

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-96-A

Date: 31 May 2023

Original: English

IN THE APPEALS CHAMBER

Before: Judge Graciela Gatti Santana, Presiding
Judge Lee G. Muthoga
Judge Aminatta Lois Runeni N’gum
Judge Yusuf Aksar
Judge Claudia Hoefler

Registrar: Mr. Abubacarr M. Tambaou

Judgement of: 31 May 2023

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC REDACTED

JUDGEMENT

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1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seized of appeals by Mr. Jovica Stanišić, (“Stanišić”), Mr. Franko Simatović (“Simatović”), and the Office of the Prosecutor of the Mechanism (“Prosecution”) against the judgement in the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, pronounced on 30 June 2021 and filed in writing on 6 August 2021 (“Trial Judgement”) by the Trial Chamber of the Mechanism (“Trial Chamber”).

I. INTRODUCTION

A. Background

2. Stanišić was born on 30 July 1950 in Ratkovo in the Autonomous Province of Vojvodina, Republic of Serbia (“Serbia”).¹ Simatović was born on 1 April 1950 in Belgrade, Serbia.² During the events relevant to this case, Stanišić served as the Deputy Chief and later Chief of the State Security Service of the Serbian Ministry of the Interior (“State Security Service”),³ and Simatović was one of the State Security Service’s senior intelligence officers.⁴

3. Following the issuance of their arrest warrants on 1 May 2003 by the International Criminal Tribunal for the former Yugoslavia (“ICTY”), Simatović was transferred into the custody of the ICTY on 30 May 2003 and had his initial appearance on 2 June 2003.⁵ Stanišić was transferred into the custody of the ICTY on 11 June 2003 and had his initial appearance on 13 June 2003.⁶

4. Subsequent to amendments, the operative indictment against Stanišić and Simatović was filed on 10 July 2008.⁷ The Prosecution charged Stanišić and Simatović with individual criminal responsibility pursuant to Article 7(1) of the Statute of the ICTY (“ICTY Statute”) on five counts under Articles 3 and 5 of the ICTY Statute, namely: persecution as a crime against humanity, murder as a crime against humanity, murder as a violation of the laws or customs of war, deportation as a crime against humanity, and inhumane acts (forcible transfer) as a crime against humanity.⁸ The

¹ Trial Judgement, para. 342.

² Trial Judgement, para. 351.

³ Trial Judgement, para. 2. *See also* Trial Judgement, paras. 342-350. The State Security Service became the State Security Department in 1992. *See* Trial Judgement, para. 332. For ease of reference, both will be referred to as the State Security Service throughout this Judgement except in sub-grounds 1 and 2 of Ground 1 of Simatović’s appeal, which relate to his specific positions within both.

⁴ Trial Judgement, para. 2. *See also* Trial Judgement, paras. 351-354.

⁵ Trial Judgement, para. 638. *See also* Trial Judgement, para. 6, n. 9 and references cited therein.

⁶ Trial Judgement, para. 638. *See also* Trial Judgement, para. 6, n. 9 and references cited therein.

⁷ Trial Judgement, para. 638, n. 2431, *referring to, inter alia, Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Prosecution Notice of Filing of Third Amended Indictment, 10 July 2008 (“Indictment”).

⁸ Indictment, paras. 22-66. *See also* Trial Judgement, paras. 3, 280. The Trial Judgement interchangeably employs the phrasing “forcible transfer”, “inhumane acts (forcible transfer)”, and “inhumane acts (forcible transfers)” with respect to

crimes covered by the Indictment were allegedly committed between April 1991 and December 1995 on the territories of Croatia and Bosnia and Herzegovina.⁹ In Croatia, these crimes allegedly occurred on the territory of the former Serb Autonomous Regions of Krajina (“SAO Krajina”) and of Slavonia, Baranja, and Western Srem (“SAO SBWS”).¹⁰ In Bosnia and Herzegovina, the alleged crimes were limited to the municipalities of Bijeljina, Zvornik, Bosanski Šamac, Doboj, and Sanski Most, and in an area near the village of Trnovo.¹¹

5. Stanišić’s and Simatović’s trial before the ICTY commenced with opening statements on 9 and 10 June 2009 and, on 29 June 2009, the presentation of evidence commenced.¹² On 30 May 2013, the ICTY Trial Chamber acquitted Stanišić and Simatović on all counts in the Indictment.¹³ On 9 December 2015, the ICTY Appeals Chamber granted, in part, the Prosecution’s appeal, quashed Stanišić’s and Simatović’s acquittals, and ordered a retrial on all counts of the Indictment.¹⁴

6. The retrial commenced with the Prosecution’s opening statement on 13 and 14 June 2017, and the presentation of Prosecution evidence on 14 June 2017.¹⁵ The Trial Chamber, on 30 June 2021, found Stanišić and Simatović guilty under Counts 1 to 5 of the Indictment for having aided and abetted the charged crimes committed in the municipality of Bosanski Šamac in Bosnia and Herzegovina, and sentenced each to a single sentence of 12 years of imprisonment.¹⁶ Stanišić and Simatović were not found guilty with respect to the charged crimes in other municipalities in Bosnia and Herzegovina, as well as in SAO Krajina and SAO SBWS.¹⁷

B. The Appeals

7. Stanišić presents eight grounds of appeal challenging his convictions and sentence.¹⁸ Stanišić requests that the Appeals Chamber quash his convictions for aiding and abetting crimes committed in Bosanski Šamac under Counts 1 to 5 of the Indictment, or in the alternative, quash the sentence

Count 5 in the Indictment. The Appeals Chamber uses “forcible transfer” and “inhumane acts (forcible transfer)” interchangeably in this Judgement.

⁹ Trial Judgement, para. 3 and references cited therein.

¹⁰ Trial Judgement, para. 3 and references cited therein.

¹¹ Trial Judgement, para. 3 and references cited therein.

¹² *Stanišić and Simatović* ICTY Trial Judgement, para. 2430. The trial before the ICTY was originally scheduled to commence on 14 April 2008 but was postponed due to Stanišić’s medical situation. See *Stanišić and Simatović* ICTY Trial Judgement, paras. 2429, 2430.

¹³ *Stanišić and Simatović* ICTY Trial Judgement, paras. 2362, 2363. See also Trial Judgement, para. 6.

¹⁴ *Stanišić and Simatović* ICTY Appeal Judgement, para. 131. See also Trial Judgement, para. 6.

¹⁵ Trial Judgement, para. 646.

¹⁶ Trial Judgement, para. 608, p. 270.

¹⁷ See Trial Judgement, paras. 597, 598, 608.

¹⁸ See Stanišić Notice of Appeal, paras. 14-36; Stanišić Appeal Brief, paras. 2-256; T. 24 January 2023 pp. 6-36.

imposed by the Trial Chamber and impose a lower sentence.¹⁹ The Prosecution responds that Stanišić's appeal should be denied in its entirety.²⁰ Simatović challenges certain portions of Stanišić's appeal, which in his view should be dismissed.²¹

8. Simatović presents four grounds of appeal challenging his convictions and sentence.²² Simatović requests that the Appeals Chamber reverse his convictions for aiding and abetting crimes committed in Bosanski Šamac under Counts 1 to 5 of the Indictment and enter a judgement of acquittal or, alternatively, quash his convictions and order a new trial, or, if his convictions are affirmed, quash his sentence and impose a lower sentence.²³ The Prosecution responds that Simatović's appeal should be denied in its entirety.²⁴

9. The Prosecution presents two grounds of appeal challenging the Trial Chamber's alleged failure to hold Stanišić and Simatović responsible as members of the joint criminal enterprise, its alleged failure to find them responsible for aiding and abetting crimes in SAO Krajina, SAO SBWS, Doboj, and Sanski Most, and its alleged failure to follow the ICTY Appeals Chamber's instructions in the *Stanišić and Simatović* ICTY Appeal Judgement regarding the scope of the retrial.²⁵ The Prosecution requests that the Appeals Chamber find that Stanišić and Simatović significantly contributed to the joint criminal enterprise in ways additional to their contribution through events in Bosanski Šamac, find that they shared the intent to further the common criminal purpose, and convict them as members of the joint criminal enterprise for crimes under Counts 1 to 5 of the Indictment.²⁶ Alternatively, the Prosecution requests that the Appeals Chamber find that Stanišić and Simatović substantially contributed to crimes in SAO Krajina, SAO SBWS, Doboj, and Sanski Most, find that they possessed the requisite *mens rea*, and convict them of aiding and abetting crimes under Counts 1 to 5 of the Indictment.²⁷ It asks that the Appeals Chamber increase their sentences accordingly.²⁸

¹⁹ See Stanišić Notice of Appeal, paras. 17, 19, 22, 24, 27, 30, 33, 35; Stanišić Appeal Brief, para. 257; T. 24 January 2023 p. 36.

²⁰ See Prosecution Response to Stanišić Appeal, paras. 7, 191; T. 24 January 2023 pp. 63-77.

²¹ See Simatović Response Brief, paras. 462-514, 517.

²² See Simatović Notice of Appeal, paras. 8-50; Simatović Appeal Brief, paras. 7-342; T. 24 January 2023 pp. 37-62.

²³ See Simatović Notice of Appeal, paras. 51, 52; Simatović Appeal Brief, paras. 343, 344; T. 24 January 2023 p. 62.

²⁴ See Prosecution Response to Simatović Appeal, paras. 4, 9, 210; T. 24 January 2023 pp. 77-99.

²⁵ See Prosecution Notice of Appeal, paras. 3-14, 16-20; Prosecution Appeal Brief, paras. 15-117, 128-148, 153-166, 168-174, 177-217, 220, 221; T. 25 January 2023 pp. 2-30. The Appeals Chamber observes that, while the Prosecution Notice of Appeal also referred to alleged errors in not entering aiding and abetting convictions in connection with the events in Zvornik, the Prosecution Appeal Brief does not make arguments in relation to this municipality. Compare Prosecution Notice of Appeal, paras. 16, 18, 19, 21 with Prosecution Appeal Brief, paras. 13, 168-219. The Appeals Chamber considers that the Prosecution has abandoned its claim with respect to Zvornik. See *Mladić* Appeal Judgement, paras. 39, 78 and references cited therein.

²⁶ See Prosecution Notice of Appeal, para. 15; Prosecution Appeal Brief, paras. 14, 118-127, 149-152, 222; T. 25 January 2023 pp. 3-21, 26-30.

²⁷ See Prosecution Notice of Appeal, para. 21; Prosecution Appeal Brief, paras. 14, 175, 176, 218, 219, 222; T. 25 January 2023 pp. 3, 21-26.

²⁸ See Prosecution Notice of Appeal, paras. 15, 21; Prosecution Appeal Brief, paras. 127, 152, 176, 219.

The Prosecution further requests that the Appeals Chamber declare that the Trial Chamber erred in law in limiting its ability to present new evidence in the retrial.²⁹ Stanišić and Simatović respond that the Prosecution’s appeal should be dismissed in its entirety.³⁰

10. The Appeals Chamber heard oral submissions regarding these appeals on 24 and 25 January 2023.³¹

II. STANDARDS OF APPELLATE REVIEW

11. The Mechanism was established pursuant to UN Security Council Resolution 1966 (2010) and continues the material, territorial, temporal, and personal jurisdiction of the International Criminal Tribunal for Rwanda (“ICTR”) and the ICTY.³² The Statute and the Rules of Procedure and Evidence of the Mechanism (“Rules”) reflect normative continuity with the Statutes and the Rules of Procedure and Evidence of the ICTR and the ICTY (“ICTR Rules” and “ICTY Rules”, respectively).³³ The Appeals Chamber considers that it is bound to interpret the Statute and the Rules in a manner consistent with the jurisprudence of the ICTR and the ICTY.³⁴

12. While not bound by the jurisprudence of the ICTR or the ICTY, the Appeals Chamber is guided by the principle that, in the interests of legal certainty and predictability, it should follow previous decisions of the ICTR and the ICTY Appeals Chambers and depart from them only for cogent reasons in the interest of justice, that is, where a previous decision has been decided on the basis of a wrong legal principle or has been “wrongly decided, usually because the judge or judges were ill-informed about the applicable law”.³⁵ It is for the party submitting that the Appeals Chamber

²⁹ See T. 25 January 2023 pp. 3, 4. The Prosecution originally requested that the Appeals Chamber admit evidence erroneously excluded by the Trial Chamber as additional evidence pursuant to Rule 142 of the Rules. See Prosecution Notice of Appeal, para. 14; Prosecution Appeal Brief, paras. 14, 167, 220, 222. However, the Appeals Chamber denied the Prosecution’s request to admit additional evidence on appeal, and, consequently, it now only seeks declaratory relief. See Decision on Prosecution Motion for Admission of Additional Evidence, 20 December 2022 (confidential) (“Decision of 20 December 2022”), paras. 64, 65; T. 25 January 2023 pp. 3, 4.

³⁰ See Stanišić Response Brief, para. 497; Simatović Response Brief, paras. 6, 516; T. 25 January 2023 pp. 31-75.

³¹ T. 24 January 2023 pp. 1-117; T. 25 January 2023 pp. 1-83. See also Scheduling Order for the Hearing of the Appeals, 5 December 2022, pp. 1, 2; Order for the Preparation of the Hearing of the Appeals, 13 January 2023, p. 1.

³² UN Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010 (“Security Council Resolution 1966”), paras. 1, 4, Annex 1, Statute of the Mechanism (“Statute”), Preamble, Article 1. See also Security Council Resolution 1966, Annex 2, Article 2(2); *Mladić* Appeal Judgement, para. 13 and references cited therein.

³³ *Mladić* Appeal Judgement, para. 13 and references cited therein.

³⁴ *Mladić* Appeal Judgement, para. 13 and references cited therein. Where the Statute of the ICTR (“ICTR Statute”) and the ICTR Rules or the ICTY Statute and the ICTY Rules are at issue, the Appeals Chamber is bound to consider the relevant precedent of these tribunals when interpreting them. See *Mladić* Appeal Judgement, para. 13 and references cited therein.

³⁵ *Mladić* Appeal Judgement, para. 14 and references cited therein.

should depart from such jurisprudence to demonstrate that there are cogent reasons in the interest of justice that justify such departure.³⁶

13. Article 23(2) of the Statute stipulates that the Appeals Chamber may affirm, reverse, or revise decisions taken by a trial chamber. An appeal is not a trial *de novo*.³⁷ The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the trial chamber and errors of fact which have occasioned a miscarriage of justice.³⁸ These criteria are set forth in Article 23 of the Statute and are well established in jurisprudence.³⁹

14. 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.⁴⁰ An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground.⁴¹ 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.⁴² 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.⁴³

15. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the trial chamber accordingly.⁴⁴ In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.⁴⁵ 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.⁴⁶

³⁶ *Mladić* Appeal Judgement, para. 14 and references cited therein.

³⁷ *Mladić* Appeal Judgement, para. 15 and references cited therein.

³⁸ *Mladić* Appeal Judgement, para. 15 and references cited therein.

³⁹ *Mladić* Appeal Judgement, para. 15 and references cited therein.

⁴⁰ *Mladić* Appeal Judgement, para. 16 and references cited therein.

⁴¹ *Mladić* Appeal Judgement, para. 16 and references cited therein.

⁴² *Mladić* Appeal Judgement, para. 16 and references cited therein.

⁴³ *Mladić* Appeal Judgement, para. 16 and references cited therein.

⁴⁴ *Mladić* Appeal Judgement, para. 17 and references cited therein.

⁴⁵ *Mladić* Appeal Judgement, para. 17 and references cited therein.

⁴⁶ *Mladić* Appeal Judgement, para. 17 and references cited therein.

16. When considering alleged errors of fact, 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.⁴⁷ The Appeals Chamber applies the same standard of reasonableness to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.⁴⁸ 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.⁴⁹ In determining whether a trial chamber's finding was reasonable, the Appeals Chamber will not lightly overturn findings of fact made by a trial chamber.⁵⁰

17. The same standard of reasonableness and the same deference to factual findings of the trial chamber apply when the Prosecution appeals against an acquittal.⁵¹ 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.⁵² Nevertheless, considering that, at trial, it is the Prosecution that bears the burden 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.⁵³ Whereas a convicted person must show that the trial chamber's factual errors create reasonable doubt as to his or her guilt,⁵⁴ the Prosecution must show that, when account is taken of the errors of fact committed by the trial chamber, all reasonable doubt of guilt has been eliminated.⁵⁵

18. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the trial chamber's rejection of those arguments constituted an error warranting an intervention of the Appeals Chamber.⁵⁶ 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.⁵⁷

19. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to

⁴⁷ *Mladić* Appeal Judgement, para. 18 and references cited therein.

⁴⁸ *Mladić* Appeal Judgement, para. 18 and references cited therein.

⁴⁹ *Mladić* Appeal Judgement, para. 18 and references cited therein.

⁵⁰ *Mladić* Appeal Judgement, para. 18 and references cited therein.

⁵¹ *Mladić* Appeal Judgement, para. 19 and references cited therein.

⁵² *Mladić* Appeal Judgement, para. 19 and references cited therein.

⁵³ *Mladić* Appeal Judgement, para. 19 and references cited therein.

⁵⁴ *Mladić* Appeal Judgement, para. 19 and references cited therein.

⁵⁵ *Mladić* Appeal Judgement, para. 19 and references cited therein.

⁵⁶ *Mladić* Appeal Judgement, para. 20 and references cited therein.

⁵⁷ *Mladić* Appeal Judgement, para. 20 and references cited therein.

which the challenge is made.⁵⁸ Moreover, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.⁵⁹ Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.⁶⁰

III. APPEAL OF JOVICA STANIŠIĆ

A. Alleged Errors Regarding the *Actus Reus* for Aiding and Abetting (Grounds 1 and 2)

20. When considering Stanišić's and Simatović's responsibility for aiding and abetting crimes committed in Bosanski Šamac, the Trial Chamber recalled its finding that the town of Bosanski Šamac was subject to a forcible takeover in the early morning of 17 April 1992 by Serb forces, which included a group under the command of Unit member Dragan Đorđević (Crni).⁶¹ The Trial Chamber noted that this group also included, among others, Unit members Srećko Radovanović (Debeli) and Slobodan Miljković (Lugar), and approximately 20 local Serbs from Bosanski Šamac.⁶² The Trial Chamber further recalled that, following the takeover of Bosanski Šamac, Dragan Đorđević (Crni), Srećko Radovanović (Debeli), and Slobodan Miljković (Lugar), as well as other Unit members, committed crimes against non-Serb civilians, which, among others, included the massacre of 16 Muslim or Croat men by Slobodan Miljković (Lugar) and others at the Crkvina detention facility on or about 7 May 1992.⁶³

21. The Trial Chamber found Stanišić and Simatović responsible for aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces in Bosanski Šamac and convicted each under Counts 1 to 5 of the Indictment in relation to these crimes.⁶⁴ As it relates to the *actus reus* for this form of liability, the Trial Chamber concluded that through organizing the training of Unit members and local Serb forces at the Pajzoš camp, near Ilok, Croatia, and through their subsequent deployment during the takeover of the Bosanski Šamac municipality in April 1992, Stanišić and Simatović provided practical assistance, which had a substantial effect on the perpetration of the crimes of persecution, murder, and forcible displacement

⁵⁸ *Mladić* Appeal Judgement, para. 21 and references cited therein.

⁵⁹ *Mladić* Appeal Judgement, para. 21 and references cited therein.

⁶⁰ *Mladić* Appeal Judgement, para. 21 and references cited therein.

⁶¹ Trial Judgement, para. 604.

⁶² Trial Judgement, para. 604.

⁶³ Trial Judgement, para. 604.

⁶⁴ Trial Judgement, para. 608, p. 270.

by Unit members and local Serb forces.⁶⁵ The Trial Chamber further concluded that the fact that, once deployed, the Unit members were resubordinated to the Yugoslav People's Army ("JNA") was immaterial as Stanišić's and Simatović's contribution consisted of training and making those forces available during the takeover, and not in directing them during the operation.⁶⁶

22. In Grounds 1 and 2 of his appeal, Stanišić argues that the Trial Chamber erred in law and in fact regarding its *actus reus* findings. The Appeals Chamber will address these challenges in turn.⁶⁷

1. Alleged Errors of Law Regarding the *Actus Reus* for Aiding and Abetting (Ground 1)

23. Stanišić submits that the Trial Chamber erred in law in finding that the training and deployment of Unit members and local Serbs amounted to practical assistance that had a substantial effect on the crimes committed in relation to the takeover of Bosanski Šamac.⁶⁸ Specifically, he argues that the Trial Chamber failed to assess his "remoteness" from the practical assistance he was found to have provided as well as the "remoteness" of that assistance from the crimes committed, which led to the erroneous finding of a "culpable *actus reus* link" to the crimes.⁶⁹

24. As it concerns his remoteness from the practical assistance he was found to have provided, Stanišić asserts that the Trial Chamber erred in law by failing to consider findings demonstrating that he was not at the Ležimir and Pajzoš camps or directly involved in the training and deployment of Unit members and local Serb forces and, in this vein, by failing to address his responsibility separately from Simatović's.⁷⁰ He also submits that the Trial Chamber's conclusion that he organized the training of Unit members and local Serb forces at the Pajzoš camp is contradicted by its finding that the training was organized at various levels of the JNA area command and officials in Belgrade.⁷¹

25. With respect to the "remoteness" of the practical assistance from the crimes, Stanišić argues that the Trial Chamber omitted consideration of factors such as: (i) temporal remoteness; (ii) geographic distance; (iii) his position in the chain of command; and (iv) whether the acts of assistance

⁶⁵ Trial Judgement, para. 605.

⁶⁶ Trial Judgement, para. 605.

⁶⁷ In his reply brief and during oral arguments, Stanišić challenges the notice given with respect to the *actus reus* and *mens rea* findings relied upon to convict him for aiding and abetting. See Stanišić Reply Brief, paras. 4-13; T. 24 January 2023 pp. 11-13. The Appeals Chamber summarily dismisses this contention, as he has denied the Prosecution the appropriate opportunity to respond. See *Nizeyimana* Appeal Judgement, para. 283, n. 881.

⁶⁸ See Stanišić Notice of Appeal, para. 16; Stanišić Appeal Brief, paras. 2-50. See also Stanišić Reply Brief, para. 14.

⁶⁹ Stanišić Appeal Brief, paras. 3, 28, 50. See also Stanišić Reply Brief, paras. 15, 18. While acknowledging that "specific direction" is not a required element of aiding and abetting, Stanišić submits that in cases where the contribution is remote, the application of the substantial effect requirement for the *actus reus* of aiding and abetting should be read strictly and with certitude of a causal and culpable link. See Stanišić Appeal Brief, paras. 10-27; Stanišić Reply Brief, paras. 17, 18.

⁷⁰ Stanišić Appeal Brief, paras. 4, 28, 34-41, 48. See also Stanišić Reply Brief, paras. 21-23.

⁷¹ Stanišić Appeal Brief, paras. 30, 34, 35, 41, referring to, *inter alia*, Trial Judgement, para. 418. See also Stanišić Appeal Brief, para. 23; Stanišić Reply Brief, para. 23.

were routine and lawful duties.⁷² As a result of these omissions, he argues that the Trial Chamber erred by: (i) concluding that it was immaterial that Unit members and local Serb forces were resubordinated under the JNA once deployed;⁷³ and (ii) failing to consider evidence and findings that the training at the Ležimir and Pajzoš camps was not designed for criminal purposes and bore no resemblance to the crimes committed.⁷⁴ In view of the errors identified under Ground 1 of his appeal, Stanišić requests that the Appeals Chamber hold that he did not commit the necessary *actus reus* for aiding and abetting liability and find him not guilty of Counts 1 to 5 of the Indictment.⁷⁵

26. The Prosecution responds that the Trial Chamber correctly assessed Stanišić's conduct and found that he provided practical assistance, which had a substantial effect on the commission of the crimes in Bosanski Šamac.⁷⁶ It argues that, based on Stanišić's role in organizing the training of Unit members and Bosanski Šamac locals and his subsequent deployment of those forces to Bosanski Šamac, where they committed crimes together with other Serb forces, the Trial Chamber correctly found that he aided and abetted those crimes.⁷⁷ The Prosecution disputes Stanišić's contention that the elements of aiding and abetting liability are different where the acts of the aider and abettor are remote from the crime in time or space.⁷⁸

27. Stanišić replies that the Prosecution misinterprets his submissions⁷⁹ and reiterates that the Trial Chamber failed to properly apply the law⁸⁰ or analyze whether his conduct assisted the crimes.⁸¹ In particular, he stresses that the Trial Chamber's findings do not establish a culpable link between the training provided and the crimes,⁸² and he contends that the Prosecution fails to address

⁷² Stanišić Appeal Brief, paras. 28, 43, 44.

⁷³ See Stanišić Appeal Brief, paras. 40, 41, 47; Stanišić Reply Brief, para. 18. Stanišić contends that, once the Unit members and local Serbs from Bosanski Šamac were resubordinated under the JNA, he exercised no control over them. See Stanišić Appeal Brief, paras. 39-41.

⁷⁴ Stanišić Appeal Brief, paras. 4, 5, 46-49; Stanišić Reply Brief, paras. 26-28. See also Stanišić Notice of Appeal, para. 16(i)(a) (arguing that the Trial Chamber failed to provide a reasoned opinion as to how the assistance substantially affected the perpetration of the entirety of the crimes).

⁷⁵ Stanišić Notice of Appeal, para. 17.

⁷⁶ Prosecution Response to Stanišić Appeal, paras. 8, 18. See also Prosecution Response to Stanišić Appeal, paras. 19-26; T. 24 January 2023 pp. 74-76.

⁷⁷ Prosecution Response to Stanišić Appeal, para. 8. See also T. 24 January 2023 pp. 74-76.

⁷⁸ Prosecution Response to Stanišić Appeal, para. 15; T. 24 January 2023 pp. 73, 74. See also Prosecution Response to Stanišić Appeal, para. 23. The Prosecution further submits that specific direction is not an element of aiding and abetting, including when an accused's acts are remote from the crimes, and that the Trial Chamber correctly followed the ICTY Appeals Chamber's instruction not to require specific direction as an element of aiding and abetting liability. See Prosecution Response to Stanišić Appeal, paras. 11, 14, 15. See also Prosecution Response to Stanišić Appeal, paras. 10, 12, 13, 16, 17.

⁷⁹ Stanišić Reply Brief, paras. 16-18. Stanišić clarifies, *inter alia*, that his appeal does not argue that specific direction is a necessary element of aiding and abetting liability or that the elements for aiding and abetting change if the acts are remote from the crimes but that the debate on these issues reflects that remoteness is "an issue determinative of a culpable link". See Stanišić Reply Brief, paras. 17, 18.

⁸⁰ Stanišić Reply Brief, para. 14.

⁸¹ Stanišić Reply Brief, paras. 21-23.

⁸² Stanišić Reply Brief, paras. 24-28.

contradictory findings in the Trial Judgement.⁸³ Stanišić emphasizes that the Trial Chamber failed to conduct a fact-based inquiry considering all material facts to assess his *actus reus*,⁸⁴ including the absence of any findings as to his role, as distinct from that of Simatović, or how his authority over Simatović manifested itself in relation to the crimes.⁸⁵

28. The Appeals Chamber recalls that the *actus reus* of aiding and abetting consists of practical assistance, encouragement, or moral support, which has a substantial effect on the perpetration of the crime.⁸⁶ The Appeals Chamber observes that the Trial Chamber correctly set forth the law as it relates to the elements of aiding and abetting liability⁸⁷ and that it expressly made findings as to the practical assistance provided by Stanišić and Simatović that established the *actus reus* upon which their aiding and abetting liability is based.⁸⁸

29. In advancing the bulk of his arguments, Stanišić relies on findings in the Trial Judgement that, in his view, established “remoteness” and required the Trial Chamber to conduct additional analysis as a matter of law. However, the Appeals Chamber recalls that a trial chamber is not required to articulate every step of its reasoning⁸⁹ and that the trial judgement must be read as a whole.⁹⁰ The Appeals Chamber is not persuaded that the Trial Chamber ignored evidence or the factual findings that Stanišić refers to on appeal, nor is it persuaded that the Trial Chamber’s *actus reus* findings were insufficient as a matter of law.⁹¹

30. With respect to Stanišić’s contention that the Trial Chamber erred in law by failing to assess his remoteness from the practical assistance that he was found to have provided, the Appeals Chamber observes that the Trial Chamber’s conclusions do not reflect that Stanišić was physically present: (i) during the training at the Ležimir and Pajzoš camps in March and April 1992; (ii) during Simatović’s address around 10 April 1992 to Unit members and locals from Bosanski Šamac who

⁸³ Stanišić Reply Brief, para. 23.

⁸⁴ Stanišić Reply Brief, para. 19.

⁸⁵ Stanišić Reply Brief, paras. 20-23.

⁸⁶ *Šešelj* Appeal Judgement, n. 594; *Nyiramasuhuko et al.* Appeal Judgement, para. 3343; *Stanišić and Simatović* ICTY Appeal Judgement, para. 104; *Popović et al.* Appeal Judgement, paras. 1758, 1783; *Šainović et al.* Appeal Judgement, para. 1649.

⁸⁷ Trial Judgement, paras. 601-603.

⁸⁸ Trial Judgement, para. 605. *See also* Trial Judgement, para. 424 (“Nonetheless, the training provided to the new members of the Unit, the approximately 20 locals from Bosanski Šamac, and their deployment to Bosanski Šamac provided practical assistance that had a substantial effect on the commission of crimes there.”).

⁸⁹ *Mladić* Appeal Judgement, paras. 339, 423 and references cited therein.

⁹⁰ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

⁹¹ The Appeals Chamber observes that the appellate jurisprudence cited by Stanišić does not demonstrate that the Trial Chamber was required as a matter of law to expressly consider the following factors when making its *actus reus* findings: (i) temporal remoteness; (ii) geographic distance; (iii) Stanišić’s position in the chain of command; and (iv) whether the acts of assistance were routine and lawful duties. *See* Stanišić Appeal Brief, para. 17, *referring to* *Perišić* Appeal Judgement, para. 40, *Blagojević and Jokić* Appeal Judgement, para. 189, *Kupreškić et al.* Appeal Judgement, paras. 275-277.

were trained at the camps; or (iii) during the deployment of Unit members and local Serb forces on 11 April 1992.⁹² Nonetheless, the Trial Chamber's conclusions reflect that, at the relevant time: (i) Stanišić was the Chief of the State Security Service and held significant powers and authority within it and the Serbian Ministry of the Interior;⁹³ (ii) he and Simatović had authority over the Unit and the Ležimir and Pajzoš camps, wherein the training was conducted at Stanišić's and Simatović's direction, with their authorization as well as their financial and logistical support;⁹⁴ (iii) while the organization of the training of Bosanski Šamac locals at the camps was done at various levels of the JNA area command and by officials in Belgrade, Stanišić and Simatović were aware of and consented to this arrangement and both would have been aware that, by allowing the use of their facilities and trainers, they would be supporting military action and, in the context of the conflict at the time, the commission of crimes by these forces;⁹⁵ (iv) they authorized the deployment of Unit members and locals from Bosanski Šamac;⁹⁶ and (v) given the context of the conflict at the time, Stanišić and Simatović would have been aware of the commission of crimes during the operation.⁹⁷

31. In light of these findings, Stanišić fails to demonstrate that, as a matter of law, the Trial Chamber was required to provide further analysis as to any remoteness between him and the training and deployment when making its *actus reus* findings. Likewise, Stanišić does not show that the Trial Chamber erred by not assessing his practical assistance independently from Simatović's, as this argument ignores the Trial Chamber's findings about their joint authority over the Unit members and the camps as well as Stanišić's position of authority over Simatović.⁹⁸ Finally, and in view of the Trial Chamber's findings summarized above, Stanišić fails to demonstrate any contradiction in the Trial Chamber's conclusions as to his authority over the camps notwithstanding the involvement of the JNA area command and officials in Belgrade.

32. Turning to Stanišić's submission that the Trial Chamber erred by failing to assess the remoteness of the assistance he provided from the ensuing crimes, the Appeals Chamber sees no error of law in the Trial Chamber's conclusion that it was immaterial that those deployed were under the

⁹² See Trial Judgement, paras. 208-234, 416-424.

⁹³ See, e.g., Trial Judgement, para. 350.

⁹⁴ Trial Judgement, paras. 409, 418. See also Trial Judgement, paras. 416, 417.

⁹⁵ Trial Judgement, para. 418. See also Trial Judgement, paras. 407, 416, 419. The Appeals Chamber has found that the Trial Chamber erred in concluding that Bosanski Šamac locals received training at the Ležimir camp but that this error has not occasioned a miscarriage of justice. See *infra* Section IV.B.2(b).

⁹⁶ Trial Judgement, para. 419. In making this finding, the Trial Chamber recalled evidence that members of the Unit could not participate in combat operations without Stanišić's and Simatović's approval. See Trial Judgement, para. 419.

⁹⁷ Trial Judgement, para. 419.

⁹⁸ See Trial Judgement, paras. 342, 350-352, 354, 409, 416, 418, 419, 605. In reaching this conclusion, the Appeals Chamber sees no contradiction or material omission as it relates to the Trial Chamber's *actus reus* findings *vis-à-vis* Stanišić in view of its earlier statement that it would "continue to examine how [Stanišić's] power and authority manifested themselves in relation to the specific events charged in the Indictment". See Trial Judgement, para. 350.

authority of the JNA. The Appeals Chamber recalls that the *actus reus* of aiding and abetting may be satisfied by a commander permitting the use of resources under his or her control to facilitate the perpetration of a crime.⁹⁹ In this respect, the Appeals Chamber observes that the Trial Chamber concluded that Stanišić's contribution to the ensuing crimes consisted of training and making forces available during the takeover, and not in directing them during the operation.¹⁰⁰

33. Likewise, Stanišić's arguments concerning the limited number of persons he was found to have deployed or the nature of the training provided do not demonstrate any error of law in the Trial Chamber's *actus reus* conclusions. The Appeals Chamber recalls that there is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime, and it is not required that such conduct serve as a condition precedent to the commission of the crime.¹⁰¹ It is sufficient for the aider and abettor's assistance or encouragement to have had a substantial effect on the realization of that crime, the establishment of which is a fact-based inquiry.¹⁰² As noted above, Stanišić argues that the limited number of men he was found to have deployed, as compared to the numerous JNA personnel and other Serb forces involved in the takeover of Bosanski Šamac, undermines the reasonableness of the conclusion that the assistance he provided had a substantial effect on the crimes. However, the Appeals Chamber recalls that the "limited scope" of the practical assistance provided does not preclude a conclusion that it had a substantial effect on the perpetration of a crime.¹⁰³

34. In any event, the Appeals Chamber observes that the Trial Chamber credited evidence that those deployed by Stanišić and Simatović had a significant role in the takeover of Bosanski Šamac and committed crimes there.¹⁰⁴ To this end, Stanišić does not substantiate his arguments that intervening events or passage of time between the training and deployment and the commission of crimes somehow minimized the impact of the practical assistance he was found to have provided.

35. Similarly, Stanišić's references to evidence in the record and the Trial Chamber's discussion in the Trial Judgement as to the nature of the training provided do not demonstrate any error of law based on the absence of any finding that the crimes were planned during the training or that it was

⁹⁹ *Blagojević and Jokić* Appeal Judgement, para. 127 and references cited therein.

¹⁰⁰ Trial Judgement, para. 605.

¹⁰¹ *Popović et al.* Appeal Judgement, para. 1783; *Šainović et al.* Appeal Judgement, n. 5336; *Rukundo* Appeal Judgement, para. 52. See also *Nyiramasuhuko et al.* Appeal Judgement, para. 3343; *Ndindiliyimana et al.* Appeal Judgement, para. 373.

¹⁰² *Šainović et al.* Appeal Judgement, n. 5336; *Rukundo* Appeal Judgement, para. 52.

¹⁰³ See *Blagojević and Jokić* Appeal Judgement, para. 134.

¹⁰⁴ See, e.g., Trial Judgement, paras. 206, 209-211, 215, 216, 218, 219, 222-225, 229-234, 407, 416-418, 424, 436, 604.

aimed at criminal conduct. There is no legal requirement, for example, that the training needed to involve criminal planning.¹⁰⁵

36. In light of the foregoing, the Appeals Chamber finds that Stanišić does not demonstrate that the Trial Chamber erred in law in relation to its *actus reus* findings on his aiding and abetting liability. Consequently, the Appeals Chamber dismisses Ground 1 of Stanišić’s appeal.

2. Alleged Errors of Fact Regarding the *Actus Reus* for Aiding and Abetting (Ground 2)

37. Stanišić submits that the Trial Chamber erred in fact in relation to its findings on the *actus reus* of aiding and abetting the crimes committed in Bosanski Šamac.¹⁰⁶ He argues that the Trial Chamber: (i) failed to identify and assess any acts or conduct to find that Stanišić, distinct from Simatović, was responsible for organizing the training of Unit members and local Serb forces (sub-ground A);¹⁰⁷ (ii) failed to properly assess and analyze the totality of evidence to find that Stanišić, distinct from Simatović, was responsible for deploying members of the Unit and local Serb forces (sub-ground B);¹⁰⁸ and (iii) erred in finding that the training and/or the initial deployment of members of the Unit and local Serb forces had a substantial effect on the crimes committed in Bosanski Šamac (sub-ground C).¹⁰⁹ Stanišić requests that the Trial Chamber’s findings be quashed to the extent of the errors identified and that he be found not guilty under Counts 1 to 5 of the Indictment.¹¹⁰ The Appeals Chamber will address the arguments in turn.

(a) Alleged Errors in Finding Stanišić Responsible for Training (sub-ground A)

38. The Trial Chamber found that, at least by August or September 1991, Stanišić and Simatović formed the Unit from amongst the most promising recruits trained at the Golubić camp between May and the end of July/early August 1991.¹¹¹ The Trial Chamber further concluded that the Unit was

¹⁰⁵ Cf. *Šešelj* Appeal Judgement, para. 172 (noting that whether an accused’s “activities might have been lawful and performed as a legitimate support to the war effort is not in and of itself determinative of whether [that accused’s] involvement in these activities can be characterized as unlawful”) (internal citation omitted); *Blagojević & Jokić* Appeal Judgement, para. 189 (holding that “where the accused knowingly participated in the commission of an offence and his or her participation substantially affected the commission of that offence, the fact that his or her participation amounted to no more than his or her ‘routine duties’ will not exculpate the accused”); *Aleksovski* Appeal Judgement, para. 163(iv) (noting that it is “not necessary to show the existence of a common concerted plan between the principal and the accessory”).

¹⁰⁶ See Stanišić Notice of Appeal, para. 18; Stanišić Appeal Brief, paras. 51-126. See also T. 24 January 2023 pp. 12, 13.

¹⁰⁷ See Stanišić Notice of Appeal, para. 18(a); Stanišić Appeal Brief, paras. 51, 52, 54-67. See also T. 24 January 2023 pp. 12, 13.

¹⁰⁸ See Stanišić Notice of Appeal, para. 18(b); Stanišić Appeal Brief, paras. 51, 52, 68-91. See also T. 24 January 2023 pp. 12, 13.

¹⁰⁹ See Stanišić Notice of Appeal, para. 18(c); Stanišić Appeal Brief, paras. 53, 92-126.

¹¹⁰ Stanišić Notice of Appeal, para. 19.

¹¹¹ Trial Judgement, para. 388. The Trial Chamber considered evidence that the Golubić training camp was located near Knin, Croatia. See Trial Judgement, para. 396. See also Trial Judgement, para. 382.

established as the State Security Service combat unit, that Stanišić and Simatović had authority over this force and that, from August or September 1991, it operated under their command and control, and that Stanišić and Simatović determined its use and deployment until at least mid-April 1992.¹¹²

39. The Trial Chamber further found that the training camps at Ležimir and Pajzoš operated under Stanišić's and Simatović's authority and control at least in the first part of 1992, until at least March or April, and that the training conducted there was done at the direction, with the authorization, as well as with the financial and logistical support of Stanišić and Simatović.¹¹³ Specifically, the Trial Chamber concluded that members of the Unit trained new members as well as locals from Bosanski Šamac at the Ležimir and Pajzoš camps.¹¹⁴ It also found that the organization of the training of the locals from Bosanski Šamac "occurred at various levels of the JNA area command and officials in Belgrade" and included transport provided by the JNA.¹¹⁵ The Trial Chamber found that, given Stanišić's and Simatović's authority over the Unit and the Ležimir and Pajzoš camps, it could "only conclude that they were aware and consented to this arrangement", and further determined that both "would have been aware [that] in allowing the use of their facilities and trainers that they would be supporting military action and, in the context of the conflict at the time, the commission of crimes by these forces".¹¹⁶ The Trial Chamber also found that, in March 1992, following their training at the camps by the Unit, a group of former police officers from SAO SBWS, including Slobodan Miljković (Lugar), Srećko Radovanović (Debeli), and Witness RFJ-035, were incorporated into the Unit and were under the authority of Stanišić and Simatović prior to being deployed.¹¹⁷

40. Stanišić submits that the finding in paragraph 409 of the Trial Judgement – that the Ležimir and Pajzoš camps operated under his authority in early 1992 until at least March or April of that year – was insufficient to support the conclusion that the training was therefore done at his and Simatović's direction, with their authorization, as well as their financial and logistical support.¹¹⁸ Stanišić further contends that no reasonable trier of fact could have reached this conclusion and the contradictory finding in paragraph 418 of the Trial Judgement that the organization of the training occurred at

¹¹² Trial Judgement, paras. 388, 405. *See also* Trial Judgement, paras. 418, 590.

¹¹³ Trial Judgement, para. 409. *See also* Trial Judgement, paras. 407, 418. The Trial Chamber noted Stanišić's submissions that Ležimir was in Fruška Gora, Serbia, and Pajzoš was in the surroundings of Ilok, Croatia. *See* Trial Judgement, para. 385.

¹¹⁴ Trial Judgement, para. 418. *See also* Trial Judgement, paras. 407, 416.

¹¹⁵ Trial Judgement, para. 418. *See also* Trial Judgement, paras. 407, 416, 419.

¹¹⁶ Trial Judgement, para. 418. *See also* Trial Judgement, para. 419.

¹¹⁷ Trial Judgement, para. 419. *See also* Trial Judgement, para. 416.

¹¹⁸ Stanišić Appeal Brief, para. 55.

various levels of the JNA area command and officials in Belgrade and that he and Simatović were aware of and consented to this arrangement.¹¹⁹

41. Stanišić also submits that the Trial Chamber erred in fact by failing to identify any of his acts or conduct that, distinct from Simatović's, would establish his responsibility for the training.¹²⁰ First, he argues that the Trial Chamber failed to consider how, if at all, Stanišić was responsible for Simatović's acts.¹²¹ In this respect, Stanišić submits that his *de jure* relationship to Simatović and his previous authority over the "nascent Unit" are insufficient to infer any conduct on his part.¹²² He also argues that there is no evidence that: (i) he was present during the training; (ii) he communicated with or instructed Simatović regarding the training; or (iii) would support the conclusions that the training was done at his direction and with his authorization, as well as his financial and logistical support or that he was aware of or consented to the training arrangements.¹²³

42. Stanišić further argues that the Trial Chamber's findings as to his authority over the "nascent Unit" are insufficient to conclude that he continued to exercise authority over the Unit members involved in the training in March and April 1992.¹²⁴ To this end, he submits that the Trial Chamber was required to, but did not, assess Stanišić's relationship with each Unit member at the time of the training.¹²⁵ Moreover, he argues that the evidence reflects that the only members of the "nascent Unit" who subsequently went to Bosanski Šamac were Dragan Đorđević (Crni) and Aleksandar Vuković (Vuk), and he contends that the Trial Chamber failed to explore their involvement in the training or any of his acts that facilitated their training.¹²⁶ Relatedly, Stanišić argues that there is no evidence to demonstrate his authority over "ex-Unit members" during the training and that his liability cannot be inferred from previous relationships or *de jure* positions.¹²⁷ Finally, in the absence of evidence that he was aware of the training of Bosanski Šamac locals and those led by Srećko Radovanović (Debeli), the Trial Chamber erred in fact in concluding that he consented to and was responsible for the organization of their training during the relevant time.¹²⁸

¹¹⁹ See Stanišić Appeal Brief, paras. 34, 35, 56. See also Stanišić Reply Brief, paras. 43, 44.

¹²⁰ Stanišić Appeal Brief, paras. 57, 58. See also T. 24 January 2023 pp. 12, 13.

¹²¹ Stanišić Appeal Brief, para. 59.

¹²² Stanišić Appeal Brief, para. 60.

¹²³ Stanišić Appeal Brief, paras. 57, 60, 61. Stanišić contends that the Trial Chamber's imprecise findings as to his authority over the Ležimir and Pajzoš camps and the Unit were insufficient to attribute responsibility to him for the training and the deployment. See Stanišić Appeal Brief, paras. 62, 63.

¹²⁴ Stanišić Appeal Brief, para. 65. See also Stanišić Appeal Brief, para. 64.

¹²⁵ Stanišić Appeal Brief, para. 65.

¹²⁶ Stanišić Appeal Brief, paras. 39, 66.

¹²⁷ Stanišić Appeal Brief, paras. 39, 67.

¹²⁸ Stanišić Appeal Brief, para. 67, referring to Trial Judgement, para. 418.

