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-08-91-A
		Date:	30 June 2016
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Carmel Agius, Presiding**
Judge Liu Daqun
Judge Christoph Flügge
Judge Fausto Pocar
Judge Koffi Kumelio A. Afanđe

Registrar: **Mr. John Hocking**

Judgement of: **30 June 2016**

PROSECUTOR
v.

MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN

PUBLIC WITH CONFIDENTIAL ANNEX C

JUDGEMENT

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I. INTRODUCTION

1. 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 ("Appeals Chamber" and "Tribunal" or "ICTY", respectively) is seised of the appeals filed by Mićo Stanišić,[1] Stojan Župljanin,[2] and the Office of the Prosecutor of the Tribunal[3] ("Stanišić", "Župljanin", and "Prosecution", respectively) against the judgement rendered by Trial Chamber II on 27 March 2013 in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T ("Trial Judgement" and "Trial Chamber", respectively).

A. Background

2. Stanišić was born on 30 June 1954 in Ponor, a village in the municipality of Pale in Bosnia and Herzegovina ("BiH").[4] From 21 December 1991, he was a Minister without Portfolio in the Council of Ministers, and an *ex officio* member of the National Security Council ("NSC"), the first *de facto* executive body of the *Republika Srpska*, the Serb Republic in BiH ("RS").[5] He was appointed the first Minister of the Ministry of Interior of the RS ("Minister of Interior" and "RS MUP", respectively) on 31 March 1992,[6] by virtue of which he was also a member of the Government of the RS ("RS Government"), until his resignation at the end of 1992.[7]

3. Župljanin was born on 22 September 1951 in Maslovare, a village in the municipality of Kotor Varoš in BiH.[8] On 6 May 1991, he became Chief of the Regional Security Services Centre ("CSB") of Banja Luka and, from at least 5 May 1992 until July 1992, he was a member of the Autonomous Region of Krajina ("ARK") Crisis Staff.[9]

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[1] See Notice of Appeal on behalf of Mićo Stanišić, 13 May 2013; Appellant's Brief on behalf of Mićo Stanišić, 19 August 2013 ("Stanišić Appeal Brief"); Amended Notice of Appeal on behalf of Mićo Stanišić, 23 April 2014 ("Stanišić Notice of Appeal"); Additional Appellant's Brief on behalf of Mićo Stanišić, 26 June 2014 ("Stanišić Additional Appeal Brief").

[2] See Notice of Appeal on behalf of Stojan [Ž]upljanin, 13 May 2013; Stojan [Ž]upljanin's Appeal Brief, 19 August 2013 (confidential; public redacted version filed on 23 August 2013, re-filed on 21 April 2016) ("Župljanin Appeal Brief"); [Ž]upljanin's Submission of Corrected Notice of Appeal, 22 August 2013; [Ž]upljanin's Submission of Amended Notice of Appeal, 9 October 2013; Župljanin's Submission of Second Amended Notice of Appeal, 22 April 2014 ("Župljanin Notice of Appeal"); Stojan Župljanin's Supplement to Appeal Brief (Ground Six), 26 June 2014 ("Župljanin Additional Appeal Brief").

[3] See Prosecution Notice of Appeal, 13 May 2013 ("Prosecution Notice of Appeal"); Prosecution Appeal Brief, 19 August 2013 ("Prosecution Appeal Brief").

[4] Trial Judgement, vol. 1, para. 2; Trial Judgement, vol. 2, para. 537.

[5] Trial Judgement, vol. 1, para. 2; Trial Judgement, vol. 2, paras 144, 549.

[6] Trial Judgement, vol. 2, paras 542-543, 558. See Trial Judgement, vol. 1, para. 2.

[7] Trial Judgement, vol. 1, para. 2; Trial Judgement, vol. 2, para. 543.

[8] Trial Judgement, vol. 1, para. 3; Trial Judgement, vol. 2, para. 348.

[9] Trial Judgement, vol. 1, para. 3; Trial Judgement, vol. 2, paras 349, 353.

4. The events giving rise to these appeals occurred in BiH from at least 1 April 1992 to at least 31 December 1992.[10] The Prosecution charged Stanišić and Župljanin with the following crimes against humanity under Article 5 of the Statute of the Tribunal ("Statute") committed during that period: (i) persecutions on political, racial, and religious grounds (Count 1); (ii) extermination (Count 2); (iii) murder (Count 3); (iv) torture (Count 5); (v) inhumane acts (Count 8); (vi) deportation (Count 9); and (vii) other inhumane acts (forcible transfer) (Count 10).[11] The Prosecution also charged Stanišić and Župljanin with the following violations of the laws or customs of war under Article 3 of the Statute: (i) murder (Count 4); (ii) torture (Count 6); and (iii) cruel treatment (Count 7).[12] The Indictment alleged Stanišić and Župljanin to be responsible for these crimes pursuant to both Article 7(1) (instigating, aiding and abetting, and committing, through participation in a joint criminal enterprise)[13] and Article 7(3) of the Statute (superior responsibility).[14] The Indictment further alleged Župljanin to be responsible for these crimes pursuant to Article 7(1) of the Statute (planning and ordering).[15]

5. The Trial Chamber concluded that many of the crimes alleged in the Indictment were committed[16] in the 20 municipalities listed in the Indictment ("Municipalities"),[17] including the municipalities in the ARK ("ARK Municipalities").[18] It found that a joint criminal enterprise came into existence no later than 24 October 1991 and remained in existence throughout the Indictment period, with the objective "to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state" ("JCE").[19] It also found that this objective was implemented through the crimes of deportation, other inhumane acts (forcible transfer), and persecutions through underlying acts of forcible transfer and deportation as crimes against humanity (collectively, "JCE I Crimes"), but that there was insufficient evidence to demonstrate that other crimes alleged in the Indictment were part of the JCE.[20]

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[10] Trial Judgement, vol. 1, para. 6. See Trial Judgement, vol. 2, paras 518-530, 729-798.
[11] *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Second Amended Consolidated Indictment, 23 November 2009 ("Indictment"), paras 24-41.
[12] Indictment, paras 29-36.
[13] Indictment, paras 4-5. See Indictment, paras 6-16.
[14] Indictment, para. 23. See Indictment, paras 17-23.
[15] Indictment, paras 5, 16.
[16] Trial Judgement, vol. 1, paras 212-228, 275-285, 340-350, 481-494, 685-703, 805-817, 873-883, 931-938, 974-986, 1034-1044, 1111-1122, 1185-1193, 1240-1251, 1281-1289, 1349-1359, 1408-1417, 1491-1501, 1548-1556, 1672-1691.
[17] Namely, Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Skender Vakuf, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik (see Indictment, Schedules A-G; Trial Judgement, vol. 2, para. 927).
[18] Namely, Banja Luka, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Skender Vakuf, and Teslić (see Indictment, Schedules A-E; Trial Judgement, vol. 2, para. 946).
[19] Trial Judgement, vol. 2, para. 313.
[20] Trial Judgement, vol. 2, para. 313.

6. The Trial Chamber found Stanišić responsible for crimes committed in each of the Municipalities,[21] while Župljanin was found responsible for crimes committed in the ARK Municipalities.[22] They were both convicted under Article 7(1) of the Statute for committing, through participation in the JCE, persecutions as a crime against humanity (through the underlying acts of killings; torture, cruel treatment, and inhumane acts; unlawful detention; establishment and perpetuation of inhumane living conditions; forcible transfer and deportation; plunder of property; wanton destruction of towns and villages including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings; and imposition and maintenance of restrictive and discriminatory measures), and murder and torture as violations of the laws or customs of war.[23] In addition, Župljanin was convicted for committing, through participation in the JCE, extermination as a crime against humanity,[24] and for ordering persecutions through plunder of property.[25] On the basis of the principles relating to cumulative convictions, the Trial Chamber did not enter convictions against Stanišić and Župljanin for murder, torture, inhumane acts, deportation, and inhumane acts (forcible transfer) as crimes against humanity, or cruel treatment as a violation of the laws or customs of war.[26] Stanišić and Župljanin were both sentenced to 22 years of imprisonment.[27]

B. Appeals

1. Stanišić's appeal

7. Stanišić challenges the Trial Judgement on 16 grounds.[28] Stanišić's first ground of appeal alleges that the Trial Chamber erred in law by failing to provide a reasoned opinion in support of its findings on the first and third categories of joint criminal enterprise.[29] Under his second through seventh grounds of appeal, Stanišić advances arguments challenging the Trial Chamber's findings relating to his liability through participation in the JCE. In particular, he alleges errors in relation to:

[21] Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885. See Trial Judgement, vol. 1, para. 8.
[22] Trial Judgement, vol. 2, paras 805, 832, 845, 850, 859, 864, 869. See Trial Judgement, vol. 1, para. 9.
[23] Trial Judgement, vol. 2, paras 955-956. Stanišić and Župljanin were found guilty under the first and third categories of joint criminal enterprise, more specifically, the first category of joint criminal enterprise with regard to persecutions through deportation and forcible transfer and the third category of joint criminal enterprise with regard to the remaining underlying acts of the crime of persecutions and the crimes of murder and torture (see Trial Judgement, vol. 2, paras 804-805, 809, 813, 818, 822, 827, 831-832, 836, 840, 844-845, 849-850, 854, 858-859, 863-864, 868-869, 873, 877, 881, 885).
[24] Trial Judgement, vol. 2, para. 956. Župljanin was convicted of extermination pursuant to the third category of joint criminal enterprise (see Trial Judgement, vol. 2, paras 805, 845, 850, 859).
[25] Trial Judgement, vol. 2, para. 805. See Trial Judgement, vol. 2, paras 526, 956.
[26] Trial Judgement, vol. 2, paras 912-917, 955-956. See Trial Judgement, vol. 2, paras 800, 804-805, 809, 813, 818, 822, 827, 831-832, 836, 840, 844-845, 849-850, 854, 858-859, 863-864, 868-869, 873, 877, 881, 885.
[27] Trial Judgement, vol. 2, paras 955-956.
[28] Stanišić Notice of Appeal, para. 19.
[29] Stanišić Notice of Appeal, paras 23-25; Stanišić Appeal Brief, paras 22-54.

(i) his membership (Ground 2);[30] (ii) the common criminal purpose (Ground 3, in part);[31] (iii) his intent to further the JCE (Ground 3, in part, and Ground 4);[32] (iv) the legal standard for contribution to a joint criminal enterprise through failure to act (Ground 5);[33] (v) his contribution to the JCE (Ground 6);[34] and (vi) the Trial Chamber's evaluation of his interview with the Prosecution, conducted between 16 and 21 July 2007 ("Interview") (Ground 7).[35] Grounds of appeal eight through eleven relate to Stanišić's convictions pursuant to the third category of joint criminal enterprise.[36] Under his twelfth through fifteenth grounds of appeal, Stanišić alleges a number of errors of law and fact in relation to his sentence.[37] Under his ground of appeal 1*bis*, he argues that the Trial Chamber violated his right to a fair hearing by an independent and impartial tribunal, thereby invalidating the Trial Judgement.[38]

8. In response, the Prosecution argues, *inter alia*, that the Appeals Chamber should dismiss Stanišić's appeal because he received a fair trial from an impartial panel of judges, and fails to demonstrate any error in the Trial Judgement.[39]

9. In reply, Stanišić submits, *inter alia*, that the Prosecution repeats the Trial Chamber's findings but fails to respond to most of his arguments on appeal.[40]

2. Župljanin's appeal

10. Župljanin challenges the Trial Judgement on six grounds.[41] Under his first ground of appeal, he advances a number of sub-grounds with respect to his conviction pursuant to first category of joint criminal enterprise.[42] Under his second and third grounds of appeal, Župljanin challenges his convictions pursuant to the third category of joint criminal enterprise,[43] and alleges errors of law and fact in relation to the Trial Chamber's findings on his responsibility for the crime of

[30] Stanišić Notice of Appeal, paras 26-28; Stanišić Appeal Brief, paras 55-74.
[31] Stanišić Notice of Appeal, paras 29-31. Stanišić Appeal Brief, paras 76-86.
[32] Stanišić Notice of Appeal, paras 29-36; Stanišić Appeal Brief, paras 75, 87-187.
[33] Stanišić Notice of Appeal, paras 37-39; Stanišić Appeal Brief, paras 188-234.
[34] Stanišić Notice of Appeal, paras 40-44; Stanišić Appeal Brief, paras 235-301.
[35] Stanišić Notice of Appeal, paras 45-48; Stanišić Appeal Brief, paras 302-332.
[36] Stanišić Notice of Appeal, paras 49-69; Stanišić Appeal Brief, paras 333-476.
[37] Stanišić Notice of Appeal, paras 70-82; Stanišić Appeal Brief, paras 477-550.
[38] Stanišić Notice of Appeal, paras 20-22; Stanišić Additional Appeal Brief, paras 2-131, p. 30. See Stanišić Appeal Brief, para. 21.
[39] Prosecution Response to Appeal of Mićo Stanišić, 21 October 2013 (confidential, public redacted version filed on 15 November 2013) ("Prosecution Response Brief (Stanišić)"), paras 5-8; Prosecution's Consolidated Supplemental Response Brief, 18 July 2014 ("Prosecution Consolidated Supplemental Response Brief"), para. 1.
[40] Brief in Reply on behalf of Mićo Stanišić, 11 November 2013 ("Stanišić Reply Brief"), paras 1, 5; Additional Brief in Reply on behalf of Mićo Stanišić, 29 July 2014 ("Stanišić Additional Reply Brief"), paras 1, 3.
[41] Župljanin Notice of Appeal, paras 7-49.
[42] Župljanin Notice of Appeal, paras 8-23; Župljanin Appeal Brief, paras 7-181.
[43] Župljanin Notice of Appeal, paras 24-37; Župljanin Appeal Brief, paras 182-242.

extermination.[44] Under his fourth ground of appeal, Župljanin alleges multiple errors of law and fact in relation to his sentence,[45] and under his fifth ground of appeal, he claims that the Trial Chamber erred in law and fact in finding that he ordered persecutions through the "appropriation of property".[46] Under his sixth ground of appeal, Župljanin argues that the Trial Chamber violated his right to a fair trial "by an impartial, independent and competent court".[47]

11. The Prosecution responds that the Appeals Chamber should dismiss Župljanin's appeal because he fails to establish an error of law invalidating the Judgement or an error of fact occasioning a miscarriage of justice.[48] It further submits that Župljanin "received a fair trial from an impartial panel of Judges".[49]

12. In reply, Župljanin argues that the Prosecution fails to rebut any of his arguments on appeal.[50]

3. Prosecution's appeal

13. The Prosecution challenges the Trial Judgement on two grounds.[51] Under its first ground of appeal, the Prosecution asserts that the Trial Chamber erred by imposing inadequate sentences on Stanišić and Župljanin.[52] Under its second ground of appeal, it alleges that the Trial Chamber erred in law by only convicting Stanišić and Župljanin for the crime against humanity of persecutions and failing to enter cumulative convictions for other crimes against humanity for which they were found criminally responsible: (i) murder (Count 3); (ii) torture (Count 5); (iii) deportation (Count 9); and (iv) inhumane acts (forcible transfer) (Count 10).[53] The Prosecution requests that the Appeals Chamber enter convictions for these crimes in order to fully reflect Stanišić's and Župljanin's criminal responsibility.[54]

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[44] Župljanin Notice of Appeal, paras 30-37; Župljanin Appeal Brief, paras 227-242.
[45] Župljanin Notice of Appeal, paras 38-46; Župljanin Appeal Brief, paras 243-277.
[46] Župljanin Notice of Appeal, paras 47-48; Župljanin Appeal Brief, paras 278-282.
[47] Župljanin Notice of Appeal, para. 49; Župljanin Additional Appeal Brief, paras 1-35.
[48] Prosecution Response to Stojan Župljanin's Appeal Brief, 21 October 2013 (confidential; public redacted version filed on 25 June 2014) ("Prosecution Response Brief (Župljanin)"), paras 3, 245.
[49] Prosecution Consolidated Supplemental Response Brief, para. 1.
[50] See generally Stojan [Ž]upljanin's Reply to Prosecution's Response Brief, 11 November 2013 (confidential; public redacted version filed on 13 November 2013) ("Župljanin Reply Brief"), paras 1-86; Stojan Župljanin's Reply to Prosecution's Consolidated Supplemental Response Brief Concerning Additional Ground, 25 July 2014 ("Župljanin Additional Reply Brief"), paras 1-23.
[51] See Prosecution Notice of Appeal, paras 2-5, Prosecution Appeal Brief, paras 1-61.
[52] Prosecution Notice of Appeal, paras 2-3; Prosecution Appeal Brief, paras 1, 3-53, 61.
[53] Prosecution Notice of Appeal, paras 4-5; Prosecution Appeal Brief, paras 2, 54-61.
[54] Prosecution Notice of Appeal, para. 5; Prosecution Appeal Brief, paras 2, 54, 60-61.

14. In response, Stanišić and Župljanin submit that the Appeals Chamber should dismiss the Prosecution's appeal,[55] In particular, they respond that the Prosecution fails to show that the Trial Chamber abused its sentencing discretion or committed an error[56] and submit that the Trial Chamber's decision not to enter cumulative convictions should be upheld.[57]

15. The Prosecution replies that neither Stanišić nor Župljanin demonstrate that the imposed sentences were reasonable.[58] Furthermore, it replies that Stanišić and Župljanin fail to show the existence of cogent reasons justifying the departure from the Tribunal's well-settled jurisprudence on cumulative convictions.[59]

C. Appeal hearing

16. The Appeals Chamber heard oral submissions from the parties regarding these appeals on 16 December 2015.[60] Having considered the written and oral submissions of Stanišić, Župljanin, and the Prosecution, the Appeals Chamber hereby renders its Judgement.

[55] Respondent's Brief on behalf of Mićo Stanišić, 21 October 2013 ("Stanišić Response Brief"), paras 3, 110, 182; Stojan [Ž]upljanin's Response to Prosecution Appeal Brief, 21 October 2013 ("Župljanin Response Brief"), para. 26. *Cf.* Stanišić Response Brief, para. 180.
[56] Stanišić Response Brief, paras 3, 110; Župljanin Response Brief, paras 2, 16.
[57] See Stanišić Response Brief, paras 115, 118, 179-180; Župljanin Response Brief, paras 17-21, 23.
[58] Consolidated Prosecution Reply to Mićo Stanišić's Respondent's Brief and Stojan Župljanin's Response to Prosecution Appeal, 11 November 2013 ("Prosecution Consolidated Reply Brief"), paras 1-17.
[59] Prosecution Consolidated Reply Brief, paras 1, 18-25.
[60] Appeal Hearing, 16 Dec 2015, AT. 61-244.

II. STANDARD OF APPELLATE REVIEW

17. Article 25 of the Statute stipulates that the Appeals Chamber may affirm, reverse, or revise the decisions taken by a trial chamber. The Appeals Chamber recalls that an appeal is not a trial *de novo*.[61] On appeal, parties must limit their arguments to legal errors that invalidate the decision of the trial chamber and to factual errors that result in a miscarriage of justice.[62] These criteria are set forth in Article 25 of the Statute and are well-established in the jurisprudence of both the Tribunal and the International Criminal Tribunal for Rwanda ("ICTR").[63] In exceptional circumstances, the Appeals Chamber will also hear appeals in which a party has raised a legal issue that would not invalidate the trial judgement but it is nevertheless of general significance to the Tribunal's jurisprudence.[64]

18. A party alleging an error of law must identify the alleged error, present arguments in support of its claim, and explain how the error invalidates the decision.[65] An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground.[66] However, even if the party's arguments are insufficient to support the contention of an error, the Appeals Chamber may find for other reasons that there is an error of law.[67] It is necessary for any appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments that the appellant submits the trial chamber omitted to address and to explain why this omission invalidates the decision.[68]

19. The Appeals Chamber reviews the trial chamber's findings of law to determine whether or not they are correct.[69] Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of the wrong legal standard, the Appeals Chamber will articulate the

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[61] *Stanišić and Simatović* Appeal Judgement, para. 15; *Đorđević* Appeal Judgement, para. 13; *Kordić and Čerkez* Appeal Judgement, para. 13.
[62] *Tolimir* Appeal Judgement, para. 8; *Popović et al.* Appeal Judgement, para. 16; *Đorđević* Appeal Judgement, para. 13.
[63] *Stanišić and Simatović* Appeal Judgement, para. 15; *Popović et al.* Appeal Judgement, para. 16; *Đorđević* Appeal Judgement, para. 13; *Nyiramasuhuko et al.* Appeal Judgement, para. 29.
[64] *Stanišić and Simatović* Appeal Judgement, para. 15; *Tolimir* Appeal Judgement, para. 8; *Popović et al.* Appeal Judgement, para. 16. *Cf. Ndahimana* Appeal Judgement, para. 8; *Mugenzi and Mugiraneza* Appeal Judgement, para. 12; *Gatete* Appeal Judgement, para. 8.
[65] *Stanišić and Simatović* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Popović et al.* Appeal Judgement, para. 17; *Nyiramasuhuko et al.* Appeal Judgement, para. 30; *Ngirabatware* Appeal Judgement, para. 8.
[66] *Stanišić and Simatović* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Popović et al.* Appeal Judgement, para. 17. See *Ndahimana* Appeal Judgement, para. 8; *Ngirabatware* Appeal Judgement, para. 8.
[67] *Stanišić and Simatović* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Popović et al.* Appeal Judgement, para. 17.
[68] *Stanišić and Simatović* Appeal Judgement, para. 16; *Tolimir* Appeal Judgement, para. 9; *Popović et al.* Appeal Judgement, para. 17.
[69] *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Popović et al.* Appeal Judgement, para. 18.

correct legal standard and review the relevant factual findings of the trial chamber accordingly.[70] 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 and determines whether it is itself convinced beyond reasonable doubt of the factual finding challenged by an appellant before the finding is confirmed on appeal.[71] The Appeals Chamber will not review the entire trial record *de novo*. Rather, it will in principle only take into account evidence referred to by the trial chamber in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and, where applicable, additional evidence admitted on appeal.[72]

20. When considering alleged errors of fact, the Appeals Chamber will apply a standard of reasonableness.[73] In reviewing the findings of the trial chamber, the Appeals Chamber will only substitute its own finding for that of the trial chamber when no reasonable trier of fact could have reached the original decision.[74] The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.[75] It is not any error of fact that will cause the Appeals Chamber to overturn a decision by a trial chamber, but only one that has caused a miscarriage of justice.[76]

21. In determining whether or not a trial chamber's finding was reasonable, the Appeals Chamber will not lightly disturb findings of fact by the trial chamber.[77] The Appeals Chamber recalls, as a general principle, the approach adopted by the Appeals Chamber in *Kupreškić et al.*, wherein it was stated that:

> [p]ursuant to the jurisprudence of the Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, 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 tribunal

[70] *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Popović et al.* Appeal Judgement, para. 18.
[71] *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Popović et al.* Appeal Judgement, para. 18.
[72] *Stanišić and Simatović* Appeal Judgement, para. 17; *Tolimir* Appeal Judgement, para. 10; *Popović et al.* Appeal Judgement, para. 18.
[73] *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Popović et al.* Appeal Judgement, para. 19. See *Ngirabatware* Appeal Judgement, para. 10.
[74] *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Popović et al.* Appeal Judgement, para. 19.
[75] *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Popović et al.* Appeal Judgement, para. 19.
[76] *Stanišić and Simatović* Appeal Judgement, para. 18; *Tolimir* Appeal Judgement, para. 11; *Popović et al.* Appeal Judgement, para. 19.
[77] *Stanišić and Simatović* Appeal Judgement, para. 19; *Tolimir* Appeal Judgement, para. 12; *Popović et al.* Appeal Judgement, para. 20.

> of fact or where the evaluation of the evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber.[78]

22. When considering an appeal by the Prosecution, the same standard of reasonableness and the deference to factual findings applies. The Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.[79] Considering that it is the Prosecution that bears the burden at trial of proving the guilt of an accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence appeal against conviction.[80] An accused must show that the trial chamber's factual errors create reasonable doubt as to his or her guilt.[81] The Prosecution 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.[82]

23. The Appeals Chamber recalls that, where additional evidence has been admitted on appeal and an alleged error of fact is raised, but there is no error in the legal standard applied in relation to the factual finding, the following two-step standard will apply:

> (i) The Appeals Chamber will first determine, on the basis of the trial record alone, whether no reasonable trier of fact could have reached the conclusion of guilt beyond reasonable doubt. If that is the case, then no further examination of the matter is necessary as a matter of law.
>
> (ii) If, however, the Appeals Chamber determines that a reasonable trier of fact could have reached a conclusion of guilt beyond reasonable doubt, then the Appeals Chamber will determine whether, in light of the trial evidence and additional evidence admitted on appeal, it is itself convinced beyond reasonable doubt as to the finding of guilt.[83]

24. The Appeals Chamber recalls that it has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and may dismiss arguments which are evidently unfounded without providing detailed reasoning.[84] Indeed, the Appeals Chamber's mandate cannot be effectively and efficiently carried out without focused contributions by the parties.[85] In order for

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[78] *Kupreškić et al.* Appeal Judgement, para. 30. See *Stanišić and Simatović* Appeal Judgement, para. 19; *Tolimir* Appeal Judgement, para. 12; *Popović et al.* Appeal Judgement, para. 20.
[79] *Popović et al.* Appeal Judgement, para. 21; *Đorđević* Appeal Judgement, para. 18; *Šainović et al.* Appeal Judgement, para. 24.
[80] *Popović et al.* Appeal Judgement, para. 21; *Đorđević* Appeal Judgement, para. 18; *Šainović et al.* Appeal Judgement, para. 24.
[81] *Popović et al.* Appeal Judgement, para. 21; *Đorđević* Appeal Judgement, para. 18; *Šainović et al.* Appeal Judgement, para. 24.
[82] *Popović et al.* Appeal Judgement, para. 21; *Đorđević* Appeal Judgement, para. 18; *Šainović et al.* Appeal Judgement, para. 24.
[83] *Lukić and Lukić* Appeal Judgement, para. 14; *Krajišnik* Appeal Judgement, para. 15; *Kvočka et al.* Appeal Judgement, para. 426.
[84] *Stanišić and Simatović* Appeal Judgement, para. 21; *Tolimir* Appeal Judgement, para. 13; *Popović et al.* Appeal Judgement, para. 22.
[85] *Stanišić and Simatović* Appeal Judgement, para. 21; *Popović et al.* Appeal Judgement, para. 22; *Đorđević* Appeal Judgement, para. 19.

the Appeals Chamber to assess a party's arguments on appeal, the party is expected to present its case clearly, logically, and exhaustively.[86] The appealing party is also expected to provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenges are being made.[87] The Appeals Chamber will not consider a party's submissions in detail when they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[88] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[89]

25. When applying these basic principles, the Appeals Chamber recalls that in previous cases it has identified the general types of deficient submissions on appeal which may be dismissed without detailed analysis.[90] In particular, the Appeals Chamber will generally dismiss: (i) arguments that fail to identify the challenged factual findings, that misrepresent the factual findings or the evidence, or that ignore other relevant factual findings; (ii) mere assertions that the trial chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the trial chamber did; (iii) challenges to factual findings on which a conviction does not rely and arguments that are clearly irrelevant, that lend support to, or that are not inconsistent with the challenged finding; (iv) arguments that challenge a trial chamber's reliance or failure to rely on one piece of evidence without explaining why the conviction should not stand on the basis of the remaining evidence; (v) arguments contrary to common sense; (vi) challenges to factual findings where the relevance of the factual finding is unclear and has not been explained by the appealing party; (vii) mere repetition of arguments that were unsuccessful at trial without any demonstration that their rejection by the trial chamber constituted an error warranting the intervention of the Appeals Chamber; (viii) allegations based on material not on the trial record; (ix) mere assertions unsupported by any evidence, undeveloped

[86] *Stanišić and Simatović* Appeal Judgement, para. 21; *Tolimir* Appeal Judgement, para. 13; *Popović et al.* Appeal Judgement, para. 22.
[87] Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002, paras 1(c)(iii)-(iv), 4(b)(ii). See *Stanišić and Simatović* Appeal Judgement, para. 21; *Tolimir* Appeal Judgement, para. 13; *Popović et al.* Appeal Judgement, para. 22.
[88] *Tolimir* Appeal Judgement, para. 13; *Popović et al.* Appeal Judgement, para. 22; *Šainović et al.* Appeal Judgement, para. 26.
[89] *Tolimir* Appeal Judgement, para. 13; *Perišić* Appeal Judgement, para. 11; *Gotovina and Markač* Appeal Judgement, para. 14; *Nyiramasuhuko et al.* Appeal Judgement, para. 34; *Karemera and Ngirumpatse* Appeal Judgement, para. 17; *Ngirabatware* Appeal Judgement, para. 11.
[90] *Stanišić and Simatović* Appeal Judgement, para. 22; *Tolimir* Appeal Judgement, para. 14; *Popović et al.* Appeal Judgement, para. 23.

assertions, or failure to articulate errors; and (x) mere assertions that the trial chamber failed to give sufficient weight to evidence or failed to interpret evidence in a particular manner.[91]

26. Finally, where the Appeals Chamber finds that a ground of appeal, presented as relating to an alleged error of law, formulates no clear legal challenge but challenges the trial chamber's factual findings in terms of its assessment of evidence, it will either analyse these allegations to determine the reasonableness of the impugned conclusions or refer to the relevant analysis under other grounds of appeal.[92]

[91] *Stanišić and Simatović* Appeal Judgement, para. 22; *Tolimir* Appeal Judgement, para. 14; *Popović et al.* Appeal Judgement, para. 23.
[92] *Tolimir* Appeal Judgement, para. 15; *Popović et al.* Appeal Judgement, para. 24; *Đorđević* Appeal Judgement, para. 21. See *Strugar* Appeal Judgement, paras 252, 269.

III. ALLEGED DENIAL OF THE RIGHT TO A FAIR TRIAL BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL (STANIŠIĆ'S GROUND OF APPEAL 1*BIS* AND ŽUPLJANIN'S SIXTH GROUND OF APPEAL)

A. Introduction

27. On 27 March 2013, the Trial Chamber, composed of Judges Burton Hall, Guy Delvoie, and Frederik Harhoff ("Judge Harhoff"), unanimously convicted Stanišić and Župljanin pursuant to joint criminal enterprise liability.[93] Following the delivery of the Trial Judgement, a Danish newspaper published a letter written by Judge Harhoff and addressed to 56 recipients, dated 6 June 2013 ("Letter").[94] On 9 July 2013, Vojislav Šešelj, an accused on trial before a chamber of which Judge Harhoff was a member, requested that Judge Harhoff be disqualified from his case on the basis of the Letter.[95] On 28 August 2013, a chamber convened in the *Šešelj* case by the Acting President of the Tribunal ("Special Chamber") found, by majority, that in the Letter, Judge Harhoff "demonstrated a bias in favour of conviction such that a reasonable observer properly informed would reasonably apprehend bias".[96] Judge Harhoff was subsequently disqualified from the *Šešelj* proceedings.[97] On 14 April 2014, the Appeals Chamber admitted the Letter in its entirety as additional evidence on appeal in this case[98] and allowed Stanišić and Župljanin to supplement their respective appeals to include submissions on the Letter.[99] The Appeals Chamber also admitted three documents in rebuttal, namely two media articles ("Media Articles"),[100] as well as a memorandum

[93] Trial Judgement, vol. 2, paras 955-956. See Trial Judgement, vol. 2, paras 313-315, 489-530, 729-798, 912, 916, 918. In addition, Župljanin was convicted for ordering persecutions through plunder of property (see *supra*, para. 6).
[94] See Exhibit 1DA1.
[95] *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Professor Vojislav Šešelj's Motion for Disqualification of Judge Frederik Harhoff, 9 July 2013.
[96] *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President, 28 August 2013 ("*Šešelj* Decision on Disqualification"), para. 14. The Special Chamber, by majority, denied a request by the Prosecution for reconsideration and Stanišić and Župljanin's request to make submissions in that case (*Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Prosecution Motion for Reconsideration of Decision on Disqualification, Requests for Clarification, and Motion on Behalf of Stanišić and Župljanin, 7 October 2013 ("*Šešelj* Reconsideration Decision"), para. 22). The Appeals Chamber will refer to the *Šešelj* Decision on Disqualification and the *Šešelj* Reconsideration Decision together as the "*Šešelj* Decisions".
[97] *Šešelj* Decision on Disqualification, paras 14-15; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Order Assigning a Judge Pursuant to Rule 15, 31 October 2013 ("*Šešelj* Order Replacing Judge Harhoff"), p. 2.
[98] Decision on Mićo Stanišić's Motion Seeking Admission of Additional Evidence Pursuant to Rule 115, 14 April 2014, paras 22-24, 27. See *infra*, Annex A, para. 5. The Letter was admitted into evidence on appeal as Exhibit 1DA1.
[99] Decision on Mićo Stanišić's Motion Seeking Leave to Amend Notice of Appeal, 14 April 2014 ("Decision on Stanišić's Motion to Amend Notice of Appeal"), paras 23-24; Decision on Župljanin's Second Request to Amend His Notice of Appeal and Supplement His Appeal Brief, 14 April 2014, paras 16-19. See Župljanin Notice of Appeal; Stanišić Notice of Appeal, 23 April 2013; [Ž]upljanin's Second Request to Amend His Notice of Appeal and Supplement His Appeal Brief, 9 September 2013; Supplemental Submission in Support of Mićo Stanišić's Motion to Amend Notice of Appeal, 9 September 2013. Stanišić's ground of appeal 1*bis* and Župljanin's ground of appeal 6 were subsequently added to the appeal proceedings.
[100] Exhibit PA2 (entitled "Two Puzzling Judgments in The Hague" dated 1 June 2013 and published by *The Economist*); Exhibit PA3 (entitled "What Happened to the Hague Tribunal?" dated 2 June 2013 and published by *The New York Times*).

dated 8 July 2013 from Judge Harhoff to Judge Jean-Claude Antonetti, Presiding Judge in the *Šešelj* case, in relation to the Letter ("Memorandum") (collectively, "Rebuttal Material").[101]

28. Stanišić and Župljanin submit that their right to a fair trial by an independent and impartial court was violated as a result of the participation of Judge Harhoff in the trial proceedings,[102] which invalidates their convictions.[103] They argue that: (i) Judge Harhoff's disqualification from the *Šešelj* proceedings must lead to the same result in the proceedings against them;[104] and (ii) the Letter reveals an unacceptable appearance of bias on the part of Judge Harhoff in favour of convicting accused persons, which rebuts the presumption of impartiality in this case.[105] Stanišić and Župljanin request that the Appeals Chamber quash the Trial Chamber's findings, vacate the Trial Judgement, and conduct a *de novo* assessment of all findings or order a re-trial before a new trial chamber.[106] Alternatively, they request that a full acquittal be pronounced.[107]

29. The Prosecution responds that Stanišić and Župljanin received a fair trial from an impartial panel of judges[108] and that their appeals in this regard should be dismissed.[109] It argues that Stanišić and Župljanin have: (i) incorrectly focused on Judge Harhoff's disqualification from the *Šešelj* case, which it submits, was erroneous and not binding in this case;[110] and (ii) neither rebutted the presumption of Judge Harhoff's impartiality nor demonstrated that a reasonable apprehension of bias is firmly established.[111]

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[101] Exhibit PA1.
[102] See Stanišić Additional Appeal Brief, paras 2-10. See also Stanišić Additional Appeal Brief, p. 30; Župljanin Additional Appeal Brief, paras 1, 34-35; *infra*, Annex A, para. 5.
[103] Stanišić Additional Appeal Brief, paras 4, 9-10, 106-131; Župljanin Additional Appeal Brief, paras 2-3, 30-34. See Appeal Hearing, 16 Dec 2015, AT. 70, 160.
[104] Stanišić Additional Appeal Brief, paras 33-52; Župljanin Additional Appeal Brief, paras 4-12, 28-29; Stanišić Additional Reply Brief, paras 28-30.
[105] Stanišić Additional Appeal Brief, paras 53-105; Župljanin Additional Appeal Brief, paras 13-27. See Appeal Hearing, 16 Dec 2015, AT. 69-70, 72-73, 144-145.
[106] Stanišić Additional Appeal Brief, para. 10, p. 30; Župljanin Additional Appeal Brief, paras 1, 3, 30-35. See Appeal Hearing, 16 Dec 2015, AT. 92-93, 160-161.
[107] Stanišić Additional Appeal Brief, para. 10, p. 30; Župljanin Additional Appeal Brief, paras 1, 3, 30-35. See Appeal Hearing, 16 Dec 2015, AT. 92-93.
[108] Prosecution Consolidated Supplemental Response Brief, para. 1.
[109] Prosecution Consolidated Supplemental Response Brief, para. 4. See Appeal Hearing, 16 Dec 2015, AT. 129, 134-135, 183, 204.
[110] Prosecution Consolidated Supplemental Response Brief, para. 3.
[111] Prosecution Consolidated Supplemental Response Brief, para. 3. See Prosecution Consolidated Supplemental Response Brief, paras 1, 4.

B. Whether Judge Harhoff's disqualification in the *Šešelj* proceedings must lead to the same result in this case

1. Submissions of the parties

30. Stanišić and Župljanin submit that the disqualification of Judge Harhoff from the *Šešelj* proceedings, although not legally binding, must lead to the same result in the proceedings against them.[112] Stanišić argues that Judge Harhoff's disqualification in the *Šešelj* case attaches to him in his capacity as a Judge of the Tribunal and is not limited to a particular case.[113] Similarly, Župljanin asserts that the bias found in the *Šešelj* Decisions was not directed against Šešelj in particular but arose from Judge Harhoff's predisposition to convict accused persons.[114] Stanišić and Župljanin also argue that the *Šešelj* Decision on Disqualification is final and the Appeals Chamber cannot invalidate it by arriving at a different conclusion in the present case.[115] In this respect, Stanišić and Župljanin submit that the *Šešelj* case and the present proceedings are essentially "identical" as the *Šešelj* Decisions address the same issue (*i.e.* Judge Harhoff's impartiality in light of views expressed in the Letter), are based on the same material (*i.e.* the Letter), are not limited to a specific accused, and concern the same subject matter (*i.e.* Judge Harhoff's interpretation of joint criminal enterprise liability).[116] Stanišić contends that the Appeals Chamber is not empowered to render a decision contrary to the *Šešelj* Decisions since the *Šešelj* Decisions were referred to by the Acting President of the Tribunal as "now final"[117] and no clear error of reasoning or change of

[112] See Stanišić Additional Appeal Brief, paras 33-52; Župljanin Additional Appeal Brief, paras 4-12, 28-29; Stanišić Additional Reply Brief, paras 28-30.
[113] Stanišić Additional Appeal Brief, paras 6, 35-41. See Župljanin Additional Appeal Brief, paras 12, 28-29. See also Appeal Hearing, 16 Dec 2015, AT. 73-75. Stanišić argues further that "[a] judge who expressed views which gave rise to an apprehension that he was predisposed to convict persons accused in one case – while sitting simultaneously on a second case – cannot be disqualified from the former and found *not* to have exhibited an appearance of bias in the latter." (Stanišić Additional Reply Brief, para. 30). See Stanišić Additional Appeal Brief, paras 49-52 (arguing that the disqualification of Judge Harhoff in the *Šešelj* proceedings is inseparable from the determination of whether he should be disqualified in this case); Stanišić Additional Reply Brief, para. 32; Appeal Hearing, 16 Dec 2015, AT. 90-91.
[114] Župljanin Additional Appeal Brief, paras 9-10. See Stanišić Additional Appeal Brief, para. 43.
[115] Stanišić Additional Appeal Brief, para. 41. See Župljanin Additional Appeal Brief, paras 1, 9-12. See also Appeal Hearing, 16 Dec 2015, AT. 90. Stanišić also argues that "[w]ere the Appeals Chamber to come to a different conclusion regarding the impact of the Letter in this case, it would have the effect of indirectly invalidating the [*Šešelj* Decisions] based on the indistinguishable features underlying both cases" (Stanišić Additional Appeal Brief, para. 46). See Stanišić Additional Appeal Brief, paras 35, 41-42.
[116] Stanišić Additional Appeal Brief, paras 42-44, 57; Župljanin Additional Appeal Brief, paras 10, 12. Stanišić identifies two differences between this case and that of *Šešelj* but argues that the finding of apparent bias in the *Šešelj* proceedings is applicable in this case. Specifically, he notes that: (i) the Trial Judgement was already issued when the Letter was published, which only has an effect on the remedy available; and (ii) the Special Chamber did not consider the Rebuttal Material (Appeal Hearing, 16 Dec 2015, AT. 91; Stanišić Additional Appeal Brief, para. 45). See Stanišić Additional Reply Brief, paras 27-31).
[117] See Stanišić Additional Appeal Brief, para. 41, referring to *Šešelj* Order Replacing Judge Harhoff. See Appeal Hearing, 16 Dec 2015, AT. 90. Stanišić asserts that the *Šešelj* Decision on Disqualification was subject to an unsuccessful appeal, and that *Šešelj* Decisions have been implemented. Stanišić Additional Appeal Brief, para. 47.

circumstances has been established or raised to justify overturning the *Šešelj* Decisions.[118] According to Stanišić, the apparent bias of Judge Harhoff undermines confidence in the administration of justice, is contrary to Article 13 of the Statute, and thus disqualifies him from acting in a judicial capacity.[119]

31. The Prosecution responds that the *Šešelj* Decisions are neither binding nor equally applicable to this case.[120] It argues that prior judicial disqualifications are case-specific, and "[t]he Appeals Chamber must therefore reach its own determination as to Judge Harhoff's impartiality in this case."[121] In particular, the Prosecution refers to the differences between the *Šešelj* case and the present case, namely, the arguments, evidence, and the fact that the Trial Judgement had already been rendered at the date of the publication of the Letter.[122] It submits further that the *Šešelj* Decisions are erroneous and not persuasive regarding Judge Harhoff's impartiality in this case.[123]

2. Analysis

32. On the issue of disqualification of Judges, Rule 15(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides that "[a] Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any

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[118] Stanišić Additional Appeal Brief, paras 41, 47-48. See Stanišić Additional Reply Brief, paras 23-24, 26. See Župljanin Additional Reply Brief, para. 2. See also Appeal Hearing, 16 Dec 2015, AT. 143.

[119] Stanišić Additional Appeal Brief, paras 49-52, referring to *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion for Disqualification of Judge Byron and Stay of the Proceedings, 20 February 2009 ("*Karemera et al.* Disqualification Decision"), para. 6, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-05/18-PT, Decision on Motion to Disqualify Judge Picard and Report to the Vice-President Pursuant to Rule 15(B)(ii), 22 July 2009 ("*Karadžić* Disqualification Decision"), para. 17.

[120] Prosecution Consolidated Supplemental Response Brief, para. 28; Appeal Hearing, 16 Dec 2015, AT. 132.

[121] Prosecution Consolidated Supplemental Response Brief, para. 31. See Prosecution Consolidated Supplemental Response Brief, paras 28-30. The Prosecution contends that the "case-specific nature of judicial bias claims is further confirmed by how prior judicial disqualifications at international criminal tribunals have only applied to particular cases, and have not impacted the challenged Judges' ability to sit on other cases" (Prosecution Consolidated Supplemental Response Brief, para. 30, referring to *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-T, Decision of the Bureau on Motion to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves, 25 October 1999 ("*Delalić et al.* Disqualification and Recusal Decision"), para. 9, *Prosecutor v. Issa Hassan Sesay*, Case No. SCSL-2004-15-AR15, Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004 ("*RUF* Decision"), paras 1, 18, *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR15bis.2, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material, 22 October 2004, paras 68-69).

[122] Prosecution Consolidated Supplemental Response Brief, para. 31; Appeal Hearing, 16 Dec 2015, AT. 133-134. The Prosecution argues that the unanimous Trial Judgement shows that the Special Chamber's majority interpretation of the Letter was incorrect and that the Memorandum was erroneously considered to be immaterial. See Appeal Hearing, 16 Dec 2015, AT. 133-134. The Prosecution also argues that a conclusion contrary to the *Šešelj* Decisions would be consistent with prior instances where different chambers reached different conclusions based on different arguments and evidence. Prosecution Consolidated Supplemental Response Brief, para. 31.

[123] Prosecution Consolidated Supplemental Response Brief, paras 21-26. See Appeal Hearing, 16 Dec 2015, AT. 132-133. The Prosecution asserts that "[t]o the extent that any language in the Decisions could be construed as having a broader impact, any such conclusions would be beyond the competence of the *Šešelj* special panel." Prosecution Consolidated Supplemental Response Brief, para. 28.

association which might affect his or her impartiality."[124] In light of Article 13 of the Statute – which requires Judges to be, *inter alia*, impartial – Rule 15(A) of the Rules has been interpreted and applied in accordance with the principle that a Judge is not impartial if actual bias or an unacceptable appearance of bias exists.[125] The Appeals Chamber also notes that a Judge who has not met the requirements of this Rule in a specific case has otherwise been entitled to continue to exercise the functions of a Judge of the Tribunal and sit in other cases when he fulfils the requirements of Rule 15 of the Rules in those other cases.[126] The Appeals Chamber therefore considers that determinations of actual bias or unacceptable appearance of bias under Rule 15 of the Rules should be made on a case-by-case basis.[127] Accordingly, the Appeals Chamber finds that Judge Harhoff's disqualification in the *Šešelj* case, which was determined pursuant to Rule 15 of the Rules, does not automatically disqualify him from other cases. Stanišić and Župljanin therefore cannot rely on a finding of apparent bias made in another case and must instead show that those actions of Judge Harhoff which allegedly demonstrate an unacceptable appearance of bias, impacted on his impartiality in their trial proceedings.[128]

33. Additionally, as held by the Appeals Chamber, there has been no general finding or final determination on Judge Harhoff's partiality with regard to the present case,[129] and the factual findings in the *Šešelj* Decisions were limited to the particular circumstances of that case.[130] The Appeals Chamber emphasises in this respect that, as a rule, factual findings made by one chamber are not binding upon subsequent chambers.[131] The Appeals Chamber also does not find

[124] See *Šainović et al.* Appeal Judgement, para. 179.
[125] *Furundžija* Appeal Judgement, paras 189-191; *Šainović et al.* Appeal Judgement, paras 179-181. See *Furundžija* Appeal Judgement, para. 175 (noting that Rule 15(A) of the Rules calls for a Judge to withdraw from a particular case if he or she believes that his or her impartiality is in question).
[126] See *Čelebići* Appeal Judgement, para. 683 (stating that the "relevant question to be determined by the Appeals Chamber is whether the reaction of the hypothetical fair-minded observer (with sufficient knowledge of the circumstances to make a reasonable judgement) would be that [the Judge] might not bring an impartial and unprejudiced mind to the issues arising in *the* case" (emphasis added)). See also *Delalić et al.* Disqualification and Recusal Decision, para. 9 ("If the Judge does not fulfil the requirements referred to in Rule 15(B), he or she is disqualified from hearing that particular case, although he or she is fully entitled to continue to exercise the functions of a Judge of the Tribunal and sit in other cases").
[127] See *Delalić et al.* Disqualification and Recusal Decision, paras 9-10. See also *Prosecutor v. Chea Nuon et al.*, Case No. 002/19-09-2007/ECCC/TC, Decision on Ieng Sary's Application to Disqualify Judge Nil Nonn and Related Requests, 28 January 2011, para. 7 ("It follows that a finding of bias in a case does not by itself require the judge's disqualification from other, unrelated cases.").
[128] See *Furundžija* Appeal Judgement, paras 197 ("It is for the Appellant to adduce sufficient evidence to satisfy the Appeals Chamber that Judge Mumba was not impartial in his case"), 200 ("even if it were established that Judge Mumba expressly shared the goals and objectives [...] in promoting and protecting the human rights of women, that inclination, being of a general nature, is distinguishable from an inclination to implement those goals and objectives as a Judge in a particular case").
[129] See Decision on Mićo Stanišić's Motion requesting a Declaration of Mistrial and Stojan Župljanin's Motion to Vacate Trial Judgement, 2 April 2014 ("Mistrial Decision"), para. 25.
[130] Decision on Mićo Stanišić's Motion Seeking Reconsideration of Decision on Stanišić's Motion for Declaration of Mistrial and Župljanin's Motion to Vacate Trial Judgement, 24 July 2014, para. 15, referring to Mistrial Decision, para. 25.
[131] See Mistrial Decision, para. 25 (with references cited therein).

Stanišić and Župljanin's argument that the *Šešelj* case and the current proceedings are "identical" to be persuasive.[132] Recalling that it is the burden of the party seeking disqualification of a Judge to demonstrate a reasonable apprehension of bias,[133] the Appeals Chamber notes that the arguments presented in the *Šešelj* case, as well as the evidence considered, differ from those in this case, and that in the *Šešelj* case, the Letter was sent by Judge Harhoff while the case was ongoing.[134] Thus, Stanišić and Župljanin's reliance on the findings in the *Šešelj* case is insufficient to meet their burden of proof. Furthermore, the Appeals Chamber considers that Stanišić takes out of context the Acting President's Order Replacing Judge Harhoff in the *Šešelj* proceedings.[135] It is clear that the relevant statement in the order, *i.e.* that Judge Harhoff's disqualification was "therefore now final", concerned the finality of the disqualification pursuant to Rule 15 of the Rules in the *Šešelj* proceedings and related only to that case.[136] Similarly, Stanišić and Župljanin's argument that a different conclusion on Judge Harhoff's impartiality in this case would invalidate the *Šešelj* Decisions is without merit and is dismissed.

34. In light of the foregoing, the Appeals Chamber dismisses Stanišić and Župljanin's arguments that the *Šešelj* Decisions must automatically lead to the same result in the present case.

C. Whether the Letter rebuts the presumption of impartiality of Judge Harhoff in this case

1. Submissions of the parties

35. Stanišić and Župljanin submit that the presumption of impartiality is rebutted in this case and that a reasonable apprehension of bias is firmly established.[137] They argue that the contents of the Letter demonstrate an appearance of bias in favour of convicting accused persons.[138] Stanišić submits that a number of statements in the Letter, in and of themselves, justify a finding of apparent bias and that the contents "'*when read as a whole*' rebut the presumption of impartiality afforded to Judge Harhoff".[139] In Stanišić's view, even though the *Gotovina and Markač* Appeal Judgement,

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[132] See *supra*, para. 30.
[133] See *Furundžija* Appeal Judgement, para. 197; *supra*, para. 44.
[134] See *e.g. Šešelj* Decision on Disqualification, paras 2 (the Šešelj Defence argued that Judge Harhoff had a strong inclination to convict accused persons of Serbian ethnicity, and contended that contempt proceedings should be initiated), 8-14 (no consideration in the *Šešelj* case of the Rebuttal Material); *Šešelj* Reconsideration Decision, paras 12-20 (no consideration in the *Šešelj* case of the Media Articles, but the Special Chamber found that the Memorandum was immaterial and not probative).
[135] See *supra*, para. 30; *Šešelj* Order Replacing Judge Harhoff.
[136] *Šešelj* Order Replacing Judge Harhoff, p. 1.
[137] Stanišić Additional Appeal Brief, para. 98. See Appeal Hearing, 16 Dec 2015, AT. 69-70, 72-73. See also Stanišić Additional Appeal Brief, paras 61-97; Župljanin Additional Appeal Brief, paras 13-26. See Stanišić Additional Reply Brief, paras 3-4, 9, 18-19; Župljanin Additional Reply Brief, para. 4.
[138] See Stanišić Additional Appeal Brief, paras 61-76; Župljanin Additional Appeal Brief, paras 10-11, 13-17, 22-27. See also Appeal Hearing, 16 Dec 2015, AT. 77-85, 144-153.
[139] Stanišić Additional Appeal Brief, para. 62, referring to the *Šešelj* Disqualification Decision, para. 13 (emphasis in original).

the *Perišić* Appeal Judgement, and the *Stanišić and Simatović* Trial Judgement, to which Judge Harhoff refers in the Letter, did not alter the parameters of JCE, "it is through his critique of these judgements that Judge Harhoff reveals his own views on JCE liability and how he has applied it as a Judge of the International Tribunal".[140] Stanišić and Župljanin assert that the statements made by Judge Harhoff in the Letter are more than mere disagreement with the law.[141] According to Župljanin, the reasonable apprehension of bias test should be applied with "reference to a reasonable observer properly informed from any of the ethnic groups affected by Judgements of the Tribunal".[142]

36. Stanišić submits that, when taken into account with his legal and academic background, Judge Harhoff's statements are "particularly shocking".[143] He also argues that Judge Harhoff's statement that "he had always 'presumed that it was right to convict leaders for the crime committed with their knowledge'" under joint criminal enterprise liability is particularly relevant to the assessment of whether an unacceptable appearance of bias exists in this case.[144] Stanišić and Župljanin submit that: (i) they are specifically included in the category of persons likely to be convicted as a result of Judge Harhoff's predisposition;[145] and (ii) Judge Harhoff's views demonstrate that he considers that accused persons may be convicted under joint criminal enterprise liability without proving the requisite legal elements.[146]

37. Further, Stanišić and Župljanin submit that the "deep professional and moral dilemma" expressed by Judge Harhoff shortly after the delivery of the Trial Judgement demonstrates his difficulty in applying the jurisprudence at the time in which he was deliberating their guilt or otherwise.[147] In Župljanin's submission, bias may be established on the basis of remarks or comments made after a judge's participation in the case for which bias is alleged,[148] including on

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[140] Stanišić Additional Appeal Brief, para. 68.
[141] Stanišić Additional Appeal Brief, paras 65-71; Župljanin Additional Appeal Brief, paras 11, 13; Stanišić Additional Reply Brief, para. 34. See Appeal Hearing, 16 Dec 2015, AT. 212-213. Župljanin also asserts that Judge Harhoff should have expressed any reservations on the jurisprudence openly and judicially in a dissenting opinion. Župljanin Additional Reply Brief, paras 17-21. See Stanišić Additional Reply Brief, para. 36.
[142] Župljanin Additional Appeal Brief, paras 16-17, referring to *Piersack v. Belgium*, Application No. 8692/79, ECtHR, Judgement, 1 October 1982 ("*Piersack v. Belgium*"), para. 30, *Hoekstra v. HM Advocate (No. 2)* (Scottish High Court of Justiciary), 2000 J.C. 391 ("*Hoekstra v. HM Advocate*"), paras 18, 22. See Appeal Hearing, 16 Dec 2015, AT. 160.
[143] Stanišić Additional Appeal Brief, para. 72.
[144] Stanišić Additional Appeal Brief, para. 79 (emphasis omitted).
[145] Appeal Hearing, 16 Dec 2015, AT. 79, 84. See Appeal Hearing, 16 Dec 2015, AT. 152.
[146] Stanišić Additional Appeal Brief, paras 65-71, 73, 78-79 (referring to Letter, pp 3-4); Župljanin Additional Appeal Brief, paras 4, 10-13. See Appeal Hearing, 16 Dec 2015, AT. 149-154; Stanišić Additional Reply Brief, paras 12, 34-35.
[147] Stanišić Additional Appeal Brief, paras 66, 74; Župljanin Additional Appeal Brief, paras 4, 13. See Appeal Hearing, 16 Dec 2015, AT. 84-85, 144, 147, 152, 158. Župljanin further submits that the "retrospective and deep-seated nature of the views expressed" demonstrates an apprehension of bias in relation to Judge Harhoff's evaluation of the evidence and law in this case (Župljanin Additional Appeal Brief, para. 13). See Stanišić Additional Reply Brief, para. 18.
[148] Župljanin Additional Appeal Brief, para. 14, referring to *Hatchcock v. Navistar Intern. Transp. Corp.*, 53 F. 3d 36, 39 (4th Cir. 1995) ("*Hatchcock v. Navistar*").

the basis of predisposition against the faithful application of the law.[149] Stanišić and Župljanin also assert that Judge Harhoff's allegation that the then President of the Tribunal and other Judges were influenced to change the law by outside forces underscores the appearance of bias.[150]

38. Stanišić and Župljanin further submit that the Rebuttal Material is irrelevant and does not diminish the appearance of bias but, instead, compounds it.[151] In particular, Stanišić and Župljanin contend that the Memorandum is a self-serving and improper *ex post facto* attempt to justify abandoning the requirements of joint criminal enterprise liability.[152] Stanišić and Župljanin further argue that the Rebuttal Material: (i) fails to explain Judge Harhoff's views that there was a "set practice" of convicting accused persons until autumn 2012;[153] and (ii) focuses almost exclusively on aiding and abetting liability.[154] According to Stanišić, the allegations in the Media Articles regarding the potential political influence distract from the real issue at hand, namely Judge Harhoff's views that there was a set practice of convicting accused persons.[155]

39. The Prosecution responds that Stanišić and Župljanin have failed to rebut the strong presumption of impartiality attached to Judge Harhoff or to satisfy the high threshold of demonstrating that a reasonable apprehension of bias is firmly established.[156] It argues that the Letter was private, informal, and addressed to a group of "personal friends", and therefore Judge Harhoff's failure to use technical legal language is unsurprising.[157] The Prosecution contends that the relevant circumstances informing a "hypothetical, fair-minded observer" include the Letter's silence regarding this case, Judge Harhoff's explanations in the Memorandum, and the public controversy surrounding the cases discussed in the Letter.[158] It argues that the Letter reveals Judge

[149] Župljanin Additional Appeal Brief, para. 15, referring to *Hoekstra v. HM Advocate*, paras 18, 20, 22.
[150] Stanišić Additional Appeal Brief, para. 63; Župljanin Additional Appeal Brief, paras 22-27. See Župljanin Additional Appeal Brief, para. 23. According to Župljanin, "Judge Harhoff had other, legally and ethically acceptable avenues at his disposal through which to address his 'professional and moral dilemma'" but that he instead "opted for speculations and insinuations" (Župljanin Additional Appeal Brief, para. 26).
[151] See Stanišić Additional Appeal Brief, paras 81-105; Župljanin Additional Appeal Brief, para. 21; Appeal Hearing, 16 Dec 2015, AT. 86-87, 153-154, 157-158. Stanišić and Župljanin argue that the Appeals Chamber should adopt the approach of the Special Chamber and find that the Rebuttal Material is immaterial to the issue of whether a reasonable, informed observer would apprehend bias on the part of Judge Harhoff (Stanišić Additional Appeal Brief, para. 96; Župljanin Additional Appeal Brief, paras 18-19). See also Stanišić Additional Appeal Brief, paras 100-102.
[152] Stanišić Additional Appeal Brief, paras 83-98; Župljanin Additional Appeal Brief, para. 20. See Appeal Hearing, 16 Dec 2015, AT. 87-89, 158.
[153] Stanišić Additional Appeal Brief, para. 100. See Stanišić Additional Reply Brief, para. 34.
[154] Stanišić Additional Appeal Brief, paras 100-102, 104-105; Župljanin Additional Appeal Brief, paras 20-21.
[155] Stanišić Additional Appeal Brief, paras 104-105.
[156] Prosecution Consolidated Supplemental Response Brief, paras 3, 19 (citations omitted).
[157] Prosecution Consolidated Supplemental Response Brief, para. 6, quoting Exhibit PA1, p. 1; Appeal Hearing, 16 Dec 2015, AT. 130, 204.
[158] Prosecution Consolidated Supplemental Response Brief, para. 2 (citations omitted). See Prosecution Consolidated Supplemental Response Brief, para. 1, quoting *Furundžija* Appeal Judgement, para. 197. See also Prosecution Consolidated Supplemental Response Brief, para. 6, referring to Exhibit PA1.

Harhoff's disagreement on a legal issue on which reasonable minds can disagree,[159] and thus "falls squarely within those categories of judicial comments that do not give rise to a reasonable apprehension of bias".[160] The Prosecution also submits that Judge Harhoff's opinion that war criminals should be punished is not a basis for disqualification[161] and does not reveal any prejudice since he did not discuss the merits of this case, or any other case on which he served as a Judge.[162] It asserts that Judge Harhoff's remarks concerning improper influence on judges do not show bias.[163]

40. The Prosecution also responds that Judge Harhoff's lack of bias in favour of conviction is demonstrated by the Trial Judgement, which contains both convictions and acquittals,[164] and his numerous rulings against the interests of the Prosecution in the present case.[165] The Prosecution argues that neither Stanišić nor Župljanin point to any matter in the trial record or the Trial Judgement showing that Judge Harhoff was predisposed in favour of conviction.[166] It adds that Judge Harhoff's commitment and ability to fairly decide this case is reflected in the solemn declaration he took to perform his duties and his experience as a professor of law and as a judge in Denmark.[167] The Prosecution further responds that the Memorandum provides context to the Letter,[168] and that Judge Harhoff clarifies various issues therein.[169]

41. Stanišić and Župljanin reply that the Prosecution fails to address the main issues raised by the Letter, misunderstands both the jurisprudence and the nature of the bias revealed by the Letter,[170] and refers to immaterial circumstances,[171] including the informal nature of the Letter.[172]

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[159] Prosecution Consolidated Supplemental Response Brief, paras 2, 14-16; Appeal Hearing, 16 Dec 2015, AT. 130-131, 205.
[160] Prosecution Consolidated Supplemental Response Brief, paras 2, 18.
[161] Prosecution Consolidated Supplemental Response Brief, paras 16-17, referring to *Furundžija* Appeal Judgement, para. 202, *RUF* Decision, paras 2, 14-18.
[162] Prosecution Consolidated Supplemental Response Brief, paras 8, 17. See Appeal Hearing, 16 Dec 2015, AT. 131.
[163] Prosecution Consolidated Supplemental Response Brief, paras 34-35. The Prosecution argues that the issue of bias is a separate matter from any inappropriateness or impropriety as to his concerns that Judges might be improperly influenced (Prosecution Consolidated Supplemental Response Brief, para. 34, referring to, *inter alia*, *Delalić et al.* Disqualification and Recusal Decision, para. 9).
[164] Prosecution Consolidated Supplemental Response Brief, para. 10. See Appeal Hearing, 16 Dec 2015, AT. 131. The Prosecution argues that the Trial Chamber found that the scope of joint criminal enterprise was narrower than what was alleged. It further argues that Judge Harhoff would have supported full conviction on all allegations had he been biased (Prosecution Consolidated Supplemental Response Brief, para. 10). The Prosecution also points to Judge Harhoff's judicial history at the Tribunal, which includes both convictions and acquittals. Prosecution Consolidated Supplemental Response Brief, para. 12, referring to *Delić* Trial Judgement, paras 337-355, 518-535, *D. Milošević* Trial Judgement, paras 406, 414, 579. See Appeal Hearing, 16 Dec 2015, AT. 131.
[165] Prosecution Consolidated Supplemental Response Brief, para. 11.
[166] Prosecution Consolidated Supplemental Response Brief, para. 1.
[167] Prosecution Consolidated Supplemental Response Brief, para. 13.
[168] Prosecution Consolidated Supplemental Response Brief, para. 9, referring to Exhibit PA1, p. 2. See Appeal Hearing, 16 Dec 2015, AT. 131.
[169] Prosecution Consolidated Supplemental Response Brief, para. 9. The Prosecution asserts that Stanišić and Župljanin fail to undermine the Memorandum's reliability (Prosecution Consolidated Supplemental Response Brief, para. 20).
[170] Stanišić Additional Reply Brief, paras 3-4, 9, 18-19; Župljanin Additional Reply Brief, para. 4.

Stanišić also replies that the assertion that Judge Harhoff's remarks merely propose that "war criminals should be punished" and are only his personal opinion, is disingenuous.[173]

2. Analysis

42. The right to be tried before an independent and impartial tribunal is an integral component of the right to fair trial, as guaranteed by Article 21 of the Statute. Article 13 of the Statute provides that the Judges of the Tribunal shall be persons of high moral character, impartiality, and integrity.[174] As noted above,[175] a Judge must withdraw from a case if it is shown that actual bias exists or there is an unacceptable appearance of bias on his part.[176] In the present case, Stanišić and Župljanin have made no allegations of actual bias on the part of Judge Harhoff.[177]

43. An unacceptable appearance of bias exists where: (i) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties; or (ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.[178] Stanišić and Župljanin have made no allegations against Judge Harhoff concerning the first part of this principle, and therefore the relevant issue in this case is whether a reasonable observer, properly informed, would reasonably apprehend bias on the part of Judge Harhoff based on the Letter and its surrounding material circumstances. The Appeals Chamber further recalls that the apprehension of bias test reflects the maxim that "justice should not only be done, but should

[171] Stanišić Additional Reply Brief, paras 10, 15-19. See Stanišić Additional Reply Brief, paras 12-13, 19-22. See Appeal Hearing, 16 Dec 2015, AT. 142. Župljanin asserts that the Trial Chamber correctly set out the applicable law since bias is seldom established through judicial error (Župljanin Additional Reply Brief, paras 9-10, referring to, *inter alia*, *Karemera et al.* Disqualification Decision, para. 67; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Appeal Against Decision on Continuation of Proceedings, 6 June 2014, Dissenting Opinion of Judge Koffi Kumelio A. Afande, para. 14). Župljanin also asserts that Judge Harhoff's judicial rulings are irrelevant. Župljanin Additional Reply Brief, paras 5-10, referring to *Liteky v. United States*, 510 U.S. 540, 555 (1994), *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Decision on Blagojević's Application Pursuant to Rule 15(B), 19 March 2003, para. 14.
[172] Stanišić Additional Reply Brief, paras 13, 18. See Appeal Hearing, 16 Dec 2015, AT. 142.
[173] Stanišić Additional Reply Brief, paras 12, 34. See Appeal Hearing, 16 Dec 2015, AT. 142. Stanišić contends that the assertion that the Letter "'falls squarely within those categories of judicial comments'" is also disingenuous (Stanišić Additional Reply Brief, para. 36 (emphasis omitted)). See also Župljanin Additional Reply Brief, paras 14-16 (arguing that the Prosecution presumes that Judge Harhoff considered all accused to be "war criminals").
[174] *Šainović et al.* Appeal Judgement, para. 179.
[175] See *supra*, para. 32.
[176] See *Šainović et al.* Appeal Judgement, para. 180; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4-A, Decision on Vojislav Šešelj's Motion to Disqualify Judges Arlette Ramaroson, Mehmet Güney and Andrésia Vaz, 10 January 2013, para. 10. As held by the Appeals Chamber, "a Judge should not only be subjectively free from bias, but also that there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias" (*Furundžija* Appeal Judgement, para. 189).
[177] See Stanišić Additional Reply Brief, para. 39.
[178] *Šainović et al.* Appeal Judgement, para. 180; *Furundžija* Appeal Judgement, para. 189.

manifestly and undoubtedly be seen to be done"[179] and is founded on the need to ensure public confidence in the judiciary.[180]

44. The Appeals Chamber stresses that there is a strong presumption of impartiality attached to a Judge which cannot be easily rebutted.[181] It is for the party alleging bias to adduce reliable and sufficient evidence to rebut that presumption.[182] No Judge may be disqualified on the basis of sweeping or abstract allegations that are neither substantiated nor detailed.[183] The reason for this high threshold is that, just as any real appearance of bias on the part of a Judge undermines confidence in the administration of justice, it is equally important that judicial officers "do not, by acceding too readily to suggestions of apparent bias, encourage parties to believe that, by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour".[184] Before a Judge can be disqualified, a reasonable apprehension of bias must be "firmly established".[185]

45. As a preliminary matter, insofar as Župljanin argues that the reasonable apprehension of bias test should be applied with "reference to a reasonable observer properly informed from any of the ethnic groups affected by Judgements of the Tribunal",[186] the Appeals Chamber first observes that the references cited by Župljanin do not support his assertion.[187] Second, the Appeals Chamber recalls that the "reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties that Judges swear to

[179] *Furundžija* Appeal Judgement, para. 195. See *The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-T, Decision on Motion for Disqualification of Judges, 25 April 2006, para. 9 (with references cited therein).
[180] *Čelebići* Appeal Judgement, para. 707; *Karemera et al.* Disqualification Decision, para. 6.
[181] *Furundžija* Appeal Judgement, paras 196-197. See *Šainović et al.* Appeal Judgement, para. 181; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Drago Nikolić Motion to Disqualify Judge Liu Daqun, 20 January 2011 ("*Popović et al.* Decision"), para. 5.
[182] *Šainović et al.* Appeal Judgement, para. 181; *Popović et al.* Decision, para. 5.
[183] See *Šešelj* Decision on Disqualification, para. 7. See also *Renzaho* Appeal Judgement, para. 21; *Rutaganda* Appeal Judgement, para. 43; *Ntagerura et al.* Appeal Judgement, para. 135.
[184] *Čelebići* Appeal Judgement, para. 707. See *Furundžija* Appeal Judgement, para. 197; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Decision on Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker, 19 November 2010, para. 17 (holding that "[d]isqualifying judges based upon unfounded allegations of bias is as much a threat to justice as a judge who is not impartial").
[185] *Šainović et al.* Appeal Judgement, para. 181; *Furundžija* Appeal Judgement, para. 196. See *Galić* Appeal Judgement, para. 44. See also *Popović et al.* Decision, para. 5.
[186] Župljanin Additional Appeal Brief, paras 16-17, referring to *Piersack v. Belgium*, para. 30, *Hoekstra v. HM Advocate*, paras 18, 22.
[187] See Župljanin Additional Appeal Brief, para. 16, referring to *Piersack v. Belgium*, para. 30 (discussing generally the objective test but not the attributes of the reasonable observer); *Hoekstra v. HM Advocate*, paras 18, 22 (considering that the Judge in question could not be seen to have been impartial, especially on the part of the Dutch appellants).

uphold".[188] Župljanin's argument, suggesting a departure from this principle and asserting that the reasonable observer must come from the region, is thus dismissed.

46. As a further preliminary matter, Stanišić and Župljanin argue that the Memorandum is an *ex post facto* attempt to justify Judge Harhoff's statement and is irrelevant.[189] The Appeals Chamber recalls that the Memorandum was admitted in rebuttal because it was relevant and clearly addressed the Letter and its contents, thus providing additional context and meaning in order to assess the Letter's evidentiary value.[190] As far as Stanišić and Župljanin argue that the Memorandum should be accorded little weight, the Appeals Chamber considers that it may be taken into account and assessed together with all the evidence from the perspective of the reasonable observer. The Appeals Chamber will therefore consider the Memorandum and the Media Articles to which it refers.

47. Another preliminary issue concerns the Prosecution's submission that Judge Harhoff's numerous rulings against it in this case demonstrate a lack of bias. The Appeals Chamber observes that, although Judge Harhoff took decisions that resulted favourably for Stanišić and Župljanin, his judicial record in this case is not instructive as to whether a reasonable observer properly informed could apprehend bias.[191] The Appeals Chamber notes, in particular, that Judge Harhoff's judicial record does not take into account that procedural decisions have limited impact on the substantive issues to be decided in a final trial judgement.

48. The Appeals Chamber will now turn to Stanišić's and Župljanin's submissions that the presumption of impartiality is rebutted and that a reasonable apprehension of bias on the part of Judge Harhoff is firmly established. In considering whether a reasonable apprehension of bias has been firmly established, the Appeals Chamber bears in mind that a reasonable observer is a hypothetical fair-minded person, acting in good faith, with sufficient knowledge of the relevant circumstances to make a reasonable judgement of whether a Judge might not bring an impartial and unprejudiced mind to the issues arising in the case.[192]

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[188] *Šainović et al.* Appeal Judgement, para. 181; *Furundžija* Appeal Judgement, para. 190. See *Karadžić* Disqualification Decision, para. 18 (referring to the perception of the hypothetical fair-minded observer with sufficient knowledge of the circumstances to make a reasonable judgement), fn. 55.
[189] See Stanišić Additional Appeal Brief, paras 83-98; Župljanin Additional Appeal Brief, para. 32.
[190] Decision on Prosecution Motion to Admit Rebuttal Material, 11 June 2014, para. 13. See Prosecution Motion to Admit Rebuttal Material, 1 May 2014.
[191] See *Karemera et al.* Disqualification Decision, para. 15 (considering that a comparison of decisions to detect a pattern "is troublesome" as all decisions are made on an individual basis as a result of particular request, and also that the decisions in question were decided by a three Judge panel and not by a particular Judge).
[192] *Šainović et al.* Appeal Judgement, para. 181; *Čelebići* Appeal Judgement, para. 683; *Nahimana et al.* Appeal Judgement, para. 50.

49. Judge Harhoff, as a result of what he perceived to be a change in the jurisprudence concerning joint criminal enterprise liability after the acquittals in the *Gotovina and Markač* Appeal Judgement, the *Perišić* Appeal Judgement, and the *Stanišić and Simatović* Trial Judgement,[193] made the following statements in the Letter:

> [i]n brief: Right up until autumn 2012, it has been a more or less set practice at the court that military commanders were held responsible for war crimes that their subordinates committed during the war in the former Yugoslavia [...].[194]
>
> [...]
>
> However, this is no longer the case. Now apparently the commanders must have had a direct intention to commit crimes – and not just knowledge or suspicion that the crimes were or would be committed.[195]
>
> [...]
>
> The result is now that not only has the court taken a significant step back from the lesson that commanding military leaders have to take responsibility for their subordinates' crimes (unless it can be proven that they knew nothing about it) – but also that the theory of responsibility under the specific 'joint criminal enterprise' has now been reduced from contribution to crimes (in some way or another) to demanding a direct intention to commit crime (and so not just acceptance of the crimes being committed). Most of the cases will lead to commanding officers walking free from here on [...].[196]

50. Judge Harhoff further remarked in the Letter:

> [i]n all the courts I have worked in here, I have always presumed that it was right to convict leaders for the crimes committed with their knowledge within a framework of a common goal. It all boils down to the difference between knowing on the one hand that the crimes actually were committed or that they were going to be committed, and on the other hand planning to commit them. [...]
>
> How do we now explain to the 1000s of victims that the court is no longer able to convict the participants of the joint criminal enterprise, unless the judges can justify that the participants in their common goal actively and with direct intent contributed to the crimes? Until now, we have convicted these participants who in one way or another had showed that they agreed with the common goal (= to eradicate the non Serbian population from areas the Serbians had deemed 'clean') as well as, in one way or another, had contributed to achieving the common goal – without having to specifically prove that they had a direct intention to commit every single crime to achieve it. It is almost impossible to prove....[197]

51. The Appeals Chamber particularly notes that a reasonable observer properly informed would be aware that: (i) Judge Harhoff's comments only generally concern the mode of liability of joint criminal enterprise;[198] (ii) none of the cases referred to by Judge Harhoff altered the scope of

[193] See Exhibit 1DA1, p. 3. See also Exhibit 1DA1, pp 1-2.
[194] Exhibit 1DA1, p. 1.
[195] Exhibit 1DA1, p. 2.
[196] Exhibit 1DA1, p. 3.
[197] Exhibit 1DA1, p. 3.
[198] The Appeals Chamber is cognisant that this is the mode of liability through which Stanišić and Župljanin were convicted. See Trial Judgement, vol. 2, paras 955-956.

joint criminal enterprise liability, contrary to his assertions;[199] and (iii) it has never been the law or practice, contrary to Judge Harhoff's statement, to "convict leaders for the crimes committed with their knowledge within a framework of a common goal".[200] Further, it is the Appeals Chamber's view that a reasonable observer properly informed of all relevant circumstances would be aware of the relevant jurisprudence of the Tribunal.[201] A reasonable observer would therefore be aware that knowledge on the part of an accused that crimes were committed is insufficient to find an accused responsible under either the first or the third category of joint criminal enterprise.

52. The Appeals Chamber notes that a reasonable observer would also consider the fact that Judge Harhoff neither distinguished the facts nor the respective modes of liability relevant to the *Gotovina and Markač* Appeal Judgement, the *Perišić* Appeal Judgement, and the *Stanišić and Simatović* Trial Judgement.[202] Based on his views on the law and practice, which do not align with the Tribunal's jurisprudence, coupled with his sweeping generalisations of the judgements in question, Judge Harhoff expressed deep dissatisfaction with what he considered a change in "set practice"[203] at the Tribunal. However, the Appeals Chamber recalls that personal convictions and opinions of Judges are not in themselves a basis for inferring a lack of impartiality.[204] Additionally, a reasonable observer, properly informed, would take into account that at no time did Judge Harhoff direct his comments to Stanišić and Župljanin. Thus, the Appeals Chamber is not convinced by Stanišić's submission that Judge Harhoff was predisposed to convicting Stanišić and Župljanin.[205]

53. Regarding Župljanin's argument that sections of the Trial Judgement indicate that the wrong *mens rea* standard was applied,[206] the Appeals Chamber is not convinced that a reasonable observer would consider that these cited sections reflect, or were influenced, by the same opinions that Judge Harhoff expressed in the Letter.[207] In this regard, the Appeals Chamber notes that the Trial Chamber applied the correct legal standard for JCE liability[208] to the circumstances of the case and not the views expressed in the Letter. Further, a reasonable observer would also take into account

[199] The Appeals Chamber considers that Judge Harhoff confuses the *Perišić* Appeal Judgement which addressed the elements for aiding and abetting.
[200] See Exhibit 1DA1, p. 3. See also *infra*, paras 109-110 , 375, 386, 595, fn. 2463.
[201] See *Tolimir* Appeal Judgement, paras 431, 514; *Popović et al.* Appeal Judgement, paras 1369, 1431; *Đorđević* Appeal Judgement, paras 468, 906; *Brđanin* Appeal Judgement, para. 365.
[202] See Exhibit 1DA1. See also Exhibit PA1, p. 2. For instance, while Judge Harhoff's remarks concern the so-called change in joint criminal enterprise liability, the Appeals Chamber notes his reference to the *Perišić* Appeal Judgement. The Appeals Chamber observes in this regard that Momčilo Perišić was acquitted of his conviction for aiding and abetting pursuant to Article 7(1) of the Statute.
[203] Exhibit 1DA1, p. 1.
[204] *Čelebići* Appeal Judgement, para. 699, referring to *Furundžija* Appeal Judgement, para. 203. See also *Hoekstra v. HM Advocate*, p. 401(E-G); *Newcastle City Council v. Lindsay* [2004] NSWCA 198, paras 35-36.
[205] See Stanišić Additional Appeal Brief, paras 68-71. See also *supra*, para. 36.
[206] Appeal Hearing, 16 Dec 2015, AT. 154-157.
[207] See *infra*, paras 906-944. See also *infra*, 366-585.
[208] Trial Judgement, vol. 1, paras 99-106.

Judge Harhoff's statement that he did not set out in the Letter all of the applicable principles necessary to assess criminal liability, including proof beyond a reasonable doubt.[209] The Appeals Chamber also finds that a reasonable observer would consider the Media Articles as providing some background information concerning the public controversy surrounding cases mentioned in the Letter. The Appeals Chamber observes that the statements contained in the Letter must therefore be viewed in the context provided by the Rebuttal Material.

54. The Appeals Chamber is of the view that when considering the statements contained in the Letter, a reasonable observer would bear in mind that it was addressed to 56 individuals, written in an informal style and not "as a legal intervention",[210] and was intended to be private.[211] These contextual circumstances could be considered by a reasonable observer as operating against a finding of apparent bias. The Appeals Chamber is of the view that the reasonable observer would also take into account the fact that – in contrast with the *Šešelj* case – the Letter was published several months after the Trial Judgement was issued.

55. The Appeals Chamber further considers that the Letter contains no language which would suggest to a reasonable observer that Judge Harhoff believed that a finding of guilt could be made without reviewing the particular evidence of a case or that he had difficulty applying the Tribunal's jurisprudence. A reasonable observer properly informed of all the circumstances would have regard for the fact that Judges are presumed to be impartial, and that before taking up his duties, Judge Harhoff made a solemn declaration to perform his duties "honourably, faithfully, *impartially* and conscientiously".[212] The Appeals Chamber considers that a fair-minded and informed observer would regard this judicial oath as an important protection against the appearance of bias. Additionally, the reasonable observer would consider Judge Harhoff's role as a Judge of the Tribunal and his professional experience. While Judge Harhoff's views on the law as expressed in the Letter do not align with the current case law of the Tribunal, Judge Harhoff was (at the time of writing the Letter) a Judge of the Tribunal and a legal professional who was to be relied upon to

[209] See Exhibit PA1, pp 1-3.
[210] Exhibit PA1, p. 2 (emphasis omitted).
[211] The Appeals Chamber observes that the cases cited by Župljanin in support of his contention that bias may be established on the basis of remarks made after a judge's participation in a case are distinguishable from the present case. First, the *Hatchcock* case concerned a public speech made by a judge while a jury trial on the issue of damages in that case was pending (*Hatchcock v. Navistar*, p. 39). Second, the *Hoekstra* case concerned a comment published by a judge just over a week after the appeal presided over by this judge was dismissed (*Hoekstra v. HM Advocate*, para. 11). In that case, the High Court of Justiciary of Scotland took into account the close time between the decision and the judge's comments in deciding the claim of bias (*Hoekstra v. HM Advocate*, para. 22). *Cf. Gaudie v. Local Court of New South Wales and Anor* [2013] NSWSC 1425, para. 183 ("[t]he fact that the Magistrate made his comments in a letter and an interview, and not in a court judgment, would not be an especially significant factor in the mind of the bystander"); *Hoekstra v. HM Advocate*, p. 401(D) (the court considered that their conclusion that apparent bias existed would have been different if the Judge had published his views, in moderate language, in a legal journal instead of hostile language in a newspaper article).
[212] Rule 14(A) of the Rules (emphasis added).

bring an impartial mind to the evidence and issues before him.[213] The Appeals Chamber considers that, in the absence of evidence to the contrary, a reasonable observer properly informed of these circumstances would presume that Judge Harhoff as a Judge of the Tribunal could disabuse his mind of any irrelevant personal beliefs or predispositions.[214]

56. Further, Judge Harhoff postulates in the Letter that the "change" in the jurisprudence may have been as a result of external pressure being exerted on the President of the Tribunal at the time, and that Judges in turn may have been influenced to change the law by outside forces.[215] While inappropriate and unsubstantiated, a reasonable observer, properly informed would not apprehend bias on the part of Judge Harhoff against Stanišić and Župljanin on the basis of these comments. On this issue, the Appeals Chamber observes that although Judge Harhoff stated in the Letter that he was faced with "deep professional and moral dilemma",[216] he explained that this reference related to his concern, if he were to discover improper influence by external forces on fellow Judges.[217] The Appeals Chamber finds that the reasonable observer would consider that this explanation weighed against finding that a reasonable apprehension of bias exists. Turning to Judge Harhoff's remarks that it "has been more or less set practice at the court that military commanders were held responsible for war crimes that their subordinates committed during the war",[218] the Appeals Chamber is of the view that this personal opinion must be considered in the context of the remaining parts of the Letter as well as in light of Judge Harhoff's explanations indicating that the crimes and responsibility for the crimes must be proven.[219] Thus, the Appeals Chamber is not convinced that Judge Harhoff's remark would lead a reasonable observer properly informed to conclude that he was predisposed to convicting accused persons before the Tribunal.

57. Based on the foregoing, the Appeals Chamber finds that Stanišić and Župljanin have failed to demonstrate that a reasonable observer, properly informed of all the relevant circumstances, would reasonably apprehend bias on the part of Judge Harhoff in this case. Stanišić and Župljanin have therefore failed to rebut the presumption of impartiality and failed to firmly establish a reasonable appearance of bias. The Appeals Chamber accordingly dismisses Stanišić's and Župljanin's arguments. Thus, Stanišić's and Župljanin's arguments on the impact of any alleged bias are moot and need not be addressed.

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[213] See Article 13 of the Statute (Judges are required to be "persons of high moral character, impartiality and integrity"); Rule 14 of the Rules (Judges are required to take an oath to exercise their powers "honourably, faithfully, impartially and conscientiously").
[214] See *Šainović et al.* Appeal Judgement, para. 181; *Furundžija* Appeal Judgement, paras 196-197.
[215] Exhibit 1DA1, pp 2-3.
[216] Exhibit 1DA1, p. 3.
[217] Exhibit PA1, p. 3.
[218] Exhibit 1DA1, p. 1.
[219] See *supra*, para. 54.

D. Conclusion

58. In light of the foregoing, the Appeals Chamber dismisses Stanišić's ground of appeal 1*bis* and Župljanin's sixth ground of appeal in their entirety.

IV. JOINT CRIMINAL ENTERPRISE

A. Introduction

59. The Trial Chamber found that from no later than 24 October 1991 and throughout the Indictment period, a joint criminal enterprise existed, with the objective of permanently removing Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of the JCE I Crimes, namely the crimes of persecutions (through underlying acts of forcible transfer and deportation) (Count 1), deportation (Count 9), and inhumane acts (forcible transfer) (Count 10) as crimes against humanity.[220]

60. The Trial Chamber found both Stanišić and Župljanin responsible pursuant to the first category of joint criminal enterprise liability for the JCE I Crimes.[221]

61. The Trial Chamber also found Stanišić responsible pursuant to the third category of joint criminal enterprise for crimes that fell outside the common purpose, namely, persecutions (through the underlying acts of killings, torture, cruel treatment, inhumane acts, unlawful detention, establishment and perpetuation of inhumane living conditions, plunder of property, wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings, and imposition and maintenance of restrictive and discriminatory measures) as a crime against humanity (Count 1), murder, torture, and cruel treatment as violations of the laws or customs of war (Counts 4, 6, and 7, respectively)[222] as well as murder, torture, and inhumane acts as crimes against humanity (Counts 3, 5, and 8, respectively) (collectively, "Stanišić's JCE III Crimes").[223] Further, the Trial Chamber found Župljanin responsible pursuant to the third category of joint criminal enterprise for the aforementioned crimes that fell outside the common purpose (Counts 1 and 3 to 8) as well as extermination as a crime against humanity (Count 2) (collectively, "Župljanin's JCE III Crimes").[224]

[220] Trial Judgement, vol. 2, para. 313.
[221] Trial Judgement, vol. 2, paras 804-805, 809, 813, 818, 822, 827, 831-832, 836, 840, 844-845, 849-850, 854, 858-859, 863-864, 868-869, 873, 877, 881, 885, 955-956.
[222] Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[223] Trial Judgement, vol. 2, paras 804, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[224] Trial Judgement, vol. 2, paras 805, 832, 845, 850, 859, 864, 869, 956.

62. In this section, the Appeals Chamber considers the appeals of Stanišić and Župljanin with respect to the Trial Chamber's findings on their responsibility, under Article 7(1) of the Statute, for participation in a joint criminal enterprise.[225]

B. Alleged errors in relation to defining the common criminal purpose (Stanišić's third ground of appeal in part and sub-ground 1(F) in part of Župljanin's first ground of appeal)

63. The Trial Chamber found that as of 1991, the aim of the Bosnian Serb leadership was for "Serbs to live in one state with other Serbs in the former Yugoslavia".[226] It found further that, following the adoption of the declaration of independence in the Assembly of the Socialist Republic of BiH ("BiH Assembly") on 15 October 1991, the Bosnian Serb leadership intensified the process of territorial demarcation, an important part of which was "the forceful assumption of control over territories".[227] The Trial Chamber found that this was done through the setting up of separate and parallel Bosnian Serb institutions and establishing Serb municipalities.[228] It found further that "violent takeovers" of the municipalities and a "widespread *and* systematic campaign of terror and violence resulting in crimes" against Muslims and Croats followed.[229] The Trial Chamber was satisfied that the Bosnian Serb leadership was in charge of these events taking place in the Municipalities through its control over the Serb forces, Serbian Democratic Party ("SDS") structure, crisis staffs, and the RS Government.[230] This, in combination with the "numerous statements of the Bosnian Serb leadership at the time", led the Trial Chamber to find that "the goal of these actions was the establishment of a Serb state, as ethnically 'pure' as possible, through the permanent removal of the Bosnian Muslims and Bosnian Croats".[231] The Trial Chamber concluded that, from no later than 24 October 1991 and throughout the Indictment period, "a common plan did exist, the objective of which was to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of the [JCE I Crimes]".[232]

1. Submissions of the parties

64. Stanišić submits that the Trial Chamber erred in law by conflating the legitimate political goal for Serbs to live in one state with other Serbs in the former Yugoslavia with the criminal

[225] Namely, Stanišić's first through eleventh grounds of appeal, sub-grounds (A)-(F) of Župljanin's first ground of appeal, and Župljanin's second and third grounds of appeal.
[226] Trial Judgement, vol. 2, para. 309.
[227] Trial Judgement, vol. 2, para. 310.
[228] Trial Judgement, vol. 2, para. 310.
[229] Trial Judgement, vol. 2, para. 311. See Trial Judgement, vol. 2, paras 290-298.
[230] Trial Judgement, vol. 2, para. 311.
[231] Trial Judgement, vol. 2, para. 311.
[232] Trial Judgement, vol. 2, para. 313.

objective of the JCE.[233] He argues that the Trial Chamber's findings on the aim of the Bosnian Serb leadership for Serbs to live in one state,[234] on its intensification of the processes of territorial demarcation, and on its initiation of the process of establishing Serb municipalities in late 1991,[235] "either individually or collectively, do not amount to anything other than a legitimate political goal, in line with the Cutileiro plan designed by the international community".[236]

65. Župljanin submits that the Trial Chamber erred in law by failing to precisely define "a common purpose that, in and of itself, 'amounts to or involves the commission of a crime provided for in the Statute'".[237] He contends that the Trial Chamber inconsistently defined the intended common purpose as either the "'permanent removal' of non-Serbs" or "the creation of a 'Serb state, as ethnically pure as possible'",[238] and that neither of these objectives in and of themselves involve criminal acts and therefore cannot amount to a common purpose within the meaning of the law on joint criminal enterprise.[239] He argues that the standard can be easily subverted through "loose definitions of the common purpose that merely involve an objective where it is probable that a crime will be committed in pursuit of the objective".[240] Župljanin further submits that, although the Trial Chamber included a criminal component to the common purpose by stating that it was to be achieved *through* the commission of crimes, the common purpose, as found by the Trial Chamber, was bifurcated, as follows: "(i) an overall 'objective' that is not inherently criminal (the creation of an ethnically homogenous state); and (ii) using means that are inherently criminal (the crime of forcible transfer)".[241]

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[233] Stanišić Appeal Brief, paras 76-86. See Appeal Hearing, 16 Dec 2015, AT. 101. Stanišić argues, *inter alia*, that any individual "reading a newspaper or watching television and finding themselves agreeing with the espousal of the objective to create a separate Serbian entity would, by the [Trial Chamber's] flawed reasoning, be considered to have shared the intent to deport and forcibly transfer Bosnian Muslims and Bosnian Croats" (Stanišić Appeal Brief, para. 85).
[234] Stanišić Appeal Brief, para. 78, quoting Trial Judgement, vol. 2, para. 309.
[235] Stanišić Appeal Brief, para. 78, referring to Trial Judgement, vol. 2, para. 310.
[236] Stanišić Appeal Brief, para. 78, referring to Exhibit P2200. See Stanišić Appeal Brief, para. 82. See also Stanišić Reply Brief, para. 29. In support to his argument, Stanišić further argues that the Trial Chamber failed to explain how the pursuit of a legitimate political goal which "occasioned crimes", meant that the commission of those crimes was "an intended aim of this political goal" (Stanišić Appeal Brief, para. 79) and thus failed to consider whether one could have supported the goal for Serbs to live in one state with other Serbs without intending this to occur by the commission of crimes (Stanišić Appeal Brief, para. 77. See Stanišić Appeal Brief, paras 81, 83-84).
[237] Župljanin Appeal Brief, para. 27 (emphasis omitted), referring to *Brđanin* Appeal Judgement, para. 364. See Župljanin Appeal Brief, paras 13, 26, 28-34, 39, 53.
[238] Župljanin Appeal Brief, para. 28. See Župljanin Appeal Brief, para. 15.
[239] Župljanin Appeal Brief, paras 28-29, referring to *Martić* Trial Judgement, para. 442. See Župljanin Appeal Brief, para. 30.
[240] Župljanin Appeal Brief, para. 32. Župljanin also argues that this has an effect of reducing the requisite subjective standard to a foreseeability or "*dolus eventualis*" standard (Župljanin Appeal Brief, paras 32-33). The Appeals Chamber has addressed this argument elsewhere in this Judgement (see *infra*, para. 920. See Župljanin Appeal Brief, paras 31, 39. See also Appeal Hearing, 16 Dec 2015, AT. 146-147).
[241] Župljanin Appeal Brief, para. 37. Župljanin further argues that the Trial Chamber failed to "define the 'goal' and the 'means' of the common criminal objective in precisely identical terms" (Župljanin Appeal Brief, para. 16. See Župljanin Appeal Brief, para. 28).

66. The Prosecution responds that the Trial Chamber correctly found that the JCE members pursued the ethnic cleansing campaign to realise their objective of creating an ethnically pure Serb state through the commission of forcible displacement crimes.[242] It submits that Stanišić seeks to disassociate "the goal of achieving a separate Serb state from the means through which it was to be achieved", *i.e.* through the commission of JCE I Crimes.[243] With respect to Župljanin, the Prosecution responds that: (i) the Trial Chamber correctly concluded, on the basis of extensive evidence, that the "Bosnian Serb leadership, and others, shared a precisely-defined common *criminal* purpose which amounted to and involved the commission of crimes in the Statute";[244] and (ii) Župljanin takes the words of the Trial Chamber out of their natural context and wrongly attempts to sever the "goal" and "means" of the common purpose, when in fact, they are indivisible and together formed the common criminal purpose.[245]

2. Analysis

67. The Appeals Chamber recalls that under joint criminal enterprise liability, a trial chamber is required to determine whether a common plan, design, or purpose existed "which amounts to or involves the commission of a crime provided for in the Statute".[246]

68. Contrary to Stanišić's argument, the Trial Chamber did not conflate the political goal to create a separate Serb entity with the common criminal purpose of the JCE. The Trial Chamber's findings on the political aim of the Bosnian Serb leadership for Serbs to live in one state and the subsequent intensification of the process of territorial demarcation are merely factors that the Trial Chamber took into account, together with other factors,[247] in reaching its conclusion on the common criminal purpose of the JCE.[248]

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[242] Prosecution Response Brief (Stanišić), para. 30. See Prosecution Response Brief (Stanišić), para. 31.
[243] Prosecution Response Brief (Stanišić), para. 31. Further, the Prosecution submits that Stanišić's argument that the Trial Chamber accepted that any form of support for the alleged legitimate "political goal" of achieving a separate Serb entity would have been sufficient to establish an individual's membership in the JCE, misconstrues the Trial Chamber's findings (Prosecution Response Brief (Stanišić), para. 32).
[244] Prosecution Response Brief (Župljanin), para. 9. See Prosecution Response Brief (Župljanin), paras 10, 12-13, 15.
[245] Prosecution Response Brief (Župljanin), para. 11, referring to Župljanin Appeal Brief, paras 16, 19, 37. See Prosecution Response Brief (Župljanin), paras 8, 12.
[246] *Tadić* Appeal Judgement, para. 227 (emphasis omitted). See *Brđanin* Appeal Judgement, para. 364; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 117.
[247] See *e.g.* the Trial Chamber's findings set out in paragraphs 309 to 311 of volume two of the Trial Judgement, listing *inter alia*: (i) the violent takeovers of the Municipalities and the widespread and systematic campaign of terror and violence resulting in the commission of crimes against Muslims and Croats; (ii) the fact that the Bosnian Serb leadership was in charge of these events taking place in the Municipalities through its control over the Serb forces, SDS party structure, crisis staffs, and the RS Government; and (iii) numerous statements of the Bosnian Serb leadership at the time (Trial Judgement, vol. 2, para. 311). See also *supra*, para. 63.
[248] Moreover, the Appeals Chamber notes that the Trial Chamber's consideration of the above mentioned factors and its ultimate conclusion that the purpose of the JCE was to be reached through the commission of crimes clearly indicate that it did not find that the aim of the Bosnian Serb leadership for Serbs to live in one state and the ensuing process merely "occasioned crimes" (see Stanišić Appeal Brief, para. 79). With regard to Stanišić's related argument that the

69. The Appeals Chamber is also not persuaded by Župljanin's contentions that the Trial Chamber inconsistently defined the common purpose, or that it erroneously divided the goal and means of the common criminal purpose and failed to define the two in identical terms. The Appeals Chamber notes that the Trial Chamber found that the common criminal purpose of the JCE was the permanent removal of Bosnian Muslims and Bosnian Croats *through* the commission of crimes provided for in the Statute.[249] The Trial Chamber thus correctly applied the legal standard and found that there existed a common purpose amounting to or involving the commission of crimes provided for in the Statute.[250] Thus, having clearly identified the crimes that were part of the JCE, the Trial Chamber did not define the common criminal purpose to "merely involve an objective where it is probable that a crime will be committed", as Župljanin argues.[251] The Trial Chamber's finding also shows that it clearly determined that the common criminal purpose of the JCE was more than the mere aspiration of an ethnically-homogeneous, planned Serb state. Župljanin's argument in this regard is therefore without merit.

70. Similarly, contrary to Stanišić's submission, the Appeals Chamber considers that the question of whether the aim of the Bosnian Serb leadership to have a separate Serb entity was in line with the legitimate purposes of the peace plan enunciated at the conclusion of a the International Commission convened in Lisbon, in February 1992 ("Cutileiro Plan")[252] has no bearing on the Trial Chamber's finding, given that the Trial Chamber unequivocally found that the common criminal purpose of the JCE involved the commission of crimes provided for in the Statute.

Trial Chamber failed to consider whether one could have supported the goal for Serbs to live in one state with other Serbs without intending this to occur through the commission of JCE I Crimes, the Appeals Chamber has dismissed this argument elsewhere, finding that the Trial Chamber was cognisant that some members of the Bosnian Serb leadership may not have shared the goal of the majority, which was the establishment of "a Serb state, as ethnically 'pure' as possible, through the permanent removal of the Bosnian Muslims and Bosnian Croats" (see *infra*, paras 81-82).

[249] Trial Judgement, vol. 2, para. 313. The Trial Chamber found that the permanent removal of Bosnian Muslims and Bosnian Croats was to be achieved through the commission of the JCE I Crimes, namely, the crimes of persecutions (through underlying acts of forcible transfer and deportation) (Count 1), deportation (Count 9), and inhumane acts (forcible transfer) (Count 10) as crimes against humanity, which are all provided for in the Statute (Trial Judgement, vol. 2, para. 313).

[250] In this regard, the Appeals Chamber recalls that it has affirmed the *Martić* Trial Judgement which held that, while: "the objective of uniting with other ethnically similar areas did not in and of itself amount to a common criminal purpose within the meaning of the law on JCE pursuant to Article 7(1) of the Statute, [...] 'where the creation of such territories is intended to be implemented through the commission of crimes within the Statute this may be sufficient to amount to a common criminal purpose'" (*Martić* Appeal Judgement, para. 123, quoting *Martić* Trial Judgement, para. 442. See *Martić* Appeal Judgement, para. 112. See also *Đorđević* Appeal Judgement, paras 116-119; *Krajišnik* Appeal Judgement, paras 699-704. See also *Šainović et al.* Appeal Judgement, para. 664, confirming *Milutinović et al.* Trial Judgement, vol. 3, paras 95-96.

[251] See Župljanin Appeal Brief, para. 32. For the same reasons, the Appeals Chamber is not persuaded by Župljanin's argument that the Trial Chamber's frequent reference to forcible takeover of the Municipalities, which does not constitute a crime, indicates that the Trial Chamber defined a common purpose that was not criminal (see Župljanin Appeal Brief, para. 35).

[252] See Trial Judgement, vol. 2, para. 553.

3. Conclusion

71. For the foregoing reasons, the Appeals Chamber finds that Stanišić and Župljanin have failed to demonstrate that the Trial Chamber erred in defining the common criminal purpose of the JCE. The Appeals Chamber therefore dismisses Stanišić's third ground of appeal in part and sub-ground (F) in part of Župljanin's first ground of appeal.

C. Alleged errors in relation to the membership of the JCE (Stanišić's second ground of appeal and sub-ground (F) in part of Župljanin's first ground of appeal)

72. The Trial Chamber found that the "aim of the Bosnian Serb leadership as of 1991 was for Serbs to live in one state with other Serbs in the former Yugoslavia",[253] and defined the Bosnian Serb leadership as consisting of "leading members of the SDS and those who occupied important posts in the RS [...]. The most important organs of the RS were the Presidency, the Government, the NSC, and the BSA".[254]

73. Having considered, among other factors, how the Bosnian Serb leadership acted in furtherance of its goal and the statements it made,[255] the Trial Chamber further found that the following persons were members of the JCE: Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, Nikola Koljević, Ratko Mladić, Momčilo Mandić, Velibor Ostojić, Momir Talić, Radoslav Brđanin, Milomir Stakić, Simo Drljača, Vojislav Kuprešanin, Vlado Vrkeš, Mirko Vručinić, Jovan Tintor, Nedeljko Đekanović, Savo Tepić, Stevan Todorović, Blagoje Simić, Vinko Kondić, Malko Koroman, Đorđe Ristanić, Predrag Radić, Andrija Bjelošević, Ljubiša Savić, a.k.a. "Mauzer", Predrag Ješurić, and Branko Grujić.[256] The Trial Chamber further stated that it would "determine whether [Stanišić and Župljanin] were members of the JCE in the sections [...] dedicated to their individual criminal responsibility".[257]

74. Stanišić and Župljanin raise several challenges to the Trial Chamber's findings in relation to the membership of the JCE.[258] The Prosecution responds that Stanišić's and Župljanin's arguments should be dismissed.[259] The Appeals Chamber will address these arguments in turn.

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[253] Trial Judgement, vol. 2, para. 309.
[254] Trial Judgement, vol. 2, para. 131.
[255] Trial Judgement, vol. 2, paras 309-312.
[256] Trial Judgement, vol. 2, para. 314.
[257] Trial Judgement, vol. 2, para. 314.
[258] Stanišić Appeal Brief, para. 55; Župljanin Appeal Brief, para. 15. See Stanišić Appeal Brief, paras 56-74.
[259] Prosecution Response Brief (Stanišić), para. 23; Prosecution Response Brief (Župljanin), para. 8. See Prosecution Response Brief (Stanišić), paras 24-29; Prosecution Response Brief (Župljanin), fn. 9.

1. Alleged error in arbitrarily constructing the term Bosnian Serb leadership without an evidentiary basis

75. Stanišić submits that the Trial Chamber arbitrarily constructed a definition of the term Bosnian Serb leadership "without any evidential basis or justification".[260] He argues that the Trial Chamber put together a "vaguely identified" group of people by virtue only of their posts or their membership in a political party while "[s]uch an amalgamate of individuals" as the Bosnian Serb leadership "never existed as an identifiable group in reality".[261]

76. The Prosecution responds that the Trial Chamber did not arbitrarily define the term Bosnian Serb leadership without any evidentiary basis.[262]

77. The Appeals Chamber recalls that the Trial Chamber found that the Bosnian Serb leadership "consisted of leading members of the SDS and those who occupied important posts in the RS".[263] The Trial Chamber described, in detail, the positions and roles of the RS institutions, their members,[264] as well as their respective powers and interrelationships.[265] In this respect, it scrutinised and explained the role of: (i) the President and the Presidency of the RS; (ii) the RS Government; and (iii) the NSC.[266] The Trial Chamber also found that "[t]he political influence within the SDS was wielded by Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, and Nikola Koljević."[267] As a basis for the above findings, the Trial Chamber analysed and referred to documentary evidence, as well as witness testimonies and adjudicated facts.[268] The Trial Chamber used the term Bosnian Serb leadership to describe the connections and interrelationships between key political and military leaders and political institutions.[269] The Appeals Chamber has confirmed the correctness of this approach in earlier judgements.[270]

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[260] Stanišić Appeal Brief, para. 57. See Stanišić Appeal Brief, paras 56, 58-59. See also Appeal Hearing, 16 Dec 2015, AT. 100.
[261] Stanišić Appeal Brief, para. 58.
[262] Prosecution Response Brief (Stanišić), para. 24.
[263] Trial Judgement, vol. 2, para. 131.
[264] See Trial Judgement, vol. 2, paras 131-134, in particular, describing the positions and roles of Radovan Karadžić ("Karadžić"), Momčilo Krajišnik ("Krajišnik"), Biljana Plavšić ("Plavšić"), and Nikola Koljević ("Koljević").
[265] Trial Judgement, vol. 2, paras 131-149. The Trial Chamber further discussed other Serb leaders, such as: Ratko Mladić ("Mladić"), Rajko Dukić, and Radoslav Brđanin ("Brđanin") (Trial Judgement, vol. 2, paras 145-147).
[266] Trial Judgement, vol. 2, paras 136-149.
[267] Trial Judgement, vol. 2, para. 131.
[268] Trial Judgement, vol. 2, fns 428-495.
[269] See Trial Judgement, vol. 2, paras 131-149.
[270] See *Brđanin* Appeal Judgement, paras 127, 216, 234, 236; *Tolimir* Appeal Judgement, para. 388; *Deronjić* Sentencing Appeal Judgement, para. 69. The Appeals Chamber notes that in *Brđanin*, *Tolimir*, and *Deronjić*, the Appeals Chamber relied on the concept of Bosnian Serb leadership as defined by the trial chambers without questioning its existence or definition. See also *Brđanin* Trial Judgement, para. 65; *Tolimir* Trial Judgement, para. 1040; *Deronjić* Sentencing Judgement, paras 56-58, 66, 190.

78. Consequently, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber arbitrarily constructed a definition of the Bosnian Serb leadership without an evidentiary basis or justification. His submissions in this regard are therefore dismissed.

2. Alleged errors in equating being part of the Bosnian Serb leadership with membership in the JCE and failing to identify those within the Bosnian Serb leadership who were not JCE members

79. Stanišić submits that the Trial Chamber erroneously equated being part of the Bosnian Serb leadership with membership in the JCE.[271] In particular, he argues that the Trial Chamber erred in law by imposing collective responsibility upon all those considered to be members of the Bosnian Serb leadership and by criminalising membership in the Bosnian Serb leadership.[272] Stanišić contends that the Trial Chamber erroneously concluded that the JCE was proved for the whole Bosnian Serb leadership by reference solely "to the aims of the 'majority'"[273] and considered "the minority" of the Bosnian Serb leadership to have the intent to commit crimes "despite acknowledging evidence to the contrary".[274] Stanišić further submits that by erroneously finding that the aims of the Bosnian Serb leadership were the commission of crimes, the Trial Chamber failed to make an assessment of each individual's responsibility.[275] In a similar vein, Župljanin submits that the Trial Chamber failed to identify those within the Bosnian Serb leadership whom it did not consider to be members of the JCE, as implied by the word "majority".[276]

80. The Prosecution responds that Stanišić and Župljanin fail to demonstrate any error in the Trial Chamber's approach.[277] In particular, the Prosecution submits that Stanišić misconstrues the Trial Chamber's findings.[278]

81. Contrary to Stanišić's argument, the Trial Chamber did not impose collective responsibility on all members of the Bosnian Serb leadership, nor did it criminalise membership therein. The Appeals Chamber notes that while the Trial Chamber acknowledged that "at times there were

[271] Stanišić Appeal Brief, paras 56, 60-69. In support, Stanišić submits that the Trial Chamber also erroneously established the elements of the JCE, including the common purpose and its implementation, by reference to the acts and statements of the Bosnian Serb leadership as a group (Stanišić Appeal Brief, paras 60-61).
[272] Stanišić Appeal Brief, paras 67, 69. See Stanišić Appeal Brief, paras 64-65, 68. See also Stanišić Reply Brief, paras 25-26; Appeal Hearing, 16 Dec 2015, AT 101-102.
[273] Stanišić Appeal Brief, para. 64 (emphasis omitted). See Appeal Hearing, 16 Dec 2015, AT. 101-102. According to Stanišić, the Trial Chamber found that the "'true aims of the majority of the Bosnian Serb leadership' were not reflected in the statements of certain Bosnian Serb leaders that were contrary to the desire for an ethnically pure state, or which called for respect of provisions of international humanitarian law" (Stanišić Appeal Brief, para. 63, referring to Trial Judgement, vol. 2, para. 312 (emphasis omitted). See Stanišić Appeal Brief, para. 64).
[274] Stanišić Appeal Brief, para. 64 (emphasis omitted). See Stanišić Reply Brief, para. 23.
[275] Stanišić Appeal Brief, para. 67. See Stanišić Appeal Brief, paras 64-65, 68-69, referring to *Tadić* Appeal Judgement, para. 186. See also Stanišić Reply Brief, paras 25-26.
[276] Župljanin Appeal Brief, para. 15.
[277] Prosecution Response Brief (Stanišić), paras 24-26; Prosecution Response Brief (Župljanin), fn. 9.
[278] Prosecution Response Brief (Stanišić), para. 25.

conflicts" between the Serb forces,[279] SDS party structure, crisis staffs, and the RS Government,[280] it found that they "all shared and worked towards the same goal under the Bosnian Serb leadership".[281] In addition, it also considered evidence that "on some occasions Serb leaders made statements that their aim was not an ethnically pure state or that international humanitarian law should be respected"[282] but concluded that, in light of all the evidence, "these statements [did] not reflect the true aims of the *majority* of the Bosnian Serb leadership",[283] which was the establishment of "a Serb state, as ethnically 'pure' as possible, through the permanent removal of the Bosnian Muslims and Bosnian Croats".[284] It is thus clear that the Trial Chamber was cognisant that some members of the Bosnian Serb leadership may not have shared the goal of the majority.[285]

82. Moreover, the Trial Chamber assessed and made findings on the criminal responsibility of Stanišić and Župljanin only, and did so on the basis of their individual acts and conduct.[286] Since the Trial Chamber assessed their criminal responsibility pursuant to joint criminal enterprise liability, it analysed the requisite elements of this mode of liability, including whether a plurality of persons acted together.[287] While the Trial Chamber was required to establish that the persons belonging to the joint criminal enterprise shared the common criminal purpose, it was not required to make an "assessment of each individual's responsibility"[288] in the Trial Judgement.[289] Having identified members of the JCE, the Trial Chamber concluded that they formed a plurality of persons who participated in the realisation of the common criminal plan.[290] In so doing, the Trial Chamber identified members of the JCE by name.[291] Accordingly, the Trial Chamber's findings demonstrate that it considered that some of the members of the Bosnian Serb leadership were also members of the JCE.[292] However, as described above,[293] the Trial Chamber was aware that certain members of the Bosnian Serb leadership may not have shared the goal of the majority, and did not find that

[279] See *infra*, Annex B.
[280] Trial Judgement, vol. 2, para. 311.
[281] Trial Judgement, vol. 2, para. 311.
[282] Trial Judgement, vol. 2, para. 312.
[283] Trial Judgement, vol. 2, para. 312 (emphasis added).
[284] Trial Judgement, vol. 2, para. 311.
[285] Trial Judgement, vol. 2, para. 312.
[286] See for Stanišić's criminal responsibility, Trial Judgement, vol. 2, paras 531-781. See for Župljanin's criminal responsibility, Trial Judgement, vol. 2, paras 343-530.
[287] Trial Judgement, vol. 2, paras 314-315. In this regard, the Appeals Chamber recalls that "[t]he crimes contemplated in the Statute mostly constitute the manifestations of collective criminality and are often carried out by groups of individuals acting in pursuance of a common criminal design or purpose" (*Martić* Appeal Judgement, para. 82, referring to *Tadić* Appeal Judgement, para. 191). However, the mode of criminal liability of joint criminal enterprise is not a form of collective responsibility and its contours, described in the jurisprudence of the Tribunal, contain sufficient safeguards to avoid this (*Martić* Appeal Judgement, para. 82, referring to *Brđanin* Appeal Judgement, paras 427-431). See *Krajišnik* Appeal Judgement, fn. 418.
[288] Stanišić Appeal Brief, para. 67.
[289] See *Đorđević* Appeal Judgement, paras 141, 158.
[290] Trial Judgement, vol. 2, paras 314-315.
[291] Trial Judgement, vol. 2, para. 314.
[292] See Trial Judgement, vol. 2, paras 136-149, 314.

every member of the Bosnian Serb leadership was also a member of the JCE.[294] Consequently, there is no basis for the argument that the Trial Chamber criminalised the Bosnian Serb leadership as such. Finally, and contrary to Župljanin's argument, there was no need for the Trial Chamber to identify those within the Bosnian Serb leadership whom it did not consider to be members of the JCE as it is irrelevant to his criminal responsibility. The Appeals Chamber finds that Župljanin has failed to articulate an error, his argument is unsupported by jurisprudence of the Tribunal, and he ignores the relevant findings of the Trial Chamber.[295] The Appeals Chamber therefore dismisses both Stanišić's and Župljanin's arguments.

3. Alleged error in finding that Stanišić was a member of the JCE on the sole basis of his association with the Bosnian Serb leadership as Minister of Interior

83. Stanišić submits that the Trial Chamber placed him within the Bosnian Serb leadership "solely by virtue of his ministerial position".[296] According to Stanišić, by finding that the Bosnian Serb leadership was part of the JCE and that he belonged to the Bosnian Serb leadership, the Trial Chamber impermissibly presumed that he contributed to the common plan and shared the intent to commit persecutory crimes.[297] Stanišić further submits that this represents a "presumption of guilt" and an "unacceptable reversal of [his] right to be presumed innocent".[298] As such, he argues that the Trial Chamber failed to determine whether he was a member of the JCE on the basis of his individual acts and conduct.[299]

84. The Prosecution responds that the Trial Chamber properly determined Stanišić's membership in the JCE on the basis of its findings concerning his contributions and shared intent, rather than merely relying on Stanišić's affiliation with the Bosnian Serb leadership as Minister of Interior.[300]

85. At the outset, the Appeals Chamber notes that while the Trial Chamber made no explicit statement that Stanišić was a member of the JCE and did not specify a date in this regard, the

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[293] See *supra*, para. 81.
[294] See Trial Judgement, vol. 2, paras 136-149, 314. For example, the Trial Chamber found that Witness Branko Đerić (RS Prime Minister) ("Witness Đerić"), Milan Trbojević (RS Deputy Prime Minister), and Bogdan Subotić (RS Minister of Defence) were members of the Bosnian Serb leadership, but did not find them to be members of the JCE (see Trial Judgement, vol. 2, paras 137, 139-141, 144, 314).
[295] See Trial Judgement, vol. 2, paras 136-149, 144, 314. See also *supra*, para. 81.
[296] Stanišić Appeal Brief, para. 70. See Stanišić Appeal Brief, para. 55.
[297] Stanišić Appeal Brief, para. 71.
[298] Stanišić Appeal Brief, para. 71. See Stanišić Appeal Brief, para. 72.
[299] Stanišić Appeal Brief, para. 73.
[300] Prosecution Response Brief (Stanišić), para. 28, quoting Stanišić Appeal Brief, paras 70-72. See Prosecution Response Brief (Stanišić), para. 24. See also Appeal Hearing, 16 Dec 2015, AT. 124. *Cf.* Stanišić Reply Brief, para. 22.

Appeals Chamber considers that it is clear from the Trial Judgement, when read as a whole, that the Trial Chamber was satisfied that Stanišić was a member of the JCE during the Indictment period.[301]

86. The Trial Chamber found that Stanišić was the Minister of Interior within the RS Government.[302] The Trial Chamber also found that the RS Government was one of the most important organs in the RS and that the Bosnian Serb leadership consisted of, *inter alios*, those who occupied important posts of the RS.[303] In light of the foregoing, the Appeals Chamber understands that the Trial Chamber identified Stanišić to be a member of the Bosnian Serb leadership. This consideration is, however, irrelevant since the Trial Chamber convicted him on the basis of his membership in the JCE, not his membership in the Bosnian Serb leadership.[304] Indeed, the Trial Chamber considered his position as Minister of Interior in combination with other factors – including his acts and conduct – to find that he contributed to the JCE[305] and shared the requisite intent.[306] It thus did not "presume" that he contributed to the common plan and shared the persecutorial intent on the basis of his membership in the Bosnian Serb leadership. The Appeals Chamber therefore finds that Stanišić has failed to show that the Trial Chamber found that he was a member of the JCE only by virtue of his association with the Bosnian Serb leadership as Minister of Interior. His arguments in this respect are therefore dismissed.

4. Conclusion

87. In light of the foregoing, the Appeals Chamber finds that Stanišić and Župljanin have failed to show that the Trial Chamber erred in its findings in relation to the membership of the JCE. The Appeals Chamber thus dismisses Stanišić's second ground of appeal in its entirety and sub-ground (F) in part of Župljanin's first ground of appeal.

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[301] See Trial Judgement, vol. 2, paras 342, 781-782, 799. See also Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885.
[302] Trial Judgement, vol. 2, para. 141.
[303] Trial Judgement, vol. 2, para. 131. See *supra*, para. 72.
[304] See Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[305] See Trial Judgement, vol. 2, paras 729-765. See also *infra*, paras 143-365.
[306] Trial Judgement, vol. 2, para. 769. See Trial Judgement, vol. 2, paras 766-768. The question of whether the Trial Chamber committed errors in its findings on Stanišić's intent will be dealt with elsewhere in this Judgement (see *infra*, paras 573-595).

D. Alleged errors regarding Stanišić's participation in the JCE

1. Introduction

88. Stanišić was elected Minister of Interior on 24 March 1992 and officially appointed to the position on 31 March 1992.[307] The Trial Chamber convicted Stanišić pursuant to Article 7(1) of the Statute for committing, through participation in the JCE, the crimes of persecutions as a crime against humanity as well as murder and torture as violations of the laws or customs of war.[308] The Trial Chamber also found Stanišić responsible, but did not enter convictions on the basis of the principles relating to cumulative convictions, for committing, through participation in the JCE, the crimes of: murder, torture, inhumane acts, deportation, and inhumane acts (forcible transfer) as crimes against humanity, and cruel treatment as a violation of the laws or customs of war.[309] The Trial Chamber further found Stanišić not guilty pursuant to Articles 7(1) and 7(3) of the Statute for the crime of extermination as a crime against humanity.[310]

89. In the section of the Trial Judgement addressing Stanišić's responsibility, the Trial Chamber presented the evidence relating to his "acts prior to and following his appointment as Minister of Interior".[311] Under the heading entitled "Findings on Mićo Stanišić's membership in JCE",[312] the Trial Chamber then set out its findings on his "contribution to JCE",[313] followed by a conclusion on his intent,[314] and ended with a discussion of his "responsibility for crimes outside scope of JCE".[315] The Appeals Chamber notes that in the section of the Trial Judgement dedicated to the conclusions on Stanišić's responsibility (*i.e.* the section entitled "Findings on Mićo Stanišić's membership in JCE"[316]) the Trial Chamber provided no cross-references to earlier findings or citations to evidence on the record.[317]

[307] Trial Judgement, vol. 2, para. 542.
[308] Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[309] Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[310] Trial Judgement, vol. 2, paras 804, 822, 844, 849, 858, 873, 877, 885, 955.
[311] Trial Judgement, vol. 2, paras 544-728.
[312] Trial Judgement, vol. 2, paras 729-769.
[313] Trial Judgement, vol. 2, paras 729-765.
[314] Trial Judgement, vol. 2, paras 766-769.
[315] Trial Judgement, vol. 2, paras 770-781.
[316] Trial Judgement, vol. 2, paras 729-769.
[317] Trial Judgement, vol. 2, paras 729-769. *Cf.* Trial Judgement, vol. 2, para. 767, fn. 1870.

90. It is regrettable that the Trial Chamber adopted such an approach, as the exercise of identifying underlying findings and analysis has been greatly convoluted as a result.[318]

91. Stanišić asserts that the Trial Chamber failed to provide a reasoned opinion for several findings in relation to the elements of joint criminal enterprise liability.[319] Stanišić also raises a number of other legal and factual challenges regarding the Trial Chamber's findings relating to his contribution to the JCE and his intent to further the JCE, as well as his responsibility under the third category of joint criminal enterprise liability.[320] The Appeals Chamber will address his submissions in turn.

2. Alleged errors in the evaluation of Stanišić's Interview (Stanišić's seventh ground of appeal)

92. From 16 to 21 July 2007, before trial proceedings had commenced, Stanišić voluntarily gave an interview to the Prosecution (*i.e.* the Interview), the transcripts of which were admitted into evidence at trial as Prosecution exhibits. The Trial Chamber noted that Stanišić relied on the Interview for the truth of its content in support of his defence case. It emphasised that it "considered [the Interview] in the course of its analysis of the evidence pertaining to Mićo Stanišić's responsibility".[321]

(a) Submissions of the parties

93. First, Stanišić submits that the Trial Chamber erred in law by not according full probative value to his Interview.[322] According to him, full probative value must be attributed to the evidence of an accused which is admitted into evidence at the Prosecution's request and not rebutted by any reliable evidence.[323] He argues that the Trial Chamber failed to consider the fact that his Interview was adduced into evidence by the Prosecution for the truth of its contents.[324] Furthermore, Stanišić argues that in adducing the Interview *via* a bar table motion, the Prosecution acknowledged the

[318] See *infra*, paras 138, 378. See also *infra*, paras 131, 142, 367, 376-377, 422, 433, 440, 456, 478, 484, 491, 507, 517, 669, 689. The Appeals Chamber acknowledges that the effects of this regrettable approach also permeate sections other than Stanišić's responsibility, see *e.g. infra*, paras 710, 843, 999, 1115, 1148.
[319] Stanišić Appeal Brief, paras 22-54 (Stanišić's first ground of appeal). See Stanišić Appeal Brief, paras 120, 235, 239-242, 370-387, 429-431.
[320] Stanišić Appeal Brief, paras 87-476 (Stanišić's third ground of appeal in part and Stanišić's fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh grounds of appeal). Stanišić also advances related arguments in paragraphs 55 to 86 of his appeal brief (Stanišić's second ground of appeal and Stanišić's third ground of appeal in part), which have been addressed in the previous sections in this Judgement (see *supra*, paras 63-87).
[321] Trial Judgement, vol. 2, para. 536.
[322] Stanišić Appeal Brief, paras 310, 315, 318.
[323] Stanišić Appeal Brief, paras 303, 310, 315, 318. See Stanišić Appeal Brief, paras 312-313.
[324] Stanišić Appeal Brief, paras 303, 305-306, 311, 318. See Stanišić Appeal Brief, paras 312-313. Stanišić also contends that the weight to be attributed to the contents of Stanišić's Interview was extensively debated during final oral arguments (see Stanišić Appeal Brief, para. 305).

reliability, relevance, and probative value of this evidence and extensively relied on its contents in its pre-trial brief, its opening statement, and during the trial.[325]

94. Second, Stanišić submits that the Trial Chamber erred in law by not addressing the parties' arguments on the weight to be attributed to the Interview.[326] Stanišić submits that the Prosecution's contention at trial – that his "numerous self-serving statements" should be rejected unless corroborated by other credible evidence – is unfounded, unspecified, and should be disregarded.[327]

95. Third, Stanišić submits that the Trial Chamber erred in law and fact by failing to "grasp the thrust of the information provided" in his Interview and to "attribute the correct probative value to this evidence".[328] He refers in this respect to specific aspects of his acts and conduct which, he argues, were clearly revealed by his Interview, including that: (i) he did not participate in the creation of the SDS and his ability to influence SDS decisions was at best minimal; (ii) he supported the Cutileiro Plan; (iii) he was not involved in the politics of the conflict; (iv) he was not close to Radovan Karadžić ("Karadžić") and did not share his views; (v) his ability to communicate with the various CSBs and Public Security Stations ("SJBs") and other persons was extremely limited; (vi) he had no jurisdiction over the creation and/or operation of prisons, camps and other detention facilities, and the information available to him was very limited; (vii) he was opposed to the presence and actions of paramilitary groups in BiH and took multiple measures to prevent and report crimes committed by such groups; and (viii) he took every possible measure with a view to investigating, reporting, and arresting perpetrators regardless of their ethnicity.[329] Stanišić argues that he consented to the Interview without the benefit of having heard any of the witnesses at trial[330] and voluntarily responded to topics in good faith.[331] He also points out that the Interview is overwhelmingly corroborated by credible evidence in the form of witness testimony and documentary evidence – mostly adduced by the Prosecution[332] – as well as by numerous orders he

[325] Stanišić Appeal Brief, paras 311-313. See Stanišić Appeal Brief, para. 318.
[326] Stanišić Appeal Brief, paras 316, 322. See Stanišić Appeal Brief, para. 305.
[327] Stanišić Appeal Brief, para. 317. See Stanišić Appeal Brief, paras 318-319, 322-324. Stanišić submits that the Prosecution: (i) failed to raise any argument at trial that justified discarding specific parts of the information he provided; and (ii) inaccurately argued at trial that he did not answer all questions during Stanišić's Interview, although he admits that there were documents he preferred not to comment on so as to avoid revealing aspects of his defence case (see Stanišić Appeal Brief, paras 323-324).
[328] Stanišić Appeal Brief, para. 329. See Stanišić Appeal Brief, para. 330. Stanišić also argues that his defence case "matched in every point" his Interview and that, had his evidence been correctly evaluated, the Trial Chamber could not have found that he was aware of and shared the persecutory intent of the perpetrators and that he contributed to the JCE (see Stanišić Appeal Brief, paras 325-326, 328). See Stanišić Reply Brief, para. 85.
[329] Stanišić Appeal Brief, para. 330. See Stanišić Appeal Brief, para. 329; Stanišić Reply Brief, para. 85.
[330] Stanišić Appeal Brief, paras 308, 327; Stanišić Reply Brief, para. 83.
[331] Stanišić Appeal Brief, paras 307-309.
[332] Stanišić Appeal Brief, paras 317, 321. See Stanišić Appeal Brief, para. 319; Stanišić Reply Brief, para. 83.

issued.[333] He contends that the "clear lack of criminal intent demonstrated throughout the [I]nterview was not accorded appropriate probative value" by the Trial Chamber.[334]

96. According to Stanišić, had his Interview been properly assessed, no reasonable trial chamber could have found that he was a member of the JCE.[335] Consequently, he requests that his convictions for Counts 1, 4, and 6 be quashed.[336]

97. With respect to Stanišić's first argument, the Prosecution responds that the weight accorded to an accused's statement, like any other evidence, is determined at the close of a case with regard to the record as a whole and that Stanišić's "newly-created legal test" is unsupported by the jurisprudence.[337] Second, the Prosecution responds that the Trial Chamber did refer to Stanišić's arguments concerning the weight to be attributed to the Interview[338] and that the Trial Chamber "reasonably found that Stanišić lied during his [I]nterview on several critical issues".[339]

98. Third, the Prosecution responds that Stanišić merely seeks to substitute his interpretation of his Interview for that of the Trial Chamber and thus his submissions warrant summary dismissal.[340] It argues that the Trial Chamber properly weighed the Interview in light of the totality of the evidence on the record and that it does not undermine the reasonableness of the finding that Stanišić was a member of the JCE.[341] The Prosecution submits that the Trial Chamber discussed Stanišić's Interview at length, repeatedly cited portions of it crediting Stanišić's evidence on some issues,[342] but also finding that several of Stanišić's statements in the Interview were inconsistent with the remainder of the evidence and, therefore, not credible.[343] The Prosecution also argues that Stanišić focuses on irrelevant considerations, such as how the Interview was conducted.[344] Finally, according to the Prosecution, Stanišić reiterates arguments contained in his final trial brief by citing

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[333] Stanišić Appeal Brief, paras 319-320. Stanišić provides a table highlighting the orders that he submits corroborate his Interview (see Stanišić Appeal Brief, para. 320).
[334] Stanišić Reply Brief, para. 83. See Stanišić Appeal Brief, para. 329; Stanišić Reply Brief, para. 85.
[335] Stanišić Appeal Brief, paras 302, 304, 331; Stanišić Reply Brief, para. 85.
[336] Stanišić Appeal Brief, para. 332.
[337] Prosecution Response Brief (Stanišić), paras 155, 157, referring to Stanišić Appeal Brief, para. 310. See Prosecution Response Brief (Stanišić), paras 154, 156.
[338] Prosecution Response Brief (Stanišić), para. 159, referring to Trial Judgement, vol. 2, para. 536.
[339] Prosecution Response Brief (Stanišić), para. 154. See Prosecution Response Brief (Stanišić), paras 158, 160, 162.
[340] Prosecution Response Brief (Stanišić), paras 154, 160.
[341] Prosecution Response Brief (Stanišić), paras 154, 166.
[342] Prosecution Response Brief (Stanišić), para. 161, referring to Trial Judgement, vol. 2, paras 6, 341, 537-543, 545-546, 549, 551-552, 557-559, 561-562, 573, 576, 595, 616, 618, 624-625, 637, 708.
[343] Prosecution Response Brief (Stanišić), paras 162, 166, referring to Trial Judgement, vol. 2, paras 6, 542-543, 545, 548, 554-555, 558, 564, 581, 588, 620, 633, 654, 656, 693, 729, 731, 735-736, 739, 753, 759, 761-762; Exhibit 1D135, p. 1. See Prosecution Response Brief (Stanišić), paras 155-156, 158, 161, 166; Exhibits P198, pp 6-9, P1999, p. 59.
[344] Prosecution Response Brief (Stanišić), para. 163.

the same exhibits whilst ignoring that the Trial Chamber addressed most of these exhibits in the Trial Judgement.[345]

(b) Analysis

99. The Appeals Chamber considers that all evidence adduced at trial, irrespective of which party tendered it, should be analysed according to the same legal standard. Once a trial chamber satisfies itself that the tendered piece of evidence meets the admissibility requirements, *i.e.* is relevant and has probative value, it may admit that evidence into the trial record.[346] The Appeals Chamber however recalls that the decision to admit a document has no bearing on the weight a trial chamber will ultimately accord it, and that the weight to be accorded is determined at the close of the case, having regard to the evidence as a whole.[347] The Appeals Chamber recalls that it is well established in the Tribunal's jurisprudence that a trial chamber has broad discretion in determining the weight to attach to evidence,[348] and that it is within its discretion to evaluate whether evidence taken as a whole is reliable and credible and to accept or reject the fundamental features of the evidence.[349]

100. With regard to Stanišić's argument that his Interview should be accorded full weight because it was adduced into evidence by the Prosecution and was not rebutted by reliable evidence, the Appeals Chamber considers that it was within the discretion of the Trial Chamber to decide what weight to afford to a piece of evidence even if this evidence was not rebutted by other evidence.[350] The fact that the Prosecution acknowledged the probative value of the Interview when tendering it into evidence cannot be seen as limiting the Trial Chamber's discretion to evaluate its weight in light of the entire trial record. The Appeals Chamber, therefore, finds that Stanišić has failed to demonstrate an error in the Trial Chamber's exercise of its discretion in assessing evidence by according to his Interview the weight it deemed fit.

101. Insofar as Stanišić argues that the Trial Chamber erred in law by not addressing the parties' arguments on the weight to be attributed to the Interview, the Appeals Chamber recalls that "the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial" and "it is in the discretion of the Trial Chamber as to which legal arguments

[345] Prosecution Response Brief (Stanišić), para. 165.
[346] Rule 89(C) of the Rules.
[347] *Boškoski and Tarčulovski* Appeal Judgement, para. 196. See *Popović et al.* Appeal Judgement, para. 90; *Rutaganda* Appeal Judgement, para. 266, fn. 63.
[348] *Popović et al.* Appeal Judgement, paras 131, 952, 1131, 1215; *Đorđević* Appeal Judgement, paras 319, 483, 797; *Lukić and Lukić* Appeal Judgement, para. 112.
[349] *Popović et al.* Appeal Judgement, para. 1358; *Munyakazi* Appeal Judgement, para. 51. See *Hategekimana* Appeal Judgement, para. 282; *Bagosora and Nsengiyumva* Appeal Judgement, para. 253.
[350] *Cf. Bikindi* Appeal Judgement, para. 115.

to address".[351] In any event, the Appeals Chamber notes that, although the Trial Chamber did not expressly refer to all of the parties' arguments concerning the weight to be attributed to Stanišić's Interview, it considered the issue in detail and made a case-by-case assessment on the weight it would attribute to the Interview. Indeed, the Trial Chamber stated that it had considered Stanišić's Interview in the course of its analysis of the evidence pertaining to Stanišić's responsibility,[352] and referred extensively and continuously to Stanišić's Interview during its discussion on Stanišić's acts and conduct – thereby accepting portions of the Interview whilst explaining why it rejected other parts.[353] Based on the foregoing, the Appeals Chamber finds that Stanišić has failed to demonstrate an error in the Trial Chamber's exercise of its discretion.

102. Finally, with regard to Stanišić's submission that the Trial Chamber erred in law and fact by failing to "grasp the thrust of the information" in the Interview and to attribute the correct probative value to it,[354] the Appeals Chamber notes that the specific portions of the Interview to which Stanišić refers concern issues that the Trial Chamber assessed and discussed.[355] Moreover, the Trial Chamber was cognisant of the fact that Stanišić consented to being interviewed without having heard witnesses and voluntarily gave evidence to the Prosecution.[356] The Appeals Chamber considers that Stanišić seeks to substitute his interpretation of the Interview for that of the Trial Chamber as he merely challenges the weight attributed to some portions of his Interview without showing that the Trial Chamber improperly exercised its discretion in weighing them against the rest of the trial record.

103. To the extent that Stanišić argues that his Interview was overwhelmingly corroborated and, therefore, should have been afforded full weight, the Appeals Chamber recalls that "corroboration of testimonies, even by many witnesses, does not establish automatically the credibility, reliability or weight of those testimonies" and that it is "neither a condition nor a guarantee of reliability of a single piece of evidence".[357] Other than stating that the listed exhibits corroborate his Interview,[358]

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[351] *Kvočka et al.* Appeal Judgement, para. 23; *Čelebići* Appeal Judgement, para. 498.
[352] Trial Judgement, vol. 2, para. 536.
[353] See *e.g.* Trial Judgement, vol. 2, paras 555, 562-564. See also Trial Judgement, vol. 2, paras 536-554, 556-561, 565-728.
[354] See *supra*, para. 95.
[355] See Trial Judgement, vol. 2, paras 545-546, 552-568, 577-580, 585, 588, 594, 617, 620, 624, 633, 637, 640, 644, 647, 675, 677-688, 695-708, 709-730, 732-733, 744-759, 761-762, 764-765, 769.
[356] See Trial Judgement, vol. 2, para. 536, in which the Trial Chamber referred to the dates of the Interview (*i.e.* from 16 to 21 July 2007) and noted that Stanišić "was read his rights pursuant to the Rules at the start of each interview session and affirmed that he understood them".
[357] *D. Milošević* Appeal Judgement, para. 248, referring to *Limaj et al.* Appeal Judgement, para. 203. See also *Čelebići* Appeal Judgement, paras 492, 506; *Gacumbitsi* Appeal Judgement, para. 72; *Musema* Appeal Judgement, paras 37-38; *Karera* Appeal Judgement, para. 45. The Appeals Chamber further recalls that a "trial chamber has full discretion to assess the credibility of a witness and determine the appropriate weight to be accorded to his or her testimony; corroboration is one of many potential factors relevant to this assessment" (see *Gatete* Appeal Judgement, para. 138). See *Popović et al.* Appeal Judgement, paras 132, 243, 1009.

Stanišić does not present any arguments demonstrating how the Trial Chamber erred in its assessment of the Interview in light of the entire trial record. The Appeals Chamber emphasises that, regardless of whether these exhibits corroborate the contents of Stanišić's Interview, the Trial Chamber had full discretion in weighing and assessing the evidence in light of the entire trial record.[359] Stanišić has failed to demonstrate that the Trial Chamber ventured outside the scope of its discretion.

(c) Conclusion

104. Based on the foregoing, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in its assessment of Stanišić's Interview. The Appeals Chamber therefore dismisses Stanišić's seventh ground of appeal.

3. Alleged error regarding the legal standard for contribution to a joint criminal enterprise through failure to act (Stanišić's first ground of appeal in part and fifth ground of appeal in part)

105. In concluding that Stanišić contributed to the JCE, the Trial Chamber considered, *inter alia*, "his role in prevention, investigation, and documentation of crimes",[360] and its finding that despite his knowledge of the crimes that were being committed, Stanišić "took insufficient action to put an end to [these crimes] and instead permitted RS MUP forces under his overall control to continue to participate in joint operations with other Serb forces involved in the commission of crimes".[361] The Trial Chamber also considered Stanišić's "role in unlawful arrest and detentions"[362] and its finding that he "contributed to [the] continued existence and operation [of detention and penitentiary facilities] by failing to take decisive action to close these facilities or, at the very least, by failing to withdraw the RS MUP forces from their involvement in these detention centres".[363]

[358] See Stanišić Appeal Brief, para. 320. The table, provided by Stanišić, lists Exhibits 1D56, 1D73, P1420, P1013, P1472, 1D48, P564, 1D52, P192, 1D563, 1D77, 1D57, 1D634, P1004, P173, P581, P582, 1D55, 1D640, 1D64, 1D651, 1D61, P792, P1252, P553, P57, 1D62, P856, 1D91, P190, 1D58, 1D59, 1D176, 1D94, P2349, P2348, 1D572, P543, P545, P534, P580, 1D76. *Cf.* Prosecution Response Brief (Stanišić), fns 646-647. Stanišić does not identify any further testimonial or documentary evidence which allegedly corroborates the Interview (see Stanišić Appeal Brief, paras 317, 321).
[359] See *supra*, para. 99. See also *Gatete* Appeal Judgement, para. 138; *Popović et al.* Appeal Judgement, paras 132, 243, 1009.
[360] Trial Judgement, vol. 2, paras 745-759.
[361] Trial Judgement, vol. 2, para. 759.
[362] Trial Judgement, vol. 2, paras 760-765.
[363] Trial Judgement, vol. 2, para. 761.

(a) Submissions of the parties

106. Stanišić submits that the Trial Chamber erred in law by failing to set out and apply the correct legal standard for contribution to a joint criminal enterprise "by omission".[364] He contends that it is well established in the jurisprudence of the Tribunal that responsibility for participating in a joint criminal enterprise falls within the ambit of Article 7(1) of the Statute, under the heading "committing", which covers the "culpable omission of an act [...] mandated by a rule of criminal law".[365] Stanišić argues that, consequently, participation in a joint criminal enterprise by way of omission can only be established when the omission arises from a "legal duty to act mandated by a rule of criminal law" and if the accused had the ability to act.[366]

107. Stanišić further submits that the Trial Chamber erred by finding that he contributed to the JCE on the basis of omissions which do not meet the requirements for incurring joint criminal enterprise liability by omission under Article 7(1) of the Statute.[367] Accordingly, Stanišić requests that his convictions under Counts 1, 4, and 6 be quashed.[368]

108. The Prosecution responds that the Trial Chamber correctly articulated and applied the law relating to joint criminal enterprise liability and that Stanišić's arguments should be dismissed.[369] In particular, the Prosecution submits that Stanišić's argument that contribution to a joint criminal enterprise by omission must be based "on a duty mandated by a rule of criminal law" should be dismissed considering that, as the Trial Chamber correctly observed, such contribution need neither be criminal nor form part of the *actus reus* of the crime.[370]

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[364] Stanišić Appeal Brief, paras 43, 189, 191-194, referring to *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Decision on Mićo Stanišić's and Stojan Župljanin's Motions on Form of the Indictment, 19 March 2009 ("Decision on Form of the Indictment"), para. 39, Trial Judgement, vol. 1, para. 103. See Stanišić Appeal Brief, paras 195-205.

[365] Stanišić Appeal Brief, paras 195-196. See Stanišić Appeal Brief, para. 195. Stanišić adds that recent jurisprudence of the Tribunal has confirmed in the context of joint criminal enterprise that responsibility for omission can only be established where the requirements for a culpable omission under Article 7(1) are met. Stanišić Appeal Brief, para. 198, referring to *Tolimir* Trial Judgement, para. 894, fn. 3528).

[366] Stanišić Appeal Brief, para. 199. See Stanišić Appeal Brief, paras 202-205). See also Stanišić Reply Brief, paras 56, 60.

[367] Stanišić Appeal Brief, paras 188-190, 206-209, 212-214, 216, 218-220, 223-228, 230-232. Stanišić submits in this regard that the Trial Chamber erred because it relied on his "purported omissions [which] do not arise from a duty mandated by a rule of criminal law" and/or because he did not have the ability to act (Stanišić Appeal Brief, para. 207).

[368] Stanišić Appeal Brief, para. 234.

[369] Prosecution Response Brief (Stanišić), paras 17, 85-87, 91.

[370] Prosecution Response Brief (Stanišić), para. 86. The Prosecution argues in this regard that Stanišić unpersuasively relies on the *Tolimir* Trial Judgement as, contrary to Stanišić's assertion, this judgement does not specifically address the issue of the limits of joint criminal enterprise through omission liability (Prosecution Response Brief (Stanišić), para. 87).

(b) Analysis

109. The Appeals Chamber considers that Stanišić's argument that the Trial Chamber failed to apply the correct legal standard to his "purported omissions"[371] is based on the premise that each failure to act assessed in the context of joint criminal enterprise liability must, *per se*, meet the legal conditions set out in the Tribunal's case law in relation to commission by omission. In this respect, the Appeals Chamber recalls that although participation in a joint criminal enterprise – which is based on an accused's significant contribution to the common criminal purpose – is a form of "commission" under Article 7(1) of the Statute, this is a mode of liability distinct from commission by omission and is characterised by different objective and subjective elements.[372]

110. In this respect, the Trial Chamber properly held that for an accused to be found criminally liable on the basis of joint criminal enterprise liability, it is sufficient that he acted in furtherance of the common purpose of a joint criminal enterprise in the sense that he significantly contributed to the commission of the crimes involved in the common purpose.[373] Beyond that, the law does not foresee specific types of conduct which *per se* could not be considered a contribution to a joint criminal enterprise.[374] Within these legal confines, the question of whether a failure to act could be taken into account to establish that the accused significantly contributed to a joint criminal enterprise is a question of fact to be determined on a case-by-case basis.[375] Furthermore, the Appeals Chamber recalls that the relevant failures to act or acts carried out in furtherance of a joint criminal enterprise need not involve carrying out any part of the *actus reus* of a crime forming part of the common purpose, or indeed any crime at all.[376] That is, one's contribution to a joint criminal enterprise need not be in and of itself criminal, as long as the accused performs acts (or fails to perform acts) that in some way contribute significantly to the furtherance of the common purpose.[377] In light of the above, contrary to Stanišić's assertion, when establishing an accused's participation in a joint criminal enterprise through his failure to act, the existence of a legal duty to

[371] Stanišić Appeal Brief, paras 190, 207.
[372] See *Tadić* Appeal Judgement, paras 188, 227-228. See also *Krajišnik* Appeal Judgement, para. 662. As for the elements of joint criminal enterprise liability, see further *Brđanin* Appeal Judgement, paras 364-365, 429-430; *Stakić* Appeal Judgement, paras 64-65. As for the elements of commission by omission, see further *Orić* Appeal Judgement, para. 43, *Brđanin* Appeal Judgement, para. 274, *Galić* Appeal Judgement, para. 175, *Ntagerura et al.* Appeal Judgement, para. 334, *Blaškić* Appeal Judgement, para. 663.
[373] Trial Judgement, vol. 1, para. 103, referring to *Brđanin* Appeal Judgement, para. 430. See *Krajišnik* Appeal Judgement, paras 215, 696. See also *Popović et al.* Appeal Judgement, para. 1378.
[374] *Krajišnik* Appeal Judgement, para. 696.
[375] See *Šainović et al.* Appeal Judgement, paras 1233, 1242. *Cf. Krajišnik* Appeal Judgement, para. 696.
[376] *Krajišnik* Appeal Judgement, para. 215; *Brđanin* Appeal Judgement, para. 427; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 99; *Tadić* Appeal Judgement, para. 227. The Appeals Chamber observes that the Trial Chamber correctly recalled the jurisprudence in this regard (see Trial Judgement, vol. 1, para. 103).
[377] *Popović et al.* Appeal Judgement, para. 1653; *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696. See *Šainović et al.* Appeal Judgement, paras 1233, 1242.

act deriving from a rule of criminal law is not required.[378] The nature of the accused's duty and the extent of his ability to act are simply questions of evidence and not determinative of joint criminal enterprise liability.[379]

111. In the present case, as part of its factual determination of Stanišić's contribution to the JCE, the Trial Chamber considered, together with his other actions,[380] his failure to discipline the RS MUP personnel who had committed crimes and to protect the civilian population,[381] despite his duties to do so, together with his ability, as the highest authority, to investigate and punish those who had committed crimes.[382] The Appeals Chamber observes that in the jurisprudence of the Tribunal, a failure to intervene to prevent recurrence of crimes or to halt abuses has been taken into account in assessing an accused's contribution to a joint criminal enterprise and his intent where the accused had some power and influence or authority over the perpetrators sufficient to prevent or halt the abuses but failed to exercise such power.[383] Therefore, Stanišić has not shown that the Trial Chamber applied an erroneous legal standard when it considered instances of his failures to act in assessing whether he contributed to the JCE.

112. In light of the above, the Appeals Chamber dismisses Stanišić's argument that the Trial Chamber erred in law by failing to set out and apply the correct legal standard for joint criminal enterprise liability through failure to act. The Appeals Chamber therefore need not address Stanišić's further arguments that his failures to act considered by the Trial Chamber do not meet the

[378] The Appeals Chamber considers Stanišić's reliance on the *Tolimir* Trial Judgement inapposite as, in the reference cited by Stanišić, the *Tolimir* Trial Chamber recalled in general terms the well-established jurisprudence on liability by omission pursuant to Article 7(1) of the Statute, which does require proof of a legal duty to act, without addressing the specific issue at stake in the present case (see *Tolimir* Trial Judgement, para. 894, fn. 3528).
[379] See *Šainović et al.* Appeal Judgement, para. 1233, 1242. See also *Šainović et al.* Appeal Judgement, para. 1045; *Martić* Appeal Judgement, para. 28; *Krajišnik* Appeal Judgement, paras 193-194, 204.
[380] See, *e.g.* Trial Judgement, vol. 2, para. 734, 737-744. See also Trial Judgement, vol. 2, paras 58, 588, 591-595, 729-736.
[381] Trial Judgement, vol. 2, paras 695, 698, 754. See Trial Judgement, vol. 2, paras 18, 37-43.
[382] Trial Judgement, vol. 2, para. 755.
[383] See *Šainović et al.* Appeal Judgement, paras 1233, 1242 (The Appeals Chamber found that the accused's duty to prevent or punish his subordinates' crimes and failure to do so was "not determinative of his criminal responsibility" for joint criminal enterprise liability but "was part of the circumstantial evidence from which his intent and contribution to the JCE could be inferred" (*Šainović et al.* Appeal Judgement, para. 1242)); *Krajišnik* Appeal Judgement, para. 194 (the Appeals Chamber found that the accused had "some power and influence" and "the power to intervene" and that the *Krajišnik* Trial Chamber could rightfully consider his failure to intervene "as one of the elements tending to prove [his] acceptance of certain crimes" (*Krajišnik* Appeal Judgement, para. 194)); *Kvočka et al.* Appeal Judgement, paras 195-196 (The Appeals Chamber observed that in concluding that the accused's participation in the functioning of the camp had furthered the criminal purpose, the Trial Chamber had considered *inter alia* its findings "that he held a high-ranking position in the camp and had some degree of authority over the guards; that he had sufficient influence to prevent or halt some of the abuses but that he made use of that influence only very rarely" (*Kvočka et al.* Appeal Judgement, para. 195 (internal citations omitted)). See also *Krajišnik* Appeal Judgement, paras 216(e), 217. For further factual background of the jurisprudence cited in the current footnote, see *Milutinović et al.* Trial Judgement, paras 773, 777, 782; *Krajišnik* Trial Judgement, paras 1118-1119, 1121(e), 1121(j); *Kvočka et al.* Trial Judgement, paras 372, 395-396. See further *infra*, para. 734.

purported requirements of contribution to a joint criminal enterprise "by omission"[384] and that, as such, the Trial Chamber erred in considering his failures to act when finding that he contributed to the JCE. His arguments in this regard are therefore dismissed as moot.[385]

(c) Conclusion

113. Based on the foregoing, the Appeals Chamber dismisses Stanišić's first ground of appeal in part and fifth ground of appeal in part.

4. Alleged error in failing to pronounce on the issue of re-subordination (Stanišić's first, fifth, and sixth grounds of appeal in part)

(a) Introduction

114. In its discussion on the "issue of the re-subordination of police to the military",[386] the Trial Chamber noted that "[t]he central question was whether [Stanišić and Župljanin] could be held criminally responsible for the actions of the members of the police who committed crimes while they may have been re-subordinated to the JNA or VRS".[387] Having analysed the evidence relating to this issue,[388] the Trial Chamber concluded that it was "unable to find whether it was the military or the civilian authorities which may have been responsible for the investigation and prosecution of crimes against Muslims and Croats which may have been committed by policemen re-subordinated to the military".[389] It noted, however, that "criminal responsibility for actions of re-subordinated policemen is primarily of importance for [...] responsibility pursuant to Article 7(3) of the Statute".[390] It further referred to its finding that the JCE existed and that members of the police, the Yugoslav People's Army ("JNA"), and the Army of *Republika Srpska* ("VRS") were all used as tools in the furtherance of the JCE, of which Stanišić and Župljanin were members.[391] On this basis, the Trial Chamber stated that it would consider "whether the actions of policemen which the Defence claims were re-subordinated to the military at the time of the commission of the crimes, can be imputed to a member of the JCE and ultimately to [Stanišić and Župljanin]".[392] Accordingly,

[384] Stanišić Appeal Brief, paras 43, 189, 191-194, referring to Decision on Form of the Indictment, para. 39, Trial Judgement, vol. 1, para. 103. See Stanišić Appeal Brief, paras 195-205.
[385] To the extent that Stanišić raises factual challenges to the Trial Chamber's findings on his authority and failure to act, the Appeals Chamber will address these arguments, developed in his fifth ground of appeal, under the sub-section dealing with the factual errors he alleges with regard to his contribution to the JCE (see *infra*, paras 246, 303-305, 309, 310, 353).
[386] Trial Judgement, vol. 2, para. 317. See Trial Judgement, vol. 2, paras 318-342.
[387] Trial Judgement, vol. 2, para. 317.
[388] Trial Judgement, vol. 2, paras 320-341. See Trial Judgement, vol. 2, paras 317-319.
[389] Trial Judgement, vol. 2, para. 342.
[390] Trial Judgement, vol. 2, para. 342.
[391] Trial Judgement, vol. 2, para. 342.
[392] Trial Judgement, vol. 2, para. 342 (citations omitted).

the Trial Chamber concluded that it was "not necessary to make any further findings on the issue of re-subordination".[393]

(b) Submissions of the parties

115. Stanišić contends that the Trial Chamber erred by failing to pronounce on whether military or civilian authorities were responsible for the investigation and prosecution of crimes against non-Serbs committed by policemen re-subordinated to the military, thereby failing to provide a reasoned opinion.[394] He contends that this failure "gravely impeded" his ability to effectively exercise his right of appeal and "fatally hinders" the Appeals Chamber's capacity to understand and review the Trial Judgement.[395]

116. More specifically, Stanišić contends that the Trial Chamber's failure to pronounce on the issue of re-subordination "goes to the heart of" his criminal responsibility as "most of the underlying crimes in this case" can be attributed to policemen re-subordinated to the military.[396] In this context, he also argues that the Trial Chamber erred by: (i) relying on his purported failure to investigate or prosecute crimes committed by policemen re-subordinated to the military to find implicitly that he contributed to the JCE;[397] and (ii) attributing the actions of the re-subordinated police to him for the purposes of establishing his JCE membership.[398] Stanišić further argues that the Trial Chamber failed to provide reasons for the contradiction between its finding that he possessed "overall command and control over the RS MUP police forces and all other internal affairs organs" and its inability to pronounce on the issue of re-subordination.[399] In addition, he contends that the Trial Chamber erred by finding that he permitted RS MUP forces under his control to continue to participate in joint operations with other Serb forces, while it made an inconclusive finding on re-subordination and whether Stanišić retained control over such forces.[400]

117. The Prosecution responds that, in determining Stanišić's responsibility, the Trial Chamber reasonably relied upon his command and control over the RS MUP on the basis of its exhaustive

[393] Trial Judgement, vol. 2, para. 342.
[394] Stanišić Appeal Brief, paras 22-23, 27-35. See Stanišić Reply Brief, para. 9.
[395] Stanišić Appeal Brief, para. 28, referring to *Naletilić and Martinović* Appeal Judgement, para. 603. See Stanišić Appeal Brief, para. 27; Stanišić Reply Brief, para. 12, referring to Trial Judgement, vol. 2, paras 321-342; Appeal Hearing, 16 Dec 2015, AT. 95.
[396] Stanišić Appeal Brief, para. 29. See Appeal Hearing, 16 Dec 2015, AT. 95-96.
[397] Stanišić Appeal Brief, para. 31. See Stanišić Appeal Brief, paras 29, 227. See also Appeal Hearing, 15 Dec 2015, AT. 94-95, where Stanišić referred to, *inter alia*, the Trial Chamber's findings at paragraphs 737, 740, 743, 745, and 757 of volume two of the Trial Judgement in support of his arguments that the Trial Chamber relied upon the action of police who may have been re-subordinated to the military.
[398] Stanišić Appeal Brief, para. 34. See Stanišić Appeal Brief, para. 33; Appeal Hearing, 16 Dec 2015, AT. 96. See also Stanišić Appeal Brief, paras 32, 35; Stanišić Reply Brief, para. 13.
[399] Stanišić Appeal Brief, para. 30, quoting Trial Judgement, vol. 2, para. 736. See Stanišić Appeal Brief, para. 259; Stanišić Reply Brief, para. 10.

analysis of evidence and that, by seizing "on the absence of a general finding on resubordination", Stanišić "miscasts" the Trial Judgement.[401] It contends that Stanišić's argument is based on the sweeping yet unsupported assertion that most underlying crimes can be attributed to police who were re-subordinated to the military.[402] The Prosecution further submits that it was "entirely reasonable" for the Trial Chamber to determine Stanišić's responsibility on the basis of his failure to investigate and punish subordinates for their crimes against non-Serbs.[403]

(c) Analysis

118. The Appeals Chamber observes that Stanišić's assertion that the Trial Chamber erred in failing to pronounce on the issue of re-subordination of policemen is based on the premise that "most of the underlying crimes in this case" can be attributed to policemen re-subordinated to the military.[404] The Appeals Chamber notes that this assertion is unsupported by any reference to the Trial Judgement or to evidence on the record and thus may be dismissed without detailed analysis. However, in view of the nature of Stanišić's challenges under this subsection, the Appeals Chamber will further consider this argument.

119. The Appeals Chamber recalls that "an accused who participated in a [joint criminal enterprise] with the requisite *mens rea* may be held responsible for crimes committed by principal perpetrators who were not [members of the joint criminal enterprise], so long as those crimes were linked with, and therefore can be imputed to, one of the [joint criminal enterprise] members" acting in accordance with the common plan, even if that member is someone other than the accused.[405] Moreover, the link between the principal perpetrators and the joint criminal enterprise member is to be assessed on a case-by-case basis.[406] Whether a joint criminal enterprise member had a duty and ability to investigate and prosecute crimes committed by the principal perpetrators is merely one of

[400] Stanišić Appeal Brief, para. 287.
[401] Prosecution Response Brief (Stanišić), para. 11.
[402] Prosecution Response Brief (Stanišić), para. 12, quoting Stanišić Appeal Brief, para. 29.
[403] Prosecution Response Brief (Stanišić), para. 13, referring to Prosecution Response Brief (Stanišić), paras 69-75, 79-84, 133-134, 144-146. In this respect the Prosecution relies upon: (i) the orders Stanišić issued; (ii) Stanišić's role in the operation of detention facilities; and (iii) the breadth of Stanišić's duty to protect the civilian population (Prosecution Response Brief (Stanišić), para. 13). See Appeal Hearing, 16 Dec 2015, AT. 127-128.
[404] See *supra*, para. 116.
[405] *Šainović et al.* Appeal Judgement, para. 1520, referring to *Krajišnik* Appeal Judgement, para. 225, *Martić* Appeal Judgement, para. 168, *Brđanin* Appeal Judgement, para. 413. See *Tolimir* Appeal Judgement, para. 432; *Popović et al.* Appeal Judgement, para. 1065.
[406] *Popović et al.* Appeal Judgement, para. 1053. See *Tolimir* Appeal Judgement, para. 432; *Đorđević* Appeal Judgement, para. 165; *Šainović et al.* Appeal Judgement, para. 1256; *Krajišnik* Appeal Judgement, para. 226.

the factors that may be taken into account by a chamber when determining whether crimes can be imputed to that member.[407]

120. In this regard, the Appeals Chamber notes that the Trial Chamber recalled its findings that the JCE existed and that members of the police, the JNA, and the VRS were all used as tools in the furtherance of the JCE, of which Stanišić and Župljanin were members.[408] It then held, on this basis, that it would consider "whether the actions of policemen which the Defence claims were re-subordinated to the military at the time of the commission of the crimes, can be imputed to a member of the JCE and ultimately to [Stanišić and Župljanin]".[409] This consideration led the Trial Chamber to conclude that it was "not necessary to make any further findings on the issue of re-subordination",[410] even though it was "unable to find whether it was the military or the civilian authorities which may have been responsible for the *investigation and prosecution* of crimes against Muslims and Croats which may have been committed by policemen re-subordinated to the military".[411] Accordingly, the Appeals Chamber discerns no error on the part of the Trial Chamber insofar as it found that there is no legal requirement to make "any further findings on the issue of re-subordination" for the assessment of joint criminal enterprise liability.[412]

121. However, the Appeals Chamber understands that Stanišić also supports his contention by asserting that the Trial Chamber erred in relying on his purported failure to investigate or prosecute crimes committed by re-subordinated police to find that he contributed to the JCE, and in turn, to establish his membership in the JCE.[413] The Appeals Chamber will therefore now examine whether, as a factual consideration in assessing his contribution to the JCE and intent, the Trial Chamber relied upon his failure to investigate or prosecute crimes of re-subordinated police.

122. In assessing Stanišić's contribution to the JCE, the Trial Chamber made, *inter alia*, findings in a section entitled "[r]ole in prevention, investigation, and documentation of crimes".[414] In this regard, the Trial Chamber first considered that the civilian law enforcement apparatus failed to function in an impartial manner with respect to the investigation and prosecution of crimes.[415] The

[407] See *Šainović et al.* Appeal Judgement, para. 1520. See also *Šainović et al.* Appeal Judgement, paras 1045, 1233, 1242.
[408] Trial Judgement, vol. 2, para. 342. See Trial Judgement, vol. 2, paras 313, 801-802, 806-807, 810-811, 815-816, 819-820, 824-825, 833-834, 837-838, 846-847, 851-852, 860-861, 865-866, 870-871, 874-876, 878-879, 882-883.
[409] Trial Judgement, vol. 2, para. 342.
[410] Trial Judgement, vol. 2, para. 342. Indeed, the Trial Chamber made no such findings and did not specify whether perpetrators of crimes in the Municipalities (that it identified as police, JNA, or VRS) may have been police who were re-subordinated to the military at the time of the commission of the offences.
[411] Trial Judgement, vol. 2, para. 342 (emphasis added).
[412] Trial Judgement, vol. 2, para. 342.
[413] Stanišić Appeal Brief, para. 31, read together with Stanišić Appeal Brief, paras 29, 34. See also *supra*, para. 116.
[414] Trial Judgement, vol. 2, paras 745-759.
[415] Trial Judgement, vol. 2, para. 745.

Trial Chamber further found that this "discriminatory failure to properly investigate crimes against non-Serbs contributed to the prevailing culture of impunity and thereby facilitated the perpetration of further crimes [...] in furtherance of the common objective" and considered Stanišić's specific acts and failures to act against this contextual background.[416] This consideration of the contextual background, however, does not mean that the Trial Chamber attributed to Stanišić, personally, a failure to investigate or prosecute crimes of policemen who may have been re-subordinated to the military when it assessed his contribution to the JCE.[417]

123. With regard to Stanišić's specific acts and failures to act relevant to measures for suppression of crimes, the Appeals Chamber notes that the Trial Chamber specifically considered: (i) that some of the orders Stanišić issued to curb crimes by RS MUP personnel were not carried out to the extent possible, given that the reserve police – among whom the problem of "unprincipled conduct" was most pronounced – were able to continue to serve within the RS MUP until the end of 1992;[418] (ii) Stanišić's failure to fulfil his duty "to discipline and dismiss [RS MUP personnel] who had committed crimes", in violation of his professional obligation to protect and safeguard the civilian population;[419] (iii) Stanišić's "ability as the highest authority to investigate and punish those found to be involved [in the theft of vehicles], even when faced by opposition from others in the Bosnian Serb leadership";[420] (iv) his actions against paramilitaries in relation only to "acts of theft, looting, and trespasses against the local RS leaders";[421] and, finally (v) his failure to take the same "decisive" action (as he took with regard to the aforementioned paramilitaries) *vis-à-vis* other crimes, such as unlawful detention, forcible displacement, killings, and inhumane treatment,

[416] Trial Judgement, vol. 2, para. 745. See Trial Judgement, vol. 2, paras 746-759.
[417] In the Appeals Chamber's view, this approach is confirmed by the fact that the specific findings set out in paragraphs 745-759 of volume two of the Trial Judgement are based on evidence addressed elsewhere in the Trial Judgement. In this regard, the Appeals Chamber notes that the Trial Chamber's finding on the failure of the civilian law enforcement apparatus is based on its analysis of the evidence in the section on the general description of the judiciary in the region at the relevant time (see Trial Judgement, vol. 2, paras 85-94), while the Trial Chamber's findings on his specific acts and omissions are based on the analysis of the evidence in the section specifically examining his personal acts and conduct (see *e.g.* Trial Judgement, vol. 2, paras 610-614 (Stanišić's orders to subordinates), 636 (Stanišić's letter to Witness Đerić), 640-641, 644, (Stanišić's orders of 23, 24, and 27 July 1992, 646 (reports of 5 and 6 August 1992), 651-663 (response to international outcry), 687 (placement of suspended RS MUP personnel under the VRS), 664-670 (Stanišić's orders of 8, 10, and 17 August), 675 (Stanišić's order of 24 August), 695-720 (disciplinary measures and actions against paramilitaries)).
[418] Trial Judgement, vol. 2, para. 746. See Trial Judgement, vol. 2, paras 748-749, 752-753.
[419] Trial Judgement, vol. 2, para. 754. See Trial Judgement, vol. 2, para. 755.
[420] Trial Judgement, vol. 2, para. 755. The Trial Chamber also found that this ability is demonstrated by Stanišić's efforts to quell the theft of vehicles "by issuing orders to monitor and protect the facilities, requiring immediate inspection and reporting by chiefs of CSBs, instituting disciplinary action leading to dismissal from service of police officers involved in the crime, and his relentless airing of the issue as a matter of personal concern" (Trial Judgement, vol. 2, para. 755).
[421] Trial Judgement, vol. 2, para. 756. In relation to such actions, the Trial Chamber found that Stanišić "raised the issue of the problems these [paramilitary] forces caused with the Prime Minister Branko Đerić" and alluded to evidence it had considered elsewhere regarding the operations instantiated by Stanišić aimed at the arrest and disarmament of the Yellow Wasps and other paramilitary groups (Trial Judgement, vol. 2, para. 756. See Trial Judgement, vol. 2, paras 713-720).

committed against non-Serbs, which were brought to his attention.[422] In addition, the Trial Chamber considered that Stanišić's instructions to the chiefs of CSBs regarding documentation of war crimes were limited to cases involving Serb victims.[423] Having considered Stanišić's specific acts and failures to act as described above, the Trial Chamber concluded that Stanišić "permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb forces involved in the commission of crimes" and took insufficient action to put an end to crimes, despite his knowledge thereof.[424]

124. In the view of the Appeals Chamber, the foregoing shows that the Trial Chamber assessed Stanišić's role in the prevention, investigation, and documentation of crimes by reference to factors that are distinct from, and do not relate to a failure by civilian or military authorities to investigate or prosecute crimes that may have been committed by re-subordinated police.[425] It follows that the Trial Chamber did not attribute to Stanišić, personally, a failure to investigate or prosecute crimes of re-subordinated policemen when it assessed his contribution to the JCE. Not only is Stanišić's implication that the Trial Chamber relied upon such a failure unsubstantiated by any reference to the Trial Judgement, but it is also not borne out by the Trial Chamber's reasoning.[426] The Appeals Chamber further finds that, to the extent the Trial Chamber relied upon Stanišić's contribution to the JCE in assessing his intent required for joint criminal enterprise liability,[427] Stanišić has failed to demonstrate that the Trial Chamber, either explicitly or implicitly, attributed to him a failure to investigate or prosecute policemen who may have been re-subordinated to the military.[428]

125. The Appeals Chamber therefore finds that Stanišić has not demonstrated that the pronouncement on whether military or civilian authorities were responsible for the investigation and prosecution of crimes committed by re-subordinated policemen is a factual finding that was

[422] Trial Judgement, vol. 2, para. 757. With regard to unlawful detention, the Trial Chamber further found that he "contributed to [the] continued existence and operation [of detention and penitentiary facilities] by failing to take decisive action to close these facilities or, at the very least, by failing to withdraw the RS MUP forces from their involvement in these detention centres" (Trial Judgement, vol. 2, para. 761).
[423] Trial Judgement, vol. 2, para. 758.
[424] Trial Judgement, vol. 2, para. 759.
[425] For instance, the Trial Chamber found that Stanišić failed to fulfil his duty to discipline and dismiss "personnel of his Ministry who had committed crimes" and his failed attempts to take actions in this respect against Malko Koroman, Stevan Todorović, Witness Petrović, Borislav Maksimović, and Simo Drljača, resulted in a violation of his "professional obligation to protect and safeguard the civilian population in the territories under their control" (Trial Judgement, vol. 2, para. 754). The Appeals Chamber notes that Stanišić's challenges to the Trial Chamber's findings in this respect are dismissed elsewhere in this Judgement (see *supra*, paras 203-208).
[426] See Stanišić Appeal Brief, para. 31. See also *supra*, para. 116.
[427] See Trial Judgement, vol. 2, paras 766-769.
[428] With respect to the Trial Chamber's assessment of the subjective element of the first category of joint criminal enterprise, see Trial Judgement, vol. 2, paras 766-769; *infra*, paras 366-585.

essential to the determination of his guilt, the lack of which would result in a failure to provide a reasoned opinion.[429]

126. The Appeals Chamber now moves to Stanišić's argument that the Trial Chamber's finding that he had "overall command and control over the RS MUP police forces" is contradicted by the Trial Chamber's stated inability to determine whether civilian or military apparatuses were responsible for the investigation and prosecution of crimes allegedly committed by re-subordinated police.[430] In this regard, the Appeals Chamber notes that the Trial Chamber's finding concerning Stanišić's command and control over the RS MUP was based upon his: (i) assignment of trusted members of the Ministry of Interior of the Socialist Republic of BiH ("SRBiH MUP" and "SRBiH", respectively) to important positions; (ii) appointment of SJB chiefs in accordance with recommendations of regional authorities; (iii) assignment of SJBs to newly established CSBs; (iv) orders requiring personnel from headquarters to inspect and visit municipalities; (v) orders regarding the investigation of crimes allegedly committed by RS MUP members; and (vi) actions in reassigning criminal elements from the police to the army.[431] In light of this, the Appeals Chamber considers that Stanišić has failed to demonstrate how the Trial Chamber's conclusion is undermined by its inability to determine whether civilian or military authorities were responsible for the investigation or prosecution of certain crimes which may have been committed by policemen re-subordinated to the military.

127. Insofar as Stanišić's argues that he did not have command and control over police forces re-subordinated to the military, the Appeals Chamber recalls the Trial Chamber's finding that, pursuant to an order issued by Stanišić on 15 May 1992, organising RS MUP forces into war units ("Stanišić's 15 May 1992 Order"), RS MUP units re-subordinated to the armed forces were to act in compliance with military regulations, "but would remain 'under the command' of designated Ministry officials".[432] Stanišić has therefore failed to show a contradiction in the relevant findings of the Trial Chamber. In the same vein, the Appeals Chamber is not persuaded by Stanišić's assertion that the Trial Chamber's inconclusive finding on the issue of re-subordination undermines

[429] *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Haradinaj et al.* Appeal Judgement, paras 77, 128.
[430] See *supra*, para. 116. See also Trial Judgement, vol. 2, paras 342, 736.
[431] Trial Judgement, vol. 2, para. 736.
[432] Trial Judgement, vol. 2, para. 588, referring to Alexander Krulj, 27 Oct 2009, T. 2079-2082, Sreto Gajić, 15 Jul 2010, T. 12856-12858, Drago Borovčanin, 23 Feb 2010, T. 6678-6679, Andrija Bjelošević, 15 Apr 2011, T. 19651-19652, Vidosav Kovačević, 8 Sep 2011, T. 23809-23811, Exhibit 1D46, pp 1-2. See Trial Judgement, vol. 2, para. 330. See also *supra*, para. 242.

its finding that he permitted RS MUP forces under his control to continue to participate in joint operations with other Serb forces.[433]

128. The Appeals Chamber notes that Stanišić does not advance any further specific arguments demonstrating that in assessing his contribution to the JCE and intent to establish his membership in the JCE, the Trial Chamber relied on its findings that would be contradictory to its finding that it was unable to determine whether civilian or military authorities were responsible for the investigation and prosecution of crimes allegedly committed by re-subordinated policemen. Therefore, the Appeals Chamber finds no merit in Stanišić's unreferenced, general contention that the Trial Chamber erred in relying upon and attributing actions of the re-subordinated police to Stanišić for the purposes of establishing his JCE membership despite the aforementioned inconclusive finding.[434]

129. Consequently, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in failing to pronounce on whether military or civilian authorities were responsible for the investigation and prosecution of crimes against non-Serbs which may have been committed by policemen re-subordinated to the military.

(d) Conclusion

130. In light of the foregoing, the Appeals Chamber dismisses Stanišić's first, fifth, and sixth grounds of appeal in part.

5. Alleged errors in finding that Stanišić contributed to the JCE

(a) Introduction

131. Under the subheading "Stanišić's contribution to JCE", the Trial Chamber made a number of findings concerning the following several factors: (i) Stanišić's role in the creation of Bosnian Serb bodies and policies;[435] (ii) the role of RS MUP forces in combat activities and takeovers of the Municipalities;[436] (iii) his role in the prevention, investigation, and documentation of crimes;[437] and (iv) his role in unlawful arrests and detentions.[438] The Appeals Chamber notes that the Trial Chamber's findings under this subheading lack cross-references to earlier underlying findings in the Trial Judgement or citations to evidence on the record. Moreover, the Trial Chamber did not enter

[433] See *supra*, para. 116. See also Trial Judgement, vol. 2, para. 759.
[434] See Stanišić Appeal Brief, para. 34. See also *supra*, para. 116.
[435] Trial Judgement, vol. 2, paras 729-736.
[436] Trial Judgement, vol. 2, paras 737-744.
[437] Trial Judgement, vol. 2, paras 745-759.
[438] Trial Judgement, vol. 2, paras 760-765.

any express finding as to whether Stanišić's acts and conduct furthered the common purpose of the JCE or whether his contribution to the JCE was significant.

132. Stanišić submits that the Trial Chamber erred by failing to provide a reasoned opinion with respect to his contribution to the JCE.[439] Further, Stanišić argues that the Trial Chamber committed numerous errors of fact in its assessment of his contribution to the JCE.[440] As a result of these errors, Stanišić avers that the Appeals Chamber must quash the convictions under Counts 1, 4, and 6.[441]

133. The Prosecution responds that Stanišić fails to demonstrate the absence of a reasoned opinion.[442] It also avers that the Trial Chamber reasonably found that Stanišić contributed to the JCE in numerous ways, and submits that Stanišić's arguments challenging the Trial Chamber's findings in this respect should be rejected.[443]

(b) Alleged error in failing to provide a reasoned opinion on Stanišić's contribution to the JCE (Stanišić's first ground of appeal in part and subsection (A) of Stanišić's sixth ground of appeal)

(i) Submissions of the parties

134. Stanišić argues that the Trial Chamber did not "make any specific findings as to whether and how [he] contributed, let alone significantly contributed, to furthering the JCE",[444] and thereby erred by failing to provide a reasoned opinion.[445] Stanišić asserts that the section of the Trial Judgement devoted to his contribution to the JCE outlines a series of findings "without any conclusion that those findings furthered the common purpose of the JCE".[446] In this respect, he submits that the Trial Chamber did not provide any indication of the evidence relied upon or excluded.[447] According to Stanišić, even a detailed review of the paragraphs concerning his responsibility does not allow him to understand the Trial Chamber's rationale for finding that he contributed to the JCE.[448] He avers, finally, that the Trial Chamber's failure to refer to other

[439] Stanišić Appeal Brief, paras 25, 42, 44-46, 235, 239-242. See Stanišić Appeal Brief, para. 22.
[440] Stanišić Appeal Brief, paras 236-238, 243-300.
[441] Stanišić Appeal Brief, paras 53, 301.
[442] Prosecution Response Brief (Stanišić), paras 14-18, 93.
[443] Prosecution Response Brief (Stanišić), paras 92-93, 153. See Prosecution Response Brief (Stanišić), paras 94-152.
[444] Stanišić Appeal Brief, para. 235.
[445] Stanišić Appeal Brief, paras 25, 42. See Appeal Hearing, 16 Dec 2015, AT. 104, 106-107. Stanišić submits that the Prosecution acknowledges the Trial Chamber's failure to enter a finding that he significantly contributed to the furtherance of the purported JCE (Stanišić Reply Brief, para. 68).
[446] Stanišić Appeal Brief, para. 239. Stanišić, in this context, also submits that the Trial Chamber merely summarised the evidence and "in the majority of instances incorrectly" (Stanišić Appeal Brief, para. 240). The Appeals Chamber notes that Stanišić does not provide any specific references to Trial Chamber findings or evidence on the record. His factual challenges relating to specific findings are set out elsewhere in this Judgement. See *infra*, paras 143-355.
[447] Stanišić Appeal Brief, para. 241.
[448] Stanišić Appeal Brief, para. 45. See Stanišić Appeal Brief, para. 241.

findings supporting its conclusions regarding Stanišić's contribution, and its failure to enter an explicit finding on such essential elements as his contribution and its significance, hindered his ability to appeal his conviction,[449] as he has had to challenge "every single finding possibly linked to his contribution".[450]

135. The Prosecution responds that Stanišić's mere assertion that he was unable to understand the Trial Chamber's reasoning with respect to his contributions to the JCE fails to show an absence of a reasoned opinion.[451] According to the Prosecution, despite the absence of an express finding, it is clear that the Trial Chamber was satisfied that Stanišić made a significant contribution to the JCE, given: (i) its correct recitation of the law;[452] (ii) the numerous contributions which it found Stanišić to have made;[453] and (iii) the finding that Stanišić was a member of the JCE.[454] The Prosecution asserts that Stanišić focuses on the Trial Chamber's findings in isolation without showing that, "based on the totality of his many contributions, no reasonable finder of fact could have concluded that he made a significant contribution to the JCE".[455] Finally, the Prosecution submits that Stanišić fails to demonstrate that the alleged deficiencies in the Trial Chamber's analysis of his contributions to the JCE have impaired his right of appeal.[456]

(ii) Analysis

136. The Appeals Chamber recalls that in order to find an accused criminally responsible pursuant to joint criminal enterprise liability, a trial chamber must be satisfied that the accused "participated in furthering the common purpose at the core of the JCE"[457] and must characterise the accused's contribution in this common plan.[458] Although an accused's contribution need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is held responsible.[459] Not every type of conduct would amount to a significant enough

[449] Stanišić Appeal Brief, paras 42, 44 (referring to the lack of references in the findings contained in paragraphs 729-765 of volume two of the Trial Judgement).
[450] Stanišić Appeal Brief, paras 46, 242.
[451] Prosecution Response Brief (Stanišić), paras 14, 17. See Prosecution Response Brief (Stanišić), paras 18, 93.
[452] Prosecution Response Brief (Stanišić), para. 93, referring to Trial Judgement, vol. 1, para. 103. See Prosecution Response Brief (Stanišić), para. 17.
[453] Prosecution Response Brief (Stanišić), para. 93, referring to Prosecution Response Brief (Stanišić), para. 92. See Prosecution Response Brief (Stanišić), para. 17, referring to Trial Judgement, vol. 2, paras 729-765, 928.
[454] Prosecution Response Brief (Stanišić), para. 93, referring to Trial Judgement, vol. 1, para. 103, Trial Judgement, vol. 2, para. 928. See Prosecution Response Brief (Stanišić), para. 17, referring to Trial Judgement, vol. 1, para. 103, Trial Judgement, vol. 2, paras 729-765, 928; Prosecution Response Brief (Stanišić), para. 928.
[455] Prosecution Response Brief (Stanišić), para. 93. See Prosecution Response Brief (Stanišić), para. 17.
[456] Prosecution Response Brief (Stanišić), paras 14, 17.
[457] *Brđanin* Appeal Judgement, para. 427. See *Popović et al.* Appeal Judgement, para. 1378; *Šainović et al.* Appeal Judgement, paras 954, 987, 1177, 1445; *Krajišnik* Appeal Judgement, paras 218, 695.
[458] *Brđanin* Appeal Judgement, para. 430.
[459] *Popović et al.* Appeal Judgement, para. 1378; *Krajišnik* Appeal Judgement, paras 215, 695; *Brđanin* Appeal Judgement, para. 430, referring to *Kvočka et al.* Appeal Judgement, paras 97-98. See *Šainović et al.* Appeal Judgement, paras 954, 987.

contribution to the crimes encompassed in the common purpose, thus giving rise to joint criminal enterprise liability.[460] The Appeals Chamber observes that the Trial Chamber correctly set out the applicable law in this respect.[461]

137. The Appeals Chamber further recalls that pursuant to Article 23(2) of the Statute and Rule 98*ter*(C) of the Rules, trial chambers are required to give a reasoned opinion.[462] The 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.[463] In particular, a trial chamber is required to make findings on those facts which are essential to the determination of guilt on a particular count.[464] The absence of any relevant legal findings in a trial judgement also constitutes a manifest failure to provide a reasoned opinion.[465] A reasoned opinion in the 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 the trial chamber's findings and its evaluation of the evidence.[466] 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.[467]

138. The Appeals Chamber first turns to Stanišić's submission that the Trial Chamber failed to indicate the evidence relied upon or excluded in the section of the Trial Judgement addressing Stanišić's contribution and as such failed to provide a reasoned opinion. The Appeals Chamber notes that the section of the Trial Judgement on Stanišić's contribution to the JCE indeed does not refer to the evidence relied upon by the Trial Chamber to support its findings. Neither does it include any cross-references to its earlier findings where the Trial Chamber analysed the evidence.[468] The Appeals Chamber, however, recalls that a trial judgement must be read as a

[460] *Šainović et al.* Appeal Judgement, para. 988. See *Brđanin* Appeal Judgement, para. 427.
[461] The Trial Chamber found that "an accused must have participated in furthering the common purpose at the core of the joint criminal enterprise" and that "[a]lthough the contribution need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is to be found responsible" (Trial Judgement, vol. 1, para. 103, referring to *Brđanin* Appeal Judgement, para. 430).
[462] *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, paras 1123, 1367, 1771; *Haradinaj et al.* Appeal Judgement, para. 128. See *Nyiramasuhuko et al.* Appeal Judgement, paras 729, 1954; *Bizimungu* Appeal Judgement, para. 18; *Ndindiliyimana et al.* Appeal Judgement, para. 293.
[463] *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Haradinaj et al.* Appeal Judgement, paras 77, 128; *Hadžihasanović and Kubura* Appeal Judgement, para. 13. See *Bizimungu* Appeal Judgement, paras 18-19; *Ndindiliyimana et al.* Appeal Judgement, para. 293.
[464] *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, paras 1771,1906, referring to *Haradinaj et al.* Appeal Judgement, para. 128; *Hadžihasanović and Kubura* Appeal Judgement, para. 13.
[465] *Stanišić and Simatović* Appeal Judgement, para. 78; *Bizimungu* Appeal Judgement, para. 19.
[466] *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, paras 1123, 1367, 1771; *Haradinaj et al.* Appeal Judgement, para. 128; *Nyiramasuhuko et al.* Appeal Judgement, para. 729; *Bizimungu* Appeal Judgement, para. 18.
[467] *Popović et al.* Appeal Judgement, paras 1367, 1771; *Kvočka et al.* Appeal Judgement, para. 25.
[468] See Trial Judgement, vol. 2, paras 729-765.

whole.[469] Furthermore, 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.[470] As Stanišić acknowledges in his own submission,[471] in the section of the Trial Judgement addressing his contribution to the JCE, the Trial Chamber summarised the evidence that it had relied on in other sections of the Trial Judgement. While the Appeals Chamber considers the Trial Chamber's approach regrettable,[472] it does not, in its view, amount to a failure to provide a reasoned opinion in and of itself. The Appeals Chamber therefore dismisses Stanišić's argument.

139. In relation to Stanišić's submission that the Trial Chamber failed to provide a reasoned opinion as to whether and how his acts and conduct furthered the JCE, and whether his alleged contribution to the JCE was significant, the Appeals Chamber notes that the Trial Chamber indeed did not enter express findings in this regard. The Appeals Chamber recalls that these are legal requirements in order for joint criminal enterprise liability to be incurred[473] and that not every type of conduct will amount to a significant enough contribution to the crime to give rise to criminal liability.[474] A trial chamber's determination of whether and to what extent an accused's acts and conduct furthered the joint criminal enterprise, and whether the requisite threshold of significance is met, are therefore relevant legal findings essential to the determination of an accused's guilt, and must be set out in a clear and articulate manner.[475] The lack of explicit findings in this regard falls short of what is required under Article 23(2) of the Statute and Rule 98*ter*(C) of the Rules.[476] Neither Stanišić nor the Appeals Chamber should be expected to engage in a speculative exercise to discern the Trial Chamber's findings in this regard.[477]

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[469] *Šainović et al.* Appeal Judgement, paras 306, 321; *Boškoski and Tarčulovski* Appeal Judgement, para. 67; *Orić* Appeal Judgement, para. 38.
[470] *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, fn. 2527; *Haradinaj et al.* Appeal Judgement, para. 129; *Kvočka et al.* Appeal Judgement, para. 23.
[471] See Stanišić Appeal Brief, paras 46, 240.
[472] See *supra*, para. 90.
[473] *Popović et al.* Appeal Judgement, para. 1378; *Krajišnik* Appeal Judgement, paras 215, 218, 695; *Brđanin* Appeal Judgement, paras 427, 430. See *supra*, para. 136.
[474] *Šainović et al.* Appeal Judgement, para. 988; *Brđanin* Appeal Judgement, para. 427.
[475] *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Bizimungu* Appeal Judgement, paras 18-19.
[476] See *Kordić and Čerkez* Appeal Judgement, paras 384-385; *Bizimungu* Appeal Judgement, paras 18-19.
[477] *Cf. Orić* Appeal Judgement, para. 56. The Trial Judgement must enable the Appeals Chamber to discharge its task pursuant to Article 25 of the Statute based on a sufficient determination as to what evidence has been accepted as proof of all elements of the mode of liability charged (*Cf. Kordić and Čerkez* Appeal Judgement, para. 385). The Appeals Chamber notes that, by contrast, after analysing Župljanin's conduct, the Trial Chamber concluded that "during the Indictment period, Stojan Župljanin significantly contributed to the common objective to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state" (Trial Judgement, vol. 2, para. 518. See Trial Judgement, vol. 2, para. 510 (holding that Župljanin's "omission to take adequate measures to stop the mass arrest of non-Serbs and his policemen's involvement therein constituted at least a significant contribution to the unlawful arrests, if not a substantial one")). The Appeals Chamber considers that the different approach taken with respect to Župljanin further highlights the Trial Chamber's failure to enter the requisite findings with respect to Stanišić (see

140. In this context, the Appeals Chamber further considers that the absence of these essential legal findings and the accompanying reasoning have necessarily hindered Stanišić's ability to appeal his conviction, as he would have been unable to identify exactly which underlying factual findings the Trial Chamber relied upon in its ultimate conclusion that he contributed significantly to the furtherance of the JCE. The Appeals Chamber therefore finds that the Trial Chamber's failure to enter express findings as to whether and how Stanišić's acts and conduct furthered the JCE, and whether his contribution was significant constitutes a failure to provide a reasoned opinion.

(iii) Conclusion

141. The Appeals Chamber finds that the Trial Chamber's failure to indicate the evidence relied upon or excluded in the section of the Trial Judgement addressing Stanišić's contribution to the JCE does not amount to a failure to provide a reasoned opinion and dismisses Stanišić's argument in this respect. The Appeals Chamber concludes, however, that the Trial Chamber failed to provide a reasoned opinion by failing to make express findings as to whether Stanišić's acts and conduct furthered the JCE, and whether his contribution was significant. Accordingly, the Appeals Chamber grants Stanišić's arguments in this regard.

142. The Trial Chamber's failure to provide a reasoned opinion constitutes an error of law which allows the Appeals Chamber to consider the Trial Chamber's factual findings and evidence relied upon by the Trial Chamber and identified by the parties in order to determine whether a reasonable trier of fact could have concluded beyond reasonable doubt that the requisite element of contribution was established in relation to Stanišić's joint criminal enterprise liability.[478] Consequently, the Appeals Chamber will assess below the Trial Chamber's findings and relevant evidence concerning Stanišić's acts and conduct to determine whether a reasonable trier of fact could have concluded beyond reasonable doubt that his acts and conduct furthered the common criminal purpose of the JCE and, ultimately, that his contribution to the JCE was significant.[479] As Stanišić raises further arguments challenging specific factual findings of the Trial Chamber related to his acts and conduct, the Appeals Chamber shall conduct this assessment after addressing these remaining challenges.[480]

Bizimungu Appeal Judgement, para. 19 and fn. 52 (wherein the Appeals Chamber noted that "[b]y contrast, the Trial Chamber did enter relevant legal findings with respect to other convictions", specifying that the trial chamber made "legal findings on the crime of genocide in relation to Ndindiliyamana")).

[478] *Cf. Kordić and Čerkez* Appeal Judgement, paras 383-388; *Nyiramasuhuko et al.* Appeal Judgement, para. 977; *Bizimungu* Appeal Judgement, para. 23; *Ndindiliyimana et al.* Appeal Judgement, para. 293. See *supra*, para. 19.

[479] See *infra*, paras 143-355.

[480] See *infra*, paras 356-364.

(c) Alleged errors of fact with regard to Stanišić's contribution to the JCE (Stanišić's fifth ground of appeal in part and subsection (B) of Stanišić's sixth ground of appeal)

143. As recalled above, in assessing Stanišić's contribution to the JCE, the Trial Chamber made findings concerning: (i) his role in the creation of Bosnian Serb bodies and policies;[481] (ii) the role of RS MUP forces in combat activities and takeovers of RS municipalities;[482] (iii) Stanišić's role in the prevention, investigation, and documentation of crimes;[483] and (iv) his role in unlawful arrests and detentions.[484]

144. Stanišić presents a number of challenges in relation to the Trial Chamber's consideration of each of these factors in its assessment of his contribution to the JCE.[485] The Prosecution responds that Stanišić fails to show any error in the Trial Chamber's findings and that his arguments should therefore be dismissed.[486] The Appeals Chamber will address Stanišić's challenges in turn.

(i) Alleged errors in relation to Stanišić's role in the creation of Bosnian Serb bodies and policies (subsection (B)(i) of Stanišić's sixth ground of appeal)

145. In its discussion of Stanišić's role in the creation of Bosnian Serb bodies and policies,[487] the Trial Chamber referred to, *inter alia*, his: (i) involvement in establishing Bosnian Serb institutions in BiH, including the SDS and the RS MUP;[488] (ii) close relationship with Karadžić and direct communication with an institution that consisted of the President of the RS and senior members of SDS ("RS Presidency");[489] (iii) knowledge of the Instructions for the Organisation and Activities of the Organs of the Serb People in BiH in a State of Emergency adopted by the SDS Main Board on 19 December 1991 ("Variant A and B Instructions" or "Instructions");[490] (iv) key-role in the decision-making authorities from early 1992 onwards;[491] (v) authority with respect to the RS MUP;[492] and (vi) overall command and control over the RS MUP police forces and of all other internal affairs organs.[493] The Trial Chamber found that, "[b]y his participation in the Bosnian Serb

[481] Trial Judgement, vol. 2, paras 729-736.
[482] Trial Judgement, vol. 2, paras 737-744.
[483] Trial Judgement, vol. 2, paras 745-759.
[484] Trial Judgement, vol. 2, paras 760-765.
[485] Stanišić Appeal Brief, para. 238. See Stanišić Appeal Brief, paras 243-301.
[486] Prosecution Response Brief (Stanišić), paras 92-93, 153. See Prosecution Response Brief (Stanišić), paras 92-153.
[487] Trial Judgement, vol. 2, paras 729-736.
[488] Trial Judgement, vol. 2, paras 729, 734.
[489] Trial Judgement, vol. 2, para. 730. The Trial Chamber found that the RS Presidency was a small institution that consisted of the President of the RS and senior members of the SDS, namely Koljević and Plavšić, which was expanded at some point to include more members, such as Witness Đerić, former Prime Minister of the RS, who was not a member of the SDS (Trial Judgement, vol. 2, para. 137).
[490] Trial Judgement, vol. 2, para. 731.
[491] Trial Judgement, vol. 2, para. 732.
[492] Trial Judgement, vol. 2, para. 733.
[493] Trial Judgement, vol. 2, para. 736.

institutions, [Stanišić] participated in the enunciation and implementation of the Bosnian Serb policy, as it evolved."[494] The Trial Chamber concluded that his conduct, presence at key meetings, attendance at sessions of the Bosnian Serb Assembly ("BSA"), acceptance of the position of Minister of Interior—all indicate "his voluntary participation in the creation of a separate Serb entity within BiH by the ethnic division of the territory".[495]

146. Stanišić challenges the Trial Chamber's findings with regard to the six factors set out above.[496] In addition, he contends that the errors in relation to these factors cumulatively led the Trial Chamber to erroneously find that he participated in the enunciation and implementation of the Bosnian Serb policy as it evolved.[497] The Prosecution responds that Stanišić was involved in all stages of the creation of the Bosnian Serb institutions and that, through his participation in such institutions, he also participated in the enunciation and implementation of Bosnian Serb policy.[498] The Appeals Chamber will address Stanišić's challenges in turn.

a. Alleged errors in the Trial Chamber's findings regarding Stanišić's involvement in establishing Bosnian Serb institutions in BiH

147. The Trial Chamber found that Stanišić was involved in the establishment of the SDS, displayed discontentment with the representation of Serbs within the SRBiH MUP, and attempted to intervene to retain and recruit Serbs within the SRBiH MUP.[499] The Trial Chamber also found that Stanišić worked to promote the interests, and implement the decisions, of the SDS in the SRBiH MUP and was involved in all the stages of the creation of the Bosnian Serb institutions in BiH, in particular the RS MUP.[500]

i. Submissions of the parties

148. Stanišić submits that the Trial Chamber erred by finding that he was involved in establishing the SDS. Referring to the transcript of the 36th session of the BSA in December 1993 ("December 1993 BSA Transcript" and "December 1993 BSA Session", respectively) and the testimonies of Witness Slobodan Škipina ("Witness Škipina"), Witness Vitomir Žepinić ("Witness Žepinić"), and Witness Radomir Njeguš ("Witness Njeguš"),[501] he asserts that the

[494] Trial Judgement, vol. 2, para. 734.
[495] Trial Judgement, vol. 2, para. 734.
[496] Stanišić Appeal Brief, paras 243-259.
[497] Stanišić Appeal Brief, para. 260.
[498] Prosecution Response Brief (Stanišić), para. 94; Appeal Hearing, 16 Dec 2015, AT. 111-112.
[499] Trial Judgement, vol. 2, para. 729.
[500] Trial Judgement, vol. 2, para. 734.
[501] Stanišić Appeal Brief, para. 243, referring to Exhibit P1999, pp 56-57, Slobodan Škipina, 30 Mar 2010, T. 8295, Slobodan Škipina, 1 Apr 2010, T. 8453, Vitomir Žepinić, 28 Jan 2010, T. 5707-5708, Radomir Njeguš, 7 Jun 2010, T. 11308.

evidence shows that he "was a member of the preparatory committee of the Democratic Party of BiH and not of the Serbian Democratic Party".[502] With respect to the Trial Chamber's finding that he was involved "in all stages" of the creation of "Bosnian Serb institutions", Stanišić contends that it only refers to the RS MUP – the creation of which was in line with the Cutileiro Plan – and that his involvement was "precisely the duty of the Minister of the Interior".[503] With respect to the Trial Chamber's conclusion that Stanišić showed discontentment regarding Serb representation in the SRBiH MUP and attempted to intervene,[504] he argues that this conclusion is erroneous and that he instead sought to have the agreement on the distribution of personnel that the SDS, the Party of Democratic Action ("SDA"), and the Croatian Democratic Union ("HDZ") had reached, upheld and followed.[505]

149. The Prosecution responds that Stanišić's argument should be dismissed.[506] It submits that Stanišić repeats his trial argument concerning his involvement in establishing the SDS without showing that the Trial Chamber erred.[507] It also asserts that the December 1993 BSA Transcript, which refers to Stanišić having been part of the first SDS Main Board and a member of the Preparatory Committee for establishing the Party,[508] and the testimonies of Witness Škipina, Witness Žepinić, and Witness Njeguš, which confirm Stanišić's close ties with the SDS,[509] support the Trial Chamber's finding.[510] The Prosecution also contends that it was reasonable for the Trial Chamber to conclude, based on Stanišić's efforts to undermine the SRBiH MUP's authority in early 1992, that while working in the SRBiH MUP Stanišić promoted SDS interests and implemented SDS decisions.[511]

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[502] Stanišić Appeal Brief, para. 243. See Stanišić Reply Brief, para. 69.
[503] Stanišić Reply Brief, para. 69. See Stanišić Reply Brief, para. 68.
[504] Stanišić Appeal Brief, para. 243, referring to Trial Judgement, vol. 2, para. 729.
[505] Stanišić Appeal Brief, para. 243, referring to Exhibit 1D115.
[506] Prosecution Response Brief (Stanišić), para. 97.
[507] Prosecution Response Brief (Stanišić), para. 97, contrasting Stanišić Appeal Brief, para. 243 with *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Mr. Mićo Stanišić's Final Written Submissions Pursuant to Rule 86, 14 May 2012 (confidential with confidential annex A) ("Stanišić Final Trial Brief"), paras 32-37.
[508] Prosecution Response Brief (Stanišić), para. 97, referring to Exhibit P1999, pp 56-57.
[509] Prosecution Response Brief (Stanišić), para. 97, referring to, *inter alia*, Slobodan Škipina, 30 Mar 2010, T. 8294-8295, Vitomir Žepinić, 28 Jan 2010, T. 5707, Radomir Njeguš, 7 Jun 2010, T. 11307-11308.
[510] Prosecution Response Brief (Stanišić), para. 97.
[511] Prosecution Response Brief (Stanišić), paras 98 (referring to Trial Judgement, vol. 2, para. 734), 99 (arguing that Stanišić opposed the appointment of a Croat in place of a Serb as the deputy commander at a Sarajevo police stations; and held the view – shared by Karadžić as well as others in the SDS – that Serbs were being sidelined in the SUP and other institutions), 100 (arguing that: (i) at a meeting held by Serb officials of SRBiH MUP in Banja Luka on 11 February 1992, where a Serb collegium was created to prepare for establishing a Serb Ministry of Interior ("11 February 1992 Meeting"), Stanišić: (a) "blamed the Muslims for dividing the joint MUP"; (b) "stressed that Serbian personnel 'must provide the means to strengthen and supply the Serbian MUP, ensuring that resources will be distributed equally'"; and (c) "stressed the position adopted by the RS Council of Ministers at its meeting of 11 January which was that 'in the territories in [the SRBiH] which are under Serbian control, that control must be felt'" (referring to Trial Judgement, vol. 2, paras 554-555); (ii) "[i]n early 1992, he reported to SDS members on the progress in creating the RS Government (referring to Trial Judgement, vol. 2, para. 556); (iii) "[w]hen Stanišić was subsequently appointed as the RS MUP Minister, he was still employed by the SRBiH MUP and denounced its work" (referring to Trial

ii. Analysis

150. The Trial Chamber concluded that Stanišić was involved in establishing the SDS.[512] In the section of the Trial Judgement addressing Stanišić's participation in the formation of Bosnian Serb organs and policy,[513] the Trial Chamber noted that Stanišić: (i) "was involved in early activities of Serb intellectuals concerning the establishment of a Serb political party";[514] (ii) explained, in his Interview, "how the party name 'SDS' was adopted and how Radovan Karadžić became its President";[515] (iii) "was in regular contact with other members of the Bosnian Serb leadership";[516] (iv) "was a member of the Preparatory Committee for establishing the SDS";[517] and, on the other hand, (v) gave evidence that "he was neither an important figure in the SDS, nor was he interested in politics".[518]

151. With respect to Stanišić's assertion that he was a member of the preparatory committee of the Democratic Party of BiH and not of the SDS, having reviewed the cited evidence, the Appeals Chamber does not find that the December 1993 BSA Transcript or the testimonies of Witness Škipina, Witness Žepinić, or Witness Njeguš support Stanišić's assertion.[519] The Appeals Chamber further notes that although the Trial Chamber did not cite the evidence it relied upon to conclude that Stanišić was involved in establishing the SDS,[520] when making findings about his participation in the formation of Bosnian Serb organs and policy,[521] the Trial Chamber referred to Stanišić's Interview,[522] and the testimonies of Witness Škipina, Witness Žepinić, and Witness Njeguš.[523] In this section, the Trial Chamber also relied on the December 1993 BSA Transcript,[524]

Judgement, vol. 2, paras 558, 560-561); and (iv) "Stanišić [made] consistent efforts to promote SDS interests within the SRBiH earned high praise from Karadžić, who spoke of Stanišić having 'fought to prevail [...] for a balance of Serbian cadres' in the SRBiH MUP and then doing 'the best he could for establishing and separating the MUP at the beginning of April 1992'" (referring to Exhibit P1999, p. 57 as cited in Trial Judgement, vol. 2, para. 596). See Appeal Hearing, 16 Dec 2015, AT. 112-113.

[512] Trial Judgement, vol. 2, para. 729.

[513] Trial Judgement, vol. 2, paras 544-575.

[514] Trial Judgement, vol. 2, para. 545, referring to Exhibits P2300, pp 53-54, 58, P1999, p. 57, P883.

[515] Trial Judgement, vol. 2, para. 545, referring to, *inter alia*, Exhibit P2300, pp 53-54, 58.

[516] Trial Judgement, vol. 2, para. 567.

[517] Trial Judgement, vol. 2, para. 545, referring to, *inter alia*, Exhibits P2300, pp 53-54, 58, P1999, p. 57. See Trial Judgement, vol. 2, para. 564, referring to Exhibit P1999, pp 56-57 (finding that Stanišić "was a member of the Preparatory Committee for establishing the party").

[518] Trial Judgement, vol. 2, para. 564, referring to Exhibit P2300, pp 54-58, Radomir Kezunović, 22 Jun 2010, T. 12096-12097, Vitomir Žepinić, 28 Jan 2010, T. 5707, 5721-5722, Slobodan Škipina, 30 Mar 2010, T. 8289-8295, Slobodan Škipina, 1 Apr 2010, T. 8452-8453, Radomir Njeguš, 7 Jun 2010, T. 11308.

[519] Stanišić Appeal Brief, para. 243, referring to Exhibit P1999, pp 56-57, Slobodan Škipina, 30 Mar 2010, T. 8295, Slobodan Škipina, 1 Apr 2010, T. 8453, Vitomir Žepinić, 28 Jan 2010, T. 5707-5708, Radomir Njeguš, 7 Jun 2010, T. 11308.

[520] Trial Judgement, vol. 2, para. 729.

[521] Trial Judgement, vol. 2, paras 545, 564.

[522] Trial Judgement, vol. 2, fns 1406, 1455, referring to Exhibit P2300.

[523] Trial Judgement, vol. 2, fn. 1455, referring to, *inter alia*, Radomir Kezunović, 22 Jun 2010, T. 12096-12097, Vitomir Žepinić, 28 Jan 2010, T. 5707, 5721-5722, Slobodan Škipina, 30 Mar 2010, T. 8289-8295, Slobodan Škipina, 1 Apr 2010, T. 8452-8453, Radomir Njeguš, 7 Jun 2010, T. 11308.

and on a series of intercepted conversations between Stanišić and other members of the Bosnian Serb leadership in April and May 1992.[525] The Appeals Chamber recalls that a trial chamber is best placed to weigh and assess the evidence[526] and for this reason will only substitute its own finding for that of the Trial Chamber when no reasonable trier of fact could have reached the original decision.[527] The Appeals Chamber is satisfied that, based on this evidence, it was reasonable for the Trial Chamber to conclude that Stanišić was involved in establishing the SDS. The Appeals Chamber considers that Stanišić seeks to substitute his own evaluation of the December 1993 BSA Transcript and the testimonies of Witness Škipina, Witness Žepinić, and Witness Njeguš for that of the Trial Chamber, without showing that, when considered in light of the entirety of the evidence, a reasonable trier of fact could not have reached the same conclusion.

152. Turning to Stanišić's challenge to the Trial Chamber's finding that he "was involved in all the stages of the creation of the Bosnian Serb institutions in BiH, in particular the MUP",[528] the Appeals Chamber recalls the Trial Chamber's findings that Stanišić: (i) worked to promote SDS interests, and implement SDS decisions, in the SRBiH MUP; (ii) was involved in all the stages of the creation of the Bosnian Serb institutions in BiH, in particular the RS MUP; and (iii) participated in the enunciation and implementation of the Bosnian Serb policy, as it evolved through his participation in these institutions.[529]

153. Insofar as Stanišić argues that the only institution he was found to have been involved in setting up was the RS MUP, the Appeals Chamber considers that Stanišić misrepresents the Trial Chamber's finding. It is clear from a plain reading of the finding that the Trial Chamber considered that, in addition to being involved in the creation of the RS MUP in particular, Stanišić was also involved in the creation of other Bosnian Serb institutions in BiH.[530] The Appeals Chamber further notes that, in the same paragraph, the Trial Chamber referred to Stanišić's conduct, presence at key meetings, attendance at BSA sessions, and acceptance of the position of Minister of Interior to conclude that he voluntarily participated in creating a separate Serb entity within BiH by the ethnic division of the territory.[531] The Appeals Chamber recalls that it has confirmed the Trial Chamber's finding that Stanišić was involved in establishing the SDS.[532] It also notes, as will be discussed in

[524] Trial Judgement, vol. 2, fns 1406, 1456, 1561, referring to, *inter alia*, Exhibit P1999.
[525] Trial Judgement, vol. 2, fns 1465 referring to Exhibits P1162, pp 9-10, P1133, P202, P203, P114. See Trial Judgement, vol. 2, fn. 1561, referring to Exhibit P1123.
[526] *Popović et al.* Appeal Judgement, para. 513; *Lukić and Lukić* Appeal Judgement, para. 384; *Limaj et al.* Appeal Judgement, para. 88; *Kupreškić et al.* Appeal Judgement, para. 32.
[527] See *supra*, para. 20.
[528] Trial Judgement, vol. 2, para. 734.
[529] Trial Judgement, vol. 2, para. 734.
[530] Trial Judgement, vol. 2, para. 734.
[531] Trial Judgement, vol. 2, para. 734.
[532] See *supra*, para. 151.

more detail below,[533] that Stanišić: (i) attended the 11 February 1992 Meeting, where a Serb collegium was created to prepare for establishing a Serb Ministry of Interior;[534] (ii) accepted the position of advisor on state security matters to the SRBiH Minister of Interior in February 1992;[535] (iii) was elected the first Minister of Interior in the RS at a session of the BSA held on 24 March 1992 ("24 March 1992 BSA Session");[536] (iv) attended a majority of RS Government sessions following his appointment as Minister of Interior;[537] and (v) attended the first joint session of the NSC and RS Government held on 15 April 1992, as an NSC member.[538] In light of the above, the Appeals Chamber finds that Stanišić has failed to demonstrate that no reasonable trier of fact could have concluded that he was involved in various stages of creation of Bosnian Serb institutions in BiH, in addition to the RS MUP.

154. With respect to Stanišić's assertion that the RS MUP was created in line with the Cutileiro Plan, and that as the Minister of Interior he had a duty to be involved, the Appeals Chamber recalls that contribution to a joint criminal enterprise need not be in and of itself criminal, as long as the accused performs acts that in some way contribute significantly to the furtherance of the common purpose.[539] Moreover, the Appeals Chamber has previously held that "the fact that [the participation of an accused] amounted to no more than his or her 'routine duties' will not exculpate the accused".[540] What matters is whether the act in question furthered the common criminal purpose and whether it was carried out with the requisite intent. Therefore, the Trial Chamber did not err in considering this evidence when assessing Stanišić's contribution to the JCE. Accordingly, his argument fails.

155. Turning to Stanišić's challenge to the Trial Chamber's finding that, at the time the SDS was being created, Stanišić "displayed discontentment with the representation of Serbs within the SRBiH MUP and attempted to intervene to retain and recruit Serbs within the Ministry",[541] the Appeals Chamber notes that the Trial Chamber referred to Witness Žepinić's testimony that Stanišić "felt that the Serbs were being sidelined by the Muslims and Croats in the SRBiH MUP and other institutions".[542] The Trial Chamber also relied on Stanišić's statement, made at the 24 March 1992 BSA Session when accepting the position of Minister of Interior, "that the SRBiH

[533] See *infra*, paras 176-183.
[534] Trial Judgement, vol. 2, paras 554, 599. See Trial Judgement, vol. 1, para. 4.
[535] Trial Judgement, vol. 2, paras 540-541.
[536] Trial Judgement, vol. 2, paras 542, 558.
[537] Trial Judgement, vol. 2, para. 572.
[538] Trial Judgement, vol. 2, para. 573.
[539] *Popović et al.* Appeal Judgement, para. 1653; *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696. See *Šainović et al.* Appeal Judgement, paras 1233, 1242. See also *supra*, para. 110.
[540] *Popović et al.* Appeal Judgement, para. 1653, quoting *Blagojević and Jokić* Appeal Judgement, para. 189.
[541] Trial Judgement, vol. 2, para. 729.

MUP had been used as an instrument of the SDA and the HDZ for achieving their political goals, including the creation of an army from the reserve forces comprised of only one ethnicity and the dismissal of Serbs from their positions".[543] Witness Žepinić's testimony and Stanišić's statement are both consistent with the Trial Chamber's conclusion that Stanišić displayed discontentment with the representation of Serbs within the SRBiH MUP.

156. With regard to the Trial Chamber's finding that he "attempted to intervene to retain and recruit Serbs within the Ministry",[544] the Appeals Chamber notes that, in reaching this finding, the Trial Chamber relied on the December 1993 BSA Transcript, wherein Karadžić praised Stanišić for having fought for a balance of Serb cadres in the SRBiH MUP and for his efforts "establishing and separating the MUP at the beginning of April 1992",[545] and the minutes of the 11 February 1992 Meeting at which attendees, including Stanišić and Serbs working for the SRBiH MUP, reached several conclusions concerning Serbs in the SRBiH MUP.[546] More specifically, it was decided that intensive work would be done to train and arm Serb police personnel,[547] a task which fell to the RS MUP under the Law on Internal Affairs of the RS ("LIA"),[548] and that the Serb Collegium created at the 11 February 1992 Meeting would carry out all necessary preparations for the functioning of a Serb MUP, after the promulgation of the RS Constitution.[549] Further, the Appeals Chamber notes the Trial Chamber's findings that, after the RS MUP started functioning on 1 April 1992, Stanišić exercised his powers as Minister of Interior to appoint Serbs to key positions in RS municipalities.[550]

157. Stanišić asserts that, instead of showing discontent or attempting to intervene, he sought to have an agreement among the SDS, the SDA, and the HDZ on the distribution of personnel upheld and followed.[551] The Appeals Chamber notes that in support of his argument, Stanišić refers to Exhibit 1D115, which he claims to be an inter-party agreement.[552] Having examined Exhibit 1D115, the Appeals Chamber observes that it is not dated and is not, on its face, capable of undermining the Trial Chamber's finding that he displayed discontentment with the representation

[542] Trial Judgement, vol. 2, para. 540, referring to, *inter alia*, Vitomir Žepinić, 28 Jan 2010, T. 5707-5708, Vitomir Žepinić, 29 Jan 2010, T. 5808.
[543] Trial Judgement, vol. 2, para. 558; Exhibit P198, p. 8.
[544] Trial Judgement, vol. 2, para. 729.
[545] Trial Judgement, vol. 2, para. 596, referring to Exhibits P1999, p. 57, P1123, pp 14-17.
[546] Trial Judgement, vol. 2, paras 4, 554, 599.
[547] Trial Judgement, vol. 2, para. 4.
[548] Trial Judgement, vol. 2, para. 599, referring to Neđo Vlaški, 15 Feb 2010, T. 6349-6351, Exhibits 1D135, p. 5, P530, Article 33. See Trial Judgement, vol. 2, paras 4-5.
[549] Trial Judgement, vol. 2, para. 554, referring to 1D135, p. 4, para. 3.
[550] Trial Judgement, vol. 2, para. 578, referring to ST121, 24 Nov 2009, T. 3723-3724 (private session).
[551] Stanišić Appeal Brief, para. 243.
[552] Stanišić Appeal Brief, para. 243, referring to Exhibit 1D115.

of Serbs within the SRBiH MUP and attempted to intervene to retain and recruit Serbs within the SRBiH MUP. Stanišić's argument is thus dismissed.

