and the Vinko Škrobo ATG had raped several women and beaten numerous

<sup>9642</sup> See *Stanišić and Župljanin* Appeal Judgement, para. 998. See also Trial Judgement, Vol. 4, paras 818, 1232 (finding that Petković and other JCE members used the HVO to commit crimes forming part of the CCP and that the actions of the HVO were attributable to him); *supra*, paras 2128-2134.

<sup>9643</sup> Trial Judgement, Vol. 4, paras 837, 840. With regard to possible implications of the Duša Reversal, the Appeals Chamber recalls that the Trial Chamber’s finding that Petković planned and facilitated military operations in Gornji Vakuf Municipality which took place in an atmosphere of extreme violence is undisturbed for the reasons set out above. See *supra*, fn. 9625; Trial Judgement, Vol. 4, paras 836-837. Thus, the Trial Chamber’s conclusion on Petković’s JCE III liability for thefts committed in Gornji Vakuf Municipality, which was primarily based on this finding, is also unaffected. See *supra*, paras 2932, 2935-2936; Trial Judgement, Vol. 4, paras 835-837. The Trial Chamber’s conclusion on Petković’s JCE III liability for thefts committed in Jablanica Municipality is unaffected as well, since it was primarily based on the Trial Chamber’s finding that he planned and facilitated military operations in Jablanica Municipality which took place in an atmosphere of extreme violence. See *supra*, paras 2932, 2935-2936, fns 9540, 9613, 9625; Trial Judgement, Vol. 4, paras 838-840. Further, the Appeals Chamber considers that its reversal of the Trial Chamber’s finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber’s conclusion concerning Petković’s JCE III liability for the thefts committed in Gornji Vakuf Municipality from January 1993 and in Jablanica Municipality from April 1993, since the Trial Chamber’s findings that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, and mistreatment during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, have been undisturbed, and Petković was found to have participated in this JCE. See *supra*, paras 882-883, 885-886, 2835; Trial Judgement, Vol. 4, paras 66-68.

<sup>9644</sup> See *supra*, paras 2836, 2902.

<sup>9645</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9646</sup> Trial Judgement, Vol. 4, para. 842, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 924-938, 973-990.

<sup>9647</sup> Trial Judgement, Vol. 4, para. 842, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 819-828, 860-876, 924-938, 973-990.

people.<sup>9648</sup> On this basis, the Trial Chamber concluded that Petković: (1) was directly informed that the HVO was engaged in eviction operations occurring in West Mostar and that these operations were occurring in an “atmosphere of violence”; and (2) allowed this to happen insofar as the same units continued operating “in the same atmosphere of violence” until February 1994.<sup>9649</sup> Based on all of these findings, the Trial Chamber found that Petković could reasonably have foreseen that thefts “would” also be committed (“*seraient également commis*”) during the operations to evict the Muslims from Mostar between June 1993 and February 1994, and that he knowingly took this risk.<sup>9650</sup>

a- Arguments of the Parties

2941. Petković submits that even though the Trial Chamber established that he could reasonably have foreseen thefts committed during eviction operations in West Mostar, and he knowingly took that risk, it did not enter a conviction in relation thereto.<sup>9651</sup> Alternatively, Petković argues that the Trial Chamber erred in finding that he possessed the requisite *mens rea* for JCE III liability “between May 1993 and February 1994”.<sup>9652</sup> He claims that the Trial Chamber failed to provide a reasoned opinion identifying which specific incidents of theft were foreseeable to him and which of them are relevant to his responsibility, particularly because he was only informed of one eviction operation, which took place on 13 June 1993.<sup>9653</sup> He also contends that the 14 June 1993 CED Report does not support the Trial Chamber’s finding that he could foresee these thefts or that he knowingly took the risk of their commission since it: (1) only mentioned units that were not found to have committed thefts after 14 June 1993,<sup>9654</sup> and (2) did not contain any reference to acts of theft.<sup>9655</sup> He further submits that knowledge of “an atmosphere of violence” could not meet the foreseeability standard required pursuant to JCE III liability.<sup>9656</sup>

<sup>9648</sup> Trial Judgement, Vol. 4, para. 843, referring to Ex. P02770. See also Trial Judgement, Vol. 4, para. 828, referring to Ex. P02770.

<sup>9649</sup> Trial Judgement, Vol. 4, para. 844.

<sup>9650</sup> Trial Judgement, Vol. 4, para. 845. See Trial Judgement, Vol. 4, Disposition, p. 431. See also *supra*, fn. 9316.

<sup>9651</sup> Petković’s Appeal Brief, para. 394, referring to Trial Judgement, Vol. 4, paras 845, 853.

<sup>9652</sup> Petković’s Appeal Brief, paras 397-399. See also Petković’s Appeal Brief, paras 394-396, 400; Petković’s Reply Brief, paras 81-82. In particular, he submits that the Trial Chamber did not find that he had information about any eviction operation save that of 13 June 1993 and that the CED Report he received on 14 June 1993 is not evidence of “foresight of crimes committed a day *before*, on 13 June 1993”. Petković’s Appeal Brief, para. 397(i) (emphasis in original).

<sup>9653</sup> Petković’s Appeal Brief, paras 394-395, 398(i). Petković further submits that “it is almost impossible for him to exercise his right of appeal” and that the Trial Chamber’s findings in relation to these incidents should thus be “quashed”. Petković’s Appeal Brief, para. 398(i).

<sup>9654</sup> Petković’s Appeal Brief, paras 398(iii), 399(ii).

<sup>9655</sup> Petković’s Appeal Brief, para. 397(ii).

<sup>9656</sup> Petković’s Appeal Brief, para. 398(ii). See also Petković’s Reply Brief, para. 81.

2942. Moreover, Petković argues that the Trial Chamber erred in finding that he knowingly took the risk of thefts being committed.<sup>9657</sup> Specifically, he submits that: (1) the Trial Chamber failed to provide a reasoned opinion in this regard; and (2) there is no evidence that he decided to continually deploy those units.<sup>9658</sup>

2943. The Prosecution responds that the Trial Chamber correctly found Petković responsible for the thefts committed in West Mostar especially given that he intended violent crimes to be committed within the context of an ethnically-charged campaign to remove the Muslims from the HZ(R) H-B.<sup>9659</sup> It further argues that the Trial Chamber provided a reasoned opinion regarding all thefts in West Mostar for which Petković is responsible pursuant to JCE III.<sup>9660</sup> It also responds that in claiming that he only knew of one eviction, Petković ignores the Trial Chamber's findings on his extensive involvement since January 1993 in planning attacks and takeovers in other municipalities, which occurred in an ethnically-charged atmosphere of extreme violence and were aimed at removing Muslims.<sup>9661</sup>

2944. As to the CED Report, the Prosecution submits that Petković's responsibility for thefts in Mostar does not depend on this single exhibit; but rather, his liability was established through his position as the Chief of the HVO Main Staff, his role in three prior HVO operations in Mostar, and his knowledge of "the atmosphere of extreme violence" there.<sup>9662</sup> In this respect, the Prosecution emphasises that the Trial Chamber only considered the CED Report to be a confirmation of Petković's knowledge about the criminal propensity of the HVO units deployed.<sup>9663</sup> The Prosecution further argues that Petković's foresight that thefts might be committed should not be limited to a specific unit and that he was not required to know that thefts, specifically, had been committed previously.<sup>9664</sup>

#### b- Analysis

2945. Regarding Petković's preliminary argument that the Trial Chamber did not enter a conviction for the thefts in West Mostar thus he "was not validly convicted" for Counts 22

<sup>9657</sup> Petković's Appeal Brief, para. 399.

<sup>9658</sup> Petković's Appeal Brief, para. 399 (i)-(ii). Petković also submits that he had no information that thefts had been committed by the units deployed and thus he had no reason not to deploy them. Petković's Appeal Brief, para. 399 (iv).

<sup>9659</sup> Prosecution's Response Brief (Petković), para. 270.

<sup>9660</sup> Prosecution's Response Brief (Petković), paras 275, 277 (arguing specifically that the Trial Chamber provided a reasoned opinion when concluding that Petković willingly took the risk based on the fact that he permitted the continued use of HVO units that he knew had been involved in certain violent crimes).

<sup>9661</sup> Prosecution's Response Brief (Petković), paras 275-276.

<sup>9662</sup> Prosecution's Response Brief (Petković), para. 276.

<sup>9663</sup> Prosecution's Response Brief (Petković), para. 276.

<sup>9664</sup> Prosecution's Response Brief (Petković), paras 276-277.



and 23,<sup>9665</sup> the Appeals Chamber considers that the omission of these counts from the list in paragraph 853 of Volume 4 of the Trial Judgement under the heading “Municipality of Mostar” is simply an inadvertent oversight.<sup>9666</sup> In reading the Trial Judgement as a whole, it is clear that the Trial Chamber concluded that the requirements for JCE III liability were met in relation to Petković’s responsibility for thefts in West Mostar by finding that he “could reasonably have foreseen that thefts would [...] be committed during the operations to evict the Muslims from Mostar between June 1993 and February 1994” and that “he knowingly took this risk”.<sup>9667</sup> Moreover, the Appeals Chamber observes that the Trial Chamber convicted Petković for the crimes of extensive appropriation of property and plunder under Counts 22 and 23.<sup>9668</sup> The Appeals Chamber therefore finds that the Trial Chamber convicted Petković, pursuant to JCE III liability, for thefts committed in West Mostar between June 1993 and February 1994.<sup>9669</sup>

2946. The Appeals Chamber now turns to Petković’s alternative submissions that the Trial Chamber erred in finding him responsible, pursuant to JCE III liability, for thefts committed in West Mostar “between May 1993 and February 1994”.<sup>9670</sup> In this regard, the Appeals Chamber observes, preliminarily, that part of Petković’s contentions appear to rest on the erroneous assumption that the Trial Chamber convicted him for the incidents of theft that occurred in West Mostar in May 1993 and on 13 June 1993.<sup>9671</sup> However, the Appeals Chamber observes that the Trial Chamber explicitly found that Petković could foresee the thefts occurring during the eviction operations “between *June* 1993 and February 1994”, thus excluding the incidents of theft which took place in May 1993.<sup>9672</sup> The Appeals Chamber further observes that in so finding, the Trial Chamber relied, in particular, on Petković’s acquisition of information contained in the CED Report, which he received on 14 June 1993, and which concerned the eviction operation carried out by HVO units on the previous day.<sup>9673</sup> Moreover, the Trial Chamber concluded that Petković willingly took the risk of the commission of thefts, based on its observation that he “allowed this to happen insofar as these same units continued operating in the same atmosphere of violence, evicting

<sup>9665</sup> Petković’s Appeal Brief, para. 394.

<sup>9666</sup> See Trial Judgement, Vol. 4, para. 853.

<sup>9667</sup> Trial Judgement, Vol. 4, para. 845. See Trial Judgement, Vol. 4, paras 842-844.

<sup>9668</sup> Trial Judgement, Vol. 4, Disposition, p. 431.

<sup>9669</sup> The Appeals Chamber, however, underlines its further finding below that the Trial Chamber did not convict Petković of thefts committed in West Mostar prior to 14 June 1993. See *infra*, para. 2946.

<sup>9670</sup> Petković’s Appeal Brief, paras 397-399. See also Petković’s Appeal Brief, para. 395.

<sup>9671</sup> See Petković’s Appeal Brief, para. 397 (“The Trial Chamber erred in law and in fact when [it] concluded that Petković possessed the requisite JCE 3 *mens rea* in relation to acts of theft committed in West Mostar between May 1993 and February 1994[...].”), 397(i) (“The Trial Chamber did not infer that Petković was informed about any ‘eviction operation’ save that on 13 June 1993[...]. The report received on 14 June 1993 did not provide evidence of JCE 3 foresight of crimes committed a day *before*, on 13 June 1993.”) (emphasis in original).

<sup>9672</sup> See Trial Judgement, Vol. 4, para. 845 (emphasis added).

<sup>9673</sup> See Trial Judgement, Vol. 4, paras 843, 845.

and removing the population of West Mostar until February 1994".<sup>9674</sup> Accordingly, the theft incidents which took place on 13 June 1993 could not have formed the basis of Petković's conviction. Based on this consideration, the Appeals Chamber finds that the Trial Chamber did not convict Petković of the thefts committed prior to 14 June 1993.<sup>9675</sup> Accordingly, insofar as Petković's challenges concern the thefts which took place in May 1993 and on 13 June 1993, they are dismissed as moot.

2947. Regarding Petković's argument that the Trial Chamber failed to provide a reasoned opinion with respect to the incidents of theft for which he was convicted, the Appeals Chamber considers that Petković ignores the express findings of the Trial Chamber. In reaching the conclusion that he could have reasonably foreseen that thefts would be committed during the operations to evict Muslims from Mostar between June 1993 and February 1994, the Trial Chamber referred to its previous factual findings where it listed the thefts committed by members of the HVO, including those from the Vinko Škrobo and Benko Penavić ATGs, during eviction operations in West Mostar in August, September, October, and November 1993, as well as in February 1994.<sup>9676</sup> Likewise, the Appeals Chamber further rejects Petković's claims that there is no evidence that any of the units mentioned in the CED Report continued to commit thefts.<sup>9677</sup> Again, Petković ignores the Trial Chamber's reference to its previous factual findings and the underlying evidence that members of the Vinko Škrobo ATG committed thefts during the eviction operations in West Mostar between July 1993 and February 1994.<sup>9678</sup> In any event, Petković fails to appreciate that he was convicted not only for the thefts committed by the specific units mentioned in the CED Report, but also for those committed by HVO soldiers during the eviction operations in similar contexts after 13 June 1993.<sup>9679</sup>

2948. Regarding Petković's argument that because the CED Report did not specifically mention thefts, it cannot provide support for the Trial Chamber's findings,<sup>9680</sup> the Appeals Chamber recalls that it is not necessary for the purpose of JCE III liability that an accused be aware of the past

<sup>9674</sup> Trial Judgement, Vol. 4, para. 844. See Trial Judgement, Vol. 4, para. 845.

<sup>9675</sup> See *supra*, para. 2913. See also *supra*, paras 2213-2225.

<sup>9676</sup> Trial Judgement, Vol. 4, para. 842, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 932, 977, 979, 982, 984, See also Trial Judgement, Vol. 2, paras 985-987.

<sup>9677</sup> Petković's Appeal Brief, paras 398(iii), 399(ii). Petković points to the Trial Chamber's finding referring to the Tihomir Mišić Battalion and the Vinko Škrobo ATG as units mentioned in the CED Report. Petković's Appeal Brief, para. 398(iii). See also Trial Judgement, Vol. 4, para. 843; *supra*, para. 2940.

<sup>9678</sup> Trial Judgement, Vol. 4, para. 842, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 932, 977, 982. See also Trial Judgement, Vol. 2, paras 985-986.

<sup>9679</sup> Trial Judgement, Vol. 4, paras 842, 845. See also Trial Judgement, Vol. 2, paras 932, 977, 979, 982, 984-987.

<sup>9680</sup> Petković's Appeal Brief, para. 397(ii). See also *supra*, para. 2940 (recalling that the Trial Chamber's findings on Petković's *mens rea* under JCE III liability for thefts were based, *inter alia*, on its finding that he was aware of the occurrence of eviction operations in West Mostar in an atmosphere of violence, which was, in turn, based on the finding that he received the CED Report stating that members of the Tihomir Mišić Battalion and the Vinko Škrobo ATG had raped several women and beaten numerous people during the eviction operations).

occurrence of a crime in order for the same conduct to be foreseeable to him.<sup>9681</sup> As to Petković's submission that "even if Petković had known of 'an atmosphere of violence', this would not meet the requisite level of foresight relevant to this mode of liability",<sup>9682</sup> the Appeals Chamber observes that he provides no references and fails to develop his argument. For these reasons, his contention can be dismissed. Moreover, the Appeals Chamber recalls that "[k]nowledge of factors such as the nature of the conflict, the means by which a joint criminal enterprise is to be achieved, and how the joint criminal enterprise is implemented on the ground may make the possibility that such a crime might occur sufficiently substantial as to be foreseeable" to JCE members.<sup>9683</sup> Thus, the Appeals Chamber finds that Petković has failed to show that the Trial Chamber erred in considering his knowledge of the climate of extreme violence as a factor when determining his liability for the thefts in West Mostar between 14 June 1993 and February 1994.<sup>9684</sup> Petković's argument is therefore dismissed.

2949. Turning to Petković's contentions vis-à-vis the Trial Chamber's conclusion that he willingly took the risk of the commission of thefts, the Appeals Chamber observes that the Trial Chamber did provide a reasoned opinion in support of its conclusion by finding that he "allowed this to happen insofar as these same units continued operating in the same atmosphere of violence, evicting and removing the population of West Mostar until February 1994".<sup>9685</sup> Accordingly, this argument is dismissed. Petković's argument that there is no evidence that he decided to continually deploy those units also rests on a misrepresentation of the Trial Judgement. The Appeals Chamber reiterates that a plain reading of the Trial Judgement shows that rather than concluding that he continually deployed the HVO units in West Mostar, the Trial Chamber found that he simply failed to stop or punish the perpetrators of these crimes, thereby allowing them to continue operating in the same atmosphere of violence in West Mostar.<sup>9686</sup>

2950. Based on the foregoing, the Appeals Chamber concludes that Petković has failed to demonstrate that the Trial Chamber erred in finding that he could have foreseen, and willingly took

<sup>9681</sup> *Šainović et al.* Appeal Judgement, para. 1081.

<sup>9682</sup> Petković's Appeal Brief, para. 398(ii).

<sup>9683</sup> *Stanišić and Župljanin* Appeal Judgement, para. 627.

<sup>9684</sup> Trial Judgement, Vol. 4, paras 837, 840, 844-845, 853.

<sup>9685</sup> Trial Judgement, Vol. 4, para. 844. As to Petković's claim that the Trial Chamber erred in concluding that he knowingly took the risk because he had no information that thefts had been committed by the HVO units deployed in West Mostar, the Appeals Chamber observes that this argument rests on the assumption that the CED Report did not provide him with sufficient information to put him on notice of the possible commission of future thefts. The Appeals Chamber reiterates that Petković has not shown that the Trial Chamber erred in considering his knowledge of the climate of extreme violence, which he acquired from the CED Report, as a factor when determining his liability for the thefts in West Mostar between 14 June 1993 and February 1994. See *supra*, para. 2948; Trial Judgement, Vol. 4, paras 732-734, 827-828, 830. Accordingly, this argument is dismissed.

<sup>9686</sup> Trial Judgement, Vol. 4, paras 734-735, 844. See *supra*, paras 2213-2225.

the risk, that the thefts in West Mostar “would” occur.<sup>9687</sup> Since the Trial Chamber’s finding that a higher degree of foreseeability was met is not disturbed, the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9688</sup> – is necessarily satisfied.<sup>9689</sup> Petković’s sub-ground of appeal 6.2.2.2 is therefore dismissed.

iii. Vareš Municipality (Petković’s Sub-ground 6.2.2.3)

2951. The Trial Chamber found that Petković ordered Rajić to deploy units of HVO soldiers to “Vareš” on 22 October 1993.<sup>9690</sup> It also found that on 23 October 1993, members of the HVO arrested Muslim men as well as stole property and money belonging to the Muslim population and that Petković was informed of these arrests on the same day.<sup>9691</sup> The Trial Chamber further found that these thefts continued until 1 November 1993.<sup>9692</sup> In light of these findings, the Trial Chamber concluded that “insofar as Milivoj Petković was informed of the arrests of Muslim men and the thefts that occurred in the town of Vareš as of 23 October 1993 and that the thefts continued until 1 November 1993”, he could have foreseen them and “knowingly” took the risk that these crimes “would” be committed (“*soient commis*”).<sup>9693</sup> The Trial Chamber therefore found Petković responsible for these thefts committed in Vareš town pursuant to JCE III liability.<sup>9694</sup>

a- Arguments of the Parties

2952. Petković submits that the Trial Chamber erred when concluding that he possessed the requisite *mens rea* for thefts committed in Vareš town.<sup>9695</sup> He submits that the Trial Chamber failed to provide a reasoned opinion in determining that he knew of a risk of thefts in Vareš town, prior to their commission.<sup>9696</sup> Moreover, he argues that the Trial Chamber unreasonably found that he was

<sup>9687</sup> Trial Judgement, Vol. 4, para. 845. The Appeals Chamber considers that its reversal of the Trial Chamber’s finding that murder and wilful killing were part of the CCP before June 1993 has no impact on the Trial Chamber’s conclusion concerning Petković’s JCE III liability for thefts committed in West Mostar, Mostar Municipality, since Petković was found responsible for thefts committed in this location between 14 June 1993 and February 1994, and not earlier than this time period. See *supra*, paras 2945-2946, 2948. See also *supra*, paras 882, 886, 2835. Further, given that the Trial Chamber’s conclusion on his JCE III liability for thefts committed in West Mostar, Mostar Municipality, was primarily based on his awareness of and involvement in the events in this municipality, the Appeals Chamber considers that this conclusion remains undisturbed by the Duša Reversal. See *supra*, para. 2940; Trial Judgement, Vol. 4, paras 842-845. See also *supra*, para. 2842.

<sup>9688</sup> See *supra*, paras 2836, 2902.

<sup>9689</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9690</sup> Trial Judgement, Vol. 4, para. 846.

<sup>9691</sup> Trial Judgement, Vol. 4, para. 847.

<sup>9692</sup> Trial Judgement, Vol. 4, para. 847.

<sup>9693</sup> Trial Judgement, Vol. 4, para. 848. See *supra*, fn. 9316.

<sup>9694</sup> Trial Judgement, Vol. 4, paras 848, 853.

<sup>9695</sup> Petković’s Appeal Brief, paras 402-403. See also Petković’s Reply Brief, paras 81-82.

<sup>9696</sup> Petković’s Appeal Brief, para. 402(iii). He also submits that the Trial Chamber failed to provide a reasoned opinion as to how it could reasonably have concluded that he knowingly took “the risk that such acts would be committed”. According to Petković, this error of law gravely prejudices his ability to effectively challenge the Trial Chamber’s reasoning. Petković’s Appeal Brief, para. 402(iv).

informed of thefts as of 23 October 1993 as the evidence on the record does not support this conclusion.<sup>9697</sup>

2953. The Prosecution responds that the Trial Chamber reasonably found that Petković could foresee thefts in Vareš town because it had already established his knowledge that previous HVO operations resulted in thefts.<sup>9698</sup>

b- Analysis

2954. With regard to Petković's general contentions that the Trial Chamber failed to provide a reasoned opinion in determining "that Petković had received information suggesting a risk of theft" in Vareš town, the Appeals Chamber recalls that an "appellant claiming an error of law because of the lack of a reasoned opinion needs to identify the specific issues, factual findings, or arguments, which he submits the trial chamber omitted to address and to explain why this omission invalidated the decision".<sup>9699</sup> The Appeals Chamber, however, observes that Petković provides no support or explanation for this contention and therefore dismisses this argument.<sup>9700</sup>

2955. Turning to Petković's argument that the evidence on the record does not support the conclusion that he was informed of thefts as of 23 October 1993, the Appeals Chamber observes that while the Trial Chamber concluded that Petković was informed of arrests *and thefts* in Vareš town as of 23 October 1993, in the preceding paragraph of its analysis it recalled only that he was informed of HVO arrests of Muslim men.<sup>9701</sup> Moreover, in support of this latter finding the Trial Chamber referred to its previous factual analysis concerning the crimes committed in Vareš town where, relying on Rajić's Report, it concluded that on 23 October 1993, Petković received information that HVO soldiers arrested Muslim men in Vareš town, insulted, threatened, and beat the arrested Muslim men, and stole property and money belonging to the Muslim population.<sup>9702</sup>

2956. In this regard, the Appeals Chamber reiterates its finding that the Trial Chamber erroneously concluded that Rajić's Report informed Petković that the members of the HVO insulted, threatened,

<sup>9697</sup> Petković's Appeal Brief, para. 402(i)-(ii). Petković also submits that the "proposition" that he was informed of thefts was not put to him when he testified, "thereby depriving him of a fair opportunity to confront any suggestion to the contrary". Petković's Appeal Brief, para. 402(ii).

<sup>9698</sup> Prosecution's Response Brief (Petković), para. 278. See also Prosecution's Response Brief (Petković), para. 270. Specifically, the Prosecution argues that Petković attempts to isolate "Vareš Municipality from the pattern of HVO attacks" and that the Trial Chamber's analysis does not turn on whether Petković was informed that a specific unit was going to commit theft in a particular location. Prosecution's Response Brief (Petković), para. 279.

<sup>9699</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137; *Popović et al.* Appeal Judgement, paras 1367, 1771; *Kvočka et al.* Appeal Judgement, para. 25.

<sup>9700</sup> Petković's Appeal Brief, para. 402(iii). For these same reasons, the Appeals Chamber observes that Petković's similar and unsupported argument that the Trial Chamber failed to provide a reasoned opinion as to how it concluded that he willingly took the risk is dismissed. See Petković's Appeal Brief, para. 402(iv).

<sup>9701</sup> Compare Trial Judgement, Vol. 4, para. 848, with Trial Judgement, Vol. 4, para. 847.

<sup>9702</sup> See Trial Judgement, Vol. 4, para. 847, referring to Trial Judgement, Vol. 3, paras 339-348.

and beat arrested Muslim men, and stole property and money belonging to the Muslim population.<sup>9703</sup> Accordingly, the Appeals Chamber finds that the Trial Chamber erred in concluding – on the sole basis of the information contained in Rajić’s Report – that Petković could foresee thefts.<sup>9704</sup>

2957. However, the Appeals Chamber is not convinced that this error occasioned a miscarriage of justice.<sup>9705</sup> Specifically, a review of the Trial Judgement reflects a number of findings relevant to Petković’s responsibility, pursuant to JCE III, for the thefts committed in Vareš town. In this regard, the Trial Chamber found that thefts were foreseeable to Petković, as early as January 1993, in multiple municipalities, namely Gornji Vakuf, Jablanica, and West Mostar, where all of the HVO operations commenced *prior* to the thefts committed in Vareš town.<sup>9706</sup> In addition, the Appeals Chamber notes the Trial Chamber’s finding that Petković received Željko Šiljeg’s 29 January 1993 report,<sup>9707</sup> which indicated that Muslim property had been stolen in the villages of Uzričje, Duša, and Trnovača in Gornji Vakuf Municipality.<sup>9708</sup> Based on these findings, a reasonable trier of fact could have concluded that Petković was already on notice of the risk that the same crimes might also be committed in the context of similar, subsequent operations during the implementation of the JCE.<sup>9709</sup> These considerations are also supported by the Trial Chamber’s conclusions that Petković: (1) significantly contributed to the JCE and shared the intent to further its CCP, which involved the expulsion of the Muslim population through various forms of mistreatment in multiple municipalities; and (2) was informed by Rajić’s Report that the HVO was involved in the arrests of Muslim men in Vareš town and in the killings of civilians in Stupni Do.<sup>9710</sup> Such findings indicate that Petković was aware of the vulnerability of the civilian

<sup>9703</sup> See *supra*, paras 2924-2927.

<sup>9704</sup> See Trial Judgement, Vol. 4, para. 848.

<sup>9705</sup> In assessing whether this error occasioned a miscarriage of justice, the Appeals Chamber applies the correct legal standard of foreseeability, which requires that it was foreseeable to the accused that the crime in question might be committed and that he willingly took that risk. See *supra*, para. 2902.

<sup>9706</sup> Trial Judgement, Vol. 4, paras 835, 837 (Gornji Vakuf Municipality), 838, 840 (Jablanica Municipality), 845 (West Mostar), 853.

<sup>9707</sup> Trial Judgement, Vol. 4, para. 705, referring to Ex. P01351. See *supra*, paras 2157-2177. While in paragraph 705, Volume 4 of the Trial Judgement, the Trial Chamber refers to the date of Šiljeg’s report (Exhibit P01351) as 28 January 1993, for the reasons stated elsewhere, the Appeals Chamber understands the date of this report to be 29 January 1993. See *supra*, fn. 3703.

<sup>9708</sup> Trial Judgement, Vol. 4, paras 130, 333, referring to Ex. P01351. The Trial Chamber also found that Petković received reports on the burning and destruction of Muslim houses in Prozor in October 1992 and that, on 31 October 1992, he issued an order prohibiting such activity, although no concrete measures were taken to implement that order on the ground. Trial Judgement, Vol. 2, para. 53, Vol. 4, para. 1243.

<sup>9709</sup> See Trial Judgement, Vol. 4, paras 44-48, 55-58, 61-65 (indicating the similarities among the HVO operations in various municipalities and the crimes committed).

<sup>9710</sup> Trial Judgement, Vol. 3, paras 339-342, 348, Vol. 4, paras 66-67, 691, 694, 696, 703-708, 712-716, 718, 720-721, 723, 732, 734, 738, 747-750, 754-755, 758-759, 761-763, 765, 778, 780, 782, 789, 794, 796-799, 801-802, 817-818. See *supra*, paras 2136-2442, 2468. With respect to Petković’s knowledge on the basis of Rajić’s Report, see *supra*, paras 2281-2284; Ex. P06026, pp. 2-3. With regard to the scope of the CCP, the Appeals Chamber recalls that it has vacated the Trial Chamber’s finding that murder and wilful killing were part of the CCP before June 1993. See *supra*,

population during the expulsion campaign in the context of the military operations in Vareš town and further corroborate the conclusion that he could foresee that thefts might be committed there. Accordingly, the Appeals Chamber finds that Petković has failed to demonstrate that the Trial Chamber's error has occasioned a miscarriage of justice.<sup>9711</sup>

2958. In light of the foregoing, the Appeals Chamber dismisses Petković's sub-ground of appeal 6.2.2.3.

#### iv. Conclusion

2959. In light of the foregoing, Petković's sub-ground of appeal 6.2.2 is dismissed.

#### c. Alleged errors concerning the destruction of mosques in Jablanica Municipality (Sovići and Doljani) (Petković's Sub-ground 6.2.3)

2960. The Trial Chamber found Petković responsible, pursuant to JCE III, for the crime of destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21) in Jablanica Municipality.<sup>9712</sup>

2961. The Trial Chamber found that on 17 April 1993, the HVO launched an attack on the Jablanica area, shelling Sovići and Doljani, and ultimately taking control of the two villages once the ABiH surrendered.<sup>9713</sup> It also determined that "in the days after the HVO attack" on Sovići and Doljani, HVO soldiers destroyed two mosques located therein.<sup>9714</sup> In the section of the Trial Judgement pertaining to Petković's responsibility, pursuant to JCE III, for the destruction of those mosques, the Trial Chamber stated that "on 17 April 1993, when combat was over, the HVO set fire to all the Muslim houses and two mosques on orders from 'senior commanders'".<sup>9715</sup> It found that the destruction of the mosques was "likely" ("*vraisemblable*") an integral part of the plan related to operations in Jablanica, which was organised and orchestrated by the HVO leadership, including Petković.<sup>9716</sup> It further found that "by planning and directing the HVO operations in Sovići and Doljani targeting Muslims", Petković "knowingly" took the risk that institutions

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paras 882, 886, 2835. However, this has no impact on the current analysis in relation to the thefts in Vareš Municipality, which were committed in October and November 1993.

<sup>9711</sup> As to Petković's specific contention that he was not questioned about this "proposition" when he testified, the Appeals Chamber recalls that the Prosecution was not required to do so. See *Krajišnik* Appeal Judgement, paras 368-370.

<sup>9712</sup> Trial Judgement, Vol. 4, paras 850-853.

<sup>9713</sup> Trial Judgement, Vol. 2, paras 538-546, 548, Vol. 4, para. 717.

<sup>9714</sup> Trial Judgement, Vol. 2, para. 646. See also Trial Judgement, Vol. 2, para. 650, Vol. 3, para. 1606.

<sup>9715</sup> Trial Judgement, Vol. 4, para. 850.

<sup>9716</sup> Trial Judgement, Vol. 4, para. 852. The Trial Chamber also noted that Petković was regularly informed of the combat operations in Jablanica Municipality between 16 and 17 April 1993. Trial Judgement, Vol. 4, para. 851.

dedicated to the Muslim religion “would” be destroyed (“*le risque de la destruction des édifices religieux musulmans*”).<sup>9717</sup>

i. Arguments of the Parties

2962. Petković submits that the Trial Chamber made contradictory findings as to the exact date of the destruction of the two mosques in Sovići and Doljani.<sup>9718</sup> Petković argues that even if he planned and organised the HVO attack on Sovići and Doljani, he did not plan the commission of crimes therein.<sup>9719</sup> According to Petković, because these crimes were not a part of any “HVO military plan”,<sup>9720</sup> no reasonable trier of fact could have reasonably concluded that he could foresee that these crimes might be committed and that he willingly took the risk that they “would” be committed.<sup>9721</sup> Additionally, Petković argues that the Trial Chamber failed to provide a reasoned opinion for finding that he knowingly took the risk.<sup>9722</sup> Accordingly, he submits that his conviction for this incident under Count 21 should be reversed.<sup>9723</sup>

2963. The Prosecution submits that the Trial Chamber consistently found that the mosques in Sovići and Doljani were destroyed some time between 18 and 24 April 1993, and that the one reference to the destruction “on 17 April 1993” is a typographical error.<sup>9724</sup> It argues that the Trial Chamber reasonably found that by planning and directing military operations which targeted Muslims in the two locations, Petković could foresee the risk of mosques being destroyed and knowingly took the risk.<sup>9725</sup> It adds that Petković fails to explain how the motives of the HVO members who committed this crime undermines this reasoning.<sup>9726</sup> It further argues that the destruction of the mosques need not be a part of the original plan and, thus, Petković’s arguments should be dismissed.<sup>9727</sup>

<sup>9717</sup> Trial Judgement, Vol. 4, para. 852. Read in the context of the Trial Chamber’s finding in the same paragraph on the destruction of mosques as an integral part of the plan which was organised and orchestrated by the HVO leadership, including Petković, the Appeals Chamber observes that the expression in the French original that Petković took “*le risque de la destruction des édifices religieux musulmans*” was appropriately translated as him taking “the risk that institutions dedicated to the Muslim religion would be destroyed”. With regard to the term “knowingly”, see *supra*, fn. 9316.

<sup>9718</sup> Petković’s Appeal Brief, paras 404-405, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 641, Vol. 3, para. 1606, Vol. 4, para. 850.

<sup>9719</sup> Petković’s Appeal Brief, para. 406. See also Petković’s Appeal Brief, para. 405, referring to, *inter alia*, Petković’s Appeal Brief, paras 241-243.

<sup>9720</sup> Petković’s Appeal Brief, para. 406.

<sup>9721</sup> Petković’s Appeal Brief, paras 406-407.

<sup>9722</sup> Petković’s Appeal Brief, para. 408. See also Petković’s Appeal Brief, para. 409.

<sup>9723</sup> Petković’s Appeal Brief, paras 408-409.

<sup>9724</sup> Prosecution’s Response Brief (Petković), para. 280, referring to Trial Judgement, Vol. 4, para. 850 & fn 1566.

<sup>9725</sup> Prosecution’s Response Brief (Petković), para. 281.

<sup>9726</sup> Prosecution’s Response Brief (Petković), para. 281.

<sup>9727</sup> Prosecution’s Response Brief (Petković), paras 281-282.



ii. Analysis

2964. With respect to Petković's argument concerning the alleged contradictory dates of the mosques' destruction, the Appeals Chamber considers that Petković fails to read the Trial Judgement as a whole. When noting that "on 17 April 1993, *when combat was over*", the HVO "set fire" to the Muslim houses as well as two mosques,<sup>9728</sup> the Trial Chamber referred to its previous findings that: (1) most of the fighting ended "late in the afternoon of 17 April 1993",<sup>9729</sup> and (2) the mosques as well as all Muslim houses were destroyed "in the days *following* the HVO attack" between "18 and 24 April 1993".<sup>9730</sup> Reading the Trial Judgement as a whole, it is clear that the Trial Chamber found, and the Appeals Chamber has previously affirmed, that two mosques were destroyed subsequent to the attack of 17 April 1993.<sup>9731</sup> This argument is thus dismissed.

2965. Additionally, the Appeals Chamber recalls that it has already dismissed Petković's contentions regarding the alleged motives behind the crimes committed by HVO members in Sovići and Doljani and affirmed the Trial Chamber's findings that the events in Jablanica were a part of the HVO campaigns following a systematic course of action and resulting from a preconceived HVO plan.<sup>9732</sup> Accordingly, the Appeals Chamber finds no merit in Petković's argument that "there was no basis upon which a reasonable trier of fact could reasonably conclude that Petković had foresight of these crimes and willingly took the risk".<sup>9733</sup> With respect to Petković's related contention that the Trial Chamber failed to provide a reasoned opinion, the Appeals Chamber recalls that a trial chamber need not articulate every step of its reasoning,<sup>9734</sup> so long as it indicates clearly the legal and factual findings on the basis of which it reached the decision either to convict or acquit an individual.<sup>9735</sup> In this regard, the Appeals Chamber emphasises that the Trial Chamber recalled Petković's involvement in "planning and directing the HVO operations in Sovići and

<sup>9728</sup> Trial Judgement, Vol. 4, para. 850 (emphasis added), referring to, *inter alia*, Trial Judgement, Vol. 2, paras 538-565.

<sup>9729</sup> Trial Judgement, Vol. 2, paras 550. See also Trial Judgement, Vol. 3, paras 538-549, 640-650.

<sup>9730</sup> Trial Judgement, Vol. 2, paras 641, 646, 650 (emphasis added).

<sup>9731</sup> Trial Judgement, Vol. 2, paras 538-550, 638-650, Vol. 4, para. 850. See also *supra*, paras 2187, 2191.

<sup>9732</sup> See *supra*, paras 894-896, 1001-1005, 2191-2192; Trial Judgement, Vol. 4, paras 46, 48, 146, 717.

<sup>9733</sup> See Petković's Appeal Brief, para. 407. In this regard, the Appeals Chamber recalls that it has vacated the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993. See *supra*, paras 882, 886, 2835. However, the Appeals Chamber recalls its observation that this does not affect the Trial Chamber's findings that the events in Jablanica were a part of the campaigns following a systematic course of action and resulting from a preconceived HVO plan. See *supra*, fn. 2854. Thus, the Appeals Chamber finds that the exclusion of murder and wilful killing from the CCP before June 1993 has no impact on the Trial Chamber's conclusion concerning Petković's JCE III liability for the destruction of mosques committed in Jablanica Municipality in April 1993, which was partly based on his involvement in the preconceived HVO plan that caused violent events in Jablanica. See Trial Judgement, Vol. 4, paras 146, 717, 852; *supra*, para. 2961.

<sup>9734</sup> *Stanišić and Župljanin* Appeal Judgement, paras 378, 1063; *Popović et al.* Appeal Judgement, paras 972, 1906; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490; *Kvočka et al.* Appeal Judgement, para. 398. See also *Kvočka et al.* Appeal Judgement, para. 23.

<sup>9735</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137; *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Hadžihasanović and Kubura* Appeal Judgement, para. 13.

Doljani targeting Muslims” when concluding that he willingly took the risk that these crimes would be committed.<sup>9736</sup> The Appeals Chamber thus dismisses this argument.

2966. Based on the foregoing, the Appeals Chamber concludes that Petković has failed to demonstrate that the Trial Chamber erred in finding that the destruction of mosques in Sovići and Doljani were foreseeable to him and that he willingly took the risk that it “would” occur.<sup>9737</sup> Since the Trial Chamber’s finding that a higher degree of foreseeability was met is not disturbed, the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9738</sup> – is necessarily satisfied.<sup>9739</sup> Petković’s sub-ground of appeal 6.2.3 is therefore dismissed.

(iii) Conclusion

2967. On the basis of the foregoing, Petković’s sub-grounds of appeal 6.1 and 6.2 are dismissed in their entirety.

(e) Ćorić’s appeal (Grounds 7 in part and 8)

2968. The Trial Chamber found Ćorić responsible, pursuant to JCE III, for the crimes of murder (Count 2) and rape (Count 4) as crimes against humanity, wilful killing (Count 3), inhuman treatment (sexual assault) (Count 5), and extensive appropriation of property (Count 22) as grave breaches of the Geneva Conventions, and plunder (Count 23) as a violation of the laws or customs of war.<sup>9740</sup>

2969. The Trial Chamber found that thefts and sexual abuse as well as murders committed during the eviction operations and detentions were natural and foreseeable consequences of the implementation of the CCP.<sup>9741</sup> The Trial Chamber then proceeded to determine Ćorić’s responsibility for, *inter alia*: (1) thefts committed in Gornji Vakuf Municipality from January 1993<sup>9742</sup> and in West Mostar as of May 1993;<sup>9743</sup> (2) sexual violence in West Mostar as of June 1993;<sup>9744</sup> and (3) killings in Dretelj Prison as of mid-July 1993.<sup>9745</sup> The Trial Chamber found that Ćorić could foresee that HVO members “would” commit sexual violence and thefts (“*commettent des violences sexuelles*” / “*commettent des vols*” / “*volent et s’approprient des biens*”) during the relevant operations and that he nevertheless “knowingly” or willingly took the risk that

<sup>9736</sup> Trial Judgement, Vol. 4, para. 852. See also Trial Judgement, Vol. 4, paras 850-851, 853.

<sup>9737</sup> See Trial Judgement, Vol. 4, para. 852. See also *supra*, fn. 9733.

<sup>9738</sup> See *supra*, paras 2836, 2902.

<sup>9739</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9740</sup> Trial Judgement, Vol. 4, para. 1021.

<sup>9741</sup> Trial Judgement, Vol. 4, para. 72. See also Trial Judgement, Vol. 4, paras 70, 1008.

<sup>9742</sup> Trial Judgement, Vol. 4, paras 1009, 1021.

<sup>9743</sup> Trial Judgement, Vol. 4, paras 1010-1011, 1021.

<sup>9744</sup> Trial Judgement, Vol. 4, paras 1012-1014, 1021.

these crimes “would” be committed (“*soient commis*”).<sup>9746</sup> With regard to murders in Dretelj Prison, the Trial Chamber found that Ćorić could foresee that murders might be committed (“*pouvaient être commis*”)<sup>9747</sup> during detention and that he willingly took the risk that detainees would be killed (“*soient tués*”).<sup>9748</sup>

2970. Ćorić challenges the Trial Chamber’s findings<sup>9749</sup> concerning his JCE III liability, specifically in relation to thefts in Gornji Vakuf as well as thefts, and in particular house appropriations, and sexual assault in West Mostar which were committed during eviction campaigns in those localities. He also challenges the Trial Chamber’s findings concerning his JCE III liability in relation to August 1993 murders resulting from mistreatment in Dretelj Prison.<sup>9750</sup> Ćorić challenges these JCE III convictions by arguing both legal and factual errors, which he asserts should result in the Appeals Chamber vacating his JCE III convictions.<sup>9751</sup> The Prosecution responds that, in challenging his JCE III convictions, Ćorić ignores relevant Trial Chamber findings and misstates the law.<sup>9752</sup>

2971. As a preliminary matter, the Appeals Chamber notes that, in assessing Ćorić’s JCE III responsibility for thefts in Gornji Vakuf and Mostar and sexual violence in Mostar, the Trial Chamber referred to a higher standard of foreseeability, *i.e.* whether it was foreseeable to him that these crimes *would* occur and that he willingly took that risk.<sup>9753</sup> There is a possibility that the Trial Chamber also did so in finding him responsible under JCE III liability for murders in Dretelj Prison.<sup>9754</sup> The Appeals Chamber recalls, however, that the *mens rea* for JCE III is whether it was foreseeable to the accused that such a crime *might* be committed and that he willingly took that

<sup>9745</sup> Trial Judgement, Vol. 4, paras 1017-1021.

<sup>9746</sup> Trial Judgement, Vol. 4, paras 1009, 1011, 1014. In paragraphs 1009 and 1011, Volume 4, of the Trial Judgement concerning Ćorić’s JCE III *mens rea* on thefts in Gornji Vakuf Municipality and West Mostar, the Trial Chamber used the term “*sciemment*” (translated as “knowingly” in the English version of the Trial Judgement). In paragraph 1014, Volume 4, of the Trial Judgement concerning his JCE III *mens rea* on sexual violence in West Mostar, the Trial Chamber used the term “*délibérément*”, which was translated as “deliberately” in the English version of the Trial Judgement, but should have been translated as “willingly”. See *supra*, para. 2896. See also *supra*, fn. 9316.

<sup>9747</sup> Trial Judgement, Vol. 4, para. 1020.

<sup>9748</sup> Trial Judgement, Vol. 4, para. 1020. The phrase “*soient tués*” in the French original was incorrectly translated as “might be killed” in the English version of paragraph 1020, Volume 4 of the Trial Judgement. In addition, in the French original of the same paragraph, the Trial Chamber used the term “*délibérément*”, which was translated as “deliberately” in the English version of the Trial Judgement. However, it should have been translated as “willingly”. See *supra*, para. 2896. See also *supra*, fn. 9316.

<sup>9749</sup> Trial Judgement, Vol. 4, paras 70, 72, 1008.

<sup>9750</sup> Ćorić’s Appeal Brief, paras 186-210.

<sup>9751</sup> Ćorić’s Appeal Brief, paras 186-210.

<sup>9752</sup> Prosecution’s Response Brief (Ćorić), para. 200. See also Prosecution’s Response Brief (Ćorić), paras 201-217.

<sup>9753</sup> Trial Judgement, Vol. 4, paras 1009, 1011, 1014. See *supra*, para. 2969. See also *supra*, fns 9316, 9746.

<sup>9754</sup> See Trial Judgement, Vol. 4, para. 1020. See also *supra*, para. 2969. The Trial Chamber also stated, at the beginning of Ćorić’s JCE III section, that it would analyse whether Ćorić could reasonably have foreseen that the crimes in question “would” be committed (“*allaient être commis*”) and took that risk. Trial Judgement, Vol. 4, para. 1008. With regard to the Trial Chamber’s findings on Ćorić’s JCE III responsibility for other incidents appealed by the Prosecution under its sub-ground of appeal 1(A), the Appeals Chamber recalls that it has found that the Trial Chamber erred by applying a higher standard of foreseeability than required. See *infra*, paras 3029-3030. See also *supra*, fns 9316, 9748.

risk.<sup>9755</sup> The Appeals Chamber therefore bears this correct legal standard of foreseeability in mind when addressing Ćorić's submissions. In assessing his challenges to factual findings which formed the basis for the Trial Chamber's conclusions that Ćorić could foresee that the crimes in question would occur and that he took that risk, the Appeals Chamber will apply the standard of reasonableness.<sup>9756</sup> When an error of fact or an error of law is identified, the Appeals Chamber will assess whether this error occasioned a miscarriage of justice or invalidates the Trial Chamber's ultimate conclusion on Ćorić's JCE III liability, applying the correct legal standard of foreseeability, *i.e.* whether it was foreseeable to him that the crime in question *might* be committed and that he willingly took that risk.<sup>9757</sup>

(i) Alleged errors concerning Ćorić's JCE III liability for crimes committed in Gornji Vakuf Municipality

2972. Regarding Ćorić's JCE III liability for thefts in Gornji Vakuf, the Trial Chamber found that, having facilitated the HVO operations in Gornji Vakuf in January 1993 by sending Military Police units to take part in them and having knowledge of them, Ćorić must have been aware of the crimes resulting from those operations.<sup>9758</sup> The Trial Chamber concluded that, inasmuch as the military operations and the capture of Hrasnica, Uzričje, and Ždrimci by the HVO took place in a climate of extreme violence,<sup>9759</sup> Ćorić could have foreseen that HVO members participating in these operations "would" commit the acts of theft that followed the military operations in these localities<sup>9760</sup> and that he "knowingly took the risk that acts of theft would be committed".<sup>9761</sup>

a. Whether the Trial Chamber applied the wrong standard in adjudicating Ćorić's JCE III liability

2973. In the context of challenging the Trial Chamber's findings on his JCE III liability for thefts in Gornji Vakuf, Ćorić argues that the Trial Chamber used a "low standard" in its determination of his JCE III liability because it did "not take into account all elements necessary".<sup>9762</sup> Namely, Ćorić contends that the Trial Chamber did not find that: (1) thefts were foreseeable to him; (2) he willingly took the risk that thefts might be committed; or (3) he intended to create conditions

<sup>9755</sup> Šainović *et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557; *supra*, para. 2836. See also *infra*, para. 3022.

<sup>9756</sup> See Šainović *et al.* Appeal Judgement, paras 1069, 1277, 1532.

<sup>9757</sup> Cf. Šainović *et al.* Appeal Judgement, paras 1069, 1078, 1277, 1532, 1536.

<sup>9758</sup> Trial Judgement, Vol. 4, paras 921-923, 1009. Crimes resulting from the military operations included murders, detention and removals of Muslims not belonging to any armed force, and the destruction of property. Trial Judgement, Vol. 4, para. 923.

<sup>9759</sup> Trial Judgement, Vol. 4, paras 922-923, 1009.

<sup>9760</sup> Trial Judgement, Vol. 4, para. 1009. See also Trial Judgement, Vol. 2, paras 413-415 (Hrasnica), 431-436 (Uzričje), 459-460 (Ždrimci) (concluding that these thefts occurred *following* the attack and takeover of the relevant villages in Gornji Vakuf).

<sup>9761</sup> Trial Judgement, Vol. 4, para. 1009. See also *supra*, paras 9316, 9746.

whereby the commission of a crime outside the CCP was possible.<sup>9763</sup> In relation to the third argument, he contends that the circumstances in which thefts were committed do not enable the conclusion that he intended to create conditions for the commission of these crimes.<sup>9764</sup>

2974. The Prosecution responds that Ćorić misunderstands the law.<sup>9765</sup> It submits that, as the jurisprudence he cites confirms, it is not a JCE III element that the accused create conditions for those crimes, but rather that such crimes were foreseeable to him and he willingly took the risk that they might be committed.<sup>9766</sup>

2975. The Appeals Chamber recalls that the applicable law for JCE III liability does not require that the accused create conditions for those crimes that take place outside of the common criminal purpose.<sup>9767</sup> In that Ćorić clearly misrepresents the law, this aspect of his argument is dismissed. By extension, Ćorić's arguments that the Trial Chamber failed to enter a finding to this end and that the circumstances in which thefts were committed do not enable such a conclusion are moot.

2976. Concerning Ćorić's remaining argument that the Trial Chamber omitted to find that thefts were foreseeable to Ćorić and that he willingly took the risk that thefts might be committed, the Appeals Chamber observes that the Trial Chamber found that, having facilitated HVO operations in Gornji Vakuf in January 1993, which took place in a climate of extreme violence, and having knowledge of those operations, Ćorić could have foreseen that members of the HVO would commit theft.<sup>9768</sup> The Trial Chamber inferred that, having facilitated the operations in Gornji Vakuf, he willingly took the risk that thefts would be committed.<sup>9769</sup> The Appeals Chamber considers that in alleging that the Trial Chamber failed to enter necessary findings, Ćorić ignores these findings. Accordingly, this aspect of his argument is dismissed.

2977. In view of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber erroneously used a lower standard than that required in the jurisprudence for JCE III liability. His ground of appeal 8 is therefore dismissed in relevant part.

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<sup>9762</sup> Ćorić's Appeal Brief, para. 198.

<sup>9763</sup> Ćorić's Appeal Brief, para. 198.

<sup>9764</sup> Ćorić's Appeal Brief, para. 198. See also Ćorić's Reply Brief, paras 45-46. Ćorić also submits that, bearing in mind the circumstances in which thefts were committed, the only knowledge he would have had was knowledge that Military Police were part of combat operations and that, among them, there would be those who would die. The Appeals Chamber finds this argument undeveloped. Ćorić cites one exhibit in advancing this argument without engaging with the Trial Chamber's findings on his knowledge and without attempting to demonstrate how this exhibit undermines any of those findings. Accordingly, this aspect of his argument is dismissed. See Ćorić's Appeal Brief, para. 198.

<sup>9765</sup> Prosecution's Response Brief (Ćorić), para. 205.

<sup>9766</sup> Prosecution's Response Brief (Ćorić), para. 205.

<sup>9767</sup> See *supra*, para. 2836.

<sup>9768</sup> Trial Judgement, Vol. 4, para. 1009. See *supra*, para. 2972.

<sup>9769</sup> Trial Judgement, Vol. 4, para. 1009. See also *supra*, fns 9316, 9746.

b. Alleged error in finding that Ćorić could have foreseen and willingly took the risk that thefts would be committed in Gornji Vakuf

2978. Ćorić argues that the Trial Chamber erred in finding that he could have foreseen that members of the HVO would commit thefts in Gornji Vakuf<sup>9770</sup> and that he knowingly took the risk that thefts would be committed.<sup>9771</sup> First, he submits that the Trial Chamber's "explanation" is illogical as he could not have been aware that the operations would take place in circumstances of extreme violence before this happened.<sup>9772</sup> Second, Ćorić contends that he was not: (1) in Gornji Vakuf during the operations; (2) present in the relevant villages; or (3) informed during the operations about what was going on.<sup>9773</sup> On this basis, he contends that he could not have known about the climate in which the operations in Gornji Vakuf took place.<sup>9774</sup>

2979. The Prosecution responds that the Trial Chamber's findings show that it was foreseeable to Ćorić that when he facilitated the violent Gornji Vakuf operations, thefts were a possible consequence. It also responds that whether Ćorić was present at the time the crimes were committed or later learned that they had taken place in a climate of extreme violence does not undermine the Trial Chamber's findings.<sup>9775</sup>

2980. Concerning Ćorić's first argument, that the Trial Chamber erred in that he could not have been aware that the operations in Gornji Vakuf would take place in circumstances of extreme violence before this took place, the Appeals Chamber observes that the Trial Chamber found that "the military operations [in Gornji Vakuf] and the capture of [Hrasnica, Uzričje, and Ždrimci] by the HVO took place in a climate of extreme violence".<sup>9776</sup> It further found that Ćorić could have

<sup>9770</sup> Ćorić's Appeal Brief, paras 188 (referring to Trial Judgement, Vol. 4, para. 1009), 197.

<sup>9771</sup> Ćorić's Appeal Brief, paras 187 (referring to, *inter alia*, Trial Judgement, Vol. 4, para. 1009), 188, 197. The Appeals Chamber does not discern an argument in paragraph 190 (last sentence) of Ćorić's Appeal Brief. Accordingly, this submission will not be addressed. Further, Ćorić submits that the Trial Chamber: (1) equated military operations with committing crimes; and (2) ignored evidence demonstrating that he did not have criminal or discriminatory intent. In that Ćorić fails to identify the Trial Chamber findings he contests and merely presents his own interpretation of evidence without showing any error on the part of the Trial Chamber, these submissions will not be addressed any further. See Ćorić's Appeal Brief, paras 191-192. Ćorić further submits that destruction in Gornji Vakuf could not be attributed to the HVO Military Police and that the "Main Staff of HVO [Military Police] was part of HVO forces". Ćorić neither identifies relevant Trial Chamber findings nor does he advance a discernable argument connected to the Trial Judgement. Ćorić's Appeal Brief, paras 193-194. These submissions will not be addressed.

<sup>9772</sup> Ćorić's Appeal Brief, para. 190.

<sup>9773</sup> Ćorić's Appeal Brief, para. 190. See also Ćorić's Appeal Brief, paras 195-196.

<sup>9774</sup> Ćorić's Appeal Brief, para. 190.

<sup>9775</sup> Prosecution's Response Brief (Ćorić), paras 153, 203.

<sup>9776</sup> Trial Judgement, Vol. 4, para. 1009. For the same reasons as set out above in relation to Stojić's JCE III liability, the Trial Chamber's characterisation of events in Gornji Vakuf as taking place in a climate of extreme violence is not affected by the Appeals Chamber's decision to overturn the Trial Chamber's finding that the killing of seven civilians during the shelling in Duša, Gornji Vakuf Municipality, in January 1993 constituted the crime of murder and wilful killing. See *supra*, paras 2857-2858 & fn. 9350; Trial Judgement, Vol. 4, para. 1009. See also *supra*, paras 441-443, 866.

foreseen thefts in these localities that *followed* their attack and takeover.<sup>9777</sup> Thus, in the context of its JCE III findings, it is not the extreme violence that the Trial Chamber found that Čorić could have foreseen, but rather the thefts that followed the extreme violence. In that Čorić misrepresents the Trial Judgement, this aspect of his argument is dismissed.

2981. The Appeals Chamber notes that Čorić refers to a number of items of evidence in support of his second argument that the Trial Chamber erred based on the fact that he was neither in Gornji Vakuf during the operations nor in the mentioned villages and was not informed during the operations about what was going on.<sup>9778</sup> However, in advancing this evidence, Čorić simply ignores the Trial Chamber's relevant factual findings and has not attempted to show how this evidence would have undermined the Trial Chamber's findings on his knowledge of crimes resulting from military operations in Gornji Vakuf in January 1993<sup>9779</sup> which were, in turn, relied upon in order to reach the impugned JCE III finding.<sup>9780</sup> Accordingly, this aspect of his argument is dismissed.

2982. In view of the above, the Appeals Chamber finds that Čorić has failed to demonstrate that the Trial Chamber erred in finding that he could have foreseen that members of the HVO "would" commit thefts in Gornji Vakuf and that he willingly took the risk that thefts would be committed.<sup>9781</sup> Since the Trial Chamber's finding that a higher degree of foreseeability was met is not disturbed, the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9782</sup> – is necessarily satisfied.<sup>9783</sup> Čorić's ground of appeal 8 is therefore dismissed in relevant part.

<sup>9777</sup> Trial Judgement, Vol. 4, para. 1009. See also Trial Judgement, Vol. 2, paras 413-415 (Hrasnica), 431-436 (Uzričje), 459-460 (Ždrimci) (for the conclusion that these thefts occurred *following* the attack and takeover of the relevant villages in Gornji Vakuf); *supra*, para. 2972.

<sup>9778</sup> Čorić's Appeal Brief, para. 190 & fn. 485, paras 195-196.

<sup>9779</sup> See Trial Judgement, Vol. 4, paras 919-923. See also *supra*, paras 2587-2593.

<sup>9780</sup> Trial Judgement, Vol. 4, para. 1009 & fn. 1882, referring to Trial Judgement, Vol. 4, paras 919-923. In relation to the Trial Chamber's findings on Čorić's knowledge, the Appeals Chamber again recalls that it has overturned the Trial Chamber's finding that the killing of seven civilians in Duša, Gornji Vakuf Municipality, in January 1993 constituted the crime of murder and wilful killing. See *supra*, paras 441-443, 866. As a result, the Appeals Chamber also sets aside the Trial Chamber's finding – on the basis of the killings in Duša and Čorić's participation in the HVO operations in Gornji Vakuf – that Čorić "must have been aware of" murder committed in Gornji Vakuf Municipality in January 1993. Trial Judgement, Vol. 4, paras 921-923, 1009. However, this has no impact on the Trial Chamber's findings that he "must have been aware of" other crimes committed there, such as the detention and removal of Muslims not belonging to any armed forces as well as the destruction of property. His knowledge of those other crimes, together with the climate of violence, were the main bases for the Trial Chamber's conclusion that the thefts committed in Gornji Vakuf were foreseeable to Čorić. This conclusion thus remains unaffected. Trial Judgement, Vol. 4, paras 921-923, 1009. See also *supra*, paras 2491-2494, 2587-2593.

<sup>9781</sup> The Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 has no impact on the Trial Chamber's conclusions concerning Čorić's *mens rea* under JCE III liability for the thefts committed in Gornji Vakuf Municipality, since the Trial Chamber's findings that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, and mistreatment during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, have been undisturbed, and Čorić was found to have participated in this JCE. See *supra*, paras 882-883, 885-886, 2835; Trial Judgement, Vol. 4, paras 66-68. See also *supra*, fns 9776, 9780.

<sup>9782</sup> See *supra*, paras 2836, 2853.

(ii) Alleged errors concerning Ćorić's JCE III liability in relation to crimes in West Mostar, Mostar Municipality

2983. Regarding Ćorić's JCE III liability for thefts and sexual violence in West Mostar, the Trial Chamber concluded that, since the eviction campaigns in Mostar were carried out in a climate of extreme violence, and Ćorić knew of this, he could have foreseen that HVO members participating in these operations "would" commit acts of theft and sexual violence.<sup>9784</sup> The Trial Chamber further found that, as of May 1993, Ćorić "knowingly" took the risk that acts of theft "would" take place, and willingly took the risk that acts of sexual violence "would" take place, as he contributed to the campaigns in Mostar.<sup>9785</sup> In support of its conclusion, the Trial Chamber recalled its finding that Ćorić participated in planning the operation to evict Muslims from West Mostar as of May 1993.<sup>9786</sup> The Trial Chamber also recalled its finding that, as of mid-June 1993, Ćorić knew that HVO soldiers were confiscating Muslim property during the evictions in West Mostar and that HVO soldiers and members of the Military Police moved into the flats of evicted Muslims with his consent.<sup>9787</sup> The Trial Chamber further recalled a 3 August 1993 report addressed directly to Ćorić, in which it was indicated that members of the Vinko Škrobo and Benko Penavić ATGs were responsible for a large share of crimes in Mostar,<sup>9788</sup> and a 9 August 1993 report, signed by Ćorić, mentioning an increase in "crimes of property", "rape", and "crimes against life" for the period of 1 to 31 July 1993.<sup>9789</sup>

a. Alleged errors in findings on Ćorić's liability for thefts during eviction operations

i. Arguments of the Parties

2984. In the context of the Trial Chamber's findings concerning his JCE III liability for thefts committed during eviction operations in Mostar, Ćorić refers to the Trial Chamber's finding that "by having contributed to the campaigns to remove the Muslims of West Mostar as of May 1993, [he] knowingly took the risk that these acts of theft would be committed".<sup>9790</sup> His challenges to this

<sup>9783</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9784</sup> Trial Judgement, Vol. 4, paras 1011-1012, 1014.

<sup>9785</sup> Trial Judgement, Vol. 4, paras 1011, 1014. See also *supra*, fns 9316, 9746.

<sup>9786</sup> Trial Judgement, Vol. 4, paras 925-928, 1012.

<sup>9787</sup> Trial Judgement, Vol. 4, paras 929, 1011, referring to, *inter alia*, Ex. P02879. See also Trial Judgement, Vol. 2, para. 876, Vol. 4, para. 1010.

<sup>9788</sup> Trial Judgement, Vol. 4, paras 931-933, 1013, referring to Ex. P03928.

<sup>9789</sup> Trial Judgement, Vol. 4, para. 1013, referring to Ex. P04058, pp. 3-4, 7, 14.

<sup>9790</sup> Ćorić's Appeal Brief, para. 202, referring to Trial Judgement, Vol. 4, para. 1014. From the wording of Ćorić's assertion, the Appeals Chamber understands that he means to refer to paragraph 1011, Volume 4, of the Trial Judgement. See also Ćorić's Appeal Brief, paras 199-201.



end relate to evidence specifically concerning the appropriation of Muslim apartments following their inhabitants' evictions.<sup>9791</sup>

2985. First, Ćorić refers to documentary evidence which he appears to believe demonstrates errors in the Trial Chamber's findings concerning the appropriation of Muslim apartments by HVO soldiers and the Military Police following their inhabitants' evictions from West Mostar as of May 1993.<sup>9792</sup> Second, he points to a number of exhibits which he contends demonstrate that the Military Police neither tolerated nor participated in evictions or displacements but rather worked to arrest and detain perpetrators.<sup>9793</sup> Moreover, Ćorić contends that these exhibits do not support the conclusions that the Military Police encouraged these crimes, that he willingly took the risk that these acts of theft in Mostar would be committed, or that he could foresee them.<sup>9794</sup> Third, Ćorić points to Exhibits P05721 and P05861 and the testimony of Witness Larry Forbes, which he contends demonstrate that persons conducting evictions were opportunistic criminals rather than persons acting according to a plan.<sup>9795</sup>

2986. Related to Ćorić's first argument, the Prosecution responds that Ćorić ignores relevant findings and evidence and mischaracterises other evidence.<sup>9796</sup> It contends that Ćorić's second argument is "equally unconvincing".<sup>9797</sup> The Prosecution submits that Ćorić's third argument concerning the steps he tried to take to prevent and punish thefts in Mostar after 9 May 1993 repeat those advanced at trial without showing any error and are irrelevant to the question of whether these crimes were foreseeable to him before they occurred and his continued participation in the JCE.<sup>9798</sup>

## ii. Analysis

2987. Concerning Ćorić's first argument, the Appeals Chamber observes that the Trial Chamber's factual findings on the appropriation of Muslim apartments by the HVO soldiers and the Military Police following their inhabitants' evictions as of May 1993<sup>9799</sup> were based on the testimony of numerous witnesses as well as various exhibits, only one to which Ćorić refers.<sup>9800</sup> He merely refers

<sup>9791</sup> Ćorić's Appeal Brief, paras 202-204.

<sup>9792</sup> Ćorić's Appeal Brief, paras 202-203, referring to Exs. P02879, 1D03016, P03089, P06860, P02538, P02608, P00344, 1D00641. See Ćorić's Reply Brief, para. 44.

<sup>9793</sup> Ćorić's Appeal Brief, para. 204 & fn. 516, referring to Exs. P05893, P05841, P02749, P02754, P02769, P02770, P02802, P02871, P01635.

<sup>9794</sup> Ćorić's Appeal Brief, para. 204. See also Ćorić's Appeal Brief, para. 206.

<sup>9795</sup> Ćorić's Appeal Brief, para. 204 & fns 517 (referring to Ex. P05721), 518 (referring to Larry Forbes, T. 21421-21426 (16 Aug 2007), Ex. P05861 (confidential)).

<sup>9796</sup> Prosecution's Response Brief (Ćorić), para. 208.

<sup>9797</sup> Prosecution's Response Brief (Ćorić), para. 209.

<sup>9798</sup> Prosecution's Response Brief (Ćorić), para. 213.

<sup>9799</sup> See *supra*, para. 2983.

<sup>9800</sup> See Trial Judgement, Vol. 4, para. 1010 & fn. 1885 (referring to, *inter alia*, Trial Judgement, Vol. 2, paras 824, 874, 924), para. 1011 & fn. 1887 (referring to, *inter alia*, Trial Judgement, Vol. 2, para. 874, Ex. P02879). See also Ćorić's Appeal Brief, para. 202, referring to, *inter alia*, Ex. P02879.

to, and offers his own interpretation of, certain exhibits, including those to which the Trial Chamber did not expressly refer, without showing why any of the Trial Chamber's findings should not stand on the basis of other evidence relied on by the Trial Chamber. Accordingly, this aspect of his argument is dismissed. Regarding Ćorić's second and third arguments, the Appeals Chamber finds that these submissions were advanced at trial and he has not attempted to demonstrate an error by the Trial Chamber warranting appeal intervention.<sup>9801</sup> Accordingly, these arguments are dismissed.

2988. In view of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate an error in the Trial Chamber's findings concerning his JCE III liability for thefts committed during eviction operations in Mostar.<sup>9802</sup> As the Trial Chamber's conclusion that he could foresee that thefts "would" occur in Mostar and that he willingly took that risk is not disturbed, the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9803</sup> – is necessarily satisfied.<sup>9804</sup> Ćorić's ground of appeal 8 is therefore dismissed in relevant part.

b. Whether the Trial Chamber erred in finding that Ćorić willingly took the risk that sexual violence would be committed as of May 1993

2989. Ćorić alleges that the Trial Chamber erred in finding that he "willingly took the risk of [the commission of rape]" in Mostar.<sup>9805</sup> To this end, he contends that the Trial Chamber did not take into account evidence demonstrating that: (1) when victims of rape reported it to the authorities and perpetrators could be identified, the Military Police took steps to locate and arrest the identified

<sup>9801</sup> See Ćorić's Final Brief, paras 288 (referring to, *inter alia*, Larry Forbes, T. 21421-21423 (16 Aug 2007) (concerning Ćorić's third argument)), 644 (referring to Exs. P05893, P05841, P02749, P02754, P02769, P02770, P02802, P02871 (concerning Ćorić's second argument)), 645 (referring to Ex. P05721, Larry Forbes, T. 21421-21423 (16 Aug 2007) (concerning Ćorić's third argument)). The Appeals Chamber observes that Exhibit P01635 to which Ćorić refers in his appeal brief in relation to his third argument was not referred to in the portion of his Final Brief wherein he first raises this argument. Nonetheless, Ćorić's third argument was advanced at trial and he does not advance any argument on appeal that is specific to Exhibit P01635.

<sup>9802</sup> The Appeals Chamber recalls that it has set aside the Trial Chamber's finding that Ćorić "must have been aware of" murder committed in Gornji Vakuf Municipality in January 1993. Trial Judgement, Vol. 4, paras 921-923, 1009. See *supra*, fn. 9780. However, this has no impact on the Trial Chamber's conclusions concerning Ćorić's JCE III liability for thefts in West Mostar, Mostar Municipality, since the Trial Chamber primarily based these conclusions on his awareness of and involvement in the events in Mostar Municipality. See *supra*, para. 2983. Further, the Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusions concerning Ćorić's JCE III liability for the thefts committed in West Mostar, Mostar Municipality, as of May 1993, since the Trial Chamber's findings that other crimes, such as persecution, deportation, forcible transfer, extensive or wanton destruction, and mistreatment during evictions, were part of the CCP from the beginning of the JCE period, namely, January 1993, have been undisturbed, and Ćorić was found to have participated in this JCE. See *supra*, paras 882-883, 885-886, 2835; Trial Judgement, Vol. 4, paras 66-68.

<sup>9803</sup> See *supra*, paras 2836, 2853.

<sup>9804</sup> See Šainović *et al.* Appeal Judgement, para. 1280.

<sup>9805</sup> Ćorić's Appeal Brief, para. 206. See also Ćorić's Appeal Brief, para. 205. The Appeals Chamber notes that Ćorić's Appeal Brief contains references to a Trial Chamber finding concerning the foreseeability that sexual violence would be committed by the HVO in West Mostar. However, these references are undeveloped and therefore will not be addressed by the Appeals Chamber. See, *e.g.*, Ćorić's Appeal Brief, paras 199, 205.

persons for criminal prosecution;<sup>9806</sup> and (2) he acted promptly when information reached him on rapes committed by four Military Police members.<sup>9807</sup> He argues that this evidence does not show that he wanted rapes to be committed in Mostar, that he created conditions making the commission of a crime outside the CCP possible, or that he intended to conceal rapes.<sup>9808</sup> He further argues that this evidence shows that he did not accept rapes and took steps to prevent them.<sup>9809</sup>

2990. The Prosecution responds that Ćorić's arguments about the steps he tried to take to prevent and punish crime in Mostar after 9 May 1993 are irrelevant to the question of whether these crimes were foreseeable to him before they occurred and his continued participation in the JCE.<sup>9810</sup>

2991. At the outset, the Appeals Chamber understands Ćorić to contest the Trial Chamber's finding that he "deliberately took the risk that [sexual violence] would be committed as of May 1993".<sup>9811</sup> The Appeals Chamber finds that both of the arguments that Ćorić advances under this ground of appeal were raised at trial and that he has not attempted to demonstrate an error by the Trial Chamber warranting the intervention of the Appeals Chamber.<sup>9812</sup> In this regard, the Appeals Chamber further observes that Ćorić simply ignores the Trial Chamber's underlying factual findings, or their evidentiary basis, upon which the Trial Chamber relied in entering the impugned finding.<sup>9813</sup> Accordingly, this aspect of his argument is dismissed.

2992. In view of the above, the Appeals Chamber finds that Ćorić has failed to show that the Trial Chamber erred in finding that he willingly took the risk that sexual violence would be committed as of May 1993.<sup>9814</sup> Since the Trial Chamber's finding that he could foresee and took this risk on the basis of a higher degree of foreseeability is not disturbed, the correct legal standard

<sup>9806</sup> Ćorić's Appeal Brief, para. 205, referring to Exs. 5D02113, P05730 (confidential), P05800 (confidential).

<sup>9807</sup> Ćorić's Appeal Brief, para. 205, referring to Ex. P03571. See also Ćorić's Reply Brief, para. 48; Appeal Hearing, AT. 593-594, 624 (24 Mar 2017).

<sup>9808</sup> Ćorić's Appeal Brief, paras 205-206.

<sup>9809</sup> Ćorić's Appeal Brief, paras 205-206.

<sup>9810</sup> Prosecution's Response Brief (Ćorić), para. 213.

<sup>9811</sup> Trial Judgement, Vol. 4, para. 1014. See *supra*, para. 2983. See also *supra*, fns 9316, 9746.

<sup>9812</sup> See Ćorić's Final Brief, para. 646 & fns 1267-1270 (referring to Exs. 5D02113, P05730 (confidential), P05800 (confidential), P03571); Ćorić's Appeal Brief, para. 205 & fns 519-520. See also *supra*, para. 2594 & fn. 8506 (5).

<sup>9813</sup> Trial Judgement, Vol. 4, paras 925-928, 1012 (concerning Ćorić's participation in planning the operations to evict Muslims from West Mostar as of May 1993), 1013-1014. See also Trial Judgement, Vol. 4, paras 929-934 (concerning Ćorić's failure to take measures against crime).

<sup>9814</sup> The Appeals Chamber recalls that it has set aside the Trial Chamber's finding that Ćorić "must have been aware of" murder committed in Gornji Vakuf Municipality in January 1993. Trial Judgement, Vol. 4, paras 921-923, 1009. See *supra*, fn. 9780. However, this has no impact on the Trial Chamber's conclusions concerning Ćorić's JCE III liability for sexual violence in West Mostar, Mostar Municipality, since the Trial Chamber primarily based these conclusions on his awareness of and involvement in the events in Mostar Municipality. See *supra*, para. 2983. Further, the Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusions concerning Ćorić's JCE III liability for sexual violence committed in West Mostar, Mostar Municipality, since the earliest incident of sexual violence in this location imputed to Ćorić occurred on 13 June 1993. See Trial Judgement, Vol. 2, paras 866-872, Vol. 3, paras 761, 765, 775, 777, Vol. 4, paras 1012, 1014. See also *supra*, paras 882, 886, 2835.

of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9815</sup> – is necessarily satisfied.<sup>9816</sup> Accordingly, Ćorić's ground of appeal 8 is dismissed in relevant part.

(iii) Alleged errors concerning Ćorić's JCE III liability in relation to crimes committed at Dretelj Prison

2993. Concerning Ćorić's JCE III liability for murders committed during detention at Dretelj Prison, the Trial Chamber first found that Ćorić facilitated the detention of Muslims not belonging to any armed force there in July 1993.<sup>9817</sup> The Trial Chamber then found that, despite Ćorić's facilitation of the detentions as of early July 1993, the evidence did not support a finding that he knew that these detentions took place in a climate of extreme violence and could foresee the murder of detainees at that time.<sup>9818</sup> However, the Trial Chamber found that in mid-July 1993, Ćorić was informed that members of the Military Police in charge of the security of the detainees had fired at some detainees, wounding two and killing one.<sup>9819</sup> The Trial Chamber also found that, in a report sent by Branimir Tucak on 29 July 1993, Ćorić was informed of the death of five prisoners, three of whom had been shot dead, while two had died of "natural causes".<sup>9820</sup> The Trial Chamber found that, as of mid-July 1993, Ćorić was informed that HVO members were mistreating the detainees at Dretelj Prison by firing at them and that they had caused the death of some of them.<sup>9821</sup>

2994. The Trial Chamber held that, "from the moment that [Ćorić] learned of the murder of detainees at Dretelj Prison following mistreatment by HVO members in mid-July 1993," it became possible for him to foresee that subsequent murders might be committed during detention.<sup>9822</sup> By failing to act and continuing to exercise his functions in the Military Police Administration, the Trial Chamber found that Ćorić willingly took the risk that more detainees would be killed as a result of mistreatment as indeed occurred when Omir Kohnić and Emir Repak died in August 1993 as a result of beatings by HVO members and other detainees, carried out on the orders of military policemen.<sup>9823</sup>

<sup>9815</sup> See *supra*, paras 2836, 2853.

<sup>9816</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

<sup>9817</sup> Trial Judgement, Vol. 4, para. 1018. See Trial Judgement, Vol. 4, paras 984-986, 994.

<sup>9818</sup> Trial Judgement, Vol. 4, para. 1019.

<sup>9819</sup> Trial Judgement, Vol. 4, paras 988, 1018, referring to Exs. P03446, P03476.

<sup>9820</sup> Trial Judgement, Vol. 4, paras 988, 1018, referring to Ex. P03794.

<sup>9821</sup> Trial Judgement, Vol. 4, para. 1018. See Trial Judgement, Vol. 4, paras 990, 994.

<sup>9822</sup> Trial Judgement, Vol. 4, para. 1020. See Trial Judgement, Vol. 4, paras 988-990, 1018.

<sup>9823</sup> Trial Judgement, Vol. 4, paras 1017, 1020. The French original corresponding to the relevant sentence in paragraph 1020, Volume 4, of the Trial Judgement reads: "à partir de [...] la mi-juillet 1993, la Chambre estime qu'il lui était devenu prévisible que de meurtres pouvaient être commis lors de la détention. Or, en omettant d'agir et en ayant continué à exercer ses fonctions au sein de l'Administration de la Police militaire, Valentin Ćorić a pris délibérément le risque que de nouveaux détenus soient tués à la suite des mauvais traitements subis, ce qui s'est réalisé en août 1993." The phrase "soient tués" was incorrectly translated as "might be killed" in the English version of paragraph 1020, Volume 4 of the Trial Judgement. See also *supra*, fns 9316, 9748.

a. Alleged errors regarding Ćorić's liability for the August 1993 murders

i. Arguments of the Parties

2995. Ćorić argues that the Trial Chamber erred in finding that, from the moment he learned of the murder of detainees in Dretelj Prison following mistreatment by HVO members in mid-July 1993, it became possible for him to foresee that murders could be committed during detention, and, by failing to act and by continuing to exercise his function in the Military Police Administration, he deliberately took the risk that more detainees might be killed.<sup>9824</sup> Ćorić first argues that it was not he who willingly took the risk that murders might take place at Dretelj Prison in August 1993.<sup>9825</sup> To this end, he submits that the evidence shows that Dretelj Prison was under the effective authority of the 1<sup>st</sup> Knez Domagoj Brigade, and its commander Nedjeljko Obradović.<sup>9826</sup> Additionally, he submits that he did what he could to inform the Government of the conditions of detention at Dretelj Prison.<sup>9827</sup> Further, Ćorić submits that the Trial Chamber misinterpreted Exhibit P03446 in that it erroneously inferred that he was informed of a murder incident at Dretelj Prison instead of finding that he made efforts to ameliorate the situation.<sup>9828</sup> Second, Ćorić argues that, on the basis of deaths at Dretelj Prison in July 1993, he could not have foreseen deaths at Dretelj Prison in August 1993.<sup>9829</sup> In this regard, he submits that the circumstances of the August 1993 deaths were different from those that occurred in July 1993.<sup>9830</sup> Additionally, he submits that there was no evidence that he was informed about deaths in Dretelj Prison in August 1993.<sup>9831</sup>

2996. The Prosecution responds that Ćorić simultaneously argues that he could not have foreseen the August 1993 deaths at Dretelj Prison and was powerless to act, and yet, he took steps regarding the conditions at the prison.<sup>9832</sup> Additionally, it responds that Ćorić's argument concerning the Trial Chamber's erroneous conclusions from Exhibit P03446 is not supported by the evidence which he cites.<sup>9833</sup> It further responds that Ćorić's submission concerning his lack of authority over Dretelj Prison repeats arguments raised under other grounds of appeal.<sup>9834</sup> Concerning Ćorić's argument that the August 1993 deaths were not foreseeable, the Prosecution responds that he

<sup>9824</sup> Ćorić's Appeal Brief, para. 207. See Ćorić's Reply Brief, para. 44.

<sup>9825</sup> See Ćorić's Appeal Brief, paras 207-208.

<sup>9826</sup> Ćorić's Appeal Brief, para. 208. See also Ćorić's Appeal Brief, para. 210.

<sup>9827</sup> Ćorić's Appeal Brief, para. 208. See also Ćorić's Appeal Brief, paras 209-210.

<sup>9828</sup> Ćorić's Appeal Brief, para. 173. The Appeals Chamber notes that Ćorić's Appeal Brief contains two paragraphs numbered "173" but the summary of arguments pertains to both paragraphs.

<sup>9829</sup> See Ćorić's Appeal Brief, paras 207-208. See Ćorić's Appeal Brief, paras 209-210. See also Appeal Hearing, AT. 607 (24 Mar 2017).

<sup>9830</sup> Ćorić's Appeal Brief, para. 208.

<sup>9831</sup> Ćorić's Appeal Brief, para. 208.

<sup>9832</sup> Prosecution's Response Brief (Ćorić), para. 215.

<sup>9833</sup> Prosecution's Response Brief (Ćorić), para. 183.

<sup>9834</sup> Prosecution's Response Brief (Ćorić), para. 215. See also Prosecution's Response Brief (Ćorić), para. 184.

misunderstands the relevant jurisprudence and that he fails to show that the Trial Chamber's conclusion was unreasonable.<sup>9835</sup>

ii. Analysis

2997. The Appeals Chamber finds that Ćorić's submissions that Dretelj Prison was under Obradović's command, that he did what he could to inform the Government of conditions there, and his interpretation of Exhibit P03446 were all advanced by him at trial and that he has not attempted to show an error by the Trial Chamber warranting the intervention of the Appeals Chamber.<sup>9836</sup> Accordingly, Ćorić's first argument is dismissed.

2998. Concerning Ćorić's argument that he could not have foreseen the August 1993 deaths at Dretelj Prison<sup>9837</sup> because they were of a different nature from previous deaths at the same prison, the Appeals Chamber observes that the Trial Chamber was cognisant of the different circumstances surrounding the killings in July 1993, of which he was informed, and the August 1993 killings, including the means through which the detainees were murdered.<sup>9838</sup> However, taking into account other factors, including the fact that they both took place at Dretelj Prison and involved military policemen,<sup>9839</sup> the Trial Chamber reached the conclusion that the August 1993 killings at Dretelj Prison were foreseeable to Ćorić. In this regard, the Appeals Chamber recalls that it is not necessary for the purposes of JCE III liability that an accused be aware of the past occurrence of a crime in order for the same conduct to be foreseeable to him.<sup>9840</sup> By merely pointing to the difference in the means through which the detainees were murdered, Ćorić has failed to show that no reasonable trier of fact could have reached the Trial Chamber's conclusion. Accordingly, this aspect of his argument is dismissed. Additionally, given that for the purposes of JCE III liability it is sufficient that the occurrence of the crimes in question was foreseeable to Ćorić,<sup>9841</sup> it is irrelevant whether he was informed about the August 1993 murders after the fact. Accordingly, Ćorić's second argument is dismissed.

2999. In view of the above, the Appeals Chamber finds that Ćorić has failed to show an error in the Trial Chamber's findings concerning his JCE III liability in relation to the August 1993 murders

<sup>9835</sup> Prosecution's Response Brief (Ćorić), paras 215-217. See Appeal Hearing, AT. 649 (24 Mar 2017).

<sup>9836</sup> Ćorić's Final Brief, paras 549 & fn. 1049, paras 581-582, 584 & fn. 1111, para. 586 & fn. 1113, para. 587 & fn. 1115, paras 588-589 & fn. 1117, para. 590 & fn. 1120; Ćorić's Appeal Brief, para. 173 & fns 440-443, para. 208 & fns 524-530. See *supra*, para. 2562 & fn. 8421.

<sup>9837</sup> See *supra*, para. 2995.

<sup>9838</sup> Trial Judgement, Vol. 4, paras 1017-1018, 1020.

<sup>9839</sup> Trial Judgement, Vol. 4, paras 1017-1018. See also Trial Judgement, Vol. 3, paras 693-696.

<sup>9840</sup> *Šainović et al.* Appeal Judgement, para. 1081.

<sup>9841</sup> See *Šainović et al.* Appeal Judgement, para. 1583.

at Dretelj Prison.<sup>9842</sup> The Appeals Chamber recalls that it is possible that the Trial Chamber meant in its findings that a higher degree of foreseeability was met in relation to Ćorić's *mens rea* for the August 1993 murders at Dretelj Prison.<sup>9843</sup> Even if that is the case, as the finding that a higher degree of foreseeability was met is not disturbed, the correct legal standard of JCE III *mens rea* – entailing a lower degree of foreseeability<sup>9844</sup> – is necessarily satisfied.<sup>9845</sup> Ćorić's ground of appeal 8 is therefore dismissed in relevant part.

(iv) Conclusion

3000. In view of the above, Ćorić's grounds of appeal 7 in relevant part and 8 are therefore dismissed.

<sup>9842</sup> In arriving at this conclusion, the Appeals Chamber also takes into account the Parties' submissions at the Appeal Hearing in response to its specific question concerning the impact of the Duša Reversal on Ćorić's *mens rea* for murder under JCE III liability. See Order for the Preparation of the Appeal Hearing, p. 6; *supra*, paras 441-443, 866. Ćorić submitted that if the Trial Chamber's finding that deaths in Duša, Gornji Vakuf Municipality, constituted murders is removed, there is no possibility for Ćorić to have foreseen killings in Dretelj Prison, which occurred at a later date, as "he would have no prior notice to be able to foresee the same". Appeal Hearing, AT. 591 (24 Mar 2017). The Prosecution argued that the Trial Chamber's conclusion was based on Ćorić's actual knowledge of other killings of Muslim detainees in the same detention centre in July, only weeks before the murders in question. According to the Prosecution, this was sufficient notice to put anyone – let alone Ćorić who was centrally involved in the network of detention centres as the Chief of the Military Police – on alert of the risk that further murders might be perpetrated. Appeal Hearing, AT. 649 (24 Mar 2017). The Appeals Chamber recalls that as a result of the Duša Reversal, it has set aside the Trial Chamber's finding that Ćorić "must have been aware of" murder committed in Gornji Vakuf Municipality in January 1993. Trial Judgement, Vol. 4, paras 921-923, 1009. See *supra*, fn. 9780. However, the Appeals Chamber finds that this has no impact on the Trial Chamber's conclusions concerning Ćorić's JCE III liability for the August 1993 murders at Dretelj Prison, since the Trial Chamber primarily based these conclusions on his awareness, as of mid-July 1993, of the murder of detainees at Dretelj Prison following mistreatment by HVO members, his facilitation of the detention of Muslims at Dretelj Prison, and his inaction to suppress crimes committed there. See *supra*, para. 2993-2994. Further, the Appeals Chamber considers that its reversal of the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993 also has no impact on the Trial Chamber's conclusions concerning Ćorić's JCE III liability for the August 1993 murders at Dretelj Prison, which occurred after June 1993. See *supra*, paras 882, 886, 2835.

<sup>9843</sup> See *supra*, paras 2853, 2969.

<sup>9844</sup> See *supra*, paras 2836, 2853.

<sup>9845</sup> See *Šainović et al.* Appeal Judgement, para. 1280.

#### 4. The Prosecution's challenges to JCE III acquittals (Prosecution's Ground 1)

##### (a) Introduction

3001. As recalled above,<sup>9846</sup> the Trial Chamber found that the following crimes were not part of the CCP: (1) murders and wilful killings committed during evictions, or closely linked thereto; (2) murders and wilful killings committed during the detention of Muslims; (3) sexual abuse (*i.e.* rapes and inhuman treatment through sexual assaults); (4) thefts (*i.e.* extensive appropriation of property and plunder); and (5) the destruction – before June 1993 – of institutions dedicated to religion or education.<sup>9847</sup> The Trial Chamber stated that it would discuss the responsibility of each of the Appellants for these crimes in the sections of the Trial Judgement devoted to their responsibility pursuant to JCE III liability.<sup>9848</sup>

3002. In the sections addressing Prlić's, Stojić's, Praljak's, Petković's, and Čorić's JCE III liability, the Trial Chamber expressly discussed their responsibility for a number of incidents involving these crimes and found them responsible pursuant to JCE III liability for some of these discussed incidents<sup>9849</sup> while acquitting them for others.<sup>9850</sup> The Trial Chamber did not expressly discuss Prlić's, Stojić's, Praljak's, Petković's, and Čorić's responsibility for a number of other incidents that the Trial Chamber had otherwise established amounted to these crimes.<sup>9851</sup>

<sup>9846</sup> See *supra*, para. 2833 & fn. 9243.

<sup>9847</sup> Trial Judgement, Vol. 4, paras 70-73, 281, 433, 632, 822, 1008, 1213. See *supra*, fn. 2. With regard to the range of murder and wilful killing as well as that of the destruction of institutions dedicated to religion or education, which fell outside of the CCP, see *supra*, para. 2833 & fn. 9243. See also Trial Judgement, Vol. 4, paras 59, 342.

<sup>9848</sup> See Trial Judgement, Vol. 4, paras 72-73. See also Trial Judgement, Vol. 4, paras 281, 433, 632, 822, 1008, 1213.

<sup>9849</sup> Trial Judgement, Vol. 4, paras 282-284, 288 (Prlić), 437, 439, 445-447, 450 (Stojić), 635, 638, 644 (Praljak), 830, 834, 837, 840, 845, 848, 852-853 (Petković), 1009, 1011, 1014, 1020, 1021 (Čorić). See *supra*, paras 2837-2838, 2849-2851, 2881-2882, 2899-2900, 2968-2969.

<sup>9850</sup> More specifically, the Trial Chamber expressly found: (1) Prlić could not foresee the murders of a detainee in Dretelj Prison and of a detainee in Vojno Detention Centre; (2) Stojić could not foresee: (a) thefts in the municipalities of Jablanica, Vareš, and Čapljina; and (b) destruction of mosques during the operations in Jablanica Municipality; (3) Praljak could not foresee thefts and sexual violence in Vareš Municipality; (4) Petković could not foresee: (a) murders committed during eviction operations in the municipalities of Stolac and Čapljina as well as certain murders in Dretelj Prison; and (b) thefts committed during the Stolac and Čapljina eviction operations as well as in Stupni Do in Vareš Municipality; and (5) Čorić could not foresee murders and thefts during eviction operations in the municipalities of Stolac and Čapljina as well as certain murders of detainees in Dretelj Prison. Trial Judgement, Vol. 4, paras 285-287 (Prlić), 440-441, 443, 448-449 (Stojić), 639-643 (Praljak), 823-825, 841, 849 (Petković), 1015-1016, 1017-1019, fn. 1896 (Čorić). See *infra*, paras 3091-3095.

<sup>9851</sup> Compare Trial Judgement, Vol. 4, paras 280-288 (Prlić), 433-450 (Stojić), 632-644 (Praljak), 822-853 (Petković), 1008-1022 (Čorić), with Trial Judgement, Vol. 2, paras 109-112, Vol. 3, paras 658-660, 707-708 (the killing of six Muslim civilians in Prajine and Tolovac, Prozor Municipality, on 19 July 1993), Vol. 2, paras 569, 580-581, 584, Vol. 3, paras 665-666, 713-715 (the killing of four Muslim ABiH detainees at Sovići School in Jablanica Municipality on 20 or 21 April 1993), Vol. 2, paras 845-853, 905-909, Vol. 3, paras 668-669, 717-718 (the killing of ten Muslim ABiH detainees at the Faculty of Mechanical Engineering in Mostar Municipality between 10 and 11 May 1993 and of two other Muslim detainees between 8 and 11 July 1993), Vol. 2, paras 940-944, Vol. 3, paras 670, 719 (the killing of a Muslim civilian in Buna, Mostar Municipality, on 14 July 1993), Vol. 2, paras 1934-1938, Vol. 3, paras 684, 735 (the killing of a Muslim civilian girl in Pješivac Greda, Stolac Municipality, on 13 July 1993), Vol. 2, paras 2014-2019, Vol. 3, paras 685-686, 736-737 (the killing of five Muslim detainees at the Koštana Hospital in Stolac Municipality in August and September 1993), Vol. 2, paras 2105-2106, Vol. 3, paras 687-688, 738-739 (the killing of two young



3003. In the section of the Trial Judgement addressing Pušić's JCE III liability, the Trial Chamber specifically discussed a few incidents and concluded that these incidents were not foreseeable to him.<sup>9852</sup> It then generally noted, in the same section, that it did "not have evidence enabling it to find" Pušić guilty with regard to all other JCE III crimes.<sup>9853</sup> As a result, the Trial Chamber expressly acquitted him of all JCE III crimes.<sup>9854</sup>

3004. In its first ground of appeal, the Prosecution argues that the Trial Chamber erred in law and fact in assessing the Appellants' responsibility pursuant to JCE III liability for a number of incidents<sup>9855</sup> (that is: Prlić's responsibility for 28 incidents;<sup>9856</sup> Stojić's responsibility for

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Muslim civilian women in Domanovići, Čapljina Municipality, on or around 13 July 1993), Vol. 2, paras 2116-2117, Vol. 3, paras 689-690, 740-741 (the killing of an 83-year old Muslim disabled civilian man in Bivolje Brdo, Čapljina Municipality, on 14 July 1993), Vol. 2, paras 2085-2090, Vol. 3, paras 691-692, 742-743 (the killing of 12 Muslim men during the evictions from Bivolje Brdo, Čapljina Municipality, around 16 July 1993), Vol. 3, paras 85-91, 693-694, 696, 744-745, 748 (the killing of a Muslim detainee in Dretelj Prison by dehydration in mid-July 1993), Vol. 3, paras 113-115, 122, 693, 696, 744-745, 747-748 (the killing of three Muslim detainees in Dretelj Prison in mid-July 1993), Vol. 3, paras 119-122, 693, 696, 744-745, 747-748 (the death of two Muslim detainees in Dretelj Prison as a result of mistreatment in August 1993), Vol. 3, paras 250, 253, 697, 749-750 (the killing of one Muslim detainee in Gabela Prison on 19 or 29 August 1993), Vol. 3, paras 251, 253, 698, 749, 751 (the killing of an ABiH detainee in Gabela Prison between 2 October and 11 December 1993), Vol. 2, paras 1715-1716, Vol. 3, paras 680, 730-731 (the killing of a Muslim detainee in Vojno Detention Centre on 5 December 1993), Vol. 2, paras 233-237, 250, 252-253, 258-262, 268-272, 283-292, Vol. 3, paras 757-760, 769 (rape of two Muslim women and girls in Podgrade, Lapsunji, and Duge, Prozor Municipality, between August and December 1993), Vol. 2, paras 233, 235, 250, 252-253, 268-272, Vol. 3, paras 771-774 (sexual assault against Muslim women and girls in Podgrade and Duge, Prozor Municipality, in August 1993), Vol. 2, paras 169-170, Vol. 3, para. 770 (sexual assault against five Muslim detainees in Jurići, Prozor Municipality, in August 1993), Vol. 2, paras 868, 870-873, 876, 925, 935, 978, 982, 985-986, Vol. 3, paras 761-764, 775 (rape of Muslim women expelled from West Mostar, Mostar Municipality, on 13 June, in mid-July, and on 4 and 29 September 1993), Vol. 2, paras 981-983, 985-986, Vol. 3, para. 776 (sexual assault against Muslim women and girls expelled from West Mostar, Mostar Municipality, on 29 September 1993), Vol. 3, paras 401-402, 404, 767, 779 (rape of two Muslim women in Vareš town, Vareš Municipality, in October 1993), Vol. 3, paras 426, 428-429, 768, 779 (rape of a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993), Vol. 3, paras 427, 429, 780 (sexual assault against a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993), Vol. 2, paras 646-650, Vol. 3, 1606-1607 (destruction of mosques in Sovići and Doljani, Jablanica Municipality, between 18 and 24 April 1993), Vol. 2, paras 96-97, Vol. 3, paras 1600-1601 (destruction of the Skrobućani mosque in Prozor Municipality in May or June 1993), Vol. 2, paras 789, 791-792, Vol. 3, para. 1608 (destruction of Baba Bešir Mosque in Mostar Municipality around 10 May 1993), Vol. 2, paras 652-655, Vol. 3, paras 1629-1631, 1661-1663 (thefts in Sovići and Doljani, Jablanica Municipality, after the attack of 17 April 1993), Vol. 2, paras 233, 235, 250-251, 253, Vol. 3, paras 1620-1621, 1655 (thefts in Podgrade, Prozor Municipality, in August 1993), Vol. 2, paras 823-824, 826-827, 864-867, 871-876, 924, 930-932, 937, 977, 979-987, Vol. 3, paras 1632-1637, 1664-1666 (thefts in West Mostar, Mostar Municipality, between May 1993 and February 1994), Vol. 2, paras 965-966, Vol. 3, paras 1638-1641, 1667-1668 (thefts in Raštani, Mostar Municipality, on 24 August 1993), Vol. 2, paras 1944-1946, Vol. 3, paras 1642-1643, 1669-1671 (thefts in Pješivac Greda, Stolac Municipality, between 2 and 13 July 1993), Vol. 2, paras 2122-2124, Vol. 3, paras 1674-1676 (thefts in Bivolje Brdo, Čapljina Municipality, between 13 and 16 July 1993), Vol. 2, paras 2165, 2179-2181, Vol. 3, paras 1647-1648, 1677-1679 (thefts of property belonging to Muslims detained at a building called Silos in Čapljina Municipality ("Silos") on 23 August 1993), Vol. 3, paras 343, 345, 348, 401, 403-404, 1650-1653, 1681-1683 (thefts in Vareš town, Vareš Municipality, between 23 October and 1 November 1993), Vol. 3, paras 465, 467, 1650-1653, 1681-1683 (thefts in Stupni Do, Vareš Municipality, on 23 October 1993).

<sup>9852</sup> This concerns the following incidents: (1) the destruction of mosques in Sovići and Doljani in Jablanica Municipality on 17 April 1993; and (2) the murder of detainees at Vojno Detention Centre committed by Mario Mihalj until December 1993. Trial Judgement, Vol. 4, paras 1214-1215. See Trial Judgement, Vol. 3, paras 680, 730-731.

<sup>9853</sup> Trial Judgement, Vol. 4, para. 1216.

<sup>9854</sup> Trial Judgement, Vol. 4, paras 1214-1216.

<sup>9855</sup> Prosecution's Appeal Brief, paras 23-24, 31, 36, 40-42, 44, 51, pp. 39-42 ("Prosecution's JCE III Table (Prlić)"), 53-57 ("Prosecution's JCE III Table (Stojić)"), 70-74 ("Prosecution's JCE III Table (Praljak)"), 87-90 ("Prosecution's JCE III Table (Petković)"), 104-108 ("Prosecution's JCE III Table (Ćorić)"), 119-123 ("Prosecution's JCE III Table (Pušić)").

30 incidents;<sup>9857</sup> Praljak's responsibility for 32 incidents;<sup>9858</sup> Petković's responsibility for 21 incidents;<sup>9859</sup> Ćorić's responsibility for 31 incidents;<sup>9860</sup> and Pušić's responsibility for 35 incidents<sup>9861</sup>), including those which the Trial Chamber discussed and found were not foreseeable to the respective Appellants and those which the Trial Chamber did not discuss in Prlić's, Stojić's, Praljak's, Petković's, and Ćorić's respective JCE III sections.

3005. In this regard, the Prosecution raises five sub-grounds of appeal.<sup>9862</sup> For those incidents in relation to which the Trial Chamber discussed and acquitted the Appellants (with the exception of all the incidents discussed in relation to Prlić and two incidents discussed in relation to Petković), the Prosecution submits that the Trial Chamber erred in law in applying an incorrect legal standard for the *mens rea* of JCE III liability by requiring the foreseeability of the crimes to be proven to a "probability" rather than the correct "possibility" standard (sub-ground of appeal 1(A)).<sup>9863</sup> For those same incidents (including the incidents discussed in relation to Prlić and two incidents discussed in relation to Petković), the Prosecution also argues that the Trial Chamber failed to assess foreseeability for each of the Appellants in light of the totality of the evidence, disregarding relevant evidence and some of its own findings, and therefore erred in law by compartmentalising its assessment of the evidence (sub-ground of appeal 1(B)).<sup>9864</sup> In addition, with respect to Ćorić's responsibility for most of those discussed incidents, the Prosecution asserts that the Trial Chamber erred in law by requiring Ćorić to have specifically contributed to a JCE I crime in a particular municipality in order to be liable for JCE III crimes in that locality (sub-ground of appeal 1(D)).<sup>9865</sup>

3006. In relation to the specific incidents for which the Trial Chamber did not discuss Prlić's, Stojić's, Praljak's, Petković's, and Ćorić's responsibility in their respective JCE III sections, the Prosecution argues that the Trial Chamber erred in law by failing to adjudicate their JCE III liability for those incidents, or alternatively, by failing to provide a reasoned opinion for their acquittals

<sup>9856</sup> Prosecution's Appeal Brief, paras 21-43, 50-52, 54-84, Prosecution's JCE III Table (Prlić), incidents 1-28.

<sup>9857</sup> Prosecution's Appeal Brief, paras 21-43, 50-52, 85-122, Prosecution's JCE III Table (Stojić), incidents 1-30.

<sup>9858</sup> Prosecution's Appeal Brief, paras 21-43, 50-52, 123-159, Prosecution's JCE III Table (Praljak), incidents 1-32.

<sup>9859</sup> Prosecution's Appeal Brief, paras 21-43, 50-52, 160-194, Prosecution's JCE III Table (Petković), incidents 1-21. The Prosecution withdrew its appeal of Petković's acquittals for murders and thefts in connection with eviction operations in the municipalities of Stolac and Čapljina, which the Trial Chamber discussed and found were not foreseeable to him. See Trial Judgement, Vol. 4, paras 823-824, 841; Prosecution's Appeal Brief, fn. 538. See also Prosecution's Appeal Brief, paras 180-184, 189, Prosecution's JCE III Table (Petković). In addition to its submissions on the 21 incidents as summarised here, the Prosecution also avers that the Trial Chamber erroneously convicted Petković under JCE I of the destruction of Baba Bešir Mosque in Mostar Municipality and the Skrobučani mosque in Prozor Municipality and that the Appeals Chamber should revise these convictions and find him responsible for the destruction of these mosques under JCE III. Prosecution's Appeal Brief, paras 195-197. The Appeals Chamber addresses this argument elsewhere. See *supra*, paras 2443-2455.

<sup>9860</sup> Prosecution's Appeal Brief, paras 21-52, 198-242, Prosecution's JCE III Table (Ćorić), incidents 1-31.

<sup>9861</sup> Prosecution's Appeal Brief, paras 21-43, 50-52, 243-276, Prosecution's JCE III Table (Pušić), incidents 1-35.

<sup>9862</sup> Prosecution's Appeal Brief, paras 22-24.

<sup>9863</sup> Prosecution's Appeal Brief, paras 23, 26-32, 90-98, 127-134, 167-172, 207-219, 247-268.

<sup>9864</sup> Prosecution's Appeal Brief, paras 23, 33-37, 60-66, 99-101, 135-138, 173-177, 220-224, 269-272.

<sup>9865</sup> Prosecution's Appeal Brief, paras 23, 44-49, 238-240.

(sub-ground of appeal 1(C)).<sup>9866</sup> With respect to Pušić, the Prosecution submits that except for the two incidents that are specifically mentioned in his JCE III section in the Trial Judgement,<sup>9867</sup> the Trial Chamber erred in law by failing to give reasons why the evidence adduced by the Prosecution did not enable it to conclude that Pušić was guilty of the JCE III crimes (sub-ground of appeal 1(C)).<sup>9868</sup>

3007. In the alternative, if the Appeals Chamber determines that the Trial Chamber did not err in law, the Prosecution submits that the Trial Chamber erred in fact with respect to all the incidents, specifically discussed or not by the Trial Chamber, as no reasonable trial chamber could have failed to find that the only reasonable conclusion from the evidence is that the Appellants are responsible pursuant to JCE III liability (sub-ground of appeal 1(E)).<sup>9869</sup> The Prosecution adds that, while the sub-grounds of appeal are in many instances mutually supporting, convictions are warranted if the Appeals Chamber is convinced by any one of the sub-grounds of appeal.<sup>9870</sup>

3008. The Prosecution further points to a number of the Trial Chamber's findings and evidence which, in its view, demonstrate that, had the Trial Chamber not erred in law or fact as described above, it would have convicted the Appellants of numerous additional JCE III crimes.<sup>9871</sup> The Prosecution submits that the Trial Chamber's errors should be corrected and that the Appeals Chamber should enter convictions pursuant to JCE III liability for: (1) murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3); (2) rape as a crime against humanity (Count 4) and inhuman treatment (sexual assaults) as a grave breach of the Geneva Conventions (Count 5); (3) destruction or wilful damage done to institutions dedicated to religion as a violation of the law or customs of war (Count 21); and (4) extensive appropriation of property as a grave breach of the Geneva Conventions (Count 22) and plunder as a violation of the laws or customs of war (Count 23).<sup>9872</sup> The Prosecution submits that the Appellants' sentence should be increased accordingly.<sup>9873</sup>

<sup>9866</sup> Prosecution's Appeal Brief, paras 23, 38-43, 67-82, 102-120, 139-157, 178-192, 225-237. See also Prosecution's Appeal Brief, fn. 679.

<sup>9867</sup> See *supra*, para. 3003.

<sup>9868</sup> Prosecution's Appeal Brief, paras 23, 273-274.

<sup>9869</sup> Prosecution's Appeal Brief, paras 24, 50-52, 83-84, 121-122, 158-159, 193-194, 241-242, 275-276, 420. In relation to Petković, the Prosecution also asserts that the Trial Chamber erred in convicting Petković under JCE I liability for wilful damage to institutions dedicated to religion for those incidents that occurred before June 1993 while he should rather have been convicted pursuant to JCE III liability. See Prosecution's Appeal Brief, paras 195-197; *supra*, para. 9859.

<sup>9870</sup> Prosecution's Appeal Brief, para. 22; Prosecution's Reply Brief, para. 18.

<sup>9871</sup> Prosecution's Appeal Brief, paras 25, 53. See Prosecution's Appeal Brief, paras 54-276.

<sup>9872</sup> Prosecution's Appeal Brief, paras 25, 66, 82, 84, 98, 101, 120, 122, 134, 138, 157, 159, 172, 177, 192, 194, 219, 224, 237, 240, 242, 268, 272, 274, 276-277; Appeal Hearing, AT. 763, 851-852 (28 Mar 2017).

<sup>9873</sup> Prosecution's Appeal Brief, paras 25, 277; Appeal Hearing, AT. 851-852 (28 Mar 2017).

3009. Prlić responds that the Trial Chamber correctly declined to convict him of the JCE III crimes, that there is no evidence that he is guilty of the additional JCE crimes, and that the Prosecution relies on erroneous conclusions of the Trial Chamber.<sup>9874</sup> Stojić, Praljak, Petković, Ćorić, and Pušić respond that the Trial Chamber did not commit, and the Prosecution fails to identify, any material error in acquitting them of the relevant crimes and that the Appeals Chamber must dismiss the Prosecution's appeal and confirm their acquittals in relation to all of these crimes.<sup>9875</sup> Additionally, in accordance with paragraph 5 of the Practice Direction on Formal Requirements, Petković argues that he did not receive adequate notice of the charges with respect to JCE III liability.<sup>9876</sup>

3010. The Appeals Chamber will first address Petković's argument on notice, before turning to the Prosecution's appeal. Subsequently, the Appeals Chamber will address the Prosecution's sub-ground of appeal 1(A), before turning to the Prosecution's sub-grounds of appeal 1(B) and 1(C), each of which will be followed by an analysis of its sub-grounds of appeal 1(D) and 1(E), if necessary.

(b) Preliminary matter: alleged defects in the Indictment concerning the pleading of JCE III liability

(i) Arguments of the Parties

3011. In response to the Prosecution's appeal, Petković submits that the Indictment "was, and remains, defective" as it only pleads his liability under JCE III in a generic manner.<sup>9877</sup> In support of this contention, Petković refers to the Tribunal's jurisprudence which states that when the Prosecution pleads alternative forms of liability, it cannot merely repeat the wording of Article 7(1) of the Statute, but should identify the particular form of participation with respect to each incident under each count.<sup>9878</sup> Likewise, he avers that, while some forms of liability may be generally pleaded in a *chapeau* paragraph, this does not necessarily imply that all generally pleaded modes of liability apply to every alleged incident.<sup>9879</sup>

<sup>9874</sup> Prlić's Response Brief, paras 46, 48, 50, 52, 54, 56, 58, 60, 62-63, 65-73.

<sup>9875</sup> Stojić's Response Brief, paras 19-96; Praljak's Response Brief, paras 12-123; Petković's Response Brief, paras 5-91; Ćorić's Response Brief, paras 15-65; Pušić's Response Brief, paras 1-27. See also Stojić's Response Brief, para. 1; Praljak's Response Brief, paras 4-11; Petković's Response Brief, paras 1-4; Ćorić's Response Brief, paras 6-8, 14. Ćorić also argues that certain submissions of the Prosecution should be rejected as they are founded on erroneous conclusions of the Trial Chamber. See, e.g., Ćorić's Response Brief, paras 49-50, 56.

<sup>9876</sup> Petković's Response Brief, paras 27-29.

<sup>9877</sup> Petković's Response Brief, para. 27.

<sup>9878</sup> Petković's Response Brief, para. 28, referring to *Blaškić* Appeal Judgement, para. 226, *Aleksovski* Appeal Judgement, para. 171, *Krnjelac* Appeal Judgement, para. 134.

<sup>9879</sup> Petković's Response Brief, para. 28, referring to *Ntawukulilyayo* Appeal Judgement, para. 194.