43. The Prosecution responds that the Trial Chamber was mindful of the different roles played by Stanišić and Simatović, considered Stanišić’s individual responsibility, and reasonably reached the same conclusion regarding both.¹²⁹ The Prosecution submits, *inter alia*, that the record demonstrates that Stanišić interacted with Unit members at the Ležimir camp around September 1991, that he exercised authority over Simatović, and that, as Chief of the State Security Service, Stanišić delegated more direct oversight for the training to Simatović, his trusted subordinate.¹³⁰ The Prosecution argues that Stanišić exercised authority over Unit members until at least mid-April 1992,¹³¹ and with such authority “must have instructed [them] to conduct the training, or authorised Simatović to instruct them” to do so.¹³²

44. The Prosecution also responds that the Trial Chamber reasonably concluded that Stanišić had control over the Unit at the Ležimir and Pajzoš camps at the time of the training and before deployment, and that he provided his financial and logistical support.¹³³ The Prosecution argues that the Trial Chamber reasonably concluded that the 30 former police officers from SAO SBWS – including Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 – were trained by Unit members in March 1992 and were incorporated into the Unit,¹³⁴ and that, given his authority over the entire Unit, it was unnecessary for the Trial Chamber to analyze Stanišić’s relationship to individual members.¹³⁵ The Prosecution also responds that the involvement of the JNA and Belgrade officials does not undermine the Trial Chamber’s findings as to Stanišić’s role in the training and his awareness of and consent to the training arrangement.¹³⁶ In its view, given Stanišić’s authority over the Unit, the camps, and the training conducted at the camps, the Trial Chamber reasonably concluded that Stanišić was aware of, supported, and consented to the training and was thus criminally responsible for its organization.¹³⁷

45. Simatović responds to Ground 2 of Stanišić’s appeal by arguing that Stanišić inappropriately seeks to transfer his responsibility to Simatović.¹³⁸

¹²⁹ See Prosecution Response to Stanišić Appeal, paras. 30-35.

¹³⁰ See Prosecution Response to Stanišić Appeal, paras. 30, 32-35.

¹³¹ See Prosecution Response to Stanišić Appeal, paras. 36-41.

¹³² Prosecution Response to Stanišić Appeal, para. 36.

¹³³ See Prosecution Response to Stanišić Appeal, paras. 42-48.

¹³⁴ See Prosecution Response to Stanišić Appeal, paras. 49-52.

¹³⁵ Prosecution Response to Stanišić Appeal, para. 52.

¹³⁶ See Prosecution Response to Stanišić Appeal, paras. 53-56.

¹³⁷ Prosecution Response to Stanišić Appeal, para. 56.

¹³⁸ See Simatović Response Brief, paras. 481, 484-500.

46. Stanišić replies that the Prosecution does not support its claim that the Trial Chamber considered Stanišić and Simatović separately.¹³⁹ Stanišić argues that the Prosecution’s response regarding his control over the camps, the training, and deployment rely on his alleged *de jure* control over Unit members rather than on any *de facto* authority.¹⁴⁰ Stanišić reiterates that the Trial Chamber erred by failing to identify any act on his part that would allow a reasonable trier of fact to conclude that he exercised authority or was otherwise responsible for the training.¹⁴¹

47. The Appeals Chamber first considers Stanišić’s submission that the finding in paragraph 409 of the Trial Judgement – that the Ležimir and Pajzoš camps operated under his authority in early 1992 until at least March or April of that year – was insufficient to support the conclusion that the training was therefore done at his and Simatović’s direction, with their authorization, as well as their financial and logistical support. The Appeals Chamber finds that Stanišić misreads the Trial Judgement. As detailed below, this conclusion is based on a larger body of evidence and findings. This contention is therefore dismissed.

48. The Appeals Chamber turns to Stanišić’s submission that the conclusions at paragraphs 409 and 418 of the Trial Judgement are contradictory. The Appeals Chamber finds that Stanišić fails to demonstrate an inherent contradiction in the conclusion at paragraph 418 that the organization of training at the Ležimir and Pajzoš camps of locals from Bosanski Šamac “occurred at various levels of the JNA area command and officials in Belgrade” and that Stanišić and Simatović were aware of and consented to this arrangement,¹⁴² and the finding at paragraph 409 that the training was done at Stanišić’s and Simatović’s direction, with their authorization, as well as their financial and logistical support.¹⁴³ This contention is therefore dismissed.

49. The Appeals Chamber next considers Stanišić’s contention that the Trial Chamber erred in fact by failing to identify any of his acts or conduct that, distinct from Simatović’s, would establish his responsibility for the training. The Appeals Chamber considers that Stanišić does not demonstrate that no reasonable trier of fact could have made joint findings as to Stanišić’s and Simatović’s joint responsibility in relation to the training.¹⁴⁴ Notwithstanding, the Appeals Chamber observes that the Trial Chamber did not make precise findings as to Stanišić’s particular acts or conduct underpinning these conclusions. For example, the Trial Chamber did not point to evidence or conclude that Stanišić

¹³⁹ See Stanišić Reply Brief, paras. 30-33.

¹⁴⁰ Stanišić Reply Brief, paras. 34, 37, 40.

¹⁴¹ Stanišić Reply Brief, para. 46.

¹⁴² See Trial Judgement, para. 418. See also Trial Judgement, paras. 407, 416, 419. The Appeals Chamber has found that the Trial Chamber erred in concluding that Bosanski Šamac locals received training at the Ležimir camp but that this error has not occasioned a miscarriage of justice. See *infra* Section IV.B.2(b).

¹⁴³ See Trial Judgement, para. 409.

¹⁴⁴ Cf. *Ndindiliyimana et al.* Appeal Judgement, para. 140.

was present at the Ležimir and Pajzoš camps in March and April 1992 organizing trainings, giving instructions, or directly overseeing the camps. The Trial Chamber made no express findings of Stanišić communicating with or instructing Simatović, trainers, or trainees regarding the training at the Ležimir and Pajzoš camps in March and April 1992. It also made no specific findings as to him contributing to the logistical and/or financial support of the camps. Rather, the Trial Chamber inferred as the only reasonable conclusions that Stanišić had authority over the camps, that the training was done at his direction, with his authorization, as well as with his logistical and financial support.¹⁴⁵

50. Bearing this in mind, the Appeals Chamber recalls the Trial Chamber's conclusions that Stanišić served as Deputy Chief of the State Security Service in 1991 and later as Chief from December 1991 until October 1998, thereby holding high-level positions with significant powers and authority within the State Security Service and the Serbian Ministry of the Interior.¹⁴⁶ The Trial Chamber rejected Stanišić's contention that the system in the State Security Service made it possible to bypass him and was open to abuse,¹⁴⁷ and he does not demonstrate on appeal that this conclusion was unreasonable. Furthermore, at the relevant time, Simatović was Stanišić's subordinate within the State Security Service,¹⁴⁸ and the Appeals Chamber considers that the evidence on the record relied upon by the Trial Chamber reasonably supports findings beyond reasonable doubt that Stanišić exercised actual authority over Simatović,¹⁴⁹ and in relation to the Unit's activities.¹⁵⁰ Consequently, Stanišić's suggestion that the Trial Chamber relied on his *de jure* authority over Simatović alone to establish his liability ignores the evidence and the Trial Chamber's findings and does not demonstrate error.

51. In reaching its findings, the Trial Chamber considered that: (i) in late August 1991, Stanišić and Simatović formed the Unit when Simatović selected 28 men from various formations who passed through Golubić;¹⁵¹ (ii) the Unit was established to serve as the State Security Service combat unit;¹⁵² (iii) three or four days after the arrival of Unit members at the Ležimir camp around September 1991,

¹⁴⁵ Trial Judgement, para. 409. *See also* Trial Judgement, para. 418.

¹⁴⁶ Trial Judgement, para. 350.

¹⁴⁷ Trial Judgement, para. 350.

¹⁴⁸ *See* Trial Judgement, paras. 351-354.

¹⁴⁹ *See, e.g.*, Witness RFJ-137, Exhibit P00245, paras. 7, 37; Witness Todorović, T. 3 July 2019 p. 36; Witness RFJ-088, Exhibit P02310, pp. 19448, 19566. *See also* Witness RFJ-066, Exhibit P00202, para. 57; Witness Babić, Exhibit P01246, pp. 13524, 13525; Witness RFJ-037, T. 6 February 2018 p. 44, T. 13 February 2018 p. 20.

¹⁵⁰ *See, e.g.*, Witness RFJ-137, Exhibit P00245, paras. 6, 7, 37, 50, 70, Exhibit 2D00012, p. 81, T. 18 July 2017 pp. 29-32.

¹⁵¹ Trial Judgement, para. 405, n. 1631, *referring to* Witness RFJ-137, Exhibit P00245, paras. 13, 22, 29, 30, T. 18 July 2017 pp. 24, 25, 53, 56. *See also* Trial Judgement, paras. 395, 412 (noting Stanišić's concessions that he created and had temporary command over the "nascent Unit").

¹⁵² Trial Judgement, para. 405, n. 1632, *referring to* Witness RFJ-137, Exhibit P00245, paras. 30, 31.

Simatović introduced Stanišić, who gave a speech to the Unit informing them of their purpose;¹⁵³ and (iv) at Ležimir, only Stanišić and Simatović “came to visit”¹⁵⁴ and, in December 1991 or January 1992, Unit members received further training and became instructors, training other men from Serbia and Bosnia and Herzegovina.¹⁵⁵ The Trial Chamber concluded that, from at least August or September 1991, the Unit operated under the command and control of Stanišić and Simatović and only they could give orders to its members.¹⁵⁶ In this regard, the Trial Chamber recalled evidence that the Unit could not participate in combat operations without the approval of Stanišić and Simatović.¹⁵⁷ In relation to the foregoing findings, the Trial Chamber relied principally on the evidence of Witness RFJ-137,¹⁵⁸ and Stanišić does not demonstrate that any of these conclusions, in light of the evidence, was unreasonable.¹⁵⁹ Specifically, the Trial Chamber noted evidence from Witness RFJ-137 who testified that Stanišić “came several times” to the Ležimir camp.¹⁶⁰ At trial, Stanišić conceded that he had temporary command over the Unit, which came into existence in September 1991,¹⁶¹ and, in view of the evidence and findings concerning the Unit and the training at the Ležimir and Pajzoš camps in March and April 1992,¹⁶² the Trial Chamber reasonably rejected¹⁶³ his contentions that he ordered the Unit to disband in March 1992.

52. Central to the Trial Chamber’s findings on Stanišić’s and Simatović’s involvement in the Ležimir and Pajzoš camps in March and April 1992 are its conclusions as to the Unit’s involvement in conducting the training at the camps.¹⁶³ The evidence considered by the Trial Chamber reasonably supports its conclusions, as it reflects that the training was conducted by Unit members,¹⁶⁴ who were operating under Simatović’s direct supervision and with his physical presence at or near the camps,¹⁶⁵

¹⁵³ Trial Judgement, para. 406, nn. 1635-1637, *referring to* Witness RFJ-137, Exhibit P00245, paras. 22, 32, 34, 36, 37, T. 18 July 2017 pp. 25, 26, 29.

¹⁵⁴ Trial Judgement, para. 406, n. 1638, *referring to* Witness RFJ-137, Exhibit P00245, para. 41, T. 20 July 2017 p. 30.

¹⁵⁵ Trial Judgement, para. 407, nn. 1640-1643, *referring to* Witness RFJ-137, Exhibit P00245, paras. 33, 42, Exhibit P00246, para. 5, T. 19 July 2017 p. 36.

¹⁵⁶ Trial Judgement, para. 405, nn. 1631, 1633, *referring to* Witness RFJ-137, Exhibit P00245, paras. 13, 22, 29, 30, 50, T. 18 July 2017 pp. 24, 25, 28, 29, 53, 56.

¹⁵⁷ Trial Judgement, para. 419, n. 1679, *referring to* Witness RFJ-137, T. 18 July 2017 pp. 29-32.

¹⁵⁸ *See, e.g.*, Trial Judgement, paras. 396, 399, 402-407, 419.

¹⁵⁹ Stanišić challenges the Trial Chamber’s reliance on the evidence of Witness RFJ-137 in sub-ground B of Ground 2 of his appeal, which is addressed below.

¹⁶⁰ *See* Trial Judgement, para. 406, n. 1638, *referring to, inter alia*, Witness RFJ-137, T. 20 July 2017 p. 30.

¹⁶¹ *See* Trial Judgement, para. 395, *referring to* Stanišić Final Trial Brief, paras. 54, 55.

¹⁶² *See* Trial Judgement, paras. 209, 407, 409, 416-419.

¹⁶³ *See* Trial Judgement, paras. 209, 407, 409, 416.

¹⁶⁴ *See* Witness RFJ-035, Exhibit P02026, paras. 29, 30, Exhibit P02028, pp. 7630, 7804, T. 17 April 2018 pp. 9-12; Exhibit P00846, p. 3; Witness Todorović, Exhibit P01916, pp. 23432, 23433, 23437, 23438, Exhibit P01922. *See also* Trial Judgement, paras. 407, 416.

¹⁶⁵ *See* Witness RFJ-035, Exhibit P02026, paras. 32, 34, T. 17 April 2018 pp. 14-16, Exhibit P02028, pp. 7623-7625, 7679, 7680, 7801; Witness Todorović, Exhibit P01916, pp. 23434, 23436, 23437, 23519.

and with the logistical and financial support of the State Security Service under Stanišić's leadership.¹⁶⁶

53. The Appeals Chamber finds that, in light of the above, the Trial Chamber reasonably concluded as the only reasonable inference that Stanišić had authority over the camps, that the training was done at his direction, authorization, and with his logistical and financial support, and that he was aware of and consented to the training arrangements.¹⁶⁷ As noted above, these conclusions rely heavily on Stanišić's actual authority within the State Security Service and over Simatović, who played a more direct role in operating the camps at Ležimir and Pajzoš. That the Trial Chamber did not conclude that Stanišić was physically present at the camps in March and April 1992 does not demonstrate that these conclusions were unreasonable.

54. Given the aforementioned findings and evidence as to Stanišić's actual authority over Simatović, the Unit, the camps, and the training therein, the Appeals Chamber also rejects Stanišić's submissions that the Trial Chamber's findings are solely based on his *de jure* position or his authority over the Unit. Furthermore, the Appeals Chamber finds that Stanišić does not demonstrate that the Trial Chamber was required to make findings as to his direct relationship with individual Unit members or trainers involved in the training and, on the same basis, dismisses his contention that the Trial Chamber erred by failing to specifically explore the acts of Dragan Đorđević (Crni) and Aleksandar Vuković (Vuk) in relation to the training prior to their deployment to Bosanski Šamac. Stanišić also does not demonstrate that the Trial Chamber: (i) failed to sufficiently evaluate his relationship with locals from Bosanski Šamac and former police officers from SAO SBWS, including Srećko Radovanović (Debeli), who were trained; or (ii) was required to find that he was aware of their specific involvement in the training to establish his actual authority in relation to the training conducted at the camps for the purposes of his aiding and abetting liability. These arguments are also dismissed.

¹⁶⁶ See Trial Judgement, paras. 405, 406; Witness RFJ-137, Exhibit P00245, paras. 6, 7, 29-32, 35, 37, 38, 40-44 (stating that the Unit members, also known as the "Red Berets", were: (i) under the authority of Stanišić and his subordinate Simatović "under the aegis of Serbia's [State Security Service]"; (ii) formed by Simatović in order to serve as the State Security Service's combat unit and moved to Fruška Gora (Ležimir) for training; (iii) a "secret unit and we did not talk about our ties to Serbia's [State Security Service]"; and (iv) gifted a pistol by Stanišić and Simatović and provided with equipment, uniforms, and red berets, and was paid by staff of the State Security Service). See also, e.g., Exhibit P00268, p. 9 (a document signed by Stanišić requesting operative checks for, *inter alios*, Aleksandar Vuković (Vuk) as a candidate for the Unit's active and reserve force); Exhibit P00845, p. 2 (a document signed by Stanišić requesting the State Security Service to vet Dragan Đorđević (Crni) as a candidate for the Unit's active and reserve forces); Witness Nielsen, Exhibit P00850, para. 204.

¹⁶⁷ See Trial Judgement, paras. 409, 418.

55. In light of the above, the Appeals Chamber dismisses Stanišić's submissions in sub-ground A of Ground 2 of his appeal.

(b) Alleged Errors in Finding Stanišić Responsible for Deployment (sub-ground B)

56. The Trial Chamber recalled evidence reflecting that, around 10 April 1992 at Pajzoš, Simatović addressed Unit members – including Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 – as well as the trainees from Bosanski Šamac and informed them of their deployment to Bosanski Šamac.¹⁶⁸ The Trial Chamber further noted evidence that, on 11 April 1992, a group of around 50 men, 30 from Serbia and the rest from Bosanski Šamac, arrived in Batkuša, a Serbian village near Bosanski Šamac, in JNA helicopters from a site near Ležimir.¹⁶⁹ The Trial Chamber also stated that Dragan Đorđević (Crni), Srećko Radovanović (Debeli), and Slobodan Miljković (Lugar) were a part of this group and that other Unit members included Aleksandar Vuković (Vuk), Predrag Lazarević (Laki), Goran Simović (Tralja), and Zivomir Avramović (Avram).¹⁷⁰

57. In this context, the Trial Chamber stated that it was satisfied that, in March 1992, following their training at the camps by the Unit, Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 were incorporated into the Unit, and that they were under the authority of Stanišić and Simatović prior to their deployment.¹⁷¹ The Trial Chamber also noted that the JNA played a large role in transporting Unit members and in their participation in the attack, but recalled the evidence of Witness RFJ-137 that members of the Unit could not participate in combat operations without the approval of Stanišić and Simatović.¹⁷² The Trial Chamber concluded that because this was a significant contingent, that they were briefed by Simatović personally prior to departure, and that they departed from Pajzoš, it was convinced that this deployment was authorized by Stanišić and Simatović.¹⁷³ The Trial Chamber then concluded that Stanišić and Simatović trained and deployed Unit members and locals from Bosanski Šamac to assist in the takeover operation of Bosanski Šamac

¹⁶⁸ Trial Judgement, para. 417. *See also* Trial Judgement, para. 209.

¹⁶⁹ Trial Judgement, paras. 209, 417.

¹⁷⁰ Trial Judgement, paras. 209, 417.

¹⁷¹ Trial Judgement, para. 419.

¹⁷² Trial Judgement, para. 419.

¹⁷³ Trial Judgement, para. 419. *See also* Trial Judgement, paras. 388 (“[T]he Trial Chamber is convinced that, at least by August or September 1991, Stanišić and Simatović formed the Unit from amongst the most promising recruits trained at Golubić between May and the end of July/early August 1991. The Trial Chamber is also satisfied that [Stanišić and Simatović] had authority over this force and determined its use and deployment until at least mid-April 1992.”), 590 (“In relation to the Unit, the Prosecution has proven beyond reasonable doubt that, on one occasion, in the context of the takeover operation of the Bosanski Šamac municipality in April 1992, [Stanišić and Simatović] deployed members of the Unit along with approximately 20 Bosanski Šamac locals trained by Unit members from its camp at Pajzoš, near Ilok, Croatia. During and in the aftermath of the operation, this group, led by Dragan Đorđević (Crni), a Unit member, committed the crimes of persecution, murder, deportation, and forcible transfer, as charged in the Indictment.”).

and that, given the context of the conflict at the time, they would have been aware of the commission of crimes during the operation.¹⁷⁴

58. Finally, the Trial Chamber found that, upon arrival in Bosanski Šamac, those deployed from Pajzoš and Ležimir camps were subordinated to the JNA during the takeover of the municipality.¹⁷⁵ Consequently, the Trial Chamber was not convinced that Stanišić and Simatović had control or command over the Unit following their deployment or that they had authority over or instructed them or Serb forces in the course of operations or the commission of crimes in Bosanski Šamac.¹⁷⁶ However, in convicting them for aiding and abetting, the Trial Chamber concluded that the fact that, once deployed the Unit members were resubordinated to the JNA, was immaterial as Stanišić's and Simatović's contributions consisted of training and making those forces available during the takeover, not in directing them during the operation.¹⁷⁷

59. Stanišić submits that no reasonable trier of fact could have found him responsible for deploying members of the Unit and local Serb forces to Bosanski Šamac.¹⁷⁸ He argues that this conclusion is based on Simatović's short briefing prior to the departure from the Pajzoš camp, and, in this context, Stanišić submits that the Trial Chamber erroneously attributed Simatović's conduct to him.¹⁷⁹ He supports this contention by highlighting the parties' trial arguments that focused on Simatović's direct role in the deployment contrasted by the absence of Stanišić's involvement.¹⁸⁰ Stanišić also submits that the Trial Chamber ignored its "own admonishment" from paragraph 350 of the Trial Judgement – to assess his power and authority specifically in relation to events in Bosanski Šamac – and erroneously failed to consider his remoteness from the deployment in concluding that he authorized it.¹⁸¹ In his view, even if the Trial Chamber was satisfied that Simatović was present and participated in the training and deployment, it also had to be satisfied that this was done at the "express behest of Stanišić".¹⁸²

60. Stanišić further argues that Simatović's briefing amounted to, at best, a "momentary intervention" or command for an "extremely limited period" rather than the exercise of any real

¹⁷⁴ Trial Judgement, para. 419.

¹⁷⁵ Trial Judgement, paras. 218, 605.

¹⁷⁶ Trial Judgement, paras. 424, 436.

¹⁷⁷ Trial Judgement, para. 605. *See also* Trial Judgement, para. 590 ("The Trial Chamber recalls, however, that, during the operation, this group was re-subordinated to the JNA's 17th Tactical Group and that there is insufficient evidence of [Stanišić and Simatović] issuing orders, instructions, or influencing, in any manner, the conduct of Unit members during and following the takeover of the municipality of Bosanski Šamac.").

¹⁷⁸ *See* Stanišić Appeal Brief, paras. 71-91. *See also* Stanišić Appeal Brief, paras. 3, 4, 6, 35-43, 47, 48, 50.

¹⁷⁹ *See* Stanišić Appeal Brief, paras. 37, 42, 48, 82-91.

¹⁸⁰ Stanišić Appeal Brief, paras. 82-86. *See also* Stanišić Appeal Brief, para. 91.

¹⁸¹ Stanišić Appeal Brief, paras. 87-89. *See also* Stanišić Appeal Brief, paras. 3, 4, 6, 36, 43, 50.

¹⁸² Stanišić Appeal Brief, paras. 36, 91.

authority in relation to this deployment.¹⁸³ In this respect, Stanišić contends that Witness RFJ-035's evidence on this issue does not reasonably demonstrate that Simatović gave a "briefing" on or around 10 April 1992 and that, in any event, this "briefing" lasted only 37 minutes, was a "fleeting command of little or no consequence to the crimes eventually committed", contained no military instructions or instructions to commit crimes, and was not linked to Stanišić's acts or conduct.¹⁸⁴ In this context, and in view of the Trial Chamber's own findings that Stanišić did not have control over the Unit members once deployed, he submits that the real command over the persons deployed was with the JNA.¹⁸⁵

61. Stanišić also submits that since only two members of the Unit – Dragan Đorđević (Crni) and Aleksandar Vuković (Vuk) – had connections to Stanišić through their prior involvement in the "nascent Unit", it is apparent that the deployment was nothing more than momentary command on the part of Simatović.¹⁸⁶ He further challenges the Trial Chamber's finding that he had any authority over the group of former police officers from SAO SBWS, which included Srećko Radovanović (Debeli), given their late incorporation into the Unit and because none of these men had any prior relationship with Stanišić or Simatović.¹⁸⁷ Stanišić argues that no reasonable trier of fact could have relied on any *de jure* authority he had over Simatović or the Unit to attribute responsibility for the deployment to him.¹⁸⁸

62. Finally, Stanišić challenges the Trial Chamber's reliance on the uncorroborated evidence of Witness RFJ-137 in paragraph 419 of the Trial Judgement in concluding that members of the Unit could not participate in combat operations without the approval of Stanišić and Simatović.¹⁸⁹ He submits that this finding was unreasonable given that the witness [REDACTED].¹⁹⁰ He nevertheless argues that Witness RFJ-137's evidence is consistent with his defence and reflects that, while Stanišić

¹⁸³ See Stanišić Appeal Brief, paras. 4, 38, 71, 72, 74, 75, 81, 105, referring to, *inter alia*, Trial Judgement, para. 419. See also Stanišić Appeal Brief, para. 107.

¹⁸⁴ Stanišić Appeal Brief, paras. 72, 76-81, referring to, *inter alia*, Trial Judgement, paras. 417, 419, Witness RFJ-035, T. 17 April 2018 pp. 15, 16, Exhibit P02026, paras. 32, 39-41, 43, Exhibit P02028, pp. 7631, 7632, 7756, Exhibit P02040, p. 1. Stanišić submits that the briefing could not be considered a "deployment" by Simatović or him, and he contrasts Simatović's remarks in the briefing with the "meaningful military briefing" given by Lieutenant Colonel Stevan Nikolić (Kriger), the Commander of the JNA's 17th Tactical Group, the night before the takeover of Bosanski Šamac. See Stanišić Appeal Brief, paras. 77, 81. See also Trial Judgement, para. 208.

¹⁸⁵ See Stanišić Appeal Brief, para. 81; Stanišić Reply Brief, para. 51. See also Stanišić Appeal Brief, paras. 4, 30, 32, 40, 41, 48, 74, 77, 105, 106. According to Stanišić, "[d]eployment was nothing more than returning the men to the JNA after they had been trained". See Stanišić Appeal Brief, para. 105.

¹⁸⁶ Stanišić Appeal Brief, para. 106. See also Stanišić Appeal Brief, paras. 4, 39, 74, 81; Stanišić Reply Brief, para. 51.

¹⁸⁷ Stanišić Appeal Brief, paras. 4, 39, 74, 81.

¹⁸⁸ Stanišić Appeal Brief, para. 81.

¹⁸⁹ Stanišić Appeal Brief, para. 90, referring to, *inter alia*, Trial Judgement, para. 419, n. 1679.

¹⁹⁰ Stanišić Appeal Brief, para. 90.

could issue orders to the Unit, only Simatović did.¹⁹¹ Stanišić submits that “even though he had some overarching authority over the men, he was remote from their day-to-day activities”.¹⁹²

63. The Prosecution responds that Stanišić fails to undermine the Trial Chamber’s reasonable conclusion that Stanišić deployed Unit members and local Serb forces to Bosanski Šamac, submitting that the Trial Chamber differentiated between Stanišić’s and Simatović’s roles.¹⁹³ It contends that: (i) the briefing by Simatović – Stanišić’s subordinate – prior to deployment confirms Stanišić’s responsibility; (ii) Stanišić’s authority over the deployment is supported by his control over the Pajzoš and Ležimir camps; and (iii) his lack of presence at the relevant time does not undermine the Trial Chamber’s findings given his leadership role in the State Security Service.¹⁹⁴ The Prosecution argues that, in relation to the specifics of Simatović’s briefing prior to departure, military instructions or instructions to commit crimes are not necessary to reach the conclusion that Stanišić deployed the Unit and local Serb forces to Bosanski Šamac.¹⁹⁵ The Prosecution further contends that the Unit’s subordination to the JNA during the Bosanski Šamac operation does not undermine the Trial Chamber’s conclusion as to Stanišić’s contribution through deployment and his control over the Unit members’ operations,¹⁹⁶ and it submits that Witness RFJ-137’s evidence provided a reliable basis for making a finding as to Stanišić’s control.¹⁹⁷

64. Simatović responds to Ground 2 of Stanišić’s appeal arguing that, contrary to Stanišić’s submission, his “briefing” was not a contribution to the deployment and that those deployed were not under Simatović’s command even for a limited period.¹⁹⁸ He also argues that Stanišić’s claim that only Simatović issued orders to the Unit misrepresents Witness RFJ-137’s evidence.¹⁹⁹

65. Stanišić replies that the Prosecution’s claim that the Trial Chamber differentiated between Stanišić’s and Simatović’s roles is unsubstantiated, and he disputes its position that the Trial Chamber could infer his conduct and responsibility through his *de jure* authority.²⁰⁰ Stanišić reiterates that, in light of the JNA’s command throughout, he never exercised “any real authority over the men (except [Dragan Đorđević] Crni and [Aleksandar Vuković] Vuk who had prior connections with the Unit)”.²⁰¹

¹⁹¹ Stanišić Appeal Brief, para. 91, referring to Witness RFJ-137, T. 18 July 2017 p. 29.

¹⁹² Stanišić Appeal Brief, para. 91.

¹⁹³ See Prosecution Response to Stanišić Appeal, paras. 57-75.

¹⁹⁴ Prosecution Response to Stanišić Appeal, paras. 70, 71, 73. See also Prosecution Response to Stanišić Appeal, para. 59.

¹⁹⁵ Prosecution Response to Stanišić Appeal, para. 72.

¹⁹⁶ See Prosecution Response to Stanišić Appeal, paras. 66-68.

¹⁹⁷ Prosecution Response to Stanišić Appeal, paras. 60, 61.

¹⁹⁸ Simatović Response Brief, paras. 504, 505.

¹⁹⁹ See Simatović Response Brief, paras. 506-513.

²⁰⁰ See Stanišić Reply Brief, paras. 47-50.

²⁰¹ Stanišić Reply Brief, para. 51.

He argues that the Trial Chamber should have examined whether the deployment amounted to the limited authority of making Unit members available to the JNA to which the Trial Chamber could not have attached any real significance.²⁰²

66. The Appeals Chamber observes that the Trial Chamber, relying on Witness RFJ-035's evidence, considered that, around 10 April 1992, Simatović addressed Unit members, including Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035, as well as trainees from Bosanski Šamac at Pajzoš and informed them of their deployment to Bosanski Šamac.²⁰³ A holistic reading of the Trial Judgement reflects that the Trial Chamber relied on Witness RFJ-035's evidence in relation to its findings that Simatović briefed Unit members and local Serbs prior to their 11 April 1992 deployment to Batkuša.²⁰⁴ The Trial Chamber relied on this finding, in part, to conclude that Stanišić and Simatović authorized the deployment.²⁰⁵

67. With respect to Stanišić's contention that the Trial Chamber erroneously attributed Simatović's conduct to him, the Appeals Chamber observes that the Trial Chamber did not point to specific evidence or make a finding on particular conduct demonstrating that Stanišić authorized this deployment. Consequently, it is apparent that the Trial Chamber inferred as the only reasonable conclusion that Stanišić, along with Simatović who was physically present at Pajzoš and addressed those who were deployed, authorized the deployment.

68. The Appeals Chamber recalls the Trial Chamber's findings as to the general organization of the State Security Service as well as Stanišić's position of authority over Simatović and their close proximity within the State Security Service during the relevant time.²⁰⁶ Additionally, the Trial Chamber rejected Stanišić's arguments that various features in the structural system of the State Security Service made it possible to bypass him and were open to abuse, including in relation to the roles of the Deputy Chief and Heads of Administrations.²⁰⁷ Stanišić has not demonstrated on appeal that this conclusion was unreasonable.

69. Furthermore, the Appeals Chamber considers that the evidence on the record and relied upon by the Trial Chamber could reasonably support findings beyond reasonable doubt that Stanišić

²⁰² See Stanišić Reply Brief, paras. 50-52.

²⁰³ Trial Judgement, para. 417, n. 1672, referring to Witness RFJ-035, T. 17 April 2018 pp. 14, 15, Exhibit P02026, paras. 32-34, Exhibit P02028, pp. 7623, 7624. See also Trial Judgement, para. 209, n. 943, referring to, *inter alia*, Witness RFJ-035, T. 17 April 2018 pp. 6, 16, T. 19 April 2018 p. 14.

²⁰⁴ Trial Judgement, paras. 209, 417, 419.

²⁰⁵ Trial Judgement, para. 419.

²⁰⁶ See Trial Judgement, paras. 329-338, 342, 348-351, 354.

²⁰⁷ Trial Judgement, para. 350.

exercised actual authority over Simatović,²⁰⁸ and in relation to the Unit's activities.²⁰⁹ The Trial Chamber relied on evidence as to their interwoven roles in the establishment and control of the Unit and the camps.²¹⁰ Furthermore, Stanišić conceded at trial that he had control of the Unit between September 1991 and March 1992,²¹¹ and the Trial Chamber reasonably rejected his contention that he ordered the Unit to be disbanded in March 1992.²¹² In this context, the Trial Chamber concluded that the camps operated under the authority of Stanišić and Simatović,²¹³ a finding that the Appeals Chamber has affirmed. The Appeals Chamber further recalls the Trial Chamber's emphasis on evidence that only Stanišić and Simatović could approve the combat operations of the Unit and that this was a "significant contingent" that was deployed following Simatović's briefing.²¹⁴

70. In light of the above, the Appeals Chamber finds no merit in Stanišić's submissions that the Trial Chamber erred by failing to differentiate him from Simatović by "attributing" Simatović's conduct to him. The Appeals Chamber observes that the Trial Chamber often discussed Stanišić and Simatović collectively in its conclusions.²¹⁵ However, in light of the evidence and findings discussed above, the Appeals Chamber finds no basis for Stanišić's submission that the Trial Chamber was required to make specific factual findings that Simatović's involvement in the deployment was done at Stanišić's "express behest" or to provide any further analysis based on Stanišić's supposed "remoteness" from the deployment. Notably, Stanišić does not argue on appeal that the Trial Chamber erred by failing to consider evidence of any intervening event between late 1991 and April 1992 demonstrating a breakdown of his authority over Simatović, the Unit, or the camps, or that Simatović was acting on his own volition outside the chain of command at the time of the deployment. Consequently, the Appeals Chamber finds that, subject to the specific evidentiary challenges addressed below, Stanišić has not shown that the Trial Chamber erred by inferring as the only reasonable conclusion that Stanišić, in addition to Simatović who was physically present at Pajzoš, authorized the deployment to Bosanski Šamac. Stanišić likewise fails to demonstrate that the Trial Chamber solely relied on his *de jure* authority over Simatović in concluding that he authorized the deployment.

²⁰⁸ See, e.g., Witness RFJ-137, Exhibit P00245, paras. 7, 37; Witness Todorović, T. 3 July 2019 p. 36; Witness RFJ-088, Exhibit P02310, pp. 19448, 19566. See also Witness RFJ-066, Exhibit P00202, para. 57; Witness Babić, Exhibit P01246, pp. 13524, 13525; Witness RFJ-037, T. 6 February 2018 p. 44, T. 13 February 2018 p. 20.

²⁰⁹ See, e.g., Witness RFJ-137, Exhibit P00245, paras. 6, 7, 37, 50, 70, Exhibit 2D00012, p. 81, T. 18 July 2017 pp. 29-32.

²¹⁰ Trial Judgement, paras. 405-407.

²¹¹ Trial Judgement, para. 412. See also Trial Judgement, paras. 385, 395.

²¹² See *supra* para. 51.

²¹³ Trial Judgement, paras. 409, 418.

²¹⁴ Trial Judgement, para. 419.

²¹⁵ See, e.g., Trial Judgement, paras. 388, 409, 418, 419, 424, 435, 436, 605.

71. The Appeals Chamber next considers Stanišić’s characterization of the briefing as a “momentary intervention” and his contention that Witness RFJ-035’s evidence does not reasonably demonstrate that Simatović gave a “briefing” on or around 10 April 1992. As noted above, the Trial Chamber relied on this evidence, in part, to find that Stanišić and Simatović authorized the deployment. The Appeals Chamber observes that Witness RFJ-035’s evidence, as referenced by the Trial Chamber and Stanišić, reflects that: (i) after about two weeks of training at Pajzoš, Simatović went to the training ground and “held a briefing” wherein he “told the group that [they] were to be deployed to Bosanski Šamac by helicopter” and that their “objective was to secure Bosanski Šamac and the surrounding Serbian villages”;²¹⁶ (ii) the briefing lasted 30 to 40 minutes;²¹⁷ (iii) participants at the briefing included Dragan Đorđević (Crni), Srećko Radovanović (Debeli) and his unit, which included the witness, as well as locals from Bosanski Šamac;²¹⁸ (iv) judging from the way everyone treated Simatović, the witness believed that Simatović was the “commander” and Dragan Đorđević (Crni)’s “superior”,²¹⁹ who in turn was superior to Srećko Radovanović (Debeli);²²⁰ and (v) the day of or the day following the briefing, the witness and other individuals were taken by helicopter to Batkuša, Bosnia and Herzegovina.²²¹ In relation to Simatović’s role as “commander”, Witness RFJ-035 stated: “I believe that [Simatović] was the superior to ‘Crni’ as he was the person giving the briefing prior to our departure for Batkuša”.²²²

72. The Appeals Chamber finds that the Trial Chamber reasonably placed emphasis on Simatović’s briefing to members of the Unit and local Serbs before their departure in finding that the “deployment was authorized” by Stanišić and Simatović.²²³ Noting Witness RFJ-035’s use of the word “briefing” in describing the event,²²⁴ the Appeals Chamber further finds, no merit in Stanišić’s suggestion that this terminology, as employed by the Trial Chamber, does not reasonably reflect the record. Furthermore, Stanišić fails to demonstrate that the duration of Simatović’s remarks or their content undermines the reasonableness of the Trial Chamber’s conclusion that he and Simatović authorized the deployment.²²⁵ His attempt to characterize the record as merely reflecting “momentary

²¹⁶ Witness RFJ-035, Exhibit P02026, para. 32, Exhibit P02028, p. 7624, T. 17 April 2018 p. 15.

²¹⁷ Witness RFJ-035, Exhibit P02028, p. 7624.

²¹⁸ Witness RFJ-035, Exhibit P02026, para. 33, Exhibit P02028, p. 7624, T. 17 April 2018 pp. 14, 15.

²¹⁹ Witness RFJ-035, Exhibit P02026, paras. 32, 34, T. 17 April 2018 pp. 14, 16.

²²⁰ Witness RFJ-035, Exhibit P02026, para. 34, T. 17 April 2018 p. 16.

²²¹ Witness RFJ-035, Exhibit P02026, para. 35, T. 17 April 2018 pp. 15, 16.

²²² Witness RFJ-035, Exhibit P02026, para. 34.

²²³ See Trial Judgement, para. 419.

²²⁴ Witness RFJ-035, Exhibit P02026, paras. 32, 34, Exhibit P02028, p. 7624.

²²⁵ In the context of the Trial Chamber’s finding that Stanišić and Simatović authorized the deployment, the Appeals Chamber sees no significance in any differences between Simatović’s remarks prior to the deployment and the remarks given by Lieutenant Colonel Stevan Nikolić (Kriger), the Commander of the JNA’s 17th Tactical Group, the night before the takeover of Bosanski Šamac.

command” or something other than a “deployment”²²⁶ ignores the Trial Chamber’s conclusions as to his and Simatović’s authority generally over the Unit as well as the training at the Ležimir and Pajzoš camps prior to the deployment.²²⁷ Similarly, Stanišić’s suggestion that he had no real authority given that those deployed were resubordinated under the JNA further ignores the Trial Chamber’s determination that Stanišić’s and Simatović’s contribution to the crimes for which they were convicted consisted of training and making those forces available during the takeover, not in directing them during the operation.²²⁸

73. The Appeals Chamber turns to Stanišić’s contention that he lacked authority in respect of the deployment because he: (i) only had connections with Dragan Đorđević (Crni) and Aleksandar Vuković (Vuk) through their prior involvement in the Unit; and (ii) had no authority over the group of former police officers from SAO SBWS, which included Srećko Radovanović (Debeli), given the group’s late incorporation into the Unit. The Appeals Chamber has previously noted the evidence and findings demonstrating the reasonableness of the Trial Chamber’s conclusions as to Stanišić’s authority over the Ležimir and Pajzoš camps and has dismissed materially similar arguments.²²⁹ Stanišić points to no evidence or intervening events to demonstrate that the Trial Chamber unreasonably determined that he and Simatović retained authority over the camps. That certain individuals were formally integrated into the Unit in March 1992 is of no import as to Stanišić’s ability to authorize their deployment in April 1992. Furthermore, and as discussed above, the Trial Chamber did not solely rely on Stanišić’s *de jure* authority over Simatović or Unit members in reaching these conclusions. These arguments are dismissed.

74. The Appeals Chamber turns to Stanišić’s contention that the Trial Chamber erroneously relied on the evidence of Witness RFJ-137, [REDACTED], to find in paragraph 419 of the Trial Judgement that members of the Unit could not participate in combat operations without the approval of Stanišić and Simatović. The Appeals Chamber observes that the Trial Chamber relied on this evidence, in part, in concluding that Stanišić and Simatović authorized the deployment in April 1992.²³⁰

75. The Appeals Chamber observes that Witness RFJ-137’s evidence, as relied upon by the Trial Chamber, reflects that, during his time in the Unit, Stanišić and Simatović were the leaders of the Unit, and “[o]nly they were able to give orders to its members”.²³¹ The witness stated that following

²²⁶ See Stanišić Appeal Brief, paras. 4, 38, 71, 72, 74, 75, 81, 105.

²²⁷ See Trial Judgement, paras. 405, 409, 418, 419. See also Trial Judgement, paras. 406, 407.

²²⁸ Trial Judgement, para. 605.

²²⁹ See *supra* paras. 50-54.

²³⁰ Trial Judgement, para. 419.

²³¹ See Trial Judgement, para. 405, referring to, *inter alia*, Witness RFJ-137, Exhibit P00245, para. 50, T. 18 July 2017 p. 29.

an operation in autumn 1991 that was supposed to be coordinated with the JNA, “Jovica and Frenki arrived from Belgrade”, were “very angry”, and “said that from that day on we were not to go to any operation without their prior approval”.²³² The witness indicated that Stanišić could issue orders but did not do so while the witness was present, that only Stanišić and Simatović could issue orders regarding the operations that the Unit could participate in, and that the Unit always followed their orders and did not engage in operations without Simatović’s approval.²³³ The Appeals Chamber considers that, irrespective of whether Witness RFJ-137 observed Stanišić issue orders, it was reasonable for the Trial Chamber to rely on this witness’s evidence that “members of the Unit could not participate in combat operations without the approval” of Stanišić and Simatović when finding that they authorized the deployment in April 1992.²³⁴

76. A further review of Witness RFJ-137’s evidence indicates that the [REDACTED],²³⁵ [REDACTED],²³⁶ [REDACTED].²³⁷ The Appeals Chamber observes that the Trial Chamber did not address this aspect of Witness RFJ-137’s evidence in the Trial Judgement. However, the Appeals Chamber recalls the presumption that the Trial Chamber has evaluated all relevant evidence before it as long as there is no indication that it completely disregarded any particular piece of evidence.²³⁸ Having considered the relevant portions of the Trial Judgement, the Appeals Chamber is of the view that the Trial Chamber’s lack of reference to [REDACTED] prior to the deployment in April 1992 and its reliance on the witness’s evidence at paragraph 419 of the Trial Judgement – which relates to deployment [REDACTED] – were not unreasonable. Rather, for the reasons set out below, the Appeals Chamber considers that the Trial Chamber took care in summarizing and relying on pertinent aspects of Witness RFJ-137’s evidence.

77. A review of the Trial Judgement reflects that the Trial Chamber relied extensively on the evidence of Witness RFJ-137 regarding, *inter alia*, the establishment of the Unit in August 1991, the Unit’s operation under the command of Stanišić and Simatović, the establishment of the Ležimir and Pajzoš training camps, and training at the camps up to January 1992.²³⁹ It did not, however, refer to Witness RFJ-137’s evidence when addressing events in the spring of 1992 related to the training of

²³² See Trial Judgement, para. 405, *referring to, inter alia*, Witness RFJ-137, T. 18 July 2017 p. 29, Exhibit P00245, para. 50. See also RFJ-137, Exhibit P00245, paras. 6, 7, 51, 68-70; Witness RFJ-137, T. 18 July 2017 pp. 31, 61, 62, T. 19 July 2017 pp. 27-29, T. 20 July 2017 p. 51.

²³³ See Trial Judgement, para. 419, *referring to, inter alia*, Witness RFJ-137, T. 18 July 2017 pp. 29-32. See also T. 19 July 2017 pp. 27-29, T. 20 July 2017 p. 51.

²³⁴ Trial Judgement, para. 419.

²³⁵ Witness RFJ-137, T. 19 July 2017 pp. 47, 48, Exhibit P00245, para. 55, Exhibit 2D00012, pp. 7459, 7495.

²³⁶ Witness RFJ-137, T. 18 July 2017 pp. 31, 32.

²³⁷ Witness RFJ-137, Exhibit P00245, para. 55, Exhibit 2D00012, p. 7459.

²³⁸ See, e.g., *Mladić* Appeal Judgement, para. 423 and references cited therein.

²³⁹ See Trial Judgement, paras. 405-407.

locals from Bosanski Šamac and former police officers from SAO SBWS, the deployment of Unit members (including those incorporated into the Unit) and locals to Bosanski Šamac, as well as the takeover of the municipality and crimes committed therein.²⁴⁰ As pointed out by Stanišić, the sole exception to this is at paragraph 419, footnote 1679, of the Trial Judgement. The relevant portion of this paragraph reads:

[...] The Trial Chamber is further mindful that the JNA played a large role in their transport and, as discussed below, their participation in the attack. However, the Trial Chamber recalls the evidence that members of the Unit could not participate in combat operations without the approval of the Accused. [...] (Internal references omitted).

The text of the footnote is as follows:

Witness RFJ-137, T. 18 July 2017 pp. 29 (wherein the witness states that: (i) “I mentioned an incident when the army called us to Fruška Gora when some Croatian forces were involved. At the time, Jovica and Frenki arrived from Belgrade and they were very angry that we were made part of that operation. They said that from that day on we were not to go to any operation without their prior approval”; and (ii) only “Frenki” and “Jovica” could decide which operations the Unit would take part in), 30 (wherein the witness states that his unit always followed the orders of the Accused), 31 (wherein the witness states that “we never went into any action or operations without Frenki’s approval”), 32 (wherein the witness states that, while he was there, members of the Unit all obeyed the orders of the Accused).

78. Considering the relevant portions of paragraph 419 in their context, the Appeals Chamber is of the view that the Trial Chamber referenced Witness RFJ-137’s evidence to address evidence of the extent of the JNA’s involvement with the Unit prior to deployment. Given the witness’s consistent evidence, [REDACTED], of Stanišić’s and Simatović’s command and control over the Unit’s operations, including an incident where Stanišić and Simatović refused a JNA general’s request to appropriate the Unit and stated that they “would have no further dealings with the JNA” and were “explicit that we were not to go into any action without orders of one of the two of them”,²⁴¹ it was not unreasonable for the Trial Chamber to consider Witness RFJ-137’s evidence when concluding that Stanišić and Simatović authorized the deployment months later. This is particularly so in view of the Trial Chamber’s reliance on Witness RFJ-035’s corroborative evidence that Simatović briefed Unit members about their deployment in April 1992 when concluding that Stanišić and Simatović authorized the deployment.²⁴²

79. In light of the foregoing, the Appeals Chamber finds that Stanišić has failed to demonstrate that, based on the record, no reasonable trier of fact could have found as the only reasonable inference that Stanišić, in addition to Simatović, authorized the deployment of members of the Unit and local

²⁴⁰ See Trial Judgement, paras. 416-424.