158. For the foregoing reasons, the Appeals Chamber concludes that Stanišić has not shown any error in the Trial Chamber's findings regarding Stanišić's involvement in establishing Bosnian Serb institutions in BiH.

b. Alleged errors in the Trial Chamber's findings regarding Stanišić's relationship with Karadžić and his direct communication with the RS Presidency

159. The Trial Chamber found that Stanišić and Karadžić, a leading member of the JCE, shared a close relationship from at least June 1991 and in the months preceding the establishment of RS.[553] The Trial Chamber further found that "[a]s a result of his relationship with Karadžić, Stanišić often did not report through the designated channels of the RS Government but communicated directly with the Presidency."[554]

i. Submissions of the parties

160. Stanišić challenges the Trial Chamber's findings that he and Karadžić "shared a close relationship" and that he did not report through designated RS Government channels.[555] With respect to the latter, Stanišić asserts that: (i) the RS MUP compiled and sent to the RS President and the Prime Minister 150 daily bulletins about its activities in 1992 and, in addition, 90 reports on security issues;[556] and (ii) in May 1992 the RS Government tasked the RS MUP with preparing a complete report on the security situation in the RS[557] and that the RS MUP prepared several such reports.[558] Stanišić further asserts that Witness Đerić's evidence that he did not attend government meetings is contradicted by the Trial Chamber's finding that he attended a majority of RS Government sessions.[559]

161. The Prosecution responds that Stanišić fails to show that the Trial Chamber erred in finding that he had a close relationship with Karadžić and that his arguments should be summarily

[553] Trial Judgement, vol. 2, para. 730. See Trial Judgement, vol. 2, para. 565.
[554] Trial Judgement, vol. 2, para. 730. See Trial Judgement, vol. 2, paras 568, 570.
[555] Stanišić Appeal Brief, para. 244, referring to Trial Judgement, vol. 2, para. 730 (emphasis omitted). See Stanišić Reply Brief, para. 69, referring to Prosecution Response Brief (Stanišić), paras 94, 102, 107.
[556] Stanišić Appeal Brief, para. 244, referring to Trial Judgement, vol. 2, paras 66, 568, Exhibit P625, p. 23. Stanišić contends that the Trial Chamber "inexplicably omitted" the information about the 90 reports on security issues from Trial Judgement, vol. 2, para. 568 (Stanišić Appeal Brief, fn. 294, contrasting Trial Judgement, vol. 2, para. 66, with Trial Judgement, vol. 2, para. 568).
[557] Stanišić Appeal Brief, para. 244, referring to Trial Judgement, vol. 2, para. 47.
[558] Stanišić Appeal Brief, para. 244, referring to Exhibit P427.05, pp 11752-11754.
[559] Stanišić Appeal Brief, para. 244, referring to Trial Judgement, vol. 2, paras 570, 572, Exhibit P400, pp 10-12.

dismissed.[560] It argues that neither the reports sent to the RS Government nor Stanišić's attendance at RS Government sessions undermine the Trial Chamber's conclusion that he communicated directly with the RS Presidency, instead of using the designated RS Government channels.[561] The Prosecution asserts that Stanišić also ignores the testimonies of Witness Žepinić and Witness Milan Trbojević ("Witness Trbojević"), that he had "direct ties with Karadžić and often bypassed the RS Government".[562] It argues that Witness Đerić's complaints about Stanišić's meetings with Karadžić and Krajišnik, voiced during a session of the BSA held on 23 and 24 November 1992 ("November 1992 BSA Session"), are consistent with the testimonies of Witness Žepinić and Witness Trbojević on this point.[563]

ii. Analysis

162. The Trial Chamber concluded that Stanišić and Karadžić "shared a close relationship" and that as a result, Stanišić "often did not report through the designated channels of the RS Government but communicated directly with the Presidency."[564] In the section of the Trial Judgement addressing Stanišić's interactions with the Bosnian Serb leadership,[565] the Trial Chamber found that they "spoke frequently, at times calling each other at home".[566] It found that Stanišić communicated directly with Karadžić on 2 March 1992, "following the negotiations between the Muslims and Serbs on the removal of the barricades in Sarajevo",[567] and again concerning "attacks, manpower, and *materiel* for combat activities".[568]

163. With regard to Stanišić's argument that the Trial Chamber erred in finding that he and Karadžić shared a close relationship, the Appeals Chamber notes that Stanišić merely repeats an argument that he has developed under the subsection (E) of his fourth ground of appeal.[569] The Appeals Chamber recalls that it has dismissed this argument elsewhere in the Judgement.[570]

164. Insofar as Stanišić argues that the Trial Chamber erred by finding that he did not report through designated RS Government channels, the Appeals Chamber finds that Stanišić misrepresents the Trial Chamber's findings. The Appeals Chamber notes that the Trial Chamber

[560] Prosecution Response Brief (Stanišić), paras 107 (referring to *Krajišnik* Appeal Judgement, para. 27), 108.
[561] Prosecution Response Brief (Stanišić), para. 107, referring to Trial Judgement, vol. 2, paras 568, 730.
[562] Prosecution Response Brief (Stanišić), para. 107, referring to Trial Judgement, vol. 2, para. 568.
[563] Prosecution Response Brief (Stanišić), para. 107, referring to Trial Judgement, vol. 2, para. 570.
[564] Trial Judgement, vol. 2, para. 730. See Trial Judgement, vol. 2, paras 565, 568, 570.
[565] Trial Judgement, vol. 2, paras 564-571.
[566] Trial Judgement, vol. 2, para. 565.
[567] Trial Judgement, vol. 2, para. 566.
[568] Trial Judgement, vol. 2, para. 567.
[569] Stanišić Appeal Brief, para. 244, referring to subsection (E) of his fourth ground of appeal. See Stanišić Appeal Brief, paras 158-164.
[570] See *infra*, para. 514.

found that Stanišić "*often* did not report through the designated channels of the RS Government but communicated directly with the Presidency".[571] Stanišić's use of designated RS Government channels, by having the RS MUP send reports to the RS President and Prime Minister[572] and by attending RS Government sessions,[573] does not undermine the Trial Chamber's finding that he often did not report through these channels. The Appeals Chamber further notes the Trial Chamber's findings that Stanišić and Karadžić spoke frequently and that at times they called each other at home,[574] and that, in particular, they communicated directly: (i) after negotiations between the Muslims and Serbs on the removal of barricades in Sarajevo;[575] and (ii) concerning "attacks, manpower, and *materiel* for combat activities".[576] In light of these Trial Chamber's findings, Stanišić has failed to show that no reasonable trier of fact could have concluded that he often did not report through designated RS Government channels but communicated directly with the RS Presidency.

c. Alleged errors in the Trial Chamber's findings relating to Stanišić's knowledge of the Variant A and B Instructions

165. The Trial Chamber found that on 19 December 1991 the SDS Main Board adopted the Variant A and B Instructions[577] which: (i) "were to be implemented in 'all municipalities where the Serb people live', completely in municipalities where Serbs were in the majority (Variant A) and partially in municipalities where Serbs were not a majority (Variant B)";[578] (ii) were the "main tool" used by the Bosnian Serb leadership when initiating the process of establishing Serb municipalities;[579] and (iii) had as their main purpose, besides the demarcation of Serb territory, "to prepare the local Serb communities and their leaders to take over power in the municipalities".[580]

[571] Trial Judgement, vol. 2, para. 730 (emphasis added).
[572] Trial Judgement, vol. 2, paras 66, 568.
[573] Trial Judgement, vol. 2, paras 570, 572.
[574] Trial Judgement, vol. 2, para. 565.
[575] Trial Judgement, vol. 2, para. 566.
[576] Trial Judgement, vol. 2, para. 567.
[577] Trial Judgement, vol. 1, para. 501, referring to *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Granting in Part Prosecution's Motions for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 1 April 2010 ("Adjudicated Facts Decision"), Adjudicated Fact 200, Simo Mišković, 1 Oct 2010, T. 15176-15178, Exhibits P15, P435, pp 1-2, P1610, pp 103-107. See Trial Judgement, vol. 2, para. 228, referring to Adjudicated Fact 100, Exhibit P15. See also Trial Judgement, vol. 2, paras 548, 731.
[578] Trial Judgement, vol. 2, para. 548, referring to Adjudicated Facts Decision, Adjudicated Fact 100, Exhibit P15, para. I.3, p. 2, Exhibit P434.
[579] Trial Judgement, vol. 2, para. 310.
[580] Trial Judgement, vol. 2, para. 310.

The Trial Chamber found that Stanišić was aware of the Instructions since the police were assigned to, and did in fact play a central role in, their implementation.[581]

i. Submissions of the parties

166. Stanišić submits that the Trial Chamber erred by finding that he was aware of the Variant A and B Instructions because the police played a central role in their implementation.[582] He argues that it was clear from his Interview that, at the time in question, he was not aware of the Instructions and that no evidence to the contrary was adduced.[583]

167. Stanišić asserts that the purpose, issuance, and implementation of the Instructions were "inextricably bound to the SDS".[584] In this regard, he refers to the Trial Chamber's conclusions that: (i) the SDS Main Board issued the Instructions and that they were the result of the SDS Main Committee's concern that BiH was seceding;[585] (ii) according to the Instructions, SDS municipal committees were to form crisis staffs which would be comprised of, *inter alios*, SDS nominees;[586] and (iii) "an order of the President of SDS in BiH according to a secret procedure" was required for the activities entailed in the Instructions to be applied.[587] According to Stanišić, it is telling that the Trial Chamber referred to the SDS in all of its findings on "the contemporaneous implementation of the Instructions".[588] Stanišić submits that the Trial Chamber failed to consider that he did not play a role in the SDS and "was not present at any meetings at which the Instructions were discussed".[589]

168. Stanišić further submits that "the Crisis Staffs were a conflicting authority that usurped the powers of the RS Government" and that implementation of the Instructions at the crisis staff level did not mean that he was aware of them.[590] In relation to the Trial Chamber's finding that establishing crisis staffs was the main instrument used to implement the Instructions,[591] Stanišić refers to Witness Đerić's testimony that "the Crisis Staffs had nothing to do with the RS Government because they were formed and worked on behalf of the SDS".[592] He also asserts that Witness Đerić's testimony was corroborated by evidence that "in some instances Crisis Staffs

[581] Trial Judgement, vol. 2, para. 731. See Trial Judgement, vol. 2, para. 548, referring to Exhibit P15, para. II.5, pp 3-6 (under first level for Variant A), paras II.2 and II.6, p. 4 (under second level for Variant A), para. II.5, p. 5 (under first level for Variant B), and II.2, p. 6 (under second level for Variant B).
[582] Stanišić Appeal Brief, para. 245, referring to Trial Judgement, vol. 2, para. 731.
[583] Stanišić Appeal Brief, para. 249, referring to Exhibit P2306, pp 1-7, 13-14.
[584] Stanišić Appeal Brief, para. 246, referring to Trial Judgement, vol. 2, paras 227-244.
[585] Stanišić Appeal Brief, para. 246, referring to Trial Judgement, vol. 2, para. 228.
[586] Stanišić Appeal Brief, para. 246, referring to Trial Judgement, vol. 2, para. 229.
[587] Stanišić Appeal Brief, para. 246, referring to Trial Judgement, vol. 2, para. 231.
[588] Stanišić Appeal Brief, para. 246, referring to Trial Judgement, vol. 2, paras 234-241.
[589] Stanišić Appeal Brief, para. 247, referring to Exhibit P2306, pp 1-2, 6.
[590] Stanišić Appeal Brief, para. 248, referring to Branko Đerić, 2 Nov 2009, T. 2417, 2436.
[591] Stanišić Appeal Brief, para. 248, referring to Trial Judgement, vol. 2, para. 244.
[592] Stanišić Appeal Brief, para. 248.

became the *de facto* superior body of SJBs, and SJBs did not inform CSBs or the [RS MUP] of the situation on the ground".[593] To this end, Stanišić cites the Trial Chamber's finding that in these cases the RS MUP did not exert its own influence until August or September 1992.[594]

169. The Prosecution responds that Stanišić fails to show any error[595] and that his arguments that crisis staffs disrupted his authority over the RS MUP, his reliance on his Interview to deny knowledge of the Instructions, and his denial of an association with the SDS were raised at trial and failed.[596] It submits that it was reasonable for the Trial Chamber to have found that Stanišić was aware of the Instructions since the police were assigned to, and in fact played a central role in, their implementation.[597] In this regard, the Prosecution refers to the Trial Chamber's findings that the Instructions were the "main tool" in establishing Serb municipalities in BiH and that they "prepared local Serb communities and their leaders to take over power in municipalities across BiH".[598]

170. The Prosecution further submits that although the Trial Chamber found that crisis staffs were the main instrument used to implement the Instructions, it also found that Stanišić was closely associated with the SDS and that the SDS largely retained control over the crisis staffs.[599] The Prosecution also contends that the Trial Chamber found that Serb forces, SDS structures, crisis staffs, and the RS Government "shared and worked towards the same goal", despite the conflicts that arose between them at times.[600] According to the Prosecution, these findings demonstrate that the Trial Chamber considered, but rejected Stanišić's denial of any knowledge of the Instructions.[601]

ii. Analysis

171. At the outset, the Appeals Chamber notes that, in the absence of direct evidence, the Trial Chamber inferred Stanišić's awareness of the Variant A and B Instructions from the central role played by the police in the implementation of these Instructions.[602]

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[593] Stanišić Appeal Brief, para. 248, referring to Trial Judgement, vol. 2, para. 251 (citing Goran Mačar, 11 Jul 2011, T. 23102, 22289-22900).
[594] Stanišić Appeal Brief, para. 248, referring to Trial Judgement, vol. 2, para. 251 (citing Goran Mačar, 11 Jul 2011, T. 23102, 22896-22898).
[595] Prosecution Response Brief (Stanišić), para. 104, referring to Trial Judgement, vol. 2, paras 548, 731, 737, Exhibits P69, p. 12 (a copy of the Variant A and B Instructions identifying Stanišić as a recipient), P522 (naming Stanišić as a member of the Sarajevo Crisis Staff and allocating tasks to him per the Variant A and B Instructions).
[596] Prosecution Response Brief (Stanišić), para. 106, referring to, *inter alia*, Stanišić Final Trial Brief, paras 37, 595-599, 612-613, Stanišić Appeal Brief, para. 248, *Krajišnik* Appeal Judgement, para. 24.
[597] Prosecution Response Brief (Stanišić), para. 104, referring to Trial Judgement, vol. 2, paras 548, 731, 737, Exhibits P69, p. 12 (a copy of the Instructions which identifies Stanišić as one of the recipients of the Instructions), P522 (naming Stanišić as a member of the Sarajevo Crisis Staff and allocating tasks to him per Instructions).
[598] Prosecution Response Brief (Stanišić), para. 104, referring to Trial Judgement, vol. 2, paras 227-244, 310.
[599] Prosecution Response Brief (Stanišić), para. 105, referring to Trial Judgement, vol. 2, para. 244.
[600] Prosecution Response Brief (Stanišić), para. 105, referring to Exhibit P163, p. 8.
[601] Prosecution Response Brief (Stanišić), para. 105, referring to Trial Judgement, vol. 2, paras 548, 731.
[602] Trial Judgement, vol. 2, para. 731. See Trial Judgement, vol. 2, paras 548, 737.

172. The Appeals Chamber recalls that trial chambers may rely on either direct or circumstantial evidence to underpin their findings.[603] The Appeals Chamber observes that the Trial Chamber considered Stanišić's evidence that he had never been informed of the Instructions,[604] but rejected it in light of the central role that was assigned to – and indeed played by – the police in the implementation of the Instructions.[605] In this regard, the Appeals Chamber notes that the Trial Chamber relied on provisions in the Instructions to conclude that the police were assigned a central role in their implementation.[606] With respect to this conclusion, the Appeals Chamber notes further the Trial Chamber's findings that 19 municipalities were taken over in April and June 1992 "in accordance with the Variant A and B Instructions through the joint action of the RS MUP and other Serb forces, sometimes by advance hostile occupation of the main features in town by police forces".[607] The Appeals Chamber also notes that the Trial Chamber found that "[a]s the highest commander of the RS MUP forces and the administrative head of the organs of the RS MUP, Stanišić received reports of the involvement of the police forces in combat activities."[608] Therefore, contrary to Stanišić's contention that no evidence contradicting his statement was adduced at trial, the Appeals Chamber observes that the Trial Chamber in fact relied on a body of circumstantial evidence to reach this conclusion.

173. Turning to Stanišić's argument that the purpose, issuance, and implementation of the Instructions were "inextricably bound to the SDS" and that the Trial Chamber failed to consider that he did not play a role in the SDS,[609] the Appeals Chamber recalls that it has upheld the Trial Chamber's finding that Stanišić was involved in the establishment of the SDS.[610] The Trial Chamber also found that he worked to promote SDS interests and implement SDS decisions in the SRBiH MUP.[611] The Appeals Chamber therefore dismisses Stanišić's argument in this regard. With respect to his submission that the Trial Chamber failed to consider that he was not present at any meetings at which the Instructions were discussed,[612] the Appeals Chamber notes that the Trial Chamber considered his assertion, in his Interview, that "he had never in fact seen these Instructions

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[603] See *Popović et al.* Appeal Judgement, para. 971; *Đorđević* Appeal Judgement, para. 348.
[604] Trial Judgement, vol. 2, para. 548, referring to Exhibit P2306, pp 1-7, 13-14. See Trial Judgement, vol. 2, para. 731.
[605] Trial Judgement, vol. 2, para. 548.
[606] Trial Judgement, vol. 2, para. 548, referring to Exhibit P15, para. II.5, p. 3 (under first level for Variant A), paras II.2, II.6, p. 4 (under second level for Variant A), para. II.5, p. 5 (under first level for Variant B), II.2, p. 6 (under second level for Variant B).
[607] Trial Judgement, vol. 2, para. 737, referring to the municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik.
[608] Trial Judgement, vol. 2, para. 741. See *infra*, paras 256-257. See also Trial Judgement, vol. 2, para. 581, referring to Exhibit P741.
[609] See *supra*, para. 167.
[610] See *supra*, para. 151. See also *supra*, para. 152.
[611] Trial Judgement, vol. 2, para. 734.
[612] Stanišić Appeal Brief, para. 247, referring to Exhibit P2306, pp 1-2, 6.

nor was he ever informed of them".[613] The Appeal Chamber is satisfied that the Trial Chamber considered that Stanišić may not have had direct knowledge of the Instructions but inferred that the only reasonable conclusion was that he was nevertheless aware of the Instructions based on circumstantial evidence including his involvement in the SDS, as set out above, and the central role assigned to, and played by, the police in their implementation.[614] Stanišić's argument thus fails.

174. With respect to Stanišić's argument concerning the effect of the crisis staffs on the RS Government's power and his assertion that the Instructions' implementation at the crisis staff level did not mean that he was aware of them, the Appeals Chamber notes that the Trial Chamber concluded "that even though at times there were conflicts between [Serb forces, SDS party structure, Crisis Staffs, and the RS Government], they all shared and worked towards the same goal under the Bosnian Serb leadership".[615] The Appeals Chamber also notes that the Trial Chamber found that the RS MUP was able to gradually restore its own influence after the autonomous regions and that the crisis staffs were abolished in August and September 1992.[616] In light of these findings, the Appeals Chamber considers that Stanišić's assertion of conflicts between the RS MUP and some crisis staffs is insufficient to demonstrate that no reasonable trial chamber could have found that he was aware of the Instructions.

175. In light of the foregoing, and given the Trial Chamber's findings on the police involvement in the widespread implementation of the Instructions between April and June 1992 and on Stanišić's authority over the police, the Appeals Chamber considers that Stanišić has failed to demonstrate that no reasonable trier of fact could have inferred that the only reasonable conclusion was that Stanišić was aware of the Instructions.

d. Alleged errors in the Trial Chamber's findings regarding Stanišić's role in the decision-making authorities from early 1992 onwards

176. The Trial Chamber found that Stanišić: (i) attended the 11 February 1992 Meeting where a Serb collegium was created to prepare for establishing a Serb MUP;[617] (ii) accepted the position of advisor on state security matters to the SRBiH Minister of Interior in February 1992;[618] (iii) was elected the first Minister of Interior "in the Serb entity, RS, of the disintegrating SRBiH MUP", at the 24 March 1992 BSA Session;[619] and (iv) proclaimed, at a Serb police unit inspection on

[613] Trial Judgement, vol. 2, para. 548, fn. Exhibit P2306, pp 1-7, 13-14.
[614] See *supra*, para. 172. See also Trial Judgement, vol. 2, paras 548, 731.
[615] Trial Judgement, vol. 2, para. 735.
[616] Trial Judgement, vol. 2, para. 251.
[617] Trial Judgement, vol. 2, paras 554, 599, 732.
[618] Trial Judgement, vol. 2, paras 540-541, 732.
[619] Trial Judgement, vol. 2, para. 732. See Trial Judgement, vol. 2, paras 542, 558.

30 March 1992, that "from that day the RS had its own police force".[620] The Trial Chamber also found that after Stanišić's 31 March 1992 appointment as Minister of Interior, he attended a majority of RS Government sessions "along with the Prime Minister, Deputy Prime Minister, other ministers, and at times their delegated representatives".[621] Further, it found that as an NSC member, Stanišić attended the first NSC and RS Government joint session, held on 15 April 1992, and continued to participate in these joint sessions in April and May 1992 during which "decisions pertaining to military and security activities were taken and reports of the combat and political situation were presented".[622] The Trial Chamber concluded that "based on the minutes and agenda of these entities, [...] Stanišić was a key member of the decision-making authorities from early 1992 onwards".[623]

i. Submissions of the parties

177. Stanišić disputes the Trial Chamber's finding that he was "a key member of the decision-making authorities from early 1992 onwards".[624] He asserts that he only participated in BSA sessions twice in the Indictment period, namely the 24 March 1992 BSA Session where he was elected by the BSA as Minister of Interior and the November 1992 BSA Session,[625] and that his presence at the NSC and the RS Government meetings was "mandated by his official function and capacity as Minister".[626] He contends that the Trial Chamber did not: (i) "cite a single specific reference" for minutes of the NSC and RS Government joint sessions, RS Government regular sessions or BSA sessions;[627] or (ii) analyse "the minutes or agendas of any of these meetings or how Stanišić's attendance was sufficient to justify the extremely prejudicial and erroneous conclusion that he was a key decision maker."[628]

178. The Prosecution responds that Stanišić's challenges to the Trial Chamber's finding that he was "a key member of the decision-making authorities from early 1992 onwards" should be summarily dismissed because he merely claims the Trial Chamber failed to consider relevant evidence without showing an error.[629] It submits that the Trial Chamber "carefully considered"

[620] Trial Judgement, vol. 2, paras 7, 560, 732.
[621] Trial Judgement, vol. 2, para. 572, referring to Exhibits P237, P240, P241, P247, P200, P242, P244, P248, P254, P253, P256, P429. See Trial Judgement, vol. 2, para. 732.
[622] Trial Judgement, vol. 2, para. 573, referring to Exhibits P1318.03, p. 8743, P1318.07, pp 9124-9125, P204, P205, P206, P711, P207, P208, P209, P210, P211, P212, P213, P214. See Trial Judgement, vol. 2, para. 732.
[623] Trial Judgement, vol. 2, para. 732.
[624] Stanišić Appeal Brief, para. 251, referring to Trial Judgement, vol. 2, para. 732.
[625] Stanišić Appeal Brief, paras 128, 251, fn. 124, referring to Trial Judgement, vol. 2, para. 558. See *infra*, para. 419.
[626] Stanišić Appeal Brief, para. 252.
[627] Stanišić Appeal Brief, para. 252, referring to Trial Judgement, vol. 2, para. 732.
[628] Stanišić Appeal Brief, para. 252, referring to Trial Judgement, vol. 2, para. 732; Stanišić Reply Brief, para. 70.
[629] Prosecution Response Brief (Stanišić), para. 103, referring to *Krajišnik* Appeal Judgement, para. 19.

evidence regarding NSC and RS Government joint sessions.[630] Citing the leadership roles Stanišić held within the RS,[631] his participation in sessions of the RS Government, the NSC and the BSA,[632] and his close ties to the SDS and its leader Karadžić, the Prosecution asserts that the Trial Chamber's finding was reasonable.[633]

179. Stanišić replies that when discussing NSC and RS Government joint sessions, RS Government sessions and BSA sessions, the Trial Chamber made it clear that he participated in his capacity as the Minister of Interior and that he attended "when matters and tasks pertaining to his Ministry were discussed".[634] He contends that his role was "limited to his ministry and did not extend to shaping Bosnian Serb policy" and is not a basis to find that he was a "key decision maker".[635] Finally, he submits that the Trial Chamber erred by relying on BSA sessions at which he was not even present.[636]

ii. Analysis

180. Turning first to Stanišić's argument that the Trial Chamber failed to cite or analyse the relevant minutes of the NSC and RS Government joint sessions, RS Government regular sessions, or BSA sessions, the Appeals Chamber notes that the Trial Chamber did not cite the specific "minutes and agenda" it considered when concluding that Stanišić was a key member of the decision-making authorities from early 1992 onwards.[637] However, the Trial Chamber did cite them in the section of the Trial Judgement addressing Stanišić's participation in the formation of Bosnian Serb organs and policy.[638] Specifically, the Trial Chamber relied on: (i) minutes of the NSC and RS Government joint sessions held in April and May 1992 to support the conclusion that Stanišić participated in NSC and RS Government joint sessions;[639] (ii) minutes of RS Government sessions between July and December 1992 to support the conclusion that Stanišić attended a majority of the RS Government sessions after he was appointed Minister of Interior;[640] and (iii) minutes of the

[630] Prosecution Response Brief (Stanišić), para. 103, referring to Trial Judgement, vol. 2, paras 558, 570, 572-575, 595, 600, 623, 625, 627, 639, 642, 650, 652, 663, 708, 721.
[631] Prosecution Response Brief (Stanišić), para. 102, referring to Trial Judgement, vol. 2, paras 542, 549, 551, 554-555, 558, 560, 571, 720, 732.
[632] Prosecution Response Brief (Stanišić), para. 102, referring to Trial Judgement, vol. 2, paras 558, 570, 572-575, 595, 600, 623, 625, 627, 639, 642, 650, 652, 663, 708, 721, 732.
[633] Prosecution Response Brief (Stanišić), para. 102.
[634] Stanišić Reply Brief, para. 70, referring to Trial Judgement, vol. 2, para. 732.
[635] Stanišić Reply Brief, para. 70.
[636] Stanišić Reply Brief, paras 70-71.
[637] Trial Judgement, vol. 2, para. 732.
[638] Trial Judgement, vol. 2, paras 544-575.
[639] Trial Judgement, vol. 2, para. 573, referring to Exhibits P204, P205, P206, P711, P207, P208, P209, P210, P211, P212, P213, P214.
[640] Trial Judgement, vol. 2, para. 572, referring to Exhibits P237, P240, P241, P247, P200, P242, P244, P248, P253, P256, P429. The Trial Chamber also relies on Exhibit P254 to conclude that Stanišić was in attendance but the Appeals Chamber considers this to be an error as the exhibit reads in relevant part: "Pero Vujičić in place of Mićo Stanišić".

24 March 1992 BSA Session[641] and the November 1992 BSA Session[642] to conclude that he participated in these BSA sessions. In light of the above, the Appeals Chamber considers that Stanišić's assertions that the Trial Chamber failed to cite the relevant minutes or analyse the minutes or agendas of any of these meetings are unfounded.

181. Turning to Stanišić's argument that he only participated in BSA sessions twice in the Indictment period, the Appeal Chamber first notes that only the November 1992 BSA Session falls within this period. Nevertheless, Stanišić has failed to demonstrate why the Trial Chamber's conclusion that he was a key member of decision-making authorities should not stand based on the other evidence that he attended a number of meetings of decision-making authorities during the Indictment period.

182. Finally, with respect to Stanišić's argument that his presence at these meetings was "mandated by his official function and capacity as Minister", the Appeals Chamber recalls that contribution to a joint criminal enterprise need not 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[643] and that the fact that his contribution amounted to no more than his routine duties will not exculpate him.[644] Therefore, even if Stanišić's presence at these meetings was mandated by his official function, the Trial Chamber did not err in relying on this evidence when entering findings with respect to his contribution. Stanišić's argument therefore fails.

183. For the reasons set out above, the Appeals Chamber finds that Stanišić has failed to show that no reasonable trier of fact could have concluded that he was a key member of the decision-making authorities from early 1992 onwards.

e. Alleged errors in the Trial Chamber's findings regarding Stanišić's authority in the RS MUP

184. The Trial Chamber found that Stanišić: (i) made a majority of key appointments in the RS MUP from 1 April 1992 onward; (ii) had the sole authority to appoint, discipline, and dismiss the chiefs of CSBs and SJBs; and (iii) under the law, also had the sole authority for establishing special police units and the authority to decide when and how a special unit could be used.[645] The Trial Chamber, however, noted that police chiefs in several municipalities were appointed by local crisis

[641] Trial Judgement, vol. 2, para. 558; Exhibit P198.
[642] Trial Judgement, vol. 2, para. 570; Exhibit P400.
[643] *Popović et al.* Appeal Judgement, para. 1653; *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696. See *Šainović et al.* Appeal Judgement, paras 1233, 1242. See also *supra*, para. 110,
[644] *Popović et al.* Appeal Judgement, para. 1653, quoting *Blagojević and Jokić* Appeal Judgement, para. 189. See *supra*, para. 154.

staffs and that the RS MUP was not informed of the establishment of some special police units by local organs.[646]

i. Submissions of the parties

185. Stanišić raises several challenges to the Trial Chamber's findings regarding his authority in the RS MUP.

186. Stanišić challenges the Trial Chamber's finding that he "made a majority of key appointments in the RS MUP".[647] He submits that as Minister of Interior, he had a duty to appoint people to posts in the RS MUP as it was being set up, but contends that Alija Delimustafić ("Delimustafić"), Minister of the SRBiH MUP,[648] had already appointed the chiefs of the CSBs that existed in BiH and that these CSB chiefs "retained their positions".[649] Stanišić asserts that he only nominated the chiefs of the newly formed CSBs in Bijeljina and Sarajevo,[650] and argues that even then, in Bijeljina, Delimustafić had appointed Predrag Ješurić ("Ješurić") as the SJB Chief and that he, Stanišić, only promoted Ješurić to CSB Chief.[651] Stanišić further submits that the appointments were all temporary and made based on a policy agreed upon at a collegium of BiH Ministry of Interior officials on 1 April 1992, following the split of the Ministry of Interior ("1 April 1992 BiH-MUP Collegium").[652] According to Stanišić, although the Trial Chamber accepted that appointments of the SJB chiefs were made upon the recommendation of regional authorities,[653] it failed to take into account that municipal organs appointed a number of SJB chiefs without the approval, or sometimes even the knowledge, of Stanišić and the RS MUP.[654]

187. Stanišić also submits that the Trial Chamber "erred by relying on the finding that he 'had the sole authority for establishing special police units and the authority to decide when and how a special unit could be used.'"[655] Referring to an order he issued on 27 July 1992 ("Stanišić's

[645] Trial Judgement, vol. 2, para. 733.
[646] Trial Judgement, vol. 2, para. 733.
[647] Stanišić Appeal Brief, para. 253, referring to Trial Judgement, vol. 2, para. 733.
[648] The Appeals Chamber notes that Stanišić refers to Delimustafić as the "Minister of the BiH MUP" (Stanišić Appeal Brief, para. 253) but also notes that Delimustafić made appointments in his capacity as the "SRBiH Minister of Interior" (Trial Judgement, vol. 2, paras 349, 538).
[649] Stanišić Appeal Brief, para. 253, referring to ST214, 19 Jul 2010, T. 12952-12953, ST214, 20 Jul 2010, T. 13050-13052, ST155, 5 Jul 2010, T. 12582-12584, 12574-12575; Stanišić Reply Brief, para. 72. Stanišić adds that all of these persons would have still been appointed, regardless of whether he "did anything or not" (Appeal Hearing, 16 Dec 2015, AT. 105).
[650] Stanišić Appeal Brief, para. 253.
[651] Stanišić Appeal Brief, para. 253, referring to Goran Mačar, 11 Jul 2011, T. 23119-23120.
[652] Stanišić Appeal Brief, para. 253, referring to SZ007, 5 Dec 2011, T. 26105, Exhibits P1408, P1410, P1414, P1416, P384, P2320; Stanišić Reply Brief, para. 72.
[653] Stanišić Appeal Brief, para. 253, referring to Trial Judgement, vol. 2, para. 736.
[654] Stanišić Appeal Brief, para. 253, referring to Goran Mačar, 6 Jul 2011, T. 22884-22885, Goran Mačar, 12 Jul 2011, T. 23192-23194; Stanišić Reply Brief, para. 72.
[655] Stanišić Appeal Brief, para. 255, referring to Trial Judgement, vol. 2, para. 733 (emphasis omitted).

27 July 1992 Order"), Stanišić asserts that he addressed the problem of the unauthorised creation of special police units by ordering their disbandment.[656] He contends that the Trial Chamber "omitt[ed] this evidence" while accepting that he and the RS MUP were not informed that local organs had established some special police units.[657] Stanišić argues that the Trial Chamber "erred by accepting evidence but not factoring this evidence into its ultimately flawed findings".[658]

188. Stanišić further argues that the Trial Chamber erred by finding that he had "'the sole authority' to discipline and dismiss the chiefs of CSBs and SJBs".[659] He asserts that the Trial Chamber's finding is contradicted by: (i) the relevant applicable law at the time;[660] and (ii) the Trial Chamber's own finding that "the statutory duty to initiate disciplinary proceedings lay with the SJB or CSB chief and the Minister was vested with appellate authority".[661] Stanišić contends that he had no basis to wield appellate authority unless disciplinary proceedings were initiated and that where he did have authority to act, "the severest sanction was imposed in the majority of proceedings".[662]

189. The Prosecution responds that Stanišić's arguments should be summarily dismissed as he repeats failed arguments from trial and has not shown that the Trial Chamber erred in making the impugned finding.[663] With respect to Stanišić's first challenge, it argues that, irrespective of their positions in the SRBiH MUP, the evidence on which the Trial Chamber relied shows that on 1 April 1992, Stanišić appointed CSB chiefs to the newly-formed RS MUP.[664] The Prosecution asserts that in a decision Stanišić issued on 25 April 1992, he allowed CSB chiefs to take over the former SRBiH MUP and immediately inform him when distributing former employees in their CSBs and SJBs ("Stanišić's 25 April 1992 Decision"),[665] and that on 15 May 1992, Stanišić confirmed a number of the temporary appointments that he had made on 1 April 1992.[666] In response to Stanišić's submission that appointments were made on the basis of the policy agreed at the 1 April 1992 BiH-MUP Collegium, the Prosecution argues that in early April 1992 Stanišić

[656] Stanišić Appeal Brief, para. 255, referring to Exhibit 1D176.
[657] Stanišić Appeal Brief, para. 255, referring to Trial Judgement, vol. 2, para. 733.
[658] Stanišić Appeal Brief, para. 255, referring to Trial Judgement, vol. 2, paras 729-765.
[659] Stanišić Appeal Brief, para. 254, referring to Trial Judgement, vol. 2, para. 733 (emphasis omitted).
[660] Stanišić Appeal Brief, para. 254, referring to Exhibit P510. Stanišić argues that the legal reasoning according to which he had the sole authority to discipline and dismiss chiefs of the CSB and SJB is applicable for events only after September 1992 as the Trial Chamber accepted that the Rules on Disciplinary Responsibility of Employees within the RS MUP ("Disciplinary Rules") were adopted in September 1992 (Appeal Hearing, 16 Dec 2015, AT. 105, referring to Trial Judgement, vol. 2, paras 14, 695, Tomislav Kovač, 9 Mar 2012, T. 27238, Exhibit 1D54).
[661] Stanišić Appeal Brief, para. 254, referring to Trial Judgement, vol. 2, para. 695. See Stanišić Reply Brief, para. 73.
[662] Stanišić Appeal Brief, para. 254, referring to Exhibits P1288, 1D796; Stanišić Reply Brief, para. 73.
[663] Prosecution Response Brief (Stanišić), para. 112, comparing Stanišić Appeal Brief, para. 253 with Stanišić Final Trial Brief, paras 291, 569-571, 597-598; Prosecution Response Brief (Stanišić), para. 115, referring to *Krajišnik* Appeal Judgement, paras 24, 26.
[664] Prosecution Response Brief (Stanišić), para. 113, referring to Trial Judgement, vol. 2, para. 579.
[665] Prosecution Response Brief (Stanišić), para. 113, referring to Trial Judgement, vol. 2, para. 580.
[666] Prosecution Response Brief (Stanišić), para. 113, referring to Trial Judgement, vol. 2, para. 579.

worked to undermine the SRBiH MUP's authority.[667] According to the Prosecution, the Trial Chamber reasonably found that Stanišić made a majority of key appointments in the RS MUP after having considered evidence that Stanišić appointed Serbs to key positions in RS municipalities, upon the proposal of the SDS and crisis staffs, and across the ranks of the RS MUP.[668]

190. With respect to Stanišić's challenge to the Trial Chamber's findings regarding his authority to establish special police units, the Prosecution responds that Stanišić's argument warrants summary dismissal as he misrepresents the Trial Chamber's factual finding.[669] It contends that the Trial Chamber acknowledged that the RS MUP was not informed that local organs had established some special police units,[670] and that the Trial Chamber gave little weight to the legal authority Stanišić exercised over special police units when determining the overall authority he exercised over the RS MUP.[671]

191. With regard to Stanišić's challenges to the Trial Chamber's findings regarding his disciplinary powers, the Prosecution responds that Stanišić concedes that he had authority to act in disciplinary cases,[672] and that he removed Borislav Maksimović ("Maksimović"), the Vogošća SJB Chief.[673] It argues that Stanišić had "extensive authority under the RS MUP's disciplinary regime"[674] and that when he acted, the dismissals were for matters not connected to the crimes charged in the Indictment.[675]

192. Stanišić replies that he did not possess "the unbridled disciplinary power" that the Prosecution attributes to him.[676] He counters that his power to amend the applicable rules was circumscribed but that he worked to reform the RS MUP "as much as his authority allowed".[677]

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[667] Prosecution Response Brief (Stanišić), para. 113, referring to Trial Judgement, vol. 2, paras 576-577, referring also to Trial Judgement, vol. 2, paras 558, 560.
[668] Prosecution Response Brief (Stanišić), para. 114, referring to Trial Judgement, vol. 2, paras 578-580. See Appeal Hearing, 16 Dec 2015, AT. 112.
[669] Prosecution Response Brief (Stanišić), para. 117, referring to *Krajišnik* Appeal Judgement, para. 18.
[670] Prosecution Response Brief (Stanišić), para. 117, referring to Trial Judgement, vol. 2, para. 733.
[671] Prosecution Response Brief (Stanišić), para. 117, referring to Trial Judgement, vol. 2, para. 736.
[672] Prosecution Response Brief (Stanišić), para. 116, referring to Stanišić Appeal Brief, para. 254. The Prosecution contends that Stanišić's authority over the disciplinary regime is also "apparent from his concession that it was he who had the authority to amend and reform the disciplinary system" (Prosecution Response Brief (Stanišić), para. 116, referring to Stanišić Appeal Brief, paras 173, 221-222).
[673] Prosecution Response Brief (Stanišić), para. 116, referring to Stanišić Appeal Brief, para. 297, Trial Judgement, vol. 2, paras 51, 707-708, 754.
[674] Prosecution Response Brief (Stanišić), para. 116, referring to Trial Judgement, vol. 2, paras 37, 42, Tomislav Kovač, 7 Mar 2012, T. 27076, Radomir Rodić, 15 Apr 2010, T. 8778.
[675] Prosecution Response Brief (Stanišić), para. 116, referring to Trial Judgement, vol. 2, paras 51, 698-704, 706-708, 754-755.
[676] Stanišić Reply Brief, para. 73, referring to Prosecution Response Brief (Stanišić), para. 116.
[677] Stanišić Reply Brief, para. 73, referring to Stanišić Appeal Brief, paras 173, 221-222, 502(i).

Stanišić further asserts that the Prosecution fails to address how initiating disciplinary action against individuals found to be JCE members contributed to furthering the JCE.[678]

ii. Analysis

a. Whether the Trial Chamber erred in finding that Stanišić made a majority of key appointments in the RS MUP

193. The Trial Chamber found that from 1 April 1992, Stanišić made a majority of key appointments in the RS MUP, "rang[ing] from the chief of the SNB, commanders of police, chiefs of the CSBs and SJBs, and the heads of the various administrations, including personnel, legal, crime prevention, and analysis".[679] It found that Stanišić issued decisions on: (i) 1 April 1992 temporarily appointing Ješurić as the Chief of the Bijeljina CSB, Krsto Savić as the Chief of the Trebinje CSB, Milenko Karišik ("Karišik") as the Commander of the MUP Special Police Detachment ("SPD"), Witness Andrija Bjelošević ("Witness Bjelošević") as the Chief of the Doboj CSB, Župljanin as the Chief of the Banja Luka CSB, and Vojin Popović ("Popović") as the Chief of the Gacko SJB;[680] (ii) 15 May 1992 confirming the appointments of Ješurić, Krsto Savić, Karišik, Witness Bjelošević, and Župljanin;[681] and (iii) 6 August 1992 appointing Dragiša Mihić as the Deputy Under-Secretary of the National Security Sevice ("SNB") of the MUP and Vlastimir Kušmuk as an advisor on duties and tasks at the SJB at the MUP.[682] The Trial Chamber also found that on 6 May 1991, Delimustafić appointed Župljanin as the Chief of the Banja Luka CSB.[683] Further, the Trial Chamber found that Stanišić's 25 April 1992 Decision authorised CSB chiefs to take over former SRBiH MUP staff and that, according to this decision, CSB chiefs were to immediately inform Stanišić when distributing former employees in their CSBs and SJBs, and to obtain his prior agreement when redistributing former high-level SRBiH MUP employees, such as heads of SNB, Public Security, SJB, and police station commanders.[684]

194. The Trial Chamber also noted that, "in several municipalities", local crisis staffs appointed police chiefs, and local organs established some special police units, without informing the RS MUP.[685] It found that in these municipalities, crisis staffs "influenced the appointments of all

[678] Stanišić Reply Brief, para. 74, referring to Prosecution Response Brief (Stanišić), para. 116; also referring to Trial Judgement, vol. 2, paras 422, 470, 816, 852, 879.
[679] Trial Judgement, vol. 2, para. 733.
[680] Trial Judgement, vol. 2, para. 579, referring to Exhibits P1000, P1411, P1409, P1416, P1414, P1413, P1410, P1408, P2016.
[681] Trial Judgement, vol. 2, para. 579, referring to Christian Nielsen, 14 Dec 2009, T. 4752, Andrija Bjelošević, 20 May 2011, T. 21072-21073, Exhibits P456, P170, P457, P455, P458.
[682] Trial Judgement, vol. 2, para. 579, referring to Exhibits P2022, P2021.
[683] Trial Judgement, vol. 2, para. 349, referring to ST213, 4 Mar 2010, T. 7204 (private session), Exhibit P2043.
[684] Trial Judgement, vol. 2, para. 580, referring to Petko Panić, 12 Nov 2009, T. 3001-3002, Exhibit 1D73.
[685] Trial Judgement, vol. 2, para. 733.

leading positions in the police stations and crime squads".[686] For the most part, SJB heads did not inform the CSBs or the RS MUP of situations – even when required – but instead informed the crisis staffs.[687]

195. With respect to Stanišić's argument that Delimustafić had appointed the chiefs of the CSBs that existed in BiH and that they "retained their positions",[688] the Appeals Chamber first notes the Trial Chamber's finding that Delimustafić appointed Župljanin as the Chief of the Banja Luka CSB on 6 May 1991[689] but it did not enter similar findings with respect to any other CSB chiefs. Further, the Appeals Chamber is not satisfied that the evidence upon which Stanišić relies supports his argument as there are no references in this evidence that Delimustafić appointed any CSB chiefs.[690] The Appeals Chamber also notes the Trial Chamber's finding that on 1 April 1992, Stanišić temporarily appointed Karišik as the Commander of MUP SPD, and Ješurić, Krsto Savić, Witness Bjelošević, and Župljanin, as the chiefs of their respective CSBs, and that on 15 May 1992, he confirmed the appointments of Karišik, Ješurić, Krsto Savić, Witness Bjelošević, and Župljanin as the CSB chiefs.[691] Even if Delimustafić had appointed CSB chiefs other than Župljanin, in light of Stanišić's decision temporarily appointing and then confirming the appointments of these CSB chiefs, Stanišić has not established that Delimustafić's earlier involvement undermines the Trial Chamber's findings that from 1 April 1992 Stanišić made a majority of key appointments in the RS MUP. Stanišić concedes that he "had a duty as Minister to appoint people to posts in the Ministry as it was being set up".[692] The mere fact that some individuals retained the positions held before 1 April 1992 is not sufficient to demonstrate that no reasonable trier of fact could have concluded that Stanišić made these key appointments.

196. Turning to Stanišić's argument that all the appointments were temporary and made based on a policy agreed upon at the 1 April BiH-MUP 1992 Collegium,[693] the Appeals Chamber observes that Stanišić ignores the Trial Chamber's findings that on 15 May 1992, he confirmed the appointments of Ješurić, Krsto Savić, Karišik, Witness Bjelošević, and Župljanin who had previously been appointed temporarily.[694] Further, the Appeals Chamber observes that the order

[686] Trial Judgement, vol. 2, para. 251, referring to Goran Mačar, 6 Jul 2011, T. 22897, 22906, 22909.
[687] Trial Judgement, vol. 2, para. 251, referring to Goran Mačar, 6 Jul 2011, T. 22896-22898.
[688] See *supra*, para. 186.
[689] Trial Judgement, vol. 2, para. 349 referring to ST213, 4 Mar 2010, T. 7204 (private session), Exhibit P2043.
[690] Stanišić Appeal Brief, para. 253 referring to ST214, 19 Jul 2010, T. 12952-12953, ST214, 20 Jul 2010, T. 13050-13052, ST155, 5 Jul 2010, T. 12582-12584, 12574-12575, Goran Mačar, 11 Jul 2011, T. 23119-23120.
[691] Trial Judgement, vol. 2, para. 579, referring to Exhibits P1409, P1414, P1410, P1408, Christian Nielsen, 14 Dec 2009, T. 4752, Andrija Bjelošević, 20 May 2011, T. 21072-21073, P455, P456, P458, P170, P457.
[692] Stanišić Appeal Brief, para. 253.
[693] Stanišić Appeal Brief, para. 253, referring to SZ007, 5 Dec 2011, T. 26105, Exhibits P1408, P1410, P1414, P1416, P384, P2320; Stanišić Reply Brief, para. 72. See *supra*, para. 186.
[694] Trial Judgement, vol. 2, para. 579, referring to Exhibits P1409, P1414, P1410, P1408, Christian Nielsen, 14 Dec 2009, T. 4752, Andrija Bjelošević, 20 May 2011, T. 21072-21073, P455, P456, P458, P170, P457.

upon which Stanišić seeks to rely to support his contention is general in nature.[695] While this order states that "some personnel decisions were discussed as well", a clear policy concerning appointments is notably absent.[696] Therefore, by advancing his argument only on the basis of this evidence, Stanišić has failed to demonstrate that the Trial Chamber erred in its findings on his power to make key appointments.

197. Insofar as Stanišić argues that the Trial Chamber failed to take into account that municipal organs appointed a number of SJB chiefs without the approval, or sometimes even the knowledge, of Stanišić and the RS MUP, the Appeals Chamber notes that the Trial Chamber explicitly considered the role that local crisis staffs played in the appointment of police chiefs in several municipalities.[697] In this regard, the Trial Chamber found that the crisis staffs "influenced the appointments of all leading positions in the police stations and crime squads"[698] and that Stanišić took into account the proposals of the SDS and crisis staffs when appointing Serbs to key positions in RS municipalities.[699] The Appeals Chamber therefore finds no merit in Stanišić's argument.

198. Moreover, the Appeals Chamber observes that, in finding that Stanišić made a majority of key appointments in the RS MUP, the Trial Chamber indicated that these positions ranged from the SNB chief, to police commanders, to chiefs of the CSBs and SJBs, and finally to the heads of the various administrations, including personnel, legal, crime prevention, and analysis.[700] Stanišić only challenges the Trial Chamber's findings on the appointment of CSB chiefs and some SJB chiefs without addressing the other key appointments, and has not explained why the Trial Chamber's finding that he made a majority of key appointments in the RS MUP should not stand on the basis of the remaining evidence.

199. For the reasons set out above, the Appeals Chamber finds that Stanišić has failed to show that no reasonable trier of fact could have concluded that he made a majority of key appointments in the RS MUP.

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[695] Stanišić Appeal Brief, para. 253, referring to Exhibit P2320; Stanišić Reply Brief, para. 72.
[696] Exhibit P2320.
[697] Trial Judgement, vol. 2, para. 733.
[698] Trial Judgement, vol. 2, para. 251, referring to Goran Mačar, 6 Jul 2011, T. 22897, 22906, 22909.
[699] Trial Judgement, vol. 2, para. 578, referring to ST121, 24 Nov 2009, T. 3723-3724 (private session).
[700] Trial Judgement, vol. 2, paras 579 (finding that on 1 April 1992 Stanišić temporarily appointed Maksimović as Commander of the RS MUP, Nedeljko Kesić as Chief of the SNB, Malko Koroman as Inspector at the Sarajevo CSB, Popović as Chief of the Gacko SJB; on 4 May 1992 Stanišić temporarily appointed Branko Stanković to cryptographic data protection in Ilijaš; on 6 August 1992 Stanišić appointed Dragiša Mihić as Deputy Under-Secretary of the SNB of the MUP and Vlastimir Kušmuk to the position of Advisor on duties and tasks at the SJB at the MUP), 733.

b. Whether the Trial Chamber erred in finding that Stanišić had the sole authority to establish and decide on the use of special police units

200. The Trial Chamber found that Stanišić "had the sole authority for establishing special police units and the authority to decide when and how a special unit could be used" but noted "that the RS MUP was not informed of the establishment of some special police units by local organs".[701] It also found that Stanišić's 27 July 1992 Order called for "the immediate disbandment and the placement of all special units formed during the war in the areas of the CSBs under the command of the VRS".[702]

201. The Appeals Chamber notes that although the Trial Chamber did not cite the evidence that it considered when making the impugned finding[703] about the scope of Stanišić's authority to establish and use special police units,[704] the Trial Chamber did provide citations in the section concerning "Special Police Units".[705] In this section, which included discussions of both special police units under Stanišić and special police units in municipalities,[706] the Trial Chamber considered, *inter alia*, the testimonies of: (i) Witness Obren Petrović ("Witness Petrović"), "that under the law, only the Minister, Mićo Stanišić, had the power to establish special police units";[707] (ii) Witness Drago Borovčanin ("Witness Borovčanin") that "during the initial period when the RS MUP was still organising itself, local active and reserve policemen had organised themselves into special units to defend their towns" and that before Witness Borovčanin's inspection of the Ilijaš SJB in May 1992 "neither [Borovčanin] nor the RS MUP knew that a special police unit had been set up there";[708] (iii) Witness Dobrislav Planojević ("Witness Planojević") that "Stanišić had the authority to decide when and how these special units could be used";[709] and (iv) Witness Planojević and Witness Bjelošević that they were required to seek Stanišić's approval when they wished to use the special police units.[710] In support of its finding that Stanišić disbanded all special police units

[701] Trial Judgement, vol. 2, para. 733. See Trial Judgement, vol. 2, para. 604.
[702] Trial Judgement, vol. 2, para. 605, referring to Exhibit 1D176.
[703] See *supra*, para. 187.
[704] Trial Judgement, vol. 2, para. 733.
[705] Trial Judgement, vol. 2, paras 601-609.
[706] Trial Judgement, vol. 2, paras 601-603 (discussing special police units under Stanišić), 604-609 (discussing special police units in municipalities).
[707] Trial Judgement, vol. 2, para. 604, referring to Obren Petrović, 12 May 2010, T. 10005-10006.
[708] Trial Judgement, vol. 2, para. 604, fns 1579-1580, referring to Drago Borovčanin, 22 Feb 2010, T. 6651-6655. See Trial Judgement, vol. 2, fn. 1575, referring to Exhibit P989, p. 4.
[709] Trial Judgement, vol. 2, para. 602, referring to Dobrislav Planojević, 22 Oct 2010, T. 16404.
[710] Trial Judgement, vol. 2, para. 602, fns 1574 (referring to Dobrislav Planojević, 22 Oct 2010, T. 16404), 1575 (referring to Andrija Bjelošević, 20 Apr 2011, T. 19883-19884). See Trial Judgement, vol. 2, fn. 1575, referring to Exhibit 1D520.

formed during the war in the areas of the CSBs and placed their members under the command of the VRS, the Trial Chamber relied on Stanišić's 27 July 1992 Order.[711]

202. Recalling that a trial judgement should be read as a whole,[712] the Appeals Chamber finds no merit in Stanišić's submission that the Trial Chamber omitted evidence that he disbanded special police units. Further, in light of the body of evidence set out above and the Trial Chamber's discussion thereof,[713] the Appeals Chamber is satisfied that a reasonable trier of fact could have concluded that Stanišić had the sole authority for establishing special police units and the authority to decide when and how a special police unit could be used. Therefore, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred.

c. Whether the Trial Chamber erred in finding that Stanišić had the sole authority to discipline and dismiss the chiefs of CSBs and SJBs

203. The Trial Chamber concluded that Stanišić had the sole authority to appoint, discipline, and dismiss the chiefs of CSBs and SJBs.[714] It found that the RS MUP's disciplinary regime was set out in two documents: the LIA, which was adopted on 28 February 1992 and entered into force on 31 March 1992,[715] and the Rules on Disciplinary Responsibility of Employees of the RS MUP ("Disciplinary Rules") that Stanišić adopted on 19 September 1992.[716] The Trial Chamber found that "the statutory duty to initiate proceedings [...] lay with the SJB or CSB chief in the first instance and the Minister of Interior was vested with the final appellate authority over sanctions imposed".[717] However, "[i]n the case of a SJB or CSB chief being the subject of misconduct or violations of the LIA, the Minister was directly responsible for his discipline and dismissal."[718]

204. The Trial Chamber further found that "[a]s the Minister, Stanišić was under a duty, both under the law applicable in the RS at the relevant time and under international law, to discipline and dismiss the personnel of his Ministry who had committed crimes."[719] It found that Stanišić exercised these powers when, through Witness Tomislav Kovač ("Witness Kovač"), Assistant

[711] Trial Judgement, vol. 2, para. 605, referring to Exhibit 1D176, p. 1.
[712] *Šainović et al.* Appeal Judgement, paras 306, 321; *Boškoski and Tarčulovski* Appeal Judgement, para. 67; *Orić* Appeal Judgement, para. 38.
[713] See *supra*, para. 201; Trial Judgement, vol. 2, paras 602, 604-605.
[714] Trial Judgement, vol. 2, para. 733.
[715] Exhibit P530; Trial Judgement, vol. 2, paras 5-6, 8.
[716] Trial Judgement, vol. 2, para. 42, referring to Tomislav Kovač, 9 Mar 2012, T. 27238-27239, Exhibit 1D54. See Trial Judgement, vol. 2, para. 695.
[717] Trial Judgement, vol. 2, para. 695.
[718] Trial Judgement, vol. 2, para. 695, referring to "RS MUP section". See Trial Judgement, vol. 2, para. 40, referring to Tomislav Kovač, 8 Mar 2012, T. 27092.
[719] Trial Judgement, vol. 2, para. 754.

Minister of Interior,[720] he initiated action against: Malko Koroman ("Koroman"), Chief of the Pale SJB; Witness Stevan Todorović ("Witness Todorović"), Chief of the Bosanski Šamac SJB; Witness Petrović, Chief of the Doboj SJB; Maksimović, Chief of the Vogošća SJB, and Simo Drljača ("Drljača"), Chief of the Prijedor SJB.[721]

205. The Appeals Chamber notes that, to support his assertion that the Trial Chamber's finding on his authority to appoint, discipline, and dismiss the chiefs of the CSBs and SJBs is contradicted by "the relevant applicable law at the time",[722] Stanišić cites Exhibit P510, the Law on Internal Affairs of the former SRBiH which was published on 29 June 1990 ("Law of 1990").[723] The Appeals Chamber observes however that the LIA, which entered into force on 31 March 1992, was the operative law at the time of the Indictment – not the Law of 1990.[724] The Appeals Chamber observes in any case that the differences between the LIA and the Law of 1990 are minor and considers that Stanišić's reference to Exhibit P510 was an oversight. Even if Stanišić intended to rely on the LIA as the operative law, he has not provided any clear indication of what provision in LIA (or in Exhibit P510) contradicts the impugned finding. The Appeals Chamber therefore finds that this undeveloped assertion is incapable of undermining the Trial Chamber's finding.

206. Turning to Stanišić assertion that the Trial Chamber's finding that "the statutory duty to initiate disciplinary proceedings lay with the SJB or CSB chief and the Minister was vested with appellate authority" contradicts its finding that he had the sole authority to appoint, discipline, and dismiss the chiefs of CSBs and SJBs,[725] the Appeals Chamber observes that a plain reading of these findings does not disclose a contradiction. Stanišić does not identify any evidence that the Trial Chamber failed to consider or explain why the Trial Chamber's conclusion was unreasonable. His argument in this regard thus fails.

207. Insofar as Stanišić's contention that he had no basis to wield appellate authority unless disciplinary proceedings were initiated can be understood to mean that his ability to act was restricted,[726] the Appeals Chamber notes that, under the LIA, the Minister of Interior had to make decisions about dismissing people from service[727] and was authorised to initiate disciplinary proceedings against CSB chiefs.[728] After Stanišić adopted the Disciplinary Rules in

[720] Trial Judgement, vol. 2, paras 39, 256.
[721] Trial Judgement, vol. 2, para. 754. See Trial Judgement, vol. 2, para. 698. See also Trial Judgement, vol. 2, para. 604 (Witness Petrović was the Chief of the Doboj SJB).
[722] See *supra*, para. 188.
[723] Stanišić Appeal Brief, para. 254, referring to Exhibit P510.
[724] Exhibit P530; Trial Judgement, vol. 2, paras 5-6, 8.
[725] See *supra*, para. 188.
[726] See *supra*, para. 188.
[727] Trial Judgement, vol. 2, para. 40, referring to Tomislav Kovač, 7 Mar 2012, T. 27076.
[728] Trial Judgement, vol. 2, para. 40, referring to Tomislav Kovač, 8 Mar 2012, T. 27092.

September 1992, the disciplinary regime was "expanded to heads of departments within the MUP, commanders of police detachments, and CSB chiefs" and that appeals were dealt with by the Minister of Interior.[729] There is nothing to suggest that either the LIA or the Disciplinary Rules restricted Stanišić's authority to initiate proceedings against CSB chiefs. Further, in October 1992, Stanišić exercised his authority and had actions initiated against several SJB chiefs including: Koroman, Witness Todorović, Witness Petrović, Maksimović, and Drljača.[730] The Appeals Chamber notes that Stanišić relies on disciplinary decisions that he issued in December 1992, confirming the termination of employment of the Doboj CSB Chief[731] and a Banja Luka SJB police officer,[732] but does not find that these decisions support the contention that his authority was limited to appeals of disciplinary proceedings. Accordingly, Stanišić has failed to demonstrate that no reasonable trier of fact could have found he had the sole authority to discipline and dismiss the chiefs of CSBs and SJBs.

iii. Conclusion

208. For the foregoing reasons, the Appeals Chamber finds that Stanišić has failed to demonstrate any error in the Trial Chamber's findings, concerning his authority with respect to the RS MUP, that he: (i) made a majority of key appointments in the RS MUP from 1 April 1992; (ii) had the sole authority for establishing special police units and the authority to decide when and how a special unit could be used; and (iii) had the sole authority to appoint, discipline, and dismiss the chiefs of CSBs and SJBs.

f. Alleged errors in the Trial Chamber's findings regarding Stanišić's overall command and control over the RS MUP police forces and of all other internal affairs organs

209. The Trial Chamber considered "the evidence adduced by the Defence to show that the local municipal bodies, particularly the local Crisis Staffs, interfered with the appointments of police at the SJB level".[733] However, recalling "its finding that, throughout the Indictment period, the Bosnian Serb leadership was in charge of the events taking place in the municipalities through its control over the Serb Forces, SDS party structure, Crisis Staffs, and the RS Government",[734] the Trial Chamber concluded that "the local police leadership was [...] part of the formulation and

[729] Trial Judgement, vol. 2, para. 695, referring to ST161, 19 Nov 2009, T. 3477-3478 (closed session), Vladimir Tutuš, 19 Mar 2010, T. 7876-7877, Radomir Rodić, 16 Apr 2010, T. 8806, Mladen Bajagić, 4 May 2011, T. 20221-20223, Exhibit 1D54.
[730] Trial Judgement, vol. 2, paras 707, 754.
[731] Exhibit 1D796.
[732] Exhibit P1288.
[733] Trial Judgement, vol. 2, para. 735.
[734] Trial Judgement, vol. 2, para. 735. See Trial Judgement, vol. 2, para. 311.

implementation of the decisions taken by the Crisis Staffs, which were in accordance with instruction from the RS Presidency, MUP, and the SDS".[735]

210. The Trial Chamber found that "taking into account the role played by municipal bodies, Stanišić had overall command and control over the RS MUP police forces and of all other internal affairs organs in accordance with the policies and decisions adopted by the Presidency, NSC, and the BSA".[736] The Trial Chamber referred to several factors concerning Stanišić's specific acts and conduct that it considered bore out this conclusion.[737]

i. Submissions of the parties

211. Stanišić submits that when analysing his alleged contribution, the Trial Chamber erred by "supplementing" evidence about his acts and conduct with "its findings on the [Bosnian Serb leadership], of which Stanišić was found to be a member".[738]

212. In particular, Stanišić challenges the Trial Chamber's finding that he had overall command and control over the RS MUP police forces.[739] He argues that this finding was made despite the Trial Chamber's: (i) inability to make a conclusive finding regarding authority over policemen who were re-subordinated to the military;[740] and (ii) implicit acknowledgement that the municipal bodies interfered in the work of the RS MUP.[741] According to him, as a result, irrespective of the lack of his *de facto* authority over re-subordinated forces or due to the interference by other organs, the Trial Chamber found that he had overall command and control over all RS MUP forces "by virtue of the overarching control of the [Bosnian Serb leadership], of which he was found to be a part".[742]

213. Stanišić also challenges the Trial Chamber's conclusion that "the local police leadership was [...] part of the formulation and implementation of the decisions taken by the Crisis Staffs, which were in accordance with instruction from the RS Presidency, MUP, and the SDS".[743] He asserts that the Trial Chamber did not analyse, "through the prism of Stanišić's personal acts and conduct", evidence that local crisis staffs and other entities or organs interfered in police

[735] Trial Judgement, vol. 2, para. 735
[736] Trial Judgement, vol. 2, para. 736.
[737] Trial Judgement, vol. 2, para. 736.
[738] Stanišić Appeal Brief, para. 256.
[739] Stanišić Appeal Brief, para. 259, referring to Trial Judgement, vol. 2, para. 736.
[740] Stanišić Appeal Brief, para. 259, referring to Trial Judgement, vol. 2, para. 342. See Stanišić Appeal Brief, para. 250, referring to Trial Judgement, vol. 2, paras 729-765. Stanišić argues that there could be no "legally correct assessment" of whether he had command and control over RS MUP forces without a conclusive finding on re-subordination (Stanišić Appeal Brief, para. 250, referring to Trial Judgement, vol. 2, para. 342). See also Stanišić Reply Brief, para. 75.
[741] Stanišić Appeal Brief, para. 259, referring to Trial Judgement, vol. 2, para. 736.
[742] Stanišić Appeal Brief, para. 259, referring to Trial Judgement, vol. 2, para. 736.
[743] Stanišić Appeal Brief, para. 257, referring to Trial Judgement, vol. 2, para. 735.

appointments.[744] Rather, he contends, the Trial Chamber's evaluation of the evidence was tainted by its findings that the Bosnian Serb leadership was in charge of the events taking place in the Municipalities through its control over crisis staffs, and that the crisis staffs' decisions accorded with instruction from the RS Presidency, RS MUP, and the SDS.[745] Stanišić submits that the Trial Chamber's "logic is circular and is patently incorrect".[746] He argues that the finding that the Bosnian Serb leadership, of which Stanišić was found to be a member, wielded authority throughout the Municipalities erroneously superseded evidence that he did not have authority.[747]

214. The Prosecution responds that it was reasonable for the Trial Chamber to conclude that Stanišić exercised overall command and control over the RS MUP based on, *inter alia*, his: (i) appointments of RS MUP personnel; (ii) orders that headquarters personnel inspect and visit municipalities; (iii) orders to investigate crimes allegedly committed by RS MUP members; and (iv) reassignment of criminal elements from the police to the army.[748] It further responds that the Trial Chamber considered evidence of interference by local crisis staffs in police appointments but found that, in light of all the evidence before it, it did not diminish Stanišić's authority because he and the crisis staffs pursued the same goal.[749] The Prosecution further argues that Stanišić merely repeats his failed trial argument[750] and that the absence of a general finding on the issue of re-subordination does not show that the Trial Chamber was wrong to rely on the factors noted above in concluding that Stanišić exercised command and control over the RS MUP.[751]

ii. Analysis

215. The Appeals Chamber notes that, in reaching its conclusion that "Stanišić had overall command and control over the RS MUP police forces and of all other internal affairs organs", the Trial Chamber considered Stanišić's following acts and conduct: (i) the assignment of trusted SRBiH MUP members to important positions; (ii) the appointment of SJB chiefs upon the recommendation of the regional authorities; (iii) the assignment of SJBs to newly established CSBs; (iv) the ordering of personnel from headquarters to conduct inspections and visits of municipalities; (v) orders to investigate crimes allegedly committed by RS MUP members; and (vi) the

[744] Stanišić Appeal Brief, para. 257, referring to Trial Judgement, vol. 2, para. 735.
[745] Stanišić Appeal Brief, para. 257 referring to Trial Judgement, vol. 2, para. 735.
[746] Stanišić Appeal Brief, para. 258.
[747] Stanišić Appeal Brief, para. 258.
[748] Prosecution Response Brief (Stanišić), para. 109, referring to Trial Judgement, vol. 2, paras 48-51, 53, 576-580, 588, 591-594, 596, 600, 613, 627, 637, 640-641, 643-646, 649, 655-656, 664-670, 675-678, 682, 684-685, 687, 698, 701-704, 706-708, 714-718, 721-725, 727-728, 736.
[749] Prosecution Response Brief (Stanišić), para. 110, referring to Trial Judgement, vol. 2, paras 735-736.
[750] Prosecution Response Brief (Stanišić), para. 110, comparing Stanišić Appeal Brief, paras 257-259 with Stanišić Final Trial Brief, paras 571, 597-598.
[751] Prosecution Response Brief (Stanišić), para. 110.

reassignment of criminal elements from the police to the army.[752] Thus, contrary to Stanišić's assertion, rather than reaching the impugned finding "by virtue of the overarching control of the [Bosnian Serb leadership]" in the Municipalities,[753] the Trial Chamber took into account these six factors concerning his individual acts and conduct to reach its conclusion on his overall command and control.[754] Stanišić has not explained why the Trial Chamber's finding should not otherwise stand on the basis of these factors and thus, he has also failed to demonstrate that the Trial Chamber's analysis was "impermissibly tainted"[755] by its findings on the Bosnian Serb leadership.

216. With respect to Stanišić's argument that the Trial Chamber did not make a conclusive finding regarding authority over police who were re-subordinated to the military, and erroneously found his command and control irrespective of the lack of his *de facto* authority over re-subordinated police forces, the Appeals Chamber recalls that it has dismissed this argument elsewhere in this Judgement.[756]

217. Turning to Stanišić's assertion that the Trial Chamber failed to analyse the Defence evidence of interference by local crisis staffs and other entities or organs in police appointments through the prism of Stanišić's personal acts and conduct, the Appeals Chamber notes that the Trial Chamber explicitly considered "the evidence adduced by the Defence to show that the local municipal bodies, particularly the local Crisis Staffs, interfered with the appointments of police at the SJB level"[757] but concluded that "the Variant A and B Instructions envisaged the creation and involvement of local bodies, including the local Crisis Staffs, at the municipal level".[758] After considering the aforementioned, alongside "evidence that the local SDS largely retained control over the Crisis Staffs in municipalities", the Trial Chamber was "satisfied that the local police leadership was in fact part of the formulation and implementation of the decisions taken by the Crisis Staffs, which were in accordance with instruction from the RS Presidency, MUP, and the SDS".[759] The Trial Chamber further concluded that the RS MUP was able to gradually restore its

[752] Trial Judgement, vol. 2, para. 736.
[753] Stanišić Appeal Brief, para. 259.
[754] Trial Judgement, vol. 2, para. 736.
[755] Stanišić Appeal Brief, para. 257.
[756] See *supra*, paras 126-127.
[757] Trial Judgement, vol. 2, para. 735. Indeed, in the section concerning "Municipal Crisis Staffs", the Trial Chamber provided citations to evidence showing that the crisis staffs "influenced the appointments of all leading positions in the police stations and crime squads" (Trial Judgement, vol. 2, para. 251, referring to Goran Mačar, 6 Jul 2011, T. 22897, 22906, 22909).
[758] Trial Judgement, vol. 2, para. 735 (noting that "municipal executive bodies were established with the local SDS representative as its president" and "Crisis Staffs were composed of the local Bosnian Serb leaders, including the chief of the relevant SJB or CSB" and recalling that, "throughout the Indictment period, the Bosnian Serb leadership was in charge of the events taking place in the municipalities through its control over the Serb Forces, SDS party structure, Crisis Staffs, and the RS Government, and that even though at times there were conflicts between these various entities, they all shared and worked towards the same goal under the Bosnian Serb leadership").
[759] Trial Judgement, vol. 2, para. 735.

own influence after the autonomous regions and the crisis staffs were abolished in August and September 1992[760] and that even though at times there were conflicts between the various entities, including the crisis staffs, "they all shared and worked towards the same goal under the Bosnian Serb leadership".[761] As stated above, having regard to these contextual factors combined with the factors relating to Stanišić's personal acts and conduct,[762] the Trial Chamber arrived at its conclusion that he had "overall command and control over the RS MUP police forces and of all other internal affairs organs".[763]

218. Moreover, the Appeals Chamber recalls that a trial chamber has discretion in weighing and assessing the evidence[764] and that it is within the discretion of a trial chamber to evaluate discrepancies and to consider the credibility of the evidence as a whole, without explaining its decision in every detail.[765] In light of the above,[766] the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in its evaluation of the evidence.

219. For the foregoing reasons, the Appeals Chamber concludes that Stanišić has failed to demonstrate that the Trial Chamber erred in its assessment of the evidence about his acts and conduct or of the evidence about the Bosnian Serb leadership's authority in reaching its finding that he had overall command and control over the RS MUP forces.

g. Conclusion

220. For the reasons set out above, the Appeals Chamber finds that Stanišić has not demonstrated that the Trial Chamber erred in its findings with respect to his: (i) involvement in establishing Bosnian Serb institutions in BiH, including the SDS and the RS MUP;[767] (ii) close relationship with Karadžić and direct communication with the RS Presidency;[768] (iii) knowledge of the Variant A and B Instructions;[769] (iv) key-role in the decision-making authorities from early 1992 onwards;[770] (v) authority with respect to the RS MUP;[771] and (vi) overall command and control over the RS

[760] Trial Judgement, vol. 2, para. 251.
[761] Trial Judgement, vol. 2, para. 735. See Trial Judgement, vol. 2, para. 311.
[762] See *supra*, para. 215.
[763] Trial Judgement, vol. 2, para. 736.
[764] *Đorđević* Appeal Judgement, para. 483, referring to *Boškoski and Tarčulovski* Appeal Judgement, para. 14, *Kupreškić et al.* Appeal Judgement, paras 30-32, *Nchamihigo* Appeal Judgement, para. 47.
[765] *Đorđević* Appeal Judgement, para. 797; *Kvočka et al.* Appeal Judgement, para. 23, referring to *Čelebići* Appeal Judgement, paras 481, 498, *Kupreškić et al.* Appeal Judgement, para. 31.
[766] See *supra*, paras 215-217.
[767] Trial Judgement, vol. 2, para. 729.
[768] Trial Judgement, vol. 2, para. 730.
[769] Trial Judgement, vol. 2, para. 731.
[770] Trial Judgement, vol. 2, para. 732.
[771] Trial Judgement, vol. 2, para. 733.

MUP police forces and of all other internal affairs organs.[772] Consequently, Stanišić' assertion that the cumulative effect of these errors is "the total contradiction" of the Trial Chamber's finding that he participated in the enunciation and implementation of the Bosnian Serb policy as it evolved,[773] also fails. Stanišić's arguments with respect to his role in the creation of Bosnian Serb bodies and policies are therefore dismissed in their entirety.

(ii) Alleged errors in relation to RS MUP forces' role in combat activities and in the takeover of RS municipalities (subsection (B)(ii) of Stanišić's sixth ground of appeal)

221. The Trial Chamber found that the municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik were taken over in the months of April and June 1992, in accordance with the Variant A and B Instructions through the joint action of the RS MUP and other Serb forces.[774] The Trial Chamber made a number of specific findings regarding the role of RS MUP forces in combat activities and takeovers of the aforementioned municipalities and Stanišić's actions in this respect.

222. First, the Trial Chamber found that, within the context of an ethnically motivated armed conflict, the intent behind the RS MUP's ostensibly legitimate requirement that all of its employees sign solemn declarations, was to provide a pretext to dismiss and disarm non-Serbs from the RS MUP.[775] Second, the Trial Chamber found that, following the call for mobilisation of all reserves, Stanišić's 15 May 1992 Order instructed RS MUP forces to be organised into "wartime units" by the chiefs of the CSBs and SJBs.[776] The Trial Chamber indicated that, in light of this order and Karadžić's order to Stanišić of 1 July 1992 to transfer 60 specially trained policemen, deployed in Crepoljsko, and "place them under the military command of the SRK" ("Karadžić's 1 July 1992 Order"),[777] it attached little weight to Stanišić's statement that the RS MUP was not consulted with regard to the reassignment of RS MUP forces to the army for combat tasks.[778] Third, the Trial Chamber found that the RS Government, and eventually the VRS, relied to a large extent on the RS MUP forces for combat activities.[779] The Trial Chamber found specifically that Stanišić issued orders for police forces, both regular and reserve units, to participate in "coordinated action with the

[772] Trial Judgement, vol. 2, para. 736.
[773] Stanišić Appeal Brief, para. 260.
[774] Trial Judgement, vol. 2, para. 737.
[775] Trial Judgement, vol. 2, para. 738.
[776] Trial Judgement, vol. 2, para. 739.
[777] Trial Judgement, vol. 2, para. 591.
[778] Trial Judgement, vol. 2, para. 739.
[779] Trial Judgement, vol. 2, para. 739.

armed forces" and facilitated the arming of the RS MUP forces.[780] Fourth, the Trial Chamber found that, as the highest commander of the RS MUP forces and the administrative head of the organs of the RS MUP, Stanišić received reports of the involvement of the police forces in combat activities.[781] Fifth, the Trial Chamber found that the evidence of Stanišić seeking recognition from other Bosnian Serb leaders for the contributions and achievements of the RS MUP in combat activities supports a finding that Stanišić deployed the police in furtherance of the decisions of the Bosnian Serb authorities.[782] The Trial Chamber found that, despite being aware of the commission of crimes, Stanišić consistently approved the deployment of the RS MUP forces to combat activities along with the other Serb forces and only sought to withdraw regular policemen from combat activities towards the end of 1992, when most of the territory of RS had been consolidated.[783] Finally, the Trial Chamber listed several JCE members who were directly appointed by Stanišić, and who, as part of the police hierarchy and their subordinate forces, were involved in the widespread and systematic takeovers of municipalities.[784]

a. Submissions of the parties

223. Stanišić raises six general challenges to the Trial Chamber's findings on the role of RS MUP forces in combat activities and takeovers of the municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik.[785]

224. First, he challenges the Trial Chamber's finding on the intent behind the requirement for all RS MUP employees to sign solemn declarations.[786] He submits that the Trial Chamber improperly imputed a persecutory intention despite having acknowledged that it is common to require solemn declarations when assuming duties in a law enforcement agency.[787] Stanišić contends that the Trial Chamber failed to consider that the solemn declaration was mandatory for all authorised RS MUP officials, irrespective of ethnicity, and that it was itself non-discriminatory.[788]

225. Second, Stanišić challenges the Trial Chamber's findings relating to the reassignment and the deployment of RS MUP forces. He submits that the Trial Chamber improperly dismissed his

[780] Trial Judgement, vol. 2, para. 740.
[781] Trial Judgement, vol. 2, para. 741.
[782] Trial Judgement, vol. 2, para. 742.
[783] Trial Judgement, vol. 2, para. 743.
[784] Trial Judgement, vol. 2, para. 744.
[785] Stanišić Appeal Brief, paras 261-272.
[786] Stanišić Appeal Brief, para. 261.
[787] Stanišić Appeal Brief, para. 261, referring to Trial Judgement, vol. 2, para. 738.
[788] Stanišić Appeal Brief, para. 261. Stanišić argues that the declaration mandated that duties be executed "in a conscientious manner, to adhere to the Constitution and the Law" (Stanišić Appeal Brief, para. 261, referring to Exhibit P530, Article 41).

statement that the RS MUP was not consulted about the reassignment of police forces and contends that it incorrectly assessed: (i) Stanišić's 15 May 1992 Order which required chiefs of the CSBs and SJBs to organise RS MUP forces into "wartime units"; and (ii) Karadžić's 1 July 1992 Order which instructed Stanišić to transfer 60 specially trained policemen, deployed in Crepoljsko, and place them "under the military command of the SRK".[789] Stanišić asserts that the Trial Chamber failed to take into account that Stanišić's 15 May 1992 Order "was made pursuant to and was required by the Law on All People's Defence".[790] Noting that Karadžić was the "Supreme Commander of the Armed Forces", Stanišić also argues that the Trial Chamber incorrectly referred to Karadžić's communication as a "request" when dismissing this statement – whereas it had previously found that he was "ordered" by Karadžić to transfer the 60 specially trained policemen.[791] Stanišić also disputes the Trial Chamber's finding that he consistently approved the deployment of RS MUP forces to combat activities,[792] and asserts that it failed to consider that the VRS was legally entitled to call up and re-subordinate active or reserve RS MUP members.[793] Stanišić further challenges the Trial Chamber's finding that he only sought to withdraw regular policemen from combat activities towards the end of 1992.[794] He argues that it was "clear" that he consistently raised the effects of re-subordination on the RS MUP's ability to fulfil its duties at least from the beginning of July 1992 to the highest RS authorities.[795] Stanišić further submits that he did not have the ability to withdraw the RS MUP forces re-subordinated to the army for combat activities.[796] Stanišić also submits that the Trial Chamber erroneously interpreted his request of 6 July 1992 to Karadžić that 60 RS MUP members provided to the military be replaced by members of the army due to operational needs ("Stanišić's 6 July 1992 Request") as he had requested the return of 60 RS MUP members so they could perform their duties and tasks, and not their replacement.[797] Stanišić argues that if he had the

[789] Stanišić Appeal Brief, paras 262-263 (emphasis omitted). See Appeal Hearing, 16 Dec 2015, AT. 105-106.
[790] Stanišić Appeal Brief, para. 263, referring to Exhibits L1, Article 207, P1977, p. 2, 1D662, paras 233-245, Milan Trbojević, 3 Dec 2009, T. 4175-4176, Vitomir Žepinić, 1 Feb 2010, T. 5933, Milan Šćekić, 18 Feb 2010, T. 6567-6568, Radomir Njeguš, 8 Jun 2010, T. 11422-11426, Sreto Gajić, 15 Jul 2010, T. 12799-12800, 12849-12850, Mladen Bajagić, 4 May 2011, T. 20182-20184.
[791] Stanišić Appeal Brief, para. 263, referring to Trial Judgement, vol. 2, paras 591, 739.
[792] Stanišić Appeal Brief, para. 269, referring to Trial Judgement, vol. 2, para. 743.
[793] Stanišić Appeal Brief, para. 269, referring to Exhibits L1, Article 104, 1D390, 1D405, 1D406, 1D409, 1D410, 1D411, 1D264, 1D266, 1D267, 1D390, 1D543, 1D468, 1D472, 1D641, 1D723, 1D729, 1D765, 1D800, 2D119, 2D120, P411.13, P1787, P1802, P1813, P1887, Vidosav Kovačević, 14 Sep 2011, T. 23647-23648, 23681, 23684-23685, 23714-23715, 23759, 23806, 23811-23812, 24124-24125, 23719-23720, 24203, Slavko Lisica, 1 Mar 2012, T. 26969-26970.
[794] Stanišić Appeal Brief, para. 269.
[795] Stanišić Appeal Brief, para. 269, referring to Exhibits P160, pp 4, 14-15, P427.8, pp 2, 4-5.
[796] Stanišić Appeal Brief, para. 229, referring to Trial Judgement, vol. 2, para. 320, Vidosav Kovačević, 6 Sep 2011, T. 23720-23723, Vidosav Kovačević, 7 Sep 2011, T. 23739-23740, Vidosav Kovačević, 16 Sep 2011, T. 24316, Exhibits P411.13, P1787, P1802, P1887.
[797] Stanišić Appeal Brief, para. 270, referring to Exhibit 1D100.

authority to withdraw RS MUP members from their re-subordination, it would have been unnecessary to make such requests to the RS hierarchy.[798]

226. Third, Stanišić challenges the Trial Chamber's finding regarding the reliance on RS MUP forces for combat activities and submits that it incorrectly assessed the evidence.[799] Stanišić submits that the Trial Chamber improperly found that he issued orders for police forces to participate in coordinated action with the armed forces.[800] Referring to Stanišić's 15 May 1992 Order, he argues that the use of RS MUP units in coordinated action with the armed forces *may* be ordered by, *inter alios*, the Minister of Interior, and that RS MUP units engaged in such coordinated action "shall be subordinated to the command of the armed forces".[801] Stanišić also submits that the Trial Chamber erred in finding that he facilitated the arming of RS MUP forces.[802] He asserts that, to the contrary, the evidence shows that the Federal Secretariat of Internal Affairs of Serbia ("Federal SUP") had a surplus of uniforms and weapons which were sent to the RS MUP in Pale, and that it ordered the unit of Witness Milorad Davidović ("Witness Davidović") to leave their equipment, among other things, with the RS MUP before returning to Belgrade.[803] He avers that only the weapons of 17 Federal SUP unit members and three all-terrain vehicles were left.[804] Stanišić also argues that it was within the Minister of Interior's purview to seek assistance as the RS MUP was only in the formation phase and the police needed to be equipped.[805] Regarding the Federal SUP's assistance in training a unit, Stanišić argues that this special police unit was engaged in crime prevention and detection and that, on his request, the Federal SUP unit arrived in the RS to assist the RS MUP to fight crime.[806]

227. Fourth, Stanišić submits that the Trial Chamber erred in finding that he received reports on the police forces' involvement in combat activities as there is "nothing conclusive in the evidence" suggesting that the reports he received contained anything other than statistical information.[807]

228. Fifth, Stanišić denies that he sought recognition for RS MUP contributions and achievements in combat activities.[808] To support his argument, Stanišić points to: (i) his statements

[798] Stanišić Appeal Brief, para. 271.
[799] Stanišić Appeal Brief, para. 264.
[800] Stanišić Appeal Brief, para. 265.
[801] Stanišić Appeal Brief, para. 265, referring to Exhibit 1D46, para. 7.
[802] Stanišić Appeal Brief, para. 266.
[803] Stanišić Appeal Brief, para. 266; Stanišić Reply Brief, para. 81.
[804] Stanišić Appeal Brief, para. 266, referring to Exhibit 1D646, p. 2. See Stanišić Reply Brief, para. 81.
[805] Stanišić Reply Brief, para. 81.
[806] Stanišić Appeal Brief, para. 266, referring to Trial Judgement, vol. 2, para. 602, Exhibit 1D646, p. 1; Stanišić Reply Brief, para. 82. Stanišić also contends that his request for assistance cannot be considered as a contribution to the furtherance of crimes (Stanišić Reply Brief, para. 82).
[807] Stanišić Appeal Brief, para. 267, referring to Exhibits 1D571, P158, P169, P621, P669, P731, P1888, P1928. Stanišić gives the example of statistics on the number of police that were re-subordinated to the army (Stanišić Appeal Brief, para. 267).

at a BSA session where he "merely 'noted'" the percentage of RS MUP forces involved in operations;[809] (ii) his statements at the first collegium meeting of senior officials of the RS MUP on 11 July 1992 ("11 July 1992 Collegium"), where he referred to the RS MUP's "immediate cooperation" with the army; and (iii) the thirteenth conclusion of the 11 July 1992 Collegium that the army and the RS MUP would coordinate action on crime prevention.[810]

229. Sixth, Stanišić challenges the Trial Chamber's finding that he directly appointed Witness Todorović, Koroman, Drljača, Witness Bjelošević, Krsto Savić, and Župljanin.[811] He contends that the evidence "clearly shows" that: (i) Witness Todorović was appointed as the Chief of Bosanski Šamac SJB by the Municipal Assembly;[812] (ii) Koroman was appointed as the Chief of Pale SJB by Delimustafić;[813] and (iii) Drljača was appointed as the Chief of the Prijedor SJB by the Prijedor Crisis Staff.[814] Stanišić submits that Delimustafić appointed Witness Bjelošević,[815] Krsto Savić,[816] and Župljanin[817] before the RS MUP was formed and asserts that the Trial Chamber "erroneously omitted" that the appointments he had made were only temporary.[818]

230. The Prosecution responds that all of Stanišić's arguments challenging the Trial Chamber's findings on the role of RS MUP forces in combat activities and takeovers of the municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik and his related acts and conduct should be dismissed.[819]

231. With respect to the Trial Chamber's findings regarding the requirement for all RS MUP employees to sign solemn declarations, the Prosecution submits that it was reasonable for the Trial Chamber to have found that, while a solemn declaration was an "ostensibly legitimate requirement", it was designed to discriminate against non-Serbs.[820] It asserts that the requirement resulted in the dismissal of non-Serbs, which further supports the reasonableness of the impugned

[808] Stanišić Appeal Brief, para. 268.
[809] Stanišić also notes that during this BSA session, he was "sacked" (Stanišić Appeal Brief, para. 268).
[810] Stanišić Appeal Brief, para. 268.
[811] Stanišić Appeal Brief, para. 272.
[812] Stanišić Appeal Brief, para. 272, referring to Exhibits 1D606, pp 9005-9006, 9009-9010, P2159, pp 1611-1612.
[813] Stanišić Appeal Brief, para. 272, referring to Goran Mačar, 12 Jul 2011, T. 23119-23120.
[814] Stanišić Appeal Brief, para. 272, referring to Exhibit P2462, ST161, 19 Nov 2009, T. 3439-3443 (closed session), Tomislav Kovač, 9 Mar 2012, T. 27240-27241, 27251-27252, Goran Mačar, 7 Jul 2011, T. 22977-22978, *Stakić* Trial Judgement, para. 64.
[815] Stanišić Appeal Brief, para. 272, referring to Exhibit P1410.
[816] Stanišić Appeal Brief, para. 272, referring to Exhibit P1414.
[817] Stanišić Appeal Brief, para. 272, referring to Exhibit P1408.
[818] Stanišić Appeal Brief, para. 272, referring to Exhibits P1408, P1410, P1414.
[819] Prosecution Response Brief (Stanišić), paras 120, 123-124, 126, 129, 130-132.
[820] Prosecution Response Brief (Stanišić), para. 121.

finding.[821] The Prosecution submits that Stanišić merely seeks to substitute his evaluation of the evidence for that of the Trial Chamber without showing how it erred.[822]

232. With respect to the Trial Chamber's dismissal of Stanišić's statement that the RS MUP was not consulted about the reassignment of police forces, the Prosecution responds that the Trial Chamber reasonably relied on Stanišić's 15 May 1992 Order and Karadžić's 1 July 1992 Order, and submits that Stanišić's argument should be dismissed as he fails to show an error.[823] It argues that the assertion that Stanišić's 15 May 1992 Order was required by law is not supported on the face of the order, and that Stanišić merely repeats his trial arguments.[824] It also submits that Stanišić fails to show how the Trial Chamber's incorrect labelling of Karadžić's 1 July 1992 Order impacts the Trial Judgement.[825]

233. Regarding Stanišić's arguments disputing that he consistently approved the deployment of RS MUP forces into combat, the Prosecution responds that these arguments should be summarily dismissed as they are undeveloped and fail to articulate an error.[826] It submits that Stanišić's 15 May 1992 Order "envisaged the participation of RS MUP forces in 'coordinated action with the armed forces' upon the authorisation of a MUP official",[827] and that Karadžić's 1 July 1992 Order and Stanišić's 6 July 1992 Request demonstrate Stanišić's involvement in deploying RS MUP forces into combat.[828] The Prosecution submits further that Stanišić's prioritisation of the continued deployment of MUP forces in combat is confirmed by, *inter alia*, the Pale police having participated in an operation in Vrace based on his order,[829] and his comments in July, August, and October 1992 regarding the RS MUP's cooperation with, and assistance to, the army.[830] The Prosecution also responds that Stanišić's arguments concerning the withdrawal of regular policemen from combat towards the end of 1992 should be summarily dismissed as he repeats trial

[821] Prosecution Response Brief (Stanišić), para. 121, referring to Trial Judgement, vol. 1, paras 298, 331, 515, 657, 722, 794, 826, 832, 867.
[822] Prosecution Response Brief (Stanišić), para. 120.
[823] Prosecution Response Brief (Stanišić), para. 126, referring to Trial Judgement, vol. 2, paras 588, 591, 739.
[824] Prosecution Response Brief (Stanišić), para. 126, contrasting Stanišić Appeal Brief, para. 263 with Stanišić Final Trial Brief, paras 205-206.
[825] Prosecution Response Brief (Stanišić), para. 126.
[826] Prosecution Response Brief (Stanišić), para. 129, referring to *Krajišnik* Appeal Judgement, paras 24, 26-27. The Prosecution also responds that Stanišić contradicts his concessions at trial (Prosecution Response Brief (Stanišić), para. 129, contrasting Stanišić Appeal Brief, para. 270 with Stanišić Final Trial Brief, para. 226). The Prosecution also argues that Stanišić repeats his failed trial arguments. (Prosecution Response Brief (Stanišić), para. 129, contrasting Stanišić Appeal Brief, para. 269 with Stanišić Final Trial Brief, para. 208).
[827] Prosecution Response Brief (Stanišić), para. 127, referring to Trial Judgement, vol. 2, para. 588. See Appeal Hearing, 16 Dec 2015, AT. 114.
[828] Prosecution Response Brief (Stanišić), para. 127, referring to Trial Judgement, vol. 2, para. 591.
[829] Prosecution Response Brief (Stanišić), para. 128, fn. 479, referring to Exhibit P1455, p. 3.
[830] Prosecution Response Brief (Stanišić), para. 128, fns 480-484, referring to Exhibits P853, p. 2, P160, p. 14, P427.08, p. 4, P163, p. 3, P737, pp 3, 7, Trial Judgement, vol. 2, para. 592.

arguments and fails to articulate an error.[831] It asserts that the Trial Chamber properly relied on Stanišić's order of 23 October 1992 to "all CSBs and SJBs that all SJBs in municipalities not directly affected by combat activities" to withdraw their active-duty police force members from the frontlines and make the reserve police available for the wartime assignment to the VRS, and to inform military commands that it was not the duty of the CSBs and SJBs to send policemen to the frontline ("Stanišić's 23 October 1992 Order"), which demonstrates Stanišić's authority to control and withdraw the MUP's deployment. It also contends that the evidence Stanišić relies on does not undermine the Trial Chamber's finding.[832]

234. Turning to Stanišić's arguments concerning the RS MUP forces' involvement in combat activities, the Prosecution asserts that they should be dismissed as they challenge the Trial Chamber's interpretation of the evidence and are undeveloped.[833] It also argues that Stanišić's challenges to the Trial Chamber's finding that he facilitated the arming of RS MUP forces should be dismissed as he fails to articulate an error.[834] Regarding the quantity of equipment provided by Witness Davidović's Federal SUP unit, the Prosecution responds that Stanišić fails to show that the Trial Chamber erred. It also contends that Stanišić's argument that he sought this Federal SUP unit's assistance to train the special police unit under his control demonstrates Stanišić's authority.[835]

235. The Prosecution further responds that the Trial Chamber reasonably relied on Stanišić's position to conclude that he received reports concerning the RS MUP forces' involvement in combat, and that Stanišić's argument should be dismissed as he seeks to give his own evaluation of the evidence.[836]

236. With respect to the Trial Chamber's conclusion concerning the recognition Stanišić sought for RS MUP contributions and achievements in combat activities, the Prosecution responds that the Trial Chamber reasonably reached the impugned conclusion.[837] It also submits that Stanišić's argument should be dismissed as he merely challenges the Trial Chamber's interpretation of his

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[831] Prosecution Response Brief (Stanišić), para. 130, contrasting Stanišić Appeal Brief, para. 269 with Stanišić Final Trial Brief, paras 227-228.
[832] Prosecution Response Brief (Stanišić), para. 130, referring to Stanišić Appeal Brief, fn. 371. The Prosecution submits that page 4 of Exhibit P427.08 records Stanišić as having stated that "we had [...] to replenish front-line units where the forces of the Serbian Republic were weaker" and "[a]s early as mid-May we issued a special order on organizing police and other MUP forces into war-time units for the defence of the territory of the Serbian Republic, [...]." The exhibit then records Stanišić saying that "co-operation was immediately achieved with other parts of the Serb defence forces, i.e. with the Army. Even though we were forced into this kind of behaviour, internal affairs organs must continue to help out on the front lines" (Prosecution Response Brief (Stanišić), fn. 494, quoting Exhibit P427.08, p. 4).
[833] Prosecution Response Brief (Stanišić), para. 129.
[834] Prosecution Response Brief (Stanišić), para. 124. See Appeal Hearing, 16 Dec 2015, AT. 114.
[835] Prosecution Response Brief (Stanišić), para. 125.
[836] Prosecution Response Brief (Stanišić), para. 131.
[837] Prosecution Response Brief (Stanišić), para. 132.

comments at the BSA session and does not demonstrate how his comments at the 11 July 1992 Collegium undermine the Trial Chamber's conclusion.[838]

237. Finally, regarding the Trial Chamber's findings that Stanišić was involved in appointing JCE members to the RS MUP, the Prosecution responds that Stanišić repeats his failed trial argument concerning the temporary nature of the appointments and ignores that, on 15 May 1992, he confirmed the appointments of Witness Bjelošević, Krsto Savić, and Župljanin.[839] It also submits that Stanišić ignores evidence showing that he initially appointed Koroman as an inspector within the RS MUP's Sarajevo CSB,[840] and that Župljanin acted on his approval when retroactively appointing Drljača as the Prijedor SJB Chief on 30 July 1992.[841] The Prosecution concedes that the evidence does not establish Stanišić's involvement in Witness Todorović's appointment, but argues that Stanišić fails to show that this error has any impact on the Trial Judgement.[842]

b. Analysis

i. Alleged errors concerning the intent behind the requirement to sign solemn declarations

238. The Trial Chamber found that between April and May 1992, the RS MUP required all of its employees to sign solemn declarations pledging loyalty to the Bosnian Serb authorities and imposed the sanction of dismissal on those who failed or refused to sign.[843] It concluded that "within the context of an ethnically motivated armed conflict, [...] the intent behind the ostensibly legitimate requirement was to provide a pretext to dismiss and disarm non-Serbs from the RS MUP".[844]

239. The Appeals Chamber first notes that the Trial Chamber took into account the fact that requiring persons in governmental employment to sign solemn declarations would not ordinarily merit consideration.[845] The Trial Chamber also took into account several instances where the RS

[838] Prosecution Response Brief (Stanišić), para. 132.
[839] Prosecution Response Brief (Stanišić), para. 122, referring to Trial Judgement, vol. 2, para. 744.
[840] Prosecution Response Brief (Stanišić), para. 123, referring to Trial Judgement, vol. 2, para. 579, Exhibit P1448 (submitting that Stanišić appointed Koroman's subordinate Stjepan Mićić on 1 April 1992 as the Head of the Group for the Prevention and Eradication of General Crime in the Pale SJB).
[841] Prosecution Response Brief (Stanišić), para. 123, referring to Exhibit P2463, Trial Judgement, vol. 2, paras 580, 486. The Prosecution also contends that Župljanin was also acting on Stanišić's approval when retroactively appointing another JCE member, Mirko Vručinić, as the Sanski Most SJB Chief on 13 June 1992. Prosecution Response Brief (Stanišić), para. 123, referring to ST161, 19 Nov 2009, T. 3439-3440 (closed session), Exhibits P366 (confidential), P384 (confidential), Trial Judgement, vol. 2, para. 314.
[842] Prosecution Response Brief (Stanišić), para. 123.
[843] Trial Judgement, vol. 2, para. 738. See Trial Judgement, vol. 1, paras 331, 515, 657, 722, 794, 867; Trial Judgement, vol. 2, paras 44, 378-380, 382-383, 737.
[844] Trial Judgement, vol. 2, para. 738.
[845] Trial Judgement, vol. 2, para. 738.

MUP dismissed employees who failed or refused to sign the solemn declarations[846] and that across RS territory Muslims, Croats, and other non-Serbs were dismissed from their places of employment and disarmed.[847] In the view of the Appeals Chamber, the Trial Chamber reasonably considered the combined effect of the occurrence of these events within the context of an ethnically motivated armed conflict, to infer that the intent behind the ostensibly legitimate requirement to sign solemn declarations was to provide a pretext to dismiss and disarm non-Serbs from the RS MUP.[848] Stanišić does not challenge the findings on the dismissal of RS MUP employees and non-Serbs throughout the RS or the ethnic nature of the conflict in this subground of appeal nor does he address the combined effect of this circumstantial evidence in his submissions. The Appeals Chamber therefore finds that Stanišić has failed to demonstrate that no reasonable trier of fact could have inferred that the only reasonable conclusion was that the intent behind the requirement to sign solemn declarations was to provide a pretext to dismiss and disarm non-Serbs from the RS MUP. Stanišić's arguments in this regard are thus dismissed.

ii. Alleged errors in the Trial Chamber's findings regarding the reassignment of RS MUP forces to the army for combat activities and Stanišić's approval of their redeployment

240. In reaching its conclusions regarding the reassignment and the deployment of RS MUP forces the Trial Chamber considered: (i) Stanišić's 15 May 1992 Order;[849] (ii) that on 15 June 1992, with a view to implementing the mobilisation order in the area of Novo Sarajevo, Stanišić ordered a special police unit to hand over conscripts to the Lukavica barracks;[850] (iii) Karadžić's 1 July 1992 Order;[851] (iv) Stanišić's 6 July 1992 Request;[852] and (v) Stanišić's 23 October 1992 Order.[853]

241. Having considered Stanišić's 15 May 1992 Order that RS MUP forces be organised into wartime units by the chiefs of CSBs and SJBs and "Karadžić's request of 1 July 1992",[854] the Trial Chamber attached little weight to the statement in Stanišić's Interview "that the RS MUP was not consulted with regard to the reassignment of RS MUP forces to the army for combat tasks".[855] It

[846] See Trial Judgement, vol. 1, paras 298, 331, 515, 657, 722, 794, 826, 832, 867; Trial Judgement, vol. 2, paras 379, 383.
[847] Trial Judgement, vol. 2, para. 738. See Trial Judgement, vol. 1, paras 794, 815, 949, 1138, 1204, 1258, 1278, 1428, 1490; Trial Judgement, vol. 2, paras 266, 279, 282, 379.
[848] See Trial Judgement, vol. 2, para. 738.
[849] Trial Judgement, vol. 2, para. 739. See Trial Judgement, vol. 2, paras 58, 330, 588, referring to Exhibit 1D46, pp 1-2.
[850] Trial Judgement, vol. 2, para. 591, referring to Exhibit P1422.
[851] Trial Judgement, vol. 2, para. 591, referring to Exhibit 1D99.
[852] Trial Judgement, vol. 2, para. 591, referring to Drago Borovčanin, 24 Feb 2010, T. 6757-6758, Exhibit 1D100.
[853] Trial Judgement, vol. 2, para. 594, referring to Exhibit 1D49, p. 1.
[854] Trial Judgement, vol. 2, para. 739.
[855] Trial Judgement, vol. 2, para. 739. See Trial Judgement, vol. 2, para. 588, referring to Exhibit P2302, p. 30 ("Stanišić stated that the President did not consult with the MUP but rather with the MOD and army in taking a decision to reassign police forces to combat tasks").

found that Stanišić consistently approved the deployment of RS MUP forces to combat activities along with the other Serb forces, "[d]espite being aware of the commission of crimes by the joint Serb Forces in the Municipalities".[856] The Trial Chamber also found that Stanišić "only sought to withdraw regular policemen from combat activities towards the end of 1992, when most of the territory of RS had been consolidated, while permitting the continued use of reserve forces by the army, primarily for the purpose of guarding prisons and detention camps".[857]

242. The Appeals Chamber first turns to Stanišić's challenge to the Trial Chamber's assessment of his statement that the RS MUP was not consulted about the reassignment of police forces. The Appeals Chamber observes that, before it dismissed this impugned statement, the Trial Chamber considered, in an earlier discussion, that Stanišić's 15 May 1992 Order stated that "MUP units would be re-subordinated to the armed forces and were to act in compliance with military regulations, but would remain 'under the command' of designated Ministry officials".[858] While Stanišić argues that the Trial Chamber failed to take into account that Stanišić's 15 May 1992 Order was in accordance with the Law On All People's Defence,[859] the Appeals Chamber notes that the Trial Chamber expressly referred to testimony that this order "was issued in accordance with the law and that the order was followed in practice".[860] Apart from pointing to the Trial Chamber's purported failure in this regard, Stanišić does not substantiate why the fact that this order was issued in accordance with the law suggests that the RS MUP was not consulted about the reassignment. Thus, Stanišić has not shown how Stanišić's 15 May 1992 Order undermines the Trial Chamber's assessment of the impugned statement. Stanišić's argument is thus dismissed.

243. With respect to Stanišić's challenge to the Trial Chamber's assessment of Karadžić's 1 July 1992 Order,[861] the Appeals Chamber notes that Stanišić does not develop his assertion beyond alleging a contradiction between its description in the Trial Judgement as a request and as an order, and highlighting that Karadžić was the "Supreme Commander of the Armed Forces".[862] The Appeals Chamber therefore dismisses Stanišić's argument that the Trial Chamber incorrectly assessed Karadžić's 1 July 1992 Order as undeveloped and vague. Furthermore, insofar as his argument can be understood to mean that since the "Supreme Commander of the Armed Forces" ordered the re-subordination of the 60 RS MUP police, the RS MUP was obligated to

[856] Trial Judgement, vol. 2, para. 743. See Trial Judgement, vol. 2, paras 766-781.
[857] Trial Judgement, vol. 2, para. 743.
[858] Trial Judgement, vol. 2, para. 588. See Trial Judgement, vol. 2, para. 330.
[859] See *supra*, para. 225.
[860] Trial Judgement, vol. 2, para. 333. See Andrija Bjelošević, 15 Apr 2011, T. 19651-19656.
[861] See *supra*, para. 225.
[862] Stanišić Appeal Brief, para. 263.

follow this order,[863] the Appeals Chamber considers that the mere fact that Karadžić issued an order on the re-subordination of MUP forces does not in itself mean that the RS MUP was not consulted. Without any further support for this assertion, the Appeals Chamber does not find that Karadžić's 1 July 1992 Order undermines the Trial Chamber's assessment of the impugned statement. Having concluded that Stanišić has failed to show that the Trial Chamber erred regarding either Stanišić's 15 May 1992 Order or Karadžić's 1 July 1992 Order, the Appeals Chamber finds that his argument that the Trial Chamber improperly dismissed the impugned statement also fails.

244. In support of his challenge to the Trial Chamber's finding that he consistently approved the deployment of RS MUP forces to combat activities,[864] Stanišić only argues that the VRS was entitled by law to call up and re-subordinate active or reserve RS MUP members. The Appeals Chamber recalls however that contribution to a joint criminal enterprise need not be in and of itself criminal; what is important is whether the accused performs acts that furthered the common criminal purpose.[865] Moreover, the fact that his contribution amounted to no more than his routine duties will not exculpate him.[866] Stanišić has therefore failed to demonstrate that the Trial Chamber erred.

245. Turning to Stanišić's argument on the withdrawal of policemen from combat activities, insofar as it can be interpreted to mean that by alerting the RS authorities in July 1992 of the difficulties arising from re-subordination he sought to withdraw RS MUP forces,[867] Stanišić fails to support his argument. The evidence Stanišić cites shows that the RS MUP had difficulties fulfilling its regular police duties and tasks during combat, but does not contradict the Trial Chamber's conclusion that he only sought to withdraw the regular policemen from combat activities towards the end of 1992.[868] The references in the cited evidence to removing obstacles to enhance the efficiency of internal affairs organs and to exemptions from combat duty except in emergencies[869] are insufficient to demonstrate that the Trial Chamber's conclusion was one that no reasonable trier of fact could have reached. The Appeals Chamber therefore dismisses Stanišić's argument that his attempts to alert RS authorities in July 1992 that re-subordination made it difficult for the RS MUP to fulfil its duties undermines the Trial Chamber's finding that he only sought to withdraw the regular policemen from combat activities towards the end of 1992.

[863] Stanišić Appeal Brief, para. 263.
[864] See *supra*, para. 225.
[865] *Popović et al.* Appeal Judgement, para. 1653; *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696. See *Šainović et al.* Appeal Judgement, paras 1233, 1242. See also *supra*, para. 110.
[866] *Popović et al.* Appeal Judgement, para. 1653, quoting *Blagojević and Jokić* Appeal Judgement, para. 189. See *supra*, para. 154.
[867] See *supra*, para. 225.
[868] Exhibits P160, pp 4, 14-15; P427.08, pp 2, 4-5. See Trial Judgement, vol. 2, para. 743.
[869] Exhibits P160, p. 14; P427.08, p. 4.

246. With respect to Stanišić's argument that he did not have the ability to withdraw personnel who had been re-subordinated to the army to engage in combat activities, the Appeals Chamber notes that Stanišić only cites several pieces of evidence without further developing his argument.[870] Thus, Stanišić has not shown how the alleged lack of his authority to withdraw the re-subordinated RS MUP forces from combat activities undermines the Trial Chamber's findings that he: (i) consistently "approved" the deployment of the RS MUP forces to combat activities despite being aware of the commission of crimes;[871] and (ii) only sought to withdraw regular policemen from combat activities towards the end of 1992, when most of the territory of RS had been consolidated, while "permitting" the continued use of reserve forces by the army, primarily for the purpose of guarding prisons and detention camps.[872] Stanišić's argument thus fails.

247. Regarding the challenge to the Trial Chamber's interpretation of Stanišić's 6 July 1992 Request, the Appeals Chamber finds that Stanišić has failed to show how requesting the return of the 60 RS MUP members so that they could perform their duties and tasks differs substantively from the Trial Chamber's conclusion that he sought to have the 60 RS MUP members replaced by members of the army due to operational needs.[873] Additionally, the Appeals Chamber considers speculative and unsupported Stanišić's assertion that had he possessed the authority to withdraw RS MUP forces from their re-subordination, these requests to the RS hierarchy would be unnecessary. Thus, Stanišić's arguments are dismissed.

248. In light of the above, the Appeals Chamber finds that Stanišić fails to demonstrate that no reasonable trier of fact could have arrived at the Trial Chamber's conclusions regarding the reassignment of RS MUP forces to the army for combat activities.

iii. Alleged errors in the Trial Chamber's findings concerning the reliance by the RS Government and the VRS on RS MUP forces for combat activities and Stanišić's actions for the deployment and arming of the RS MUP

249. The Trial Chamber found that the RS Government, and eventually the VRS, relied to a large extent on the RS MUP forces for combat activities, "along with other armed forces of the territory".[874] It found that Stanišić issued orders for police forces, both regular and reserve units, to participate in "coordinated action with the armed forces" and that he "facilitated the arming of the

[870] See *supra*, para. 225.
[871] Trial Judgement, vol. 2, para. 743.
[872] Trial Judgement, vol. 2, para. 743.
[873] Trial Judgement, vol. 2, para. 591. See Drago Borovčanin, 24 Feb 2010, T. 6758 ("He proposes that they be replaced by regular army troops so that they could continue with their regular police work"); Exhibit 1D100 ("[I]t is necessary to exchange these police members with members of the Serbian army so that the police members may perform the above described duties and tasks").

RS MUP forces by seeking – and receiving – the assistance of the Federal SUP of Serbia for supplying equipment, weapons, and training for a special unit under his direct control at the Ministry level".[875]

250. The only evidence that Stanišić relies on to support his challenge to the Trial Chamber's findings concerning his orders for the police forces' participation in coordinated action with the armed forces is Stanišić's 15 May 1992 Order,[876] which in relevant part reads:

> [t]he use of the Ministry units in coordinated action with the armed forces of the Serbian Republic of BH may be ordered by the [M]inister of the [I]nterior, commander of the police detachment of the Ministry [...] and chief of the CSB of the Ministry [...].
>
> [...]
>
> While participating in combat operations, the units of the Ministry shall be subordinated to the command of the armed forces; however, the Ministry units shall be under the direct command of certain Ministry officials.[877]

251. The Appeals Chamber first observes that the use of the word "may" does not negate the Minister of Interior's authority to order the use of RS MUP units "in coordinated action with the armed forces" of the RS. The Appeals Chamber also notes that while pursuant to Stanišić's 15 May 1992 Order, MUP forces were subordinated to the command of the armed forces while participating in combat, the order explicitly provided that these units remained under the direct command of MUP officials.[878] In light of the foregoing, Stanišić has failed to demonstrate how the cited provisions from Stanišić's 15 May 1992 Order undermine the Trial Chamber's finding that he issued orders for the police forces to participate in coordinated action with the armed forces or, ultimately, the Trial Chamber's finding that "[t]he RS Government, and eventually the VRS, relied to a large extent on the RS MUP forces for combat activities, along with other armed forces of the territory."[879] Stanišić's argument is thus dismissed.

252. The Appeals Chamber now turns to the question of whether the Trial Chamber erred in finding that Stanišić facilitated the arming of the RS MUP forces by seeking support from the Federal SUP of Serbia.[880] The Appeals Chamber notes that in reaching this conclusion,[881] the Trial Chamber considered the evidence of Witness Davidović, former Federal SUP inspector, that: (i) the Federal SUP shipped a surplus of uniforms and "high quality weapons" for approximately 500 men

[874] Trial Judgement, vol. 2, para. 740.
[875] Trial Judgement, vol. 2, para. 740.
[876] See *supra*, para. 226.
[877] Exhibit 1D46, para. 7.
[878] Exhibit 1D46, para. 7.
[879] Trial Judgement, vol. 2, para. 740.
[880] See *supra*, para. 226.
[881] Trial Judgement, vol. 2, para. 587, referring to Exhibit P541, p. 2.

to the RS MUP in Pale under the control of Stanišić and Witness Momčilo Mandić ("Witness Mandić"); and (ii) Petar Gračanin, of the Federal SUP in Belgrade, ordered Witness Davidović's unit to leave all of their weapons, ammunition, equipment, and vehicles with the new RS MUP special police unit headed by Karišik before returning to Belgrade,[882] as well as the evidence on the agreement between the Federal SUP and the RS MUP.[883] The Appeals Chamber also notes that the relevant part of Exhibit 1D646, to which Stanišić refers, reads: "[t]he Federal Secretary accepted the request from the SR BH MUP and sent a group of 17 members of the SSUP unit with the necessary weapons and three all-terrain vehicles to the Bijeljina CSB [...] on 27 June 1992."[884]

253. Insofar as Stanišić argues that the Federal SUP had a surplus of uniforms and weapons which it left behind, and that only the weapons of 17 Federal SUP unit members and three all-terrain vehicles were left,[885] the Appeals Chamber considers that Stanišić fails to show how the quantity of weapons and equipment supplied, even if limited,[886] undermines the Trial Chamber's finding that by seeking and receiving assistance from the Federal SUP of Serbia, he facilitated the arming of the RS MUP forces. Furthermore, as far as Stanišić implies that the uniforms and equipments supplied were not requested but were given as they were surplus items, the Appeals Chamber finds that he fails to support or develop this assertion. For reasons given earlier, the Appeals Chamber also finds no merit in Stanišić's contention that it was within the Minister of Interior's purview to seek assistance as the RS MUP was in formation phase and equipment was needed.[887] The Appeals Chamber reiterates that participation in a joint criminal enterprise that amounts to no more than his or her "routine duties" will not exculpate the accused.[888] Therefore, whether or not it was within Stanišić's purview or his legal obligation to seek assistance does not demonstrate that the Trial Chamber erred.

254. With respect to Stanišić's arguments that the special police unit – trained with the assistance of the Federal SUP of Serbia and under his command – was engaged in crime prevention and detection,[889] the Trial Chamber noted Witness Davidović's testimony that, as a member of the Federal SUP, he assisted in forming and training Stanišić's own RS MUP special police unit – composed of approximately 170 members and led by Karišik – in Vrace at the beginning of

[882] Trial Judgement, vol. 2, para. 587.
[883] Exhibit P541, p. 2 ("According to the agreement with the Serbian SSUP and the Serbian MUP, we should request the equipment they can give us").
[884] Exhibit 1D646, pp 1-2.
[885] See *supra*, para. 226.
[886] See Exhibit P1557.01, para. 39 (evidence that uniforms, flak jackets, and high quality weapons for approximately 500 men was delivered to a football field in Pale).
[887] See *supra*, para. 244.
[888] *Popović et al.* Appeal Judgement, para. 1653, quoting *Blagojević and Jokić* Appeal Judgement, para. 189. See *supra*, para. 154.
[889] See *supra*, para. 226.

April 1992.[890] It also noted Witness Planojević's testimony that Stanišić had the authority to decide on the use of these special units, and that he had to ask Stanišić to use the special police unit led by Karišik in crime prevention and detection – a request Stanišić approved without further query.[891] The Appeals Chamber does not find that either the type of engagement undertaken by the special police unit or Stanišić's assertion that the unit arrived at his request undermines the Trial Chamber's finding that, by seeking and receiving assistance from the Federal SUP of Serbia for the training of a special police unit under his direct control, Stanišić facilitated the arming of the RS MUP forces. The Appeals Chamber therefore finds no merit in Stanišić's argument.

255. In light of the above, the Appeals Chamber concludes that Stanišić has failed to demonstrate that the Trial Chamber erred in finding that: (i) he issued orders for police forces to participate in coordinated action with the armed forces; (ii) he facilitated the arming of the RS MUP forces by seeking the Federal SUP of Serbia's support; and (iii) the RS Government and the VRS relied on RS MUP forces for combat activities.

iv. Alleged errors in the Trial Chamber's findings that Stanišić received reports on the involvement of police forces in combat activities

256. The Trial Chamber found that Stanišić issued an order on 16 May 1992 directing "all five CSBs to send daily fax reports on combat activities, terrorist activities, implementation of tasks under the LIA, and war crimes and other serious crimes committed against Serbs" ("Stanišić's 16 May 1992 Order").[892] It also found that "[a]s the highest commander of the RS MUP forces and the administrative head of the organs of the RS MUP, Stanišić received reports of the involvement of the police forces in combat activities."[893]

257. The Appeals Chamber notes that Stanišić's 16 May 1992 Order directed the CSBs to send daily fax reports on combat activities,[894] and that these daily reports were to be submitted to the RS MUP with one of their purposes being to monitor combat operations.[895] With respect to combat activities, Stanišić's 16 May 1992 Order required the reports to contain information on: (i) the type, duration, and location of combat operations; (ii) coordination with "the Serbian Army"; (iii) movement of Serb forces to new positions; (iv) any RS MUP losses; (v) assessments or exact information on the opposing side's losses; and (vi) other important observations regarding combat

[890] Trial Judgement, vol. 2, para. 601, referring to, *inter alia*, Milorad Davidović, 23 Aug 2010, T. 13532-13533; Exhibit P1557.01, p. 12.
[891] Trial Judgement, vol. 2, para. 602.
[892] Trial Judgement, vol. 2, para. 723. See Exhibit P173, p. 1.
[893] Trial Judgement, vol. 2, para. 741.
[894] Trial Judgement, vol. 2, para. 723.
[895] Exhibit P173, p. 1.

activities.[896] Furthermore, the Trial Chamber noted the requirement that reports had to be as broad and detailed as possible.[897] Considering Stanišić's position as the RS MUP forces' highest commander and the RS MUP organs' administrative head, as well as Stanišić's 16 May 1992 Order, the Appeals Chamber does not find Stanišić's argument[898] convincing. The Appeals Chamber therefore finds that Stanišić has failed to demonstrate that no reasonable trier of fact could have concluded that he received reports of the involvement of the police forces in combat activities.

v. Alleged errors concerning the Trial Chamber's finding that Stanišić sought recognition for the contributions and achievements of the RS MUP in combat activities

258. The Trial Chamber relied on "the evidence of Stanišić seeking recognition from other Bosnian Serb leaders for the contributions and achievements of the RS MUP in combat activities" to support its finding that he "deployed the police in furtherance of the decisions of the Bosnian Serb authorities, of which his Ministry was considered an instrumental organ".[899] In this regard, the Trial Chamber considered that at the November 1992 BSA Session, Stanišić "noted that '50% of the daily number of police officers' took part in combat and 'fought and defended' the territories 'to create a legal state to at least some degree'".[900] It also noted that Stanišić opened the 11 July 1992 Collegium with remarks concerning the political and security situation in RS,[901] and remarked on the "immediate cooperation" RS MUP forces had provided to the army.[902] He added that, in order to establish full constitutionality and legality, it was decided not only to prevent criminal activities committed by citizens but also those committed by soldiers, army officers, active duty and reserve police, and members of the internal affairs organs and their officers.[903]

259. In light of these findings of the Trial Chamber, the Appeals Chamber does not find persuasive Stanišić's argument that he merely "noted"[904] the percentage of the RS MUP forces involved in military operations. Furthermore, Stanišić does not show the relevance of the fact that a conclusion from the 11 July 1992 Collegium was similar to his own comment. The Appeals Chamber is satisfied that Stanišić has failed to demonstrate an error on the part of the Trial Chamber in considering that he sought recognition for the RS MUP contributions and achievements in combat activities. In the view of the Appeals Chamber, Stanišić merely disagrees with the Trial

[896] Exhibit P173, p. 1.
[897] Trial Judgement, vol. 2, para. 723.
[898] See *supra*, para. 227.
[899] Trial Judgement, vol. 2, para. 742.
[900] Trial Judgement, vol. 2, para. 595, referring to Exhibit P400, pp 16-17.
[901] Trial Judgement, vol. 2, para. 630, referring to Andrija Bjelošević, 15 Apr 2011, T. 19703-19705, Exhibits 1D476, P160, pp 15-16.
[902] Trial Judgement, vol. 2, para. 630, referring to Exhibit P160, pp 14-15.
[903] Trial Judgement, vol. 2, para. 630, referring to Exhibit P160, pp 14-15.
[904] See *supra*, para. 228.

Chamber's evaluation of the evidence and offers his own interpretation without demonstrating that no reasonable trier of fact could have reached the same conclusion. Stanišić's argument is therefore dismissed.

vi. Alleged errors concerning the appointment of JCE members to the RS MUP

260. The Trial Chamber found that JCE members Witness Todorović, Koroman, Drljača, Witness Bjelošević, Krsto Savić, and Župljanin were "directly appointed by Stanišić" to their posts as SJB or CSB chiefs.[905] It found that: (i) on 6 May 1991, Delimustafić appointed Župljanin as the Chief of the Banja Luka CSB;[906] (ii) on 1 April 1992, Stanišić issued decisions "temporarily appointing" Koroman as the Inspector at the Sarajevo CSB,[907] Witness Bjelošević as the Chief of the Doboj CSB,[908] Krsto Savić as the Chief of the Trebinje CSB,[909] and Župljanin as the Chief of the Banja Luka CSB;[910] and (iii) on 15 May 1992, Stanišić issued a series of orders confirming the appointments of Witness Bjelošević, Krsto Savić, and Župljanin.[911] With respect to Witness Todorović, the Trial Chamber found that, in a 25 November 1992 letter sent to Stanišić, Witness Bjelošević proposed replacing Witness Todorović, Chief of the Bosanski Šamac SJB, due to "frequent and grave violations of duty".[912] It also referred to Witness Bjelošević's statement in this letter that Witness Todorović had never received an official letter of appointment to his post.[913]

261. With respect to Stanišić's argument on Koroman's appointment,[914] the Appeals Chamber notes evidence that Delimustafić had appointed Koroman as the Chief of Pale SJB in 1991.[915] Given Stanišić's 1 April 1992 decision appointing Koroman as Inspector at the Sarajevo CSB, the Appeals Chamber is not persuaded that Delimustafić's involvement in Koroman's earlier

[905] Trial Judgement, vol. 2, para. 744.
[906] Trial Judgement, vol. 2, para. 349, referring to ST213, 4 Mar 2010, T. 7204 (private session), Exhibit P2043.
[907] Trial Judgement, vol. 2, para. 579, referring to Exhibit P1416. The Appeals Chamber notes that the Trial Chamber also found that Koroman was appointed Chief of the Pale SJB by Stanišić on 1 April 1992 (Trial Judgement, vol. 2, para. 700, referring to Tomislav Kovač, 9 Mar 2012, T. 27224, Exhibit P1416). However, the evidence referred to by the Trial Chamber does not support this conclusion as Exhibit P1416 states that Koroman was appointed Inspector at the Sarajevo CSB by Stanišić on 1 April 1992 while the testimony of Witness Kovač is that Koroman: (i) was the Chief of the Pale SJB, pursuant to a decision issued by the minister, Delimustafić, in 1991; and (ii) was appointed Inspector at the Sarajevo CSB in April 1992 (Tomislav Kovač, 9 Mar 2012, T. 27220-27221, 27224-27225).
[908] Trial Judgement, vol. 2, para. 579, referring to Exhibit P1410.
[909] Trial Judgement, vol. 2, para. 579, referring to Exhibit P1414.
[910] Trial Judgement, vol. 2, para. 579, referring to Exhibit P1408.
[911] Trial Judgement, vol. 2, para. 579, referring to Christian Nielsen, 14 Dec 2009, T. 4752, Andrija Bjelošević, 20 May 2011, T. 21072-21073, Exhibits P455, P458, P170.
[912] Trial Judgement, vol. 2, para. 699, referring to Tomislav Kovač, 9 Mar 2012, T. 27220, Exhibit P2086.
[913] Trial Judgement, vol. 2, para. 699, referring to Exhibit P2086.
[914] See *supra*, para. 229.
[915] Tomislav Kovač, 9 Mar 2012, T. 27220-27221, 27224-27225. See *supra*, fn. 902.

appointment undermines the Trial Chamber's finding that Koroman was "directly appointed by Stanišić"[916] as Inspector at the Sarajevo CSB.

262. Regarding Drljača's appointment, the Appeals Chamber notes that the Trial Chamber found that he was originally appointed as the Chief of the Prijedor SJB by the Prijedor Crisis Staff,[917] and that on 30 July 1992 Župljanin formally appointed him, with retroactive effect as of 29 April 1992.[918] It found that Drljača's appointment was in accordance with Stanišić's 25 April 1992 Decision, which gave Župljanin the power to appoint SJB chiefs provided he had Stanišić's prior agreement.[919] The Trial Chamber also found that Drljača was directly subordinated to Župljanin "who in turn was directly subordinated to Stanišić as the Minister of RS MUP who exercised overall command and control of the Ministry".[920] Given Župljanin's 30 July 1992 decision and Stanišić's 25 April 1992 Decision, the Appeals Chamber is not persuaded that the Prijedor Crisis Staff's involvement in Drljača's earlier appointment undermines the Trial Chamber's finding that Stanišić appointed Drljača. Furthermore, although it would have been more accurate for the Trial Chamber to have found that Stanišić authorised Drljača's appointment, as Stanišić was involved in the appointment, the Appeals Chamber is satisfied that a reasonable trier of fact could have made the impugned finding.[921]

263. Before addressing the merits of Stanišić's challenges to the Trial Chamber's findings regarding the appointments of Witness Bjelošević, Krsto Savić, and Župljanin,[922] the Appeals Chamber notes that the Trial Chamber refers to the named individuals as "JCE members"[923] but did not find that Krsto Savić was a member of the JCE.[924] The Appeals Chamber also notes that Ljubiša Savić, who the Trial Chamber specified also went by the name of "Mauzer", was found to have been a JCE member.[925] The Appeals Chamber considers that Krsto Savić's inclusion in the list of JCE members was an inadvertent error as the Trial Chamber had not previously made an explicit finding that he was indeed a member. The impact of this error, if any, will be considered below.

[916] Trial Judgement, vol. 2, para. 744.
[917] Trial Judgement, vol. 2, para. 856. See Trial Judgement, vol. 2, para. 350.
[918] Trial Judgement, vol. 2, para. 486, referring to Exhibit P2463. See Trial Judgement, vol. 1, para. 507, referring to Tomislav Kovač, 8 Mar 2012, T. 27184-27186, Exhibit P2463. See also Trial Judgement, vol. 2, paras 791, 856.
[919] Trial Judgement, vol. 2, para. 791. See Trial Judgement, vol. 1, para. 507; Trial Judgement, vol. 2, para. 356, referring to Exhibit 1D73.
[920] Trial Judgement, vol. 2, para. 791.
[921] See *supra*, para. 260.
[922] See *supra*, para. 229.
[923] Trial Judgement, vol. 2, para. 744.
[924] Trial Judgement, vol. 2, para. 314.
[925] Trial Judgement, vol. 2, para. 314.

264. Turning to the merits of Stanišić's challenges to the Trial Chamber's findings regarding the appointments of Witness Bjelošević, Krsto Savić, and Župljanin,[926] the Appeals Chamber notes that the Trial Chamber found that Stanišić issued decisions "temporarily appointing" Witness Bjelošević, Krsto Savić, and Župljanin on 1 April 1992,[927] and that on 15 May 1992 he issued a series of orders confirming their appointments.[928] It is clear from the Trial Judgement that the Trial Chamber considered that the appointments were temporary but that this did not prevent it from arriving at its finding.[929] The Appeals Chamber therefore finds no merit in Stanišić's argument that the Trial Chamber "erroneously omitted" that the appointments he had made were only temporary. With respect to Stanišić's argument that Delimustafić appointed Witness Bjelošević, Krsto Savić, and Župljanin before the RS MUP was formed, the Appeals Chamber recalls the Trial Chamber's finding that Delimustafić appointed Župljanin as the Chief of the Banja Luka CSB on 6 May 1991,[930] but it did not enter similar findings with respect to any other CSB chiefs.[931] Neither the evidence that Stanišić cites, nor the Trial Judgement, identifies who appointed Witness Bjelošević and Krsto Savić prior to their 1 April 1992 appointment.[932] Nevertheless, even if Delimustafić had previously appointed Witness Bjelošević and Krsto Savić, given the decisions Stanišić issued on 1 April 1992 appointing Witness Bjelošević, Krsto Savić, and Župljanin, the Appeals Chamber is not persuaded that Delimustafić's involvement in prior appointments undermines the Trial Chamber's finding that they were "directly appointed by Stanišić".[933] Accordingly, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred.

265. With respect to Stanišić's argument on Witness Todorović's appointment,[934] the Appeals Chamber notes that the Trial Chamber did not cite any evidence to support its finding that Witness Todorović was "directly appointed by Stanišić"[935] – and in fact referred to evidence that Witness Todorović never received an official letter of appointment.[936] In light of the above, having reviewed the evidence to which Stanišić refers,[937] and noting the Prosecution's submissions,[938] the Appeals

[926] See *supra*, para. 229.
[927] Trial Judgement, vol. 2, para. 579, referring to Exhibits P1410, P1414, P1408.
[928] Trial Judgement, vol. 2, para. 579, referring to Christian Nielsen, 14 Dec 2009, T. 4752, Andrija Bjelošević, 20 May 2011, T. 21072-21073, Exhibits P455, P458, P170.
[929] See *Popović et al.* Appeal Judgement, para. 1257. See also *Haradinaj et al.* Appeal Judgement, para. 129; *Krajišnik* Appeal Judgement, para. 353; *Kvočka et al.* Appeal Judgement, para. 23.
[930] Trial Judgement, vol. 2, para. 349, referring to ST213, 4 Mar 2010, T. 7204 (private session), Exhibit P2043.
[931] See *supra*, para. 195.
[932] Stanišić Appeal Brief, para. 272, referring to Exhibits P1410, P1414.
[933] See Trial Judgement, vol. 2, para. 744. See *supra*, para. 195.
[934] See *supra*, para. 229.
[935] Trial Judgement, vol. 2, para. 744.
[936] Trial Judgement, vol. 2, para. 699.
[937] ST121, 24 Nov 2009, T. 3728, 3731; ST121, 25 Nov 2009, T. 3806 (private session); Exhibits 1D606, pp 9005-9006, 9009-9010, P2159, pp 1611-1612.
[938] See *supra*, para. 237.

Chamber considers that the Trial Chamber erred in finding that Witness Todorović was directly appointed by Stanišić. The impact of this error, if any, will be considered below.

266. The Appeals Chamber recalls that in the impugned finding, the Trial Chamber identified six individuals who it indicated were found to be JCE members and who "were directly appointed by Stanišić and [...] used the police force as physical perpetrators to implement the common plan".[939] The Appeals Chamber has found that the Trial Chamber's finding that Witness Todorović was directly appointed by Stanišić was erroneous,[940] and that although the Trial Chamber found that Krsto Savić was directly appointed by Stanišić, it did not find that he was a JCE member.[941] Therefore, the Trial Chamber erred in considering the appointments of Witness Todorović and Krsto Savić as evidence of Stanišić's direct appointments of JCE members to the RS MUP. However, Stanišić has failed to show that the Trial Chamber's conclusion that he appointed JCE members to the RS MUP would not stand on the basis of the Trial Chamber's findings on his involvement in the appointments of Koroman, Drljača, Witness Bjelošević, and Župljanin – which the Appeals Chamber has confirmed.

267. In light of the errors identified above with regard to the appointments of Witness Todorović and Krsto Savić,[942] the Appeals Chamber will consider the Trial Chamber's findings on Stanišić's direct appointments of JCE members to the RS MUP with the exception of the appointments of these two individuals, when assessing whether a reasonable trier of fact could have concluded beyond reasonable doubt that Stanišić's relevant acts and conduct significantly contributed to the JCE.[943]

c. Conclusion

268. Based on the foregoing, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in its conclusions regarding the RS MUP forces' role in combat activities and in the takeovers of the municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik as well as his actions in this regard, with the exception

[939] Trial Judgement, vol. 2, para. 744.
[940] See *supra*, para. 265.
[941] See *supra*, para. 263. See also *supra*. para. 260.
[942] See *supra*, paras 263, 265-266.
[943] See *infra*, paras 356-364.

of the appointments of Witness Todorović and Krsto Savić,[944] the impact of which will further be assessed below.[945]

(iii) Alleged errors in relation to Stanišić's role in preventing, investigating, and documenting crimes (Stanišić's fifth ground of appeal in part and subsection (B)(iii) of Stanišić's sixth ground of appeal)

269. In its discussion on Stanišić's role in preventing, investigating, and documenting crimes,[946] the Trial Chamber found that: (i) the police and civilian prosecutors failed to function in an impartial manner;[947] (ii) Stanišić's orders of 8, 10, 17, and 24 August 1992 – instructing all CSB and SJB chiefs to obtain information concerning the treatment of detainees and requiring CSB chiefs to initiate criminal reports against perpetrators of crimes – were prompted by international attention;[948] (iii) Stanišić had the authority to take measures against crimes and failed to do so sufficiently;[949] (iv) Stanišić's actions against paramilitaries were only undertaken due to their refusal to submit to the command of the army and their commission of crimes against Serbs;[950] and (v) Stanišić focused primarily on crimes committed against Serbs.[951] Taking into account, *inter alia*, these factors, the Trial Chamber concluded that, despite his knowledge of the crimes that were being committed, Stanišić "took insufficient action to put an end to them and instead permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb Forces involved in the commission of crimes, particularly the JNA/VRS and the TO".[952]

270. Stanišić challenges the Trial Chamber's above findings on his role in preventing, investigating, and documenting crimes committed by Serb perpetrators against non-Serbs.[953] The Prosecution responds that the Trial Chamber reasonably concluded that Stanišić took insufficient action to protect non-Serbs, considering his ability and failure to punish his subordinates for their crimes against non-Serbs and that Stanišić's arguments should be dismissed.[954] The Appeals Chamber will address Stanišić's challenges in turn.

[944] See *supra*, paras 263, 265-266.
[945] See *infra*, paras 356-364. See also *supra*, para. 267.
[946] Trial Judgement, vol. 2, paras 745-759.
[947] Trial Judgement, vol. 2, para. 745.
[948] Trial Judgement, vol. 2, paras 752-753.
[949] Trial Judgement, vol. 2, paras 754-757.
[950] Trial Judgement, vol. 2, para. 756.
[951] Trial Judgement, vol. 2, para. 758.
[952] Trial Judgement, vol. 2, para. 759.
[953] Stanišić Appeal Brief, paras 273-288.
[954] Prosecution Response Brief (Stanišić), paras 65, 68-84, 133-149.

a. Preliminary matter

271. Before turning to Stanišić's challenges, the Appeals Chamber will address a preliminary matter.

272. In challenging the Trial Chamber's analysis on his role in preventing, investigating, and documenting crimes, Stanišić also disputes its finding, on the basis of an intercepted conversation between himself and Witness Kovač on 21 June 1992 ("21 June 1992 Intercept"), that he "specifically directed that numbers on losses suffered by the Serb side be inflated in order to create a record".[955] He submits that the Trial Chamber's finding is not supported by any reasonable interpretation of the 21 June 1992 Intercept.[956] In his view, a "correct interpretation" of the underlying evidence would undermine any notion that he contributed to the JCE and that he had the "*mens rea*" to commit discriminatory crimes.[957] However, the Appeals Chamber observes that, contrary to Stanišić's assertion, the Trial Chamber did not rely on this factual finding to establish his contribution to the JCE or his intent for joint criminal enterprise liability. His arguments are thus dismissed.

b. Alleged errors in the Trial Chamber's finding that the police and civilian prosecutors failed to function in an impartial manner

273. The Trial Chamber found that the civilian law enforcement apparatus failed to function in an impartial manner and that between April and December 1992, the police and civilian prosecutors either did not report or under-reported "the vast number of serious crimes committed by Serb perpetrators against non-Serbs".[958] Ultimately, the Trial Chamber concluded that "the discriminatory failure to properly investigate crimes against non-Serbs contributed to the prevailing culture of impunity and thereby facilitated the perpetration of further crimes committed in furtherance of the common objective".[959]

274. The Trial Chamber found in particular that:

> [i]n the municipalities of Bileća, Ilijaš, Gacko, Višegrad, Pale, Vlasenica, Vogošća, and Bosanski Šamac, no serious crimes alleged to have been committed by Serbs against non-Serbs during the Indictment period were reported to the prosecutor's offices. In addition, one crime was reported in each of the following municipalities: Doboj, Kotor Varoš, Prijedor, and Ključ. Approximately two were reported in Zvornik, nine in Teslić, four in Sanski Most, three in Brčko, and four in Bijeljina. Based on the review of the Banja Luka Basic Prosecutor's office, there were a total of 21 serious

[955] Stanišić Appeal Brief, para. 274, referring to Trial Judgement, vol. 2, para. 724.
[956] Stanišić Appeal Brief, para. 274, *contra* Prosecution Response Brief (Stanišić), para. 139.
[957] Stanišić Appeal Brief, para. 274, *contra* Prosecution Response Brief (Stanišić), para. 139.
[958] Trial Judgement, vol. 2, para. 745. See Trial Judgement, vol. 2, paras 90, 104, referring to Staka Gojković, 15 Jun 2010, T. 11752.
[959] Trial Judgement, vol. 2, para. 745.

> crimes by Serb perpetrators committed against non-Serb victims reported in Banja Luka, Skender Vakuf, and Donji Vakuf between 1 April and 31 December 1992.[960]

The Trial Chamber reached this conclusion after considering the evidence of Witness Staka Gojković ("Witness Gojković") – a judge of the Basic Court in Sarajevo between 20 June and 19 December 1992 – and Witness Slobodanka Gaćinović ("Witness Gaćinović") – Higher Prosecutor for Trebinje from August 1992 – and relying upon information contained in the "logbooks from 1992 to 1995 in relation to crimes that occurred during the Indictment period".[961]

i. Submissions of the parties

275. Stanišić challenges the Trial Chamber's finding that the police and civilian prosecutors failed to function in an impartial manner.[962] He submits that the Trial Chamber improperly relied on the evidence of Witness Gaćinović concerning the 1992 logbooks of the Basic Public Prosecutor's Offices in Sarajevo, Sokolac, Vlasenica, and Višegrad including criminal offences against *known* and *unknown* perpetrators ("KT Logbooks" and "KTN Logbooks", respectively),[963] despite noting that in reviewing the KTN Logbooks and the KT Logbooks, the witness adopted a methodology which "could obfuscate the data".[964] Stanišić also contends that the Trial Chamber disregarded Witness Gaćinović's evidence "about the number of criminal complaints for serious crimes committed against Muslims and Croats by unknown perpetrators".[965] He submits further that in analysing the reporting of crimes during the Indictment period, the Trial Chamber erred by relying solely on information contained in the police registers of criminal cases reported to and investigated by the police in the RS in 1992 ("KU Registers").[966] He argues that, according to Witness Gojko Vasić ("Witness Vasić"), a crime investigator at Laktaši SJB in 1992, in order to get a complete picture of the reporting of crimes it would be necessary to also consider the police logbook of daily events and the register of on-site investigations.[967]

276. The Prosecution responds that Stanišić's arguments with respect to Witness Gaćinović should be summarily dismissed because he fails to articulate an error[968] and mischaracterises the Trial Chamber's findings regarding that witness.[969] The Prosecution also submits that Stanišić's

[960] Trial Judgement, vol. 2, para. 94 (citations omitted).
[961] Trial Judgement, vol. 2, para. 93. See Trial Judgement, vol. 2, paras 90-92.
[962] Stanišić Appeal Brief, para. 273, referring to Trial Judgement, vol. 2, para. 745.
[963] See Trial Judgement, vol. 2, para. 90.
[964] Stanišić Appeal Brief, para. 273, referring to Trial Judgement, vol. 2, fn. 313.
[965] Stanišić Appeal Brief, para. 273, referring to Trial Judgement, vol. 2, fn. 320, Exhibit P1609.01, p. 18.
[966] Stanišić Appeal Brief, para. 273, referring to Trial Judgement, vol. 2, para. 93.
[967] Stanišić Appeal Brief, para. 273, referring to Gojko Vasić, 25 Aug 2010, T. 13678-13679, Gojko Vasić, 26 Aug 2010, T. 13730.
[968] Prosecution Response Brief (Stanišić), para. 141, referring to *Krajišnik* Appeal Judgement, paras 19, 26.
[969] Prosecution Response Brief (Stanišić), para. 141, referring to Stanišić Appeal Brief, para. 273, Trial Judgement, vol. 2, fn. 313. The Prosecution contends further the Trial Chamber did not "disregard" the evidence of Witness

argument based on the KU Registers should be summarily dismissed, as Stanišić misrepresents the basis of the Trial Chamber's finding and seeks to substitute his evaluation of the evidence for that of the Trial Chamber without showing an error.[970] It argues that, in light of Witness Vasić's evidence, it was not wrong for the Trial Chamber to rely on the KU Registers.[971]

ii. Analysis

277. With regard to Stanišić's argument that the Trial Chamber improperly relied on the evidence of Witness Gaćinović despite noting that the witness adopted a methodology which could obfuscate the data,[972] the Appeals Chamber observes that the Trial Chamber indeed acknowledged that this witness "did not focus on transfers from [the] KTN [Log]books to [the] KT [Log]books when the suspect was finally identified" and that this "could mean a crime was listed twice and which could obfuscate the data".[973] However, the Trial Chamber reached its conclusion that between April and December 1992, the police and civilian prosecutors failed to report or under-reported serious crimes committed by Serb perpetrators against non-Serbs after having analysed itself the KTN Logbooks, the KT Logbooks, and the evidence of Witness Gojković and Witness Gaćinović in light of the methodology used.[974] The Appeals Chamber therefore finds that Stanišić merely asserts that the Trial Chamber failed to interpret the evidence in a particular manner without showing any error in its approach.

278. Insofar as Stanišić argues that the Trial Chamber disregarded Witness Gaćinović's evidence regarding the number of criminal complaints for serious crimes against Muslims and Croats *by unknown perpetrators*,[975] the Appeals Chamber notes that the Trial Chamber in fact explicitly took this evidence into account in concluding on the number of crimes committed *by Serbs perpetrators* against non-Serbs that had been reported to the prosecutor's offices during the Indictment period.[976] Moreover, the Appeals Chamber observes that the portion of Witness Gaćinović's evidence concerning crimes committed against non-Serbs by *unknown perpetrators* is irrelevant to the Trial

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Gaćinović as the "15 entries concerning crimes against non-Serbs by unknown perpetrators" referred to in her evidence do not undermine the Trial Chamber's finding that the vast number of serious crimes against non-Serbs went unreported across the Municipalities (Prosecution Response Brief (Stanišić), para. 141, referring to Exhibit P1609.1, para. 113, Trial Judgement, vol. 2, para. 745). The Prosecution further argues that Stanišić ignores Witness Gaćinović's evidence that neither the KT Logbooks nor the KTN Logbooks contained entries that corresponded to the 15 entries in the Ključ KTA Logbook, which led Witness Gaćinović to conclude that, between 1992 and 1995, the police had not filed criminal reports with the civilian prosecutor's office in relation to these incidents (Prosecution Response Brief (Stanišić), paras 113, 141 (referring to Exhibit P1609.1)).

[970] Prosecution Response Brief (Stanišić), para. 141, referring to *Krajišnik* Appeal Judgement, paras 18, 27.

[971] Prosecution Response Brief (Stanišić), para. 141, referring to Exhibit P1558.02, para. 2(c) (confidential).

[972] See *supra*, para. 275.

[973] Trial Judgement, vol. 2, fn. 313.

[974] Trial Judgement, vol. 2, paras 90-94, 104.

[975] See *supra*, para. 275.

Chamber's conclusion that between April and December 1992, the police and civilian prosecutors failed to report or under-reported serious crimes committed *by Serb perpetrators* against non-Serbs.[977] Stanišić has therefore failed to show that the Trial Chamber erred in disregarding the said portion of Witness Gaćinović's evidence.[978]

279. With respect to Stanišić's argument that the Trial Chamber failed to consider the logbook of daily events and the register of on-site investigations and relied solely on the KU Registers,[979] the Appeals Chamber notes Witness Vasić's evidence that: (i) KU Registers should contain all criminal cases reported to and investigated by the police;[980] (ii) a comprehensive analysis, such as a police station audit, would include a review of the logbook of daily events, the register of on-site investigations as well as the KU Registers;[981] and (iii) as crimes could be reported to either the police or the public prosecutor's office, the logbook of daily events plus the logbook of the public prosecutor's office were "the place where you could get a complete picture of what was reported to the police and the public prosecutor's office".[982] The Appeals Chamber also notes that although Witness Vasić's review and analysis was limited to the KU Registers,[983] the Trial Chamber's conclusions relating to the reporting of crimes do not only rely on the KU Registers. As discussed above, in addition to Witness Vasić's evidence, the Trial Chamber also reviewed and analysed the "logbooks from 1992 to 1995 in relation to crimes that occurred during the Indictment period".[984] The Appeals Chamber therefore finds that Stanišić has failed to demonstrate an error.

280. In light of the above, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in finding that the police and civilian prosecutors failed to function in an impartial manner.

c. Alleged errors in the Trial Chamber's finding that Stanišić's orders of 8, 10, 17, and 24 August 1992 were prompted by international attention

281. The Trial Chamber found that Stanišić's orders of 8, 10, 17, and 24 August 1992, by which he requested that all CSB and SJB chiefs obtain information concerning the treatment of war

[976] Trial Judgement, vol. 2, para. 94. See Stanišić Appeal Brief, para. 273, referring to Trial Judgement, vol. 2, fn. 320, Exhibit P1609.01, p. 18.
[977] Trial Judgement, vol. 2, para. 94, referring to P1609.01, pp 6-9, 12, 18, P1609.04, pp 2-6, 8, Staka Gojković, 15 Jun 2010, T. 11766-11768, Lazar Draško, 28 Jun 2010, T. 12299.
[978] See *Tolimir* Appeal Judgement, para. 161; *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, para. 864; *Haradinaj et al.* Appeal Judgement, para. 129; *Kvočka et al.* Appeal Judgement, para. 23.
[979] See *supra*, para. 275.
[980] Exhibit P1558.02, para. 2(c) (confidential).
[981] Gojko Vasić, 25 Aug 2010, T. 13678-13679.
[982] Gojko Vasić, 25 Aug 2010, T. 13679-13680.
[983] Gojko Vasić, 25 Aug 2010, T. 13679.
[984] Trial Judgement, vol. 2, para. 93.

prisoners and the conditions of life of detainees and that chiefs of CSBs initiate criminal reports against perpetrators of crimes such as mistreatment of detainees, were prompted by the international attention given to the detention camps in BiH by June 1992.[985] The Trial Chamber found that these orders were a result of an instruction of 6 August 1992 by the RS Presidency, "which was concerned about its image in the eyes of the world".[986]

i. Submissions of the parties

282. Stanišić submits that the Trial Chamber erred by finding that his orders of 8, 10, 17, and 24 August 1992 were prompted by "international attention", as his motivation to issue these orders is plainly irrelevant.[987] He further submits that the Trial Chamber did not properly assess the totality of the evidence on the trial record.[988] Stanišić argues that the Trial Chamber failed to take into account Exhibit P427.08, a report on the 11 July 1992 Collegium to the President and the Prime Minster of RS, dated 17 July 1992 ("17 July 1992 Report").[989] According to him, this exhibit demonstrates that he had reported to the highest authorities of the RS and requested a meeting with the Ministry of Justice of the RS ("MOJ") and VRS to resolve the issue of detention camps, before the International Committee of the Red Cross ("ICRC") released a report on 25 July 1992 criticising the conditions at Manjača and Bileća detention camps and before the BiH President Alija Izetbegović informed the Chairman of the European Community Conference on Yugoslavia of the existence of concentration camps.[990] Stanišić also refers to an order he issued on 19 July 1992 to the chiefs of the CSBs "requesting information on procedures for arrest, treatment of prisoners, conditions of collection camps, and Muslim prisoners detained by the army at 'undefined camps' without proper documentation" ("19 July 1992 Order").[991] He argues that the 19 July 1992 Order "was a result of Stanišić becoming aware of detention camps at the 11 July 1992 Collegium, and not in response to international attention".[992] He contends that the Trial Chamber: (i) made no reference to the 17 July 1992 Report;[993] and (ii) made "only cursory reference" to the letter he sent to Witness Đerić, Prime Minister of the RS on 18 July 1992 ("Đerić Letter"), Exhibit P190, in which Stanišić, *inter alia*, reiterated a request for regulations to be issued to prevent breaches of

[985] Trial Judgement, vol. 2, paras 752-753.
[986] Trial Judgement, vol. 2, para. 753.
[987] Stanišić Appeal Brief, para. 210. See Stanišić Appeal Brief, para. 275.
[988] Stanišić Appeal Brief, para. 279.
[989] Stanišić Appeal Brief, para. 275, referring to Exhibit P427.08, pp 3, 6.
[990] Stanišić Appeal Brief, para. 275, referring to Exhibit P427.08, pp 3, 6.
[991] Stanišić Appeal Brief, para. 276, referring to Exhibit 1D76.
[992] Stanišić Appeal Brief, para. 276, referring to Exhibit P2309, pp 18-19.
[993] Stanišić Appeal Brief, para. 279, referring to Exhibit P427.08.

international law, and informed Witness Đerić that he had instructed the RS MUP to record war crimes regardless of the ethnicity of perpetrators.[994]

283. Stanišić further contends that the Trial Chamber erred by noting that the mistreatment in the camps continued and by imputing it to Stanišić.[995] He asserts that there is clear evidence that the RS MUP did not have authority or jurisdiction over the camps or detainees.[996] Stanišić argues that despite this lack of authority or jurisdiction, he ordered that information be gathered about the camps, expressing the need for conditions to comply with international law.[997] He further submits that although the Trial Chamber referred to some of the orders he issued "which ran contrary to the furtherance of the common purpose",[998] it failed to assess their significance and failed to consider or even refer to numerous other similar orders he issued.[999]

284. The Prosecution responds that Stanišić only issued orders concerning the protection of non-Serb detainees because of international attention on the detention camps in BiH, and misconstrues the Trial Chamber's finding that the detention camps had already attracted international attention by June 1992.[1000] It further submits that despite issuing these orders, Stanišić was uninterested in genuinely trying to put a stop to crimes against non-Serbs, as evident from his efforts to shift the blame for these crimes to others, his continued transfers of known police offenders to the army, his willingness to accept false reports concerning the conditions within detention facilities, and his failure to secure full compliance with his orders concerning the protection of non-Serb detainees.[1001]

ii. Analysis

285. With regard to Stanišić's argument that the Trial Chamber erred in finding that his orders of 8, 10, 17, and 24 August 1992 were prompted by international attention given that his motivation for issuing these orders is irrelevant, the Appeals Chamber finds that the Trial Chamber was not legally barred from considering Stanišić's motivation for issuing these orders as it constituted a

[994] Stanišić Appeal Brief, para. 279, referring to Exhibit P190.
[995] Stanišić Appeal Brief, para. 276, referring to Trial Judgement, vol. 2, para. 753.
[996] Stanišić Appeal Brief, para. 276, referring to Momčilo Mandić, 4 May 2010, T. 9481-9482, 9554, Goran Mačar, 19 Jul 2011, T. 23534-23537, Milan Trbojević, 2 Dec 2009, T. 4095, Exhibit P2310, p. 9.
[997] Stanišić Appeal Brief, para. 277, referring to Exhibits 1D563, 1D55, 1D56, 1D57.
[998] Stanišić Appeal Brief, para. 278, referring to Trial Judgement, vol. 2, paras 747-750.
[999] Stanišić Appeal Brief, para. 278.
[1000] Prosecution Response Brief (Stanišić), paras 71 (referring to Trial Judgement, vol. 2, paras 34-36, 39-42, 87, 90-94, 97-98, 101, 104, 600, 613-614, 637-638, 640-641, 643-646, 648, 651-673, 675-676, 684, 687, 698-704, 706-708, 743, 745-746, 748-749, 752-755, 763, 765), 142 (referring to Trial Judgement, vol. 2, paras 614, 753). See Prosecution Response Brief (Stanišić), para. 82. The Prosecution points out that Stanišić ignored reports concerning mistreatment within detention facilities in the ARK and willingly accepted false reports from his subordinates which covered up crimes against non-Serbs (Prosecution Response Brief (Stanišić), paras 72-73, referring to Trial Judgement, vol. 1, paras 591-635, 679-683, Trial Judgement, vol. 2, paras 631, 636, 646, 654, 659, 671-672, 676, 692, 750, 757).

relevant factual inquiry for assessing the elements of the joint criminal enterprise mode of liability. Stanišić's argument is therefore without merit.

286. With respect to Stanišić's argument that he took measures regarding the detention camps before the issue was raised by the international community at the end of July 1992, the Appeals Chamber notes that Stanišić seeks to support his argument with a reference to the 17 July 1992 Report, which he argues the Trial Chamber disregarded, and his 19 July 1992 Order.[1002] The Appeals Chamber first observes that, contrary to Stanišić's contention, the Trial Chamber found that the issue of detention camps in BiH had already been raised by the international community by June 1992,[1003] before Stanišić's 17 July 1992 Report and 19 July 1992 Order. The Appeals Chamber further notes that the Trial Chamber established that in July 1992, Stanišić had already issued orders in relation to the detention camps.[1004] In this regard, the Appeals Chamber observes that the Trial Chamber specifically considered Stanišić's 17 July 1992 Report[1005] and his 19 July 1992 Order.[1006] In light of this, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber disregarded his 17 July 1992 Report or erred in its consideration of his 19 July 1992 Order. The Appeals Chamber notes further, to the extent that Stanišić seeks to rely on the Đerić Letter of 18 July 1992, that the Trial Chamber considered it explicitly and in detail in assessing Stanišić's role in prevention, investigation, and documentation of crimes,[1007] and on this basis dismisses his argument.

287. Insofar as Stanišić submits that the Trial Chamber erred by failing to consider evidence that the RS MUP did not have authority or jurisdiction over the detention camps or detainees,[1008] the Appeals Chamber recalls that it has addressed and dismissed this argument elsewhere in this Judgement.[1009]

288. Turning to Stanišić's submission that the Trial Chamber failed to assess the significance of the orders he issued which ran contrary to the furtherance of the common purpose, and therefore failed to properly assess the totality of the evidence on the trial record,[1010] the Appeals Chamber observes that the Trial Chamber made specific findings in relation to these orders and assessed their

[1001] Prosecution Response Brief (Stanišić), para. 143, referring to Trial Judgement, vol. 2, paras 636, 747, 757, 759.
[1002] See *supra*, para. 282.
[1003] Trial Judgement, vol. 2, paras 614, 753.
[1004] Trial Judgement, vol. 2, para. 748.
[1005] Trial Judgement, vol. 2, paras 632-633.
[1006] Trial Judgement, vol. 2, para. 748.
[1007] See *infra*, fn. 1813.
[1008] See *supra*, para. 283.
[1009] *See infra*, paras 344-355.
[1010] See *supra*, paras 282-283.

significance.[1011] The Appeals Chamber recalls the Trial Chamber's conclusion that these orders were prompted by international attention, that the conditions of detention did not improve, and that the mistreatment in the detention camps continued.[1012] The Trial Chamber further concluded that Stanišić failed to use the powers available to him under the law to ensure the full implementation of these orders despite being aware of the limited action taken subsequent to his orders.[1013] The Appeals Chamber considers that Stanišić has therefore failed to show that the Trial Chamber erred in this regard.

289. With regard to Stanišić's submission that the Trial Chamber failed to consider or even refer to numerous other similar orders he issued, the Appeals Chamber observes that Stanišić does not specify the evidence which he alleges the Trial Chamber failed to consider. His argument is therefore dismissed.

290. In light of the above, the Appeals Chamber finds that Stanišić has failed to show that no reasonable trier of fact could have concluded that his orders of 8, 10, 17, and 24 August 1992 were prompted by international attention.

d. Alleged errors in the Trial Chamber's finding that Stanišić had the authority to take measures against crimes and failed to take sufficient action to put an end to them

291. The Trial Chamber found that as the Minister of Interior, Stanišić was under a duty, both under the law applicable in the RS at the relevant time and under international law, to discipline and dismiss the personnel of his RS MUP who had committed crimes.[1014] In this regard, the Trial Chamber held that in the exercise of these powers, Stanišić, through Witness Kovač, initiated action against Koroman, Witness Todorović, Witness Petrović, Maksimović, and Drljača, but that none of these persons were successfully removed from the RS MUP in the course of 1992.[1015] The Trial Chamber moreover held that the proceedings launched against these persons did not pertain to the crimes charged in the Indictment but instead concerned crimes such as theft and professional misconduct.[1016] The Trial Chamber found that, "given the above, Stanišić violated his professional obligation to protect and safeguard the civilian population in the territories under their control".[1017]

292. The Trial Chamber further found that "[a]ctions by Mićo Stanišić against [Witness Dragomir Andan ("Witness Andan")], Nenad Simić, [Witness Petrović], Vladimir Petrov, and

[1011] Trial Judgement, vol. 2, paras 746-753.
[1012] Trial Judgement, vol. 2, para. 753.
[1013] Trial Judgement, vol. 2, para. 753.
[1014] Trial Judgement, vol. 2, para. 754.
[1015] Trial Judgement, vol. 2, para. 754.
[1016] Trial Judgement, vol. 2, para. 754.

Veljko Šolaja resulted in dismissals [but that] these persons were only pursued for their involvement in the theft and smuggling of vehicles or persons".[1018] It found that:

> the evidence on the efforts made by Stanišić to quell the theft of vehicles—by issuing orders to monitor and protect the facilities, requiring immediate inspection and reporting by chiefs of CSBs, instituting disciplinary action leading to dismissal from service of police officers involved in the crime, and his relentless airing of the issue as a matter of personal concern—demonstrates his ability as the highest authority to investigate and punish those found to be involved, even when faced by opposition from others in the Bosnian Serb leadership.[1019]

293. In addition, the Trial Chamber found that the action taken by Stanišić against paramilitaries was only pursued following their refusal to submit to the command of the army and their continued commission of acts of theft, looting, and trespasses against the local RS leaders.[1020] The Trial Chamber further found that the primary motivation for these actions was the theft of Golf vehicles and harassment of the Serbs.[1021]

294. Furthermore, the Trial Chamber found that Stanišić failed to act in the same decisive manner with regard to the other crimes, such as unlawful detention, displacement and removal of non-Serb civilians – and the ensuing crimes of killing and inhumane treatment of detainees.[1022]

295. Finally, the Trial Chamber concluded that, despite his knowledge of the crimes that were being committed, Stanišić "took insufficient action to put an end to them and instead permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb Forces involved in the commission of crimes, particularly the JNA/VRS and the TO".[1023]

i. Alleged errors relating to Stanišić's authority to take measures against crimes

a. Submissions of the parties

296. Stanišić submits that the Trial Chamber erroneously interpreted evidence of his dismissal of Witness Andan, Nenad Simić, Witness Petrović, Vladimir Petrov, and Veljko Šolaja as demonstrating his ability as the highest authority to investigate and punish.[1024] He submits that the instances the Trial Chamber referred to were ones in which disciplinary proceedings had already

[1017] Trial Judgement, vol. 2, para. 754.
[1018] Trial Judgement, vol. 2, para. 755.
[1019] Trial Judgement, vol. 2, para. 755.
[1020] Trial Judgement, vol. 2, para. 756.
[1021] Trial Judgement, vol. 2, para. 756.
[1022] Trial Judgement, vol. 2, para. 757.
[1023] Trial Judgement, vol. 2, para. 759.
[1024] Stanišić Appeal Brief, para. 280, referring to Trial Judgement, vol. 2, para. 755.

begun and that he was therefore able to exercise his appellate power to dismiss the individuals in question.[1025] Moreover, Stanišić asserts that these dismissals "occurred despite opposition from others in the Bosnian Serb leadership", which he argues shows that he used his disciplinary powers irrespective of opposition from individuals found to be members of the JCE.[1026]

297. Stanišić further submits that the Trial Chamber erred in considering that the measures he took to quell the theft of vehicles, to curb looting and misappropriation of property, and against paramilitaries, demonstrated his ability to act.[1027] Stanišić argues that there are practical differences between the ability to counteract thefts and other more serious crimes, often taking place near the frontline, "where the perpetrators are more likely to shoot back rather than be arrested".[1028] Stanišić further argues that: (i) the Trial Chamber's finding that his orders were not carried out to the extent possible fails to take into account that his orders for arrests and prosecutions were passed down the chain of command to the relevant RS MUP members, a fact that the Trial Chamber acknowledged;[1029] and (ii) the fact that these orders were not carried out to the extent possible shows lack of *de facto* ability to do more rather than an omission.[1030] He argues further that the Trial Chamber failed to take into account the "severe difficulties" he encountered and therefore his objective inability to do more than he actually did.[1031]

298. The Prosecution responds that Stanišić's arguments should be summarily dismissed.[1032] It submits that Stanišić's argument ignores the full extent of his role in the actions against RS MUP officials Nenad Simić,[1033] Witness Andan,[1034] Vladimir Srebov,[1035] and Witness Petrović.[1036] The

[1025] Stanišić Appeal Brief, para. 280.
[1026] Stanišić Appeal Brief, para. 281, referring to Trial Judgement, vol. 2, para. 755.
[1027] Stanišić Appeal Brief, paras 223-225.
[1028] Stanišić Appeal Brief, para. 224.
[1029] Stanišić Appeal Brief, para. 230, referring to Trial Judgement, vol. 2, paras 746, 752.
[1030] Stanišić Appeal Brief, para. 230.
[1031] Stanišić Appeal Brief, para. 211.
[1032] Prosecution Response Brief (Stanišić), para. 145, referring to *Krajišnik* Appeal Judgement, para. 18 ("submissions which either misrepresent the Trial Chamber's factual findings or the evidence on which the Trial Chamber relies [...] will not be considered in detail").
[1033] Prosecution Response Brief (Stanišić), para. 145, referring to Trial Judgement, vol. 2, para. 702 ("As a result of an investigation conducted by Dragomir Andan and others in Bijeljina, Brčko and Zvornik, Stanišić stated that a decision would be issued for the dismissal of officers for their reported involvement in criminal activities. On 29 July 1992, the Bijeljina SJB issued a ruling on the detention of Nenad Simić on the 'suspicion' that he was illegally commandeering vehicles and goods and using weapons to check drivers and vehicles at illegal checkpoints in Zvornik between 28 June and 29 July 1992").
[1034] Prosecution Response Brief (Stanišić), para. 145, referring to Trial Judgement, vol. 2, para. 703 ("On 11 September 1992, Stanišić initiated disciplinary proceedings against Dragomir Andan for illegally confiscating a gambling machine for private purposes").
[1035] Prosecution Response Brief (Stanišić), para. 145, referring to Trial Judgement, vol. 2, para. 704 ("Stanišić signed the initial remand order in August 1992 to detain Vladimir Srebrov, a Serb who was charged with persuading people to join the 'enemy army'").
[1036] Prosecution Response Brief (Stanišić), para. 145, referring to Trial Judgement, vol. 2, para. 706 ("[Witness] Petrović testified that he was summarily dismissed, based upon a proposal of Andrija Bjelošević, in January 1993 pursuant to a dispatch directly from Mićo Stanišić").

Prosecution further submits that the Trial Chamber's finding that Stanišić pursued the theft of vehicles despite opposition from the Bosnian Serb leadership is irrelevant to the Trial Chamber's conclusion that Stanišić shared the common criminal purpose and contributed to it.[1037]

299. The Prosecution also responds that the Trial Chamber reasonably found that Stanišić "had the 'ability as the highest authority to investigate and punish those found to be involved'" in the crimes, in light of the measures he took for matters such as theft, professional misconduct, and the smuggling of vehicles or persons.[1038] It contends that Stanišić misrepresents the Trial Chamber's factual findings when arguing that the Trial Chamber failed to take into account differences between counteracting thefts and other more serious crimes since, contrary to his submission, the crimes were not a sporadic consequence of combat.[1039]

b. Analysis

300. With respect to Stanišić's argument that the dismissals of the five individuals referred to by the Trial Chamber were incidents in which disciplinary proceedings had already begun and that he therefore was able to exercise his appellate power to dismiss,[1040] the Appeals Chamber first notes that Stanišić does not advance any evidence to support his factual claim that the proceedings had already been initiated. The Appeals Chamber further notes that, contrary to Stanišić's contention, in relation to some of the instances to which the Trial Chamber referred, it established that Stanišić initiated the disciplinary proceedings.[1041] For example, the Trial Chamber found that Stanišić initiated internal disciplinary proceedings, including an investigative commission established to look into allegations of corruption at the Bijeljina SJB in August 1992.[1042] The Trial Chamber further found that on 11 September 1992, Stanišić initiated disciplinary proceedings against Witness Andan, a RS MUP police inspector who informally acted as chief of the Bijeljina SJB in July and August 1992,[1043] for illegally confiscating a gambling machine for private purposes.[1044] In this respect, the Appeals Chamber recalls the Trial Chamber's finding that under the RS MUP

[1037] Prosecution Response Brief (Stanišić), para. 146.
[1038] Prosecution Response Brief (Stanišić), para. 75, quoting Trial Judgement, vol. 2, para. 755. See Prosecution Response Brief (Stanišić), para. 75, referring to Trial Judgement, vol. 2, paras 707-708, 714-175, 755. See also Prosecution Response Brief (Stanišić), para. 77.
[1039] Prosecution Response Brief (Stanišić), para. 76, referring to *Krajišnik* Appeal Judgement, para. 18, Stanišić Appeal Brief, para. 224, Trial Judgement, vol. 1, paras 201, 204-206, 211, 222, 262, 265, 269, 281-282, 332, 338, 346-347, 467, 474-476, 480, 482, 490-491, 659, 669, 671, 676-679, 681-683, 686, 699-700, 709, 755-757, 785, 798-799, 801, 803, 811, 868, 870-872, 879-880, 919, 967, 970-972, 982, 1003, 1021, 1030, 1032-1033, 1041, 1099, 1101-1106, 1110, 1118-1119, 1177, 1179, 1182, 1189-1190, 1229, 1232, 1234-1235, 1236, 1239, 1247, 1248, 1280, 1338-1339, 1342-1343, 1348, 1355-1356, 1403, 1413, 1423, 1442, 1444, 1446, 1477-1478, 1480, 1483-1485, 1490, 1497-1498, 1532, 1545, 1547, 1633, 1652-1653, 1657-1659, 1663, 1665-1668, 1670-1671, 1687.
[1040] See *supra*, para. 296.
[1041] Trial Judgement, vol. 2, paras 697, 703-704. See Trial Judgement, vol. 2, paras 695-696.
[1042] Trial Judgement, vol. 2, para. 697.
[1043] Trial Judgement, vol. 1, para. 894.

regulations, the Minister of Interior had the authority to initiate appropriate disciplinary proceedings against SJB or CSB chiefs.[1045]

301. Moreover, as far as Stanišić seeks to challenge the Trial Chamber's overall conclusion that he had authority to investigate and punish members of the RS MUP involved in crime,[1046] the Appeals Chamber recalls that the Trial Chamber relied not only on the actions he took with respect to the five individuals mentioned above but also on the evidence about the efforts Stanišić made to quell the theft of vehicles.[1047] This evidence included "issuing orders to monitor and protect the facilities, requiring immediate inspection and reporting by chiefs of CSBs, instituting disciplinary action leading to dismissal from service of police officers involved in the crime, and his relentless airing of the issue as a matter of personal concern".[1048] In light of these findings, the Appeals Chamber dismisses Stanišić's argument.

302. Insofar as Stanišić argues that he used his disciplinary powers despite opposition from individuals found to be members of the JCE,[1049] the Appeals Chamber recalls the Trial Chamber's finding that Stanišić used his disciplinary powers with respect to persons involved in the theft and smuggling of vehicles or professional misconduct, but not with respect to those involved in the crimes charged in the Indictment.[1050] The Appeals Chamber considers that the fact that individuals within the Bosnian Serb leadership opposed Stanišić's efforts to investigate and punish crimes not charged in the Indictment does not demonstrate that the Trial Chamber erred in concluding that Stanišić had the ability to investigate and punish members of the RS MUP. Stanišić's argument is therefore dismissed.

303. The Appeals Chamber now turns to Stanišić's contention that the Trial Chamber erred in considering that the measures he took to curb looting and misappropriation of property, and against paramilitaries, demonstrated his ability to act as there are practical differences between the ability to counteract thefts and other more serious crimes, often taking place near the frontline.[1051] In this regard, the Appeals Chamber observes that the vast majority of crimes against the civilian

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[1044] Trial Judgement, vol. 2, para. 703.
[1045] Trial Judgement, vol. 2, paras 40, 695, 698.
[1046] See *supra*, para. 296.
[1047] Trial Judgement, vol. 2, para. 755.
[1048] Trial Judgement, vol. 2, para. 755. See Trial Judgement, vol. 2, para. 708.
[1049] See *supra*, para. 296.
[1050] Trial Judgement, vol. 2, paras 754-755. The Appeals Chamber recalls that the Indictment charged Stanišić with the following crimes against humanity under Article 5 of the Statute: (i) persecutions on political, racial, and religious grounds; (ii) extermination; (iii) murder; (iv) torture; (v) inhumane acts; (vi) deportation; and (vii) other inhumane acts (forcible transfer). The Indictment also charged Stanišić with the following violations of the laws or customs of war under Article 3 of the Statute: (i) murder; (ii) torture; and (iii) cruel treatment (Indictment paras 24, 26, 28-29, 31-32, 34, 36-38, 41). See *supra*, para. 4.
[1051] See *supra*, para. 297.

population which the Trial Chamber took into account were committed across areas of the Municipalities where no combat activity was taking place.[1052] The Appeals Chamber therefore considers that Stanišić's argument misrepresents the Trial Chamber's findings and dismisses it.

304. With regard to Stanišić's argument that the Trial Chamber's finding that his orders were not carried out to the extent possible fails to take into account that his orders for arrests and prosecutions were passed down the chain of command and that the fact that his orders were not carried out to the extent possible shows lack of *de facto* ability to do more, the Appeals Chamber finds that it is inapposite. The Trial Chamber acknowledged that Stanišić's orders were passed down the chain of command,[1053] but found that: (i) his orders from May 1992 to arrest and prosecute or dismiss and hand over to the VRS, members of the reserve police – among whom the problem of "unprincipled conduct" was most pronounced – were not carried out to the extent possible since the reserve police continued to serve within the RS MUP until the end of 1992;[1054] and (ii) "despite being aware of the limited action taken subsequent to his orders" to obtain information concerning the treatment of war prisoners and requiring chiefs of CSBs to initiate criminal reports against perpetrators of crimes, "Stanišić failed to use the powers available to him under the law to ensure the full implementation of these orders".[1055] Considering these findings, Stanišić has failed to explain how the mere fact that these orders were not carried out by his subordinates demonstrates the lack of his *de facto* ability to take further action to ensure the full implementation of his orders. The Appeals Chamber therefore dismisses Stanišić's argument.

305. With regard to Stanišić's contention that the Trial Chamber failed to take into account the "severe difficulties" he encountered while carrying out his duties and, therefore, his objective inability to do more than he actually did,[1056] the Appeals Chamber notes that to support his argument, Stanišić exclusively relies on Trial Chamber's findings based on evidence regarding the difficulties he encountered.[1057] The Appeals Chamber therefore finds that, contrary to Stanišić's contention, the Trial Chamber did not fail to take into account the "severe difficulties" he encountered while carrying out his duties.[1058] To the extent that Stanišić argues that the Trial Chamber failed to give sufficient weight to the evidence it considered, the Appeals Chamber considers that he merely asserts that the evidence should have been interpreted in a particular

[1052] See Trial Judgement, vol. 1, paras 200-211, 260-274, 331-339, 453-480, 655-684, 782-804, 867-872, 915-930, 967-973, 1028-1033, 1099-1110, 1174-1184, 1228-1239, 1278-1280, 1337-1348, 1397-1407, 1476-1490, 1539-1547, 1633-1671.
[1053] Trial Judgement, vol. 2, paras 746, 752.
[1054] Trial Judgement, vol. 2, para. 746.
[1055] Trial Judgement, vol. 2, para. 753. See Trial Judgement, vol. 2, para. 752.
[1056] See *supra*, para. 297.
[1057] See Stanišić Appeal Brief, para. 211, referring to Trial Judgement, vol. 2, paras 581-583, 697.
[1058] See *e.g.* Trial Judgement, vol. 2, para. 735.

manner without further showing any error on the part of the Trial Chamber. The Appeals Chamber consequently dismisses Stanišić's argument.

ii. Alleged errors in relation to Stanišić's failure to take sufficient action to put an end to crimes

a. Submissions of the parties

306. Stanišić argues that the Trial Chamber erred in finding that placing reserve policemen at the disposal of the army was not sufficient to fulfil his duties, considering that it acknowledged that this was the only applicable disciplinary procedure available at that time for reserve policemen.[1059] He contends further that the Trial Chamber failed to take into account actions he took, to the extent of his ability, to reform the disciplinary system, including dismissing a large number of personnel, and the time required for the disciplinary measures and reforms to be completed.[1060] Stanišić argues that the Trial Chamber failed to give appropriate weight to the measures he took against named individuals, regardless of his purported motivation for doing so.[1061]

307. The Prosecution responds that, while Stanišić argues that the transfer of reserve policemen to the army was the only sanction available to him to deal with delinquent reserve policemen, he repeatedly transferred such personnel to the army, sometimes even before disciplinary proceedings against them had concluded.[1062] It argues that Stanišić should have ensured that criminal reports were filed against offenders who committed serious crimes and that the VRS was duly informed of these crimes upon transfer.[1063] In this regard, the Prosecution adds that, as he concedes that he had authority to reform the disciplinary system, Stanišić could have ensured that the system did not facilitate further contact between civilians and known offenders within his ranks.[1064]

308. Stanišić replies that the Prosecution's assertion that he failed to inform the VRS about the crimes committed by the reserve policemen when they were being transferred is unfounded, as the

[1059] Stanišić Appeal Brief, paras 213-215, 217 (referring to Trial Judgement, vol. 2, paras 43, 342, 696-697, Vladimir Tutuš, 18 Mar 2010, T. 7750), 218.
[1060] Stanišić Appeal Brief, paras 221-222, 225, referring to Exhibits P1252, P553, P1013, P571, P427.08, P855, 1D58, 1D59, P592, 1D64, 1D662, Trial Judgement, vol. 2, paras 42, 582, 647, 694, 698, 700-702, 755, 756, 768.
[1061] Stanišić Appeal Brief, para. 221.
[1062] Prosecution Response Brief (Stanišić), para. 74.
[1063] Prosecution Response Brief (Stanišić), paras 73-74, referring to Sreto Gajić, 15 Jul 2010, T. 12838-12839, 12845-12846, Exhibits 1D666, 1D58, 1D59, 1D176, 1D60, P855, P1013, Trial Judgement, vol. 1, para. 1413, Trial Judgement, vol. 2, paras 18, 25, 34-36, 39-42, 48-51, 53, 87, 90-94, 97-98, 101, 104, 354, 578-580, 588, 591-596, 605-609, 613-621, 623-625, 629, 631-633, 636-641, 644-646, 651-652, 654-657, 659-673, 675, 677-680, 684, 687, 689-692, 698, 701-704, 706-708, 714-715, 717-718, 733, 736, 743, 745-746, 748-752, 754, 756-759, 761-765.
[1064] Prosecution Response Brief (Stanišić), para. 74, referring to Stanišić Appeal Brief, paras 173, 221-222, Trial Judgement, vol. 2, para. 42.

documentation detailing their behaviour and disciplinary record accompanied them upon their transfer to the army.[1065]

b. Analysis

309. With regard to Stanišić's argument that the Trial Chamber erred in finding that placing errant reserve policemen at the disposal of the army was not sufficient to fulfil his duties,[1066] the Appeals Chamber notes that the Trial Chamber acknowledged that such a placement was in accordance with the applicable disciplinary procedures.[1067] The Trial Chamber nonetheless found that this measure was not sufficient to fulfil Stanišić's duty to protect the Muslim and Croat population, considering that the transfer of known offenders in the reserve police to the army in fact further facilitated their continued interaction with civilians.[1068] In light of the Trial Chamber's findings regarding the involvement of the VRS in takeovers of municipalities and in guarding the detention facilities,[1069] the Appeals Chamber considers that the transfer of known offenders from the reserve police to the army may have exposed the civilians to a greater risk of abuses. The Appeals Chamber therefore finds that a reasonable trier of fact could have concluded that this measure was not enough to fulfil Stanišić's duty to protect civilians. Stanišić's argument is dismissed.

310. With respect to Stanišić's argument that the Trial Chamber failed to take into account evidence establishing actions he took, to the extent of his ability, to reform the disciplinary system, including firing a large number of personnel,[1070] the Appeals Chamber first recalls that it is not necessary for a trial chamber to refer to every piece of evidence on the record, as long as there is no indication that the trial chamber completely disregarded evidence which is clearly relevant.[1071] It is presumed that the trial chamber evaluated all evidence presented before it.[1072] In the present instance, the Trial Chamber duly considered evidence and made findings in relation to the measures he took for the errant reserve policemen to be placed at the disposal of the army and to curb looting and misappropriation of property.[1073] Furthermore, insofar as Stanišić argues that the Trial Chamber

[1065] Stanišić Reply Brief, para. 66, referring to Radomir Rodić, 16 Apr 2010, T. 8805.
[1066] See *supra*, para. 306.
[1067] Trial Judgement, vol. 2, para. 751.
[1068] Trial Judgement, vol. 2, para. 751.
[1069] See *e.g.* Trial Judgement, vol. 1, paras 235-248, 254, 258, 261, 263, 268, 274, 333, 337, 343, 378, 504, 735-747, 827, 1055, 1139, 1204, 1314.
[1070] See *supra*, para. 306.
[1071] *Tolimir* Appeal Judgement, para. 56; *Popović et al.* Appeal Judgement, paras 306, 340, 359, 375, 830, 847, 925, 1024, 1123, 1136, 1171, 1213, 1257, 1521, 1541, 1895, 1971; *Đorđević* Appeal Judgement, fn. 2527.
[1072] *Tolimir* Appeal Judgement, paras 54, 56; *Popović et al.* Appeal Judgement, paras 306, 340, 359, 375, 830, 847, 925, 1094, 1123, 1136, 1171, 1213, 1257, 1521, 1541, 1895, 1971; *Đorđević* Appeal Judgement, fn. 2527.
[1073] See Trial Judgement, vol. 2, paras 433, 640-641, 687, 746, 751, 754-755. See also Stanišić Appeal Brief, paras 221-222, fns 267, 272, referring to Exhibits P1252, P553, P1013, P571, P427.08, P855, 1D58, 1D59, P592, 1D64, 1D662. The Appeals Chamber notes that the evidence cited by Stanišić is related to the measures he took for the errant reserve

failed to give appropriate weight to the measures he took against named individuals and to the time required to implement the reforms,[1074] the Appeals Chamber observes that he merely asserts that the Trial Chamber failed to give sufficient weight to certain evidence without articulating any further error. The Appeals Chamber therefore dismisses Stanišić's argument.

iii. Conclusion

311. In light of the above, the Appeals Chamber finds that Stanišić has failed to show any error in the Trial Chamber's findings with regard to his authority to take measures against crimes and his failure to take sufficient action to put an end to them.

e. Alleged error in the Trial Chamber's finding that Stanišić's actions against paramilitaries were only undertaken due to their refusal to submit to the command of the army and their commission of crimes against Serbs

312. With regard to actions taken against paramilitaries, the Trial Chamber referred to evidence that Stanišić was "opposed to the use of paramilitaries from outside BiH to forward the Serb cause, primarily at the behest of Biljana Plavšić, and that he raised the issue of the problems these forces caused with the Prime Minister Branko Đerić".[1075] The Trial Chamber, however, found that "the action against the Yellow Wasps in Zvornik and other paramilitaries in Bijeljina, Brčko, and other municipalities was only pursued by Stanišić following their refusal to submit to the command of the army and their continued commission of acts of theft, looting, and trespasses against the local RS leaders".[1076] It found that "[t]he primary motivation for these actions was the theft of Golf vehicles and harassment of the Serbs, an issue that concerned the RS authorities since the start of hostilities".[1077]

i. Submissions of the parties

313. Stanišić submits that the Trial Chamber erred in finding that his actions against paramilitaries from outside BiH were only undertaken due to the paramilitaries' refusal to submit to the command of the army and their commission of crimes against Serbs.[1078] He contends that the Trial Chamber's finding is "a selective misreading of the evidence".[1079] Stanišić submits that as

policemen to be placed at the disposal of the army, to quell the theft of vehicles, and to curb looting and misappropriation of property.
[1074] Stanišić Appeal Brief, para. 221.
[1075] Trial Judgement, vol. 2, para. 756.
[1076] Trial Judgement, vol. 2, para. 756.
[1077] Trial Judgement, vol. 2, para. 756.
[1078] Stanišić Appeal Brief, para. 282, referring to Trial Judgement, vol. 2, para. 756.
[1079] Stanišić Appeal Brief, para. 285, referring to Trial Judgement, vol. 2, para. 756.

early as May 1992, he sought the assistance of the Federal SUP to tackle "the worsening security situation including the issue of paramilitaries".[1080] Stanišić argues that he appointed "Davidović from the [Federal SUP] to act 'as a police chief in the [RS MUP] with all powers while he was in the BH area'"[1081] and that Witness Davidović and his unit used this power to disarm and suppress "criminal and in some cases inhumane activities" by: (i) a paramilitary group led by Željko Ražnatović, alias Arkan ("Arkan"), known as the Serbian Volunteer Guard or Arkan's Men ("Arkan's Men"); (ii) the Red Berets, an armed formation of the SDS, also known as the Serb Defence Forces ("SOS" or "Red Berets"); and (iii) the Yellow Wasps, a Serbian paramilitary group also known as Žućo or Repic's men ("Yellow Wasps").[1082] Stanišić submits in particular that: (i) he initially sent Witness Davidović and Witness Andan to Bijeljina "to restore law and order";[1083] (ii) in Brčko, the unit under their command took part in actions to arrest and eliminate paramilitaries;[1084] and (iii) he gave them full authority to "uncover any kind of criminal acts" and they "took such actions in Bijeljina and Zvornik".[1085] Stanišić contends that contemporaneous notes of Witness Andan detail the steps Stanišić took against paramilitaries in Brčko, Zvornik, Foča, Rudo, Višegrad, and Trebinje.[1086]

314. The Prosecution responds that Stanišić merely repeats a failed trial argument without articulating an error[1087] and that therefore his argument should be summarily dismissed.[1088]

315. Stanišić replies that his actions against paramilitaries from outside BiH, which resulted in the reduction of the commission of crimes, even regardless of their motivation, cannot be considered a contribution to the common purpose to commit crimes.[1089]

ii. Analysis

316. With regard to Stanišić's submission that the Trial Chamber erred in finding that his actions against paramilitaries from outside BiH were only undertaken due to the paramilitaries' refusal to submit to the command of the army and their commission of crimes against Serbs,[1090] the Appeals

[1080] Stanišić Appeal Brief, para. 283, referring to Milorad Davidović, 23 Aug 2010, T. 13563-13567.
[1081] Stanišić Appeal Brief, para. 283, referring to Exhibit 1D646, p. 1 (emphasis omitted).
[1082] Stanišić Appeal Brief, para. 283, referring to Exhibit 1D646, p. 6.
[1083] Stanišić Appeal Brief, para. 284, referring to Exhibits 1D97, p. 3, 1D646, p. 9.
[1084] Stanišić Appeal Brief, para. 284, referring to Dragomir Andan, 27 May 2011, T. 21456-21466, 21472-21473, 21666-21674.
[1085] Stanišić Appeal Brief, para. 284, referring to Milorad Davidović, 23 Aug 2010, T. 13565-13566, 13614-13615, Dragomir Andan, 27 May 2011, T. 21687-21688, Exhibit P317.22.
[1086] Stanišić Appeal Brief, para. 284, referring to Exhibits 1D557, 1D539, 1D650, 1D651.
[1087] Prosecution Response Brief (Stanišić), para. 147, contrasting Stanišić Appeal Brief, paras 283-284 with Stanišić Final Trial Brief, paras 334-338, 348, 357.
[1088] Prosecution Response Brief (Stanišić), para. 147, referring to *Krajišnik* Appeal Judgement, paras 24, 26.
[1089] Stanišić Reply Brief, para. 80.
[1090] See *supra*, para. 313.

Chamber notes that Stanišić repeats arguments from his final trial brief.[1091] The Trial Chamber implicitly rejected Stanišić's arguments by concluding that the action he took against some paramilitaries was only pursued following their refusal to submit to the command of the army and their continued commission of acts of theft, looting, and trespasses against the local RS leaders.[1092] The Appeals Chamber will determine if the rejection of Stanišić's arguments by the Trial Chamber constitutes an error warranting its intervention.

317. The Appeals Chamber observes that the evidence advanced by Stanišić to support his argument that as early as May 1992, he sought the Federal SUP's assistance to tackle the issue of paramilitaries, does not support his factual claim.[1093] The Appeals Chamber further observes that Stanišić's submission ignores relevant findings of the Trial Chamber, namely that: (i) the position of the RS MUP was that, once the VRS had been established, all armed forces had to be under the command of the Ministry of Defence of the RS ("MOD"), however the paramilitaries did not come under the command of the MOD and continued to cause security problems;[1094] (ii) between June and the beginning of July 1992, Stanišić was informed by several sources of the activities of the paramilitary groups in Zvornik, including war crimes;[1095] (iii) Witness Davidović received instructions from Stanišić and Čedo Kljajić to take action with respect to the Yellow Wasps "to do whatever was necessary, as even Karadžić and Krajišnik insisted that this formation needed to be disbanded";[1096] (iv) on 29 and 30 July 1992 the RS MUP, in coordination with the army, arrested members of the Yellow Wasps in Zvornik;[1097] (v) the police questioning of the Yellow Wasps members focused primarily on their involvement in thefts and a criminal report was filed against members of this group for aggravated theft, principally of Volkswagen Golf vehicles;[1098] (vi) Stanišić only intervened against paramilitaries in Zvornik after Velibor Ostojić, the RS Minister for Information, was stopped and forced to eat grass at a checkpoint by members of the Yellow Wasps;[1099] (vii) Witness Andan and Witness Davidović led actions against the paramilitary groups in Bijeljina and against the Red Berets in Brčko but these paramilitary groups resisted and refused to fall under the command of the army;[1100] and (viii) at a 20 December 1992 meeting of the Supreme Command Stanišić raised the issue of paramilitary groups that needed to be resolved and

[1091] See Stanišić Final Trial Brief, paras 334-377.
[1092] Trial Judgement, vol. 2, para. 756.
[1093] See Stanišić Appeal Brief, para. 283, referring to Milorad Davidović, 23 Aug 2010, T. 13563-13567.
[1094] Trial Judgement, vol. 2, para. 719.
[1095] Trial Judgement, vol. 2, para. 713.
[1096] Trial Judgement, vol. 2, para. 714.
[1097] Trial Judgement, vol. 2, para. 714.
[1098] Trial Judgement, vol. 2, para. 715. See *infra*, paras 692-693.
[1099] Trial Judgement, vol. 2, para. 715.
[1100] Trial Judgement, vol. 2, para. 717.

stated that such groups "had to be placed under one command".[1101] In light of the above, the Appeals Chamber dismisses Stanišić's submission.

318. With respect to Stanišić's submission that his actions against paramilitaries which resulted in the reduction of the commission of crimes, even regardless of their motivation, cannot be considered a contribution to the common purpose to commit crimes,[1102] the Appeals Chamber notes that the Trial Chamber did not take into account these actions in relation to his contribution to the common purpose of the JCE, as it found that Stanišić took these actions only with respect to crimes of theft, looting, and trespasses as well as harassment, and only when these crimes were committed against Serbs, including local RS leaders.[1103] The Appeals Chamber further notes the Trial Chamber's finding that Stanišić failed to act in the same decisive manner with regard to other crimes, "such as unlawful detention and displacement and removal of non-Serb civilians".[1104] The Appeals Chamber therefore understands the Trial Chamber's reference to Stanišić's actions against paramilitaries as a factual element taken into account in relation to his ability to act and not as his contribution to the common purpose of the JCE, as such. The Appeals Chamber therefore dismisses Stanišić's argument.

319. In light of the above, the Appeals Chamber considers that Stanišić has failed to demonstrate that no reasonable trier of fact could have concluded that his actions against paramilitaries from outside BiH were only undertaken due to the paramilitaries' refusal to submit to the command of the army and their commission of crimes against Serbs.

f. Alleged errors in the Trial Chamber's finding that Stanišić focused primarily on crimes committed against Serbs

320. The Trial Chamber noted, when dealing with war crimes, that "Stanišić focused primarily on crimes committed against Serbs".[1105] The Trial Chamber found that "[f]ollowing the 22 April 1992 instruction from the Federal SUP in Belgrade, Stanišić directed the chiefs of the CSBs to forward detailed documentation and investigation of war crimes and other serious crimes committed against Serbs for its use by the 'war crimes commission'."[1106] It further found that Stanišić's instruction to the CSBs on documenting war crimes and other mass atrocities was specifically limited to instances where Serbs were the victims, and not all civilians.[1107] In reaching

[1101] Trial Judgement, vol. 2, para. 720.
[1102] See *supra*, para. 315.
[1103] See Trial Judgement, vol. 2, para. 756.
[1104] Trial Judgement, vol. 2, paras 755-757.
[1105] Trial Judgement, vol. 2, para. 758.
[1106] Trial Judgement, vol. 2, para. 758.
[1107] Trial Judgement, vol. 2, para. 758.

this finding, the Trial Chamber took into account "the language of the orders of 16 May, 26 May, 17 June, 11 July, and 17 July 1992", which it considered together with the testimonies of Witness ST174, Witness Goran Mačar ("Witness Mačar"), Witness Gojković, and the 22 April 1992 instruction from the Socialist Federal Republic of Yugoslavia ("22 April 1992 Instruction" and "SFRY", respectively).[1108]

i. Submissions of the parties

321. Stanišić submits that the Trial Chamber erred by finding that he "focused primarily on war crimes committed against Serbs".[1109] He contends that the Trial Chamber's conclusion "ignores the voluminous evidence that Stanišić continuously reiterated that investigations into crimes, including war crimes, was to be on a non-discriminatory basis".[1110]

322. The Prosecution responds that Stanišić's arguments warrant summary dismissal as he merely claims that the Trial Chamber failed to consider relevant evidence[1111] and repeats an argument which failed at trial.[1112] The Prosecution further submits that Stanišić fails to show that no reasonable trier of fact could have reached the conclusions of the Trial Chamber.[1113]

ii. Analysis

323. With respect to Stanišić's argument that the Trial Chamber ignored the voluminous evidence that he had continuously reiterated that investigations into crimes were to be conducted on a non-discriminatory basis,[1114] the Appeals Chamber notes that the Trial Chamber took into account the portion of the 17 July 1992 Report Stanišić refers to in his appeal brief.[1115] On the basis of this portion of the report, the Trial Chamber found that, *inter alia*, during the 11 July 1992 Collegium, the detection and documentation of war crimes, including those committed by Serbs, was listed as a

[1108] Trial Judgement, vol. 2, para. 758.
[1109] Stanišić Appeal Brief, para. 286, referring to Trial Judgement, vol. 2, para. 758.
[1110] Stanišić Appeal Brief, para. 286, referring to Exhibits P427.08, pp 5-7, 1D63, 1D572, 1D328.
[1111] Prosecution Response Brief (Stanišić), para. 136, contrasting Stanišić Appeal Brief, para. 286 with Stanišić Final Trial Brief, paras 378-379. With respect to Exhibit 1D328 on which Stanišić relies, the Prosecution contends that at the meeting referred to in this exhibit, concern was expressed about the looting of non-Serb property because the MUP's position was "that all the movable and immovable property on liberated Serbian territories [...] belongs to the Serbian state" (Prosecution Response Brief (Stanišić), para. 138, referring to Exhibit 1D328, p. 3).
[1112] Prosecution Response Brief (Stanišić), para. 136, referring to *Krajišnik* Appeal Judgement, paras 19, 24.
[1113] Prosecution Response Brief (Stanišić), para. 138. The Prosecution argues that the Trial Chamber reasonably relied on: (i) "[e]xpress language in his orders of 15 May, 16 May, 26 May and 17 July 1992 directing that measures be taken to document crimes committed against Serbs which were in accordance with the dictates of the RS Presidency"; (ii) "[e]vidence that the RS MUP followed through on Stanišić's order and compiled such information"; and (iii) "[t]he RS MUP's failure to report or its under-reporting of crimes against non- Serbs" (Prosecution Response Brief (Stanišić), para. 137, referring to Trial Judgement, vol. 2, paras 104, 723-727, 745; also referring to Trial Judgement, vol. 2, paras 34-36, 87, 90-94, 96-98, 101).
[1114] See *supra*, para. 321.
[1115] Trial Judgement, vol. 2, para. 632. See Stanišić Appeal Brief, para. 286, referring to Exhibits P427.08, pp 5-7, 1D63, 1D572, 1D328.

priority for both the SNB and the Crime Investigation Service.[1116] The Appeals Chamber further notes that, contrary to Stanišić's submission, the Trial Chamber also took into account Exhibit 1D572, an order issued by Stanišić on 5 October 1992, by which he reiterated a request to all the CSBs to submit completed questionnaires on any criminal reports filed against persons suspected of having committed war crimes ("5 October 1992 Order").[1117] With regard to Exhibit 1D63, an order issued by Stanišić on 19 July 1992, the Appeals Chamber notes that although the Trial Chamber did not explicitly refer to the order in the Trial Judgement, it did not ignore this evidence. Indeed, the 5 October 1992 Order is a reiteration of the original request contained in Exhibit 1D63 to complete the questionnaire on any criminal reports filed against persons suspected of having committed war crimes. The Appeals Chamber observes in this regard that the 5 October 1992 Order explicitly refers to Exhibit 1D63.[1118] With respect to Exhibit 1D328, a report from a meeting in Sokolac of heads of departments for criminology in the area of the Romanija-Birač CSB dated 28 July 1992 ("Sokolac Report"), the Appeals Chamber notes that this report concerns the difficulties encountered by these departments in the area of Romanija-Birač CSB in dealing with offences against movable and immovable property in "liberated Serbian territories".[1119] The Appeals Chamber therefore considers that the Trial Chamber did not err in not relying on the Sokolac Report as it is irrelevant to the issue at stake.

324. The Appeals Chamber moreover recalls the Trial Chamber's findings that following the 22 April 1992 Instruction, Stanišić directed the chiefs of the CSBs to forward detailed documentation and investigation of war crimes and other serious crimes committed against Serbs for use by the state commission in Serbia mandated to collect and verify data in relation to war crimes, genocide, and crimes against humanity in Croatia and other areas.[1120] The Trial Chamber found that the instruction did not include the investigation of all crimes irrespective of the ethnicity of the victims.[1121] The Trial Chamber further found that, in view of the language of the orders of 16 May 1992, 26 May 1992, 17 June 1992, 11 July 1992, and 17 July 1992,[1122] the instruction from Stanišić to the CSBs on documenting war crimes and other mass atrocities was specifically limited to instances where Serbs were the victims, and not all civilians.[1123]

[1116] Trial Judgement, vol. 2, para. 632.
[1117] Trial Judgement, vol. 2, para. 682.
[1118] Exhibit 1D572, p. 1.
[1119] Exhibit 1D328, pp 1-5.
[1120] Trial Judgement, vol. 2, paras 722, 758.
[1121] Trial Judgement, vol. 2, para. 758.
[1122] See Trial Judgement, vol. 2, paras 723-727. The Appeals Chamber observes that the orders of 16 May 1992, 26 May 1992, 17 June 1992, 11 July 1992, and 17 July 1992 were issued by Stanišić and the RS Presidency to organise the gathering of information on war crimes and mass atrocities committed against Serbs during the armed conflict (see Trial Judgement, vol. 2, paras 723-727).
[1123] Trial Judgement, vol. 2, para. 758.

325. In light of the above, the Appeals Chamber finds that Stanišić has failed to demonstrate that no reasonable trier of fact could have found that he focused primarily on war crimes committed against Serbs, and therefore dismisses his argument.

g. Alleged error in the Trial Chamber's finding that Stanišić permitted RS MUP forces under his control to participate in joint operations in the Municipalities

326. Having considered various factors in relation to Stanišić's role in preventing, investigating, and documenting crimes, including those discussed above, the Trial Chamber concluded that Stanišić "took insufficient action to put an end to [crimes that were being committed] and instead permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb Forces involved in the commission of crimes, particularly the JNA/VRS and the TO".[1124]

327. Stanišić asserts that the Trial Chamber disregarded its own inconclusive finding on the issue of re-subordination of police forces and, on this basis, disputes its finding that he permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb forces.[1125] The Appeals Chamber recalls that it has addressed and dismissed this argument elsewhere in this Judgement.[1126]

h. Conclusion

328. For the reasons set out above, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in finding that: (i) the police and civilian prosecutors failed to function in an impartial manner;[1127] (ii) Stanišić's orders of 8, 10, 17, and 24 August 1992 were prompted by international attention;[1128] (iii) Stanišić had the authority to take measures against crimes and failed to take sufficient action to put an end to them;[1129] (iv) Stanišić's actions against paramilitaries were only undertaken due to their refusal to submit to the command of the army and their commission of crimes against Serbs;[1130] and (v) Stanišić focused primarily on crimes committed against Serbs.[1131] Neither has he demonstrated any error in the Trial Chamber's conclusion that he took insufficient action to put an end to the crimes and instead permitted RS MUP forces under his overall control to continue to participate in joint operations in the

[1124] Trial Judgement, vol. 2, para. 759.
[1125] Stanišić Appeal Brief, para. 287, referring to Trial Judgement, vol. 2, paras 342, 759.
[1126] See *supra*, paras 126-127.
[1127] Trial Judgement, vol. 2, para. 745.
[1128] Trial Judgement, vol. 2, paras 752-753.
[1129] Trial Judgement, vol. 2, paras 746-756.
[1130] Trial Judgement, vol. 2, para. 756.
[1131] Trial Judgement, vol. 2, para. 758.

Municipalities with other Serb forces.[1132] Stanišić's arguments with regard to his role in preventing, investigating, and documenting crimes are therefore dismissed in their entirety.

(iv) Alleged errors in relation to Stanišić's role in unlawful arrest and detentions (subsection (B)(iv) of Stanišić's sixth ground of appeal)

329. In considering Stanišić's role in the unlawful arrest and detentions of non-Serbs as a factor in its assessment of his contribution to the JCE, the Trial Chamber first found that in addition to detention centres at the SJBs or police stations, members of the police were involved in guarding detainees at the following detention centres at which crimes were found to have been committed: Bileća; Luka detention camp in Brčko; the Power Station Hotel in Gacko; the Nikola Mačkić School in Ključ; the detention facility at the gymnasium in Pale ("Gymnasium"); Omarska and Keraterm detention camps in Prijedor; the Territorial Defence ("TO") building in Teslić; Sušica detention camp in Vlasenica; and the Bunker in Vogošća.[1133] Further, the Trial Chamber found that the RS MUP shared responsibility for the detention centres with the MOJ and the VRS during the time relevant to the Indictment, either by establishing, managing, or guarding these facilities, or otherwise assisting in their functioning.[1134] The Trial Chamber also concluded that Stanišić contributed to their continued existence and operation by failing to take decisive action to close these facilities or, at the very least, by failing to withdraw the RS MUP forces from their involvement in these detention centres.[1135]

a. Submissions of the parties

330. Stanišić submits that in its assessment of the objective element of the first category of joint criminal enterprise, the Trial Chamber "improperly relied on findings in relation to detention camps, many of which are manifestly incorrect"[1136] and that no reasonable trier of fact could have been satisfied "on the basis of these incorrect findings that he contributed to the 'continued existence and operation' of the detention camps".[1137]

331. Stanišić submits that the Trial Chamber failed to make a conclusive finding as to whether the Luka detention camp in Brčko was controlled by either the SDS in Bijeljina or Brčko police.[1138]

[1132] Trial Judgement, vol. 2, para. 759.
[1133] Trial Judgement, vol. 2, para. 760.
[1134] Trial Judgement, vol. 2, para. 761.
[1135] Trial Judgement, vol. 2, para. 761.
[1136] Stanišić Appeal Brief, para. 289.
[1137] Stanišić Appeal Brief, para. 300.
[1138] Stanišić Appeal Brief, para. 290, referring to Trial Judgement, vol. 2, para. 760.

332. Further, Stanišić submits that the Trial Chamber failed to make specific findings to support its conclusion that the RS MUP had "joint authority" over the Sušica camp.[1139] Stanišić submits that the Trial Chamber erred in finding that the RS MUP had "joint authority" with the crisis staff over the Sušica camp in the municipality of Vlasenica as the RS MUP headquarters had no influence over the crisis staff in Vlasenica in mid-1992, which "prompt[ed] efforts by the Serb leadership to end [the crisis staff's] 'apparent independence and autonomy'".[1140] He submits that "[t]his failed, however, with [Witness] Đokanović testifying that nothing changed except the name of the Crisis Staff."[1141]

333. Stanišić also argues that the Trial Chamber erred in relation to the Gymnasium in Pale by failing to make findings supporting its conclusion that the RS MUP "guarded" the Gymnasium.[1142] Stanišić also argues that the Trial Chamber erred by failing to consider that the SDS controlled the Pale Crisis Staff,[1143] and that he took measures to remove Koroman, the Chief of the Pale SJB and head of the police guarding the Gymnasium, "but was unsuccessful due to the strong support Koroman received locally".[1144] Stanišić further points to the testimony of Witness Slobodan Marković ("Witness Marković"), a member of the Commission for Exchange of Prisoners set up on 8 May 1992,[1145] that while working on prisoner exchanges in Pale, Stanišić told him that prisoners should be treated in accordance with the Geneva Conventions I-IV of 12 August 1949 ("Geneva Conventions"), even though the exchanges were under the authority of the MOJ and the VRS and that Stanišić had no power in this regard.[1146]

334. With regard to Gacko municipality, Stanišić submits that the Trial Chamber erred by: (i) failing to make findings supporting its conclusions that the RS MUP "controlled" the Power Station Hotel in Gacko;[1147] and (ii) failing to consider its earlier finding regarding the difficulties with communications,[1148] and that SJB Chief Popović told the commission for detention facilities in

[1139] Stanišić Appeal Brief, para. 291, referring to Trial Judgement, vol. 2, para. 760.
[1140] Stanišić Appeal Brief, para. 292, referring to Trial Judgement, vol. 2, paras 54, 260.
[1141] Stanišić Appeal Brief, para. 292, referring to Trial Judgement, vol. 2, para. 262, Exhibit P397.02, pp 10576, P397.04, pp 10773-10774.
[1142] Stanišić Appeal Brief, para. 291, referring to Trial Judgement, vol. 2, para. 760.
[1143] Stanišić Appeal Brief, para. 293, referring to Trial Judgement, vol. 2, para. 852.
[1144] Stanišić Appeal Brief, para. 293, referring to Trial Judgement, vol. 2, paras 698, 700, 852, Tomislav Kovač, 9 Mar 2012, T. 27226-27227, ST127, 17 Jun 2010, T. 11924-11925, Exhibit P2461.
[1145] See Trial Judgement, vol. 2, para. 616.
[1146] Stanišić Appeal Brief, para. 293, referring to Trial Judgement, vol. 2, para. 617, Witness Marković, 12 Jul 2010, T. 12674-12675, 12690, Witness Marković, 13 Jul 2010, T. 12730.
[1147] Stanišić Appeal Brief, para. 291, referring to Trial Judgement, vol. 2, para. 760.
[1148] Stanišić Appeal Brief, para. 294, referring to Trial Judgement, vol. 2, para. 74, Aleksander Krulj, 26 Oct 2009, T. 1992.

the municipalities of Trebinje, Gacko, and Bileća[1149] ("Second Commission for Detention Facilities") that there were no prisoners in Gacko.[1150]

335. Stanišić also submits that the Trial Chamber failed to consider that Ključ was taken over in late July 1992 by "cooperated action" between a police detachment and the VRS through re-subordination of the police under the army command.[1151] He submits that the evidence further shows that in August 1992, it was reported to the RS MUP that there were no camps in the municipality.[1152]

336. With regard to Omarska detention camp, Stanišić submits that the Trial Chamber erred by failing to consider that it was established by a decision of Drljača, Chief of the Prijedor SJB, as ordered by the Prijedor Crisis Staff, "in clear contravention of his competence and authority".[1153]

337. With regard to the Bunker, the detention centre in Vogošća, Stanišić submits that the Trial Chamber failed to refer to the evidence that it was run by Branko Vlačo, who had been appointed by the military authorities,[1154] and that the MOJ was *de facto* and *de jure* in charge of the detention centre.[1155] He also argues that the Trial Chamber failed to consider that the problem of autonomous local authorities disregarding the RS MUP was particularly pronounced in Vogošća.[1156] In this regard, Stanišić asserts that the failure of Maksimović, Chief of the Vogošća SJB, to follow orders and the fact that he took instruction from the crisis staff alone led to his removal by Stanišić and the filing of a criminal complaint against him by the RS MUP.[1157]

338. Stanišić also argues that the Trial Chamber erred in failing to refer to the testimony of Witness Predrag Radulović ("Witness Radulović") concerning contemporary reports indicating that

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[1149] Trial Judgement, vol. 2, para. 673.
[1150] Stanišić Appeal Brief, para. 294, referring to Trial Judgement, vol. 2, para. 673, Exhibit P165.
[1151] Stanišić Appeal Brief, para. 295, referring to Trial Judgement, vol. 2, paras 405, 502, Vidosav Kovačević, 15 Sep 2011, T. 24316, Slavko Lisica, 1 Mar 2012, T. 26933-26934, 26999.
[1152] Stanišić Appeal Brief, para. 295, referring to Trial Judgement, vol. 2, para. 426, Exhibit P972.
[1153] Stanišić Appeal Brief, para. 296, referring to Trial Judgement, vol. 2, paras 422, 856, Exhibits P1560, 1D166. In this regard, Stanišić asserts that Drljača was appointed by the Prijedor Crisis Staff (Stanišić Appeal Brief, para. 296 referring to Exhibit P2462, ST161, 19 Nov 2009, T. 3439-3443, Tomislav Kovač, 9 Mar 2012, T. 27240-27241, 27251-27252).
[1154] Stanišić Appeal Brief, para. 297, referring to Momčilo Mandić, 4 May 2010, T. 9535-9536. Stanišić further asserts that in spite of Momčilo Mandić's testimony, the Trial Chamber was "unable to make a conclusive finding whether Vlačo was a member of the police or a MOJ official" (Stanišić Appeal Brief, fn. 438, referring to Trial Judgement, vol. 2, para. 879).
[1155] Stanišić Appeal Brief, para. 297, referring to Exhibits P1318.30, P1318.31, P1318.33, P1872, P1308, P1475, Witness Marković, 12 Jul 2010, T. 12673-12675.
[1156] Stanišić Appeal Brief, para. 297, referring to Drago Borovčanin, 24 Feb 2010, T. 6772.
[1157] Stanišić Appeal Brief, para. 297, referring to Exhibits 1D106, 1D182, 1D184, 1D186.