3012. Further, pointing to the final brief submitted by the Prosecution at trial, Petković submits that the Prosecution did not argue that he was responsible for Counts 22 and 23 under JCE III liability.<sup>9880</sup>

3013. The Prosecution replies that the Indictment provided Petković with sufficient notice concerning his JCE III liability in relation to each count and incident.<sup>9881</sup> It contends that the allegations for each incident contain cross-references to the portion of the Indictment concerning JCE III liability.<sup>9882</sup> The Prosecution further highlights that the Trial Chamber confirmed at trial that the Prosecution had given sufficient notice of Petković's JCE III responsibility for crimes not included in the CCP and contends that, in any event, the alleged defects of the Indictment were cured in a timely, clear, and consistent manner through post-Indictment communication.<sup>9883</sup> Finally, the Prosecution submits that although its final trial brief should not be considered relevant to ascertaining notice, it did argue there that Petković could be held responsible for Counts 22 and 23 pursuant to JCE III.<sup>9884</sup>

(ii) Analysis

3014. The Appeals Chamber recalls that “[i]n order for an accused charged with joint criminal enterprise to fully understand which acts he is allegedly responsible for, the indictment should clearly indicate which form of joint criminal enterprise is being alleged”.<sup>9885</sup> An indictment may charge a defendant with multiple categories of JCE liability; an accused has sufficient notice of the category charged where the indictment pleads the *mens rea* element of the respective category.<sup>9886</sup> In this regard, the Appeals Chamber first observes that the Indictment clearly set out the Prosecution's allegation concerning JCE III liability by specifying the requisite *mens rea*.<sup>9887</sup> The relevant paragraph also clarifies that JCE III was pleaded in the alternative with respect to *all* crimes charged in the Indictment.<sup>9888</sup>

<sup>9880</sup> Petković's Response Brief, para. 29.

<sup>9881</sup> Prosecution's Reply Brief, paras 59-62.

<sup>9882</sup> Prosecution's Reply Brief, para. 59.

<sup>9883</sup> Prosecution's Reply Brief, paras 60-61, referring to, *inter alia*, Decision on Defence Preliminary Motions Alleging Defect in the Form of the Indictment, 22 July 2005, para. 20, Petković's Pre-Trial Brief, paras 47, 49(ii), 53, Petković's Final Brief, paras 569-570, Prosecution's Pre-Trial Brief, para. 227, Prosecution Opening Statement, T. 811 (26 Apr 2006).

<sup>9884</sup> Prosecution's Reply Brief, para. 62.

<sup>9885</sup> See *supra*, para. 55.

<sup>9886</sup> *Simba* Appeal Judgement, para. 77.

<sup>9887</sup> See Indictment, para. 227 (“In addition or in the alternative, as to any crime charged in this indictment which was not within the objective or an intended part of the joint criminal enterprise, such crime was the natural and foreseeable consequence of the joint criminal enterprise and of implementing or attempting to implement the enterprise and each accused was aware of the risk of such crime or consequence and, despite this awareness, willingly took that risk, in joining and/or continuing in the enterprise, and is therefore responsible for the crime charged”).

<sup>9888</sup> See Indictment, para. 227.

3015. Moreover, contrary to Petković's contention that the Indictment does not indicate clearly which crime was actually charged under JCE III, the Appeals Chamber notes that, in summarising the crimes charged with respect to each specific incident and location, the Indictment contains express cross-references to: (1) the portion of the Indictment concerning the pleaded modes of responsibility, which encompasses the JCE III allegations; and (2) the paragraphs identifying the material conduct of each accused.<sup>9889</sup> In light of such references and reading the Indictment as a whole, the Appeals Chamber finds that the parts of the Indictment containing the descriptions of the specific crimes as well as the section alleging JCE III liability provided sufficient notice regarding Petković's alleged responsibility under JCE III for all counts.<sup>9890</sup>

3016. With respect to Counts 22 and 23 specifically, the Appeals Chamber notes that the Indictment pleads that such counts are pursued, additionally or alternatively, under JCE III liability.<sup>9891</sup> In any event, the Appeals Chamber notes that Petković's contention that the Prosecution's final trial brief does not refer to Counts 22 and 23 in relation to JCE III is based on a misrepresentation of the Prosecution's contentions at trial. While in its final trial brief, the Prosecution mentioned Counts 22 and 23 in relation to Petković's JCE I liability,<sup>9892</sup> in the introductory section concerning the JCE responsibility of all of the Appellants, it expressly stated that, in the alternative, the crimes under Counts 22 and 23 were pursued under JCE III with respect to all Appellants.<sup>9893</sup>

3017. Based on the above, the Appeals Chamber finds that Petković has failed to show that he lacked adequate notice that JCE III liability was pleaded in relation to each count set forth in the Indictment. Accordingly, this argument is dismissed.

<sup>9889</sup> See Indictment, paras 60 (Prozor Municipality), 72 (Gornji Vakuf Municipality), 87 (Jablanica Municipality (Sovići and Doljani)), 118 (Mostar Municipality), 135 (the Heliodrom), 143 (Vojno Detention Centre), 153 (Ljubuški Municipality and Detention Centres), 171 (Stolac Municipality), 186 (Čapljina Municipality), 194 (Dretelj Prison), 203 (Gabela Prison), 217 (Vareš Municipality).

<sup>9890</sup> In this regard, the Appeals Chamber finds Petković's reliance on the Tribunal's jurisprudence inapposite since, in the present case, the Indictment contains an express indication of the form of responsibility pursued in relation to each specific crime and incident as well as the specific material acts and omissions through which the accused allegedly contributed to such crimes. *Cf. Blaškić* Appeal Judgement, paras 225-226; *Krnjelac* Appeal Judgement, para. 134; *Ntawukulilyayo* Appeal Judgement, para. 194. Moreover, the Appeals Chamber finds that Petković's reliance on the *Aleksovski* case does not support his argument concerning notice, as that case deals with the substance of the form of liability, rather than the notice thereof. See *Aleksovski* Appeal Judgement, para. 171.

<sup>9891</sup> Indictment, para. 227.

<sup>9892</sup> See Prosecution's Final Brief, para. 967.

<sup>9893</sup> See Prosecution's Final Brief, paras 52-53.

(c) Alleged error regarding the applicable *mens rea* for JCE III liability (Prosecution's Sub-ground 1(A) in part)

(i) Arguments of the Parties

3018. The Prosecution submits that the Trial Chamber erred in law by incorrectly setting out and applying the *mens rea* for JCE III liability regarding specific incidents<sup>9894</sup> (five incidents in relation to Stojić,<sup>9895</sup> five incidents in relation to Praljak,<sup>9896</sup> one incident in relation to Petković,<sup>9897</sup> seven incidents in relation to Ćorić,<sup>9898</sup> 35 incidents in relation to Pušić<sup>9899</sup>), which resulted in acquittals of Stojić, Praljak, Petković, Ćorić, and Pušić for these incidents.

<sup>9894</sup> Prosecution's Appeal Brief, paras 23, 26, 31, Prosecution's JCE III Table (Stojić), incidents 20, 23, 27, 29-30, Prosecution's JCE III Table (Praljak), incidents 19-21, 31-32, Prosecution's JCE III Table (Petković), incident 21, Prosecution's JCE III Table (Ćorić), incidents 5, 7, 10-11, 27-29, Prosecution's JCE III Table (Pušić), incidents 1-35; Appeal Hearing, AT. 751-754 (28 Mar 2017). This challenge concerns all Appellants, except Prlić. See Prosecution's Appeal Brief, fn. 169.

<sup>9895</sup> Prosecution's Appeal Brief, para. 31, Prosecution's JCE III Table (Stojić), incident 20 (the destruction of mosques in Sovići and Doljani, Jablanica Municipality, in April 1993 (Count 21)), incidents 23, 27, 29-30 (the thefts: (1) in Sovići and Doljani, Jablanica Municipality, after the attack of 17 April 1993 (Counts 22 and 23); (2) in Bivolje Brdo, Čapljina Municipality, between 13 and 16 July 1993 (Count 23); (3) in Vareš town, Vareš Municipality, between 23 October and 1 November 1993 (Counts 22 and 23); and (4) in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 22 and 23)).

<sup>9896</sup> Prosecution's Appeal Brief, para. 31, Prosecution's JCE III Table (Praljak), incidents 19-21 (the: (1) rape of two Muslim women in Vareš town, Vareš Municipality, in October 1993 (Counts 4 and 5); (2) rape of a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 4 and 5); and (3) sexual assault against a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Count 5)), incidents 31-32 (the thefts: (1) in Vareš town, Vareš Municipality, between 23 October and 1 November 1993 (Counts 22 and 23); and (2) in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 22 and 23)).

<sup>9897</sup> Prosecution's Appeal Brief, para. 31, Prosecution's JCE III Table (Petković), incident 21 (the thefts in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 22 and 23)).

<sup>9898</sup> Prosecution's Appeal Brief, para. 31, Prosecution's JCE III Table (Ćorić), incidents 5, 7, 10-11 (the killings of: (1) a Muslim civilian girl in Pješivac Greda, Stolac Municipality, on 13 July 1993 (Counts 2 and 3); (2) two young Muslim civilian women in Domanovići, Čapljina Municipality, on or around 13 July 1993 (Counts 2 and 3); (3) a Muslim detainee by dehydration in Dretelj Prison, in mid-July 1993 (Counts 2 and 3); and (4) three Muslim detainees in Dretelj Prison, in mid-July 1993 (Counts 2 and 3)), incidents 27-29 (the thefts: (1) in Pješivac Greda, Stolac Municipality, between 2 and 13 July 1993 (Counts 22 and 23); (2) in Bivolje Brdo, Čapljina Municipality, between 13 and 16 July 1993 (Count 23); and (3) of property belonging to Muslims detained at the Silos in Čapljina Municipality, on 23 August 1993 (Counts 22 and 23)). The Prosecution additionally raises the same challenge under its sub-ground of appeal 1(A) with regard to Ćorić's responsibility for two incidents (Prosecution's JCE III Table (Ćorić), incidents 8-9). However, the Prosecution submits that it is in the alternative to its sub-ground of appeal 1(C) and that its "primary position" is that the Trial Chamber did not adjudicate his JCE III responsibility for these two incidents, as the Trial Chamber omitted to refer to these incidents in its legal findings on his JCE III responsibility. Prosecution's Appeal Brief, paras 212 & fn. 679 (referring to Trial Judgement, Vol. 4, fn. 1896), Prosecution's JCE III Table (Ćorić), incidents 8-9 (the killings of: (1) an 83-year old Muslim disabled civilian man in Bivolje Brdo, Čapljina Municipality, on 14 July 1993 (Counts 2 and 3); and (2) 12 Muslim men during the evictions from Bivolje Brdo, Čapljina Municipality, on or about 16 July 1993 (Counts 2 and 3)). The Prosecution further alleges under its sub-ground of appeal 1(C) that the Trial Chamber failed to provide a reasoned opinion on his JCE III responsibility for these incidents. See Prosecution's Appeal Brief, paras 38-41, 43, 225, 229, 236-237, Prosecution's JCE III Table (Ćorić), incidents 8-9. As the Appeals Chamber elsewhere grants the Prosecution's sub-ground of appeal 1(C) in relation to these two incidents, it will not address the Prosecution's sub-ground of appeal 1(A) in relation thereto. See *infra*, para. 3114.

<sup>9899</sup> Prosecution's Appeal Brief, para. 31, Prosecution's JCE III Table (Pušić), incidents 1-15 (the killings of: (1) six Muslims civilians in Prajine and Tolovac, Prozor Municipality, on 19 July 1993 (Counts 2 and 3); (2) four Muslim ABiH detainees at Sovići School in Jablanica Municipality on 20 or 21 April 1993 (Counts 2 and 3); (3) ten Muslim ABiH detainees at the Faculty of Mechanical Engineering in Mostar Municipality between 10 and 11 May 1993, and two other Muslim detainees between 8 and 11 July 1993 (Counts 2 and 3); (4) a Muslim civilian in Buña, Mostar Municipality, on 14 July 1993 (Counts 2 and 3); (5) a Muslim civilian girl in Pješivac Greda, Stolac Municipality, on

3019. The Prosecution argues that the Trial Chamber required, for the majority of JCE III crimes, that Stojić, Praljak, Petković, Čorić, and Pušić be aware of the “probability” that these crimes “would” be committed as the natural and foreseeable consequences of the implementation of the CCP, whereas the correct standard requires that the JCE member knows that these crimes “might” be committed.<sup>9900</sup> As a result, the Prosecution contends that the respective acquittals of Stojić, Praljak, Petković, Čorić, and Pušić of JCE III charges in relation to the said incidents were erroneous and should be reversed.<sup>9901</sup>

3020. Stojić, Praljak, Petković, Čorić, and Pušić respond that a defendant may only be convicted if the Prosecution proves his awareness of the “sufficiently substantial possibility” that the relevant JCE III crime “might” be committed.<sup>9902</sup> This standard, according to Stojić and Pušić, is higher than

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13 June 1993 (Counts 2 and 3); (6) five Muslim detainees at the Koštana Hospital, Stolac Municipality, in August and September 1993 (Counts 2 and 3); (7) two young Muslim civilian women in Domanovići, Čapljina Municipality, on or around 13 July 1993 (Counts 2 and 3); (8) an 83-year old Muslim disabled civilian man in Bivolje Brdo, Čapljina Municipality, on 14 July 1993 (Counts 2 and 3); (9) 12 Muslim men during the evictions from Bivolje Brdo, Čapljina Municipality, on or about 16 July 1993 (Counts 2 and 3); (10) a Muslim detainee by dehydration in Dretelj Prison, in mid-July 1993 (Counts 2 and 3); (11) three Muslim detainees in Dretelj Prison, in mid-July 1993 (Counts 2 and 3); (12) two Muslim detainees as a result of mistreatment in Dretelj Prison, in August 1993 (Counts 2 and 3); (13) a Muslim detainee in Gabela Prison, on 19 or 29 August 1993 (Counts 2 and 3); (14) an ABiH detainee in Gabela Prison, between 2 October and 11 December 1993 (Counts 2 and 3); and (15) a Muslim detainee in Vojno Detention Centre, on 5 December 1993 (Counts 2 and 3)), incidents 16-23 (the: (1) rape of Muslim women and girls in Podgrade, Lapsunj and Duge, Prozor Municipality, between August and December 1993 (Counts 4 and 5); (2) sexual assault against Muslim women and girls in Podgrade and Duge, Prozor Municipality, in August 1993 (Count 5); (3) sexual assault against five Muslim male detainees in Jurići, Prozor Municipality, in August 1993 (Count 5); (4) rape of Muslim women expelled from West Mostar, Mostar Municipality, on 13 June, in mid-July, and on 4 and 29 September 1993 (Counts 4 and 5); (5) sexual assault against Muslim women and girls expelled from West Mostar, Mostar Municipality, on 29 September 1993 (Count 5); (6) rape of two Muslim women in Vareš town, Vareš Municipality, in October 1993 (Counts 4 and 5); (7) rape of a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 4 and 5); (8) sexual assault against a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Count 5)), incidents 24-26 (the destruction of: (1) mosques in Sovići and Doljani, Jablanica Municipality, in April 1993 (Count 21); (2) the Skrobućani mosque in Prozor Municipality, in May or June 1993 (Count 21); and (3) Baba Bešir Mosque in Mostar Municipality, on 10 May 1993 (Count 21)), incidents 27-35 (the thefts: (1) in Sovići and Doljani, Jablanica Municipality, after the attack of 17 April 1993 (Counts 22 and 23); (2) in Podgrade, Prozor Municipality, in August 1993 (Counts 22 and 23); (3) in West Mostar, Mostar Municipality, between May 1993 and February 1994 (Counts 22 and 23); (4) in Raštani, Mostar Municipality, on 24 August 1993 (Counts 22 and 23); (5) in Pješivac Greda, Stolac Municipality, between 2 and 13 July 1993 (Counts 22 and 23); (6) in Bivolje Brdo, Čapljina Municipality, between 13 and 16 July 1993 (Count 23); (7) of property belonging to Muslims detained at the Silos in Čapljina Municipality, on 23 August 1993 (Counts 22 and 23); (8) in Vareš town, Vareš Municipality, between 23 October and 1 November 1993 (Counts 22 and 23); and (9) in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 22 and 23)).

<sup>9900</sup> Prosecution’s Appeal Brief, paras 27-29. See Prosecution’s Appeal Brief, paras 90-91, 127, 167, 207, 247. See also Prosecution’s Reply Brief, paras 6-7, 26; Appeal Hearing, AT. 751-754 (28 Mar 2017). According to the Prosecution, the statement of law requiring that the accused knew that the crimes were a “*conséquence probable*” of the implementation of the common criminal purpose and the phrases that the Appellants reasonably foresaw and took the risk “*que le(s) [crime(s)] soit/soient/seraient/allaient être commis*” or “[*que les auteurs commettent/commettraient/allaient commettre [le(s) crime(s)]*” – translated into English as “would be committed” – prove that the Trial Chamber improperly stated and applied a higher standard. Prosecution’s Appeal Brief, paras 27, 29.

<sup>9901</sup> Prosecution’s Appeal Brief, paras 25, 30-32, 98, 134, 172, 214, 219, 268, 277; Appeal Hearing, AT. 754, 763 (28 Mar 2017).

<sup>9902</sup> Stojić’s Response Brief, paras 25-28, 30-32; Praljak’s Response Brief, para. 6; Petković’s Response Brief, para. 7; Pušić’s Response Brief, paras 5, 9-11; Appeal Hearing, AT 801, 838-839 (28 Mar 2017).



the standard proposed by the Prosecution.<sup>9903</sup> Stojić, Petković, Ćorić, and Pušić further claim that, although the Trial Chamber may have stated the applicable standard incorrectly, it clearly applied the correct legal standard in acquitting them of the relevant JCE III crimes.<sup>9904</sup> Stojić concedes that the Trial Chamber occasionally used the wrong language, but argues that the Prosecution fails to demonstrate any misapplication of the correct foreseeability standard.<sup>9905</sup> Ćorić and Pušić also maintain that, when read in the context of the entire Trial Judgement, it becomes obvious that the Trial Chamber was aware of and applied the correct foreseeability standard in acquitting them of JCE III charges.<sup>9906</sup> Petković recalls that, under the settled jurisprudence, the Appeals Chamber will not reverse trial findings based on the use of inappropriate or misleading language, so long as the trial chamber's reasoning makes it clear that the correct legal standard was applied.<sup>9907</sup> Stojić and Petković further argue that the Prosecution fails to show that no reasonable trier of fact could have acquitted them under the correct foreseeability standard and thus fails to demonstrate an error invalidating the Trial Judgement.<sup>9908</sup> Praljak concedes that the Trial Chamber frequently applied the incorrect foreseeability standard, but argues that this does not invalidate the Trial Chamber's conclusion to acquit him of the relevant JCE III charges.<sup>9909</sup>

3021. The Prosecution replies that, according to the jurisprudence, the foreseeability test for JCE III requires that the possibility of a JCE III crime be "sufficiently substantial" to be foreseeable to the accused.<sup>9910</sup> It argues, however, that in those instances where the Trial Chamber referred to and applied a "probability" standard, there is no basis to find that it applied the correct standard.<sup>9911</sup>

<sup>9903</sup> Stojić's Response Brief, para. 26; Pušić's Response Brief, paras 5-7. See Appeal Hearing, AT. 801-802, 838-839, 842-843, 852-853 (28 Mar 2017), referring to *Brđanin* Appeal Judgement, para. 428. Stojić argues that the test is not satisfied if the defendant was only aware of the mere possibility that a deviatory crime might occur. Stojić's Response Brief, paras 25-27; Appeal Hearing, AT. 801-802 (28 Mar 2017). See Stojić's Response Brief, para. 29. Pušić underlines that the test involves a subjective element and that the possibility that the crime could have been committed must be sufficiently substantial so as to be foreseeable to the accused based on the information available to him. Appeal Hearing, AT. 838-839 (28 Mar 2017).

<sup>9904</sup> Stojić's Response Brief, paras 25, 34; Petković's Response Brief, paras 7-8, 10-11; Ćorić's Response Brief, paras 20, 23; Pušić's Response Brief, para. 3; Appeal Hearing, AT. 604, 606-608 (24 Mar 2017), 823 (28 Mar 2017). See also Ćorić's Response Brief, paras 19, 21-22; Pušić's Response Brief, para. 7.

<sup>9905</sup> Stojić's Response Brief, paras 25, 33.

<sup>9906</sup> Ćorić's Response Brief, paras 20-22; Pušić's Response Brief, paras 2-3, 7; Appeal Hearing 604, 607-608 (24 Mar 2017).

<sup>9907</sup> Petković's Response Brief, para. 8, referring to *Čelebići* Appeal Judgement, paras 45-50, *Limaj et al.* Appeal Judgement, para. 65, *Kamuhanda* Appeal Judgement, paras 38-39, *Zigiranyirazo* Appeal Judgement, paras 19-20, *Ngirabatware* Appeal Judgement, paras 207 *et seq.*

<sup>9908</sup> Stojić's Response Brief, paras 25, 33, 35, 44-45; Petković's Response Brief, paras 9-10; Appeal Hearing, AT. 800-801 (28 Mar 2017). See also Ćorić's Response Brief, paras 19, 21-22; Pušić's Response Brief, paras 10-11; Appeal Hearing, AT. 604-609 (24 Mar 2017), 839, 843 (28 Mar 2017).

<sup>9909</sup> Praljak's Response Brief, paras 7-11. See also Appeal Hearing, AT. 382 (22 Mar 2017), 814 (28 Mar 2017).

<sup>9910</sup> Prosecution's Reply Brief, para. 6.

<sup>9911</sup> Prosecution's Reply Brief, para. 8. See Prosecution's Reply Brief, paras 6-7. See also Appeal Hearing, AT. 656 (24 Mar 2017).

(ii) Analysis

3022. The Appeals Chamber recalls that, pursuant to its well-established jurisprudence, the accused can only be held responsible under JCE III for a crime outside the common purpose if:

it was foreseeable to the accused that such a crime might be committed by a member of the JCE or one or more of the persons used by the accused (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose and the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.<sup>9912</sup>

The Appeals Chamber also recalls that the JCE III *mens rea* standard does not require an understanding that the deviatory crime would *probably* be committed but requires instead that the possibility that “a crime could be committed is sufficiently substantial as to be foreseeable to an accused”.<sup>9913</sup>

3023. The Appeals Chamber further recalls that: (1) a trial judgement must be read as a whole;<sup>9914</sup> (2) it should be assumed that the words used in a trial judgement accurately describe the approach adopted by the trial chamber;<sup>9915</sup> and (3) when a trial chamber uses language that does not necessarily reflect the correct legal standard, it should be examined whether a trial chamber applied the correct legal principles to the facts of the case.<sup>9916</sup> Thus, the Appeals Chamber will proceed to examine whether the Trial Chamber set out and applied the correct legal standard for JCE III liability and, in so doing, it will review all the relevant statements in the French version of the Trial Judgement, as it is the authoritative text.<sup>9917</sup>

3024. The Appeals Chamber first notes that, when setting out the applicable law relating to the third form of JCE liability, the Trial Chamber stated *in abstracto* that: (1) this form applies to a situation where, while the shared intent was to forcibly remove members of one ethnicity, it was foreseeable that the removal of civilians at gunpoint “*puisse se solder*” (might well result) in the

<sup>9912</sup> *Šainović et al.* Appeal Judgement, para. 1557, referring to *Brđanin* Appeal Judgement, paras 365, 411, *Kvočka et al.* Appeal Judgement, para. 83, *Vasiljević* Appeal Judgement, para. 99 (internal references omitted). See *Popović et al.* Appeal Judgement, para. 1431; *Tadić* Appeal Judgement, para. 228; *supra*, para. 2836. To the extent that Stojić argues that there is a separate requirement to establish that “the deviatory crime was objectively a natural and foreseeable consequence of the JCE” in addition to the foreseeability of the crime to the accused (see Stojić’s Response Brief, para. 29), the Appeals Chamber rejects this argument as it rests upon an artificial distinction – that the subjective element of JCE III contains distinct objective and subjective elements – in direct contravention of the law. See *Stanišić and Župljanin* Appeal Judgement, paras 622, 981.

<sup>9913</sup> *Karadžić* JCE III Decision, para. 18. See *Popović et al.* Appeal Judgement, para. 1432; *Dorđević* Appeal Judgement, para. 907; *Šainović et al.* Appeal Judgement, paras 1061, 1081, 1272, 1525, 1538, 1557-1558.

<sup>9914</sup> *Stanišić and Župljanin* Appeal Judgement, paras 376, 1107; *Popović et al.* Appeal Judgement, para. 2006; *Šainović et al.* Appeal Judgement, paras 306, 321.

<sup>9915</sup> See *Zigiranyirazo* Appeal Judgement, para. 19, quoting *Musema* Appeal Judgement, para. 209.

<sup>9916</sup> See *Limaj et al.* Appeal Judgement, para. 65; *Čelebići* Appeal Judgement, paras 45-50; *Zigiranyirazo* Appeal Judgement, paras 19-20; *Kamuhanda* Appeal Judgement, paras 38-39; *Musema* Appeal Judgement, para. 210.

<sup>9917</sup> Trial Judgement, Vol. 4, Disposition, p. 432. In the following paragraphs the English translation is included in parentheses for convenience.

death of one or more of those civilians;<sup>9918</sup> (2) responsibility for a crime other than the one envisaged in the common criminal purpose attaches only when it was foreseeable that such a crime “*était susceptible d’être commis*” (might be committed) by one or more members of the group and when the accused deliberately assumed the risk that the crime “*soit commis*” (would be committed) because he knew that a crime of this sort “*était la conséquence probable*” (was the probable outcome) of the furtherance of the common purpose and accepted the crime being carried out while nevertheless deciding to take part in the JCE;<sup>9919</sup> and (3) the Prosecution must prove that it was foreseeable for the accused that a new crime “*était susceptible d’être commis*” (might be committed) and that the accused knew that the new crime “*était la conséquence probable*” (was the probable outcome) but nevertheless decided to take part in the JCE.<sup>9920</sup> The Appeals Chamber also notes that the Trial Chamber stated the correct legal standard when it quoted the *Brđanin* Appeal Judgement<sup>9921</sup> and when it summarised the Prosecution’s arguments.<sup>9922</sup>

3025. In its *in concreto* analysis of foreseeability, the Trial Chamber stated that: (1) it would analyse whether Prlić, Stojić, Praljak, Ćorić, and Pušić could reasonably have foreseen that the crimes “*allaient être commis*” (would be committed)<sup>9923</sup> or that the crimes “*étaient susceptibles d’être commis*” (might be committed) by HVO members as “*étant la conséquence probable*” (the probable consequence),<sup>9924</sup> and took that risk; (2) Petković could (or could not) have foreseen that crimes “*seraient commis*” (would be committed);<sup>9925</sup> (3) Stojić, Praljak, Petković, and Ćorić could (or could not) have foreseen that HVO members “*commettraient*”,<sup>9926</sup> “*allaient commettre*”,<sup>9927</sup> or “*commettent*” (would commit) crimes,<sup>9928</sup> “*détruisent*” (would destroy) religious institutions,<sup>9929</sup> and “*volent et s’approprient*” (would steal and appropriate) property;<sup>9930</sup> (4) Stojić, Praljak, Petković, and Ćorić took the risk that crimes “*soient commis*” (would be committed),<sup>9931</sup> that HVO

<sup>9918</sup> Trial Judgement, Vol. 1, para. 205.

<sup>9919</sup> Trial Judgement, Vol. 1, para. 216.

<sup>9920</sup> Trial Judgement, Vol. 1, para. 220. The Appeals Chamber notes that in the English version of paragraph 220, Volume 1, the expression “*était susceptible d’être commis*” was incorrectly translated as “was likely to be committed”.

<sup>9921</sup> Trial Judgement, Vol. 1, para. 218, quoting *Brđanin* Appeal Judgement, para. 411.

<sup>9922</sup> Trial Judgement, Vol. 4, paras 36, 280. The Appeals Chamber notes that, in its final trial brief, the Prosecution emphasised the difference between “possible” and “probable”. Prosecution’s Final Brief, para. 128.

<sup>9923</sup> Trial Judgement, Vol. 4, paras 433, 632, 1008, 1213.

<sup>9924</sup> Trial Judgement, Vol. 4, para. 281. The Appeals Chamber notes that in the English version of paragraph 281, Volume 4, the expression “*étaient susceptibles d’être commis*” was incorrectly translated as “were likely to be committed”.

<sup>9925</sup> Trial Judgement, Vol. 4, paras 824, 841, 845.

<sup>9926</sup> Trial Judgement, Vol. 4, paras 437, 443, 643. The Appeals Chamber notes that in the English version of paragraph 437, Volume 4, the term “*à nouveau*” was incorrectly translated as “also” instead of “anew”.

<sup>9927</sup> Trial Judgement, Vol. 4, para. 441.

<sup>9928</sup> Trial Judgement, Vol. 4, paras 439, 445-446, 448, 635, 638, 837, 840, 1009, 1014.

<sup>9929</sup> Trial Judgement, Vol. 4, para. 449.

<sup>9930</sup> Trial Judgement, Vol. 4, para. 1011.

<sup>9931</sup> Trial Judgement, Vol. 4, paras 439, 635, 638, 830, 834, 837, 840, 848, 1009, 1011, 1014. The Appeals Chamber notes that in the English version of paragraph 439, Volume 4, the expression “*soient commis*” was incorrectly translated as “might be committed”. See also Trial Judgement, Vol. 4, para. 852; *supra*, para. 2961 & fn. 9717.

“*commettent*” (would commit) crimes,<sup>9932</sup> or that detainees “*soient tués*” (would be killed);<sup>9933</sup> and (5) the crimes “*commis*” (committed) were not foreseeable to Petković and Ćorić.<sup>9934</sup> In a few instances the Trial Chamber stated that: (1) it would analyse whether Petković knew that crimes “*pourraient être commis*” (might be committed);<sup>9935</sup> (2) the respective Appellants knew or could have foreseen that crimes “*pourraient être commis*” or “*pouvaient être commis*” (might be committed);<sup>9936</sup> and (3) Prlić must have foreseen “*la possible réalisation*” (the possible commission) of crimes.<sup>9937</sup>

3026. The Appeals Chamber, Judge Liu dissenting, notes that the active and passive forms of periphrastic future structure for the near future (*futur proche*),<sup>9938</sup> subjunctive verb mood (*subjonctif présent*),<sup>9939</sup> and conditional verb mood (*conditionnel présent*)<sup>9940</sup> – as used in the above-mentioned contexts in the Trial Judgement – convey a degree of likelihood higher than the modal verb “might” or “could”,<sup>9941</sup> and resemble more closely the likelihood that is conveyed in the use of the term “would”.

3027. Considering the above, the Appeals Chamber finds that the language used by the Trial Chamber to state *in abstracto* the legal standard and to examine *in concreto* the foreseeability of the JCE III crimes is inconsistent throughout the Trial Judgement.<sup>9942</sup> The Trial Chamber occasionally used language that reflects the correct legal standard for the *mens rea* of JCE III

<sup>9932</sup> Trial Judgement, Vol. 4, para. 447.

<sup>9933</sup> Trial Judgement, Vol. 4, para. 1020. The Appeals Chamber notes that in the English version of paragraph 1020, Volume 4, the term “*soient tués*” was incorrectly translated as “might be killed”.

<sup>9934</sup> Trial Judgement, Vol. 4, paras 849, 1016. The Appeals Chambers notes that in the English version of paragraph 849, Volume 4, the phrase “*les vols commis par les membres du HVO à Stupni Do étaient prévisibles pour Milivoj Petković*” was incorrectly translated as “Milivoj Petković could have foreseen that the HVO members would commit theft in Stupni Do”.

<sup>9935</sup> Trial Judgement, Vol. 4, para. 822. See also Trial Judgement, Vol. 4, para. 281, in which the Trial Chamber used the expression “*étaient susceptibles d’être commis*” (might be committed). With regard to the English translation of this expression, see *supra*, fn. 9924.

<sup>9936</sup> Trial Judgement, Vol. 4, paras 72-73, 1020.

<sup>9937</sup> Trial Judgement, Vol. 4, paras 282-284.

<sup>9938</sup> Trial Judgement, Vol. 4, paras 433, 441, 632, 1008, 1213 (“*allaient être commis*”/“*allaient commettre*”). The *futur proche* is formed with the auxiliary verb “*aller*” followed by an infinitive. In these paragraphs of the Trial Judgement, while the verb “*aller*” gives the sense of near future, it is in the imperfect tense due to the tense agreement rules of the French language.

<sup>9939</sup> Trial Judgement, Vol. 1, para. 216, Vol. 4, paras 439, 445-449, 635, 638, 830, 837, 840, 848, 1009, 1011, 1014, 1020 (“*que...soit/soient commis*”/“*que...soient tués*”/“*que...commettent*”/“*que...déruisent*”/“*que...volent et s’approprient*”).

<sup>9940</sup> Trial Judgement, Vol. 4, paras 437, 443, 643, 824, 841, 845 (“*commettraient*”/“*seraient commis*”).

<sup>9941</sup> According to the rules of English grammar, the modal verbs “might” and “could” “express meanings such as necessity and possibility”; “might” is used to say that “something is possibly true” or “for an uncertain predication or intention” and, “could” is used “to suggest possible future actions”. See John Eastwood, *Oxford Guide to English Grammar* (7th ed., Oxford University Press, 2002), pp. 113, 122-123.

<sup>9942</sup> The Appeals Chamber notes that the inconsistency with the terms used occurred also in the same paragraph. See, e.g., Trial Judgement, Vol. 1, para. 216, 220, Vol. 4, para. 1020. With regard to the English translation of paragraph 220, Volume 1, and paragraph 1020, Volume 4, see *supra*, fns 9920, 9933. The Appeals Chamber also notes that in certain instances the language used by the Trial Chamber was too general to assist in understanding which standard the Trial Chamber applied. See Trial Judgement, Vol. 1, paras 219, 221, Vol. 4, paras 286-287, 825, 1019, 1214-1215.

liability.<sup>9943</sup> However, the Appeals Chamber, Judge Liu dissenting, finds that in most instances, the language used evinces a higher threshold of foreseeability than the one required by the correct legal standard.<sup>9944</sup> Notably, in setting out the steps of its analysis on whether the respective Appellants could foresee the commission of a crime and took such a risk in their respective JCE III sections, the Trial Chamber often used French terminology that conveys a degree of likelihood that is similar to the term “would” in English.<sup>9945</sup> Similarly, when concluding in the JCE III sections whether the respective Appellants could foresee the commission of the crime and, if relevant, took such a risk, the Trial Chamber in most cases used French terminology that conveys a degree of likelihood that is similar to the term “would” in English.<sup>9946</sup>

3028. The Appeals Chamber further observes that, on some occasions, even where the Trial Chamber used the correct legal terminology, requiring that it was foreseeable that a crime “might” be committed, it stressed at the same time that the accused is required to have known that such a crime was the “probable” consequence.<sup>9947</sup> The Appeals Chamber further takes into account the possibility that, in determining that an accused could have foreseen that a crime *would* be committed, the Trial Chamber simply used language reflecting the evidence rather than the language associated with the correct legal standard. However, in view of the fact that the

<sup>9943</sup> Trial Judgement, Vol. 1, paras 205, 216, 218, 220, Vol. 4, paras 36, 72-73, 280, 282-284, 822, 1020. With regard to the English translation of paragraph 220, Volume 1, and paragraph 1020, Volume 4, see *supra*, fns 9920, 9933.

<sup>9944</sup> See, e.g., Trial Judgement, Vol. 1, paras 216, 220, Vol. 4, paras 281, 433, 437, 439, 441, 443, 445-449, 632, 635, 638, 643, 824, 830, 834, 837, 840-841, 845, 848, 1008-1009, 1011, 1014, 1020, 1213. With regard to the English translation of paragraph 220, Volume 1, and paragraphs 281, 439, 1020, Volume 4, see *supra*, fns 9920, 9924, 9931, 9933. See also Trial Judgement, Vol. 4, para. 852; *supra*, para. 2961 & fn. 9717.

<sup>9945</sup> Trial Judgement, Vol. 4, paras 433, 632, 1008, 1213.

<sup>9946</sup> Trial Judgement, Vol. 4, paras 437, 439, 441, 443, 445-449, 635, 638, 643, 824, 830, 834, 837, 840-841, 845, 848, 1009, 1011, 1014, 1020.

<sup>9947</sup> Trial Judgement, Vol. 1, paras 216, 220, Vol. 4, para. 281. In addition, the Appeals Chamber notes that, in paragraph 216, Volume 1, of the Trial Judgement, the Trial Chamber stated that one of the requirements for JCE III mode of liability is that “*l'accusé a délibérément pris le risque que ce crime soit commis puisqu'il savait qu'un tel crime était la conséquence probable de la réalisation du but commun*” (references omitted). See *supra*, para. 3024. In support of this statement the Trial Chamber cited paragraph 101 of the *Vasiljević* Appeal Judgement. However in the *Vasiljević* Appeal Judgement the requirement does not include a “probability” component. It rather states that the JCE III responsibility for a crime arises “only if, under the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group and (ii) the accused willingly took that risk’ – that is, being aware that such crime was a *possible* consequence of the execution of that enterprise, and with that awareness, the accused decided to participate in that enterprise” (internal references omitted, emphasis omitted and added). *Vasiljević* Appeal Judgement, para. 101 (the French translation of the authoritative English version states that the JCE III responsibility for a crime “*« ne s'applique que si, dans les circonstances de l'espèce, i) il était prévisible qu'un tel crime était susceptible d'être commis par l'un ou l'autre des membres du groupe, et ii) l'accusé a délibérément pris ce risque »*. En d'autres termes, l'accusé, sachant qu'un tel crime était la conséquence possible de l'exécution du but de cette entreprise, y a néanmoins pris part” (references omitted, emphasis omitted)). Moreover, after it had analysed relevant jurisprudence in various appeal judgements and quoted the *Brđanin* Appeal Judgement, the Trial Chamber repeated its own understanding that the requirements for JCE III liability includes the accused's awareness that the crime in question “*était la conséquence probable de la réalisation du but commun*”. Trial Judgement, Vol. 1, para. 220. See *supra*, para. 3024. The Appeals Chamber further notes that, in so doing, the Trial Chamber made no reference to the *Karadžić* JCE III Decision, which was issued by the Appeals Chamber prior to the Trial Judgement and clarified that a “possibility” standard, rather than a “probability” standard, must be applied when assessing the foreseeability of deviatory crimes to an accused under JCE III liability. See *supra*, para. 3022; *Karadžić* JCE III Decision, paras 15-18; *Šainović et al.* Appeal Judgement, paras 1557-1558.

Trial Chamber used the same language indicative of an incorrect legal standard both when it convicted and acquitted an appellant,<sup>9948</sup> the Appeals Chamber considers that the use of French terminology that is similar to “would” by the Trial Chamber has no direct correlation with the evidence considered.

3029. In conclusion, the Appeals Chamber, Judge Liu dissenting, finds that the Trial Chamber frequently used language indicating the use of the incorrect legal standard for the *mens rea* of JCE III liability, both in the restatements of the applicable legal principles and in the application of these principles throughout the Trial Judgement.<sup>9949</sup> At times, it appears to have also used the terms “possible” and “probable” interchangeably.<sup>9950</sup> However, in so doing, it stressed that it is required that the accused foresaw the crime as the probable consequence.<sup>9951</sup> The Appeals Chamber, Judge Liu dissenting, considers that there is nothing in the Trial Judgement, read as a whole, that suggests that the wrong legal terminology used by the Trial Chamber did not accurately describe the approach adopted by the Trial Chamber or that the Trial Chamber nevertheless applied the correct legal standard to the facts of the case. Rather, as explained above,<sup>9952</sup> the context and manner in which the Trial Chamber used the terminology in question indicate that the Trial Chamber applied a higher threshold of likelihood than required. As a result, the Appeals Chamber, Judge Liu dissenting, is convinced that, at least in the incidents challenged by the Prosecution under this sub-ground of appeal,<sup>9953</sup> the Prosecution has shown that the Trial Chamber applied a higher threshold in its assessment of the foreseeability than required by the correct legal standard.<sup>9954</sup> The Appeals Chamber, Judge Liu dissenting, thus finds that, for these challenged incidents, the Trial Chamber committed an error of law arising from the application of the wrong legal standard concerning the *mens rea* of JCE III liability.

### (iii) Conclusion

3030. Based on the foregoing, the Appeals Chamber, Judge Liu dissenting, grants the Prosecution’s sub-ground of appeal 1(A) to the extent that it finds that the Trial Chamber applied

<sup>9948</sup> Compare Trial Judgement, Vol. 4, paras 437, 439, 445-447, 635, 638, 830, 834, 837, 840, 845, 848, 1009, 1011, 1014 (convictions), with Trial Judgement, Vol. 4, paras 441, 443, 448-449, 643, 824, 841 (acquittals).

<sup>9949</sup> Trial Judgement, Vol. 1, paras 216, 220, Vol. 4, paras 281, 433, 437, 439, 441, 443, 445-449, 632, 635, 638, 643, 824, 830, 834, 837, 840-841, 845, 848, 1008-1009, 1011, 1014, 1020, 1213.

<sup>9950</sup> Trial Judgement, Vol. 1, paras 216, 218, 220. See also Trial Judgement, Vol. 4, paras 36, 280-284, 1020.

<sup>9951</sup> Trial Judgement, Vol. 1, paras 216, 220, Vol. 4, para. 281.

<sup>9952</sup> See *supra*, paras 3027-3028.

<sup>9953</sup> Prosecution’s JCE III Table (Stojić), incidents 20, 23, 27, 29-30 (as reflected, in particular, in Trial Judgement, Vol. 4, paras 441, 443, 448-449), Prosecution’s JCE III Table (Praljak), incidents 19-21, 31-32 (as reflected, in particular, in Trial Judgement, Vol. 4, para. 643), Prosecution’s JCE III Table (Petković), incident 21 (as reflected, in particular, in Trial Judgement, Vol. 4, para. 849), Prosecution’s JCE III Table (Ćorić), incidents 5, 7, 10-11, 27-29 (as reflected, in particular, in Trial Judgement, Vol. 4, paras 1016, 1019), Prosecution’s JCE III Table (Pušić), incidents 1-35 (as reflected, in particular, in Trial Judgement, Vol. 4, paras 1214-1216). With regard to two incidents in relation to Ćorić’s responsibility (Prosecution’s JCE III Table (Ćorić), incidents 8-9), see *supra*, fn. 9898; *infra*, para. 3114.

the incorrect legal standard of JCE III *mens rea* to the incidents appealed by the Prosecution under this sub-ground of appeal. The Appeals Chamber will assess the impact of this finding below.<sup>9955</sup> In light of its conclusion on the Prosecution's sub-ground of appeal 1(A), the Appeals Chamber need not consider the Prosecution's arguments concerning these incidents<sup>9956</sup> under its remaining sub-grounds of appeal (namely, its sub-grounds of appeal 1(B), 1(C), 1(D), and 1(E)) and dismisses them as moot.<sup>9957</sup>

(d) Alleged errors concerning the assessment of evidence (Prosecution's Sub-grounds 1(B) and 1(E) both in part)

3031. The Appeals Chamber has granted the Prosecution's sub-ground of appeal 1(A) concerning certain specific incidents in relation to which the Trial Chamber expressly discussed Stojić's, Praljak's, Petković's, Čorić's, and Pušić's responsibility under JCE III and acquitted them.<sup>9958</sup> As a result, the Appeals Chamber has found the Prosecution's remaining sub-grounds of appeal (*i.e.* its sub-grounds of appeal 1(B), 1(C), 1(D), and 1(E)) moot with respect to their responsibility for these specific incidents.<sup>9959</sup> However, the Prosecution appeals Petković's acquittals of JCE III liability for two incidents, which the Trial Chamber expressly discussed, only under its sub-grounds of appeal 1(B) and 1(E) and not under its sub-ground of appeal 1(A).<sup>9960</sup> The Prosecution also appeals, under its sub-grounds of appeal 1(B) and 1(E), Prlić's acquittals of JCE III liability for two

<sup>9954</sup> Cf. *Popović et al.* Appeal Judgement, para. 1432.

<sup>9955</sup> See *infra*, paras 3115-3132.

<sup>9956</sup> See *supra*, fn. 9953.

<sup>9957</sup> In relation to Stojić's, Praljak's, Petković's, Čorić's, and Pušić's responsibility, all incidents in question appealed under the Prosecution's sub-ground of appeal 1(A) are also appealed under its sub-grounds of appeal 1(B) and 1(E). Prosecution's JCE III Table (Stojić), incidents 20, 23, 27, 29-30, Prosecution's JCE III Table (Praljak), incidents 19-21, 31-32, Prosecution's JCE III Table (Petković), incidents 6-7, 21, Prosecution's JCE III Table (Čorić), incidents 5, 7, 10-11, 27-29, Prosecution's JCE III Table (Pušić), incidents 1-35. Additionally, in relation to Čorić's responsibility, all but two incidents in question appealed under the Prosecution's sub-ground of appeal 1(A) are also appealed under its sub-ground of appeal 1(D). Prosecution's JCE III Table (Čorić), incidents 5, 7, 27-29. Moreover, in relation to Pušić's responsibility, all but two incidents appealed under the Prosecution's sub-ground of appeal 1(A) are also appealed under its sub-ground of appeal 1(C) (although the Prosecution only alleges that the Trial Chamber failed to provide a reasoned opinion on Pušić's JCE III responsibility for these incidents, and does not allege that the Trial Chamber failed to adjudicate). Prosecution's JCE III Table (Pušić), incidents 1-14, 16-23, 25-35. As a result of the above conclusion granting the Prosecution's sub-ground of appeal 1(A), the Appeals Chamber will not address the Prosecution's arguments under its sub-grounds of appeal 1(B) and 1(E) concerning the same incidents. Moreover, given that the Prosecution's sub-ground of appeal 1(D) only concerns Čorić's responsibility and that all incidents appealed under its sub-ground of appeal 1(D) are also appealed under its sub-ground of appeal 1(A), in light of the above conclusion granting its sub-ground of appeal 1(A), the Appeals Chamber will not further discuss the Prosecution's sub-ground of appeal 1(D). Further, with regard to Pušić's responsibility, all incidents appealed under its sub-ground of appeal 1(C) are also appealed under its sub-ground of appeal 1(A). In light of the above conclusion granting its sub-ground of appeal 1(A), the Appeals Chamber will not further discuss the Prosecution's sub-ground of appeal 1(C) in relation to Pušić's responsibility. With respect to two incidents in relation to Čorić's responsibility (Prosecution's JCE III Table (Čorić), incidents 8-9), see *supra*, fn. 9898; *infra*, para. 3114.

<sup>9958</sup> See *supra*, para. 3030, fn. 9953. The Prosecution's sub-ground of appeal 1(A) concerns all Appellants, except Prlić. See Prosecution's Appeal Brief, fn. 169.

<sup>9959</sup> See *supra*, para. 3030 & fn. 9957.

<sup>9960</sup> Prosecution's JCE III Table (Petković), incidents 6-7. The Prosecution also does not appeal the Trial Chamber's findings on Petković's responsibility for these incidents under its sub-ground of appeal 1(C) or 1(D).

incidents the Trial Chamber expressly discussed.<sup>9961</sup> The Appeals Chamber will accordingly turn to the Prosecution's sub-ground of appeal 1(B) with regard to these incidents, which will be followed by an analysis of its sub-ground of appeal 1(E), if necessary.

(i) Alleged errors concerning the assessment of evidence in relation to Prlić's responsibility for certain killing incidents

3032. The Trial Chamber found that Prlić could not have reasonably foreseen the murder of a detainee who died of dehydration on 16 July 1993 in Dretelj Prison, given that the bad detention conditions, and in particular the overcrowding, in Dretelj Prison were only discussed with Prlić several days following the death of the detainee during the meetings of 19 and 20 July 1993 and that there is no evidence that he knew about the detention conditions at Dretelj Prison on 16 July 1993.<sup>9962</sup>

3033. Similarly, the Trial Chamber found that Prlić could not have reasonably foreseen the murder of a detainee who was shot dead on 5 December 1993 in Vojno Detention Centre, since he was only informed on 20 January 1994 through the ICRC Letter that detainees at Vojno Detention Centre had died, some of them allegedly as a result of maltreatment and bad detention conditions.<sup>9963</sup>

3034. The Trial Chamber identified the direct perpetrators of these murders as being the HVO soldiers and members of the Military Police,<sup>9964</sup> who it found were used by Prlić and other JCE members to implement the CCP.<sup>9965</sup>

a. Alleged error of law in the assessment of evidence (Prosecution's Sub-ground 1(B) in part)

i. Arguments of the Parties

3035. The Prosecution argues in its sub-ground of appeal 1(B) that the Trial Chamber erred by compartmentalising its assessment of the evidence regarding Prlić's ability to foresee the killings of the Muslim detainees in Dretelj Prison in mid-July 1993 and in Vojno Detention Centre on 5 December 1993.<sup>9966</sup> It argues that instead of assessing whether these killings were foreseeable to Prlić in light of the totality of the evidence, the Trial Chamber analysed the evidence in relation to

<sup>9961</sup> Prosecution's JCE III Table (Prlić), incidents 8, 13. The Prosecution does not appeal the Trial Chamber's findings on Prlić's responsibility for these incidents under its sub-ground of appeal 1(A), 1(C), or 1(D).

<sup>9962</sup> Trial Judgement, Vol. 4, paras 285-286.

<sup>9963</sup> Trial Judgement, Vol. 4, para. 287.

<sup>9964</sup> Trial Judgement, Vol. 2, paras 1715-1716, Vol. 3, paras 85-91, 680, 693-694, 696, 730-731, 734, 744-745, 748, Vol. 4, paras 286-288.

<sup>9965</sup> Trial Judgement, Vol. 4, paras 270, 273, 1225, 1232. See also Trial Judgement, Vol. 4, paras 111, 121, 154, 429.



each of the incidents in isolation, thus it misapplied the legal standard that requires a trial chamber to consider all the evidence presented to it and to assess it in its totality and in context.<sup>9967</sup>

3036. More specifically, the Prosecution argues that the Trial Chamber only took into account evidence of Prlić's knowledge of the climate of violence or crimes at the particular location where the relevant crimes occurred.<sup>9968</sup> According to the Prosecution, in so doing, the Trial Chamber failed to consider its own findings and relevant evidence that provided context to those incidents, such as Prlić's role in the JCE, his knowledge of the pattern of crimes in the broader area, his intent to remove the Muslim population through the commission of JCE I crimes, including murder as well as mistreatment and detention of detainees in poor conditions, his knowledge of the bad conditions in Dretelj Prison and Gabela Prison as of 19 July 1993, and his ability to foresee murders of detainees in Jablanica Municipality in April 1993 and murders linked to eviction campaigns in Mostar as of June 1993.<sup>9969</sup>

3037. The Prosecution argues that, based on the totality of the evidence and the Trial Chamber's findings, the Appeals Chamber should correct the Trial Chamber's error and convict Prlić for these criminal incidents.<sup>9970</sup>

3038. Prlić responds that the Prosecution relies on erroneous findings of the Trial Chamber and that no reasonable trier of fact would have found that he knew of the bad conditions in Dretelj Prison and Gabela Prison as of 19 July 1993, was aware of any risk that detainees might be murdered in detention facilities, or shared an intent to ethnically cleanse, abuse, detain, or murder Muslims.<sup>9971</sup> In so doing, Prlić challenges the Trial Chamber's findings that the Prosecution mentions in support of its ground of appeal, and refers to the grounds of appeal in his appeal brief.<sup>9972</sup>

## ii. Analysis

3039. The Appeals Chamber recalls that it is the totality of the evidence that must be weighed to determine whether the Prosecution has met its burden of proof.<sup>9973</sup> The Appeals Chamber further

<sup>9966</sup> Prosecution's Appeal Brief, paras 33-37, 60-66, Prosecution's JCE III Table (Prlić), incidents 8, 13. See also Appeal Hearing, AT. 754-755 (28 Mar 2017).

<sup>9967</sup> Prosecution's Appeal Brief, paras 33-35, 60, referring to, *inter alia*, Kvočka *et al.* Appeal Judgement, para. 23, Martić Appeal Judgement, para. 233, Halilović Appeal Judgement, para. 125, Ntagerura *et al.* Appeal Judgement, para. 174. See also Prosecution's Reply Brief, paras 9-17; Appeal Hearing, AT. 754-755, 845, 849 (28 Mar 2017).

<sup>9968</sup> Prosecution's Appeal Brief, paras 35, 60, 65.

<sup>9969</sup> Prosecution's Appeal Brief, paras 60-64, referring to, *inter alia*, Prosecution's Appeal Brief, paras 8, 54-59, 67-82, Trial Judgement, Vol. 4, paras 64, 66-68, 155, 219-220, 232, 248, 255, 270-278, 283-284, 286-287. See also Appeal Hearing, AT. 755-756 (28 Mar 2017).

<sup>9970</sup> Prosecution's Appeal Brief, para. 66. See also Prosecution's Appeal Brief, paras 35-37, 64-65, 277.

<sup>9971</sup> Prlić's Response Brief, paras 60-63, referring to, *inter alia*, Prlić's Appeal Brief, grounds of appeal 11-13, 16-18. See also Appeal Hearing, AT. 793-795, 798-799 (28 Mar 2017).

recalls that there is a presumption that a trial chamber has evaluated all the evidence presented to it, as long as there is no indication that the trial chamber completely disregarded any particular piece of evidence.<sup>9974</sup> The Appeals Chamber also recalls that there may be an indication of disregard when evidence which is clearly relevant to the findings is not addressed in the trial chamber's reasoning.<sup>9975</sup>

3040. The Appeals Chamber notes that, in arguing that the Trial Chamber failed to consider its own findings and relevant evidence, the Prosecution merely refers to findings of the Trial Chamber in other parts of the Trial Judgement, which it did not explicitly repeat in the section on Prlić's JCE III liability when it assessed the two incidents at issue. In so doing, the Prosecution does not point to any piece of evidence that was not addressed in the Trial Judgement.<sup>9976</sup> The Appeals Chamber recalls that, as a general rule, a trial chamber is not required to articulate every step of its reasoning for each finding it makes,<sup>9977</sup> so long as it indicates clearly the legal and factual findings on the basis of which it reached the decision either to convict or acquit an individual.<sup>9978</sup> With regard to the two incidents at issue, the Trial Chamber expressly explained what was determinative of its conclusions that Prlić could not have foreseen them – namely the evidence that he was informed of harsh conditions and/or mistreatment in the respective detention facilities only after the incidents had occurred.<sup>9979</sup> Thus, it is to be presumed that the Trial Chamber considered the other findings on the context which it made elsewhere in the Trial Judgement and the evidence assessed therein,<sup>9980</sup> but decided not to place significant weight on them in determining whether Prlić could have foreseen that the incidents at issue might occur. In the absence of any further submission, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber disregarded any relevant evidence. The Prosecution has also not shown that the Trial Chamber failed to assess the evidence in its totality or in context. Consequently, the Prosecution has not shown that the Trial Chamber committed an error of law by misapplying the

<sup>9972</sup> Prlić's Response Brief, para. 63, referring to, *inter alia*, Prlić's Appeal Brief, grounds of appeal 11-13, 16-18.

<sup>9973</sup> Martić Appeal Judgement, para. 233. See also Halilović Appeal Judgement, para. 125, Ntagerura et al. Appeal Judgement, para. 174.

<sup>9974</sup> Kvočka et al. Appeal Judgement, paras 23-24. See Stanišić and Župljanin Appeal Judgement, para. 138; Popović et al. Appeal Judgement, paras 306, 925.

<sup>9975</sup> Kvočka et al. Appeal Judgement, paras 23-24. See Tolimir Appeal Judgement, paras 53, 161, 299; Popović et al. Appeal Judgement, paras 926, 1017.

<sup>9976</sup> The Appeals Chamber notes that in its sub-ground of appeal 1(B) the Prosecution refers to Exhibit P01351. See Prosecution's Appeal Brief, fn. 201. However, as the Prosecution notes in the same footnote, the Trial Chamber explicitly discussed this exhibit. See Trial Judgement, Vol. 4, paras 130, 132, 134 & fns 381, 383.

<sup>9977</sup> Stanišić and Župljanin Appeal Judgement, paras 378, 1063; Popović et al. Appeal Judgement, paras 972, 1906; Šainović et al. Appeal Judgement, paras 325, 378, 392, 461, 490; Kvočka et al. Appeal Judgement, para. 398. See also Kvočka et al. Appeal Judgement, para. 23.

<sup>9978</sup> Stanišić and Župljanin Appeal Judgement, para. 137; Stanišić and Simatović Appeal Judgement, para. 78; Popović et al. Appeal Judgement, para. 1906; Hadžihasanović and Kubura Appeal Judgement, para. 13.

<sup>9979</sup> Trial Judgement, Vol. 4, paras 285-287.

legal standard concerning the assessment of evidence. The Prosecution's sub-ground of appeal 1(B) is therefore dismissed. Thus, the Appeals Chamber will now address the Prosecution's alternative contention alleged in its sub-ground of appeal 1(E).

b. Alleged error of fact in the assessment of evidence (Prosecution's Sub-ground 1(E) in part)

i. Argument of the Parties

3041. Under its sub-ground of appeal 1(E), the Prosecution submits that the Trial Chamber findings and evidence demonstrate that no reasonable trier of fact could have failed to find Prlić responsible under JCE III liability for the two incidents of murder at issue and, consequently, the acquittals should be reversed.<sup>9981</sup>

3042. The Prosecution contends that in light of the Trial Chamber's findings and evidence, it was foreseeable to Prlić that HVO forces might commit murders against Muslim detainees in the execution of the CCP and that he willingly took that risk.<sup>9982</sup> In support, the Prosecution first refers to general factors concerning Prlić, including: (1) the official position that he held; (2) his importance as a JCE member; (3) his contribution to the JCE; (4) his importance in implementing the campaign of violence directed against the Muslim population throughout the HZ(R) H-B; (5) the finding that he intended the mass and indiscriminate detention of Muslim men in several municipalities; (6) the findings that he accepted and encouraged the extremely precarious conditions and the mistreatment of detainees at Dretelj Prison, Gabela Prison, and the Heliodrom; (7) the findings that he facilitated and accepted the use of detainees for front line labour and as human shields; and (8) the finding that he was informed of the situation in the HZ(R) H-B and of the campaign of violence being carried out by HVO forces against Muslims.<sup>9983</sup>

3043. The Prosecution also refers to the Trial Chamber's findings according to which, allegedly, Prlić was specifically alerted to the risk that killings might be committed in the execution of the CCP. It refers to the findings that Prlić: (1) was alerted to the risk that HVO forces might commit

<sup>9980</sup> This includes findings concerning: (1) the nature of the CCP; (2) the manner in which the CCP was implemented; (3) Prlić's intent; and (4) Prlić's knowledge of the climate of violence and crimes in other locations prior to the killings at issue. See, e.g., Trial Judgement, Vol. 4, paras 44-68, 84-288.

<sup>9981</sup> Prosecution's Appeal Brief, paras 83-84; Appeal Hearing, AT. 757 (28 Mar 2017). See also Prosecution's Appeal Brief, paras 50-52, 277.

<sup>9982</sup> Prosecution's Appeal Brief, paras 60, 64, 68-71, referring to, *inter alia*, Prosecution's Appeal Brief, paras 8, 54-59.

<sup>9983</sup> Prosecution's Appeal Brief, paras 8, 54-59, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 90, 130-132, 154, 234-235, 268-269, 271-279, 1315-1317, Ex. P01351. See Prosecution's Appeal Brief, para. 63, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 219-220, 248, 255, 260-263. See also Appeal Hearing, AT. 756-760, 762, 764 (28 Mar 2017).

murders because he intended “some types of murder” as a means of implementing the CCP;<sup>9984</sup> (2) intended that detainees be mistreated and confined in poor conditions;<sup>9985</sup> (3) had knowledge of the bad conditions in Dretelj Prison and Gabela Prison as of 19 July 1993;<sup>9986</sup> and (4) could foresee in April 1993 the murder of detainees in Jablanica Municipality and, as of June 1993, the murder of Muslims in Mostar Municipality linked to the eviction campaigns.<sup>9987</sup>

3044. Prlić responds that no reasonable trier of fact would have found that he could foresee killings in detention and that he is not responsible for these killings.<sup>9988</sup> Prlić argues that, since he was not involved in any criminal activity, even if he could foresee “because of the ongoing war activity, that war crimes and crimes against humanity would inevitably occur (as in any war)”, he cannot and should not be held responsible for any criminal activity that was beyond his authority to prevent or punish.<sup>9989</sup> In addition, Prlić challenges the Trial Chamber’s findings on which the Prosecution relies in its ground of appeal, and refers in support to the grounds of appeal in his appeal brief.<sup>9990</sup>

<sup>9984</sup> Prosecution’s Appeal Brief, paras 62-63, 69-70, referring to Trial Judgement, Vol. 4, paras 66-68, 134, 232, 238, 270-278, 283-284. See also Appeal Hearing, AT. 756 (28 Mar 2017).

<sup>9985</sup> Prosecution’s Appeal Brief, paras 62-63, 69, referring to Trial Judgement, Vol. 4, paras 64, 66-68, 155, 219-220, 248, 255, 260-263. See also Appeal Hearing, AT. 756 (28 Mar 2017).

<sup>9986</sup> Prosecution’s Appeal Brief, paras 61, 63, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 286-287. See also Appeal Hearing, AT. 756 (28 Mar 2017).

<sup>9987</sup> Prosecution’s Appeal Brief, paras 62, 69, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 283-284. See also Appeal Hearing, AT. 756 (28 Mar 2017).

<sup>9988</sup> Prlić’s Response Brief, paras 60, 62, 65, 68, 72. See also Prlić’s Response Brief, para. 60; Appeal Hearing, AT. 793-795, 798-799 (28 Mar 2017). The Appeals Chamber will also consider the parts of Prlić’s response that correspond to those arguments of the Prosecution which are incorporated by reference under its sub-ground of appeal 1(E) and are relevant to the killings at issue.

<sup>9989</sup> Prlić’s Response Brief, para. 67. See also Prlić’s Response Brief, para. 66.

<sup>9990</sup> Prlić’s Response Brief, paras 28-32, 46, 48, 50, 52, 54, 56, 58, 60, 62-63, 68, 72-73, referring to, *inter alia*, Prlić’s Appeal Brief, grounds of appeal 1-4, 6, 8-18. See also Prlić’s Response Brief, paras 33-44, 65-66; Appeal Hearing, AT. 799 (28 Mar 2017). Referring to his appeal brief, Prlić reargues, *inter alia*, that JCE liability is a judicial creation and that the Trial Chamber: (1) erred in finding that he was responsible for JCE III crimes; (2) failed to consider evidence showing his lack of authority as the President of the HZ(R) H-B and erred in finding he was a key figure in setting the strategy for the HVO; (3) erred in its findings concerning the CCP as well as his shared intent and contribution to the JCE; (4) erred in its findings regarding his awareness of events in and around the HZ H-B and HZ(R) H-B; (5) erred in finding that he did not condemn the crimes; (6) erred in finding that he supported the HVO campaign of sniping and shelling against East Mostar; and (7) erred in finding that he knew of the bad conditions in Dretelj Prison and Gabela Prison as of 19 July 1993. Additionally, in support of his argument that he did not receive a steady stream of information regarding the campaign of violence being carried out by HVO forces against Muslims, Prlić challenges the Trial Chamber’s reliance on Željko Šiljeg’s report on 29 January 1993 (Exhibit P01351) to find that he was informed of crimes committed in HVO operations in Gornji Vakuf in January 1993. With regard to this report, he claims that there is no evidence that he or the HVO HZ H-B ever received it, noting that: (1) the HVO HZ H-B had no packet radio communication; (2) there was no incoming stamp showing that the information had actually been received; (3) there was no registration of any letter being sent from the HVO HZ H-B to Šiljeg “or any military part”; and (4) Šiljeg was never called as a witness to comment on this report. He adds that there is no evidence that Šiljeg’s reports were discussed during the meetings of the HVO HZ H-B. He further submits that the mere appearance of an official’s name on the distribution list of a document does not imply responsibility for or the power to make decisions or issue orders with respect to the subject matter of the document. Prlić’s Response Brief, para. 58(k)(i), referring to Prosecution’s Appeal Brief, para. 57, which, in turn, refers to, *inter alia*, Trial Judgement, Vol. 4, paras 130-132, Ex. P01351; Appeal Hearing, AT. 174-175, 240-241 (20 Mar 2017). See also Trial Judgement, Vol. 4, para. 134.

3045. The Prosecution replies that Prlić does not contest that the incidents in question were foreseeable to him, but instead repeats his existing challenges to the Trial Chamber's underlying findings.<sup>9991</sup> The Prosecution adds that the question of JCE III liability is whether the accused can personally foresee the risk arising from the accused's intentional implementation of a common criminal purpose rather than foresee that certain crimes might be committed during war.<sup>9992</sup>

ii. Analysis

3046. As a preliminary matter, the Appeals Chamber notes that, in challenging the Trial Chamber's findings on which the Prosecution relies, Prlić refers to arguments in his appeal brief.<sup>9993</sup> Considering that the Appeals Chamber dismisses these arguments elsewhere in this Judgement, they will not be re-addressed.<sup>9994</sup> However, in cases where Prlić raises relevant arguments in response that are connected to his grounds of appeal and distinct from those already addressed, the Appeals Chamber will examine them below together with the Prosecution's arguments.

3047. The Appeals Chamber first turns to Prlić's contention that he should not be held responsible merely because he could foresee that crimes would inevitably occur due to the ongoing war activity. The Appeals Chamber observes that, in so arguing, Prlić misconstrues the law on JCE III liability. The Appeals Chamber recalls that pursuant to JCE III liability, an accused can be held responsible

<sup>9991</sup> Prosecution's Reply Brief, para. 20. See also Prosecution's Reply Brief, paras 21-23. With regard to Šiljeg's report on 29 January 1993 (Exhibit P01351), the Prosecution replies that: (1) Prlić's claim that the HVO HZ-HB had no packet radio communication is irrelevant; and (2) the Trial Chamber's finding that he must have been informed of the contents of the report was based on several factors, including but not limited to the fact that Šiljeg's reports were addressed to the Government. Prosecution's Reply Brief, para. 22.

<sup>9992</sup> Prosecution's Reply Brief, para. 15.

<sup>9993</sup> See, *supra*, para. 3044. The Appeals Chamber notes that even in cases where Prlić does not make specific references to his arguments in his appeal brief, he frequently repeats the substance of his arguments contained in his appeal brief. His arguments further overlap with his submissions at the Appeal Hearing. See Appeal Hearing, AT. 125-173, 233-244 (20 Mar 2017). In certain cases, Prlić additionally advances arguments referring to evidence which was not mentioned in his appeal brief or in his submissions at the Appeal Hearing. However, these arguments fail to show that the Trial Chamber erred or they have no chance of changing the outcome of its decision. See, e.g., Prlić's Response Brief, paras 42 (Prlić argues that he supported the Washington Agreement in March 1994 and the Dayton Peace Accords in 1995), 58(f) (Prlić argues, *inter alia*, that the Trial Chamber ignored evidence in finding that he contributed to the blocking of aid to East Mostar and that Stojić misstates evidence in this regard), 58(j) (Prlić argues that he was not informed of the situation on the ground in the HZ(R) H-B since, *inter alia*, the minutes of the Government meetings in which he participated do not mention the "Banovina 1939" borders, annexation, expulsion, demographic domination, resettling in accordance with any goal, or discrimination of any kind and there is no evidence in any public statements or discussions by Prlić calling for non-compliance with international humanitarian law). The Appeals Chamber also notes that the Trial Chamber found that the HVO hindered the regular delivery of humanitarian aid to East Mostar between June and December 1993, whereas, in arguing that the Trial Chamber ignored evidence regarding his contribution to the blocking of aid to East Mostar, Prlić refers to reports that cover different periods. See Trial Judgement, Vol. 2, paras 1227, 1230, 1238-1239, 1244; Prlić's Response Brief, para. 58(f) & fns 111-112 (referring to Exs. P06324, P04735). The Appeals Chamber observes that Prlić mistakenly refers to Ex. P04735 as a "report from June to November 1993", while the report covers only activities "for the period January to June 1993". See Prlić's Response Brief, para. 58(f) & fn. 112; Ex. P04699 (Exhibit P04699 is the first part of the report that continues in Exhibit P04735).

for a crime outside the common criminal purpose if: (1) it was foreseeable to the accused that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common criminal purpose; and (2) the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.<sup>9995</sup> The possibility that the crime could be committed must be sufficiently substantial as to be foreseeable to the accused.<sup>9996</sup>

3048. The Trial Chamber found that Prlić could not have reasonably foreseen the death of a Muslim detainee on 16 July 1993 in Dretelj Prison or the murder of a detainee on 5 December 1993 in Vojno Detention Centre since he was informed of harsh conditions and/or mistreatment in the respective detention facilities only after the incidents had occurred.<sup>9997</sup> As stated above, the Appeals Chamber understands that in so doing, the Trial Chamber did not place significant weight on its findings and underlying evidence concerning contextual factors, such as: (1) the nature of the CCP; (2) the manner in which the CCP was implemented; (3) Prlić's intent; and (4) Prlić's knowledge of the climate of violence and crimes in other locations prior to the killings at issue.<sup>9998</sup> However, in the circumstances of this case, the Appeals Chamber, Judge Liu dissenting, finds that no reasonable trier of fact could have considered that Prlić's ability to foresee that these killings might be committed was dependent upon his knowledge of specific circumstances in Dretelj Prison and Vojno Detention Centre, respectively.

3049. The Appeals Chamber, Judge Liu dissenting, observes that in the Trial Judgement, there is nothing that suggests that the difference between the circumstances surrounding the killings at issue and other crimes is such that a reasonable trier of fact could have given only limited weight to all of these contextual factors for the killings at issue. Rather, as highlighted by the Prosecution,<sup>9999</sup> the Trial Chamber found, in assessing the scope of the CCP, that JCE members, including Prlić, the President of the HVO/Government of the HZ(R) H-B, "implemented an entire system for forcibly deporting the Muslim population of the HR H-B", which included murders during attacks, mistreatment during eviction operations, mistreatment and poor conditions of confinement, and the widespread use of detainees on the front lines for labour or as human shields, as well as murders

<sup>9994</sup> See *supra*, paras 108-138, 168-191, 199, 204-218, 225, 583-591, 596-601, 609-615, 625-633, 645-654, 662-667, 672-676, 695-699, 719-727, 735-739, 749-754, 782, 910-922, 949-955, 962-964, 1014, 1018-1400, 2837-2841.

<sup>9995</sup> *Stanišić and Župljanin* Appeal Judgement, paras 595, 614; *Šainović et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557. See *Popović et al.* Appeal Judgement, para. 1431; *Dorđević* Appeal Judgement, para. 906; *Brdanin* Appeal Judgement, paras 365, 411. See also *Tadić* Appeal Judgement, para. 228; *supra*, para. 2836.

<sup>9996</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1055; *Popović et al.* Appeal Judgement, para. 1432; *Šainović et al.* Appeal Judgement, paras 1081, 1538, 1557; *Karadžić* JCE III Decision, para. 18. See *supra*, para. 2836.

<sup>9997</sup> Trial Judgement, Vol. 4, paras 285-287. See *supra*, paras 3032-3033.

<sup>9998</sup> See *supra*, para. 3040.

<sup>9999</sup> See, in particular, Prosecution's Appeal Brief, paras 60-66, 69-71, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 64, 66-68, 130, 134, 155, 219-220, 232, 248, 255, 260-263, 270-278, 283.

and mistreatment related thereto.<sup>10000</sup> Prlić was also found to have shared the intent to further this CCP, the implementation of which involved similar HVO operations and detention facilities with harsh conditions, including Dretelj Prison and Vojno Detention Centre, in various municipalities.<sup>10001</sup> Further, in this context, Prlić was found to have intended, *inter alia*, mistreatment during evictions and detentions, poor conditions of confinement, as well as murder in certain contexts, which included killings of detainees during forced labour.<sup>10002</sup>

3050. Prlić's knowledge of HVO crimes and the climate of violence during the relevant period must be considered against this background. With regard to his knowledge of killings,<sup>10003</sup> the Trial Chamber found that Prlić knew about the murders that were committed by the HVO during the campaign of fire and shelling against East Mostar already from June 1993.<sup>10004</sup> It also found that Prlić was informed, at least by 5 November 1993, of the murders of people who did not belong to any armed force during the attack on Stupni Do in Vareš.<sup>10005</sup>

3051. The Trial Chamber also found that Prlić intended, from the beginning of the JCE, detentions of Muslims who did not belong to any armed forces.<sup>10006</sup> Prlić endorsed and accepted the mass arrests and detentions of Muslim men, for example, in Mostar as of 9 May 1993 and in various municipalities on 30 June 1993.<sup>10007</sup> The Appeals Chamber further notes that with regard to

<sup>10000</sup> Trial Judgement, Vol. 4, para. 66. See also Trial Judgement, Vol. 4, paras 44, 51, 58, 65, 82, 168, 275. The Appeals Chamber recalls that it has vacated the Trial Chamber's finding that murder and wilful killing were part of the CCP before June 1993. See *supra*, paras 882, 886, 2835. However, this has no impact on the current analysis in relation to the killings at Dretelj Prison and Vojno Detention Centre, which occurred in July and December 1993, respectively. See *supra*, paras 3032-3033.

<sup>10001</sup> Trial Judgement, Vol. 4, paras 44-48, 55-58, 61-65. With regard to detention facilities, see also Trial Judgement, Vol. 3, paras 1074, 1082, 1088, 1096, 1098, 1120, 1130, 1137, 1147, 1150, 1172, 1182, 1189, 1199, 1202. See also *supra*, para. 1399, fn. 4322.

<sup>10002</sup> Trial Judgement, Vol. 4, paras 66-68. See also, *e.g.*, Trial Judgement, Vol. 4, paras 134 (Gornji Vakuf), 147 (Prozor and Jablanica), 171, 176, 185 (Mostar), 232 (the Heliodrom), 238 (Vojno Detention Centre), 249, 255 (Dretelj Prison and Gabela Prison), 278-279. In this regard, the Appeals Chamber considers the Trial Chamber's findings on Prlić's intent for murder only from June 1993, given that it has reversed the Trial Chamber's finding that murder and wilful killing formed part of the CCP before June 1993. See *supra*, paras 882, 886, 2835. See also *supra*, paras 1168-1174, 1205-1208, fns 3681, 3717, 3792, 4322.

<sup>10003</sup> The Appeals Chamber recalls that it has set aside the Trial Chamber's finding that Prlić was aware of murder committed in Gornji Vakuf Municipality in January 1993. See *supra*, para. 2843; Trial Judgement, Vol. 4, paras 130-132, 134. Concerning his knowledge regarding killings of detainees specifically, the Trial Chamber found that Prlić received on 20 January 1994 a protest letter from the ICRC informing him that several detainees had been killed while being used as human shields in Mostar on 17 September 1993 and noted its finding that the killed detainees were from the Heliodrom. Trial Judgement, Vol. 4, paras 230, 232, 274. See Trial Judgement, Vol. 2, paras 1620, 1629. The Trial Chamber also found that the same ICRC letter of 20 January 1994 informed him that some detainees from Vojno Detention Centre that were used to work at the front line had been killed. Trial Judgement, Vol. 4, paras 236, 238, 274. See Trial Judgement, Vol. 2, para. 1620.

<sup>10004</sup> Trial Judgement, Vol. 4, paras 173-174, 176, 284.

<sup>10005</sup> Trial Judgement, Vol. 4, para. 191. On the same date Prlić also knew that Petković had requested an investigation into the events. Trial Judgement, Vol. 4, para. 191.

<sup>10006</sup> Trial Judgement, Vol. 4, paras 66-67, 134, 147, 278.

<sup>10007</sup> Trial Judgement, Vol. 4, paras 154-155, 165, 272

mistreatment of detainees,<sup>10008</sup> the Trial Chamber found that Prlić: (1) knew, as early as August 1993, that detainees from the Heliodrom were being used to work at the front line and that some were wounded or mistreated;<sup>10009</sup> (2) was aware, following the meetings on 19 and 20 July 1993, of the harsh conditions in detention centres under which the Muslims arrested by the HVO were being detained, including at Dretelj Prison and Gabela Prison;<sup>10010</sup> and (3) encouraged these extremely precarious conditions and the mistreatment of the detainees.<sup>10011</sup>

3052. Moreover, the Trial Chamber found that Prlić was informed of and/or contributed to the climate of violence in Gornji Vakuf Municipality as of 19 January 1993,<sup>10012</sup> in Jablanica Municipality in April 1993,<sup>10013</sup> and in Mostar Municipality in the summer of 1993.<sup>10014</sup>

<sup>10008</sup> The Trial Chamber stated that “the HVO severely beat Muslims at the detention centres of Ljubuški, Dretelj, Gabela and the Heliodrom, often subjecting them to very harsh conditions of confinement which could lead to detainee deaths”. Trial Judgement, Vol. 4, para. 64.

<sup>10009</sup> Trial Judgement, Vol. 4, paras 229, 232, 274. The Trial Chamber also found that Prlić knew, as of 20 January 1994, that detainees from Vojno Detention Centre were being used to work at the front line and that several of them were wounded and mistreated. Trial Judgement, Vol. 4, paras 238, 274.

<sup>10010</sup> Trial Judgement, Vol. 4, paras 219-220, 224-225, 232, 241, 248-249, 253, 255, 261-262, 273, 286. In particular, the Trial Chamber found that the detention conditions, including the overcrowding in Dretelj Prison and Gabela Prison, were discussed at meetings on 19 and 20 July 1993 chaired by Prlić. Trial Judgement, Vol. 4, paras 224-225, 241, 253, 286.

<sup>10011</sup> Trial Judgement, Vol. 4, para. 273. See also Trial Judgement, Vol. 4, paras 219-220, 224-225, 232, 241, 248-249, 253, 255, 261-262, 286.

<sup>10012</sup> Trial Judgement, Vol. 4, para. 282. See also *supra*, paras 1146-1174. With regard to the Trial Chamber’s finding that Prlić was informed of the climate of violence in Gornji Vakuf Municipality as of 19 January 1993, the Appeals Chamber observes that this finding was based on the Trial Chamber’s finding that he was informed of the course of HVO operations in the municipality in January 1993 and crimes committed therein. Trial Judgement, Vol. 4, paras 134, 282. This finding was, in turn, based on, *inter alia*, the Trial Chamber’s finding that Prlić was informed of the contents of various reports by Željko Šiljeg as to the situation in the municipality in January 1993, including Šiljeg’s report of 29 January 1993, which detailed thefts, torching of Muslims houses, and killings of Muslim “civilians” during the shelling on the village of Duša. Trial Judgement, Vol. 4, paras 127, 130-132, referring to Exs. P01206, p. 1, P01357, p. 6, P01351. The Trial Chamber found that Prlić was informed of the contents of this report, among others, on the basis of: (1) Prlić’s signature of the 15 January 1993 Ultimatum which initiated the HVO operations in Gornji Vakuf; (2) Prlić’s meeting with Stojić on 19 January 1993 on the implementation of that decision; and (3) relatedly, the fact that Stojić was one of the addressees of Šiljeg’s reports. Trial Judgement, Vol. 4, para. 132. The Appeals Chamber notes that Šiljeg’s reports – including the report of 29 January 1993 – do not list named individual addressees. However, it understands that the Trial Chamber reached the conclusion that Stojić was one of the addressees of Šiljeg’s reports on the basis that the addressees of these reports include, *inter alia*, the HVO HZ H-B Department of Defence, of which Stojić was the Head. The Appeals Chamber further notes that the reports were also addressed to the Presidency, Government, and Main Staff of the HVO HZ H-B. See Exs. P01206, p. 1, P01357, p. 1, P01351, p. 1. Prlić’s argument that there is no evidence that he ever received Šiljeg’s report is inapposite insofar as the Trial Chamber did not find that he personally received it, and ignores the actual bases for the Trial Chamber’s finding that he was informed of the report’s contents. Likewise, Prlić’s argument that there is no evidence that Šiljeg’s reports were discussed in the meetings of the HVO HZ H-B ignores the Trial Chamber’s reasoning and does not show that no reasonable trier of fact could have drawn the inference that the Trial Chamber drew from the above factual bases, as the only reasonable conclusion. These arguments are accordingly dismissed. Similarly, Prlić’s argument that the appearance of an official’s name on the distribution list of a document does not imply responsibility for or the power to make decisions or issue orders with respect to the subject matter of the document is dismissed as irrelevant; the question before the Appeals Chamber is not one of power or authority, but foreseeability. See *supra*, fn. 9990. Further, the Appeals Chamber recalls that, while it has set aside the Trial Chamber’s finding that Prlić had knowledge of murder committed in Gornji Vakuf Municipality in January 1993, which was solely based on his awareness of the killings in Duša mentioned in Šiljeg’s 29 January 1993 report, the remainder of the findings are sufficient for a reasonable trier of fact to conclude that Prlić was informed, as of 19 January 1993, of the climate of violence in which HVO operations were carried out in Gornji Vakuf Municipality. See *supra*, para. 2843; Trial Judgement, Vol. 4, paras 125, 127, 130-132, 282.

<sup>10013</sup> Trial Judgement, Vol. 4, para. 283. See also *supra*, paras 1175-1208, 2844.



3053. In light of the foregoing,<sup>10015</sup> particularly Prlić's intent for murder and wilful killing and for mistreatment of detainees, as well as his knowledge of killings, of unjustified mass arrest of Muslims, and of the climate of violence already before July 1993, assessed in light of the nature of the CCP and the manner in which it was implemented,<sup>10016</sup> the Appeals Chamber, Judge Liu dissenting, considers that no reasonable trier of fact could have had a reasonable doubt that Prlić could have foreseen that the killings at issue might be committed in Dretelj Prison in mid-July 1993 and in Vojno Detention Centre in December 1993. Further, in view of his continuing participation in the JCE until April 1994,<sup>10017</sup> the Appeals Chamber, Judge Liu dissenting, finds that no reasonable trier of fact could have had a reasonable doubt that Prlić willingly took the risk that these killings might be committed.<sup>10018</sup>

### iii. Conclusion

3054. In relation to the killings during detentions at issue, the Appeals Chamber, Judge Liu dissenting, finds that the Prosecution has shown that all reasonable doubt as to Prlić's guilt under JCE III liability has been eliminated and that no reasonable trier of fact could have acquitted him. The Appeals Chamber, Judge Liu dissenting, therefore concludes that the Trial Chamber erred in failing to find Prlić responsible, pursuant to JCE III liability, for murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3) for the killings of: (1) a Muslim detainee in Dretelj Prison on 16 July 1993; and (2) a detainee in Vojno Detention Centre on 5 December 1993. Consequently, the Appeals Chamber, Judge Liu dissenting, grants the Prosecution's sub-ground of appeal 1(E) with respect to these incidents.

<sup>10014</sup> Trial Judgement, Vol. 4, para. 284. See also *supra*, paras 1231-1241, 2847. In particular, the Trial Chamber found that while Prlić was repeatedly alerted to the forcible evictions of Muslims from West Mostar, at least from June 1993, he contributed to the climate of violence in Mostar and knowingly turned a blind eye to the increasingly violent ethnic cleansing operations conducted by the HVO. Trial Judgement, Vol. 4, paras 171, 272. The Trial Chamber also found that Prlić accepted the commission of acts of violence linked to the eviction campaigns in West Mostar, that is, mistreatment and forced removal, which were an integral part of the preconceived plan. Trial Judgement, Vol. 4, para. 171. The Appeals Chamber also notes the Trial Chamber's finding that Prlić signed the Decree of 6 July 1993 on the use of apartments abandoned by the tenants, from which the Trial Chamber concluded that he accepted the HVO HZ H-B practice of appropriating the apartments of the Muslims expelled from West Mostar and knew about it as of June 1993. Trial Judgement, Vol. 4, paras 169-170.

<sup>10015</sup> See *supra*, paras 3048-3052.

<sup>10016</sup> See *supra*, paras 3049-3052, fns 10000, 10002-10003.

<sup>10017</sup> Trial Judgement, Vol. 4, paras 1225, 1230, 1232. See *supra*, para. 1400. In this context, the Trial Chamber also found that Prlić, in the majority of cases, neither sincerely condemned crimes committed by the HVO nor sought to have the perpetrators of these crimes investigated or punished, but instead sometimes knowingly turned a blind eye while being aware that this would result in impunity for crimes. Trial Judgement, Vol. 4, para. 273. See also Trial Judgement, Vol. 4, paras 272, 274.

<sup>10018</sup> See *supra*, para. 2836; *Stanišić and Župljanin Appeal Judgement*, paras 688, 705.

3055. However, conscious of the interests of fairness to Prlić and the interests of justice, and taking into account the nature of the offences and the circumstances of the case at hand,<sup>10019</sup> the Appeals Chamber declines to enter new convictions on appeal in relation to these incidents.

(ii) Alleged errors concerning the assessment of evidence in relation to Petković's responsibility for certain killing incidents

3056. The Trial Chamber found that Petković learned of the deaths of detainees in Dretelj Prison from the ICRC Letter of 20 January 1994, which indicated that on 14 July 1993 guards opened fire on detainees and that during the summer of 1993, detainees also died as a result of poor conditions.<sup>10020</sup> It found that insofar as Petković was informed of these events only several months after they occurred, he could not have foreseen the murders.<sup>10021</sup>

3057. The Trial Chamber identified the physical perpetrators of the killing incidents as being HVO soldiers and members of the Military Police,<sup>10022</sup> who it found were used by Petković and other JCE members to implement the CCP.<sup>10023</sup>

a. Alleged error of law in the assessment of evidence (Prosecution's Sub-ground 1(B) in part)

i. Arguments of the Parties

3058. The Prosecution submits in its sub-ground of appeal 1(B) that the Trial Chamber erred by compartmentalising its assessment of the evidence regarding Petković's ability to foresee the death of one Muslim detainee by dehydration as well as the killing of three other detainees in Dretelj Prison in mid-July 1993.<sup>10024</sup> It argues that when assessing the foreseeability of these crimes to Petković, the Trial Chamber erroneously failed to consider the totality of the evidence on the record, instead analysing the evidence in isolation and only taking into account that evidence which concerns Petković's knowledge of the climate of violence or crimes in the particular location where

<sup>10019</sup> Article 25 of the Statute; *Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3625; *Šainović et al.* Appeal Judgement, fn. 5269; *Đorđević* Appeal Judgement, para. 928; *Jelišić* Appeal Judgement, para. 73.

<sup>10020</sup> Trial Judgement, Vol. 4, para. 825, referring to Ex. P07636.

<sup>10021</sup> Trial Judgement, Vol. 4, para. 825. See also Trial Judgement, Vol. 3, paras 85-91, 694, 745, 748 (factual and legal findings regarding the conditions of confinement in Dretelj Prison in mid-July 1993, specifically the death of a detainee as the result of dehydration on 16 July 1993), 113-115, 122, 695, 746, 748 (factual and legal findings regarding the death of at least three detainees in Dretelj Prison in mid-July 1993 as a result of HVO military policemen firing at the hangars where they were being held). Cf. Trial Judgement, Vol. 4, para. 285. It is clear from the Trial Judgement that the discussion in paragraph 825, Volume 4, of the Trial Judgement does not include the deaths of two detainees as a result of beatings in August 1993. See Trial Judgement, Vol. 3, paras 119-122, 696, 747-748.

<sup>10022</sup> Trial Judgement, Vol. 3, paras 85-91, 113-115, 122, 693-696, 744-746, 748.

<sup>10023</sup> Trial Judgement, Vol. 4, paras 818, 1232.

<sup>10024</sup> Prosecution's Appeal Brief, paras 33-37, 173-175, 177, Prosecution's JCE III Table (Petković), incidents 6-7; Prosecution's Reply Brief, paras 9, 12; Appeal Hearing, AT. 754-756, 845, 849 (28 Mar 2017).

the relevant crimes occurred.<sup>10025</sup> According to the Prosecution, the Trial Chamber therefore misapplied the legal standard that requires a trial chamber to consider all the evidence presented to it and to assess it in its totality and in context.<sup>10026</sup> Specifically, the Prosecution contends that the Trial Chamber limited its analysis to the ICRC Letter dated 20 January 1994, which informed Petković of these deaths, while it ignored relevant evidence that provided context to those incidents as well as its own findings that: (1) the HVO ran a unified network of detention centres in which crimes were committed to further the CCP; (2) Petković intended killings, mistreatment, and the poor conditions of confinement from mid-January 1993; (3) on 18 April 1993, before the killings at issue occurred, Petković ordered a report on the killing of captured ABiH soldiers and civilians (“18 April 1993 Order”); and (4) he witnessed the deplorable conditions in Sovići School in May 1993.<sup>10027</sup> The Prosecution argues that, based on the totality of the evidence and the Trial Chamber’s findings, the Appeals Chamber should correct the Trial Chamber’s error and convict Petković for these criminal incidents.<sup>10028</sup>

3059. Petković responds that the Prosecution has failed to establish that the Trial Chamber ignored any relevant evidence, but instead relies on findings and evidence of a general nature that were unrelated to the incidents in question.<sup>10029</sup> Particularly, Petković submits that the Trial Chamber was bound to make findings in relation to crimes committed in each specific location as that was how the case was pled and that, in any case, the *mens rea* standard requires that foreseeability be established on a “case-by-case basis”, and not generally.<sup>10030</sup>

<sup>10025</sup> Prosecution’s Appeal Brief, paras 33-35, 37, 173, 177; Prosecution’s Reply Brief, paras 9-12. See also Prosecution’s Reply Brief, para. 13.

<sup>10026</sup> Prosecution’s Appeal Brief, paras 33-35, 173, referring to, *inter alia*, *Kvočka et al.* Appeal Judgement, para. 23, *Martić* Appeal Judgement, para. 233, *Halilović* Appeal Judgement, para. 125, *Ntagerura et al.* Appeal Judgement, para. 174. See also Prosecution’s Reply Brief, paras 9-17.

<sup>10027</sup> Prosecution’s Appeal Brief, paras 174-175, referring to Trial Judgement, Vol. 2, para. 575, Vol. 4, paras 66-67, 724, 780, 825, 980, 982, 1209, 1225, 1367, Ex. P01959. See also Prosecution’s Appeal Brief, para. 35; Prosecution’s Reply Brief, paras 14, 17. The Prosecution submits, in general terms, that the Trial Chamber ignored its own findings and relevant evidence that provided context of those incidents, such as Petković’s participation in the CCP, his knowledge of crimes, and his contribution to the atmosphere of violence. See Prosecution’s Appeal Brief, para. 35, referring to Trial Judgement, Vol. 1, paras 735, 741-742, 767, Vol. 4, paras 668, 686, 691-694, 696, 699, 704-708, 710-717, 721, 745-747, 750, 764-767, 814-819, 827, 830, 834, 836-837, 839-840, 844-845, 848, 1220. See also Prosecution’s Reply Brief, paras 14-17.

<sup>10028</sup> Prosecution’s Appeal Brief, paras 37, 177, 277.

<sup>10029</sup> Petković’s Response Brief, paras 14(vi), 15, 19(i)-(iii), 22-23, 53-54. See also Petković’s Response Brief, paras 13, 56.

<sup>10030</sup> Petković’s Response Brief, para. 14(i)-(ii), 14(iv)-(v). See Petković’s Response Brief, paras 18. According to Petković, the Prosecution’s position to the contrary implies that all or most crimes are foreseeable during war time. Petković’s Response Brief, paras 14(iii), 55.

3060. The Prosecution replies that the fact that it pled particular crimes in particular locations does not relieve the Trial Chamber of its obligation to evaluate the evidence in its entirety and in context.<sup>10031</sup>

ii. Analysis

3061. The Appeals Chamber recalls its jurisprudence on the assessment of evidence, as set out above.<sup>10032</sup> In arguing that the Trial Chamber ignored its own findings and relevant evidence, the Prosecution merely points to findings in other parts of the Trial Judgement, which the Trial Chamber did not explicitly repeat in the section on Petković's JCE III liability when it assessed the two incidents at issue. In so doing, the Prosecution does not point to any piece of evidence that was not addressed in the Trial Judgement.<sup>10033</sup> With regard to the two incidents at issue, the Trial Chamber expressly explained what was determinative of its conclusions that Petković could not have foreseen them: namely, the evidence that he was informed of the deaths of detainees due to poor conditions and shots fired by guards in Dretelj Prison only several months after they occurred.<sup>10034</sup> Thus, it is to be presumed that the Trial Chamber considered the other findings on the context which it made elsewhere in the Trial Judgement and the evidence assessed therein,<sup>10035</sup> but decided not to place significant weight on them in determining whether Petković could have foreseen that the incidents at issue might occur. In the absence of any further submission, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber disregarded any relevant evidence or did not assess the evidence in its totality or in context. Consequently, the Prosecution has not shown that the Trial Chamber committed an error of law by misapplying the legal standard concerning the assessment of evidence. The Prosecution's sub-ground of appeal 1(B) is therefore dismissed. Thus, the Appeals Chamber will now address the Prosecution's alternative contention alleged in its sub-ground of appeal 1(E).

<sup>10031</sup> Prosecution's Reply Brief, para. 10.

<sup>10032</sup> See *supra*, paras 3039-3040.

<sup>10033</sup> The Appeals Chamber notes that in its sub-ground of appeal 1(B), the Prosecution refers to Exhibit P01959. See Prosecution's Appeal Brief, fn. 559. However, this exhibit was, in fact, repeatedly considered by the Trial Chamber when assessing Petković's powers and functions. See Trial Judgement, Vol. 4, paras 675, 680, 682, referring to, *inter alia*, Ex. P01959.

<sup>10034</sup> Trial Judgement, Vol. 4, para. 825.

<sup>10035</sup> These findings include those concerning: (1) the nature of the CCP; (2) the manner in which the CCP was implemented; (3) Petković's intent; and (4) his knowledge of the climate of violence and crimes in other locations prior to the killings at issue. See, e.g., Trial Judgement, Vol. 4, paras 44-68, 653-853.



b. Alleged error of fact in the assessment of evidence (Prosecution's Sub-ground 1(E), in part)

i. Arguments of the Parties

3062. Under its sub-ground of appeal 1(E), the Prosecution submits that the Trial Chamber's findings and the evidence demonstrate that no reasonable trier of fact could have failed to find Petković responsible, under JCE III liability, for the two incidents of murder at issue and these acquittals should therefore be overturned.<sup>10036</sup> The Prosecution points to Petković's: (1) JCE participation; (2) knowledge of events on the ground and of crimes being committed; (3) knowledge of the climate of violence; and (4) shared intent to commit crimes, including killings of detainees used for forced labour or as human shields, as well as killings during attacks, as a means to implement the CCP from mid-January 1993.<sup>10037</sup>

3063. Specifically, the Prosecution highlights that Petković: (1) issued the 18 April 1993 Order;<sup>10038</sup> (2) became aware of the deplorable conditions in HVO detention centres when he visited Sovići School in May 1993, prior to the killings at issue;<sup>10039</sup> and (3) knew of the vulnerability of detainees at the Koštana Hospital in Stolac Municipality given that his 30 June 1993 Order directed the South-East OZ, which included Stolac Municipality, to "isolate" Muslim HVO members and able-bodied men, thus it sent thousands of Muslims into the HVO detention network, thereby exacerbating conditions.<sup>10040</sup> The Prosecution also submits that the CED Report dated 14 June 1993, which was addressed to Petković, stated that there were "indications that 'civilians' were murdered" during HVO eviction operations in Mostar.<sup>10041</sup> Finally, the Prosecution contends that by remaining

<sup>10036</sup> Prosecution's Appeal Brief, paras 50-52, 193-194 (referring to Prosecution's Appeal Brief, paras 160-192); Appeal Hearing, AT. 757 (28 Mar 2017). See also Prosecution's Appeal Brief, paras 37, 277.

<sup>10037</sup> Prosecution's Appeal Brief, paras 180 (referring to Prosecution's Appeal Brief, paras 174-175, 178-179), 182 (referring to, *inter alia*, Ex. P01351, p. 3); Appeal Hearing, AT. 757-760, 762, 764 (28 Mar 2017). See also Prosecution's Appeal Brief, paras 160-166; Prosecution's Reply Brief, para. 66. The Prosecution submits that it was foreseeable to Petković that detainees might be killed given that he ordered that they be used for forced labour on the front line while knowing that many of them would be killed or wounded. Prosecution's Appeal Brief, paras 161, 164 (referring to, *inter alia*, Trial Judgement, Vol. 4, para. 672, Ex. P03474); Prosecution's Reply Brief, para. 67.

<sup>10038</sup> Prosecution's Appeal Brief, paras 175 (referring to, *inter alia*, Ex. P01959), 181. See also Prosecution's Reply Brief, para. 66.

<sup>10039</sup> Prosecution's Appeal Brief, paras 175, 181 (referring to, *inter alia*, Trial Judgement, Vol. 2, para. 575, Vol. 4, paras 724, 780). See also Prosecution's Reply Brief, para. 67. The Prosecution also relies on findings that the HVO ran a unified network of detention centres in which crimes were committed to further the CCP. Prosecution's Appeal Brief, para. 174, referring to Trial Judgement, Vol. 4, paras 980, 982, 1209, 1367.

<sup>10040</sup> Prosecution's Appeal Brief, para. 183 (quoting Ex. P03019, p. 1); Prosecution's Reply Brief, para. 68, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1521, 1806, 1862, Vol. 3, para. 59, Vol. 4, para. 57, Andrew Pringle, T. 24141, 24150 (6 Nov 2007). See Prosecution's Appeal Brief, paras 160-161, 166. With regard to the geographical scope of the South-East OZ, see Trial Judgement, Vol. 1, fn 1835.

<sup>10041</sup> Prosecution's Appeal Brief, para. 182 (quoting Trial Judgement, Vol. 4, para. 732).

in his post and continuing to contribute to the JCE, Petković willingly took the risk that JCE III crimes might be committed.<sup>10042</sup>

3064. Petković responds that the Prosecution has failed to prove that no reasonable trial chamber could have acquitted him for these crimes.<sup>10043</sup> He submits that the Prosecution “misapplies the relevant legal standard” when arguing that general awareness of the ongoing armed conflict and unrelated violent crimes was sufficient to conclude that he could foresee each particular JCE III crime.<sup>10044</sup> Petković further contends that his awareness of poor conditions in a particular detention centre does not suffice to demonstrate that murders in that or any other location were foreseeable.<sup>10045</sup>

3065. Specifically, Petković argues that the Prosecution’s contentions regarding the foreseeability of killings in Dretelj Prison rest entirely on his awareness of the conditions in Sovići School in May 1993.<sup>10046</sup> Further, Petković claims that his 18 April 1993 Order was general in nature and therefore irrelevant to the foreseeability of the killings at issue.<sup>10047</sup> He also submits that the Prosecution fails to explain how his 30 June 1993 Order could have put him on notice of the Koštana Hospital detainees’ vulnerability or the possibility of murders there or in any other detention facility.<sup>10048</sup> Petković further contends that the CED Report cannot be relied upon, as there is no indication that it contained information regarding the relevant incidents.<sup>10049</sup> Concerning his willingness to take the risk that killings might be committed, Petković asserts that the Prosecution disregards the fact that such willingness must be established “in particular to each specific crime, not in general”.<sup>10050</sup>

3066. The Prosecution replies that the fact that Petković learned of poor conditions in Sovići School in May 1993, along with his knowledge since June 1993 of the killings of HVO detainees on

<sup>10042</sup> Prosecution’s Appeal Brief, paras 160, 179.

<sup>10043</sup> Petković’s Response Brief, paras 34-37, 89-91. The Appeals Chamber will also consider the parts of Petković’s response that correspond to those arguments of the Prosecution which are incorporated by reference under its sub-ground of appeal 1(E) and are relevant to the killings at issue.

<sup>10044</sup> Petković’s Response Brief, paras 41, 44-47. Specifically, in response to the Prosecution’s argument that he could foresee additional JCE III crimes, Petković submits that the Prosecution did not raise this issue when cross-examining him at trial. Petković’s Response Brief, para. 45.

<sup>10045</sup> Petković’s Response Brief, paras 64-66.

<sup>10046</sup> Petković’s Response Brief, para. 71. According to Petković, even in the context of his visit to Sovići School, he was not informed of murders or the risk thereof. Petković’s Response Brief, paras 62-63.

<sup>10047</sup> Petković’s Response Brief, para. 19(ii). See also Petković’s Response Brief, paras 61-63.

<sup>10048</sup> Petković’s Response Brief, paras 69-70. Petković argues that: (1) his 30 June 1993 Order makes no reference to detainees being subjected to any form of physical abuse; (2) the Prosecution does not point to an erroneous Trial Chamber finding relating to this matter; and (3) there is no evidence that he had information at the relevant time suggesting that crimes in the Koštana Hospital or any other detention facility may have been foreseeable to him. Petković’s Response Brief, para. 70.

<sup>10049</sup> Petković’s Response Brief, paras 59 (referring to Prosecution’s Appeal Brief, para. 182), 60. See Petković’s Response Brief, paras 67 (referring to Prosecution’s Appeal Brief, para. 182), 68.

the front line as well as his subsequent orders to use detainees there, increased the foreseeability of murders in detention centres.<sup>10051</sup>

ii. Analysis

3067. The Trial Chamber found that Petković could not have foreseen the deaths of detainees at Dretelj Prison in mid-July 1993 because he “was informed of these events only several months after they occurred” by the ICRC Letter.<sup>10052</sup> As stated above, the Appeals Chamber understands that, in so doing, the Trial Chamber did not place significant weight on its findings and underlying evidence concerning contextual factors, such as: (1) the nature of the CCP; (2) the manner in which the CCP was implemented; (3) Petković’s intent; and (4) Petković’s knowledge of the climate of violence and crimes in other locations prior to the killings at issue.<sup>10053</sup> However, in the circumstances of this case, the Appeals Chamber, Judge Liu dissenting, finds that no reasonable trier of fact could have considered that Petković’s ability to foresee that these killings might be committed was dependent upon his knowledge of particular circumstances in Dretelj Prison.

3068. The Appeals Chamber, Judge Liu dissenting, observes that in the Trial Judgement, there is nothing that suggests that the difference between the circumstances surrounding the killings at issue and other crimes is such that a reasonable trier of fact could have given only limited weight to all of these contextual factors for the killings at issue. Rather, as highlighted by the Prosecution,<sup>10054</sup> the Trial Chamber found, in assessing the scope of the CCP, that JCE members, including Petković, “implemented an entire system for deporting the Muslim population of the HR H-B”, which included murders during attacks, mistreatment during evictions operations, mistreatment and poor conditions of confinement, and the widespread use of detainees on the front lines for labour or as human shields, as well as murders and mistreatment related thereto.<sup>10055</sup> Petković was also found to have shared the intent to further this CCP, the implementation of which involved similar HVO operations and detention facilities with harsh conditions, including Dretelj Prison, in various

<sup>10050</sup> Petković’s Response Brief, para. 42. Petković also argues that “[t]he fact that [he] remained in his position during the relevant period is no proof of foresight”. Petković’s Response Brief, para. 42.

<sup>10051</sup> Prosecution’s Reply Brief, para. 67, referring to, *inter alia*, Exs. P02950, P05967, P05308. Additionally, the Prosecution asserts that it did not rely solely on Petković’s positions to demonstrate that he “willingly took the risk”, but on his use of these positions to contribute to the CCP despite his knowledge of the situation in the field. Prosecution’s Reply Brief, paras 64-65. The Prosecution also submits that it did cross-examine Petković on his foresight of JCE III crimes, generally, although it was not required to do so. Prosecution’s Reply Brief, para. 63 & fn. 232, referring to Milivoj Petković, T. 50599, 50603 (8 Mar 2010), T. 50612-50614 (9 Mar 2010).

<sup>10052</sup> Trial Judgement, Vol. 4, para. 825, referring to Ex. P07636. See *supra*, para. 3056.

<sup>10053</sup> See *supra*, para. 3061.

<sup>10054</sup> Prosecution’s Appeal Brief, paras 174-177, 180-184, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 575, 2012, 2015-2019, Vol. 4, paras 66-68, 705, 710, 724, 732, 778, 780, 782, 796, 815, 980, 982, 1209, 1225, 1367.

<sup>10055</sup> Trial Judgement, Vol. 4, para. 66. See also Trial Judgement, Vol. 4, paras 44, 58, 65, 818. The Appeals Chamber recalls that it has vacated the Trial Chamber’s finding that murder and wilful killing were part of the CCP before June 1993. See *supra*, paras 882, 886, 2835. However, this has no impact on the current analysis in relation to the killings at Dretelj Prison, which occurred in July 1993. See *supra*, para. 3056 & fn. 10021.

municipalities.<sup>10056</sup> Further, in this context, Petković was found to have intended, *inter alia*, mistreatment during evictions and detentions, poor conditions of confinement, as well as murder in certain contexts, which included killings of detainees during forced labour.<sup>10057</sup>

3069. Against this background, the Appeals Chamber further considers the Trial Chamber's finding that, due to his position within the Main Staff, Petković was regularly informed by various channels of the military situation in the OZs,<sup>10058</sup> and that he personally reported this information directly to the Government and Department of Defence.<sup>10059</sup> With regard to Petković's knowledge of killings<sup>10060</sup> and conditions in detention specifically, the Appeals Chamber first notes that the Trial Chamber found that Petković issued the 18 April 1993 Order,<sup>10061</sup> in which he instructed HVO units to gather information on the "killing of captured soldiers and civilians".<sup>10062</sup> Insofar as this order indicated that Petković was on notice by that date that Muslims captured by the HVO were in danger of being killed, the Appeals Chamber is not persuaded by Petković's argument that the order's general nature rendered it irrelevant to the foreseeability of killings occurring later that month. The Appeals Chamber further notes the Trial Chamber's findings that Petković: (1) witnessed the deplorable conditions in Sovići School in Jablanica Municipality during a visit on 4 May 1993,<sup>10063</sup> (2) was informed, specifically, upon receiving the CED Report on 14 June 1993 that there were indications that civilians were murdered during eviction operations in Mostar,<sup>10064</sup> and (3) knew that the shelling and firing on East Mostar between June 1993 and March 1994 caused deaths, injuries, and the destruction of property.<sup>10065</sup> Further, the Trial Chamber found that

<sup>10056</sup> Trial Judgement, Vol. 4, paras 44-48, 55-58, 61-65. With regard to detention facilities, see also Trial Judgement, Vol. 3, paras 1074, 1082, 1088, 1096, 1098, 1120, 1130, 1137, 1147, 1150, 1172, 1182, 1189, 1199, 1202.

<sup>10057</sup> Trial Judgement, Vol. 4, paras 66-68. See, e.g., Trial Judgement, Vol. 4, paras 691-693, 695-697 (Prozor), 710 (Gornji Vakuf), 717-719, 721 (Jablanica), 730, 735, 750, 756 (Mostar), 776-777 (Vareš), 782 (Gabela Prison), 783, 785 (Dretelj Prison), (the Heliodrom), 798 (Vojno Detention Centre), 820. See also *supra*, paras 2311-2327. In this regard, the Appeals Chamber considers the Trial Chamber's findings on Petković's intent for murder only from June 1993, given that it has reversed the Trial Chamber's finding that murder and wilful killing formed part of the CCP before June 1993. See *supra*, paras 882, 886, 2835. See also *supra*, paras 2157-2177.

<sup>10058</sup> See, e.g., Trial Judgement, Vol. 1, paras 735-737, 740-742, 794, Vol. 4, paras 714, 754. See also Ex. P03516, pp. 4-5 (referred to in paragraph 566 of Volume 4 of the Trial Judgement).

<sup>10059</sup> Trial Judgement, Vol. 1, paras 767-768, Vol. 4, para. 686.

<sup>10060</sup> In this regard, the Appeals Chamber recalls that it has overturned the Trial Chamber's finding that the killing of seven civilians during the shelling in Duša, Gornji Vakuf Municipality in January 1993, constituted the crime of murder and wilful killing. See *supra*, paras 441-443, 866. As a result, the Appeals Chamber also sets aside the Trial Chamber's finding that murder committed in Gornji Vakuf in January 1993 was part of the preconceived plan of which Petković was aware, which was solely based on his awareness of the killings in Duša mentioned in Šiljeg's 29 January 1993 report. Trial Judgement, Vol. 4, paras 708, 710. See also Petković's Appeal Brief, para. 231(v); *supra*, paras 2157-2177.

<sup>10061</sup> Trial Judgement, Vol. 4, para. 675, referring to Ex. P01959.

<sup>10062</sup> Ex. P01959.

<sup>10063</sup> Trial Judgement, Vol. 2, paras 605-606, Vol. 4, paras 724, 780. See also Trial Judgement, Vol. 2, para. 575. In particular, the Trial Chamber noted the scarcity of water when Muslims were being detained in Sovići School. Trial Judgement, Vol. 2, para. 574.

<sup>10064</sup> Trial Judgement, Vol. 4, para. 732, referring to Ex. P02770. See Trial Judgement, Vol. 2, para. 868. The Trial Chamber further found that the CED Report put Petković on notice of rapes during the HVO operations in Mostar Municipality. Trial Judgement, Vol. 4, paras 828, 843. See *supra*, paras 2909, 2913-2915.

<sup>10065</sup> Trial Judgement, Vol. 4, paras 743, 748-750.