²⁴¹ Witness RFJ-137, Exhibit P00245, paras. 45, 50, 51, 55, 70, T. 18 July 2017 pp. 14, 29, 57. See also Trial Judgement, paras. 405, 419, nn. 1633, 1679.

²⁴² Trial Judgement, paras. 417, 419, n. 1672, referring to, *inter alia*, Witness RFJ-035, Exhibit P02026, paras. 32, 34, T. 17 April 2018 pp. 14, 15.

Serb forces to Bosanski Šamac in April 1992. The Appeals Chamber dismisses sub-ground B of Ground 2 of Stanišić's appeal.

(c) Alleged Errors in Finding Substantial Effect on Ensuing Crimes (sub-ground C)

80. As discussed above, the Trial Chamber found that, by at least August or September 1991, Stanišić and Simatović formed the Unit, which operated under their sole command and control, and that the Unit members included, *inter alios*, Dragan Đorđević (Crni).²⁴³ The Trial Chamber was also satisfied that both Ležimir and Pajzoš operated as camps under the authority and control of Stanišić and Simatović until at least March or April 1992, and that the training conducted at the camps was done at their "direction, with their authorization, as well as their financial and logistical support".²⁴⁴ At the camps, Unit members trained locals from Bosanski Šamac as well as a group of former SAO SBWS police officers, led by Srećko Radovanović (Debeli) and including Slobodan Miljković (Lugar) and Witness RFJ-035.²⁴⁵ According to the Trial Chamber, Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 were incorporated into the Unit in March 1992, and were under the authority of Stanišić and Simatović prior to their deployment in April 1992.²⁴⁶

81. The Trial Chamber further found that Stanišić and Simatović authorized the deployment of Unit members and locals from Bosanski Šamac, who, on 11 April 1992, were taken to Batkuša, a village near Bosanski Šamac.²⁴⁷ The Trial Chamber concluded that the training provided to the new members of the Unit and locals from Bosanski Šamac as well as their subsequent deployment to Bosanski Šamac provided practical assistance that had a substantial effect on the commission of crimes there.²⁴⁸

82. In addressing crimes in Bosnia and Herzegovina, the Trial Chamber found that the town of Bosanski Šamac was attacked and subject to a takeover on 17 April 1992 by Serb police and the Territorial Defence.²⁴⁹ Prior to the takeover, paramilitaries arrived in Batkuša in a group including 30 men from Serbia under the command of Dragan Đorđević (Crni), a Unit member, and approximately 20 locals from Bosanski Šamac.²⁵⁰ The Trial Chamber found that this group of about 50 men participated in the attack while resubordinated to the JNA 17th Tactical Group.²⁵¹ The Trial Chamber

²⁴³ See Trial Judgement, paras. 417, 419, 590, 604. See also Trial Judgement, paras. 211, 218, 412.

²⁴⁴ Trial Judgement, para. 409. See also Trial Judgement, paras. 385, 407.

²⁴⁵ Trial Judgement, paras. 418, 419. See also Trial Judgement, paras. 407, 416.

²⁴⁶ Trial Judgement, para. 419. See also Trial Judgement, para. 416.

²⁴⁷ Trial Judgement, paras. 209, 417, 419, 436, 590.

²⁴⁸ Trial Judgement, paras. 424, 605. See also Trial Judgement, paras. 436, 590.

²⁴⁹ Trial Judgement, paras. 218, 604. See also Trial Judgement, para. 215.

²⁵⁰ Trial Judgement, paras. 209, 218.

²⁵¹ Trial Judgement, paras. 218, 604, 605. See also Trial Judgement, paras. 209, 211, 215, 590.

further found that Srećko Radovanović (Debeli) and Slobodan Miljković (Lugar) also participated in the attack under Dragan Đorđević (Crni)'s command.²⁵² The Trial Chamber noted evidence that, among others, Goran Simović (Tralja) arrived with this paramilitary group.²⁵³

83. The Trial Chamber found proven beyond reasonable doubt that, in connection with the takeover of Bosanski Šamac, Serb forces detained non-Serb men and that those forces, including Dragan Đorđević (Crni) and the men under his command, engaged in criminal activities, such as subjecting detainees to severe abuse and killings in various detention facilities throughout Bosanski Šamac.²⁵⁴ The Trial Chamber further found that, on or about 7 May 1992, Slobodan Miljković (Lugar) and Goran Simović (Tralja) participated in the beating of non-Serb detainees as well as the killing of 16 Muslim or Croat men at the Crkvina detention facility, and that the victims were taking no active part in the hostilities at the time of the mistreatment and killings.²⁵⁵ Additionally, having considered evidence and circumstances regarding the departure of the local population of Bosanski Šamac, the Trial Chamber found proven beyond reasonable doubt that the acts of violence committed by Serb forces during and after the takeover forced a significant number of non-Serbs to leave the municipality of Bosanski Šamac.²⁵⁶

84. Based on the foregoing, the Trial Chamber concluded that, through organizing the training of Unit members and local Serb forces and deploying these men to Bosanski Šamac in April 1992, Stanišić and Simatović provided practical assistance that had a substantial effect on the perpetration of the crimes of persecution, murder, and forcible displacement by Unit members and local Serb forces.²⁵⁷ The Trial Chamber further concluded that the resubordination of Unit members to the JNA following the deployment was immaterial as Stanišić's and Simatović's contributions consisted of training and making those forces available during the takeover, and not in directing them during the operation.²⁵⁸

²⁵² Trial Judgement, paras. 218, 604. *See also* Trial Judgement, paras. 202, 209, 211, 216.

²⁵³ Trial Judgement, para. 209.

²⁵⁴ Trial Judgement, paras. 233, 590, 604. *See also* Trial Judgement, paras. 221-229. The Trial Chamber considered evidence that, starting on 17 April 1992, Serb forces, including paramilitaries, arbitrarily detained Muslims and Croats in detention facilities throughout Bosanski Šamac, and that detainees were held in poor and unhygienic conditions and during imprisonment were, *inter alia*, murdered, beaten, tortured, and forced to engage in sexual acts. *See* Trial Judgement, para. 222. In particular, the Trial Chamber received further evidence, including from detainees, that beatings were applied by paramilitary forces from Serbia, that those who abused detainees included the group from Serbia who had come from Batkuša as well as locals from Bosanski Šamac, and that, *inter alios*, Dragan Đorđević (Crni), Slobodan Miljković (Lugar), and Stevan Todorović administered beatings to detainees in Bosanski Šamac that, in some cases, resulted in death. *See* Trial Judgement, paras. 223, 224.

²⁵⁵ Trial Judgement, paras. 229, 232, 604. *See also* Trial Judgement, paras. 225-228.

²⁵⁶ Trial Judgement, para. 234. *See also* Trial Judgement, paras. 221, 231.

²⁵⁷ Trial Judgement, para. 605. *See also* Trial Judgement, paras. 232-234, 409, 418, 419, 424, 436.

²⁵⁸ Trial Judgement, para. 605. *See also* Trial Judgement, paras. 424, 436, 590.

85. Stanišić submits that the Trial Chamber erred in finding that the training and deployment of members of the Unit and local Serb forces had a substantial effect on the crimes committed in Bosanski Šamac.²⁵⁹ He argues that the Trial Chamber’s findings are “scant”, only using the term “substantial” in paragraph 424 of the Trial Judgement, and reveal that it failed to perform a fact-based inquiry on the substantiality of the practical assistance on the “entirety” of the crimes.²⁶⁰ He also suggests that the Trial Chamber erroneously relied on the evidence of Witness Stevan Todorović – which indicates that 30 men from Serbia under JNA command played a “significant role” in the takeover of Bosanski Šamac – and submits that this aspect of the witness’s evidence only relates to the night of the takeover and not to the crimes committed in the aftermath for which he was convicted.²⁶¹

86. In particular, Stanišić contends that no reasonable trier of fact could have found that the training was “special” or had a substantial effect on the ensuing crimes.²⁶² He argues that nothing in the nature of the training – “predominantly fitness training with some elements of military training” – reveals planning, preparation, or a causal link to the subsequent crimes committed, which included savage beatings and arbitrary killings.²⁶³ To the contrary, he submits that the nature of the training allows for the reasonable inference that it was in furtherance of legitimate military operations in defence of the Serbs of Bosanski Šamac against threats and war preparations by Muslims from Bosnia and Herzegovina and Croats.²⁶⁴ To this end, Stanišić argues that the Trial Chamber found that he and Simatović deployed Unit members and locals from Bosanski Šamac to assist in its takeover, and he highlights that this operation lasted only 37 minutes and did not involve casualties or crimes.²⁶⁵ He further repeats arguments in sub-ground B of Ground 2 of his appeal – that the deployment was, at most, a momentary exercise of authority – and contends that no reasonable trier of fact could have considered that Simatović’s briefing and subsequent “returning of the men to the JNA” contributed to the crimes.²⁶⁶

²⁵⁹ See Stanišić Notice of Appeal, para. 18; Stanišić Appeal Brief, paras. 53, 92-126. See also Stanišić Reply Brief, para. 69. See also Stanišić Appeal Brief, paras. 3-6, 28, 30-33, 37, 40, 41, 44, 46, 48-50; T. 24 January 2023 pp. 15, 106.

²⁶⁰ Stanišić Appeal Brief, paras. 94, 95.

²⁶¹ Stanišić Appeal Brief, para. 96, referring to Trial Judgement, para. 216, Exhibit P01916, p. 23457.

²⁶² See Stanišić Appeal Brief, paras. 5, 46, 95, 97-101, 104, referring to, *inter alia*, Trial Judgement, paras. 411, 415, 416, 418, 419, 424, Witness RFJ-035, Exhibit P02026, paras. 20, 29, Exhibit P02028, pp. 7623, 7671, T. 17 April 2018 pp. 56, 57. See also Stanišić Reply Brief, para. 61.

²⁶³ See Stanišić Appeal Brief, paras. 31, 46, 49, 50, 97, 102, 104, 158; Stanišić Reply Brief, paras. 54, 61, 63.

²⁶⁴ See Stanišić Appeal Brief, paras. 6, 46, 102. Stanišić highlights that of the 208 deaths in Bosanski Šamac in 1992, the majority were Serbs. See Stanišić Appeal Brief, para. 102.

²⁶⁵ Stanišić Appeal Brief, para. 103, referring to Trial Judgement, para. 419.

²⁶⁶ See Stanišić Appeal Brief, paras. 4, 49, 105-107, 114. See also Stanišić Reply Brief, paras. 39, 51, 58.

87. Beyond this, Stanišić argues that the Trial Chamber failed to assess how the training or deployment had a causal link to crimes upon which it made findings beyond reasonable doubt, and failed to consider the temporal and geographic remoteness between the training and the crimes.²⁶⁷ Stanišić focuses on the 7 May 1992 massacre at the Crkvina detention facility, and the detention of non-Serb men who were subjected to abuse and killings in detention facilities throughout Bosanski Šamac.²⁶⁸ In relation to the massacre of 16 men at the Crkvina detention facility on 7 May 1992,²⁶⁹ Stanišić submits that the crimes committed there: (i) occurred almost a month after completion of the training and deployment and evidence reflects that the killings were in retaliation for the Serbs killed “on Grebnica”; (ii) did not require “specialist skills” or “echo” the training received at the Ležimir and Pajzoš camps; and (iii) had no link to Stanišić other than the fact that three perpetrators – Slobodan Miljković (Lugar), Goran Simović (Tralja), and Debeli Musa – were trained and “momentarily briefed” by Simatović.²⁷⁰

88. In relation to the abuse and killings of non-Serb men in detention centres, Stanišić submits that, according to the evidence, some Unit members were involved in beatings while others were not, and he also argues that the Trial Chamber’s findings fail to demonstrate any link between the crimes and the training or deployment.²⁷¹ As for other killings, Stanišić refers to incidents involving, *inter alios*, Slobodan Miljković (Lugar) and argues that none of the evidence reflects a link between the training and deployment and the crimes.²⁷²

89. The Prosecution responds that Stanišić fails to demonstrate that no reasonable trier of fact could have found that, by training and deploying Unit members and local Serb forces, he provided practical assistance that had a substantial effect on the crimes in Bosanski Šamac.²⁷³ It contends that the Trial Chamber conducted a fact-based inquiry regarding Stanišić’s contribution²⁷⁴ and reasonably found that the training, which covered a wide range of skills including weapons handling, mop-up operations, and house searches and takeovers, had a substantial effect on the crimes.²⁷⁵ It submits

²⁶⁷ See Stanišić Appeal Brief, paras. 3-6, 28, 30, 32, 33, 37, 44, 48-50, 108-126.

²⁶⁸ See Stanišić Appeal Brief, paras. 109-126, *referring to, inter alia*, Trial Judgement, paras. 222-224, 229, 232, 234, 301, 620. Stanišić also notes the Trial Chamber’s findings on the resulting displacement of a significant number of non-Serbs from Bosanski Šamac but submits that, because this is the “perceived result” of the violence and killings committed by Serb forces about which the Trial Chamber made findings, his arguments focus on evidence related to those findings. See Stanišić Appeal Brief, para. 110. He nonetheless notes evidence that only 92 persons left Bosanski Šamac in 1992, while 129 left between 1992 and 1995. See Stanišić Appeal Brief, para. 110.

²⁶⁹ See Stanišić Appeal Brief, paras. 109-114.

²⁷⁰ See Stanišić Appeal Brief, paras. 49, 113, 114.

²⁷¹ See Stanišić Appeal Brief, paras. 109, 115-118.

²⁷² See Stanišić Appeal Brief, paras. 109, 119-126.

²⁷³ See Prosecution Response to Stanišić Appeal, paras. 76-102.

²⁷⁴ See Prosecution Response to Stanišić Appeal, paras. 78, 79.

²⁷⁵ See Prosecution Response to Stanišić Appeal, paras. 80-85, 101.

that, irrespective of subordination to the JNA and the number of individuals deployed by Stanišić and Simatović compared to the rest of the Serb forces in Bosanski Šamac, the deployment had a substantial effect on the crimes as several members of the group played a leading role in the operation and the crimes.²⁷⁶ The Prosecution responds that the deployment of the Unit and local Serb forces was not simply for military control over Bosanski Šamac, as the crimes were perpetrated in furtherance of the common criminal plan to permanently remove non-Serbs, and Stanišić was aware of this plan.²⁷⁷ The Prosecution further argues that the Unit members and local Serb forces were not merely trained and returned to JNA command as Stanišić fails to show that any of them had been part of the JNA prior to their training at the camps.²⁷⁸

90. Stanišić replies that the Prosecution’s submissions do not demonstrate that the Trial Chamber’s findings on substantial contribution are reasonable, or that it performed a fact-based inquiry.²⁷⁹ He argues that the Prosecution has also failed to demonstrate links between the training and deployment and the crimes committed, and he contends that it simply relies on his *de jure* authority.²⁸⁰ Reiterating submissions from Ground 1 of his appeal, Stanišić submits that the Trial Chamber’s reasoning fails to address the critical issue of his “remoteness”.²⁸¹

91. Turning first to Stanišić’s general contention that the Trial Chamber’s conclusions as to the substantial effect of the training and deployment on the crimes committed in Bosanski Šamac are “scant”, limited to paragraph 424 of the Trial Judgement, or otherwise lacking a fact-based inquiry, the Appeals Chamber finds that this argument reflects a misreading of the Trial Judgement and ignores the principle that a trial judgement should be read as a whole.²⁸² The Appeals Chamber observes that the Trial Chamber relied on an extensive body of evidence from several sources and made numerous findings in relation to the takeover of Bosanski Šamac reflecting that, *inter alia*, Unit members and individuals – *inter alios*, Dragan Đorđević (Crni), Srećko Radovanović (Debeli), Witness RFJ-035, and Slobodan Miljković (Lugar) – were involved in training or trained at the Ležimir and Pajzoš camps and, once deployed, committed crimes in Bosanski Šamac.²⁸³ Similarly, Stanišić’s contention that the substantial effect findings are erroneously based on the evidence of Witness Todorović – that 30 men from Serbia under JNA command played a “significant role” in the night of the takeover of Bosanski Šamac when no crimes were committed – also reflects a

²⁷⁶ See Prosecution Response to Stanišić Appeal, paras. 80, 86-93, 97-99.

²⁷⁷ Prosecution Response to Stanišić Appeal, paras. 94, 100.

²⁷⁸ Prosecution Response to Stanišić Appeal, para. 96.

²⁷⁹ See Stanišić Reply Brief, paras. 53, 56, 57.

²⁸⁰ See Stanišić Reply Brief, paras. 54, 58-65.

²⁸¹ Stanišić Reply Brief, para. 67.

²⁸² *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

²⁸³ See Trial Judgement, paras. 221-234, 407, 416, 417, 419, 590, 604.

misunderstanding of the Trial Chamber's extensive findings. Stanišić does not substantiate that the Trial Chamber's conclusions on substantial effect are somehow limited to its consideration of this specific evidence, nor does he demonstrate that the evidence was irrelevant to these conclusions. These contentions are therefore dismissed.

92. The Appeals Chamber next addresses Stanišić's argument suggesting that neither the training nor the deployment had a causal link to the resulting crimes. In essence, Stanišić argues that the training provided was not "special", consisted predominantly of "fitness training with some elements of military training", and had no causal link to, for example, the beatings and killings because it did not "echo" in the crimes themselves. The Appeals Chamber considers that the Trial Chamber did not make any finding that the training was "special" nor that any such designation underpinned the conclusion that Stanišić and Simatović provided practical assistance that had a substantial effect on the ensuing crimes.²⁸⁴ Nevertheless, the Appeals Chamber observes that the Trial Chamber took into account evidence from Witness RFJ-035 reflecting that the training involved fitness, mop-up operations, taking over and searching houses, weapons handling, and military tactics.²⁸⁵ Furthermore, the Trial Chamber credited evidence that those deployed by Stanišić and Simatović had a significant role in the takeover of Bosanski Šamac and subsequently committed crimes in the municipality.²⁸⁶ In this context, and for the reasons set out below, the Appeals Chamber finds that Stanišić fails to show that the Trial Chamber acted unreasonably in finding that the training in conjunction with the deployment had a substantial effect on the crimes for which he was convicted.

93. The Appeals Chamber recalls that the *actus reus* of aiding and abetting consists of practical assistance, encouragement, or moral support, which has a substantial effect on the perpetration of the crime.²⁸⁷ There is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as a condition precedent to the commission of the crime.²⁸⁸ Stanišić's position suggests that the Prosecution was required to prove, and the Trial Chamber was required to find, that the training included, for example, targeted

²⁸⁴ See Trial Judgement, paras. 214, 422.

²⁸⁵ See Trial Judgement, para. 416, nn. 1670, 1671, referring to, *inter alia*, Witness RFJ-035, Exhibit P02026, para. 30, Exhibit P02028, p. 7623.

²⁸⁶ See, e.g., Trial Judgement, paras. 206, 209-211, 215, 216, 218, 219, 222-225, 229-234, 407, 416-418, 424, 436, 604. See also Trial Judgement, n. 972 ("The Trial Chamber also finds, contrary to Simatović's submission [...] that the record does not reflect the 'insignificance' of the role played by the paramilitaries that arrived on 11 April 1992 during the takeover of Bosanski Šamac [...]").

²⁸⁷ *Šešelj* Appeal Judgement, n. 594; *Nyiramasuhuko et al.* Appeal Judgement, para. 3343; *Stanišić and Simatović* ICTY Appeal Judgement, para. 104; *Popović et al.* Appeal Judgement, paras. 1758, 1783; *Šainović et al.* Appeal Judgement, para. 1649.

²⁸⁸ *Popović et al.* Appeal Judgement, para. 1783; *Šainović et al.* Appeal Judgement, n. 5336; *Rukundo* Appeal Judgement, para. 52. See also *Nyiramasuhuko et al.* Appeal Judgement, para. 3343; *Ndindiliyimana et al.* Appeal Judgement, para. 373.

instruction on the crimes that occurred – such as beating and/or killing of captured civilians in detention centres – but fails to point to any jurisprudential support for this position.

94. The Appeals Chamber further rejects Stanišić’s contention that the Trial Chamber erred because another reasonable inference exists – namely, that the training was aimed at the legitimate defence of Serbs in Bosanski Šamac against Bosnian Muslims and Croats. That the training conducted at the Ležimir and Pajzoš camps could have furthered lawful military operations is not dispositive given the Trial Chamber’s determination that, at the time of the training, Stanišić and Simatović would have been aware, in allowing the use of their facilities and trainers, that they would be supporting military action and, in the context of the conflict, the commission of crimes by these forces.²⁸⁹

95. The Appeals Chamber next considers Stanišić’s contention that, at most, the deployment was a momentary exercise of authority that simply returned the men to the JNA and had no direct causal link and could not have had a substantial effect on the crimes. At the outset, the Appeals Chamber observes that the Trial Chamber did not find, nor does Stanišić point to any evidence that the former police officers from SAO SBWS and the Bosanski Šamac locals trained at the Ležimir and Pajzoš camps were under the authority of the JNA prior to their training. Furthermore, Stanišić’s argument ignores the Trial Chamber’s conclusions as to his and Simatović’s continuing authority over the Ležimir and Pajzoš camps in the first part of 1992 until at least March or April 1992.²⁹⁰ He also ignores findings that, given Simatović’s personal briefing to the group shortly prior to deployment, the Trial Chamber was convinced that the deployment was authorized by Stanišić and Simatović.²⁹¹ In this regard, Stanišić’s authority, according to the Trial Chamber’s findings, was not momentary or only based on the short briefing provided by Simatović prior to the deployment, but rather it was continuous until those deployed were resubordinated to the JNA.²⁹² In this context, the Appeals Chamber recalls that making resources available that ultimately facilitate the commission of crimes is sufficient to establish substantial contribution to the ensuing crimes,²⁹³ and the Trial Chamber’s findings reflect Stanišić to have done this.²⁹⁴ These contentions are dismissed.

²⁸⁹ Trial Judgement, para. 418. *See also* Šešelj Appeal Judgement, para. 172 (noting that whether an accused’s “activities might have been lawful and performed as a legitimate support to the war effort is not in and of itself determinative of whether [that accused’s] involvement in these activities can be characterized as unlawful”) (internal citation omitted).

²⁹⁰ Trial Judgement, para. 409.

²⁹¹ Trial Judgement, para. 419.

²⁹² *See* Trial Judgement, paras. 424, 436, 590, 605.

²⁹³ *See, e.g.,* Blagojević and Jokić Appeal Judgement, paras. 125-135, 194-199; Krstić Appeal Judgement, paras. 61, 62, 135-144.

²⁹⁴ *See* Trial Judgement, paras. 419, 424, 436, 590, 597, 605.

96. The Appeals Chamber now addresses Stanišić's arguments that the Trial Chamber failed to assess how the training or deployment had a causal link to the 7 May 1992 massacre at the Crkvina detention facility, as well as the abuse and killings of non-Serb men in detention facilities throughout Bosanski Šamac. In advancing this contention, Stanišić points to aspects of the record that the Trial Chamber accounted for in making its findings.²⁹⁵ He does not demonstrate that the Trial Chamber erred by ignoring this evidence or that, in light of the jurisprudence, a direct causal link was required to find that the training and deployment had a substantial effect on the commission of the crimes.

97. The Appeals Chamber is mindful that the Trial Chamber did not find that the training involved instruction on unlawful beatings or killings. Likewise, it did not conclude that Simatović instructed those deployed from Pajzoš to commit crimes. Nonetheless, Stanišić's arguments concede, as the Trial Chamber considered and found, that the individuals who were trained and subsequently deployed from the Ležimir and Pajzoš camps to Bosanski Šamac participated in crimes committed in the municipality.²⁹⁶ Reiterating that no cause-effect relationship is required between the conduct of the aider and abettor and the commission of the crime,²⁹⁷ the Appeals Chamber further recalls that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated, and the location at which the *actus reus* takes place may be removed from the location of the principal crime.²⁹⁸ Accordingly, Stanišić's references to evidence concerning the nature of, the reason for, and the manner in which the crimes were committed as well as their temporal or geographic distance from the training and the deployment – evidence that the Trial Chamber considered²⁹⁹ – do not demonstrate that it was unreasonable for the Trial Chamber to conclude that the training and deployment had a substantial effect on the ensuing crimes. Specifically, Stanišić fails to demonstrate how pieces of evidence suggesting retaliatory motives of perpetrators or how the crimes were committed within weeks and, at most, five months of the training and deployment would undermine the reasonableness of the Trial Chamber's findings in this respect.

98. In light of the foregoing, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in finding that the training and deployment of Unit members and local Serb forces had a substantial effect on the crimes committed in Bosanski Šamac. The Appeals Chamber dismisses sub-ground C of Ground 2 of Stanišić's appeal.

²⁹⁵ Compare Stanišić Appeal Brief, paras. 111-125 with Trial Judgement, paras. 221-234.

²⁹⁶ See Stanišić Appeal Brief, paras. 112-114, 118-124; Trial Judgement, paras. 218, 223-234, 410, 417, 419, 436, 604.

²⁹⁷ See *Popović et al.* Appeal Judgement, para. 1783; *Šainović et al.* Appeal Judgement, n. 5336; *Rukundo* Appeal Judgement, para. 52. See also *Nyiramasuhuko et al.* Appeal Judgement, para. 3343; *Ndindiliyimana et al.* Appeal Judgement, para. 373.

²⁹⁸ See *Nyiramasuhuko et al.* Appeal Judgement, para. 3343; *Popović et al.* Appeal Judgement, para. 1783; *Mrkšić and Šljivančanin* Appeal Judgement, para. 81.

²⁹⁹ Compare Stanišić Appeal Brief, paras. 32, 33, 48-50, 111-125 with Trial Judgement, paras. 221-234.

(d) Conclusion

99. For the reasons set out above, Stanišić has failed to demonstrate that the Trial Chamber erred in concluding that the *actus reus* element of aiding and abetting had been established with respect to Stanišić in connection with the crimes committed in Bosanski Šamac. Consequently, the Appeals Chamber dismisses Ground 2 of Stanišić's appeal in its entirety.

B. Alleged Errors Regarding the *Mens Rea* for Aiding and Abetting (Grounds 3 and 4)

100. The Trial Chamber found Stanišić and Simatović responsible for aiding and abetting the crimes committed by Serb forces in Bosanski Šamac.³⁰⁰ As noted above, the Trial Chamber considered that, through organizing the training of Unit members and local Serb forces at the Pajzoš camp and through their subsequent deployment during the takeover of the Bosanski Šamac municipality in April 1992, Stanišić and Simatović provided practical assistance, which had a substantial effect on the perpetration of these crimes by Unit members and local Serb forces.³⁰¹

101. When considering Stanišić's *mens rea* for aiding and abetting liability, the Trial Chamber was satisfied that Stanišić and Simatović knew that their acts assisted the commission of the crimes of persecution, murder, deportation, and forcible displacement and were aware of the essential elements of the crimes, including the intent of the perpetrators.³⁰² The Trial Chamber noted that the crimes committed during and following the takeover of Bosanski Šamac did not occur as an isolated incident, but formed part of a pattern of crimes accompanying the takeover of territory by Serb forces in Bosnia and Herzegovina, and that military operations were conducted with the objective of establishing Serb control, expelling the non-Serb inhabitants of towns and villages, and intimidating, arbitrarily detaining, and subjecting any remaining non-Serb civilians in the area to various crimes and acts of violence.³⁰³

102. The Trial Chamber further noted that, nearly a year before the takeover of Bosanski Šamac, Serb forces systematically committed persecution, murder, and forcible displacement against the non-Serb inhabitants of SAO Krajina and SAO SBWS.³⁰⁴ Shortly before the attack on Bosanski Šamac, Serb forces attacked Bijeljina and Zvornik and widespread looting, destruction of property, sexual assaults, and killings of non-Serbs, in particular Bosnian Muslim civilians, took place.³⁰⁵ The Trial

³⁰⁰ Trial Judgement, para. 608.

³⁰¹ Trial Judgement, para. 605. *See also* Trial Judgement, para. 608.

³⁰² Trial Judgement, paras. 606, 607. *See also, e.g.*, Trial Judgement, paras. 418, 419.

³⁰³ Trial Judgement, para. 606.

³⁰⁴ Trial Judgement, para. 607.

³⁰⁵ Trial Judgement, para. 607.

Chamber further recalled its findings that Stanišić and Simatović were undoubtedly aware of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina as well as of the shared intent of the members of the joint criminal enterprise.³⁰⁶

103. In Grounds 3 and 4 of his appeal, Stanišić argues that the Trial Chamber erred in law and in fact in relation to its *mens rea* findings. The Appeals Chamber will address these challenges in turn.

1. Alleged Errors of Law Regarding the *Mens Rea* for Aiding and Abetting (Ground 3)

104. Stanišić submits that the Trial Chamber erred in law in its assessment of his *mens rea* for aiding and abetting liability.³⁰⁷ He concedes that the Trial Chamber correctly articulated the *mens rea* standard for aiding and abetting;³⁰⁸ however, he submits that it erred in law in its application of the standard by failing to assess his knowledge of the specific crimes committed in Bosanski Šamac at the time of his assistance.³⁰⁹ Stanišić contends that the Trial Chamber erroneously confined its analysis to whether he knew of prior crimes and was aware of the general probability of future crimes occurring in Serb military operations, thereby lowering the applicable *mens rea* standard.³¹⁰

105. Stanišić posits that the Trial Chamber was required to assess his awareness, at the time of his assistance, of the principal perpetrators' planning and preparation for the crimes in Bosanski Šamac and any manifest intent.³¹¹ To this end, he sets out factors that the Trial Chamber failed to assess to establish the "culpability link"³¹² and argues that the Trial Chamber did not consider several circumstances that demonstrate that he lacked the requisite *mens rea* when making its findings.³¹³ Stanišić requests that, as a result of these errors, the Appeals Chamber hold that the Trial Chamber erred in law when determining that he possessed the requisite *mens rea* and enter a finding of not guilty for Counts 1 to 5 of the Indictment.³¹⁴

106. The Prosecution responds that the Trial Chamber properly applied the law concerning Stanišić's *mens rea* for aiding and abetting the crimes in Bosanski Šamac and that this ground of

³⁰⁶ Trial Judgement, para. 607.

³⁰⁷ See Stanišić Notice of Appeal, paras. 20-22; Stanišić Appeal Brief, paras. 127-160. See also T. 24 January 2023 pp. 7-10, 14-25, 100-105.

³⁰⁸ Stanišić Appeal Brief, paras. 132, 160.

³⁰⁹ See Stanišić Appeal Brief, paras. 127, 128, 130; Stanišić Reply Brief, para. 70. See also T. 24 January 2023 pp. 17-25; 100-103.

³¹⁰ See Stanišić Appeal Brief, paras. 129-131, 143, 153, 155; T. 24 January 2023 pp. 23, 24. See also Stanišić Appeal Brief, paras. 132-141; T. 24 January 2023 pp. 8-10, 15, 22, 100.

³¹¹ Stanišić Appeal Brief, paras. 131, 143; T. 24 January 2023 pp. 16-19, 22, 23, 102, 103.

³¹² Stanišić Appeal Brief, para. 142; T. 24 January 2023 pp. 16-23. See also Stanišić Notice of Appeal, para. 21; Stanišić Reply Brief, para. 76; T. 24 January 2023 pp. 100-102, 105.

³¹³ See Stanišić Appeal Brief, paras. 156-159; T. 24 January 2023 pp. 15-17, 22.

³¹⁴ Stanišić Notice of Appeal, para. 22.

appeal should be dismissed.³¹⁵ It submits that knowledge is the standard for the *mens rea* of aiding and abetting liability and that knowledge includes “awareness of a probability” or “awareness of a substantial likelihood”.³¹⁶ The Prosecution contends that the assessment of *mens rea* is case specific and that there are no fixed factors a trial chamber must consider to determine the *mens rea* of aiding and abetting.³¹⁷

107. In response to Stanišić’s submissions that the Trial Chamber failed to assess specific factors, the Prosecution argues that: (i) the Trial Chamber identified the perpetrators, some of whom were explicitly named, and assessed Stanišić’s knowledge of their intent at the time of his assistance;³¹⁸ (ii) the *mens rea* for aiding and abetting liability did not require the Trial Chamber to find that Stanišić planned, prepared for, or agreed to commit the crimes, or that he was aware of such planning and preparation;³¹⁹ and (iii) the Trial Chamber properly considered that Stanišić knew that his assistance, including the type and timing, would assist the specific crimes committed in Bosanski Šamac and the essential elements of those crimes.³²⁰ The Prosecution further submits that the Trial Chamber, in line with jurisprudence, properly considered whether Stanišić knew his conduct would assist “specific crimes” – meaning the “types of crimes”.³²¹

108. Stanišić replies that the Trial Chamber erred in failing to consider his knowledge of specific crimes in Bosanski Šamac and submits that the Prosecution’s submissions distort the applicable law and misrepresent his submissions.³²² He argues that the Prosecution’s submissions should be rejected as they reflect a lower *mens rea* standard and “obviate the need to examine Stanišić’s awareness of specific crimes, only ‘types’ of crimes”.³²³

109. The Appeals Chamber recalls that the *mens rea* requirements for aiding and abetting liability are as follows:

It is firmly established in the jurisprudence of the [ICTY] that to satisfy the *mens rea* requirement for aiding and abetting, it must be shown that the aider and abettor knew that his acts or omissions

³¹⁵ See Prosecution Response to Stanišić Appeal, paras. 103-121. See also T. 24 January 2023 pp. 65-69.

³¹⁶ See Prosecution Response to Stanišić Appeal, paras. 104-108; T. 24 January 2023 pp. 66-68.

³¹⁷ Prosecution Response to Stanišić Appeal, para. 110. See also T. 24 January 2023 p. 69.

³¹⁸ See Prosecution Response to Stanišić Appeal, paras. 111-115.

³¹⁹ See Prosecution Response to Stanišić Appeal, paras. 116-118. The Prosecution submits that, in any event, the Trial Chamber acknowledged that Stanišić was aware of a plan to forcibly and permanently remove non-Serbs from large parts of Bosnia and Herzegovina, including Bosanski Šamac. See Prosecution Response to Stanišić Appeal, para. 117.

³²⁰ See Prosecution Response to Stanišić Appeal, paras. 119-121.

³²¹ See Prosecution Response to Stanišić Appeal, para. 132; T. 24 January 2023 pp. 68, 69.

³²² See Stanišić Reply Brief, paras. 70-82. See also T. 24 January 2023 pp. 8, 23, 100-105.

³²³ See Stanišić Reply Brief, paras. 72, 73; T. 24 January 2023 pp. 8-10, 15, 23, 24. Stanišić further argues that the Prosecution seeks to expand the notion of principal perpetrators to all Serb forces so as to include members of the joint criminal enterprise with no identifiable role in the Bosanski Šamac crimes, and reverse the burden of proof by arguing that the Trial Chamber retroactively found the Bosanski Šamac crimes to be part of the joint criminal enterprise. See Stanišić Reply Brief, paras. 78-80.

assisted the commission of the specific crime by the principal, and that the aider and abettor was aware of the essential elements of the crime which was ultimately committed, including the intent of the principal perpetrator. In addition, the Appeals Chamber recalls that it is not necessary that the aider and abettor know the precise crime that was intended and was in fact committed – if he is aware that one of a number of crimes will probably be committed, and one of those crimes is committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.

The Appeals Chamber has previously defined “specific crime” as referring to, for example, “murder, extermination, rape, torture, wanton destruction of civilian property, etc.” There is no legal requirement that the aider and abettor know every detail of the crime that was eventually committed. Nonetheless, the degree of knowledge pertaining to the details of the crime required to satisfy the *mens rea* of aiding and abetting will depend on the circumstances of the case, including the scale of the crimes and the type of assistance provided.³²⁴

110. The Appeals Chamber observes that the Trial Chamber correctly set forth in the Trial Judgement the applicable *mens rea* standard for aiding and abetting,³²⁵ which Stanišić acknowledges.³²⁶ Furthermore, as noted above, the Trial Chamber made the essential *mens rea* findings in relation to this mode of liability.³²⁷ Stanišić does not demonstrate that, as a matter of law, the Trial Chamber was required to provide further analysis.

111. Stanišić nonetheless argues that the Trial Chamber lowered the applicable *mens rea* standard by failing to consider that, at the time of his assistance: (i) no member of the joint criminal enterprise was involved in the Bosanski Šamac crimes and none of the principal perpetrators was a member of the joint criminal enterprise or had been involved in any crimes, including in similar patterns of crimes in Croatia or takeovers in Bosnia and Herzegovina;³²⁸ (ii) no planning or preparation for the crimes ultimately committed had been made with Stanišić and, in fact, the Trial Chamber’s findings reflect that the planning of the crimes in Bosanski Šamac occurred after the assistance Stanišić provided and without his participation or knowledge;³²⁹ and (iii) nothing in the nature of the practical assistance the Trial Chamber found Stanišić provided could be relied upon to infer that crimes were intended by that assistance or that he knew his assistance would support future crimes.³³⁰

112. Stanišić does not refer to any jurisprudence to demonstrate that, as a matter of law, the Trial Chamber was required to expressly consider any of these factors when making findings on his *mens rea*. Consequently, the Appeals Chamber finds that Stanišić does not substantiate his claim that the

³²⁴ *Šainović et al.* Appeal Judgement, paras. 1772, 1773 (internal citations omitted; emphasis in original). See also *Popović et al.* Appeal Judgement, para. 1732 and references cited therein.

³²⁵ See Trial Judgement, para. 602. See also Trial Judgement, para. 603.

³²⁶ See Stanišić Appeal Brief, paras. 132, 160.

³²⁷ Trial Judgement, paras. 606, 607. See also T. 24 January 2023 p. 100.

³²⁸ See Stanišić Appeal Brief, paras. 144-147; T. 24 January 2023 pp. 17, 18, 22, 23, 101, 105.

³²⁹ See Stanišić Appeal Brief, paras. 148-155; T. 24 January 2023 pp. 18, 19, 23, 101.

³³⁰ See Stanišić Appeal Brief, paras. 156-159; T. 24 January 2023 pp. 19, 20, 101, 103.

Trial Chamber erred in law by erroneously applying a lower *mens rea* standard by omitting such analysis.

113. Notwithstanding the assertion under this ground of appeal that the Trial Chamber erred in law by lowering the *mens rea* standard,³³¹ the thrust of Stanišić’s argument is that the Trial Chamber erred in its assessment of the facts and that no reasonable trier of fact could have concluded that the evidence relied upon and the findings in the Trial Judgement were sufficient to establish his *mens rea* for aiding and abetting liability.³³² However, a party’s arguments that contend, *inter alia*, that a trial chamber’s findings are insufficient to support its *mens rea* conclusions for aiding and abetting are challenges of a factual nature and stand to be addressed as such.³³³ Consequently, the core of Stanišić’s arguments raised in this ground will be addressed, to the extent necessary, in Ground 4 of Stanišić’s appeal, in which Stanišić alleges that the Trial Chamber erred in fact in relation to its *mens rea* conclusions.

114. Based on the foregoing, the Appeals Chamber dismisses Ground 3 of Stanišić’s appeal.

2. Alleged Errors of Fact Regarding the *Mens Rea* for Aiding and Abetting (Ground 4)

115. Stanišić argues that the Trial Chamber erroneously placed undue weight on “pattern evidence” of crimes committed in Croatia (SAO Krajina and SAO SBWS) and Bosnia and Herzegovina (Bijeljina and Zvornik) in late 1991 and early 1992 to support its finding on his *mens rea* for aiding and abetting crimes committed in Bosanski Šamac.³³⁴ In his view, the “starting point” of the Trial Chamber’s assessment should have been evidence related to his specific knowledge of crimes to be committed in Bosanski Šamac at the time of his assistance.³³⁵ Only then, he submits, could the Trial Chamber have considered any prior pattern evidence and the intent of members of the

³³¹ See Stanišić Appeal Brief, paras. 127, 128, 131, 160; T. 24 January 2023 pp. 8-10, 16, 17, 102, 105.

³³² See, e.g., Stanišić Appeal Brief, paras. 131 (“These were the essential facts that provided an insight into what Stanišić could have known, and did know.”), 146 (“[...] the [Trial Chamber] failed to identify any relationship that Stanišić had with the principal perpetrators, their preparation and planning of crimes or any manifest intent, that showed that they considered these assessments as vital to the assessment of *mens rea*.”), 154 (“Had the [Trial Chamber considered relevant evidence and findings], it would have been driven to the conclusion that nothing in [the] actual planning or preparation of the takeover was proven to have put Stanišić on notice of the specific crimes and the intention of the perpetrators.”), 155 (“Instead of drawing the only reasonable the [*sic*] conclusion [...]”), 158 (“[...] there was nothing express or implicit in either the training or deployment that allowed any inference of knowledge to be drawn.”), 159 (“In sum, there was nothing [...] that could have satisfied the [Trial Chamber] that crimes were intended and Stanišić’s [*sic*] knew that his assistance would support them.”) (emphasis in original). See also T. 24 January 2023 pp. 17-25, 100-103.

³³³ Cf. *Blagojević and Jokić* Appeal Judgement, paras. 144, 145.

³³⁴ See Stanišić Notice of Appeal, para. 23; Stanišić Appeal Brief, paras. 128-130, 161-186; Stanišić Reply Brief, paras. 83-102; T. 24 January 2023 pp. 14, 15, 17, 23, 24, 102.

³³⁵ Stanišić Appeal Brief, paras. 128, 131, 162, 186. See also T. 24 January 2023 pp. 8, 9, 15, 16, 23, 24.

joint criminal enterprise to the extent that it could be corroborative and if it involved compelling similarities with the planning, preparation, or execution of the Bosanski Šamac operation.³³⁶

116. Stanišić, however, submits that the crimes committed in SAO Krajina and SAO SBWS in late 1991 as well as in Bijeljina and Zvornik in early 1992 had little or no relevance to the assessment of his *mens rea* with respect to crimes committed in Bosanski Šamac given the absence of compelling similarities.³³⁷ He stresses that none of the joint criminal enterprise members and/or physical perpetrators involved in the planning and/or perpetration of the attacks in SAO Krajina, SAO SBWS, Bijeljina, and Zvornik were found to have participated in the planning or execution of the subsequent crimes in Bosanski Šamac.³³⁸ Stanišić further adds that none of the principal perpetrators involved in the crimes committed in Bosanski Šamac was found to be a member of the joint criminal enterprise or found to have participated in previous crimes.³³⁹ In view of these dissimilarities, Stanišić contends that the Trial Chamber placed undue weight on the finding that he was undoubtedly aware of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina and aware of the shared intent of the members of the joint criminal enterprise.³⁴⁰ According to Stanišić, no reasonable trier of fact could have relied upon this pattern evidence to conclude that he knew that his acts would assist in the commission of crimes in Bosanski Šamac and that he was aware of the essential elements of those crimes, including the intent of the principal perpetrators.³⁴¹

117. Stanišić further submits that the Trial Chamber erred in failing to consider and give sufficient weight to the following factors:³⁴² (i) the nature of the training and deployment reasonably could have been for legal activities aimed at the protection of Serbs in Croatia and Bosnia and Herzegovina,³⁴³ (ii) there were no findings that crimes in Bosanski Šamac were planned and the principal planning of the takeover (and implicit threat of crimes to be committed) occurred after the deployment from Pajzoš and without Stanišić's participation or knowledge,³⁴⁴ and (iii) no evidence suggests that, at the

³³⁶ Stanišić Appeal Brief, paras. 162, 163, 186; Stanišić Reply Brief, para. 90. *See also* T. 24 January 2023 pp. 16, 17, 102.

³³⁷ *See* Stanišić Appeal Brief, paras. 166-179.

³³⁸ *See* Stanišić Appeal Brief, paras. 144-148, 160, 166, 167, 172, 174, 176-180; Stanišić Reply Brief, paras. 91, 94; T. 24 January 2023 pp. 17, 18, 22, 23, 105. *See also* Stanišić Appeal Brief, paras. 163, 168-171.

³³⁹ Stanišić Appeal Brief, paras. 145, 147, 173; T. 24 January 2023 pp. 22, 24, 101, 105. *See also* Stanišić Reply Brief, para. 95.

³⁴⁰ Stanišić Appeal Brief, para. 180; T. 24 January 2023 pp. 14, 15, 17, 18, 21-24. *See also* Stanišić Reply Brief, paras. 92, 96, 97.

³⁴¹ *See* Stanišić Appeal Brief, paras. 165, 174, 176, 179, 180, 186. *See also* Stanišić Appeal Brief, paras. 164, 175; T. 24 January 2023 p. 25.

³⁴² *See* Stanišić Appeal Brief, paras. 148-152, 154-159, 181-184.

³⁴³ *See* Stanišić Appeal Brief, paras. 158, 159, 182. *See also* Stanišić Appeal Brief, para. 102; T. 24 January 2023 pp. 16, 24, 25, 103, 104.