Stanišić had not been informed in 1992 about the events that occurred in the municipalities of Prijedor and Teslić.[1158]

339. Stanišić further submits that the Trial Chamber's finding that he had authority over RS MUP forces who were involved in detention centres is "tainted" by the Trial Chamber's improper reliance on its findings in relation to the Bosnian Serb leadership.[1159] Stanišić also argues that the Trial Chamber erred in finding that he failed to take decisive action to withdraw RS MUP forces from their involvement in detention facilities which were the shared responsibility of the MOJ, VRS, and RS MUP.[1160] In this regard, Stanišić refers to arguments made earlier in his appeal brief that he "did not have the power to withdraw RS MUP forces from their re-subordination", and that the Trial Chamber attributed to him the criminal conduct of these re-subordinated forces without making an express finding that he had authority over these forces.[1161] Stanišić submits that the Trial Chamber thereby incorrectly based its conclusion that he had authority over these forces on the underlying finding that the Bosnian Serb leadership was in control over events taking place in the municipalities.[1162]

340. Ultimately, Stanišić submits that no reasonable trial chamber could have been satisfied on the basis of these incorrect findings that Stanišić contributed to the "continued existence and operation" of the detention camps.[1163]

341. The Prosecution responds that the Trial Chamber reasonably found that Stanišić contributed to the continued existence and operation of the detention facilities by failing to take action to close these detention facilities, or at the very least, by failing to withdraw RS MUP personnel working within these facilities.[1164] It submits that even though Stanišić knew of the unlawful detentions of non-Serbs at the latest by the beginning of June 1992,[1165] he did not withdraw his personnel from these facilities and, quite the opposite, informed his subordinates that if necessary, reserve

[1158] Stanišić Appeal Brief, para. 298, referring to Predrag Radulović, 2 Jun 2010, T. 11205-11209.
[1159] Stanišić Appeal Brief, para. 299, referring to Trial Judgement, vol. 2, para. 761. More specifically, Stanišić argues that the Trial Chamber incorrectly based its conclusion that he had authority over re-subordinated RS MUP forces on its finding that the Bosnian Serb leadership was in control over events taking place in the Municipalities (Stanišić Appeal Brief, para. 299).
[1160] Stanišić Appeal Brief, paras 228-229, referring to Trial Judgement, vol. 2, para. 761.
[1161] Stanišić Appeal Brief, para. 299, referring to Stanišić Appeal Brief, para. 269 and to his first ground of appeal, in general. See Stanišić Appeal Brief, paras 228-229.
[1162] Stanišić Appeal Brief, para. 299.
[1163] Stanišić Appeal Brief, para. 300, referring to Trial Judgement, vol. 2, para. 761.
[1164] Prosecution Response Brief (Stanišić), para. 150, referring to Trial Judgement, vol. 2, para. 761. See Appeal Hearing, 16 Dec 2015, AT. 115-116.
[1165] Prosecution Response Brief (Stanišić), para. 150, referring to Trial Judgement, vol. 2, para. 762; also referring to Trial Judgement, vol. 2, paras 614-621, 623-625, 763-764. In this regard, the Prosecution argues that by July 1992, Stanišić knew that in the ARK "several thousands" Muslims and Croats were being held at different locations and that the RS MUP was securing detention camps where conditions were bad and the international norms not observed (Prosecution Response Brief (Stanišić), para. 150, referring to Trial Judgement, vol. 2, paras 631, 638).

personnel could be deployed to assist them.[1166] The Prosecution contends that Stanišić's argument that police forces in detention facilities were re-subordinated to the army "ignores that he expressly signalled to his subordinates that they could continue to deploy reserve personnel to work within these facilities".[1167] Further, the Prosecution contends that Stanišić's orders to his subordinates regulating the treatment of the detainees demonstrate that he could have withdrawn RS MUP personnel from detention facilities.[1168] It submits that Stanišić's argument that he issued such orders but did not exercise jurisdiction or authority over the personnel in detention facilities defies common sense[1169] and should be summarily dismissed.[1170]

342. The Prosecution also submits that Stanišić's challenges to the Trial Chamber's findings concerning his authority over "individual" detention facilities should be summarily dismissed.[1171] In particular, it argues that Stanišić: (i) ignores the Trial Chamber's findings in volume one of the Trial Judgement regarding Sušica detention camp, the Gymnasium in Pale, and the Power Station Hotel in Gacko;[1172] (ii) misrepresents the evidence he claims the Trial Chamber ignored,[1173] repeats his

[1166] Prosecution Response Brief (Stanišić), para. 150, referring to Trial Judgement, vol. 2, para. 667. The Prosecution also argues that Stanišić knew that the reserve personnel included "thieves and criminals" (Prosecution Response Brief (Stanišić), para. 150, referring to Trial Judgement, vol. 2, paras 600, 643, 743).

[1167] Prosecution Response Brief (Stanišić), para. 151, referring to Stanišić Appeal Brief, para. 299. According to the Prosecution, while Stanišić challenges the Trial Chamber's conclusion that the RS MUP exercised responsibility over detention facilities on the premise that the police working in these facilities were re-subordinated to the military, this challenge fails because: (i) his duty to protect the civilian population imposed upon him the obligation to conduct investigations to determine the identity of perpetrators, irrespective of their affiliation; (ii) the RS MUP shared the responsibility for detention facilities along with the MOJ and the VRS, and many police stations operated as detention facilities; and (iii) a wealth of evidence demonstrates Stanišić's deep involvement in the detention of non-Serbs (Prosecution Response Brief (Stanišić), paras 78-80).

[1168] Prosecution Response Brief (Stanišić), para. 151, referring to Prosecution Response Brief (Stanišić), paras 11-13, 79-83.

[1169] Prosecution Response Brief (Stanišić), para. 151, referring to Stanišić Appeal Brief, paras 276-277.

[1170] Prosecution Response Brief (Stanišić), para. 151, referring to *Krajišnik* Appeal Judgement, para. 22.

[1171] Prosecution Response Brief (Stanišić), para. 152, referring to *Krajišnik* Appeal Judgement, paras 18-19, 23-24, 26-27.

[1172] Prosecution Response Brief (Stanišić), para. 152, referring to Stanišić Appeal Brief, para. 291. Regarding Sušica detention camp, the Prosecution points to the Trial Chamber's findings that: (i) decisions concerning the camp and its detainees were made by the crisis staff and the RS MUP; (ii) RS MUP personnel were among the guards at the camp; (iii) RS MUP received reports concerning the camp; and (iv) detainees were removed from the camp under the authority of the Vlasenica SJB Chief (Prosecution Response Brief (Stanišić), para. 152, referring to Trial Judgement, vol. 1, paras 1452, 1456, 1471). Regarding the Gymnasium in Pale, the Prosecution refers to the Trial Chamber's reliance on testimonies of detainees that the facility was guarded by members of the Pale police as well as reserve police (Prosecution Response Brief (Stanišić), para. 152, referring to Trial Judgement, vol. 1, paras 1319, 1323, 1326, 1330). With regard to the Power Station Hotel in Gacko, the Prosecution refers to the Trial Chamber's finding that the facility was commanded by Radinko Ćorić and Ranko Ignjatović, both RS MUP employees, and that the orders at the facility came from Popović, as well as Božidar Vučurević, President of the SAO Herzegovina (Prosecution Response Brief (Stanišić), para. 152, referring to Trial Judgement, vol. 1, para. 1220).

[1173] Prosecution Response Brief (Stanišić), para. 152, referring to, *inter alia*, Stanišić Appeal Brief, paras 293 (according to the Prosecution the evidence Stanišić cites merely confirms that he appointed Koroman to posts within the RS MUP in 1994, Exhibit P2461, pp 3-4), 298 (submitting that in fact: (i) Witness Radulović testified that during a conversation in 2000, Stanišić "said that most of the things that we talked about [Stanišić] had not been informed about"; (ii) it was Witness Radulović's "impression" that Stanišić "was really insufficiently informed"; (iii) Stanišić "knew about the events in Prijedor and Teslić and Doboj because these were well known cases and events which anyone who lived in Republika Srpska could have known about"; and (iv) it was Witness Radulović's general

failed arguments from trial,[1174] and refers to evidence without demonstrating an error;[1175] (iii) fails to identify an error in the Trial Chamber's finding that Luka detention camp in Brčko was "controlled by either the SDS in Bijeljina or Brčko police" given that RS MUP personnel were involved in the operation of the camp;[1176] and (iv) seeks to substitute his own evaluation of the evidence pertaining to the RS MUP's authority over Sušica detention camp without showing an error.[1177]

343. In reply, Stanišić argues that the Prosecution's arguments regarding detention-related crimes do not address issues of jurisdiction and authority, and that he did not exercise any authority over detention camps or over the forces entrusted with guarding the facilities.[1178] He also submits that the lack of a conclusive finding as to the authority exercised over re-subordinated forces prevents the Prosecution from attributing actions by RS MUP forces guarding detention camps to him.[1179]

b. Analysis

344. With regard to Stanišić's argument that the Trial Chamber erred by failing to make a conclusive finding whether Luka detention camp in Brčko was "controlled by either the SDS in Bijeljina or Brčko police",[1180] the Appeals Chamber observes that the Trial Chamber did not make an explicit finding as to which authority exercised control over Luka detention camp. The Trial Chamber found that Goran Jelisić ("Jelisić"), who was in charge of the camp, was seen at times in a blue uniform like the one worn by the police in the former Yugoslavia and at times in a military camouflage uniform.[1181] The Trial Chamber cited evidence indicating that Jelisić was a member of the reserve police, but also referred to evidence that he "appeared to follow the orders of Vojkan Đurković, a member of the SDS".[1182] However, it then also referred to evidence that Jelisić was a member of a paramilitary organisation.[1183] The Trial Chamber further cited evidence that the Brčko SJB had no authority over Luka detention camp and that the camp was controlled by the army.[1184] In addition, the Trial Chamber cited evidence that members of the Brčko RS MUP visited the camp

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understanding that Stanišić "was not informed in a timely manner about those events"), referring to Predrag Radulović, 2 Jun 2010, T. 11206-11209).

[1174] Prosecution Response Brief (Stanišić), para. 152, comparing Stanišić Appeal Brief, para. 293 with Stanišić Final Trial Brief, paras 498, 501, 574, Stanišić Appeal Brief, para. 296 with Stanišić Final Trial Brief, paras 571, 610, and Stanišić Appeal Brief, para. 297 with Stanišić Final Trial Brief, paras 509, 572.

[1175] Prosecution Response Brief (Stanišić), para. 152.

[1176] Prosecution Response Brief (Stanišić), para. 152, referring to Stanišić Appeal Brief, para. 290, Trial Judgement, vol. 1, para. 1101.

[1177] Prosecution Response Brief (Stanišić), para. 152, referring to Stanišić Appeal Brief, para. 292.

[1178] Stanišić Reply Brief, para. 79, referring to Prosecution Response Brief (Stanišić), paras 133, 142-143, 150-152.

[1179] Stanišić Reply Brief, para. 79, referring to Prosecution Response Brief (Stanišić), paras 133, 143, 150-152.

[1180] See *supra*, para. 331.

[1181] Trial Judgement, vol. 1, para. 1079.

[1182] Trial Judgement, vol. 1, para. 1079.

[1183] Trial Judgement, vol. 1, para. 1079.

and that police officers questioned and occasionally mistreated detainees.[1185] The Trial Chamber also cited evidence that the guards at the camp were Serb soldiers from Serbia, Bijeljina, and Brčko and that members of the Red Berets detained Muslims at the camp.[1186] In light of the contradictory evidence the Trial Chamber referred to, and considering the Trial Chamber's failure to enter a finding as to which authority exercised control over Luka detention camp, the Appeals Chamber considers the Trial Chamber's finding that Stanišić failed to take decisive action to close Luka detention camp or to withdraw the RS MUP forces from it and its reliance on this finding in the assessment of Stanišić's contribution to the JCE,[1187] to be unreasonable and therefore an error. The impact of this error will be assessed later in this Judgement.[1188]

345. With respect to Stanišić's arguments pertaining to the Sušica detention camp in Vlasenica,[1189] the Appeals Chamber considers that the Trial Chamber's conclusion must be read in conjunction with the factual findings made earlier in the Trial Judgement. In particular, the Appeals Chamber notes the Trial Chamber's findings that: (i) decisions concerning Sušica detention camp and detainees were made by the crisis staff and the RS MUP, which received reports on the situation in the camp;[1190] and (ii) members of the police were involved in guarding, beating, and mistreating detainees at the camp.[1191] Insofar as Stanišić argues that the RS MUP headquarters had no influence over the crisis staff in Vlasenica, the Appeals Chamber notes that the Trial Chamber has indeed made findings suggesting that the crisis staff had certain autonomy in Vlasenica.[1192] However, Stanišić merely points to the Trial Chamber's findings and evidence suggesting that the crisis staff had certain autonomy in Vlasenica,[1193] without substantiating how such alleged autonomy of the crisis staff undermines the Trial Chamber's conclusion that the RS MUP had "joint authority"[1194] with the crisis staff over the Sušica camp in the municipality of Vlasenica. In light of these findings, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber

[1184] Trial Judgement, vol. 1, para. 1080.
[1185] Trial Judgement, vol. 1, para. 1080.
[1186] Trial Judgement, vol. 1, para. 1080.
[1187] See Trial Judgement, vol. 2, para. 761.
[1188] See *infra*, paras 354-355.
[1189] See *supra*, para. 332.
[1190] Trial Judgement, vol. 1, para. 1452.
[1191] Trial Judgement, vol. 1, paras 1453-1460, 1477-1478, 1485, 1487, 1490.
[1192] The Trial Chamber found that the RS MUP headquarters had no influence over some SJBs, including the SJB in Vlasenica, between May and July 1992 (Trial Judgement, vol. 2, para. 54) and that Dragan Đokanović ("Witness Đokanović") – appointed on 9 June 1992 by Karadžić to the position of Republican Commissioner tasked with forming municipal war commissions and the restoration of power to the elected local civilian authorities – travelled to several municipalities, including Vlasenica, and that despite their apparent independence and autonomy, the crisis staffs in these municipalities reorganised themselves according to Witness Đokanović's directions without opposition (Trial Judgement, vol. 2, para. 260).
[1193] See *supra*, para. 332.
[1194] Trial Judgement, vol. 2, para. 760.

erred by failing to make findings to support its conclusion that the RS MUP and the crisis staff in Vlasenica had joint authority over Sušica detention camp.

346. Turning to Stanišić's argument that the Trial Chamber erred in its finding in relation to the Gymnasium in Pale,[1195] the Appeals Chamber first recalls that the Trial Chamber found that members of the Pale SJB, the reserve police, and a special police unit were involved in the beatings that took place at the Gymnasium,[1196] that police units of Pale guarded the detainees,[1197] and that "[t]he local police, through Koroman, were subordinated to the RS MUP, which was under the control of Mićo Stanišić".[1198] Consequently, the Appeals Chamber considers that Stanišić has failed to demonstrate that the Trial Chamber erred by failing to make findings supporting its conclusion that the police subordinated to the RS MUP guarded the Gymnasium. Insofar as Stanišić argues that the Trial Chamber erred in failing to consider its own finding that the Pale Crisis Staff was controlled by the SDS,[1199] the Appeals Chamber observes that Stanišić has failed to substantiate how this alleged error had an effect on the Trial Chamber's conclusion that the police subordinated to the RS MUP, which was under Stanišić's control, guarded the Gymnasium. Stanišić's arguments are therefore dismissed.

347. With regard to Stanišić's argument that the Trial Chamber erred by failing to consider its own finding that he took measures to remove Koroman, the Chief of the Pale SJB and head of the police guarding the Gymnasium, but was unsuccessful due to the strong support Koroman received locally,[1200] the Appeals Chamber recalls the Trial Chamber's finding that the proceedings were launched against him towards the end of 1992 and did not pertain to the crimes charged in the Indictment but instead concerned crimes such as theft and professional misconduct.[1201] Stanišić's argument thus falls short of demonstrating an error in the Trial Chamber's finding that he failed to take decisive action against crimes committed in detention centres for which the RS MUP shared responsibility.[1202] With respect to Stanišić's argument based on the evidence of Witness Marković,[1203] the Appeals Chamber notes the Trial Chamber's assessment of evidence that members of the Pale police and of the reserve police were guarding the facility, which included an

[1195] See *supra*, para. 333.
[1196] Trial Judgement, vol. 1, paras 1325, 1330-1331, 1338-1339, 1342; Trial Judgement, vol. 2, para. 851.
[1197] Trial Judgement, vol. 1, paras 1319, 1339, 1341.
[1198] Trial Judgement, vol. 2, para. 852.
[1199] Stanišić Appeal Brief, para. 293, referring to Trial Judgement, vol. 2, para. 852. See *supra*, para. 334. See also Trial Judgement, vol. 1, paras 1298, 1343.
[1200] Stanišić Appeal Brief, para. 293, referring to Trial Judgement, vol. 2, paras 698, 700, 852, Exhibit P2461, ST127, 17 Jun 2010, T. 11924-11925, Tomislav Kovač, 9 Mar 2012, T. 27226-27227.
[1201] Trial Judgement, vol. 2, para. 754.
[1202] Trial Judgement, vol. 2, para. 761. See Trial Judgement, vol. 2, paras 754, 757, 760.
[1203] See *supra*, para. 333.

assessment of Witness Marković's evidence in this regard.[1204] In light of these findings, the Appeals Chamber finds that Stanišić has not demonstrated that the Trial Chamber failed to consider the testimony of Witness Marković. Consequently, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in relying on his failure with respect to the Gymnasium in Pale when assessing his contribution to the JCE. Stanišić's arguments are therefore dismissed.

348. Stanišić further argues that the Trial Chamber erred in its findings relating to the Power Station Hotel in Gacko.[1205] The Appeals Chamber first notes the Trial Chamber's findings that: (i) the Power Station Hotel was commanded by members of the police; (ii) orders at the facility came from SJB Chief Popović; and (iii) members of the police guarded and mistreated detainees.[1206] Consequently, the Appeals Chamber considers that Stanišić has failed to demonstrate that the Trial Chamber erred by failing to make findings supporting its conclusion that the RS MUP "controlled" the Power Station Hotel in Gacko. As to Stanišić's argument that the Trial Chamber erred by failing to consider earlier findings,[1207] the Appeals Chamber finds that Stanišić has failed to demonstrate how the lack of communication in the municipality of Trebinje to which he refers, invalidates the Trial Chamber's conclusion regarding the RS MUP control over the Power Station Hotel in Gacko. Further, the Appeals Chamber observes that the report Stanišić refers to when arguing that Popović told the Second Commission for Detention Facilities that there were no prisoners in Gacko, concerns the period between the middle to the end of August 1992,[1208] whereas the crimes for which Stanišić was found responsible occurred from June 1992 onwards.[1209] Moreover, in light of the evidence cited by the Trial Chamber pertaining to, *inter alia*, the detention of Witness Osman Musić and other individuals during the month of June 1992,[1210] the Appeals Chamber finds that the Trial Chamber reasonably concluded that prisoners were present at the Power Station Hotel during the relevant period. Consequently, the Appeals Chamber finds that Stanišić has failed to show an error in the Trial Chamber's reliance on his failure to act with regard to the Power Station Hotel in Gacko municipality. Stanišić's arguments in this respect are therefore dismissed.

349. With regard to Stanišić's argument that the municipality of Ključ was taken over in late July 1992 by a joint action between the police and the VRS,[1211] the Appeals Chamber considers that the cooperation between members of the Banja Luka CSB SPD and the VRS, as established by the

[1204] See Trial Judgement, vol. 1, paras 1319, 1323, 1330.
[1205] Stanišić Appeal Brief, paras 291, 294. See *supra*, para. 334.
[1206] Trial Judgement, vol. 1, paras 1220, 1221, 1222, 1229, 1230, 1232, 1239.
[1207] Stanišić Appeal Brief, para. 294, referring to Trial Judgement, vol. 2, para. 74, Witness Krjul, 26 Oct 2009, T. 1992.
[1208] Exhibit P165.
[1209] Trial Judgement, vol. 1, paras 1220-1227.
[1210] Trial Judgement, vol. 1, paras 1220-1227.

Trial Chamber,[1212] does not undermine the Trial Chamber's findings that members of the police were involved in guarding detainees at the Nikola Mačkić School. The Appeals Chamber notes in this respect the Trial Chamber's findings that members of the police in Ključ, of the Banja Luka CSB SPD, and of the reserve police were involved in bringing in, interrogating, and mistreating detainees at the Nikola Mačkić School.[1213] The Appeals Chamber also considers that Exhibit P972 is dated 27 August 1992, whereas the crimes for which Stanišić was found responsible occurred from May 1992 onwards.[1214] In consequence, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in relation to the municipality of Ključ.

350. With regard to Stanišić's argument that the Trial Chamber erred in failing to consider that Omarska detention camp was established by Drljača pursuant to an order of the Prijedor Crisis Staff, "in clear contravention of his competence and authority",[1215] the Appeals Chamber notes the Trial Chamber's finding that the Prijedor SJB was in charge of the Omarska detention camp.[1216] The Appeals Chamber therefore finds that Stanišić has failed to demonstrate an error on the part of the Trial Chamber and his arguments are dismissed.

351. Turning to Stanišić's arguments regarding the Bunker in the municipality of Vogošća, the Appeals Chamber notes the Trial Chamber's findings that Branko Vlaćo, the warden of the Bunker, was either a member of the police or an official of the MOJ.[1217] Therefore, contrary to Stanišić's submission,[1218] the Trial Chamber considered the possibility that the MOJ may have been in charge of the detention centre when assessing Stanišić's responsibility. With regard to Stanišić's argument that local authorities were acting autonomously from the RS MUP in the municipality of Vogošća, the Appeals Chamber recalls the Trial Chamber's finding that in May and June 1992, some CSB chiefs were unable to control the situation and cope with the SJB chiefs in their areas and that this problem was "particularly pronounced in Vogošća and Zvornik".[1219] The Trial Chamber found, however, that Maksimović, Chief of the Vogošća SJB, was found guilty of dereliction of duty and official misconduct and was temporarily relieved of his duties by Stanišić,[1220] which shows that even if members of the SJBs refused to follow orders, Stanišić had the power to remove them. Stanišić therefore has failed to demonstrate that no reasonable trier of fact could have found that the

[1211] See *supra*, para. 335.
[1212] Trial Judgement, vol. 2, paras 405, 502.
[1213] Trial Judgement, vol. 1, para. 308.
[1214] Trial Judgement, vol. 1, paras 331-339.
[1215] See *supra*, para. 336.
[1216] Trial Judgement, vol. 2, paras 422, 486. See *infra*, para. 806.
[1217] Trial Judgement, vol. 1, para. 1543.
[1218] Stanišić Appeal Brief, para. 297.
[1219] See Trial Judgement, vol. 2, para. 583.
[1220] Trial Judgement, vol. 2, para. 707.

police were involved in guarding detainees at the Bunker in Vogošća. Stanišić's arguments in this regard are dismissed.

352. With respect to Stanišić's argument that the Trial Chamber failed to consider the evidence of Witness Radulović regarding reports indicating that Stanišić lacked knowledge of the crimes committed against non-Serbs in the municipalities of Prijedor and Teslić in 1992,[1221] the Appeals Chamber notes that the Trial Chamber considered Witness Radulović's testimony. The Trial Chamber found that the information contained in the reports that were not submitted to Stanišić was nevertheless relayed to him "through the leadership of Banja Luka".[1222] The Trial Chamber further found that despite difficulties between April and August 1992, the communication system within the RS MUP did function.[1223] In light of these findings, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in its consideration of the evidence when assessing his role in the arrest and detentions of non-Serbs in the municipalities of Prijedor and Teslić. Stanišić's argument is therefore dismissed.

353. Finally, insofar as Stanišić argues that he did not have the power to withdraw re-subordinated RS MUP forces from detention facilities,[1224] the Appeals Chamber notes that, in support, he only submits that he had no authority to withdraw personnel who had been re-subordinated to the army to engage in combat activities. In so doing, Stanišić has failed to show how the alleged lack of his authority to withdraw the re-subordinated RS MUP forces from the combat activities impacts the Trial Chamber's findings with regard to his failure to take decisive action to withdraw RS MUP forces from their involvement in detention facilities which were the shared responsibility of the MOJ, VRS, and RS MUP.[1225] Moreover, Stanišić's argument that the Trial Chamber improperly found his authority over re-subordinated RS MUP forces on the basis of its finding that the Bosnian Serb leadership was in control of events taking place in the Municipalities, ignores the Trial Chamber's findings based on a plethora of evidence specifically related to Stanišić's authority over various detention facilities.[1226] His arguments are therefore dismissed.

c. Conclusion

354. The Appeals Chamber has found that the Trial Chamber erred by finding that Stanišić failed to take decisive action to close the Luka detention camp in Brčko or to withdraw the RS MUP

[1221] Stanišić Appeal Brief, para. 298. See *supra*, para. 338.
[1222] Trial Judgement, vol. 2, para. 689.
[1223] Trial Judgement, vol. 2, para. 690.
[1224] See *supra*, para. 338.
[1225] See *supra*, para. 245.

forces from it and by relying on this failure to act when assessing his contribution to the JCE.[1227] However, the Appeals Chamber recalls that it has confirmed the Trial Chamber's findings regarding Sušica detention camp in Vlasenica, the Gymnasium in Pale, the Power Station Hotel in Gacko, the Nikola Mačkić School in Ključ, the Omarska camp in Prijedor, the TO building in Teslić, and the Bunker in Vogošća.[1228] On the basis of these upheld findings, the Appeals Chamber is satisfied that a reasonable trial chamber could have reached the conclusion that Stanišić "contributed to [the] continued existence and operation [of the detention and penitentiary facilities for which the RS MUP shared responsibility with the MOJ and VRS] by failing to take decisive action to close these facilities or, at the very least, by failing to withdraw the RS MUP forces from their involvement in these detention centres".[1229]

355. Nonetheless, when assessing whether a reasonable trier of fact could have reached beyond reasonable doubt the conclusion that Stanišić's relevant acts and conduct significantly contributed to the JCE, the Appeals Chamber will consider his role in the unlawful arrest and detentions of non-Serbs – *i.e.* Stanišić's contribution to the continued existence and operation of the detention and penitentiary facilities for which the RS MUP shared responsibility with the MOJ and VRS – with the exception of the Trial Chamber's overturned finding on his role in the Luka detention camp in Brčko.

(d) Conclusion

356. The Appeals Chamber has found that the Trial Chamber erred in law by failing to make findings on whether Stanišić's acts and conduct furthered the JCE and whether his contribution was significant, thereby failing to provide a reasoned opinion.[1230] The Appeals Chamber recalls that a trial chamber's failure to provide a reasoned opinion constitutes an error of law which allows the Appeals Chamber to consider the relevant evidence and factual findings in order to determine whether a reasonable trier of fact could have established beyond reasonable doubt the findings challenged by the appellant.[1231] The Appeals Chamber shall therefore assess, on the basis of the Trial Chamber's findings and evidence relied upon by the Trial Chamber and identified by the parties whether a reasonable trier of fact could have concluded beyond reasonable doubt that Stanišić significantly contributed to the JCE.

[1226] See *supra*, paras 344-352. See also Trial Judgement, vol. 2, paras 760-761.
[1227] See *supra*, para. 344.
[1228] Trial Judgement, vol. 2, para. 760.
[1229] Trial Judgement, vol. 2, para. 761.
[1230] See *supra*, paras 136-142.
[1231] *Cf. Kordić and Čerkez* Appeal Judgement, paras 383-388; *Nyiramasuhuko et al.* Appeal Judgement, para. 977; *Bizimungu* Appeal Judgement, para. 23; *Ndindiliyimana et al.* Appeal Judgement, para. 293. See *supra*, paras 19, 142.

357. With regard to the common criminal purpose of the JCE, the Appeals Chamber has upheld the Trial Chamber's conclusion that, from no later than 24 October 1991 throughout the Indictment period, "a common plan did exist, the objective of which was to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serb state through the commission of the [JCE I Crimes]".[1232]

358. The Trial Chamber further found that in the months of April and June 1992, the municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik were taken over, in accordance with the Variant A and B Instructions through the joint action of the RS MUP and other Serb forces, sometimes by advance hostile occupation of the main features in town by police forces.[1233] According to the Trial Chamber, what followed was the mass exodus and involuntary departure of Muslims, Croats, and other non-Serbs from their homes, communities, villages, and towns either provoked by violent means that entailed unlawful detention at the local SJBs and improvised camps and centres or by the imposition of harsh, unliveable conditions and discriminatory measures by Serb forces, including members of the RS MUP.[1234]

359. With regard to Stanišić's contribution to the JCE, the Appeals Chamber recalls that Stanišić has not demonstrated any error in the Trial Chamber's findings, made under the subheading "Stanišić's contribution to JCE", on the following factors: (i) Stanišić's role in the creation of Bosnian Serb bodies and policies;[1235] (ii) the role of RS MUP forces in combat activities and takeovers of RS municipalities and Stanišić's actions in this regard, with the exception of the appointments of Witness Todorović and Krsto Savić considered as evidence of Stanišić's direct appointments of JCE members to the RS MUP, which were overturned by the Appeals Chamber;[1236] (iii) Stanišić's role in the prevention, investigation, and documentation of crimes;[1237] and (iv) Stanišić's role in unlawful arrests and detentions, with the exception of his role in the Luka detention camp in Brčko, which was overturned by the Appeals Chamber.[1238]

360. With regard to the first factor, the Trial Chamber found that, *inter alia*, Stanišić: (i) was involved in establishing Bosnian Serb institutions in BiH, including the SDS and the RS MUP;[1239]

[1232] Trial Judgement, vol. 2, para. 313. See *supra*, paras 63-71.
[1233] Trial Judgement, vol. 2, para. 737. See Trial Judgement, vol. 1, paras 133-1691.
[1234] Trial Judgement, vol. 2, para. 737. See Trial Judgement, vol. 1, paras 133-1691.
[1235] See *supra*, paras 145-220.
[1236] See *supra*, paras 221-268.
[1237] See *supra*, paras 269-328.
[1238] See *supra*, paras 329-355.
[1239] Trial Judgement, vol. 2, paras 729, 734.

(ii) had a close relationship with Karadžić, "a leading member of the JCE", from at least June 1991 and in the months preceding the establishment of the RS;[1240] (iii) was a key member of the decision-making authorities from early 1992 onwards;[1241] (iv) was aware of the Variant A and B Instructions, since the police were assigned, and played a central role in the implementation of the Instructions;[1242] (v) made the majority of key appointments in the RS MUP from 1 April 1992 onwards;[1243] and (vi) by his participation in the Bosnian Serb institutions, participated in the enunciation and implementation of the Bosnian Serb policy, as it evolved.[1244] The Trial Chamber concluded that his "conduct, presence at key meetings, attendance at sessions of the BSA, acceptance of the position of Minister of Interior—all indicate his voluntary participation in the creation of a separate Serb entity within BiH by the ethnic division of the territory".[1245] The Trial Chamber also found that Stanišić had overall command and control over the RS MUP police forces and over all other internal affairs organs.[1246]

361. With respect to the second factor, the Trial Chamber found that Stanišić: (i) ordered RS MUP forces, on 15 May 1992, to be organised into "wartime units" by the chiefs of the CSBs and SJBs;[1247] (ii) issued orders for police forces, both regular and reserve units, to participate in "coordinated action with the armed forces" and facilitated the arming of the RS MUP forces;[1248] (iii) deployed police forces in joint combat operations with the military in furtherance of the decisions of the Bosnian Serb authorities;[1249] and (iv) consistently approved the deployment of the RS MUP forces to combat activities along with the other Serb forces despite being aware of the commission of crimes.[1250] The Trial Chamber also found that in the police hierarchy, Stanišić directly appointed Koroman, Chief of Pale SJB, Drjlača, Chief of Prijedor SJB, Witness Bjelošević, Chief of Doboj CSB, and Župljanin, Chief of Banja Luka CSB, who the Trial Chamber established were JCE members and were involved in the widespread and systematic takeovers of municipalities.[1251] The Trial Chamber found that they used the police forces as physical perpetrators to implement the common plan.[1252] The Trial Chamber also considered the appointments of Witness Todorović, Chief of Bosanski Šamac SJB, and Krsto Savić, Chief of the Trebinje CSB, as evidence

[1240] Trial Judgement, vol. 2, para. 730.
[1241] Trial Judgement, vol. 2, para. 732.
[1242] Trial Judgement, vol. 2, para. 731.
[1243] Trial Judgement, vol. 2, para. 733.
[1244] Trial Judgement, vol. 2, para. 734.
[1245] Trial Judgement, vol. 2, para. 734.
[1246] Trial Judgement, vol. 2, para. 736.
[1247] Trial Judgement, vol. 2, para. 739.
[1248] Trial Judgement, vol. 2, para. 740.
[1249] Trial Judgement, vol. 2, para. 742.
[1250] Trial Judgement, vol. 2, para. 743.
[1251] Trial Judgement, vol. 2, para. 744. See Trial Judgement, vol. 2, paras 314, 520.
[1252] Trial Judgement, vol. 2, para. 744.

of Stanišić's direct appointments of JCE members to the RS MUP,[1253] however, the Appeals Chamber recalls its finding that the Trial Chamber erred in so doing.[1254] Nonetheless, the Appeals Chamber has found that Stanišić has failed to show that the Trial Chamber's conclusion that he appointed JCE members to the RS MUP would not stand on the basis of the Trial Chamber's findings on his involvement in the appointments of JCE members Koroman, Drljača, Witness Bjelošević, and Župljanin – which the Appeals Chamber has upheld.[1255]

362. As regards the third factor, the Trial Chamber found that Stanišić: (i) had the authority to investigate and punish members of the RS MUP involved in crimes but failed to comply with his professional obligation to protect and safeguard the civilian population in the territories under his control;[1256] (ii) took action against paramilitaries but only because of their refusal to submit to the command of the army and their commission of crimes against Serbs;[1257] (iii) failed to act in the same decisive manner with respect to crimes charged in the Indictment;[1258] and (iv) focused primarily on the investigation of crimes against Serbs.[1259] The Trial Chamber concluded that Stanišić took insufficient action to put an end to crimes and instead permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb forces involved in the commission of crimes – particularly the JNA/VRS and TO – with the knowledge that crimes were being committed.[1260]

363. Finally, regarding the fourth factor, the Trial Chamber considered that, *inter alia*, the RS MUP shared responsibility for the detention centres with the MOJ and the VRS during the time relevant to the Indictment, either by establishing, managing, or guarding these facilities, or otherwise assisting in their functioning.[1261] It then concluded that Stanišić contributed to the continued existence and operation of detention and penitentiary facilities "by failing to take decisive action to close these facilities or, at the very least, by failing to withdraw the RS MUP forces from their involvement in these detention centres".[1262] The Appeals Chamber recalls in this regard that it

[1253] Trial Judgement, vol. 2, para. 744.
[1254] See *supra*, paras 263, 265-266.
[1255] See *supra*, para. 266.
[1256] Trial Judgement, vol. 2, paras 754-755. See Trial Judgement, vol. 2, paras 695, 698. In particular, the Trial Chamber noted Stanišić's insufficient actions against the personnel of the RS MUP who it found were JCE members and had committed crimes, such as Koroman, Todorović, and Drljača (Trial Judgement, vol. 2, para. 754, read together with Trial Judgement, vol. 2, para. 314). The Trial Chamber also found that Stanišić issued orders that all members of the RS MUP who had committed crimes or against whom official criminal proceedings had been launched be placed at the disposal of the VRS, which was insufficient to fulfil his duty to protect the Muslim and Croat population (Trial Judgement, vol. 2, paras 749, 751).
[1257] Trial Judgement, vol. 2, para. 756.
[1258] Trial Judgement, vol. 2, para. 757. See *supra*, paras 293-294, 318.
[1259] Trial Judgement, vol. 2, para. 758.
[1260] Trial Judgement, vol. 2, para. 759.
[1261] Trial Judgement, vol. 2, para. 761.
[1262] Trial Judgement, vol. 2, para. 761.

has found that the Trial Chamber erred by finding that Stanišić failed to take decisive action to close the Luka detention camp in Brčko or to withdraw the RS MUP forces from it.[1263] However, the Appeals Chamber has found that, on the basis of the upheld findings in relation to Stanišić's role in unlawful arrest and detentions, a reasonable trial chamber could have reached the conclusion that Stanišić contributed to the continued existence and operation of the detention and penitentiary facilities for which the RS MUP shared responsibility with the MOJ and VRS by failing to take decisive action to close these facilities or, at the very least, by failing to withdraw the RS MUP forces from their involvement in these detention centres.[1264]

364. Based on the Trial Chamber's findings as recalled above as well as the evidence the Trial Chamber relied upon in this regard, with the exception of the overturned findings, the Appeals Chamber finds that a reasonable trier of fact could have concluded beyond reasonable doubt that Stanišić significantly contributed to the JCE. Therefore, the Appeals Chamber finds that the Trial Chamber's error of law of failing to provide a reasoned opinion by failing to make findings on whether Stanišić's acts and conduct furthered the JCE and whether his contribution to the JCE was significant does not invalidate the Trial Chamber's conclusion on Stanišić's responsibility through participation in the JCE.

365. Based on the foregoing, the Appeals Chamber dismisses Stanišić's first, fifth, and sixth grounds of appeal in part. However, given that the Appeals Chamber has found that the Trial Chamber erred in considering the appointments of Witness Todorović and Krsto Savić as Stanišić's direct appointments of JCE members to the RS MUP and in finding that Stanišić failed to take decisive action to close the Luka detention camp in Brčko or to withdraw the RS MUP forces from it,[1265] the Appeals Chamber will consider the impact of these errors, if any, on Stanišić's sentence below.[1266]

6. Alleged errors in finding that Stanišić shared the intent to further the JCE

(a) Introduction

366. The section of the Trial Judgement dedicated to Stanišić's intent pursuant to the first category of joint criminal enterprise ("*Mens Rea* Section") reads as follows:

> [t]o assess Stanišić's state of mind in relation to the conduct examined above, the Trial Chamber first considered evidence on Stanišić's knowledge of the commission of crimes against Muslims and Croats in the geographic area and during the time period covered by the Indictment.

[1263] See *supra*, para. 354.
[1264] See *supra*, para. 354.
[1265] See *supra*, paras 263, 265-266, 354.
[1266] See *infra*, para. 1191.

> Aside from evidence on Mićo Stanišić's knowledge, the Trial Chamber, in assessing Stanišić's alleged *mens rea*, also reviewed evidence on the political stances of the SDS and the BSA in the period preceding the Indictment and Stanišić's conduct and statements in relation to these policies. The Trial Chamber recalls that the views of the Bosnian Serb leadership—that there be an ethnic division of the territory, that 'a war would lead to a forcible and bloody transfer of minorities' from one region to another, and that joint life with Muslims and Croats was impossible—were expressed during the sessions of the BSA of which Stanišić was a member and during the meetings of the SDS in late 1991 and early 1992. The Trial Chamber further recalls that the six strategic objectives, which had been set by, among others, the RS Government, were issued on 12 May 1992 and presented to the BSA. The first goal called for the separation of Serb people from Muslims and Croats. Stanišić also attended the first meeting of the Council of Ministers of the BSA, where the boundaries of ethnic territory and the establishment of government organs in the territory were determined to be priorities.
>
> In this regard, the Trial Chamber has considered the evidence that Stanišić, albeit opposed to the presence of some paramilitary groups in BiH, approved of the operation of Arkan's Men in Bijeljina and Zvornik and allowed Arkan to remove whatever property in exchange for 'liberating' the territories. Moreover, Stanišić was present at sessions of the RS Government where the RS MUP was tasked with gathering information about Muslims moving out of the RS and the needs of refugees and displaced persons. He was also present at the 11 July Collegium meeting, where the relocation of citizens and entire villages was discussed. Finally, on 13 July 1992, the Višegrad SJB Chief Risto Perišić reported to the RS MUP that certain police officers were exhibiting a lack of professionalism while over 2,000 Muslims moved out of the municipality in an organised manner.
>
> Considering his position at the time, his close relationship with Radovan Karadžić, and his continued support of and participation in the implementation of the policies of the Bosnian Serb leadership and the SDS, the Trial Chamber finds that the only reasonable inference is that Stanišić was aware of the persecutorial intentions of the Bosnian Serb leadership to forcibly transfer and deport Muslims and Croats from territories of BiH and that Stanišić shared the same intent.[1267]

367. The Appeals Chamber notes that in the *Mens Rea* Section, the Trial Chamber provided no cross-references to earlier findings or citations to evidence on the record.[1268]

368. Stanišić submits that the Trial Chamber failed to provide a reasoned opinion for concluding that he had the requisite *mens rea* pursuant to the first category of joint criminal enterprise.[1269] Stanišić also submits that the Trial Chamber erred in finding that he was "aware of the persecutorial intentions of the Bosnian Serb leadership to forcibly transfer and deport Muslims and Croats from territories of BiH and that Stanišić shared the same intent", since this finding is based on circumstantial evidence, and is not the sole reasonable inference available on the evidence.[1270]

369. In particular, he alleges that the Trial Chamber erred in: (i) finding that his support for a legitimate political goal and his participation in the Bosnian Serb leadership was sufficient to prove his intent to further the JCE;[1271] (ii) relying on his purported knowledge of the crimes in assessing

[1267] Trial Judgement, vol. 2, paras 766-769 (internal citations omitted).
[1268] Trial Judgement, vol. 2, paras 766-769. *Cf.* Trial Judgement, vol. 2, para. 767, fn. 1870.
[1269] Stanišić Appeal Brief, paras 36-41.
[1270] Stanišić Appeal Brief, paras 96, 98, 111, 187. See Stanišić Appeal Brief, paras 101-103; Appeal Hearing, 16 Dec 2015, AT. 97.
[1271] Stanišić Appeal Brief, paras 99-100, 112-116. See Stanišić Appeal Brief, paras 168-170. See also Stanišić Appeal Brief, paras 75-76, 87-94.

his intent to further the JCE;[1272] (iii) relying on the factors set out in paragraph 767, volume two of the Trial Judgement in finding that Stanišić had the intent to further the JCE;[1273] (iv) relying on the factors listed in paragraph 768, volume two of the Trial Judgement in finding that Stanišić had the intent to further the JCE;[1274] (v) relying on the factors listed in paragraph 769, volume two of the Trial Judgement in finding that Stanišić had the intent to further the JCE;[1275] and (vi) failing to consider "the considerable exculpatory" evidence demonstrating that he did not intend to commit crimes.[1276]

370. Stanišić requests that the Appeals Chamber reverse the Trial Chamber's finding that he possessed the requisite *mens rea* pursuant to the first category of joint criminal enterprise, and quash the findings of guilt for Counts 1, 4, and 6.[1277]

371. The Prosecution responds that Stanišić fails to demonstrate the absence of a reasoned opinion.[1278] It also submits that the Trial Chamber reasonably concluded that Stanišić shared the common criminal purpose of the JCE.[1279]

(b) Alleged error in failing to provide a reasoned opinion for finding that Stanišić shared the intent to further the JCE (Stanišić's first ground of appeal in part and fourth ground of appeal in part)

(i) Submissions of the parties

372. Stanišić submits that while the Trial Chamber summarised a large quantity of evidence, it subsequently failed to provide a reasoned opinion for drawing the inference that he possessed the requisite *mens rea* pursuant to the first category of joint criminal enterprise.[1280] He argues that the Trial Chamber reached its conclusion on his *mens rea* "in no more than 4 paragraphs that fail to refer specifically to other findings",[1281] and contends that even a thorough examination of the paragraphs where the Trial Chamber discusses his individual criminal responsibility does not make it possible to understand the reasoning in the *Mens Rea* Section,[1282] including the date as of when he formed the requisite *mens rea*.[1283] He asserts, moreover, that the Trial Chamber "provided no

[1272] Stanišić Appeal Brief, paras 104, 117-124.
[1273] Stanišić Appeal Brief, paras 105-107, 125-138.
[1274] Stanišić Appeal Brief, paras 108, 139-155.
[1275] Stanišić Appeal Brief, paras 109, 156-170.
[1276] Stanišić Appeal Brief, para. 110. See Stanišić Appeal Brief, paras 39, 171-186.
[1277] Stanišić Appeal Brief, paras 95, 187. See Stanišić Appeal Brief, para. 53.
[1278] Prosecution Response Brief (Stanišić), paras 14-15.
[1279] Prosecution Response Brief (Stanišić), para. 36.
[1280] Stanišić Appeal Brief, para. 38. See Stanišić Appeal Brief, paras 40-41.
[1281] Stanišić Appeal Brief, para. 37, referring to Trial Judgement, vol. 2, paras 766-769 (and pointing out that these paragraphs of the Trial Judgement do not contain any footnotes); Appeal Hearing, 16 Dec 2015, AT. 96-97.
[1282] Stanišić Appeal Brief, para. 38, referring to Trial Judgement, vol. 2, paras 532-728.
[1283] See Appeal Hearing, 16 Dec 2015, AT. 104.

reasons for failing to consider voluminous exculpatory evidence", demonstrating that other reasonable inferences compatible with Stanišić's innocence could have been drawn.[1284] He contends, in this context, that in certain circumstances, insufficient analysis of evidence on the record can amount to a failure to provide a reasoned opinion.[1285] Finally, he argues that on the "sole occurrence" where the Trial Chamber examined his acts and conduct to draw inferences about his *mens rea* "it failed to address serious inconsistencies" in the evidence of Witness Davidović without providing a reasoned opinion.[1286]

373. The Prosecution responds that Stanišić fails to show the absence of a reasoned opinion.[1287] It contends that neither the length of the "section in the Judgement summarising the Chamber's conclusion regarding Stanišić's shared intent" nor the absence of citations in that section, demonstrate a lack of a reasoned opinion.[1288] It contends, further, that Stanišić's challenges to the Trial Chamber's consideration of Witness Davidović's evidence repeat arguments under his fourth and fifth grounds of appeal and that he fails to show any error.[1289] The Prosecution submits, finally, that the Trial Chamber's findings show that Stanišić shared the requisite intent with other JCE members "from the JCE's beginning", *i.e.* from no later than 24 October 1991.[1290]

374. Stanišić replies that the Prosecution does not address the Trial Chamber's failure to explain how the evidence it summarised "sustained its erroneous inferences".[1291] He argues that the Prosecution wrongly asserts that the Trial Chamber considered the exculpatory evidence he identifies, and fails to consider that the Trial Chamber "missed the important contradictions" in Witness Davidović's testimony in this case.[1292]

[1284] Stanišić Appeal Brief, para. 39, referring to his arguments set out with respect to subsection (F) of his fourth ground of appeal. See Appeal Hearing, 16 Dec 2015, AT. 96-97, where he submits that the Trial Chamber failed to consider the totality of the evidence on the record, and in some cases, failed to even refer to relevant evidence.
[1285] Stanišić Appeal Brief, para. 36, referring to *Perišić* Appeal Judgement, para. 92.
[1286] Stanišić Appeal Brief, para. 40. See Stanišić Appeal Brief, para. 41, referring to Trial Judgement, vol. 2, para. 768, Milorad Davidović, 24 Aug 2010, T. 13625-13626. See also Stanišić Reply Brief, para. 19.
[1287] Prosecution Response Brief (Stanišić), para. 14. The Prosecution adds that in concluding that Stanišić shared the common criminal purpose, the Trial Chamber drew upon its exhaustive analysis of the evidence, its findings concerning Stanišić's various contributions, his knowledge of crimes, and his persistence in implementing the JCE (Prosecution Response Brief (Stanišić), para. 15. See Prosecution Response Brief (Stanišić), fn. 15 (and citations therein); Appeal Hearing, 16 Dec 2015, AT. 119).
[1288] Prosecution Response Brief (Stanišić), para. 15.
[1289] Prosecution Response Brief (Stanišić), para. 18, referring to Prosecution Response Brief (Stanišić), paras 51-53, 65-91. See *infra*, paras 451-473.
[1290] Appeal Hearing, 16 Dec 2015, AT. 126, referring to Trial Judgement, vol. 2, paras 313, 769. See Appeal Hearing, 16 Dec 2015, AT. 121-124, 126-127.
[1291] Stanišić Reply Brief, para. 17. Stanišić contends that, other than for its "erroneous application of a knowledge standard", the Trial Judgement is devoid of any reasoning (Stanišić Reply Brief, para. 17, referring to Stanišić Appeal Brief, paras 96-187).
[1292] Stanišić Reply Brief, para. 19. See Stanišić Reply Brief, para. 18.

(ii) Analysis

375. The Appeals Chamber recalls that in order to establish a failure to provide a reasoned opinion, an appellant must show that the trial chamber failed to indicate clearly the legal and factual findings underpinning its decision to convict or acquit.[1293] In particular, a trial chamber is required to provide clear, reasoned findings of fact as to each element of the crime or mode of liability charged.[1294] In the circumstances of this case, in order to demonstrate that the subjective element of the first category of joint criminal enterprise was met in relation to Stanišić, the Trial Chamber was required to establish that he shared with the other JCE members the intent to commit the JCE I Crimes and the intent to participate in a common plan aimed at their commission.[1295] While such intent can be inferred from circumstantial evidence, it must be the only reasonable inference.[1296]

376. The Trial Chamber concluded that "Stanišić was aware of the persecutorial intentions of the Bosnian Serb leadership to forcibly transfer and deport Muslims and Croats from territories of the BiH and that [he] shared the same intent".[1297] In reaching this conclusion the Trial Chamber did not make an express determination as of when Stanišić shared the intent with other members of the JCE,[1298] nor did the Trial Chamber, at the very least, set out when it considered Stanišić first contributed to the JCE with the requisite intent.[1299] In the circumstances of this case, the absence of such determinations complicates the task of understanding the Trial Chamber's reasoning. Nonetheless, recalling that a trial judgement must be read as a whole,[1300] and in light of the Trial Chamber's analysis elsewhere in the Trial Judgement, the Appeals Chamber understands that it found that Stanišić possessed the requisite intent throughout the Indictment period (*i.e.* at the latest from 1 April 1992 until 31 December 1992).[1301]

[1293] *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Haradinaj et al.* Appeal Judgement, paras 77, 128; *Hadžihasanović and Kubura* Appeal Judgement, para. 13. See *Bizimungu* Appeal Judgement, paras 18-19; *Ndindiliyimana et al.* Appeal Judgement, para. 293. See *supra*, para. 137.

[1294] *Cf. Kordić and Čerkez* Appeal Judgement, para. 383; *Ndindiliyimana et al.* Appeal Judgement, para. 293; *Renzaho* Appeal Judgement, para. 320. See *Orić* Appeal Judgement, para. 56.

[1295] *Popović et al.* Appeal Judgement, para. 1369. See *Đorđević* Appeal Judgement, para. 468; *Brđanin* Appeal Judgement, para. 365.

[1296] *Popović et al.* Appeal Judgement, para. 1369; *Šainović et al.* Appeal Judgement, para. 995; *Krajišnik* Appeal Judgement, para. 202.

[1297] Trial Judgement, vol. 2, para. 769. See *infra*, para. 386.

[1298] Trial Judgement, vol. 2, para. 769.

[1299] The Appeals Chamber notes that, in contrast, with regard to Župljanin's intent, the Trial Chamber made a clearer finding stating that "he intended, with other members of the JCE, to achieve the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of [JCE I Crimes] against Muslims and Croats in the ARK Municipalities" and that "Župljanin was a member of the JCE starting at least in April 1992 and throughout the rest of 1992" (Trial Judgement, vol. 2, para. 520).

[1300] *Šainović et al.* Appeal Judgement, paras 306, 321; *Boškoski and Tarčulovski* Appeal Judgement, para. 67; *Orić* Appeal Judgement, para. 38.

[1301] *Cf.* Trial Judgement, vol. 2, paras 531-532, 766, 927-928, 955. The Appeals Chamber notes that the Trial Chamber convicted Stanišić for his responsibility for crimes occurring throughout the Indictment period, which it identified as "from no later than 1 April 1992" until 31 December 1992 (Trial Judgement, vol. 2, para. 532. See Trial Judgement,

377. Insofar as Stanišić contends that a thorough examination of the *Mens Rea* Section does not make it possible to understand the Trial Chamber's reasoning, the Appeals Chamber notes that, in addition to the absence of the aforementioned findings, the *Mens Rea* Section lacks cross-references to the Trial Chamber's analysis or findings elsewhere in the Trial Judgement or references to evidence in support of the factors listed therein.[1302] Moreover, with regard to a number of factors listed in the *Mens Rea* Section the Trial Chamber adopted vague, generic, and nondescript terms to refer to factual findings contained in the section of the Trial Judgement dedicated to Stanišić's contributions to the JCE or in other portions of the Trial Judgement.[1303]

378. This approach of the Trial Chamber is problematic, and has complicated the Appeals Chamber's review of the reasoning in the Trial Judgement. Nonetheless, through a careful and thorough examination of the Trial Judgement as a whole, as is demonstrated below,[1304] the Trial Chamber's reasoning in the *Mens Rea* Section is discernable. In this respect, the Appeals Chamber considers that the factors identified in the *Mens Rea* Section must be understood as a summary of the conclusions, findings, and analysis of evidence set out elsewhere in the Trial Judgement. The Appeals Chamber recalls in this regard that a reasoned opinion does not require a trial chamber to articulate every step of its reasoning.[1305] When viewed in the context of the Trial Chamber's analysis and findings contained elsewhere in the Trial Judgement, the Appeals Chamber considers that the *Mens Rea* Section is sufficiently clear to enable the understanding of the Trial Chamber's reasoning. Stanišić's argument that it is not possible to understand the Trial Chamber's reasoning in the *Mens Rea* Section, when read in the context of the Trial Judgement as a whole, is therefore without merit.

379. Insofar as Stanišić contends that the Trial Chamber erred by failing to consider "voluminous exculpatory evidence",[1306] the Appeals Chamber has dismissed these arguments for reasons set out

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vol. 2, paras 531, 955) and expressly identified that Stanišić had committed these crimes through his participation in a joint criminal enterprise (Trial Judgement, vol. 2, para. 928). Moreover, in its assessment of his intent, the Trial Chamber "considered evidence on Stanišić's knowledge of the commission of crimes against Muslims and Croats in the geographic area and during the time period covered by the Indictment" (Trial Judgement, vol. 2, para. 766) and stated that it reviewed other evidence in the context of "assessing Stanišić's *alleged mens rea*" (which the Indictment alleges he possessed throughout the duration of the Indictment period) (Trial Judgement, vol. 2, para. 767 (emphasis added). See Trial Judgement, vol. 2, para. 532).

[1302] See Trial Judgement, vol. 2, paras 766-769.

[1303] See generally, Trial Judgement, vol. 2, paras 766-769. For example, the Trial Chamber referred to Stanišić's: (i) "knowledge of the commission of crimes" (Trial Judgement, vol. 2, para. 766); (ii) "position at the time" (Trial Judgement, vol. 2, para. 769); (iii) "close relationship with Radovan Karadžić" (Trial Judgement, vol. 2, para. 769); and (iv) "continued support of and participation in the implementation of the policies of the Bosnian Serb leadership and SDS" (Trial Judgement, vol. 2, para. 769).

[1304] See generally *infra*, paras 389-529.

[1305] See *supra*, paras 137, 375.

[1306] See *supra*, para. 372.

below.[1307] Similarly, Stanišić's assertion that the Trial Chamber failed to address inconsistencies in Witness Davidović's evidence is dismissed for reasons given elsewhere in this Judgement.[1308] The Appeals Chamber thus finds that Stanišić has not demonstrated that the Trial Chamber's analysis of the evidence was so "insufficient" that it amounts to a failure to provide a reasoned opinion.[1309]

380. In light of the above, the Appeals Chamber considers that Stanišić has not demonstrated that the Trial Chamber failed to provide a reasoned opinion for concluding that he possessed the requisite intent pursuant to the first category of joint criminal enterprise. His arguments in this respect are accordingly dismissed.

(c) Alleged error in finding that Stanišić's support for a legitimate political goal was determinative of his intent pursuant to the first category of joint criminal enterprise (Stanišić's third ground of appeal in part and fourth ground of appeal in part)

381. In the conclusion of the *Mens Rea* Section, considering, *inter alia*, "his continued support of and participation in the implementation of the policies of the Bosnian Serb leadership and the SDS", the Trial Chamber found that "Stanišić was aware of the persecutorial intentions of the Bosnian Serb leadership to forcibly transfer and deport Muslims and Croats from the territories of the BiH and that Stanišić shared the same intent".[1310]

(i) Submissions of the parties

382. Stanišić submits that the Trial Chamber erred in law by finding that his support for a legitimate political goal (*i.e.* the Bosnian Serb leadership's aim for Serbs to live in one state with other Serbs) was sufficient to prove that he possessed the requisite intent.[1311] In support, Stanišić argues that the Trial Chamber failed to make the requisite finding that the criminal purpose it identified (*i.e.* the permanent removal of non-Serbs through the commission of JCE I Crimes) was common to all the persons acting together within the JCE.[1312] Reiterating his submission under his second ground of appeal, Stanišić argues that the Trial Chamber instead considered that a group it termed as the "Bosnian Serb leadership", including him, necessarily shared the same criminal purpose "by virtue of their grouping", without properly assessing whether he (as well as other individuals within this leadership) personally possessed the requisite intent to commit the

[1307] See *infra*, paras 530-571.
[1308] See *infra*, paras 456-473.
[1309] See *Perišić* Appeal Judgement, para. 92.
[1310] Trial Judgement, vol. 2, para. 769.
[1311] Stanišić Appeal Brief, paras 75-76, 87-94.
[1312] Stanišić Appeal Brief, para. 87, referring to *Brđanin* Appeal Judgement, para. 430, *Stakić* Appeal Judgement, para. 69. See Stanišić Appeal Brief, para. 88.

crimes.[1313] He avers that the Trial Chamber therefore impermissibly inferred that he shared the intent of the Bosnian Serb leadership to commit crimes, merely having found him to be part of this leadership.[1314]

383. Stanišić further contends that a "minority" within the Bosnian Serb leadership existed that did not share the requisite intent to be considered part of the JCE, but rather intended to achieve their aim without committing crimes.[1315] He argues that a proper analysis of the evidence with regard to his acts and conduct leads to the reasonable inference that he shared the aim of this "minority" within the Bosnian Serb leadership and therefore did not intend to commit any "persecutory act".[1316]

384. The Prosecution responds that Stanišić's argument is based on the "mistaken assumption that his JCE membership was determined by reference to his status as a Bosnian Serb leader" and ignores the Trial Chamber's analysis of his criminal responsibility.[1317] It requests that the Appeals Chamber summarily dismiss Stanišić's arguments.[1318]

(ii) Analysis

385. The Appeals Chamber observes that Stanišić essentially repeats arguments raised under his second ground of appeal, while shifting the focus to the question of his intent and directly referring to the Trial Chamber's conclusion in this respect.[1319] Insofar as these arguments can be understood to assert that, in reaching this conclusion, the Trial Chamber failed to find that he *shared the intent with the other JCE members* to further the common purpose of the JCE, the Appeals Chamber finds that Stanišić misconstrues the Trial Judgement.

386. In this regard, the Appeals Chamber recalls that, in order for the subjective element of the first category of joint criminal enterprise to be met, the accused must share, with the other participants, the intent to commit the crimes that form part of the common purpose of the joint

[1313] Stanišić Appeal Brief, para. 88. See Stanišić Appeal Brief, paras 89, 109, 112, 168, referring to Stanišić Appeal Brief, paras 57-59, 70-73. See also Stanišić Appeal Brief, paras 75-76.
[1314] Stanišić Appeal Brief, paras 168-169, referring to Stanišić Appeal Brief, paras 70-73. See Stanišić Appeal Brief, paras 75-76, 88, 109, 170; Appeal Hearing, 16 Dec 2015, AT. 101.
[1315] Stanišić Appeal Brief, paras 99-100, 113-114. See Stanišić Appeal Brief, para. 112.
[1316] Stanišić Appeal Brief, paras 100, 115-116. See Stanišić Appeal Brief, paras 112-113. See also Appeal Hearing, 16 Dec 2015, AT. 101. In support of this argument, Stanišić makes some specific references to evidence on the trial record (Stanišić Appeal Brief, paras 90-94, 116, fn. 100; Stanišić Reply Brief, paras 31-32).
[1317] Prosecution Response Brief (Stanišić), paras 32-33. See Prosecution Response Brief (Stanišić), paras 28, 36-37. See also Appeal Hearing, 16 Dec 2015, AT. 124. See further Prosecution Response Brief (Stanišić), paras 30, 34, responding to Stanišić's specific references to evidence in the trial record which purportedly shows that he did not share the requisite intent.
[1318] Prosecution Response Brief (Stanišić), para. 30.
[1319] See in particular, Stanišić Appeal Brief, paras 88, 168.

criminal enterprise and the intent to participate in a common plan aimed at their commission.[1320] The Appeals Chamber notes that the Trial Chamber found that "Stanišić was aware of the *persecutorial intentions of the Bosnian Serb leadership* to forcibly transfer and deport Muslims and Croats from territories of BiH and that Stanišić shared *the same intent*".[1321] Thus, the Trial Chamber did not explicitly find that Stanišić shared the intent with the JCE members but rather that he shared the persecutorial intentions with the Bosnian Serb leadership. However, the Appeals Chamber also notes that the Trial Chamber found that the goal of the *majority* of the Bosnian Serb leadership was the "establishment of a Serb state, as ethnically 'pure' as possible, through the permanent removal of Bosnian Muslims and Bosnian Croats".[1322] The Trial Chamber further found that a joint criminal enterprise existed which had the common purpose of permanently removing Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of JCE I Crimes.[1323] The Trial Chamber also identified members of this JCE by specifically naming them, and found that they formed a plurality of persons.[1324] Therefore, although an explicit finding would have been preferable,[1325] the Appeals Chamber is satisfied that the Trial Chamber did find that Stanišić shared with the JCE members the intent to participate in the common criminal purpose and the intent to commit the JCE I Crimes.

387. Turning to Stanišić's argument that the Trial Chamber presupposed that all Bosnian Serb leaders, including Stanišić, shared the criminal purpose by virtue of their grouping without examining their individual intent,[1326] the Appeals Chamber recalls that it has already dismissed his argument to this effect elsewhere.[1327] In this regard, the Appeals Chamber recalls its conclusion that the Trial Chamber neither equated being part of the Bosnian Serb leadership with membership in the JCE nor found that Stanišić was a member of the JCE solely by virtue of his association with the Bosnian Serb leadership.[1328] Rather, the Trial Chamber examined Stanišić's criminal responsibility on the basis of his individual acts and conduct.[1329] In particular, as regards Stanišić's individual intent, the Appeals Chamber notes that the Trial Chamber specifically relied on a number of factors

[1320] *Popović et al.* Appeal Judgement, para. 1369. See *Đorđević* Appeal Judgement, para. 468; *Brđanin* Appeal Judgement, para. 365.
[1321] Trial Judgement, vol. 2, para. 769 (emphasis added).
[1322] Trial Judgement, vol. 2, para. 311.
[1323] Trial Judgement, vol. 2, para. 313.
[1324] Trial Judgement, vol. 2, para. 314. See *supra*, paras 73, 82.
[1325] The Appeals Chamber notes that, in contrast, with regard to Župljanin's intent, the Trial Chamber made a clearer finding stating that: "he intended, with other members of the JCE, to achieve the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of [JCE I Crimes] against Muslims and Croats in the ARK Municipalities" (Trial Judgement, vol. 2, para. 520).
[1326] Stanišić Appeal Brief, paras 87-88.
[1327] See *supra*, paras 79-87.
[1328] See *supra*, paras 82, 86.
[1329] See Trial Judgement, vol. 2, paras 531-781.

concerning Stanišić's individual knowledge and actions,[1330] and found that Stanišić had the intent to forcibly transfer and deport Muslims and Croats from the territories of the BiH,[1331] thereby finding that he shared the intent of the other members of the JCE.[1332]

388. In light of the foregoing, the Appeals Chamber finds no merit in Stanišić's argument that the Trial Chamber reached the conclusion that he possessed the requisite intent solely by virtue of his participation in the Bosnian Serb leadership or his support for its legitimate political goal. Thus, his arguments in this respect are dismissed. The question of whether a reasonable trial chamber could have reached this conclusion, as well as the specific challenges raised by Stanišić with regard to the Trial Chamber's assessment of evidence, are addressed elsewhere in this Judgement.[1333]

(d) Alleged errors in relying on Stanišić's purported knowledge of the crimes in finding that he had the intent to further the JCE (Stanišić's fourth ground of appeal in part and first ground of appeal in part)

389. In the first paragraph of the *Mens Rea* Section, the Trial Chamber stated that "[t]o assess Stanišić's state of mind in relation to the conduct examined above, [it] first considered evidence on Stanišić's knowledge of the commission of crimes against Muslims and Croats in the geographic area and during the time period covered by the Indictment."[1334] Apart from evidence on Stanišić's knowledge, the Trial Chamber also reviewed evidence on a number of different factors[1335] and subsequently found that he shared the intent to forcibly transfer and deport Muslims and Croats from the territories of BiH.[1336]

(i) Submissions of the parties

390. Stanišić submits that the Trial Chamber erred in law by impermissibly applying a "'knowledge' standard" when determining his *mens rea* rather than assessing whether he intended to commit the crimes.[1337] According to Stanišić, the Trial Chamber's approach, in first considering evidence on his knowledge of the commission of crimes, demonstrates that it assessed his

[1330] Trial Judgement, vol. 2, paras 766-769.
[1331] Trial Judgement, vol. 2, para. 769. See Trial Judgement, vol. 2, paras 313-314.
[1332] Trial Judgement, vol. 2, paras 313-314. See *supra*, para. 376.
[1333] See *supra*, paras 83-86. In particular, in the section "Alleged errors in equating being part of the Bosnian Serb leadership with membership in the JCE and failing to identify those within the Bosnian Serb leadership who were not JCE members", the Appeals Chamber will address Stanišić's arguments referring to specific evidence which allegedly demonstrates that he shared the aim of the "minority" within the Bosnian Serb leadership rather than intending to commit any persecutory act (Stanišić Appeal Brief, paras 90-94, 116, fn. 100; Stanišić Reply Brief, paras 31-32. See *infra*, paras 530-571).
[1334] Trial Judgement, vol. 2, para. 766.
[1335] Trial Judgement, vol. 2, paras 767-769.
[1336] Trial Judgement, vol. 2, para. 769.

knowledge of the commission of crimes rather than assessing whether he intended the commission of crimes.[1338] He submits that, while the Trial Chamber's reliance on factors such as the meetings he attended or the reports of ill-discipline within the RS MUP[1339] could be relevant to assessing his knowledge of crimes, they cannot "go to assessing whether [he] possessed and shared the intent to commit crimes".[1340]

391. Stanišić further submits that the Trial Chamber committed an error of law by relying on his knowledge of crimes without making "conclusive findings" as to the extent of his knowledge about "the Indictment crimes" and when he should be considered to have had knowledge about these crimes.[1341] He argues, moreover, that the Trial Chamber committed an error of fact in relying solely on the communications logbook of the RS MUP Headquarters and Sarajevo CSB from 22 April 1992 to 2 January 1993 ("Communications Logbook") when finding that he "was regularly informed throughout 1992 about crimes and actions being taken to investigate them", since the evidence cited by the Trial Chamber in support of its conclusion shows that the earliest relevant report was sent to the RS MUP on 19 July 1992.[1342] According to Stanišić, the Trial Chamber also committed an error of fact when "referring to" the "daily, weekly and quarterly reports", as the earliest of such reports relevant to the crimes alleged in the Indictment is dated 17 July 1992.[1343] Finally, Stanišić submits that, when referring to the reports prepared by the "Miloš Group" prior to July 1992, the Trial Chamber failed to consider the testimony of Witness Radulović, head of the Miloš Group, who testified that Stanišić did not receive reports in 1992.[1344]

392. The Prosecution responds that the Trial Chamber reasonably inferred Stanišić's intent from a number of factors, including his knowledge of and reaction to crimes committed against

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[1337] Stanišić Appeal Brief, para. 104. See Stanišić Appeal Brief, paras 40, 117-118, 124. See also Appeal Hearing, 16 Dec 2015, AT. 102-103, 108.
[1338] Stanišić Appeal Brief, paras 40, 117-118.
[1339] Stanišić's specific challenges to the Trial Chamber's findings in this respect are dealt with below in Stanišić's fourth ground of appeal, subsections C, D, E, and F (see *infra*, paras 414-571).
[1340] Stanišić Appeal Brief, para. 119 (emphasis omitted). See Stanišić Reply Brief, para. 34. See also Stanišić Reply Brief, paras 35-36.
[1341] Stanišić Appeal Brief, paras 120, 123. See Appeal Hearing, 16 Dec 2015, AT. 103, where Stanišić reiterates that, considering that the Trial Chamber relied on Stanišić's knowledge to infer his *mens rea*, a determination as of when Stanišić knew of which crimes is fundamental.
[1342] Stanišić Appeal Brief, para. 121, referring to Trial Judgement, vol. 2, para. 690, fn. 1771, Exhibit P1428. See Appeal Hearing, 16 Dec 2015, AT. 137-138, where Stanišić adds that the number of dispatches decreased significantly during the first nine months of the war.
[1343] Stanišić Appeal Brief, para. 121, referring to Trial Judgement, vol. 2, para. 690, Exhibit P427.08.
[1344] Stanišić Appeal Brief, para. 122, referring to Trial Judgement, vol. 2, para. 689, fn. 1768, Predrag Radulović, 2 Jun 2010, T. 11205-11209. See Appeal Hearing, 16 Dec 2015, AT. 137 (during the Appeal Hearing, Stanišić referred to other transcript pages of Witness Radulović's testimony than the ones he refers to in his appeal brief (see Appeal Hearing, 16 Dec 2015, AT. 137, referring to Predrag Radulović, 28 May 2010, T. 11014, Predrag Radulović, 31 May 2010, T. 11073, Predrag Radulović, 1 Jun 2010, T. 11188, Predrag Radulović, 2 Jun 2010, T. 11199)). The Appeals Chamber notes that the Trial Chamber found that the Miloš Group was a unit collecting intelligence for the SNB (Trial Judgement, vol. 2, para. 372).

non-Serbs, as well as his persistence in implementing the JCE.[1345] The Prosecution further submits that the Trial Chamber did not err by failing to make conclusive findings with regard to his knowledge of the crimes.[1346] The Prosecution contends, specifically, that Stanišić: (i) had knowledge of crimes that "formed part of the violent means of forcing non-Serbs out", such as lootings and beatings, starting in April 1992; (ii) was aware of unlawful detention of non-Serbs by early June 1992, at the latest; and (iii) was aware of the displacement of non-Serbs from at least July 1992.[1347] It argues that Stanišić only refers to a fragment of the evidence on which the Trial Chamber relied in this regard and mischaracterises it.[1348] It submits that throughout the conflict, he received a steady stream of information concerning the crimes being committed against non-Serbs from sources within the RS MUP, as well as the RS Presidency, the RS Government, international organisations and media.[1349]

(ii) Analysis

393. The Appeals Chamber recalls that the requisite intent for the first category of joint criminal enterprise can be inferred from factors such as a person's knowledge of the common criminal purpose or the crime(s) it involves, combined with his or her continuing participation in the crimes or in the implementation of the common criminal purpose.[1350] While such intent can be inferred from circumstantial evidence, this inference must be the only reasonable inference.[1351]

394. The Appeals Chamber observes that in its assessment of Stanišić's intent, the Trial Chamber considered, first, "evidence on [his] knowledge of the commission of crimes against Muslims and Croats in the geographic area and during the time period covered by the Indictment".[1352] Aside from the evidence on his knowledge, it also considered, *inter alia*: (i) the political stances of the SDS and the BSA during the period preceding the Indictment and Stanišić's conduct and statements in

[1345] Prosecution Response Brief (Stanišić), para. 49. See Appeal Hearing, 16 Dec 2015, AT. 119, where the Prosecution reiterates that the Trial Chamber's finding on Stanišić's *mens rea* did not rest on his knowledge alone.
[1346] Prosecution Response Brief (Stanišić), para. 50.
[1347] Appeal Hearing, 16 Dec 2015, AT. 126-127, referring to Trial Judgement, vol. 2, paras 603, 610-612, 627, 632, 634, 762.
[1348] Prosecution Response Brief (Stanišić), para. 49.
[1349] Prosecution Response Brief (Stanišić), para. 49. See Appeal Hearing, 16 Dec 2015, AT. 121-124.
[1350] *Stanišić and Simatović* Appeal Judgement, para. 81. See *Popović et al.* Appeal Judgement, para. 1369; *Đorđević* Appeal Judgement, para. 512. See also *Krajišnik* Appeal Judgement, paras 202, 697; *Kvočka et al.* Appeal Judgement, para. 243.
[1351] *Popović et al.* Appeal Judgement, para. 1369; *Šainović et al.* Appeal Judgement, para. 995; *Krajišnik* Appeal Judgement, para. 202.
[1352] Trial Judgement, vol. 2, para. 766. The Appeals Chamber notes that the geographic area of the Indictment covers the municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Skender Vakuf, Teslić, Vlasenica, Višegrad, Vogošća and Zvornik and that the Indictment period is from 1 April 1992 to 31 December 1992 (see Indictment, para. 11). See Trial Judgement, vol. 2, paras 762-765. See also *infra*, paras 395-409.

relation to these policies;[1353] (ii) Stanišić's close relationship with Karadžić;[1354] and (iii) Stanišić's "continued support of and participation in the implementation of the policies of the Bosnian Serb leadership and the SDS".[1355] Stanišić's assertion that the Trial Chamber relied exclusively on his knowledge when inferring his intent and that this shows that it applied a "'knowledge' standard"[1356] is thus without merit. Accordingly, the Appeals Chamber considers that Stanišić has failed to demonstrate that the Trial Chamber erred in law in its application of the standard for the subjective element of the first category of joint criminal enterprise.

395. In relation to Stanišić's argument that the Trial Chamber erred by failing to make conclusive findings on the extent of his knowledge about "the Indictment crimes" and when he should be considered to have had knowledge about these crimes,[1357] the Appeals Chamber understands him to refer to his knowledge of crimes committed by Serb forces against Muslims and Croats in the area and at the time relevant to the Indictment.[1358] The Appeals Chamber, upon a careful reading of the Trial Judgement as a whole,[1359] is able to identify several findings of the Trial Chamber related to Stanišić's knowledge of such crimes. The Appeals Chamber understands that the Trial Chamber's reference to consideration of evidence on Stanišić's knowledge of the crimes as set out in paragraph 766 of volume two of the Trial Judgement – *i.e.* "evidence on Stanišić's knowledge of the commission of crimes against Muslims and Croats in the geographic area and during the time period covered by the Indictment" – must be understood in the context of the Trial Chamber's below-mentioned analysis of the evidence[1360] and findings elsewhere in the Trial Judgement.

396. The Appeals Chamber considers the clearest finding in this regard to be the following: Stanišić "learned of the unlawful detention of Muslims [and] Croats, at the latest, by the beginning of June 1992".[1361]

[1353] Trial Judgement, vol. 2, paras 767-768. See Trial Judgement, vol. 2, paras 729-736. See also *infra*, paras 422-428.
[1354] Trial Judgement, vol. 2, para. 769. See Trial Judgement, vol. 2, para. 730. See also *infra*, paras 507-514.
[1355] Trial Judgement, vol. 2, para. 769. See Trial Judgement, vol. 2, paras 729-765. See also *infra*, paras 517-528.
[1356] Stanišić Appeal Brief, para. 104. See Stanišić Appeal Brief, paras 40, 117-118, 124.
[1357] See *supra*, para. 391.
[1358] See Stanišić Appeal Brief, para. 120, read in the context of Stanišić Appeal Brief, paras 121-123. See also *supra*, para. 391.
[1359] See *Šainović et al.* Appeal Judgement, paras 306, 321; *Boškoski and Tarčulovski* Appeal Judgement, para. 67; *Orić* Appeal Judgement, para. 38.
[1360] See *infra*, paras 396-404.
[1361] Trial Judgement, vol. 2, para. 762. See Trial Judgement, vol. 2, paras 763-765. See also Trial Judgement, vol. 2, paras 617, 623, 631-633, 639, 646, 660-663. In making this finding, the Trial Chamber relied upon evidence regarding: (i) Stanišić's attendance at a Government meeting on 10 June 1992, where it was decided that the MOJ would prepare a report, focusing on, *inter alia*, matters such as the treatment of the civilian population, POWs, accommodation, and food (Trial Judgement, vol. 2, paras 623, 763); (ii) Stanišić's discussion with Witness Marković, a member of the Central Commission for the Exchange of Prisoners which was set up by a decision on 8 May 1992, on the treatment of women and children in the context of prisoner exchanges (Trial Judgement, vol. 2, paras 617, 764. See *supra*, para. 700); (iii) the fact that the information gathered by the SNB inspectors, who the Trial Chamber found to have played a significant role in the interrogation of Muslims and Croats in detention camps, such as in Prijedor and Manjača, was

397. With respect to Stanišić's knowledge of other incidents of crimes committed against Croats and Muslims, the Trial Chamber noted relevant evidence in different sections of the Trial Judgement. More specifically, concerning his knowledge of unlawful arrests, the Trial Chamber considered evidence that: (i) on 18 April 1992, Stanišić was informed by Radomir Kojić that a certain "Zoka" had arrested Muslims in Sokolac for "messing up with the weapons" and wanted to bring them to Vrace, telling Stanišić that "there '[t]hey can beat them, they can do whatever they fucking want', to which Stanišić responded: '[f]ine'";[1362] and (ii) on 20 July 1992, "Župljanin informed Stanišić that the VRS and the police had arrested 'several thousands' of Muslims and Croats, including persons of no security interest, whom Župljanin proposed to use as hostages for prisoner exchanges".[1363]

398. With regard to Stanišić's knowledge of looting, the Trial Chamber considered evidence that in late April 1992, Stanišić was informed about the looting of Muslim property by reserve police in Vrace and about the unit of Duško Malović ("Malović") stealing cars from the TAS factory in Vogošća to which Stanišić responded that the former was "normal" in times of war and that for the latter "'we' should work on preventing such issues".[1364] In addition, the Trial Chamber also considered evidence that at the 11 July 1992 Collegium attended by Stanišić, "looting, mainly perpetrated during 'mopping-up operations' was considered to be a serious problem", and "war crimes" committed by Serbs was also discussed.[1365] The Trial Chamber also found that between June and the beginning of July 1992, Stanišić was informed by several sources of the activities of the paramilitary groups in Zvornik, "including [committing] war crimes".[1366]

399. With respect to Stanišić's knowledge of killings, the Appeals Chamber notes the Trial Chamber's finding that on 21 August 1992 at Koričanske Stijene, Prijedor policemen killed

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available to Stanišić (Trial Judgement, vol. 2, paras 26, 689, 764. See *supra*, paras 400-401); (iv) Stanišić's attendance at the 11 July 1992 Collegium, where Župljanin stated that "the army and Crisis Staffs were requesting that as many Muslims as possible be 'gathered' and that the security of 'undefined camps', where international norms were not respected, was left to RS MUP organs" (Trial Judgement, vol. 2, paras 631-632, 765. See *infra*, paras 484-487); (v) Stanišić's attendance at an RS Government session on 22 July 1992 where "instances of unlawful treatment of war prisoners were discussed" (Trial Judgement, vol. 2, paras 639, 765) ; (vi) the fact that on 5 August 1992, Witness Sreto Gajić ("Witness Gajić"), Head of the Defence Preparations of the Police section in the RS MUP, reported to Stanišić that camps still existed in Prijedor and that 300 policemen were engaged in securing them (Trial Judgement, vol. 2, paras 644, 646, 750, 765); and (vii) the fact that in October 1992, Slobodan Avlijaš, Deputy Minister of Justice and Inspector for Penitentiary Institutions under the MOJ, reported to Stanišić that the police in Zvornik were detaining people "without any justification in law" (Trial Judgement, vol. 2, paras 652, 660-663, 765).

[1362] Trial Judgement, vol. 2, para. 612. The Appeals Chamber notes that this finding is challenged by Stanišić in his eleventh ground of appeal and that the Appeals Chamber has found that the Trial Chamber erred in fact in finding that the arrests in Sokolac involved Muslims (see *supra*, paras 664-665).

[1363] Trial Judgement, vol. 2, para. 765. See Trial Judgement, vol. 2, para. 638.

[1364] Trial Judgement, vol. 2, para. 603.

[1365] Trial Judgement, vol. 2, para. 632. See Trial Judgement, vol. 2, para. 631.

[1366] Trial Judgement, vol. 2, para. 713, referring to the testimony of Dragan Đokanović, 20 Nov 2009, T. 3586-3588; ST222, 9 Nov 2010, T. 17101-17104 (confidential). For crimes committed by paramilitaries in Zvornik, see *e.g.* Trial Judgement, vol. 1, paras 1652, 1663, 1666, 1670.

approximately 150-200 Muslim men from Trnopolje detention facility who were taking no active part in hostilities,[1367] and its consideration of Stanišić's Interview where he stated that he first "learned of the incident at Koricanske Stijene two or three days after the incident" (*i.e.* 23 or 24 August 1992).[1368]

400. Recalling the Trial Chamber's finding that "[e]vidence on the various channels of reporting and information demonstrate Stanišić's knowledge of the crimes that were being committed",[1369] the Appeals Chamber further notes the Trial Chamber's analysis of the channels of reporting and general information Stanišić received. The Trial Chamber considered evidence concerning the channel of information reaching Stanišić from the SNB. It found that Witness Škipina – appointed on 6 August 1992 as Advisor on matters relating to the SNB – reported directly to the Minister of the RS MUP on events that were brought to his attention.[1370] The Trial Chamber also considered reports from the SNBs to the RS MUP.[1371] In this context, the Trial Chamber noted that: (i) members of the SNB visited various locations from the outbreak of the conflict and kept the RS MUP "abreast of the developments in the municipalities";[1372] (ii) members of the secret service branch of the RS MUP prepared reports on "rising ethnic tensions, the outbreak of hostilities, the death toll on both sides following the takeovers of towns and municipalities, crimes against Muslim and Croat civilians and the arrest and detention of civilians by the army and SJBs";[1373] and (iii) while not all the reports prepared by the "Miloš Group" intelligence team – which collected intelligence for the SNB[1374] – were directly submitted to the RS MUP, the information contained in these report was relayed "through the leadership of Banja Luka to the upper echelons of decision makers".[1375] In light of the above, the Trial Chamber found that "information gathered by the SNB was available to the decision makers of the RS, which included Stanišić".[1376]

401. The specific Miloš Group reports cited by the Trial Chamber in this context are Exhibits P1368, P1375, P1376, P1377, and P1387.[1377] The Appeals Chamber notes, first, that

[1367] Trial Judgement, vol. 1, para. 696.
[1368] Trial Judgement, vol. 2, para. 677.
[1369] See Trial Judgement, vol. 2, para. 759.
[1370] Trial Judgement, vol. 2, para. 689, referring to Slobodan Škipina, 30 Mar 2010, T. 8308-8312, 8316-8317, 8323; Exhibits P1254, P1267, P1268. With respect to Stanišić's argument in relation to Witness Škipina's testimony on the reports, see *infra*, para. 638.
[1371] Trial Judgement, vol. 2, para. 689.
[1372] Trial Judgement, vol. 2, para. 689.
[1373] Trial Judgement, vol. 2, para. 689.
[1374] Trial Judgement, vol. 2, para. 372.
[1375] Trial Judgement, vol. 2, para. 689.
[1376] Trial Judgement, vol. 2, para. 764. With respect to Stanišić's specific challenges relating to the Trial Chamber's reliance on the testimony of the head of the Miloš Group, Witness Radulović, see *infra*, para. 409.
[1377] Trial Judgement, vol. 2, para. 689, fn. 1768, referring to, *inter alia*, Exhibits P1368 (Report of the Miloš Group Regarding the Inter-Ethnic Division in the SJBs in Prijedor, Sanski Most, Kotor Varoš, Bosanski Novi, and Ključ,

Exhibits P1368 and P1375 do not mention crimes against Muslims and Croats. Exhibits P1376 and P1377, Miloš Group reports dated 28 May 1992 and 30 May 1992 respectively, when read together, indicate that a large number of Muslims, including civilians, were arrested and detained (it is not specified by whom) and that municipal authorities had difficulties providing them with food and accommodation.[1378] Exhibit P1387, a Miloš Group report dated 3 June 1992, states that "in the areas of Prijedor, Sanski Most, Doboj and other towns [...] individuals and groups among our forces are behaving wilfully. We have information that persons of Muslim and Croatian nationality, mostly civilians, have been victims of crimes."[1379] The Appeals Chamber notes that the report does not mention the type of crime suffered by these civilians, but specifies the perpetrators as "individuals and groups among our forces".[1380]

402. The Trial Chamber further noted that "according to the communications logbook of the RS MUP headquarters, Stanišić was regularly informed throughout 1992 about crimes and actions being taken to investigate them".[1381]

403. In addition, the Trial Chamber also made general findings on the communication system within the RS MUP and found that: (i) from April to the summer of 1992, the communications system (through fax machines, teleprinters, telephone and couriers) did function, albeit with disruptions; and (ii) by the second half of 1992, the communications system was well established.[1382] It also found that "[d]aily, weekly, and quarterly reports were compiled, in addition to security situation reports on a periodic basis",[1383] and referenced witness testimony to the effect that these reports were prepared in order for "the Minister" to know what was going on in the territory of the RS.[1384] In addition, the Trial Chamber noted that "reports made public by the ICRC,

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9 Apr 1992), P1375 (Report of the Miloš Group Regarding Prijedor Takeover, 30 Apr 1992), P1376 (Miloš Group Report 28 May 1992), P1377 (Miloš Group Report, 30 May 1992), P1387 (Miloš Group Report, 3 Jun 1992).

[1378] The Appeals Chamber notes that Exhibit P1376 is a Miloš Group report dated 28 May 1992 and mentions that following fighting in the area of Kozarac in the Municipality of Prijedor a "huge number of persons", including "many children, women and old people", were arrested or surrendered, and that the municipal authorities encountered "great difficulty in providing them with food and shelter" (Exhibit P1376). Exhibit P1377 is a Miloš Group report dated 30 May 1992 stating that "[t]he problem of detained and captured persons of Muslim background is still present, and one of the greatest problems is that of food and accommodation" (Exhibit P1377).

[1379] Exhibit P1387.

[1380] Exhibit P1377.

[1381] Trial Judgement, vol. 2, para. 690. The Communications Logbook, relied on by the Trial Chamber in reaching this finding, contains a number of entries referring to crimes in general terms, mostly without articulating ethnicity of perpetrators or victims (Trial Judgement, vol. 2, para. 690, fn. 1771, referring to multiple entries in Exhibit P1428). With respect to Stanišić's specific challenges relating to the Trial Chamber's reliance on the Communications Logbook, see *infra*, para. 407.

[1382] Trial Judgement, vol. 2, paras 103, 690.

[1383] Trial Judgement, vol. 2, para. 690, fn. 1772, referring to, *inter alia*, Exhibits P155, P427.08, P432.12, P595, P633, P748, P866, 2D25, 1D334. The Appeals Chamber notes that Stanišić's argument relating to this finding will be addressed later in this section.

[1384] Trial Judgement, vol. 2, para. 690.

ECMM, and CSCE, as well as open media reports, were the subject of discussion and negotiation with the RS Presidency and Government".[1385]

404. Having examined the Trial Chamber's analysis of the evidence and findings as recalled above, the Appeals Chamber is of the view that it is discernible that the Trial Chamber considered that Stanišić acquired knowledge: (i) on 18 April 1992, that a certain "Zoka" had arrested Muslims in Sokolac for "messing up with the weapons", in relation to which it was suggested to Stanišić that "[t]hey can beat them, they can do whatever they fucking want", to which Stanišić responded "fine";[1386] (ii) in late April 1992, that reserve police in Vrace were looting Muslim property;[1387] (iii) at the end of May 1992, that Muslim civilians were arrested and detained in the municipality of Prijedor;[1388] (iv) on 3 June 1992, that Muslim and Croat civilians were victims of unspecified crimes, the perpetrators of which were identified as "individuals and groups among our forces";[1389] (v) at the latest by the beginning of June 1992 (and then again in July, August, and October 1992), of the unlawful detention of Muslims and Croats;[1390] (vi) at some point between June and the beginning of July 1992, of the activities of the paramilitary groups in Zvornik, "including [committing] war crimes";[1391] (vii) on 11 July 1992, of "looting, mainly perpetrated during 'mopping-up operations'" and "war crimes" committed by Serbs;[1392] (viii) on 20 July 1992, "that the VRS and the police had arrested 'several thousands' of Muslims and Croats, including persons of no security interest [...]";[1393] and (ix) by around 23 or 24 August 1992, that Prijedor policemen killed approximately 150-200 Muslim men from Trnopolje detention camp at Korićanske Stijene.[1394]

405. It is also apparent from the Trial Judgement that, while the Trial Chamber considered its analysis of evidence and findings concerning the communication system and the channels of

[1385] Trial Judgement, vol. 2, para. 692.
[1386] See *supra*, para. 397. The Appeals Chamber notes that this finding is challenged by Stanišić in his eleventh ground of appeal and that the Appeals Chamber has found that the Trial Chamber erred in fact in finding that the arrests in Sokolac involved Muslims (see *supra*, paras 664-665).
[1387] See *supra*, para. 398. While the looting of Muslim property in Vrace is not charged in the Indictment, the Appeals Chamber notes that the Trial Chamber was entitled to consider the evidence concerning the information Stanišić received with respect to this looting in assessing his knowledge of crimes against Muslims and Croats (*cf. Šainović et al.* Appeal Judgement, paras 1193-1196, 1199). However, with regard to the looting of cars from the TAS factory in Vogošća, given that the Trial Judgement does not elucidate whether Stanišić was informed of this looting as an offence committed against non-Serbs (see Trial Judgement, vol. 2, para. 603; Trial Judgement, vol. 1, para. 1553, fn. 3591), the Appeals Chamber understands the Trial Chamber to have not considered this as part of the "evidence on Stanišić's knowledge of the commission of crimes against Muslims and Croats in the geographic area and during the time period covered by the Indictment" (Trial Judgement, vol. 2, para. 766).
[1388] See *supra*, para. 401.
[1389] See *supra*, para. 401.
[1390] See *supra*, para. 396, fn. 1361.
[1391] See *supra*, para. 398.
[1392] Trial Judgement, vol. 2, para. 632. See Trial Judgement, vol. 2, para. 631. See *supra*, para. 398.
[1393] See *supra*, para. 397.
[1394] See *supra*, para. 399; Trial Judgement, vol. 2, para. 677. See also Trial Judgement, vol. 1, para. 696.

reporting and information in general,[1395] it did not place substantial weight on this evidence given that it is not specific enough as to types of crimes or ethnicity of victims and perpetrators contained in the information Stanišić received, or whether, and if so, when Stanišić received the information in question.[1396]

406. In light of the above, the Appeals Chamber considers that Stanišić's argument that the Trial Chamber failed to enter "conclusive findings" with respect to the extent of his knowledge of crimes committed against Muslims and Croats in the area and at the time relevant to the Indictment, and when he should be considered to have had knowledge of these crimes,[1397] is without merit.

407. Turning to Stanišić's specific challenge to the Trial Chamber's finding that he was "regularly informed throughout 1992 about crimes", the Appeals Chamber notes the Trial Chamber's finding that "[*a*]*ccording to the communications logbook of the RS MUP headquarters*, Stanišić was regularly informed throughout 1992 about crimes and action being taken to investigate them."[1398] The Communications Logbook referred to by the Trial Chamber is a logbook of dispatches sent and received by the RS MUP headquarters from 22 April 1992 to 2 January 1993.[1399] Thus, it does not cover the period from 1 January to 21 April 1992. In addition, the Appeals Chamber observes that the Communications Logbook suggests that the earliest report referring to crimes in general (without articulating ethnicity of perpetrators or victims) was sent by the RS MUP on 23 April 1992 to, *inter alia*, the RS Government.[1400] The Appeals Chamber therefore finds that, based on the Communications Logbook alone, no reasonable trier of fact could have found that Stanišić was "regularly informed throughout 1992 about crimes".[1401] The impact of

[1395] This includes: (i) the Trial Chamber's finding on the basis of the Communications Logbook that "[a]ccording to the communications logbook of the RS MUP headquarters" he was regularly informed throughout 1992 about crimes and actions being taken to investigate them (Trial Judgement, vol. 2, para. 690. See *supra*, para. 402); (ii) its analysis of evidence concerning the communication system and the channel of information reaching Stanišić from some of the SNB and the Miloš Group reports, which do not include specific information concerning crimes against non-Serbs (Trial Judgement, vol. 2, para. 689. See *supra*, para. 401); and (iii) reports made public by the ICRC, ECMM, and CSCE, as well as open media reports, which were the subject of discussion and negotiation with the RS Presidency and RS Government (Trial Judgement, vol. 2, para. 692. See *supra*, para. 403).
[1396] For instance, this is shown by the fact that, in finding that Stanišić learned of the unlawful detention of Muslims and Croats by the beginning of June 1992 (see Trial Judgement, vol. 2, para. 762), the Trial Chamber did not rely on the Communications Logbook which contained entries with relatively general information, such as "gathering data on camps" and "treatment of war prisoners" (see Trial Judgement, vol. 2, paras 763-765, in comparison with Trial Judgement, vol. 2, para. 690, fn. 1771, referring to, *inter alia*, Exhibit P1428, log 311, p. 44, log 362, p. 53).
[1397] See *supra*, para. 391.
[1398] Trial Judgement, vol. 2, para. 690 (emphasis added). See Trial Judgement, vol. 2, para. 690, fn. 1771, referring to multiple entries in Exhibit P1428.
[1399] Exhibit P1428. See Trial Judgement, vol. 2, para. 690, referring to Exhibit P1428.
[1400] See Exhibit P1428, log 3, p. 1, referring to "massacre of Predrag Močević".
[1401] Trial Judgement, vol. 2, para. 690.

this error on the Trial Chamber's finding regarding Stanišić's knowledge of crimes against Muslims and Croats will be assessed below.[1402]

408. With regard to Stanišić's argument concerning the Trial Chamber's purported reliance on "[d]aily, weekly and quarterly reports" to establish his knowledge of crimes during the Indictment period,[1403] the Appeals Chamber recalls that the Trial Chamber found that such reports were compiled, in addition to security situation reports, on a periodic basis.[1404] It then referred to the testimony of Witness Aleksander Krulj ("Witness Krulj") who stated that these reports were prepared in order for "the Minister" to "know what happened in the territory of the republic".[1405] The Appeals Chamber notes that while the Trial Chamber, in its discussion of these reports, may have placed some reliance on them to the extent Witness Krulj testified they were produced for the purposes of informing Stanišić of what was going on in the RS, it is clear that it was only one of the factors it considered in assessing his knowledge of events on the ground in general. Moreover, the Trial Chamber does not specify the types of crimes, or draw a conclusion as to whether Stanišić had knowledge of crimes through these reports.[1406] Therefore, the Appeals Chamber is of the view that Stanišić misinterprets the scope of this particular finding, and his argument is thus without merit.

409. Finally, with regard to Stanišić's argument that the Trial Chamber failed to consider Witness Radulović's testimony concerning the Miloš Group reports,[1407] the Appeals Chamber first notes that the passages relied on by Stanišić in his appeal brief are specifically referred to by the Trial Chamber in support of its finding that "[w]hile not every report prepared by the 'Miloš Group' intelligence team, headed by Predrag Radulović, was directly submitted to the RS MUP, the

[1402] See *infra*, paras 411-413.
[1403] Stanišić Appeal Brief, paras 120-121. The Appeals Chamber notes that in footnote 1772 of volume two of the Trial Judgement, the Trial Chamber referred to several reports sent by or to the RS MUP, CSBs and SJBs in support of its finding (Trial Judgement, vol. 2, fn. 1172, referring to Exhibits P155, P423.12, p. 3, P427.08, p. 3, P432.12, P595, P663, P748, p. 2, P866, 2D25, 1D334). However, not all of these exhibits refer to crimes (see *e.g.* Exhibits P155, P432.12) or mention that Stanišić was informed of their content (see *e.g.* Exhibits P866, P748). Additionally, some of these reports were relied on by the Trial Chamber to make specific findings on his knowledge of crimes and will be discussed in that context.
[1404] See Trial Judgement, vol. 2, para. 690. See also *supra*, para. 403.
[1405] See Trial Judgement, vol. 2, para. 690.
[1406] The Appeals Chamber notes that some of the information contained in these reports has been relied on by the Trial Chamber to make specific findings on Stanišić's knowledge of specific crimes and are dealt with elsewhere in this Judgement. See *e.g.* Exhibit P427.08, which is a report of the RS MUP to the President of the Presidency and the Prime Minister on 17 July 1992. This report relates to the 11 July 1992 Collegium attended by Stanišić. The Appeals Chamber notes that this exhibit was not specifically referred to by the Trial Chamber when making its findings on Stanišić's knowledge of crimes, however, the information contained in this report was relied on by the Trial Chamber elsewhere (see Trial Judgement, vol. 2, paras 630-631, 765). See also *infra*, paras 484-487. See also Exhibit P633, a dispatch from the chief of the SJB Višegrad, Risto Perišić, to the Ministry of Interior, providing a brief overview of the military and security situation in Višegrad, dated 13 July 1992. According to Risto Perišić, "[w]ith the help of the Red Cross, over 2,000 Muslims moved out the municipality in an organised manner. There is a continued interest in moving out, so that this process should be continued in a coordinated way on some higher level". This information about the Muslims moving out is set out in paragraph 634 of volume two of the Trial Judgement. See also *infra*, paras 491-495.
[1407] See *supra*, para. 391

information in these reports was relayed through the leadership of Banja Luka to the upper echelons of decision makers."[1408] Second, the Appeals Chamber considers that Stanišić's submissions, interpreting Witness Radulović's evidence as showing "that Stanišić did not receive reports in 1992",[1409] are not supported by the witness's testimony.[1410] Third, the Trial Chamber referred to a number of transcript pages of the testimony of Witness Radulović, which lasted for more than four days, in addition to the pages referred to by Stanišić.[1411] Stanišić's argument thus amounts to a mere assertion that the Trial Chamber failed to interpret Witness Radulović's evidence in a particular manner and falls short of establishing an error by the Trial Chamber. Stanišić's argument is, therefore, dismissed.

(iii) Conclusion

410. The Appeals Chamber has found that Stanišić has failed to demonstrate that the Trial Chamber erred: (i) in law by applying an incorrect standard when assessing his intent;[1412] (ii) by failing to make conclusive findings as to the extent of his knowledge about the crimes alleged in the Indictment and as of when he should be considered to have had knowledge about these crimes;[1413] (iii) by relying on the "[d]aily, weekly and quarterly reports" as a factor demonstrating his knowledge of crimes during the Indictment period;[1414] and (iv) by failing to consider Witness Radulović's evidence in relation to the Miloš Group reports.[1415]

411. However, the Appeals Chamber has found that the Trial Chamber erred in finding, based on the Communications Logbook, that Stanišić was "regularly informed throughout 1992 about crimes".[1416] Further, the Appeals Chamber recalls its finding, elsewhere, that the Trial Chamber

[1408] Trial Judgement, vol. 2, para. 689. Stanišić argues that the Trial Chamber failed to consider Witness Radulović's testimony and, in support of his argument, refers to Predrag Radulović, 2 Jun 2010, T. 11205-11209. However, the Trial Chamber explicitly referred to Predrag Radulović, 2 Jun 2010, T. 11206-11209 (Trial Judgement, vol. 2, para. 689, fn. 1769), and the Appeals Chamber notes that T. 11205 (the only transcript page not referred to by the Trial Chamber) does not contain any information relevant to the present issue.
[1409] Stanišić Appeal Brief, para. 122.
[1410] Indeed, Witness Radulović testified about an encounter he had with Stanišić in 2000 when: (i) Stanišić told him that he did not know about "the majority or most of the [crimes against non-Serbs] that [they] talked about" (Predrag Radulović, 2 Jun 2010, T. 11206. See Predrag Radulović, 2 Jun 2010, T. 11207-11208), but that he knew about the "events" in Prijedor, Teslić, and Doboj because they were "well known cases and events which anyone who lived in Republika Srpska could have known about" (Predrag Radulović, 2 Jun 2010, T. 11208); (ii) his "impression" was that Stanišić was insufficiently informed (Predrag Radulović, 2 Jun 2010, T. 11207); and (iii) Witness Radulović's "general understanding" was that Stanišić was not informed "in a timely manner" about the "events" in Prijedor, Teslić, and Doboj (Predrag Radulović, 2 Jun 2010, T. 11208-11209).
[1411] See Trial Judgement, vol. 2, para. 689, fn. 1769. The Appeals Chamber notes that the additional pages referred to by Stanišić during the Appeal Hearing (see Appeal Hearing, 16 Dec 2015, AT. 137, referring to Predrag Radulović, 28 May 2010, T. 11014, Predrag Radulović, 31 May 2010, T. 11073, Predrag Radulović, 1 Jun 2010, T. 11188, Predrag Radulović, 2 Jun 2010, T. 11199) do not present a substantive addition to the submission at hand.
[1412] See *supra*, para. 394.
[1413] See *supra*, para. 406.
[1414] See *supra*, para. 408
[1415] See *supra*, para. 409.
[1416] Trial Judgement, vol. 2, para. 690. See *supra*, para. 407.

erred in finding that, on 18 April 1992, Stanišić was informed that a certain "Zoka" had arrested Muslims in Sokolac.[1417] The Appeals Chamber will now assess the impact of these factual errors, if any, on the Trial Chamber's finding concerning Stanišić's knowledge of the commission of crimes against Muslims and Croats.

412. The Appeals Chamber is of the view that, given the limited weight attached to the Communications Logbook in assessing Stanišić's knowledge of crimes committed against Muslims and Croats,[1418] the Trial Chamber's error in relation to this evidence on its own has no impact on the Trial Chamber's findings concerning Stanišić's knowledge of crimes against Muslims and Croats as set out above.[1419] However, given that the Trial Chamber's finding on Stanišić's knowledge of the arrest of Muslims in Sokolac on 18 April 1992 has also been overturned, the Appeals Chamber finds that on the basis of the Trial Chamber's remaining findings, a reasonable trier of fact could have found that the earliest time at which he acquired knowledge of crimes committed against Muslims and Croats in the area relevant to the Indictment was late April 1992, when he was informed that reserve police in Vrace were looting Muslim property.[1420]

413. The Appeals Chamber therefore grants, in part, Stanišić's challenge to the Trial Chamber's finding on his knowledge of crimes committed against Muslims and Croats. The Appeals Chamber will further assess the impact of this finding, if any, on the Trial Chamber's ultimate conclusion on Stanišić's intent in a section below.[1421]

(e) Alleged errors in relying on factors set out in paragraph 767 of volume two of the Trial Judgement in finding that Stanišić had the intent to further the JCE (subsection (C) of Stanišić's fourth ground of appeal)

414. The Trial Chamber held that:

> [a]side from evidence on Mićo Stanišić's knowledge, [...] in assessing Stanišić's alleged *mens rea*, [it] also reviewed evidence on the political stances of the SDS and the BSA in the period preceding the Indictment and Stanišić's conduct and statements in relation to these policies. The Trial Chamber recalls that the views of the Bosnian Serb leadership—that there be an ethnic division of the territory, that 'a war would lead to a forcible and bloody transfer of minorities' from one region to another, and that joint life with Muslims and Croats was impossible—were expressed during the sessions of the BSA of which Stanišić was a member and during the meetings of the SDS in late 1991 and early 1992. The Trial Chamber further recalls that the six strategic objectives, which had been set by, among others, the RS Government, were issued on 12 May 1992 and presented to the BSA. The first goal called for the separation of Serb people

[1417] See *supra*, para. 397; *infra*, para. 665. See also Trial Judgement, vol. 2, para. 612, referring to Exhibit P1115, pp 1-2.
[1418] See *supra*, para. 405.
[1419] See *supra*, para. 404.
[1420] With regard to the information on crimes against Muslims and Croats that Stanišić received after this date, see *supra*, para. 404. See also *supra*, para. 398.
[1421] See *infra*, paras 573-585.

> from Muslims and Croats. Stanišić also attended the first meeting of the Council of Ministers of the BSA, where the boundaries of ethnic territory and the establishment of government organs in the territory were determined to be priorities.[1422]

415. Stanišić advances three groups of arguments challenging these findings. First, he argues that his conduct and statements regarding the political stances of the BSA and SDS do not demonstrate that he possessed the requisite intent.[1423] Second, he submits that the Trial Chamber erroneously relied on the six strategic objectives presented to the session of the BSA on 12 May 1992 ("Strategic Objectives") by incorrectly imputing knowledge of these objectives to him.[1424] Finally, he asserts that no reasonable trial chamber could have found participation in the work of the Council of Ministers as demonstrative of his intent.[1425] These arguments will be discussed in turn below.

(i) Alleged errors in finding that Stanišić's conduct and statements regarding the political stances of the BSA and SDS demonstrate intent to further the JCE

416. As recalled above, in assessing Stanišić's intent, the Trial Chamber considered, *inter alia*, "Stanišić's conduct and statements in relation to" the policies of the SDS and the BSA in the period preceding the Indictment.[1426] In this context, the Trial Chamber recalled that:

> the views of the Bosnian Serb leadership – that there be an ethnic division of the territory, that 'a war would lead to a forcible and bloody transfer of minorities' from one region to another, and that joint life with Muslims and Croats was impossible – were expressed during the sessions of the BSA of which Stanišić was a member and during the meetings of the SDS in late 1991 and early 1992.[1427]

a. Alleged error in finding that Stanišić was a member of the BSA

417. Stanišić submits that the Trial Chamber erred by finding that he was a member of the BSA.[1428] He contends that: (i) he "could not [...] have been a member both of the legislature and the executive"; (ii) the BSA consisted of directly elected representatives; and (iii) it is "patently evident" from the Trial Chamber's findings that he was not an elected representative.[1429] The Prosecution concedes "that there is insufficient evidence to establish Stanišić's membership in the

[1422] Trial Judgement, vol. 2, para. 767 (citations omitted).
[1423] Stanišić Appeal Brief, paras 125-132.
[1424] Stanišić Appeal Brief, paras 133-135.
[1425] Stanišić Appeal Brief, paras 136-138.
[1426] Trial Judgement, vol. 2, para. 767.
[1427] Trial Judgement, vol. 2, para. 767.
[1428] Stanišić Appeal Brief, paras 125-126. See Stanišić Reply Brief, paras 47-48. See also, Appeal Hearing, 16 Dec 2015, AT. 99.
[1429] Stanišić Appeal Brief, para. 125, referring to Trial Judgement, vol. 2, para. 165. See Appeal Hearing, 16 Dec 2015, AT. 134-135.

BSA",[1430] but contends that Stanišić's argument should be summarily dismissed, as he fails to show how this error impacts the Trial Judgement.[1431]

418. The Appeals Chamber notes that Stanišić has failed to identify any evidence capable of supporting his assertion that he could not have simultaneously occupied roles in the legislative and executive. The Appeals Chamber recalls that mere assertions unsupported by any evidence are generally liable to dismissal.[1432] Nonetheless, considering that the Trial Chamber's only mentioning of Stanišić's membership in the BSA is unreferenced and that there is no finding in the Trial Judgement to substantiate this conclusion, the Appeals Chamber finds that the Trial Chamber erred in fact in finding that Stanišić was a member of the BSA. Since the Trial Chamber relied on this finding in support of its conclusion that Stanišić had the intent to forcibly transfer and deport Bosnian Muslims and Croats from the territories of the BiH, the Appeals Chamber will consider the impact of the Trial Chamber's error, if any, below.[1433]

b. Alleged error concerning the Trial Chamber's reliance upon statements made at meetings of the BSA and SDS

i. Submissions of the parties

419. Stanišić submits that when assessing his intent the Trial Chamber erred by relying on statements made at meetings of the BSA and SDS.[1434] Stanišić submits that the Trial Chamber erred in relying on a statement by Karadžić at a session of the BSA on 18 March 1992 ("18 March 1992 BSA Session")[1435] "that the occurrence of war would include the 'forcible and bloody transfer of minorities'",[1436] as there is no evidence that Stanišić was present.[1437] He also contends that "there are only two references to [him] in the context of the BSA during the Indictment period": (i) when he was elected as Minister of Interior on 24 March 1992;[1438] and (ii) his participation in the November 1992 BSA Session.[1439] Stanišić argues that the Trial Chamber "improperly and prejudicially" cited his speech to the BSA at the November 1992 BSA Session, mischaracterising

[1430] Prosecution Response Brief (Stanišić), para. 47, referring to Trial Judgement, vol. 2, para. 767. See Appeal Hearing, 16 Dec 2015, AT. 99.
[1431] See Prosecution Response Brief (Stanišić), para. 47.
[1432] *Krajišnik* Appeal Judgement, para. 26 (with references cited therein). See *Stanišić and Simatović* Appeal Judgement, para. 22; *Tolimir* Appeal Judgement, para. 14; *Popović et al.* Appeal Judgement, para. 23.
[1433] See *infra*, paras 573-585.
[1434] Stanišić Appeal Brief, paras 127-132; Stanišić Reply Brief, para. 48.
[1435] Stanišić argues that the Trial Chamber improperly attributed Karadžić's statement to the Bosnian Serb leadership as a whole (Stanišić Appeal Brief, fn. 123). This argument is addressed above in relation to Stanišić's second ground of appeal (see *supra*, paras 83-86).
[1436] Stanišić Appeal Brief, para. 127, referring to Trial Judgement, vol. 2, para. 767.
[1437] Stanišić Appeal Brief, para. 127.
[1438] Stanišić Appeal Brief, para. 128, referring to Trial Judgement, vol. 2, paras 531, 549, 558.

his words as an admission of his involvement in the acceptance of criminal elements into the reserve police, as a result of a translation error.[1440]

420. With regard to the SDS meetings, Stanišić contends that the Trial Chamber improperly referred to a statement by Todor Dutina ("Dutina"), that "joint life with Muslims and Croats was impossible",[1441] made at a meeting of the SDS held on 15 October 1991 ("15 October 1991 SDS Meeting"),[1442] as he was neither present at this meeting nor a member of the SDS.[1443]

421. The Prosecution responds that in concluding that Stanišić was aware of the view that ethnic separation would be achieved through violence, the Trial Chamber appropriately relied on his close relationship with Karadžić and high-level position within the RS leadership.[1444] It submits that the Trial Chamber's conclusion "did not turn on" evidence of Stanišić's physical presence at specific meetings.[1445] According to the Prosecution, Stanišić attempts to undermine the Trial Chamber's finding "by denying an association with the SDS".[1446] The Prosecution also submits that Stanišić "wrongly asserts" that the Trial Chamber "improperly and prejudicially" cited his speech at the November 1992 BSA Session.[1447]

ii. Analysis

422. As stated above, in assessing Stanišić's intent, the Trial Chamber considered "Stanišić's conduct and statements" in relation to the "political stances of the SDS and the BSA".[1448] In this context, the Trial Chamber referred to the "views of the Bosnian Serb leadership [...] expressed during the sessions of the BSA [...] and during the meetings of the SDS in late 1991 and early 1992".[1449] More specifically, the Trial Chamber recalled the views of the Bosnian Serb leadership "that there be an ethnic division of the territory, that 'a war would lead to a forcible and bloody transfer of minorities' from one region to another, and that joint life with Muslims and Croats was impossible".[1450]

[1439] Stanišić Appeal Brief, para. 128. He further submits that "[t]he sole other reference is to a session of the BSA in 1993, outside the Indictment period" (Stanišić Appeal Brief, para. 128, referring to Trial Judgement, vol. 2, para. 596).
[1440] Stanišić Appeal Brief, para. 129, referring to Hearing, 5 May 2010, T. 9566.
[1441] Stanišić Appeal Brief, para. 131 (emphasis omitted).
[1442] Stanišić Appeal Brief, para. 131, referring to Trial Judgement, vol. 2, para. 162.
[1443] Stanišić Appeal Brief, para. 131, referring to Trial Judgement, vol. 2, para. 162, Exhibit P14. See Stanišić Reply Brief, para. 49, referring to Prosecution Response Brief (Stanišić), para. 46. See also Stanišić Appeal Brief, para. 132.
[1444] Prosecution Response Brief (Stanišić), para. 46, referring to Trial Judgement, vol. 2, paras 156-157, 161-162, 167-170, 174, 178-179, 188, 199, 769.
[1445] Prosecution Response Brief (Stanišić), para. 46, referring to Stanišić Appeal Brief, paras 127-128, 130-132.
[1446] Prosecution Response Brief (Stanišić), para. 46, referring to Stanišić Appeal Brief, para. 131.
[1447] Prosecution Response Brief (Stanišić), fn. 107, referring to Stanišić Appeal Brief, para. 129.
[1448] Trial Judgement, vol. 2, para. 767.
[1449] Trial Judgement, vol. 2, para. 767.
[1450] See Trial Judgement, vol. 2, para. 767.

423. The Appeals Chamber notes that although the Trial Chamber did not include any citations to evidence or cross-references to findings elsewhere,[1451] through a careful reading of the Trial Judgement as a whole, it is nonetheless able to identify several findings substantiating the Trial Chamber's conclusion regarding the views of the Bosnian Serb leadership expressed in sessions of the BSA and meetings of the SDS in late 1991 and early 1992. Specifically, elsewhere in the Trial Judgement, the Trial Chamber considered statements of: (i) Karadžić, at the 18 March 1992 BSA Session, that any war would lead to an ethnic division and "include the forcible and bloody transfer of minorities from one region to another and the creation of three ethnically homogenous regions within BiH";[1452] (ii) Dutina, at the 15 October 1991 SDS Meeting, that "an end must be put to the illusion that a joint existence with Muslims and Croats was possible";[1453] and (iii) Vojislav Kuprešanin ("Kuprešanin"), at the 25 February 1992 session of the BSA ("25 February 1992 BSA Session"), that "I am against any kind of joint institution with the Muslims and Croats of BiH. I personally consider them to be our natural enemies. You already know what natural enemies are, and that we can never again live together. We can never again do anything together."[1454] Accordingly, the Appeals Chamber considers that it is these statements of Karadžić, Dutina, and Kuprešanin that the Trial Chamber referred to as the views expressed during the 15 October 1991 SDS Meeting, the 25 February 1992 BSA Session, or the 18 March 1992 BSA Session (collectively, "BSA and SDS Meetings") when assessing Stanišić's intent.[1455]

424. In this regard, the Appeals Chamber notes that, as rightly pointed out by Stanišić, at no point in the Trial Judgement did the Trial Chamber make any findings on, or refer to evidence of, Stanišić's physical presence at the abovementioned BSA and SDS Meetings, or his awareness of their content. In addition, the Trial Chamber cited no evidence that Stanišić was aware of these particular statements. However, a plain reading of the Trial Judgement indicates that the Trial

[1451] *Cf. supra*, paras 377-380.
[1452] Trial Judgement, vol. 2, para. 179, referring to Exhibits P397.02, pp 10554-10555, P707, p. 4. *Cf.* Stanišić Appeal Brief, para. 127. The Trial Chamber also considered evidence that Karadžić was the President of the SDS, President of the RS Presidency, and President of the NSC, (Trial Judgement, vol. 2, para. 132, referring to Branko Đerić, 29 Oct 2009, T. 2279, Christian Nielsen, 14 Dec 2009, T. 4708, Momčilo Mandić, 3 May 2010, T. 9432, 9442, Exhibits P257, L327) and was a member of the JCE (Trial Judgement, vol. 2, para. 314).
[1453] Trial Judgement, vol. 2, para. 162, referring to Exhibit P14, p. 1. *Cf.* Stanišić Appeal Brief, paras 131-132. The Trial Chamber also considered evidence that Dutina was present at the 15 October 1991 SDS Meeting and later became the Director of the Serbian News Agency, SRNA (Trial Judgement, vol. 2, para. 162, referring to Exhibits P14, p. 1, P204, pp 1-2).
[1454] Trial Judgement, vol. 2, para. 174, quoting Momčilo Mandić, 3 May 2010, T. 9443, Exhibit P427.09, p. 59. The Trial Chamber also considered evidence that Kuprešanin attended various sessions of the BSA (Trial Judgement, vol. 2, paras 174, 224), was President of the ARK Assembly and a prominent member of the SDS (Trial Judgement, vol. 2, para. 350, referring to Exhibit P1098.03 (confidential), p. 4051, ST174, 23 Mar 2010, T. 8087 (closed session)), and was a member of the JCE (Trial Judgement, vol. 2, para. 314).
[1455] While the Trial Chamber did not make any express findings at to whether Karadžić, Dutina, and/or Kuprešanin were members of the Bosnian Serb leadership, it found that the Bosnian Serb leadership "consisted of leading members of the SDS and those who occupied important posts in the RS" (Trial Judgement, vol. 2, para. 131, referring to Adjudicated Facts Decision, Adjudicated Fact 109).

Chamber merely referred to these statements as contextual evidence demonstrating the "political stances" or "policies" of the BSA and the SDS, when it examined "Stanišić's conduct and statements in relation to these policies".[1456]

425. In this respect, the Appeals Chamber recalls that it has found that the Trial Chamber erred in finding that Stanišić was a member of the BSA.[1457] However, the Trial Chamber also noted the evidence that: (i) at the 24 March 1992 BSA Session, Stanišić was elected the first Minister of Interior of the RS Government and remarked that "the SRBiH MUP had been used as an instrument of the SDA and the HDZ for achieving their political goals, including the creation of an army from the reserve forces comprised of only one ethnicity and the dismissal of Serbs from their positions"[1458] and that he hoped that "in the future, the Serbian MUP [would] become a professional organisation, an organ of state administration which [would] actually protect property, life, body and other values";[1459] and (ii) at the November 1992 BSA Session, Stanišić "acknowledged in his speech to the BSA that 'in the beginning', 'thieves and criminals' were accepted into the reserve police forces because 'we wanted the country defended'",[1460] and stated, "I as a man have followed policies of the SDS Presidency and our Deputies in the former state, I have always followed these policies."[1461]

426. With regard to his conduct in relation to the political stances of the SDS, the Trial Chamber further found that Stanišić was involved in the establishment of the SDS, displayed discontentment with the representation of Serbs within the SRBiH MUP, and attempted to intervene to retain and recruit Serbs within the SRBiH MUP.[1462] The Trial Chamber also found that Stanišić worked to promote the interests, and implement the decisions, of the SDS in the SRBiH MUP and was involved in all the stages of the creation of the Bosnian Serb institutions in BiH, in particular the RS MUP.[1463]

427. As contextual information relevant to Stanišić's conduct and statements as described above, when assessing his intent, the Trial Chamber was entitled to rely on the statements of Karadžić, Dutina, and Kuprešanin at the BSA and SDS Meetings, which are indicative of the policies adopted by the BSA and the SDS. The Appeals Chamber therefore discerns no error.

[1456] Trial Judgement, vol. 2, para. 767.
[1457] See *supra*, para. 418.
[1458] Trial Judgement, vol. 2, para. 558. See Trial Judgement, vol. 2, para. 542.
[1459] Trial Judgement, vol. 2, para. 558, referring to Exhibit P198, pp 7-8.
[1460] Trial Judgement, vol. 2, para. 600, also quoting Stanišić's further statement that "[o]ur priority, our intentions were good and maybe that is where we went wrong, maybe that is where I went wrong, agreed."
[1461] Trial Judgement, vol. 2, para. 570.
[1462] Trial Judgement, vol. 2, para. 729.
[1463] Trial Judgement, vol. 2, para. 734.

428. Regarding Stanišić's argument that the Trial Chamber mischaracterised his speech at the November 1992 BSA Session,[1464] the Appeals Chamber first recalls the Trial Chamber's finding on the basis of, *inter alia*, Exhibit P400, that in this speech, Stanišić "acknowledged that 'in the beginning', 'thieves and criminals' were accepted into the reserve police forces because 'we wanted the country defended'".[1465] The Appeals Chamber further notes that at trial, Stanišić raised the issue of a translation error in Exhibit P400 which, in his submission, had the effect of implying that Stanišić had personal involvement in the acceptance of thieves and criminals into the reserve police, where he was in fact speaking in general terms.[1466] It is, however, clear that the corrected English translation of Exhibit P400 on the trial record does not contain the error raised in Stanišić's objection, as this exhibit quotes Stanišić as stating that "there were reserves in the police, we wanted the country defended, so *they* took on thieves and criminals".[1467] The Appeals Chamber further notes that nowhere in the Trial Judgement did the Trial Chamber refer to any alternate wording of Exhibit P400 from before the correction was made to the English translation of Exhibit P400.[1468] Stanišić has therefore failed to demonstrate that the Trial Chamber erred in its assessment of his speech to the BSA.

429. In light of the above, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in relying upon statements made at meetings of the BSA and SDS, among other factors, when assessing his intent.

(ii) Alleged error concerning the Trial Chamber's reliance upon the Strategic Objectives

430. In assessing Stanišić's intent, the Trial Chamber recalled that the Strategic Objectives, which had been set by the RS Government, among others, were issued on 12 May 1992 and presented to the BSA.[1469] It also noted that the first goal of the Strategic Objectives called for the separation of Serb people from Muslims and Croats.[1470] Among other factors, the Trial Chamber relied on Stanišić's continued support of and participation in the implementation of policies of the Bosnian Serb leadership and the SDS, including the Strategic Objectives, in inferring that he was aware of and shared the persecutory intentions of the Bosnian Serb leadership.[1471]

[1464] Stanišić Appeal Brief, para. 129.
[1465] Trial Judgement, vol. 2, para. 600, referring to, *inter alia*, Exhibit P400, p. 17.
[1466] Stanišić argued that "instead of putting it in the first -- in the -- first person like it is in the translation, it should be -- it should be '*they*'" (Hearing, 5 May 2010, T. 9566 (emphasis added). See Hearing, 4 May 2010, T. 9560-9563).
[1467] Exhibit P400, p. 17 (emphasis added).
[1468] See Trial Judgement, vol. 2, paras 600, 743. See also Hearing, 4 May 2010, T. 9560-9563; Hearing, 5 May 2010, T. 9566.
[1469] Trial Judgement, vol. 2, para. 767.
[1470] Trial Judgement, vol. 2, para. 767, referring to "JCE section".
[1471] Trial Judgement, vol. 2, paras 767, 769.

a. Submissions of the parties

431. Stanišić submits that the Trial Chamber erred by relying on the Strategic Objectives in the assessment of his intent.[1472] He argues that: (i) there is no evidence of his attendance at, or knowledge of a session of the BSA held on 12 May 1992 ("12 May 1992 BSA Session"),[1473] or a meeting prior to the 12 May 1992 BSA Session at which the Strategic Objectives were discussed by, *inter alios*, Mladić, Krajišnik, and Karadžić;[1474] (ii) the Strategic Objectives were not published until 26 November 1993;[1475] and (iii) the Trial Chamber erred by relying on Karadžić's speech rather than on the minutes of RS Government sessions, to find that the Strategic Objectives were set by, among others, the RS Government.[1476]

432. The Prosecution responds that Stanišić fails to show that no reasonable trier of fact could have found that he was aware of the Strategic Objectives given Karadžić's statement at the 12 May 1992 BSA Session.[1477] It submits that Stanišić merely seeks to supplant his evaluation of the evidence for that of the Trial Chamber and that his argument should be summarily dismissed.[1478]

b. Analysis

433. The Appeals Chamber observes that despite the deficiencies discussed above in relation to the lack of citations or cross-references to findings when referring to the Strategic Objectives in the *Mens Rea* Section,[1479] reading the Trial Judgement as a whole reveals that the Trial Chamber entered several relevant findings in this regard. In particular, it discussed the nature of the Strategic Objectives, their formation, and implementation, including establishing who was involved in drawing-up the Strategic Objectives, and as of when.[1480] Specifically, the Trial Chamber found that: (i) Krajišnik issued the Strategic Objectives at the 12 May 1992 BSA Session and specified their contents;[1481] (ii) the goals had already been discussed on 7 May 1992, at a meeting attended by, among others, Mladić, Krajišnik, and Karadžić;[1482] (iii) Krajišnik wanted to make the Strategic Objectives public immediately, "while Karadžić and others felt that they gave away too much of the

[1472] Stanišić Appeal Brief, para. 135.
[1473] Stanišić Appeal Brief, para. 133, referring to Trial Judgement, vol. 2, paras 190, 767, Exhibits P2304, p. 42, P2310, p. 30, P2311, p. 10.
[1474] Stanišić Appeal Brief, para. 133, referring to Trial Judgement, vol. 2, para. 189.
[1475] Stanišić Appeal Brief, para. 133, referring to Trial Judgement, vol. 2, para. 189.
[1476] Stanišić Appeal Brief, para. 134, referring to Trial Judgement, vol. 2, para. 767.
[1477] Prosecution Response Brief (Stanišić), para. 48.
[1478] Prosecution Response Brief (Stanišić), para. 48.
[1479] *Cf. supra*, paras 377-380.
[1480] See generally, Trial Judgement, vol. 2, paras 188-199.
[1481] Trial Judgement, vol. 2, paras 188, 190.
[1482] Trial Judgement, vol. 2, para. 189, referring to Exhibit P1753, pp 262-263.

actual intent of the Bosnian Serb leadership";[1483] (iv) the War Presidency of the RS adopted the decision to publish the Strategic Objectives and a corresponding map of RS on 9 June 1992;[1484] and (v) the Strategic Objectives were published on 26 November 1993.[1485] The Appeals Chamber notes that the Trial Chamber also held that at the 12 May 1992 BSA Session, Karadžić stated that the goals were set by the Bosnian Serb Presidency, Government, and the NSC.[1486]

434. Insofar as Stanišić argues that the Trial Chamber erroneously found that he knew of the Strategic Objectives on the basis of the 12 May 1992 BSA Session or the 7 May 1992 meeting of, among others, Mladić, Krajišnik, and Karadžić,[1487] he misconstrues the Trial Judgement. The Trial Chamber did not make a finding on whether Stanišić became aware of the Strategic Objectives through this BSA session or this meeting. Rather, in assessing his intent, the Trial Chamber took into account, *inter alia*, Stanišić's continued support of and participation in the implementation of policies of the Bosnian Serb leadership and the SDS and considered the Strategic Objectives as part of these policies.[1488] In this context, the Trial Chamber found that Stanišić was a member of the RS Government and participated in meetings of the NSC,[1489] and that the Strategic Objectives were set by, among others, the RS Government.[1490] In these circumstances, the Appeals Chamber discerns no error in the Trial Chamber's consideration of the Strategic Objectives when assessing Stanišić's intent.[1491]

435. Turning to Stanišić's argument that the Trial Chamber erroneously found that the Strategic Objectives were set by, *inter alia*, the RS Government on the basis of Karadžić's speech at the 12 May 1992 BSA Session rather than on the minutes of RS Government sessions,[1492] the Appeals Chamber observes that Stanišić makes a general unreferenced assertion that "the minutes of the 1992 RS government sessions, which are all in the trial record" do not refer to any discussion on the

[1483] Trial Judgement, vol. 2, para. 189, referring to Robert Donia, 16 Sep 2009, T. 412-413.
[1484] Trial Judgement, vol. 2, para. 189, referring to Exhibit P260.
[1485] Trial Judgement, vol. 2, para. 189, referring to Exhibit P24.
[1486] Trial Judgement, vol. 2, para. 190.
[1487] Stanišić Appeal Brief, para. 133.
[1488] Trial Judgement, vol. 2, paras 767, 769.
[1489] See Trial Judgement, vol. 2, paras 20, 572-575. The Trial Chamber found that, on 24 March 1992, Stanišić was elected the first Minister of Interior and officially appointed to the position on 31 March 1992 (Trial Judgement, vol. 2, para. 542, referring to Branko Đerić, 29 Oct 2009, T. 2281-2282, Christian Nielsen, 16 Dec 2009, T. 4890, Exhibits P198, pp 6-9, P353, P508, para. 83, P2301, pp 30-35, P2307, pp 9-11, 15. See Trial Judgement, vol. 2, para. 558) and considered that he was a member of the RS Government by virtue of his position as Minister of Interior (see Trial Judgement, vol. 2, paras 20, 558). The Trial Chamber also found that: (i) Stanišić attended a majority of the RS Government sessions; (ii) on the occasions that Stanišić did not attend RS Government sessions, Petar Bujičić or Tomislav Kovač attended as his delegated representative (Trial Judgement, vol. 2, para. 572); and (iii) Stanišić participated in joint meetings of the RS Government and NSC from April through May 1992 (Trial Judgement, vol. 2, para. 573. See Trial Judgement, vol. 2, paras 574-575). The Appeals Chamber recalls that it has found that the Trial Chamber erred in fact by finding that Stanišić was a member of the BSA (see *supra*, para. 418).
[1490] Trial Judgement, vol. 2, para. 767.
[1491] See Trial Judgement, vol. 2, paras 767, 769 (referring to, *inter alia*, the Strategic Objectives and Stanišić's position during the Indictment period).

Strategic Objectives.[1493] Accordingly, Stanišić has failed to provide the Appeals Chamber with guidance as to the veracity of this undeveloped submission. Moreover, it was not only on Karadžić's speech at the 12 May 1992 BSA that the Trial Chamber relied to reach its conclusion that the Strategic Objectives were set by, *inter alia*, the RS Government. It also considered other evidence, as set out above.[1494] The Appeals Chamber recalls that the task of assessing and weighing the evidence presented at trial is left primarily to trial chambers and only where the evidence relied on by the trial chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the trial chamber.[1495] Consequently, Stanišić has failed to show that the Trial Chamber erred in its reliance on Karadžić's speech at the 12 May 1992 BSA, among other evidence, in determining who set the Strategic Objectives.

436. In light of the above, the Appeals Chamber finds that Stanišić has not demonstrated that the Trial Chamber erred by relying on the Strategic Objectives, among other factors, when assessing his intent. Stanišić's arguments in this respect are therefore dismissed.

(iii) Alleged error concerning the Trial Chamber's reliance upon Stanišić's participation in the work of the Council of Ministers

437. In assessing Stanišić's intent the Trial Chamber relied on, *inter alia*, his attendance at "the first meeting of the Council of Ministers of the BSA, where the boundaries of ethnic territory and the establishment of government organs in the territory were determined to be priorities", and his conduct in relation to this policy.[1496]

a. Submissions of the parties

438. Stanišić submits that the Trial Chamber erred in relying on his participation at the first meeting of the Council of Ministers of the BSA on 11 January 1992 ("1st Council Meeting") in assessing his intent.[1497] He asserts that "presence at a meeting is not indicative of intent to commit persecutory crimes"[1498] and that the legitimate priorities propagated thereat (including the "defining of ethnic territory" and formation of government organs) do not demonstrate an intent to commit

[1492] Stanišić Appeal Brief, para. 134.
[1493] See Stanišić Appeal Brief, para. 134.
[1494] Trial Judgement, vol. 2, paras 188-199.
[1495] See *supra*, para. 21.
[1496] Trial Judgement, vol. 2, para. 767.
[1497] Stanišić Appeal Brief, para. 136.
[1498] Stanišić Appeal Brief, para. 138, referring to *Stanišić and Simatović* Trial Judgement, paras 2312, 2315, 2340, 2354, *Perišić* Trial Judgement, Dissenting Opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paras 61-75.

crimes.[1499] He submits that the Trial Chamber "failed to refer to Stanišić's evidence that he viewed the creation of the Council of Ministers as a centrally organized authority for the RS by the Serbs as fulfilling the conditions for the Cutileiro plan to deal with the problem in BiH".[1500] Finally, Stanišić contends that the Trial Chamber failed to refer to evidence that he refused to take part in or contribute to work of the Council of Ministers because it was incompatible with his work as Secretary of the Sarajevo SUP.[1501]

439. The Prosecution responds that the Trial Chamber reasonably relied on the 1st Council Meeting when inferring Stanišić's intent.[1502] It contends that Stanišić fails to show that no reasonable trier of fact could have found that Stanišić's efforts to promote the demarcation of ethnic Serb territory "were connected to the ethnic cleansing campaign which the Bosnian Serbs unleashed in the spring of 1992".[1503] The Prosecution submits that, contrary to Stanišić's submission, the Trial Chamber considered evidence concerning Stanišić's view of the creation of the Council of Ministers, his presence at the 1st Council Meeting, as well as his emphatic support for the priorities set thereat.[1504] It recalls that subsequently, at the 11 February 1992 Meeting involving Serb employees of the SRBiH MUP, Stanišić provided active support to these priorities.[1505] The Prosecution argues that the minutes of this meeting belie Stanišić's statements in his Interview that he refused to take part in or contribute to the work of the Council of Ministers, statements which the Trial Chamber considered and appropriately rejected.[1506]

b. Analysis

440. Although the Trial Chamber provided no cross-references or citations to evidence on the record when relying upon Stanišić's attendance at the 1st Council Meeting in the *Mens Rea* Section,[1507] reading the Trial Judgement as a whole reveals several relevant findings in this respect. Specifically, the Trial Chamber found that on 11 January 1992, Stanišić attended the 1st Council Meeting, where it was decided that the "'defining of ethnic territory' and the 'establishment of government organs in the territory' were priorities emanating from the Declaration of the RS on

[1499] Stanišić Appeal Brief, para. 138. See Stanišić Appeal Brief, para. 136.
[1500] Stanišić Appeal Brief, para. 137, referring to Exhibit P2301, pp 5-6.
[1501] Stanišić Appeal Brief, para. 137, referring to Exhibit P2301, pp 17-20.
[1502] Prosecution Response Brief (Stanišić), para. 42, referring to Trial Judgement, vol. 2, paras 549, 551, 554-556, 767.
[1503] Prosecution Response Brief (Stanišić), para. 43, referring to Trial Judgement, vol. 2, paras 308-313.
[1504] Prosecution Response Brief (Stanišić), para. 44, referring to Trial Judgement, vol. 2, para. 563. See Prosecution Response Brief (Stanišić), para. 45. The Prosecution contends that "[t]his finding is consistent with the [Trial] Chamber's determination that the effort to demarcate ethnic Serb territory was a component of the common criminal purpose" (Prosecution Response Brief (Stanišić), para. 44, referring to Trial Judgement, vol. 2, paras 308-313).
[1505] Prosecution Response Brief (Stanišić), para. 45, referring to Trial Judgement, vol. 2, paras 554-555.
[1506] Prosecution Response Brief (Stanišić), para. 45.
[1507] *Cf. supra*, paras 377-380.

9 January".[1508] The Trial Chamber found further that at this meeting, Stanišić was appointed to a working group to deal with issues regarding the organisation and scope of national security and was given responsibility for the work of this group. The Trial Chamber also found that during their first two meetings, the members of the Council of Ministers of the BSA decided to establish new ethnically divided government organs.[1509]

441. Insofar as Stanišić argues that the Trial Chamber erred in law as "presence at a meeting is not indicative of intent to commit persecutory crimes", the Appeals Chamber notes that he seeks to rely on the *Stanišić and Simatović* Trial Judgement and Judge Bakone Justice Moloto's dissenting opinion in the *Perišić* case, where the accused's attendance at meetings was found not to be indicative of intent. In the view of the Appeals Chamber, however, Stanišić's reliance upon these authorities is misplaced as they do not give rise to any principle of law that "[p]resence at a meeting is not indicative of intent to commit persecutory crimes."[1510] To the contrary, the determinations made by the *Stanišić and Simatović* Trial Chamber and Judge Moloto in his dissenting opinion in the *Perišić* case turn upon the factual considerations unique to those cases.[1511]

442. With respect to Stanišić's argument that the priorities propagated at the 1st Council Meeting were legitimate, the Appeals Chamber recalls that contribution to a joint criminal enterprise need not be in and of itself criminal,[1512] and that the requisite intent for a conviction under joint criminal enterprise can be inferred from circumstantial evidence.[1513] The Trial Chamber therefore did not err in law in relying on Stanišić's participation in the 1st Council Meeting in its assessment of his intent.

443. As far as Stanišić argues that the Trial Chamber erred in fact in its assessment of the 1st Council Meeting, the Appeals Chamber considers that the Trial Chamber's findings regarding the 1st Council Meeting should be viewed in the context of its findings concerning the formation of the plan to establish a Serb state as ethnically "pure" as possible.[1514] The Appeals Chamber notes in this respect the Trial Chamber's findings that following the declaration of independence in the BiH Assembly on 15 October 1991, "the SDS and the Bosnian Serb leadership intensified the process of territorial demarcation, an important part of which was the forceful assumption of control over

[1508] Trial Judgement, vol. 2, para. 551.
[1509] Trial Judgement, vol. 2, para. 551.
[1510] See Stanišić Appeal Brief, para. 138.
[1511] See *Stanišić and Simatović* Trial Judgement, paras 2312, 2315, 2340, 2354; *Perišić* Trial Judgement, Dissenting Opinion of Judge Moloto on Counts 1 to 4 and 9 to 12, paras 61-75.
[1512] *Popović et al.* Appeal Judgement, para. 1653; *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, para. 215, 695-696. See *Šainović et al.* Appeal Judgement, paras 1233, 1242. See *supra*, para. 110.
[1513] See *Popović et al.* Appeal Judgement, para. 1369; *Šainović et al.* Appeal Judgement, para. 995; *Krajišnik* Appeal Judgement, para. 202.
[1514] Trial Judgement, vol. 2, para. 311.

territories".[1515] According to the Trial Chamber's conclusions, even prior to the negotiations in Lisbon in February 1992 regarding the Cutileiro Plan, "Serbs had already coalesced around the idea of a separate Serb entity carved out of the territory of the SRBiH" and this agenda came to coincide with the proposals discussed at the Lisbon negotiations.[1516] The Trial Chamber found that Bosnian Serb control over the territories was achieved "through the setting up of separate and parallel Bosnian Serb institutions" including eventually, the RS and its separate government.[1517] It also considered that the Bosnian Serb leadership initiated a "process of establishing Serb municipalities" through the Variant A and B Instructions, which led to the violent takeovers of the Municipalities.[1518]

444. Moreover, the Appeals Chamber notes that contrary to Stanišić's submissions, the Trial Chamber expressly referred to his evidence that "he refused to take part in or contribute to the work of the Council [...] because it was incompatible with his work as a Secretary of the Sarajevo SUP".[1519] At the same time, however, the Trial Chamber referred to evidence that Stanišić worked to promote the priorities set at the 1st Council Meeting.[1520] His argument that the Trial Chamber disregarded his evidence is therefore without merit.

445. The Trial Chamber found that the establishment of Bosnian Serb bodies, policies, and parallel institutions,[1521] the creation of a separate Serb entity within BiH,[1522] and the implementation of the Variant A and B Instructions,[1523] were all actions that preceded the violent takeovers of the Municipalities,[1524] to which Stanišić contributed.[1525] Moreover, these actions were undertaken at a time that the Bosnian Serb leadership espoused inflammatory and ethnically charged views about

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[1515] Trial Judgement, vol. 2, para. 310.
[1516] Trial Judgement, vol. 2, para. 563.
[1517] Trial Judgement, vol. 2, para. 310.
[1518] Trial Judgement, vol. 2, para. 310. See Trial Judgement, vol. 2, para. 311.
[1519] Trial Judgement, vol. 2, para. 551, referring to Exhibit P2301, pp 17-20.
[1520] See generally, Trial Judgement, vol. 2, paras 554-556. In particular, the Trial Chamber considered Stanišić's attendance, in his capacity as a member of the Council of Ministers, at a meeting of Serbs working in the SRBiH MUP in Banja Luka on 11 February 1992, during the negotiations of the Cutileiro Plan (see Trial Judgement, vol. 2, paras 554-555). Specifically, the Trial Chamber referred to the minutes of this meeting, at which Stanišić stated:

> '[t]he position of the Council of Ministers at the last session was that the territories in [SRBiH] which are under Serbian control, that control must be felt'; that the joint MUP was 'being divided by the Muslims'; and that Serbian personnel in the MUP 'must provide the means to strengthen and supply the Serbian MUP, ensuring that resources will be distributed equally' (Trial Judgement, vol. 2, para. 555, referring to Exhibit 1D135, p. 1).

The Appeals Chamber further notes that the Trial Chamber expressly considered and rejected Stanišić's challenge as to the reliability of the minutes of this 11 February 1992 Meeting (Trial Judgement, vol. 2, para. 555).
[1521] See Trial Judgement, vol. 2, paras 151-206.
[1522] See Trial Judgement vol. 2, paras 207-226.
[1523] See Trial Judgement, vol. 2, paras 227-244. See also Trial Judgement, vol. 2, paras 245-262.
[1524] Trial Judgement, vol. 2, paras 309-311. See Trial Judgement, vol. 2, paras 281-298.
[1525] With respect to Stanišić's participation in the JCE, see generally, Trial Judgement, vol. 2, paras 544-765.

the future of the BiH,[1526] which the Trial Chamber considered as evidence that the goal of the violent takeover of the Municipalities was to establish an ethnically "pure" Serb state through the permanent removal of Bosnian Muslims and Bosnian Croats.[1527]

446. Taking stock of these findings, the Appeals Chamber therefore considers that even though there was nothing criminal, *per se*, in either the conclusions reached at the 1st Council Meeting or Stanišić's subsequent promotion of the priorities spelled out thereat, Stanišić has failed to demonstrate that the Trial Chamber erred in fact in relying on his participation in the 1st Council Meeting and his conduct in relation to the policy determined thereat in its assessment of his intent.

(iv) Conclusion

447. In light of the above, the Appeals Chamber finds that the Trial Chamber erred in fact by relying upon Stanišić's membership in the BSA when assessing his intent. The Appeals Chamber will discuss the potential impact of this error below.[1528] The Appeals Chamber further finds that Stanišić has failed to show that the Trial Chamber erred in relying upon the following factors when assessing his intent: (i) statements made at meetings of the BSA and SDS; (ii) the Strategic Objectives; and (iii) his participation in the 1st Council Meeting and his conduct in relation to the policy determined thereat. Therefore, it dismisses the remainder of Stanišić's arguments with respect to paragraph 767 of volume two of the Trial Judgement.

(f) Alleged errors in relying on the factors set out in paragraph 768 of volume two of the Trial Judgement in finding that Stanišić had the intent to further the JCE (subsection (D) of Stanišić's fourth ground of appeal)

448. In assessing Stanišić's intent, the Trial Chamber further stated that:

> [it] has considered the evidence that Stanišić, albeit opposed to the presence of some paramilitary groups in BiH, approved of the operation of Arkan's Men in Bijeljina and Zvornik and allowed Arkan to remove whatever property in exchange for "liberating" the territories. Moreover, Stanišić was present at sessions of the RS Government where the RS MUP was tasked with gathering information about Muslims moving out of the RS and the needs of refugees and displaced persons. He was also present at the 11 July Collegium meeting, where the relocation of citizens and entire villages was discussed. Finally, on 13 July 1992, the Višegrad SJB Chief Risto Perišić reported to the RS MUP that certain police officers were exhibiting a lack of professionalism while over 2,000 Muslims moved out of the municipality in an organised manner.[1529]

[1526] See Trial Judgement, vol. 2, para. 311. See also Trial Judgement, vol. 2, paras 156-157, 159, 161-162, 167-170, 172, 174, 176, 178-181, 184, 194-195, 199, 201-202, 208, 215, 241.
[1527] See Trial Judgement, vol. 2, para. 311.
[1528] See *infra*, paras 573-585.
[1529] Trial Judgement, vol. 2, para. 768.

449. Stanišić challenges the Trial Chamber's reliance on the factors referred to in this paragraph of the Trial Judgement in assessing his intent.[1530] He argues that no reasonable trial chamber could have found that he approved of Arkan's operations.[1531] Stanišić also argues that the Trial Chamber erred by relying upon: (i) his presence at the 36th and 42nd sessions of the RS Government held on 4 and 29 July 1992 ("4 July 1992 Session" and "29 July 1992 Session", respectively; "July 1992 Sessions", collectively);[1532] (ii) his presence at the meeting of senior officials of the RS MUP on 11 July 1992;[1533] and (iii) the report by the Chief of the Višegrad SJB, Risto Perišić, dated 13 July 1992 ("Perišić Report").[1534]

(i) Alleged error in finding that Stanišić approved of Arkan's operations in the municipalities of Bijeljina and Zvornik

450. As noted above, in assessing Stanišić's intent, the Trial Chamber considered "the evidence that Stanišić, albeit opposed to the presence of some paramilitary groups in BiH, approved of the operation of Arkan's Men in Bijeljina and Zvornik and allowed Arkan to remove whatever property in exchange for 'liberating' the territories".[1535]

a. Submissions of the parties

451. Stanišić submits that the Trial Chamber erred by finding that he approved of "Arkan's operations in Bijeljina and Zvornik and allowed Arkan to remove any property [...] he wished".[1536] He contends that the Trial Chamber erred by relying on Witness Davidović's testimony in *Krajišnik* as the sole basis for this finding and in ultimately concluding that he intended to commit persecutory crimes.[1537]

452. Stanišić submits that the Trial Chamber "ignored" Witness Davidović's *viva voce* testimony in the present case showing that his statement about Stanišić making a "deal" with Arkan is unreliable and uncorroborated hearsay.[1538] Stanišić points out that Witness Davidović's testimony

[1530] See Stanišić Appeal Brief, paras 139-155.
[1531] Stanišić Appeal Brief, paras 139-146.
[1532] Stanišić Appeal Brief, paras 147-149.
[1533] Stanišić Appeal Brief, paras 150-152.
[1534] Stanišić Appeal Brief, paras 153-155.
[1535] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, para. 710.
[1536] Stanišić Appeal Brief, para. 139. See Appeal Hearing, 16 Dec 2015, AT. 99.
[1537] Stanišić Appeal Brief, paras 139-146. See Stanišić Reply Brief, para. 42; Appeal Hearing, 16 Dec 2015, AT. 140.
[1538] Stanišić Appeal Brief, paras 139-140, 145.

in the present case that he heard about the "deal" between Stanišić and Arkan from Mladić is directly contradicted both by his testimony in *Krajišnik* and his witness statement.[1539]

453. Stanišić also submits that the Trial Chamber failed to explain why it chose to rely on certain aspects of Witness Davidović's testimony in *Krajišnik* and to omit any reference to contradictory statements made in the present case.[1540] He alleges that Witness Davidović made inconsistent and contradictory statements in relation to: (i) whether he had informed Stanišić about Arkan's takeover of Bijeljina SUP;[1541] (ii) Stanišić's attendance at a meeting at Bosanska Vila with, *inter alios*, Karadžić, Krajišnik, and Arkan in April or May 1992 ("Bosanska Vila Meeting"), at which "certain tasks were distributed";[1542] and (iii) Stanišić's statement that Arkan's Men could not be opposed.[1543] According to Stanišić, these inconsistencies serve to undermine the reliability of Witness Davidović's testimony regarding Stanišić's dealings with Arkan.[1544]

454. Finally, Stanišić submits that the Trial Chamber's finding regarding his "deal" with Arkan is contradicted by direct evidence that he attempted to deal with the paramilitaries responsible for committing crimes,[1545] and was publicly criticised by Plavšić for doing so.[1546]

455. The Prosecution responds that Stanišić fails to show that no reasonable trier of fact could have relied on Witness Davidović's evidence in *Krajišnik*, as that evidence is not inconsistent with Witness Davidović's testimony in this case.[1547] The Prosecution further submits that Stanišić's arguments with regard to the specific inconsistencies in Witness Davidović's evidence should be summarily dismissed as he merely disagrees with the Trial Chamber's interpretation of evidence

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[1539] Stanišić Appeal Brief, para. 140, referring to Exhibits P1557.04, pp 14253-14254, P1557.01, pp 31-32; Stanišić Reply Brief, para. 42. See Stanišić Reply Brief, para. 45.
[1540] Stanišić Appeal Brief, para. 141. See Stanišić Appeal Brief, paras 40-41, referring to Trial Judgement, vol. 2, para. 768, Milorad Davidović, 24 Aug 2010, T. 13625-13626. See also Stanišić Reply Brief, para. 19.
[1541] Stanišić Appeal Brief, para. 142. Stanišić argues that in *Krajišnik*, Witness Davidović testified that he informed Stanišić about the takeover of Bijeljina SUP by Arkan's Men, later to testify in the present case that he did not have any conversation with Stanišić about the presence of Arkan and his men in Bijeljina and what they were doing there and he only assumed that Stanišić knew about it (Stanišić Appeal Brief, para. 142, referring to Milorad Davidović, 23 Aug 2010, T. 13544, Exhibit P1557.03, pp 14220-14221).
[1542] Stanišić Appeal Brief, para. 144, referring to, Trial Judgement, vol. 2, para. 711, Exhibit P1557.05, p. 14362, Milorad Davidović, 24 Aug 2010, T. 13624.
[1543] Stanišić Appeal Brief, para. 143, referring to Milorad Davidović, 23 Aug 2010, T. 13545-13546, Milorad Davidović, 24 Aug 2010, T. 13625-13626, Exhibit 1D646, p. 1.
[1544] Stanišić Appeal Brief, para. 145. See Stanišić Reply Brief, para. 42.
[1545] Stanišić Appeal Brief, para. 146, referring to Andrija Bjelošević, 15 Apr 2011, T. 19711-19712, ST161, 19 Nov 2009, T. 3456 (confidential), Radovan Pejić, 25 Jun 2010, T. 12202-12204, Dragomir Andan, 27 May 2011, T. 21421, 21460-21464, Dragomir Andan, 30 May 2011, T. 21503-21505, 21538-21541, 21545-21546, Dragomir Andan, 1 Jun 2011, T. 21697-21698, 21701-21702, ST215, 28 Sep 2010, T. 15002-15003, Milorad Davidović, 23 Aug 2010, T. 13531-13533, 13564-13566, 13590, Milorad Davidović, 24 Aug 2010, T. 13613-13616, 13623-13630, Exhibits P1557.04, pp 14292-14293, 1D76, P2309, P1476, 1D567, 1D557, 1D558, 1D173, 1D646, 1D97, 1D554, P339, P591, P1557.01, pp 26-27. See Appeal Hearing, 16 Dec 2015, AT. 99.
[1546] Stanišić Appeal Brief, para. 146, referring to Exhibit P400, p. 20, Momčilo Mandić, 6 May 2010, T. 9274-9276.
[1547] Prosecution Response Brief (Stanišić), para. 51.

and fails to demonstrate any inconsistencies.[1548] Finally, the Prosecution points out that Stanišić initiated measures against paramilitaries only after they refused to submit to the army's command and committed crimes against local RS leaders.[1549]

b. Analysis

456. In assessing Stanišić's intent, the Trial Chamber stated that it "considered the evidence" that Stanišić "approved of the operation of Arkan's Men in Bijeljina and Zvornik and allowed Arkan to remove whatever property in exchange for 'liberating' the territories".[1550] In doing so, the Trial Chamber provided no references to earlier findings or citations to evidence on the record.[1551] Nonetheless, a reading of the Trial Judgement as a whole reveals that it did discuss evidence concerning Stanišić's actions with respect to paramilitaries suspected of committing crimes, including Arkan's Men.[1552] Specifically, the Trial Chamber relied exclusively upon evidence of Witness Davidović in *Krajišnik* when stating that:

> Davidović testified that Arkan's forces participated in 'liberating' territories in Zvornik and Bijeljina with Stanišić's knowledge and approval. Stanišić, who had met with Arkan in Bijeljina on several occasions, had agreed that, in exchange for their engagement in the area, Arkan's forces could take any property they wanted from the territories they liberated.[1553]

457. The Appeals Chamber notes that the Trial Chamber relied extensively on the evidence of Witness Davidović throughout the Trial Judgement.[1554] In particular it relied upon Witness Davidović's *viva voce* testimony and evidence in *Krajišnik* in stating that "Stanišić told Davidović that Karadžić, too, was aware of Arkan's engagement in the area."[1555] It also relied exclusively upon Witness Davidović's evidence in *Krajišnik* when stating that he "assumed that Stanišić was aware of the crimes of Arkan's men in Bijeljina, Brčko, and other territories, because these crimes were well-known, and Stanišić received information from a number of different sources", and

[1548] Prosecution Response Brief (Stanišić), paras 52 (referring to Exhibit P1557.03, pp 74-75, Milorad Davidović, 23 Aug 2010, T. 13544-13545), 53.
[1549] Prosecution Response Brief (Stanišić), para. 52, referring to Trial Judgement, vol. 2, paras 714-720, 756, Milorad Davidović, 24 Aug 2010, T. 13623-13624, Exhibit P1557.01, paras 51-82.
[1550] Trial Judgement, vol. 2, para. 768.
[1551] Trial Judgement, vol. 2, para. 768. *Cf. supra*, paras 377-380.
[1552] See Trial Judgement, vol. 2, paras 709-712.
[1553] Trial Judgement, vol. 2, para. 710.
[1554] See Trial Judgement, vol. 1, paras 887, 891, 894-897, 899-900, 1052, 1057-1058, 1079-1080, 1092, 1098, 1562, 1568, 1577, 1596, fns 2028, 2036, 2038, 2045-2046, 2049-2051, 2055-2056, 2058, 2060-2066, 2068-2073, 2078, 2084, 2406, 2426-2427, 2517, 2525, 2586, 3711, 3742, 3758-3788, 3869; Trial Judgement, vol. 2, paras 122-123, 126, 185, 288, 587, 601, 603, 709-715, 717, fns 390, 406, 408, 420, 579-580, 834, 1539-1540, 1570-1572, 1576-1577, 1820-1824, 1826-1829, 1832, 1836, 1839. See also Trial Judgement, vol. 1, paras 918, 920, 923, 925. But see Trial Judgement, vol. 1, paras 1079, 1101, fn. 2518.
[1555] Trial Judgement, vol. 2, para. 710, referring to Milorad Davidović, 23 Aug 2010, T. 13544-13545, Exhibit P1557.01, p. 31.

Arkan acted with full freedom and consent of the MUP of Serbia.[1556] Further, the Trial Chamber relied exclusively on Witness Davidović's testimony in *Krajišnik* regarding the Bosanska Vila Meeting, when finding that:

> Davidović also testified that, in April or May of 1992, after Arkan's Men had entered Bijeljina, he attended a meeting at Bosanska Vila with Radovan Karadžić, Momčilo Krajišnik, Mićo Stanišić, Pero Mihajlović, Frenki Simatović, and Arkan. Davidović attended at the invitation of Stanišić to discuss the transport of ammunition. At this meeting, certain tasks were distributed to the units of the Federal SUP. Arkan was told to stay out of certain matters, while permitted to participate in other tasks as assigned by Karadžić, Krajišnik, and Stanišić.[1557]

The Trial Chamber also recalled Witness Davidović's *viva voce* testimony "that Stanišić neither ordered nor prohibited him to arrest Arkan or members of his forces".[1558] As is discussed further in the following paragraphs, the Trial Chamber did not note any inconsistencies regarding Witness Davidović's *viva voce* testimony and his evidence in *Krajišnik*.

458. Failure to discuss inconsistent or contradictory evidence is, however, not necessarily indicative of disregard.[1559] The Appeals Chamber reiterates in this respect that "[c]onsidering the fact that minor inconsistencies commonly occur in witness testimony without rendering it unreliable, it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail".[1560]

459. With respect to Stanišić's argument that the Trial Chamber erred by relying on Witness Davidović's testimony in *Krajišnik* as the sole basis for finding that he approved of "Arkan's operations in Bijeljina and Zvornik and allowed Arkan to remove any property [...] he wished",[1561] the Appeals Chamber notes that Witness Davidović gave evidence about the interactions between Stanišić and Arkan, both in *Krajišnik* and in the present case.[1562] Specifically, the Appeals Chamber notes that in his witness statement in *Krajišnik*, Witness Davidović stated that:

> [Arkan] had a training camp at Erdut for which he had received the consent of the Serbian MUP. Mićo Stanišić had been invited to the training camp and when he went there he was amazed to see how well it was run and the respect Arkan received from his men. Mićo Stanišić met him several times in Bijeljina where Arkan had total control. Although Mićo Stanišić knew what Arkan and his staff were doing in Bijeljina he dared not interfere because of Arkan's links with the Serbian MUP. [...] Mićo Stanišić whilst at Lukavica with Ratko Mladić had seen some of Arkan's men there. [...] Stanišić had made a deal with Arkan for him to come into Sarajevo and occupy any territory he wanted and that he could take whatever he wanted and take it to Serbia. He was

[1556] Trial Judgement, vol. 2, para. 710, referring to Exhibits P1557.04, pp 14251-14254, P1557.01, p. 31, P1557.03, pp 14220-1121.
[1557] Trial Judgement, vol. 2, para. 711, referring to Exhibits P1557.04, pp 14255-14258, P1557.05, pp 14362-14363, P1557.07, pp 15280-15281.
[1558] Trial Judgement, vol. 2, para. 712, referring to Milorad Davidović, 24 Aug 2010, T. 13625-13626.
[1559] *Popović et al.* Appeal Judgement, para. 1151.
[1560] *Popović et al.* Appeal Judgement, para. 1151; *Kvočka et al.* Appeal Judgement, para. 23 (internal citations omitted).
[1561] Stanišić Appeal Brief, paras 140, 145.
[1562] Milorad Davidović, 24 Aug 2010, T. 13625-13626; Exhibits P1557.01, para. 125, P1557.04, pp 14253-14254.

> allowed to take the territory right down to the Baščaršija where there were some 50 jewellery shops.[1563]

460. According to Witness Davidović's in-court testimony in *Krajišnik*, Stanišić had informed Witness Davidović of Arkan's activities in the territory of Bijeljina, stating that "Arkan's forces were in Bijeljina and Zvornik".[1564] Witness Davidović testified that when he was in the Lukavica barracks, Stanišić had told him that "Arkan's forces were helping them to liberate territory that they believed should become part of Republika Srpska".[1565] When questioned as to whether Stanišić had told him anything else about Arkan's presence in the RS, Witness Davidović responded "[n]othing special, except that they were engaged there and they had his approval to help out in the area and that there was agreement amongst themselves that whatever they liberated and took would be an area in which they could do as they liked with any property."[1566]

461. In the present case, Witness Davidović testified that Stanišić's "deal" with Arkan existed "in the sense of Mićo Stanišić calling [Arkan's Men] to Sarajevo and giving them the possibility [to loot]".[1567] Specifically, Witness Davidović recalled that, while he was at the garrison at Lukavica, Mladić told him:

> that there was lootings going on, and so on, and that [Stanišić] had called to Sarajevo, allegedly, the members of Arkan's Guard and gave them certain rights, I think they were talking about Baščaršija and said, Look you can take whatever you want, whatever you liberate, whatever you take in that sense, all of that is yours. That's what General Ratko Mladić said to me then when he was telling me how these paramilitaries were not coming spontaneously or by accident, but rather that they were enjoying somebody's support.[1568]

462. The Appeals Chamber notes that the Trial Chamber did not refer to this evidence in relation to its findings about the existence of a "deal" between Stanišić and Arkan.[1569] As for Stanišić's argument that the Trial Chamber "ignored" this portion of Witness Davidović's testimony in the present case, the Appeals Chamber recalls that it is to be presumed that the Trial Chamber evaluated all the evidence presented to it, provided that there is no indication that the Trial Chamber completely disregarded any particular piece of evidence.[1570] Such disregard is shown when

[1563] Exhibit P1557.01, para. 125.
[1564] Exhibit P1557.04, p. 14253.
[1565] Exhibit P1557.04, p. 14253.
[1566] Exhibit P1557.04, pp 14253-14254.
[1567] Milorad Davidović, 24 Aug 2010, T. 13625-13626.
[1568] Milorad Davidović, 24 Aug 2010, T. 13626.
[1569] See Trial Judgement, vol. 2, fn. 1821.
[1570] *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, fn. 2527; *Haradinaj et al.* Appeal Judgement, para. 129; *Kvočka et al.* Appeal Judgement, para. 23.

evidence which is clearly relevant to the findings is not addressed in the Trial Chamber's reasoning.[1571]

463. The Appeals Chamber notes that throughout his evidence in *Krajišnik* and the present case, Witness Davidović was consistent that there was a "deal" between Arkan and Stanišić, in the sense of Stanišić giving Arkan and his men the opportunity to occupy any territory they wanted and to loot such areas of whatever property they wished.[1572] Therefore, the only notable discrepancy in Witness Davidović's evidence concerns the person from whom Witness Davidović heard about Stanišić's "deal" with Arkan. The Trial Chamber did not make any specific finding as to how Witness Davidović became aware of Stanišić's deal with Arkan and hence did not discuss this potential inconsistency.[1573] The Appeals Chamber therefore considers that even if Witness Davidović's knowledge about the "deal" was in fact hearsay, and even if it was uncorroborated,[1574] it was still within the Trial Chamber's discretion to rely on it if it considered such evidence credible as a whole.

464. Consequently, and given that the potential inconsistency in Witness Davidović's evidence has no direct impact on the Trial Chamber's ultimate finding on the *existence* of the "deal" between Stanišić and Arkan, which his testimony in both *Krajišnik* and the present case fully supports, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred by not explicitly addressing Witness Davidović's testimony as to *how* he became informed about this arrangement. Moreover, Stanišić has failed to demonstrate that this potential inconsistency renders the Trial Chamber's finding regarding his "deal" with Arkan unsafe.

465. The Appeals Chamber now turns to Stanišić's argument that the Trial Chamber failed to explain Witness Davidović's alleged inconsistent and contradictory statements in relation to whether Witness Davidović informed Stanišić about Arkan's takeover of Bijeljina SUP.[1575] The Appeals Chamber notes that, in setting out the evidence in respect of Stanišić's deal with Arkan and

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[1571] *Tolimir* Appeal Judgement, para. 161; *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, para. 864; *Haradinaj et al.* Appeal Judgement, para. 129; *Kvočka et al.* Appeal Judgement, para. 23.

[1572] See *supra*, paras 459-461. Indeed, Witness Davidović confirmed in his testimony in the present case that this was the meaning of his earlier statement that a "deal" existed between Stanišić and Arkan to this effect (see Milorad Davidović, 24 Aug 2010, T. 13625-12626). See also Exhibits P1557.01, para. 125, P1557.04, pp 14253-14254. Further, his evidence appears to be compatible in relation to the location at which Witness Davidović heard about Stanišić's "deal" with Arkan (see Milorad Davidović, 24 Aug 2010, T. 13626, Exhibit P1557.04, pp 14253-14254).

[1573] See Trial Judgement, vol. 2, paras 709-712, 768.

[1574] The Appeals Chamber recalls that "nothing prohibits a Trial Chamber from relying on uncorroborated evidence; it has the discretion to decide in the circumstances of each case whether corroboration is necessary or whether to rely on uncorroborated, but otherwise credible, witness testimony" (*Popović et al.* Appeal Judgement, para. 1009). The Appeals Chamber further recalls that a trial chamber may rely on hearsay evidence, provided it is reliable and credible (*Popović et al.* Appeal Judgement, para. 1276. See *Bizimungu* Appeal Judgement, paras 180, 236; *Šainović et al.* Appeal Judgement, para. 846. See also *Nizeyimana* Appeal Judgement, para. 95; *Đorđević* Appeal Judgement, paras 229, 397; *Lukić and Lukić* Appeal Judgement, para. 577).

his awareness of the participation of Arkan's forces in the operations in Bijeljina and Zvornik, the Trial Chamber referred to Witness Davidović's testimony in *Krajišnik* that "Stanišić told Davidović that Karadžić too, was aware of Arkan's engagement in the area".[1576] Witness Davidović also testified in *Krajišnik* that he had reported the takeover of Bijeljina to Stanišić.[1577] In the present case, when questioned as to whether he had discussed with Stanišić "the presence of Arkan and his men and what they were doing in Bijeljina, Brčko, and the other territories where they had been seen in action",[1578] Witness Davidović testified that he "did not elaborate" on this issue with Stanišić" as "[t]here was no need",[1579] but that he assumed Stanišić was aware that Arkan had come to Bijeljina and committed a series of crimes including murders and robberies.[1580]

466. The Appeals Chamber notes that the Trial Chamber did not make any specific finding as to whether Witness Davidović informed Stanišić about Arkan's presence in the area of Bijeljina and hence did not discuss this potential inconsistency.[1581] It notes, however, that Witness Davidović was consistent in his evidence that Stanišić was aware of Arkan's engagement in the area of Bijeljina.[1582] In the Appeals Chamber's view, the potential inconsistency in Witness Davidović's evidence concerning whether he informed Stanišić about Arkan's presence in the area of Bijeljina is therefore not such that the Trial Chamber ventured outside of its discretion in finding, on the basis of Witness Davidović's evidence, that Stanišić was aware of, and approved of, the operation of Arkan's Men in Bijlejina and Zvornik.[1583]

467. Regarding the challenge to the Trial Chamber's finding that Stanišić attended the Bosanska Vila Meeting, at which he, Karadžić, and Krajišnik, assigned certain tasks to Arkan, and the Trial Chamber's reliance on Witness Davidović's testimony in *Krajišnik* in this respect,[1584] Stanišić's argues that this evidence is unreliable as the witness never mentioned the Bosanska Vila Meeting during his interview with the Prosecution.[1585] The Appeals Chamber notes that this issue was

[1575] Stanišić Appeal Brief, para. 142.
[1576] Trial Judgement, vol. 2, para. 710.
[1577] Exhibit P1557.03, p. 14220.
[1578] Milorad Davidović, 23 Aug 2010, T. 13544. The Appeals Chamber further notes that on the basis of this testimony the Trial Chamber concluded that "Davidović assumed that Stanišić was aware of the crimes of Arkan's men in Bijeljina, Brčko, and other territories" (see Trial Judgement, vol. 2, para. 710, referring to Milorad Davidović, 23 Aug 2010, T. 13544-13545).
[1579] Milorad Davidović, 23 Aug 2010, T. 13544.
[1580] Milorad Davidović, 23 Aug 2010, T. 13544-13545.
[1581] See Trial Judgement, vol. 2, paras 709-712, 768.
[1582] See Milorad Davidović, 23 Aug 2010, T. 13544-13545; Exhibit P1557.03, p. 14220.
[1583] See Trial Judgement, vol. 2, paras 710, 768.
[1584] Stanišić Appeal Brief, para. 144. See Trial Judgement, vol. 2, para. 711.
[1585] Stanišić Appeal Brief, para. 144, referring to Trial Judgement, vol. 2, para. 711, Exhibit P1557.05, p. 14362, Milorad Davidović, 24 Aug 2010, T. 13624.

addressed thoroughly in cross-examination in *Krajišnik*.[1586] The Appeals Chamber recalls that the Trial Chamber should be afforded deference in assessing various factors that affect a witness's credibility.[1587] It finds that by simply repeating the lack of reference to the Bosanska Vila Meeting in Witness Davidović's interview with the Prosecution, Stanišić has failed to demonstrate any error in the Trial Chamber's assessment of the witness's evidence in finding that Stanišić attended the Bosanska Vila Meeting.

468. As to Stanišić's argument that Witness Davidović's testimony in *Krajišnik* concerning the Bosanska Vila Meeting is inconsistent with Witness Davidović's testimony in the present case, the Appeals Chamber notes that Stanišić points to Witness Davidović's evidence in the present case that, upon arriving in Bijeljina, Stanišić told him that, if needed, he could arrest paramilitaries regardless of their "name, gender, everything that had happened".[1588] However, Stanišić has not demonstrated how this statement contradicts Witness Davidović's testimony in *Krajišnik*, or the Trial Chamber's finding based thereon, that Stanišić attended the Bosanska Vila Meeting, at which he, among others, assigned certain tasks to Arkan.[1589] Stanišić's argument in this respect is therefore dismissed.

469. Regarding Witness Davidović's alleged inconsistent and contradictory statements in relation to whether Stanišić told him that Arkan's Men could not be opposed,[1590] the Appeals Chamber notes that in the present case Witness Davidović first testified that a deal had existed between Stanišić and Arkan "in the sense of Mićo Stanišić calling [Arkan's Men] to Sarajevo and giving them [the] possibility" to allow Arkan to loot whatever he wanted.[1591] He testified that "when I came with the intention of disarming the paramilitaries, I was told [by Stanišić] that quite simply they could not have opposed them".[1592] Witness Davidović further explained that "[a]fter all, they came under the guise of some kind of patriots [...]. However, very soon, they turned into their very contradiction".[1593] Subsequently, he clarified that:

[1586] The Appeals Chamber notes that the Trial Chamber referred to Witness Davidović's evidence-in-chief, cross-examination, and re-examination in relation to the issue of the Bosanska Vila Meeting (see Trial Judgement, vol. 2, fn. 1823). The Appeals Chamber notes, in particular, that when cross-examined as to why he had not mentioned "this very significant event" in his interview with the Prosecution, Witness Davidović replied "I don't know why it is supposed to be significant. I answered to questions put to me. There's a whole range of issues in which I did not provide details or did not answer questions that were not put to be me by the investigator" (Exhibit P1557.05, p. 14363).
[1587] *Tolimir* Appeal Judgement, para. 469; *Popović et al.* Appeal Judgement, para. 1142. See *Šainović et al.* Appeal Judgement, para. 658; *Lukić and Lukić* Appeal Judgement, para. 112.
[1588] Stanišić Appeal Brief, para. 144, referring to Milorad Davidović, 24 Aug 2010, T. 13624.
[1589] Trial Judgement, vol. 2, para. 711.
[1590] Stanišić Appeal Brief, paras 143, 145.
[1591] Milorad Davidović, 24 Aug 2010, T. 13625-13626.
[1592] Milorad Davidović, 23 Aug 2010, T. 13545.
[1593] Milorad Davidović, 23 Aug 2010, T. 13545.

> [h]owever, in later procedures that I undertook in order to disarm paramilitaries, [Stanišić] never said, [d]o not arrest Arkan or whoever. I actually have to say that, had I had an opportunity to arrest him, I would have done it with pleasure. [...] There was no hindrance in that sense. It's not that [Stanišić] said, Do not arrest Arkan or Arkan's forces, no.[1594]

The Appeals Chamber notes, however, that the Trial Chamber resolved this inconsistency and accepted Witness Davidović's clarification by finding that "Davidović testified that Stanišić neither ordered nor prohibited him to arrest Arkan or members of his forces."[1595] Other than alleging that this inconsistency has a negative impact on the credibility of Witness Davidović's evidence regarding Arkan, Stanišić does not demonstrate that the Trial Chamber erred in its approach.

470. Turning to Stanišić's argument that the alleged inconsistencies discussed above "fundamentally undermine the reliability of Davidović's testimony regarding Arkan",[1596] the Appeals Chamber recalls that a trial chamber is best placed to assess the credibility of a witness and reliability of the evidence adduced,[1597] and therefore has broad discretion in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.[1598] As with other discretionary decisions, the question before the Appeals Chamber is not whether it "agrees with that decision" but "whether the trial chamber has correctly exercised its discretion in reaching that decision".[1599] The party challenging a discretionary decision by the trial chamber must demonstrate that the trial chamber has committed a discernible error.[1600]

471. In light of the above, the Appeals Chamber is of the view that the inconsistencies within Witness Davidović's account identified by Stanišić concern either relatively minor issues on which the Trial Chamber did not enter any findings,[1601] or were resolved to the benefit of Stanišić.[1602] Further, the Appeals Chamber stresses that Witness Davidović was consistent in his evidence

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[1594] Milorad Davidović, 24 Aug 2010, T. 13626. See Milorad Davidović, 23 Aug 2010, T. 13590.
[1595] Trial Judgement, vol. 2, para. 712.
[1596] Stanišić Appeal Brief, para. 145.
[1597] *Tolimir* Appeal Judgement, para. 469; *Popović et al.* Appeal Judgement, para. 131; *Šainović et al.* Appeal Judgement, paras 437, 464, 1296; *Lukić and Lukić* Appeal Judgement, para. 296. See *Đorđević* Appeal Judgement, para. 395.
[1598] *Tolimir* Appeal Judgement, para. 76; *Popović et al.* Appeal Judgement, para. 131; *Đorđević* Appeal Judgement, paras 781, 797, 819; *Ndahimana* Appeal Judgement, paras 43, 93; *Lukić and Lukić* Appeal Judgement, paras 86, 235, 363, 375.
[1599] *Popović et al.* Appeal Judgement, para. 131; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.1, Decision on Miroslav Šeparović's Interlocutory Appeal Against Trial Chamber's Decisions on Conflict of Interest and Finding of Misconduct, 4 May 2007, para. 11; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-AR65.1, Decision on Defence Appeal Against Trial Chamber's Decision on Sredoje Lukić's Motion for Provisional Release, 16 April 2007, para. 4; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release, 17 October 2005, para. 6.
[1600] *Popović et al.* Appeal Judgement, para. 131. The Appeals Chamber will only overturn a trial chamber's discretionary decision where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of discretion (*Popović et al.* Appeal Judgement, para. 74; *Šainović et al.* Appeal Judgement, para. 29; *Lukić and Lukić* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, para. 81).
[1601] See *supra*, para. 466. See also *supra*, para. 463.
[1602] See *supra*, para. 469.

regarding the existence of Stanišić's "deal" with Arkan, which is the evidence relied on by the Trial Chamber in its assessment of Stanišić's intent. The Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber committed a discernible error in its assessment of the credibility of Witness Davidović on this issue. Stanišić's arguments in this respect are therefore dismissed.

472. As to Stanišić's argument that the Trial Chamber's conclusion concerning his arrangement with Arkan is contradicted by "direct evidence" relating to his efforts to deal with paramilitaries, for which he was publicly criticised by Plavšić,[1603] the Appeals Chamber notes that, with the exception of portions of Witness Davidović's testimony in the present case, the evidence Stanišić relies upon does not specifically address the issue of Arkan's Men.[1604] With respect to Witness Davidović's evidence, the Appeals Chamber has already dismissed Stanišić's arguments regarding alleged contradictions in this witness's testimony in the present case and his evidence in the *Krajišnik* case.[1605] Moreover, the Appeals Chamber considers that Stanišić ignores the context of the Trial Chamber's findings regarding his deal with Arkan and actions against paramilitary groups in general. The Trial Chamber did consider evidence that Stanišić's action directed at breaking up paramilitary groups put him in conflict with Plavšić, including evidence on which Stanišić relies,[1606] and concluded nonetheless that the action taken against these groups:

> was only pursued by Stanišić following their refusal to submit to the command of the army and their continued commission of acts of theft, looting, and trespasses against the local RS leaders. The primary motivation for these actions was the theft of Golf vehicles and harassment of the Serbs, an issue that concerned the RS authorities since the start of hostilities.[1607]

Moreover, the Trial Chamber found that Stanišić failed to act in the same decisive manner with regard to the other crimes, including the displacement and removal of non-Serb civilians.[1608] Accordingly, the Appeals Chamber considers that Stanišić has failed to demonstrate any contradiction between the Trial Chamber's reliance upon his deal with Arkan and its finding regarding the limited action he took against some paramilitary groups. Stanišić's arguments in this respect are therefore dismissed.

[1603] See *supra*, para. 454.
[1604] See Andrija Bjelošević, 15 Apr 2011, T. 19711-19712, ST161, 19 Nov 2009, T. 3456 (confidential), Radovan Pejić, 25 Jun 2010, T. 12202-12204, Dragomir Andan, 27 May 2011, T. 21421, 21460-21464, Dragomir Andan, 30 May 2011, T. 21505, 21538-21541, Dragomir Andan, 1 Jun 2011, T. 21697-21698, 21701-21702, ST215, 28 Sep 2010, T. 15002-15003, Milorad Davidović, 23 Aug 2010, T. 13531-13533, 13564-13566, 13590, Milorad Davidović, 24 Aug 2010, T. 13613-13616, 13623-13630, Exhibits P1557.04, pp 14292-14293, 1D76, P2309, P1476, 1D567, 1D558, 1D173, 1D646, 1D97, 1D554, P339, P591, P1557.01, p 26-27. See also *supra*, fn. 1545.
[1605] See *supra*, paras 469-471.
[1606] Trial Judgement, vol. 2, paras 717-720. See *supra*, fn. 1546.
[1607] Trial Judgement, vol. 2, para. 756. See Trial Judgement, vol. 2, para. 717. See also Trial Judgement, vol. 2, fn. 1843, referring to Momčilo Mandić, 6 May 2010, T. 9723-9276.
[1608] Trial Judgement, vol. 2, para. 757.

473. In light of the above, the Appeals Chamber finds that Stanišić has not demonstrated that no reasonable trier of fact could have relied on Witness Davidović's evidence to conclude that he: (i) approved of the operations of Arkan's Men in Bijeljina and Zvornik; and (ii) allowed Arkan to remove property in exchange for liberating the territories. Consequently, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in relying upon his arrangement with Arkan, among other factors, when assessing his intent.

(ii) Alleged error in relying upon Stanišić's presence at RS Government sessions

474. As noted above, in its assessment of Stanišić's intent, the Trial Chamber considered that "Stanišić was present at sessions of the RS Government where the RS MUP was tasked with gathering information about Muslims moving out of the RS and the needs of refugees and displaced persons".[1609]

a. Submissions of the parties

475. Stanišić submits that the Trial Chamber erred by relying on minutes of the July 1992 Sessions – *i.e.* the 4 July 1992 Session and the 29 July 1992 Session of the RS Government – to infer his intent.[1610] He argues that the Trial Chamber erred by relying on the minutes of the 4 July 1992 Session as the "bare tasking of the RSMUP with gathering information on the movement of Muslims from the territory of the RS does not provide any basis upon which the [Trial Chamber] could infer Stanišić's *mens rea*".[1611] Stanišić emphasises the testimony of Witness Đerić, that the issue was related to either "voluntary movement for security reasons" or "movement due to fear",[1612] and the fact that the RS Government did not have "a point of view on this matter" and therefore required information.[1613]

476. Stanišić also contends that the Trial Chamber erred by relying on the minutes of the 29 July 1992 Session and wrongly attributed, to the RS MUP, a greater role in the assessment of the needs of displaced persons than suggested on the face of the exhibit.[1614] He argues in this respect that the minutes of the session only note that "effort should be invested to gather true information, [...] using the information from the Interior and Defence Ministries".[1615] Stanišić asserts that the minutes are therefore inconclusive regarding the role and tasks of the RS MUP,[1616] and that no

[1609] Trial Judgement, vol. 2, para. 768.
[1610] Stanišić Appeal Brief, para. 147.
[1611] Stanišić Appeal Brief, para. 147.
[1612] Stanišić Appeal Brief, para. 147, referring to Branko Đerić, 30 Oct 2009, T. 2361-2363.
[1613] Stanišić Appeal Brief, para. 147, quoting Exhibit P236, p. 4 (emphasis omitted).
[1614] Stanišić Appeal Brief, para. 148.
[1615] Stanišić Appeal Brief, para. 148, quoting Exhibit P242, p. 6.
[1616] Stanišić Appeal Brief, para. 148.

reasonable trial chamber could have inferred his intent to further the JCE from the tasks assigned to the RS MUP.[1617]

477. The Prosecution responds that the Trial Chamber reasonably relied on the assignments given to the RS MUP at the July 1992 Sessions when inferring Stanišić's intent.[1618]

b. Analysis

478. The Appeals Chamber notes that the Trial Chamber provided no cross-references to earlier findings or citations to evidence on the record in support of its finding that "Stanišić was present at sessions of the RS Government where the RS MUP was tasked with gathering information about Muslims moving out of the RS and the needs of refugees and displaced persons".[1619] Nonetheless, the Appeals Chamber is able to identify the Trial Chamber's discussion of the evidence related to the July 1992 Sessions elsewhere in the Trial Judgement.[1620]

479. Specifically, the Trial Chamber found that Stanišić attended the 4 July 1992 Session, where "the issue of Muslims moving out of RS was raised, on which the Government decided it had no 'point of view' and asked the RS MUP to present information that could be considered before taking an appropriate position".[1621] The Trial Chamber noted Witness Đerić's testimony that the task given to the RS MUP "related to 'some kind of moving out voluntarily' for security reasons or 'forced ones due to fear'".[1622] The Trial Chamber also found that the 29 July 1992 Session was attended by Stanišić, and that the RS MUP and MOJ "were designated to assess the needs of refugees, displaced persons, and large numbers of socially deprived persons by gathering 'true information'".[1623]

480. Thus, the Trial Chamber was fully aware that the RS Government decided that it had no "point of view" on the issue of Muslims moving out of the RS. It nevertheless still considered Stanišić's presence at the July 1992 Sessions in assessing his intent, as his presence and the discussions at these sessions are relevant to his knowledge of the movements of Bosnian Muslims out of the territory of the RS as well as the possibility that the movements were forced due to fear.[1624] In this context, the Appeals Chamber also recalls that the Trial Chamber found that

[1617] Stanišić Appeal Brief, para. 149.
[1618] Prosecution Response Brief (Stanišić), para. 54. See Prosecution Response Brief (Stanišić), paras 55-56.
[1619] Trial Judgement, vol. 2, para. 768. *Cf. supra*, paras 377-380.
[1620] See Trial Judgement, vol. 2, paras 627, 650.
[1621] Trial Judgement, vol. 2, para. 627, referring to Exhibits P236, pp 4-5, P237, pp 1, 3.
[1622] Trial Judgement, vol. 2, para. 627, quoting Branko Đerić, 30 Oct 2009, T. 2361-2363.
[1623] Trial Judgement, vol. 2, para. 650, referring to Exhibit P242, pp 2, 6-7.
[1624] In this regard, the Appeals Chamber observes that the Trial Chamber correctly noted that Witness Đerić testified that the task given to the RS MUP in the 4 July 1992 Session "related to 'some kind of moving out voluntarily' for

insecurity, violence, unlivable conditions, discriminatory measures, and fear led to the mass exodus of non-Serbs from the Municipalities, in finding that this departure was *involuntary* in nature.[1625] As stated above, the requisite intent for a conviction under the first category of joint criminal enterprise can be inferred from circumstantial evidence.[1626] Therefore, the Appeals Chamber discerns no error in the Trial Chamber's reliance on the evidence concerning Stanišić's presence at the July 1992 Sessions, as circumstantial evidence among other factors, when assessing his intent. His arguments in this respect are dismissed.

(iii) Alleged error in relying upon Stanišić's presence at the 11 July 1992 Collegium

481. As noted above, in its assessment of Stanišić's intent, the Trial Chamber considered that Stanišić was present at the 11 July 1992 Collegium, "where the relocation of citizens and entire villages was discussed".[1627]

a. Submissions of the parties

482. Stanišić submits that the Trial Chamber erred by relying on his presence at the 11 July 1992 Collegium when assessing his intent.[1628] He argues that the Trial Chamber's "selective summary of the evidence improperly represents the minutes of [this meeting] in a prejudicial manner".[1629] He contends that the conclusions reached at the 11 July 1992 Collegium show that the focus was on "resolving the issue of the moving out of some inhabitants, villages, etc., for which the MUP [was] not responsible, but for which the MUP [was] being blamed".[1630] Stanišić emphasises that he subsequently provided information to the President and the Prime Minister on this problem suggesting that a meeting be held between the MUP and the army as this issue did not fall within the MUP's competencies.[1631] Finally, Stanišić submits that the Trial Chamber failed to make any reference to the rest of the contents of the 11 July 1992 Collegium "in which numerous and

security reasons or 'forced ones due to fear'" (Trial Judgement, vol. 2, para. 627). Stanišić misrepresents Witness Đerić's evidence by describing it as stating that the issue discussed at this session was related to either "voluntary movement for security reasons" or "movement due to fear", while omitting his evidence describing the latter as "forced" movement. (See Stanišić Appeal Brief, para. 147, referring to Branko Đerić, 30 Oct 2009, T. 2361-2363).

[1625] Trial Judgement, vol. 2, para. 737. See Trial Judgement, vol. 1, paras 196, 210, 246, 273, 281, 338, 389-396, 477, 654, 684, 699, 778-781, 803-804, 810, 859-864, 872, 879, 890-896, 917-919, 922, 934, 953, 972, 981, 1023-1025, 1032, 1040, 1060, 1107, 1118, 1173, 1178-1179, 1189, 1206, 1236, 1247, 1257, 1285, 1335, 1343-1345, 1355, 1364, 1403, 1413, 1436-1437, 1454, 1487, 1497, 1506, 1542, 1552, 1563, 1571, 1581, 1588, 1590, 1670-1671, 1686.

[1626] *Popović et al.* Appeal Judgement, para. 1369; *Šainović et al.* Appeal Judgement, para. 995; *Krajišnik* Appeal Judgement, para. 202. See *supra*, para. 375.

[1627] Trial Judgement, vol. 2, para. 768.

[1628] Stanišić Appeal Brief, para. 150. See *infra*, fn. 1783.

[1629] Stanišić Appeal Brief, para. 151. See Stanišić Appeal Brief, para. 150.

[1630] Stanišić Appeal Brief, para. 150. Stanišić points out in this respect that the 11 July 1992 Collegium minutes reveal that the information about relocation of citizens and entire villages was raised as a problem having a direct impact on the activities of the internal affairs organs "with the army and crisis staffs gathering Muslims and thereafter trying to place responsibility on the RSMUP for them" (Stanišić Appeal Brief, para. 150).

[1631] Stanišić Appeal Brief, para. 150, referring to Exhibit P427.08, pp 2-3, 6. See Appeal Hearing, 16 Dec 2015, AT. 97.

repeated reference is made to the prevention, documentation and detecting of crimes and the protection of citizens, irrespective of ethnicity".[1632]

483. The Prosecution responds that it was reasonable for the Trial Chamber to rely on the record of the 11 July 1992 Collegium,[1633] which provides direct evidence of Stanišić's knowledge of the forcible displacement of non-Serbs.[1634] The Prosecution also contends that the meeting that Stanišić contends he arranged with the VRS to address the issue of the forcible displacement of non-Serbs instead "focused on improving co-operation, not on protecting non-Serbs".[1635]

b. Analysis

484. The Appeals Chamber notes that in finding that Stanišić was "present at the 11 July [1992] Collegium meeting, where the relocation of citizens and entire villages was discussed" when assessing Stanišić's intent,[1636] the Trial Chamber neither provided cross-references to earlier findings nor citations to evidence on record.[1637] While this would have been preferable, the Appeals Chamber has been able to identify the Trial Chamber's discussion of the 11 July 1992 Collegium elsewhere in the Trial Judgement.[1638]

485. Specifically, the Trial Chamber considered that at the 11 July 1992 Collegium: (i) Stanišić stated that the RS MUP forces provided immediate cooperation to the armed forces;[1639] (ii) Stanišić also stated that the RS MUP had decided to prevent criminal activities irrespective of the affiliation of the perpetrators;[1640] and (iii) Župljanin reported that "army and Crisis Staffs or War Presidencies" requested as many Muslims as possible be "gathered".[1641] The Trial Chamber found that the discussion during the 11 July 1992 Collegium also focussed on achieving "more effective cooperation and coordinated action between the RS MUP and the VRS" and that a joint meeting of the two organs subsequently took place on 27 July 1992.[1642] At the same time, the Trial Chamber noted that while the discussions gave rise to a decision to call a joint meeting with the MOJ to address problems relating to extended periods of pre-trial detention, there was no evidence of such a meeting being organised.[1643] Finally, the Trial Chamber found that it was emphasised at the

[1632] Stanišić Appeal Brief, para. 152.
[1633] Prosecution Response Brief (Stanišić), para. 57.
[1634] Prosecution Response Brief (Stanišić), para. 57.
[1635] Prosecution Response Brief (Stanišić), para. 58.
[1636] Trial Judgement, vol. 2, para. 768.
[1637] *Cf. supra*, paras 377-380.
[1638] See Trial Judgement, vol. 2, paras 629-633.
[1639] Trial Judgement, vol. 2, para. 630.
[1640] Trial Judgement, vol. 2, para. 630. See Trial Judgement, vol. 2, para. 632, referring to Exhibit P427.08, pp 5-7.
[1641] Trial Judgement, vol. 2, para. 631, referring to Exhibit P160, pp 7-8.
[1642] Trial Judgement, vol. 2, para. 632.
[1643] Trial Judgement, vol. 2, para. 632.

11 July 1992 Collegium that it was not the task of the RS MUP to relocate certain citizens, despite efforts to assign this task to it.[1644]

486. In the view of the Appeals Chamber, there is nothing in the section of the Trial Judgement dedicated to discussion of the 11 July 1992 Collegium that suggests that the Trial Chamber "improperly" or "prejudicially" relied upon evidence related to that meeting. The Trial Chamber merely summarised the contents of the discussions and noted Stanišić's own evidence that he was informed at the 11 July 1992 Collegium of the "fact that the army was bringing in captives, including to police stations".[1645] Notably, although the Trial Chamber considered that the relocation of "certain citizens, villages" was discussed at the 11 July 1992 Collegium, it did not attribute any role to Stanišić in this respect.[1646] Moreover, there is nothing in the Trial Judgement to suggest that this evidence was used by the Trial Chamber in any way other than to show Stanišić's knowledge of these events. As recalled above, the requisite intent for the first category of joint criminal enterprise may be inferred from circumstantial evidence, including knowledge, combined with continuous contribution to crimes within the common criminal purpose.[1647] The Appeals Chamber therefore finds that Stanišić has failed to demonstrate that the Trial Chamber erred by "improperly representing" the minutes of the 11 July 1992 Collegium in a "prejudicial manner" or by relying on the discussion thereat, among other factors, in assessing his intent.

487. With regard to Stanišić's submissions that the Trial Chamber failed to make any reference to the rest of the contents of the 11 July 1992 Collegium when discussing his intent, the Appeals Chamber notes that the Trial Chamber did expressly acknowledge the conclusions of that meeting, including that senior officers were tasked to take legal and other measures to remove employees who had committed crimes.[1648] In addition, throughout the Trial Judgement, and in its discussion on Stanišić's contribution to the JCE in particular, the Trial Chamber acknowledged the existence of numerous orders issued by Stanišić that accorded with the conclusions reached at the 11 July 1992 Collegium, concerning the prevention and investigation of crimes committed in the RS.[1649] The Appeals Chamber considers that Stanišić has failed to show how the Trial Chamber erred by not explicitly referring to portions of the minutes of the 11 July 1992 Collegium in its discussion on his intent. Accordingly, Stanišić argument is dismissed.

[1644] Trial Judgement, vol. 2, para. 632.
[1645] See Trial Judgement, vol. 2, paras 629-633.
[1646] See Trial Judgement, vol. 2, para. 632.
[1647] *Popović et al.* Appeal Judgement, para. 1369; *Đorđević* Appeal Judgement, para. 512; *Šainović et al.* Appeal Judgement, para. 995; *Krajišnik* Appeal Judgement, para. 202. See *Stanišić and Simatović* Appeal Judgement, para. 81. See also *supra*, para. 375.
[1648] Trial Judgement, vol. 2, para. 632. *Cf.* Stanišić Appeal Brief, fn. 186; Trial Judgement, vol. 2, para. 631.

(iv) Alleged error in relying on the Perišić Report

488. As noted above, in its assessment of Stanišić's intent, the Trial Chamber considered the Perišić Report dated 13 July 1992, in which Perišić reported to the RS MUP that in the municipality of Višegrad, certain police officers were exhibiting "a lack of professionalism while over 2,000 Muslims moved out of the municipality in an organised manner".[1650]

a. Submissions of the parties

489. Stanišić submits that the Trial Chamber erred by relying on the Perišić Report to infer his intent.[1651] He argues that the Perišić Report was "erroneously characterized" as reporting that "certain police officers were exhibiting a lack of professionalism while over 2,000 Muslims moved out of the municipality".[1652] Stanišić submits that the Trial Chamber erred by linking the lack of professionalism of certain police officers to the movement of 2,000 Muslims out of the municipality of Višegrad.[1653] He also submits that the Trial Chamber failed to consider that the Perišić Report indicates that the movement of the 2,000 Muslims out of the municipality occurred "with the help of the Red Cross".[1654] According to Stanišić, the main thrust of the Perišić Report instead deals with "fierce fighting" in Višegrad municipality between paramilitaries and other factions resulting in the "consequent organized movement of civilians out of the area with international assistance".[1655]

490. The Prosecution responds that Stanišić's argument should be summarily dismissed as the Trial Chamber reasonably relied on the Perišić Report and Stanišić merely suggests an alternative interpretation.[1656] It argues that the report "confirms the RS MUP's involvement in the expulsions of non-Serbs and Stanišić's willingness to condone its participation".[1657] The Prosecution submits that it is irrelevant that the Perišić Report refers to the assistance provided by the ICRC with regard to the departure of over 2,000 Muslims from Višegrad, as this departure occurred in the context of

[1649] See Trial Judgement, vol. 2, paras 635-638, 640-649. Nevertheless, on the basis of other evidence, the Trial Chamber found that Stanišić "took insufficient action to put an end to [the crimes]" (Trial Judgement, vol. 2, para. 759. See *supra*, paras 269-328).
[1650] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, para. 634.
[1651] Stanišić Appeal Brief, para. 153.
[1652] Stanišić Appeal Brief, paras 153, 155.
[1653] Stanišić Appeal Brief, para. 153. Stanišić contends that the Trial Chamber improperly suggested a persecutory disposition on the part of certain policemen "where none is evident from the report relied upon" (Stanišić Appeal Brief, para. 153).
[1654] Stanišić Appeal Brief, para. 154.
[1655] Stanišić Appeal Brief, para. 155.
[1656] Prosecution Response Brief (Stanišić), para. 59.
[1657] Prosecution Response Brief (Stanišić), para. 59.

"a lack of discipline and professionalism" and an "inclination to various abuses" of the local police, not in the context of "fierce fighting" as Stanišić argues.[1658]

b. Analysis

491. The Appeals Chamber notes that when referring to the Perišić Report in assessing Stanišić's intent,[1659] the Trial Chamber provided no cross-references to earlier relevant findings or citations to relevant evidence on record.[1660] Nonetheless, the Appeals Chamber has identified the Trial Chamber's discussion of the Perišić Report elsewhere in the Trial Judgement. Specifically, the Trial Chamber found that "Višegrad SJB Chief Risto Perišić [...] reported to the RS MUP that certain police officers were exhibiting a lack of professionalism, 'an inclination to various abuses, acquiring material gain and other deficiencies', while 'over 2,000 Muslims moved out of the municipality in an organised manner'".[1661]

492. Contrary to Stanišić's submission,[1662] the Appeals Chamber does not consider that the Trial Chamber mischaracterised the Perišić Report in this finding. The Appeals Chamber notes that the Perišić Report refers to the "[f]ierce fighting" along ethnic lines that took place on the "border area between the liberated territory of the Serbian municipality of Višegrad and the part of this former local community which has not been liberated".[1663] It also describes the situation of lawlessness that prevailed at the same time on "liberated" areas under the control of the Bosnian Serbs.[1664] Additionally, the Perišić Report identifies "[w]idespread looting and burglaries" that "create[d] a negative mood among the residents" in the Bosnian Serb controlled areas.[1665] The Perišić Report further refers to the "strong tendency" among the reserve police "not to antagonise anybody, characteristic of local circumstances and of those who are not doing their work professionally",[1666] including regarding the criminal behaviour of local residents and various paramilitary units committing crimes that were unrelated to fighting on the outskirts of Bosnian Serb controlled areas.[1667] It states that members of the police "demonstrated a particular lack of readiness" to deal with these crimes, and that the reduction in the number of police officers "in view of the former national composition of the Višegrad Public Security Station" is aggravated by a "lack of discipline and professionalism, an inclination to various abuses, acquiring material gain and other

[1658] Prosecution Response Brief (Stanišić), para. 60.
[1659] Trial Judgement, vol. 2, para. 768.
[1660] See Trial Judgement, vol. 2, para. 768. *Cf. supra*, paras 377-380.
[1661] Trial Judgement, vol. 2, para. 634.
[1662] Stanišić Appeal Brief, paras 153, 155.
[1663] Exhibit P633, p. 1.
[1664] See Exhibit P633, pp 2-3.
[1665] Exhibit P633, p. 2.
[1666] Exhibit P633, pp 2-3.
[1667] See Exhibit P633, p. 3.

deficiencies".[1668] Finally, the Appeals Chamber notes that the Perišić Report refers to the mass departure of Bosnian Muslims from the municipality, stressing that "over 2,000 Muslims moved out of the municipality" and that "[t]here is continued interest in moving out".[1669]

493. By arguing that the main thrust of the Perišić Report deals with fierce fighting in Višegrad municipality between paramilitaries and other factions resulting in the organised movement of civilians out of the area, and that the report indicates no link between a lack of professionalism on the part of police officers and the movement of Muslims, Stanišić merely presents his own interpretation of the Perišić Report without showing any error on the part of the Trial Chamber.

494. As to Stanišić's submission that the Trial Chamber erred by failing to consider that the Perišić Report indicates that the movement of Bosnian Muslims "occurred 'with the help of the Red Cross'",[1670] the Appeals Chamber recalls that it is to be presumed that the Trial Chamber 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.[1671] 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.[1672] In the view of the Appeals Chamber, the fact that the ICRC provided logistical support to those seeking to leave is irrelevant to the question of what caused the departure of over 2,000 Muslims. The Appeals Chamber therefore considers that Stanišić has not demonstrated that the Trial Chamber erred by disregarding the reference to the role of the ICRC when assessing the Perišić Report.

495. Accordingly, the Appeals Chamber finds that Stanišić has failed to demonstrate any error in the Trial Chamber's reliance on the Perišić Report, among other factors, in assessing his intent.[1673]

(v) Conclusion

496. In light of the foregoing, the Appeals Chamber considers that Stanišić has failed to show that the Trial Chamber erred by relying on the following factors when assessing his intent: (i) Stanišić's approval of Arkan's operations in Bijeljina and Zvornik; (ii) Stanišić's presence at RS Government sessions; (iii) Stanišić's presence at the 11 July 1992 Collegium; and (iv) the Perišić

[1668] Exhibit P633, pp 2-3.
[1669] Exhibit P633, p. 3.
[1670] Stanišić Appeal Brief, para. 154, quoting Exhibit P633, p. 3.
[1671] *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, fn. 2527; *Haradinaj et al.* Appeal Judgement, para. 129.
[1672] *Tolimir* Appeal Judgement, para. 161; *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, para. 864.
[1673] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, para. 634.

Report. Accordingly, the Appeals Chamber dismisses the arguments raised in relation to paragraph 768 of volume two of the Trial Judgement.

(g) Alleged errors in relying on the factors set out in paragraph 769 of volume two of the Trial Judgement in finding that Stanišić had the intent to further the JCE (subsection (E) of Stanišić's fourth ground of appeal)

497. The Trial Chamber held:

> [c]onsidering his position at the time, his close relationship with Radovan Karadžić, and his continued support of and participation in the implementation of the policies of the Bosnian Serb leadership and the SDS, [...] the only reasonable inference is that Stanišić was aware of the persecutorial intentions of the Bosnian Serb leadership to forcibly transfer and deport Muslims and Croats from territories of BiH and that Stanišić shared the same intent.[1674]

498. Stanišić challenges the Trial Chamber's reliance on the factors referred to in this paragraph of the Trial Judgement in assessing his intent.[1675] Stanišić asserts that no reasonable trial chamber could have found that: (i) his position at the time was demonstrative of his intent to commit persecutory crimes;[1676] (ii) he had a close relationship with Karadžić;[1677] and (iii) he supported and participated in the implementation of policies of the Bosnian Serb leadership and the SDS.[1678]

(i) Alleged errors in finding that Stanišić's position was demonstrative of his intent

a. Submissions of the parties

499. Stanišić submits that the Trial Chamber erred by considering his position at the time in finding that the only reasonable inference was that he shared the intent to commit crimes.[1679] He argues that "[t]he fact alone that [he] occupied a position in the Government as Minister of the Interior does not and cannot, in and of itself, serve as a basis to infer intent to commit persecutory crimes."[1680] Referring to arguments raised under his second ground of appeal, Stanišić contends that the Trial Chamber's "flawed reasoning is impermissibly based on Stanišić's purported association with those found to have been members of the JCE".[1681]

500. The Prosecution responds that the Trial Chamber appropriately relied upon Stanišić's high-level position within the RS leadership in concluding that he was aware of the view that ethnic

[1674] Trial Judgement, vol. 2, para. 769.
[1675] Stanišić Appeal Brief, paras 156-167.
[1676] Stanišić Appeal Brief, paras 156-157. See Stanišić Appeal Brief, para. 109.
[1677] Stanišić Appeal Brief, paras 158-164. See Stanišić Appeal Brief, para. 109. See Appeal Hearing, 16 Dec 2015, AT. 139-140.
[1678] Stanišić Appeal Brief, paras 165-167. See Stanišić Appeal Brief, para. 109.
[1679] Stanišić Appeal Brief, para. 156.
[1680] Stanišić Appeal Brief, para. 156.

separation would be achieved through violence.[1682] It contends that Stanišić challenges the Trial Chamber's findings in isolation and fails to show that no reasonable trier of fact could have concluded that he shared the common criminal purpose on the basis of all the evidence.[1683]

b. Analysis

501. At the outset, the Appeals Chamber notes that in referring to Stanišić's position at the relevant time when assessing his intent, the Trial Chamber neither provided references to its findings in other parts of the Trial Judgement nor did it include any citations to evidence on the record.[1684] Nonetheless, the Appeals Chamber has been able to identify several findings concerning Stanišić's position elsewhere in the Trial Judgement. Specifically, the Trial Chamber found that: (i) from his appointment on 31 March 1992 until the end of 1992, Stanišić was the Minister of Interior within the RS Government;[1685] (ii) the RS Government was one of the most important organs in the RS;[1686] and (iii) the Bosnian Serb leadership, of which Stanišić was a member, consisted of, *inter alios*, those who occupied important posts in the RS.[1687] The Appeals Chamber recalls that it has already dismissed Stanišić's challenges advanced under his second ground of appeal, including the allegation that the Trial Chamber incorrectly: (i) equated being part of the Bosnian Serb leadership with membership in the JCE; and (ii) found that he was a member of the JCE by virtue only of his association with the Bosnian Serb leadership.[1688]

502. The Appeals Chamber recalls, further, that in addition to Stanišić's position, the Trial Chamber also took into account a number of other factors, as set out in the *Mens Rea* Section.[1689] The Appeals Chamber considers that the component pieces of circumstantial evidence on the issue of Stanišić's intent are to be considered in relation to all other pieces of circumstantial evidence bearing on the issue, and not in isolation.[1690] Whereas the assessment of an evidentiary factor in a vacuum might fail to establish an essential matter, the weight of all relevant evidence taken together can conclusively prove the same matter beyond reasonable doubt.[1691] Accordingly, even if Stanišić's position at the time was not, in and of itself, sufficient to prove his intent beyond

[1681] Stanišić Appeal Brief, para. 157, referring to Stanišić Appeal Brief, paras 60-73.
[1682] Prosecution Response Brief (Stanišić), para. 46, referring to Trial Judgement, vol. 2, paras 156-157, 161-162, 167-170, 174, 178-179, 188, 199, 769. See Prosecution Response Brief (Stanišić), para. 36.
[1683] Prosecution Response Brief (Stanišić), para. 37.
[1684] See Trial Judgement, vol. 2, para. 769. *Cf. supra*, paras 377-380.
[1685] See Trial Judgement, vol. 2, para. 141. See also Trial Judgement, vol. 2, para. 6.
[1686] See Trial Judgement, vol. 2, para. 131.
[1687] See Trial Judgement, vol. 2, para. 131. See also Trial Judgement, vol. 2, para. 144; *supra*, para. 86.
[1688] See *supra*, paras 79-82.
[1689] See Trial Judgement, vol. 2, paras 766-769.
[1690] *Popović et al.* Appeal Judgement, paras 1103, 1150. See *Tolimir* Appeal Judgement, para. 495, referring to *Vasiljević* Appeal Judgement, para. 120.
[1691] *Popović et al.* Appeal Judgement, paras 1103, 1150.

reasonable doubt, he has failed to demonstrate that the Trial Chamber erred in considering it, among other factors, in reaching its ultimate conclusion.

503. In light of the above, the Appeals Chamber dismisses Stanišić's argument that the Trial Chamber erred by relying upon his position at the time when assessing his intent.

(ii) Alleged error in relying upon Stanišić's close relationship with Karadžić when assessing his intent

a. Submissions of the parties

504. Stanišić submits that the Trial Chamber erred by holding that he and Karadžić shared a close relationship and by relying on this finding when assessing his intent.[1692] He contends that the Trial Chamber "arbitrarily" considered the fact that he was a Minister in the RS Government – and therefore obliged and required to interact with Karadžić – as the basis for its finding.[1693] He argues that the Trial Chamber's finding was based on a total of nine intercepted conversations[1694] only two of which relate to conversations initiated by him[1695] and four of which occurred between June and August 1991, *i.e.* outside the Indictment period.[1696]

505. The Prosecution responds that the Trial Chamber reasonably concluded that Stanišić and Karadžić shared a close relationship from at least June 1991.[1697] It argues that Stanišić misrepresents the Trial Chamber's finding by failing to address all of the evidence on which the Trial Chamber relied,[1698] and that as such, his arguments should be summarily dismissed.[1699] Specifically, the Prosecution submits that, in addition to the intercepted conversations, the Trial Chamber also relied upon: (i) "insider evidence" of former Deputy SRBiH MUP Minister Witness Žepinić and Witness Mandić, RS MOJ Minister, who both "confirmed that Stanišić was among the people close to Karadžić";[1700] (ii) Stanišić's presence at the November 1992 BSA Session, "where he proclaimed his allegiance to Karadžić and the SDS", and stated that he always followed the

[1692] Stanišić Appeal Brief, paras 158-164. See Stanišić Appeal Brief, paras 109, 244; Appeal Hearing, 16 Dec 2015, AT. 139-140. See also *supra*, paras 160-164.
[1693] Stanišić Appeal Brief, para. 158.
[1694] Stanišić Appeal Brief, para. 161, referring to Exhibits P1108, P1110, P1120, P1135, P1147, P1149, P1152, P1155, P1162. See Stanišić Appeal Brief, paras 162-163.
[1695] Stanišić Appeal Brief, para. 161, referring to Exhibits P1135, P1152.
[1696] Stanišić Appeal Brief, para. 161, referring to Exhibits P1108, P1135, P1149, P1152. See Stanišić Appeal Brief, paras 162 (referring to Exhibit P1110, P1120, P1147, P1155, P1162), 163.
[1697] Prosecution Response Brief (Stanišić), para. 39, referring to Trial Judgement, vol. 2, paras 564-568, 570, 596, 730, 769. See Prosecution Response Brief (Stanišić), para. 41.
[1698] Prosecution Response Brief (Stanišić), para. 39, referring to Stanišić Appeal Brief, paras 158, 160-164.
[1699] Prosecution Response Brief (Stanišić), para. 39.
[1700] Prosecution Response Brief (Stanišić), para. 39, referring to Trial Judgement, vol. 2, paras 2, 141, 565.

policies of the SDS Presidency and Deputies in the former state;[1701] (iii) evidence that Karadžić insisted upon Stanišić's appointment and rejected calls for his removal;[1702] (iv) the fact that Stanišić often communicated directly with the RS Presidency, which Karadžić governed, rather than through designated channels of the RS Government;[1703] and (v) evidence of the "lofty praise" that Karadžič gave to Stanišić at the December 1993 BSA Session "for having 'fought to prevail' for a balance of Serbian cadres in the SRBiH MUP", for his role in establishing and separating the RS MUP at the beginning of April 1992, and for having exercised authority among the police.[1704]

506. In reply, Stanišić submits that the Prosecution "incorrectly" points to hearsay evidence of Witness Žepinić and Witness Mandić in support of the finding concerning his relationship with Karadžić.[1705] He argues that "Žepinić did not confirm a close relationship between Stanišić and Karadžić",[1706] and contends that the Prosecution overemphasises "this supposedly close relationship" despite being "unable to elicit any information in this regard when Mandić testified in this case".[1707] Stanišić also contends that the "claim that [he] was bypassing designated channels is wholly erroneous".[1708] He further asserts that the Prosecution's references to Karadžić's "praise for Minister Stanišić and rejecting calls for his removal do not prove closeness in their relationship",[1709] and argues that the Prosecution's arguments are inapposite as he was dismissed from his second term as Minister by Karadžić.[1710]

b. Analysis

507. As stated above, the Trial Chamber considered Stanišić's "close relationship with Radovan Karadžić" to be a relevant factor when assessing his intent.[1711] However, in doing so the Trial Chamber neither provided references to its findings on their relationship in other parts of the Trial Judgement nor did it include any citations to evidence on the record.[1712] Nonetheless, a reading of the Trial Judgement as a whole reveals that it contains several findings underlying the Trial Chamber's conclusion that Stanišić shared a close relationship with Karadžić. Specifically, the Trial

[1701] Prosecution Response Brief (Stanišić), para. 40, referring to Trial Judgement, vol. 2, para. 570.
[1702] Prosecution Response Brief (Stanišić), para. 40, referring to Trial Judgement, vol. 2, paras 139, 568, Branko Đerić, 30 Oct 2009, T. 2374.
[1703] Prosecution Response Brief (Stanišić), para. 40, referring to Trial Judgement, vol. 2, paras 137, 568, 570, 730.
[1704] Prosecution Response Brief (Stanišić), para. 40, referring to Trial Judgement, vol. 2, para. 596.
[1705] Stanišić Reply Brief, para. 39.
[1706] Stanišić Reply Brief, para. 39 (emphasis omitted), referring to Vitomir Žepinić, 29 Jan 2010, T. 5774-5775.
[1707] Stanišić Reply Brief, para. 39, referring to Momčilo Mandić, 3 May 2010, T. 9395-9471, Momčilo Mandić, 4 May 2010, T. 9473-9563, Momčilo Mandić, 5 May 2010, T. 9565-9643, Momčilo Mandić, 6 May 2010, T. 9645-9732, Momčilo Mandić, 7 May 2010, T. 9734-9821, Exhibit P1318.01, p. 8634.
[1708] Stanišić Reply Brief, para. 41, referring to Stanišić Appeal Brief, para. 244. See Stanišić Reply Brief, para. 41, referring to Prosecution Response Brief (Stanišić), para. 40; *supra*, paras 160-164.
[1709] Stanišić Reply Brief, para. 40.
[1710] Stanišić Reply Brief, para. 40, referring to Exhibits P400, P2305, pp 26-27.
[1711] Trial Judgement, vol. 2, para. 769.