Petković planned and organised the campaign of arrests and mass detention of Muslims who did not belong to any armed force on 30 June 1993.<sup>10066</sup>

3070. As for killings of detainees during forced labour on the front lines, the Trial Chamber found that Petković was not informed of deaths of detainees from the Heliodrom or Vojno Detention Centre who were sent to the front line until January 1994.<sup>10067</sup> However, as pointed out by the Prosecution,<sup>10068</sup> the ICRC sent Petković letters at least as of 25 June 1993 informing him of injuries and deaths resulting from labour on the front line regarding detainees from other detention centres under the HVO's authority.<sup>10069</sup> Additionally, the Trial Chamber found that he issued orders and numerous authorisations to use detainees for forced labour, including an order on 15 July 1993 for the use of detainees from the Heliodrom on the front line.<sup>10070</sup>

3071. In addition, the Trial Chamber found that Petković was informed of and/or contributed to the climate of violence in which the HVO operations took place in Gornji Vakuf Municipality in January 1993,<sup>10071</sup> and later in Mostar Municipality as of June 1993.<sup>10072</sup>

3072. The Appeals Chamber is not persuaded by Petković's argument that the findings recalled above<sup>10073</sup> are of a general nature and unrelated to the killing incidents in Dretelj Prison in mid-July 1993, as the Prosecution particularised its pleadings according to specific locations, and also because the requisite *mens rea* standard requires that foreseeability be established on a "case-by-case basis", and not generally.<sup>10074</sup> While Petković's ability to foresee must be established in relation to each incident alleged, this can be done by way of inference from circumstantial evidence, including contextual factors.<sup>10075</sup> Indeed, knowledge of factors such as the nature of the conflict, the means by which a JCE is to be achieved, and how the JCE is implemented on the ground may make the possibility that such a crime might occur sufficiently substantial as to be

<sup>10066</sup> Trial Judgement, Vol. 4, paras 737-738, 815, 1220.

<sup>10067</sup> Trial Judgement, Vol. 4, paras 794, 796 (the Heliodrom), 797-798 (Vojno Detention Centre).

<sup>10068</sup> See *supra*, para. 3066.

<sup>10069</sup> Exhibit. P02950 (dated 25 June 1993).

<sup>10070</sup> Trial Judgement, Vol. 4, paras 672, 790-793.

<sup>10071</sup> Trial Judgement, Vol. 4, paras 708, 710, 835-837. See *supra*, paras 2932, 2935, 2938-2939. See also Trial Judgement, Vol. 4, paras 125-128, 685, 702-704. The Appeals Chamber recalls that notwithstanding the Duša Reversal, it has found that the remainder of the findings are sufficient for a reasonable trier of fact to conclude, as the Trial Chamber did, that the HVO operations in Gornji Vakuf took place in a climate of violence and that Petković planned and facilitated those operations. Trial Judgement, Vol. 4, paras 708, 710, 835-837. See *supra*, paras 2935-2936 & fn. 9625; *supra*, paras 2157-2177.

<sup>10072</sup> See, e.g., Trial Judgement, Vol. 4, paras 734-735, 844. See *supra*, paras 2940, 2948.

<sup>10073</sup> See *supra*, paras 3068-3071.

<sup>10074</sup> See *supra*, para. 3059. Petković expressly raised this argument in response to the Prosecution's sub-ground of appeal 1(B), while he also implicitly raised it in response to the Prosecution's sub-ground of appeal 1(E). Thus, the Appeals Chamber addresses this argument here as it also pertains to the factual assessment of evidence concerning the foreseeability of crimes. See *supra*, para. 3059 & fns 10029-10030.

<sup>10075</sup> See also *supra*, para. 2836.

foreseeable to members of the JCE.<sup>10076</sup> In assessing the numerous findings of the Trial Chamber recounted above in light of the nature of the CCP,<sup>10077</sup> the fact that the implementation of the CCP involved the detention of Muslims in similar detention facilities with harsh conditions, including Sovići School and Dretelj Prison,<sup>10078</sup> as well as Petković's intent to further this CCP,<sup>10079</sup> the Appeals Chamber is not persuaded by Petković's arguments concerning the irrelevance of the knowledge he gained through the CED Report,<sup>10080</sup> his observations of the conditions in Sovići School,<sup>10081</sup> or the 30 June 1993 Order.<sup>10082</sup> Moreover, contrary to Petković's assertion, the factors enumerated above indicate that he had more than a "general awareness of the ongoing armed conflict".<sup>10083</sup>

3073. In light of the foregoing,<sup>10084</sup> particularly Petković's intent for murder and wilful killing which he already possessed before July 1993,<sup>10085</sup> as well as his awareness since May 1993 of the deplorable detention conditions and as of June 1993 of killings,<sup>10086</sup> in addition to his 15 July 1993 order to use detainees for forced labour on the front line,<sup>10087</sup> the Appeals Chamber, Judge Liu dissenting, considers that no reasonable trier of fact could have had a reasonable doubt that Petković could have foreseen that the killings at issue might be committed in Dretelj Prison in mid-July 1993.

3074. With respect to whether Petković willingly took the risk that these incidents might occur, the Appeals Chamber first notes the Trial Chamber's finding that although he knew particularly of the harsh conditions in Sovići School by 4 May 1993, he did not accept them insofar as he orchestrated the removal of detainees the next day.<sup>10088</sup> However, as recalled elsewhere by the Appeals Chamber, the Trial Chamber rejected Petković's submission at trial that he believed this removal to be a legal operation and found that he intended to commit the crimes of forcible and unlawful transfer and that the operation was not carried out for security purposes.<sup>10089</sup> Thus, the

<sup>10076</sup> *Stanišić and Župljanin* Appeal Judgement, para. 627. See *supra*, para. 2836.

<sup>10077</sup> See *supra*, para. 3068.

<sup>10078</sup> Trial Judgement, Vol. 4, paras 48, 57, 64. See also Trial Judgement, Vol. 3, paras 1074, 1082, 1088, 1096, 1098, 1120, 1130, 1137, 1147, 1150, 1172, 1182, 1189, 1199, 1202.

<sup>10079</sup> See *supra*, para. 3068.

<sup>10080</sup> Petković's Response Brief, paras 41, 44-47, 59-60.

<sup>10081</sup> Petković's Response Brief, paras 41, 44-47, 62-63, 71.

<sup>10082</sup> Petković's Response Brief, paras 41, 44-47, 69-70.

<sup>10083</sup> Petković's Response Brief, paras 41, 44-47. In the same vein, the Appeals Chamber is not persuaded by Petković's submission that the Prosecution's position implies that all or most crimes are foreseeable during war time.

<sup>10084</sup> See *supra*, paras 3067-3072.

<sup>10085</sup> See *supra*, para. 3068 & fns 10055, 10057.

<sup>10086</sup> See *supra*, para. 3069. The Appeals Chamber further recalls Petković's issuance of the 18 April 1993 Order directing HVO units to gather information on the killing of captured soldiers and civilians. See *supra*, para. 3069.

<sup>10087</sup> See *supra*, para. 3070. Additionally, the Appeals Chamber notes Petković's receipt of a letter dated 25 June 1993, which informed him of injuries and deaths resulting from detainees' forced labour on the front line. See *supra*, para. 3070.

<sup>10088</sup> Trial Judgement, Vol. 4, para. 724.

<sup>10089</sup> Trial Judgement, Vol. 3, paras 849, 907, Vol. 4, paras 722-723, 820; *supra*, paras 2205-2209.

Appeals Chamber considers that the Trial Chamber's finding that he did not accept these conditions does not detract from his willingness to take the risk that Muslims might be killed in detention thereafter.

3075. The Appeals Chamber further recalls the Trial Chamber's finding that, for the purpose of launching an investigation, Petković issued the 18 April 1993 Order instructing HVO units to gather information on a number of crimes, including the killing of captured soldiers and civilians.<sup>10090</sup> The Trial Chamber found, however, that not only were no measures taken against the KB and its ATGs following their criminal conduct in April 1993, but Petković continued deploying them and they subsequently committed numerous violent crimes against Muslims, including the physical abuse of the Heliudrom detainees.<sup>10091</sup> Additionally, the Trial Chamber found that despite being informed in April 1993 that the Bruno Bušić Regiment committed crimes,<sup>10092</sup> on 15 July 1993, Petković ordered the regiment to use detainees for front line labour.<sup>10093</sup> The regiment also went on to commit other crimes, including the mistreatment of detainees.<sup>10094</sup> In light of these findings of the Trial Chamber regarding Petković's failure to make serious efforts to punish and prevent the commission of crimes, as well as those concerning his continued participation in the JCE until April 1994,<sup>10095</sup> while being aware that detainees were in danger of being killed, the Appeals Chamber, Judge Liu dissenting, finds that no reasonable trier of fact could have had a reasonable doubt that Petković willingly took the risk that the killing incidents at issue in Dretelj Prison might be committed. Petković's assertion that his willingness to take the risk must be established "in particular to each specific crime, not in general"<sup>10096</sup> does not undermine this finding, since the inference that an accused "willingly took the risk" that a crime might be committed may be drawn from the fact that he was aware that the crime was a possible consequence of the JCE but nevertheless decided to join or continued to participate in that enterprise.<sup>10097</sup>

<sup>10090</sup> Trial Judgement, Vol. 4, para. 675, referring to Ex. P01959.

<sup>10091</sup> Trial Judgement, Vol. 4, para. 720 & fn. 1383, paras 806-808.

<sup>10092</sup> The Appeals Chamber notes that it overturned the Trial Chamber's finding that Petković was informed that the Bruno Bušić Regiment committed crimes as early as January 1993. See *supra*, paras 2176, 2356-2357.

<sup>10093</sup> Trial Judgement, Vol. 4, paras 810-811.

<sup>10094</sup> Trial Judgement, Vol. 4, paras 812-813.

<sup>10095</sup> Trial Judgement, Vol. 4, paras 1225, 1230, 1232. See *supra*, paras 2338-2368, 2436-2441, 2456-2467, 2468, fn. 8124.

<sup>10096</sup> Petković's Response Brief, para. 42. When considering this submission in light of Petković's Response Brief as a whole, the Appeals Chamber understands "each specific crime" to refer to each killing incident, rather than the particular counts.

<sup>10097</sup> *Stanišić and Župljanin* Appeal Judgement, paras 688, 705. See *supra*, para. 2836. Further, Petković conflates the standards of foreseeability and willingness to take the risk when asserting that "[t]he fact that [he] remained in his position during the relevant period is no proof of foresight". Petković's Response Brief, para. 42. See *Šainović et al.* Appeal Judgement, para. 1557.

iii. Conclusion

3076. In relation to the killings at issue, the Appeals Chamber, Judge Liu dissenting, finds that the Prosecution has shown that all reasonable doubt as to Petković's guilt under JCE III liability has been eliminated and that no reasonable trier of fact could have acquitted him. The Appeals Chamber, Judge Liu dissenting, therefore concludes that the Trial Chamber erred in failing to find Petković responsible, pursuant to JCE III liability, for murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3) for the death of one Muslim detainee by dehydration as well as for the killing of three other detainees in Dretelj Prison in mid-July 1993. The Appeals Chamber, Judge Liu dissenting, accordingly grants the Prosecution's sub-ground of appeal 1(E) with respect to these incidents.

3077. However, conscious of the interests of fairness to Petković and the interests of justice, and taking into account the nature of the offences and the circumstances of the case at hand,<sup>10098</sup> the Appeals Chamber declines to enter new convictions on appeal in relation to these incidents.

(e) Alleged failure to adjudicate or to provide a reasoned opinion in relation to certain incidents (Prosecution's Sub-ground 1(C), in part)

3078. Having addressed the Prosecution's arguments regarding those incidents in relation to which the Trial Chamber expressly discussed the Appellants' JCE III liability and acquitted them,<sup>10099</sup> the Appeals Chamber now turns to the Prosecution's arguments with regard to the specific incidents for which the Trial Chamber did not expressly discuss Prlić's, Stojić's, Praljak's, Petković's, and Čorić's responsibility in their respective JCE III sections. Concerning these incidents, the Prosecution contends that the Trial Chamber erred in law by failing to adjudicate Prlić's, Stojić's, Praljak's, Petković's, and Čorić's responsibility under JCE III or by failing to provide a reasoned opinion for acquitting them (sub-ground of appeal 1(C)).<sup>10100</sup> In the alternative, the Prosecution submits that the Trial Chamber erred in fact by acquitting them of the relevant

<sup>10098</sup> Article 25 of the Statute; *Stanišić and Župljanin* Appeal Judgement, para. 1096 & fn. 3625; *Šainović et al.* Appeal Judgement, fn. 5269; *Đorđević* Appeal Judgement, para. 928; *Jelisić* Appeal Judgement, para. 73.

<sup>10099</sup> Prosecution's JCE III Table (Prlić), incidents 8, 13; Prosecution's JCE III Table (Stojić), incidents 20, 23, 27, 29-30, Prosecution's JCE III Table (Praljak), incidents 19-21, 31-32, Prosecution's JCE III Table (Petković), incidents 6-7, 21, Prosecution's JCE III Table (Čorić), incidents 5, 7, 10-11, 27-29, Prosecution's JCE III Table (Pušić), incidents 1-35.

<sup>10100</sup> Prosecution's Appeal Brief, paras 38-41, 43, 67, 81, 102, 119, 139, 156, 178, 191, 225, 236, Prosecution's JCE III Table (Prlić), incidents 1-7, 9-12, 14-28, Prosecution's JCE III Table (Stojić), incidents 1-19, 21-22, 24-26, 28, Prosecution's JCE III Table (Praljak), incidents 1-18, 22-30, Prosecution's JCE III Table (Petković), incidents 1-5, 8-18, 20, Prosecution's JCE III Table (Čorić), incidents 1-4, 6, 8-9, 12-26, 30-31. Additionally, the Prosecution submits that the Trial Chamber failed to enter a conviction in relation to Petković's JCE III responsibility for one incident, despite having made explicit findings that his *mens rea* for JCE III liability with respect to this incident was established. Prosecution's Appeal Brief, para. 190, Prosecution's JCE III Table (Petković), incident 19. See *infra*, fn. 10117.

JCE III crimes (sub-ground of appeal 1(E)).<sup>10101</sup> The Appeals Chamber will first address the Prosecution's sub-ground of appeal 1(C), which will be followed by an analysis of its sub-ground of appeal 1(E), if necessary.

(i) Arguments of the Parties

3079. The Prosecution argues that the Trial Chamber, despite its findings that the following crimes were proven, failed to adjudicate:<sup>10102</sup>

- a) Prlić's responsibility, under JCE III, for 26 incidents, namely: (1) specific incidents of murder and wilful killing in the municipalities of Prozor, Mostar, Stolac, and Čapljina, as well as in Dretelj Prison, Gabela Prison, and Vojno Detention Centre (Counts 2 and 3);<sup>10103</sup> (2) specific incidents of rape and/or inhuman treatment (sexual assault) in the municipalities of Prozor and Vareš (Counts 4 and/or 5);<sup>10104</sup> (3) destruction of or wilful damage to two

<sup>10101</sup> Prosecution's Appeal Brief, paras 24, 50-52, 83-84, 121-122, 158-159, 193-194, 241-242, 275-276, Prosecution's JCE III Table (Stojić), incidents 1-19, 21-22, 24-26, 28, Prosecution's JCE III Table (Praljak), incidents 1-18, 22-30, Prosecution's JCE III Table (Petković), incidents 1-5, 8-18, 20, Prosecution's JCE III Table (Ćorić), incidents 1-4, 6, 8-9, 12-26, 30-31. See also Prosecution's JCE III Table (Petković), incident 19. With respect to Ćorić's JCE III responsibility for two incidents, the Prosecution raises alternative challenges also under its sub-grounds of appeal 1(A), 1(B), and 1(D), in addition to its sub-ground of appeal 1(E). Prosecution's JCE III Table (Ćorić), incidents 8-9. For the reasons stated elsewhere, the Appeals Chamber will first address the Prosecution's sub-ground of appeal 1(C) with regard to his responsibility for these incidents, which will be followed by an analysis of its sub-ground of appeal 1(A), 1(B), 1(D), or 1(E), if necessary. See *supra*, fn. 9898.

<sup>10102</sup> Prosecution's Appeal Brief, paras 38-40, 43, 67, 102, 139, 178, 225, Prosecution's JCE III Table (Prlić), incidents 1-7, 9-12, 14-28, Prosecution's JCE III Table (Stojić), incidents 1-19, 21-22, 24-26, 28, Prosecution's JCE III Table (Praljak), incidents 1-18, 22-30, Prosecution's JCE III Table (Petković), incidents 1-5, 8-18, 20, Prosecution's JCE III Table (Ćorić), incidents 1-4, 6, 8-9, 12-26, 30-31. See Prosecution's Appeal Brief, paras 23, 82, 120, 157, 192, 237. See also Appeal Hearing, AT. 747-751, 849-850 (28 Mar 2017). With regard to the incident listed as incident 19 in Prosecution's JCE III Table (Petković), see *infra*, fn. 10117.

<sup>10103</sup> Prosecution's Appeal Brief, paras 40, 67, 71, Prosecution's JCE III Table (Prlić), incidents 1-7, 9-12 (the killings of: (1) six captured Muslim civilians in Prajine and Tolovac, Prozor Municipality, on 19 July 1993 (Counts 2 and 3); (2) ten Muslim ABiH detainees at the Faculty of Mechanical Engineering in Mostar Municipality between 10 and 11 May 1993 (Counts 2 and 3); (3) a Muslim civilian girl in Pješivac Greda, Stolac Municipality, on 13 July 1993 (Counts 2 and 3); (4) five Muslim detainees at the Koštana Hospital, Stolac Municipality, in August and September 1993 (Counts 2 and 3); (5) two young Muslim civilian women in Domanovići, Čapljina Municipality, on or around 13 July 1993 (Counts 2 and 3); (6) an 83-year old Muslim disabled man in Bivolje Brdo, Čapljina Municipality, on 14 July 1993 (Counts 2 and 3); (7) 12 Muslim men during the evictions from Bivolje Brdo, Čapljina Municipality, on or about 16 July 1993 (Counts 2 and 3); (8) three Muslim detainees in Dretelj Prison, in mid-July 1993 (Counts 2 and 3); (9) two Muslim detainees in Dretelj Prison as a result of mistreatment in August 1993 (Counts 2 and 3); (10) a Muslim detainee in Gabela Prison on 19 or 29 August 1993 (Counts 2 and 3); and (11) an ABiH detainee in Gabela Prison, between 2 October and 11 December 1993 (Counts 2 and 3)).

<sup>10104</sup> Prosecution's Appeal Brief, paras 40, 67, 74, Prosecution's JCE III Table (Prlić), incidents 14-19 (the: (1) rape of Muslim women and girls in Podgrade, Lapsunj, and Duge, Prozor Municipality, between August and December 1993 (Counts 4 and 5); (2) sexual assault against Muslim women and girls in Podgrade and Duge, Prozor Municipality, in August 1993 (Count 5); (3) sexual assault against five Muslim male detainees in Jurići, Prozor Municipality, in August 1993 (Count 5); (4) rape of two Muslim women in Vareš town, Vareš Municipality, in October 1993 (Counts 4 and 5); (5) rape of a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Count 4 and 5); and (6) sexual assault against a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Count 5)). The Appeals Chamber also notes that in the Prosecution's JCE III Table regarding Prlić, incident 19 is incorrectly listed under a heading entitled "Murder (Count 2) and wilful killing (Count 3)" while it concerns an incident of sexual assault. The Appeals Chamber considers this to be an oversight.

mosques in the municipalities of Prozor and Mostar (Count 21);<sup>10105</sup> and (4) specific incidents of extensive appropriation of property and/or plunder in the municipalities of Prozor, Mostar, Stolac, Čapljina, and Vareš (Counts 22 and/or 23);<sup>10106</sup>

- b) Stojić's responsibility, under JCE III, for 25 incidents, namely: (1) specific incidents of murder and wilful killing in the municipalities of Prozor, Jablanica, Mostar, Stolac, and Čapljina, as well as in Dretelj Prison and Gabela Prison (Counts 2 and 3);<sup>10107</sup> (2) specific incidents of rape and/or inhuman treatment (sexual assault) in the municipalities of Prozor and Vareš (Counts 4 and/or 5);<sup>10108</sup> (3) destruction of or wilful damage to two mosques in the municipalities of Prozor and Mostar (Count 21);<sup>10109</sup> and (4) specific incidents of extensive appropriation of property and plunder in the municipalities of Prozor, Mostar, Stolac, and Čapljina (Counts 22 and 23);<sup>10110</sup>

<sup>10105</sup> Prosecution's Appeal Brief, paras 40, 67, 77, Prosecution's JCE III Table (Prlić), incidents 20-21 (the destruction of: (1) the Skrobućani mosque in Prozor Municipality, in May or June 1993 (Count 21); and (2) Baba Bešir Mosque in Mostar Municipality, on 10 May 1993 (Count 21)).

<sup>10106</sup> Prosecution's Appeal Brief, paras 40, 67, 80, Prosecution's JCE III Table (Prlić), incidents 22-28 (the thefts: (1) in Podgrade, Prozor Municipality, in August 1993 (Counts 22 and 23); (2) in West Mostar, Mostar Municipality, in May 1993 (Counts 22 and 23); (3) in Pješivac Greda, Stolac Municipality, between 2 and 13 July 1993 (Counts 22 and 23); (4) in Bivolje Brdo, Čapljina Municipality, between 13 and 16 July 1993 (Count 23); (5) of property belonging to Muslims detained at the Silos in Čapljina Municipality, on 23 August 1993 (Counts 22 and 23); (6) in Vareš town, Vareš Municipality, between 23 October and 1 November 1993 (Counts 22 and 23); and (7) in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 22 and 23)). The Appeals Chamber also notes that in the Prosecution's JCE III Table regarding Prlić, incidents 27 and 28 are incorrectly listed under a heading entitled "Murder (Count 2) and wilful killing (Count 3)" despite the fact that they concern property crimes. The Appeals Chamber considers this to be an oversight.

<sup>10107</sup> Prosecution's Appeal Brief, paras 40, 102, 108, Prosecution's JCE III Table (Stojić), incidents 1-13 (the killings of: (1) six Muslim civilians in Prajine and Tolovac, Prozor Municipality, on 19 July 1993 (Counts 2 and 3); (2) four Muslim ABiH detainees at Sovići School in Jablanica Municipality on 20 or 21 April 1993 (Counts 2 and 3); (3) ten Muslim ABiH detainees at the Faculty of Mechanical Engineering in Mostar Municipality between 10 and 11 May 1993, and two other Muslim detainees between 8 and 11 July 1993 (Counts 2 and 3); (4) a Muslim civilian in Buna, Mostar Municipality, on 14 July 1993 (Counts 2 and 3); (5) a Muslim civilian girl in Pješivac Greda, Stolac Municipality, on 13 July 1993 (Counts 2 and 3); (6) five Muslim detainees at the Koštana Hospital, Stolac Municipality, in August and September 1993 (Counts 2 and 3); (7) two young Muslim civilian women in Domanovići, Čapljina Municipality, on or around 13 July 1993 (Counts 2 and 3); (8) an 83-year old Muslim disabled man in Bivolje Brdo, Čapljina Municipality, on 14 July 1993 (Counts 2 and 3); (9) 12 Muslim men during the evictions from Bivolje Brdo, Čapljina Municipality, on or about 16 July 1993 (Counts 2 and 3); (10) a Muslim detainee by dehydration in Dretelj Prison in mid-July 1993 (Counts 2 and 3); (11) three Muslim detainees in Dretelj Prison in mid-July 1993 (Counts 2 and 3); (12) two Muslim detainees as a result of mistreatment in Dretelj Prison in August 1993 (Counts 2 and 3); and (13) a Muslim detainee in Gabela Prison on 19 or 29 August 1993 (Counts 2 and 3)).

<sup>10108</sup> Prosecution's Appeal Brief, paras 40, 102, 112, Prosecution's JCE III Table (Stojić), incidents 14-19 (the: (1) rape of Muslim women and girls in Podgrade, Lapsunj, and Duge, Prozor Municipality, between August and November 1993 (Counts 4 and 5); (2) sexual assault against Muslim women and girls in Podgrade and Duge, Prozor Municipality, in August 1993 (Count 5); (3) sexual assault against five Muslim male detainees in Jurići, Prozor Municipality, in August 1993 (Count 5); (4) rape of two Muslim women in Vareš town, Vareš Municipality, in October 1993 (Counts 4 and 5); (5) rape of a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 4 and 5); and (6) sexual assault against a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Count 5)).

<sup>10109</sup> Prosecution's Appeal Brief, paras 40, 102, 115, Prosecution's JCE III Table (Stojić), incidents 21-22 (the destruction of: (1) the Skrobućani mosque in Prozor Municipality, in May or June 1993 (Count 21); and (2) Baba Bešir Mosque in Mostar Municipality, on 10 May 1993 (Count 21)).

<sup>10110</sup> Prosecution's Appeal Brief, paras 40, 102, 118, Prosecution's JCE III Table (Stojić), incidents 24-26, 28 (the thefts: (1) in Podgrade, Prozor Municipality, in August 1993 (Counts 22 and 23); (2) in Raštani, Mostar Municipality, on 24 August 1993 (Counts 22 and 23); (3) in Pješivac Greda, Stolac Municipality, between 2 and 13 July 1993 (Counts

- c) Praljak's responsibility, under JCE III, for 27 incidents, namely: (1) specific incidents of murder and wilful killing in the municipalities of Prozor, Jablanica, Mostar, Stolac, and Čapljina, as well as in Dretelj Prison and Gabela Prison (Counts 2 and 3);<sup>10111</sup> (2) specific incidents of rape and/or inhuman treatment (sexual assault) in the municipalities of Prozor and Mostar (Counts 4 and/or 5);<sup>10112</sup> (3) destruction of or wilful damage to mosques in the municipalities of Jablanica, Prozor, and Mostar (Count 21);<sup>10113</sup> and (4) specific incidents of extensive appropriation of property and/or plunder in the municipalities of Jablanica, Prozor, Mostar, Stolac, and Čapljina (Counts 22 and/or 23);<sup>10114</sup>
- d) Petković's responsibility, under JCE III, for 17 incidents, namely: (1) specific incidents of murder and wilful killing in the municipalities of Prozor, Jablanica, Mostar, and Stolac as well as in Dretelj Prison, Gabela Prison, and Vojno Detention Centre (Counts 2 and 3);<sup>10115</sup>

22 and 23); and (4) of property belonging to Muslims detained at the Silos in Čapljina Municipality, on 23 August 1993 (Counts 22 and 23)).

<sup>10111</sup> Prosecution's Appeal Brief, paras 40, 139, 145, Prosecution's JCE III Table (Praljak), incidents 1-13 (the killings of: (1) six Muslim civilians in Prajine and Tolovac, Prozor Municipality, on 19 July 1993 (Counts 2 and 3); (2) four Muslim ABiH detainees at Sovići School in Jablanica Municipality on 20 or 21 April 1993 (Counts 2 and 3); (3) ten Muslim ABiH detainees at the Faculty of Mechanical Engineering in Mostar Municipality between 10 and 11 May 1993, and two other Muslim detainees between 8 and 11 July 1993 (Counts 2 and 3); (4) a Muslim civilian in Buna, Mostar Municipality, on 14 July 1993 (Counts 2 and 3); (5) a Muslim civilian girl in Pješivac Greda, Stolac Municipality, on 13 July 1993 (Counts 2 and 3); (6) five Muslim detainees at the Koštana Hospital, Stolac Municipality, in August and September 1993 (Counts 2 and 3); (7) two young Muslim civilian women in Domanovići, Čapljina Municipality, on or around 13 July 1993 (Counts 2 and 3); (8) an 83-year old Muslim disabled man in Bivolje Brdo, Čapljina Municipality, on 14 July 1993 (Counts 2 and 3); (9) 12 Muslim men during the evictions from Bivolje Brdo on or about 16 July 1993 (Counts 2 and 3); (10) a Muslim detainee by dehydration in Dretelj Prison in mid-July 1993 (Counts 2 and 3); (11) three Muslim detainees in Dretelj Prison in mid-July 1993 (Counts 2 and 3); (12) two Muslim detainees as a result of mistreatment in Dretelj Prison in August 1993 (Counts 2 and 3); and (13) a Muslim detainee in Gabela Prison on 19 or 29 August 1993 (Counts 2 and 3)).

<sup>10112</sup> Prosecution's Appeal Brief, paras 40, 139, 148, Prosecution's JCE III Table (Praljak), incidents 14-18 (the: (1) rape of Muslim women and girls in Podgrade, Lapsunj, and Duge, Prozor Municipality, between August and November 1993 (Counts 4 and 5); (2) sexual assault against Muslim women and girls in Podgrade and Duge, Prozor Municipality, in August 1993 (Count 5); (3) sexual assault against five Muslim male detainees in Jurići, Prozor Municipality, in August 1993 (Count 5); (4) rape of Muslim women and girls expelled from West Mostar, Mostar Municipality, on 13 June, in mid-July, and on 4 and 29 September 1993 (Counts 4 and 5); and (5) sexual assault against Muslim women expelled from West Mostar, Mostar Municipality, on 29 September 1993 (Count 5)).

<sup>10113</sup> Prosecution's Appeal Brief, paras 40, 139, 151, Prosecution's JCE III Table (Praljak), incidents 22-24 (the destruction of: (1) mosques in Sovići and Doljani, Jablanica Municipality, in April 1993 (Count 21); (2) the Skrobućani mosque, Prozor Municipality, in May or June 1993 (Count 21); and (3) Baba Bešir Mosque, Mostar Municipality, on 10 May 1993 (Count 21)).

<sup>10114</sup> Prosecution's Appeal Brief, paras 40, 139, 155, Prosecution's JCE III Table (Praljak), incidents 25-30 (the thefts: (1) in Sovići and Doljani, Jablanica Municipality, after the attacks of 17 April 1993 (Counts 22 and 23); (2) in Podgrade, Prozor Municipality, in August 1993 (Counts 22 and 23); (3) in West Mostar, Mostar Municipality, in May and June 1993, and from August to November 1993 (Counts 22 and 23); (4) in Pješivac Greda, Stolac Municipality, between 2 and 13 July 1993 (Counts 22 and 23); (5) in Bivolje Brdo, Čapljina Municipality, between 13 and 16 July 1993 (Count 23); and (6) of property belonging to Muslims detained at the Silos in Čapljina Municipality, on 23 August 1993 (Counts 22 and 23)).

<sup>10115</sup> Prosecution's Appeal Brief, paras 40, 178, Prosecution's JCE III Table (Petković), incidents 1-5, 8-11 (the killings of: (1) six Muslim civilians in Prajine and Tolovac, Prozor Municipality, on 19 July 1993 (Counts 2 and 3); (2) four Muslim ABiH detainees at Sovići School in Jablanica Municipality on 20 or 21 April 1993 (Counts 2 and 3); (3) ten Muslim ABiH detainees at the Faculty of Mechanical Engineering in Mostar Municipality between 10 and 11 May 1993, and two other Muslim detainees between 8 and 11 July 1993 (Counts 2 and 3); (4) a Muslim civilian in Buna, Mostar Municipality, on 14 July 1993 (Counts 2 and 3); (5) five Muslim detainees at the Koštana Hospital, Stolac Municipality, in August and September 1993 (Counts 2 and 3); (6) two Muslim detainees as a result of mistreatment in

(2) specific incidents of rape and/or inhuman treatment (sexual assault) in the municipalities of Prozor and Vareš (Counts 4 and/or 5);<sup>10116</sup> and (3) specific incidents of extensive appropriation of property and plunder in the municipalities of Prozor and Mostar (Counts 22 and 23);<sup>10117</sup> and

- e) Ćorić's responsibility, under JCE III, for 24 incidents, namely: (1) specific incidents of murder and wilful killing in the municipalities of Prozor, Jablanica, Mostar, Stolac, and Čapljina, as well as in Gabela Prison and Vojno Detention Centre (Counts 2 and 3);<sup>10118</sup> (2) specific incidents of rape and/or inhuman treatment (sexual assault) in the municipalities of Prozor and Vareš (Counts 4 and/or 5);<sup>10119</sup> (3) destruction or wilful damage done to mosques in the municipalities of Jablanica, Prozor and Mostar (Count 21);<sup>10120</sup> and

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Dretelj Prison in August 1993 (Counts 2 and 3); (7) a Muslim detainee in Gabela Prison on 19 or 29 August 1993 (Counts 2 and 3); (8) a ABiH detainee in Gabela Prison between 2 October and 11 December 1993 (Counts 2 and 3); and (9) a Muslim detainee in Vojno Detention Centre on 5 December 1993 (Counts 2 and 3)).

<sup>10116</sup> Prosecution's Appeal Brief, paras 40, 178, Prosecution's JCE III Table (Petković), incidents 12-16 (the: (1) rape of Muslim women and girls in Podgrade, Lapsunj, and Duge, Prozor Municipality, between August and December 1993 (Counts 4 and 5); (2) sexual assault against Muslim women and girls in Podgrade and Duge, Prozor Municipality, in August 1993 (Count 5); (3) sexual assault against five Muslim male detainees in Jurići, Prozor Municipality, in August 1993 (Count 5); (4) rape of a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 4 and 5); and (5) sexual assault against another Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Count 5)).

<sup>10117</sup> Prosecution's Appeal Brief, paras 40, 178, Prosecution's JCE III Table (Petković), incidents 17-18, 20 (the thefts: (1) in Podgrade, Prozor Municipality, in August 1993 (Counts 22 and 23); (2) in West Mostar, Mostar Municipality, in May 1993 (Counts 22 and 23); and (3) in Raštani, Mostar Municipality, on 24 August 1993 (Counts 22 and 23)). Additionally, in relation to the thefts in West Mostar between June 1993 and February 1994, the Prosecution contends that the Trial Chamber failed to enter a conviction, despite having made explicit findings that Petković could foresee that those crimes might be committed and that he willingly took that risk. Prosecution's Appeal Brief, para. 190, referring to Trial Judgement, Vol. 4, paras 845, 853. See Prosecution's JCE III Table (Petković), incident 19.

<sup>10118</sup> Prosecution's Appeal Brief, paras 40, 225, 229, Prosecution's JCE III Table (Ćorić), incidents 1-4, 6, 8-9, 12-14 (the killings of: (1) six captured Muslim civilians in Prajine and Tolovac, Prozor Municipality, on 19 July 1993 (Counts 2 and 3); (2) four Muslim ABiH detainees at Sovići School in Jablanica Municipality on 20 or 21 April 1993 (Counts 2 and 3); (3) ten Muslim ABiH detainees at the Faculty of Mechanical Engineering in Mostar Municipality between 10 and 11 May 1993, and two other Muslim detainees between 8 and 11 July 1993, (Counts 2 and 3); (4) a Muslim civilian in Buna, Mostar Municipality, on 14 July 1993 (Counts 2 and 3); (5) five Muslim detainees at the Koštana Hospital, Stolac Municipality, in August and September 1993 (Counts 2 and 3); (6) an 83-year old Muslim disabled civilian man in Bivolje Brdo, Čapljina Municipality, on 14 July 1993 (Counts 2 and 3); (7) 12 Muslim men during the evictions from Bivolje Brdo, Čapljina Municipality, on or about 16 July 1993 (Counts 2 and 3); (8) a Muslim detainee in Gabela Prison, on 19 or 29 August 1993 (Counts 2 and 3); (9) an ABiH detainee in Gabela Prison between 2 October and 11 December 1993 (Counts 2 and 3); and (10) a Muslim detainee in Vojno Detention Centre on 5 December 1993 (Counts 2 and 3)).

<sup>10119</sup> Prosecution's Appeal Brief, paras 40, 225, 229, Prosecution's JCE III Table (Ćorić), incidents 15-20 (the: (1) rape of Muslim women and girls in Podgrade, Lapsunj, and Duge, Prozor Municipality, between August and December 1993 (Counts 4 and 5); (2) sexual assault against Muslim women and girls in Podgrade and Duge, Prozor Municipality, in August 1993 (Count 5); (3) sexual assault against five Muslim male detainees in Jurići, Prozor Municipality, in August 1993 (Count 5); (4) rape of two Muslim women in Vareš town, Vareš Municipality, in October 1993 (Counts 4 and 5); (5) rape of a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 4 and 5); and (6) sexual assault against a Muslim girl in Stupni Do, Vareš Municipality, on 23 October 1993 (Count 5)).

<sup>10120</sup> Prosecution's Appeal Brief, paras 40, 225, 229, Prosecution's JCE III Table (Ćorić), incidents 21-23 (the destruction of: (1) mosques in Sovići and Doljani, Jablanica Municipality, in April 1993 (Count 21); (2) the Skrobućani mosque in Prozor Municipality in May or June 1993 (Count 21); and (3) Baba Bešir Mosque in Mostar Municipality, on 10 May 1993 (Count 21)).



(4) specific incidents of extensive appropriation of property and plunder in the municipalities of Jablanica, Prozor, Mostar, and Vareš (Counts 22 and 23).<sup>10121</sup>

3080. The Prosecution avers that despite the Trial Chamber's statement that Prlić's, Stojić's, Praljak's, Petković's, and Čorić's criminal responsibility for crimes falling outside the CCP would be analysed pursuant to JCE III liability, it failed to do so and only examined a small subset of incidents.<sup>10122</sup>

3081. In the alternative, the Prosecution argues that the Trial Chamber failed to provide a reasoned opinion on Prlić's, Stojić's, Praljak's, Petković's, and Čorić's acquittals for the incidents at issue,<sup>10123</sup> since it provided "no discussion whatsoever" on these incidents and failed to explain why the JCE III requirements were not met.<sup>10124</sup> It points to a number of the Trial Chamber's findings and evidence which, in its view, show that Prlić,<sup>10125</sup> Stojić,<sup>10126</sup> Praljak,<sup>10127</sup> Petković,<sup>10128</sup> and Čorić<sup>10129</sup> could have foreseen that these incidents might occur and that they willingly took that risk, and argues that a *de novo* review by the Appeals Chamber should lead to these conclusions.<sup>10130</sup>

<sup>10121</sup> Prosecution's Appeal Brief, paras 40, 225, 229, Prosecution's JCE III Table (Čorić), incidents 24-26, 30-31 (the thefts: (1) in Sovići and Doljani, Jablanica Municipality, after the attack of 17 April 1993 (Counts 22 and 23); (2) in Podgrade, Prozor Municipality, in August 1993 (Counts 22 and 23); (3) in Raštani, Mostar Municipality, on 24 August 1993 (Counts 22 and 23); (4) in Vareš town, Vareš Municipality, between 23 October and 1 November 1993 (Counts 22 and 23); and (5) in Stupni Do, Vareš Municipality, on 23 October 1993 (Counts 22 and 23)).

<sup>10122</sup> Prosecution's Appeal Brief, paras 39-40, 67, 102, 139, 178, 225. See also Appeal Hearing, AT. 749-750 (28 Mar 2017).

<sup>10123</sup> Prosecution's Appeal Brief, paras 38, 41, 43, 81, 119, 156, 191, 236, Prosecution's JCE III Table (Prlić), incidents 1-7, 9-12, 14-28, Prosecution's JCE III Table (Stojić), incidents 1-19, 21-22, 24-26, 28, Prosecution's JCE III Table (Praljak), incidents 1-18, 22-30, Prosecution's JCE III Table (Petković), incidents 1-5, 8-18, 20, Prosecution's JCE III Table (Čorić), incidents 1-4, 6, 8-9, 12-26, 30-31. See also Prosecution's Appeal Brief, para. 23.

<sup>10124</sup> Prosecution's Appeal Brief, para. 41.

<sup>10125</sup> Prosecution's Appeal Brief, paras 8, 54-59, 69-81, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 534, 668, 670, 767-768, Vol. 3, paras 1564-1566, Vol. 4, paras 59, 64-68, 82, 88, 90, 92, 94, 96, 106, 108-109, 119, 125-134, 136-147, 149-155, 165, 167-168, 171-176, 179-185, 215, 219-220, 232, 234-238, 245, 247, 249, 253, 255, 259-263, 265, 267-279, 282-284, 342, 433, 1216, 1220, 1315-1317.

<sup>10126</sup> Prosecution's Appeal Brief, paras 9, 85-89, 104-119, referring, *inter alia*, to Trial Judgement, Vol. 1, paras 555-556, 606, 736-737, Vol. 4, paras 57, 65-68, 73, 151-155, 293, 297, 300-302, 305, 312, 318, 329, 331-338, 341-342, 348-351, 355-357, 359, 362-363, 367, 369-370, 372-375, 378, 380-381, 387-388, 391, 395-396, 401-403, 406-407, 415, 420, 422-423, 425-429, 431-432, 435, 437, 973, 984, 996, 1220.

<sup>10127</sup> Prosecution's Appeal Brief, paras 10, 123-126, 141-155, referring, *inter alia*, to Trial Judgement, Vol. 4, paras 65-68, 73, 538, 540, 558-562, 607-614, 620, 625-628, 630-631, 635, 638.

<sup>10128</sup> Prosecution's Appeal Brief, paras 11, 160-166, 168-172, 180-183, 186-187, 189, 191, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 715-717, 726-727, Vol. 2, paras 575, 1300-1301, 1315, 1345, 1362, 1366, 2012, 2015-2018, Vol. 4, paras 65-68, 651-652, 672, 691-694, 696-697, 699, 704-705, 707-708, 710, 714, 718, 720-721, 724, 750, 767, 774, 778, 780, 782, 789, 794, 796-799, 803, 806-813, 815-818, 820-821.

<sup>10129</sup> Prosecution's Appeal Brief, paras 12, 198-206, 227-235, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 856, 925, Vol. 2, paras 872-873, 876, Vol. 4, paras 59, 70, 72, 861, 883, 919-923, 926, 928-934, 938, 944-945, 948, 952-953, 955-957, 962, 964-966, 970-971, 973, 977, 980-982, 987, 990, 993-994, 996-998, 1000-1002, 1006, 1008-1021, 1220, 1226 1247-1250.

<sup>10130</sup> Prosecution's Appeal Brief, paras 43, 81, 119, 156, 191, 236. See also Prosecution's Appeal Brief, paras 68, 103, 140, 179, 226; Appeal Hearing, AT. 757-758, 760, 851-852 (28 Mar 2017).

3082. Prlić's response does not directly address the Prosecution's contention that the Trial Chamber failed to adjudicate the said incidents or to provide a reasoned opinion.<sup>10131</sup> Rather, Prlić submits that no reasonable trier of fact would have found that he could foresee the JCE III crimes.<sup>10132</sup>

3083. Stojić responds that all these crimes were either expressly adjudicated by the Trial Chamber or an acquittal is implicit in the surrounding findings, particularly the finding in paragraph 424 of Volume 4 of the Trial Judgement.<sup>10133</sup> According to Stojić, this finding must be "carried over into" the Trial Chamber's JCE III analysis.<sup>10134</sup> He further argues that some of the incidents were adjudicated in relation to Prlić, Petković, Praljak, and Čorić, which shows that the Trial Chamber implicitly acquitted him of the same.<sup>10135</sup> Regarding incidents that Stojić claims were explicitly determined by the Trial Chamber, he submits that he was convicted of two killing incidents and the destruction of Baba Bešir Mosque in Mostar, through his convictions under JCE I for Counts 2, 3, and 21.<sup>10136</sup> With respect to thefts in the village of Raštani on 24 August 1993, Stojić submits that they were part of his JCE III conviction for thefts in Mostar Municipality.<sup>10137</sup> Stojić does not specifically respond to the argument that the Trial Chamber failed to provide a reasoned opinion, but argues that the Prosecution's sub-ground of appeal 1(C) should be dismissed and the appeal "should only succeed if the Prosecution can establish that the factual findings underpinning these acquittals were unreasonable".<sup>10138</sup>

3084. Praljak's response does not address the Prosecution's contention that the Trial Chamber failed to adjudicate the relevant incidents.<sup>10139</sup> Instead, he argues that the Trial Chamber "might

<sup>10131</sup> Prlić's Response Brief, paras 64-71. The Appeals Chamber notes that the heading of the relevant section of Prlić's Response Brief states that the Trial Chamber correctly adjudicated his responsibility for the JCE III crimes, but he then fails to make any specific arguments in this respect in his submissions. See Prlić's Response Brief, heading before para. 64.

<sup>10132</sup> Prlić's Response Brief, para. 65.

<sup>10133</sup> Stojić's Response Brief, paras 61, 63, 67-68, referring to Trial Judgement, Vol. 4, para. 424.

<sup>10134</sup> Stojić's Response Brief, para. 67. Stojić also refers to the Trial Chamber's findings on Pušić's JCE III responsibility where Pušić was explicitly acquitted for certain crimes. Stojić argues that the Trial Chamber did the same with respect to his JCE III responsibility, albeit implicitly, since the Trial Judgement follows the same structure in relation to each of the Appellants. Stojić's Response Brief, para. 67, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 1213-1216.

<sup>10135</sup> Stojić's Response Brief, para. 68 (killings at Sovići School (Prlić), killings in Stolac Municipality and two incidents of killings in Čapljina (Petković), killings in Dretelj Prison (Prlić, Petković, and Čorić), rape and sexual assaults in Vareš (Praljak), thefts in Stolac and Čapljina (Petković), and thefts in Raštani and Vareš (Praljak)).

<sup>10136</sup> Stojić's Response Brief, paras 63-64, 66, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 431, Prosecution's JCE III Table (Stojić), incidents 3-4, 22. See also Stojić's Response Brief, para. 61.

<sup>10137</sup> Stojić's Response Brief, paras 61, 65, referring to Trial Judgement, Vol. 4, paras 444, 450, Prosecution's JCE III Table (Stojić), incident 25.

<sup>10138</sup> Stojić's Response Brief, paras 60-62, 68.

<sup>10139</sup> See Praljak's Response Brief, paras 17-123.

have failed to provide [a] reasoned opinion” in relation to the incidents at issue here, but that it did not commit any error when it acquitted him of them.<sup>10140</sup>

3085. Petković responds that the Trial Chamber did not fail to adjudicate the alleged JCE III crimes; rather, it found that he was not responsible for the relevant incidents.<sup>10141</sup> He further submits that the Prosecution has not established that the Trial Chamber failed to give a reasoned opinion in acquitting him of these crimes, nor has it shown that no reasonable trier of fact could have acquitted Petković for these crimes.<sup>10142</sup>

3086. Ćorić’s response does not address the Prosecution’s argument concerning the failure to adjudicate the relevant incidents.<sup>10143</sup> Rather, he limits his submissions to the alternative argument that the Trial Chamber failed to provide a reasoned opinion, asserting that the Prosecution’s challenges in this regard should be summarily dismissed because it has failed to discharge its obligation to identify the specific issues, factual findings, or arguments that the Trial Chamber omitted to address and explain why these omissions invalidate the decision.<sup>10144</sup>

(ii) Analysis

a. Alleged failure to adjudicate

3087. The Appeals Chamber will first consider whether the Trial Chamber failed to adjudicate Prlić’s, Stojić’s, Praljak’s, Petković’s, and Ćorić’s responsibility with regard to the above-mentioned incidents.<sup>10145</sup> The Appeals Chamber notes that the Trial Chamber made factual

<sup>10140</sup> Praljak’s Response Brief, para. 17. Praljak submits in general that the Trial Chamber failed to provide a reasoned opinion for many of its findings and that the Trial Judgement is “confused, contradictory and incomprehensive in its totality”. Praljak’s Response Brief, para. 17, referring to Praljak’s Appeal Brief, paras 99, 137-138, 539-544, 593-599 (Praljak’s Grounds 5, 7, 49, 55).

<sup>10141</sup> Petković’s Response Brief, paras 83, 85. With respect to the Trial Chamber’s conclusion regarding his JCE III liability for thefts in West Mostar from June 1993, Petković agrees that the Trial Chamber failed to adjudicate his responsibility in relation thereto, but suggests that such omission was not erroneous. Petković’s Response Brief, paras 84, 86, referring to Prosecution’s Appeal Brief, para. 190. See also Prosecution’s JCE III Table (Petković), incident 19.

<sup>10142</sup> Petković’s Response Brief, para. 87. See also Petković’s Response Brief, paras 26, 30-31, 39, 57-58, 89.

<sup>10143</sup> See Ćorić’s Response Brief, paras 33-36. See also Ćorić’s Response Brief, paras 55-60 (dealing exclusively with the question of foreseeability of JCE III crimes), 61 (stating only that the Trial Chamber used the “same principles in acquittals like when it entered convictions”); Prosecution’s Reply Brief, para. 70 (observing that Ćorić does not respond to the Prosecution’s primary argument under its sub-ground of appeal 1(C), namely, that the Trial Chamber neglected to provide any reasoning or make any findings on Ćorić’s responsibility for the proven crimes).

<sup>10144</sup> Ćorić’s Response Brief, paras 35-36, 59, 61. See Appeal Hearing, AT. 829 (28 Mar 2017).

<sup>10145</sup> See *supra*, para. 3079. As noted above, with respect to Petković’s responsibility, the Prosecution appeals one more incident under its sub-ground of appeal 1(C), in addition to the above-mentioned incidents. Namely, it contends that the Trial Chamber failed to enter a conviction in relation to Petković for the thefts in West Mostar between June 1993 and February 1994. Prosecution’s Appeal Brief, para. 190, Prosecution’s JCE III Table (Petković), incident 19. See *supra*, fn. 10117. In this regard, the Appeals Chamber recalls that it has previously found, based on the clear finding of the Trial Chamber on Petković’s liability under JCE III for thefts, that the mere absence of references to Counts 22 and 23 in the list contained in paragraph 853 of Volume 4 of the Trial Judgement relating to Mostar Municipality does not show that the Trial Chamber failed to enter a conviction for thefts committed in West Mostar from June 1993 to February 1994, but is merely indicative of an inadvertent omission. See *supra*, para. 2945. Thus, the Appeals Chamber

and legal findings on each of these incidents which the Prosecution challenges in relation to Prlić's,<sup>10146</sup> Stojić's,<sup>10147</sup> Praljak's,<sup>10148</sup> Petković's,<sup>10149</sup> and Čorić's<sup>10150</sup> JCE III liability. The

dismisses the Prosecution's argument that the Trial Chamber failed to enter a conviction with regard to Petković's JCE III responsibility for that incident. The Prosecution's alternative challenge in relation to his JCE III liability for this same incident under sub-ground of appeal I(E) is therefore also dismissed as moot.

<sup>10146</sup> The Trial Chamber concluded that the killing incidents at issue took place and amounted to murder and wilful killing. See Trial Judgement, Vol. 2, paras 109-112, 845-853, 1715-1716, 1934-1938, 2014-2019, 2085-2090, 2105-2106, 2116-2117, Vol. 3, paras 85-91, 113-115, 119-122, 250-251, 253, 658-660, 668, 680, 684-698, 707-708, 717, 730-731, 735-751. The Trial Chamber concluded that the incidents of sexual violence at issue took place and amounted to rape and inhuman treatment (sexual assault). See Trial Judgement, Vol. 2, paras 169-170, 233-237, 250, 252-253, 258-262, 268-272, 283-292, Vol. 3, paras 401-402, 404, 426-429, 757-760, 767-774, 779-780. The Trial Chamber concluded that the destruction of mosques at issue took place which amounted to destruction or damage done to institutions dedicated to religion or education. See Trial Judgement, Vol. 2, paras 96-97, 789, 791-792, Vol. 3, paras 1600-1601, 1608. The Trial Chamber concluded that the thefts at issue took place and amounted to extensive appropriation of property and plunder of private property. See Trial Judgement, Vol. 2, paras 233, 235, 250-251, 253, 823-824, 826-827, 924, 1944-1946, 2122-2124, 2179-2181, Vol. 3, paras 343, 345, 348, 401, 403-404, 465, 467, 1620-1621, 1632-1637, 1642-1643, 1647-1648, 1650-1653, 1655, 1664-1666, 1669-1671, 1674-1676, 1677-1679, 1681-1683. The Appeals Chamber also notes the incidents were mentioned in the Indictment. See Indictment, paras 53, 55, 57, 59, 95, 97, 99-100, 107, 159, 161, 169, 175-177, 182, 192, 200, 209, 211, 213. See also Prosecution's Amended Annex to the Indictment (confidential).

<sup>10147</sup> The Trial Chamber concluded that the killing incidents at issue took place and amounted to murder and wilful killing. See Trial Judgement, Vol. 2, paras 109-112, 569, 580-581, 584, 845-853, 905-909, 940-944, 1934-1938, 2014-2019, 2085-2090, 2105-2106, 2116-2117, Vol. 3, paras 85-91, 113-115, 119-122, 250, 253, 658-660, 665-666, 668-670, 684-697, 713-715, 717-719, 735-750. The Trial Chamber concluded that the incidents of sexual violence at issue took place and amounted to rape and/or inhuman treatment (sexual assault). See Trial Judgement, Vol. 2, paras 169-170, 233-237, 250, 252-253, 258-262, 268-272, 283-292, Vol. 3, paras 401-402, 404, 426-429, 757-760, 767-774, 779-780. The Trial Chamber concluded that the thefts at issue took place and amounted to extensive appropriation of property and plunder of public or private property. See Trial Judgement, Vol. 2, paras 233, 235, 250-251, 253, 965-966, 1944-1946, 2179-2181, Vol. 3, paras 1620-1621, 1629-1631, 1642-1643, 1647-1648, 1661-1663, 1669-1671, 1677-1679. The Trial Chamber concluded that the destruction of mosques at issue took place and amounted to destruction or damage done to institutions dedicated to religion or education. See Trial Judgement, Vol. 2, paras 96-97, 789, 791-792, Vol. 3, paras 1600-1601, 1608. The Appeals Chamber also notes that the incidents were mentioned in the Indictment. See Indictment, paras 53, 55, 57, 59, 77, 83, 85, 95, 97, 99, 106, 108, 159, 161, 169, 175-177, 182, 191-192, 199, 200, 209, 211, 213.

<sup>10148</sup> The Trial Chamber concluded that the killing incidents at issue took place and amounted to murder and wilful killing. See Trial Judgement, Vol. 2, paras 109-112, 569, 580-581, 584, 845-853, 905-909, 940-944, 1934-1938, 2014-2019, 2085-2090, 2105-2106, 2116-2117, Vol. 3, paras 85-91, 113-115, 119-122, 250, 253, 658-660, 665-666, 668-670, 684-697, 707-708, 713-715, 717-719, 735-750. The Trial Chamber concluded that the incidents of sexual violence at issue took place and amounted to rape and/or inhuman treatment (sexual assault). See Trial Judgement, Vol. 2, paras 169-170, 233-237, 250, 252-253, 258-262, 268-272, 283-292, 868, 870-873, 876, 925, 935, 978, 981-983, 985-986, Vol. 3, paras 757-764, 767-776. The Trial Chamber concluded that the thefts at issue took place and amounted to extensive appropriation of property and/or plunder of private property. See Trial Judgement, Vol. 2, paras 233, 235, 250-251, 253, 652-655, 823-824, 826-827, 864-867, 871-876, 924, 930-932, 937, 977, 979-987, 1944-1946, 2179-2181, 2122-2124, Vol. 3, paras 1620-1621, 1629-1637, 1642-1643, 1647-1648, 1655, 1661-1666, 1669-1671, 1674-1679. The Trial Chamber concluded that the destruction of mosques at issue took place and amounted to destruction or damage done to institutions dedicated to religion or education. See Trial Judgement, Vol. 2, paras 96-97, 646-650, 789, 791-792, Vol. 3, paras 1600-1601, 1606-1608. The Appeals Chamber also notes that the incidents were mentioned in the Indictment. See Indictment, paras 53, 55, 57, 59, 77, 83, 85, 95, 97, 99-100, 102, 104, 106-109, 159, 161, 169, 175-177, 182, 190-192, 200.

<sup>10149</sup> The Trial Chamber concluded that the killing incidents at issue took place and amounted to murder and wilful killing. See Trial Judgement, Vol. 2, paras 109-112, 569, 580-581, 584, 845-853, 905-909, 940-944, 1715-1716, 2014-2019, Vol. 3, paras 119-122, 250-251, 253, 665-666, 668-670, 680, 685-688, 693-698, 707-708, 713-715, 717-719, 730-731, 735-737, 744-751. The Trial Chamber considered that the incidents of sexual violence at issue took place and amounted to rape and inhuman treatment (sexual assault). See Trial Judgement, Vol. 2, paras 169-170, 233-237, 250, 252-253, 258-262, 268-272, 283-292, Vol. 3, paras 426-429, 757-760, 768, 770-774, 779-780. The Trial Chamber concluded that the thefts at issue took place and amounted to extensive appropriation of property and plunder of public or private property. See Trial Judgement, Vol. 2, paras 233, 235, 250-251, 253, 823-824, 826-827, 864-867, 871-876, 924, 930-932, 937, 965-966, 977, 979-987, Vol. 3, paras 1620-1621, 1632-1641, 1655, 1664-1668. The Appeals Chamber also notes that the incidents were mentioned in the Indictment. See Indictment, paras 53, 55, 57, 59, 77, 95, 99-100, 104, 106-108, 138, 169, 191-192, 200, 211.

Appeals Chamber further notes that the Trial Chamber excluded a range of crimes from the CCP, including the incidents at issue,<sup>10151</sup> and stated that an analysis of each of the Appellants' JCE III participation for the crimes falling outside the CCP would follow.<sup>10152</sup> Accordingly, in the sections of the Trial Judgement concerning Prlić's,<sup>10153</sup> Praljak's,<sup>10154</sup> Petković's,<sup>10155</sup> and Čorić's<sup>10156</sup> responsibility under JCE I, the Trial Chamber made no findings on any of the incidents at issue here.

3088. Likewise, and contrary to Stojić's claim, the Appeals Chamber notes that the Trial Chamber made no findings in Stojić's JCE I section of the Trial Judgement on any of the relevant incidents. Although the Trial Chamber convicted Stojić for murder and wilful killing in Mostar Municipality

<sup>10150</sup> The Trial Chamber concluded that the killing incidents at issue took place and amounted to murder and wilful killing. See Trial Judgement, Vol. 2, paras 109-112, 569, 580-581, 584, 845-853, 905-909, 940-944, 1715-1716, 2014-2019, 2085-2090, 2105-2106, 2116-2117, Vol. 3, paras 250-251, 253, 658-660, 665-666, 668-670, 680, 685-686, 689-692, 697-698, 707-708, 713-715, 717-719, 730-731, 736-737, 740-743, 749-751. The Trial Chamber concluded that the incidents of sexual violence at issue took place and amounted to rape and/or inhuman treatment (sexual assault). See Trial Judgement, Vol. 2, paras 169-170, 233-237, 250, 252-253, 258-262, 268-272, 283-292, Vol. 3, paras 401-402, 404, 426-429, 757-760, 767-774, 779-780. The Trial Chamber concluded that the thefts at issue took place and amounted to extensive appropriation of property and plunder of public or private property. See Trial Judgement, Vol. 2, paras 233, 235, 250-251, 253, 652-655, 965-966, Vol. 3, paras 403-404, 465, 467, 1620-1621, 1655, 1629-1631, 1661-1663, 1638-1653, 1667-1668, 1681-1683. The Trial Chamber also concluded that the destruction of mosques at issue took place and amounted to destruction or damage done to institutions dedicated to religion or education. See Trial Judgement, Vol. 2, paras 96-97, 646-650, 789, 791-792, Vol. 3, paras 1600-1601, 1606-1608. The Appeals Chamber notes that the incidents were mentioned in the Indictment. See Indictment, paras 53, 55, 57, 59, 77, 83, 85, 95, 97, 104, 106, 108, 138, 169, 200, 209, 211, 213.

<sup>10151</sup> See *supra*, para. 2833 & fn. 9243, para. 3001; Trial Judgement, Vol. 4, paras 72-73, 281, 433, 632, 822, 1008, 1213; Prosecution's JCE III Table (Prlić), incidents 1-7, 9-12, 14-28; Prosecution's JCE III Table (Stojić), incidents 1-19, 21-22, 24-26, 28; Prosecution's JCE III Table (Praljak), incidents 1-18, 22-30, Prosecution's JCE III Table (Petković), incidents 1-5, 8-18, 20; Prosecution's JCE III Table (Čorić), incidents 1-4, 6, 8-9, 12-26, 30-31. See also Trial Judgement, Vol. 4, paras 59, 70-71, 342.

<sup>10152</sup> Trial Judgement, Vol. 4, paras 72-73. See also Trial Judgement, Vol. 4, paras 281, 433, 632, 822, 1008, 1213.

<sup>10153</sup> Trial Judgement, Vol. 4, paras 122-279. Recalling its observation – set out elsewhere – about the Trial Chamber's findings on the scope of the CCP, the Appeals Chamber notes that while the Trial Chamber convicted Prlić, under JCE I, of Counts 2 and 3 in relation to Prozor and Vojno Detention Centre, these convictions do not encompass the killing incidents at issue here. See *supra*, para. 2833 & fn. 9243, para. 3001. The Trial Chamber also convicted him, under JCE I, of Count 21 in relation to Mostar. However, this conviction does not encompass the destruction of Baba Bešir Mosque at issue here. See also *infra*, para. 3089 & fn. 10165.

<sup>10154</sup> Trial Judgement, Vol. 4, paras 512-630. Recalling its observation – set out elsewhere – about the Trial Chamber's findings on the scope of the CCP (see *supra*, para. 2833 & fn. 9243, para. 3001), the Appeals Chamber notes that while the Trial Chamber convicted Praljak, under JCE I, of Counts 2, 3, and 21 in relation to Mostar, these convictions do not encompass the killing incidents at issue here, nor do they include the destruction of Baba Bešir Mosque. See also *infra*, para. 3089 & fn. 10165.

<sup>10155</sup> See Trial Judgement, Vol. 4, paras 687-821. Recalling its observation – set out elsewhere – about the Trial Chamber's findings on the scope of the CCP (see *supra*, para. 2833 & fn. 9243), the Appeals Chamber notes that while the Trial Chamber convicted Petković, under JCE I, of Counts 2 and 3 in relation to Mostar and Vojno Detention Centre, these convictions do not encompass the killing incidents at issue here. See *supra*, paras 2263-2265. With regard to Petković's convictions, under JCE I, of Count 21 in relation to Mostar and Prozor, the Appeals Chamber has found that the Trial Chamber erroneously convicted Petković for the destruction of Baba Bešir Mosque in Mostar and the Skrobućani mosque in Prozor under JCE I. Following a revision of these convictions, the Appeals Chamber has found him responsible for the destruction of both mosques pursuant to JCE III. See *supra*, paras 2447-2455. See also *supra*, fn. 9869.

<sup>10156</sup> See Trial Judgement, Vol. 4, paras 918-1007. Recalling its observation – set out elsewhere – about the Trial Chamber's findings on the scope of the CCP (see *supra*, para. 2833 & fn. 9243, para. 3001), the Appeals Chamber notes that while the Trial Chamber convicted Čorić, under JCE I, of Counts 2, 3, and 21 in relation to Mostar, these convictions do not encompass the killing incidents at issue here, nor do they include the destruction of Baba Bešir Mosque. See also *supra*, paras 3089; *infra*, fn. 10165.

through his participation in the JCE,<sup>10157</sup> it also concluded that specific categories of murders, namely those committed during eviction operations, or “closely linked thereto”, and those committed in detention centres were not part of the CCP.<sup>10158</sup> In addition, it explicitly found that the excluded crimes encompassed murders in Prozor, Čapljina, Mostar, and Stolac, as well as deaths of numerous detainees who died while in confinement, either due to poor conditions of detention or due to violence meted out by HVO members.<sup>10159</sup> The Appeals Chamber notes that the two killing incidents in Mostar at issue here took place either during evictions or in detention,<sup>10160</sup> and thus were clearly excluded from Stojić’s JCE I conviction for murder and wilful killing in Mostar.<sup>10161</sup>

3089. Regarding Stojić’s contention that he was convicted of the destruction of Baba Bešir Mosque, the Appeals Chamber notes that the Trial Chamber found that the CCP expanded to include Count 21 as of June 1993.<sup>10162</sup> Moreover, under JCE I, the Trial Chamber held that Stojić accepted crimes which were directly linked to HVO operations against East Mostar, including murders and destruction of mosques related to the shelling.<sup>10163</sup> Accordingly, since it was located in West Mostar and destroyed with dynamite around 10 May 1993,<sup>10164</sup> the Appeals Chamber considers that Stojić was not convicted for the destruction of Baba Bešir Mosque under JCE I.<sup>10165</sup>

<sup>10157</sup> Trial Judgement, Vol. 4, para. 431.

<sup>10158</sup> Trial Judgement, Vol. 4, paras 70, 72.

<sup>10159</sup> Trial Judgement, Vol. 4, para. 70.

<sup>10160</sup> Trial Judgement, Vol. 2, paras 845-853, 905-909, 940-944, Vol. 3, paras 668-670, 717-719. The Appeals Chamber also notes that the Trial Chamber explicitly stated that some of the killings – which the Prosecution now argues it failed to adjudicate – were not included in the CCP, namely the killings in Prajine and Tolovac, the killing of a Muslim girl in Pješivac Greda, and the killings of two women in Domanovići. Trial Judgement, Vol. 4, paras 70, 72, fn. 182. See Prosecution’s JCE III Table (Stojić), incidents 1, 5, 7.

<sup>10161</sup> *Contra* Stojić’s Response Brief, para. 64.

<sup>10162</sup> Trial Judgement, Vol. 4, para. 59. See *supra*, paras 799, 814. See also Trial Judgement, Vol. 4, paras 342, 433.

<sup>10163</sup> Trial Judgement, Vol. 4, para. 363. See Trial Judgement, Vol. 3, para. 1609. The Trial Chamber convicted Stojić for the destruction of mosques in East Mostar under JCE I. This is reflected in paragraph 431 of Volume 4 of the Trial Judgement, which enumerates crimes for which he was found responsible under JCE I, including the destruction or wilful damage done to institutions dedicated to religion or education (Count 21) in Mostar Municipality. Compare Trial Judgement, Vol. 4, paras 363, 431, with Trial Judgement, Vol. 4, paras 343-358 (where the Trial Chamber discusses events in West Mostar but makes no mention of destruction of mosques there).

<sup>10164</sup> Trial Judgement, Vol. 2, paras 789, 791-792. See Trial Judgement, Vol. 3, para. 1608.

<sup>10165</sup> The Appeals Chamber recalls that it has found that the Trial Chamber erred in finding Petković responsible, pursuant to JCE I, for the destruction of Baba Bešir Mosque on 10 May 1993 as well as that of Skrobućani mosque in “May or June” 1993, as these crimes occurred prior to the point at which the Trial Chamber found that the destruction of religious institutions (Count 21) became a part of the CCP. See *supra*, paras 2448-2449. However, this does not necessarily mean that the Trial Chamber also (erroneously) found Stojić responsible for the destruction of Baba Bešir Mosque or the Skrobućani mosque pursuant to JCE I. The section on Stojić’s individual responsibility contains nothing that resembles the factors that led the Appeals Chamber to conclude that Petković was convicted of the destruction of these mosques pursuant to JCE I. Rather, the Appeals Chamber considers that, since the Trial Chamber considered the destruction of Baba Bešir Mosque and the Skrobućani mosque to be outside the CCP, Stojić cannot be said to have been convicted for the destruction of these mosques pursuant to JCE I either by virtue of paragraph 431 of Volume 4 of the Trial Judgement (see *supra*, fn. 10163) or by virtue of paragraph 432 of Volume 4 of the Trial Judgement, which states that he was held responsible under JCE I for “all of the crimes that were part of the common plan”. See Trial Judgement, Vol. 4, paras 431-432. With regard to the scope of the CCP which excludes the destruction of Baba Bešir Mosque or the Skrobućani mosque, see *supra*, para. 2833 & fn. 9243, para. 3001. See also Trial Judgement, Vol. 4, paras 59, 70-71, 342, 433.

3090. Subsequently, in the section dedicated to Prlić's, Stojić's, Praljak's, Petković's, and Ćorić's responsibility under JCE III, the Trial Chamber expressly considered certain incidents of crimes falling outside of the CCP, found that these incidents were foreseeable to them and that they willingly took the risk of their occurrence, and entered convictions.<sup>10166</sup>

3091. With respect to Prlić, after express discussions, JCE III convictions were entered for: (1) murder and wilful killing in the municipalities of Jablanica and Mostar; (2) sexual violence in Mostar Municipality; (3) destruction of or wilful damage to mosques in Jablanica Municipality; and (4) thefts in the municipalities of Gornji Vakuf, Jablanica, and Mostar.<sup>10167</sup> The Trial Chamber further expressly discussed the killings of a detainee in Dretelj Prison and of a detainee in Vojno Detention Centre and concluded that Prlić could not have reasonably foreseen these incidents.<sup>10168</sup> Nonetheless, the section on Prlić's JCE III liability does not include any discussion about, or mention of, the 26 incidents now appealed by the Prosecution.<sup>10169</sup>

3092. With respect to Stojić, after express discussions, JCE III convictions were entered for: (1) thefts in the municipalities of Gornji Vakuf and Mostar; and (2) sexual violence in Mostar Municipality.<sup>10170</sup> In addition, the Trial Chamber entered convictions for murder and wilful killing in the Heliodrom.<sup>10171</sup> The Trial Chamber further expressly discussed thefts in the municipalities of Jablanica, Vareš, and Čapljina as well as destruction of mosques during the operations in Jablanica Municipality and concluded that Stojić could not have reasonably foreseen these incidents.<sup>10172</sup> However, it did not discuss, or mention, the 25 incidents now appealed by the Prosecution in Stojić's JCE III section.<sup>10173</sup> Regarding Stojić's argument that thefts in Raštani were encompassed in his conviction under JCE III for thefts in Mostar Municipality, the Appeals Chamber notes that, in its legal findings regarding thefts in Mostar, the Trial Chamber referred to two separate situations: (1) thefts in West Mostar in May and June 1993, and then from August 1993 to February

<sup>10166</sup> See *infra*, paras 3091-3095.

<sup>10167</sup> Trial Judgement, Vol. 4, paras 282-284, 288.

<sup>10168</sup> Trial Judgement, Vol. 4, paras 285-286. See also Prosecution's JCE III Table (Prlić), incidents 8, 13.

<sup>10169</sup> See Trial Judgement, Vol. 4, paras 280-288.

<sup>10170</sup> Trial Judgement, Vol. 4, paras 437, 439, 445-446.

<sup>10171</sup> Trial Judgement, Vol. 4, para. 450. Regarding the Heliodrom convictions, the Appeals Chamber notes that, unlike other crimes it entered convictions for pursuant to JCE III, the Trial Chamber did not include any discussion of the Heliodrom killings in the section dealing with Stojić's JCE III responsibility. The Appeals Chamber also notes that with respect to the deaths of detainees from the Heliodrom taken to the front line to work or to be used as human shields – which are the only killing incidents charged in the context of the Heliodrom detention –, the Trial Chamber clearly convicted Stojić of murder and wilful killing pursuant to JCE I. See Trial Judgement, Vol. 4, paras 388-395, 431; Indictment, paras 119-135 (in particular, paras 127-130 about killings). In light of this and based on the lack of discussion on any Heliodrom killings in Stojić's JCE III section, the Appeals Chamber considers, *proprio motu*, that the Trial Chamber inadvertently found Stojić responsible for these killings under JCE III. Thus, the Appeals Chamber reverses Stojić's conviction in this regard. See Trial Judgement, Vol. 4, paras 72, 433-449. The impact of this reversal on Stojić's sentence, if any, will be addressed later in this Judgement. See *infra*, para. 3361.

<sup>10172</sup> Trial Judgement, Vol. 4, paras 441, 443, 448-449.

<sup>10173</sup> See Trial Judgement, Vol. 4, paras 434-450.

1994;<sup>10174</sup> and (2) thefts in Raštani village on 24 August 1993.<sup>10175</sup> In the section discussing Stojić's JCE III liability, however, the Trial Chamber only discussed thefts in West Mostar and did not refer to its factual narrative of events in Raštani.<sup>10176</sup> Thus, and taking into account the discussion below,<sup>10177</sup> the Appeals Chamber considers that the Trial Chamber did not convict him for thefts in Raštani.

3093. With respect to Praljak, after express discussions, JCE III convictions were entered for thefts in Gornji Vakuf Municipality and Raštani village in Mostar Municipality.<sup>10178</sup> The Trial Chamber further expressly discussed thefts and sexual violence in Vareš Municipality and concluded that Praljak could not have reasonably foreseen these incidents.<sup>10179</sup> However, the Trial Chamber did not discuss or mention any of the 27 incidents now appealed by the Prosecution in Praljak's JCE III section.<sup>10180</sup>

3094. With respect to Petković, after express discussions, JCE III convictions were entered for: (1) sexual violence in the municipalities of Mostar and Vareš; (2) thefts in the municipalities of Gornji Vakuf and Jablanica and in Vareš town in Vareš Municipality, as well as in West Mostar in Mostar Municipality from June 1993; and (3) destruction of or wilful damage to mosques in Jablanica Municipality.<sup>10181</sup> The Trial Chamber further expressly discussed: (1) killings committed during eviction operations in the municipalities of Stolac and Čapljina and in Dretelj Prison; and (2) thefts committed during the Stolac and Čapljina eviction operations as well as in Stupni Do in Vareš Municipality, and concluded that Petković could not have reasonably foreseen these incidents.<sup>10182</sup> Nonetheless, the section on Petković's JCE III liability does not include any discussion about, or mention of, the 17 incidents now appealed by the Prosecution.<sup>10183</sup>

3095. With respect to Ćorić, after express discussions, JCE III convictions were entered for: (1) thefts in the municipalities of Gornji Vakuf and Mostar; (2) sexual violence in Mostar Municipality; and (3) murder and wilful killing in Dretelj Prison.<sup>10184</sup> The Trial Chamber further expressly discussed certain murders and thefts during eviction operations in the municipalities of

<sup>10174</sup> Trial Judgement, Vol. 3, paras 1632-1637, 1664-1666.

<sup>10175</sup> Trial Judgement, Vol. 3, paras 1638-1641, 1667-1668.

<sup>10176</sup> Trial Judgement, Vol. 4, paras 444-447 & fns 900-901. In contrast, the Trial Chamber discussed Praljak's JCE III responsibility for thefts in Raštani only. Trial Judgement, Vol. 4, paras 636-638.

<sup>10177</sup> See *infra*, paras 3096-3097.

<sup>10178</sup> Trial Judgement, Vol. 4, paras 633-638, 644.

<sup>10179</sup> Trial Judgement, Vol. 4, paras 639-643.

<sup>10180</sup> Trial Judgement, Vol. 4, paras 632-644. While the Trial Chamber found Praljak responsible under JCE III for thefts in Mostar Municipality, it is clear from its discussion that these concerned thefts in the village of Raštani alone, and not thefts in West Mostar which are being appealed by the Prosecution. Trial Judgement, Vol. 4, paras 636-638, 644. See also *supra*, para. 3092; Trial Judgement, Vol. 3, paras 1632-1641, 1664-1668.

<sup>10181</sup> Trial Judgement, Vol. 4, paras 826-840, 842-848, 850-853.

<sup>10182</sup> Trial Judgement, Vol. 4, paras 823-825, 841, 849.

<sup>10183</sup> Trial Judgement, Vol. 4, paras 822-853.



Stolac and Čapljina as well as certain murders of detainees in Dretelj Prison and concluded that it was not in a position to find that Čorić could have foreseen these crimes.<sup>10185</sup> Nonetheless, the section on Čorić's JCE III liability does not explicitly discuss or mention any of the 24 incidents now appealed by the Prosecution.<sup>10186</sup>

3096. In sum, a number of incidents which the Trial Chamber found had fallen outside the CCP were not only excluded from the discussions in the respective JCE I sections in the Trial Judgement, but were also not mentioned in the sections devoted to Prlić's, Stojić's, Praljak's, Petković's, and Čorić's JCE III responsibility, even though the Trial Chamber found elsewhere that these incidents were proven and constituted crimes as alleged. However, the Appeals Chamber observes that prior to its discussion specific to the respective Appellants, including their responsibility under both JCE I and JCE III, the Trial Chamber stated as a preliminary matter that it would "address only the events for which it [had] evidence that might be relevant to its analysis of [their] responsibility".<sup>10187</sup> Moreover, with respect to Stojić, in paragraph 424 of Volume 4 of the Trial Judgement, after having analysed his involvement in and knowledge of events in various municipalities, the Trial Chamber stated that the "evidence did not allow [it] to make a finding as to Bruno Stojić's responsibility regarding the other crimes in the municipalities and the detention centres included in the Indictment".<sup>10188</sup> While the Trial Chamber made this finding in the section concerning Stojić's JCE I responsibility, the Appeals Chamber – agreeing with Stojić's submissions in this regard<sup>10189</sup> – interprets this reasoning as applying equally to his JCE III section. Further, albeit only with respect to Čorić, at the conclusion of its JCE III analysis in paragraph 1022 of Volume 4 of the Trial Judgement, the Trial Chamber noted that it "received no evidence showing that [...] Čorić was informed of the other crimes not part of the common criminal purpose".<sup>10190</sup>

3097. Taking into account these statements in the Trial Judgement, the Appeals Chamber understands that the Trial Chamber considered that it had no evidence on the basis of which it could

<sup>10184</sup> Trial Judgement, Vol. 4, paras 1009-1021.

<sup>10185</sup> Trial Judgement, Vol. 4, paras 1015-1016 & fn. 1896 (Stolac and Čapljina), paras 1017-1019 (Dretelj Prison).

<sup>10186</sup> See Trial Judgement, Vol. 4, paras 1008-1022.

<sup>10187</sup> Trial Judgement, Vol. 4, paras 76, 290, 454, 648, 857, 1025. Although the wording of the English versions of the Praljak, Petković, and Pušić sections of the Trial Judgement differ slightly in that they use the construction "evidence that *may* be relevant to its analysis" (emphasis added), the French versions of the sentence are consistent for all Appellants ("*éléments de preuve qui pourraient être pertinents dans son analyse*"). Compare Trial Judgement, Vol. 4, paras 454, 648, 1025, with Trial Judgement, Vol. 4, paras 76, 290, 857.

<sup>10188</sup> Trial Judgement, Vol. 4, para. 424.

<sup>10189</sup> Stojić's Response Brief, para. 67. See also Stojić's Response Brief, paras 61, 63, 68. Further, as Stojić points out, many of the incidents that were not mentioned in the section of the Trial Judgement dealing with Stojić's JCE III responsibility were clearly discussed in the sections dealing with Prlić, Praljak, Petković, Čorić, and Pušić. See Trial Judgement, Vol. 4, paras 283-284, 286, 638, 643, 823-825, 834, 840-841, 1019-1020, 1214, fn. 1538; Stojić's Response Brief, para. 68. The Appeals Chamber thus considers that the Trial Chamber did not overlook the incidents in question as it concerns Stojić but rather purposefully excluded them from the analysis of his JCE III responsibility and that the same applies, *mutatis mutandis*, to the Trial Chamber's analyses in the sections dealing with Prlić's, Praljak's, Petković's, and Čorić's JCE III responsibility.

find that the JCE III requirements were met and, by extension, upon which it could find Prlić, Stojić, Praljak, Petković, and Čorić guilty in relation to the incidents not specifically addressed in subsequent sections discussing their responsibility. Accordingly, the Trial Chamber acquitted Prlić, Stojić, Praljak, Petković, and Čorić of these incidents. The Appeals Chamber therefore dismisses the Prosecution's argument that the Trial Chamber failed to adjudicate Prlić's, Stojić's, Praljak's, Petković's, and Čorić's responsibility with regard to these incidents.

3098. Having found that the Trial Chamber entered acquittals for the incidents not expressly addressed in its JCE III analysis, the Appeals Chamber will next consider whether the Trial Chamber failed to provide a reasoned opinion in acquitting Prlić, Stojić, Praljak, Petković, and Čorić.

b. Alleged failure to provide a reasoned opinion

3099. The Appeals Chamber recalls that pursuant to Article 23(2) of the Statute and Rule 98ter(C) of the Rules, trial chambers are required to give a reasoned opinion.<sup>10191</sup> While it need not articulate every step of its reasoning,<sup>10192</sup> "factual and legal findings on which a trial chamber relied upon to convict or acquit an accused should be set out in a clear and articulate manner".<sup>10193</sup> The Appeals Chamber also notes that a reasoned opinion in a trial judgement is essential, *inter alia*, for allowing a meaningful exercise of the right of appeal by the parties and enabling the Appeals Chamber to understand and review a trial chamber's findings and its evaluation of the evidence.<sup>10194</sup> An appellant claiming an error of law because of the lack of a reasoned opinion must identify the specific issues, factual findings, or arguments that he submits the trial chamber omitted to address and explain why this omission invalidates the decision.<sup>10195</sup>

3100. The Appeals Chamber recalls its earlier finding that the Trial Chamber acquitted Prlić of the 26 incidents of murder, sexual violence, theft, and destruction of mosques; Stojić of the 25 incidents of murder, sexual violence, theft, and destruction of mosques; Praljak of the 27 incidents of murder, sexual violence, theft, and destruction of mosques; Petković of the 17 incidents of murder, sexual violence, and theft; and Čorić of the 24 incidents of murder, sexual violence, theft, and destruction

<sup>10190</sup> Trial Judgement, Vol. 4, para. 1022.

<sup>10191</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137; *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, paras 1123, 1367, 1771; *Haradinaj et al.* Appeal Judgement, para. 128.

<sup>10192</sup> *Stanišić and Župljanin* Appeal Judgement, paras 378, 1063; *Popović et al.* Appeal Judgement, paras 972, 1906; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490; *Kvočka et al.* Appeal Judgement, para. 398. See also *Kvočka et al.* Appeal Judgement, para. 23.

<sup>10193</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137. See *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Hadžihasanović and Kubura* Appeal Judgement, para. 13.

<sup>10194</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137; *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, paras 1123, 1367, 1771; *Haradinaj et al.* Appeal Judgement, para. 128.

<sup>10195</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137. See *supra*, para. 19.

of mosques, based on the reasoning that it had no evidence on which to find that the JCE III requirements were met in relation to these incidents.<sup>10196</sup> However, after it assessed the evidence on the record, the Trial Chamber made various factual findings – also identified by the Prosecution – which concern factors such as knowledge of the nature of the conflict, the climate of violence, and how the CCP was implemented on the ground, as well as whether there was an awareness that similar crimes were previously committed. As established by the Tribunal's jurisprudence, these factors can be considered in assessing whether an accused could have foreseen the commission of a crime and may make the possibility that such a crime might occur sufficiently substantial as to be foreseeable to members of the JCE.<sup>10197</sup>

3101. Specifically, the Trial Chamber found that Prlić: (1) shared the intent to remove the Muslim population from the HZ(R) H-B through acts of violence and, to that end, he planned, facilitated, and encouraged the crimes committed by HVO members from January 1993;<sup>10198</sup> (2) knew of the violent crimes committed during several HVO operations and in certain detention centres, including destruction of Muslim houses, murder, forced removal, and detention of Muslim civilians, and mistreatment of Muslim detainees,<sup>10199</sup> yet made no serious effort to prevent or punish those crimes;<sup>10200</sup> (3) knew of or contributed to the atmosphere of violence in the municipalities of Gornji Vakuf, Jablanica, and Mostar;<sup>10201</sup> and (4) intended, *inter alia*, the destruction of property, mistreatment during evictions and detentions, poor conditions of confinement, as well as murder in certain contexts – such as during attacks on villages and towns as well as linked to the use of detainees on the front lines for labour or as human shields – as part of the CCP.<sup>10202</sup> In particular, the Trial Chamber found that Prlić: (1) was informed, as of the latter half of January 1993, that following the 15 January 1993 Ultimatum, the HVO committed crimes against the Muslim population in Gornji Vakuf, including murder and detention of Muslims not belonging to any armed force, the removal of inhabitants, and the destruction of Muslims houses as well as thefts;<sup>10203</sup> (2) by formulating the 4 April 1993 Ultimatum in the same terms as the 15 January 1993 Ultimatum

<sup>10196</sup> See *supra*, paras 3096-3097. See also Trial Judgement, Vol. 4, paras 76, 290, 424, 454, 857, 1022.

<sup>10197</sup> See *supra*, para. 2836; *Stanišić and Župljanin* Appeal Judgement, para. 627; *Šainović et al.* Appeal Judgement, paras 1079-1082, 1089-1090, 1537-1539, 1545, 1576-1579, 1581, 1584-1587, 1589, 1591.

<sup>10198</sup> Trial Judgement, Vol. 4, paras 65-68, 127-129, 131, 134, 142-147, 151-155, 165, 169-171, 174-176, 185, 209-215, 225, 232, 249, 271, 275-276, 1220, 1316. See also Trial Judgement, Vol. 4, paras 44, 51, 58, 65, 111-114, 121, 233-235.

<sup>10199</sup> Trial Judgement, Vol. 4, paras 127, 130-132, 134 (Gornji Vakuf), 145-147 (Prozor and Jablanica), 165, 167-168, 171, 174-176, 185, 272 (Mostar), 222-224, 229-230, 232, 273-274 (the Heliodrom), 236-239, 274 (Vojno Detention Centre), 219-220, 241, 245-249, 255, 273 (Dretelj Prison and Gabela Prison). In addition, Prlić was found to have been aware of thefts that took place during the HVO operation in Gornji Vakuf Municipality as well as the appropriation of Muslim property in Mostar Municipality. Trial Judgement, Vol. 4, paras 130, 134, 169-170.

<sup>10200</sup> Trial Judgement, Vol. 4, paras 231-232, 238, 259-263, 268-269, 272-274, 1316.

<sup>10201</sup> Trial Judgement, Vol. 4, paras 171, 265-267, 282-284. See also Trial Judgement, Vol. 4, para. 72.

<sup>10202</sup> Trial Judgement, Vol. 4, paras 66-68. See also, *e.g.*, Trial Judgement, Vol. 4, paras 134 (Gornji Vakuf), 147 (Prozor and Jablanica), 171, 176, 185 (Mostar), 232 (the Heliodrom), 238 (Vojno Detention Centre), 249, 255 (Dretelj Prison and Gabela Prison), 278-279.

intended to repeat the events in Gornji Vakuf in the municipalities of Prozor and Jablanica;<sup>10204</sup> (3) knew from at least August 1993 that detainees from the Heliodrom, and as of 20 January 1994 detainees from Vojno Detention Centre, were being used to work at the front line and that some were wounded or mistreated;<sup>10205</sup> (4) was aware, following meetings on 19 and 20 July 1993, of the harsh conditions in detention facilities, including at Dretelj Prison and Gabela Prison;<sup>10206</sup> (5) by signing the Decree of 6 July 1993 (on the use of apartments abandoned by the tenants), accepted the HVO HZ H-B practice of appropriating the apartments of the Muslims expelled from West Mostar and knew about it as of June 1993;<sup>10207</sup> (6) was repeatedly alerted to the forcible evictions of Muslims from West Mostar from at least June 1993, contributed to the climate of violence in Mostar, and accepted the mistreatment and forced removal linked to the eviction campaigns;<sup>10208</sup> (7) knew about “the HVO crimes committed during the HVO campaign of fire and shelling” from June 1993 against East Mostar, such as murders and the destruction of property;<sup>10209</sup> and (8) “knowingly turned a blind eye to the increasingly violent ethnic cleansing operations conducted by the HVO against the Muslim population” in Mostar in the summer of 1993.<sup>10210</sup>

3102. The Trial Chamber found that Stojić: (1) shared the intent to remove the Muslim population from the HZ(R) H-B through acts of violence and, to that end, he planned, organised, and facilitated various military operations from January 1993 as well as arrests of Muslim men not belonging to any armed force;<sup>10211</sup> (2) knew of the violent crimes committed during a number of HVO operations and in certain detention centres, including destruction of Muslim houses, murder, forced removal, and detention of Muslim civilians, and mistreatment of Muslim detainees<sup>10212</sup> and yet made no serious effort to prevent or punish those crimes;<sup>10213</sup> (3) knew of or contributed to the atmosphere of violence in the municipalities of Gornji Vakuf and Mostar;<sup>10214</sup> and (4) intended, *inter alia*, the destruction of property, mistreatment during evictions and detentions, poor conditions of confinement, as well as murder in certain contexts – such as during attacks on villages and towns as well as linked to the use of detainees on the front lines for labour or as human shields – as part of

<sup>10203</sup> Trial Judgement, Vol. 4, paras 127, 130-134, 146, 282, referring to, *inter alia*, Exs. P01206, P01351, P01357.

<sup>10204</sup> Trial Judgement, Vol. 4, paras 146-147, 271.

<sup>10205</sup> Trial Judgement, Vol. 4, paras 232, 238, 274.

<sup>10206</sup> Trial Judgement, Vol. 4, paras 219-220, 224-225, 232, 241, 248-249, 253, 255, 261-262, 273, 286.

<sup>10207</sup> Trial Judgement, Vol. 4, paras 169-170, referring to Ex. P03089.

<sup>10208</sup> Trial Judgement, Vol. 4, paras 167-168, 171.

<sup>10209</sup> Trial Judgement, Vol. 4, para. 176. See also Trial Judgement, Vol. 4, paras 173-174.

<sup>10210</sup> Trial Judgement, Vol. 4, para. 272.

<sup>10211</sup> Trial Judgement, Vol. 4, paras 65-68, 151-155, 305, 335-337, 347-349, 357, 373-375, 381-383, 425-426, 428-429, 1220.

<sup>10212</sup> Trial Judgement, Vol. 4, paras 330-336 (Gornji Vakuf), 338-342 (Jablanica), 349-355, 357, 363, 369-370, 416, 422 (Mostar), 375-378 (Čapljina), 381-383 (Vareš), 388-395 (the Heliodrom), 400-402, 404-407 (Dretelj Prison and Gabela Prison). In addition, Stojić was found to have been aware of thefts that took place during the HVO operation in Gornji Vakuf Municipality and of sexual assaults and thefts in Mostar Municipality. Trial Judgement, Vol. 4, paras 333, 336-337, 416-417, 436-438, 446.

<sup>10213</sup> Trial Judgement, Vol. 4, paras 414-415, 420, 423, 427, 1328.

the CCP.<sup>10215</sup> In particular, the Trial Chamber found that Stojić: (1) was aware of reports dated the latter half of January 1993 on HVO crimes committed in Gornji Vakuf in that month, including the destruction of Muslim houses, thefts, and murder;<sup>10216</sup> (2) was informed by the ICRC Report of 20 April 1993 of civilian houses being regularly torched and people being summarily executed in HVO-controlled territory, including Jablanica;<sup>10217</sup> (3) “must have been aware” of the crimes, such as the destruction of property, including mosques, committed by the HVO forces during the Jablanica operations in April 1993;<sup>10218</sup> (4) received the CED Report dated 14 June 1993 which informed him of beatings, rapes, and possible murders during evictions in West Mostar in mid-June 1993;<sup>10219</sup> (5) knew about thefts being committed by HVO soldiers during the Mostar evictions in May 1993, as indicated by Stojić’s order dated 31 May 1993 referring to an increased number of thefts in Mostar town;<sup>10220</sup> (6) was informed, between July and September 1993, of the poor detention conditions and mistreatment of detainees in the HVO detention centres, including the Heliodrom, Dretelj Prison, and Gabela Prison;<sup>10221</sup> and (7) was informed in August and October 1993 that some detainees from the Heliodrom were taken to the front line to perform work and had been wounded and died.<sup>10222</sup>

3103. The Trial Chamber found that Praljak: (1) shared the intent to remove the Muslim population from the HZ(R) H-B through acts of violence;<sup>10223</sup> (2) possessed discriminatory intent against the Muslim population;<sup>10224</sup> (3) planned, directed, and facilitated various HVO military operations from January 1993 that resulted in crimes such as murders, sexual violence, thefts, and destruction of Muslim homes, including the operations in Gornji Vakuf in January 1993 and in Prozor and Mostar during the summer of 1993, as well as arrests of Muslim men not belonging to any armed force;<sup>10225</sup> (4) was routinely present in the field, kept abreast of situations in the field – starting with the situation in Gornji Vakuf in 1993 –, and received reports from commanders,<sup>10226</sup> which led the Trial Chamber to generally conclude that he “was informed of the crimes committed

<sup>10214</sup> Trial Judgement, Vol. 4, paras 435, 439, 445-446. See also Trial Judgement, Vol. 4, para. 72.

<sup>10215</sup> Trial Judgement, Vol. 4, paras 66-68. See also, e.g., Trial Judgement, Vol. 4, paras 336-337 (Gornji Vakuf), 342 (Jablanica), 357, 363, 370 (East Mostar), 378 (Čapljina), 383 (Vareš), 395 (the Heliodrom), 407 (Dretelj Prison and Gabela Prison), 426, 428-429, 431-432.

<sup>10216</sup> Trial Judgement, Vol. 4, paras 331-333, 336-337, referring to, *inter alia*, Exs. P01206, P01351, P01357.

<sup>10217</sup> Trial Judgement, Vol. 4, para. 340, referring to Ex. P01989.

<sup>10218</sup> Trial Judgement, Vol. 4, paras 341-342.

<sup>10219</sup> Trial Judgement, Vol. 4, para. 351, referring to Ex. P02770. See Trial Judgement, Vol. 4, paras 436-437.

<sup>10220</sup> Trial Judgement, Vol. 2, para. 826, Vol. 4, para. 446, referring to Ex. P02578, p. 1. See also Trial Judgement, Vol. 4, para. 422.

<sup>10221</sup> Trial Judgement, Vol. 4, paras 387, 390, 395, 400-404, 406. In particular, the Trial Chamber relied on the minutes of the Government meeting of 20 July 1993 in which the attendees, including Stojić, discussed the overcrowding in Dretelj Prison and Gabela Prison. Trial Judgement, Vol. 4, para. 401, referring to Ex. P03573.

<sup>10222</sup> Trial Judgement, Vol. 4, para. 391, referring to Exs. P04352, P05812.

<sup>10223</sup> Trial Judgement, Vol. 4, paras 44, 65-68, 625-628, 1230.

<sup>10224</sup> Trial Judgement, Vol. 4, para. 628.

<sup>10225</sup> Trial Judgement, Vol. 4, paras 562 (Gornji Vakuf), 570, 572-573 (Prozor, from 24 July 1993), 579, 581, 586 (Mostar, from 24 July 1993), 594, 597 (Vareš), 625-628, 1228, 1230.

by the members of the HZ(R) H-B armed forces primarily through HVO internal communication channels”,<sup>10227</sup> and (5) intended the destruction of property, mistreatment during evictions and detentions, poor conditions of confinement, as well as murder in certain contexts – such as during attacks on villages and towns as well as linked to the use of detainees on the front lines for labour or as human shields – as part of the CCP.<sup>10228</sup> In relation to his knowledge specifically, the Trial Chamber further found that he: (1) knew of removals and detentions of the Muslim population from Prozor from July to August 1993,<sup>10229</sup> the poor conditions of several detention facilities at least from September 1993,<sup>10230</sup> and the use of Muslim detainees for forced labour on front lines in August 1993;<sup>10231</sup> and (2) knew that members of the Military Police committed thefts during HVO operations in Prozor Municipality in October 1992.<sup>10232</sup>

3104. The Trial Chamber found that Petković: (1) shared the intent to remove the Muslim population from the HZ(R) H-B through acts of violence and, to that end, he planned, organised and facilitated various military operations from January 1993 as well as ordered arrests of Muslim men not belonging to any armed force;<sup>10233</sup> (2) knew of the violent crimes committed during a number of HVO operations and in certain detention centres, including destruction of Muslim houses, murder, forced removal, and detention of Muslim civilians, and mistreatment of Muslim detainees<sup>10234</sup> and yet made no serious effort to prevent or punish those crimes;<sup>10235</sup> (3) knew of or contributed to the atmosphere of violence which prevailed in the municipalities of Gornji Vakuf, Mostar, and Vareš;<sup>10236</sup> and (4) intended, *inter alia*, the destruction of property, mistreatment during evictions and detentions, poor conditions of confinement, as well as murder in certain contexts – such as during attacks on villages and towns as well as linked to the use of detainees on the front lines for

<sup>10226</sup> See Trial Judgement, Vol. 4, paras 470, 481-482, 489, 538, 554, 556, 566-567, 573.

<sup>10227</sup> Trial Judgement, Vol. 4, para. 625.

<sup>10228</sup> See, *e.g.*, Trial Judgement, Vol. 4, paras 66-68. See also, *e.g.*, Trial Judgement, Vol. 4, paras 562 (Gornji Vakuf), 572-575 (Prozor), 582, 584, 586 (Mostar), 609, 611, 614 (Dretelj Prison and Gabela Prison), 625, 627, 630.

<sup>10229</sup> Trial Judgement, Vol. 4, paras 566-567, 573 (Prozor).

<sup>10230</sup> Trial Judgement, Vol. 4, paras 609-611, 614 (Gabela Prison and Dretelj Prison).

<sup>10231</sup> Trial Judgement, Vol. 4, paras 574-575 (Prozor).

<sup>10232</sup> Trial Judgement, Vol. 4, para. 1239 (in the section considering Praljak’s superior responsibility). See also Trial Judgement, Vol. 2, paras 56-60.

<sup>10233</sup> Trial Judgement, Vol. 4, paras 65-68, 691, 693-694, 696-697, 699, 708, 710, 716-717, 721, 737-738, 747, 750, 757-758, 765-767, 814-815, 817-818, 1220.

<sup>10234</sup> Trial Judgement, Vol. 4, paras 691, 693, 695-697 (Prozor), 704, 707-708, 710 (Gornji Vakuf), 717-719, 723-724 (Jablanica), 729-730, 732, 734, 737-738, 748-750 (Mostar), 758 (Stolac), 759 (Čapljina), 761-763, 765-767, 776 (Vareš), 778, 780, 782 (Gabela Prison), 783-785 (Dretelj Prison), 789-791, 793-794, 796 (the Heliodrom), 797-798 (Vojno Detention Centre), 800-802 (Vitina-Otok Camp), 807-808, 813, 815. In addition, Petković was found to have been aware of rapes during the HVO operations in Mostar Municipality. Trial Judgement, Vol. 4, paras 828, 843. The Trial Chamber also found that Petković was informed of: (1) the situation in Gornji Vakuf Municipality through a report which mentions, *inter alia*, thefts committed there; and (2) thefts in Vareš Municipality. Trial Judgement, Vol. 4, paras 130, 333, 705, 708, 710, 761, 765, 833, 848.

<sup>10235</sup> Trial Judgement, Vol. 4, paras 720, 730, 734-735, 777, 805, 808, 813, 816.

<sup>10236</sup> Trial Judgement, Vol. 4, paras 72, 827, 830, 834, 837, 840, 844. See also Trial Judgement, Vol. 4, para. 72.

labour or as human shields – as part of the CCP.<sup>10237</sup> In particular, the Trial Chamber found that Petković: (1) was aware of reports dated in the latter half of January 1993 on HVO crimes committed in Gornji Vakuf,<sup>10238</sup> which indicated that Muslim property had been destroyed and stolen and that “civilians” had been killed during the shelling in Duša;<sup>10239</sup> (2) issued an order on 18 April 1993 directing HVO units to gather information concerning the killing of captured soldiers and civilians;<sup>10240</sup> (3) witnessed the deplorable conditions in Sovići School in Jablanica Municipality during a visit on 4 May 1993;<sup>10241</sup> (4) received the CED Report dated 14 June 1993, which informed him of beatings, rapes, and possible murders in West Mostar;<sup>10242</sup> (5) knew that the shelling and firing on East Mostar between June 1993 and March 1994 caused deaths, injuries, and the destruction of property as he was regularly alerted by several international witnesses of attacks on civilian targets;<sup>10243</sup> (6) issued orders and numerous authorisations to use detainees for forced labour, including orders on 15 July and 8 August 1993 for the use of detainees from the Heliodrom and Vitina-Otok Camp on the front lines;<sup>10244</sup> and (7) received multiple letters from the ICRC in January 1994 informing him of deaths, or the possibility thereof, resulting from front line labour in the Heliodrom and Vojno Detention Centre as well as the violent mistreatment of detainees in Dretelj Prison.<sup>10245</sup>

3105. The Trial Chamber found that Ćorić: (1) shared the intent to remove the Muslim population from the HZ(R) H-B through acts of violence, and to that end, he facilitated, participated in, and contributed to the planning of, various military operations from January 1993 as well as arrests of Muslim men not belonging to any armed force;<sup>10246</sup> (2) occupied a key role in the operation of the network of HVO detention centres until 10 November 1993 by contributing to the arrest and detention of thousands of Muslims, knowingly contributing to their detention in harsh conditions, using detainees or allowing them to be used for work on the front line, and transferring them from one detention centre to another;<sup>10247</sup> (3) knew of the violent crimes committed during a number of HVO operations and in certain detention centres, including destruction of Muslim houses, murder,

<sup>10237</sup> Trial Judgement, Vol. 4, paras 66-68. See also, *e.g.*, Trial Judgement, Vol. 4, paras 695-697 (Prozor), 710 (Gornji Vakuf), 717-719, 721 (Jablanica), 730, 735, 750, 756 (Mostar), 776-777 (Vareš), 782 (Gabela Prison), 783, 785 (Dretelj Prison), 796 (the Heliodrom), 798 (Vojno Detention Centre), 800-802 (Vitina-Otok Camp), 820.

<sup>10238</sup> Trial Judgement, Vol. 4, para. 705, 707-708, 710, referring to, *inter alia*, Exs. P01351, P01357.

<sup>10239</sup> Trial Judgement, Vol. 4, paras 130, 333, 707, referring to Exs. P01351, P01357.

<sup>10240</sup> Trial Judgement, Vol. 4, para. 675, referring to Ex. P01959.

<sup>10241</sup> Trial Judgement, Vol. 2, paras 605-606, Vol. 4, paras 724, 780. See also Trial Judgement, Vol. 2, para. 575.

<sup>10242</sup> Trial Judgement, Vol. 4, paras 732, 828-829, 843, referring to Ex. P02770.

<sup>10243</sup> Trial Judgement, Vol. 4, paras 743, 748-750. Further, the Trial Chamber found that, having received several reports at the end of October 1993 informing him that HVO members had committed various violent crimes, including killing numerous civilians, during the attack on Stupni Do, Petković requested that an investigation be launched. See Trial Judgement, Vol. 3, para. 485, Vol. 4, paras 676, 761, 765.

<sup>10244</sup> Trial Judgement, Vol. 4, paras 672, 790-793, 800-802.

<sup>10245</sup> Trial Judgement, Vol. 4, paras 783, 794, 796-798.

<sup>10246</sup> Trial Judgement, Vol. 4, paras 65-68, 922-923, 928, 936-938, 944-945, 953, 971, 973, 982, 984-986, 994, 996, 1000, 1004.

forced removal, and detention of Muslim civilians, and mistreatment of Muslim detainees;<sup>10248</sup> (4) knew of or contributed to the climate of extreme violence in which the HVO operations were carried out in the municipalities of Gornji Vakuf and Mostar;<sup>10249</sup> and (5) intended, *inter alia*, the destruction of property, mistreatment during evictions and detentions, poor conditions of confinement, as well as murder in certain contexts – such as during attacks on villages and towns as well as linked to the use of detainees on the front lines for labour or as human shields – as part of the CCP.<sup>10250</sup> In particular, the Trial Chamber found that Ćorić: (1) had knowledge, by 5 July 1993, of the fact that HVO soldiers had shot at the Heliodrom detainees and, as of July 1993, accepted the mistreatment of the Heliodrom detainees;<sup>10251</sup> (2) must have known, as of 9 July 1993, of the overcrowding in Dretelj Prison;<sup>10252</sup> (3) was informed in mid-July 1993 that members of the Military Police had fired at a number of detainees in Dretelj Prison, wounding two and killing one;<sup>10253</sup> (4) was informed, through a report received on 29 July 1993, of the death of five prisoners in Dretelj Prison, three of whom had been shot dead, and two of whom had apparently died of “natural causes”;<sup>10254</sup> (5) at least in July, August, and September 1993, was informed of problems with the security of detainees inside the Heliodrom;<sup>10255</sup> (6) from July to at least October 1993, was regularly informed that the Heliodrom detainees were mistreated, wounded, or killed while working on the front line, and did nothing to prevent this practice;<sup>10256</sup> (7) received reports in August and October 1993 informing him of the poor detention conditions at the Heliodrom;<sup>10257</sup> (8) on 9 August 1993, signed a report for the period of 1 to 31 July 1993, which mentions an increase in crimes, including rape, committed in Mostar during the eviction campaigns;<sup>10258</sup> (9) was made aware of thefts committed by military policemen as early as 25 October 1992;<sup>10259</sup> (10) was informed, in mid-June 1993, that HVO soldiers were confiscating Muslim property during

<sup>10247</sup> Trial Judgement, Vol. 4, paras 971, 982, 994, 996-999, 1001.

<sup>10248</sup> Trial Judgement, Vol. 4, paras 921, 923 (Gornji Vakuf), 929-930, 934, 938, 945 (East and West Mostar), 948 (Ljubuški), 971 (the Heliodrom), 977, 982 (Ljubuški Prison and Vitina-Otok Camp), 994 (Dretelj Prison), 996-997 (Gabela Prison), 998 (Prozor Secondary School), 1000-1002. In addition, Ćorić was found to have been aware of thefts in Gornji Vakuf Municipality, thefts and sexual assaults in Mostar Municipality, and the murder of detainees at Dretelj Prison after mid-July 1993. Trial Judgement, Vol. 4, paras 1009-1014, 1018-1020.

<sup>10249</sup> Trial Judgement, Vol. 4, paras 933, 1009-1012.

<sup>10250</sup> Trial Judgement, Vol. 4, paras 66-68. See also, *e.g.*, Trial Judgement, Vol. 4, para. 923 (Gornji Vakuf), 928-929, 934 (West Mostar), 938 (East Mostar), 955-957, 965-966 (the Heliodrom), 974 (Ljubuški Prison), 977 (Vitina-Otok Camp), 987, 990, 994 (Dretelj Prison), 1000-1004.

<sup>10251</sup> Trial Judgement, Vol. 4, para. 955 (referring to Ex. P03209, Josip Praljak, T(F). 14732-14735 (27 Feb 2007)), 956-957, 971.

<sup>10252</sup> Trial Judgement, Vol. 4, paras 985 (referring to Ex. P03347), 987, 994.

<sup>10253</sup> Trial Judgement, Vol. 4, para. 988, referring to Exs. P03446, P03476.

<sup>10254</sup> Trial Judgement, Vol. 4, para. 988, referring to Ex. P03794.

<sup>10255</sup> Trial Judgement, Vol. 4, para. 955, referring to Exs. P00285, p. 99, P03942, p. 2, P05008, p. 1.

<sup>10256</sup> Trial Judgement, Vol. 2, para. 1484, Vol. 4, paras 955, 964-966. See Trial Judgement, Vol. 4, para. 910.

<sup>10257</sup> Trial Judgement, Vol. 4, para. 962, referring to Exs. P04186, P05563.

<sup>10258</sup> Trial Judgement, Vol. 4, para. 1013, referring to Ex. P04058, pp. 3, 4, 7, 14. The Trial Chamber also found that a 3 August 1993 report addressed directly to him indicated that members of the Vinko Škrobo and Benko Penavić ATGs were responsible for a large share of the crimes in Mostar. Trial Judgement, Vol. 4, para. 1013, referring to Ex. P03928.

<sup>10259</sup> Trial Judgement, Vol. 4, paras 1247, 1250.



evictions<sup>10260</sup> and, after the evictions, consented to HVO soldiers and members of the Military Police moving into the flats of those evicted;<sup>10261</sup> and (11) knew that the destruction of property formed part of the HVO operations in Gornji Vakuf in January 1993 and intended these crimes.<sup>10262</sup>

3106. Moreover, the Appeals Chamber takes account of findings made by the Trial Chamber in the context of Prlić's, Stojić's, Praljak's, Petković's, and Čorić's ability to foresee incidents other than those at issue here. In particular, the Trial Chamber concluded that Prlić must have foreseen the possible commission of: (1) murders linked to the detentions in Jablanica Municipality in April 1993 and murders committed during the campaigns of eviction in Mostar Municipality from at least June 1993;<sup>10263</sup> (2) rapes and sexual abuse in Mostar Municipality from at least June 1993;<sup>10264</sup> (3) destruction of the mosques in Jablanica Municipality in April 1993;<sup>10265</sup> and (4) the theft of Muslim property in Gornji Vakuf Municipality in the aftermath of the attack on 18 January 1993, in Jablanica Municipality in April 1993, and in Mostar Municipality from at least June 1993.<sup>10266</sup> The Trial Chamber concluded that Stojić could have foreseen that HVO members "would" commit: (1) sexual abuse in Mostar Municipality in July and September 1993;<sup>10267</sup> (2) thefts in Gornji Vakuf Municipality from January 1993;<sup>10268</sup> and (3) thefts in Mostar Municipality in May and June 1993 as well as between August and 15 November 1993.<sup>10269</sup> The Trial Chamber concluded that Praljak could have foreseen that HVO members "would" commit thefts in Gornji Vakuf Municipality from January 1993 and in Raštani village in Mostar Municipality around 24 August 1993.<sup>10270</sup> The Trial Chamber concluded that Petković could have foreseen that HVO members "would" commit: (1) thefts in Gornji Vakuf Municipality from January 1993;<sup>10271</sup> (2) thefts and destruction of mosques in Jablanica Municipality in April 1993;<sup>10272</sup> (3) sexual abuse and thefts in Mostar Municipality between June 1993 and February 1994;<sup>10273</sup> and (4) sexual abuse and thefts in Vareš Municipality in October and November 1993.<sup>10274</sup> The Trial Chamber concluded that Čorić: (1) could have foreseen that HVO members "would" commit thefts in Gornji Vakuf Municipality from January 1993 and thefts and sexual

<sup>10260</sup> Trial Judgement, Vol. 2, paras 871, 873-874, 876 (referring to, *inter alia*, Exs. P02749, P02769, P02754), Vol. 4, paras 929, 1011.

<sup>10261</sup> Trial Judgement, Vol. 2, para. 874, 876, Vol. 4, paras 929, 1011 (referring to, *inter alia*, Ex. P02879).

<sup>10262</sup> Trial Judgement, Vol. 4, paras 922-923. See also Trial Judgement, Vol. 4, para. 921.

<sup>10263</sup> Trial Judgement, Vol. 4, paras 283-284. See *supra*, paras 2838, 2844, 2847.