³⁴⁴ *See* Stanišić Appeal Brief, paras. 148-155, 184. *See also* Stanišić Appeal Brief, para. 186; T. 24 January 2023 pp. 16, 18, 19, 23, 101, 102.

time of the training or deployment, the principal perpetrators intended the takeover to entail persecution, murder, and/or forcible transfer.³⁴⁵ Stanišić further argues that the Trial Chamber was required to assess his physical and temporal proximity to the crimes in assessing his *mens rea*.³⁴⁶ In view of these errors, Stanišić requests that the Appeals Chamber quash the Trial Chamber’s findings as to his *mens rea* and find him not guilty of Counts 1 to 5 of the Indictment.³⁴⁷

118. The Prosecution responds that the Trial Chamber reasonably concluded that Stanišić knew that his conduct would assist the commission of crimes in Bosanski Šamac and was aware of the essential elements of the crimes committed, including the intent of the perpetrators.³⁴⁸ It argues that, in making its findings on Stanišić’s *mens rea*, the Trial Chamber correctly relied on the totality of the evidence, including the pattern of crimes committed in Croatia and Bosnia and Herzegovina, given the compelling similarities of those crimes to crimes committed in Bosanski Šamac.³⁴⁹ The Prosecution also responds that the Trial Chamber reasonably relied on Stanišić’s awareness of the campaign of forcible displacement in Croatia and Bosnia and Herzegovina and awareness of the shared intent of joint criminal enterprise members, as well as his communications with them.³⁵⁰ The Prosecution further submits that Stanišić has misread the Trial Judgement in claiming that no joint criminal enterprise member was involved in the Bosanski Šamac operations, and it points to findings in the Trial Judgement that the common criminal purpose included Bosanski Šamac and that core members of the joint criminal enterprise controlled Serb forces that attacked the municipality.³⁵¹

119. As to Stanišić’s arguments that the Trial Chamber failed to consider relevant factors,³⁵² the Prosecution contends that aiding and abetting liability does not require the assistance to be criminal.³⁵³ Furthermore, it argues that Stanišić was not merely conducting “legal activities” as he would have been aware that he would be supporting military activities involving the commission of crimes, including a persecutory campaign.³⁵⁴ Regarding the timing of the planning for the operation or Simatović’s briefing, the Prosecution submits that, at the time Stanišić provided assistance, he already had sufficient knowledge for aiding and abetting liability.³⁵⁵

³⁴⁵ Stanišić Appeal Brief, paras. 183, 184. *See also* Stanišić Appeal Brief, para. 182; T. 24 January 2023 pp. 16, 20.

³⁴⁶ *See* Stanišić Appeal Brief, para. 156; T. 24 January 2023 pp. 16, 19, 20, 103.

³⁴⁷ Stanišić Notice of Appeal, para. 24. *See also* Stanišić Notice of Appeal, para. 22.

³⁴⁸ Prosecution Response to Stanišić Appeal, para. 122. *See also* T. 24 January 2023 pp. 68-72.

³⁴⁹ *See* Prosecution Response to Stanišić Appeal, paras. 123-128, 133-143.

³⁵⁰ Prosecution Response to Stanišić Appeal, paras. 130, 146. *See also* Prosecution Response to Stanišić Appeal, paras. 132, 142; T. 24 January 2023 pp. 70-72.

³⁵¹ Prosecution Response to Stanišić Appeal, paras. 144, 147. *See also* T. 24 January 2023 pp. 71, 72.

³⁵² *See* Prosecution Response to Stanišić Appeal, paras. 148-151.

³⁵³ Prosecution Response to Stanišić Appeal, para. 150.

³⁵⁴ Prosecution Response to Stanišić Appeal, para. 149. *See also* T. 24 January 2023 p. 72.

³⁵⁵ Prosecution Response to Stanišić Appeal, para. 151.

120. Stanišić replies that no reasonable trier of fact would have found that his knowledge was established without reference to “any feature of the intended operation (their preparation, planning, or execution of the specific crimes in Bosanski Šamac), including the principal perpetrators”.³⁵⁶ He argues that the Prosecution shifts the focus from his knowledge of his acts assisting crimes to “awareness of a risk that his acts *might* assist some unspecified crimes [that] *might* occur in Bosanski Šamac”.³⁵⁷ According to Stanišić, the Prosecution has failed to identify material facts establishing his knowledge,³⁵⁸ and he submits that its suggested approach would modify the *mens rea* requirement for aiding and abetting (from knowledge to probability)³⁵⁹ and reverse the burden of proof.³⁶⁰ He replies that the Prosecution’s claim of “compelling similarities” with earlier crimes is unpersuasive,³⁶¹ and he argues that it does not support its assertion that forces under the control of specified members of the joint criminal enterprise were involved in crimes committed in Bosanski Šamac.³⁶²

121. The Appeals Chamber first turns to Stanišić’s contention that the Trial Chamber placed undue weight on “pattern evidence” of crimes committed in Croatia and Bosnia and Herzegovina in late 1991 and early 1992, respectively, in determining his *mens rea*. Recalling that trial chambers have broad discretion in weighing and assessing evidence,³⁶³ the Appeals Chamber considers that Stanišić’s submission that the Trial Chamber was required, as a “starting point”, to first look at evidence of his specific knowledge of crimes to be committed in Bosanski Šamac at the time he provided the assistance before relying on pattern evidence is unsubstantiated. The central consideration is whether the Trial Chamber applied the applicable burden of proof – beyond reasonable doubt – when reaching conclusions as to Stanišić’s *mens rea* for aiding and abetting the crimes committed in Bosanski Šamac. Bearing the foregoing in mind, it is well established that an accused’s *mens rea* may be inferred on the basis of circumstantial evidence so long as it is the only reasonable inference.³⁶⁴ The Appeals Chamber further recalls that an individual’s high-ranking

³⁵⁶ Stanišić Reply Brief, para. 83 (emphasis in original); T. 24 January 2023 p. 15. See also T. 24 January 2023 pp. 16-24.

³⁵⁷ Stanišić Reply Brief, para. 84 (emphasis in original). See also T. 24 January 2023 pp. 8-10, 15, 23-25.

³⁵⁸ See Stanišić Reply Brief, paras. 85-102. See also T. 24 January 2023 p. 8.

³⁵⁹ See Stanišić Reply Brief, paras. 72, 87-95, 102; T. 24 January 2023 pp. 8-10, 15, 25.

³⁶⁰ See Stanišić Reply Brief, paras. 87, 96-102. See also T. 24 January 2023 p. 24.

³⁶¹ See Stanišić Reply Brief, paras. 91, 92.

³⁶² Stanišić Reply Brief, para. 98. See also T. 24 January 2023 pp. 17, 18, 24.

³⁶³ See *Mladić* Appeal Judgement, paras. 169, 387 and references cited therein.

³⁶⁴ See *Karadžić* Appeal Judgement, para. 672, n. 1845 and references cited therein. See also *Kayishema and Ruzindana* Appeal Judgement, para. 159 (“As noted by the Trial Chamber, explicit manifestations of criminal intent are, for obvious reasons, often rare in the context of criminal trials. In order to prevent perpetrators from escaping convictions simply because such manifestations are absent, the requisite intent may normally be inferred from relevant facts and circumstances.”); *Prosecutor v. Slobodan Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73 & IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 31 (“A person’s state of mind [...] may be established by way of inference from other facts in evidence. Where, as here, the state of mind to be established is an essential ingredient of the basis of criminal responsibility charged, the inference must be established beyond reasonable doubt. If there is any other inference reasonably open from the evidence which is consistent

position, coupled with the open and notorious manner in which criminal acts unfold, can provide a sufficient basis for inferring knowledge of the crimes.³⁶⁵

122. The Appeals Chamber finds that Stanišić's submissions fail to account for the Trial Chamber's conclusions that the crimes committed in Bosanski Šamac were among a clearly discernible pattern of criminality demonstrating the existence of a common criminal purpose,³⁶⁶ and fail to appreciate that these circumstances could bear directly on his *mens rea*. The Trial Chamber further concluded that Stanišić and Simatović "contributed to the furtherance of the common criminal purpose" through the training and deployment of Unit members and local Serb forces during the takeover of Bosanski Šamac in April 1992.³⁶⁷ In view of this and the Trial Chamber's broad discretion in weighing evidence before it,³⁶⁸ Stanišić fails to demonstrate that the Trial Chamber erred in relying on these conclusions as well as the intent of joint criminal enterprise members – or what Stanišić refers to as "pattern evidence" – when inferring his *mens rea*.³⁶⁹

123. As to Stanišić's submission that the Trial Chamber placed undue weight on pattern evidence in view of the fact that none of the joint criminal enterprise members or perpetrators involved in events in Croatia and Bosnia and Herzegovina was involved in the preparation, participation, or commission of crimes in Bosanski Šamac, the Appeals Chamber observes that the Trial Chamber's findings name core members of the joint criminal enterprise to be, among others and depending on the area and timing of the commission of the crimes, Slobodan Milošević, Radmilo Bogdanović, Radovan Stojičić (Badža), Mihalj Kertes, Milan Martić, Milan Babić, Goran Hadžić, Radovan Karadžić, Ratko Mladić, Momčilo Krajišnik, Biljana Plavšić, and Željko Ražnatović (Arkan).³⁷⁰ Stanišić has not shown that the absence of the direct participation of any of these persons in the crimes committed in Bosanski Šamac undermines the reasonableness of the Trial Chamber's findings as to his *mens rea*. Although Stanišić argues that the Trial Chamber found certain core members of the joint criminal enterprise to have participated directly in prior attacks,³⁷¹ any such findings would not establish this as a prerequisite for concluding that Stanišić possessed the necessary *mens rea* for aiding and abetting crimes committed in relation to the takeover of Bosanski Šamac.

with the innocence of the accused, the required inference will not have been established to the necessary standard of proof.").

³⁶⁵ See *Karemera and Ngirumpatse* Appeal Judgement, para. 630 and reference contained therein.

³⁶⁶ See, e.g., Trial Judgement, paras. 378, 379, 594, 597.

³⁶⁷ See Trial Judgement, para. 597.

³⁶⁸ See *Mladić* Appeal Judgement, paras. 169, 387 and references cited therein.

³⁶⁹ See Trial Judgement, paras. 589, 594, 606, 607. See also Stanišić Appeal Brief, paras. 162, 163, 186.

³⁷⁰ See Trial Judgement, para. 380.

³⁷¹ See, e.g., Stanišić Appeal Brief, paras. 167, 172 and references cited therein.

124. The Appeals Chamber is further not convinced that Stanišić’s contention that none of the principal perpetrators had committed crimes in Croatia and Bosnia and Herzegovina prior to the takeover of Bosanski Šamac somehow undermines the reasonableness of the Trial Chamber’s findings as to his *mens rea*. The Trial Chamber considered that the attack on and crimes committed in Bosanski Šamac fell within the scope of the joint criminal enterprise.³⁷² Given that different core members and forces were used to carry out the common criminal purpose in Croatia and Bosnia and Herzegovina in view of the different geographic areas and the timing of events,³⁷³ the fact that different individuals participated in the takeover and crimes in Bosanski Šamac – including local Serbs from Bosanski Šamac – does not undermine the Trial Chamber’s reliance on Stanišić’s awareness of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina and awareness of the shared intent of the members of the joint criminal enterprise in inferring his *mens rea* for aiding and abetting in relation to the crimes at Bosanski Šamac.

125. As to Stanišić’s broader contention that the Trial Chamber erroneously placed undue weight on “pattern evidence” of prior crimes committed in Croatia and Bosnia and Herzegovina in finding that he possessed the *mens rea* for aiding and abetting crimes committed in Bosanski Šamac, the Appeals Chamber considers that Stanišić offers a different opinion without demonstrating an error. Stanišić fails to show that the events in SAO Krajina, SAO SBWS, Bijeljina, and Zvornik in late 1991 and early 1992 were so dissimilar that it was unreasonable for the Trial Chamber to rely decisively on the pattern of criminality of operations conducted by Serb forces therein when assessing Stanišić’s *mens rea* in relation to Bosanski Šamac. On the contrary, the Trial Chamber emphasized that:

the crimes committed during and following the takeover of Bosanski Šamac did not occur as an isolated incident, but formed part of a pattern of crimes accompanying the takeover of territory by Serb forces in Bosnia and Herzegovina. Consistent evidence demonstrates that military operations were conducted with the objective of establishing Serb control, expelling the non-Serb inhabitants of towns and villages, and intimidating, arbitrarily detaining, and subjecting any remaining non-Serb civilians in the area to various crimes and acts of violence.³⁷⁴

This assessment echoes the Trial Chamber’s earlier findings that:

the evidence demonstrates a clearly discernible pattern of numerous crimes committed by Serb forces in the areas of the SAO Krajina, the SAO SBWS, and the municipalities of Bijeljina, Zvornik, Bosanski Šamac, Doboje, and Sanski Most during the Indictment period. Having examined the totality of the circumstances surrounding the commission of the crimes, the Trial Chamber finds that they were not committed in a random or disorganized manner, but rather during the course of well-planned and coordinated operations, demonstrating the existence of a common criminal purpose.³⁷⁵

³⁷² See, e.g., Trial Judgement, paras. 378, 379, 597.

³⁷³ See, e.g., Trial Judgement, paras. 102, 169, 181, 199, 200, 218, 222-227, 229, 373-375, 380.

³⁷⁴ Trial Judgement, para. 606. See also Trial Judgement, paras. 372-379.

³⁷⁵ Trial Judgement, para. 378.

126. As the findings of the Trial Chamber reflect, starting from August 1991, military operations led by Serb forces, first in Croatia and then in early 1992 in Bosnia and Herzegovina, followed a pattern of criminal destruction of non-Serb property and violence against non-Serbs that resulted in injuries and deaths and forced non-Serb inhabitants to leave – a pattern that immediately repeated itself in Bosanski Šamac.³⁷⁶ Moreover, the Appeals Chamber observes that the Trial Chamber noted evidence indicating that:

particularly in relation to Bosnia and Herzegovina, due to the mixed demographics of the region, carving out a Serb statelet was necessarily going to involve violence, and that operations were conducted not only for the purpose of taking over territory, but also for the purpose of changing, through violence, the demographic character of the areas.³⁷⁷

127. Although the Trial Chamber found that Stanišić did not share the intent of the common criminal purpose of the joint criminal enterprise,³⁷⁸ its findings also reflect that he and Simatović were aware of it at the time of the training at the Ležimir and Pajzoš camps in early 1992 and deployment of Unit members and local Serbs from Bosanski Šamac in April 1992.³⁷⁹ Notably, the Trial Chamber considered that Stanišić, as part of the State Security Service, had “unfettered access to intelligence information” of events in Croatia and Bosnia and Herzegovina through “various networks and channels of reporting”.³⁸⁰ Furthermore, between 1990 and 1992, he communicated and attended meetings with core members of the joint criminal enterprise, including Slobodan Milošević, Milan Babić, Milan Martić, Goran Hadžić, and Radovan Karadžić, as well as other Bosnian Serb leaders, regarding events on the ground.³⁸¹ The Trial Chamber explicitly considered that Stanišić had “comprehensive knowledge of the events on the ground in Croatia and Bosnia and Herzegovina [...] including detailed information of the strength, composition, and deployment of Serb forces in various regions of the conflict”.³⁸² Additionally, it considered that his comments during conversations with Radovan Karadžić in January 1992 “reflect Stanišić’s knowledge that military operations may result in killings”.³⁸³ On this basis, the Trial Chamber found proven beyond reasonable doubt that, at the relevant time, Stanišić was aware of the campaign of forcible displacement targeting non-Serbs in

³⁷⁶ Compare, e.g., Trial Judgement, paras. 102, 169, 170, 181, 199-201 with Trial Judgement, paras. 218, 221-234. See also Trial Judgement, paras. 372, 374, 375.

³⁷⁷ Trial Judgement, para. 377.

³⁷⁸ See Trial Judgement, para. 596.

³⁷⁹ See Trial Judgement, paras. 581, 586, 587, 589, 594, 597, 606, 607.

³⁸⁰ Trial Judgement, paras. 578, 586.

³⁸¹ See Trial Judgement, paras. 578, 586, 587.

³⁸² Trial Judgement, para. 587.

³⁸³ Trial Judgement, para. 581.

Croatia and Bosnia and Herzegovina,³⁸⁴ and he was aware of the shared intent of the members of the joint criminal enterprise.³⁸⁵

128. Viewed in this context and considering the circumstances of the conflict at the time, the Appeals Chamber finds that it was reasonable for the Trial Chamber to conclude that, in early 1992, Stanišić would have been aware that, in allowing the use of their facilities and trainers, he and Simatović would be supporting military action and the commission of crimes by these forces.³⁸⁶ It was equally reasonable for the Trial Chamber to conclude that, in subsequently deploying Unit members and approximately 20 locals from Bosanski Šamac in April 1992 to assist in the takeover operation of Bosanski Šamac, Stanišić would have been aware of the commission of crimes during the operation.³⁸⁷ The Appeals Chamber finds that Stanišić's submissions challenging the Trial Chamber's reliance on pattern evidence and the intent of the members of the joint criminal enterprise to support its findings on his *mens rea* do not undermine the reasonableness of the Trial Chamber's conclusions.

129. The Appeals Chamber now turns to Stanišić's contentions that the Trial Chamber failed to sufficiently consider factors specific to the takeover of Bosanski Šamac.³⁸⁸ Regarding the purported legal nature of the training and deployment,³⁸⁹ the Appeals Chamber notes the evidence cited by the Trial Chamber and its findings as to: (i) the creation of the Unit in August or September 1991,³⁹⁰ (ii) the Unit's involvement in the training of locals from Bosanski Šamac as well as former SAO SBWS police officers at the Ležimir and Pajzoš camps and the inclusion of new members;³⁹¹ and (iii) the deployment of Unit members and trainees from the camps to Batkuša as well as preparations that were made prior to the 17 April 1992 takeover of Bosanski Šamac.³⁹² The Appeals Chamber observes that none of these findings expressly reflects that the purpose of the training, the type of training given, the deployment, or preparations immediately before the takeover of Bosanski Šamac were necessarily aimed at the commission of crimes. The Appeals Chamber recalls, however, that it has previously rejected Stanišić's contentions that the nature of the training or the manner of the deployment prevented the Trial Chamber from relying on it in support of the *actus reus* for his aiding and abetting liability.³⁹³ Given the compelling contextual factors considered by the Trial Chamber in

³⁸⁴ Trial Judgement, paras. 372-379, 589, 597.

³⁸⁵ Trial Judgement, para. 594.

³⁸⁶ Trial Judgement, para. 418.

³⁸⁷ Trial Judgement, para. 419.

³⁸⁸ See Stanišić Appeal Brief, paras. 181-184. See also Stanišić Appeal Brief, paras. 143-160.

³⁸⁹ See Stanišić Appeal Brief, para. 182.

³⁹⁰ See Trial Judgement, paras. 388, 396-406, 409.

³⁹¹ See Trial Judgement, paras. 407, 409, 416, 418, 419.

³⁹² See Trial Judgement, paras. 209, 218, 419.

³⁹³ See *supra* paras. 91-98.

finding that Stanišić possessed the *mens rea* for aiding and abetting, Stanišić does not demonstrate that the Trial Chamber failed to give sufficient consideration to the nature of the training or deployment in reaching this conclusion. The Appeals Chamber reiterates that there is no legal requirement that the training needed to involve criminal planning.³⁹⁴

130. The Appeals Chamber turns to Stanišić's submissions that the Trial Chamber failed to sufficiently consider the fact that there were no findings that crimes in Bosanski Šamac were planned and the principal planning of the takeover (and implicit threat of crimes to be committed) occurred after the deployment from Pajzoš and without his participation or knowledge. The Appeals Chamber observes that none of the evidence or findings relied upon by Stanišić demonstrates that planning specific to the commission of crimes occurred after the deployment. In any event, the *mens rea* for aiding and abetting liability does not require the aider and abettor to share the intent of the principal perpetrator³⁹⁵ and, similarly, there is no requirement of having participated in the planning of crimes.³⁹⁶ Rather, the *mens rea* standard requires that the aider and abettor be aware of the essential elements of the crime ultimately committed, including the intent of the principal perpetrator.³⁹⁷

131. As discussed above, given the pattern of crimes in Croatia and Bosnia and Herzegovina, the fact that the events in Bosanski Šamac followed this pattern, Stanišić's awareness of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina and awareness of the shared intent of the members of the joint criminal enterprise, as well as his "unfettered access" to information on the ground,³⁹⁸ it was reasonable for the Trial Chamber to conclude as the only reasonable inference that at the time of the training and deployment, Stanišić would have been aware that his conduct supported military action and the commission of crimes in Bosanski Šamac.³⁹⁹ Stanišić's submission fails to demonstrate that the Trial Chamber was obligated to expressly assess or find that, at the time of the training and deployment, Stanišić was involved in the planning of specific crimes ultimately committed by the principal perpetrators in Bosanski Šamac. Given the Trial Chamber's findings that Stanišić was aware of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina,⁴⁰⁰ that he possessed this awareness at the time of the training and deployment relevant to Bosanski Šamac,⁴⁰¹ and that the crimes in Bosanski Šamac were

³⁹⁴ Cf. *Šešelj* Appeal Judgement, para. 172; *Blagojević & Jokić* Appeal Judgement, para. 189.

³⁹⁵ See *Popović et al.* Appeal Judgement, paras. 1794, 1812.

³⁹⁶ See *Aleksovski* Appeal Judgement, para. 163(iv) ("It is not necessary to show the existence of a common concerted plan between the principal and the accessory").

³⁹⁷ See *Popović et al.* Appeal Judgement, para. 1732; *Šainović et al.* Appeal Judgement, para. 1772.

³⁹⁸ See Trial Judgement, paras. 378, 379, 578, 586, 587, 589.

³⁹⁹ See Trial Judgement, paras. 418, 419, 606, 607.

⁴⁰⁰ See Trial Judgement, para. 589. See also Trial Judgement, paras. 594, 596.

⁴⁰¹ See Trial Judgement, paras. 418, 419, 606, 607. See also Trial Judgement, para. 596.

eventually committed in furtherance of a criminal campaign,⁴⁰² there is no merit to Stanišić’s contention that the Trial Chamber failed to consider that “there [was] nothing to suggest that at the time of the assistance the takeover was intended to be a persecutory campaign”.⁴⁰³ These findings further undermine Stanišić’s contention that it was unreasonable for the Trial Chamber to conclude that he was aware of the principal perpetrators’ criminal intent. Finally, Stanišić does not show that the Trial Chamber failed to sufficiently consider any geographic or temporal remoteness between him and the crimes that were ultimately committed when assessing his *mens rea* given the factors it relied upon in reaching its conclusion.⁴⁰⁴

132. In light of the above, the Appeals Chamber concludes that Stanišić has not shown that the Trial Chamber erred in finding that he knew that his acts assisted the commission of the crimes of persecution, murder, deportation and forcible transfer in Bosanski Šamac and was aware of the essential elements of the crimes, including the intent of the perpetrators.⁴⁰⁵ The Appeals Chamber dismisses Ground 4 of Stanišić’s appeal.

IV. APPEAL OF FRANKO SIMATOVIĆ

A. Alleged Errors of Fact and Law in Determining Simatović’s Positions and Roles

(Ground 1)

133. In Ground 1 of his appeal, Simatović alleges that the Trial Chamber committed numerous errors in reaching findings on his conduct unrelated to the takeover of Bosanski Šamac and concerning his positions and roles. The Appeals Chamber will address these challenges below, with the exception of sub-grounds 11 and 12 of Ground 1, which are considered in Ground 2 of Simatović’s appeal.⁴⁰⁶

1. Alleged Errors in Findings Not Related to Bosanski Šamac (sub-grounds 3, 6 through 9, and 13 through 16)

134. In sub-grounds 3, 6 through 9, and 13 through 16 of Ground 1 of Simatović’s appeal, he argues that the Trial Chamber erred in fact and/or in law in making the following findings: (i) Stanišić and Simatović were involved in the provision of financial support and weapons to the SAO Krajina

⁴⁰² Cf. Trial Judgement, paras. 375, 378, 597. See also Trial Judgement, paras. 232-234, 604.

⁴⁰³ See Stanišić Appeal Brief, para. 183.

⁴⁰⁴ The cases Stanišić refers to in his appeal submissions do not demonstrate any error in the Trial Chamber’s assessment. See T. 24 January 2023 pp. 19, 20.

⁴⁰⁵ Trial Judgement, paras. 606, 607.

⁴⁰⁶ See *infra* Sections IV.B.2, IV.B.3.

police between late 1990 and the first half of 1991;⁴⁰⁷ (ii) Simatović played a role in organizing the training of members of the SAO Krajina police, the SAO Krajina Territorial Defence, and other volunteers at the Golubić training camp until around the end of July 1991, through the use of State Security Service affiliated trainers;⁴⁰⁸ (iii) Simatović participated in the planning and carrying out of the attack on Lovinac (SAO Krajina) on 5 August 1991;⁴⁰⁹ and (iv) Stanišić and Simatović had authority over the use and deployment of the Unit for Anti-Terrorist Activities (“JATD”) from its creation in August 1993 until the end of the period covered by the Indictment.⁴¹⁰

135. The Prosecution responds, *inter alia*, that the Trial Chamber did not take most of these findings into account when convicting Simatović and that any error in this respect therefore would not invalidate the verdict.⁴¹¹ It contends that the Trial Chamber reasonably determined that Simatović provided weapons to the SAO Krajina police between late 1990 and the first half of 1991.⁴¹² Simatović does not reply to the contention that these findings do not support his convictions.⁴¹³

136. The Appeals Chamber recalls that, when considering alleged errors of fact, 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.⁴¹⁴ Similarly, an allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground.⁴¹⁵

137. The Appeals Chamber observes that Simatović was convicted for aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces in relation to the takeover of Bosanski Šamac in April 1992.⁴¹⁶ None of Simatović’s present submissions contends that errors in relation to the findings challenged in sub-grounds 3, 6 through 9, and 13 through 16 of Ground 1 of his appeal have resulted in a miscarriage of justice or invalidate his convictions or sentence. A review of the Trial Judgement reveals that the Trial Chamber did not consider any of the challenged findings when convicting Simatović or in determining his sentence.⁴¹⁷

⁴⁰⁷ Simatović Notice of Appeal, paras. 22, 23; Simatović Appeal Brief, paras. 56-68; Simatović Reply Brief, paras. 18-24, *referring to, inter alia*, Trial Judgement, paras. 494, 501, 504, 505.

⁴⁰⁸ See Simatović Notice of Appeal, paras. 14-16; Simatović Appeal Brief, paras. 32-44; Simatović Reply Brief, paras. 13-15, *referring to, inter alia*, Trial Judgement, paras. 397, 403, 409.

⁴⁰⁹ Simatović Notice of Appeal, para. 10; Simatović Appeal Brief, paras. 20-25, *referring to, inter alia*, Trial Judgement, para. 29.

⁴¹⁰ Simatović Notice of Appeal, paras. 13, 20, 21; Simatović Appeal Brief, paras. 30, 31, 47-55; Simatović Reply Brief, paras. 16, 17, *referring to, inter alia*, Trial Judgement, paras. 388, 432, 434.

⁴¹¹ Prosecution Response to Simatović Appeal, paras. 17, 22, 30, 35.

⁴¹² See Prosecution Response to Simatović Appeal, paras. 39-42.

⁴¹³ See Simatović Reply Brief, paras. 13-24.

⁴¹⁴ *Mladić* Appeal Judgement, para. 18 and references cited therein.

⁴¹⁵ *Mladić* Appeal Judgement, para. 16 and references cited therein.

⁴¹⁶ See Trial Judgement, paras. 604, 608.

⁴¹⁷ Compare Trial Judgement, para. 29 (“[T]he Trial Chamber finds that Simatović participated in the planning and carrying out of the attack on Lovinac on 5 August 1991. However, the Trial Chamber does not find that [...] there [is]

Consequently, Simatović has not shown that any of the errors alleged with respect to the Trial Chamber's findings summarized above could have occasioned a miscarriage of justice or invalidate his convictions or sentence, and they can be dismissed on this basis.

138. Nevertheless, the Appeals Chamber considers that the interests of justice require consideration of certain arguments raised in sub-grounds 6 and 13 of Ground 1 of Simatović's appeal relating to findings as to his authority over the JATD in view of the Prosecution's appeal and analysis elsewhere in this Judgement.⁴¹⁸ Moreover, the Appeals Chamber notes that the Prosecution, which responded in substance to these arguments, is not prejudiced.⁴¹⁹ The Appeals Chamber, however, finds that Simatović's challenges to the Trial Chamber's conclusions in paragraph 434 of the Trial Judgement concerning the JATD's presence in Pajzoš camp from late 1993 or 1994 until 1995 or 1996, training conducted in Pajzoš in 1995, or training conducted in Petrova Gora do not implicate any issues of his authority over the JATD that must be adjudicated in view of the interests of justice.⁴²⁰

139. The Appeals Chamber notes that the Trial Chamber considered that the JATD was established in early August 1993 as an independent organizational unit within the State Security Service and was

sufficient evidence to demonstrate beyond reasonable doubt that the actions of the Serb forces in Lovinac targeted the non-Serb population in the area. [...] While the Trial Chamber received evidence that a number of people were displaced from Lovinac in August and September 1991, this evidence, alone, is insufficient to support a determination on the reasons behind the displacement.”), 388 (“There is also no doubt that, as a general matter, the Accused had authority over the use and deployment of JATD from its creation in August 1993 until the end of the period covered by the Indictment. The Prosecution, however, has not proven beyond reasonable doubt that the Unit or the JATD perpetrated crimes charged in the Indictment in the periods from August 1991 until mid-April 1992, and from August 1993 until December 1995.”), 397 (“The Trial Chamber considers that the evidence discussed below, when viewed collectively, indicates that Stanišić and Simatović did play a role in organizing the training at [Golubić], including through facilitating instruction. The Trial Chamber is mindful though that this took place prior to the time frame when it was proven that the common criminal purpose came into existence.”), 403 (“Such evidence, however, does not detract from the role that Stanišić and Simatović may have played in contributing to the training there between May and July/August 1991, for example, by facilitating the provision of instructors affiliated with the Serbian State Security Service. This and any other support to security structures in the SAO Krajina in relation to training, however, came before the common criminal purpose came into existence.”), 409 (“The Trial Chamber is satisfied that the Accused contributed to the training of members of the SAO Krajina police, the SAO Krajina Territorial Defence, and other volunteers at the Golubić camp until around the end of July 1991 through the use of Serbian State Security Service affiliated trainers.”), 432 (“It follows from the evidence that the JATD was established in early August 1993, as an independent organizational unit within the Serbian State Security Service, and that it was under the authority of Stanišić.”), 501 (“Having carefully considered the totality of the witness's evidence, including alleged inconsistencies in his testimony, the Trial Chamber decides to rely on Witness RFJ-066's account only to the extent that it demonstrates that Stanišić and Simatović were involved in the provision of weapons to the SAO Krajina police in late 1990 and early 1991, but not in relation to the specific details of such support.”), 505 (“The Trial Chamber has found that Stanišić exerted influence over Martić, and that both Accused were involved in providing the SAO Krajina police with weapons, communication equipment, and some limited technical assistance in late 1990 and early 1991, as well as financial support between late 1990 and first half of 1991. The Trial Chamber recalls, however, its earlier finding that the common plan did not come into existence until at least August 1991. In these circumstances, the Trial Chamber does not consider the above described conduct of the Accused to constitute a contribution to the furtherance of the common criminal purpose.”) *with* Trial Judgement, paras. 604-608, 619-621, 628-632, 634, 635, 637.

⁴¹⁸ See *infra* Section VI.A.4(c).

⁴¹⁹ Cf. *Nyiramasuhuko et al.* Appeal Judgement, para. 468 (noting that, in the context of a response brief on appeal from judgement, the relevant Rules or the relevant practice directions do not prohibit “a party from raising an allegation of error in the Trial Judgement in response to an issue raised by the other party”).

⁴²⁰ See Simatović Appeal Brief, paras. 51-55; Simatović Reply Brief, para. 17.

under Stanišić's authority.⁴²¹ According to the Trial Chamber, Stanišić, as head of the State Security Service, signed all employment decisions, including for the JATD, while salary decisions were signed by the head of the Eighth Administration of the State Security Service.⁴²² The Trial Chamber further considered that, on 12 January 1994, Stanišić appointed Milan Radonjić as Deputy Commander of the JATD, that the JATD was responsible to Simatović, as the Assistant Chief of the State Security Service, and that reports were submitted to the Assistant and Deputy Chief of the State Security Service.⁴²³ It also noted evidence that Witness Dragoslav Krsmanović was involved in the recruitment of JATD members.⁴²⁴ The Trial Chamber concluded that there is "no doubt that, as a general matter, [Stanišić and Simatović] had authority over the use and deployment of [the] JATD from its creation in August 1993 until the end of the period covered by the Indictment".⁴²⁵

140. Simatović submits that the Trial Chamber's finding – that, as a general matter, he had authority over the use and deployment of the JATD from August 1993 until the end of the Indictment period – is unfounded and unsubstantiated.⁴²⁶ According to Simatović, the Trial Chamber's consideration that the JATD was responsible to him, as Assistant Chief of the State Security Service, is based on the testimony of Witness Krsmanović, which he contends the Trial Chamber misrepresented and relied on selectively.⁴²⁷ Simatović argues that Witness Krsmanović did not actually know Simatović's position at the relevant time and could not provide details of reports sent to the Second Administration of the State Security Service.⁴²⁸

141. The Prosecution responds, *inter alia*, that the Trial Chamber reasonably relied on Witness Krsmanović's evidence that the JATD both reported to Simatović and was responsible to him,⁴²⁹ and that it was within the Trial Chamber's discretion to accept parts of the witness's evidence.⁴³⁰

142. The Appeals Chamber recalls that trial chambers have broad discretion in weighing evidence,⁴³¹ and are best placed to assess the credibility of a witness and the reliability of the evidence adduced.⁴³² In noting that the "JATD was responsible to the Assistant Chief of the [...] State Security

⁴²¹ Trial Judgement, para. 432.

⁴²² Trial Judgement, para. 432.

⁴²³ Trial Judgement, para. 432.

⁴²⁴ Trial Judgement, para. 432.

⁴²⁵ Trial Judgement, para. 388.

⁴²⁶ See Simatović Appeal Brief, paras. 30, 31, 47-50, *referring to, inter alia*, Trial Judgement, paras. 388, 432.

⁴²⁷ See Simatović Appeal Brief, paras. 47-50.

⁴²⁸ Simatović Appeal Brief, para. 49, *referring to, inter alia*, Witness Krsmanović, T. 1 October 2019 pp. 49, 50. See also Simatović Reply Brief, para. 16.

⁴²⁹ See Prosecution Response to Simatović Appeal, paras. 31, 32.

⁴³⁰ Prosecution Response to Simatović Appeal, para. 33.

⁴³¹ *Mladić* Appeal Judgement, paras. 169, 387 and references cited therein.

⁴³² *Karadžić* Appeal Judgement, paras. 363, 530 and references cited therein.

Service, Simatović, and reports were submitted to the Assistant and Deputy Chief of the [...] State Security Service”, the Trial Chamber referenced Witness Krsmanović’s evidence,⁴³³ which in relevant respects states:

Within the [State Security] Service system, the unit was an independent organizational unit and following the work line was responsible to the Assistant Chief of the Service, more concretely Franko SIMATOVIĆ. The unit was submitting reports to the Assistant and Deputy Chief of the [State Security Service]. We did not submit reports directly to the Chief of the Service, but we respected the reporting hierarchy.⁴³⁴

Simatović places emphasis on Witness Krsmanović’s testimony discussing the foregoing paragraph of Exhibit 1D00384, wherein he testified that reports “went to the 2nd Administration”, and that he was not sure “who was the head of that administration at that time” but believed “it was Franko Simatović”.⁴³⁵ Nevertheless, the Appeals Chamber observes no material contradiction in the witness’s evidence, noting that he further testified that he was “not changing his evidence”,⁴³⁶ that his unit reported to the “2nd Administration”, and that Simatović had read and initialled a relevant report.⁴³⁷ Consequently, Simatović has not demonstrated that the Trial Chamber misrepresented the witness’s evidence.

143. In light of the foregoing, Simatović fails to demonstrate that the Trial Chamber erred in its assessment of Witness Krsmanović’s evidence, or, on this basis, erred in finding that, as a general matter, Simatović, as well as Stanišić as head of the State Security Service, exercised authority over the JATD from its creation in August 1993 until the end of the period covered by the Indictment.⁴³⁸

144. The Appeals Chamber, therefore, dismisses sub-grounds 6 and 13 of Ground 1 of Simatović’s appeal on the merits. The Appeals Chamber further finds that Simatović has not shown that any of the errors alleged with respect to the Trial Chamber’s findings challenged in sub-grounds 3, 7 through 9, and 14 through 16 of Ground 1 of his appeal could have occasioned a miscarriage of justice or invalidate his convictions or sentence. Consequently, the Appeals Chamber dismisses sub-grounds 3, 6 through 9, and 13 through 16 of Ground 1 of Simatović’s appeal.

⁴³³ Trial Judgement, para. 432, n. 1723, *referring to* Witness Krsmanović, Exhibit 1D00384, para. 26, T. 1 October 2019 pp. 48-50.

⁴³⁴ Witness Krsmanović, Exhibit 1D00384, para. 26.

⁴³⁵ Witness Krsmanović, T. 1 October 2019 p. 50.

⁴³⁶ Witness Krsmanović, T. 1 October 2019 p. 50.

⁴³⁷ Witness Krsmanović, T. 1 October 2019 pp. 48, 49.

⁴³⁸ *See* Trial Judgement, paras. 388, 432.

2. Alleged Errors Regarding Simatović's Positions and Authority Within the State Security Service and Department (sub-grounds 1 and 2)

145. Upon considering evidence related to Simatović's positions and powers, the Trial Chamber concluded that, during the period relevant to the Indictment, Simatović held "high-level positions with significant powers and authority within the State Security Service and later the State Security Department".⁴³⁹ Additionally, when determining Simatović's sentence, the Trial Chamber recalled that, at the time of the commission of the crimes in Bosanski Šamac, Simatović was a senior intelligence officer in the Second Administration of the State Security Service, and it considered as an aggravating factor that Simatović – cloaked with the authority of Stanišić and the State Security Service – abused his authority in utilizing the resources at his disposal to facilitate the commission of the crimes.⁴⁴⁰

146. Simatović argues that the Trial Chamber erred in finding that he held several high-level positions with significant powers and authority in the State Security Service and the State Security Department.⁴⁴¹ In particular, he contends that the Trial Chamber erroneously found that, from 8 January 1991, he was the Chief of Section of the State Security Service's Second Administration in Belgrade for Serbia and submits that he was, instead, the Chief of the Second Branch of the State Security Service Administration for Belgrade,⁴⁴² the lowest managerial level position in the State Security Service.⁴⁴³

147. Simatović also submits that the Trial Chamber's conclusion that he had a maximum of 94 employees under his leadership when he was Deputy Chief of the Second Administration of the State Security Department from 1 May 1992 to 1 May 1993 is not correct.⁴⁴⁴ He contends that he had no one under his leadership during this period because leadership was vested in the chief, not in the deputy.⁴⁴⁵ He also argues that his position was at a "middle management level",⁴⁴⁶ and that he could not lead the Second Administration directly and independently,⁴⁴⁷ or make independent decisions.⁴⁴⁸ Simatović further asserts that, as a Special Advisor to the Chief of the State Security Department, a

⁴³⁹ Trial Judgement, para. 354.

⁴⁴⁰ Trial Judgement, para. 628.

⁴⁴¹ See Simatović Notice of Appeal, paras. 8, 9; Simatović Appeal Brief, paras. 7-19; Simatović Reply Brief, paras. 6-10; T. 24 January 2023 pp. 46, 47, 51-56, 115. See also Simatović Appeal Brief, paras. 155, 158, 279.

⁴⁴² Simatović Appeal Brief, para. 8; T. 24 January 2023 pp. 51-56.

⁴⁴³ See Simatović Appeal Brief, paras. 9-11; T. 24 January 2023 pp. 53, 54, 115.

⁴⁴⁴ Simatović Appeal Brief, paras. 12, 13. See also Simatović Appeal Brief, para. 17; T. 24 January 2023 pp. 53, 54.

⁴⁴⁵ Simatović Appeal Brief, para. 13; T. 24 January 2023 p. 53.

⁴⁴⁶ Simatović Appeal Brief, para. 14. See also T. 24 January 2023 p. 53.

⁴⁴⁷ Simatović Appeal Brief, para. 14. See also T. 24 January 2023 pp. 53, 54.

⁴⁴⁸ Simatović Appeal Brief, paras. 15, 17; T. 24 January 2023 p. 53.

position he held from 1 May 1993, he could only provide advice to the chief, who always made the decisions.⁴⁴⁹

148. The Prosecution responds that the Trial Chamber reasonably concluded, based on the evidence, that Simatović held several high-level positions within the State Security Service and the State Security Department, and it contends that Simatović repeats arguments which failed at trial.⁴⁵⁰ It submits that the Trial Chamber's reference to the State Security Service's Second Administration in Belgrade, as opposed to the Second "Branch", "Section", or "Department" of the Security Service Administration in Belgrade, does not demonstrate error, as it is clear from the Trial Chamber's description of the size and responsibilities of the office that it understood Simatović's official responsibilities when working there.⁴⁵¹ The Prosecution argues that, in any event, Simatović's formation of the Unit, authority over the Unit and the Ležimir and Pajzoš camps, and related acts concerning the Bosanski Šamac operation were beyond the scope of his official duties as Chief of Section of the State Security Service Administration in Belgrade.⁴⁵² Finally, the Prosecution contends that Simatović fails to demonstrate that the Trial Chamber erred in concluding that, as Deputy Chief of the Second Administration, Simatović had up to 94 subordinate employees, and argues that the Trial Chamber made no finding as to the actual number of employees that were reporting to Simatović.⁴⁵³

149. Simatović replies that the Prosecution's submissions concerning the positions he held after 11 April 1992 are of no relevance, as the training and deployment of Unit members and local Serb forces, on the basis of which he was convicted, occurred before that date.⁴⁵⁴ He reiterates that the position of Chief of Section was the lowest managerial position within the State Security Service, which, as acknowledged by the Trial Chamber, followed "strict hierarchy", and that the Trial Chamber erred in considering it was a high-level position when deciding on his responsibility for aiding and abetting and determining his sentence.⁴⁵⁵

150. With regard to Simatović's contention that the Trial Chamber erred in finding that he was the Chief of Section in the Second Administration of the State Security Service for Serbia, instead of the Second Branch of the State Security Service Administration in Belgrade, the Appeals Chamber notes

⁴⁴⁹ Simatović Appeal Brief, paras. 16, 17; T. 24 January 2023 p. 55.

⁴⁵⁰ See Prosecution Response to Simatović Appeal, paras. 11, 12, 15.

⁴⁵¹ Prosecution Response to Simatović Appeal, para. 13.

⁴⁵² Prosecution Response to Simatović Appeal, para. 16. See also T. 24 January 2023 pp. 83-86. The Prosecution argues that Simatović's conduct in connection with SAO Krajina and SAO SBWS had no apparent connection with his official responsibilities of monitoring United States intelligence in 1991 and early 1992. See T. 24 January 2023 pp. 85, 86.

⁴⁵³ Prosecution Response to Simatović Appeal, para. 14.

⁴⁵⁴ Simatović Reply Brief, para. 7; T. 24 January 2023 pp. 54, 55.

⁴⁵⁵ Simatović Reply Brief, para. 8; T. 24 January 2022 pp. 47, 51-56, 114, 115.

that, in reaching this finding, the Trial Chamber considered the evidence of Witnesses Nielsen,⁴⁵⁶ Mičić,⁴⁵⁷ and Ristić,⁴⁵⁸ as well as documentary evidence.⁴⁵⁹ This evidence indicates that Simatović worked in the Second “Branch” or “Department” of the State Security Service Administration in Belgrade, as he contends. However, the Appeals Chamber also observes that the Trial Chamber’s description of Simatović’s responsibilities and functions accurately reflects the evidence on the record.⁴⁶⁰ In this context, the Appeals Chamber considers that any error in referring to the Second Administration of the State Security Service, instead of the Second “Branch” or “Department” of the State Security Service Administration in Belgrade, is one of form rather than substance.⁴⁶¹

151. Moreover, the Appeals Chamber observes that, upon reaching a conclusion on the evidence related to Simatović’s positions and powers, the Trial Chamber expressly stated that it would examine how Simatović’s power and authority manifested itself in relation to the specific events charged in the Indictment.⁴⁶² Thus, when examining the events that took place in Bosanski Šamac, the Trial Chamber found, *inter alia*, that: (i) Stanišić and Simatović formed the Unit and determined its use and deployment until at least mid-April 1992;⁴⁶³ (ii) Stanišić and Simatović had authority and control over the Unit and the Pajzoš and Ležimir camps, where a new group of Unit members and locals from Bosanski Šamac received training before being deployed to Bosanski Šamac;⁴⁶⁴ (iii) Stanišić and Simatović allowed the use of their facilities and trainers, and would have been aware, in doing so, that they would be supporting military action and the commission of crimes by these forces;⁴⁶⁵ (iv) the training conducted at Pajzoš and Ležimir was done at Stanišić and Simatović’s direction, with their authorization, as well as their financial and logistical support;⁴⁶⁶ and (v) Stanišić and Simatović

⁴⁵⁶ Trial Judgement, para. 351, nn. 1491, 1492, *referring to* Witness Nielsen, T. 14 November 2017 pp. 32-35 (testifying that Simatović was deployed in the Second Department of the Administration of the State Security Service), Exhibit P00850, para. 85 (indicating that on 8 January 1991, Simatović was appointed as a Senior Inspector in the Second Department of the State Security Service Administration in Belgrade).

⁴⁵⁷ Trial Judgement, para. 351, n. 1492, *referring to, inter alia*, Witness Mičić, T. 3 March 2020 pp. 7, 9, Exhibit 2D00454, pp. 19774-19777, 19864 (indicating that Simatović was the head of the American desk (AOS) of the Belgrade centre of the State Security Service, the lowest organizational level within the Belgrade centre).

⁴⁵⁸ Trial Judgement, para. 351, n. 1492, *referring to, inter alia*, Witness Ristić, Exhibit 1D00135, p. 11739 (stating that Simatović was the head of the section for countering the activities of the American intelligence service).

⁴⁵⁹ Trial Judgement, para. 351, nn. 1491, 1492, *referring to, inter alia*, Exhibit 2D00451, paras. 382, 395 (indicating that from 15 December 1990 until 1 May 1992, Simatović was the chief of the section for the USA in the Second Branch of the State Security Service Administration in Belgrade), Exhibit P00831, p. 47 (indicating that Simatović was assigned with effect from 15 December 1990 in the Second Section of the State Security Service/Administration in Belgrade).