Chamber found that the close relationship between Stanišić and Karadžić – a "leading member of the JCE" – was shared from at least June 1991 and in the months preceding the establishment of the RS.[1713] It also found that: (i) the two spoke frequently, at times calling each other at home;[1714] (ii) both "Mandić and Žepinić confirmed that Stanišić was among the people close to Karadžić";[1715] (iii) Stanišić had discussed attacks, manpower, and *materiel* for combat activities with Karadžić and noted that they should exercise caution in what they said as they were being tapped;[1716] (iv) testimonial evidence from Witness Trbojević and Witness Žepinić indicated that, "although Stanišić was answerable to Branko Đerić, the Prime Minister, he had direct ties with Karadžić and often bypassed the Government";[1717] and (v) Karadžić was opposed to Stanišić's removal from office.[1718] It is thus clear that, contrary to Stanišić's assertion, the Trial Chamber did not only rely on intercepted conversations and its findings in relation to these conversations but also on other factors to find that he had a close relationship with Karadžić.

508. Turning to Stanišić's challenge to the Trial Chamber's reliance upon Witness Žepinić's testimony, the Appeals Chamber observes that Stanišić selectively refers to, and therefore mischaracterises, the evidence upon which the Trial Chamber relied. To this end, the Appeals Chamber notes that, in finding that Witness Žepinić confirmed that Stanišić and Karadžić shared a close relationship, the Trial Chamber referred to an excerpt of his testimony where he stated, *inter alia*, "I can only say that, yes, they had a quite close relationship".[1719] Contrary to Stanišić's submission,[1720] therefore, Witness Žepinić did in fact confirm a close relationship between Stanišić and Karadžić.

[1712] Trial Judgement, vol. 2, para. 769. *Cf. supra*, paras 377-380.
[1713] Trial Judgement, vol. 2, para. 730. See Trial Judgement, vol. 2, para. 565,
[1714] Trial Judgement, vol. 2, para. 565, referring to Exhibits P1135, P1149. The Appeals Chamber notes that Exhibit P1135 is the transcript of a phone call made by Stanišić to Karadžić, at his home, on 20 July 1991, while Exhibit P1149 is the transcript of a phone call made by Karadžić to Stanišić, at his apartment, on 12 June 1991. The Trial Chamber noted that in August 1991, "Karadžić called Stanišić to complain angrily about Serbs in the SRBiH government being followed and tracked by the SUP and the ransacking of a warehouse in search of hidden weapons where the Serbs were stocking food" in response to which Stanišić offered to assign Mandić to look into the issue (Trial Judgement, vol. 2, para. 565, referring to Exhibit P1108, pp 2-3). It also referred to an intercept of a conversation on 31 August 1991, when Stanišić spoke to Karadžić from Bileća to inform him that nothing had been done in relation to this incident, and promised to take the matter up with Mandić and another person (Trial Judgement, vol. 2, para. 565, referring to Exhibit P1152, pp 2-3). In addition, the Trial Chamber noted direct communication between Karadžić and Stanišić following the removal of barricades in Sarajevo (Trial Judgement, vol. 2, para. 566, referring to Nedo Vlaški, 15 Feb 2010, T. 6352-6353, 6358-6359, Exhibits P643, p. 4, P910, p. 3, P1110, pp 7-8).
[1715] Trial Judgement, vol. 2, para. 565, referring to Exhibit P1318.01, p. 8634, Vitomir Žepinić, 29 Jan 2010, T. 5774-5775.
[1716] Trial Judgement, vol. 2, para. 567, referring to Exhibits P2300, p. 32, P1120, pp 2-3, P1147, pp 2-3, P1155, pp 1-3.
[1717] Trial Judgement, vol. 2, para. 568, referring to Milan Trbojević, 3 Dec 2009, T. 4145, Vitomir Žepinić, 29 Jan 2010, T. 5775, Exhibits P427.02, p. 11498, P427.04, p. 11689. See Trial Judgement, vol. 2, para. 730.
[1718] Trial Judgement, vol. 2, para. 568, referring to Exhibits P427.01, pp 11456-11459, P427.02, p. 11498.
[1719] Vitomir Žepinić, 29 Jan 2010, T. 5775. See Trial Judgement, vol. 2, para. 565, fn. 1458.
[1720] Stanišić Reply Brief, para. 39.

509. Regarding Stanišić's argument that the Prosecution did not elicit any relevant information from Witness Mandić's testimony "*in this case*",[1721] the Appeals Chamber considers that the Trial Chamber was entitled to rely upon Witness Mandić's testimony in *Krajišnik* as that testimony was part of the trial record in the present case.[1722] Stanišić has not shown why this evidence could not be relied on to find that Stanišić shared a close relationship with Karadžić, and as a consequence, has failed to demonstrate that the Trial Chamber erred by doing so.

510. The Appeals Chamber now turns to Stanišić's argument that the Trial Chamber erred by relying upon hearsay evidence. Insofar as the portion of Witness Žepinić's evidence on which the Trial Chamber relied relates to his own "observation, with regard to their relationship",[1723] the Appeals Chamber is not persuaded that this constitutes hearsay evidence. The Appeals Chamber notes, however, that the portion of Witness Mandić's evidence upon which the Trial Chamber relied does have the character of hearsay, insofar as it concerns his testimony that Stanišić was among the people who enjoyed Karadžić's trust.[1724] Nonetheless, the Appeals Chamber recalls that a trial chamber may rely on evidence, including hearsay evidence, provided it is reliable and credible.[1725] Accordingly, and given the fact that the Trial Chamber's conclusion on the basis of this evidence is supported by the other sources identified by the Trial Chamber – and referred to above[1726] – the Appeals Chamber considers that Stanišić has failed to demonstrate any error in this respect.

511. With respect to Stanišić's argument that the Trial Chamber erred by finding that he did not report through the designated channels of the RS Government,[1727] the Appeals Chamber recalls that it has dismissed this challenge elsewhere in this Judgement.[1728]

512. Regarding Stanišić's challenge to the Trial Chamber's reliance on the fact that Karadžić rejected calls for his removal and praised him at the December 1993 BSA Session,[1729] and his submission that it was in fact Karadžić who ultimately dismissed him,[1730] the Appeals Chamber notes that the evidence Stanišić refers to suggests that Karadžić only removed Stanišić from office

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[1721] Stanišić Reply Brief, para. 39 (emphasis added).
[1722] See Exhibit P1318.01, p. 8634; Trial Judgement, vol. 2, fn. 1458.
[1723] Vitomir Žepinić, 29 Jan 2010, T. 5775. See Vitomir Žepinić, 29 Jan 2010, T. 5774; Trial Judgement, vol. 2, para. 565.
[1724] Exhibit P1318.01, p. 8634.
[1725] *Popović et al.* Appeal Judgement, para. 1276. See *Bizimungu* Appeal Judgement, paras 180, 236; *Šainović et al.* Appeal Judgement, para. 846. See also *Nizeyimana* Appeal Judgement, para. 95; *Đorđević* Appeal Judgement, paras 229, 397; *Lukić and Lukić* Appeal Judgement, para. 577.
[1726] See *supra*, para. 507.
[1727] See *supra*, para. 506.
[1728] See *supra*, paras 160-164.
[1729] Trial Judgement, vol. 2, para. 596. See Stanišić Reply Brief, para. 40; Prosecution Response Brief (Stanišić), para. 40.
[1730] Stanišić Reply Brief, para. 40. See Prosecution Response Brief (Stanišić), para. 40.

in July 1994,[1731] one and a half years after the end of the Indictment period. This event, therefore, does not have any direct impact on the Trial Chamber's finding that the two shared a close relationship since at least June 1991[1732] and the Trial Chamber's reliance on this close relationship in assessing Stanišić's intent during the Indictment period. Stanišić has therefore failed to demonstrate any error in this respect.

513. Finally, the Appeals Chamber considers that other than challenging the finding about his close relationship with Karadžić, Stanišić does not present any argument showing that, if established, his close relationship with Karadžić could not be considered as a factor relevant in the assessment of his intent.

514. In light of the foregoing, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in concluding that he shared a close relationship with Karadžić and by taking this finding into account, among other factors, in assessing his intent.[1733]

(iii) Alleged error in finding that Stanišić supported and participated in the implementation of policies of the Bosnian Serb leadership and the SDS

a. Submissions of the parties

515. Stanišić submits that the Trial Chamber erred by failing to identify which policies of the Bosnian Serb leadership and the SDS it considered he supported, and participated in the implementation of.[1734] He argues that the Trial Chamber did not provide any information as to what this support and participation amounted to, how it was manifested, or for how long it occurred, but instead "made a bare and unreferenced assertion which no reasonable trial chamber could have considered" as a basis for inferring his intent.[1735] Stanišić also contends that, if the policies mentioned by the Trial Chamber were intended as references to the deportation and forcible transfer of Muslims and Croats, the Trial Chamber erred by finding that he "supported and participated in such policies".[1736] In this respect, Stanišić submits that: (i) "each and every one of the points relied on by the [Trial Chamber] regarding [his] involvement and interaction with the BSA and the RS Government failed to demonstrate support or implementation of persecutory policies";[1737] and (ii) the Trial Chamber failed to refer to the evidence showing that his acts, conduct, and statements

[1731] See Exhibit P2305, pp 26-27.
[1732] Trial Judgement, vol. 2, para. 730. See Trial Judgement, vol. 2, para. 565.
[1733] See Trial Judgement, vol. 2, para. 769.
[1734] Stanišić Appeal Brief, para. 165.
[1735] Stanišić Appeal Brief, para. 165, referring to Trial Judgement, vol. 2, para. 769.
[1736] Stanišić Appeal Brief, para. 166, referring to Trial Judgement, vol. 2, para. 769.
[1737] Stanišić Appeal Brief, para. 166, referring to Stanišić Appeal Brief, paras 125-164.

were "directly contrary to the common purpose of the JCE".[1738] Additionally, Stanišić argues that the Trial Chamber failed to consider that his conduct, presence at meetings, attendance at sessions of the BSA, and acceptance of the position of Minister of Interior, demonstrate that he supported the creation of a separate Serb entity in line with the Cutileiro Plan rather than intending the commission of crime.[1739]

516. The Prosecution responds that Stanišić's continuous support for, and participation in the implementation of, the policies of the Bosnian Serb leadership and the SDS is evidenced through his various contributions to the JCE.[1740] The Prosecution also contends that the Trial Chamber properly considered all the evidence before it and reasonably concluded that Stanišić's measures did not demonstrate that he acted decisively to stop crimes against non-Serbs.[1741] The Prosecution further avers that Stanišić's conduct, presence at meetings and BSA sessions, and his acceptance of the position as Minister of Interior support the Trial Chamber's conclusion concerning his membership in the JCE.[1742]

b. Analysis

517. The Appeals Chamber observes that, in paragraph 769 of volume two of the Trial Judgement, the Trial Chamber referred to Stanišić's support for, and participation in the implementation of, the policies of the Bosnian Serb leadership and the SDS as a factor relevant to the assessment of his intent, without identifying the specific policies or the factors it considered to constitute Stanišić's support for, or participation in the implementation of, these policies.[1743] Additionally, the Trial Chamber provided no references to its findings in other parts of the Trial

[1738] Stanišić Appeal Brief, para. 167. See Stanišić Appeal Brief, paras 171-186; Stanišić Reply Brief, paras 37-38.
[1739] Stanišić Appeal Brief, para. 93, referring to Trial Judgement, vol. 2, paras 734, 766-769.
[1740] Prosecution Response Brief (Stanišić), paras 49 (referring to Trial Judgement, vol. 2, para. 769), 92. Specifically, the Prosecution points to Stanišić's: (i) involvement in all stages of the creation of the Bosnian Serb institutions in BiH, and the RS MUP in particular (Prosecution Response Brief (Stanišić), paras 92 (referring to Trial Judgement, vol. 2, para. 734), 94-117); (ii) participation in the enunciation and implementation of Bosnian Serb policy through his involvement in the highest institutions of the RS leadership (Prosecution Response Brief (Stanišić), paras 92 (referring to Trial Judgement, vol. 2, paras 732, 734), 94-117); (iii) involvement in the removal of non-Serb MUP personnel, who could have otherwise impeded the JCE (Prosecution Response Brief (Stanišić), paras 92 (referring to Trial Judgement, vol. 2, paras 576-577, 738), 118, 120-121); (iv) appointment of JCE members as leaders within the RS MUP and filling the ranks of the reserve police with "thieves and criminals" (Prosecution Response Brief (Stanišić), paras 92 (referring to Trial Judgement, vol. 2, paras 579, 600, 643, 743-744), 118, 122-123); (v) facilitation of the arming of RS MUP forces (Prosecution Response Brief (Stanišić), paras 92 (referring to Trial Judgement, vol. 2, para. 740), 118, 124-125); (vi) deployment of the RS MUP forces in operations that were in furtherance of the decisions of the Bosnian Serb authorities, despite being aware of the commission of crimes by the joint Serb forces (Prosecution Response Brief (Stanišić), paras 92 (referring to Trial Judgement, vol. 2, paras 737, 740-743), 118, 126-132); and (vii) contribution to the culture of impunity within the RS by focusing on crimes against Serbs and taking insufficient action to stop crimes against non-Serbs (Prosecution Response Brief (Stanišić), paras 65-91, 92 (referring to Trial Judgement, vol. 2, paras 745, 765), 133-149, 211, 214-217, 220-223).
[1741] Prosecution Response Brief (Stanišić), paras 61-63. See *infra*, para. 533.
[1742] Prosecution Response Brief (Stanišić), para. 34.
[1743] See Trial Judgement, vol. 2, para. 769.

Judgement or citations to evidence on the record. However, paragraph 769 of volume two of the Trial Judgement should not be read in isolation. In paragraph 767 of volume two of the Trial Judgement – *i.e.* in the same *Mens Rea* Section – the Trial Chamber at least referred to the views of the Bosnian Serb leadership "expressed during the sessions of the BSA" and "meetings of the SDS" in late 1991 and early 1992 as well as the Strategic Objectives "set by, among others, the RS Government". While paragraph 767 suffers from the same deficiencies – *i.e.* the lack of references to earlier relevant findings or citations to relevant evidence – the somewhat more detailed description of the factors in this paragraph has enabled the Appeals Chamber to locate relevant underlying findings in the Trial Judgement.[1744] Moreover, a reading of the Trial Judgement as a whole – including the section on Stanišić's contribution to the JCE and preceding sections analysing the evidence in this regard – reveals that it contains numerous findings underlying the Trial Chamber's references in paragraph 769 to the policies of the Bosnian Serb leadership and the SDS, as well as Stanišić's support for, or participation in the implementation of, these policies.[1745]

518. The Appeals Chamber recalls in this respect that, at paragraph 767 of volume two of the Trial Judgement, the Trial Chamber referred to: (i) the specific views of the Bosnian Serb leadership, espoused by Karadžić, Dutina, and Kuprešanin and expressed at the BSA and SDS Meetings in late 1991 and early 1992, "that there be an ethnic division of the territory, that 'a war would lead to a forcible and bloody transfer of minorities' from one region to another, and that joint life with Muslims and Croats was impossible";[1746] (ii) the Strategic Objectives "set by, among others, the RS Government", which called for, *inter alia*, the separation of the Serb people from Muslims and Croats;[1747] and (iii) the 1st Council Meeting attended by Stanišić, "where the boundaries of ethnic territory and the establishment of government organs in the territory were determined to be priorities".[1748]

519. Further, the Trial Chamber also entered specific findings with regard to the policies of the Bosnian Serb leadership elsewhere in the Trial Judgement. Specifically, the Trial Chamber found that: (i) the SDS and Bosnian Serb leadership intensified a process of territorial demarcation following the declaration of independence in the BiH Assembly on 15 October 1991 and that the forceful assumption of control over territories was an important part of this process;[1749] (ii) prior to February 1992, Serbs had coalesced around the idea of a separate Serb entity "carved out of the

[1744] See *supra*, paras 414-447.
[1745] *Cf. supra*, paras 377-380.
[1746] Trial Judgement, vol. 2, para. 767. See Trial Judgement, vol. 2, paras 162, 174, 179; *supra*, paras 422-429.
[1747] Trial Judgement, vol. 2, para. 767. See Trial Judgement, vol. 2, paras 188-199; *supra*, paras 433-436.
[1748] Trial Judgement, vol. 2, para. 767. See Trial Judgement, vol. 2, para. 551; *supra*, paras 440-446.
[1749] Trial Judgement, vol. 2, para. 310.

territory of [the] SRBiH";[1750] (iii) Bosnian Serb control over the territories was to be achieved through the establishment of separate and parallel Bosnian Serb institutions, including the RS and RS Government;[1751] and (iv) the process of establishing Serb municipalities was initiated through the Variant A and B Instructions, which led to the violent takeovers of the Municipalities, the aim of which was the establishment of an ethnically "pure" Serb state through the permanent removal of the Bosnian Muslims and Bosnian Croats.[1752] The Appeals Chamber therefore finds that the Trial Chamber did identify which policies it relied upon in assessing Stanišić's intent, albeit in portions other than paragraph 769 of volume two of the Trial Judgement.

520. The Appeals Chamber now turns to Stanišić's argument that the Trial Chamber "did not provide any information" as to what constituted his support for, and involvement in the implementation of, policies of the Bosnian Serb leadership. In this respect, the Trial Chamber noted Stanišić's statement at the November 1992 BSA Session, made in response to the assertion of Witness Đerić[1753] that Stanišić did not attend government meetings, that:

> I as a man have followed policies of the SDS Presidency and our Deputies in the former state, I have always followed these policies. Those who want to separate me from them, I will always be with them until it is shown that their wishes and intentions differ from those of their people, those who want to separate me from that are making a big mistake, I will not allow that even if it costs me my life, let alone a ministerial post.[1754]

521. The Trial Chamber also made a number of specific findings in the section of the Trial Judgement dedicated to Stanišić's contribution to the JCE, which indicate his support for, and involvement in the implementation of, the policies outlined above.[1755] For example, the Appeals Chamber first notes that the Trial Chamber concluded that "Stanišić worked to promote the interests, and implement the decisions, of the SDS in the SRBiH MUP and was involved in all the stages of the creation of the Bosnian Serb institutions in BiH, in particular the [RS] MUP".[1756] This included his involvement in the establishment of the SDS,[1757] as well as the creation of the RS

[1750] Trial Judgement, vol. 2, para. 563. See Trial Judgement, vol. 2, paras 169, 174, 551.
[1751] Trial Judgement, vol. 2, para. 310. See Trial Judgement, vol. 2, paras 176-184, 554-559, 576-583. The Trial Chamber considered, for instance, that Stanišić had attended the 11 February 1992 Meeting in Banja Luka where a Serb collegium was created for the establishment of a Serb MUP, one of the conclusions of which was for a reserve police force of Serb ethnicity to be armed and trained by the RS MUP, in accordance with Article 33 of the LIA (Trial Judgement, vol. 2, paras 4, 554-555, 599. See Trial Judgement, vol. 2, para. 376).
[1752] Trial Judgement, vol. 2, para. 311. See Trial Judgement, vol. 2, paras 179-180, 184, 186, 227-244, 285-307, 310.
[1753] Witness Đerić was a member of the Government of SRBiH, a member of the Ministerial Council of the RS, and subsequently Prime Minister of the Government of the RS until his resignation at the November 1992 BSA Session (see Trial Judgement, vol. 2, paras 20, 139), and part of the expanded Presidency of the RS (Trial Judgement, vol. 2, para. 137).
[1754] See Trial Judgement, vol. 2, para. 570, quoting Exhibit P400, p. 15.
[1755] See *supra*, paras 518-519.
[1756] Trial Judgement, vol. 2, para. 734. See generally, Trial Judgement, vol. 2, paras 729-736.
[1757] Trial Judgement, vol. 2, para. 729. See Trial Judgement, vol. 2, paras 544-575; *supra*, para. 151.

MUP,[1758] including the dismissal of non-Serbs from the RS MUP,[1759] and the arming of the RS MUP forces.[1760]

522. According to the Trial Chamber, "by his participation in [the Bosnian Serb] institutions, [Stanišić] participated in the enunciation and implementation of the Bosnian Serb policy, as it evolved".[1761] The Trial Chamber considered that, from 1 April 1992, Stanišić "made a majority of key appointments in the RS MUP",[1762] which included JCE members who "were involved in the widespread and systematic takeovers of municipalities" as leaders within the RS MUP.[1763] Further, the Trial Chamber found that Stanišić's "participation in the creation of a separate Serb entity within BiH by the ethnic division of the territory" was voluntary, as indicated by his "conduct, presence at key meetings, attendance at sessions of the BSA, acceptance of the position of Minister of Interior".[1764] The Appeals Chamber recalls that it has dismissed Stanišić's challenges to these findings elsewhere in this Judgement.[1765]

523. Second, the Trial Chamber considered Stanišić's role in the deployment of RS MUP forces in joint combat activities with the military.[1766] It found, in particular, that Stanišić approved the deployment of RS MUP forces to joint combat activities with other Serb forces, despite his awareness of crimes committed by joint Serb forces.[1767] The Trial Chamber also considered that RS

[1758] Trial Judgement, vol. 2, paras 732-734. The Trial Chamber found that Stanišić was present at a Serb police unit inspection on 30 March 1992, where he proclaimed that from that day, the RS had its own police force (Trial Judgement, vol. 2, para. 732. See Trial Judgement, vol. 2, para. 560, referring to Goran Mačar, 5 Jul 2011, T. 22838-22845, Goran Mačar, 12 Jul 2011, T. 23163, Exhibit 1D633, p. 1).

[1759] Trial Judgement, vol. 2, paras 576-577, 738. The Trial Chamber referred to Stanišić's dispatch to all CSBs and SJBs, dated 3 April 1992, compelling compliance with an earlier dispatch of Witness Mandić (Trial Judgement, vol. 2, para. 577, referring to, *inter alia*, Exhibit P534), which in turn informed all CSBs and SJBs of the requirement in the new RS Constitution and the LIA that RS MUP officials make a "solemn declaration" before the Minister or authorised official (Trial Judgement, vol. 2, para. 576, referring to, *inter alia*, Exhibit P353, p. 1). The Trial Chamber found that the requirement to sign solemn declarations with the sanction of dismissal on failure to do so was a "pretext to dismiss and disarm non-Serbs from the RS MUP" (Trial Judgement, vol. 2, para. 738).

[1760] Trial Judgement, vol. 2, para. 740. The Trial Chamber concluded that Stanišić facilitated the arming of the RS MUP forces by seeking and receiving assistance of the Federal SUP of Serbia for equipment, weapons, and training for a special unit under his direct control at the level of the RS MUP (Trial Judgement, vol. 2, para. 740). It referred elsewhere in the Trial Judgement to evidence of agreement between the RS MUP and the Federal SUP regarding: (i) the provision of equipment (Trial Judgement, vol. 2, para. 587); (ii) the supply of weapons and uniforms to Stanišić and Witness Mandić (Trial Judgement, vol. 2, para. 587); and (iii) Witness Davidović's role, as a member of the Federal SUP, in assisting Stanišić to form and train his own special unit in the RS MUP at Vrace (Trial Judgement, vol. 2, para. 601).

[1761] Trial Judgement, vol. 2, para. 734.

[1762] Trial Judgement, vol. 2, para. 733. See Trial Judgement, vol. 2, paras 579, 744.

[1763] Trial Judgement, vol. 2, para. 744. See Trial Judgement, vol. 2, para. 579.

[1764] Trial Judgement, vol. 2, para. 734.

[1765] See *supra*, paras 148-158, 193-199, 260-267. The Appeals Chamber notes that Stanišić's argument that the Trial Chamber failed to consider that his conduct, presence at key meetings, attendance at sessions of the BSA, acceptance of the position of Minister of Interior demonstrated that he supported the creation of a separate Serb entity in line with the Cutileiro Plan rather than intending the commission of crimes, is addressed below (see *infra*, paras 527, 541, fn. 1815).

[1766] See generally, Trial Judgement, vol. 2, paras 737-744.

[1767] Trial Judgement, vol. 2, para. 743. See Trial Judgement, vol. 2, para. 766. The Trial Chamber found elsewhere in this respect that Stanišić: (i) organised the RS MUP forces into war units on 15 May 1992 (Trial Judgement, vol. 2, para. 588); (ii) issued three orders between 15 June and 6 July 1992 relating to the deployment of police to the military

MUP forces were deployed in joint action with other Serb forces, in accordance with the Variant A and B Instructions,[1768] and in fact played "a central role" with respect to their implementation.[1769] It concluded that Stanišić must therefore have been aware of the Instructions.[1770] The Appeals Chamber has dismissed Stanišić's challenges with regard to these findings elsewhere.[1771]

524. Third, the Trial Chamber also concluded that, despite being aware of the infiltration of the reserve police by criminal elements, "Stanišić only sought to withdraw regular policemen from combat activities towards the end of 1992, when most of the territory of RS had been consolidated, while permitting the continued use of reserve forces by the army, primarily for the purpose of guarding prisons and detention camps."[1772]

525. Moreover, Stanišić's argument that the Trial Chamber erred by failing to refer to evidence showing that his acts, conduct, and statements were contrary to the common purpose of the JCE is dismissed for reasons set out below.[1773] Contrary to Stanišić's submission, therefore, the Trial Chamber, despite the lack of clarity in this regard, did enter sufficiently identifiable findings with respect to the conduct it relied upon as a basis for inferring his intent.

526. Finally, insofar as Stanišić contends that the "each and every one of the points relied upon by the [Trial Chamber]" concerning his interaction with the BSA and the RS Government in the *Mens Rea* Section do not demonstrate his support for the "persecutorial" policies relating to forcible transfer and deportation, the Appeals Chamber recalls its finding that the Trial Chamber did not equate the policies of the Bosnian Serb leadership, as such, with the objective of the JCE.[1774] Moreover, the Appeals Chamber recalls that the component pieces of circumstantial evidence on the issue of Stanišić's intent are to be considered in relation to all other pieces of circumstantial

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(Trial Judgement, vol. 2, paras 587, 601); (iii) attended the 11 July 1992 Collegium where he stated that the RS MUP forces had provided "immediate cooperation" to the army (Trial Judgement, vol. 2, para. 630), and where the issue of effective cooperation and coordinated action between the RS MUP and VRS was discussed (see Trial Judgement, vol. 2, para. 632); and (iv) met with Bosnian Serb generals Mladić, Witness Manojlo Milovanović, and Zdravko Tolimir and deputy prime minister of the RS Government Milan Trbojević, on 27 July 1992, to discuss joint operations and increased cooperation between the RS MUP and VRS (Trial Judgement, vol. 2, para. 592. See Trial Judgement, vol. 2, paras 56, 137, 139-140).

[1768] Trial Judgement, vol. 2, para. 737. See Trial Judgement, vol. 2, paras 740-742.

[1769] Trial Judgement, vol. 2, para. 731.

[1770] Trial Judgement, vol. 2, para. 731.

[1771] See *supra*, paras 165-175.

[1772] Trial Judgement, vol. 2, para. 743. See Trial Judgement, vol. 2, paras 594, 600, 643. The Trial Chamber considered that: (i) Stanišić complained at the November 1992 BSA Session "that the infiltration of criminal reserve police had hindered 'the cooperation of the army, the police, and the civilian authorities'" (Trial Judgement, vol. 2, para. 600, quoting P400, pp 16-17); (ii) Stanišić ordered all CSBs and SJBs to withdraw active police from frontlines and make reserve police available for wartime assignment to the VRS on 23 October 1992 (Trial Judgement, vol. 2, para. 594).

[1773] See *infra*, paras 530-571.

[1774] See *supra*, paras 63-71.

evidence bearing on the issue, and not in isolation.[1775] The Trial Chamber did not rely upon his support for the policies of the Bosnian Serb leadership, in isolation, when inferring that he had the requisite intent for participation in the JCE. It rather examined this factor in the context of other factors summarised in the *Mens Rea* Section.[1776] His arguments in this respect are therefore inapposite.

527. In the same vein, the Appeals Chamber is not persuaded by Stanišić's argument that his conduct, presence at meetings, attendance at sessions of the BSA, and acceptance of the position of Minister of Interior, demonstrate that he supported the creation of a separate Serb entity in line with the Cutileiro Plan rather than intending the commission of crimes. The Trial Chamber was fully aware of the enunciation of the Cutileiro Plan around late February 1992 and the political developments in the SRBiH resulting from this plan.[1777] However, on the basis of other evidence, it also found that prior to February 1992, Serbs had "coalesced around the idea of a separate Serb entity carved out of the territory of the SRBiH".[1778] This consideration, as well as other factors summarised in the *Mens Rea* Section, led the Trial Chamber to find that Stanišić shared the intent to further the JCE.[1779] His argument – merely asserting the legitimacy of a separate Serb entity by ethnic division in light of the Cutileiro Plan – therefore does not demonstrate any error on the part of the Trial Chamber.

528. In light of the above, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred by failing to identify which policies of the Bosnian Serb leadership and the SDS it considered he supported and participated in the implementation of. He has also failed to show that the Trial Chamber erred in considering his support for, and participation in the implementation of, such policies, in assessing his intent.

(iv) Conclusion

529. In light of the foregoing, the Appeals Chamber considers that Stanišić has failed to show that the Trial Chamber erred by relying on the following factors when assessing his intent: (i) his position at the time; (ii) his close relationship with Karadžić; and (iii) his support for, and participation in, the implementation of the policies of the Bosnian Serb leadership. Stanišić's arguments in this respect are therefore dismissed.

[1775] *Popović et al.* Appeal Judgement, paras 1103, 1150. See *Tolimir* Appeal Judgement, para. 495, referring to *Vasiljević* Appeal Judgement, para. 120.
[1776] See *supra*, para. 378.
[1777] See Trial Judgement, vol. 2, paras 552-562.
[1778] Trial Judgement, vol. 2, para. 563. See Trial Judgement, vol. 2, paras 169, 174, 551.
[1779] See generally, Trial Judgement, vol. 2, paras 766-769.

(h) Alleged errors in failing to consider exculpatory evidence demonstrating that Stanišić did not intend the commission of crimes (subsection (F) of Stanišić's fourth ground of appeal)

(i) Submissions of the parties

530. Stanišić argues that the Trial Chamber failed to consider relevant evidence in arriving at its conclusion that he shared the intent to further the JCE.[1780] He submits that evidence "omitted by the [Trial Chamber] in its findings on his *mens rea*" goes to show that his "acts, conduct and statements do not demonstrate either a general intent to commit crimes or a specific intent that those crimes be committed with a discriminatory intent".[1781]

531. Stanišić contends that the Trial Chamber failed to refer to "numerous and repeated measures" he took in order to ensure that the RS MUP worked in accordance with the law.[1782] Specifically, he contends that the Trial Chamber failed to consider that he: (i) issued numerous orders relating to the prevention, detection, and investigation of crimes;[1783] (ii) established the

[1780] Stanišić Appeal Brief, paras 171-186. See Appeals Hearing, 16 Dec 2015, AT. 96-99, 103-104; Stanišić Reply Brief, para. 18.
[1781] Stanišić Appeal Brief, para. 186. See Stanišić Appeal Brief, para. 39.
[1782] Stanišić Appeal Brief, para. 171. See Stanišić Appeal Brief, paras 115-116, 172-181; Stanišić Reply Brief, para. 37. See also Stanišić Appeal Brief, paras 100, 112-113; Appeal Hearing, 16 Dec 2015, AT. 101.
[1783] Stanišić Appeal Brief, paras 172, 174-176, 180-181. Stanišić contends that: (i) he issued orders from the beginning of the Indictment period seeking to ensure public safety and the prevention and detection of crimes (Stanišić Appeal Brief, para. 172, referring to Exhibits 1D61, P792, 1D634, P1252, Milomir Orašanin, 7 Jun 2011, T. 21(9)63-21(9)65, Goran Mačar, 5 Jul 2011, T. 22862-22863, Momčilo Mandić, 6 May 2010, T. 9728-9729. With respect to the testimony of Witness Milomir Orašanin ("Witness Orašanin"), the Appeals Chamber notes that Stanišić refers specifically to Witness Orašanin's testimony at pages 2163-2165 of the trial transcript (Stanišić Appeal Brief, fn. 213). However, no such pages of the trial transcript corresponds with Witness Orašanin's testimony. Having reviewed the transcript of Witness Orašanin's testimony, the Appeals Chamber understands Stanišić's reference as a typographical error intended to refer to Milomir Orašanin, 7 Jun 2011, T. 21963-21965); (ii) he repeated "several times throughout the Indictment period" orders emphasising the imperative of preventing criminal activities of citizens, soldiers, active and reserve police, and "members of the internal affairs organs" (Stanišić Appeal Brief, para. 174, referring to Trial Judgement, vol. 2, paras 640-641, 644, 674, 680, Exhibits 1D58, 1D59, 1D176, P163, p. 8, P1269, pp 1, 3, P160, p. 15, P1252, Slobodan Škipina, 30 Mar 2010, T. 8315-8317, Goran Mačar, 5 Jul 2011, T. 22865-22866, Vladimir Tutuš, 19 Mar 2010, T. 7865, Milomir Orašanin, 6 Jun 2011, T. 21908-21913, Milomir Orašanin, 7 Jun 2011, T. 21915-21920, Milomir Orašanin, 9 Jun 2011, T. 22118-22123, Exhibits P553, 1D356, 1D357. See Appeal Hearing, 16 Dec 2015, AT. 98); (iii) he insisted on the investigation of war crimes, regardless of the ethnicity of the perpetrator or victims (Stanišić Appeal Brief, para. 175, referring to Radomir Njeguš, 9 Jun 2010, T. 11475-11477, Exhibits 1D63, P160, p. 22, P427.08, pp 3, 6. See Stanišić Appeal Brief, para. 180, referring to Trial Judgement, vol. 2, para. 621, Exhibit 1D63, Vladimir Tutuš, 22 Mar 2010, T. 7914-7915, Dobrislav Planojević, 29 Oct 2010, T. 16569, Simo Tuševljak, 16 Jun 2011, T. 22276-22278. See also Appeal Hearing, 16 Dec 2015, AT. 98); (iv) he insisted on the indiscriminate investigation and filing of reports on crimes, including war crimes, as reflected in the conclusions of the 11 July 1992 Collegium (Stanišić Appeal Brief, para. 181, referring to Exhibit P160, pp 22-23, Vladimir Tutuš, 22 Mar 2010, T. 7914-7915, Dobrislav Planojević, 29 Oct 2010, T. 16569, Simo Tuševljak, 16 Jun 2011, T. 22276-22278, Exhibits 1D328, p. 5, 1D189, 1D63); (v) he responded promptly and unequivocally upon becoming aware of the commission of crimes (Stanišić Appeal Brief, para. 176, referring to Radomir Njeguš, 9 Jun 2010, T. 11475-11476, Slobodan Škipina, 30 Mar 2010, T. 8339-8361, Slobodan Škipina, 31 Mar 2010, T. 8362-8364, Dobrislav Planojević, 22 Oct 2010, T. 16411-16412, Dobrislav Planojević, 28 Oct 2010, T. 16537-16539, Goran Mačar, 18 Jul 2011, T. 23473-23474, Vladimir Tutuš, 16 Mar 2010, T. 7707-7712, Exhibits P628, P847); and (vi) the RS MUP gathered substantial and reliable material during the investigation of crimes which involved victims and alleged perpetrators of all ethnicities, which formed the basis of subsequent prosecutions of both Serb and non-Serb individuals (Stanišić Appeal Brief, para. 176, referring to Exhibits 1D595, 1D596, 1D597, 1D598, 1D599, 1D600, 1D601, Simo Tuševljak, 20 Jun 2011, T. 22434-22451). Stanišić also relies on his order of 17 August to CSB chiefs, requiring them to abide by

Crime Prevention Administration to prevent and detect crimes and monitor the work of crime prevention services at CSBs and SJBs;[1784] (iii) took various actions in relation to disciplining members of the RS MUP suspected of misconduct, including criminal activity;[1785] (iv) sent inspectors into the field to gather information and provide guidance to CSBs and SJBs;[1786] (v) sought federal assistance in light of the gravity of the security situation to help in taking action to arrest, detain, and interrogate criminal elements in the RS, including paramilitaries;[1787] (vi) issued orders requesting information on detention camps and prisoners, as well as orders requiring the free movement of civilians and the immediate release of all persons not detained in accordance with existing laws;[1788] (vii) "insisted on resolving issues of jurisdiction with the army in relation to combating crime and the criminal activity of paramilitaries";[1789] and (viii) "encountered fierce opposition at the municipal level when he ordered the dismissal of illegally formed 'special police units'".[1790]

532. Stanišić also submits that the Trial Chamber erred by failing to refer to the direct evidence that he "frequently made statements contrary to the idea of a common purpose to commit

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the laws of war and international conventions (Appeal Hearing, 16 Dec 2015, AT. 98, referring to, *inter alia*, Trial Judgement, vol. 2, para. 668).

[1784] Stanišić Appeal Brief, para. 174, referring to Trial Judgement, vol. 2, para. 46.

[1785] Stanišić contends that he: (i) introduced "disciplinary offences of 'discrimination on religious or national grounds' and 'failure to file disciplinary complaint against fellow officer', as well as simplifying the disciplinary process and extending the statute of limitations so that disciplinary offences were not left unpunished" (Stanišić Appeal Brief, para. 173, referring to Exhibit 1D54); (ii) "purged" the ranks of the RS MUP, issuing orders for the dismissal of all members who had either committed crimes or had proceedings commenced against them (Stanišić Appeal Brief, para. 178, referring to Trial Judgement, vol. 2, para. 749); and (iii) requested background checks for all RS MUP personnel and the removal of employees with criminal records (Stanišić Appeal Brief, para. 178, referring to Trial Judgement, vol. 2, paras 687-688, 698-708).

[1786] Stanišić Appeal Brief, para. 172, referring to Exhibits 1D328, pp 2, (5), P427.08, p. 3, Dragomir Andan, 31 May 2011, T. 21573-21576, Exhibit P993, Simo Tuševljak, 16 Jun 2011, T. 22314-22315, Goran Mačar, 7 Jul 2011, T. 22968-22974, Goran Mačar, 15 Jul 2011, T. 23352-23354. With respect to Exhibit 1D328 (the Sokolac Report), the Appeals Chamber notes that Stanišić refers to pages 2 and 8 of that exhibit although the exhibit itself only contains five pages. Having reviewed the exhibit, the Appeals Chamber understands Stanišić's reference thereto relates to Exhibit 1D328, pp 2, 5.

[1787] Stanišić Appeal Brief, para. 172, referring to Exhibits 1D646, P1557.0(1), para. 46, P1557.03, pp 14189, 14211-14212, Milorad Davidović, 23 Aug 2010, T. 13532-13534, 13586-13591, Milorad Davidović, 24 Aug 2010, T 13623-13630, Exhibits P1557.01, paras 84-85, P1557.04, p. 14260. The Appeals Chamber notes that Stanišić refers to paragraph 46 of Exhibit P1557.02 in support of this argument. However, on reviewing Exhibit P1557.02, it is apparent that this exhibit, a corrigendum to Exhibit P1557.01, contains no paragraph 46. The Appeals Chamber will therefore treat Stanišić's reference as relating to Exhibit P1557.01, para. 46.

[1788] Stanišić Appeal Brief, para. 177, referring to Trial Judgement, vol. 2, paras 664, 667, 673, 748. See Appeal Hearing, 16 Dec 2015, AT. 98.

[1789] See Stanišić Appeal Brief, para. 179, referring to Trial Judgement, vol. 2, paras 592, 594, 637, 642, 720, Exhibits 1D76, P160, pp 24-25.

[1790] Stanišić Appeal Brief, para. 179, referring to Trial Judgement, vol. 2, paras 606-607. Stanišić contends that he was "put [...] in confrontation with individuals such as Plavšić" as a result of orders he issues against paramilitary formations throughout the territory (Stanišić Appeal Brief, para. 179, referring to Trial Judgement, vol. 2, para. 719). He submits that Plavisić was "considered by the [Trial Chamber] to be a leading member of the JCE" (Stanišić Appeal Brief, para. 179, referring to Trial Judgement, vol. 2, para. 314). He also argues that the evidence demonstrates that he clashed with crisis staffs over the appointment of RS MUP personnel "without the consent and knowledge of the RS MUP" (Stanišić Appeal Brief, para. 179, referring to Trial Judgement, vol. 2, paras 681, 684, 733).

persecutory crimes".[1791] Specifically, Stanišić contends that: (i) his public speeches throughout the Indictment period were non-discriminatory and aimed at the promotion of the rule of law, the professionalism of the police, and the protection of life and property of all citizens;[1792] and (ii) the Đerić Letter reiterated "his request for the adoption of a legislative instrument to prevent breaches of international law", stated that he had ordered RS MUP members to "abide by international law and the criminal code", and informed Witness Đerić that the RS MUP was working to indiscriminately document evidence of war crimes.[1793]

533. The Prosecution responds that Stanišić merely repeats failed arguments raised at trial without demonstrating any error and as such his submissions should be summarily dismissed.[1794] It argues that the Trial Chamber properly considered all of the evidence before it,[1795] including exculpatory evidence,[1796] and was not required to refer to the testimony of every witness or every piece of evidence on the trial record.[1797]

534. The Prosecution submits, further, that the Trial Chamber reasonably concluded that Stanišić's measures did not demonstrate that he acted decisively to stop crimes against non-Serbs.[1798] It points out in this respect that: (i) Stanišić failed to use the powers available to him under the law to ensure the full implementation of his orders, despite his awareness of the limited action taken pursuant to them;[1799] (ii) Stanišić's subordinates followed his lead by failing to report or under-reporting serious crimes by Serbs against non-Serbs;[1800] (iii) Stanišić only punished

[1791] Stanišić Appeal Brief, para. 182. See Stanišić Appeal Brief, paras 183-186; Stanišić Reply Brief, para. 37.
[1792] Stanišić Appeal Brief, para. 183, referring to Trial Judgement, vol. 2, paras 558, 560, 609, Exhibit P160, p. 4. Stanišić also argues that he made his unequivocal support for a peaceful solution in BiH, in accordance with the Cutileiro Plan, publicly known (Stanišić Appeal Brief, para. 183, referring to Trial Judgement, vol. 2, paras 557, 560, 562).
[1793] Stanišić Appeal Brief, para. 184, referring to Exhibit P190. Stanišić contends that the Đerić Letter constitutes direct evidence that he did not intent to commit crimes (Stanišić Appeal Brief, paras 90-92, referring to Exhibit P190). He submits that: (i) the Đerić Letter was sent to "the highest authorities in the RS Government, individuals who were deemed by the [Trial Chamber] to be part of the so-called [Bosnian Serb leadership] and therefore members of the JCE" (Stanišić Appeal Brief, para. 185, referring to Trial Judgement, vol. 2, para. 769); (ii) in the Đerić Letter, he criticised the RS Prime Minister for failing to disassociate the RS Government from all groups and individuals whose intentions differed "from the legitimate political goals of the Serbian people" (Stanišić Appeal Brief, para. 185, referring to Exhibit P190); and (iii) the Đerić Letter demonstrates that he opposed the commission of crimes and sought the attainment of legitimate political goals through lawful means (Stanišić Appeal Brief, paras 90-92. See Stanišić Reply Brief, paras 31-32).
[1794] Prosecution Response Brief (Stanišić), para. 61, referring to *Krajišnik* Appeal Judgement, para. 24. See Prosecution Response Brief (Stanišić), fn. 193. See also Prosecution Response Brief (Stanišić), para. 16.
[1795] Prosecution Response Brief (Stanišić), para. 62. See Prosecution Response Brief (Stanišić), paras 34, 36-37.
[1796] Prosecution Response Brief (Stanišić), para. 16.
[1797] Prosecution Response Brief (Stanišić), para. 61, referring to Prosecution Response Brief (Stanišić), para. 16. The Prosecution further points out that Stanišić alleges that the Trial Chamber did not consider evidence, yet cites paragraphs of the Trial Judgement where the evidence is expressly cited and discussed (Prosecution Response Brief (Stanišić), para. 61, fn. 194).
[1798] Prosecution Response Brief (Stanišić), para. 62.
[1799] Prosecution Response Brief (Stanišić), paras 62 (referring to Trial Judgement, vol. 2, paras 748, 752-753), 71, 133, 142-143. See Prosecution Response Brief (Stanišić), para. 62, referring to Trial Judgement, vol. 2, paras 757-759.
[1800] Prosecution Response Brief (Stanišić), para. 62, referring to Trial Judgement, vol. 2, paras 104, 745, 758.

subordinates for theft and professional misconduct, rather than for Indictment-related crimes,[1801] and only pursued paramilitaries when they refused to submit to the command of the army and continued to commit crimes against RS leaders;[1802] and (iv) Stanišić facilitated the continued interaction with civilians of delinquent personnel by placing them at the disposal of the army.[1803]

535. Additionally, the Prosecution submits that Trial Chamber considered the Đerić Letter but "nonetheless found, on the basis of all the evidence before it, that Stanišić shared the common criminal purpose".[1804]

(ii) Analysis

536. At the outset, the Appeals Chamber 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 it completely disregarded any particular piece of evidence.[1805] This presumption may be rebutted when evidence which is clearly relevant to the trial chamber's findings is not addressed in its reasoning.[1806]

537. The Appeals Chamber recalls that a trial chamber's failure to explicitly refer to particular evidence will not often amount to an error of law, especially where there is significant contrary evidence on the record.[1807] This is because a trial chamber cannot be presumed to have ignored a particular piece of evidence simply because it did not mention it in its judgement.[1808] Rather, it could be presumed, in the absence of particular circumstances suggesting otherwise, that a trial chamber chose not to rely on an unmentioned piece of evidence, meaning that it considered the evidence but was of the view that it was either not reliable or otherwise not worth citing in its

[1801] Prosecution Response Brief (Stanišić), paras 63 (referring to Trial Judgement, vol. 2, paras 754-755), 70, 75, 116, 134, 144-146, 211, 214-217, 220-223.
[1802] Prosecution Response Brief (Stanišić), paras 52, 63, referring to Trial Judgement, vol. 2, para. 756.
[1803] Prosecution Response Brief (Stanišić), para. 63, referring to, *inter alia*, Trial Judgement, vol. 2, para. 751. According to the Prosecution, had Stanišić genuinely intended to protect the non-Serb population, he would have used his authority to amend the disciplinary regime (Prosecution Response Brief (Stanišić), para. 63, referring to Trial Judgement, vol. 2, para. 42). The Prosecution also contends that Stanišić concedes that he had the authority to make such amendments (Prosecution Response Brief (Stanišić), para. 63, referring to Stanišić Appeal Brief, paras 173, 221-222).
[1804] Prosecution Response Brief (Stanišić), para. 34. According to the Prosecution, Stanišić's interpretation of the contents of the Đerić Letter is insufficient to demonstrate an error (Prosecution Response Brief (Stanišić), para. 34). In addition, it argues that Stanišić merely repeats arguments he already made at trial in relation to the Đerić Letter (Prosecution Response Brief (Stanišić), paras 30, 34, referring to Stanišić Appeal Brief, paras 90-92, Stanišić Final Trial Brief, para. 401).
[1805] *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, fn. 2527; *Haradinaj et al.* Appeal Judgement, para. 129.
[1806] *Tolimir* Appeal Judgement, para. 161; *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, para. 864. The failure to address evidence on the record that is clearly relevant to a finding may amount to an error of law by failing to provide a reasoned opinion (*Đorđević* Appeal Judgement, para. 864; *Perišić* Appeal Judgement, para. 92; *Kvočka et al.* Appeal Judgement, para. 23). However, what constitutes a reasoned opinion depends on the specific facts of a case (*Perišić* Appeal Judgement, para. 92, referring to *Kvočka et al.* Appeal Judgement, para. 24).
[1807] *Tolimir* Appeal Judgement, para. 53; *Perišić Appeal Judgement*, para. 95, referring to *Kvočka et al.* Appeal Judgement, paras 23, 483-484, 487, 582-583, *Simba* Appeal Judgement, paras 143, 152, 155.

judgement.[1809] In the Appeals Chamber's view, this reflects a corollary of the overarching principle of deference to the discretion of a trial chamber. The Appeals Chamber therefore concludes that only where it is shown within the substance of a trial chamber's reasoning that clearly relevant evidence has been disregarded, should the Appeals Chamber intervene in order to assess whether that evidence would have changed the factual basis supporting the trial chamber's conclusion.

538. The Appeals Chamber considers that in arguing that evidence was disregarded in the assessment of his intent, Stanišić has failed to appreciate, as noted above,[1810] that the *Mens Rea* Section is a summary of the factors the Trial Chamber considered clearly relevant to reaching its conclusion regarding Stanišić's intent. While it would have been preferable for the Trial Chamber to expressly indicate the evidence upon which it relied in reaching its findings listed in the *Mens Rea* Section, that it did not do so does not amount, in and of itself, to a failure to provide a reasoned opinion,[1811] and is not necessarily indicative of "disregard" for particular evidence.[1812]

539. Stanišić's submissions that the Trial Chamber disregarded "evidence" are premised on references to allegedly supportive material that falls into three broad categories: (i) evidence that is expressly referred to in the Trial Judgement; (ii) findings in sections of the Trial Judgement other than the *Mens Rea* Section; and (iii) evidence not expressly referred to in the Trial Judgement.

540. Regarding the evidence Stanišić identifies that is expressly referred to in the Trial Judgement, the Appeals Chamber notes that in many instances the Trial Chamber has explicitly discussed the very portions of the exhibits, including the Đerić Letter, that Stanišić relies upon.[1813]

[1808] *Kamuhanda* Appeal Judgement, para. 32, referring to *Musema* Appeal Judgement, para. 118.
[1809] *Kamuhanda* Appeal Judgement, para. 32, referring to *Musema* Appeal Judgement, para. 118.
[1810] See *supra*, para. 378.
[1811] The Appeals Chamber recalls that Stanišić's argument that the Trial Chamber failed to provide a reasoned opinion for finding that he shared the intent of the JCE members has been dismissed elsewhere in this Judgement (see *supra*, para. 380).
[1812] See *supra*, para. 536.
[1813] First, with regard to Stanišić's argument on his "numerous orders for the prevention and investigation of crimes" and his "repeated statements that the RS MUP were to respect domestic and international law in their duties", the Appeals Chamber notes that Stanišić lists 115 exhibits (see Stanišić Appeal Brief, para. 116, fn. 100), all referred to in the Trial Judgement (see Trial Judgement, vol. 2, paras 46, 386, 488, 542, 557-558, 560-562, 564, 566, 570, 572-573, 578-579, 581, 588, 594, 598, 601, 605-610, 613, 621, 628, 630-631, 637, 640-648, 655, 664, 667-670, 673-675, 679-682, 684, 687-688, 690, 692, 695, 698-703, 705-708, 711, 713-714, 716-720) without designating the relevant parts of these exhibits or explaining how they support his argument. As such, his submission in paragraph 116 of his appeal brief is clearly undeveloped and has failed to show that no reasonable trier of fact, based on the evidence, could reach the same conclusion as the Trial Chamber did. Second, the Appeals Chamber notes that the Trial Chamber considered Exhibit P993 in finding that Witness Orašanin, an inspector at the Crime Prevention Administration, and his inspection team "visited Karakaj and then went to Brčko, Bijeljina, and the new Skelani SJB" (Trial Judgement, vol. 2, para. 50, referring to, *inter alia*, Exhibit P993 (undated RS MUP report concerning the supervision of the state of the RS MUP and work of the Bratunac and Skelani Police Stations performed between 1-3 August 1992)). Having considered Exhibit P993, the Trial Chamber nonetheless concluded that the civilian law enforcement apparatus failed to function in an impartial manner and that police had failed to report or under-reported crimes against non-Serb victims by Serb perpetrators during the Indictment period (see Trial Judgement, vol. 2, paras 104, 745). Third, the Appeals Chamber notes that the Trial Chamber referred to Exhibit 1D54 in finding that Stanišić had adopted new rules on the disciplinary

In the Appeals Chamber's view it is thus clear that the Trial Chamber took this evidence into account but considered that, after assessing it in light of other evidence, it was not precluded from reaching the factual findings upon which it based its conclusions regarding Stanišić's intent.[1814]

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responsibility of RS MUP employees, in order to adapt the work of the RS MUP to "wartime conditions" (Trial Judgement, vol. 2, para. 42, referring to, *inter alia*, Exhibit 1D54 (Rules on the Disciplinary Responsibility of RS MUP Employees Under Wartime Regime). See Trial Judgement, vol. 2, paras 14, 695, 706). The Trial Chamber also referred to Exhibit 1D58 in finding that, on 23 July 1992, Stanišić ordered that legal measures be taken against all members of the RS MUP who had committed crimes since the establishment of the RS MUP, with the exception of "political and verbal offences" (see Trial Judgement, vol. 2, para. 640, referring to, *inter alia*, Exhibit 1D58. See also Trial Judgement, vol. 2, para. 684). The Trial Chamber referred further to Exhibit 1D59 in finding that on 24 July 1992, Stanišić ordered the chiefs of CSBs to dismiss all members of the RS MUP who had been criminally prosecuted or against whom criminal proceedings were being conducted before competent courts and place them at the disposal of the VRS (Trial Judgement, vol. 2, paras 641, 727, referring to, *inter alia*, Exhibit 1D59). It also referred to Exhibit P163, being a summary of a working group meeting in Trebinje on 20 August 1992, in finding that in his opening remarks at that meeting, Stanišić pointed out the need to implement the order to remove from the RS MUP those individuals not worthy of belonging to the service as well as the need to disband special units due to abuses being committed by them (see Trial Judgement, vol. 2, paras 609, 674, referring to, *inter alia*, Exhibit P163, pp 3, 8-9). Moreover, the Trial Chamber referred to pages 1 and 3 of Exhibit P1269 in finding that Stanišić chaired a meeting of RS MUP officials in Jahorina on 9 September 1992, where he stressed the need to fully implement an earlier order of 6 September 1992 and to release from service all persons who fail to meet the criteria for employment in the RS MUP (Trial Judgement, vol. 2, para. 680, referring to Exhibit P1269, pp 1, 3). Having considered Exhibits 1D54, 1D58, 1D59, P163, and P1269, the Trial Chamber nonetheless concluded that Stanišić violated his professional obligation to protect and safeguard the civilian population in the territories under the control of the RS, by only instituting disciplinary proceedings for RS MUP personnel in relation to theft and professional misconduct and not for crimes charged in the Indictment (see Trial Judgement, vol. 2, paras 755-756). Fourth, the Appeals Chamber notes that the Trial Chamber referred to Exhibit 1D176, an order of 27 July 1992, in finding that Stanišić: (i) ordered the immediate disbandment and the placement of all special units formed during the war in the areas of the CSBs under the command of the VRS; (ii) Stanišić reiterated instructions encompassed in his order of 23 July 1992 for the removal of individuals found criminally responsible for crimes and those who had committed crimes but had not yet been prosecuted, and the placement of these persons at the disposal of the VRS; and (iii) reiterated the need for professional conduct of RS MUP employees (Trial Judgement, vol. 2, paras 605, 644-645, 647, referring to, *inter alia*, Exhibit 1D176, pp 1-2). The Appeals Chamber notes in this respect that the Trial Chamber also considered Stanišić's actions in relation to the "special units and detachments in municipalities" in some detail (see Trial Judgement, vol. 2, paras 604-609) and found that the placing of errant reserve policemen at the disposal of the army, despite being in accordance with the applicable disciplinary procedures, was not sufficient to satisfy Stanišić's duty to protect the Muslim and Croat population (see Trial Judgement, vol. 2, para. 751). Fifth, the Appeals Chamber observes that the Trial Chamber referred to Exhibit 1D76 in relation to its finding concerning action taken by Stanišić pursuant to the conclusions reached at the 11 July 1992 Collegium (Trial Judgement, vol. 2, para. 637, referring to, *inter alia*, Exhibit 1D76. See Trial Judgement, vol. 2, para. 748). The Trial Chamber however also noted other evidence and ultimately concluded that he took insufficient action to put an end to crimes (Trial Judgement, vol. 2, para. 759. See Trial Judgement, vol. 2, paras 749, 751, 753). Sixth, the Appeals Chamber notes that the Trial Chamber referred to Exhibit P847 in finding that on 31 August 1992, 10 days after the killing of approximately 150-200 Muslim men by Prijedor policemen, including members of the Prijedor Intervention Platoon ("PIP"), at Korićanske Stijene in Skender Vakuf municipality on 21 August 1992, Stanišić reinforced the obligation on part of the crime service to undertake everything that was necessary and ordered investigations into the deaths of 150 Muslim victims (Trial Judgement, vol. 2, para. 677, referring to, *inter alia*, Exhibit P847). Having considered Exhibit P847, the Trial Chamber nonetheless concluded that the civilian law enforcement apparatus failed to function in an impartial manner and that Stanišić focused primarily on crimes committed against Serbs (Trial Judgement, vol. 2, paras 745, 758). Finally, the Appeals Chamber notes that the Trial Chamber explicitly considered the Đerić Letter in finding that "Stanišić sent a letter to Branko Đerić that regulations be issued directing the activities of the army, groups, and individuals in order to prevent breaches of international law that could have led to 'genocide or war crimes'. The letter was also sent to Karadžić and the Federal [Secretariat of Internal Affairs ("SUP")]." (Trial Judgement, vol. 2, para. 747. See Trial Judgement, vol. 2, para. 636, referring to, *inter alia*, Exhibit P190). Having considered the Đerić Letter, the Trial Chamber nonetheless concluded that the Trial Chamber was not satisfied that Stanišić took sufficient action to put an end to the crimes and found that instead he permitted the RS MUP forces under his control to continue to participate in joint operations with other Serb forces involved in the commission of crimes" (Trial Judgement, vol. 2, para. 759).

[1814] *Cf. Popović et al.* Appeal Judgement, vol. 2, paras 1541-1542.

541. Insofar as Stanišić relies on the Trial Chamber's findings in other sections of the Trial Judgement in support of his argument that it disregarded relevant evidence,[1815] his arguments are equally incongruous. While Stanišić clearly disagrees with the Trial Chamber's evaluation of the evidence and its conclusions, he has advanced no argument showing that no reasonable trier of fact, based on all the evidence, could have reached the same conclusions as the Trial Chamber did. To the contrary, Stanišić has merely identified evidence he submits supports his proposition that he did not possess the requisite intent, without indicating how this evidence demonstrates that the Trial Chamber's conclusions were unreasonable. Stanišić has therefore failed to demonstrate any error and his arguments in this respect are dismissed.

542. The Appeals Chamber now turns to Stanišić's arguments relating to evidence allegedly disregarded by the Trial Chamber that is not expressly referred to in the Trial Judgement. Noting that there is some overlap between the evidence underlying Stanišić's various submissions, the Appeals Chamber will proceed to address related evidence together, where possible.

543. The Appeals Chamber notes that the Trial Chamber referred to, and relied extensively on, the testimony of Witness Orašanin throughout the Trial Judgement,[1816] including portions of the extract of Witness Orašanin's testimony on which Stanišić relies in support of his contention that he issued orders, from the beginning of the Indictment period, seeking to ensure public safety and the prevention and detection of crimes.[1817] In the view of the Appeals Chamber, the remainder of the excerpts of Witness Orašanin's testimony that Stanišić cites, but the Trial Chamber did not, concerns a document Witness Orašanin referred to in relation to jurisdictional issues between the RS MUP "border department and military police".[1818] Nothing in the excerpts Stanišić cites, which the Trial Chamber did not, supports the contention that the Trial Chamber disregarded clearly relevant evidence when assessing Stanišić's intent. His arguments in this respect are therefore dismissed.

[1815] See Stanišić Appeal Brief, paras 174 (referring to, *inter alia*, Trial Judgement, vol. 2, paras 46, 640-641, 644, 674, 680), 177 (referring to Trial Judgement, vol. 2, paras 664, 667, 673, 748), 178 (referring to Trial Judgement, vol. 2, paras 687-688, 698-708, 749), 179 (referring to, *inter alia*, Trial Judgement, vol. 2, paras 314, 592, 594, 606-607, 637, 642, 681, 684, 719-720, 733), 180 (referring to, *inter alia*, Trial Judgement, vol. 2, para. 621), 183 (referring to, *inter alia*, Trial Judgement, vol. 2, paras 557-558, 560, 562, 609).

[1816] See *e.g.* Trial Judgement, vol. 2, paras 46-51, 53-55, 71, 73, 682, 686, 728, fns 142-148, 150-168, 173, 175-181, 245, 253, 686, 1756, 1763, 1867.

[1817] See Stanišić Appeal Brief, fn. 213, referring to, *inter alia*, Milomir Orašanin, 7 Jun 2011, T. 21963-21965. These portions of Witness Orašanin's testimony relate to Stanišić's request of 5 October 1992 to the CSBs, concerning the submission of reports on persons suspected of committing war crimes (Trial Judgement, vol. 2, para. 682, referring to Exhibit 1D572, Milomir Orašanin, 7 Jun 2011, T. 21962, 21964).

[1818] See Milomir Orašanin, 7 Jun 2011, T. 21965.

544. The Trial Chamber referred extensively to the testimony of Witness Mačar[1819] and Witness Mandić[1820] throughout the Trial Judgement. However, it did not refer to the extracts of Witness Mačar's testimony on which Stanišić relies,[1821] in which Witness Mačar explains the nature of Exhibits 1D61 and 1D634, namely, Stanišić's order of 15 April 1992 ("Order of 15 April 1992") and his order of 16 April 1992 concerning the sanctioning of persons involved in criminal activities and protecting the civilian population (collectively, "Orders of 15 and 16 April 1992").[1822] Nor did it refer to the specific extracts of Witness Mandić's testimony on which Stanišić relies in support of his contention that he issued orders from the beginning of the Indictment period seeking to ensure public safety and the prevention and detection of crimes.[1823] The Appeals Chamber notes that this portion of Witness Mandić's testimony relates to his evidence that Exhibit 1D61 reflected the position taken by the RS MUP, to protect "law and order, and life and property".[1824] However, the Appeals Chamber also notes that the Trial Chamber referred to the existence and nature of the Orders of 15 and 16 April 1992 in the Trial Judgement,[1825] yet on the basis of other evidence, found that Stanišić took "insufficient action" to put an end to crimes.[1826] Accordingly, Stanišić has not demonstrated that the Trial Chamber disregarded the aforementioned extracts of the testimonies of Witness Mačar and Witness Mandić, and his arguments in this respect are therefore dismissed.

545. Nonetheless, the Appeals Chamber notes that the Trial Chamber did not address other orders that Stanišić identifies in support of his contention that he sought to ensure public safety and the prevention and detection of crimes throughout the Indictment period, namely: (i) Exhibit P792, Stanišić's order of 15 April 1992, requiring the return and itemisation of misappropriated material and technical property from the barracks in Faletići;[1827] and (ii) Exhibit P1252, a dispatch from Stanišić to the CSBs of Banja Luka, Bijeljina, Doboj, and Sarajevo, calling for the prosecution of perpetrators of the appropriation and plunder of real estate and public and private property committed by members in the service of the RS MUP ("17 April 1992 Dispatch").[1828] The Appeals Chamber also notes that Stanišić relies on evidence relating to the dissemination of the

[1819] See *e.g.* Trial Judgement, vol. 2, paras 1, 48, 56, 63, 67-68, 70, 251, 361, 560, 569, 581, 583, 611, 719, 726, fns 1, 57, 151, 214, 223, 229-230, 232, 238, 240, 747, 991, 1446, 1473, 1521, 1529, 1596, 1772, 1845, 1859-1860.
[1820] See *e.g.* Trial Judgement, vol. 2, paras 4, 8, 576, 719, fns 20, 31, 1490, 1494, 1660, 1843-1844.
[1821] See Stanišić Appeal Brief, fn. 213, referring to, *inter alia*, Goran Mačar, 5 Jul 2011, T. 22862-22863.
[1822] See Goran Mačar, 5 Jul 2011, T. 22862-22863, discussing Exhibits 1D61, 1D634.
[1823] See Stanišić Appeal Brief, para. 172, referring to, *inter alia*, Momčilo Mandić, 6 May 2010, T. 9728-9729.
[1824] Momčilo Mandić, 6 May 2010, T. 9729. See Momčilo Mandić, 6 May 2010, T. 9728.
[1825] Specifically, the Trial Chamber found that on 15 and 16 April 1992, respectively, Stanišić ordered: (i) "his subordinates to sanction persons seising, looting, and appropriating property and carrying out other unauthorised acts for personal gain with the 'most rigorous responsibility measures, including arrest and detention'"; and (ii) "all CSB chiefs to step up measures for the protection of the population, the prevention of crimes, and the apprehension of the perpetrators" (Trial Judgement, vol. 2, para. 610, referring to Exhibits 1D61, 1D634).
[1826] Trial Judgement, vol. 2, para. 759. See Trial Judgement, vol. 2, paras 746, 751-758.
[1827] See Exhibit P792, p. 1.
[1828] See Exhibit P1252.

17 April 1992 Dispatch in support of his argument that, throughout the Indictment period, he repeated orders emphasising the imperative of preventing criminal activities. Specifically, Stanišić refers in this regard to Exhibit P553, a telegram sent by Župljanin to chiefs of SJBs on 29 April 1992, requiring SJB employees to be informed of Stanišić's request for action to be taken against RS MUP members involved in, *inter alia*, appropriation of moveable goods, as well as to the extracts of the testimonies of Witness Mačar, Witness Škipina, and Witness Vladimir Tutuš ("Witness Tutuš").[1829] Although the Trial Chamber referred to Witness Mačar's testimony,[1830] Witness Škipina's testimony,[1831] and Witness Tutuš's testimony[1832] throughout the Trial Judgement, the Appeals Chamber notes that it did not refer to the specific extracts cited by Stanišić, or to Exhibit P553.

546. As to the question of whether the Trial Chamber disregarded this evidence, the Appeals Chamber first notes that Exhibit P792 does not concern crimes committed against non-Serbs and as such is not relevant to the discussion on Stanišić's intent.[1833] Second, it is clear from the Trial Judgement that the Trial Chamber was cognisant of the Orders of 15 and 16 April 1992 requiring action to be taken in relation to the prevention of crimes.[1834] With respect to Exhibits P553, P1252, and related excerpts of Witness Mačar's testimony, Witness Škipina's testimony, and Witness Tutuš's testimony, attesting to the dissemination of the Order of 15 April 1992, the Appeals Chamber notes that the Trial Chamber considered the testimony of Witness Krulj, Chief of the Ljubinje SJB, that the Order of 15 April 1992 was implemented in the Ljubinje SJB to the extent possible.[1835] However, it also found that Stanišić's follow-up orders from May 1992 with respect to the reserve police, among whom the problem of "unprincipled conduct" was most pronounced, were not carried out to the extent possible since the reserve police continued to serve within the RS MUP until the end of 1992.[1836] This and other evidence led the Trial Chamber to conclude that despite his knowledge of the crimes being committed, Stanišić took insufficient action to put an end

[1829] See Stanišić Appeal Brief, para. 174, referring to, *inter alia*, Exhibit P553, Slobodan Škipina, 30 Mar 2010, T. 8315-8317, Goran Mačar, 6 Jul 2011, T. 22865-22866, Vladimir Tutuš, 19 Mar 2010, T. 7865.
[1830] See *e.g.* Trial Judgement, vol. 2, paras 1, 48, 56, 63, 67-68, 70, 251, 361, 560, 569, 581, 583, 611, 719, 726, fns 1, 57, 151, 214, 223, 229-230, 232, 238, 240, 747, 991, 1446, 1473, 1521, 1529, 1596, 1772, 1845, 1859-1860.
[1831] See *e.g.* Trial Judgement, vol. 2, paras 17, 26-29, 66, 557, 564, 578, 601, 619, 689, fns 58, 83-84, 86-92, 220-221, 1140, 1455, 1499, 1573, 1623, 1767. The Appeals Chamber notes that the Trial Chamber referred to portions of the extract of Witness Škipina's testimony, on which Stanišić relies, at paragraph 689 of volume two of the Trial Judgement, in finding that Witness Škipina "was appointed Advisor on matters relating to the SNB on 6 August 1992 after having served as Head of the SNB until 3 July 1992, reported directly to the Minister of the RS MUP on events that were brought to his attention, some of which were included in daily bulletin reports for other leading members of the RS" (see Trial Judgement, vol. 2, para. 689, referring to Slobodan Škipina, 30 Mar 2010, T. 8308-8312, 8316-8317, 8323, Exhibits P1267, P1268, P1254).
[1832] See *e.g.* Trial Judgement, vol. 2, paras 80, 396, 398, 415, 470, 488, 576, 695, fns 281, 1365-1370, 1494, 1783.
[1833] *Cf.* Trial Judgement, vol. 2, para. 766.
[1834] The Appeals Chamber recalls that the Trial Chamber did consider evidence regarding the existence the Orders of 15 and 16 April 1992 (see Trial Judgement, vol. 2, para. 610).
[1835] Trial Judgement, vol. 2, para. 610, referring to, *inter alia*, Aleksandar Krulj, 28 Oct 2009, T. 2163-2165.
[1836] Trial Judgement, vol. 2, para. 746.

to them.[1837] Given that the evidence explicitly discussed by the Trial Chamber is similar in nature to Exhibits P553, P1252, and related excerpts of the testimonies of Witness Mačar, Witness Škipina, and Witness Tutuš, Stanišić has failed to demonstrate that the Trial Chamber disregarded this evidence. His arguments are therefore dismissed.

547. The Appeals Chamber notes that the Trial Chamber referred to the evidence of Witness Njeguš[1838] and Witness Simo Tuševljak ("Witness Tuševljak")[1839] throughout the Trial Judgement, although not to the specific extracts upon which Stanišić relies.[1840] Nonetheless, the Trial Chamber considered that Witness Tuševljak, Witness Mačar, Witness Orašanin, and Witness Njeguš "testified that the policy at the time was to investigate all crimes equally",[1841] but concluded that this evidence was not reliable.[1842] In the Appeal's Chamber's view, Stanišić has therefore failed to demonstrate the Trial Chamber's disregard of Witness Njeguš's testimony and Witness Tuševljak's testimony in this respect. His arguments in this regard are therefore dismissed.

548. Although the Trial Chamber referred to the testimony of Witness Andan,[1843] Witness Mačar,[1844] and Witness Tuševljak,[1845] it did not refer to the portions of their testimony on which Stanišić relies with respect to inspection teams from the RS MUP conducting tours and audits of CSBs and SJBs throughout municipalities of the RS.[1846] The Appeals Chamber notes, however, that throughout the Trial Judgement, the Trial Chamber extensively referred to evidence relating to the engagement of the RS MUP's inspectors sent to SJBs and CSBs.[1847] In the Appeal's Chamber's view, the aforementioned testimonial evidence does not materially add any new argument to the Trial Chamber's discussion and as such is not of a character that its absence from the Trial Judgement shows its disregard. Stanišić's arguments in this respect are therefore dismissed.

[1837] Trial Judgement, vol. 2, para. 759. See Trial Judgement, vol. 2, paras 751-758.
[1838] See Trial Judgement, vol. 2, paras 14, 17, 355, 564, 601, 728, 936, fns 49-52, 58-59, 929, 1455, 1572, 1867.
[1839] See *e.g.* Trial Judgement, vol. 2, paras 70-71, 708, fns 240, 244, 248, 1815.
[1840] See Stanišić Appeal Brief, paras 175 (referring to, *inter alia*, Radomir Njeguš, 9 Jun 2010, T. 11475-11477), 180 (referring to, *inter alia*, Simo Tuševljak, 16 Jun 2011, T. 22276-22278). The Appeals Chamber notes that Stanišić also relies on this evidence in support of his contention that he responded promptly and unequivocally upon becoming aware of the commission of crimes (see Stanišić Appeal Brief, para. 181).
[1841] Trial Judgement, vol. 2, para. 728, referring to Simo Tuševljak, 23 Jun 2011, T. 22694-22696, Goran Mačar, 13 Jul 2011, T. 23234-23241, Goran Mačar, 19 Jul 2011, T. 23528-23530, Radomir Njeguš, 9 Jun 2010, T. 11477-11479.
[1842] The Trial Chamber found that this evidence did not represent "a true reflection of the practice of investigation and prosecution followed by the RS authorities in 1992" (Trial Judgement, vol. 2, para. 728).
[1843] See *e.g.* Trial Judgement, vol. 2, paras 17, 122, 537-540, 648, 665, 702-703, 714, 716-717, fns 58, 393, 396-397, 1386, 1388, 1390, 1391, 1687, 1717, 1800, 1803, 1827, 1837-1838, 1839, 1840.
[1844] See *e.g.* Trial Judgement, vol. 2, paras 1, 48, 56, 63, 67-68, 70, 251, 361, 560, 569, 581, 583, 611, 719, 726; Trial Judgement, vol. 2, fns 1, 57, 151, 214, 223, 229-230, 232, 238, 240, 747, 991, 1446, 1473, 1521, 1529, 1596, 1772, 1845, 1859-1860.
[1845] See *e.g.* Trial Judgement, vol. 2, paras 70-71, 708, fns 240, 244, 248, 1815.
[1846] See Stanišić Appeal Brief, para. 172, referring to, *inter alia*, Dragomir Andan, 31 May 2011, T. 21573-21576, Exhibit P993, Simo Tuševljak, 16 Jun 2011, T. 22314-22315, Goran Mačar, 7 Jul 2011, T. 22968-22974, Goran Mačar, 15 Jul 2011, T. 23352-23354.
[1847] See *e.g.* Trial Judgement, vol. 2, paras 48-54, 361, 392, 604.

549. Stanišić contends that the Trial Chamber failed to consider portions of Witness Davidović's *viva voce* testimony as well as Exhibits 1D646, P1557.01, P1557.03, and P1557.04 which demonstrate that he sought federal assistance to help in taking action against criminal elements.[1848] The Appeals Chamber notes that: (i) Exhibit 1D646 is a report by Witness Davidović, dated 8 August 1992;[1849] (ii) Exhibit P1557.01 is the witness statement of Witness Davidović;[1850] and (iii) Exhibits P1557.03 and P1557.04 contain Witness Davidović's testimony of 9 and 10 June 2005 in *Krajišnik*, respectively.[1851]

550. The Appeals Chamber notes that the Trial Chamber relied on Witness Davidović's evidence, including portions of the extracts of *viva voce* testimony to which Stanišić refers, throughout the Trial Judgement. Specifically, the Trial Chamber relied on such evidence in discussing Stanišić's "deal" with Arkan,[1852] and in finding that: (i) in April or May 1992, Witness Davidović was "the chief police inspector in the federal SUP";[1853] (ii) the presence, in the RS, of paramilitary forces, who were initially invited and supported by the crisis staffs, was tolerated only until such forces "compromised the war-profiteering plans of the Crisis Staffs or harmed local Serbs";[1854] (iii) as a member of "the federal SUP", Witness Davidović had assisted Stanišić in the training of a "Special Police Unit, composed of approximately 170 members" in Vrace;[1855] (iv) Stanišić specifically gave Witness Davidović and Witness Andan full authority to deal with paramilitaries;[1856] (v) Witness Davidović met with Stanišić in Vrace to discuss arresting paramilitary formations and the Yellow Wasps in particular;[1857] (vi) Stanišić neither ordered, nor prohibited Davidović to arrest Arkan or members of his paramilitary force;[1858] and (vii) "Dragomir Andan and Milorad Davidović led actions against the paramilitary groups in Bijeljina and against the Red Berets in Brčko with assistance from Malović's Unit."[1859] The Trial Chamber found that these paramilitary groups resisted the action by Witness Andan and Witness Davidović and "refused to fall under the command of the army."[1860] The Appeals Chamber considers that other

[1848] See Stanišić Appeal Brief, para. 172, referring to Exhibits 1D646, P1557.01, para. 46, P1557.03, pp 14189, 14211-14212, Milorad Davidović, 23 Aug 2010, T. 13586-13591, Milorad Davidović, 24 Aug 2010, T. 13623-13630, Exhibits P1557.01, paras 84-85, P1557.04, p. 14260. See also *supra*, para. 531.
[1849] See Exhibit 1D646.
[1850] See Exhibit P1557.01.
[1851] See Exhibits P1557.03, P1557.04.
[1852] See Trial Judgement, vol. 2, paras 710-711.
[1853] Trial Judgement, vol. 2, para. 185, referring to, *inter alia*, Exhibit P1557.03, p. 14172.
[1854] Trial Judgement, vol. 2, para. 126, referring to, *inter alia*, Exhibits P1557.01, p. 19, P1557.04, pp 14247-14250.
[1855] Trial Judgement, vol. 2, para. 601, referring to, *inter alia*, Milorad Davidović, 23 Aug 2010, T. 13532-13533, Exhibits P1557.01, p. 12, P1127, p. 4.
[1856] See Trial Judgement, vol. 2, para. 714, referring to, *inter alia*, Milorad Davidović, 23 Aug 2010, T. 13590, Milorad Davidović, 24 Aug 2010, T. 13613-13615, 13623-13624, Exhibit P1557.04, pp 14292-14293.
[1857] Trial Judgement, vol. 2, para. 714, referring to Milorad Davidović, 23 Aug 2010, T. 13531-13533, 13564-13566.
[1858] Trial Judgement, vol. 2, para. 712, referring to Milorad Davidović, 24 Aug 2010, T. 13625-13626.
[1859] Trial Judgement, vol. 2, para. 717.
[1860] Trial Judgement, vol. 2, para. 717, referring to, *inter alia*, Milorad Davidović, 24 Aug 2010, T. 13623-13630, Exhibits P1557.01, pp 26-27, 1D646, pp 6-12, 1D97, pp 2-5, 1D554, P591.

extracts of Witness Davidović's evidence to which Stanišić refers, but the Trial Chamber did not, merely lend further support to the Trial Chamber's finding that Stanišić authorised Witness Davidović to investigate, arrest, and institute proceedings against paramilitaries, and to train a special police unit in Vrace.[1861] Accordingly, Stanišić has failed to demonstrate that the Trial Chamber disregarded these portions of Witness Davidović's evidence. His arguments in this respect are therefore dismissed.

551. Regarding Exhibit 1D646, a report of Witness Davidović to Stanišić dated 8 August 1992, detailing actions taken by a group of 17 members of the Federal SUP who were sent to the Bijeljina CSB on 27 June 1992 at the request of the RS MUP and were under Witness Davidović's command,[1862] the Appeals Chamber notes that the Trial Chamber *did* refer to it in the context of actions undertaken by Witness Andan and Witness Davidović against the paramilitary groups.[1863] Stanišić's argument that the Trial Chamber disregarded this evidence is therefore dismissed.

552. The Trial Chamber did not address Exhibit 1D328 in the Trial Judgement. Stanišić relies on this exhibit in support of his contentions that he: (i) sent inspectors into the field with a view to taking measures to prevent and detect crimes, and to locate and apprehend perpetrators, irrespective of their ethnicity;[1864] and (ii) insisted on the investigation and filing of "reports on crimes, including war crimes, without any distinction being made on the basis of the ethnicity of the perpetrator or victim".[1865]

553. The Appeals Chamber recalls that Exhibit 1D328 (the Sokolac Report) concerns a meeting on 27 July 1992 in Sokolac of leading personnel of criminology departments from the area of the Romanija–Birač CSB ("27 July 1992 Meeting").[1866] The Appeals Chamber notes that, according to the Sokolac Report, the 27 July 1992 Meeting was also attended by members of the RS MUP, Sarajevo CSB, and representatives of SJBs from various municipalities, including municipalities falling within the geographic area covered by the Indictment.[1867] The Appeals Chamber observes that Stanišić cites extracts of the Sokolac Report that detail: (i) difficulties faced by attendees, including Witness Mačar and members of the RS MUP, in performing their duties; and (ii) conclusions reached as to proceeding in the circumstances.[1868] He also relies, in particular, on the sixth conclusion reached at the 27 July 1992 Meeting, which states that "[m]aximal engagement

[1861] See Trial Judgement, vol. 2, para. 714.
[1862] Exhibit 1D646, pp 1-2.
[1863] Trial Judgement, vol. 2, para. 717, referring to, *inter alia*, Exhibit 1D646. See Trial Judgement, vol. 2, para. 714.
[1864] Stanišić Appeal Brief, para. 172, fn. 214.
[1865] Stanišić Appeal Brief, para. 181, fn. 238.
[1866] Exhibit 1D328.
[1867] See Exhibit 1D328, p. 1.
[1868] Exhibit 1D328, pp 2, 5.

of all the operational workers is requested for the tasks of documenting war crimes and submitting criminal reports against unidentified perpetrators; to this end maximum cooperation is required with all the authorities in any particular area".[1869] The Appeals Chamber notes that the portions of the Sokolac Report referred to by Stanišić do not attest to his assertion that he "sent inspectors into the field with a view to taking measures to prevent and detect crimes, and to locate and apprehend perpetrators, irrespective of their ethnicity".[1870] In any event, as stated above, the Trial Chamber extensively referred to evidence relating to the engagement of the RS MUP's inspectors sent to SJBs and CSBs.[1871] Moreover, the Trial Chamber also referred to a number of Stanišić's orders to investigate and document crimes.[1872] In light of the foregoing, the Appeals Chamber considers that the Trial Chamber did not err by not specifically addressing the Sokolac Report. Stanišić's argument is therefore dismissed.

554. The Appeals Chamber notes that the Trial Chamber did not refer to Exhibit 1D63 an instruction to the SJB chiefs of Banja Luka, Bijeljina, Doboj, Sarajevo, and Trebinje, dated 19 July 1992 and originated by Stanišić.[1873] The exhibit pertains to the conclusion reached at the 11 July 1992 Collegium[1874] and contains questionnaires and instructions requiring SJB personnel to complete the questionnaire for all persons, regardless of ethnicity, against whom criminal reports had been submitted on reasonable grounds, as well as questionnaires for victims "regardless of whether a criminal report has been submitted or the procedure of gathering evidence for the submission of a criminal report against a perpetrator is still in progress".[1875] Exhibit 1D63 therefore relates to actions taken by Stanišić further to the conclusions reached at the 11 July 1992 Collegium. The Appeals Chamber notes, however, that the Trial Chamber considered evidence as to actions that Stanišić took further to the conclusions reached at the 11 July 1992 Collegium. For example, the Trial Chamber found that:

> [f]ollowing the 11 July Collegium, Stanišić sent an order on 19 July 1992 to the chiefs of all CSBs requesting information on [...] problems related to paramilitary units, procedures in taking custody, the treatment of prisoners, conditions of collection camps, and prisoners of Muslim ethnicity who were deposited without papers by the army at "undefined camps".[1876]

[1869] Exhibit 1D328, p. 5. See Stanišić Appeal Brief, fn. 238.
[1870] See Stanišić Appeal Brief, para. 172, referring to, *inter alia*, Exhibit 1D328, pp 2, 5.
[1871] See *e.g.* Trial Judgement, vol. 2, paras 48-54, 361, 392, 604.
[1872] Trial Judgement, vol. 2, paras 748, 752-753. See *supra*, fn. 1813. The Appeals Chamber further notes that nothing in the Sokolac Report suggests that Stanišić insisted on the investigation and reporting of crimes *without any distinction being made on the basis of ethnicity of the perpetrator or victim*, as Stanišić argues (Exhibit 1D328, pp 1-5. See Stanišić Appeal Brief, para. 181, fn. 238).
[1873] Exhibit 1D63, pp 1-2.
[1874] Exhibit 1D63, p. 1.
[1875] Exhibit 1D63, pp 1, 3-4.
[1876] Trial Judgement, vol. 2, para. 637, referring to, *inter alia*, Exhibit 1D76. See Trial Judgement, vol. 2, para. 748.

However, the Trial Chamber found that despite this and other orders, mistreatment of detainees at the camps continued, and that Stanišić "failed to use the powers available to him under the law to ensure the full implementation of" his orders, despite being aware of the only limited action taken by his subordinates.[1877]

555. Accordingly, the Appeals Chamber considers it apparent that the Trial Chamber expressly considered that action Stanišić took was insufficient to put an end to crimes.[1878] Given that Exhibit 1D63 is demonstrative only of limited action Stanišić took pursuant to the conclusions reached at the 11 July 1992 Collegium, the Appeals Chamber is of the view that Stanišić has failed to demonstrate that this evidence undermines the Trial Chamber's ultimate conclusion concerning Stanišić's failure to take sufficient action against crimes.[1879] As such, the Trial Chamber did not err in not explicitly addressing Exhibit 1D63 and Stanišić's argument is therefore dismissed.

556. Stanišić refers to Exhibit P160, namely, minutes of the 11 July 1992 Collegium,[1880] in support of his arguments that the Trial Chamber failed to consider evidence that: (i) he repeated, throughout the Indictment period, orders emphasising the imperative of preventing criminal activities;[1881] (ii) he insisted on the non-discriminatory investigation of war crimes,[1882] which was reflected in the conclusions reached at the 11 July 1992 Collegium;[1883] (iii) he insisted on resolving issues of jurisdiction within the army in relation to combating crime and the criminal activity of paramilitaries;[1884] and (iv) his public speeches throughout the Indictment period were non-discriminatory and aimed at the promotion of the rule of law, the professionalism of the police, and the protection of life and property.[1885]

[1877] Trial Judgement, vol. 2, para. 753. See Trial Judgement, vol. 2, paras 748, 752. See Trial Judgement, vol. 2, para. 761. In addition, the Trial Chamber considered Stanišić's orders in the latter half of July, that all members of the MUP who had committed crimes or against whom official criminal proceedings had been launched should be relieved of duty and placed at the disposal of the VRS (Trial Judgement, vol. 2, para. 749). The Trial Chamber found, however, that the placing of errant reserve policemen at the disposal of the army "was not sufficient to fulfil his duty to protect the Muslim and Croat population, considering the fact that transferring known offenders in the reserve police to the army in fact further facilitated their continued interaction with civilians" (Trial Judgement, vol. 2, para. 751). Finally, the Appeals Chamber also notes that considering the language of the orders of, *inter alia*, 11 and 17 July 1992, the Trial Chamber found that "the instruction from Stanišić to the CSBs on documenting war crimes and other mass atrocities was specifically limited to where Serbs were the victims, and not all civilians" (Trial Judgement, vol. 2, para. 758).
[1878] See Trial Judgement, vol. 2, para. 759.
[1879] See Trial Judgement, vol. 2, para. 759.
[1880] Exhibit P160, pp 1-2.
[1881] Stanišić Appeal Brief, para. 174, referring to, *inter alia*, Exhibit P160, p. 15.
[1882] Stanišić Appeal Brief, para. 175, referring to, *inter alia*, Exhibit P160, p. 22.
[1883] Stanišić Appeal Brief, para. 181, referring to, *inter alia*, Exhibit P160, pp 22-23.
[1884] Stanišić Appeal Brief, para. 179, referring to, *inter alia*, Exhibit P160, pp 24-25.
[1885] Stanišić Appeal Brief, para. 183, referring to, *inter alia*, Exhibit P160, p. 4.

557. The Appeals Chamber notes that the Trial Chamber *did* refer to some of the portions of Exhibit P160, including to some portions that Stanišić identifies.[1886] The Appeals Chamber also recalls that elsewhere in the Trial Judgement, it has already dismissed Stanišić's argument that the Trial Chamber erred by not explicitly referring to the rest of Exhibit P160 in its discussion of his intent.[1887]

558. The Appeals Chamber now turns to: (i) Exhibits 1D595 to 1D601, and portions of the testimony of Witness Tuševljak, which Stanišić contends demonstrate that the RS MUP "gathered substantial and reliable material during the investigation of crimes which involved victims and alleged perpetrators of all ethnicities" and that this evidence "subsequently formed the basis of prosecutions of accused Serb and non-Serb individuals";[1888] (ii) Exhibits 1D356 and 1D357, and portions of the testimony of Witness Orašanin, which Stanišić argues demonstrate that he repeatedly emphasised the imperative of preventing criminal activities; and (iii) Exhibit 1D189 which Stanišić argues demonstrate that he insisted on the indiscriminate investigation and filing of reports on crimes.[1889]

559. The Appeals Chamber notes that the Trial Chamber did not refer to Exhibits 1D595 to 1D601, or the portion of Witness Tuševljak's testimony on which Stanišić relies, in the Trial Judgement.[1890] Having reviewed Exhibits 1D595 to 1D601, it is apparent to the Appeals Chamber that these exhibits relate to the subsequent prosecutions of individuals, *i.e.* outside of the Indictment period, for crimes committed in BiH during the Indictment period.[1891] The Appeals Chamber also notes that Witness Tuševljak testified that the public prosecutors in the RS and BiH continue to rely heavily upon documentary evidence gathered by the RS MUP during the Indictment period in order to establish convictions for perpetrators of crimes perpetrated at that time.[1892] The Appeals Chamber observes, specifically, Witness Tuševljak's testimony that Exhibit 1D595, a document of the Zvornik public prosecutor's office enclosing a criminal report of the Bratunac SJB, was indicative of a prosecution arising, at least in part, from evidence gathered by the RS MUP during

[1886] See Trial Judgement, vol. 2, paras 81, 510, 630-631, fns 284, 1194, 1210, 1650-1653, referring to, *inter alia*, Exhibit P160, pp 7-9, 12, 14-17.
[1887] See *supra*, para. 485.
[1888] Stanišić Appeal Brief, para. 176, referring to Exhibits 1D595, 1D596, 1D597, 1D598, 1D599, 1D600, 1D601, Simo Tuševljak, 20 Jun 2011, T. 22434-22451.
[1889] See Stanišić Appeal Brief, para. 174, referring to, *inter alia*, Milomir Orašanin, 6 Jun 2011, T. 21908-21913, Milomir Orašanin, 7 Jun 2011, T. 21915-21920, Milomir Orašanin, 9 Jun 2011, T. 22118-22123, Exhibits 1D356, 1D357.
[1890] The Appeals Chamber, however, notes that the Trial Chamber did refer to Witness Tuševljak's testimony throughout the Trial Judgement (see *e.g.* Trial Judgement, vol. 2, paras 70-71, 708, fns 240, 244, 248).
[1891] See Exhibits 1D595, 1D596, 1D597, 1D598, 1D599, 1D600, 1D601.
[1892] Simo Tuševljak, 20 Jun 2011, T. 22437.

the Indictment period,[1893] while Exhibits 1D596 to 1D601 were admitted on the basis that they were demonstrative of similar prosecutions.[1894]

560. Further, the Trial Chamber did not refer at any point in the Trial Judgement to Exhibits 1D356 and 1D357, namely, reports submitted to the public prosecutor's office by Witness Bjelošević, Chief of the Doboj CSB, dated 1 August 1992 concerning, respectively, the death of Sejfudin Hadžimujić and the suspected murder of Derviš and Nejra Begović, all non-Serbs. The Appeals Chamber also notes that the Trial Chamber did not refer to Witness Orašanin's testimony in relation to these exhibits,[1895] or to Exhibit 1D189, a criminal report of 12 December 1992 to the public prosecutor's office in Sarajevo concerning the killing of nine prisoners in Vogošća municipality,[1896] in the broader context of his evidence concerning the role of the police, prosecutors, and the judiciary in conducting investigations of crimes.[1897]

561. The Appeals Chamber considers that Stanišić has not demonstrated that the Trial Chamber's failure to address Exhibits 1D356, 1D357, 1D189, 1D595 to 1D601 as well as the portions of Witness Orašanin's testimony and Witness Tuševljak's testimony that he cites, was indicative of any error, when viewed in the full context of the Trial Chamber's findings and analysis. In this respect, the Appeals Chamber observes that the Trial Chamber specifically noted that it had analysed: (i) the KT Logbooks and KTN Logbooks;[1898] (ii) the 1993 entries in the logbook from the "Sarajevo Basic Prosecutor's Office II";[1899] and (iii) prosecutor logbooks for the period 1992 to 1995, covering the Municipalities charged in the Indictment (collectively, "Prosecutor's Logbooks").[1900] On this basis, the Trial Chamber found that:

> [i]n the municipalities of Bileća, Ilijaš, Gacko, Višegrad, Pale, Vlasenica, Vogošća, and Bosanski Šamac, no serious crimes alleged to have been committed by Serbs against non-Serbs during the Indictment period were reported to the prosecutor's offices. In addition, one crime was reported in each of the following municipalities: Doboj, Kotor Varoš, Prijedor, and Ključ. Approximately two were reported in Zvornik, nine in Teslić, four in Sanski Most, three in Brčko, and four in Bijeljina. Based on the review of the Banja Luka Basic Prosecutor's office, there were a total of 21 serious crimes by Serb perpetrators committed against non-Serb victims reported in Banja Luka, Skender Vakuf, and Donji Vakuf between 1 April and 31 December 1992.[1901]

[1893] See Simo Tuševljak, 20 Jun 2011, T. 22434-22438.
[1894] Hearing, 20 Jun 2011, T. 22449-22451.
[1895] See Stanišić Appeal Brief, para. 174, referring to, *inter alia*, Milomir Orašanin, 7 Jun 2011, T. 21915-21920.
[1896] The Appeals Chamber notes that although the Trial Chamber did refer to this exhibit, it did so to establish that the crime mentioned in this report occurred, and hence not in the context relevant to the discussion on Stanišić's *mens rea* (see Trial Judgement, vol. 1, para. 1537, referring to, *inter alia*, Exhibit 1D189).
[1897] See Milomir Orašanin, 7 Jun 2011, T. 21915-21920. See also Milomir Orašanin, 9 Jun 2011, T. 22118-22123.
[1898] Trial Judgement, vol. 2, para. 90. See Trial Judgement, vol. 2, para. 93.
[1899] Trial Judgement, vol. 2, para. 90. See Trial Judgement, vol. 2, para. 93.
[1900] Trial Judgement, vol. 2, para. 91. See Trial Judgement, vol. 2, para. 93.
[1901] Trial Judgement, vol. 2, para. 94 (citations omitted).

562. Moreover, the Trial Chamber also considered the testimonial evidence of Witness Gojković, a judge of the Basic Court in Sarajevo between 20 June and 19 December 1992, and Witness Gaćinović, the higher prosecutor for Trebinje in August of 1992, regarding their respective analyses of the Prosecutor's Logbooks, that supported the Trial Chamber's conclusion that "the police and civilian prosecutors failed to report or under-reported serious crimes committed by Serb perpetrators against non-Serbs".[1902] The Appeals Chamber notes that Stanišić's challenges to the Trial Chamber's reliance on the evidence relating to the KT Logbooks and KTN Logbooks are dismissed elsewhere in this Judgement.[1903]

563. The Appeals Chamber accepts that Exhibits 1D356, 1D357, 1D189, 1D595 to 1D601, as well as the portions of Witness Orašanin's testimony and Witness Tuševljak's testimony cited by Stanišić, suggest that *some* reports of the crimes committed against non-Serbs were filed with the RS Prosecution's office and that *some* information gathered by the RS MUP during the Indictment period was utilised in subsequent investigations and prosecutions of perpetrators of crimes, including against non-Serbs.[1904] However, it is unknown from this evidence whether subsequent prosecutions were based solely, or even to any significant extent, on reports and investigations conducted by the RS MUP during the Indictment period. Furthermore, the Trial Chamber did consider evidence of the reporting of serious crimes within the RS MUP and by the RS MUP to the judiciary during the Indictment period.[1905] Nonetheless, in light of other evidence on the record, the Trial Chamber rejected evidence, including that of Witness Tuševljak, that it was the policy of the RS MUP to investigate all crimes equally.[1906] The Appeals Chamber therefore considers that Stanišić has failed to demonstrate that these exhibits and portions of witness testimony are so clearly relevant that the absence of references to them in the Trial Judgement shows the Trial Chamber's disregard. Stanišić's arguments in relation to this evidence are therefore dismissed.

564. The Appeals Chamber now turns to Stanišić's assertion that he insisted on the indiscriminate investigation and filing of reports on crimes, including war crimes, as reflected in the conclusions reached at the 11 July 1992 Collegium.[1907] Although the Trial Chamber referred to portions of the testimony of Witness Planojević and Witness Tutuš throughout the Trial

[1902] Trial Judgement, vol. 2, paras 104, 745. See Trial Judgement, vol. 2, para. 462.
[1903] See *supra*, paras 273-280.
[1904] See Exhibits 1D595, 1D596, 1D597, 1D598, 1D599, 1D600, 1D601.
[1905] Trial Judgement, vol. 2, paras 104, 745. See *e.g.* Trial Judgement, vol. 2, paras 66-94, 462.
[1906] See Trial Judgement, vol. 2, para. 728, referring to Staka Gojković, 15 Jun 2010, T. 11738, 11740-11741, 11572-11573, 11769, Exhibits P1609.01, p. 5, P1284.55, p. 28. See also Trial Judgement, vol. 2, para. 745.
[1907] See *supra*, fn. 1783.

Judgement,[1908] it did not refer to the specific extracts upon which Stanišić relies.[1909] The Appeals Chamber notes that Witness Planojević's testimony and Witness Tutuš's testimony corroborate evidence in Exhibits P160 and P427.08 as to the conclusions reached at the 11 July 1992 Collegium, following discussions led by Stanišić.[1910] As noted above,[1911] the Trial Chamber considered the 11 July 1992 Collegium, including Exhibit P160.[1912] Accordingly, the Appeals Chamber is of the view that Stanišić has failed to demonstrate that the Trial Chamber disregarded the portions of Witness Planojević's testimony and Witness Tutuš's testimony that he cites, and his arguments are therefore dismissed.

565. Stanišić contends that Exhibit P628 and portions of the testimonies of Witness Mačar, Witness Škipina, Witness Planojević, and Witness Tutuš demonstrate that he responded promptly and unequivocally upon becoming aware of the commission of crimes.[1913] The Appeals Chamber notes that the Trial Chamber only referred to portions of Exhibit P628, a report of Witness Tutuš concerning "registered illegal activities" of the members of the former Banja Luka CSB SPD, dated 5 May 1993,[1914] in the section of the Trial Judgement dedicated to Župljanin's responsibility.[1915] The Appeals Chamber further notes that Stanišić does not explain how Exhibit P628 is demonstrative of his prompt or unequivocal response to crimes, and is liable to be dismissed on those grounds alone.[1916] Nonetheless, the Appeals Chamber notes that Exhibit P628 details various crimes committed by members of the Banja Luka CSB SPD in both 1992 and 1993. The Appeals Chamber notes, further, that the crimes referred to in Exhibit P628 were predominantly directed

[1908] With respect to Witness Planojević, see Trial Judgement, vol. 2, paras 537, 601-602, 708, fns 1386-1387, 1572, 1574, 1813, referring to Dobrislav Planojević, 22 Oct 2010, T. 16395, 16404, 16432. With respect to Witness Tutuš, see *e.g.* Trial Judgement, vol. 2, paras 80, 396, 398, 415, 470, 488, 576, 695, fns 281, 1365-1370, 1494, 1783.
[1909] See Stanišić Appeal Brief, para. 181, referring to, *inter alia*, Vladimir Tutuš, 22 Mar 2010, T. 7914-7915, Dobrislav Planojević, 29 Oct 2010, T. 16569, Simo Tuševljak, 16 Jun 2011, T. 22276-22278. Insofar as Stanišić also relies upon the pages 22276-22278 of Witness Tuševljak's testimony in support of this argument, the Appeals Chamber recalls its finding above that Stanišić has failed to demonstrate that the Trial Chamber erred by disregarding this evidence (see *supra*, para. 547). Moreover, Stanišić also relies upon these portions of Witness Tutuš's testimony, Witness Planojević's testimony, and Witness Tuševljak's testimony, in support of his argument that conclusions reached at the 11 July 1992 Collegium "reflected [his] insistence to investigate and file criminal reports on crimes, including war crimes, without any distinction being made on the basis of the ethnicity or perpetrator of the victim" (see Stanišić Appeal Brief, para. 181, referring to, *inter alia*, Vladimir Tutuš, 22 Mar 2010, T. 7914-7915, Dobrislav Planojević, 29 Oct 2010, T. 16569).
[1910] Vladimir Tutuš, 22 Mar 2010, T. 7914-7915; Dobrislav Planojević, 29 Oct 2010, T. 16569. See Trial Judgement, vol. 2, para. 637; Exhibits P160; P427.08.
[1911] See Trial Judgement, vol. 2, paras 629-633.
[1912] The Trial Chamber also expressly rejected the suggestion that the policy of the RS MUP was to investigate all crimes equally and in an impartial manner (see Trial Judgement, vol. 2, para. 728).
[1913] Stanišić Appeal Brief, para. 176, referring to, *inter alia*, Slobodan Škipina, 30 Mar 2010, T. 8339-8361, Slobodan Škipina, 31 Mar 2010, T. 8362-8364, Dobrislav Planojević, 22 Oct 2010, T. 16411-16412, Dobrislav Planojević, 28 Oct 2010, T. 16537-16539, Goran Mačar, 18 Jul 2011, T. 23473-23474, Vladimir Tutuš, 16 Mar 2010, T. 7707-7712, Exhibit P628. See *supra*, fn. 1813.
[1914] Exhibit P628, p. 1.
[1915] Trial Judgement, vol. 2, para. 438, referring to, *inter alia*, Exhibit P628, p. 10. See Trial Judgement, vol. 2, para. 488, referring to, *inter alia*, Exhibit P628.
[1916] See Stanišić Appeal Brief, para. 176, fn. 223.

against Serb victims,[1917] many of whom were policemen in the RS MUP.[1918] While the exhibit does mention isolated instances of crimes committed against non-Serbs,[1919] it does not contain evidence going to the issue of what, if any, follow up action was taken in relation to these incidents.[1920] Further, the Appeals Chamber notes that Stanišić does not contend that any of the incidents referred to in Exhibit P628 are demonstrative of action taken by the RS MUP in relation to the crimes charged in the Indictment.[1921] Finally, the Appeals Chamber notes that the Trial Chamber addressed Stanišić's actions in relation to the Banja Luka CSB SPD in some detail in the Trial Judgement.[1922] In light of the above, the Appeals Chamber is not persuaded that the absence of the Trial Chamber's explicit references to certain portions of Exhibit P628 shows its disregard of this evidence. His argument that the Trial Chamber erred by disregarding this evidence is therefore dismissed.

566. While the Trial Chamber referred to Witness Mačar's testimony,[1923] Witness Škipina's testimony,[1924] and Witness Planojević's testimony,[1925] throughout the Trial Judgement, it did not refer to the particular extracts upon which Stanišić relies in this respect. The Appeals Chamber notes that aforementioned portions of testimonies relate to, *inter alia*, the RS MUP's efforts to arrest the paramilitary Veselin "Batko" Vlahović ("Vlahović") in or around May 1992, who was considered responsible for crimes, including rape, killings, and armed robberies, against "Bosniaks" in parts of Sarajevo.[1926]

567. In this respect, the Appeals Chamber notes that Stanišić refers to a large extract of the testimony of Witness Škipina,[1927] who was the chief of the SNB in the RS from early April 1992 to 3 July 1992.[1928] This portion of Witness Škipina's testimony includes his evidence that allegations against Vlahović were an example of the evidence he received about crimes from his inspectors.[1929]

[1917] See Exhibit P628, pp 2-20.
[1918] See *e.g.* Exhibit P628, pp 2-8, 10, 13.
[1919] See Exhibit P628, pp 2, 6, 12.
[1920] See Exhibit P628, pp 2-20.
[1921] See Stanišić Appeal Brief, para. 176.
[1922] See Trial Judgement, vol. 2, paras 606-609.
[1923] See *e.g.* Trial Judgement, vol. 2, paras 1, 48, 56, 63, 67-68, 70, 251, 361, 560, 569, 581, 583, 611, 719, 726; Trial Judgement, vol. 2, fns 1, 57, 151, 214, 223, 229-230, 232, 238, 240, 747, 991, 1446, 1473, 1521, 1529, 1596, 1772, 1845, 1859-1860.
[1924] See *e.g.* Trial Judgement, vol. 2, paras 17, 26-29, 66, 557, 564, 578, 601, 619, 689; Trial Judgement, vol. 2, fns 58, 83-84, 86-92, 220-221, 1140, 1455, 1499, 1573, 1623, 1767.
[1925] See Trial Judgement, vol. 2, paras 537, 601-602, 708, fns 1386-1387, 1572, 1574, 1813.
[1926] See Slobodan Škipina, 30 Mar 2010, T. 8339-8341; Slobodan Škipina, 31 Mar 2010, T. 8362-8364; Dobrislav Planojević, 22 Oct 2010, T. 16411-16412; Dobrislav Planojević, 28 Oct 2010, T. 16537-16539; Goran Mačar, 18 Jul 2011, T. 23473-23474. See also Slobodan Škipina, 30 Mar 2010, T. 8342-8361.
[1927] Stanišić Appeal Brief, para. 176, referring to, *inter alia*, Slobodan Škipina, 30 Mar 2010, 8339-8361, Slobodan Škipina, 31 Mar 2010, T. 8362-8364.
[1928] Trial Judgement, vol. 2, para. 17.
[1929] Slobodan Škipina, 30 Mar 2010, T. 8339-8340. The Appeals Chamber notes that Witness Škipina also testified that, *inter alia*: (i) the only information he received about crimes was from his inspector (Slobodan Škipina, 30 Mar 2010, T. 8339-8840); (ii) he did not receive information about crimes through informal channels other than Radio Sarajevo (Slobodan Škipina, 30 Mar 2010, T. 8340-8341); (iii) the RS MUP may have received information from other sources,

Witness Škipina testified that he did not know what ultimately happened to Vlahović, and was unaware if any further action was taken against him.[1930] Witness Mačar recalled that the RS MUP received information about Vlahović's criminal activities, and that he remembered that "pursuant to [Witness Planojević's] orders, and after consultations with the minister, attempts were made to arrest him, but a short while before that, the military police arrested him and launched the relevant procedure".[1931]

568. The Appeals Chamber notes that Witness Škipina also gave evidence in relation to an informal meeting between himself, Witness Đerić, and Witness Planojević, where the high incidence of crimes was one of the topics discussed.[1932] Witness Planojević testified in more detail in relation to this meeting, which occurred in about May 1992,[1933] stating that he had mentioned Vlahović to Witness Đerić, and that Witness Đerić, in his presence, then made a phone call requesting that the issue of Vlahović be resolved.[1934] Witness Planojević testified that "soon after that" Vlahović was arrested by the armed forces.[1935] The Appeals Chamber further notes Witness Planojević's testimony that he had previously spoken to Stanišić about Vlahović, and that Stanišić: (i) stated that he would call the Main Staff of the armed forces; and (ii) requested Witness Planojević to "please follow this and see whether anything will really be done about that".[1936] Nonetheless, Witness Planojević also testified that he was unaware if Stanišić ever contacted the Main Staff about Vlahović.[1937]

569. The Appeals Chamber accepts that the testimonies of Witness Mačar, Witness Škipina, and Witness Planojević suggest that the RS MUP and Stanišić took some action in relation to Vlahović. However, this evidence is inconclusive as to whether Stanišić personally made any efforts to resolve the issue. Moreover, even if accepted as evidence of Stanišić's intention to resolve this issue, the Appeals Chamber considers that this isolated example of action taken in relation to one paramilitary member alleged to be a perpetrator of crimes against non-Serbs on territory outside of the geographical scope of the Indictment, is insufficient, when considered in the context of the evidence as a whole, to undermine the Trial Chamber's finding that: (i) action against paramilitaries was "only pursued by Stanišić following their refusal to submit to the command of the army and

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but that the SNB did not, in part due to communications issues (Slobodan Škipina, 30 Mar 2010, T. 8344-8345); and (iv) he attended two cabinet meetings in lieu of Stanišić, at the Minister of Interior's request (Slobodan Škipina, 30 Mar 2010, T. 8347-8348. See Slobodan Škipina, 30 Mar 2010, T. 8349-8352).

[1930] Slobodan Škipina, 31 Mar 2010, T. 8364.

[1931] Goran Mačar, 18 Jul 2011, T. 23474.

[1932] See Slobodan Škipina, 30 Mar 2010, T. 8353-8555.

[1933] Dobrislav Planojević, 22 Oct 2010, T. 16411.

[1934] Dobrislav Planojević, 22 Oct 2010, T. 16412.

[1935] Dobrislav Planojević, 22 Oct 2010, T. 16408, 16412.

[1936] Dobrislav Planojević, 22 Oct 2010, T. 16407. See Dobrislav Planojević, 22 Oct 2010, T. 16412.

[1937] Dobrislav Planojević, 22 Oct 2010, T. 16408.

their continued commission of acts of theft, looting, and trespasses against the local RS leaders";[1938] and (ii) "when dealing with war crimes, Mićo Stanišić focused *primarily* on crimes committed against Serbs".[1939] Accordingly, the Appeals Chamber is of the view that Stanišić has failed to demonstrate that the Trial Chamber erred by not explicitly addressing this evidence in the Trial Judgement. His arguments in this respect are therefore dismissed.

570. Finally, the Appeals Chamber notes that the Trial Chamber in fact considered the portion of Witness Tutuš's testimony upon which Stanišić relies, which relates to an incident on 21 July 1992, when 30 armed members of the Banja Luka CSB SPD freed two members of the detachment from the Tunjice prison in Banja Luka.[1940] Accordingly, Stanišić has failed to demonstrate that the Trial Chamber disregarded this evidence and his arguments in this respect are dismissed.

(iii) Conclusion

571. In light of the above, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erroneously disregarded evidence demonstrating that he did not intend the commission of crimes. Accordingly, the Appeals Chamber dismisses Stanišić's arguments in this respect.

(i) Whether the Trial Chamber erred in concluding that Stanišić possessed the requisite intent pursuant to the first category of joint criminal enterprise (Stanišić's first ground of appeal in part and fourth ground of appeal in part)

(i) Submissions of the parties

572. As set out above,[1941] Stanišić contends that the Trial Chamber erred in finding that the only reasonable inference on the basis of the evidence was that he was aware of the persecutorial intentions of the Bosnian Serb leadership to forcibly transfer and deport non-Serbs from BiH and shared that intent.[1942] The Prosecution responds that the Trial Chamber reasonably concluded that Stanišić shared the common criminal purpose of the JCE.[1943]

[1938] Trial Judgement, vol. 2, para. 756.
[1939] Trial Judgement, vol. 2, para. 758 (emphasis added).
[1940] See Trial Judgement, vol. 2, para. 488, referring to, *inter alia*, Vladimir Tutuš, 16 Mar 2010, T. 7708-7712. While Stanišić also refers to Vladimir Tutuš, 16 Mar 2010, T. 7707, the Appeals Chamber considers that the testimony of Witness Tutuš therein is not such that it impacts upon the testimony at pages 7708-7712 of the transcript.
[1941] See *supra*, para. 368.
[1942] Stanišić Appeal Brief, para. 96, referring to Trial Judgement, vol. 2, para. 769. See Stanišić Appeal Brief, paras 98, 111, 187, Appeal Hearing, 15 Dec 2015, AT. 97, where Stanišić reiterates that the Trial Chamber erred in drawing the inference that he shared the *mens rea*. See also Stanišić Appeal Brief, paras 101-102, Appeal Hearing, 15 Dec 2015, AT. 98-99, 103-104.
[1943] Prosecution Response Brief (Stanišić), para. 36.

(ii) Analysis

573. The Appeals Chamber recalls its previous finding that the Trial Chamber found that, Stanišić possessed the requisite intent throughout the Indictment period (*i.e.* from at least 1 April 1992 until 31 December 1992),[1944] when it concluded that he shared the "persecutorial intentions of the Bosnian Serb leadership to forcibly transfer and deport Muslims and Croats from territories of BiH".[1945] In the preceding sections of this Judgement, the Appeals Chamber has addressed Stanišić's arguments concerning the factors referred to by the Trial Chamber in the *Mens Rea* Section – namely, at paragraphs 766 to 769 of volume two of the Trial Judgement – in reaching its conclusion that he shared this requisite intent. As indicated above, the Appeals Chamber considers that the factors referred to by the Trial Chamber in the *Mens Rea* Section must be understood as a summary of findings contained throughout the Trial Judgement and must be read in the context of the Trial Judgement as a whole.[1946] The Appeals Chamber will now proceed to assess the effect of the findings in the preceding sections concerning the factors listed in the *Mens Rea* Section on the Trial Chamber's ultimate conclusion regarding Stanišić's intent.

574. In assessing Stanišić's intent, the Trial Chamber "first considered evidence on Stanišić's knowledge of the commission of crimes against Muslims and Croats in the geographic area and during the time period covered by the Indictment".[1947] In this respect, the Appeals Chamber has found that the Trial Chamber erred in finding: (i) on the basis of the Communications Logbook, that Stanišić was "regularly informed throughout 1992 about crimes";[1948] and (ii) that on 18 April 1992, Stanišić was informed that a certain "Zoka" had arrested Muslims in Sokolac.[1949]

575. Nonetheless, the Appeals Chamber has found that in light of the remaining findings of the Trial Chamber, a reasonable trier of fact could have found that Stanišić acquired knowledge of crimes committed against Muslims and Croats in the area relevant to the Indictment as of late April 1992.[1950] More specifically, the Appeals Chamber has upheld the Trial Chamber's findings that Stanišić became aware: (i) in late April 1992, of the looting of Muslim property by reserve police in Vrace, to which Stanišić responded that it was "normal" in times of war;[1951] (ii) at the end of May 1992, that a large number of Muslims, including civilians, were arrested and detained in the

[1944] See *supra*, para. 376.
[1945] Trial Judgement, vol. 2, para. 769.
[1946] See *supra*, para. 378. See generally *supra*, paras 389-571.
[1947] Trial Judgement, vol. 2, para. 766.
[1948] See *supra*, para. 411.
[1949] See *infra*, paras 664-665. Trial Judgement, vol. 2, para. 612.
[1950] See *supra*, para. 412.
[1951] Trial Judgement, vol. 2, para. 603.

municipality of Prijedor;[1952] (iii) on 3 June 1992, that Muslim and Croat civilians were victims of unspecified crimes, the perpetrators of which were identified as "individuals and groups among our forces";[1953] (iv) "at the latest, by the beginning of June 1992" (and again in July, August, and October 1992), of the unlawful detention of Muslims and Croats;[1954] (v) at some point between June and the beginning of July 1992, of the activities of the paramilitary groups in Zvornik, "including [committing] war crimes";[1955] (vi) on 11 July 1992, of "looting, mainly perpetrated during 'mopping-up operations'" and "war crimes" committed by Serbs;[1956] (vii) on 20 July 1992, that "the VRS and the police had arrested 'several thousands' of Muslims and Croats, including persons of no security interest, whom Župljanin proposed to use as hostages for prisoner exchanges";[1957] and (viii) by around 23 or 24 August 1992, of the killing of approximately 150-200 Muslim men from Trnopolje detention camp by Prijedor policemen at Koričanske Stijene.[1958]

576. Further, the Trial Chamber considered various other factors in assessing Stanišić's intent. Among those was Stanišić's "position at the time".[1959] In this regard, the Appeals Chamber recalls that it has found that the Trial Chamber erred in finding that Stanišić was a member of the BSA.[1960] Regardless of whether he was a member of the BSA, the Trial Chamber further considered that from 31 March 1992 until the end of 1992, he held the position of Minister of Interior within the RS Government,[1961] which was one of the most important organs in the RS.[1962]

577. The Trial Chamber further considered evidence of Stanišić's conduct and statements in relation to policies of the BSA and SDS.[1963] As regards these policies, the Trial Chamber noted, in particular: (i) views expressed by Karadžić, Dutina, and Kuprešanin at the BSA and SDS Meetings in late 1991 and early 1992, "that there be an ethnic division of the territory, that 'a war would lead to a forcible and bloody transfer of minorities' from one region to another, and that joint life with Muslims and Croats was impossible";[1964] (ii) Stanišić's attendance at the 1st Council Meeting on 11 January 1992, where the boundaries of ethnic territory and the establishment of government

[1952] Trial Judgement, vol. 2, para. 689, referring to, *inter alia*, Exhibits P1376, P1377. See Trial Judgement, vol. 2, paras 420, 764.
[1953] Trial Judgement, vol. 2, para. 689, referring to, *inter alia*, Exhibit P1387. See Trial Judgement, vol. 2, para. 764.
[1954] Trial Judgement, vol. 2, para. 762. See Trial Judgement, vol. 2, paras 617, 623, 631-633, 639, 646, 660-663, 763-765.
[1955] Trial Judgement, vol. 2, para. 713, referring to Dragan Đokanović, 20 Nov 2009, T. 3586-3588, ST222, 9 Nov 2010, T. 17101-17104 (confidential). For crimes committed by paramilitaries in Zvornik, see *e.g.* Trial Judgement, vol. 1, paras 1652, 1663, 1666, 1670.
[1956] Trial Judgement, vol. 2, para. 632. See Trial Judgement, vol. 2, para. 631.
[1957] Trial Judgement, vol. 2, para. 765. See Trial Judgement, vol. 2, para. 638.
[1958] Trial Judgement, vol. 2, para. 677. See Trial Judgement, vol. 1, para. 696.
[1959] Trial Judgement, vol. 2, para. 769.
[1960] See *supra*, para. 418.
[1961] Trial Judgement, vol. 2, paras 141, 542. See Trial Judgement, vol. 2, paras 6, 797.
[1962] Trial Judgement, vol. 2, para. 131.
[1963] Trial Judgement, vol. 2, para. 767.

organs in the RS were determined to be priorities;[1965] and (iii) the Strategic Objectives, presented to the BSA on 12 May 1992, which called for the separation of Serb people from Muslims and Croats.[1966]

578. The Appeals Chamber observes that, with respect to Stanišić's statements in relation to these policies, the Trial Chamber found that: (i) on 24 March 1992, when he was elected the Minister of Interior by the BSA, Stanišić remarked that "the SRBiH MUP had been used as an instrument of the SDA and the HDZ for achieving their political goals, including the creation of an army from the reserve forces comprised of only one ethnicity and the dismissal of Serbs from their positions";[1967] (ii) upon his election as the Minister of Interior, Stanišić also stated that he hoped that "in the future, the Serbian MUP [would] become a professional organisation, an organ of state administration which [would] actually protect property, life, body and other values";[1968] (iii) at the November 1992 BSA Session, Stanišić "acknowledged that 'in the beginning', 'thieves and criminals' were accepted into the reserve police forces because 'we wanted the country defended'";[1969] and (iv) at the same BSA session, Stanišić stated that he had always followed "policies of the SDS Presidency and our Deputies in the former state".[1970]

579. In this context, the Trial Chamber also considered Stanišić's "close relationship with Karadžić" from at least June 1991.[1971]

580. Further, the Trial Chamber took into account evidence of Stanišić's deal with Arkan's Men, in the sense that he approved of the operations of Arkan's Men in Bijeljina and Zvornik, and allowed Arkan to remove property in exchange for liberating the territories.[1972] While the Trial Chamber did not specify precisely when it considered Stanišić had approved of these operations, the Appeals Chamber notes the Trial Chamber's finding that the attacks by, *inter alios*, Arkan's Men on Bijeljina and Zvornik took place in early April 1992.[1973] The Trial Chamber further considered that while Stanišić took action against some paramilitary groups, this action:

> was only pursued by Stanišić following their refusal to submit to the command of the army and their continued commission of acts of theft, looting, and trespasses against the local RS leaders.

[1964] Trial Judgement, vol. 2, para. 767. See Trial Judgement, vol. 2, paras 162, 174, 179.
[1965] Trial Judgement, vol. 2, para. 767. See Trial Judgement, vol. 2, para. 551.
[1966] Trial Judgement, vol. 2, para. 767. See Trial Judgement, vol. 2, paras 188-199.
[1967] Trial Judgement, vol. 2, para. 558.
[1968] Trial Judgement, vol. 2, para. 558. See Trial Judgement, vol. 2, paras 542, 732.
[1969] Trial Judgement, vol. 2, para. 600.
[1970] Trial Judgement, vol. 2, para. 570.
[1971] Trial Judgement, vol. 2, paras 730, 769. See Trial Judgement, vol. 2, paras 565, 567-568.
[1972] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, para. 710.
[1973] Trial Judgement, vol. 1, paras 888, 915 (Bijeljina), 1571-1572 (Zvornik).

> The primary motivation for these actions was the theft of Golf vehicles and harassment of the Serbs, an issue that concerned the RS authorities since the start of hostilities.[1974]

581. Moreover, the Trial Chamber considered: (i) Stanišić's presence at the sessions of the RS Government on 4 and 29 July 1992 when the issue of Muslims moving out of the RS was raised and the RS MUP was tasked with gathering information about Muslims moving out of the RS and the needs of displaced persons and refugees;[1975] (ii) Stanišić's presence at the 11 July 1992 Collegium, "where the relocation of citizens and entire villages was discussed";[1976] and (iii) the Perišić Report of 13 July 1992, which detailed that in the municipality of Višegrad, "certain police officers were exhibiting a lack of professionalism while over 2,000 Muslims moved out of the municipality" of Višegrad "in an organised manner".[1977]

582. Further, the Trial Chamber considered Stanišić's "continued support for and participation in the implementation of the polices of the Bosnian Serb leadership and the SDS".[1978] In addition to the views of Karadžić, Dutina, and Kuprešanin, the Strategic Objectives, and Stanišić's attendance at the 1st Council Meeting, referred to above,[1979] the Trial Chamber also considered that: (i) SDS and Bosnian Serb leadership intensified a process of territorial demarcation following the declaration of independence in the BiH Assembly on 15 October 1991 and that the forceful assumption of control over territories was an important part of this process;[1980] (ii) prior to February 1992, Serbs had coalesced around the idea of a separate Serb entity "carved out of the territory of the SRBiH";[1981] (iii) Bosnian Serb control over the territories was to be achieved through the establishment of separate and parallel Bosnian Serb institutions, including the RS and RS Government;[1982] and (iv) the process of establishing Serb municipalities was initiated through the Variant A and B Instructions issued on 19 December 1991, which led to the violent takeovers of the Municipalities, the aim of which was the establishment of an ethnically "pure" Serb state through the permanent removal of the Bosnian Muslims and Bosnian Croats.[1983]

583. With respect to Stanišić's continued support for and participation in the implementation of these policies, the Trial Chamber found that Stanišić: (i) "worked to promote the interests, and implement the decisions, of the SDS in the SRBiH MUP and was involved in all the stages of the

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[1974] Trial Judgement, vol. 2, para. 756. See Trial Judgement, vol. 2, paras 708, 715, 717.
[1975] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, paras 627, 650.
[1976] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, paras 629-633.
[1977] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, para. 634.
[1978] Trial Judgement, vol. 2, para. 769.
[1979] See *supra*, para. 577.
[1980] Trial Judgement, vol. 2, para. 310.
[1981] Trial Judgement, vol. 2, para. 563.
[1982] Trial Judgement, vol. 2, para. 310.
[1983] Trial Judgement, vol. 2, paras 310-311. See Trial Judgement, vol. 2, paras 228-233.

creation of the Bosnian Serb institutions in BiH, in particular the [RS] MUP",[1984] which included his involvement in the establishment of the SDS,[1985] as well as the creation of the RS MUP,[1986] including through the dismissal of non-Serbs,[1987] and arming of RS MUP forces;[1988] (ii) "made a majority of key appointments in the RS MUP",[1989] which included JCE members involved in the takeover of municipalities;[1990] (iii) participated voluntarily in the creation of a separate Serb entity, as indicated by his conduct, presence at key meetings, attendance at sessions of the BSA, and acceptance of the position of Minister of Interior; [1991] (iv) consistently approved the deployment of RS MUP forces to joint combat activities with other Serb forces, despite his awareness of crimes committed by joint Serb forces;[1992] (v) was aware of the Variant A and B Instructions since the "police were assigned" and played a "central" role in their implementation;[1993] (vi) only sought to withdraw regular policemen from combat activities towards the end of 1992, when most of the territory of RS had been consolidated, while permitting the continued use of reserve forces by the army, primarily for the purpose of guarding prisons and detention camps, despite being aware that reserve police had been infiltrated by criminal elements;[1994] and (vii) despite his knowledge of crimes that were being committed, took insufficient action to put an end to them and instead permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb forces involved in the commission of crimes, particularly the JNA/VRS and the TO.[1995]

584. In light of the foregoing, despite the Trial Chamber's errors set out above,[1996] and in spite of the Appeals Chamber's conclusion that a reasonable trier of fact could have found that Stanišić first became aware of the commission of crimes against Muslims and Croats in the area relevant to the Indictment only as of late April 1992, the Appeals Chamber is not convinced that these errors have an impact on the Trial Chamber's ultimate conclusion on Stanišić's intent. On the basis of the remaining findings of the Trial Chamber set out in the preceding paragraphs,[1997] including those concerning: (i) Stanišić's position from 31 March 1992 until the end of that year, as Minister of the

[1984] Trial Judgement, vol. 2, para. 734. See generally, Trial Judgement, vol. 2, paras 729-736.
[1985] Trial Judgement, vol. 2, para. 729. See Trial Judgement, vol. 2, paras 544-575.
[1986] Trial Judgement, vol. 2, paras 732-733. See Trial Judgement, vol. 2, para. 57.
[1987] Trial Judgement, vol. 2, paras 576-577, 738.
[1988] Trial Judgement, vol. 2, para. 740.
[1989] Trial Judgement, vol. 2, para. 733. See Trial Judgement, vol. 2, para. 579.
[1990] Trial Judgement, vol. 2, para. 744.
[1991] Trial Judgement, vol. 2, para. 734.
[1992] Trial Judgement, vol. 2, para. 743. See Trial Judgement, vol. 2, paras 587-588, 601, 630, 632, 592.
[1993] Trial Judgement, vol. 2, para. 731.
[1994] Trial Judgement, vol. 2, para. 743. See Trial Judgement, vol. 2, paras 594, 600, 643.
[1995] Trial Judgement, vol. 2, para. 759. See Trial Judgement, vol. 2, paras 746, 751-758.
[1996] See *supra*, paras 574-576.
[1997] See *supra*, paras 575-583.

Interior within the RS Government, which was one of the most important organs in the RS;[1998] (ii) Stanišić's deal with Arkan's Men, whereby he approved of the operations of Arkan's Men in Bijeljina and Zvornik in early April 1992 and allowed Arkan to remove property in exchange for liberating the territories;[1999] (iii) Stanišić's acknowledgement at the November 1992 BSA Session that "'in the beginning', 'thieves and criminals' were accepted into the reserve police forces because 'we wanted the country defended'";[2000] (iv) Stanišić's close relationship, from at least June 1991, with Karadžić, who made an inflammatory speech on 11 March 1992 at the BSA that "a war would lead to a forcible and bloody transfer of minorities from one region to another and the creation of three ethnically homogenous regions within BiH";[2001] (v) the displacement of large numbers of non-Serbs and their movement out of the RS, as discussed both at sessions of the RS Government sessions and the 11 July 1992 Collegium, when Stanišić was present, and also referred to in the Perišić Report;[2002] (vi) Stanišić's continued support for participation in the implementation of the policies of the SDS and BSA;[2003] (vii) Stanišić's consistent approval of the deployment of RS MUP forces to joint combat activities with other Serb forces, despite his awareness of crimes committed by joint Serb forces;[2004] (viii) Stanišić's statement that he had always followed the policies of the SDS Presidency and of its deputies in the former state;[2005] and (ix) Stanišić's involvement in all the stages of the creation of the Bosnian Serb institutions in BiH, and the RS MUP in particular,[2006] the Appeals Chamber concludes that a reasonable trier of fact could have concluded that the only reasonable inference is that Stanišić possessed the requisite intent throughout the Indictment period (*i.e.* from at least 1 April 1992 until 31 December 1992).

(j) Conclusion

585. For the foregoing reasons, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in finding that he possessed the requisite intent for the first category of joint criminal enterprise liability throughout the Indictment period (*i.e.* from at least 1 April 1992 until 31 December 1992). The Appeals Chamber therefore dismisses Stanišić's first and third grounds of appeal in part and his fourth ground of appeal in its entirety.

[1998] Trial Judgement, vol. 2, paras 131, 141, 542. See Trial Judgement, vol. 2, paras 6, 797.
[1999] Trial Judgement, vol. 2, paras 710-711, 768.
[2000] Trial Judgement, vol. 2, para. 600.
[2001] Trial Judgement, vol. 2, para. 179. See Trial Judgement, vol. 2, para. 767.
[2002] Trial Judgement, vol. 2, para. 768. See Trial Judgement, vol. 2, paras 627, 629-634, 650.
[2003] Trial Judgement, vol. 2, para. 769. See *supra*, paras 582-583.
[2004] Trial Judgement, vol. 2, para. 743.
[2005] Trial Judgement, vol. 2, para. 570.
[2006] Trial Judgement, vol. 2, para. 734.

7. Alleged errors in relation to Stanišić's responsibility pursuant to the third category of joint criminal enterprise

(a) Introduction

586. The Trial Chamber convicted Stanišić for the following crimes falling outside the common purpose: persecutions as a crime against humanity (through the underlying acts of killings, torture, cruel treatment, inhumane acts, unlawful detention, establishment and perpetuation of inhumane living conditions, plunder of property, wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings, and imposition and maintenance of restrictive and discriminatory measures) (Count 1), murder as a violation of the laws or customs of war (Count 4) and torture as a violation of the laws or customs of war (Count 6).[2007] The Trial Chamber also found Stanišić responsible for murder, torture, and inhumane acts as crimes against humanity (Counts 3, 5, and 8, respectively) and for cruel treatment as a violation of the laws or customs of war (Count 7) pursuant to the third category of joint criminal enterprise but did not enter a conviction for these crimes on the basis of the principles relating to cumulative convictions.[2008]

587. Stanišić challenges the Trial Chamber's findings on his responsibility pursuant to the third category of joint criminal enterprise and his conviction on this basis in his eighth through eleventh grounds of appeal. In particular, he submits that the Trial Chamber erred in law by: (i) entering convictions for the specific intent crime of persecutions as a crime against humanity pursuant to the third category of joint criminal enterprise;[2009] and (ii) failing to enter the required findings that the crimes charged under Counts 3 to 8 were foreseeable to Stanišić and that he willingly took that risk.[2010] Stanišić submits further that the Trial Chamber erred in fact by implicitly finding that it was foreseeable to him and that he willingly took the risk that the crimes charged under Counts 3 to 8[2011] and persecutions through underlying acts as charged under Count 1[2012] could be committed. The Prosecution responds that Stanišić's challenges in his eighth through eleventh grounds of appeal should be dismissed.[2013]

[2007] Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[2008] Trial Judgement, vol. 2, paras 804, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[2009] Stanišić Appeal Brief, paras 333-369.
[2010] Stanišić Appeal Brief, paras 370-387.
[2011] Stanišić Appeal Brief, paras 388-423.
[2012] Stanišić Appeal Brief, paras 424-476.
[2013] Prosecution Response Brief (Stanišić), paras 178, 185, 225.

(b) Alleged errors in relation to Stanišić's convictions for persecutions as a crime against humanity (Stanišić's eighth ground of appeal)

(i) Submission of the parties

588. Stanišić submits that the Trial Chamber erred in law by entering convictions for persecutions as a crime against humanity pursuant to the third category of joint criminal enterprise.[2014] He acknowledges that the Tribunal's jurisprudence allows for convictions for specific intent crimes on the basis of the third category of joint criminal enterprise but argues that cogent reasons exist to depart from this jurisprudence.[2015]

589. More specifically, Stanišić contends that the case law of the Tribunal gives rise to cogent reasons to depart from the *Brđanin* Appeal Decision of 19 March 2004 and subsequent consistent jurisprudence.[2016] He submits that in order to be convicted as a perpetrator of a specific intent crime, specific intent must be established,[2017] and that, therefore, the necessary requirements to prove the *mens rea* for persecutions are "the intent to commit the underlying act (general intent) and the intent to discriminate on political, racial or religious grounds (*dolus specialis*)".[2018] He submits that accordingly, an accused cannot be convicted for committing a specific intent crime (as a perpetrator) pursuant to the third category of joint criminal enterprise because this mode of liability only requires *dolus eventualis*.[2019] Stanišić contends that the *Stakić* Trial Judgement,[2020] *Stakić* Appeal Judgement,[2021] and Judge Shahabuddeen's "partially dissenting" opinion in the *Brđanin* Appeal Decision of 19 March 2004 provide support for the proposition that *dolus specialis* is "an

[2014] Stanišić Appeal Brief, para. 333. See Stanišić Appeal Brief, paras 368-369.
[2015] Stanišić Appeal Brief, paras 334-368. The Appeals Chamber notes that Stanišić uses the terms "specific intent", "special intent", and "*dolus specialis*" interchangeably to refer to the *mens rea* elements for the crimes of persecutions and genocide, as well as for crimes in Article 2 of the International Convention for the Suppression of Terrorist Bombing, U.N. Doc. A/RES/52/164; 37 ILM 249 (1998); 2149 UNTS 284, adopted 15 December 1997, entered into force 23 May 2001 ("Convention for the Suppression of Terrorist Bombings") (see Stanišić Appeal Brief, paras 334, 336-340, 345-349, 351-353, 355-357, 359, 361-363, 365-367). Similarly, the Prosecution uses the terms "special intent crimes" and "specific intent crimes" interchangeably to refer collectively to the crimes of persecutions and genocide (see Prosecution Response Brief (Stanišić), paras 168-170, 172, 174-176) and refers to the *mens rea* requirement of the crime of persecutions as "*dolus specialis*" (see Prosecution Response Brief (Stanišić), para. 170). The Appeals Chamber will adopt the terms "discriminatory intent" or "specific intent" to refer to the *mens rea* of persecutions, and "specific intent crimes" to refer collectively to the crimes of persecutions and genocide, as well as crimes in Article 2 of the Convention for the Suppression of Terrorist Bombings.
[2016] Stanišić Appeal Brief, para. 350, referring to *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-AR73.10, Decision on Interlocutory Appeal, 19 March 2004 ("*Brđanin* Appeal Decision of 19 March 2004"). See Stanišić Appeal Brief, paras 336-349.
[2017] Stanišić Appeal Brief, para. 336, referring to *Stakić* Appeal Judgement, para. 328. See Stanišić Appeal Brief, paras 337-339, referring to, *inter alia*, *Krstić* Appeal Judgement, para. 134, *Krnojelac* Appeal Judgement, para. 111, *Kvočka et al.* Appeal Judgement, para. 110, *Jelisić* Appeal Judgement, para. 49.
[2018] Stanišić Appeal Brief, para. 340 (emphasis omitted).
[2019] Stanišić Appeal Brief, para. 346. See Stanišić Appeal Brief, paras 341-344, 347.
[2020] Stanišić Appeal Brief, para. 348, referring to *Stakić* Trial Judgement, para. 530.
[2021] Stanišić Appeal Brief, para. 348, referring to *Stakić* Appeal Judgement, para. 328.

inherent requirement and therefore a constituent part of the crime [and] cannot be varied by a mode of liability".[2022]

590. Furthermore, Stanišić argues that recent jurisprudence of the Special Tribunal for Lebanon ("STL")[2023] and Special Court for Sierra Leone ("SCSL")[2024] demonstrates that "it would be a serious legal anomaly to allow convictions under JCE III [...] for crimes which require proof of a specific intent"[2025] and therefore provides cogent reasons to depart from the *Brđanin* Appeal Decision of 19 March 2004 and subsequent jurisprudence.[2026] In addition, relying on Article 2 of the Convention for the Suppression of Terrorist Bombings,[2027] the ICC Statute,[2028] and post-World War II cases,[2029] Stanišić submits that "no support can be found" in customary international law allowing for convictions for specific intent crimes on the basis of the third category of joint criminal enterprise.[2030]

591. Stanišić requests that the Appeals Chamber: (i) hold that a departure from the Tribunal's case law is warranted and that no convictions for specific intent crimes may be entered under the third category of joint criminal enterprise; and (ii) quash Stanišić's convictions pursuant to the third category of joint criminal enterprise for the crime of persecutions as a crime against humanity under Count 1.[2031]

[2022] Stanišić Appeal Brief, para. 349, referring to *Brđanin* Appeal Decision of 19 March 2004, Separate Opinion of Judge Shahabuddeen, para. 4. See Stanišić Reply Brief, paras 88-89.

[2023] Stanišić Appeal Brief, paras 351-352, referring to *The Prosecutor. v. Salim Jamil Ayyash et al.*, Case No. STL-11-01/I/AC/R176bis, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011 ("STL Decision of 16 February 2011"), paras 248-249.

[2024] Stanišić Appeal Brief, para. 353, referring to *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, Judgement, 18 May 2012 ("*Taylor* Trial Judgement"), para. 468.

[2025] Stanišić Appeal Brief, para. 352. See Stanišić Appeal Brief, para. 353.

[2026] Stanišić Appeal Brief, para. 354. See Stanišić Appeal Brief, paras 352-353. See also Stanišić Appeal Brief, para. 334.

[2027] Stanišić Appeal Brief, para. 356, referring to Convention for the Suppression of Terrorist Bombings, art. 2(1). See Stanišić Appeal Brief, paras 357-358.

[2028] Stanišić Appeal Brief, para. 363, referring to Statute of the International Criminal Court, adopted by a Diplomatic Conference in Rome on 17 July 1998 ("ICC Statute"). See Stanišić Appeal Brief, paras 361-362.

[2029] Stanišić Appeal Brief, para. 364, referring to *The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Göring et al.*, Judgement, 1 October 1946, Trial of Major War Criminals Before the International Military Tribunal Under Control Council Law No. 10, Vol. 1 (1947), *The United States of America v. Altstoetter et al.*, U.S. Military Tribunal, Judgement, 3-4 December 1947, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10 (1951), Vol. III ("*Justice* case"), *The United States of America v. Greifelt et al.*, U.S. Military Tribunal, Judgement, 10 March 1948, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10 (1951), Vol. V.

[2030] Stanišić Appeal Brief, para. 367. See Stanišić Appeal Brief, paras 355, 364-366.

[2031] See Stanišić Notice of Appeal, para. 51; Stanišić Appeal Brief, paras 368-369. In his notice of appeal, Stanišić also requests the Appeals Chamber to "impose a new and appropriate, lower sentence" (Stanišić Notice of Appeal, para. 51).

592. The Prosecution responds that there are no cogent reasons to depart from the existing jurisprudence and that Stanišić's arguments should be dismissed.[2032] Specifically, it submits that Stanišić's arguments with respect to the Tribunal's jurisprudence were each considered and rejected by the Appeals Chamber in the *Brđanin* Appeal Decision of 19 March 2004,[2033] and that contrary to Stanišić's argument, the Trial Chamber did not convict Stanišić for persecutions on the basis of *dolus eventualis*.[2034] It contends that the Trial Chamber correctly convicted Stanišić for persecutions through deportation and forcible transfer pursuant to the first category of joint criminal enterprise on the basis that he had discriminatory intent,[2035] and that "[t]here is therefore no logical reason why Stanišić should not also be found guilty under JCE III of persecution on the basis of other underlying crimes".[2036]

593. The Prosecution further contends that recent jurisprudence of the STL and SCSL "do[es] not provide cogent reasons for the Appeals Chamber to revisit and depart from its previous and consistent jurisprudence regarding the application of JCE III to specific intent crimes".[2037] In addition, the Prosecution asserts that the absence of the third category of joint criminal enterprise from the Convention for the Suppression of Terrorist Bombings and the ICC Statute cannot "undermine settled jurisprudence of the Tribunal".[2038] It also submits that the post-World War II cases relied upon by Stanišić: (i) support the recognition of the third category of joint criminal enterprise under customary international law;[2039] and (ii) do not exclude a conviction of an accused for specific intent crimes pursuant to the third category of joint criminal enterprise.[2040]

(ii) Analysis

594. The Appeals Chamber recalls that the crime of persecutions consists of an act or omission that discriminates in fact and denies or infringes upon a fundamental right laid down in customary

[2032] Prosecution Response Brief (Stanišić), paras 168-169, 175, 178. See Prosecution Response Brief (Stanišić), paras 170-173.
[2033] Prosecution Response Brief (Stanišić), para. 170. See Prosecution Response Brief (Stanišić), paras 169-173.
[2034] Prosecution Response Brief (Stanišić), para. 177, referring to Stanišić Appeal Brief, paras 344-347.
[2035] Prosecution Response Brief (Stanišić), paras 168, 177.
[2036] Prosecution Response Brief (Stanišić), para. 177. See Prosecution Response Brief (Stanišić), para. 168.
[2037] Prosecution Response Brief (Stanišić), para. 175. It argues further that Stanišić's reliance on the jurisprudence of other internationalised tribunals is selective and that he ignores jurisprudence of the ICTR Appeals Chamber confirming that all three forms of joint criminal enterprise liability may be applied to the specific intent crime of genocide (Prosecution Response Brief (Stanišić), para. 176, referring to *André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, 22 October 2004 ("*Rwamakuba* Appeal Decision on Joint Criminal Enterprise of 22 October 2004"), paras 10, 13, 24, 31, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Six Preliminary Motions Challenging Jurisdiction, 28 April 2009, para. 32).
[2038] Prosecution Response Brief (Stanišić), para. 174.
[2039] Prosecution Response Brief (Stanišić), para. 174, referring to *Rwamakuba* Appeal Decision on Joint Criminal Enterprise of 22 October 2004, para. 24, *Brđanin* Appeal Judgement, paras 393-404.
[2040] Prosecution Response Brief (Stanišić), para. 174.

international law or treaty law (*actus reus*).[2041] The *mens rea* element is satisfied when the underlying act or omission is carried out deliberately (general intent) and with the intent to discriminate on the basis of race, religion, or politics (discriminatory or specific intent).[2042]

595. The Appeals Chamber also recalls that under the third category of joint criminal enterprise, an accused can be held responsible for a crime outside the common purpose if, under the circumstances of the case: (i) 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 joint criminal enterprise) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.[2043]

596. It is well established in the case law of the Tribunal that the Appeals Chamber may, exceptionally, depart from its previous decisions if there are cogent reasons to do so,[2044] *i.e.* if the previous decision was made "'on the basis of a wrong legal principle' or given *per incuriam*, that is, 'wrongly decided, usually because the judge or judges were ill-informed about the applicable law'".[2045] It is for the party advocating a departure to demonstrate that there are cogent reasons in the interests of justice that justify such departure.[2046]

597. With respect to Stanišić's argument that the Tribunal's case law gives rise to cogent reasons to depart from the Tribunal's case law, the Appeals Chamber considers that Stanišić conflates the *mens rea* requirement for the crime of persecutions with the subjective element of a mode of liability by which criminal responsibility may attach to an accused. It recalls that for a conviction for persecutions pursuant to the third category of joint criminal enterprise, it is sufficient that it was foreseeable to the accused that an act of persecutions could be committed and that it could be committed with discriminatory intent.[2047] This is well established in the Tribunal's jurisprudence,[2048] and Stanišić fails to show that this jurisprudence is based on incorrect legal

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[2041] *Popović et al.* Appeal Judgement, paras 737, 761; *Đorđević* Appeal Judgement, para. 693.
[2042] *Popović et al.* Appeal Judgement, paras 737-738; *Đorđević* Appeal Judgement, para. 558; *Šainović et al.* Appeal Judgement, para. 579.
[2043] *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brđanin* Appeal Judgement, paras 365, 411.
[2044] *Đorđević* Appeal Judgement, para. 23; *Galić* Appeal Judgement, para. 117; *Aleksovski* Appeal Judgement, para. 107.
[2045] *Đorđević* Appeal Judgement, para. 24, quoting *Aleksovski* Appeal Judgement, para. 108.
[2046] *Đorđević* Appeal Judgement, para. 24. See *Popović et al.* Appeal Judgement, para. 1674.
[2047] *Đorđević* Appeal Judgement, para. 919; *Brđanin* Appeal Decision of 19 March 2004, para. 6. It must further be shown that the accused willingly took the risk that the crime might be committed (see *supra*, para. 595).
[2048] See *Popović et al.* Appeal Judgement, paras 1440, 1707-1708; *Đorđević* Appeal Judgement, para. 83, referring to *Krstić* Appeal Judgement, para. 150, *Martić* Appeal Judgement, paras 194-195, 202-205. See also *Đorđević* Appeal Judgement, paras 84, 929. With regard to the *Stakić* Appeal Judgement and *Krstić* Appeal Judgement to which Stanišić refers, the Appeals Chamber notes that in fact these cases confirm that convictions for specific intent crimes may be

principles or given *per incuriam*. In light of the above, the Appeals Chamber is of the view that Stanišić has failed to demonstrate that the Tribunal's case law provides cogent reasons to depart from the existing jurisprudence.

598. Insofar as Stanišić relies upon the jurisprudence of the STL and SCSL, the Appeals Chamber recalls that it 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 than that reached by another judicial body.[2049] The Appeals Chamber considers that in order to constitute a cogent reason for departing from its established jurisprudence on a matter, the party advocating a departure would need to show that a non-binding opinion of another court is the correct law and demonstrate that there is a clear mistake in the Appeals Chamber's approach.[2050] Accordingly, and on review of the STL Decision of 16 February 2011 and the *Taylor* Trial Judgement,[2051] the Appeals Chamber finds that Stanišić has not demonstrated any error in the Appeals Chamber's well-established jurisprudence.

599. With respect to Stanišić's argument that customary international law does not permit convictions for specific intent crimes pursuant to the third category of joint criminal enterprise, the Appeals Chamber observes that in its analysis of customary international law in the *Tadić* case, it specifically considered the provisions of the Convention for the Suppression of Terrorist Bombings and the ICC Statute cited by Stanišić.[2052] It found, on the basis on numerous sources from both civil and common law jurisdictions, including post-World War II cases, that the third category of joint criminal enterprise has existed as a mode of liability in customary international law since at least 1992 and that it applies to all crimes.[2053] While Stanišić asserts that the Convention for the Suppression of Terrorist Bombings, the ICC Statute, and the post-World War II cases on which he relies do not expressly provide for convictions for specific intent crimes on the basis of the third

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entered pursuant to the third category of joint criminal enterprise (*Stakić* Appeal Judgement, para. 38; *Krstić* Appeal Judgement, paras 150-151, p. 87). In addition, the Appeals Chamber notes that in the *Brđanin* Appeal Decision of 19 March 2004, Judge Shahabuddeen did not dissent from the majority's decision to reverse the acquittal of Brđanin of genocide with respect to the third category of joint criminal enterprise, but appended a separate opinion, and stated that the third category of joint criminal enterprise "does not dispense with the need to prove intent [but] provides a mode of proving intent in particular circumstances, namely, by proof of foresight in those circumstances" (*Brđanin* Appeal Decision of 19 March 2004, Separate Opinion of Judge Shahabuddeen, para. 2).

[2049] *Đorđević* Appeal Judgement, para. 83, referring to *Čelebići* Appeal Judgement, para. 24. See *Tolimir* Appeal Judgement, para. 226; *Popović et al.* Appeal Judgement, para. 1674.

[2050] See *Popović et al* Appeal Judgement, para. 1674, referring to *Đorđević* Appeal Judgement, para. 24, *Aleksovski* Appeal Judgement, para. 108.

[2051] See, in particular, STL Decision of 16 February 2011, paras 248-249; *Taylor* Trial Judgement, para. 468. *Cf. Đorđević* Appeal Judgement, para. 83.

[2052] *Tadić* Appeal Judgement, paras 221-223, referring to Convention for the Suppression of Terrorist Bombings, art. 2(3)(c), ICC Statute, art. 25(3). See Stanišić Appeal Brief, paras 355-363.

[2053] *Tadić* Appeal Judgement, paras 194-226. See *Đorđević* Appeal Judgement, para. 81; *Rwamakuba* Appeal Decision on Joint Criminal Enterprise of 22 October 2004, paras 10, 17, referring to *Tadić* Appeal Judgement, paras 188, 193.

category of joint criminal enterprise or even the third category of joint criminal enterprise itself,[2054] this does not undermine the Appeals Chamber's analysis of customary international law and conclusion in the *Tadić* case, which has been consistently confirmed in the Tribunal's subsequent jurisprudence.[2055] In the Appeals Chamber's view, Stanišić merely relies upon the absence of express support in the sources he identifies, without showing that they give rise to cogent reasons to depart from the Tribunal's existing jurisprudence.

(iii) Conclusion

600. In light of the above, the Appeals Chamber finds that Stanišić has failed to demonstrate that cogent reasons exist to depart from the Tribunal's well-established case law and dismisses Stanišić's eighth ground of appeal.

(c) Alleged errors of law by failing to make the required third category of joint criminal enterprise subjective element findings in relation to Counts 3 to 8 (Stanišić's first ground of appeal in part and ninth ground of appeal)

601. In assessing Stanišić's responsibility for crimes outside the scope of the JCE, the Trial Chamber first considered that Stanišić intended to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of JCE I Crimes.[2056] Further, it considered that Stanišić was "aware of the criminal background and propensity of members of the Bosnian Serb Forces to commit crimes, and particularly the RS reserve police force, which were mobilised in the early months of the conflict to effect this removal".[2057]

602. The Trial Chamber found that "the forcible removal of Bosnian Muslims and Bosnian Croats from BiH was engineered by enforcing unbearable living conditions following the takeover of identified towns and villages".[2058] It concluded that the possibility of the imposition and maintenance of restrictive and discriminatory measures against the non-Serbs in these towns and

[2054] See Stanišić Appeal Brief, paras 356-358, 361-366.
[2055] *Popović et al.* Appeal Judgement, para. 1672, referring to *Đorđević* Appeal Judgement, para. 81; *Martić* Appeal Judgement, para. 80; *Brđanin* Appeal Judgement, para. 405. See *Rwamakuba* Appeal Decision on Joint Criminal Enterprise of 22 October 2004, paras 14-25. In this regard, the Appeals Chamber also recalls that "it is not required to demonstrate that every possible combination between crime and mode of liability be explicitly allowed by, or have precedents in, customary international law" (*Đorđević* Appeal Judgement, para. 81 (emphasis omitted)).
[2056] Trial Judgement, vol. 2, para. 771.
[2057] Trial Judgement, vol. 2, para. 771.
[2058] Trial Judgement, vol. 2, para. 772.

villages, with a discriminatory intent, in the execution of the common plan was sufficiently substantial so as to be foreseeable to Stanišić, and that he willingly took that risk.[2059]

603. The Trial Chamber also found that, in the execution of the common plan, the possibility of the unlawful detention of Bosnian Muslims and Bosnian Croats at SJBs, prisons, and improvised detention centres and camps, with a discriminatory intent, was sufficiently substantial so as to be foreseeable to Stanišić, and that he willingly took that risk.[2060]

604. The Trial Chamber further found that, "in the ethnically charged atmosphere during the 'reorganisation' of the internal organs of the municipalities", the possibility that killings, both during the attacks and takeover of municipalities and in the prisons, detention centres, and camps, could be committed with a discriminatory intent in the execution of the common plan, was sufficiently substantial as to be foreseeable to Stanišić and that he willingly took that risk.[2061]

605. The Trial Chamber found that, given Stanišić's knowledge of the large-scale detention of the non-Serb civilians in prisons, SJBs, detention centres, and camps, which were guarded by the armed forces of the RS with the support by both active and reserve forces of the SJBs in individual municipalities approved by his direct orders, it was foreseeable to him that the torture, cruel treatment, and other inhumane acts, including beatings and rape, and inhumane conditions of detention, such as provision of starvation rations, and unhygienic and insufficient amenities, could be committed subsequently in the course of unlawful detentions.[2062] The Trial Chamber further found that the possibility that these crimes could be committed with a discriminatory intent in the execution of the common plan was sufficiently substantial as to be foreseeable to Stanišić, and that he willingly took that risk.[2063]

606. In addition, considering the evidence on the numerous reports and meetings that addressed the increased level of looting, search and seizure, appropriation, and plunder of the moveable and immoveable property of the Bosnian Muslims, Bosnian Croats, and other non-Serbs in the Municipalities (during the takeover of the Municipalities, during their transportation to detention centres and camps and while in detention, and in the course of their escorted removal from Serb-held territory), the Trial Chamber was satisfied that the possibility that these crimes could be

[2059] Trial Judgement, vol. 2, para. 772.
[2060] Trial Judgement, vol. 2, para. 773.
[2061] Trial Judgement, vol. 2, para. 774.
[2062] Trial Judgement, vol. 2, para. 776.
[2063] Trial Judgement, vol. 2, para. 776.

committed with a discriminatory intent in the execution of the common plan was sufficiently substantial as to be foreseeable to Stanišić, and that he willingly took that risk.[2064]

607. The Trial Chamber further found that, in light of its finding that the wanton destruction and damage of religious and cultural property was "carried out in a concerted effort to eliminate the historical moorings of the Bosnian Muslims and Bosnian Croats during and following the takeover of the Municipalities was foreseeable to Mićo Stanišić in the course of the execution of the common plan",[2065] the possibility that these crimes could be committed with a discriminatory intent in the execution of the common plan was sufficiently substantial as to be foreseeable to Stanišić, and that he willingly took that risk.[2066]

608. Finally, considering its finding that the crimes of unlawful detention; imposition and maintenance of restrictive and discriminatory measures; killings; torture, cruel treatment, and inhumane acts; establishment and perpetuation of inhumane living conditions in the detention facilities; appropriation of property and plunder; and wanton destruction and damage of religious and cultural property were all committed with a discriminatory intent, the Trial Chamber was satisfied that they comprised underlying acts of persecutions, the possibility of which was sufficiently substantial as to be foreseeable to Stanišić, and that he willingly took that risk.[2067]

(i) Submissions of the parties

609. Stanišić argues that the Trial Chamber erred in law by failing to expressly make the required findings on the subjective element of the third category of joint criminal enterprise liability in relation to the crimes under Counts 3 to 8.[2068] He contends that the Trial Chamber, when recalling its foreseeability findings in the section addressing Stanišić's responsibility for each municipality, "in fact recalled findings that do not exist".[2069] According to Stanišić, the Trial Chamber's findings on the third category of joint criminal enterprise liability refer "solely and expressly" to his responsibility for persecutory acts included under Count 1.[2070] He submits that the Trial Chamber

[2064] Trial Judgement, vol. 2, para. 777.
[2065] Trial Judgement, vol. 2, para. 778.
[2066] Trial Judgement, vol. 2, para. 778.
[2067] Trial Judgement, vol. 2, para. 779.
[2068] Stanišić Appeal Brief, paras 49, 51, 370-372. The Appeals Chamber recalls that the crimes under Counts 3 to 8 are the following: (i) murder as a crime against humanity and as a violation of the laws or customs of war (Counts 3 and 4, respectively); (ii) torture as a crime against humanity and as a violation of the laws or customs of war (Counts 5 and 6, respectively); (iii) cruel treatment as a violation of the laws or customs of war (Count 7); and (iv) inhumane acts as a crime against humanity (Count 8) (Stanišić Appeal Brief, paras 49, 51, 370. See Trial Judgement, vol. 2, paras 313, 772-774, 776, 955).
[2069] Stanišić Appeal Brief, para. 374 (emphasis omitted). See Stanišić Reply Brief, para. 29.
[2070] Stanišić Appeal Brief, para. 373, referring to Trial Judgement, vol. 2, paras 770-774, 776-779. The Appeals Chamber recalls that the persecutory acts charged under Count 1 (other than forcible transfer and deportation) are the following: killings, torture, cruel treatment, inhumane acts, unlawful detention, establishment and perpetuation of

thus failed to provide reasons as to why the crimes under Counts 3 through 8 were foreseeable to him and how he willingly took the risk that they could be committed.[2071]

610. In addition, Stanišić argues that the crimes against humanity charged under Counts 3, 5, 7, and 8 and the violations of the laws or customs of war charged under Counts 4 and 6 "are distinct offences each comprising specific and essential elements that must be examined independently".[2072] Therefore, he submits that the Trial Chamber's findings regarding the foreseeability of "persecutory acts included under Count 1 cannot make up for the absence of findings for Counts 3-8".[2073] Stanišić claims that in the absence of these essential findings, his convictions for Counts 4 and 6 and the findings that he was responsible for Counts 3, 5, 7, and 8 have been entered without any legal basis.[2074] As such, he requests the Appeals Chamber to quash his convictions under Counts 4 and 6, and the findings of responsibility under Counts 3, 5, 7, and 8.[2075]

611. The Prosecution responds that Stanišić fails to show any legal error and that his arguments should be dismissed.[2076] It contends that the Trial Chamber applied the correct subjective standard for third category joint criminal enterprise liability and made the required findings.[2077] It argues that when the Trial Judgement is read as a whole, it is clear that the Trial Chamber appropriately assessed the foreseeability of the crimes under Count 1 and crimes under Counts 3 to 8 "at the same time".[2078] The Prosecution submits that the crimes of murder, torture, cruel treatment, and inhumane acts were also charged as underlying acts of persecutions under Count 1.[2079] It argues that, therefore, when the Trial Chamber found that the commission of killings, torture, cruel treatment, and other inhumane acts with discriminatory intent was foreseeable to Stanišić, it made findings that were sufficient to also establish his responsibility for the crimes in Counts 3 to 8 pursuant to the

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inhumane living conditions, plunder of property, wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings, and imposition and maintenance of restrictive and discriminatory measures (Trial Judgement, vol. 2, paras 313, 772-774, 776-779, 955).

[2071] Stanišić Appeal Brief, paras 49, 51, 375. See Stanišić Appeal Brief, paras 376-378.

[2072] Stanišić Appeal Brief, para. 380. See Stanišić Reply Brief, para. 91. Stanišić illustrates his argument with reference to murder as a violation of the laws or customs of war, for which it must be proven that the victim took "no active part in the hostilities", an element which he argues does not exist for killings as a crime against humanity (Stanišić Appeal Brief, para. 381 (emphasis omitted)). He argues that, when assessing the foreseeability of a crime, all the essential elements of that crime must be taken into consideration and thus a finding that killings as a crime against humanity is foreseeable to an accused is "evidently distinct" from a finding that murder as a violation of the laws or customs of war was foreseeable (Stanišić Appeal Brief, para. 383 (emphasis omitted). See Stanišić Appeal Brief, para. 382). Further, Stanišić stresses the necessity of finding that each of the specific elements of joint criminal enterprise are satisfied for each crime (Stanišić Appeal Brief, paras 384-385, referring to *Brđanin* Appeal Judgement, paras 428-429, *Tadić* Appeal Judgement, para. 220).

[2073] Stanišić Appeal Brief, para. 379. See Stanišić Appeal Brief, para. 386.

[2074] Stanišić Appeal Brief, para. 378. See Stanišić Reply Brief, para. 21.

[2075] Stanišić Appeal Brief, paras 53, 387.

[2076] Prosecution Response Brief (Stanišić), paras 19-20, 179, 185. See Prosecution Response Brief (Stanišić), paras 180-184.

[2077] Prosecution Response Brief (Stanišić), para. 179.

[2078] Prosecution Response Brief (Stanišić), para. 180. See Prosecution Response Brief (Stanišić), para. 20.

[2079] Prosecution Response Brief (Stanišić), para. 180. See Prosecution Response Brief (Stanišić), para. 20.

third category of joint criminal enterprise.[2080] According to the Prosecution, this reading of the Trial Judgement is consistent with the Trial Chamber's conclusions on Stanišić's responsibility with respect to each municipality, where it "recalled its earlier findings" on the foreseeability of Stanišić's JCE III Crimes.[2081]

612. The Prosecution further argues that since the Trial Chamber did not enter convictions for the crimes charged under Counts 7 and 8, "[a]ny alleged failure to enter JCE III liability findings relating to the crimes charged under those counts would have no impact on his convictions."[2082]

(ii) Analysis

613. At the outset, the Appeals Chamber notes that while Stanišić was not convicted for the crimes charged under Counts 3, 5, 7, and 8, the Trial Chamber entered findings of responsibility in relation to these crimes.[2083] Moreover, the Appeals Chamber recalls its finding elsewhere in the Judgement that the Trial Chamber erred in law by failing to enter convictions of Stanišić for these crimes.[2084] In light of this, the Appeals Chamber finds it appropriate to address Stanišić's submissions with respect to the crimes under Counts 3, 5, 7, and 8.

614. The Appeals Chamber recalls that, as correctly set out by the Trial Chamber, an accused can only be held responsible for a crime outside the common purpose if, under the circumstances of the case: (i) 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 joint criminal enterprise) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.[2085] In this regard, the Appeals Chamber recalls further that the foreseeability requirement applies to the *crime* with all its legal elements.[2086]

[2080] Prosecution Response Brief (Stanišić), para. 180. The Prosecution submits that therefore the Trial Chamber did not need to repeat its earlier findings that the elements of each of these crimes were met (Prosecution Response Brief (Stanišić), para. 180).
[2081] Prosecution Response Brief (Stanišić), para. 181.
[2082] Prosecution Response Brief (Stanišić), para. 184.
[2083] Trial Judgement, vol. 2, paras 804, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885, 955.
[2084] See *infra*, para. 1097. The Appeals Chamber recalls that it refrained from entering new convictions (see *infra*, para. 1096).
[2085] *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brđanin* Appeal Judgement, paras 365, 411. See Trial Judgement, vol. 1, para. 106.
[2086] See *e.g. Šainović et al.* Appeal Judgement, paras 1073, 1075, 1081, where the Appeals Chamber found that, *inter alia*, in finding that murder as a war crime was foreseeable, the *Šainović et al.* Trial Chamber erroneously relied on certain reports on the basis that it was unclear as to whether the killings reported therein constituted murder or were the result of legitimate combat activity (*Šainović et al.* Appeal Judgement, paras 1073, 1075). The Appeals Chamber examined whether the remaining factual findings were sufficient to establish that murder was foreseeable to the accused. The Appeals Chamber listed the remaining findings on the accused's awareness of crimes prior to 7 May 1999

615. The Appeals Chamber notes that the Indictment charged Stanišić with killings during and after attacks on villages and towns, in detention facilities, and during transfer to and from detention facilities as: (i) persecutions as a crime against humanity through the underlying act of killings; (ii) murder as a crime against humanity; and (iii) murder as a violation of the laws or customs of war.[2087] The Appeals Chamber recalls in this regard that persecutions through the underlying act of killings, murder as a crime against humanity, and murder as a violation of the laws or customs of war are distinct crimes with distinct elements.[2088] In order to find Stanišić responsible for these crimes pursuant to the third category of joint criminal enterprise, the Trial Chamber had to be satisfied, in relation to each of these crimes, that it was foreseeable to Stanišić that they might be committed and that he willingly took that risk.[2089]

616. The Appeals Chamber observes that the Trial Chamber did not make an explicit finding that murder as a crime against humanity and murder as a violation of the laws or customs of war were foreseeable to Stanišić. Rather, the Trial Chamber found that it was foreseeable to Stanišić, that in the course of the attacks and takeover of the municipalities and in the context of detention, killings could be committed with a discriminatory intent and that he willingly took this risk.[2090] The Appeals Chamber considers that the absence of explicit findings on such an important issue is unfortunate. The Appeals Chamber observes, however, that the Trial Chamber found elsewhere in the Trial Judgement that these killings satisfied the elements of murder as a crime against humanity and murder as a violation of the laws or customs of war.[2091] In these circumstances, the Appeals Chamber understands that by finding that killings with discriminatory intent were foreseeable to Stanišić and he willingly took the risk that they could be committed, the Trial Chamber considered that the crimes of murder as a crime against humanity and murder as a violation of the laws or customs of war were foreseeable to Stanišić and that he willingly took that risk. Stanišić's argument that the Trial Chamber erred in law by failing to make the required findings on the subjective element of the third category of joint criminal enterprise liability in relation to the crimes under Counts 3 to 4 is therefore dismissed.

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against the civilian population. It concluded that the evidence did not establish that prior to 7 May 1999, the accused was aware "of acts of violence to *civilians* of such gravity as to make murders, in particular, foreseeable to him" (*Šainović et al.* Appeal Judgement, para. 1081 (emphasis added)).

[2087] Indictment, paras 24, 26(a)-(b), 28-29, 31.

[2088] See *Đorđević* Appeal Judgement, para. 548; *Kvočka et al.* Appeal Judgement, para. 261; *Kordić and Čerkez* Appeal Judgement, paras 37, 113. See also *Popović et al.* Appeal Judgement, para. 1714; *Đorđević* Appeal Judgement, para. 840; *Kordić and Čerkez* Appeal Judgement, para. 1036.

[2089] See *infra*, para. 621.

[2090] Trial Judgement, vol. 2, para. 774.

[2091] See Trial Judgement, vol. 1, paras 215-218, 278, 343, 484-487, 688-689, 691, 693-694, 696, 876, 977, 1037, 1114-1115, 1243-1244, 1352, 1411, 1494, 1675-1677.

617. The Appeals Chamber notes that the same reasoning applies to torture, cruel treatment, and other inhumane acts, which were all charged as underlying acts of persecutions as a crime against humanity (Count 1) while also charged as: (i) torture and inhumane acts as crimes against humanity (Counts 5 and 8, respectively); and (ii) torture and cruel treatment as violations of the laws or customs of war (Counts 6 and 7, respectively).[2092] The Trial Chamber found that it was foreseeable to Stanišić that torture, cruel treatment, and other inhumane acts could be committed,[2093] and that it was foreseeable to him, and he willingly took the risk, that these crimes might be committed with discriminatory intent.[2094] The Trial Chamber also found elsewhere in the Trial Judgement that these acts satisfied the elements of torture as a crime against humanity, torture as a violation of the laws or customs of war, cruel treatment as a violation of the laws or customs of war, and inhumane acts as a crime against humanity.[2095] In these circumstances, the Appeals Chamber understands that by finding that acts of torture, cruel treatment, and other inhumane acts were foreseeable to Stanišić and that he willingly took the risk that such acts might be committed with discriminatory intent, the Trial Chamber considered that the subjective element of the third category of joint criminal enterprise liability was met in relation to Stanišić with respect to the crimes charged under Counts 5 to 8. Therefore, Stanišić's argument in this regard is dismissed.

(iii) Conclusion

618. In light of the foregoing, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in law by failing to make the required findings on the subjective element of third category of joint criminal enterprise liability in relation to Counts 3 to 8, thereby failing to provide a reasoned opinion for its findings on the third category of joint criminal enterprise. Therefore, the Appeals Chamber dismisses Stanišić's first ground of appeal in part and ninth ground of appeal in its entirety.

(d) Alleged errors of law in relation to whether Stanišić's JCE III Crimes were natural and foreseeable consequences of the common purpose (Stanišić's first ground of appeal in part and eleventh ground of appeal in part)

619. Stanišić avers that the Trial Chamber erred in law by failing to enter findings that Stanišić's JCE III Crimes were natural and foreseeable consequences of the common purpose of the JCE,

[2092] Indictment, paras 26(c)-(d), 32, 34, 36.
[2093] The Appeals Chamber notes that the Trial Chamber did not make a separate finding that Stanišić willingly took the risk that torture, cruel treatment, and other inhumane acts could be committed (see Trial Judgement, vol. 2, para. 776).
[2094] Trial Judgement, vol. 2, para. 776.
[2095] See Trial Judgement, vol. 1, paras 220, 280, 345, 489, 698, 808-809, 878, 979-980, 1039, 1117, 1188, 1246, 1284, 1354, 1496, 1551, 1685.

thereby failing to provide a reasoned opinion.[2096] He submits that in order for liability under the third category of joint criminal enterprise to attach, it must be shown that the crimes outside of the scope of the joint criminal enterprise were "natural and foreseeable consequences of that enterprise", which he refers to as "objectively foreseeable".[2097] He argues that the "objective foreseeability" does not depend upon the accused's state of mind.[2098] In light of the Trial Chamber's alleged error in failing to conduct this assessment, Stanišić requests the Appeals Chamber to quash his convictions for Counts 1 (through underlying acts other than forcible transfer and deportation), 4, and 6.[2099]

620. The Prosecution responds that Stanišić's challenges should be dismissed since the "objective foreseeability" is only "the first step" in the analysis concerning responsibility for crimes pursuant to the third category of joint criminal enterprise.[2100] It argues that, ultimately, a trial chamber must find that these crimes were foreseeable "to a particular accused", which is what the Trial Chamber found in relation to Stanišić.[2101]

621. The Appeals Chamber recalls that, as correctly set out by the Trial Chamber:[2102]

> an accused may be responsible for crimes committed beyond the common purpose of the [...] joint criminal enterprise, if they were a natural and foreseeable consequence thereof. However, it is to be emphasized that this question must be assessed in relation to the knowledge of a particular accused. [...] What is natural and foreseeable to one person [...] might not be natural and foreseeable to another, depending on the information available to them. Thus, participation in a [...] joint criminal enterprise does not necessarily entail criminal responsibility for *all* crimes which, though not within the common purpose of the enterprise, were a natural or foreseeable consequence of the enterprise. A participant may be responsible for such crimes only if the Prosecution proves that the accused had sufficient knowledge such that the additional crimes were a natural and foreseeable consequence to him.[2103]

622. Accordingly, the Appeals Chamber considers that Stanišić's argument creates and rests upon an artificial distinction – that the subjective element of the third category of joint criminal enterprise contains distinct objective and subjective elements – in direct contravention of the

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[2096] Stanišić Appeal Brief, paras 48 (relating to the crime of persecutions under Count 1 (through underlying acts other than forcible transfer and deportation)), 51 (relating to crimes under Counts 3 to 8). See Stanišić Appeal Brief, paras 429-431.
[2097] Stanišić Appeal Brief, para. 429, referring to *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 30.
[2098] Stanišić Appeal Brief, para. 429, in which Stanišić also avers that the "objective foreseeability" must be examined on the basis of the prevailing circumstances at the time, assessed from the point of view of a reasonable person (see Stanišić Appeal Brief, paras 430-431).
[2099] Stanišić Appeal Brief, paras 53, 476.
[2100] Prosecution Response Brief (Stanišić), paras 22, 194.
[2101] Prosecution Response Brief (Stanišić), para. 194. See Prosecution Response Brief (Stanišić), para. 187.
[2102] Trial Judgement, vol. 1, para. 99.
[2103] *Kvočka et al.* Appeal Judgement, para. 86.

law.[2104] Stanišić's unfounded argument, which departs from well-established jurisprudence, therefore has no merit. As such, the Appeals Chamber dismisses Stanišić's first ground of appeal in part and eleventh ground of appeal in part concerning this issue.[2105]

(e) Alleged errors in finding that Stanišić's JCE III Crimes were foreseeable to Stanišić and that he willingly took the risk that they might be committed (Stanišić's first ground of appeal in part, tenth ground of appeal, and eleventh ground of appeal in part)

623. Stanišić submits that the Trial Chamber erred: (i) in law by failing to provide a reasoned opinion for: (a) its implicit findings that the possibility that crimes under Counts 3 to 8 could be committed was sufficiently substantial as to be foreseeable to him;[2106] and (b) its findings that the possibility that the crime of persecutions charged in Count 1 (through underlying acts other than forcible transfer and deportation) could be committed was sufficiently substantial as to be foreseeable to him;[2107] (ii) in fact by finding that Stanišić's JCE III Crimes were foreseeable to him;[2108] and (iii) in fact by finding that he willingly took the risk that Stanišić's JCE III Crimes could be committed.[2109] In light of these errors, Stanišić requests the Appeals Chamber to quash his convictions for Counts 1 (for underlying acts other than forcible transfer and deportation), 4, and 6 and the Trial Chamber's findings of responsibility for Counts 3, 5, 7, and 8.[2110] The Prosecution responds that Stanišić's challenges should be dismissed.[2111]

[2104] *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.

[2105] The Appeals Chamber notes that Stanišić also submits that the Trial Chamber erred in fact by (implicitly) finding that Stanišić's JCE III Crimes were natural and foreseeable consequences of the JCE (see Stanišić Appeal Brief, paras 391, 395-399, 426, 431). In light of its conclusion that under the third category of joint criminal enterprise, the accused may be responsible for crimes beyond the common purpose of a joint criminal enterprise if they were natural and foreseeable consequences of the common purpose *to him*, the Appeals Chamber will address these arguments to the extent that they are relevant to the Trial Chamber's consideration in this regard. These arguments will be addressed in the next section together with Stanišić's factual challenges raised with respect to the Trial Chamber's findings that Stanišić's JCE III Crimes were foreseeable to him (see *infra*, paras 635-671).

[2106] Stanišić Appeal Brief, paras 50-51. See Stanišić Appeal Brief, paras 49, 375-377.

[2107] Stanišić Appeal Brief, para. 48.

[2108] Stanišić Appeal Brief, paras 388, 392, 400-410 (relating to crimes under Counts 3 to 8), 424, 427, 432-448 (relating to the crime of persecution under Count 1 (through underlying acts other than forcible transfer and deportation)). The Appeals Chamber notes that in his notice of appeal, Stanišić only challenges his convictions for Counts 4 and 6 under his tenth ground of appeal. However, the Appeals Chamber recalls that after leave was granted, Stanišić filed an amended notice of appeal on 23 April 2014 adding Counts 3, 5, 7, and 8 to the counts targeted by the alleged error of fact in his tenth ground of appeal (Decision on Stanišić's Motion to Amend Notice of Appeal. See Stanišić Notice of Appeal, paras 55-58).

[2109] Stanišić Appeal Brief, paras 388, 393, 411-422 (relating to crimes under Counts 3 to 8), Stanišić Appeal Brief, paras 428, 449-475 (relating to the crime of persecution under Count 1 (through underlying acts other than forcible transfer and deportation)).

[2110] Stanišić Appeal Brief, paras 53, 423, 476.

[2111] Prosecution Response Brief (Stanišić), paras 22, 187, 225.

(i) Alleged errors in failing to provide a reasoned opinion for finding that Stanšić's JCE III Crimes were foreseeable to Stanišić (Stanišić's first ground of appeal in part)

624. Stanišić submits that the Trial Chamber has failed to provide any reasons in support of its implicit findings that the possibility that the crimes under Counts 3 through 8 could be committed was sufficiently substantial so as to be foreseeable to him.[2112] In addition, Stanišić avers that the Trial Chamber failed to provide any reasons in support of its findings that the possibility that the crime of persecutions charged under Count 1 (through underlying acts other than forcible transfer and deportation) could be committed was sufficiently substantial as to be foreseeable to him.[2113] Stanišić argues that these errors amount to failures to provide a reasoned opinion, errors of law.[2114]

625. The Prosecution responds that the Trial Chamber provided a reasoned opinion for its findings on the foreseeability of Stanišić's JCE III Crimes.[2115]

626. Given that, as found above,[2116] the Trial Chamber's third category of joint criminal enterprise findings for the crimes in Counts 3 to 8 are encompassed in the Trial Chamber's findings on the crimes in Count 1, the Appeals Chamber will assess whether the Trial Chamber provided a reasoned opinion for its findings that crimes were foreseeable to Stanišić in relation to all Stanišić's JCE III Crimes together.[2117]

627. The Appeals Chamber recalls that it is not necessary for the purposes of the third category of joint criminal enterprise that an accused be aware of the past occurrence of a crime for the same crime to be foreseeable to him.[2118] Knowledge 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 members of the joint criminal enterprise.[2119]

628. The Appeals Chamber notes that the trial Chamber found that Stanišić's JCE III Crimes occurred in the context of the JCE, which had the common plan to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of the crimes of deportation, inhumane acts (forcible transfer), and persecutions through forcible

[2112] Stanišić Appeal Brief, paras 50-51.
[2113] See Stanišić Appeal Brief, para. 48.
[2114] Stanišić Appeal Brief, paras 48, 50-51.
[2115] Prosecution Response Brief (Stanišić), para. 19.
[2116] See *supra*, paras 616-617.
[2117] See *supra*, para. 609.
[2118] *Šainović et al.* Appeal Judgement, para. 1081.
[2119] See *Šainović et al.* Appeal Judgement, para. 1089.

transfer and deportation, as crimes against humanity.[2120] The Appeals Chamber observes in this regard the Trial Chamber's findings elsewhere in the Trial Judgement that in implementing the JCE, violent takeovers of the Municipalities occurred together with an ensuing widespread and systematic campaign of terror and violence,[2121] aimed at establishing a Serb state as ethnically "pure" as possible.[2122] Furthermore, in finding that Stanišić's JCE III Crimes were foreseeable to him and he willingly took the risk that they might be committed, the Trial Chamber relied on its findings, which have not been overturned on appeal, that Stanišić: (i) shared the intent to forcibly remove non-Serbs from the territory of the planned Serb state through the commission of the crimes of deportation, inhumane acts (forcible transfer), and persecutions through deportation and forcible transfer as crimes against humanity;[2123] and (ii) was aware of the criminal background and propensity of members of the Bosnian Serb forces to commit crimes, particularly the RS reserve police force, which were mobilised from the early months of the conflict.[2124] In addition to these factors, the Trial Chamber relied on certain other factors in assessing the foreseeability of individual crimes.

629. Specifically, in finding that it was foreseeable to Stanišić and he willingly took the risk that the imposition and maintenance of restrictive and discriminatory measures against non-Serbs in towns and villages after their takeover might be committed, with a discriminatory intent, in the execution of the common plan, the Trial Chamber also relied on the fact that the forcible removal of the Bosnian Muslims and Bosnian Croats from BiH was "engineered by enforcing unbearable living conditions following the takeover of identified towns and villages".[2125]

630. In finding that it was foreseeable to Stanišić and he willingly took the risk that in the execution of the common plan killings might be committed, the Trial Chamber, in addition, relied on the "ethnically charged atmosphere during the 'reorganisation' of the internal organs of the municipalities".[2126]

631. In finding that it was foreseeable to Stanišić and he willingly took the risk that torture, cruel treatment, and other inhumane acts might be committed, with discriminatory intent, in the course of unlawful detentions and in the execution of the common plan, the Trial Chamber relied, in addition, on Stanišić's knowledge of the large-scale detention of non-Serb civilians in prisons, SJBs,

[2120] Trial Judgement, vol. 2, paras 770-774, 776-779. See Trial Judgement, vol. 2, para. 313.
[2121] Trial Judgement, vol. 2, paras 310-311.
[2122] Trial Judgement, vol. 2, para. 311. See Trial Judgement, vol. 2, paras 310, 738. See also Trial Judgement, vol. 2, para. 292.
[2123] Trial Judgement, vol. 2, paras 770-771. See Trial Judgement, vol. 2, paras 766-769. See also Trial Judgement, vol. 2, paras 313, 770, 955.
[2124] Trial Judgement, vol. 2, para. 771. See Trial Judgement, vol. 2, paras 526, 598, 613, 746-747, 749.
[2125] Trial Judgement, vol. 2, para. 772. See Trial Judgement, vol. 2, paras 292, 294, 300, 522, 737.

detention centres, and camps which were guarded by the armed forces of the RS with the support of both active and reserve forces of the SJBs in individual municipalities approved by his direct orders.[2127]

632. Furthermore, the Trial Chamber relied on evidence on "numerous reports and meetings" that addressed the increased level of looting, search and seizure, appropriation, and plunder of the moveable and immoveable property of non-Serbs during the takeover of Municipalities, in the course of transporting them to detention centres and camps, while in detention, and in the course of their escorted removal from Serb-held territory, to find that it was foreseeable to Stanišić and he willingly took the risk that these property crimes could be committed with discriminatory intent in the execution of the common plan.[2128]

633. Finally, in finding that it was foreseeable to Stanišić and he willingly took the risk that the wanton destruction and damage of religious and cultural property could be committed, with discriminatory intent, in the execution of the common plan, the Trial Chamber in addition relied on its finding that such destruction was "carried out in a concerted effort to eliminate the historical moorings of the Bosnian Muslims and Bosnian Croats during and following the takeover of the Municipalities".[2129]

634. The Trial Chamber thus relied on a combination of factors, including both specific reports of crimes as well as more generally, Stanišić's intent for the JCE I Crimes, the context in which Stanišić's JCE III Crimes were committed, and his knowledge of events. The Appeals Chamber sees no error in this approach. The Appeals Chamber is further satisfied that by doing so, the Trial Chamber provided a reasoned opinion for its findings that Stanišić's JCE III Crimes were foreseeable to him. Stanišić's submissions in this respect are thus dismissed.

(ii) Alleged errors of fact in finding that Stanišić's JCE III Crimes were foreseeable to Stanišić (Stanišić's tenth ground of appeal in part and eleventh ground of appeal in part)

a. Submissions of the parties

635. Stanišić argues that the Trial Chamber erred in fact by: (i) implicitly concluding that the crimes under Counts 3 to 8 were foreseeable to him;[2130] and (ii) finding that the crime of

[2126] Trial Judgement, vol. 2, para. 774. See Trial Judgement, vol. 2, paras 310, 548, 551, 731, 734, 738.
[2127] Trial Judgement, vol. 2, para. 776. See Trial Judgement, vol. 2, paras 748, 750, 752, 757, 759, 762-765.
[2128] Trial Judgement, vol. 2, para. 777. See Trial Judgement, vol. 2, paras 631-632, 746.
[2129] Trial Judgement, vol. 2, para. 778. See Trial Judgement, vol. 2, paras 292, 294, 451.
[2130] Stanišić Appeal Brief, paras 388, 391-392, 394-395, 399-400, 410. See Stanišić Reply Brief, para. 97; Stanišić Appeal Brief, para. 388.

persecutions under Count 1 (through underlying acts other than forcible transfer and deportation)[2131] were foreseeable to him.[2132]

636. With regard to the crimes under Counts 3 to 8, Stanišić argues first that the Trial Chamber failed to take into account the prevailing circumstances at the time, namely that the Cutileiro Plan had been signed by all parties to the conflict, which provided the prospect of a peaceful resolution.[2133] Stanišić further avers that the situation, along with the crimes that occurred, was completely unprecedented since World War II.[2134] Stanišić submits that instead of taking these circumstances into account, the Trial Chamber found that an "'ethnically charged atmosphere' existed", which according to him does not make the possibility of killings sufficiently substantial as to be foreseeable.[2135] Referring to the *Popović et al.* Trial Judgement, Stanišić also contends that the forcible transfer of a population does not make "opportunistic killings" necessarily foreseeable to an accused.[2136]

637. Stanišić further submits that the Trial Chamber erred by failing to properly consider the evidence of Witness Mačar that SJBs chiefs frequently did not inform the CSBs or the RS MUP of "situations", despite their obligation to do so.[2137] Stanišić argues that this evidence was corroborated by Prosecution witnesses, Witness Mandić,[2138] Radovan Pejić ("Witness Pejić"),[2139] and Dragan Kezunović ("Witness Kezunović")[2140] who also testified about the critical breakdown and lack of

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[2131] See *supra*, fn. 2070.
[2132] Stanišić Appeal Brief, paras 424, 426-427, 431, 448 (the Appeals Chamber notes that in paragraph 430 of his appeal brief, Stanišić refers to crimes under Count 3 to 8. However, given that the section in which these arguments are made concerns the crime of persecutions under Count 1 (through underlying acts other than forcible transfer and deportation), the Appeals Chamber understands this to be a typographical error).
[2133] Stanišić Appeal Brief, para. 397, referring to Exhibits P2200, P2203, 1D134. In this regard, Stanišić also refers to his Interview in which he indicated that at the time, both sides of the conflict expected that the situation would improve rather than get worse (Stanišić Appeal Brief, para. 397, referring to Exhibit P2301, p. 54. The Appeals Chambers understands Stanišić's reference to "P2301, P54" (see Stanišić Appeal Brief, para. 397, fn. 535) to be a reference to Exhibit P2301, p. 54 since Exhibit P54 is not relevant to the issue at hand, while page 54 of Exhibit P2301 is the relevant portion of Stanišić's Interview (see Exhibit P2301, p. 54)).
[2134] Stanišić Appeal Brief, paras 397-398. See Stanišić Appeal Brief, para. 430. See also Stanišić Reply Brief, para. 97.
[2135] Stanišić Appeal Brief, para. 398 referring to Trial Judgement, vol. 2, para. 774. See Stanišić Appeal Brief, para. 431.
[2136] Stanišić Appeal Brief, para. 399, referring to *Popović et al.* Trial Judgement, vol. 2, para. 1830.
[2137] Stanišić Appeal Brief, para. 403, quoting Trial Judgement, vol. 2, para. 251. See Stanišić Appeal Brief, para. 402.
[2138] Stanišić Appeal Brief, paras 402, 404-405. Stanišić argues that Witness Mandić testified that "in some places", individuals "ran out of control completely" and that communications broke down (Stanišić Appeal Brief, para. 404, referring to Momčilo Mandić, 5 May 2010, T. 9588, Trial Judgement, vol. 2, para. 253).
[2139] Stanišić Appeal Brief, para. 405. Stanišić argues that Witness Pejić testified that "there were no appropriate means of communications that the MUP of the RS could use" (Stanišić Appeal Brief, para. 405 (emphasis omitted), referring to Radovan Pejić, 25 Jun 2010, T. 12192).
[2140] Stanišić Appeal Brief, para. 405. Stanišič argues that Witness Kezunović testified at length as to the severity of the communications breakdown, including the fact that there was "a complete disruption, breakdown in communications from the source of events to the seats of organisational units" (Stanišić Appeal Brief, para. 405 (emphasis omitted), referring to Dragan Kezunović, 10 Jun 2010, T. 11538, 11540, 11542, 11544, Dragan Kezunović, 14 Jun 2010, T. 11692-11693). See Stanišić Appeal Brief, para. 402.

communications between the central government and the municipalities.[2141] Moreover, Stanišić submits that the Trial Chamber erred in its assessment of the evidence of Witness Davidović, given that his testimony directly contradicts the Trial Chamber's findings on Stanišić's knowledge of the killing of several families in Bijeljina by Malović and his unit.[2142] In addition, Stanišić argues that there are "numerous additional examples [...] in the Judgement where evidence directly related to [his] lack of knowledge and/or information [...] was obviously not considered" by the Trial Chamber.[2143]

638. Next Stanišić submits that the Trial Chamber heavily relied on the evidence of Witness Radulović, head of the Miloš Group, when finding that he was informed of the commission of crimes[2144] in spite of his testimony[2145] and Witness Goran Sajinović's ("Witness Sajinović") evidence,[2146] that the Miloš Group reports were neither sent to the RS MUP nor to Stanišić but were sent directly to Belgrade.[2147] He also refers to the evidence of Witness Škipina that, as the chief of SNB, he did not receive any reports or information from Witness Radulović and that the Miloš Group was operating outside the rules of service.[2148] Stanišić submits that their testimonies show that he was not privy to the information produced by the Miloš Group.[2149] Thus, according to Stanišić, the Trial Chamber disregarded parts of their evidence, since on the basis of the testimonies of Witness Radulović, Witness Sajinović, and Witness Škipina, "no reasonable trier of fact could have held that the only reasonable conclusion [...] was that this information [contained in the Miloš Group reports] was available to [him]".[2150]

639. In addition, Stanišić argues that the Trial Chamber erred in relying on Exhibit P1428, the Communications Logbook,[2151] and daily reports to find that he had knowledge of crimes.[2152] Stanišić submits that the Communications Logbook does not show that he was personally informed about the crimes and the actions taken to investigate them.[2153] He contends that the entries cited by the Trial Judgement mainly concern requests for information on crimes sent by either Sarajevo CSB

[2141] Stanišić Appeal Brief, paras 402, 404-405. See Stanišić Reply Brief, para. 99.
[2142] Stanišić Appeal Brief, paras 406-408. See Stanišić Appeal Brief, para. 402.
[2143] Stanišić Appeal Brief, para. 409, referring to Trial Judgement, vol. 2, paras 581, 583, 588-589, 604, 617, 637.
[2144] Stanišić Appeal Brief, para. 435.
[2145] Stanišić Appeal Brief, para. 436, referring to, *inter alia*, Predrag Radulović, 28 May 2010, T. 11016-11017.
[2146] Stanišić Appeal Brief, para. 437, referring to, *inter alia*, Goran Sajinović, 17 Oct 2011, T. 25120, Goran Sajinović, 18 Oct 2011, T. 25220.
[2147] Stanišić Appeal Brief, paras 436-437.
[2148] Stanišić Appeal Brief, para. 438, referring to Slobodan Škipina, 31 Mar 2010, T. 8413-8415. See Stanišić Reply Brief, para. 99.
[2149] Stanišić Appeal Brief, para. 439.
[2150] Stanišić Appeal Brief, para. 439. See Stanišić Appeal Brief, paras 435-438.
[2151] Stanišić Appeal Brief, para. 440.
[2152] Stanišić Appeal Brief, para. 440, referring to Trial Judgement, vol. 2, para. 690; Stanišić Reply Brief, para. 99.
[2153] Stanišić Appeal Brief, para. 441.

or the RS MUP headquarters and "did not receive a response".[2154] Stanišić submits that the drastic decline in the number of dispatches from April to December 1992 resulting from the "chronic breakdown in communications" must also be taken into account.[2155] Furthermore, Stanišić asserts that the Trial Chamber erroneously relied on evidence from Witness Krulj that Stanišić was regularly informed via reports since he also testified that he "could not verify who actually received such reports".[2156]

640. Finally, Stanišić submits that the Trial Chamber's finding that he was informed of crimes committed against Muslims who were arrested in Sokolac is based on an erroneous interpretation of the evidence.[2157] He argues that the intercepted conversation on which the Trial Chamber relied does not mention that the arrested persons were Muslims.[2158] Moreover, he contends that since Sokolac was a predominantly Serb town[2159] and Serbs were selling weapons on the black market, it is more likely that the persons arrested "for messing up with the weapons" were in fact Serbs.[2160]

641. The Prosecution responds that the Trial Chamber reasonably found that Stanišić's JCE III Crimes were foreseeable to him.[2161] It submits that Stanišić's arguments should be summarily dismissed since he ignores that the Trial Chamber's findings were "based primarily on the nature of the common criminal purpose that [he] intended and the context in which he knew it was implemented".[2162]

642. The Prosecution first submits that: (i) the Trial Chamber's analysis was properly based in part on the prevailing circumstances at the time; (ii) while the crimes may have been unprecedented since World War II, they were not unexpected once the campaign of terror and violence started across the RS; and (iii) the Cutileiro Plan did not lessen the likelihood of the commission of crimes.[2163] The Prosecution argues that Stanišić "artificially isolates" the Trial Chamber's finding regarding the ethnically charged atmosphere, as it was the totality of factors on the basis of which

[2154] Stanišić Appeal Brief, para. 441. Stanišić also contends that the entries in the Communications Logbook do not contain sufficient detail and information and that therefore they "cannot [...] be relied on to describe what was happening in any detail" (Stanišić Appeal Brief, para. 442).
[2155] Stanišić Appeal Brief, para. 443.
[2156] Stanišić Appeal Brief, para. 444, referring to Aleksander Krulj, 26 Oct 2009, T. 1986.
[2157] Stanišić Appeal Brief, paras 445-446, referring to Trial Judgement, vol. 2, para. 612.
[2158] Stanišić Appeal Brief, paras 445-446, referring to Exhibit P1115, pp 1-2.
[2159] Stanišić Appeal Brief, para. 446, referring to Exhibit 1D541, p. 219.
[2160] Stanišić Appeal Brief, paras 446-447.
[2161] Prosecution Response Brief (Stanišić), para. 189.
[2162] Prosecution Response Brief (Stanišić), para. 187. See Prosecution Response Brief (Stanišić), para. 199. The Appeals Chamber notes that the Prosecution responds to Stanišić's tenth and eleventh grounds of appeal in one consolidated section (Prosecution Response Brief (Stanišić), para. 188).
[2163] Prosecution Response Brief (Stanišić), para. 196. The Prosecution also submits that "Stanišić allegedly originally thinking in April 1992 that 'armed incidents' might soon end [...] is a separate issue from the objective foreseeability" of crimes (Prosecution Response Brief (Stanišić), para. 196).

the Trial Chamber found that Stanišić's JCE III Crimes were foreseeable.[2164] It also submits that the finding of a different trial chamber based on a different crime base does not undermine the Trial Chamber's findings.[2165]

643. The Prosecution further responds that Stanišić's "one-sided presentation of the evidence" regarding the alleged breakdown of communication within the RS MUP should be summarily dismissed.[2166] Moreover, the Prosecution submits that Stanišić shows no contradiction in the Trial Chamber's "treatment" of Witness Davidović's testimony on the killings in Bijeljina by Malović and his unit.[2167] The Prosecution also avers that Stanišić's citations to numerous paragraphs of the Trial Judgement where the Trial Chamber discussed evidence of his purported lack of knowledge prove that the Trial Chamber explicitly considered and reasonably rejected such evidence in light of other evidence concerning Stanišić's knowledge of crimes.[2168]

644. In response to Stanišić's arguments concerning the Miloš Group reports, the Prosecution submits that he ignores the Trial Chamber's broader finding that he received information from various sources in the SNB, to which the Miloš Group belonged, including from Witness Škipina, who was the head of the SNB and reported directly to him.[2169] The Prosecution further argues that: (i) Witness Radulović testified that Stanišić received some reports from the Miloš Group; and (ii) Witness Sajinović testified that information contained in those reports was also sent up the RS MUP chain of command.[2170] The Prosecution argues that it was reasonable for the Trial Chamber to rely on such evidence, even if Witness Škipina gave contrary evidence.[2171]

645. The Prosecution further responds that the information in the Communications Logbook was "detailed enough to alert"[2172] and that the absence of responses confirms the Trial Chamber's findings on the "inadequacy of RS MUP efforts to combat these crimes".[2173] According to the Prosecution, the fact that the Communications Logbook does not specify that Stanišić was notified and that it was "shared between the RS MUP headquarters and the CSB Sarajevo" does not weaken

[2164] Prosecution Response Brief (Stanišić), para. 197, referring to Trial Judgement, vol. 2, paras 738, 774.
[2165] Prosecution Response Brief (Stanišić), para. 198. The Prosecution adds that numerous judgements have found that "killings were natural and foreseeable consequences of a [joint criminal enterprise] aimed at forcibly displacing civilians" (Prosecution Response Brief (Stanišić), para. 198 (and references cited therein).
[2166] Prosecution Response Brief (Stanišić), para. 201.
[2167] Prosecution Response Brief (Stanišić), para. 202.
[2168] Prosecution Response Brief (Stanišić), para. 203.
[2169] Prosecution Response Brief (Stanišić), para. 204, referring to, *inter alia*, Trial Judgement, vol. 2, para. 689.
[2170] Prosecution Response Brief (Stanišić), para. 205.
[2171] Prosecution Response Brief (Stanišić), para. 205.
[2172] Prosecution Response Brief (Stanišić), para. 206.
[2173] Prosecution Response Brief (Stanišić), para. 206.

the Trial Chamber's finding.[2174] The Prosecution argues that the number of dispatches is irrelevant to Stanišić's knowledge about crimes.[2175] Further, according to the Prosecution, Witness Krulj gave evidence that Stanišić received regular reports on the situation within the RS and that the information Witness Krulj compiled was "sent up the chain of command until it reached Stanišić".[2176]

646. Finally, the Prosecution submits that, while the evidence does not specify the ethnicity of the persons arrested in Sokolac, the Trial Chamber reasonably found that they were Muslims in light of the ongoing and widespread campaign to disarm the non-Serb population.[2177]

b. Analysis

647. As discussed elsewhere in this Judgement,[2178] in finding that Stanišić's JCE III Crimes were foreseeable to Stanišić, the Trial Chamber relied on a number of factors, such as that Stanišić: (i) shared the intent to forcibly remove non-Serbs from the territory of the planned Serb state through the commission of the crimes of deportation, inhumane acts (forcible transfer), and persecutions through deportation and forcible transfer as crimes against humanity;[2179] and (ii) was aware of the criminal background and propensity of members of the Bosnian Serb forces to commit crimes, particularly the RS reserve police force, which were mobilised from the early months of the conflict.[2180] Further, in relation to some of Stanišić's JCE III Crimes, the Trial Chamber relied also on: (i) Stanišić's knowledge of the large scale detention of non-Serb civilians in prisons, SJBs, detention centres, and camps which were guarded by the armed forces of the RS with the support of both active and reserve forces of the SJBs approved by his direct orders;[2181] and (ii) evidence on "numerous reports and meetings" that addressed the increased level of looting, search and seizure, appropriation, and plunder of the moveable and immoveable property of non-Serbs during the takeover of Municipalities, in the course of transporting them to detention centres and camps, while in detention, and in the course of their escorted removal from Serb-held territory.[2182] Considering that the Trial Chamber thus relied to some extent on Stanišić's knowledge of crimes to find that

[2174] Prosecution Response Brief (Stanišić), para. 206. The Prosecution adds that the fact that the Communications Logbook was shared between the RS MUP and the Sarajevo CSB was acknowledged by the Trial Chamber (Prosecution Response Brief (Stanišić), para. 206, referring to Trial Judgement, vol. 2, para. 63).
[2175] Prosecution Response Brief (Stanišić), para. 209.
[2176] Prosecution Response Brief (Stanišić), para. 207.
[2177] Prosecution Response Brief (Stanišić), para. 208, referring to Trial Judgement, vol. 1, paras 265, 454, 658, 785, 1179, Trial Judgement, vol. 2, paras 274-278.
[2178] See *supra*, para. 628.
[2179] Trial Judgement, vol. 2, paras 770-771.
[2180] Trial Judgement, vol. 2, para. 771.
[2181] Trial Judgement, vol. 2, para. 776 (in relation to specifically the foreseeabilty of torture, cruel treatment, and other inhumane acts). See Trial Judgement, vol. 2, paras 748, 750, 752, 757, 759, 762-765.
[2182] Trial Judgement, vol. 2, para. 777 (in relation to specifically the foreseeability of looting, search and seizure, appropriation, and plunder of property). See Trial Judgement, vol. 2, paras 631-632, 691, 746.

Stanišić's JCE III Crimes were foreseeable to him, the Appeals Chamber will address his arguments on knowledge, insofar as they relate to one or more of the factors listed above. The Appeals Chamber recalls that the foreseeability of crimes outside the scope of the joint criminal enterprise must be assessed in relation to the individual knowledge of each accused.[2183] As recalled in the *Šainović et al.* Appeal Judgement, "[d]epending on the information available, what may be foreseeable to one member of a JCE, might not be foreseeable to another."[2184]

648. As another preliminary matter, the Appeals Chamber understands that the Trial Chamber was satisfied that the subjective element of the third category of joint criminal enterprise was met in relation to Stanišić throughout the Indictment period, *i.e.* at least from 1 April 1992, and in any event, when Stanišić's JCE III Crimes were committed.[2185]

649. With respect to Stanišić's argument that, in assessing the foreseeability of the crimes under Counts 3-8, the Trial Chamber failed to consider the prevailing circumstances at the time, namely that the Cutileiro Plan had been signed and that the crimes were unprecedented since World War II, the Appeals Chamber notes that the Trial Chamber considered the Cutileiro Plan at length in the context of assessing Stanišić's responsibility.[2186] After examining the events surrounding the negotiation of the Cutileiro Plan and the conduct of the Bosnian Serb leadership, the Trial Chamber accepted that the withdrawal of assent by Alija Izetbegović was one of the reasons for the failure of the Cutileiro Plan.[2187] However, it also found that "prior to the negotiations in Lisbon, the Serbs had already coalesced around the idea of a separate Serb entity carved out of the territory of SRBiH in order to remain within a rump state of Yugoslavia—an agenda that came to coincide with the proposals of the Cutileiro Plan—and eventually in a greater Serbian state".[2188] In light of these findings, while the Trial Chamber did not explicitly consider the Cutileiro Plan in the context of the foreseeability of the crimes, it did consider it in the broader context of his responsibility, and therefore, the Appeals Chamber finds that Stanišić's submission that the Trial Chamber failed to

[2183] *Šainović et al.* Appeal Judgement, para. 1575. See *Tolimir* Appeal Judgement, para. 514.
[2184] *Šainović et al.* Appeal Judgement, para. 1575. See *Tolimir* Appeal Judgement, para. 514.
[2185] The Appeals Chamber notes that for the assessment of the foreseeability of all of Stanišić's JCE III Crimes, the Trial Chamber relied on, *inter alia*, the common purpose of the JCE as well as Stanišić's awareness of "the criminal background and propensity of members of the Bosnian Serb Forces to commit crimes, and particularly the RS reserve police force, which were mobilised in *the early months of the conflict*" (Trial Judgement, vol. 2, para. 771 (emphasis added). See Trial Judgement, vol. 2, para. 770). Moreover, Stanišić was convicted pursuant to the third category of joint criminal enterprise for crimes occurring throughout the Indictment period (see *e.g.* Trial Judgement, vol. 2, paras 801, 804, 806, 809-810, 813, 815, 818-819, 822, 824, 827-828, 831, 833, 836-837, 840-841, 844, 846, 850-851, 854-855, 858, 860, 863, 865, 868, 870, 873-874, 877-878, 881-882, 885, 955). The Appeals Chamber notes that the Trial Chamber identified the Indictment period as "from no later than 1 April 1992" until 31 December 1992 (Trial Judgement, vol. 2, para. 532. See Trial Judgement, vol. 2, para. 531).
[2186] Trial Judgement, vol. 2, paras 552-563. See Trial Judgement, vol. 1, para. 131.
[2187] Trial Judgement, vol. 2, para. 563.
[2188] Trial Judgement, vol. 2, para. 563. In light of these Trial Chamber findings, the Appeals Chamber finds Stanišić's submission that there was a general expectation that things would get better unconvincing.

consider the Cutileiro Plan fails. Moreover, considering the Trial Chamber's findings on the context in which the crimes occurred,[2189] the Appeals Chamber finds that Stanišić has failed to show that no reasonable trier of fact could have reached the findings on the foreseeability of the crimes under Counts 3 to 8, as the Trial Chamber did, in light of the Cutileiro Plan.

650. The Appeals Chamber also considers that, given the factors relied upon by the Trial Chamber in its foreseeability assessment, as well as its findings elsewhere in the Trial Judgement that a widespread and systematic campaign of terror and violence against non-Serbs was implemented by Serb forces with the ultimate aim to permanently remove them from the planned Serbian state,[2190] the fact that the nature of crimes may have been unprecedented since World War II does not undermine the Trial Chamber's findings on the foreseeability of the crimes under Counts 3 to 8.

651. With respect to Stanišić's argument that the "ethnically charged atmosphere" was insufficient to make killings foreseeable,[2191] the Appeals Chamber considers that he ignores relevant findings. As set out above,[2192] the Trial Chamber's findings on the foreseeability of killings were based on several factors, including, but not limited to, the ethnically charged atmosphere. His argument is therefore dismissed.

652. Considering that the Trial Chamber's findings were based on the trial record in this specific case, the Appeals Chamber further finds no merit in Stanišić's argument that other trial chambers have found that killings were not a foreseeable consequence of a joint criminal enterprise aimed at forcibly displacing a population. Moreover, the Appeals Chamber recalls that an error cannot be established by merely pointing to the fact that another trial chamber has reached a different conclusion.[2193]

653. As regards Stanišić's argument that the Trial Chamber failed to properly assess the evidence of Witness Mačar, Witness Mandić, Witness Pejić, and Witness Kezunović concerning problems with communications between the RS MUP and the Municipalities during the conflict, the Appeals Chamber notes that the Trial Chamber explicitly considered their evidence in relation to communication problems,[2194] as well as other evidence concerning communication difficulties, in

[2189] See *supra*, para. 628.
[2190] Trial Judgement, vol. 2, para. 313. See Trial Judgement, vol. 2, paras 737-738.
[2191] Stanišić Appeal Brief, para. 398, referring to Trial Judgement, vol. 2, para. 774. See Stanišić Appeal Brief, para. 431.
[2192] See *supra*, paras 628, 630.
[2193] See *Đorđević* Appeal Judgement, para. 257; *Krnojelac* Appeal Judgement, para. 12.
[2194] Trial Judgement, vol. 2, paras 56, 60-65, 67-6, 74, 76, 83, 251, 253.

its assessment of communication within the RS MUP.[2195] The Trial Chamber also considered ample evidence, both on the overall communications within the RS MUP as well as on the communication systems in the Sarajevo CSB,[2196] Bijeljina and Trebinje CSBs,[2197] Doboj CSB,[2198] and Banja Luka CSB,[2199] indicating that despite the difficulties, communications remained possible.[2200] Among other things, it took into account that in April 1992, in the absence of a communication system within the police, most communications between the RS MUP and the CSBs occurred through existing fax and telephone lines.[2201] Furthermore, in Bijeljina and Trebinje CSBs, couriers were used almost daily.[2202] The Trial Chamber also took into account that at the Banja Luka CSB, telephone and telegraph exchanges had remained operational, thus helping communications with all SJBs in the region to be linked to the telephone or telegraph lines.[2203] The Trial Chamber also took into account Witness ST219's testimony that the communication centre in Pale was able to use teleprinters, radio communication, and other types of communications, despite the difficulties caused by the outbreak of hostilities.[2204] After assessing all the evidence, the Trial Chamber acknowledged that there were indeed many difficulties in the communications within the RS MUP, especially in the period from April to the summer of 1992.[2205] However, it was satisfied that during this period, "the system of communications through fax machines, teleprinters, telephone, and couriers did function, albeit with disruptions".[2206] The Trial Chamber also found that the communication system was well established in the second half of 1992.[2207]

654. The Appeals Chamber recalls that "it is the trier of fact who is best placed to assess the evidence in its entirety"[2208] and that trial chambers enjoy broad discretion in doing so.[2209] The Appeals Chamber considers that Stanišić merely prefers a different interpretation of the evidence but has failed to show that no reasonable trier of fact could have concluded as the Trial Chamber did. His arguments in this regard are therefore dismissed.

[2195] Trial Judgement, vol. 2, paras 61, 65, 67-71, 73-74, 76, 78-80, 82-83.
[2196] Trial Judgement, vol. 2, paras 70-72 (and references cited therein).
[2197] Trial Judgement, vol. 2, paras 73-74 (and references cited therein).
[2198] Trial Judgement, vol. 2, paras 75-76 (and references cited therein).
[2199] Trial Judgement, vol. 2, paras 77-84 (and references cited therein).
[2200] See Trial Judgement, vol. 2, paras 61-67, 69, 72-73, 75, 77, 79.
[2201] Trial Judgement, vol. 2, para. 68. See Trial Judgement, vol. 2, para. 73.
[2202] Trial Judgement, vol. 2, para. 74.
[2203] Trial Judgement, vol. 2, para. 77. See Trial Judgement, vol. 2, para. 81.
[2204] Trial Judgement, vol. 2, para. 72.
[2205] Trial Judgement, vol. 2, para. 103.
[2206] Trial Judgement, vol. 2, para. 103.
[2207] Trial Judgement, vol. 2, para. 103.
[2208] *Đorđević* Appeal Judgement, para. 395 (and references cited therein).
[2209] See *e.g. Đorđević* Appeal Judgement, para. 856; *Boškoski and Tarčulovski* Appeal Judgement, para. 14; *Kupreškić et al.* Appeal Judgement, paras 30-32.

655. Turning to Stanišić's argument regarding the killings in Bijeljina,[2210] the Appeals Chamber notes that, contrary to Stanišić's submission, the Trial Chamber did not make a finding that he knew about these killings.[2211] Stanišić therefore misrepresents the Trial Chamber's findings and consequently, his argument is dismissed.

656. As regards Stanišić's argument that there are "numerous additional examples" in the Trial Judgement where the Trial Chamber failed to consider evidence relating to his lack of knowledge,[2212] the Appeals Chamber considers that he has failed to identify an error, and merely points to paragraphs of the Trial Judgement without explaining how the Trial Chamber erred.[2213] Stanišić's argument in this respect is thus dismissed.