<sup>10264</sup> Trial Judgement, Vol. 4, para. 284. See *supra*, paras 2838, 2847.

<sup>10265</sup> Trial Judgement, Vol. 4, para. 283. See *supra*, paras 2838, 2844.

<sup>10266</sup> Trial Judgement, Vol. 4, paras 282-284. See *supra*, paras 2838, 2843-2844, 2847.

<sup>10267</sup> Trial Judgement, Vol. 4, paras 436-437. See *supra*, para. 2851.

<sup>10268</sup> Trial Judgement, Vol. 4, para. 439. See *supra*, para. 2850.

<sup>10269</sup> Trial Judgement, Vol. 4, paras 444-446. See *supra*, para. 2850, fn. 9409.

<sup>10270</sup> Trial Judgement, Vol. 4, paras 635, 638. See *supra*, para. 2882.

<sup>10271</sup> Trial Judgement, Vol. 4, para. 837. See *supra*, paras 2900, 2932.

<sup>10272</sup> Trial Judgement, Vol. 4, paras 838, 840, 852. See *supra*, paras 2900, 2932, 2961.

<sup>10273</sup> Trial Judgement, Vol. 4, paras 830, 845. See *supra*, paras 2900, 2909, 2940.

<sup>10274</sup> Trial Judgement, Vol. 4, paras 834, 848. See *supra*, paras 2900, 2916, 2951.

abuse in Mostar Municipality as of May 1993;<sup>10275</sup> and (2) could foresee that murders might be committed during detention in Dretelj Prison by mid-July 1993.<sup>10276</sup>

3107. In arriving at these conclusions, the Trial Chamber considered, *inter alia*, the respective Appellants' participation in the events in a particular municipality or detention facility, reports and orders which showed their knowledge of crimes in a particular municipality or detention facility, as well as their knowledge of or contribution to the climate of violence in which operations were carried out in a particular municipality.<sup>10277</sup> Importantly, these conclusions on Prlić's, Stojić's, Praljak's, Petković's, and Čorić's ability to foresee the above crimes mainly concern incidents which took place prior to the incidents at issue. However, apart from stating that it had no evidence relevant to the determination of their responsibility, the Trial Chamber did not explain on what basis it considered that the same factors were not relevant to their responsibility for the incidents at issue. This stands in stark contrast to the instances where the Trial Chamber found that foreseeability was not established but at least explained which factor was determinative of this finding.<sup>10278</sup>

3108. Moreover, having analysed the JCE III sections on each of the Appellants and having compared the incidents which the Trial Chamber expressly discussed with those it did not, the Appeals Chamber has been unable to discern a coherent pattern that reveals the reasoning underpinning the Trial Chamber's determination of the relevance of various factors to one incident versus another. For instance, on two occasions where the Trial Chamber expressly discussed and convicted Prlić and Petković for certain incidents, it referred, among other factors, to their awareness of the climate of violence against the Muslim population and/or crimes committed by the same perpetrators in another past operation in a different municipality.<sup>10279</sup> This indicates that the Trial Chamber itself considered such a circumstantial factor – *i.e.* the knowledge of crimes and violent atmosphere even in different municipalities – to be relevant. However, it is unclear how the Trial Chamber assessed these factors in relation to other incidents which the Trial Chamber did not expressly discuss.

<sup>10275</sup> Trial Judgement, Vol. 4, paras 1009, 1011, 1014. See *supra*, paras 2969, 2972, 2983.

<sup>10276</sup> Trial Judgement, Vol. 4, para. 1020. See Trial Judgement, Vol. 4, para. 1021. See also *supra*, paras 2969, 2993-2994.

<sup>10277</sup> Trial Judgement, Vol. 4, paras 282-284 (Prlić), 435, 438-439, 444-447 (Stojić), 633-638 (Praljak), 827-831, 833-834, 836-837, 839-840, 843-844, 846-848, 851-852 (Petković), 1009, 1011-1014, 1018 (Čorić). See *supra*, paras 2837-2838, 2849-2851, 2881-2882, 2899-2900, 2909, 2916, 2932, 2940, 2951, 2961, 2968-2969, 2972, 2983, 2993-2994.

<sup>10278</sup> Trial Judgement, Vol. 4, paras 285-287 (Prlić), 440-443, 448-449 (Stojić), 639-643 (Praljak), 823-825, 841, 849 (Petković), 1015-1016 (& fn. 1896), 1017-1019 (Čorić). See also, *e.g.*, *supra*, paras 3032-3033, 3056-3057, 3091-3095.

<sup>10279</sup> Trial Judgement, Vol. 4, paras 283 (in assessing Prlić's ability to foresee crimes in Jablanica Municipality in April 1993, the Trial Chamber referred to his awareness of the climate of violence against the Muslim population in Gornji Vakuf Municipality in January 1993), 826-830 (in assessing Petković's ability to foresee sexual violence during the eviction operations in West Mostar, Mostar Municipality, in June, July, and September 1993, the Trial Chamber

3109. Further, with regard to three incidents involving the same type of crimes committed in the same detention facility, the Trial Chamber expressly discussed the responsibility of Prlić and Petković only in relation to some of the incidents, and appears to have acquitted them due to their having received information on bad conditions in that detention facility only after the mentioned incidents occurred.<sup>10280</sup> By contrast, it did not discuss the remaining incidents in the same facility in the context of their JCE III responsibility at all.<sup>10281</sup> This further makes it impossible to discern on which basis the Trial Chamber expressly discussed all three incidents in this facility in assessing Ćorić's JCE III responsibility,<sup>10282</sup> while it discussed none of them in assessing Stojić's and Praljak's responsibility.<sup>10283</sup>

3110. It is also noteworthy that with regard to Stojić's and Praljak's responsibility under JCE III, the Trial Chamber did not discuss killing incidents at all, even in cases where killings occurred during the operations in which it found that Stojić and Praljak were involved or intended/accepted acts of violence or crimes.<sup>10284</sup> By contrast, the Trial Chamber expressly discussed certain incidents

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referred to his knowledge of crimes committed by the same perpetrators in Sovići and Doljani in Jablanica Municipality in April 1993).

<sup>10280</sup> Trial Judgement, Vol. 4, paras 285-286, 825.

<sup>10281</sup> This is visible in the Trial Chamber's discussion of Prlić's ability to foresee the death of a detainee on 16 July 1993 in Dretelj Prison – for which it acquitted Prlić, seemingly on the basis that he was informed of the bad detention conditions in Dretelj Prison only during meetings on 19 and 20 July 1993 – while it did not discuss his responsibility for the killing of three detainees in mid-July and the death of two detainees in August 1993 in the same facility. Compare Trial Judgement, Vol. 3, paras 85-91, 694, 745, 748, Vol. 4, paras 285-286 (concerning the death of a detainee in Dretelj Prison on 16 July 1993), with Trial Judgement, Vol. 3, paras 113-115, 119-122, 695-696, 746-748 (concerning the killing of three detainees in mid-July and the death of two detainees in Dretelj Prison in August 1993). With regard to Petković, the Trial Chamber ultimately concluded that he could not foresee two killing incidents in Dretelj Prison in mid-July 1993 because he was informed of the events as well as the poor conditions of confinement only in January 1994. The Trial Chamber expressly considered whether he could foresee these two incidents, but made no mention of a third incident which concerned the deaths of two detainees in Dretelj Prison in August 1993. Compare Trial Judgement, Vol. 3, paras 85-91, 113-115, 694-695, 745-746, 748, Vol. 4, para. 825 (concerning the killings on 14 July and the death as a result of poor conditions in mid-July 1993), with Trial Judgement, Vol. 3, paras 119-122, 696, 747-748 (concerning the death of two detainees in Dretelj Prison in August 1993).

<sup>10282</sup> Trial Judgement, Vol. 4, paras 1017-1020. The Trial Chamber found that, as of mid-July 1993, Ćorić was informed that HVO members were mistreating detainees at Dretelj Prison, and while he could not be found to have foreseen murders of detainees having taken place prior to that date, it became possible for him to foresee that murder might be committed in detention thereafter. The Trial Chamber therefore acquitted Ćorić of two incidents of murder in detention in mid-July 1993, but convicted him of one incident of murder in detention having taken place in August 1993. Trial Judgement, Vol. 4, paras 1018-1021.

<sup>10283</sup> See Trial Judgement, Vol. 4, paras 433-450, 632-644.

<sup>10284</sup> See Trial Judgement, Vol. 4, paras 434-450, 632-644. Notably, the Trial Chamber considered Stojić's participation in events in Mostar Municipality and his knowledge of the climate of extreme violence which existed there to conclude that he could have foreseen sexual violence in July and September 1993 and thefts in May and June 1993 and from August 1993 onwards, but did not discuss the killings which took place in that municipality during the same time frame, such as the killings of ten Muslim ABiH detainees at the Faculty of Mechanical Engineering between 10 and 11 May 1993, two other Muslim detainees between 8 and 11 July 1993, and a Muslim civilian in Buna on 14 July 1993. Compare Trial Judgement, Vol. 4, paras 349, 355-358, 434-437, 444-446, with Prosecution's JCE III Table (Stojić), incidents 3-4. With respect to Praljak, for instance, the Trial Chamber found that he planned and directed HVO military operations in Prozor Municipality as of 24 July 1993, was familiar with the situation in the field prior to that date, relying on, *inter alia*, a report to the HVO Main Staff dated 17 July 1993, and must have known that HVO members were removing and detaining the Muslim population from Prozor from July to August 1993. See Trial Judgement, Vol. 4, paras 566, 573. The Trial Chamber also found that Praljak participated in planning and directing the HVO operations in Mostar Municipality between 24 July and early November 1993. See Trial Judgement, Vol. 4, paras 577, 579-581, 586, 636. Yet, the Trial Chamber did not discuss killing incidents in these locations, including the killing of six



of sexual violence and thefts in such circumstances and determined that: (1) Stojić could have foreseen sexual violence in Mostar; (2) Stojić and Praljak could have foreseen thefts in Gornji Vakuf and Mostar; and (3) they could not have foreseen other incidents of theft or sexual violence.<sup>10285</sup> Similarly, although it relied on Petković's involvement in the HVO operations in the municipalities of Jablanica and Mostar when assessing his JCE III responsibility for sexual abuse and thefts in those locations, the Trial Chamber made no mention of killings that occurred in connection with those same operations.<sup>10286</sup> Likewise, the Trial Chamber omitted any express analysis of Ćorić's JCE III responsibility for killing incidents in Mostar Municipality, despite having found that he participated in planning the eviction operations there and having both expressly discussed and found him responsible for the thefts as well as the sexual violence in that location which were committed in connection with the eviction operations.<sup>10287</sup>

3111. Moreover, with regard to the destruction of the mosques in Sovići and Doljani in Jablanica Municipality in April 1993, the Appeals Chamber notes that the Trial Chamber found that "inasmuch as [that destruction] occurred during HVO military operations against Muslim-majority localities in which these troops destroyed many non-military structures, the Accused, as members of the JCE, knew that during these military operations the mosques might also be destroyed and took this risk", and stated that this would be discussed in relation to each of the Appellants' responsibility under JCE III.<sup>10288</sup> Despite this finding and others consistent with it,<sup>10289</sup> the Trial Chamber nevertheless held that Stojić and Pušić could not have foreseen the destruction of mosques

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captured Muslim civilians in Prajine and Tolovac in Prozor Municipality on 19 July 1993. See Trial Judgement, Vol. 4, paras 633-644. See also Prosecution's JCE III Table (Praljak), incidents 1, 3-4.

<sup>10285</sup> Trial Judgement, Vol. 4, paras 434-448, 633-643. In addition, the Appeals Chamber notes that despite its findings on Praljak's participation in, and knowledge of, events in municipalities of Prozor and Mostar during certain periods as described above (see *supra*, fn. 10284), the Trial Chamber did not discuss some incidents of sexual violence and theft that were committed in those municipalities during the same time frames. Compare Trial Judgement, Vol. 4, paras 566, 573, 577, 579-581, 586, 636, with Prosecution's JCE III Table (Praljak), incidents 14-18, 26-27.

<sup>10286</sup> Compare Trial Judgement, Vol. 2, paras 569, 580-581, 584 (factual findings on killings at Sovići School), 845-853, 903-909, 940-944 (factual findings on killings in Mostar), Vol. 3, paras 665-666 (legal findings on killings at Sovići School), 668-670, 717-719 (legal findings on killings in Mostar), Vol. 4, paras 826-830 (Petković's JCE III responsibility for sexual abuse in Mostar), 838-840 (Petković's JCE III responsibility for thefts at Sovići School), 842-845 (Petković's JCE III responsibility for thefts in Mostar), with Trial Judgement, Vol. 4, paras 823-825 (Petković's JCE III responsibility for murders in Stolac, Čapljina, and Dretelj Prison only). The Appeals Chamber notes that, with regard to Petković's JCE III responsibility for killings, the Trial Chamber only discussed killing incidents in the municipalities of Stolac and Čapljina and at Dretelj Prison and found that these killing incidents were not foreseeable to Petković. Trial Judgement, Vol. 4, paras 823-825.

<sup>10287</sup> See Trial Judgement, Vol. 4, paras 934, 938, 945, 1000 (Ćorić's participation in, and intent related to, the eviction operations in Mostar), 1010-1014 (Ćorić's JCE III responsibility for sexual abuse and thefts in Mostar). The Appeals Chamber notes that, with regard to Ćorić's JCE III responsibility for killings, the Trial Chamber only discussed killing incidents in the municipalities of Stolac and Čapljina and at Dretelj Prison. Of those, the Trial Chamber found him responsible for some killings in Dretelj Prison while it found that the rest were not foreseeable to him. Trial Judgement, Vol. 4, paras 1015-1020.

<sup>10288</sup> Trial Judgement, Vol. 4, para. 73. See Trial Judgement, Vol. 4, paras 71, 632, 822, 1008. See also Trial Judgement, Vol. 4, paras 433, 1213.

<sup>10289</sup> Trial Judgement, Vol. 4, paras 283 (finding that Prlić could foresee the destruction of mosques in Sovići and Doljani and willingly took that risk), 852 (finding that Petković could foresee the destruction of mosques in Sovići and Doljani and willingly took that risk).

in Sovići and Doljani<sup>10290</sup> and did not discuss the incident when assessing Praljak's or Čorić's responsibility under JCE III.<sup>10291</sup> Additionally, despite having found that the crime of destruction of institutions dedicated to religion or education was not part of the CCP before June 1993<sup>10292</sup> and that Stojić, Čorić, and Pušić were involved in various HVO activities against the Muslims in Mostar that began on 9 May 1993,<sup>10293</sup> the Trial Chamber failed to discuss whether they or any other of the Appellants were responsible, pursuant to JCE III liability, for the destruction of Baba Bešir Mosque, which it found had occurred "around 10 May 1993".<sup>10294</sup>

3112. All of these inconsistencies further raise questions as to the methodology of the Trial Chamber in determining which incident deserved an express discussion in the respective JCE III sections in relation to each of the Appellants.

3113. Based on the above, the Appeals Chamber, Judge Liu dissenting, considers that the Trial Chamber's blanket statement that there was no evidence with regard to Prlić's, Stojić's, Praljak's, Petković's, and Čorić's responsibility under JCE III for the incidents at issue<sup>10295</sup> does not appear to reflect its own assessment of the trial record. Apart from this statement, the Trial Chamber did not discuss which factors and findings it considered relevant but insufficient to establish the *mens rea* for JCE III.<sup>10296</sup> As a result, it is impossible to fully comprehend on what basis the Trial Chamber considered that the factors on which it relied to conclude that Prlić, Stojić, Praljak, Petković, and Čorić could have foreseen some crimes – resulting in their convictions – were insufficient to show that they could have foreseen the possibility that the incidents at issue might occur. Moreover, the Trial Chamber did discuss some incidents and acquitted Prlić, Stojić, Praljak, Petković, and Čorić thereof, but decided that the incidents at issue did not warrant any analysis. Other than a general statement that there was no relevant evidence,<sup>10297</sup> there is no clear explanation in the Trial Judgement on what basis these incidents were treated differently. In these circumstances, the

<sup>10290</sup> Trial Judgement, Vol. 4, paras 449 (finding that Stojić could not foresee the destruction of mosques in Sovići and Doljani), 1214 (finding that Pušić could not foresee the destruction of mosques in Sovići and Doljani).

<sup>10291</sup> See Trial Judgement, Vol. 4, paras 633-644 (Praljak), 1008-1020 (Čorić).

<sup>10292</sup> Trial Judgement, Vol. 4, paras 342, 433, 1213. See *supra*, para. 2833 & fn. 9243.

<sup>10293</sup> Trial Judgement, Vol. 4, paras 348-349, 426, 445, 928, 1000, 1110. Specifically, the Trial Chamber found that Stojić participated in planning the HVO military operations and the arrests of Muslims, and that Čorić contributed to planning, and Pušić took part in, the arrest campaigns. See Trial Judgement, Vol. 4, paras 348-349, 426, 445, 928, 1000, 1110.

<sup>10294</sup> Trial Judgement, Vol. 2, para. 791. See Trial Judgement, Vol. 2, para. 792, Vol. 4, para. 729. The Appeals Chamber recalls that the Trial Chamber erred in finding Petković responsible for the destruction of Baba Bešir Mosque pursuant to JCE I liability. See *supra*, paras 2447-2449.

<sup>10295</sup> See *supra*, paras 3096-3097, 3100.

<sup>10296</sup> Only in the section dealing with Čorić's JCE III responsibility, the Trial Chamber noted that it "received no evidence showing that [...] Čorić was informed of the other crimes not part of the [CCP], except for those set out" in that section. Trial Judgement, Vol. 4, para. 1022. However, even this statement does not elucidate how the Trial Chamber assessed other types of evidence. For example, it is unclear why facilitation of HVO operations was sufficient to infer that Čorić must have been aware of crimes in some locations, but not others. Compare Trial Judgement, Vol. 4, para. 1009, with Trial Judgement, Vol. 4, para. 1022.

<sup>10297</sup> See *supra*, paras 3096-3097, 3100.

Appeals Chamber, Judge Liu dissenting, finds that the Trial Chamber failed to explain, “in a clear and articulate manner”,<sup>10298</sup> how it reached the conclusion that Prlić, Stojić, Praljak, Petković, and Čorić were not responsible for the incidents at issue under JCE III liability. The Appeals Chamber, Judge Liu dissenting, finds that this omission amounts to a failure to provide a reasoned opinion, which constitutes an error of law.<sup>10299</sup>

(iii) Conclusion

3114. Based on the foregoing, the Appeals Chamber, Judge Liu dissenting, grants the Prosecution’s sub-ground of appeal 1(C) to the extent that it finds that the Trial Chamber committed an error of law in failing to provide a reasoned opinion in relation to Prlić’s, Stojić’s, Praljak’s, Petković’s, and Čorić’s JCE III liability with respect to the incidents at issue appealed by the Prosecution under this sub-ground of appeal. The Appeals Chamber will assess the impact of this finding below.<sup>10300</sup> In light of its conclusion on the Prosecution’s sub-ground of appeal 1(C), the Appeals Chamber need not consider the Prosecution’s arguments concerning these incidents<sup>10301</sup> under its remaining sub-grounds of appeal (namely, its sub-ground of appeal 1(E),<sup>10302</sup> and with respect to Čorić’s liability in relation to two incidents of murder in Čapljina, in addition to sub-ground of appeal 1(E), sub-grounds of appeal 1(A), 1(B), and 1(D))<sup>10303</sup> and dismisses them as moot.

(f) Implications of the Appeals Chamber’s findings on the Prosecution’s sub-grounds of appeal 1(A) and 1(C) and remedy sought

3115. The Appeals Chamber has found that the Trial Chamber erred in law in applying an incorrect legal standard regarding JCE III *mens rea* to the incidents appealed by the Prosecution under its sub-ground of appeal 1(A).<sup>10304</sup> It also found that the Trial Chamber erred in law in failing to provide a reasoned opinion with respect to the JCE III liability of Prlić, Stojić, Praljak, Petković,

<sup>10298</sup> *Stanišić and Župljanin* Appeal Judgement, para. 137.

<sup>10299</sup> See *supra*, para. 19.

<sup>10300</sup> See *infra*, paras 3115-3132.

<sup>10301</sup> See *supra*, para. 3079, fns 10103-10121.

<sup>10302</sup> In relation to Prlić, Stojić, Praljak, Petković, and Čorić’s responsibility, all incidents in question appealed under the Prosecution’s sub-ground of appeal 1(C) are also appealed under its sub-ground of appeal 1(E). Prosecution’s JCE III Table (Prlić), incidents 1-7, 9-12, 14-28, Prosecution’s JCE III Table (Stojić), incidents 1-19, 21-22, 24-26, 28, Prosecution’s JCE III Table (Praljak), incidents 1-18, 22-30, Prosecution’s JCE III Table (Petković), incidents 1-5, 8-18, 20, Prosecution’s JCE III Table (Čorić), incidents 1-4, 6, 8-9, 12-26, 30-31. With regard to the incident identified as incident 19 in Prosecution’s JCE III Table (Petković), see *supra*, fn. 10145.

<sup>10303</sup> Prosecution’s JCE III Table (Čorić), incidents 8-9. See *supra*, fns 9898, 10101.

<sup>10304</sup> See *supra*, para. 3030.

and Ćorić for the incidents appealed by the Prosecution under its sub-ground of appeal 1(C).<sup>10305</sup> The Appeals Chamber will now discuss the implications of those findings.

(i) Arguments of the Parties

3116. The Prosecution requests that the Appeals Chamber: (1) correct the Trial Chamber's errors;<sup>10306</sup> (2) engage in a *de novo* review and find that the elements of JCE III *mens rea* are met under Article 7(1) of the Statute;<sup>10307</sup> and (3) overturn the acquittals on these counts, convict the Appellants, and increase their sentences accordingly.<sup>10308</sup> The Prosecution sets out a number of the Trial Chamber's findings and evidence which, in its view, should result in convictions of the Appellants for numerous additional JCE III crimes.<sup>10309</sup> In the alternative, the Prosecution requests the Appeals Chamber to exercise its discretion to remand this issue to a bench of the Tribunal to apply the correct legal standards to the trial record.<sup>10310</sup>

3117. Prlić and Ćorić respond that entering a new conviction or increasing their respective sentences on appeal would violate their fundamental right to have their conviction reviewed by a higher tribunal, as required by Article 14(5) of the International Covenant on Civil and Political

<sup>10305</sup> See *supra*, para. 3114.

<sup>10306</sup> Prosecution's Notice of Appeal, para. 12; Prosecution's Appeal Brief, paras 25, 82, 98, 120, 134, 157, 172, 192, 219, 237, 268, 274, 277, 424; Appeal Hearing, AT. 763, 852 (28 Mar 2017).

<sup>10307</sup> Prosecution's Notice of Appeal, para. 12; Prosecution's Appeal Brief, paras 32, 43, 81-82, 98, 119-120, 134, 156-157, 172, 191-192, 219, 236-237, 268, 274, 277; AT. 754 (28 Mar 2017).

<sup>10308</sup> Prosecution's Notice of Appeal, para. 12; Prosecution's Appeal Brief, paras 20, 25, 32, 43, 82, 98, 120, 134, 157, 172, 192, 219, 237, 268, 274, 277, 424; Appeal Hearing, AT. 754, 763, 852 (28 Mar 2017). The Prosecution submits that if the Appeals Chamber enters convictions in relation to the relevant incidents under JCE III, it should consider the Appellants' responsibility under Article 7(3) for those crimes as an aggravating factor in sentencing. Prosecution's Appeal Brief, para. 424.

<sup>10309</sup> Prosecution's Appeal Brief, paras 25, 32, 43, 53. See Prosecution's Appeal Brief, paras 54-276 (Section G). In the alternative, in relation to sub-ground of appeal 1(C), and in the event the Appeals Chamber is not satisfied that the elements of JCE III are met, the Prosecution, in its notice of appeal, requests that the Appeals Chamber: (1) find that the elements of the other modes of responsibility pleaded in the Indictment are met; (2) convict the Appellants under Articles 7(1) and/or 7(3) of the Statute; and (3) increase their sentences accordingly. Prosecution's Notice of Appeal, para. 12. The Appeals Chamber notes, however, that, in its appeal brief, the Prosecution only mentions JCE III and superior responsibility as alternative modes of liability, while being silent with respect to other modes of liability. Further, only with respect to a limited number of incidents it challenges under its sub-ground of appeal 1(C), does the Prosecution, in its appeal brief, request that the Appeals Chamber find the Appellants responsible under superior responsibility in case it is not satisfied that the elements of JCE III are met. Compare Prosecution's Appeal Brief, para. 279, with Prosecution's JCE III Table (Prlić), Prosecution's JCE III Table (Stojić), Prosecution's JCE III Table (Praljak), Prosecution's JCE III Table (Petković), and Prosecution's JCE III Table (Ćorić). Those incidents are: (1) the killing of three Muslim detainees in mid-July 1993 and the death of two Muslim detainees as a result of mistreatment in August 1993, both at Dretelj Prison, as regards Prlić's liability (see Prosecution's JCE III Table (Prlić), incidents 9-10); (2) appropriation of property and plunder of property belonging to Muslims detained at the Silos in Čapljina Municipality on 23 August 1993 as regards Stojić's liability (see Prosecution's JCE III Table (Stojić), incident 28); and (3) the death of two Muslim detainees as a result of mistreatment at Dretelj Prison in August 1993 as regards Petković's liability (see Prosecution's JCE III Table (Petković), incident 8). Therefore the Appeals Chamber considers that the Prosecution has abandoned this argument with regard to the other incidents previously mentioned in its notice of appeal.

<sup>10310</sup> Prosecution's Notice of Appeal, para. 12; Prosecution's Reply Brief, para. 4. The Appeals Chamber notes that this argument is first raised by the Prosecution in its notice of appeal, but it is not further articulated in its appeal brief. However, because it is then reiterated in its reply brief, the Appeals Chamber understands the Prosecution not to have abandoned this alternative request on remedy.

Rights (“ICCPR”),<sup>10311</sup> which is “implicitly embedded in Article 25 of the Statute”.<sup>10312</sup> They argue that, in the event the Appeals Chamber finds that a new conviction should be entered or that the sentence should be increased, the Appeals Chamber should remit the case to the Trial Chamber.<sup>10313</sup>

3118. Stojić responds that should the Appeals Chamber grant the Prosecution’s first ground of appeal, it should decline to increase his sentence.<sup>10314</sup> Stojić alleges that the Prosecution has failed to show that any new conviction would increase the level of gravity of his criminal conduct viewed as a whole because the Trial Chamber entered convictions on the same counts in other municipalities and detention centres.<sup>10315</sup> In addition, he contends that contrary to the Prosecution’s submissions, the Trial Judgement “doesn’t leave behind the necessary building blocks, the factual foundations and findings, on which [the Appeals Chamber] could build new convictions”.<sup>10316</sup>

3119. Petković opposes the relief sought by the Prosecution in its sub-grounds of appeal 1(A) and 1(C), namely that the Appeals Chamber reverse the acquittal and convict Petković for the corresponding crimes, as it would deny his right to an appeal.<sup>10317</sup>

3120. Praljak and Pušić do not present any argument on remedy, neither in their briefs nor in their oral arguments.

<sup>10311</sup> Prlić’s Response Brief, paras 11-14, referring to, *inter alia*, Article 25 of the Statute, Article 14(5) of the ICCPR, *Mrkšić and Šljivančanin* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, para. 9, *Semanza* Appeal Judgement, Dissenting Opinion of Judge Pocar, para. 1; Ćorić’s Response Brief, para. 9, referring to Article 14(5) of the ICCPR. In relation to Article 14 of the ICCPR, Prlić also submits that in the *Tadić* Appeal Judgement, the Appeals Chamber “expressly adopted the comments in the Secretary General’s Report (S/25704) that the Tribunal ‘must respect internationally recognized standards regarding the rights of the accused including Article 14 of the [ICCPR]’” and ruled that this article “reflects an imperative norm of international law to which the Tribunal must adhere”. Prlić’s Response Brief, para. 13, referring to, *inter alia*, *Prosecutor v. Duško Tadić*, Case IT-94-1-A-AR77, Appeal Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, 27 February 2001, p. 3, UNSC Res. 827 (25 May 1995), Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704 (3 May 1993), paras 106, 116. See also Prlić’s Response Brief, para. 169.

<sup>10312</sup> Prlić’s Response Brief, para. 11.

<sup>10313</sup> Prlić’s Response Brief, para. 14; Ćorić’s Response Brief, para. 9.

<sup>10314</sup> Stojić’s Response Brief, para. 96. See also Stojić’s Response Brief, p. 83.

<sup>10315</sup> Stojić’s Response Brief, para. 96.

<sup>10316</sup> Appeal Hearing, AT. 804 (28 Mar 2017). See also Stojić’s Response Brief, paras 97-103. The Appeals Chamber further notes that, albeit in the context of Stojić’s responsibility under Article 7(3) of the Statute, he argues that the alternative solution offered by the Prosecution, to remit the question to a bench of the Tribunal, would violate his right to be tried without undue delay, noting in this regard that he voluntarily surrendered to the Tribunal more than ten years ago. Stojić’s Response Brief, para. 102, referring to Article 21(4)(c) of the Statute. He concludes that “if the issue cannot be fairly determined, it should not be determined at all”. Stojić’s Response Brief, para. 103.

<sup>10317</sup> Petković’s Response Brief, paras 5-6, 25-26; Appeal Hearing, AT. 816-818 (28 Mar 2017). To support his argument, Petković refers to the “separate opinions of Judge Pocar in the *Gotovina* case as well as in a series of other cases at this Tribunal, also at the European Court, the position was that an acquittal must not be reversed or overturned, regardless of the discretion of the Chamber to do so, if thereby they deny the accused’s right to an appeal”. Appeal Hearing, AT. 816 (28 Mar 2017). In support of his position, Petković also refers to the criminal law of the SFRY and the law currently in force in Croatia and Bosnia and Herzegovina, under which, he states, he “would be guaranteed the right not to have an acquittal turned into a conviction without assuring the adequate protection, meaning [...] the right to appeal”. Appeal Hearing, AT. 817-818 (28 Mar 2017).



3121. The Prosecution replies that the Statute authorises the Appeals Chamber to enter new convictions and increase sentences on appeal and that the Appeals Chamber has already done so “repeatedly”.<sup>10318</sup> The Prosecution asserts that the Trial Chamber “has already made most of the necessary underlying factual findings, and [that] the Appeals Chamber need only draw legal inferences from them”.<sup>10319</sup> It further argues that to the extent any “additional discrete factual finding” is needed, it would be within the competence of the Appeals Chamber to make such a finding because, when faced with an error of law, the Appeals Chamber “not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record”.<sup>10320</sup> In the alternative, the Prosecution contends that “should the Appeals Chamber deem remittal for further factual findings appropriate, any such remittal would be limited and could be accomplished expeditiously without undue delay”.<sup>10321</sup>

(ii) Analysis

3122. Where the Appeals Chamber finds an error committed by a trial chamber, the choice of a remedy lies within the discretion of the Appeals Chamber.<sup>10322</sup> Article 25 of the Statute, providing that the Appeals Chamber “may affirm, reverse or revise the decisions taken by the [t]rial [c]hambers”, is wide enough to confer such a faculty.<sup>10323</sup> The Appeals Chamber further recalls that this discretion must be exercised on proper judicial grounds on a case-by-case basis, balancing factors including fairness to the accused, the interests of justice, the nature of the offences, and the circumstances of the case.<sup>10324</sup>

3123. In the present case, the Appeals Chamber has found that the Trial Chamber erred in law in: (1) applying an incorrect legal standard regarding JCE III *mens rea* to the incidents appealed by the Prosecution under its sub-ground of appeal 1(A);<sup>10325</sup> and (2) failing to provide a reasoned opinion with respect to the JCE III liability of Prlić, Stojić, Praljak, Petković, and Čorić for the incidents appealed by the Prosecution under its sub-ground of appeal 1(C).<sup>10326</sup> Collectively, these errors concern Prlić’s alleged responsibility for 26 incidents of murder, sexual violence, theft, and destruction of mosques; Stojić’s alleged responsibility for 30 incidents of murder, sexual violence, theft, and destruction of mosques; Praljak’s alleged responsibility for 32 incidents of murder, sexual

<sup>10318</sup> Prosecution’s Reply Brief, para. 3, referring to Article 25(1) and Article 25(2) of the Statute, *Popović et al.* Appeal Judgement, para. 2117, *Dorđević* Appeal Judgement, paras 928, 981. See also Prosecution’s Reply Brief, para. 182.

<sup>10319</sup> Prosecution’s Reply Brief, para. 4. See also Appeal Hearing, AT. 758-760 (28 Mar 2017).

<sup>10320</sup> Prosecution’s Reply Brief, para. 4, referring to *Perišić* Appeal Judgement, para. 9.

<sup>10321</sup> Prosecution’s Reply Brief, para. 4.

<sup>10322</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1096; *Jelišić* Appeal Judgement, paras 73, 77.

<sup>10323</sup> *Jelišić* Appeal Judgement, para. 73.

<sup>10324</sup> *Jelišić* Appeal Judgement, para. 73. See *Šainović et al.* Appeal Judgement, fn. 5269. See also *Orić* Appeal Judgement, para. 185.

<sup>10325</sup> See *supra*, para. 3030.

violence, theft, and destruction of mosques; Petković's alleged responsibility for 18 incidents of murder, sexual violence, and theft; Ćorić's alleged responsibility for the 31 incidents of murder, sexual violence, theft, and destruction of mosques; and Pušić's alleged responsibility for 35 incidents of murder, sexual violence, theft, and destruction of mosques.<sup>10327</sup>

3124. According to the standard of appellate review, where the Appeals Chamber finds an error of law in the trial judgement arising from the application of the wrong legal standard, it will articulate the correct legal standard and review the relevant factual findings of the trial chamber accordingly.<sup>10328</sup> In so doing, the Appeals Chamber not only corrects the legal error, but when necessary, applies the correct legal standard to the evidence contained in the trial record,<sup>10329</sup> taking into account the trial chamber's findings as well as evidence in the trial record referred to by the trial chamber or identified by the parties.<sup>10330</sup> An error of law arising from a failure to provide a reasoned opinion allows the Appeals Chamber to consider the trial chamber's findings as well as evidence in the trial record referred to by the trial chamber or identified by the parties in order to determine whether a reasonable trier of fact could have reached the findings challenged by an appellant.<sup>10331</sup>

3125. However, were the Appeals Chamber to conduct its own review of the relevant evidence and factual findings of the Trial Chamber, it would have to make findings on each of the six Appellants' alleged responsibility under JCE III for each of the respective numbers of incidents, as described above,<sup>10332</sup> involving four different types of crimes<sup>10333</sup> that occurred in six municipalities and three detention facilities over a period of 11 months (between April 1993 and February 1994).<sup>10334</sup> Moreover, the evidence on which the Prosecution relies to establish each of the Appellants' *mens rea* for JCE III liability is of a circumstantial nature, pertaining to their conduct, knowledge, and intent over the period between October 1992 and the beginning of 1994 in various

<sup>10326</sup> See *supra*, para. 3114.

<sup>10327</sup> See *supra*, paras 3018, 3030, 3079, 3114.

<sup>10328</sup> *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Popović et al.* Appeal Judgement, para. 18; *Blaškić* Appeal Judgement, para. 15.

<sup>10329</sup> *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Popović et al.* Appeal Judgement, para. 18; *Blaškić* Appeal Judgement, para. 15.

<sup>10330</sup> *Stanišić and Župljanin* Appeal Judgement, para. 19; *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Popović et al.* Appeal Judgement, para. 18; *Kordić and Čerkez* Appeal Judgement, para. 21, fn. 12.

<sup>10331</sup> See *Stanišić and Župljanin* Appeal Judgement, para. 142, referring to, *inter alia*, *Kordić and Čerkez* Appeal Judgement, paras 383-388, *Nyiramasuhuko et al.* Appeal Judgement, para. 977; *Bizimungu* Appeal Judgement, para. 23, *Ndindilyimana et al.* Appeal Judgement, para. 293. See also *Bagosora and Nsengiyumva* Appeal Judgement, paras 683, 688.

<sup>10332</sup> See *supra*, para. 3123.

<sup>10333</sup> In addition, the Trial Chamber sub-divided murder (one of the four types of crimes) into two sub-types – namely murder while in detention and murder during evictions. See *supra*, para. 2833 & fn. 9243.

<sup>10334</sup> See *supra*, paras 3018, 3030, 3079, 3114.

locations in the territory of the HZ(R) H-B.<sup>10335</sup> The Prosecution also requests the Appeals Chamber to make certain supplementary factual findings, referring, at times, to certain pieces of evidence to which the Trial Chamber did not explicitly refer or referred in a different context.<sup>10336</sup> Given that the circumstances surrounding each of the six Appellants are all different, a comprehensive understanding of the entire trial record would be necessary in order for the Appeals Chamber to conduct the requested analysis in a manner which is coherent and at the same time tailored to each of the Appellants when determining whether the *mens rea* requirements of JCE III liability are met with respect to each of them. This would amount to re-evaluating the entire trial record and, in effect, require the Appeals Chamber to decide the case anew. However, an appeal is not a trial *de novo*,<sup>10337</sup> and the Appeals Chamber cannot be expected to act as a primary trier of fact.<sup>10338</sup> Indeed, the Appeals Chamber is not in the best position to assess the reliability and credibility of the evidence.<sup>10339</sup> The Appeals Chamber accordingly declines to determine whether the elements of JCE III liability are met with respect to the incidents at issue.

3126. Rule 117(C) of the Rules provides that: “[i]n appropriate circumstances the Appeals Chamber may order that the accused be retried according to law”.<sup>10340</sup> The Appeals Chamber also has the inherent power to remit limited issues to be determined by either the original or a newly composed trial chamber.<sup>10341</sup>

3127. Should the case be remitted to hear limited issues, the original Trial Chamber would have been best placed to make the necessary findings on the basis of the original trial record. The Appeals Chamber notes, however, that the original Trial Chamber cannot be re-constituted because one of the three judges (Judge Árpád Prandler) is deceased.<sup>10342</sup>

<sup>10335</sup> See Prosecution’s Appeal Brief, paras 8-13, 54-59, 69-82, 85-98, 104-120, 123-134, 141-157, 160-166, 168-172, 180-192, 198-206, 208-219, 227-237, 243-246, 249-268.

<sup>10336</sup> See, e.g., Prosecution’s Appeal Brief, paras 93 (referring to, *inter alia*, Ex. P00648), 96, 106, 111 (referring to, *inter alia*, Exs. P04177, pp. 2-3, P04161 (confidential), pp. 2-3), 143 (referring to Slobodan Praljak, T. 44247 (2 Sept 2009), 73 (& fn. 223), 231, 262 (referring to, *inter alia*, Witness BB, T. 17213 (closed session) (17 Apr 2007), Witness BA, T. 7208-7210 (closed session) (25 Sept 2006), Exs. P09678 (confidential), paras 11, 14, P03804 (confidential), para. 9), 265 (& fn. 824) (referring to Ex. P01393).

<sup>10337</sup> See, e.g., *Stanišić and Simatović* Appeal Judgement, para. 127; *Orić* Appeal Judgement, para. 186.

<sup>10338</sup> *Krajišnik* Appeal Judgement, para. 798; *Orić* Appeal Judgement, para. 186.

<sup>10339</sup> See, e.g., *Krajišnik* Appeal Judgement, para. 798; *Orić* Appeal Judgement, para. 186.

<sup>10340</sup> According to the jurisprudence of the Tribunal and the ICTR, a retrial pursuant to this Rule inherently includes the possibility of hearing evidence that was not presented during the initial proceedings. *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-AR73, Decision on the Prosecutor’s Appeal Concerning the Scope of Evidence to be Adduced in the Retrial, 24 March 2009, para. 13; *Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj*, Case No. IT-04-84bis-AR73.1, Decision on Haradinaj’s Appeal on Scope of Partial Retrial, 31 May 2011, para. 24.

<sup>10341</sup> *Stanišić and Simatović* Appeal Judgement, para. 125, referring to *Čelebići* Appeal Judgement, paras 711, 713, Disposition, p. 306 (item nos 2-4), *Mucić et al.* Appeal Judgement on Sentence, paras 3, 9-10, 16-17.

<sup>10342</sup> The Appeals Chamber also notes that another one of the three judges (Judge Stefan Trechsel) no longer holds office at the Tribunal or the International Residual Mechanism for Criminal Tribunals.

3128. Should the case be remitted to a newly constituted trial chamber to make the necessary findings on the basis of the original trial record, it would encounter similar difficulties to those which would be encountered by the Appeals Chamber in carrying out its assessment of the impact of the Trial Chamber's errors; namely, the newly constituted trial chamber would have to assess the evidence on the record without the benefit of having heard the evidence, an endeavour which would be rendered even more difficult given the complexity of the case and the circumstantial nature of the evidence.

3129. With respect to either a retrial or remittance, the Appeals Chamber considers that proceedings (including the appeal) have been on-going for more than 13 years.<sup>10343</sup> The Trial Chamber imposed on the Appellants sentences ranging from 10 to 25 years of imprisonment,<sup>10344</sup> and each of the Appellants has served a substantial portion of those sentences. The fundamental trial rights of the Appellants, in particular the right to be tried without undue delay, militate against prolonging proceedings any further, and it should be noted that it is through no fault of their own that the Trial Chamber erred in law.<sup>10345</sup>

3130. Further, the Appeals Chamber also takes into account the fact that convictions for serious crimes constituting grave breaches of the Geneva Conventions,<sup>10346</sup> violations of the laws or customs of war,<sup>10347</sup> and crimes against humanity<sup>10348</sup> have been upheld by the Appeals Chamber,<sup>10349</sup> and the gravity of these crimes requires a severe and proportionate sentence.<sup>10350</sup>

<sup>10343</sup> The Appeals Chamber notes that the Appellants voluntarily surrendered to the Tribunal on 5 April 2004. Their initial appearance took place on 6 April 2004. Trial Judgement, Vol. 5, para. 33. The Appeals Chamber also notes that throughout these proceedings the Appellants have been granted provisional release on a number of occasions. See, e.g., Trial Judgement, Vol. 4, fns 2457 (Prlić), 2478 (Stojić), 2497 (Praljak), 2518 (Petković), 2534 (Ćorić), 2545 (Pušić).

<sup>10344</sup> At trial, Prlić was sentenced to 25 years' imprisonment, Stojić to 20 years' imprisonment, Praljak to 20 years' imprisonment, Petković to 20 years' imprisonment, Ćorić to 16 years' imprisonment, and Pušić to 10 years' imprisonment. Trial Judgement, Vol. 4, Disposition, pp. 430-431.

<sup>10345</sup> See *Jelisić* Appeal Judgement, para. 75.

<sup>10346</sup> Namely: wilful killing (Count 3), inhuman treatment (sexual assault) (Count 5), unlawful deportation of a civilian (Count 7), unlawful transfer of a civilian (Count 9), unlawful confinement of a civilian (Count 11), inhuman treatment (conditions of confinement) (Count 13), inhuman treatment (Count 16), extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly (Count 19), and extensive appropriation of property not justified by military necessity and carried out unlawfully and wantonly (Count 22).

<sup>10347</sup> Namely: unlawful labour (Count 18), destruction or wilful damage done to institutions dedicated to religion or education (Count 21), plunder of public or private property (Count 23), unlawful attack on civilians (Count 24), and unlawful infliction of terror on civilians (Count 25).

<sup>10348</sup> Namely: persecution (Count 1), murder (Count 2), rape (Count 4), deportation (Count 6), inhumane acts (forcible transfer) (Count 8), imprisonment (Count 10), inhumane acts (conditions of confinement) (Count 12), and inhumane acts (Count 15).

<sup>10349</sup> See *infra*, paras 3359-3366.

<sup>10350</sup> See *infra*, paras 3359-3366.

3131. Recalling that an order for retrial is an exceptional measure to which resort must necessarily be limited,<sup>10351</sup> the Appeals Chamber finds that on balance, the interests of justice will be better served if it declines to order a retrial or remit limited issues for further proceedings.

3132. In light of the foregoing and conscious of the tasks lying within its functions,<sup>10352</sup> the Appeals Chamber finds that the appropriate course of action is to decline to quash the acquittals entered by the Trial Chamber and appealed by the Prosecution under its sub-grounds of appeal 1(A) and 1(C), or to order a retrial or a remittance.

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<sup>10351</sup> *Stanišić and Simatović* Appeal Judgement, para. 127; *Muvunyi* Appeal Judgement, para. 148.

<sup>10352</sup> *Orić* Appeal Judgement, para. 186.

## IX. SUPERIOR RESPONSIBILITY

### A. Introduction

3133. The Indictment alleged that, in addition or in the alternative to their liability under Article 7(1) of the Statute, the Appellants were responsible for crimes committed by their subordinates pursuant to Article 7(3) of the Statute.<sup>10353</sup> The Trial Chamber, having found that the crimes committed in the municipality of Prozor in October 1992 were not part of the CCP, limited its analysis of Prlić's, Stojić's, Praljak's, Petković's, and Čorić's superior responsibility to these crimes.<sup>10354</sup> The Trial Chamber considered that "it [had] evidence that might be relevant only to proving" the superior responsibility of Stojić, Praljak, Petković, and Čorić for crimes committed in Prozor in October 1992.<sup>10355</sup> Thus, the Trial Chamber did not consider: (1) the superior responsibility of Stojić, Praljak, Petković, and Čorić for crimes committed in 1993 that were not part of the CCP; or (2) Prlić's and Pušić's responsibility under Article 7(3) of the Statute. It found Čorić responsible under Article 7(3) of the Statute for the crimes committed in Prozor in October 1992, but only for those occurring before 26 October 1992, and convicted him of inhumane acts (Count 15), inhuman treatment (Count 16), extensive destruction of property (Count 19), and plunder (Count 23).<sup>10356</sup>

3134. The Prosecution appeals the Trial Chamber's decision to acquit Prlić, Stojić, Praljak, Petković, and Čorić of superior responsibility for certain crimes,<sup>10357</sup> arguing that they should have been convicted pursuant to Article 7(3) of the Statute for failing to punish these crimes committed by forces under their effective control.<sup>10358</sup> Specifically, the Prosecution alleges that the Trial Chamber erred: (1) in law by failing to adjudicate Prlić's, Stojić's, Praljak's, Petković's, and Čorić's superior responsibility for crimes other than those committed in Prozor in October 1992;<sup>10359</sup> and alternatively, (2) in fact as no reasonable trier of fact could have concluded that they

<sup>10353</sup> Indictment, paras 228-229.

<sup>10354</sup> Trial Judgement, Vol. 4, para. 1234. Notably, Pušić was not charged with the crimes committed in Prozor in October 1992. Indictment, para. 230; Trial Judgement, Vol. 4, fn. 2305.

<sup>10355</sup> Trial Judgement, Vol. 4, para. 1234.

<sup>10356</sup> Trial Judgement, Vol. 4, paras 1251-1252, Disposition, p. 431. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter convictions under Counts 17 and 20 of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 431.

<sup>10357</sup> These crimes, for which the Trial Chamber found that Prlić, Stojić, Praljak, Petković, and Čorić were not responsible through their participation in the JCE, are murder and wilful killing with respect to Dretelj Prison (Prlić and Čorić); appropriation of property and/or plunder with respect to Čapljina and Vareš (Stojić); rape, inhuman treatment (sexual assault), appropriation of property, and plunder with respect to Vareš (Praljak); and murder and wilful killing with respect to Dretelj Prison as well as appropriation of property and plunder in Vareš (Petković). Prosecution's Appeal Brief, para. 279.

<sup>10358</sup> Prosecution's Appeal Brief, paras 278-280.

<sup>10359</sup> Prosecution's Appeal Brief, paras 278, 281-283.

were not criminally responsible.<sup>10360</sup> Ćorić also appeals the Trial Chamber's findings and argues that it erred in law and in fact by convicting him of superior responsibility for the crimes committed in Prozor in October 1992.<sup>10361</sup>

## **B. Alleged Errors Concerning the Pleading of Superior Responsibility in the Indictment**

### 1. Arguments of the Parties

3135. In response to the Prosecution's appeal against his acquittal for superior responsibility, Petković argues that the Indictment is defective in relation to the pleading of this mode of liability.<sup>10362</sup> He specifically contends that the Indictment lacks all the relevant material facts required for the proper pleading of liability under Article 7(3) of the Statute.<sup>10363</sup> He submits that the pleadings are too general and do not specify the crimes alleged or differentiate between the individual accused. Petković contends therefore that the Indictment is impermissibly vague and violates his rights.<sup>10364</sup> He requests that the Prosecution's ground of appeal 2 be dismissed for this reason alone.<sup>10365</sup>

3136. The Prosecution replies that Petković had sufficient notice prior to the start of the trial and that paragraphs concerning Article 7(3) responsibility and allegations on each crime site were cross-referenced.<sup>10366</sup> It contends that the Appellants were alleged to be responsible for the crimes under both Articles 7(1) and 7(3) of the Statute.<sup>10367</sup> The Prosecution also submits that the material facts were sufficiently pleaded and refers to paragraphs in the Indictment concerning the crimes at issue, Petković's effective control over the perpetrators, his knowledge, and his failure to punish.<sup>10368</sup>

### 2. Analysis

3137. As a preliminary matter, the Appeals Chamber notes that Petković's arguments regarding the pleading of superior responsibility in the Indictment are raised in response to the Prosecution's appeal against his acquittal for this mode of liability. The Appeals Chamber recalls that, according

<sup>10360</sup> Prosecution's Appeal Brief, para. 280.

<sup>10361</sup> Ćorić's Appeal Brief, paras 211-226.

<sup>10362</sup> Petković's Response Brief, paras 98-103.

<sup>10363</sup> Petković's Response Brief, para. 98 & fn. 90.

<sup>10364</sup> Petković's Response Brief, para. 98. Petković further argues that the Prosecution's pre-trial brief and opening statement did not offer any clarity, and that he took issue with the inadequate pleadings in his pre-trial and final trial briefs. Petković's Response Brief, paras 99-102.

<sup>10365</sup> Petković's Response Brief, para. 103.

<sup>10366</sup> Prosecution's Reply Brief, para. 123.

<sup>10367</sup> Prosecution's Reply Brief, para. 123.

<sup>10368</sup> Prosecution's Reply Brief, para. 124, referring to Indictment, paras 9-10, 17.4(a)-(b), 17.4(d), 17.4(h)-(i), 17.4(m)-(o), 25, 39(b)-(d), 40, 190-193, 208, 211, 214-216, 228. The Prosecution further contends that any defect was cured by post-indictment communications and that Petković's conduct of his defence demonstrated that his ability to prepare same was not materially impaired. Prosecution's Reply Brief, para. 125.

to paragraph 5 of the Practice Direction on Formal Requirements, if an appellant relies on a particular ground to reverse an acquittal, the respondent may support the acquittal on additional grounds in the respondent's brief.<sup>10369</sup> Therefore, the Appeals Chamber will consider Petković's arguments.

3138. The Appeals Chamber recalls that:

in a case where superior criminal responsibility pursuant to Article 7(3) of the Statute is alleged, the material facts which must be pleaded in the indictment are:

(a) (i) that the accused is the superior of (ii) subordinates sufficiently identified, (iii) over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and (iv) for whose acts he is alleged to be responsible;

(b) the conduct of the accused by which he may be found to (i) have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates, and (ii) the related conduct of those others for whom he is alleged to be responsible. The facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision, because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue; and

(c) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.<sup>10370</sup>

3139. The Trial Chamber, in a pre-trial decision, addressed the issues raised by the Appellants concerning the pleading of superior responsibility and found “that [paragraph 228 of the Indictment] when read in conjunction with the context of the Indictment (in particular the paragraphs stating the Accused's positions of command or authority) sufficiently inform the accused of their alleged criminal responsibility pursuant to Article 7(3) of the Statute”.<sup>10371</sup> The Indictment clearly alleges that each Appellant was criminally responsible under Article 7(3) of the Statute “[i]n addition or in the alternative” to responsibility under Article 7(1) of the Statute.<sup>10372</sup> Generally, the Indictment alleges that each Appellant was involved in various aspects of the Herceg-Bosna/HVO governmental, political, and military structures and policies, all of which was then used to pursue and implement the joint criminal enterprise.<sup>10373</sup> More specifically, the Appeals Chamber notes that the Indictment explicitly pleads Petković's official positions during the Indictment period and alleges that he “exercised *de jure* and/or *de facto* command and control over the Herceg-Bosna/HVO armed forces” and that he “exercised effective control and substantial

<sup>10369</sup> *Popović et al.* Appeal Judgement, para. 542.

<sup>10370</sup> *Blaškić* Appeal Judgement, para. 218 (internal references omitted). See also *Blaškić* Appeal Judgement, para. 219; *Ndiindiliyimana et al.* Appeal Judgement, para. 201; *Nahimana et al.* Appeal Judgement, para. 323.

<sup>10371</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision on Defence Preliminary Motions Alleging Defect in the Form of the Indictment, 22 July 2005, para. 59.

<sup>10372</sup> Indictment, para. 228.

<sup>10373</sup> Indictment, para. 17.



influence” over these forces.<sup>10374</sup> Petković was also alleged to have “had command authority over the Herceg-Bosna/HVO civilian police”.<sup>10375</sup> The Indictment also sets out the alleged involvement of the HVO and the Military Police in crimes committed in the various municipalities.<sup>10376</sup> Thus, in the Appeals Chamber’s view, allegations of Petković having a superior-subordinate relationship with the perpetrators of crimes, and the identity of his subordinates, were sufficiently pleaded.

3140. Regarding the pleading of the knowledge requirement, the Appeals Chamber notes that paragraph 228 of the Indictment specifically alleges that “each of the accused [...] knew or had reason to know that such persons were about to commit or had committed such acts or omissions”. Notably, throughout the Indictment the conduct of the HVO which allegedly resulted in crimes is stated in detail.<sup>10377</sup> Further, the Indictment sets out a case against Petković which concerns, *inter alia*, his participation in high-level meetings of the HVO and the Herceg-Bosna/HVO leadership, his approval, ordering, and directing of operations and the actions of the HVO forces, and his facilitation of and participation in various crimes.<sup>10378</sup> Recalling that an indictment must be considered as a whole,<sup>10379</sup> the Appeals Chamber considers that paragraphs 10, 17.4, 39, 40, 208, 215, and 228 of the Indictment, read in combination, sufficiently plead Petković’s conduct whereby he had the required knowledge of crimes being committed by his subordinates. Likewise, Petković’s alleged failure to take necessary and reasonable measures to prevent or punish crimes is adequately set out in the Indictment and was in fact expressly stated.<sup>10380</sup> In this regard, the Appeals Chamber recalls that “it will be sufficient in many cases to plead that the accused did not take any necessary and reasonable measure to prevent or punish the commission of criminal acts”.<sup>10381</sup> Therefore, regardless of the fact that superior responsibility is alleged against *all* the Appellants,<sup>10382</sup> the Indictment clearly states that *each* accused is charged individually with this mode of liability and Petković’s alleged criminal conduct and proximity to the crimes charged are pleaded with sufficient specificity.

<sup>10374</sup> Indictment, paras 9-10, 17.4(a). See Indictment, para. 228.

<sup>10375</sup> Indictment, para. 10. See Indictment, para. 228.

<sup>10376</sup> See, generally, Indictment, paras 25-217.

<sup>10377</sup> See, *e.g.*, Indictment, paras 188-193, 208, 211, 215 (regarding killings at Dretelj Prison and theft of property in Stupni Do, Vareš Municipality).

<sup>10378</sup> Indictment, paras 10, 17.4, 39. See Indictment, paras 40, 193, 208, 214-216 (regarding killings at Dretelj Prison and Petković’s knowledge of HVO “atrocities” in Stupni Do, Vareš Municipality).

<sup>10379</sup> *Popović et al.* Appeal Judgement, para. 68.

<sup>10380</sup> Indictment, para. 228. See Indictment, paras 10, 17.4, 39, 193, 215 (alleging that none of the HVO commanders involved in the attack on Stupni Do was suspended or disciplined).

<sup>10381</sup> *Nahimana et al.* Appeal Judgement, para. 323.

<sup>10382</sup> See Indictment, paras 39, 228. See also *supra*, para. 3135.

3141. The Appeals Chamber thus finds that Petković has not shown that the Indictment is defective on the pleading of his superior responsibility and his arguments are dismissed.<sup>10383</sup>

**C. Alleged Failure to Adjudicate Prlić's, Stojić's, Praljak's, Petković's, and Čorić's Superior Responsibility (Prosecution's Ground 2)**

**1. Arguments of the Parties**

3142. The Prosecution submits that the Trial Chamber erred in law by entering acquittals against Prlić, Stojić, Praljak, Petković, and Čorić for certain crimes<sup>10384</sup> before considering all charged modes of liability.<sup>10385</sup> The Prosecution argues that the Trial Chamber was required to address superior responsibility and that doing so was neither optional nor discretionary.<sup>10386</sup> It contends that the Trial Chamber erroneously concluded that it was not required to reach findings in respect of every mode of responsibility alleged in the Indictment as “[t]his reasoning cannot apply to acquittals or concurrent Article 7(3) charges”.<sup>10387</sup> The Prosecution argues that, as the Appeals Chamber considers an appellant’s responsibility under Article 7(3) of the Statute if an Article 7(1) conviction is overturned, then it “necessarily follows that a trial chamber must do the same”.<sup>10388</sup> It also argues that even when a conviction is entered under Article 7(1) of the Statute, superior responsibility must be considered for sentencing purposes.<sup>10389</sup> The Prosecution requests that the Trial Chamber’s errors be corrected, that convictions be entered against Prlić, Stojić, Praljak, Petković, and Čorić under Article 7(3) of the Statute, and that their sentences be increased.<sup>10390</sup> Alternatively, the Prosecution requests that the issue of their superior responsibility be remanded to a bench of the Tribunal for determination.<sup>10391</sup>

3143. Prlić responds that the Trial Chamber’s failure to analyse his superior responsibility “may be a potential legal error” but nonetheless the Trial Chamber did not make the necessary findings for new convictions to be entered on appeal based on alternative modes of liability.<sup>10392</sup> Prlić also argues that his fair trial rights would be compromised if new convictions are entered as he would

<sup>10383</sup> The Appeals Chamber considers it unnecessary to address Petković’s and the Prosecution’s remaining arguments on whether any defect in the Indictment concerning superior responsibility was cured.

<sup>10384</sup> See *supra*, fn. 10357.

<sup>10385</sup> Prosecution’s Appeal Brief, paras 278, 281-282.

<sup>10386</sup> Appeal Hearing, AT. 764-766 (28 Mar 2017). See Appeal Hearing, AT. 852 (28 Mar 2017).

<sup>10387</sup> Prosecution’s Appeal Brief, para. 281, referring to Trial Judgement, Vol. 4, fn. 3.

<sup>10388</sup> Prosecution’s Appeal Brief, para. 282.

<sup>10389</sup> Prosecution’s Appeal Brief, para. 283. The Prosecution replies that Čorić and Praljak misinterpret its arguments and the relief it seeks, respectively. Prosecution’s Reply Brief, paras 87-88.

<sup>10390</sup> Prosecution’s Appeal Brief, para. 323; Prosecution’s Reply Brief, para. 3. If convictions are entered for the crimes under JCE III, the Prosecution requests that findings on the Appellants’ superior responsibility be made and subsequently treated as an aggravating factor. Prosecution’s Appeal Brief, para. 322.

<sup>10391</sup> Prosecution’s Appeal Brief, para. 324.

<sup>10392</sup> Prlić’s Response Brief, para. 169.

not have had the opportunity to challenge the evidence relied on by the Appeals Chamber.<sup>10393</sup> Similarly, Stojić argues that the Appeals Chamber cannot fairly enter convictions against him as the Trial Chamber's factual findings are limited and it did not consider the necessary inferences for superior responsibility.<sup>10394</sup> He argues that entering convictions would lead the Appeals Chamber to make entirely new factual findings; findings which he would be unable to appeal.<sup>10395</sup> Stojić also responds that the alternative relief sought by the Prosecution to remand the matter would also violate his right to a fair hearing and his right to be tried without undue delay.<sup>10396</sup>

3144. Praljak responds that, while the Trial Chamber may have erred by failing to provide a reasoned opinion on why it did not enter convictions against him for superior responsibility, it did not err by acquitting him.<sup>10397</sup> Petković asserts that the Prosecution fails to establish that the Trial Chamber erred in not making a finding on his superior responsibility.<sup>10398</sup> Petković also argues that his acquittals should not be overturned as doing so would deny him his right to appeal.<sup>10399</sup> Ćorić responds that the Prosecution misinterprets the Trial Judgement and the prevailing case-law.<sup>10400</sup> He argues that the case-law does not support the assertions that a trial chamber: (1) must examine superior responsibility if liability under Article 7(1) of the Statute has already been established; or (2) is obliged to make explicit findings on superior responsibility for sentencing purposes.<sup>10401</sup> Ćorić also responds that the appropriate remedy, if any, would be to remand the matter to the Trial Chamber for re-sentencing as imposing a harsher penalty on appeal would deprive him of his right to appeal the new sentence.<sup>10402</sup>

3145. The Prosecution replies that it would be appropriate in this case for the Appeals Chamber to enter new convictions and increase the sentences, as the Trial Chamber "already made most of the necessary underlying factual findings, and the Appeals Chamber need only draw legal inferences from them".<sup>10403</sup> The Prosecution also replies that if remand of the matter is deemed appropriate, any such remittal would be limited and could be accomplished expeditiously without undue delay.<sup>10404</sup>

<sup>10393</sup> Prlić's Response Brief, paras 11-14, 169.

<sup>10394</sup> Stojić's Response Brief, paras 98-103.

<sup>10395</sup> Stojić's Response Brief, para. 101.

<sup>10396</sup> Stojić's Response Brief, para. 102.

<sup>10397</sup> Praljak's Response Brief, para. 125.

<sup>10398</sup> Petković's Response Brief, para. 106. See Appeal Hearing, AT. 818 (28 Mar 2017).

<sup>10399</sup> Appeal Hearing, AT. 815-818 (28 Mar 2017).

<sup>10400</sup> Ćorić's Response Brief, paras 70-72. See Ćorić's Response Brief, para. 88.

<sup>10401</sup> Ćorić's Response Brief, para. 71.

<sup>10402</sup> Ćorić's Response Brief, para. 9.

<sup>10403</sup> Prosecution's Reply Brief, para. 4.

<sup>10404</sup> Prosecution's Reply Brief, para. 4.

## 2. Analysis

3146. The Trial Chamber, after noting that the Appellants were charged with each mode of liability under Article 7(1) of the Statute as well as superior responsibility,<sup>10405</sup> considered “that the analysis of the [Appellants’] responsibility from the perspective of their participation in a JCE is the correct legal approach” and that, “[t]herefore, the other modes of participation alleged in the Indictment will be examined solely for those crimes not falling within the JCE”.<sup>10406</sup> After analysing the evidence, the Trial Chamber found that some criminal acts committed in 1993 in various municipalities did not form part of the CCP, *i.e.* murders, thefts, and sexual abuse committed during evictions and detention, as well as destruction of mosques prior to June 1993.<sup>10407</sup> The Trial Chamber considered these criminal acts under JCE III liability and convicted Prlić, Stojić, Praljak, Petković, and Čorić for some incidents but acquitted them for other incidents, including those incidents for which the Prosecution is now requesting a reversal of the acquittals under its ground of appeal 2.<sup>10408</sup> Specifically, these are certain incidents of murder and wilful killing committed at Dretelj Prison in August 1993, incidents of rape and inhuman treatment (sexual assault) committed in Vareš Municipality in October 1993, plunder committed in Čapljina Municipality between 13 and 16 July 1993, and incidents of plunder and appropriation of property committed in Stupni Do and Vareš town in October 1993.

3147. However, in the beginning of its discussion on other forms of responsibility, the Trial Chamber concluded that “[i]nsofar as only the crimes committed in the Municipality of Prozor in October 1992 [were] not part of the common criminal purpose, the [Trial] Chamber will analyse the responsibility of the Accused pursuant to other modes of participation under the Statute only with respect to these crimes.”<sup>10409</sup> As noted above, it then proceeded to only address superior responsibility for crimes committed in Prozor in October 1992.<sup>10410</sup> The Appeals Chamber will now consider whether, in relation to crimes not falling within the CCP for which Prlić, Stojić, Praljak,

<sup>10405</sup> Trial Judgement, Vol. 4, para. 1.

<sup>10406</sup> Trial Judgement, Vol. 4, para. 2. See Trial Judgement, Vol. 4, para. 1234; *supra*, para. 3133. The Trial Chamber relied on a single trial decision in the *Stanišić and Župljanin* case which states that the Tribunal’s case-law does not “establish a rule that a Trial Chamber must make findings on all modes of liability charged in an indictment”, and that it would not be in the interests of judicial economy “to make superfluous findings on modes of liability”. *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Denying Prosecution Motion Requesting Findings on All Modes of Liability Charged in the Indictment, 16 January 2013 (“*Stanišić and Župljanin* Decision of 16 January 2013”), paras 2-3.

<sup>10407</sup> Trial Judgement, Vol. 4, paras 70-73, 281, 433, 632, 822, 1008, 1213.

<sup>10408</sup> Trial Judgement, Vol. 4, paras 281-288, 433-450, 632-644, 822-853, 1008-1021. See *supra*, paras 2833-2834, 3001-3002, 3004. The Appeals Chamber excludes Pušić from the analysis on this section as he was not charged with superior responsibility and the Prosecution has not argued on appeal that any other mode of liability is applicable to Pušić.

<sup>10409</sup> Trial Judgement, Vol. 4, para. 1234.

<sup>10410</sup> See *supra*, para. 3133.

Petković, and Ćorić were acquitted, the Trial Chamber erred in law by failing to adjudicate on modes of liability charged in the Indictment other than JCE III liability.<sup>10411</sup>

3148. The Appeals Chamber recalls that the crimes alleged by the Prosecution as giving rise to superior responsibility were crimes the Trial Chamber excluded from the CCP and for which the Trial Chamber acquitted Prlić, Stojić, Praljak, Petković, and Ćorić pursuant to JCE III liability.<sup>10412</sup> The Appeals Chamber is of the view that the Trial Chamber, by only addressing the superior responsibility of Prlić, Stojić, Praljak, Petković, and Ćorić for crimes committed in Prozor in October 1992 on the basis that they were the only crimes that were not part of the CCP,<sup>10413</sup> disregarded that it had elsewhere acquitted them under JCE III liability for the incidents now in question.<sup>10414</sup>

3149. Moreover, the Appeals Chamber recalls that, when an accused is charged in an indictment cumulatively under Articles 7(1) and 7(3) of the Statute, the Trial Chamber is required to make findings as to whether the accused incurred superior responsibility and that failure to do so constitutes an error of law.<sup>10415</sup> *A fortiori*, the Appeals Chamber finds that the Trial Chamber – having found that an element necessary for a finding of the commission pursuant to JCE III liability had not been proven – erred by failing to make findings on whether Prlić, Stojić, Praljak, Petković, and Ćorić were responsible for failing to punish crimes under Article 7(3) of the Statute, as an alternative mode of liability.<sup>10416</sup>

3150. In light of the above, the Appeals Chamber grants the Prosecution's ground of appeal 2 in part and finds that the Trial Chamber erroneously failed to adjudicate Prlić's, Stojić's, Praljak's, Petković's, and Ćorić's superior responsibility for all the crimes for which it otherwise found an element necessary for a finding that commission pursuant to JCE III liability had not been proven. However, the Appeals Chamber will limit its consideration of their superior responsibility to those

<sup>10411</sup> See *infra*, para. 3149.

<sup>10412</sup> Trial Judgement, Vol. 4, paras 70, 72.

<sup>10413</sup> Trial Judgement, Vol. 4, para. 1234.

<sup>10414</sup> Trial Judgement, Vol. 4, para. 2. See Trial Judgement, Vol. 4, para. 1234; *supra*, paras 3133, 3146.

<sup>10415</sup> *Setako* Appeal Judgement, para. 268. See also *Nyiramasuhuko et al.* Appeal Judgement, fn. 2845. As a result, the Appeals Chamber finds that, for the purposes of sentencing, the Trial Chamber erred in law by failing to make findings on whether Prlić, Stojić, Praljak, Petković, and Ćorić were responsible as superiors for crimes falling within the CCP and those considered under JCE III liability. However, given that the Prosecution did not appeal this issue, the Appeals Chamber declines to make findings as to the consequences of this error of law.

<sup>10416</sup> Cf. *Gacumbitsi* Appeal Judgement, paras 112, 116, 120-124; *Ntakirutimana and Ntakirutimanmasuhuko et al.* Appeal Judgement, paras 528-537. Superior responsibility was charged in the Indictment and the Prosecution maintained its case alleging superior responsibility against the Appellants throughout the trial. See Indictment, para. 228; Prosecution's Pre-Trial Brief, para. 228; Prosecution's Final Brief, paras 161-162, 517, 519, 637, 645, 851, 854, 859, 971, 973, 979, 1180, 1182. The Appeals Chamber considers that the *Stanišić and Župljanin* Decision of 16 January 2013, rendered by a trial chamber, does not provide sufficient support for the approach taken by the Trial Chamber in light of the jurisprudence established by the Appeals Chamber.

criminal incidents which the Prosecution has appealed.<sup>10417</sup> The Appeals Chamber will now consider whether it should embark on a determination of their responsibility as superiors for the crimes in question.

3151. As recalled above,<sup>10418</sup> where the Trial Chamber is found to have erred, the choice of remedy lies within the discretion of the Appeals Chamber in light of Article 25 of the Statute.<sup>10419</sup> In the present case, the Trial Chamber failed to adjudicate the superior responsibility of: (1) Prlić, Petković, and Čorić for certain incidents of murder and wilful killing at Dretelj Prison in Čapljina Municipality between mid-July 1993 and August 1993;<sup>10420</sup> (2) Praljak for incidents of rape and inhuman treatment (sexual assault) in Vareš Municipality in October 1993;<sup>10421</sup> and (3) Stojić for plunder committed in Čapljina Municipality between 13 and 16 July 1993.<sup>10422</sup> Regarding thefts in Vareš Municipality in October 1993, the Trial Chamber also failed to adjudicate the superior responsibility of: (1) Stojić, Praljak, and Petković for plunder and appropriation of property committed in Stupni Do;<sup>10423</sup> and (2) Stojić and Praljak for plunder and appropriation of property committed in Vareš town.<sup>10424</sup>

3152. If the Appeals Chamber were to conduct its own review of the relevant evidence and factual findings of the Trial Chamber, it would have to determine whether Prlić, Stojić, Praljak, Petković, and Čorić: (1) had the material ability to prevent crimes or punish the perpetrators of each relevant incident; (2) knew or had reason to know that the perpetrators had committed the criminal incidents; and (3) failed to take necessary and reasonable measures to punish the perpetrators. In this regard, the Appeals Chamber notes that all the Trial Chamber's findings on the Appellant's responsibility for and knowledge of crimes, with the exception of Čorić, were made in the context of JCE liability. The Appeals Chamber also considers that: (1) each Appellant's authority over, and material ability to punish, the perpetrators of the specific incidents varies; and (2) the *mens rea* assessment would require inferences to be drawn from circumstantial evidence. Considering these factors, the rights of the accused, and the circumstances of this case, the Appeals Chamber is of the view that an assessment of the superior responsibility of the five Appellants for various crimes on appeal would

<sup>10417</sup> See *supra*, paras 3134, 3146.

<sup>10418</sup> See *supra*, para. 3122.

<sup>10419</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1096; *Jelisić* Appeal Judgement, paras 73, 77. See *supra*, para. 3122.

<sup>10420</sup> See Trial Judgement, Vol. 3, paras 693-696, 745-748, Vol. 4, paras 281, 285-286, 288, 822, 825, 853, 1008, 1017-1021, 1233-1251. See also Prosecution's Appeal Brief, para. 279.

<sup>10421</sup> See Trial Judgement, Vol. 3, paras 767-768, 779-780, Vol. 4, paras 632, 640, 643-644, 1233-1251. See also Prosecution's Appeal Brief, para. 279.

<sup>10422</sup> See Trial Judgement, Vol. 3, paras 1674-1676, Vol. 4, paras 433, 448, 450, 1233-1251. See also Prosecution's Appeal Brief, para. 279.

<sup>10423</sup> See Trial Judgement, Vol. 3, paras 1650-1653, 1681-1683, Vol. 4, paras 433, 442-443, 450, 632, 639, 643-644, 822, 847, 849, 853, 1233-1251. See also Prosecution's Appeal Brief, para. 279.

not be in the interests of justice. The Appeals Chamber recalls that an appeal is not a trial *de novo*,<sup>10425</sup> and it cannot be expected to act as a primary trier of fact.<sup>10426</sup> The Appeals Chamber therefore declines to determine whether the elements of superior responsibility are met with respect to the incidents at issue.

3153. Moreover, for the same reasons discussed above – particularly, the length of time Prlić, Stojić, Praljak, Petković, and Čorić have already served in custody, and the protracted length of these proceedings<sup>10427</sup> – a retrial or remittance is not an appropriate remedy when balancing their rights, the interests of justice, and the circumstances of this case.

3154. In light of the foregoing, and being conscious of the tasks lying within its functions,<sup>10428</sup> the Appeals Chamber finds that the appropriate course of action is to decline to quash the acquittals entered by the Trial Chamber and appealed by the Prosecution under its ground of appeal 2, or to order a retrial or a remittance of the matter. Having granted the Prosecution's ground of appeal 2 to the extent it concerns the legal error by the Trial Chamber, the Appeals Chamber dismisses the remainder of this ground of appeal concerning the remedy sought.

**D. Alleged Errors in Convicting Čorić for Failing to Punish Subordinates**  
**(Čorić's Ground 9)**

3155. The Trial Chamber found Čorić responsible under Article 7(3) of the Statute for some crimes committed in Prozor Municipality in October 1992.<sup>10429</sup> Specifically, the Trial Chamber found that, from 24 October 1992 to at least 30 October 1992, after the takeover of Prozor town, HVO soldiers and members of the Military Police destroyed approximately 75 Muslim houses and other property.<sup>10430</sup> Based on these events, the Trial Chamber convicted Čorić of inhumane acts as a crime against humanity (Count 15), and inhuman treatment (Count 16) and extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly (Count 19) as grave breaches of the Geneva Conventions.<sup>10431</sup> The Trial Chamber also convicted Čorić of plunder

<sup>10424</sup> See Trial Judgement, Vol. 3, paras 1650-1653, 1681-1683, Vol. 4, paras 433, 442-443, 450, 639, 643-644, 1233-1251. See also Prosecution's Appeal Brief, para. 279.

<sup>10425</sup> See, e.g., *Stanišić and Simatović* Appeal Judgement, para. 127; *Orić* Appeal Judgement, para. 186. See also *supra*, para. 3125.

<sup>10426</sup> *Krajišnik* Appeal Judgement, para. 798; *Orić* Appeal Judgement, para. 186. See also *supra*, para. 3125.

<sup>10427</sup> See *supra*, paras 3126-3132. The Prosecution has not demonstrated that remittance of the issue of superior responsibility "could be accomplished expeditiously without undue delay". See *supra*, para. 3145.

<sup>10428</sup> *Orić* Appeal Judgement, para. 186.

<sup>10429</sup> Trial Judgement, Vol. 4, para. 1251. The Trial Chamber seemingly excluded from Čorić's responsibility those crimes committed as of 26 October 1992. See Trial Judgement, Vol. 4, para. 1252.

<sup>10430</sup> Trial Judgement, Vol. 2, paras 50, 53-55, Vol. 4, para. 1249.

<sup>10431</sup> Trial Judgement, Vol. 3, paras 1207, 1297, 1523-1524, Vol. 4, para. 1251, Disposition, p. 431. On the basis of the principle of cumulative convictions, the Trial Chamber did not enter convictions under Counts 17 (cruel treatment as a violation of the laws or customs of war) and 20 (wanton destruction of cities, towns or villages, or devastation not

of private property as a violation of the laws or customs of war (Count 23) for the theft of at least 30 vehicles by members of the Military Police on 23 and 24 October 1992 in Prozor town.<sup>10432</sup>

3156. Regarding the thefts, the Trial Chamber considered the evidence of Witness Zdenko Andabak but gave it little weight due to his participation in the Prozor events as Commander of the 2<sup>nd</sup> Military Police Battalion.<sup>10433</sup> The Trial Chamber assigned more weight to Exhibit P00648, a report dated 25 October 1992 from Colonel Željko Šiljeg (“Šiljeg’s Report”) concerning approximately 30 illegally seized motor vehicles being in the possession of a part of the Military Police unit under the command of Andabak.<sup>10434</sup> The Trial Chamber also took into account the 14 November 1992 Order issued by Ćorić and Praljak to Andabak, among others, for the return of the stolen vehicles to their owners.<sup>10435</sup> It further considered Exhibit P00536, which is an undated report from Andabak recounting his activities between 21 and 29 October 1992 (“Andabak’s Report”), in arriving at its findings on the destruction of property and the thefts.<sup>10436</sup>

### 1. Arguments of the Parties

3157. Ćorić argues that the Trial Chamber erred in law and in fact by convicting him as a superior for the crimes committed in Prozor.<sup>10437</sup> Ćorić first disputes the Trial Chamber’s assessment of the evidence,<sup>10438</sup> and submits that the Trial Chamber “ignored the evidence when it assigned little weight to the statements of Andabak”.<sup>10439</sup> Ćorić contends that the Trial Chamber erroneously discredited Andabak, whose report stated that the HOS were the sole perpetrators of the thefts, based on its conclusion that the HOS had already been dissolved. Ćorić submits that HOS units existed until 1993 and that not all HOS units joined the HVO.<sup>10440</sup> He argues that the Trial Chamber’s discounting of Andabak’s evidence because he was involved as a commander of a

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justified by military necessity as a violation of the laws or customs of war) of the Indictment. Trial Judgement, Vol. 4, Disposition, p. 431. See Trial Judgement, Vol. 3, paras 1399, 1557.

<sup>10432</sup> Trial Judgement, Vol. 3, para. 1654, Vol. 4, para. 1251, Disposition, p. 431. The Appeals Chamber observes that the Trial Chamber, at times, appeared to refer to these seizures as having taken place on 25 October 1992. See Trial Judgement, Vol. 2, para. 59, Vol. 4, paras 1246-1247.

<sup>10433</sup> Trial Judgement, Vol. 2, para. 59.

<sup>10434</sup> Trial Judgement, Vol. 2, para. 59, Vol. 4, paras 1246-1248. See Trial Judgement, Vol. 2, paras 57-58, Vol. 3, para. 1654. Colonel Željko Šiljeg was the commander of the HVO North-West OZ which included, among others, the HVO Rama Brigade in Prozor. Trial Judgement, Vol. 1, para. 783, Vol. 2, para. 13.

<sup>10435</sup> Trial Judgement, Vol. 2, para. 59, Vol. 4, paras 1247-1248.

<sup>10436</sup> Trial Judgement, Vol. 2, para. 59, Vol. 4, para. 1249.

<sup>10437</sup> Ćorić’s Appeal Brief, paras 211, 226. See also Ćorić’s Appeal Brief, para. 290.

<sup>10438</sup> Ćorić’s Appeal Brief, paras 213-215, 225-226.

<sup>10439</sup> Ćorić’s Appeal Brief, para. 213. See Ćorić’s Appeal Brief, para. 299. Ćorić asserts that Andabak was a respected officer in the post-Dayton Armed Forces of BiH. Ćorić’s Appeal Brief, para. 214. Ćorić also asserts that the Trial Chamber erred in drawing a negative inference from his promotion of Andabak as after 2001, Andabak was promoted to the rank of colonel which demonstrated “his high credibility and respectable character”. Ćorić’s Appeal Brief, para. 301. See Appeal Hearing, AT. 668-669 (24 Mar 2017).

<sup>10440</sup> Ćorić’s Appeal Brief, paras 213, 225, referring to Exs. P01901, 2D03080, 5D00130, P00687, P10984, Witness 4D-AA, T. 49263-49265 (9 Feb 2010), Milivoj Gagro, T. 2733 (29 May 2006), Milivoj Petković, T. 50071-50073



Military Police unit in the Prozor events is erroneous and inconsistent with its treatment of Šiljeg's "words".<sup>10441</sup> Ćorić points out that Šiljeg was an HVO commander and Andabak's superior, and submits that if involvement in fighting was reasonably used to discredit Andabak's evidence then Šiljeg's "accusations" should have been similarly discredited.<sup>10442</sup> He also argues that Andabak was cross-examined while Šiljeg was not a witness, and that the Trial Chamber failed to assess Andabak's demeanour.<sup>10443</sup> Ćorić further contends that the Trial Chamber gave no explanation on why Šiljeg was "a reliable witness", and failed to take into account that he may have been self-interested.<sup>10444</sup> He concludes that "the veracity/reliability of Šiljeg is such that no reasonable Chamber could rely upon his untested [statements] over other evidence".<sup>10445</sup>

3158. Regarding Šiljeg's Report, Ćorić argues that this evidence speaks to the theft of the vehicles only and cannot serve as a basis for his alleged knowledge or failure to act.<sup>10446</sup> Ćorić further contends that the Trial Chamber misinterpreted Šiljeg's Report as: (1) it was addressed to the Military Police Administration, as one of its recipients, and not to him personally; (2) it refers to only a part of Andabak's Military Police unit being involved; (3) it states that there were indications that property of Croats was looted; (4) it indicates that Šiljeg was convinced that the Chief of the Military Police Administration did not know what was happening on the field; (5) it shows that Šiljeg did not believe that the perpetrators were under the control of the Chief of the Military Police Administration; and (6) it would only give him notice of crimes committed by unknown perpetrators.<sup>10447</sup>

3159. Ćorić argues that there is no evidence connecting Andabak's Military Police unit with the crimes other than thefts,<sup>10448</sup> and that the Trial Chamber erred by finding that these other crimes were linked to Military Police units under Ćorić's effective control.<sup>10449</sup> He submits that the Trial Chamber did not identify the perpetrators of the destruction of property or how they were subordinated to him. Ćorić contends that the evidence shows that he did not have command

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(25 Feb 2010), Dragan Pinjuh, T. 37726-37727 (4 Mar 2009), Zrinko Tokić, T. 45351-45352 (29 Sept 2009). See Ćorić's Appeal Brief, para. 299.

<sup>10441</sup> Ćorić's Appeal Brief, para. 214.

<sup>10442</sup> Ćorić's Appeal Brief, para. 214. Ćorić replies that, as Šiljeg is treated like a JCE member in the Trial Judgement, his evidence must be rejected if Andabak's evidence is rejected because he is an alleged JCE member. Ćorić's Reply Brief, paras 49-50, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 333, 692.

<sup>10443</sup> Ćorić's Appeal Brief, para. 214.

<sup>10444</sup> Ćorić's Appeal Brief, paras 214-215. Ćorić argues that: (1) the Trial Chamber failed to address the fact that Šiljeg complained of misappropriation of UNPROFOR fuel trucks by the Military Police but then these trucks were found in his possession and he refused to return them; and (2) Šiljeg denied the existence of detention facilities in Prozor despite the fact that they were under his command. Ćorić's Appeal Brief, para. 215.

<sup>10445</sup> Ćorić's Appeal Brief, para. 215.

<sup>10446</sup> Ćorić's Appeal Brief, paras 216, 219, referring to Exs. P00648, P00640 (confidential). Ćorić also argues that the Trial Chamber failed to consider that the vehicles were confiscated by the Military Police from criminals at checkpoints and were being safeguarded for return to their owners. Ćorić's Appeal Brief, para. 221.

<sup>10447</sup> Ćorić's Appeal Brief, paras 223, 226.

<sup>10448</sup> Ćorić's Appeal Brief, para. 216.

authority over Military Police units once re-subordinated.<sup>10450</sup> He submits that the Trial Chamber's finding on his superior role is contradicted by its earlier findings that the Military Police were re-subordinated to the HVO commanders and that he only retained limited powers over them.<sup>10451</sup> Ćorić argues that it is not shown how his limited powers resulted in effective control or the power to punish.<sup>10452</sup>

3160. Regarding his knowledge of the crimes, Ćorić submits that the Trial Chamber relied only on evidence that he "may have had [knowledge] about [the] damage occurring during combat", which is collateral damage and is insufficient to give him notice of crimes.<sup>10453</sup> Ćorić also submits that no reasonable chamber would find that he was well informed of crimes committed by HVO forces in Prozor. He relies on Andabak's evidence "that neither Franji[ć] nor the Brigade SIS reported" any crimes committed in Prozor to Andabak and asserts that he "certainly [...] could not receive any such reports either".<sup>10454</sup> Ćorić also argues that: (1) the Trial Chamber erroneously relied on the 14 November 1992 Order, as it does not confirm that he knew who committed crimes; and (2) at the time, there was no reason to punish Andabak as he was not identified as a perpetrator.<sup>10455</sup>

3161. Ćorić further submits that some measures were taken in relation to the crimes and specifies that: (1) the Military Police Administration sent the CPD to Prozor, took stock of and began processing all unsolved crimes, brought the Military Police from another zone, arrested persons for crimes, and questioned Franjić;<sup>10456</sup> (2) a commission was formed in the Military Police Administration that co-operated with Andabak's Military Police unit to compile a list of the stolen vehicles which were returned to their owners;<sup>10457</sup> and (3) the 14 November 1992 Order confirmed that Šiljeg was ordered to return the vehicles.<sup>10458</sup> Ćorić contends that if he and the Military Police Administration "decided not to punish Andabak or others, it could also be, because [...] the

<sup>10449</sup> Ćorić's Appeal Brief, para. 219.

<sup>10450</sup> Ćorić's Appeal Brief, para. 218.

<sup>10451</sup> Ćorić's Appeal Brief, para. 218. See *supra*, paras 2479-2490. See also Ćorić's Appeal Brief, paras 101-102. Ćorić contends that the Trial Chamber found that his powers were limited to recruitment and appointments. Ćorić's Appeal Brief, para. 218, referring to Trial Judgement, Vol. 4, paras 873-876.

<sup>10452</sup> Ćorić's Appeal Brief, para. 218.

<sup>10453</sup> Ćorić's Appeal Brief, para. 219, referring to Trial Judgement, Vol. 4, para. 1249 (referring to Ex. P00536).

<sup>10454</sup> Ćorić's Appeal Brief, para. 220, referring to Zdenko Andabak, T. 50954-50956, 50960-50961 (15 Mar 2010). Ćorić asserts that Ilija Franjić was first the Commander of the Rama Brigade and then the Commander of the 2<sup>nd</sup> Military Police Battalion, until he resigned and became the Commander of the Rama Brigade again. Ćorić's Appeal Brief, para. 220.

<sup>10455</sup> Ćorić's Appeal Brief, para. 224.

<sup>10456</sup> Ćorić's Appeal Brief, para. 220, referring to Zdenko Andabak, T. 50960-50961 (15 Mar 2010), Ex. 3D00422.

<sup>10457</sup> Ćorić's Appeal Brief, para. 221, referring to Zdenko Andabak, T. 51070 (17 Mar 2010).

<sup>10458</sup> Ćorić's Appeal Brief, para. 222. See Ćorić's Reply Brief, para. 50.

requirements of the law [of BiH] were satisfied by the return of property, and [...] no action by [him] or anyone under law was required”.<sup>10459</sup>

3162. The Prosecution responds that Ćorić fails to show that the Trial Chamber abused its discretion in its assessment of Andabak’s evidence and Šiljeg’s Report.<sup>10460</sup> Specifically, it argues that the Trial Chamber assigned little weight to Andabak’s evidence as he was credibly linked directly to the Prozor crimes,<sup>10461</sup> while Šiljeg was never implicated in the Prozor crimes and did not share Andabak’s motivation to lie.<sup>10462</sup> The Prosecution contends that Ćorić repeats arguments made at trial on Šiljeg’s credibility without showing an error.<sup>10463</sup> It also responds that the Trial Chamber properly found that Ćorić had effective control over the Military Police in Prozor in 1992, and that the 14 November 1992 Order, which was enforced, showed his effective control.<sup>10464</sup>

3163. Regarding Ćorić’s knowledge of the crimes committed by his subordinates in Prozor, the Prosecution argues that he had sufficiently alarming information to put him on notice of the crimes,<sup>10465</sup> and that he merely disagrees with the Trial Chamber’s conclusions without showing that they were unreasonable.<sup>10466</sup> The Prosecution asserts that: (1) the Trial Chamber properly relied on Šiljeg’s Report in finding that Ćorić was made aware of the crimes;<sup>10467</sup> (2) Ćorić misinterprets the Trial Chamber’s use of Šiljeg’s Report;<sup>10468</sup> and (3) the Trial Chamber relied on Šiljeg’s Report in combination with Andabak’s Report.<sup>10469</sup> The Prosecution also argues that Ćorić’s repeated trial argument regarding Andabak’s notice of crimes should be dismissed as he relies on Andabak’s discredited testimony.<sup>10470</sup>

<sup>10459</sup> Ćorić’s Appeal Brief, para. 222. Ćorić submits that Article 147 of the Criminal Code of BiH provides that “if the offender had restored stolen movable property to the injured party before he learned of the commencement of criminal proceedings, he may be relieved from the punishment”. Ćorić’s Appeal Brief, para. 222. See Ćorić’s Appeal Brief, para. 299.

<sup>10460</sup> Prosecution’s Response Brief (Ćorić), paras 222-223, 226-227, 230, referring to Ex. P00648.

<sup>10461</sup> Prosecution’s Response Brief (Ćorić), para. 225, referring to Ex. P00648. See Appeal Hearing, AT. 653 (24 Mar 2017). The Prosecution argues that the Trial Chamber heard the argument that Andabak was a respected officer in the post-Dayton Armed Forces of BiH and clearly considered it to be irrelevant. Prosecution’s Response Brief (Ćorić), para. 226.

<sup>10462</sup> Prosecution’s Response Brief (Ćorić), para. 226. See Prosecution’s Response Brief (Ćorić), para. 229.

<sup>10463</sup> Prosecution’s Response Brief (Ćorić), para. 228. The Prosecution also argues that Ćorić fails to explain how Šiljeg’s alleged involvement in the misappropriation of fuel trucks eight months after the events in Prozor, and his denials about detention facilities, cast doubt on Šiljeg’s Report. Prosecution’s Response Brief (Ćorić), para. 228.

<sup>10464</sup> Prosecution’s Response Brief (Ćorić), para. 235. See Prosecution’s Response Brief (Ćorić), para. 218.

<sup>10465</sup> Prosecution’s Response Brief (Ćorić), paras 218, 220-221, 234.

<sup>10466</sup> Prosecution’s Response Brief (Ćorić), para. 231.

<sup>10467</sup> Prosecution’s Response Brief (Ćorić), para. 232. The Prosecution further argues that Ćorić fails to explain why the Trial Chamber should have interpreted the references in Šiljeg’s Report to “illegally seized motor vehicles” and “other stolen things” as confiscated property at checkpoints. Prosecution’s Response Brief (Ćorić), para. 232.

<sup>10468</sup> Prosecution’s Response Brief (Ćorić), para. 234.

<sup>10469</sup> Prosecution’s Response Brief (Ćorić), para. 234.

<sup>10470</sup> Prosecution’s Response Brief (Ćorić), para. 233.

3164. The Prosecution further responds that Ćorić's challenges to the Trial Chamber's findings on his failure to punish are contradictory,<sup>10471</sup> and rely on the discredited testimony of Andabak.<sup>10472</sup> It also argues that Ćorić's argument that he "'could' have abstained from punishing Andabak based on Article 147 of the Criminal Code of the BiH"<sup>10473</sup> should be dismissed as he raises it for the first time on appeal and waived his right to argue this point now. Regardless, according to the Prosecution, Ćorić mischaracterises the plain meaning of the provision which speaks to the court's power to relieve the offender in certain circumstances.<sup>10474</sup> It concludes that, at the very least, a commander must move to investigate crimes and cannot discharge his duty by doing nothing.<sup>10475</sup>

## 2. Analysis

### (a) Alleged errors in the assessment of the evidence

3165. In assigning little weight to Andabak's evidence concerning the events in Prozor in October 1992, the Trial Chamber specifically considered that "as a member of the Military Police, by his admission, [Andabak] participated in the attack and takeover of the town of Prozor and left the town along with 'his unit excluding one company' only two or three days later, that is, on or about 25 October 1992".<sup>10476</sup> It concluded that this very involvement in events "necessarily [vitiates] the credibility of [Andabak's] testimony on this point".<sup>10477</sup> For the same reason, the Trial Chamber gave little weight to Andabak's Report.<sup>10478</sup> In this regard, the Appeals Chamber recalls that a trial chamber has broad discretion in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.<sup>10479</sup>

3166. First, the Appeals Chamber will address the challenges to evidence emanating from Šiljeg. As Šiljeg did not testify at trial and Šiljeg's Report was deemed authentic, relevant, and had probative value in order to be admitted into evidence, Ćorić essentially disputes the weight given to Šiljeg's Report. The Appeals Chamber observes that, despite being aware of Šiljeg's involvement in events during the Indictment period, the Trial Chamber consistently relied on and gave weight to reports and orders originating from Šiljeg throughout the Trial Judgement in its assessment of the

<sup>10471</sup> Prosecution's Response Brief (Ćorić), paras 237, 239. The Prosecution argues that Ćorić's reliance on the 14 November 1992 Order to show that he took measures contradicts his argument that he had no notice of Andabak's crimes. Prosecution's Response Brief (Ćorić), para. 239.

<sup>10472</sup> Prosecution's Response Brief (Ćorić), paras 237-238 (submitting on the formation of a commission in the Military Police Administration).

<sup>10473</sup> Prosecution's Response Brief (Ćorić), para. 240.

<sup>10474</sup> Prosecution's Response Brief (Ćorić), para. 240, referring to Ex. 2D00907, Article 147(2), p. 75. See Prosecution's Response Brief (Ćorić), paras 237, 241.

<sup>10475</sup> Prosecution's Response Brief (Ćorić), para. 241.

<sup>10476</sup> Trial Judgement, Vol. 2, para. 59.

<sup>10477</sup> Trial Judgement, Vol. 2, para. 59.

<sup>10478</sup> Trial Judgement, Vol. 2, para. 59.

<sup>10479</sup> *Popović et al.* Appeal Judgement, para. 131.



evidence, thereby considering this evidence to be credible.<sup>10480</sup> The Appeals Chamber recalls that a trial chamber is not required to set out in detail why it accepted or rejected a particular testimony, and that an accused's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of particular witnesses.<sup>10481</sup> On a similar basis, the Appeals Chamber finds that the Trial Chamber was not required to explain in detail why it considered Šiljeg's Report credible. Further, the Appeals Chamber considers that Ćorić repeats arguments he made at trial regarding Šiljeg's self-interest and reliability without showing a discernible error by the Trial Chamber in giving weight to Šiljeg's Report.<sup>10482</sup> The Appeals Chamber also notes that, although Šiljeg's Report was "untested",<sup>10483</sup> it was corroborated by other evidence, including the 14 November 1992 Order.<sup>10484</sup> Thus, Ćorić has failed to demonstrate that the Trial Chamber abused its discretion by giving weight to Šiljeg's Report.

3167. Turning to the assessment of Andabak's evidence, Ćorić's arguments centre on a comparison between Andabak and Šiljeg, in that their account of events should be treated in the same way. However, Ćorić fails to recognise that the Trial Chamber gave Andabak's evidence little weight because of his direct involvement in the takeover of Prozor town while Šiljeg was not directly implicated in the crimes. Notably, Andabak's evidence was only discounted in relation to events in Prozor and the Trial Chamber gave his evidence on other events some weight.<sup>10485</sup> Recalling that a trial chamber can reasonably accept certain parts of a witness's testimony and reject others,<sup>10486</sup> the Appeals Chamber is of the view that the Trial Chamber considered Andabak to be generally credible but not in relation to events in which he was directly involved. Further, the Appeals Chamber considers that Ćorić fails to demonstrate that the Trial Chamber did not assess Andabak's demeanour in court, particularly in light of the Trial Chamber's confirmation that when assessing *viva voce* witnesses, it "gave specific consideration to the attitude, the conduct and the personality of the witnesses".<sup>10487</sup> In light of the above, the Appeals Chamber finds that Ćorić fails to show that the Trial Chamber abused its discretion when discounting Andabak's evidence on the events in Prozor while accepting Šiljeg's Report.<sup>10488</sup>

<sup>10480</sup> See, e.g., Trial Judgement, Vol. 1, paras 842, 967, Vol. 2, paras 32, 87, 135, 147-148, 379, 389, 398, 543.

<sup>10481</sup> *Popović et al.* Appeal Judgement, para. 133.

<sup>10482</sup> Cf. Ćorić's Appeal Brief, para. 215; Ćorić's Final Brief, paras 617, 748.

<sup>10483</sup> See Ćorić's Appeal Brief, para. 215.

<sup>10484</sup> See Trial Judgement, Vol. 2, paras 57, 59, referring to Edward Vulliamy, T(F). 1527 (8 May 2006), Ex. P00721 (evidence that Military Police officers "robbed" or "confiscated" weapons and vehicles).

<sup>10485</sup> See, e.g., Trial Judgement, Vol. 1, paras 849, 853, 866-867, 871, 926, 966, Vol. 2, fns 62-64, 67, 111, 152-153, 158, 487, 775, 837, 1184, 1594, 2074, 3531, 4465, 4481, Vol. 4, para. 878.

<sup>10486</sup> *Popović et al.* Appeal Judgement, para. 132.

<sup>10487</sup> Trial Judgement, Vol. 1, para. 284.

<sup>10488</sup> The Appeals Chamber also dismisses Ćorić's assertions on Andabak's "respectable character" as he fails to show how these assertions could impact on the Trial Chamber's assessment of Andabak's evidence on the events in Prozor in 1992, particularly as the Trial Chamber considered Andabak's promotion four months after these events in relation to



3168. Moreover, in Andabak's Report, Andabak indicated that the HOS were the sole perpetrators of the thefts committed in Prozor but the Trial Chamber gave little weight to this report on the basis that the HOS had already been dissolved as of 23 August 1992 and the majority of HOS members had joined the HVO.<sup>10489</sup> The Trial Chamber considered various pieces of evidence in arriving at this conclusion that the HOS had been dissolved.<sup>10490</sup> The exhibits Ćorić cites in support of his argument that the HOS existed until 1993 do not call into question the Trial Chamber's decision to give little weight to Andabak's Report.<sup>10491</sup> Similarly, the testimony relied on by Ćorić only indicates that one or two HOS units operated in 1993, seemingly against orders, but is insufficient to show that the Trial Chamber erred in its assessment of the evidence,<sup>10492</sup> particularly as the Trial Chamber itself noted the presence of HOS members in December 1992 and in early 1993.<sup>10493</sup> Ćorić's argument concerning the HOS is therefore dismissed.

3169. Regarding Ćorić's arguments that the Trial Chamber misinterpreted Šiljeg's Report,<sup>10494</sup> the Appeals Chamber notes that the Trial Chamber considered that Šiljeg's Report: (1) was addressed to the Main Staff and the Military Police Administration; and (2) stated that part of Andabak's unit had illegally seized motor vehicles.<sup>10495</sup> Ćorić fails to explain the relevance of a reference in Šiljeg's Report to the looting of Croat houses and property to the Trial Chamber's consideration of this report. The Appeals Chamber also considers Ćorić's arguments as to what Šiljeg believed – concerning Ćorić's knowledge and control, as Chief of the Military Police Administration – based

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the question of whether any measures were taken to punish the perpetrators of the thefts. Trial Judgement, Vol. 2, para. 60. See *supra*, fn. 10439.

<sup>10489</sup> Trial Judgement, Vol. 2, para. 59. See Trial Judgement, Vol. 1, paras 777-778. The Trial Chamber also clarified that the former HOS members who joined the HVO still wore black uniforms and HOS insignia, and that when witnesses referred to HOS members this meant former members who joined the HVO. Trial Judgement, Vol. 2, fn. 156.  
<sup>10490</sup> See Trial Judgement, Vol. 1, paras 777-778, fns 1820-1825, and evidence cited therein.

<sup>10491</sup> See Exs. P01901 (order dated 16 April 1993 stating that HOS units were present only in the Livno area and instructing that a unit be dismantled), 5D00130 (order dated 15 August 1992 instructing HOS units to be subordinated to the Konjić TG-1 Command), P00687, p. 3 (report dated 1 November 1992 noting that "the situation on the terrain between HVO and HOS /Croatian Defence Forces/ units was very good"), P10984 (announcement signed 10 August 1992 condemning the murder of a HOS commander, Blaž Kraljević, and his associates and indicating a conflict between the HOS and the HVO).

<sup>10492</sup> See Witness 4D-AA, T. 49263-49265 (closed session) (9 Feb 2010), Milivoj Gagro, T. 2733 (29 May 2006) (evidence that after Kraljević was killed some HOS members joined the HVO and integrated into the defence force), Milivoj Petković, T. 50071-50073 (25 Feb 2010) (testimony that one HOS unit survived in Livno and that "they tricked us by saying that they were joining the brigade"), Dragan Pinjuh, T. 37726-37727 (4 Mar 2009) (testimony that the HOS continued to operate under the ABiH, but then later the witness said that most of the HOS listed as killed were killed during 1992 and 1993 as members of the HVO, see Dragan Pinjuh, T. 37728 (4 Mar 2009)), Zrinko Tokić, T. 45351-45352 (29 Sept 2009) (testimony that members of the HOS raised a HOS flag in January 1993).

<sup>10493</sup> See Trial Judgement, Vol. 2, paras 314 (referring to Zrinko Tokić, T. 45351-45352 (29 Sept 2009)), 324, 334.

<sup>10494</sup> See *supra*, para. 3158.

<sup>10495</sup> Trial Judgement, Vol. 2, para. 59, Vol. 4, paras 1246-1247. The Appeals Chamber also notes that the Trial Chamber considered, and rejected, Ćorić's argument that the motor vehicles were confiscated and being safeguarded, and he fails to present an argument showing that the Trial Chamber erred. Trial Judgement, Vol. 2, paras 48, 59, Vol. 4, paras 1246-1247.



on Šiljeg's Report, to be speculative and unsupported.<sup>10496</sup> Thus, the Appeals Chamber dismisses Ćorić's arguments on the Trial Chamber's interpretation of Šiljeg's Report discussed above.

3170. Based on the foregoing, the Appeals Chamber finds that Ćorić has failed to demonstrate a discernible error in the Trial Chamber's assessment of the evidence concerning the destruction of property and thefts of motor vehicles in Prozor in October 1992.

(b) Alleged errors in finding that Ćorić exercised effective control over the perpetrators

3171. The Appeals Chamber notes that the Trial Chamber found that: (1) even though Military Police units were, from at least April 1992 until July 1993, subordinated to the commander of the HVO unit to which they were assigned, Ćorić "still held some power of command and control over them";<sup>10497</sup> and (2) Ćorić's command over Military Police units weakened as of July 1993 but did not disappear completely and was limited.<sup>10498</sup> More specifically, the Trial Chamber found that Ćorić had effective control over members of the Military Police present in Prozor in October 1992.<sup>10499</sup>

3172. Concerning Ćorić's argument that the perpetrators of the destruction of property in Prozor were not identified and that the Trial Chamber did not indicate how they were subordinated to him,<sup>10500</sup> the Appeals Chamber notes the Trial Chamber's finding that HVO soldiers and members of the Military Police destroyed approximately 75 Muslim houses and property in Prozor.<sup>10501</sup> Further, the Trial Chamber discussed the units of the HVO that were present in Prozor Municipality,<sup>10502</sup> and specifically identified the Military Police unit present in October 1992 as being the 4<sup>th</sup> Company of the 2<sup>nd</sup> Military Police Battalion,<sup>10503</sup> augmented in late October 1992 by men from the 1<sup>st</sup> and 2<sup>nd</sup> Companies of the same battalion.<sup>10504</sup> The Appeals Chamber recalls that,

<sup>10496</sup> See *supra*, para. 3158.

<sup>10497</sup> Trial Judgement, Vol. 4, para. 867. See Trial Judgement, Vol. 4, para. 871.

<sup>10498</sup> Trial Judgement, Vol. 4, para. 868. See Trial Judgement, Vol. 4, paras 876, 915. Further, the Trial Chamber concluded that the Military Police Administration's command authority over Military Police units diminished as the conflict progressed but that "this reduction did not, however, lead to the complete renunciation of its prerogatives of command over the Military Police units". Trial Judgement, Vol. 1, para. 964. See Trial Judgement, Vol. 1, para. 963. The Trial Chamber also concluded that Ćorić had: (1) the ability to participate in fighting crime within the HVO "but that his power was limited to investigating the perpetrators of crimes" (Trial Judgement, Vol. 4, para. 915. See Trial Judgement, Vol. 4, paras 880-882); and (2) the power to re-subordinate Military Police units at least between July 1993 and October 1993 and that, in the case of conflicting orders, Military Police units were to report to Ćorić personally (Trial Judgement, Vol. 4, paras 869-871. See Trial Judgement, Vol. 4, para. 915).

<sup>10499</sup> Trial Judgement, Vol. 4, paras 1245, 1248, 1250. The Appeals Chamber notes that Ćorić argues that the evidence shows that he did not have effective control but only cites section III of Ćorić's Final Brief which the Trial Chamber considered at trial and, thus, this argument will not be addressed further. See Ćorić's Appeal Brief, para. 215, fn. 552.

<sup>10500</sup> See *supra*, para. 3159.

<sup>10501</sup> Trial Judgement, Vol. 2, paras 50, 53-55, Vol. 3, para. 1207, Vol. 4, para. 1249; *supra*, para. 3155.

<sup>10502</sup> Trial Judgement, Vol. 2, paras 13-29.

<sup>10503</sup> Trial Judgement, Vol. 2, para. 22. See also Trial Judgement, Vol. 2, para. 23.

<sup>10504</sup> Trial Judgement, Vol. 2, paras 24, 33. The Trial Chamber also concluded that the Military Police units present took part in the takeover of Prozor town. Trial Judgement, Vol. 2, para. 42.

notwithstanding the degree of specificity with which the culpable subordinates must be identified, in any event, their existence as such must be established.<sup>10505</sup> The Appeals Chamber also recalls that a superior need not necessarily know the exact identity of the subordinates who perpetrate crimes in order to incur liability under Article 7(3) of the Statute,<sup>10506</sup> and that “physical perpetrators of crimes can be identified by category in relation to a particular crime site”.<sup>10507</sup> Considering the Trial Chamber’s finding that Ćorić had effective control over members of the Military Police present in Prozor in October 1992, further identification of the direct perpetrators of the destruction of property in Prozor is unnecessary in these circumstances.<sup>10508</sup> Ćorić’s arguments are thus dismissed.

3173. Based on the foregoing, the Appeals Chamber finds that Ćorić has failed to show that the Trial Chamber erred in relation to his effective control over the members of the Military Police who committed the acts of theft and destruction of property in Prozor in October 1992.

(c) Alleged errors in finding that Ćorić knew or had reason to know of crimes

3174. The Appeals Chamber recalls that the “reason to know” standard pursuant to Article 7(3) of the Statute is met if the superior possessed information sufficiently alarming to justify further inquiry.<sup>10509</sup> This information does not need to provide specific details about the unlawful acts committed or about to be committed but may consist of general information which would put a superior on notice of possible unlawful acts by his subordinates.<sup>10510</sup>

3175. The Trial Chamber concluded that Ćorić had the “means of knowing which of the above crimes had been committed by members of the Military Police”,<sup>10511</sup> referring to the illegal seizure of vehicles and the destruction of property.<sup>10512</sup> It found that Ćorić knew that the motor vehicles were illegally seized,<sup>10513</sup> based on Šiljeg’s Report and the 14 November 1992 Order.<sup>10514</sup> Ćorić seems to argue that as Šiljeg’s Report was addressed to the Military Police Administration and not him personally, he did not receive it.<sup>10515</sup> Notably, Šiljeg’s Report was sent to the Military Police Administration and requested that its chief urgently inspect the Military Police units in the area,

<sup>10505</sup> Orić Appeal Judgement, para. 35.

<sup>10506</sup> Blagojević and Jokić Appeal Judgement, para. 287. See Bizimungu Appeal Judgement, para. 79.

<sup>10507</sup> Bizimungu Appeal Judgement, para. 79. See Karemera and Ngirumpatse Appeal Judgement, para. 370 (“Under certain circumstances, referring to an alleged subordinate by category can constitute sufficient notice of his or her identity”).

<sup>10508</sup> See, e.g., Bizimungu Appeal Judgement, paras 79, 117.

<sup>10509</sup> Popović et al. Appeal Judgement, para. 1910; Strugar Appeal Judgement, para. 298.

<sup>10510</sup> Popović et al. Appeal Judgement, para. 1910; Krnojelac Appeal Judgement, para. 154; Čelebići Appeal Judgement, para. 238.

<sup>10511</sup> Trial Judgement, Vol. 4, para. 1250.

<sup>10512</sup> Trial Judgement, Vol. 4, paras 1247-1250.

<sup>10513</sup> Trial Judgement, Vol. 4, para. 1248.