⁴⁶⁰ Trial Judgement, para. 351, n. 1492, *referring to, inter alia*, Witness Nielsen, T. 14 November 2017 pp. 32-35, Exhibit P00850, para. 85, Exhibit 2D00451, paras. 382, 395, Witness Mičić, T. 3 March 2020 pp. 7, 9, Exhibit 2D00454, pp. 19774-19777, 19864, Witness Ristić, Exhibit 1D00135, p. 11739.

⁴⁶¹ *Cf. Ndindiliyimana et al.* Appeal Judgement, para. 134, *referring to Hategekimana* Appeal Judgement, para. 30.

⁴⁶² Trial Judgement, para. 354.

⁴⁶³ Trial Judgement, para. 388. *See also* Trial Judgement, para. 405.

⁴⁶⁴ *See* Trial Judgement, paras. 409, 418, 419. *See also* Trial Judgement, paras. 405, 407, 416.

⁴⁶⁵ Trial Judgement, para. 418. *See also* Trial Judgement, para. 419.

⁴⁶⁶ Trial Judgement, paras. 409, 418.

authorized the deployment of Unit members and locals from Bosanski Šamac.⁴⁶⁷ In this context, and mindful that a trial judgement must be read as a whole, the Trial Chamber determined in sentencing that, cloaked with the authority of Stanišić and the State Security Service, Simatović abused his authority in utilizing the resources at his disposal to facilitate the commission of the crimes, which the Trial Chamber took into account as an aggravating factor.⁴⁶⁸

152. The Appeals Chamber considers that these findings reflect an examination of Simatović's actual authority within the State Security Service based on evidence related to his role in the preparations for the takeover of Bosanski Šamac and not his *de jure* authority as the Chief of Section in the Second Branch of the State Security Service Administration in Belgrade in March and April 1992.⁴⁶⁹ Consequently, Simatović fails to demonstrate that any error by the Trial Chamber in referring to his position impacts the foregoing findings and would occasion a miscarriage of justice or invalidate his convictions or sentence. His arguments are accordingly dismissed.

153. The Appeals Chamber now turns to Simatović's contentions that the Trial Chamber erred in finding that he held several high-level positions with significant powers and authority in the State Security Service and the State Security Department, including its consideration of his positions of Deputy Chief of the Second Administration of the State Security Department from 1 May 1992 and Special Advisor to the Chief of the State Security Department from 1 May 1993. As Simatović has conceded,⁴⁷⁰ he held these positions after his contributions to the crimes committed in Bosanski Šamac and the Trial Chamber did not rely on findings related to them in concluding that he aided and abetted the crimes in Bosanski Šamac.⁴⁷¹ Furthermore, while the Trial Judgement cross-references its findings related to these positions in the sentencing section,⁴⁷² the Trial Chamber did not rely on them in determining Simatović's sentence.⁴⁷³ Consequently, Simatović has not shown that any error in relation to the Trial Chamber's consideration of the evidence related to these positions would lead to a miscarriage of justice or invalidate his convictions or sentence. Therefore, the Appeals Chamber dismisses them.

⁴⁶⁷ Trial Judgement, para. 419. In making this finding, the Trial Chamber recalled evidence that members of the Unit could not participate in combat operations without the approval of Stanišić and Simatović. *See* Trial Judgement, para. 419.

⁴⁶⁸ Trial Judgement, para. 628.

⁴⁶⁹ *See, e.g.*, Trial Judgement, paras. 405, 407, 416, 418, 419.

⁴⁷⁰ Simatović Reply Brief, para. 7.

⁴⁷¹ *See, e.g.*, Trial Judgement, paras. 604, 605, 619.

⁴⁷² *See* Trial Judgement, para. 628.

⁴⁷³ *See infra* para. 347.

154. Based on the foregoing, the Appeals Chamber dismisses sub-grounds 1 and 2 of Ground 1 of Simatović's appeal.

3. Alleged Errors Regarding Simatović's Formation of and Authority over the Unit
(sub-grounds 4, 5 and 10)

155. The Trial Chamber found that, at least by August or September 1991, Stanišić and Simatović formed the Unit from amongst the most promising recruits trained at Golubić between May and the end of July/early August 1991.⁴⁷⁴ The Trial Chamber further concluded that: (i) the Unit was established as the State Security Service combat unit; (ii) Stanišić and Simatović had authority over this force and, from August or September 1991, it operated under their command and control; and (iii) Stanišić and Simatović determined its use and deployment until at least mid-April 1992.⁴⁷⁵ The Trial Chamber considered these findings, in part, when concluding that Stanišić and Simatović aided and abetted the crimes committed in Bosanski Šamac,⁴⁷⁶ and it considered as an aggravating factor in sentencing that Simatović abused his authority in utilizing the resources at his disposal to facilitate the commission of crimes.⁴⁷⁷

156. Simatović disputes the Trial Chamber's findings in paragraphs 388 and 405 of the Trial Judgement that he and Stanišić formed the Unit and that it operated under their command and control.⁴⁷⁸ He submits that the Trial Chamber relied exclusively on the testimony of Witness RFJ-137, which he contends is inaccurate, incomplete, and insufficient to support both findings.⁴⁷⁹ In particular, Simatović argues that Witness RFJ-137's evidence reflects that the witness did not know: (i) if Simatović selected Unit members independently or how "other persons were selected"; (ii) who controlled the Unit in the beginning; (iii) "what type of relationship existed" between Simatović and the "trainees of those centres"; (iv) about Simatović's activities in Knin until August 1991; and (v) about Simatović's position within the State Security Service.⁴⁸⁰ Simatović further contends that Witness RFJ-137's evidence reflects that Simatović never commanded "a unit" in a combat situation.⁴⁸¹

⁴⁷⁴ Trial Judgement, para. 388.

⁴⁷⁵ Trial Judgement, paras. 388, 405. *See also* Trial Judgement, para. 419.

⁴⁷⁶ *See* Trial Judgement, paras. 407, 409, 416, 418, 419, 424, 604-608.

⁴⁷⁷ Trial Judgement, para. 628.

⁴⁷⁸ *See* Simatović Notice of Appeal, paras. 11, 12, 17; Simatović Appeal Brief, paras. 26-28.

⁴⁷⁹ *See* Simatović Appeal Brief, paras. 26-28.

⁴⁸⁰ Simatović Appeal Brief, para. 27, *referring to* Witness RFJ-137, T. 20 July 2017 pp. 15-17, 27, 29, 39, 64, Exhibit P00245, para. 72. *See also* Simatović Reply Brief, para. 11.

⁴⁸¹ Simatović Appeal Brief, para. 27.

157. Simatović also argues that the Trial Chamber’s conclusions conflict with Serbia’s Law on Internal Affairs, which reflects that only the Minister of the Interior had the authority to form an organizational unit within the Serbian Ministry of the Interior.⁴⁸² Simatović submits that, in this context, no reasonable trier of fact could have found that, in his position within the State Security Service, he could have informally formed the Unit.⁴⁸³

158. The Prosecution responds that Witness RFJ-137’s first-hand evidence supports the Trial Chamber’s conclusions and it reasonably relied upon his evidence in making them.⁴⁸⁴ It contends that Simatović’s reliance on the Law on Internal Affairs overlooks the Trial Chamber’s conclusions that the Unit operated under the command and control of him and Stanišić.⁴⁸⁵

159. The Appeals Chamber observes that the Trial Chamber referred to Witness RFJ-137’s evidence when making the challenged findings and did not expressly refer to other evidence in paragraph 405 of the Trial Judgement.⁴⁸⁶ The Appeals Chamber notes that Witness RFJ-137’s evidence, as referred to by the Trial Chamber, reflects that he was a member of the Unit and an instructor at the Golubić camp.⁴⁸⁷ With respect to the formation of the Unit, the Trial Chamber referred to aspects of the witness’s testimony that Simatović formed the Unit in late August 1991 when he selected 28 men from various formations who had passed through Golubić, and that the Unit was established to serve as the State Security Service’s combat unit.⁴⁸⁸

160. The Trial Chamber also referred to Witness RFJ-137’s evidence when finding that Stanišić and Simatović had command and control over the Unit.⁴⁸⁹ Specifically, Witness RFJ-137 testified that “only [Stanišić and Simatović] were able to give us orders”,⁴⁹⁰ that Simatović was in charge of the Unit,⁴⁹¹ that only Stanišić and Simatović could decide what operations the Unit would take part in,⁴⁹² and that he was not aware of any instance of any Unit members disobeying their orders.⁴⁹³

⁴⁸² Simatović Appeal Brief, para. 29.

⁴⁸³ Simatović Appeal Brief, para. 29. *See also* Simatović Reply Brief, para. 12.

⁴⁸⁴ Prosecution Response to Simatović Appeal, paras. 18, 19.

⁴⁸⁵ Prosecution Response to Simatović Appeal, para. 20.

⁴⁸⁶ *See* Trial Judgement, para. 405, nn. 1631-1634.

⁴⁸⁷ Exhibit P00245, paras. 7, 9, 29, 30. *See also* Trial Judgement, para. 396.

⁴⁸⁸ *See* Trial Judgement, para. 405, nn. 1631, 1632, *referring to* Exhibit P00245, paras. 13, 22, 29, 30, 31, Witness RFJ-137, T. 18 July 2017 pp. 24, 25, 53, 56.

⁴⁸⁹ *See* Trial Judgement, para. 405, n. 1633, *referring to* Exhibit P00245, para. 50, Witness RFJ-137, T. 18 July 2017 pp. 28, 29. *See also* Trial Judgement, para. 419, n. 1679.

⁴⁹⁰ Witness RFJ-137, Exhibit P00245, para. 50. *See also* Witness RFJ-137, T. 18 July 2017 pp. 28, 29, 31.

⁴⁹¹ Witness RFJ-137, T. 18 July 2017 pp. 28, 29.

⁴⁹² Witness RFJ-137, T. 18 July 2017 p. 29. *See also* Witness RFJ-137, T. 18 July 2017 p. 31.

⁴⁹³ Witness RFJ-137, T. 18 July 2017 pp. 31, 32. *See also supra* para. 75 and references cited therein.

161. In view of the above, the Appeals Chamber considers that Simatović does not demonstrate that the Trial Chamber acted unreasonably in relying on Witness RFJ-137's evidence to find that Stanišić and Simatović formed the Unit and had command and control over it as reflected in paragraphs 388 and 405 of the Trial Judgement. In reaching this conclusion, the Appeals Chamber observes that the Trial Chamber did not include references in those paragraphs of the Trial Judgement to the limited portions of Witness RFJ-137's cross-examination and a paragraph of his amalgamated statement that Simatović cites on appeal.⁴⁹⁴ However, the Appeals Chamber recalls that a trial chamber is not obliged to refer to every piece of evidence on the trial record,⁴⁹⁵ and it is to be presumed to have evaluated all the evidence presented to it, as long as there is no indication that it completely disregarded any particular piece of evidence.⁴⁹⁶

162. The Appeals Chamber considers that the limited aspects of Witness RFJ-137's testimony referred to by Simatović neither undermine the reasonableness of the Trial Chamber's conclusions in paragraphs 388 and 405 of the Trial Judgement nor demonstrate that the Trial Chamber ignored these elements of the witness's testimony. Specifically, Simatović does not show that the brief elements of Witness RFJ-137's testimony where he testified that Simatović did not participate in combat with the Unit or where he could not provide details related to: (i) the manner of selection of Unit members, particularly whether Simatović alone was in charge of this; (ii) the relationship between Simatović and trainees; (iii) Simatović's activities in Knin until August 1991; or (iv) Simatović's precise position within the State Security Service⁴⁹⁷ undermine the reasonableness of the Trial Chamber's reliance on his testimony to find that Stanišić and Simatović formed the Unit and exercised command and control over it. The Appeals Chamber considers that the fact that this witness was not knowledgeable about all aspects of the Unit's operation and Simatović's position or prior activities does not impact the reliability of his first-hand evidence about the Unit and how Simatović exercised authority over it.

163. Furthermore, regarding Stanišić's and Simatović's authority over the Unit, the Appeals Chamber observes that the Trial Chamber relied on other evidence as it pertained to their authority over the training that occurred in the Ležimir and Pajzoš camps in March and April 1992, and their authority over those involved in the training there, which included existing and new Unit members

⁴⁹⁴ Compare Trial Judgement, paras. 388, 405 and references cited therein with Simatović Appeal Brief, para. 27 and references cited therein.

⁴⁹⁵ *Mladić* Appeal Judgement, paras. 172, 199 and references cited therein.

⁴⁹⁶ *Mladić* Appeal Judgement, paras. 199, 423 and references cited therein.

⁴⁹⁷ See Simatović Appeal Brief, para. 27, referring to Witness RFJ-137, T. 20 July 2017 pp. 15-17, 27, 29, 39, 64. See also Simatović Reply Brief, para. 11.

who were then deployed to Bosanski Šamac in April 1992.⁴⁹⁸ Recalling that a Trial Judgement must be read as a whole,⁴⁹⁹ Simatović's assertion that the Trial Chamber relied exclusively on Witness RFJ-137's evidence ignores that the Trial Chamber also relied on this other evidence.

164. Turning to Simatović's contention that it was unreasonable for the Trial Chamber to conclude that he formed the Unit in light of the Law on Internal Affairs, a review of this law reflects that it does not explicitly prescribe that organizational units could only be formed by the Minister of the Interior, or that the Minister could not delegate any such authority.⁵⁰⁰ Moreover, Simatović does not demonstrate that this law would have prevented the Trial Chamber from finding that he had a role in establishing and exercising authority over the Unit in view of the direct evidence to the contrary.

165. In light of the foregoing, the Appeals Chamber finds that Simatović has not shown that the Trial Chamber erred in concluding that he and Stanišić formed the Unit and that it operated under their command and control. Consequently, the Appeals Chamber dismisses sub-grounds 4, 5, and 10 of Ground 1 of Simatović's appeal.

B. Alleged Errors Regarding Aiding and Abetting Crimes Committed in Bosanski Šamac (Ground 1 sub-grounds 11 and 12 and Ground 2)

166. As discussed above, when considering Stanišić's and Simatović's responsibility for aiding and abetting crimes committed in Bosanski Šamac, the Trial Chamber recalled its finding that the town of Bosanski Šamac was subject to a forcible takeover in the early morning of 17 April 1992 by Serb forces, which included a group under the command of Unit member Dragan Đorđević (Crni).⁵⁰¹ The Trial Chamber noted that this group also included, among others, Unit members Srećko Radovanović (Debeli) and Slobodan Miljković (Lugar), and approximately 20 local Serbs from Bosanski Šamac.⁵⁰² The Trial Chamber further recalled that, following the takeover of Bosanski Šamac, Dragan Đorđević (Crni), Srećko Radovanović (Debeli), and Slobodan Miljković (Lugar), as well as other Unit members, committed crimes against non-Serb civilians, which, among others, included the massacre of 16 Muslim or Croat men by Slobodan Miljković (Lugar) and others at the Crkvina detention facility on or about 7 May 1992.⁵⁰³

⁴⁹⁸ See, e.g., Trial Judgement, paras. 209, 407, 416-419. See, in particular, Trial Judgement, para. 417, referring to Witness RFJ-035 T. 17 April 2018 pp. 14, 15, Exhibit P02026, paras. 32-34, Exhibit P02028, pp. 7623, 7624.

⁴⁹⁹ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

⁵⁰⁰ See Exhibit P01550, Article 6. See also Exhibit P01550, Article 8 ("the person in charge of an organisational unit [...] shall be authorised to discharge matters").

⁵⁰¹ Trial Judgement, para. 604.

⁵⁰² Trial Judgement, para. 604.

⁵⁰³ Trial Judgement, para. 604.

167. As noted above, the Trial Chamber found Stanišić and Simatović responsible for aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces in the municipality of Bosanski Šamac.⁵⁰⁴ In relation to the *actus reus* of aiding and abetting, the Trial Chamber found that Stanišić and Simatović provided practical assistance through organizing the training of Unit members and local Serb forces and through their subsequent deployment during the takeover of Bosanski Šamac in April 1992, which had a substantial effect on the perpetration of the crimes by Unit members and local Serb forces.⁵⁰⁵ Regarding the training, the Trial Chamber found that Stanišić and Simatović had authority and control over the Ležimir and Pajzoš camps and the training there was done at Stanišić's and Simatović's direction, as well as with their authorization and support.⁵⁰⁶ As to the *mens rea* for aiding and abetting, the Trial Chamber was satisfied that Stanišić and Simatović knew that their acts assisted the commission of crimes and were aware of the essential elements of the crimes, including the intent of the perpetrators.⁵⁰⁷

168. Simatović submits that the Trial Chamber erred in finding him responsible for aiding and abetting the crimes committed in Bosanski Šamac.⁵⁰⁸ Having set out his submissions in 17 sub-grounds, Simatović makes the following categories of arguments: (i) the Trial Chamber erred in finding Witnesses Todorović and RFJ-035 credible and in relying on their evidence;⁵⁰⁹ (ii) the Trial Chamber erred in relation to the Pajzoš and Ležimir camps;⁵¹⁰ (iii) the Trial Chamber made erroneous findings as to Simatović's authority over the training camps and Unit members, his conduct leading up to the deployment, his awareness of the crimes committed in Bosanski Šamac, and his conduct following the takeover;⁵¹¹ (iv) the Trial Chamber erred regarding the Unit, its members, and the training it provided;⁵¹² and (v) the Trial Chamber erred as the evidence established that the JNA had ultimate control over the training and deployment to Bosanski Šamac.⁵¹³ In Simatović's view, the evidence set out by the Trial Chamber does not prove beyond reasonable doubt that he was

⁵⁰⁴ Trial Judgement, para. 608, p. 270.

⁵⁰⁵ Trial Judgement, para. 605. *See also* Trial Judgement, para. 608.

⁵⁰⁶ Trial Judgement, para. 409. *See also* Trial Judgement, para. 418.

⁵⁰⁷ Trial Judgement, paras. 606, 607. *See also, e.g.,* Trial Judgement, paras. 418, 419.

⁵⁰⁸ *See* Simatović Notice of Appeal, paras. 18, 19, 24-38; Simatović Appeal Brief, paras. 45, 46, 69-268.

⁵⁰⁹ *See* Simatović Notice of Appeal, para. 24; Simatović Appeal Brief, paras. 69-89. *See also* Simatović Appeal Brief, paras. 94-97, 103, 104, 113-115, 124, 126, 127, 142-145, 240, 241, 257; T. 24 January 2023 pp. 37-44, 112, 113.

⁵¹⁰ *See* Simatović Notice of Appeal, paras. 18, 26, 27; Simatović Appeal Brief, paras. 45, 100-122, 124, 133, 149-154, 163, 243; T. 24 January 2023 pp. 44, 46.

⁵¹¹ *See* Simatović Notice of Appeal, paras. 19, 30, 31, 33-35, 37(b)-(e); Simatović Appeal Brief, paras. 46, 93-99, 144-149, 155-180, 206-235, 238, 242, 243, 256-258, 264, 266; T. 24 January 2023 pp. 46, 47.

⁵¹² *See* Simatović Notice of Appeal, paras. 27-29, 32; Simatović Appeal Brief, paras. 90-92, 123-143, 181-205, 263.

⁵¹³ *See* Simatović Notice of Appeal, paras. 35, 36; Simatović Appeal Brief, paras. 236-241, 248-256.

responsible for aiding and abetting the crimes committed in Bosanski Šamac.⁵¹⁴ The Appeals Chamber will address each argument in turn.

1. Alleged Errors Regarding Witnesses Todorović and RFJ-035 (Ground 2 sub-ground 1)

169. In assessing the events in Bosanski Šamac as well as Stanišić's and Simatović's liability in this regard, the Trial Chamber considered the evidence of Witnesses Todorović and RFJ-035.⁵¹⁵ It also considered Stanišić's and Simatović's arguments challenging the credibility and reliability of these two witnesses.⁵¹⁶ The Trial Chamber stated that, while it viewed the evidence of Witnesses Todorović and RFJ-035 with "appropriate caution", it was nonetheless satisfied that it may rely on the fundamental features of their accounts of events that transpired prior to and after the takeover of the town of Bosanski Šamac, including the killings at the Crkvina detention facility on 7 May 1992.⁵¹⁷

170. Simatović submits that the Trial Chamber erred in relying on the evidence of Witnesses Todorović and RFJ-035.⁵¹⁸ He contends that the Trial Chamber did not give adequate weight to his trial arguments setting out why "trust should not be placed" in their evidence, and that a conviction cannot be based on their testimonies.⁵¹⁹ According to Simatović, Witness Todorović worked closely with military leaders in the takeover of Bosanski Šamac and was "one of the most responsible" for crimes committed as part of the takeover.⁵²⁰ In this context, Simatović argues that his evidence is "strongly influenced" by his plea agreement with the Prosecution,⁵²¹ is inconsistent, inadequately corroborated, or has otherwise been "completely misinterpret[ed]" by the Trial Chamber.⁵²² Simatović also submits that the evidence of Witness RFJ-035 cannot be relied upon for conclusions linking Simatović with the training of local Serb forces at the Pajzoš camp or to the events in Bosanski Šamac.⁵²³ He challenges the credibility of Witness RFJ-035 on the basis of, *inter alia*, his: (i) inconsistent evidence regarding events in Pajzoš camp⁵²⁴ and the killings at Crkvina on 7 May 1992,

⁵¹⁴ See Simatović Appeal Brief, paras. 265-268.

⁵¹⁵ See, e.g., Trial Judgement, paras. 206, 209-211, 214-217, 222, 224-229, 416-423.

⁵¹⁶ See Trial Judgement, paras. 205, 206, 219, 220, 229.

⁵¹⁷ See Trial Judgement, paras. 206, 219, 220, 229.

⁵¹⁸ See Simatović Notice of Appeal, para. 24; Simatović Appeal Brief, paras. 69-89. See also Simatović Appeal Brief, paras. 94-97, 103, 104, 113-115, 124, 126, 127, 142-145, 240, 241, 257, 258; T. 24 January 2023 pp. 37-43, 50, 112, 113.

⁵¹⁹ See Simatović Appeal Brief, paras. 70, 89, 257, 258. See also T. 24 January 2023 pp. 37-41, 50.

⁵²⁰ Simatović Appeal Brief, paras. 71, 72; T. 24 January 2023 pp. 38, 39.

⁵²¹ Simatović Appeal Brief, paras. 73, 74; T. 24 January 2023 p. 38.

⁵²² Simatović Appeal Brief, paras. 75, 76; T. 24 January 2023 pp. 38, 39.

⁵²³ Simatović Appeal Brief, para. 77; T. 24 January 2023 pp. 37, 39-43, 50, 112, 113.

⁵²⁴ See Simatović Appeal Brief, paras. 81-89; T. 24 January 2023 pp. 43, 44.

wherein he was present and acted as an accomplice;⁵²⁵ and (ii) convictions for serious crimes and motive to assist the Prosecution.⁵²⁶

171. The Prosecution responds that Simatović fails to show that the Trial Chamber abused its discretion in assessing the reliability and credibility of Witnesses Todorović and RFJ-035.⁵²⁷ According to the Prosecution, the Trial Chamber employed its broad discretion in considering the credibility challenges raised by Simatović at trial and exercised appropriate caution when assessing their evidence.⁵²⁸

172. Simatović replies that the Prosecution has mischaracterized his submissions as he does not argue that the Trial Chamber abused its discretion, but rather that it erred in the application of its discretion by accepting some aspects of Witnesses Todorović's and RFJ-035's evidence as credible.⁵²⁹

173. The Appeals Chamber recalls that trial chambers have broad discretion in weighing evidence,⁵³⁰ and are best placed to assess the credibility of a witness and the reliability of the evidence adduced.⁵³¹ Nothing in the Statute or the Rules prohibits a trial chamber from relying on the evidence of accomplice witnesses.⁵³² However, such evidence is to be treated with appropriate caution, the main question being whether the witness concerned might have motives or incentives to implicate the accused.⁵³³ Nevertheless, a trial chamber may rely on uncorroborated, but otherwise credible, accomplice witness testimony.⁵³⁴

174. The Appeals Chamber observes that the Trial Chamber considered Simatović's challenges that Witness Todorović's evidence was "strongly influenced" by a plea agreement with the

⁵²⁵ Simatović Appeal Brief, paras. 78, 79, 89; T. 24 January 2023 p. 39.

⁵²⁶ Simatović Appeal Brief, paras. 79, 89; T. 24 January 2023 p. 39. *See also* Simatović Reply Brief, para. 33.

⁵²⁷ *See* Prosecution Response to Simatović Appeal, paras. 44-58. *See also* T. 24 January 2023 pp. 86-91.

⁵²⁸ *See* Prosecution Response to Simatović Appeal, paras. 45-52, 54-56. *See also* T. 24 January 2023 pp. 86-89, 91.

⁵²⁹ Simatović Reply Brief, paras. 26, 27. Simatović argues in his reply that the Trial Chamber did not clearly address Witness Todorović's testimony regarding facts preceding the attack on Bosanski Šamac, which he contends are inconsistent and uncorroborated and do not establish a connection between Simatović and the training of the group before being sent to Bosanski Šamac. *See* Simatović Reply Brief, paras. 28-31. The Prosecution responds that Simatović's contentions in his reply brief are unsubstantiated and that Witness Todorović's evidence is not inconsistent. *See* T. 24 January 2023 pp. 87, 88, *referring to, inter alia*, Exhibit P01938, p. 256. *See also* T. 24 January 2023 pp. 111, 112.

⁵³⁰ *Mladić* Appeal Judgement, paras. 169, 387 and references cited therein.

⁵³¹ *Karadžić* Appeal Judgement, paras. 363, 530 and references cited therein.

⁵³² *Renzaho* Appeal Judgement, para. 263. *See also* *Popović et al.* Appeal Judgement, para. 134 and references cited therein.

⁵³³ *Renzaho* Appeal Judgement, para. 263. *See also* *Popović et al.* Appeal Judgement, para. 134 and references cited therein.

⁵³⁴ *Renzaho* Appeal Judgement, para. 263. *See also* *Popović et al.* Appeal Judgement, para. 134 and references cited therein.

Prosecution in November 2000.⁵³⁵ In the Trial Judgement, the Trial Chamber recalled its 22 February 2018 decision admitting Witness Todorović's evidence, stating:

the Trial Chamber considered that the existence of a plea agreement, in itself, did not warrant the exclusion of his evidence, and that his evidence is sufficiently reliable for admission given that he testified under oath in another proceeding before the ICTY, in which he was cross-examined.⁵³⁶

175. The Trial Chamber further recalled that Witness Todorović was convicted by the ICTY for his actions prior to and after the takeover of Bosanski Šamac.⁵³⁷ It did not consider that this fact or the fact that he entered into a plea agreement rendered his testimony wholly unreliable.⁵³⁸ After reviewing the totality of Witness Todorović's evidence "with appropriate caution" and finding it internally consistent as well as consistent with other evidence on the record, the Trial Chamber determined that it could rely on the fundamental features of Witness Todorović's account of events that transpired prior to and after the takeover of the town of Bosanski Šamac.⁵³⁹

176. With respect to Witness RFJ-035, the Trial Chamber noted Simatović's submission that "nothing can be concluded regarding the events in Bosanski Šamac on the basis of Witness RFJ-035's evidence due to [...] his criminal record, and his complicity in the crime that took place in Crkvina on 7 May 1992".⁵⁴⁰ The Trial Chamber further noted that Witness RFJ-035 did not report the crimes in Crkvina to his superiors, and the "possibility that he provided evidence in an attempt to minimize his own involvement in the events at Crkvina".⁵⁴¹ The Trial Chamber stated that it viewed the evidence of Witness RFJ-035 with caution and considered that, notwithstanding the issues raised by Stanišić and Simatović, the fundamental features of his evidence may be relied on in relation to how the events unfolded prior to and after the takeover of Bosanski Šamac, including events in Crkvina.⁵⁴² In this regard, the Appeals Chamber observes that the Trial Chamber did not rely on Witness RFJ-035's evidence when he had no direct knowledge.⁵⁴³

⁵³⁵ See Trial Judgement, paras. 205, 219, 415, nn. 934, 973-975, 1668, *referring to, inter alia*, Simatović Final Trial Brief, paras. 678, 685.

⁵³⁶ Trial Judgement, para. 219, n. 975, *referring to Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 112, 22 February 2018, paras. 12, 13.

⁵³⁷ Trial Judgement, para. 219, n. 976, *referring to, inter alia*, *Todorović Sentencing Judgement*, paras. 9, 35-39, 117.

⁵³⁸ Trial Judgement, para. 219.

⁵³⁹ Trial Judgement, paras. 206, 219.

⁵⁴⁰ Trial Judgement, paras. 220, 229.

⁵⁴¹ Trial Judgement, para. 229.

⁵⁴² Trial Judgement, paras. 206, 220, 229.

⁵⁴³ Trial Judgement, para. 420.

177. The Appeals Chamber considers that Simatović merely repeats credibility challenges with respect to Witnesses Todorović and RFJ-035⁵⁴⁴ without demonstrating that the Trial Chamber failed to give them sufficient weight or abused its discretion in determining that, as a threshold matter, it could rely on aspects of their evidence notwithstanding their convictions in connection with crimes for which the Trial Chamber convicted Simatović.⁵⁴⁵ Recalling further that a party cannot merely repeat arguments that did not succeed at trial, unless it can demonstrate that rejecting them caused an error warranting appellate intervention,⁵⁴⁶ the Appeals Chamber therefore dismisses his challenges to the Trial Chamber's assessment of Witnesses Todorović's and RFJ-035's general credibility. The Appeals Chamber also notes that Simatović raises broad challenges regarding the inconsistency or lack of corroboration of their evidence as well as alleged errors of the Trial Chamber in the interpretation of this evidence. To the extent that Simatović develops these challenges in relation to the Trial Chamber's reliance on specific aspects of the evidence of Witnesses Todorović and RFJ-035, these contentions are addressed where appropriate below.

178. In light of the foregoing, the Appeals Chamber dismisses sub-ground 1 of Ground 2 of Simatović's appeal.

2. Alleged Errors Regarding the Pajzoš and Ležimir Camps (Ground 1 sub-ground 11, Ground 2 sub-grounds 3, 4 in part, 5 in part, 7 in part, and 12 in part)

(a) Pajzoš Camp

179. The Trial Chamber found that a training camp was located at Pajzoš (Ilok, Croatia) and that it operated under the authority and control of Stanišić and Simatović until at least March or April 1992.⁵⁴⁷

180. Simatović submits that the Trial Chamber erred in concluding that a camp existed at Pajzoš where special training was conducted.⁵⁴⁸ Specifically, Simatović argues that the evidence of

⁵⁴⁴ Compare Simatović Appeal Brief, paras. 71-75, 77-89 with Simatović Final Trial Brief, paras. 663, 667, 669, 678, 685, 692, 695-703.

⁵⁴⁵ The Appeals Chamber finds that Simatović does not substantiate his unreferenced contentions, raised in his reply brief, that the Trial Chamber did not address Witness Todorović's testimony regarding facts preceding the attack on Bosanski Šamac. The Trial Chamber stated that, notwithstanding the appropriate caution, it was nonetheless satisfied that it may rely on the fundamental features of his account of events "that transpired prior to and after" the takeover of Bosanski Šamac. See Trial Judgement, para. 206. Additionally, the witness's evidence that Unit members trained locals from Bosanski Šamac at the Pajzoš camp is corroborated by evidence the Trial Chamber considered – including that of Witness RFJ-035 and Ratko Mladić's diary. See Trial Judgement, paras. 407, 416-418, n. 1645 and references cited therein.

⁵⁴⁶ Mladić Appeal Judgement, paras. 381, 401, 409 and references cited therein.

⁵⁴⁷ See Trial Judgement, paras. 409, 418. See also Trial Judgement, paras. 385, 407, 590, 605.

⁵⁴⁸ See Simatović Notice of Appeal, paras. 18, 26; Simatović Appeal Brief, paras. 100-122, 124, 133, 149-154, 163, 243. See also Simatović Appeal Brief, para. 45; T. 24 January 2023 pp. 43-45.

Witnesses OFS-22,⁵⁴⁹ OFS-18,⁵⁵⁰ Vojislav Cvetković,⁵⁵¹ Dušan Knežević,⁵⁵² and Todorović⁵⁵³ demonstrates that, instead, there was an intelligence centre at Pajzoš, where workers of the Second Administration of the State Security Service were deployed, and that this explains Simatović's occasional presence there.⁵⁵⁴ Simatović further submits that the Trial Chamber erred in relying on Witness Todorović's evidence to find that "special" training was conducted at Pajzoš as no other evidence supports this finding.⁵⁵⁵ He also points to documentary evidence showing that, through the Military Administration of the City of Ilok,⁵⁵⁶ only the JNA could organize or conduct training in Ilok.⁵⁵⁷ In his view, no reasonable trial chamber could conclude that the State Security Service "had anything to do with any military training" at Pajzoš.⁵⁵⁸

181. The Prosecution responds that Simatović fails to show that the Trial Chamber erred in finding that training was conducted at Pajzoš⁵⁵⁹ and contends that this finding was reasonable based on the evidence.⁵⁶⁰ In its view, the Trial Chamber's conclusion that training took place at Pajzoš is not inconsistent with Pajzoš being used for intelligence-gathering purposes, and the evidence Simatović points to does not undermine the Trial Chamber's findings.⁵⁶¹ The Prosecution further argues that Simatović does not show that the Trial Chamber erred in concluding that the training at Pajzoš was "special".⁵⁶² In addition, the Prosecution asserts that Simatović ignores the Trial Chamber's findings that the JNA was, in fact, involved in organizing training at Pajzoš.⁵⁶³

182. Simatović replies that the Prosecution misinterprets the evidence supporting the Trial Chamber's finding that there was a training camp at Pajzoš,⁵⁶⁴ and he reiterates that

⁵⁴⁹ See Simatović Appeal Brief, paras. 106-109. The Appeals Chamber notes that, although Simatović refers to Witness OFS-023 in the main text of his appeal brief, the relevant footnotes indicate that Simatović is pointing to the testimony of Witness OFS-22. See Simatović Appeal Brief, nn. 127, 129-132.

⁵⁵⁰ See Simatović Appeal Brief, paras. 106, 110, 151, 153, 154, 160. See also Simatović Appeal Brief, para. 52.

⁵⁵¹ Simatović Appeal Brief, paras. 111, 112, 150.

⁵⁵² Simatović Appeal Brief, para. 154.

⁵⁵³ See Simatović Appeal Brief, paras. 104, 113-115, 133; Simatović Reply Brief, paras. 49, 53. See also Simatović Appeal Brief, paras. 146, 242, 243.

⁵⁵⁴ See Simatović Appeal Brief, paras. 105-113, 149-154. See also Simatović Appeal Brief, paras. 133, 163, 243; T. 24 January 2023 pp. 43, 45.

⁵⁵⁵ See Simatović Appeal Brief, paras. 101-105; T. 24 January 2023 p. 43. See also T. 24 January 2023 pp. 110, 111.

⁵⁵⁶ Simatović Appeal Brief, para. 117; T. 24 January 2023 p. 44. See also Simatović Appeal Brief, para. 116; T. 24 January 2023 p. 45.

⁵⁵⁷ See Simatović Appeal Brief, paras. 117-121; T. 24 January 2023 p. 44.

⁵⁵⁸ Simatović Appeal Brief, para. 122. See also Simatović Reply Brief, para. 50.

⁵⁵⁹ Prosecution Response to Simatović Appeal, paras. 67, 68, 74. See also Prosecution Response to Simatović Appeal, paras. 65, 73, 80.

⁵⁶⁰ Prosecution Response to Simatović Appeal, paras. 68-71. See also, e.g., Prosecution Response to Simatović Appeal, paras. 75, 76, 87, 102.

⁵⁶¹ See Prosecution Response to Simatović Appeal, paras. 72, 100-102.

⁵⁶² Prosecution Response to Simatović Appeal, para. 73; T. 24 January 2023 pp. 93, 94.

⁵⁶³ Prosecution Response to Simatović Appeal, para. 72.

⁵⁶⁴ See Simatović Reply Brief, paras. 55-59.

Witness Todorović's evidence is "unconvincing".⁵⁶⁵ Simatović submits that, although Pajzoš is in the vicinity of Ilok, it does not mean that the Pajzoš training centre was in the same place as the intelligence centre.⁵⁶⁶

183. In finding that a training camp was located at Pajzoš under the authority and control of Stanišić and Simatović until at least March or April 1992,⁵⁶⁷ the Trial Chamber relied upon documentary evidence⁵⁶⁸ as well as evidence from Witnesses Todorović,⁵⁶⁹ Knežević,⁵⁷⁰ Borislav Bogunović,⁵⁷¹ and RFJ-035.⁵⁷² This evidence also reflects that Pajzoš was located near Ilok, Croatia.⁵⁷³

184. Turning to the evidence that Simatović relies on to demonstrate that there was no training camp at Pajzoš but rather an intelligence centre, the Appeals Chamber observes that the Trial Chamber did not discuss the testimony of Witnesses OFS-22 and OFS-18 in the Trial Judgement. The Appeals Chamber recalls, however, that a trial chamber is not required to expressly refer to and comment upon every piece of evidence admitted into the record.⁵⁷⁴ Furthermore, the evidence of Witnesses OFS-22 and OFS-18, as referenced by Simatović, relates to events in May and September 1992 as well as in 1995,⁵⁷⁵ respectively, and does not affirmatively deny that training was

⁵⁶⁵ Simatović Reply Brief, para. 53. *See also* Simatović Reply Brief, para. 49.

⁵⁶⁶ Simatović Reply Brief, paras. 49, 51.

⁵⁶⁷ Trial Judgement, paras. 409, 418. *See also* Trial Judgement, paras. 407, 416.

⁵⁶⁸ Trial Judgement, para. 214, n. 962, *referring to* Exhibit P00846, p. 3 (indicating that at the beginning of April, a group of Serbian Radical Party members, together with a group of 18 men from Bosanski Šamac, underwent a training at the training centre "near Ilok in the town of Pajzoš").

⁵⁶⁹ Trial Judgement, paras. 214, 407, nn. 962, 1645, *referring to, inter alia*, Witness Todorović, Exhibit P01916, pp. 23426, 23431-23433, 23436, 23437, 23452, 23454, 23455, 23519, 23520, 23558, Exhibit P00846, p. 3.

⁵⁷⁰ Trial Judgement, para. 407, n. 1644, *referring to, inter alia*, Witness Knežević, Exhibit 1D00530, para. 62 (wherein the witness says that the "Red Berets" were in Pajzoš at the end of 1991 or the beginning of January 1992). In relation to the term "Red Berets", the Trial Chamber made no explicit finding that they were the Unit as such; however, it considered evidence that the group of 30 men, including Witness RFJ-035, who were trained in and deployed from Pajzoš and Ležimir to Bosanski Šamac were members of the "Red Berets" and under the command of Srećko Radovanović (Debeli). *See, e.g.*, Trial Judgement, paras. 210, 211, 216, 227.

⁵⁷¹ Trial Judgement, para. 407, n. 1644, *referring to, inter alia*, Witness Borislav Bogunović, Exhibit P02718, para. 24 (wherein the witness says that the Red Berets arrived in Ilok at the beginning of December 1991 and were located "in Ilok and in a Vinery called PAJDOŠ on a hill above Ilok").

⁵⁷² Trial Judgement, paras. 407, 416, nn. 1645, 1670, *referring to, inter alia*, Witness RFJ-035, T. 17 April 2018 pp. 11-13, 46 (wherein the witness discusses training and events at Pajzoš), Exhibit P02026, para. 30 (wherein the witness says he received training, uniforms, and weapons in Pajzoš, near Ilok, and that this location was a former residence of Tito, not a proper training ground), Exhibit P02028, p. 7630 (wherein the witness says he and those who received training at Pajzoš participated in the takeover of Bosanski Šamac).

⁵⁷³ *See* Witness Borislav Bogunović, Exhibit P02718, para. 24; Witness RFJ-035, Exhibit P02026, para. 30.

⁵⁷⁴ *Mladić* Appeal Judgement, paras. 172, 199 and references cited therein.

⁵⁷⁵ *See* Simatović Appeal Brief, paras. 106-110, 160 and references cited therein.

conducted in Pajzoš prior to those periods.⁵⁷⁶ This evidence does not undermine the reasonableness of the Trial Chamber's finding of training in Pajzoš in early 1992 until at least March or April 1992.⁵⁷⁷

185. The Trial Chamber did, contrary to Simatović's contention, discuss and rely on Witness Knežević's evidence regarding the existence of a training camp at Pajzoš, and Simatović does not show that the Trial Chamber's findings are unreasonable in light of it.⁵⁷⁸ Regarding Witness Cvetković, Simatović points to portions of his evidence stating that the witness was told by Radoslav Lukić that there was an intelligence centre at Pajzoš and that he had met Simatović there.⁵⁷⁹ While the Trial Chamber did not discuss this aspect of Witness Cvetković's evidence in the Trial Judgement, the Appeals Chamber notes that the Trial Chamber referred to the witness's evidence elsewhere.⁵⁸⁰ Simatović fails to demonstrate how hearsay evidence in relation to the presence of an intelligence centre at Pajzoš would be incompatible with the Trial Chamber's findings as to the existence of a training camp at Pajzoš as well. Moreover, he does not explain how this evidence demonstrates that it was unreasonable for the Trial Chamber to rely on the accounts of Witnesses Todorović,⁵⁸¹ Knežević,⁵⁸² Borislav Bogunović,⁵⁸³ and RFJ-035,⁵⁸⁴ as well as documentary evidence,⁵⁸⁵ which all reasonably support the conclusion that a training camp existed at Pajzoš.⁵⁸⁶ In light of the foregoing, Simatović fails to establish that the Trial Chamber erred in its assessment of the evidence or that the evidence he refers to undermines the reasonableness of the Trial Chamber's conclusion that a training camp existed in Pajzoš in early 1992.

186. The Appeals Chamber next considers Simatović's reliance on an aspect of Witness Todorović's evidence – that Simatović exited a vehicle in front of a house located approximately one kilometre from Pajzoš – to argue that there was no camp at Pajzoš and that Simatović had “nothing to do with the training” conducted there. The Appeals Chamber observes that Simatović only points to an isolated portion of this witness's evidence and ignores other aspects that the Trial Chamber

⁵⁷⁶ See Witness OFS-22, T. 10 March 2020 pp. 19-24, 55, 56; Witness OFS-18, T. 19 November 2019 pp. 64, 65, T. 21 November 2019 p. 10; Exhibit 2D00314, pp. 19369, 19370.

⁵⁷⁷ See Trial Judgement, paras. 407, 409.

⁵⁷⁸ See Trial Judgement, para. 407, n. 1644, *referring to, inter alia*, Witness Knežević, Exhibit 1D00530, para. 62. See also Simatović Appeal Brief, para. 154.

⁵⁷⁹ Witness Cvetković, T. 1 September 2020 pp. 29-33, T. 2 September 2020 pp. 58, 60.

⁵⁸⁰ See Trial Judgement, paras. 334, 354, 432.

⁵⁸¹ Trial Judgement, paras. 214, 407, nn. 962, 1645, *referring to, inter alia*, Witness Todorović, Exhibit P01916, pp. 23426, 23431-23433, 23436, 23437, 23452, 23454, 23455, 23519, 23520, 23558, Exhibit P01922, p. 1, Exhibit P00846, p. 3.

⁵⁸² See Trial Judgement, para. 407, n. 1644, *referring to, inter alia*, Witness Knežević, Exhibit 1D00530, para. 62.

⁵⁸³ Trial Judgement, para. 407, n. 1644, *referring to, inter alia*, Witness Borislav Bogunović, Exhibit P02718, para. 24.

⁵⁸⁴ Trial Judgement, paras. 407, 416, nn. 1645, 1670, *referring to, inter alia*, Witness RFJ-035, T. 17 April 2018 pp. 11-13, 46, Exhibit P02026, para. 30, Exhibit P02028, p. 7630.

⁵⁸⁵ Trial Judgement, para. 214, n. 962, *referring to* Exhibit P00846, p. 3.

⁵⁸⁶ See Trial Judgement, para. 409. See also Trial Judgement, para. 407.

relied on.⁵⁸⁷ Specifically, Witness Todorović indicated that in late March or early April 1992: (i) the witness followed Simatović's car to visit the training camp; (ii) Simatović was dressed in civilian clothes but those with him were wearing uniforms and red berets; (iii) Simatović stopped in front of a house, where soldiers wearing uniforms and red berets were standing outside and greeted him; (iv) Simatović told the witness he would find someone to "show [him] where the men were being trained"; and (v) several minutes later, a man in uniform took the witness "off a kilometre or so" to where 20 locals from Bosanski Šamac were being trained.⁵⁸⁸ Simatović's submissions fail to explain how the impugned finding, that a training camp existed at Pajzoš, is unreasonable in light of Witness Todorović's evidence.

187. The Appeals Chamber further considers that Simatović's submission – that the Trial Chamber erred in finding that "special" training was organized at Pajzoš – misinterprets the Trial Judgement. While the Trial Chamber referred to a "special" training when summarizing evidence at paragraphs 214 and 422 of the Trial Judgement,⁵⁸⁹ it did not explicitly find that the training at Pajzoš was "special", nor is such a conclusion a precondition for the Trial Chamber's conclusions as to Simatović's aiding and abetting liability.⁵⁹⁰ Simatović's assertion is accordingly dismissed.

188. The Appeals Chamber turns to Simatović's submission that only the JNA could organize or conduct training in Ilok, through the Military Administration of the City of Ilok, which decided on "all issues in the said territory". Simatović relies on documentary evidence, which reflects that the JNA was involved in, *inter alia*, the surrender of weapons from civilians, the departure of civilians, the resettlement of Serb refugees, and the manner in which European monitors should be handled in Ilok.⁵⁹¹ Notably, the Trial Chamber did not refer to this evidence in relation to the Pajzoš training camp,⁵⁹² but Simatović does not demonstrate any error in light of this omission. In any event, the Appeals Chamber observes that the Trial Chamber found that the organization of training of Bosanski Šamac locals "occurred at various levels of the JNA area command and officials in Belgrade", and that the JNA had a "large role" in transporting Unit members and local Serb forces to Bosanski Šamac.⁵⁹³ It further concluded that, in view of Simatović's authority over the Unit and the Ležimir

⁵⁸⁷ See Trial Judgement, para. 407, n. 1645, referring to, *inter alia*, Witness Todorović, Exhibit P01916, p. 23436.