657. The Appeals Chamber now moves to Stanišić's argument that the Trial Chamber erred in relying on the Miloš Group reports in finding that he had knowledge of crimes. The Appeals Chamber observes that the Trial Chamber found that the Miloš Group was collecting intelligence for the SNB[2214] and, on the basis of Witness Radulović's evidence, found that "[w]hile not every report prepared by the 'Miloš Group' intelligence team, [...] was directly submitted to the RS MUP, the information in these reports was relayed through the leadership of Banja Luka to the upper echelons of decision makers."[2215] Based on the foregoing, the Trial Chamber ultimately concluded that the "information gathered by the SNB was available to the decision makers of the RS, which included Stanišić".[2216]

658. The Appeals Chamber recalls that it has already dismissed Stanišić's argument elsewhere in this Judgement that the Trial Chamber failed to consider Witness Radulović's evidence that Stanišić did not receive the Miloš Group reports.[2217]

659. Turning to Stanišić's argument that the Trial Chamber disregarded parts of Witness Sajinović's evidence that the Miloš Group reports were neither sent to the RS MUP nor to Stanišić, but directly to Belgrade,[2218] the Appeals Chamber observes that Stanišić ignores the part of Witness Sajinović's testimony, considered by the Trial Chamber, that the Miloš Group reports were also

[2210] See Stanišić Appeal Brief, paras 406-408.
[2211] See Trial Judgement, vol. 2, para. 603.
[2212] Stanišić Appeal Brief, para. 409.
[2213] See Stanišić Appeal Brief, para. 409, referring to Trial Judgement, vol. 2, paras 581, 583, 588-589, 604, 617, 637.
[2214] Trial Judgement, vol. 2, para. 372.
[2215] Trial Judgement, vol. 2, para. 689, referring to Predrag Radulović, 25 May 2010, T. 1072010721, 10722-10723 (private session), 10728-10731, Predrag Radulović, 27 May 2010, T. 10894-10897, 10898 (private session), 10950-10951 (private session), Predrag Radulović, 28 May 2010, T. 10997, Predrag Radulović, 1 Jun 2010, T. 11119-11121, Predrag Radulović, 2 Jun 2010, T. 11206-11209, 11213-11214.
[2216] Trial Judgement, vol. 2, para. 764.
[2217] See *supra*, para. 409.
[2218] See *supra*, para. 638.

sent to "Sajinović and Radulović's superiors in the Banja Luka SNB".[2219] Regarding Stanišić's argument that Witness Škipina did not receive any reports or information from Witness Radulović,[2220] the Appeals Chamber notes that indeed, the Trial Chamber did not rely on his evidence to find that the information gathered by the SNB was available to Stanišić.[2221] The Appeals Chamber recalls that "it is within the discretion of the Trial Chamber to evaluate [witnesses' testimony] and to consider whether the evidence as a whole is credible, without explaining its decision in every detail".[2222] In view of the consistent evidence of Witness Radulović and Witness Sajinović on this issue, the Appeals Chamber finds that Stanišić has failed to show that, in light of Witness Škipina's testimony, no reasonable trier of fact could have found that the "information gathered by the SNB was available to the decision makers of the RS, which included Stanišić".[2223]

660. Turning to Stanišić's arguments regarding the Trial Chamber's analysis of and reliance on the Communications Logbook, the decline in the number of dispatches from April to December 1992, and Witness Krulj's evidence, the Appeals Chamber notes that the Trial Chamber found that:

> [a]ccording to the communications logbook of the RS MUP headquarters, Stanišić was regularly informed throughout 1992 about crimes and action being taken to investigate them.[2224] Daily, weekly, and quarterly reports were compiled, in addition to security situation reports on a periodic basis.[2225] Aleksander Krulj testified that these reports were prepared in order for the Minister to 'know what happened in the territory of the republic'.[2226]

661. Insofar as Stanišić argues that the Trial Chamber erred in relying on the Communications Logbook to find that he had knowledge of crimes, the Appeals Chamber recalls its finding that no reasonable trier of fact could have found, based on this evidence, that Stanišić was informed about the crimes "throughout 1992".[2227] The Appeals Chamber recalls its findings earlier in this Judgement that this error has no impact on the Trial Chamber's findings concerning Stanišić's knowledge of crimes committed against Muslims and Croats.[2228]

[2219] Trial Judgement vol. 2, para. 372.
[2220] See *supra*, para. 638.
[2221] Trial Judgement, vol. 2, para. 689, referring to Predrag Radulović, 25 May 2010, T. 10720-10721, 10722-10723 (private session), 10728-10731, Predrag Radulović, 27 May 2010, T. 10894-10897, 10898 (private session), 10950-10951 (private session), Predrag Radulović, 28 May 2010, T. 10997, Predrag Radulović, 1 Jun 2010, T. 11119-11121, Predrag Radulović, 2 Jun 2010, T. 11206-11209, 11213-11214.
[2222] *Popović et al.* Appeal Judgement, para. 1151, quoting *Kvočka et al.* Appeal Judgement, para. 23.
[2223] Trial Judgement, vol. 2, para. 764.
[2224] Trial Judgement, vol. 2, para. 690, referring to Exhibit P1428, pp 5, 33-34, 43-44, 49, 53, 63, 74, 114, 129, 132, 143-144, 218, 231, 235, 247, 294.
[2225] Trial Judgement, vol. 2, para. 690, referring to, *inter alia*, Exhibits P155, P595, P427.08, p. 3, P432.12, p. 3, P633, p. 3, 2D25, P866, P748, p. 2, 1D334.
[2226] Trial Judgement, vol. 2, para. 690, referring to Aleksander Krulj, 26 Oct 2009, T. 1983-1987.
[2227] See *supra*, para. 407.
[2228] See *supra*, para. 412.

662. With respect to Stanišić's argument regarding the decline in the number of dispatches between April and December 1992,[2229] the Appeals Chamber observes that the Trial Chamber considered this argument in its analysis of the communications systems in the RS, noting that "on average, 15 dispatches a day were sent to the centres and other organs from the RS MUP headquarters (a total of 4,170 in all lines of work) and on average 16 dispatches per day were received (a total of 4,400)".[2230] The Trial Chamber also considered Witness Kezunović's testimony that the number of dispatches for the "first nine months in 1992 amounted to less than 10% of the number of dispatches for the same period in 1991".[2231] The Trial Chamber further considered Witness Dragan Raljić's ("Witness Raljić") testimony that "there was a significant drop in the number of incoming and outcoming [*sic*] dispatches in the period from 11 June 1992 until the end of the year".[2232] Based on, *inter alia*, the evidence listed above, the Trial Chamber found that "there were indeed many difficulties in the communications within the RS MUP, especially in the period from April to the summer of 1992".[2233] However, the Trial Chamber ultimately found that "the system of communications through fax machines, teleprinters, telephone, and couriers did function, albeit with disruptions" and that "[i]n the second half of 1992, the communications system was well established."[2234] In light of these findings, Stanišić has not shown that no reasonable trier of fact could have concluded as the Trial Chamber did.

663. The Appeals Chamber now turns to Stanišić's argument that the Trial Chamber erroneously disregarded Witness Krulj's evidence that he "could not verify who actually received such reports" and yet relied on his testimony to support its findings that Stanišić was kept regularly informed through reports.[2235] Witness Krulj testified that "these reports were prepared in order for the Minister to 'know what happened in the territory of the republic'"[2236] and the Appeals Chamber therefore considers that Stanišić misrepresents Witness Krulj's testimony. Moreover, the Appeals Chamber recalls the Trial Chamber's finding that from April to the summer of 1992 the system of communication did function, albeit with interruptions, and that in the second half of 1992, communication was well established.[2237] Consequently, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in relying on Witness Krulj's evidence in assessing the general sources of information available to Stanišić at that time.

[2229] Stanišić Appeal Brief, para. 443.
[2230] Trial Judgement, vol. 2, para. 61, referring to Exhibit P625, p. 23.
[2231] Trial Judgement, vol. 2, para. 83, referring to, *inter alia*, Dragan Kezunović, 14 Jun 2010, T. 11690-11692, 11694-11695, Exhibits 2D52, p. 11, P621, p. 31, P595, p. 12.
[2232] Trial Judgement, vol. 2, para. 83, referring to, *inter alia*, Dragan Raljić, 30 Jun 2010, T. 12450-12451, Dragan Kezunović, 14 Jun 2010, T. 11691-11692, Exhibits P595, p. 12, P621, p. 31, P1486.
[2233] Trial Judgement, vol. 2, para. 103.
[2234] Trial Judgement, vol. 2, para. 103.
[2235] Stanišić Appeal Brief, para. 444.

664. Turning to Stanišić's argument regarding the arrests in Sokolac, the Appeals Chamber notes that the Trial Chamber found that:

> on 18 April 1992, Radomir Kojić informed Stanišić that a certain 'Zoka' had arrested Muslims in Sokolac for 'messing up with the weapons'. Kojić agreed with 'Zoka' that the arrested people would be brought to Vrace, telling Stanišić that there '[t]hey can beat them, they can do whatever they fucking want', to which Stanišić responded: '[f]ine'.[2238]

665. The Appeals Chamber notes that this finding is based on Exhibit P1115, which is an intercepted conversation between Stanišić and Radomir Kojić dated 18 April 1992.[2239] The Appeals Chamber further notes that the exhibit in fact does not mention whether the people arrested were Muslims or provide any information from which their ethnicity could be inferred.[2240] Further, the incident is not discussed elsewhere in the Trial Judgement. Additionally, the fact that the arrested people "would be brought to Vrace" does not provide any further information since there is no indication anywhere in the Trial Judgement as to the ethnicity of those detained in Vrace. Therefore, the Appeals Chamber finds that the Trial Chamber erred in its analysis of this evidence and in finding that the arrests in Sokolac involved Muslims. The Appeals Chamber recalls its findings elsewhere in this Judgement that this error has an impact on the Trial Chamber's findings concerning Stanišić's knowledge of crimes committed against Muslims and Croats, and that a reasonable trial chamber could have found that Stanišić acquired such knowledge only as of late April 1992.[2241]

c. Conclusion

666. The Appeals Chamber will now assess the impact, on the Trial Chamber's findings on the foreseeability of Stanišić's JCE III Crimes, of the abovementioned error in relation to the arrests in Sokolac, and the Appeals Chamber's finding elsewhere in this Judgement that, in light of this error, a reasonable trial chamber could have found that Stanišić acquired knowledge of crimes committed against Muslims and Croats only as of late April 1992.[2242]

[2236] Trial Judgement, vol. 2, para. 690, referring to Aleksander Krulj, 26 Oct 2009, T. 1983-1987.
[2237] Trial Judgement, vol. 2, paras 103, 690.
[2238] Trial Judgement, vol. 2, para. 612, referring to Exhibit P1115, pp 1-2.
[2239] Trial Judgement, vol. 2, para. 612, referring to Exhibit P1115.
[2240] See Exhibit P1115, pp 1-2.
[2241] See *supra*, para. 412.
[2242] See *supra*, para. 412. The Appeals Chamber recalls that while it has also found an error in relation to the Communications Logbook, it has concluded that this error has no impact on the Trial Chamber's findings concerning Stanišić's knowledge of crimes committed against Muslims and Croats (see *supra*, paras 411-412). In light of this, coupled with the fact that the Trial Chamber did not rely directly on the Communications Logbook in its foreseeability assessment (see *supra*, paras 629-633), the Appeals Chamber finds that the error in relation to the Communications Logbook does not have any impact on the Trial Chamber's foreseeability findings. As such, the Appeals Chamber will not address this error further in this section.

667. The Appeals Chamber recalls that in finding that Stanišić's JCE III Crimes were foreseeable to him, the Trial Chamber relied on the fact that they occurred in the context of the JCE.[2243] The Trial Chamber further relied on Stanišić's intent to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of crimes,[2244] and his awareness of the criminal background and propensity of members of the Bosnian Serb forces to commit crimes and particularly the RS reserve police force which were mobilised in the early months of the conflict to effect this removal.[2245]

668. The Appeals Chamber notes that it has upheld the Trial Chamber's finding on the existence of the JCE.[2246] The Appeals Chamber further recalls that, despite its finding that a reasonable trier of fact could have found that Stanišić acquired knowledge of crimes committed against Muslims and Croats only as of late April 1992,[2247] it has upheld the Trial Chamber's finding that Stanišić possessed the intent to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of JCE I Crimes during the Indictment period (*i.e.* from 1 April 1992 to 31 December 1992).[2248]

669. With regard to Stanišić's awareness of the criminal background and propensity of members of the Bosnian Serb forces to commit crimes, while the section in the Trial Judgement on Stanišić's responsibility for Stanišić's JCE III Crimes lacks references, the Appeals Chamber understands the Trial Chamber to have relied on its findings regarding Stanišić's: (i) knowledge of crimes committed by these forces against Muslims and Croats;[2249] (ii) acknowledgement at the November 1992 BSA Session that "'in the beginning', 'thieves and criminals' were accepted into the reserve police forces because 'we wanted the country defended'";[2250] and (iii) orders from 15 April 1992 that measures be taken against his subordinates who engaged in looting and misappropriation or other "unprincipled conduct", which the Trial Chamber found were not carried out to the extent possible.[2251] As regards Stanišić's knowledge of crimes committed against Muslims and Croats, as recalled above,[2252] the Appeals Chamber has found that due to the error in

[2243] Trial Judgement, vol. 2, paras 770-774, 776-779. See Trial Judgement, vol. 2, para. 313.
[2244] Trial Judgement, vol. 2, paras 770-771. See Trial Judgement, vol. 2, paras 766-769. See also Trial Judgement, vol. 2, paras 313, 770, 955.
[2245] Trial Judgement, vol. 2, para. 771. See Trial Judgement, vol. 2, paras 600, 746-747, 749, 751.
[2246] Trial Judgement, vol. 2, paras 313-314. See *supra*, paras 71, 87.
[2247] See *supra*, para. 412.
[2248] See *supra*, para. 584.
[2249] Trial Judgement, vol. 2, paras 420, 603, 612, 617, 623, 631-633, 638-639, 646, 660-663, 677, 689, 713, 762-765. See *supra*, para. 404.
[2250] Trial Judgement, vol. 2, para. 600.
[2251] Trial Judgement, vol. 2, paras 746-747, 749, 751, 759. See Trial Judgement, vol. 2, paras 605, 610, 613, 636, 640-641, 644.
[2252] See *supra*, para. 666.

the Trial Chamber's finding on Stanišić's knowledge of the arrests in Sokolac,[2253] a reasonable trier of fact could have found that Stanišić acquired knowledge of crimes committed against Muslims and Croats only as of late April 1992.[2254] However, the Appeals Chamber considers that this has no impact on the Trial Chamber's finding that he was aware of the criminal background and propensity of members of the Bosnian Serb forces to commit crimes, in light of his knowledge of crimes against Muslims and Croats from late April,[2255] as well as the remaining factors considered by the Trial Chamber.

670. In addition to taking into account that Stanišić's JCE III Crimes occurred in the context of the JCE, that Stanišić had the intent to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of JCE I Crimes, and that he was aware of the criminal background and propensity of members of the Bosnian Serb forces to commit crimes, the Trial Chamber also relied on other varying factors in relation to assessing the foreseeability to Stanišić of specific crimes for which he was found responsible for pursuant to the third category of joint criminal enterprise.[2256] However, there is no indication that the Trial Chamber relied specifically on Stanišić's knowledge of the Sokolac arrests.[2257]

671. For the foregoing reasons, the Appeals Chamber finds that the error in the Trial Chamber's finding on Stanišić's knowledge of the Sokolac arrests has no impact on the Trial Chamber's finding that it was foreseeable to Stanišić that Stanišić's JCE III Crimes could be committed in the execution of the common plan of the JCE. In the absence of any further submissions, Stanišić has failed to demonstrate that the Trial Chamber erred in fact in reaching this conclusion. His arguments in this regard are therefore dismissed.

[2253] Trial Judgement, vol. 2, para. 612. See *supra*, para. 665.
[2254] See *supra*, para. 412.
[2255] Trial Judgement, vol. 2, paras 420, 603, 617, 623, 631-633, 638-639, 646, 660-663, 677, 689, 713, 762-765. See *supra*, para. 575.
[2256] See *supra*, paras 629-633.
[2257] With respect to the foreseeability of inhumane acts and persecutions through torture, cruel treatment, and inhumane acts as crimes against humanity; torture as a crime against humanity and a violation of the laws or customs of war; and cruel treatment as a violation of the laws or customs of war, the Appeals Chamber notes that the Trial Chamber relied on Stanišić's knowledge of the large-scale detention of the non-Serbs civilians (Trial Judgement, vol. 2, para. 776). In this respect, the Appeals Chamber observes that the Trial Chamber found elsewhere that he learned of the unlawful detentions of Muslims and Croats, at the latest, by the beginning of June 1992 (Trial Judgement, vol. 2, para. 762. See Trial Judgement, vol. 2, paras 617, 623, 631-633, 639, 646, 660-663, 763-765. See also Trial Judgement, vol. 2, paras 637, 646, 664, 667-668, 675, 748, 750, 752, 757, 759, 763-765). In reaching this conclusion, the Trial Chamber however did not rely on his knowledge of the Sokolac arrests (see Trial Judgement, vol. 2, paras 762-765. See also Trial Judgement, vol. 2, paras 617, 623, 631-633, 639, 646, 660-663; *supra*, paras 404-405). With respect to the foreseeabilty of the plunder of property as an underlying act of persecutions as a crime against humanity, the Trial Chamber additionally considered evidence on numerous reports and meetings that addressed the increased level of looting, search and seizure, and plunder of the moveable and immoveable property of the Bosnian Muslims and Bosnian Croats, and other non-Serbs in the Municipalities (Trial Judgement, vol. 2, para. 777. See Trial Judgement, vol. 2, paras 603, 631-632, 746). However, it is evident that the Trial Chamber did not rely on Stanišić knowledge of the Sokolac arrests in reaching its conclusion on the information he received concerning property crimes (see Trial Judgement, vol. 2, paras 762-765. See also Trial Judgement, vol. 2, paras 617, 623, 631-633, 639, 646, 660-663; *supra*, paras 404-405).

(iii) Alleged errors in finding that Stanišić willingly took the risk that Stanišić's JCE III Crimes could be committed (Stanišić's tenth ground of appeal in part and eleventh ground of appeal in part)

a. Submissions of the parties

672. Stanišić argues that the Trial Chamber erred in fact by finding that he willingly took the risk that the crimes under Counts 3 to 8 and the crime of persecutions under Count 1 (through underlying acts other than forcible transfer and deportation)[2258] could be committed.[2259] In particular, Stanišić submits that the Trial Chamber failed to provide references in finding him responsible for crimes in the Municipalities outside the scope of the JCE and "simply follow[ed] its incorrect reasoning from paragraphs 771-774 and 776-779" of volume two of the Trial Judgement.[2260]

673. Stanišić further submits that the evidence demonstrates that he took numerous positive measures against those who committed crimes, but that the Trial Chamber mischaracterised this evidence.[2261] In particular, Stanišić contends that the Trial Chamber mischaracterised efforts to bring the Yellow Wasps to justice by focussing on the charges of vehicle theft and by finding that "[m]embers of the Yellow Wasps were released from detention on 28 August 1992 and an indictment against them was only issued in 1999."[2262] Stanišić refers to Witness Andan's evidence that on the basis of the information provided by him to the Serbian authorities, the leaders of the Yellow Wasps were indicted in Serbia in 1993 and convicted and sentenced in 1994,[2263] and that other paramilitaries were also arrested and prosecuted.[2264] Stanišić further argues that in finding that operations similar to those against the Yellow Wasps never occurred "because Davidović 'returned to Serbia' and Andan was removed from RS MUP", the Trial Chamber mischaracterised Witness Andan's evidence.[2265] According to Stanišić, Exhibits 1D75, a report from the Crime Police Directorate within the RS MUP on criminal activity of the Yellow Wasps, and 1D557, the diary of

[2258] See *supra*, fn. 2070.
[2259] Stanišić Appeal Brief, paras 393-394, 411, 425, 451. See Stanišić Appeal Brief, paras 454, 461, 466, 470, 472, 475.
[2260] Stanišić Appeal Brief, para. 450.
[2261] Stanišić Appeal Brief, para. 417. See Stanišić Appeal Brief, paras 412-416. See also Stanišić Reply Brief, para. 99.
[2262] Stanišić Appeal Brief, para. 412 (emphasis omitted), quoting Trial Judgement, vol. 2, para. 715.
[2263] Stanišić Appeal Brief, para. 413, referring to Dragomir Andan, 1 Jun 2011, T. 21688, 21690-21692, Exhibit P1979.
[2264] Stanišić Appeal Brief, para. 414, referring to Dragomir Andan, 1 Jun 2011, T. 21690-21692, 21700-21702.
[2265] Stanišić Appeal Brief, para. 415, referring to Trial Judgement, vol. 2, para. 716. Stanišić refers to Trial Chamber findings and Witness Andan's evidence that the operation to counter paramilitaries in Foča was cancelled due to the MUP of Serbia and Montenegro's refusal to "allow them to cross onto their territory" (Stanišić Appeal Brief, para. 415, referring to Trial Judgement, vol. 2, paras 716, 718, Dragomir Andan, 30 May 2011, T. 21547-21548).

Witness Andan from July-August 1992, also demonstrate that measures were taken against paramilitaries in relation to their involvement in serious crimes and not only thefts.[2266]

674. Stanišić submits that the Trial Chamber acknowledged many examples where he took measures to counter crimes.[2267] Further, he argues that it accepted that Witness Đokanović and Stanišić "were the only people in the RS Government who were interested in addressing the issue of war crimes",[2268] but disregarded this evidence when concluding that he willingly took the risk that such crimes could be committed.[2269] In addition, Stanišić argues that the Trial Chamber ignored several exhibits showing that he did not willingly take the risk that crimes under Counts 3 to 8 be committed.[2270]

675. Stanišić further refers to the Trial Chamber's finding that he issued strict instructions "for the purpose of safeguarding the lives of people in the detention centres"[2271] and to his orders to counter serious crimes as soon as he was informed of such crimes.[2272] He submits that the Trial Chamber erred in finding that he willingly took the risk that killings in detention centres and the Municipalities, as underlying acts of persecutions under Count 1, could be committed.[2273]

676. With respect to the Trial Chamber's finding that he willingly took the risk that imposition and maintenance of restrictive and discriminatory measures as an underlying act of persecutions could be committed,[2274] Stanišić refers to the Trial Chamber's findings that he took action when informed of these acts.[2275] He further argues that the Trial Chamber erred when finding that the civilian law enforcement apparatus did not function impartially.[2276]

[2266] Stanišić Appeal Brief, paras 414, 416, referring to, *inter alia*, Exhibits 1D75, p. 3, 1D557, pp 6-8.
[2267] Stanišić Appeal Brief, paras 418-419, referring to Trial Judgement, vol. 2, paras 635-637, 640-641, 644-645, 647-648, 698.
[2268] Stanišić Appeal Brief, para. 451 (emphasis omitted), quoting Trial Judgement, vol. 2, para. 694.
[2269] Stanišić Appeal Brief, paras 419, 451. See Stanišić Reply Brief, para. 98; Stanišić Appeal Brief, para. 421.
[2270] Stanišić Appeal Brief, para. 422, referring to Exhibits 1D61, P792, P1252, P1323, P847, 1D94, 1D62, P553, P1013, P571, 1D58, 1D59, 1D49, P855. See Stanišić Appeal Brief, para. 420; Stanišić Reply Brief, para. 99. In support of his argument, Stanišić also refers to his submissions in his fourth ground of appeal (see Stanišić Appeal Brief, fn. 566, referring to Stanišić Appeal Brief, para. 116).
[2271] Stanišić Appeal Brief, para. 452, referring to Trial Judgement, vol. 2, para. 667, Exhibit 1D55.
[2272] Stanišić Appeal Brief, para. 453, referring to Trial Judgement, vol. 2, para. 649.
[2273] Stanišić Appeal Brief, para. 454.
[2274] Stanišić Appeal Brief, para. 461.
[2275] Stanišić Appeal Brief, para. 455, referring to Trial Judgement, vol. 2, paras 610, 635, 682, 746. Stanišić refers to orders that legal measures be taken against RS MUP members who committed crimes and that CSB chiefs dismiss RS MUP members subjected to criminal proceedings (Stanišić Appeal Brief, para. 455, referring to Trial Judgement, vol. 2, paras 640-641).
[2276] Stanišić Appeal Brief, para. 457, referring to Trial Judgement, vol. 2, paras 91-94. See Stanišić Appeal Brief, para. 456, referring to Trial Judgement, vol. 2, para. 745. Stanišić submits that the Trial Chamber: (i) did not take into account that the success of police investigations was dependent on government bodies over which he had no control (Stanišić Appeal Brief, para. 456, referring to Trial Judgement, vol. 2, paras 87-89); (ii) found that only one crime committed by Serbs against non-Serbs was reported in Doboj while six additional reports were entered into the Doboj logbook (Stanišić Appeal Brief, para. 458, referring to Trial Judgement, vol. 2, para. 94, Hearing, 23 May 2011,

677. Stanišić also contends that the Trial Chamber erred in finding that he willingly took the risk that unlawful detentions could be committed,[2277] arguing that the Trial Chamber acknowledged that he issued orders requesting information on the condition of detention but failed to take them into account.[2278] He further submits that the Trial Chamber erroneously relied on his conversations with Witness Marković[2279] to find that he willingly took that risk.[2280]

678. Furthermore, Stanišić submits that the Trial Chamber erred in finding that he willingly took the risk that torture, cruel treatment, and other inhumane acts could be committed since it disregarded that he: (i) ordered CSB chiefs to abide by the relevant laws on the treatment of POWs and civilians, and SJBs to release and allow free movement to the civilian population;[2281] (ii) requested to be informed where "treatment violated internal and international standards", and ordered that criminal reports be filed against perpetrators;[2282] (iii) forwarded to CSBs and SJBs requests from the Ministry of Health, Work, and Social Security regarding the collection of data on detention centres;[2283] and (iv) requested CSBs to submit "questionnaires on criminal reports filed in cases of war crimes" and that such reports be processed irrespective of ethnicity.[2284]

679. Stanišić also submits that the Trial Chamber erred in finding that he willingly took the risk that looting, search and seizure, appropriation, and plunder of moveable and immoveable property could be committed, considering that: (i) following complaints raised by RS MUP members at the 11 July 1992 Collegium about "[a]rmy looting", the RS MUP took positive actions within several

T. 21087); (iii) disregarded "highly significant material" in its assessment of the prosecutor's logbooks regarding the reporting of crimes against non-Serbs (Stanišić Appeal Brief, para. 459, referring to Trial Judgement, vol. 2, paras 91-94); and (iv) ignored relevant evidence of Witness Gaćinović that investigations of crimes against non-Serbs were being conducted (Stanišić Appeal Brief, para. 460, referring to Trial Judgement, vol. 2, para. 94, fn. 320, Exhibit P1609.01, p. 18. Stanišić argues that the fact that the perpetrators could not be identified does not show that crimes were going unreported, as the Trial Chamber erroneously found (Stanišić Appeal Brief, para. 460)).

[2277] Stanišić Appeal Brief, para. 466.

[2278] Stanišić Appeal Brief, para. 462, referring to Trial Judgement, vol. 2, para. 748. Stanišić submits that following his orders, commissions were set up in each CSB leading to inspections and reports that there were no detention centres in certain municipalities (Stanišić Appeal Brief, para. 462, referring to Trial Judgement, vol. 2, paras 673, 676, 752, Exhibits 1D57, P165, 2D95, P671, P679).

[2279] Stanišić Appeal Brief, para. 464, referring to Trial Judgement, vol. 2, para. 764.

[2280] Stanišić submits that: (i) he and Witness Marković discussed the exchange of prisoners conducted under supervision of the ICRC and United Nations Protection Force ("UNPROFOR"); and (ii) his general statement to ensure proper treatment cannot be used to infer that he willingly took that risk (Stanišić Appeal Brief, paras 465-466, referring to Slobodan Marković, 12 Jul 2010, T. 12674-12675, Exhibit P179.18).

[2281] Stanišić Appeal Brief, para. 467, referring to Trial Judgement, vol. 2, para. 445, Exhibit 1D563.

[2282] Stanišić Appeal Brief, para. 467, referring to Trial Judgement, vol. 2, para. 668, Exhibit 1D56.

[2283] Stanišić Appeal Brief, para. 468, referring to Trial Judgement, vol. 2, para. 675, Exhibit 1D57.

[2284] Stanišić Appeal Brief, para. 469, referring to Trial Judgement, vol. 2, paras 48, 682, Exhibits 1D572, 1D63, 1D84, 1D328, P568, P989, Simo Tuševljak, 24 Jun 2011, T. 22771-22773, 22754-22755.

weeks;[2285] and (ii) the Trial Chamber found that as early as 15 April 1992, Stanišić issued an order to curb looting and misappropriation of property.[2286]

680. Finally, with regard to wanton destruction and damage of religious and cultural property, Stanišić submits that the Trial Chamber "failed to mention any evidential basis" on which to conclude that the subjective element of the third category of joint criminal enterprise was met in relation to him for these crimes.[2287] Furthermore, he argues that in light of all the orders he issued to prevent crimes, including property crimes,[2288] the Trial Chamber could not have found that these crimes were foreseeable to him and that he willingly took that risk.[2289]

681. The Prosecution responds that Stanišić's argument that the Trial Chamber failed to provide references to relevant evidence in its finding on the third category of joint criminal enterprise should be summarily dismissed as undeveloped.[2290] The Prosecution also contends that many of Stanišić's references to the Trial Judgement or exhibits do not support his submissions and that the orders he refers to were directly addressed by the Trial Chamber, proving that it did not disregard them.[2291]

682. The Prosecution submits that the Trial Chamber reasonably found that: (i) the RS MUP investigations against the Yellow Wasps primarily focused on the thefts of cars despite their involvement in serious crimes;[2292] (ii) they were released shortly after being arrested;[2293] and (iii) they were not indicted within the RS until 1999.[2294] The Prosecution further responds that the operation in Foča to which Stanišić refers was never carried out and that in any case, it was to focus

[2285] Stanišić Appeal Brief, para. 471, referring to Trial Judgement, vol. 2, para. 631, fn. 1653, Exhibit P160. See Stanišić Appeal Brief, para. 472.
[2286] Stanišić Appeal Brief, para. 471, referring to Trial Judgement, vol. 2, para. 746. See Stanišić Appeal Brief, para. 472.
[2287] Stanišić Appeal Brief, para. 473.
[2288] Stanišić Appeal Brief, para. 474, referring to Exhibits 1D61, P792, 1D634, P1252, P1323, 1D84. See Stanišić Reply Brief, para. 98.
[2289] Stanišić Appeal Brief, paras 474-475.
[2290] Prosecution Response Brief (Stanišić), para. 219.
[2291] Prosecution Response Brief (Stanišić), para. 213, referring to, *inter alia*, Stanišić Appeal Brief, paras 418-419, 422, 452-453, 455, 462, 467-469, 471, 474.
[2292] Prosecution Response Brief (Stanišić), para. 214.
[2293] Prosecution Response Brief (Stanišić), paras 214-215. The Prosecution argues that, contrary to Stanišić's submission, Witness Andan did not testify that the Yellow Wasps were handed over to or prosecuted in Serbia on the basis of information he provided. Rather, according to the Prosecution, Witness Andan confirmed that they were released shortly after their arrest (Prosecution Response Brief (Stanišić), para. 215, referring to Dragomir Andan, 30 May 2011, T. 21526, Dragomir Andan, 1 Jun 2011, T. 21688).
[2294] Prosecution Response Brief (Stanišić), para. 215. The Prosecution adds that Stanišić ignores Witness Andan's testimony that "a deliberate choice had been made to expel paramilitaries to Serbia rather than prosecute them in the RS" (Prosecution Response Brief (Stanišić), para. 216).

on property crimes and the harassment of Serbs.[2295] With respect to Exhibits 1D75 and 1D557, the Prosecution argues that they support the Trial Chamber's findings on selective prosecutions.[2296]

683. The Prosecution also submits that Stanišić misreads the Trial Judgement when claiming that the Trial Chamber "accepted" the evidence of Witness Đokanović regarding Stanišić's efforts to combat war crimes,[2297] as the Trial Chamber specifically rejected it in light of the totality of the evidence.[2298]

684. In response to Stanišić's arguments concerning the imposition and maintenance of restrictive and discriminatory measures, the Prosecution contends that the Trial Chamber was aware of the distinction between the roles of the police and that of the prosecutor and thus properly focused on Stanišić's orders aimed only at documenting crimes against Serbs.[2299]

685. With regard to Stanišić's arguments concerning Witness Marković's evidence, the Prosecution submits that this evidence together with the remainder of the trial record, supports the Trial Chamber's finding that he was liable for unlawful detentions under the third category of joint criminal enterprise.[2300]

686. The Prosecution contends that Stanišić takes a selective approach to the evidence in his arguments regarding looting, search and seizure, appropriation, and plunder of the moveable and immoveable property, as the evidence shows that the police also engaged in stealing.[2301]

687. Finally, the Prosecution responds that, in arguing that the Trial Chamber failed to explain the evidentiary basis for finding him liable for wanton destruction and damage of religious and cultural property, Stanišić ignores the Trial Chamber's findings that these crimes were foreseeable to him because "they were carried out to pressure non-Serbs to leave and to wipe out traces of their

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[2295] Prosecution Response Brief (Stanišić), para. 216.
[2296] Prosecution Response Brief (Stanišić), para. 217.
[2297] Prosecution Response Brief (Stanišić), para. 220.
[2298] Prosecution Response Brief (Stanišić), para. 220.
[2299] Prosecution Response Brief (Stanišić), para. 221, referring to Trial Judgement, vol. 2, paras 87-89, 723-728, 758. In addition, it submits that Stanišić's arguments concerning the Doboj prosecutor's logbook ignore that the Trial Chamber also relied on logbooks from 19 other municipalities to find that very few serious crimes against non-Serb victims had been recorded (Prosecution Response Brief (Stanišić), para. 221, referring to Trial Judgement, vol. 2, paras 91-94). The Prosecution further submits that it has already addressed Stanišić's arguments regarding Witness Gaćinović as part of its response to Stanišić's fourth ground of appeal (Prosecution Response Brief (Stanišić), para. 221, referring to Prosecution Response Brief (Stanišić), para. 141).
[2300] Prosecution Response Brief (Stanišić), para. 222, referring to Slobodan Marković, 12 Jul 2010, T. 12674-12675, Trial Judgement, vol. 2, paras 620, 764, 772, 776. The Prosecution points in particular to Stanišić's own admission that "he learned about [the] conditions of detention and treatment of prisoners from the Commission's reports" (Prosecution Response Brief (Stanišić), para. 222).
[2301] Prosecution Response Brief (Stanišić), para. 223, referring to, *inter alia*, Exhibit P160, p. 17.

existence in the RS".[2302] According to the Prosecution, this argument should be summarily dismissed.[2303]

b. Analysis

688. The Appeals Chamber recalls that for a conviction for a crime under the third category of joint criminal enterprise, it must be shown that it was foreseeable to the accused that such a crime might be committed in order to carry out the *actus reus* of the crimes forming part of the common purpose.[2304] In addition, 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.[2305]

689. At the outset, the Appeals Chamber notes that Stanišić is correct in stating that the Trial Chamber provided no references for its findings on his responsibility for Stanišić's JCE III Crimes in the Municipalities.[2306] However, as also noted by Stanišić, earlier in the Trial Judgement, the Trial Chamber found that it was foreseeable to Stanišić that Stanišić's JCE III Crimes could be committed and that he willingly took that risk.[2307] These findings, together with the Trial Chamber's findings that Stanišić's JCE III Crimes were committed by members of the JCE or persons used by members of the JCE,[2308] were sufficient for the Trial Chamber to conclude that Stanišić was responsible for these crimes pursuant to the third category of joint criminal enterprise. The Appeals Chamber will address below whether the Trial Chamber reasonably found that Stanišić willingly took the risk that Stanišić's JCE III Crimes could be committed.

690. The Appeals Chamber understands that the Trial Chamber based its conclusion that Stanišić willingly took the risk that Stanišić's JCE III Crimes could be committed, on its findings that these crimes were foreseeable to him in the implementation of the JCE,[2309] and that Stanišić was a

[2302] Prosecution Response Brief (Stanišić), para. 224, referring to Trial Judgement, vol. 2, paras 292, 294, 778.
[2303] Prosecution Response Brief (Stanišić), para. 224.
[2304] *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brđanin* Appeal Judgement, paras 365, 411.
[2305] *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brđanin* Appeal Judgement, paras 365, 411.
[2306] See Trial Judgement, vol. 2, paras 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885.
[2307] Trial Judgement, vol. 2, paras 772-774, 776-779.
[2308] Trial Judgement, vol. 2, paras 799, 801-802, 806-807, 810-811, 815-816, 819-820, 824-825, 828-829, 833-834, 837-838, 841-842, 846-847, 851-852, 855-856, 860-861, 865-866, 870-871, 874-875, 878-879, 882-883.
[2309] See Trial Judgement, vol. 2, paras 772-774, 776-779.

member of the JCE and continued to support and participate in the JCE throughout the Indictment period.[2310] These findings have been upheld on appeal.[2311]

691. The Appeals Chamber now turns to Stanišić's specific challenges to the Trial Chamber's assessment of evidence with regard to his willingly taking the risk.

i. Alleged errors in mischaracterising Witness Andan's evidence

692. As regards Stanišić's arguments that the Trial Chamber mischaracterised Witness Andan's evidence regarding the Yellow Wasps,[2312] the Appeals Chamber notes the following Trial Chamber findings:

> [a]ccording to an RS MUP report, on 29 and 30 July 1992 the RS MUP, in cooperation with the army, 'disarmed and arrested 100 members of paramilitary formations' in Zvornik.[2313] [...]
>
> The police questioning of the Yellow Wasps, however, focused primarily on their involvement in thefts [...].[2314] Members of the Yellow Wasps were released from detention on 28 August 1992 and an indictment against them was only issued in 1999.[2315] [...]
>
> Andan testified that he understood from conversations he had with Stanišić [...] that he would be involved in similar operations to deal with paramilitaries [...]. However, this never occurred because Davidović 'returned to Serbia' and Andan was removed from the RS MUP.[2316]

693. The Appeals Chamber sees no inconsistency between Witness Andan's evidence and these findings, which the Trial Chamber based, in part, on the evidence Stanišić refers to in his submissions.[2317] The Appeals Chamber further observes that Witness Andan did not testify that members of the Yellow Wasps were prosecuted in Serbia on the basis of information he provided. Rather, he testified that some paramilitaries were handed over to Serbia with a "brief description of the crimes they had committed and their names".[2318] The Appeals Chamber is unable to see how

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[2310] See Trial Judgement, vol. 2, paras 769-770. See also Trial Judgement, vol. 2, paras 801, 804, 806, 809-810, 813, 815, 818-819, 822, 824, 827-828, 831, 833, 836-837, 840-841, 844, 846, 849, 851, 854-855, 858, 860, 863, 865, 868,870, 873-874, 877-878, 881-882, 885.
[2311] See *supra*, paras 87, 356-364, 573-585, 669.
[2312] See *supra*, para. 673.
[2313] Trial Judgement, vol. 2, para. 714. See Trial Judgement, vol. 2, fn. 1831, referring to Exhibit 1D558, Witness ST121, 23 Nov 2009, T. 3678.
[2314] Trial Judgement, vol. 2, para. 715. See Trial Judgement, vol. 2, fn. 1834, referring to, *inter alia*, Exhibits P403 (confidential), 1D75, P1533, P2002, P2003, P322.
[2315] Trial Judgement, vol. 2, para. 715. See Trial Judgement, vol. 2, fn. 1835, referring to Witness ST215, 28 Sep 2010, T. 15003, Exhibits P317.21, P317.19.
[2316] Trial Judgement, vol. 2, para. 716. See Trial Judgement, vol. 2, fn. 1837, referring to Dragomir Andan, 1 Jun 2011, T. 21700-21702, Exhibit 1D557, p. 14.
[2317] See Trial Judgement, vol. 2, fns 1831, 1834-1835, 1837, referring to, *inter alia*, Exhibits 1D75, 1D557, p. 14, Dragomir Andan, 1 Jun 2011, T. 21700-21702. See also Stanišić Appeal Brief, paras 414-417, referring to Dragomir Andan, 30 May 2011, T. 21547-21548, Dragomir Andan, 1 Jun 2011, 21683-21695, 21700-21702, Exhibits 1D557, pp 6-8, 1D75, p. 3. The Appeals Chamber further notes that Witness Andan confirmed that members of the Yellow Wasps were released shortly after their arrest by the RS MUP 1992 (Dragomir Andan, 1 Jun 2011, T. 21688. See Dragomir Andan, 30 May 2011, T. 21526).
[2318] Dragomir Andan, 1 Jun 2011, T. 21688.

this testimony undermines the Trial Chamber's finding that in the RS, members of the Yellow Wasps were released shortly after their arrest in 1992 and only indicted in 1999.

694. Insofar as Stanišić argues that the Trial Chamber mischaracterised Witness Andan's evidence regarding the operation in Foča,[2319] the Appeals Chamber notes that the Trial Chamber explicitly noted this evidence and found, on the basis of it, that the operation was cancelled for lack of authorisation from the MUPs of Serbia and Montenegro for the necessary passage through their territory.[2320] However, the Trial Chamber also noted that Witness Andan confirmed that, although he had understood from Stanišić that he would be involved in further operations like those in Zvornik, this never occurred as he was removed from the RS MUP.[2321] The Appeals Chamber sees no inconsistency in the Trial Chamber's findings on the reasons why operations similar to those against the Yellow Wasps never occurred again and Witness Andan's evidence, and finds that Stanišić has failed to show an error.

ii. Alleged errors in disregarding evidence that Stanišić took measures to combat crimes

695. The Appeals Chamber now turns to Stanišić's argument that the Trial Chamber acknowledged evidence that he took a number of measures to combat crimes and yet disregarded this evidence when finding that he willingly took the risk that Stanišić's JCE III Crimes could be committed.[2322] The Appeals Chamber notes that in the paragraphs of the Trial Judgement referred to by Stanišić, the Trial Chamber considered evidence on measures he took to combat crimes.[2323] However, Stanišić ignores that the Trial Chamber ultimately concluded, in light of the trial record, that: (i) his orders on actions to be taken against the reserve police force were not carried out to the extent possible;[2324] (ii) placing errant policemen at the disposal of the VRS was not sufficient to fulfil his duty to protect the Muslim and Croat population since transferring known offenders to the army further facilitated their continued interaction with civilians;[2325] (iii) Stanišić failed to use his

[2319] See *supra*, para. 673.
[2320] Trial Judgement, vol. 2, para. 718, referring to Dragomir Andan, 30 May 2011, T. 21548. See Dragomir Andan, 1 Jun 2011, T. 21698.
[2321] Trial Judgement, vol. 2, para. 716, referring to, *inter alia*, Dragomir Andan, 1 Jun 2011, T. 21700-21702.
[2322] See *supra*, para. 674.
[2323] See, *inter alia*, Trial Judgement, vol. 2, paras 635, 637, 640-641, 644-645, 647-648 (on Stanišić's orders of 17, 19, 23, 24 and 27 July 1992 concerning, *inter alia*, information to be provided on the commission of crimes, the involvement of police therein, issues related to detention and treatment of detainees, and legal and administrative measures to be taken against MUP members engaged in criminal activities); Trial Judgement, vol. 2, para. 636 (on the Đerić Letter); Trial Judgement, vol. 2, para. 694 (on the evidence of Witness Đokanović that he and Stanišić "were the only people in the RS Government who were interested in addressing the issue of war crimes"); Trial Judgement, vol. 2, para. 698 (on Stanišić's instructions of 23 October 1992 to take action against errant staff). See also Stanišić Appeal Brief, paras 418-419, referring to Trial Judgement, vol. 2, paras 635-637, 640-641, 644-645, 647-648, 698.
[2324] Trial Judgement, vol. 2, para. 746.
[2325] Trial Judgement, vol. 2, para. 751.

powers to ensure the full implementation of his orders regarding detentions despite being aware of the limited action taken subsequent to his orders;[2326] (iv) by failing to remove the personnel of the RS MUP who had committed crimes, Stanišić violated his professional obligation to protect and safeguard the civilian population in the territories under his control;[2327] (v) although Stanišić had the ability to investigate and punish "those found to be involved" in crimes, he failed to act when learning of serious crimes such as unlawful detention, forcible displacement, cruel treatments or killings;[2328] and (vi) Stanišić took "insufficient action" to put an end to the crimes and instead "permitted RS MUP forces under his overall control to continue to participate in joint operations in the Municipalities with other Serb Forces involved in the commission of crimes".[2329] In light of these findings, which have been upheld on appeal,[2330] the Appeals Chamber considers that Stanišić has failed to show that no reasonable trier of fact could have concluded as the Trial Chamber did. Stanišić's argument that the Trial Chamber disregarded that he took a number of measures to combat crimes in assessing whether he willingly took the risk is therefore dismissed.[2331]

696. With respect to the exhibits Stanišić argues the Trial Chamber ignored, and which allegedly demonstrate that he did "everything he could" to counter crimes,[2332] the Appeals Chamber considers that he has failed to identify any error. Stanišić merely lists the exhibits, most of which are explicitly referred to in the Trial Judgement,[2333] without explaining how they render the Trial Chamber's finding unsafe. Stanišić's argument in this respect is therefore dismissed.

iii. Alleged errors in finding that Stanišić willingly took the risk that underlying acts of persecutions could be committed

697. With respect to Stanišić's challenge to the Trial Chamber's finding that he willingly took the risk that killings in detention centres and the Municipalities could be committed,[2334] the Appeals Chamber notes the Trial Chamber's finding that, in the course of July and August 1992, Stanišić

[2326] Trial Judgement, vol. 2, para. 753.
[2327] Trial Judgement, vol. 2, para. 754.
[2328] Trial Judgement, vol. 2, para. 757. See Trial Judgement, vol. 2, para. 755.
[2329] Trial Judgement, vol. 2, para. 759.
[2330] See *supra*, paras 240-255, 288, 300-305, 309-311.
[2331] The Appeals Chamber further notes that Stanišić's related submission on burden of proof falls short of articulating an error. The Appeals Chamber finds that this argument is clearly underdeveloped and thus dismisses it.
[2332] See *supra*, para. 674.
[2333] See Trial Judgement, vol. 2, paras 510 (Exhibit P1013), 594 (Exhibit 1D49), 610 (Exhibit 1D61), 640 (Exhibit 1D58), 641 (Exhibit 1D59), 677 (Exhibit P847), 687 (Exhibit P855), 708 (Exhibit 1D94), 724 (Exhibit 1D62). See also Stanišić Appeal Brief, para. 422, referring to Exhibits 1D61, P792, P1252, P1323, P847, 1D94, 1D62, P553, P1013, P571, 1D58, 1D59, 1D49, P855.
[2334] See *supra*, para. 675.

issued a number of orders and instructions relating to detention.[2335] The Trial Chamber also noted actions that followed these orders, such as the inspections between 18 and 20 August 1992 and the reports sent to Stanišić.[2336] However, Stanišić ignores that the Trial Chamber found that his orders of 8, 10, 17, and 24 August 1992 on detention related matters, were "prompted by the international attention given to the detention camps in BiH by June 1992" and "a result of an instruction of 6 August by the RS Presidency, which was concerned about its image in the eyes of the world".[2337] The Trial Chamber further noted that the conditions and mistreatment continued and ultimately found that "Stanišić failed to use the powers available to him under the law to ensure the full implementation of these orders despite being aware of the limited action taken subsequent to his orders".[2338] In light of these findings, which have been upheld on appeal,[2339] the Appeals Chamber considers that Stanišić merely disagrees with the Trial Chamber's conclusion that he willingly took the risk and has failed to show that no reasonable trier of fact could have reached this conclusion.

698. Further, in support of his argument that he issued orders to counter serious crimes as soon as he was informed thereof, Stanišić refers to paragraph 649 of volume two of the Trial Judgement.[2340] In this paragraph, the Trial Chamber considered evidence that, after being informed in July 1992 "that 'criminal gangs' (often wearing RS MUP and army uniforms) were committing serious crimes against all citizens, Stanišić demanded vigorous action by the SJBs and the CSBs to fight these kinds of activities, jointly with the military".[2341] The Appeals Chamber notes that the Trial Chamber later found that Stanišić issued a number of orders in the course of July and August 1992 relating to, *inter alia*, "criminal elements in the police".[2342] In response to the orders he issued in July 1992, the Trial Chamber found that Stanišić was informed that "disciplinary measures were instituted against 35 policemen at the Vlasenica SJB and that a number of policemen in Doboj and in the ARK were transferred to the VRS".[2343] However, the Trial Chamber ultimately concluded that Stanišić's placing of errant reserve policemen at the disposal of the army "was not sufficient to fulfil his duty to protect the Muslim and Croat population",[2344] which has been upheld on appeal.[2345] In light of

[2335] See Trial Judgement, vol. 2, paras 445 (on Stanišić's order of 8 August 1992), 637 (on Stanišić's request for information of 19 July 1992), 667 (on Stanišić's order of 10 August 1992), 675 (on Stanišić's order of 24 August 1992). See also Trial Judgement, vol. 2, paras 664, 668, 748; *supra*, paras 281-290.
[2336] Trial Judgement, vol. 2, paras 673, 676, referring to Exhibits P165, 2D95, P972, Tomislav Kovač, 7 Mar 2012, T. 27067-27068, Andrija Bjeloševič, 19 Apr 2011, T. 19809-19810. See Trial Judgement, vol. 2, para. 752.
[2337] Trial Judgement, vol. 2, para. 753. See Trial Judgement, vol. 2, para. 752. See also Trial Judgement, vol. 2, paras 651-668.
[2338] Trial Judgement, vol. 2, para. 753. The Appeals Chamber further notes the Trial Chamber's finding that Stanišić failed to act in a decisive matter with regard to, *inter alia*, killings and inhumane treatment of detainees (see Trial Judgement, vol. 2, para. 757).
[2339] See *supra*, paras 281-290, 304.
[2340] See *supra*, para. 675.
[2341] Trial Judgement, vol. 2, para. 649, referring to Goran Mačar, 11 Jul 2011, T. 23109, Exhibit P595, pp 7-8.
[2342] Trial Judgement, vol. 2, para. 748. See *supra*, para. 697.
[2343] Trial Judgement, vol. 2, para. 749.
[2344] Trial Judgement, vol. 2, para. 751.

these findings, the Appeals Chamber finds that Stanišić has failed to show that no reasonable trier of fact could have found that he willingly took the risk and his argument is dismissed.

699. With respect to Stanišić's arguments that the Trial Chamber erred in finding that he willingly took the risk that the underlying act of unlawful detention could be committed,[2346] the Appeals Chamber first observes that insofar as he refers to his orders requesting information on the conditions of detention, resulting in the setting up of commissions,[2347] it has already dismissed his arguments[2348] and thus will not address these orders again here.

700. Stanišić also argues that the Trial Chamber erred in relying on Witness Marković's evidence to find that he knew about unlawful detentions and willingly took the risk that these could be committed.[2349] The Appeals Chamber notes in this regard that the Trial Chamber found that Witness Marković, as a member of the Commission for Exchange of Prisoners on behalf of the RS MUP, was not obliged to file reports with the RS MUP on his work on prisoners exchanges[2350] but spoke twice to Stanišić about it.[2351] The Trial Chamber considered that Stanišić told him that "the prisoners should be treated in line with the Geneva Conventions [and] that especially women and young children were not to be maltreated".[2352] Given the reference to women and young children in the context of prisoner exchanges,[2353] the Appeals Chamber considers that this evidence supports the Trial Chamber's finding that Stanišić knew of unlawful detentions.[2354] Stanišić has failed to show that the Trial Chamber erred in its assessment and his arguments are dismissed.

701. Regarding Stanišić's submission that the Trial Chamber erred in finding that he willingly took the risk that torture, cruel treatment, and other inhumane acts could be committed,[2355] the Appeals Chamber notes that it has already dismissed his argument elsewhere in this Judgement.[2356]

702. The Appeals Chamber now turns to Stanišić's challenge to the Trial Chamber's finding that he willingly took the risk that imposition and maintenance of restrictive and discriminatory

[2345] See *supra*, para. 309.
[2346] See *supra*, para. 677.
[2347] See *supra*, para. 677.
[2348] See *supra*, para. 697.
[2349] See *supra*, para. 677.
[2350] Trial Judgement, vol. 2, paras 616-617, referring to, *inter alia*, Slobodan Marković, 12 Jul 2010, T. 12689-12690; Exhibit P2310, p. 10.
[2351] Trial Judgement, vol. 2, para. 617, fn. 1612, referring to Slobodan Marković, 12 Jul 2010, T. 12640-12641, 12643, 12674, 12764.
[2352] Trial Judgement, vol. 2, para. 617, fn. 1613, referring to Slobodan Marković, 12 Jul 2010, T. 12674-12675, 12690.
[2353] See Trial Judgement, vol. 2, para. 764.
[2354] The Appeals Chamber also notes that Stanišić stated that his knowledge on the detention conditions and treatment of detainees came from the Commission for Exchange of Prisoners (see Trial Judgement, vol. 2, para. 620, referring to Exhibit P2308, pp 36-38. See also Trial Judgement, vol. 2, para. 764).
[2355] See *supra*, para. 678.
[2356] See *supra*, paras 320-325, 697.

measures could be committed.[2357] It notes that the paragraphs of the Trial Judgement he refers to in support do not refer to actions Stanišić took against the imposition and maintenance of restrictive and discriminatory measures.[2358] Rather, they concern looting and appropriation or more generally "other severe crimes"[2359] or "war crimes".[2360] Since the Trial Chamber's findings in these paragraphs are considered elsewhere in this Judgement,[2361] the Appeals Chamber will not address them here. Furthermore, as regards Stanišić's argument that the Trial Chamber could not have found that he willingly took the risk that imposition and maintenance of restrictive and discriminatory measures could be committed in light of his orders of 23 and 24 July 1992, the Appeals Chamber notes that it has already addressed and dismissed his arguments on these orders above.[2362] Regarding Stanišić's argument on the civilian law enforcement apparatus, the Appeals Chamber recalls its earlier findings that he has failed to show that no reasonable trier of fact could have found that the civilian law enforcement apparatus failed to function in an impartial manner.[2363]

703. Turning now to Stanišić's submission that the Trial Chamber erred in finding that he willingly took the risk that looting, appropriation, and plunder of moveable and immoveable property could be committed,[2364] the Appeals Chamber notes that Stanišić fails to provide support for his submission that "positive action was taken by the [RS] MUP within several weeks" after the report of looting during the 11 July 1992 Collegium.[2365] However, the Appeals Chamber notes the Trial Chamber's finding that after the 11 July 1992 Collegium, Stanišić issued several orders, including on the involvement of the police in criminal activities. These orders have been addressed above and his argument in relation to them has already been dismissed.[2366]

704. Further, Stanišić is correct in noting that the Trial Chamber found that "[a]s early as 15 April 1992, Stanišić issued an order to curb looting and misappropriation of property by his

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[2357] See *supra*, para. 676.
[2358] See Stanišić Appeal Brief, para. 455, referring to Trial Judgement, vol. 2, paras 610, 635, 682, 746.
[2359] Trial Judgement, vol. 2, para. 635. See Trial Judgement, vol. 2, paras 610, 746.
[2360] Trial Judgement, vol. 2, para. 682.
[2361] See *supra*, paras 320-325 (concerning Trial Judgement, vol. 2, para. 682), 695 (concerning Trial Judgement, vol. 2, para. 635); *infra*, para. 704 (concerning Trial Judgement, vol. 2, paras 610, 746).
[2362] See *supra*, paras 695-696.
[2363] See *supra*, paras 277-280.
[2364] See *supra*, para. 679.
[2365] See Stanišić Appeal Brief, para. 471, referring to Trial Judgement, vol. 2, para. 631, fn. 1653, Exhibit P160. The Appeals Chamber notes that Stanišić only refers to Exhibit P160, which are the minutes of the 11 July 1992 Collegium when the issue was reported. The Appeals Chamber further notes that Stanišić refers to "[a]rmy looting". However, Witness Planojević stated at the meeting that police was also involved in such activity (see Exhibit P160, p. 17, where it reads that he stated that "looting [...] is most frequently committed in the so-called mopping up of territory, when paramilitary and military formations and police engage in stealing". See also Trial Judgement, vol. 2, para. 630, where the Trial Chamber noted Stanišić's statement at the 11 July 1992 Collegium that there was a need "to prevent criminal activities committed not only by citizens but also soldiers and [a]rmy officers, active duty and reserve police and members of the internal affairs organs and their officers who are found to have committed crimes of any kind").
[2366] See *supra*, para. 695.

subordinates".[2367] The Trial Chamber found that Stanišić was under a duty to discipline and dismiss the personnel of the RS MUP who had committed crimes.[2368] The Trial Chamber further found that Stanišić did initiate proceedings pertaining to theft and concluded that this demonstrated his ability "as the highest authority to investigate and punish".[2369] Stanišić, however, ignores the Trial Chamber's finding, which has been upheld on appeal,[2370] that "he took insufficient action to put an end" to the crimes.[2371] Other than disagreeing with it, he has failed to show that no reasonable trier of fact could have reached this conclusion. Accordingly, his argument that the Trial Chamber erred in finding that he willingly took the risk that persecutory looting, appropriation, plunder, and other similar acts could be committed fails.

705. The Appeal Chamber now turns to Stanišić's arguments concerning the Trial Chamber's finding on wanton destruction and damage of religious and cultural property.[2372] To the extent that he argues that the Trial Chamber failed to explain on what basis it concluded that these underlying acts of persecutions were foreseeable to him,[2373] the Appeals Chamber notes that it has already addressed elsewhere in this Judgement whether the Trial Chamber provided sufficient reasons for its findings concerning the foreseeability of underlying acts of persecutions, including wanton destruction and damage to religious and cultural property.[2374] Insofar as Stanišić argues that the Trial Chamber failed to provide reasons for its conclusion that he willingly took the risk that wanton destruction and damage of religious and cultural property could be committed,[2375] the Appeals Chamber recalls, as set out above, 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 joint criminal enterprise but nevertheless decided to join or continues to participate in that enterprise.[2376] The Appeals Chamber further recalls that a trial judgement must be read as a whole.[2377] The Appeals Chamber notes that the Trial Chamber found that it was foreseeable to Stanišić that persecutory wanton destruction and damage of religious and cultural property could be committed.[2378] Furthermore, the Trial Chamber found that Stanišić participated in

[2367] Trial Judgement, vol. 2, para. 746. See Trial Judgement, vol. 2, para. 610.
[2368] Trial Judgement, vol. 2, para. 754.
[2369] Trial Judgement, vol. 2, para. 755. See Trial Judgement, vol. 2, para. 754. See also Trial Judgement, vol. 2, paras 698-706. The Appeals Chamber further notes the Trial Chamber's finding that Stanišić focused on crimes committed against Serbs (See Trial Judgement, vol. 2, para. 758).
[2370] See *supra*, para. 312.
[2371] Trial Judgement, vol. 2, para. 759. See Trial Judgement, vol. 2, paras 698-708.
[2372] See *supra*, para. 680.
[2373] See *supra*, para. 680.
[2374] See *supra*, para. 628. The Appeals Chamber notes that the reasonableness of the Trial Chamber's findings on foreseeability has been addressed in the previous section of this Chapter (see *supra*, paras 647-671).
[2375] Stanišić Appeal Brief, paras 473-474.
[2376] See *supra*, para. 688.
[2377] *Šainović et al.* Appeal Judgement, paras 306, 321; *Boškoski and Tarčulovski* Appeal Judgement, para. 67; *Orić* Appeal Judgement, para. 38.
[2378] Trial Judgement, vol. 2, paras 778-779.

the JCE and continued to do so until the end of 1992.[2379] The Appeals Chamber understands that it is on this basis that the Trial Chamber found that Stanišić willingly took the risk that these crimes could be committed. Stanišić has thus failed to show an error.

706. Regarding Stanišić's argument that the Trial Chamber could not have found that he willingly took the risk that persecutory wanton destruction and damage of religious and cultural property could be committed in light of the orders he issued to prevent crimes, including these crimes,[2380] Stanišić merely lists exhibits, some of which were explicitly considered by the Trial Chamber,[2381] but has failed to explain how they render the Trial Chamber's finding unsafe. Therefore, the Appeals Chamber dismisses this argument. Moreover, the Appeals Chamber notes that the orders Stanišić refers to do not address the destruction or damage of religious property,[2382] and that he has not shown why they are relevant to the Trial Chamber's finding in question.

c. Conclusion

707. In light of all the foregoing, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in finding that he willingly took the risk that the crimes underlying his convictions pursuant to the third category of joint criminal enterprise could be committed.

(iv) Conclusion

708. The Appeals Chamber has found that Stanišić has failed to show that the Trial Chamber erred in law by failing to provide a reasoned opinion for its finding that the crimes under Counts 3 to 8 were foreseeable to Stanišić and for its finding that the persecutory acts charged under Count 1 (other than forcible transfer and deportation) were foreseeable to Stanišić.[2383] The Appeals Chamber has further found that Stanišić has failed to show that the Trial Chamber erred in fact by finding that Stanišić's JCE III Crimes were foreseeable to him[2384] and that he willingly took the risk that

[2379] See Trial Judgement, vol. 2, paras 769-770. See also Trial Judgement, vol. 2, paras 801, 804, 806, 809-810, 813, 815, 818-819, 822, 824, 827-828, 831, 833, 836-837, 840-841, 844, 846, 849, 851, 854-855, 858, 860, 863, 865, 868, 870, 873-874, 877-878, 881-882, 885.
[2380] See *supra*, para. 680.
[2381] See Trial Judgement, vol. 2, paras 74 (Exhibit 1D84), 610 (Exhibits 1D61, 1D634).
[2382] See Exhibits P792 (an order issued by Stanišić on misappropriation of VRS materials and technical equipment, dated 15 April 1992); P1252 (an order issued by Stanišić on appropriation of private property, dated 17 April 1992); P1323 (an order issued by Mandić, Deputy to the Minister of Interior concerning the need for patrols in Sarajevo in light of escalation of terrorism, violence, and robberies dated 19 April 1992); 1D61 (an order issued by Stanišić concerning identification and measures to be taken against people involved in looting, appropriation, and other property crimes, dated 15 April 1992); 1D84 (instructions signed by Witness Planojević, then Assistant Minister for Prevention and Detention of Crime, on measures to be taken against perpetrators of property crimes and war crimes, dated 5 June 1992); 1D634 (an order issued by the Ministry of Interior to increase measures of protection, not signed, dated 16 January 1992).
[2383] See *supra*, para. 634.
[2384] See *supra*, para. 671.

they might be committed.[2385] Therefore, the Appeals Chamber dismisses Stanišić's first ground of appeal in part, tenth ground of appeal, and eleventh ground of appeal in part.

E. Alleged errors regarding Župljanin's participation in the JCE

1. Introduction

709. Župljanin became Chief of the Banja Luka CSB on 6 May 1991 and, from at least 5 May 1992 until July 1992, was a member of the ARK Crisis Staff.[2386] The Trial Chamber found Župljanin responsible for crimes committed in the ARK Municipalities. Specifically, he was convicted pursuant to Article 7(1) of the Statute for committing, through participation in the JCE, the crimes of persecutions and extermination as crimes against humanity, murder, and torture as violations of the laws or customs of war.[2387] The Trial Chamber found Župljanin responsible, but did not enter convictions on the basis of the principles relating to cumulative convictions, for committing, through participation in the JCE, the crimes of: murder, torture, inhumane acts, deportation, and inhumane acts (forcible transfer) as crimes against humanity, and cruel treatment as a violation of the laws or customs of war.[2388]

710. In the section of the Trial Judgement addressing Župljanin's responsibility, the Trial Chamber considered evidence relating to his "role and authority",[2389] "sources of knowledge",[2390] and "alleged conduct in furtherance of JCE".[2391] Under the heading "Findings on Stojan Župljanin's membership in JCE",[2392] the Trial Chamber then set out its findings on his "duties, authority, and powers",[2393] followed by "Findings on Župljanin's contribution to JCE".[2394] The latter section includes the Trial Chamber's conclusions regarding Župljanin's significant contribution to the JCE,[2395] his intent pursuant to the first category of joint criminal enterprise,[2396] his membership in the JCE,[2397] and his responsibility "in the context of the third category of joint criminal enterprise".[2398] The Appeals Chamber notes that in the section of the Trial Judgement dedicated to the conclusions on Župljanin's responsibility, *i.e.* the section entitled "Findings on Stojan

[2385] See *supra*, para. 707.
[2386] Trial Judgement, vol. 2, paras 542-543, 558. See Trial Judgement, vol. 1, para. 2.
[2387] Trial Judgement, vol. 2, paras 805, 832, 845, 850, 859, 864, 869, 956.
[2388] Trial Judgement, vol. 2, paras 805, 832, 845, 850, 859, 864, 869, 956.
[2389] Trial Judgement, vol. 2, p. 110. See Trial Judgement, vol. 2, paras 348-368.
[2390] Trial Judgement, vol. 2, p. 119. See Trial Judgement, vol. 2, paras 369-374.
[2391] Trial Judgement, vol. 2, p. 121. See Trial Judgement, vol. 2, paras 375-488.
[2392] Trial Judgement, vol. 2, p. 167. See Trial Judgement, vol. 2, paras 448-530.
[2393] Trial Judgement, vol. 2, p. 167. See Trial Judgement, vol. 2, paras 488-493.
[2394] Trial Judgement, vol. 2, p. 168. See Trial Judgement, vol. 2, paras 494-530.
[2395] Trial Judgement, vol. 2, para. 518.
[2396] Trial Judgement, vol. 2, paras 519-520.
[2397] Trial Judgement, vol. 2, para. 520.

Župljanin's membership in JCE",[2399] the Trial Chamber provided no cross-references to earlier findings or citations to evidence on the record.[2400] It is regrettable that the Trial Chamber adopted such an approach, as the exercise of identifying underlying findings and analysis has been unnecessarily convoluted as a result.

711. Župljanin asserts that the Trial Chamber erred in finding him responsible pursuant to the first category of joint criminal enterprise.[2401] He also raises a number of other legal and factual challenges regarding the Trial Chamber's findings concerning his responsibility for crimes pursuant to the third category of joint criminal enterprise,[2402] including challenges to the Trial Chamber's findings regarding his liability for the crime of extermination.[2403] The Appeals Chamber will address his submissions in turn.

2. Alleged errors regarding Župljanin's responsibility under the first category of joint criminal enterprise (sub-grounds (A) to (E) and sub-ground (F) in part of Župljanin's first ground of appeal)

(a) Introduction

712. In the section of the Trial Judgement dedicated to its conclusions on Župljanin's responsibility pursuant to the first category of joint criminal enterprise, the Trial Chamber found that Župljanin was a member of the JCE starting from at least in April 1992 and throughout the rest of 1992 and was responsible for committing, through participation in the JCE, the JCE I Crimes, *i.e.* deportation, other inhumane acts (forcible transfer), and persecutions through underlying acts of deportation and forcible transfer, as crimes against humanity.[2404]

713. With respect to Župljanin's contribution to the JCE, the Trial Chamber found that:

> starting on 1 April 1992 and continuing throughout the rest of the year, Stojan Župljanin ordered and coordinated the disarming of the non-Serb population in the ARK Municipalities. He created a unit, the Banja Luka CSB Special Police Detachment, which he used to assist other Serb Forces in the takeovers of the ARK Municipalities. He was fully aware of and took part in the unlawful arrest of non-Serbs and their forcible removal. He failed to launch criminal investigations and discipline his subordinates who had committed crimes against non-Serbs, thus creating a climate of impunity which only increased the commission of crimes against non-Serbs. He failed to protect the non-Serb population even when they pleaded with him for protection, thereby exacerbating their feeling of insecurity and strongly contributing to their flight out of the ARK Municipalities.

[2398] Trial Judgement, vol. 2, para. 521. See Trial Judgement, vol. 2, paras 522-528.
[2399] Trial Judgement, vol. 2, paras 448-530.
[2400] Trial Judgement, vol. 2, paras 448-530. *Cf.* Trial Judgement, vol. 2, paras 490, 494, 516-517, 526, fns 1371-1375.
[2401] Župljanin Appeal Brief, paras 8-181 (sub-grounds (A) to (E) and sub-ground (F) in part of Župljanin's first ground of appeal). Under sub-ground (F) of his first ground of appeal, Župljanin also raises arguments related to the common criminal purpose (see Župljanin Appeal Brief, paras 15-16, 27-33, 35, 37, 39). The Appeals Chamber recalls that it has already addressed and dismissed Župljanin's arguments in this respect (see *supra*, paras 67-71).
[2402] Župljanin Appeal Brief, paras 182-242 (Župljanin's second and third grounds of appeal).
[2403] Župljanin Appeal Brief, paras 227-242 (Župljanin's third ground of appeal).
[2404] Trial Judgement, vol. 2, para. 520. See Trial Judgement, vol. 2, paras 805, 832, 845, 850, 859, 864, 869.

> Therefore, during the Indictment period, Stojan Župljanin significantly contributed to the common objective to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state.[2405]

714. With respect to Župljanin's intent under the first category of joint criminal enterprise, the Trial Chamber stated that it had:

> primarily considered Župljanin's role in the blockade of Banja Luka; his ties to the SDS, demonstrated by the unreserved support given by top SDS leaders in the ARK to his appointment as Chief of the CSB and by his interactions with other SDS members; his attendance at the 14 February 1992 SDS Main Board meeting at the Holiday Inn in Sarajevo; and his contribution to the implementation of SDS policies in Banja Luka and in other ARK municipalities. The Trial Chamber has also considered Župljanin's failure to protect the non-Serb population in conjunction with his enrollment of the SOS in the [Banja Luka CSB SPD], his inaction in relation to the crimes committed by this unit, and his statements and actions taken in response to requests for protection by the Muslims of Banja Luka. In this context, the Trial Chamber has considered that Župljanin issued orders to protect the non-Serb population in the ARK and filed some criminal reports for crimes committed against non-Serbs. However, even though he continued to receive information that crimes, including unlawful detention, were being committed on a large scale, he did not take steps to ensure that these orders were in fact carried out. It has also considered that Župljanin did successfully take action against the Miće Group, the members of which committed crimes against non-Serbs in Teslić, but having considered all the instances in which Župljanin neglected to protect the non-Serb population, the Trial Chamber finds that he did so only because the Miće Group had become a nuisance to Serb municipal authorities. Based on this evidence, the Trial Chamber finds that Župljanin's failure to protect the Muslims and Croatian population formed part of the decision to discriminate against them and force them to leave the ARK Municipalities, and was not merely the consequence of simple negligence. With regard to the unlawful arrests, the evidence clearly shows that Župljanin was aware of the arrests, of their unlawfulness, and that in spite of this he actively contributed to the operation. Through the formation of a feigned commission and by providing false information to the judicial authorities, he endeavoured, and successfully managed, to shield his subordinates from criminal prosecution for the murder, unlawful arrests, looting, and cruel treatment of non-Serb prisoners, thus creating a climate of impunity that encouraged the perpetration of crimes against non-Serbs and made non-Serbs decide to leave the ARK Municipalities. The Trial Chamber finds that all of Župljanin's actions described above were voluntary.[2406]

On this basis, the Trial Chamber found that:

> Župljanin's acts and omissions demonstrate beyond reasonable doubt that he intended, with other members of the JCE, to achieve the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of [the JCE I Crimes] against Muslims and Croats in the ARK Municipalities.[2407]

715. Župljanin contends that the Trial Chamber erred in law and fact in concluding that he significantly contributed to the JCE and that he possessed the intent to further the JCE.[2408] In support, Župljanin alleges errors in relation to the Trial Chamber's reliance on the following factors: (i) his failure to launch criminal investigations, to discipline his subordinates, and to protect the non-Serb population;[2409] (ii) his knowledge of, and role in, unlawful arrests and detentions of

[2405] Trial Judgement, vol. 2, para. 518.
[2406] Trial Judgement, vol. 2, para. 519.
[2407] Trial Judgement, vol. 2, para. 520.
[2408] Župljanin Appeal Brief, paras 7-11.
[2409] Župljanin Appeal Brief, paras 55-111, 127-135, 139-151, 155-156, 162-177.

non-Serbs in the ARK Municipalities;[2410] and (iii) his other positive acts, in particular, his attendance at the SDS Main Board meeting at the Holiday Inn in Sarajevo on 14 February 1992 ("Holiday Inn Meeting"), his role in the takeovers of the ARK Municipalities and the blockade of Banja Luka, and his close ties with SDS political leaders.[2411] In addition, Župljanin contends that, even assuming that there is no error in its assessment of these factors, the Trial Chamber erred in concluding on the basis of these factors that he significantly contributed to the JCE[2412] and possessed the intent to further the JCE.[2413]

716. In response, the Prosecution submits that Župljanin fails to show any error in the Trial Chamber's reasoning establishing his intentional participation in the common criminal purpose to forcibly and permanently remove non-Serbs from BiH, and that his arguments should be dismissed.[2414]

717. The Appeals Chamber will address Župljanin's challenges in turn.[2415]

(b) Alleged errors in relying on Župljanin's failure to launch criminal investigations, to discipline his subordinates, and to protect the non-Serb population

718. When assessing Župljanin's contribution to the JCE, the Trial Chamber considered, in combination with his positive acts, Župljanin's omissions in relation to his failure to: (i) launch criminal investigations;[2416] (ii) discipline subordinates who had committed crimes against non-Serbs;[2417] and (iii) to protect the non-Serb population, even when they pleaded for his protection.[2418] Moreover, in finding that Župljanin intended to further the JCE, the Trial Chamber also relied on his inactions in relation to the crimes committed by the Banja Luka CSB SPD, and on

[2410] Župljanin Appeal Brief, paras 112-125. See Župljanin Appeal Brief, paras 153, 161.
[2411] Župljanin Appeal Brief, paras 139, 152, 154-155, 157-160.
[2412] Župljanin Appeal Brief, paras 126, 136.
[2413] Župljanin Appeal Brief, paras 12-13, 17-25, 31-32, 35-39, 40-53, 102-104, 155-156, 178-179.
[2414] Prosecution Response Brief (Župljanin), paras 4-137.
[2415] The Appeals Chamber observes that the factors relied upon by the Trial Chamber in concluding that Župljanin significantly contributed to the JCE and that he possessed the intent to further the JCE are largely overlapping (compare Trial Judgement, vol. 2, para. 518 with Trial Judgement, vol. 2, para. 519). As a result, many of Župljanin's arguments challenging the Trial Chamber's findings and/or reliance on these underlying factors pertain to both his contribution and intent. Therefore, the Appeals Chamber will first address his challenges concerning the underlying factors and the Trial Chamber's reliance thereon in the context of both his contribution and intent. Subsequently, the Appeals Chamber will address his overall arguments that, even assuming that there is no error in its assessment of these factors, the Trial Chamber erred in concluding on the basis of these factors that he significantly contributed to the JCE and possessed the intent to further the JCE.
[2416] See Trial Judgement, vol. 2, para. 518. See Trial Judgement, vol. 2, paras 499, 506-510, 513. See also Trial Judgement, vol. 2, paras 368, 415-440, 457-482.
[2417] See Trial Judgement, vol. 2, para. 518. See Trial Judgement, vol. 2, paras 501-505, 510, 515. See also Trial Judgement, vol. 2, paras 438-440, 483-488. *Cf.* Trial Judgement, vol. 2, paras 368, 384-398, 405-406, 415-440, 506-512.
[2418] Trial Judgement, vol. 2, para. 518. See Trial Judgement, vol. 2, paras 506-509, 513-514. See also Trial Judgement, vol. 2, paras 415-456.

his failure to protect the non-Serb population.[2419] Specifically, the Trial Chamber noted that despite continuing to receive information regarding the commission of crimes, Župljanin did not take steps to ensure that the orders he issued to protect the non-Serb population were actually carried out.[2420] It found, in particular, that Župljanin: (i) issued orders to protect the non-Serb population and filed reports for some crimes committed against non-Serbs,[2421] but did not take steps to ensure such orders were carried out,[2422] even though he continued to receive information that crimes, including unlawful detention, were being committed on a large scale;[2423] and (ii) successfully took action against the Miće Group, who had committed crimes against non-Serbs in Teslić, only because the Miće Group had become a nuisance to Serb municipal authorities.[2424] Finally, the Trial Chamber referred to the fact that Župljanin formed a "feigned commission" and provided false information to judicial authorities.[2425]

719. In support of its conclusion that Župljanin failed to discipline subordinates who had committed crimes against non-Serbs, the Trial Chamber relied upon findings elsewhere in the Trial Judgement that he: (i) did nothing to rein in the behaviour and to effectively discipline members of the Banja Luka CSB SPD, notwithstanding his extensive knowledge of crimes committed by them;[2426] (ii) never attempted to remove Simo Drljača, the Chief of the Prijedor SJB ("Drljača"), from Prijedor despite his knowledge of the atrocities committed in the detention camps in Prijedor municipality and Witness Radulović's warning about Drljača;[2427] and (iii) failed to take adequate measures to stop the mass arrest of non-Serbs and the involvement of policemen therein, regardless of his knowledge of crimes against non-Serbs and in particular of their unlawful detention.[2428]

[2419] Trial Judgement, vol. 2, para. 519.
[2420] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 506-513, 515. See also Trial Judgement, vol. 2, paras 407-440, 415-449, 453-464.
[2421] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, para. 510. See also Trial Judgement, vol. 2, paras 357, 432-437.
[2422] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 510, 514. See also Trial Judgement, vol. 2, paras 457-464.
[2423] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 506-513. See also Trial Judgement, vol. 2, paras 407-440.
[2424] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, para. 515. See also Trial Judgement, vol. 2, paras 453-454. According to the Trial Chamber, Župljanin's failure to protect the Muslim and Croat populations formed part of the decision to discriminate against them and force them to leave the ARK Municipalities (Trial Judgement, vol. 2, para. 519).
[2425] Trial Judgement, vol. 2, para. 519. According to the Trial Chamber, by doing so, Župljanin "endeavoured, and successfully managed to shield his subordinates from criminal prosecution for the murder, unlawful arrests, looting, and cruel treatment of non-Serb prisoners, thus creating a climate of impunity that encouraged the perpetration of crimes against non-Serbs" (Trial Judgement, vol. 2, para. 519). See Trial Judgement, vol. 2, paras 514, 516-517. See also Trial Judgement, vol. 2, paras 446-447, 465-482.
[2426] Trial Judgement, vol. 2, paras 504-505. See Trial Judgement, vol. 2, paras 501-503. See also Trial Judgement, vol. 2, paras 368, 384-398, 405-406, 438-440, 483-488.
[2427] Trial Judgement, vol. 2, para. 515. See Trial Judgement, vol. 2, para. 508. See also Trial Judgement, vol. 2, paras 420-424.
[2428] Trial Judgement, vol. 2, para. 510. See Trial Judgement, vol. 2, paras 506-509. See also Trial Judgement, vol. 2, paras 368, 415-440.

720. In reaching its conclusions that Župljanin failed to launch criminal investigations, the Trial Chamber relied upon its findings that he: (i) failed to take adequate measures to stop the mass arrest of non-Serbs and his policemen's involvement therein;[2429] (ii) did nothing to rein in the behaviour and to effectively investigate members of the Banja Luka CSB SPD;[2430] and (iii) failed to ensure that his police duly investigated crimes committed against non-Serbs in the ARK Municipalities, notwithstanding his extensive knowledge of the crimes committed in the ARK by Serb forces against non-Serbs.[2431]

721. Based on the foregoing findings, the Trial Chamber also reached the conclusion that Župljanin did not do anything to reassure and protect the non-Serb population,[2432] even when they pleaded with him for protection, aside from issuing ineffective and general orders exhorting the ARK SJBs to respect the law that were not genuinely meant to be implemented.[2433]

722. Župljanin submits that the Trial Chamber erred in finding that he failed to launch criminal investigations, to discipline his subordinates, and to protect the non-Serb population, and in relying on these findings to convict him under the first category of joint criminal enterprise.[2434] Specifically, Župljanin alleges that the Trial Chamber: (i) erred regarding the legal standard for contribution to a joint criminal enterprise though failure to act;[2435] (ii) failed to make the required findings in relation to his failure to act over policemen re-subordinated or otherwise not under his control;[2436] (iii) failed to establish that Župljanin acted with knowledge of his duties;[2437] (iv) erred in reaching its findings that Župljanin failed to investigate and discipline members of the Banja Luka CSB SPD;[2438] and (v) erred in finding that Župljanin failed to protect the non-Serb population by issuing general and ineffective orders which were not genuinely meant to be effectuated.[2439]

[2429] Trial Judgement, vol. 2, paras 510-511. See Trial Judgement, vol. 2, paras 506-507. See also Trial Judgement, vol. 2, paras 432-437.
[2430] Trial Judgement, vol. 2, paras 504-505. See Trial Judgement, vol. 2, paras 501-503. See also Trial Judgement, vol. 2, paras 368, 384-398, 405-406, 438-440, 483-488.
[2431] Trial Judgement, vol. 2, para. 513. See Trial Judgement, vol. 2, paras 506-509. See also Trial Judgement, vol. 2, paras 368, 415-440.
[2432] Trial Judgement, vol. 2, para. 514. See *e.g.* Trial Judgement, vol. 2, paras 451-452. See also Trial Judgement, vol. 2, paras 513-514.
[2433] Trial Judgement, vol. 2, paras 514, 518. See Trial Judgement, vol. 2, paras 441-456. *Cf.* Trial Judgement, vol. 2, paras 415-449.
[2434] See generally, Župljanin Appeal Brief, paras 30, 55-57, 60-125, 127, 130-134, 139-154.
[2435] See Župljanin Appeal Brief, paras 70, 107-111, 127, 130-134.
[2436] See Župljanin Appeal Brief, paras 30, 55-57, 60-101.
[2437] See Župljanin Appeal Brief, paras 102-104.
[2438] See Župljanin Appeal Brief, paras 112-125.
[2439] See Župljanin Appeal Brief, paras 139-154.

723. The Prosecution responds that the Trial Chamber correctly applied the law of joint criminal enterprise and did not err in its rejection of Župljanin's argument at trial on the issue of re-subordination of the police to the military.[2440]

(i) Alleged errors regarding the legal standard for contribution to a joint criminal enterprise through failure to act (sub-ground (A) in part, sub-ground (B), and sub-ground (C) in part of Župljanin's first ground of appeal)

a. Submissions of the parties

724. Župljanin submits that the Trial Chamber erred in law in relying on his omissions to convict him pursuant to the first category of joint criminal enterprise since it did not apply the correct legal standard for omissions.[2441] Župljanin submits in particular that in order for the Trial Chamber to rely on his omissions in relation to his contribution and intent for the first category of joint criminal enterprise, the Trial Chamber was required to establish that the threshold conditions for an omission were satisfied, namely: (i) the existence of a legal duty; (ii) the capacity to fulfil the duty; (iii) the knowledge of the duty and capacity to act; and (iv) the failure to fulfil the duty.[2442]

725. In relation to his legal duty to act, Župljanin argues that the Trial Chamber erred in referring to Article 10 of the RS Constitution and Article 42 of the LIA since reliance on a failure to fulfil domestic legal obligations constitutes a "radical and unprecedented extension of omission liability in international criminal law".[2443]

[2440] Prosecution Response Brief (Župljanin), paras 33-76.

[2441] Župljanin Appeal Brief, paras 70, 107-111, 127, 130-134. See Appeal Hearing, 16 Dec 2015, AT. 165. Župljanin contends that the Trial Chamber's error in this respect renders the Trial Chamber's findings on the *actus reus* and *mens rea* of joint criminal enterprise liability unsafe and invalidates his conviction for all the crimes committed pursuant to the first category of joint criminal enterprise (Župljanin Appeal Brief, paras 111, 128).

[2442] Župljanin Appeal Brief, para. 70, referring to *Galić* Appeal Judgement, para. 175; *Orić* Appeal Judgement, para. 43; *Brđanin* Appeal Judgement, para. 274; *Ntagerura et al.* Appeal Judgement, para. 334. See Župljanin Appeal Brief, para. 71. See also Župljanin Reply Brief, paras 42, 46; Appeal Hearing, 16 Dec 2015, AT. 165, 167.

[2443] Župljanin Appeal Brief, paras 107, 109-110. See Župljanin Reply Brief, para. 47. Appeal Hearing, 16 Dec 2015, AT. 207-208. In support of his contention, Župljanin argues that: (i) a criminal prohibition of acts or conduct does not imply a general obligation to prevent the criminalised conduct (Župljanin Appeal Brief, para. 107. See Župljanin Appeal Brief, para. 110); (ii) by relying on a domestic legal obligation, the Trial Chamber exceeded the subject matter jurisdiction of the Tribunal pursuant to Articles 2 to 5 of the Statute, which restricts the Tribunal's jurisdiction to crimes in international criminal law (Župljanin Appeal Brief, para. 110); and (iii) the Trial Chamber's reference to a duty to protect "the entire civilian population" is contrary to the Appeals Chamber's jurisprudence that the duties giving rise to liability in international criminal law are narrowly defined (Župljanin Appeal Brief, para. 110). With respect to his argument that a criminal prohibition of acts or conduct does not imply a general obligation to prevent the criminalised conduct, Župljanin puts forward that in domestic law, even when a duty to prevent certain types of harm gives rise to a statutory breach it does not give rise to liability for the relevant criminal conduct (Župljanin Appeal Brief, para. 107). He further argues that there is no general principle of law supporting the view that breaches of a police officer's law enforcement obligations render him liable for the crime facilitated or permitted due to the breaches of his obligations (Župljanin Reply Brief, para. 48). With respect to his argument that duties giving rise to liability in international criminal law are narrowly defined, Župljanin underlines that the Appeals Chamber has only recognised two legal duties to act that may give rise to criminal liability, namely superior responsibility and failure to fulfil obligations concerning

726. In relation to his capacity or ability to act, Župljanin asserts that the *actus reus* of commission through omission requires an accused to exercise at least "concrete influence" over subordinate physical perpetrators[2444] and that this threshold should apply *mutatis mutandis* to all forms of commission, including through joint criminal enterprise.[2445] Župljanin further argues that the Trial Chamber assessed his omissions without first establishing in each case whether Župljanin had authority over the perpetrators.[2446] He submits that the Trial Chamber made no attempt to "make particularized findings" as to in which events "he had such a high degree of control that his 'omission' could count as part of the *actus reus* of commission".[2447]

727. The Prosecution responds that the Trial Chamber correctly found that Župljanin's omissions formed part of his significant contribution to the JCE.[2448] The Prosecution contends that Župljanin's

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prisoners of war as provided for by the Geneva Conventions and that no other duties have been recognized as giving rise to criminal responsibility (Župljanin Appeal Brief, para. 108, referring to Hadžihasanović and Kubura Appeal Judgement, para. 39; Blaškić Appeal Judgement, para. 663; Mrkšić and Šljivančanin Appeal Judgement, paras 70-71, 73). Finally, he submits that the Trial Chamber failed to provide reasons for its extension of omission liability, which impaired the exercise of his right to appeal (Župljanin Appeal Brief, para. 110).

[2444] Župljanin Appeal Brief, para. 130, quoting *Orić* Appeal Judgement, para. 41. See Župljanin Appeal Brief, paras 127, 131-134, 137. He points out that this is a higher level of control or influence than that required for superior responsibility or aiding and abetting by omission (Župljanin Appeal Brief, paras 130, 133, referring to *Orić* Appeal Judgement, para. 41; *Blaškić* Appeal Judgement, para. 664; *Mrkšić and Šljivančanin* Appeal Judgement, para. 156). Župljanin adds that the jurisprudence for aiding and abetting by omission requires that the accused "had the ability to act but failed to do so" and that the same logic must apply when relying on an omission as a contribution to the JCE (Župljanin Appeal Brief, para. 70, referring to *Mrkšić and Šljivančanin* Appeal Judgement, paras 82, 99). See also Župljanin Appeal Brief, para. 137.

[2445] Župljanin Appeal Brief, para. 131, referring to *Milutinović et al.* Appeal Decision on Joint Criminal Enterprise of 21 May 2003, paras 20, 31. Župljanin relies upon statements of the Appeals Chamber in that decision to the effect that joint criminal enterprise is a form of commission under Article 7(1) of the Statute (Župljanin Appeal Brief, fn. 187, referring to *Milutinović et al.* Appeal Decision on Joint Criminal Enterprise of 21 May 2003, paras 20, 31). Župljanin argues that, "[t]he authority of an accused [...] is relevant to the assessment of *actus reus*" (Župljanin Appeal Brief, para. 132, referring to *Kvočka et al.* Appeal Judgement, paras 101 103), especially in respect of omissions in order to avoid that any failure to prevent crimes can be found to satisfy the objective element of joint criminal enterprise (Župljanin Appeal Brief, para. 132, referring to *Milutinović et al.* Appeal Decision on Joint Criminal Enterprise of 21 May 2003, paras 25-26. See Appeal Hearing, 16 Dec 2015, AT. 208).

[2446] Župljanin Appeal Brief, para. 135. See Župljanin Appeal Brief, para. 73. In this respect, he underlines that the Trial Chamber assessed his "every inaction, his every deficient performance of his duties, [and] every crime against non-Serbs committed in the seven ARK municipalities, as amongst the omissions constituting the *actus reus* of committing forcible transfers through JCE" (Župljanin Appeal Brief, para. 135). Župljanin argues that the Trial Chamber's findings concerning his omissions relate to "sub-findings referring to a wide range of different situations", and that the Trial Chamber failed to differentiate between "gradations" in the level of control he exercised over the physical perpetrators in each of these situations (Župljanin Appeal Brief, para. 129. See Župljanin Appeal Brief, para. 130).

[2447] Župljanin Appeal Brief, para. 135. See Župljanin Appeal Brief, paras 127, 138. See also Appeal Hearing, 16 Dec 2015, AT. 167, 169. In this respect he contends that the Trial Chamber erred by occasionally stating that he could have taken certain measures against subordinates, "without ever making any finding of who was subordinate to him, with the possible exception of the Special Police Detachment" (Župljanin Appeal Brief, para. 135). Župljanin further contends that the Trial Chamber failed to make findings resembling those made in the *Blaškić* Appeal Judgement or the *Mrkšić and Šljivančanin* Appeal Judgement "concerning the extent of control necessary for an omission to be categorized as part of the *actus reus* of the crime" (Župljanin Appeal Brief, para. 135. See Župljanin Appeal Brief, paras 130, 133).

[2448] Prosecution Response Brief (Župljanin), paras 79, 85. See Appeal Hearing, 16 Dec 2015, AT. 185, 190-191.

arguments in this respect rest on a misunderstanding of the applicable law and the Trial Judgement, and should therefore be rejected.[2449]

728. The Prosecution rejects Župljanin's argument that the Trial Chamber expanded the scope of omission liability and submits that Župljanin seeks to import elements not required to establish a significant contribution to a joint criminal enterprise.[2450] It argues that, contrary to Župljanin's contention, a contribution to a joint criminal enterprise by omission can be based on a duty derived from national law, as the nature of the duty is not relevant for the *actus reus* of joint criminal enterprise.[2451]

729. The Prosecution further responds that there is no basis for Župljanin's argument that the Trial Chamber should have applied any standard of "concrete influence" over subordinates.[2452] It submits that: (i) an "elevated degree of concrete influence" is not an element of the *actus reus* of joint criminal enterprise, even when an accused's contribution includes omissions;[2453] and (ii) a position of authority is not an element of joint criminal enterprise but rather only a contextual factor that may be relevant to an assessment of an accused's contribution to a joint criminal enterprise.[2454] The Prosecution argues that Župljanin erroneously conflates references in the jurisprudence to "concrete influence" over the *crimes* with the superior responsibility concept of control over *subordinates*.[2455]

730. In response to Župljanin's argument that the Trial Chamber failed to make particularised findings regarding his control over perpetrators, the Prosecution submits that the Trial Chamber

[2449] Prosecution Response Brief (Župljanin), paras 77, 86. See Appeal Hearing, 16 Dec 2015, AT. 195.
[2450] Prosecution Response Brief (Župljanin), paras 77-78.
[2451] Prosecution Response Brief (Župljanin), paras 77, 80. See Appeal Hearing, 16 Dec 2015, AT. 194-195, referring to *Nyiramasuhuko et al.* Appeal Judgement, para. 2194. The Prosecution emphasises that nothing in the Tribunal's jurisprudence establishes that there is a "closed" list of duties, the breach of which may establish contributions to a joint criminal enterprise (Prosecution Response Brief (Župljanin), para. 82), and rejects Župljanin's argument that the Trial Chamber exceeded the subject-matter jurisdiction conferred by the Statute (Prosecution Response Brief (Župljanin), para. 81, referring to Župljanin Appeal Brief, paras 108, 110). In this respect, the Prosecution submits in particular that there is a "clear practice" in the Tribunal that omissions may be punished as a war crime, crime against humanity, or genocide provided that they meet the elements of a mode of liability under Article 7(1) of the Statute (Prosecution Response Brief (Župljanin), para. 81). The Prosecution specifies that in the case of commission by omission – where the omission itself satisfies the *actus reus* of the crime – it may be appropriate to require that the nature of the duty be derived from international law in order "to ensure uniformity of norms" (Prosecution Response Brief (Župljanin), para. 80). The Prosecution submits that, in any event, Župljanin's duty as a police officer is recognised by national and international law (Prosecution Response Brief (Župljanin), paras 77, 83-84, fn. 331, referring to Exhibit P119, pp 97, 118, 123. See Appeal Hearing, 16 Dec 2015, AT. 195).
[2452] Prosecution Response Brief (Župljanin), para. 94, referring to Župljanin Appeal Brief, paras 127, 133. The Prosecution also submits that Župljanin's claim that there were "gradations" of control over his subordinates is irrelevant, provided that the threshold of effective control was passed "as it was in this case" (Prosecution Response Brief (Župljanin), para. 94).
[2453] Prosecution Response Brief (Župljanin), para. 88.
[2454] Prosecution Response Brief (Župljanin), para. 90, referring to *Kvočka et al.* Appeal Judgement, paras 101, 192, 238.
[2455] Prosecution Response Brief (Župljanin), para. 89, referring to Župljanin Appeal Brief, paras 127, 132-135, *Mrkšić and Šljivančanin* Appeal Judgement, fn. 554, *Blaškić* Appeal Judgement, para. 664.

properly established that he was both under a legal duty as a police officer to protect the civilian population, and that he maintained the ability to execute this duty.[2456] Furthermore, the Prosecution submits that the Trial Chamber only relied on Župljanin's failure to discipline particular subordinates when it made the requisite factual finding that the subordinates in question were under his control.[2457]

b. Analysis

731. Recalling the applicable law set out above in relation to Stanišić's similar arguments,[2458] the Appeals Chamber considers that Župljanin's challenges are based on the incorrect premise that each failure to act assessed in the context of joint criminal enterprise liability must, *per se*, meet the legal conditions set out in the Tribunal's case law for commission by omission.[2459]

732. Contrary to Župljanin's assertion, the demonstration of a duty to act that would meet the legal conditions set out in the Tribunal's case law for commission by omission is not required when relying on an accused's failure to act in the context of assessing his participation in a joint criminal enterprise.[2460] The Appeals Chamber emphasises that nothing in the law prevented the Trial Chamber from considering Župljanin's failure to fulfil his domestic duty in its factual assessment of his contribution to the JCE and when inferring his intent. Consequently, the Appeals Chamber finds no error of law in the Trial Chamber's reliance on Župljanin's failure to fulfil his domestic obligation under article 10 of the RS Constitution and article 42 of the LIA as part of its factual analysis of his contribution to the JCE and to infer his intent. Since the remainder of Župljanin's arguments in relation to a duty to act are based on the incorrect premise that the Trial Chamber's reliance on a failure to fulfil domestic legal obligations constitutes an extension of omission liability, the Appeals Chamber dismisses them without further discussion.[2461]

733. Turning to Župljanin's arguments in relation to his capacity or ability to act, based on the same reasoning, the Appeals Chamber finds no merit in Župljanin's attempt to conflate the Appeals

[2456] Prosecution Response Brief (Župljanin), para. 93. The Prosecution also submits that since Župljanin's duty depended on his status as a police officer and not on his position as a superior, the Trial Chamber was not required to determine that he exercised "control" or "influence" over any perpetrators (Prosecution Response Brief (Župljanin), para. 93. See Appeal Hearing, 16 Dec 2015, AT. 196). The Prosecution further submits that Župljanin makes "no attempt" to show that the Trial Chamber was unreasonable in its findings (Prosecution Response Brief (Župljanin), para. 93).

[2457] Prosecution Response Brief (Župljanin), para. 94. The Prosecution submits that Župljanin fails to show any error in the Trial Chamber's assessment of his failure to prevent the crimes of certain subordinates since the Trial Chamber adequately established Župljanin's duty to control the acts of his subordinates, his ability to act, and his failure to do so (Prosecution Response Brief (Župljanin), para. 94).

[2458] See *supra*, paras 109-110.

[2459] The Appeals Chamber notes that Stanišić raises similar arguments with respect to his contribution to the JCE (see *supra*, paras 106-107).

[2460] See *supra*, para. 110.

Chamber's statement that the objective element of commission by omission requires, at a minimum, an "elevated degree of 'concrete influence'",[2462] with the significant contribution requirement of joint criminal enterprise liability.[2463] For the same reason, the Appeals Chamber dismisses Župljanin's argument that the Trial Chamber failed to make findings or particularised findings as to whether "he had such a high degree of control over his subordinates that his 'omission' could count as part of the *actus reus* of commission".[2464]

734. Finally, the Appeals Chamber observes that in the jurisprudence of the Tribunal a failure to intervene to prevent recurrence of crimes or to halt abuses has been taken into account in assessing an accused's contribution to a joint criminal enterprise and his intent, where the accused had some power and influence or authority over the perpetrators sufficient to prevent or halt the abuses but failed to exercise such power.[2465] In the present case, the Trial Chamber considered Župljanin's failure to protect the non-Serb population, launch criminal investigations, and discipline his subordinates who committed crimes against non-Serbs, together with his other actions, as part of its factual determination of Župljanin's contribution to the JCE and in inferring his intent.[2466] In this context, the Trial Chamber made detailed findings on Župljanin's authority over perpetrators and his power to prevent or halt abuses.[2467] The Appeals Chamber therefore finds that Župljanin has not

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[2461] See *supra*, paras 724-725.

[2462] *Mrkšić and Šljivančanin* Appeal Judgement, para. 156; *Orić* Appeal Judgement, para. 41; *Blaškić* Appeal Judgement, para. 664.

[2463] *Cf. Mrkšić and Šljivančanin* Appeal Judgement, para. 156, where the Appeals Chamber rejected Veselin Šljivančanin's attempt to conflate the substantial contribution requirement of the objective element of aiding and abetting with the elevated degree of concrete influence. The Appeals Chamber further considers inapposite Župljanin's contention that "anyone's failure to prevent crimes" would satisfy the objective element of joint criminal enterprise in the absence of a threshold of concrete influence over subordinates (Župljanin Appeal Brief, para. 132). His argument in this respect once more ignores the requirements for joint criminal enterprise liability, that an accused must make at least a significant contribution to the execution of the common plan (*Popović et al.* Appeal Judgement, para. 1378; *Kvočka et al.* Appeal Judgement, paras 97-98; *supra*, para. 110. See *Šainović et al.* Appeal Judgement, paras 954, 987).

[2464] Župljanin Appeal Brief, para. 135. The Appeals Chamber further notes that Župljanin's submissions that the Trial Chamber failed to make particularised findings regarding his control and authority over his subordinates is based on the unsupported statement that the Trial Chamber relied upon his failure to fulfil his duties with respect to every Indictment crime it evaluated, and considered his every inaction in assessing his contribution to the JCE. As explained below, the Appeals Chamber considers that Župljanin's assertion misinterprets the Trial Judgement (see Župljanin Appeal Brief, para. 135. See *infra*, paras 736-813).

[2465] See *Šainović et al.* Appeal Judgement, paras 1233, 1242; *Krajišnik* Appeal Judgement, para. 194; *Kvočka et al.* Appeal Judgement, paras 195-196. See *supra*, para. 111. The Appeals Chamber also recalls that although a *de jure* or *de facto* position of authority is not a material condition required by law under the theory of joint criminal enterprise, it is a relevant factor in determining the scope of the accused's participation in the common purpose (see *Kvočka et al.* Appeal Judgement, para. 192. See also *Kvočka et al.* Appeal Judgement, para. 104).

[2466] Trial Judgement, vol. 2, paras 518-519.

[2467] In particular, in assessing his failure to act, the Trial Chamber considered that Župljanin was the highest police authority in the ARK (Trial Judgement, vol. 2, para. 493) and found that, pursuant to Article 10 of the RS Constitution and Article 42 of the LIA, he had a duty to protect the civilian population regardless of religion, ethnicity, race, or political beliefs, even when the execution of such activities and tasks placed his life in danger (Trial Judgement, vol. 2, para. 489. See Trial Judgement, vol. 2, para. 354, referring to Exhibits P181, art. 10; P530, art. 42). The Trial Chamber also found that Župljanin had legal authority over police in the ARK (Trial Judgement, vol. 2, para. 355) and by 11 May 1992, the Banja Luka CSB had "'total control' of 25 police stations in the ARK" (Trial Judgement, vol. 2, para. 351). The Trial Chamber further found that Župljanin had *de jure* and *de facto* authority over the SJBs of the ARK Municipalities, which included the power to appoint and remove RS MUP staff, including SJB chiefs, to order the

shown that the Trial Chamber applied an erroneous legal standard when it considered instances of his failures to act in determining whether he contributed to the common purpose and had the requisite intent.[2468]

c. Conclusion

735. In view of the above, the Appeals Chamber rejects Župljanin's argument that the Trial Chamber erred in law by relying on his failures to act to find that he significantly contributed to the JCE and possessed the requisite intent and to convict him pursuant to the first category of joint criminal enterprise.

(ii) Alleged errors regarding Župljanin's failure to act over policemen re-subordinated to the military or otherwise not under his control (sub-ground (A) in part of Župljanin's first ground of appeal)

736. Župljanin contends that the Trial Chamber erred in relying on his omissions to infer his contribution to the JCE and criminal intent, as it failed to make findings that he had sufficient control or authority over the police by failing to pronounce on issues of re-subordination of the police to the military.[2469] He also points to three specific examples that he asserts demonstrate the pervasive consequence of the Trial Chamber's failure to address the re-subordination issues.[2470] The Appeals Chamber will address these contentions in turn.

a. Failure to make findings in relation to policemen re-subordinated to the military or otherwise not under his control

737. In its discussion of the "issue of the re-subordination of police to the military",[2471] the Trial Chamber noted that "[t]he central question was whether [Stanišić and Župljanin] could be held criminally responsible for the actions of members of the police who committed crimes while they may have been re-subordinated to the JNA or VRS".[2472] Having analysed the evidence relating to

police to perform specific tasks, and to take disciplinary measures against his subordinates (Trial Judgement, vol. 2, para. 493).

[2468] The Appeals Chamber will address in detail below Župljanin's specific challenges that the Trial Chamber failed to make findings pertaining to his authority and his capacity to act to prevent or halt abuses (see *infra*, paras 737-760, 821-869).

[2469] Župljanin Appeal Brief, paras 55-75, 105-106.

[2470] Župljanin Appeal Brief, paras 76-104. Župljanin alleges the Trial Chamber failed to make sufficient findings with respect to: (i) the municipalities of Donji Vakuf, Kotor Varoš, and Ključ (Župljanin Appeal Brief, paras 77-87); (ii) re-subordinated police serving in military-run detention facilities (Župljanin Appeal Brief, paras 88-89); and (iii) the extent to which he exercised control over the Prijedor SJB, including the Keraterm and Omarska detention facilities (Župljanin Appeal Brief, paras 90-101).

[2471] Trial Judgement, vol. 2, para. 317. See Trial Judgement, vol. 2, paras 318-342.

[2472] Trial Judgement, vol. 2, para. 317.

this issue,[2473] the Trial Chamber concluded that it was "unable to find whether it was the military or the civilian authorities which may have been responsible for the investigation and prosecution of crimes against Muslims and Croats which may have been committed by policemen re-subordinated to the military".[2474] It noted, however, that "criminal responsibility for actions of re-subordinated policemen is primarily of importance for [...] responsibility pursuant to Article 7(3) of the Statute".[2475] It further referred to its finding that the JCE existed and that members of the police, the JNA, and the VRS were all used as tools in furtherance of the JCE, of which Stanišić and Župljanin were members.[2476] On this basis, the Trial Chamber stated that it would consider "whether the actions of policemen, which the Defence claims were re-subordinated to the military at the time of the commission of the crimes, can be imputed to a member of the JCE and ultimately to [Stanišić and Župljanin]".[2477] Accordingly, the Trial Chamber concluded that it was "not necessary to make any further findings on the issue of re-subordination".[2478]

i. Submissions of the parties

738. Župljanin submits that the Trial Chamber erred by relying heavily on his failures to discharge two inter-related duties, derived from his position as regional police commander in the ARK, to infer his contribution to the JCE and his criminal intent.[2479] He contends that the Trial Chamber relied upon his omissions "in coming to the view that he committed forcible transfer through a JCE and, in particular, inferring his criminal intent".[2480] He asserts that the Trial Chamber's error arises from its failure to make findings on the extent to which policemen: (i) were periodically re-subordinated to the military;[2481] or (ii) were under the control of municipal crisis staffs,[2482] to the exclusion of his own authority.

739. Župljanin argues that the Trial Chamber deliberately declined to make findings on whether he had a duty to prevent or punish specific crimes committed by policemen by failing to determine

[2473] Trial Judgement, vol. 2, paras 320-341.
[2474] Trial Judgement, vol. 2, para. 342.
[2475] Trial Judgement, vol. 2, para. 342.
[2476] Trial Judgement, vol. 2, para. 342.
[2477] Trial Judgement, vol. 2, para. 342 (citations omitted).
[2478] Trial Judgement, vol. 2, para. 342.
[2479] Župljanin Appeal Brief, paras 55, 63-64. See Župljanin Appeal Brief, paras 61-62 (referring to, *inter alia*, Trial Judgement, vol. 2, paras 518-519); Župljanin Reply Brief, para. 21. See also Appeal Hearing, 16 Dec 2015, AT. 163-164. Župljanin characterises these duties as a duty of a commander to prevent or punish crimes committed by subordinates (the "authority duty") and the duty of a policeman to protect the civilian population regardless of the identity of the perpetrator (the "jurisdictional duty") (Župljanin Appeal Brief, paras 55 (referring to Trial Judgement, vol. 2, paras 441, 499, 510, 513, 518-519), 64 (referring to Trial Judgement, vol. 2, paras 354, 441-455, 483-489, 496, 505, 513, 518-519).
[2480] Župljanin Appeal Brief, para. 60. See Župljanin Appeal Brief, paras 61-62, referring to Trial Judgement, vol. 2, paras 518-519.
[2481] Župljanin Appeal Brief, paras 56, 65.
[2482] Župljanin Appeal Brief, para. 57.

the scope of re-subordination of the police forces.[2483] He asserts that since the Trial Chamber found that it was unable to determine whether it was the military or the civilian authorities which may have been responsible for the investigation and prosecution of crimes committed by re-subordinated policemen, it was also unable to determine whether he exercised *de jure* or *de facto* control over the re-subordinated policemen to an extent that would create a duty to "protect or punish crimes" committed by them.[2484] In his submissions, the Trial Chamber's findings therefore meant that he had no authority or duty to prevent or punish his subordinate policemen's crimes "unless the policemen committing the crime were not re-subordinated".[2485]

740. Moreover, Župljanin underlines that the Trial Chamber found that he was the highest police authority in the ARK and that he had *de facto* and *de jure* authority over SJBs in the ARK Municipalities without any temporal or geographic limitation.[2486] He submits that he, however, had presented the Trial Chamber with considerable evidence regarding re-subordination of police force,[2487] and that the Trial Chamber acknowledged that the JNA and the VRS periodically exercised control over policemen "for certain periods or in the performance of certain tasks".[2488] He argues that, nonetheless, the Trial Chamber deliberately declined to make "findings about the scope of re-subordination or to determine whether particular crimes were committed by re-subordinated policemen".[2489] Župljanin contends that "[t]he least that was required of the [Trial] Chamber [...] was a determination as to which crimes were committed by re-subordinated, as opposed to non-re-subordinated, policemen".[2490] In his view, to rely on his omissions to infer his participation in the JCE, the Trial Chamber was required to determine if he had a duty to act, and he only had

[2483] Župljanin Appeal Brief, paras 56, 68. See Župljanin Appeal Brief, paras 55, 65-67, 71-75. See also Župljanin Reply Brief, paras 22 (referring to, *inter alia*, Trial Judgement, vol. 2, para. 342), 23.
[2484] Župljanin Appeal Brief, para. 67.
[2485] Župljanin Appeal Brief, para. 67 (emphasis omitted), referring to Trial Judgement, vol. 2, paras 317-342.
[2486] Župljanin Appeal Brief, para. 65, referring to Trial Judgement, vol. 2, para. 493. The Appeals Chamber notes Župljanin refers to paragraph 350 of volume two of the Trial Judgement, but that the relevant paragraph is 351. He also points to the Trial Chamber's findings that Banja Luka CSB was "reportedly" in "total control" of 25 local police stations, that by virtue of his position as the head of CSB he "had authority over and coordinated the activities of the ARK SJBs (see Župljanin Appeal Brief, para. 65, referring to Trial Judgement, vol. 2, paras 35(1), 355, 356, 368).
[2487] Župljanin Appeal Brief, paras 73-74, referring to, *inter alia*, Exhibit P621, p. 7 (Report dated October 1992); *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Župljanin Defence Final Trial Brief, 14 May 2012 (confidential) ("Župljanin Final Trial Brief"), paras 233-239, 255-277, 284, 289-291, 300-315, 331, 393 (arguing that evidence was presented at trial indicating that in some municipalities, the VRS went as far as declaring military rule and subordinated police commanders to perform certain tasks, encompassing arresting non-Serbs in combat areas where they would pose a security threat, guarding detainees, and transporting detainees from one detention facility to another). See Župljanin Reply Brief, para. 22.
[2488] Župljanin Appeal Brief, para. 66, referring to Trial Judgement, vol. 1, para. 637, Trial Judgement, vol. 2, paras 58, 311. See Župljanin Appeal Brief, para. 73.
[2489] Župljanin Appeal Brief, paras 56, 68. See Župljanin Appeal Brief, paras 65-67, 70-75. See also Župljanin Reply Brief, paras 22 (referring to, *inter alia*, Trial Judgement, vol. 2, para. 342), 23. Župljanin also underlines that the Trial Chamber declined to make findings because he would still be liable for those crimes as long as he was a member of the JCE (see Župljanin Appeal Brief, para. 69).
[2490] Župljanin Appeal Brief, para. 75. According to Župljanin "that would have been the only way, logically, to avoid imputing omissions to [him] where he had no duty to act" (Župljanin Appeal Brief, para. 75).

such duty with respect to police that were not re-subordinated, which, in turn, required a determination of the re-subordination issue.[2491]

741. According to Župljanin, the Trial Chamber then incoherently proceeded to infer his participation in the JCE based on his alleged failures to exercise authority over these same policemen.[2492] He contends that as a consequence, the Trial Chamber attributed "a host of 'omissions'" to him without having determined whether he had a duty, or the practical capacity, to act.[2493] Finally, according to Župljanin, the issue of re-subordination is also "determinative of whether there was any civilian police jurisdiction over the crime[s]" since crimes committed by soldiers, reservists, TO, or re-subordinated police were subject to the exclusive military jurisdiction.[2494]

742. Župljanin further contends that the Trial Chamber also attributed several omissions to him without having considered the extent to which local police stations were influenced or commanded by municipal crisis groups or the VRS to the exclusion of his own authority.[2495] He points in particular to the fact that the Trial Chamber failed to take into account its own finding that the Prijedor police were under the influence of the municipal authorities and were not under his effective control or authority.[2496] He also argues that the Trial Chamber acknowledged that there were other governmental institutions exercising authority in the ARK Municipalities in 1992, including the Serb forces, the SDS party structure, and crisis staffs.[2497]

743. According to Župljanin, the Trial Chamber's failure to enter findings about the scope of his duties "affects all findings on which the [Trial] Chamber relied to impose JCE liability".[2498] Župljanin asserts that the aforementioned errors invalidate the Trial Chamber's conclusions regarding his joint criminal enterprise liability.[2499] He requests that the Appeals Chamber "reverse the conclusion that [he] committed forcible transfer through a JCE".[2500]

744. The Prosecution responds that Župljanin fails to show that the Trial Chamber erred in its analysis of re-subordination or in its analysis of his acts and omissions in reaching its finding that

[2491] Župljanin Appeal Brief, paras 70-71, 73.
[2492] Župljanin Appeal Brief, para. 56.
[2493] Župljanin Appeal Brief, paras 56, 71, 73. In this respect, he contends that he did not have "plenary jurisdiction" over crimes in the ARK since he did not have authority over VRS soldiers present in the BiH by July 1992 and no jurisdiction to punish crimes committed by TO soldiers or re-subordinated police officers (see Župljanin Appeal Brief, para. 105).
[2494] Župljanin Appeal Brief, para. 72.
[2495] Župljanin Appeal Brief, para. 57.
[2496] Župljanin Appeal Brief, para. 57.
[2497] Župljanin Appeal Brief, para. 66, referring to Trial Judgement, vol. 2, para. 311.
[2498] Župljanin Appeal Brief, para. 106.
[2499] Župljanin Appeal Brief, paras 60, 105-106.

he contributed to the JCE.[2501] The Prosecution submits that the Trial Chamber correctly applied the law on joint criminal enterprise, relying on the Trial Chamber's rejection of Župljanin's re-subordination argument to establish his participation in the JCE.[2502] It argues that, in order for Župljanin to investigate and prosecute crimes committed against non-Serbs, he did not need to possess control over the perpetrators of those crimes.[2503] It argues that the Trial Chamber found that Župljanin exercised authority over those subordinates whose actions it took into account when concluding on his failure to prevent crimes or punish the perpetrators.[2504]

745. The Prosecution further submits that the Trial Chamber's findings pertaining to Župljanin's conduct establish that he had power and authority over the police forces.[2505] It argues in particular that as the "highest police authority in the ARK", Župljanin was able to "set and enforce the pattern for the symbiotic relationship between regional and local crisis staffs and the police" and that his police subordinates were used to carry out crimes.[2506]

746. In reply, Župljanin argues that the Trial Chamber purposefully renounced determining the issue of re-subordination, in light of evidence confirming that the crimes, committed by his subordinates while being re-subordinated to the military, were within exclusive military jurisdiction.[2507]

[2500] Župljanin Appeal Brief, para. 106.
[2501] Prosecution Response Brief (Župljanin), para. 33.
[2502] Prosecution Response Brief (Župljanin), paras 33-38. The Prosecution submits in this respect that: (i) the Trial Chamber properly addressed the "extensive" arguments made by the parties during the course of the trial (Prosecution Response Brief (Župljanin), para. 34, referring to Trial Judgement, vol. 2, paras 317, 319-341); (ii) the Trial Chamber found that the military, the police, and the civil authorities worked closely together, but that "[c]ooperation cannot [...] be equated, with resubordination" (Prosecution Response Brief (Župljanin), para. 34, referring to Trial Judgement, vol. 2, paras 493, 761); (iii) Župljanin exaggerates the scope of re-subordination (Prosecution Response Brief (Župljanin), para. 34, comparing Župljanin Appeal Brief, para. 73, fn. 93 with Exhibits P621, P624, p. 5); (iv) the Trial Chamber did make findings pertaining to the issue of subordination of specific individuals or groups as were necessary to determine Župljanin's liability (Prosecution Response Brief (Župljanin), para. 35, referring to Župljanin Appeal Brief, para. 69, Trial Judgement, vol. 2, para. 342. See Prosecution Response Brief (Župljanin), para. 37); and (v) the issue of re-subordination was irrelevant to the two elements at the core of the Trial Chamber's reasoning regarding Župljanin's JCE responsibility (Prosecution Response Brief (Župljanin), para. 36. See Prosecution Response Brief (Župljanin), paras 37, 40-42).
[2503] Prosecution Response Brief (Župljanin), para. 36. See Prosecution Response Brief (Župljanin), para. 94. See also Prosecution Response Brief (Župljanin), paras 37, 40-42.
[2504] Prosecution Response Brief (Župljanin), para. 37, referring to Trial Judgement, vol. 2, paras 505, 515, 791, 802.
[2505] Prosecution Response Brief (Župljanin), paras 39-42.
[2506] Prosecution Response Brief (Župljanin), para. 39, referring to Trial Judgement, vol. 2, paras 491-493, 500, 510, 735. See Prosecution Response Brief (Župljanin), para. 93. The Prosecution also submits that the Trial Chamber reasonably concluded that "Župljanin had *de jure* and *de facto* authority over the SJBs of the ARK Municipalities" and could "take disciplinary measures, [...] against his subordinates" (Prosecution Response Brief (Župljanin), para. 39, referring to, *inter alia*, Trial Judgement, vol. 2, para. 493).
[2507] Župljanin Reply Brief, para. 22.

ii. Analysis

747. Župljanin's contention regarding the Trial Chamber's alleged errors in failing to determine the scope of re-subordination of police, fails to appreciate both the Trial Chamber's reasoning and the basis for his conviction.

748. Župljanin's unreferenced assertion that the Trial Chamber found that he had no *de jure* or *de facto* control "unless the policemen committing the crime were not re-subordinated",[2508] is not borne out by the Trial Judgement. Rather, the Trial Chamber held that it was "unable to find whether it was the military or the civilian authorities which may have been responsible for the *investigation and prosecution* of crimes against Muslims and Croats which may have been committed by policemen re-subordinated to the military".[2509] Although this finding could be an indication that Župljanin's capacity to act may have been somewhat limited when policemen were re-subordinated to the military, in the view of the Appeals Chamber, it does not imply that the Trial Chamber found that Župljanin had no control over policemen whatsoever, unless such policemen were not re-subordinated.[2510]

749. Moreover, the Appeals Chamber considers that Župljanin's assertion that the Trial Chamber deliberately declined to make findings about the scope of re-subordination misrepresents the Trial Judgement.[2511] The Trial Chamber stated that it was unable to ascertain whether civilian or military authorities were responsible for the investigation and prosecution of crimes that may have been committed by re-subordinated police.[2512] However, it further found that members of the police, JNA, and VRS were used as tools in furtherance of the common criminal purpose and stated that it would consider, in the sections of the Trial Judgement related to Stanišić and Župljanin's individual responsibility, "whether the actions of policemen, which the Defence claims were re-subordinated to the military at the time of the commission of the crimes, can be imputed to a member of the JCE and ultimately to [Stanišić and Župljanin]".[2513] The Trial Chamber concluded that it was "not necessary to make any further findings on the issue of re-subordination".[2514] Therefore, the Trial Chamber did not decline to make findings about the scope of re-subordination but rather found that it was unnecessary to make any further findings on this issue, since it was to address elsewhere whether the actions of policemen "which the Defence claims were re-subordinated to the military at

[2508] See *supra*, para. 739.
[2509] Trial Judgement, vol. 2, para. 342 (emphasis added).
[2510] See Župljanin Appeal Brief, para. 67, referring to Trial Judgement, vol. 2, paras 317-342. See also Župljanin Reply Brief, para. 22.
[2511] See *supra*, paras 740, 746.
[2512] See Trial Judgement, vol. 2, para. 342.
[2513] Trial Judgement, vol. 2, para. 342 (citations omitted).
[2514] Trial Judgement, vol. 2, para. 342.

the time of the commission of the crimes" could be imputed to Stanišić, Župljanin, or another JCE member.

750. Recalling the applicable law set out above in relation to Stanišić's similar arguments,[2515] the Appeals Chamber discerns no error in the Trial Chamber's finding that, with regard to the question of whether crimes can be attributable to Župljanin under joint criminal enterprise liability, no further findings were necessary in relation to the issue of re-subordination. The Appeals Chamber recalls that, so long as it is established that Župljanin participated in the JCE and that the subjective element is met, he can be held responsible for crimes committed by perpetrators who were not members of the JCE provided that those crimes are linked to a member of the JCE who used the perpetrator in furtherance of the common criminal purpose.[2516]

751. To the extent that Župljanin argues that the Trial Chamber was required to address the issue of re-subordination when assessing his contribution to the JCE by his failure to act, the Appeals Chamber, as a preliminary matter, observes that he does not support his premise that the Trial Chamber attributed him a host of "omissions"[2517] by any reference to the Trial Judgement and has failed to appreciate the basis for his conviction. As set out above, the Trial Chamber clearly identified several specific failures to act that it attributed to Župljanin in assessing his significant contribution to, and intent to further the JCE – namely: (i) his failure to launch criminal investigations; (ii) his failure to discipline subordinates who had committed crimes against non-Serbs; and (iii) ultimately, his failure to protect the non-Serb population.[2518]

752. In this regard, the Appeals Chamber observes that in the jurisprudence of the Tribunal, a failure to intervene to prevent recurrence of crimes or to halt abuses has been taken into account in assessing an accused's contribution to a joint criminal enterprise and intent, where the accused had some power and influence or authority over the perpetrators to prevent or halt the abuses, but failed to exercise such powers.[2519] The existence of such influence or authority is a factual matter to be determined on a case-by-case basis.[2520] Therefore, in order to rely on Župljanin's failures to act as a

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[2515] See *supra*, para. 119.
[2516] See *Šainović et al.* Appeal Judgement, para. 1520, referring to *Krajišnik* Appeal Judgement, para. 225, *Martić* Appeal Judgement, para. 168, *Brđanin* Appeal Judgement, para. 413. See *Tolimir* Appeal Judgement, para. 432; *Popović et al.* Appeal Judgement, para. 1065.
[2517] See *supra*, para. 741.
[2518] See *supra*, para. 718.
[2519] See *Šainović et al.* Appeal Judgement, paras 1233, 1242; *Krajišnik* Appeal Judgement, para. 194; *Kvočka et al.* Appeal Judgement, paras 194-196. See also *supra*, para. 111.
[2520] See *Šainović et al.* Appeal Judgement, paras 1233, 1242. See also *Šainović et al.* Appeal Judgement, para. 1045; *Martić* Appeal Judgement, para. 28; *Krajišnik* Appeal Judgement, paras 193-194, 204. *Cf. Krajišnik* Appeal Judgement, para. 696, where the Appeals Chamber held that "[w]hat matters in terms of law is that the accused lends a significant contribution to the commission of the crimes involved in the JCE" and that, beyond that, "the question of whether the accused contributed to a JCE is a question of fact to be determined on a case-by-case basis".

contribution to the JCE, the Trial Chamber indeed had to be satisfied that he had sufficient powers, influence, or authority to prevent or carry out such tasks. In light of the foregoing, and of the Trial Chamber's findings in relation to Župljanin's failures to act, the Appeals Chamber considers that Župljanin's argument that the Trial Chamber failed to make findings about the scope of the re-subordination of the police in assessing his failure to act is only relevant to the Trial Chamber's finding that he failed to discipline subordinates who had committed crimes against non-Serbs. Indeed, that is the sole finding of the Trial Chamber on Župljanin's failure to act where his capacity to prevent or halt abuses could have been affected by the re-subordination of policemen to the military.[2521]

753. However, having reviewed the Trial Chamber's findings – and having addressed below Župljanin's specific arguments on the matter[2522] – the Appeals Chamber considers that there is no indication that the Trial Chamber attributed to Župljanin a failure to discipline policemen re-subordinated to the military when it assessed his contribution to the JCE and inferred his intent. Moreover, the Trial Judgement contains sufficient findings regarding Župljanin's relationship to, and authority over, subordinate policemen where such findings were necessitated by the Trial Chamber's reliance upon Župljanin's failures to act in assessing his contribution to the JCE and his intent.

754. In this respect, the Appeals Chamber observes that when the Trial Chamber relied upon Župljanin's failures to "discipline his subordinates" in its assessment of his contribution to the JCE,[2523] it considered specific findings that it made elsewhere. Namely, the Trial Chamber relied upon findings that Župljanin: (i) failed to rein in the behaviour and effectively discipline members of the Banja Luka CSB SPD, despite his knowledge of their involvement in crimes;[2524] (ii) never attempted to remove Drljača, the Chief of the Prijedor SJB, from Prijedor, notwithstanding Župljanin's knowledge of the atrocities committed in the detention camps and Witness Radulović's

[2521] The Appeals Chamber considers that the issue of re-subordination of policemen to the military is irrelevant to the Trial Chamber's conclusion that Župljanin failed to launch criminal investigations, including for crimes committed by policemen, since it is based on his duty as a police officer to protect the civilian population and to investigate crimes, in particular to file criminal reports to the public prosecutor for crimes committed in the Banja Luka CSB's area of responsibility (see Trial Judgement, vol. 2, paras 354-356, 489, 518). The Appeals Chamber considers that the same holds true for the Trial Chamber's finding that Župljanin failed to ensure that his police duly investigated crimes committed against non-Serbs in the ARK Municipalities since it is not based on his failure to act against his subordinates but on his duty as a police officer to protect the civilian population and in failing to ensure that crimes were duly investigated (see Trial Judgement, vol. 2, para. 513).
[2522] See *infra*, paras 761-812.
[2523] Trial Judgement, vol. 2, para. 518. See *supra*, paras 718-720.
[2524] Trial Judgement, vol. 2, paras 504-505.

warning about Drljača;[2525] and (iii) failed to take adequate measures to stop, and in particular to discipline, policemen involved in the unlawful arrests.[2526]

755. The Appeals Chamber notes that Župljanin's specific challenges to the Trial Chamber's findings regarding his authority over the Banja Luka CSB SPD, including whether the Banja Luka CSB SPD may have been re-subordinated to the military and that the Trial Chamber was required to further address the issue of re-subordination, are addressed and dismissed elsewhere in this Judgement.[2527] Moreover, the Appeals Chamber has dismissed, in the following section, the specific examples that Župljanin asserts are demonstrative of the Trial Chamber's failure to address the issue of the re-subordination of the police to the military.[2528] As for the remaining events in the ARK Municipalities, the Appeals Chamber notes that the Trial Chamber made express findings that the police involved in the commission of crimes charged in the Indictment – including unlawful arrest – in these municipalities were under the authority of Župljanin as the highest police authority in the ARK[2529] and that he had *de jure* and *de facto* authority over the SJBs of the ARK Municipalities, including the capacity to take disciplinary measures against his subordinates.[2530] Župljanin does not advance any further argument suggesting that the Trial Chamber attributed to him a failure to discipline policemen re-subordinated to the military when it assessed his contribution to the JCE and inferred his intent in relation to the remaining events in the ARK Municipalities.

[2525] Trial Judgement, vol. 2, para. 515. See Trial Judgement, vol. 2, paras 360-362. See also Trial Judgement, vol. 2, paras 453-456.
[2526] Trial Judgement, vol. 2, paras 510, 518. See Trial Judgement, vol. 2, paras 368, 483-485.
[2527] See *infra*, paras 821-836.
[2528] See *infra*, paras 761-812.
[2529] See Trial Judgement, vol. 2, paras 801-802 (Banja Luka: perpetrators included members of the police and the Banja Luka CSB SPD, Banja Luka CSB, SNB Prijedor, Sanski Most, Ključ, and other ARK Municipalities, members of the crew of the red van were police under the authority of Župljanin, the highest police authority in the ARK), 828-829 (Donji Vakuf: perpetrators included members of the police force, including personnel from the Donji Vakuf SJB and the regular and reserve police in Donji Vakuf reported through the Banja Luka CSB, which was under the command of Župljanin); 841-842 (Ključ: perpetrators included members of the Ključ SJB and the Sanica sub-station, under Chief Vinko Kondić ("Kondić"), and Župljanin was the highest police authority in the ARK); 846-847 (Kotor Varoš: perpetrators included members of the SJB; members of the police force under the command of Savo Tepić; members of the Banja Luka CSB SPD, which was under the authority of Župljanin. The SJB in Kotor Varoš came under the Banja Luka CSB, with Župljanin as the Chief of CSB Banja Luka and the highest police authority in the ARK); 855-856 (Prijedor and Skender Vakuf: perpetrators included members of the Prijedor SJB; the PIP, and the perpetrators in Skender Vakuf were Prijedor policemen, including members of the Prijedor Intervention Platoon. Župljanin was the highest police authority in the ARK) 860-861 (Sanski Most: perpetrators included the Sanski Most SJB, under Chief Mirko Vručinić. Župljanin was the highest police authority in the ARK); 865-866 (Teslić: perpetrators included members of the police, including personnel from the Doboj CSB, the Teslić SJB, reserve police officers, and members of the Banja Luka CSB SPD, and a group known as the Red Berets or the Miće Group which was composed of both police and VRS personnel. The local police in Teslić and members of the Banja Luka CSB SPD were under the authority of Stojan Župljanin).
[2530] See Trial Judgement, vol. 2, paras 355-356, 368, 493.

756. With respect to his failure to launch criminal investigations and, in particular to ensure that his police duly investigated crimes committed against non-Serbs in the ARK Municipalities,[2531] Župljanin has again failed to appreciate the basis of his conviction. Contrary to his submission,[2532] whether the crimes committed were subject to military jurisdiction is irrelevant to the Trial Chamber's findings on Župljanin's contribution to the JCE and his intent. Indeed, the Trial Chamber's conclusion that Župljanin failed to launch criminal investigations, was based on his general failure to fulfil his duty as a police officer to protect the civilian population and to investigate crimes, in particular to ensure the filing of criminal reports to the public prosecutor for crimes committed in the Banja Luka CSB's area of responsibility.[2533]

757. Finally, insofar as Župljanin contends that the Trial Chamber attributed failures to act to him, without having considered the extent to which local police stations were influenced or commanded by municipal crisis groups,[2534] he points to no evidence or findings in support of this general argument.[2535] Accordingly, Župljanin has provided the Appeals Chamber with no basis upon which to assess his unsupported claims. Thus, the Appeals Chamber dismisses this argument.

758. Moreover, to the extent that Župljanin's argument rests upon his assertion that the Trial Chamber failed to take into account its own finding that the police in Prijedor were under the influence of the municipal authorities, Župljanin mischaracterises the Trial Chamber's findings. The Appeals Chamber notes in this respect that the Trial Chamber did not find that the police in Prijedor were under the influence of the municipal authorities to the exclusion of Župljanin's authority,[2536] but rather "that certain SJBs, like Prijedor and Sanski Most, received and implemented instructions of municipal Crisis Staff to guard and transport non-Serb detainees".[2537] It further stated "that several exhibits [...] show that the Prijedor SJB kept the Banja Luka CSB informed of the events in the municipality and requested its assistance in a number of matters, including the transport of prisoners from Prijedor to the Manjača camp, throughout the summer of 1992".[2538] On the basis of this and other evidence, the Trial Chamber concluded that:

> [w]hile some SJBs in his area of responsibility performed tasks assigned by local Crisis Staffs, the evidence shows that the ARK Crisis Staff, municipal Crisis Staffs, and the Banja Luka CSB were

[2531] See Trial Judgement, vol. 2, paras 513, 518.
[2532] See Župljanin Appeal Brief, para. 72.
[2533] See Trial Judgement, vol. 2, para. 513. See also Trial Judgement, vol. 2, paras 354, 356, 489, 516-517, 518; *supra*, paras 720-721; *supra*, fn. 2521.
[2534] See *supra*, para. 742.
[2535] To the extent that Župljanin's argument could be understood as referring to the alleged control of the Prijedor Crisis Staff over the Prijedor SJB, the Appeals Chamber has addressed this argument below (see *infra*, paras 758, 795 805-811).
[2536] See Župljanin Appeal Brief, para. 57.
[2537] Trial Judgement, vol. 2, para. 491.
[2538] Trial Judgement, vol. 2, para. 491.

> *cooperating closely* in matters such as the takeover of the ARK Municipalities by Serb Forces, the imprisonment of non-Serbs, and their resettlement in other areas of BiH or in other countries.[2539]

It found, moreover, that Župljanin exercised *de jure* and *de facto* control over the ARK SJBs, *i.e.* irrespective of the fact that some SJBs performed tasks assigned by local crisis staffs.[2540] Furthermore, the Appeals Chamber has dismissed Župljanin's arguments regarding the Trial Chamber's alleged error in failing to address whether, or to what extent, he exercised authority over the Prijedor SJB and in relation to his alleged failure to order police to disregard the orders of the local crisis staffs elsewhere in this Judgement.[2541]

759. Turning to Župljanin's argument that the Trial Chamber acknowledged that there were other governmental institutions exercising authority in the ARK Municipalities in 1992, the Appeals Chamber fails to see how this fact would undermine the Trial Chamber's findings regarding his own specific authority over the police and his failure to act.[2542]

760. In light of the above, the Appeals Chamber dismisses Župljanin's arguments that the Trial Chamber generally failed to make sufficient findings on the extent to which civilian policemen were periodically re-subordinated to the military or under the control of municipal crisis staffs, and thus erred in relying on his failures to launch criminal investigations, discipline his subordinates, and protect the non-Serb population, in assessing his contribution to the JCE and his intent.

b. Failure to make findings regarding re-subordinated police in specific instances

761. Župljanin advances three "examples" he contends demonstrate the "pervasive consequence" of the Trial Chamber's alleged failure to address the issue of his jurisdiction and control over re-subordinated police in respect of his participation in the JCE and "show the manifest unreasonableness" of the Trial Chamber's reliance on his omissions.[2543] He contends that the Trial Chamber failed to: (i) address the issue of VRS town commands in the municipalities of Donji Vakuf, Kotor Varoš, and Ključ;[2544] (ii) make findings as to whether police serving in the Manjača and Trnopolje detention facilities were re-subordinated;[2545] and (iii) address the extent to which he

[2539] Trial Judgement, vol. 2, para. 493. See Trial Judgement, vol. 2, paras 491-492.
[2540] Trial Judgement, vol. 2, para. 493.
[2541] See *infra*, para. 811.
[2542] The Appeals Chamber also notes that to support his contention, Župljanin points to a finding in relation to the common purpose (see Župljanin Appeal Brief, para. 66, referring to Trial Judgement, vol. 2, para. 311). In paragraph 311 of volume two of the Trial Judgement, the Trial Chamber only found that the Serb Forces, SDS party structure, crisis staffs, and the RS Government were exercising authority in the municipalities but that even though at times there were conflicts between these various entities, they all shared and worked towards the same goal under the Bosnian Serb leadership (see Trial Judgement, vol. 2, para. 311).
[2543] Župljanin Appeal Brief, para. 76. See Župljanin Appeal Brief, paras 77-101.
[2544] Župljanin Appeal Brief, paras 77-87.
[2545] Župljanin Appeal Brief, paras 88-89.

exercised authority over the Prijedor SJB, including the Keraterm and Omarska detention facilities.[2546]

762. The Prosecution responds that Župljanin fails to show any error in the Trial Chamber's reasoning as the Trial Chamber made the necessary findings.[2547]

i. Re-subordination of police in the municipalities of Donji Vakuf, Kotor Varoš, and Ključ

763. In assessing Župljanin's participation in the JCE, the Trial Chamber found that Župljanin "had *de jure* and *de facto* authority over the SJBs of the ARK Municipalities".[2548] On the basis of this and other findings, the Trial Chamber found that Župljanin failed to launch criminal investigations, to discipline his subordinates, and to protect the non-Serb population.[2549] In addition to these general findings, the Trial Chamber also made specific findings in relation to the municipalities of Donji Vakuf, Kotor Varoš, and Ključ.[2550] It ultimately found that Župljanin failed to: (i) take adequate measures to stop the mass arrest of non-Serbs and the involvement of policemen therein, regardless of his knowledge of crimes against non-Serbs and in particular of their unlawful detention;[2551] and (ii) investigate crimes committed by the Banja Luka CSB SPD, or impose disciplinary sanctions against its members.[2552]

764. With respect to the municipality of Donji Vakuf, the Trial Chamber considered, in particular, that Župljanin knew by 5 August 1992 that there was a prison for Muslims and Croats in Donji Vakuf and that the police had arrested, and were responsible for guarding, 60 prisoners.[2553]

[2546] Župljanin Appeal Brief, paras 90-101.
[2547] Prosecution Response Brief (Župljanin), para. 43.
[2548] Trial Judgement, vol. 2, para. 493. According to the Trial Chamber, Župljanin's authority "included the power to appoint and remove RS MUP staff, including SJB chiefs, and to order the police to perform specific tasks, including [...] the transport of non-Serb detainees", and "Župljanin could also take disciplinary measures, including termination of employment, against his subordinates" (Trial Judgement, vol. 2, para. 493). The Appeals Chamber notes that in reaching these findings, the Trial Chamber considered, *inter alia*, Župljanin's arguments that "municipal Crisis Staffs had usurped [his] authority over the police, [...] that local police were following the orders of municipal authorities" (Trial Judgement, vol. 2, para. 490, referring to Župljanin Final Trial Brief, pp 70-76), and that he lacked "effective control over municipal police forces" (Trial Judgement, vol. 2, para. 490). It found, nonetheless, that "Župljanin himself had, until at least 30 July 1992, *de facto* legitimised the municipal police to follow the orders of the municipal Crisis Staffs" (Trial Judgement, vol. 2, para. 492). The Trial Chamber further found, on the basis of this and other evidence, that "[w]hile some SJBs in his area of responsibility performed tasks assigned by local Crisis Staffs, the evidence shows that the ARK Crisis Staff, municipal Crisis Staffs, and the Banja Luka CSB were cooperating closely" (Trial Judgement, vol. 2, para. 493). With respect to Župljanin's duties and responsibilities as Chief of the Banja Luka CSB, see Trial Judgement, vol. 2, paras 354-356. With respect to the role of ARK municipal crisis staffs during the Indictment period, see Trial Judgement, vol. 2, paras 357-367.
[2549] See *supra*, paras 718-721. See also Trial Judgement, vol. 2, paras 518-520.
[2550] See *infra*, paras 764-766.
[2551] Trial Judgement, vol. 2, para. 510. See Trial Judgement, vol. 2, para. 518 (failure to discipline his subordinates).
[2552] Trial Judgement, vol. 2, para. 505.
[2553] Trial Judgement, vol. 2, para. 509. See Trial Judgement, vol. 2, para. 427.

765. As for the municipality of Kotor Varoš, the Trial Chamber found that Župljanin dispatched the Banja Luka CSB SPD to the municipality in the summer of 1992.[2554] It found that at the end of June 1992, Župljanin was informed of the Banja Luka CSB SPD's involvement in serious crimes against the non-Serb population during their deployment in Kotor Varoš,[2555] and that there was limited evidence of efforts to investigate serious crimes against non-Serbs in Kotor Varoš.[2556]

766. The Trial Chamber also found that Župljanin dispatched the Banja Luka CSB SPD to the municipality of Ključ in the summer of 1992.[2557] It found that Župljanin knew: (i) by July 1992, of police involvement in the mass arrests and detentions in Ključ municipality during May and June 1992; (ii) on 29 August 1992, that the Ključ SJB had sent persons detained in the municipality to the Manjača camp; and (iii) in November 1992, of cases of murder, rape, theft, and arson in which the victims were Muslims and that the Chief of the Ključ SJB Chief requested instructions from the Banja Luka CSB "on whether he should make the crimes public by filing reports against unknown perpetrators".[2558]

a. Submissions of the parties

767. Župljanin argues that the Trial Chamber's finding that the crimes committed in the municipalities of Donji Vakuf, Ključ, and Kotor Varoš were not addressed by him "is predicated on a finding that the [Trial] Chamber never makes: that he had jurisdiction over those crimes".[2559] He submits that the "general finding of *de facto* and *de jure* control was inapplicable in respect of these three municipalities" and that the Trial Chamber was "duty-bound to address the issue".[2560]

768. He argues that the Trial Chamber failed to acknowledge, or reject, documentary[2561] and testimonial[2562] evidence showing that the police in the town of Donji Vakuf were continuously

[2554] Trial Judgement, vol. 2, para. 502. The Trial Chamber found that, during the summer of 1992, Župljanin dispatched the Banja Luka CSB SPD to participate, with other Serb forces, in the takeovers of various municipalities including Kotor Varoš, Prijedor, and Ključ (Trial Judgement, vol. 2, para. 502. *Cf.* Trial Judgement, vol. 2, para. 405).
[2555] Trial Judgement, vol. 2, para. 503. See Trial Judgement, vol. 2, para. 425.
[2556] Trial Judgement, vol. 2, para. 504. See Trial Judgement, vol. 2, para. 425. The Trial Chamber found that the only evidence of an investigation against members of the Banja Luka CSB SPD was the filing of a report against Danko Kajkut for a "double rape" allegedly committed in Kotor Varoš but that a criminal report in relation to the incident was never filed with the public prosecutor (Trial Judgement, vol. 2, para. 504. See Trial Judgement, vol. 2, para. 462).
[2557] Trial Judgement, vol. 2, para. 502. See *supra*, fn. 2554.
[2558] Trial Judgement, vol. 2, para. 509. See Trial Judgement, vol. 2, para. 426.
[2559] Župljanin Appeal Brief, para. 87. See Župljanin Reply Brief, para. 24. With respect to Donji Vakuf, see Župljanin Appeal Brief, paras 77-79, 87. With respect to Kotor Varoš, see Župljanin Appeal Brief, paras 80-82, 87. With respect to Ključ, see Župljanin Appeal Brief, paras 83-87.
[2560] Župljanin Appeal Brief, para. 87. See Župljanin Appeal Brief, paras 77, 82, 85.
[2561] See Župljanin Appeal Brief, para. 78, referring to Exhibit P1928, pp 2, 4. See also Župljanin Appeal Brief, para. 77, referring to Exhibits 1D403, 1D473.
[2562] See Župljanin Appeal Brief, para. 79, referring to Andrija Bjelošević, 15 Apr 2011, T. 19663-19664, Vidosav Kovačević, 6 Sep 2011, T. 23684-23685, Vidosav Kovačević, 7 Sep 2011, T. 23766-23767.

re-subordinated to a VRS town command,[2563] and that "the [Trial] Chamber's own findings contradict, or at least limit, its sweeping finding that [he] exercised *de jure* and *de facto* control over all police stations in the ARK".[2564] Župljanin contends that nevertheless, the alleged unlawful detention in Donji Vakuf and his alleged failure to intervene were mentioned amongst the matters from which the Trial Chamber inferred his involvement in the JCE.[2565]

769. Župljanin also asserts that, having found that he knew of and failed to act in relation to crimes committed in Kotor Varoš,[2566] the Trial Chamber could not have drawn the inference that he intended to commit, and did commit, forcible transfer, without first determining that police who committed serious crimes in Kotor Varoš were not re-subordinated to the VRS.[2567] Župljanin points to evidence which he submits demonstrates that a town command existed in Kotor Varoš on or about 25 June 1992, [2568] and argues that the Trial Chamber "had ample evidence that required it to consider whether the crimes of [local policemen and the Banja Luka CSB SPD] were committed while subordinated to the VRS".[2569] Župljanin underlines that the Trial Chamber did not even refer to the evidence establishing that military command was in effect in Kotor Varoš at the time of the crimes.[2570]

770. Župljanin further argues that the Trial Chamber erred by relying on "the default peacetime statutory framework" to conclude that Župljanin had *de jure* and *de facto* control over the activities of joint combat operations in Ključ municipality or over the perpetrators of crimes committed during such operations despite evidence to the contrary.[2571] He adds that the Trial Chamber itself acknowledged an abundance of evidence suggesting the reasonable possibility that some, if not

[2563] Župljanin Appeal Brief, para. 77.
[2564] Župljanin Appeal Brief, para. 77, referring to Trial Judgement, vol. 1, para. 241, Trial Judgement, vol. 2, paras 356, 358, 493. See Župljanin Reply Brief, paras 25-28.
[2565] Župljanin Appeal Brief, para. 77, referring to Trial Judgement, vol. 2, paras 247, 509.
[2566] Župljanin Appeal Brief, para. 82, referring to Trial Judgement, vol. 2, paras 42(5), 503. The Appeals Chamber notes that Župljanin refers to paragraph 426 of volume two of the Trial Judgement, but understands that this is intended as a reference to paragraph 425, instead.
[2567] Župljanin Appeal Brief, para. 82. See Župljanin Reply Brief, paras 29-33. Župljanin contends that the "[r]esolving the issue" of re-subordination was a pre-requisite to inferring his intent and contribution from his omissions (Župljanin Appeal Brief, para. 82).
[2568] Župljanin Appeal Brief, para. 80. Župljanin points specifically to: (i) Exhibit 2D132, an excerpt of minutes of a meeting of the Kotor Varoš Crisis Staff held on 25 June 1992, and the testimony of Witness Ewan Brown, which in his submission, show that the town command in Kotor Varoš was set up on the basis of direct communication between the local VRS unit and the local crisis staff (Župljanin Appeal Brief, para. 80, referring to Exhibit 2D132, Ewan Brown, 20 Jan 2011, T. 19058-19062, Exhibit P1787, p. 6); and (ii) Exhibit P1787, an order issued by the town commander in July 1992, prescribing complete control over the movement of the population (Župljanin Appeal Brief, para. 80).
[2569] Župljanin Appeal Brief, para. 81.
[2570] Župljanin Appeal Brief, para. 82.
[2571] Župljanin Appeal Brief, para. 85. See Župljanin Reply Brief, paras 34-35. Župljanin points to documentary evidence showing that a military town command was set up from 31 May 1992 onwards (Župljanin Appeal Brief, para. 83, referring to Exhibit P1783, p. 1) and that a close relationship between military and SJB forces existed at the end of May 1992 (Župljanin Appeal Brief, paras 84-85, referring to Exhibit P960.24, pp 3-4, 8).

many, of the crimes were committed by soldiers, with or without the involvement of policemen.[2572] In Župljanin's submission, the combination of crimes committed by soldiers, the collaboration of the police and the military, as well as, the existence of a town command, suggests that the police were substantially or continuously re-subordinated to the military.[2573] According to Župljanin, moreover, the Trial Chamber failed to address this evidence let alone make "any finding whatsoever as to the contours of re-subordination or which crimes were committed by whom".[2574]

771. The Prosecution responds that the Trial Chamber did not have to address the issue of town commands, given that it was not a significant issue in the case.[2575] It submits that the evidence indicates cooperation between the military and the police, rather than re-subordination.[2576]

772. Regarding Donji Vakuf, the Prosecution asserts that Župljanin merely repeats submissions made at trial and fails to show any error in the Trial Chamber's reasoning.[2577] According to the Prosecution, Župljanin's submissions misstate or omit relevant evidence considered by the Trial Chamber which shows that Župljanin continued to exercise authority over the Donji Vakuf SJB, uninterrupted by the existence of a "defence command", and that there was no need for the Trial Chamber to make an express finding about the "defence command" in Donji Vakuf.[2578] It further argues the Trial Chamber's findings regarding his role in coordinated action between the RS MUP, crisis staffs, and the VRS forces are consistent with the Trial Chamber's findings regarding his authority.[2579]

773. The Prosecution responds that the Trial Chamber reasonably relied on evidence pertaining to the municipalities of Kotor Varoš in assessing Župljanin's participation in the JCE.[2580] The Prosecution contends that again, Župljanin merely repeats submissions made during trial and ignores the distinction between cooperation and re-subordination.[2581] It asserts that the evidence on

[2572] Župljanin Appeal Brief, para. 85, referring to Trial Judgement, vol. 1, paras 304, 311-314, 318-319, 323, 331-332, 338.
[2573] Župljanin Appeal Brief, para. 85.
[2574] Župljanin Appeal Brief, para. 86.
[2575] Prosecution Response Brief (Župljanin), para. 44. See Prosecution Response Brief (Župljanin), paras 46, 48, 52. Specifically, the Prosecution contends that the Trial Chamber did not need to make findings regarding: (i) the "defence command" in Donji Vakuf (Prosecution Response Brief (Župljanin), para. 46); (ii) the "command for the defence of Kotor Varoš" (Prosecution Response Brief (Župljanin), para. 48); and (iii) the "Ključ defence command" (Prosecution Response Brief (Župljanin), para. 52). The Prosecution contends that a trial chamber, while obliged to provide reasons for its findings of fact on each element of the crimes charged, is not obliged to articulate every step of its reasoning, cite every piece of evidence it considered, or to provide reasons for rejecting evidence that is contradicted by substantial and credible evidence to the contrary (Prosecution Response Brief (Župljanin), para. 44, referring to *Renzaho* Appeal Judgement, para. 320, *Krajišnik* Appeal Judgement, para. 139, *Perišić* Appeal Judgement, para. 92).
[2576] Prosecution Response Brief (Župljanin), para. 54.
[2577] Prosecution Response Brief (Župljanin), para. 45.
[2578] Prosecution Response Brief (Župljanin), paras 45-46.
[2579] See Prosecution Response Brief (Župljanin), para. 46.
[2580] Prosecution Response Brief (Župljanin), para. 47.
[2581] Prosecution Response Brief (Župljanin), para. 47.

the record shows that to the extent that any town command existed, it did not disturb Župljanin's authority over the police in Kotor Varoš and that therefore the Trial Chamber was not obliged to make an express finding concerning the existence of a town command.[2582]

774. With regard to Ključ, the Prosecution responds that Župljanin selectively refers to evidence which the Trial Chamber reasonably considered to be insignificant in the context of the evidence read as a whole.[2583] According to the Prosecution, Župljanin also overlooks evidence showing that the "military town command" was a measure agreed upon by the Ključ Crisis Staff and was not inconsistent with Župljanin's continuing authority over the Ključ police.[2584] The Prosecution submits that it was reasonable for the Trial Chamber to conclude that Župljanin retained control over the Ključ police, and that nothing shows that the crimes committed in Ključ or the conduct of the police were outside Župljanin's jurisdiction.[2585]

b. Analysis

775. The Appeals Chamber 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.[2586] 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.[2587]

776. The Appeals Chamber is not convinced by Župljanin's contention that the Trial Chamber's findings in relation to Donji Vakuf contradict or limit its finding that he exercised *de jure* and *de facto* control over the SJBs of the ARK Municipalities, including Donji Vakuf SJB.[2588] As noted by Župljanin,[2589] the Trial Chamber found that "[o]n 13 June 1992, a military order of the 19th Partisan Division established a defence command for the town of Donji Vakuf."[2590] The Appeals Chamber is however not convinced that Exhibit 1D473 – which concerns the town of

[2582] See Prosecution Response Brief (Župljanin), paras 47-50, fns 151-167. In particular, the Prosecution contends that Župljanin overlooks findings on his personal involvement in deploying a Banja Luka CSB SPD platoon to Kotor Varoš, which is consistent with the Trial Chamber's finding that he exercised complete authority over the Banja Luka CSB SPD (Prosecution Response Brief (Župljanin), para. 49).
[2583] Prosecution Response Brief (Župljanin), para. 51.
[2584] Prosecution Response Brief (Župljanin), paras 51-52.
[2585] Prosecution Response Brief (Župljanin), para. 54.
[2586] *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, fn. 2527; *Haradinaj et al.* Appeal Judgement, para. 129; *Kvočka et al.* Appeal Judgement, para. 23.
[2587] *Popović et al.* Appeal Judgement, para. 306; *Đorđević* Appeal Judgement, para. 864; *Haradinaj et al.* Appeal Judgement, para. 129; *Kvočka et al.* Appeal Judgement, para. 23.
[2588] See Trial Judgement, vol. 2, paras 493, 829. The Appeals Chamber notes in this respect the Trial Chamber's finding that "regular and reserve police in Donji Vakuf reported through the Banja Luka CSB, which was under the command of Stojan Župljanin, to the RS MUP under the control of Mićo Stanišić" (Trial Judgement, vol. 2, para. 829).
[2589] Župljanin Appeal Brief, para. 77.
[2590] Trial Judgement, vol. 1, para. 240 (internal references omitted).

Bosanski Brod and does not specifically mention the police[2591] – supports Župljanin's assertion that whenever a town command existed, the police fell directly and exclusively under the control of the military.[2592] The Appeals Chamber further observes that the Trial Chamber expressly considered, and therefore did not disregard, the order of 13 June 1992, which designated Boško Savković ("Savković") as Chief of the Donji Vakuf SJB and appointed Sufulo Šišić ("Šišić"), a military captain, as Commander of the Donji Vakuf SJB.[2593] The Appeals Chamber is also not convinced that Savković's appointment as Chief of the Donji Vakuf SJB by a military order, or the appointment of Šišić, a military captain, as Commander of the Donji Vakuf SJB is sufficient to show that no reasonable trier of fact could have found that Župljanin exercised *de jure* and *de facto* control over the Donji Vakuf SJB, even after 13 June 1992.[2594] In the Appeals Chamber's view, Župljanin merely points to evidence regarding the appointments of SJB officials to Donji Vakuf SJB, without demonstrating any error in the Trial Chamber's findings concerning Župljanin's authority over the police in the municipality. Accordingly, the Appeals Chamber finds that Župljanin has not shown that Trial Chamber's findings in relation to Donji Vakuf contradict or limit the finding that he exercised *de jure* and *de facto* control over the SJBs of the ARK Municipalities.

777. Contrary to Župljanin's argument, the Trial Chamber expressly addressed and relied on Exhibit P1928 – a report on the work of the Donji Vakuf SJB between 1 April 1992 and 25 December 1992, dated January 1993 – in the section of the Trial Judgement dedicated to its findings in relation to Donji Vakuf municipality.[2595] The Appeals Chamber is equally unconvinced by Župljanin's reliance upon extracts of the testimonies of Witness Bjelošević and Witness Vidosav Kovačević ("Witness V. Kovačević"). The Appeals Chamber notes that the portions of Witness Bjelošević's testimony on which Župljanin relies relate to a town command in Derventa, and thus are irrelevant to the issue of whether or not police in Donji Vakuf were under military control.[2596] The portions of Witness V. Kovačević's evidence on which Župljanin relies, meanwhile, only address the relationship between police units re-subordinated to the military, generally, without demonstrating that police in Donji Vakuf were in fact re-subordinated to the

[2591] Exhibit 1D473.
[2592] See Župljanin Appeal Brief, para. 77, referring to Exhibit 1D473.
[2593] See Trial Judgement, vol. 1, para. 241. See also Trial Judgement, vol. 2, para. 829.
[2594] The Appeals Chamber observes that the Trial Chamber's findings show that Savković was reporting to Župljanin after 13 June 1992. See Trial Judgement, vol. 2, para. 427.
[2595] See in particular, Trial Judgement, vol. 1, para. 245, referring to Exhibit P1928. Župljanin selectively quotes this exhibit and points to extracts which do not establish that the police in the town of Donji Vakuf were continuously re-subordinated to a VRS town command (see Župljanin Appeal Brief, para. 78, referring to Exhibit P1928, pp 2, 4). Having reviewed Exhibit P1928, the Appeals Chamber notes that it evidences: (i) cooperation between the VRS and the police; (ii) joint check points established by the Donji Vakuf SJB and the military police; and (iii) the frequent participation of police in "war operations" (see Exhibit P1928).
[2596] See Andrija Bjelošević, 15 Apr 2011, T. 19663-19664.

military.[2597] Accordingly, Župljanin has failed to show that the Trial Chamber disregarded clearly relevant evidence. His arguments in this respect are dismissed.

778. With respect to Župljanin's submissions concerning the municipality of Kotor Varoš, the Appeals Chamber considers that Župljanin has failed to demonstrate that the Trial Chamber was required to make findings, or failed to consider evidence of, re-subordination or the effect of town commands on his capacity to discipline members of the police. Having reviewed the only evidence Župljanin identifies to support his contention,[2598] the Appeals Chamber considers that it merely shows that a town command existed as of 25 June 1992, that the military units in Kotor Varoš were tasked with exercising control over the movement of population, and that the prisoners of war should be taken to the brigade command for interrogation before being sent to a prison camp.[2599] Župljanin does not explain or demonstrate how the existence of the town command impacted his ability to discipline the policemen of the Kotor Varoš SJB.

779. Further, to the extent that Župljanin argues that the Banja Luka CSB SPD would not have been under his control because of the existence of a town command in Kotor Varoš, Župljanin has failed to substantiate his claim that the Banja Luka CSB SPD was re-subordinated to the VRS.[2600] The Appeals Chamber also recalls its finding that the Trial Chamber adequately addressed whether Župljanin had sufficient power or authority over the members of the Banja Luka CSB SPD to impose disciplinary sanctions irrespective of whether they were involved in combat operations with the army.[2601] The Appeals Chamber therefore finds that Župljanin has not shown that the Trial Chamber was required to further address the issue of re-subordination of the Banja Luka CSB SPD when deployed in Kotor Varoš or that the Trial Chamber erroneously relied on Župljanin's failure to investigate crimes committed by the Banja Luka CSB SPD there and to impose disciplinary sanctions against its members.[2602]

[2597] See Vidosav Kovačević, 6 Sep 2011, T. 23684-23685; Vidosav Kovačević, 7 Sep 2011, T. 23766-23767.
[2598] Župljanin points specifically to Exhibit 2D132, an excerpt of a meeting of the Kotor Varoš Crisis Staff held on 25 June 1992, which in his submission, shows that the town command was set upon on the basis of direct communication between the local VRS unit and the local crisis staff, and to Exhibit P1787, an order issued by the town commander in July 1992, prescribing a complete control over the movement of the population and that such evidence "was not contested by the Prosecution expert" (Župljanin Appeal Brief, para. 80, referring to Exhibit 2D132, Ewan Brown, 20 Jan 2011, T. 19058-19062, Exhibit P1787, p. 6).
[2599] See Exhibits 2D132, P1787.
[2600] See Župljanin Appeal Brief, para. 81.
[2601] See *infra*, paras 827-836. The Appeals Chamber also notes the Trial Chamber's findings that, as the official exercising authority over the Banja Luka CSB SPD, Župljanin was kept informed of the crimes committed by its members, including in the municipality of Kotor Varoš (Trial Judgement, vol. 1, para. 435, referring to Predrag Radulović, 27 May 2010, T. 10911-10914. See Trial Judgement, vol. 2, para. 374) and that he acted with such authority when in turn informing the RS MUP of these crimes (Trial Judgement, vol. 2, para. 425).
[2602] Trial Judgement, vol. 2, para. 505.

780. With respect to the municipality of Ključ, Župljanin has failed to show that no reasonable trier of fact could have found that he maintained *de facto* and *de jure* control over the Ključ SJB.[2603] Insofar as Župljanin relies on portions of Exhibits P1783 and P960.24 as evidence that the Trial Chamber allegedly failed to consider,[2604] the Appeals Chamber notes that the Trial Chamber expressly referred to the extracts of Exhibit P960.24 to which Župljanin refers.[2605] Župljanin merely presents an alternate interpretation of this evidence expressly considered by the Trial Chamber without showing an error. The Appeals Chamber further notes that while the Trial Chamber did not refer to Exhibit P1783, this document only evidences the membership of the Chief of the Ključ SJB in – and the establishment of – a town command in Kotor Varoš, along with military officials and others.[2606] Thus, Exhibit P1783 was not clearly relevant to the Trial Chamber's findings regarding Župljanin's *de jure* and *de facto* control over the police, including in the municipality of Ključ.

781. Further, and contrary to Župljanin's submission,[2607] the evidence that he points to, does not show that the Trial Chamber simply relied upon "the default peacetime statutory framework" to conclude that he had the authority to discipline police from the Ključ SJB.[2608] In fact, the Trial Chamber addressed the issue of cooperation between the police and the military in finding that "the evidence shows that the ARK Crisis Staff, municipal Crisis Staffs, and the Banja Luka CSB were cooperating closely in matters such as the takeover of the ARK Municipalities by Serb Forces, the imprisonment of non-Serbs, and their resettlement in other areas of BiH or in other countries".[2609] The Appeals Chamber notes that the evidence on which Župljanin relies is not inconsistent with these findings.[2610] In the Appeals Chamber's view, Župljanin merely presents a different interpretation of the evidence on the record, without demonstrating that the Trial Chamber disregarded clearly relevant evidence.[2611]

[2603] See Trial Judgement, vol. 2, para. 493. See also Trial Judgement, vol. 2, para. 842.
[2604] See *supra*, fn. 2571.
[2605] Trial Judgement, vol. 2, para. 426. Specifically, the Trial Chamber found that, in July 1992, the Chief of the Ključ SJB, Vinko Kondić ("Kondić"), reported to the Banja Luka CSB that "police in cooperation with the army had processed 2,000 people and sent to detention camps 1,278 persons suspected of having been involved in armed rebellion, in the 'so called Muslim TO', or in smuggling of weapons, but also people who owned weapons without a permit, even though they were not members of any armed formation" (Trial Judgement, vol. 2, para. 426). The Trial Chamber further found that Kondić reported that "during this process, 'things happened that are not in the nature and are against the moral code of the Serbian people'" (Trial Judgement, vol. 2, para. 426). The Trial Chamber also refereed to Exhibit P960.24 in finding that "[o]n 27 March 1992, on the occasion of the adoption of the Constitution by the BSA, the Banja Luka CSB was assigned the territory of the ARK as its area of responsibility" (Trial Judgement, vol. 2, para. 351, referring to, *inter alia*, Exhibit P960.24, pp 3-4).
[2606] Exhibit P1783, p. 1.
[2607] See *supra*, para. 770.
[2608] Župljanin Appeal Brief, para. 85.
[2609] Trial Judgement, vol. 2, para. 493.
[2610] See Exhibits P1783, p. 1, P960.24, pp 3-4, 8.
[2611] *Cf. supra*, para. 536.

782. Finally, insofar as Župljanin argues that the Trial Chamber itself acknowledged an abundance of evidence suggesting the reasonable possibility that some, if not many, of the crimes were committed by soldiers, with or without the involvement of policemen,[2612] the Appeals Chamber considers that he again misunderstands the law of joint criminal enterprise liability. Župljanin fails to appreciate that under joint criminal enterprise liability, he can be held responsible for those crimes forming part of the common criminal purpose, so long as they are linked either to him or another JCE member.[2613] In addition, there is no indication in the relevant findings of the Trial Chamber[2614] that, in assessing Župljanin's intent and contribution, the Trial Chamber considered that he failed to discipline soldiers over whom he did not have authority.

783. The Appeals Chamber also fails to see how the fact that crimes were committed by soldiers with or without the involvement of the police would indicate that the police were re-subordinated to the military. Even if considered in combination with the collaboration of the police and the military, as well as the existence of a town command, Župljanin does not demonstrate how the commission of crimes by soldiers suggests that the police were substantially or continuously re-subordinated to the military. Accordingly, the Appeals Chamber is not convinced that soldiers' involvement in the commission of crimes renders the Trial Chamber's findings regarding Župljanin's *de jure* and *de facto* control over the police in the municipality of Ključ unsafe. Likewise the Appeals Chamber is not persuaded that Župljanin has shown that the Trial Chamber was required to further address the contours of the re-subordination of the police in relation to the existence of a town command in Ključ.

784. In conclusion, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber erred by failing to make findings on the issue of re-subordination of policemen to the military or by failing to consider evidence relating to military commands set up in the municipalities of Donji Vakuf, Kotor Varoš, and Ključ. His arguments in this respect are therefore dismissed.

ii. Re-subordination of police forces serving in the military-run Manjača and Trnopolje detention camps

785. In assessing Župljanin's participation in the JCE, the Trial Chamber found that, *inter alia*, Župljanin "was aware that thousands of non-Serbs were detained under harsh conditions at the

[2612] See Župljanin Appeal Brief, para. 85.
[2613] *Šainović et al.* Appeal Judgement, para. 1520, referring to *Krajišnik* Appeal Judgement, para. 225, *Martić* Appeal Judgement, para. 168, *Brđanin* Appeal Judgement, para. 413. See *Tolimir* Appeal Judgement, para. 432; *Popović et al.* Appeal Judgement, para. 1065. See also *supra*, para. 119.
[2614] See *supra*, paras 747-760.

Manjača camp, a military detention facility in the municipality of Banja Luka, where the police transported prisoners previously detained in police-run detention facilities in other ARK municipalities".[2615] The Trial Chamber also found that "Predrag Radulović informed Župljanin on more than one occasion that Serb Forces in Prijedor razed villages, destroyed mosques, and arrested large numbers of non-Serbs, including women, children, and the elderly, and detained them at Omarska, Keraterm, and Trnopolje."[2616] It further noted that on 5 August 1992, international media began to report about detainees being held at Omarska and Trnopolje detention facilities in inhumane conditions and subjected to physical abuse.[2617] Based on these findings and other evidence of Župljanin's knowledge of crimes committed against non-Serbs and of their unlawful detention in particular,[2618] the Trial Chamber found that Župljanin's failures to take adequate measures to stop the mass arrest of non-Serbs and the involvement of policemen therein, regardless of his knowledge of crimes against non-Serbs, and in particular, of their unlawful detention, constituted at least a significant contribution to the unlawful arrests, if not a substantial one.[2619]

a. Submissions of the parties

786. Župljanin submits that the Trial Chamber failed to make findings as to whether the police forces serving in the Manjača and Trnopolje detention facilities were re-subordinated to the military.[2620] To this end, he argues that: (i) the commander of the Trnopolje detention camp was the TO commander of Prijedor;[2621] (ii) the guards in the Trnopolje detention camp were dressed in military uniforms as opposed to police uniforms;[2622] (iii) the Manjača detention camp was a VRS

[2615] Trial Judgement, vol. 2, para. 506. In this respect, the Trial Chamber found, specifically, that: (i) on 2 July 1992, Župljanin was informed that the Sanski Most SJB had transported 250 Croats and Muslims to Manjača (Trial Judgement, vol. 2, paras 418, 506); (ii) at the end of July or the beginning of August 1992, Župljanin visited the Manjača detention facility "including the stables where the prisoners were held" (Trial Judgement, vol. 2, para. 417. See Trial Judgement, vol. 2, para. 506); (iii) on 5 August 1992, Drljača requested Župljanin to ensure safe passage for a convoy of 1,466 detainees scheduled to travel from Prijedor to Manjača on 6 August 1992 (Trial Judgement, vol. 2, paras 465, 506); and (iv) Župljanin knew of the death of approximately 20 non-Serb detainees, who suffocated whilst being transported in a truck between Sanski Most and the Manjača detention facility by Sanski Most police (Trial Judgement, vol. 2, paras 419, 506). The Trial Chamber also found that Župljanin knew that on 29 August 1992, the Ključ SJB had sent all of the persons detained in that municipality to the Manjača detention facility (Trial Judgement, vol. 2, paras 426, 509).
[2616] Trial Judgement, vol. 2, para. 508. See Trial Judgement, vol. 2, para. 420.
[2617] See Trial Judgement, vol. 2, para. 509. See also Trial Judgement, vol. 2, para. 444.
[2618] See Trial Judgement, vol. 2, paras 506-510. See also Trial Judgement, vol. 2, paras 415-440, 499, 503-504, 511-519.
[2619] Trial Judgement, vol. 2, para. 510. With respect to Župljanin's failure to discipline his subordinates, see Trial Judgement, vol. 2, para. 518.
[2620] See Župljanin Appeal Brief, paras 88-89.
[2621] Župljanin Appeal Brief, para. 88, referring to Trial Judgement, vol. 2, para. 638, Witness ST249, 26 Nov 2010, T. 17859-17860, Witness ST24, 18 Oct 2010, T. 16140. See Župljanin Reply Brief, para. 37.
[2622] Župljanin Appeal Brief, para. 88, referring to Trial Judgement, vol. 1, para. 619, Witness ST249, 26 Nov 2010, T. 17859-17860, Witness ST67, 9 Dec 2010, T. 18404, Exhibit P671.

facility and was commanded by a VRS commander;[2623] and (iv) policemen were apparently present at both facilities from time to time.[2624] According to Župljanin, the Trial Chamber imputed "failures" to him in respect of crimes committed at both Manjača and Trnopolje detention facilities, "without conducting any inquiry at all as to whether policemen, in any role, were re-subordinated to the military in the course of their activities there".[2625]

787. The Prosecution responds that Župljanin misunderstands the Trial Chamber's findings.[2626] It contends that the Trial Chamber limited its analysis of Župljanin's intent and contribution to the JCE to the "'external' involvement" of the police in operations in the two detention camps, and that the evidence does not indicate a re-subordination of the police forces for these purposes.[2627] The Prosecution argues, specifically, that: (i) Župljanin fails to show any error in the Trial Chamber's findings on the role of the police in the Manjača detention camp or in its analysis of Župljanin's intent and contributions to the JCE based on its authority over the Banja Luka and other SJBs which supported the camp;[2628] (ii) the Trial Chamber reasonably found that Župljanin knew of the detention of thousands of non-Serbs under harsh conditions;[2629] and (iii) all of the factors taken into account by the Trial Chamber are consistent with its conclusion on his position of authority over the police forces transporting detainees to and from the camp.[2630] The Prosecution further argues that the conduct of the police at Trnopolje detention camp indicates that they were independent from the military.[2631]

b. Analysis

788. The Appeals Chamber observes that although the Trial Chamber relied on Župljanin's knowledge of the conditions of detention in the Manjača and Trnopolje detention facilities when assessing his contribution to the JCE and his intent,[2632] it did not rely on failures to discipline police forces serving in the Manjača and Trnopolje detention facilities, which were under the authority of

[2623] Župljanin Appeal Brief, para. 88, referring to Trial Judgement, vol. 2, paras 337, 506, 802, *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution's Final Trial Brief, 14 May 2012 (confidential with confidential annexes) ("Prosecution Final Trial Brief"), ,paras 136-137. See Župljanin Reply Brief, para. 37.
[2624] Župljanin Appeal Brief, para. 88, referring to Trial Judgement, vol. 1, para. 172.
[2625] Župljanin Appeal Brief, para. 89, referring to Trial Judgement, vol. 2, paras 465, 524. According to Župljanin this "presumption of plenary authority, and the corollary attribution of omissions contributing to the JCE, was based on a failure to make adequate findings" (Župljanin Appeal Brief, para. 89). See also Župljanin Reply Brief, paras 38-39.
[2626] Prosecution Response Brief (Župljanin), para. 55, referring to Župljanin Appeal Brief, para. 89.
[2627] Prosecution Response Brief (Župljanin), para. 55.
[2628] Prosecution Response Brief (Župljanin), para. 56, referring to Trial Judgement, vol. 1, paras 171-173, 191-193, 202, 204-206, 215-220, 223.
[2629] Prosecution Response Brief (Župljanin), para. 57, referring to Trial Judgement, vol. 2, paras 417, 506.
[2630] Prosecution Response Brief (Župljanin), para. 58, referring to Trial Judgement, vol. 1, paras 174-176, 223, 633, Trial Judgement, vol. 2, paras 418-419, 426-427, 447-448, 465, 487, 493, 506, 509, 511, 514, 516, 524.
[2631] Prosecution Response Brief (Župljanin), paras 59-60, referring to Trial Judgement, vol. 1, paras 619, 622, 625-630, 680-684, Trial Judgement, vol. 2, paras 447, 791.
[2632] See *supra*, para. 785.

the military.[2633] In this regard, the Appeals Chamber recalls that in its assessment of his contribution and intent, the Trial Chamber relied upon Župljanin's failures to "discipline his subordinates",[2634] and that its conclusions on these failures were based on specific findings, including that he failed to take adequate measures to stop policemen's involvement in the unlawful arrest of non-Serbs.[2635] Therefore, the Appeals Chamber is of the view, that the Trial Chamber found that despite his knowledge of unlawful detention and in particular of the conditions in the Manjača and Trnopolje detention facilities, Župljanin failed to take adequate measures to stop policemen's involvement in the unlawful *arrest* of non-Serbs.[2636] This finding, in the view of the Appeals Chamber, clearly excludes that the Trial Chamber relied upon Župljanin's failure to discipline police forces serving in the Manjača and Trnopolje detention facilities. Accordingly, the issue of whether police serving at the Manjača and Trnopolje detention facilities were re-subordinated was irrelevant to the Trial Chamber's assessment of Župljanin's participation in the JCE.[2637]

789. In light of the above, the Appeals Chamber dismisses Župljanin's arguments with respect to the Trial Chamber's alleged failures to make findings on whether the police serving at the Manjača and Trnopolje detention facilities were re-subordinated to the military.

iii. Župljanin's authority over the Prijedor SJB

790. In assessing Župljanin's participation in the JCE, the Trial Chamber found that Župljanin exercised *de jure* and *de facto* control over the SJBs in the ARK (*i.e.* including the Prijedor SJB).[2638] In reaching this finding, the Trial Chamber considered, *inter alia*, that: (i) the Prijedor SJB, despite implementing some instructions of municipal crisis staffs, "kept the Banja Luka CSB informed of events in the municipality and requested its assistance in a number of matters";[2639] and (ii) a "relationship based on cooperation" existed between the War Presidency of the Prijedor

[2633] See Trial Judgement, vol. 2, paras 802 ("the Trial Chamber recalls that the [Manjača] camp was under the authority of the 1st KK, with Božidar Popović acting as the camp warden"), 856 ("[t]he Chamber further recalls that the Trnopolje camp was under the charge of the TO and guarded by Serb soldiers and that the camp commander was Slobodan Kurzunović"). See also Trial Judgement, vol. 1, paras 171-172, 619.
[2634] See *supra*, para. 754. See also Trial Judgement, vol. 2, paras 518, 519.
[2635] See *supra*, para. 754. See also Trial Judgement, vol. 2, paras 510, 518.
[2636] Trial Judgement, vol. 2, para. 510 (emphasis added). See Trial Judgement, vol. 2, paras 518-519.
[2637] The Appeals Chamber also recalls its finding that the issue of re-subordination of policemen to the military is irrelevant to the Trial Chamber's conclusion that Župljanin failed launch criminal investigations, including for crimes committed by policemen and for the Trial Chamber's finding that Župljanin failed to ensure that police under his authority duly investigated crimes committed against non-Serbs (see *supra*, fn. 2521).
[2638] Trial Judgement, vol. 2, para. 493. See Trial Judgement, vol. 2, para. 856 ("Stojan Župljanin was the highest police authority in the ARK, and the police in Prijedor and Skender Vakuf were under the RS MUP, which was under the overall control of Mićo Stanišić").
[2639] Trial Judgement, vol. 2, para. 491. See Trial Judgement, vol. 2, paras 359-362.

Municipal Assembly ("Prijedor War Presidency"), Drljača (the Chief of the Prijedor SJB), and Župljanin, "in which Župljanin played a leadership role".[2640]

791. With respect to the Keraterm and Omarska detention facilities in particular, the Trial Chamber found that: (i) Župljanin was informed by Witness Radulović and Witness Sajinović, at some point in June 1992, "of the horrible conditions in which prisoners were held and the abuses perpetrated against them" in these camps, "including by members of the police" to which he "responded dismissively [...] and left hurriedly";[2641] (ii) on 16 July 1992, Župljanin visited Omarska detention facility with other ARK leaders "where detainees showed signs of mistreatment and were forced to give the delegation the three finger salute" while members of the delegation laughed at the scene;[2642] (iii) Župljanin was informed on more than one occasion that Serb Forces in Prijedor razed villages, destroyed mosques, and arrested a large number of non-Serbs and detained them at detention facilities in Omarska, Keraterm, and Trnopolje;[2643] and (iv) international media began reporting about detainees in the Omarska and Trnopolje detention facilities who were held in inhumane conditions and subjected to physical abuse, by 5 August 1992.[2644] The Trial Chamber further considered that "Župljanin never attempted to remove Simo Drljača from Prijedor, notwithstanding Župljanin's knowledge of the atrocities committed in the detention camps and Radulović's warning about Drljača", while Župljanin successfully took action "to arrest members of

[2640] Trial Judgement, vol. 2, para. 492. See Trial Judgement, vol. 2, para. 360. See also *e.g.* Trial Judgement, vol. 2, paras 422-423, 475-476, 479-480. The Appeals Chamber further notes that, in assessing Župljanin's participation in the JCE, the Trial Chamber also found in relation to the municipality of Prijedor that: (i) Župljanin dispatched platoons of the Banja Luka CSB SPD to the municipality during the summer of 1992, upon the request of municipal authorities (Trial Judgement, vol. 2, para. 502. See Trial Judgement, vol. 2, para. 405); (ii) on 5 August 1992, Drljača requested Župljanin to ensure safe passage for a convoy of approximately 1,466 prisoners from Prijedor to Manjača (Trial Judgement, vol. 2, paras 506, 516. See Trial Judgement, vol. 2, para. 465), and that Župljanin obliged on 6 August 1992 (Trial Judgement, vol. 2, para. 511. See Trial Judgement, vol. 2, para. 465); (iii) on 29 September 1992, Župljanin, notwithstanding his knowledge of the Prijedor police's involvement in the murder of non-Serbs, ordered the Prijedor police to escort buses transporting more than 1,500 persons from Trnopolje detention facility, in Prijedor municipality, to Croatia (Trial Judgement, vol. 2, para. 511. See Trial Judgement, vol. 2, para. 478); and (iv) Župljanin withheld information from the public prosecutor about the involvement of Prijedor police in the murder of about 150-200 Muslims at Koričanske Stijene (Trial Judgement, vol. 2, para. 517. See Trial Judgement, vol. 2, paras 466-482).

[2641] Trial Judgement, vol. 2, para. 508. See Trial Judgement, vol. 2, para. 423.

[2642] Trial Judgement, vol. 2, para. 508. See Trial Judgement, vol. 2, para. 424, referring to Exhibit P2096, pp 7436-7437, Predrag Radulović, 27 May 2010, T. 10879-10881, Nusret Sivac, 16 Aug 2010, T. 13196-13200, Simo Mišković, 4 Oct 2010, T. 15247-15250, Exhibit P1378. The Appeals Chamber notes that, at paragraph 508 of volume two of the Trial Judgement, the Trial Chamber refers to this visit as having occurred on 17 July 1992. In light of the Trial Chamber's finding at paragraph 424 of volume two of the Trial Judgement that this visit occurred on 16 July 1992, and considering the evidence relied upon thereat, the Trial Chamber considers that the subsequent reference to 17 July 1992 is merely a typographical error (see *e.g.* Exhibit P1378, being a newspaper article referring to the visit, which was published on 17 July 1992. See also Predrag Radulović, 27 May 2010, T. 10880-10881).

[2643] Trial Judgement, vol. 2, para. 508. See Trial Judgement, vol. 2, para. 423.

[2644] Trial Judgement, vol. 2, para. 509. See Trial Judgement, vol. 2, para. 444. The Trial Chamber also found that the report of the commission that Župljanin established to investigate the conditions of detention facilities, "was simply a collage of previously drafted reports on Omarska, Keraterm, and Trnopolje" (Trial Judgement, vol. 2, para. 514. See Trial Judgement, vol. 2, paras 446-447).

the powerful Miće Group", and "successfully prevented an attempt by paramilitary forces to kill between 300 and 600 Muslims and Roma between Doboj and Banja Luka in mid-May 1992".[2645]

a. Submissions of the parties

792. Župljanin submits that the Trial Chamber failed to address whether, or to what extent, he exercised authority over the Prijedor SJB, including over the Keraterm and Omarska detention camps.[2646] Župljanin submits further that when inferring his intent and contribution to the JCE, the Trial Chamber erred in relying upon his "failure to intercede to prevent mistreatment" of non-Serb detainees in Prijedor municipality.[2647]

793. Specifically, he argues that the Trial Chamber's conclusions about the Keraterm and Omarska detention facilities being run by Serb policemen or operated jointly by the Bosnian Serb police and military personnel fall short of finding that the camps were not within the jurisdiction of the VRS and that the police there were not re-subordinated to the VRS.[2648] In this regard, he argues that there were indicia that the two detention camps were under VRS jurisdiction, namely that: (i) in the Manjača detention camp, the police on duty were considered to be re-subordinated to the military;[2649] (ii) in August 1992, Mladić, the commander of the VRS issued an order allowing journalists to visit the Omarska detention camp;[2650] (iii) the Trnopolje and Manjača detention camps were military facilities subject to military jurisdiction;[2651] and (iv) the stated purpose of the Keraterm and Omarska detention camps, to detain persons captured during combat, is relevant to military functions and is not a police-related activity.[2652] Župljanin submits that no reasonable trier of fact could have rejected evidence showing that the camps were under VRS jurisdiction and that the police serving there were re-subordinated.[2653] He adds that the Appeals Chamber is not required

[2645] Trial Judgement, vol. 2, para. 515. See Trial Judgement, vol. 2, para. 453-456.
[2646] Župljanin Appeal Brief, paras 90-94. He refers to the Trial Chamber's findings that: (i) Keraterm and Omarska detention camps were set up by Drljača, acting on orders of the Prijedor Crisis Staff (Župljanin Appeal Brief, para. 91, referring to Trial Judgement, vol. 1, paras 563-564, Exhibit 2D90, p. 1, Adjudicated Fact Decision, Adjudicated Fact 378); (ii) at Omarska detention camp a large number of military men were security guards (Župljanin Appeal Brief, para. 91, referring to Trial Judgement, vol. 1, para. 593); (iii) the Keraterm detention camp was to be "'under the supervision of employees of the Prijedor Public Security Section and the Prijedor Military Police'" (Župljanin Appeal Brief, para. 91, referring to Exhibit 2D90, p. 28); (iv) both civilian and military personnel conducted the interrogations at the two detention camps (Župljanin Appeal Brief, para. 91); and (v) the worst incident of mistreatment at the Keraterm detention camp was "'committed by Bosnian Serb army personnel'" (Župljanin Appeal Brief, para. 91, referring to Trial Judgement, vol. 1, paras 589, 668).
[2647] The Appeals Chamber notes that Župljanin also challenges the Trial Chamber's findings that the detentions were unlawful by cross-referencing to his arguments under sub-ground 1(G) of his appeal (Župljanin Appeal Brief, para. 90).
[2648] Župljanin Appeal Brief, para. 92, referring to Trial Judgement, vol. 1, paras 678-679. See Župljanin Reply Brief, para. 44.
[2649] Župljanin Appeal Brief, para. 93, referring to Trial Judgement, vol. 2, para. 337.
[2650] Župljanin Appeal Brief, para. 93, referring to Exhibit P1683.
[2651] Župljanin Appeal Brief, para. 93.
[2652] Župljanin Appeal Brief, para. 93. See Župljanin Appeal Brief, para. 91, referring to Exhibits P1560, 2D90, p. 28.
[2653] Župljanin Appeal Brief, para. 94. See Župljanin Appeal Brief, para. 93.

to analyse whether that was the case since the Trial Chamber made no findings on the issue, but instead simply assumed that the camps were subject to police jurisdiction.[2654]

794. Župljanin also argues that, even assuming that the police serving at the Keraterm and Omarska detention camps were not re-subordinated to the military, the Trial Chamber erred by failing to determine when he was "sufficiently informed" of abuses being committed against detainees.[2655] He points in this respect to the absence of findings as to whether: (i) he was informed of killings and beatings during his visit to the Omarska detention facility on 16 July 1992, or that he refrained from punishing the perpetrators of those killings;[2656] and (ii) Drljača reported any mistreatment of detainees to Župljanin.[2657]

795. Župljanin further contends that the Trial Chamber erred by "unreasonably" finding that he had effective control over the Prijedor SJB and its commander Drljača.[2658] In this respect, he points to: (i) the Trial Chamber's acknowledgement that Drljača "operated with a certain degree of independence" and provided security in the detention camps, following orders from the Prijedor Crisis Staff;[2659] (ii) Exhibit P621, an October 1992 report from the Banja Luka CSB in which Župljanin "protested" the "functional 'detachment' of a number of SJBs" from his authority;[2660] and (iii) Exhibit 2D25, which demonstrates that in July 1992, he "directly upbraid[ed] the SJB chiefs for their 'benevolent attitude towards escalating criminal activities of some individuals and groups'".[2661] Župljanin contends that the Trial Chamber erred in relying upon his failure to remove

[2654] Župljanin Appeal Brief, para. 94. In this respect, Župljanin notes that the Trial Chamber's finding that the Keraterm and Omarska detention facilities were run to some degree by policemen (see Župljanin Appeal Brief, para. 94). He contends that the Trial Chamber simply assumed that these detention facilities were under police jurisdiction, arguing that they could have been run to some degree by some policemen and yet remain subject to military jurisdiction (see Župljanin Appeal Brief, para. 94).
[2655] Župljanin Appeal Brief, para. 95. See Župljanin Appeal Brief, para. 96.
[2656] Župljanin Appeal Brief, para. 96, referring to Exhibit P1560. According to Župljanin, the Trial Chamber found instead "that [Ž]upljanin was informed orally '[a]t some point in summer 1992' of bad conditions at the camps and abuse of prisoners" (Župljanin Appeal Brief, para. 96, referring to Trial Judgement, vol. [2], paras 423, 508 (the Appeals Chamber understands that Župljanin erroneously refers to volume one of the Trial Judgement and intends to refer to volume two, instead)).
[2657] Župljanin Appeal Brief, para. 96. He also contends that the Trial Chamber did not hear any evidence in this respect, and that "[n]o such information was included in Drljača's Work Report of the Prijedor SJB for the first half of 1992" (Župljanin Appeal Brief, para. 96, referring to Exhibit P657).
[2658] Župljanin Appeal Brief, para. 95. See Župljanin Appeal Brief, paras 96-101.
[2659] Župljanin Appeal Brief, para. 97, quoting Trial Judgement, vol. 2, para. 359. According to Župljanin, the Trial Chamber recognised that Drljača "set up two prison camps on the authority of local crisis staff; ordered that the camps be kept secret; and openly obstructed or declined to follow [Župljanin's] orders" (Župljanin Appeal Brief para. 97). In this respect, Župljanin contends that the Trial Chamber made findings concerning Drljača's "political ambitions" and that Drljača obstructed his efforts to investigate the Korićanske Stijene killings (Župljanin Appeal Brief, fn. 137, referring to Trial Judgement, vol. 2, paras 358, 360).
[2660] Župljanin Appeal Brief, para. 98, referring to Exhibit P621, p. 43. See Župljanin Appeal Brief, para. 99, referring to Exhibit 2D25, pp 2-3.
[2661] Župljanin Appeal Brief, para. 99, quoting Exhibit 2D25, pp 2-3. Župljanin also contends that he complained of the unprofessional attitude of some SJB chiefs who were seeking to "deal with issues beyond the scope of their jobs" and seeking approval for certain actions from political organs (Župljanin Appeal Brief, para. 99, referring to Exhibit 2D25, pp 2-3).

Drljača as "indicative of commission of forcible transfer through a JCE", despite Župljanin having no *de jure* authority to do so.[2662] He asserts that the basis for this finding was the fact that he had previously ordered the police to arrest members a paramilitary group committing crimes in Teslić.[2663] He also submits that no reasonable trier of fact could have relied upon the suggestion that he "was legally obliged to disregard the legal limitations on his power [...] against the will of local political leaders" in order to infer his effective control over Drljača.[2664]

796. Finally, Župljanin also contends that the Trial Chamber erred in finding that he was responsible "for the crimes in Omarska and Keraterm detention facilities because he failed to order the police to disregard the orders of the local crisis staffs, and because he was himself a member of the regional crisis staff, which ostensibly had some authority over the local crisis staffs".[2665]

797. The Prosecution responds that Župljanin fails to show any error in the Trial Chamber's reasoning concerning his control over the Prijedor SJB and that he repeats arguments made at trial which were rejected by the Trial Chamber.[2666]

798. The Prosecution submits that Župljanin fails to show any error and instead misrepresents or misinterprets the Trial Chamber's findings in relation to the Prijedor SJB's authority over the Keraterm and Omarska detention camps.[2667] It argues that the Trial Chamber made clear findings establishing the police authority over the Omarska and Keraterm detention camps, namely that: (i) the two detention camps were commanded by police officers;[2668] (ii) the army refused to take over responsibilities with regard to, *inter alia*, security tasks at the Keraterm detention camp;[2669] (iii) civilian and military investigators played a role in the operation of the Omarska detention

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[2662] Župljanin Appeal Brief, para. 100 (citations omitted).
[2663] Župljanin Appeal Brief, para. 100, referring to Trial Judgement, vol. 2, para. 515. See Župljanin Reply Brief, para. 43. He argues further in this respect, that "[m]ilitary superiority of Group A over Group B does not imply effective control by Group A over Group B" (Župljanin Appeal Brief, para. 100).
[2664] Župljanin Appeal Brief, para. 100.
[2665] Župljanin Appeal Brief, para. 101. According to Župljanin, the Trial Chamber: (i) made no "sufficient findings" on the hierarchy between the ARK Crisis Staff and the local crisis staffs; and (ii) had to acknowledge that he ordered the police to disregard the local crisis staffs instructions as of July 1992, which he contends was not untimely or delayed in order to facilitate the commission of crimes on the instructions of local authorities (Župljanin Appeal Brief, para. 101, referring to Trial Judgement, vol. 2, para. 367).
[2666] Prosecution Response Brief (Župljanin), para. 62, comparing Župljanin Appeal Brief, para. 90 with Župljanin Final Trial Brief, paras 157-163, 269-270, 297-313.
[2667] Prosecution Response Brief (Župljanin), para. 68. It points, specifically, to the Trial Chamber's findings that: (i) both detention camps were established by Župljanin's subordinate, Drljača (Prosecution Response Brief (Župljanin), para. 69, referring to Trial Judgement, vol. 1, paras 580, 593, Trial Judgement, vol. 2, para. 856, Župljanin Appeal Brief, para. 91); (ii) Serb forces arrested Muslims and Croats in Prijedor without legitimate grounds and on discriminatory basis, and then unlawfully held them in inhumane living conditions (Prosecution Response Brief (Župljanin), para. 69, referring to Trial Judgement, vol. 1, para. 700); and (iii) "even though Drljača's order to set up the Omarska detention camp was issued 'in accordance with the Decision from the [Prijedor] Crisis Staff'", he required that its implementation be done "'in collaboration with the Banja Luka [CSB]'" (Prosecution Response Brief (Župljanin), para. 69, referring to Exhibit P1560, p. 3).
[2668] Prosecution Response Brief (Župljanin), para. 70, referring to Trial Judgement, vol. 1, para. 580.
[2669] Prosecution Response Brief (Župljanin), para. 70.

camp;[2670] and (iv) the army refused to assume responsibility over Omarska when asked to do so.[2671] The Prosecution further submits that there is no requirement for the Trial Chamber to "disprove hypothetical and speculative claims",[2672] and that given the evidence that the Keraterm and Omarska detention camps were police facilities, there was no need for the Trial Chamber to find that they were not military facilities.[2673] The Prosecution contends that Župljanin misrepresents the Trial Chamber's analysis of his conduct and the crimes committed in Prijedor, since "[h]e did not merely fail 'to order the police to disregard the orders of local crisis staffs' or fail 'to intercede to prevent mistreatment'" but "took positive action to shield perpetrators from investigation or punishment" and had ample knowledge of the crimes committed in the Prijedor camps.[2674]

799. The Prosecution also submits that the Trial Chamber reasonably relied on Župljanin's failure to remove Drljača despite knowing of his criminal conduct.[2675] It contends that Župljanin fails to show that the Trial Chamber erred in failing to consider evidence since the evidence was considered by the Trial Chamber and does not undermine the finding that he exercised authority over Drljača.[2676] Likewise, the Trial Chamber expressly considered that "'decisions of the ARK Crisis Staff were binding for all municipal Crisis Staffs in the region'".[2677] Further, the Prosecution argues that Župljanin fails to show an error in the Trial Chamber's reasoning regarding his ability to take action as a police officer,[2678] referring in particular to Župljanin's "decisive action" against the

[2670] Prosecution Response Brief (Župljanin), para. 70, referring to Trial Judgement, vol. 1, para. 580.
[2671] Prosecution Response Brief (Župljanin), para. 70, referring to, *inter alia*, Trial Judgement, vol. 1, para. 593.
[2672] Prosecution Response Brief (Župljanin), para. 71.
[2673] Prosecution Response Brief (Župljanin), para. 71. The Prosecution further argues that "Župljanin's claim that the Trial Chamber's findings 'fall short of finding that Omarska and Keraterm did not fall within the VRS's jurisdiction' is untenable" given the evidence contradicting the examples pointed out by Župljanin (Prosecution Response Brief (Župljanin), para. 71, referring to Župljanin Appeal Brief, paras 92-94). In this respect, the Prosecution contends that: (i) Omarska and Keraterm differed from Manjača and Trnopolje in their command and in the circumstances of their establishment and therefore there is no inconsistency in treating Omarska and Keraterm differently from Manjača and Trnopolje; (ii) the order issued by Mladić does not imply a military jurisdiction over the detention camps; and (iii) the Trial Chamber found that the two camps were used for the unlawful and discriminatory detention of non-Serbs and not for an activity "'directly relevant to the core functions of the military'" (Prosecution Response Brief (Župljanin), para. 71).
[2674] Prosecution Response Brief (Župljanin), para. 72, referring to Župljanin Appeal Brief, paras 90, 101, Trial Judgement, vol. 2, paras 514-515, 517-518. The Prosecution submits that these actions included maintaining Drljača in his position as Chief of the Prijedor SJB, issuing non-assertive orders to SJBs to comply with the law, establishing a fake commission to investigate detention facilities in the ARK, and obstructing investigation into the Koričanske Stijene killings (Prosecution Response Brief (Župljanin), para. 72, referring to Trial Judgement, vol. 2, paras 514-515). The Prosecution also points to the Trial Chamber's finding that Župljanin had "ample knowledge of the crimes committed in Prijedor camps" (Prosecution Response Brief (Župljanin), para. 72, referring to Trial Judgement, vol. 2, para. 506).
[2675] Prosecution Response Brief (Župljanin), para. 63. It argues that the Trial Chamber's finding that "Drljača 'operated with a certain degree of independence' does not show that Župljanin lacked authority to remove him" and that the Trial Chamber specifically found that "'there was a relationship based on cooperation'" between Župljanin, Drljača, and the Prijedor War Presidency in which Župljanin played a leading role (Prosecution Response Brief (Župljanin), para. 63, referring to Trial Judgement, vol. 2, paras 360, 364-367, 492, 791. Župljanin Appeal Brief, para. 97).
[2676] Prosecution Response Brief (Župljanin), para. 64.
[2677] Prosecution Response Brief (Župljanin), para. 64, referring to Trial Judgement, vol. 2, paras 357-358, 364.
[2678] Prosecution Response Brief (Župljanin), para. 65, referring to Župljanin Appeal Brief, para. 100. See Prosecution Response Brief (Župljanin), para. 66, referring to Trial Judgement, vol. 2, para. 515.

Miće Group.[2679] Finally, the Prosecution argues that extensive evidence pertaining to the close working relationship between Župljanin and Drljača confirms the Trial Chamber's finding that the former exercised authority over the latter.[2680]

800. In reply, Župljanin argues that the findings referred to by the Prosecution in relation to his authority over Drljača only show "anecdotal cooperation" between the two and do not amount to a degree of control that would allow the Trial Chamber to infer that Župljanin failed to prevent the crimes for which Drljača is allegedly responsible.[2681]

b. Analysis

801. With regard to Župljanin's argument that the Trial Chamber failed to address whether the police serving in Keraterm and Omarska detention camps were re-subordinated to the VRS, the Appeals Chamber recalls the Trial Chamber's findings that the commander of the Keraterm detention camp was Duško Sikirica, a police officer, and that the camp was guarded by the police (as the army declined to do so) under orders from Drljača, the Chief of the Prijedor SJB.[2682] The Trial Chamber further found that the Omarska camp was established by an order of Drljača and operated jointly by police and military personnel, including members of the Banja Luka Corps who acted as interrogators, and was commanded by Željko Mejakić, commander of the police sub-station in Omarska.[2683] The Appeals Chamber notes that Župljanin does not challenge these findings but rather submits that this analysis falls short of finding that the camps were not within the jurisdiction of the VRS and that the police there were not re-subordinated to the VRS.[2684]

802. The Appeals Chamber is not convinced that the evidence Župljanin points to indicates that the Trial Chamber was required to further address whether police were re-subordinated to the military at the Keraterm and Omarska detention camps. Insofar as Župljanin alleges that police on

[2679] Prosecution Response Brief (Župljanin), para. 65, referring to Trial Judgement, vol. 2, para. 515. See Župljanin Reply Brief, para. 43.
[2680] Prosecution Response Brief (Župljanin), para. 67, referring to Trial Judgement, vol. 1, paras 505, 509, 511-513, 521, 527, 564, 580-582, 592-593, 595-597, 615, 623, 636, 649, Trial Judgement, vol. 2, paras 79, 422, 447, 478, 491, 676, Exhibits P1902, P652, P656, P1005, P659, P668, P669, P671, P672, P657, P684, P689.
[2681] Župljanin Reply Brief, para. 41, referring to Prosecution Response Brief (Župljanin), paras 63, 67. Župljanin adds that the only finding establishing his *de facto* authority over Drljača is located in the findings regarding Stanišić's responsibility (Župljanin Reply Brief, para. 41, referring to Prosecution Response Brief (Župljanin), fn. 240).
[2682] Trial Judgement, vol. 1, para. 580; Trial Judgement, vol. 2, para. 856. See Trial Judgement, vol. 1, para. 678. The Trial Chamber also noted that teams representing both military and civilian authorities screened detainees in Keraterm to determine their involvement in the conflict (see Trial Judgement, vol. 1, para. 580).
[2683] Trial Judgement, vol. 2, para. 856. See Trial Judgement, vol. 1, paras 593, 679. The Trial Chamber also noted in Omarska, while "[a] large number of military men were security guards who manned machine gun nests", there were uniformed police officers from Prijedor SJB at the gate and the reception desk of the detention camp (Trial Judgement, vol. 1, para. 593).
[2684] See Župljanin Appeal Brief, para. 92, referring to Trial Judgement, vol. 1, paras 678-679.

duty in the Manjača detention facility were considered to be re-subordinated to the military,[2685] the Appeals Chamber fails to see how the fact that Manjača detention camp was under the authority of the military,[2686] would show that the police operating at Keraterm and Omarska detention camps – both of which were commanded by policemen – were re-subordinated to the military. The same holds true for his reliance on the Trnopolje detention facility which was also under the control of the military and guarded by Serb soldiers.[2687]

803. Similarly, the Appeals Chamber is not persuaded by Župljanin's reliance on the order issued by Mladić in August 1992, allowing journalists to visit the Omarska detention camp,[2688] given that the exhibit, on its face, does not suggest that the Omarska detention camp was under the exclusive authority of the military or that the police at the Omarska detention camp were re-subordinated to the military. By merely pointing to this exhibit, Župljanin has failed to demonstrate how it undermines the Trial Chamber's conclusions that: (i) police and military personnel jointly operated Omarska detention camp; and (ii) the facility was commanded by Mejakić, a police commander.[2689] Moreover, the Appeals Chamber observes that Župljanin's assertion that the fact that the purpose of the Keraterm and Omarska detention camps was to "detain 'persons captured in combat'" and therefore relevant to military functions, not police-related activity,[2690] ignores the Trial Chamber's findings which show that the detainees in Keraterm and Omarska detention camps were not necessarily involved in combat.[2691]

804. Consequently, the Appeals Chamber finds that Župljanin has failed to show that the Trial Chamber was required to make further findings as to whether police forces serving in the Keraterm and the Omarska detention camps were under the VRS jurisdiction.

805. With respect to Župljanin's contention that the Trial Chamber erred in failing to determine as of when he became sufficiently informed of the abuses that had been committed against the detainees in the Keraterm and Omarska detention camps, the Appeals Chamber notes the Trial Chamber's findings that: (i) at some point in June 1992, Župljanin was informed of the conditions in the Keraterm and Omarska detention camps;[2692] and (ii) on 16 July 1992, Župljanin visited the

[2685] See Župljanin Appeal Brief, para. 93, referring to Trial Judgement, vol. 2, para. 337
[2686] See Trial Judgement vol. 1, para. 619; Trial Judgement, vol. 2, paras 802, 856.
[2687] See Trial Judgement, vol. 2, para. 856. See also Trial Judgement, vol. 1, paras 619, 680. The Appeals Chamber notes in this respect, the Trial Chamber's finding that "the Trnopolje camp was under the charge of the TO and guarded by Serb soldiers and that the camp commander was Slobodan Kurzunović" (Trial Judgement, vol. 2, para. 856).
[2688] See Exhibit P1683.
[2689] Trial Judgement, vol. 2, para. 856. See Trial Judgement, vol. 1, paras 593, 679.
[2690] See Župljanin Appeal Brief, para. 91, referring to Exhibits P1560, 2D90, p. 28.
[2691] See Trial Judgement, vol. 1, paras 596-597, 603, 613.
[2692] Trial Judgement, vol. 2, para. 508. See Trial Judgement, vol. 2, para. 423.

Omarska detention facility, where detainees showed signs of mistreatment.[2693] In light of these findings, Župljanin's assertion is without merit. Regarding Župljanin's contention that the Trial Chamber erred by failing to make findings on whether he was informed and failed to punish perpetrators of killings and beatings at Omarska, or that Drljača reported the mistreatment of detainees to him directly,[2694] Župljanin has developed no arguments as to why such findings would be necessary to infer his responsibility through participation in the JCE.

806. With respect to Župljanin's challenges to the Trial Chamber's findings that he had effective control over the Prijedor SJB and its commander Drljača,[2695] the Appeals Chamber recalls the Trial Chamber: (i) found that Drljača's order creating the Omarska detention camp had been implemented in collaboration with the Banja Luka CSB (of which Župljanin was Chief);[2696] and (ii) considered multiple examples between May and August 1992 of instances where Drljača reported to Župljanin on matters pertaining to the Keraterm and Omarska detention camps.[2697] In the Appeals Chamber's view, neither Župljanin's reliance upon Exhibits P261 and 2D25 – both expressly considered by the Trial Chamber[2698] – nor his reliance on the Trial Chamber's finding that Drljača operated with a "certain degree of independence",[2699] is sufficient to demonstrate that no reasonable trier of fact could have concluded that: (i) there existed a relationship of cooperation between Župljanin, Drljača, and Prijedor War Presidency, in which Župljanin played a leadership role;[2700] (ii) Župljanin exercised *de jure* and *de facto* control over the SJBs in the ARK Municipalities (including the Prijedor SJB);[2701] and (iii) Drljača was "directly subordinated to" Župljanin.[2702] Župljanin merely disagrees with the Trial Chamber's assessment of the evidence without showing any error.

807. Insofar as Župljanin contends that he had no capacity to remove Drljača,[2703] the Appeals Chamber notes the Trial Chamber found that "Župljanin never attempted to remove Simo Drljača from Prijedor" notwithstanding his knowledge of the atrocities committed in the detention camps and Witness Radulović's warnings about Drljača.[2704] The Trial Chamber further found that "had

[2693] Trial Judgement, vol. 2, para. 508. See Trial Judgement, vol. 2, para. 424.
[2694] See *supra*, para. 794.
[2695] See *supra*, para. 795.
[2696] Trial Judgement, vol. 2, para. 422. See Trial Judgement, vol. 2, para. 493.
[2697] Trial Judgement, vol. 2, paras 421-422.
[2698] See Trial Judgement, vol. 2, paras 357 (referring to, *inter alia*, Exhibit 2D25, pp 2-4), 358 (referring to, *inter alia*, Exhibit P261, p. 43). See also *supra*, para. 536.
[2699] Trial Judgement, vol. 2, para. 359. See *supra*, para. 795.
[2700] See *supra*, para. 790.
[2701] See *supra*, para. 790.
[2702] Trial Judgement, vol. 2, para. 791.
[2703] See *supra*, para. 795.
[2704] Trial Judgement, vol. 2, para. 515.

Župljanin wanted to remove Drljača, he could have done it".[2705] The Trial Chamber reached this conclusion by considering that Župljanin was the highest police officer in the ARK and he took action "to arrest members of the powerful Miće Group" and that "his forces successfully prevented an attempt by paramilitary forces to kill between 300 and 600 Muslims and Roma between Doboj and Banja Luka in mid-May 1992".[2706]

808. In relation to Župljanin's position as the highest police officer in the ARK, the Appeals Chamber further notes the Trial Chamber's findings that Župljanin's *de jure* and *de facto* control over the SJBs of the ARK Municipalities "included the ability to appoint and remove RS MUP staff, including SJB chiefs".[2707] While the Trial Chamber did not refer to any evidence regarding Župljanin's authority to remove SJB chiefs,[2708] it did expressly refer to evidence that Župljanin had the authority to appoint SJB chiefs and staff.[2709] Moreover, the Trial Chamber made a number of other findings regarding Župljanin's *de jure* and *de facto* control over the SJBs of the ARK Municipalities. In particular, it considered other evidence indicating Župljanin's powers as Chief of the Banja Luka CSB, namely that: (i) Župljanin had authority over, and coordinated the activities of, the ARK SJBs (which included Prijedor SJB);[2710] (ii) the Banja Luka CSB was duty-bound to assist the police stations in their areas of responsibility and Župljanin was responsible for police activities in the territories of the police stations in the ARK;[2711] and (iii) the SJB chiefs were obliged to follow orders coming from the Banja Luka CSB.[2712] In the view of the Appeals Chambers, these findings are sufficient to demonstrate that a reasonable trier of fact could have found that Župljanin had the ability to remove Drljača, if he wanted.[2713]

809. In addition, the Appeals Chamber considers that the Trial Chamber's conclusion in this respect must be read in the context of its findings that "Župljanin formally appointed Drljača as

[2705] Trial Judgement, vol. 2, para. 515.
[2706] Trial Judgement, vol. 2, para. 515.
[2707] Trial Judgement, vol. 2, para. 493. See Trial Judgement, vol. 2, paras 355-356.
[2708] *Cf.* Trial Judgement, vol. 2, para. 493, where the Trial Chamber found that Župljanin's *de jure* and *de facto* authority over the SJBs in the ARK included the "power to appoint and remove RS MUP staff, including SJB chiefs" without referring to any evidence. However, elsewhere in the Trial Judgement, the Trial Chamber considered evidence that Župljanin had the authority to appoint SJB chiefs, with Stanišić's prior approval (Trial Judgement, vol. 2, para. 356), yet referred to no evidence indicating that Župljanin had a similar power to *remove* SJB chiefs from office. The Appeals Chamber notes, however, that Župljanin does not contend that the Trial Chamber erred by relying upon this finding (see Župljanin Appeal Brief, paras 95, 97-100). In the absence of challenges from Župljanin in this respect, and noting that the Trial Chamber's findings otherwise recalled in this paragraph support the Trial Chamber's conclusion that had Župljanin wanted to remove Drljača, he could have done it, the Appeals Chamber declines to address the issue further.
[2709] Trial Judgement, vol. 2, para. 356. The Trial Chamber found that, in order to appoint chiefs and commanders, Stanišić's prior approval was necessary (Trial Judgement, vol. 2, para. 356). *Cf.* Trial Judgement, vol. 2, para. 507.
[2710] Trial Judgement, vol. 2, para. 355.
[2711] Trial Judgement, vol. 2, para. 355.
[2712] Trial Judgement, vol. 2, para. 355.
[2713] See Trial Judgement, vol. 2, para. 515.

Chief of the Prijedor SJB on 30 July 1992, *with retroactive effect* as of 29 April 1992",[2714] and did so despite reports (sent by Witness Radulović to the Banja Luka CSB in May 1992) concerning the crimes committed in Prijedor and recommending Drljača's removal.[2715]

810. Moreover, insofar as Župljanin contends that the Trial Chamber erred by "inferring effective" control over Drljača on the basis of its finding that he previously ordered his police to arrest members of the Miće Group,[2716] Župljanin has failed to demonstrate how the finding that he had the ability to remove Drljača could not be upheld on the basis of the remaining evidence that he was the highest police officer in the ARK Municipalities.[2717]

811. Finally, the Appeals Chamber turns to Župljanin's argument that the Trial Chamber erred by finding him responsible "for the crimes in the Omarska and Keraterm detention facilities because he failed to order the police to disregard the orders of the local crisis staffs, and because he was himself a member of the regional crisis staff, which ostensibly had some authority over the local crisis staffs".[2718] The Appeals Chamber considers that Župljanin has failed to substantiate his assumption that the Trial Chamber relied upon his authority over the local crisis staff in attributing responsibility to him for the crimes in the Keraterm and Omarska detention facilities.[2719] Rather than demonstrating any error in the Trial Chamber's findings, Župljanin merely disagrees with the Trial Chamber's assessment and presents his own alternative interpretation of the evidence.

812. Consequently, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber erred in concluding that he had authority over the Prijedor SJB, including the power to remove Drljača, or by failing to make sufficient findings as to his authority over the Keraterm and Omarska detention facilities when inferring his intent and contribution to the JCE.

c. Conclusion

813. In light of the above, the Appeals Chamber considers that Župljanin has not demonstrated that the Trial Chamber erred by failing to make findings that he had sufficient control or authority over the police as a result of declining to pronounce on issues of re-subordination of the police to the military, and as a result, erred in relying on his failures to act to infer his contribution to the JCE and his intent.

[2714] Trial Judgement, vol. 2, para. 486 (emphasis added). Trial Judgement, vol. 1, para. 507.
[2715] Trial Judgement, vol. 2, para. 486. See Trial Judgement, vol. 2, para. 515.
[2716] See *supra*, para. 795.
[2717] See *supra*, paras 807-809; Trial Judgement, vol. 2, para. 515.
[2718] See *supra*, para. 796.
[2719] Trial Judgement, vol. 2, para. 492. See Trial Judgement, vol. 2, para. 360. See also *e.g.* Trial Judgement, vol. 2, paras 422-423, 475-476, 479-480; *supra*, para. 796.