<sup>10514</sup> Trial Judgement, Vol. 2, para. 59, Vol. 4, paras 1247-1248. See *supra*, para. 3155.



consider the situation, and take appropriate measures against individuals.<sup>10516</sup> This was then followed by the issuance of the 14 November 1992 Order by Ćorić and Praljak to Šiljeg, Andabak, and Ante Alilović,<sup>10517</sup> instructing that the motor vehicles be returned, and specifying that Andabak and Alilović were responsible for carrying out the order.<sup>10518</sup> The Appeals Chamber considers that a reasonable trier of fact could have concluded that Ćorić's subsequent action – the issuance of the 14 November 1992 Order – is evidence that he received Šiljeg's Report or was aware of its contents. Thus, the Appeals Chamber is of the view that it was reasonable for the Trial Chamber to consider Šiljeg's Report in its discussion on his knowledge of the relevant events. Ćorić's only other argument is that the 14 November 1992 Order does not establish that he knew who committed the crimes.<sup>10519</sup> However, as considered earlier in this paragraph, a reasonable trier of fact could have concluded that Ćorić received or knew of the contents of Šiljeg's Report and Andabak was Commander of the 2<sup>nd</sup> Military Police Battalion. Thus, Ćorić fails to show that no reasonable trier of fact could have concluded that Ćorić knew that his subordinates, namely members of the 2<sup>nd</sup> Military Police Battalion, had illegally seized the vehicles. Ćorić's argument is therefore dismissed as he fails to show an error in the Trial Chamber's conclusion that he knew that the motor vehicles were illegally seized by the Military Police.

3176. Regarding Ćorić's knowledge of the destruction of property, the Trial Chamber concluded that "information contained in [Andabak's Report and Šiljeg's Report] – describing the discipline problems of military policemen involved in the illegal seizure of vehicles in Prozor – were sufficiently alarming to warrant an additional investigation"<sup>10520</sup> and that "Ćorić had means of knowing which of the [thefts and destruction of property] had been committed by members of the Military Police".<sup>10521</sup> The Appeals Chamber considers that Ćorić misinterprets the Trial Chamber's reliance on Šiljeg's Report in finding that he had reason to know of crimes.<sup>10522</sup> The Appeals Chamber is of the view that the Trial Chamber's reference to Šiljeg's Report primarily concerned Ćorić's knowledge of the theft of the vehicles and, then more generally, his knowledge of discipline problems of the Military Police in Prozor at the time. Ćorić's arguments on Šiljeg's Report in relation to his knowledge of the destruction of property are dismissed.

3177. Additionally, the Trial Chamber considered that Andabak's Report, addressed to Ćorić, mentions that numerous houses were damaged as a result of combat in Prozor on

<sup>10515</sup> See *supra*, para. 3158.

<sup>10516</sup> Ex. P00648, p. 2.

<sup>10517</sup> The Appeals Chamber notes that, according to the evidence, Ante Alilović was the Deputy Chief of the General and Traffic Military Police Department. See Ex. 3D00424; Ćorić's Appeal Brief, para. 224.

<sup>10518</sup> Ex. 3D00424.

<sup>10519</sup> See *supra*, para. 3160.

<sup>10520</sup> Trial Judgement, Vol. 4, para. 1250. See Trial Judgement, Vol. 4, para. 1249.

<sup>10521</sup> Trial Judgement, Vol. 4, para. 1250.

25 October 1992.<sup>10523</sup> Thus, although it accorded little weight to Andabak's Report,<sup>10524</sup> the Appeals Chamber's view is that the Trial Chamber considered that the mention of damaged houses in this report would have alerted Ćorić to the fact that possible crimes relating to the destruction of property had been committed. Ćorić argues, to the contrary, that Andabak's Report would only have indicated that collateral damage to houses may have occurred during combat.<sup>10525</sup> The Appeals Chamber notes that the relevant part of Andabak's Report states that Prozor town was cleared on 25 October 1992 and that "[c]onsiderable material damage was inflicted during street fights in the town and many housing facilities were damaged".<sup>10526</sup> The Appeals Chamber considers that although Andabak's Report by itself may not have been sufficient to alert Ćorić to the possibility that his subordinates were burning and destroying property, the Trial Chamber also took into account that Ćorić would have known of other crimes being committed by the Military Police during the takeover of Prozor town and its disciplinary problems.<sup>10527</sup> On this issue, the Appeals Chamber recalls that the "reason to know" standard is met if the superior possessed information sufficiently alarming to justify further inquiry, and this information need not provide specific details about the unlawful acts committed but may consist of general information which would put a superior on notice of possible unlawful acts by his subordinates.<sup>10528</sup> The Appeals Chamber therefore finds that Ćorić has failed to show that no reasonable trier of fact could have concluded that, based on his knowledge that members of the Military Police were committing crimes at the same time that houses were being damaged, Ćorić had sufficiently alarming information which justified further inquiry. Ćorić's argument is thus dismissed.

3178. In relation to Ćorić's general argument that no reasonable chamber would find that he was well informed of crimes committed by the HVO in Prozor, the Appeals Chamber notes that he relies on testimony from Andabak, to which the Trial Chamber gave little weight.<sup>10529</sup> The Appeals Chamber considers that Ćorić was found responsible for his subordinates' crimes, *i.e.* those of the Military Police,<sup>10530</sup> and thus his knowledge of crimes committed by the HVO is irrelevant. Further, Ćorić's speculation that because Andabak allegedly did not receive any reports of crimes, then he (Ćorić) "certainly" could not have received any such reports, is unconvincing. He merely

<sup>10522</sup> See *supra*, para. 3158.

<sup>10523</sup> Trial Judgement, Vol. 4, para. 1249.

<sup>10524</sup> Trial Judgement, Vol. 2, para. 59.

<sup>10525</sup> See *supra*, para. 3160.

<sup>10526</sup> Ex. P00536, p. 3. The Appeals Chamber notes that the Trial Chamber reviewed evidence that some houses were damaged during the fighting but that most were burnt later. Trial Judgement, Vol. 2, paras 50-53.

<sup>10527</sup> Trial Judgement, Vol. 4, para. 1250.

<sup>10528</sup> *Popović et al.* Appeal Judgement, para. 1910.

<sup>10529</sup> See *supra*, paras 3160, 3165, 3167.

<sup>10530</sup> Trial Judgement, Vol. 4, paras 1245-1251.

repeats his trial arguments without showing how the Trial Chamber erred in concluding that he had sufficiently alarming information.<sup>10531</sup> His argument is dismissed.

3179. In light of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber erred in relation to his knowledge of the acts of theft and destruction of property committed by members of the Military Police in Prozor in October 1992.

(d) Alleged errors in finding that Ćorić failed to punish his subordinates for the crimes

3180. The Appeals Chamber recalls that the duty to punish will be fulfilled when necessary and reasonable measures to punish perpetrators have been taken.<sup>10532</sup> “Necessary” measures are the measures appropriate for the superior to discharge his obligation (showing that he genuinely tried to prevent or punish) and “reasonable” measures are those reasonably falling within the material powers of the superior.<sup>10533</sup>

3181. The Trial Chamber concluded that Ćorić “refrained from taking the necessary and reasonable measures to discharge his duty to punish” the acts of theft and destruction of property committed by members of the Military Police in Prozor in October 1992.<sup>10534</sup> With regard to the thefts, the Trial Chamber determined that: (1) it had no knowledge of any punitive measures taken against the perpetrators;<sup>10535</sup> (2) Andabak was promoted four months later, on the recommendation of Ćorić;<sup>10536</sup> and (3) the return of the property to the owners did not constitute a reasonable measure by way of which Ćorić would have discharged his obligation to punish.<sup>10537</sup> The Trial Chamber expressly inferred from Andabak’s promotion that “Ćorić failed to inquire about the crimes or to launch an investigation, establish the facts and alert the relevant authorities to them”.<sup>10538</sup>

3182. In contesting the Trial Chamber’s findings on his failure to punish, Ćorić argues that the Military Police Administration did take some measures, relying on the testimony of Andabak.<sup>10539</sup> Recalling the little weight given by the Trial Chamber to Andabak’s evidence regarding the crimes in Prozor in October 1992, the Appeals Chamber also notes that his evidence, cited by Ćorić, does not show that measures were taken to punish the members of the Military Police who committed

<sup>10531</sup> See Ćorić’s Final Brief, paras 420, 613.

<sup>10532</sup> *Popović et al.* Appeal Judgement, para. 1927; *Boškoski and Tarčulovski* Appeal Judgement, para. 230; *Halilović* Appeal Judgement, para. 175; *Bagosora and Nsengiyumva* Appeal Judgement, para. 683.

<sup>10533</sup> *Popović et al.* Appeal Judgement, para. 1927; *Orić* Appeal Judgement, para. 177; *Halilović* Appeal Judgement, para. 63; *Blaškić* Appeal Judgement, para. 417.

<sup>10534</sup> Trial Judgement, Vol. 4, para. 1250.

<sup>10535</sup> Trial Judgement, Vol. 2, para. 60, Vol. 4, para. 1247.

<sup>10536</sup> Trial Judgement, Vol. 2, para. 60, Vol. 4, para. 1247.

<sup>10537</sup> Trial Judgement, Vol. 4, para. 1248.

<sup>10538</sup> Trial Judgement, Vol. 4, para. 1248. See Trial Judgement, Vol. 4, para. 1250.

acts of theft and destruction of property in October 1992. Andabak's testimony: (1) that stock was taken of all unsolved crimes; (2) that the Military Police was reinforced; and (3) that Franjić and "his men" were arrested, relates to the alleged crimes by Franjić and shows that these actions were taken in November 1993.<sup>10540</sup> Further, Exhibit 3D00422 dated 20 January 1994, which is also cited by Ćorić, refers to "bringing in" Franjić, as well as three members of the Military Police in Prozor, for committing crimes, including theft, but does not specify the time-period in which these crimes were committed.<sup>10541</sup> Thus, the Appeals Chamber considers that the evidence Ćorić cites is unpersuasive and does not call into question the Trial Chamber's findings. His argument is dismissed.

3183. Ćorić also submits that a commission was formed which co-operated with Andabak's unit to compile a list of the stolen vehicles, again relying on Andabak's testimony.<sup>10542</sup> The Appeals Chamber first observes that Ćorić repeats his trial arguments<sup>10543</sup> without showing that the Trial Chamber erred in finding that it did not have information that the commission – which was supposed to "shed light on the events in Prozor in October 1992" – was put in place or did in fact investigate the events.<sup>10544</sup> Nevertheless, Andabak's testimony does not support the contention that measures were taken to punish the perpetrators of the thefts.<sup>10545</sup> Therefore, Ćorić's argument is unconvincing. Similarly, the Appeals Chamber also finds that Ćorić's submission that the 14 November 1992 Order amounts to "some measure" taken with respect to the crimes is without merit and irrelevant as it does not support a conclusion that measures were taken to *punish* the perpetrators.

3184. With regard to Ćorić's submission that it was not required under national law to punish the perpetrators of the thefts as the vehicles were returned, the Appeals Chamber considers that the relevant provision does not relieve a superior from his duty to punish his subordinates for crimes committed.<sup>10546</sup> Indeed, the provision under national law to which Ćorić refers does not dispose of criminal proceedings, but rather empowers a court to grant relief from punishment. The

<sup>10539</sup> See *supra*, para. 3161.

<sup>10540</sup> Zdenko Andabak, T. 50954-50961 (15 Mar 2010). The Appeals Chamber notes that Andabak denied knowing that members of the Military Police had committed crimes. Zdenko Andabak, T. 50955-50956 (15 Mar 2010).

<sup>10541</sup> Ex. 3D00422, paras 1, 4-5.

<sup>10542</sup> See *supra*, para. 3161.

<sup>10543</sup> Ćorić's Final Brief, para. 617.

<sup>10544</sup> Trial Judgement, Vol. 2, para. 76.

<sup>10545</sup> Zdenko Andabak, T. 51070-51072 (17 Mar 2010). The Appeals Chamber notes that Andabak testified that "some commission" was formed, and that cars were returned to their owners, but denied that the vehicles were illegally seized and specifically stated that "no one stole any vehicles and, as a result, couldn't be punished for such an act". Zdenko Andabak, T. 51070, 51072 (17 Mar 2010).

<sup>10546</sup> See *supra*, para. 3161. See generally Ćorić's Final Brief; Ćorić Closing Arguments, T. 52681-52689 (23 Feb 2011). Article 147 of the Criminal Code of BiH states that "[i]f the offender had restored the stolen movable to the injured party before he learned of the commencement of criminal proceedings, the court may relieve him from punishment". Ex. 2D00907, p. 57.

Appeals Chamber further recalls that the Trial Chamber expressly considered that the return of the vehicles did not constitute a reasonable measure discharging Ćorić's obligation to punish.<sup>10547</sup> Further, Ćorić raises this argument for the first time on appeal.<sup>10548</sup> The Appeals Chamber therefore dismisses Ćorić's argument.

3185. Based on the foregoing, and as Ćorić does not present any additional arguments contesting the Trial Chamber's findings on his failure to punish the crimes committed by members of the Military Police in Prozor in 1992, the Appeals Chamber finds that Ćorić has failed to show that the Trial Chamber erred in this regard.

### 3. Conclusion

3186. In light of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber erred in convicting him as a superior for acts of theft and destruction of property committed by members of the Military Police in Prozor in October 1992. Ćorić's ground of appeal 9 is therefore dismissed.

### E. Conclusion

3187. The Appeals Chamber dismisses all of Ćorić's challenges to his convictions pursuant to Article 7(3) of the Statute for crimes committed in Prozor Municipality in October 1992.<sup>10549</sup>

3188. The Appeals Chamber grants the Prosecution's ground of appeal 2 in part as it concerns the Trial Chamber's failure to adjudicate the superior responsibility of Prlić, Stojić, Praljak, Petković, and Ćorić regarding certain incidents of murder, wilful killing, rape, inhuman treatment (sexual assault), appropriation of property, and plunder committed in various municipalities in 1993, but dismisses the remainder of this ground of appeal concerning the remedy sought.

<sup>10547</sup> Trial Judgement, Vol. 4, para. 1248.

<sup>10548</sup> See *Tolimir* Appeal Judgement, paras 170 (recalling that "a party is under an obligation to formally raise before the Trial Chamber [...] any issues that require resolution, and that failure to do so would amount to a waiver of the right to bring the issue as a valid ground of appeal unless special circumstances are present"), 183; *Šainović et al.* Appeal Judgement, paras 125, 223 (recalling that parties "cannot remain silent on [a] matter only to return on appeal to seek a trial *de novo*").

<sup>10549</sup> See *supra*, para. 3186.

## X. CUMULATIVE CONVICTIONS

### A. Alleged Errors Relating to Cumulative Convictions (Ćorić's Ground 15)

#### 1. Introduction

3189. The Trial Chamber found that Ćorić was responsible, as a member of the JCE, for, *inter alia*, grave breaches of the Geneva Conventions under Article 2 of the Statute, violations of the laws or customs of war under Article 3 of the Statute, and crimes against humanity under Article 5 of the Statute.<sup>10550</sup>

3190. In the section dedicated to its discussion of cumulative convictions, the Trial Chamber referred to the test established by the *Čelebići* Appeals Chamber, whereby cumulative convictions are permissible only if each crime has a "materially distinct element" ("*Čelebići* Test").<sup>10551</sup> The Trial Chamber, in applying the test, concluded that cumulative convictions for the offences under Articles 2 and 5 of the Statute, and Articles 3 and 5 of the Statute, are possible "insofar as each of these provisions contains a materially distinct applicability requirement not contained within the other".<sup>10552</sup> With regard to the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly under Article 2(d) of the Statute (Count 19) and the destruction or wilful damage done to institutions dedicated to religion or education under Article 3(d) of the Statute (Count 20), the Trial Chamber found that: (1) the former required the distinct material element that it must be extensive; and (2) cumulative convictions entered for these crimes were therefore permissible.<sup>10553</sup>

#### 2. Arguments of the Parties

3191. Ćorić submits that the Trial Chamber erred in law and fact by finding that cumulative convictions for the crimes under Articles 2 and 5, Articles 3 and 5, and Articles 2(d) and 3(d) of the Statute are permissible.<sup>10554</sup> More specifically, Ćorić argues that his convictions for crimes against humanity under Article 5 and grave breaches of the Geneva Conventions under Article 2, namely murder (Count 2) and wilful killing (Count 3), deportation (Count 6) and unlawful deportation (Count 7), inhumane acts (forcible transfer) (Count 8) and unlawful transfer (Count 9), imprisonment (Count 10) and unlawful confinement (Count 11), and inhumane acts (Count 15) and

<sup>10550</sup> Trial Judgement, Vol. 4, para. 1006. See also *supra*, para. 2472.

<sup>10551</sup> Trial Judgement, Vol. 4, para. 1254.

<sup>10552</sup> Trial Judgement, Vol. 4, paras 1256-1257, 1259.

<sup>10553</sup> Trial Judgement, Vol. 4, paras 1267-1268. See Trial Judgement, Vol. 4, para. 1258.

<sup>10554</sup> Ćorić's Appeal Brief, paras 311, 316, 319.

inhuman treatment (Count 16), are impermissibly cumulative and unfair.<sup>10555</sup> Ćorić essentially submits that the Trial Chamber erred in: (1) applying the law on cumulative convictions – specifically, in its application of the *Čelebići* Test and the test established in the case of *Blockburger v. United States* (“*Blockburger* Test”) – hence finding that Article 5 of the Statute contained materially distinct elements from Article 2 of the Statute;<sup>10556</sup> and (2) convicting him under both Articles 2 and 5 of the Statute on the basis of the same conduct.<sup>10557</sup>

3192. Ćorić further submits that the Trial Chamber erred in entering impermissibly cumulative convictions for the crimes of extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly under Article 2(d) of the Statute (Count 19) and destruction or wilful damage done to institutions dedicated to religion or education under Article 3(d) of the Statute (Count 21).<sup>10558</sup> Ćorić argues that the former category embraces all property, including cultural or religious property.<sup>10559</sup> Further, he asserts that the Trial Chamber’s finding that the destruction of property not justified by military necessity must be extensive implies that the destruction or wilful damage to institutions dedicated to religion or education cannot be extensive, whereas in fact, it may be.<sup>10560</sup> Ćorić requests that the Appeals Chamber quash the convictions that are impermissibly cumulative and reduce his sentence accordingly.<sup>10561</sup>

3193. The Prosecution responds that the Trial Chamber properly convicted Ćorić of crimes under Articles 2 and 5, Articles 3 and 5, and Articles 2(d) and 3(d) of the Statute, arguing that he fails to demonstrate an error in the Trial Chamber’s findings on cumulative convictions and to give any cogent reasons to depart from the well-settled case-law on cumulative convictions.<sup>10562</sup> The Prosecution submits that Ćorić, while recognising that the Trial Chamber applied settled jurisprudence, fundamentally misunderstands the *Čelebići* Test, which speaks to the elements of crimes, not – as Ćorić implies – to the conduct underlying the crimes.<sup>10563</sup> It submits that: (1) the Trial Chamber identified the unique material elements required for each crime;<sup>10564</sup> and (2) insofar

<sup>10555</sup> Ćorić’s Appeal Brief, para. 311. See also Ćorić’s Appeal Brief, paras 316, 318.

<sup>10556</sup> Ćorić’s Appeal Brief, paras 311, 316-318, referring to, *inter alia*, *Kupreškić et al.* Trial Judgement, para. 682, *Akayesu* Trial Judgement. The Appeals Chamber notes that paragraph 317 of Ćorić’s Appeal Brief refers to certain paragraphs of the *Kupreškić et al.* Trial Judgement verbatim. Compare Ćorić’s Appeal Brief, para. 317 with *Kupreškić et al.* Trial Judgement, paras 681-683 (in part). See also Ćorić’s Appeal Brief, paras 312-315; Ćorić’s Reply Brief, paras 73-74.

<sup>10557</sup> Ćorić’s Appeal Brief, para. 318.

<sup>10558</sup> Ćorić’s Appeal Brief, para. 319.

<sup>10559</sup> Ćorić’s Appeal Brief, para. 319.

<sup>10560</sup> Ćorić’s Appeal Brief, para. 319.

<sup>10561</sup> Ćorić’s Appeal Brief, para. 320.

<sup>10562</sup> Prosecution’s Response Brief (Ćorić), paras 346-352.

<sup>10563</sup> Prosecution’s Response Brief (Ćorić), paras 348-349, referring to Ćorić’s Appeal Brief, para. 318. See also Prosecution’s Response Brief (Ćorić), paras 350-351.

<sup>10564</sup> Prosecution’s Response Brief (Ćorić), paras 349, 352-353. The Prosecution also states that Ćorić offers no support for his argument that Article 5 “contains all of the elements that [Article 3] contains” and thus convictions under

as Ćorić requests the Appeals Chamber to depart from the well-settled *Čelebići* Test, he neither explains why the Trial Chamber's reasoning does not accord with the *Blockburger* test nor elucidates any difference between the two tests.<sup>10565</sup>

3194. Ćorić replies that he does not challenge the jurisprudence on cumulative convictions, but the Trial Chamber's failure to identify a materially distinct element under Articles 2 and 5 of the Statute, contrary to the *Čelebići* Test.<sup>10566</sup>

### 3. Analysis

3195. At the outset, the Appeals Chamber notes that while Ćorić purports to challenge the Trial Chamber's findings concerning cumulative convictions for crimes under Articles 3 and 5 of the Statute, he fails to identify specifically which of the convictions under these provisions are impermissibly cumulative.<sup>10567</sup> The Appeals Chamber therefore dismisses this argument as an undeveloped assertion.<sup>10568</sup>

3196. Further, with respect to Ćorić's argument regarding cumulative convictions under Counts 19 and 21 (Articles 2(d) and 3(d) of the Statute, respectively), the Appeals Chamber observes that Ćorić was not convicted under these two counts on the basis of the same conduct. His conviction for extensive destruction not justified by military necessity (Article 2(d)), relates to the crimes committed in the municipalities of Prozor and Gornji Vakuf, whereas his conviction for destruction or wilful damage done to religious institutions (Article 3(d)) concerns the crimes committed in Mostar Municipality in 1993.<sup>10569</sup> Consequently, insofar as Ćorić requests that cumulative convictions based on the same acts under Counts 19 and 21 be overturned, the Appeals Chamber dismisses this aspect of his contention.

3197. Turning to Ćorić's remaining arguments in respect of the convictions under Articles 2 and 5 of the Statute, the Appeals Chamber first notes that Ćorić does not argue that the

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Articles 2 and 5 "[are] not possible without breaching the rule *ne bis in idem*". Prosecution's Response Brief (Ćorić), para. 349.

<sup>10565</sup> Prosecution's Response Brief (Ćorić), para. 350. The Prosecution also submits that Ćorić refers to a holding of the *Kupreškić et al.* Trial Judgement without noting that the holding was overturned on appeal and that he also refers to an outdated test from the *Akayesu* Trial Judgement, failing to explain how its application would result in a different conclusion or be in the interests of justice. Prosecution's Response Brief (Ćorić), para. 351, referring to Ćorić's Appeal Brief, paras 317-318.

<sup>10566</sup> Ćorić's Reply Brief, paras 73-74. In his reply, Ćorić submits that what he challenges on appeal is not "jurisdiction itself, as erroneously stated by the Prosecution". Ćorić's Reply Brief, para. 74, referring to Prosecution's Response Brief (Ćorić), para. 350. The Appeals Chamber considers the word "jurisdiction" to be a typographical error which was intended to be "jurisprudence".

<sup>10567</sup> See Ćorić's Appeal Brief, paras 311, 316.

<sup>10568</sup> The Appeals Chamber notes that in any event it is well-established in the case-law of the Tribunal that convictions for the same conduct under Articles 3 and 5 are permissible. See *Kordić and Čerkez* Appeal Judgement, para. 1036. See also Trial Judgement, Vol. 4, para. 1257.



Trial Chamber erred by relying on the *Čelebići* Test *per se*.<sup>10570</sup> The Appeals Chamber recalls that according to the *Čelebići* Test it is only permissible to enter multiple criminal convictions under separate statutory provisions to punish the same conduct if “each statutory provision involved has a materially distinct element not contained in the other” and “[a]n element is materially distinct from another if it requires proof of a fact not required by the other”.<sup>10571</sup>

3198. Ćorić argues that in applying the *Čelebići* Test, the Trial Chamber failed to identify the elements which distinguish Articles 2 and 5 of the Statute.<sup>10572</sup> The Appeals Chamber observes that in fact, the Trial Chamber undertook this analysis explicitly:

the applicability requirements for crimes against humanity, punishable under Article 5 of the Statute, and grave breaches of the Geneva Conventions, punishable under Article 2 of the Statute, each contain a materially distinct element not contained within the other. Crimes against humanity require proof that the act is part of a widespread or systematic attack against a civilian population, which is not a requirement for grave breaches of the Geneva Conventions. The latter require proof of a nexus between the acts of the accused and the existence of an international armed conflict, and that the persons and property have protected status under the Geneva Conventions, conditions that are not required for crimes against humanity.<sup>10573</sup>

The Trial Chamber then concluded that cumulative convictions for the crimes under Articles 2 and 5 of the Statute “are possible insofar as each of these provisions contains a materially distinct applicability requirement not contained within the other”.<sup>10574</sup> Ćorić has shown no error in this approach.

3199. As to Ćorić’s argument that the Trial Chamber erred when it convicted him under both Articles 2 and 5 of the Statute for the same conduct, the Appeals Chamber considers that he misinterprets the legal standard.<sup>10575</sup> Applying the *Čelebići* Test, the Trial Chamber correctly convicted Ćorić under Counts 2 and 3, 6 and 7, 8 and 9, 10 and 11, and 15 and 16 on the basis of the same acts, each of which contain materially distinct elements not contained in the other.<sup>10576</sup> Accordingly, the Appeals Chamber finds that the Trial Chamber committed no legal error by entering cumulative convictions for the crimes punishable under Articles 2 and 5 of the Statute.

<sup>10569</sup> Trial Judgement, Vol. 4, paras 923, 945, 1006, 1251.

<sup>10570</sup> See *supra*, para. 3194.

<sup>10571</sup> *Čelebići* Appeal Judgement, para. 412. See Trial Judgement, Vol. 4, para. 1254. See also, e.g., *Stanišić and Župljanin* Appeal Judgement, para. 1088; *Tolimir* Appeal Judgement, para. 601; *Đorđević* Appeal Judgement, para. 839; *Krajišnik* Appeal Judgement, para. 386.

<sup>10572</sup> See *supra*, para. 3194. See also *supra*, para. 3191.

<sup>10573</sup> Trial Judgement, Vol. 4, para. 1256, referring to *Kordić and Čerkez* Appeal Judgement, para. 1037.

<sup>10574</sup> Trial Judgement, Vol. 4, para. 1259.

<sup>10575</sup> See *Kordić and Čerkez* Appeal Judgement, para. 1033 (“When applying the *Čelebići* test, what must be considered are the legal elements of each offence, not the acts or omissions giving rise to the offence. What each offence requires, as a matter of law, is the pertinent inquiry.”).

<sup>10576</sup> Trial Judgement, Vol. 4, Disposition, p. 431. See also Trial Judgement, Vol. 4, para. 1259.

#### 4. Conclusion

3200. In light of the foregoing, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber erred in law by finding that cumulative convictions for the crimes under Articles 2 and 5, Articles 3 and 5, and Articles 2(d) and 3(d) of the Statute were permissible. To the extent that Ćorić has not shown any legal error, his assertion regarding factual errors also fails. The Appeals Chamber therefore dismisses Ćorić's ground of appeal 15 in its entirety.



## XI. SENTENCING

3201. The Trial Chamber sentenced Prlić to a single sentence of 25 years of imprisonment,<sup>10577</sup> and Stojić, Praljak, and Petković, each, to a single sentence of 20 years of imprisonment.<sup>10578</sup> Ćorić was sentenced to a single sentence of 16 years of imprisonment,<sup>10579</sup> while Pušić received a single sentence of ten years of imprisonment.<sup>10580</sup>

3202. Prlić,<sup>10581</sup> Stojić,<sup>10582</sup> Petković,<sup>10583</sup> Ćorić,<sup>10584</sup> Pušić,<sup>10585</sup> and the Prosecution<sup>10586</sup> have appealed against the sentences.

### A. Applicable Law and Standard of Appellate Review on Sentencing

3203. Pursuant to Article 24 of the Statute and Rule 101 of the Rules, a trial chamber must take into account the following factors in sentencing: (1) the gravity of the offence or totality of the culpable conduct; (2) the individual circumstances of the convicted person; (3) the general practice regarding prison sentences in the courts of the former Yugoslavia; and (4) aggravating and mitigating circumstances.<sup>10587</sup>

3204. Appeals against sentence, as appeals from a trial judgement, are appeals *stricto sensu*; they are of a corrective nature and are not trials *de novo*.<sup>10588</sup> Trial chambers are vested with a broad discretion in determining an appropriate sentence, due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.<sup>10589</sup> As a general rule, the Appeals Chamber will not revise a sentence unless the trial chamber has committed a “discernible error” in exercising its discretion or has failed to follow the applicable law.<sup>10590</sup> It is for

<sup>10577</sup> Trial Judgement, Vol. 4, Disposition, p. 430.

<sup>10578</sup> Trial Judgement, Vol. 4, Disposition, pp. 430-431.

<sup>10579</sup> Trial Judgement, Vol. 4, Disposition, p. 431.

<sup>10580</sup> Trial Judgement, Vol. 4, Disposition, p. 431.

<sup>10581</sup> Prlić’s Appeal Brief, paras 677-682.

<sup>10582</sup> Stojić’s Appeal Brief, paras 426-439.

<sup>10583</sup> Petković’s Appeal Brief, paras 445-469.

<sup>10584</sup> Ćorić’s Appeal Brief, paras 321-339.

<sup>10585</sup> Pušić’s Appeal Brief, paras 236-255.

<sup>10586</sup> Prosecution’s Appeal Brief, paras 331-419, 424(d). The Prosecution has appealed all sentences and requests an increase to 40 years of imprisonment for Prlić, Stojić, Praljak, and Petković, 35 years of imprisonment for Ćorić, and 25 years of imprisonment for Pušić. Prosecution’s Appeal Brief, paras 338, 419.

<sup>10587</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1099; *Tolimir* Appeal Judgement, para. 626; *Popović et al.* Appeal Judgement, para. 1960; *Čelebići* Appeal Judgement, paras 429, 716.

<sup>10588</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1100; *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1961; *Kupreškić et al.* Appeal Judgement, para. 408.

<sup>10589</sup> *Stanišić and Župljanin*, Appeal Judgement, para. 1100; *Tolimir* Appeal Judgement, para. 626; *Popović et al.* Appeal Judgement, para. 1961; *Čelebići* Appeal Judgement, para. 717.

<sup>10590</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1100; *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1961; *Čelebići* Appeal Judgement, para. 725.

the party challenging the sentence to demonstrate how the trial chamber ventured outside its discretionary framework in imposing the sentence.<sup>10591</sup>

3205. To show that the trial chamber committed a discernible error in exercising its discretion, an appellant must demonstrate that the trial chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion; or that its decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the trial chamber failed to properly exercise its discretion.<sup>10592</sup>

## **B. Alleged Errors Regarding the Gravity of the Crimes**

### **1. Introduction**

3206. In imposing sentences, the Trial Chamber recognised that it should take into account the gravity of the offence as the most important consideration.<sup>10593</sup> It also recognised that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused.<sup>10594</sup>

3207. The Prosecution contests the Trial Chamber's assessment of the gravity of the crimes.<sup>10595</sup> It argues that the sentences imposed were manifestly inadequate and failed to reflect: (1) the nature of the crimes;<sup>10596</sup> and (2) the form and degree of participation of each Appellant.<sup>10597</sup> The Prosecution requests that the Trial Chamber's errors be corrected and that each sentence be increased.<sup>10598</sup> Stojić, Petković, and Pušić argue, *inter alia*, that the Trial Chamber erred in considering their respective form and degree of participation in the crimes, and request a reduction in their sentences.<sup>10599</sup> The Appeals Chamber will address each specific argument in turn.

<sup>10591</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1100; *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1961; *Čelebići* Appeal Judgement, para. 725.

<sup>10592</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1100; *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1962; *Babić* Judgement on Sentencing Appeal, para. 44.

<sup>10593</sup> Trial Judgement, Vol. 4, para. 1281.

<sup>10594</sup> Trial Judgement, Vol. 4, para. 1281. The Trial Chamber further noted that: "[t]he assessment criteria that the Chamber must take into consideration include, *inter alia*, the legal nature of the offence committed, the discriminatory nature of the crime where this is not considered as an element of the crime, the scale and brutality of the crime, the position of authority of the accused, the vulnerability of the victims, the number of victims and the effect of the crime upon the victims and their relatives". Trial Judgement, Vol. 4, para. 1282 (footnotes omitted).

<sup>10595</sup> Prosecution's Appeal Brief, paras 331-336, 419; Appeal Hearing, AT. 772 (28 Mar 2017).

<sup>10596</sup> Prosecution's Appeal Brief, paras 339-375; Appeal Hearing, AT. 772-773, 777 (28 Mar 2017).

<sup>10597</sup> Prosecution's Appeal Brief, paras 376-415, 419, 423; Appeal Hearing, AT. 772-774 (28 Mar 2017).

<sup>10598</sup> Prosecution's Appeal Brief, paras 338, 419, 424(d); Prosecution's Reply Brief, paras 181-182. See Prosecution's Appeal Brief, paras 331, 336, 376.

<sup>10599</sup> Stojić's Appeal Brief, para. 429; Petković's Appeal Brief, paras 445-449; Pušić's Appeal Brief, paras 237, 242.

## 2. Prosecution's appeal (Ground 4 in part)

### (a) The nature of the crimes

3208. In assessing the gravity of the crimes, the Trial Chamber considered, *inter alia*, that: (1) all the crimes for which it convicted the Appellants constituted a large-scale attack; and (2) these crimes were committed on the territory of eight municipalities in BiH during a period of approximately one-and-a-half years, resulting in thousands of victims.<sup>10600</sup> It found that the “scale and brutality of the crimes” and the “inherent nature of the offences” demonstrate that the crimes the Appellants committed are extremely serious.<sup>10601</sup> The Trial Chamber further concluded that a considerable number of the victims were particularly vulnerable, subjected to physical and mental suffering because of these crimes, with many of them losing their lives, family members, and property.<sup>10602</sup>

#### (i) Arguments of the Parties

3209. The Prosecution contends that the Trial Chamber imposed sentences that failed to adequately reflect the extreme gravity of the crimes committed,<sup>10603</sup> and gave insufficient weight to the factors it considered.<sup>10604</sup> First, the Prosecution submits that the Trial Chamber's sentencing analysis “minimised the seriousness and impact” of the crimes.<sup>10605</sup> In particular, it contends that the Trial Chamber did not take full account of: (1) the massive scale of the crimes;<sup>10606</sup> (2) the systematic, orchestrated, and organised manner in which the HVO operations were conducted, all following a similar pattern which became increasingly widespread and violent;<sup>10607</sup> (3) the “very difficult to horrific” conditions in the HVO detention facilities;<sup>10608</sup> (4) the vulnerability of the

<sup>10600</sup> Trial Judgement, Vol. 4, para. 1297. See also Trial Judgement, Vol. 4, paras 1298-1299.

<sup>10601</sup> Trial Judgement, Vol. 4, para. 1302. See also Trial Judgement, Vol. 4, para. 1306.

<sup>10602</sup> Trial Judgement, Vol. 4, paras 1303-1305.

<sup>10603</sup> Prosecution's Appeal Brief, paras 336, 339, 419. See Prosecution's Appeal Brief, paras 331, 334. See also Appeal Hearing, AT. 772, 777, 783 (28 Mar 2017).

<sup>10604</sup> Prosecution's Appeal Brief, paras 340, 356, 369, 374; Prosecution's Reply Brief, paras 154-157; Appeal Hearing, AT. 772, 776-777, 779, 783 (28 Mar 2017).

<sup>10605</sup> Prosecution's Appeal Brief, para. 341. See also Appeal Hearing, AT. 783 (28 Mar 2017).

<sup>10606</sup> Prosecution's Appeal Brief, paras 341-342, 346-347, 352-353, 355; Appeal Hearing, AT. 777, 783 (28 Mar 2017). The Prosecution argues that the JCE encompassed the commission of 21 types of crimes across eight municipalities, and that the Trial Chamber ignored many of the JCE III crimes in its analysis. Prosecution's Appeal Brief, paras 342, 353.

<sup>10607</sup> Prosecution's Appeal Brief, paras 343-345, 347-348, 353. The Prosecution submits in particular that: (1) in Stolac, the “eviction campaign was so frighteningly effective that by October/November 1993, none of Stolac's 8,000 Muslim inhabitants remained”; and (2) the expulsion of Muslims in West Mostar was characterised by repetitive violence. Prosecution's Appeal Brief, paras 344-345.

<sup>10608</sup> Prosecution's Appeal Brief, paras 349-351. The Prosecution submits that many detainees were held in overcrowded facilities and suffered from, *inter alia*, hunger, thirst, lack of hygiene, beatings, and other forms of mistreatment. Prosecution's Appeal Brief, para. 349.

victims;<sup>10609</sup> and (5) the profound demographic change which resulted from the ethnic cleansing campaign.<sup>10610</sup>

3210. Second, the Prosecution contends that the East Mostar siege alone warrants significantly higher sentences.<sup>10611</sup> It highlights: (1) the intense, daily, and uninterrupted shelling and sniping of the population over ten months, resulting in numerous deaths and injuries;<sup>10612</sup> (2) the deliberate blocking of humanitarian aid, leading to insufficient food, water, electricity, and medical care;<sup>10613</sup> and (3) that the targeted victims were civilians, including women, children, the elderly, and relief workers.<sup>10614</sup> Third, the Prosecution submits that the deportation system distinguishes this case from others before the Tribunal, and warrants higher sentences.<sup>10615</sup> Specifically, it points to: (1) the fact that Muslims were coerced into leaving HZ(R) H-B by the “dire conditions” and brutal mistreatment in the detention centres while their wives, children, and the elderly were left to fend for themselves against HVO armed forces, and by being sent to work on the front line;<sup>10616</sup> (2) the highly organised nature of the system, specifically the involvement of the Croatian authorities;<sup>10617</sup> and (3) the number and particular vulnerability of the deported victims.<sup>10618</sup> Finally, the Prosecution contends that the Trial Chamber failed to give sufficient weight to the “uniquely cruel feature of the JCE” in the “nearly systematic” use of detainees as unlawful labour on the front lines, or as human shields.<sup>10619</sup>

3211. Stojić, Praljak, Petković, and Ćorić all respond that the Prosecution: (1) fails to show that the Trial Chamber abused its sentencing discretion;<sup>10620</sup> and (2) focuses on factors already considered by the Trial Chamber in its sentencing analysis.<sup>10621</sup> Stojić, Petković, and Ćorić further argue that the Prosecution seeks to re-litigate arguments raised at trial without showing a

<sup>10609</sup> Prosecution’s Appeal Brief, para. 348.

<sup>10610</sup> Prosecution’s Appeal Brief, paras 354-355. See also Prosecution’s Appeal Brief, para. 418.

<sup>10611</sup> Prosecution’s Appeal Brief, para. 356; Prosecution’s Reply Brief, paras 159-160. See also Appeal Hearing, AT. 777-780, 783 (28 Mar 2017).

<sup>10612</sup> Prosecution’s Appeal Brief, paras 357-360; Appeal Hearing, AT. 777-780 (28 Mar 2017). The Prosecution contends that the siege caused substantial damage to property and that the civilian population was prevented from carrying out activities indispensable to its survival. Prosecution’s Appeal Brief, para. 357.

<sup>10613</sup> Prosecution’s Appeal Brief, para. 361; Appeal Hearing, AT. 778 (28 Mar 2017).

<sup>10614</sup> Prosecution’s Appeal Brief, paras 360, 362-364; Appeal Hearing, AT. 778-780 (28 Mar 2017).

<sup>10615</sup> Prosecution’s Appeal Brief, paras 334, 339, 369; Prosecution’s Reply Brief, paras 167-168; Appeal Hearing, AT. 781-783 (28 Mar 2017).

<sup>10616</sup> Prosecution’s Appeal Brief, para. 370; Appeal Hearing, AT. 782 (28 Mar 2017).

<sup>10617</sup> Prosecution’s Appeal Brief, paras 369, 371; Prosecution’s Reply Brief, para. 167.

<sup>10618</sup> Prosecution’s Appeal Brief, paras 372-373; Prosecution’s Reply Brief, para. 168. The Prosecution argues that the crime of deportation is more serious than the crime of forcible transfer as the former requires displacement of the victims across a *de jure* or *de facto* border, rendering the victims of deportation more vulnerable than those forcibly displaced within their own State. Prosecution’s Appeal Brief, para. 373.

<sup>10619</sup> Prosecution’s Appeal Brief, paras 374-375; Appeal Hearing, AT. 782-783 (28 Mar 2017).

<sup>10620</sup> Stojić’s Response Brief, paras 180, 184; Praljak’s Response Brief, paras 160, 165-167; Petković’s Response Brief, paras 111-114, 119; Ćorić’s Response Brief, paras 97, 105-106. See also Stojić’s Response Brief, paras 195, 201; Praljak’s Response Brief, paras 163-164; Appeal Hearing, AT. 810-811, 814-815, 824-827 (28 Mar 2017).

discernible error.<sup>10622</sup> Stojić also responds that his sentence is not “so low that it demonstrably shocks the conscience”,<sup>10623</sup> while Petković submits that many of the factors raised were taken into account as part of the assessment of criminal responsibility, and could not be “double[-] or triple-counted as factors relevant to sentencing”.<sup>10624</sup> In addition to his general arguments, Ćorić responds that: (1) he did not contribute to the crimes of East Mostar by impeding humanitarian aid or otherwise;<sup>10625</sup> and (2) the Prosecution ignores the fact that he was not convicted for all crimes.<sup>10626</sup> Similarly, Praljak responds that the Prosecution ignores the principle that a sentence must be individualised.<sup>10627</sup> Praljak also argues that: (1) the Trial Chamber found that he had no role in the detention centres and the deportation system;<sup>10628</sup> and (2) the involvement of Croatian authorities in deportation arrangements – which he contests – and the organised nature of the crimes do not warrant higher sentences.<sup>10629</sup>

3212. Repeating the submissions made in his appeal brief, Prlić further denies the existence of and his involvement in: (1) the JCE,<sup>10630</sup> (2) the East Mostar siege,<sup>10631</sup> (3) the organised system of

<sup>10621</sup> Stojić’s Response Brief, paras 196-197; Praljak’s Response Brief, paras 167-170, 173, 175; Petković’s Response Brief, paras 113-114, 117; Ćorić’s Response Brief, para. 106. See Praljak’s Response Brief, paras 165-166.

<sup>10622</sup> Stojić’s Response Brief, paras 180-183, referring to, *inter alia*, Prosecution’s Final Brief, paras 1289-1292, 1294-1296, 1306; Petković’s Response Brief, paras 113, 117; Ćorić’s Response Brief, paras 97, 105; Appeal Hearing, AT. 807 (28 Mar 2017). See also Stojić’s Response Brief, paras 179, 219. Stojić also argues that the Prosecution seeks the same sentence requested at trial but ignores that he was acquitted on some charges. Stojić’s Response Brief, para. 183.

<sup>10623</sup> Stojić’s Response Brief, paras 202-207, referring to *Galić* Appeal Judgement, Separate and Partially Dissenting Opinion of Judge Meron, para. 6. Stojić argues that his sentence is proportionate to other sentences imposed by the Tribunal (see Stojić’s Response Brief, paras 205, 207, 210-218; see also Appeal Hearing, AT. 808-812 (28 Mar 2017)), and that a sentence of 40 years’ or life imprisonment is an exceptional punishment “truly drawn from the wrong shelf”. Stojić’s Response Brief, heading before para. 214, paras 214-215, referring to, *inter alia*, *Popović et al.* Appeal Judgement, pp. 713-714; *Lukić and Lukić* Appeal Judgement, pp. 220-222; *Galić* Appeal Judgement, p. 185.

<sup>10624</sup> Petković’s Response Brief, para. 115. Petković argues that the element of “scale” is part of the definition of crimes against humanity, and the element of “planning” is a core part of the Trial Chamber’s findings regarding the existence and nature of the JCE. See also Petković’s Response Brief, para. 116.

<sup>10625</sup> Ćorić’s Response Brief, paras 127-128.

<sup>10626</sup> Ćorić’s Response Brief, paras 147-149. See also Ćorić’s Response Brief, paras 106, 150.

<sup>10627</sup> Praljak’s Response Brief, para. 172. See also Praljak’s Response Brief, para. 197. Praljak points out that his participation in the JCE ceased on 9 November 1993 and that the Trial Chamber concluded that it did not have evidence of his role in the criminal events in Mostar between 9 May 1993 and 24 July 1993. Praljak’s Response Brief, para. 172.

<sup>10628</sup> Praljak’s Response Brief, paras 196-197, referring to Praljak’s Appeal Brief, ground of appeal 46. Praljak also asserts that the Trial Chamber: (1) found that he sought to end the use of detainees as labour (see Praljak’s Response Brief, para. 200); (2) erroneously concluded that he had knowledge of unlawful labour (see Praljak’s Response Brief, para. 200, referring to Praljak’s Appeal Brief, ground of appeal 43); and (3) found that he was not involved in the use of the Heliodrom detainees to work on the front line (see Praljak’s Response Brief, para. 201).

<sup>10629</sup> Praljak’s Response Brief, para. 198, referring to Praljak’s Appeal Brief, ground of appeal 5. See also Appeal Hearing, AT. 825 (28 Mar 2017). Praljak submits that the assertion that deportation is a more serious offence than forcible transfer is unsupported. Praljak’s Response Brief, para. 199. See Praljak’s Response Brief, para. 206. Praljak also argues that the Prosecution misrepresents the number of persons evicted. Praljak’s Response Brief, para. 171. See Praljak’s Response Brief, paras 167-170.

<sup>10630</sup> Prlić’s Response Brief, paras 186-215, heading before para. 231, para. 231(a)(i)-(iv), 231(b)-(j), 231(l)-(q), referring to Prlić’s Appeal Brief, grounds of appeal 1-7, 9-16, 18. Prlić repeats that: (1) he is not guilty of a number of crimes characterised as those of “an immense scale” (Prlić’s Response Brief, paras 231(a)(i)-(iv), referring to Prlić’s Appeal Brief, grounds of appeal 10-16, 18); and (2) he did not participate in nor is he responsible for mistreatment or conditions in detention centres (Prlić’s Appeal Brief, paras 231(m)-(n), referring to Prlić’s Appeal Brief, grounds of appeal 10-13, 16). See Prlić’s Response Brief, paras 233, 238(b)-(h). See also Appeal Hearing, AT. 795 (28 Mar 2017).

deportation;<sup>10632</sup> and (4) the institutionalised use of detainees on the front lines.<sup>10633</sup> Thus, Prlić responds that his sentence was manifestly excessive.<sup>10634</sup> Pušić responds that the Prosecution does not provide any basis for increasing his sentence, and that the Trial Chamber paid due regard to the gravity of the crimes.<sup>10635</sup>

3213. The Prosecution replies that: (1) the fact that Stojić and Ćorić were acquitted of a small number of incidents should have no impact on the gravity assessment, as they were still convicted of crimes on an immense scale;<sup>10636</sup> and (2) as the crimes against detainees and the deportation were committed as part of the JCE, and Praljak was convicted for these crimes as a JCE member, it was correct for the gravity of these crimes to be assessed in relation to him.<sup>10637</sup>

(ii) Analysis

3214. Considering first the Prosecution's arguments on the seriousness and impact of the crimes, the Appeals Chamber notes that the Trial Chamber expressly considered the factors identified by the Prosecution. Specifically, the Trial Chamber observed that: (1) the crimes constituted a large-scale attack committed in eight municipalities over approximately 18 months which resulted in thousands of victims;<sup>10638</sup> (2) the crimes were extremely serious because of, *inter alia*, their "scale and brutality" and the inherent nature of the offences;<sup>10639</sup> (3) the crimes followed a clear pattern of conduct, the majority of which were not "accidental or random acts";<sup>10640</sup> (4) the system implemented to expel the Muslim population consisted of, *inter alia*, forcible removal and detention, as well as mistreatment and poor conditions of confinement;<sup>10641</sup> and (5) the use of detainees on the front line to work and sometimes to serve as human shields was "widespread and

<sup>10631</sup> Prlić's Response Brief, paras 216-223, 231(a)(v), 231(k), 232, referring to Prlić's Appeal Brief, grounds of appeal 2, 6, 10, 16, 18. See also Prlić's Response Brief, para. 238(i)-(l).

<sup>10632</sup> Prlić's Response Brief, paras 224-230, 231(p), 234, referring to Prlić's Appeal Brief, grounds of appeal 6, 10-11, 13, 16.

<sup>10633</sup> Prlić's Response Brief, paras 235-237, referring to Prlić's Appeal Brief, grounds of appeal 1-4, 10-11, 16. See also Prlić's Response Brief, para. 247(f).

<sup>10634</sup> Prlić's Response Brief, paras 238-239. Prlić also responds that his convictions should be overturned and a full acquittal entered. Prlić's Response Brief, para. 243.

<sup>10635</sup> Pušić's Response Brief, para. 29. Pušić also refers to arguments made in his appeal brief in favour of a sentence reduction. Pušić's Response Brief, para. 29, referring to Pušić's Appeal Brief, paras 236-254. See also Appeal Hearing, AT. 843 (28 Mar 2017).

<sup>10636</sup> Prosecution's Reply Brief, para. 157, referring to Stojić's Response Brief, para. 183, Ćorić's Response Brief, paras 147-149. See also Prosecution's Reply Brief, para. 172, referring to Ćorić's Response Brief, para. 99. The Prosecution also replies that the jurisprudence referred to by Stojić either supports the position that higher sentences should be awarded in the present case, or is unhelpful. Prosecution's Reply Brief, paras 179-180.

<sup>10637</sup> Prosecution's Reply Brief, para. 174, referring to Praljak's Response Brief, paras 196, 201. The Prosecution also replies that Praljak's claim that there were merely "thousands" rather than "tens of thousands" of victims is incorrect. Prosecution's Reply Brief, para. 158, referring to Praljak's Response Brief, para. 171.

<sup>10638</sup> Trial Judgement, Vol. 4, para. 1297.

<sup>10639</sup> Trial Judgement, Vol. 4, paras 1302, 1306.

<sup>10640</sup> Trial Judgement, Vol. 4, para. 1298.

<sup>10641</sup> Trial Judgement, Vol. 4, para. 1298. See Trial Judgement, Vol. 4, para. 1305 (noting that "[w]hile in detention, the civilian population was attacked, robbed, verbally and physically abused and sexually attacked").



almost systematic”, resulting in murder and mistreatment.<sup>10642</sup> The Trial Chamber also considered that the crimes resulted in demographic changes across the municipalities of Ljubuški, Čapljina, Stolac, Mostar, and Prozor,<sup>10643</sup> that victims suffered both physically and mentally,<sup>10644</sup> and that a considerable number of the victims were deemed “particularly vulnerable”.<sup>10645</sup> The Trial Judgement also clearly demonstrates that the Trial Chamber considered the seriousness of the crimes committed in furtherance of the JCE.<sup>10646</sup> The Appeals Chamber thus finds that the Prosecution merely relies upon factors the Trial Chamber considered in its analysis and is not convinced that it has shown that the Trial Chamber committed a discernible error by giving insufficient weight to these factors.<sup>10647</sup> The Appeals Chamber therefore dismisses these arguments.

3215. Similarly, the Appeals Chamber is not persuaded by the Prosecution’s arguments concerning the events in East Mostar. In this regard, the Appeals Chamber notes that the Trial Chamber considered that the East Mostar population was subjected to “physical and mental suffering for months” by virtue of the daily shelling and shooting as well as “extremely harsh living conditions” which caused numerous deaths and injuries.<sup>10648</sup> Additionally, the Trial Chamber considered that the HVO hindered the delivery of humanitarian aid and restricted the access of international organisations to East Mostar.<sup>10649</sup> The Appeals Chamber is of the view that the Prosecution has failed to show that the Trial Chamber gave insufficient weight to the East Mostar siege when assessing the gravity of the crimes committed. The Appeals Chamber dismisses the Prosecution’s arguments regarding the Trial Chamber’s assessment of the seriousness of the crimes in East Mostar.

3216. Regarding the Prosecution’s arguments on the deportation system,<sup>10650</sup> the Appeals Chamber notes that the Trial Chamber took account of the fact that there was an “entire system to expel the Muslim population from Herceg-Bosna”,<sup>10651</sup> discussed the effects of this forcible removal on the civilian population, and took note of the particular vulnerability of the victims.<sup>10652</sup> In the same analysis, the Trial Chamber also referred to the sections of the Trial Judgement where it considered the expulsion system more fully, including the involvement of the Croatian

<sup>10642</sup> Trial Judgement, Vol. 4, para. 1298.

<sup>10643</sup> Trial Judgement, Vol. 4, para. 1299.

<sup>10644</sup> Trial Judgement, Vol. 4, para. 1304. See Trial Judgement, Vol. 4, para. 1303.

<sup>10645</sup> Trial Judgement, Vol. 4, para. 1305. See Trial Judgement, Vol. 4, para. 1303.

<sup>10646</sup> See, e.g., Trial Judgement, Vol. 4, paras 44, 50, 56-57, 64-68, 70-73. The Appeals Chamber recalls that it has considered, and dismissed, challenges to these findings elsewhere. See *supra*, paras 844-983.

<sup>10647</sup> See *supra*, para. 3209.

<sup>10648</sup> Trial Judgement, Vol. 4, para. 1304.

<sup>10649</sup> Trial Judgement, Vol. 4, para. 1304.

<sup>10650</sup> The Appeals Chamber notes that it has considered, and dismissed, a number of the challenges to the deportation system elsewhere. See *supra*, paras 952-955, 958-960, 980, 994-997.

<sup>10651</sup> Trial Judgement, Vol. 4, para. 1298.

<sup>10652</sup> See Trial Judgement, Vol. 4, paras 1298-1299, 1303-1305.

authorities.<sup>10653</sup> The Appeals Chamber recalls that a trial judgement must be read as a whole,<sup>10654</sup> and thus considers that the Trial Chamber was well aware of the “coercion” applied to Muslims to leave the municipalities, the highly organised nature of the deportation system, and the involvement of the Croatian authorities. Further, the Appeals Chamber is not persuaded by the Prosecution’s contention that the distinct deportation system in this case, by itself, warranted higher sentences. The Appeals Chamber thus finds that the Prosecution merely attempts to replace the Trial Chamber’s assessment of the gravity of the crimes with its own assessment.<sup>10655</sup>

3217. Finally, regarding the use of detainees as unlawful labour and human shields,<sup>10656</sup> the Appeals Chamber notes that the Trial Chamber expressly considered the “widespread and almost systematic use of detainees on the front line to work and sometimes to serve as human shields, and murder and mistreatment related to this work”.<sup>10657</sup> The Prosecution’s argument that this “uniquely cruel feature of the JCE” should have warranted higher sentences is insufficient to show that the Trial Chamber committed a discernible error, particularly as it expressly found that the crimes in question were “extremely serious”.<sup>10658</sup> As the Prosecution fails to show a discernible error by the Trial Chamber, the Appeals Chamber dismisses these arguments.

3218. In sum, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber committed a discernible error in assessing the nature of the crimes or that its conclusions were so unreasonable as to amount to an abuse of discretion. It thus dismisses the Prosecution’s ground of appeal 4 in relevant part.

(b) The form and degree of participation of the Appellants in the commission of the crimes

3219. In assessing the extent of each Appellant’s participation in the commission of the crimes, the Trial Chamber found that: (1) Prlić, Stojić, Praljak, Petković, and Čorić each “played a key role in the implementation of all the crimes”;<sup>10659</sup> and (2) Čorić and Pušić significantly contributed to the implementation of the JCE.<sup>10660</sup>

<sup>10653</sup> Trial Judgement, Vol. 4, para. 1298, referring to Trial Judgement, Vol. 4, paras 41-73 (section entitled “Existence of a Common Plan”). See Trial Judgement, Vol. 4, paras 64, 66.

<sup>10654</sup> *Stanišić and Župljanin* Appeal Judgement, paras 1107, 1115, 1148, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

<sup>10655</sup> The Appeals Chamber notes that the Prosecution does not cite jurisprudence in support of its assertion that deportation should be considered as a more serious crime than forcible transfer. This submission is therefore dismissed.

<sup>10656</sup> The Appeals Chamber recalls that it has considered, and dismissed, a number of challenges to the findings regarding the use of detainees on the front line elsewhere. See *supra*, paras 1348, 1963-1967, 2316-2322, 2331-2334, 2347-2349, 2365-2366, 2387-2389, 2512-2514, 2688-2697, 2791-2796.

<sup>10657</sup> Trial Judgement, Vol. 4, para. 1298.

<sup>10658</sup> Trial Judgement, Vol. 4, paras 1302, 1306.

<sup>10659</sup> Trial Judgement, Vol. 4, paras 1317, 1329, 1341, 1354, 1369. See also Trial Judgement, Vol. 4, paras 1315-1316, 1328, 1340, 1353, 1367-1368.

<sup>10660</sup> Trial Judgement, Vol. 4, paras 1367, 1379. See also Trial Judgement, Vol. 4, para. 1380.

(i) Arguments of the Parties

3220. The Prosecution submits that each Appellant played a key role in the furtherance of the JCE, describing them as “architects and leading implementers” of the JCE.<sup>10661</sup> The Prosecution submits that the sentences imposed on the Appellants were manifestly inadequate, as the Trial Chamber failed to properly consider their roles, thereby abusing its discretion.<sup>10662</sup> In particular, the Prosecution argues that Prlić, Stojić, Petković, Čorić, and Pušić all contributed to the East Mostar siege by either impeding the humanitarian aid or ordering the shelling campaign.<sup>10663</sup>

3221. Specifically in relation to Prlić, the Prosecution submits that he used his extensive powers to further the criminal plan, including at “crucial moments” in the JCE,<sup>10664</sup> and points to his role in: (1) drafting the 15 January 1993 Ultimatum and the 4 April 1993 Ultimatum;<sup>10665</sup> (2) participating in the 30 June 1993 Joint Proclamation, which contributed to mass arrests and detentions;<sup>10666</sup> and (3) planning and facilitating the deportation of 2,500 Heliudrom detainees.<sup>10667</sup> The Prosecution also contends that Prlić sought to minimise or conceal HVO crimes and to spread fear, mistrust, and hatred of Bosnian Muslims.<sup>10668</sup>

3222. Regarding Stojić, the Prosecution submits that he was an important link between the HVO civilian government and its military component over which he had effective control,<sup>10669</sup> and highlights his role in: (1) establishing and structuring the HVO armed forces;<sup>10670</sup> (2) implementing the 15 January 1993 Ultimatum;<sup>10671</sup> (3) planning, facilitating, and organising violent HVO

<sup>10661</sup> Prosecution’s Appeal Brief, paras 335, 376, 378-383 (Prlić’s role throughout the JCE), 384-387 (Stojić as an architect of the JCE in the early stages), 388-392 (Praljak as one of the most important JCE members), 394-400 (Petković was one of the key JCE members throughout the JCE lifespan), 401-408 (Čorić’s major role in furthering the JCE), 409-415 (Pušić played a “major and increasingly significant” role in implementing the JCE throughout its lifespan). The Prosecution also argues that JCE is one of the most serious forms of liability. See Prosecution’s Appeal Brief, para. 377.

<sup>10662</sup> Prosecution’s Appeal Brief, paras 331, 336, 376; Prosecution’s Reply Brief, paras 181-182. See also Appeal Hearing, AT. 772-776, 783 (28 Mar 2017). The Prosecution submits that the sentences for Prlić, Stojić, Praljak, and Petković should be increased to 40 years of imprisonment, while Čorić’s and Pušić’s sentences should be increased to 35 years and 25 years, respectively. Prosecution’s Appeal Brief, paras 338, 419, 424(d).

<sup>10663</sup> Prosecution’s Appeal Brief, paras 381 (Prlić’s encouragement of the siege and impeding the delivery of humanitarian aid), 387 (Stojić’s role in blocking humanitarian aid), 397 (Petković ordered the shelling and the military campaign resulting in the destruction of the Old Bridge), 402 (Čorić deliberately impeded the delivery of humanitarian aid), 411 (Pušić used his authority to hinder the humanitarian efforts).

<sup>10664</sup> Prosecution’s Appeal Brief, para. 380. See Prosecution’s Appeal Brief, paras 335, 376-377.

<sup>10665</sup> Prosecution’s Appeal Brief, para. 380. The Prosecution argues that by drafting these ultimatums, Prlić planned, facilitated, and encouraged crimes in Gornji Vakuf, Prozor, and Jablanica. Prosecution’s Appeal Brief, para. 380.

<sup>10666</sup> Prosecution’s Appeal Brief, para. 380.

<sup>10667</sup> Prosecution’s Appeal Brief, para. 382. The Prosecution contends that Prlić planned and facilitated this deportation despite being aware that an international organisation had qualified it as “ethnic cleansing”. Prosecution’s Appeal Brief, para. 382.

<sup>10668</sup> Prosecution’s Appeal Brief, para. 383.

<sup>10669</sup> Prosecution’s Appeal Brief, para. 385. See Prosecution’s Appeal Brief, paras 335, 377.

<sup>10670</sup> Prosecution’s Appeal Brief, para. 385.

<sup>10671</sup> Prosecution’s Appeal Brief, para. 386.

operations;<sup>10672</sup> and (4) participating in the 30 June 1993 Joint Proclamation.<sup>10673</sup> The Prosecution also submits that Stojić made no serious effort to stop HVO crimes and encouraged the commission of further crimes.<sup>10674</sup>

3223. As for Praljak, the Prosecution submits that he played a major role in the crimes through his functions and powers, and continuously abused these powers to achieve the CCP from mid-January until early November 1993.<sup>10675</sup> It also contends that Praljak: (1) was a strong advocate of the CCP in the early stages;<sup>10676</sup> (2) participated in the JCE from the outset, drafting the 15 January 1993 Ultimatum and directing subsequent military operations;<sup>10677</sup> (3) was a key figure in making decisions regarding the HVO military operations;<sup>10678</sup> and (4) from 24 July 1993, planned and directed violent eviction operations in the municipalities of Prozor, Mostar, and Vareš.<sup>10679</sup> The Prosecution further argues that Praljak did not attempt to stop or prevent crimes and instead encouraged the commission of more crimes,<sup>10680</sup> and that he served as a continuous intermediary between the senior Croatian leadership and the HZ(R) H-B in furtherance of the CCP.<sup>10681</sup>

3224. With regard to Petković, the Prosecution highlights the fact that he: (1) planned, directed, or facilitated military campaigns in a number of regions;<sup>10682</sup> (2) ordered the arrest of all able-bodied Muslim men in the South-East OZ following the 30 June 1993 Joint Proclamation;<sup>10683</sup> and (3) “cynically abuse[d]” his authority, participating in the sham investigation designed to conceal responsibility for the Stupni Do killings, as well as the replacement of Ivica Rajić with the fictitious Viktor Andrić to “mislead the international community”.<sup>10684</sup> The Prosecution also argues that Petković personally ordered and authorised the widespread use of detainees for forced labour at the front line.<sup>10685</sup>

<sup>10672</sup> Prosecution’s Appeal Brief, para. 386.

<sup>10673</sup> Prosecution’s Appeal Brief, para. 386.

<sup>10674</sup> Prosecution’s Appeal Brief, para. 387.

<sup>10675</sup> Prosecution’s Appeal Brief, para. 388. See Prosecution’s Appeal Brief, paras 335, 377.

<sup>10676</sup> Prosecution’s Appeal Brief, para. 389; Prosecution’s Reply Brief, paras 170-171. The Prosecution argues that from April 1992 to November 1993, Praljak participated in meetings with senior Croatian leadership, including Tudman and Mladić, which discussed the furtherance of the ethnic cleansing campaign. Prosecution’s Appeal Brief, para. 389.

<sup>10677</sup> Prosecution’s Appeal Brief, para. 390.

<sup>10678</sup> Prosecution’s Appeal Brief, para. 390. The Prosecution also submits that, although he had no *de jure* authority before 24 July 1993, Praljak played an important role in the operations in the municipalities of Gornji Vakuf, Ljubuški, Prozor, Jablanica, and Mostar. Prosecution’s Appeal Brief, para. 390.

<sup>10679</sup> Prosecution’s Appeal Brief, para. 391.

<sup>10680</sup> Prosecution’s Appeal Brief, para. 392. The Prosecution asserts that Praljak, *inter alia*, concealed crimes committed in Stupni Do and turned a blind eye to the appalling conditions in HVO detention centres. Prosecution’s Appeal Brief, para. 392.

<sup>10681</sup> Prosecution’s Appeal Brief, para. 393. See Prosecution’s Appeal Brief, para. 335.

<sup>10682</sup> Prosecution’s Appeal Brief, paras 335, 396, 398.

<sup>10683</sup> Prosecution’s Appeal Brief, para. 396.

<sup>10684</sup> Prosecution’s Appeal Brief, paras 398-399.

<sup>10685</sup> Prosecution’s Appeal Brief, paras 335, 400.

3225. Regarding Ćorić, the Prosecution submits that he contributed to the JCE by providing Military Police units to assist in military takeovers, particularly in Mostar.<sup>10686</sup> The Prosecution also contends that Ćorić was one of the architects of the HVO detention facilities and authorised the use of detainees for forced labour, notably at the front line,<sup>10687</sup> as well as the forced deportation of Muslims by way of the detention centres.<sup>10688</sup>

3226. On Pušić's role, the Prosecution submits that he held an increasingly significant role as a JCE member,<sup>10689</sup> and that he: (1) played a key role in the detention and release of Muslim detainees;<sup>10690</sup> (2) was the link between the network of HVO detention facilities and the most important JCE members; (3) organised the forcible deportation of Muslim detainees following release;<sup>10691</sup> (4) ordered and/or authorised the use of detainees at the front lines;<sup>10692</sup> and (5) participated in the forced displacement of at least 300 Muslim women, children, and elderly from West Mostar to East Mostar.<sup>10693</sup> It argues that Pušić sought to conceal HVO responsibility for crimes by suggesting the destruction of the Heliodrom archives.<sup>10694</sup>

3227. Prlić responds that the Prosecution relies on the Trial Chamber's erroneous conclusions,<sup>10695</sup> and he repeats the submissions made in his appeal brief denying his involvement in the JCE, in all events specified by the Prosecution,<sup>10696</sup> and in planning the division of BiH.<sup>10697</sup> Stojić, Ćorić, and Pušić respond that the Prosecution seeks to re-litigate arguments raised at trial.<sup>10698</sup> Further, Stojić, Praljak, Petković, and Ćorić argue that the Prosecution fails to demonstrate any abuse of the

<sup>10686</sup> Prosecution's Appeal Brief, para. 402.

<sup>10687</sup> Prosecution's Appeal Brief, paras 335, 404.

<sup>10688</sup> Prosecution's Appeal Brief, para. 406.

<sup>10689</sup> Prosecution's Appeal Brief, para. 409.

<sup>10690</sup> Prosecution's Appeal Brief, paras 410, 412. See Prosecution's Appeal Brief, para. 411.

<sup>10691</sup> Prosecution's Appeal Brief, paras 409, 413.

<sup>10692</sup> Prosecution's Appeal Brief, para. 412.

<sup>10693</sup> Prosecution's Appeal Brief, para. 414.

<sup>10694</sup> Prosecution's Appeal Brief, para. 415.

<sup>10695</sup> Prlić also submits that his sentence was "manifestly excessive" and that it should not be increased. Prlić's Response Brief, paras 239, 243.

<sup>10696</sup> Prlić's Response Brief, para. 238(g)-(n), referring to Prlić's Appeal Brief, grounds of appeal 6, 14, 16. See also Prlić's Response Brief, paras 189-207, 216-223, 231(a)(v), 231(k)-(l), 234(a)-(g), 238(m). Prlić responds in particular that he did not: (1) draft the 15 January 1993 Ultimatum and the 4 April 1993 Ultimatum (Prlić's Response Brief, para. 238(g)); (2) participate in the 30 June 1993 Joint Proclamation (Prlić's Response Brief, para. 238(h)); (3) encourage the crimes in East Mostar, or impede humanitarian aid (Prlić's Response Brief, para. 238(i), (k)-(l)); (4) plan or facilitate the deportation of the Heliodrom detainees (Prlić's Response Brief, para. 238(m)); or (5) spread hatred of the Bosnian Muslim population (Prlić's Response Brief, para. 238(n)).

<sup>10697</sup> Prlić's Response Brief, para. 238(b)-(g), referring to Prlić's Appeal Brief, grounds of appeal 1, 5, 9-11, 15-16. Prlić also argues that he had no "extensive powers", and if he did, he did not use them to further the alleged criminal purpose. Prlić's Response Brief, para. 238(f).

<sup>10698</sup> Stojić's Response Brief, paras 179-183, 219, referring, *inter alia*, to Prosecution's Final Brief, paras 1291, 1306; Ćorić's Response Brief, paras 97, 106; Pušić's Response Brief, para. 30. In particular, Stojić submits that the Prosecution raised at trial: (1) the central roles and high-level positions of the Appellants; and (2) the request for a sentence of 40 years of imprisonment for him. Stojić's Response Brief, para. 182. See also Appeal Hearing, AT. 808 (28 Mar 2017).

Trial Chamber's broad discretion or a discernible error.<sup>10699</sup> Specifically, Stojić responds that the Trial Chamber considered the factors raised by the Prosecution in its sentencing analysis, either expressly or by reference.<sup>10700</sup>

3228. Praljak also repeats his challenges to the conclusions regarding: (1) his participation in the JCE and the existence of a common criminal plan;<sup>10701</sup> and (2) his role in the crimes committed in the municipalities.<sup>10702</sup> He further disputes his involvement in the early evolution of the CCP.<sup>10703</sup> Praljak submits that the Trial Chamber did not find that he *continuously* abused his powers,<sup>10704</sup> and argues that he called for HVO members who contravened the rules of international humanitarian law to be punished and helped the Muslim population.<sup>10705</sup> Petković responds that: (1) there is no indication that the Trial Chamber failed to account for any of the factors raised;<sup>10706</sup> and (2) the Prosecution attempts to introduce new factors as "aggravating factors" on appeal, which is impermissible.<sup>10707</sup>

3229. Ćorić specifically responds that the Prosecution fails to take account of the fact that he: (1) was not convicted for direct commission of the crimes, but for commission through a JCE;<sup>10708</sup> and (2) was not convicted for all crimes.<sup>10709</sup> Ćorić also responds that the Trial Chamber impermissibly relied on his role as Minister of the Interior, a role he occupied outside the

<sup>10699</sup> Stojić's Response Brief, paras 180, 184, 219; Praljak's Response Brief, para. 160; Petković's Response Brief, paras 112-114, 119; Ćorić's Response Brief, paras 105-106. See Stojić's Appeal Brief, paras 185-186; Praljak's Response Brief, para. 164.

<sup>10700</sup> Stojić's Response Brief, para. 198. Stojić contends that the Trial Chamber "went too far in its assessment", because it double-counted his official position both in considering the extent of his participation and the aggravating factors. Stojić's Response Brief, para. 198. See also *infra*, para. 3268.

<sup>10701</sup> Praljak's Response Brief, paras 161, 203-204, 206, referring to Praljak's Appeal Brief, grounds of appeal 39-40, 50.

<sup>10702</sup> Praljak's Response Brief, para. 207, referring to Praljak's Appeal Brief, grounds of appeal 42-46. See also Appeal Hearing, AT. 814-815 (28 Mar 2017). Praljak asserts that he was found not to have played a role in the implementation of the JCE in the municipalities of Ljubuški, Jablanica, and Mostar before 24 July 1993. Praljak's Response Brief, para. 207. Praljak also asserts that the Trial Chamber double-counted by considering his role under the gravity of the offence and as an aggravating factor. Praljak's Response Brief, para. 210. See also Praljak's Response Brief, para. 208.

<sup>10703</sup> Praljak's Response Brief, para. 205. Praljak argues that it is "illogical" that he advocated the CCP before such a plan existed, and that he was not found to have participated in discussions aimed at furthering the ethnic cleansing campaign. Praljak's Response Brief, para. 205, referring to Trial Judgement, Vol. 4, paras 43-44, 522.

<sup>10704</sup> Praljak's Response Brief, para. 205 (emphasis added), referring to Trial Judgement, Vol. 4, para. 1342.

<sup>10705</sup> Praljak's Response Brief, para. 209.

<sup>10706</sup> Petković's Response Brief, para. 118(i).

<sup>10707</sup> Petković's Response Brief, paras 116, 118(ii). Petković also asserts that most of the factors raised were taken into account in the assessment of criminal responsibility, and so could not be "double[-] or triple-counted as factors relevant to sentencing". Petković's Response Brief, paras 115, 118(iii). The Appeals Chamber notes that Petković also argues that to the extent that the Prosecution raises new "aggravating factors", he had no notice as these factors were not pleaded in the Indictment. Petković's Response Brief, para. 118(ii).

<sup>10708</sup> Ćorić's Response Brief, para. 100. According to Ćorić, "gradations of fault within the JCE doctrine are possible, and may be reflected in the sentences given". Ćorić's Response Brief, para. 100.

<sup>10709</sup> Ćorić's Response Brief, paras 147-149.

Indictment period.<sup>10710</sup> In addition, he submits that the Trial Chamber did not individualise his sentence, and based its finding of guilt on his leadership position.<sup>10711</sup> Further, Ćorić asserts that he did not: (1) have control over the detention facilities or the deportation arrangements;<sup>10712</sup> (2) create a climate of impunity, tolerating crimes;<sup>10713</sup> (3) use Military Police units to contribute to crimes in Mostar and Gornji Vakuf;<sup>10714</sup> or (4) impede humanitarian aid to East Mostar.<sup>10715</sup> Pušić responds that the Prosecution seeks to substitute its views for those expressed in the Trial Judgement.<sup>10716</sup> Pušić also incorporates, by reference, the arguments made in his appeal brief.<sup>10717</sup>

3230. Replying to Petković, the Prosecution denies raising any new factors on appeal.<sup>10718</sup>

(ii) Analysis

3231. The Appeals Chamber recalls that in assessing the extent of each Appellant's participation in the commission of the crimes, the Trial Chamber found that: (1) Prlić, Stojić, Praljak, and Petković were "key members of the JCE"; and (2) Prlić, Stojić, Praljak, Petković, and Ćorić played a "key role" in its implementation.<sup>10719</sup> It also found that Pušić significantly contributed to the JCE.<sup>10720</sup> The Trial Chamber discussed in its sentencing analysis various aspects of each Appellant's involvement in the crimes and the JCE, and cross-referenced its previous findings on each Appellant's respective contribution.<sup>10721</sup> As a preliminary point, the Appeals Chamber notes that it has considered and dismissed elsewhere all challenges from Prlić,<sup>10722</sup> Stojić,<sup>10723</sup> Praljak,<sup>10724</sup>

<sup>10710</sup> Ćorić's Response Brief, para. 101, referring to Ćorić's Appeal Brief, ground of appeal 11. Ćorić also responds that the Prosecution initially argued that his sentence should be increased because he played a key role in the JCE, but then seeks to attribute his actions as further "aggravating factors". Ćorić's Response Brief, para. 101.

<sup>10711</sup> Ćorić's Response Brief, para. 106. Ćorić also submits that the Prosecution focuses on retribution as opposed to his individual responsibility. Ćorić's Response Brief, para. 150.

<sup>10712</sup> Ćorić's Response Brief, paras 108-115, referring to Ćorić's Appeal Brief, grounds of appeal 6 (paras 135, 138-142), 7 (generally, and in particular, paras 168-171), 13. Ćorić argues that the Prosecution ignores findings indicating that he had limited authority and also relies on other findings which are erroneous. Ćorić's Response Brief, paras 111-115.

<sup>10713</sup> Ćorić's Response Brief, paras 116-122.

<sup>10714</sup> Ćorić's Response Brief, paras 123-126, referring to Ćorić's Appeal Brief, fns 40, 42-43, 58.

<sup>10715</sup> Ćorić's Response Brief, paras 127-128.

<sup>10716</sup> Pušić's Response Brief, para. 30. See also Appeal Hearing, AT. 843 (28 Mar 2017).

<sup>10717</sup> Pušić's Response Brief, para. 30, referring to Pušić's Appeal Brief, paras 236-254 (ground 8).

<sup>10718</sup> Prosecution's Reply Brief, para. 157, referring to Prosecution's Final Brief, paras 1291-1292, 1308.

<sup>10719</sup> Trial Judgement, Vol. 4, paras 1315, 1317 (Prlić), 1328-1329 (Stojić), 1340-1341 (Praljak), 1353-1354 (Petković), 1369 (Ćorić).

<sup>10720</sup> Trial Judgement, Vol. 4, para. 1379.

<sup>10721</sup> Trial Judgement, Vol. 4, paras 1315-1317 (Prlić), 1328-1329 (Stojić), 1340-1341 (Praljak), 1353-1354 (Petković), 1367-1368 (Ćorić), 1379-1380 (Pušić).

<sup>10722</sup> The Appeals Chamber recalls that it considers and dismisses elsewhere Prlić's challenges to these findings. See *supra*, para. 1400.

<sup>10723</sup> The Appeals Chamber recalls that it considers and dismisses elsewhere Stojić's challenges to these findings. See *supra*, para. 1806.

<sup>10724</sup> The Appeals Chamber recalls that it considers and dismisses elsewhere Praljak's challenges to his JCE responsibility. See *supra*, para. 2083.

and Ćorić<sup>10725</sup> to the Trial Chamber's findings referred to in their respective sentencing sections. With regard to Petković and Pušić, the Appeals Chamber notes that it has overturned certain findings referred to by the Trial Chamber in their respective sentencing sections.<sup>10726</sup>

3232. The Appeals Chamber first notes that the majority of the factors identified by the Prosecution as indicating that the Appellants were "architects and leading implementers" of the JCE were expressly considered and given weight by the Trial Chamber in its sentencing analysis.<sup>10727</sup> Insofar as the Prosecution argues that the Trial Chamber failed to properly consider the Appellants' involvement in crimes, the Appeals Chamber considers that it merely recites these same factors and findings and seeks to substitute its own assessment for that of the Trial Chamber, without showing a discernible error. Further, the Prosecution has not demonstrated that the Trial Chamber's assessment of these factors was so unreasonable that it could be inferred that the Trial Chamber failed to properly exercise its broad sentencing discretion.

3233. Nonetheless, the Appeals Chamber observes that some of the factors put forward by the Prosecution were not expressly considered by the Trial Chamber in its sentencing analysis. These factors are: (1) Prlić's role in the formation of the JCE, and the deportation of 2,500 Heliodrom detainees in July 1993; (2) Stojić's role in the implementation of the 15 January 1993 Ultimatum, as well as his participation in the 30 June 1993 Joint Proclamation and in the blockade of humanitarian aid in the siege of East Mostar; (3) Praljak's involvement in the early planning of the JCE, as well as in drafting the 15 January 1993 Ultimatum; (4) Petković's deception of international authorities; and (5) Pušić's actions in hindering the humanitarian efforts in East Mostar, and in displacing Muslim civilians from West Mostar to East Mostar. The Appeals Chamber notes, however, that the

<sup>10725</sup> The Appeals Chamber recalls that it considers and dismisses elsewhere Ćorić's challenges to his JCE responsibility. See *supra*, para. 2595.

<sup>10726</sup> With regard to Petković, the Appeals Chamber notes that it has overturned the Trial Chamber finding that he directly contributed to the crimes committed in Vareš town and Stupni Do. See *supra*, para. 2468. With regard to Pušić, the Appeals Chamber notes that it has overturned Trial Chamber finding that Pušić contributed to the JCE by failing to take measures to resolve problems related to conditions of confinement and mistreatment of detainees. See *supra*, para. 2772.

<sup>10727</sup> Trial Judgement, Vol. 4, paras 1315-1317 (Prlić's drafting of the 15 January 1993 Ultimatum and the 4 April 1993 Ultimatum, his contribution to the 30 June 1993 Joint Proclamation and the East Mostar siege, and his discriminatory intent), 1328-1329 (Stojić's significant *de jure* and *de facto* authority over the HVO armed forces and the Military Police, his linking of the HZ(R) H-B Government and the HVO military component, his planning of operations in Mostar and East Mostar, and his failure to prevent or punish crimes), 1340-1341 (Praljak's significant *de facto* and *de jure* authority over the HVO armed forces and Military Police, his key role as a conduit between Croatia and the HVO government, his participation in military operations in Prozor, Mostar, and Vareš, and his failure to prevent or punish crimes), 1353-1354 (Petković's involvement in planning the military operations and arrest campaigns and in the crimes committed during the East Mostar siege, his ordering and authorising the use of forced labour of detainees from the Heliodrom and the Vitina-Otok Camp, and that he facilitated, encouraged, and concealed HVO crimes), 1367-1368 (Ćorić's use of the Military Police in eviction operations, his deliberate impeding of humanitarian aid to East Mostar, his key role in the functioning of network of detention units, and his involvement in detainees being used for work on the front lines), 1379-1380 (Pušić's significant power over the detention or release of Muslim detainees, him acting as a link with the leadership of Croatia and BiH regarding exchanges and movement of people, his facilitation of the deportation of detainees and their use on the front lines, and his attempts in denying or minimising HVO crimes).



Trial Chamber considered these factors elsewhere in the Trial Judgement with specific reference to Prlić,<sup>10728</sup> Stojić,<sup>10729</sup> Praljak,<sup>10730</sup> Petković,<sup>10731</sup> and Pušić.<sup>10732</sup> Moreover, by cross-referencing to its findings in relation to the existence of the JCE generally, the Trial Chamber considered the fact that “the political and military leadership of the HZ(R) H-B, *including the Accused*, and certain leaders of Croatia implemented an entire system to expel the Muslim population [...]”<sup>10733</sup> The Appeals Chamber is therefore of the view that the Trial Chamber’s discussion of each Appellant’s involvement in the crimes must be read in conjunction with its earlier findings, and considers that the fact that these findings were not repeated in the sentencing analysis does not, by itself, indicate an error. Accordingly, the Prosecution has failed to demonstrate that the Trial Chamber committed a discernible error with regard to factors not expressly referenced in its sentencing analysis. The Prosecution has also failed to show that the Trial Chamber did not properly consider the roles of Prlić, Stojić, Praljak, Petković, and Pušić and that the sentences imposed on them were manifestly inadequate.

3234. In conclusion, the Appeals Chamber dismisses the Prosecution’s ground of appeal 4 in relevant part.

(c) Ćorić’s superior responsibility

3235. The Prosecution submits that the Trial Chamber erred by failing to take into account Ćorić’s superior responsibility, under Article 7(3) of the Statute, for crimes committed by his subordinates in Prozor in October 1992.<sup>10734</sup> It contends therefore that Ćorić’s sentence should be increased.<sup>10735</sup>

3236. Ćorić responds that superior responsibility should not be taken into account in the gravity assessment, because to do so would constitute impermissible double-counting between the elements of the offence and “aggravating factor[s]”.<sup>10736</sup>

3237. The Prosecution replies that Ćorić’s double-counting argument is inapposite as he was not convicted for the Prozor crimes in October 1992 under JCE liability but rather as a superior.<sup>10737</sup>

<sup>10728</sup> See Trial Judgement, Vol. 4, paras 18, 43, 1219-1220 (considering the early planning of the JCE and Prlić’s involvement), 235 (Prlić’s involvement in the deportation of 2,500 Heliodrom detainees).

<sup>10729</sup> See Trial Judgement, Vol. 4, paras 44-45, 125-126, 304, 330, 334, 438-439, 1219-1220 (regarding Stojić’s implementation of the 15 January 1993 Ultimatum), 151-155, 305, 373-375, 973, 984, 996, 1219-1220 (regarding the 30 June 1993 Joint Proclamation), 372 (regarding the blockade of humanitarian aid to East Mostar).

<sup>10730</sup> See Trial Judgement, Vol. 4, paras 43, 475, 522-523 (Praljak’s involvement in the early planning of the JCE and in drafting the 15 January 1993 Ultimatum). See also Trial Judgement, Vol. 4, para. 553.

<sup>10731</sup> Trial Judgement, Vol. 4, paras 772, 774-777 (Petković’s role in misleading authorities).

<sup>10732</sup> Trial Judgement, Vol. 4, paras 1111-1122 (Pušić’s role in hindering humanitarian efforts and displacing Muslim civilians in Mostar).

<sup>10733</sup> Trial Judgement, Vol. 4, para. 1298 (emphasis added).

<sup>10734</sup> Prosecution’s Appeal Brief, para. 408; Prosecution’s Reply Brief, para. 173.

<sup>10735</sup> Prosecution’s Appeal Brief, paras 336, 338, 376.

<sup>10736</sup> Ćorić’s Response Brief, para. 107.

3238. The Appeals Chamber recalls that in assessing the gravity of a crime in the context of a conviction under Article 7(3) of the Statute, the Trial Chamber must take into account: (1) the gravity of the underlying crime committed by the convicted person's subordinate; and (2) the gravity of the convicted person's own conduct in failing to prevent or punish the underlying crimes.<sup>10738</sup> Thus, in the context of a conviction under Article 7(3) of the Statute, the gravity of a subordinate's crimes remains an "essential consideration" in assessing the gravity of the superior's own conduct in sentencing.<sup>10739</sup> The Appeals Chamber recalls that Ćorić was convicted, under Article 7(3) of the Statute, for crimes committed by members of the Military Police in Prozor in October 1992 through the underlying acts of theft and destruction of property.<sup>10740</sup> It also recalls that it has dismissed Ćorić's challenges to this conviction.<sup>10741</sup>

3239. The Appeals Chamber observes that in assessing Ćorić's individual circumstances in the context of sentencing, the Trial Chamber relied exclusively on his contribution to the implementation of the JCE, confining its analysis to his responsibility for the crimes which occurred from January 1993 to 10 November 1993.<sup>10742</sup> Namely, the Trial Chamber considered only Ćorić's command and control authority over the Military Police and his failure to investigate the KB members with respect to these crimes. Notably, the Trial Chamber's assessment includes no reference, express or implicit, to Ćorić's failure to prevent and punish the crimes committed in Prozor in October 1992.<sup>10743</sup> The Appeals Chamber finds that the complete absence of any reference to his criminal responsibility as a superior is a sufficient indication that the Trial Chamber failed to take into account this aspect of his conduct in determining his sentence. It thus finds that the Trial Chamber committed a discernible error.

3240. The Appeals Chamber therefore grants the Prosecution's ground of appeal 4 in relevant part insofar as it relates to Ćorić's responsibility under Article 7(3) of the Statute. The Appeals Chamber will consider the impact of this error, if any, below.<sup>10744</sup>

### 3. Stojić's appeal (Sub-grounds 56.2 in part and 56.3)

3241. Stojić first argues that the Trial Chamber erred in finding that he had played a "key role" in the commission of all the crimes he was found guilty of pursuant to JCE I liability, as his

<sup>10737</sup> Prosecution's Reply Brief, para. 173.

<sup>10738</sup> *Popović et al.* Appeal Judgement, para. 1991, referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 313; *Čelebići* Appeal Judgement, paras 732, 741.

<sup>10739</sup> *Popović et al.* Appeal Judgement, para. 1991, referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 313; *Čelebići* Appeal Judgement, para. 741.

<sup>10740</sup> Trial Judgement, Vol. 4, para. 1251, Disposition, p. 431. See *supra*, para. 3155.

<sup>10741</sup> See *supra*, para. 3187.

<sup>10742</sup> Trial Judgement, Vol. 4, para. 1367.

<sup>10743</sup> Trial Judgement, Vol. 4, para. 1367.

participation in the JCE was limited.<sup>10745</sup> In particular, he argues that there is only limited evidence that he contributed to specific crimes in specific municipalities.<sup>10746</sup> Stojić also repeats his challenges to the Trial Chamber's findings that he: (1) was a member of the JCE; (2) had significant authority over the HVO armed forces and the Military Police; (3) planned operations in Mostar; (4) intended to discriminate against Muslims; and (5) failed to prevent or punish crimes.<sup>10747</sup>

3242. Second, Stojić submits that his sentence was excessive in comparison to Praljak's and Petković's sentences, who were also sentenced to 20 years of imprisonment despite their different levels of contribution to the crimes.<sup>10748</sup> Particularly, he argues that as reflected in the Trial Chamber's findings, Praljak and Petković had "direct command authority over the military and the direct perpetrators" while Stojić did not and his contribution to the crime was "thus less immediate".<sup>10749</sup> Accordingly, Stojić requests that his sentence be reduced.<sup>10750</sup>

3243. The Prosecution responds that Stojić fails to show that the Trial Chamber committed a discernible error.<sup>10751</sup> It asserts that Stojić formulated government decisions and translated them into ground-level action, and that his contribution was not limited to specific crimes in specific municipalities.<sup>10752</sup> Moreover, the Prosecution responds that Stojić's contribution was not "less immediate" than that of Praljak and Petković and that his culpability is equal to that of Prlić, Praljak, and Petković.<sup>10753</sup> It contends that in light of his contribution, the Trial Chamber reasonably found that Stojić "played a key role in the commission of all the crimes".<sup>10754</sup>

3244. With regard to Stojić's first argument, the Appeals Chamber recalls that it has considered and dismissed elsewhere Stojić's challenges to the Trial Chamber's findings regarding the form and

<sup>10744</sup> See *infra*, para. 3364.

<sup>10745</sup> Stojić's Appeal Brief, para. 429. Stojić contends that his sentence should be reduced. Stojić's Appeal Brief, para. 429.

<sup>10746</sup> Stojić's Appeal Brief, para. 429, referring to Stojić's Appeal Brief, grounds of appeal 28-37; Appeal Hearing, AT. 810-811 (28 Mar 2017).

<sup>10747</sup> Stojić's Appeal Brief, para. 429, referring to Stojić's Appeal Brief, grounds of appeal 20-21, 24-25, 31-34. See also Appeal Hearing, AT. 810-811 (28 Mar 2017).

<sup>10748</sup> Stojić's Appeal Brief, paras 432-433. See also Stojić's Appeal Brief, paras 430-431.

<sup>10749</sup> Stojić's Appeal Brief, para. 433, referring to Trial Judgement, Vol. 1, paras 708, 791-796. In this regard, Stojić argues that, in his dissenting opinion, Judge Antonetti observed that Stojić bore less responsibility than Praljak and Petković on the grounds that the latter two gave military orders whereas the former only provided logistical support to the armed forces. Stojić's Appeal Brief, para. 433, referring to Judge Antonetti Dissent, pp. 408-409.

<sup>10750</sup> Stojić's Appeal Brief, para. 433.

<sup>10751</sup> Prosecution's Response Brief (Stojić), para. 396. The Prosecution also argues that Stojić's sentence is manifestly inadequate and should be increased. Prosecution's Response Brief (Stojić), paras 396, 399.

<sup>10752</sup> Prosecution's Response Brief (Stojić), para. 399.

<sup>10753</sup> Prosecution's Response Brief (Stojić), para. 399. In particular, the Prosecution responds that Stojić was one of the most important JCE members and that his contribution was not limited to logistical support or to the crimes committed in specific municipalities, but that he formulated defence policy and "translated Government decisions into ground level action through control over the armed forces and Petković". Prosecution's Response Brief (Stojić), para. 399 (references omitted).

<sup>10754</sup> Prosecution's Response Brief (Stojić), para. 399, referring to Trial Judgement, Vol. 4, para. 1329.

degree of his participation in the JCE,<sup>10755</sup> along with his challenges to the findings regarding his responsibility in specific regions.<sup>10756</sup> Thus, the Appeals Chamber considers that Stojić fails to show a discernible error in the Trial Chamber's assessment of his participation in the crimes.

3245. As regards Stojić's second argument, the Appeals Chamber recalls that trial chambers are obliged to individualise penalties to fit the circumstances of the accused and the gravity of the crimes, and that to that end, they are vested with broad discretion to determine the appropriate sentence.<sup>10757</sup> The Appeals Chamber notes that the Trial Chamber explicitly considered the extent of Stojić's, Praljak's, and Petković's contributions to the crimes, finding that each of them played a key role in the commission of the crimes.<sup>10758</sup> It notes in particular with respect to Stojić that the Trial Chamber considered, *inter alia*, that he was "one of the key members of the JCE" and "had significant *de facto* and *de jure* authority over the majority of the components of the HZ(R) H-B armed forces and Military Police and was the link between the civilian government of the HZ(R) H-B and the military component of the HVO".<sup>10759</sup> Additionally, the Appeals Chamber finds that Stojić's reference to the Trial Chamber's findings does not support his submission that there was any disparity in culpability between him and Praljak and Petković.<sup>10760</sup> The Appeals Chamber therefore finds that Stojić has failed to demonstrate that the Trial Chamber erred in failing to assess his level of contribution vis-à-vis that of Praljak and Petković in its determination of their respective sentences.

3246. Accordingly, the Appeals Chamber dismisses Stojić's sub-grounds of appeal 56.2 in relevant part and 56.3.

#### 4. Petković's appeal (Sub-ground 8.1 in part)

3247. Petković argues that the Trial Chamber erroneously relied on his "effective control" over the HVO armed forces as a factor in sentencing as such control was "unproven in relation to any of

<sup>10755</sup> See *supra*, para. 1806.

<sup>10756</sup> See *supra*, paras 1551-1748.

<sup>10757</sup> See *supra*, para. 3204. See also *Popović et al.* Appeal Judgement, para. 1993.

<sup>10758</sup> Trial Judgement, Vol. 4, paras 1328-1329, 1340-1341, 1353-1354.

<sup>10759</sup> Trial Judgement, Vol. 4, para. 1328.

<sup>10760</sup> See Trial Judgement, Vol. 1, paras 708, 791-796. Contrary to Stojić's arguments, the Trial Chamber found that while the "classic chain of command of the armed forces proceeded from the Main Staff", Stojić, Head of the Department of Defence, also gave orders directly to the commanders of the OZs and to the brigade commanders, without going through the Main Staff. See Trial Judgement, Vol. 1, paras 791, 795. Moreover, the Appeals Chamber finds Stojić's reliance on the Judge Antonetti Dissent inapposite. Judge Antonetti challenges the legality of the notion of JCE, as a form of commission, and considers that each accused should be convicted for another mode of liability provided by Article 7(1) of the Statute. See Judge Antonetti Dissent, pp. 100-182, 409. Based on these considerations, the Appeals Chamber dismisses Stojić argument in this regard. See also *Galić* Appeal Judgement, paras 226-227.

the crimes committed”.<sup>10761</sup> He submits that the Trial Chamber erred as it: (1) double-counted his “effective control” over the armed forces when his *de jure* or *de facto* position was already considered as proof of his JCE membership;<sup>10762</sup> and (2) double- or triple-counted the finding on his intent to evict the Muslim population from HZ(R) H-B when this finding served to form part of his “JCE intent” and as a constitutive element of persecution, a crime of which he was convicted.<sup>10763</sup>

3248. Petković also submits that the Trial Chamber erred because the “involvement of a military commander in military operations is not a recognized factor relevant for sentencing”.<sup>10764</sup> Similarly, he submits that his “effective control” is not recognised as an aggravating factor under customary international law.<sup>10765</sup> Petković submits that the Trial Chamber therefore violated the principle of legality in both instances.<sup>10766</sup> He requests a “significant reduction” in his sentence to take account of these errors.<sup>10767</sup>

3249. The Prosecution responds that Petković fails to show that the Trial Chamber committed a discernible error.<sup>10768</sup> In particular, it argues that the Trial Chamber expressly found that he had effective control over the physical perpetrators,<sup>10769</sup> and that Petković misunderstands the concept of “double-counting”.<sup>10770</sup> The Prosecution also responds that the Trial Chamber’s consideration of Petković’s “effective command and control” did not violate the principle of legality, and is consistent with the Tribunal’s jurisprudence.<sup>10771</sup>

3250. The Trial Chamber concluded that Petković “had command and control authority and effective control over the armed forces [...]”.<sup>10772</sup> The Appeals Chamber notes that it has considered and dismissed elsewhere Petković’s challenges to the Trial Chamber’s conclusions on his effective

<sup>10761</sup> Petković’s Appeal Brief, para. 447(iii), referring to Trial Judgement, Vol. 4, para. 1353. Petković argues that this error, amongst others, warrants a significant reduction in his sentence. Petković’s Appeal Brief, para. 449. See also Petković’s Reply Brief, para. 95.

<sup>10762</sup> Petković’s Appeal Brief, paras 445, 447(ii), 447(iv). The Appeals Chamber notes that Petković refers to the relevant findings as being made as an aggravating circumstance, however, as he makes these arguments in his challenge to the Trial Chamber’s gravity assessment rather than as part of his submissions on aggravating circumstances, the Appeals Chamber will consider these arguments in the context of gravity of the crimes. See Petković’s Appeal Brief, paras 445, 449.

<sup>10763</sup> Petković’s Appeal Brief, paras 445, 448. Petković characterises the finding regarding his effective control as an “aggravating factor”, however, given that the reference to “effective control” occurs in the Trial Chamber’s assessment of the gravity of the crimes, and Petković cites to those paragraphs, the Appeals Chamber interprets this submission accordingly. See Petković’s Appeal Brief, para. 447(i), referring to Trial Judgement, Vol. 4, para. 1353.

<sup>10764</sup> Petković’s Appeal Brief, paras 445-446.

<sup>10765</sup> Petković’s Appeal Brief, para. 447(i).

<sup>10766</sup> Petković’s Appeal Brief, paras 446, 447(i).

<sup>10767</sup> Petković’s Appeal Brief, para. 449. See also Petković’s Reply Brief, para. 95.

<sup>10768</sup> Prosecution’s Response Brief (Petković), para. 305.

<sup>10769</sup> Prosecution’s Response Brief (Petković), paras 305, 307.

<sup>10770</sup> Prosecution’s Response Brief (Petković), paras 305-306, referring to *Naletilić and Martinović* Appeal Judgement, para. 610; *Hadžihasanović and Kubura* Appeal Judgement, para. 320.

<sup>10771</sup> Prosecution’s Response Brief (Petković), para. 307, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 814, 816; *Ntabakuze* Appeal Judgement, para. 272.

<sup>10772</sup> Trial Judgement, Vol. 4, para. 679. See also Trial Judgement, Vol. 4, paras 803, 814-815.

control.<sup>10773</sup> Petković offers no further demonstration of the Trial Chamber's alleged abuse of discretion. The Appeals Chamber therefore dismisses his argument in this respect.

3251. The Appeals Chamber recalls that a factor considered by a trial chamber as an element of a crime cannot also be considered as an aggravating circumstance as this would amount to impermissible double-counting.<sup>10774</sup> Similarly, a factor taken into account by a trial chamber in its assessment "of the gravity of the crime cannot additionally be taken into account as a separate aggravating circumstance, and *vice versa*".<sup>10775</sup> However, this prohibition does not preclude the factors forming the basis of criminal responsibility from being considered in the assessment of the gravity of the offence. The Appeals Chamber recalls that a trial chamber is obliged to consider, as the Trial Chamber did in this case, the extent of an accused's form and degree of participation as part of its assessment of the gravity of crimes.<sup>10776</sup> Thus, Petković's arguments on double-counting are misplaced and therefore dismissed.

3252. Regarding Petković's arguments on the principle of legality, the Appeals Chamber recalls that a trial chamber is obliged to individualise the penalty to fit the circumstances of the accused and the gravity of the crime.<sup>10777</sup> To this end, it is vested with broad discretion to determine the appropriate sentence.<sup>10778</sup> Consequently, it would be inappropriate to set down a definitive list of sentencing guidelines,<sup>10779</sup> and it is within a trial chamber's discretion to select or disregard factors on a case-by-case basis.<sup>10780</sup> Petković's assertion that the principle of legality precludes consideration of his military involvement or his effective control is hence inapposite, as sentencing considerations are fact-based and case-specific. Further, as Petković has failed to refer to any supporting jurisprudence or legal authority, his arguments are unsubstantiated.

3253. The Appeals Chamber therefore dismisses Petković's sub-ground of appeal 8.1 in relevant part.

<sup>10773</sup> See *supra*, paras 2089-2135.

<sup>10774</sup> *Dorđević* Appeal Judgement, para. 936. See also *Nzabonimana* Appeal Judgement, para. 464.

<sup>10775</sup> *Dorđević* Appeal Judgement, para. 936. See *Popović et al.* Appeal Judgement, paras 2019, 2026.

<sup>10776</sup> *Tolimir* Appeal Judgement, para. 633. See also Trial Judgement, Vol. 4, para. 1281.

<sup>10777</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1106; *Tolimir* Appeal Judgement, para. 626; *Popović et al.* Appeal Judgement, para. 1993.

<sup>10778</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1106; *Tolimir* Appeal Judgement, para. 626; *Popović et al.* Appeal Judgement, para. 1993.

<sup>10779</sup> See *Blaškić* Appeal Judgement, para. 680.

<sup>10780</sup> See, e.g., *Jelišić* Appeal Judgement, para. 100.

5. Pušić's appeal (Ground 8 in part)

3254. Pušić first argues that the Trial Chamber abused its discretion because he did not directly perpetrate the crimes for which he was convicted<sup>10781</sup> and a lesser sentence should thus be imposed to remedy the abuse of discretion.<sup>10782</sup> Second, Pušić submits that the Trial Chamber erred in imposing an excessive and disproportionate sentence against him.<sup>10783</sup> More specifically, he contends that the Trial Chamber erred by failing to determine the appropriate sentence to reflect his culpability, role, and degree of criminal responsibility relative to the other members of the JCE in this case.<sup>10784</sup> He highlights his challenges to the Trial Chamber's findings that he: (1) joined the JCE at a later stage; (2) had no role in the formulation and planning of the underlying crimes; and (3) had limited participation in the JCE and the underlying crimes.<sup>10785</sup> Taking these factors into account, Pušić submits that the Trial Chamber should have imposed a lower sentence on him.<sup>10786</sup>

3255. The Prosecution responds that JCE, as a form of direct perpetration, merits a higher sentence than secondary forms of participation.<sup>10787</sup> It also responds that Pušić fails to show that the Trial Chamber erred in exercising its discretion when it imposed his sentence.<sup>10788</sup> It submits that Pušić disregards the Trial Chamber's findings in relation to his participation in the crimes.<sup>10789</sup> Further, the Prosecution argues that Pušić was a JCE member from April 1993 to April 1994 and participated in the JCE over a longer period than Stojić or Praljak.<sup>10790</sup> Lastly, according to the Prosecution, the fact that Pušić was not involved in planning the CCP does not undermine the significance of his contributions to the crimes.<sup>10791</sup>

3256. The Appeals Chamber observes that the Trial Chamber found that as a member of the JCE, Pušić: (1) significantly contributed to the JCE, by participating in and facilitating the system of detention of the Muslims, and organising and facilitating the system by which HVO detainees were released or exchanged in order to be sent to ABiH-held territories or third countries; and (2) intended the commission of the CCP crimes.<sup>10792</sup> Pušić was thus convicted for his role in a JCE, a form of commission under Article 7(1) of the Statute.<sup>10793</sup> In this respect, the Appeals Chamber recalls that,

<sup>10781</sup> Pušić's Appeal Brief, para. 242. See also Pušić's Appeal Brief, paras 238-239.

<sup>10782</sup> Pušić's Appeal Brief, para. 255.

<sup>10783</sup> Pušić's Appeal Brief, para. 241.

<sup>10784</sup> Pušić's Appeal Brief, paras 243-244.

<sup>10785</sup> Pušić's Appeal Brief, paras 243-244.

<sup>10786</sup> Pušić's Appeal Brief, para. 244.

<sup>10787</sup> Prosecution's Response Brief (Pušić), para. 220. The Prosecution responds that far from being excessive, the sentence imposed upon Pušić was too lenient. Prosecution's Response Brief (Pušić), para. 217.

<sup>10788</sup> Prosecution's Response Brief (Pušić), paras 219-222.

<sup>10789</sup> Prosecution's Response Brief (Pušić), para. 221.

<sup>10790</sup> Prosecution's Response Brief (Pušić), para. 222, referring to Trial Judgement, Vol. 4, paras 1227-1229, 1379.

<sup>10791</sup> Prosecution's Response Brief (Pušić), para. 222.

<sup>10792</sup> Trial Judgement, Vol. 4, paras 1202-1209, 1379.

<sup>10793</sup> See, e.g., *Tadić* Appeal Judgement, para. 188. See also Trial Judgement, Vol. 4, Disposition, p. 431.

provided the accused shares the intent to implement the common purpose by criminal means, “participation [in the JCE] does not have to be in and of itself criminal, as long as the accused performs acts that in some way contribute to the furtherance of the common purpose of the JCE”.<sup>10794</sup> The Appeals Chamber considers that Pušić has misconstrued the Trial Chamber’s findings on his participation in the JCE. Pušić has therefore failed to show that the Trial Chamber abused its discretion in assessing his participation in the crimes when considering his sentence. Pušić’s ground of appeal 8 is thus dismissed in relevant part.

3257. As regards Pušić’s argument that the Trial Chamber erred in imposing an excessive and disproportionate sentence against him, the Appeals Chamber considers that the Trial Chamber assessed each Appellant’s circumstances vis-à-vis their respective degree of culpability and contributions to the crimes and individualised their sentences accordingly.<sup>10795</sup> In light of these considerations, Pušić was sentenced to ten years of imprisonment, while Prlić was sentenced to 25 years of imprisonment, Stojić, Praljak, and Petković to 20 years of imprisonment each, and Ćorić to 16 years of imprisonment.<sup>10796</sup> The difference in the sentences imposed reflects that, contrary to Pušić’s argument, the Trial Chamber individualised the penalties of the Appellants, taking into account the significance of their individual contributions to the crimes. The Appeals Chamber finds that Pušić merely disagrees with the Trial Chamber’s conclusion regarding his sentence, but has failed to show any discernible error by the Trial Chamber.<sup>10797</sup>

3258. Accordingly, Pušić’s ground of appeal 8 is dismissed in relevant part.

## 6. Conclusion

3259. For the foregoing reasons, the Appeals Chamber grants the Prosecution’s ground of appeal 4 in relevant part insofar as it relates to Ćorić’s responsibility under Article 7(3) of the Statute. The Appeals Chamber further concludes that the Prosecution, Stojić, Petković, and Pušić have failed to demonstrate a discernible error in the Trial Chamber’s assessment of the gravity of the crimes in other parts and thus dismisses the Prosecution’s ground of appeal 4 in relevant part, Stojić’s sub-grounds of appeal 56.2 and 56.3 in relevant part, Petković’s sub-ground of appeal 8.1 in part, and Pušić’s ground of appeal 8 in relevant part.

<sup>10794</sup> *Popović et al.* Appeal Judgement, para. 1653. See also *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696.

<sup>10795</sup> Trial Judgement, Vol. 4, paras 1315-1317 (Prlić), 1328-1329 (Stojić), 1340-1341 (Praljak), 1353-1354 (Petković), 1367-1369 (Ćorić), 1379-1380 (Pušić), Disposition, pp. 430-431.

<sup>10796</sup> Trial Judgement, Vol. 4, Disposition, pp. 430-431.

<sup>10797</sup> The Appeals Chamber also summarily dismisses as unsubstantiated Pušić’s allegation of error that his sentence cannot be justified as he did not directly commit any of the crimes for which he was convicted, as he provides no support or references for this proposition.



## C. Alleged Errors Regarding Aggravating Circumstances

### 1. Introduction

3260. The Trial Chamber stated that: (1) pursuant to Rule 101(B) of the Rules, it was required to take into account the existence of aggravating circumstances; and (2) given that neither the Statute nor the Rules set out an exhaustive list of aggravating circumstances, it could take into account aggravating circumstances as established by the Tribunal's jurisprudence.<sup>10798</sup> It also noted that the aggravating circumstances recognised by the Tribunal's jurisprudence must be proven beyond reasonable doubt, be put to the Trial Chamber in the Indictment and during trial, and be directly related to the commission of the offence charged and to the offender himself when he committed the offence.<sup>10799</sup> Subsequently, the Trial Chamber found that aggravating circumstances existed with regard to each of the Appellants.<sup>10800</sup>

### 2. Prlić's appeal (Sub-ground 21.2 in part)

3261. The Trial Chamber found that Prlić played a key role in the commission of crimes by virtue of his functions and powers within the HZ(R) H B government.<sup>10801</sup> It concluded that "[h]e thus abused his authority as the President of the HVO of the HZ H-B and President of the HR H-B government in order to facilitate the crimes by using the resources at his disposal for the implementation of all those crimes".<sup>10802</sup>

3262. Prlić, challenging the Trial Chamber's consideration of aggravating factors,<sup>10803</sup> submits that the Trial Chamber: (1) erred in relying on his position of authority as an aggravating circumstance, because a position of authority should not automatically warrant a harsher sentence;<sup>10804</sup> and (2) double-counted his position and his contribution to the JCE.<sup>10805</sup> He requests that the Appeals Chamber reduce his sentence.<sup>10806</sup>

3263. The Prosecution responds that the Trial Chamber relied on abuse of authority, not position of authority, as an aggravating factor for Prlić.<sup>10807</sup> It also responds that the Trial Chamber did not

<sup>10798</sup> Trial Judgement, Vol. 4, para. 1284. See also Trial Judgement, Vol. 4, paras 1285-1287, 1290.

<sup>10799</sup> Trial Judgement, Vol. 4, para. 1285.

<sup>10800</sup> Trial Judgement, Vol. 4, paras 1318 (Prlić), 1330 (Stojić), 1342 (Praljak), 1355 (Petković), 1370 (Ćorić), 1381 (Pušić).

<sup>10801</sup> Trial Judgement, Vol. 4, para. 1318.

<sup>10802</sup> Trial Judgement, Vol. 4, para. 1318.

<sup>10803</sup> Prlić's Appeal Brief, paras 679-681.

<sup>10804</sup> Prlić's Appeal Brief, para. 680.

<sup>10805</sup> Prlić's Appeal Brief, para. 681.

<sup>10806</sup> Prlić's Appeal Brief, para. 682.