⁵⁸⁸ See Witness Todorović, Exhibit P01916, pp. 23431, 23433-23437.

⁵⁸⁹ Trial Judgement, paras. 214, 422.

⁵⁹⁰ Trial Judgement, paras. 418, 419, 424, 597, 605, 621.

⁵⁹¹ See Simatović Appeal Brief, paras. 117-120 and references cited therein.

⁵⁹² See Trial Judgement, para. 165, nn. 794, 797, referring to, *inter alia*, Exhibit 2D00005, Exhibit 2D00099, Exhibit 2D00102.

⁵⁹³ Trial Judgement, paras. 418, 419.

and Pajzoš camps, he was aware of and consented to the training arrangement.⁵⁹⁴ The evidence Simatović relies upon does not demonstrate that these findings were unreasonable.

189. In view of the foregoing, Simatović fails to demonstrate that the Trial Chamber erred in concluding that a training camp existed at Pajzoš and operated under the authority and control of Stanišić and Simatović.

(b) Ležimir Camp

190. The Trial Chamber concluded that Unit members trained locals from Bosanski Šamac at the Ležimir and Pajzoš camps.⁵⁹⁵

191. Simatović argues that the Trial Chamber erred in finding that a group of 20 locals from Bosanski Šamac received training at the Ležimir camp, since the evidence of Witnesses Todorović and RFJ-035, which the Trial Chamber relied upon to reach this conclusion, does not support it.⁵⁹⁶

192. The Prosecution responds that, in view of the evidence the Trial Chamber relied upon to make its findings, the Bosanski Šamac locals were trained only in the Pajzoš camp.⁵⁹⁷

193. In finding that Unit members trained locals from Bosanski Šamac at the Ležimir and Pajzoš camps, the Trial Chamber relied on the evidence of Witness Todorović, who indicated that 20 men from Bosanski Šamac were sent for military training in the “surroundings of Ilok”.⁵⁹⁸ It also considered the testimony of Witness RFJ-035, who stated that the group from Bosanski Šamac was trained at the Pajzoš camp and had been brought there by Witness Todorović.⁵⁹⁹ The Appeals Chamber notes that the evidence relied upon by the Trial Chamber reasonably supports the conclusion that the group of Bosanski Šamac locals were trained at the Pajzoš camp⁶⁰⁰ but not at the Ležimir

⁵⁹⁴ Trial Judgement, para. 418.

⁵⁹⁵ Trial Judgement, para. 418. *See also* Trial Judgement, para. 407, n. 1645.

⁵⁹⁶ *See* Simatović Notice of Appeal, para. 27; Simatović Appeal Brief, paras. 123, 124; T. 24 January 2023 p. 44. *See also* Simatović Notice of Appeal, para. 18; Simatović Appeal Brief, paras. 45, 113, 125-127; Simatović Reply Brief, paras. 63, 64; T. 24 January 2023 pp. 45, 46.

⁵⁹⁷ Prosecution Response to Simatović Appeal, para. 78.

⁵⁹⁸ Trial Judgement, para. 407, n. 1645, *referring to, inter alia*, Witness Todorović, Exhibit P01916, pp. 23432, 23433, 23436, 23437, 23519, 23520. *See also* Trial Judgement, paras. 416, 418. As addressed above, the evidence considered by the Trial Chamber indicated that the Pajzoš camp was in the surroundings of Ilok, Croatia. *See* Witness Borislav Bogunović, Exhibit P02718, para. 24; Witness RFJ-035, Exhibit P02026, para. 30.

⁵⁹⁹ Trial Judgement, para. 407, n. 1645, *referring to, inter alia*, Witness RFJ-035, T. 17 April 2018 pp. 12, 13. *See also* Trial Judgement, paras. 416, 418.

⁶⁰⁰ Trial Judgement, paras. 214, 407, nn. 962, 1645, *referring to, inter alia*, Witness Todorović, Exhibit P01916, pp. 23432, 23433, 23436, 23437, 23519, 23520, 23558, Exhibit P00846, p. 3, Witness RFJ-035, T. 17 April 2018 pp. 12, 13.

camp. The Appeals Chamber therefore finds that no reasonable trier of fact could have found that locals from Bosanski Šamac received training at the Ležimir camp.

194. Notwithstanding, Simatović has not demonstrated how this error would undermine the Trial Chamber's conclusions underpinning his liability. Namely, this error does not demonstrate that it was otherwise unreasonable for the Trial Chamber to conclude that Simatović had authority and control over both the Pajzoš and Ležimir camps where Unit members were trained,⁶⁰¹ that locals from Bosanski Šamac received training from Unit members at the Pajzoš camp,⁶⁰² and that the men trained at these camps were deployed to and participated in the takeover of Bosanski Šamac on 17 April 1992 and the ensuing crimes.⁶⁰³ Given that these findings underpin Simatović's responsibility for having aided and abetted the crimes committed in Bosanski Šamac, this error has not occasioned a miscarriage of justice.

195. The Appeals Chamber therefore finds that Simatović has demonstrated that the Trial Chamber erred in finding that locals from Bosanski Šamac were trained at the Ležimir camp. However, Simatović has not shown how this error has occasioned a miscarriage of justice in relation to the Trial Chamber's overall findings with respect to his aiding and abetting liability.

(c) Conclusion

196. Based on the foregoing, the Appeals Chamber dismisses sub-ground 11 of Ground 1 as well as sub-grounds 3 in part, 4, 5 in part, 7 in part, and 12 in part of Ground 2 of Simatović's appeal.

3. Alleged Errors Regarding Simatović's Conduct and Role Leading Up to Crimes (Ground 1 sub-ground 12, Ground 2 sub-grounds 2 in part, 6 in part, 7, 8, 10 in part, 11, 12, 13 in part, and 14 in part)

197. Simatović submits that the Trial Chamber erred in relation to his authority over the Pajzoš and Ležimir camps and Unit members, his role in the briefing of Unit members and local Serb forces and their deployment to Bosanski Šamac, his awareness of crimes committed in Bosanski Šamac, and his role in the takeover of Bosanski Šamac.⁶⁰⁴ The Appeals Chamber will address these contentions in turn.

⁶⁰¹ Trial Judgement, paras. 409, 418. *See also* Trial Judgement, paras. 406, 407.

⁶⁰² Trial Judgement, paras. 418, 419. *See also* Trial Judgement, paras. 407, 416, 417.

⁶⁰³ *See* Trial Judgement, paras. 218, 410, 419, 424, 436, 604, 605. *See also* Trial Judgement, paras. 223-234, 417, 597.

⁶⁰⁴ *See* Simatović Notice of Appeal, paras. 19, 30, 31, 33-35, 37 (b)-(e); Simatović Appeal Brief, paras. 46, 93-99, 144-149, 155-180, 206-235, 242, 243, 256-258, 264-266. *See also* T. 24 January 2023 pp. 37, 41-43, 46-50.

(a) Authority over Training Camps and the Unit

198. The Trial Chamber found that Stanišić and Simatović had authority and control over the Unit and the Ležimir and Pajzoš camps at least in the first part of 1992 until at least March or April, and that the training that was conducted there was, accordingly, done at Stanišić's and Simatović's direction, with their authorization, and with their financial and logistical support.⁶⁰⁵ It further concluded that, with respect to the Bosanski Šamac locals, the organization of the training at the camps "occurred at various levels of the JNA area command and officials in Belgrade", and that Stanišić and Simatović, given their authority over the camps and the Unit, were aware of and consented to this arrangement.⁶⁰⁶

199. Simatović submits that the Trial Chamber erred in finding, at paragraphs 409 and 418 of the Trial Judgement, that he had authority over the Unit and the Ležimir and Pajzoš camps, and that he agreed with the arrangement for training persons sent to Bosanski Šamac.⁶⁰⁷ He argues that there is no reliable evidence showing that he was in a position to make decisions or had the authority to train or send individuals to Bosanski Šamac.⁶⁰⁸ Simatović contends that between December 1990 and May 1992, he held a low-level position within the State Security Service hierarchy, with no independent decision-making powers, and was responsible for intelligence collection and technology-related matters.⁶⁰⁹ He argues that he did not have combat duties, military knowledge, or the ability to conduct military training.⁶¹⁰ Simatović points to evidence that his visits to Pajzoš related "exclusively" to a "radio reconnaissance centre" and his role as an intelligence officer.⁶¹¹ In his view, the foregoing demonstrates that it was impossible to establish beyond reasonable doubt that he was aware of or agreed with training arrangements for individuals deployed to Bosanski Šamac.⁶¹² Simatović also argues that the Trial Chamber's findings at paragraph 418 of the Trial Judgement regarding his authority over the Unit and the camps as well as his agreement with the training arrangements are unsupported by footnotes or evidence.⁶¹³ In a similar vein, he submits that the Trial Chamber's

⁶⁰⁵ See Trial Judgement, paras. 407, 409, 416, 418, 419.

⁶⁰⁶ See Trial Judgement, paras. 407, 409, 416, 418, 419.

⁶⁰⁷ See Simatović Appeal Brief, paras. 46, 148-164, 166, 173-175, 264, 265. See also Simatović Reply Brief, paras. 78, 83; T. 24 January 2023 pp. 45-47, 49, 50.

⁶⁰⁸ Simatović Appeal Brief, para. 166; Simatović Reply Brief, para. 83. See also Simatović Appeal Brief, para. 238; T. 24 January 2023 pp. 46, 47.

⁶⁰⁹ See Simatović Appeal Brief, paras. 155, 157, 158; T. 24 January 2023 pp. 46, 47. See also Simatović Appeal Brief, para. 256. See also T. 24 January 2023 pp. 51-56, 114, 115.

⁶¹⁰ Simatović Appeal Brief, paras. 155, 156, referring to, *inter alia*, Simatović Final Trial Brief, pp. 29-38. See also Simatović Appeal Brief, para. 256; T. 24 January 2023 p. 47.

⁶¹¹ See Simatović Appeal Brief, paras. 159-163, 242, 243. See also Simatović Appeal Brief, paras. 149-154; T. 24 January 2023 p. 47.

⁶¹² Simatović Appeal Brief, para. 164; T. 24 January 2023 pp. 47-50.

⁶¹³ See Simatović Appeal Brief, paras. 173-175.

finding, at paragraph 409 of the Trial Judgement, that the Ležimir and Pajzoš camps operated under his authority and control was made without adequate support.⁶¹⁴

200. Finally, Simatović argues that Witness RFJ-035 is the only witness to testify about Simatović's presence at the Pajzoš camp where his group trained and submits that his testimony that Simatović went to the camp or was in uniform is contradicted by Witness Todorović's evidence.⁶¹⁵ Simatović argues that no reasonable trial chamber could have concluded beyond reasonable doubt that he was ever present at the camp where the training occurred or that he wore the same uniform as Witness RFJ-035 and his group.⁶¹⁶

201. The Prosecution responds that Simatović fails to demonstrate that no reasonable trier of fact could have concluded that he had authority over the Unit and the camps at Ležimir and Pajzoš,⁶¹⁷ and it argues that he repeats trial submissions without showing any error.⁶¹⁸ It submits that Simatović's argument that he was at the bottom of the hierarchy of the State Security Service was considered by the Trial Chamber and does not undermine findings that he had significant power, authority, and control over the training camps and the Unit, including in March and April 1992.⁶¹⁹ The Prosecution argues that the evidence Simatović relies on to demonstrate his presence in Pajzoš for intelligence purposes is irrelevant as it pertains to time periods outside the training conducted at Pajzoš.⁶²⁰ It further responds that Simatović was aware of and consented to the training of new Unit members and local Serb forces at the Ležimir and Pajzoš camps,⁶²¹ and that his submissions claiming no knowledge or ability to train Unit members and local Serb forces are unsubstantiated and incapable of undermining the Trial Chamber's findings, as it did not conclude that he personally conducted the training.⁶²² The Prosecution also responds that the Trial Chamber's findings at paragraph 418 of the Trial Judgement are neither unclear nor unsupported as they reference findings made earlier in the Trial Judgement.⁶²³ According to the Prosecution, the Trial Chamber's findings and the evidence on the record support its conclusion that Simatović exercised authority over the Ležimir and Pajzoš

⁶¹⁴ Simatović Appeal Brief, para. 46, *referring to* Trial Judgement, paras. 406-409. *See also* T. 24 January 2023 pp. 45, 50.

⁶¹⁵ *See* Simatović Appeal Brief, paras. 144-147, 242, 243, *referring to* Witness Todorović, Exhibit P01916, pp. 23434-23436.

⁶¹⁶ *See* Simatović Appeal Brief, para. 147.

⁶¹⁷ Prosecution Response to Simatović Appeal, para. 91.

⁶¹⁸ Prosecution Response to Simatović Appeal, para. 92.

⁶¹⁹ *See* Prosecution Response to Simatović Appeal, paras. 93-97. *See also* T. 24 January 2023 pp. 83-86.

⁶²⁰ Prosecution Response to Simatović Appeal, para. 100. *See also* Prosecution Response to Simatović Appeal, paras. 101, 102.

⁶²¹ Prosecution Response to Simatović Appeal, para. 103.

⁶²² Prosecution Response to Simatović Appeal, para. 104.

⁶²³ Prosecution Response to Simatović Appeal, para. 108.

camps until at least 11 April 1992.⁶²⁴ Finally, the Prosecution argues that Simatović's arguments related to Witness RFJ-035's evidence should be disregarded as they are irrelevant to the findings he challenges.⁶²⁵

202. Simatović replies that his appeal repeats trial arguments because the Trial Chamber erred in rejecting them.⁶²⁶

203. The Appeals Chamber first turns to Simatović's contentions regarding the absence of his decision-making authority due to his "low-level" position in the State Security Service. The Appeals Chamber observes that the Trial Chamber considered and rejected Simatović's arguments that he was "never in a sufficiently powerful position" and that "he was limited in his work and influence by different management levels [...] and by the decisions of his superiors".⁶²⁷ The Appeals Chamber observes that outside of reiterating his trial submissions,⁶²⁸ Simatović does not demonstrate how the Trial Chamber erred in these considerations. Likewise, Simatović's references to evidence related to his intelligence gathering responsibilities and activities in Pajzoš and his lack of military training do not, for the reasons discussed below, demonstrate any error in the Trial Chamber's conclusions as to his authority and control over the Unit and the Ležimir and Pajzoš camps.

204. Moreover, and of principal significance, Simatović's submissions ignore extensive Trial Chamber findings regarding his actual authority and control over the Unit and the Ležimir and Pajzoš camps. As discussed in Ground 1 of Simatović's appeal, the Trial Chamber found that he and Stanišić formed the Unit at least by August or September 1991 from amongst the most promising recruits trained at the Golubić camp between May and July/August 1991, and considered evidence that Simatović personally selected Unit members. The Trial Chamber was also satisfied that, from at least August or September 1991, the Unit operated under the command and control of Stanišić and Simatović, that they were "ultimately in charge of this Unit", and that "only they were able to give orders to its members".⁶²⁹ Regarding the camps, the Trial Chamber considered evidence that the Ležimir camp was established around September 1991 after Unit members were selected, that Simatović introduced Stanišić to the men three to four days after they arrived at Ležimir, that only Stanišić and Simatović visited this camp, that access to the camp could be refused by Simatović, and

⁶²⁴ See Prosecution Response to Simatović Appeal, paras. 96, 97.

⁶²⁵ Prosecution Response to Simatović Appeal, para. 90.

⁶²⁶ Simatović Reply Brief, paras. 78, 79.

⁶²⁷ Trial Judgement, para. 354, nn. 1504, 2333 and references cited therein.

⁶²⁸ Compare, e.g., Simatović Appeal Brief, paras. 155-158 with Simatović Final Trial Brief, paras. 67, 88, 89, 91, 94, 97, 103.

⁶²⁹ See Trial Judgement, paras. 405, 419.

that the Pajzoš camp was subsequently established around December 1991 or January 1992.⁶³⁰ In light of the evidence before it, the Trial Chamber was satisfied that both Ležimir and Pajzoš operated as camps under the authority of Stanišić and Simatović at least in the first part of 1992, until at least March or April, and that the training conducted therein was done at their direction, with their authorization, and with their financial and logistical support.⁶³¹ The Trial Chamber's findings regarding Simatović's role in the establishment of the Unit and the camps, as well as his authority over them, are based primarily on the evidence of Witness RFJ-137,⁶³² and the Appeals Chamber has dismissed Simatović's challenges to the Trial Chamber's reliance on this evidence in this respect.⁶³³ Given the foregoing, Simatović fails to demonstrate that the Trial Chamber erred in finding that he had authority over the camps or that it was unreasonable to conclude that he was aware of and agreed to the training arrangements for individuals deployed to Bosanski Šamac.⁶³⁴

205. The Appeals Chamber further dismisses Simatović's argument that the finding at paragraph 418 of the Trial Judgement, regarding his authority over the camps and agreement to the training arrangements, is unsupported. Recalling that a trial judgement is to be read as a whole,⁶³⁵ the Appeals Chamber observes that the Trial Chamber's statement regarding Simatović's authority over the Unit and the camps at paragraph 418 of the Trial Judgement is based on findings and evidence addressed elsewhere in the Trial Judgement.⁶³⁶ The same considerations apply to Simatović's challenge to paragraph 409 of the Trial Judgement that the Trial Chamber failed to provide reasons for concluding that he had authority over the camps.⁶³⁷ The Appeals Chamber dismisses this contention as well.

206. Finally, the Appeals Chamber concludes that Simatović fails to demonstrate that Witness RFJ-035's evidence as to Simatović's presence in the Pajzoš camp with the witness or whether he wore a uniform similar to the witness's was critical to establishing his authority over the camp.⁶³⁸ In any event, Simatović isolates portions of Witness Todorović's evidence in asserting that it contradicts Witness RFJ-035's evidence as to Simatović's presence in the camp or whether Simatović wore a uniform. However, Simatović does not demonstrate that his evidence contradicts Witness RFJ-035's evidence as he does not show that their observations occurred at the same time. Moreover, the Appeals Chamber considers that Witness Todorović's evidence reflecting that, towards the end of

⁶³⁰ See Trial Judgement, paras. 406, 407.

⁶³¹ Trial Judgement, para. 409.

⁶³² See Trial Judgement, paras. 405-407, nn. 1631-1643.

⁶³³ See *supra* paras. 159-163. The Appeals Chamber notes that Simatović has challenged Witness RFJ-137's evidence in relation to his role in deploying Unit members and local Serb forces to Bosanski Šamac, which will be discussed below.

⁶³⁴ See Trial Judgement, para. 418.

⁶³⁵ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

⁶³⁶ See Trial Judgement, paras. 388, 405-407, 409.

⁶³⁷ See Simatović Appeal Brief, para. 46, *referring to* Trial Judgement, paras. 406-409.

⁶³⁸ See Trial Judgement, paras. 416, 417.

March or early April 1992, Simatović knew about the existence of the training camp at Pajzoš and arranged for a uniformed soldier to take the witness about a kilometre away to the camp where 20 locals from Bosanski Šamac were being trained tends to support, rather than contradict, Witness RFJ-035's evidence regarding Simatović's involvement with the Pajzoš camp.⁶³⁹ In light of the foregoing, Simatović has not shown that the Trial Chamber erred in relation to its findings as to his authority over the camps and the Unit.

(b) Briefing and Deployment

207. The Appeals Chamber observes that the Trial Chamber, relying on Witness RFJ-035's evidence, considered that, around 10 April 1992, Simatović addressed Unit members, including Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035, as well as trainees from Bosanski Šamac at Pajzoš and informed them of their deployment to Bosanski Šamac.⁶⁴⁰ A holistic reading of the Trial Judgement reflects that the Trial Chamber relied on Witness RFJ-035's evidence in relation to its findings that Simatović briefed Unit members and local Serbs prior to their 11 April 1992 deployment to Batkuša.⁶⁴¹ The Trial Chamber relied on this finding, in part, to conclude that Stanišić and Simatović authorized the deployment.⁶⁴²

208. In addition, the Trial Chamber noted that the JNA played a large role in transporting Unit members and in their participation in the attack, but recalled the evidence of Witness RFJ-137 that members of the Unit could not participate in combat operations without the approval of Stanišić and Simatović.⁶⁴³ The Trial Chamber concluded that because this was a significant contingent, that they were briefed by Simatović personally prior to departure, and that they departed from Pajzoš, it was convinced that this deployment was authorized by Stanišić and Simatović.⁶⁴⁴

⁶³⁹ See Witness Todorović, Exhibit P01916, pp. 23431, 23433-23437. See also Trial Judgement, para. 407, n. 1645.

⁶⁴⁰ Trial Judgement, para. 417, n. 1672, referring to Witness RFJ-035, T. 17 April 2018 pp. 14, 15, Exhibit P02026, paras. 32-34, Exhibit P02028, pp. 7623, 7624. See also Trial Judgement, para. 209, n. 943, referring to, *inter alia*, Witness RFJ-035, T. 17 April 2018 pp. 6, 16, T. 19 April 2018 p. 14.

⁶⁴¹ Trial Judgement, paras. 209, 417, 419.

⁶⁴² Trial Judgement, para. 419.

⁶⁴³ Trial Judgement, para. 419.

⁶⁴⁴ Trial Judgement, para. 419. See also Trial Judgement, paras. 388 (“[T]he Trial Chamber is convinced that, at least by August or September 1991, Stanišić and Simatović formed the Unit from amongst the most promising recruits trained at Golubić between May and the end of July/early August 1991. The Trial Chamber is also satisfied that [Stanišić and Simatović] had authority over this force and determined its use and deployment until at least mid-April 1992.”), 590 (“In relation to the Unit, the Prosecution has proven beyond reasonable doubt that, on one occasion, in the context of the takeover operation of the Bosanski Šamac municipality in April 1992, [Stanišić and Simatović] deployed members of the Unit along with approximately 20 Bosanski Šamac locals trained by Unit members from its camp at Pajzoš, near Ilok, Croatia. During and in the aftermath of the operation, this group, led by Dragan Đorđević (Crni), a Unit member, committed the crimes of persecution, murder, deportation, and forcible transfer, as charged in the Indictment.”).

209. Simatović submits that the Trial Chamber erred in finding that he held a briefing in Pajzoš prior to the deployment of the group to Bosanski Šamac and that he authorized the deployment.⁶⁴⁵ He contends that the Trial Chamber was inconsistent regarding the date he provided the briefing, and notes that, according to paragraph 209 of the Trial Judgement, the briefing occurred “on or around 11 April 1992”, whereas paragraph 417 of the Trial Judgement states that Simatović addressed Unit members “around 10 April 1992”.⁶⁴⁶ Simatović also argues that, while the Trial Chamber indicated that it relied on the evidence from other witnesses regarding this briefing at paragraph 209 of the Trial Judgement, only Witness RFJ-035 testified about this event.⁶⁴⁷

210. Simatović further contends that the Trial Chamber erred in relying on the uncorroborated evidence of Witness RFJ-035 in view of his doubtful credibility and inconsistent evidence regarding Simatović’s role and the circumstances surrounding the briefing at the Pajzoš camp prior to deployment.⁶⁴⁸ Simatović also emphasizes that, although the Trial Chamber referred to the evidence of Witnesses Todorović, Petar Đukić, Dragan Lukač, and Sulejman Tihić when discussing the briefing, none of them testified about it.⁶⁴⁹ In his view, the Trial Chamber therefore erred in finding that he had provided a briefing in Pajzoš prior to the group’s deployment to Bosanski Šamac.⁶⁵⁰

211. Simatović further submits that the Trial Chamber erred in finding, at paragraph 419 of the Trial Judgement, that Simatović approved and authorized the deployment of forces to Bosanski Šamac, and he challenges its reliance on Witness RFJ-137’s evidence in making its findings.⁶⁵¹ According to Simatović, the Trial Chamber misinterpreted Witness RFJ-137’s evidence and considered it out of context, as the witness [REDACTED].⁶⁵² To this end, he notes that the evidence of Witness RFJ-137, referenced by the Trial Chamber at footnote 1679 of the Trial Judgement, relates to events in late 1991 or early 1992 and has no relevance to the training and deployment of forces to Bosanski Šamac later in the spring of 1992.⁶⁵³

⁶⁴⁵ See Simatović Notice of Appeal, paras. 25, 33; Simatović Appeal Brief, paras. 90, 93-99, 197, 201, 206-216.

⁶⁴⁶ Simatović Appeal Brief, para. 93.

⁶⁴⁷ See Simatović Appeal Brief, paras. 94-97; Simatović Reply Brief, paras. 38-44; T. 24 January 2023 pp. 40-42, 112, 113. See also Simatović Appeal Brief, paras. 257, 258.

⁶⁴⁸ See Simatović Appeal Brief, paras. 70, 81-89, 94-97, 257, 258; Simatović Reply Brief, paras. 38, 39. See also T. 24 January 2023 pp. 41, 42, 112, 113.

⁶⁴⁹ See Simatović Appeal Brief, paras. 94, 95; T. 24 January 2023 p. 42.

⁶⁵⁰ See Simatović Appeal Brief, paras. 98, 99. According to Simatović, even if he had addressed the group prior to their departure to Bosanski Šamac, this briefing in itself does not indicate that he had any role in the deployment. See Simatović Reply Brief, para. 45.

⁶⁵¹ See Simatović Appeal Brief, paras. 197, 201, 206-216, referring to, *inter alia*, Trial Judgement, para. 419, n. 1679.

⁶⁵² See Simatović Appeal Brief, paras. 207-212, 214-216.

⁶⁵³ Simatović Appeal Brief, para. 213.

212. The Prosecution responds that Simatović fails to demonstrate that the Trial Chamber made inconsistent findings regarding the date of the briefing.⁶⁵⁴ It also argues that the Trial Chamber properly relied on Witness RFJ-035's uncorroborated evidence to support the conclusions regarding the briefing at Pajzoš⁶⁵⁵ and contends that evidence of Witnesses Todorović, Đukić, Lukač, and Tihic is not inconsistent with Witness RFJ-035's, as none were present when Simatović gave the briefing.⁶⁵⁶

213. Concerning Witness RFJ-137, the Prosecution responds that this evidence was not the sole basis for the Trial Chamber's conclusion that Simatović deployed Unit members and local Serb forces to Bosanski Šamac.⁶⁵⁷ It argues that Witness RFJ-137's evidence substantiates the Trial Chamber's related findings regarding the training, briefing, deployment, and field command as supported by other documentary and witness evidence, including that of Witness RFJ-035 describing Simatović as a commander.⁶⁵⁸ According to the Prosecution, while Witness RFJ-137 [REDACTED], the Trial Chamber was entitled to rely on this witness's evidence to find that Unit members could not participate in combat operations without the approval of Stanišić and Simatović in April 1992.⁶⁵⁹

214. Turning first to Simatović's challenges related to the date of his briefing prior to deployment, the Appeals Chamber notes that paragraph 209 of the Trial Judgement states that: "[o]n or around 11 April 1992, after being briefed by Simatović at Pajzoš, paramilitaries flew in JNA helicopters" to Batkuša, a Serbian village near Bosanski Šamac.⁶⁶⁰ Paragraph 417 of the Trial Judgement states that: "[a]round 10 April 1992, Simatović addressed the Unit members [...] and the trainees from Bosanski Šamac at Pajzoš and informed them of their deployment to the Bosanski Šamac municipality in Bosnia and Herzegovina".⁶⁶¹ Contrary to Simatović's contention,⁶⁶² there is no inconsistency between paragraphs 209 and 417 of the Trial Judgement. Paragraph 209 speaks to the date that forces were deployed to Bosanski Šamac, while paragraph 417 addresses the date of Simatović's briefing, which the Trial Chamber considered to have occurred about a day before the deployment.⁶⁶³ This argument is dismissed.

⁶⁵⁴ Prosecution Response to Simatović Appeal, para. 62.

⁶⁵⁵ Prosecution Response to Simatović Appeal, paras. 54-58, 63; T. 24 January 2023 pp. 89-91. *See also* Prosecution Response to Simatović Appeal, para. 64; T. 24 January 2023 p. 86.

⁶⁵⁶ Prosecution Response to Simatović Appeal, paras. 64, 138.

⁶⁵⁷ Prosecution Response to Simatović Appeal, para. 121. *See also* Prosecution Response to Simatović Appeal, paras. 118-120.

⁶⁵⁸ Prosecution Response to Simatović Appeal, para. 121.

⁶⁵⁹ Prosecution Response to Simatović Appeal, para. 122.

⁶⁶⁰ Trial Judgement, para. 209. Simatović's allegations of error in relation to Witness RFJ-035's evidence that Simatović wore a uniform in view of Witness Todorović's evidence that he did not is unpersuasive. As discussed above, Simatović fails to show that the evidence he refers to reflects that the two witnesses observed Simatović at the same time.

⁶⁶¹ Trial Judgement, para. 417.

⁶⁶² *See* Simatović Appeal Brief, para. 93.

⁶⁶³ *See* Trial Judgement, paras. 209, 417.

215. Simatović further challenges the Trial Chamber’s reference in footnote 943 of paragraph 209 of the Trial Judgement to the evidence of Witnesses RFJ-035, Todorović, Petar Đukić, Dragan Lukač, and Sulejman Tihić when, according to Simatović, only Witness RFJ-035 spoke about the briefing.⁶⁶⁴ The Appeals Chamber rejects this argument as the sentence related to footnote 943 primarily discusses events following the deployment rather than the briefing,⁶⁶⁵ which is supported by the referenced evidence.⁶⁶⁶

216. Turning to Simatović’s challenges to the Trial Chamber’s reliance on Witness RFJ-035’s evidence in relation to the briefing Simatović gave to Unit members and locals from Bosanski Šamac at Pajzoš prior to their deployment to Bosanski Šamac, the Appeals Chamber observes that, indeed, the Trial Chamber relied solely on this witness’s evidence.⁶⁶⁷ Having reviewed Witness RFJ-035’s evidence cited in the Trial Judgement,⁶⁶⁸ the Appeals Chamber considers that the Trial Chamber reasonably relied on it to find that Unit members and trainees from Bosanski Šamac “were briefed by Simatović personally” prior to deployment.⁶⁶⁹ The Appeals Chamber recalls the Trial Chamber’s discretion to decide whether to rely on uncorroborated evidence,⁶⁷⁰ even that of accomplice witnesses who may have a motive to implicate the accused, provided that appropriate caution is exercised.⁶⁷¹

217. In this context, the Trial Chamber carefully considered Witness RFJ-035’s status as an accomplice, possible motivations to implicate Simatović, and the reliability of his evidence regarding the briefing and Simatović’s affiliation with the Unit, and it applied “appropriate caution” to his evidence.⁶⁷² The Trial Chamber did not rely on his evidence when he had no direct knowledge.⁶⁷³

⁶⁶⁴ See Simatović Appeal Brief, paras. 94, 95; T. 24 January 2023 p. 42.

⁶⁶⁵ See Trial Judgement, para. 209 (“On or around 11 April 1992, after being briefed by Simatović at Pajzoš, paramilitaries flew in JNA helicopters from an airstrip at Ležimir and arrived in Batkuša, a Serbian village near Bosanski Šamac, and that, among the group of around 50 men, 30 came from Serbia while the remaining 18 to 20 were from Bosanski Šamac.”).

⁶⁶⁶ See Trial Judgement, para. 209, n. 943, referring to Witness Todorović, Exhibit P01916, pp. 23441, 23442, 23454, 23466, 23520, Witness RFJ-035, T. 17 April 2018 pp. 6, 13-16, T. 18 April 2018 p. 29, T. 19 April 2018 pp. 14, 15, 32, 33, Exhibit P02028, pp. 7628, 7792, Exhibit P02026, paras. 35-37, Exhibit P02042, p. 3, Witness Lukač, Exhibit P02732, pp. 1612, 1614-1616, Exhibit P02731, p. 14, Witness Djukić, T. 17 December 2019 pp. 12, 13, 22, T. 21 January 2020 p. 3, T. 22 January 2020 p. 22, Witness Tihić, Exhibit P01869, pp. 3134, 3199, 3213, 3214, Exhibit P01868, pp. 29883, 29884, 29946, 29951, Exhibit P01870, pp. 1343, 1344, Exhibit P01865, p. 5, Exhibit P01938, pp. 256, 257, Exhibit P00846, p. 3, Exhibit P01953, p. 2, Exhibit P02048, p. 1, Adjudicated Facts 1059-1063. The Appeals Chamber notes that the adjudicated facts in this case are listed in *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Order in Relation to Prosecution Request for Clarification of Decision on Adjudicated Facts, 15 January 2019, Corrected Annex to Decision on Judicial Notice of Adjudicated Facts (“Adjudicated Facts”). See Trial Judgement, para. 18.

⁶⁶⁷ See Trial Judgement, para. 417, n. 1672. See also Trial Judgement, para. 419.

⁶⁶⁸ See Trial Judgement, para. 417, n. 1672, referring to Witness RFJ-035, T. 17 April 2018 pp. 14, 15, Exhibit P02026, paras. 32-34, Exhibit P02028, pp. 7623, 7624. See also Witness RFJ-035, Exhibit P02028, pp. 7677, 7678.

⁶⁶⁹ See Trial Judgement, para. 419.

⁶⁷⁰ See *Karadžić* Appeal Judgement, para. 363 and references cited therein.

⁶⁷¹ See *Popović et al.* Appeal Judgement, para. 135 and references cited therein.

⁶⁷² Trial Judgement, paras. 206, 220.

⁶⁷³ Trial Judgement, para. 420.

Moreover, the Appeals Chamber observes that other evidence corroborates the witness's account that he participated in events in Bosanski Šamac.⁶⁷⁴ Other aspects of the witness's testimony related to the deployment to Batkuša, the number of persons deployed, and the uniforms worn are corroborated by other evidence on the record.⁶⁷⁵ The Appeals Chamber has reviewed the evidence cited by Simatović⁶⁷⁶ – which he pointed to at trial and of which the Trial Chamber was cognizant.⁶⁷⁷ The Appeals Chamber does not see any evolutions in Witness RFJ-035's evidence or material contradictions that would have prevented a reasonable trier of fact from relying on it in relation to the briefing, Simatović's role, and his position of authority.⁶⁷⁸ In this context, Simatović fails to demonstrate that the Trial Chamber abused its discretion in relying on Witness RFJ-035's evidence to find that Simatović briefed Unit members and locals from Bosanski Šamac at Pajzoš prior to their deployment to Bosanski Šamac.

218. The Appeals Chamber turns to Simatović's contention that Witness Todorović's evidence contradicts Witness RFJ-035's account. Simatović fails to demonstrate that Witness Todorović's evidence as to his visit to Pajzoš occurred on the same day as the briefing in Witness RFJ-035's evidence, a point which Simatović appears to concede.⁶⁷⁹ Moreover, the Appeals Chamber sees no material contradiction that would render the Trial Chamber's reliance on Witness RFJ-035's testimony unreasonable based on Simatović's suggestion that Witness RFJ-035 testified that Todorović was present during Simatović's briefing whereas Witness Todorović did not testify to this fact.⁶⁸⁰ Having reviewed Witness RFJ-035's evidence, the Appeals Chamber observes that it is equivocal as to whether Witness Todorović was present at the briefing.⁶⁸¹ Furthermore, Simatović's contention that Witnesses Đukić, Lukač, and Tihčić did not testify about the briefing does not render the Trial Chamber's reliance on Witness RFJ-035's evidence unreasonable given that Simatović has not demonstrated that they would have been present for it or that any omission in their evidence related to the briefing materially contradicts Witness RFJ-035's evidence.⁶⁸²

⁶⁷⁴ See, e.g., Exhibit P02048, p. 1; Exhibit P02049, pp. 1, 7, 8.

⁶⁷⁵ See, e.g., Trial Judgement, paras. 209, 210, n. 943.

⁶⁷⁶ See Simatović Appeal Brief, paras. 81-88.

⁶⁷⁷ See Simatović Final Trial Brief, paras. 697, 698; Trial Judgement, para. 205, n. 934, *referring to, inter alia*, Simatović Final Trial Brief, paras. 695-703.

⁶⁷⁸ See Witness RFJ-035, Exhibit P02026, paras. 32-34, Exhibit P02027, para. 8, Exhibit P02028, pp. 7624, 7681, 7744, 7807, 7808, T. 17 April 2018 pp. 14-16, T. 18 April 2018 pp. 9, 10, 12.

⁶⁷⁹ See Simatović Reply Brief, paras. 40-42.

⁶⁸⁰ See Simatović Appeal Brief, paras. 88, 95.

⁶⁸¹ Compare Exhibit P02026, para. 33 (indicating that Witness Todorović was present at the briefing) with Exhibit P02028, p. 7624 ("I believe that Stevan Todorović was there as well but I can't state that for a fact. I had frequent contacts with him so I may have – I may be mistaken.") and Witness RFJ-035, T. 17 April 2018 pp. 14, 15 (indicating that he was "not sure" if Witness Todorović was present for the briefing).

⁶⁸² Simatović appears to concede this position in his reply brief. See Simatović Reply Brief, paras. 40-42.

219. The Appeals Chamber turns to Simatović's challenges to the Trial Chamber's reliance on Witness RFJ-137's evidence at paragraph 419 of the Trial Judgement in order to conclude that the deployment was authorized by Stanišić and Simatović. The Appeals Chamber notes that the witness's evidence reflects that the [REDACTED]⁶⁸³ [REDACTED]⁶⁸⁴ [REDACTED].⁶⁸⁵ While the Trial Chamber did not address this aspect of Witness RFJ-137's evidence in the Trial Judgement, this does not amount to an error in light of the presumption that the Trial Chamber has evaluated all the evidence before it.⁶⁸⁶ The Appeals Chamber notes that, while paragraph 419 of the Trial Judgement addresses events in March and April 1992, [REDACTED], a contextual review of this paragraph reveals that the Trial Chamber referenced Witness RFJ-137's evidence when considering the extent of the JNA's involvement with the Unit prior to deployment.⁶⁸⁷

220. Given the witness's consistent evidence of Stanišić's and Simatović's command and control over the Unit's operations [REDACTED], including an incident where Stanišić and Simatović refused a JNA general's request to appropriate the Unit and stated that they "would have no further dealings with the JNA" and were "explicit that we were not to go into any action without orders of one of the two of them",⁶⁸⁸ it was not unreasonable for the Trial Chamber to rely on such evidence when concluding that Stanišić and Simatović authorized the deployment months later. Furthermore, even if the Trial Chamber did not rely on Witness RFJ-137's evidence, its finding that Stanišić and Simatović authorized the deployment of members of the Unit and locals from Bosanski Šamac is supported by Witness RFJ-035's evidence, which reasonably supports the Trial Chamber's conclusions as to Simatović's command over members of the Unit prior to their deployment.⁶⁸⁹ Simatović has accordingly not demonstrated that the Trial Chamber erred in misinterpreting Witness RFJ-137's evidence or taking it out of context. Simatović's submissions that the Trial Chamber erred with respect to its assessment of the deployment are therefore dismissed.

221. Based on the foregoing, Simatović has not shown that the Trial Chamber erred in relation to its findings concerning the briefing or deployment.

⁶⁸³ Witness RFJ-137, T. 18 July 2017 pp. 14, 57, T. 19 July 2017 pp. 47, 48, Exhibit P00245, paras. 45, 55, Exhibit 2D00012, pp. 7459, 7495.

⁶⁸⁴ Witness RFJ-137, T. 18 July 2017 pp. 31, 32.

⁶⁸⁵ Witness RFJ-137, Exhibit P00245, para. 55, Exhibit 2D00012, p. 7459.

⁶⁸⁶ *Mladić* Appeal Judgement, paras. 199, 423 and references cited therein.

⁶⁸⁷ *See* Trial Judgement, para. 419, n. 1679.

⁶⁸⁸ Witness RFJ-137, Exhibit P00245, paras. 50, 51, 70, T. 18 July 2017 p. 29. *See also* Trial Judgement, paras. 405, 419, nn. 1633, 1679.

⁶⁸⁹ Witness RFJ-035, Exhibit P02026, paras. 32, 34, T. 17 April 2018 pp. 14-16.

(c) Knowledge of Supporting the Commission of Crimes

222. In paragraph 418 of the Trial Judgement, the Trial Chamber found in relation to the training of Bosanski Šamac locals, *inter alia*, that given Stanišić's and Simatović's authority over the Unit and the camps, as well as their agreement to training arrangements, they "would have been aware in allowing the use of their facilities and trainers that they would be supporting military action and, in the context of the conflict at the time, the commission of crimes by these forces".⁶⁹⁰

223. Simatović submits that the Trial Chamber erred in finding that he was aware that, by allowing persons to be trained and then deployed to Bosanski Šamac, he would be supporting military action and the commission of crimes.⁶⁹¹ Simatović contends that he was not aware that the individuals deployed would support military action in Bosanski Šamac or that they would commit crimes.⁶⁹² He further argues that the Trial Chamber's reference to the "context of the conflict at the time" in paragraph 418 of the Trial Judgement is unclear and unsupported by evidence.⁶⁹³ Simatović also points to evidence considered by the Trial Chamber at paragraph 418 of the Trial Judgement – namely, Ratko Mladić's diary (Exhibit P01938) – which he claims demonstrates, *inter alia*, the JNA's role with regard to training and deployment, and ultimately that the arrangement to train and deploy individuals to Bosanski Šamac was "completely beyond Simatović's knowledge and influence, even interest".⁶⁹⁴ Simatović further submits that, even if he had known of the JNA "training a group of volunteers near Pajzoš" and had visited the training site, this would not support a finding that "he supported their participation in potential crimes".⁶⁹⁵ In this regard, he notes that the group of 50 deployed volunteers could not have played a significant role in the crimes compared to the 6,700 Serb forces in Bosanski Šamac, and submits that their crimes were not foreseeable.⁶⁹⁶

224. The Prosecution responds that the Trial Chamber reasonably found that Simatović knew the training and deployment of forces to Bosanski Šamac would assist the commission of crimes there and that he was aware of the essential elements of those crimes, as well as the shared intent of joint

⁶⁹⁰ See also Trial Judgement, paras. 407, 416, 419. The Appeals Chamber has found that the Trial Chamber erred in concluding that Bosanski Šamac locals received training at the Ležimir camp but that this error has not occasioned a miscarriage of justice. See *supra* Section IV.B.2(b).

⁶⁹¹ See Simatović Appeal Brief, paras. 165-180, 266. See also Simatović Reply Brief, para. 45, n. 643; T. 24 January 2023 pp. 47-50, 109, 110.

⁶⁹² Simatović Appeal Brief, para. 167; T. 24 January 2023 pp. 47, 48, 109, 110. See also Simatović Reply Brief, paras. 85, 88.

⁶⁹³ Simatović Appeal Brief, paras. 179, 180.

⁶⁹⁴ See Simatović Appeal Brief, paras. 168-171, 176. See also T. 24 January 2023 pp. 49, 50.

⁶⁹⁵ Simatović Appeal Brief, para. 177.

⁶⁹⁶ Simatović Appeal Brief, para. 178. See also Simatović Appeal Brief, paras. 236, 244-247, 250.

criminal enterprise members,⁶⁹⁷ irrespective of the number of individuals he deployed.⁶⁹⁸ It argues that the Trial Chamber's findings reasonably rely on a pattern of crimes accompanying the takeover of territory by Serb forces in Bosnia and Herzegovina, including in Bosanski Šamac.⁶⁹⁹ According to the Prosecution, Simatović's submissions, including his reliance on Ratko Mladić's diary, fail to demonstrate that the Trial Chamber's findings in this regard are erroneous or speculative.⁷⁰⁰ The Prosecution also responds that the Trial Chamber's findings at paragraph 418 of the Trial Judgement are not unclear or unsupported as they reference findings made earlier in the Trial Judgement.⁷⁰¹

225. Simatović replies that evidence on the record does not show that he had power over the training camps or the Unit, that he could have known the takeover of territories in Bosnia and Herzegovina would be accompanied by crimes, or that he personally received reports of crimes that accompanied military operations in Croatia in 1991.⁷⁰² He further argues that, even if he had the authority to allow the use of instructors and training camps, the only reasonable conclusion was that he was assisting Bosnian Serb war efforts and not assisting the commission of crimes.⁷⁰³

226. The Appeals Chamber considers Simatović's focus on paragraph 418 of the Trial Judgement to be a misguided reading of the Trial Chamber's overall findings that he aided and abetted crimes committed in Bosanski Šamac. While pointing to Ratko Mladić's diary (Exhibit P01938) and indicating the existence of "numerous other pieces of evidence" from his final trial brief to argue that he was not aware of the training and the eventual crimes committed,⁷⁰⁴ Simatović fails to address or demonstrate the unreasonableness of extensive Trial Chamber findings that support his *mens rea* for aiding and abetting.

227. The Trial Chamber's findings reflect that military operations followed a pattern of crimes after violent takeovers of municipalities in Croatia (starting from August 1991) and in Bosnia and Herzegovina (starting from early 1992) by Serb forces.⁷⁰⁵ According to the Trial Chamber, this discernible pattern of crimes was not committed in a random or disorganized manner, but rather during the course of well-planned and coordinated operations, demonstrating the existence of a

⁶⁹⁷ Prosecution Response to Simatović Appeal, para. 105. *See also* T. 24 January 2023 pp. 79-82.

⁶⁹⁸ *See* Prosecution Response to Simatović Appeal, paras. 129, 130, n. 361.

⁶⁹⁹ Prosecution Response to Simatović Appeal, para. 105. *See also* T. 24 January 2023 pp. 79-81.

⁷⁰⁰ Prosecution Response to Simatović Appeal, paras. 106, 107.

⁷⁰¹ Prosecution Response to Simatović Appeal, para. 108.