(iii) Alleged error in the Trial Chamber's failure to establish that Župljanin acted with knowledge of his duty (sub-ground (A) in part of Župljanin's first ground of appeal)

a. Submissions of the parties

814. Župljanin submits that the Trial Chamber was required to establish that he had knowledge of his legal obligation to intervene and to enter findings excluding the possibility that he could have misjudged the scope of his duty or ability to act.[2720] He contends that the Trial Chamber failed to analyse whether "he may have been genuinely mistaken" about the scope of his duty and thus failed to substantiate its inferences that he significantly contributed to the JCE and possessed the requisite intent.[2721] To support his contention, Župljanin relies on evidence of an address he made on 11 July 1992 showing, in his submission, that his knowledge concerning the conditions in the Omarska and Keraterm detention camps was only general.[2722] Župljanin also refers to his decision to set up a commission to inspect the conditions of detention camps on 14 August 1992 and argues that he did bring information he had in his possession to his superiors' attention.[2723]

815. The Prosecution responds that the Trial Chamber did address the issue of Župljanin's awareness of his legal obligations, which were stated in the RS Constitution.[2724] It further submits that the Trial Judgement established Župljanin's ability to act as the Chief of the Banja Luka CSB, and that he could not have been mistaken about his authority to prevent and punish his subordinates such as Drljača and the Banja Luka CSB SPD.[2725] Finally, the Prosecution argues that Župljanin ignores the Trial Chamber's findings "that he had 'ample knowledge of the unlawful detention, mistreatment, and murder of non-Serb detainees in detention facilities and camps in the ARK Municipalities'" and that the commission was a "feigned commission", as he himself acknowledged.[2726]

b. Analysis

816. The Appeals Chamber recalls the Trial Chamber's finding that, as Chief of the Banja Luka CSB, Župljanin was the highest police authority in the ARK.[2727] As such, he had a duty to protect

[2720] Župljanin Appeal Brief, paras 58, 102-103. Župljanin submits that he could have been uninformed or mistaken about the scope of his authority and duty, as well as with regard to the means at his disposal to inquire into the situation and to take remedial measures (Župljanin Appeal Brief, paras 102-103).
[2721] Župljanin Appeal Brief, para. 104. See Župljanin Appeal Brief, paras 58, 102-103, 106.
[2722] Župljanin Appeal Brief, para. 103, referring to Exhibit P160, p. 7.
[2723] Župljanin Appeal Brief, para. 103, referring to Exhibit P601.
[2724] Prosecution Response Brief (Župljanin), para. 74, referring to Trial Judgement, vol. 2, para. 354.
[2725] Prosecution Response Brief (Župljanin), para. 75, referring to, *inter alia*, Prosecution Response Brief (Župljanin), paras 39-42, Trial Judgement, vol. 2, paras 486, 492, 500-502, 511, 514-519, 526.
[2726] Prosecution Response Brief (Župljanin), para. 76, referring to Trial Judgement, vol. 2, paras 506, 514, 519, Župljanin Appeal Brief, paras 103, 166.

the civilian population pursuant to Article 10 of the RS Constitution and Article 42 of the LIA, as well as the duty and the authority to discipline his subordinates, including permanently removing them from service and filing criminal reports on crimes his policemen committed.[2728] The Trial Chamber relied on these findings in reaching its conclusion that Župljanin failed to protect the non-Serb population, launch criminal investigations, and discipline his subordinates.[2729] It then concluded, *inter alia* on the basis of these factors, that he significantly contributed to the JCE and possessed the requisite intent.[2730]

817. The Appeals Chamber turns first to Župljanin's submissions that his knowledge of crimes was limited and the Trial Chamber erred with respect to his knowledge of his duties. Regarding his alleged lack of knowledge of the commission of crimes, Župljanin refers to his address of 11 July 1992.[2731] In light of the significant evidence of his knowledge of crimes against non-Serbs, which the Trial Chamber considered,[2732] and in particular his knowledge about the conditions at the Omarska and Keraterm detention camps,[2733] the Appeals Chamber finds that Župljanin has failed to demonstrate that his address of 11 July 1992 undermines the Trial Chamber's conclusion that he had extensive knowledge of the crimes committed against non-Serbs, including by his own police.[2734] Regarding the Trial Chamber's alleged failure to establish that Župljanin had knowledge of his legal obligation to intervene, the Appeals Chamber notes that the Trial Chamber relied on Župljanin's duties as a police officer pursuant to Article 10 of the RS Constitution and Article 42 of

[2727] Trial Judgement, vol. 2, para. 493.
[2728] Trial Judgement, vol. 2, paras 489, 493. See Trial Judgement, vol. 2, paras 354-356, 501.
[2729] Trial Judgement, vol. 2, paras 518-519. See Trial Judgement, vol. 2, paras 503-517.
[2730] Trial Judgement, vol. 2, paras 518-520.
[2731] The Appeals Chamber notes that Župljanin refers to p. 7 of Exhibit P160 in his submission (Župljanin Appeal Brief, para. 103, referring to Exhibit P160, p. 7). Exhibit P160 is a summary of a MUP senior officials meeting on 11 July 1992 (Exhibit P160, p. 1). Župljanin spoke at this meeting as the Chief of the Banja Luka CSB outlining problems "which are directly linked to and have an impact on the activities of internal affairs organs" (Exhibit P160, p. 7. See Exhibit P160, p. 6). He stated, *inter alia*, that "the army and crisis staffs, or war presidencies" were gathering "as many Muslims as possible" in "undefined camps" and that they left these camps "up to the internal affairs organs" (Exhibit P160, p. 7). He further stated that "[c]onditions in these camps are bad – there is no food, some individuals do not observe international norms because, among other things, such collection centres are not adequate or there are other reasons" (Exhibit P160, p. 7). The Trial Chamber relied on this evidence to conclude that, "by 11 July 1992, [Župljanin] knew of the mass arrest of Muslims by municipal authorities, of their detention and abuse in 'undefined camps', and of police involvement in the guarding of these facilities" (Trial Judgement, vol. 2, para. 510).
[2732] See *infra*, para. 934.
[2733] Trial Judgement, vol. 2, paras 503-517. With respect to the Keraterm and Omarska detention facilities in particular, the Trial Chamber found that: (i) Župljanin was informed by Witness Radulović and Witness Sajinović, at some point in June 1992, "of the horrible conditions in which the prisoners were held and of the abuses perpetrated against them" in these camps, "including by members of the police", to which he "responded dismissively [...] and left hurriedly"; (Trial Judgement, vol. 2, para, 508) (ii) on 17 July 1992, Župljanin visited Omarska detention facility with other ARK leaders "where detainees showed signs of mistreatment and were forced to give the delegation the three finger salute" while members of the delegation laughed at the scene (Trial Judgement, vol. 2, para. 508);and (iii) international media began reporting about detainees in the Omarska and Trnopolje detention facilities who were held in inhumane conditions and subjected to physical abuse by 5 August 1992 (Trial Judgement, vol. 2, para. 509). See *supra*, paras 801-805.
[2734] See Trial Judgement, vol. 2, para. 513. See also Trial Judgement, vol. 2, paras 510, 518-519.

the LIA of the RS and the fact that he was the highest police authority in the ARK.[2735] As such, the Appeals Chamber finds his unsubstantiated argument that he did not know about his legal duty to intervene unconvincing and that Župljanin has therefore failed to demonstrate any error of the Trial Chamber in this respect.

818. With respect to Župljanin's contention that he may have been mistaken about the scope of his duty or ability to act, the Appeals Chamber finds that the mere fact that Župljanin had taken some action in accordance with his duties is insufficient to establish that the Trial Chamber erred. The Appeals Chamber notes that to substantiate his claim that he brought information to his superiors' attention, Župljanin merely points to his decision to set up a commission.[2736] Relying on this evidence, the Trial Chamber found that, on 14 August 1992, Župljanin decided to form a commission to inspect the condition of detention camps.[2737] However, the Trial Chamber also found that: (i) Župljanin appointed as commissioners the "very people who were in charge of interrogating detainees" and thus, were involved or informed of their mistreatment; (ii) he gave the commission only three days to complete its work; (iii) the commission's report was simply a collage of previous reports, which did not shed any light on abuses of detainees and their perpetrators; and (iv) Župljanin did not request further investigations into mistreatments of detainees.[2738] On the basis of, *inter alia*, these findings, the Trial Chamber concluded that Župljanin's orders to apparently protect the non-Serb population were not genuinely meant to be effectuated.[2739] Furthermore, the Trial Chamber more broadly discussed evidence on Župljanin's efforts to investigate crimes and take disciplinary actions against subordinates but ultimately concluded that he did not take steps to ensure that his orders were carried out and successfully managed to shield his subordinates from criminal prosecution.[2740] The Appeals Chamber also notes that Župljanin does not point to any other evidence supporting his contention that he may have been mistaken about the scope of his duty or ability to act. The Appeals Chamber therefore, finds that Župljanin has failed to show that no reasonable trier of fact could have concluded that the only reasonable inference from the evidence was that he failed to protect the non-Serb population, to launch criminal investigations, and to take disciplinary actions against subordinates.

819. Turning to Župljanin's argument that the Trial Chamber should have made findings excluding the possibility that he may have misjudged the scope of his duty or ability to act, the Appeals Chamber recalls that where the challenge on appeal is to an inference drawn to establish a

[2735] Trial Judgement, vol. 2, paras 489, 493. See Trial Judgement, vol. 2, paras 354-356, 501.
[2736] Župljanin Appeal Brief, para. 103, referring to Exhibit P601.
[2737] Trial Judgement, vol. 2, paras 446, 514.
[2738] Trial Judgement, vol. 2, para. 514. See Trial Judgement, vol. 2, paras 446-447.
[2739] Trial Judgement, vol. 2, para. 514. See *infra*, paras 837-869.
[2740] Trial Judgement, vol. 2, paras 457-488, 514-517, 519. See *infra*, paras 847-868.

fact on which a conviction relies, the standard is only satisfied if the inference was the *only* reasonable one that could be drawn from the evidence presented.[2741] As set out above, the Trial Chamber relied upon a comprehensive body of circumstantial evidence to reach its conclusion that Župljanin failed to fulfil his duties to protect the non-Serb population, to launch criminal investigations, and to take disciplinary actions against subordinates. The Appeals Chamber considers that a plain reading of the Trial Judgement reflects that the Trial Chamber was satisfied that these conclusions were the only reasonable inference from the evidence. In the absence of any attempt by Župljanin to substantiate his argument, the Appeals Chamber considers that he has failed to show that the Trial Chamber erred.

c. Conclusion

820. The Appeals Chamber therefore finds that Župljanin has failed to show that the Trial Chamber erred in failing to enter findings on his knowledge of his legal obligation to act. Župljanin's arguments are dismissed.

(iv) Alleged errors in relation to Župljanin's failure to investigate and discipline members of the Banja Luka CSB SPD (sub-ground (D) in part of Župljanin's first ground of appeal)

821. The Trial Chamber found that in May 1992, Župljanin created the Banja Luka CSB SPD.[2742] The Trial Chamber determined that Župljanin exercised "complete authority" over this unit and could impose on its members disciplinary sanctions, including permanent removal from service.[2743] It further found that "[n]otwithstanding his extensive knowledge of the crimes of [the Banja Luka CSB SPD], Župljanin did nothing to rein in their behaviour and to effectively investigate and discipline its members."[2744] The Trial Chamber concluded, *inter alia*, that by failing to launch criminal investigations and to discipline his subordinates who had committed crimes against non-Serbs, Župljanin significantly contributed to the JCE.[2745]

[2741] *Đorđević* Appeal Judgement, para. 700; *Stakić* Appeal Judgement, paras 219-220; *Nyiramasuhuko et al.* Appeal Judgement, paras 650, 1509.
[2742] Trial Judgement, vol. 2, para. 518. See Trial Judgement, vol. 2, paras 384-385, 501-502, 514.
[2743] Trial Judgement, vol. 2, para. 501. The Trial Chamber found that: (i) on 27 April 1992, the ARK Assembly decided to form a special purpose police detachment at the Banja Luka CSB of around 160 members, *i.e.* Banja Luka CSB SPD, and designated Župljanin to implement the decision (Trial Judgement, vol. 2, para. 384); (ii) on 6 May 1992, Župljanin informed the chiefs of the ARK SJBs that he had established a counter-sabotage and counter-terrorism police unit of about 150 members (Trial Judgement, vol. 2, para. 385); and (iii) the authority for appointing the commander of the Banja Luka CSB SPD rested with Župljanin (Trial Judgement, vol. 2, para. 386). The Trial Chamber also found that the Banja Luka CSB SPD was subordinated to Župljanin, who authorised payments to its members (Trial Judgement, vol. 2, para. 392).
[2744] Trial Judgement, vol. 2, para. 504.
[2745] Trial Judgement, vol. 2, para. 518.

a. Submissions of the parties

822. Župljanin submits that no reasonable trier of fact could have found that he contributed to the JCE through his role in relation to the Banja Luka CSB SPD and that the Trial Chamber erroneously characterised his failure to punish, prevent, or otherwise discipline specific members of the Banja Luka CSB SPD as an omission amounting to a contribution to the JCE.[2746]

823. He submits in particular that the Trial Chamber erred in finding that he "exercised complete authority" over the Banja Luka CSB SPD.[2747] According to Župljanin, the Trial Chamber failed to: (i) discuss "any element of elevated control" between him and the alleged perpetrators of crimes;[2748] and (ii) make specific findings as to whether the Banja Luka CSB SPD was re-subordinated to the VRS during the commission of crimes which he was found to have failed to prevent.[2749] In this respect, Župljanin argues that: (i) the evidence clearly shows that the Banja Luka CSB SPD was re-subordinated to the VRS during the events in Kotor Varoš;[2750] (ii) there is a "real

[2746] Župljanin Appeal Brief, paras 139-140, 150-151. Župljanin raises the factual challenges pertaining to the Trial Chamber's findings on his failure to investigate and discipline subordinates as a challenge to the Trial Chamber's findings on his contribution to the JCE (Župljanin Appeal Brief, paras 139, 151, 154). The Appeals Chamber notes that the Trial Chamber relied on these findings in reaching its conclusions on both his contribution to the JCE and his intent (Trial Judgement, vol. 2, paras 518-519). In this section, the Appeals Chamber will examine whether the Trial Chamber erred in finding that Župljanin failed to investigate and discipline his subordinates and whether the Trial Chamber erred in relying on these findings to conclude that Župljanin contributed to the JCE and had the requisite intent. Župljanin's argument as to whether it was reasonable for the Trial Chamber to ultimately conclude that he significantly contributed to the JCE and possessed the requisite intent on the basis of, *inter alia*, these factors will be addressed in other sections (see *infra*, paras 901-944). The Appeals Chamber notes that Župljanin's challenges pertaining to the Trial Chamber's finding that by enrolling SOS members into the Banja Luka CSB SPD, he created a unit comprised of Serb nationalists with criminal records, have been addressed elsewhere (see *infra*, paras 840-846).

[2747] Župljanin Appeal Brief, paras 140 (referring to Trial Judgement, vol. 2, para. 511), 144. The Appeals Chamber notes that the reference to paragraph 511 of the Trial Judgement is incorrect and understands Župljanin to refer to paragraph 501. Referring to the Trial Chamber's finding that his contribution to the JCE included that he "failed to launch criminal investigations and discipline his subordinates [...] thus creating a climate of impunity which only increased the commission of crimes against non-Serbs", Župljanin asserts that the only express finding of his authority over the perpetrators of crimes is the Trial Chamber's finding with respect to the Banja Luka CSB SPD (Župljanin Appeal Brief, para. 140, referring to Trial Judgement, vol. 2, para. 518).

[2748] Župljanin Appeal Brief, para. 150. See Župljanin Appeal Brief, para. 144. Župljanin submits that "[his] acquiescing in the secondment of the [Banja Luka CSB SPD] to the VRS certainly does not establish his 'effective' control for the duration of that operation" (Župljanin Appeal Brief, para. 144). Župljanin submits that the Trial Chamber's finding that he "dispatched platoons of the Detachment to participate in the takeovers is in no way determinative that he was exercising operational control over them and that the Trial Chamber failed to provide reasons "expressing any awareness that the only burden on the Defence was to raise reasonable doubt" (Župljanin Appeal Brief, fn. 215, referring to Trial Judgement, vol. 2, para. 502).

[2749] Župljanin Appeal Brief, para. 143. See Župljanin Appeal Brief, paras 141-143. See also Župljanin Reply Brief, para. 58; Appeal Hearing, 16 Dec 2015, AT. 167, 172. Župljanin asserts that the Trial Chamber's finding rejecting the assertion that the Banja Luka CSB SPD was a military unit is not "dispositive" as it does not address the re-subordination issue (Župljanin Appeal Brief, para. 141, referring to Trial Judgement, vol. 2, para. 501). He further submits that the Trial Chamber acknowledged evidence that the Banja Luka CSB SPD took part in combat operations with VRS units (Župljanin Appeal Brief, para. 143, referring to Trial Judgement, vol. 2, para. 405).

[2750] Župljanin Appeal Brief, para. 142. Župljanin refers in this respect to evidence that: (i) there were large numbers of men in regular uniforms and carrying long-barrelled rifles at the Kotor Varoš police station (Župljanin Appeal Brief, para. 142, referring to Trial Judgement, vol. 1, para. 406); and (ii) a VRS town command was set up in Kotor Varoš. He also submits that the Trial Chamber failed to address Witness SZ002's evidence that the Banja Luka CSB SPD's deployment in Kotor Varoš was determined in coordination with the VRS town commander, Colonel Peulić (Župljanin

possibility" that it was also re-subordinated for intervals during its engagements in Prijedor and Banja Luka;[2751] and (iii) the crimes in Doboj were committed while the Banja Luka CSB SPD was not subordinated to him, given that Doboj was outside the ARK Municipalities and therefore outside his jurisdiction.[2752] Furthermore, he contends that "no reasonable trier of fact could have ignored that by its leadership, its composition, purpose and direct evidence, the [Banja Luka CSB SPD] was intermittently and easily subordinated to the VRS throughout 1992".[2753]

824. Regarding the Trial Chamber's finding that he failed to investigate and discipline members of the Banja Luka CSB SPD, Župljanin submits that: (i) members of the Banja Luka CSB SPD were suspended and criminal proceedings were initiated in relation to their suspected involvement in crimes, specifically in Kotor Varoš as shown in Exhibit P631;[2754] and (ii) the Trial Chamber had no evidence indicating that he resisted the disbandment of the Banja Luka CSB SPD in early August 1992 and its placement under the command of the VRS for disciplinary reasons; rather, it had evidence to the contrary.[2755]

825. The Prosecution responds that the Trial Chamber reasonably found that Župljanin controlled the Banja Luka CSB SPD and relied upon his use of the Banja Luka CSB SPD and his failure to prevent or punish its members' crimes as part of his contribution to the JCE.[2756] The Prosecution further contends that the law does not require an "element of elevated control" in order to establish joint criminal enterprise liability.[2757] In addition, it submits that the Trial Chamber relied on Župljanin's knowledge of the crimes committed by Banja Luka CSB SPD members in Doboj in

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Appeal Brief, para. 142, referring to Trial Judgement, vol. 1, paras 351-494, Trial Judgement, vol. 2, paras 393, 501, Exhibit 2D132).

[2751] Župljanin Appeal Brief, para. 143. Župljanin submits in particular that the commander and the deputy-commander were both military commanders, that "a certain Colonel Stevilovi[ć] had a major role in the functioning of the unit", and that the unit was based in a military facility (Župljanin Appeal Brief, para. 143).

[2752] Župljanin Appeal Brief, para. 150, referring to Trial Judgement, vol. 2, para. 440.

[2753] Župljanin Appeal Brief, para. 143. See Župljanin Appeal Brief, para. 141.

[2754] Župljanin Appeal Brief, para. 150, referring to Exhibit P631, p. 2. The Appeals Chamber notes that Exhibit P631 is a report on the CSB and the SJBs in the ARK Municipalities, dated 5 August 1992, which mentions with regard to "negativities" faced by the Banja Luka CSB SPD at the time of deployment of the unit in Kotor Varoš, that "a number of employees" had been suspended and criminal proceedings initiated.

[2755] Župljanin Appeal Brief, para. 150. Župljanin argues that even though the Trial Chamber relied on Exhibit P631, it erred in its consideration of it, particularly in light of Witness SZ002's testimony, which, in his submission, contradicts Exhibit P631 (Župljanin Appeal Brief, para. 150, referring to Exhibit P631, Witness SZ002, 9 Nov 2011, T. 25468).

[2756] Prosecution Response Brief (Župljanin), paras 111-112. See Appeal Hearing, 16 Dec 2015, AT. 197. The Prosecution also argues that the Trial Chamber correctly and reasonably concluded that re-subordination was irrelevant to Župljanin's liability (Response Brief (Župljanin), para. 114, referring to Prosecution Response Brief (Župljanin), paras 33-76). The Prosecution further submits that contrary to Župljanin's contention, the Trial Chamber did not find that the commander and the deputy commander of the Banja Luka CSB SPD were military commanders (Prosecution Response Brief (Župljanin), para. 115, referring to Župljanin Appeal Brief, para. 143). In addition, the Prosecution submits that the Trial Chamber rejected Witness SZ002's evidence as not credible (Prosecution Response Brief (Župljanin), para. 115, referring to Trial Judgement, vol. 2, paras 386, 393).

[2757] Prosecution Response Brief (Župljanin), para. 121, referring to Prosecution Response Brief (Župljanin), paras 87-94.

order to find that he had knowledge of "undisciplined behaviour" of Banja Luka CSB SPD members, but did not consider this incident as a failure to punish the crimes of subordinates.[2758]

826. The Prosecution further argues that Exhibit P631 does not assist Župljanin as the Trial Chamber considered evidence that no criminal reports were submitted with the public prosecutor with respect to Banja Luka CSB SPD members suspected of crimes, and that such members continued to be engaged in actions of the Banja Luka CSB SPD.[2759] Finally, the Prosecution submits that Župljanin misstates the Trial Judgement when claiming that the Trial Chamber concluded that he resisted disbanding the Banja Luka CSB SPD in August 1992, as the Trial Chamber only found that there was "reluctance by the Banja Luka officials to disband the [Banja Luka CSB SPD]".[2760]

b. Analysis

827. The Appeals Chamber recalls that in the jurisprudence of the Tribunal a failure to intervene to prevent recurrence of crimes or to halt abuses has been taken into account in assessing an accused's contribution to a joint criminal enterprise and his intent, where the accused had sufficient power and influence or authority over the perpetrators to prevent or halt the abuses, but failed to exercise these powers.[2761]

828. Turning to Župljanin's argument that the Trial Chamber erred in finding that he exercised complete authority over the Banja Luka CSB SPD, the Appeals Chamber first recalls that it has already dismissed Župljanin's argument that an elevated degree of control over subordinates is

[2758] Prosecution Response Brief (Župljanin), para. 121, comparing Trial Judgement, vol. 2, para. 440 with Trial Judgement, vol. 2, p. 144, sub-title (x). The Prosecution adds that in any event, Župljanin retained the duty to punish SDS members for crimes in Doboj (Prosecution Response Brief (Župljanin), para. 121). Furthermore, according to the Prosecution, Župljanin deployed the Banja Luka CSB SPD to Doboj, continued to deploy the commanders of the Banja Luka CSB SPD to Doboj in later operations, and subsequently even appointed them to senior positions (Prosecution Response Brief (Župljanin), para. 121, referring to Trial Judgement, vol. 2, paras 398, 405, 440, 502, 505).

[2759] Prosecution Response Brief (Župljanin), para. 121. The Prosecution specifically refers to the Trial Chamber's finding based on Exhibit P631, that Župljanin informed Witness Gajić of crimes committed by the Banja Luka CSB SPD during its deployment in Kotor Varoš (Prosecution Response Brief (Župljanin), para. 121, referring to Trial Judgement, vol. 2, para. 425). It also refers to the Trial Chamber's findings that Župljanin knew of the crimes committed by the SPD member Danko Kajkut and continued to engage him in actions of the Banja Luka CSB SPD (Prosecution Response Brief (Župljanin), para. 121, referring to Trial Judgement, vol. 2, paras 504-505).

[2760] Prosecution Response Brief (Župljanin), para. 121, referring to Župljanin Appeal Brief, para. 150, Trial Judgement, vol. 2, paras 395, 606. The Prosecution further argues that in any case, Župljanin's argument has no impact given that the disbandment of the Banja Luka CSB SPD would not have been an adequate measure in order to punish crimes (Prosecution Response Brief (Župljanin), para. 121, referring to Župljanin Appeal Brief, para. 150, Trial Judgement, vol. 2, paras 395, 606).

[2761] See *Šainović et al.* Appeal Judgement, paras 1233, 1242; *Krajišnik* Appeal Judgement, para. 194; *Kvočka et al.* Appeal Judgement, paras 195-196. See also *supra*, para. 111. The Appeals Chamber also recalls that although a *de jure* or *de facto* position of authority is not a material condition required by law under the theory of joint criminal enterprise, it is a relevant factor in determining the scope of the accused's participation in the common purpose (see *Kvočka et al.* Appeal Judgement, para. 192. See also *Kvočka et al.* Appeal Judgement, para. 104).

required for failures to act in the context of joint criminal enterprise.[2762] As such, the Appeals Chamber rejects Župljanin's arguments based on this incorrect premise.

829. Moreover, the Appeals Chamber notes that Župljanin exercised complete authority over the Banja Luka CSB SPD and could impose disciplinary sanctions against its members.[2763] The Appeals Chamber is not convinced that the Trial Chamber was required to further address the issue of re-subordination in relation to the Banja Luka CSB SPD, since the Trial Chamber adequately addressed the question of whether Župljanin had sufficient power or authority over the members of the Banja Luka CSB SPD to take measures against them. In light of the Trial Chamber's findings that: (i) Župljanin had the authority to appoint the commander of the Banja Luka CSB SPD;[2764] (ii) the SPD members were on the payroll of the Banja Luka CSB;[2765] and (iii) an officer within the Banja Luka CSB was in charge of liaising with the Banja Luka CSB SPD when it was deployed in the field,[2766] the Appeals Chamber is of the view that the Trial Chamber considered that the Banja Luka CSB SPD remained part of the CSB structure, even when its members were involved in combat operations with the army. The Trial Chamber also expressly concluded that the evidence that the Banja Luka CSB SPD was a military unit was not credible and that even though a number of Banja Luka CSB SPD members had a military background, that was not determinative of who had authority over them once they became part of the Banja Luka CSB SPD.[2767] Župljanin simply puts forth a contradictory interpretation of the evidence without showing that the Trial Chamber erred in its assessment of the relevant evidence.[2768] In addition, the Appeals Chamber is not convinced that Župljanin's statement that if "it is necessary for the detachment to fight together with the army, it will be made available" shows that the Banja Luka CSB SPD was re-subordinated to the VRS for the duration of combat-related assignments or, in any event, that Župljanin did not have sufficient power or authority over Banja Luka CSB SPD members to impose disciplinary

[2762] See *supra*, para. 733.
[2763] Trial Judgement, vol. 2, para. 501. See Trial Judgement, vol. 2, paras 384-386, 392.
[2764] Trial Judgement, vol. 2, para. 386.
[2765] Trial Judgement, vol. 2, para. 392. See Trial Judgement, vol. 2, para. 484.
[2766] Trial Judgement, vol. 2, para. 393.
[2767] Trial Judgement, vol. 2, para. 501. See Trial Judgement, vol. 2, paras 386, 393.
[2768] In this respect, the Appeals Chamber notes that, contrary to Župljanin's submission, the Trial Chamber expressly addressed the testimony of Witness SZ002 that the Banja Luka CSB SPD was a military unit under the control of Colonel Stevilović but found it not credible (Trial Judgement, vol. 2, para. 501. See Trial Judgement, vol. 2, para. 393; Župljanin Appeal Brief, para. 142). The Appeals Chamber therefore finds no merit in Župljanin's submission, on the basis of the testimony of Witness SZ002, that the fact that "a certain Colonel Stevilovi[ć] had a major role in the functioning of the unit" and that the unit was based in a military facility would show re-subordination of the Banja Luka CSB SPD to the VRS (Župljanin Appeal Brief, para. 142). Župljanin's argument is a mere disagreement with the Trial Chamber's conclusion, without showing any error. In addition, the Appeals Chamber is not convinced that the fact that there were large numbers of men in regular uniforms and carrying long-barrelled rifles at the Kotor Varoš police station or Witness SZ002's evidence that the Banja Luka CSB SPD deployment in Kotor Varoš was determined in coordination with the VRS town commander would show that the members of the Banja Luka CSB SPD were not under the control of Župljanin.

sanctions.[2769] Accordingly, Župljanin has failed to show that no reasonable trier of fact could have found that he exercised control over the Banja Luka CSB SPD to the extent that he had sufficient authority to impose disciplinary sanctions on its members irrespective of whether they were involved in combat operations with the army.

830. Further, insofar as Župljanin argues that "no reasonable trier of fact could have ignored that by its leadership, its composition, purpose and direct evidence, the [Banja Luka CSB SPD] was intermittently and easily subordinated to the VRS throughout 1992",[2770] the Appeals Chamber considers that Župljanin ignores the Trial Chamber's relevant findings. The Trial Chamber found that the commander of the Banja Luka CSB SPD, Captain Mirko Lukić, was a serviceman, and that Ljuban Ečim ("Ečim"), the deputy commander, was a member of the Banja Luka SNB.[2771] However, the Trial Chamber also specifically considered Witness ST258's statement that what mattered with respect to the Banja Luka CSB SPD's civilian or military nature was not the members' origin or training, but rather the service they actually performed during the war.[2772] It then found that the background of the members of the Banja Luka CSB SPD was not determinative of who had authority over them.[2773] In this respect the Trial Chamber noted that Banja Luka CSB SPD members wore blue and grey camouflage uniforms, like those worn by the police, and blue or red berets, that the armoured personnel carriers had the word "Milicija" painted on them, and that Župljanin provided the members of the Banja Luka CSB SPD with ID cards, which authorised them to arrest people, search premises without a warrant, and to carry and use fire arms.[2774] These considerations, together with the factors described above,[2775] led the Trial Chamber to conclude that it was Župljanin who exercised complete authority over the Banja Luka CSB SPD and could impose disciplinary sanctions against its members.[2776]

831. In light of the foregoing, the Appeals Chamber dismisses Župljanin's argument that the Trial Chamber was required to enter specific findings regarding the re-subordination of the Banja Luka CSB SPD to the VRS in the municipalities of Kotor Varoš, Prijedor, and Banja Luka.

832. With regard to Župljanin's argument that the crimes in Doboj were committed while the Banja Luka CSB SPD was not subordinated to him as it was outside the ARK Municipalities, and thus outside his jurisdiction, the Appeals Chamber observes that the portion of the Trial Judgement,

[2769] See Župljanin Appeal Brief, para. 141, referring to Trial Judgement, vol. 2, para. 385.
[2770] Župljanin Appeal Brief, para. 143. See Župljanin Appeal Brief, para. 141.
[2771] Trial Judgement, vol. 2, para. 386.
[2772] Trial Judgement, vol. 2, para. 389.
[2773] Trial Judgement, vol. 2, para. 501.
[2774] Trial Judgement, vol. 2, para. 390.
[2775] See *supra*, para. 829.
[2776] Trial Judgement, vol. 2, para. 501.

on which Župljanin relies, does not support his assertion.[2777] To the contrary, the Appeals Chamber observes that the Trial Chamber's findings clearly show that Župljanin had authority over Ečim and Zdravko Samardžija ("Samardžija") who led the Banja Luka CSB SPD in Doboj,[2778] and that Župljanin was aware of the crimes committed by the Banja Luka CSB SPD in Doboj.[2779] The Trial Chamber also found that, despite this knowledge, Župljanin did not impose disciplinary measures against members of the Banja Luka CSB SPD, but instead continued to engage them in actions and that in May 1993 Ečim and Samardžija were still employed at the Banja Luka CSB.[2780] In light of these findings, the Appeals Chamber is not persuaded that the fact that Doboj was not part of the ARK Municipalities is sufficient to demonstrate that Župljanin had no authority to take action against the Banja Luka CSB SPD for the crimes committed there.[2781]

833. The Appeals Chamber is of the view that Župljanin has failed to demonstrate an error in the Trial Chamber's reasoning and has failed to show that no reasonable trier of fact could have found that he exercised complete authority over the Banja Luka CSB SPD.

834. The Appeals Chamber now turns to Župljanin's challenge to the Trial Chamber's finding that he failed to investigate and discipline members of the Banja Luka CSB SPD. In support of his argument that members of the Banja Luka CSB SPD were suspended and criminal proceedings initiated against them with regard to crimes committed in Kotor Varoš,[2782] Župljanin seeks to rely on Exhibit P631. Exhibit P631 is a report on the CSB and the SJBs in the ARK Municipalities, dated 5 August 1992, which mentions with regard to "negativities" faced by the Banja Luka CSB SPD at the time of deployment of the unit in Kotor Varoš, that "a number of employees" had been suspended and criminal proceedings initiated.[2783] Župljanin merely refers to this evidence without substantiating how it would undermine the Trial Chamber's conclusion that he failed to investigate and discipline members of Banja Luka CSB SPD. In any event, the Trial Chamber expressly

[2777] See Župljanin Appeal Brief, para. 150, referring to Trial Judgement, vol. 2, para. 440.
[2778] Trial Judgement, vol. 1, para. 1149; Trial Judgement, vol. 2, paras 386, 440, 501.
[2779] Trial Judgement, vol. 2, paras 440, 503.
[2780] Trial Judgement, vol. 2, paras 398, 505. The Appeals Chamber notes that the month in which Ečim and Samardžija were still employed at the Banja Luka CSB differs in these two paragraphs of the Trial Judgement (Trial Judgement, vol. 2, paras 398, 505). In view of the evidence referred to in Trial Judgement, vol. 2, para. 398, the correct date of this finding appears to be 5 May 1993 (Trial Judgement, vol. 2, para. 398).
[2781] The Appeals Chamber observes that Župljanin was not charged and convicted for the crimes committed in Doboj (see Trial Judgement, vol. 2, fn. 1208, paras 824-827). However, the Appeals Chamber observes that it is not clear from the Trial Chamber's ultimate conclusions that the Trial Chamber did not rely on his failures to launch criminal investigations and discipline members of the Banja Luka CSB SPD for the crimes they committed outside of the ARK Municipalities in finding that Župljanin significantly contributed to the JCE and had the required intent for the first category of joint criminal enterprise in the ARK Municipalities. See Trial Judgement, vol. 2, paras 518 (finding that Župljanin failed to launch criminal investigations and discipline his subordinates who had committed crimes against non-Serbs without geographical limitation), 519 (relying on Župljanin's inaction in relation to the crimes committed by the Banja Luka CSB SPD without geographical limitation).
[2782] Župljanin Appeal Brief, para. 150, referring to Exhibit P631, p. 2.
[2783] Exhibit P631, p. 2.

addressed action taken in relation to the crimes committed by Banja Luka CSB SPD members in Kotor Varoš.[2784] It noted however that the only evidence of an investigation against members of this unit for a serious crime is an entry in the Kotor Varoš "Open Cases Logbook" for 29 July 1992, which records the filing of a criminal report against Danko Kajkut ("Kajkut") for a double rape allegedly committed in Kotor Varoš.[2785] The Trial Chamber specifically referred to Exhibit P631 in reaching this conclusion,[2786] which suggests that it placed only limited or no weight on this exhibit. The Trial Chamber further found that: (i) a criminal report against Kajkut was not submitted to the public prosecutor; (ii) the charges were eventually dropped; (iii) Župljanin continued to engage him in actions of the Banja Luka CSB SPD; and (iv) in May 1993 Kajkut was still employed at the Banja Luka CSB.[2787] Accordingly, the Appeals Chamber dismisses his argument.

835. Finally, the Appeals Chamber turns to Župljanin's contention that the Banja Luka CSB SPD was disbanded and placed under the command of the VRS in part for disciplinary reasons, a measure with which he agreed.[2788] The Appeals Chamber considers that Župljanin has failed to explain and demonstrate how the disbandment of the unit and his agreement to it would show an error in the Trial Chamber's conclusion that he failed to punish members of the Banja Luka CSB SPD during its existence.[2789] Moreover, the Trial Chamber found that following the disbandment of the Banja Luka CSB SPD, several prominent members of the Banja Luka CSB SPD who Župljanin knew had committed crimes were appointed to commanding positions within the Banja Luka CSB.[2790] The Trial Chamber's reliance on the continued employment of these members at the Banja Luka CSB in concluding that Župljanin failed to rein in the behaviour of members of the Banja Luka CSB SPD[2791] suggests that it did not consider the disbandment of the Banja Luka CSB SPD to be an effective or sufficient measure to suppress their criminal behaviour. Thus, Župljanin's mere reference to the disbandment and his agreement thereto falls short of showing that the Trial Chamber erred.

c. Conclusion

836. In light of the foregoing, the Appeals Chamber finds that Župljanin has failed to show that no reasonable trier of fact could have found that he contributed to the JCE through his failure to investigate and discipline Banja Luka CSB SPD members.

[2784] Trial Judgement, vol. 2, para. 425. See Trial Judgement, vol. 2, para. 503.
[2785] Trial Judgement, vol. 2, para. 504. See Trial Judgement, vol. 2, para. 425, fn. 1176, referring to, *inter alia*, Exhibit P1558.06.
[2786] Trial Judgement, vol. 2, para. 425, fn. 1176, referring to, *inter alia*, Exhibit P631, p. 2.
[2787] Trial Judgement, vol. 2, para. 504.
[2788] Župljanin Appeal Brief, para. 150.
[2789] Trial Judgement, vol. 2, para. 505.

(v) Alleged errors in finding that Župljanin failed to protect the non-Serb population by issuing general and ineffective orders which were not genuinely meant to be effectuated (sub-ground (E) in part of Župljanin's first ground of appeal)

837. In reaching its conclusion that Župljanin failed to "protect the non-Serb population",[2792] the Trial Chamber considered that Župljanin issued general and ineffective orders to the ARK SJBs "exhorting them to respect the law", which "were not genuinely meant to be effectuated".[2793]

838. Župljanin asserts that the Trial Chamber unreasonably dismissed evidence of his efforts to suppress crimes when it concluded that his orders to protect the non-Serb population "were not genuinely meant to be effectuated".[2794] Specifically, Župljanin challenges the Trial Chamber's factual findings that he: (i) hired criminal members of the SOS to the Banja Luka CSB SPD just a few days before issuing an order prohibiting hiring individuals with criminal records; (ii) appointed a feigned commission to investigate crimes at prisons in Prijedor, appointed the former warden of prisons in Sanski Most to be the crime inspector for white-collar crimes, and failed to remove Drljača as Chief of the Prijedor SJB; and (iii) filed reports identifying the perpetrators as unknown in respect of two important crimes.[2795]

839. The Prosecution responds that Župljanin fails to demonstrate that the Trial Chamber unreasonably concluded that certain "'ineffective and general orders' to SJBs were 'not genuinely

[2790] Trial Judgement, vol. 2, para. 398. See Trial Judgement, vol. 2, paras 503-505.
[2791] Trial Judgement, vol. 2, para. 505. See Trial Judgement, vol. 2, para. 504.
[2792] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, para. 518.
[2793] Trial Judgement, vol. 2, para. 514.
[2794] Župljanin Appeal Brief, para. 163, referring to Trial Judgement, vol. 2, para. 514. See Appeal Hearing, 16 Dec 2015, AT. 180-181. Župljanin's factual challenges pertaining to the Trial Chamber's findings on his failure to protect the non-Serb population are raised as challenges to the Trial Chamber's finding of intent (Župljanin Appeal Brief, paras 156). The Appeals Chamber notes that the Trial Chamber relied on these findings in reaching its conclusions on both his contribution to the JCE and his intent (Trial Judgement, vol. 2, paras 518-519). In this section, the Appeals Chamber will examine whether the Trial Chamber erred in finding that Župljanin failed to protect the non-Serb population and whether the Trial Chamber erred in relying on these findings to conclude that Župljanin contributed to the JCE and had the requisite intent. Župljanin's argument as to whether it was reasonable for the Trial Chamber to ultimately conclude that he significantly contributed to the JCE and possessed the requisite intent on the basis of, *inter alia*, these factors will be addressed in other sections (see *infra*, paras 901-944). Under sub-ground (E) of his first ground of appeal, Župljanin also submits that the Trial Chamber erred in inferring his intent from his failure to prevent or punish the crimes charged in the Indictment because this finding resulted from the Trial Chamber's failure to address the re-subordination of police, which he raises as a separate error in sub-ground (A) of his first ground of appeal (Župljanin Appeal Brief, para. 162, referring to sub-ground (A) of his first ground of appeal). The Appeals Chamber has therefore dismissed this argument in connection with sub-ground (A) of Župljanin's first ground of appeal (see *supra*, paras 736-813).
[2795] Župljanin Appeal Brief, para. 163. See Župljanin Appeal Brief, paras 164-171. See also Župljanin Appeal Brief, paras 270-271.

meant to be effectuated'".[2796] It adds that to the contrary, the Trial Chamber's findings demonstrate that Župljanin "tolerated and approved the commission of crimes against non-Serbs".[2797]

a. Alleged error in finding that Župljanin hired members of the SOS with criminal records

840. The Trial Chamber found that Župljanin enrolled criminal members of the SOS in the Banja Luka CSB SPD only a few days before issuing an order prohibiting hiring of persons with criminal records.[2798] In reaching this conclusion, the Trial Chamber relied on its previous findings that following the formulation of the operative work plan of the Banja Luka CSB on 25 May 1992 ("25 May 1992 Work Plan") to tackle crimes in Banja Luka committed by, *inter alios*, SOS members against non-Serbs, Župljanin filed a few criminal reports with the public prosecutor's office.[2799] It further found that Župljanin absorbed SOS's members into the newly created Banja Luka CSB SPD, notwithstanding their role in the "illegal blockade of Banja Luka and the warnings received [...] that they were dangerous criminals".[2800] The Trial Chamber also found that Župljanin, as Chief of the Banja Luka CSB, knew about the "widespread and systematic" crimes committed against non-Serbs by the SOS during and in the aftermath of the blockade in Banja Luka in the beginning of April 1992.[2801] The Trial Chamber concluded that by enrolling members of the SOS in the Banja Luka CSB SPD, "including to commanding positions, Župljanin created a unit comprised of Serb nationalists with criminal records".[2802]

i. Submissions of the parties

841. Župljanin submits that the Trial Chamber erred in finding that he hired members of the SOS with criminal records.[2803] According to Župljanin, the Trial Chamber misstates the evidence and its lack of clarity in the assessment of the evidence results from the absence of footnotes in the section containing the findings on his responsibility.[2804] He argues in particular that the Trial Chamber

[2796] Prosecution Response Brief (Župljanin), para. 127.
[2797] Prosecution Response Brief (Župljanin), para. 127.
[2798] Trial Judgement, vol. 2, paras 514, 519. See Trial Judgement, vol. 2, paras 387-391, 499, 501, 861.
[2799] Trial Judgement, vol. 2, paras 498-499. See Trial Judgement, vol. 2, para. 519.
[2800] Trial Judgement, vol. 2, para. 499. See Trial Judgement, vol. 2, para. 387.
[2801] Trial Judgement, vol. 2, paras 496, 499. See Trial Judgement, vol. 1, paras 144, 147, 157.
[2802] Trial Judgement, vol. 2, para. 499. The Trial Chamber reached this conclusion after considering that Župljanin enrolled criminal members of the SOS in his Banja Luka CSB SPD notwithstanding an order he forwarded to his SJB chiefs that persons with criminal records could not be part of the Banja Luka CSB SPD (Trial Judgement, vol. 2, paras 514, 519). See Trial Judgement, vol. 2, paras 387-391, 499, 502, 861.
[2803] Župljanin Appeal Brief, paras 145, 148, 164.
[2804] Župljanin Appeal Brief, para. 149. Župljanin submits that the absence of footnotes sets the Trial Judgement apart from most other judgements "which are usually assiduously footnoted to ensure the conformity between the ultimate findings and the rest of the Judgement" (Župljanin Appeal Brief, para. 149, referring to *Popović et al.* Trial Judgement, paras 1929-1979, *Orić* Trial Judgement, paras 677-716, *Haradinaj et al.* Retrial Judgement, paras 628-668). In support of his argument that the Trial Chamber misdirected itself in relation to important factual matters, Župljanin, *inter alia*,

neither found nor does the evidence support that persons with criminal records or criminal suspects were permitted to join the Banja Luka CSB SPD or that he knew anything about it.[2805] Župljanin asserts that he tried to prevent suspected criminals from joining the Banja Luka CSB SPD.[2806] In support of his submission, Župljanin refers to his interview with the *Glas* newspaper in which he stated that those claiming to be members of the SOS but engaged in "unlawful measures and activities" were not welcome in the Banja Luka CSB SPD.[2807] Župljanin further refers to the 25 May 1992 Work Plan he issued, ordering the arrest of SOS members suspected of crimes and others involved in harassment of non-Serbs in Banja Luka, and the investigation of the murder of a Muslim man and the bombing of the Arnaudija Mosque.[2808]

842. The Prosecution responds that the Trial Chamber reasonably relied upon Župljanin's recruitment of "seasoned criminals" and nationalists to the Banja Luka CSB SPD.[2809] According to the Prosecution, the Trial Chamber clearly set out the evidence it relied on and Župljanin fails to show how the Trial Chamber erred in its assessment thereof.[2810] The Prosecution contends that the Trial Chamber's finding that Župljanin sought to enrol members of the SOS with criminal records into the Banja Luka CSB SPD and that he neither took action to exclude them nor did he punish them for their crimes was amply supported by the evidence.[2811] The Prosecution submits in

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points to the Trial Chamber's conclusion that the Banja Luka CSB SPD included criminals from the SOS, while "earlier in the Judgement", the Trial Chamber found that only a few members of the SOS had been enrolled in the Banja Luka CSB SPD, without making a finding as to whether any of them had a criminal record (Župljanin Reply Brief, para. 57, comparing Trial Judgement, vol. 2, para. 499 with Trial Judgement, vol. 2, paras 387-388).

[2805] Župljanin Appeal Brief, para. 164. Župljanin argues that the "mere fact that some members of the SOS were accepted into the [Banja Luka CSB SPD] and that some members of the SOS were suspected to have committed crimes during the blockade of Banja Luka in no way establishes" that members of the SOS who had criminal records were permitted to join the SPD or that "Župljanin knew that anyone permitted to join the [Banja Luka CSB SPD] was suspected of having committed a crime or was a person with a criminal record" (Župljanin Appeal Brief, para. 164).

[2806] Župljanin Appeal Brief, paras 145, 148, 164.

[2807] Župljanin Appeal Brief, para. 145, referring to Trial Judgement, vol. 2, para. 404, referring in turn to Exhibit P560 ("*Glas* Article").

[2808] Župljanin Appeal Brief, para. 146, referring to Exhibit 1D198. See Appeal Hearing, 16 Dec 2015, AT. 180-181, 210-211. Župljanin also contends that the Trial Chamber's findings regarding the 25 May 1992 Work Plan are unclear and that the Trial Chamber seems to suggest that the absence of evidence concerning the release of one of the arrested persons undermines the "sincerity or robustness of the plan" (Župljanin Appeal Brief, para. 148). He also emphasises that the 25 May 1992 Work Plan was secret and argues that it was therefore genuinely meant to be implemented (see Župljanin Appeal Brief, paras 147-148, referring to Trial Judgement, vol. 2, paras 457, 498).

[2809] Prosecution Response Brief (Župljanin), para. 128.

[2810] Prosecution Response Brief (Župljanin), paras 117-118, referring to Trial Judgement, vol. 1, paras 143, 146, 157-158, 209, 213, Trial Judgement, vol. 2, paras 384, 386-388, 503. The Prosecution in particular argues that the Trial Chamber accepted and relied on evidence pertaining to: (i) the attack by SOS members against non-Serbs and their property after the 3 April 1992 blockade of Banja Luka; (ii) the formation of the Banja Luka CSB SPD with members of the SOS, after Župljanin expressly asked the Banja Luka SJB Chief, Witness Tutuš, in August 1992 to reconsider his initial refusal to use these members to form the special police unit; (iii) the recruitment of the SOS members Ljuban Ečim, Zdravko Samardžija, and Slobodan Dubočanin into the Banja Luka CSB SPD; (iv) the testimony of Witness Radulović concerning the recruitment of SOS members into the police; and (v) the fact that Župljanin was informed by Witness Radulović and Witness Tutuš that Banja Luka CSB SPD members continued to commit crimes after the unit was created (Prosecution Response Brief (Župljanin), para. 117).

[2811] Prosecution Response Brief (Župljanin), para. 128. The Prosecution refers specifically to the testimonies of Witness Tutuš, Witness Radulović, Witness Radić, and Witness Sajinović and a report prepared by VRS security chief Zdravko Tolimir (Prosecution Response Brief (Župljanin), para. 128).

particular that Župljanin fails to show that the Trial Chamber was unreasonable in its approach to the *Glas* Article and the 25 May 1992 Work Plan.[2812] Finally, the Prosecution submits that Župljanin's argument regarding the absence of footnotes ignores the previous 116 footnoted paragraphs summarising and analysing the evidence upon which the Trial Chamber based its conclusions.[2813]

ii. Analysis

843. Although the Trial Chamber provided no cross-references or citations to evidence on the record in the section containing the findings on Župljanin's responsibility, the Appeals Chamber considers that the Trial Chamber's conclusion that Župljanin enrolled criminal SOS members in the Banja Luka CSB SPD, must be read in conjunction with its previous findings on Župljanin's conduct in furtherance of the JCE. The Trial Chamber made a number of relevant factual findings in this respect. It found that Witness Tutuš, Chief of the Banja Luka CSB SPD, refused repeatedly to use members of the SOS for the Banja Luka CSB SPD, in part because some of them were convicted criminals.[2814] The Trial Chamber further noted that it understood that Župljanin asked him to reconsider his position and found that Witness Tutuš agreed to have SOS members accepted into the reserve police force upon preliminary background checks.[2815] Eventually, some members of the SOS were incorporated in the Banja Luka CSB SPD, others were incorporated in military units.[2816] The Trial Chamber also found that Witness Radulović expressed his concerns that the transfer of some SOS members to the active-duty police was "incomprehensible and unnecessary" as they were criminals who by becoming policemen were given a basis to continue their activities in a more "rampant" fashion.[2817] According to the Trial Chamber, Župljanin dismissed these concerns by saying that the SOS were "Serbian knights".[2818] In light of these detailed findings, the Appeals

[2812] Prosecution Response Brief (Župljanin), paras 118-119. The Prosecution submits that the *Glas* Article does not assist Župljanin as the Trial Chamber considered evidence that no criminal reports were submitted with the public prosecutor with respect to Banja Luka CSB SPD members suspected of crimes, and that such members continued to be engaged in actions of the Banja Luka CSB SPD (Prosecution Response Brief (Župljanin), para. 121. See Prosecution Response Brief (Župljanin), para. 118)). The Prosecution specifically refers to the Trial Chamber's finding based on Exhibit P631, that Župljanin informed Witness Gajić of crimes committed by the Banja Luka CSB SPD during its deployment in Kotor Varoš (Prosecution Response Brief (Župljanin), para. 121, referring to Trial Judgement, vol. 2, para. 425). It also refers to the Trial Chamber's findings that Župljanin knew of the crimes committed by the Banja Luka CSB SPD member Danko Kajkut and continued to engage him in actions of the Banja Luka CSB SPD (Prosecution Response Brief (Župljanin), para. 121, referring to Trial Judgement, vol. 2, paras 504-505). Furthermore, the Prosecution submits that the assertion in the 25 May 1992 Work Plan that SOS members who committed crimes should be arrested, does not alter the established fact that SOS members who committed crimes and were recruited to the Banja Luka CSB SPD were not arrested (Prosecution Response Brief (Župljanin), para. 119).
[2813] Prosecution Response Brief (Župljanin), para. 120, referring to Trial Judgement, vol. 2, paras 375-490.
[2814] Trial Judgement, vol. 2, para. 387.
[2815] Trial Judgement, vol. 2, para. 387.
[2816] Trial Judgement, vol. 2, para. 387.
[2817] Trial Judgement, vol. 2, para. 388.
[2818] Trial Judgement, vol. 2, para. 388.

Chamber finds that the Trial Chamber sufficiently identified the basis for its conclusion.[2819] Accordingly, the Appeals Chamber dismisses Župljanin's contention that the Trial Chamber never found that persons with criminal records or criminal suspects were permitted to join the Banja Luka CSB SPD or that he knew anything about it.

844. Insofar as Župljanin seeks to rely on the *Glas* Article, the Appeals Chamber observes that the Trial Chamber expressly considered the portions of the article to which he refers.[2820] The Appeals Chamber notes that this article referred to Župljanin's statement that the SOS were "quality people, above all in terms of character" and that "the bad reputation of the unit was due to some rogue members from whom the SOS had distanced itself".[2821] As the *Glas* Article does not negate the evidence concerning Župljanin's knowledge of the criminal background of some SOS members, the Appeals Chamber considers that it is not inconsistent with the Trial Chamber's conclusions. In addition, in light of the testimony of Witness Radulović recalled above in relation to Župljanin's reaction when warned about the possible enrolment of criminal SOS members into the Banja Luka CSB SPD,[2822] the Appeals Chamber is not convinced that the *Glas* Article undermines the Trial Chamber's findings or demonstrates that Župljanin tried to prevent suspected criminals from joining the Banja Luka CSB SPD. Župljanin has failed to show that the Trial Chamber erred in its assessment of the *Glas* Article.

845. Finally, with regard to the 25 May 1992 Work Plan, the Appeals Chamber is unconvinced that it demonstrates that Župljanin tried to prevent suspected criminals of the SOS from joining the Banja Luka CSB SPD. Indeed, the Trial Chamber expressly took into account the 25 May 1992 Work Plan, and found that it was adopted to tackle crimes that had affected Banja Luka starting in April 1992 and included crimes committed by SOS members.[2823] The Trial Chamber also found that following the 25 May 1992 Work Plan, Župljanin filed only "few criminal reports" and that the commission of crimes continued throughout 1992 and in fact increased after 16 August 1992.[2824] The Trial Chamber further found that despite the fact that the Banja Luka CSB had drawn up the 25 May 1992 Work Plan to investigate some of the SOS crimes, Župljanin enrolled SOS members in the Banja Luka CSB SPD, including to commanding positions, "creat[ing] a unit comprised of Serb nationalists with criminal records".[2825] The Appeals Chamber considers that Župljanin ignores the Trial Chamber's reasoning and merely disagrees with the Trial Chamber's conclusion without

[2819] See *supra*, para. 840.
[2820] See Trial Judgement, vol. 2, para. 404. See also Trial Judgement, vol. 2, para. 387.
[2821] Trial Judgement, vol. 2, para. 404, referring to Exhibit P560, pp 3-4.
[2822] See *supra*, para. 843.
[2823] Trial Judgement, vol. 2, para. 498.
[2824] Trial Judgement, vol. 2, para. 499. See Trial Judgement, vol. 2, paras 459, 498.
[2825] Trial Judgement, vol. 2, para. 499.

showing any error. Thus, Župljanin has failed to show that the Trial Chamber erred in its assessment of the 25 May 1992 Work Plan.

846. Based on the foregoing, the Appeals Chamber finds that Župljanin has not demonstrated that no reasonable trier of fact could have found that Župljanin enrolled criminal SOS members in the Banja Luka CSB SPD only a few days before issuing an order prohibiting hiring of persons with criminal records. He has also failed to show that the Trial Chamber erred in relying on this finding to conclude that Župljanin's orders were not genuinely meant to be effectuated.

b. Alleged error in relation to Župljanin's decisions to form a commission to inspect the conditions of detention camps, to appoint Vujanić, and not to dismiss Drljača

847. In finding that Župljanin's orders to protect the civilian population were not "genuinely meant to be effectuated",[2826] the Trial Chamber considered that Župljanin formed a "feigned commission",[2827] appointed as commissioners individuals who were "involved, or however informed of" the mistreatment of detainees,[2828] and gave them only three days to complete their work.[2829] The Trial Chamber added that when the commissioners filed their report it did not shed any light on the abuses suffered by non-Serb detainees and on the people who were responsible.[2830] The Trial Chamber found that Župljanin did not request further investigation into mistreatments in the detention centres or take any further step to uncover those responsible for the mistreatments of which he knew.[2831] The Trial Chamber stated that, to the contrary, Župljanin appointed Drago Vujanić ("Vujanić"), warden of the detention facilities in Sanski Most, as crime inspector for white-collar crime, notwithstanding his knowledge of the implication of the Sanski Most police in the unlawful detentions and in the death of 20 detainees who suffocated while being transported between Sanski Most and the Manjača detention camp.[2832] The Trial Chamber further considered that Župljanin never attempted to remove Drljača as Chief of the Prijedor SJB "notwithstanding Župljanin's knowledge of the atrocities committed in the detention camps".[2833]

[2826] Trial Judgement, vol. 2, para. 514.
[2827] Trial Judgement, vol. 2, para. 519.
[2828] Trial Judgement, vol. 2, para. 514.
[2829] Trial Judgement, vol. 2, paras 514, 519. See Trial Judgement, vol. 2, para. 446.
[2830] Trial Judgement, vol. 2, para. 514. See Trial Judgement, vol. 2, para. 447.
[2831] Trial Judgement, vol. 2, para. 514.
[2832] Trial Judgement, vol. 2, para. 514. See Trial Judgement, vol. 2, para. 487.
[2833] Trial Judgement, vol. 2, para. 515. See Trial Judgement, vol. 2, para. 486. See also Trial Judgement, vol. 1, para. 507.

i. Submissions of the parties

848. Župljanin submits that the Trial Chamber erred in finding that his orders were not genuinely meant to be effectuated because he appointed a commission to investigate crimes at prisons in Prijedor of the very people who were in charge of interrogating the detainees.[2834] He asserts that he appointed officers to the commission to "report on crimes that may have been committed at those locations" and that "rather obviously, individuals were appointed who had some knowledge of the prisons".[2835]

849. Župljanin also submits that the Trial Chamber erred in finding that his orders were not genuinely meant to be effectuated based on evidence that he: (i) appointed the former warden of prisons in Sanski Most, whose officers may have committed crimes, to be the crime inspector for white-collar crimes; and (ii) failed to remove Drljača as head of the Prijedor SJB.[2836] He argues that although Vujanić was the warden of Sanski Most detention camp when 20 detainees died of asphyxia, the Trial Chamber accepted the possibility that the killings may have resulted from negligence, but later incorrectly stated that the 20 detainees were murdered.[2837] In addition, Župljanin submits that the Trial Chamber failed to make findings that investigations had not been pursued or that Vujanić improperly handled the matter.[2838] Župljanin further challenges the relevance of this appointment "made three months after the events in question and after almost all Indictment crimes had been committed".[2839] Finally, Župljanin challenges the Trial Chamber's reliance on his failure to remove Drljača, which he argues, "is similarly not indicative of any concealed criminal intent on [his] part".[2840]

850. The Prosecution responds that the Trial Chamber reasonably relied upon Župljanin's cover-up of crimes committed in detention camps.[2841] It asserts that the Trial Chamber correctly found that the function of the commission Župljanin formed was "feigned" based on evidence that he: (i) appointed as commissioners the very persons who interrogated detainees and who were at

[2834] Župljanin Appeal Brief, para. 163. Župljanin submits that the Trial Chamber failed to determine beyond a reasonable doubt whether he "possessed jurisdiction over any crimes that may have been committed [in Trnopolje, Omarska, and Keraterm] by police officers" who may have been subordinated to the VRS (Župljanin Appeal Brief, para. 165). This argument has already been addressed and dismissed in a different section (see *supra*, paras 785-812).
[2835] Župljanin Appeal Brief, para. 166. Župljanin further submits that his agreement at trial that the "report was a self-serving whitewash" does not substantiate the Trial Chamber's unsupported conclusion that he acted with ulterior motives or criminally (Župljanin Appeal Brief, para. 166).
[2836] Župljanin Appeal Brief, para. 163.
[2837] Župljanin Appeal Brief, para. 167, referring to Trial Judgement, vol. 2, para. 215, Trial Judgement, vol. 2, para. 419.
[2838] Župljanin Appeal Brief, para. 168.
[2839] Župljanin Appeal Brief, para. 168.
[2840] Župljanin Appeal Brief, para. 169. The Appeals Chamber understands Župljanin's reference to the argument he makes in sub-ground (E) of his first ground of appeal as a reference to the arguments he raises in sub-ground (A) of his first ground of appeal.

least informed of the mistreatment of prisoners; and (ii) "only gave the commissioners three days to complete their work".[2842] The Prosecution further responds that the Trial Chamber "reasonably relied upon Župljanin's actions to shield and reward criminal MUP officials".[2843] It argues that Vujanić is one example of such action and notes that the murder of at least 20 non-Serbs was not "mere negligence".[2844] The Prosecution notes that "the only consequence for Vujanić was his promotion by Župljanin to inspector for white-collar crimes".[2845] It argues that the Trial Chamber also reasonably found that Župljanin failed to remove Drljača as Chief of the Prijedor SJB, notwithstanding his knowledge of crimes committed against non-Serbs in Prijedor.[2846]

ii. Analysis

851. The Appeals Chamber notes that the Trial Chamber found that, in August 1992, Župljanin set up a commission in response to requests from the ICRC to the Bosnian Serb leadership for the improvement of the unsatisfying conditions at the Manjača detention camp as well as to foreign journalist reports that detainees at Omarska and Trnopolje were held in inhumane conditions and subject to physical abuse.[2847] The Trial Chamber considered that, *inter alia*, Župljanin "appointed as commissioners the very people who were in charge of interrogating detainees in these camps, and therefore were involved, *or however informed of*, their mistreatment".[2848] The Trial Chamber, therefore, did not consider that Župljanin merely appointed individuals who had "*some knowledge* of the prisons" as submitted by Župljanin,[2849] but that he appointed those with direct knowledge who were either involved in or informed of the mistreatment of detainees.[2850] Further, Župljanin's appointment of those with knowledge of mistreatment of detainees must also be viewed in the context of the Trial Chamber's other considerations in relation to his establishment of the commission.[2851] In particular, the Appeals Chamber notes the Trial Chamber's findings that Župljanin "gave [the commissioners] only three days to complete their work" and that "when the

[2841] Prosecution Response Brief (Župljanin), para. 129.
[2842] Prosecution Response Brief (Župljanin), para. 129.
[2843] Prosecution Response Brief (Župljanin), para. 130. See Prosecution Response Brief (Župljanin), para. 72.
[2844] Prosecution Response Brief (Župljanin), para. 130.
[2845] Prosecution Response Brief (Župljanin), para. 130.
[2846] Prosecution Response Brief (Župljanin), para. 131.
[2847] Trial Judgement, vol. 2, paras 444, 446. The Trial Chamber found that the commission was established to: (i) determine "whether any POW camp, reception centre, investigation centre, or other facilities for the 'reception' of citizens had been established in these municipalities; the reasons for their establishment; the number of people arrested, processed, and released; and the ethnicity, gender, and age of the persons and the conditions in which they lived"; and (ii) "[ascertain] if in these municipalities there had been instances of citizens being moved out, and if so, their ethnicity, their number, and whether they had moved out voluntarily or under coercion" (Trial Judgement, vol. 2, para. 446).
[2848] Trial Judgement, vol. 2, para. 514 (emphasis added). In particular the Trial Chamber considered that two of the four commissioners appointed to the team were involved in interrogating prisoners at the Omarska detention camp (Trial Judgement, vol. 2, para. 446. See Trial Judgement, vol. 2, para. 447). The Trial Chamber also found that at least one of the commissioners, Vojin Bera, was an officer of the Banja Luka SNB (Trial Judgement, vol. 2, para. 372).
[2849] Župljanin Appeal Brief, para. 166 (emphasis added).
[2850] See Trial Judgement, vol. 2, para. 514.

commissioners filed their report, it was simply a collage of previously drafted reports [...] which did not shed any light on the abuses suffered by non-Serb detainees and on the people who were responsible".[2852] In light of these findings, the Appeals Chamber finds that Župljanin has failed to demonstrate that no reasonable trier of fact could have relied on Župljanin's role in the formation of the commission to find that his orders to protect the civilian population were not genuinely meant to be effectuated.

852. Concerning Vujanić, the Appeals Chamber notes that the Trial Chamber found that Župljanin appointed Vujanić, a police officer and warden in charge of the Betonirka detention camp in Sanski Most from June 1992, to the position of inspector for white-collar crimes.[2853] The Trial Chamber further considered that while Vujanić was warden, non-Serbs were unlawfully detained and subjected to regular beatings at the camp.[2854] In particular, the Trial Chamber found that while Vujanić was in charge, 20 detainees had been murdered by suffocation whilst being transported "packed like sardines" by police officers from the Sanski Most SJB.[2855] The Trial Chamber further considered that following these murders, Župljanin appointed Vujanić "notwithstanding [Župljanin's] knowledge of the implication of the Sanski Most police in unlawful detentions and in the death of 20 detainees".[2856] The Appeals Chamber finds that, contrary to Župljanin's submission,[2857] the Trial Chamber was not required to establish that investigations had not been pursued or that Vujanić improperly handled the matter. It was within the Trial Chamber's discretion to consider, among other evidence, Vujanić's appointment, which occurred notwithstanding Župljanin's knowledge of the mistreatment and deaths of detainees while Vujanić was warden, when concluding that Župljanin's orders to protect the civilian population were not genuinely meant to be effectuated. The Appeals Chamber further considers that the fact that this appointment was made three months after the events in question, and after almost all Indictment crimes had been committed, is incapable of undermining the Trial Chamber's reasoning.

[2851] See Trial Judgement, vol. 2, para. 519.
[2852] Trial Judgement, vol. 2, para. 514. The Trial Chamber considered that the report did not contain information concerning the mistreatment of prisoners or the inadequacy of the detention facilities (Trial Judgement, vol. 2, para. 447). Moreover, the findings of the commission appeared to be based on reports provided to the commission by the Prijedor, Sanski Most, and Bosanski Novi SJBs, rather than on first hand information obtained by the commissioners (Trial Judgement, vol. 2, para. 447).
[2853] Trial Judgement, vol. 2, para. 514. See Trial Judgement, vol. 1, paras 769, 800-801. See also Trial Judgement, vol. 1, paras 184, 798.
[2854] Trial Judgement, vol. 1, paras 184, 800-801, 808-809, 811. See Trial Judgement, vol. 1, para. 798. In particular, between 120 and 150 Bosnian Muslims and Bosnian Croats were detained in three garages of the Betonirka factory from the end of May or beginning of June 1992 until the end of June 1992 in crowded and unsanitary conditions where they were subject to beatings on a regular basis, causing serious injury (Trial Judgement, vol. 1, paras 800-801).
[2855] Trial Judgement, vol. 1, paras 189, 215. See Trial Judgement, vol. 1, para. 190. The Appeals Chamber notes that it has dismissed Župljanin's submission that the Trial Chamber suggested a standard of negligence when it indicated that the police officers "knew or should have known" that transporting detainees in locked refrigerator trucks with insufficient airflow in the summer could result in their death elsewhere in this Judgement (see *infra*, fn. 3448).
[2856] Trial Judgement, vol. 2, para. 514. See Trial Judgement, vol. 2, para. 487.
[2857] Župljanin Appeal Brief, para. 168.

853. Concerning Župljanin's lack of efforts to remove Drljača,[2858] Župljanin has failed to substantiate his contention that his failure to remove Drljača is "not indicative of any concealed criminal intent on [his] part".[2859] The Appeals Chamber considers that through his undeveloped argument Župljanin has failed to identify an error in the Trial Chamber's reasoning.[2860] His argument is therefore dismissed.

854. Based on the foregoing, the Appeals Chamber finds that Župljanin has not demonstrated that the Trial Chamber erred in its conclusions on Župljanin's decisions to form a commission to inspect the conditions of detention camps, to appoint Vujanić, and not to dismiss Drljača.

c. Alleged errors in considering Župljanin's obstruction of criminal investigations

855. In finding that his orders were not genuinely meant to be effectuated, the Trial Chamber further considered that Župljanin, "at least on two occasions, knowingly misled the public prosecutor in investigations concerning the murder of non-Serbs perpetrated by the Prijedor police".[2861] In particular, it took into account that Župljanin filed criminal reports against unknown perpetrators to the public prosecutor in relation to two incidents of killings at the Manjača detention camp and Koričanske Stijene, without adding any other available details regarding the first incident and without any indication on the possible implication of the Prijedor police in the second incident.[2862] The Trial Chamber also considered that the public prosecutor was "unable to proceed immediately with the prosecution"[2863] since he "needed this information in order to be able to open a criminal investigation".[2864] Regarding Koričanske Stijene, the Trial Chamber added that in an interview with *ABC Nightline* in November 1992, Župljanin stated that there were no survivors to shed light on that incident, when in fact, he was informed since 24 August 1992 that there was a survivor of the incident.[2865] The Trial Chamber also found that while the responsibility for the

[2858] The Appeals Chamber notes that the Trial Chamber considered that Župljanin appointed Drljača as Prijedor SJB Chief on 30 July 1992, with retroactive effect as of 29 April 1992, and that he did not remove Drljača from that role despite having knowledge of the crimes committed in Prijedor (see Trial Judgement, vol. 2, para. 486. See Trial Judgement, vol. 1, para. 507).
[2859] Župljanin Appeal Brief, para. 169.
[2860] The Appeals Chamber recalls that it has upheld the Trial Chamber's finding that Župljanin exercised authority over Drljača (see *supra*, para. 812).
[2861] Trial Judgement, vol. 2, para. 516. See Trial Judgement, vol. 2, para. 517.
[2862] Trial Judgement, vol. 2, para. 516. See Trial Judgement, vol. 2, para. 517.
[2863] Trial Judgement, vol. 2, para. 474.
[2864] See Trial Judgement, vol. 2, para. 465.
[2865] See Trial Judgement, vol. 2, para. 517. See also Trial Judgement, vol. 2, para. 481.

failure of this inquiry did not rest exclusively with Župljanin, he "did what he could to ensure impunity for the perpetrators".[2866]

i. Submissions of the parties

856. Župljanin challenges the Trial Chamber's "heavy reliance" on evidence that he submitted two reports to the public prosecutor's office in relation to the killings at the Manjača detention camp and Korićanske Stijene which concealed the names of persons suspected of perpetrating crimes.[2867] He argues that the two reports provided to the public prosecution outlined the suspected involvement of policemen in those incidents, and appended witnesses' statements, which included the names of all the suspected perpetrators and their probable affiliation with the Prijedor police.[2868] He contends further that the reports ought to be considered along with the many others in which he "identifies crimes and recommends or directs immediate action to address the crimes".[2869]

857. Regarding the Trial Chamber's finding that Župljanin "did what he could to ensure impunity for the perpetrators" of the Korićanske Stijene killings, Župljanin argues that it reflects disregard for the evidence.[2870] He asserts that the Trial Chamber erred in relying on his: (i) failure to indicate in his criminal report to the prosecutor's office that he had grounds to believe that the perpetrators were members of the Prijedor police; and (ii) denial in a media interview that there were survivors of the incident and that it was under investigation.[2871] According to Župljanin, the Trial Chamber "fails to mention that the report to the Prosecutor's Office included the statements of all witnesses to the event, identifying every single suspected perpetrator and their probable affiliation with the Prijedor Police".[2872] Župljanin further submits that failure to disclose details of the investigation on international television is in no way probative that he was obstructing, or intended to obstruct, the investigation.[2873] Finally, he avers that he promptly initiated investigations into the Korićanske Stijene killings.[2874]

[2866] Trial Judgement, vol. 2, para. 517.
[2867] Župljanin Appeal Brief, paras 170 (referring to Trial Judgement, vol. 2, paras 516-517), 176.
[2868] Župljanin Appeal Brief, para. 171. See Župljanin Appeal Brief, para. 176. See also Župljanin Reply Brief, para. 60.
[2869] Župljanin Appeal Brief, para. 171. See Appeal Hearing, 16 Dec 2015, AT. 180-182, 210-211.
[2870] Župljanin Appeal Brief, paras 172-177, quoting Trial Judgement, vol. 2, para. 517. Župljanin contends that no reasonable trier of fact would have "committed such a serious error in appreciating the evidence", particularly where that "evidence is relied on to make such a damning and wide-ranging inference" (Župljanin Appeal Brief, para. 176).
[2871] Župljanin Appeal Brief, para. 175.
[2872] Župljanin Appeal Brief, para. 176, referring to Exhibit P1567, pp 4-13.
[2873] Župljanin Appeal Brief, para. 176.
[2874] Župljanin Appeal Brief, para. 174. Župljanin further submits in this respect that he: (i) attended the crime scene "almost immediately"; (ii) "discovered what he could" about the identity of the perpetrators; (iii) convened a meeting of the police chiefs with jurisdiction over the crime and the suspects and insisted on the prosecution of the perpetrators; (iv) demanded that a survivor of the massacre be brought to him for an interview and handed over safely to the ICRC; (v) submitted a criminal report on the incident to the Banja Luka public prosecutor's office on 8 September 1992 against unidentified perpetrators; (vi) ordered on 11 September 1992 the Prijedor police to take statements from all

858. Župljanin finally asserts that "[i]n order to infer that [he] handled his duties *with the intention* of furthering" the crimes of deportation, other inhumane acts (forcible transfer), and persecutions through the same underlying acts, the Trial Chamber "would have had to eliminate the possibility that": (i) he genuinely believed (albeit mistakenly) that the police officers were re-subordinated to the military, which may have affected the extent of his efforts; (ii) he did the best he felt he could do in all the circumstances; (iii) he was grossly negligent; (iv) he was reckless in respect of the potential impact on future crimes; or (v) his acts, such as not announcing the Korićanske Stijene killings on *ABC Nightline*, were in pursuit of non-criminal goals (*i.e.* "avoiding a public relations disaster or avoiding fear among the non-Serb population in the ARK").[2875]

859. The Prosecution responds that the Trial Chamber reasonably relied upon Župljanin's obstruction of criminal investigations and that Župljanin fails to show an "error of fact undermining these findings".[2876] It argues that the criminal report regarding the murder of eight non-Serbs at Manjača detention camp was submitted with "an unexplained delay" and contained no information on the identity of the victims, the involvement of the Prijedor police, or the fact that the victims had died more than a month before.[2877] In relation to the Korićanske Stijene killings, the Prosecution responds that at no time did Župljanin initiate investigations into the incident "promptly" but "[r]ather, he did all he could to delay, divert and obstruct justice".[2878] The Prosecution provides a number of examples of his delay, diversion, and obstruction of justice, including Župljanin's *ABC Nightline* interview, which allegedly "demonstrates his effort to conceal what he knew of Korićanske Stijene and obstruct further investigation by other interested parties".[2879]

860. In relation to the report concerning the Manjača detention camp, Župljanin replies that the Trial Chamber did not make a finding that the report was submitted after "an unexplained delay" or that it was deficient as a whole.[2880] Župljanin further replies in relation to the Korićanske Stijene killings that the Prosecution "tries to invoke other evidence" that he obstructed the investigation and claims that he "'connived' with Drlja[č]a" which was not the Trial Chamber's finding.[2881]

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those escorting the convoy; and (vii) repeated his request on 7 October 1992 after the Prijedor police chief obstructed the investigation (Župljanin Appeal Brief, para. 174).

[2875] Župljanin Appeal Brief, para. 177.

[2876] Prosecution Response Brief (Župljanin), para. 132.

[2877] Prosecution Response Brief (Župljanin), para. 133.

[2878] Prosecution Response Brief (Župljanin), para. 134.

[2879] Prosecution Response Brief (Župljanin), para. 134.

[2880] Župljanin Reply Brief, para. 60. Župljanin submits that the Prosecution makes speculative arguments "which the Appeals Chamber would have to assess on a *de novo* basis" (Župljanin Reply Brief, para. 60).

[2881] Župljanin Reply Brief, para. 61. According to Župljanin, "[t]he Prosecution's imputations to [him] are unfair and disregard the clear evidence of [his] genuine disgust at this event and his vigorous efforts – obstructed by Drlja[č]a with the assistance of the military – to bring the perpetrators to justice" (Župljanin Reply Brief, para. 61).

ii. Analysis

861. Turning first to the killings near the Manjača detention camp, the Appeals Chamber observes that, contrary to Župljanin's submission, the annexes to the criminal report filed by Župljanin – an exhibit that the Trial Chamber considered extensively[2882] – did not name the suspected perpetrators.[2883] Instead, as noted by the Trial Chamber, the annexes contain statements of two policemen who had escorted a convoy of several buses transporting detainees from Omarska detention camp to Manjača detention camp.[2884] The Trial Chamber further noted that, according to these two policemen's statements, the detainees spent the night in the buses, waiting to be admitted into the Manjača detention camp, but during the night several prisoners died.[2885]

862. In addition, Župljanin's argument ignores the Trial Chamber's reasoning, which he does not otherwise challenge, that when a criminal report was filed against unknown perpetrators the investigation could not proceed.[2886] In this respect, the Appeals Chamber notes that the Trial Chamber considered that Župljanin filed a criminal report on 28 August 1992 to the public prosecutor Marinko Kovačević ("Witness M. Kovačević") concerning this incident.[2887] The Trial Chamber noted that the criminal report stated that there "were reasonable grounds for suspicions that unknown perpetrators had killed eight so far unidentified persons".[2888] The Trial Chamber further considered the testimony of Witness M. Kovačević that the report contained no information on: (i) the identity of the victims or that they had died at Manjača in the night of 6 to 7 of August 1992; or (ii) the involvement of the Prijedor police.[2889] The Trial Chamber also noted Witness M. Kovačević's testimony that he sent back the file to the police for further investigation to uncover the identity of the perpetrators since he needed that information to be able to open a criminal investigation.[2890] Accordingly, Župljanin has not shown that no reasonable trier of fact could have found that the criminal report he submitted on 26 August 1992 to the public prosecutor of Banja Luka was against unknown perpetrators.[2891] He has also not shown that the Trial Chamber

[2882] See Trial Judgement, vol. 2, para. 465.
[2883] Exhibit 2D71, pp 13-14.
[2884] Trial Judgement, vol. 2, para. 465, referring to Exhibit 2D71, pp 13-14.
[2885] Trial Judgement, vol. 2, para. 465, referring to Exhibit 2D71, pp 13-14. The Trial Chamber also noted the policemen's statement that a lieutenant colonel told them that the bodies should be dumped into the Vrbas river (Trial Judgement, vol. 2, para. 465, referring to Exhibit 2D71, pp 13-14).
[2886] See Trial Judgement, vol. 2, para. 465.
[2887] Trial Judgement, vol. 2, paras 465 (referring to Marinko Kovačević, 2 Sep 2010, T. 14143-14145, Exhibits 2D71, P1574), 516.
[2888] Trial Judgement, vol. 2, para. 465, referring to Marinko Kovačević, 2 Sep 2010, T. 14142, Exhibits 2D71, pp 1-2.
[2889] Trial Judgement, vol. 2, para. 465. See Trial Judgement, vol. 2, para. 516.
[2890] Trial Judgement, vol. 2, para. 465, referring to Marinko Kovačević, 2 Sep 2010, T. 14156-14158, Exhibits 2D71, p. 22.
[2891] In addition, Župljanin's argument that the report ought to be considered along with the many others in which he "identifies crimes and recommends or directs immediate action to address the crimes" is unsupported by any reference to the evidence on the records or to the Trial Chamber's findings (see Župljanin Appeal Brief, para. 171).

erred in relying on this report to reach the conclusion that he knowingly misled the public prosecutor in investigations concerning the murder of non-Serbs perpetrated by the Prijedor police.[2892]

863. Turning to the Koricanske Stijene killings, the Appeals Chamber observes that, contrary to Župljanin's assertion, the annexes to the report – an exhibit that the Trial Chamber considered[2893] – neither identify the perpetrators nor provide detailed accounts of this incident.[2894] In particular, the Appeals Chamber observes that the annexes contain the statements of seven witnesses, of whom five were Bosnian Muslims survivors of the Koricanske Stijene killings and two were reserve policemen.[2895] The statements of the victims do not identify any of the perpetrators, beyond indicating that they were from the police.[2896] The Appeals Chamber notes that the statements of the two reserve policemen identify the perpetrators as a "group of six or seven policemen in blue police uniforms", commanded by a police officer with a red baseball cap.[2897] Accordingly, Župljanin's assertion that the "report to the Prosecutor's Office included the statements of all witnesses to the event, identifying every single suspected perpetrator and their probable affiliation with the Prijedor Police", has no support in the evidence.

864. In addition, the Appeals Chamber notes that with respect to the Koricanske Stijene killings, Župljanin ignores once more the Trial Chamber's reasoning that when a criminal report was filed against unknown perpetrators the prosecution could not proceed.[2898] The Appeals Chamber notes that the Trial Chamber considered that Župljanin submitted a criminal report regarding the Koricanske Stijene killings to the Banja Luka Public Prosecutor Office on 8 September 1992 but that it was filed against "unidentified perpetrators",[2899] notwithstanding his knowledge of the identity of the perpetrators and detailed information regarding the killings.[2900] The Trial Chamber

[2892] Trial Judgement, vol. 2, para. 516.
[2893] See Trial Judgement, vol. 2, para. 474.
[2894] Exhibit P1567, pp 5-13.
[2895] Exhibit P1567, pp 5-13.
[2896] See Exhibit P1567, pp 6-9, 11-12.
[2897] Exhibit P1567, p. 5. See Exhibit P1567, p. 10.
[2898] Trial Judgement, vol. 2, para. 474.
[2899] Trial Judgement, vol. 2, para. 474. See Trial Judgement, vol. 2, para. 517 (where the Trial Chamber incorrectly mentions the date of this report as 8 October 1992).
[2900] Trial Judgement, vol. 2, paras 469, 517. See Trial Judgement, vol. 2, para. 466. See also Trial Judgement, vol. 1, para. 674. In particular, the Trial Chamber considered that within two days of the incident, Chief of the Skender Vakuf SJB, Witness Nenad Krejić, informed Župljanin of the incident and that Prijedor police officers had admitted to the killings (see Trial Judgement, vol. 2, paras 469, 478). It further considered that at the meeting chaired by Župljanin on 24 August 1992, "there was open acknowledgment [...] that policemen from Prijedor had committed the killings" (Trial Judgement, vol. 2, para. 470). The Appeals Chamber notes Župljanin's challenge to the Trial Chamber's finding on the basis that the Skender Vakuf police were resubordinated to the military (see Župljanin Appeal Brief, para. 172). The Appeals Chamber however finds this point to be immaterial to the issue at hand since the Trial Chamber's finding that Župljanin knowingly misled the public prosecutor regarding the Koricanske Stijene killings was not based on his authority over the Skender Vakuf police, but on the finding that he withheld information (Trial Judgement, vol. 2, para. 517).

also noted that the deputy basic prosecutor in Banja Luka testified that he received the criminal report but was unable to proceed immediately with the prosecution since the perpetrators were unknown.[2901]

865. The Appeals Chamber also finds no merit in Župljanin's assertion that he promptly initiated investigations into the Korićanske Stijene killings.[2902] In addition to the filing of a criminal report against unknown perpetrators, the Trial Chamber considered evidence that Župljanin and others met the day following the incident with the "policemen involved in the incident",[2903] that no statements were taken from them, and that they were not questioned about the events.[2904] Further, it considered that Župljanin issued orders to take written statements from members of the Prijedor police who had escorted the convoy only 20 days after the incident and that no such statements were taken.[2905] The Trial Chamber also considered that Župljanin and Drljača went to Korićanske Stijene along with a unit in an unsuccessful attempt to remove the bodies from the gorge and noted the evidence of one witness who did not see an investigating judge or other representative of an investigative organ at the site.[2906] Accordingly, the Appeals Chamber is of the view that Župljanin selectively quotes the Trial Judgement and merely disagrees with the Trial Chamber's conclusion that he obstructed the Korićanske Stijene investigation, without demonstrating any error.

866. Regarding the Trial Chamber's alleged error in relation to Župljanin's television interview, the Appeals Chamber notes that, in concluding that Župljanin did what he could to ensure impunity for the perpetrators of the Korićanske Stijene killings, the Trial Chamber considered, *inter alia*, Župljanin's interview with *ABC Nightline* which aired on an unspecified date in November 1992.[2907] The Trial Chamber observed that in the interview Župljanin "stated that there were no living witnesses to confirm or deny the killing incident at Korićanske Stijene" and that the investigations were ongoing.[2908] The Trial Chamber also considered that contrary to what he stated in this interview, Župljanin was informed on 24 August 1992 that there was a survivor from the incident.[2909] In light of these findings that show that he publicly denied the existence of a survivor who could have shed light on the incident, the Appeals Chamber finds no merit in Župljanin's

[2901] Trial Judgement, vol. 2, para. 474.
[2902] See *supra*, para. 857.
[2903] Trial Judgement, vol. 2, para. 468.
[2904] Trial Judgement, vol. 2, para. 468, referring to Exhibit P1569.
[2905] See Trial Judgement, vol. 2, paras 475-476.
[2906] Trial Judgement, vol. 2, para. 470.
[2907] See Trial Judgement, vol. 2, paras 481, 517.
[2908] Trial Judgement, vol. 2, para. 481.
[2909] See Trial Judgement, vol. 2, paras 481, 517. The Trial Chamber considered that "Nenad Krejić testified that he was unaware of when the *ABC* interview actually took place, but that, having turned over a survivor to Župljanin, he knew that Župljanin was aware that there were survivors" (Trial Judgement, vol. 2, para. 481, referring to Nenad Krejić, 1 Sep 2010, T. 14070-14071).

argument that this interview is in no way probative that he was obstructing, or intended to obstruct, the investigation. His arguments in this respect are dismissed.

867. Insofar as Župljanin alleges that the Trial Chamber "would have had to eliminate" a number of alternative inferences in order to infer that he handled his duties with the intention of furthering the JCE,[2910] the Appeals Chamber considers that Župljanin misunderstands the standard of proof for circumstantial evidence. The Appeals Chamber recalls that a trial chamber does not have to discuss other inferences it may have considered, as long as it is satisfied that the inference it retained was the only reasonable one.[2911] The Appeals Chamber also observes in this regard that Župljanin simply refers to the existence of alternative inferences but has failed to point to evidence or Trial Chamber findings to support his contention.

868. In light of the above, the Appeals Chamber finds that Župljanin has failed to demonstrate that no reasonable trier of fact could have found that on at least two occasions, Župljanin knowingly misled the public prosecutor in investigations concerning the murder of non-Serbs perpetrated by the Prijedor police.

d. Conclusion

869. For the foregoing reasons, the Appeals Chamber finds that Župljanin has failed to demonstrate that no reasonable trier of fact could have found that he issued general and ineffective orders that were not genuinely meant to be effectuated. Similarly, he has failed to show that the Trial Chamber erred in relying on this finding to conclude that Župljanin failed to protect the non-Serb population.

(vi) Conclusion

870. Based on the foregoing, the Appeals Chamber finds that Župljanin has failed to demonstrate that no reasonable trier of fact could have found that he failed to launch criminal investigations, to discipline subordinates who had committed crimes against non-Serbs, and to protect the non-Serb population. Accordingly, Župljanin has failed to demonstrate that the Trial Chamber erred in relying on these findings to conclude that Župljanin significantly contributed to the JCE and possessed the requisite intent.

[2910] Župljanin Appeal Brief, para. 177.
[2911] *Đorđević* Appeal Judgement, para. 157, referring to *Krajišnik* Appeal Judgement, para. 192.

(c) Alleged errors in relying on Župljanin's knowledge of and role in the unlawful arrests and detentions of non-Serbs in the ARK Municipalities (sub-ground (G), sub-ground (D) in part, and sub-ground (E) in part of Župljanin's first ground of appeal)

871. In determining that Župljanin significantly contributed to the JCE, the Trial Chamber relied on, *inter alia*, its finding that Župljanin was fully aware of, and took part in, the unlawful arrest of non-Serbs and their forcible removal.[2912] In concluding that Župljanin intended to further the JCE, the Trial Chamber also considered that although Župljanin was informed that crimes, including unlawful detention, were being committed on a large scale and issued orders to protect the non-Serb population, he did not take steps to ensure that these orders were in fact carried out.[2913] The Trial Chamber further considered that "Župljanin was aware of the arrests, of their unlawfulness, and that in spite of this he actively contributed to the operation".[2914]

872. In particular, the Trial Chamber found that "Župljanin [...] played a proactive role in the mass arrest operation of non-Serbs in the ARK."[2915] To reach this conclusion, the Trial Chamber relied, together with other evidence,[2916] on Exhibit P583, a letter dated 20 July 1992 ("20 July 1992 Dispatch") whereby Župljanin informed Stanišić that:

> between April and July 1992 the army and the police in the ARK had arrested several thousand citizens of Muslim and Croat nationality as a consequence of combat operations, that for some of them there was no information of involvement in combat or combat-related activities, and that they could be treated as 'hostages' and exchanged for Serb prisoners.[2917]

The Trial Chamber concluded that "Župljanin not only failed to stop the unlawful detention of non-Serbs, but also agreed with it, actively participated in it, and even proposed to use unlawfully detained non-Serbs in prisoners exchanges."[2918]

(i) Submissions of the parties

873. Župljanin submits that the Trial Chamber erred in relying on his acts and omissions in relation to the unlawful arrests and detentions of non-Serbs in the ARK Municipalities to establish that he contributed to the JCE and had the requisite intent as: (i) the arrests and detentions were not unlawful under international law given the circumstances prevailing in the ARK Municipalities between April and August 1992;[2919] and (ii) the 20 July 1992 Dispatch does not support the Trial

[2912] Trial Judgement, vol. 2, para. 518. See Trial Judgement, vol. 2, paras 415-437, 506-512.
[2913] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 415-437, 506-512.
[2914] Trial Judgement, vol. 2, para. 519.
[2915] Trial Judgement, vol. 2, para. 511.
[2916] See Trial Judgement, vol. 2, para. 511.
[2917] Trial Judgement, vol. 2, para. 511.
[2918] Trial Judgement, vol. 2, para. 511.
[2919] Župljanin Appeal Brief, paras 112-121, 125. See Župljanin Appeal Brief, paras 153, 161.

Chamber's conclusion that he agreed with and actively participated in the unlawful detentions.[2920] Župljanin asserts that the Trial Chamber's error, viewed individually or cumulatively with other errors, invalidates its finding of commission through a joint criminal enterprise and occasions a miscarriage of justice.[2921]

874. In particular, Župljanin argues that the Trial Chamber erred in law by relying on the "unanalyzed" premise that the arrests and detentions of non-Serbs in the ARK were unlawful.[2922] Župljanin submits that in an international armed conflict, international law permits the detention of combatants or direct participants in hostilities and the temporary internment of civilians for imperative security reasons.[2923] Župljanin contends that the arrests and detentions in the ARK Municipalities between April and August 1992 were lawful given the prevailing circumstances.[2924] In this respect, he submits that the arrests and detentions in the ARK area were lawful due to the "large numbers of Muslim combatants nestled in the midst of the territory of the ARK [M]unicipalities" between April and August 1992.[2925] He argues that not only was there an armed conflict in the ARK and a declared imminent threat of war in the RS, "but the very survival of the ARK and its inhabitants was in serious doubt during this period".[2926] Župljanin contends that Serb forces were therefore entitled to detain anyone suspected of being a combatant, and in certain areas, acted well within their discretion in arresting any and all Muslim military-aged men both on suspicion of having participated in the armed conflict or because of the likelihood that they may participate in the armed conflict in the future.[2927]

[2920] Župljanin Appeal Brief, paras 122-125.
[2921] Župljanin Appeal Brief, para. 125.
[2922] Župljanin Appeal Brief, paras 113, 121, 125. See Župljanin Reply Brief, para. 51.
[2923] Župljanin Appeal Brief, para. 114, referring to Geneva Convention IV, arts 42 and 78, ICRC Commentary on Geneva Convention IV, art. 42. Župljanin further argues that: (i) individual determinations are not a precondition of internment; (ii) the purpose of internment is "to prevent future danger to the security of the state or the public safety"; (iii) the detention can continue for as long as "the detainee endangers or may be a danger to security"; (iv) a review of such internment is to be made "as soon as possible" and, thereafter, at least "twice yearly" but no exact definition of the requirement of a review as soon as possible has been prescribed; and (v) "[n]o full-blown criminal procedure is required" to review any such internment of civilians (see Župljanin Appeal Brief, paras 115-117, referring to, *inter alia*, *Louie Salama et al. v. Israel Defence Force (IDF) Commander in Judea and Samaria and Judge of the Military Appeals Court*, Case Nos HCJ 5784/03, HCJ 6024/03, HCJ 6025/03, Petition to the Supreme Court Sitting as the High Court of Justice, 11 August 2003, para. 6, *Iad Ashak Mahmud Marab et al. v. IDF Commander in the West Bank and Judea and Samaria Brigade Headquarters*, Case No. HCJ 3239/02, The Supreme Court Sitting as the High Court of Justice, Judgement, 2 May 2003 (*sic*), para. 23, ICRC Commentary on Geneva Convention IV, arts 41 and 43. See also Župljanin Reply Brief, paras 53-54). Finally, Župljanin submits that even assuming at some point the RS breached its obligations under the Geneva Conventions by failing to institute adequate judicial procedures, this failure cannot be attributed to him personally or used as a basis to impute his criminal responsibility (see Župljanin Appeal Brief, paras 113, 117).
[2924] Župljanin Appeal Brief, paras 113, 118-121.
[2925] Župljanin Appeal Brief, para. 119. See Župljanin Appeal Brief, para. 118.
[2926] Župljanin Appeal Brief, para. 119. See Župljanin Appeal Brief, paras 118, 120.
[2927] Župljanin Appeal Brief, para. 120. See Župljanin Reply Brief, paras 50, 55.

875. Župljanin further submits that the Trial Chamber erred by inferring from the 20 July 1992 Dispatch that "he was in favour of holding detainees as 'hostages'".[2928] Župljanin contends that this exhibit reveals to the contrary that he "was very concerned about the detention of individuals on insufficient grounds and the continued detention of all detainees to be adequately reviewed".[2929] Župljanin asserts that the Trial Chamber misread the 20 July 1992 Dispatch, as he did not urge the continued detention of adult men who were not of security interest but was instead alerting his superiors of the need to release them even if a negotiating advantage could not be secured, "lest they be viewed as 'hostages'".[2930] He finally submits that within weeks of the 20 July 1992 Dispatch, a large number of detainees were released.[2931]

876. The Prosecution responds that the Trial Chamber reasonably relied on Župljanin's "proactive role" in the mass arrest of non-Serbs in the ARK in concluding that he significantly contributed to the JCE and shared the intent to further its common criminal purpose.[2932] The Prosecution submits that the Trial Chamber: (i) correctly analysed unlawful arrest and detention under international law;[2933] (ii) reasonably found that the Serb forces arrested and detained non-Serbs in the ARK Municipalities without legitimate grounds, without due process of law, and on a discriminatory basis;[2934] (iii) reasonably concluded that these detentions were unlawful;[2935] and (iv) reasonably concluded that Župljanin knew of, and contributed to, the unlawful arrest and detention of non-Serbs.[2936]

[2928] Župljanin Appeal Brief, para. 122.
[2929] Župljanin Appeal Brief, para. 122, referring to Exhibit P583, pp 1-2.
[2930] Župljanin Appeal Brief, para. 123. Župljanin Appeal Brief, paras 122, 124.
[2931] Župljanin Appeal Brief, para. 123.
[2932] Prosecution Response Brief (Župljanin), para. 110, referring to Trial Judgement, vol. 2, paras 510-511.
[2933] Prosecution Response Brief (Župljanin), para. 101. In particular, the Prosecution submits that: (i) the detention of civilians is an exceptionally severe measure and that there must be a serious and legitimate reason for detainment based on an assessment that the person poses a particular risk to the security of the state; (ii) the mere fact that a man is of military age or a person is a national of, or aligned with, an enemy party cannot be considered a threat to security; (iii) the detention of civilians for security reasons is only justified if security cannot be safeguarded by other less severe means, and lawful detention becomes unlawful if the basic procedural rights of detained civilians are not respected; and (iv) under Article 43 of Geneva Convention IV detained persons are entitled to have their detention reviewed at the earliest possible moment by an administrative board offering the necessary guarantees of independence and impartiality (Prosecution Response Brief (Župljanin), paras 96-99, referring to, *inter alia*, *Čelebići* Appeal Judgement, paras 327-328, ICRC Commentary to Geneva Convention IV, art. 43).
[2934] Prosecution Response Brief (Župljanin), para. 102.
[2935] Prosecution Response Brief (Župljanin), para. 102. See Prosecution Response Brief (Župljanin), para. 103. In support of this submission, the Prosecution highlights various findings of the Trial Chamber, including: (i) with a few exceptions, the detainees were Muslims or Croats; (ii) arrests were accompanied with ethnic slurs and derogatory terms and detainees were forced to make Serb greeting signs or sign Serb songs; (iii) the majority of detainees were not informed of the reason for their arrest, or formally processed or charged with any offence; (iv) the majority of detainees were unarmed at the time of arrest and there was no indication of involvement in armed rebelling or subversive activities; and (v) detainees included women, children, elderly, the mentally impaired, and persons too sick or weak to take part in combat activities as well as prominent members of the local Muslim and Croat communities (Prosecution Response Brief (Župljanin), para. 102).
[2936] Prosecution Response Brief (Župljanin), para. 104, referring to Trial Judgement, vol. 2, paras 415, 417, 424, 435, 506, 508, 511. See Prosecution Response Brief (Župljanin), para. 110.

877. Regarding the 20 July 1992 Dispatch, the Prosecution responds that Župljanin's interpretation of the exhibit is "nonsensical", and that none of his proposals made in the 20 July 1992 Dispatch suggested that detainees should be released or that their detention be adequately reviewed.[2937] The Prosecution also submits that Župljanin fails to cite any evidence in support of his submission that a large number of detainees were released following the 20 July 1992 Dispatch and that the Trial Chamber made no such findings.[2938]

878. Župljanin replies that the Prosecution's characterisation of the 20 July 1992 Dispatch is false and that no reasonable trial chamber could have adopted "the highly prejudicial interpretation" of the 20 July 1992 Dispatch given the other reasonable interpretations available, particularly "without relying on any testimonial confirmation of its own interpretation".[2939]

(ii) Analysis

879. The Appeals Chamber observes that a plain reading of the Trial Judgement shows that when assessing Župljanin's contribution to the JCE and his intent, the Trial Chamber relied on his knowledge of, and his role in, the unlawful arrests and subsequent detentions of non-Serbs in the ARK Municipalities,[2940] which the Trial Chamber found constituted the crime of persecutions through unlawful detention as a crime against humanity pursuant to Article 5(h) of the Statute.[2941] In this respect, the Trial Chamber stated that it "construe[d] the charges of unlawful detention in the Indictment as charges of the crime of imprisonment",[2942] a crime against humanity under Article 5(e) of the Statute.[2943] The Trial Chamber further held that:

> [i]n order to prove the crime of imprisonment as persecution, as a crime against humanity, the Prosecution must prove the general requirements of a crime against humanity, the specific requirements of persecution, and the following elements of the underlying offence: (a) an individual is deprived of his or her liberty; (b) the deprivation of liberty is carried out arbitrarily, that is, there is no legal basis for it; and, (c) the perpetrator acted with the intent to deprive the individual arbitrarily of his or her liberty.[2944]

[2937] Prosecution Response Brief (Župljanin), para. 106. The Prosecution argues that Župljanin made similar submissions regarding this exhibit at trial, which the Trial Chamber reasonably rejected (Prosecution Response Brief (Župljanin), para. 107).
[2938] Prosecution Response Brief (Župljanin), para. 109.
[2939] Župljanin Reply Brief, para. 56.
[2940] Trial Judgement, vol. 2, paras 506-512, 518-519.
[2941] See Trial Judgement, vol. 1, paras 222-223, 227, 347-349, 700-702, 811, 816.
[2942] Trial Judgement, vol. 1, para. 77.
[2943] Trial Judgement, vol. 1, para. 80. See Trial Judgement, vol. 1, para. 79.
[2944] Trial Judgement, vol. 1, para. 78, referring to *Gotovina et al.* Trial Judgement, para. 1815, *Krajišnik* Trial Judgement, para. 752. See also Trial Judgement, vol. 1, para. 79, referring to *Kordić and Čerkez* Appeal Judgement, para. 116, where the Trial Chamber noted that "[t]he Appeals Chamber ha[d] held that imprisonment, in the context of Article 5(e), should be understood as 'arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law'".

880. Moreover, the Appeals Chamber notes that in the legal findings sections concerning the alleged crimes in each of the ARK Municipalities, the Trial Chamber found that non-Serbs were arbitrarily arrested and detained by Serb forces in the ARK Municipalities, *i.e.* without any legal ground for such detentions, and on a discriminatory basis, and concluded that they were unlawfully detained.[2945] The Appeals Chamber further notes that the Trial Chamber conducted detailed factual analyses of evidence in this respect in relation to all ARK Municipalities.[2946] In light of the above, the Appeals Chamber dismisses Župljanin's argument that the Trial Chamber's conclusions with regard to the lawfulness of the detentions of non-Serbs were "unanalyzed".[2947]

881. Turning to Župljanin's argument that the arrests and detentions of non-Serbs in the ARK Municipalities were lawful under the Geneva Conventions, the Appeals Chamber observes that Župljanin merely refers to the provisions of the Geneva Conventions containing the law on international armed conflict,[2948] without explaining why the Trial Chamber's reliance on the law applicable to the crime of imprisonment as a crime against humanity under Article 5(e) of the Statute to establish the unlawfulness of the detentions was erroneous.

882. In any event, and to the extent that Župljanin's argument can be understood to assert that because of the existence of an international armed conflict,[2949] the Geneva Conventions are the applicable law for determining the lawfulness of the detention, the Appeals Chamber finds it unnecessary to address the issue. The Appeals Chamber notes in this regard that while Župljanin refers to the provisions of the Geneva Conventions applicable to international armed conflict, he does not explain why he believes that the armed conflict in this case was of an international character. Even if the Appeals Chamber were to consider that these provisions of the Geneva Conventions are applicable in the circumstances of this case, Župljanin's assertion that the detentions were lawful given the prevailing circumstances in the ARK Municipalities is undeveloped and he has failed to identify the Trial Chamber's findings he challenges or any relevant evidence in support of his contention.

[2945] Trial Judgement, vol. 1, paras 222-223 (Banja Luka municipality), 282 (Donji Vakuf municipality), 347 (Ključ municipality), 491 (Kotor Varoš municipality), 700 (Prijedor municipality), 811 (Sanski Most municipality), 880 (Teslić municipality).

[2946] For the factual findings, see Trial Judgement, vol. 1, paras 201-202 (Banja Luka municipality), 262 (Donji Vakuf municipality), 332 (Ključ municipality), 455, 474-476, 480 (Kotor Varoš municipality), 659-660 (Prijedor municipality), 785-786, 796 (Sanski Most municipality), 868, 870 (Teslić municipality).

[2947] Župljanin Appeal Brief, para. 113.

[2948] Župljanin Appeal Brief, paras 114-117, referring to Geneva Convention IV, arts 42, 78, ICRC Commentary on Geneva Convention IV, arts 41-43.

[2949] Župljanin Appeal Brief, para. 119. See Župljanin Appeal Brief, para. 114. In this regard, the Appeals Chamber notes that Župljanin points to the Trial Chamber's finding that an armed conflict existed on the territory of the BiH during the Indictment period (Župljanin Appeal Brief, para. 119, referring to Trial Judgement, vol. 1, para. 340. See Trial Judgement, vol. 1, para. 132).

883. Specifically, Župljanin has failed to identify any relevant evidence supporting his claim that there were a large number of non-Serb combatants engaged in hostilities in the ARK area.[2950] He also does not point to any Trial Chamber findings or evidence on the record that would support his assertion that the majority of these detainees could reasonably be perceived as a threat, or a future threat, to security.[2951] Finally, his unsubstantiated submission that arresting any and all Muslim military-aged men on the basis of a general suspicion of having participated in the armed conflict or because of the likelihood that they may participate in the armed conflict was lawful,[2952] is based on a misunderstanding of the provisions of the Geneva Conventions[2953] and misrepresents the Trial Chamber's findings. In this regard, the Appeals Chamber notes the Trial Chamber's findings that: (i) the vast majority of the persons detained were not involved in military activities or in armed rebellion;[2954] (ii) a large number of detainees were deprived of liberty without any legal basis, were not formally charged or notified of the reason for their arrest and detention;[2955] and (iii) the detainees included women, children, the elderly, and infirm.[2956]

884. In light of the foregoing, the Appeals Chamber finds that Župljanin has not demonstrated that the Trial Chamber erred in finding that, in the circumstances of this case, the detentions of non-Serbs in the ARK Municipalities were unlawful and dismisses all his arguments in relation to the application of the Geneva Conventions to the facts prevailing in the ARK Municipalities between April and August 1992.[2957]

885. With respect to Župljanin's submission that the Trial Chamber erred by inferring from the 20 July 1992 Dispatch that "he was in favour of holding detainees as 'hostages'",[2958] the Appeals Chamber observes that Župljanin merely seeks to offer another interpretation of the words "so they can be treated as hostages"[2959] as meaning "lest they be viewed as 'hostages'".[2960] The Appeals

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[2950] The Appeals Chamber notes that Župljanin solely refers to paragraph 300 of volume 1 of the Trial Judgement to support his argument that a large number of non-Serbs combatants engaged in hostilities in the ARK area (Župljanin Appeal Brief, para. 118). However, the Appeals Chamber fails to see how the fact that Witness Nikola Vračar testified that he saw 30 armed Muslim wearing TO uniforms on 27 May 1992 in front of the cultural centre of the village Pudin Han would be sufficient to establish that a large number of non-Serbs combatants engaged in hostilities in the ARK area.

[2951] See Župljanin Appeal Brief, paras 118-120.

[2952] Župljanin Appeal Brief, paras 114-120.

[2953] Compare Župljanin Appeal Brief, paras 119-120 with *Čelebići* Appeal Judgement, para. 327 where the Appeals Chamber held that it is perfectly clear from the provisions of Geneva Convention IV that there is no blanket power to detain the entire civilian population of an enemy party to a conflict on the assumption that this entire civilian population necessarily constitutes a threat to security, but that there must be an assessment that each civilian taken into detention poses a particular risk to the security of the State. See *Čelebići* Appeal Judgement, para. 330.

[2954] See *e.g.* Trial Judgement, vol. 1, paras 177-179, 223, 332.

[2955] See *e.g.* Trial Judgement, vol. 1, paras 179, 223, 262, 303, 332, 407, 474, 476, 659, 765, 796, 811.

[2956] See *e.g.* Trial Judgement, vol. 1, paras 178, 223, 428, 523, 659, 786.

[2957] For Župljanin's arguments in relation to the application of the Geneva Conventions to the facts prevailing in the ARK Municipalities between April and August 1992, see *supra*, para. 874.

[2958] Župljanin Appeal Brief, para. 122.

[2959] Župljanin Appeal Brief, para. 122, referring to Exhibit P583, pp 1-2.

Chamber notes that a plain reading of the 20 July 1992 Dispatch does not support Župljanin's interpretation.[2961] The Appeals Chamber is satisfied that a reasonable trier of fact could have concluded, based on this evidence, that Župljanin proposed to treat non-Serb detainees as hostages and to use them in prisoner exchanges.[2962] Moreover, the Appeals Chamber notes that Župljanin does not refer to any evidence to support his factual claim that within weeks of the 20 July 1992 Dispatch a large number of detainees were released.[2963] Finally, with regard to the alleged absence of "testimonial confirmation",[2964] the Appeals Chamber recalls that a trial chamber has the discretion to rely on uncorroborated evidence and to decide in the circumstances of each case whether corroboration is necessary.[2965] Accordingly, the Appeals Chamber dismisses Župljanin's arguments in relation to the 20 July 1992 Dispatch.

(iii) Conclusion

886. In light of the foregoing, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber erred in concluding that the arrests and detentions of non-Serbs in the ARK Municipalities were unlawful and in its assessment of the 20 July 1992 Dispatch. Župljanin does not put forth any other argument supporting his general allegation that the Trial Chamber erred in relying on his knowledge of and role in the unlawful arrests and detentions to establish his contribution to the JCE and his intent. Accordingly, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber erred in this respect.

[2960] Župljanin Appeal Brief, para. 123.
[2961] The Appeals Chamber observes that in the 20 July 1992 Dispatch, Župljanin expressly outlined that there were three categories of mostly military aged men detained, with "the third category [being] made of adult men on which, so far, the Service doesn't have any information of security interest for us, so they can be treated as hostages" (Exhibit P583, p. 1). Župljanin then expressly proposed "to exchange military aged [men] of no security interest to [them], who can be treated only as hostages, for citizens of Serbian nationality who have been detained in camps held by Muslim-Croatian forces, according to the same criteria" (Exhibit P583, p. 2).
[2962] Trial Judgement, vol. 2, paras 435, 511. The Appeals Chamber also observes that the 20 July 1992 Dispatch constitutes direct evidence and not circumstantial evidence and that consequently, the Trial Chamber was not required to determine that its conclusion was the only reasonable inference available from the evidence (*Čelebići* Appeal Judgement, para. 458). In light of the above, the Appeals Chamber dismisses Župljanin's submission that the Trial Chamber was required but failed to eliminate all other reasonable interpretations of the 20 July 1992 Dispatch (see Župljanin Reply Brief, para. 56).
[2963] See Župljanin Appeal Brief, para. 123.
[2964] Župljanin Reply Brief, para. 56.
[2965] *Đorđević* Appeal Judgement, para. 858, fn. 2505; *Gatete* Appeal Judgement, para. 138.

(d) Alleged errors in relying on Župljanin's attendance at the Holiday Inn Meeting, his role in the takeovers of the ARK Municipalities and the blockade of Banja Luka, and his close ties with SDS political leaders (sub-ground (D) in part and sub-ground (E) in part of Župljanin's first ground of appeal)

887. In concluding that Župljanin significantly contributed to the JCE, the Trial Chamber considered, together with other factors, that Župljanin created a unit, the Banja Luka CSB SPD, which he used to assist other Serb forces in the takeovers of the ARK Municipalities.[2966] In finding that Župljanin intended to further the JCE, the Trial Chamber "primarily" considered Župljanin's acts in relation to, *inter alia*, his: (i) attendance at the Holiday Inn Meeting where he was scheduled to meet Karadžić;[2967] (ii) ties to the SDS;[2968] and (iii) key role in the blockade of Banja Luka by the SOS on 3 April 1992.[2969]

(i) Submissions of the parties

888. Župljanin disputes the Trial Chamber's reliance on the above-mentioned positive acts to conclude that he significantly contributed to the common criminal purpose and/or to infer that he had the requisite intent pursuant to the first category of joint criminal enterprise.[2970] In particular, Župljanin argues that the Trial Chamber erred in relying on his: (i) attendance at the Holiday Inn Meeting;[2971] (ii) participation in the takeovers of the ARK Municipalities and his role in the blockade of Banja Luka;[2972] and (iii) close ties with SDS political leaders.[2973] Župljanin argues that

[2966] Trial Judgement, vol. 2, para. 518. See Trial Judgement, vol. 2, paras 501-505. See also Trial Judgement, vol. 2, paras 384-398, 405-406.
[2967] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 352, 495.
[2968] Trial Judgement, vol. 2, para. 519. According to the Trial Chamber, Župljanin's ties to the SDS were demonstrated by "the unreserved support" he received from SDS leaders in the ARK to his appointment as Chief of the Banja Luka CSB and interactions with other SDS members (Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 349-353 (with respect to support Župljanin received from SDS leaders), 399, 452, 454, 495 (referring to Župljanin's interaction with SDS members). The Trial Chamber also referred to Župljanin's role in ensuring the implementation of the orders of the ARK Crisis Staff, of which he was a member (see Trial Judgement, vol. 1, paras 147-148, 200; Trial Judgement, vol. 2, paras 276-278, 353, 495, 500) and noted that "top leaders [of the ARK Crisis Staff] included prominent SDS members Radoslav Brđanin and Vojislav Kupreŝanin, both found by the Trial Chamber to have been members of the JCE" (Trial Judgement, vol. 2, para. 500).
[2969] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 495-499. See also Trial Judgement, vol. 1, paras 147-156, 200, Trial Judgement, vol. 2, paras 399-404.
[2970] Župljanin Appeal Brief, paras 139, 152, 154-155, 157-160. In connection with Župljanin's involvement in the creation of the Banja Luka CSB SPD and his use of this unit in the takeovers of the ARK Municipalities, the Appeals Chamber recalls that it has already rejected Župljanin's submissions that the Trial Chamber erred in finding that he exercised complete authority over the Banja Luka CSB SPD (see *supra*, paras 821-836. See also Župljanin Appeal Brief, paras 140-151). Furthermore, although Župljanin appears to challenge the Trial Chamber's reliance on his role in the disarming of the non-Serb population in the ARK Municipalities, he does not develop this argument anywhere in his appeal brief (see Župljanin Appeal Brief, para. 139, p. 76 (the title of sub-section (iv) within the section on sub-ground (D) of Župljanin's first ground of appeal)). Therefore, the Appeals Chamber does not consider that this argument warrants any further discussion.
[2971] Župljanin Appeal Brief, paras 157-158.
[2972] Župljanin Appeal Brief, paras 152, 157, 159.
[2973] Župljanin Appeal Brief, paras 157, 160.

these positive acts are not probative of anything more than the lawful objective of "setting up and defending a separate political entity in the ARK" and "did not require recourse to any criminal means to be carried out".[2974]

889. Župljanin challenges the Trial Chamber's reliance on his alleged attendance at the Holiday Inn Meeting in inferring his intent.[2975] Župljanin contends that the Trial Chamber made no findings, and no evidence was presented, about the content of any conversations between himself and Karadžić.[2976] According to Župljanin, even if the Trial Chamber correctly determined that he had a conversation with Karadžić, "[i]t would be a gross fallacy to infer that the content of that [*sic*] any discussion involving [him] – which could have been quite brief, according to the available evidence – included discussing the adoption of criminal methods merely because crimes were committed during the intense military conflict that ensued."[2977]

890. Župljanin also challenges the Trial Chamber's findings on his role in the blockade of Banja Luka and the takeovers of the ARK Municipalities,[2978] arguing that the blockade and the takeovers were neither unlawful nor criminal under international law and therefore, not probative of any contribution to the JCE or criminal intent.[2979] In relation to the Trial Chamber's finding that Župljanin had close ties with the SDS, he argues that it is likewise not probative of criminal intent since most leading Bosnian Serb politicians in the ARK or RS had contacts and were affiliated with the SDS and that "it would have been simply impossible to function as a police chief [...] without having extensive contacts with SDS leaders".[2980] He further argues that the Trial Chamber's reliance on this factor to prove criminal intent is "misguided" as it "comes dangerously close to attributing guilt by association".[2981]

891. The Prosecution responds that the Trial Chamber reasonably considered Župljanin's positive conduct when finding that he significantly contributed to the JCE and intended to further the JCE.[2982] The Prosecution argues that the Trial Chamber reasonably established that Župljanin

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[2974] Župljanin Appeal Brief, paras 157-158. See Župljanin Appeal Brief, paras 155, 159-161.
[2975] Župljanin Appeal Brief, paras 155, 158.
[2976] Župljanin Appeal Brief, para. 158. See Appeal Hearing, 16 Dec 2015, AT. 161.
[2977] Župljanin Appeal Brief, para. 158; Appeal Hearing, 16 Dec 2015, AT. 161-162.
[2978] Župljanin Appeal Brief, paras 152, 157, 159. Župljanin also reiterates his arguments under sub-ground (D) of his first ground of appeal that he undertook efforts to ensure that crimes committed in the context of the blockade were investigated and prosecuted (Župljanin Appeal Brief, para. 159). See *supra*, paras 821-836.
[2979] Župljanin Appeal Brief, paras 152, 159. Župljanin notes that "[t]he blockade may have been unlawful under the law of Bosnia and Herzegovina (as were most actions of the Bosnian government under SFRY law)" (see Župljanin Appeal Brief, para. 159).
[2980] Župljanin Appeal Brief, para. 160. See Župljanin Appeal Brief, para. 157.
[2981] Župljanin Appeal Brief, para. 160, referring to *Stanišić and Simatović* Trial Judgement, Separate Opinion of Judge Alphons Orie, para. 2415.
[2982] Prosecution Response Brief (Župljanin), paras 111, 125. The Prosecution asserts that Župljanin's contention that "specific incidents, taken out of context, were not probative of his criminal intent" ignores that "[t]he object of the

participated in the Holiday Inn Meeting.[2983] It contends that Župljanin's argument that the Trial Chamber failed to ascertain the content of a private conversation between himself and Karadžić during the Holiday Inn Meeting "misses the point" since it is uncontested that "during the meeting, 'Karadžić called for the formation of municipal executive boards and other municipal organs, followed by mobilisation of Serb Forces to takeover Variant A municipalities and monitor Variant B municipalities'".[2984] It contends that therefore, Župljanin's attendance at the meeting shows his knowledge of and agreement with the SDS policy of violent takeovers which were a "crucial component of the JCE".[2985]

892. The Prosecution further responds that a contribution to a joint criminal enterprise need not be criminal in and of itself,[2986] and that consequently, the question as to whether the blockade of Banja Luka and the takeovers of the ARK Municipalities were illegal under international law is immaterial.[2987] It submits that the Trial Chamber reasonably relied on Župljanin's participation in the Banja Luka blockade to determine his intent, since it demonstrates his "agreement and satisfaction with SOS activities" and "his resolve [...] to use his power to promote and/or to perpetuate crimes against non-Serbs".[2988] Moreover, according to the Prosecution, Župljanin fails to show that the Trial Chamber unreasonably concluded that his assistance to the Serb forces in carrying out the takeovers, taken together with his other conduct, constituted a significant contribution to the common criminal purpose.[2989] It also submits that, contrary to Župljanin's argument that the Trial Chamber relied decisively on his close ties with the SDS leadership, the Trial Chamber reached its conclusion based on extensive evidence and that there was therefore "no danger of 'guilt by association'".[2990]

893. Župljanin replies that even accepting as truthful the evidence of the receipt from the Holiday Inn hotel purporting to show that he stayed there on the night of 14 February 1992 as well as the

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common criminal purpose was indivisible from the agreed criminal means by which it would be achieved" (Prosecution Response Brief (Župljanin), para. 125). According to the Prosecution, Župljanin focuses on irrelevant details and fails to consider the purpose for which the Trial Chamber referred to the incidents (Prosecution Response Brief (Župljanin), para. 126).

[2983] Appeal Hearing, 16 Dec 2015, AT. 199-200.

[2984] Prosecution Response Brief (Župljanin), para. 126, quoting Trial Judgement, vol. 2, para. 495.

[2985] Prosecution Response Brief (Župljanin), para. 126, referring to Trial Judgement, vol. 2, paras 310-311, 313.

[2986] Prosecution Response Brief (Župljanin), paras 122-123. The Prosecution further points out that Župljanin repeats his argument raised under sub-ground (G) of his first ground of appeal that the arrest and detention of non-Serbs in the ARK was lawful (Prosecution Response Brief (Župljanin), para. 123, referring to Župljanin Appeal Brief, para. 153).

[2987] Prosecution Response Brief (Župljanin), paras 122-123.

[2988] Prosecution Response Brief (Župljanin), para. 126, referring to Prosecution Response Brief (Župljanin), paras 29, 122.

[2989] Prosecution Response Brief (Župljanin), para. 122, referring to Trial Judgement, vol. 2, para. 518. It asserts that, in any event, the Trial Chamber's conclusion was "eminently reasonable, especially given its findings 'that the takeovers preceded the mass arrest campaign, imposition of discriminatory measures, forcible transfer, deportation, and the commission of other crimes against the non-Serb population'" (Prosecution Response Brief (Župljanin), para. 122, quoting Trial Judgement, vol. 2, para. 502).

intercept where Karadžić indicates that he might be able to meet with Župljanin "during breaks", it does not demonstrate that Župljanin was present at the meeting.[2991] He contends that the reasonable inference remains that he was present in Sarajevo to meet Karadžić at the breaks but did not attend the Holiday Inn Meeting of the SDS, of which he was not a member.[2992]

(ii) Analysis

894. Regarding Župljanin's argument in relation to his attendance at the Holiday Inn Meeting, the Appeals Chamber observes that the Trial Chamber found that Župljanin was present at the Holiday Inn Meeting where he was scheduled to meet with Karadžić.[2993] In reaching this conclusion, the Trial Chamber considered evidence of a phone conversation of 13 February 1992 between Karadžić and Jovan Čizmović ("Čizmović"), a Serb ARK politician, in which Čizmović asked Karadžić to meet the following day and informed him that "'Stojan' would have liked to come too".[2994] Karadžić replied that they could meet during "breaks".[2995] The Trial Chamber was satisfied that the "Stojan" referred to in the conversation was Župljanin after further considering evidence of a receipt for the stay of members of the SDS assembly at the Holiday Inn hotel for 14 and 15 February 1992.[2996] In particular, the Trial Chamber considered that according to the receipt a number of prominent SDS leaders and a guest named "Župljanin" arrived at the Holiday Inn hotel on 14 February 1992 and departed on the following day.[2997]

895. The Appeals Chamber considers that no reasonable trier of fact could have concluded that the only reasonable inference from the evidence is that Župljanin was present at the Holiday Inn Meeting. In this respect, the Appeals Chamber notes that the Holiday Inn Meeting was a meeting of the Main and Executive Boards of the SDS, to which only SDS members appear to have been invited.[2998] The Trial Chamber made no findings that Župljanin was a member of these boards or of the SDS. In light of this, while it may have been reasonable for the Trial Chamber to conclude on the basis of the phone conversation between Karadžić and Čizmović and the hotel receipt that Župljanin was present at the Holiday Inn hotel on that day, his presence at the hotel does not exclude other reasonable inferences, including for instance, that he met with Karadžić during breaks but did not attend the Holiday Inn Meeting. The Appeals Chamber therefore concludes that the Trial Chamber erred in finding beyond reasonable doubt that Župljanin was present at the Holiday

[2990] Prosecution Response Brief (Župljanin), para. 126.
[2991] Župljanin Reply Brief, para. 59.
[2992] Župljanin Reply Brief, para. 59.
[2993] Trial Judgement, vol. 2, para. 352.
[2994] Trial Judgement, vol. 2, para. 352.
[2995] Trial Judgement, vol. 2, para. 352.
[2996] Trial Judgement, vol. 2, para. 352.
[2997] Trial Judgement, vol. 2, para. 352.

Inn Meeting. It follows that the Trial Chamber erred in relying on this factor when assessing his intent to further the JCE.[2999] The impact of this error will be assessed below.[3000]

896. The Appeals Chamber now turns to Župljanin's challenges with regard to the Trial Chamber's reliance on its findings that he played a key role in the blockade of Banja Luka and assisted other Serb forces in the takeovers of the ARK Municipalities by using the Banja Luka CSB SPD. He argues that these actions were neither illegal nor criminal.[3001] The Appeals Chamber recalls that a contribution to a joint criminal enterprise need not be in and of itself criminal, as long as the accused performs acts that in some way contribute significantly to the furtherance of the common purpose.[3002] In addition, the Appeals Chamber recalls that intent can be proven through inference from circumstantial evidence, as long as it is the only reasonable inference based on the evidence.[3003]

897. In light of this, the lawfulness of the blockade of Banja Luka and of the takeovers of ARK Municipalities is of no relevance to the determination as to whether the Trial Chamber erred in relying on Župljanin's role in these events to establish his contribution to the JCE and his intent. The Appeals Chamber observes that Župljanin does not raise any further challenges to the Trial Chamber's findings that he played a key role in the blockade of Banja Luka and assisted other Serb forces in the takeovers of the ARK Municipalities by using the Banja Luka CSB SPD. Therefore, the Appeals Chamber finds that Župljanin has not demonstrated that the Trial Chamber erred in relying on these findings to establish that he contributed to the JCE and had the requisite intent.

898. The Appeals Chamber next turns to Župljanin's challenge in relation to the Trial Chamber's finding that he had "[c]lose ties with the SDS political leaders".[3004] The Appeals Chamber observes that in inferring Župljanin's intent, the Trial Chamber considered his "ties to the SDS, demonstrated by the unreserved support given by top SDS leaders in the ARK to his appointment as Chief of the CSB and by his interactions with other SDS members".[3005] The Appeals Chamber finds no merit in Župljanin's contention that his ties with the SDS were not probative of criminal intent since most

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[2998] Trial Judgement, vol. 2, paras 237 (referring to, *inter alia*, Exhibit P1841), 352. See Exhibit P1841, p. 1.
[2999] See Trial Judgement, vol. 2, para. 519.
[3000] See *infra*, para. 942. In light of the foregoing, the Appeals Chamber dismisses as moot the remainder of Župljanin's submissions in relation to his attendance at the Holiday Inn Meeting (see Župljanin Appeal Brief, paras 157-158).
[3001] Župljanin Appeal Brief, paras 152, 159. See also Župljanin Appeal Brief, para. 157.
[3002] *Popović et al.* Appeal Judgement, para. 1653; *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696. See *Šainović et al.* Appeal Judgement, paras 1233, 1242. See also *supra*, para. 110.
[3003] *Popović et al.* Appeal Judgement, para. 1369; *Šainović et al.* Appeal Judgement, para. 995; *Krajišnik* Appeal Judgement, para. 202.
[3004] Župljanin Appeal Brief, para. 160. See Župljanin Appeal Brief, para. 157.
[3005] Trial Judgement, vol. 2, para. 519. The Trial Chamber also considered that Župljanin contributed to the implementation of SDS policies in Banja Luka and other ARK Municipalities, among other factors, when inferring his intent (see Trial Judgement, vol. 2, para. 519).

leading Bosnian Serb politicians in the ARK or RS had contacts and were affiliated with the SDS.[3006] The Appeals Chamber considers that Župljanin misrepresents the Trial Chamber's findings. The Trial Chamber did not rely on his general contact and ties with SDS members to infer his intent, but rather on specific interactions he had with some SDS political leaders as well as the "unreserved support" he received from top SDS leaders in the ARK for his appointment as Chief of the CSB.[3007]

899. The Appeals Chamber also considers that the Trial Chamber's finding that Župljanin received unreserved support from top SDS leaders for his appointment as Chief of the CSB and interacted with other SDS members[3008] must be read in conjunction with the fact that the vast majority of the SDS political leaders he was found to have close ties with were also found to be members of the JCE.[3009] In addition, the Appeals Chamber does not agree with Župljanin that the Trial Chamber's reliance on this factor "comes dangerously close to attributing 'guilt by association'".[3010] Župljanin's submission ignores that the Trial Chamber did not solely rely on his close ties with the SDS, but that it was merely one of numerous factors relied upon by the Trial Chamber to infer that he intended to further the JCE.[3011] Accordingly, Župljanin has not shown that the Trial Chamber erred in relying on his close ties with SDS political leaders in assessing his intent for joint criminal enterprise liability.

(iii) Conclusion

900. In light of the foregoing, the Appeals Chamber finds that the Trial Chamber erred in finding beyond reasonable doubt that Župljanin was present at the Holiday Inn Meeting and in relying on

[3006] Župljanin Appeal Brief, para. 160. See Župljanin Appeal Brief, para. 157.
[3007] Trial Judgement, vol. 2, para. 519. See Trial Judgement, vol. 2, paras 349-353 (referring to support Župljanin received from SDS leaders), 399, 452, 454, 495 (referring to Župljanin's interaction with SDS members). See also Trial Judgement, vol. 1, paras 147, 148; Trial Judgement, vol. 2, paras 276-278, 495, 500 (referring to Župljanin's role in ensuring the implementation of the orders of the ARK Crisis Staff (of which he was a member), "whose top leaders included prominent SDS members Radoslav Brđanin and Vojislav Kupreŝanin, both found by the Trial Chamber to have been members of the JCE").
[3008] See Trial Judgement, vol. 2, para. 519.
[3009] Compare Trial Judgement, vol. 2, para. 314 (see *supra*, para. 73) with Trial Judgement, vol. 2, paras 349 (Brđanin), 350 (Kupreŝanin), 352, 452 (Brđanin, Kupreŝanin, Karadžić, and Krajišnik), 495 (Karadžić), 500 (Brđanin and Kupreŝanin).
[3010] See Župljanin Appeal Brief, para. 160.
[3011] The Appeals Chamber notes that in reaching this conclusion, the Trial Chamber considered that Župljanin: (i) played a role in the blockade of Banja Luka; (ii) had ties to the SDS; (iii) contributed to the implementation of SDS policies in Banja Luka and in other municipalities in the ARK; (iv) failed to protect the non-Serb population; (v) enrolment of the SOS in the Banja Luka CSB SPD; (vi) inaction in relation to the crimes committed by this unit; (vii) "statements and actions taken in response to requests for protection by the Muslims of Banja Luka"; (viii) was aware and actively contributed to unlawful arrest operations; and (ix) created a "climate of impunity that encouraged the perpetration of crimes against non-Serbs and made non-Serbs decide to leave the ARK Municipalities" by shielding his subordinates from criminal prosecution (Trial Judgement, vol. 2, para. 519. See *supra*, para. 906). The Appeals Chamber notes that the Trial Chamber also considered that Župljanin attended the Holiday Inn Meeting but recalls its

this factor when assessing his intent to further the JCE. The impact of this error will be assessed below.[3012] The Appeals Chamber further finds that Župljanin has failed to demonstrate any error in the Trial Chamber's reliance on his: (i) participation in the takeovers of the ARK Municipalities and his role in the blockade of Banja Luka; and (ii) close ties with SDS political leaders to conclude that he significantly contributed to the common criminal purpose and/or to infer that he had the requisite intent pursuant to the first category of joint criminal enterprise.

(e) Whether the Trial Chamber erred in concluding that Župljanin significantly contributed to the JCE (sub-ground (C) in part of Župljanin's first ground of appeal)

901. As recalled above, the Trial Chamber assessed Župljanin's contribution to the JCE on the basis of its findings that he: (i) ordered and coordinated the disarming of the non-Serb population in ARK Municipalities; (ii) created the Banja Luka CSB SPD, which he used to assist other Serb forces in the takeovers of the ARK Municipalities; (iii) knew of and took part in the unlawful arrest of non-Serbs and their forcible removal; (iv) failed to launch criminal investigations and to discipline his subordinates who had committed crimes against non-Serbs, creating a climate of impunity which only increased the commission of crimes against non-Serbs; and (v) failed to protect the non-Serb population even when they pleaded with him for protection.[3013] In light of these acts and failures to act, the Trial Chamber concluded that, during the Indictment period, Župljanin significantly contributed to the common objective of the JCE to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serb state.[3014]

(i) Submissions of the parties

902. Župljanin submits that the Trial Chamber placed "heavy reliance on omissions" to find that he significantly contributed to the JCE,[3015] and that the Trial Chamber's errors in failing to apply the correct legal standard for omissions and make necessary findings in this regard is not remedied by the fact that the Trial Chamber relied on a mixture of acts and omissions.[3016] He argues that "the MUP in the ARK was not found to constitute a 'criminal enterprise' so as to convert general actions in support of that organ as constituting the *actus reus*".[3017]

finding that the Trial Chamber erred in relying on this factor when assessing Župljanin's intent to further the JCE (see Trial Judgement, vol. 2, para. 519. See also *supra*, para. 895).
[3012] See *infra*, para. 942.
[3013] Trial Judgement, vol. 2, para. 518.
[3014] Trial Judgement, vol. 2, para. 518.
[3015] Župljanin Appeal Brief, para. 126.
[3016] Župljanin Appeal Brief, para. 136.
[3017] Župljanin Appeal Brief, para. 136. Župljanin also submits that the Trial Chamber relied solely on his position as an official of the RS MUP and the fact that RS MUP organs "committed crimes or failed to prevent crimes" in order to

903. The Prosecution responds that the Trial Chamber correctly convicted Župljanin as a JCE member on the basis of its conclusion that he made a significant contribution to the common criminal purpose.[3018] The Prosecution adds that the Trial Chamber was only required to find that "the totality of Župljanin's conduct (including both actions and omissions) – as opposed to each of his contributions considered separately – constituted a significant contribution to the implementation of the common criminal purpose",[3019] and that Župljanin fails to show any error in the Trial Chamber's assessment.[3020] Finally, the Prosecution contends that the fact that the RS MUP "was not a 'criminal enterprise' is irrelevant to Župljanin's culpability".[3021] It argues that Župljanin was convicted for his "significant and intentional contribution to a common criminal purpose", not for providing support to a broad organisation or for his "mere membership in the MUP".[3022]

(ii) Analysis

904. At the outset, the Appeals Chamber recalls its finding that Župljanin has not shown that the Trial Chamber applied an erroneous legal standard when it considered instances of his failures to act or erred in failing to make necessary findings in this regard.[3023] The Appeals Chamber has also found that none of Župljanin's arguments demonstrate that the Trial Chamber erred in finding that he failed to launch criminal investigations, to discipline his subordinates, and ultimately, to protect the non-Serb population.[3024] Therefore, Župljanin's argument that the Trial Chamber's alleged errors in this respect are not remedied by the fact that the Trial Chamber "relied on a mixture of acts and omissions"[3025] is moot. However, to the extent that his argument can be understood to challenge the Trial Chamber's overall reasoning for its finding that he significantly contributed to the JCE, the Appeals Chamber will address his argument.

905. In this respect, the Appeals Chamber recalls that, in addition to dismissing Župljanin's above-mentioned arguments in relation to his failures to act, it has found that he has not demonstrated that the Trial Chamber erred in its assessment of other factors, namely: (i) his knowledge of and role in unlawful arrest and detention of non-Serbs in the ARK Municipalities;[3026] and (ii) his use of the Banja Luka CSB SPD to assist other Serb forces in the takeovers of the ARK

conclude that he "committed the *actus reus* of the crime committed or not prevented by [RS] MUP organs" (Župljanin Appeal Brief, para. 126).
[3018] Prosecution Response Brief (Župljanin), para. 85.
[3019] Prosecution Response Brief (Župljanin), para. 92.
[3020] Prosecution Response Brief (Župljanin), para. 93.
[3021] Prosecution Response Brief (Župljanin), para. 91, referring to Župljanin Appeal Brief, paras 134, 136.
[3022] Prosecution Response Brief (Župljanin), para. 91.
[3023] See *supra*, paras 734-735.
[3024] See *supra*, para. 870.
[3025] Župljanin Appeal Brief, para. 136.
[3026] See *supra*, para. 886.

Municipalities,[3027], on which it relied to conclude that he significantly contributed to the JCE.[3028] Further, Župljanin has not challenged the Trial Chamber's reliance on his order and coordination of the disarming of the non-Serb population in ARK Municipalities to conclude that he significantly contributed to the JCE.[3029] Župljanin's argument that "the MUP in the ARK was not found to constitute a 'criminal enterprise' so as to convert general actions in support of that organ as constituting the *actus reus*"[3030] is unsupported by a plain reading of the Trial Judgement. The Trial Chamber specifically identified Župljanin's conduct it considered to be demonstrative of his significant contribution to the JCE, which was not based on his mere support to the MUP.[3031] Noting that Župljanin does not advance any other allegations of error, the Appeals Chamber finds that he has not shown that no reasonable trier of fact could have found that Župljanin significantly contributed to the JCE.

(f) Whether the Trial Chamber erred in concluding that Župljanin possessed the requisite intent pursuant to the first category of joint criminal enterprise (sub-ground (E) in part and sub-ground (F) in part of Župljanin's first ground of appeal)

(i) Introduction

906. The Trial Chamber concluded that Župljanin, who was found to be a member of the JCE starting at least in April 1992 and throughout the rest of 1992, intended through his acts and omissions, with other members of the JCE, to achieve the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of the JCE I Crimes.[3032] In reaching this conclusion, the Trial Chamber "primarily considered" that Župljanin: (i) played a role in the blockade of Banja Luka; (ii) had ties to the SDS; (iii) attended the Holiday Inn Meeting; and (iv) contributed to the implementation of SDS policies in Banja Luka and in other municipalities in the ARK.[3033] The Trial Chamber also considered Župljanin's failure to protect the non-Serb population, which it found "formed part of the decision to discriminate against them and force them to leave the ARK Municipalities, and was not merely the consequence of simple negligence".[3034] It considered this factor in conjunction with his: (i) enrolment of the SOS in the Banja Luka CSB SPD; (ii) inaction in relation to the crimes committed by this unit; and

[3027] See *supra*, para. 900.
[3028] See Trial Judgement, vol. 2, para. 518.
[3029] See *supra*, fn. 2970.
[3030] Župljanin Appeal Brief, para. 136. See Župljanin Appeal Brief, para. 126.
[3031] See Trial Judgement, vol. 2, para. 518; *supra*, para. 901.
[3032] Trial Judgement, vol. 2, para. 520. The Trial Chamber also considered that Župljanin's acts were voluntary (Trial Judgement, vol. 2, para. 519). See Trial Judgement, vol. 2, para. 518 (finding that Župljanin's contributions to the JCE started on 1 April 1992 and continued "throughout the rest of the year" and concluding that "during the Indictment period" Župljanin significantly contributed to the common purpose of the JCE).
[3033] Trial Judgement, vol. 2, para. 519.

(iii) "statements and actions taken in response to requests for protection by the Muslims of Banja Luka".[3035] The Trial Chamber further found that Župljanin was aware and actively contributed to unlawful arrest operations, and created a "climate of impunity that encouraged the perpetration of crimes against non-Serbs and made non-Serbs decide to leave the ARK Municipalities" by shielding his subordinates from criminal prosecution.[3036]

907. Župljanin submits that the Trial Chamber erred when concluding that he shared the intent to commit the crimes forming part of the common criminal purpose of the JCE by: (i) applying an erroneous *mens rea* standard;[3037] (ii) failing to make a finding that he shared the intent with the other JCE members;[3038] (iii) finding that he shared the intent from April 1992;[3039] and (iv) concluding that the only reasonable inference was that he possessed the requisite intent.[3040] Župljanin asserts that these errors invalidate the Trial Chamber's conclusion that he had the requisite intent for the first category of joint criminal enterprise and that all his convictions based on the first category of joint criminal enterprise should be reversed.[3041] The Prosecution responds that the Trial Chamber correctly and reasonably found that Župljanin intended to participate in and to further the JCE from April 1992, based on the proper application of the law.[3042]

(ii) Alleged errors related to the subjective element pursuant to the first category of joint criminal enterprise

a. Submissions of the parties

908. Župljanin submits that the Trial Chamber committed several errors in relation to the applicable standard for the subjective element which is required for a conviction under the first category of joint criminal enterprise.[3043] He contends that these errors invalidate the Trial Chamber's finding that he "intended forcible transfer as the common criminal purpose".[3044]

909. Župljanin first submits that the Trial Chamber was required to find that he intended coercive acts to find that he shared the requisite intent pursuant to the first category of joint criminal

[3034] Trial Judgement, vol. 2, para. 519.
[3035] Trial Judgement, vol. 2, para. 519.
[3036] Trial Judgement, vol. 2, para. 519.
[3037] Župljanin Appeal Brief, paras 12-15, 17-25, 31-32, 35-44, 53.
[3038] Župljanin Appeal Brief, paras 50-52.
[3039] Župljanin Appeal Brief, paras 45-49.
[3040] Župljanin Appeal Brief, paras 102-104, 155-156, 178-179.
[3041] Župljanin Appeal Brief, para. 54. See Župljanin Appeal Brief, para. 179.
[3042] See Prosecution Response Brief (Župljanin), paras 5, 8, 124.
[3043] Župljanin Appeal Brief, paras 12-15, 17-25, 31-32, 35-44, 53.
[3044] Župljanin Appeal Brief, para. 14.

enterprise[3045] since: (i) the common purpose was to be achieved through JCE I Crimes;[3046] and (ii) the *actus reus* of JCE I Crimes requires "either physical compulsion or coercive acts against the expellee".[3047] According to Župljanin, this implies that the act inducing the departure must itself be criminal.[3048] Župljanin contends that the Trial Chamber failed to find that he intended any of the coercive acts through which the common purpose was implemented.[3049] According to Župljanin, the only "coercive acts" by which the non-Serbs were induced to flee were considered by the Trial Chamber in the context of the third category of joint criminal enterprise and found only to be foreseeable to him.[3050] Župljanin submits that the Trial Chamber's finding that he intended to further the JCE is therefore contradicted by, and incompatible with, the "finding that he did not intend any of the coercive acts by which the forcible transfer was effectuated".[3051]

910. Župljanin adds that the contradiction in the Trial Chamber's findings arises from its analysis of his intent on the basis of its "loose definitions of the common purpose that merely involve an objective where it is probable that a crime will be committed in pursuit of the objective", thereby reducing the requisite *mens rea* standard for first category of joint criminal enterprise from direct intent to *dolus eventualis*.[3052] He contends that the Trial Chamber's findings incorrectly suggest that intending to create an ethnically homogenous state, which is not inherently criminal and is rather a

[3045] See Župljanin Appeal Brief, paras 3, 35.
[3046] Župljanin Appeal Brief, para. 15.
[3047] Župljanin Appeal Brief, para. 17, referring to *Stakić* Appeal Judgement, para. 279, *Popović et al.* Trial Judgement, para. 891, *Krnojelac* Trial Judgement, para. 474. See Župljanin Appeal Brief, para. 12.
[3048] Župljanin Appeal Brief, para. 18. He further argues that measures authorised or permitted under the law of armed conflict, such as a lawful and legitimate attack on a village, do not satisfy the *actus reus* of forcible transfer. According to Župljanin, a contrary approach would "unjustifiably limit the conduct of hostilities, and overthrow the fundamental principle that 'humanitarian law is the *lex specialis* which applies in cases of armed conflict'" (Župljanin Appeal Brief, para. 18).
[3049] Župljanin Appeal Brief, para. 53.
[3050] Župljanin Appeal Brief, paras 8, 19. See Župljanin Appeal Brief, para. 12; Župljanin Reply Brief, paras 5, 9. Župljanin argues that the Trial Chamber "exhaustively" analysed in the context of the third category of joint criminal enterprise the coercive acts by which non-Serbs were forced to flee but found that these crimes were merely foreseeable to him (Župljanin Appeal Brief, para. 20. See Župljanin Appeal Brief, para. 23. See also Župljanin Reply Brief, para. 13).
[3051] Župljanin Appeal Brief, para. 25. See Župljanin Appeal Brief, para. 12. Quoting the *Krajišnik* Appeal Judgement, Župljanin further submits that the parties should not be "placed in the position of having to guess [...] what may have been intended by the Chamber" in relation to elements central to his individual criminal responsibility, especially where the Trial Chamber's findings are contradictory (Župljanin Appeal Brief, para. 24 quoting *Krajišnik* Appeal Judgement, para. 176. See Župljanin Appeal Brief, para. 25).
[3052] Župljanin Appeal Brief, para. 32. See Župljanin Appeal Brief, paras 31, 33; Appeal Hearing, 16 Dec 2015, AT. 146-147. Župljanin also contends that the Trial Chamber defined the common purpose "in such a way as to encompass goals that merely involve a possibility of crimes" (Župljanin Appeal Brief, para. 39. See Župljanin Appeal Brief, para. 38, referring to *Prosecutor v. Issa Hassan Sesay et al.*, Case No. SCSL-04-15-A, Judgement, 26 October 2009 ("*RUF* Appeal Judgement"), para. 305, Partially Dissenting and Concurring Opinion of Judge Shireen Avis Fisher, paras 17-19, 25).

"pursuit of lawful objectives", is sufficient to establish the subjective element of the first category of joint criminal enterprise.[3053]

911. Župljanin further submits that the Trial Chamber's finding that his failure to protect the non-Serb population formed part of the decision to force non-Serbs to leave the ARK Municipalities and was not merely the consequence of "simple negligence" suggests that it applied an erroneous *mens rea* standard as the absence of "simple negligence" does not establish direct intent.[3054] He further contends that the Trial Chamber's statement that his conduct "encouraged the perpetration of crimes" implies that the Trial Chamber applied "a *mens rea* consistent with aiding and abetting, not commission".[3055]

912. The Prosecution responds that the Trial Chamber's conclusion as to Župljanin's intent demonstrates that it correctly articulated and applied the requisite intent standard pursuant to the first category of joint criminal enterprise.[3056] The Prosecution argues that the Trial Chamber's definition of the common criminal purpose is consistent with its findings on the third category of joint criminal enterprise.[3057] It contends that there is no legal requirement that "the crime of forced displacement" be achieved through the commission of specific violent crimes, such as those for which Župljanin was convicted for under the third category of joint criminal enterprise.[3058] The Prosecution also submits that Župljanin's proposition that the act inducing the displacement of individuals must itself be criminal is "unsupported and inconsistent with the jurisprudence establishing that it suffices to employ 'mere' threats or to take advantage of a coercive environment".[3059] The Prosecution adds that nothing in the law requires the joint criminal enterprise

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[3053] Župljanin Appeal Brief, paras 33, 37. In support of his submission, Župljanin adds that: (i) the Trial Chamber refers to "'forcible takeovers' of municipalities as if to imply that this is criminal in a legally relevant sense" and that since forcible takeover does not constitute a crime, the Trial Chamber's reference indicates that it defined a common purpose that was not, in itself, criminal and therefore erroneously assessed his intent in relation to a non-criminal purpose (Župljanin Appeal Brief, para. 35, referring to Trial Judgement, vol. 1, paras 331, 1006, 1028, Trial Judgement, vol. 2, para. 375)); (ii) the Trial Chamber failed to find that he intended acts of coercion which indicates that it had a non-criminal purpose in mind (Župljanin Appeal Brief, para. 35. See Appeal Hearing, 16 Dec 2015, AT. 155-157; Župljanin Appeal Brief, paras 19-23); and (iii) the Letter sent by Judge Harhoff suggests that a joint criminal enterprise "can be established merely on the basis of foresight and 'acceptance' of the commission of crimes, rather than a criminal intent to commit such crimes" (Župljanin Appeal Brief, para. 35. See Appeals Hearing, 16 Dec 2015, AT. 155-157. See Župljanin Appeal Brief, paras 19-23). He adds that the Trial Chamber "would not have refrained from entering findings of direct intent on the basis of judicial economy" and that it had the "duty to make findings in relation to the charges on the standard of proof beyond a reasonable doubt" (Župljanin Reply Brief, para. 9).

[3054] Župljanin Appeal Brief, para. 42. See Župljanin Appeal Brief, paras 13, 40, referring to Trial Judgement, vol. 2, para. 519. Župljanin Reply Brief, paras 14-15. Župljanin argues that in the spectrum between "simple negligence" and direct intent, "are the mental states of recklessness, *dolus eventualis*, gross negligence, and knowledge" (Župljanin Appeal Brief, para. 42).

[3055] Župljanin Appeal Brief, para. 42.

[3056] Prosecution Response Brief (Župljanin), paras 12, 23.

[3057] Prosecution Response Brief (Župljanin), p. 7 (title of section 2). See Prosecution Response Brief (Župljanin), paras 16-21.

[3058] Prosecution Response Brief (Župljanin), para. 17.

[3059] Prosecution Response Brief (Župljanin), fn. 36. It further responds that Župljanin's proposition is inconsistent with the principle that underlying acts of persecutions need not themselves constitute crimes under international law

members to agree, or the Trial Chamber to make findings upon the particular form by which the coercion of non-Serbs might take place.[3060] According to the Prosecution, there is therefore no basis upon which to consider that the Trial Chamber's reference to Župljanin's JCE III Crimes was intended to be an exhaustive review of the coercive acts by which the common criminal purpose would be implemented.[3061] It further submits that Župljanin incorrectly asserts that Župljanin's JCE III Crimes "were the only 'coercive acts' relevant to the forced displacement crimes".[3062] It argues that there is no inconsistency between the Trial Chamber's conclusion that he shared the intent to further the JCE and its findings on Župljanin's JCE III Crimes since the Trial Chamber made no findings excluding Župljanin's direct (or indirect) intent for the JCE III Crimes.[3063] The Prosecution also asserts that the Trial Chamber was not required to find that Župljanin intended Župljanin's JCE III Crimes.[3064]

913. The Prosecution further argues that the Trial Chamber did not, therefore, apply a standard of *dolus eventualis* or mere intent for an "overall 'objective'" that is not criminal, as suggested by Župljanin.[3065]

(Prosecution Response Brief (Župljanin), fn. 36, referring to *Brđanin* Appeal Judgement, para. 296, *Kvočka et al.* Appeal Judgement, para. 323). The Prosecution also notes that "the Appeals Chamber specifically left open the question 'whether attacks on lawful military targets could ever constitute a basis for ascribing criminal liability'" (see Prosecution Response Brief (Župljanin), fn. 36, referring to *Gotovina and Markač* Appeal Judgement, para. 114, fn. 330).

[3060] Prosecution Response Brief (Župljanin), para. 18. The Prosecution adds that, "[i]n other words, once the JCE members had agreed to forcibly remove the non-Serbs, they did not also have to agree on the precise manner or methods by which this was to be carried out" (Prosecution Response Brief (Župljanin), para. 18).

[3061] Prosecution Response Brief (Župljanin), para. 18.

[3062] Prosecution Response Brief (Župljanin), para. 16. The Prosecution underlines that, to the contrary, it is clear from the Trial Chamber's findings concerning the crimes committed in the ARK Municipalities that Serb forces forced non-Serbs to leave through a range of coercive acts which were not strictly limited to Župljanin's JCE III Crimes. The Prosecution argues that, although these acts also included particular crimes, they also entailed the "use of threats, fear, and the exploitation of the general coercive environment created by the JCE members and their tools" (Prosecution Response Brief (Župljanin), para. 16).

[3063] Prosecution Response Brief (Župljanin), para. 19. According to the Prosecution, rather, the Trial Chamber made only those findings which were necessary, and thus acted consistently with the principle of judicial economy (see Prosecution Response Brief (Župljanin), para. 19).

[3064] Prosecution Response Brief (Župljanin), para. 21. The Prosecution notes that the Trial Chamber was not required to make this finding "except for the purpose of ascertaining – in the exercise of its direction as to appropriate modes – whether Župljanin had ordered persecution through the appropriation of property" (Prosecution Response Brief (Župljanin), para. 21 (citations omitted)).

[3065] Prosecution Response Brief (Župljanin), para. 12, referring to Župljanin Appeal Brief, paras 32-33, 36. In addition, the Prosecution avers that "forcible takeovers" were correctly considered by the Trial Chamber, along with other factual circumstances, when inferring Župljanin's intent (Prosecution Response Brief (Župljanin), para. 14). It asserts that although forcible takeover does not constitute a crime under the Statute, "a person's willingness to use force and violence as the means of securing ethnic dominance in a municipality, and the subsequent and repeated exploitation of power gained from that takeover to commit crimes, is a factor material to an intent analysis" (Prosecution Response Brief (Župljanin), para. 14). The Prosecution also submits that the comparison to the *RUF* Appeal Judgement is inapposite since: (i) the majority concluded that a common purpose existed to secure control over Sierra Leone through the commission of the charged crimes; and (ii) "Judge Fisher's Separate Opinion turned on a difference of opinion as to the proper interpretation of the Trial Judgement" (Prosecution Response Brief (Župljanin), para. 15, referring to *RUF* Appeal Judgement, paras 300, 302, 305, Partially Dissenting and Concurring Opinion of Judge Shireen Avis Fisher, para. 12).

914. The Prosecution finally responds that while Župljanin does not challenge the intent standard for the first category of joint criminal enterprise, he "challenges the Chamber's reasoning based on a semantic argument".[3066] It argues that there is nothing in the Trial Chamber's analysis suggesting that it inferred Župljanin's intent on the basis of "simple negligence".[3067] It further argues that the Trial Chamber's reference to "negligence" was made in the context of ascertaining the intentional nature of Župljanin's omission.[3068] It finally argues that the Trial Chamber was not obliged to refute other intent standards known to law but inapposite to the facts of this case and that the Trial Chamber's conclusion "is more than adequately reasoned".[3069]

b. Analysis

915. The Appeals Chamber recalls that in order for the subjective element of the first category of joint criminal enterprise to be met, the accused must share, with the other participants, the intent to commit the crimes that form part of the common purpose of the joint criminal enterprise and the intent to participate in a common plan aimed at their commission.[3070]

916. The Appeals Chamber observes that the Trial Chamber defined the common purpose of the JCE as the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state, which was to be achieved through the crimes of other inhumane acts (forcible transfer), deportation, and persecutions through underlying acts of forcible transfer and deportation.[3071] The Trial Chamber then found, relying on a number of factors as set out above,[3072] that Župljanin shared the intent with other members of the JCE to further the JCE.[3073] The Trial Chamber then considered Župljanin's liability for all other charged crimes pursuant to the third category of joint criminal enterprise.[3074] In doing so, the Trial Chamber found that the possibility that Župljanin's JCE III Crimes could be committed in the execution of the common criminal

[3066] Prosecution Response Brief (Župljanin), para. 23.
[3067] Prosecution Response Brief (Župljanin), para. 23, quoting Župljanin Appeal Brief, paras 40, 42.
[3068] Prosecution Response Brief (Župljanin), para. 24. According to the Prosecution, Župljanin confuses the Trial Chamber's discussion of his failure to carry out his duty as a police officer to protect the civilian population with its "reasoning establishing his intent to further the common purpose" (Prosecution Response Brief (Župljanin), para. 24).
[3069] Prosecution Response Brief (Župljanin), para. 27. See Prosecution Response Brief (Župljanin), para. 26.
[3070] *Popović et al.* Appeal Judgement, para. 1369. See *Đorđević* Appeal Judgement, para. 468; *Brđanin* Appeal Judgement, para. 365.
[3071] See Trial Judgement, vol. 2, para. 313.
[3072] See *supra*, para. 906.
[3073] Trial Judgement, vol. 2, para. 520. See Trial Judgement, vol. 2, para. 519.
[3074] Trial Judgement, vol. 2, para. 521. See Trial Judgement, vol. 2, paras 522-528. Župljanin was also convicted of ordering persecutions, through appropriation of property, as a crime against humanity through plunder of property (see Trial Judgement, vol. 2, para. 805. See also Trial Judgement, vol. 2, paras 526, 956).

purpose was sufficiently substantial so as to be foreseeable to him and that he willingly took the risk that such crimes might be committed.[3075] Župljanin has failed to show any error in this reasoning.

917. Župljanin's argument that the Trial Chamber was required to find that he intended coercive acts to find that he possessed the requisite intent pursuant to the first category of joint criminal enterprise is based on a misunderstanding of the applicable law. The Trial Chamber was not required to establish that Župljanin intended the specific coercive acts by which the JCE I Crimes were to be achieved. The Appeals Chamber recalls that the Trial Chamber was required to find that Župljanin shared with the other members of the JCE the intent to commit the JCE I Crimes and the intent to participate in a common plan aimed at their commission.[3076] Therefore, it was necessary for the Trial Chamber to find that Župljanin shared the intent for the JCE I Crimes, and especially that he intended to forcibly displace, permanently or otherwise, the victims across the relevant *de facto* or *de jure* border to another country (as in deportation) or within a relevant border (as in forcible transfer).[3077] In the view of the Appeals Chamber, it is not required that members of the JCE agreed upon a particular form through which the forcible displacement of non-Serbs was to be effectuated or that Župljanin intended specific acts of coercion causing the displacement of individuals, so long as it is established that Župljanin intended to forcibly displace the victims.

918. In addition, Župljanin's argument that the Trial Chamber was required to find that he intended coercive acts under the first category of joint criminal enterprise because the *actus reus* of the JCE I Crimes requires that the act inducing the departure be criminal, finds no support in the jurisprudence of the Tribunal. The Appeals Chamber observes that the common purpose of the JCE was to be achieved through the JCE I Crimes, namely, the crimes of other inhumane acts (forcible transfer), deportation, and persecutions through acts of forcible transfer and deportation.[3078] In order to establish these crimes, the Trial Chamber was required to find, *inter alia*, that the displacement of persons was forced.[3079] The Appeals Chamber recalls that the requirement that the displacement be forced is not limited to physical force but can be met through the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or taking advantage of a coercive environment.[3080] It is the absence of genuine choice that makes the

[3075] See Trial Judgement, vol. 2, paras 522-528.
[3076] *Popović et al.* Appeal Judgement, para. 1369. See *Đorđević* Appeal Judgement, para. 468; *Brđanin* Appeal Judgement, para. 365. It is noted that Župljanin does not contest this standard (see Župljanin Reply Brief, para. 12).
[3077] See Trial Judgement, vol. 1, paras 61, 105. See also *Stakić* Appeal Judgement, paras 278, 307, 317. In this regard, the Appeals Chamber notes that the Trial Chamber correctly recounted the *mens rea* required for the JCE I Crimes (see Trial Judgement, vol. 1, para. 61).
[3078] Trial Judgement, vol. 2, para. 313.
[3079] *Đorđević* Appeal Judgement, paras 705, (referring to *Krajišnik* Appeal Judgement, para. 304, *Stakić* Appeal Judgement, paras 278, 307), 727. See also Trial Judgement, vol. 1, para. 63.
[3080] *Đorđević* Appeal Judgement, para. 727, referring to *Stakić* Appeal Judgement, para. 281, *Krnojelac* Appeal Judgement, paras 229-233.

displacement unlawful.[3081] While fear of violence, use of force, or other such circumstances may create an environment where there is no choice but to leave, the determination as to whether a transferred person had a genuine choice is one to be made within the context of the particular case being considered.[3082] Contrary to Župljanin's unreferenced assertion, the jurisprudence of the Tribunal does not require that persons be displaced as a result of criminal acts.[3083]

919. Finally, and based on his incorrect statement of the law, Župljanin takes the view that the Trial Chamber exclusively relied on Župljanin's JCE III Crimes to establish the coercive acts through which the forcible displacements in question were effectuated.[3084] The Appeals Chamber finds no support in the Trial Judgement for Župljanin's assertion. A review of the Trial Chamber's findings reveals that the Trial Chamber found that non-Serbs were forced to flee through a range of coercive acts not limited to the factual basis relied upon by the Trial Chamber to find that Župljanin's JCE III Crimes were established. These coercive acts not only included particular crimes, but also entailed harassment, threats, fear, and the creation of a general coercive environment.[3085] The Appeals Chamber therefore finds no merit in Župljanin's argument that the Trial Chamber's finding that he intended to further the JCE is contradicted by, or incompatible with, the Trial Chamber's finding that Župljanin's JCE III Crimes were only foreseeable to him. It follows that Župljanin has not shown that the Trial Chamber erred in this regard.

920. Turning to Župljanin's argument that the Trial Chamber analysed his intent on the basis of its "loose definitions of the common purpose that merely involve an objective where it is probable that a crime will be committed",[3086] the Appeals Chamber recalls that it has dismissed Župljanin's argument that the Trial Chamber incorrectly defined the common purpose.[3087] It has also found that the Trial Chamber clearly determined that the common purpose of the JCE involved the commission of crimes within the Statute.[3088] Accordingly, the Appeals Chamber finds no merit in Župljanin's contentions that the Trial Chamber reduced the requisite subjective element of the first category of joint criminal enterprise from direct intent to *dolus eventualis* and that the Trial Chamber's findings suggest that intending the pursuit of a lawful objective is sufficient to establish

[3081] *Đorđević* Appeal Judgement, para. 727; *Krnojelac* Appeal Judgement, para. 229.
[3082] *Đorđević* Appeal Judgement, para. 727; *Stakić* Appeal Judgement, paras 281-282.
[3083] In relation to Župljanin's argument that measures authorised or permitted under the law of armed conflict, such as a lawful and legitimate attack on a village, do not satisfy the *actus reus* of forcible transfer (Župljanin Appeal Brief, para. 8.), the Appeals Chamber observes that Župljanin does not point to any evidence to suggest that the displacements in this case were justified under international humanitarian law. The Appeals Chamber therefore dismisses Župljanin's argument as undeveloped and demonstrating no error.
[3084] See Župljanin Appeal Brief, paras 19-23.
[3085] See Trial Judgement, vol. 1, paras 208-211, 221, 273-274, 281, 338, 346, 477, 490, 684, 699, 803-804, 810, 872, 879; Trial Judgement, vol. 2, para. 522.
[3086] Župljanin Appeal Brief, para. 32. See Župljanin Appeal Brief, paras 31, 33.
[3087] See *supra*, para. 69.
[3088] See *supra*, para. 69.

the intent required for the first category of joint criminal enterprise.[3089] The Appeals Chamber also finds no merit in the remainder of Župljanin's arguments in support of his submission that the Trial Chamber analysed his intent based on a common purpose which was not criminal.[3090]

921. The Appeals Chamber now turns to Župljanin's argument that the Trial Chamber's findings show that it applied a standard which was inconsistent with the requisite standard of direct intent. In this respect, the Appeals Chamber underlines that the Trial Chamber expressly found that Župljanin "*intended*, with other members of the JCE" to achieve the goal of the JCE through the commission of the JCE I Crimes.[3091]

922. In concluding that Župljanin possessed the requisite intent, the Trial Chamber considered that Župljanin's failure to protect the non-Serb population "formed part of the decision to discriminate against them and force them to leave the ARK Municipalities, and was not merely the consequence of *simple negligence*".[3092] The Appeals Chambers finds that Župljanin takes out of context and misrepresents the Trial Judgement when arguing that this finding suggests that the Trial Chamber applied an incorrect standard for the subjective element of the first category of joint criminal enterprise. A plain reading of the Trial Judgement shows that this finding was made in the context of the Trial Chamber's assessment of the intentional nature of Župljanin's failure to carry

[3089] Insofar as Župljanin seeks to rely on the *RUF* Appeal Judgement before the SCSL, the Appeals Chamber observes that the majority of the appeals chamber in the *RUF* case concluded that the trial chamber determined that a common purpose existed to secure control over Sierra Leone through the commission of crimes charged in the indictment (*RUF* Appeal Judgement, paras 300, 302, 305). Judge Shireen Avis Fisher ("Judge Fisher"), however, dissented in relation to one of the accused, noting the trial chamber's express finding that the accused did not intend a number of crimes under the first category of joint criminal enterprise (see *RUF* Appeal Judgement, Partially Dissenting and Concurring Opinion of Judge Shireen Avis Fisher, paras 14-16). According to Judge Fisher, this express finding contradicted the finding that the accused had participated in a joint criminal enterprise (see *RUF* Appeal Judgement, Partially Dissenting and Concurring Opinion of Judge Shireen Avis Fisher, paras 14-16). The Appeals Chamber notes in this regard that Judge Fisher's remarks were made in the context of the facts and findings in that case, and considers that they do not apply to the present case. In the present case, the Trial Chamber did not find that Župljanin did not intend the crimes through which the common purpose was to be implemented. Instead, it expressly found that Župljanin intended, with other members of the JCE, to achieve the common purpose through the commission of the crimes of other inhumane acts (forcible transfer), deportation, and persecutions through the same underlying acts (see Trial Judgement, vol. 2, para. 520). The reasoning of Judge Fisher's dissenting opinion is therefore inapplicable to the present case, since the Trial Judgement is neither ambiguous nor contradictory in this respect. Župljanin has therefore failed to demonstrate an error in this regard.

[3090] As for Župljanin's submissions concerning forcible takeovers, the Appeals Chamber recalls that it has rejected Župljanin's argument that the Trial Chamber's reference to the forcible takeover of the Municipalities, which does not constitute a crime, indicates that the Trial Chamber defined a common purpose which was not criminal (see *supra*, fn. 251). The Appeals Chamber further recalls that it has rejected, above, Župljanin's argument in relation to coercive acts (see *supra*, paras 917-919). The Appeals Chamber also recalls that it has dismissed Župljanin's arguments regarding Judge Harhoff's misstatement of the subjective standard for joint criminal enterprise liability in the Letter (see *supra*, paras 52-53).

[3091] Trial Judgement, vol. 2, para. 520 (emphasis added).

[3092] Trial Judgement, vol. 2, para. 519 (emphasis added).

out his duty as a police officer to protect the civilian population.[3093] Accordingly, the Appeals Chamber dismisses this argument.

923. The Appeals Chamber now turns to Župljanin's submission that the Trial Chamber's statement that his conduct "encouraged the perpetration of crimes" implies that it applied a standard consistent with aiding and abetting, not commission.[3094] The Appeals Chamber notes that the Trial Chamber made this statement in the context of Župljanin's participation in the JCE through his formation of a "feigned commission" that resulted in the creation of a climate of impunity.[3095] The Appeals Chamber considers that Župljanin takes the Trial Chamber's words out of context and ignores the Trial Chamber's conclusion that he *intended* with other members of the JCE to further the JCE in light of all the factors considered, including his specific role in the formation a "feigned commission".[3096] The Appeals Chamber considers that, contrary to Župljanin's assertion, there is no indication that the Trial Chamber applied the standard for the subjective element of aiding and abetting liability and not commission through participation in a joint criminal enterprise.[3097] The Appeals Chamber therefore dismisses Župljanin's argument.

924. Based on the foregoing, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber applied an incorrect standard for the subjective element when finding that Župljanin possessed the requisite intent pursuant to the first category of joint criminal enterprise.

(iii) Alleged error in failing to find that Župljanin shared the intent to further the JCE with other JCE members

a. Submissions of the parties

925. Župljanin submits that the Trial Chamber failed to make the required findings to establish that he shared the criminal purpose common to all JCE members and not merely had the same criminal purpose.[3098] Relying on the *Brđanin* Appeal Judgement, he avers that "a coinciding *mens rea*, and even a substantial overlap in the crimes actually committed" does not suffice to

[3093] See Trial Judgement, vol. 2, paras 519-520.
[3094] Župljanin Appeal Brief, para. 42. See Župljanin Appeal Brief, para. 41.
[3095] Trial Judgement, vol. 2, para. 519.
[3096] Trial Judgement, vol. 2, para. 520. The Appeals Chamber also recalls that it has already dismissed Župljanin's submission that the Trial Chamber erred in relying on his formation of a feigned commission when assessing his participation in the JCE (see *supra*, para. 851).
[3097] The Appeals Chamber also fails to see how the fact that "encouragement" can constitute the objective element of aiding abetting would suggest that the Trial Chamber applied the standard for the subjective element of aiding and abetting in this case when addressing Župljanin's intent pursuant to the first category of joint criminal enterprise (*cf. Šainović et al.* Appeal Judgement, para. 1649).
[3098] Župljanin Appeal Brief, paras 50-53. Župljanin also points out that he was not found to have been a founding member of the JCE, but that he joined it in April 1992 (Župljanin Appeal Brief, para. 51).

establish that he possessed the requisite intent.[3099] Župljanin further contends that the reasonable inference remains that his "supposedly permissive attitude towards the commission of crimes was attributable to 'a shared motive'" (rather than a common criminal purpose or shared criminal intent) and that the Trial Chamber simply presumed that his "coincident intent" meant that he became a member of the pre-existing JCE.[3100]

926. The Prosecution responds that the Trial Chamber's findings establish that "Župljanin had more than a 'shared motive' with his fellow JCE members".[3101] The Prosecution submits that the Trial Chamber did not presume his membership in the JCE based on the coincidence of his intent with that of other JCE members but rather expressly found that he intended with other members of the JCE to further the JCE.[3102] It contends that Župljanin's reference to the *Brđanin* Appeal Judgement does not assist him since the risk of mere coincidence between the acts of remote physicals perpetrators and the common criminal purpose does not arise in this case where the nexus between Župljanin and the common criminal purpose is clear.[3103]

b. Analysis

927. The Appeals Chamber recalls that in order for the subjective element of the first category of joint criminal enterprise to be met, the accused must share, with the other participants, the intent to commit the crimes that form part of the common purpose of the joint criminal enterprise and the intent to participate in a common plan aimed at their commission.[3104] The Appeals Chamber further recalls that a trial chamber must "make a finding that th[e] criminal purpose is not merely the same, but also common to all the persons acting together within a joint criminal enterprise".[3105]

928. The Appeals Chamber observes that a plain reading of the Trial Judgement shows that the Trial Chamber found that Župljanin shared the intent with the other JCE members to further the JCE. Indeed, it found that "Župljanin's acts and omissions demonstrate beyond reasonable doubt that *he intended, with other members of the JCE, to achieve* the permanent removal of Bosnian

[3099] Župljanin Appeal Brief, para. 50, referring to *Brđanin* Appeal Judgement, paras 447-448. See Župljanin Appeal Brief, paras 51-52, 54. Župljanin contends that the Trial Chamber was required to find that the criminal purpose was "not merely the same, but also common to all of the persons acting together within a joint criminal enterprise" (Župljanin Appeal Brief, para. 50, quoting *Brđanin* Appeal Judgement, paras 430, 447-448. See Župljanin Appeal Brief, paras 51-52, 54).
[3100] Župljanin Appeal Brief, para. 52. See Župljanin Appeal Brief, paras 51, 54.
[3101] Prosecution Response Brief (Župljanin), para. 31. See Prosecution Response Brief (Župljanin), para. 32.
[3102] Prosecution Response Brief (Župljanin), para. 31, quoting Trial Judgement, vol. 2, para. 520. The Prosecution adds that, reading the Trial Judgement as a whole and in particular the passages establishing his links with the SDS and other JCE members, it is clear that the Trial Chamber found that he intended to participate with other JCE members to achieve the common criminal purpose (see Prosecution Response Brief (Župljanin), para. 32).
[3103] Prosecution Response Brief (Župljanin), para. 32.
[3104] *Popović et al.* Appeal Judgement, para. 1369. See *Đorđević* Appeal Judgement, para. 468; *Brđanin* Appeal Judgement, para. 365.

Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of [the JCE I Crimes]".[3106] It then concluded that "Župljanin was a member of the JCE starting at least in April 1992 and throughout the rest of 1992".[3107]

929. Contrary to Župljanin's submission, the Trial Chamber's conclusion was not based on the presumption that his "coincident intent meant that he became a member of the pre-existing JCE".[3108] The Appeals Chamber notes that unlike in the *Brđanin* case,[3109] other reasonable inferences, including that Župljanin might have shared a motive to further the commission of the JCE I Crimes but was not a member of the JCE, did not remain in the present case. In this regard, the Trial Chamber reached its conclusion on the basis of findings establishing a clear link between Župljanin's knowledge of the crimes, his conduct that supported the commission of crimes, and his ties with other members of the JCE, notwithstanding that he was not found to have been a founding member of the JCE.[3110] The Appeals Chamber therefore considers Župljanin's reference to the finding in the *Brđanin* Appeal Judgement to be inapposite.

930. In light of the foregoing, Župljanin has not demonstrated that the Trial Chamber failed to make findings required for establishing that he shared the intent with the other JCE members to further the JCE. His arguments are therefore dismissed.

(iv) Alleged errors in finding that Župljanin shared the intent from April 1992

a. Submissions of the parties

931. Župljanin submits that the Trial Chamber erroneously relied on evidence of his conduct from August to November 1992 to infer that he was a member of the JCE and had the requisite intent from at least April 1992.[3111] While recognising that the Trial Chamber was "not disentitled"

[3105] *Brđanin* Appeal Judgement, para. 430, referring to *Stakić* Appeal Judgement, para. 69.
[3106] Trial Judgement, vol. 2, para. 520 (emphasis added).
[3107] Trial Judgement, vol. 2, para. 520.
[3108] Župljanin Appeal Brief, para. 52.
[3109] See *Brđanin* Appeal Judgement, para. 448. In the *Brđanin* case, the Appeals Chamber found that other reasonable inferences remained, including that those found by the *Brđanin* Trial Chamber to be members of the joint criminal enterprise "might have shared a motive in furthering the commission of the same crime but were not members of the same [joint criminal enterprise]" (*Brđanin* Appeal Judgement, para. 448).
[3110] See Trial Judgement, vol. 2, para. 520. See also Trial Judgement, vol. 2, paras 489-519; *supra*, fn. 3009 (Župljanin's ties with the other JCE members).
[3111] Župljanin Appeal Brief, para. 45, referring to Trial Judgement, vol. 2, paras 474, 514, 517, 519-520. See Župljanin Reply Brief, paras 16-18. See also Župljanin Reply Brief, para. 19. According to Župljanin, "[a] person cannot be liable pursuant to JCE I unless and until it is established that the crime was committed at a time when it was part of the common [...] purpose" (Župljanin Appeal Brief, para. 46, referring to *Krajišnik* Appeal Judgement, para. 173). In particular, he argues that, in order to draw inferences about his *mens rea* as of April 1992, the Trial Chamber relied "heavily" on, and made "special mention" of, evidence concerning events which occurred on 14 August 1992, 26 August 1992, and 8 September 1992 (Župljanin Appeal Brief, paras 45, 47. See Župljanin Reply Brief, paras 17-18). Župljanin refers to evidence concerning his establishment of a feigned commission to inspect detention camps as well as the concealment of the names of perpetrators of the killings in front of the Manjača Camps and of Prijedor police

to rely on evidence of events which occurred after April 1992, Župljanin argues that the Trial Chamber was required to provide reasons as to why his alleged conduct from August and September 1992 were probative of his intent in April 1992.[3112] He argues that the Trial Chamber did not indicate that it could have found that he had the required intent since April 1992 without relying on evidence from August to November 1992.[3113] According to Župljanin, the implication is that the evidence of his conduct "through the month of July 1992 was not sufficient to reveal his criminal intent as the only reasonable inference as of that date".[3114] Župljanin finally argues that the Trial Chamber failed to identify the date upon which he allegedly joined the JCE "or what conduct, event, or statement gave rise to the inference" that his intent "crystallized" in April 1992.[3115]

932. The Prosecution responds that the Trial Chamber's finding that Župljanin was a member of the JCE from at least April 1992 is well-grounded in evidence and not impermissibly vague.[3116] It further responds that Župljanin inaccurately interprets the Trial Judgement when arguing that the Trial Chamber should not have relied on conduct from August and September 1992 since the Trial Chamber did not rely exclusively on evidence from that period but reasonably took into account the totality of the evidence.[3117]

b. Analysis

933. The Trial Chamber found that Župljanin possessed the requisite intent for the first category of joint criminal enterprise starting from at least April 1992 and continuing throughout the rest of the year.[3118] The Appeals Chamber considers that Župljanin's arguments are based on the premise that the Trial Chamber exclusively or mainly relied on evidence from August to November 1992 to infer that Župljanin was a member of the JCE and had the requisite intent from "at least April 1992".[3119] Župljanin merely refers to three paragraphs of the Trial Judgement without explaining why he considers them to be the only relevant paragraphs relied upon by the Trial

officers who murdered approximately 150-200 Muslims in Korićanske Stijene (Župljanin Appeal Brief, para. 45, fn. 56, referring to Trial Judgement, vol. 2, paras 474, 514, 517).
[3112] Župljanin Appeal Brief, para. 47. See Župljanin Appeal Brief, para. 48. See also Župljanin Reply Brief, paras 16-18.
[3113] Župljanin Appeal Brief, para. 47. See Župljanin Reply Brief, paras 17-18. Župljanin asserts that the Appeals Chamber would need to determine whether the post-April events supported a finding of *mens rea* beyond reasonable doubt before August 1992 (Župljanin Reply Brief, para. 18).
[3114] Župljanin Appeal Brief, para. 47.
[3115] Župljanin Appeal Brief, para. 48.
[3116] See Prosecution Response Brief (Župljanin), paras 29-30.
[3117] Prosecution Response Brief (Župljanin), para. 29, referring to Župljanin Appeal Brief, paras 45-47, Trial Judgement, vol. 2, paras 349-350, 352, 378, 399-404, 495, 500-505, 519. See Prosecution Response Brief (Župljanin), para. 30.
[3118] Trial Judgement, vol. 2, para. 520.
[3119] See Trial Judgement, vol. 2, para. 520.

Chamber to infer that he had the requisite intent.[3120] To the contrary, in reaching its conclusion that Župljanin was a member of the JCE and had the requisite intent, the Trial Chamber, as explained below, expressly considered ample evidence which demonstrated his membership and intent from at least April 1992.[3121]

934. The Appeals Chamber recalls that the subjective element of the first category of joint criminal enterprise may be inferred from circumstantial evidence, including a person's knowledge, combined with continuous contribution to crimes within the common criminal purpose.[3122] The Appeals Chamber observes that in assessing Župljanin's intent, the Trial Chamber considered evidence that Župljanin had extensive knowledge of crimes being committed against the non-Serb population, was well aware that the non-Serb population left *en masse* out of fear for their lives, and continued to acquire information on the commission of crimes including displacements from April 1992 and continuing throughout the Indictment period.[3123]

935. The Appeals Chamber further observes that the Trial Chamber found that Župljanin significantly contributed to the JCE from 1 April 1992 and continuing throughout the rest of the year[3124] and extensively relied on his conduct to find that he shared the requisite intent. In particular, the Trial Chamber considered Župljanin's conduct prior to April 1992[3125] and notably that he had ties to the SDS from 1991 to 1992.[3126] The Trial Chamber also considered Župljanin's role as early as 3 April 1992 in the blockade of Banja Luka and the takeover of the town, which he

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[3120] See Župljanin Appeal Brief, para. 45, fn. 56, referring to Trial Judgement, vol. 2, paras 474, 514, 517. The Appeals Chamber also observes that the evidence Župljanin points to concerns events which occurred after Župljanin was found to have formed the requisite intent in April 1992. Župljanin particularly points to the Trial Chamber's findings that he: (i) formed a "feigned commission" to inspect detention camps on 14 August 1992 (Trial Judgement, vol. 2, para. 514. See Trial Judgement, vol. 2, para. 519); (ii) filed a criminal report on 26 August 1992 concealing the names of the perpetrators of the killings in front of the Manjača detention camp (Trial Judgement, vol. 2, paras 516, 519); and (iii) concealed the names of the Prijedor police officers who murdered approximately 150-200 Muslims at Koricanske Stijene from 23 August through November 1992 (see Trial Judgement, vol. 2, para. 517). Although this evidence does not support a finding of intent as of April 1992, this evidence, together with the remainder of the evidence relied upon by the Trial Chamber, is demonstrative of Župljanin's continued intent throughout the Indictment period.

[3121] See *infra*, para. 928.

[3122] *Popović et al.* Appeal Judgement, para. 1369; *Đorđević* Appeal Judgement, para. 512; *Šainović et al.* Appeal Judgement, para. 995; *Krajišnik* Appeal Judgement, para. 202. See *Stanišić and Simatović* Appeal Judgement, para. 81. See also *supra*, para. 375.

[3123] See Trial Judgement, vol. 2, paras 494-519. See also Trial Judgement, vol. 2, paras 369-374 (regarding the reporting system), 415-440 (regarding knowledge of crimes). In particular, the Appeals Chamber observes that the Trial Chamber found that Župljanin had knowledge of: (i) the commission of crimes against non-Serbs by members of the Banja Luka CSB SPD after 3 April 1992 (Trial Judgement, vol. 2, paras 415, 431, 499); (ii) unlawful detentions, mistreatment, and murder of non-Serb detainees in detention facilities and camps in the ARK Municipalities by the end of April and also in May through the end of August, and in November 1992 (Trial Judgement, vol. 2, paras 416-437, 506-511); and (iii) undisciplined behaviour of members of the Banja Luka CSB SPD in May and June 1992 (Trial Judgement, vol. 2, paras 438-440).

[3124] Trial Judgement, vol. 2, para. 518.

[3125] The Appeals Chamber recalls that it has overturned the Trial Chamber's finding in relation to Župljanin's attendance at the Holiday Inn Meeting on 14 February 1992. However, as discussed in more detail below, it finds that Župljanin has failed to show that the Trial Chamber's conclusion that he possessed the requisite intent would not stand on the basis of the Trial Chamber's other findings (see *infra*, para. 942).

had began planning from at least March 1992.[3127] It also took into account that Župljanin contributed to the implementation of SDS policies in the ARK Municipalities by, *inter alia*, ordering the police under his command to carry out the disarmament of the non-Serb population in May and June 1992, and deploying members of the Banja Luka CSB SPD to ARK Municipalities to participate in takeovers despite having knowledge of crimes committed by its members since April 1992.[3128] Accordingly, the Appeals Chamber considers that there is no merit in Župljanin's submission that the Trial Chamber failed to identify "what conduct, event, or statement gave rise to the inference" that his intent "crystallized" in April 1992.

936. In light of the totality of the evidence, the Appeals Chamber finds that Župljanin has failed to show that the Trial Chamber erred in finding that he was a member of the JCE and had the requisite intent from at least April 1992. The Appeals Chamber therefore dismisses Župljanin's submission in this respect.

(v) Alleged error in finding that Župljanin possessed the requisite intent beyond reasonable doubt

a. Submissions of the parties

937. Župljanin submits that the factors relied upon by the Trial Chamber to infer his intent, viewed cumulatively or individually, were insufficient to conclude that he possessed the requisite intent.[3129] He argues that even assuming that every finding made by the Trial Chamber was correct, it still should have established that he possessed the requisite *mens rea*.[3130] He avers that other reasonable explanations remained for his alleged lack of action, including: (i) his genuine belief, albeit mistaken, that crimes being perpetrated were beyond his authority or control; (ii) gross negligence; (iii) "reckless disregard of the potential consequences"; (iv) "being overwhelmed by the scale of events"; and (v) his belief that he "did the most he could to curb" violence.[3131] He adds that the Trial Chamber's reasoning does not eliminate the reasonable inference that his mental state was

[3126] Trial Judgement, vol. 2, paras 349-350, 519.
[3127] Trial Judgement, vol. 2, paras 378, 399-404, 495, 519. In particular, the Trial Chamber considered that on 2 March 1992, Župljanin told Stanišić that "he was waiting for instructions and that, if a total blockade [of Banja Luka] was needed, it would be done" (Trial Judgement, vol. 2, para. 495. See Trial Judgement, vol. 2, para. 519). The Trial Chamber found that: "[i]n light of the events that followed this conversation, the Trial Chamber has no doubt that Župljanin was referring to a possible future blockade of Banja Luka" (Trial Judgement, vol. 2, para. 495). It further considered that Župljanin immediately joined the Banja Luka Crisis Staff formed in response to the blockade, implemented the demands of the SOS who carried out the blockade, and expressed his satisfaction in May 1992 with the work of the SOS by stating that "[t]hey have finally taken power up here" (Trial Judgement, vol. 2, paras 399-404, 495, 519).
[3128] Trial Judgement, vol. 2, paras 496, 499-505, 519.
[3129] Župljanin Appeal Brief, para. 155.
[3130] Župljanin Appeal Brief, para. 178.

gross negligence, recklessness, *dolus eventualis*, or knowledge.[3132] According to Župljanin, the Trial Chamber's "inquiry was not to examine in retrospect whether [he] met the Nelson Mandela standard of public service; its inquiry was to determine whether the only possible explanation for his conduct was an intent to commit forcible transfer".[3133] He argues that the Trial Chamber failed to adequately consider these "alternative possibilities" thereby failing to provide a reasoned opinion, and simply assumed that his alleged omissions reflected his intention thereby yielding a "manifestly unreasonable outcome".[3134]

938. The Prosecution responds that the Trial Chamber expressly concluded that Župljanin's acts and omissions demonstrate that he possessed the necessary intent beyond reasonable doubt.[3135] It submits that Župljanin's assertion that the Trial Chamber failed to establish his "'*mens rea* to the requisite standard' of proof ignores the Judgement's clear wording and repeats meritless arguments raised elsewhere in his brief".[3136] According to the Prosecution, the Trial Chamber was not required to determine "'the only possible explanation' for Župljanin's conduct but, rather, whether the findings necessary for his conviction were established beyond a reasonable doubt".[3137] It finally submits that the Trial Chamber "was not obliged to refute other intent standards known to law but inapposite to the facts of this case"[3138] and that the Trial Chamber's conclusion "is more than adequately reasoned".[3139]

b. Analysis

939. The Appeals Chamber observes that the Trial Chamber explicitly found that "Župljanin's acts and omissions demonstrate *beyond reasonable doubt* that he intended, with other members of the JCE", to further the JCE.[3140] The Trial Chamber reached this conclusion after having considered that Župljanin: (i) played a role in the blockade of Banja Luka; (ii) had ties to the SDS; (iii) attended the Holiday Inn Meeting; (iv) contributed to the implementation of SDS policies in

[3131] Župljanin Appeal Brief, para. 178, referring to Exhibit P621 (a report of Banja Luka CSB from October 1992), pp 7, 43.
[3132] Župljanin Appeal Brief, para. 43, referring to *Brđanin* Appeal Judgement, para. 429. He contends that the Trial Chamber's failure to eliminate the reasonable inference that his mental state was gross negligence, recklessness, *dolus eventualis*, or knowledge is "particularly significant in light of the Chamber's [...] findings in paragraphs 521 through 528, determining that all of the crimes constituting coercive acts were merely foreseeable" (Župljanin Appeal Brief, para. 43).
[3133] Župljanin Appeal Brief, para. 179.
[3134] Župljanin Appeal Brief, para. 179. See Župljanin Appeal Brief, para. 178. See also Župljanin Appeal Brief, para. 44, referring to *Brđanin* Appeal Judgement, para. 9, *Zigiranyirazo* Appeal Judgement, para. 46.
[3135] Prosecution Response Brief (Župljanin), para. 135, referring to Trial Judgement, vol. 2, para. 520 (citations omitted).
[3136] Prosecution Response Brief (Župljanin), para. 135.
[3137] Prosecution Response Brief (Župljanin), para. 136 (citations omitted).
[3138] Prosecution Response Brief (Župljanin), para. 26.
[3139] Prosecution Response Brief (Župljanin), para. 27.
[3140] Trial Judgement, vol. 2, para. 520 (emphasis added).

Banja Luka and in other municipalities in the ARK; (v) failed to protect the non-Serb population; (vi) enrolled the SOS in the Banja Luka CSB SPD; (vii) failed to act in relation to the crimes committed by this unit; (viii) made statements and acted in response to requests for protection by the Muslims of Banja Luka; (ix) was aware and actively contributed to unlawful arrest operations; and (x) created a "climate of impunity that encouraged the perpetration of crimes against non-Serbs and made non-Serbs decide to leave the ARK Municipalities" by shielding his subordinates from criminal prosecution.[3141]

940. To substantiate his claim that a number of reasonable inferences remained, Župljanin points to an October 1992 report of Banja Luka CSB where he "wrote at the time that 'it appears that the situation is increasingly getting out of control of the organs of legal authority' and specifically noted that a large percentage of police resources were being co-opted by the military in the form of re-subordinated police".[3142] The Appeals Chamber does not agree with Župljanin that this evidence shows that there are other reasonable inferences to be drawn aside from his intent to further the JCE.[3143] In particular, the evidence considered by the Trial Chamber does not demonstrate that Župljanin was mistaken as to the scope of his obligations, his ability to execute his duties, or authority, as suggested by Župljanin. The Appeals Chamber recalls in this regard that it has upheld the Trial Chamber's finding that Župljanin reasonably knew of his duty and ability to repress crimes as Banja Luka CSB Chief.[3144]

941. With the exception of this specific example, Župljanin merely refers to the existence of alternative inferences or states of mind such as recklessness, gross negligence, or knowledge but has failed to point to evidence or Trial Chamber's findings to support his contention that the Trial Chamber failed to consider any alternative inferences that would show a different state of mind. In addition, Župljanin's argument that the Trial Chamber's failure to adequately consider these "alternative possibilities"[3145] amounts to a failure to provide a reasoned opinion is without merit. A trial chamber does not have to discuss other inferences it may have considered, as long as it is satisfied that the inference it retained was the only reasonable one.[3146] In view of the Trial Chamber's reasoning which expressly lists the factors it relied upon as the basis of its conclusion that Župljanin shared the intent to further the JCE,[3147] and its express finding of intent,[3148] the Appeals Chamber considers that the Trial Chamber's conclusion that he possessed the requisite

[3141] See Trial Judgement, vol. 2, para. 519.
[3142] Župljanin Appeal Brief, para. 178, referring to Exhibit P621, pp 7, 43.
[3143] See Župljanin Appeal Brief, para. 178.
[3144] See *supra*, paras 814-820.
[3145] Župljanin Appeal Brief, paras 178-179.
[3146] *Đorđević* Appeal Judgement, para. 157, referring to *Krajišnik* Appeal Judgement, para. 192.
[3147] See Trial Judgement, vol. 2, para. 519.

intent for the first category of joint criminal enterprise beyond reasonable doubt was more than adequately reasoned.

942. The Appeals Chamber now turns to Župljanin's submission that the factors relied upon by the Trial Chamber were insufficient to infer that he possessed the requisite intent.[3149] In this regard, the Appeals Chamber recalls its finding that the Trial Chamber erred in finding that Župljanin attended the Holiday Inn Meeting on 14 February 1992 and in relying on this meeting in assessing his intent.[3150] The Appeals Chamber is not persuaded, however, that this error has caused a miscarriage of justice. The Appeals Chamber observes that Župljanin's attendance of the Holiday Inn Meeting is only one among a number of factors that the Trial Chamber relied upon in order to establish that he possessed the intent to further the JCE.[3151] In addition, the Appeals Chamber has dismissed all of Župljanin's other arguments relating to the remaining factors and found that he has failed to demonstrate any error in the Trial Chamber's reliance on these factors when inferring his intent.[3152] In light of the foregoing, and noting that the Holiday Inn Meeting occurred in February 1992, two months before Župljanin was found to have become a member of the JCE, the Appeals Chamber finds that Župljanin has failed to show that the Trial Chamber's conclusion that he possessed the requisite intent would not stand without the Trial Chamber's reliance on his attendance at the Holiday Inn Meeting.

943. Thus, Župljanin has failed to demonstrate that the Trial Chamber erred in concluding that the only reasonable inference to be drawn from the evidence was that Župljanin intended to further the JCE in order to achieve the common criminal purpose.[3153] His arguments in this regard are therefore dismissed.

(vi) Conclusion

944. For the foregoing reasons, the Appeals Chamber finds that Župljanin has failed to demonstrate that no reasonable trier of fact could have found that he possessed the requisite intent pursuant to the first category for joint criminal enterprise.

(g) Conclusion

945. For the reasons set out above, Župljanin has not demonstrated that the Trial Chamber erred in concluding that he significantly contributed to the JCE and shared the intent to further the JCE.

[3148] See Trial Judgement, vol. 2, para. 520.
[3149] See Župljanin Appeal Brief, para. 155.
[3150] See *supra*, para. 895.
[3151] See *supra*, para. 906.
[3152] See *supra*, paras 718-900.

Consequently, the Appeals Chamber dismisses sub-grounds (A) to (E) of Župljanin's first ground of appeal in their entirety and sub-ground (F) in part of Župljanin's first ground of appeal.

3. Alleged errors with respect to Župljanin's responsibility pursuant to the third category of joint criminal enterprise

946. The Trial Chamber convicted Župljanin for the following crimes pursuant to the third category of joint criminal enterprise: persecutions (through the underlying acts of killings, torture, cruel treatment, inhumane acts, unlawful detentions, establishment and perpetuation of inhumane living conditions, plunder of property, wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religious and other cultural buildings, and imposition and maintenance of restrictive and discriminatory measures) and extermination as crimes against humanity (Counts 1 and 2, respectively), and murder and torture as violations of the laws or customs of war (Counts 4 and 6, respectively).[3154] The Trial Chamber also found Župljanin responsible for murder, torture, and inhumane acts as crimes against humanity (Counts 3, 5, and 8, respectively), and for cruel treatment as a violation of the laws or customs of war (Count 7) pursuant to the third category of joint criminal enterprise, but did not enter convictions on the basis of the principles relating to cumulative convictions.[3155]

947. Župljanin alleges a number of legal and factual errors with respect to the Trial Chamber's findings on his responsibility for Župljanin's JCE III Crimes in general.[3156] He further raises specific challenges in relation to his conviction pursuant to the third category of joint criminal enterprise for extermination as a crime against humanity.[3157] The Prosecution responds that Župljanin's arguments should be dismissed.[3158]

(a) Alleged errors of law and fact in relation to the third category of joint criminal enterprise in general (Župljanin's second ground of appeal)

948. In assessing Župljanin's responsibility for crimes outside the scope of the JCE, the Trial Chamber recalled its finding that Serb forces carried out the forcible removal of Bosnian Muslims and Bosnian Croats from the ARK Municipalities by committing crimes against them and by enforcing unbearable living conditions following the takeover of towns and villages.[3159] It also

[3153] See Trial Judgement, vol. 2, paras 519-520.
[3154] Trial Judgement, vol. 2, paras 805, 832, 845, 850, 859, 864, 869, 956.
[3155] Trial Judgement, vol. 2, paras 805, 832, 845, 850, 859, 864, 869, 956.
[3156] Župljanin Appeal Brief, paras 182-226.
[3157] Župljanin Appeal Brief, paras 227-242.
[3158] Prosecution Response Brief (Župljanin), paras 138, 179-180, 207. See Prosecution Response Brief (Župljanin), paras 139-178, 181-206.
[3159] Trial Judgement, vol. 2, para. 522.

recalled that Župljanin was a member of both the ARK and Banja Luka crisis staff, which issued orders restricting the rights of non-Serbs to perform certain jobs or impacting on their property rights.[3160] On this basis, the Trial Chamber concluded that the possibility that, in the execution of the common plan, Serb forces could impose and maintain restrictive and discriminatory measures against non-Serbs in the ARK Municipalities was sufficiently substantial as to be foreseeable to Župljanin, and that he willingly took that risk.[3161]

949. The Trial Chamber further found that, in light of Župljanin's degree of knowledge and involvement in the transport and guarding of detained non-Serbs in the ARK Municipalities, the possibility that, in the execution of the common plan, Serb forces not only could, but would unlawfully detain large numbers of Bosnian Muslims and Bosnian Croats at SJB's prisons and improvised detention centres and camps was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took that risk.[3162]

950. The Trial Chamber also considered that Župljanin: (i) enrolled in the Banja Luka CSB SPD seasoned criminals of the SOS who distinguished themselves for their nationalistic stance and the commission of crimes against non-Serbs, of which he was aware;[3163] (ii) dispatched the Banja Luka CSB SPD for operations notwithstanding frequent reports on their lack of discipline and criminal activities;[3164] (iii) was present in Banja Luka after the 3 April 1992 blockade of the town, when the non-Serb community started being targeted by, *inter alia*, the SOS and the Banja Luka CSB SPD, and was informed, in the first half of April, and then again in August and September 1992, of crimes against non-Serbs committed there;[3165] (iv) knew, already on 30 April 1992, that members of ARK police were committing crimes;[3166] (v) left the Sanski Most police in charge of transporting detainees despite knowing of the incident in which 20 detainees died during their transportation from Betonirka detention camp in Sanski Most to Manjača detention camp in Banja Luka municipality by Sanski Most police officers on 7 July 1992 ("Sanski Most Incident");[3167] and (vi) knew or had strong reason to know of the involvement of the Prijedor police in the death of eight non-Serbs at the Manjača detention camp between 6 and 7 August 1992 and the killing of approximately 150-200 Muslims at Korićanske Stijene in Skender Vakuf municipality on

[3160] Trial Judgement, vol. 2, para. 522. See Trial Judgement, vol. 2, paras 279-284, 353, 401, 492-493.
[3161] Trial Judgement, vol. 2, para. 522.
[3162] Trial Judgement, vol. 2, para. 523. See Trial Judgement, vol. 2, paras 415-437, 506-511, 516.
[3163] Trial Judgement, vol. 2, para. 524. See Trial Judgement, vol. 2, paras 385, 499, 504.
[3164] Trial Judgement, vol. 2, para. 524. See Trial Judgement, vol. 2, paras 405, 415, 425, 438-440, 501-505.
[3165] Trial Judgement, vol. 2, para. 524. See Trial Judgement, vol. 2, paras 399-404, 450-452, 495-497.
[3166] Trial Judgement, vol. 2, para. 524. See Trial Judgement, vol. 2, paras 433, 510.
[3167] Trial Judgement, vol. 2, para. 524. See Trial Judgement, vol. 2, paras 418-419, 506-507, 511; Trial Judgement, vol. 1, paras 189-190, 215.

21 August 1992, but nonetheless continued to task the Prijedor police with escorting detainees.[3168] On the basis of these findings, the Trial Chamber concluded that the possibility that Serb forces could commit murders and extermination in the execution of the common plan was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took that risk.[3169]

951. Furthermore, considering that Župljanin received reports on the conditions of detention camps and that he knew of the ethnic tensions in the region,[3170] the Trial Chamber found that the possibility that Serb forces, in the execution of the common plan, could establish and perpetuate inhumane living conditions and commit torture, cruel treatment, and inhumane acts against non-Serbs was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took that risk.[3171]

952. Considering the presence of criminals in the units that Župljanin dispatched in various ARK Municipalities, the weak position in which non-Serbs found themselves in relation to Serb forces arresting them and expelling them from their municipalities, and the strong ethnic tensions and resentments,[3172] the Trial Chamber also concluded that the possibility that, in the execution of the common plan, Serb forces could commit plunder and looting of non-Serb property was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took that risk.[3173]

953. The Trial Chamber found that the possibility that Serb forces could carry out the wanton destruction and damage of religious and cultural property of Muslims and Croats in a "concerted effort to eliminate their historical moorings during and following the takeover of the ARK Municipalities" was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took that risk.[3174]

954. In addition, the Trial Chamber recalled its finding that the imposition and maintenance of restrictive and discriminatory measures, the unlawful detentions, the killings, the establishment and perpetuation of inhumane living conditions, torture, cruel treatment, inhumane acts, plunder of property, and wanton destruction and damage of religious and cultural property in the ARK Municipalities were committed with a discriminatory intent.[3175] "Considering the ethnically charged character of the armed conflict, the existence of a widespread and systematic attack against [non-Serbs], and Župljanin's knowledge of such an attack", the Trial Chamber was satisfied that the

[3168] Trial Judgement, vol. 2, para. 524. See Trial Judgement, vol. 2, paras 465-482, 511, 516-517.
[3169] Trial Judgement, vol. 2, para. 524.
[3170] Trial Judgement, vol. 2, para. 525. See Trial Judgement, vol. 2, paras 415-437, 506-511.
[3171] Trial Judgement, vol. 2, para. 525.
[3172] Trial Judgement, vol. 2, para. 526. See Trial Judgement, vol. 2, paras 405-406, 415, 425, 438-440, 501-505.
[3173] Trial Judgement, vol. 2, para. 526.
[3174] Trial Judgement, vol. 2, para. 527.

possibility that Serb forces could commit these crimes with a discriminatory intent, thereby committing the crime of persecution, was sufficiently substantial as to be foreseeable to him and that he willingly took that risk.[3176]

955. Župljanin submits that the Trial Chamber erred: (i) in law by failing to make a finding that he possessed the intent to participate in and further the criminal purpose of the JCE;[3177] (ii) in law by imposing on him criminal liability pursuant to the third category of joint criminal enterprise for crimes of "more serious gravity" than the intended crimes;[3178] (iii) in law and fact in relation to whether Župljanin's JCE III Crimes were natural and foreseeable consequences of the JCE;[3179] and (iv) in fact by finding that Župljanin's JCE III Crimes were foreseeable to him and that he willingly took that risk.[3180] Župljanin requests the Appeals Chamber to overturn his convictions for Župljanin's JCE III Crimes.[3181] The Prosecution responds that the Trial Chamber applied the correct legal standard and properly convicted Župljanin on the basis of the third category of joint criminal enterprise.[3182]

(i) Alleged error of law in failing to make specific findings that Župljanin possessed the intent to participate in and further the criminal purpose of the JCE (sub-ground (C) of Župljanin's second ground of appeal)

956. Župljanin submits that the Trial Chamber erred in law by failing to make specific findings with regard to his intent to participate in and further the criminal purpose of the JCE as required under the third category of joint criminal enterprise.[3183] Župljanin suggests that "the similarity between the language of JCE I *mens rea* regarding the voluntary participation and the language of JCE III *mens rea* regarding intent to participate in the JCE" may mean that the Trial Chamber

[3175] Trial Judgement, vol. 2, para. 528.
[3176] Trial Judgement, vol. 2, para. 528.
[3177] Župljanin Appeal Brief, paras 189-192; Župljanin Reply Brief, paras 62-65.
[3178] Župljanin Notice of Appeal, paras 24-25; Župljanin Appeal Brief, paras 219-226; Župljanin Reply Brief, para. 73.
[3179] Župljanin Appeal Brief, paras 193-200; Župljanin Reply Brief, paras 66-67.
[3180] Župljanin Appeal Brief, paras 201-218; Župljanin Reply Brief, paras 68-72.
[3181] Župljanin Appeal Brief, paras 192, 195, 218.
[3182] Prosecution Response Brief (Župljanin), para. 138.
[3183] Župljanin Appeal Brief, para. 190; Župljanin Reply Brief, para. 64. In this regard, he argues that the paragraphs in the Trial Judgement dealing with his *mens rea* and his criminal responsibility under the third category of joint criminal enterprise liability "make no mention of his intent as required by JCE III" but rather only deal with his foresight of crimes outside of the common criminal purpose (see Župljanin Appeal Brief, paras 189-190). Župljanin further submits that "[i]n order to establish an accused's *mens rea* for JCE III, a Trial Chamber must first establish that all of the elements of JCE I have been met" and that "it must also be established [...]: (a) that the accused possessed the intent to participate in and contribute to the common criminal purpose, and (b) (i) that the crimes were a natural and foreseeable consequence of the JCE ('the Objective Element'), and (ii) that the accused was aware that such crime was a possible consequence of the execution of that enterprise and with that awareness, willingly took the risk" (Župljanin Appeal Brief, para. 184). He also submits that he has already "raised a number of challenges to the Chamber's findings regarding Župljanin's *mens rea* in the JCE I section" under his first ground of appeal and that many of those "principles and challenges" are equally applicable here (see Župljanin Appeal Brief, fn. 272 referring to sub-grounds (A), (E), and (F) of his first ground of appeal).

equated its finding that he shared the intent with other members of the JCE to achieve the permanent removal of Bosnian Muslims and Bosnian Croats,[3184] with the intent to participate in the JCE as part of its analysis on the third category of joint criminal enterprise.[3185] He argues that the "additional requirement of proof of intent to contribute, however, necessitates an independent analysis", which the Trial Chamber failed to undertake.[3186]

957. The Prosecution responds that the Trial Chamber made the necessary specific findings to conclude that the possibility that Serb forces could commit Župljanin's JCE III crimes in executing the JCE was sufficiently substantial as to be foreseeable to Župljanin and that he willingly accepted that risk.[3187] The Prosecution further responds that the Tribunal's jurisprudence does not require "a second finding of intent in relation to the JCE I crimes to establish JCE III liability".[3188]

958. The Appeals Chamber recalls that an accused can only be held responsible for crimes pursuant to the third category of joint criminal enterprise, when the elements of the first category of joint criminal enterprise have been satisfied.[3189] Thus, the extended form of joint criminal enterprise attaches only where a trial chamber is satisfied that an accused *already possessed* the intent to participate in and further the common criminal purpose of a group.[3190] The Appeals Chamber recalls further that the subjective element of the first category of joint criminal enterprise is that an accused had the intent to commit the crimes that form part of the common purpose of the joint criminal enterprise and the intent to participate in a common plan aimed at their commission.[3191] For liability pursuant to the third category of joint criminal enterprise, a trial chamber must be satisfied in addition that: (i) it was foreseeable to the accused that a crime outside the common purpose might be perpetrated by one or more of the persons used by him (or by any other member of the joint criminal enterprise) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took the risk that the crime might occur by joining

[3184] Župljanin Appeal Brief, para. 191, referring to Trial Judgement, vol. 2, para. 520.
[3185] Župljanin Appeal Brief, para. 191.
[3186] Župljanin Appeal Brief, para. 191, referring to *Tadić* Appeal Judgement, para. 228. Župljanin submits that the Appeals Chamber in the *Tadić* case set out three *mens rea* elements "apparently unique to JCE III" (Župljanin Appeal Brief, para. 191).
[3187] Prosecution Response Brief (Župljanin), para. 139.
[3188] Prosecution Response Brief (Župljanin), para. 140. See Prosecution Response Brief (Župljanin), paras 141-143. The Prosecution further submits that the Appeals Chamber has "consistently relied on the finding that the accused was a JCE member who possessed the requisite *mens rea* for JCE I" (Prosecution Response Brief (Župljanin), para. 142).
[3189] See *Blaškić* Appeal Judgement, para. 33; *Vasiljević* Appeal Judgement, para. 99; *Tadić* Appeal Judgement, para. 228.
[3190] See *e.g. Blaškić* Appeal Judgement, para. 33, referring to *Vasiljević* Appeal Judgement, para. 101 (quoting *Tadić* Appeal Judgement, para. 228); *Brđanin* Appeal Judgement, para. 411; *Stakić* Appeal Judgement, para. 65; *Kvočka et al.* Appeal Judgement, para. 83.
[3191] *Popović et al.* Appeal Judgement, para. 1369. See *Đorđević* Appeal Judgement, para. 468.

or continuing to participate in the enterprise.[3192] The Appeals Chamber thus finds that Župljanin misconstrues the jurisprudence of the Tribunal, and in particular the *Tadić* Appeal Judgement to which he refers,[3193] when suggesting that there exists an additional requirement of proof of intent to contribute to and further the common criminal purpose as part of the assessment under the third category of joint criminal enterprise liability.

959. As noted earlier, the Trial Chamber found that Župljanin significantly contributed to the common objective to permanently remove Bosnian Muslims and Croats from the territory of the planned Serb state.[3194] Based on Župljanin's acts and failures to act, the Trial Chamber concluded that he *intended* the JCE I Crimes.[3195] The Trial Chamber then found that specific evidence supported the conclusion that the possibility that Župljanin's JCE III Crimes could be committed was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took the risk that they might be committed.[3196]

960. The Appeals Chamber therefore is satisfied that the Trial Chamber made the necessary findings regarding Župljanin's responsibility under the third category of joint criminal enterprise and his arguments in this respect are dismissed.

961. In light of the foregoing, the Appeals Chamber dismisses sub-ground (C) of Župljanin's second ground of appeal.

(ii) Alleged errors in finding Župljanin liable pursuant to the third category of joint criminal enterprise for crimes of "greater gravity" than the JCE I Crimes (sub-ground (A) of Župljanin's second ground of appeal)

a. Submissions of the parties

962. Župljanin submits that the Trial Chamber erred in law by convicting him pursuant to the third category of joint criminal enterprise for crimes of extreme violence, namely "extermination, murder, torture and cruel treatment"[3197] when his intent was limited to non-violent crimes.[3198] He

[3192] *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brđanin* Appeal Judgement, paras 365, 411.
[3193] Župljanin Appeal Brief, para. 191, referring to *Tadić* Appeal Judgement, para. 228.
[3194] Trial Judgement, vol. 2, para. 518. See *supra*, para. 901.
[3195] Trial Judgement, vol. 2, para. 520. See *supra*, para. 906.
[3196] Trial Judgement, vol. 2, paras 522-528. See *supra*, para. 916.
[3197] Župljanin Appeal Brief, para. 219. The Appeals Chamber understands Župljanin to argue that the Trial Chamber erred by convicting him of persecutions through killings, torture, and cruel treatment (Count 1); extermination as a crime against humanity (Count 2); murder as a violation of the laws or customs of war (Count 4); and torture as a violation of the laws or customs of war (Counts 6). While Župljanin was not convicted for murder as a crime against humanity (Count 3); torture as crime against humanity (Count 5); and cruel treatment as a violation of the laws or customs of war (Count 7), the Trial Chamber did find him responsible for these crimes (see Trial Judgement, vol. 2,

argues that as a matter of law, liability pursuant to the third category of joint criminal enterprise should not be imposed where the foreseeable crime is of "substantially greater gravity and seriousness" than the intended crime.[3199]

963. Župljanin further avers that the Appeals Chamber should adopt an additional condition for imposition of third category of joint criminal enterprise liability, namely that liability for foreseeable violent crimes may only arise when the accused intended the adoption of violent means to implement the common purpose.[3200] He argues that adoption of such an additional condition would respond to "many of the concerns that have [been] expressed about the potential untrammelled breadth of JCE III".[3201] In support of this argument, he further asserts that: (i) according to the Appeals Chamber jurisprudence, including the *Tadić* and *Stakić* cases, liability pursuant to the third category of joint criminal enterprise for a violent crime is always predicated on some element of violence or the likelihood of violence;[3202] (ii) Judge Cassese has noted in extrajudicial writings that "liability should not be extended by way of JCE III to special intent crimes unless the intended crime includes the requisite intent";[3203] and (iii) many "felony-murders" statutes in common law jurisdictions similarly restrict the "distance between the intended and the foreseeable crime".[3204] Župljanin submits that the Trial Chamber made no findings that he intended to adopt any violent means to effectuate the common purpose and asserts that the Trial Chamber's "failure to consider the absence of any connection between the intended and the foreseeable crimes

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paras 805, 845, 850, 859, 956). The Appeals Chamber therefore understands Župljanin to challenge these findings as well and, recalling its conclusion that the Trial Chamber erred in law by failing to enter convictions for Župljanin for these crimes, the Appeals Chamber finds it appropriate to also address his submissions in this regard.

[3198] Župljanin Appeal Brief, para. 219. See Župljanin Appeal Brief, para. 226.

[3199] Župljanin Appeal Brief, para. 219.

[3200] Župljanin Appeal Brief, paras 223, 225.

[3201] Župljanin Appeal Brief, para. 225, referring to *Brđanin* Trial Judgement, para. 355, *Brđanin* Appeal Judgement, Partially Dissenting Opinion of Judge Shahabuddeen, paras 1-20, *Martić* Appeal Judgement, Separate Opinion of Judge Schomburg on the Individual Criminal Responsibility of Milan Martić, para. 3, *Prosecutor v. Ieng Thirith et al.*, Case File No. 002/19-09-2007-ECCC/OCIJ (PTC38), Decision on the Appeals Against the Co-Investigative Judges Orders on Joint Criminal Enterprise (JCE), 20 May 2010, ("ECCC Decision on JCE"), para. 83. Župljanin argues that his suggestion of adopting this additional condition is a more modest approach to addressing the concerns raised than those suggested by different commentators (Župljanin Appeal Brief, para. 225, referring to K. Ambos *Amicus Curiae* Concerning Criminal Case File NO. 001/18-07-2007-ECCC/OCIJ (PTC 02), 27 October 2008 ("Kai Ambos *Amicus Curiae* Application"); J.D. Ohlin, "*Joint Intentions to Commit International Crimes*", Cornell Law Faculty Publications, 169 (2011) ("Ohlin Article"); A. Cassese, "Proper Limits of Individual Responsibility Under the Doctrine of JCE", *International Criminal Justice Journal*, 5 (2007) ("Judge Cassese Article on JCE"), pp 118-120).