<sup>10807</sup> Prosecution's Response Brief (Prlić), paras 427-428. See also Prosecution's Response Brief (Prlić), para. 422.

double-count with regard to Prlić as the factors considered as aggravating circumstances were not required elements of his JCE convictions.<sup>10808</sup>

3264. With regard to Prlić's first argument, the Appeals Chamber observes that the Trial Chamber correctly noted that the Tribunal's jurisprudence recognises that the abuse of superior authority may be an aggravating circumstance.<sup>10809</sup> It also noted correctly, in the context of Article 7(1) liability, that an accused's superior position does not *per se* constitute an aggravating factor.<sup>10810</sup> The Trial Chamber then addressed the aggravating circumstances in relation to Prlić in terms reflective of this distinction. It considered that Prlić played a key role in the commission of crimes by virtue of his functions and powers and found that he abused his authority in order to facilitate the crimes by using the resources at his disposal for the implementation of the crimes.<sup>10811</sup> It is clear from the Trial Chamber's reasoning that it did not consider Prlić's position, as such, as an aggravating circumstance, but rather his abuse thereof. The Trial Chamber neither elaborated on how Prlić abused his position nor provided cross references to other sections of the Trial Judgement in support thereof, but the Appeals Chamber recalls that a trial judgement must be read as a whole.<sup>10812</sup> The Appeals Chamber notes that the Trial Chamber considered in detail the manner in which Prlić exercised his authority elsewhere in the Trial Judgement.<sup>10813</sup> It therefore finds that Prlić has failed to demonstrate a discernible error.

3265. As regards Prlić's second argument, the Appeals Chamber recalls that a factor considered by a trial chamber as an element of a crime cannot also be considered as an aggravating circumstance.<sup>10814</sup> The Appeals Chamber observes that Prlić was convicted under Article 7(1) of the Statute for his commission of crimes through a JCE.<sup>10815</sup> In its aggravating factors analysis, the Trial Chamber considered that the fact that Prlić in his position of authority had committed crimes amounted to an abuse of authority.<sup>10816</sup> The Appeals Chamber further recalls that a position of

<sup>10808</sup> Prosecution's Response Brief (Prlić), paras 427-428. The Prosecution also responds that Prlić's sentence was inadequate. Prosecution's Response Brief (Prlić), para. 422.

<sup>10809</sup> Trial Judgement, Vol. 4, para. 1287, referring to *D. Milošević* Appeal Judgement, paras 302-303, *Galić* Appeal Judgement, para. 412, *Martić* Appeal Judgement, para. 350. See *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Blagojević and Jokić* Appeal Judgement, para. 324; *Stakić* Appeal Judgement, para. 411; *M. Nikolić* Appeal Judgement, para. 61.

<sup>10810</sup> Trial Judgement, Vol. 4, para. 1287, referring to *D. Milošević* Appeal Judgement, para. 302. See *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Blagojević and Jokić* Appeal Judgement, para. 324; *Stakić* Appeal Judgement, para. 411; *M. Nikolić* Appeal Judgement, para. 61.

<sup>10811</sup> Trial Judgement, Vol. 4, para. 1318.

<sup>10812</sup> *Stanišić and Župljanin* Appeal Judgement, paras 1107, 1115, 1148, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

<sup>10813</sup> See Trial Judgement, Vol. 4, paras 125-269.

<sup>10814</sup> *Dorđević* Appeal Judgement, para. 936. See also *Nzabonimana* Appeal Judgement, para. 464. The Appeals Chamber observes that the Trial Chamber did not expressly recall this aspect of the double-counting prohibition. See Trial Judgement, Vol. 4, para. 1290 (observing that double-counting as between gravity and aggravating factors is prohibited).

<sup>10815</sup> Trial Judgement, Vol. 4, Disposition, p. 430.

<sup>10816</sup> Trial Judgement, Vol. 4, para. 1318.

authority is not an element of JCE responsibility under Article 7(1) of the Statute.<sup>10817</sup> Consequently, although an assessment of JCE responsibility may involve consideration of a person's official role and commission of crimes in that capacity, as in the present case,<sup>10818</sup> a JCE conviction does not rest upon these factors.<sup>10819</sup> The Appeals Chamber finds no discernible error in the exercise of the Trial Chamber's discretion when it relied on Prlić's abuse of authority as an aggravating factor.

3266. In conclusion, the Appeals Chamber dismisses Prlić's sub-ground of appeal 21.2 in relevant part.

### 3. Stojić's appeal (Sub-ground 56.2 in part)

3267. The Trial Chamber found that Stojić played a key role in the commission of crimes by virtue of his functions and powers within the Department of Defence and the HZ(R) H-B Government.<sup>10820</sup> It concluded that he thus abused his authority as the head of the Department of Defence and member of the HVO to facilitate the crimes by using the resources at his disposal for the implementation of all those crimes.<sup>10821</sup>

3268. Stojić, challenging the Trial Chamber's consideration of aggravating factors,<sup>10822</sup> asserts that the Trial Chamber erroneously relied on his position of authority as an aggravating circumstance.<sup>10823</sup> He contends that a trial chamber must consider abuse of authority only, as opposed to position of authority *per se*, as an aggravating circumstance, and did not do so in his case.<sup>10824</sup> Moreover, Stojić submits that the Trial Chamber double-counted by considering the same factors both in its gravity analysis and as aggravating circumstances, arguing that the Trial Chamber counted his official role twice.<sup>10825</sup> He requests that the Appeals Chamber reduce his sentence.<sup>10826</sup>

3269. The Prosecution responds that the Trial Chamber relied on abuse of authority, not position of authority, as an aggravating factor for Stojić.<sup>10827</sup> It submits that the Trial Chamber correctly

<sup>10817</sup> See, e.g., *Šainović et al.* Appeal Judgement, para. 1823.

<sup>10818</sup> See, e.g., Trial Judgement, Vol. 4, paras 78-121.

<sup>10819</sup> See, e.g., *Popović et al.* Appeal Judgement, para. 2020; *Dorđević* Appeal Judgement, para. 937; *Šainović et al.* Appeal Judgement, para. 1823.

<sup>10820</sup> Trial Judgement, Vol. 4, para. 1330.

<sup>10821</sup> Trial Judgement, Vol. 4, para. 1330.

<sup>10822</sup> Stojić's Appeal Brief, paras 426-429; Stojić's Reply Brief, paras 79-82.

<sup>10823</sup> Stojić's Appeal Brief, paras 427-428.

<sup>10824</sup> Stojić's Appeal Brief, paras 427-428.

<sup>10825</sup> Stojić's Appeal Brief, para. 428; Stojić's Reply Brief, paras 79-82. In reply, Stojić argues that the Prosecution misunderstands the *Popović et al.* Appeal Judgement, which establishes that where the exercise of the regular functions of position are relied upon both in relation to the gravity of the crimes and to establish abuse of authority, double-counting will occur. Stojić's Reply Brief, para. 79.

<sup>10826</sup> Stojić's Appeal Brief, para. 428.

<sup>10827</sup> Prosecution's Response Brief (Stojić), para. 398.

observed that a factor could not be considered in both gravity and aggravation, and correctly applied this standard when considering aggravating factors.<sup>10828</sup>

3270. As observed above, the Trial Chamber correctly noted that the abuse of superior authority as an aggravating circumstance is to be distinguished from a superior position *per se* which generally does not constitute an aggravating factor.<sup>10829</sup> It then addressed the aggravating circumstances in relation to Stojić in terms reflective of this distinction. It considered that Stojić played a key role in the commission of crimes by virtue of his functions and powers within the Department of Defence and the HZ(R) H-B Government and found that he abused his authority in order to facilitate the crimes by using the resources at his disposal for the implementation of the crimes.<sup>10830</sup> It is clear from the Trial Chamber's reasoning that it did not consider Stojić's position, as such, as an aggravating circumstance, but rather his abuse thereof. While the Trial Chamber neither elaborated on how he abused his position nor provided cross references to other sections of the Trial Judgement in support thereof, the Appeals Chamber recalls that a trial judgement must be read as a whole.<sup>10831</sup> The Trial Chamber considered in detail the manner in which Stojić exercised his authority elsewhere in the Trial Judgement.<sup>10832</sup> The Appeals Chamber therefore finds that Stojić has failed to demonstrate a discernible error.

3271. With regard to Stojić's argument that the Trial Chamber double-counted by considering the same factors both in its gravity analysis and as aggravating circumstances, the Appeals Chamber recalls that trial chambers have "some discretion as to the rubric under which they treat particular factors" for the purposes of sentencing.<sup>10833</sup> However, a factor taken into account by a trial chamber in its assessment of the gravity of the crime cannot additionally be taken into account as an aggravating circumstance, and *vice versa*.<sup>10834</sup> Abuse of authority – understood as the commission of crimes in a particular position of authority – may thus be considered either as part of the gravity

<sup>10828</sup> Prosecution's Response Brief (Stojić), para. 397. The Prosecution responds that the Trial Chamber considered Stojić's official role in its gravity assessment, and his contribution to the CCP as abuse of authority in its aggravation analysis. Prosecution's Response Brief (Stojić), paras 397-398. The Prosecution also responds that Stojić's sentence was inadequate. Prosecution's Response Brief (Stojić), para. 396.

<sup>10829</sup> See *supra*, para. 3264.

<sup>10830</sup> Trial Judgement, Vol. 4, para. 1330.

<sup>10831</sup> *Stanišić and Župljanin* Appeal Judgement, paras 1107, 1115, 1148, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

<sup>10832</sup> See Trial Judgement, Vol. 4, paras 329-424.

<sup>10833</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 317.

<sup>10834</sup> See, e.g., *Stanišić and Župljanin* Appeal Judgement, para. 1138; *Popović et al.* Appeal Judgement, paras 2019, 2026; *Dorđević* Appeal Judgement, para. 936; *D. Milošević* Appeal Judgement, paras 306, 309; *Limaj et al.* Appeal Judgement, para. 143.

analysis or as an aggravating factor,<sup>10835</sup> provided that the same facts are not considered twice.<sup>10836</sup> The Appeals Chamber observes that the Trial Chamber correctly stated the relevant law.<sup>10837</sup>

3272. In considering Stojić's form and degree of participation in the commission of crimes as part of its gravity assessment, the Trial Chamber took account of his position of authority and the way in which this authority was exercised,<sup>10838</sup> as well as his involvement in the commission of crimes.<sup>10839</sup> It then concluded that Stojić had played a "key role" in the crimes in question.<sup>10840</sup> The Appeals Chamber considers that nothing in the Trial Judgement's language suggests that the Trial Chamber considered that Stojić had abused his position at the time of the commission of the crimes nor that the crimes were graver simply because he abused his position.<sup>10841</sup> By contrast, in its analysis of aggravating circumstances, the Trial Chamber considered that Stojić played a "key role" in the commission of the crimes by virtue of his functions and powers, which it found constituted an abuse of his authority.<sup>10842</sup> The Appeals Chamber considers that the Trial Chamber only assessed Stojić's abuse of his position in the context of aggravating circumstances. It therefore finds no error in the Trial Chamber's exercise of discretion in this regard.

3273. Accordingly, the Appeals Chamber dismisses Stojić's sub-ground of appeal 56.2 in relevant part.

#### 4. Petković's appeal (Sub-ground 8.2 in part)

3274. The Trial Chamber found that Petković played a key role in the commission of crimes by virtue of his functions and powers as the chief, subsequently the deputy commander, and ultimately the deputy chief of the Main Staff.<sup>10843</sup> It thus concluded that he abused his authority in order to

<sup>10835</sup> The Appeals Chamber notes that the commission of crimes in a position of authority is often considered as part of the gravity analysis, as a trial chamber is obliged to give due consideration to the form and degree of participation of the Accused at that juncture. See, e.g., Trial Judgement, para. 1281. The Appeals Chamber also notes, however, that if these factors have not been considered as part of the gravity assessment, they may be assessed as aggravating factors. See *Tolimir* Appeal Judgement, para. 633. See also *Hadžihasanović and Kubura* Appeal Judgement, para. 317. For this reason, the Appeals Chamber rejects Stojić's submission that if the regular exercise of authority is considered as part of aggravation, this will automatically constitute double-counting.

<sup>10836</sup> *Popović et al.* Appeal Judgement, paras 2019, 2026; *Đorđević* Appeal Judgement, para. 936; *D. Milošević* Appeal Judgement, paras 306, 309; *Limaj et al.* Appeal Judgement, para. 143.

<sup>10837</sup> Trial Judgement, Vol. 4, para. 1290.

<sup>10838</sup> Specifically the Trial Chamber found, *inter alia*, that Stojić: (1) had significant authority over the majority of the components of the HZ(R) H-B armed forces and the Military Police and was the link between the civilian government of the HZ(R) H-B and the military component of the HVO; (2) participated in planning the HVO military operations in Mostar at various times; and (3) continued to exercise control over the armed forces all the while knowing that its members were committing crimes in other BiH municipalities. Trial Judgement, Vol. 4, para. 1328.

<sup>10839</sup> Trial Judgement, Vol. 4, para. 1328.

<sup>10840</sup> Trial Judgement, Vol. 4, para. 1329.

<sup>10841</sup> See, e.g., *Stanišić and Župljanin* Appeal Judgement, para. 1139.

<sup>10842</sup> Trial Judgement, Vol. 4, para. 1330.

<sup>10843</sup> Trial Judgement, Vol. 4, para. 1355.

facilitate the crimes by using the resources at his disposal for the implementation of all the crimes.<sup>10844</sup>

3275. Petković advances three arguments challenging the Trial Chamber's findings on aggravating factors in his case.<sup>10845</sup> First, Petković asserts that the Trial Chamber erroneously relied on his position of authority as an aggravating circumstance.<sup>10846</sup> Second, he submits that the Trial Chamber double-counted by relying on factors already considered in determining his JCE responsibility as aggravating circumstances.<sup>10847</sup> Petković adds that the Trial Chamber double-counted his "alleged powers and position", which formed part of the findings that he significantly contributed to the JCE, as well as his JCE *mens rea*.<sup>10848</sup> Third, he contends that the Trial Chamber double-counted by considering the same factors both in its gravity analysis and as aggravating circumstances.<sup>10849</sup> Petković requests that the Appeals Chamber reduce his sentence.<sup>10850</sup>

3276. The Prosecution responds that the Trial Chamber relied on abuse of authority, not position of authority, as an aggravating factor for Petković.<sup>10851</sup> It argues that the Trial Chamber acted within its discretion in adopting this approach.<sup>10852</sup> It also responds that the Trial Chamber: (1) did not double-count Petković's powers and position;<sup>10853</sup> and (2) correctly observed that a factor could not be considered in both gravity and aggravation, and correctly applied this standard when considering aggravating factors.<sup>10854</sup>

3277. With regard to Petković's first argument, the Appeals Chamber observes that the Trial Chamber addressed the aggravating circumstances of Petković in terms reflective of the above-mentioned distinction between the abuse of superior authority and a superior position *per se*.<sup>10855</sup> The Trial Chamber considered that Petković played a key role in the commission of crimes by virtue of his functions and powers as the chief, subsequently the deputy commander, and

<sup>10844</sup> Trial Judgement, Vol. 4, para. 1355.

<sup>10845</sup> Petković's Appeal Brief, paras 450-452; Petković's Reply Brief, paras 90-91(ii).

<sup>10846</sup> Petković's Appeal Brief, para. 450; Petković's Reply Brief, para. 91(ii). The Appeals Chamber notes that Petković does not argue an independent error as regards reliance on position of authority, as opposed to abuse of authority, as an aggravating circumstance. However, given that his double-counting arguments would become moot if the Trial Chamber erred as alleged by Prlić and Stojić above, the Appeals Chamber will consider his submissions regarding the nature of the aggravating factors at the same juncture.

<sup>10847</sup> Petković's Appeal Brief, paras 450-451.

<sup>10848</sup> Petković's Appeal Brief, paras 450-451.

<sup>10849</sup> Petković's Appeal Brief, paras 450-452; Petković's Reply Brief, para. 91(i).

<sup>10850</sup> Petković's Appeal Brief, para. 452.

<sup>10851</sup> Prosecution's Response Brief (Petković), paras 309-310.

<sup>10852</sup> Prosecution's Response Brief (Petković), para. 308.

<sup>10853</sup> Prosecution's Response Brief (Petković), para. 309.

<sup>10854</sup> Prosecution's Response Brief (Petković), para. 309. The Prosecution responds that the Trial Chamber considered the contributions made to crimes rather than his role itself, while in aggravation, the Trial Chamber focused on the use of the resources at his disposal to implement the CCP. Prosecution's Response Brief (Petković), paras 309-310. The Prosecution also responds that Petković's sentence was inadequate. Prosecution's Response Brief (Petković), paras 304-305.

ultimately the deputy chief of the Main Staff and found that he abused his authority in order to facilitate the crimes by using the resources at his disposal for the implementation of the crimes.<sup>10856</sup> It is clear from the Trial Chamber's reasoning that it did not consider Petković's positions, as such, as an aggravating circumstance, but rather his abuse thereof. The Trial Chamber neither elaborated on how he abused his position nor provided cross references to other sections of the Trial Judgement in support thereof, but elsewhere in the Trial Judgement it considered in detail the manner in which Petković exercised his authority.<sup>10857</sup> The Appeals Chamber therefore finds that Petković has failed to demonstrate that the Trial Chamber committed a discernible error in this respect.

3278. As regards Petković's second argument, the Appeals Chamber observes that Petković was convicted under Article 7(1) of the Statute for his commission of crimes through a JCE.<sup>10858</sup> In its aggravating factors analysis, the Trial Chamber considered that the fact that Petković in his position of authority had committed crimes amounted to an abuse of authority.<sup>10859</sup> The Appeals Chamber recalls that a position of authority is not an element of JCE responsibility under Article 7(1) of the Statute.<sup>10860</sup> Thus, although an assessment of JCE responsibility may involve consideration of a person's official role and commission of crimes in that capacity, as in the present case,<sup>10861</sup> a JCE conviction does not rest upon these factors.<sup>10862</sup> The Appeals Chamber finds no discernible error in the exercise of the Trial Chamber's discretion when it relied on Petković's abuse of authority as an aggravating factor.

3279. In respect of Petković's third argument, the Appeals Chamber observes that in considering Petković's form and degree of participation in the commission of crimes as part of its gravity assessment, the Trial Chamber took account of his position of authority and the way in which this authority was exercised,<sup>10863</sup> as well as his involvement in the commission of crimes.<sup>10864</sup> The Trial Chamber then concluded that Petković had played a "key role" in the crimes in question.<sup>10865</sup> The Appeals Chamber considers that nothing in the Trial Judgement's language suggests that the Trial Chamber considered that he had abused his position at the time of the commission of the

<sup>10855</sup> See *supra*, para. 3264.

<sup>10856</sup> Trial Judgement, Vol. 4, para. 1355.

<sup>10857</sup> See Trial Judgement, Vol. 4, paras 691-813.

<sup>10858</sup> Trial Judgement, Vol. 4, Disposition, p. 431.

<sup>10859</sup> Trial Judgement, Vol. 4, para. 1355.

<sup>10860</sup> See, e.g., *Šainović et al.* Appeal Judgement, para. 1823.

<sup>10861</sup> See, e.g., Trial Judgement, Vol. 4, paras 650-686, 691-813.

<sup>10862</sup> See, e.g., *Popović et al.* Appeal Judgement, para. 2020; *Dordević* Appeal Judgement, para. 937; *Šainović et al.* Appeal Judgement, para. 1823.

<sup>10863</sup> Specifically the Trial Chamber found, *inter alia*, that Petković ordered, planned, facilitated, encouraged, and concealed the crimes committed by members of the HZ(R) H-B armed forces over which he had effective control. Trial Judgement, Vol. 4, para. 1353.

<sup>10864</sup> Trial Judgement, Vol. 4, para. 1353.

crimes nor that the crimes were graver simply because he abused his position.<sup>10866</sup> By contrast, in its analysis of aggravating circumstances, the Trial Chamber considered that Petković played a “key role” in the commission of the crimes by virtue of his functions and powers, which it found constituted an abuse of his authority.<sup>10867</sup> The Appeals Chamber considers that the Trial Chamber only assessed Petković’s abuse of his position in the context of aggravating circumstances. It therefore finds no error in the Trial Chamber’s exercise of discretion in this regard.

3280. In conclusion, the Appeals Chamber dismisses Petković’s sub-ground of appeal 8.2 in relevant part.

##### 5. Ćorić’s appeal (Ground 16 in part)

3281. The Trial Chamber found that Ćorić played a key role in the commission of the crimes by virtue of his functions and powers within the Military Police.<sup>10868</sup> It thus concluded that he abused his authority as the Chief of the Military Police Administration of the HVO in order to facilitate the crimes by using the resources at his disposal for the implementation of all the crimes.<sup>10869</sup>

3282. Ćorić argues that the Trial Chamber: (1) erroneously relied on his position of authority as an aggravating circumstance;<sup>10870</sup> and (2) double-counted by considering the same factors both in its gravity analysis and as aggravating circumstances, and thus considered his position of authority twice.<sup>10871</sup> Moreover, Ćorić submits that the Trial Chamber erred in its analysis of the aggravating factors,<sup>10872</sup> for it failed to take into account its previous findings that he: (1) had limited authority over the Military Police owing to their re-subordination to HVO commanders;<sup>10873</sup> (2) did not have knowledge of mistreatment at the detention facilities and lacked authority with regard to these facilities;<sup>10874</sup> and (3) did not have a role in logistics for the detention facilities.<sup>10875</sup> He argues that

<sup>10865</sup> Trial Judgement, Vol. 4, para. 1354.

<sup>10866</sup> See, e.g., *Stanišić and Župljanin* Appeal Judgement, para. 1139.

<sup>10867</sup> Trial Judgement, Vol. 4, para. 1355.

<sup>10868</sup> Trial Judgement, Vol. 4, para. 1370.

<sup>10869</sup> Trial Judgement, Vol. 4, para. 1370.

<sup>10870</sup> Ćorić’s Appeal Brief, para. 324. See also Ćorić’s Appeal Brief, para. 322. The Appeals Chamber notes that Ćorić does not argue an independent error as regards reliance on position of authority, as opposed to abuse of authority, as an aggravating circumstance. However, given that his double-counting arguments would become moot if the Trial Chamber erred as alleged by Prlić and Stojić above, the Appeals Chamber will consider his submissions regarding the nature of the aggravating factors at the same juncture.

<sup>10871</sup> Ćorić’s Appeal Brief, para. 324.

<sup>10872</sup> Ćorić’s Appeal Brief, para. 323, referring to Trial Judgement, Vol. 4, para. 1370.

<sup>10873</sup> Ćorić’s Appeal Brief, para. 323, referring to Trial Judgement, Vol. 4, paras 867-871. Ćorić also argues that there was no evidence that he had effective control over the Military Police engaged in combat on the front line, or that reports from these units were sent to him. Ćorić’s Appeal Brief, para. 323, referring to ground of appeal 2.

<sup>10874</sup> Ćorić’s Appeal Brief, para. 323, referring to Trial Judgement, Vol. 4, paras 955, 974, ground of appeal 7.

<sup>10875</sup> Ćorić’s Appeal Brief, para. 323, referring to Trial Judgement, Vol. 4, para. 904.



the Trial Chamber over-estimated the extent of his participation based on the position he held at the time.<sup>10876</sup> He requests that the Trial Chamber reduce his sentence.<sup>10877</sup>

3283. The Prosecution responds that the Trial Chamber relied on abuse of authority, not position of authority, as an aggravating factor for Ćorić.<sup>10878</sup> It argues that the Trial Chamber acted within its discretion in adopting this approach.<sup>10879</sup> It also responds that the Trial Chamber correctly observed that a factor could not be considered in both gravity and aggravation.<sup>10880</sup> Further, the Prosecution argues that the Trial Chamber considered the findings to which Ćorić refers,<sup>10881</sup> and that in repeating the challenges raised in his appeal brief, Ćorić articulates his disagreement without showing an error.<sup>10882</sup> It also submits that Ćorić played a key role in the JCE.<sup>10883</sup>

3284. As regards Ćorić's first argument, the Appeals Chamber observes that the Trial Chamber addressed the aggravating circumstances of Ćorić in terms reflective of the distinction between the abuse of superior authority as an aggravating circumstance and a superior position *per se*.<sup>10884</sup> The Trial Chamber considered that Ćorić played a key role in the commission of crimes by virtue of his functions and powers within the Military Police and found that he abused his authority in order to facilitate the crimes by using the resources at his disposal for the implementation of the crimes.<sup>10885</sup> It is clear from the Trial Chamber's reasoning that it did not consider Ćorić's position, as such, as an aggravating circumstance, but rather his abuse thereof. The Trial Chamber neither elaborated on how he abused his position nor provided cross references to other sections of the Trial Judgement in support thereof, but elsewhere in the Trial Judgement it considered in detail the manner in which Ćorić exercised his authority.<sup>10886</sup> It therefore finds that Ćorić has failed to demonstrate a discernible error in this regard.

<sup>10876</sup> Ćorić's Appeal Brief, para. 323. See Ćorić's Appeal Brief, para. 321; Ćorić's Reply Brief, para. 80.

<sup>10877</sup> Ćorić's Appeal Brief, paras 321, 332, 340.

<sup>10878</sup> See Prosecution's Response Brief (Ćorić), paras 359-361. The Prosecution submits that the finding that Ćorić abused his authority was based on his "special responsibility to uphold the standards of [international humanitarian law]", as well as his failure to act in relation to conditions in detention. Prosecution's Response Brief (Ćorić), paras 360-361.

<sup>10879</sup> Prosecution's Response Brief (Ćorić), paras 356, 359.

<sup>10880</sup> Prosecution's Response Brief (Ćorić), paras 359-361. The Prosecution responds that Ćorić fails to cite "where in the Judgement he believes the Chamber 'already used [his position of authority in its] finding of the gravity of the crimes'" (Prosecution's Response Brief (Ćorić), para. 359), and that in any event, the Trial Chamber's analysis of aggravation does not merely rely on Ćorić's position, but on the manner in which he exercised his authority. Prosecution's Response Brief (Ćorić), paras 360-361.

<sup>10881</sup> Prosecution's Response Brief (Ćorić), para. 357, referring to Trial Judgement, Vol. 2, paras 1480-1485, 1529, Vol. 4, paras 867, 869, 871, 896, 904, 955, 962, 971, 979-980.

<sup>10882</sup> Prosecution's Response Brief (Ćorić), para. 358.

<sup>10883</sup> Prosecution's Response Brief (Ćorić), paras 354-355.

<sup>10884</sup> See *supra*, para. 3264.

<sup>10885</sup> Trial Judgement, Vol. 4, para. 1370.

<sup>10886</sup> See Trial Judgement, Vol. 4, paras 919-999.

3285. With regard to Ćorić's second argument, the Appeals Chamber observes that in considering his form and degree of participation in the commission of crimes as part of its gravity assessment, the Trial Chamber took account of his position of authority and the way in which this authority was exercised,<sup>10887</sup> as well as his respective involvement in the commission of crimes.<sup>10888</sup> It then concluded that Ćorić had played a "key role" in the crimes in question.<sup>10889</sup> The Appeals Chamber considers that nothing in the Trial Judgement's language suggests that the Trial Chamber considered that he had abused his position at the time of the commission of the crimes nor that the crimes were graver simply because he abused his position.<sup>10890</sup> By contrast, in its analysis of aggravating circumstances, the Trial Chamber considered that Ćorić played a "key role" in the commission of the crimes by virtue of his functions and powers, which it found constituted an abuse of his authority.<sup>10891</sup> The Appeals Chamber considers that the Trial Chamber only assessed Ćorić's abuse of his position in the context of aggravating circumstances. It therefore finds no error in the Trial Chamber's exercise of discretion in this respect.

3286. In respect of Ćorić's third argument, the Appeals Chamber observes that the Trial Chamber found that he: (1) had command and control over the MP units from January 1993 to 10 November 1993;<sup>10892</sup> and (2) played a key role in the operation of the HVO detention units until 10 November 1993.<sup>10893</sup> Although the Trial Chamber did not expressly refer to these findings in its sentencing analysis,<sup>10894</sup> it found that "Ćorić played a key role in the commission of the crimes by virtue of his functions and powers with the HVO Military Police".<sup>10895</sup> It went on to conclude that Ćorić "abused his authority as Chief of the Military Police Administration [...] in order to facilitate the crimes by using the resources at his disposal for the implementation of all the crimes".<sup>10896</sup> The Appeals Chamber considers that the Trial Chamber's reference to Ćorić's powers and functions must be read in conjunction with its findings made elsewhere in the Trial Judgement, and in particular its findings on any limitations to his authority and his knowledge. Ćorić has failed to

<sup>10887</sup> Specifically the Trial Chamber found, *inter alia*, that Ćorić: (1) had command and control authority over the Military Police units; engaged Military Police units in the eviction operations conducted in several municipalities in 1993; (2) played a key role in the functioning of the HVO's network of detention centres until 10 November 1993; and (3) executed a part of the CCP by blocking the Muslim population of East Mostar and blocking humanitarian aid while fully aware of the impact this would have on the population of East Mostar. Trial Judgement, Vol. 4, paras 1367-1368.

<sup>10888</sup> Trial Judgement, Vol. 4, paras 1367-1368.

<sup>10889</sup> Trial Judgement, Vol. 4, para. 1369.

<sup>10890</sup> See, e.g., *Stanišić and Župljanin* Appeal Judgement, para. 1139.

<sup>10891</sup> Trial Judgement, Vol. 4, para. 1370.

<sup>10892</sup> Trial Judgement, Vol. 4, para. 1000. The Appeals Chamber notes that challenges to Ćorić's relationship with the MP have been considered and dismissed elsewhere. See *supra*, paras 2478-2494.

<sup>10893</sup> See Trial Judgement, Vol. 4, para. 1001. Ćorić fails to explain why the Trial Chamber was not entitled to reach this conclusion despite its finding that he did not have a role in the logistical aspect of the confinement at the HVO detention centres (see Trial Judgement, Vol. 4, para. 904), or evidence regarding his role in health care in the detention units. The Appeals Chamber notes that challenges to Ćorić's role as regards the detention centres have been considered and dismissed elsewhere. See *supra*, paras 2502-2562.

<sup>10894</sup> Trial Judgement, Vol. 4, para. 1370.

<sup>10895</sup> Trial Judgement, Vol. 4, para. 1370.

demonstrate that the Trial Chamber erred in its analysis of the aggravating factors by over-estimating the extent of his participation based on the positions he held.

3287. Accordingly, the Appeals Chamber thus dismisses Ćorić's ground of appeal 16 in relevant part.

#### 6. Pušić's appeal (Ground 8 in part)

3288. Pušić submits that the Trial Chamber double-counted by relying on factors already considered in determining his JCE responsibility as aggravating circumstances.<sup>10897</sup> Pušić asserts that the Trial Chamber relied on his contribution to the JCE twice.<sup>10898</sup> He requests that the Trial Chamber reduce his sentence.<sup>10899</sup>

3289. The Prosecution argues that the Trial Chamber did not double-count with regard to Pušić because the factors considered as aggravating circumstances were not required elements of his JCE conviction.<sup>10900</sup>

3290. The Appeals Chamber observes that Pušić was convicted under Article 7(1) of the Statute for his commission of crimes through a JCE.<sup>10901</sup> In its aggravating factors analysis, the Trial Chamber considered that the fact that Pušić in his position of authority had committed crimes amounted to an abuse of his authority.<sup>10902</sup> Recalling that a position of authority is not an element of JCE responsibility under Article 7(1) of the Statute,<sup>10903</sup> the Appeals Chamber considers that while an assessment of JCE responsibility may involve consideration of a person's official role and commission of crimes in that capacity, as in the present case,<sup>10904</sup> a JCE conviction does not rest upon these factors.<sup>10905</sup> It finds no discernible error in the exercise of the Trial Chamber's discretion when it relied on Pušić's abuse of his position of authority as an aggravating factor. The Appeals Chamber therefore dismisses Pušić's ground of appeal 8 in relevant part.

<sup>10896</sup> Trial Judgement, Vol. 4, para. 1370.

<sup>10897</sup> Pušić's Appeal Brief, para. 245.

<sup>10898</sup> Pušić's Appeal Brief, para. 245.

<sup>10899</sup> Pušić's Appeal Brief, paras 236-237, 255.

<sup>10900</sup> Prosecution's Response Brief (Pušić), para. 223. See also Prosecution's Response Brief (Pušić), para. 218. The Prosecution also responds that Pušić's sentence was inadequate. Prosecution's Response Brief (Pušić), para. 217.

<sup>10901</sup> Trial Judgement, Vol. 4, Disposition, p. 431.

<sup>10902</sup> Trial Judgement, Vol. 4, para. 1381.

<sup>10903</sup> See, e.g., *Šainović et al.* Appeal Judgement, para. 1823.

<sup>10904</sup> See, e.g., Trial Judgement, Vol. 4, paras 1027-1093, 1097-1201.

<sup>10905</sup> See, e.g., *Popović et al.* Appeal Judgement, para. 2020; *Dorđević* Appeal Judgement, para. 937; *Šainović et al.* Appeal Judgement, para. 1823.

## 7. Conclusion

3291. For the foregoing reasons, the Appeals Chamber finds that Prlić, Stojić, Petković, Čorić, and Pušić have failed to demonstrate a discernible error in the Trial Chamber's assessment of aggravating circumstances. It thus dismisses Prlić's sub-ground of appeal 21.2, Stojić's sub-ground of appeal 56.2, Petković's sub-ground of appeal 8.2, Čorić's ground of appeal 16, and Pušić's ground of appeal 8, all in relevant part.

### **D. Alleged Errors Regarding Mitigating Circumstances**

#### 1. Introduction

3292. The Trial Chamber stated that: (1) pursuant to Rule 101(B) of the Rules, it was required to take into account the existence of mitigating circumstances; and (2) given that neither the Statute nor the Rules set out an exhaustive list of mitigating circumstances, it could take into account mitigating circumstances as established by the Tribunal's jurisprudence.<sup>10906</sup> It also noted that the standard of proof for mitigating circumstances is the balance of probabilities and is not necessarily related to the offence.<sup>10907</sup> Accordingly, the Trial Chamber found that certain mitigating circumstances existed with regard to each of the Appellants.<sup>10908</sup>

#### 2. Prlić's appeal (Sub-ground 21.1 in part)

3293. The Trial Chamber noted that Prlić had not put forth mitigating factors to be taken into account in the determination of his sentence, and that he only submitted in general that weight should be accorded to the fact that he voluntarily surrendered to the Tribunal and co-operated with the Prosecution.<sup>10909</sup> The Trial Chamber then considered that Prlić's voluntary surrender, his good behaviour while in detention and during his provisional releases, as well as his post-conflict conduct, constituted mitigating circumstances.<sup>10910</sup> With respect to the degree of his co-operation, the Trial Chamber concluded that the single interview he gave to the Prosecution was insufficient to be taken into account as mitigation.<sup>10911</sup>

3294. Prlić submits that the Trial Chamber erred when it failed to consider the following circumstances as mitigating factors: (1) his efforts to facilitate the transfer and distribution of

<sup>10906</sup> Trial Judgement, Vol. 4, para. 1284. See also Trial Judgement, Vol. 4, paras 1288-1290.

<sup>10907</sup> Trial Judgement, Vol. 4, para. 1285.

<sup>10908</sup> Trial Judgement, Vol. 4, paras 1319-1322 (Prlić), 1331-1334 (Stojić), 1344-1347 (Praljak), 1356-1361 (Petković), 1371-1373 (Čorić), 1382-1384 (Pušić).

<sup>10909</sup> See Trial Judgement, Vol. 4, para. 1312.

<sup>10910</sup> Trial Judgement, Vol. 4, paras 1319-1320, 1322. See also Trial Judgement, Vol. 4, paras 1312-1313.

<sup>10911</sup> Trial Judgement, Vol. 4, para. 1321. See also Trial Judgement, Vol. 4, para. 1312.

humanitarian aid;<sup>10912</sup> (2) the fact that he could not control the violence in detention centres;<sup>10913</sup> (3) efforts of the HVO/Government of the HZ(R) H-B to address the conditions in detention facilities;<sup>10914</sup> and (4) his post-conflict conduct, including his efforts to “bring a sense of normalcy” after the war and his continuity of government service in BiH.<sup>10915</sup> Prlić requests that the Appeals Chamber reduce his sentence.<sup>10916</sup>

3295. The Prosecution responds that Prlić failed to raise these elements as mitigating circumstances at trial, and that in any case they cannot be identified as such.<sup>10917</sup>

3296. The Appeals Chamber recalls that appeal proceedings are not the appropriate forum to raise mitigating circumstances for the first time.<sup>10918</sup> In the present case, the Appeals Chamber observes that while Prlić claims that the Trial Chamber did not take into account certain mitigating circumstances, he did not raise the relevant factors in his final brief or closing arguments.<sup>10919</sup> In any event, the Appeals Chamber observes that in referring to these factors, Prlić ignores a number of relevant findings of the Trial Chamber. Specifically, in assessing his responsibility under JCE I, the Trial Chamber considered and rejected Prlić’s assertion that he facilitated the transfer and distribution of humanitarian aid and that he could not control the violence in detention centres.<sup>10920</sup> In addition, while the Trial Chamber noted that Prlić may have sought to improve the detention conditions and treatment of the detainees, it considered that the measures he took were “insufficient or inappropriate” and found that he “accepted the extremely precarious conditions in which the Muslim detainees were living.”<sup>10921</sup> Moreover, the Trial Chamber took into account Prlić’s post-conflict conduct as a mitigating factor, noting: (1) his preliminary statement during trial; and (2) his role during the Dayton Accords and in promoting reconciliation in the former Yugoslavia.<sup>10922</sup> Accordingly, the Appeals Chamber finds that Prlić has failed to demonstrate that the Trial Chamber did not consider his efforts to “bring a sense of normalcy” after the war and his continuous government service in BiH as a mitigating factor. The Appeals Chamber is not

<sup>10912</sup> Prlić’s Appeal Brief, para. 678. Prlić also argues that the Trial Chamber did not consider that every humanitarian convoy travelling through HZ(R) H-B reached its destination. Prlić’s Appeal Brief, para. 678.

<sup>10913</sup> Prlić’s Appeal Brief, para. 678.

<sup>10914</sup> Prlić’s Appeal Brief, para. 678.

<sup>10915</sup> Prlić’s Appeal Brief, para. 678. With respect to his post-conflict conduct, Prlić also advances that the Trial Chamber did not take into account: (1) his contribution to the growth rates in the sector of Croat-majority areas of BiH; and (2) the fact that “Herceg-Bosna legislation was accepted in the federation and later at BiH’s level”. Prlić’s Appeal Brief, para. 678.

<sup>10916</sup> Prlić’s Appeal Brief, para. 682.

<sup>10917</sup> Prosecution’s Response Brief (Prlić), paras 423-426. It also submits that the Trial Chamber already found Prlić’s post-conflict conduct to constitute a mitigating factor. Prosecution’s Response Brief (Prlić), para. 425.

<sup>10918</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1133, *Tolimir* Appeal Judgement, para. 644, *Popović et al.* Appeal Judgement, para. 2060; *Dorđević* Appeal Judgement, para. 945.

<sup>10919</sup> The Appeals Chamber observes that the Trial Chamber highlighted that Prlić did not raise any specific mitigating factor and that Prlić does not challenge this finding. See Trial Judgement, Vol. 4, para. 1312.

<sup>10920</sup> Trial Judgement, Vol. 4, paras 178-185, 217-218.

<sup>10921</sup> Trial Judgement, Vol. 4, para. 220. See also Trial Judgement, Vol. 4, para. 273.

persuaded that the Trial Chamber committed a discernible error in exercising its discretion and dismisses Prlić's sub-ground of appeal 21.1 in relevant part.

### 3. Petković's appeal (Sub-ground 8.3)

3297. In assessing Petković's mitigating circumstances, the Trial Chamber considered, *inter alia*, his efforts to improve the situation of vulnerable people and to co-operate with the ABiH to put an end to the conflict.<sup>10923</sup> However, it concluded that Petković's "preference for negotiation" had limited weight in light of his participation in the crimes and his attempts to conceal the responsibility of the HVO authorities from international representatives.<sup>10924</sup>

3298. Petković submits that the Trial Chamber erred in concluding that his "humanitarian efforts were limited to a 'preference for negotiations'" and that it failed to consider "all his other efforts to alleviate the hardship of the war affecting civilians and to try to protect them from harm" such as his endeavour to find a peaceful solution, including through cease-fire agreements.<sup>10925</sup> In particular, Petković points to his efforts and orders to: (1) secure and facilitate the safe passage of humanitarian aid and convoys;<sup>10926</sup> (2) protect civilians and remind the HVO to respect their obligations under international humanitarian law;<sup>10927</sup> (3) protect Muslim properties and respect their religious holidays;<sup>10928</sup> (4) secure the release of civilians who had been arrested;<sup>10929</sup> and (5) ensure the safe passage of UNPROFOR.<sup>10930</sup> According to Petković, the Appeals Chamber should revise his sentence in light of these elements and significantly reduce it.<sup>10931</sup>

3299. The Prosecution responds that Petković fails to show an error in the Trial Chamber's assessment of his mitigating circumstances as it did not result in an excessive sentence.<sup>10932</sup> With respect to his arguments that the Trial Chamber failed to consider mitigating circumstances, the Prosecution argues that Petković did not raise such elements at trial.<sup>10933</sup>

<sup>10922</sup> Trial Judgement, Vol. 4, para. 1322.

<sup>10923</sup> Trial Judgement, Vol. 4, para. 1361, referring to Petković's Final Brief, para. 672(ix) and (xii). See also Trial Judgement, Vol. 4, para. 1351, referring to Petković's Final Brief, para. 672(ix) and (xii).

<sup>10924</sup> Trial Judgement, Vol. 4, para. 1361.

<sup>10925</sup> Petković's Appeal Brief, para. 454. See also Petković's Appeal Brief, paras 453, 455-458.

<sup>10926</sup> Petković's Appeal Brief, para. 454(ii), referring to Petković's Appeal Brief, Annex 3.

<sup>10927</sup> Petković's Appeal Brief, para. 454(iii), referring to Petković's Appeal Brief, Annex 3.

<sup>10928</sup> Petković's Appeal Brief, para. 454(iv), referring to Ex. 4D00016/P02577.

<sup>10929</sup> Petković's Appeal Brief, para. 454(v), referring to Exs. P01467, P01709, P01959, P02344, P02726, P05138, Milivoj Petković, T. 49526-49527 (16 Feb 2010).

<sup>10930</sup> Petković's Appeal Brief, para. 454(vi), referring to Petković's Appeal Brief, Annex 3.

<sup>10931</sup> Petković's Appeal Brief, paras 457-458.

<sup>10932</sup> Prosecution's Response Brief (Petković), paras 311-312.

<sup>10933</sup> Prosecution's Response Brief (Petković), para. 312. The Prosecution argues that in any event, such factors were considered by the Trial Chamber and that they do not qualify as mitigation since: (1) the Trial Chamber specifically referred to Petković's powers vis-à-vis ceasefires, which were also used to advance the goals of the JCE; (2) the Trial Chamber found that in some instances, Petković impeded access of humanitarian convoys to vulnerable areas; (3) while

3300. Petković replies that, contrary to the Prosecution's arguments, he raised the mitigating factors at trial.<sup>10934</sup>

3301. The Appeals Chamber notes that in his final trial brief, Petković made generic submissions that he tried to improve the conditions of vulnerable people and that he co-operated with ABiH commanders to find a peaceful solution to the conflict and end the suffering of the population without referring to any part of the trial record.<sup>10935</sup> Having examined the evidence on the record, the Trial Chamber concluded that although the evidence showed Petković's "preference for negotiation", it had limited weight in light of the extent of his participation in the crimes and his efforts to conceal the responsibility of HVO authorities before international representatives.<sup>10936</sup> Based on these considerations, the Appeals Chamber finds that Petković's claim that his humanitarian efforts were not limited to a preference for negotiations is unsubstantiated and that it does not show a discernible error in the Trial Chamber's exercise of its discretion.

3302. Further, contrary to Petković's submissions that the Trial Chamber failed to consider and give due weight to several circumstances reflecting his efforts to protect civilians and to find a peaceful solution to end the conflict, he did not identify any of these specific circumstances as potential mitigating factors at trial.<sup>10937</sup> The Appeals Chamber recalls that appeal proceedings are not an appropriate forum to raise mitigating circumstances for the first time.<sup>10938</sup> In any event, the Appeals Chamber observes that in referring to these circumstances, Petković ignores a number of relevant findings of the Trial Chamber. Specifically, while the Trial Chamber noted that Petković occasionally facilitated the access of humanitarian convoys, it also considered that in other instances he had facilitated the *hindering* of humanitarian convoys, thereby contributing to harsh living conditions.<sup>10939</sup> The Trial Chamber also considered that despite his power over the armed forces and the Military Police, Petković did not make serious efforts to put an end to the commission of crimes by the members of these armed forces, but rather attempted to conceal the

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Petković issued orders to protect civilians, he also directly contributed to the military attacks in furtherance of the JCE; (4) Petković's steps to protect Muslim properties and to respect Muslim holidays contradicts the findings regarding his intent and responsibility for destruction of such properties including mosques; and (5) Petković's orders to release civilians did not "outweigh" his criminal conduct and in any case these orders were issued only when it was in the interest of the HVO, namely for political reasons or under pressure from the international community. See Prosecution's Response Brief (Petković), para. 312.

<sup>10934</sup> Petković's Reply Brief, para. 92, referring to Petković's Final Brief, para. 672(ix)-(xii).

<sup>10935</sup> Petković's Final Brief, para. 672(ix) ("During the conflict, Petković took many steps to try to improve situation/circumstances affecting the vulnerable. He showed a great deal of cooperation with members of the [ABiH] with a view to find a peaceful solution to the conflict and end the sufferings of the civilian population.") and (xii) ("Petković helped to put an end to the conflict by renewing his negotiation efforts with the [ABiH] commanders.").

<sup>10936</sup> Trial Judgement, Vol. 4, para. 1361.

<sup>10937</sup> Compare Petković's Appeal Brief, para. 454(i)-(iv) with Petković's Final Brief, para. 672(ix) and (xii).

<sup>10938</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1133; *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2060; *Dorđević* Appeal Judgement, para. 945.

<sup>10939</sup> Trial Judgement, Vol. 4, para. 755.

responsibility of the HVO authorities from international representatives.<sup>10940</sup> Finally, the Trial Chamber found that Petković directed or otherwise facilitated military operations and intended that Muslim property be destroyed and men who did not belong to any armed forces be arrested and detained.<sup>10941</sup> The Appeals Chamber is not persuaded, therefore, that the Trial Chamber committed a discernible error in exercising its discretion and dismisses Petković's sub-ground of appeal 8.3.

#### 4. Ćorić's appeal (Ground 16 in part)

3303. The Trial Chamber found that Ćorić's voluntary surrender and good behaviour while in detention constituted mitigating circumstances.<sup>10942</sup> It also concluded that his family's medical situation did not warrant mitigation.<sup>10943</sup>

3304. Ćorić submits that, in determining his sentence, the Trial Chamber failed to give adequate consideration to, or attribute sufficient weight to, his voluntary surrender and good behaviour in detention.<sup>10944</sup> He also argues that the Trial Chamber erred in concluding that his family situation did not constitute a mitigating factor, although this element was considered to be a compelling circumstance justifying his provisional release.<sup>10945</sup>

3305. Ćorić further contends that the Trial Chamber failed to consider the following findings as mitigating factors: (1) his involvement in fighting crimes in the HVO;<sup>10946</sup> (2) his role in training and instructing the Military Police to comply with international humanitarian law;<sup>10947</sup> (3) that the crimes committed by HVO forces could not be "effectively opposed", as the Military Police was "forced to devote major part of its resources to combat operations";<sup>10948</sup> (4) his requests to withdraw the Military Police from the front-lines in order to fight crimes;<sup>10949</sup> and (5) his contribution after the war with respect to the maintenance of law and order as Minister of Civilian Affairs and communications in BiH.<sup>10950</sup> Ćorić submits that in light of these errors, his sentence should be significantly reduced.<sup>10951</sup>

<sup>10940</sup> Trial Judgement, Vol. 4, paras 808, 813, 816.

<sup>10941</sup> Trial Judgement, Vol. 4, paras 699, 710, 717, 738, 750, 758-759, 787-798, 802.

<sup>10942</sup> Trial Judgement, Vol. 4, paras 1371-1372.

<sup>10943</sup> Trial Judgement, Vol. 4, para. 1373. See also Trial Judgement, Vol. 4, para. 1365.

<sup>10944</sup> Ćorić's Appeal Brief, para. 326. See also Ćorić's Reply Brief, para. 77.

<sup>10945</sup> Ćorić's Appeal Brief, para. 325, referring to Trial Judgement, Vol. 4, fn. 2536.

<sup>10946</sup> Ćorić's Appeal Brief, para. 327, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 881, 932, 934. See also Ćorić's Reply Brief, para. 77.

<sup>10947</sup> Ćorić's Appeal Brief, para. 328, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 861, 893. See also Ćorić's Reply Brief, para. 77.

<sup>10948</sup> Ćorić's Appeal Brief, para. 329, referring to Trial Judgement, Vol. 1, para. 972. See also Ćorić's Reply Brief, para. 77.

<sup>10949</sup> Ćorić's Appeal Brief, para. 330.

<sup>10950</sup> Ćorić's Appeal Brief, para. 331.

<sup>10951</sup> Ćorić's Appeal Brief, para. 332.



3306. The Prosecution responds that the Trial Chamber did not commit any error in assessing Ćorić's good behaviour and the specific circumstances concerning Ćorić's family situation.<sup>10952</sup> It also avers that, at trial, Ćorić only identified his family health situation as a mitigating circumstance and that the Trial Chamber was therefore not required to address any other elements.<sup>10953</sup>

3307. Ćorić replies that the Prosecution misrepresents his argument by claiming that he raised mitigating factors for the first time on appeal, while in fact his challenges relate to the Trial Chamber's failure to take into account certain factual findings it made that were "worthy of mitigating".<sup>10954</sup>

3308. With respect to Ćorić's submissions that the Trial Chamber failed to give sufficient weight to his voluntary surrender and good behaviour, the Appeals Chamber recalls that a trial chamber is endowed with a considerable degree of discretion in deciding how much weight, if any, to accord to mitigating circumstances that have been identified.<sup>10955</sup> Moreover, the existence of mitigating circumstances does not automatically result in a reduction of sentence.<sup>10956</sup> In the present case, other than arguing that the Trial Chamber did not adequately weigh his voluntary surrender and good behaviour in determining his sentence, Ćorić does not identify any error. Accordingly, this part of Ćorić's arguments is dismissed.

3309. As to Ćorić's second claim, the Appeals Chamber observes that the Trial Chamber: (1) factored his family situation into its considerations of his request for provisional release, which it found constituted sufficiently compelling humanitarian grounds to warrant provisional release; and (2) further concluded that his family situation did not constitute mitigation.<sup>10957</sup> Recalling that in general, only little weight is afforded to the family situation of an accused in the absence of exceptional family circumstances,<sup>10958</sup> the Appeals Chamber fails to see a discernible error in the Trial Chamber's exercise of its discretion not to accord this factor any mitigating value. In the present case, other than arguing that his family situation was considered a compelling circumstance by the Trial Chamber when granting provisional release, Ćorić has failed to show that exceptional

<sup>10952</sup> Prosecution's Response Brief (Ćorić), paras 364, 366.

<sup>10953</sup> Prosecution's Response Brief (Ćorić), paras 363, 365. Moreover, the Prosecution contends that the Trial Chamber was not required to address the circumstances Ćorić raised as mitigating, as it was within its discretion to consider that such factors have only limited weight in the determination of the sentence in light of Ćorić's role as a leading JCE member. Prosecution's Response Brief (Ćorić), para. 365.

<sup>10954</sup> Ćorić's Reply Brief, paras 75-76. See also Ćorić's Reply Brief, paras 77-79.

<sup>10955</sup> *Popović et al.* Appeal Judgement, para. 2053; *Bagosora and Nsengiyumva* Appeal Judgement, para. 424; *D. Milošević* Appeal Judgement, para. 316.

<sup>10956</sup> *Popović et al.* Appeal Judgement, para. 2053; *Nizeyimana* Appeal Judgement, para. 445; *Ntabakuze* Appeal Judgement, paras 267, 280.

<sup>10957</sup> Trial Judgement, Vol. 4, para. 1373, fn. 2536.

<sup>10958</sup> *Jokić* Judgement on Sentencing Appeal, para. 62; *Ntabakuze* Appeal Judgement, para. 284; *Nahimana et al.* Appeal Judgement, para. 1108.

family circumstances existed so as to warrant mitigation of his sentence. Accordingly, the Appeals Chamber dismisses this part of Ćorić's arguments.

3310. The Appeals Chamber observes that Ćorić did not raise at trial the other factors that he now argues the Trial Chamber disregarded.<sup>10959</sup> The Appeals Chamber recalls that appeal proceedings are not the appropriate forum to raise mitigating circumstances for the first time.<sup>10960</sup> Ćorić bases the specific circumstances he refers to on the Trial Chamber's factual findings,<sup>10961</sup> but he fails to appreciate that it is his prerogative to identify any mitigating circumstances at trial.<sup>10962</sup> As such, the Trial Chamber cannot be faulted for failing to consider as mitigating circumstances elements which Ćorić did not properly identify. In any event, the Appeals Chamber observes that in referring to his involvement in crime fighting, training of the Military Police to comply with international humanitarian law, and his requests to withdraw the Military Police from the front lines, Ćorić ignores a number of relevant findings of the Trial Chamber,<sup>10963</sup> including that he failed to take measures against the crimes committed by the HVO and used members of the Military Police to commit crimes.<sup>10964</sup>

3311. In conclusion, the Appeals Chamber is not persuaded that the Trial Chamber committed a discernible error in exercising its discretion and dismisses Ćorić's ground of appeal 16 in relevant part.

##### 5. Pušić's appeal (Ground 8 in part)

3312. The Trial Chamber considered that Pušić's voluntary surrender and good behaviour in detention constituted mitigating circumstances in the determination of his sentence.<sup>10965</sup> It also concluded that his personal and family situations did not have any weight on the sentence as a mitigating factor.<sup>10966</sup>

3313. Pušić submits that the Trial Chamber erred in concluding that his poor health did not constitute a mitigating factor.<sup>10967</sup> Specifically, he argues that his illness is of particular relevance

<sup>10959</sup> Ćorić's Final Brief, para. 774. See also Trial Judgement, Vol. 4, para. 1365 ("The Ćorić Defence submits that the medical situation of the Accused Ćorić's family members should be taken into account by the [Trial] Chamber as a mitigating circumstance in the determination of his sentence.").

<sup>10960</sup> *Stanišić and Župljanin* Appeal Judgement, para. 1133; *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2060; *Dorđević* Appeal Judgement, para. 945.

<sup>10961</sup> Ćorić's Appeal Brief, paras 327-331.

<sup>10962</sup> See, e.g., *Nzabonimana* Appeal Judgement, para. 459.

<sup>10963</sup> Trial Judgement, Vol. 4, paras 938, 944-945, 953, 957, 966, 973, 977, 990, 996, 1000.

<sup>10964</sup> Trial Judgement, Vol. 4, paras 921, 923, 925, 934, 945, 953, 957, 973, 984, 987, 990, 994, 996, 1000.

<sup>10965</sup> Trial Judgement, Vol. 4, paras 1382-1384. See also Trial Judgement, Vol. 4, para. 1377.

<sup>10966</sup> Trial Judgement, Vol. 4, para. 1384. See also Trial Judgement, Vol. 4, para. 1377.

<sup>10967</sup> Pušić's Appeal Brief, para. 252.

since it “will make it harder for him to serve the time he is required to spend in custody”.<sup>10968</sup> He also argues that, aside from considering his good conduct in custody as mitigating, the Trial Chamber failed to give appropriate weight to his good character as it did not consider his lack of prior criminal convictions or prior discriminatory behaviour in mitigation.<sup>10969</sup> Similarly, Pušić contends that the Trial Chamber failed to take into account as mitigating factors:<sup>10970</sup> (1) his contribution to the release of Muslim detainees;<sup>10971</sup> (2) his co-operation with international agencies;<sup>10972</sup> and (3) his remorse as evidenced during trial “in person and through his Counsel”.<sup>10973</sup> Pušić requests that the Appeals Chamber reduce his sentence.<sup>10974</sup>

3314. The Prosecution responds that the Trial Chamber correctly identified and weighed mitigating factors in determining Pušić’s sentence.<sup>10975</sup> It contends that at trial, Pušić failed to raise the absence of his prior discriminatory behaviour or prior criminal record as mitigating factors.<sup>10976</sup> The Prosecution also submits that Pušić’s argument concerning his medical situation does not show that the Trial Chamber abused its discretion.<sup>10977</sup> Moreover, the Prosecution argues that Pušić’s allegations concerning the Trial Chamber’s failure to consider his conduct towards the victims, his co-operation with international agencies, and his remorse should be summarily dismissed as they were not part of Pušić’s Notice of Appeal and, in any event, have no merit.<sup>10978</sup>

3315. With respect to Pušić’s health condition, the Appeals Chamber recalls that poor health is accepted as a mitigating factor only in exceptional cases,<sup>10979</sup> and that it may at times be taken into account in the enforcement of the sentence.<sup>10980</sup> A review of the Trial Judgement reflects that the Trial Chamber duly considered whether Pušić’s physical condition could warrant mitigation and

<sup>10968</sup> Pušić’s Appeal Brief, para. 252.

<sup>10969</sup> Pušić’s Appeal Brief, para. 246.

<sup>10970</sup> Pušić’s Appeal Brief, paras 248-251.

<sup>10971</sup> Pušić’s Appeal Brief, para. 249, referring to Pušić’s Final Brief, paras 448-449.

<sup>10972</sup> Pušić’s Appeal Brief, para. 250, referring to Pušić’s Final Brief, paras 122, 146, 154.

<sup>10973</sup> Pušić’s Appeal Brief, para. 248, referring to T. 7950-7951 (closed session) (5 Oct 2006), Pušić Closing Arguments, T. 52793-52794 (24 Feb 2011).

<sup>10974</sup> Pušić’s Appeal Brief, para. 255.

<sup>10975</sup> Prosecution’s Response Brief (Pušić), paras 224-231.

<sup>10976</sup> Prosecution’s Response Brief (Pušić), para. 228. With respect to Pušić’s submission concerning his lack of discriminatory behaviour, the Prosecution also argues that he was convicted of persecution as a crime against humanity. Prosecution’s Response Brief (Pušić), para. 227.

<sup>10977</sup> Prosecution’s Response Brief (Pušić), para. 229, referring to Prosecution’s Response Brief (Pušić), confidential and *ex parte* Appendix.

<sup>10978</sup> Prosecution’s Response Brief (Pušić), para. 230. Specifically, the Prosecution avers that the Trial Chamber’s findings concerning Pušić’s failure to co-operate with international agencies and contribution in the system of detention centres contradict his allegation of errors. See Prosecution’s Response Brief (Pušić), para. 230, referring to Trial Judgement, Vol. 4, paras 1121, 1379. Similarly, the Prosecution responds that the Trial Chamber did not err in not considering Pušić’s alleged remorse, since it was not sincere and genuine. Prosecution’s Response Brief (Pušić), para. 231.

<sup>10979</sup> *Šainović et al.* Appeal Judgement, para. 1827; *Galić* Appeal Judgement, para. 436; *Blaškić* Appeal Judgement, para. 696.

<sup>10980</sup> See, e.g., *M. Simić* Sentencing Judgement, para. 98; 28 June 2010 Decision on Early Release of Gvero, para. 10 & fn. 25.

that it specifically noted that while his serious and frail health condition was “acknowledged” pending and during the trial, including the periods of provisional release, it did not warrant mitigation.<sup>10981</sup> The Appeals Chamber is not persuaded that Pušić has demonstrated that exceptional circumstances surrounding his health existed such as to warrant mitigation of his sentence. The Appeals Chamber therefore finds that it was within the Trial Chamber’s discretion to conclude that Pušić’s health condition did not warrant mitigation of his sentence and dismisses Pušić’s argument.

3316. With respect to Pušić’s contention that the Trial Chamber failed to take into account his good behaviour prior to the commission of the crimes, the trial record indicates that he only vaguely pointed to his character and to “respect for the Tribunal” he showed during his provisional releases<sup>10982</sup> and that at no point did he refer to the lack of criminal record or discriminatory behaviour as mitigating circumstances. Similarly, the Appeals Chamber observes that Pušić did not identify as mitigating circumstances his involvement in the release of detainees, co-operation with international agencies, or remorse.<sup>10983</sup> In this regard, the Appeals Chamber recalls that appeal proceedings are not the appropriate forum to raise mitigating circumstances for the first time.<sup>10984</sup> In any event, the Appeals Chamber finds that in referring to these factors, Pušić ignores a number of relevant Trial Chamber findings,<sup>10985</sup> including, *inter alia*, (1) that he directly contributed to crimes against detainees,<sup>10986</sup> and (2) his lack of co-operation with international agencies with respect to HVO crimes.<sup>10987</sup> The Appeals Chamber, therefore, is not persuaded that the Trial Chamber committed a discernible error in exercising its discretion and dismisses this part of Pušić’s argument.

3317. With regard to Pušić’s expression of remorse, the Appeals Chamber notes that Counsel for Pušić made a statement during the closing arguments that Pušić “found it unbearable to listen to the testimony of the victims in this case”.<sup>10988</sup> While the Trial Judgement does not explicitly discuss this passage of Pušić’s closing argument, the Appeals Chamber observes that the Trial Chamber referenced the relevant portion of the transcript in summarising Pušić’s arguments concerning

<sup>10981</sup> Trial Judgement, Vol. 4, para. 1384.

<sup>10982</sup> Pušić Closing Arguments, T. 52793 (24 Feb 2011), which reads in part: “Mr. Pušić is grateful to the Trial Chamber for the sympathy and understanding that you have shown, and we submit that Mr. Pušić has also shown respect for the Tribunal during those periods when he has been granted provisional release.”

<sup>10983</sup> See T. 52793-52794 (24 Feb 2011). See also Trial Judgement, Vol. 4, para. 1377. The Appeals Chamber also notes that, as the Prosecution points out, these allegations of errors were not set forth in Pušić’s Notice of Appeal and that the Appeals Chamber is not required to consider them. See, *e.g.*, Šainović *et al.* Appeal Judgement, para. 84; Galić Appeal Judgement, para. 78.

<sup>10984</sup> Stanišić and Župljanin Appeal Judgement, para. 1133; Tolimir Appeal Judgement, para. 644; Popović *et al.* Appeal Judgement, para. 2060; Đorđević Appeal Judgement, para. 945.

<sup>10985</sup> Trial Judgement, Vol. 4, paras 1097-1104, 1110, 1116, 1122-1123, 1133-1187, 1191-1203, 1209.

<sup>10986</sup> Trial Judgement, Vol. 4, paras 1133-1187.

<sup>10987</sup> Trial Judgement, Vol. 4, paras 1191-1203.

<sup>10988</sup> Pušić’s Closing Arguments, T. 52793 (24 Feb 2011), referring to T. 7950-7951 (closed session) (5 Oct 2006).

mitigating circumstances.<sup>10989</sup> This suggests that the Trial Chamber considered the statement, but found that it did not warrant any mitigation. Taking into account a trial chamber's considerable discretion in weighing mitigating factors as well as the vague nature of the statement, the Appeals Chamber sees no discernible error on the part of the Trial Chamber in this respect. Accordingly, this part of Pušić's argument is dismissed. The Appeals Chamber therefore dismisses Pušić's ground of appeal 8 in relevant part.

## 6. Conclusion

3318. For the foregoing reasons, the Appeals Chamber concludes that Prlić, Petković, Čorić, and Pušić have failed to demonstrate a discernible error in the Trial Chamber's assessment of mitigating circumstances. Thus, the Appeals Chamber dismisses Prlić's sub-ground of appeal 21.1 in relevant part, Petković's sub-ground of appeal 8.3, Čorić's ground of appeal 16 in relevant part, and Pušić's ground of appeal 8 in relevant part.

### **E. Alleged Errors Regarding the Calculation of Time Served**

#### 1. Introduction

3319. The Trial Chamber, recalling Rule 101(C) of the Rules,<sup>10990</sup> stated that the time each Accused spent in detention pending and during trial must be taken into account "after deducting the time spent on provisional release granted to [the Accused]".<sup>10991</sup> In light of this, the Trial Chamber unanimously imposed sentences on each Accused, "subject to credit being given under Rule 101(C) of the Rules for the period that [each Accused] has already spent in detention pending and during trial".<sup>10992</sup>

#### 2. Arguments of the Parties (Stojić's Ground 57, Petković's Sub-ground 8.4, Čorić's Ground 17, and Pušić's Ground 8 in part)

3320. Stojić, Petković, Čorić, and Pušić challenge the Trial Chamber's findings in respect of the credit given for their time served in detention pursuant to Rule 101(C) of the Rules. They argue that the Trial Chamber erred by failing to deduct their time spent on provisional release, including while

<sup>10989</sup> Trial Judgement, Vol. 4, para. 1377, referring to Pušić's Closing Arguments, T. 52793-52794 (24 Feb 2011).

<sup>10990</sup> Rule 101(C) of the Rules provides that "[c]redit shall be given to the convicted person for the period, if any, during which the convicted person was *detained in custody* pending surrender to the Tribunal or pending trial or appeal" (emphasis added).

<sup>10991</sup> Trial Judgement, Vol. 4, paras 1280, 1323-1324 (regarding Prlić), 1335-1336 (regarding Stojić), 1348-1349 (regarding Praljak), 1362-1363 (regarding Petković), 1374-1375 (regarding Čorić), 1385-1386 (regarding Pušić).

<sup>10992</sup> Trial Judgement, Vol. 4, Disposition, pp. 430-431.

being under home confinement or receiving medical treatment, from their sentences.<sup>10993</sup> They request that this error be corrected and their respective sentences be reduced.<sup>10994</sup>

3321. More specifically, Stojić submits that the extensive restrictions imposed on him during provisional release amounted to a deprivation of liberty as defined by the European Court of Human Rights (“ECtHR”),<sup>10995</sup> and that the conditions of house arrest imposed in the *Blaškić* case under Rule 64 of the Rules (“*Blaškić* Decision on Rule 64”) cannot be distinguished from the conditions imposed on Stojić.<sup>10996</sup> He argues that if the Appeals Chamber does not find that the “extensive restrictions” placed on Stojić’s liberty during all periods of provisional release amount to a “full deprivation”, it should still give credit to him for the provisional release periods when he was under house arrest on the basis that house arrest is a form of detention.<sup>10997</sup>

3322. Petković argues that, under human rights practice, “time spent under judicially-ordered conditions affecting the freedom of the accused should in principle be regarded as a form of deprivation of liberty and thus be accounted for in relation to sentencing”.<sup>10998</sup> In support, Petković relies on domestic practice and the *Blaškić* Decision on Rule 64.<sup>10999</sup> He contends that: (1) the provisional release conditions imposed on him,<sup>11000</sup> including home confinement,<sup>11001</sup> significantly

<sup>10993</sup> Stojić’s Appeal Brief, paras 434-435, 439; Stojić’s Reply Brief, paras 83, 86; Petković’s Appeal Brief, paras 459-461, 464, 469; Ćorić’s Appeal Brief, paras 333, 339; Pušić’s Appeal Brief, paras 237, 253-255; Appeal Hearing, AT. 624 (24 Mar 2017), AT. 812 (28 Mar 2017). Stojić argues that denial of this credit in effect imposes an additional penalty on him, because had he stayed in the United Nations Detention Unit (“UNDU”), he would have been given credit for these periods. Stojić’s Appeal Brief, para. 438. Petković replies that credit should be given only when “severe restrictions” to his freedom were imposed. Petković’s Reply Brief, para. 93. See also Petković’s Reply Brief, para. 94.

<sup>10994</sup> Stojić’s Appeal Brief, para. 439; Petković’s Appeal Brief, paras 468-469; Ćorić’s Appeal Brief, para. 340; Pušić’s Appeal Brief, para. 255.

<sup>10995</sup> Stojić’s Appeal Brief, para. 438, referring to, as an example, 30 July 2004 Stojić Provisional Release Order; 17 December 2010 Stojić Provisional Release Decision; 6 December 2007 Stojić Provisional Release Decision; 7 December 2011 Stojić Provisional Release Decision.

<sup>10996</sup> Stojić’s Appeal Brief, paras 434, 436, referring to *Guzzardi* Decision, paras 92-93. See Stojić’s Appeal Brief, para. 438; Stojić’s Reply Brief, para. 84. In reply, Stojić submits that even though the ECtHR case-law is not binding on the Tribunal, it is persuasive in cases where there is no well-established jurisprudence. Stojić’s Reply Brief, para. 84.

<sup>10997</sup> Stojić’s Appeal Brief, paras 436-438, referring to *Blaškić* Decision on Rule 64, paras 13, 24, *Blaškić* Trial Judgement, para. 794, p. 270, *Lavents* Decision, para. 63, *Ciobanu* Decision, paras 63-65. Stojić replies that “detained in custody” should encompass “time during which his movements were so restricted that he was deprived of liberty rather than limited to detention in a traditional prison”. Stojić’s Reply Brief, para. 83. He also submits that it is immaterial that the house arrest in *Blaškić* was ordered pursuant to Rule 64 of the Rules. Stojić’s Reply Brief, para. 85.

<sup>10998</sup> Petković’s Appeal Brief, para. 462.

<sup>10999</sup> Petković’s Appeal Brief, paras 462-463. Petković also refers to the *Ciobanu* Decision, para. 63 and *Lavents* Decision, para. 63.

<sup>11000</sup> Petković’s Appeal Brief, paras 460-461, 466, referring to, as an example, 30 July 2004 Petković Provisional Release Order, 10 October 2005 Petković Provisional Release Decision, 9 July 2007 Petković Provisional Release Decision. See also Petković’s Appeal Brief, paras 467-468.

<sup>11001</sup> Petković’s Appeal Brief, paras 460-461, referring to 6 February 2009 Petković Provisional Release Decision, 24 June 2009 Petković Provisional Release Decision, 15 December 2009 Petković Provisional Release Decision, 20 July 2010 Petković Provisional Release Decision, 21 December 2010 Petković Provisional Release Decision, 6 July 2011 Petković Provisional Release Decision.

restricted or affected the full enjoyment of his rights and freedoms;<sup>11002</sup> and (2) these conditions would have resulted in a sentence reduction under his own domestic law.<sup>11003</sup>

3323. Ćorić submits that the restrictions imposed during the periods of his provisional releases, including when he was under home confinement and released for medical treatment,<sup>11004</sup> were akin to detention,<sup>11005</sup> citing in support the domestic practice in Croatia<sup>11006</sup> and Tribunal and SCSL case-law.<sup>11007</sup> He also argues that the Trial Chamber failed to give a reasoned analysis for its deduction of the provisional release periods from time spent in custody and to address the relevant law or jurisprudence.<sup>11008</sup>

3324. Referring to the ECtHR and ICTY case-law as well as national case-law, Pušić argues that: (1) while on provisional release, including release granted for confidential reasons, he was subjected to stringent restrictions prohibiting his travel and association, including constant surveillance and monitoring;<sup>11009</sup> (2) ECtHR case-law “recognises that home confinement in this type of situation can amount to deprivation of liberty”;<sup>11010</sup> and (3) in the *Blaškić* Decision on Rule 64, the time spent under home confinement by Blaškić was taken into account when determining his sentence.<sup>11011</sup> Pušić points to, as an additional exceptional factor which warrants the intervention of the Appeals Chamber, the fact that he was granted provisional release during the appellate phase of this case due to, *inter alia*, the unavailability of the appropriate medical treatment at the UNDU, which was “a factor entirely unrelated to [his] conduct or culpability”.<sup>11012</sup>

3325. The Prosecution argues that periods of provisional release, even if under restrictive conditions, do not amount to deprivation of liberty or detention.<sup>11013</sup> It submits that the cited ECtHR

<sup>11002</sup> Petković’s Appeal Brief, paras 466-467, referring to, *inter alia*, *Guzzardi* Decision.

<sup>11003</sup> Petković’s Appeal Brief, para. 465. Petković argues that Rule 101(B) of the Rules is applicable to all factors relevant to sentencing. Petković’s Appeal Brief, para. 465.

<sup>11004</sup> Ćorić’s Appeal Brief, para. 334, referring to a period between 1 May 2009 and 18 October 2009.

<sup>11005</sup> Ćorić’s Appeal Brief, para. 334, referring to, as an example, 4 July 2011 Ćorić Provisional Release Decision.

<sup>11006</sup> Ćorić’s Appeal Brief, paras 335-336.

<sup>11007</sup> Ćorić’s Appeal Brief, paras 335-338, referring to, *inter alia*, *Blaškić* Decision on Rule 64, para. 15, *Milutinović et al.* Trial Judgement, Vol. 2, paras 1208-1212, *Norman* Decision, paras 4, 12. The Appeals Chamber notes that Ćorić refers to Volume 2 of the *Milutinović et al.* Trial Judgement. Having reviewed these paragraphs, the Appeals Chamber understands this to be a typographical error intended to refer to Volume 3 instead. Ćorić submits that the periods of provisional release closely resemble house arrest under Croatian legislation and that this, as well as release for medical treatment or visits to ill family members, is counted as time spent in prison. Ćorić’s Appeal Brief, paras 335-336.

<sup>11008</sup> Ćorić’s Appeal Brief, para. 333.

<sup>11009</sup> Pušić’s Appeal Brief, para. 253, referring to Trial Judgement, Vol. 5, para. 56 *et seq.*

<sup>11010</sup> Pušić’s Appeal Brief, paras 253, referring to *Lavents* Decision, para. 63, *Ciobanu* Decision, paras 63-65, *Guzzardi* Decision, paras 92-93.

<sup>11011</sup> Pušić’s Appeal Brief, para. 254, referring to *Blaškić* Trial Judgement, para. 794, p. 270. Pušić argues that “national court decisions can serve as an aid in recognising law”. Pušić’s Appeal Brief, para. 254 & fn. 396, referring to United Kingdom, *R v. Glover, Cox and Issit* [2008] EWCA Crim 1782.

<sup>11012</sup> Pušić’s Appeal Brief, para. 254, referring to 24 July 2014 Pušić Provisional Release Decision.

<sup>11013</sup> Prosecution’s Response Brief (Stojić), para. 403; Prosecution’s Response Brief (Ćorić), paras 367, 369, 371; Prosecution’s Response Brief (Petković), para. 316; Prosecution’s Response Brief (Pušić), paras 233-234, 236, referring to *M. Simić* Sentencing Judgement, para. 118, *M. Tadić* 2004 Decision on Pardon or Commutation of Sentence, fn. 8.

cases do not demonstrate an abuse of the Trial Chamber's discretion as this case-law is not binding on the Tribunal and does not establish a rule that time spent on provisional release should be counted as time served.<sup>11014</sup> With respect to the Tribunal's jurisprudence, the Prosecution submits that the *Blaškić* case, in particular, is inapplicable as Tihomir Blaškić was never on provisional release, but detained at a place other than the UNDU in accordance with Rule 64 of the Rules.<sup>11015</sup>

3326. The Prosecution further responds that, during their provisional releases, Stojić, Petković, Ćorić, and Pušić enjoyed significant liberty and thus were not detained in custody.<sup>11016</sup> In response to Petković's arguments, the Prosecution claims that the consideration of the laws of, and the general sentencing practice in, the former Yugoslavia is applicable to the determination of aggravating and mitigating circumstances and not to the calculation of credit given for time served under Rule 101(C) of the Rules.<sup>11017</sup> It argues that Stojić's, Petković's, Ćorić's, and Pušić's grounds of appeal relating to credit for time served should therefore be dismissed.<sup>11018</sup>

### 3. Analysis

3327. At the outset, the Appeals Chamber is not persuaded by Ćorić's contention that the Trial Chamber failed to provide a reasoned opinion and to address the relevant law and jurisprudence.<sup>11019</sup> In the absence of specific submissions by the Parties at trial, including those on the law and jurisprudence, the Trial Chamber was not required to provide a reasoned analysis on this issue, nor address the law and jurisprudence. Ćorić's argument is therefore dismissed.

3328. The Appeals Chamber understands Stojić, Petković, Ćorić, and Pušić to argue that the Trial Chamber misinterpreted Rule 101(C) of the Rules, to the extent that they contend that provisional release periods – under, allegedly, restrictive conditions amounting to a deprivation of liberty, including home confinement – should be included in calculations of time spent in detention.

<sup>11014</sup> Prosecution's Response Brief (Stojić), para. 407; Prosecution's Response Brief (Petković), para. 318; Prosecution's Response Brief (Pušić), para. 237. The Prosecution presents a similar argument in response to Petković's reliance on domestic legislation and case-law. Prosecution's Response Brief (Petković), para. 318.

<sup>11015</sup> Prosecution's Response Brief (Stojić), para. 408; Prosecution's Response Brief (Petković), para. 320; Prosecution's Response Brief (Ćorić), para. 372; Prosecution's Response Brief (Pušić), para. 238.

<sup>11016</sup> Prosecution's Response Brief (Stojić), paras 404-406; Prosecution's Response Brief (Petković), paras 314, 316-317; Prosecution's Response Brief (Ćorić), para. 370; Prosecution's Response Brief (Pušić), paras 234-235.

<sup>11017</sup> Prosecution's Response Brief (Petković), para. 319. See also Prosecution's Response Brief (Petković), para. 313; Prosecution's Response Brief (Stojić), para. 402; Prosecution's Response Brief (Ćorić), para. 368; Prosecution's Response Brief (Pušić), para. 233. The Prosecution also points out the distinction between detention in custody provided for in Rule 64 of the Rules and provisional release under Rule 65 of the Rules. Prosecution's Response Brief (Petković), para. 319. Distinguishing between detention and provisional release, it further contends that the conditions imposed on Petković – which he voluntarily accepted – were meant to ensure that he returned to the Tribunal and to prevent interference in the proceedings. Prosecution's Response Brief (Petković), paras 314-315.

<sup>11018</sup> Prosecution's Response Brief (Stojić), para. 409; Prosecution's Response Brief (Petković), paras 321-322; Prosecution's Response Brief (Ćorić), paras 367, 373; Prosecution's Response Brief (Pušić), paras 239-240. The Prosecution asserts that there is no Tribunal jurisprudence or Rules that supports the proposition that provisional release is counted towards time served. Prosecution's Response Brief (Stojić), para. 401.



Thus, the issue before the Appeals Chamber is whether they have demonstrated an error of law with respect to the Trial Chamber's interpretation of Rule 101(C) of the Rules.

3329. As a preliminary matter, the Appeals Chamber notes that the question whether time spent on provisional release can be considered as time served is one of first impression. In support of their contentions regarding this issue, the Parties rely on ECtHR, SCSL, and domestic case-law as well as ICTY case-law – trial chamber and presidential decisions.<sup>11020</sup> In this respect, the Appeals Chamber recalls that decisions of trial chambers have no binding force on each other or on the Appeals Chamber.<sup>11021</sup> It also recalls that the Appeals Chamber is not bound by the findings of other courts – domestic, international, or hybrid – and that, even though it will consider such jurisprudence, it may nonetheless come to a different conclusion on a matter from that reached by another judicial body.<sup>11022</sup>

3330. Concerning the ECtHR case-law cited by Stojić, Petković, and Pušić, the Appeals Chamber notes that while the referenced cases concern the issue of whether types of restrictions other than the typical confinement in a cell may constitute “deprivation of liberty” within the meaning of Article 5(1) of the European Convention on Human Rights (“ECHR”),<sup>11023</sup> the Appeals Chamber, Judge Liu dissenting, considers that the ECtHR's case-law on deprivation of liberty within the meaning of Article 5(1) of the ECHR<sup>11024</sup> is not determinative of the issue at hand. The Appeals Chamber, Judge Liu dissenting, therefore finds that Stojić, Petković, Čorić, and Pušić have not demonstrated that the Trial Chamber erred in law in interpreting Rule 101(C) of the Rules. These arguments are therefore dismissed.

3331. Moreover, concerning Čorić's submission on the *Norman* Decision, the Appeals Chamber observes that the SCSL President's approach to determining whether home confinement is a form of detention, which hinges on the level of control exercised by the detaining authority, is consistent with the Tribunal's practice in assessing whether conditions of provisional release amount to

<sup>11019</sup> See Čorić's Appeal Brief, para. 333.

<sup>11020</sup> See *supra*, paras 3320-3326.

<sup>11021</sup> See *Aleksovski* Appeal Judgement, paras 113-114.

<sup>11022</sup> *Stanišić and Župljanin* Appeal Judgement, para. 598, referring to *Đorđević* Appeal Judgement, para. 83, *Čelebići* Appeal Judgement, para. 24. See also *Tolimir* Appeal Judgement, para. 226; *Popović et al.* Appeal Judgement, para. 1674.

<sup>11023</sup> See *Guzzardi* Decision, para. 92 (stating that in proclaiming the “right of liberty”, paragraph 1 of Article 5 is contemplating the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. [...] the paragraph is not concerned with mere restrictions on liberty of movement [...]); *Ciobanu* Decision, para. 62; *Lavents* Decision, paras 62-63.

<sup>11024</sup> The Appeals Chamber observes that to this end the ECtHR assessed, *inter alia*, whether the applicants had been deprived of liberty rather than whether they had been detained in custody. See *Ciobanu* Decision, paras 52, 56, 62; *Lavents* Decision, paras 62-63; *Guzzardi* Decision, para. 92. Moreover, it observes that the ECtHR has repeatedly held that its determination hinges upon the “concrete situation [of the applicant] and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question”. *Lavents* Decision, para. 62; *Guzzardi* Decision, para. 92.

detention in custody.<sup>11025</sup> Turning to the provisions of Croatian law to which Petković and Ćorić refer,<sup>11026</sup> the Appeals Chamber, Judge Liu dissenting, considers that they do not show that the Trial Chamber erred in law in interpreting Rule 101(C) of the Rules.<sup>11027</sup> In addition, to the extent that Petković and Pušić contend that the domestic cases support the proposition that strict conditions on bail warrant a deduction of that time from the sentence to be served, the Appeals Chamber considers that these cases are of little assistance as they primarily highlight the national courts' discretionary power in determining the credit given, if at all.<sup>11028</sup> Accordingly, the Appeals Chamber dismisses these arguments.

3332. With regard to ICTY case-law, the Appeals Chamber notes that Stojić, Petković, Ćorić, and Pušić rely on, *inter alia*, the *Blaškić* Decision on Rule 64.<sup>11029</sup> The Appeals Chamber, Judge Liu dissenting, observes that the *Blaškić* case is distinguishable from the situations of Stojić, Petković, Ćorić, and Pušić, in that *Blaškić* was not provisionally released pursuant to Rule 65 of the Rules, but detained at a place other than the UNDU in accordance with Rule 64 of the Rules.<sup>11030</sup> In this

<sup>11025</sup> See *Norman* Decision, paras 4, 12.

<sup>11026</sup> See Petković's Appeal Brief, para. 465 & fn. 615, referring to Petković's Appeal Brief, Annex 5, which contains: (1) Croatian Penal Code, Article 54 ("Crediting custody, remand and earlier penalties"); (2) Croatian Law on Criminal Proceedings, Articles 119-120 ("Home detention"); and (3) Croatian Law on Serving the Prison Sentence, Articles 106 ("Accommodation for the purpose of medical treatment"), 128 ("Benefits-exceptional leaves"), 130 ("Types of benefits"); Ćorić's Appeal Brief, paras 335-336, referring to Croatian Law on Criminal Procedure, Arts 119-120, 325, Croatian Law on the Enforcement of Jail Sentences, Arts 106, 128, 130.

<sup>11027</sup> The Appeals Chamber observes that Article 54 of the Croatian Penal Code to which Petković refers provides that "[t]ime spent in custody and remand [...] shall be included as a part of [the] prison sentence". It understands the direction provided under this article to be equivalent in this respect to that provided under Rule 101(C). Concerning Articles 119-120 of the Croatian Law on Criminal Proceedings to which Petković refers, the Appeals Chamber observes that these articles do not regulate whether "home detention" should be counted towards time served. Concerning Articles 106, 128, and 130 of the Croatian Law on Serving the Prison Sentence, the Appeals Chamber finds that Ćorić has failed to clearly articulate how they support his argument. The Appeals Chamber notes in this regard that Ćorić did not attach the relevant legal provisions to which he refers. Accordingly, his submissions in this regard will not be addressed. The Appeals Chamber also recalls that trial chambers are required to take into consideration the general practice regarding prison sentences in the courts of the former Yugoslavia although they are not bound by it. See, e.g., *Tolimir* Appeal Judgement, para. 647.

<sup>11028</sup> The Appeals Chamber observes the cases relied on and notes that: (1) a judge has a wide discretion in calculating any credit; (2) the credit, if any, is considered as mitigation and not fully as time served; and (3) the bail conditions must have been restrictive for a lengthy period of time, in comparison to the final sentence. See United Kingdom, *R v. Glover, Cox and Issitt* [2008] EWCA Crim 1782, paras 12-15 (concerning 123 days under house arrest due to the appellant's medical condition and where it was concluded that the Trial Judge was entitled to decide on the onerous conditions of the appellant's bail, which did not put him in a position equivalent to being in prison); Canada, *R v. Downes* [2006] O.J. No. 555, 2006 CanLII 3957, paras 42-44, 46 (18 months spent on bail considered a mitigating factor; credit given for five months); New Zealand, *R v. Potoru*, HC AK CRI 2006-092-003877, 14 Sept 2007, paras 15, 19 (approximately ten months on bail and exemplary behaviour resulted in credit given for six months in mitigation); United Kingdom, *R v. Taylor* [2013] EWCA Crim 1704, paras 3, 5, 7, 11 (99 days spent on bail, credit given for 50 days). See also United Kingdom, *R v. Morgan* [2014] EWCA Crim 1812, para. 20 (following the statutory regulation on calculating the credit served). The Appeals Chamber also observes that the Council of Europe Recommendation to which Petković refers merely indicates that national law shall regulate the manner in which time spent under electronic monitoring supervision at a pre-trial stage may be deducted by the court when defining the overall duration of any final sanction (Council of Europe Recommendation CM/Rec (2014)4, "Basic Principles", para. 17). Accordingly, this submission is dismissed.

<sup>11029</sup> See Stojić's Appeal Brief, para. 437; Petković's Appeal Brief, para. 463; Ćorić's Appeal Brief, para. 337; Pušić's Appeal Brief, para. 254.

<sup>11030</sup> *Blaškić* Decision on Rule 64, paras 12, 24. Seised of *Blaškić*'s request to modify his conditions of detention and asking for "some sort of restricted liberty" pursuant to Rule 64 of the Rules, the President of the Tribunal stated that:

context, the President of the Tribunal stated that house arrest – within the meaning of Rule 64 of the Rules – is a form of detention “for all purposes including [...] the right to have the period spent under house arrest taken into account for determining the penalty”.<sup>11031</sup> The Appeals Chamber considers that it is clear that such form of detention amounts to “detention in custody”, thus credit was given pursuant to Rule 101(C) of the Rules.<sup>11032</sup>

3333. The Appeals Chamber observes that in the *Miroslav Tadić* case, the President stated that the “conditions of provisional release, however restrictive, [...] cannot give rise to an expectation that the time spent on provisional release would be later considered as time served”.<sup>11033</sup> In the *Milan Simić* case, the trial chamber also found that no credit should be given for time spent on provisional release in light of the fact that Simić’s provisional release did not amount to “detention in custody” given that, albeit with certain limitations, he was allowed to leave his house.<sup>11034</sup>

3334. The Appeals Chamber further observes that in the *Popović et al.* case, the trial chamber stated that, pursuant to Rule 101(C) of the Rules, Drago Nikolić, Ljubomir Borovčanin, and Vinko Pandurević were entitled to credit for the period, including the days when they were on “custodial release”,<sup>11035</sup> and were subject to stringent conditions – *i.e.* the accused remained in constant custody of a designated state authority and were required to, *inter alia*, spend all nights at a detention facility.<sup>11036</sup> That trial chamber’s approach indicates that such release amounted to “detention in custody” pursuant to Rule 101(C) of the Rules.<sup>11037</sup> Conversely, but in the same case, when it came to Radivoje Miletić and Milan Gvero who were granted provisional release several times under such conditions as confinement in a designated geographic area, surrender of their

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“[A]ny form of ‘liberty’, *i.e.*, provisional release, whether or not accompanied by strict conditions, must be ruled out at the outset, as it is for the relevant Trial Chamber to order such a release under Rule 65.” *Blaškić* Decision on Rule 64, paras 1-4, 12. The Appeals Chamber notes that Rule 64 of the Rules provides, in part, that: “[T]he accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside the host country.”

<sup>11031</sup> *Blaškić* Decision on Rule 64, para. 18.

<sup>11032</sup> See *Blaškić* Decision on Rule 64, para. 18. The Appeals Chamber notes that decisions of the President of the Tribunal are made by the President alone, and not by the Appeals Chamber.

<sup>11033</sup> *M. Tadić* 2004 Decision on Pardon or Commutation of Sentence, fn. 8.

<sup>11034</sup> *M. Simić* Sentencing Judgement, para. 119. In that case, the Trial Chamber considered that the conditions imposed on Simić were not of such a nature that they amounted to “house arrest” but rather allowed him to return to his family and community. *M. Simić* Sentencing Judgement, para. 119.

<sup>11035</sup> *Popović et al.* Trial Judgement, Vol. 2, Disposition, pp. 828-830, 832.

<sup>11036</sup> See, *e.g.*, 24 July 2007 Decision on Borovčanin’s Application for Custodial Visit, pp. 5-6, (2)(e)(i) (“the Accused shall be *in custody at all times, i.e.*, have armed members of the RS MUP guarding him 24 hours per day [...]”), (iv) (“to spend every night in the local detention facility [...]”) (emphasis added); 11 December 2007 Decision on Pandurević’s Request for Provisional Release, para. 18(1)(e)(i) (“Pandurević shall be *in custody at all times, i.e.*, have armed members of the RS MUP guarding him 24 hours per day”), (iv) (“Pandurević shall spend every night in the local detention facility”); 21 July 2008 Decision on Nikolić’s Motion for Provisional Release, paras 22(b)(vi)(1) (“Nikolić shall be in custody at all times, *i.e.* have armed members of the Republika Srpska MUP guarding him 24 hours per day”), 22(b)(vi)(4) (“Nikolić shall spend every night in the local detention facility”). See also *Popović et al.* Trial Judgement, Vol. 2, Annex 2, paras 58-59, 62.

<sup>11037</sup> *Popović et al.* Trial Judgement, Vol. 2, Disposition, pp. 828-830, 832 (concerning Nikolić, Borovčanin, and Pandurević).

passports, regular reporting to designated police stations, and prohibition of contact with individuals or the media,<sup>11038</sup> the trial chamber did not give credit for the period of provisional release.<sup>11039</sup>

3335. The Appeals Chamber, Judge Liu dissenting, thus considers that the Tribunal's practice shows that when an accused has been provisionally released, no credit will be given for the time spent on provisional release and that custodial release ordered in the *Popović et al.* case is distinct from provisional release. Taking into account the Tribunal's practice, the Appeals Chamber now turns to Stojić's, Petković's, Ćorić's, and Pušić's arguments on restrictions, including home confinement, during their provisional releases.

3336. The Appeals Chamber observes that the conditions imposed upon Stojić, Petković, Ćorić, and Pušić included permanent or partial surveillance by the Croatian authorities, confinement in a designated geographic area, surrender of their passports, regular reporting to designated police stations, prohibition of contact with individuals or the media, and situation reporting.<sup>11040</sup> It further observes that in some instances, in view of the circumstances of the case and the advanced stage of the proceedings, the Trial Chamber: (1) imposed on Stojić and Petković home confinement;<sup>11041</sup> and

<sup>11038</sup> See *Popović et al.* Trial Judgement, Annex 2, paras 12, 60-61, referring to, e.g., 7 December 2006 Miletić and Gvero Provisional Release Decision, 7 December 2007 Miletić and Gvero Provisional Release Decision, 13 July 2007 Miletić and Gvero Provisional Release Decision.

<sup>11039</sup> See *Popović et al.* Trial Judgement, Disposition, pp. 830-831. The *Milutinović et al.* Trial Judgement to which Ćorić refers is of little assistance as that Trial Chamber merely stated that the accused in that case were "entitled to credit for time spent in detention thus far". *Milutinović et al.* Trial Judgement, Vol. 3, Disposition, paras 1208-1212.

<sup>11040</sup> With regard to Stojić, see 30 July 2004 Stojić Provisional Release Order, para. 34, pp. 11-12; 17 August 2006 Stojić Provisional Release Decision, pp. 5-6; 8 December 2006 Stojić Provisional Release Decision, confidential annex, pp. 6-7; 9 July 2007 Stojić Provisional Release Decision, confidential annex, pp. 6-7; 6 December 2007 Stojić Provisional Release Decision, confidential annex, pp. 6-7; 21 February 2008 Stojić Provisional Release Decision, confidential annex, pp. 7-8; 29 April 2008 Stojić Provisional Release Decision, confidential annex, pp. 1-2; 24 July 2008 Stojić Provisional Release Decision, confidential annex, pp. 4-5; 9 December 2008 Stojić Provisional Release Decision, confidential annex, pp. 4-5; 24 June 2009 Stojić Provisional Release Decision, confidential annex, pp. 5-6; 18 December 2009 Stojić Provisional Release Decision, confidential annex, pp. 22-23; 20 July 2010 Stojić Provisional Release Decision, confidential annex, pp. 15-16; 17 December 2010 Stojić Provisional Release Decision, confidential annex, pp. 18-19; 24 June 2011 Stojić Provisional Release Decision, confidential annex, pp. 17-18; 7 December 2011 Stojić Provisional Release Decision, confidential and *ex parte* annex 2, pp. 15-16. With regard to Petković, see 17 August 2006 Petković Provisional Release Decision, pp. 4-5; 9 July 2007 Petković Provisional Release Decision, confidential annex, pp. 6-7; 6 December 2007 Petković Provisional Release Decision, confidential annex, pp. 7-8; 18 December 2008 Petković Provisional Release Decision, para. 36 & confidential annex, pp. 4-5; 6 December 2011 Petković Provisional Release Decision, para. 44 & confidential annex 2, pp. 1-2; 20 March 2012 Petković Provisional Release Decision, pp. 7-8; 14 January 2013 Petković Provisional Release Order, p. 5; 15 March 2013 Petković Provisional Release Order, p. 5. With regard to Ćorić, see 8 December 2006 Ćorić Provisional Release Decision, confidential annex, pp. 7-8; 17 August 2006 Ćorić Provisional Release Decision, pp. 5-6; 12 June 2007 Ćorić Provisional Release Decision, confidential annex, pp. 7-8; 6 December 2007 Ćorić Provisional Release Decision, confidential annex, pp. 7-8; 21 February 2008 Ćorić Provisional Release Decision, confidential annex, pp. 7-8; 2 December 2011 Ćorić Provisional Release Decision, confidential and *ex parte* annex 2, pp. 15-16; 15 March 2012 Ćorić Provisional Release Order, p. 6; 7 June 2012 Ćorić Provisional Release Decision, p. 5; 6 September 2012 Ćorić Provisional Release Decision, p. 5; 14 December 2012 Ćorić Provisional Release Decision, p. 4; 15 March 2013 Ćorić Provisional Release Decision, p. 5. With regard to Pušić, see 17 August 2006 Pušić Provisional Release Decision, pp. 4-5; 9 July 2007 Pušić Provisional Release Decision, confidential annex, pp. 6-7; 6 December 2007 Pušić Provisional Release Decision, confidential annex, pp. 6-7.

<sup>11041</sup> With regard to Stojić, see 24 June 2009 Stojić Provisional Release Decision, para. 28; 18 December 2009 Stojić Provisional Release Decision, para. 31; 20 July 2010 Stojić Provisional Release Decision, para. 33. In other instances, the Trial Chamber decided to adjust the conditions, by relaxing the conditions of home confinement. 17 December 2010

(2) imposed on Ćorić and Pušić such conditions as home confinement or confinement in designated places when they were provisionally released for medical treatment or confidential reasons that justified Pušić's release.<sup>11042</sup> It observes that the Trial Chamber deemed that all of these conditions were necessary in order to ensure their compliance with the requirements under Rule 65 of the Rules, including their appearance at trial.<sup>11043</sup> Taking into account these particular circumstances and bearing in mind the Tribunal's practice discussed above, the Appeals Chamber, Judge Liu dissenting in part, considers that the conditions imposed on Stojić, Petković, Ćorić, and Pušić fall short of being tantamount to detention in custody. For the same reasons, the Appeals Chamber, Judge Liu dissenting, rejects Pušić's argument concerning an additional exceptional factor which warrants its intervention, insofar as he argues that the period of his provisional release, which was granted during the appellate phase of this case due to, *inter alia*, the unavailability of the appropriate medical treatment at the UNDU, should be included in calculations of time spent in detention. The Appeals Chamber, Judge Liu dissenting, therefore finds that Stojić, Petković, Ćorić, and Pušić have failed to demonstrate that the Trial Chamber erred in law in interpreting Rule 101(C) of the Rules when it excluded the periods of provisional release either under the imposed conditions or for confidential reasons from the time served in custody.

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Stojić Provisional Release Decision, paras 38, 40; 24 June 2011 Stojić Provisional Release Decision, paras 35, 39. With regard to Petković, see 6 February 2009 Petković Provisional Release Decision, para. 46; 23 June 2009 Petković Provisional Release Decision, para. 29; 15 December 2009 Petković Provisional Release Decision, para. 30; 20 July 2010 Petković Provisional Release Decision, para. 35. In other instances, the Trial Chamber decided to adjust the conditions, by relaxing the conditions of home confinement. See 21 December 2010 Petković Provisional Release Decision, paras 30, 32; 6 July 2011 Petković Provisional Release Decision, para. 36. The Trial Chamber also allowed him to go out on a daily basis for a certain duration under police escort. 21 December 2010 Petković Provisional Release Decision, para. 30; 6 July 2011 Petković Provisional Release Decision, para. 34. In some instances, Petković was also provisionally released under specific circumstances. See 6 February 2009 Petković Provisional Release Decision, paras 34-42; 15 December 2009 Petković Provisional Release Decision, paras 24, 26; 20 July 2010 Petković Provisional Release Decision, para. 29; 21 December 2010 Petković Provisional Release Decision, para. 27; 6 July 2011 Petković Provisional Release Decision, para. 29.

<sup>11042</sup> With regard to Ćorić, see 25 May 2009 Ćorić Provisional Release Decision, para. 42 & confidential and *ex parte* annex, pp. 15-16; 22 June 2009 Ćorić Second Provisional Release Decision, pp. 5-6; 14 July 2009 Ćorić Third Provisional Release Decision, pp. 6-7; 4 September 2009 Ćorić Fourth Provisional Release Decision, p. 9. See also 25 July 2008 Ćorić Provisional Release Decision, para. 30 & confidential annex, pp. 3-4; 16 December 2008 Ćorić Provisional Release Decision, confidential annex, pp. 5-6; 20 July 2010 Ćorić Provisional Release Decision, para. 37 & confidential annex, pp. 15-16; 16 December 2010 Ćorić Provisional Release Decision, confidential annex, pp. 18-19; 4 July 2011 Ćorić Provisional Release Decision, paras 39, 41 & confidential and *ex parte* annex, pp. 21-22. With regard to Pušić, see 8 December 2006 Pušić Provisional Release Decision, confidential annex, pp. 6-7; 25 March 2008 Pušić Provisional Release Decision, confidential annex, pp. 12-13; 17 December 2008 Pušić Provisional Release Decision, confidential annex, pp. 15-16; 25 June 2009 Pušić Provisional Release Decision, confidential annex, pp. 15-16; 14 December 2009 Pušić Provisional Release Decision, confidential annex, p. 19; 20 July 2010 Pušić Provisional Release Decision, confidential annex, pp. 15-16; 9 December 2010 Pušić Provisional Release Decision, confidential annex, pp. 17-18; 19 April 2011 Pušić Provisional Release Decision, confidential and *ex parte* annex, pp. 18-19; 9 December 2011 Pušić Provisional Release Decision, confidential and *ex parte* annex, pp. 16-17; 10 December 2012 Pušić Provisional Release Decision, p. 5.

<sup>11043</sup> See, e.g., 17 August 2006 Stojić Provisional Release Decision, p. 4; 6 December 2007 Stojić Provisional Release Decision, pp. 3, 5; 21 February 2008 Stojić Provisional Release Decision, pp. 4-5; 9 July 2007 Petković Provisional Release Decision, pp. 3-4; 6 December 2007 Petković Provisional Release Decision, p. 5; 17 August 2006 Ćorić Provisional Release Decision, pp. 4-5; 8 December 2006 Ćorić Provisional Release Decision, pp. 4-5; 12 June 2007 Ćorić Provisional Release Decision, p. 4; 6 December 2007 Ćorić Provisional Release Decision, pp. 4-5; 21 February 2008 Ćorić Provisional Release Decision, pp. 4-5; 17 August 2006 Pušić Provisional Release Decision, p. 4; 9 July 2007 Pušić Provisional Release Decision, p. 4; 6 December 2007 Pušić Provisional Release Decision, pp. 4-5.

#### 4. Conclusion

3337. For the foregoing reasons, the Appeals Chamber, Judge Liu dissenting, concludes that Stojić, Petković, Ćorić, and Pušić have failed to show that the Trial Chamber erred in law in interpreting Rule 101(C) of the Rules when it excluded the periods of provisional release from the time served in custody. The Appeals Chamber, Judge Liu dissenting, therefore dismisses Stojić's ground of appeal 57, Petković's sub-ground of appeal 8.4, Ćorić's ground of appeal 17, and Pušić's ground of appeal 8 in relevant part.

#### F. Alleged Errors Regarding Comparison of Sentences

##### 1. Prosecution's appeal (Ground 4 in part)

###### (a) Comparison to sentencing practice at the Tribunal

3338. The Prosecution submits that the sentences imposed in this case were unreasonable when compared to the sentences imposed on Stanislav Galić and Dragomir Milošević for their responsibility for the siege of Sarajevo.<sup>11044</sup> It argues that the humanitarian situation in East Mostar in the present case was worse than the siege of Sarajevo even though the former did not last as long as the latter and the crimes the Appellants committed included a "much broader campaign of ethnic cleansing" than the crimes committed during the Sarajevo siege.<sup>11045</sup>

3339. Stojić, Praljak, and Ćorić respond that their respective sentences are not comparable to those of Galić and Dragomir Milošević.<sup>11046</sup> More specifically, Stojić and Ćorić point to the "exceptional" nature of the crimes in the *Galić* case.<sup>11047</sup> Ćorić responds that the Appeals Chamber in the *Dragomir Milošević* case focused on the accused's active and central role in crimes.<sup>11048</sup> Prlić

<sup>11044</sup> Prosecution's Appeal Brief, paras 367-368, referring to *Galić* Appeal Judgement, p. 185, *D. Milošević* Appeal Judgement, p. 144; Prosecution's Reply Brief, paras 160-166; Appeal Hearing, AT. 780 (28 Mar 2017). The Prosecution submits that as the commanders of the Sarajevo Romanija Corps of the VRS, Galić and Dragomir Milošević received a life sentence and 29 years' imprisonment, respectively. Prosecution's Appeal Brief, para. 368.

<sup>11045</sup> Prosecution's Appeal Brief, paras 365-366, 368; Prosecution's Reply Brief, paras 160-166; Appeal Hearing, AT. 780 (28 Mar 2017).

<sup>11046</sup> Stojić's Response Brief, para. 205; Praljak's Response Brief, para. 195; Ćorić's Response Brief, paras 129, 131-132. See also Stojić's Response Brief, paras 202-204, 206; Appeal Hearing, AT. 810-811, 837 (28 Mar 2017). Stojić also argues that more substantial mitigation exists in his case. Stojić's Response Brief, para. 205. Praljak and Ćorić assert that a sentence must depend on the circumstances of a case. Praljak's Response Brief, para. 195; Ćorić's Response Brief, para. 133. Pušić does not specifically respond to the Prosecution's argument in this regard. See Pušić's Response Brief, para. 29.

<sup>11047</sup> Stojić's Response Brief, para. 205; Ćorić's Response Brief, para. 131.

<sup>11048</sup> Ćorić's Response Brief, para. 132.

responds that the Prosecution's comparisons lack merit.<sup>11049</sup> Petković submits that the Prosecution merely re-litigates arguments raised at trial concerning the siege of East Mostar.<sup>11050</sup>

3340. The Appeals Chamber recalls that a trial chamber is under no obligation to expressly compare the case of one accused to that of another.<sup>11051</sup> However, a "disparity between sentences rendered in similar cases may be considered 'capricious or excessive', hence warranting the intervention of the Appeals Chamber, 'if it is out of *reasonable* proportion with a line of sentences passed in similar circumstances for the same offences'".<sup>11052</sup> The Appeals Chamber notes that the Trial Chamber did not expressly consider the sentences imposed upon Galić and Dragomir Milošević in relation to the siege of Sarajevo, namely a life sentence and 29 years' imprisonment, respectively. The Appeals Chamber observes that while the sieges of East Mostar and Sarajevo may have had certain features in common,<sup>11053</sup> the Prosecution – in attempting to argue that the cases are comparable – relies solely on the shared aspect of a siege situation. Specifically, the Prosecution does not argue that the crimes and the nature of the offences are the same in the cases in question.

3341. The Appeals Chamber recalls that the Trial Chamber is obliged to tailor the penalty to fit the individual circumstances of the accused and the gravity of the crime with due regard for the entirety of the case, which may justify different sentences in similar cases.<sup>11054</sup> In particular, the existence of different mitigating and aggravating factors may dictate different results.<sup>11055</sup> Additionally, the Appeals Chamber considers that the Prosecution, by relying solely on the shared aspect of a siege situation, does not show that the sentences imposed in this case are not reasonably proportionate to other cases. Therefore, the Prosecution has failed to demonstrate any discernible error in the Trial Chamber's assessment of the sentences in comparison to other cases.

3342. Accordingly, the Appeals Chamber dismisses the Prosecution's ground of appeal 4 in relevant part.

<sup>11049</sup> Prlić's Response Brief, para. 233.

<sup>11050</sup> Petković's Response Brief, para. 117.

<sup>11051</sup> Kupreškić *et al.* Appeal Judgement, para. 443.

<sup>11052</sup> Dorđević Appeal Judgement, para. 949, referring to *Limaj et al.* Appeal Judgement, para. 135, *D. Nikolić* Judgement on Sentencing Appeal, para. 19, *Kvočka et al.* Appeal Judgement, para. 681, *Jelisić* Appeal Judgement, para. 96.

<sup>11053</sup> See *Galić* Appeal Judgement, para. 454, referring to *Galić* Trial Judgement, para. 764; *D. Milošević* Appeal Judgement, para. 323, referring to *D. Milošević* Trial Judgement, paras 991-994. See also Trial Judgement, Vol.4, para. 1304.

<sup>11054</sup> *D. Milošević* Appeal Judgement, para. 327.

<sup>11055</sup> See *Stanišić and Župljanin* Appeal Judgement, para. 1185; *Popović et al.* Appeal Judgement, paras 2099, 2106; *D. Milošević* Appeal Judgement, paras 327-328. See also *Galić* Appeal Judgement, para. 455.

(b) Comparison to national sentencing practice

3343. The Prosecution submits that the sentences imposed on Prlić, Stojić, Praljak, Petković, Čorić, and Pušić are manifestly inadequate and inconsistent with emerging domestic sentencing practice concerning serious violations of international humanitarian law.<sup>11056</sup> It argues that domestic cases concerning the responsibility of leaders who were found guilty for “similar but smaller crimes” resulted in sentences ranging from 25 years to life imprisonment.<sup>11057</sup> The Prosecution contends that the lenience of the sentences imposed by the Trial Chamber significantly undermines the gravity of the crimes committed.<sup>11058</sup> It also argues that, in being inconsistent with the referenced domestic practice, the sentences “risk undermining the Tribunal’s standing as a pre-eminent international judicial body and tribunal”.<sup>11059</sup> Accordingly, the Prosecution requests that the Appeals Chamber find that the Trial Chamber abused its discretion in determining the sentences and increase them accordingly.<sup>11060</sup>

3344. Stojić, Praljak, and Čorić respond that the selective domestic sentencing practice that the Prosecution refers to is irrelevant and inapposite.<sup>11061</sup> Specifically, Stojić argues that national sentencing practice should be assessed with the greatest caution at the international level as it is embedded in its peculiar domestic legal framework and its underlying principles.<sup>11062</sup> Stojić, Praljak, and Čorić contend that comparison with other cases is of limited assistance since the determination of sentence requires a specific assessment on the particular circumstances of each case.<sup>11063</sup> They also argue that the relevant provisions of the Statute and the Rules only required the Trial Chamber to have recourse to the sentencing practice in the courts of the former Yugoslavia, which is not binding on the Tribunal.<sup>11064</sup> Stojić, Čorić, and Pušić submit that even in light of the sentencing practice of the former Yugoslavia, the sentences imposed against them are neither

<sup>11056</sup> Prosecution’s Appeal Brief, paras 416-418.

<sup>11057</sup> Prosecution’s Appeal Brief, paras 416-418, fns 1307-1316. In particular, the Prosecution points to cases from Peru, Argentina, Canada, United States of America, Finland, Switzerland, United Kingdom, France, Spain, and Germany. Prosecution’s Appeal Brief, para. 417, fns 1307-1316.

<sup>11058</sup> Prosecution’s Appeal Brief, para. 418.

<sup>11059</sup> Prosecution’s Appeal Brief, para. 418.