⁷⁰² *See* Simatović Reply Brief, paras. 83, 85, 87, 88. *See also* Simatović Reply Brief, paras. 82, 84; T. 24 January 2023 p. 48.

⁷⁰³ Simatović Reply Brief, para. 86.

⁷⁰⁴ *See* Simatović Appeal Brief, paras. 168-171, 176. *See also* T. 24 January 2023 p. 49.

⁷⁰⁵ *See* Trial Judgement, paras. 102, 169, 170, 181, 199-201, 218, 229, 232-234, 372-375, 377-379. *See also* Trial Judgement, paras. 606, 607.

common criminal purpose to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through the commission of crimes charged in the Indictment.⁷⁰⁶ While finding that Simatović did not share the intent of the common criminal purpose of the joint criminal enterprise,⁷⁰⁷ the Trial Chamber's conclusions reflect that both he and Stanišić were aware of the common criminal purpose and of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina at the time of the training at the Ležimir and Pajzoš camps from early 1992 and the deployment of Unit members and locals from Bosanski Šamac on 11 April 1992.⁷⁰⁸ Specific to Simatović's knowledge, the Trial Chamber noted that, as an intelligence officer, he would have had "unimpeded access to information about events on the ground and that, as Simatović acknowledges, his primary task in the regions of Croatia and Bosnia and Herzegovina was collecting intelligence".⁷⁰⁹

228. The Appeals Chamber considers that the Trial Chamber relied on these findings to conclude at paragraph 418 of the Trial Judgement that Stanišić and Simatović "would have been aware in allowing the use of their facilities and trainers that they would be supporting military action and, in the context of the conflict at the time, the commission of crimes by these forces".⁷¹⁰ Recalling that the Trial Judgement is to be read as a whole⁷¹¹ and that the Trial Chamber need not unnecessarily repeat considerations reflected elsewhere in the Trial Judgement,⁷¹² the Appeals Chamber accordingly dismisses Simatović's contention that the Trial Chamber's findings at paragraph 418 are unsupported, or otherwise unclear. Regarding Ratko Mladić's diary (Exhibit P01938) as cited in relation to paragraph 418 of the Trial Judgement, the Appeals Chamber is of the view that the Trial Chamber reasonably relied on this exhibit.⁷¹³ Furthermore, considering that the record reflects his involvement in the training and deployment, the Appeals Chamber observes that Exhibit P01938 neither discusses Simatović nor supports his contention that the training and deployment were "completely beyond [his] knowledge and influence, even interest".⁷¹⁴

⁷⁰⁶ Trial Judgement, paras. 378, 379, 594, 597.

⁷⁰⁷ Trial Judgement, para. 596.

⁷⁰⁸ See Trial Judgement, paras. 418, 588, 589, 594, 596, 606, 607.

⁷⁰⁹ Trial Judgement, para. 588. See also Trial Judgement, para. 578 (stating that Stanišić and Simatović, on account of their "unfettered access to intelligence information through various channels, and their attendance at meetings or presence on the ground, were undoubtedly aware of the sentiment of local [Serb] leaders").

⁷¹⁰ See also Trial Judgement, paras. 407, 416, 419.

⁷¹¹ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

⁷¹² *Mladić* Appeal Judgement, para. 247 and references cited therein.

⁷¹³ See Trial Judgement, para. 418 (stating that the organization of the training occurred at various levels of the JNA area command and officials), n. 1676, referring to Exhibit P01938, pp. 256, 257.

⁷¹⁴ See Simatović Appeal Brief, para. 176.

229. The Appeals Chamber further finds inapposite Simatović's argument that the deployment of 50 individuals to Bosanski Šamac compared to the 6,700 JNA forces could not have played a significant role in the crimes, and that their crimes were not foreseeable. In this regard, he ignores the Trial Chamber's conclusion that those who were trained at the Pajzoš and Ležimir camps and subsequently deployed committed crimes in Bosanski Šamac.⁷¹⁵ With respect to Simatović's knowledge of the crimes, the Appeals Chamber recalls its earlier discussion regarding the Trial Chamber's consideration that, based on Simatović's access to information as an intelligence officer and the discernible pattern of crimes in Croatia and Bosnia and Herzegovina at the time, he would have been aware that his activities would support military action and the commission of crimes in Bosanski Šamac.⁷¹⁶ His mere submission that "no one could have guessed that in this context [the 50 men deployed] could commit crimes"⁷¹⁷ is therefore unsubstantiated, ignores key findings in the Trial Judgement, and accordingly fails to demonstrate any error on the part of the Trial Chamber. Simatović's contentions in these respects are dismissed.

(d) Role in the Takeover of Bosanski Šamac

230. Simatović submits that, at paragraph 421 of the Trial Judgement, the Trial Chamber erroneously relied on reports pertinent to Dragan Đorđević (Crni) and Slobodan Miljković (Lugar) following the operation in Bosanski Šamac to conclude that he had a role in events in the municipality.⁷¹⁸

231. The Prosecution responds that Simatović's submissions have no impact on his conviction as the Trial Chamber was not convinced that Simatović directed or had command and control of Unit members during the operations or commission of crimes in Bosanski Šamac.⁷¹⁹

232. The Appeals Chamber observes that, contrary to Simatović's submissions, paragraph 421 of the Trial Judgement does not contain findings but rather a summary of evidence, including reports related to Dragan Đorđević (Crni) and Slobodan Miljković (Lugar), regarding the role of Stanišić and Simatović in events in Bosanski Šamac. Having considered this and other relevant evidence,⁷²⁰ the Trial Chamber concluded that it was not convinced that Stanišić and Simatović "directed or had command and control over the members of the Unit in the course of the operations or the commission

⁷¹⁵ See, e.g., Trial Judgement, paras. 209, 218, 229, 232, 407, 410, 416, 417, 419, 590, 604. See also Trial Judgement, paras. 223, 224, 226, 227.

⁷¹⁶ See *supra* paras. 226-228. See also, e.g., Trial Judgement, paras. 102, 169, 170, 181, 199-201, 218, 229, 232-234, 372-375, 378, 379, 418, 578, 588, 589, 594, 606, 607.

⁷¹⁷ See Simatović Appeal Brief, para. 178.

⁷¹⁸ See Simatović Notice of Appeal, para. 34; Simatović Appeal Brief, paras. 217-235.

⁷¹⁹ Prosecution Response to Simatović Appeal, paras. 123, 124.

⁷²⁰ See Trial Judgement, paras. 420-423.

of crimes in Bosanski Šamac”.⁷²¹ Simatović’s submissions, based on the reports relevant to Dragan Đorđević (Crni) and Slobodan Miljković (Lugar), as to his role in Bosanski Šamac reflect a misreading of the Trial Judgement. Recalling that arguments which do not have the potential to reverse or revise the impugned decision may be immediately dismissed and need not be considered on the merits,⁷²² the Appeals Chamber accordingly dismisses Simatović’s challenge to paragraph 421 of the Trial Judgement.

(e) Conclusion

233. For the foregoing reasons, the Appeals Chamber dismisses sub-ground 12 of Ground 1 of Simatović’s appeal, sub-grounds 2 in part, 6 in part, 7, 8, 10 in part, 11, 12, 13 in part, and 14 in part of Ground 2 of his appeal.

4. Alleged Errors Regarding the Unit and its Members (Ground 2 sub-grounds 2 in part, 4 in part, 5 in part, 6 in part, 9, 10 in part, and 14 in part)

234. The Trial Chamber found that Unit members trained locals from Bosanski Šamac.⁷²³ It further concluded that, following their training at the camps, former SAO SBWS police officers were incorporated into the Unit and were under the authority of Stanišić and Simatović prior to their deployment.⁷²⁴ The Trial Chamber further considered evidence that, on or around 11 April 1992, after being briefed by Simatović at Pajzoš, paramilitaries flew in JNA helicopters to Batkuša, a Serbian village near Bosanski Šamac, and that, among the group of around 50 men, 30 came from Serbia while the remaining were from Bosanski Šamac.⁷²⁵ The Trial Chamber then found that the town of Bosanski Šamac was attacked and subject to a takeover on 17 April 1992 by Serb forces, and that during the takeover, the paramilitaries that arrived in Batkuša, which included the group of 30 men from Serbia, who were under the command of Unit member Dragan Đorđević (Crni), and approximately 20 locals from Bosanski Šamac participated in the attack while subordinated to the

⁷²¹ Trial Judgement, para. 424.

⁷²² *Mladić* Appeal Judgement, paras. 20, 448, 590 and references cited therein.

⁷²³ Trial Judgement, para. 418.

⁷²⁴ Trial Judgement, para. 419. *See also* Trial Judgement, paras. 416, 417, 604.

⁷²⁵ Trial Judgement, para. 209.

JNA 17th Tactical Group.⁷²⁶ The Trial Chamber concluded that Srećko Radovanović (Debeli) and Slobodan Miljković (Lugar) participated in the attack under Dragan Đorđević (Crni)'s command.⁷²⁷

235. Simatović challenges the Trial Chamber's: (i) use of inconsistent terminology with respect to the Unit; (ii) finding that the Unit trained former SAO SBWS police officers and locals from Bosanski Šamac; and (iii) finding that former SAO SBWS police officers were incorporated into the Unit.⁷²⁸ He submits that the Trial Chamber used inconsistent terminology regarding the "group" deployed to Bosanski Šamac and failed to determine to whom the group belonged or its status before its resubordination to the JNA 17th Tactical Group.⁷²⁹ Specifically, he argues that the Trial Chamber referenced the group as "paramilitaries" and later as Unit members, and found that the 20 locals from Bosanski Šamac were not incorporated into the Unit, but subsequently treated the entire deployed group (former SAO SBWS police officers and locals from Bosanski Šamac) as Unit members.⁷³⁰

236. Simatović further submits that the Trial Chamber erred in finding that locals from Bosanski Šamac were trained by Unit members and in relying on Witness RFJ-035's uncorroborated evidence in this regard.⁷³¹ Simatović also notes that Witness Todorović could not remember the name of any instructor in relation to this training apart from Aleksandar Vuković (Vuk).⁷³² Simatović argues that the Trial Chamber equally erred in finding that Unit members trained a group of former SAO SBWS police officers, including Slobodan Miljković (Lugar), Srećko Radovanović (Debeli), and Witness RFJ-035, as there is no evidence to establish such a fact.⁷³³ Simatović points to evidence showing that training in Pajzoš was conducted instead by instructors of the Ministry of the Interior of the Republic of Serbian Krajina.⁷³⁴

237. Simatović also challenges the Trial Chamber's finding that Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 were incorporated as Unit members following

⁷²⁶ Trial Judgement, para. 218. *See also* Trial Judgement, para. 604 ("The Trial Chamber recalls its finding that the town of Bosanski Šamac was subject to a forcible takeover in the early morning of 17 April 1992 by Serb forces, which included a group under the command of Unit member Dragan Đorđević (Crni). This group also included, among others, Unit members Srećko Radovanović (Debeli) and Slobodan Miljković (Lugar), and approximately 20 local Serbs from Bosanski Šamac.").

⁷²⁷ Trial Judgement, para. 218. *See also* Trial Judgement, para. 604.

⁷²⁸ *See* Simatović Notice of Appeal, paras. 27-29, 32; Simatović Appeal Brief, paras. 90-92, 123-144, 181-196, 198-205, 263. *See also* Simatović Reply Brief, paras. 37, 63-73, 75, 76, 89-94; T. 24 January 2023 pp. 41, 45, 50, 51.

⁷²⁹ *See* Simatović Appeal Brief, paras. 91, 92, 135, 138-143; T. 24 January 2023 p. 41. *See also* Simatović Appeal Brief, paras. 136, 137.

⁷³⁰ *See* Simatović Appeal Brief, paras. 91, 92, 141-143; T. 24 January 2023 p. 41. *See also* Simatović Reply Brief, paras. 37, 76.

⁷³¹ Simatović Appeal Brief, paras. 126, 127; T. 24 January 2023 p. 50.

⁷³² Simatović Appeal Brief, para. 125. *See also* T. 24 January 2023 p. 50.

⁷³³ Simatović Appeal Brief, paras. 128, 129. *See also* T. 24 January 2023 p. 45.

⁷³⁴ *See* Simatović Appeal Brief, paras. 130-133; T. 24 January 2023 p. 45.

their training.⁷³⁵ He argues that the evidence, which the Trial Chamber ignored or misinterpreted, shows that these individuals were members of the Serbian Radical Party,⁷³⁶ and points to, *inter alia*, an entry in Ratko Mladić's diary,⁷³⁷ as well as evidence of them being part of the "Grey Wolves" unit affiliated with the Serbian Radical Party in Kragujevac.⁷³⁸ Simatović further refers to evidence that Slobodan Miljković (Lugar), a member of the Serbian Radical Party's paramilitary, was the "subject of processing" by the State Security Service, and did not cooperate with anyone in the State Security Service.⁷³⁹ He also points to evidence that Srećko Radovanović (Debeli)'s unit was the Posavina Brigade in Bosanski Šamac,⁷⁴⁰ that Slobodan Miljković (Lugar) was not part of the State Security Service based on documents issued in December 1991 and August 1992,⁷⁴¹ and that, according to a newspaper article dated 25 November 1992, Slobodan Miljković (Lugar) and Dragan Đorđević (Crni) were "Chetnik bandits".⁷⁴² According to Simatović, no reasonable trier of fact could have attributed responsibility to the State Security Service for the acts of former SAO SBWS police officers.⁷⁴³

238. The Prosecution responds that the Trial Chamber's use of the term "paramilitaries" to refer collectively to the group is consistent with its findings that the group included Unit members and 20 locals from Bosanski Šamac who were not formally incorporated into the Unit.⁷⁴⁴ According to the Prosecution, Simatović fails to show that no reasonable trier of fact could have found that Unit members trained the 20 locals from Bosanski Šamac at the Pajzoš camp, or that the Trial Chamber erred in relying on the evidence of Witnesses Todorović and RFJ-035.⁷⁴⁵ The Prosecution also submits that Simatović fails to demonstrate that the Trial Chamber erred in finding that Unit members trained the group of former SAO SBWS police officers at the Ležimir and Pajzoš camps⁷⁴⁶ and that this group was incorporated into the Unit during their training and prior to deployment to Bosanski Šamac.⁷⁴⁷

239. Simatović replies that, while it may be reasonable to conclude that the former SAO SBWS police officers were Unit members for less than a month and only when training was conducted at Ležimir and Pajzoš, he nonetheless argues that doubts persist with respect to this conclusion as these

⁷³⁵ See Simatović Appeal Brief, paras. 181-196, 198-205, 263; T. 24 January 2023 pp. 50, 51.

⁷³⁶ See Simatović Appeal Brief, paras. 182-185, 187-196, 198-205. See also T. 24 January 2023 pp. 50, 51.

⁷³⁷ Simatović Appeal Brief, para. 182; T. 24 January 2023 p. 50. See also Simatović Reply Brief, para. 66.

⁷³⁸ See Simatović Appeal Brief, paras. 193-195.

⁷³⁹ Simatović Appeal Brief, para. 188. See also Simatović Appeal Brief, para. 202.

⁷⁴⁰ Simatović Appeal Brief, paras. 185, 192; T. 24 January 2023 pp. 50, 51.

⁷⁴¹ Simatović Appeal Brief, para. 190.

⁷⁴² Simatović Appeal Brief, para. 189.

⁷⁴³ Simatović Appeal Brief, para. 196. See also T. 24 January 2023 p. 51.

⁷⁴⁴ See Prosecution Response to Simatović Appeal, paras. 60, 61, 89.

⁷⁴⁵ See Prosecution Response to Simatović Appeal, paras. 74-78, 80.

⁷⁴⁶ See Prosecution Response to Simatović Appeal, paras. 79, 81-86.

⁷⁴⁷ See Prosecution Response to Simatović Appeal, paras. 109-117. See also T. 24 January 2023 pp. 82, 83, 92.

men reported to the Serbian Radical Party from Bosanski Šamac and there is no “material proof of their written address” to the State Security Service.⁷⁴⁸

240. Turning first to Simatović’s claim regarding inconsistent terminology, the Appeals Chamber notes that, in earlier parts of the Trial Judgement discussing events and crimes committed in Bosanski Šamac,⁷⁴⁹ the Trial Chamber referred to the approximately 50 individuals (30 from Serbia and 20 locals from Bosanski Šamac) who were briefed by Simatović and transported to Batkuša via JNA helicopters on or around 11 April 1992 as, *inter alia*, “paramilitaries” or “paramilitaries that arrived in Batkuša”.⁷⁵⁰ On the other hand, in sections of the Trial Judgement addressing the contributions of Stanišić and Simatović through the “Unit” and to events in Bosanski Šamac,⁷⁵¹ the Trial Chamber referred to the same 50 individuals deployed to Bosanski Šamac as Unit members and locals from Bosanski Šamac (or “local Serb forces”).⁷⁵² Given that the Trial Chamber first addressed crimes in Bosanski Šamac and later examined the physical perpetrators (50 men trained and deployed) and their connection to Stanišić and Simatović, it was not unreasonable for the Trial Chamber to use the more general term “paramilitaries” in the earlier section of the Trial Judgement and more specific terms thereafter. Simatović fails to demonstrate error through the Trial Chamber’s use of differing terminology.

241. The Appeals Chamber further observes the Trial Chamber’s considerations that, at the end of March 1992: (i) a group of around 20 men from Bosanski Šamac were trained by Unit members but not formally incorporated into the Unit,⁷⁵³ and (ii) a group of former SAO SBWS police officers, including Slobodan Miljković (Lugar), Srećko Radovanović (Debeli), and Witness RFJ-035, received similar training by Unit members and became Unit members under the authority of Stanišić and Simatović prior to deployment.⁷⁵⁴ The Appeals Chamber observes that among the group of 50 individuals who were trained by Unit members and then deployed, the Trial Chamber consistently distinguished between the former SAO SBWS police officers, who became Unit members, and the

⁷⁴⁸ See Simatović Reply Brief, paras. 92, 93. In relation to the argument that former SAO SBWS police officers were only Unit members between mid-March and mid-April 1992, the Prosecution contends that it has consistently maintained that these men were Unit members after they were deployed to Bosanski Šamac and resubordinated to the JNA during the takeover. See T. 24 January 2023 pp. 82, 83.

⁷⁴⁹ See Trial Judgement, paras. 202-234.

⁷⁵⁰ See, e.g., Trial Judgement, paras. 209, 211, 215, 218, 224.

⁷⁵¹ See Trial Judgement, paras. 391-424.

⁷⁵² See, e.g., Trial Judgement, paras. 407, 410, 411, 413, 415-419, 424, 435, 436, 590, 597, 604, 605, 621.

⁷⁵³ See Trial Judgement, paras. 407, 416, 418.

⁷⁵⁴ See Trial Judgement, paras. 407, 416, 419.

Bosanski Šamac locals, who did not.⁷⁵⁵ The Appeals Chamber finds no inconsistency in the Trial Chamber's approach, and Simatović's submissions in this regard are dismissed.

242. The Appeals Chamber now turns to Simatović's argument that the Trial Chamber erred in finding that the Unit trained locals from Bosanski Šamac and former SAO SBWS police officers. Regarding the locals from Bosanski Šamac, the Trial Chamber found that, in March 1992, they were trained by the Unit at the Ležimir and Pajzoš camps.⁷⁵⁶ As discussed above, the Appeals Chamber found that the Trial Chamber erred in concluding that locals from Bosanski Šamac were trained in Ležimir.⁷⁵⁷ As to their training at the Pajzoš camp, contrary to Simatović's submission that the Trial Chamber relied on the uncorroborated evidence of Witness RFJ-035,⁷⁵⁸ the Trial Chamber considered evidence from both Witnesses Todorović and RFJ-035 that the 20 locals from Bosanski Šamac received training by members of the Unit at the Pajzoš camp in March 1992.⁷⁵⁹ Furthermore, Simatović misreads Witness Todorović's evidence⁷⁶⁰ as the witness recalled not only Aleksandar Vuković (Vuk) but also Dragan Đorđević (Crni) as instructors, and explicitly indicated that the instructors were "members of [a] special unit of the state security of the [Ministry of the Interior] of Serbia".⁷⁶¹ The Appeals Chamber finds that Simatović fails to demonstrate that it was unreasonable for the Trial Chamber to rely on their evidence to find that locals from Bosanski Šamac were trained by Unit members at the Pajzoš camp.

243. As to the training of former SAO SBWS police officers, the Trial Chamber considered that, in March 1992, the group that included Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 was trained at the Ležimir and Pajzoš camps by the Unit.⁷⁶² The Trial Chamber referred to Witness RFJ-035's evidence, which indicated, *inter alia*, that: (i) prior to March 1992 he was part of a police unit in SAO SBWS with Slobodan Miljković (Lugar) under the command of Srećko Radovanović (Debeli); (ii) at the Ležimir and Pajzoš camps, the instructors were members of a "special-purpose brigade of the Serbian [Ministry of the Interior]", also referred to as the "Red Berets"; and (iii) some of the instructors who trained him and the group of former police officers at the Ležimir camp were the same instructors who trained the Bosanski Šamac locals at the Pajzoš

⁷⁵⁵ See Trial Judgement, paras. 416-419, 424, 590, 604.

⁷⁵⁶ Trial Judgement, paras. 418, 590. See also Trial Judgement, paras. 407, 416.

⁷⁵⁷ See *supra* Section IV.B.2(b).

⁷⁵⁸ See Simatović Appeal Brief, paras. 126, 127.

⁷⁵⁹ Trial Judgement, para. 407, n. 1645. See also Trial Judgement, paras. 416, 418.

⁷⁶⁰ See Simatović Appeal Brief, para. 125.

⁷⁶¹ Witness Todorović, Exhibit P01916, pp. 23437, 23438; Exhibit P01922.

⁷⁶² See Trial Judgement, paras. 407, 416, 419.

camp.⁷⁶³ There is accordingly no merit to Simatović’s contention that no evidence exists to conclude that Unit members trained the group of former SAO SBWS police officers.⁷⁶⁴ Equally unconvincing is Simatović’s contention that the Trial Chamber erred in relying on the uncorroborated evidence of Witness RFJ-035 regarding the training of former SAO SBWS police officers. The Appeals Chamber has already dismissed Simatović’s general challenges to the credibility assessment of this witness.⁷⁶⁵ While the Trial Chamber relied primarily on Witness RFJ-035’s evidence in relation to the training of former SAO SBWS police officers,⁷⁶⁶ the Appeals Chamber, having reviewed the evidence of Witness RFJ-035 as set out above, considers that Simatović has not shown that it was unreasonable for the Trial Chamber to have credited this evidence. Notably, other evidence considered in the Trial Judgement provides circumstantial support for Witness RFJ-035’s evidence.⁷⁶⁷ The Appeals Chamber observes that the Trial Chamber did not refer to the evidence cited by Simatović that instructors at Pajzoš were from the Ministry of the Interior of the Republic of Serbian Krajina.⁷⁶⁸ This evidence, however, relates to events in Pajzoš in June 1992⁷⁶⁹ and is therefore of tangential relevance to the Trial Chamber’s findings on training conducted by the Unit at the camps in March and April 1992.⁷⁷⁰ Simatović fails to demonstrate error in the Trial Chamber’s finding that Unit members trained former SAO SBWS police officers.

244. As to the submissions challenging the incorporation of new members into the Unit, the Appeals Chamber notes the Trial Chamber’s finding that, in March 1992 and following their training at the camps by the Unit, Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 were incorporated into the Unit.⁷⁷¹ In coming to this conclusion, the Trial Chamber was “mindful of the evidence” that Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), Witness RFJ-035, and Dragan Đorđević (Crni) had close affiliations with the Serbian Radical Party and its

⁷⁶³ See Trial Judgement, paras. 407, 416, nn. 1646, 1670, referring to, *inter alia*, Witness RFJ-035, T. 17 April 2018 pp. 7-11, 46, 47, Exhibit P02026, paras. 27, 29, 30, Exhibit P02028, p. 7630, Exhibit P02045, p. 3. See also Witness RFJ-035, T. 17 April 2018 p. 12.

⁷⁶⁴ See Simatović Appeal Brief, paras. 128, 129. See also T. 24 January 2023 p. 45.

⁷⁶⁵ See *supra* paras. 176, 177.

⁷⁶⁶ See Trial Judgement, paras. 407, 416, 417.

⁷⁶⁷ See Exhibit P01938, pp. 256, 257 (discussing the deployment of 30 volunteers from Kragujevac); Witness Todorović, Exhibit P01916, pp. 23454, 23456, 23457 (discussing the participation of 30 volunteers, part of the unit associated with “Frenki”, in the takeover of Bosanski Šamac); Exhibit P02040, p. 1 (stating that, in 1992, Slobodan Miljković (Lugar) “went to Ležimir, Pajzoš with a unit for special physical training”, and was transferred by helicopter to Batkuša after having completed the training); Exhibit P00846, p. 3 (discussing that a group of Serbian Radical Party members went to a training centre near Ilok in the town of Pajzoš together with a group of “18 men from Šamac” and following the training “headed for Šamac”).

⁷⁶⁸ See Simatović Appeal Brief, paras. 130, 131, referring to Exhibit P03238, Exhibit P03240, Exhibit P03241. See also T. 24 January 2023 p. 45.

⁷⁶⁹ See Exhibit P03238; Exhibit P03240; Exhibit P03241.

⁷⁷⁰ See Trial Judgement, paras. 409, 419. See also Trial Judgement, paras. 407, 416, 417.

⁷⁷¹ Trial Judgement, para. 419. See also Trial Judgement, paras. 209, 407, 416, 604.

War Staff and considered much of the evidence Simatović cites to on appeal.⁷⁷² The Trial Chamber nevertheless concluded that this did not call into question their affiliation with the Unit at the relevant time.⁷⁷³ The Appeals Chamber observes that many of Simatović's appeal submissions regarding the affiliation of these men with the Serbian Radical Party repeat, almost verbatim, those presented at trial.⁷⁷⁴ Recalling that a party cannot merely repeat arguments that did not succeed at trial, unless it can demonstrate that rejecting them caused an error warranting appellate intervention,⁷⁷⁵ the Appeals Chamber, having reviewed the evidence expressly considered by the Trial Chamber in reaching this conclusion,⁷⁷⁶ is of the view that Simatović merely disagrees with the Trial Chamber's assessment of the evidence without demonstrating error.

245. With respect to the entry in Ratko Mladić's diary (Exhibit P01938) referenced by Simatović, the Trial Chamber considered it in relation to the affiliation and command of volunteers, including Srećko Radovanović (Debeli), Witness RFJ-035, and Dragan Đorđević (Crni).⁷⁷⁷ The Appeals Chamber observes that Ratko Mladić's diary contains handwritten notes of a meeting dated 7 December 1992 with, *inter alios*, Witness Todorović.⁷⁷⁸ Under the name of Todorović, the notes indicate that 18 men were sent to Ilok for training and, on 18 April 1992, were transferred in helicopters together with 30 volunteers from Kragujevac, including two members of the Serbian Ministry of the Interior, Dragan Đorđević (Crni) and Aleksandar Vuković (Vuk).⁷⁷⁹ The Appeals Chamber observes that the Trial Chamber considered evidence that the Pajzoš camp is in the surroundings of Ilok,⁷⁸⁰ that JNA helicopters transported men to Batkuša prior to the takeover of Bosanski Šamac in mid-April 1992,⁷⁸¹ and that those transported included Aleksandar Vuković (Vuk), Dragan Đorđević (Crni), Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035, who were former SAO SBWS police officers from Kragujevac.⁷⁸² The Appeals Chamber finds that the mere mention in Ratko Mladić's diary that 30 volunteers were from Kragujevac alongside two members of the Serbian Ministry of the Interior does not undermine the

⁷⁷² Trial Judgement, para. 419. *See also, e.g.*, Trial Judgement, paras. 211, 212, 413.

⁷⁷³ Trial Judgement, para. 419.

⁷⁷⁴ *Compare* Simatović Appeal Brief, paras. 183-185, 188, 202-204 *with* Simatović Final Trial Brief, paras. 687-689, 693. *See also* Trial Judgement, para. 413, n. 1661.

⁷⁷⁵ *Mladić* Appeal Judgement, paras. 381, 401, 409 and references cited therein.

⁷⁷⁶ *Compare* Trial Judgement, para. 419, n. 1678 *and* Simatović Appeal Brief, paras. 183, 184, 187, 188, 200-205 and references cited therein.

⁷⁷⁷ *See* Trial Judgement, para. 413.

⁷⁷⁸ Exhibit P01938, pp. 253, 254, 256.

⁷⁷⁹ Exhibit P01938, pp. 256, 257.

⁷⁸⁰ *See* Trial Judgement, paras. 214, 407, 416, nn. 962, 1644, 1670, *referring to, inter alia*, Witness Borislav Bogunović, Exhibit P02718, para. 24; Witness RFJ-035, Exhibit P02026, para. 30.

⁷⁸¹ *See* Trial Judgement, paras. 209, 218, 418, 419.

⁷⁸² *See* Trial Judgement, paras. 209, 407, 416, 417, 419, nn. 1646, 1673, *referring to, inter alia*, Witness RFJ-035, T. 17 April 2018 pp. 7, 8. *See also* Witness RFJ-035, Exhibit P02026, para. 28.

reasonableness of the Trial Chamber’s conclusion that the group of former SAO SBWS police officers was incorporated into the Unit following their training in March 1992.⁷⁸³

246. Simatović also points to evidence that Srećko Radovanović (Debeli)’s unit was called the “Grey Wolves” or “Šareni” and was linked to the Serbian Radical Party.⁷⁸⁴ The Appeals Chamber notes that the Trial Chamber did not refer to Exhibit P02032 as cited by Simatović on appeal⁷⁸⁵ but recalls that a trial chamber need not refer to every single piece of evidence on the record.⁷⁸⁶ Furthermore, the Trial Chamber reviewed and summarized evidence that “the 30 men from Serbia” were referred to by different names, including the “Šareni”, special forces, “Grey Wolves”, or “Red Berets”, and were recognizable, *inter alia*, by their clothing, including camouflage uniforms, red berets, and insignia depicting a grey wolf.⁷⁸⁷ As discussed above, it also considered that members of this group – including Dragan Đorđević (Crni), Srećko Radovanović (Debeli), Slobodan Miljković (Lugar), and Witness RFJ-035 – were affiliated with the Serbian Radical Party.⁷⁸⁸ The Trial Chamber further noted that, according to Witness Todorović, Dragan Đorđević (Crni) and Slobodan Miljković (Lugar) were members of the Serbian Radical Party and the special unit of the State Security Service.⁷⁸⁹ The Appeals Chamber finds no inherent contradiction in this evidence demonstrating that it was unreasonable for the Trial Chamber to find that the former SAO SBWS police officers were incorporated into the Unit following their training and prior to the deployment notwithstanding any other affiliations.⁷⁹⁰

247. With respect to Simatović’s submissions regarding the “processing” of Slobodan Miljković (Lugar) by the State Security Service in 1992, the Appeals Chamber observes that the Trial Chamber was aware of this argument⁷⁹¹ and considered the evidence referenced by Simatović on appeal.⁷⁹² Simatović’s submissions, repeating those at trial,⁷⁹³ fail to undermine the reasonableness of the Trial Chamber’s finding that, in March 1992, Slobodan Miljković (Lugar) was trained and incorporated into the Unit.⁷⁹⁴ The Appeals Chamber concurs with similar conclusions reached by the Trial

⁷⁸³ See Trial Judgement, para. 419. See also Trial Judgement, para. 416.

⁷⁸⁴ See Simatović Appeal Brief, paras. 193-195, referring to Witness Todorović, Exhibit P01916, Exhibit P02032. See also T. 24 January 2023 pp. 50, 51.

⁷⁸⁵ See Simatović Appeal Brief, para. 193, n. 202.

⁷⁸⁶ *Mladić* Appeal Judgement, paras. 172, 199 and references cited therein.

⁷⁸⁷ Trial Judgement, para. 210.

⁷⁸⁸ See Trial Judgement, paras. 211, 212, 413.

⁷⁸⁹ Trial Judgement, para. 211, n. 952, referring to Witness Todorović, Exhibit P01916.

⁷⁹⁰ See Trial Judgement, para. 419.

⁷⁹¹ See Trial Judgement, para. 205, n. 933, referring to, *inter alia*, Simatović Final Trial Brief, para. 693.

⁷⁹² See Trial Judgement, paras. 209, 419, nn. 944, 1678, referring to, *inter alia*, Exhibit P02043, Exhibit 1D00862, Exhibit P02040.

⁷⁹³ Compare Simatović Appeal Brief, paras. 188, 202 with Simatović Final Trial Brief, para. 693.

⁷⁹⁴ Trial Judgement, para. 419. See also Trial Judgement, para. 416.

Chamber that there is no contradiction in the State Security Service simultaneously using and monitoring an asset.⁷⁹⁵ The Appeals Chamber dismisses Simatović's contentions in this respect.

248. The Appeals Chamber next turns to the evidence that Simatović relies on with respect to Srećko Radovanović (Debeli) to suggest that the Trial Chamber erred in finding that he was a member of the Unit. Simatović relies on evidence of Srećko Radovanović (Debeli) being Chief or Commander of the Posavina Brigade after arriving in Bosanski Šamac, the certificate issued to Slobodan Miljković (Lugar) on 21 August 1992 regarding material owned by the State Security Service, and the article in the Belgrade daily dated November 1992. The Appeals Chamber observes that the Trial Chamber did not discuss this evidence in the Trial Judgement. Notwithstanding, the foregoing exhibits referenced by Simatović were either issued or relate to events in December 1991,⁷⁹⁶ August 1992,⁷⁹⁷ November 1992,⁷⁹⁸ or in Bosanski Šamac following the deployment,⁷⁹⁹ respectively, and are, thus, outside the timeframe of the training and deployment in March to early April 1992.⁸⁰⁰ Simatović accordingly fails to demonstrate how they undermine the reasonableness of the Trial Chamber's findings given their tangential relevance and in view of more direct evidence as to Srećko Radovanović (Debeli)'s participation in the trainings and deployment before the takeover of Bosanski Šamac.⁸⁰¹ Finally, given the evidence considered by the Trial Chamber and its findings – that former SAO SBWS police officers were trained by Unit members, were incorporated into the Unit, and were deployed to Bosanski Šamac, where they were resubordinated to the JNA and committed crimes⁸⁰² – the Appeals Chamber finds Simatović's submissions that these men were Unit members only during the training to be unsubstantiated and that they do not undermine the reasonableness of the Trial Chamber's conclusions supporting his aiding and abetting liability.

249. For the foregoing reasons, the Appeals Chamber dismisses sub-grounds 2 in part, 4 in part, 5 in part, 6 in part, 9, 10 in part, and 14 in part of Ground 2 of Simatović's appeal.

⁷⁹⁵ See Trial Judgement, para. 400.

⁷⁹⁶ See Exhibit P02047.

⁷⁹⁷ See Exhibit P01931.

⁷⁹⁸ See Exhibit P02761, p. 1.

⁷⁹⁹ See Exhibit 2D00164, p. 2.

⁸⁰⁰ See Trial Judgement, paras. 407, 409, 416-419.

⁸⁰¹ See, e.g., Witness RFJ-035, T. 17 April 2018 pp. 7-11, 15, 16, Exhibit P02026, paras. 21, 29-34, Exhibit P02028, pp. 7617, 7619, 7620-7624, 7630, 7631. See also Trial Judgement, paras. 416, 417, 419.

⁸⁰² See Trial Judgement, paras. 209, 218, 221-229, 416, 417, 419.

5. Alleged Errors Regarding the Role of the JNA and Other Forces in Training and Deployment to Bosanski Šamac (Ground 2 sub-grounds 12 in part and 13)

250. The Trial Chamber was satisfied that members of the Unit and others trained by them at the end of March 1992 were deployed by Stanišić and Simatović and participated in crimes committed in Bosanski Šamac.⁸⁰³ It considered that the training of the Bosanski Šamac locals “occurred at various levels of the JNA area command and officials in Belgrade and included transport provided by the JNA”.⁸⁰⁴ The Trial Chamber found that this training and deployment provided practical assistance that had a substantial effect on the commission of crimes in Bosanski Šamac.⁸⁰⁵ According to the Trial Chamber, however, it was not proven beyond reasonable doubt that Stanišić and Simatović had authority over or instructed these Serb forces, who were resubordinated to the JNA 17th Tactical Group during the operation in Bosanski Šamac.⁸⁰⁶

251. Simatović submits that the Trial Chamber erred in finding, in paragraphs 424 and 436 of the Trial Judgement, that he had authority over, or any connection to, the training of the group of approximately 50 men and their deployment to Bosanski Šamac, and that these activities had a substantial effect on the crimes committed in the municipality.⁸⁰⁷ Instead, he argues that the evidence, including from Colonels Novica Simić and Mile Beronja indicates that senior JNA aviation officers (Colonel Jeremić and General Bajić) and staff of the Serbian Ministry of the Interior (Milan Prodanić) were responsible for the training and deployment of the group of men as well as the takeover operations in Bosanski Šamac.⁸⁰⁸ Simatović contends that Ratko Mladić’s diary (Exhibit P01938) supports this position.⁸⁰⁹ Moreover, he argues that Witness Todorović’s evidence shows Simatović was not connected to the camps, as Witness Todorović did not testify about Simatović’s role in the training or deployment of the group.⁸¹⁰ Finally, Simatović argues that, given evidence that the number of Serb forces present at the time of the armed conflict in Bosanski Šamac was nearly 6,700 men, the Trial Chamber erred in concluding that the training and deployment of 30 men from Serbia and 20 Bosanski Šamac locals had a substantial effect on the commission of the crimes.⁸¹¹

⁸⁰³ See Trial Judgement, paras. 436, 590.

⁸⁰⁴ Trial Judgement, para. 418. See also Trial Judgement, paras. 209, 407, 416, 419.

⁸⁰⁵ See Trial Judgement, paras. 424, 605.

⁸⁰⁶ See Trial Judgement, paras. 424, 436, 590, 605.

⁸⁰⁷ See Simatović Notice of Appeal, paras. 35, 36; Simatović Appeal Brief, paras. 236-258.

⁸⁰⁸ See Simatović Appeal Brief, paras. 239, 240, 251-256, referring to, *inter alia*, Exhibit 2D00373, pp. 18, 19, 34, 35; Exhibit P01918, pp. 2, 3; Exhibit P01919, p. 3.

⁸⁰⁹ Simatović Appeal Brief, paras. 239, 240, referring to, *inter alia*, Exhibit P01938, pp. 247-249. See also T. 24 January 2023 pp. 49, 111, 112.

⁸¹⁰ Simatović Appeal Brief, para. 241.

⁸¹¹ Simatović Appeal Brief, paras. 244-247.

252. The Prosecution responds that Simatović repeats trial arguments without demonstrating error.⁸¹² It further contends that he misrepresents evidence relating to the involvement of JNA Colonel Jeremić and General Bajić as well as evidence provided by Simo Zarić.⁸¹³ The Prosecution submits that, even if General Bajić was involved in bringing the group to Bosanski Šamac in April 1992, this would not undermine the reasonableness of the Trial Chamber’s finding that Simatović deployed the group.⁸¹⁴ The Prosecution also contends that Simatović misrepresents Witness Todorović’s testimony regarding the training of the Bosanski Šamac locals and argues that the fact that he did not testify about Simatović’s role in the deployment of the group does not undermine the Trial Chamber’s reliance on his testimony or the reasonableness of its findings.⁸¹⁵

253. Simatović replies that the Prosecution fails to demonstrate that he has misrepresented the evidence.⁸¹⁶ Simatović contends that his conclusion – that the group of men was deployed by Colonel Jeremić, General Bajić, and representatives from the Serbian Ministry of the Interior – is drawn from the same circumstantial evidence considered by the Trial Chamber and is reasonable.⁸¹⁷

254. With respect to the training of Bosanski Šamac locals, the Trial Chamber concluded that, despite the participation of “various levels of JNA area command and officials in Belgrade” in the organization of the training, Stanišić and Simatović, given their authority over the Unit and the Ležimir and Pajzoš camps, were aware of and consented to the training of the group of men later deployed to Bosanski Šamac.⁸¹⁸ Simatović has not shown that any evidence he refers to, including Witness Todorović’s, suggesting that JNA General Bajić, Colonel Jeremić, or Milan Prođanić participated in the operations of the camps, and, in particular, sending persons to be trained undermines the reasonableness of this finding.⁸¹⁹ Specifically, Simatović’s reliance on Ratko Mladić’s diary entry (Exhibit P01938) suggesting that General Bajić and Colonel Jeremić sent persons for training was considered by the Trial Chamber, and it does not undermine the reasonableness of this conclusion.⁸²⁰

⁸¹² Prosecution Response to Simatović Appeal, para. 132.

⁸¹³ Prosecution Response to Simatović Appeal, paras. 142-144. *See also* T. 24 January 2023 p. 88.

⁸¹⁴ *See* Prosecution Response to Simatović Appeal, paras. 142-145.

⁸¹⁵ Prosecution Response to Simatović Appeal, paras. 137, 138.

⁸¹⁶ *See* Simatović Reply Brief, paras. 95-97.

⁸¹⁷ Simatović Reply Brief, para. 98.

⁸¹⁸ Trial Judgement, para. 418. *See also* Trial Judgement, paras. 209, 407, 416, 419. The Appeals Chamber has found that the Trial Chamber erred in concluding that Bosanski Šamac locals received training at the Ležimir camp but that this error has not occasioned a miscarriage of justice. *See supra* Section IV.B.2(b).

⁸¹⁹ *See* Exhibit P01938, pp. 256, 257; Witness Todorović, Exhibit P01916, pp. 23431, 23432, 23434, 23436; Exhibit 2D00373, pp. 17942, 17943, 18167, 18168. In this respect, while Simatović argues that the evidence reflects that Milan Prođanić worked for the Serbian Ministry of the Interior it further reflects that he worked for the State Security Service. *See* Exhibit P01916, pp. 23431, 23432.

⁸²⁰ *See* Trial Judgement, para. 418, n. 1676, *referring to* Exhibit P01938, pp. 256, 257.

255. With regard to the deployment of Unit members and local Serb forces to Bosanski Šamac, the Appeals Chamber observes that the Trial Chamber considered Simatović's assertions that the JNA was responsible for the deployment of the group, and it was mindful of the "large role" of the JNA in the group's transport to Bosanski Šamac and its participation in the subsequent attack.⁸²¹ However, it also relied on evidence that members of the Unit could not participate in combat operations without the approval of Stanišić and Simatović.⁸²² The Trial Chamber also found that: (i) a group of former SAO SBWS police officers, including Witness RFJ-035, were incorporated into the Unit under the authority of Stanišić and Simatović; and (ii) Simatović personally briefed the group prior to their departure to Bosanski Šamac.⁸²³ On this basis, and considering that this was a "significant contingent", the Trial Chamber found that Stanišić and Simatović authorized the deployment.⁸²⁴ The Appeals Chamber considers that Simatović's reliance on other evidence reflecting the JNA's involvement in providing transport also does not undermine the reasonableness of the Trial Chamber's conclusion that Stanišić and Simatović authorized the deployment.⁸²⁵ Specifically, he fails to substantiate that statements given by Novica Simić and Mile Beronja, which recount events in the fall of 1992, are relevant to the Trial Chamber's conclusions related to this deployment.⁸²⁶ The remaining evidence referred to by Simatović, particularly related to the JNA's role in transportation is of tangential relevance, duplicative, or cumulative of evidence the Trial Chamber considered and relied upon in finding that the JNA played a role in, *inter alia*, the deployment of the group.⁸²⁷

256. The Appeals Chamber has also considered the evidence of Witness Todorović that Simatović highlights as demonstrating that the witness did not testify about Simatović's role in the training or deployment.⁸²⁸ For the reasons discussed above, the Appeals Chamber considers that it does not undermine the reasonableness of the Trial Chamber's reliance on Witness RFJ-035's evidence directly implicating Simatović in the deployment.⁸²⁹ The Appeals Chamber, likewise, does not consider that Witness Todorović's evidence undermines the reasonableness of the Trial Chamber's conclusions as to Simatović's authority over the camps.

257. Finally, with respect to Simatović's contention that the deployment of 30 Serbs and 20 Bosanski Šamac locals could not have had a substantial impact on the crimes committed in Bosanski

⁸²¹ Trial Judgement, para. 419. *See also* Trial Judgement, para. 209.

⁸²² Trial Judgement, para. 419.

⁸²³ Trial Judgement, para. 419. *See also* Trial Judgement, paras. 409, 416, 417.

⁸²⁴ Trial Judgement, para. 419.

⁸²⁵ *See* Simatović Appeal Brief, paras. 251-254, *referring to* Exhibit P01918, pp. 1-3; Exhibit P01919, pp. 1-3; 2D00373, pp. 17926, 17927, 17841, 17942.

⁸²⁶ *See* Exhibit P01918, pp. 1-3; Exhibit P01919, pp. 1-3.

⁸²⁷ *See* Trial Judgement, para. 209 and references cited therein.

⁸²⁸ *See* Simatović Appeal Brief, para. 241, n. 231, *referring to* Witness Todorović, Exhibit P01916, p. 23434.

⁸²⁹ *See supra* paras. 216, 217.

Šamac in view of the fact that around 6,700 Serb forces were there during the relevant period, the Appeals Chamber observes that the Trial Chamber credited evidence that those deployed by Stanišić and Simatović had a significant role in the takeover of Bosanski Šamac and subsequently committed crimes in the municipality.⁸³⁰ In this context, the Appeals Chamber finds that Simatović does not demonstrate that the Trial Chamber acted unreasonably in finding that the training in conjunction with the deployment had a substantial effect on the crimes for which he was convicted.

258. For the foregoing reasons, the Appeals Chamber finds that Simatović has failed to demonstrate that the Trial Chamber erred by finding him responsible for the training of approximately 50 individuals and their deployment to Bosanski Šamac, and that these activities had a substantial effect on the crimes committed there. The Appeals Chamber dismisses sub-grounds 12 and 13 of Ground 2 of Simatović’s appeal.