[3202] Župljanin Appeal Brief, para. 220. Župljanin submits that in *Tadić*, the Appeals Chamber "contemplated the possibility of JCE III for murder in respect of expulsions intentionally carried out 'at gunpoint' or by 'burning their houses'" (Župljanin Appeal Brief, para. 220, referring to *Tadić* Appeal Judgement, para. 214). He further submits that in *Stakić*, the accused was found guilty of "extermination JCE III [*sic*] in part based on the Trial Chamber's findings that he had 'intent to kill' required for murder" (Župljanin Appeal Brief, para. 220, referring to *Stakić* Trial Judgement, para. 656, *Stakić* Appeal Judgement, para. 96).

[3203] Župljanin Appeal Brief, para. 221, referring to Judge Cassese Article on JCE, pp 121-122.

[3204] Župljanin Appeal Brief, para. 222, referring to G. Binder, "Felony Murder and Mens Rea Default Rules: A study in Statutory Interpretation", *Buffalo Criminal Law Review*, vol. 4:399 (2000-2001) ("Binder Article"), p. 406, S.H. Pillsbury, *Judging Evil: Rethinking the Law of Murder and Manslaughter* (1998) ("Pillsbury Article"), p. 106, 108, Homicide Act 1957, 5 & 6 Eliz.2, Ch. 11 (United Kingdom) ("UK Homicide Act"), section 1(1).

was an error of law" thus invalidating his convictions pursuant to the third category of joint criminal enterprise.[3205]

964. The Prosecution responds that it is not a legal error to convict an accused pursuant to the third category of joint criminal enterprise for crimes which may be viewed as "more serious" or "more violent" than the crimes intended in the common plan.[3206] The Prosecution submits that: (i) the *Stakić* and *Tadić* cases, as well as other Tribunal cases, show that an accused may be convicted pursuant to the third category of joint criminal enterprise for crimes perceived as "more serious or violent" than the intended crimes;[3207] (ii) the Appeals Chamber has rejected Judge Cassese's view on "the impossibility of a conviction for a specific intent crime through JCE III";[3208] (iii) Župljanin's references to concerns expressed by commentators do not demonstrate cogent reasons for departing from the established practice;[3209] and (iv) Župljanin's references to common law jurisdictions are unconvincing and, in any event, national jurisprudence is not binding on the Tribunal.[3210]

965. The Prosecution further submits that the Trial Chamber reasonably convicted Župljanin for Župljanin's JCE III Crimes.[3211] It argues that Župljanin's argument rests on his repeated mistaken premise that "his intent was limited to non-violent crimes" and that Župljanin ignores the abundant evidence upon which the Trial Chamber relied to infer that crimes were foreseeable to him.[3212] The Prosecution contends that Župljanin intended to use violent means to implement the common criminal purpose, namely forcible transfer, deportation, and persecution through forcible displacement.[3213]

b. Analysis

966. The Appeals Chamber understands Župljanin to argue that the Trial Chamber erred by convicting him pursuant to the third category of joint criminal enterprise for Župljanin's JCE III Crimes because these crimes are more serious than the JCE I Crimes.[3214] The Appeals Chamber, however, observes that this contention is essentially premised on his suggestion to depart from the

[3205] Župljanin Appeal Brief, para. 226; Župljanin Reply Brief, para. 73.
[3206] Prosecution Response Brief (Župljanin), para. 171.
[3207] Prosecution Response Brief (Župljanin), para. 174.
[3208] Prosecution Response Brief (Župljanin), para. 175.
[3209] Prosecution Response Brief (Župljanin), para. 175.
[3210] Prosecution Response Brief (Župljanin), paras 176-177.
[3211] Prosecution Response Brief (Župljanin), paras 172, 178.
[3212] Prosecution Response Brief (Župljanin), paras 172, 178. The Prosecution submits that given the means used to implement the JCE, it was entirely reasonable for the Trial Chamber to conclude that the Župljanin's JCE III Crimes were foreseeable to him and that he willingly accepted that risk (Prosecution Response Brief (Župljanin), para. 178).
[3213] Prosecution Response Brief (Župljanin), para. 178.
[3214] Župljanin Appeal Brief, para. 219.

existing jurisprudence on the basis of his misconstruction of the law. More specifically, Župljanin argues that the Appeals Chamber should depart from its jurisprudence and establish an additional requirement within the subjective element of the third category of joint criminal enterprise, namely that in cases involving "violent foreseeable crimes" the accused must have "intended recourse to violent means" to implement the joint criminal enterprise.[3215] However, the Appeals Chamber is not persuaded by this contention for the following reasons.

967. The Appeals Chamber first recalls the law on the subjective elements for the first and third categories of joint criminal enterprise liability as set out above.[3216] In addition, the Appeals Chamber recalls that criminal liability pursuant to the third category of joint criminal enterprise can attach for *any* crime that falls outside of an agreed upon joint criminal enterprise so long as that crime is foreseeable to the accused and he willingly took that risk.[3217]

968. The Appeals Chamber further recalls that in the interests of certainty and predictability, it should follow its previous decisions.[3218] The Appeals Chamber may depart from them only where cogent reasons in the interests of justice exist,[3219] *i.e.* where the previous decision has been decided on the basis of a wrong legal principle or has been given *per incuriam*, that is, a judicial decision that has been "wrongly decided, usually because the judge or judges were ill-informed about the applicable law".[3220] It is for the party submitting that the Appeals Chamber should depart from a previous decision to demonstrate that there are cogent reasons in the interest of justice that justify such departure.[3221]

969. The Appeals Chamber is not convinced by Župljanin's argument that the Tribunal's case law, including the *Tadić* Appeal Judgement and *Stakić* Appeal Judgement, constitutes cogent reasons to depart from its jurisprudence.[3222]

970. The Appeals Chamber notes that the paragraph of the *Tadić* Appeal Judgement to which Župljanin refers generally describes examples of the third category of joint criminal enterprise.[3223] It states that if the common purpose or shared intent of a joint criminal enterprise was to remove members of one ethnicity from their region, the foreseeability of the crime of murder may be

[3215] Župljanin Appeal Brief, paras 223, 225.
[3216] See *supra*, para. 958.
[3217] See *Đorđević* Appeal Judgement, paras 77, 906; *Brđanin* Appeal Decision of 19 March 2004, paras 5-9.
[3218] See *Đorđević* Appeal Judgement, para. 23; *Aleksovski* Appeal Judgement, para. 107.
[3219] *Đorđević* Appeal Judgement, para. 23; *Galić* Appeal Judgement, para. 117; *Aleksovski* Appeal Judgement, para. 107.
[3220] *Đorđević* Appeal Judgement, para. 24, quoting *Aleksovski* Appeal Judgement, para. 108.
[3221] *Đorđević* Appeal Judgement, para. 24. See *Popović et al.* Appeal Judgement, para. 1674.
[3222] Župljanin Appeal Brief, para. 220. See Župljanin Appeal Brief, para. 224.
[3223] *Tadić* Appeal Judgement, para. 204. See Župljanin Appeal Brief, para. 220.

inferred from the forcible removal of civilians "at gunpoint" or "by burning their houses".[3224] However, these are mere examples of factors from which the foreseeability of crimes outside the common purpose can be inferred. They do not imply that certain violent forms of acts must be perpetrated or intended in the execution of the common purpose in order for a trier of fact to conclude that the crime of murder is foreseeable pursuant to the third category of joint criminal enterprise. With respect to the case specifically, the *Tadić* Appeals Chamber found that Duško Tadić had the "intention to further the criminal purpose to rid the Prijedor region of the non-Serb population, by committing inhumane acts against them".[3225] It then found that in the context of that case, it was foreseeable that killings might be committed.[3226]

971. In the paragraph of the *Stakić* Appeal Judgement that Župljanin cites, the *Stakić* Appeals Chamber referred to, *inter alia*, the *Stakić* Trial Chamber's finding that Stakić possessed "the requisite intent to kill, including the intent to cause serious bodily harm in the reasonable knowledge that it was likely to result in death".[3227] The *Stakić* Appeals Chamber considered this finding to fulfil the subjective element of the third category of joint criminal enterprise.[3228] With respect to the subjective element of the first category of joint criminal enterprise, the *Stakić* Appeals Chamber found that Stakić shared the intent to further the common purpose that was to ethnically cleanse the municipality of Prijedor by deporting and persecuting Bosnian Muslims and Bosnian Croats.[3229] It then found, as regards the third category of joint criminal enterprise, that the crimes of murder and extermination were foreseeable.[3230]

972. The Appeals Chamber fails to see how the *Tadić* Appeal Judgement and *Stakić* Appeal Judgement differ from the present case, where the Trial Chamber found that: (i) Župljanin intended to achieve the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serb state through the commission of the JCE I Crimes, *i.e.* the crimes of deportation, inhumane acts (forcible transfer), and persecutions through forcible transfer and deportation as crimes against humanity in the ARK Municipalities;[3231] and (ii) the possibility that Župljanin's JCE III Crimes, including murder and extermination, could be committed in the execution of the

[3224] *Tadić* Appeal Judgement, para. 204.
[3225] *Tadić* Appeal Judgement, para. 232.
[3226] *Tadić* Appeal Judgement, para. 232.
[3227] *Stakić* Appeal Judgement, para. 96, quoting *Stakić* Trial Judgement, para. 656. See Župljanin Appeal Brief, para. 220.
[3228] *Stakić* Appeal Judgement, para. 97.
[3229] *Stakić* Appeal Judgement, paras 73, 84. See *Stakić* Appeal Judgement, para. 83.
[3230] *Stakić* Appeal Judgement, para. 98.
[3231] Trial Judgement, vol. 2, para. 520.

common purpose was sufficiently substantial so as to be foreseeable to him and that he willingly took that risk.[3232]

973. Both the *Tadić* Appeal Judgement and the *Stakić* Appeal Judgement as well as the Trial Judgement in the present case are in line with the Tribunal's jurisprudence, which consistently set out the subjective element of the third category of joint criminal enterprise as recalled above.[3233]

974. In support of his assertion that the "distance" between the intended and the foreseeable crimes must be restricted, Župljanin also refers to national laws and practice in common law jurisdictions[3234] as well as the extrajudicial writings of Judge Cassese.[3235] However, the Appeals Chamber recalls that the Tribunal is not bound by decisions from national jurisdictions[3236] or extrajudicial writings of a judge.[3237]

975. With regard to Župljanin's argument that his suggested approach of imposing the additional condition of violent crimes would respond to concerns that have been raised as to the "potential untrammelled breadth" of the third category of joint criminal enterprise,[3238] the Appeals Chamber first notes that, while Župljanin relies on (i) the *Brđanin* Trial Judgement and Judge Shahabuddeen's dissenting opinion in the *Brđanin* Appeal Judgement; and (ii) Judge Schomburg's separate opinion in the *Martić* Appeal Judgement, these do not constitute cogent reasons to depart from the Tribunal's jurisprudence as they do not concern the issue at hand.[3239] Second, with respect to Župljanin's reliance of the ECCC Decision on JCE, the Appeals Chamber recalls its earlier conclusion that this decision does not constitute a cogent reason for the Appeals Chamber to depart

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[3232] See Trial Judgement, vol. 2, paras 522-528.
[3233] *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1078, 1081; *Brđanin* Appeal Judgement, paras 365, 411; *Stakić* Appeal Judgement, para. 65; *Tadić* Appeal Judgement, para. 228. See *supra*, para. 958.
[3234] See Župljanin Appeal Brief, para. 222, referring to Binder Article, p. 406; Pillsbury Article, p. 106, 108; UK Homicide Act, section 1(1).
[3235] See Župljanin Appeal Brief, para. 221.
[3236] See *Krajišnik* Appeal Judgement, para. 600.
[3237] *Đorđević* Appeal Judgement, para. 83. See *Đorđević* Appeal Judgement, para. 33. Moreover, the Appeals Chamber observes that in the extrajudicial writing cited by Župljanin, Judge Cassese noted that resorting to the third category of joint criminal enterprise for specific intent crimes is intrinsically ill-founded (Judge Cassese Article on JCE, p. 121. See Judge Cassese Article on JCE, p. 122). However, the Appeals Chamber has considered that this position expressed in extrajudicial writings of Judge Cassese does not justify departure from its established case law on the third category of joint criminal enterprise in relation to specific intent crimes (*Đorđević* Appeal Judgement, para. 83. See *Popović et al.* Appeal Judgement, paras 1437-1443).
[3238] Župljanin Appeal Brief, para. 225.
[3239] The Appeals Chamber observes that: (i) Judge Shahabuddeen's dissenting opinion relates to the issue of whether the principal perpetrators of a crime must be proved to be members of the joint criminal enterprise in order for their crimes to be attributed to the members of the enterprise (*Brđanin* Trial Judgement, paras 354-355; *Brđanin* Appeal Judgement, Partially Dissenting Opinion of Judge Shahabuddeen, paras 1-20); (ii) Judge Schomburg's separate opinion in the *Martić* Appeal Judgement addresses the question of whether Martić's conduct had to be qualified as that of a "(co)-perpetrator" under the mode of liability of commission pursuant to Article 7(1) of the Statute as opposed to contribution to a joint criminal enterprise (*Martić* Appeal Judgement, Separate Opinion of Judge Schomburg on Individual Criminal Responsibility of Milan Martić, paras 2, 7).

from its consistent jurisprudence on liability pursuant to the third category of joint criminal enterprise.[3240]

976. For the foregoing reasons, the Appeals Chamber finds that Župljanin has failed to demonstrate that there are cogent reasons warranting departure from the Tribunal's jurisprudence on the third category of joint criminal enterprise. Accordingly, the Appeals Chamber also finds no merit in Župljanin's additional argument that the Trial Chamber erred in law in failing to find that he "intended the adoption of any violent means" to effectuate the common purpose.[3241]

c. Conclusion

977. For the above reasons, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber erred in law in convicting him of persecutions through killings, torture, and cruel treatment; extermination as a crime against humanity; murder as a violation of the laws or customs of war; and torture as a violation of the laws or customs of war and finding him responsible for murder as a crime against humanity; torture as crime against humanity; and cruel treatment as a violation of the laws or customs of war pursuant to the third category of joint criminal enterprise. The Appeals Chamber therefore dismisses sub-ground (A) of Župljanin's second ground of appeal.

(iii) Alleged errors of law in relation to whether Župljanin's JCE III Crimes were natural and foreseeable consequences of the common purpose (sub-ground (B) in part of Župljanin's second ground of appeal)

978. Župljanin submits that the Trial Chamber erred in law by failing to make a finding that Župljanin's JCE III Crimes were "objectively" natural and foreseeable consequences of the common purpose.[3242] He contends that the lack of a finding on such an essential element of the third

[3240] *Đorđević* Appeal Judgement, para. 53. See *Đorđević* Appeal Judgement, paras 50-52. See also *Martić* Appeal Judgement, paras 76, 84. With regard to Župljanin's contention that other commentators have proposed quite radically that third category of joint criminal enterprise should be abolished in favour of the concept of aiding and abetting (Župljanin Appeal Brief, para. 225, referring to Kai Ambos *Amicus Curiae* Application, pp 8-13, Ohlin Article, p. 9), the Appeals Chamber recalls that while writings of highly respected academics may be considered in determining the law, their subsidiary nature is well-established and the Appeals Chamber is not bound by them (*Đorđević* Appeal Judgement, para. 33).

[3241] Župljanin Appeal Brief, para. 224. See Župljanin Appeal Brief, para. 226.

[3242] Župljanin Appeal Brief, paras 193-194; Župljanin Reply Brief, para. 66. Župljanin submits that none of the paragraphs of the Trial Judgement devoted to the third category of joint criminal enterprise make a determination on whether these crimes were a natural and foreseeable consequence of the JCE. He submits that the Trial Chamber "later" makes a reference to "a finding" that the Župljanin's JCE III Crimes were "foreseeable consequences" of the execution of the common plan, but it fails to indicate where in the Trial Judgement this finding was made. According to Župljanin, the Trial Chamber might have confused its findings in paragraphs 521-528 of volume two of the Trial Judgement on "subjective foreseeability" with "objective foreseeability" with respect to which it did not make a finding (Župljanin Appeal Brief, para. 193).

category of joint criminal enterprise liability invalidates his conviction pursuant to this form of liability.[3243]

979. The Prosecution responds that the Trial Chamber's findings on Župljanin's "'subjective foreseeability' implicitly assume that the Trial Chamber also found the crimes to have been 'objectively foreseeable'".[3244] The Prosecution submits that in these circumstances, the Trial Chamber was not required to make any additional findings on whether Župljanin's JCE III Crimes were natural and foreseeable consequences of the JCE.[3245] The Prosecution further submits that, even if the Trial Chamber should have entered a more specific finding, Župljanin fails to show that any alleged oversight by the Trial Chamber would have any impact since the only reasonable conclusion is that Župljanin's JCE III Crimes were natural and foreseeable consequences of the JCE.[3246]

980. The Appeals Chamber reiterates, as correctly set out by the Trial Chamber,[3247] that an accused may be responsible for crimes committed beyond the common purpose of the joint criminal enterprise, if they were a natural and foreseeable consequence thereof.[3248] However, this "must be assessed in relation to the knowledge of a particular accused".[3249]

981. Accordingly, the Appeals Chamber considers that Župljanin's argument creates and rests upon an artificial distinction – that the subjective element of the third category of joint criminal enterprise contains distinct objective and subjective elements – in direct contravention of the law.[3250] Župljanin's unfounded argument, which departs from well-established jurisprudence, therefore has no merit. As such, the Appeals Chamber dismisses sub-ground (B) of Župljanin's second ground of appeal in part concerning this issue.[3251]

[3243] Župljanin Appeal Brief, para. 194.
[3244] Prosecution Response Brief (Župljanin), para. 145. The Prosecution adds that the Trial Chamber confirmed this when it "recall[ed] its findings that all of the remaining crimes were foreseeable consequences of the execution of the common plan" (Prosecution Response Brief (Župljanin), para. 145).
[3245] Prosecution Response Brief (Župljanin), para. 145.
[3246] Prosecution Response Brief (Župljanin), paras 144-145.
[3247] Trial Judgement, vol. 1, para. 99.
[3248] *Kvočka et al.* Appeal Judgement, para. 86.
[3249] *Kvočka et al.* Appeal Judgement, para. 86. See *supra*, para. 621.
[3250] *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.
[3251] The Appeals Chamber notes that Župljanin also submits that the Trial Chamber erred in fact by (implicitly) finding that Župljanin's JCE III Crimes were natural and foreseeable consequences of the JCE (see Župljanin Appeal Brief, paras 196-200). In light of its conclusion that under the third category of joint criminal enterprise, the accused may be responsible for crimes beyond the common purpose of a joint criminal enterprise if they were natural and foreseeable consequences of the common purpose *to him*, the Appeals Chamber will address these arguments to the extent that they are relevant to the Trial Chamber's considerations in this regard. These arguments will be addressed in the next section together with Župljanin's factual challenges raised with respect to the Trial Chamber's findings that Župljanin's JCE III Crimes were foreseeable to him (see *infra*, paras 982-1010).

(iv) Alleged errors in finding that Župljanin's JCE III Crimes were foreseeable to Župljanin and that he willingly took the risk that they might be committed (sub-ground (B) in part and sub-ground (D) of Župljanin's second ground of appeal)

a. Submissions of the parties

982. Župljanin submits that the Trial Chamber erred in finding that Župljanin's JCE III Crimes were foreseeable to him and that he willingly took the risk that they might be committed.[3252] He argues that the Trial Chamber "impermissibly generalized and distorted factual findings" regarding his individual criminal responsibility pursuant to the third category joint criminal enterprise.[3253] Specifically, he submits that the Trial Chamber erred in its approach by making unsupported generalisations about the ARK Municipalities as a whole, which it then used to make further findings on each municipality.[3254] In this context, Župljanin further submits that: (i) the lack of internal references makes it "impossible" to understand the Trial Chamber's findings;[3255] (ii) each of the ARK Municipalities required an independent analysis as they had different ethnic compositions, sequences of events, decision-makers, and perpetrators;[3256] and (iii) the foreseeable actions of one group of perpetrators cannot be said to be equally foreseeable in relation to another group in a different municipality.[3257] According to Župljanin, the Trial Chamber's failure to make findings on the foreseeability of specific crimes in specific municipalities means that an unspecified crime at an unspecified location was a foreseeable and natural consequence of the JCE, a conclusion that "substantially and dangerously" diminishes the threshold of joint criminal enterprise liability.[3258]

983. Župljanin also argues that no reasonable trier of fact could have found that Župljanin's JCE III Crimes were natural and foreseeable consequences of the JCE since the Trial Chamber expressly excluded from the common criminal purpose all violent crimes and acts of unlawful coercion charged in the Indictment.[3259] Župljanin argues in this regard that the violent crimes were not natural and foreseeable *consequences* of the objective to see the permanent departures of

[3252] Župljanin Appeal Brief, paras 201-218.
[3253] Župljanin Appeal Brief, paras 201-213.
[3254] Župljanin Appeal Brief, paras 203-204, 206.
[3255] Župljanin Appeal Brief, para. 204. See Župljanin Appeal Brief, paras 202-203. See also Župljanin Reply Brief, para. 68. Župljanin argues that the Trial Chamber's conclusions were not sufficiently referenced on a central element and that the parties and the Appeals Chamber are left to speculate on or surmise how the Trial Chamber arrived at these findings. He adds that this violates his right to a reasoned opinion (Župljanin Appeal Brief, paras 202-203, referring to, *inter alia*, *Krajišnik* Appeal Judgement, paras 23, 176; Župljanin Reply Brief, para. 68).
[3256] Župljanin Appeal Brief, paras 203-206. See Župljanin Reply Brief, para. 69.
[3257] Župljanin Appeal Brief, para. 205.
[3258] Župljanin Appeal Brief, para. 199. See Župljanin Appeal Brief, para. 200.
[3259] Župljanin Appeal Brief, paras 196, 198.

non-Serbs from the ARK as many other factors contributed to these crimes.[3260] Župljanin contends further that in the absence of any meaningful definition in the Trial Judgement of what was intended within the common purpose, even non-violent crimes cannot be considered natural and foreseeable consequences of the JCE.[3261]

984. Župljanin also contends that the Trial Chamber's findings – particularly as they relate to murder and extermination – were unreasonable, inconsistent, or insufficiently reasoned, and do not demonstrate that he had the requisite *mens rea*.[3262] Specifically, Župljanin submits that the Trial Chamber erred by relying on: (i) the enrolment of "seasoned criminals" in the Banja Luka CSB SPD and his receipt of reports on the Banja Luka CSB SPD's lack of discipline and criminal activities;[3263] (ii) "unspecified 'crimes'" committed against non-Serbs in Banja Luka;[3264] (iii) the death of 20 detainees in the Sanski Most Incident during their transportation on 7 July 1992 even though it accepted the possibility that this may not have been intentional;[3265] (iv) the death of eight non-Serbs at the Manjača detention camp between 6 and 7 August 1992 and the Koričanske Stijene killings on 21 August 1992;[3266] and (v) his tasking of the Prijedor police to escort buses of non-Serb detainees to Croatia in September 1992.[3267]

985. Župljanin further argues that the Trial Chamber failed to properly link the principal perpetrators to members of the JCE, which affects any foreseeability imputed to him.[3268] He submits that there is neither evidence nor preliminary findings explaining how the JCE members

[3260] Župljanin Appeal Brief, para. 197. Župljanin submits that many factors contributed to the occurrence of crimes, including opportunism driven by ethnic hatred, a desire to revenge perceived atrocities by the other side, and a lack of adequate command and control in military operations. He adds that many of the crimes appear to have been committed "without the perpetrators having the slightest interest in inducing the victims to flee" (Župljanin Appeal Brief, para. 197).
[3261] Župljanin Appeal Brief, para. 198.
[3262] Župljanin Appeal Brief, paras 207-213.
[3263] Župljanin Appeal Brief, para. 208. Župljanin contends that the Trial Chamber's reasoning on these matters is so vague that it fails to demonstrate his "foresight, much less that he undertook the risk that crimes would be committed" (Župljanin Appeal Brief, para. 208). Župljanin also refers to his argument under sub-ground (D)(ii) of his first ground of appeal regarding the enrolment of "seasoned criminals" into the Banja Luka CSB SPD (Župljanin Appeal Brief, para. 208, fn. 296).
[3264] Župljanin Appeal Brief, para. 209.
[3265] Župljanin Appeal Brief, para. 210. Župljanin submits that the Trial Chamber did not imply that these specific deaths were foreseeable and that it accepted the possibility that they were unintentional (Župljanin Appeal Brief, para. 210, referring to Trial Judgement, vol. 1, para. 215). He also submits that the Trial Chamber failed to identify any criminal behaviour, specifically murder or extermination, after 7 July 1992 involving the Sanski Most police (Župljanin Appeal Brief, para. 210).
[3266] Župljanin Appeal Brief, para. 211. Župljanin argues that his foresight cannot be inferred on the basis of these incidents since: (i) no crimes were found to have been committed by the Prijedor police after 21 August 1992; (ii) all police involved in the Koričanske Stijene killings were transferred out of the Prijedor police force; and (iii) the preliminary report on the incident at the Manjača detention camp on 6 and 7 August 1992 was not finalised until 26 August 1992, *i.e.* after the Koričanske Stijene killings (Župljanin Appeal Brief, para. 211).
[3267] Župljanin Appeal Brief, para. 212. Župljanin submits that no crimes, specifically violent crimes, are alleged to have occurred during the transportation (Župljanin Appeal Brief, para. 212).
[3268] Župljanin Appeal Brief, paras 214-215, 217. See Župljanin Reply Brief, para. 72.

used the principal perpetrators to commit Župljanin's JCE III Crimes, and that this is not the only reasonable inference available.[3269]

986. The Prosecution responds that the Trial Chamber's findings were sufficiently referenced,[3270] and that it was not required to conduct an "independent analysis" for each of the ARK Municipalities since all crimes were committed in the implementation of the JCE and followed the same pattern.[3271] Moreover, the Prosecution argues that it was not required under the third form of joint criminal enterprise liability that Župljanin foresaw "the possibility that a specific unit could commit a specific crime in a specific municipality",[3272] and that he fails to show that the Trial Chamber's approach was incorrect.[3273]

987. The Prosecution also contends that the Trial Chamber found that violent and coercive means were involved in the implementation of the JCE and that Župljanin's contrary argument rests on an incorrect premise.[3274] The Prosecution further submits that the Trial Chamber considered the factors listed by Župljanin, among others, as contributing to the occurrence of Župljanin's JCE III Crimes, when it assessed foreseeability.[3275]

988. The Prosecution further responds that Župljanin had extensive knowledge of the context of the crimes and consistently contributed to the JCE, thus the crimes were foreseeable to him and he

[3269] Župljanin Appeal Brief, para. 216, referring to Trial Judgement, vol. 2, para. 316. Župljanin argues that how the JCE members used the physical perpetrators is an important aspect of any potential foreseeability on his part as the perpetrators in each municipality differed (Župljanin Appeal Brief, para. 217).
[3270] Prosecution Response Brief (Župljanin), para. 151. The Prosecution submits that the Trial Chamber was not obliged in its summary of conclusions on Župljanin's individual criminal responsibility to cross-reference "each of its many previous findings" considering that a judgement must be read as a whole (Prosecution Response Brief (Župljanin), para. 151, referring to *Krajišnik* Appeal Judgement, para. 237; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379).
[3271] Prosecution Response Brief (Župljanin), paras 152, 154. The Prosecution submits that the JCE implementation across all the ARK Municipalities involved, *inter alia*: (i) the arming of Serbs and the disarming of non-Serbs; (ii) the forcible takeover of the ARK Municipalities; (iii) a recurring pattern of ethnic cleansing which resulted in a widespread and systematic campaign of terror; (iv) the same targeted victim group; and (v) physical perpetrators who belonged to groups used by JCE members, and who closely cooperated with each other, to further the common plan (Prosecution Response Brief (Župljanin), paras 154-155).
[3272] Prosecution Response Brief (Župljanin), para. 156.
[3273] Prosecution Response Brief (Župljanin), para. 156. See Prosecution Response Brief (Župljanin), para. 150.
[3274] Prosecution Response Brief (Župljanin), para. 146. The Prosecution submits that the furtherance of the criminal objective of the JCE involved using violent and coercive means (Prosecution Response Brief (Župljanin), para. 146, referring to Prosecution Appeal Brief (Župljanin), paras 9-12).
[3275] Prosecution Response Brief (Župljanin), para. 147. The Prosecution submits that the Trial Chamber, in particular, took into account the ethnically charged character of the armed conflict, the ethnic tensions existing in the region, the weak position in which non-Serbs found themselves in relation to the Serb forces arresting them and expelling them from their municipalities, and the strong ethnic tensions and resentments. It adds that the Trial Chamber was aware of the lack of discipline and extreme actions of certain members of the Serb forces (Prosecution Response Brief (Župljanin), para. 147). It further responds that Župljanin's assertion that "many of the crimes appear to have been committed without the perpetrators having the slightest interest in inducing the victims to flee" is not only unsupported, but is also contradicted by the evidence and the Trial Chamber's findings and that it is well established that the persons used as tools to carry out the *actus reus* of the crime need not share the *mens rea* for the joint criminal enterprise (Prosecution Response Brief (Župljanin), para. 148).

willingly took the risk of their commission.[3276] It submits that Župljanin: (i) was aware of and intended the massive forcible displacement campaign conducted against non-Serbs; (ii) knew of the widespread and systematic attack against non-Serbs and their weaker position; and (iii) was aware of the ethnically charged character of the armed conflict and shared the discriminatory intent with other JCE members.[3277] The Prosecution argues that Župljanin continuously received specific and repeated information that Serb forces, including forces under his command, committed widespread and systematic crimes against non-Serbs, both in general and regarding specific incidents.[3278] It also contends that the Trial Chamber reasonably relied on Župljanin's knowledge of the Sanski Most Incident and the Koričanske Stijene killings as they were "clear warnings" of the risk of additional murders being committed during the transport of detainees by police.[3279] The Prosecution asserts that Župljanin misunderstands the role of some factors considered by the Trial Chamber as they show that he willingly took the risk of, and encouraged, the continuation of crimes.[3280]

989. The Prosecution finally contends that Župljanin fails to show that the Trial Chamber erred in concluding that the JCE members used Serb forces to carry out Župljanin's JCE III Crimes in the ARK Municipalities.[3281] It argues that Župljanin's arguments in this regard warrant dismissal as they go beyond his notice of appeal.[3282] The Prosecution also submits that there is "no requirement 'of some proof of an *act* by the JCE member in order to use the non-JCE members as tools to further the JCE'".[3283] It asserts that the existence of the requisite link may be inferred from various circumstances,[3284] and that the Trial Chamber reasonably established the requisite links.[3285]

[3276] Prosecution Response Brief (Župljanin), para. 157. See Prosecution Response Brief (Župljanin), paras 158-161.
[3277] Prosecution Response Brief (Župljanin), para. 158.
[3278] Prosecution Response Brief (Župljanin), paras 159-161.
[3279] Prosecution Response Brief (Župljanin), para. 162. The Prosecution also responds that it is irrelevant that Župljanin did not finalise his report before 26 August 1992 and, given the efficient reporting system set up by Župljanin, there can be no doubt that he was informed of the murders and the likely involvement of the Prijedor police on, or soon after, the day of the incident (Prosecution Response Brief (Župljanin), para. 163).
[3280] Prosecution Response Brief (Župljanin), para. 164. The Prosecution argues that the factors considered by the Trial Chamber demonstrated that: (i) Župljanin's JCE III Crimes continued to be committed by the Banja Luka CSB SPD and other units under Župljanin's authority; (ii) Župljanin continued to redeploy and use these units with the knowledge of their crimes; and (iii) Župljanin failed to take any measures to punish them (Prosecution Response Brief (Župljanin), para. 164).
[3281] Prosecution Response Brief (Župljanin), paras 165, 167.
[3282] Prosecution Response Brief (Župljanin), para. 166. The Prosecution submits that Župljanin's notice of appeal does not indicate that he intended to challenge the link between the principal perpetrators and the JCE members and alleges an error of fact while his arguments concern an error of law (Prosecution Response Brief (Župljanin), para. 166).
[3283] Prosecution Response Brief (Župljanin), para. 168.
[3284] Prosecution Response Brief (Župljanin), para. 169.
[3285] Prosecution Response Brief (Župljanin), para. 170. The Prosecution refers to findings: (i) that the JCE members, including Župljanin, had control over the hierarchically structured forces whose members committed crimes in the ARK Municipalities; (ii) that some JCE members, by virtue of their leadership over the SDS and/or their important posts in the RS, were in charge of events taking place in the municipalities through their control over the SDS structure and Crisis Staffs; (iii) that all ARK Municipalities were under the authority of the ARK Crisis Staff, whose leading members were also members of the JCE; and (iv) that the JCE members in each municipality acted in concert and with the other principal perpetrators when they committed the crimes (Prosecution Response Brief (Župljanin), para. 170).

990. Župljanin replies that his arguments regarding the failure to link the physical perpetrators to the JCE members do not go beyond the scope of his notice of appeal since the issue is "part and parcel" of the alleged foreseeability of the crimes and he only alleges errors of fact.[3286]

b. Analysis

991. In light of the nature of Župljanin's submissions, the Appeals Chamber will consider, first, Župljanin's arguments on the link between the principal perpetrators of Župljanin's JCE III Crimes and the JCE members and, second, his arguments on the alleged errors concerning the foreseeability of Župljanin's JCE III Crimes.

i. Alleged errors on the link between the principal perpetrators of Župljanin's JCE III Crimes and the JCE members

992. The Appeals Chamber will first determine whether Župljanin's argument concerning the link between the principal perpetrators of Župljanin's JCE III Crimes and the JCE members should be considered on the merits. The Appeals Chamber recalls that a notice of appeal shall contain, *inter alia*, the grounds of appeal, clearly specifying in respect of each ground of appeal any alleged error of law and any alleged error of fact.[3287] The Appeals Chamber notes that in Župljanin's notice of appeal, sub-ground (D) of the second ground of appeal alleges that "[n]o reasonable trier of fact could have found that the JCE III crimes were foreseeable to Mr Župljanin",[3288] and therefore gives notice of an error of fact. In his appeal brief, however, Župljanin argues that the Trial Chamber failed to properly link the principal perpetrators to JCE members, a failure which affects its findings on the foreseeability of crimes.[3289] The Appeals Chamber considers that, in so arguing, Župljanin alleges a failure of the Trial Chamber to correctly apply the jurisprudence on joint criminal enterprise to the evidence and provide a reasoned opinion, thus an error of law.[3290] Therefore, contrary to Župljanin's assertion,[3291] his argument is not correctly characterised as an error of fact and is thus not covered by paragraphs 28 and 29 of his notice of appeal. However, recalling that the purpose of listing all the grounds of appeal in a notice of appeal is to focus the mind of the respondent on the arguments which will be developed subsequently in the appeal brief,[3292] the

[3286] Župljanin Reply Brief, paras 70-71.
[3287] *Popović et al.* Appeal Judgement, para. 500; *Boškoski and Tarčulovski* Appeal Judgement, para. 246. See *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Prosecution's Motion for Clarification and Reconsideration of the Decision of 28 February 2008, 11 March 2008, para. 10 ("[a] notice of appeal need not enumerate the precise contours that an argument will take [...] however, [...] the arguments [...] advance[d] must be within the ambit of issues [...]set forth in [the] notice of appeal").
[3288] Župljanin Notice of Appeal, para. 28. See Župljanin Notice of Appeal, para. 29.
[3289] Župljanin Appeal Brief, paras 214-218.
[3290] See *Popović et al.* Appeal Judgement, para. 502.
[3291] See Župljanin Reply Brief, paras 70-71 (reiterating that the Trial Chamber's errors are errors of fact).
[3292] *Popović et al.* Appeal Judgement, para. 500, referring to *Boškoski and Tarčulovski* Appeal Judgement, para. 246.

Appeals Chamber finds that the Prosecution will not suffer any prejudice if Župljanin's argument is considered on the merits as it had the opportunity to respond to this argument and the matter is fully litigated in the briefs.[3293] Thus, in these circumstances, the Appeals Chamber will consider Župljanin's argument.

993. The Trial Chamber found that Serb forces committed the crimes underlying Župljanin's convictions pursuant to the third form of joint criminal enterprise in the ARK Municipalities, and for each municipality, it identified the specific group or unit of the Serb forces – belonging to various police forces, paramilitary groups, or military forces – who were involved in the perpetration of these crimes in the course of implementing the JCE.[3294] The Appeals Chamber also notes that the Trial Chamber did not identify the Serb forces, or any group or unit thereof, as members of the JCE.[3295] Župljanin does not challenge the Trial Chamber's findings on the principal perpetrators of the relevant crimes or the JCE members in this sub-ground of appeal, but disputes whether the link between them was properly established.

994. The Appeals Chamber recalls that, under the third category of joint criminal enterprise, 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".[3296] The Appeals Chamber notes that, for each of the ARK Municipalities, the Trial Chamber identified a link between the specific group or unit of the Serb forces involved in crimes and at least one JCE member, and at times, Župljanin himself.[3297] As examples, the Appeals Chamber notes that the Trial Chamber found that the principal perpetrators of Župljanin's JCE III Crimes in Banja Luka, Ključ, Kotor Varoš, Donji Vakuf, Sanski Most, Prijedor, Skender Vakuf, and Teslić included members of forces who were under the authority of Župljanin himself and/or other JCE members, such as, Vinko Kondić, Witness Nedeljko Đekanović, Momir Talić, Mirko

[3293] *Cf. Popović et al.* Appeal Judgement, para. 489; *Nizeyimana* Appeal Judgement, paras 352-354.
[3294] Trial Judgement, vol. 2, paras 801, 828, 841, 846, 855, 860, 865. See Trial Judgement, vol. 2, paras 522-528.
[3295] See Trial Judgement, vol. 2, para. 314 (finding that the JCE members were Karadžić, Krajišnik, Plavšić, Koljević, Mladić, Mandić, Velibor Ostojić, Momir Talić, Brđanin, Stakić, Drljača, Kuprešanin, Vlado Vrkeš, Mirko Vručinić, Jovan Tintor, Nedeljko Đekanović, Savo Tepić, Stevan Todorović, Blagoje Simić, Vinko Kondić, Malko Koroman, Đorđe Ristanić, Predrag Radić, Andrija Bjelošević, Ljubiša Savić, a.k.a. "Mauzer", Predrag Ješurić, and Branko Grujić).
[3296] *Popović et al.* Appeal Judgement, para. 1679; *Đorđević* Appeal Judgement, para. 911.
[3297] Trial Judgement, vol. 2, paras 314, 801-802 (Banja Luka), 828-829 (Donji Vakuf), 841-842 (Ključ), 846-847 (Kotor Varoš), 855-856 (Prijedor and Skender Vakuf), 860-861 (Sanski Most), 865-866 (Teslić). See *e.g.* Trial Judgement, vol. 1, paras 142-147, 163-164, 200, 240, 716; Trial Judgement, vol. 2, paras 311, 350-356, 384-397, 495-499, 502-503, 710, 721-727.

Vručinić, Drljača, and Mladić.[3298] The Trial Chamber then concluded that the named JCE members "when using these Serb Forces" to commit crimes, acted in accordance with the common plan.[3299]

995. The Appeals Chamber recalls that the existence of the link between the principal perpetrator of a crime and a member of the joint criminal enterprise is to be assessed on a case-by-case basis.[3300] This link can be inferred from various factors, including "evidence that the JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit the crime".[3301] Insofar as Župljanin asserts that "there must be some proof of an act by the JCE member in order to use the non-JCE members as tools to further the JCE",[3302] the Appeals Chamber considers that there is no requirement that there must be "an act" by the JCE member in order to establish the necessary link.[3303]

996. The Appeals Chamber also considers Župljanin's argument on *how* the JCE members used the principal perpetrators to commit crimes to be unpersuasive and unsupported. The Appeals Chamber recalls that there is "no requirement that a trial chamber demonstrate 'how each physical perpetrator was *used* to commit the crimes' in order to establish such link", provided that the trial chamber identifies how one or more members of the joint criminal enterprise used the forces to which these physical perpetrators belonged in furtherance of the common plan.[3304] The Appeals Chamber notes that, in arriving at its conclusions on the required link, the Trial Chamber considered: (i) the hierarchical structure, which included at least one JCE member exercising command or control over the relevant Serb forces involved in the commission of the crimes; (ii) the knowledge possessed by at least one JCE member on the involvement of the identified Serb forces in the criminal activities, including the unlawful detentions, the imposition of inhumane conditions, and the crimes committed in detention facilities; and (iii) that the various units or groups of the Serb

[3298] Trial Judgement, vol. 2, paras 801-802 (see Trial Judgement, vol. 1, paras 200-211) (Banja Luka); Trial Judgement, vol. 2, paras 314, 841-842 (see Trial Judgement, vol. 1, paras 331-339) (Ključ); Trial Judgement, vol. 2, paras 314, 846-847 (see Trial Judgement, vol. 2, paras 384-397; Trial Judgement, vol. 1, paras 453-480) (Kotor Varoš); Trial Judgement, vol. 2, paras 314, 828-832 (see Trial Judgement, vol. 1, paras 260-274) (Donji Vakuf); Trial Judgement, vol. 2, paras 314, 860-861 (see Trial Judgement, vol. 1, paras 782-804) (Sanski Most); Trial Judgement, vol. 2, paras 314, 854-856 (see Trial Judgement, vol. 1, paras 655-684) (Prijedor and Skender Vakuf); Trial Judgement, vol. 2, paras 314, 865-866 (see Trial Judgement, vol. 1, paras 867-872; Trial Judgement, vol. 2, paras 405, 418-419, 421-422, 432-433, 435, 437-448) (Teslić).
[3299] Trial Judgement, vol. 2, paras 802, 829, 842, 847, 856, 861, 866.
[3300] *Popović et al.* Appeal Judgement, para. 1053. See *Tolimir* Appeal Judgement, para. 432; *Đorđević* Appeal Judgement, para. 165; *Šainović et al.* Appeal Judgement, para. 1256; *Krajišnik* Appeal Judgement, para. 226.
[3301] *Popović et al.* Appeal Judgement, para. 1050, quoting *Krajišnik* Appeal Judgement, para. 226. See *Šainović et al.* Appeal Judgement, paras 1257, 1259.
[3302] Župljanin Appeal Brief, para. 215.
[3303] See *e.g. Popović et al.* Appeal Judgement, para. 1057, fn. 3081; *Šainović et al.* Appeal Judgement, paras 1259, 1263; *Martić* Appeal Judgement, paras 181, 187-189, 205-206.
[3304] *Đorđević* Appeal Judgement, para. 165.

forces acted in concert with each other in accordance with the common plan.[3305] In the view of the Appeals Chamber, Župljanin has failed to show an error in the Trial Chamber's consideration of these factors or that the Trial Chamber misapplied the law. The Appeals Chamber thus considers that the Trial Chamber correctly applied the jurisprudence on joint criminal enterprise. The Appeals Chamber also finds that Župljanin has not demonstrated that no reasonable trier of fact could have concluded that the only reasonable inference available is that Župljanin's JCE III Crimes can be imputed to at least one JCE member and that this member – when using the principal perpetrators – acted in accordance with the common plan. Župljanin's arguments on the link between the principal perpetrators and the JCE members are accordingly dismissed.

ii. Alleged errors on the foreseeability of Župljanin's JCE III Crimes

997. The Appeals Chamber recalls that the Trial Chamber, in its foreseeability assessment of Župljanin's JCE III Crimes committed in the ARK Municipalities, considered the overall context in which these crimes occurred as well as specific evidence which it found supported the conclusion that: (i) the possibility that, in the execution of the common plan, these crimes could be committed was sufficiently substantial as to be foreseeable to Župljanin; and (ii) he willingly took that risk.[3306] The Appeals Chamber understands that the Trial Chamber was satisfied that the subjective element pursuant to the third category of joint criminal enterprise was met in relation to Župljanin throughout the Indictment period, *i.e.* at least from 1 April 1992 and, in any event when Župljanin's JCE III Crimes were committed.[3307]

998. Insofar as Župljanin argues that the Trial Chamber erred by making unsupported generalisations about the ARK Municipalities as a whole, the Appeals Chamber finds that he ignores the Trial Chamber's relevant findings. In this regard, the Appeals Chamber notes that, for each of the ARK Municipalities, the Trial Chamber reviewed the evidence and made findings on

[3305] Trial Judgement, vol. 2, paras 802 (Banja Luka), 829 (Donji Vakuf), 842 (Ključ), 847 (Kotor Varoš), 856 (Prijedor and Skender Vakuf), 861 (Sanski Most), 866 (Teslić). See Trial Judgement, vol. 2, paras 405, 418-419, 421-422, 432-433, 435, 437-448 (Banja Luka), 507 (Sanski Most), 508 (Prijedor), 509 (Ključ and Donji Vakuf), 510-517.
[3306] Trial Judgement, vol. 2, paras 522-528.
[3307] The Appeals Chamber notes that for the assessment of the foreseeability of all of Župljanin's JCE III Crimes, the Trial Chamber relied on, *inter alia*, the common purpose of the JCE (Trial Judgement, vol. 2, para. 521). With regard to foreseeability of unlawful detentions, the Trial Chamber additionally relied on the "information available to Župljanin during the *Indictment period*" (emphasis added) (Trial Judgement, vol. 2, para. 523). With respect to the foreseeability of murders and extermination, it further relied on his presence in Banja Luka after the 3 April 1992 blockade of the town as well as his receipt of information about crimes against non-Serbs in Banja Luka from "the first half of April 1992" (Trial Judgement, vol. 2, para. 524). The Trial Chamber also relied on the ethnic tensions in the regions in relation to the foreseeability of plunder and looting, and his knowledge of ethnic tensions in relation to torture, cruel treatment, and inhumane acts (Trial Judgement, vol. 2, paras 525-526). Moreover, Župljanin was convicted pursuant to the third category of joint criminal enterprise for crimes occurring throughout the Indictment period (see *e.g.* Trial Judgement, vol. 2, paras 801, 805, 828, 832, 841, 845-846, 850, 855, 859-860, 864-865, 869, 956). The Appeals Chamber notes that the Trial Chamber identified the Indictment period as "from no later than 1 April 1992" until 31 December 1992 (Trial Judgement, vol. 2, para. 344. See Trial Judgement, vol. 2, para. 520).

the sequence of events and the crimes committed,[3308] the principal perpetrators of the crimes,[3309] and Župljanin's involvement in and knowledge of the events and crimes committed.[3310] Similarly, in concluding that it was foreseeable to Župljanin that Župljanin's JCE III Crimes might be committed, the Trial Chamber considered the relevant findings for each crime.[3311] For example, as set out in detail above,[3312] the Trial Chamber's finding that it was foreseeable to Župljanin that Serb forces might impose and maintain restrictive and discriminatory measures against non-Serbs was based on, *inter alia*, his membership in "both the ARK and Banja Luka crisis staffs, which issued orders restricting the rights of Muslims and Croats to perform certain jobs or impacting on their property rights".[3313] Likewise, its finding that it was foreseeable to Župljanin that Serb forces might establish and perpetuate inhumane living conditions and commit torture, cruel treatment, and inhumane acts against Muslims and Croats was based on "the reports that Župljanin received on the conditions of detention camps and his knowledge of ethnic tensions existing in the region".[3314] It is on the basis of an analysis of all of the above findings that the Trial Chamber concluded that it was foreseeable to Župljanin, and he willingly took the risk, that restrictive and discriminatory measures might be imposed, large numbers of non-Serbs might be unlawfully detained, and that other serious crimes, including murder and extermination, could be committed.[3315] Contrary to Župljanin's argument,[3316] the Trial Chamber was not required to establish whether it was foreseeable that a *specific* group would commit the *specific* crime, as long as it found that it was foreseeable to Župljanin that a crime outside the common purpose might be perpetrated by one or more of the persons used by him (or by another member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose and he willingly took the risk that the crime might be committed by joining or continuing to participate in the JCE.[3317]

999. Furthermore, for each of the ARK Municipalities, the Trial Chamber considered the principal perpetrators of the crimes and their link to JCE members before concluding that Župljanin's JCE III Crimes were foreseeable to him and that he willingly took the risk that the

[3308] Trial Judgement, vol. 1, paras 200-228 (Banja Luka), 260-285 (Donji Vakuf), 331-350 (Ključ), 453-494 (Kotor Varoš), 655-703 (Prijedor and Skender Vakuf), 782-817 (Sanski Most), 867-883 (Teslić).
[3309] Trial Judgement, vol. 1, paras 200-211 (Banja Luka), 260-274 (Donji Vakuf), 331-339 (Ključ), 453-480 (Kotor Varoš), 655-684 (Prijedor and Skender Vakuf), 782-804 (Sanski Most), 867-872 (Teslić).
[3310] See *e.g.* Trial Judgement, vol. 2, paras 415-430, 432-437, 495-499, 506 (Banja Luka), 507 (Sanski Most), 508 (Prijedor), 509 (Ključ and Donji Vakuf), 510-517.
[3311] Trial Judgement, vol. 2, paras 522-527.
[3312] See *supra*, paras 948-954.
[3313] Trial Judgement, vol. 2, para. 522. See Trial Judgement, vol. 2, paras 279-284, 353, 401, 492-493.
[3314] Trial Judgement, vol. 2, paras 525. See Trial Judgement, vol. 2, paras 415-437, 506-511.
[3315] Trial Judgement, vol. 2, paras 522-528.
[3316] Župljanin Appeal Brief, para. 205.
[3317] See *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brđanin* Appeal Judgement, paras 365, 411.

crimes might be committed by participating in the JCE.[3318] As Župljanin argues, the portion of the Trial Judgement concerning legal findings on his individual criminal responsibility pursuant to the third category of joint criminal enterprise does not contain internal references to these and other relevant underlying findings.[3319] However, as stated above, while the Appeals Chamber considers the Trial Chamber's approach regrettable,[3320] it does not amount to a failure to provide a reasoned opinion in and of itself.[3321] The Appeals Chamber therefore considers that Župljanin has failed to show an error in the Trial Chamber's approach in its assessment of the subjective element of the third category of joint criminal enterprise. Thus, his arguments on the use of general or broad findings concerning the foreseeability of crimes and the need for individual analysis for each municipality are dismissed.

1000. Insofar as Župljanin argues that the Trial Chamber should not have concluded that JCE III Crimes were natural and foreseeable consequences of the common purpose of the JCE because it excluded violent crimes and acts of unlawful coercion from the common purpose, he does not substantiate why the Trial Chamber's finding on the common purpose can be understood that way.[3322] To the extent that he means that the Trial Chamber found that the common purpose was not criminal or that the JCE I Crimes through which the common purpose was implemented did not involve coercive acts, the Appeals Chamber has dismissed these arguments elsewhere in this Judgement.[3323] Consequently, the Appeals Chamber finds no merit in Župljanin's assertion.

1001. The Appeals Chamber finds equally unconvincing Župljanin's argument that no reasonable trier of fact could have found that Župljanin's JCE III Crimes were natural and foreseeable consequences of the common purpose since "many factors contributed to the occurrence of crimes".[3324] While he enumerates several factors, he refers to no evidence or findings of the Trial Chamber in support.[3325]

1002. In this respect, the Appeals Chamber notes that in considering whether the crimes were natural and foreseeable consequences of the common purpose to Župljanin, the Trial Chamber rightly took into account the overall context in which crimes occurred.[3326] In particular, the Trial Chamber found that Župljanin's JCE III Crimes occurred in the context of the JCE, the common

[3318] Trial Judgement, vol. 2, paras 801-803, 805 (Banja Luka), 828-830, 832 (Donji Vakuf), 841-843, 845 (Ključ), 846-848, 850 (Kotor Varoš), 855-857, 859 (Prijedor and Skender Vakuf), 860-862, 864 (Sanski Most), 865-867, 869 (Teslić).
[3319] Trial Judgement, vol. 2, paras 521-528.
[3320] See *supra*, para. 90.
[3321] See *supra*, para. 138.
[3322] Župljanin Appeal Brief, paras 196, 198. See Trial Judgement, vol. 2, para. 313.
[3323] See *supra*, paras 69, 919.
[3324] Župljanin Appeal Brief, para. 197.
[3325] See *supra*, fn. 3260.

purpose of which was to permanently remove the Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of the JCE I Crimes, *i.e.* crimes of deportation, inhumane acts (forcible transfer), and persecutions through forcible transfer and deportation as crimes against humanity.[3327] The Appeals Chamber also notes the Trial Chamber's findings that in implementing the JCE, violent takeovers of the Municipalities occurred together with an ensuing widespread and systematic campaign of terror and violence,[3328] aimed at establishing a Serb state as ethnically "pure" as possible.[3329] In its foreseeability assessment, the Trial Chamber further referred to factors such as: (i) the fact that Serb forces carried out the forcible removal of Bosnian Muslims and Bosnian Croats from the ARK Municipalities by enforcing unbearable living conditions on them following the takeovers of towns and villages;[3330] (ii) the weak position in which non-Serbs found themselves in relation to Serb forces arresting and expelling them;[3331] (iii) the strong ethnic tensions and resentment in the ARK Municipalities;[3332] and (iv) the presence of criminals in units that were dispatched to carry out operations in the ARK Municipalities in close contact with non-Serbs civilians.[3333] His unsupported assertion ignores the Trial Chamber's reasoning and fails to identify an error in the Trial Chamber's consideration of these factors. The Appeals Chamber therefore finds that Župljanin has failed to show that no reasonable trier of fact could have found, while taking into account the overall context in which crimes occurred, that Župljanin's JCE III Crimes were natural and foreseeable consequences of the common purpose to him.

1003. Turning to Župljanin's challenges to specific findings on which the Trial Chamber relied in reaching its conclusion that the crimes of murder and extermination were foreseeable to him,[3334] the Appeals Chamber first recalls that it has elsewhere dismissed Župljanin's argument regarding the enrolment and deployment of seasoned criminals in the Banja Luka CSB SPD.[3335] The Appeals Chamber further notes that the Trial Chamber: (i) found that Župljanin was one of the key actors behind the organisation of the blockade of Banja Luka on 3 April 1992 and the takeover of that town, which he began planning from at least March 1992;[3336] (ii) noted evidence that SOS members

[3326] See *Đorđević* Appeal Judgement, para. 920.
[3327] Trial Judgement, vol. 2, para. 521. See Trial Judgement, vol. 2, para. 522.
[3328] Trial Judgement, vol. 2, paras 310-311.
[3329] Trial Judgement, vol. 2, para. 311. See Trial Judgement, vol. 2, para. 310. See also Trial Judgement, vol. 2, paras 292, 738.
[3330] Trial Judgement, vol. 2, para. 522.
[3331] Trial Judgement, vol. 2, para. 526.
[3332] Trial Judgement, vol. 2, para. 525. See Trial Judgement, vol. 2, para. 528.
[3333] Trial Judgement, vol. 2, para. 524. See Trial Judgement, vol. 2, paras 415-440, 456, 518.
[3334] See *supra*, para. 984.
[3335] See *supra*, paras 843-845.
[3336] Trial Judgement, vol. 2, para. 495. The Trial Chamber found that during the 3 April 1992 blockade of Banja Luka, members of the SOS were armed and that, together with the Banja Luka CSB SPD, they carried out attacks against non-Serbs and their property (Trial Judgement, vol. 1, paras 144, 157, 201; Trial Judgement, vol. 2, paras 415, 496).

who were mostly thugs or from local criminal gangs were enrolled in the Banja Luka CSB SPD;[3337] and (iii) found that the crimes and undisciplined behaviour of the Banja Luka CSB SPD were reported to Župljanin.[3338] The Appeals Chamber thus considers that in light of the Trial Chamber's findings, which – contrary to Župljanin's argument[3339] – are sufficiently clear, a reasonable trier of fact could have relied on Župljanin's knowledge of the criminal elements in the Banja Luka CSB SPD and his continued use of them in concluding that it was foreseeable to him that crimes might be committed.

1004. With respect to Župljanin's claim that the Trial Chamber erred in relying on "unspecified 'crimes'" committed against non-Serbs in Banja Luka, the Appeals Chamber notes that the Trial Chamber found that "[i]n the first half of April 1992, and then again in August and September of the same year, representatives of the non-Serb community informed Župljanin about the crimes committed against non-Serbs in Banja Luka."[3340] In assessing the foreseeability of murder and extermination, the Trial Chamber relied on this finding.[3341] While this finding is not accompanied by internal references, a reading of the Trial Judgement as a whole reveals that the Trial Chamber based this finding on the evidence described elsewhere in the Trial Judgement, evincing that: (i) by 15 April 1992 Župljanin made a statement that he could not guarantee the physical security and the safety of property of non-Serb citizens in Banja Luka;[3342] and (ii) representatives of the non-Serb community informed him of, *inter alia*, murders, attacks against property, destruction of mosques, unlawful arrests, and the situation in detention camps in August and September 1992.[3343] This shows that the Trial Chamber indeed considered Župljanin's knowledge of specific crimes committed against non-Serbs in Banja Luka. Župljanin's argument, which misconstrues the Trial Judgement, is thus dismissed.

1005. Regarding Župljanin's argument that the Trial Chamber erred in relying on the Sanski Most Incident even though it accepted the possibility that this may not have been intentional, the Appeals Chamber notes that in support of his argument, he refers to the Trial Chamber's finding that police officers who transported these detainees: (i) "intended to inflict serious bodily harm upon these detainees"; and (ii) "knew or should have known that [the way they were transported] could result in their death".[3344] The Appeals Chamber understands that, in so arguing, he repeats the argument that the Trial Chamber found that the deaths of the victims in the Sanski Most Incident "may have

[3337] Trial Judgement, vol. 1, para. 143. See Trial Judgement, vol. 2, para. 388.
[3338] Trial Judgement, vol. 2, para. 503.
[3339] Župljanin Appeal Brief, para. 208.
[3340] Trial Judgement, vol. 2, para. 524.
[3341] Trial Judgement, vol. 2, para. 524.
[3342] Trial Judgement, vol. 2, para. 450.
[3343] Trial Judgement, vol. 2, paras 451-452.

resulted from mere negligence, rather than intent to kill",[3345] which the Appeals Chamber has dismissed elsewhere.[3346]

1006. Further, insofar as Župljanin argues that while the Trial Chamber found that the Sanski Most police were involved in the Sanski Most Incident on 7 July 1992, it failed to identify any criminal behaviour, specifically murder or extermination, after 7 July 1992 involving the Sanski Most police,[3347] the Appeals Chamber considers that his argument is premised on the misunderstanding that any subsequent acts of murder and extermination must involve the same perpetrators, *i.e.* the Sanski Most police, in order for those subsequent crimes to be foreseeable.[3348] The propensity of the police in general – not only of Sanski Most police – under Župljanin's authority to commit crimes, including murder and extermination, is relevant to the Trial Chamber's determination as to whether the occurrence of such crimes were foreseeable to him in the course of the execution of the common purpose of the JCE. Therefore, the Appeals Chamber discerns no error in the Trial Chamber's reliance on the Sanski Most Incident and Župljanin's knowledge thereof, among other evidence, in assessing the foreseeability of murder and extermination to him.[3349]

1007. Turning to Župljanin's argument on the incident in the Manjača detention camp, the Appeals Chamber notes that he argues that the preliminary report on the incident at the Manjača detention camp on 6 and 7 August 1992 was not finalised until 26 August 1992, *i.e.* after the Korićanske Stijene killings on 21 August 1992.[3350] However, Župljanin does not point to any evidence or findings of the Trial Chamber to support this argument. The Appeals Chamber therefore dismisses his argument as unsubstantiated.[3351]

1008. Furthermore, the Appeals Chamber considers that, even if no crimes were committed after the Korićanske Stijene killings on 21 August 1992,[3352] the Trial Chamber reasonably relied on Župljanin's tasking of the Prijedor police to escort non-Serb detainees to Croatia in September 1992, while knowing of their prior involvement in crimes, to find that he willingly took the risk that murders and extermination of Muslims and Croats might be committed in the execution

[3344] Župljanin Appeal Brief, para. 210, referring to Trial Judgement, vol. 1, para. 215.
[3345] Župljanin Appeal Brief, para. 234, referring to Trial Judgement, vol. 1, para. 215.
[3346] See *infra*, fn. 3448.
[3347] Župljanin Appeal Brief, para. 210.
[3348] *Cf. infra*, paras 1064-1065.
[3349] Elsewhere in his brief, Župljanin also raises an argument with regard to the question of whether, and if so when, Župljanin was informed of the Sanski Most Incident (see *infra*, paras 1050, 1054). The Appeals Chamber has addressed this argument and found an error in the Trial Chamber's reliance on one exhibit, but has found that "a reasonable trier of fact could have concluded that Župljanin was informed of the Sanski Most Incident shortly after it occurred, but in any case not later than 18 August 1992" (see *infra*, paras 1061-1062). Consequently, there is no impact of this error on the Trial Chamber's findings of the foreseeability of Župljanin's JCE III Crimes to Župljanin.
[3350] Župljanin Appeal Brief, para. 211.
[3351] See *supra*, para. 25.
[3352] See Župljanin Appeal Brief, para. 211. See also Župljanin Appeal Brief, para. 212.

of the common plan.[3353] Moreover, in arguing that all the police officers involved in the Koricanske Stijene killings were transferred out of the Prijedor police force after 21 August 1992, he does not refer to any evidence or findings of the Trial Chamber in support, thereby failing to substantiate his argument.[3354] Župljanin's arguments with regard to the Koricanske Stijene killings and his tasking of the Prijedor police to escort non-Serb detainees are thus dismissed.[3355]

1009. The Appeals Chamber is therefore satisfied that Župljanin has failed to demonstrate that no reasonable trier of fact could have concluded that the requisite subjective element of the third category of joint criminal enterprise was met in relation to Župljanin with respect to Župljanin's JCE III Crimes.

c. Conclusion

1010. In light of the foregoing, the Appeals Chamber dismisses sub-ground (B) in part and sub-ground (D) of Župljanin's second ground of appeal.

(v) Conclusion

1011. In light of the foregoing, the Appeals Chamber dismisses Župljanin's second ground of appeal in its entirety.

(b) Alleged errors of law and fact in finding Župljanin responsible for extermination as a crime against humanity (Župljanin's third ground of appeal)

1012. The Trial Chamber found Župljanin responsible for extermination as a crime against humanity (Count 2) with respect to acts committed in the municipalities of Banja Luka,[3356] Ključ,[3357] Kotor Varoš,[3358] Prijedor,[3359] and Skender Vakuf.[3360] The Trial Chamber found that it was

[3353] See Trial Judgement, vol. 2, paras 524, 528. See also *infra*, para. 1066.
[3354] Župljanin Appeal Brief, para. 211.
[3355] See Župljanin Appeal Brief, paras 211-212.
[3356] Trial Judgement, vol. 2, para. 805. The Trial Chamber found that the Sanski Most Incident – *i.e.* the incident in which 20 detainees died during their transportation from Betonirka detention camp in Sanski Most to Manjača detention camp in Banja Luka municipality by Sanski Most police officers on 7 July 1992 – amounted to extermination (Trial Judgement, vol. 1, para. 219). See Trial Judgement, vol. 1, paras 189-190, 215, 218.
[3357] Trial Judgement, vol. 2, para. 845. The Trial Chamber found that extermination was established in relation to the combined killing of 76 victims on 1 June 1992 at Velagići and 144 victims on 10 July 1992 at Biljani (Trial Judgement, vol. 1, para. 344). See Trial Judgement, vol. 1, paras 310-321, 336-337, 343-344.
[3358] Trial Judgement, vol. 2, para. 850. The Trial Chamber found that the killing of 26 men on the way to and in front of the Kotor Varoš medical centre on 25 June 1992 amounted to extermination (Trial Judgement, vol. 1, para. 488). See Trial Judgement, vol. 1, paras 436-452, 457-464, 484-485.
[3359] Trial Judgement, vol. 2, para. 859. The Trial Chamber found that extermination was established in relation to the killing of: (i) approximately 800 people during the attack on Kozarac between 24 and 26 May 1992 (Trial Judgement, vol. 1, para. 688. See Trial Judgement, vol. 1, paras 529-541, 661, 686); (ii) 74 victims in the villages of Biščani and Čarakovo on 20 and 23 July 1992 (Trial Judgement, vol. 1, para. 690. See Trial Judgement, vol. 1, paras 550-554, 557-560, 664-665, 689); (iii) approximately 68 persons in Briševo on 24 July 1992 (Trial Judgement, vol. 1, para. 690.

foreseeable to Župljanin that extermination could be committed in the implementation of the JCE and that he willingly took that risk.[3361] It therefore concluded that Župljanin was criminally responsible for extermination as a crime against humanity pursuant to the third category of joint criminal enterprise.[3362]

1013. Župljanin raises three sub-grounds of appeal against his conviction for extermination.[3363] Specifically, he alleges that the Trial Chamber erred in law and fact by finding that: (i) the *actus reus* requirement for extermination was met in relation to the Sanski Most Incident and the killing of approximately 95 victims at Omarska detention camp in Prijedor municipality in July 1992;[3364] (ii) the physical perpetrators had the required *mens rea* for extermination in relation to the Sanski Most Incident;[3365] and (iii) "it was foreseeable to [him] or that he was aware, that the extermination would be committed" in the implementation of the JCE.[3366] Župljanin argues that these errors occasion a miscarriage of justice and invalidate his conviction under Count 2.[3367] The Prosecution responds that Župljanin fails to show that the Trial Chamber erred in convicting him of extermination and requests that this ground of appeal be dismissed.[3368]

(i) Alleged errors of law and fact in relation to the large scale requirement in the *actus reus* of extermination (sub-ground (A) of Župljanin's third ground of appeal)

1014. With regard to the Sanski Most Incident, the Trial Chamber found that on 7 July 1992, a large number of detainees were transported by Sanski Most SJB police officers from Betonirka

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See Trial Judgement, vol. 1, paras 555, 663, 689. The Appeals Chamber observes that in the factual and legal findings sections, the Trial Chamber referred to the killings in Briševo as having occurred on 27 May 1992, which is the day on which the attack first started (see Trial Judgement, vol. 1, paras 555, 663, 689-690). In light of the Trial Chamber's analysis of the evidence and of the adjudicated facts on which it relied, the Appeals Chamber considers the reference to 27 May 1992 to be a typographical error and understands this to be a reference to 24 July 1992 (see Trial Judgement, vol. 1, paras 555, 663, referring to, Adjudicated Facts Decision, Adjudicated Facts 840, 842)); (iv) a minimum of 15 persons at Ljubija football stadium combined with a further 45 persons at Kipe mine near the stadium on the same day in July 1992 (Trial Judgement, vol. 1, paras 692, 697. See Trial Judgement, vol. 1, paras 572-578, 667, 691); (v) approximately 128 persons in Room 3 at Keraterm detention camp around 24 to 26 July 1992 (Trial Judgement, vol. 1, paras 693, 697. See Trial Judgement, vol. 1, paras 579-590, 668); and (vi) approximately 95 victims at Omarska detention camp in Prijedor municipality in July 1992 (Trial Judgement, vol. 1, paras 695, 697. See Trial Judgement, vol. 1, paras 591-617, 669-672, 694).

[3360] Trial Judgement, vol. 2, para. 859. The Trial Chamber found that extermination was established in relation to the killing of approximately 150-200 Muslim men at Koričanske Stijene in Skender Vakuf municipality on 21 August 1992 – *i.e.* the Koričanske Stijene killings (Trial Judgement, vol. 1, paras 696-697. See Trial Judgement, vol. 1, paras 637-648, 674).

[3361] Trial Judgement, vol. 2, paras 524, 805, 845, 850, 859.

[3362] Trial Judgement, vol. 2, paras 805 (Banja Luka), 845 (Ključ), 850 (Kotor Varoš), 859 (Prijedor and Skender Vakuf), 956.

[3363] Župljanin Appeal Brief, paras 227-242; Župljanin Reply Brief, paras 74-78.

[3364] Župljanin Appeal Brief, paras 227-230; Župljanin Reply Brief, paras 74-76.

[3365] Župljanin Appeal Brief, paras 231-234; Župljanin Reply Brief, para. 77.

[3366] Župljanin Appeal Brief, para. 235. See Župljanin Appeal Brief, paras 236-242; Župljanin Reply Brief, para. 78.

[3367] Župljanin Appeal Brief, para. 242.

[3368] Prosecution Response Brief (Župljanin), para. 180.

detention camp in Sanski Most to Manjača detention camp.[3369] The Trial Chamber found that about 20 of the detainees died of asphyxia during the transportation and that these deaths constituted murder.[3370] The Trial Chamber further found that, having taken into account the circumstances of the incident, the killing of 20 detainees in the Sanski Most Incident was sufficiently large as to satisfy the requirements of extermination.[3371]

1015. With regard to Omarska detention camp, the Trial Chamber found that "approximately 28 prominent members of the Prijedor Muslim community detained at Omarska, including lawyers, doctors, and police officers, were killed in an organised manner between 25 and 27 July 1992".[3372] It also found that "in an incident in July 1992, 18 persons were executed at night by camp guards based on a list provided by Rade Knežević, one of the Prijedor SJB inspectors who visited the camp"[3373] and that an additional 50 persons were killed at Omarska detention camp.[3374] The Trial Chamber then found that all these killings were part of the same operation and concluded that the total number of victims, amounting to approximately 95 victims, was sufficiently large scale to satisfy the requirements for extermination.[3375]

a. Submissions of the parties

1016. Župljanin submits that the Trial Chamber "applied an incorrect legal standard for extermination and/or relied on factual determinations that could have been made by no reasonable trier of fact, and on the basis of a failure to give reasons".[3376] More specifically, he argues that the Trial Chamber found that extermination was established with regard to incidents ranging between 20 and 800 victims, but failed to provide a reasoned opinion for "set[ting] the threshold of large-scale killing at 20 victims".[3377] He contends that the threshold of 20 victims, which is the number of victims who died in the Sanski Most Incident,[3378] appears arbitrary considering that "some events with just slightly fewer victims" were found not to meet the large scale

[3369] Trial Judgement, vol. 1, paras 189, 205, 215.
[3370] Trial Judgement, vol. 1, paras 205, 215.
[3371] Trial Judgement, vol. 1, para. 219.
[3372] Trial Judgement, vol. 1, para. 694. See Trial Judgement, vol. 1, paras 669-672.
[3373] Trial Judgement, vol. 1, para. 671. See Trial Judgement, vol. 1, para. 694.
[3374] Trial Judgement, vol. 1, para. 695. See Trial Judgement, vol. 1, paras 672, 694.
[3375] Trial Judgement, vol. 1, para. 695.
[3376] Župljanin Appeal Brief, para. 227.
[3377] Župljanin Appeal Brief, para. 228. See Župljanin Appeal Brief, paras 227, 230. See also Župljanin Appeal Brief, fn. 311. Župljanin submits that extermination has "a more destructive connotation meaning the annihilation of a mass of people" and "must be collective in nature rather than directed towards singled out individuals" (Župljanin Appeal Brief, para. 229, referring to, *inter alia*, *Krstić* Trial Judgement, para. 496, *Stakić* Trial Judgement, para. 639).
[3378] See *supra*, fn. 3356.

requirement.[3379] Župljanin alleges that the absence of explanation for setting this threshold is "a failure to give reasons".[3380]

1017. Župljanin further submits that the Trial Chamber erred in failing to offer any explanation for connecting various killings at or from Omarska, considering that they occurred over a period of approximately one month and did not involve "any single 'mass killing' event".[3381]

1018. The Prosecution responds that the "large scale" requirement does not imply a "numerical minimum of victims" but must be assessed on a case-by-case basis, taking into account the circumstances in which the killings occurred.[3382] The Prosecution additionally responds that the Trial Chamber "did not 'set the threshold of large scale killings at 20 victims'", but rather assessed each extermination incident on a case-by-case basis.[3383] With regard to the Sanski Most Incident, the Prosecution argues that the Trial Chamber gave reasons as to what combination of factors it considered as it specifically stated that it had "'taken into account the circumstances of this incident', thereby clearly referring to its previous findings".[3384] Moreover, it submits that Župljanin's argument that "events with just slightly fewer victims" were not categorised as extermination, does not undermine the Trial Chamber's findings as the first three incidents Župljanin refers to involve significantly less victims, and his reliance on the fourth incident, involving the killing of 18 persons, is misleading.[3385]

1019. The Prosecution also argues that an "amalgamated" number of killings can amount to extermination, regardless of whether any of the individual incidents amounts in itself to extermination[3386] and avers that the Trial Chamber reasonably found and sufficiently justified its findings that the killings at Omarska detention camp collectively constituted extermination.[3387]

[3379] Župljanin Appeal Brief, para. 230. Župljanin refers to the following incidents in support of his argument: (i) the killing of a number of men in front of Manjača detention camp on 6 August 1992; (ii) the death of a number of men resulting from beatings at Vrbas Promet factory; (iii) the death of a number of men resulting from beatings at the TO warehouse; and (iv) the killing of 18 persons in Omarska detention camp in July 1992 (see Župljanin Appeal Brief, fn. 316). See Župljanin Reply Brief, para. 75.
[3380] Župljanin Appeal Brief, para. 230.
[3381] Župljanin Appeal Brief, para. 228. See Župljanin Appeal Brief, para. 227.
[3382] Prosecution Response Brief (Župljanin), para. 182. The Prosecution refers to factors relevant in the assessment of the large scale requirement but submits that they do not constitute material elements of the crime of extermination (Prosecution Response Brief (Župljanin), para. 184 (and references cited therein)).
[3383] Prosecution Response Brief (Župljanin), para. 185.
[3384] Prosecution Response Brief (Župljanin), para. 186, referring to Trial Judgement, vol. 1, para. 219.
[3385] Prosecution Response Brief (Župljanin), para. 187, referring to Župljanin Appeal Brief, para. 230, fns 313, 316, Trial Judgement, vol. 1, paras 206, 216-217, 266, 278, 871, 876-877. See *supra*, fn. 3379.
[3386] Prosecution Response Brief (Župljanin), para. 188. See Prosecution Response Brief (Župljanin), paras 189-191. The Prosecution submits that relevant factors to consider in determining whether to amalgamate killings are "whether the killings constitute 'one and the same incident' or operation, and whether they present similar features, *i.e.* whether they were committed within a relatively short time period, in the same or connected locations, in similar circumstances or following similar patterns, against similar victim groups by the same perpetrator groups" (Prosecution Response Brief

1020. Župljanin replies that his reference to an incident involving 18 victims is not misleading.[3388] He argues that the Trial Chamber's finding that this incident was "'part of the same operation' with two other killings that *collectively* constituted extermination", shows that the Trial Chamber considered the killing of 18 persons, in itself, to be insufficient to constitute extermination.[3389]

b. Analysis

1021. The Appeals Chamber recalls that the *actus reus* of extermination is "the act of killing on a large scale".[3390] It is this element of "massiveness" that distinguishes the crime of extermination from the crime of murder.[3391] However, the expression "on a large scale" does not suggest a strict numerical approach with a minimum number of victims.[3392] While extermination as a crime against humanity has been found in relation to the killing of thousands, it has also been found in relation to far fewer killings.[3393]

1022. The assessment of "large scale" is made on a case-by-case basis, taking into account the circumstances in which the killings occurred.[3394] The Appeals Chamber has found that relevant factors include but are not limited to: (i) the time and place of the killings;[3395] (ii) the selection of the victims and the manner in which they were targeted;[3396] (iii) the type of victims;[3397] (iv) whether the killings were aimed at the collective group rather than victims in their individual capacity;[3398] and (v) the population density of the victims' area of origin.[3399] These factors do not constitute elements of the crime of extermination as a crime against humanity, but rather are factors which a

(Župljanin), para. 189, referring to *Bagosora and Nsengiyumva* Appeal Judgement, paras 395-396, *Popović et al.* Trial Judgement, paras 803-806).
[3387] Prosecution Response Brief (Župljanin), paras 187, 190-191.
[3388] Župljanin Reply Brief, para. 76.
[3389] Župljanin Reply Brief, para. 76, referring to Trial Judgement, vol. 1, para. 695.
[3390] *Tolimir* Appeal Judgement, para. 146; *Lukić and Lukić* Appeal Judgement, para. 536, referring to *Stakić* Appeal Judgement, para. 259, *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516; *Karemera and Ngirumpatse* Appeal Judgement, para. 660. See Trial Judgement, vol. 1, para. 44.
[3391] *Tolimir* Appeal Judgement, para. 146; *Lukić and Lukić* Appeal Judgement, para. 536; *Stakić* Appeal Judgement, para. 260; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516. See Trial Judgement, vol. 1, para. 44.
[3392] *Lukić and Lukić* Appeal Judgement, para. 537; *Stakić* Appeal Judgement, para. 260; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516.
[3393] *Lukić and Lukić* Appeal Judgement, para. 537. In the *Lukić and Lukić* case, the Appeals Chamber found that the killing of 59 persons was sufficiently large so as to constitute extermination (*Lukić and Lukić* Appeal Judgement, para. 543). In the *Akayesu* case, the ICTR Appeals Chamber upheld the finding that the killing of 16 persons constituted extermination (see *Akayesu* Appeal Judgement, paras 423-424; *Akayesu* Trial Judgement, paras 737-744).
[3394] *Lukić and Lukić* Appeal Judgement, para. 538, referring to *Martić* Trial Judgement, para. 63, *Stakić* Trial Judgement, para. 640, *Brđanin* Trial Judgement, para. 391, *Blagojević and Jokić* Trial Judgement, para. 57; *Krajišnik* Trial Judgement, para. 716, *Nahimana et al.* Trial Judgement, para. 1061. See *Brđanin* Appeal Judgement, para. 472, finding "that the scale of the killings, in *light of the circumstances in which they occurred*, meets the required threshold of massiveness for the purposes of extermination" (emphasis added).
[3395] *Lukić and Lukić* Appeal Judgement, para. 538.
[3396] *Lukić and Lukić* Appeal Judgement, para. 538.
[3397] *Lukić and Lukić* Appeal Judgement, para. 542.
[3398] *Lukić and Lukić* Appeal Judgement, para. 538.
[3399] *Lukić and Lukić* Appeal Judgement, paras 539, 542-543.

trier of facts may take into account when assessing whether or not the "large scale" element is satisfied.[3400] Moreover, separate killing incidents may be aggregated for the purpose of meeting the "large scale requirement" if the killings are considered to be part of one and the same operation.[3401] Whether killings are part of the same operation must be assessed on a case-by-case basis taking into account the circumstances in which they occurred.[3402] As held by the ICTR Appeals Chamber, collective consideration of distinct events committed in different locations, in different circumstances, by different perpetrators, over an extended period of time cannot satisfy the requirement of killing on a large scale.[3403]

1023. Turning to Župljanin's argument that the Trial Chamber erred by failing to provide reasons for setting the threshold at 20 victims with respect to the requirement of massiveness, the Appeals Chamber first observes that the Trial Chamber correctly pointed out in the Trial Judgement that there is no numerical minimum of victims to satisfy the "large scale" requirement, and that this requirement should be assessed on a case-by-case basis.[3404] In accordance with this, in its factual and legal findings, the Trial Chamber assessed the circumstances of each incident to determine whether it met the "large scale" or "massiveness" requirement.[3405] Thus, contrary to Župljanin's argument, the Trial Chamber did not set any numerical threshold for the large scale requirement for extermination.

1024. Insofar as Župljanin argues that the Trial Chamber erred by failing to give reasons for finding that extermination was established in relation to the Sanski Most Incident while incidents with "just slightly fewer victims [were not] categorized as extermination",[3406] the Appeals Chamber notes that, when determining whether the Sanski Most Incident amounted to extermination, the Trial Chamber concluded, "*having taken into account the circumstances of this incident*", that the killing of 20 detainees in this incident was sufficiently large as to satisfy the requirements of

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[3400] *Lukić and Lukić* Appeal Judgement, para. 542.
[3401] *Tolimir* Appeal Judgement, para. 147; *Karemera and Ngirumpatse* Appeal Judgement, paras 661-662; *Bagosora and Nsengiyumva* Appeal Judgement, para. 396.
[3402] *Cf. Tolimir* Appeal Judgement, para. 149.
[3403] *Karemera and Ngirumpatse* Appeal Judgement, para. 661; *Bagosora and Nsengiyumva* Appeal Judgement, para. 396.
[3404] Trial Judgement, vol. 1, para. 44. See *supra*, para. 1021-1022. Insofar as Župljanin alleges that extermination has "a more destructive connotation meaning the annihilation of a mass of people" (Župljanin Appeal Brief, para. 229), the Appeals Chamber notes that this phrase has only been used in the *Krstić* Trial Judgement (see *Krstić* Trial Judgement, para. 496). As such, the Appeals Chamber is not bound by it (see *e.g Lukić and Lukić* Appeal Judgement, para. 260, fn. 195; *Aleksovski* Appeal Judgement, para. 114). Moreover, the Appeals Chamber understands that the statement of the *Krstić* Trial Chamber was merely intended to describe the *actus reus* of extermination, *i.e.* killing on a large scale, using different words and thus does not introduce a different legal standard. This interpretation is consistent with the *Krstić* Trial Chamber's own finding that extermination can be established in relation to a limited number of victims (see *Krstić* Trial Judgement, para. 501). Župljanin's argument is therefore dismissed.
[3405] See Trial Judgement, vol. 1, paras 205, 215, 219, 336-337, 343-344, 484-485, 488, 661-665, 667-672, 674, 688-697. See also Trial Judgement, vol. 1, paras 189-190, 310-321, 436-452, 457-466, 529-561, 572-617, 637-648.
[3406] Župljanin Appeal Brief, para. 230.

extermination.[3407] While the Trial Chamber did not explicitly mention the circumstances it took into account in reaching this finding,[3408] the Appeals Chamber considers that it is apparent from the Trial Chamber's factual findings made several paragraphs earlier, what these circumstances are.[3409] Specifically, the Appeals Chamber observes that the Trial Chamber found that the victims were killed the same day, at the same location, and in the same manner, namely by being transported inhumanely – "packed like sardines" in locked refrigerator trucks without sufficient air flow – and that the victims were detainees, some of whom were already weak and infirm.[3410] The Trial Chamber also found that at the relevant time only Muslims and Croats were detained in Betonirka detention camp and thus concluded that the victims were targeted collectively on the basis of their ethnicity rather than in their individual capacity.[3411] The Appeals Chamber recalls that these are factors that the Trial Chamber was entitled to take into account when assessing the large scale requirement.[3412] In light of the foregoing, the Appeals Chamber is satisfied that the Trial Chamber sufficiently explained the basis on which it found that the large scale requirement for the Sanski Most Incident was met. Further and in light of the above, the Appeals Chamber is satisfied that the Trial Chamber's conclusion was one that a reasonable trier of fact could have made.

1025. With respect to Župljanin's argument that the threshold of 20 victims appears arbitrary, considering that "some events with just slightly fewer victims" were found not to meet the large scale requirement,[3413] the Appeals Chamber notes that three of these incidents concern significantly fewer victims than the Sanski Most Incident and that Župljanin ignores the specific circumstances in which these killings occurred.[3414] With respect to the fourth incident, *i.e.* the killing of 18 persons in Omarska detention camp in July 1992, the Appeals Chamber notes that the Trial Chamber found that this incident, considered together with other incidents, amounted to extermination.[3415] As set out above, killing incidents may be aggregated if they are considered to be part of one and the same operation,[3416] which the Trial Chamber found was the case for the killings at Omarska detention camp.[3417] The Appeals Chamber finds Župljanin's argument that the Trial Chamber aggregated these killings because it was not convinced that the individual incidents at Omarska detention camp

[3407] Trial Judgement, vol. 1, para. 219 (emphasis added).
[3408] See Trial Judgement, vol. 1, para. 219.
[3409] See Trial Judgement, vol. 1, paras 205, 215.
[3410] Trial Judgement, vol. 1, paras 205, 215. See *supra*, para. 1022.
[3411] Trial Judgement, vol. 1, para. 205.
[3412] See *supra*, para. 1022.
[3413] See *supra*, para. 1016.
[3414] See Trial Judgement, vol. 1, paras 216-217, 219 (eight victims at Manjača detention camp), 266, 278-279 (two victims at the Vrbas Promet factory; one victim at the TO warehouse in Donji Vakuf), 871, 876-877 (three men at the TO warehouse in Teslić). See Župljanin Appeal Brief, fn. 316. The Appeals Chamber notes that it is unclear whether Župljanin's submissions relate to the murders at the TO warehouse in Donji Vakuf or at the TO warehouse in Teslić.
[3415] See Trial Judgement, vol. 1, paras 694-695.
[3416] See *supra*, para. 1022. The Appeals Chamber notes that the question of whether the Trial Chamber erred by aggregating these killings will be addressed below (see *infra*, paras 1021-1029).

satisfied the large scale requirement, speculative and unconvincing. Župljanin's argument is therefore dismissed.

1026. Based on the foregoing, the Appeals Chamber finds that Župljanin has failed to show that the Trial Chamber erred in law or fact in finding that the Sanski Most Incident amounted to extermination.

1027. The Appeals Chamber now moves to Župljanin's submission that the Trial Chamber erred in law by failing to explain why it connected various killings at or from Omarska detention camp, considering that these killings occurred over a period "spanning from late June to the end of July 1992" and did not include "any single 'mass killing' event".[3418] It notes that the Trial Chamber did not consider the time frame during which the killings occurred in finding that they formed part of the same operation.[3419] However, the Appeals Chamber considers that while a trial chamber may take into consideration the time frame when assessing whether killings are part of the same operation,[3420] the jurisprudence does not establish specific time limits as a requirement for extermination.[3421] Rather, as set out above, it is the collective consideration of factors, including the time frame, which should be taken into account in determining whether the killings formed part of the same operation and thus whether they may be aggregated.[3422] In the present case, the Trial Chamber found that the killings at Omarska detention camp were part of the same operation on the basis that they all were committed in an organised manner, by the same perpetrators, and at the same location.[3423] The Appeals Chamber therefore finds no merit in Župljanin's submission that the Trial Chamber failed to set out the reasons for aggregating the killings at Omarska detention camp.

1028. Further, the Appeals Chamber notes that Župljanin offers no support for his statement that killings may only be aggregated when at least one of the incidents in itself is considered large scale,[3424] and it finds no support for this proposition in the Tribunal's case law.[3425] Župljanin has thus failed to show an error in this respect.

[3417] Trial Judgement, vol. 1, para. 695.
[3418] See Župljanin Appeal Brief, para. 228.
[3419] See Trial Judgement, vol. 1, para. 695. See Župljanin Appeal Brief, paras 227-228.
[3420] See *supra*, para. 1022.
[3421] See *Tolimir* Appeal Judgement, para. 147, stating that "[i]t is not required that that the killings be on a vast scale in a concentrated location over a short period of time." See also *Karemera and Ngirumpatse* Appeal Judgement, para. 661; *Bagosora and Nsengiyumva* Appeal Judgement, para. 396.
[3422] *Tolimir* Appeal Judgement, para. 147; *Karemera and Ngirumpatse* Appeal Judgement, para. 661; *Bagosora and Nsengiyumva* Appeal Judgement, para. 396. See *supra*, para. 1022.
[3423] See Trial Judgement, vol. 1, para. 695.
[3424] See Župljanin Appeal Brief, para. 228.
[3425] The Appeals Chamber notes that in the *Brđanin* case, the Trial Chamber found killings occurring in separate incidents between 22 April 1992 and 18 December 1992 to collectively amount to extermination (10 victims at Manjača detention camp, 94 victims at Omarska detention camp, 20 victims at Trnopolje detention camp, 20 victims in the

1029. In light of the foregoing, the Appeals Chamber finds that Župljanin has failed to show that the Trial Chamber erred in law or fact by finding that the killings at Omarska detention camp satisfied the large scale requirement and collectively amounted to extermination.

c. Conclusion

1030. The Appeals Chamber finds that Župljanin has failed to show that the Trial Chamber erred in its findings on the large scale requirement for the *actus reus* of extermination as a crime against humanity. Therefore, the Appeals Chamber dismisses sub-ground (A) of Župljanin's third ground of appeal.

(ii) Alleged errors of law and fact in relation to the *mens rea* of extermination (sub-ground (B) of Župljanin's third ground of appeal)

1031. With regard to the Sanski Most Incident, the Trial Chamber found that police officers from the Sanski Most SJB who, on 7 July 1992, transported a large number of detainees from Betonirka detention camp to Manjača detention camp: (i) intended to inflict serious bodily harm upon the detainees; and (ii) knew or should have known that the way they were transported could result in their deaths.[3426] The Trial Chamber concluded that these deaths constituted murder.[3427] The Trial Chamber further found that the number of killings satisfied the large scale requirement of extermination.[3428] After recalling that the general requirements of Article 5 of the Statute had been satisfied, the Trial Chamber concluded that the perpetrators committed extermination as a crime against humanity.[3429]

a. Submissions of the parties

1032. Župljanin argues that the Prosecution has failed to prove beyond reasonable doubt that the principal perpetrators possessed the required *mens rea* for extermination.[3430] In particular, Župljanin submits that when concluding on the *mens rea* for extermination of the principal perpetrators of the Sanski Most Incident, the Trial Chamber found that the deaths of the victims "may have resulted

Sanski Most Incident, 4 victims in front of Manjača Camp, 190 victims at Room 3 Keraterm detention camp, 200 victims at Koričanske Stijene, 11 victims at Petar Kočić elementary school, 144 victims at Biljani, 45 victims at Teslić TO). It however did not convict Brđanin for extermination, and this finding was not challenged on appeal (see *Brđanin* Trial Judgement, paras 436-465, 467, 478-479).

[3426] Trial Judgement, vol. 1, para. 215. See Trial Judgement, vol. 1, para. 189.

[3427] Trial Judgement, vol. 1, para. 215.

[3428] Trial Judgement, vol. 1, para. 219.

[3429] Trial Judgement, vol. 1, para. 219.

[3430] Župljanin Appeal Brief, para. 231, referring to Trial Judgement, vol. 1, paras 200-228 (Banja Luka), 331-350, (Ključ) 453-494 (Kotor Varoš), 655-703 (Prijedor and Skender Vakuf); Trial Judgement, vol. 2, paras 801-803, 805, 841-843, 845-848, 850, 855-857, 859. See Appeal Hearing, 16 Dec 2015, AT. 176.

from mere negligence, rather than intent to kill".[3431] He avers that the Trial Chamber therefore erred in law in finding that the principal perpetrators of this incident possessed the required intent since the *mens rea* standard for extermination is not satisfied by "[r]ecklessness or gross negligence".[3432]

1033. Župljanin further contends that the evidence of Witness ST161 – that the Sanski Most police heading the column of trucks and buses filled with detainees were not aware of the transport conditions[3433] – when considered in conjunction with Exhibits P486 and P487, shows that the Sanski Most police acted, at most, with negligence and as such did not possess the required intent for extermination.[3434] Therefore, he argues that the Sanski Most Incident cannot be characterised as extermination, or "imputed as such to the JCE even if it was foreseeable".[3435]

1034. The Prosecution responds that the Trial Chamber recalled the correct law on *mens rea* for extermination as requiring either "direct or indirect intent"[3436] and correctly found that the Sanski Most Incident could be established based on indirect intent.[3437] It further contends that, contrary to Župljanin's assertion, the Trial Chamber did not find that the deaths in this incident resulted from "mere negligence", but rather that Sanski Most police officers "'intended to inflict serious bodily harm' on the 20 non-Serb detainees and 'knew or should have known that this way of transporting the detainees could result in their death [and] accepted that risk'".[3438] The Prosecution argues that, therefore, the Trial Chamber applied the correct legal standard for murder.[3439]

1035. The Prosecution further responds that Župljanin fails to show that no reasonable trial chamber could have found that Sanski Most police officers "had the required (indirect) intent for murder" as the actions of the police officers show that they clearly intended to inflict serious bodily

[3431] Župljanin Appeal Brief, para. 234, referring to Trial Judgement, vol. 1, para. 215. See Appeal Hearing, 16 Dec 2015, AT. 173, 177. See also Župljanin Reply Brief, para. 77.
[3432] Župljanin Appeal Brief, para. 233 and references cited therein; Appeal Hearing, 16 Dec 2015, AT. 176. Župljanin also contends that the *mens rea* standard of extermination cannot be "lower than that required for committing murder – *i.e.*, *dolus directus*" (Župljanin Appeal Brief, para. 233).
[3433] Appeal Hearing, 16 Dec 2015, AT. 174-175 (private session), 176.
[3434] Appeal Hearing, 16 Dec 2015, AT. 175-176 (private session), referring to Exhibits P486 (confidential) (a daily report from the operative team of the Manjača detention camp to the 1st Krajina Corps ("1st KK") Command, dated 8 July 1992 ("Daily Report of 8 July 1992")), P487 (confidential) (a daily report from the operative team of the Manjača detention camp to the 1st KK Command, dated 9 July 1992) ("Daily Report of 9 July 1992", collectively, "Daily Reports of 8 and 9 July 1992").
[3435] Župljanin Appeal Brief, para. 234; Appeal Hearing, 16 Dec 2015, AT. 177. Župljanin argues specifically in relation to Exhibit P486 (confidential) that it criticises the "Sanski Most organs" and not the Sanski Most police (Appeal Hearing, 16 Dec 2015, AT. 176). Furthermore, he argues that both Exhibits P486 (confidential) and P487 (confidential) were sent to the 1st KK and not to the Sanski Most police or Banja Luka police or to Župljanin (Appeal Hearing, 16 Dec 2015, AT. 176).
[3436] Prosecution Response Brief (Župljanin), para. 193; Appeal Hearing, 16 Dec 2015, AT 202.
[3437] Prosecution Response Brief (Župljanin), para. 195. The Prosecution contends that Župljanin incorrectly claims that extermination can only be constituted if the physical perpetrators have direct intent (*dolus directus*) (Prosecution Response Brief (Župljanin), para. 193. See Prosecution Response Brief (Župljanin), para. 195).
[3438] Prosecution Response Brief (Župljanin), para. 195, referring to Trial Judgement, vol. 1, para. 215.
[3439] Prosecution Response Brief (Župljanin), para. 195.

harm on the victims, knowing that this could result in their deaths or had the intention to subject a large number of people to living conditions that would lead to their death.[3440] Moreover, the Prosecution argues that "any alleged oversight by the Chamber has no impact upon its conclusion that the Sanski Most police officers had the required intent for extermination, as it is the only reasonable conclusion on the evidence".[3441]

b. Analysis

1036. The Appeals Chamber recalls that the *mens rea* for extermination has been defined as the intention of the perpetrator to: (i) kill on a large scale; or (ii) systematically subject a large number of people to conditions of living that would lead to their deaths.[3442] In this regard, the Appeals Chamber recalls that it has consistently held that the elements of the crime of extermination are the same as those required for murder as a crime against humanity, with the difference that extermination is killing on a large scale.[3443] As such, the Appeals Chamber considers that the *mens rea* for extermination to "(i) kill on a large scale" can be met by establishing the *mens rea* for murder as a crime against humanity – *i.e.* the intent to: (i) kill the victim; or (ii) wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death[3444] – plus the additional intention to do so on a large scale.[3445]

1037. Turning now to the Sanski Most Incident,[3446] the Appeals Chamber notes that the Trial Chamber first found that the Sanski Most police officers possessed the *mens rea* for murder by finding that they intended to inflict serious bodily harm upon the detainees who died in the Sanski Most Incident by transporting them "packed like sardines", and that the police officers knew or should have known that transporting detainees in such a manner could result in their death.[3447] The

[3440] Prosecution Response Brief (Župljanin), paras 196-197, referring to Trial Judgement, vol. 1, paras 189, 205, 215, 219. The Prosecution submits that "[t]hese considerations are implicit in the Chamber's findings" (Prosecution Response Brief (Župljanin), para. 197). See Appeal Hearing, 16 Dec 2015, AT. 201-202. The Prosecution further avers that the evidence cited by Župljanin during the Appeal Hearing does not show an error in the Trial Chamber's findings that the police played a central role in the event (Appeal Hearing, 16 Dec 2015, AT. 202-203).
[3441] Prosecution Response Brief (Župljanin), para. 197 and references cited therein; Appeal Hearing, 16 Dec 2015, AT. 201-202. The Prosecution also argues that even if the Appeals Chamber comes to the conclusion that the Trial Chamber applied the wrong *mens rea* standard, this has no impact since the only reasonable conclusion is that the perpetrators had the required intent for extermination (Appeal Hearing, 16 Dec 2015, AT. 202).
[3442] *Lukić and Lukić* Appeal Judgement, para. 536; *Stakić* Appeal Judgement, paras 259-260. See Trial Judgement, vol. 1, para. 45.
[3443] *Lukić and Lukić* Appeal Judgement, para. 536; *Stakić* Appeal Judgement, para. 260. See *Popović et al.* Appeal Judgement, para. 701.
[3444] *Kvočka et al.* Appeal Judgement, para. 261.
[3445] In this regard, the Appeals Chamber also recalls that "[t]he principle of individual guilt requires that an accused can only be convicted for a crime if his *mens rea* comprises the *actus reus* of the crime" (*Boškoski and Tarčulovski* Appeal Judgement, para. 66, quoting *Naletilić and Martinović* Appeal Judgement, para. 114). Thus, for a conviction of extermination, not only the *actus reus* but also the *mens rea* must encompass the large scale element.
[3446] Župljanin Appeal Brief, para. 234, referring to Trial Judgement, vol. 1, para. 215; Župljanin Reply Brief, para. 77.
[3447] Trial Judgement, vol. 1, para. 215.

Trial Chamber thus applied the correct *mens rea* standard for murder.[3448] The Appeals Chamber further notes that, in assessing whether the incident amounted to extermination, in a subsequent paragraph, the Trial Chamber found that the number of victims was sufficiently large "so as to satisfy the requirements for extermination".[3449] It concluded that, therefore, "through their acts, the perpetrators committed extermination, as a crime against humanity".[3450]

1038. The Appeals Chamber considers that it is clear from the Trial Chamber's finding that it was satisfied that in the circumstances of this case, the number of 20 victims in the Sanski Most Incident is sufficiently large to meet the requirement of "large scale killing" for the *actus reus* of extermination. However, the Appeals Chamber finds that there is no such clear finding with respect to the *mens rea* of extermination, *i.e.* it is unclear whether the Trial Chamber was satisfied that the Sanski Most police officers wilfully caused serious bodily harm which they should reasonably have known might lead to the death of *a large number of detainees*. The Appeals Chamber recalls in this regard that a trial chamber is required to provide clear, reasoned findings of fact as to each element of the crime charged.[3451] In the absence of a clear finding on whether the principal perpetrators possessed the *mens rea* of extermination, which was a requirement in this case, the Appeals Chamber considers *proprio motu* that the Trial Chamber failed to provide a reasoned opinion, an error of law, which allows the Appeals Chamber to consider relevant evidence and factual findings in order to determine whether a reasonable trier of fact could have found beyond reasonable doubt that the requisite *mens rea* for extermination in relation to the Sanski Most Incident was established.[3452]

1039. In this regard, the Appeals Chamber notes that the Trial Chamber found that Serb civilian police from the Prijedor, Sanski Most, Ključ, and other ARK municipalities transported thousands of detainees to Manjača detention camp starting from mid-May 1992 to November or December 1992.[3453] The detention camp itself was under the authority of the 1st KK and detainees in the camp were guarded by the 1st KK military police.[3454] The Trial Chamber also found that in June 1992, only Muslims and Croats were detained in Betonirka detention camp in Sanski Most.[3455] It further considered that on 7 July 1992, police officers from the Sanski Most SJB transported

[3448] See *supra*, para. 1036. Accordingly, the Appeals Chamber considers that Župljanin's argument that the Trial Chamber found that the deaths of the victims "may have resulted from mere negligence" clearly misrepresents the Trial Judgement (see Župljanin Appeal Brief, para. 234). Thus, his argument in this respect is dismissed.
[3449] Trial Judgement, vol. 1, para. 219.
[3450] Trial Judgement, vol. 1, para. 219.
[3451] *Cf. Kordić and Čerkez* Appeal Judgement, para. 383; *Ndindiliyimana et al.* Appeal Judgement, para. 293; *Renzaho* Appeal Judgement, para. 320. See *Orić* Appeal Judgement, para. 56.
[3452] *Cf. Kordić and Čerkez* Appeal Judgement, paras 383-388; *Ndindiliyimana et al.* Appeal Judgement, para. 977; *Bizimungu* Appeal Judgement, para. 23; *Ndindiliyimana et al.* Appeal Judgement, para. 293. See *supra*, paras 19, 142.
[3453] Trial Judgement, vol. 1, para. 202.
[3454] Trial Judgement, vol. 1, para. 202.

about 560 prisoners from Sanski Most to Manjača, approximately 64 of whom were Muslims and Croats from Betonirka detention camp.[3456] The Trial Chamber found that the detainees from Betonirka detention camp were transported under harsh conditions, namely "packed like sardines" in locked refrigerator trucks with insufficient airflow in the summer, while some of the detainees were already weak or infirm, and that during the transportation, about 20 of them died as a result of asphyxia.[3457] It was further satisfied that by transporting the detainees in the manner they did, the Sanski Most police officers intended to inflict serious bodily harm upon the detainees while they knew or should have known that transporting detainees in such a manner could result in their deaths and as such possessed the required intent for murder.[3458]

1040. Insofar as Župljanin argues that no reasonable trier of fact could have reached this latter finding in light of Witness ST161's evidence that the Sanski Most police officers were not aware of the transport conditions, and the Daily Reports of 8 and 9 July 1992,[3459] the Appeals Chamber notes that in reaching its finding, the Trial Chamber relied on the evidence of Witness SZ007 that police officers were present when the detainees were loaded onto trucks and escorted them to Manjača detention camp.[3460] In addition, the Trial Chamber relied on Witness ST172's evidence that he personally witnessed that the detainees were brought in by the Sanski Most police.[3461]

1041. The Appeals Chamber recalls that a trial chamber has broad discretion in its assessment of the evidence,[3462] and has the main responsibility for resolving inconsistencies which may arise within or among witnesses' testimony.[3463] It further recalls that the Appeals Chamber will only disturb a trial chamber's finding of fact when it considers that no reasonable trier of fact could have concluded as the trial chamber did.[3464] The Appeals Chamber considers that while Župljanin disagrees with the Trial Chamber's assessment of the evidence, he has failed to show that it was an abuse of the Trial Chamber's discretion to prefer the direct evidence of Witness SZ007 and Witness ST172 over that of Witness ST161.

[3455] Trial Judgement, vol. 1, paras 189, 205.
[3456] Trial Judgement, vol. 1, paras 189, 205.
[3457] Trial Judgement, vol. 1, para. 215. See Trial Judgement, vol. 1, paras 189, 205.
[3458] Trial Judgement, vol. 1, para. 215.
[3459] See *supra*, para. 1033.
[3460] Trial Judgement, vol. 1, para. 189, referring to, *inter alia*, SZ007, 7 Dec 2011, T. 26280-26284, 26287 (closed session).
[3461] Trial Judgement, vol. 1, para. 189, referring to, *inter alia*, ST172, 21 Jan 2010, T 5293-5294.
[3462] *Tolimir* Appeal Judgement, para. 76; *Popović et al.* Appeal Judgement, paras 74, 131; *Đorđević* Appeal Judgement, para. 856; *Boškoski and Tarčulovski* Appeal Judgement, para. 14.
[3463] *Đorđević* Appeal Judgement, para. 422; *Munyakazi* Appeal Judgement, para. 71.
[3464] *Tolimir* Appeal Judgement, para. 12; *Popović et al.* Appeal Judgement, paras 20, 1154; *Đorđević* Appeal Judgement, para. 856.

1042. The Appeals Chamber is further of the view that the fact that the operative team of the Manjača detention camp sent daily reports to the 1st KK, which had the authority over the camp,[3465] is incapable of undermining the Trial Chamber's finding that the Sanski Most police office, who carried out the transportation, had the required intent for murder. In addition, the Appeals Chamber considers it irrelevant that the Daily Report of 8 July 1992 does not specifically mention the Sanski Most police, and only refers to "extremely inhumane and unprofessional" behaviour on the part of the Sanski Most organs in relation to the Sanski Most Incident.[3466]

1043. In light of the foregoing the Appeals Chamber finds that Župljanin has failed to show that no reasonable trier of fact could have found that the Sanski Most police officers had the required intent for murder.

1044. Moreover, the Appeals Chamber is of the view that in light of this and the Trial Chamber's findings on the general circumstances of this incident – *i.e.* that all the approximately 64 detainees from Betonika detention camp, some of whom were weak or infirm, were transported together in one and the same truck, "packed like sardines" with insufficient airflow in the summer – as well as the modality of the Sanski Most police officers' involvement,[3467] a reasonable trier of fact could have found that the only reasonable inference is that the Sanski Most police officers wilfully caused serious bodily harm to a large number of detainees which they reasonably should have known could lead to the death of detainees, on a large scale. Therefore, the Appeals Chamber finds that a reasonable trier of fact could have concluded beyond reasonable doubt that the perpetrators of the Sanski Most Incident acted with the required *mens rea* for extermination.

c. Conclusion

1045. The Appeals Chamber finds that the Trial Chamber erred in law by failing to make the requisite *mens rea* findings for extermination with respect to the principal perpetrators of the Sanski Most Incident. Having reviewed the Trial Chamber's findings and evidence on record, the Appeals Chamber finds, however, that a reasonable trier of fact could have found beyond reasonable doubt that the principal perpetrators of the Sanski Most Incident had the requisite *mens rea* for extermination. Therefore, the Appeals Chamber finds that the Trial Chamber's error does not invalidate the Trial Judgement. On the basis of the foregoing, and in light of the fact that Župljanin has failed to show any other error in the Trial Chamber findings on the *mens rea* for extermination, the Appeals Chamber dismisses sub-ground (B) of Župljanin's third ground of appeal.

[3465] Trial Judgement, vol. 1, para. 202.
[3466] Exhibit P486 (confidential), p. 1.
[3467] Trial Judgement, vol. 1, para. 215. See Trial Judgement, vol. 1, paras 189, 205.

(iii) Alleged errors of law and fact in finding that extermination was foreseeable to Župljanin (sub-ground (C) of Župljanin's third ground of appeal)

1046. In setting out the subjective element of the third category of joint criminal enterprise, the Trial Chamber stated, *inter alia*, that an accused can be held responsible for a crime falling outside of the common purpose if: (i) it was foreseeable to the accused that such a crime might be committed; and (ii) the accused willingly took that risk.[3468]

1047. In assessing whether the subjective element of the third category of joint criminal enterprise liability was met in relation to Župljanin with respect to extermination, the Trial Chamber found that:

> the possibility that in the execution of the plan Serb Forces, including forces under Župljanin's control, could commit other serious crimes was sufficiently substantial as to be foreseeable to Župljanin. First, Župljanin enrolled in the Detachment seasoned criminals of the SOS who had distinguished themselves for their nationalistic stance and the commission of crimes against non-Serbs, of which he was aware. He dispatched platoons of the Detachment to carry out operations in close contact with non-Serb civilians, notwithstanding frequent reports on the lack of discipline and criminal activities carried out by this special unit. Second, Župljanin was in Banja Luka after the 3 April 1992 blockade of the town, when the non-Serb community began being targeted by the SOS, the group of people in the red van, and the Detachment. In the first half of April 1992, and then again in August and September of the same year, representatives of the non-Serb community informed Župljanin about the crimes committed against non-Serbs in Banja Luka. Exhibit P1002 shows that, already on 30 April 1992, Župljanin knew that members of the ARK police were committing crimes. With regard to police involvement in the arrest and transport of non-Serb prisoners, he knew that on 7 July 1992 20 non-Serb detainees had died in a truck while being transported by the Sanski Most police. Nevertheless, Župljanin left the Sanski Most police in charge of the transport of detainees. Although Župljanin had strong reasons to know that the Prijedor police were involved in the murder of eight non-Serbs at the Manjača camp between 6 and 7 August 1992, he not only misled the investigation into these murders, but also allowed the Prijedor police to continue escorting detainees between detention camps. On 21 August 1992 Prijedor policemen killed about 150 Muslims at Koričanske Stijene. Furthermore, notwithstanding these murders and Župljanin's knowledge of the Prijedor police's involvement, in September 1992 Župljanin tasked the Prijedor police with escorting buses of non-Serb detainees to Croatia. On this basis, the Trial Chamber finds that the possibility that Serb Forces could commit murders and extermination of Muslims and Croats in the execution of the common plan was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took that risk.[3469]

a. Submissions of the parties

1048. Župljanin asserts that the Trial Chamber erred in law and fact by finding that it was foreseeable to him that extermination "would be committed" in the ARK Municipalities.[3470] Župljanin argues that it is required that participants in the plan "would know from the outset that the execution of [the] plan might foreseeably involve the commission of crimes by other members of

[3468] See Trial Judgement, vol. 1, para. 106, referring to, *inter alia*, *Brđanin* Appeal Judgement, paras 365, 411, *Stakić* Appeal Judgement, paras 65, 87, *Kvočka et al.* Appeal Judgement, para. 83, *Blaškić* Appeal Judgement, para. 33, *Vasiljević* Appeal Judgement, para. 101, *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 467.
[3469] Trial Judgement, vol. 2, para. 524.

the JCE".[3471] He argues that the Trial Chamber therefore erred when it failed to provide a specific date on when he became aware of "the foreseeability of extermination" or "when he undertook the risk of extermination".[3472]

1049. Župljanin also submits that no reasonable trier of fact would have concluded that extermination was foreseeable to him as other inferences were available on the evidence.[3473] Specifically, he contends that the police criminal activities referred to in his dispatch of 30 April 1992 ("30 April 1992 Dispatch") "cannot be characterized as a proper sign [...] that the ARK police would commit extermination against non-Serbs".[3474]

1050. Župljanin further argues that he was not in charge of designating policemen to transport the detainees and there is no evidence that he knew of the conditions in which detainees were being transported.[3475] He raises several arguments in this regard. First, in relation to the Sanski Most Incident, he argues that: (i) he could only have had possible knowledge of it from "a semi-annual report that most likely did not reach him until sometime in January 1993";[3476] and (ii) the complaint sent to the SNB of the Banja Luka CSB on 18 August 1992 is vague, and there is no evidence it ever reached him in person.[3477] Second, concerning the Korićanske Stijene killings, Župljanin submits that his conduct towards the murder investigations as well as the information he had and the steps he took show that the Trial Chamber's conclusion "was not the only reasonable inference a trier of fact could have made".[3478] Third, Župljanin contends that it is "entirely erroneous" to infer his *mens rea* from the dispatch of September 1992, tasking the Prijedor police with escorting buses of non-Serb detainees to Croatia ("September 1992 Dispatch"), since: (i) the decision came as a result of an agreement between the RS Government and the ICRC;[3479] (ii) he did not sign the September 1992 Dispatch in person;[3480] and (iii) there is no evidence that any incidents occurred

[3470] Župljanin Appeal Brief, para. 235. Župljanin submits that regardless of the exact characterisation of the error, either as an error of law and/or error of fact, it occasions a miscarriage of justice and invalidates his convictions under Count 2 (see Župljanin Appeal Brief, para. 242).
[3471] Župljanin Appeal Brief, para. 236.
[3472] Župljanin Appeal Brief, para. 241. See Župljanin Reply Brief, para. 78.
[3473] Župljanin Appeal Brief, paras 235-240, referring to Trial Judgement, vol. 2, para. 524. See Appeal Hearing, 16 Dec 2015, AT. 173.
[3474] Župljanin Appeal Brief, para. 238, referring to Exhibit P1002. Župljanin submits that the "one serious crime" mentioned in the 30 April 1992 Dispatch – the murder of a Serb – was committed by two members of the Banja Luka police, and that their services were ultimately terminated (Župljanin Appeal Brief, para. 238, referring to Radomir Rodić, 16 Apr 2010, T. 8814).
[3475] Župljanin Appeal Brief, para. 239; Appeal Hearing, 16 Dec 2015, AT. 175-176 (private session). See Župljanin Reply Brief, para. 78.
[3476] Župljanin Appeal Brief, para. 240.
[3477] Župljanin Appeal Brief, para. 240.
[3478] Župljnain Appeal Brief, para. 240.
[3479] Župljanin Appeal Brief, para. 240, referring to Exhibit P1905, Trial Judgement, vol. 2, para. 636.
[3480] Župljanin Appeal Brief, para. 240.

during this escort or that those involved in the Koricanske Stijene killings were assigned to this escort.[3481]

1051. The Prosecution responds that Župljanin fails to show that the Trial Chamber erred in finding that it was foreseeable to him that extermination might be committed.[3482] It argues that Župljanin's "unsupported assertion" does not show that it is required that extermination was foreseeable to him "from the outset".[3483] According to the Prosecution, the Trial Chamber found that extermination was foreseeable to Župljanin prior to its commission, which is sufficient.[3484]

1052. The Prosecution further responds that none of Župljanin's challenges to the evidence or factual findings show that the Trial Chamber's finding on his *mens rea* for extermination was unreasonable.[3485] It argues that Župljanin ignores the Trial Chamber's findings on his extensive knowledge of the widespread commission of serious crimes across the ARK Municipalities by police officers and other Serb forces, including murder, and of the context of their commission.[3486] According to the Prosecution, the Trial Chamber reasonably considered that Župljanin's specific knowledge that his subordinates were murdering non-Serbs and his continued tasking of the Banja Luka CSB SPD in operations in close contact with the vulnerable population were strong indicators that extermination was foreseeable to him.[3487]

1053. More specifically, the Prosecution argues that: (i) Župljanin fails to show that the Trial Chamber incorrectly relied on the 30 April 1992 Dispatch "in addition to many other pieces of evidence showing his foresight";[3488] (ii) Župljanin's unsupported assertion that he was not aware of the conditions in which the detainees were transported is contradicted by the evidence and the Trial Chamber's findings and, in any event, he did not need to foresee the exact circumstances of each

[3481] Župljanin Appeal Brief, para. 240.
[3482] Prosecution Response Brief (Župljanin), para. 198.
[3483] Prosecution Response Brief (Župljanin), para. 199.
[3484] Prosecution Response Brief (Župljanin), para. 199, referring to Trial Judgement, vol. 2, paras 524, 805, 845, 850, 859. The Prosecution submits that the first extermination incidents occurred at the end of May 1992 (Prosecution Response Brief (Župljanin), fn. 810, referring to Trial Judgement, vol. 2, paras 688, 690).
[3485] Prosecution Response Brief (Župljanin), paras 200-201. See Prosecution Response Brief (Župljanin), para. 198.
[3486] Prosecution Response Brief (Župljanin), para. 200, referring to Trial Judgement, vol. 2, paras 415-416, 418, 420-421, 425, 428, 431, 433, 438, 440, 450-453, 455-459, 465-470, 496-497, 503, 506, 509-510, 514-517, 524, Trial Judgement, vol. 1, paras 157-159, 849.
[3487] Prosecution Response Brief (Župljanin), para. 200. The Prosecution submits that by mid-May, following Župljanin's intervention in the Doboj incident, he "had *specific* knowledge of the risk of mass killings by Serb Forces but nevertheless continued to contribute to the JCE" (Prosecution Response Brief (Župljanin), para. 200).
[3488] Prosecution Response Brief (Župljanin), para. 201. The Prosecution submits that "[w]hile the 30 April 1992 Dispatch may have referred to the killing of a Serb, it shows that, by April, [Župljanin] knew that his subordinate police officers were committing murder rather than protecting the civilian population" (Prosecution Response Brief (Župljanin), para. 201). It adds that the purported disciplinary measures taken against those involved, serve as evidence of Župljanin's ability to suppress and punish crimes (Prosecution Response Brief (Župljanin), para. 201).

extermination incident;[3489] (iii) Župljanin fails to show that on 18 August 1992, the day of the Koričanske Stijene killings, he was unaware of the Sanski Most Incident and the police's involvement therein;[3490] (iv) contrary to Župljanin's submissions, his "'conduct towards murder investigations' [...] only served to increase his awareness of the possibility of further extermination incidents" and the Trial Chamber did not err in relying on this as an indicator of his *mens rea*;[3491] (v) Župljanin "chose and ordered the Prijedor SJB to escort" the detainees from Trnopolje detention camp despite his knowledge of its involvement in the Koričanske Stijene killings and therefore it is irrelevant whether the decision to escort the prisoners originated from an agreement between the RS Government and the ICRC;[3492] and (vi) it is irrelevant whether the same persons involved in the Koričanske Stijene killings were used to escort the convoy to Croatia or whether incidents occurred, considering that "Drljača was still the Chief of Prijedor SJB" and that Župljanin knew that for Drljača "the killing of 150-200 Muslim prisoners by Serb police officers 'was normal' [...], and [...] that 'the best way of dealing with [the mass killing] would be to conceal it'".[3493]

1054. Župljanin replies that the Prosecution does not dispute that the Trial Chamber failed to provide a specific date as of when murders and extermination became foreseeable to him and when

[3489] Prosecution Response Brief (Župljanin), para. 202. The Prosecution argues Župljanin "had detailed knowledge of the appalling conditions in which non-Serbs were detained and of the fact that many prisoners were killed" (Prosecution Response Brief (Župljanin), para. 202). It submits that it was thus easily foreseeable to Župljanin when he ordered or approved his subordinates to escort and/or transport non-Serb detainees that the conditions of their transport "would be no better", especially considering his knowledge that "specific mass killings" occurred on several of such transports (Prosecution Response Brief (Župljanin), para. 202).

[3490] Prosecution Response Brief (Župljanin), para. 203. The Prosecution argues that Župljanin was sent directly a report dated 18 August 1992 mentioning the death of 21 persons "while they were in the assembly centres of being transported to Manjaća Army Camp" (Prosecution Response Brief (Župljanin), para. 203, referring to Exhibit P602, pp 1, 6, 12). Furthermore, it argues that on 18 August 1992, a report from the Sanski Most SJB Chief was sent to the SNB of the Banja Luka CSB stating that "20 persons 'perished during transportation' to Manjača Camp during which members of the Sanski Most SJB 'provided security for captives'" (Prosecution Response Brief (Župljanin), para. 203, referring to Exhibit P391, p. 3). It submits that Župljanin had an efficient system informing him in detail of criminal activities through daily reports compiling information from SJB reports and the Banja Luka SNB and that it is therefore irrelevant when he received Witness ST161's half-yearly report (Prosecution Response Brief (Župljanin), para. 203, referring to Trial Judgement, vol. 2, paras 370-372, 419).

[3491] Prosecution Response Brief (Župljanin), para. 204, referring to Trial Judgement, vol. 2, paras 516-517, 519. In particular, the Prosecution refers to the steps Župljanin took concerning the Koričanske Stijene killings which consisted of "obstructing the investigation and shielding his subordinates from criminal prosecution" (Prosecution Response Brief (Župljanin), para. 204).

[3492] Prosecution Response Brief (Župljanin), para. 205. The Prosecution submits that Župljanin's argument that he did not issue the order warrants summary dismissal as it merely repeats his trial submissions without showing an error (Prosecution Response Brief (Župljanin), para. 205, referring to Župljanin Final Trial Brief, paras 99-101). Moreover, it argues that even if Župljanin did not sign the order in person, he does not show that he did not approve it considering that he had authority over and coordinated the activities of the ARK SJBs, and even declared that his orders, be they oral or by dispatches, were law for the chiefs of the ARK SJBs (Prosecution Response Brief (Župljanin), para. 205, referring to Trial Judgement, vol. 2, para. 355).

[3493] Prosecution Response Brief (Župljanin), para. 206, referring to Trial Judgement, vol. 2, para. 470. The Prosecution submits that the Trial Chamber "reasonably relied upon Župljanin having tasked the Prijedor police with escorting non-Serb prisoners, despite knowing of their involvement in extermination, to establish he was willing to accept the risk of additional crimes, including additional large killings" (Prosecution Response Brief (Župljanin), para. 206, referring to Trial Judgement, vol. 2, para. 234. See Prosecution Response Brief (Župljanin), paras 62-67, 72, 164).

he took that risk.[3494] He further submits that the Prosecution's reliance on the Koricanske Stijene killings is misplaced as it occurred well after many of the killings for which he was convicted pursuant to the third category of joint criminal enterprise.[3495]

b. Analysis

1055. The Appeals Chamber recalls that pursuant to the third category of joint criminal enterprise, an accused can only be held responsible for a crime falling outside the common purpose if: (i) 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 joint criminal enterprise) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.[3496] Thus, liability under this category of joint criminal enterprise may attach where an accused, with the awareness that such a crime was a *possible* consequence of the implementation of the joint criminal enterprise, decided to participate in it.[3497] The subjective element of the third category joint criminal enterprise is, however, not satisfied by implausibly remote scenarios; it requires that the possibility "that a crime could be committed is sufficiently substantial as to be foreseeable to the accused".[3498]

1056. Insofar as Župljanin argues that the Trial Chamber erred in law in failing to determine whether extermination was foreseeable to the participants in the plan "from the outset",[3499] the Appeals Chamber recalls that the foreseeability standard does not include an express time frame.[3500] Accordingly, a trial chamber is not required to make a finding with respect to precisely when the crimes first became foreseeable to an accused as long as it is clear that prior to their commission, these crimes were foreseeable to the accused and he willingly took the risk that they might occur by

[3494] Župljanin Reply Brief, para. 78.
[3495] Župljanin Reply Brief, para. 78, referring to Prosecution Response Brief (Župljanin), para. 203. Župljanin also replies that killings in Doboj by a "renegade paramilitary group" would not have made it foreseeable that detainees or others targeted for expulsion would be killed in the process (Župljanin Reply Brief, para. 78, referring to Prosecution Response Brief (Župljanin), para. 200).
[3496] *Tolimir* Appeal Judgement, para. 514; *Đorđević* Appeal Judgement, para. 906; *Šainović et al.* Appeal Judgement, paras 1061, 1557; *Brđanin* Appeal Judgement, paras 365, 411. See Trial Judgement, vol. 1, para. 106.
[3497] *Šainović et al.* Appeal Judgement, para. 1557; *Đorđević* Appeal Judgement, para. 907, referring to *Brđanin* Appeal Judgement, paras 365, 411, *Kvočka et al.* Appeal Judgement, para. 83, *Blaškić* Appeal Judgement, para. 33, *Vasiljević* Appeal Judgement, para. 101, *Tadić* Appeal Judgement, para. 228. In this regard, the Appeals Chamber observes that the Trial Chamber correctly set out the foreseeability standard (Trial Judgement, vol. 1, para. 106). The Appeals Chamber also notes that the Trial Chamber found that "the possibility that Serb Forces *could* commit murders and extermination of Muslims and Croats in the execution of the common plan was sufficiently substantial as to be foreseeable to Župljanin and that he willingly took that risk" (Trial Judgement, vol. 2, para. 524 (emphasis added)). The Appeals Chamber notes that Župljanin thus misstates the Trial Judgement when he submits that the Trial Chamber found that it was foreseeable to him that extermination *would* be committed (see Župljanin Appeal Brief, para. 235. See Župljanin Appeal Brief, para. 236).
[3498] *Đorđević* Appeal Judgement, para. 907, quoting *Karadžić* JCE III Decision, para. 18; *Šainović et al.* Appeal Judgement, paras 1081, 1538, 1557. See *Popović et al.* Appeal Judgement, para. 1432.
[3499] See *supra*, para. 1048; Župljanin Appeal Brief, para. 236.
[3500] *Popović et al.* Appeal Judgement, para. 1696, referring to *Šainović et al.* Appeal Judgement, paras 1061, 1557.

joining or continuing to participate in the joint criminal enterprise.[3501] Župljanin therefore has failed to show an error.

1057. The Appeals Chamber now turns to Župljanin's arguments concerning alleged errors of fact. In this regard, the Appeals Chamber recalls its observation that in the circumstances of the present case, while the Trial Chamber did not articulate as of when Župljanin's JCE III Crimes became foreseeable to him, it is discernible that it was satisfied that the subjective element pursuant to the third category of joint criminal enterprise was met in relation to Župljanin throughout the Indictment period, *i.e.* at least from 1 April 1992, and in any event when Župljanin's JCE III Crimes were committed.[3502] The Appeals Chamber also notes that the first extermination incident for which Župljanin was convicted pursuant to the third category of joint criminal enterprise occurred between 24 and 26 May 1992.[3503] Therefore, it understands that the Trial Chamber relied on the factors relating to a later date as mentioned in its assessment in order to further support its findings that extermination was foreseeable to Župljanin and that he willingly took, and continued to take, the risk that extermination could be committed. It is in this context that the Appeals Chamber will address Župljanin's arguments.

1058. In finding that extermination was foreseeable to Župljanin and he willingly took the risk that extermination could be committed, the Trial Chamber relied, *inter alia*, on the 30 April 1992 Dispatch,[3504] sent by Župljanin, as chief of the Banja Luka CSB, to the SJB chiefs of the ARK Municipalities concerning unprofessional and criminal behaviour of SJB personnel.[3505] The Trial Chamber found that this document showed that from that date, Župljanin knew that members of the ARK police were committing crimes.[3506] The Appeals Chamber observes that Župljanin is correct in arguing that the 30 April 1992 Dispatch only refers specifically to one serious crime, namely an incident of murder by two Banja Luka SJB policemen who were subsequently disciplined for their behaviour.[3507] However, the Appeals Chamber notes that in the 30 April 1992 Dispatch, Župljanin referred more generally to the occurrence of "criminal activities" by SJB employees and emphasised the need for such behaviour to be addressed.[3508] The Appeals Chamber finds that the content of the 30 April 1992 Dispatch is therefore consistent with the Trial Chamber's finding that

[3501] See *Šainović et al.* Appeal Judgement, paras 1061, 1557.
[3502] See *supra*, para. 997.
[3503] Trial Judgement, vol. 1, para. 688; Trial Judgement, vol. 2, para. 859. See Trial Judgement, vol. 1, paras 529-541, 661, 686.
[3504] Trial Judgement, vol. 2, para. 524.
[3505] See Exhibit P1002, pp 1-2.
[3506] See Trial Judgement, vol. 2, para. 524.
[3507] See Exhibit P1002, p. 2. See also Župljanin Appeal Brief, para. 238. The Appeals Chamber further notes the evidence to which Župljanin refers indicating that the victim may have been Serb (see Župljanin Appeal Brief, para. 238, referring to Radomir Rodić, 16 Apr 2010, T. 8814).
[3508] Exhibit P1002. See Trial Judgement, vol. 2, para. 433.

Župljanin knew that the ARK police were committing crimes. Moreover, Župljanin ignores the fact that the Trial Chamber did not rely on this document in isolation but also relied on other evidence to support its finding that Župljanin knew that his subordinates were committing crimes from 30 April and continuing in May 1992.[3509] In light of the foregoing, the Appeals Chamber finds that Župljanin has not shown that no reasonable trier of fact could have relied on the 30 April 1992 Dispatch, among other evidence, in assessing whether extermination was foreseeable to Župljanin. His argument in this regard is therefore dismissed.

1059. In finding that extermination was foreseeable to Župljanin and that he willingly took the risk that this crime could be committed, the Trial Chamber also relied on his role in and knowledge of the arrest and transportation of non-Serb detainees.[3510] Župljanin argues that he was not in charge of these transportations or aware of their conditions.[3511] He also raises distinct challenges in relation to specific transportations and incidents upon which the Trial Chamber relied in its assessment.[3512] The Appeals Chamber will address these arguments in turn.

1060. First, with respect to Župljanin's submission that he was not in charge of designating policemen to transport detainees and not aware of the conditions of these transports,[3513] the Appeals Chamber observes that the Trial Chamber found that Župljanin was the highest police officer in the ARK and that he had *de jure* and *de facto* authority over the SJBs of the ARK Municipalities, which included the power to order the police to perform specific tasks, including the transport of non-Serb prisoners to Manjača detention camp.[3514] The Appeals Chamber further observes that the Trial Chamber found that the Banja Luka CSB was constantly apprised by the Sanski Most SJB of mass arrests of non-Serbs and of its involvement in the guarding and transportation of detainees.[3515] Furthermore, the Trial Chamber found that the Prijedor SJB informed the Banja Luka CSB of events in the municipality and requested its assistance in the transportation of detainees from

[3509] Trial Judgement, vol. 2, para. 510, referring to Exhibits 1D666 (dispatch from Župljanin, quoting to the ARK SJB chiefs a document dated 11 May 1992 from the MUP concerning measures to be taken against members of police reserves involved in unprincipled behaviour, dated 15 May 1922), P1013 (dispatch from Župljanin quoting to the ARK SJB chiefs a document dated 11 May 1992 from the MUP concerning measures to be taken against members of police reserves involved in unprincipled behaviour, dated 15 May 1922). The Trial Chamber considered that "[e]xhibits P1002, 1D666, and P1013, for instance, show that by 30 April 1992, and continuing in May 1992, Stojan Župljanin knew that members of the ARK police were involved in criminal activities" (Trial Judgement, vol. 2, para. 510. See Trial Judgement, vol. 2, para. 433).
[3510] See Trial Judgement, vol. 2, para. 524.
[3511] See Župljanin Appeal Brief, para. 239.
[3512] See Župljanin Appeal Brief, paras 238-240.
[3513] See Župljanin Appeal Brief, para. 239.
[3514] Trial Judgement, vol. 2, para. 493. See Trial Judgement, vol. 2, paras 350-351, 353-357, 363-368, 409, 426-427, 435, 448, 456, 478, 511.
[3515] Trial Judgement, vol. 2, para. 491. See Trial Judgement, vol. 2, paras 418-419, 506-507, 511. See also *infra*, para. 1062.

Prijedor to Manjača.[3516] Moreover, the Trial Chamber found that Župljanin had ample knowledge of the unlawful detention, mistreatment, and murder of non-Serb detainees in detention facilities and camps in the ARK Municipalities, on the basis of reports he received but also on the basis of personal visits he made to detention camps.[3517] The Appeals Chamber considers that these findings stand in stark contrast with Župljanin's submissions that he was not in charge of assigning police to transport detainees and not aware of the conditions of these transportations. Župljanin's arguments are therefore dismissed.

1061. Second, with respect to the Sanski Most Incident,[3518] the Trial Chamber found that Župljanin was informed of this incident and relied on this knowledge in support of its finding that extermination was foreseeable to him and he willingly took, and continued to take, the risk that extermination could be committed.[3519] The Appeals Chamber observes that when assessing Župljanin's knowledge of the Sanski Most Incident, the Trial Chamber considered Witness ST161's evidence that he informed Župljanin of the incident in one of his "half-yearly" reports.[3520] The Appeals Chamber observes that the Trial Chamber made no findings on and did not refer to evidence indicating when Witness ST161's report was circulated or when Župljanin received it. [See Annex C – Confidential Annex].[3521] There is no report in evidence concerning July-December 1992. However, the Appeals Chamber notes that even if the incident was included in the July-December 1992 report, this could only have reached Župljanin months after the Sanski Most Incident. In light of this, the Appeals Chamber finds that no reasonable trier of fact could have relied on this evidence to find that Župljanin knew of the Sanski Most Incident at a time prior to the extermination incidents for which Žulpjanin was convicted.[3522]

1062. The Appeals Chamber notes, however, that in considering Župljanin's knowledge of crimes in Sanski Most, the Trial Chamber also considered the evidence of Witness Dragan Majkić ("Witness Majkić"), Chief of the Sanski Most SJB, and Witness ST161 that Župljanin was informed on a daily basis of crimes committed by paramilitaries in Sanski Most.[3523] In addition, the Appeals Chamber notes that in the section containing findings on Župljanin's membership in the JCE, the Trial Chamber concluded on the basis of Exhibits P117, P123, P390, and P391, and the testimonies of Witness Majkić and Witness ST161, "that the Sanski Most SJB kept the Banja Luka

[3516] Trial Judgement, vol. 2, para. 491. See Trial Judgement, vol. 2, paras 420-424, 465, 506, 508, 511-512.
[3517] Trial Judgement, vol. 2, paras 506-512. See Trial Judgement, vol. 2, paras 415-437.
[3518] See *supra*, para. 1050.
[3519] Trial Judgement, vol. 2, paras 418-419, 506, 524.
[3520] Trial Judgement, vol. 2, para. 419, referring to ST161, 20 Nov 2009, T. 3557-3558 (closed session).
[3521] See Annex C – Confidential Annex.
[3522] The Appeals Chamber notes that the extermination incidents for which Župljanin was convicted occurred between 24 May and 21 August 1992 (see *supra*, para. 1012).
[3523] Trial Judgement, vol. 2, paras 419, 507.

CSB constantly apprised of the mass arrests of non-Serbs and its involvement in the guarding and transport of prisoners".[3524] In particular, the Appeals Chamber observes that Exhibit P391 is a report from the Sanski Most SJB to the SNB of the Banja Luka CSB dated 18 August 1992 which provides information, *inter alia*, on the establishment of and conditions at the "collection and investigation" centres in Sanski Most municipality and the role of the SJB in processing, guarding, and transporting detainees from these centres to Manjača detention camp.[3525] The report includes an overview of the total number of persons transferred to Manjača detention camp, persons processed and waiting to be processed, persons deceased at the camp, and those who escaped or perished during transport to Manjača.[3526] The Appeals Chamber observes that the report specifically mentions the death of 20 persons during their transportation to Manjača detention camp.[3527] The Appeals Chamber therefore disagrees with Župljanin that Exhibit P391 is "vague".[3528] Furthermore, the document was specifically addressed to the CSB[3529] and Župljanin was its chief.[3530] The Appeals Chamber thus finds that Župljanin has failed to show that no reasonable trier of fact could have relied on this evidence by merely suggesting, without any basis, that the document never reached him. Based on the foregoing, the Appeals Chamber considers that despite its error in relying on Witness ST161's evidence about the half-yearly reports, a reasonable trier of fact could have concluded that Župljanin was informed of the Sanski Most Incident shortly after it occurred, but in any case not later than 18 August 1992, and could have relied on this knowledge in support of its finding that it was foreseeable to him that extermination could be committed and he willingly took, and continued to take, that risk in relation to incidents that occurred after this date.

1063. Third, turning to Župljanin's challenges in relation to the Prijedor police escorting non-Serb detainees to Croatia,[3531] the Appeals Chamber notes that the Trial Chamber found that it was Župljanin who ordered this task to the Prijedor police in the September 1992 Dispatch.[3532] As

[3524] Trial Judgement, vol. 2, para. 491, referring to Exhibits P117 (dispatch from Mirko Vrućinić, Chief of Sanski Most SJB, to Banja Luka CSB regarding mass arrests of Muslims and Croats, dated 2 July 1992), P123 (dispatch from Mirko Vrućinić, Chief of Sanski Most SJB, to Župljanin/Banja Luka CSB concerning escalation of violence against Muslims and Croats and request for assistance, dated 10 November 1992), P390 (dispatch from Mirko Vrućinić, Chief of Sanski Most SJB, to Banja Luka CSB concerning, *inter alia*, violence against Muslims and Croats by paramilitary groups and responsibility of SJB concerning detainees, dated 5 August 1992), P391 (report from Mirko Vrućinić, Chief of Sanski Most SJB, to the SNB of the Banja Luka CSB concerning detention facilities, departure of Muslims and Croats from municipality, and role of SJB in relation to transporting and guarding prisoners, dated 18 August 1992). See Trial Judgement, vol. 2, para. 507. See also Trial Judgement, vol. 2, paras 418-419.
[3525] Exhibit P391, pp 1-3.
[3526] Exhibit P391, p. 3.
[3527] See Exhibit P391, p. 3.
[3528] *Cf.* Župljanin Appeal Brief, para. 240.
[3529] See Exhibit P391, p. 1.
[3530] Trial Judgement, vol. 2, paras 350, 493.
[3531] Župljanin Appeal Brief, para. 240, referring to Exhibit P1905 (dispatch from Župljanin to the chiefs of the Prijedor and Bosanski Novi SJBs with instructions on organising the transport of 1,561 persons from Trnopolje in Prijedor, through Bosanski Novi, to Croatia, dated 29 September 1992). See *supra*, para. 1050.
[3532] Trial Judgement, vol. 2, para. 478.

regards Župljanin's submission that he did not personally sign the September 1992 Dispatch, the Appeals Chamber finds that he merely repeats an argument already made at trial without showing an error.[3533] While the Trial Chamber did not explicitly address this argument in the Trial Judgement, the Appeals Chamber recalls that a trial chamber need not set out each step of its reasoning.[3534] The Appeals Chamber considers that by relying on the September 1992 Dispatch to find that he ordered the Prijedor police to secure buses to transport non-Serbs to Croatia,[3535] the Trial Chamber implicitly rejected Župljanin's argument. Župljanin has failed to show that the Trial Chamber erred by so doing.

1064. The Appeals Chamber further notes that the Trial Chamber relied on the fact that Župljanin assigned the Prijedor police to this transport, despite his knowledge of their involvement in the Koričanske Stijene killings.[3536] The Appeals Chamber observes that the Trial Chamber found that he not only knew of the involvement of the Prijedor police in this incident, but also that he did what he could to ensure impunity for the perpetrators.[3537] Moreover, the Trial Chamber found that Drljača was still the chief of the Prijedor SJB.[3538] The Trial Chamber also found that Župljanin was aware of the atrocities occurring in Prijedor's detention camps and received many warnings about Drljača but never attempted to remove him.[3539] In these circumstances, the Appeals Chamber finds that it is immaterial whether the decision to escort the detainees came as a result of an agreement between the RS and the ICRC or whether any accidents occurred during the journey or that police officers involved in the Koričanske Stijene killings were assigned to this escort.[3540] The Appeals Chamber considers that on the basis of the fact that Župljanin assigned the Prijedor police to escort detainees while knowing of their prior involvement in the killing of a large number of detainees in similar circumstances, a reasonable trier of fact could have considered that Župljanin was aware of and accepted the possibility of similar incidents occurring. Therefore, the Appeals Chamber finds that Župljanin has not shown that the Trial Chamber erred in relying on the fact that he tasked the

[3533] See Župljanin Final Trial Brief, paras 99-101, submitting, in general, that he did not personally sign all dispatches sent by the Banja Luka CSB, as some of them bore his typed name only. See *supra*, para. 25.
[3534] *Popović et al.* Appeal Judgement, para. 972; *Đorđević* Appeal Judgement, fn. 940; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490; *Krajišnik* Appeal Judgement, para. 27; *Martić* Appeal Judgement, para. 19; *Strugar* Appeal Judgement, para. 21.
[3535] See Trial Judgement, vol. 2, para. 478.
[3536] Trial Judgement, vol. 2, paras 478, 524.
[3537] Trial Judgement, vol. 2, para. 517. See Trial Judgement, vol. 2, paras 466-482. The Appeals Chamber also notes Župljanin's sweeping statement that his "conduct toward the murder investigations, as well as the information he had and the steps he took concerning the killing incident at Koričanske Stijene [...], show that it was not the only reasonable inference a trier of fact could have made" (see Župljanin Appeal Brief, para. 240). However, the Appeals Chamber observes that Župljanin's assertion is unsupported and therefore dismisses it without further analysis.
[3538] Trial Judgement, vol. 2, para. 515.
[3539] Trial Judgement, vol. 2, para. 515. See Trial Judgement, vol. 2, paras 362, 420-424, 444, 465, 468, 470, 486, 491. See *supra*, paras 806-812.
[3540] The Appeals Chamber also notes the Trial Chamber's consideration elsewhere in the Trial Judgement of evidence that the Bosnian Serb authorities used international relief organisations to legitimise the expulsion of non-Serbs in July 1992 (see Trial Judgement, vol. 2, paras 299-307).

Prijedor police with escorting non-Serb detainees to Croatia, despite his knowledge of their involvement in the Koricanske Stijene killings, in finding that extermination was foreseeable to Župljanin and that he willingly took the risk that such crimes might be committed.

1065. For these reasons, the Appeals Chamber finds that Župljanin has failed to show that no reasonable trier of fact could have relied on his involvement in and knowledge of the transport conditions of non-Serb detainees in support of its finding that it was foreseeable to him that extermination could be committed and he willingly took, and continued to take, the risk.

1066. Finally, as regards Župljanin's argument that the Trial Chamber erred in relying on the Koricanske Stijene killings as they only occurred "well after many of the killings for which [he] was convicted by way of JCE III",[3541] the Appeals Chamber finds that he misreads and misrepresents the Trial Chamber's analysis. Contrary to Župljanin's assertion, the Trial Chamber did not find that Župljanin's knowledge of the Koricanske Stijene killings made it foreseeable to him that extermination could be committed prior to that date. The Trial Chamber found that Župljanin knew as early as April 1992, and thus prior to the first extermination incident, that violent crimes were being committed against non-Serbs during the implementation of the JCE.[3542] It further found that throughout the Indictment period, Župljanin received information that violent crimes, including extermination, had been committed.[3543] The Trial Chamber further considered that, regardless of this knowledge, Župljanin continued to task units which he knew were involved in the commission of such crimes to carry out tasks in close contact with the non-Serb population, and that as such, he took the risk that violent crimes – including extermination – could be committed.[3544] The Appeals Chamber understands that the Trial Chamber's reliance on the Koricanske Stijene killings must be read in this context, and it finds that Župljanin has failed to show any error in the Trial Chamber's assessment of and reliance on this evidence.

[3541] Župljanin Reply Brief, para. 78. The Appeals Chamber notes that the Trial Chamber convicted Župljanin for extermination in relation to incidents which occurred between 24 May 1992 and 21 August 1992 (see *supra*, para. 1012).
[3542] See Trial Judgement, vol. 2, para. 524. See also Trial Judgement, vol. 2, paras 370-374, 387-388, 415, 419, 431, 433, 440, 450, 456, 457, 495-496, 498-499, 510, 512. The Appeals Chamber notes the Trial Chamber's finding that owing to Župljanin's intervention, the killings of 300-600 Muslims and Roma in the Doboj incident was averted (see Trial Judgement, vol. 2, paras 456, 515).
[3543] See Trial Judgement, vol. 2, para. 524. See also Trial Judgement, vol. 2, paras 374, 387-388, 397, 404, 415-426, 431-433, 436-440, 443, 451-455, 456-471, 474, 479-481, 487, 491, 495-499, 503-517.
[3544] See Trial Judgement, vol. 2, para. 524. See also Trial Judgement, vol. 2, paras 385, 404-405, 415, 418, 421, 425, 438-440, 448, 465, 478, 486, 488, 497, 499-505, 507-508, 511-512, 514-515, 518-519. The Appeals Chamber notes in particular that Župljanin tasked the Prijedor police to escort the buses transporting the detainees to Croatia in September 1992 despite his knowledge of their involvement in the Koricanske Stijene killings on 21 August 1992 (see Trial Judgement, vol. 2, paras 478, 524; *supra*, para. 1064).

1067. For the foregoing reasons, the Appeals Chamber finds that Župljanin has failed to demonstrate that no reasonable trier of fact could have concluded that it was foreseeable to him that extermination could be committed and that he willingly took that risk.

c. Conclusion

1068. The Appeals Chamber therefore finds that Župljanin has failed to demonstrate that the Trial Chamber erred in law or fact in concluding that extermination was foreseeable to him and that he willingly took the risk that it might be committed. Therefore, the Appeals Chamber dismisses sub-ground (C) of Župljanin's third ground of appeal.

(iv) Conclusion

1069. In light of the foregoing, the Appeals Chamber dismisses Župljanin's third ground of appeal in its entirety.

V. ALLEGED ERRORS IN RELATION TO ŽUPLJANIN'S CONVICTION FOR ORDERING PERSECUTIONS THROUGH THE APPROPRIATION OF PROPERTY (ŽUPLJANIN'S FIFTH GROUND OF APPEAL)

1070. The Trial Chamber found that on 31 July 1992, Župljanin requested the chiefs of the ARK SJBs to: (i) implement the ARK Crisis Staff decision that individuals leaving the ARK could take with them a maximum of 300 Deutsche Mark ("DM"); (ii) issue certificates of temporary seizure when amounts in excess of 300 DM were taken; and (iii) deposit seised amounts at the Banja Luka CSB cash office ("31 July 1992 Order").[3545] On this basis, it found Župljanin responsible for ordering persecutions through the "crime of appropriation of property",[3546] and convicted him under Article 7(1) of the Statute for persecutions as a crime against humanity through the underlying act of plunder.[3547]

A. Submissions of the parties

1071. Župljanin contends that the Trial Chamber erred in law and fact by determining that he "ordered the crime of 'appropriation of property' as a form of persecution by conveying an order to chiefs of police stations that individuals were not allowed to leave the ARK with more than 300DM in cash".[3548] Specifically, he argues that the Trial Chamber erred in its definition of appropriation of

[3545] Trial Judgement, vol. 2, para. 409, referring to Exhibit P594. See Trial Judgement, vol.2, paras 512, 526.
[3546] Trial Judgement, vol. 2, para. 526.
[3547] Trial Judgement, vol. 2, para. 956. See Trial Judgement, vol. 2, para. 805. The Appeals Chamber observes that Župljanin was not convicted for "appropriation of property" as a distinct and separate underlying act of persecutions as a crime against humanity. The Trial Chamber considered that the charge described as "appropriation or plunder of property" in paragraphs 26(h) and 27(h) of the Indictment "is properly construed as 'plunder of property', because the word 'appropriation' has been used by the Appeals Chamber in the definition of the crime of plunder" (Trial Judgement, vol. 1, fn. 147, referring to Indictment, paras 26(h), 27(h), *Kordić and Čerkez* Appeal Judgement, para. 84). Accordingly, it convicted Župljanin for persecutions through plunder (Trial Judgement, vol. 2, para. 956). In so doing, the Trial Chamber used the terms "appropriation", "plunder" and "appropriation and plunder" interchangeably throughout the Trial Judgement (see *e.g.* Trial Judgement, vol. 1, paras 224-226, 263, 282-283, 341, 347-348, 491-492, 545, 572, 649-650, 655, 700-701, 792, 813, 815, 874, 879-880, 982, 984, 988, 1006, 1035, 1041, 1046, 1058, 1119-1120, 1190-1191, 1195, 1248-1249, 1286, 1356-1357, 1414-1415, 1498-1499, 1553, 1636, 1689), together with other terms such as "looting" as well as references to the confiscation, relinquishing, removal, stealing, taking, or theft of property (see *e.g.* Trial Judgement, vol. 1, paras 83, 154, 201, 221, 230, 243, 248, 263, 274, 281-282, 287, 308, 311, 323, 335, 341, 352, 378, 380, 390, 435, 476-478, 490-491, 509, 518, 521, 527, 532, 546, 555, 557-558, 649-650, 655, 684, 700, 727, 737, 740, 746-747, 793, 806, 813, 831, 844-845, 865, 869, 890, 896-897, 916, 919, 953, 972, 975, 981, 988, 1006, 1029, 1046, 1058, 1061, 1081, 1107-1108, 1118-1119, 1124, 1150, 1171, 1178-1179, 1189-1190, 1195, 1203, 1208, 1236-1237, 1247-1248, 1346, 1376, 1402, 1419, 1448, 1458, 1473, 1483, 1487-1488, 1572, 1577, 1597, 1609, 1636-1637, 1639-1640, 1642, 1673). While a more consistent approach would have been preferable, the Appeals Chamber is of the view that the Trial Chamber's approach – which is not challenged by Župljanin – was not inherently erroneous since the legal definition of the underlying act, if any, is not determinative. As a result of the Trial Chamber's approach, the Appeals Chamber in this Judgement will refer to both plunder and appropriation in relation to the same acts of seizure of currency from fleeing non-Serbs.
[3548] Župljanin Appeal Brief, para. 278. See Župljanin Appeal Brief, paras 279-282. The Appeals Chamber notes that in the heading of the section on this ground of appeal, Župljanin describes his ground as addressing the argument that "[t]he Trial Chamber erred in law and fact in determining that [he] *committed* persecution by way of appropriation of property through a JCE" (Župljanin Appeal Brief, p. 125 (emphasis added)). However, in his submissions, Župljanin

property, as appropriation "implies permanence",[3549] and that the Trial Chamber did not find "that the seizure of money by police constituted permanent forfeiture".[3550] Župljanin argues that in fact, the seizure was temporary given that in the 31 July 1992 Order, he "specified that the police should 'issue certificates of temporary seizure' in respect of any amounts confiscated".[3551] As such, he submits that the Trial Chamber erred by finding that temporary seizure qualified as appropriation.[3552]

1072. In addition, Župljanin asserts that, even assuming that temporary confiscation of currency could constitute appropriation, it does not meet the threshold of being "of gravity equal to the crimes listed in Article 5 of the Statute".[3553] He argues that the Trial Chamber failed to make findings concerning: (i) other options available to civilians to preserve their assets, such as depositing their savings in a bank or leaving money with friends, while still complying with the cap on currency that could be transported; (ii) the sum of money confiscated; or (iii) how many victims were affected.[3554] Župljanin further submits that the gravity of the impact must "be assessed against pre-existing legal regulations".[3555] He argues that SFRY law had previously imposed a similar cap and it would thus have been anticipated by those leaving the ARK.[3556]

1073. The Prosecution responds that Župljanin's arguments should be dismissed as the Trial Chamber correctly convicted him of ordering persecutions through appropriation of property, and he fails to show that the Trial Chamber erred in applying the law on persecutions or reached an unreasonable conclusion of fact.[3557]

B. Analysis

1074. The Trial Chamber found that by way of the 31 July 1992 Order, Župljanin ordered his subordinates to carry out the removal of currency in excess of 300 DM from non-Serbs leaving the

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actually challenges the Trial Chamber's finding that he *ordered* appropriation of property (see Župljanin Appeal Brief, paras 278-282). The Appeals Chamber therefore considers Župljanin's reference to commission liability to be an inadvertent error.

[3549] Župljanin Appeal Brief, para. 279.

[3550] Župljanin Appeal Brief, para. 279.

[3551] Župljanin Appeal Brief, para. 279, referring to Trial Judgement, vol. 2, para. 409.

[3552] Župljanin Appeal Brief, para. 279.

[3553] Župljanin Appeal Brief, para. 280, referring to *Blaškić* Appeal Judgement, para. 135. Župljanin argues, by way of example, that "[t]he outright destruction of a car or personal belongings have been found of insufficient gravity to constitute the crime of persecution" (Župljanin Appeal Brief, para. 280, referring to *Kupreškić et al.* Trial Judgement, para. 631, *Blagojević and Jokić* Trial Judgement, para. 620).

[3554] Župljanin Appeal Brief, paras 279-280.

[3555] Župljanin Appeal Brief, para. 281.

[3556] Župljanin Appeal Brief, para. 281, referring to Exhibit P594, p. 1.

[3557] Prosecution Response Brief (Župljanin), para. 238, referring to Trial Judgement, vol. 1, paras 225-227, 491-493. See Prosecution Response Brief (Župljanin), paras 239-244.

ARK Municipalities.[3558] Elsewhere in the Trial Judgement, it considered, with respect to Banja Luka municipality,[3559] that "Muslims and Croats [...] could not take more than 200 or 300 DM with them" and that "thousands had left the municipality" by September 1992.[3560] The Trial Chamber concluded that "by limiting to 200 or 300 DM the amount of money that Muslims and Croats fleeing Banja Luka could take with them [...] the ARK and Banja Luka municipal authorities committed appropriation of property".[3561]

1075. The Appeals Chamber recalls that for an act to satisfy the *actus reus* elements of the crime against humanity of persecutions, it must be established that the underlying act discriminated in fact and denied or infringed upon a fundamental right laid down in international customary or treaty law.[3562] The Appeals Chamber also reiterates that the acts underlying the crime of persecutions, whether considered in isolation or in conjunction with other acts, must be of equal gravity to the crimes listed in Article 5 of the Statute.[3563]

1076. Insofar as Župljanin argues that appropriation of property must be permanent in order to amount to an underlying act of persecutions, the Appeals Chamber notes that his arguments are not substantiated by any authority.[3564] Moreover, he has failed to demonstrate why the appropriation of personal property in accordance with the 31 July 1992 Order could not satisfy the aforementioned *actus reus* elements of persecutions as a crime against humanity regardless of its duration. The Appeals Chamber notes that, in any event, the Trial Chamber's findings indicate that the appropriation in question occurred in the context of forcible transfer and deportations, and that the victims were removed without guarantees of their future return.[3565] The Appeals Chamber is therefore of the view that Župljanin's argument that the appropriation of property occurring in this

[3558] Trial Judgement, vol. 2, para. 526. See Trial Judgement, vol. 2, paras 409, 512.
[3559] The Appeals Chamber notes that while the Trial Chamber also discussed the seizure of currency in excess of 300 DM in relation to non-Serbs leaving Kotor Varoš municipality (Trial Judgement, vol. 1, paras 390, 478), it did not make any findings suggesting that seizure of currency occurred after 31 July 1992, *i.e.* after the date Župljanin issued the order on the basis of which he was found responsible for ordering persecutions. Moreover, the Trial Chamber entered findings on Župljanin's responsibility for ordering persecutions through appropriation only in relation to Banja Luka municipality (Trial Judgement, vol. 2, para. 805). Therefore the Appeals Chamber understands the Trial Chamber's reference to "the imposition of this limit on non-Serbs who were being forcibly removed from the ARK Municipalities" to refer only to the appropriation in Banja Luka municipality (Trial Judgement, vol. 2, para. 526). Accordingly, Župljanin's conviction for ordering persecutions through appropriation only relates to Banja Luka municipality.
[3560] Trial Judgement, vol. 1, para. 211. See Trial Judgement, vol. 1, paras 196-197, 199; Trial Judgement, vol. 2, paras 409, 512, 526.
[3561] Trial Judgement, vol. 1, para. 225. See Trial Judgement, vol. 2, para. 512.
[3562] *Popović et al.* Appeal Judgement, paras 737, 761; *Đorđević* Appeal Judgement, para. 693. *Cf. Popović et al.* Appeal Judgement, para. 762, referring to *Nahimana et al.* Appeal Judgement, para. 985.
[3563] *Popović et al.* Appeal Judgement, para. 762, referring to, *inter alia*, *Nahimana et al.* Appeal Judgement, paras 985-988, *Simić* Appeal Judgement, para. 177, *Blaškić* Appeal Judgement, paras 135, 139, 154-155, 160. *Cf. Brđanin* Appeal Judgement, para. 296.
[3564] See Župljanin Appeal Brief, para. 279. See also Župljanin Appeal Brief, para. 280.
[3565] See Trial Judgement, vol. 1, para. 221; Trial Judgement, vol. 2, paras 512, 526. See also Trial Judgement, vol. 2, para. 313.

context was temporary, is without basis. In the Appeals Chamber's view, Župljanin's undeveloped arguments in this respect do not warrant further consideration.

1077. The Appeals Chamber further observes that Župljanin merely asserts that the Trial Chamber was required, when assessing the gravity of the appropriation in question, to enter findings on alternate options available to civilians to preserve their assets, the sum of money confiscated, or how many victims were affected, but he has failed to point to any authority or principle of law requiring the Trial Chamber to do so. Moreover, Župljanin ignores the Trial Chamber's findings on the context in which this appropriation took place and the significance of its impact upon victims,[3566] without showing any error therein. In addition, in support of his argument that the equal gravity requirement must be assessed against pre-existing legal regulations and that SFRY law previously imposed a similar restriction, Župljanin refers only to the 31 July 1992 Order itself, which does not support his contention.[3567] The Appeals Chamber considers that he has thus failed to show any error in the Trial Chamber's conclusion. Considering that Župljanin does not further substantiate his arguments with respect to the equal gravity requirements, these arguments are also dismissed.

1078. In light of the above, the Appeals Chamber dismisses Župljanin's fifth ground of appeal in its entirety.

[3566] See *supra*, paras 1074, 1076.
[3567] Župljanin Appeal Brief, para. 281, referring to Exhibit P594, p. 1. Župljanin's 31 July 1992 Order refers to the SFRY Law on Foreign Currency Transactions and its provision providing that "the amount of foreign currency that may be taken out of the country shall be decided by the Federal Executive Council" (Exhibit P594, p. 1). However, it is unclear from this order whether a restriction similar to the one in this order was previously imposed (see Exhibit P594).

VI. CUMULATIVE CONVICTIONS (PROSECUTION'S SECOND GROUND OF APPEAL)

A. Introduction

1079. The Trial Chamber found that Stanišić and Župljanin were responsible, as members of the JCE for, *inter alia*, the crimes of murder (Count 3), torture (Count 5), deportation (Count 9), and other inhumane acts (forcible transfer) (Count 10) as crimes against humanity under Article 5 of the Statute.[3568] It also found Stanišić and Župljanin responsible for the crime of persecutions (Count 1) as a crime against humanity through underlying acts including killings, torture, inhumane acts, forcible transfer, and deportation.[3569]

1080. Having made these findings, the Trial Chamber then considered whether it was permissible to enter *intra*-Article 5 cumulative convictions.[3570] 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").[3571] It found that the *Čelebići* test was not met in relation to the crimes of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity *vis-à-vis* the crime of persecutions as a crime against humanity through the same crimes as underlying acts,[3572] and consequently entered convictions for the crime of persecutions only.[3573]

B. Submissions of the parties

1081. The Prosecution submits that the Trial Chamber erred by failing to enter convictions under Article 5 of the Statute for the crimes of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity in addition to the convictions it entered for the crime of persecutions through the same underlying acts.[3574] It contends that the Trial Chamber failed to correctly apply the *Čelebići* test which establishes that cumulative convictions must be entered

[3568] Trial Judgement, vol. 2, paras 804-805, 809, 813, 818, 822, 827, 831-832, 836, 840, 844-845, 849-850, 854, 858-859, 863-864, 868-869, 873, 877, 881, 885, 955-956. See Trial Judgement, vol. 1, paras 228, 285, 350, 494, 703, 817, 883, 938, 986, 1044, 1122, 1193, 1251, 1289, 1359, 1417, 1501, 1556, 1691.
[3569] Trial Judgement, vol. 2, paras 804-805, 809, 813, 818, 822, 827, 831-832, 836, 840, 844-845, 849-850, 854, 858-859, 863-864, 868-869, 873, 877, 881, 885. See Trial Judgement, vol. 1, paras 222-228, 282-285, 347-350, 491-494, 700-703, 811-817, 880-883, 935-938, 982-986, 1041-1044, 1119-1122, 1190-1193, 1248-1251, 1286-1289, 1356-1359, 1414-1417, 1498-1501, 1553-1556, 1687-1691.
[3570] See Trial Judgement, vol. 2, paras 905-918.
[3571] See Trial Judgement, vol. 2, paras 905-918, referring to, *inter alia*, *Čelebići* Appeal Judgement, para. 412.
[3572] Trial Judgement, vol. 2, paras 911-913, 916, 918.
[3573] Trial Judgement, vol. 2, paras 955-956. See Trial Judgement, vol. 2, paras 912, 916, 918.
[3574] Prosecution Appeal Brief, paras 2, 54-58.

where each offence has a materially distinct element.[3575] The Prosecution further argues that pursuant to the *Čelebići* test "[a] conviction for persecutions must be cumulated with a conviction for another crime against humanity, even when based on the same conduct."[3576] According to the Prosecution, the Trial Chamber had no discretion in this matter and was required to enter convictions for each distinct crime for which Stanišić and Župljanin were found guilty in order to fully reflect their criminal responsibility.[3577] It submits that the Appeals Chamber should therefore correct the legal error and enter convictions against Stanišić and Župljanin for the crimes of murder, torture, deportation, and inhumane acts (forcible transfer) as crimes against humanity pursuant to Article 5 of the Statute.[3578]

1082. Stanišić and Župljanin respond that the Appeals Chamber should uphold the Trial Chamber's decision not to enter cumulative convictions.[3579] They argue that the Appeals Chamber should adopt the approach of a number of judgements rendered prior to the *Kordić and Čerkez* Appeal Judgement that regarded *intra*-Article 5 cumulative convictions as impermissible.[3580] In addition, Stanišić and Župljanin respond that, even if the Appeals Chamber finds that cumulative convictions are permissible for these crimes, there are cogent reasons to depart from the Tribunal's jurisprudence.[3581] In particular, Stanišić argues that there are cogent reasons based on: (i) the "correct application" of the *Čelebići* test which "does not regard convictions as permissibly cumulative where one crime includes, but goes beyond the legal elements of another crime";[3582] (ii) the case law of the Tribunal predating the *Kordić and Čerkez* Appeal Judgement and dissenting

[3575] Prosecution Appeal Brief, paras 2, 56-59, referring to, *inter alia*, *Čelebići* Appeal Judgement, para. 412. See Prosecution Appeal Brief, para. 55.
[3576] Prosecution Appeal Brief, para. 2. See Prosecution Appeal Brief, paras 54, 56-57. It also argues that, contrary to what the Trial Chamber stated, the crime of persecutions is not always committed through another crime and that "[a]ll that is required is that the act of persecution discriminates in fact, infringes upon a fundamental right, and is deliberately carried out with the intent to discriminate on prohibited grounds" (Prosecution Appeal Brief, paras 58-59, referring to Trial Judgement, vol. 2, para. 910).
[3577] Prosecution Appeal Brief, paras 2, 54-57, 60.
[3578] Prosecution Appeal Brief, paras 2, 54, 60-61; Prosecution Reply Brief, para. 26.
[3579] See Stanišić Response Brief, paras 115, 118, 179-180; Župljanin Response Brief, paras 17-21, 23. Stanišić contends that since "there is no materially distinct element within the underlying crime that is not reciprocated in persecutions", Article 5 convictions based on the same conduct are impermissible. In particular, Stanišić argues that the crime of persecutions is an "'empty hull' that can only be established once the elements of the underlying act are proven" and that the "materially distinct element principle is offended as persecutory intent merely supplements the underlying crimes" (Stanišić Response Brief, paras 111-113, 156. See Stanišić Response Brief, paras 113, 116, 123-142, 144-149, 153-158, 176. See also Stanišić Response Brief, para. 174). Župljanin argues that the issues raised in this ground of appeal were raised before the *Đorđević* Appeals Chamber and that he therefore "adopts the submissions of the [Đorđević] Appeals Brief" as his own (Župljanin Response Brief, fn. 40, referring to *the Prosecutor v. Vlastimir Đorđević*, Case No IT-05-87/1-A, Vlastimir Đorđević's Appeal Brief, 23 January 2012 (redacted public version), paras 399-406).
[3580] Stanišić Response Brief, paras 111, 114, 121, 142-143, 158, 176, 178, referring to *Krnojelac* Appeal Judgement, *Vasiljević* Appeal Judgement, *Krstić* Appeal Judgement, *Kunarac et al.* Appeal Judgement, *Stakić* Trial Judgement; Župljanin Response Brief, paras 19, 21-22, 25; Appeal Hearing, 16 Dec 2015, AT. 234. See Stanišić Response Brief, paras 112-113, 116, 123-141, 146-149, 156, 174.
[3581] Stanišić Response Brief, paras 115-116, 122-141, 143-167, 172-175, 177, 179; Appeal Hearing, 16 Dec 2015, AT. 229. See Župljanin Response Brief, para. 25. See also Župljanin Response Brief, paras 21-22.

opinions which found *intra*-Article 5 convictions impermissible;[3583] (iii) the case law of national jurisdictions, including "the case law upon which the '*Čelebići* test' is based";[3584] and (iv) other *supra*-national legal sources.[3585] Župljanin further argues that cumulative convictions for the same underlying crimes should be prohibited as they could have an "inappropriate impact" on sentencing because they might create an impression that trial chambers should "give higher sentences".[3586]

1083. Moreover, Župljanin argues that, should the Appeals Chamber increase his sentence on appeal on the basis of additional convictions, it would amount to entering new charges on appeal and therefore violate his right to appeal.[3587] He submits that, if the Appeals Chamber were to correct the Trial Chamber's reasoning and findings, it should pronounce the error but decline to enter new convictions.[3588]

1084. The Prosecution replies that the Tribunal's jurisprudence has been settled since the *Kordić and Čerkez* Appeal Judgement[3589] and that Stanišić and Župljanin fail to demonstrate cogent reasons to depart from the Tribunal's well-settled jurisprudence that has developed since then.[3590]

[3582] Stanišić Response Brief, para. 140. See Stanišić Response Brief, paras 111-116, 123-142, 154.
[3583] Stanišić Response Brief, paras 116, 143-158, referring to *Krnojelac* Appeal Judgement, *Vasiljević* Appeal Judgement, *Krstić* Appeal Judgement, *Kunarac et al.* Appeal Judgement, *Stakić* Trial Judgement, *Kordić and Čerkez* Appeal Judgement, Joint Dissenting Opinion of Judge Schomburg and Judge Güney on Cumulative Convictions, *Naletilić and Martinović* Appeal Judgement, Opinion Dissidente Conjointe des Juges Güney et Schomburg sur le Cumul de Déclarations de Culpabilité, *Krajišnik* Appeal Judgement, Opinion Dissidente du Juge Güney sur le Cumul de Déclarations de Culpabilité, *Stakić* Appeal Judgement, Opinion Dissidente de Juge Güney sur le Cumul de Déclarations de Culpabilité, *Nahimana et al.* Appeal Judgement, Partly Dissenting Opinion of Judge Güney. See Stanišić Response Brief, paras 123-141, 144-157.
[3584] Stanišić Response Brief, paras 116, 127-129, 159-164, referring to *Blockburger v. United States*, 284 U.S. 299, (1932) ("*Blockburger v. United States*") p. 304, *Rutledge v. United States*, 517, U.S. 292, (1996) ("*Rutledge v. United States*"), p. 297, *Whalen v. United States*, 445 U.S. 684 (1980) ("*Whalen v. United States*"), pp 693-694, *Ex parte Lange*, 85 U.S. 163 (1873) ("*Ex parte Lange*"), p. 168, *Kienapple v. The Queen*, [1975] 1 S.C.R. 7829 ("*Kienapple v. The Queen*"), p. 634. See Stanišić Response Brief, para. 166.
[3585] Stanišić Response Brief, paras 116, 165-167, referring to International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, entered into force 23 March 1976 ("ICCPR"), art. 14(7), Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ("European Convention on Human Rights"), art. 4, *Sergey Zolotukhin v. Russia*, European Court of Human Rights, no. 14939/03, Judgement, 10 February 2009 ("*Zolotukhin v. Russia*"), paras 44, 97, 122, *Ruotsalainen v. Finland*, European Court of Human Rights, no. 13079/03, Judgement, 16 June 2009 ("*Ruotsalainen v. Finland*"). In addition, Župljanin notes that the ECCC continues to apply the "pre-*Kordić* case law" (Župljanin Response Brief, para. 22, referring to *Co-Prosecutors v. Guek Eav Kaing alias "Duch"*, Case File: 001/18-17-2007/ECCC/TC, Trial Judgement, 26 July 2010 ("*Duch* Trial Judgement"), paras 563-565).
[3586] Župljanin Response Brief, para. 25. See Župljanin Response Brief, para. 19. Župljanin however notes that "[t]he Chamber gives no indication, and the Prosecution does not suggest, that the formal manner of entering convictions had any effect on sentencing" (Župljanin Response Brief, para. 19).
[3587] Appeal Hearing, 16 Dec 2015, AT. 234. Župljanin emphasises that the Prosecution does not seek an increase of his sentence on the basis of the additional convictions (Appeal Hearing, 16 Dec 2015, AT. 234, referring to Prosecution Appeal Brief, fn. 2).
[3588] Appeal Hearing, 16 Dec 2015, AT. 234-235. Župljanin adds that this approach would meet the balance between fairness to the accused and the interests in convictions (Appeal Hearing, 16 Dec 2015, AT. 235).
[3589] Prosecution Reply Brief, paras 18-20. See Prosecution Reply Brief, para. 22 (internal citations omitted).
[3590] Prosecution Reply Brief, paras 18, 21-24.

C. Analysis

1085. The Trial Chamber referred to the *Čelebići* test, stating that it is permissible to enter convictions under more than one statutory provision for the same conduct "only if each has a materially distinct element".[3591] The Trial Chamber then noted that in the *Kordić and Čerkez* case the Appeals Chamber, in applying the *Čelebići* test, found that "*intra*-Article 5 convictions for the crime of persecutions as a crime against humanity are permissibly cumulative with other crimes against humanity because they each have a materially distinct element not contained in the other".[3592] The Trial Chamber observed that the Appeals Chamber in *Kordić and Čerkez* found that the crime of persecutions contains a materially distinct element from the other Article 5 crimes.[3593]

1086. Despite these observations, the Trial Chamber argued that the Appeals Chamber in the *Kordić and Čerkez* case improperly applied the *Čelebići* test.[3594] The Trial Chamber reasoned that:

> the Appeals Chamber [in *Kordić and Čerkez*] has looked at the elements of persecution in the abstract and divorced its analysis from persecution's nature as an 'empty hull' that must be filled with the additional elements of an underlying act [...]. This gives rise to difficulty because the *Čelebići* test provides that the issue of cumulative convictions only arises in relation to crimes which are based on the same conduct; and, in the view of the Trial Chamber, the *Kordić and Čerkez* majority failed to do this when it treated persecution in isolation from the underlying act [...]. In the Trial Chamber's view, it would appear that the Appeals Chamber did not fully appreciate the fact that persecution is always committed *through* some other crime [...] whose elements must still be proved in addition to the discriminatory element required for persecution. To classify a crime as 'persecution' is to add a discriminatory intent to that crime.[3595]

1087. The Trial Chamber then considered that the elements of the crimes of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity are subsumed within the crime of persecutions through underlying acts of killing, torture, deportation, and forcible transfer.[3596] It was on this basis that the Trial Chamber concluded that these other crimes against humanity do not contain any element that is materially distinct from the crime of persecutions through the same underlying acts.[3597] It therefore held that the relevant crimes are impermissibly cumulative[3598] and only entered a conviction for the crime of persecutions.[3599]

[3591] Trial Judgement, vol. 2, para. 905, referring to *Semanza* Appeal Judgement, para. 315, *Kordić and Čerkez* Appeal Judgement, paras 1032-1033, *Krštić* Appeal Judgement, para. 218, *Kunarac et al.* Appeal Judgement, para. 173, *Čelebići* Appeal Judgement, para. 412, *Limaj et al.* Trial Judgement, para. 717, *Strugar* Trial Judgement, para. 447, *Blagojević and Jokić* Trial Judgement, para. 799. See Trial Judgement, vol. 2, paras 906-907.

[3592] See Trial Judgement, vol. 2, para. 909. The Appeals Chamber notes that in *Kordić and Čerkez*, the Appeals Chamber considered whether it was permissible to enter cumulative convictions for the crime of persecutions and the crimes of deportation, other inhumane acts (forcible transfer), and murder as crimes against humanity (see *Kordić and Čerkez* Appeal Judgement, paras 1041-1043).

[3593] See Trial Judgement, vol. 2, para. 909, referring to *Kordić and Čerkez* Appeal Judgement, para. 1041.

[3594] Trial Judgement, vol. 2, para. 910. See Trial Judgement, vol. 2, paras 916, 918.

[3595] Trial Judgement, vol. 2, para. 910 (internal citations omitted).

[3596] Trial Judgement vol. 2, paras 911-913, 916-918.

[3597] Trial Judgement, vol. 2, paras 911-913, 916-918.

[3598] Trial Judgement, vol. 2, paras 912-913, 916, 918.

1088. The Appeals Chamber recalls that the well-established jurisprudence on cumulative convictions is the *Čelebići* test, pursuant to which:

> multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.[3600]

1089. The Appeals Chamber further recalls that since the *Kordić and Čerkez* Appeal Judgement, it is well-established jurisprudence that under the *Čelebići* test, *intra*-Article 5 convictions for the crime of persecutions as a crime against humanity are permissibly cumulative with convictions for other crimes against humanity, based on the same conduct, because they each have a materially distinct element not contained in the other.[3601] That is, the crime of persecutions requires proof that an act or omission discriminates in fact and proof that it was committed with specific intent to discriminate.[3602]

1090. The *Kordić and Čerkez* Appeal Judgement and subsequent appeal judgements have repeatedly rejected an interpretation of the *Čelebići* test that prohibits cumulative convictions for the crime of persecutions as a crime against humanity and other crimes against humanity.[3603] Accordingly, cumulative convictions have been found to be permissible under Article 5 of the Statute on the basis of the same conduct in relation to the crimes of deportation, other inhumane acts, murder, torture, and extermination, on one hand, and the crime of persecutions, on the other.[3604] Although prior jurisprudence adopted a different approach, the Appeals Chamber in the *Kordić and Čerkez* case considered that cogent reasons warranted a departure from its previous jurisprudence.[3605] Subsequent appeal judgements have repeatedly confirmed the approach adopted in the *Kordić and Čerkez* case[3606] and the ICTR Appeals Chamber has taken the same approach.[3607] Moreover, the Trial Chamber's reasoning that the Appeals Chamber in the *Kordić and Čerkez* case

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[3599] Trial Judgement, vol. 2, pp 311-313.
[3600] *Čelebići* Appeal Judgement, para. 412.
[3601] *Kordić and Čerkez* Appeal Judgement, paras 1040-1043.
[3602] *Kordić and Čerkez* Appeal Judgement, para. 1041. See *Đorđević* Appeal Judgement, para. 840; *Krajišnik* Appeal Judgement, paras 390-391; *Stakić* Appeal Judgement, paras 359-362.
[3603] *Đorđević* Appeal Judgement, para. 840 (deportation, other inhumane acts (forcible transfer), and murder); *Krajišnik* Appeal Judgement, paras 386-391 (murder, extermination, deportation, and other inhumane acts (forcible transfer)); *Stakić* Appeal Judgement, paras 359-367 (murder, deportation, other inhumane acts (forcible transfer), and extermination); *Naletilić and Martinović* Appeal Judgement, paras 589-590 (torture); *Kordić and Čerkez* Appeal Judgement, paras 1039-1043 (deportation, other inhumane acts (forcible transfer), and murder).
[3604] See *Đorđević* Appeal Judgement, paras 839-842; *Krajišnik* Appeal Judgement, paras 388-391; *Naletilić and Martinović* Appeal Judgement, paras 587-591; *Stakić* Appeal Judgement, paras 355-367; *Nahimana et al.* Appeal Judgement, paras 1026-1027.
[3605] *Kordić and Čerkez* Appeal Judgement, para. 1040. See *Đorđević* Appeal Judgement, paras 840-841; *Krajišnik* Appeal Judgement, para. 389.
[3606] *Đorđević* Appeal Judgement, para. 840; *Naletilić and Martinović* Appeal Judgement, paras 587-591; *Stakić* Appeal Judgement, paras 355-367.

improperly applied the *Čelebići* test has been previously considered and expressly rejected by the Appeals Chamber.[3608] The Appeals Chamber further observes that the Trial Chamber provided no persuasive explanation for departing from the Tribunal's well-established jurisprudence.

1091. The Appeals Chamber also observes that, although the Trial Chamber referred to the *Čelebići* test,[3609] when applying the test it incorrectly characterised the crime of persecutions as "an empty hull".[3610] The Appeals Chamber recalls that such a characterisation has been expressly rejected as it incorrectly focuses on the acts of the accused rather than the elements of the crime of persecutions.[3611] In addition, the Appeals Chamber notes that the Trial Chamber incorrectly stated that the crime of persecutions "is always committed *through* some other crime".[3612] Contrary to the Trial Chamber's assertion, the crime of persecutions does not require that underlying acts are crimes under international law.[3613]

1092. In light of the above-recalled, well-established jurisprudence, the Appeals Chamber finds that the Trial Chamber committed an error of law when it found that convictions for the crime of persecutions as a crime against humanity are impermissibly cumulative with convictions for murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity based on the same conduct. In this context, the Appeals Chamber is not persuaded by the submissions of Stanišić and Župljanin that there are cogent reasons to depart from this settled jurisprudence of the Tribunal.[3614] The dissenting opinions of Judge Schomburg and Judge Güney cited by Stanišić[3615] neither bind the Appeals Chamber nor constitute cogent reasons to revisit that jurisprudence.[3616] Similarly, neither the national[3617] nor the *supra*-national legal sources[3618] cited

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[3607] *Nahimana et al.* Appeal Judgement, paras 1026-1027. See *Bagosora and Nsengiyumva* Appeal Judgement, paras 414, 735.
[3608] *Đorđević* Appeal Judgement, para. 840; *Krajišnik* Appeal Judgement, para. 389. See Trial Judgement, vol. 2, paras 910-912.
[3609] See Trial Judgement, vol. 2, para. 905, referring to, *inter alia*, *Čelebići* Appeal Judgement, para. 412.
[3610] Trial Judgement, vol. 2, para. 910. See *Kordić and Čerkez* Appeal Judgement, paras 1039-1041; *Krajišnik* Appeal Judgement, paras 383, 389.
[3611] See *Kordić and Čerkez* Appeal Judgement, paras 1039-1040; *Krajišnik* Appeal Judgement, paras 383, 389.
[3612] See Trial Judgement, vol. 2, para. 910.
[3613] *Popović et al.* Appeal Judgement, para. 738; *Brđanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, para. 323; *Nahimana et al.* Appeal Judgement, para. 985.
[3614] See *supra*, para. 596. See also Stanišić Response Brief, paras 115-116, 122-158, 165-167, 172-175, 177, 179; Župljanin Response Brief, para. 25.
[3615] See Stanišić Response Brief, paras 114, 119.
[3616] See *e.g. Đorđević* Appeal Judgement, para. 841. In particular, Judge Schomburg and Judge Güney are the same judges who dissented on *intra*-Article 5 convictions for persecutions in the *Kordić and Čerkez* Appeal Judgement. Their dissenting opinions proffer a different view from the Tribunal's jurisprudence in relation to the crime of persecutions as a crime against humanity but do not provide "clear and compelling" reasons to revisit that jurisprudence (see *e.g. Đorđević* Appeal Judgement, paras 24, 841).
[3617] See *Blockburger v. United States*, p. 304; *Rutledge v. United States*, p. 297; *Whalen v. United States*, pp 693-695; *Ex parte Lange*, p. 168; *Kienapple v. The Queen*, pp 634, 751. See also Stanišić Response Brief, paras 159-164.
[3618] See ICCPR, art. 14(7), Protocol No. 7 to the European Convention on Human Rights, art. 4; *Zolotukhin v. Russia*, paras 44, 73-77, 82-84, 97, 120, 122; *Ruotsalainen v. Finland*, paras 48-50; *Duch* Trial Judgement. See also Stanišić Response Brief, paras 116, 165-167; Župljanin Response Brief, para. 22.

demonstrate that the Appeals Chamber has adopted its approach "on the basis of a wrong legal principle" nor provide "clear and compelling"[3619] considerations which constitute cogent reasons to depart from the Tribunal's jurisprudence. The Appeals Chamber recalls in this regard that the Tribunal's jurisprudence is not to be lightly disturbed even where another court has taken a different approach.[3620] Moreover, the Appeals Chamber observes that the Appeals Chamber of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") reversed the *Duch* Trial Judgement, on which Župljanin relies,[3621] and applied the approach in the *Kordić and Čerkez* Appeal Judgement.[3622]

1093. The Appeals Chamber therefore finds no cogent reasons in the interest of justice to depart from its well-established jurisprudence that convictions, under Article 5 of the Statute, for the crime of persecutions and other crimes against humanity based on the same conduct are permissibly cumulative.

1094. The Appeals Chamber also recalls that:

> [w]hen the evidence supports convictions under multiple counts for the same underlying acts, the test as set forth in *Čelebići* and *Kordić* does not permit the Trial Chamber discretion to enter one or more of the appropriate convictions, unless the two crimes do not possess materially distinct elements.[3623]

The Trial Chamber therefore further erred in law when it failed to enter convictions for the crimes of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity.

1095. The Appeals Chamber notes that the Prosecution requests that the Appeals Chamber correct this error by entering convictions for the crimes of murder (Count 3), torture (Count 5), deportation (Count 9), and other inhumane acts (forcible transfer) (Count 10).[3624]

1096. The Appeals Chamber recalls that the choice of remedy lies within its discretion, in light of Article 25 of the Statute.[3625] Accordingly, in the interests of fairness to Stanišić and Župljanin,

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[3619] See *Đorđević* Appeal Judgement, para. 24, referring to *Aleksovski* Appeal Judgement, para. 108.
[3620] See *Đorđević* Appeal Judgement, para. 83.
[3621] See Župljanin Response Brief, para. 22.
[3622] *Co-Prosecutors v. Guek Eav Kaing alias "Duch"*, Case File: 001/18-17-2007/ECCC/SC, Appeal Judgement, 3 February 2012, paras 316-336; *Duch* Trial Judgement. The Appeals Chamber also notes that the *Đorđević* Appeal Chamber considered the *Duch* Trial Judgement but found that it did not constitute a cogent reason to revisit the Tribunal's jurisprudence on cumulative convictions (see *Đorđević* Appeal Judgement, para. 841).
[3623] *Strugar* Appeal Judgement, para. 324, quoting *Stakić* Appeal Judgement, para. 358. See *Gatete* Appeal Judgement, paras 160-261.
[3624] Prosecution Appeal Brief, paras 2, 54, 60.
[3625] See *Jelisić* Appeal Judgement, para. 73. Article 25(2) of the Statute provides that "[t]he Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers". See also *Šainović et al.* Appeal Judgement, para. 1604, fn. 5269 (with references).

balanced with considerations of public interest and the administration of justice, and taking into account the nature of the offences and the circumstances of the case at hand, the Appeals Chamber finds it appropriate to refrain from entering new convictions on appeal for these crimes.[3626]

D. Conclusion

1097. In light of the foregoing, the Appeals Chamber finds that the Trial Chamber erred in law by: (i) finding that convictions for the crime of persecutions as a crime against humanity under Article 5 of the Statute are impermissibly cumulative with convictions for other crimes against humanity based on the same conduct; and (ii) failing to enter convictions for Stanišić and Župljanin pursuant to Article 7(1) of the Statute for the crimes of murder (Count 3), torture (Count 5), deportation (Count 9), and other inhumane acts (forcible transfer) (Count 10) as crimes against humanity. Consequently, the Appeals Chamber grants the Prosecution's second ground of appeal. However, it declines to enter new convictions against Stanišić and Župljanin on appeal under these counts.

[3626] See *Jelisić* Appeal Judgement, paras 73, 77; *Aleksovski* Appeal Judgement, paras 153-154, 192; *Krstić* Appeal Judgement, paras 220-227, 229, p. 87; *Stakić* Appeal Judgement, paras 359-367, pp 141-142; *Naletilić and Martinović* Appeal Judgement, paras 588-591, p. 207. See also *Šainović et al.* Appeal Judgement, paras 1604, 1766.

VII. SENTENCING

1098. The Trial Chamber convicted Stanišić and Župljanin under Article 7(1) of the Statute for persecutions as a crime against humanity, murder as a violation of the laws or customs of war, and torture as a violation of the laws or customs of war.[3627] Župljanin was, in addition, convicted for extermination as a crime against humanity.[3628] The Trial Chamber sentenced Stanišić and Župljanin each to a single sentence of 22 years of imprisonment.[3629] Stanišić, Župljanin, and the Prosecution have each appealed the sentences.[3630]

A. Applicable law and standard of review

1099. Pursuant to Article 24 of the Statute and Rules 87(C) and 101 of the Rules, a trial chamber must take into account the following factors in determining the appropriate sentence: (i) the gravity of the offence or the totality of the culpable conduct; (ii) the individual circumstances of the convicted person; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; and (iv) aggravating and mitigating circumstances.

1100. An appeal against sentencing is an appeal *stricto sensu*; it is corrective in nature and not a trial *de novo*.[3631] 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.[3632] As a rule, the Appeals Chamber will not substitute its own sentence for that imposed by a trial chamber unless the appealing party demonstrates that the trial chamber committed a "discernible error" in exercising its discretion or has failed to follow the applicable law.[3633] It is for the party challenging the sentence to demonstrate how the trial chamber ventured outside its discretionary framework in imposing the sentence.[3634] In doing so, an appellant must demonstrate that the trial chamber: (i) gave weight to extraneous or irrelevant considerations;

[3627] Trial Judgement, vol. 2, paras 955-956. The Appeals Chamber notes that the Trial Chamber also found both Stanišić and Župljanin guilty, but on the basis of the principles relating to cumulative convictions, did not enter convictions for: murder as a crime against humanity (Count 3); torture as a crime against humanity (Count 5); cruel treatment as a violation of the laws or customs of war (Count 7); inhumane acts as a crime against humanity (Count 8); deportation as a crime against humanity (Count 9); and inhumane acts (forcible transfer) as a crime against humanity (Count 10) (Trial Judgement, vol. 2, paras 955-956).
[3628] Trial Judgement, vol. 2, para. 956.
[3629] Trial Judgement, vol. 2, paras 955-956.
[3630] See Stanišić Appeal Brief, paras 477-550; Župljanin Appeal Brief, paras 243-277, 283; Prosecution Appeal Brief, paras 1, 3-53, 61.
[3631] *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1961.
[3632] *Tolimir* Appeal Judgement, para. 626; *Popović et al.* Appeal Judgement, para. 1961; *Đorđević* Appeal Judgement, para. 931; *Šainović et al.* Appeal Judgement, para. 1837; *Nyiramasuhuko et al.* Appeal Judgement, para. 3349.
[3633] *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1961; *Đorđević* Appeal Judgement, para. 932; *Nyiramasuhuko et al.* Appeal Judgement, para. 3349.
[3634] *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1961; *Đorđević* Appeal Judgement, para. 932.

(ii) failed to give weight or sufficient weight to relevant considerations; (iii) made a clear error as to the facts upon which it exercised its discretion; or (iv) made a decision that was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the trial chamber failed to properly exercise its discretion.[3635]

B. Stanišić

1101. Stanišić raises four grounds of appeal in relation to his sentence and requests that his sentence be reduced.[3636] He submits that the Trial Chamber erred by: (i) failing to adequately assess the gravity of his conduct;[3637] (ii) failing to properly consider aggravating factors;[3638] (iii) failing to properly assess mitigating factors;[3639] and (iv) considering his abuse of his official position of Minister of Interior on multiple occasions.[3640] The Prosecution submits that these grounds of appeal should be dismissed.[3641]

1. Alleged errors in assessing the gravity of Stanišić's conduct and his role in the JCE (Stanišić's twelfth ground of appeal)

1102. In its assessment of the sentence, the Trial Chamber stated that it was "guided by the principle that the sentence should reflect the gravity of the offences and the individual circumstances of the accused".[3642] In determining Stanišić's sentence, the Trial Chamber assessed the gravity of the offence and considered that:

> Stanišić [was found] responsible for massive crimes in all of the 20 municipalities alleged in the Indictment, including murder, torture, forcible displacement, and persecution. The victims number in the thousands. The effect of the crimes upon these victims and the fact that many of them were particularly vulnerable persons—such as children, women, the elderly, and persons who had been deprived of their liberty in detention centres—has also been taken into account. These crimes were not isolated instances, but rather part of a widespread and systematic campaign of terror and violence. Stanišić was a high level police official at the time of the commission of the crimes. The Trial Chamber therefore finds that the crimes for which Stanišić has been found to incur criminal liability are of a high level of gravity.[3643]

[3635] *Tolimir* Appeal Judgement, para. 627; *Popović et al.* Appeal Judgement, para. 1962; *Đorđević* Appeal Judgement, para. 932.
[3636] Stanišić Appeal Brief, paras 477, 506, 523, 549, 550. See Appeal Hearing, 16 Dec 2015, AT. 108-109.
[3637] See Stanišić Appeal Brief, paras 478, 482-506.
[3638] See Stanišić Appeal Brief, paras 507-523.
[3639] See Stanišić Appeal Brief, paras 524-539.
[3640] See Stanišić Appeal Brief, paras 540-549.
[3641] Prosecution Response Brief (Stanišić), paras 226, 231-232, 240-241, 253-254, 257. The Prosecution argues that the seriousness of the crimes to which Stanišić contributed and the nature, scope, and degree of participation in these crimes warrant an increase in his sentence, not a decrease (Prosecution Response Brief (Stanišić), paras 226, 231. See Prosecution Response Brief (Stanišić), paras 227-230).
[3642] Trial Judgement, vol. 2, para. 888.
[3643] Trial Judgement, vol. 2, para. 927.

The Trial Chamber also stated that the "fact that Stanišić has been found to have committed these crimes through his participation in a JCE has been taken into account in the determination of his sentence".[3644]

(a) Submissions of the parties

1103. Stanišić submits that by improperly focusing "almost exclusively" on the objective gravity of the crimes,[3645] the Trial Chamber failed to individualise his sentence based on a proper assessment of the form and degree of his participation in the JCE.[3646] He argues that the contributions of those convicted for participation in a joint criminal enterprise can vary widely[3647] and that the "mere listing" of the fact that he was a high-level police official when the crimes were committed and that he was found to have committed these crimes through his participation in a JCE "without any explanation whatsoever" is not sufficient to address the form and degree of his participation in the JCE.[3648] According to Stanišić, moreover, the Trial Chamber failed to consider extensive findings and evidence showing that: (i) he only made a limited contribution to the JCE;[3649] and (ii) his acts and conduct impeded the furtherance of the JCE.[3650]

1104. The Prosecution responds that the Trial Chamber did not focus "almost exclusively" on the objective gravity of the crimes nor did it base Stanišić's conviction solely on his position or participation in the JCE.[3651] It acknowledges that the Trial Chamber did not explicitly reiterate its findings on Stanišić's conduct in its sentencing analysis but submits that the Trial Judgement should be read as a whole.[3652] According to the Prosecution, Stanišić's participation in the JCE was

[3644] Trial Judgement, vol. 2, para. 928.
[3645] Stanišić Appeal Brief, para. 483 (emphasis omitted). See Stanišić Appeal Brief, para. 478; Stanišić Reply Brief, para. 106.
[3646] Stanišić Appeal Brief, paras 479, 486.
[3647] Stanišić Appeal Brief, para. 492, referring to *Tadić* Sentencing Appeal Judgement, paras 56-58. Stanišić argues that "an individual's contribution could be absolutely pivotal to the furtherance of a common purpose, or indeed, an individual's contribution could be found to just meet the threshold of significant contribution" (Stanišić Appeal Brief, para. 492).
[3648] Stanišić Appeal Brief, para. 485. See Stanišić Appeal Brief, paras 484, 487-488, 491-493; Stanišić Reply Brief, paras 106-107. In this respect, Stanišić submits that in international criminal law sentences are imposed on the basis of an accused's individual conduct and not on the basis of their official position (Stanišić Appeal Brief, para. 489). Stanišić submits, in addition, that his "harsh sentence" is not related to his individual conduct but stems from his affiliation to the Bosnian Serb leadership (Stanišić Appeal Brief, para. 490).
[3649] Stanišić Appeal Brief, paras 480, 494, 499. See Stanišić Appeal Brief, para. 505. See also Appeal Hearing, 16 Dec 2015, AT. 109. Stanišić lists a series of findings in the Trial Judgement that he contends "clearly" demonstrate the limited nature of his participation in the JCE (Stanišić Appeal Brief, paras 499-500). Stanišić also asserts that the Trial Chamber did not find that he issued orders either directly aimed at the commission of crimes or related to the RS MUP's military activities (Stanišić Appeal Brief, paras 495-497).
[3650] Stanišić Appeal Brief, paras 481, 500-503. See Stanišić Reply Brief, para. 104. Stanišić argues that the cumulative effect of all this evidence was the "substantial minimalizing" of his contribution to the JCE (Stanišić Appeal Brief, para. 503).
[3651] Prosecution Response Brief (Stanišić), para. 227. See Prosecution Response Brief (Stanišić), paras 228-230.
[3652] Prosecution Response Brief (Stanišić), para. 227. See Prosecution Response Brief (Stanišić), para. 228, where the Prosecution points out that the sentencing section follows an extensive analysis of Stanišić's individual criminal

"extensive and enduring".[3653] It avers that Stanišić refers selectively to passages of the Trial Judgement while ignoring the Trial Chamber's ultimate findings.[3654] For instance, the Prosecution submits that the Trial Chamber did not conclude that Stanišić's conduct served to impede or hinder the common purpose, but found that he was a key member of the JCE and significantly contributed to it.[3655] It contends that the matters Stanišić raises "effectively amount to a collateral challenge on the [Trial] Chamber's findings regarding his participation in the JCE", which it argues is dealt with under other grounds of his appeal.[3656]

1105. In reply, Stanišić argues that contrary to the Prosecution's submission, there is no finding in the Trial Judgement that he was a key member of the JCE.[3657] Stanišić also submits that he did not suggest that the Trial Chamber had found that his conduct had served to impede or hinder the common purpose, but that he had "demonstrated how the [Trial Chamber's] findings can actually only lead a reasonable [trier] of fact to such a conclusion".[3658]

(b) Analysis

1106. The Appeals Chamber recalls that trial chambers have an "overriding obligation to tailor a penalty to fit the individual circumstances of the accused *and* the gravity of the crime, with due regard to the entirety of the case".[3659] To this end, they are vested with a broad discretion to determine the appropriate sentence.[3660] The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the accused's participation in the crime.[3661] Factors to be considered include the cruelty, nature, and circumstances of the crimes; the position of authority; the number of victims; the vulnerability of the victims; and the consequences, effect or impact of the crimes upon the broader targeted group.[3662]

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responsibility in which the Trial Chamber details his role and the nature, scope, and degree of his participation in the crimes. See also Prosecution Response Brief (Stanišić), para. 230, where the Prosecution argues that is clear from the Trial Chamber's findings in this regard that Stanišić's sentence was not imposed on the basis of "his affiliation to the [Bosnian Serb leadership]".

[3653] Prosecution Response Brief (Stanišić), para. 228.

[3654] Prosecution Response Brief (Stanišić), para. 229, referring to Stanišić Appeal Brief, paras 500, 502.

[3655] Prosecution Response Brief (Stanišić), para. 229, referring to Trial Judgement, vol. 2, paras 740-743, 588-596.

[3656] Prosecution Response Brief (Stanišić), para. 229, referring to Stanišić's fourth, fifth, and sixth grounds of appeal.

[3657] Stanišić Reply Brief, para. 102. See Stanišić Reply Brief, para. 103.

[3658] Stanišić Reply Brief, para. 104. See Stanišić Reply Brief, para. 105, arguing that the Prosecution cannot refute the Trial Chamber's various findings demonstrating that his acts and conduct served to impede the JCE.

[3659] *Šainović et al.* Appeal Judgement, para. 1837, quoting *D. Nikolić* Sentencing Appeal Judgement, para. 19.

[3660] *Tolimir* Appeal Judgement, para. 626; *Popović et al.* Appeal Judgement, para. 1961; *Đorđević* Appeal Judgement, para. 931; *Nyiramasuhuko et al.* Appeal Judgement, para. 3349.

[3661] *Stakić* Appeal Judgement, para. 380; *Furundžija* Appeal Judgement, para. 249; *Aleksovski* Appeal Judgement, para. 182. See Trial Judgement, vol. 2, para. 892.

[3662] See *Đorđević* Appeal Judgement, para. 972; *Mrkšić and Šljivančanin* Appeal Judgement, para. 400; *Strugar* Appeal Judgement, paras 353-354; *Galić* Appeal Judgement, paras 409-410; *Naletilić and Martinović* Appeal Judgement,

1107. While the Trial Chamber did not explicitly reiterate its findings on Stanišić's conduct and the form and degree of his participation in the JCE in the sentencing section of the Trial Judgement, the Appeals Chamber recalls that the Trial Chamber, in its determination of sentence, stated that it took into account that Stanišić was found to have committed the crimes he was convicted for through his participation in the JCE.[3663] The Appeals Chamber notes that with respect to Stanišić's participation in the JCE, the Trial Chamber made a wide range of findings throughout the Trial Judgement, including on his official position,[3664] his acts and conduct,[3665] his contribution to the JCE,[3666] and his intent.[3667] It recalls, further, that a trial judgement should be read as a whole.[3668]

1108. Therefore, despite the brevity of the Trial Chamber's reasoning in the sentencing section with respect to the gravity of Stanišić's conduct, the Appeals Chamber finds no merit in Stanišić's assertion that the Trial Chamber failed to adequately assess the form and degree of his participation in the JCE in determining his sentence. As a result, the Appeals Chamber finds that the related submission that the Trial Chamber failed to individualise his sentence also fails. Moreover, to the extent that Stanišić argues that his sentence is based solely on his affiliation with the Bosnian Serb leadership, the Appeals Chamber recalls that it has previously addressed and dismissed similar arguments raised by Stanišić under other grounds of his appeal.[3669]

1109. Further, with regard to Stanišić's characterisation of his participation in the JCE as "limited", the Appeals Chamber notes that it is inconsistent with the Trial Chamber's conclusions. Having considered the extent of Stanišić's participation in the section of the Trial Judgement dealing with his contribution, it was unnecessary for the Trial Chamber to reconsider the issue in the specific context of sentencing. For the same reasons, the Appeals Chamber finds that Stanišić's assertion that the Trial Chamber failed to give weight or sufficient weight to evidence that his acts and conduct impeded the furtherance of the JCE is devoid of merit. Moreover, the Trial Chamber

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paras 609, 613, 626; *Stakić* Appeal Judgement, para. 380; *Blaškić* Appeal Judgement, para. 683; *Musema* Appeal Judgement, paras 382-383. See also Trial Judgement, vol. 2, para. 892.

[3663] Trial Judgement, vol. 2, para. 928. The Appeals Chamber also notes that the Trial Chamber stated that it was "guided by the principle that the sentence should reflect the gravity of the offences and the individual circumstances of the accused" (Trial Judgement, vol. 2, para. 888).

[3664] Trial Judgement, vol. 2, para. 542.

[3665] Trial Judgement, vol. 2, paras 544-728 (concerning Stanišić's acts prior to and following his appointment as Minister of Interior). The Trial Judgement includes findings on Stanišić's participation in the formation of Bosnian Serb organs and policy (Trial Judgement, vol. 2, paras 544-575), his participation in formation and deployment of RS MUP forces (Trial Judgement, vol. 2, paras 576-609), and his acts and conduct in relation to crimes (Trial Judgement, vol. 2, paras 610-728).

[3666] Trial Judgement, vol. 2, paras 729-765 (within the section entitled "Findings on Mićo Stanišić's membership in the JCE").

[3667] Trial Judgement, vol. 2, paras 766-769. In addition, the Trial Chamber made findings on his responsibility for crimes outside the scope of the JCE (Trial Judgement, vol. 2, paras 770-781).

[3668] *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

[3669] See *supra*, paras 81-82.

considered the evidence to which Stanišić refers,[3670] but nonetheless convicted him for the commission of crimes through participation in the JCE.[3671] In the Appeals Chamber's view, Stanišić provides his own interpretation of the evidence without showing that the Trial Chamber erred in its assessment of the weight to be attached to relevant considerations and thus he has failed to show a discernible error in the exercise of its sentencing discretion.

(c) Conclusion

1110. The Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber committed a discernible error in assessing the gravity of his conduct and individualising his sentence. Therefore, the Appeals Chamber dismisses Stanišić's twelfth ground of appeal.

2. Alleged errors in assessing aggravating factors (Stanišić's thirteenth ground of appeal)

1111. In determining Stanišić's sentence, the Trial Chamber considered as aggravating circumstances: (i) Stanišić's abuse of his superior position as RS MUP Minister; (ii) the length of time over which the crimes were committed; and (iii) his education and political background.[3672]

(a) Alleged error of law in considering Stanišić's official position as an aggravating factor

1112. Stanišić submits that the Trial Chamber erred in finding that his official position as Minister of Interior "in and of itself" constituted an aggravating factor,[3673] without demonstrating how he allegedly abused his position in order to further the JCE.[3674]

1113. The Prosecution responds that the Trial Chamber did not find that it was Stanišić's official position which was, in and of itself, an aggravating factor, but rather his abuse of that position.[3675]

1114. The Appeals Chamber recalls that it is not the superior position in itself which constitutes an aggravating factor, but rather the abuse of such position which may be considered as an aggravating factor.[3676]

[3670] Trial Judgement, vol. 2, paras 42, 46, 488, 568-569, 605-607, 609, 613, 621, 632, 664, 667, 681, 684, 687-688, 694-695, 698-704, 706-708, 714, 717-719, 733, 749, 755. See Stanišić Appeal Brief, para. 502.
[3671] Trial Judgement, vol. 2, paras 928, 955.
[3672] Trial Judgement, vol. 2, paras 929-931.
[3673] Stanišić Appeal Brief, para. 508. See Stanišić Appeal Brief, paras 507, 510.
[3674] Stanišić Appeal Brief, paras 510-512, referring to, *inter alia*, *Babić* Sentencing Appeal Judgement, para. 80. See Stanišić Reply Brief, para. 111.
[3675] Prosecution Response Brief (Stanišić), paras 232-233. The Prosecution points to a number of the Trial Chamber's findings to demonstrate that Stanišić abused his superior position and contends that Stanišić fails to demonstrate any error in the Trial Chamber's assessment related to the abuse of his official position as an aggravating factor (Prosecution Response Brief (Stanišić), paras 233-234).
[3676] *Đorđević* Appeal Judgement, para. 939; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Stakić* Appeal Judgement, para. 411; *Simba* Appeal Judgement, para. 285. See Trial Judgement, vol. 2, para. 896.

1115. The Trial Chamber considered that Stanišić's participation in the JCE was undertaken in his official capacity as Minister of Interior and found that this constituted an abuse of his superior position and as such aggravated his culpability.[3677] The Appeals Chamber observes that the Trial Chamber did not articulate how Stanišić abused his position to further the JCE as part of its analysis of aggravating circumstances.[3678] While it would have been preferable for the Trial Chamber to provide such analysis in the sentencing section, or at least refer to relevant earlier findings, the Appeals Chamber recalls that a trial judgement should be read as a whole.[3679] The Appeals Chamber notes that the Trial Chamber considered in detail the manner in which Stanišić exercised his authority elsewhere in the Trial Judgement.[3680] In light of the foregoing, and irrespective of the brevity of the Trial Chamber's reasoning, the Appeals Chamber finds no merit in Stanišić's assertion that the Trial Chamber relied upon his official status as Minister of Interior *per se*, rather than his abuse of that position in assessing aggravating factors.

1116. The Appeals Chamber therefore finds that Stanišić has failed to demonstrate that the Trial Chamber committed a discernible error.

(b) Alleged error in considering the duration of the crimes as an aggravating factor

1117. Stanišić submits that the Trial Chamber erroneously considered as an aggravating factor that the crimes were committed during a period of nine months.[3681] He argues that a trial chamber should consider the length of time during which the crimes "lasted", as opposed to the length of time in which the crimes "occurred".[3682] Stanišić contends that the Trial Chamber should have considered a period of three months as the time period during which the crimes lasted given that the vast majority of crimes occurred from April to September 1992 and he was aware of the crimes only as of June 1992.[3683]

1118. The Prosecution responds that the Trial Chamber reasonably found that the nine-month period during which the crimes were committed constitutes an aggravating factor.[3684] According to the Prosecution, Stanišić's distinction between the length of time a crime "lasted" and the length of

[3677] Trial Judgement, vol. 2, para. 929.
[3678] See Trial Judgement, vol. 2, para. 929.
[3679] *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.
[3680] See *e.g.* Trial Judgement, vol. 2, paras 609, 611, 617, 620, 623-625, 631-633, 636-645, 651-652, 654-657, 659-663, 667-668, 671-673, 684, 687-692, 698-704, 706-708, 742-743, 745-748, 751-756, 759-765.
[3681] Stanišić Appeal Brief, paras 507, 508, 513. See Stanišić Appeal Brief, paras 514-518.
[3682] Stanišić Appeal Brief, para. 514 (emphasis omitted). See Stanišić Appeal Brief, para. 513.
[3683] Stanišić Appeal Brief, paras 515-517. See Stanišić Reply Brief, paras 108-109.
[3684] Prosecution Response Brief (Stanišić), paras 235, 238.

time during which criminal conduct "occurred" has no basis in the Tribunal's jurisprudence.[3685] In addition, it contends that Stanišić's attempt to limit the period during which the crimes were committed to three months is baseless considering that: (i) he shared the intent for JCE I Crimes and foresaw but nonetheless took the risk that Stanišić's JCE III Crimes might be committed throughout the nine-month period (*i.e.* between April and December 1992);[3686] and (ii) the Trial Chamber found him liable for crimes after September 1992.[3687]

1119. The Appeals Chamber reiterates that the length of the period during which crimes were committed may be considered by a trial chamber as an aggravating factor in sentencing.[3688] The Appeals Chamber recalls in this regard that Stanišić was found to be responsible for "massive" crimes committed in all of the 20 Municipalities listed in the Indictment, from April to December 1992.[3689] It also found that these crimes were not isolated instances but part of a widespread and systematic campaign of terror and violence[3690] and that the commission of many of these crimes continued until December 1992.[3691] Therefore, the Appeals Chamber finds no merit in Stanišić's argument that the Trial Chamber committed a discernible error in considering the length of the commission of the crimes as an aggravating factor.

1120. To the extent that Stanišić argues that he was aware of the crimes only as of June 1992 and, as a result, incurs criminal responsibility only from June 1992, the Appeals Chamber recalls that elsewhere in this Judgement, it has dealt with this argument and found that a reasonable trier of fact could have found that Stanišić acquired the knowledge of crimes committed against Muslims and Croats only as of late April 1992.[3692] The Appeals Chamber nonetheless found that a reasonable trier of fact could have concluded that Stanišić possessed the requisite intent for joint criminal enterprise liability during the Indictment period, *i.e.* from 1 April to 31 December 1992.[3693] Therefore, his criminal responsibility for the crimes committed during this period has been

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[3685] Prosecution Response Brief (Stanišić), para. 235. The Prosecution adds that Stanišić's argument is premised on a situation where crimes are sporadic and isolated, which was not the situation in the case at hand (Prosecution Response Brief (Stanišić), para. 235).
[3686] Prosecution Response Brief (Stanišić), para. 236, referring to Trial Judgement, vol. 2, paras 767-779.
[3687] Prosecution Response Brief (Stanišić), para. 237.
[3688] See *Martić* Appeal Judgement, para. 340; *Blaškić* Appeal Judgement, para. 686. See also *Hadžihasanović and Kubura* Appeal Judgement, para. 317.
[3689] Trial Judgement, vol. 2, para. 927. See Trial Judgement, vol. 2, paras 801-802, 804, 809-811, 813, 815, 818-819, 822, 824, 827-828, 831, 833, 836-837, 840-841, 844, 846, 849, 851, 854-855, 858, 860, 863, 865, 868, 870, 873-874, 877-878, 881-882, 885.
[3690] Trial Judgement, vol. 2, para. 927. See Trial Judgement, vol. 1, paras 213-214, 276-277, 341-342, 482-483, 686-687, 806-807, 874-875, 932-933, 975-976, 1035-1036, 1112-1113, 1186-1187, 1241-1242, 1282-1283, 1350-1351, 1409-1410, 1492-1493, 1549-1550, 1673-1674.
[3691] See *e.g.* Trial Judgement, vol. 1, paras 221, 223, 228, 346, 490, 494, 699, 810-811, 816-817, 938, 981, 1040, 1044, 1118, 1122, 1193, 1251, 1359, 1413, 1417, 1497, 1501, 1556.
[3692] See *supra*, para. 412.
[3693] See *supra*, para. 584.

affirmed. Consequently, the Trial Chamber's consideration of the duration of crimes for nine months as an aggravating factor will be unaffected.