<sup>11060</sup> Prosecution’s Appeal Brief, paras 338, 418, 424(d).

<sup>11061</sup> Stojić’s Response Brief, paras 187-194; Praljak’s Response Brief, paras 211-214; Čorić’s Response Brief, paras 134-136.

<sup>11062</sup> Stojić’s Response Brief, paras 189-190. Stojić and Čorić argue that the Prosecution’s arguments should be dismissed as the referenced case-law is taken out of the context of its specific legal system which differs from the Tribunal’s practice. Stojić’s Response Brief, para. 190; Čorić’s Response Brief, para. 135. Stojić further points to the fact that Finnish and Swiss legal framework provide for parole concerning life imprisonment sentence after 12 or 15 years. Stojić’s Response Brief, para. 190.

<sup>11063</sup> Stojić’s Response Brief, para. 191; Praljak’s Response Brief, para. 212; Čorić’s Response Brief, para. 136. See also Appeal Hearing, AT. 835-837 (28 Mar 2017).

<sup>11064</sup> Stojić’s Response Brief, paras 187-188, 193; Praljak’s Response Brief, para. 213; Čorić’s Response Brief, paras 137-138. See also Pušić’s Response Brief, para. 31.



unreasonable nor unduly lenient.<sup>11065</sup> Finally, with respect to the Prosecution's argument that the lenience of the sentence may undermine the Tribunal's standing, Stojić contends that such consideration should be dismissed as sentences should be determined only on the basis of the specific circumstances of the case.<sup>11066</sup>

3345. The Prosecution replies that contrary to the arguments of Stojić, Praljak, Ćorić, and Pušić, it does not contend that the Trial Chamber erred in not considering national sentencing practice.<sup>11067</sup> According to the Prosecution, the reference to national sentencing practice in comparable cases serves to highlight the inadequacy of the sentences and shows the existence of an abuse of discretion.<sup>11068</sup>

3346. The Appeals Chamber recalls that while some guidance may be found in sentencing practices other than those of the former Yugoslavia when determining the appropriate sentence, such practices should not be given undue weight.<sup>11069</sup> The Appeals Chamber further recalls that trial chambers are vested with a broad discretion in determining an appropriate sentence, due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.<sup>11070</sup> In this instance, the Prosecution essentially argues that when considered against domestic sentencing practice, the sentences imposed by the Trial Chamber are inadequate.<sup>11071</sup> However, other than referring to a number of "similar but smaller" national cases which resulted in higher sentences, the Prosecution does not substantiate any discernible error in the Trial Chamber's exercise of its discretion when imposing the sentences. The Appeals Chamber therefore finds that, through its reference to national case-law, the Prosecution has failed to show that the sentences in this case are so unreasonable or plainly unjust that the Appeals Chamber can infer abuse of discretion on the part of the Trial Chamber. Consequently, the Appeals Chamber finds it unnecessary to deal with the Prosecution's speculative argument that the lenience of the sentences risks undermining the Tribunal's standing.

<sup>11065</sup> Stojić's Response Brief, para. 193; Ćorić's Response Brief, paras 138-140; Pušić's Response Brief, para. 31. See also Appeal Hearing, AT. 835-837 (28 Mar 2017).

<sup>11066</sup> Stojić's Response Brief, para. 194.

<sup>11067</sup> Prosecution's Reply Brief, para. 175, referring to Stojić's Response Brief, paras 187-194, Praljak's Response Brief, paras 211-214, Ćorić's Response Brief, paras 134-136, Pušić's Response Brief, para. 31. Cf. Appeal Hearing, AT. 835-837 (28 Mar 2017).

<sup>11068</sup> Prosecution's Reply Brief, paras 175-176, 178. See also Appeal Hearing, AT. 848-849 (28 Mar 2017). The Prosecution also argues that Stojić's arguments on parole in Finland and Switzerland conflate sentencing practice with sentencing enforcement. Prosecution's Reply Brief, para. 177.

<sup>11069</sup> *Galić* Appeal Judgement, para. 443. Further, as the Trial Chamber correctly stated, while both the Statute and the Rules provide that a trial chamber shall take into account the general practice regarding the prison sentences in the courts of the former Yugoslavia, such national practice has no binding effect on the Tribunal. See Trial Judgement, Vol. 4, para. 1293. See also Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules; *Popović et al.* Appeal Judgement, para. 2087; *Šainović et al.* Appeal Judgement, para. 1830; *Krstić* Appeal Judgement, paras 260, 262.

<sup>11070</sup> See *supra*, para. 3204. See also Trial Judgement, Vol. 4, para. 1293.

<sup>11071</sup> See *supra*, para. 3343.

3347. Accordingly, the Appeals Chamber dismisses the Prosecution's ground of appeal 4 in relevant part.

2. Ćorić's appeal (Ground 16 in part)

3348. Ćorić contends that the Trial Chamber violated the relevant provision of the SFRY criminal procedure code when it double-counted his position of authority.<sup>11072</sup> He submits that such double-counting is impermissible according to "the existing criminal procedure code of SFRY", citing "KZ SFRY Art. 41 part 1".<sup>11073</sup> Ćorić argues that his sentence should therefore be significantly reduced.<sup>11074</sup>

3349. The Prosecution responds that Ćorić's arguments should be dismissed as he fails to cite any evidence from the trial record identifying the source of "KZ SFRY Art. 41 part 1".<sup>11075</sup> It argues that, to the extent Ćorić relies on the SFRY criminal procedure code reflected in Exhibit 2D00906, nothing in the provision that he cites appears to support his contention.<sup>11076</sup>

3350. The Appeals Chamber notes that Ćorić's submissions do not clearly identify the legal source he relies upon. To the extent that he refers to the SFRY criminal procedure code, the Appeals Chamber observes that the Trial Judgement reflects that the Trial Chamber took into account the relevant provisions for determining sentences set out therein, including Article 41.<sup>11077</sup> In this regard, the Appeals Chamber notes that Article 41(1) provides, in part, that a sentence for a criminal act shall be imposed taking into account "all the circumstances bearing on the magnitude of punishment [...] and, in particular, the degree of criminal responsibility, the motives from which the act was committed, the degree of the danger or injury to the protected object, [and] the circumstances in which the act was committed".<sup>11078</sup> The Appeals Chamber fails to see how this provision could be of any relevance to Ćorić's arguments or capable of demonstrating any discernible error in the Trial Chamber's consideration of his position of authority in determining his sentence.

3351. Accordingly, the Appeals Chamber dismisses Ćorić's ground of appeal 16 in relevant part.

<sup>11072</sup> Ćorić's Appeal Brief, para. 324.

<sup>11073</sup> Ćorić's Appeal Brief, para. 324 & fn. 856.

<sup>11074</sup> Ćorić's Appeal Brief, para. 332.

<sup>11075</sup> Prosecution's Response Brief (Ćorić), fn. 1321.

<sup>11076</sup> Prosecution's Response Brief (Ćorić), fn. 1321. In response, the Prosecution refers to Ex. 2D00907 (BiH criminal code). However, the Appeals Chamber understands that the referenced exhibit number is a typographical error and was instead intended to be Ex. 2D00906 (SFRY criminal code).

<sup>11077</sup> Trial Judgement, Vol. 4, para. 1292. See Article 24 of the Statute; Rule 101 of the Rules.

<sup>11078</sup> Ex. 2D00906, p. 13.

### 3. Pušić's appeal (Ground 8 in part)

3352. Pušić submits that the Trial Chamber erred in failing to explain how it took into account the sentencing practices of the former Yugoslavia when imposing a ten-year sentence on him.<sup>11079</sup>

Pušić also contends that the Trial Chamber failed to explain why his conduct warranted 50 percent of the maximum sentence which can be imposed under the SFRY criminal code.<sup>11080</sup>

3353. The Prosecution responds that Pušić fails to show how the Trial Chamber abused its discretion in: (1) considering the sentencing practice of the former Yugoslavia; and (2) imposing the sentence on him in light of the scale and the gravity of the crimes of which he was convicted.<sup>11081</sup> The Prosecution argues that while the Trial Chamber is not bound by the sentencing practices of the former Yugoslavia, it did in fact impose a sentence within the range of the former Yugoslavia's sentences for similar cases.<sup>11082</sup>

3354. The Appeals Chamber recalls that trial chambers are required to take into consideration the general practice regarding prison sentences in the courts of the former Yugoslavia although they are not bound by it.<sup>11083</sup> Additionally, the Appeals Chamber recalls that the Tribunal is not prevented from imposing a greater or lesser sentence than would have been imposed under the legal regime of the former Yugoslavia.<sup>11084</sup> The Appeals Chamber observes that in determining the sentence, the Trial Chamber explicitly referenced the relevant provisions of the SFRY criminal code,<sup>11085</sup> including Article 38, which provides that the maximum prison sentence that can be imposed is 20 years' imprisonment.<sup>11086</sup> The Trial Chamber, after considering several factors pertinent to its determination, sentenced Pušić to a single sentence of ten years of imprisonment.<sup>11087</sup> In light of this, and considering that the Trial Chamber had broad discretion in determining the appropriate sentence,<sup>11088</sup> the Appeals Chamber finds that Pušić's allegation that the Trial Chamber erred in failing to explain how it took into account the sentencing practice of the former Yugoslavia does

<sup>11079</sup> Pušić's Appeal Brief, para. 247. The Appeals Chamber notes that in his response to the Prosecution's Appeal Brief, Prlić appears to set forth similar arguments. In particular, Prlić contends that his sentence is manifestly excessive as the Trial Chamber erred in failing to take into account the sentencing practice of the former Yugoslavia. See Prlić's Response Brief, paras 241-242. Pursuant to the Practice Direction on Formal Requirements, a respondent's brief is limited to arguments in response to the appeal brief and the respondent may raise additional grounds to support an acquittal. Practice Direction on Formal Requirements, para. 5. As far as Prlić's arguments do not relate to an acquittal and thus do not conform to the practice direction, the Appeals Chamber will not consider these arguments.

<sup>11080</sup> Pušić's Appeal Brief, para. 247, referring to, *inter alia*, Article 38 of the SFRY Criminal Code.

<sup>11081</sup> Prosecution's Response Brief (Pušić), para. 232.

<sup>11082</sup> Prosecution's Response Brief (Pušić), para. 232.

<sup>11083</sup> See Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules; *Popović et al.* Appeal Judgement, para. 2087; *Šainović et al.* Appeal Judgement, para. 1830; *Krstić* Appeal Judgement, paras 260, 262.

<sup>11084</sup> *Popović et al.* Appeal Judgement, para. 2087; *Krstić* Appeal Judgement, para. 262.

<sup>11085</sup> Trial Judgement, Vol. 4, paras 1291-1292.

<sup>11086</sup> See Ex. 2D00906, p. 12. See also Trial Judgement, Vol. 4, para. 1291.

<sup>11087</sup> Trial Judgement, Vol. 4, paras 1376-1386, Disposition, p. 431.

<sup>11088</sup> See *supra*, para. 3204. See also Trial Judgement, Vol. 4, para. 1293.

not show any discernible error in the Trial Chamber's conclusion to impose a sentence of ten years of imprisonment against him.

3355. Accordingly, the Appeals Chamber dismisses Pušić's ground of appeal 8 in relevant part.

#### 4. Conclusion

3356. For the foregoing reasons, the Appeals Chamber concludes that the Prosecution, Ćorić, and Pušić have failed to demonstrate that the Trial Chamber made a discernible error in exercising its discretion. Thus, the Appeals Chamber dismisses the Prosecution's ground of appeal 4 Ćorić's ground of appeal 16, and Pušić's ground of appeal 8, all in relevant part.

#### G. Conclusion

3357. In light of the foregoing, the Appeals Chamber grants the Prosecution's ground of appeal 4 in relevant part insofar as it relates to Ćorić's responsibility under Article 7(3) of the Statute. The impact of this finding on Ćorić's sentence, if any, will be considered in the section below.

3358. The Appeals Chamber dismisses, Judge Liu dissenting, Stojić's ground of appeal 57, Petković's sub-ground of appeal 8.4, Ćorić's ground of appeal 17, and Pušić's ground of appeal 8 in relevant part concerning the calculation of time served in detention. It further dismisses all other remaining challenges to sentencing.

#### H. Impact of the Appeals Chamber's Findings on Sentences

3359. The Appeals Chamber recalls that it has reversed the Trial Chamber's finding that murder and wilful killing were part of the CCP from January 1993, and has concluded that the remaining findings establish that murder and wilful killing were part of the CCP from June 1993.<sup>11089</sup>

3360. With respect to Prlić, the Appeals Chamber recalls that it has reversed his convictions for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality;<sup>11090</sup> (2) persecution as a crime against humanity in relation to the destruction of houses in Gornji Vakuf Municipality during attacks on 18 January 1993;<sup>11091</sup> (3) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions, for the killing of two unarmed men in Tošćanica, Prozor Municipality<sup>11092</sup>

<sup>11089</sup> See *supra*, paras 882, 886, 1014.

<sup>11090</sup> See *supra*, paras 441-443, 578.

<sup>11091</sup> See *supra*, paras 453, 578.

<sup>11092</sup> See *supra*, paras 886, 1014.

as well as for the murders linked to detentions committed in Jablanica Municipality in April 1993;<sup>11093</sup> (4) persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar;<sup>11094</sup> and (5) extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality.<sup>11095</sup> The Appeals Chamber has also reversed the Trial Chamber's finding that Prlić contributed to the JCE by minimising or attempting to deny the HVO forces' responsibility for the destruction of the Old Bridge.<sup>11096</sup> Prlić, however, remains convicted of very serious crimes. In these circumstances, considering the limited nature of these reversals, the Appeals Chamber finds that no reduction of sentence is warranted. Consequently, the Appeals Chamber affirms Prlić's sentence of 25 years of imprisonment.

3361. With respect to Stojić, the Appeals Chamber recalls that it has reversed his convictions<sup>11097</sup> for: (1) persecution, murder, and inhumane acts as crimes against humanity as well as wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality;<sup>11098</sup> (2) persecution as a crime against humanity in relation to the destruction of houses in Gornji Vakuf Municipality during attacks on 18 January 1993;<sup>11099</sup> (3) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Toščanica, Prozor Municipality;<sup>11100</sup> (4) persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar;<sup>11101</sup> and (5) extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality.<sup>11102</sup> The Appeals Chamber further recalls that Stojić cannot be held responsible for crimes occurring after 15 November 1993.<sup>11103</sup> Stojić, however, remains convicted of very serious crimes. In these circumstances, considering the limited nature of these reversals, the Appeals Chamber finds that no reduction of sentence is

<sup>11093</sup> See *supra*, paras 2846, 2848.

<sup>11094</sup> See *supra*, paras 426, 578.

<sup>11095</sup> See *supra*, paras 343, 345, 381. Cf. *supra*, para. 3079 a) & fn. 10106, para. 3097.

<sup>11096</sup> See *supra*, paras 1246, 1400.

<sup>11097</sup> The Appeals Chamber has also reversed Stojić's conviction, pursuant to JCE III liability, for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions with respect to the killings of detainees from the Heliodrom during forced labour or while being used as human shields. However, Stojić remains convicted of the same crimes in relation to these killings under JCE I liability. See *supra*, fn. 10171.

<sup>11098</sup> See *supra*, paras 441-443, 578.

<sup>11099</sup> See *supra*, paras 453, 578.

<sup>11100</sup> See *supra*, paras 886, 1014.

<sup>11101</sup> See *supra*, paras 426, 578.

<sup>11102</sup> See *supra*, paras 343, 345, 381. Cf. *supra*, para. 3002 & fn. 9850, para. 3092 & fn. 10172.

<sup>11103</sup> See *supra*, para. 1807, fn. 5395.

warranted. Consequently, the Appeals Chamber affirms Stojić's sentence of 20 years of imprisonment.

3362. With respect to Praljak, the Appeals Chamber recalls that it has reversed his convictions for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality;<sup>11104</sup> (2) persecution as a crime against humanity in relation to the destruction of houses in Gornji Vakuf Municipality during attacks on 18 January 1993;<sup>11105</sup> (3) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality;<sup>11106</sup> and (4) persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar;<sup>11107</sup> and (5) extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality.<sup>11108</sup> The Appeals Chamber has also found that Praljak cannot be held responsible for crimes occurring after 9 November 1993.<sup>11109</sup> The Appeals Chamber has further found that the Trial Chamber erred in concluding that Praljak facilitated the crimes committed in Stupni Do, Vareš Municipality on 23 October 1993 by contributing to their concealment.<sup>11110</sup> Praljak, however, remains convicted of very serious crimes. In these circumstances, considering the limited nature of these reversals, the Appeals Chamber finds that no reduction of sentence is warranted. Consequently, the Appeals Chamber affirms Praljak's sentence of 20 years of imprisonment.

3363. With respect to Petković, the Appeals Chamber recalls that it has reversed his convictions<sup>11111</sup> for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality;<sup>11112</sup> (2) persecution as a crime against humanity in relation to the destruction of houses in Gornji Vakuf Municipality during

<sup>11104</sup> See *supra*, paras 441-443, 578.

<sup>11105</sup> See *supra*, paras 453, 578.

<sup>11106</sup> See *supra*, paras 886, 1014.

<sup>11107</sup> See *supra*, paras 426, 578.

<sup>11108</sup> See *supra*, paras 343, 345, 381. Cf. *supra*, para. 3002 & fn. 9850, para. 3093 & fn. 10179

<sup>11109</sup> See *supra*, paras 1984-1985, 2000-2003, 2026, 2084.

<sup>11110</sup> See *supra*, paras 2053-2054, 2059-2062, 2084.

<sup>11111</sup> The Appeals Chamber has also reversed the Trial Chamber's findings that Petković was responsible, pursuant to JCE I liability, for destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war, in relation to the destruction of Baba Bešir Mosque in Mostar Municipality and the Skrobućani mosque in Prozor Municipality. However, the Appeals Chamber has found him responsible for this crime in relation to the destruction of these mosques under JCE III liability. See *supra*, paras 2454-2455, 2468.

<sup>11112</sup> See *supra*, paras 441-443, 578.

attacks on 18 January 1993;<sup>11113</sup> (3) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality;<sup>11114</sup> (4) persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar;<sup>11115</sup> and (5) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, as grave breaches of the Geneva Conventions, in relation to the destruction of houses and buildings as well as thefts committed in Vareš Municipality.<sup>11116</sup> Further, the Appeals Chamber has concluded that the Trial Chamber erred in finding that Petković: (1) continued to deploy the Bruno Bušić Regiment to Jablanica Municipality in April 1993 despite having been aware of the past criminal behaviour of its members in Gornji Vakuf Municipality;<sup>11117</sup> and (2) directly contributed to the crimes committed in Vareš town and Stupni Do, Vareš Municipality.<sup>11118</sup> Petković remains convicted of very serious crimes. In these circumstances, considering the limited nature of these reversals, the Appeals Chamber finds that no reduction of sentence is warranted. Consequently, the Appeals Chamber affirms Petković's sentence of 20 years of imprisonment.

3364. With respect to Ćorić, the Appeals Chamber recalls that it has reversed his convictions for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality;<sup>11119</sup> (2) persecution as a crime against humanity in relation to the destruction of houses in Gornji Vakuf Municipality during attacks on 18 January 1993;<sup>11120</sup> (3) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality;<sup>11121</sup> (4) persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar;<sup>11122</sup> and (5) extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality.<sup>11123</sup> The Appeals Chamber further

<sup>11113</sup> See *supra*, paras 453, 578.

<sup>11114</sup> See *supra*, paras 886, 1014.

<sup>11115</sup> See *supra*, paras 426, 578.

<sup>11116</sup> See *supra*, paras 343, 345, 381. Cf. *supra*, paras 2899-2900 & fn. 9522, para. 3002 & fn. 9850, para. 3094 & fn. 10182.

<sup>11117</sup> See *supra*, paras 2361, 2367-2368, 2468. See also *supra*, paras 2176, 2356-2357.

<sup>11118</sup> See *supra*, paras 2280, 2294, 2468.

<sup>11119</sup> See *supra*, paras 441-443, 578.

<sup>11120</sup> See *supra*, paras 453, 578.

<sup>11121</sup> See *supra*, paras 886, 1014.

<sup>11122</sup> See *supra*, paras 426, 578.

<sup>11123</sup> See *supra*, paras 343, 345, 381. Cf. *supra*, para. 3079 e) & fn. 10121, para. 3097.

recalls that it has reversed the Trial Chamber's findings on Ćorić's role in the JCE as Minister of the Interior as of 10 November 1993 and has vacated his convictions in relation to his JCE responsibility as Minister of the Interior.<sup>11124</sup> Finally, the Appeals Chamber has found that the Trial Chamber erred in not taking into account, for sentencing purposes, Ćorić's superior responsibility for crimes committed by members of the Military Police in Prozor Municipality in October 1992 through the acts of theft and destruction of property.<sup>11125</sup> Ćorić, however, remains convicted of very serious crimes. In these circumstances, considering the limited nature of these reversals, the Appeals Chamber finds that no reduction of sentence is warranted. Consequently, the Appeals Chamber affirms Ćorić's sentence of 16 years of imprisonment.

3365. With respect to Pušić, the Appeals Chamber recalls that it has reversed his convictions for: (1) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality;<sup>11126</sup> (2) persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar;<sup>11127</sup> and (3) extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality.<sup>11128</sup> The Appeals Chamber further recalls its reversal of the Trial Chamber's finding that Pušić contributed to the JCE by facilitating the removal of the population from Sovići and Doljani on 5 May 1993, denying the expulsions of the women, children, and elderly people from Čapljina Municipality, and failing to take measures to resolve problems related to conditions of confinement and mistreatment of detainees.<sup>11129</sup> Pušić, however, remains convicted of very serious crimes. In these circumstances, considering the limited nature of these reversals, the Appeals Chamber finds that no reduction of sentence is warranted. Consequently, the Appeals Chamber affirms Pušić's sentence of 10 years of imprisonment.

<sup>11124</sup> See *supra*, paras 105, 2473.

<sup>11125</sup> See *supra*, paras 3238-3240, 3259.

<sup>11126</sup> See *supra*, paras 886, 1014.

<sup>11127</sup> See *supra*, paras 426, 578.

<sup>11128</sup> See *supra*, paras 343, 345, 381. Cf. *supra*, para. 3003.

<sup>11129</sup> See *supra*, paras 2712, 2722, 2733, 2772, 2832.



## XII. DISPOSITION

3366. For the foregoing reasons, **THE APPEALS CHAMBER,**

**PURSUANT TO** Article 25 of the Statute and Rules 117 and 118 of the Rules;

**NOTING** the respective written submissions of the Parties and the arguments presented at the Appeal Hearing on 20-24 and 27-28 March 2017;

**SITTING** in open session;

**WITH RESPECT TO JADRANKO PRLIĆ,**

**DISMISSES** Prlić's appeal in its entirety;

**REVERSES**, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Prlić's convictions as a participant in a JCE for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part); (2) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part); and (3) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the murders linked to detentions committed in Jablanica Municipality in April 1993 (Counts 2 and 3, both in part);

**REVERSES**, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Ćorić in response to the Prosecution's ground of appeal 3, Prlić's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

**REVERSES** *proprio motu* Prlić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

**AFFIRMS**, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting, in part, with respect to Counts 2, 3, and 21, the remainder of Prlić's convictions under Counts 1-13, 15-16, 18-19, 21-25;

**ALLOWS**, Judge Liu dissenting, the Prosecution's ground of appeal 1(C) concerning Prlić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3079 and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS**, Judge Liu dissenting, the Prosecution's ground of appeal 1(E) in part and **FINDS**, Judge Liu dissenting, that the Trial Chamber incorrectly found Prlić not guilty for committing through his participation in a JCE murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions with respect to the killings of: (1) a Muslim detainee in Dretelj Prison on 16 July 1993; and (2) a detainee in Vojno Detention Centre on 5 December 1993 (Counts 2 and 3, both in part), but **DECLINES** to enter new convictions against him in this regard;

**ALLOWS** the Prosecution's ground of appeal 2 concerning Prlić's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and December 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Prlić in this regard;

**DISMISSES** the Prosecution's appeal concerning Prlić in all other respects;

**AFFIRMS** the sentence of 25 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

**WITH RESPECT TO BRUNO STOJIC,**

**GRANTS** Stojic's sub-ground of appeal 45.1 and **REVERSES** his convictions as a participant in a JCE for persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part);

**DISMISSES**, Judge Liu dissenting in part and Judge Pocar dissenting in part, Stojić's appeal in all other respects;

**REVERSES**, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Stojić's convictions as a participant in a JCE for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

**REVERSES**, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Ćorić in response to the Prosecution's ground of appeal 3, Stojić's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

**REVERSES *proprio motu*** Stojić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

**REVERSES *proprio motu*** Stojić's conviction as a participant in a JCE, under JCE III liability, for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions with respect to the killings of detainees from the Heliodrom during forced labour or while being used as human shields, but **AFFIRMS** his convictions for the same crimes in relation to these killings under JCE I liability (Counts 2 and 3, both in part);

**AFFIRMS**, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2, 3, and 21, the remainder of Stojić's convictions under Counts 1-13, 15-16, 18-19, 21-25;

**ALLOWS**, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Stojić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 2 concerning Stojić's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and 15 November 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Stojić in this regard;

**DISMISSES** the Prosecution's appeal concerning Stojić in all other respects;

**AFFIRMS** the sentence of 20 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

**WITH RESPECT TO SLOBODAN PRALJAK,**

**GRANTS** Praljak's ground of appeal 12 and **REVERSES** his convictions as a participant in a JCE for persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part);

**GRANTS** Praljak's sub-ground of appeal 44.1 in part to the extent that it concerns Praljak's responsibility as a participant in a JCE for the incidents as set out in paragraph 2003 of this Judgement;

**DISMISSES** Praljak's appeal in all other respects;

**REVERSES**, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Praljak's convictions as a participant in a JCE for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

**REVERSES**, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Čorić in response to the Prosecution's ground of appeal 3, Praljak's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

**REVERSES** *proprio motu* Praljak's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

**AFFIRMS**, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2, 3, and 21, the remainder of Praljak's convictions under Counts 1-3, 6-13, 15-16, 18-19, 21-25;

**ALLOWS**, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Praljak's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 2 concerning Praljak's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and 9 November 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Praljak in this regard;

**DISMISSES** the Prosecution's appeal concerning Praljak in all other respects;

**AFFIRMS** the sentence of 20 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

**WITH RESPECT TO MILIVOJ PETKOVIĆ,**

**GRANTS** Petković's sub-ground of appeal 5.2.2.4 in part and the Prosecution's ground of appeal 1 in part and **REVERSES** the Trial Chamber's findings that Petković was responsible as a participant in a JCE, under JCE I liability, for destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war, in relation to the destruction of Baba Bešir Mosque in Mostar Municipality and the Skrobućani mosque in Prozor Municipality

(Count 21 in part), but **FINDS** him responsible in this regard as a participant in a JCE, under JCE III liability;

**DISMISSES**, Judge Liu dissenting in part and Judge Pocar dissenting in part, Petković's appeal in all other respects;

**REVERSES**, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Petković's convictions as a participant in a JCE for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part); and (2) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

**REVERSES**, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Ćorić in response to the Prosecution's ground of appeal 3, Petković's convictions as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

**REVERSES** *proprio motu* Petković's convictions as a participant in a JCE for extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, as grave breaches of the Geneva Conventions, in relation to the destruction of houses and buildings and the appropriation of property committed in Vareš Municipality (Counts 19 and 22, both in part);

**AFFIRMS**, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2 and 3 and, in part, Count 21, the remainder of Petković's convictions under Counts 1-13, 15-16, 18-19, 21-25;

**ALLOWS**, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Petković's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS**, Judge Liu dissenting, the Prosecution's ground of appeal 1(E) in part and **FINDS**, Judge Liu dissenting, that the Trial Chamber incorrectly found Petković not guilty for committing

through his participation in a JCE murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions with respect to the killings, in Dretelj Prison, of one Muslim detainee on 16 July 1993 and three other detainees in mid-July 1993 (Counts 2 and 3, both in part), but **DECLINES** to enter new convictions against him in this regard;

**ALLOWS** the Prosecution's ground of appeal 2 concerning Petković's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and December 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Petković in this regard;

**DISMISSES** the Prosecution's appeal concerning Petković in all other respects;

**AFFIRMS** the sentence of 20 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

**WITH RESPECT TO VALENTIN ĆORIĆ,**

**GRANTS** Ćorić's ground of appeal 11 in part and **REVERSES** his convictions as a participant in a JCE for crimes committed as of 10 November 1993;

**DISMISSES**, Judge Liu dissenting in part, Ćorić's appeal in all other respects;

**REVERSES**, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Ćorić's convictions as a participant in a JCE for: (1) persecution, murder, and inhumane acts as crimes against humanity and wilful killing and inhuman treatment as grave breaches of the Geneva Conventions with regard to the killing of seven civilians in Duša, Gornji Vakuf Municipality (Counts 1, 2, 3, 15, and 16, all in part); and (2) murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

**REVERSES**, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Ćorić in response to the Prosecution's ground of appeal 3, Ćorić's convictions

as a participant in a JCE for: (1) persecution as a crime against humanity in relation to the destruction, during attacks, of houses in Gornji Vakuf Municipality on 18 January 1993 (Count 1 in part); and (2) Judge Pocar dissenting, persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

**REVERSES** *proprio motu* Ćorić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

**AFFIRMS**, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2 and 3, both in part, and Count 21, the remainder of Ćorić's convictions under Counts 1-13, 15-16, 18-19, 21-25;

**ALLOWS**, Judge Liu dissenting, the Prosecution's ground of appeal 1(A) and 1(C) concerning Ćorić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018, 3030, 3079, and 3114 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 2 concerning Ćorić's superior responsibility for the incidents as set out in paragraphs 3134 and 3151 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and 10 November 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Ćorić in this regard;

**GRANTS** the Prosecution's ground of appeal 4 concerning sentencing in part insofar as it relates to Ćorić's superior responsibility;

**DISMISSES** the Prosecution's appeal concerning Ćorić in all other respects;

**AFFIRMS** the sentence of 16 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;



**WITH RESPECT TO BERISLAV PUŠIĆ,**

**DISMISSES**, Judge Liu dissenting in part, Pušić's appeal in its entirety;

**REVERSES**, as a result of granting Stojić's sub-ground of appeal 45.1 and Praljak's ground of appeal 12, Pušić's convictions as a participant in a JCE for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the killing of two unarmed men in Tošćanica, Prozor Municipality (Counts 2 and 3, both in part);

**REVERSES**, as a result of allowing the additional grounds of appeal submitted by, variously, Prlić, Stojić, Praljak, and Ćorić in response to the Prosecution's ground of appeal 3, and Judge Pocar dissenting, Pušić's convictions as a participant in a JCE for persecution as a crime against humanity and unlawful infliction of terror on civilians as a violation of the laws or customs of war in relation to the destruction of the Old Bridge of Mostar (Counts 1 and 25, both in part);

**REVERSES** *proprio motu* Pušić's conviction as a participant in a JCE for extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions, in relation to the destruction of houses and buildings in Vareš Municipality (Count 19 in part);

**AFFIRMS**, Judge Liu dissenting with respect to Count 25 and Judge Pocar dissenting with respect to Counts 2, 3, and 21, the remainder of Pušić's convictions under Counts 1-3, 6-13, 15-16, 18-19, 21, 24-25;

**ALLOWS**, Judge Liu dissenting, the Prosecution's sub-ground of appeal 1(A) concerning Pušić's responsibility as a participant in a JCE for the incidents as set out in paragraphs 3018 and 3030 of this Judgement, but **DECLINES** to quash the acquittals in this regard, or to order a retrial or a remittance;

**ALLOWS** the Prosecution's ground of appeal 3 in part and **FINDS** that the Trial Chamber erred by failing to enter convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war with respect to the destruction, during attacks, of: (1) Muslim property in Prozor Municipality between May or June and early July 1993; and (2) mosques in East Mostar, Mostar Municipality, between June and December 1993 (Count 20 in part), but **DECLINES** to enter new convictions against Pušić in this regard;

**DISMISSES** the Prosecution's appeal concerning Pušić in all other respects;

**AFFIRMS** the sentence of 10 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

**RULES** that this Judgement shall be enforced immediately pursuant to Rule 118(A) of the Rules;

**ORDERS**, pursuant to Rule 118(B) of the Rules, the arrest or surrender of Berislav Pušić to the UNDU in The Hague, to be facilitated as early as practicable; and

**ORDERS**, in accordance with Rules 103(C) and 107 of the Rules, that the Appellants are to remain in the custody of the Tribunal pending the finalisation of arrangements for their transfer to the State where their sentences will be served.

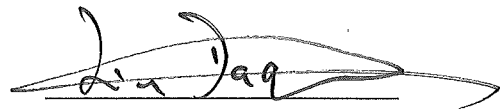
Judge Liu Daqun appends dissenting opinions, a partially dissenting opinion, and a declaration.

Judge Fausto Pocar appends dissenting opinions.

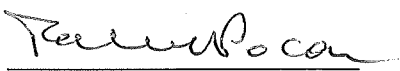
Done in English and French, the English text being authoritative.



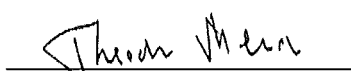
Judge Carmel Agius, Presiding



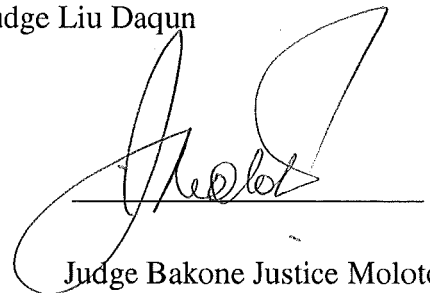
Judge Liu Daqun



Judge Fausto Pocar



Judge Theodor Meron



Judge Bakone Justice Moloto

Dated this twenty-ninth day of November 2017,

At The Hague,

The Netherlands.

[Seal of the Tribunal]

### XIII. PARTIALLY DISSENTING, DISSENTING OPINIONS AND DECLARATION OF JUDGE LIU DAQUN

1. For the reasons detailed below, I respectfully disagree with the Majority's decisions (1) to uphold the Appellants' convictions for the crime of unlawful infliction of terror as a violation of the laws or customs of war (Count 25); and (2) to grant the Prosecution's sub-grounds of appeal 1(A), 1(C), and 1(E), in part, in respect to a number of Trial Chamber acquittals for convictions pursuant to the JCE III mode of liability. I will also provide details regarding my partial disagreement with the Majority's finding that Stojić, Petković, Ćorić, and Pušić have failed to show that the Trial Chamber erred in law when it excluded the periods of their provisional release from the calculation of time served in custody. In addition, I append a declaration in relation to Stojić's and Petković's arguments about alleged errors concerning the Prosecution's JCE theory to clarify my position on whether the Prosecution's Final Brief should be read as an abandonment of charges and, if so, what consequences would unfold.

#### A. Declaration: Alleged Errors Concerning the JCE Theory

2. The Appeals Chamber dismisses Stojić's and Petković's arguments that they were not put on notice of the JCE liability allegations, that their fair trial rights were violated, and that the Trial Chamber impermissibly altered the Prosecution's case.<sup>1</sup> While I support the decision to dismiss Stojić's and Petković's arguments in the circumstances of this case, I append this declaration to clarify my position on whether the Prosecution's Final Brief should be read as an abandonment of charges and, if so, what consequences would unfold.

3. I agree that Stojić and Petković have not demonstrated that there was an issue with notice in this case.<sup>2</sup> Nevertheless, the heart of the issue here is not one of notice but whether the Trial Chamber impermissibly transformed the Prosecution's case as alleged in the Prosecution's Final Brief. In the Prosecution's Final Brief, it alleged that the Appellants were responsible pursuant to the JCE I mode of liability for a number of crimes in the Indictment but qualified Counts 2, 3, and 21 and Counts 10-18 (for crimes committed prior to 1 July 1993) only as JCE III Crimes. In the Trial Judgement, on the other hand, the Trial Chamber found the Appellants responsible pursuant to the JCE I mode of liability for certain crimes under these counts.<sup>3</sup> In this context, the questions for

<sup>1</sup> Appeal Judgement, para. 63.

<sup>2</sup> See Appeal Judgement, paras 55-56.

<sup>3</sup> The Prosecution qualified in the Prosecution's Final Brief: (1) Count 2 (murder as a crime against humanity); (2) Count 3 (wilful killing as a grave breach to the Geneva Conventions); and (3) Count 21 (destruction and wilful damage to religious institutions as a violation of the laws or customs of war) as JCE III Crimes while the Trial Chamber found that a number of crimes included under Counts 2, 3 and 21 were JCE I Crimes. *Compare* Prosecution's Final Brief, paras 57-62, 516, 636, 850, 970, 1179, 1276 with Trial Judgement, Vol. 4, paras 66, 68, 342, 433, 1213 (where the Trial

the Appeals Chamber are whether the Prosecution's Final Brief reflects its intention not to pursue these crimes pursuant to the JCE I mode of liability, and, if so, whether it was permissible for the Trial Chamber to ignore this abandonment and to convict the Appellants for these crimes pursuant to the JCE I mode of liability.

4. Turning to the first question, I believe that the practice of the Tribunal and of the ICTR reflects that the Prosecution can abandon a charge in its final brief and thus Rule 50 of the Rules is not the only way accepted in practice for the Prosecution to abandon a charge in the Indictment.<sup>4</sup> I also note that the jurisprudence of the ICTR reflects that the withdrawal of charges by the Prosecution in its final brief does not need to be express but that it can be inferred from the fact that there is no reference to these particular charges in the final brief.<sup>5</sup> In the absence of an express withdrawal of a particular charge by the Prosecution, the inference that the final brief reflects such withdrawal is a matter of interpretation and would depend on the circumstances of the case.

5. The discrepancies between the JCE theories pleaded by the Prosecution in the Indictment and in the Prosecution's Final Brief puzzle me. Nevertheless, I note that when presenting the Prosecution's position on the CCP, the Trial Chamber first recalled the Prosecution's case on JCE as presented by the Prosecution in the Indictment.<sup>6</sup> It then summarized the relevant parts of the Prosecution's Final Brief.<sup>7</sup> This reflects, in my view, that the Trial Chamber understood the Prosecution's Final Brief to be an articulation of the Prosecution's view on the more appropriate mode of liability at the end of the trial.

6. I can see that the way this issue is presented in the Prosecution's Final Brief could create ambiguity.<sup>8</sup> Nevertheless, I note that the Prosecution did not expressly indicate therein its intention

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Chamber found that crimes included under Counts 2 and 3 committed during attacks and by virtue of forced labour as well as Count 21 committed as of June 1993 were JCE I crimes). Moreover, crimes included under Counts 10 to 18 were found by the Trial Chamber to be part of the JCE from mid-January 1993 when the Prosecution's Final Brief qualified them as JCE I crimes from 1 July 1993 onwards and before that date as JCE III crimes. *Compare* Prosecution's Final Brief, paras 19-46 (the Prosecution also alleged that crimes under Counts 10-18 committed prior to 1 July 1993 were attributable to the Appellants as JCE III crimes, and for the crimes committed as of 1 July 1993, JCE III was alleged in the alternative) *with* Trial Judgement, Vol. 4, paras 44-63, 68 (where the Trial Chamber found that Counts 10-18 were part of the JCE from mid-January 1993).

<sup>4</sup> See Appeal Judgement, fn. 214. See *Setako* Appeal Judgement, para. 256. See also *Setako* Trial Judgement, paras 68-72.

<sup>5</sup> See *Ntagerura et al.* Appeal Judgement paras 148-150 ("[t]he facts that may form the basis for a 6(3) conviction are systematically omitted from the Prosecution's Final Brief. [...] In light of the above, the Appeals Chamber considers that the Prosecution failed to pursue the charges [...] under Article 6(3) of the Statute. [...] The Appeals Chamber considers that for the foregoing reasons, the Trial Chamber could not have entered a finding of guilt under Article 6(3) of the Statute"), 164; *Setako* Appeal Judgement, para. 256. See also *Setako* Trial Judgement, paras 68-72.

<sup>6</sup> See Trial Judgement, Vol. 4, paras 26-28.

<sup>7</sup> See Trial Judgement, Vol. 4, paras 28-38.

<sup>8</sup> I note that for the crimes included under Counts 2, 3, and 21 and the crimes included under Counts 10-18 committed prior to 1 July 1993 the Prosecution only mentions JCE III mode of liability and not JCE I and JCE III as alternative modes of liability (Prosecution's Final Brief, paras 25-26, 32-33, 44-45, 60, 62) contrary to what it has otherwise done for JCE I mode of liability and other modes of liability (Prosecution's Final Brief, fn. 2, paras 27, 34, 46, 517-526, 637-

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to withdraw JCE I as a form of liability for the crimes in question. Further, the Prosecution did not at any point during trial request leave to amend the Indictment to withdraw charges in accordance with Rule 50 of the Rules. Moreover, I consider that Stojić and Petković do not point to any elements - for instance, the actual case presented at trial by the Prosecution - that would support an interpretation that the Prosecution's Final Brief was reflective of the Prosecution's intent to not pursue those charges. In light of the foregoing, I defer to the Trial Chamber, which heard the Prosecution's JCE theory at trial, in its interpretation that the Prosecution's Final Brief reflects the Prosecution's view on the most appropriate mode of liability at the end of the trial and not an assertion that the Prosecution abandoned those charges.

7. Following a slightly different reasoning, the Appeals Chamber reaches the same conclusion and therefore the second question remains unanswered. For the sake of completeness, however, I wish to indicate that if there had been a clear indication that the Prosecution had decided to withdraw the charges related to counts 2, 3, and 21 as JCE I crimes and counts 10-18 as JCE I crimes prior to 1 July 1993 in this case, it would not have been permissible for a trial chamber (without at a very minimum giving some kind of notice to the parties of its intention and allowing the parties to make submissions)<sup>9</sup> to convict for charges that the Prosecution had decided to drop at any stage of the proceedings. In the ICTY system, it is for the Prosecution to decide what charges are to be brought to the Judges and Judges cannot go beyond the scope of the Prosecution's case.<sup>10</sup> This would be particularly true in a situation like the one at hand, where the Trial Chamber convicted the Appellants for crimes pursuant to the JCE I mode of liability which *mens rea* requirement is higher than the *mens rea* required for the JCE III mode of liability put forward by the Prosecution. The Prosecution would have likely brought forward the lower *mens rea* mode of liability because it had not brought any evidence at trial on that charge or considered that there was insufficient evidence for a finding beyond reasonable doubt pursuant to JCE I liability. In my view, for a trial chamber to convict in such a case, without first addressing whether the fair trial rights of the accused were respected, would necessarily be detrimental to the rights of the accused.

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646, 851-860, 971-980, 1180-1189, 1277-1284.) See also Prosecution's Final Brief, paras 513-516, 633-636, 847-850, 967-970, 1176-1179, 1273-1276. I note that the Appeals Chamber quoted the Prosecution's Final Brief, fn. 2, stating that the relevant section in its Final Brief "described the crimes involved in the JCEs" and that the "accused are also responsible for those crimes pursuant to other modes of liability contained in Article 7(1) and 7(3)." However, in my view, this reference is of no assistance as a plain reading of the Prosecution's Final Brief shows that this reference did not concern the JCE mode of liability but the other modes of liability under Article 7(1) of the Statute. See Appeal Judgement, para. 61 & fn. 217, referring to Prosecution's Final Brief, fn. 2.

<sup>9</sup> I note that Rule 50 of the Rules specifies that after the assignment of the case to a Trial Chamber, the Trial Chamber or a Judge of that Chamber can only grant leave *after having heard the parties*.

<sup>10</sup> I also believe that it is one of the reasons why cumulative charging is to be allowed and usual practice at the Tribunal. See *Čelebići* Appeal Judgement, para. 400.

**B. Dissenting Opinion: Unlawful Infliction of Terror on Civilians (Municipality of Mostar)**

8. I respectfully disagree with the Majority's decision to uphold the Appellants' convictions for the crime of unlawful infliction of terror on civilians in the Municipality of Mostar between June 1993 and April 1994 as a violation of the laws or customs of war (Count 25).<sup>11</sup>

9. I acknowledge that Tribunal jurisprudence recognises the crime of unlawful infliction of terror on civilians as a violation of the laws or customs of war pursuant to Article 3 of the Statute.<sup>12</sup> However, for reasons that I have previously expounded in the *D. Milošević* Appeal Judgement,<sup>13</sup> it is my view that while there was a clear prohibition against acts or threats of violence the primary purpose of which was to spread terror among the civilian population under customary international law between June 1993 and April 1994, this prohibition did not entail individual criminal responsibility. Consequently, this Tribunal does not have jurisdiction over the crime of unlawful infliction of terror on civilians for the charged events in Mostar. Moreover, while I am not persuaded that the crime of terror existed under customary international law at the relevant time, I am further of the view, for reasons also previously explained in the *D. Milošević* Appeal Judgement,<sup>14</sup> that the elements of the offence set out by the Majority in this Judgement do not adequately define a criminal charge.<sup>15</sup> Moreover, I note that all the underlying acts relied on by the Trial Chamber as acts or threats of terror against the civilian population are otherwise covered by crimes in the jurisdiction of the Tribunal, which in my view sufficiently reflects the criminal conduct of the Appellants in this case.<sup>16</sup>

10. Accordingly, the Appellants' convictions under Count 25 for unlawful infliction of terror on civilians as a violation of the laws or customs of war should be vacated. As a result, and assessed

<sup>11</sup> See Appeal Judgement, paras 424, 562-564, 1774-1789, 2017-2026, 2400-2402, 2406, 2800-2802. See also Trial Judgement, Vol. 3, paras 1689-1692. I note that the Appeals Chamber has otherwise reversed the Appellants' convictions for unlawful infliction of terror on civilians in relation to the Old Bridge in Mostar. See Appeal Judgement, paras 425-426.

<sup>12</sup> Appeal Judgement, para. 424. See *Milošević D. Appeal Judgement*, para. 30; *Galić Appeal Judgement*, paras 87-98.

<sup>13</sup> *D. Milošević Appeal Judgement*, Partly Dissenting Opinion of Judge Liu Daqun, paras 1-13. See also *Galić Appeal Judgement*, Separate and Partially Dissenting Opinion of Judge Schomburg, paras 4-24.

<sup>14</sup> *D. Milošević Appeal Judgement*, Partly Dissenting Opinion of Judge Liu Daqun, paras 14-22.

<sup>15</sup> Appeal Judgement, paras 424, 1774, 2017, 2400.

<sup>16</sup> These crimes are persecution on political, racial and religious grounds as a crime against humanity (Count 1), murder as a crime against humanity (Count 2), wilful killing as a grave breach of the Geneva Conventions of 1949 (Count 3), inhumane acts as a crime against humanity (Count 15), inhumane treatment as a grave breach of the Geneva Conventions of 1949 (Count 16), cruel treatment as a violation of the laws or customs of war (Count 17), wanton destruction of cities, towns or villages, or devastation not justified by military necessity as a violation of the laws or customs of war (Count 20), destruction or wilful damage to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21), and unlawful attack on civilians as a violation of the laws or customs of war (Count 24). Compare Trial Judgement, Vol. 3, paras 1689-1691 with Trial Judgement, Vol. 3, paras 672-673, 721-722, 1253-1256, 1347-1350, 1450-1453, 1579-1580, 1609-1610, 1684-1688, 1711.

together with the other reversals of convictions by the Appeals Chamber,<sup>17</sup> the Appellants' sentences should be reduced.

**C. Dissenting Opinions: Prosecution's Challenges to JCE III Acquittals (Prosecution's**

**Ground 1)**

**1. Alleged error regarding the applicable *mens rea* for JCE III liability (Prosecution's Sub-ground 1(A) in part)**

11. I respectfully disagree with the Majority's decision to grant the Prosecution's sub-ground of appeal 1(A) to the extent that the Trial Chamber applied the incorrect legal standard of JCE III *mens rea* to the incidents appealed by the Prosecution under this sub-ground of appeal.<sup>18</sup> I agree with the Majority that it is well established that the JCE III *mens rea* standard does not require an understanding that the deviatory crime would *probably* be committed. It requires instead the possibility that "a crime could be committed is sufficiently substantial as to be foreseeable to an accused".<sup>19</sup> I have serious doubt, however, that the Prosecution has demonstrated that the Trial Chamber applied a higher "probability" JCE III *mens rea* standard than the required "possibility" standard.

12. The first place to look when assessing whether the correct legal standard was applied is the applicable law section of the Trial Judgement as it should describe the legal standard that the Trial Chamber had in mind. It is worth noting that in this section, with the exception of two instances that could be misinterpreted,<sup>20</sup> I believe that the Trial Chamber correctly stated the applicable JCE III *mens rea* standard, referring to some of the leading cases.<sup>21</sup> The Majority's summary of the applicable law section also reflects that the Trial Chamber referred to the correct applicable law but for these two exceptions.<sup>22</sup> Therefore, in my opinion, the correct conclusion to be drawn from the

<sup>17</sup> See Appeal Judgement, paras 3359-3365.

<sup>18</sup> Appeal Judgement, para. 3030. For a precise list of the incidents appealed by the Prosecution under sub-ground of appeal 1(A) see Appeal Judgement, para. 3018 & fns 9894-9899.

<sup>19</sup> *Karadžić* JCE III Decision, para. 18. See also Appeal Judgement, paras 2836, 3022, and references cited therein.

<sup>20</sup> See Appeal Judgement, para. 3024 referring to Trial Judgement, Vol. 1, para. 216 ("when the accused deliberately assumed the risk that the crime "*soit commis*" (would be committed) because he knew that a crime of this sort "*était la conséquence probable*" (was the probable outcome) of the furtherance of the common purpose and accepted the crime being carried out while nevertheless deciding to take part in the JCE"), 220 ("the accused knew that the new crime "*était la conséquence probable*" (was the probable outcome) but nevertheless decided to take part in the JCE"). I note that the first reference was not made in the context of stating the standard of foreseeability but relates to the other prong of the legal standard on the wilfulness to take the risk. As for the references to "the probable outcome", I note that despite the inaccurate use of language, the Trial Chamber supported the first statement with the correct jurisprudence. Therefore, I wonder how much can be drawn from this inaccurate use of language. See Trial Judgement, Vol. 1, para. 216, referring to *Vasiljević* Appeal Judgement, para. 101; *Tadić* Appeal Judgement, para. 220.

<sup>21</sup> See Trial Judgement, Vol. 1, paras 205, 216, 218 referring to *Tadić* Appeal Judgement; *Vasiljević* Appeal Judgement, *Brdanin* Appeal Judgement.

<sup>22</sup> Appeal Judgement, para. 3024.

applicable law section is that there is no reason to question that the Trial Chamber was well aware of the correct applicable legal standard for JCE III *mens rea*.<sup>23</sup>

13. Turning to the Majority's analysis of the foreseeability language used by the Trial Chamber in the sections on the discussion of the Appellants' individual JCE III responsibility,<sup>24</sup> the Majority finds that in most instances the language used evinces a higher threshold of foreseeability than the one required and the "Trial Chamber in most cases used French terminology that conveys a degree of likelihood that is similar to the term 'would' in English".<sup>25</sup> My analysis of the Trial Chamber's language in this respect is much more nuanced. Despite the attempt of the Majority to review all the statements in French,<sup>26</sup> it seems to me that there is a methodological flaw in the way the Majority approaches the question. I do not think that the various verb moods used in French allow concluding on whether the French formulation means "might" or "would".<sup>27</sup> The Majority's approach fails to take into account the way in which these sentences are constructed in French and that the emphasis in these French sentences does not appear to be on the degree of likelihood.<sup>28</sup> Moreover, the concept of foreseeability already includes a degree of likelihood. Therefore, what ultimately matters is the correct use of the word "foreseeable" which already implies that the possibility that a crime could be committed is sufficiently substantial. By placing so much emphasis on the words "would" and "could", the Majority is looking at indicators that do not seem to show what degree of foreseeability the Trial Chamber had in mind. Therefore, while I would agree that in some instances the Trial Chamber used language that could indicate the use of the incorrect legal standard,<sup>29</sup> I do not agree that there is overwhelming evidence in the language used that a higher threshold of foreseeability than the one required was applied by the Trial Chamber.

<sup>23</sup> Conversely, the Majority's analysis of the applicable law section leads it to conclude that the Trial Chamber "frequently" used language indicating the use of the incorrect legal standard for the *mens rea* of JCE in the restatements of the applicable legal principles. See Appeal Judgement, para. 3029.

<sup>24</sup> Appeal Judgement, paras 3025-3028.

<sup>25</sup> Appeal Judgement, para. 3027. See also Appeal Judgement, paras 3025-3026, 3028.

<sup>26</sup> Appeal Judgement, para. 3023.

<sup>27</sup> According to the Majority, the verb moods used in French "convey a degree of likelihood higher than the modal verb 'could' and resemble more closely the likelihood that is conveyed in the use of the term 'would'". Appeal Judgement, para. 3026. See also Appeal Judgement, para. 3025.

<sup>28</sup> In numerous instances referred to by the Majority, the verb mood was in my opinion used to convey the starting point from which the Trial Chamber made these findings. In other words, it solely indicates in my view that the crimes have actually been committed. This interpretation transpires where the Trial Chamber used language such as "*commis*" (committed) (Appeal Judgement, para. 3025 & fn. 9934 referring to Trial Judgement, Vol. 4, paras 849, 1016) but also "*commettraient*", "*allaient commettre*", or "*commettent*" (would commit) "*détruisent*" (would destroy), and "*volent et s'approprient*" (would steal and appropriate) (Appeal Judgement, para. 3025, fns 9926-9930 and references cited therein). Another example is Trial Judgement, Vol. 4, para. 448 where the sentence is phrased slightly differently making clear that it was a fact that the Members of the HVO did commit acts of theft during operations ("De ce fait, la Chambre ne peut pas conclure que le fait que les membres du HVO commettent des vols pendant ces opérations était prévisible pour Bruno Stojić").

<sup>29</sup> In particular, I find the Trial Chamber's use of language such as "probable consequence" problematic. See Appeal Judgement, para. 3025 & fn. 9924, referring to Trial Judgement, Vol. 4, para. 281.



14. Based on the foregoing, I disagree that the Prosecution has shown that the Trial Chamber applied an incorrect legal standard for JCE III *mens rea*. Even more concerning, the Prosecution itself acknowledges that in some cases the Trial Chamber applied the correct legal standard.<sup>30</sup> At best, the Prosecution has shown that the language used by the Trial Chamber was in some instances inconsistent. As recalled by the Majority, when a trial chamber uses language that does not necessarily reflect the correct legal standard, it should be examined whether the trial chamber applied the correct legal principles to the facts of the case.<sup>31</sup> Nevertheless, neither the Prosecution's submissions, nor the Majority's analysis, which are centred on the language used, examined whether the Trial Chamber applied the correct legal principles to the facts of this case.

15. Finally, I believe that, even without the issues raised above, the Majority fails to draw the correct conclusion from its own findings. According to the Majority, the language used by the Trial Chamber is inconsistent throughout the Trial Judgement.<sup>32</sup> It also states that the Trial Chamber "frequently" used language indicating the use of the incorrect legal standard and that "[a]t times, it appears to have also used the terms 'possible' and 'probable' interchangeably."<sup>33</sup> Such terminology displays that the Majority's review is inconclusive on the standard applied. A correct application of the appeals standard should have led the Majority to conclude that the Prosecution had not demonstrated that the Trial Chamber applied an incorrect legal standard. Conversely, the Majority reverses the presumption that the Trial Chamber applied a correct legal standard.<sup>34</sup> Recalling that the burden of proof is on the Prosecution and that Stojić, Praljak, Petković, Ćorić, and Pušić were acquitted of the incidents appealed by the Prosecution under this sub-ground of appeal, I have no doubt that an inconclusive review should have been resolved in favour of the Appellants.<sup>35</sup>

16. As a result of the Prosecution's failure to show that the Trial Chamber applied an incorrect legal standard for JCE III *mens rea*, rather than granting the Prosecution's sub-ground of appeal 1(A), I would dismiss it. In addition, even if I do not agree that the Prosecution has shown that the Trial Chamber applied the incorrect legal standard, I agree that the appropriate course of action in this case, were such an error to exist, is to decline to quash the acquittals entered by the Trial

<sup>30</sup> See Prosecution's Appeal Brief, para. 29 & fn. 75. For instance the Prosecution does not allege that the Trial Chamber applied an incorrect JCE III *mens rea* standard in relation to Prlić. See Prosecution's Appeal Brief, para. 31.

<sup>31</sup> See Appeal Judgement, para. 3023 and references cited therein.

<sup>32</sup> Appeal Judgement, para. 3027.

<sup>33</sup> Appeal Judgement, para. 3029.

<sup>34</sup> In particular, the Majority states "[t]here is nothing in the Trial Judgement, read as a whole, that suggests that the wrong legal terminology used by the Trial Chamber did not accurately describe the approach adopted by the Trial Chamber or that [it] nevertheless applied the correct legal standard to the facts of the case." See Appeal Judgement, para. 3029.

<sup>35</sup> See *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 16 October 1998, para. 73 ("any doubt should be resolved in favour of the Appellant in accordance with the principle of *in dubio pro reo*.").

Chamber and appealed by the Prosecution under this sub-ground of appeal, or to order a retrial or a remittance.<sup>36</sup>

2. Alleged errors concerning the assessment of evidence (Prosecution's Sub-ground 1(E) in part)

17. The Majority finds that the Prosecution has shown that all reasonable doubt as to Prlić's and Petković's guilt has been eliminated and that the Trial Chamber erred in failing to find pursuant to JCE III liability that: (1) Prlić is responsible for murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3) for the killing of a Muslim detainee in Dretelj Prison on 16 July 1993 and a detainee in Vojno Detention Centre on 5 December 1993;<sup>37</sup> and (2) Petković is responsible for murder as a crime against humanity (Count 2) and wilful killing as a grave breach of the Geneva Conventions (Count 3) for the death of one Muslim detainee by dehydration as well as for the killing of three other detainees in Dretelj Prison in mid-July 1993.<sup>38</sup> For the reasons explained below, I am unable to agree with the Majority's decision.

18. To acquit Prlić and Petković of the detention related killing incidents appealed by the Prosecution under the relevant part of this sub-ground of appeal ("Detention Related Killings"),<sup>39</sup> the Trial Chamber relied primarily on the fact that Prlić and Petković could not have foreseen the deaths at Dretelj Prison and Vojno Detention Centre since they were informed of the harsh conditions and/or mistreatment in these detention facilities only after the incidents had occurred.<sup>40</sup> Without identifying a specific error in the Trial Chamber's reasoning, the Majority finds that "in the circumstances of this case" no reasonable trier of fact could have considered that the ability of Prlić and Petković to foresee that these killings might be committed was dependent upon their knowledge of specific circumstances at the Dretelj Prison and the Vojno Detention Centre.<sup>41</sup> I recall that the Appeals Chamber must give a margin of deference to a finding of fact reached by a trial chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable trier of fact may the Appeals Chamber substitute its own finding for that of the Trial Chamber.<sup>42</sup> The Majority fails to explain why it was unreasonable for a trier of fact to consider that the ability of Prlić and Petković to foresee that these killings might be committed depended on their

<sup>36</sup> Appeal Judgement, para. 3132. See also Appeal Judgement, paras 3122-3131.

<sup>37</sup> Appeal Judgement, para. 3054. See also Appeal Judgement, paras 3046-3053.

<sup>38</sup> Appeal Judgement, para. 3076. See also Appeal Judgement, paras 3067-3075.

<sup>39</sup> The killing incidents appealed by the Prosecution under the relevant part of this sub-ground of appeal are for Prlić, the killings of a Muslim detainee in Dretelj Prison on 16 July 1993 and a detainee in Vojno Detention Centre on 5 December 1993 and for Petković, the death of one Muslim detainee by dehydration as well as for the killing of three other detainees in Dretelj Prison in mid-July 1993. See Appeal Judgement, paras 3032-3033, 3035, 3054 (Prlić), 3056, 3058, 3076 (Petković).

<sup>40</sup> Trial Judgement, Vol. 4, paras 285-287 (Prlić), 825 (Petković). See Appeal Judgement, paras 3048 (Prlić), 3067 (Petković).

<sup>41</sup> Appeal Judgement, paras 3048 (Prlić), 3067 (Petković).

knowledge of the circumstances at Dretelj Prison and Vojno Detention Centre. This conclusion is, in my view, without foundation and exceeds the purview of the Appeals Chamber.

19. The reasoning of the Majority falls short of providing an explanation as to what the “circumstances of this case”<sup>43</sup> are. Nevertheless, it transpires that the disagreement lies on the fact that, according to the Majority’s assessment of the evidence, the Trial Chamber did not place sufficient weight on its findings and underlying evidence of contextual factors, such as: (1) the nature of the CCP; (2) the manner in which the CCP was implemented; (3) Prlić’s intent; and (4) Prlić’s knowledge of the climate of violence and crimes in other locations prior to the killings at issue.<sup>44</sup> I do not disagree that these findings, and the underlying evidence of contextual factors,<sup>45</sup> are relevant. I, however, do not see why they should prevail over the Trial Chamber’s determination.

20. I consider that a reasonable trier of fact could have concluded that the ability of Prlić and Petković to foresee that the Detention Related Killings might be committed was dependent on their knowledge of the circumstances at Dretelj Prison and Vojno Detention Centre. The Trial Chamber had to be convinced beyond reasonable doubt that the possibility that the Detention Related Killings at issue could be committed was *sufficiently substantial* as to be foreseeable to Prlić and Petković in particular.<sup>46</sup> If the Trial Chamber considered that the contextual factors listed by the Majority were not ultimately determinative and that Prlić’s and Petković’s ability to foresee the crimes was not established due to their lack of knowledge of the circumstances in the relevant detention facilities, I fail to see where an error would lie.

<sup>42</sup> Appeal Judgement, para. 22 referring to *Kupreškić et al.* Appeal Judgement, para. 30. See Appeal Judgement, para. 22 and references cited therein.

<sup>43</sup> Appeal Judgement, paras 3048 (Prlić), 3067 (Petković).

<sup>44</sup> Appeal Judgement, paras 3048, 3053 (Prlić), 3067, 3075 (Petković).

<sup>45</sup> See Appeal Judgement, paras 3048-3053 (relying in particular on Prlić’s intent for murder and wilful killing and for mistreatment of detainees, as well as his knowledge of killings, of unjustified mass arrests of Muslims, and of the climate of violence already in existence before July 1993, assessed in light of the nature of the CCP and the manner in which it was implemented). See Appeal Judgement, paras 3067-3073, 3075 (relying in particular on Petković’s intent for murder and wilful killing which he already possessed before July 1993, as well as his awareness as of May 1993 of the deplorable detention conditions and as of June 1993 of killings, in addition to his 15 July 1993 order to use detainees for forced labour on the front line). For the intent for murder and wilful killing, see para. 21 below.

<sup>46</sup> It is well established jurisprudence that foreseeability must be assessed in relation to the knowledge of a particular accused as what is natural and foreseeable to one person might not be natural and foreseeable to another, depending on the information available to them. See Appeal Judgement, para. 2836 and references cited therein. I do not disagree with the Majority’s assessment that Petković’s ability to foresee must be established in relation to each incident alleged and that this can be done by way of inference from circumstantial evidence, including contextual factors. However, the logical consequence of the statement that foreseeability must be established in relation to each incident alleged is that it was indeed reasonable for a trier of fact to conclude that Petković could not have foreseen the deaths of detainees at Dretelj Prison in mid-July 1993 because he “was informed of these events only several months after they occurred” by the ICRC Letter, not that these contextual factors should have superseded the Trial Chamber’s assessment. See Appeal Judgement, paras 3072-3073.

21. Moreover, the Majority also finds that “there is nothing in the Trial Judgement that suggests that the difference between the circumstances surrounding the killings at issue and other crimes is such that a reasonable trier of fact could have given only limited weight to all of these contextual factors for the killings at issue”.<sup>47</sup> However, from a plain reading of the Trial Judgement, it is clear that the Trial Chamber considered that there were sufficient differences between the circumstances surrounding the multiple killing incidents such that killings committed during attacks and by virtue of forced labour were considered to be crimes forming part of the CCP, while killings committed during evictions or closely linked to evictions and as a result of mistreatment and poor conditions of confinement were not.<sup>48</sup> The Majority did not otherwise overturn these findings and thus exceeds its purview in ignoring this distinction established by the Trial Chamber. This shows disregard for the margin of deference the Appeals Chamber is to give to the Trial Chamber’s assessment of the evidence and is merely the Majority substituting its preferred assessment of the evidence.

22. The considerations raised above showing the absence of error of fact in the Trial Chamber’s reasoning are even more important in a case like this one where the Prosecution’s appeal relates to an acquittal.<sup>49</sup> In my view, the Prosecution’s submissions ignore the Trial Chamber’s reasoning, simply propose a *de novo* analysis of the evidence, and fail to demonstrate that all reasonable doubt as to Prlić’s and Petković’s guilt for the Detention Related Killings at issue has been eliminated.<sup>50</sup>

23. For the foregoing reasons, I disagree with the Majority’s finding that the Prosecution has shown that all reasonable doubt as to Prlić’s and Petković’s guilt has been eliminated and that the Trial Chamber erred in failing to find, pursuant to JCE III liability, Prlić and Petković responsible for murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions for the Detention Related Killings. Rather than to grant the Prosecution’s sub-ground

<sup>47</sup> Appeal Judgement, paras 3049 (Prlić), 3068 (Petković).

<sup>48</sup> The Trial Chamber found that murders as crimes against humanity and wilful killings as grave breaches of the Geneva Conventions committed during attacks and by virtue of forced labour were part of the JCE (See Trial Judgement, Vol. 4, paras 66, 68, 342, 433, 1213) while other killings committed during evictions or closely linked to evictions and as a result of mistreatment and poor conditions of confinement were not (Trial Judgement, Vol. 4, paras 68, 70-73, 342, 433, 1213).

<sup>49</sup> I recall that when the Prosecution appeals against an acquittal, it must show that, when account is taken of the errors of fact committed by the trial chamber, all reasonable doubt of the accused’s guilt has been eliminated. See Appeal Judgement, para. 23.

<sup>50</sup> Appeal Judgement, paras 3041-3043 (Prlić), 3062-3063 (Petković). Since I am not convinced that the Prosecution has shown that the Trial Chamber erred in concluding that the killings of a Muslim detainee in Dretelj Prison on 16 July 1993 and a detainee in Vojno Detention Centre on 5 December 1993 were foreseeable to Prlić and that the death of one Muslim detainee by dehydration as well as for the killing of three other detainees in Dretelj Prison in mid-July 1993 were foreseeable to Petković, I do not find it necessary to address whether they willingly took the risk that these killings might be committed and also disagree with the Majority’s conclusion in this respect. See Appeal Judgement, paras 3053 (Prlić) 3074-3075 (Petković).

of appeal 1(E) and to decline to enter convictions on appeal,<sup>51</sup> I would dismiss the Prosecution's sub-ground of appeal 1(E) with respect to the Detention Related Killings.

3. Alleged failure to provide a reasoned opinion in relation to certain incidents (Prosecution's Sub-ground 1(C) in part)

24. I respectfully disagree with the Majority's granting, in part, of the Prosecution's sub-ground of appeal 1(C). I am not satisfied that the Prosecution has met its burden of proof to show that the Trial Chamber failed to provide a reasoned opinion in relation to Prlić's, Stojić's, Praljak's, Petković's, and Čorić's JCE III liability for the incidents not specifically addressed in the section on each Appellant's respective responsibility ("Appealed Incidents").<sup>52</sup>

25. I join the Majority's finding to dismiss the Prosecution's argument that the Trial Chamber failed to adjudicate Prlić's, Stojić's, Praljak's, Petković's, and Čorić's responsibility for the Appealed Incidents.<sup>53</sup> To reach this conclusion, the Appeals Chamber relies on a statement in the Trial Judgement – repeated prior to the discussion specific to the respective Appellants' responsibility under JCE - that "[a]s a preliminary matter, the [Trial] Chamber notes that it will address only the events for which it has evidence that might be relevant to its analysis of [each Appellant's] responsibility".<sup>54</sup> Considering this statement, the Appeals Chamber understands that the Trial Chamber considered that it had no evidence on the basis of which it could find that the JCE III requirements were met and, by extension, upon which it could find Prlić, Stojić, Praljak, Petković, and Čorić guilty in relation to the Appealed Incidents.<sup>55</sup> However, the Majority does not similarly consider that this statement constitutes a reasoned opinion in this case.<sup>56</sup>

26. I note that the sole substantive argument of the Prosecution is to point to a number of the Trial Chamber's findings and evidence which, in its view, show that the Appellants could have foreseen that these incidents might occur and that they willingly took that risk, and argues that a *de novo* review should lead to these conclusions.<sup>57</sup> However, rather than showing the absence of a

<sup>51</sup> Appeal Judgement, paras 3054-3055 (Prlić), 3076-3077 (Petković). I emphasise that while I do not agree that the Prosecution has shown any error of fact, I fully agree that the appropriate course of action in this case, if such an error is found, is to decline to enter new convictions on appeal in relation to the Detention Related Killings. See Appeal Judgement, paras 3055 (Prlić), 3077 (Petković).

<sup>52</sup> Appeal Judgement, para. 3114. For a precise list of the incidents appealed by the Prosecution under sub-ground of appeal 1 (C) see Appeal Judgement, fns. 10102-10121.

<sup>53</sup> Appeal Judgement, paras 3096-3097.

<sup>54</sup> Appeal Judgement, para. 3096 referring to Trial Judgement, Vol. 4, paras 76, 290, 454, 648, 857, 1025. The Appeals Chamber also relies on other Trial Chamber's findings made specifically in relation to Stojić and Čorić. See Appeal Judgement, para. 3096.

<sup>55</sup> Appeal Judgement, para. 3097.

<sup>56</sup> I note that the Prosecution does not mention this statement in its submissions. See Prosecution's Appeal Brief, paras 41-42, 81, 119, 156, 191, 236, 273-274.

<sup>57</sup> Prosecution's Appeal Brief, paras 8, 54-59, 69-81 (Prlić), 9, 85-89, 104-119 (Stojić), 10, 123-126, 141-155 (Praljak), 11, 160-166, 168-172, 180-183, 186-187, 189, 191 (Petković), 12, 198-206, 227-236 (Čorić).

reasoned opinion underpinning the acquittals, these arguments appear to impugn their correctness. They should have thus been rejected. Conversely, the Majority agrees with this argument. It finds that, because similar factors – to those pointed to by the Prosecution and potentially relevant<sup>58</sup> – were used in relation to the Trial Chamber’s assessment of other unrelated incidents, the Trial Chamber did not explain on what basis it considered that the factors were not relevant for the Appealed Incidents.<sup>59</sup> In my opinion this only shows that the Majority disagrees with the opinion of the Trial Chamber that there was no relevant evidence on the basis of which it could find that JCE III requirements were met for the Appealed Incidents but falls short of showing a failure to provide a reasoned opinion. A disagreement with an opinion rendered does not show that there was no such opinion, to the contrary.

27. Moreover, I do not disagree that the Trial Chamber’s intention in determining which incident deserved an express discussion in the respective JCE III sections in relation to each of the Appellants is not in all instances entirely apparent from a plain reading of the Trial Judgement.<sup>60</sup> However the analysis of the Majority goes far beyond the scope of the Prosecution’s submissions. The Prosecution did not point to possible inconsistencies between discussed and not discussed incidents. It did not provide support for its contention nor attempt to explain how, in light of the circumstances of the Appealed Incidents, the above-mentioned statement of the Trial Chamber would be insufficient to explain the acquittals.<sup>61</sup> Without parties’ submissions, it is not surprising that the Majority is *prima facie* unable to explain a number of questions in the Trial Chamber’s approach. In my view, the Majority is being lenient in its application of the standard of appellate review. I recall, as the Majority did, that there is an obligation for an appellant claiming an error of law because of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments that the trial chamber omitted to address and explain why this omission invalidates the decision.<sup>62</sup> In my opinion, the Prosecution’s submissions fall short of its obligation in this respect.

28. Indeed, the right to a reasoned opinion applies to both the accused and the Prosecution and “factual and legal findings on which a trial chamber relied upon to convict or acquit an accused should be set out in a clear and articulate manner”.<sup>63</sup> On the other hand, I observe that a trial chamber is not under the obligation to justify its findings in relation to every submission made during trial, and that it is within the trial chamber’s discretion as to which legal arguments to

<sup>58</sup> Appeal Judgement, para. 3100. See also, Appeal Judgement, paras 3101-3106.

<sup>59</sup> Appeal Judgement, para 3107.

<sup>60</sup> Appeal Judgement, paras 3108-3112.

<sup>61</sup> See Prosecution’s Appeal Brief, paras 41-42, 81, 119, 156, 191, 236, 273-274.

<sup>62</sup> Appeal Judgement, para. 3099 and references cited therein.

<sup>63</sup> Appeal Judgement, para. 3099 and references cited therein. Moreover, a reasoned opinion in a trial judgement is essential, *inter alia*, for allowing a meaningful exercise of the right of appeal by the parties and enabling the Appeals

address.<sup>64</sup> This is particularly the case when the submissions made at trial are deficient. In this regard, I observe that in the Prosecution's Final Brief, the Prosecution did not make specific submissions on the Appealed Incidents.<sup>65</sup> Rather - and despite the fact that what is natural and foreseeable to one person participating in a joint criminal enterprise depends on the information available to them<sup>66</sup> - the Prosecution merely raised broad and similar arguments that the evidence showed that all the JCE III crimes, were "natural and foreseeable consequence[s]" of the implementation of the JCE and that the Appellants were all aware that these crimes might occur.<sup>67</sup> This is particularly striking when compared to the level of detail that the Prosecution is now able to bring in its appeal brief.<sup>68</sup>

29. Taking into account the broad nature of the Prosecution's submissions at trial, especially in a case of this magnitude, I find that the Prosecution's mere assertion of error does not demonstrate that the Trial Chamber exceeded its discretion by addressing only the events for which it was satisfied that it had evidence that might be relevant to Prlić's, Stojić's, Praljak's, Petković's, and Čorić's JCE III liability. While in a perfect situation, the Trial Chamber would have discussed the Appealed Incidents in more detail, I believe that the burden of a reasoned opinion imposed on the Trial Chamber by the Majority is not reasonable in light of the size of this case and of the deficiency of the Prosecution's submissions. I would dismiss the Prosecution's sub-ground of appeal 1(C) entirely. Further, I emphasise that while I do not agree that the Prosecution has shown a failure to provide a reasoned opinion, I fully agree that the appropriate course of action in this case if such an error is found, is to decline to quash the acquittals entered by the Trial Chamber and appealed by the Prosecution under this sub-ground of appeal, or to order a retrial or a remittance.<sup>69</sup>

#### **D. Partially Dissenting Opinion: Alleged Errors Regarding the Calculation of Time Served**

30. The Majority finds that Stojić, Petković, Čorić, and Pušić have failed to show that the Trial Chamber erred in law in interpreting Rule 101(C) of the Rules when it excluded the periods of their

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Chamber to understand and review a trial chamber's findings and its evaluation of the evidence. Appeal Judgement, para. 3099 and references cited therein.

<sup>64</sup> See *Kvočka et al.* Appeal Judgement, para. 23.

<sup>65</sup> The Prosecution did not address the foreseeability of the Appealed Incidents to Prlić, Stojić, Praljak, Petković, or Čorić, nor did it argue that they willingly took the risk that such crimes could occur. See Prosecution's Final Brief, 516, 636, 850, 970, 1179.

<sup>66</sup> See *Šainović et al.* Appeal Judgement, para. 1575; *Kvočka et al.* Appeal Judgement, para. 86.

<sup>67</sup> Prosecution's Final Brief, paras 516, 636, 850, 970, 1179 ("The evidence proves beyond a reasonable doubt that the crimes of murder/wilful killing, rape/inhuman treatment and destruction of religious and educational institutions, as charged in Counts 2-5 and 21, were the natural and foreseeable consequence of [the] implementation of the Herceg-Bosna JCE. [Prlić, Stojić, Praljak, Petković or Čorić] was aware of the possibility that these crimes would occur. [Prlić, Stojić, Praljak, Petković or Čorić] bears responsibility for the crimes charged in Counts 2-5 and 21 under JCE Form 3").

<sup>68</sup> See Prosecution's Appeal Brief, paras 8-12, 54-59, 69-81, 85-89, 104-119, 123-126, 141-155, 160-166, 168-172, 180-183, 186-187, 189, 191, 198-206, 227-235.

<sup>69</sup> See Appeal Judgement, para. 3132. See also Appeal Judgement, paras 3122-3131.

provisional release from the calculation of time served in custody.<sup>70</sup> I respectfully disagree with the Majority's blanket finding that the conditions imposed on Stojić, Petković, Ćorić, and Pušić fall short of being tantamount to detention in custody.<sup>71</sup> For the reasons set out below, I consider that at the very least, the time spent on provisional release under conditions amounting to deprivation of liberty, such as full-time home or hospital confinement, should be taken into account for the calculation of time served pursuant to Rule 101(C) of the Rules.

31. Rule 101(C) of the Rules provides that “[c]redit shall be given to the convicted person for the period, if any, during which the convicted person was *detained in custody* pending surrender to the Tribunal or pending trial or appeal.”<sup>72</sup> When applying the rule, the Trial Chamber stated that credit for the time “spent in detention pending and during [Stojić, Petković, Ćorić, and Pušić’s] trial” should be taken into account “after deducting the time spent on provisional release granted to [them].”<sup>73</sup> The question before the Appeals Chamber is whether the Trial Chamber misinterpreted Rule 101(C) of the Rules, to the extent that certain provisional release periods must have been included in the calculation of time spent in “detention in custody”.<sup>74</sup> It is worth noting that it is the first time that the Appeals Chamber is called upon to address this issue of law.<sup>75</sup>

32. The Majority appears to consider that Tribunal practice is of primary relevance in addressing the issue at hand.<sup>76</sup> I do not disagree with the description of the practice of the Tribunal set out in the Appeal Judgement. However, I am not convinced that it supports, as the Majority considers, that when an accused has been provisionally released no credit will be given for the time spent on provisional release.<sup>77</sup> In my view, it rather supports the view that an individual assessment needs to be conducted in order to determine whether time spent on provisional release will be taken into account when calculating time served.<sup>78</sup> Even if that were a correct characterisation of the

<sup>70</sup> Appeal Judgement, paras 3336-3337.

<sup>71</sup> See Appeal Judgement, para. 3336.

<sup>72</sup> Emphasis added.

<sup>73</sup> Trial Judgement, Vol. 4, paras 1280, 1335-1336 (Stojić), 1362-1363 (Petković), 1374-1375 (Ćorić), 1385-1386 (Pušić).

<sup>74</sup> Appeal Judgement, para. 3328.

<sup>75</sup> Appeal Judgement, para. 3329.

<sup>76</sup> Appeal Judgement, paras 3332-3335.

<sup>77</sup> Appeal Judgement, para. 3335.

<sup>78</sup> Appeal Judgement, paras 3332-3334. The reference to the President of the Tribunal's decision in the *Tadić* case is, in my view, taken out of context. When rejecting Tadić's request that his time on provisional release should be considered in the determination of his eligibility for pardon or commutation of sentence, the President of the Tribunal considered that to do so “would be to violate the Trial Chamber's determination of what constituted time served by the Applicant and creditable against his sentence”. In other words, the President of the Tribunal did not consider that it was within his purview - when considering an application for early release - to reassess the final determination of the trial chamber that the time spent on provisional release was not to be credited as time served in that case. See *M. Tadić* 2004 Decision on Pardon or Commutation of Sentence, para. 4 & fn. 8. The trial chamber's ruling in the *Simić* case does not support the proposition that no credit will be given for time spent on provisional release. Rather it demonstrates that the Trial Chamber took into account the particular circumstances of the case to reach the conclusion that the conditions imposed on Simić, namely that he was allowed to leave his house albeit with certain limitations, were not of such a nature that they amounted to “house arrest” or “detention in custody” for the purpose of Rule 101(C) of the Rules. See *M. Simić*



Tribunal's practice, practice does not automatically reflect applicable law.<sup>79</sup> Rather than providing a definition of "detention in custody" for the purpose of Rule 101(C), the Majority limited its assessment to this inconclusive description of the Tribunal's practice.

33. Moreover, the Majority rejects the possibility that ECtHR caselaw could assist in the determination of the issue.<sup>80</sup> Relevant ECtHR jurisprudence relates to whether restrictions on movement other than the typical confinement in a cell may constitute deprivations of liberty within the meaning of Article 5(1) of the ECHR.<sup>81</sup> Such a determination is to be carried out on a case by case basis and hinges on the "concrete situation [of the applicant] and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question".<sup>82</sup> Even if the ECtHR's methodology to determine what amounts to "deprivation of liberty" for the purpose of Article 5(1) of ECHR is not binding on the Tribunal in its determination of what amounts to "detention in custody" for Rule 101(C) of the Rules,<sup>83</sup> I am of the view that, in the absence of established Tribunal jurisprudence, the ECtHR's jurisprudence has persuasive power in this case. In particular, I fully agree with the ECtHR's statement that the difference between deprivation of liberty and restriction upon liberty is merely one of degree or intensity and not one of nature or substance.<sup>84</sup> In addition, relying on the ECtHR's methodology to determine the meaning of "detention in custody" in this case would be consistent with the approach

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Sentencing Judgement, para. 119. As to the reference to the *Popović et al.* Trial Judgement, if anything, it shows that on some occasions when the conditions of the release are very stringent, those periods have been credited by the trial chamber in the calculation of time served. See *Popović et al.* Trial Judgement, Vol. 2, Disposition, pp. 828-830, 832. The remaining examples from the *Popović et al.* case are of little assistance here as none of the periods of provisional release in the present case required an accused to spend the night at a detention facility. I also do not agree that it can be inferred from the *Popović et al.* case that the custodial release it ordered is distinct from provisional release simply because in some other instances in the same case, the trial chamber did not give credit for the period of provisional release. Indeed, even though there is no discussion from the *Popović et al.* trial chamber on that point, it may well be that the trial chamber in that case considered that in the particular circumstances of that case, the conditions imposed on the accused during provisional release did not amount to detention in custody for the purpose of Rule 101(C) of the Rules. See Appeal Judgement, para. 3334, referring to *Popović et al.* Trial Judgement, Disposition, pp. 830-831; *Popović et al.* Trial Judgement, Annex 2, paras 60-61.

<sup>79</sup> I further recall that decisions of trial chambers have no binding force on each other or on the Appeals Chamber. See *Aleksovski* Appeal Judgement, para. 114.

<sup>80</sup> Appeal Judgement, para. 3330.

<sup>81</sup> See *Guzzardi* Decision, para. 92; *Ciobanu* Decision, para. 62; *Lavents* Decision, paras 62-63.

<sup>82</sup> *Guzzardi* Decision, para. 92. See also *Lavents* Decision, para. 62.

<sup>83</sup> I recall that the Appeals Chamber is not bound by the findings of other courts – domestic, international, or hybrid – and that, even though it will consider such jurisprudence, it may nonetheless come to a different conclusion on a matter from that reached by another judicial body. See *Stanišić and Župljanin* Appeal Judgement, para. 598, referring to *Dorđević* Appeal Judgement, para. 83, *Čelebići* Appeal Judgement, para. 24. See Appeal Judgement, para. 3329.

<sup>84</sup> *Guzzardi* Decision, para. 93. See also *Lavents* Decision, para. 62. I therefore do not understand the distinction that the Majority draws between Rules 64 and 65 of the Rules in relation to the *Blaškić* Decision on Rule 64. The Majority states that the *Blaškić* case is distinguishable from the situations of *Stojić*, *Petković*, *Čorić*, and *Pušić*, in that *Blaškić* was not provisionally released pursuant to Rule 65 of the Rules, but detained at a place other than the UNDU in accordance with Rule 64 of the Rules. It is hard for me to understand how some of the liberty infringement imposed in this case, like full-time home/hospital confinement, differs from house arrest, described in the *Blaškić* case, which the President considered as a form of detention for which credit was given as time served. See Appeal Judgement, para. 3332; *Blaškić* Decision on Rule 64, paras 12, 18.

adopted elsewhere in the Judgement for the definition of the crimes of imprisonment and unlawful confinement of civilians.<sup>85</sup>

34. In my opinion, Tribunal practice and ECtHR jurisprudence<sup>86</sup> support a finding that an assessment of the time spent by Stojić, Petković, Ćorić, and Pušić on provisional release needs to be conducted on an individual basis in order to determine whether any restrictions on their freedom of movement were such that they amounted to a deprivation of liberty and thus “detention in custody” for the purpose of calculating time served.

35. I consider that most of the time spent on provisional release by Stojić, Petković, Ćorić, and Pušić would not *ipso facto* amount to deprivation of liberty and thus detention in custody for the purpose of calculating time served.<sup>87</sup> However, on a number of occasions, the Trial Chamber imposed extremely restrictive conditions of provisional release on Stojić, Petković, Ćorić, and Pušić - for example full-time home confinement or confinement in designated places when they were provisionally released for medical treatment or other confidential reasons that justified release.<sup>88</sup> In these instances, I cannot agree with the Majority that the conditions imposed on Stojić, Petković, Ćorić, and Pušić fall short of being tantamount to detention in custody.<sup>89</sup> It is clear that the absence of any kind of freedom of movement in these cases lead to a conclusion that the accused were deprived of liberty despite being on provisional release. The time spent on provisional release under such conditions should thus be taken into account in calculating time served. This interpretation is supported by ECtHR jurisprudence which suggests that full-time house/hospital confinement amounts to deprivation of liberty,<sup>90</sup> equivalent in my view to detention in custody for the calculation of time served. Moreover, both the ECtHR jurisprudence and the practice of a number

<sup>85</sup> In the section regarding the arrest and detention of civilians, the Appeals Chamber considers that confinement in houses guarded by HVO even in some cases with some limited freedom of movement can amount to deprivation of liberty. See Appeal Judgement, paras 471-479 (Arrest and detention of civilians from Duša, Hrasnica, Uzričje, and Ždrimci), 508-515 (Arrest and detention of civilians from Prozor).

<sup>86</sup> I further consider that the SCSL President’s approach to determining whether home confinement is a form of detention, which hinges on the level of control exercised by the detaining authority, is also consistent with the approach described in this paragraph. See *Norman* Decision, paras 4, 12.

<sup>87</sup> See Appeal Judgement, para. 3336 & fn. 11040 and references cited therein.

<sup>88</sup> See Appeal Judgement, para. 3336 & fns 11041-11042 and references cited therein.

<sup>89</sup> See Appeal Judgement, para. 3336. The Majority further states that “all of these conditions of provisional release were necessary in order to ensure their compliance with the requirements under Rule 65 of the Rules” including their appearance at trial. See Appeal Judgement, para. 3336. In my view, this consideration, which relates to the justification behind the imposition of conditions for provisional release, is irrelevant to the issue of whether the degree of constraint imposed upon the accused during periods of provisional release can amount to “detention in custody”.

<sup>90</sup> In the *Mancini v. Italy* case, though noting that house arrest was “a more lenient form of detention than a traditional prison regime”, the ECtHR held that “in view of their effects and their manner of implementation, both imprisonment and *house arrest* amounted to a deprivation of the applicants’ liberty for the purposes of Article 5 § 1 (c) of the Convention ECHR. *Mancini v. Italy*, Application No. 44955/98, Judgement of 12 December 2001, para. 17. In a similar vein, the ECtHR concluded in the *Lavents v. Latvia* case that full-time house and hospital confinement amounted to a “deprivation of liberty”. See *Lavents* Decision, para. 62. See also *Guzzardi* Decision, para. 95; *Ciobanu* Decision, paras 62-63.

of States - like Italy,<sup>91</sup> Bulgaria,<sup>92</sup> Portugal,<sup>93</sup> Azerbaijan,<sup>94</sup> Macedonia,<sup>95</sup> Hungary,<sup>96</sup> Germany,<sup>97</sup> China,<sup>98</sup> Russia,<sup>99</sup> and Japan<sup>100</sup> for instance<sup>101</sup> - support that there is an emerging rule in customary international law that provisional release under restrictive conditions such as full-time home confinement or hospital confinement shall be taken into account for the calculation of time served. In my view, Rule 101(C) of the Rules should be read according to this approach. Finally, while not determinative, I consider that, contrary to the Majority view, some of the provisions of Croatian law support the proposition that strict conditions on bail warrant a deduction of that time from the sentence to be served.<sup>102</sup>

36. For the same reasons, I consider that the conditions imposed on Pušić during the period of provisional release granted during the appeal phase due to, *inter alia*, the unavailability of the appropriate medical treatment at the UNDU, amount to full-time home confinement and should be considered as “detention in custody”<sup>103</sup> and included in the calculation of time served by Pušić.<sup>104</sup>

<sup>91</sup> See Articles 284(1)&(5) 657(1), Codice di Procedura Penal (Italy), in force as of 22 September 1988 (<http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-di-procedura-penale>).

<sup>92</sup> Article 59(1), Criminal Code of the Republic of Bulgaria, Publication State Gazette No. 26/02.04.1968, in force as of 01 May 1968, Last amendment SG No. 32/27.04.2010, in force as of 28 May 2010 (<http://www.legislationline.org/documents/action/popup/id/8881/preview>).

<sup>93</sup> Article 80(1), the Portuguese Penal Code (General Part) (<http://www.legislationline.org/documents/section/criminal-codes> (unofficial translation)).

<sup>94</sup> Article 158(2)&(6), Code of Criminal Procedure of the Azerbaijan Republic, adopted on 14 July 2000 (<http://www.legislationline.org/download/action/download/id/1659/file/dddecee81440fa5295fc11e6b2b1.htm/preview>).

<sup>95</sup> See Articles 163(1)&(6), 248(7) and 404(1), Code of Criminal Procedure of Macedonia, Official gazette No. 150 from 18 November 2010 ([https://www.unodc.org/res/cld/document/mkd/1996/criminal-procedure-code-of-the-republic-of-macedonia-as-of-2010\\_html/FYROM\\_Criminal\\_procedure\\_code\\_as\\_of\\_2010\\_English.pdf](https://www.unodc.org/res/cld/document/mkd/1996/criminal-procedure-code-of-the-republic-of-macedonia-as-of-2010_html/FYROM_Criminal_procedure_code_as_of_2010_English.pdf) (unofficial translation)).

<sup>96</sup> Section 92(1)&(3), Act C of 2012 on the Criminal Code of Hungary (2012) (<http://www.legislationline.org/document/s/section/criminal-codes>).

<sup>97</sup> Section 116(1), Code of Criminal Procedure in the version published on 7 April 1987 (Federal Law Gazette [Bundesgesetzblatt] Part I p. 1074, 1319), as most recently amended by Article 3 of the Act of 23 April 2014 (Federal Law Gazette Part I p. 410); Section 51(1), Criminal Code in the version promulgated on 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] I p. 3322, last amended by Article 1 of the Law of 24 September 2013, Federal Law Gazette I p. 3671 and with the text of Article 6(18) of the Law of 10 October 2013, Federal Law Gazette I p. 3799. ([https://www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html](https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html))

<sup>98</sup> Article 73, Criminal Procedure Law of the People’s Republic of China, Order No. 55 of the President of the People’s Republic of China, in force as of 1 January 2013 (<https://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-peoples-republic-of-china>).

<sup>99</sup> Articles 107, 109(10) and 308(9), Criminal Procedure Code of the Russian Federation, Federal Law No. 420-FZ of 7 December 2011, in force as of 1 January 2012 (<http://legislationline.org/documents/section/criminal-codes>).

<sup>100</sup> Articles 95 and 167(1)&(5), Code of Criminal Procedure of Japan, Act No. 74 of 2011 (<http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=04&re=02> (unofficial translation)).

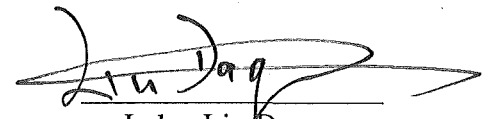
<sup>101</sup> This list is not exhaustive. It only intends to show that there is considerable support in national legislation to support the proposition that provisional release under restrictive conditions such as house arrest under full-time home confinement or hospital confinement should be taken into account for the calculation of time served.

<sup>102</sup> I observe that Article 54 of the Croatian Penal Code to which Petković refers provides that “[t]ime spent in custody and remand, as well as any deprivation of freedom related to the criminal offense shall be included as a part of [the] prison sentence”. It should be read together with Articles 119 and 120 of the Croatian Law on Criminal Proceedings to which Petković refers, which provide that, a person under “home detention” shall be prohibited from leaving his home and that home detention shall be treated in the same way as “investigative detention” which I understand means pre-trial detention. See Petković’s Appeal Brief, Annex V.

<sup>103</sup> The conditions imposed by the Appeals Chamber on Pušić’s provisional release include an obligation to remain at all times at the address indicated in his application, save for his presence at a designated location for required treatment, under 24-hours surveillance. See 24 July 2014 Pušić Provisional Release Decision, para. 19. His provisional release was

37. In my view, the Trial Chamber erred by failing to conduct an individual assessment and by excluding all periods of provisional release from the calculation of time served. Moreover, this individual assessment lead me to conclude that, at a minimum, period's equivalent with full-time home/hospital confinement ordered at trial or during the appeals phase of the proceedings should be taken into account for the calculation of time served. In light of the foregoing, I cannot concur with the Majority's conclusion that Stojić, Petković, Ćorić, and Pušić have failed to show that the Trial Chamber erred in law in interpreting Rule 101(C) of the Rules when it excluded the periods of provisional release from the calculation of time served.<sup>105</sup> I would partially grant Stojić's, Petković's, Ćorić's, and Pušić's relevant grounds of appeal.

Done in English and French, the English text being authoritative.



Judge Liu Daqun

Dated this twenty-ninth day of November 2017,

At the Hague,

The Netherlands.

[Seal of the Tribunal]

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extended on medical grounds through a series of decisions issued by the Appeals Chamber on the same conditions. See Decision on Berislav Pušić's Application for an Extension of His Provisional Release, 27 January 2015 (confidential and *ex parte*); Decision on Berislav Pušić's Application for a Further Extension of His Provisional Release, 22 July 2015 (confidential and *ex parte*); Order Granting a Temporary Extension of Berislav Pušić's Provisional Release, 27 January 2016 (confidential and *ex parte*); Decision on Berislav Pušić's Application to Further Extend Provisional Release on Medical Grounds, 22 July 2016 (confidential and *ex parte*), para. 23; Decision on Berislav Pušić's Application to Further Extend Provisional Release on Medical Grounds, 19 January 2017 (confidential and *ex parte*), p. 5; Decision on Berislav Pušić's Application to Further Extend Provisional Release on Medical Grounds, 13 July 2017 (confidential and *ex parte*), p. 4.

<sup>104</sup> See *contra*, Appeal Judgement, para. 3336.

<sup>105</sup> Appeal Judgement, paras 3336-3337.

#### XIV. DISSENTING OPINIONS OF JUDGE FAUSTO POCAR

##### A. Alleged Errors Concerning the JCE Theory (Stojić's Ground 13, Petković's Sub-Ground 3.1)

1. In this Appeal Judgement, the Appeals Chamber considers, by majority, that “the Prosecution’s Final Brief cannot be reasonably interpreted to mean that the Prosecution abandoned JCE I as a possible mode of liability for some crimes by qualifying those crimes as only JCE III crimes” and found that “the Prosecution did not expressly and formally withdraw JCE I as a form of liability that could possibly be applied to all counts”.<sup>1</sup> Accordingly, the Appeals Chamber finds, by majority, that Stojić and Petković have failed to demonstrate “that their fair trial rights were violated, or that the Trial Chamber impermissibly altered the Prosecution’s case.”<sup>2</sup> I respectfully disagree with the reasoning and the findings of the Majority.

2. In particular, I strongly disagree with the Majority regarding its findings that: (i) the Prosecution did not withdraw JCE I as a mode of liability for murder as a crime against humanity (Count 2), wilful killing as a grave breach of the Geneva Conventions (Count 3), and destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); (ii) the Trial Chamber did not impermissibly mould the case of the Prosecution to include murder as a crime against humanity (Count 2), wilful killing as a grave breach of the Geneva Conventions (Count 3), and destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21), thereby exceeding the scope of the JCE I crimes pleaded at trial; and (iii) the Appellants have not demonstrated that their fair trial rights were violated.

3. The Majority errs in finding that the Prosecution did not withdraw its charges under JCE I of murder as a crime against humanity (Count 2), wilful killing as a grave breach of the Geneva Conventions (Count 3), and destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21) in the Prosecution’s Final Brief.<sup>3</sup> While correctly emphasising that the Prosecution “qualif[ied] those crimes as *only* JCE III crimes”, the Majority fails to consider the significance of this limitation as constituting a withdrawal of the charges for Counts 2, 3, and 21 under JCE I.<sup>4</sup> For these crimes, the Prosecution only attributes responsibility of the Appellants under JCE III liability; nowhere in the Prosecution’s Final Brief does it assert that it was also, or in the alternative, charging the Appellants under JCE I

<sup>1</sup> Appeal Judgement, para. 60.

<sup>2</sup> Appeal Judgement, para. 63.

<sup>3</sup> Appeal Judgement, para. 60.

<sup>4</sup> Appeal Judgement, para. 60 (emphasis added).

for these crimes.<sup>5</sup> This sole, unequivocal characterisation of the form of JCE under which the Appellants were alleged to be responsible for Counts 2, 3, and 21 – that is, under JCE III – in the Prosecution’s Final Brief constitutes a manifest, express abandonment of the JCE I charges for these crimes. Withdrawing charges in a prosecution final trial brief, either expressly or implicitly, is an accepted practice of this Tribunal and the ICTR.<sup>6</sup> In this respect, the Majority mischaracterises the Prosecution’s argument when referring to footnote 2 of the Prosecution’s Final Brief, which unambiguously states that this “section described the crimes involved in the JCEs. The accused are also responsible for those crimes pursuant to other modes of liability contained in Articles 7(1) and 7(3).”<sup>7</sup> The Prosecution refers in this footnote to other modes of liability, that are not commission through a JCE under Article 7(1) of the Statute, such as planning and aiding and abetting as well as superior responsibility under Article 7(3) of the Statute.<sup>8</sup> Regarding “the crimes involved in the JCEs”, the Majority disregards that the Prosecution specifically lists the crimes falling under each form of JCE and, in so doing, limits Counts 2, 3, and 21 as falling under JCE III *only*, and not under JCE I or JCE II.<sup>9</sup> In light of the unequivocal abandonment of the charges under JCE I for Counts 2, 3, and 21, the Majority compounds the Trial Chamber’s error of impermissibly exceeding the Prosecution’s case, and moulding its own, by finding that these crimes were JCE I crimes.<sup>10</sup> As a result, the Majority erred in failing to recognise that the Trial Chamber violated the fair trial rights of the Appellants.

4. The Majority exacerbates the Trial Chamber’s error of impermissibly expanding and recharacterising the Prosecution’s case resulting in the Appellants being convicted for multiple incidents of murder as a crime against humanity (Count 2), wilful killing as a grave breach of the Geneva Conventions (Count 3), and destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21) under JCE I, which is detrimental to the Appellants and, at the very least, in violation of the principle of *in dubio pro*

<sup>5</sup> Prosecution’s Final Brief, paras 60, 62, 516, 636, 850, 970, 1179, 1276, which list Counts 2, 3, and 21 alleging liability under JCE III *compare with* Prosecution’s Final Brief, paras 513, 633, 847, 967, 1176, 1273, which do not list Counts 2, 3, and 21 but allege liability for other counts under JCE I.

<sup>6</sup> See *Ntagerura et al.* Appeal Judgement paras 148-150 (stating that because the “facts that may form the basis for a 6(3) conviction are systematically omitted” from the Prosecution Final Trial Brief, “the Appeals Chamber considers that the Prosecution failed to pursue the charges [...] under Article 6(3) of the Statute” and that “for the foregoing reasons, the Trial Chamber could not have entered a finding of guilt under Article 6(3) of the Statute”), 164 (concluding that the appellant “was entitled to infer from the post-indictment filings that the Prosecution had decided not to pursue the Gashirabwoba charges based on Article 6(3) of the Statute”); *Setako* Appeal Judgement, para. 256. See also *Popović et al.* Trial Judgement, fns. 1614, 2866 referring to allegations abandoned by the Prosecution in the corrigendum to its final brief.

<sup>7</sup> Appeal Judgement, para. 61 & fn. 217; Prosecution’s Final Brief, fn. 2.

<sup>8</sup> See also Prosecution’s Final Brief, paras 517-526, 637-646, 851-860, 971-980, 1180-1189, 1277-1284.

<sup>9</sup> Prosecution’s Final Brief, paras 516, 636, 850, 970, 1179, 1276, which are all paragraphs explaining the alleged culpability of the Appellants under JCE III. These paragraphs fall under an Appellant specific heading which indicates that each Appellant “is guilty of the crimes that were a natural and foreseeable consequence of the Herceg-Bosna JCE (JCE Form 3)”.

<sup>10</sup> Trial Judgement, Vol. 4, paras 66, 68.

*reo.*<sup>11</sup> The Majority should have remedied the Trial Chamber's error on appeal in favour of the Appellants. Accordingly, in strict compliance with the standard of appellate review – as an appeal is not a trial *de novo* – the Appeals Chamber should have remanded this case or ordered a limited retrial to reassess the scope of the CCP of the JCE I in this case in light of the removal of Counts 2, 3, and 21 and to determine the Appellants' liability under JCE III or any of the other modes of liability charged under 7(1) and 7(3) of the Statute for these counts.<sup>12</sup>

**B. Alleged Errors Relating to Wanton Destruction of Cities, Towns Or Villages Or  
Devastation Not Justified by Military Necessity**

**1. The Old Bridge of Mostar (Praljak's Ground 23 in part, Petković's Ground 5.2.2.4 in part and  
Praljak's responses to Prosecution's Ground 3**

5. In this Appeal Judgement, the Appeals Chamber finds, by majority, that the "Trial Chamber erred in finding that the destruction of the Old Bridge of Mostar constituted the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war" under Count 20.<sup>13</sup> Accordingly, the Appeals Chamber, by majority, dismisses the relevant part of the Prosecution's ground of appeal 3 and thereby does not find the Appellants responsible for wanton destruction not justified by military necessity, as a violation of the laws or customs of war (Count 20) for the destruction of the Stari Most ("Old Bridge of Mostar").<sup>14</sup> I respectfully disagree with the reasoning and any major conclusions of the Majority.

<sup>11</sup> Trial Judgement, Vol. 4, Disposition. See also *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 16 October 1998, para. 73 stating that: "any doubt should be resolved in favour of the Appellant in accordance with the principle *in dubio pro reo.*"

<sup>12</sup> See *Stanišić and Simatović* Appeal Judgement, paras 125-127; *Orić* Appeal Judgement, paras 186-187; *Krajišnik* Appeal Judgement, para. 798.

<sup>13</sup> Appeal Judgement, para. 411. See also Appeal Judgement, para. 393, explaining that while the Trial Chamber found that the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war under Count 20 had been committed, it failed to enter convictions for these crimes due to an erroneous conclusion in its cumulative convictions analysis.

<sup>14</sup> Appeal Judgement, para. 414. With respect to the relevant portion of the Prosecution ground of appeal 3, I strongly reiterate my previously stated position that the Appeals Chamber does not have the power to remedy an error of the Trial Chamber by subsequently entering a new conviction on appeal. As required by the fundamental principles of international human rights law, which the Appeals Chamber is bound to apply under Article 24(2) of the Statute of the Tribunal, the right to appeal a conviction should be granted to an accused before the Tribunal in all situations. Accordingly, while I would affirm the findings of the Trial Chamber that the destruction of the Old Bridge of Mostar constitutes wanton destruction not justified by military necessity, as a violation of the laws or customs of war (Count 20) and find the Appellants responsible for that crime, I would, as a remedy, decline to enter new convictions against the Appellants for this crime. *Popović et al.* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, paras 1-4; *Mrkšić and Šljivančanin* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, pp. 171-177, paras 1-13; *Galić* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, p. 187, para. 2; *Semanza* Appeal Judgement, Dissenting Opinion of Judge Pocar, pp. 131-133, paras 1-4; *Rutaganda* Appeal Judgement, Dissenting Opinion of Judge Pocar, pp. 1-4; *Setako* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, paras 1-6; *Gatete* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, pp. 90-91, paras 1-5.

6. The Indictment charged the Appellants under Counts 1, 20, and 25 for the “Herceg-Bosna/HVO forces destroy[ing] the Stari Most” Bridge on 9 November 1993.<sup>15</sup> The Trial Chamber relied on its finding that the destruction of the Old Bridge of Mostar constituted wanton destruction not justified by military necessity, as a violation of the laws or customs of war (Count 20) as a basis for its findings that the HVO committed both persecutions on political, racial, and religious grounds as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),<sup>16</sup> and thereby convicted the Appellants for these crimes in relation to the Old Bridge of Mostar.<sup>17</sup> The elements of the crime of wanton destruction not justified by military necessity are: (i) the destruction of property occurring on a large scale; (ii) the destruction is not justified by military necessity; and (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.<sup>18</sup>

7. In this context, I disagree with the Majority with respect to: (i) it erroneously conflating the notion of a military target with that of military necessity; (ii) its failure to discuss the fact that the attack on the Old Bridge of Mostar was disproportionate and the consequences thereof; (iii) its failure to account for the fact that the Old Bridge of Mostar constitutes cultural property protected under the general principles of international humanitarian law (“IHL”); and (iv) the consequences of the above errors with respect to persecutions on political, racial, and religious grounds as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws of customs of war (Count 25).

(a) Military necessity<sup>19</sup>

8. The Majority reasons that because “the Trial Chamber found that the Old Bridge was a military target at the time of the attack, and, thus, its destruction offered a definite military advantage, [...] it cannot be considered, in and of itself, as wanton destruction not justified by military necessity.”<sup>20</sup> In so doing, the Majority errs in conflating the well-established IHL notion of military target or military objective and the principle of military necessity. The Majority errs when reasoning that because the Old Bridge of Mostar was a military target, its destruction was justified by military necessity. In line with Article 52(1) of the Additional Protocol I of the Geneva Conventions (“AP I”), a military objective or military target consists of “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or

<sup>15</sup> Indictment, para. 116. See also Indictment, para. 229.

<sup>16</sup> Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713.

<sup>17</sup> See Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713, Vol. 4, para. 59, Disposition.

<sup>18</sup> *Kordić and Čerkez* Appeal Judgement, paras 74-76.

<sup>19</sup> See Trial Judgement, Vol. 3, paras 1582-1584. See also Trial Judgement, Vol. 2, paras 1284-1290, 1354, 1357.

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partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage".<sup>21</sup> While I do not disagree with the Majority that the Old Bridge of Mostar could be classified as a military objective,<sup>22</sup> I strongly disagree with the Majority's reasoning that the Old Bridge of Mostar being a military objective is *per se* determinative of the issue of whether or not its destruction was justified by military necessity.<sup>23</sup> The notion of justified by military necessity is distinct from and more stringent than that of a military objective. According to the jurisprudence of the Appeals Chamber, military necessity is defined as "the necessity of those measures which are indispensable for securing the ends of the war, and which are *lawful* according to the modern law and usages of war".<sup>24</sup>

9. Under IHL, the means and methods for engaging in an attack in an armed conflict are not unlimited.<sup>25</sup> The Geneva Conventions, their Additional Protocols, various treaties, and customary international law govern the lawfulness of attacks under IHL. While there are various provisions of IHL, the three most general protections governing the lawfulness of an attack under IHL are distinction, proportionality, and precaution.<sup>26</sup> According to IHL, an attack is unlawful if it violates, *inter alia*, any of these three principles. In this context, the paucity of the Majority's discussion on the lawfulness of the attack on the Old Bridge of Mostar is glaring. Perhaps most glaring is the Majority's scant discussion on the disproportionate nature of the attack,<sup>27</sup> which is a dispositive finding that the Majority appears to uphold.<sup>28</sup> The Majority appears to even be aware of its own flawed reasoning as it observes that the Trial Chamber, "having discussed the question of proportionality, did not enter a discrete finding that the destruction was not justified by military

<sup>20</sup> Appeal Judgment, para. 411 (internal citations omitted).

<sup>21</sup> *Kordić and Čerkez* Appeal Judgement, para. 53 quoting Article 52(1) of AP I. This is also the definition applicable to Articles 51 and 52 of AP I. AP I constitutes customary international law and did so at the time of the relevant conflict. See *Kordić and Čerkez* Appeal Judgement, para. 59. The same is true of Additional Protocol II of the Geneva Conventions, however as this case concerns an international armed conflict, this dissent only discusses the relevant provisions of AP I.

<sup>22</sup> While I am of the view that the nature of the Old Bridge of Mostar as cultural property is controlling in this case, with respect to the Trial Chamber's findings that the Old Bridge of Mostar was real property normally used by civilians but also essential to the ABiH for military purposes, I note that some IHL scholars might classify the Old Bridge of Mostar as a "dual use" object. See *e.g.*, Shue, Henry and Wippman, David (2002) "Limiting Attacks on Dual-Use facilities Performing Indispensable Civilian Functions," *Cornell International Law Journal*, Vol. 35, Iss. 3, Article 7. See also Trial Judgement, Vol. 3, para. 1582; Trial Judgement, Vol. 2, paras 1284-1293.

<sup>23</sup> See Appeal Judgement, para. 411.

<sup>24</sup> *Kordić and Čerkez* Appeal Judgement, para. 686 (emphasis added) quoting Article 14 of the Lieber Code. See also *Hostage Trial Case*, pp. 1255-1256 ("Military necessity or expediency do not justify a violation of positive rules.").

<sup>25</sup> See AP I, Art. 35(1), which states that in "any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited". See also Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 200 Grammes Weight, Saint Petersburg, 29 November 1868, which is the first multilateral agreement limiting the methods and means of warfare.

<sup>26</sup> See AP I, Arts 48, 51(2), 51(5)(b), 52(2), 57-58.

<sup>27</sup> Appeal Judgement, para. 411.

<sup>28</sup> Appeal Judgement, para. 411, which states; "Rather, in reaching its conclusion that the attack on the Old Bridge was disproportionate, the Trial Chamber found that the attack isolated the Muslim population in Mostar and caused a very significant psychological impact".

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necessity”.<sup>29</sup> However, instead of addressing this issue, the Majority buries this observation in a footnote and repeats this same mistake.<sup>30</sup> In this respect, the Majority’s silence on the disproportionate nature of the attack on the Old Bridge of Mostar is both misleading and legally incorrect; a disproportionate attack is *per se* unlawful and therefore cannot be justified by military necessity.<sup>31</sup>

(b) The notion of proportionality

10. The Trial Chamber found that the destruction of the Old Bridge of Mostar put the residents of Donja Mahala in “virtually total isolation”, resulting in a serious deterioration of the humanitarian situation for the population living there, and had a “very significant psychological impact on the Muslim population” there.<sup>32</sup> The Trial Chamber further noted that the HVO’s destruction of the Kamenica Bridge a few days later definitively cut off *all* access across the Neretva River in Mostar and recalled evidence that the local community in Donja Mahala was “without supplies of food or medicines”.<sup>33</sup> It also found that the destruction of the Old Bridge of Mostar “seriously exacerbat[ed] the humanitarian situation” of the people living on the right bank of the Neretva river.<sup>34</sup> The Trial Chamber therefore found that the impact of the destruction of the Old Bridge of Mostar on the Muslim civilian population of Mostar was *disproportionate to the concrete and direct military advantage expected*.<sup>35</sup> The Majority fails to demonstrate that the Trial Chamber erred in this regard.

11. Additionally, the Trial Chamber further found that the “destruction of the Old Bridge [...] was extensive” and that it was intended by the HVO command, thereby sapping the morale of the Muslim population.<sup>36</sup> The Trial Chamber therefore concluded that by destroying the Old Bridge of Mostar, the HVO committed the crime of wanton destruction not justified by military necessity, a violation of the laws or customs of war (Count 20) – a crime under Article 3 of the Statute.<sup>37</sup> Notably, the Majority leaves all the above findings of the Trial Chamber untouched, including the

<sup>29</sup> Appeal Judgement, fn. 1258.

<sup>30</sup> Appeal Judgement, fn. 1258.

<sup>31</sup> See *Kordić and Čerkez* Appeal Judgement, para. 686 quoting Article 14 of the Lieber Code. See also *Hostage Trial Case*, pp. 1255-1256 (“Military necessity or expediency do not justify a violation of positive rules.”). See also AP I, Art. 51(5)(b) which clearly sets out that indiscriminate attacks are prohibited and defines indiscriminate attacks to include those that are disproportionate or in other words, those attacks that “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.

<sup>32</sup> Trial Judgement, Vol. 3, para. 1583. See Trial Judgement, Vol. 2, paras 1354, 1356-1357; Trial Judgement, Vol. 3, para. 1586.

<sup>33</sup> Trial Judgement, Vol. 2, para. 1292. See also Trial Judgement, Vol. 3, para. 1583; Trial Judgement, Vol. 2, para. 1355.

<sup>34</sup> Trial Judgement, Vol. 2, para. 1293.

<sup>35</sup> Trial Judgement, Vol. 3, para. 1584.

<sup>36</sup> Trial Judgement, Vol. 3, paras 1585-1586.

<sup>37</sup> Trial Judgement, Vol. 3, para. 1587.

overall conclusion that the attack was disproportionate in nature. Accordingly, I disagree with the conclusions of the Majority and find that all requisite elements of the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war (Count 20) were established.<sup>38</sup>

(c) The implications of the Old Bridge of Mostar being cultural property

12. While I am of the view that the destruction of the Old Bridge of Mostar, in this case, constitutes the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war, because of the remarkable cultural significance of the Old Bridge of Mostar, I would be remiss not to discuss the additional protections afforded to the bridge – under IHL – as a landmark constituting cultural property.<sup>39</sup> En passant, I note the missed opportunity of the Prosecutor in failing to specifically charge the destruction of the Old Bridge of Mostar as “destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science” under Article 3(d) of the Statute, which protects specifically cultural property.

13. In this context, I recall that the findings of the Trial Chamber undoubtedly establish that the Old Bridge of Mostar is a landmark of cultural property. Specifically, the Trial Chamber recognised the “undeniable cultural, historical and symbolic value” of the Old Bridge of Mostar.<sup>40</sup> The Trial Chamber also recognised the “exceptional character of this monument – built by architect Hairudin and almost 500 years old – as well as its historical and symbolic nature.”<sup>41</sup> It further noted that *all* “the evidence confirms the importance of the bridge both for the inhabitants of the town of Mostar [...] and for the BiH and the Balkan region” and highlighted that while the Old Bridge of Mostar was one of the major symbols of the Balkan region, it “was of particular value to the Muslim community”.<sup>42</sup> Even one of the Appellants testified to the “historical importance” of the Old Bridge of Mostar and referred to it as a monument.<sup>43</sup>

14. Under IHL, cultural property is afforded special protections. Specifically, Article 53(a) of AP I prohibits “any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.” This provision of AP I is however without prejudice to those protections already established by the 1954 Convention for the

<sup>38</sup> See Trial Judgement, Vol. 3, paras 1583-1587.

<sup>39</sup> Cultural property is defined in Article 1 of the 1954 Convention to include “movable or immovable property of great importance to the cultural heritage of every people, such as monuments”.

<sup>40</sup> Trial Judgement, Vol. 3, para. 1711.

<sup>41</sup> Trial Judgement, Vol. 2, para. 1282 (internal citations omitted); Trial Judgement, Vol. 2, para. 1364.

<sup>42</sup> Trial Judgement, Vol. 2, para. 1282.

<sup>43</sup> Trial Judgement, Vol. 2, paras 1297, 1354. See also Trial Judgement, Vol. 2, para. 1292 recalling testimony that the Old Bridge of Mostar is “a monument of the most important category”.

Protection of Cultural Property in the Event of Armed Conflict (“1954 Convention”), which aimed to protect cultural property belonging to any people in order to preserve cultural heritage during armed conflict.<sup>44</sup>

15. The 1954 Convention – which the Majority fails to cite, let alone discuss, and to which Croatia is a State party – specifically states that the obligation of States to protect cultural property, by refraining from directing acts of hostility at such property, can only be waived “in cases where *military necessity imperatively* requires such a waiver”.<sup>45</sup> The imperative nature of the military necessity required under the 1954 Convention obliges States to assess military necessity even more stringently in order to direct acts of hostility at cultural property. I further emphasise that the protection afforded to cultural property under Article 53 of AP I to the Geneva Conventions cannot be waived. Therefore according to the applicable law at the time relevant to the Indictment, except for in extremely limited situations, targeting and thereby destroying cultural property is prohibited. Accordingly, I am of the view that the Majority erred in failing to consider this when assessing the legality of the destruction of the Old Bridge of Mostar even when charged under Article 3(b) of the Statute.

16. Additionally, I would like to take this opportunity to highlight that the protection of cultural property under IHL has been consistently reinforced since the time relevant to the Indictment in this case. As has been exemplified in many recent armed conflicts, such as those in Mali, Syria, Libya, Yemen, and Iraq, the protection of cultural property is paramount. According to the UNESCO Protection of Cultural Property Military Manual (“UNESCO Military Manual”) – which UNESCO states mirrors the protections of cultural property under customary international law<sup>46</sup> – it “is prohibited to attack cultural property unless it becomes a military objective *and there is no feasible alternative for obtaining a similar military advantage.*”<sup>47</sup> Accordingly, the UNESCO Military Manual essentially dictates that customary international law has developed such that when cultural property is at issue, the military objective analysis becomes more rigorous by requiring that there is no feasible alternative for obtaining a similar military advantage. In this context, while not necessarily controlling in this case, I note that the HVO may have had many feasible alternatives for

<sup>44</sup> While the 1954 Convention constitutes customary international law, I also note that: (i) in principle, many treaty obligations entered into by the predecessor State pass automatically onto successor States; and (ii) in any event, Croatia signed a notification of succession as a State party (as a territory of the former Yugoslavia) to the 1954 Convention in July of 1992 and therefore, the 1954 Convention constitutes applicable treaty law at the time relevant to the Indictment in this case. See also *The Law of Treaties beyond the Vienna Convention*, Ed. Enzo Cannizzaro, Oxford University Press, pp. 279-293 (2011), which largely discusses the automatic succession of human rights and humanitarian law treaties; *Čelebići Appeal Judgement*, paras 107-115.

<sup>45</sup> 1954 Convention, Art. 4(2) (emphasis added).

<sup>46</sup> UNESCO Military Manual, p. 4. UNESCO and the International Institute of Humanitarian Law published the UNESCO Military Manual jointly in 2016.

<sup>47</sup> UNESCO Military Manual, p. 29 (emphasis added). See also UNESCO Military Manual, p. 55.

obtaining a similar military advantage to destroying the Old Bridge of Mostar including, just to name a few (and not speculating as to the otherwise lawful nature of these alternatives under IHL), blocking or destroying ABiH access to the Old Bridge of Mostar and engaging in direct combat with ABiH in East Mostar. Moreover, in line with protection afforded by the 1954 Convention, the UNESCO Military Manual further affirms the general provision that it is “prohibited to destroy or damage cultural property under one’s own control unless this is *imperatively required by military necessity*.”<sup>48</sup>

17. In light of the above, it is clear that cultural property is subject to enhanced protection under IHL. Accordingly, I strongly believe that the Majority contravened the law in not considering the enhanced protection afforded to the Old Bridge of Mostar as a landmark of cultural property and cultural heritage.

(d) The destruction of the Old Bridge of Mostar under Counts 1 and 25

18. The Trial Chamber relied on its finding that the destruction of the Old Bridge of Mostar constitutes wanton destruction not justified by military necessity as a violation of the laws or customs of war as a basis for its findings that the HVO committed both persecutions on political, racial, and religious grounds as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25),<sup>49</sup> and consequently convicted the Appellants for these crimes in relation to the Old Bridge of Mostar.<sup>50</sup>

19. In this context, with respect to persecutions as a crime against humanity, the Trial Chamber found that the Old Bridge of Mostar “was of particular value to the Muslim community”.<sup>51</sup> It also found the Old Bridge of Mostar to be of “immense cultural, historical and symbolic value for the Muslims in particular”<sup>52</sup> and emphasised that it had “great symbolic importance, primarily for the Muslims”.<sup>53</sup> The Trial Chamber also noted that its destruction resulted in “almost total isolation of the inhabitants of the Muslim enclave” in Mostar<sup>54</sup> and that “the destruction of the Old Bridge had a serious effect on the morale of the population in Mostar, particularly on the Muslims residing in East Mostar, and that the HVO was well aware of this fact.”<sup>55</sup> It further found that “the HVO armed

<sup>48</sup> UNESCO Military Manual, p. 40 (emphasis added). See also *supra*, para. 15.

<sup>49</sup> Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713.

<sup>50</sup> See Trial Judgement, Vol. 3, paras 1690-1692, 1711-1713, Vol. 4, para. 59, Disposition.

<sup>51</sup> Trial Judgement, Vol. 2, para. 1282; Trial Judgement, Vol. 2, para. 1356 stating that the Old Bridge of Mostar had “symbolic importance [...] particularly for the Bosnian Muslim community.”

<sup>52</sup> Trial Judgement, Vol. 3, para. 1585.

<sup>53</sup> Trial Judgement, Vol. 2, para. 1364

<sup>54</sup> Trial Judgement, Vol. 2, para. 1292.

<sup>55</sup> Trial Judgement, Vol. 2, para. 1357.

forces knowingly risked isolating the population of the Muslim enclave” in Mostar.<sup>56</sup> Lastly, the Trial Chamber considered several of the “crimes against the Muslims of the Municipality of Mostar”<sup>57</sup> and found that by committing all these crimes, including destroying the Old Bridge of Mostar, the HVO specifically targeted and discriminated against Muslims and violated their basic rights to life, freedom, and dignity.<sup>58</sup> Accordingly, the Trial Chamber concluded that the HVO intended to discriminate against Muslims, violating their basic rights and therefore committing persecutions as a crime against humanity.<sup>59</sup>

20. Regarding unlawful infliction of terror on civilians as a violation of the laws of customs of war, the Trial Chamber found that the destruction of the Old Bridge of Mostar “had a major psychological impact on the morale of the population; that the HVO had to be aware of that impact [...] in particular because of its great symbolic, cultural and historical value.”<sup>60</sup> The Trial Chamber also recalled the siege on East Mostar generally, including the destruction of the Old Bridge of Mostar, and found that the indiscriminate shelling and firing “terrified the population of East Mostar; that the people lived under constant shelling and gunfire in deafening noise and under the constant threat”.<sup>61</sup> The Trial Chamber then recalled the “deliberate isolation” of the population of East Mostar and the “exacerbation of their distress and difficult living conditions” to conclude that the HVO had the specific intent to spread terror among the civilian population of East Mostar.<sup>62</sup> Accordingly, the Trial Chamber concluded that the HVO committed acts of violence, “the main aim of which was to inflict terror on the population”, thereby committing unlawful infliction of terror on civilians.<sup>63</sup>

21. First and foremost, as I strongly disagree with the Majority and find that the destruction of the Old Bridge of Mostar constitutes wanton destruction not justified by military necessity as a violation of the laws or customs of war (Count 20), I accordingly also disagree with the reasoning and the conclusions of the Majority with respect to the destruction of the Old Bridge of Mostar as an underlying act of persecutions on political, racial, and religious grounds as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws of customs of war (Count 25).

<sup>56</sup> Trial Judgement, Vol. 2, para. 1355.

<sup>57</sup> Trial Judgement, Vol. 3, para. 1712. See Trial Judgement, Vol. 3, paras 1707-1711, 1713.

<sup>58</sup> Trial Judgement, Vol. 3, para. 1712.

<sup>59</sup> Trial Judgement, Vol. 3, paras 1712-1713.

<sup>60</sup> Trial Judgement, Vol. 3, para. 1690 (internal citations omitted).

<sup>61</sup> Trial Judgement, Vol. 3, para. 1689 (internal citations omitted). See also Trial Judgement, Vol. 3, para. 1690.

<sup>62</sup> Trial Judgement, Vol. 3, para. 1691.

<sup>63</sup> Trial Judgement, Vol. 3, para. 1692.

22. In light of my agreement with the findings of the Trial Chamber related to the destruction of the Old Bridge of Mostar, in particular that the attack was disproportionate and thus, unlawful under IHL, I would, as a result also uphold the findings of the Trial Chamber with respect to the Appellants' convictions for persecutions on political, racial, and religious grounds as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). In this context, I highlight that none of the findings relied upon by the Trial Chamber to determine that this destruction constitutes persecutions on political, racial, and religious grounds as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) were overturned by the Majority.<sup>64</sup> Thus, I dissent from the Majority having acquitted the Appellants of these crimes.

23. Moreover, with respect to the crime of persecutions on political, racial, and religious grounds as a crime against humanity (Count 1), I observe that the Majority failed to directly address the principle that persecutions as a crime against humanity "does not require that the underlying acts are crimes under international law."<sup>65</sup> Accordingly, regardless of its erroneous conclusion that the destruction of the Old Bridge of Mostar does not constitute the crime of wanton destruction not justified by military necessity as a violation of the laws or customs of war, the Majority failed to properly analyse whether, on the basis of the remaining factual findings of the Trial Chamber, the destruction of the Old Bridge of Mostar could still be an underlying act of persecutions as a crime against humanity. In light of the numerous upheld findings of the Trial Chamber demonstrating the emblematic nature of the Old Bridge of Mostar to Muslims and that the HVO intended to discriminate against Muslims through, *inter alia*, its destruction, I disagree with the Majority that no reasonable trier of fact could have found that "the HVO had the specific intent to discriminate".<sup>66</sup>

### C. Conclusion

24. In light of the above, I fundamentally dissent from the Majority with respect to it: (i) failing to find that the Trial Chamber erred by impermissibly moulding the case of the Prosecution to

<sup>64</sup> See *supra*, paras 10-11, 13, 415-19.

<sup>65</sup> *Popović et al.* Appeal Judgement, para. 738 citing *Nahimana et al.* Appeal Judgement, para. 985; *Brdanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, para. 323.

<sup>66</sup> Appeal Judgement, para. 423. See *supra*, paras 10-11, 13, 415-19. In this respect, I reiterate that strict application of the standard of appellate review requires that when reviewing alleged factual errors of a trial chamber, "the standard applied by the Appeals Chamber has been that of reasonableness, namely, whether the conclusion of guilt beyond reasonable doubt is one which no reasonable trier of fact could have reached" and that as the trial chamber is best placed to assess the evidence, "in determining whether or not a Trial Chamber's finding was reasonable, [the Appeals Chamber] 'will not lightly disturb findings of fact by a Trial Chamber'". *Blaškić* Appeal Judgement, paras 16-17. It is not within the authority of the Appeals Chamber to review the trial record *de novo* or to otherwise interfere with decisions of a trial chamber which a reasonable trier of fact could have found.

include murder as a crime against humanity (Count 2), wilful killing as a grave breach of the Geneva Conventions (Count 3), and destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21) as JCE I crimes thereby violating the fair trial rights of the Appellants; and (ii) overturning the findings of the Trial Chamber that the destruction of the Old Bridge of Mostar constituted wanton destruction not justified by military necessity, as a violation of the laws or customs of war (Count 20) as the attack was disproportionate and the Old Bridge of Mostar is cultural property.

Done in English and French, the English text being authoritative.



Judge Fausto Pocar

Dated this twenty-ninth day of November 2017,

At The Hague,

The Netherlands.

[Seal of the Tribunal]



## XV. ANNEX A: PROCEDURAL HISTORY

### A. Composition of the Appeals Chamber

1. On 19 June 2013, Judge Theodor Meron, the then-President of the Tribunal, designated Judge Carmel Agius, Judge Patrick Robinson, Judge Fausto Pocar, Judge Liu Daqun, and himself to form the Appeals Chamber's bench assigned to this case.<sup>1</sup> On the same day, Judge Theodor Meron, as the then-Presiding Judge in this case, appointed himself as the Pre-Appeal Judge.<sup>2</sup> On 18 November 2014, Judge Bakone Justice Moloto replaced Judge Patrick Robinson on the bench.<sup>3</sup>

2. On 18 November 2015, Judge Carmel Agius, having been elected as President of the Tribunal the day before and in light of Article 14(2) of the Statute of the Tribunal, assigned himself as the Pre-Appeal Judge in this case.<sup>4</sup>

### B. Notices of Appeal

3. On 21 June 2013, the Pre-Appeal Judge extended the time limit for the filing of notices of appeal for Prlić, Stojić, Petković, and Čorić, and ordered them to file their notices of appeal within 60 days of the issuance of the English translation of the Trial Judgement.<sup>5</sup> The Pre-Appeal Judge further ordered that the remaining parties file their notices of appeal within 90 days of the issuance of the Trial Judgement.<sup>6</sup> Accordingly, the Prosecution filed its notice of appeal on 27 August 2013,<sup>7</sup> and Praljak and Pušić filed their notices of appeal on 28 June 2013.<sup>8</sup> Stojić and Čorić filed their

<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 19 June 2013.

<sup>2</sup> Order Designating a Pre-Appeal Judge, 19 June 2013.

<sup>3</sup> Order Replacing a Judge in a Case Before the Appeals Chamber, 18 November 2014.

<sup>4</sup> Order Designating a Pre-Appeal Judge, 18 November 2015.

<sup>5</sup> Decision on Motions for an Extension of Time to File Notices of Appeal and Other Relief, 21 June 2013, p. 4.

<sup>6</sup> Decision on Motions for an Extension of Time to File Notices of Appeal and Other Relief, 21 June 2013, p. 5.

<sup>7</sup> Prosecution's Notice of Appeal, 27 August 2013.

<sup>8</sup> Slobodan Praljak's Notice of Appeal, 28 June 2013; Notice of Appeal on Behalf of Berislav Pušić, 28 June 2013. On 29 July 2013, Praljak filed a corrigendum to his notice of appeal. See Corrigendum to Slobodan Praljak's Notice of Appeal with Annex, 29 July 2013. Pursuant to an Appeals Chamber decision of 6 March 2014, Pušić re-filed his notice of appeal on 13 March 2014. See Decision on Prosecution Motion for Order Striking Grounds from Berislav Pušić's Notice of Appeal and on Berislav Pušić's Application for Leave to File a Corrigendum to His Notice of Appeal, 6 March 2014; Re-Filing of the Notice of Appeal on Behalf of Berislav Pušić, 13 March 2014.

notices of appeal on 4 August 2014.<sup>9</sup> Prlić and Petković filed their notices of appeal on 5 August 2014.<sup>10</sup>

### C. Appeal Briefs

#### 1. Extensions of time and word limits of briefs

4. On 22 August 2013, the Pre-Appeal Judge granted, in part, requests by Praljak and Pušić for an extension of time to file their appeal briefs, and ordered that Praljak, Pušić, and the Prosecution file their appeal briefs no later than 135 days from the issuance of the English translation of the Trial Judgement.<sup>11</sup> The Pre-Appeal Judge also granted, in part, a request by Praljak for an extension of the word limit for his appeal brief, and authorised: (1) Praljak to file an appeal brief not exceeding 45,000 words; and (2) the Prosecution to file its response brief to Praljak's appeal brief not exceeding 45,000 words.<sup>12</sup>

5. On 22 August 2014, the Pre-Appeal Judge granted, in part: (1) Prlić's, Stojić's, Praljak's, Petković's, Ćorić's, and Pušić's requests to extend time and word limits for the filing of their appeal briefs, ordering that all appeal briefs be filed no later than 4 November 2014 with a word limit of 45,000 words; and (2) the Prosecution's request for the extension of time and word limits for its response brief(s), ordering it to file its response brief(s) no later than 55 days after receipt of the appeal briefs with a word limit of 270,000 words in total.<sup>13</sup> On 5 September 2014, the Pre-Appeal Judge, while denying the Defence's requests for reconsideration of the 22 August 2014 Decision, granted, in part, the Prosecution's request for reconsideration and ordered that the Defence and Prosecution response brief(s) be filed no later than 13 February 2015, and the reply briefs be filed no later than 9 March 2015.<sup>14</sup>

6. On 18 September 2014, the Pre-Appeal Judge granted the requests of Prlić, Stojić, Praljak, Petković, and Ćorić to refer their requests for extension of time and word limits for the appeal briefs

<sup>9</sup> Bruno Stojić's Notice of Appeal, 4 August, 2014. Notice of Appeal on Behalf of Mr. Valentin Ćorić, 4 August, 2014. Pursuant to an Appeals Chamber's decision, on 11 December 2014, Ćorić re-filed his notice of appeal on 23 December 2014. See Decision on Prosecution Motion to Strike Grounds 12 and 14 of Valentin Ćorić's Notice of Appeal, 11 December 2014; Re-Filed Notice of Appeal Filed on Behalf of Mr. Valentin Ćorić, 23 December 2014.

<sup>10</sup> Jadranko Prlić's Notice of Appeal, 5 August 2014; Milivoj Petković's Notice of Appeal, 5 August 2014. Prlić filed a corrigendum to his notice of appeal on 13 January 2015. Jadranko Prlić's Corrigendum to His Notice of Appeal, 13 January 2015.

<sup>11</sup> Decision on Motions for Extension of Time to File Appeal Briefs and for Authorization to Exceed Word Limit, 22 August 2013, paras 1, 18.

<sup>12</sup> Decision on Motions for Extension of Time to File Appeal Briefs and for Authorization to Exceed Word Limit, 22 August 2013, paras 1, 10, 18.

<sup>13</sup> Decision on Defence Motions to Extend Time and/or Exceed Word Limits for Appeal Briefs and Prosecution Motion for Extension of Time to File Respondent's Briefs, 22 August 2014, pp. 1-3, 5.

<sup>14</sup> Decision on Motions for Reconsideration, 5 September 2014, pp. 4-5.

to the Appeals Chamber seised of this case.<sup>15</sup> On 9 October 2014, the Appeals Chamber granted the requests of Prlić, Stojić, Praljak, Petković, and Ćorić and ordered that: (1) all appeal briefs, including that of Pušić, be filed no later than 12 January 2015 and were not to exceed 50,000 words; (2) the Appellants' and Prosecution's response briefs be filed no later than 7 May 2015; (3) the Appellants' and Prosecution's reply briefs be filed no later than 29 May 2015; and (4) the Prosecution's response brief(s) shall not exceed 300,000 words in total.<sup>16</sup> On 9 April 2015, the Appeals Chamber denied Prlić's, Stojić's, Praljak's, Petković's, Ćorić's, and Pušić's requests for extension of the word limit for their response briefs and reply briefs and of the time limit for their reply briefs.<sup>17</sup>

## 2. Prosecution's appeal

7. The Prosecution filed its appeal brief on 12 January 2015.<sup>18</sup> Prlić,<sup>19</sup> Stojić,<sup>20</sup> Praljak,<sup>21</sup> Petković,<sup>22</sup> Ćorić,<sup>23</sup> and Pušić<sup>24</sup> filed their respective response briefs on 7 May 2015. The Prosecution filed its consolidated reply brief on 29 May 2015.<sup>25</sup> The Prosecution filed a corrigendum to its response and reply briefs on 28 September 2015.<sup>26</sup>

<sup>15</sup> Decision on Motions for Referral to the Panel of Judges, 18 September 2014, pp. 1-2.

<sup>16</sup> Decision on Appellants' Requests for Extension of Time and Word Limits, 9 October 2014, pp. 2, 4.

<sup>17</sup> Decision on Requests for Extension of Word Limit for Respondent's Briefs and Reply Briefs and for Time Limit for Reply Briefs, 9 April 2015, p. 6.

<sup>18</sup> Prosecution Appeal Brief, 12 January 2015 (confidential). The Prosecution filed a revised public redacted version on 29 July 2015. Notice of Filing of Prosecution Revised Public Redacted Appeal Brief, 29 July 2015. See also Book of Authorities for Prosecution Appeal Brief Part 1 and 2, 12 January 2015.

<sup>19</sup> Jadranko Prlić's Respondent's Brief, 7 May 2015 (confidential). See also Jadranko Prlić's Notice of Re-Filing of Public Redacted Version of Jadranko Prlić's [sic] Respondent's Brief, 20 August 2015; Jadranko Prlić's Book of Authorities for his Respondent's Brief, 7 May 2015.

<sup>20</sup> Bruno Stojić's Respondent's Brief, 7 May 2015 (confidential). See also Notice of Filing the Corrigendum to the Public Redacted Version of Bruno Stojić's Respondent's Brief, 18 August 2015; Bruno Stojić's Respondent's Brief - Annex C Book of Authorities, parts 1 and 2, 7 May 2015.

<sup>21</sup> Slobodan Praljak's Response to Prosecution Appeal Brief, 7 May 2015 (confidential). See also Notice of Filing of Revised Public Redacted and Corrected Version of Slobodan Praljak's Response to Prosecution Appeal Brief with Annexes, 20 August 2015.

<sup>22</sup> Milivoj Petković Respondent's Brief, 7 May 2015; Book of Authorities for Milivoj Petković Respondent's Brief, 7 May 2015 (confidential). See Decision on Petković's and Pušić's Motions to Reclassify Confidential Briefs, 21 October 2015.

<sup>23</sup> Respondent's Brief of Valentin Ćorić, 7 May 2015 (confidential). See also Respondent's Brief of Valentin Ćorić, 18 August 2015.

<sup>24</sup> Berislav Pušić's Response to Prosecution's Appeal Brief, 7 May 2015 (confidential). See Decision on Petković's and Pušić's Motions to Reclassify Confidential Briefs, 21 October 2015.

<sup>25</sup> Prosecution's Consolidated Reply to Respondents' Briefs, 29 May 2015 (confidential with confidential appendix). See also Notice of Filing of Public Redacted Version of Prosecution's Consolidated Reply to Respondents' Briefs, 7 September 2015.

<sup>26</sup> Corrigendum to Prosecution Response and Reply Briefs, 28 September 2015.

### 3. Defence appeals

#### (a) Prlić's appeal

8. On 12 January 2015, Prlić filed his appeal brief.<sup>27</sup> The Prosecution filed its response brief on 7 May 2015.<sup>28</sup> Prlić filed his reply brief on 29 May 2015.<sup>29</sup>

#### (b) Stojić's appeal

9. On 12 January 2015, Stojić filed his appeal brief.<sup>30</sup> The Prosecution filed its response brief on 7 May 2015.<sup>31</sup> Stojić filed his reply brief on 29 May 2015.<sup>32</sup>

#### (c) Praljak's appeal

10. Praljak filed his appeal brief on 12 January 2015.<sup>33</sup> The Prosecution filed its response brief on 7 May 2015.<sup>34</sup> Praljak filed his reply brief on 29 May 2015.<sup>35</sup>

#### (d) Petković's appeal

11. On 12 January 2015, Petković filed his appeal brief.<sup>36</sup> The Prosecution filed its response brief on 7 May 2015.<sup>37</sup> Petković filed his reply brief on 29 May 2015.<sup>38</sup>

<sup>27</sup> Jadranko Prlić's Appeal Brief, 12 January 2015 (confidential). Prlić filed a corrigendum to his appeal brief on 6 March 2015. Jadranko Prlić's Corrigendum to His Appeal Brief, 6 March 2015 (confidential). See also Jadranko Prlić's Notice of Re-Filing of Public Redacted Version of Jadranko Prlić's Appeal Brief, 29 July 2015; Jadranko Prlić's Book of Authorities for His Appeal Brief, 12 January 2015.

<sup>28</sup> Prosecution Response to Jadranko Prlić's Appellant's Brief, 7 May 2015 (confidential with confidential appendix). See Notice of Filing of Prosecution Public Redacted Response to Jadranko Prlić's Appellant's Brief, 19 August 2015; Corrigendum to Prosecution Response and Reply Briefs, 28 September 2015, Annex A. See also Consolidated Book of Authorities for Prosecution Response Briefs, 7 May 2015.

<sup>29</sup> Jadranko Prlić's Reply Brief, 29 May 2015 (confidential). See also Jadranko Prlić's Notice of Re-Filing of Public Redacted Version of Jadranko Prlić's [sic] Reply Brief, 1 September 2015; Jadranko Prlić's Book of Authorities for His Reply Brief, 29 May 2015.

<sup>30</sup> Bruno Stojić's Appellant's Brief, 12 January 2015 (confidential). See also Notice of Filing the Corrigendum to the Public Redacted Version of Bruno Stojić's Appellant's Brief, 28 July 2015; Bruno Stojić's Appellant's Brief - Annex C Book of Authorities, 12 January 2015.

<sup>31</sup> Prosecution Response to Bruno Stojić's Appellant's Brief, 7 May 2015 (confidential). See also Notice of Filing of Public Redacted Version of Prosecution Response to Bruno Stojić's Appellant's Brief, 19 August 2015; Corrigendum to Prosecution Response and Reply Briefs, 28 September 2015, Annex B; Consolidated Book of Authorities for Prosecution Response Briefs, 7 May 2015.

<sup>32</sup> Bruno Stojić's Brief in Reply, 29 May 2015 (confidential). See also Notice of Filing the Corrigendum to the Public Redacted Version of Bruno Stojić's Brief in Reply, 2 September 2015.

<sup>33</sup> Slobodan Praljak's Appeal Brief with Annexes, 12 January 2015 (confidential). See also Notice of Filing of Revised Public Redacted Version of Slobodan Praljak's Appeal Brief with Annexes, 29 July 2015; Corrigendum to Slobodan Praljak's Appeal Brief, 5 February 2015 (confidential); Book of Authorities for Slobodan Praljak's Appeal Brief, 16 January 2015.

<sup>34</sup> Prosecution Response to Slobodan Praljak's Appellant's Brief, 7 May 2015 (confidential). See also Notice of Filing of Public Redacted Version of Prosecution Response to Slobodan Praljak's Appellant's Brief, 19 August 2015; Corrigendum to Prosecution Response and Reply Briefs, 28 September 2015, Annex C; Consolidated Book of Authorities for Prosecution Response Briefs, 7 May 2015.

<sup>35</sup> Slobodan Praljak's Reply Brief with Annexes, 29 May 2015 (confidential). See also Notice of Filing of Revised Public Redacted and Corrected Version of Slobodan Praljak's Reply Brief with Annexes, 31 August 2015.

(e) Ćorić's appeal

12. On 12 January 2015, Ćorić filed his appeal brief.<sup>39</sup> The Prosecution filed its response brief on 7 May 2015.<sup>40</sup> Ćorić filed his reply brief on 29 May 2015.<sup>41</sup>

(f) Pušić's appeal

13. Pušić filed his appeal brief on 12 January 2015.<sup>42</sup> The Prosecution filed its response brief on 7 May 2015.<sup>43</sup> Pušić filed his reply brief on 29 May 2015.<sup>44</sup>

#### **D. Motions for Provisional Release and Early Release**

##### 1. Prlić

14. On 15 September 2015, the Appeals Chamber granted Prlić's motion for provisional release on humanitarian grounds to attend the funeral and post-funeral ceremonies of his brother.<sup>45</sup> On 6 April 2016, the Appeals Chamber denied Prlić's motion seeking provisional release on compassionate grounds to visit a family member who was scheduled to undergo a medical

<sup>36</sup> Milivoj Petković's Appeal Brief, 12 January 2015 (confidential with confidential annexes). See also Notice of Re-filing of Redacted Versions of Milivoj Petković Appeal Brief and Book of Authorities, 29 July 2015; Corrigendum to Milivoj Petković's Appeal Brief, 30 January 2015 (confidential); Book of Authorities for Milivoj Petković's Appeal Brief, 23 January 2015 (reclassified as confidential on 30 January 2015).

<sup>37</sup> Prosecution Response to Milivoj Petković's Appellant's Brief, 7 May 2015 (confidential with confidential and *ex parte* appendix). See also Notice of Filing of Public Redacted Version of Prosecution Response to Milivoj Petković's Appellant's Brief, 19 August 2015; Corrigendum to Prosecution Response and Reply Briefs, 28 September 2015, Annex D; Consolidated Book of Authorities for Prosecution Response Briefs, 7 May 2015.

<sup>38</sup> Milivoj Petković's Brief in Reply, 29 May 2015 (confidential). See also Milivoj Petković's Notice on Change of Status of Defence Brief in Reply, 3 June 2015; Notice of Re-Filing of Redacted Version of Milivoj Petković's Brief in Reply, 2 September 2015.

<sup>39</sup> Appellant's Brief of Valentin Ćorić, 12 January 2015 (confidential). See also Corrigendum to Appellant's Brief of Valentin Ćorić, 23 March 2016; Valentin Ćorić's Book of Authorities, 12 January 2015; Corrigendum to Appellant's Brief of Valentin Ćorić, 12 January 2015 (confidential). See also Order for Further Redaction of Valentin Ćorić's Appeal Brief, 21 March 2016 (confidential).

<sup>40</sup> Prosecution Response to Valentin Ćorić's Appellant's Brief, 7 May 2015 (confidential with confidential and *ex parte* appendix). See also Notice of Filing of Public Redacted Version of Prosecution Response to Valentin Ćorić's Appellant's Brief, 19 August 2015; Corrigendum to Prosecution Response and Reply Briefs, 28 September 2015, Annex E; Consolidated Book of Authorities for Prosecution Response Briefs, 7 May 2015.

<sup>41</sup> Reply Brief of Valentin Ćorić in Support of Appellant's Brief, 29 May 2015 (confidential with confidential and *ex parte* Annexes A and B). See also Reply Brief of Valentin Ćorić in Support of Appellant's Brief, 31 August 2015.

<sup>42</sup> Appeal Brief of Berislav Pušić, 12 January 2015 (confidential). See also Notice of Re-filing of Public Redacted Appeal Brief of Berislav Pušić, 28 July 2015; Book of Authorities for Appeal Brief of Berislav Pušić, 12 January 2015.

<sup>43</sup> Prosecution Response to Berislav Pušić's Appellant's Brief, 7 May 2015 (confidential with confidential and *ex parte* appendix). See also Notice of Filing of Public Redacted Version of Prosecution Response to Berislav Pušić's Appellant's Brief, 19 August 2015; Corrigendum to Prosecution Response and Reply Briefs, 28 September 2015, Annex F; Consolidated Book of Authorities for Prosecution Response Briefs, 7 May 2015.

<sup>44</sup> Berislav Pušić's Brief in Reply 29 May 2015 (reclassified as public on 21 October 2015). See also Decision on Petković's and Pušić's Motions to Reclassify Confidential Briefs, 21 October 2015.

<sup>45</sup> Decision on Jadranko Prlić's Urgent Request for Provisional Release, 15 September 2015 (confidential), p. 3.

procedure.<sup>46</sup> Prlić renewed this request on 28 April 2016 and the Appeals Chamber denied the motion on 10 May 2016.<sup>47</sup>

## 2. Stojić

15. The Appeals Chamber denied Stojić's motion seeking provisional release on 19 December 2013.<sup>48</sup> On 22 December 2015, the Duty Judge granted Stojić's motion seeking provisional release on compassionate grounds.<sup>49</sup> On 14 December 2016, the Appeals Chamber granted Stojić's second motion seeking provisional release on compassionate grounds.<sup>50</sup>

## 3. Petković

16. The Appeals Chamber denied Petković's motion for provisional release on 19 December 2013.<sup>51</sup> On 15 September 2015, the Appeals Chamber, Judge Pocar dissenting, granted Petković's motion for provisional release on humanitarian grounds.<sup>52</sup>

## 4. Ćorić

17. The Appeals Chamber denied Ćorić's motions for provisional release on 19 December 2013,<sup>53</sup> 12 March 2015,<sup>54</sup> and 15 August 2016.<sup>55</sup> On 11 November 2014, the President of the Tribunal dismissed Ćorić's request for early release.<sup>56</sup>

<sup>46</sup> Decision on Jadranko Prlić's Request for Provisional Release on Compassionate Grounds, 6 April 2016 (confidential), p. 3.

<sup>47</sup> Decision on Jadranko Prlić's Renewed Request for Provisional Release on Compassionate Grounds, 10 May 2016 (confidential), p. 3.

<sup>48</sup> Decision on Bruno Stojić's Motion for Provisional Release pursuant to Rule 65(I) of the Rules, 19 December 2013 (confidential and *ex parte*), p. 4.

<sup>49</sup> Decision on Bruno Stojić's Urgent Motion for Provisional Release, 22 December 2015 (confidential and *ex parte*), p. 4.

<sup>50</sup> Decision on Bruno Stojić's Urgent Motion for Provisional Release, 14 December 2016 (confidential and *ex parte*), p. 4.

<sup>51</sup> Decision on Milivoj Petković's Motion for Provisional Release, 19 December 2013 (confidential), p. 4.

<sup>52</sup> Decision on Milivoj Petković's Urgent Motion for Provisional Release on Humanitarian Grounds, 15 September 2015 (confidential and *ex parte*), p. 4. See also Decision on Prosecution Urgent Motion for Reconsideration and Stay of Decision on Petković's Motion for Provisional Release, 21 September 2015 (confidential and *ex parte*); *Corrigendum* to Decision on Prosecution Urgent Motion for Reconsideration and Stay of Decision on Petković's Motion for Provisional Release, 23 September 2015 (confidential and *ex parte*).

<sup>53</sup> Decision on Valentin Ćorić's Motion Seeking Provisional Release Until Translation of the Judgement, 19 December 2013, p. 4.

<sup>54</sup> Decision on Valentin Ćorić's Motion seeking Provisional Release, 12 March 2015 (confidential and *ex parte*); Public Redacted Version of the "Decision on Valentin Ćorić's Motion seeking Provisional Release" Issued on 12 March 2015, 14 May 2015. See also Decision on Motion to Lift Confidential and *Ex Parte* Status of the Appeals Chamber's Decision on Ćorić's Motion Seeking Provisional Release, 14 May 2015.

<sup>55</sup> Public Redacted Version of the "Decision on Valentin Ćorić's Request for Provisional Release" Issued on 15 August 2016, 1 December 2016.

<sup>56</sup> Decision on Valentin Ćorić's Request for Early Release and on Prosecution's Motion to Strike the Request, 11 November 2014 (confidential and *ex parte*).

## 5. Pušić

18. The Appeals Chamber denied Pušić's application for provisional release on medical grounds on 14 March 2014.<sup>57</sup> On 24 July 2014, the Appeals Chamber granted Pušić's urgent renewed application for provisional release on medical grounds and ordered that he be provisionally released.<sup>58</sup> His provisional release was extended on medical grounds through a series of decisions issued by the Appeals Chamber.<sup>59</sup> The last such decision was rendered on 13 July 2017, whereby Pušić's provisional release on medical grounds was extended until further order of the Appeals Chamber and, at the latest, until the delivery of the Appeal Judgement.<sup>60</sup> On 21 November 2017, the Appeals Chamber informed Pušić and the Prosecution that no such order would be issued and it further instructed Pušić that, should he decide to exercise his right to be present at the pronouncement of the Appeal Judgement scheduled for 29 November 2017,<sup>61</sup> he should inform the Registrar of the Tribunal accordingly.<sup>62</sup> On 22 November 2017, Pušić filed a notice in which he waived his right to attend the pronouncement of the Appeal Judgement.<sup>63</sup>

### E. Decision Pursuant to Rule 115

19. On 20 April 2016, the Appeals Chamber dismissed Ćorić's motion for admission of additional evidence on appeal pursuant to Rule 115 of the Rules.<sup>64</sup>

### F. Legal Representation

20. On 3 October 2013, the Registry appointed, in light of Praljak's preference, privately-retained counsel pursuant to Rule 44(A) of the Rules to represent him before the Tribunal.<sup>65</sup> On 27 June 2014, and while denying Praljak's renewed request for a stay of

<sup>57</sup> Decision on Berislav Pušić's Application for Provisional Release on Medical Grounds, 14 March 2014 (confidential and *ex parte*).

<sup>58</sup> Decision on Berislav Pušić's Urgent Renewed Application for Provisional Release on Medical Grounds, 24 July 2014 (confidential and *ex parte*), paras 18-19 (granting provisional release for an initial period of six months).

<sup>59</sup> See Decision on Berislav Pušić's Application for an Extension of His Provisional Release, 27 January 2015 (confidential and *ex parte*); Decision on Berislav Pušić's Application for a Further Extension of His Provisional Release, 22 July 2015 (confidential and *ex parte*); Order Granting a Temporary Extension of Berislav Pušić's Provisional Release, 27 January 2016 (confidential and *ex parte*); Decision on Berislav Pušić's Application to Further Extend Provisional Release on Medical Grounds, 22 July 2016 (confidential and *ex parte*), para. 23; Decision on Berislav Pušić's Application to Further Extend Provisional Release on Medical Grounds, 19 January 2017 (confidential and *ex parte*), p. 5.

<sup>60</sup> Decision on Berislav Pušić's Application to Further Extend Provisional Release on Medical Grounds, 13 July 2017 (confidential and *ex parte*), p. 4.

<sup>61</sup> Scheduling Order for Pronouncement of Judgement, 5 October 2017.

<sup>62</sup> Order in relation to Berislav Pušić's Attendance at the Pronouncement of the Appeal Judgement, 21 November 2017 (confidential and *ex parte*).

<sup>63</sup> Berislav Pušić's Waiver Not to Attend Pronouncement of the Appeal Judgement, 22 November 2017 (confidential and *ex parte*).

<sup>64</sup> Decision on Valentin Ćorić's Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 20 April 2016, para. 25.

<sup>65</sup> Deputy Registrar's Decision, 3 October 2013, p. 4.

proceedings,<sup>66</sup> the Appeals Chamber *proprio motu* instructed the Registrar to assign counsel to Praljak in the interests of justice.<sup>67</sup> On 6 August 2014, counsel and co-counsel were assigned to Praljak for the appeal proceedings.<sup>68</sup>

21. On 19 June 2015, Mr. Davor Lazić replaced Mr. Guènaël Mettraux as a co-counsel for Petković.<sup>69</sup>

### G. Other Pre-Appeal decisions and orders

22. In addition to the above, the Appeals Chamber issued 20 decisions and orders concerning evidentiary and other matters. Further, the Appeals Chamber issued 12 orders and decisions concerning applications pursuant to Rule 75 of the Rules.

### H. Status Conferences

23. In accordance with Rule 65 *bis*(B) of the Rules, status conferences were held on 8 October 2013,<sup>70</sup> 3 February 2014,<sup>71</sup> 27 May 2014,<sup>72</sup> 23 September 2014,<sup>73</sup> 21 January 2015,<sup>74</sup> 12 May 2015,<sup>75</sup> 2 September 2015,<sup>76</sup> 23 November 2015,<sup>77</sup> 10 February 2016,<sup>78</sup> 25 May 2016,<sup>79</sup> 19 September 2016,<sup>80</sup> 17 January 2017,<sup>81</sup> 3 May 2017,<sup>82</sup> and 23 August 2017.<sup>83</sup>

<sup>66</sup> Decision on Praljak's Request for Stay of Proceedings, 27 June 2014, paras 6, 9, 13, 16, 18.

<sup>67</sup> Decision on Praljak's Request for Stay of Proceedings, 27 June 2014, paras 13, 16, 18. See also Registrar's Decision, 6 August 2014, pp. 1, 5 (assigning counsel to Praljak). On two separate occasions, the Appeals Chamber ordered Praljak to reimburse the Tribunal for the costs sustained in providing him with legal aid in connection with his appeal proceedings and warned him that failure to comply with the orders of the Appeals Chamber would result in further action. See Decision on Praljak's Request for Stay of Proceedings, 27 June 2014, para. 18. See also Order Concerning Non-Receipt of Funds, 26 October 2016. The Appeals Chamber also rejected his first request for appointment of counsel. See Decision on Praljak's Motion for Stay of Procedure and Assignment of Counsel in the Interest of Justice, 4 April 2014, paras 1, 5, 20, 22.

<sup>68</sup> Registrar's Decision, 6 August 2014, p. 5.

<sup>69</sup> Deputy Registrar's Decision, 19 June 2015, p. 3.

<sup>70</sup> Status Conference, AT. 1-12 (8 Oct 2013); Scheduling Order, 13 September 2013.

<sup>71</sup> Status Conference, AT. 13-23 (3 Feb 2014); Scheduling Order, 16 January 2014.

<sup>72</sup> Status Conference, AT. 24-33 (27 May 2014); Scheduling Order, 14 May 2014.

<sup>73</sup> Status Conference, AT. 34-42 (23 Sept 2014); Scheduling Order, 2 September 2014.

<sup>74</sup> Status Conference, AT. 43-48 (21 Jan 2015); Scheduling Order, 16 December 2014.

<sup>75</sup> Status Conference, AT. 49-55 (12 May 2015); Scheduling Order, 4 May 2015.

<sup>76</sup> Status Conference, AT. 56-63 (2 Sep 2015); Scheduling Order, 23 July 2015.

<sup>77</sup> Status Conference, AT. 64-71 (23 Nov 2015); Scheduling Order, 22 October 2015.

<sup>78</sup> Status Conference, AT. 72-80 (10 Feb 2016); Scheduling Order, 11 January 2016.

<sup>79</sup> Status Conference, AT. 81-92 (25 May 2016); Scheduling Order, 21 April 2016.

<sup>80</sup> Status Conference, AT. 93-102 (19 Sep 2016); Scheduling Order, 5 August 2016.

<sup>81</sup> Status Conference, AT. 103-114 (17 Jan 2017); Scheduling Order, 17 November 2016.

<sup>82</sup> Status Conference, AT. 871-877 (3 May 2017); Scheduling Order, 3 April 2017.

<sup>83</sup> Status Conference, AT. 878-883 (23 Aug 2017); Scheduling Order, 12 June 2017; Amended Scheduling Order, 2 August 2017.



**I. Appeal Hearing**

24. The appeal hearing in this case took place from 20 to 24 and 27 to 28 March 2017.<sup>84</sup>

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<sup>84</sup> Appeal Hearing, AT. 115-870 (20-24 and 27-28 Mar 2017); Scheduling Order for the Appeal Hearing, 15 December 2016; Order for the Preparation of the Appeal Hearing, 1 March 2017.



## XVI. ANNEX B: GLOSSARY

### A. Filings in This Case

Annex A to Supplement of Praljak's Motion	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-T, Annex A to Supplement to Slobodan Praljak's Motion Pursuant to the 6 October 2010 Decision on the Prosecution's Motion to Re-open Its Case, 2 November 2010 (confidential)</i>
Ćorić's Appeal Brief	Appellant's Brief of Valentin Ćorić, 12 January 2015 (confidential) (corrigendum 12 January 2015), 23 March 2016 (public)
Ćorić's Final Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-T, Valentin Ćorić's Final Trial Brief, 7 January 2011 (confidential), 28 March 2011 (public)</i>
Ćorić's Notice of Appeal	Notice of Appeal Filed on Behalf of Mr. Valentin Ćorić, 4 August 2014 (filed 23 December 2014) (public)
Ćorić's Reply Brief	Reply Brief of Valentin Ćorić in Support of Appellant's Brief, 29 May 2015 (confidential), 31 August 2015 (public)
Ćorić's Response Brief	Respondent's Brief of Valentin Ćorić, 7 May 2015 (confidential), 18 August 2015 (public)
Indictment	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-T, Second Amended Indictment, 11 June 2008</i>
Joint Defence Response of 12 July 2007	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-T, Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence (Čapljina/Stolac Municipalities), 12 July 2007</i>
Joint Response	<i>Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-T, Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence, 8 October 2007 (confidential)</i>

Order for the Preparation of the Appeal Hearing	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-A, Order for the Preparation of the Appeal Hearing, 1 March 2017 (public)
Petković's Appeal Brief	Milivoj Petković's Appeal Brief, 12 January 2015 (confidential) (corrigendum 30 January 2015), 29 July 2015 (public)
Petković's Final Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Petkovic [ <i>sic</i> ] Defence Final Brief, 7 January 2011 (confidential), 1 April 2011 (public)
Petković's Reply Brief	Milivoj Petković's Brief in Reply, 29 May 2015 (confidential), 2 September 2015 (public)
Petković's Response Brief	Milivoj Petković Respondent's Brief, 7 May 2015 (public)
Praljak's Appeal Brief	Slobodan Praljak's Appeal Brief, 12 January 2015 (confidential) (corrigendum 5 February 2015), 29 July 2015 (public)
Praljak's Notice of Appeal	Slobodan Praljak's Notice of Appeal, 28 June 2013 (public) (corrigendum 29 July 2013) (public)
Praljak's Reply Brief	Slobodan Praljak's Reply Brief, 29 May 2015 (confidential), 31 August 2015 (public)
Praljak's Response Brief	Slobodan Praljak's Response to Prosecution Appeal Brief, 7 May 2015 (confidential), 20 August 2015 (public)
Prlić's Appeal Brief	Jadranko Prlić's Appeal Brief, 12 January 2015 (confidential) (corrigendum 6 March 2015), 29 July 2015 (public)
<i>Prlić et al.</i> Appeal Decision on Admission of Evidence Pursuant to Rule 92 bis	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-AR73.17, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Refusal to Decide upon Evidence Tendered Pursuant to Rule 92 bis, 1 July 2010
<i>Prlić et al.</i> Appeal Decision on Admission of Evidence	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-AR73.19, Decision on Jadranko Prlić's Consolidated Interlocutory Appeal Against the Trial Chamber's Orders of 6 and 9 October

	2008 on Admission of Evidence, 12 January 2009
<i>Prlić et al.</i> Appeal Decision on Admission of Prlić's Statement	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-AR73.6, Decision on Appeal Against Decision Admitting Transcript of Jadranko Prlić Questioning into Evidence, 23 November 2007
<i>Prlić et al.</i> Appeal Decision on Cross-Examination	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel's Request for Leave to File an <i>Amicus Curiae</i> Brief, 4 July 2006
<i>Prlić et al.</i> Appeal Decision on Motion for Reconsideration	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009
<i>Prlić et al.</i> Order to Admit Evidence in relation to Praljak's Testimony	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Order to Admit Evidence Relating to the Testimony of Slobodan Praljak, 24 February 2010 (French original 15 February 2010)
<i>Prlić et al.</i> Trial Decision on Admission of Evidence on Co-operation	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Stojić Defence Motion for the Admission of Documentary Evidence (Cooperation between the Authorities and the Armed Forces of Herceg-Bosna and the Authorities and the Armed Forces of the ABiH), 28 July 2009
<i>Prlić et al.</i> Trial Decision on Admission of Evidence related to the Municipalities and Čapljina and Stolac	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motions for Admission of Documentary Evidence (Čapljina/Stolac Municipalities), 3 September 2007 (French

	original 23 August 2007)
<i>Prlić et al.</i> Trial Decision on Admission of Evidence Pursuant to Rule 92 bis	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Slobodan Praljak's Motion to Admit Evidence Pursuant to Rule 92 bis of the Rules, 21 December 2010
<i>Prlić et al.</i> Trial Decision on Admission of Petković's Prior Testimony	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Prosecution Motion for the Admission into Evidence of the Testimony of Milivoj Petković Given in Other Cases Before the Tribunal, 25 October 2007
<i>Prlić et al.</i> Trial Decision on Admission of Praljak's Prior Testimony	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Admission into Evidence of Slobodan Praljak's Evidence in the Case of Naletilić and Martinović, 17 September 2007 (French original 5 September 2007)
<i>Prlić et al.</i> Trial Decision on Admission of Prlić's Statement	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Request for Admission of the Statement of Jadranko Prlić, 6 September 2007
<i>Prlić et al.</i> Trial Decision on Cross-Examination	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, T. 1475-1476, 1485-1486 (8 May 2006)
<i>Prlić et al.</i> Trial Decision on Implementation	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Implementation of the Decision of 8 May 2006 on Time Allocated for Cross-Examination by Defence, 18 July 2006 (French original 12 July 2006)
<i>Prlić et al.</i> Trial Decision on Prlić's Motion to Admit Evidence in Rebuttal	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Decision on Jadranko Prlić's Motion to Admit Evidence Rebutting Evidence Admitted by the Decision of 6 October 2010, 3 December 2010 (French original 24 November 2010)

<i>Prlić et al.</i> Trial Decision on Reopening Petković's Case	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Petković Defence Motion to Reopen Its Case, 3 December 2010 (French original 23 November 2010)
<i>Prlić et al.</i> Trial Decision on Reopening Praljak's Case	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Praljak Defence Motion to Reopen Its Case, 2 December 2010 (French original 23 November 2010)
<i>Prlić et al.</i> Trial Decision on Reopening Stojić's Case	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Stojić Defence Request to Reopen Its Case, 8 December 2010 (French original 25 November 2010)
<i>Prlić et al.</i> Trial Decision on Reopening the Prosecution's Case	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Prosecution's Motion to Reopen Its Case, 12 October 2010 (French original 6 October 2010)
Prlić's Final Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Jadranko Prlić's Final Brief, 7 January 2011 (confidential), 29 March 2011 (public)
Prlić's Notice of Appeal	Jadranko Prlić's Notice of Appeal, 5 August 2014 (public) (corrigendum 13 January 2015)
Prlić's Pre-Trial Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-PT, Jadranko Prlić's Response to Prosecution's Pre-Trial Brief, 15 February 2006 (public)
Prlić's Reply Brief	Jadranko Prlić's Reply Brief, 29 May 2015 (confidential), 1 September 2015 (public)
Prlić's Response Brief	Jadranko Prlić's Respondent's Brief, 7 May 2015 (confidential), 20 August 2015 (public)
Prosecution's Amended Annex to the Indictment	Prosecution's Amended Annex to the Indictment, 16 November 2005 (confidential) (corrigendum 2 March 2015)
Prosecution's Appeal Brief	Prosecution Appeal Brief, 12 January 2015

	(confidential), 29 July 2015 (public)
Prosecution's Final Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Prosecution Final Trial Brief, 7 January 2011 (confidential), 1 April 2011 (public)
Prosecution's JCE III Table (Appellant)	Set of Tables produced by the Prosecution as part of its Appeal Brief, outlining incidents for which it submits that each Appellant should be held responsible pursuant to the third category of joint criminal enterprise, 12 January 2015 (confidential)
Prosecution's List of Rule 92 <i>bis</i> Witnesses	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-PT, Prosecution's Rule 65 <i>ter</i> Witness Lists, 19 January 2006 (public), Annex (List of Rule 92 <i>bis</i> Witnesses) (confidential)
Prosecution's Notice of Appeal	Prosecution's Notice of Appeal, 27 August 2013 (public)
Prosecution's Pre-Trial Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-PT, Prosecution Pre-Trial Brief, 19 January 2006 (partly confidential)
Prosecution's Reply Brief	Prosecution's Consolidated Reply to Respondents' Briefs, 29 May 2015 (confidential), 7 September 2015 (public)
Prosecution's Response Brief (Appellant)	Prosecution Response to Valentin Čorić's Appellant's Brief, 7 May 2015 (confidential), 19 August 2015 (public); Prosecution Response to Milivoj Petković's Appellant's Brief, 7 May 2015 (confidential), 19 August 2015 (public); Prosecution Response to Slobodan Praljak's Appellant's Brief, 7 May 2015 (confidential), 19 August 2015 (public); Prosecution Response to Jadranko Prlić's Appellant's Brief, 7 May 2015 (confidential), 19 August 2015 (public); Prosecution Response to Berislav Pušić's Appellant's Brief, 7 May 2015 (confidential), 19 August 2015 (public); Prosecution Response to Bruno Stojić's Appellant's Brief, 7 May 2015 (confidential), 19 August 2015 (public)
Pušić's Appeal Brief	Appeal Brief of Berislav Pušić, 12 January 2015 (confidential), 28 July 2015 (public)

Pušić's Notice of Appeal	Notice of Appeal on Behalf of Berislav Pušić, 28 June 2013 (public) (refiled 13 March 2014)
Pušić's Reply Brief	Berislav Pušić's Brief in Reply, 29 May 2015 (confidential), 7 May 2015 (public)
Pušić's Response Brief	Berislav Pušić's Response to the Prosecution's Appeal Brief, 29 May 2015 (public)
Stojić's Appeal Brief	Bruno Stojić's Appellant's Brief, 12 January 2015 (confidential), 28 July 2015 (public)
Stojić's Final Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Bruno Stojić's Final Trial Brief, 7 January 2011 (confidential), 1 April 2011 (public)
Stojić's Notice of Appeal	Bruno Stojić's Notice of Appeal, 4 August 2014 (public)
Stojić's Pre-Trial Brief	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-PT, Bruno Stojić's Rule 65 ter (F) Pre-Trial Brief, 15 February 2006 (public)
Stojić's Reply Brief	Bruno Stojić's Brief in Reply, 29 May 2015 (confidential), 2 September 2015 (public)
Stojić's Response Brief	Bruno Stojić's Respondent's Brief, 7 May 2015 (confidential), 18 August 2015 (public)

#### B. Provisional Release Decisions at Trial and on Appeal in this Case

30 July 2004 Stojić Provisional Release Order	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-PT, Order on Provisional Release of Bruno Stojić, 30 July 2004
17 August 2006 Stojić Provisional Release Decision <sup>30</sup>	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Stojić, 17 August 2006 (French original filed on 26 June 2006)
8 December 2006 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision Relative to the Motion for Provisional Release of the Accused Stojić, 8 December 2006 (French original)



	(partially confidential)
9 July 2007 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Stojić, 9 July 2007 (French original filed on 11 June 2007) (with confidential annex)
6 December 2007 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Stojić, 6 December 2007 (French original filed on 29 November 2007) (with confidential annex)
21 February 2008 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Stojić, 21 February 2008 (French original filed on 19 February 2008) (with confidential annex)
29 April 2008 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Further Decision Regarding the Decision on Provisional Release of the Accused Stojić, 29 April 2008 (French original) (with confidential annex)
24 July 2008 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Accused Stojić's Motion for Provisional Release, 24 July 2008 (French original filed on 17 July 2008) (with confidential annex)
9 December 2008 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Accused Stojić's Motion for Provisional Release, 9 December 2008 (French original filed on 2 December 2008) (with confidential annex)
24 June 2009 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Bruno Stojić's Motion for Provisional Release, 24 June 2009 (French original filed on 17 June 2009) (with confidential annex)
10 September 2009 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the

	Motion for Provisional Release filed by the Accused Stojić, 10 September 2009 (French original filed on 3 September 2009) (confidential)
18 December 2009 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Accused Stojić's Motion for Provisional Release, 18 December 2009 (French original filed on 9 December 2009) (confidential)
20 July 2010 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Bruno Stojić, 20 July 2010 (French original filed on 12 July 2010) (confidential)
17 December 2010 Stojić Provisional Release Decision <sup>6</sup>	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Stojić, 17 December 2010 (French original filed on 9 December 2010) (confidential)
24 June 2011 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Stojić, 24 June 2011 (French original filed on 21 June 2011) (confidential)
7 December 2011 Stojić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Bruno Stojić's Motion for Provisional Release, 7 December 2011 (French original filed on 1 December 2011) (confidential)
30 July 2004 Petković Provisional Release Order	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-PT, Order on Provisional Release of Milivoj Petković, 30 July 2004
10 October 2005 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-PT, Decision to Grant Accused Milivoj Petković's Application for Variation of the Conditions for Provisional Release, 10 October 2005
17 August 2006 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on

	Motion for Provisional Release of the Accused Petković, 17 August 2006 (French original filed on 26 June 2006) (confidential)
9 July 2007 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Petković, 9 July 2007 (French original filed on 11 June 2007) (with confidential annex)
6 December 2007 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Petković, 6 December 2007 (French original filed on 29 November 2007) (with confidential annex)
18 December 2008 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Accused Petković's Motion for Provisional Release, 18 December 2008 (French original filed on 5 December 2008) (with confidential annex)
6 February 2009 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Milivoj Petković to Undergo Major Surgery in Croatia, 6 February 2009 (French original filed on 29 January 2009) (confidential)
23 June 2009 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Accused Petković's Motion for Provisional Release, 23 June 2009 (French original filed on 17 June 2009) (with confidential annex)
15 December 2009 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Petković, 15 December 2009 (French original filed on 9 December 2009) (confidential)
20 July 2010 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Petković, 20 July 2010 (French original filed on 12 July 2010) (confidential)
21 December 2010 Petković Provisional	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan</i>

Release Decision	<i>Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release filed by the Accused Petković (Winter 2010/2011), 21 December 2010 (French original filed on 9 December 2010) (confidential)
6 July 2011 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Milivoj Petković's Motion for Provisional Release, 6 July 2011 (French original filed on 24 June 2011) (confidential)
6 December 2011 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Petković, 6 December 2011 (French original filed on 30 November 2011) (with one confidential annex)
14 January 2013 Petković Provisional Release Order	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Public Redacted Version of "Order on Motion of Accused Petković for Extension of Provisional Release, 14 January 2013 (French original filed on 3 December 2012)
20 March 2012 Petković Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Extension of Provisional Release of Accused Milivoj Petković and Modification of Conditions, 20 March 2012 (French original filed on 14 March 2012) (confidential)
15 March 2013 Petković Provisional Release Order	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Public Redacted Version of "Order on Motion to Extend Provisional Release of Accused Milivoj Petković, 15 March 2013 (French original filed on 11 March 2013)
8 December 2006 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision Relative to the Motion for Provisional Release of the Accused Ćorić, 8 December 2006 (French original) (partially confidential)
17 August 2006 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Ćorić,

	17 August 2006 (French original filed on 26 June 2006) (confidential)
12 June 2007 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision Relative to the Motion for Provisional Release of the Accused Ćorić, 12 June 2007 (French original) (with confidential annex)
6 December 2007 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Ćorić,, 6 December 2007 (French original filed on 29 November 2007) (with confidential annex)
21 February 2008 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Ćorić,, 21 February 2008 (French original filed on 19 February 2008) (with confidential annex)
25 July 2008 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Accused Ćorić's Request for Provisional Release, 25 July 2008 (French original filed on 17 July 2008) (with confidential annex)
16 December 2008 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Valentin Ćorić's Request for Provisional Release, 16 December 2008 (French original filed on 2 December 2008) (with confidential annex)
25 May 2009 Ćorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Public Redacted Version of Order on Motion to Renew Provisional Release of Accused Ćorić, 25 May 2009 (French original filed on 29 April 2009) (confidential)
22 June 2009 Ćorić Second Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Second Decision Amending Decision on Valentin Ćorić's Request for Provisional Release, 22 June 2009 (French original filed on 19 June 2009) (confidential)
14 July 2009 Ćorić Third Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and</i>

	<i>Berislav Pušić</i> , Case No. IT-04-74-T, Third Decision Amending Decision on Valentin Čorić's Request for Provisional Release, 14 July 2009 (French original filed on 9 July 2009) (confidential)
4 September 2009 Čorić Fourth Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Fourth Decision Amending Decision on Valentin Čorić's Request for Provisional Release, 4 September 2009 (French original filed on 3 September 2009) (confidential)
20 July 2010 Čorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Request for Provisional Release of the Accused Valentin Čorić, 20 July 2010 (French original filed on 13 July 2010) (confidential)
16 December 2010 Čorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Valentin Čorić's Request for Provisional Release, 16 December 2010 (French original filed on 7 December 2010) (confidential)
4 July 2011 Čorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Request for Provisional Release of Accused Valentin Čorić, 4 July 2011 (French original filed on 22 June 2011) (confidential)
2 December 2011 Čorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Valentin Čorić's Request for Provisional Release, 2 December 2011 (French original filed on 29 November 2011) (confidential)
15 March 2012 Čorić Provisional Release Order	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Public Redacted Version of Order on Motion to Extend Provisional Release of Accused Čorić, 15 March 2012 (French original filed on 6 March 2012)
7 June 2012 Čorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Order Relative to the Motion to Extend Provisional Release of Accused Čorić, 7 June 2012 (French original) (confidential)

6 September 2012 Čorić Provisional Release Order	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Public Redacted Version of Order Relative to the Motion to Extend Provisional Release of Accused Čorić, 6 September 2012 (French original)
14 December 2012 Čorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Public Redacted Version of Order on Motion to Renew Provisional Release of Accused Čorić, 14 December 2012 (French original filed on 4 December 2012)
15 March 2013 Čorić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Public Redacted Version of Order on Motion to Renew Provisional Release of Accused Čorić, 15 March 2013 (French original filed on 8 March 2013)
17 August 2006 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Pušić, 17 August 2006 (French original filed on 26 June 2006) (confidential)
8 December 2006 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision Relative to the Motion for Provisional Release of the Accused Pušić, 8 December 2006 (French original) (partially confidential)
9 July 2007 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Pušić, 9 July 2007 (French original filed on 11 June 2007) (with confidential annex)
6 December 2007 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Pušić, 6 December 2007 (French original filed on 19 November 2007) (with confidential annex)
25 March 2008 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Application for Provisional Release of the Accused Pušić, 25 March 2008 (French original filed on 19

	March 2008) (with confidential annex)
25 July 2008 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Accused Pušić's Request for Provisional Release, 25 July 2008 (French original filed on 17 July 2008) (with confidential annex)
17 December 2008 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Berislav Pušić, 17 December 2008 (French original filed on 5 December 2008) (confidential)
25 June 2009 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Berislav Pušić, 25 June 2009 (French original filed on 17 June 2009) (confidential)
14 December 2009 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on the Accused Berislav Pušić's Motion for Provisional Release, 14 December 2009 (French original filed on 4 December 2009) (confidential)
20 July 2010 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Application for Provisional Release of the Accused Berislav Pušić, 20 July 2010 (French original filed on 12 July 2010) (confidential)
9 December 2010 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Berislav Pušić's Motion for Provisional Release, 9 December 2010 (French original filed on 1 December 2010) (confidential)
19 April 2011 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Application for Provisional Release of the Accused Berislav Pušić, 19 April 2011 (French original filed on 7 April 2011) (confidential)
9 December 2011 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on



	Application for Provisional Release of the Accused Berislav Pušić, 9 December 2011 (French original filed on 5 December 2011) (confidential)
29 May 2012 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision Relative to the Motion to Extend Provisional Release of the Accused Berislav Pušić, 29 May 2012 (French original) (confidential)
10 December 2012 Pušić Provisional Release Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Berislav Pušić's Application to Extend Provisional Release, 10 December 2012 (French original filed on 13 November 2012) (confidential)
24 July 2014 Pušić Provisional Release Decision	Decision on Berislav Pušić's Urgent Renewed Application for Provisional Release on Medical Grounds, 24 July 2014 (confidential and <i>ex parte</i> )

### C. ICTY Judgements and Decisions

7 December 2006 Miletić and Gvero Provisional Release Decision	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero, and Vinko Pandurević</i> , Case No. IT-05-88-T, Decision on Defence Motions for Provisional Release of Radivoje Miletić and Milan Gvero, 7 December 2006
13 July 2007 Miletić and Gvero Provisional Release Decision	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero, and Vinko Pandurević</i> , Case No. IT-05-88-T, Decision on Motion for Provisional Release from 21 July 2007 until the Resumption of Trial, 13 July 2007
24 July 2007 Decision on Borovčanin's Application for Custodial Visit	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević</i> , Case No. IT-05-88-T, Decision on Borovčanin's Motion for Leave to Withdraw Application for Provisional Release and to File Application for "Custodial Visit to His Father For a Short Fixed Period Based on Humanitarian Grounds", 24 July 2007 (confidential)
7 December 2007 Miletić and Gvero Provisional Release Decision	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero, and Vinko Pandurević</i> ,

	Case No. IT-05-88-T, Decision on Motions for Provisional Release during the Winter Judicial Recess, 7 December 2007
11 December 2007 Decision on Pandurević's Request for Provisional Release	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević</i> , Case No. IT-05-88-T, Decision on Pandurević's Request for Provisional Release on Compassionate Grounds, 11 December 2007
21 July 2008 Decision on Nikolić's Motion for Provisional Release	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević</i> , Case No. IT-05-88-T, Decision on Nikolić's Motion for Provisional Release, 21 July 2008
28 June 2010 Decision on Early Release of Gvero	<i>Prosecutor v. Milan Gvero</i> , Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Judgement, Case No. IT-95-14/1-A, 24 March 2000
<i>Babić</i> Judgement on Sentencing Appeal	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, Judgement, 18 July 2005
<i>Blagojević and Jokić</i> Appeal Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Blaškić</i> Decision on Rule 64	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Decision on the Motion of the Defence Filed Pursuant to Rule 64 of the Rules of Procedure and Evidence, 3 April 1996
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<i>Brđanin</i> Appeal Judgement	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-A, Judgement, 3 April 2007
<i>Brđanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Boškoski and Tarčulovski</i> Appeal Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-A, Judgement, 19 May 2010
<i>Boškoski and Tarčulovski</i> Trial Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-T, Judgement,

	10 July 2008
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
<i>Delić</i> Indictment	<i>Prosecutor v. Rasim Delić</i> , Amended Indictment, Case No. IT-04-83-PT, 14 July 2006
<i>Dorđević</i> Appeal Judgement	<i>Prosecutor v. Vlastimir Dorđević</i> , Case No. IT-05-87/1-A, Judgement, 27 January 2014
<i>Dorđević</i> Trial Judgement	<i>Prosecutor v. Vlastimir Dorđević</i> , Case No. IT-05-87/1-T, Judgement, 23 February 2011
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgement, 21 July 2000
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<i>Galić</i> Appeal Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement, 5 December 2003
<i>Gotovina et al.</i> Appeal Decision on Reopening	<i>Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač</i> , Case No. IT-06-90-AR73.6, Decision on Ivan Čermak and Mladen Markač Interlocutory Appeals Against Trial Chamber's Decision to Reopen the Prosecution Case, 1 July 2010
<i>Gotovina and Markač</i> Appeal Judgement	<i>Prosecutor v. Ante Gotovina and Mladen Markač</i> , Case No. IT-06-90-A, Judgement, 16 November 2012
<i>Gotovina et al.</i> Trial Judgement	<i>Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač</i> , Case No. IT-06-90-T, Judgement, 15 April 2011
<i>Hadžihasanović and Kubura</i> Appeal Judgement	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-A, Judgement, 22 April 2008
<i>Hadžihasanović and Kubura</i> , Decision on Rule 98bis	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for

	Acquittal, 11 March 2005
<i>Hadžihasanović and Kubura</i> Indictment	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-I, Third Amended Indictment, 15 March 2006
<i>Halilović</i> Appeal Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, Judgement, 16 October 2007
<i>Halilović</i> Indictment	<i>Prosecutor v. Sefer Halilović</i> , Indictment, Case No. IT-01-48-I, 10 September 2001
<i>Haradinaj et al.</i> Appeal Judgement	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj</i> , Case No. IT-04-84-A, Judgement, 19 July 2010
<i>Haradinaj et al.</i> Decision on Scope of Retrial	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj</i> , Case No. IT-04-84bis-AR73.1, Decision on Haradinaj's Appeal on Scope of Partial Retrial, 31 May 2011
<i>Haradinaj et al.</i> Trial Judgement	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj</i> , Case No. IT-04-84-T, Judgement, 3 April 2008
<i>Karadžić</i> JCE III Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR72.4, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability, 25 June 2009
<i>Karadžić</i> Hostage-Taking Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR73.9, Decision on Appeal from Denial of Judgement Acquittal for Hostage-Taking, 11 December 2012
<i>Karadžić</i> Trial Judgement	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, Judgement, 24 March 2016
<i>Kordić and Čerkez</i> Appeal Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004, and Corrigendum to Judgement of 17 December 2004, 26 January 2005
<i>Kordić and Čerkez</i> Trial Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<i>Krajišnik</i> Appeal Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, Judgement, 17 March 2009
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003

<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002
<i>Krstić</i> Appeal Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 April 2004
<i>Kunarac et al.</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković</i> , Case Nos. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002
<i>Kupreškić et al.</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, and Vladimir Šantić</i> , Case No. IT-95-16-A, Appeal Judgement, 23 October 2001
<i>Kupreškić et al. Tu Quoque</i> Decision	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, and Vladimir Šantić</i> , Case No. IT-95-16-A, Decision on Evidence of the Good Character of the Accused and the Defence of Tu Quoque, 17 February 1999
<i>Kupreškić et al.</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, and Vladimir Šantić</i> , Case No. IT-95-16-T, Judgement, 14 January 2000
<i>Kvočka et al.</i> Appeal Judgement	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić, and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005
<i>Kvočka et al.</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić, and Dragoljub Prcać</i> , Case No. IT-98-30/1-T, Judgement, 2 November 2001
<i>Limaj et al.</i> Appeal Judgement	<i>Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu</i> , Case No. IT-03-66-A, Judgement, 27 September 2007
<i>Limaj et al.</i> Trial Judgement	<i>Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu</i> , Case No. IT-03-66-T, Judgement, 30 November 2005
<i>Lukić and Lukić</i> Appeal Judgement	<i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Judgement, Case No. IT-98-32/1-A, 4 December 2012, and Corrigendum to Judgement of 4 December 2012, 4 March 2013
<i>Martić</i> Appeal Judgement	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, Judgement, 8 October 2008
<i>D. Milošević</i> Appeal Judgement	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, Judgement, 12 November 2009

<i>Milutinović et al.</i> Trial Judgement	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić</i> , Case No. IT-05-87-T, Judgement, 26 February 2009
<i>Mrkšić and Šljivančanin</i> Appeal Judgement	<i>Prosecutor v. Mile Mrkšić and Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, Judgement, 5 May 2009
<i>Mrkšić et al.</i> Trial Judgement	<i>Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin</i> , Case No. IT-95-13/1-T, Judgement, 27 September 2007
<i>M. Nikolić</i> Appeal Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006
<i>Naletilić and Martinović</i> Appeal Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. IT-98-34-A, Judgement, 3 May 2006
<i>Naletilić and Martinović</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> ”, Case No. IT-98-34-T, Judgement, 31 March 2003
<i>Orić</i> Appeal Judgement	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-A, Judgement, 3 July 2008
<i>Perišić</i> Appeal Judgement	<i>Prosecutor v. Momčilo Perišić</i> , Case No. IT-04-81-A, Judgement, 28 February 2013
<i>Popović et al.</i> Appeal Decision on Reopening	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero, and Vinko Pandurević</i> , Case No. IT-05-88-AR73.5, Decision on Vujadin Popović’s Interlocutory Appeal Against the Decision on the Prosecution’s Motion to Reopen Its Case-in-Chief, 24 September 2008
<i>Popović et al.</i> Appeal Judgement	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević</i> , Case No. IT-05-88-A, Judgement, 30 January 2015
<i>Popović et al.</i> Decision of 30 January 2008	<i>Prosecutor v. Vujadin Popović et al.</i> , Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008
<i>Rajić</i> Review Decision	<i>Prosecutor v. Ivica Rajić a/k/a Viktor Andrić</i> , Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, Case No. IT-95-12-R61, 13 September 1996

<i>Šešelj</i> Appeal Decision on Motion for Reconsideration	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR72.1, Decision on Motion for Reconsideration of the "Decision on the Interlocutory Appeal Concerning Jurisdiction" dated 31 August 2004, 15 June 2006
<i>Simić</i> Appeal Judgement	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, Judgement, 28 November 2006
<i>Simić et al.</i> Decision on the International Character of the Conflict	<i>Prosecutor v. Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović, and Simo Zarić</i> , Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, Case No. IT-95-9-PT, 25 March 1999
<i>M. Simić</i> Sentencing Judgement	<i>Prosecutor v. Milan Simić</i> , Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002
<i>Simić et al.</i> Trial Judgement	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić</i> , Case No. IT-95-9-T, Judgement, 17 October 2003
<i>Stakić</i> Appeal Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006
<i>Stanišić and Simatović</i> Appeal Judgement	<i>Prosecutor v. Jovica Stanišić and Franko Simatović</i> , Case No. IT-03-69-A, Judgement, 9 December 2015
<i>Stanišić and Župljanin</i> Appeal Judgement	<i>Prosecutor v. Mićo Stanišić and Stojan Župljanin</i> , Case No. IT-08-91-A, Judgement, 30 June 2016
<i>Stanišić and Župljanin</i> Decision of 16 January 2013	<i>Prosecutor v. Mićo Stanišić and Stojan Župljanin</i> , Case No. IT-08-91-T, Decision Denying Prosecution Motion Requesting Findings on All Modes of Liability Charged in the Indictment, 16 January 2013
<i>Strugar</i> Appeal Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, Judgement, 17 July 2008
<i>Strugar</i> Trial Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Judgement, 31 January 2005
<i>Šainović et al.</i> Appeal Judgement	<i>Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić</i> , Case No. IT-05-87-A, Judgement, 23 January 2014

<i>M. Tadić</i> 2004 Decision on Pardon or Communication of Sentence	<i>Prosecutor v. Miroslav Tadić</i> , Case No. IT-95-9, Decision of the President on the Application for Pardon or Communication of Sentence of Miroslav Tadić, 24 June 2004
<i>Tadić</i> Appeal Decision on Jurisdiction	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Judgement, 7 May 1997
<i>Tolimir</i> Appeal Judgement	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-A, Judgement, 8 April 2015
<i>Tolimir</i> Trial Judgement	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-T, 12 December 2012
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004

#### D. ICTR Judgements and Decisions

<i>Akayesu</i> Trial Judgement	<i>The Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement, 2 September 1998
<i>Bagilishema</i> Trial Judgement	<i>The Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-T, Judgement, 7 June 2001
<i>Bagosora and Nsengiyumva</i> Appeal Judgement	<i>Théoneste Bagosora and Anatole Nsengiyumva v. The Prosecutor</i> , Case No. ICTR-98-41-A, Judgement, 14 December 2011
<i>Bizimungu</i> Appeal Judgement	<i>Augustin Bizimungu v. The Prosecutor</i> , Case No. ICTR-00-56B-A, Judgement, 30 June 2014
<i>Gacumbitsi</i> Appeal Judgement	<i>Sylvestre Gacumbitsi v. The Prosecutor</i> , Case No. ICTR-2001-64-A, Judgement, 7 July 2006
<i>Gatete</i> Appeal Judgement	<i>Jean-Baptiste Gatete v. The Prosecutor</i> , Case No. ICTR-00-61-A, Judgement, 9 October 2012
<i>Hategekimana</i> Appeal Judgement	<i>Ildephonse Hategekimana v. The Prosecutor</i> , Case No. ICTR-00-55B-A, Judgement, 8 May 2012
<i>Kalimanzira</i> Appeal Judgement	<i>Callixte Kalimanzira v. The Prosecutor</i> , Case No. ICTR-05-88-A, Judgement, 20 October



	2010
<i>Kajelijeli</i> Appeal Judgement	<i>Juvénal Kajelijeli v. The Prosecutor</i> , Case No. ICTR-98-44A-A, Judgement, 23 May 2005
<i>Kanyarukiga</i> Appeal Judgement	<i>Prosecutor v. Gaspard Kanyarukiga</i> , Case No. ICTR-02-78-A, Judgement, 8 May 2012
<i>Karemera and Ngirumpatse</i> Appeal Judgement	<i>Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor</i> , Case No. ICTR-98-44-A, Judgement, 29 September 2014
<i>Karera</i> Appeal Judgement	<i>François Karera v. The Prosecutor</i> , Case No. ICTR-01-74-A, Judgement, 2 February 2009
<i>Kayishema and Ruzindana</i> Appeal Judgement	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001
<i>Kayishema and Ruzindana</i> Trial Judgement	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1999
<i>Mugenzi and Mugiraneza</i> Appeal Judgement	<i>Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor</i> , Case No. ICTR-99-50-A, Judgement, 4 February 2013
<i>Musema</i> Trial Judgement	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Judgement, 27 January 2000
<i>Muvunyi</i> Trial Judgement	<i>Prosecutor v. Tharcisse Muvunyi</i> , Case No. ICTR-2000-55A-T, Judgement and Sentence, 12 September 2006
<i>Nahimana et al.</i> Appeal Judgement	<i>Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze v. The Prosecutor</i> , Case No. ICTR-99-52-A, Judgement, 28 November 2007
<i>Nchamihigo</i> Appeal Judgement	<i>Siméon Nchamihigo v. The Prosecutor</i> , Case No. ICTR-2001-63-A, Judgement, 18 March 2010
<i>Ndahimana</i> Appeal Judgement	<i>Grégoire Ndahimana v. The Prosecutor</i> , Case No. ICTR-01-68-A, Judgement, 16 December 2013
<i>Ndindabahizi</i> Appeal Judgement	<i>Emmanuel Ndindabahizi v. The Prosecutor</i> , Case No. ICTR-01-71-A, Judgement, 16 January 2007
<i>Ndindiliyimana et al.</i> Appeal Judgement	<i>Augustin Ndindiliyimana, François-Xavier Nzuwonemeye, and Innocent Sagahutu v. The Prosecutor</i> , Case No. ICTR-00-56-A, Judgement, 11 February 2014

<i>Niyitegeka</i> Appeal Judgement	<i>Eliézer Niyitegeka v. The Prosecutor</i> , Case No. ICTR-96-14-A, Judgement, 9 July 2004
<i>Nizeyimana</i> Appeal Judgement	<i>Ildéphonse Nizeyimana v. The Prosecutor</i> , Case No. ICTR-00-55C-A, Judgement, 29 September 2014
<i>Ntagerura et al.</i> Appeal Judgement	<i>The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, Judgement, 7 July 2006
<i>Ntakirutimana and Ntakirutimana</i> Appeal Judgement	<i>The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana</i> , Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004
<i>Ntawukulilyayo</i> Appeal Judgement	<i>Dominique Ntawukulilyayo v. The Prosecutor</i> , Case No. ICTR-05-82-A, Judgement, 14 December 2011
<i>Nyiramasuhuko et al.</i> Appeal Judgement	<i>The Prosecutor v. Pauline Nyiramasuhuko, Arsene Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, and Élie Ndayambaje</i> , Case No. ICTR-98-42-A, Judgement, 14 December 2015
<i>Nzabonimana</i> Appeal Judgement	<i>Callixte Nzabonimana v. The Prosecutor</i> , Case No. ICTR-98-44D-A, Judgement, 29 September 2014
<i>Renzaho</i> Appeal Judgement	<i>Tharcisse Renzaho v. The Prosecutor</i> , Case No. ICTR-97-31-A, Judgement, 1 April 2011
<i>Simba</i> Appeal Judgement	<i>Aloys Simba v. The Prosecutor</i> , Case No. ICTR-01-76-A, Judgement, 27 November 2007

### E. Other Jurisprudence

1. <u>ICC</u>	
<i>Bemba</i> Confirmation of Charges Decision	<i>Prosecutor v. Jean-Pierre Bemba Gombo</i> , Case No. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009
<i>Katanga</i> Article 74 Judgement	<i>The Prosecutor v. Germain Katanga</i> , Case No. ICC-01/04-01/07-3436, Judgment pursuant to Article 74, 7 March 2014
<i>Lubanga</i> Article 74 Judgement	<i>The Prosecutor v. Thomas Lubanga Dyilo</i> , Case No. ICC-01/04-01/06-2842, Judgment pursuant to Article 74, 14 March 2012

<i>Lubanga</i> Confirmation of Charges Decision	<i>The Prosecutor v. Thomas Lubanga Dyilo</i> , Case No. ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007
2. <u>ICJ</u>	
<i>Advisory Opinion on the Wall</i>	Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004
<i>Armed Activities</i> Judgement	Case concerning Armed Activities on the Territory of the Congo, Democratic Republic of Congo v. Uganda, Judgement, 19 December 2005
<i>Bosnia Genocide</i> Judgement	Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v. Serbia and Montenegro, Judgement, 26 February 2007
<i>Nicaragua Activities</i> Judgement	Case concerning the Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America (Merits), Judgement, 27 June 1986
3. <u>SCSL</u>	
<i>Norman</i> Decision	<i>The Prosecutor v. Sam Hinga Norman</i> , Case No. SCSL-2003-08-PT, Decision on Motion for Modification of the Conditions of Detention, 26 November 2003
<i>Sesay et al.</i> Trial Judgement	<i>Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao</i> , Case No. SCSL-04-15-T, 2 March 2009
4. <u>ECtHR</u>	
<i>A. and others</i> Decision	<i>A. and others v. United Kingdom</i> , Application no. 3455/05, Judgement, 19 February 2009
<i>Al-Khawaja and Tahery</i> Decision	<i>Al-Kawaja and Tahery v. United Kingdom</i> , Application nos 26766/05 and 22228/06, Judgement, 15 December 2011
<i>Ciobanu</i> Decision	<i>Ciobanu v. Romania and Italy</i> , Application no. 4509/08, Judgement, 9 July 2013 (French only)
<i>Guzzardi</i> Decision	<i>Guzzardi v. Italy</i> , Application no. 7367/76, Judgement, 6 November 1980

<i>Lavents</i> Decision	<i>Lavents v. Latvia</i> , Application no. 58442/00, Judgement, 28 November 2002 (French only)
<i>Nada</i> Decision	<i>Nada v. Switzerland</i> , Application no. 10593/08, Judgement, 12 September 2012
<i>Papageorgiou</i> Decision	<i>Georgios Papageorgiou v. Greece</i> , Application no. 59506/00, Judgement, 9 May 2003
<b>5. <u>Miscellaneous</u></b>	
<i>Genie-Lacayo</i> Judgement	<i>Genie-Lacayo v. Nicaragua</i> , IACtHR, Judgement, 29 January 1997
<i>Hostage</i> Trial Case	Law Reports of the War Criminals, UN War Crimes Commission, Vol. VIII, 1949
<i>Lepore</i> Case	<i>Re Lepore</i> , Italian Supreme Military Tribunal, 19 July 1946, <i>Annual Digest and Reports of Public International Law Cases</i> , 1951, p. 354
<i>Motosuke</i> Case	Temporary Court-Martial at Amboina, In re <i>Motosuke</i> , Judgement of 28 January 1948, <i>Annual Digest and Reports of Public International Law Cases</i> , Vol. 15, 1948, p. 682
<i>Pilz</i> Case	District Court of The Hague (Special Criminal Chamber), In re <i>Pilz</i> , Judgement of 21 December 1949 and Special Court of Cassation, Judgement of 5 July 1950, <i>International Law Reports</i> , Vol. 17, p. 391

#### **F. ICTY Documents**

Practice Direction on Formal Requirements	Practice Direction on Formal Requirements for Appeals from Judgement (IT/201), 7 March 2002
Rules	Updated Rules of Procedure and Evidence of the Tribunal of the International Criminal Tribunal for the former Yugoslavia, IT/32/Rev.50 (8 July 2015)
Statute	Updated Statute of the International Criminal Tribunal for the former Yugoslavia, September 2009, as amended most recently by Security Council Resolution 2306 (2016), originally adopted by Security Council Resolution 827



(1993)

**G. Table of Other Authorities**

1. <u>International legal instruments and commentaries</u>	
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 3
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 609
Commentary on the Additional Protocols	Commentary on Additional Protocol to the Geneva Convention of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977
Commentary on Geneva Convention I	Commentary of 2016 on Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949
Commentary on Geneva Convention IV	Commentary of 1958 on Convention IV relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
Fourth Hague Convention	Convention (IV) Respecting the Laws and Customs of War on Land, and its annex: Regulation concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, 187 C.T.S. 227
Geneva Convention I	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva (First Geneva Convention), 12 August 1949, 75 U.N.T.S. 31
Geneva Convention II	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva (Second Geneva Convention), 12 August 1949, 75 U.N.T.S. 85
Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War, Geneva (Third Geneva

	Convention ), 12 August 1949, 75 U.N.T.S. 135
Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Prisoners in Time of War, Geneva (Fourth Geneva Convention), 12 August 1949, 75 U.N.T.S. 287
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 U.N.T.S. 277
Hague Convention of 1954	Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, 249 U.N.T.S. 240
Hague Regulations	Annex to the Fourth Hague Convention - Convention (IV) Respecting the Laws and Customs of War on Land, and its annex: Regulation concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, 187 C.T.S. 227
ICC Elements of Crimes	Elements of Crimes, Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May-11 June 2010 (International Criminal Court publication, RC/11)
ICC Statute	Rome Statute (A/CONF.183/9), 17 July 1998
ICCPR	United Nations General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, U.N.T.S. 999, p. 171
<b>2. <u>Military Manuals</u></b>	
1880 UK Manual on the Laws of War	Manual on the Laws of War on Land, Institute of International Law, Oxford, 1880
1958 UK Manual on the Law of War	Manual of Military Law of War on Land, United Kingdom, 1958
1956 US Manual on the Law of War	The Law of Land Warfare, Department of the Army, United States of America, 1956
1992 German Manual on the Law of War	Humanitarian Law in Armed Conflicts – Manual, Federal Ministry of Defence, Federal Republic of Germany, 1992
<b>3. <u>Books and Articles</u></b>	
Arai-Takahashi, <i>The Law of Occupation</i>	Yutaka Arai-Takahashi, <i>The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with</i>

	<i>International Human Rights Law</i> , Brill, 2009
Boothby, <i>Weapons and the Law of Armed Conflict</i>	<i>Weapons and the Law of Armed Conflict</i> , William H. Boothby, OUP Oxford (1st ed.), 2009
Benvenisti, <i>The International Law of Occupation</i>	Eyal Benvenisti, <i>The International Law of Occupation, Second Edition</i> , Oxford University Press, 2012
Carcano, <i>The Transformation of Occupied Territory in International Law</i>	Andrea Carcano, <i>The Transformation of Occupied Territory in International Law</i> , Brill - Nijhoff, 2015
Cassese, <i>International Criminal Law</i>	Antonio Cassese, <i>International Criminal Law</i> , Second Edition, Oxford University Press, 2008
Dinstein, <i>The International Law of Belligerent Occupation</i>	Yoram Dinstein, <i>The International Law of Belligerent Occupation</i> , Cambridge University Press, 2009
Fleck, <i>The Handbook of Humanitarian Law in Armed Conflicts</i>	Dieter Fleck, <i>The Handbook of Humanitarian Law in Armed Conflicts</i> , Oxford University Press, 1999
Haines, <i>Weapons, Means and Methods of Warfare</i>	Steven Haines, <i>Weapons, Means and Methods of Warfare</i> , Cambridge University Press, 2007
Haupais, "Les Obligations de la Puissance Occupante au Regard de la Jurisprudence et de la Pratique Récentes"	Nicolas Haupais, "Les Obligations de la Puissance Occupante au Regard de la Jurisprudence et de la Pratique Récentes", (2007) 111 <i>Revue Générale de Droit International Public</i> 117
Henckaerts and Doswald-Beck, <i>Customary International Humanitarian Law</i>	<i>Customary International Humanitarian Law, Volume 1: Rules</i> , Jean-Marie Henckaerts and Louise Doswald-Beck (eds), ICRC and Cambridge University Press, 2005
Jennings and Watts, <i>Oppenheim's International Law</i>	<i>Oppenheim's International Law, Ninth Edition, Volume I, Peace</i> , Sir Robert Jennings and Sir Arthur Watts (eds), Longman, 1996
Lauterpacht, <i>Oppenheim's International Law</i>	<i>Oppenheim's International Law, Seventh Edition, Volume II</i> , Hersch Lauterpacht, (ed.), Longman, 1952
Oppenheim, <i>International Law, War and Neutrality</i>	Lassa Oppenheim, <i>International Law, Volume II: War and Neutrality</i> , Longman's, Green, and Co., 1906
Sluiter, Friman, Linton, Vasiliev, Zappalà, <i>International Criminal Procedure: Principles</i>	<i>International Criminal Procedure: Principles and Rules</i> , Göran Sluiter, Håkan Friman, Suzannah Linton, Sergey

<i>and Rules</i>	Vasiliev, Salvatore Zappalà, OUP Oxford, 21 March 2013, pp. 675, 679
Vasiliev, <i>International Criminal Trials: A Normative Theory</i>	<i>International Criminal Trials: A Normative Theory</i> , Vasiliev, S. OUP Oxford, 2014
von Glahn, <i>The Occupation of Enemy Territory</i>	<i>The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation</i> , Gerhard von Glahn, Minnesota University Press, 1957

#### H. Table of Short Forms

25 March 1991 Karadordevo Meeting	A meeting in which Franjo Tudman participated, which took place on 25 March 1991 in Karadordevo to discuss the plans concerning the division of BiH
3 July 1992 Decree on the Armed Forces	Exhibit P00289, a decree issued by Mate Boban on 3 July 1992 on the armed forces of the Croatian Community of Herceg-Bosna
14 November 1992 Order	Exhibit 3D00424, an order issued on 14 November 1992 by Praljak and Ćorić to Zdenko Andabak, among others, for the return of the vehicles stolen in Prozor to their owners
6 January 1993 Order	Exhibit P01064, an order issued by Petković on 6 January 1993 instructing the commander of the Bruno Bušić Regiment to have his regiment at full combat readiness
15 January 1993 Ultimatum	An ultimatum adopted by the HVO HZ-HB on 15 January 1993 envisaging, <i>inter alia</i> , the subordination of the ABiH to the HVO in Provinces 3, 8, and 10 within five days
4 April 1993 Ultimatum	An ultimatum adopted by the HVO HZ H-B on 3 April 1993, published on 4 April 1993, envisaging that, if the Muslim authorities refused to sign a statement on the subordination of the ABiH to the HVO in Provinces 3, 8, and 10 by 15 April 1993, the HVO would apply it unilaterally, including by military means
15 April 1993 Decision	A decision issued by the Mostar municipal HVO on 15 April 1993 addressing the rights of refugees and displaced and deported persons
23 April 1993 Order	Exhibit P02050, an order from Stojić and Petković ordering all commanders of all OZs to



	respect international law
4 June 1993 Divulje Meeting	A meeting of HZ(R) H-B officials with representatives of international organisations on 4 June 1993 in Divulje, Croatia
30 June 1993 Joint Proclamation	Exhibit P03038, a proclamation issued jointly by Prlić and Stojić on 30 June 1993 instructing Croatian people in BiH to defend against Muslim aggression following the ABiH attack on HVO positions
30 June 1993 Order	Exhibit P03019, an order issued by Petković on 30 June 1993, to the South-East OZ indicating that all HVO Muslim members should be disarmed and isolated, and that all the military-aged Muslim men residing in the South-East OZ should also be isolated
10 December 1993 Decision	Exhibit P07096, a decision by Mate Boban ordering unilateral closure of the detention facilities on HR H-B territory as of 17 December 1993 at the latest
ABiH	Army of Bosnia and Herzegovina
Adjudicated Fact	An adjudicated fact of which judicial notice was taken in the <i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006, Public, 7 September 2006
Amended 3 July 1992 Decree on the Armed Forces	Exhibit P00588, a decree issued by Mate Boban on 17 October 1992 on the armed forces of the Croatian Community of Herceg-Bosna (edited version)
Andabak's Report	Exhibit P00536, an undated report from Zdenko Andabak recounting his activities between 21 and 29 October 1992
Andrić's Report	Exhibit 3D03065/4D00348, a report dated 27 January 1993 from Colonel Miro Andrić to Stojić on the situation in Gornji Vakuf and Prozor
Appeals Chamber	The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since

	1991
Appeal Hearing	The Appeal Hearing in this case which took place from 20 to 24 and 27 to 28 March 2017
Appellants	Six Defence Appellants
ATG/s	Anti-Terrorist Group/s
Attack on the HVO Tihomir Mišić Barracks	An attack by the ABiH on the HVO Tihomir Mišić Barracks in the north of Mostar town on 30 June 1993
BBC Video	A British Broadcasting Corporation interview with Stojić after 9 May 1993 in which he explained that the HVO could clear its part of Mostar town in several hours
BCS	The Bosnian/Croatian/Serbian language
BiH	Bosnia and Herzegovina
CCP	Common criminal plan of the JCE, referring to the common criminal plan of the joint criminal enterprise in this case, specifically, domination by the HR H-B Croats through ethnic cleansing of the Muslim population
CED Report	Exhibit P02770, an Electronic Operations Centre (a service of the Main Staff) report dated 14 June 1993, stating that rapes were committed by the <i>Vinko Škrobo</i> ATG unit and members of the 4 <sup>th</sup> Battalion called <i>Tihomir Mišić</i> of the 3 <sup>rd</sup> HVO Brigade on 13 June 1993, and that there were indications that "civilians" were killed, during the evictions in West Mostar
Central Bosnia OZ	Central Bosnia Operative Zone (HVO)
Common Article 3	Article 3 common to the Geneva Conventions
Common Criminal Plan	See CCP above
Croatia	Republic of Croatia
Ćurčić's Report of 2 June 1993	Exhibit P02608, a report from Dragan Ćurčić dated 2 June 1993 informing Stojić of the occupancy of vacant flats in Čapljina and Mostar assigned to members of the HVO
Decree of 6 July 1993	Exhibit P03089, a decree signed by Prlić on 6

	July 1993 on the use of abandoned apartments
Decree on Compulsory Military Service	Exhibit 4D01030, a decree law on compulsory military service, published on 1 August 1992
Department for Criminal Investigations	Department for the Prevention of Crime/Department for Criminal Investigations/Department for Fighting Crime within the Military Police Administration
Detention Commission	A commission created on 6 August 1993 by the Department of Defence to take charge of all detention units and prisons in which POWs and military detainees are held, and which began its work as of 10 August 1993, (see Exhibit P03995)
DoJA	The Department of Justice and Administration
<i>Domobrani</i>	Home Guards within the HVO
Dretelj Prison	Dretelj Military District Prison in Čapljina Municipality
East Mostar Hospital	Hospital in East Mostar, also called the "Institute for Hygiene", located in Maršal Tito Street in the municipality of Mostar
EC	European Community
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECMM	European Community Monitoring Mission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
Exchange Commission	Commission for the Exchange of Prisoners and Other Persons
Exchange Service	The Service for the Exchange of Prisoners and Other Persons, the executive organ of the Commission for the Exchange of Prisoners and Other Persons (see Exhibits P03191, 1D01669), which carried out a range of functions in relation to prisoners and prisoner exchange
Faculty of Mechanical Engineering	Building of the Faculty of Mechanical Engineering in Mostar Municipality
Fish Farm	Fish farm near Doljani in Jablanica Municipality

Gabela Prison	Gabela Military District Prison in Čapljina Municipality
Glass Bank	Building known as the "Glass Bank" (Glass Bank Building), also known as the Blue Bank, at Maršal Tito Street in West Mostar
Geneva Conventions	Geneva Conventions of 12 August 1949
HDZ-BiH	Croatian Democratic Union of Bosnia and Herzegovina
Heliodrom	Heliodrom Camp in Mostar Municipality
Heliodrom Prison Logbook	Exhibit P00285
HOS	Croatian Defence Forces (military wing of the BiH Croats)
HR H-B	Croatian Republic of Herceg-Bosna
HV	Army of the Republic of Croatia
HVO	Croatian Defence Council (Army of BiH Croats)
HVO/Government of the HZ(R) H-B	Executive organs/Governments of the Croatian Community and Republic of Herceg-Bosna, referred to jointly
HVO HZ H-B	Executive organ of the Croatian Community of Herceg-Bosna
HZ H-B	Croatian Community of Herceg-Bosna
HZ(R) H-B	Croatian Community and Republic of Herceg-Bosna, referred to jointly
ICC	International Criminal Court
ICFY	International Conference on the Former Yugoslavia
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICRC Letter	Exhibit P07629, an ICRC protest letter dated 20 January 1994 sent to Marijan Biškić, Milivoj Petković, Jadranko Prlić and Vladislav Pogarčić about the mistreatment of detainees
ICRC Report of 20 April 1993	Exhibit P01989, a report dated 20 April 1993 from the ICRC speaking to crimes committed by the HVO

ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991
JCE	Joint criminal enterprise
JCE I	First form of joint criminal enterprise liability
JCE II	Second form of joint criminal enterprise liability
JCE III	Third form of joint criminal enterprise liability
JNA	Yugoslav People's Army
Judge Antonetti Dissent	<i>Dissenting Opinion of Judge Antonetti in The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-T, Judgement, 6 June 2014 (French original filed on 29 May 2013) (public)</i>
KB	Convicts' Battalion
Ljubuški Prison	Military remand prison in Ljubuški town
Luka Markešić Report	Exhibit P04177, an SIS report from Luka Markešić dated 14 August 1993, regarding, <i>inter alia</i> , criminal acts by HVO soldiers and Military Police
Makarska Agreement	Exhibit P10264, an agreement reached in Makarska on 10 July 1993 between the ABiH and the HVO on the free passage of humanitarian convoys in the territory of BiH
Military Police	The Military Police of the HVO
Minutes of 31 May 1993	Exhibit P02575, the minutes of an HZ(R) H-B meeting on 31 May 1993 requiring that appropriate measures be taken for the prevention of crimes in Mostar
Minutes of the 47 <sup>th</sup> Government Session	Exhibit P03573, the minutes of the 47 <sup>th</sup> session of Government held on 20 July 1993 attended by

	Stojić
Mladić Diaries	Exhibits P11376, P11380, P11386, and P11389, excerpts of Ratko Mladić's diaries
MTS	Material and Technical Equipment
MUP	Civilian police force reporting to the Ministry of the Interior
North-West OZ	North-West Herzegovina Operative Zone (HVO)
Occupation Guidelines	<i>Naletilić Martinović</i> Trial Judgement, para. 217.
ODPR	Office for Displaced Persons and Refugees
OZ	Operative Zone
Parties	Refers to both the Appellants and the Prosecution
POW/POWs	Prisoner/s of War
PPN	Special Purposes Unit
Praljak Log Book	Exhibit P00352, a log book by Josip Praljak, the <i>de facto</i> warden (21 September to 10 December 1993) and then the co-warden (10 December 1993 to 1 July 1994) of the Helidrom detention facility.
Praljak's Order of 23 October 1993	Exhibit P06028, an order issued by Praljak to, <i>inter alios</i> , Petković and Ivica Rajić on 23 October 1993 to "[s]ort out the situation in Vareš showing no mercy towards anyone"
Praljak's Order of 17 August 1993	Exhibit P04260, an order issued by Praljak to the Prozor forward command post on 17 August 1993 for the withdrawal of all detainees used for labour
Primorac's Report of 23 April 1993	Exhibit 4D01034, a report dated 23 April 1993 from Ivica Primorac, Assistant Chief of the Main Staff, to Stojić and Petković concerning the activities of HVO professional units in the period of 13 to 23 April 1993
Prlić's Statements	Statements given by Jadranko Prlić to the Prosecution in December 2001 against his co-Appellants

Provisional Instructions	Exhibit P00837, the Provisional Instructions for the Work of the Military Police Units of April 1992
Prozor Secondary School	Secondary school in Prozor Municipality
RBiH	Republic of Bosnia and Herzegovina (following independence)
Rozić's Report of 23 April 1993	Exhibit P02063, a report submitted by Marko Rozić to Slobodan Božić on 23 April 1993
RS	Republika Srpska
SCSL	Special Court for Sierra Leone
SDA	Party of Democratic Action
Serbia	Republic of Serbia
SFRY	Socialist Federal Republic of Yugoslavia
Silos	A building called Silos in Čapljina Municipality
SIS	HVO Information and Security Service
South-East OZ	South-East Herzegovina Operative Zone (HVO)
Sovići School	School in Sovići in Jablanica Municipality
SpaBat	UNPROFOR Spanish Battalion
SRBiH	Socialist Republic of Bosnia and Herzegovina (prior to independence)
Statutory Decision of 3 July 1992	Exhibit P00303, a statutory decision issued by Mate Boban on 3 July 1992 on the temporary organisation of executive authority and administration in the territory of the HZ H-B
Šiljeg's Report of 13 July 1993	Exhibit P03418, a report from Željko Šiljeg to Stojić and Petković on 13 July 1993 which informed them that Šiljeg relocated detainees from Prozor Secondary School to Ljubuški Prison
Stojić's Order of 3 July 1993	Exhibit 4D00461, an order from Stojić dated 3 July 1993 through which he transferred the management of the detention of the Muslim men of military age arrested in the Municipality of Čapljina from the 1 <sup>st</sup> Knez Domogoj Brigade to the local HVO

Stojić's Order of 31 May 1993	Exhibit P02578, an order issued by Stojić dated 31 May 1993 ordering a curfew, vehicle checks, and arrests in Mostar
TO	Territorial Defence
Trial Chamber	Trial Chamber III of the Tribunal
Trial Judgement	<i>The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić</i> , Case No. IT-04-74-T, Judgement, 6 June 2014 (French original filed on 29 May 2013) (public)
Trial Judgement (French original)	<i>Le Procureur c/ Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, et Berislav Pušić</i> , Affaire n° IT-04-74-T, Jugement, 29 May 2013
Tribunal	ICTY
Tudman-Izetbegović Declaration	Exhibit P05051, a joint declaration of 14 September 1993, signed by Franjo Tudman and Alija Izetbegović
Ultimate Purpose	An ultimate purpose of the HZ(R) H-B leaders and Franjo Tudman to set up a Croatian entity that reconstituted, at least in part, the borders of the Banovina of 1939, thereby facilitating the reunification of the Croatian people; and such an entity was either supposed to be joined to Croatia directly subsequent to a possible dissolution of BiH, or otherwise, to become an independent state within BiH with close ties to Croatia
UN	United Nations
UNCIVPOL	United Nations Civilian Police
UNDU	United Nations Detention Unit
UNHCR	United Nations High Commissioner for Refugees
UNMO	United Nations Military Observers
UNPROFOR	United Nations Protection Force
Vance-Owen Peace Plan	A peace plan proposed by the Co-Chairmen of the ICFY Steering Committee to the representatives of the Serbs, Muslims, and Croats in BiH on 2 January 1993, which envisaged, <i>inter alia</i> , the creation of ten decentralised provinces (including Provinces 3,



	8, and 10) in BiH
Velež Stadium	Velež Football Stadium located in West Mostar
Vitina-Otok Camp	Detention facility in the hamlets of Vitina and Otok in Ljubuški Municipality
VJ	Yugoslav Army
Vrlić's Report of 5 July 1993	Exhibit P03181, a report from Stojan Vrlić dated 5 July 1993 containing a list of Muslim homes to be raided that evening in Mostar
Vojno Detention Centre	Buildings clustered in the Vojno sector in Mostar Municipality
VOS	HVO Military Intelligence Services
Vranica Building	Vranica building complex located in West Mostar
VRS	Army of the Serbs of Bosnia and Herzegovina
Mostar ZP	Mostar Military District (replaced the South-East OZ as of 15 October 1993)

### I. Table of Abbreviations

Art. / Arts	Article/s
AT.	Transcript page from proceedings before the Appeals Chamber in the present case
<i>Cf.</i>	Compare with
<i>E.g.</i>	<i>Exempli Gratia</i> (for example)
<i>Et seq.</i>	<i>Et sequitur</i> (and following)
Ex. / Exs.	Exhibit/s
Ex. Pxxxxx	Prosecution trial exhibit
Ex. 1Dxxxxx	Defence trial exhibit for Jadranko Prlić
Ex. 2Dxxxxx	Defence trial exhibit for Bruno Stojić
Ex. 3Dxxxxx	Defence trial exhibit for Slobodan Praljak
Ex. 4Dxxxxx	Defence trial exhibit for Milivoj Petković
Ex. 5Dxxxxx	Defence trial exhibit for Valentin Čorić

Ex. 6Dxxxxx	Defence trial exhibit for Berislav Pušić
fn. / fns	Footnote/s
p. / pp.	Page/s
para. / paras	Paragraph/s
T.	Transcript page from proceedings before the Trial Chamber in the present case
T(F).	Transcript page from proceedings before the Trial Chamber in the present case in French
Vol.	Volume



**XVII. ANNEX C: CONFIDENTIAL ANNEX**

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