(c) Alleged error in considering Stanišić's education and political experience as an aggravating factor

1121. Stanišić submits that the Trial Chamber erred in considering his education and political background as an aggravating factor, arguing that aggravating factors may only include "circumstances 'directly related to the crime or crimes' for which the accused has been convicted".[3694] He further argues that the Trial Chamber failed to provide a reasoned opinion as to the appropriateness of using factors outside of the Indictment period[3695] and that it should have considered his good education as a mitigating factor and not as an aggravating factor.[3696]

1122. The Prosecution responds that the Trial Chamber's finding that Stanišić's education and political background constituted an aggravating factor is consistent with the settled jurisprudence and that Stanišić fails to demonstrate an error.[3697] Furthermore, the Prosecution submits that Stanišić argues for the first time on appeal that his prior education and political experience should have been considered as a mitigating factor.[3698]

1123. Regarding Stanišić's submission that the Trial Chamber erred in considering, or failed to give a reasoned opinion as to why it considered, education and previous political experience in aggravation, the Appeals Chamber observes that the Trial Chamber correctly noted that intelligence and good education may be considered as possible aggravating factors.[3699] The Trial Chamber further found that, as a result of his legal education and political experience prior to the Indictment period, Stanišić was able to have "full insight into the context in which the crimes were committed and a thorough legal understanding of the nature of the crimes".[3700] The Appeals Chamber notes, moreover, that the two trial judgements cited by Stanišić in support of his submission that

[3694] Stanišić Appeal Brief, para. 519 (emphasis omitted). See Stanišić Appeal Brief, paras 507, 508, 520-522. See Stanišić Reply Brief, para. 110. Stanišić argues, in this context, that the Trial Chamber erroneously considered that his domestic law degree and previous political experience during peace time was "directly related to the commission of the persecutory crimes of deportation and forcible transfer in the context of an armed conflict" (Stanišić Appeal Brief, para. 519. See Stanišić Reply Brief, para. 110).
[3695] Stanišić Appeal Brief, para. 520, referring to *Stakić* Appeal Judgement, para. 423.
[3696] Stanišić Appeal Brief, paras 521-522, referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 328, *Hadžihasanović and Kubura* Trial Judgement, para. 2080.
[3697] Prosecution Response Brief (Stanišić), para. 239, quoting Trial Judgement, vol. 2, para. 931 and referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 328.
[3698] Prosecution Response Brief (Stanišić), para. 239.
[3699] Trial Judgement, vol. 2, para. 931. See *Hadžihasanović and Kubura* Appeal Judgement, para. 328.
[3700] Trial Judgement, vol. 2, para. 931. See Trial Judgement, vol. 2, paras 537-551.

aggravating circumstances must be "directly related to the crime or crimes" for which the accused has been convicted, are neither binding nor conclusive on the matter.[3701]

1124. Turning to Stanišić's argument that the Trial Chamber should have considered his education and political experience as a mitigating factor instead of an aggravating factor, the Appeals Chamber first recalls that, as was noted by the Trial Chamber, Stanišić did not make any direct submissions in relation to mitigating circumstances.[3702] Second, Stanišić did not raise any objections to the Prosecution's submissions concerning Stanišić's education and political experience as an aggravating factor at trial.[3703] The Appeals Chamber emphasises that appeal proceedings are not the appropriate forum to raise such matters for the first time.[3704] In any event, the Appeals Chamber recalls that whether factors going to a convicted person's character constitute mitigating or aggravating factors depends largely on the particular circumstances of the case and is within the discretion of a trial chamber.[3705] The Trial Chamber acknowledged that intelligence and good education "should [not] only be considered as aggravating"[3706] but concluded that in Stanišić's case, they constituted an aggravating factor and attributed appropriate weight to it within its discretion.[3707]

1125. In light of the foregoing, the Appeals Chamber finds that Stanišić has failed to show any error in the Trial Chamber's assessment of his education and prior political experience as aggravating factors and not in mitigation.

(d) Conclusion

1126. For the reasons set out above, the Appeals Chamber finds that Stanišić has failed to show that the Trial Chamber erred in its assessment of aggravating factors. Therefore, the Appeals Chamber dismisses Stanišić's thirteenth ground of appeal.

[3701] See Stanišić Appeal Brief, para. 519 (referring to *Kunarac et al.* Trial Judgement, para. 850, *Hadžihasanović and Kubura* Trial Judgement, para. 2069). The Appeals Chamber notes that, on the contrary, the Appeals Chamber has upheld trial chamber findings of aggravating circumstances that were not directly related to the crime or crimes for which an accused was convicted. See *Popović et al.* Appeal Judgement, para. 2046 (upholding the *Popović et al.* Trial Chamber's finding (*Popović et al.* Trial Judgement, para. 2199) that one of the defendant's requests to attendees at two meetings in 1999 and 2000 not to provide any information related to the events in Srebrenica to the Tribunal, constituted an aggravating factor); *Čelebići* Appeal Judgement, para. 786 (upholding the *Čelebići* Trial Chamber finding (*Čelebići* Trial Judgement, para. 1244) that the defendant's conduct during the trial in terms of his attitude and demeanour constitute aggravating factors). See also *Čelebići* Appeal Judgement, paras 787-788. See further *Hadžihasanović and Kubura* Appeal Judgement, para. 328.

[3702] See Trial Judgement, vol. 2, para. 932.

[3703] Trial Judgement, vol. 2, para. 920, referring to Prosecution Final Trial Brief, para. 1012.

[3704] *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2060; *Đorđević* Appeal Judgement, para. 945. See *Šainović et al.* Appeal Judgement, para. 1816.

[3705] See *Hadžihasanović and Kubura* Appeal Judgement, para. 328; *Babić* Sentencing Appeal Judgement, para. 49.

[3706] Trial Judgement, vol. 2, para. 931.

[3707] See Trial Judgement, vol. 2, para. 931, referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 328.

3. Alleged errors in relation to mitigating factors (Stanišić's fourteenth ground of appeal)

1127. In determining Stanišić's sentence, the Trial Chamber noted that he had not made any direct submissions regarding mitigating circumstances.[3708] However, it *proprio motu* considered Stanišić's voluntary surrender to the Tribunal and his cooperation in relation to provisional release as mitigating factors.[3709] The Trial Chamber also considered but attached little weight in mitigation to evidence of Stanišić's good and professional character and no weight to Stanišić's Interview.[3710] Further, while the Trial Chamber recalled in this context Stanišić's orders issued for the protection of the civilian population, it noted that he failed to use the powers available to him under the law to ensure the full implementation of these orders.[3711]

(a) Submissions of the parties

1128. Stanišić submits that the Trial Chamber erred in its assessment of mitigating factors by affording no weight to his Interview and insufficient weight to his good personal and professional character.[3712] He argues that the Trial Chamber erred in finding that Stanišić's Interview did not amount to substantial cooperation with the Prosecution,[3713] and contends that even if it did not amount to substantial cooperation, the Trial Chamber should have nonetheless accorded it some weight in mitigation.[3714] In addition, he submits that the Trial Chamber erred by failing to consider the orders he issued to "uphold the law" and investigate, prevent, deter, and punish the commission of crimes, as well as the fact that he did not actively facilitate, enable, or engage in deportation or forcible transfer, was never present when these crimes occurred, and never encouraged the commission of crimes.[3715]

1129. The Prosecution responds that the Trial Chamber reasonably assessed mitigating circumstances, notwithstanding that Stanišić failed to make any direct submissions at trial.[3716] In particular, the Prosecution submits that the Trial Chamber properly assessed Stanišić's Interview

[3708] Trial Judgement, vol. 2, para. 932.
[3709] Trial Judgement, vol. 2, paras 933-934.
[3710] Trial Judgement, vol. 2, paras 935-936.
[3711] Trial Judgement, vol. 2, para. 936.
[3712] Stanišić Appeal Brief, paras 524-525, 532-534, 539. Stanišić argues that the extensive evidence of his good character coupled with the evidence of his professional approach in carrying out his duties deserved maximum weight in mitigation (Stanišić Appeal Brief, paras 533-534).
[3713] Stanišić Appeal Brief, paras 526-532. In this respect, Stanišić submits that the Interview was: (i) voluntary (Stanišić Appeal Brief, para. 526); (ii) beneficial to the Prosecution's case which relied upon it throughout the proceedings (Stanišić Appeal Brief, paras 528, 530, 532); and (iii) used in the case against Župljanin (Stanišić Appeal Brief, para. 530).
[3714] Stanišić Appeal Brief, paras 531-532.
[3715] Stanišić Appeal Brief, paras 525, 535, 537-538.
[3716] Prosecution Response Brief (Stanišić), paras 241-253, referring to, *inter alia*, Trial Judgement, vol. 2, para. 932.

and found that it did not reveal any substantial cooperation.[3717] The Prosecution further submits that the Trial Chamber gave appropriate weight to evidence of Stanišić's character in light of the crimes for which he was found guilty,[3718] and did not err in rejecting Stanišić's orders as mitigating factors.[3719]

(b) Analysis

1130. The Appeals Chamber recalls that trial chambers shall take into account any mitigating circumstances, including substantial cooperation with the Prosecution.[3720] The Appeals Chamber further recalls that a trial chamber enjoys a considerable degree of discretion in determining what constitutes a mitigating circumstance and the weight, if any, to be accorded to factors in mitigation.[3721]

1131. The Appeals Chamber observes that the Trial Chamber considered Stanišić's Interview but found that it did not reveal substantial cooperation with the Prosecution in light of the quality and quantity of the information given.[3722] The Appeals Chamber recalls that whether cooperation was substantial and should be afforded weight in mitigation is within the discretion of a trial chamber.[3723] It is also within a trial chamber's discretion to take into account, and accord weight to, cooperation which is less than substantial.[3724] Stanišić merely contests the Trial Chamber's evaluation of Stanišić's Interview but has failed to show that the Trial Chamber committed a discernible error by not attaching weight to it in mitigation.[3725]

1132. As regards Stanišić's argument that the Trial Chamber should have given more weight in mitigation to his good character, the Appeals Chamber recalls that this is often afforded only limited weight in mitigation.[3726] Moreover, the weight afforded to mitigating factors is weighed against the gravity of the crimes.[3727] The Appeals Chamber notes that the Trial Chamber found

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[3717] Prosecution Response Brief (Stanišić), paras 242, 244-248.
[3718] Prosecution Response Brief (Stanišić), para. 249.
[3719] Prosecution Response Brief (Stanišić), paras 250-251.
[3720] Rule 101(B)(ii) of the Rules.
[3721] *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2053; *Đorđević* Appeal Judgement, para. 944; *Čelebići* Appeal Judgement, paras, 777, 780.
[3722] Trial Judgement, vol. 2, para. 935.
[3723] *Bralo* Sentencing Appeal Judgement, para. 51; *M. Nikolić* Sentencing Appeal Judgement, para. 91; *D. Nikolić* Sentencing Appeal Judgement, para. 66; *Jelisić* Appeal Judgement, para. 126.
[3724] See *Bralo* Sentencing Appeal Judgement, para. 51; *D. Nikolić* Sentencing Appeal Judgement, fn. 155; *Vasiljević* Appeal Judgement, para. 180.
[3725] The Appeals Chamber also recalls that it has dismissed Stanišić's challenges to the Trial Chamber's evaluation and weight given to Stanišić's Interview elsewhere in the Judgement (see *supra*, para. 104).
[3726] *Babić* Sentencing Appeal Judgement, paras 48-50; *Ntabakuze* Appeal Judgement, para. 296; *Seromba* Appeal Judgement, para. 235; *Semanza* Appeal Judgement, para. 398.
[3727] Rule 101(B) of the Rules; Article 24(2) of the Statute. See *Popović et al.* Appeal Judgement, para. 2053; *Kupreškić et al.* Appeal Judgement, para. 442; *Čelebići* Appeal Judgement, para. 731; *Aleksovski* Appeal Judgement, para. 182; *Niyitegeka* Appeal Judgement, para. 267.

Stanišić responsible for crimes which were of a high level of gravity.[3728] Therefore, taking into account a trial chamber's considerable discretion in weighing mitigating factors, the Appeals Chamber finds that Stanišić has failed to show a discernible error.

1133. Stanišić also argues that the Trial Chamber abused its sentencing discretion by failing to take into account as a mitigating factor his orders aimed at preventing and deterring crimes and upholding the law. The Appeals Chamber notes, however, that Stanišić ignores that, in its assessment of mitigating factors for sentencing, the Trial Chamber expressly considered its earlier finding that he failed to use the powers available to him under the law to ensure the implementation of the orders he issued for the protection of the civilian population, despite being aware of the limited action taken in relation to them.[3729] The Trial Chamber considered this in the context of the limited weight to be attached to the evidence on his professionalism.[3730] The Trial Chamber was therefore cognisant of his issuance of the orders to suppress crimes and for the protection the civilian population, but did not accord substantial weight to it as a mitigating factor. Stanišić has shown no discernible error on the part of the Trial Chamber in this respect. With regard to Stanišić's argument that the Trial Chamber failed to take into account that he did not actively facilitate, enable, or engage in deportation or forcible transfer, was never present when these crimes occurred, and never encouraged the commission of crimes,[3731] the Appeals Chamber notes that he did not raise, and the Trial Chamber did not address, these factors as mitigating circumstances. The Appeals Chamber recalls in this regard that appeal proceedings are not the appropriate forum to raise mitigating circumstances for the first time.[3732] In any event, the Appeals Chamber observes that in referring to these factors, Stanišić ignores a number of relevant findings of the Trial Chamber concerning his participation in the JCE.[3733] In these circumstances, the Appeals Chamber finds that Stanišić has not demonstrated that the Trial Chamber abused its sentencing discretion by failing to consider these factors in mitigation.[3734]

(c) Conclusion

1134. In light of the foregoing, the Appeals Chamber considers that Stanišić has not shown that the Trial Chamber erred in its assessment of mitigating factors. Therefore, the Appeals Chamber dismisses Stanišić's fourteenth ground of appeal.

[3728] Trial Judgement, vol. 2, para. 927.
[3729] Trial Judgement, vol. 2, para. 936. See Trial Judgement, vol. 2, paras 745-759.
[3730] Trial Judgement, vol. 2, para. 936.
[3731] Stanišić Appeal Brief, para. 537.
[3732] *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2060; *Đorđević* Appeal Judgement, para. 945. See *Šainović et al.* Appeal Judgement, para. 1816.

4. Alleged errors in relation to double counting Stanišić's abuse of his official position (Stanišić's fifteenth ground of appeal)

1135. In its assessment of the gravity of the offences, the Trial Chamber noted that Stanišić was a high-level police official at the time of the commission of the crimes.[3735] In its assessment of aggravating circumstances, the Trial Chamber noted that he participated in the JCE in his official capacity as Minister of Interior and found that this constituted an abuse of his superior position and thus aggravated his culpability.[3736] Further, in its assessment of mitigating circumstances, the Trial Chamber recalled its finding that Stanišić failed to use the powers available to him under the law to ensure the full implementation of orders he issued for the protection of the civilian population despite being aware of the limited action taken in relation to them.[3737]

(a) Submissions of the parties

1136. Stanišić submits that the Trial Chamber erred in law by impermissibly double-counting the purported abuse of his official position in determining the gravity of the offences, and as an aggravating circumstance.[3738] He asserts that it is impermissible to rely on different aspects of the same fact,[3739] noting that the Trial Chamber referred to two different aspects of his position (*i.e.* high-level police official and Minister of Interior).[3740] Stanišić argues that in addition, the Trial Chamber "improperly" considered this purported abuse of his official position on a third occasion, as a factor minimising the weight to be given to mitigating circumstances.[3741] Specifically, he submits that the Trial Chamber afforded "little weight" to evidence of his good character on the basis that he "'failed to use the powers available to him under the law' for the protection of the civilian population".[3742]

1137. The Prosecution responds that the Trial Chamber only considered Stanišić's abuse of his superior position as an aggravating factor, whereas in its assessment of the gravity of the offences it

[3733] See *e.g.* Trial Judgement, vol. 2, paras 39-42, 609, 613-621, 623-625, 631-633, 636-641, 644-645, 652, 654-657, 659-663, 667-668, 671-673, 684, 687, 689-692, 698-704, 706-708, 742-743, 745-746, 748-749, 751-765.
[3734] See *supra*, para. 1100.
[3735] Trial Judgement, vol. 2, para. 927.
[3736] Trial Judgement, vol. 2, para. 929.
[3737] Trial Judgement, vol. 2, para. 936.
[3738] Stanišić Appeal Brief, para. 540. See Stanišić Appeal Brief, paras 541-545; Stanišić Reply Brief, para. 117.
[3739] Stanišić Appeal Brief, para. 545, referring to *D. Milošević* Appeal Judgement, para. 309.
[3740] Stanišić Appeal Brief, para. 544. See Stanišić Appeal Brief, paras 543, 545.
[3741] Stanišić Appeal Brief, paras 540. See Stanišić Appeal Brief, paras 546-548; Stanišić Reply Brief, para. 118.
[3742] Stanišić Appeal Brief, para. 547 (emphasis omitted) Stanišić argues that this aspect is "intrinsically related" to his purported abuse of his official position and that the Trial Chamber therefore "allow[ed] one aspect of the facts to have a prejudicial and wholly unjustified influence on the assessment of the appropriate sentence" (Stanišić Appeal Brief, para. 548).

took into account Stanišić's actions and omissions as a high-level police official.[3743] It argues that, in assessing aggravating factors, the Trial Chamber was free to consider how Stanišić abused his position in order to carry out these acts and omissions.[3744] The Prosecution further responds that the Trial Chamber's finding that Stanišić failed to ensure "the full implementation of his orders for the protection of non-Serb civilians" was relevant to its assessment of the weight to be given to the testimony regarding Stanišić's character.[3745] In addition, it submits, the Trial Chamber did not only rely on Stanišić's failure to ensure the implementation of his orders to assess the weight of his character evidence, but also considered the crimes for which he had been found guilty.[3746]

(b) Analysis

1138. The Appeals Chamber recalls that double-counting for sentencing purposes is impermissible.[3747] In this regard, factors taken into account by a trial chamber in its assessment of the gravity of a crime cannot additionally be taken into account as separate aggravating circumstances, and *vice versa*.[3748] In weighing a fact, either as an aspect of the gravity of the crime or as an aggravating circumstance, a trial chamber is required to consider and account all of its aspects and implications on the sentence in order to ensure that no double-counting occurs.[3749]

1139. In assessing the gravity of the crimes, the Trial Chamber noted that Stanišić was "a high level police official at the time of the commission of the crimes" and concluded that the crimes were "of a high level of gravity".[3750] The Appeals Chamber finds that nothing in the Trial Judgement's language suggests that, in assessing the gravity of the offences, the Trial Chamber considered that Stanišić had abused his position at the time of the commission of the crimes.[3751] Rather, by referring to his position as a "high level police official", the Appeals Chamber understands that the Trial Chamber described his role in the crimes, which was, in turn, necessary to assess the degree of his participation in the JCE and to establish his joint criminal enterprise liability.[3752] In so doing, the Trial Chamber never suggested that a crime was graver because he

[3743] Prosecution Response Brief (Stanišić), paras 254-255.
[3744] Prosecution Response Brief (Stanišić), para. 255.
[3745] Prosecution Response Brief (Stanišić), para. 256, referring to Trial Judgement, vol. 2, para. 936. The Prosecution argues that the Trial Chamber's findings on Stanišić's failure to ensure full implementation of his orders showed that the evidence on his character was unreliable (Prosecution Response Brief (Stanišić), para. 256).
[3746] Prosecution Response Brief (Stanišić), para. 256, referring to Trial Judgement, vol. 2, para. 936.
[3747] *Đorđević* Appeal Judgement, para. 936; *Limaj et al.* Appeal Judgement, para. 143; *Deronjić* Sentencing Appeal Judgement, para. 107. See *D. Milošević* Appeal Judgement, paras 306, 309.
[3748] *Popović et al.* Appeal Judgement, paras 2019, 2026; *Đorđević* Appeal Judgement, para. 936; *M. Nikolić* Sentencing Appeal Judgement, para. 58. See *D. Milošević* Appeal Judgement, para. 306; *Limaj et al.* Appeal Judgement, para. 143.
[3749] *D. Milošević* Appeal Judgement, para. 309.
[3750] Trial Judgement, vol. 2, para. 927.
[3751] See Trial Judgement, vol. 2, para. 927. See also Trial Judgement, vol. 2, para. 928.
[3752] See Trial Judgement, vol. 2, paras 927-928. See also Trial Judgement, vol. 2, para. 542 (with regard to his official position as the Minister of Interior), read together with Trial Judgement, vol. 2, paras 544-728 ("Mićo Stanišić's acts

abused his position.[3753] In this regard, the Appeals Chamber also recalls that a position of authority is a factor that may be considered in determining the gravity of the offences.[3754] By contrast, when assessing aggravating circumstances, the Trial Chamber considered that Stanišić's participation in the JCE was undertaken in his official capacity as Minister of Interior, and found this to constitute an "abuse of his superior position" which aggravated his culpability.[3755] The Trial Chamber thus only considered Stanišić's abuse of position in the context of aggravating circumstances.

1140. The Appeals Chamber now turns to Stanišić's argument concerning the Trial Chamber's alleged "improper" consideration of his abuse of his official position as a factor minimising the weight to be given to mitigating circumstances.[3756] The Appeals Chamber notes that in determining the weight to be accorded to evidence of Stanišić's good character and professionalism, the Trial Chamber concluded that this evidence had little weight as a mitigating factor in light of the crimes for which he had been found guilty.[3757] The Trial Chamber then recalled its earlier finding that Stanišić failed to use the powers available to him under the law to ensure the full implementation of the orders issued for the protection of the civilian population.[3758] It is thus apparent that while the Trial Chamber considered Stanišić's failure to ensure the implementation of his orders as a factor that would have an impact on the weight to be given to evidence on his professionalism, it did not consider this failure as an abuse of his official position in this context. Moreover, even if the Appeals Chamber were to find that the Trial Chamber erred in relying on Stanišić's failure to implement his orders, it would not be clear that such an error had any impact on the sentence imposed given that the Trial Chamber already concluded that the character evidence had little weight in light of the crimes for which Stanišić was convicted.[3759] The argument is therefore rejected.

(c) Conclusion

1141. The Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber committed a discernible error and abused its sentencing discretion in relation to Stanišić's abuse of his official position. Therefore, it dismisses Stanišić's fifteenth ground of appeal.

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prior to and following his appointment as Minister of Interior"), 729-769 (the Trial Chamber's assessment of Stanišić's contribution to the JCE and his intent within the section entitled "Findings on Mićo Stanišić's membership in the JCE").
[3753] *Cf. Šainović et al.* Appeal Judgement, para. 1823; *Stakić* Appeal Judgement, para. 411; *D. Milošević* Appeal Judgement, para. 302.
[3754] See *supra*, para. 1106.
[3755] Trial Judgement, vol. 2, para. 929.
[3756] See Stanišić Appeal Brief, paras 540. See also Stanišić Appeal Brief, paras 546-548; Stanišić Reply Brief, para. 118.
[3757] Trial Judgement, vol. 2, para. 936.
[3758] Trial Judgement, vol. 2, para. 936.
[3759] *Cf. Krajišnik* Appeal Judgement, para. 795.

C. Župljanin

1. Alleged errors in relation to sentencing (Župljanin's fourth ground of appeal)

1142. Župljanin submits that the Trial Chamber erred by imposing a manifestly excessive sentence as it: (i) failed to adequately consider the nature and form of his participation in the crimes; (ii) double-counted the same factors under both the gravity of the crimes and aggravating circumstances; and (iii) failed in its assessment of mitigating circumstances.[3760] According to Župljanin, these errors, viewed separately or jointly, "caused irreparable damage to the sentencing part of the judgement".[3761] The Prosecution responds that Župljanin's appeal against his sentence should be dismissed and that he fails to demonstrate that his sentence is excessive.[3762]

(a) Alleged errors in assessing the gravity of offences (sub-ground (B) of Župljanin's fourth ground of appeal)

(i) Submissions of the parties

1143. Župljanin submits that the Trial Chamber failed to adequately consider the nature, form, and degree of his participation in the commission of crimes.[3763] He asserts that liability pursuant to the third category of joint criminal enterprise – which is applicable to the majority of the crimes for which he was found responsible – is generally less culpable than liability under the first category of joint criminal enterprise as it requires less than direct intent.[3764] He also contends that he "was not the key mover in the campaign of persecutions" and that his JCE participation, if any, was limited.[3765] Župljanin submits that he "used neither his authority nor his power to *commit* a crime".[3766]

1144. The Prosecution responds that Župljanin fails to demonstrate an error and merely disagrees with the Trial Chamber's assessment.[3767] It further submits that crimes committed under the third category of joint criminal enterprise do not necessarily entail lesser culpability.[3768] According to the

[3760] Župljanin Appeal Brief, paras 243-277.
[3761] Appeal Hearing, 16 Dec 2015, AT. 178.
[3762] Prosecution Response Brief (Župljanin), paras 208-209, 232, 237. The Prosecution contends that Župljanin's sentence is "manifestly too low" (Prosecution Response Brief (Župljanin), para. 232).
[3763] Župljanin Appeal Brief, para. 268; Župljanin Reply Brief, para. 85. See Appeal Hearing, 16 Dec 2015, AT. 181. Župljanin also submits that the Trial Chamber failed to "offer meaningful reasons as to how [it] weighed" the consideration of the nature and form of his participation, and that this failure deprived him of his "right to appeal effectively" (Župljanin Reply Brief, para. 85).
[3764] Župljanin Appeal Brief, paras 267-268, referring to, *inter alia*, Trial Judgement, vol. 2, para. 947, *Kajelijeli* Trial Judgement, para. 963, *Krstić* Appeal Judgement, para. 268, *Martić* Appeal Judgement, para. 350.
[3765] Župljanin Appeal Brief, para. 269.
[3766] Župljanin Appeal Brief, para. 269.
[3767] Prosecution Response Brief (Župljanin), para. 226. See Prosecution Response Brief (Župljanin), paras 227-228.
[3768] Prosecution Response Brief (Župljanin), para. 228, referring to *Babić* Sentencing Appeal Judgement, paras 26-28.

Prosecution, the Trial Chamber reasonably considered Župljanin's conduct and role in the crimes as a whole for sentencing purposes.[3769] The Prosecution adds that he committed, intended, and played a crucial role in the commission of crimes of the utmost gravity.[3770]

(ii) Analysis

1145. The Appeals Chamber notes that in assessing the sentence the Trial Chamber stated that it was "guided by the principle that the sentence should reflect the gravity of the offences and the individual circumstances of the accused".[3771] In considering the gravity of the offences of which Župljanin was found guilty, the Trial Chamber concluded that:

> Župljanin [was found] responsible for massive crimes throughout the ARK, including murder, extermination, torture, forcible displacement, and persecution. The victims number in the thousands. The effect of the crimes upon these victims and the fact that many of them were particularly vulnerable persons—such as children, women, the elderly, and persons who had been deprived of their liberty in detention centres—has also been taken into account. These crimes were not isolated instances, but rather part of a widespread and systematic campaign of terror and violence. Župljanin was a high-level police official at the time of the commission of the crimes. The Trial Chamber therefore finds that the crimes for which Župljanin has been found to incur criminal liability are of a high level of gravity.[3772]

The Trial Chamber also stated that the "fact that Župljanin has been found to have committed the majority of these crimes through his participation in a JCE has been taken into account in the determination of his sentence".[3773]

1146. At the outset, the Appeals Chamber notes that the jurisprudence referred to by Župljanin does not support his assertion that the commission of crimes through the third category of joint criminal enterprise generally entails lesser culpability than the commission of crimes through the first category of joint criminal enterprise.[3774] Župljanin has thus failed to show that, in determining his sentence, the Trial Chamber was required to distinguish between crimes committed pursuant to

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[3769] Prosecution Response Brief (Župljanin), para. 228, referring to Trial Judgement, vol. 2, para. 947.
[3770] Prosecution Response Brief (Župljanin), paras 229-230. According to the Prosecution, "Župljanin's participation in the JCE was extensive and enduring" and this warrants an increase in his sentence (see Prosecution Response Brief (Župljanin), para. 226).
[3771] Trial Judgement, vol. 2, para. 888, referring to *Galić* Appeal Judgement, para. 442, *Čelebići* Appeal Judgement, paras 429, 717.
[3772] Trial Judgement, vol. 2, para. 946.
[3773] Trial Judgement, vol. 2, para. 947.
[3774] See Župljanin Appeal Brief, para. 268, referring to *Kajelijeli* Trial Judgement, para. 963, *Krstić* Appeal Judgement, para. 268, *Martić* Appeal Judgement, para. 350. The Appeals Chamber notes that in the relevant paragraph of the *Kajelijeli* Trial Judgement, which is not a binding precedent, the *Kajelijeli* Trial Chamber merely referred to the fact that "[s]econdary or indirect forms of participation" such as for instance incitement to commit genocide or aiding and abetting genocide, "have generally resulted in a lower sentence" (*Kajelijeli* Trial Judgement, para. 963). In the relevant paragraph of the *Krstić* Appeal Judgement, the *Krstić* Appeal Chamber only stated that "aiding and abetting is a form of responsibility which generally warrants lower sentences than responsibility as a co-perpetrator" (*Krstić* Appeal Judgement, para. 268). The paragraph cited by Župljanin from *Martić* Appeal Judgement likewise makes no specific reference to the third category of joint criminal enterprise liability, and merely recalls that "the inherent gravity of a

the first and third categories of joint criminal enterprise. Župljanin's arguments in this respect are dismissed.

1147. The Appeals Chamber now turns to Župljanin's submissions that the Trial Chamber failed to adequately consider the nature, form, and degree of his participation in the commission of crimes.[3775] The Appeals Chamber notes that in addressing the gravity of the offences, the Trial Chamber explicitly considered: (i) the seriousness of the crimes, namely their scale, nature, and circumstances; (ii) the number and vulnerability of the victims, and the effect of the crimes upon them; (iii) the fact that at the time of the commission of the crimes, Župljanin was a high-level police official; and (iv) that Župljanin was found to have committed the crimes through his participation in the JCE.[3776]

1148. While the Trial Chamber did not explicitly reiterate its findings on Župljanin's form or degree of participation in the commission of crimes in the sentencing section of the Trial Judgement, the Appeals Chamber recalls first that the Trial Chamber, in its determination of sentence, explicitly stated that it took into account that Župljanin was found to have committed the crimes he was convicted for through his participation in the JCE.[3777] Furthermore, the Appeals Chamber recalls that a trial judgement should be read as a whole.[3778] The Trial Chamber's references to Župljanin's position as a high-level police official and his participation in the JCE must therefore be read in conjunction with the Trial Chamber's findings elsewhere in the Trial Judgement such as its findings on his contribution to the JCE, detailing the nature of his participation.[3779]

1149. Therefore, despite the brevity of the Trial Chamber's reasoning with respect to the gravity of Župljanin's conduct in the sentencing section, the Appeals Chamber finds no merit in his assertion that the Trial Chamber failed to adequately consider the nature, form, and degree of his participation in the commission of crimes in the determination of his sentence.[3780]

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crime must be determined by reference to the particular circumstances of the case and the form and degree of the accused's participation in the crime" (*Martić* Appeal Judgement, para. 350).

[3775] See Župljanin Appeal Brief, paras 267-269.

[3776] Trial Judgement, vol. 2, paras 946-947.

[3777] Trial Judgement, vol. 2, para. 947.

[3778] *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

[3779] See Trial Judgement, vol. 2, paras 495-520. With regard to Župljanin's positions, see Trial Judgement, vol. 2, paras 492-493.

[3780] See Župljanin Appeal Brief, paras 267-269. To the extent that Župljanin asserts that he did not use his authority to commit crimes and that his involvement in the JCE was limited, the Appeals Chamber recalls that these arguments have been dealt with and dismissed in the section addressing sub-ground (A) and (D) in part of Župljanin's first ground of appeal (*supra*, paras 736-813, 821-833).

1150. Based on the foregoing, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber erred in assessing the gravity of the offences. Therefore, it dismisses sub-ground (B) of Župljanin's fourth ground of appeal.

(b) Alleged errors in relation to double-counting (sub-ground (D) of Župljanin's fourth ground of appeal)

(i) Submissions of the parties

1151. Župljanin submits that the Trial Chamber impermissibly took into account his participation in the JCE and his position of authority in assessing the gravity of the crimes, and then again as aggravating circumstances.[3781]

1152. The Prosecution responds that Župljanin's contentions on double-counting should be summarily dismissed as they fall outside the scope of his notice of appeal.[3782] According to the Prosecution, the Trial Chamber properly took into account Župljanin's participation in the JCE and his position of authority as relevant factors in the analysis of the gravity of his offence,[3783] and the abuse of his position of authority as aggravating circumstances.[3784]

(ii) Analysis

1153. The Appeals Chamber notes that, in the Župljanin Notice of Appeal, sub-ground (D) of his fourth ground of appeal states that "[g]iven the nature of Župljanin's involvement, the nature, number and relation of aggravating and mitigating factors, no reasonable trier of fact could have imposed a sentence of twenty-two years",[3785] and therefore alleges an error of fact. A challenge concerning the principle of double-counting, however, amounts to an allegation of an error of law. Thus, Župljanin's arguments on double-counting are not covered by his notice of appeal. Nonetheless, the Appeals Chamber finds that as the Prosecution has responded to the arguments it will not be materially prejudiced if the Appeals Chamber considers them on their merits.[3786] Therefore, the Appeals Chamber will proceed to analyse the arguments on the merits, recalling that double-counting is impermissible for sentencing purposes, and that factors considered in

[3781] Župljanin Appeal Brief, paras 274-275. See Appeal Hearing, 16 Dec 2015, AT. 178.
[3782] Prosecution Response Brief (Župljanin), paras 234, 236.
[3783] Prosecution Response Brief (Župljanin), paras 235-236.
[3784] Prosecution Response Brief (Župljanin), para. 235. The Prosecution contends that, with respect to aggravating circumstances, the Trial Chamber: (i) recalled his participation in the JCE only to establish that he abused his superior position; and (ii) considered the abuse of his position of authority, not his position itself (Prosecution Response Brief (Župljanin), paras 235-236).
[3785] Župljanin Notice of Appeal, para. 45.
[3786] See *Krajišnik* Appeal Judgement, para. 748. *Cf. Popović et al.* Appeal Judgement, para. 489; *Nizeyimana* Appeal Judgement, paras 352-354.

establishing the gravity of the crimes cannot be considered again as separate aggravating circumstances.[3787]

1154. The Appeals Chamber first notes that Župljanin was convicted for his participation in the JCE pursuant to Article 7(1) of the Statute.[3788] In assessing the gravity of the offences, the Trial Chamber considered that Župljanin was responsible for "massive"[3789] crimes throughout the ARK, the majority of which he was found to have committed through his participation in the JCE.[3790] The Trial Chamber therefore considered his participation in the JCE in the gravity of the offences.[3791] Subsequently, in assessing the aggravating circumstances, the Trial Chamber considered that Župljanin's active and direct participation in the JCE was undertaken in his official capacity as chief of the Banja Luka CSB and that this constituted an abuse of his superior position.[3792] The Appeals Chamber is of the view that the latter reference to Župljanin's participation in the JCE was only intended as a preliminary and contextual statement leading to the Trial Chamber's conclusion that the abuse of his position aggravated his culpability. Thus, Župljanin has failed to demonstrate that the Trial Chamber considered his participation in the JCE *per se* as an aggravating factor.

1155. Regarding Župljanin's argument that the Trial Chamber double-counted his position of authority, the Appeals Chamber notes that in assessing the gravity of the offences, the Trial Chamber referred to the fact that Župljanin was a "high-level police official" at the time of the commission of the crimes,[3793] but reasoned that it was his abuse of this position that was an aggravating factor.[3794] The Appeals Chamber understands that, in the context of assessing the gravity of the offences, the Trial Chamber referred to Župljanin's position to describe his role in the crimes and never suggested that the crime was graver simply because he was in a position of authority.[3795] Moreover, in relation to the abuse of his position as an aggravating factor, while it would have been preferable for the Trial Chamber to articulate how Župljanin abused his official position, or at least refer to relevant earlier findings, the Appeals Chamber recalls that a trial judgement should be read as a whole.[3796] The Appeals Chamber notes in this respect that the Trial Chamber considered in detail both the nature of Župljanin's duty, authorities, and powers,[3797] and

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[3787] *Popović et al.* Appeal Judgement, paras 2019, 2026; *Đorđević* Appeal Judgement, para. 936; *D. Milošević* Appeal Judgement, paras 306, 309. See *supra*, para. 1138.
[3788] Trial Judgement, vol. 2, para. 956.
[3789] Trial Judgement, vol. 2, para. 946.
[3790] Trial Judgement, vol. 2, paras 946-947.
[3791] See *supra*, para. 1148.
[3792] Trial Judgement, vol. 2, para. 948.
[3793] Trial Judgement, vol. 2, para. 946.
[3794] See *supra*, para. 1154.
[3795] *Cf. Šainović et al.* Appeal Judgement, para. 1823; *Stakić* Appeal Judgement, para. 411; *D. Milošević* Appeal Judgement, para. 302. See also *Babić* Sentencing Appeal Judgement, para. 80.
[3796] *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.
[3797] Trial Judgement, vol. 2, paras 489-493.

the manner in which Župljanin exercised his authority in contributing to the JCE.[3798] The Appeals Chamber therefore finds that the Trial Chamber, when considering Župljanin's position under gravity of offences and then his abuse of this position as an aggravating factor, did not double-count his position of authority.

1156. Based on the foregoing, the Appeals Chamber finds that Župljanin has failed to demonstrate that the Trial Chamber committed a discernible error by double-counting Župljanin's position and his participation in the JCE. Therefore, it dismisses sub-ground (D) of Župljanin's fourth ground of appeal.

(c) Alleged errors in the Trial Chamber's assessment of mitigating circumstances (sub-grounds (A) and (C) of Župljanin's fourth ground of appeal)

1157. In its discussion on mitigating factors, the Trial Chamber considered Župljanin's expression of regret and sympathy for the victims and their suffering in his closing argument.[3799] It, however, accorded little weight to this factor in light of Župljanin's "crucial role in the commission of crimes".[3800] In reaching this conclusion the Trial Chamber also recalled its finding that Župljanin did nothing to protect and reassure the non-Serb population, "aside from issuing ineffective and general orders, which were not genuinely meant to be effectuated" and considered that he failed to "take steps to ensure that these orders were in fact carried out".[3801] The Trial Chamber also considered evidence of Župljanin's good character, particularly, testimony that "he always tried to help people in trouble regardless of their backgrounds" but found that while this may have been the case in "specific and isolated instances", in light of the crimes for which he was found guilty, such testimony carries little weight.[3802]

(i) Alleged failure to consider Župljanin's efforts to suppress violence

1158. Župljanin submits that the Trial Chamber failed to properly consider in mitigation his efforts to suppress violence committed against non-Serbs.[3803] Župljanin submits, in particular, that the Trial Chamber failed to consider its finding that he intervened and prevented the massacre of

[3798] See Trial Judgement, vol. 2, paras 495-520.
[3799] Trial Judgement, vol. 2, para. 953.
[3800] Trial Judgement, vol. 2, para. 953.
[3801] Trial Judgement, vol. 2, para. 953.
[3802] Trial Judgement, vol. 2, para. 952.
[3803] Župljanin Appeal Brief, paras 243, 246-260.

300-600 non-Serbs in Doboj,[3804] which, given the substantial harm prevented, warranted direct consideration as a mitigating factor.[3805]

1159. Župljanin also submits that the Trial Chamber disregarded evidence of his statements, orders, and reports, as well as the investigative and disciplinary measures taken to prevent crimes and protect the non-Serb population.[3806] Župljanin argues that the Trial Chamber "swept" aside this evidence by relying on its finding that he "did not do anything to reassure and protect the non-Serb population, aside from issuing ineffective and general orders, which were not genuinely meant to be effectuated"[3807] on the basis of an "unexamined presumption" that this finding applied to all his orders to suppress violence.[3808] Župljanin further submits that the Trial Chamber erred in considering in sentencing its finding that his orders to suppress violence were "not genuinely meant to be effectuated", which, in his view, was not proven beyond a reasonable doubt.[3809]

1160. The Prosecution responds that the Trial Chamber reasonably attributed minimal weight to the instances where Župljanin carried out his duties to protect non-Serbs in light of his "crucial

[3804] Župljanin Appeal Brief, paras 243, 247 (referring to, *inter alia*, Trial Judgement, vol. 2, para. 456), 248-249. See Župljanin Reply Brief, para. 80. At the Appeal Hearing, Župljanin added that he was also actively involved in the release of hundreds of non-Serb detainees in Teslić (Appeal Hearing, 16 Dec 2015, AT. 179, referring to Hearing, 1 Jun 2012, T. 27630-27631. Considering Hearing 1 June 2012, T. 27630-27631 is not on point, but Hearing, 1 June 2012, T. 27629-27630 is, the Appeals Chamber understands that Župljanin intended to refer to the Hearing, 1 June 2012, T. 27629-27630).

[3805] Župljanin Appeal Brief, para. 249, referring to, *inter alia*, *Blagojević and Jokić* Appeal Judgement, para. 342, *Popović et al.* Trial Judgement, paras 2194, 2220. Župljanin submits that the Trial Chamber's failure to expressly consider the Doboj incident in mitigation can only reflect a failure to have given it adequate or any consideration (Župljanin Reply Brief, para. 80). Župljanin contends that the Appeals Chamber has accepted as mitigating factors: (i) attempts to release certain non-Serb individuals from detention and the distribution of humanitarian aid; and (ii) the saving of lives even if motivated by military considerations (Appeal Hearing, 16 Dec 2015, AT. 179-180, referring to *Krajišnik* Appeal Judgement, paras 816-817, *Popović et al.* Appeal Judgement, paras 2076-2077. See Župljanin Appeal Brief, fn. 340).

[3806] Župljanin Appeal Brief, paras 250-256, 258-260. Župljanin argues that the Trial Chamber systematically disregarded, *inter alia*: (i) dispatches he issued; (ii) his media interview of 12 May 1992; (iii) an operative work plan he issued "aimed at arresting and punishing persons accused of committing crimes"; (iv) his report at the 11 July 1992 Collegium on the incidence of crime and lack of cooperation by members of the police; (v) a report of 30 July 1992 condemning violations of the law and subsequent orders issued; (vi) an October 1992 summary report of crimes committed; (vii) evidence of criminal investigations undertaken by Župljanin and orders to ensure that crimes were investigated, including the investigation into the Korićanske Stijene killings and the death of prisoners in front of the Manjača detention camp; (viii) testimony which indicated that he was opposed to any efforts to conceal murders; (ix) criminal reports filed by Župljanin; and (x) his "frequent inquiries to the SJBs to obtain more information about violent crimes" (Župljanin Appeal Brief, paras 251-256, 258-259, referring to, *inter alia*, Exhibits P355, P1002, P367, p. 2, P560, p. 3, 1D198, P860, 1D201, 1D202, 2D71, pp 18-19, P160, 1D63, 2D25, pp 1, 3, P621, 2D139, P1380, P607, P608, P595, 1D63, 2D71, 1D371, 1D372, 1D373. See Appeal Hearing, 16 Dec 2015, AT. 180-181, referring to, *inter alia*, Exhibits 1D198, P601, P624, 2D57, 2D58, 2D59 as examples of his efforts to protect the non-Serb population.

[3807] Župljanin Appeal Brief, para. 256.

[3808] Župljanin Appeal Brief, para. 257.

[3809] Župljanin Appeal Brief, para. 270. See Župljanin Appeal Brief, paras 271-272. In particular, Župljanin challenges the Trial Chamber's reliance on findings that he: (i) hired criminal members of the SOS to be part of the Banja Luka CSB SPD notwithstanding a previous order to the reserve police not to hire persons with criminal records; and (ii) appointed a commission to investigate crimes in detention camps in Prijedor, which comprised individuals who were in charge of interrogating detainees in these camps (Župljanin Appeal Brief, paras 270-271).

role" in the crimes.[3810] It submits that, although the Doboj incident was not expressly referred to in mitigation, this was not required as the Trial Judgement must be read as a whole.[3811]

1161. The Prosecution also submits that the Trial Chamber: (i) considered the evidence to which Župljanin refers, including evidence of the few measures he undertook and of those he consistently failed to undertake;[3812] (ii) expressly considered Župljanin's arguments in sentencing and did not need to repeat its earlier findings;[3813] and (iii) reasonably discounted his purported efforts to address crimes in light of his extensive and enduring participation in the JCE.[3814] The Prosecution further avers that Župljanin impermissibly challenges substantive liability findings in sentencing and that, in weighing mitigating factors, the Trial Chamber properly considered its reasonable finding that his orders were not genuinely meant to be implemented.[3815]

1162. The Appeals Chamber notes that the Trial Chamber correctly considered that Župljanin's purported good character may constitute a mitigating circumstance,[3816] but concluded that testimony that he "tried to help people in trouble regardless of their backgrounds" carried little weight.[3817] The Appeals Chamber further notes that the Trial Chamber correctly recalled that consideration must be given to mitigating factors and noted that assistance to detainees or victims can be taken into account in this context.[3818] In this regard, the Trial Chamber made a finding elsewhere in the Trial Judgement that Župljanin intervened in the Doboj incident and that "owing to this intervention the massacre [of 300-600 people primarily of Roma and Muslim ethnicity] was prevented".[3819] Although the Trial Chamber did not expressly mention the Doboj incident in the context of sentencing, the Appeals Chamber recalls that a trial judgement should be read as a whole.[3820] The Trial Chamber was thus aware of its obligation to consider the mitigating factors pointed out by the parties in determining the appropriate sentence.[3821] Župljanin has therefore not

[3810] Prosecution Response Brief (Župljanin), paras 208, 210, referring, *inter alia*, to Trial Judgement, vol. 2, paras 354, 942-945, 952-953.
[3811] Prosecution Response Brief (Župljanin), para. 211, referring to, *inter alia*, Trial Judgement, vol. 2, para. 456, *Mrkšić and Šljivančanin* Appeal Judgement, para. 379. It contends that even if the Doboj incident warranted specific discussion in sentencing, this would not invalidate the Trial Chamber's conclusion that such an "isolated episode" had limited weight as a mitigating factor (Prosecution Response Brief (Župljanin), para. 212. See Prosecution Response Brief (Župljanin), para. 213).
[3812] Prosecution Response Brief (Župljanin), paras 214-215, referring to Trial Judgement, vol. 2, paras 358-359, 377, 387, 394, 404, 433-437, 442-443, 445-448, 453-488, 498-499, 510, 514-517, 519, 524.
[3813] Prosecution Response Brief (Župljanin), para. 215. See Prosecution Response Brief (Župljanin), paras 214, 219.
[3814] Prosecution Response Brief (Župljanin), para. 216. See Prosecution Response Brief (Župljanin), para. 217.
[3815] Prosecution Response Brief (Župljanin), paras 208, 231.
[3816] See Trial Judgement, vol. 2, para. 952.
[3817] Trial Judgement, vol. 2, para. 952.
[3818] Trial Judgement, vol. 2, paras 893, 897.
[3819] Trial Judgement, vol. 2, para. 456.
[3820] *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.
[3821] The Appeals Chamber notes that, in his closing arguments, Župljanin specifically referred to "the incident along the Stanari-Teslic road where [he] prevented the killing of 600 non-Serbs" as shedding light on his personality (Hearing, 1 Jun 2012, T. 27629-27630).

demonstrated that the Trial Chamber failed to consider the Doboj incident in determining the appropriate sentence or that its failure to expressly refer to the Doboj incident as a unique mitigating factor amounts to a discernible error in the exercise of its sentencing discretion.

1163. Turning to Župljanin's submission that the Trial Chamber disregarded evidence of his statements, orders, and reports, as well as the measures taken to prevent crimes,[3822] the Appeals Chamber observes that the Trial Chamber recalled, in the consideration of mitigating factors, its finding on Župljanin's lack of action other than issuing general and ineffective orders which were "not genuinely meant to be effectuated".[3823] While Župljanin challenges this finding to assert that his orders and other actions should have been considered as mitigating factors, the Appeals Chamber recalls that in earlier sections of this Judgement, it has dismissed his same challenge with regard to this finding.[3824] Thus, his submissions in this respect do not warrant further discussion. Moreover, the Appeals Chamber recalls that the weight to be given to a particular factor, if any, is a matter for the Trial Chamber to determine in the exercise of its discretion.[3825] It was therefore within the Trial Chamber's discretion to consider its earlier finding that Župljanin's orders were ineffective and not meant to be implemented as a factor affecting mitigation. Given that the Trial Chamber noted in the context of sentencing Župljanin's arguments on his actions to prevent and punish crimes,[3826] and yet considered that his orders were ineffective and not genuine, the Appeals Chamber considers that Župljanin merely disagrees with the Trial Chamber's conclusion. The Appeals Chamber therefore finds that Župljanin has failed to demonstrate that the Trial Chamber committed a discernible error regarding his purported efforts to prevent, investigate, and punish crimes in determining the appropriate sentence.

(ii) Alleged failure to consider exigent and chaotic conditions faced in Župljanin's exercise of his duties

1164. Župljanin submits that the Trial Chamber erroneously rejected, as a mitigating factor, the exigent circumstances he faced which made fulfilling his duties difficult or dangerous.[3827] He

[3822] See *supra*, para. 1159.
[3823] Trial Judgement, vol. 2, para. 953. See Trial Judgement, vol. 2, para. 514. See also Trial Judgement, vol. 2, para. 519. The Appeals Chamber notes that the Trial Chamber's finding was based on various findings along with evidence relating to: (i) the criminal activities of the members of the SOS (see Trial Judgement, vol. 2, paras 387-388, 404, 419, 499, 514, 519); (ii) the "feigned" commission that Župljanin had appointed (see Trial Judgement, vol. 2, paras 514, 519); and (iii) Župljanin's provision of false information to the judicial authorities in order to shield his subordinates from criminal prosecution – including in relation to the Korićanske Stijene killings and the death of prisoners in front of the Manjača detention camp (see Trial Judgement, vol. 2, paras 516-517, 519).
[3824] See *supra*, paras 837-869.
[3825] *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2053; *Đorđević* Appeal Judgement, para. 944; *Čelebići* Appeal Judgement, paras, 777, 780.
[3826] Trial Judgement, vol. 2, paras 943, 945.
[3827] Župljanin Appeal Brief, paras 246, 261-264. See Župljanin Reply Brief, para. 84; Appeal Hearing, 16 Dec 2015, AT. 182-183.

argues that the Trial Chamber failed to address: (i) the death threats he received; (ii) the chaotic circumstances of war, including the influx of refugees and the lack of a proper communication system; and (iii) the inadequate operation of the local courts and prosecutor's office.[3828] Župljanin further contends that he was only a police officer and not a political figure.[3829] He also argues that the difficulty in enforcing orders in wartime has previously been taken into account as a factor in sentencing.[3830]

1165. The Prosecution responds that Župljanin repeats his trial arguments without showing that the Trial Chamber committed a discernible error.[3831]

1166. The Appeals Chamber notes that although Župljanin raised the chaotic context of war at trial, and in particular, the breakdown in communications and the operation of civilian courts,[3832] the Trial Chamber did not expressly consider it as a mitigating circumstance.[3833] In this regard, the Appeals Chamber recalls that "the chaotic context of a conflict cannot be taken into account in mitigation".[3834] By raising these matters again on appeal, Župljanin merely repeats his trial arguments without showing how the Trial Chamber committed a discernible error. The Appeals Chamber also finds Župljanin's argument that he was not a political figure to be irrelevant and undeveloped as he has failed to show how this could be considered as a mitigating factor.

1167. Turning to Župljanin's argument that he received death threats, the Appeals Chamber notes that, as part of his case at trial, he referred to death threats issued against him as well as threats to remove him from his post,[3835] but did not expressly raise this as a mitigating factor.[3836] The Appeals Chamber further notes that the Trial Chamber considered elsewhere in the Trial Judgement that

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[3828] Župljanin Appeal Brief, paras 261-262. See Appeal Hearing, 16 Dec 2015, AT. 180, referring to SD166, SD167, SD182, SD172 (the Appeals Chamber understands this to be references to the testimonies of Witness Drago Raković, Witness Raljić, Witness Radulović, and Witness ST172, Exhibits 2D52, P595, P621, P160, 2D50, 2D91, 2D25, and P560).
[3829] Župljanin Appeal Brief, para. 262.
[3830] Župljanin Appeal Brief, para. 261, referring to *Blaškić* Appeal Judgement, para. 711. See Župljanin Reply Brief, para. 84.
[3831] Prosecution Response Brief (Župljanin), para. 220, referring to Župljanin Final Trial Brief, paras 15(g), 22, 43, 51, 277, 377-382, 433. See Prosecution Response Brief (Župljanin), paras 221-222. The Prosecution also argues that Župljanin cannot benefit from this chaotic circumstance given that he significantly contributed to its creation and maintenance (Prosecution Response Brief (Župljanin), para. 222).
[3832] See Župljanin Final Trial Brief, paras 15(g), 22, 43, 47, 50-51, 277, 377-382, 433; Hearing, 31 May 2012, T. 27553-27555.
[3833] See Trial Judgement, vol. 2, paras 952-953. See also Trial Judgement, vol. 2, paras 941-945.
[3834] *Bralo* Sentencing Appeal Judgement, para. 13. See *Blaškić* Appeal Judgement, para. 711 ("a finding that a 'chaotic' context might be considered as a mitigating factor in circumstances of combat operations risks mitigating the criminal conduct of all personnel in a war zone. Conflict is by its nature chaotic, and it is incumbent on the participants to reduce that chaos").
[3835] Župljanin Final Trial Brief, paras 50(e), 62-63. *Cf.* Hearing, 31 May 2012, T. 27553-27595; Hearing, 1 Jun 2012, T. 27596-27640.
[3836] In this regard, the Appeals Chamber recalls that appeal proceedings are not the appropriate forum to raise mitigating circumstances for the first time (*Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2060; *Đorđević* Appeal Judgement, para. 945. See *Šainović et al.* Appeal Judgement, para. 1816).

Župljanin was required under national law to carry out activities and tasks concerning national and public security even when this placed his life in danger.[3837] The Appeals Chamber considers that it was within the discretion of the Trial Chamber not to consider in mitigation the circumstances surrounding the exercise of a duty which is required by law. Furthermore, Župljanin's submission regarding death threats is unconvincing as he cites: (i) Witness Dragan Majkić's testimony that Župljanin himself told the witness that he received threats without citing any further corroborating evidence;[3838] and (ii) testimony on threats to remove persons from their posts but this evidence does not speak to death threats made against Župljanin.[3839] It was consequently within the Trial Chamber's discretion not to consider this factor in mitigation, and Župljanin has failed to show that a discernible error was committed.

(iii) Alleged failure to consider Župljanin's age and the country where he will serve his sentence

1168. Župljanin submits that the Trial Chamber failed to consider his age even though, in other cases, age has been routinely recognised as a mitigating factor.[3840] Župljanin also submits that the Trial Chamber failed to consider, in mitigation, that he will serve his sentence in a foreign country.[3841]

1169. The Prosecution responds that Župljanin's arguments should be dismissed as he raises these mitigating factors for the first time on appeal and they fall outside his notice of appeal.[3842] It further submits that "only limited weight can be attached to advanced age"[3843] and with regard to Župljanin serving his sentence in a foreign country, argues that although trial chambers have noted that it "may constitute an additional hardship, they have never considered it a mitigating factor".[3844]

1170. The Appeals Chamber notes that Župljanin did not put forward at trial, his age or the fact that his sentence would be served in another country as mitigating factors, and the Trial Chamber

[3837] Trial Judgement, vol. 2, para. 354, referring to Exhibit P530, Article 42.
[3838] See Dragan Majkić, 16 Nov 2009, T. 3200-3201.
[3839] Predrag Radulović, 1 Jun 2010, T. 11161-11162, referring to Exhibit 2D91. See ST172, 21 Jan 2010, T. 5320-5327; ST172, 22 Jan 2010, T. 5328-5405.
[3840] Župljanin Appeal Brief, para. 265, referring to *Krnojelac* Trial Judgement, para. 533, *Plavšić* Sentencing Judgement, paras 105-106, *Erdemović* Sentencing Judgement, para. 16, *Simić et al.* Trial Judgement, para. 1099. Župljanin argues that if he were to serve his sentence of 22 years of imprisonment he would be "nearly 80 years old when released" (Župljanin Appeal Brief, para. 265).
[3841] Župljanin Appeal Brief, para. 266, referring to *Prosecutor v. Issa Hassan Sesay et al.*, Case No SCSL-04-15-T, Sentencing Judgement, 8 April 2009, para. 206.
[3842] Prosecution Response Brief (Župljanin), para. 223.
[3843] Prosecution Response Brief (Župljanin), para. 224, referring to *Jokić* Sentencing Judgement (with references), *Krnojelac* Trial Judgement, para. 533, *Krnojelac* Appeal Judgement, para. 251.
[3844] Prosecution Response Brief (Župljanin), para. 225, referring to *Tadić* Sentencing Appeal Judgement, paras 18, 22-23; *Mrđa* Sentencing Judgement, para. 109; *RUF* Appeal Judgement, para. 1246.

did not consider these factors.[3845] The Appeals Chamber recalls in this regard that appeal proceedings are not the appropriate forum to raise mitigating circumstances for the first time.[3846] In any event, the Appeals Chamber considers that in light of the limited weight given to advanced age as mitigating factor in the jurisprudence of the Tribunal,[3847] Župljanin has not demonstrated that the Trial Chamber erred in failing to consider that his age warrants mitigation, if any at all.[3848] Further, the Appeals Chamber finds that Župljanin has failed to demonstrate why, in his particular case, the Trial Chamber should have considered the fact that he will serve his sentence in a foreign country as a mitigating factor.[3849]

(iv) Conclusion

1171. Based on the foregoing, the Appeals Chamber considers that Župljanin has failed to demonstrate any error in the Trial Chamber's assessment of mitigating circumstances. Therefore, the Appeals Chamber dismisses sub-grounds (A) and (C) of Župljanin's fourth ground of appeal.

(d) Conclusion

1172. For the foregoing reasons, the Appeals Chamber dismisses Župljanin's fourth ground of appeal in its entirety.

D. Prosecution

1. Alleged errors in relation to Stanišić and Župljanin's sentences (Prosecution's first ground of appeal)

1173. The Prosecution submits that the Trial Chamber erred by imposing manifestly inadequate sentences on Stanišić and Župljanin.[3850] It argues that the Trial Chamber: (i) failed to give

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[3845] See Trial Judgement, vol. 2, paras 941-945, 952-953. See generally Župljanin Final Trial Brief; Hearing, 31 May 2012, T. 27553-27595; Hearing, 1 Jun 2012, T. 27596-27640.
[3846] *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2060; *Đorđević* Appeal Judgement, para. 945. See *Šainović et al.* Appeal Judgement, para. 1816.
[3847] See *e.g. Babić* Sentencing Appeal Judgement, para. 43; *Blaškić* Appeal Judgement, para. 696; *Jokić* Sentencing Judgement, para. 100; *Plavšić* Sentencing Judgement, para. 106. See also *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2052.
[3848] See *e.g. Jokić* Sentencing Judgement, paras 100-102; *Kordić and Čerkez* Trial Judgement, para. 848.
[3849] In this respect, the Appeals Chamber notes that in certain cases of the Tribunal, given that the serving of a sentence in a foreign country is a common aspect of prison sentences imposed by the Tribunal, it was not recognised as a mitigating factor. See *Mrđa* Sentencing Judgement, para. 109; *Tadić* Sentencing Appeal Judgement, paras 18(iii), 22-23. See also *RUF* Appeal Judgement, para. 1246 (recalling the common practice that convicted persons from international criminal tribunals serve their sentences in foreign countries, the *RUF* Appeals Chamber concluded that the appellant had "not referred to any case in which serving the sentence in a foreign country has been considered as a mitigating factor for sentencing purposes"). The Appeals Chamber considers that it is unnecessary to address the Prosecution's argument that these mitigating factors raised by Župljanin fall outside the scope of his notice of appeal.
[3850] Prosecution Appeal Brief, paras 1, 53; Prosecution Consolidated Reply Brief, para. 2. See Appeal Hearing, 16 Dec 2015, AT. 214-227.

appropriate weight to the seriousness of the crimes;[3851] (ii) failed to give appropriate weight to Stanišić's and Župljanin's leadership positions within the JCE and the degree of their participation in the commission of crimes;[3852] and (iii) imposed a sentence outside the range imposed in similar cases.[3853] According to the Prosecution, in order to properly reflect the gravity of their crimes, the Appeals Chamber should substitute the sentences of 22 years imposed on Stanišić and Župljanin by the Trial Chamber with sentences in the range of 30 to 40 years.[3854] Stanišić and Župljanin respond that the Prosecution's arguments should be dismissed as it has failed to show that the Trial Chamber abused its sentencing discretion and committed an error.[3855]

(a) Alleged error in relation to the weight given to the seriousness of the crimes

(i) Submissions of the parties

1174. The Prosecution submits that the sentences imposed on Stanišić and Župljanin by the Trial Chamber do not adequately reflect the seriousness of the crimes for which they were convicted.[3856] It argues that the Trial Chamber failed to give adequate weight to: (i) the broad geographic and temporal scope of the crimes and their discriminatory and systematic nature;[3857] (ii) the use of arbitrary arrests, prolonged detention, brutal violence, sexual violence, and killings;[3858] and (iii) the devastating and lasting effect of the crimes on more than 100,000 victims.[3859]

1175. Stanišić and Župljanin respond that the Prosecution fails to demonstrate that the Trial Chamber erroneously considered the factors the Prosecution enumerates.[3860] Stanišić further submits that in any event, the Prosecution's submissions in support of its request for the imposition of a higher sentence are "fundamentally erroneous" as they are based on inconclusive Trial

[3851] Prosecution Appeal Brief, paras 4, 7-26.
[3852] Prosecution Appeal Brief, paras 5, 27-48.
[3853] Prosecution Appeal Brief, paras 49-52.
[3854] Prosecution Appeal Brief, paras 1, 3, 49, 53.
[3855] Stanišić Response Brief, paras 3, 110; Župljanin Response Brief, paras 2, 16.
[3856] Prosecution Appeal Brief, paras 4, 7, 26. See Prosecution Appeal Brief, paras 8-25; Appeal Hearing, 16 Dec 2015, AT. 219-224.
[3857] Prosecution Appeal Brief, paras 7-9. The Prosecution asserts that Stanišić's and Župljanin's crimes "continued over a nine-month period, across multiple municipalities in BiH, and harmed well over 100,000 victims" (Prosecution Appeal Brief, para. 8). It further submits that Stanišić and Župljanin were ultimately responsible for the expulsion of "well over" 130,000 and 100,000 non-Serbs from their homes, respectively (Prosecution Appeal Brief, para. 9). See Appeal Hearing, 16 Dec 2015, AT. 219-224, 227.
[3858] See Prosecution Appeal Brief, paras 7-8, 10-25. The Prosecution notes, in particular, the incidents at the Omarska detention camp (Prosecution Appeal Brief, paras 15-17), Manjača detention camp (Prosecution Appeal Brief, paras 18-20), SJB building (Prosecution Appeal Brief, paras 21-22), and Čelopek Dom (Prosecution Appeal Brief, paras 23-24). See also Appeal Hearing, 16 Dec 2015, AT. 220-224 (referring to the gravity of the crimes).
[3859] Prosecution Appeal Brief, paras 7, 25-26. The Prosecution submits that both Stanišić and Župljanin were convicted for forcibly displacing non-Serbs from Serb-claimed territory and, relying on paragraph 813 of the *Krajišnik* Appeal Judgement, argues that persecutory deportation and forcible transfer are among the most severe crimes known to humankind (See Appeal Hearing, 16 Dec 2015, AT. 219-220).

Chamber's findings.[3861] Župljanin submits that the Prosecution mischaracterises the Trial Chamber's findings.[3862] According to Župljanin, if anything, the Trial Chamber afforded too much weight to the factors cited by the Prosecution, thereby failing to individualise his sentence.[3863]

(ii) Analysis

1176. The Appeals Chamber notes that, in assessing the gravity of the crimes for the purposes of determination of sentence, the Trial Chamber considered that Stanišić and Župljanin were found responsible for "massive" crimes in 20 and eight municipalities, respectively.[3864] The Trial Chamber also considered that these crimes were committed as part of a widespread and systematic campaign of violence and terror.[3865] It further considered that the victims numbered in the thousands, and took into account the effect of the crimes on these victims and that many of them were vulnerable persons such as children, women, the elderly, and those deprived of their liberty in detention centres.[3866] In addition, the Trial Chamber took into account the length of time during which crimes that Stanišić and Župljanin were found guilty of were committed, namely, a period of nine months.[3867] The Trial Chamber thus clearly took into account and gave weight to these factors when determining the sentences to be imposed upon Stanišić and Župljanin. The Appeals Chamber emphasises in this context that the appropriate weight to be accorded to a particular factor is within the broad discretion of a trial chamber.[3868] Other than repeating the Trial Chamber's findings, the Prosecution has failed to demonstrate that the Trial Chamber gave insufficient weight to these factors in its determination of sentence. The Appeals Chamber therefore finds that the Prosecution has failed to demonstrate any error in the Trial Chamber's exercise of discretion.

[3860] Stanišić Response Brief, paras 7, 15-30, 33-34, 39-41; Župljanin Response Brief, para. 3. See Stanišić Response Brief, paras 12-13.
[3861] Stanišić Response Brief, paras 8, 42-43. In particular, Stanišić contends that the Prosecution's submissions are based on the Trial Chamber's failure to determine the extent to which: (i) RS MUP policemen were re-subordinated to the military; and (ii) municipal crisis staffs were acting independently (Stanišić Response Brief, paras 44-56). See Stanišić Appeal Brief, paras 33-39. See also Appeal Hearing, 16 Dec 2015, AT. 230-231.
[3862] Župljanin Response Brief, paras 4-7.
[3863] Župljanin Response Brief, paras 8-9.
[3864] Trial Judgement, vol. 2, paras 927, 946. See also Trial Judgement, vol. 2, paras 919, 948.
[3865] Trial Judgement, vol. 2, paras 927, 946.
[3866] Trial Judgement, vol. 2, paras 927, 946.
[3867] Trial Judgement, vol. 2, paras 930, 949.
[3868] *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2053; *Đorđević* Appeal Judgement, para. 944; *Čelebići* Appeal Judgement, paras, 777, 780. See *supra*, para. 1100.

(b) Alleged error in weight attributed to Stanišić and Župljanin's roles and the degree of their participation in the crimes

(i) Submissions of the parties

1177. The Prosecution submits that the Trial Chamber failed to give adequate weight to Stanišić's and Župljanin's precise leadership roles and the degree of their participation in the crimes through the implementation of the JCE.[3869] With regard to Stanišić, the Prosecution submits that he was among the most senior figures within the leadership of the JCE, that "there were few who were more senior" to him by his own account,[3870] and argues that his participation in the JCE was extensive and enduring.[3871] In relation to Župljanin, the Prosecution submits that he was "zealous" in furthering the common criminal purpose of the JCE,[3872] and that, moreover, the Trial Chamber failed to give adequate weight to its finding that Župljanin ordered the appropriation of property of non-Serbs despite recognising this factor in its assessment of the gravity of the crimes.[3873] According to the Prosecution, Stanišić's and Župljanin's actions to further the JCE created the situation in which the crimes of the low-level perpetrators were allowed to take place on a massive scale.[3874] It further submits that the Trial Chamber, while properly identifying aggravating factors, failed to give adequate weight to Stanišić's and Župljanin's betrayal of the trust vested in them as police officials by "neutralizing the police as a force for law and order, and its subversion into a unit of destruction and terror".[3875]

1178. Stanišić responds that he was neither "intimately involved" in the implementation of the JCE nor "highly important" to its success[3876] and that the Prosecution fails to demonstrate that his purported position within the JCE warrants an increase of his "manifestly excessive sentence".[3877] He submits that the Prosecution fails to demonstrate that: (i) he was among the most senior JCE leaders, arguing that he was not a key member of the Bosnian Serb decision-making authorities;[3878]

[3869] Prosecution Appeal Brief, paras 5, 27-29, 47. See Appeal Hearing, 16 Dec 2015, AT. 220-221.
[3870] Prosecution Appeal Brief, para. 30. See Prosecution Appeal Brief, paras 5-6, 31; Prosecution Consolidated Reply Brief, para. 6.
[3871] Prosecution Appeal Brief, paras 6, 30-31, 47. See Prosecution Appeal Brief, paras 5, 32-38; Prosecution Consolidated Reply Brief, para. 6.
[3872] Prosecution Appeal Brief, para. 41. For further submissions concerning Župljanin's participation in the JCE, see Prosecution Appeal Brief, paras 6, 39-40, 42-45.
[3873] Prosecution Appeal Brief, para. 44.
[3874] Appeal Hearing, 16 Dec 2015, AT. 224. See Appeal Hearing, 16 Dec 2015, AT. 225-226.
[3875] Prosecution Appeal Brief, para. 46. See Prosecution Appeal Brief, paras 47-48. See also Appeal Hearing, 16 Dec 2015, AT. 224-225.
[3876] Stanišić Response Brief, para. 57; Appeal Hearing, 16 Dec 2015, AT. 232.
[3877] Stanišić Response Brief, para. 65; Appeal Hearing, 16 Dec 2015, AT. 232.
[3878] Stanišić Response Brief, paras 58-63.

and (ii) his participation in the JCE was extensive and enduring.[3879] Stanišić contends that his purported role in the JCE was "very limited", with his acts and conduct aimed at impeding the JCE rather than furthering it.[3880]

1179. Župljanin responds that the Prosecution's characterisation of his "zealous" participation in the JCE[3881] does not accord with the Trial Chamber's findings.[3882] He submits, moreover, that contrary to the Prosecution's submission, the Trial Chamber considered his involvement in ordering the appropriation of property of non-Serbs within the context of his participation in the JCE and that there was no need for the Trial Chamber to address this crime separately from his contribution to the JCE, given its relative insignificance and the lack of evidence about its impact.[3883] Župljanin submits that even if, *arguendo*, the Trial Chamber should have given weight to this particular conduct separately from his participation in the JCE, the crime in question was not of such severity as to render the imposed sentence unreasonable.[3884]

(ii) Analysis

1180. In assessing the gravity of the crimes for the purposes of determination of sentence,[3885] the Trial Chamber considered that Stanišić and Župljanin were high-level police officials at the time of the commission of the crimes[3886] and took into account that they were found to have committed the crimes through their participation in the JCE.[3887] The Trial Chamber also considered in aggravation that in undertaking their participation in the JCE in their respective capacities as Minister of Interior and Chief of the CSB Banja Luka, Stanišić and Župljanin abused their respective positions.[3888]

[3879] Stanišić Response Brief, paras 9, 66-72, 85. Stanišić submits that the Prosecution bases its submissions regarding his role and responsibility on inconclusive and fundamentally flawed findings of the Trial Chamber in relation to, *inter alia*, the issue of re-subordination of the RS MUP forces to the military, and the conflicting authority between the RS MUP and municipal authorities (Stanišić Response Brief, paras 8, 33-39, 42-56, 72-74, 79. See Appeal Hearing, 16 Dec 2015, AT. 230-231). Stanišić also argues that the Trial Chamber's findings are inconclusive in relation to his knowledge of the commission of crimes by joint Serb forces (Stanišić Response Brief, paras 75-77).

[3880] Stanišić Response Brief, paras 87, 93 (emphasis omitted). See Stanišić Response Brief, para. 68. In this respect, Stanišić points to, *inter alia*, the fact that he: (i) aimed to fulfil his duties as an RS MUP official in accordance with the law (Stanišić Response Brief, para. 92. See Stanišić Response Brief, paras 82-83); (ii) initiated disciplinary proceedings against several individuals who were found to have been members of the JCE, as acknowledged by the Trial Chamber (Stanišić Response Brief, paras 80-81, 84, 88, 90); and (iii) had clashes with high-ranking individuals within the JCE due to actions he took to prevent criminal actions of paramilitaries (Stanišić Response Brief, paras 5, 91). See also Appeal Hearing, 16 Dec 2015, AT. 231.

[3881] Župljanin Response Brief, para. 4.

[3882] Župljanin Response Brief, paras 4-7, 9.

[3883] Župljanin Response Brief, paras 13-15.

[3884] Župljanin Response Brief, para. 15.

[3885] Trial Judgement, vol. 2, paras 927-928, 946-947.

[3886] Trial Judgement, vol. 2, paras 927, 946.

[3887] Trial Judgement, vol. 2, paras 928, 947. The Appeals Chamber notes that in relation to Župljanin, the Trial Chamber took into account that he was found to have committed "the majority" of the crimes through his participation in the JCE (Trial Judgement, vol. 2, para. 947).

[3888] Trial Judgement, vol. 2, paras 929, 931, 948, 950.

1181. The Appeals Chamber observes that in its determination of sentence, the Trial Chamber did not explicitly reiterate its findings on Stanišić's or Župljanin's conduct and the form and degree of their participation in the crimes. However, the Appeals Chamber recalls that a trial judgement should be read as a whole.[3889] The considerations of the Trial Chamber in the context of sentencing must thus be read in conjunction with the rest of the Trial Judgement, including the Trial Chamber's findings on Stanišić's and Župljanin's roles and the degree of their participation in the crimes.[3890] In light of these findings, the Appeals Chamber is satisfied that the Trial Chamber took into account and gave weight to these factors when determining the sentences to be imposed.[3891] Further, the Appeals Chamber again emphasises that the weight to be accorded to a particular factor in sentencing is within the broad discretion of a trial chamber.[3892] Aside from repeating the Trial Chamber's findings, the Prosecution has failed to demonstrate that the Trial Chamber erred in its discretion when according weight to these factors.

1182. Further, as regards the Prosecution's argument that the Trial Chamber failed to give adequate weight to its finding that Župljanin ordered the appropriation of property of non-Serbs, the Appeals Chamber observes that, as acknowledged by the Prosecution,[3893] the Trial Chamber recognised in its assessment of the gravity of the crimes that Župljanin was found to have committed crimes beyond his participation in the JCE.[3894] The Appeals Chamber considers that, aside from disagreeing with the weight given to this factor by the Trial Chamber, the Prosecution has failed to demonstrate that the Trial Chamber committed a discernible error in the exercise of its broad sentencing discretion.

(c) Alleged error in imposing a sentence outside the range of sentences imposed in similar cases

(i) Submissions of the parties

1183. The Prosecution submits that it is evident from the sentencing practice of the Tribunal in other, similar cases that the Trial Chamber manifestly failed to give adequate weight to the seriousness of the crimes, the roles of Stanišić and Župljanin, and their degree of participation in the

[3889] *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.
[3890] See, *inter alia*, Trial Judgement, vol. 2, paras 492-493, 518, 522, 524 (concerning Župljanin); Trial Judgement, vol. 2, paras 729, 731-734, 736, 740-759, 761-765 (concerning Stanišić). See also *supra*, para. 1107.
[3891] See *supra*, paras 1107-1108, 1110, 1147-1150.
[3892] *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2053; *Đorđević* Appeal Judgement, para. 944; *Čelebići* Appeal Judgement, paras, 777, 780. See *supra*, para. 1100.
[3893] Prosecution Appeal Brief, para. 44.
[3894] Trial Judgement, vol. 2, para. 947, where the Trial Chamber stated that in determining Župljanin's sentence, it had taken into account that Župljanin was found to have committed "the majority" of the crimes through his participation in the JCE.

crimes.[3895] According to the Prosecution, the *Brđanin* and *Stakić* cases are particularly relevant to the assessment of the sentences in the present case and demonstrate that the Trial Chamber should have imposed sentences "at least within the range of 30-40 years".[3896] The Prosecution additionally relies on a number of other cases which, in its view, demonstrate that a sentence of 22 years is erroneous for an accused convicted as a member of a joint criminal enterprise for crimes committed in eight or more municipalities.[3897] Finally, the Prosecution submits that the mitigating factors recognised by the Trial Chamber do not justify the manifestly inadequate sentences imposed, especially when viewed together with the aggravating factors found by the Trial Chamber – namely, Stanišić's and Župljanin's abuse of their superior positions, the extensive duration of the crimes, and "their insight into the context and legal nature of the crimes resulting from their careers and education".[3898]

1184. In response, Stanišić and Župljanin submit that the *Brđanin* and *Stakić* cases can be distinguished from the present case on a number of bases.[3899] Stanišić contends that the other cases cited by the Prosecution[3900] may also be distinguished from the case at hand, because "in these cases [...] each of the accused was personally and directly involved in the commission of crimes".[3901] Stanišić further submits that the Trial Chamber failed to give sufficient weight to a number of mitigating factors.[3902] Župljanin submits that the Prosecution suggests that his sentence

[3895] Prosecution Appeal Brief, para. 49. The Prosecution argues that the sentence of 22 years imposed by the Trial Chamber places Stanišić and Župljanin's criminal responsibility in the same range as the "low-level" perpetrators who committed one or more of the "well over 100.000 crimes for which they were convicted", which sends out the wrong message (see Appeal Hearing, 16 Dec 2015, AT. 227-228).

[3896] Prosecution Appeal Brief, para. 50. The Prosecution further argues that the appropriate sentence for leadership perpetration through a joint criminal enterprise must not be less than those imposed in equivalent leadership cases (Appeal Hearing, 16 Dec 2015, AT. 228-229). It notes, in particular, that in the *Brđanin* case and *Stakić* case higher sentences (30 years and 40 years of imprisonment, respectively) were imposed in relation to convictions for fewer municipalities and/or for a less grave form of responsibility than Stanišić and Župljanin (Prosecution Appeal Brief, para. 50, referring to *Brđanin* Appeal Judgement, paras 229, 241, 290, 304, 321, 506, *Stakić* Appeal Judgement, paras 73, 83-84, 89, 428. See Prosecution Consolidated Reply Brief, paras 15-16).

[3897] See Prosecution Appeal Brief, para. 51, fns 185-188. The Prosecution refers specifically to: (i) *Kvočka et al.* Appeal Judgement, in which accused Žigić was sentenced to 25 years for "crimes at the camps in Prijedor alone" (Prosecution Appeal Brief, para. 51, fn. 186); (ii) the *Krajišnik* Appeal Judgement, where the Appeals Chamber "reduced *Krajišnik's* responsibility as a JCE member to crimes in just seven Bosnian municipalities" and "reduced his sentence from 27 years to 20 years accordingly" (Prosecution Appeal Brief, fn. 185); and (iii) the *Plavšić* Sentencing Judgement, where the Trial Chamber "gave weight to 'the age of the accused and the significant mitigating factors connected with her plea of guilty and post-conflict conduct'" and "so imposed a sentence of 11 years" (Prosecution Appeal Brief, fn. 185). It also refers to the *Zelenović*, *Banović*, *Mrđa*, *D. Nikolić*, and *Jelisić* cases, where the accused were sentenced to between 8 and 40 years' imprisonment (Prosecution Appeal Brief, para. 51, fns 187-188). See also Appeal Hearing, 16 Dec 2015, AT. 214-219.

[3898] Prosecution Appeal Brief, para. 52.

[3899] Stanišić Response Brief, paras 96-97; Župljanin Response Brief, paras 10-12. See Stanišić Response Brief, para. 95.

[3900] See Stanišić Response Brief, paras 98-102; Appeal Hearing, 16 Dec 2015, AT. 214-219.

[3901] Stanišić Response Brief, para.102. See Stanišić Response Brief, paras 98-101, Appeal Hearing, 16 Dec 2015, AT. 214-219; Stanišić Response Brief, paras 99-101. See also Appeal Hearing, 16 Dec 2015, AT. 231-232.

[3902] Stanišić Response Brief, paras 104-107.

should not be any less than for other leadership cases arising from similar circumstances without according any value to intent in assessing culpability and deciding upon sentencing.[3903]

(ii) Analysis

1185. The Appeals Chamber recalls that previous sentencing decisions of the Tribunal may be of assistance if they involve the commission of the same offences in substantially similar circumstances.[3904] It also recalls that a sentence should not be "capricious or excessive, and that, in principle, it may be thought to be capricious or excessive if it is out of reasonable proportion with a line of sentences passed in similar circumstances for the same offences".[3905] This does not, however, override a trial chamber's obligation to tailor a penalty to fit the individual circumstances of an accused and the gravity of the crime.[3906] Thus, comparisons with the sentences imposed in other cases are, as a general rule, "of limited assistance" as "often the differences [between cases] are more significant than the similarities, and the mitigating and aggravating factors dictate different results".[3907]

1186. Turning to the cases relied upon by the Prosecution, the Appeals Chamber notes that the *Brđanin* case – like the present case, in part – relates to crimes committed by Bosnian Serb forces in the ARK during 1992.[3908] However, while there may be some overlap between the relevant offences and circumstances of the two cases, the Appeals Chamber does not consider that the fact that Brđanin received a sentence of 30 years, reflecting the particular circumstances of that case and his role, demonstrates that the Trial Chamber erred in sentencing Stanišić and Župljanin each to 22 years of imprisonment.[3909] Similarly, the Appeals Chamber does not consider that the sentence of 40 years imposed on Stakić, which reflects the particular circumstances of that case and his role,

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[3903] Appeal Hearing, 16 Dec 2015, AT. 235-236.
[3904] *Babić* Sentencing Appeal Judgement, para. 32; *Čelebići* Appeal Judgement, para. 720. See *Popović et al.* Appeal Judgement, para. 2093, quoting *Strugar* Appeal Judgement, para. 348; *Đorđević* Appeal Judgement, para. 949.
[3905] *Jelisić* Appeal Judgement, para. 96. See *Đorđević* Appeal Judgement, para. 949. See also *Popović et al.* Appeal Judgement, para. 2093, quoting *Strugar* Appeal Judgement, para. 348.
[3906] *Babić* Sentencing Appeal Judgement, para. 32. See *Tolimir* Appeal Judgement, para. 626; *Popović et al.* Appeal Judgement, para. 1961; *Đorđević* Appeal Judgement, para. 931; *Šainović et al.* Appeal Judgement, para. 1837; *Nyiramasuhuko et al.* Appeal Judgement, para. 3349.
[3907] *Čelebići* Appeal Judgement, para. 719. See *Babić* Sentencing Appeal Judgement, para. 32, quoting *D. Nikolić* Sentencing Appeal Judgement, para. 19.
[3908] See *Brđanin* Trial Judgement, paras 1-19.
[3909] See *Brđanin* Trial Judgement, paras 1093-1140; *Brđanin* Appeal Judgement, paras 498-501, 506, p. 157. The Appeals Chamber notes that Brđanin was convicted of crimes under eight counts of the indictment, having been found guilty on the basis of aiding and abetting liability, as well as on the basis of having instigated and ordered crimes (see *Brđanin* Trial Judgement, paras 475-476, 534-538, 577-583, 669-670, 677-678, 1054, 1061, 1071, 1075. See also *Brđanin* Trial Judgement, para. 1067). The Appeals Chamber further observes that in sentencing Brđanin, the *Brđanin* Trial Chamber took into account numerous aggravating and mitigating circumstances which are specific to him, as well as the gravity of his offences (*Brđanin* Trial Judgement, paras 1093-1140. See *Brđanin* Appeal Judgement, paras 498-501, 506).

demonstrates that the Trial Chamber in the present case committed an error in imposing sentences of 22 years.[3910]

1187. The Appeals Chamber is also of the view that the other cases referred to by the Prosecution are inapposite, as the specific circumstances in these cases differ significantly from those in the present case.[3911] As such, these cases do not demonstrate that the Trial Chamber erred in the exercise of its discretion when sentencing Stanišić and Župljanin each to 22 years of imprisonment. For these reasons, and emphasising the Trial Chamber's considerable discretion in sentencing matters, the Appeals Chamber considers that the Prosecution has failed to demonstrate any discernible error on the part of the Trial Chamber by pointing to other allegedly similar cases.

1188. The Appeals Chamber now turns to the Prosecution's argument that the Trial Chamber erred by imposing a manifestly inadequate sentence which is not justified by the mitigating circumstances set out in the Trial Judgement. It recalls that "the Statute and the Rules do not define exhaustively the factors which may be taken into account by a Trial Chamber in mitigation or aggravation of sentence, and Trial Chambers are therefore endowed with a considerable degree of discretion in deciding on the factors which may be taken into account",[3912] as well as the weight to be given to each factor.[3913]

1189. The Appeals Chamber notes that the Trial Chamber took into account several factors in mitigation, including voluntary surrender,[3914] cooperation in relation to provisional release,[3915] good

[3910] See *Stakić* Appeal Judgement, p. 142. The Appeals Chamber notes that Stakić was convicted of crimes under five counts of the indictment, having been found guilty on the basis of "co-perpetratorship", and in relation to deportation also found him liable on the basis of having planned and ordered the crime (see *Stakić* Trial Judgement, paras 468, 616, 661, 712, 826, 914, p. 253). On appeal, the Appeals Chamber set aside, *proprio motu*, the *Stakić* Trial Chamber's finding that Stakić was responsible as a co-perpetrator and instead found him responsible on the basis of joint criminal enterprise liability (see *Stakić* Appeal Judgement, p. 141). In addition, the *Stakić* Appeals Chamber vacated Stakić's legal responsibility for certain acts of deportation (*Stakić* Appeal Judgement, p. 141. See also *Stakić* Trial Judgement, paras 654, 906, 912, 916). The *Stakić* Trial Chamber also took into account a number of aggravating and mitigating circumstances which are specific to him, as well as the gravity of his offences (*Stakić* Trial Judgement, paras 910, 912-915, 917-919, 921-924).

[3911] See *D. Nikolić* Sentencing Judgement, paras 117, 119, p. 73; *D. Nikolić* Sentencing Appeal Judgement, p. 44; *Plavšić* Sentencing Judgement, paras 5, 134 (cases where the accused pleaded guilty); *Banović* Sentencing Judgement, paras 90, 93, 95; *Mrđa* Sentencing Judgement, paras 10, 123, 125, 129; *Zelenović* Sentencing Judgement, paras 36, 38-40, 43, 71; *Zelenović* Sentencing Appeal Judgement, p. 13; *Jelisić* Trial Judgement, paras 138-139; *Jelisić* Appeal Judgement, p. 41 (cases involving principal perpetrators who pleaded guilty); *Kvočka et al.* Trial Judgement, paras 747, 764, 766; *Kvočka et al.* Appeal Judgement, paras 594-600, 716, p. 243 (involving the accused's key role in maintaining and functioning of a detention camp pursuant to the second category of joint criminal enterprise liability). See also *Krajišnik* Trial Judgement, para. 1126, p. 421; *Krajišnik* Appeal Judgement, para. 820 (involving an accused who had a senior role in the political sector of the Bosnian Serb leadership).

[3912] *Čelebići* Appeal Judgement, para. 780.

[3913] *Čelebići* Appeal Judgement, para. 777. See *Tolimir* Appeal Judgement, para. 644; *Popović et al.* Appeal Judgement, para. 2053; *Đorđević* Appeal Judgement, para. 944.

[3914] Trial Judgement, vol. 2, para. 933.

[3915] Trial Judgement, vol. 2, para. 934.

character prior to commission of the crimes,[3916] and expression of regret or sympathy.[3917] As the Prosecution itself notes, however, the Trial Chamber expressly afforded little weight to these mitigating factors.[3918] In contrast, the Trial Chamber did give weight to the aggravating factors that it found, including abuse of superior position[3919] and the length of time during which the crimes took place,[3920] in the case of both Stanišić and Župljanin. Therefore, the Appeals Chamber rejects the Prosecution's argument that the mitigating circumstances were determinative of the sentences it imposed in this case. Moreover, the Appeals Chamber emphasises that mitigating circumstances are merely factors to be taken into account, among others, by a trial chamber in the exercise of its discretion, and do not alone justify a sentence.[3921] In these circumstances, the Prosecution has failed to identify any error on the part of the Trial Chamber.

(d) Conclusion

1190. The Appeals Chamber concludes that the Prosecution has failed to demonstrate that the Trial Chamber: (i) failed to give appropriate weight to the seriousness of the crimes; (ii) failed to give appropriate weight to Stanišić and Župljanin's leadership positions within the JCE and the degree of their participation in the commission of crimes; and (iii) imposed a sentence outside the range imposed in similar cases. Therefore, the Appeals Chamber dismisses the Prosecution's first ground of appeal in its entirety.

E. Impact of the Appeals Chamber's Findings on Sentences

1191. With respect to Stanišić, the Appeals Chamber has affirmed all of his convictions. In so doing, the Appeals Chamber has upheld the Trial Chamber's conclusion on his responsibility for participation in the JCE.[3922] However, the Appeals Chamber recalls that it has reversed several findings of the Trial Chamber on his acts and failures to act considered as his contribution to the JCE. More specifically, the Appeals Chamber has found that the Trial Chamber erred in: (i) considering the appointments of Witness Todorović and Krsto Savić as Stanišić's direct

[3916] Trial Judgement, vol. 2, paras 936, 952.
[3917] Trial Judgement, vol. 2, para. 953.
[3918] Prosecution Appeal Brief, para. 52. The Appeals Chamber notes that the Trial Chamber afforded "little weight" to the character evidence put forward by Stanišić, in light of the crimes for which he was found guilty (Trial Judgement, vol. 2, para. 936). Similarly, the Trial Chamber gave little weight to the testimony received as to Župljanin's good character, in light of the crimes for which he was found guilty (Trial Judgement, vol. 2, para. 952), and considered that Župljanin's expression of regret and sympathy also carried little weight as a mitigating factor in view of those crimes (Trial Judgement, vol. 2, para. 953).
[3919] Trial Judgement, vol. 2, paras 929, 948.
[3920] Trial Judgement, vol. 2, paras 930, 949.
[3921] *Babić* Sentencing Appeal Judgement, para. 44, quoting *Niyitegeka* Appeal Judgement, para. 267.
[3922] See *supra*, paras 71, 87, 364, 585, 708.

appointments of JCE members to the RS MUP;[3923] and (ii) finding that Stanišić failed to take decisive action to close Luka detention camp or to withdraw the RS MUP forces from it.[3924] The Appeals Chamber does not consider that these reversals affect Stanišić's overall criminal culpability for the serious crimes of which he has been convicted. The Appeals Chamber therefore affirms Stanišić's sentence of 22 years of imprisonment.

1192. With respect to Župljanin, the Appeals Chamber has affirmed all of his convictions. In so doing, the Appeals Chamber has upheld the Trial Chamber's conclusions on his responsibility for participation in the JCE – including all of its findings on his acts and failures to act considered as his contribution to the JCE[3925] – and on his responsibility for ordering the crime of persecutions through the underlying act of plunder of property.[3926] The Appeals Chamber thus affirms his sentence of 22 years of imprisonment.

[3923] See *supra*, paras 263, 266, 267. See also *supra*, paras 355, 359, 361, 363, 365.
[3924] See *supra*, paras 344, 354. See also *supra*, paras 268, 359, 361, 363, 365.
[3925] See *supra*, paras 71, 87, 905, 944-945, 1011, 1069.
[3926] See *supra*, para. 1078.

VIII. DISPOSITION

1193. 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 they presented at the Appeal Hearing on 16 December 2015;

SITTING in open session;

DISMISSES Mićo Stanišić's appeal in its entirety;

DISMISSES Stojan Župljanin's appeal in its entirety;

AFFIRMS Mićo Stanišić's convictions under Counts 1, 4, and 6 and Stojan Župljanin's convictions under Counts 1, 2, 4, and 6;

GRANTS the Prosecution's second ground of appeal and **FINDS** that the Trial Chamber erred by: (i) finding that convictions for the crime of persecutions as a crime against humanity under Article 5 of the Statute are impermissibly cumulative with convictions for other crimes against humanity based on the same conduct; and (ii) failing to enter convictions for Mićo Stanišić and Stojan Župljanin pursuant to Article 7(1) of the Statute under Counts 3, 5, 9, and 10, but **DECLINES** to enter new convictions against Mićo Stanišić and Stojan Župljanin on appeal under these counts;

DISMISSES the Prosecution's appeal in all other respects;

AFFIRMS the sentences of 22 years of imprisonment imposed by the Trial Chamber against Mićo Stanišić and Stojan Župljanin, respectively, subject to credit being given under Rule 101(C) of the Rules for the periods they have already spent in detention;

RULES that this Judgement shall be enforced immediately pursuant to Rule 118 of the Rules; and

ORDERS in accordance with Rule 103(C) and Rule 107 of the Rules, that Mićo Stanišić and Stojan Župljanin are to remain in the custody of the Tribunal pending the finalisation of arrangements for their transfer to the State where their sentence will be served.

Done in English and French, the English text being authoritative.

Judge Carmel Agius, Presiding

Judge Liu Daqun

Judge Christoph Flügge

Judge Fausto Pocar

Judge Koffi Kumelio A. Afande

Judge Liu Daqun appends a declaration.

Judge Koffi Kumelio A. Afande appends a separate opinion.

Dated this thirtieth day of June 2016,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

IX. DECLARATION OF JUDGE LIU

1. In this Judgement the Appeals Chamber upholds the convictions of Stanišić and Župljanin for persecution as a crime against humanity pursuant to the third category of joint criminal enterprise ("JCE III").[1] While I am in agreement with the findings and the disposition of this Judgement, I find it apposite to append a declaration to share my views regarding perpetrators' culpability pursuant to JCE III liability for specific intent crimes.[2]

2. Although I acknowledge that the Tribunal's jurisprudence provides for convictions for specific intent crimes on the basis of JCE III mode of liability,[3] I find myself unable to adhere to this interpretation of the law.[4] In my opinion, it defies reason to find an accused guilty of *committing* specific intent crimes while accepting at the same time that the specific intent of that accused was not proven in court. Specific intent crimes require a particular high standard of intent (*dolus specialis*), which cannot be satisfied, via the subjective element of JCE III, by *dolus eventualis*.

3. This does not mean that the contribution of an accused, who is lacking the specific intent, to the execution of a specific intent crime shall go unpunished. This criminal behaviour could be criminalized under other modes of liability, such as aiding and abetting, provided that all other elements are fulfilled.

4. It is not necessary to reiterate here all the reasons for my disagreement with this jurisprudence as I have already explained at length my point of view in the *Šainović et al.* case.[5] I note that similar concerns regarding this issue have also been raised by others.[6]

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[1] Appeal Judgement, paras 600, 1011, 1193.
[2] See Appeal Judgement, fn. 2015.
[3] Appeal Judgement, paras 594-599 (with references cited therein).
[4] While Stanišić and Župljanin were only found guilty for the specific intent crime of persecution, my views in this declaration, however, are relevant to all crimes within the jurisdiction of the Tribunal that require specific intent.
[5] *Šainović et al.* Appeal Judgement, Partially Dissenting Opinion and Declaration of Judge Liu, paras 11-20.
[6] See Special Tribunal for Lebanon, Case No. STL-11-01/I, "Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging", 16 February 2011, paras 248-249 ("A problem arises from the fact that for a conviction under JCE III, the accused need not share the intent of the primary offender. This leads to a serious legal anomaly: if JCE III liability were to apply, a person could be convicted as a (co)perpetrator for a *dolus specialis* crime without possessing the requisite *dolus specialis* [...] the better approach under international criminal law is not to allow convictions under JCE III for special intent crimes like terrorism."); Special Court for Sierra Leone, *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012, para. 468 ("The Trial Chamber concurs with the reasoning of the STL Appeals Chamber and accordingly finds that the Accused may not be held liable under the third form of JCE for specific intent crimes such as terrorism."); Report of the International Law Commission on the work of its forty-eight session, U.N. Doc. A/51/10 (1996), p. 44 ("[A] general intent to commit one of the enumerated acts combined with a general awareness of the probable consequences of such an act with respect to the immediate victim or victims is not sufficient for the crime of genocide. The definition of this crime requires a particular state of mind or a specific intent with respect to the overall consequences of the prohibited act. As indicated in the opening clause of article 17, an individual incurs responsibility for the crime of genocide only when one of the prohibited acts is žcommitted with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as

5. Nevertheless, I concede that the law in this Judgement regarding the application of the JCE III to specific intent crimes is part of the Tribunal's jurisprudence and is applied correctly in this Judgement. Moreover, I take note of the Trial Chamber's findings that the Appellants had persecutory intent towards Bosnian Muslims and Bosnian Croats in the execution of the JCE I Crimes, which remain unaffected by this Judgement.[7] In the circumstances of this case, I am satisfied that the Trial Chamber's findings would also lead to the conclusion that Stanišić and Župljanin possessed the discriminatory intent for other underlying acts of persecution, for which they were convicted pursuant to JCE III liability. Consequently, I do not dissent from the upholding of Stanišić's and Župljanin's convictions on the basis of the JCE III for persecution as a crime against humanity.

Done in English and French, the English text being authoritative.

Judge Liu Daqun

Dated this thirtieth day of June 2016,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

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such'."). I note that the latter is considered "an authoritative instrument, parts of which may constitute evidence of customary international law, clarify customary rules, or, at the very least, 'be indicative of the legal views of eminently qualified publicists representing the major legal systems of the world.'" See *Šainović et al.* Appeal Judgement, para. 1647 (with references cited therein). See also *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Decision on Motion for Acquittal Pursuant to Rule 98 *BIS*, 28 November 2003, paras 30, 55-57 ("This specific intent cannot be reconciled with the *mens rea* required for a conviction pursuant to the third category of JCE. The latter consists of the Accused's awareness of the risk that genocide would be committed by other members of the JCE. This is a different *mens rea* and falls short of the threshold needed to satisfy the specific intent required for a conviction for genocide under Article 4(3)(a)"); *Stakić* Trial Judgement, para. 530 ("Conflating the third variant of joint criminal enterprise and the crime of genocide would result in the *dolus specialis* being so watered down that it is extinguished. Thus, the Trial Chamber finds that in order to "commit" genocide, the elements of that crime, including the *dolus specialis* must be met."); A. Cassese, "The Proper Limits of Individual Criminal Responsibility under the Doctrine of Joint Criminal Enterprise", *Journal of International Criminal Justice*, vol. 5(1) (2007), pp 109-133, 121-122 ("Resorting to [the third class of JCE] would be intrinsically ill-founded when the crime committed by the 'primary offender' requires a special or specific intent (*dolus specialis*)... In these cases the 'secondary offender' may not share – by definition – that special intent (otherwise one would fall under the first and second class of JCE), even though entertaining such intent is a *sine qua non* condition for being charged with the crime."). I note that Judge Shahabuddeen also addressed the issue of specific intent crimes and found that while it is necessary to show specific intent "that intent is shown by the particular circumstances of the third category of joint criminal enterprise" and that "the Appeals Chamber in *Tadić* was not of the view that intent did not have to be shown; what it considered was that intent was shown by the particular circumstances of the third category of joint criminal enterprise". See, *Brđanin* Appeal Decision of 19 March 2004, Separate Opinion of Judge Shahabuddeen, paras 5, 8.

[7] See, *e.g.*, Trial Judgement, vol. 2, paras 311, 313, 520, 769. See also Trial Judgement, vol. 2, paras 507-512, 518, 804, 805, 809, 813, 818, 822, 831-832, 836, 840, 845, 849-850, 854, 859, 863, 864, 868-869, 873, 877, 881, 885, 955-956.

X. SEPARATE OPINION OF JUDGE AFANDE

A. Introduction

1. In principle, I should have started this separate opinion by stating that "I agree with the Majority's conclusion...but not with the reasoning". However, upon reflection and out of precaution, I have decided to take a calculated distance from the Majority's conclusions and refrain from automatically endorsing them, despite the fact that I will ultimately arrive at the same outcome. The binary reason for this precaution is that I profoundly believe that any conclusion must be the result of reasoning and that the magnetic force which any conclusion needs to attract supporters derives absolutely from the persuasive power of the reasoning that leads to it. Whilst more than one line of reasoning may properly lead to the same conclusion, that conclusion can be said to have been convincingly deduced from a specific line of reasoning only if a backward thinking process, starting from the said conclusion, enables one to recompose that particular reasoning. I am of the view that in the present case, none of the conclusions challenged here enables the supporting reasoning to be rebuilt backwards.

2. According to a theorem attributed to the Greek philosopher and mathematician Thales of Miletus,[1] if a triangle is located in a semi-circle with its hypotenuse being equal to the radian of the full circle, then the angle of the adjacent and opposite sides is always a right angle. Clearly, many triangles can be located within one semi-circle with some of them being symmetrically inverse to one another, however, they all will have a "right angle". The conclusion therefore, that within a semi-circle there will exist a triangle with a right angle is superficial, because it does not enable us to know the precise parameters of the triangle itself. One may wonder what relevance this theorem, sometimes regarded as an axiom, has in the case before this Appeals Chamber however, by reflecting it is clear that it can be used to clearly illuminate the deficiencies in the Majority's logic. This is because the conclusion that there is a triangle (conviction) with a right angle (the liability accused/convicted) in a semi-circle (among many other persons) is only convincing if one is able to determine the size and weight of the triangle (sentence), based on a demonstration of both (i) the exact point where the right angle (liability of the accused/convicted) is situated on the circumference of the circle (*actus reus* and *mens rea*) and (ii) the length of the adjacent side (gravity of the crimes), in addition to the length of the opposite side (aggravating and mitigating factors) of the triangle, without which the right angle (liability of the accused/convicted) does not even exist.

[1] Cheikh Anta Diop. Antériorité des civilisations nègres: mythes ou réalité, Présence Africaine, 1967, pp. 100-101; https://belafrikamedia.com/belafrika/2014/02/07/histoire-africaine-les-longs-sejours-de-thales-et-pythagore-en-afrique-noire-www-belafrika-be-webtv/(accessed June 07, 2016).

This issue touches upon the obligation of the Appeals Chamber to provide a reasoned opinion in order to prevent judicial arbitrariness and preserve unfairness toward the accused/convicted person.

3. The Majority's approach in the present case seems to be analogous to concluding on the existence of convictions (triangle) and of the liability of the accused (right angle) without convincingly determining the parameters of the sentencing (seize/weight of the triangle) through a clear demonstration of the liability (position of the right angle on the circle) and the gravity of the crimes (adjacent site of the triangle), as well as the aggravating and mitigating factors (opposite side of the triangle).

4. I therefore unfortunately find it difficult to join the Majority's conclusions, since the laconism of the reasoning on each point discussed below does not convince me that it could genuinely lead to that conclusion. Hence, my arguments as developed in this "separate opinion" can perhaps rather be considered as a "dissenting opinion on the reasoning".

5. Therefore, whilst I would have ultimately upheld Mićo Stanišić's and Stojan Župljanin's convictions, I strongly express my disagreement with the Majority's reasoning with respect to six main issues which go to the very core of the Appeal Judgement in the present case. They are namely: (i) the analysis of whether the participation in this case of Judge Harhoff, who was disqualified from the *Šešelj* case, has affected Stanišić's and Župljanin's fair trial rights; (ii) the failure to crystallise the distinction between the non criminal political goal and the common criminal purpose of the JCE; (iii) the failure to distinguish between the membership of the Bosnian Serb leadership and the membership of the JCE; (iv) the appraisal of the forseeability of the crimes considered to be "JCE III crimes"; (v) the elevation of the "appropriation of property" as a crime *per se* and; (vi) the approach to Stanišić's and Župljanin's sentencing appeal.

B. Whether the Disqualification of Judge Harhoff in the Šešelj Case has Rebutted his Impartiality and Affected Stanišić's and Župljanin's Right to a Fair Trial in Their Case

6. For the purpose of the following demonstration, it imports to recall that, under grounds 1*bis* and 6 of their respective appeals, Stanišić and Župljanin submit that their right to a fair trial by an independent and impartial court has been violated as a result of the participation of Judge Harhoff in the trial proceedings,[2] which invalidates their convictions.[3] Stanišić and Župljanin argue that the letter dated 6 June 2013 written by Judge Harhoff ("Letter") and published after the rendering of the Trial Judgement in their case on 27 March 2013, reveals an unacceptable appearance of bias on the

[2] *See* Stanišić Additional Appeal Brief, paras 2-10. *See also* Stanišić Additional Appeal Brief, p. 30; Župljanin Additional Appeal Brief, paras 1, 34; *infra*, Annex A, para. 5.

part of Judge Harhoff in favour of convicting accused persons. According to them therefore, the Letter rebuts the presumption of impartiality ordinarily afforded to a Judge in their case.[4] Stanišić and Župljanin recognize that the decision by the Special Chamber disqualifying Judge Harhoff in the Šešelj case on the ground that the Letter displayed an apprehension of bias ("Šešelj Special Chamber Decision") is not binding *per se* on the Appeals Chamber. However, they request that the Appeals Chamber quash the Trial Chamber's findings, vacate the Trial Judgement and conduct a *de novo* assessment of all findings or, order a re-trial before a new trial chamber.[5] Alternatively, they request that a full acquittal be pronounced.[6]

7. The Prosecution responds that Stanišić and Župljanin received a fair trial from an impartial panel of judges.[7] The Prosecution also contends that Stanišić and Župljanin fail to substantiate their claim that Judge Harhoff was predisposed in favour of conviction.[8] The Prosecution further argues that Stanišić and Župljanin have neither rebutted the presumption of Judge Harhoff's impartiality, nor demonstrated that a reasonable apprehension of bias is firmly established.[9]

8. I am of the view that the Letter does not rebut the impartiality of Judge Harhoff, and that Stanišić and Župljanin have been tried by a Trial Chamber composed of independent judges. However, I feel the pressing need to dissociate myself from the Majority's line of reasoning. In particular, I find the Majority's approach to be insufficient: (i) in explaining why the finding of the Special Chamber in the Šešelj case is not automatically binding on this Chamber; and (ii) in discussing the fair trial rights of the appellants. In essence, the Majority's argument is that the disqualification of Judge Harhoff by the Special Chamber in the Šešelj case is a disqualification of a judge pursuant to Rule 15 of the Rules and consequently must be considered on a case-by-case basis, and that the finding made by the Special Chamber is not of a general nature and is not binding on the Appeals Chamber in this case. Already, it is redundant on the part of the Majority to make findings on the non-binding character of the Šešelj Special Chamber Decision on this Appeals Chamber, because Stanišić and Župljanin recognise this themselves.[10] This approach is therefore unconvincing as the arguments are proclaimed just as postulates, without any elaboration as to why the Šešelj Special Chamber Decision is not transposable to this case by the ordinary Appeals Chamber. By doing so, the Majority regrettably not only fails to examine the time factors and the sequence of the procedural events which are decisive and different in both cases. It also misses the

[3] Stanišić Additional Appeal Brief, paras 4, 9-10, 106-131; Župljanin Additional Appeal Brief, paras 2-3, 30-33.
[4] Stanišić Additional Appeal Brief, paras 53-105; Župljanin Additional Appeal Brief, paras 13-27.
[5] Stanišić Additional Appeal Brief, para. 10, p. 30; Župljanin Additional Appeal Brief, paras 1, 3, 30-35.
[6] Stanišić Additional Appeal Brief, para. 10, p. 30; Župljanin Additional Appeal Brief, paras 1, 3, 30-35.
[7] Prosecution Consolidated Supplemental Response Brief, para. 1.
[8] Prosecution Consolidated Supplemental Response Brief, paras 1, 4.
[9] Prosecution Consolidated Supplemental Response Brief, para. 3.

opportunity to genuinely develop the central issue, which is whether or not the content of the Letter, that I will refer to as the "Harhoff Standard", shows any apprehension of bias which would have impacted on the Trial Judgement so as to affect Stanišić's and Župljanin's fair trial rights. Since, to my knowledge, this Tribunal has never determined issues similar to these ones, and given the importance which should be properly attributed to the concept of judicial bias, it is my firm view that it was the duty of the Appeals Chamber to consider the matter in as precise and elaborate detail as possible. Unfortunately, I find the Majority's approach laconic in nature, and I therefore consider it necessary to proffer my position, which goes above and beyond the Majority's approach, in order to raise the discussion up to the standard of analysis expected at the appellate level.

9. In determining if Judge Harhoff's participation in the trial proceedings violates Stanišić's and Župljanin's right to be tried by an independent and impartial trial chamber, the Majority should have assessed whether the Trial Chamber applied the correct JCE standard, as set out by the Tribunal in a number of previous judgements or opted for the "Harhoff Standard". In my view, the correct approach to make this assessment would have been for the Appeals Chamber to undertake a three-step demonstration. Specifically, it should have: (i) explained how the "reasonable observer" standard shall apply; (ii) discussed the Letter in the light of the correct standard of JCE in the Tribunal's jurisprudence in order to ascertain whether it demonstrated a bias towards conviction; and (iii) analysed the Trial Judgement, to determine whether the JCE standard applied has been influenced by the contents of the Letter.

1. The Modalities of the Standard of the "Reasonable Observer" Relating to the Appearance of Bias

10. I consider that the Majority should have first answered the question of whether the impartiality of Judge Harhoff is rebutted in the present case. The response to this interrogation however, is intrinsically linked to addressing the related questions of whether or not the assessment of impartiality should be based either on the Šešelj Special Chamber Decision, which found an "apprehension of bias" on the part of Judge Harhoff in the Šešelj case, or on a *de novo* assessment of the content of the Harhoff Letter? Or, whether this assessment should be based on a combination of both?

11. Concerning the applicability of the Šešelj Special Chamber Decision in the present case, it is worth recalling that as a matter of principle, a determination made by one chamber is not binding on another. As a result, the finding of "apprehension of bias" on the part of Judge Harhoff by the

[10] Stanišić Additional Appeal Brief, para. 10, p. 30; Župljanin Additional Appeal Brief, paras 1, 3, 30-35.

Special Chamber in the Šešelj case is not binding on the Appeals Chamber in the present case, as conceded by Stanišić and Župljanin.[11] However this principle does not mean, as the Majority considers, the reasoning ends, as it is only tangential to the question before this Appeals Chamber. Indeed, that principle only relates to, but does not resolve, the issue of the applicability of the Šešelj Special Chamber's Decision by the ordinary Appeals Chamber in the present case. There are two reasons for this. First, the principle that a finding by one chamber does not bind another chamber applies among the ordinary trial chambers of the Tribunal, and does not take into account the "special" nature of the chamber which made findings in the Šešelj case.[12] Second, this principle is also valid among the different ordinarily constituted benches of the Appeals Chamber, bearing in mind however that a determination of a bench of the ordinary Appeals Chamber is in theory binding on trial chambers.[13] Hence this principle does not fully address the question in the present case, which is whether or not a determination made by the "Special Chamber", convened for the Šešelj case and therefore not an "ordinary chamber", may bind an ordinarily constituted Appeals Chamber. It may well be that the "special" character of the Chamber in the Šešelj case makes its findings binding on the ordinary chambers at trial or appellate stage. This question is of a unique importance given the fact that the issue of the "appearance of bias" on the part of Judge Harhoff, which the Šešelj Special Chamber has decided upon, is of interest not only to the Tribunal, but also to the international community in its perception of justice. In this regard, the Šešelj Special Chamber's determination that a reasonable observer confronted with the Letter "would reasonably apprehend bias on the part of Judge Harhoff in favour of conviction", is a finding which is general in nature, as opposed to the Majority's view, and arguably goes beyond the Šešelj case that the Special Chamber cited *only* as an example.[14]

12. However, contrary to the Majority's position, the approach to the question of whether or not the Šešelj Special Chamber Decision is binding or not on ordinary chambers, including the Appeals Chamber, requires that the matter be assessed with regard to the specific contexts of the Šešelj case and the Stanišić and Župljanin case. Indeed, these two cases are so different that they call for entirely separate methodological lines in interpreting the standard of "appearance of bias". For the following series of reasons, I consider that it would be erroneous to treat them the same and to apply the Šešelj Special Chamber's approach to the Stanišić and Župljanin case. Specifically, whereas the trial proceedings in the Šešelj case were still ongoing and a judgement was expected to be delivered after the Letter was published, the trial proceedings in the Stanišić and Župljanin case were completed and a judgement had been handed down, 71 days before the Harhoff Letter came to

[11] *See* Stanišić Additional Appeal Brief, para. 10, p. 30; Župljanin Additional Appeal Brief, paras 1, 3, 30-35.
[12] *See e.g. Lukić and Lukić* Appeal Judgement, para. 260.
[13] *See e.g. Aleksovski* Appeal Judgement, para. 113.

light.[15] As such, the apt approach to interpret the standard of "appearance of bias" in the Šešelj case was "prospective"[16], i.e. on the basis of a *projection* into the future of the case, under the assumption that during the upcoming deliberations and judgement Judge Harhoff *may* apply the standard which he set out in his Letter. However, projection and assumption are logically incompatible with the Stanišić and Župljanin case, since the trial had already been completed and the judgement delivered. Therefore, the Majority should have considered that it can only be logical to *retrospectively* apply the standard of the "appearance of bias" in the present case. This proper retrospective application would require this Appeals Chamber to examine *ex post facto* whether the standard in the Letter which gave rise to "apprehension of bias" for a future judgement in the Šešelj case, was already applied in the Stanišić and Župljanin case that was completed before the publication of the said Letter.

13. It is worth mentioning that the retrospective application of the standard of the "appearance of bias" is also based on the "reasonable observer" test and should not be conflated with the standard of "actual bias" which requires a higher threshold of evidence.[17]

14. In summary, my position is that it is not the Šešelj Special Chamber Decision *per se* that should be directly transposed to the current Stanišić and Župljanin case. The solution should rather be found in the content of the Letter, in which the Šešelj Special Chamber found that "Judge Harhoff has demonstrated a bias in favour of conviction such that a reasonable observer properly informed would reasonably apprehend bias".[18]

15. To this end, it should also be noted that Stanišić's and Župljanin's convictions relate solely to the mode of liability of Joint Criminal Enterprise (JCE) as a form of committing.[19] Given that no party challenges which mode of liability Judge Harhoff was referring to in his Letter, the present

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[14] *See* Šešelj Special Chamber Decision, para. 13.
[15] The Trial Judgement was rendered on 27 March 2013. The Letter is dated 6 June 2013. *See* Appeal Judgement para. 27.
[16] Šešelj Special Chamber Decision, para. 14 in which the Special Chamber uses the prospective term "would reasonably apprehend" bias.
[17] Neither Stanišić nor Župljanin makes allegations that Judge Harhoff was actually biased. *See e.g.* Stanišić Additional Reply Brief, para. 39 where Stanišić expressly contends that, he does not allege nor is he required to prove the existence of actual bias on the part of Judge Harhoff.
[18] Šešelj Special Chamber Decision, para. 14.
[19] I note that the Trial Chamber specifically stated that having made findings on JCE "it is not necessary for the Trial Chamber to make findings on the other forms of responsibility alleged in the Indictment" for *Stanišić*. *See* Trial Judgement, vol. 2 para. 529. With regards Župljanin the Trial Chamber again stated that having made findings on JCE "it is not necessary for the Trial Chamber to make findings on the other forms of responsibility alleged in the Indictment". See Trial Judgement, para. 780. For extermination which the Trial Chamber found could not be included under JCE III, other modes of liability were assessed and rejected. See Trial Judgement, paras 782-786. *See also* Trial Judgement paras 520, 521, 529, 928, 929, 948.

analysis will also proceed on this basis.[20] Therefore, the retrospective analysis should stem from the contents of the Letter, in order to determine whether it has tainted the Tribunal's standard of JCE that the Trial Chamber should ordinarily have applied in Stanišić's and Župljanin's Trial Judgement.

2. The Reasonable Observer's Test as to the Conformity of the Harhoff Letter with the Standard of JCE in the Tribunal's Jurisprudence

16. Whether a reasonable observer would conclude that the "Harhoff Standard" of JCE incorrectly deviates from the Tribunal's jurisprudence in the matter is not sufficient on its own, but it is necessary in assessing if Judge Harhoff's participation in their case has affected Stanišić's and Župljanin's fair trial rights or not. The Majority's analysis is not understandable when it seems in paragraphs 52 and 55 to insinuate that, regardless of the non-conformity of the content of the Letter to the Tribunal's case law, a reasonable observer would not apprehend bias, as it displays: (i) Judge Harhoff's "personal conviction" which is "intended to be private"; (ii) is written in an informal style and not "as a legal intervention"; and (iii) is published several months after the judgement. In my view, the most appropriate method at this stage for the reasonable observer test should have been to limit the analysis solely and strictly to a discussion of Judge Harhoff's Letter in the light the Tribunal's case law as to whether or not the former is correct and genuinely reflects the latter.

17. According to the jurisprudence of the Tribunal on JCE:

a - the objective element for the first and third categories of JCE liability consists of: (i) a plurality of persons; (ii) the existence of a common plan, design, or purpose which amounts to or involves the commission of a crime provided for in the Statute; and (iii) the participation of the accused in the common design involving the perpetration of one of the crimes provided for in the Statute.[21]

b - The subjective element for the first category of JCE liability is the intent to perpetrate a certain crime (this being the shared intent on the part of all co-perpetrators).[22] The third category requires that it was foreseeable to the accused that such a crime might be committed by a member of the JCE or one

[20] *See* Stanišić Supplemental Appeal Brief, paras 2-52 and Župljanin Supplemental Appeal Brief, paras 2-12 both of which consider Judge Harhoff to be discussing JCE.
[21] *Stanišić and Simatović* Appeal Judgement, para. 77; *Tadić* Appeal Judgement, para. 227. *See also Stakić* Appeal Judgement, para. 64; *Brđanin* Appeal Judgement, para. 364.
[22] *Stanišić and Simatović* Appeal Judgement, para. 77; *Tadić* Appeal Judgement, para. 228. *See also Stakić* Appeal Judgement, para. 65; *Brđanin* Appeal Judgement, para. 365; *Krajišnik* Appeal Judgement, paras 200-208, 707.

> or more of the persons used by the accused (or by any other member of the JCE) in order to carry out the objective element 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.[23]

18. It is unquestionable that the above case law on JCE offers the legal standard from which to assess whether the "Harhoff Standard" presents any deviation that is more than a mere disagreement with the law[24] as alleged by Stanišić and Župljanin and could have lead a reasonable observer to apprehend of a bias that could rebut the impartiality of Judge Harhoff.

19. In the Letter, Judge Harhoff explained what he perceived to be a change in the Tribunal's JCE jurisprudence following the acquittals in the *Gotovina and Markač* Appeal Judgement, the *Perišić* Appeal Judgement and the *Stanišić and Simatović* Trial Judgement.[25] He further states that it has been a "set practice" at the Tribunal that military commanders were held responsible for war crimes that their subordinates committed during the war in the former Yugoslavia from 1992 to 1995.[26] He later added however, that the commanders must have had a direct *intention* to commit crimes and not just have had knowledge or suspicion that the crimes were or would be committed. [27] He continued that, the Tribunal has taken a significant step back from its position of making commanders responsible for their subordinates' crimes without proving that they knew nothing about them. According to him, that change has reduced the theory of JCE from contribution to crimes, to demanding a direct intention to commit crimes and that the acceptance of the crimes being committed is no longer sufficient. In his view, most of the commanding officers would walk free from the Tribunal. Judge Harhoff asserted that he has always presumed that it was right to convict leaders for the crimes committed with their knowledge within a framework of a common goal. He added that "we have convicted these participants who … had showed *(sic!)* that they agreed with the common goal" and "had contributed to achieving the common goal without having to specifically prove that they had a direct intention to commit every single crime to achieve it." He wondered how to explain to the victims that the Tribunal can no longer convict the participants of a JCE, unless the judges can justify that the participants in their common goal actively and with direct intent, contributed to the crimes.

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[23] *See e.g. Šainović et al.* Appeal Judgement, para. 1061. *See also Brđanin* Appeal Judgement, paras 365, 411 and *Kvočka et al.* Appeal Judgement, para. 83, *referring to Tadić* Appeal Judgement, paras 204, 220, 228; *Vasiljević* Appeal Judgement, para. 99.

[24] Stanišić Additional Appeal Brief, paras 65-71; Župljanin Additional Appeal Brief, paras 11, 13; Stanišić Additional Reply Brief, para. 34. *See also* Appeal Hearing, 16 Dec 2015, pp. 212-213. Župljanin also asserts that Judge Harhoff should have expressed any reservations on the jurisprudence openly and judicially in a dissenting opinion. *See* Župljanin Additional Reply Brief, paras 17-21. *See also* Stanišić Additional Reply Brief, para. 36.

[25] *See* Exhibit 1DA1, p. 3. *See also* Exhibit 1DA1, pp 1-2.

20. I note that as they are presented in the Harhoff Letter, the requirements for conviction under JCE do not accurately reflect the elements of JCE, as developed by the Tribunal and recalled above. In particular, the emphasis put on the "just knowledge or suspicion that the crimes were or would be committed" ostensibly deviates from the requirement of "shared intent" of the subjective element for JCE I.[28] The Letter also seems to discuss the "contribution" which is part of the objective element and the "intent" which is rather characteristic of the subjective element, as if they were interchangeable. This approach again misrepresents the Tribunal's jurisprudence on JCE. Moreover, the assertion in the Letter according to which JCE is reduced from "contribution to crimes" to "demanding a direct intention to commit crime and not just acceptance of the crimes being committed", the former of which being the objective element and the latter suggesting the subjective element, is not clear. This statement is also misleading in the sense that it could allow the reader to wrongly believe that before autumn 2012, contribution was enough to convict an accused person for JCE, without having to prove the subjective element. The Letter also gives the incorrect impression that, regarding the subjective element of the JCE, a lower standard of a mere "acceptance" by an accused person of the crime committed", can be used instead of the higher standard of the "shared intent" as properly required. Furthermore, Judge Harhoff's reference to "direct intention" seems to imply that as a result of what he perceives to be a change, the jurisprudence of the Tribunal henceforth requires proof that the accused intends to commit "every single crime", whereas such a requirement has never formed part of either the objective or the subjective elements of a JCE even in the Tribunal's recent jurisprudence.[29]

21. Based on the above analysis, I am of the view that Judge Harhoff's comments in the Letter substantially deviate from the Tribunal's jurisprudence on JCE and can be seen to nurture unfairness towards accused persons. If it is found that the unfair "Harhoff Standard" in the Letter was applied by the Trial Chamber, the right of Stanišić and Župljanin to a fair trial would indeed have been violated.

3. The Reasonable Observer Test to the Standard of JCE in Stanišić and Župljanin Trial Judgement

22. The issue of Judge Harhoff's impartiality at stake in this case, is certainly not one of a theoretical nature and resolving it requires going far beyond a mere recitation and recollection of

[26] Exhibit 1DA1, p. 1.
[27] Exhibit 1DA1, p. 2.
[28] *See above*, para. 4.
[29] *See e.g. Popović et al.* Appeals Judgement, para. 1615 in which the Appeals Chamber reiterated that participation of an accused in a JCE need not involve the commission of a crime, but that it may take the form of assistance in, or contribution to, the execution of the common objective or purpose.

relevant legal provisions such as Article 13 and 21 of the Statute of the Tribunal. As the Majority rightly recalls in paragraph 43, the apprehension of bias test reflects the maxim that "justice should not only be done, but should manifestly and undoubtedly be seen to be done" and is founded on the need to ensure public confidence in the judiciary. However, the Majority stops its analysis of that maxim here, which, in my view, is rather the point where the discussion should have started in order to demonstrate whether justice could be seen to have been manifestly and undoubtedly done in the Stanišić and Župljanin Trial Judgement. In this case where the Trial judgement was already delivered, the best way to see whether justice has been done is to assess if it is the "Harhoff Standard" found to be erroneously deviating from the Tribunal's jurisprudence and promoting unfairness that has been applied in the Stanišić and Župljanin Trial judgement.

23. I observe that when considering how the Trial Chamber undertook its assessment of JCE, it set out the correct standard for JCE in its summary of the applicable law.[30] I further note that in applying that correct JCE standard to the facts before it, the Trial Chamber first made initial legal findings on the crimes alleged to have been committed in the 20 municipalities, before considering the mode of liability.[31] The Majority should have assessed the Trial Chamber's findings on these crimes, and then considered whether a reasonable observer would find that the "Harhoff Standard" as presented in the Letter was applied in the Trial Judgement, which would necessarily lead to the violation of Stanišić's and Župljanin's fair trial rights.

24. With regard to the Trial Chamber's second stage of considering JCE as a mode of liability, it examined in detail the existence of a common plan or design,[32] and the individual criminal responsibility of Stanišić and Župljanin. A careful review of the JCE standard utilized, and in particular both the objective and subjective elements used in its analysis, reveals that in convicting Stanišić and Župljanin through participation in a JCE, the Trial Chamber did not use the lower and unfair "Harhoff Standard" of the subjective element. Instead, the Trial Chamber applied the correct higher JCE standard throughout its assessment of the evidence, specifically in its analysis of Župljanin's conduct in furtherance of the JCE,[33] his membership of the JCE,[34] and his JCE

[30] *See* Trial Judgement, vol. 1, paras 99-106.
[31] *See* Trial Judgement, vol. 1, paras 212-228 (Banja Luka), Trial Judgement, vol. 1, paras 275-285 (Donji Vakuf), Trial Judgement, vol. 1, paras 340-350 (Ključ), Trial Judgement, vol. 1, paras 481-494 (Koto Varoš), Trial Judgement, vol. 1, paras 685-703 (Prijedor), Trial Judgement, vol. 1, paras 805-817 (Sanski Most), Trial Judgement, vol. 1, paras 873-883 (Teslić), Trial Judgement, vol. 1, paras 931-938 (Bijeljina), Trial Judgement, vol. 1, paras 974-986 (Bileća), Trial Judgement, vol. 1, paras 1034-1044 EB (Bosanski Šamac), Trial Judgement, vol. 1, paras 1111-1122 (Brčko), Trial Judgement, vol. 1, paras 1185-1193 (Doboj), Trial Judgement, vol. 1, paras 1240-1251 (Gacko), Trial Judgement, vol. 1, paras 1281-1289 (Ilijaš), Trial Judgement, vol. 1, paras 1349-1359 (Pale), Trial Judgement, vol. 1, paras 1408-1417 (Višsegrad), Trial Judgement, vol. 1, paras 1491-1501 (Vlasenica), Trial Judgement, vol. 1, paras 1548-1556 (Vogošća), and Trial Judgement, vol. 1, paras 1672-1691 (Zvronik).
[32] *See* Trial Judgement, vol. 2, paras 128-316.
[33] *See* Trial Judgement, vol. 2, paras 375-488.
[34] *See* Trial Judgement, vol. 2, paras 489-517.

liability.[35] Similarly, for Stanišić, the Trial Chamber deployed the correct higher JCE standard with regard to his alleged participation in the JCE,[36] and his membership of the JCE.[37] Only after having made findings on crimes committed in each municipality, and having assessed Stanišić's and Župljanin's JCE liability, did the Trial Chamber conclude whether those crimes could be imputed to Stanišić, Župljanin or other members of the JCE.[38] I therefore conclude that in itself, this approach demonstrates to a reasonable observer that the Trial Chamber did not in fact employ the unfair "Harhoff Standard" for conviction. The Trial Chamber instead, looked in detail at every element of JCE based on the Tribunal's correct standard of the objective and subjective elements before reaching its final conclusion. Accordingly, I find that a reasonable observer would retrospectively not apprehend any bias in the Trial Chamber's approach in the Stanišić and Župljanin case.

25. Lastly, it appears that none of the Trial Chamber judges, including Judge Harhoff himself, expressed or appended any individual view in favour of a lower standard as found in the Letter. Therefore, on the basis of the above analysis, the correct and higher standard of JCE as identified in the Trial Judgement has been applied unanimously and uniformly by all three Judges of the Trial Chamber in Stanišić's and Župljanin's case. This means that, even if it is assumed that at the time of the conviction of Stanišić and Župljanin, Judge Harhoff was already incubating views based on the lower threshold of JCE which he disclosed in the Letter, he did not apply them and did not sway the other Judges in anyway towards that position in the present case. My argument demonstrates that, contrary to what Judge Harhoff asserted in the Letter, the reasonable observer could be satisfied that there is no merit in the argument that the Tribunal were predisposed to convict accused persons. Consequently, the observation made by the Appeals Chamber, as invoked by Stanišić and Župljanin,[39] that there is a realistic possibility that they may not have been tried by three impartial judges[40] is not established. Likewise, the allegations made by Stanišić and Župljanin

[35] *See* Trial Judgement, vol. 2, paras 518-530.
[36] *See* Trial Judgement, vol. 2, paras 532-534.
[37] *See* Trial Judgement, vol. 2, paras 729-781.
[38] *See* Trial Judgement, vol. 2, paras 801-805 (Banja Luka), Trial Judgement, vol. 2, paras 806-809 (Bijeljina), Trial Judgement, vol. 2, paras 810-814 (Bileća), Trial Judgement, vol. 2 815-818 (Bosanski Šamac), Trial Judgement, vol. 2, paras 819-823 (Brčko), Trial Judgement, vol. 2, paras 824-827 (Doboj), Trial Judgement, vol. 2, paras 828-832 (Donji Vakuf), Trial Judgement, vol. 2, paras 833-836 (Gacko), Trial Judgement, vol. 2, paras 837-840 (Ilijaš), Trial Judgement, vol. 2, paras 841-845 (Ključ), Trial Judgement, vol. 2, paras 846-850 (Koto Varoš), Trial Judgement, vol. 2, paras 851-854 (Pale), Trial Judgement, vol. 2, paras 855-859 (Prijedor and Skender Vakuf), Trial Judgement, vol. 2, paras 860-864 (Sanski Most), Trial Judgement, vol. 2, paras 865-869 (Teslić), Trial Judgement, vol. 2, paras 870-873 (Višsegrad), Trial Judgement, vol. 2, paras 874-877 (Vlasenica), Trial Judgement, vol. 2, paras 878-881 (Vogošća), Trial Judgement, vol. 2, paras 882-885 (Zvronik).
[39] Joint Motion on Behalf of Mićo Stanišić and Stojan Župljanin Seeking Expedited Adjudication of Their Respective Grounds of Appeal 1Bis and 6, 25 August 2014, para. 3. *See also* Stanišić Additional Appeal Brief, paras 2-10 and Župljanin Additional Appeal Brief, paras 1, 34.
[40] Decision on Mićo Stanišić's Motion Seeking Admission of Additional Evidence Pursuant to Rule 115, 14 April 2014, para. 22.

that the Letter rebuts the impartiality of Judge Harhoff and that they have not been tried by a Trial composed of independent judges[41] are unfounded.

26. In conclusion, based on the above analysis on the modalities of the reasonable observer's standard, the discussion of the Harhoff Letter in light of the Tribunal's jurisprudence and the JCE standard applied in the Trial Judgement by the Trial Chamber, including Judge Harhoff, the participation of the latter in the Trial judgement cannot be said to have violated Stanišić's and Župljanin's fair trial rights.

C. Failure to Crystallise the Distinction Between the Political Goal and Common Criminal Purpose of the JCE

27. I consider that the Majority has regrettably missed the opportunity in this Judgement to set out clearly the distinction between the legitimate non-criminal political goal in existence at the time of the Indictment and the common criminal purpose of the JCE. Given that this issue has never been addressed by the Tribunal, this Judgement was a unique opportunity to consider this important matter. Discussion on this distinction would have been instructive in clarifying and revisiting the Appeals Chamber's approach to a number of complex issues surrounding Joint Criminal Enterprise, in the interest of a well reasoned development of international criminal law and justice. Given the Majority's failure to seize this opportunity, I feel it incumbent upon myself to do so and express my position.

28. As the Trial Judgement made plain, the aim of the Bosnian Serb leadership in 1991 was for Serbs to live in one state with other Serbs from the former Yugoslavia.[42] Such a goal is political and not criminal by nature. Of course, one may question this goal, but this does not mean that is criminal in and of itself. Separate from this political goal, a programme was devised to *ethnically cleanse* regions of the former Yugoslavia by permanently removing non-Serb peoples, meaning Bosnian Muslims and Bosnian Croats. This plan by some members of the Bosnian Serb leadership to ethnically cleanse regions was undoubtedly criminal *per se* and not merely political. It alone embodied the "common criminal purpose" to be achieved through the commission of crimes found in the ICTY Statute. Curiously however, the Trial Judgement seems to imply that because crimes were committed as a means to achieve the common criminal purpose beside the political goal, then the latter was also criminal.[43] The Majority now upholds the Trial Chamber's line of thought, from which I strongly differ. Logically, I am of the view that the crimes were committed to further the

[41] *See* Stanišić Additional Appeal Brief, paras 2-10, 53-105 106-131 and Župljanin Additional Appeal Brief, paras 1-12, 28-34.
[42] Trial Judgement, vol. 2, para 309 as stated in Appeal Judgement, para. 63.

"common criminal purpose" of cleansing the said populations from the relevant regions, as a means to achieve the non-criminal political goal of Serbs living on one territory. In other words, the "common criminal purpose" is rather the operative link between the crimes committed and the non-criminal political goal of having Serbs living on one territory. Hence, whilst both the common criminal purpose and the political plan may share certain elements, it is a patent error to treat them as one and the same. In my view, the Bosnian Serb leadership's aim for all Serbs to live in one territory remained a non-criminal, political goal throughout the entirety of the conflict in the former Yugoslavia. Indeed, that political goal could have been achieved by having all Serbs living in one territory alongside other non-Serb populations or ethnic groups such as the Bosnian Muslims and Bosnian Croats. However, among other things, the speeches of Dutina (SDS meeting on 15 October 1991), of Kuprešanin (25 February 1992 session of the BSA) and of Karadžić (BSA meeting on 18 March 1992) consistently illustrate that such cohabitation was not envisaged and their creation of a plan to ethnically cleanse areas of these non-Serbs as summarised by the Trial Chamber in paragraph 767 of Volume 2 of the Trial Judgement, was patently criminal. As the political goal and the common criminal purpose ran parallel to each other, the Majority fails to take the necessary precaution to use language which always draws a clear distinction between the two. If the Majority had established such a difference between both, it would have corrected the confusion already created by the language in the Trial Judgement itself, according to which because crimes were committed in furtherance to the common criminal purpose beside the political goal, then the latter was also criminal. As ambiguous as its analysis may be, the Trial Chamber at paragraph 313 of Volume 2 of the Trial Judgement, still seems to define the common criminal purpose as the plan to "permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian State". The approach of the Majority in paragraph 69 seems to confirm this definition of the common criminal purpose, which is manifestly distinguishable from the non-criminal political objective.

29. Additional difficulties arise from the Trial Chamber's language, which as opposed to referring solely to the "common criminal purpose" where appropriate, repeatedly refers interchangeably to a "common plan" without the adjective "criminal".[44] This unfortunate language bears the risk of conflating the non-criminal, political goal (all Serbs living in one territory) with the common criminal purpose (ethnically cleansing non-Serbs). This confusion is compounded at paragraph 63 of the Majority analysis, in its attempt to summarise the Trial Chamber's findings at paragraph 313 of Volume 2 of the Trial Judgement. Here the Majority appears to aggregate the non-

[43] *See e.g.* Trial Judgement, vol.2, paras 311, 313.
[44] *See, inter alia,* Trial Judgement, vol. 2, paras 313, 314, 494, 522, 523.

criminal political goal and the crimes committed to conclude on the existence of a JCE, thus not capturing this necessary distinction.

30. Instead of directly quoting paragraph 313 of Volume 2 of the Trial Judgement, where the Trial Chamber found that the objective of the JCE was to "permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state through the commission of crimes", paragraph 63 of the Majority's reasoning speaks of the removal of non-Serbs through the commission of "*[JCE I crimes]*". The Majority hence inserts this language of "*JCE I crimes*" at a place where the Trial Chamber itself had not used it and has only referred to "crimes".

31. As will be explained below, the use of terms such as "objective of the JCE" in paragraph 526 of the Majority Judgement adds to this ambiguity. By not differentiating between both, the Majority's approach may bear the risk of supporting Stanišić's Second Ground of Appeal, as well as his Third and Fourth Ground of Appeal in part, through the equation of all members of the Bosnian Serb leadership, with members of the JCE. In addition to this point, I have some issue with the Majority's position that the Trial Chamber did not equate the policies of the Bosnian Serb leadership, as such, with the "objective of the JCE".[45] To my mind, the "objective of the JCE" is not at issue here. The issue here is the existence, or not, of a *common criminal purpose* which amounts to or involves the commission of crimes under the Tribunal's Statute as correctly recalled at paragraph 70 of the Majority Judgement. The term "objective of the JCE" is therefore misleading, especially, considering that similar language is used for the "aim" or "objective" of the non-criminal political goal. The Majority should therefore have used more precise terminology in line with the settled terms such as the "existence of a common plan." Also, given my position that the non-criminal political goal and common criminal plan should be clearly separated, paragraph 69 of the Majority reasoning should not have relied on the political goal as a factor used by the Trial Chamber to determine the existence of a common criminal plan, but should instead spell out in clear terms what "other factors" the Trial Chamber relied upon. For not having done so, the Majority continues to entertain the vexing confusion already made by the Trial Chamber between the "non-criminal political goal" and the "common criminal purpose".

32. Taken individually or in conjunction, I consider that the Majority's approach does not contain a reasoned opinion which would have unequivocally distinguished between the "non-criminal political goal" and the "common criminal purpose", as demonstrated above. This failure, in my view, taints the Majority's analysis and amounts to a discernable error of law.

[45] Judgement, para. 526 *referring to* Appeal Judgement, paras 63-71.

D. Failure to Distinguish Between Membership of the Bosnian Serb Leadership and Membership of the JCE

33. Stanišić argues that the Trial Chamber failed to adequately differentiate between membership of the Bosnian Serb leadership, and membership of a joint criminal enterprise with the common criminal purpose of removing non-Serbs from areas of Bosnia and Herzegovina through the commission of crimes contained within the Tribunal's Statute. [46]

34. Instead of finding that the Trial Chamber did make that confusion and rectify it, the Majority rather takes the position that the Trial Chamber did in fact make this distinction and applied it throughout its assessment of the evidence.[47] But the references to the Trial Chamber findings which the Majority resorts to are in and of themselves ambiguous and confirm that the confusion does exist. In particular, I note that paragraph 81 of the Majority Judgement cites paragraphs 311 and 312 of Volume 2 of the Trial Judgement as support for the position that the Trial Chamber did make the distinction between members of the Bosnian Serb leadership and members of the JCE. The Majority relies on the Trial Chamber's use of the term "majority" of the Bosnian Serb leadership to demonstrate that "not all" members of that Bosnian Serb leadership were necessarily considered members of the JCE. However, reviewing these paragraphs of the Trial Judgement, I struggle to see where this distinction is made and these paragraphs even appear to contradict this suggestion. Paragraph 311, for example, suggests that whilst there were conflicts and disagreements between different levels of the Serb authorities "**they all shared** and worked towards the same goal under the Bosnian Serb leadership". This finding by the Trial Chamber that "they all shared" the same goal appears to *oppose* the conclusion by the Majority that the Trial Chamber was of the view that at least *some* members of the leadership did not share that goal and that culpability was therefore not attributed to "all" Bosnian Serb leadership. This contradiction can only be rectified if the two following issues, which the Majority unfortunately failed to address, were clarified: (i) the "Serb authorities" that the Trial Chamber referred to as "all sharing the same goal" are distinct from the "Bosnian Serb leadership; and (ii) the "goal under the Bosnian Serb leadership referred to by the Trial Chamber as having been shared by "all those Serb authorities" is the non-criminal political one and not the "common criminal purpose". Furthermore, paragraph 312 of Volume 2 of the Trial Judgement relied on, in paragraph 81 of the Majority analysis, could be read to allude to the fact that the Trial Chamber acknowledges that on some occasions certain Serb leaders stated that "their aim was not an ethnically pure state or that international humanitarian law should be respected" However, the Trial Chamber does not subsequently recognize that these Serb

[46] Appeal Judgement, para. 79.
[47] Appeal Judgement, paras 81-82.

leaders, taking distance from the common criminal purpose, should be absolved of criminal culpability. Instead, the Trial Chamber suggests that because these diverging statements did "not reflect the true aims of the majority of the Bosnian Serb leadership", the Serb leaders expressing them shall also be liable of JCE, on the same footing as the members of the JCE.

35. Based on these contradictions and weaknesses in paragraphs 311 and 312 of Volume 2 of the Trial Judgement, the Majority should have relied solely on references to the Trial Judgement where the drawing of the distinction between "members of the Bosnian Serb leadership" and "members of the JCE" is clearer. Namely, in paragraph 314 of Volume 2 of its Judgement the Trial Chamber found that Branko Đerić (RS Prime Minister), Milan Trbojević (RS Deputy Prime Minister), and Bogdan Subotić (RS Minister of Defence) were members of the Bosnian Serb leadership, but did not find them to be members of the JCE.[48] These findings, in my view, unequivocally refute Stanišić's argument that collective responsibility was attributed to all solely by virtue of membership of the Bosnian Serb leadership.

36. At paragraph 217 of its analysis, the Majority also entertains a similar contradiction by trying to distinguish the membership of the Bosnian Serb leadership from that of the JCE, but at the same time conflating them with each other. An illustration is that the Majority cites paragraph 311 of Volume 2 of the Trial Judgement, to support the distinction, while it invokes the same paragraph by recalling that even though at times there were conflicts between the various entities, including the crisis staffs, "they all shared and worked towards the same goal under the Bosnian Serb leadership".[49] Obviously there are serious contradictions and inconsistency in the Majority's approach to use paragraph 311 of Volume 2 of the Trial Judgement to attempt to establish that the Trial Chamber differentiated between the "Bosnian Serb leadership" and the members of the JCE, but to resort to the same paragraph 311 of Volume 2 of the Trial Judgement to support the assimilation of both.

37. That contradiction not only vitiates the Majority's reasoning, but makes it legally non-existent. I am therefore of the view that the Majority has committed a failure to provide a reasoned opinion, which amounts to a discernable error of law.

E. Foreseeability of the Crimes Referred to by the Majority as "JCE III Crimes"

38. Concerning the foreseeability of the crimes it refers to generally as "JCE III crimes", the Majority have missed the opportunity to fully engage with Stanišić's "cogent reasons to depart"

[48] *See* Trial Judgement, vol. 2, para. 314.
[49] Referring to Trial Judgement, vol. 2, paras. 311, 735.

submissions and to uphold the necessary standard of review, when considering the Trial Chamber's approach. Furthermore, the Majority's finding is troubling when it characterises merely as "artificial" Stanišić's distinction on whether the foreseeability of JCE III crimes should be "objectively" or "subjectively" assessed.

39. With respect to Stanišić's "cogent reasons to depart" submissions examined at paragraph 598 in the Majority's analysis, I find the dismissal of the submissions to be superficial. The Majority is correct when it recalls that "[i]nsofar as Stanišić relies upon the jurisprudence of the STL and SCSL...it is not bound by the findings of other courts – domestic, international, or hybrid". However, the Majority seems to be on the defensive when it adds that "... even though it will consider such jurisprudence, it may nonetheless come to a different conclusion on a matter than that reached by another judicial body". I have unsuccessfully struggled to convince myself of this reasoning by the Majority. I believe that the arguments raised by Stanišić should have been entertained to allow a full discussion on the point, as it affords the Appeals Chamber the opportunity to re-examine its stance on this issue and explain its position. In my view, it is incumbent on the Appeals Chamber to examine the nature of the common criminal purpose which forms the JCE. In the case where the common criminal purpose for JCE I is substantially different from a *dolus specialis* required for an ensuing JCE III crime, I may have some difficulty in imputing those specific intent JCE III crimes to members of a JCE, without any further convincing demonstration. But in this case, the "common criminal purpose" to ethnically cleanse parts of Bosnia and Herzegovina of non-Serbs is at its heart "discriminatory". Therefore, the specific intent of "discrimination" required for persecutions as a crime against humanity, which Stanišić is charged with under JCE III, is already ostensibly encompassed in the common criminal purpose of the JCE I. Consequently, it is not necessary to make a separate explicit finding as to whether Stanišić possessed the specific discriminatory intent concerning the persecution crimes before attaching the JCE III liability to him. If this line of reasoning was followed by the Majority, then there will absolutely be no need to examine the STL and SCSL findings on JCE III or the Rome Statue of the ICC. This approach will obviate recourse to the cursory and doubtful arguments used by the Majority to dismiss the case law and provisions of those jurisdictions.

40. In addition, the approach at paragraphs 616 and 617 of the Majority Judgement is questionable in law. Specifically, it concludes that, despite not making explicit findings on murder, as a crime against humanity and murder, as a war crime, the Trial Chamber "considered" that these crimes were foreseeable and that Stanišić willingly took the risk. In my view the term "considered" shows clearly that the Trial Chamber did not make a "finding" of this issue. The Majority's approach therefore blatantly falls below and even violates the standard of review on appeal. This line of conclusion appears to be a dangerous attempt on the part of the Majority to read the mind of

the Trial Chamber instead of reviewing its reasoning as per the law, and therefore amounts to an error of law.

41. Furthermore, the Majority's approach is laconic in dismissing Stanišić submissions on whether the natural and foreseeable consequence for JCE III emanates from the common criminal purpose (objective) or from the individual member of the JCE (subjective). I consider that the obviously defensive dismissal of this argument merely as "artificial" by the Majority at paragraph 622 truncates this Tribunal's jurisprudential evolution and is ultimately an inadequate approach to deal with the matter at hand. Regardless of the time when Stanišić is meant to have possessed the intent of the JCE crimes or to have acquired knowledge of the crimes being committed against Muslims and Croats, a finding on the foreseeability of the crimes charges under JCE III is flawed if it is not based on a well defined distinction between the various crimes. In my view, the answer may vary between "objective" and "subjective" foreseeability depending on the specific crimes to which the Trial Chamber attaches the JCE III liability. The fact that the JCE III crimes are not differentiated in the Majority's reasoning, but instead are referred to collectively as "JCE III crimes" is therefore inapposite and confusing.[50] For the purpose of demonstration, it should be recalled that according to the Majority in paragraphs 6 and 61 of the Judgement, the Trial Chamber attached liability under JCE III for the following three categories of crimes:

a. persecution as a crime against humanity through the underlying acts of killings, torture, cruel treatment, and inhumane acts, unlawful detention, establishment and perpetuation of inhumane living conditions, plunder of property, wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings, and imposition and maintenance of restrictive and discriminatory measures as a crime against humanity (Count 1),

b. murder, torture, and cruel treatment as violations of the laws or customs of war (Counts 4, 6 and 7) and

c. murder, torture, and inhumane acts as crimes against humanity (Counts 3, 5 and 8).

42. As explained at paragraph 39 above in this document, the crime of persecutions (Count 1) is based on the *dolus specialis* of discrimination, whilst discrimination is also and already an integral element of the JCE common criminal purpose. As a result, there exists a clear objective link between the common criminal purpose based on "discrimination", and the crime of persecution, which also entails "discrimination". The latter is then the objectively natural and foreseeable

[50] Examples could be found at paragraphs 626, 628 and 634 of the Majority Judgement.

consequence of the former. Because the JCE members necessarily share this common criminal purpose based on "discrimination", each of them, including Stanišić, is individually liable under JCE III for persecution as a crime against humanity involving the same "discrimination" as *dolus specialis*. Therefore, it is superfluous to seek to establish whether for Stanišić, as an individual, but member of the JCE, persecution based on the specific intent of "discrimination" is subjectively a natural and foreseeable consequence of that discrimination-based criminal purpose which he shares. However, this element of discrimination, and therefore the objective link with the discrimination-related common criminal purpose, does not exist for the non-discrimination based crimes of murder, torture, and cruel treatment as violations of the laws or customs of war (Counts 4, 6, and 7) and of murder, torture, and inhumane acts as crimes against humanity (Counts 3, 5, and 8). In the absence of this objective element of natural and foreseeable consequence between these crimes and the discrimination-based common criminal purpose, and failing any Trial Chamber's finding, it is incumbent on the Appeals Chamber to move to a "subjective level" in order to examine whether the acts or conduct of Stanišić demonstrate that such crimes were a natural and foreseeable consequence *for him*, as an individual. It is only if it is demonstrated that these crimes were naturally foreseeable for him, that the Appeals Chamber could uphold convictions based on liability under JCE III for those crimes. In my view, the Trial Chamber's findings on Stanišić's acts and conduct such as the deployment of police units to participate in operations, the involvement of police officers into the managements of detention camps, where the police had the proclivity to commit crimes, could be demonstrative enough to ground a finding that those crimes were also natural and foreseeable consequences of the common criminal purpose for him.

43. By amalgamating all crimes under an arbitrary category named "JCE III crimes" and attaching a blanket liability of JCE III to all of them together, without demonstrating to what extent each of the crimes has a nexus with that mode of liability, the Majority fails to provide a reasoned opinion and thus commits a discernable error of law.

F. Appropriation of Property as an Underlying Act of Persecution

44. I would have dismissed Župljanin's fifth ground of appeal relating to the crime of persecution[51] and upheld his conviction. I cannot however, agree with the Majority's approach to the "appropriation of property" as an underlying act of persecution which I find to be inconsistent both with the Tribunal's jurisprudence and international humanitarian law such that it amounts to a discernable error of law on the part of the Majority.

[51] Župljanin Additional Appeal Brief, paras 278–282.

45. First, at paragraph 526 of Volume 2 of the Trial Judgement, the Trial Chamber found that the imposition of a currency limit of 300 DM on non-Serbs constitutes "the crime of appropriation of property, as an underlying act of persecution, as a crime against humanity". However, reviewing paragraph 528, footnotes 1876 and 1877 of Volume 2 of the Trial Judgement and then the disposition at paragraph 956 of Volume 2 of the Trial Judgement it appears that Župljanin was rather convicted of "plunder" (and not for the "appropriation of property") as an underlying act of persecution. The definition of plunder which has been established in the jurisprudence of the Tribunal, is the "extensive, unlawful, and wanton appropriation of property".[52]It has therefore been established that the "appropriation of property" is just one element of plunder, and whilst the Trial Chamber entered findings for this element, it failed to enter findings for the "wanton", "unlawful" and "extensive" elements. As per the jurisprudence of the Tribunal, the Trial Chamber is required to make findings on those facts which are essential to the determination of guilt on a particular count.[53] As a result, the Trial Chamber has committed a discernable error of law for not having provided a reasoned opinion or making finding on these essential elements of the crime of persecution.

46. This discernable error of law, of which the Appeals Chamber should have seized itself *proprio motu*, does not emerge in the Majority's analysis. Instead, the Majority uses the term "appropriation of property" interchangeably with "plunder" and at times in addition to it.[54] The jurisprudence of this Tribunal does not provide a basis for making the "appropriation of property" an underlying act of persecution in and of itself. Even the recognition of the "extensive destruction and appropriation of property" as a crime under international humanitarian law requires that the "destruction and appropriation of property" be "extensive".[55] Therefore, without that element of "extensiveness", there is no legal basis in international humanitarian law for elevating the "appropriation of property" *per se* to a crime. Furthermore, absent any findings, not only on that element of "extensiveness", but also on the "wanton" and the "unlawful" elements, the Tribunal's jurisprudence does not support raising the "appropriation of property" as found by the Trial Chamber to a crime and also not to an underlying act of persecution *per se*. This is particularly not permissible in this case, since as mentioned above, the Trial Chamber actually convicted Župljanin of *plunder* as a crime against humanity,[56] and not of "appropriation of property", without having assessed the existence of the other remaining elements which together with the "appropriation of

[52] *Blaškić* Appeal Judgement, para. 144.
[53] *Stanišić and Simatović* Appeal Judgement, para. 311 *referring to Popović et al.* Appeal Judgement, para. 1906.
[54] *See* Appeal Appeal Judgement para. 545; para. 1070 "...such as appropriation *or* plunder of property", footnote 3547.
[55] *See e.g.* Article 50 of the 1949 Geneva convention I, Article 51 of the 1949 Geneva Convention II and Article 147 of the 1949 Geneva Convention IV recognize the "extensive destruction and appropriation of property" as grave breaches.
[56] *See* Trial Judgement, vol. 2, p. 312.

property" would have established the crime of "plunder" as per its definition in the Tribunal's jurisprudence.

47. An examination of the evidence on record reveals however, that the remaining elements of "wanton", "unlawful" and "extensive" are indeed made out. The "unlawful" element of the plunder stems from the 31 July 1992 Order itself, since its content can be said to violate international law on the rights of property[57] and is therefore clearly "unlawful". "Wanton" is defined as "deliberate and unprovoked"[58] whilst "extensive" is referred to as "covering or affecting a large area".[59] Using these two definitions, I believe the "wanton" element can be evidenced through the fact that the appropriation of property in these circumstances was intentional and carried out without provocation by the victims. The "extensive" nature of the appropriation of property as an element of the plunder can be established through the large number of non-Serbs who were the victims of the unlawful Order and the number of municipalities that were affected, as evidenced by the trial record.

48. Second, whilst I agree in the context of this case that the facts demonstrate that the crime of plunder is of equal gravity to other Article 5 crimes, I firmly disagree with the Majority's approach to the "equal gravity" test. Once the *actus reus* and *mens rea* elements for the crime of persecutions are fulfilled,[60] it falls to be determined on a case-by-case basis whether the act in question can be said to be of equal gravity to the other crimes listed under article 5 of the ICTY statute.[61] A number of factors can be taken into account when undertaking this analysis, however, it is my view that there is a dangerous risk of double-counting if caution is not exercised. This may occur through the use of *crimes themselves*, already charged under the various modes of liabilities (in this case JCE I, JCE III and Ordering) to determine the equal gravity of the plunder. Neither do I feel it is correct to use the *elements of crimes* already determined in this case to assess the equal gravity of the plunder, as such approach could also lead to double-counting. The Majority allude to "the context in which

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[57] The right to property is enshrined in several international and regional human rights instruments, *see* for example Universal Declaration of Human Rights (1948), Art. 17(1) and (2); Convention relating to the Status of Refugees (1951), Art. 13, 18, 19, 29 and 30: Convention relating to the Status of Stateless Persons (1954), Art. 13, 18, 19, 29 and 30; Convention on the Elimination of All Forms of Racial Discrimination (1965) Art. 5; European Convention on Human Rights (1952) Art. 1 Protocol 1; The American Convention on Human rights (1969) Art. 21; The African Charter on Human and Peoples' Rights (1981) Art. 14.

[58] Wanton, adj. and n.". OED Online. March 2016. Oxford University Press. http://www.oed.com/view/Entry/225544?rskey=AyheYO&result=1 (accessed June 07, 2016).

[59] Extensive, adj.". OED Online. March 2016. Oxford University Press. http://www.oed.com/view/Entry/66943?redirectedFrom=extensive (accessed June 07, 2016).

[60] To establish the *actus reus* of persecution in the present case, the Trial Chamber was required to establish that the underlying acts discriminated in fact, denied or infringed upon a fundamental right laid down in international customary or treaty law. For *mens rea*, what is required is establishing that the underlying act was deliberately carried out with discriminatory intent. *See e.g. Popović et al.* Appeal Judgement, paras 738, 762.

[61] *Blaškić* Appeal Judgement, para. 146.

this appropriation of property took place and the significance of its impact upon victims"[62] to demonstrate that the plunder in question was of equal gravity to the other Article 5 crimes, however this approach is flawed. To begin with paragraph 1074, the Majority simply recalls that a currency limit was put in place by Župljanin and cannot be classed as clarifying the "context" in which that plunder of property took place. At paragraph 1076 the Majority details that "...the appropriation in question took place in the context of forcible transfers and deportations..." however it is clear that, at least in the case of forcible transfers, this is a crime which has already been used to convict Župljanin under JCE.[63] Deportation can be said to be an element of a crime which also already forms the basis of a charge against Župljanin under JCE.[64] It is my view that the use of such crimes and elements of crimes to determine the equal gravity of the plunder exposes the Majority at best, to criticism based on incongruity and at worse, to serious reproach for double-counting.

49. Instead, the Majority should have relied solely on the *acts* surrounding the crime of plunder and their likely consequences to assess the equal gravity requirement. In order to do this, the equal gravity test as set out in *Kupreškić* and approved in *Blaškić* is most appropriate. Here, the Appeals Chamber determined that an act,[65] is of equal gravity to those listed under Article 5 of the ICTY Statute if it "constitutes an indispensable and vital asset to the owner" and if the removal of it "constitutes a destruction of the livelihood of a certain population".[66]

50. Using the *Kupreškić* test as the basis for a finding on the equal gravity in this case, it is indubitable in my mind that the crime of plunder with value above 300 DM constitutes the removal of "vital assets" and is therefore of equal gravity to other Article 5 crimes. The assets in the present case were vital because during the war financial resources, perhaps more than any other ,were essential to the very survival of the targeted non-Serbs. They allowed people to acquire food, clothes, shelter and if possible, to move away from zones and regions where violent conflagrations are occurring. As such, the plunder of financial resources could even be viewed as a callous manoeuvre to bring about the death of victims as without them it would have been clear that they would have struggled to eat, clothe themselves, find shelter and move away from the fighting. These factors, or a combination thereof, would have been likely to bring about their deaths.

51. Third, I dissociate myself from the Majority's determination of Župljanin's claim that the appropriation was not "permanent" but rather temporary in nature. The Majority is correct when it

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[62] Appeal Judgement, para 1077.
[63] *See* Trial Judgement, vol. 2, para. 956. The Trial Chamber convicted Župljanin of Persecutions through the underlying acts of *inter alia* "Forcible transfer and deportation". *See also* Judgement, para. 6.
[64] *Ibid.*
[65] I note that in *Blaškić* the "act" was "destruction of property" *see Blaškić* Appeal Judgement, para. 149. In *Kupreškić* the "act" was "attacks on property" *see Kupreškić* Trial Judgement, para. 631.

finds in paragraph 1076 of the Judgement that the issue of permanence is "without basis".[67] However, there is an obvious inconsistency due to the fact that despite this finding, the Majority then proceeds to address the issue in the same paragraph. Not only does this approach appear to present a contradiction with the Majority's assertion that this argument is without basis, but it also gives the impression that Župljanin's position on the required permanence is in fact correct, as the Majority's choice to subsequently address his argument tacitly lends weight to it.

52. It can be reasonably inferred from the above analysis that the Majority has unfortunately entertained a regrettable error of law committed by the Trial Chamber. It should have instead, seized itself *proprio motu* and corrected this error, especially so given the seriousness of the crime of persecution as considered in the appraisal of the "gravity of the crimes" as an element of the sentencing.[68]

G. Sentencing

53. I do wish to express my humble disagreement with the Majority's approach to the alleged errors in assessing (i) the gravity of Stanišić's conduct (Stanišić's twelfth Ground of Appeal) and (ii) the aggravating factors (Stanišić's thirteenth Ground of Appeal) as well as (iii) the gravity of Župljanin's conduct (Sub-ground B of Župljanin's fourth Ground of Appeal) and (iv) the double-counting submissions (Sub-ground D of Župljanin's fourth Ground of Appeal).

54. Considering first the assessment of Stanišić conduct, the Majority correctly sets out that the Trial Chamber failed to explicitly reiterate in the sentencing section its findings on his conduct.[69] It also identifies this failure in relation to the form and degree of Stanišić's, participation in the JCE in the sentencing section of the Trial Judgement concerning the gravity of crimes.[70] In an attempt to address this lacuna, the Majority seeks, through the principle of reading the Trial Judgement "as a whole", to mine the Trial Chamber's findings on Stanišić's contribution to the JCE in order to fill out the brevity of the Trial Chamber's findings on the gravity of the offences, and in particular at paragraph 1107 the Majority relies on a number of general findings.

55. In paragraph 1107, the Majority concludes its "reasoning" as follows:

> The Appeals Chamber notes that with respect to Stanišić's participation in the JCE, the Trial Chamber made a wide range of findings throughout the Trial Judgement, including on his official

[66] *Blaškić* Appeal Judgement, para. 146, *citing Kupreškić* Trial Judgement, para. 631.
[67] Appeal Judgement, para 1076.
[68] *See* Trial Judgement, vol. 2, para. 946.
[69] Appeal Judgement, para. 1107.
[70] Appeal Judgement, paras 1107, 1108.

> position, his acts and conduct, his contribution to the JCE, and his *mens rea*. It recalls, further, that a trial judgement should be read as a whole. [Footnotes omitted].

56. By considering general findings from four random sections of the Trial Judgement, the Majority arguably oversteps the deference afforded to the Trial Chamber in the sense that it creates a patchwork of findings or, worse still, speculates on the Trial Chamber's opinion in order to compensate for its deficiencies. Paraphrasing the American architect Frank Lloyd Wright, according to whom an architectural mistake can be covered by "planting vines", the Majority has planted a doubtful invocation of the need to "read the Trial Judgement as a whole" in order to cover the Trial Chambers legal errors. Reading the Trial Judgement "as a whole" seems to be used by the Majority in this case to exonerate itself from strictly abiding by the principle of deference to the Trial Chamber, which is only aimed at admitting a finding or affirming a pattern of reasoning of the Trial Chamber. This principle cannot apply where there is no finding or reasoning of the Trial Chamber's to defer to. Instead, the Majority's approach goes beyond merely "reading" the Trial Judgement and enters into the realm of re-writing by linking sections of the Trial Judgement where the Trial Chamber itself did not make any explicit connection. Even on a generous reading of the impugned sections, there appears to be no inkling that the Trial Chamber intended to use the findings relied upon by the Majority in assessing the gravity of offences or aggravating circumstances.

57. It can be admitted that despite the lack of any explicit link made by the Trial Chamber between sections and the "gravity of offences" section, the Appeals Chamber can use the former to bolster the latter. The reasons for this approach should nevertheless have been markedly explained, as this method appears to use findings that could be deemed to be unrelated to the issue at hand or worse, can lead to the possibility of double-counting. Curiously, in support of its claim that the Trial Chamber considered "acts and conduct" in relation to gravity of offences the Majority relies upon paragraphs 544 to 728 of the Trial Judgement.[71] This reference suggests that *all* 184 paragraphs are relevant to this issue. However, reviewing just a few of these paragraphs for demonstration purposes, I fail to see the relevance of paragraphs 553 and 554 of the Trial Judgement in this context. In addition, several paragraphs within this same range (paragraphs 544 to 728), of the Trial Judgement are also used to bolster the aggravating circumstances section.[72] This approach of resorting to the same findings to establish the gravity of the offences and the aggravating circumstances seriously violates the principle prohibiting double-counting and should have been avoided. As it stands, this is undoubtedly an error of law on the part of the Majority.

[71] *See* Appeal Judgement, fn. 3665.

58. Similarly, with regard to Župljanin, I note that at paragraph 1148 of the Judgement, in the "gravity of offences section", the Majority takes a similar path of referring to previous Trial Chamber findings on contribution to the JCE and detailing the nature of his participation,[73] to support the sentencing section. This approach is repeated on the matter of "aggravating factors" at paragraph 1155 of the Judgement, where the Majority states that the Trial Chamber considered Župljanin's duty, authorities and powers,[74] and the manner in which Župljanin exercised his authority in contributing to the JCE.[75] Accordingly, the Majority relies on paragraphs 495 to 520 of volume 2 of the Trial Judgement to support its findings on both the gravity of offences and the aggravating factors.[76] In my view, this approach again leads to the distinct possibility of the Majority engaging in impermissible double-counting, which constitutes an error of law.

H. Conclusion

59. In overall conclusion, based on the Majority's findings, which I have not challenged, but combined with my methodology contained in this reasoned separate (dissenting) opinion on some core issues of the case, I am of the view that Stanišić and Župljanin have failed to demonstrate errors on the part of the Trial Chamber and that the alleged errors are ultimately compensated for by the reading of the Trial Judgement as a whole.

Done in English and French, the English version being authoritative.

Done this thirtieth day of June 2016,
At The Hague,
The Netherlands

Judge Koffi Kumelio A. Afande

[Seal of the Tribunal]

[72] *Compare* fn.3665 Appeal Judgement *referring to* paras 544 to 828, *and* fn. 3680, Appeal Judgement, which refers to, *inter alia*, paras 609, 611, 617, 620, 623-625, 631-633, 636-645, 651-652, 654-657, 659-663, 667-668, 671-673, 684, 687-692, 698-704, 706-708
[73] *See* Appeal Judgement, para. 1148, fn. 3779 *referring to* Trial Judgement, vol. 2, paras. 495-520.
[74] Appeal Judgement, para. 1155 *referring to* Trial Judgement, vol. 2, paras 489-493.
[75] Appeal Judgement, para. 1155 *referring to* Trial Judgement, vol. 2, paras. 495-520.
[76] *Compare* Appeal Judgement, fn. 3779 (gravity of offences) *and* fn. 3798 (aggravating factors).

XI. ANNEX A – PROCEDURAL HISTORY

A. Composition of the Appeals Chamber

1. On 8 April 2013, Judge Theodor Meron ("Judge Meron"), the then President 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 ("Tribunal"), designated himself, Judge Carmel Agius ("Judge Agius"), Judge Patrick Robinson ("Judge Robinson"), Judge Liu Daqun ("Judge Liu"), and Judge Arlette Ramaroson ("Judge Ramaroson") to the Bench in this case.[1] On 15 April 2013, Judge Meron, as presiding Judge in this case pursuant to Rule 22(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), designated himself as Pre-Appeal Judge.[2] On 15 April 2014, Judge Meron appointed Judge William Hussein Sekule ("Judge Sekule") to replace him on the Bench, for reasons pertaining to appeal management and the Tribunal's needs in terms of distribution of cases.[3]

2. On 2 May 2014, Judge Agius, having been elected as Presiding Judge, designated himself as the Pre-Appeal Judge.[4] On 27 June 2014, Judge Meron appointed Judge Koffi Kumelio A. Afande to replace Judge Liu on the Bench.[5] On 22 September 2014, Judge Meron appointed Judge Khalida Rachid Khan ("Judge Khan") to replace Judge Sekule on the Bench.[6] On 11 February 2015, Judge Meron appointed Judge Bakhtiyar Tuzmukhamedov ("Judge Tuzmukhamedov") to replace Judge Robinson on the Bench following his election as judge of the International Court of Justice.[7] On 22 April 2015, Judge Meron appointed Judge Christoph Flügge ("Judge Flügge"), Judge Fausto Pocar, and Judge Liu to replace Judge Ramaroson, Judge Khan, and Judge Tuzmukhamedov on the Bench in light of the expiration of their mandates as Judges of the International Criminal Tribunal for Rwanda.[8]

B. Notices of appeal

3. On 16 April 2013, the Pre-Appeal Judge extended the time limit for filing notices of appeal by 15 days.[9] The Office of the Prosecutor of the Tribunal ("Prosecution"), Mićo Stanišić

[1] Order Assigning Judges to a Case Before the Appeals Chamber, 8 April 2013.
[2] Order Designating a Pre-Appeal Judge, 15 April 2013.
[3] Order Replacing a Judge in a Case Before the Appeals Chamber, 15 April 2014, p. 1.
[4] Order Designating a Pre-Appeal Judge, 2 May 2014.
[5] Order Replacing a Judge in a Case Before the Appeals Chamber, 27 June 2014.
[6] Order Replacing a Judge in a Case Before the Appeals Chamber, 22 September 2014. See Corrigendum to Order Replacing a Judge in a Case Before the Appeals Chamber, 23 September 2014.
[7] Order Replacing a Judge in a Case Before the Appeals Chamber, 11 February 2015.
[8] Order Replacing Judges in a Case Before the Appeals Chamber, 22 April 2015.
[9] Decision on Joint Defence Motion Seeking Extension of Time to File Notice of Appeal, 16 April 2013.

("Stanišić"), and Stojan Župljanin ("Župljanin") filed their initial notices of appeal against the Trial Judgement on 13 May 2013.[10]

4. On 19 August 2013, the Pre-Appeal Judge granted Župljanin's request to correct his notice of appeal with respect to three typographical errors.[11] Župljanin subsequently filed a corrected notice of appeal on 22 August 2013.[12] On 8 October 2013, the Appeals Chamber granted Župljanin's request to amend his notice of appeal to insert sub-ground (G) in his first ground of appeal as well as a fifth ground of appeal.[13] Župljanin filed his amended notice of appeal on 9 October 2013.[14]

5. On 14 April 2014, the Appeals Chamber granted Župljanin's second request to amend his notice of appeal.[15] Consequently, Župljanin filed an amended notice of appeal to include an additional sixth ground of appeal alleging that his right to a fair trial by an independent and impartial Tribunal was violated by the participation of Judge Frederik Harhoff ("Judge Harhoff").[16] On 14 April 2014, the Appeals Chamber also granted Stanišić's request to amend his notice of appeal.[17] Stanišić filed an amended notice of appeal on 23 April 2014, modifying his fourth and tenth grounds of appeal, and including an additional ground of appeal 1*bis* concerning the participation of Judge Harhoff in the trial proceedings.[18]

C. Appeal briefs

6. On 21 May 2013, Stanišić filed a motion seeking an extension of 40 days to submit his appeal brief and an extension of the word limit for a total of 10,000 words.[19] On 21 May 2013, Župljanin also filed a motion seeking an extension of time for filing of his appeal brief and a request to exceed the word limit.[20] Pursuant to the Pre-Appeal Judge's decision of 4 June 2013, the deadline for filing the appellants' briefs was extended by 21 days and Stanišić and Župljanin were each granted an extension of the word limit to 10,000 words for their respective briefs.[21] The

[10] Prosecution Notice of Appeal, 13 May 2013; Notice of Appeal on Behalf of Mićo Stanišić, 13 May 2013; Notice of Appeal on Behalf of Stojan [Ž]upljanin, 13 May 2013.
[11] Decision on Župljanin's Request to Correct his Notice of Appeal, 19 August 2013.
[12] [Ž]upljanin's Submission of Corrected Notice of Appeal, 22 August 2013.
[13] Decision on Stojan Župljanin's Request to Amend Notice of Appeal, 8 October 2013, p. 6.
[14] [Ž]upljanin's Submission of Amended Notice of Appeal, 9 October 2013.
[15] Decision on Župljanin's Second Request to Amend his Notice of Appeal and Supplement his Appeal Brief, 14 April 2014.
[16] Župljanin Notice of Appeal, 22 April 2014, p. 12.
[17] Decision on Mićo Stanišić's Motion Seeking Leave to Amend Notice of Appeal, 14 April 2014.
[18] Stanišić Notice of Appeal, 23 April 2014, pp 5, 7-8, 12-13.
[19] Expedited Motion on Behalf of Mićo Stanišić Seeking a Variation of Time and Word Limits to File Appellant's Brief, 21 May 2013, p. 1.
[20] [Ž]upljanin Request for Extension of Time to File Appeal Brief, 21 May 2013, pp 2, 5.
[21] Decision on Mićo Stanišić's and Stojan Župljanin's Motions Seeking Variation of Time and Word Limits to File Appeal Briefs, 4 June 2013, ("4 June 2013 Decision"), p. 5.

Prosecution was granted a corresponding extension of the word limit for its briefs in response.[22] Stanišić and Župljanin were also each granted an extension of time by five days to submit their briefs in reply.[23] The Prosecution was granted a corresponding extension of 21 days to file its appeal brief, Stanišić and Župljanin were granted an extension of 21 days to file their respective response briefs, and the Prosecution was granted an extension of five days to file its brief in reply.[24]

7. The Prosecution filed its appeal brief on 19 August 2013.[25] On 21 October 2013, Stanišić and Župljanin filed their respective respondent briefs.[26] The Prosecution replied on 11 November 2013.[27] Stanišić and Župljanin filed their respective appeal briefs on 19 August 2013.[28] The Prosecution responded on 21 October 2013,[29] and Stanišić and Župljanin replied on 11 November 2013.[30]

8. On 2 May 2014, the Pre-Appeal Judge varied the deadline for filing an addition to Stanišić's and Župljanin's appeal briefs.[31] Stanišić and Župljanin subsequently filed additions to their appeal briefs on 26 June 2014[32] and the Prosecution filed a consolidated response on 18 July 2014.[33] Stanišić and Župljanin replied on 25 July 2014.[34]

9. On 14 April 2016, the Presiding Judge ordered Župljanin to make certain redactions to the public redacted version of his appeal brief and file a further public redacted version of his appeal brief within seven days.[35] On 21 April 2016, Župljanin filed an amended public redacted version of his appeal brief.[36]

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[22] 4 June 2013 Decision, p. 5. On 21 June 2013, the Pre-Appeal Judge denied Stanišic's motion of 6 June 2013 seeking reconsideration of the 4 June 2013 Decision and requesting a reduction of the Prosecution's word limit to no more than 53,333 words (Decision on Mićo Stanišić's Motion Seeking Reconsideration of Decision on Variation of Time and Word Limits to File Appellant's Brief, 21 June 2013).
[23] 4 June 2013 Decision, p. 5.
[24] 4 June 2013 Decision, p. 5.
[25] Prosecution Appeal Brief, 19 August 2013.
[26] Župljanin Response Brief, 21 October 2013; Stanišić Response Brief, 21 October 2013.
[27] Prosecution Consolidated Reply Brief, 11 November 2013.
[28] Stanišić Appeal Brief, 19 August 2013; Župljanin Appeal Brief, 19 August 2013 (confidential). On 23 August 2013 Župljanin filed a public redacted version of his appeal brief.
[29] Prosecution Response Brief (Stanišić), 21 October 2013 (confidential; public redacted version filed on 15 November 2013); Prosecution Response Brief (Župljanin), 21 October 2013 (confidential; public redacted version filed on 15 November 2013).
[30] Stanišić Reply Brief, 11 November 2013; Župljanin Reply Brief, 11 November 2013.
[31] Decision on Urgent Prosecution Motion for Variation of Supplemental Briefing Schedule, 2 May 2014.
[32] Stanišić Additional Appeal Brief, 26 June 2014; Župljanin Additional Appeal Brief, 26 June 2014.
[33] Prosecution Consolidated Supplemental Response Brief, 18 July 2014.
[34] Stanišić Additional Reply Brief, 25 July 2014; Župljanin Additional Reply Brief, 25 July 2014. On 30 October 2014, the Appeals Chamber dismissed the Prosecution's motion for leave to file a sur-reply to answer Župljanin's new argument in reply concerning the late filing of the Prosecution Consolidated Supplemental Response Brief as moot (Decision on Prosecution Motion for Leave to File Sur-reply and Sur-reply to Župljanin's Reply to Prosecution's Consolidated Supplemental Response Brief Concerning Additional Appeal Ground, 30 October 2014).
[35] Order for Redaction of Stojan Župljanin's Appeal Brief, 14 April 2016 (confidential).
[36] Stojan [Ž]upljanin's Appeal Brief, 21 April 2016.

D. Decisions relating to Judge Harhoff

10. As discussed in the paragraphs below, the parties filed nine motions relating to the allegation of bias on the part of Judge Harhoff following a letter he had written on 6 June 2013 and that was published in a Danish newspaper on 13 June 2013 ("Letter"). Considering that the references to Judge Meron in the Letter gave rise to a "conflict of interest",[37] Judge Meron issued an order replacing himself on the Bench with Judge Sekule for the purposes of considering these motions.[38]

11. On 2 July 2013, Stanišić filed a motion seeking the admission of additional evidence on appeal consisting of excerpts from the Letter.[39] On 14 April 2014, the Appeals Chamber granted the motion and admitted the Letter as additional evidence on appeal.[40] On 11 June 2014, the Appeals Chamber granted the Prosecution's motion to admit three documents as rebuttal material.[41]

12. On 21 October 2013, Župljanin filed a motion to vacate the Trial Judgement on the basis that the Trial Chamber was not a properly constituted trial chamber consisting of three impartial judges.[42] For the same reasons, on 23 October 2013 Stanišić filed a motion to declare a mistrial and to vacate the Trial Judgement.[43] Župljanin also filed a motion requesting that Judge Liu be recused from considering the motion to vacate,[44] which was denied on 3 December 2013 by Judge Agius in his capacity as acting President.[45] On 13 December 2013, Župljanin filed a request, joined by Stanišić, for the appointment of a panel to adjudicate the request for disqualification of Judge Liu.[46]

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[37] Order Assigning a Motion to a Judge, 23 July 2013, p. 1.
[38] Order Replacing a Judge in Respect of a Motion Before the Appeals Chamber, 24 July 2013; Order Assigning a Motion to a Judge, 10 September 2013; Order Replacing a Judge in Respect of Motions Before the Appeals Chamber, 28 November 2013; Order Replacing a Judge in Respect of a Motion Before the Appeals Chamber, 28 November 2013; Order Replacing a Judge in Respect of a Motion Before the Appeals Chamber, 28 November 2013; Order Replacing a Judge in Respect of a Motion Before the Appeals Chamber, 28 November 2013; Order Replacing a Judge in Respect of a Motion Before the Appeals Chamber, 28 November 2013. See Order Assigning a Motion to a Judge, 23 July 2013; Order Assigning a Motion to a Judge, 23 July 2013; Order Replacing a Judge in Respect of a Rule 115 Motion Before the Appeals Chamber, 24 July 2013; Order Assigning Motions to a Judge, 22 October 2013; Order Assigning Motions [*sic*] to a Judge, 23 October 2013; Order Assigning a Motion to a Judge, 25 October 2013.
[39] Rule 115 Motion on Behalf of Mićo Stanišić Seeking Admission of Additional Evidence with Annex, 2 July 2013 ("Stanišić 2 July 2013 Rule 115 Motion"). Župljanin joined the Stanišić 2 July 2013 Rule 115 Motion through the Župljanin Second Request to Amend Notice of Appeal, 14 April 2014.
[40] Decision on Mićo Stanišić's Motion Seeking Admission of Additional Evidence Pursuant to Rule 115, 14 April 2014 ("Rule 115 Decision"), pp 7-8. See Rule 115 Decision, para. 24.
[41] Decision on Prosecution Motion to Admit Rebuttal Material, 11 June 2014.
[42] Stojan [Ž]upljanin's Motion to Vacate Trial Judgement, 21 October 2013.
[43] Motion on Behalf of Mićo Stanišić Requesting a Declaration of Mistrial, 23 October 2013 ("Stanišić Motion for Declaration of Mistrial").
[44] Stojan [Ž]upljanin's Motion Requesting Recusal of Judge Liu Daqun from Adjudication of Motion to Vacate Trial Judgement, 21 October 2013 ("Župljanin's Motion to Vacate Trial Judgement").
[45] Decision on Motion Requesting Recusal, 3 December 2013.
[46] Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun, 13 December 2013; Motion on Behalf of Mićo Stanišić joining Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun, 23 December 2013.

The appointed panel composed of Judge Flügge, Judge Howard Morrison, and Judge Melville Baird[47] denied the request on 24 February 2014.[48]

13. On 2 April 2014, the Appeals Chamber denied Stanišić's Motion for Declaration of Mistrial and Župljanin's Motion to Vacate Trial Judgement.[49] On 10 April 2014, Stanišić filed a motion seeking reconsideration of the Decision on Mistrial and Vacation of Trial Judgement,[50] which was denied on 24 July 2014.[51]

14. On 25 August 2014, Stanišić and Župljanin filed a motion seeking expedited adjudication of their respective additional grounds of appeal 1*bis* and six,[52] which the Appeals Chamber denied on 22 October 2014.[53]

E. Provisional release and request for custodial visit

15. On 19 December 2013, the Appeals Chamber dismissed Stanišić's and Župljanin's motions for provisional release.[54] On 16 October 2015, the Appeals Chamber dismissed Župljanin's request for custodial visit on humanitarian grounds.[55]

F. Other decisions and orders

16. In addition to the above, the Appeals Chamber issued 11 decisions and orders concerning evidentiary and other matters. Further, the Appeals Chamber issued 28 orders and decisions concerning applications pursuant to Rule 75 of the Rules.

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[47] See Decision on Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun, 7 February 2014.
[48] Decision on Motion Requesting Recusal of Judge Liu from Adjudication of Motion to Vacate Trial Judgement, 24 February 2014.
[49] Decision on Mićo Stanišić's Motion Requesting a Declaration of Mistrial and Stojan Župljanin's Motion to Vacate Trial Judgement, 2 April 2014.
[50] Motion on Behalf of Mićo Stanišić Seeking Reconsideration of Decision on Stanišić's Motion for a Declaration of Mistrial and Župljanin Motion to Vacate Trial Judgement, 10 April 2014.
[51] Decision on Mićo Stanišić's Motion Seeking Reconsideration of Decision on Stanišić's Motion for Declaration of Mistrial and Župljanin's Motion to Vacate Trial Judgement, 24 July 2014.
[52] Joint Motion on Behalf of Mićo Stanišić and Stojan Župljanin Seeking Expedited Adjudication of Their Respective Grounds of Appeal 1*Bis* and 6, 25 August 2014.
[53] Decision on Joint Motion on Behalf of Mićo Stanišić and Stojan Župljanin Seeking Expedited Adjudication of Their Respective Grounds of Appeal 1*Bis* and 6, 22 October 2014.
[54] Decision on Motion on Behalf of Mićo Stanišić Seeking Provisional Release, 19 December 2013; Decision on Stojan Župljanin's Request for Provisional Release, 19 December 2013.
[55] Decision on Stojan Župljanin's Request for Custodial Visit on Humanitarian Grounds, 16 October 2015 (confidential).

G. Status conferences

17. In accordance with Rule 65 *bis*(B) of the Rules, status conferences were held on 4 September 2013,[56] 11 December 2013,[57] 9 April 2014,[58] 24 July 2014,[59] 12 November 2014,[60] 9 March 2015,[61] 30 June 2015,[62] 15 October 2015,[63] 10 February 2016,[64] and 25 May 2016.[65]

H. Appeal hearing

18. On 30 October 2015, the Appeals Chamber issued a scheduling order for the Appeal Hearing in this case.[66] On 4 December 2015, the Appeals Chamber issued an *addendum* informing the parties of certain modalities of the Appeal Hearing[67] and inviting the parties to address several specific issues.[68] The Appeal Hearing was held on 16 December 2015.[69]

[56] Scheduling Order, 10 July 2013; Status Conference, 4 Sep 2013, AT. 1-5.
[57] Scheduling Order, 2 December 2013; Status Conference, 11 Dec 2013, AT. 6-13.
[58] Scheduling Order, 10 March 2014; Status Conference, 9 Apr 2014, AT. 14-19.
[59] Scheduling Order, 3 June 2014; Status Conference, 24 Jul 2014, AT. 20-28.
[60] Scheduling Order, 1 October 2014; Amendment to Order Scheduling Status Conference, 17 October 2014; Status Conference, 12 Nov 2014, AT. 29-37.
[61] Scheduling Order, 29 January 2015; Status Conference, 9 Mar 2015, AT. 38-46. See Decision on Urgent Motion on Behalf of Mićo Stanišić Seeking Rescheduling of 6th March Status Conference, 2 March 2015.
[62] Scheduling Order, 14 May 2015; Status Conference, 30 Jun 2015, AT. 47-53.
[63] Scheduling Order, 8 September 2015; Status Conference, 15 Oct 2015, AT. 54-60.
[64] Scheduling Order, 11 January 2016; Status Conference, 10 Feb 2016, AT. 245-249.
[65] Scheduling Order, 21 April 2016; Status Conference, 25 May 2016, AT. 250-254.
[66] Scheduling Order for Appeal Hearing, 30 October 2015, p. 1.
[67] *Addendum* to Scheduling Order for Appeal Hearing, 4 December 2015, pp 1-2, setting out the timetable for the appeal hearing. On 11 December 2015, granting the Prosecution's urgent motion in part, the Appeals Chamber amended the timetable for the Appeal Hearing, by adjusting the distribution of time allocated to the parties (Decision on Prosecution Urgent Motion to Revise the Timetable for the Appeal Hearing, 11 December 2015, pp 2-3).
[68] *Addendum* to Scheduling Order for Appeal Hearing, 4 December 2015, pp 2-3.
[69] Appeal Hearing, 16 Dec 2015, AT. 61-244.

XII. ANNEX B – GLOSSARY

A. Jurisprudence

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NTAGERURA ET AL.
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NTAKIRUTIMANA AND NTAKIRUTIMANA
The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004 ("*Ntakirutimana and Ntakirutimana* Appeal Judgement")

NYIRAMASUHUKO ET AL.
Pauline Nyiramasuhuko et al. v. The Prosecutor, Case No. ICTR-98-42-A, Judgement, 14 December 2015 ("*Nyiramasuhuko et al.* Appeal Judgement")

RENZAHO
Tharcisse Renzaho v. The Prosecutor, Case No. ICTR-97-31-A, Judgement, 1 April 2011 ("*Renzaho* Appeal Judgement")

RUTAGANDA
Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement, 26 May 2003 ("*Rutaganda* Appeal Judgement")

RWAMAKUBA
André Rwamakuba v. The Prosecutor, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, 22 October 2004 ("*Rwamakuba* Appeal Decision on Joint Criminal Enterprise of 22 October 2004")

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SEROMBA
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The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement, 12 March 2008 ("*Seromba* Appeal Judgement")

SIMBA
Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement, 27 November 2007 ("*Simba* Appeal Judgement")

ZIGIRANYIRAZO
Protais Zigiranyirazo v. The Prosecutor, Case No. ICTR-01-73-A, Judgement, 16 November 2009 ("*Zigiranyirazo* Appeal Judgement")

3. Mechanism for International Criminal Tribunals

NGIRABATWARE
Augustin Ngirabatware v. The Prosecutor, Case No. MICT-12-29-A, Judgement, 18 December 2014 ("*Ngirabatware* Appeal Judgement")

4. Decisions related to crimes committed during World War II

The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Herman Wilhelm Göring et al., Judgement, 1 October 1946, Trial of Major War Criminals Before the International Military Tribunal Under Control Council Law No. 10, Vol. 1 (1947)

The United States of America v. Alstoetter et al., U.S. Military Tribunal, Judgement, 3-4 December 1947, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10 (1951), Vol. III

The United States of America v. Greifelt et al., U.S. Military Tribunal, Judgement, 10 March 1948, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10 (1951), Vol. V

5. SCSL

SESAY ET AL. ("RUF")
Prosecutor v. Issa Hassan Sesay, Case No. SCSL-2004-15-AR15, Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004 ("*RUF* Decision")

Prosecutor v. Issa Hassan Sesay et al., Case No SCSL-04-15-T, Sentencing Judgement, 8 April 2009

Prosecutor v. Issa Hassan Sesay et al., Case No. SCSL-04-15-A, Judgement, 26 October 2009 ("*RUF* Appeal Judgement")

TAYLOR
Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-01-T, Judgement, 18 May 2012 ("*Taylor* Trial Judgement")

6. STL

The Prosecutor. v. Salim Jamil Ayyash et al., Case No. STL-11-01/I/AC/R176bis, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011 ("STL Decision of 16 February 2011")

7. ECCC

Ambos, Kai, Amicus Curiae Concerning Criminal Case File NO. 001/1807-ECCC/OCIJ (PTC 02), 27 October 2008 ("Kai Ambos *Amicus Curiae* Application")

Prosecutor v. Ieng Thirith et al., Case File No. 002/19-09-2007-ECCC/OCIJ (PTC38), Decision on the Appeals Against the Co-Investigative Judges Orders on Joint Criminal Enterprise (JCE), 20 May 2010, ("ECCC Decision on JCE")

Co-Prosecutors v. Guek Eav Kaing alias "Duch", Case File: 001/18-07-2007/ECCC/TC, Trial Judgement, 26 July 2010 ("*Duch* Trial Judgement")

Co-Prosecutors v. Guek Eav Kaing alias "Duch", Case File: 001/18-07-2007/ECCC/SC, Appeal Judgement, 3 February 2012

Co-Prosecutors v Chea Nuon et al., Case No. 002/19-09-2007/ECCC/TC, Decision on Ieng Sary's Application to Disqualify Judge Nil Nonn and Related Requests, 28 January 2011

8. European Court of Human Rights

Piersack v. Belgium, Application No. 8692/79, ECtHR, Judgement, 1 October 1982 ("*Piersack v. Belgium*")

Ruotsalainen v. Finland, European Court of Human Rights, no. 13079/03, Judgement, 16 June 2009 ("*Ruotsalainen v. Finland*")

Sergey Zolotukhin v. Russia, European Court of Human Rights, no. 14939/03, Judgement, 10 February 2009 ("*Zolotukhin v. Russia*")

9. Courts of domestic jurisdictions

(a) Australia

Gaudie v. Local Court of New South Wales and Anor [2013] NSWSC 1425

Newcastle City Council v. Lindsay [2004] NSWCA 198

(b) United Kingdom

Hoekstra v. HM Advocate (No. 2) (Scottish High Court of Justiciary), 2000 J.C. 391 ("*Hoekstra v. HM Advocate*")

Kienapple v. The Queen, [1975] 1 S.C.R. 7829 ("*Kienapple v. The Queen*")

(c) United States

Hatchcock v. Navistar Intern. Transp. Corp., 53 F. 3d 36, 39 (4th Cir 1995) ("*Hatchcock v. Navistar*")

Liteky v. United States, 510 U.S. 540, 555 (1994)

Blockburger v. United States, 284 U.S. 299, 304 (1932) ("*Blockburger v. United States*")

Ex parte Lange, 85 U.S. 163 (1873) ("*Ex parte Lange*")

Rutledge v. United States, 517, U.S. 292 (1996) ("*Rutledge v. United States*")

Whalen v. United States, 445 U.S. 684 (1980) ("*Whalen v. United States*")

B. Other authorities

1. Publications

A. Cassese, "Proper Limits of Individual Responsibility Under the Doctrine of JCE", *International Criminal Justice Journal*, 5 (2007) ("Judge Cassese Article on JCE")

G. Binder, "Felony Murder and Mens Rea Default Rules: A study in Statutory Interpretation", *Buffalo Criminal Law Review*, vol. 4:399 (2000-2001) ("Binder Article")

J. D. Ohlin, "*Joint Intentions to Commit International Crimes*", Cornell Law Faculty Publications, 169 (2011) ("Ohlin Article")

S. H. Pillsbury, *Judging Evil: Rethinking the Law of Murder and Manslaughter* (1998) ("Pillsbury Article")

2. Other documents

European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ("European Convention on Human Rights")

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 ("Geneva Convention IV")

Homicide Act 1957, 5 & 6 Eliz.2, Ch. 11 (United Kingdom) ("UK Homicide Act")

International Committee of the Red Cross, Commentary on Article 42 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 (1958) ("ICRC Commentary on Geneva Convention IV")

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, entered into force 23 March 1976 ("ICCPR")

International Convention for the Suppression of Terrorist Bombing, U.N. Doc. A/RES/52/164; 37 ILM 249 (1998); 2149 UNTS 284, entered into force 23 May 2001 ("Convention for the Suppression of Terrorist Bombing")

Statute of the International Criminal Court, adopted by a Diplomatic Conference in Rome on 17 July 1998 ("ICC Statute")

C. List of Designated Terms and Abbreviations

1 April 1992 BiH-MUP Collegium	A collegium of BiH Ministry of Interior officials on 1 April 1992, following the split of the Ministry of Interior
11 February 1992 Meeting	A meeting held by Serb officials of Ministry of the Interior of the Socialist Republic of Bosnia and Herzegovina in Banja Luka on 11 February 1992, where a Serb collegium was created to prepare for establishing a Serb Ministry of Interior
11 July 1992 Collegium	The first collegium meeting of senior officials of the Ministry of Interior of *Republika Srpska* on 11 July 1992
12 May 1992 BSA Session	A session of the Bosnian Serb Assembly held on 12 May 1992
15 October 1991 SDS Meeting	A meeting of the Serbian Democratic Party held on 15 October 1991
17 April 1992 Dispatch	A dispatch from Mićo Stanišić to Security Services in Banja Luka, Bijeljina, Doboj, and Sarajevo, calling for the prosecution of perpetrators of the appropriation and plunder of real estate and public and private property committed by members in the service of the Ministry of Interior of *Republika Srpska*
17 July 1992 Report	A report on the 11 July 1992 Collegium to the President and the Prime Minister of *Republika Srpska*, dated 17 July 1992 (Exhibit P427.08)
18 March 1992 BSA Session	A session of the Bosnian Serb Assembly held on 18 March 1992
19 July 1992 Order	An order issued by Mićo Stanišić on 19 July 1992 to chiefs of the Security Services Centres requesting information on procedures for arrest, treatment of prisoners, conditions of collection camps, and Muslim prisoners detained by the army at "undefined camps" without proper documentation (Exhibit 1D76)
1st Council Meeting	The first meeting of the Council of Ministers of the Bosnian Serb Assembly on 11 January 1992
1st KK	1st Krajina Corps

21 June 1992 Intercept	An intercepted conversation between Mico Stanišić and Tomilsav Kovač on 21 June 1992 (Exhibit P1171)
22 April 1992 Instruction	The 22 April 1992 instruction from the Socialist Federal Republic of Yugoslavia
24 March 1992 BSA Session	A session of the Bosnian Serb Assembly held on 24 March 1992
25 February 1992 BSA Session	A session of the Bosnian Serb Assembly held on 25 February 1992
25 May 1992 Work Plan	Operative work plan of the Banja Luka Security Services Centre, dated 25 May 1992
27 July 1992 Meeting	A meeting on 27 July 1992 in Sokolac of leading personnel of criminology departments from the area of the Romanija–Birač Security Services Centre
29 July 1992 Session	A session of the Government of *Republika Srpska* held on 29 July 1992
30 April 1992 Dispatch	A dispatch sent on 30 April 1992 by Stojan Župljanin (Exhibit P1002)
31 July 1992 Order	An order issued by Stojan Župljanin requesting the chiefs of the Public Security Stations of the ARK to implement an ARK Crisis Staff decision that individuals leaving the ARK could take with them a maximum of 300 Deutsche Mark, to issue certificates of temporary seizure when amounts in excess of 300 Deutsche Mark were taken, and to deposit seised amounts at the Banja Luka Security Services Centre cash office (Exhibit P594)
4 July 1992 Session	A session of the Government of *Republika Srpska* held on 4 July 1992
5 October 1992 Order	An order issued by Mićo Stanišić on 5 October 1992, by letter, repeating to all Security Services Centres an earlier instruction to report on war crimes (Exhibit 1D572)
Appeals Chamber	Appeals Chamber of the Tribunal
ARK	Autonomous Region of Krajina
Arkan	An alias of Željko Ražnatović

Arkan's Men	A paramilitary group led by Željko Ražnatović also known as the Serbian Volunteer Guard or Arkan's Tigers
ARK Municipalities	The municipalities of Banja Luka, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Skender Vakuf, and Teslić
AT.	Transcript page from hearings on appeal in the present case
BiH	Bosnia and Herzegovina
BiH Assembly	Assembly of the Socialist Republic of Bosnia and Herzegovina
Bosanska Vila Meeting	A meeting at Bosanska Vila attended by Witness Milorad Davidović, Momčilo Krajišnik, Pero Mihaljović, Frenki Simatović, Mićo Stanišić, and Željko Ražnatović (alias Arkan)
BSA	Bosnian Serb Assembly
BSA and SDS Meetings	The 15 October 1991 SDS Meeting, the 25 February 1992 BSA Session, and the 18 March 1992 BSA Session, collectively
Communications Logbook	The communications logbook of the Ministry of Interior of *Republika Srpska* Headquarters and the Sarajevo Security Services Centre from 22 April 1992 to 2 January 1993 (Exhibit P1428)
CSB(s)	(Regional) Security Services Centre(s)
Cutileiro Plan	The peace plan enunciated at the conclusion of a the International Commission convened in Lisbon, in around February 1992
Daily Report of 8 July 1992	A daily report from the operative team of the Manjača detention camp to the 1st Krajina Corps Command, dated 8 July 1992 (Exhibit P486)
December 1993 BSA Session	The 36th session of the Bosnian Serb Assembly held in December 1993
December 1993 BSA Transcript	Transcript of the 36th session of the Bosnian Serb Assembly in December 1993
Đerić Letter	A letter sent by Mićo Stanišić to Branko Đerić, Prime Minister of *Republika Srpska* on 18 July 1992 (Exhibit P190)

Disciplinary Rules	Rules on Disciplinary Responsibility of Employees of the Ministry of Interior of *Republika Srpska*
ECCC	Extraordinary Chambers in the Courts of Cambodia
Federal SUP	Federal Secretariat of Internal Affairs of Serbia
fn. (fns)	Footnote (footnotes)
Geneva Conventions	Geneva Conventions I-IV of 12 August 1949
Glas Article	Stojan Župljanin's interview with the *Glas* newspaper in which he stated that those claiming to be members of the Serb Defence Forces but engaged in unlawful measures and activities were not welcome in the Banja Luka Regional Security Services Centre Special Police Detachment (Exhibit P560)
Gymnasium	A detention facility at the gymnasium in the municipality of Pale
HDZ	Croatian Democratic Union
Holiday Inn Meeting	The meeting of the SDS Main and Executive Boards on 14 February 1992, in Sarajevo
ICC Statute	Statute of the International Criminal Court, adopted by a Diplomatic Conference in Rome on 17 July 1998
ICRC	International Committee of the Red Cross
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 and Other Such Violations 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

Indictment	*Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Second Amended Consolidated Indictment, 23 November 2009
Instructions	*See* Variant A and B Instructions
Interview	Mićo Stanišić's interview with the Prosecution, conducted between 16 and 21 July 2007
JCE	The joint criminal enterprise found in this case
JCE I Crimes	The crimes of deportation, and inhumane acts (forcible transfer), and persecutions through the underlying acts of forcible transfer and deportation, as crimes against humanity
JNA	Yugoslav People's Army
July 1992 Sessions	4 July 1992 Session and 29 July 1992 Session, collectively.
Karadžić's 1 July 1992 Order	An order of Radovan Karadžić to Mićo Stanišić of 1 July 1992 to transfer 60 specially trained policemen, deployed in Crepolojsko, and "place them under the military command of the SRK"[70] (Exhibit 1D99)
KT Logbooks	1992 logbooks of the Basic Prosecutor's Office in Sarajevo, Sokolac, Vlasenica, and Višegrad including criminal offences against *known* perpetrators
KTN Logbooks	1992 logbooks of the Basic Prosecutor's Office in Sarajevo, Sokolac, Vlasenica, and Višegrad including criminal offences against *unknown* perpetrators
KU Registers	Police registers of criminal cases reported to and investigated by the police in *Republika Srpska* in 1992
Law of 1990	Law on Internal Affairs of the former Socialist Republic of Bosnia and Herzegovina which was published on 29 June 1990 (Exhibit P510)
Letter	A letter written by Judge Frederik Harhoff and addressed to 56 recipients, dated 6 June 2013 (Exhibit 1DA1)

[70] Trial Judgement, vol. 2, para. 591.

LIA	Law on Internal Affairs of *Republika Srpska* (Exhibit P530)
Media Articles	Two media articles entitled "Two Puzzling Judgements in The Hague" dated 1 June 2013 and published by *The Economist* (Exhbiit PA2) and "What Happened to the Hague Tribunal?" published by *The New York Times* (Exhibit PA3) on 2 June 2013, collectively
Memorandum	A memorandum dated 8 July 2013 from Judge Frederik Harhoff to Judge Jean-Claude Antonetti, Presiding Judge in the *Šešelj* case in relation to the Letter
Mens Rea Section	The section of the Trial Judgement dedicated to Stanišić's intent pursuant to the first category of joint criminal enterprise
Miloš Group	A unit collecting intelligence for the National Security Service
Minister of Interior	Minister of the Ministry of Interior of *Republika Srpska*
MOD	Minstry of Defence of *Republika Srpska*
MOJ	Ministry of Justice of *Republika Srpska*
Municipalities	The municipalities of Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Donji Vakuf, Gacko, Ilijaš, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, Skender Vakuf, Teslić, Vlasenica, Višegrad, Vogošća, and Zvornik
November 1992 BSA Session	A session of the Bosnian Serb Assembly held on 23 and 24 November 1992
NSC	National Security Council
Order of 15 April 1992	Mićo Stanišić's order of 15 April 1992 concerning the sanctioning of persons involved in criminal activities and protecting the civilian population (Exhibit 1D61)
Orders of 15 and 16 April 1992	Mićo Stanišić's orders of 15 and 16 April 1992 concerning the sanctioning of persons involved in criminal activities and protecting the civilian population (Exhibits 1D61 and 1D634)
P. (pp)	Page (pages)
Para. (paras)	Paragraph (paragraphs)

Perišić Report	The report by the Chief of the Višegrad Public Security Station, Risto Perišić, dated 13 July 1992
PIP	Prijedor Intervention Platoon
Prijedor War Presidency	War Presidency of the Prijedor Municipal Assembly
Prosecution	Office of the Prosecutor of the Tribunal
Prosecution Appeal Brief	Prosecution Appeal Brief, 19 August 2013
Prosecution Consolidated Reply Brief	Consolidated Prosecution Reply to Mićo Stanišić's Respondent's Brief and Stojan Župljanin's Response to Prosecution Appeal, 11 November 2013
Prosecution Consolidated Supplemental Response Brief	Prosecution's Consolidated Supplemental Response Brief, 18 July 2014
Prosecution Final Trial Brief	*Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution's Final Trial Brief, 14 May 2012 (confidential with confidential annexes)
Prosecution Notice of Appeal	Prosecution Notice of Appeal, 13 May 2013
Prosecution Response Brief (Stanišić)	Prosecution Response to Appeal of Mićo Stanišić, 21 October 2013 (confidential, public redacted version filed on 15 November 2013)
Prosecution Response Brief (Župljanin)	Prosecution Response to Stojan Župljanin's Appeal Brief, 21 October 2013 (confidential; public redacted version filed on 25 June 2014)
Prosecutor's Logbooks	1992 logbooks of the Basic Prosecutor's Office in Sarajevo, Sokolac, Vlasenica, and Višegrad including criminal offences against *known* and *unknown* perpetrators, respectively, from the Basic Public Prosecutor's Offices in Sarajevo, Sokolac, Vlasenica, and Višegrad, the 1993 entries in the logbook from the "Sarajevo Basic Prosecutor's Office II", and prosecutor logbooks for the period 1992 to 1995, covering the Municipalities charged in the Indictment, collectively

Rebuttal Material	A reference to two media articles entitled "Two Puzzling Judgments in The Hague" dated 1 June 2013 and published by *The Economist* and "What Happened to the Hague Tribunal?" dated 2 June 2013 and published by *The New York Times*, collectively as well as a memorandum dated 8 July 2013 from Judge Frederik Harhoff to Judge Jean-Claude Antonetti, Presiding Judge in the *Šešelj* case, in relation to the Letter
Red Berets	*See* SOS
RS	*Republika Srpska*, Serb Republic in Bosnia and Herzgovina
RS Government	Government of *Republika Srpska*
RS MUP	Ministry of Interior of *Republika Srpska*
RS Presidency	A small institution that consisted of the President of the *Republika Srpska* and senior members of Serbian Democratic Party, namely Nikola Koljević and Biljana Plavšić, which was expanded at some point to include more members such as Branko Đerić, former Prime Minister of the *Republika Srpska*, who was not member of the Serbian Democratic Party
Rules	Rules of Procedure and Evidence of the Tribunal
Sanski Most Incident	The incident in which 20 detainees died during their transportation from Betonirka detention camp in Sanski Most to Manjača detention camp in Banja Luka municipality by Sanski Most police officers on 7 July 1992
SCSL	Special Court for Sierra Leone
SDA	Party of Democratic Action
SDS	Serbian Democratic Party
Second Commission for Detention Facilities	The commission for detention facilities in the municipalities of Trebinje, Gacko, and Bileća
September 1992 Dispatch	A dispatch issued by Stojan Župljanin in September 1992, tasking the Prijedor police with escorting buses of non-Serb detainees to Croatia (Exhibit P1905)

Serb forces	Members of the Ministry of Interior of *Republika Srpska*, the Army of *Republika Srpska*, Yugoslav People's Army, the Yugoslav Army, the Territorial Defence, Serbian Ministry of Interior, crisis staffs, Serbian and Bosnian paramilitary forces, volunteer units, local Bosnian Serbs acting under their instruction or pursuant to the direction of the aforementioned forces
Šešelj Decisions	A reference to the *Šešelj* Decision on Disqualification and *Šešelj* Reconsideration Decision, collectively
SFRY	Socialist Federal Republic of Yugoslavia
SJB(s)	Public Security Station / Public Security Service
SNB	National Security Service
Sokolac Report	A report from a meeting in Sokolac of heads of departments for criminology in the area of the Romanija–Birač Security Services Centre dated 28 July 1992 (Exhibit 1D328)
SOS	Serb Defence Forces, also known as the Red Berets, an armed formation of the Serbian Democratic Party
SPD	Special Police Detachment
Special Chamber	A chamber convened in the *Šešelj* case by the Acting President of the Tribunal[71]
SRBiH	Socialist Republic of Bosnia and Herzegovina
SRBiH MUP	Ministry of Interior of the Socialist Republic of Bosnia and Herzegovina
Stanišić's 15 May 1992 Order	An order issued by Mićo Stanišić on 15 May 1992, organising RS MUP forces into war units (Exhibit 1D46)

[71] See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Order Pursuant to Rule 15, 25 July 2013.

Stanišić's 16 May 1992 Order	An order issued by Mićo Stanišić on 16 May 1992, to all five Security Services Centre Chiefs to send daily fax reports on combat activities, terrorist activities, implementation of tasks under the Law on Internal Affairs of *Republika Sprksa*, and war crimes and other serious crimes committed against Serbs (Exhibit P173)
Stanišić's 23 October 1992 Order	An order issued by Mićo Stanišić on 23 October 1992, requesting the withdrawal of active-duty police members from the frontline, make the reserve police available for the wartime assignment to the Army of *Republika Srpska*, and to inform military commands that it was not the duty of the Security Services Centres and Public Security Stations to send policemen to the frontline (Exhibit 1D49)
Stanišić's 25 April 1992 Decision	A decision issued by Mićo Stanišić on 25 April 1992, allowing Security Services Centres chiefs to take over the former Ministry of Interior of the Socialist Republic of Bosnia and Herzegovina and immediately inform him when distributing former employees in their Security Services Centres and Public Security Stations (Exhibit 1D73)
Stanišić's 27 July 1992 Order	An order issued by Mićo Stanišić on 27 July 1992 (Exhibit 1D176)
Stanišić's 6 July 1992 Request	Mićo Stanišić's request of 6 July 1992 to Radovan Karadžić that 60 Ministry of Interior of *Republika Srpska* members provided to the military be replaced by members of the army due to operational needs (Exhibit 1D100)

Stanišić's JCE III Crimes	Crimes that fell outside the common purpose for which Stanišić was held responsible pursuant to the third category of the joint criminal enterprise, namely persecutions (through the underlying acts of killings, torture, cruel treatment, inhumane acts, unlawful detention, establishment and perpetuation of inhumane living conditions, plunder of property, wanton destruction of towns and villages, including destruction or willful damage done to institutions dedicated to religion and other cultural buildings, and imposition and maintenance of restrictive and discriminatory measures) as a crime against humanity (Count 1), murder, torture, and cruel treatment as violations of the laws or customs of war (Counts 4, 6, and 7, respectively) as well as murder, torture, and inhumane acts as crimes against humanity (Counts 3, 5, and 8, respectively)
Stanišić Additional Appeal Brief	Additional Appellant's Brief on behalf of Mićo Stanišić, 26 June 2014
Stanišić Additional Reply Brief	Additional Brief in Reply on behalf of Mićo Stanišić, 29 July 2014
Stanišić Appeal Brief	Appellant's Brief on behalf of Mićo Stanišić, 19 August 2013
Stanišić Final Trial Brief	*Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Mr. Mićo Stanišić's Final Written Submissions Pursuant to Rule 86, 14 May 2012 (confidential with confidential annex A)
Stanišić Notice of Appeal	Amended Notice of Appeal on behalf of Mićo Stanišić, 23 April 2014
Stanišić Reply Brief	Brief in Reply on behalf of Mićo Stanišić, 11 November 2013
Stanišić Response Brief	Respondent's Brief on behalf of Mićo Stanišić, 21 October 2013
Statute	Statute of the Tribunal
STL	Special Tribunal for Lebanon
Strategic Objectives	Six strategic objectives presented to the session of the Bosnian Serb Assembly on 12 May 1992

T.	Transcript page from herings at trial in the instant case
TO	Territorial Defence
Trial Chamber	Trial Chamber II in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T
Trial Judgement	*Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Judgement, 27 March 2013
Tribunal	*See* "ICTY"
Variant A and B Instructions	Instructions for the Organisation and Activities of the Organs of the Serb People in Bosnia and Herzegovina in a State of Emergency adopted by the Serbian Democratic Party Main Board on 19 December 1991
VRS	Army of *Republika Srpska*
Yellow Wasps	A Serbian paramilitary group, also known as Žućo or Repic's men
Župljanin's JCE III Crimes	Crimes that fell outside the common purpose for which Stojan Župljanin was found responsible pursuant to the third category of the joint criminal enterprise, namely (persecutions through underlying acts of killings, torture, cruel treatment, inhumane acts, unlawful detention, establishment and perpetuation of inhumane living conditions, plunder of property, wanton destruction of towns and villages, including destruction or willful damage done to institutions dedicated to religion and other cultural buildings, imposition and maintenance of restrictive and discriminatory measures) as a crime against humanity (Count 1) as well as murder, torture, and cruel treatment as violations of the laws or customs of war (Counts 4, 6, and 7, respectively) as well as extermination murder, torture, and inhumane acts as crimes against humanity (Counts 2, 3, 5, and 8, respectively)
Župljanin Additional Appeal Brief	Stojan Župljanin's Supplement to Appeal Brief (Ground Six), 26 June 2014
Župljanin Additional Reply Brief	Stojan Župljanin's Reply to Prosecution's Consolidated Supplemental Response Brief Concerning Additional Ground, 25 July 2014

Župljanin Appeal Brief	Stojan [Ž]upljanin's Appeal Brief, 19 August 2013 (confidential; public redacted version filed on 23 August 2013, re-filed on 21 April 2016)
Župljanin Final Trial Brief	*Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Župljanin Defence Final Trial Brief, 14 May 2012 (confidential)
Župljanin Notice of Appeal	Župljanin's Submission of Second Amended Notice of Appeal, 22 April 2014
Župljanin Reply Brief	Stojan [Ž]upljanin's Reply to Prosecution's response Brief, 11 November 2013 (confidential; public redacted version filed on 13 November 2013)
Župljanin Response Brief	Stojan [Ž]upljanin's Response to Prosecution Appeal Brief, 21 October 2013

XIII. ANNEX C – CONFIDENTIAL ANNEX