6. Cumulative Arguments (Ground 2 sub-grounds 14 in part and 15)

259. Simatović submits that the Trial Chamber erred in concluding, in paragraphs 604 to 608 of the Trial Judgement, that he was responsible for aiding and abetting the crimes committed in connection with the takeover of Bosanski Šamac, and thus guilty of Counts 1 to 5 of the Indictment.⁸³¹ In particular, Simatović contends that the Trial Chamber erred in finding that: (i) specific direction is not an element of aiding and abetting liability, and that the principle of *lex mitior* is “inadmissible”; (ii) Dragan Đorđević (Crni), Srećko Radovanović (Debeli), and Slobodan Miljković (Lugar) were members of the Unit; (iii) Simatović provided practical assistance that had a substantial effect on the crimes committed in Bosanski Šamac; and (iv) he was aware that his actions aided the commission of the crimes.⁸³² Simatović argues that the evidence he relies upon, in his final trial brief and appeal, supports the view that he was not responsible for crimes committed in Bosanski Šamac.⁸³³

260. The Prosecution responds that Simatović has failed to demonstrate that no reasonable trial chamber could have found him responsible for the crimes committed in Bosanski Šamac,⁸³⁴ that the

⁸³⁰ See, e.g., Trial Judgement, paras. 209-211, 215, 216, 218, 219, 222-225, 229-234, 407, 416-418, 424, 436, 590, 604. See also Trial Judgement, n. 972 (“The Trial Chamber also finds, contrary to Simatović’s submission [...] that the record does not reflect the ‘insignificance’ of the role played by the paramilitaries that arrived on 11 April 1992 during the takeover of Bosanski Šamac [...].”).

⁸³¹ See Simatović Notice of Appeal, paras. 37, 38; Simatović Appeal Brief, paras. 259-268.

⁸³² See Simatović Appeal Brief, paras. 259-267.

⁸³³ Simatović Appeal Brief, para. 268.

⁸³⁴ Prosecution Response to Simatović Appeal, paras. 151, 152.

Trial Chamber applied the correct law regarding aiding and abetting liability,⁸³⁵ and that his remaining submissions are repetitive of arguments developed elsewhere in his appeal brief.⁸³⁶

261. At the outset, the Appeals Chamber notes that legal arguments pertaining to specific direction and *lex mitior* have been dismissed in connection with Ground 4 of Simatović's appeal.⁸³⁷ The Appeals Chamber observes that the rest of his submissions in sub-grounds 14 and 15 are repetitive of or summarize arguments raised in the remainder of Ground 2 of his appeal. Specifically, the Appeals Chamber has addressed and dismissed Simatović's submissions regarding the membership of the Unit, his involvement in the training at the Pajzoš and Ležimir camps as well as the subsequent deployment, and his resultant responsibility for aiding and abetting the crimes committed in connection with the takeover of Bosanski Šamac.⁸³⁸ The Appeals Chamber further recalls that Simatović has failed to establish any error warranting its intervention in relation to sub-grounds 1 to 13 of Ground 2 of his appeal, and he has failed to present any new or further arguments in sub-grounds 14 and 15.⁸³⁹ Consequently, the Appeals Chamber dismisses sub-grounds 14 in part and 15 of Ground 2 of Simatović's appeal.

7. Conclusion

262. For the foregoing reasons, the Appeals Chamber has found that the Trial Chamber erred in its findings regarding the training of locals from Bosanski Šamac at the Ležimir camp but concludes that this error has not occasioned a miscarriage of justice and it has no impact on Simatović's convictions or sentence. Consequently, the Appeals Chamber dismisses sub-grounds 1 through 13, 14 in part, and 15 of Ground 2 of Simatović's appeal as well as sub-grounds 11 and 12 of Ground 1 of his appeal.

C. Alleged Errors Regarding Aiding and Abetting Law and Evidentiary Decisions **(Ground 2 sub-ground 14 in part and Ground 4)**

263. Simatović challenges the Trial Chamber's refusal to incorporate "specific direction" in its application of the law on aiding and abetting, its rejection of the applicability of *lex mitior* to his case and failure to provide a reasoned opinion in this regard, and its determinations in evidentiary decisions pertinent to seven witnesses.⁸⁴⁰ The Appeals Chamber will address these submissions in turn.

⁸³⁵ See Prosecution Response to Simatović Appeal, paras. 146-149.

⁸³⁶ Prosecution Response to Simatović Appeal, para. 150.

⁸³⁷ See *infra* Sections IV.C.1, IV.C.2.

⁸³⁸ See *generally supra* Sections IV.B.2-IV.B.5.

⁸³⁹ Cf. *Prlić et al.* Appeal Judgement, para. 2877; *Nyiramasuhuko et al.* Appeal Judgement, n. 2108.

⁸⁴⁰ See Simatović Notice of Appeal, paras. 48-50; Simatović Appeal Brief, paras. 259-262, 297-342.

1. Alleged Error of Law in Failing to Apply Specific Direction (Ground 2 sub-ground 14 in part and Ground 4 sub-ground 1)

264. The Trial Chamber stated that the *actus reus* of aiding and abetting consists of practical assistance, encouragement, or moral support, which has a substantial effect on the perpetration of the crime.⁸⁴¹ It further stated that specific direction is not an element of aiding and abetting liability under customary international law.⁸⁴²

265. Simatović submits that the Trial Chamber erred in law in concluding that specific direction is not an element of aiding and abetting liability.⁸⁴³ He argues that “clear sources of law” indicate that specific direction is an element of aiding and abetting pursuant to customary international law, and he seeks to support this with ICTY and ICTR jurisprudence,⁸⁴⁴ particularly the *Perišić* Appeal Judgement.⁸⁴⁵ According to Simatović, specific direction is also necessary for fair determinations of culpability.⁸⁴⁶

266. Simatović further argues that he “does not accept that there is a hierarchy between [judgements] of different compositions of benches of the Appeals Chambers of ICTY, ICTR or [the Mechanism]”.⁸⁴⁷ In his view, the Appeals Chamber is the highest level and no deviation from its findings is possible unless, *inter alia*, the holding is contrary to customary international law.⁸⁴⁸ In this regard, he contends that the ICTY Appeals Chamber in the *Šainović et al.* case did not properly explain why it rejected the *Perišić* Appeal Judgement along with 15 years of jurisprudence.⁸⁴⁹ He considers, therefore, that the position of the ICTY Appeals Chamber in the *Šainović et al.* case is not binding on the Appeals Chamber in this case.⁸⁵⁰ Finally, pointing to the Rome Statute of the International Criminal Court (“Rome Statute”), Simatović argues that the acceptance of Article 25(3)(c) of the Rome Statute implies that the international community has clearly reached a consensus that specific direction is part of the *mens rea* for aiding and abetting.⁸⁵¹

⁸⁴¹ Trial Judgement, para. 601.

⁸⁴² Trial Judgement, para. 601.

⁸⁴³ See Simatović Notice of Appeal, para. 48; Simatović Appeal Brief, paras. 259-262, 297-316. See also Simatović Appeal Brief, para. 325.

⁸⁴⁴ See Simatović Appeal Brief, paras. 299-311, 315, 316.

⁸⁴⁵ Simatović Appeal Brief, paras. 306, 314.

⁸⁴⁶ Simatović Appeal Brief, para. 315.

⁸⁴⁷ Simatović Appeal Brief, paras. 299, 312.

⁸⁴⁸ Simatović Appeal Brief, paras. 313, 314.

⁸⁴⁹ Simatović Appeal Brief, para. 314.

⁸⁵⁰ Simatović Appeal Brief, para. 316.

⁸⁵¹ Simatović Appeal Brief, para. 262.

267. The Prosecution responds that Simatović fails to show the Trial Chamber erred as the law is settled that specific direction is not an element of aiding and abetting, and it contends that he fails to show cogent reasons to depart from it.⁸⁵² The Prosecution argues that the *Šainović et al.* Appeal Judgement did not overturn but confirmed the jurisprudence issued prior to the *Perišić* Appeal Judgement,⁸⁵³ and that this Appeals Chamber, as successor of the ICTY and ICTR Appeals Chambers, is bound to follow settled ICTY and ICTR law, based on the interests of legal certainty and predictability.⁸⁵⁴ Regarding the application of the Rome Statute, it submits that the *Šainović et al.* Appeal Judgement considered a similar argument and found that the Rome Statute, as a multilateral treaty, was not intended to codify customary law.⁸⁵⁵

268. The Appeals Chamber observes that the ICTY Appeals Chamber in the *Šainović et al.* case considered that neither the jurisprudence of the ICTY and the ICTR nor customary international law included specific direction as an element of aiding and abetting liability.⁸⁵⁶ It rejected the approach adopted in the *Perišić* Appeal Judgement, which required specific direction as an element of the *actus reus* of aiding and abetting,⁸⁵⁷ and held that this approach was “in direct and material conflict with the prevailing jurisprudence on the *actus reus* of aiding and abetting liability and with customary international law”.⁸⁵⁸ Given the confirmation of this approach in the *Popović et al.* Appeal Judgement,⁸⁵⁹ and subsequently by the *Stanišić and Simatović* ICTY Appeal Judgement,⁸⁶⁰ the jurisprudence as set out in the *Šainović et al.* Appeal Judgement is settled law. Significantly, the Appeals Chamber in the *Šešelj* Appeal Judgement recognized this approach in proceedings before the Mechanism.⁸⁶¹ The Appeals Chamber further considers that, as the Trial Chamber was explicitly ordered by the ICTY Appeals Chamber to “apply the correct law on aiding and abetting liability [...], which does not require that the acts of the aider and abettor be specifically directed to assist the commission of a crime”,⁸⁶² the Trial Chamber was not at liberty to deviate from this order.⁸⁶³

⁸⁵² See Prosecution Response to Simatović Appeal, paras. 177, 181-183, 186-188.

⁸⁵³ Prosecution Response to Simatović Appeal, para. 186.

⁸⁵⁴ Prosecution Response to Simatović Appeal, para. 188.

⁸⁵⁵ Prosecution Response to Simatović Appeal, para. 147. See also Prosecution Response to Simatović Appeal, para. 148.

⁸⁵⁶ See *Šainović et al.* Appeal Judgement, paras. 1623-1625, 1649, 1650.

⁸⁵⁷ *Perišić* Appeal Judgement, para. 36.

⁸⁵⁸ *Šainović et al.* Appeal Judgement, para. 1650.

⁸⁵⁹ *Popović et al.* Appeal Judgement, para. 1758.

⁸⁶⁰ *Stanišić and Simatović* ICTY Appeal Judgement, paras. 104, 105.

⁸⁶¹ See *Šešelj* Appeal Judgement, n. 594 (wherein the Appeals Chamber recalled that the *actus reus* of aiding and abetting consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime, and specifically cites, *inter alia*, the *Popović et al.* Appeal Judgement and the *Šainović et al.* Appeal Judgement).

⁸⁶² *Stanišić and Simatović* ICTY Appeal Judgement, paras. 128, 131.

⁸⁶³ The Appeals Chamber recalls that a proper construction of the Statute requires that the *ratio decidendi* of its decisions is binding on trial chambers. See *Prlić et al.* Appeal Judgement, n. 1981; *Aleksovski* Appeal Judgement, para. 113.

269. While not formally bound by the jurisprudence of the ICTR or the ICTY, the Appeals Chamber reiterates that it is guided by the principle that, in the interests of legal certainty and predictability, it should follow previous decisions of the ICTR and ICTY Appeals Chambers and depart from them only for cogent reasons in the interest of justice, that is, where a previous decision has been decided on the basis of a wrong legal principle or has been “wrongly decided, usually because the judge or judges were ill-informed about the applicable law”.⁸⁶⁴ It is for the party submitting that the Appeals Chamber should depart from such jurisprudence to demonstrate that there are cogent reasons in the interest of justice that justify such departure.⁸⁶⁵ Simatović’s blanket submission that specific direction is part of customary international law, and his argument that it is “necessary from the standpoint of a fair and lawful determination of the guilt of the accused”⁸⁶⁶ do not constitute cogent reasons to depart from settled case law.

270. With regard to Simatović’s reliance on the Rome Statute, the Appeals Chamber observes that the ICTY Appeals Chamber in the *Šainović et al.* Appeal Judgement considered a similar argument and concluded that the adoption of an international treaty does not necessarily prove that states consider the content of that treaty to express customary international law.⁸⁶⁷ The Appeals Chamber further recalls that the Rome Statute, as a multilateral treaty, is not binding on it.⁸⁶⁸ Consequently, Simatović fails to justify why the Appeals Chamber should rely on the Rome Statute rather than its own jurisprudence and that of the ICTY and ICTR.

271. In light of the foregoing, the Appeals Chamber considers that Simatović does not demonstrate that the Trial Chamber erred in concluding that specific direction is not an element of aiding and abetting liability. The Appeals Chamber dismisses sub-ground 14 of Ground 2 in part as well as sub-ground 1 of Ground 4 of Simatović’s appeal.

2. Alleged Error of Law in Failing to Apply the Principle of *Lex Mitior* (Ground 2 sub-ground 14 in part and Ground 4 sub-ground 2)

272. In setting out the jurisprudence on aiding and abetting, the Trial Chamber rejected Simatović’s argument that the principle of *lex mitior* – *i.e.* the principle that if the law relevant to the

⁸⁶⁴ See *supra* para. 12.

⁸⁶⁵ See *supra* para. 12.

⁸⁶⁶ Simatović Appeal Brief, para. 315. See also Simatović Appeal Brief, paras. 259-262, 297-316.

⁸⁶⁷ *Šainović et al.* Appeal Judgement, para. 1648.

⁸⁶⁸ See *Popović et al.* Appeal Judgement, para. 436.

offence of the accused has been amended, the less severe law should be applied – was applicable to his case.⁸⁶⁹

273. Simatović submits that the Trial Chamber erred in finding that the principle of *lex mitior* is not applicable in his case and failed to provide a reasoned opinion supporting this conclusion.⁸⁷⁰ He argues that, based on the law that was valid until 23 January 2014 when the *Šainović et al.* Appeal Judgement was rendered, he would not have been held responsible for aiding and abetting because specific direction was not proven, and that, in line with the principle of *lex mitior*, he should be judged in accordance with this earlier, more favourable, law.⁸⁷¹ Simatović underlines that the law on specific direction changed during his proceedings, which were lengthy due to no fault of his own, and if they would have been completed by 23 January 2014, he would have been acquitted.⁸⁷² Simatović further argues that Article 19(1) of the Statute guarantees the equality of persons before the Mechanism,⁸⁷³ and he has the right to the application of the same law as Momčilo Perišić, whose aiding and abetting convictions were overturned for lack of specific direction.⁸⁷⁴

274. The Prosecution responds that Simatović repeats the arguments that he advanced at trial and that the Trial Chamber correctly found that *lex mitior* does not apply in the case of specific direction.⁸⁷⁵ It points out that *lex mitior* only applies if the law changes between the commission of the crime and the conviction or the sentencing, while specific direction was never part of the elements of aiding and abetting liability under customary international law.⁸⁷⁶ Consequently, it argues that Simatović's further argument that he was treated unequally, since specific direction was applied in the *Perišić* case, should also be dismissed, as the wrong law was applied in the *Perišić* Appeal Judgement.⁸⁷⁷

275. Simatović replies that the non-application of specific direction would mean he would be treated unequally not only in relation to Momčilo Perišić but in relation to all persons who were tried until 2014 and convicted of aiding and abetting.⁸⁷⁸

⁸⁶⁹ Trial Judgement, n. 2352, *referring to, inter alia*, Simatović Final Trial Brief, paras. 72-81.

⁸⁷⁰ See Simatović Notice of Appeal, para. 49; Simatović Appeal Brief, paras. 259, 261, 317-325; Simatović Reply Brief, paras. 114, 115.

⁸⁷¹ See Simatović Appeal Brief, paras. 320-323. See also Simatović Reply Brief, paras. 114, 115.

⁸⁷² Simatović Appeal Brief, para. 324.

⁸⁷³ Simatović Appeal Brief, para. 323. See also Simatović Appeal Brief, para. 261, *referring to Aleksovski* Appeal Judgement, para. 105; Simatović Reply Brief, para. 114.

⁸⁷⁴ Simatović Appeal Brief, para. 323.

⁸⁷⁵ Prosecution Response to Simatović Appeal, para. 189.

⁸⁷⁶ Prosecution Response to Simatović Appeal, para. 190.

⁸⁷⁷ Prosecution Response to Simatović Appeal, para. 191. See also Prosecution Response to Simatović Appeal, para. 149.

⁸⁷⁸ Simatović Reply Brief, para. 114.

276. As noted above, the Appeals Chamber recalls that the principle of *lex mitior* prescribes that if the law relevant to the offence of the accused has been amended, the less severe law should be applied; however, the relevant law must be binding upon the court.⁸⁷⁹

277. Turning first to Simatović's submission that the Trial Chamber failed to provide a reasoned opinion as to why the principle of *lex mitior* is not applicable in this case, the Appeals Chamber observes that the Trial Chamber's analysis and conclusion on the matter is provided at footnote 2352 of the Trial Judgement. The Trial Chamber referenced relevant portions of Simatović's trial submissions and the *Stanišić and Simatović* ICTY Appeal Judgement, wherein the ICTY Appeals Chamber had dismissed the same argument raised by Simatović.⁸⁸⁰ Recalling that a trial chamber is not required to articulate every step of its reasoning,⁸⁸¹ and that the purposes of a reasoned opinion are, *inter alia*, to enable a party to meaningfully exercise its right of appeal and the Appeals Chamber to understand and review the findings,⁸⁸² the Appeals Chamber considers that the Trial Chamber's statement and references satisfied its burden to provide a reasoned opinion. Simatović's submission is accordingly dismissed.

278. As to Simatović's substantive arguments on *lex mitior*, the Appeals Chamber notes that they are largely repetitive of his trial submissions.⁸⁸³ These arguments were dismissed by the Trial Chamber,⁸⁸⁴ as well as by the ICTY Appeals Chamber in the *Stanišić and Simatović* ICTY Appeal Judgement.⁸⁸⁵ When instructing the new trial chamber on how to apply the correct law concerning aiding and abetting liability, the ICTY Appeals Chamber stated that:

the principle of *lex mitior*, as alleged by Simatović, is not applicable to the present case. Whereas this principle applies to situations where there is a change in the concerned applicable law, as noted above, it has been established that specific direction has never been part of the elements of aiding and abetting liability under customary international law, which the [ICTY] has to apply.⁸⁸⁶

279. The Appeals Chamber recalls that a party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the trial chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.⁸⁸⁷ Simatović does not

⁸⁷⁹ *Mladić* Appeal Judgement, para. 562 and references cited therein.

⁸⁸⁰ See Trial Judgement, n. 2352, referring to, *inter alia*, *Stanišić and Simatović* ICTY Appeal Judgement, para. 128.

⁸⁸¹ *Mladić* Appeal Judgement, paras. 339, 423 and references cited therein.

⁸⁸² Article 21(2) of the Statute; Rule 122(C) of the Rules; *Mladić* Appeal Judgement, para. 437 and references cited therein.

⁸⁸³ Compare Simatović Final Trial Brief, paras. 72-77, 79, 81 with Simatović Appeal Brief, paras. 261, 317-325.

⁸⁸⁴ See Trial Judgement, n. 2352.

⁸⁸⁵ *Stanišić and Simatović* ICTY Appeal Judgement, para. 128.

⁸⁸⁶ *Stanišić and Simatović* ICTY Appeal Judgement, para. 128 (internal references omitted).

⁸⁸⁷ *Mladić* Appeal Judgement, paras. 20, 381, 401, 409.

introduce any new arguments demonstrating that the Trial Chamber – when following the instructions of the ICTY Appeals Chamber – erred in finding that *lex mitior* does not apply to his case.

280. With regard to Simatović’s further argument that he was treated unequally to other accused in violation of Article 19(1) of the Statute, the Appeals Chamber recalls that this provision encompasses the requirement that there be no discrimination in the enforcement or application of the law.⁸⁸⁸ However, as noted above, the ICTY Appeals Chamber has rejected the legal standard regarding aiding and abetting liability that was applied in the *Perišić* Appeal Judgement.⁸⁸⁹ Furthermore, the Appeals Chamber recalls that a proper construction of the Statute requires that the *ratio decidendi* of its decisions be binding on trial chambers.⁸⁹⁰ Accordingly, the Trial Chamber was not at liberty to include specific direction as an element of aiding and abetting in view of the principle of *lex mitior* as this would have been in violation of the ICTY Appeals Chamber’s rejection of this proposition in his case.⁸⁹¹

281. In light of the foregoing, the Appeals Chamber finds that Simatović does not demonstrate that the Trial Chamber erred in declining to apply the principle of *lex mitior* or that it failed to provide a reasoned opinion. The Appeals Chamber dismisses sub-ground 14 of Ground 2 in part as well as sub-ground 2 of Ground 4 of Simatović’s appeal.

3. Alleged Errors in Relation to Evidentiary Decisions (Ground 4 sub-ground 3)

282. In its decision of 2 February 2017, the Trial Chamber limited the Prosecution’s evidence in the retrial primarily to that presented during the original trial, allowing it to present new evidence in certain limited instances, including where new evidence was unavailable during the original proceedings, it could not have been discovered through the exercise of due diligence, and its admission would be in the interests of justice.⁸⁹²

283. Following the Decision of 2 February 2017, the Trial Chamber, on 19 April 2018, granted the Prosecution’s motion to admit, pursuant to Rule 111(A) of the Rules, the evidence of Prosecution Witnesses RFJ-174 and RFJ-083 in order to replace the evidence of two other witnesses who provided

⁸⁸⁸ See *Karemera and Ngirumpatse* Appeal Judgement, para. 51 and references cited therein. See *mutatis mutandis* Article 20(1) of the ICTR Statute.

⁸⁸⁹ See *supra* para. 268.

⁸⁹⁰ *Prlić et al.* Appeal Judgement, n. 1981; *Aleksovski* Appeal Judgement, para. 113.

⁸⁹¹ *Stanišić and Simatović* ICTY Appeal Judgement, para. 128.

⁸⁹² *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Decision on Stanišić’s Request for Stay of Proceedings, 2 February 2017 (“Decision of 2 February 2017”), para. 23.

similar evidence in the original trial but were unavailable for the retrial.⁸⁹³ On 20 April 2018, the Trial Chamber admitted portions of Witness RFJ-017's evidence, which it considered relevant yet unavailable during the original trial due to the witness's security concerns.⁸⁹⁴ Simatović's requests for certification to appeal the Decision of 19 April 2018 and the Decision of 20 April 2018 were denied on 8 June 2018.⁸⁹⁵ In a decision filed on 6 June 2018, the Trial Chamber found, *inter alia*, Prosecution Witness RFJ-084's evidence relevant, determined that the witness was "unavailable" during the original trial due to security concerns, and admitted the witness's evidence pursuant to Rule 111(A) of the Rules.⁸⁹⁶ Simatović's request for certification to appeal this decision was denied.⁸⁹⁷

284. In its decision of 24 September 2018, the Trial Chamber found, *inter alia*, that Prosecution Witnesses RFJ-011 and RFJ-055 were unavailable within the meaning of Rule 112 of the Rules, granted the Prosecution's request for admission of their evidence, and considered that, as the witnesses were cross-examined by Stanišić and Simatović during the original trial, "the probative value accorded to the[ir] proposed evidence shall be the same irrespective of whether it [was] admitted pursuant to Rule 111 or Rule 112 of the Rules".⁸⁹⁸ On 12 November 2018, the Trial Chamber denied Simatović's request for certification to appeal the Decision of 24 September 2018.⁸⁹⁹

285. In its decision of 20 August 2020, the Trial Chamber admitted the expert report of Defence Expert Witness Jovan Krstić pursuant to Rule 116(C) of the Rules but rejected Simatović's further

⁸⁹³ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of RFJ-174 and RFJ-083 Pursuant to Rule 111, 19 April 2018 (confidential) ("Decision of 19 April 2018"), para. 16. See also Decision of 19 April 2018, paras. 8-12.

⁸⁹⁴ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of RFJ-017 Pursuant to Rule 111, 20 April 2018 (confidential) ("Decision of 20 April 2018"), paras. 17, 22. See also Decision of 20 April 2018, paras. 9-15.

⁸⁹⁵ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Simatović's Consolidated Request for Certification to Appeal Decisions on Prosecution Motions for Admission of Evidence of Witnesses RFJ-017, RFJ-174, and RFJ-083 Pursuant to Rule 111, 8 June 2018 (confidential), pp. 2, 3.

⁸⁹⁶ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of Witness RFJ-084 Pursuant to Rule 111, 6 June 2018 (confidential) ("Decision of 6 June 2018"), pp. 1, 3-5, referring to, *inter alia*, Decision of 2 February 2017, para. 23.

⁸⁹⁷ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T; Decision on Simatović's Defence Request for Certification to Appeal Decision on Admission of Evidence of Witness RFJ-084, 25 September 2018, p. 2.

⁸⁹⁸ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112, 24 September 2018 (confidential) ("Decision of 24 September 2018"), paras. 5, 7, 8.

⁸⁹⁹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Simatović Defence Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112, 12 November 2018, p. 2.

request to call the witness to testify via video-conference link.⁹⁰⁰ On 15 September 2020, the Trial Chamber denied Simatović's request for certification to appeal the Decision of 20 August 2020.⁹⁰¹

286. Simatović argues that the Trial Chamber erred in relation to these decisions.⁹⁰² Specifically, he submits that the Trial Chamber erroneously: (i) considered that Witnesses RFJ-017, RFJ-174, RFJ-083, and RFJ-084 or their evidence were “unavailable” and admitted their evidence in the retrial;⁹⁰³ and (ii) concluded that the evidence of Witnesses RFJ-011 and RFJ-055, admitted under Rule 112 of the Rules, would have the same probative value as evidence admitted under Rule 111 of the Rules.⁹⁰⁴ He notes that there is a clear distinction between Rules 111 and 112 of the Rules, and he submits that the Trial Chamber deviated from established practice that evidence admitted through Rule 112 of the Rules requires corroboration.⁹⁰⁵ Simatović also contends that the Trial Chamber erroneously rejected his request to allow Witness Krstić to testify by video-conference link, which, consequently, prevented the Trial Chamber from properly assessing whether Simatović signed a document – Exhibit P00217 – which the Trial Chamber relied upon, in part, in support of conclusions related to the attack on Lovinac.⁹⁰⁶ He further argues that the Trial Chamber erred in denying his requests for certification to appeal the aforementioned decisions.⁹⁰⁷ Simatović requests that the Appeals Chamber rectify the errors by excluding the testimony of Witnesses RFJ-017, RFJ-174, RFJ-083, RFJ-084, RFJ-011, and RFJ-055, and by declaring that Simatović did not sign or create Exhibit P00217.⁹⁰⁸

287. The Prosecution responds that the Trial Chamber acted within its discretion in relation to these evidentiary decisions and that Simatović fails to demonstrate otherwise.⁹⁰⁹ In particular, it contends that the Trial Chamber acted within its discretion in determining that it could rely on the evidence of Witnesses RFJ-011 and RFJ-055 admitted under Rule 112 of the Rules given “the unique circumstances of the retrial”.⁹¹⁰ It further submits, *inter alia*, that Simatović fails to show the impact of any error committed by the Trial Chamber as his convictions are not based solely or decisively on

⁹⁰⁰ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Simatović's Request for Video-Conference Link for Witness Jovan Krstić (OFS-30), 20 August 2020 (“Decision of 20 August 2020”), pp. 1, 2.

⁹⁰¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Simatović's Request for Certification to Appeal Decision in Relation to Witness Jovan Krstić (OFS-30), 15 September 2020, p. 2.

⁹⁰² See Simatović Notice of Appeal, para. 50; Simatović Appeal Brief, paras. 326-342.

⁹⁰³ See Simatović Appeal Brief, paras. 335-342.

⁹⁰⁴ See Simatović Appeal Brief, paras. 331-334.

⁹⁰⁵ Simatović Appeal Brief, para. 333.

⁹⁰⁶ See Simatović Appeal Brief, paras. 326-330.

⁹⁰⁷ See Simatović Appeal Brief, paras. 326, 331, 335, 338.

⁹⁰⁸ See Simatović Appeal Brief, paras. 330, 334, 337, 342.

⁹⁰⁹ See Prosecution Response to Simatović Appeal, paras. 192-195, 197, 204.

⁹¹⁰ See Prosecution Response Brief, paras. 197-203. The Prosecution further contends that the Trial Chamber acted within its discretion in denying Simatović's request to certify for appeal the Decision of 24 September 2018. See Prosecution Response Brief, paras. 197, 203.

the evidence of the relevant witnesses, or that he was unfairly prejudiced by the evidentiary decisions.⁹¹¹ The Prosecution also responds that the Trial Chamber properly denied Simatović's motions for certification to appeal.⁹¹²

288. The Appeals Chamber observes that Simatović challenges the Trial Chamber's decisions related to the admission of evidence,⁹¹³ which is a matter falling within a trial chamber's discretion.⁹¹⁴ In order to successfully challenge a discretionary decision, a party must demonstrate that the trial chamber committed a discernible error resulting in prejudice to that party.⁹¹⁵ Furthermore, on appeals from judgement, the Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the trial chamber and errors of fact which have occasioned a miscarriage of justice.⁹¹⁶

289. The Appeals Chamber observes that Simatović raises no specific arguments as to how the decisions admitting the Prosecution's evidence noted above were prejudicial to his defence during the course of the retrial, nor does he provide submissions as to how the consequences of these decisions had any impact on his convictions or sentence.⁹¹⁷ Specifically, the Appeals Chamber notes that the Trial Chamber did not refer directly to the evidence of Witness RFJ-174 or Witness RFJ-083 in the Trial Judgement.⁹¹⁸ As noted by Simatović, the evidence of Defence Expert Witness Krstić was considered in relation to the Trial Chamber's findings as to his involvement in the attack on Lovinac on 5 August 1991, for which he was not convicted.⁹¹⁹ In this respect, Simatović fails to demonstrate that any error in relation to the admission of this evidence or the consideration of Witness Krstić's evidence has the potential to impact his convictions or sentence and his contentions are therefore dismissed.

290. With respect to Witnesses RFJ-084 and RFJ-017, the Appeals Chamber notes that the Trial Chamber referred to the evidence of Witness RFJ-084⁹²⁰ in the parts of the Trial Judgement regarding,

⁹¹¹ See Prosecution Response to Simatović Appeal, paras. 196, 202, 208.

⁹¹² See Prosecution Response to Simatović Appeal, paras. 193, 195, 197, 203, 209.

⁹¹³ See Decision of 2 February 2017, para. 14; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-AR.Misc, Decision on a Prosecution Motion for Enforcement of Order for Retrial, 14 December 2018 ("Decision of 14 December 2018"), para. 8.

⁹¹⁴ *Karadžić* Appeal Judgement, paras. 177, 198 and references cited therein. See also *Mladić* Appeal Judgement, para. 63 and references cited therein.

⁹¹⁵ *Mladić* Appeal Judgement, paras. 63, 107, n. 261 and references cited therein.

⁹¹⁶ *Mladić* Appeal Judgement, para. 15 and references cited therein.

⁹¹⁷ See Simatović Appeal Brief, paras. 331-342.

⁹¹⁸ The Trial Chamber referred to the Prosecution's reliance on Witness RFJ-083 regarding events in the Podrinje region and training at Mount Tara in 1993. See Trial Judgement, nn. 1442, 1443.

⁹¹⁹ See Trial Judgement, paras. 27-29, n. 57.

⁹²⁰ See, e.g., Trial Judgement, para. 140, nn. 1376, 1474 (referring to the evidence of Witness Anastasijević). See also *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Decision on Prosecution Motions for

inter alia, the structure of the Serbian Ministry of the Interior⁹²¹ and Stanišić's authority within the State Security Service and the Serbian Ministry of the Interior in 1991.⁹²² The Trial Chamber also referred to the evidence of Witness RFJ-017⁹²³ regarding, *inter alia*, Stanišić's authority within the State Security Service and the Serbian Ministry of the Interior in 1991⁹²⁴ and Stanišić's knowledge of events on the ground in Croatia and Bosnia and Herzegovina during the Indictment period.⁹²⁵

291. The Appeals Chamber considers that, while such evidence may have been pertinent to the Trial Chamber's general considerations as to the State Security Service and Stanišić's position, authority, and knowledge within it and the Serbian Ministry of the Interior, Simatović makes no arguments as to how the Trial Chamber's admission of and any reliance on this evidence underpins *his* convictions or sentence or was otherwise prejudicial to him.⁹²⁶ In any event, the Appeals Chamber observes that, when considering the evidence of these two witnesses in the Trial Judgement, the Trial Chamber also relied upon multiple other sources of evidence that contained similar information.⁹²⁷ In this context, the Appeals Chamber finds that Simatović does not show how any error in relation to the admission of this evidence would invalidate the decision or otherwise result in a miscarriage of justice warranting appellate intervention.

292. The Appeals Chamber turns to Simatović's submission that the Trial Chamber erred in its Decision of 24 September 2018 by concluding that the testimonies of Witnesses RFJ-011 and RFJ-055, admitted through Rule 112 of the Rules, would have the same probative value as if admitted through Rule 111 of the Rules. The Appeals Chamber observes that Simatović challenges the Trial Chamber's decision to admit the evidence of Witnesses RFJ-011 and RFJ-055.⁹²⁸ The Trial Chamber relied upon their evidence in relation to operations in Sanski Most and the Serbian Volunteer Guard,⁹²⁹ which concern findings that do not serve as a basis for his convictions or sentence and, therefore, may also be summarily dismissed. Nevertheless, the Appeals Chamber considers that the interests of justice require consideration of these arguments in view of the Prosecution's appeal and

Protective Measures for Witnesses, 15 May 2017 (confidential) ("Decision of 15 May 2017"), para. 35 (rescinding the protective measure of pseudonym granted to Witness RFJ-084).

⁹²¹ See Trial Judgement, n. 1376 (referring to the evidence of Witness Anastasijević).

⁹²² See Trial Judgement, n. 1474.

⁹²³ See, e.g., Trial Judgement, nn. 1474, 2332 (referring to the evidence of Witness Vasiljević). See also Decision of 15 May 2017, para. 34 (determining that Witness RFJ-017's identity shall not be disclosed to the public until the witness appears to testify).

⁹²⁴ See Trial Judgement, n. 1474.

⁹²⁵ See Trial Judgement, n. 2332.

⁹²⁶ See Simatović Appeal Brief, para. 341 (arguing that the consequence of these decisions by the Trial Chamber is that the Prosecution was given the discretion to arbitrarily label witnesses as unavailable).

⁹²⁷ See Trial Judgement, nn. 1474, 2332.

⁹²⁸ See Simatović Notice of Appeal, para. 50; Simatović Appeal Brief, paras. 331-334.

⁹²⁹ See Trial Judgement, paras. 263, 265, 267, 269, 271, 273, 274, 453, nn. 1192, 1200, 1201, 1211, 1212, 1218-1221, 1228-1235, 1824, 1826.

analysis elsewhere in this Judgement.⁹³⁰ Moreover, the Appeals Chamber notes that the Prosecution, which responded in substance to these arguments, is not prejudiced.⁹³¹

293. As noted above, the Trial Chamber found that Witnesses RFJ-011 and RFJ-055 were not available within the meaning of Rule 112 of the Rules as a result of Witness RFJ-011's medical condition and Witness RFJ-055 being deceased.⁹³² In granting the Prosecution's request for admission of their evidence, and considering that the witnesses had been cross-examined by Stanišić and Simatović during the original trial, the Trial Chamber stated that "the probative value accorded to the proposed evidence shall be the same irrespective of whether it [was] admitted in these proceedings pursuant to Rule 111 or Rule 112 of the Rules".⁹³³ The Trial Chamber further stated that the adequacy of these witnesses' cross-examination in the original trial would be a matter for it to consider when weighing the evidence.⁹³⁴

294. The Appeals Chamber recalls that, in line with Rule 112 of the Rules, the evidence of a person who is objectively unable to testify before a trial chamber may be admitted in written form even if the evidence goes directly to the accused's acts and conduct.⁹³⁵ Furthermore, corroboration is not a requirement for admission of evidence under this Rule, but rather goes to the reliability of the evidence and whether, once admitted, it will be relied upon to support a conviction.⁹³⁶ If such evidence is to support a conviction, it must be corroborated.⁹³⁷

295. Considering the language used by the Trial Chamber – that "the probative value accorded to the proposed evidence shall be the same irrespective of whether it [was] admitted in these proceedings pursuant to Rule 111 or Rule 112 of the Rules"⁹³⁸ – and the relevant citations provided,⁹³⁹ the Appeals

⁹³⁰ See *infra* Section VI.A.4(c).

⁹³¹ Cf. *Nyiramasuhuko et al.* Appeal Judgement, para. 468 (noting that, in the context of a response brief on appeal from judgement, the relevant Rules or the relevant practice directions do not prohibit "a party from raising an allegation of error in the Trial Judgement in response to an issue raised by the other party").

⁹³² Decision of 24 September 2018, para. 5.

⁹³³ See Decision of 24 September 2018, paras. 6-8.

⁹³⁴ Decision of 24 September 2018, para. 7.

⁹³⁵ See *Popović et al.* Appeal Judgement, para. 1222; *Lukić and Lukić* Appeal Judgement, para. 565. See, *mutatis mutandis*, Rule 92 *quater* of the ICTY Rules.

⁹³⁶ See *Popović et al.* Appeal Judgement, para. 1222; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Motion on Behalf of Drago Nikolić Seeking Admission of Evidence Pursuant to Rule 92 *Quater*, 18 December 2008 (confidential; public redacted version filed on 19 February 2009), para. 47.

⁹³⁷ See *Popović et al.* Appeal Judgement, para. 1222; *Lukić and Lukić* Appeal Judgement, para. 570. Whether untested evidence is sufficiently corroborated is a fact-specific inquiry and varies from case to case. The Appeals Chamber has declined to impose any specific legal requirement as to the source of the corroboration. See *Haraqija and Morina* Appeal Judgement, para. 62.

⁹³⁸ See Decision of 24 September 2018, paras. 6-8.

⁹³⁹ See Decision of 24 September 2018, n. 33. See also *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Notice of Filing of Evidence of RFJ-088 and RFJ-002 Pursuant to Rule 111, 16 May 2018, p. 2, n. 12, referring to, *inter alia*, *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-

Chamber understands that, according to the Trial Chamber, it would not be prevented, as a matter of law, from relying on the evidence of Witnesses RFJ-011 and RFJ-055 in support of a conviction, even in the absence of corroboration.⁹⁴⁰ The references reflect the Trial Chamber’s view that the fact that these witnesses were cross-examined in the original trial⁹⁴¹ remedied any “[u]nacceptable infringements” of the rights of the defence wherein a conviction is based solely, or in a decisive manner, on a witness whom the accused has had no opportunity to examine or to have examined during the retrial.⁹⁴² In view of this analysis and a trial chamber’s broad discretion in the conduct of proceedings, including in deciding on matters relating to the admission of evidence,⁹⁴³ the Appeals Chamber finds that Simatović demonstrates no error based on the manner in which the Trial Chamber admitted the evidence of Witnesses RFJ-011 and RFJ-055.

296. Moreover, Simatović does not provide any submissions as to how the Trial Chamber erred in its assessment of this evidence in view of the manner in which it was admitted. The Appeals Chamber observes that the evidence of Witnesses RFJ-011 and RFJ-055 was not relied upon solely or decisively in convicting or sentencing Simatović. In any event, when the Trial Chamber referred to or relied upon their evidence, it was corroborated. The Trial Chamber cited Witness RFJ-011’s evidence in conjunction with other witness and documentary evidence.⁹⁴⁴ Similarly, the Trial Chamber relied upon Witness RFJ-055’s evidence in conjunction with several other sources of evidence when discussing the crimes committed in Sasina and Trnova, Sanski Most, in September 1995.⁹⁴⁵

297. In light of the foregoing, Simatović has failed to demonstrate that the Trial Chamber erred in not requiring corroboration for the admission of evidence under Rule 112 of the Rules, or in stating that it would accord the same probative value to this evidence irrespective of whether it was admitted pursuant to Rule 111 or Rule 112 of the Rules.

298. Based on the foregoing, the Appeals Chamber dismisses Simatović’s submissions challenging the Decisions of 19 April 2018, 20 April 2018, 6 June 2018, 24 September 2018, and 20 August 2020 as well as the corresponding decisions rejecting his requests for certification to appeal them. In light of the above, the Appeals Chamber dismisses sub-ground 3 of Ground 4 of Simatović’s appeal.

96-T, Decision on Prosecution Motions for Admission of Evidence of RFJ-037 Pursuant to Rule 111 and for Protective Measures, 25 January 2018 (confidential) (“Decision of 25 January 2018”), para. 8.

⁹⁴⁰ See Decision of 25 January 2018, para. 8, n. 33.

⁹⁴¹ See Decision of 24 September 2018, para. 7.

⁹⁴² See Decision of 25 January 2018, para. 8, n. 33 and references cited therein.

⁹⁴³ See *Karadžić* Appeal Judgement, para. 304 and references cited therein.

⁹⁴⁴ See Trial Judgement, para. 453, nn. 1824, 1825. See also *infra* Section VI.A.4(c).

⁹⁴⁵ See Trial Judgement, paras. 263, 269, 271, 273, 274, nn. 1192, 1200, 1201, 1211, 1212, 1218-1221, 1228-1235.

4. Conclusion

299. Having dismissed Simatović's arguments that the Trial Chamber erred in relation to the law on aiding and abetting, in its non-application of the principle of *lex mitior*, and in its evidentiary decisions, the Appeals Chamber dismisses Ground 4 of Simatović's appeal in its entirety as well as sub-ground 14 in part of Ground 2 of his appeal.

V. SENTENCING APPEALS

300. Stanišić and Simatović challenge the sentences imposed on them by the Trial Chamber. Before turning to the merits of their respective submissions, the Appeals Chamber recalls that, pursuant to Article 22 of the Statute, Rule 125 of the Rules, and jurisprudence, trial chambers adjudicating cases related to the former Yugoslavia must take into account the following factors in sentencing: (i) the gravity of the offence or 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.⁹⁴⁶

301. The Appeals Chamber recalls that appeals against a sentence, as appeals from a trial judgement, are appeals *stricto sensu*; they are of a corrective nature and are not trials *de novo*.⁹⁴⁷ Trial chambers are vested with a broad discretion in determining an appropriate sentence, due to their obligation to individualize the penalties to fit the circumstances of the accused and the gravity of the crime.⁹⁴⁸ As a general rule, the Appeals Chamber will not revise a sentence unless the trial chamber has committed a discernible error in exercising its discretion or has failed to follow the applicable law.⁹⁴⁹ It is for the party challenging the sentence to demonstrate how the trial chamber ventured outside its discretionary framework in imposing the sentence.⁹⁵⁰ To show that the trial chamber committed a discernible error in exercising its discretion, an appellant must demonstrate that the trial chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that its decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the trial chamber failed to properly exercise its discretion.⁹⁵¹

⁹⁴⁶ *Mladić* Appeal Judgement, para. 538; *Karadžić* Appeal Judgement, para. 748; *Prlić et al.* Appeal Judgement, para. 3203; *Stanišić and Župljanin* Appeal Judgement, para. 1099; *Tolimir* Appeal Judgement, para. 626.

⁹⁴⁷ *Mladić* Appeal Judgement, para. 539 and references cited therein.

⁹⁴⁸ *Mladić* Appeal Judgement, para. 539 and references cited therein.

⁹⁴⁹ *Mladić* Appeal Judgement, para. 539 and references cited therein.

⁹⁵⁰ *Mladić* Appeal Judgement, para. 539 and references cited therein.

⁹⁵¹ *Mladić* Appeal Judgement, para. 539 and references cited therein.

A. Sentencing Appeal of Jovica Stanišić (Grounds 5 through 8)

302. The Trial Chamber sentenced Stanišić to a single sentence of 12 years of imprisonment for aiding and abetting the crimes of murder, deportation, forcible transfer, and persecution committed by Serb forces in Bosanski Šamac in connection with and following the takeover of the municipality in April 1992.⁹⁵² In determining his sentence, the Trial Chamber considered, *inter alia*, the general practice regarding prison sentences in the courts of the former Yugoslavia, the gravity of Stanišić’s offences, his individual circumstances, and sentences in other cases at the ICTY.⁹⁵³

303. Stanišić appeals against the sentence of 12 years of imprisonment imposed by the Trial Chamber.⁹⁵⁴ The Appeals Chamber will address his grounds of appeal on sentencing in turn.

1. Alleged Errors of Law and Fact in Imposing a Manifestly Unreasonable Sentence (Ground 5)

304. Stanišić submits that the Trial Chamber erred in fact and in law and abused its discretion in sentencing him to 12 years of imprisonment.⁹⁵⁵ He argues that no reasonable trier of fact could have imposed this “manifestly severe and disproportionate sentence” in light of all the evidence, the gravity of the crimes committed in Bosanski Šamac, the nature, form, and degree of his participation, as well as the sentencing practices of the ICTR and the ICTY.⁹⁵⁶ Stanišić contends that the Trial Chamber failed to provide a reasoned opinion as to how the factors it considered shaped his sentence, and he submits that only “five paragraphs” of sentencing analysis in the Trial Judgement is insufficient and inconsistent with the ICTY’s general practice.⁹⁵⁷

305. With respect to the Trial Chamber’s determination of the gravity of the offences, Stanišić submits that the Trial Chamber failed to appreciate the gravity and scale of the crimes that took place in Bosanski Šamac due to its “generalised” and “flawed” approach.⁹⁵⁸ He argues that the Trial Chamber failed to assess or particularize the crimes relevant to his conviction for aiding and

⁹⁵² See Trial Judgement, paras. 608, 609, 619, p. 270.

⁹⁵³ See Trial Judgement, paras. 615, 616, 619-621, 626, 627, 634-636.

⁹⁵⁴ See Stanišić Notice of Appeal, paras. 25-36; Stanišić Appeal Brief, paras. 187-257. See also T. 24 January 2023 pp. 25-36.

⁹⁵⁵ See Stanišić Notice of Appeal, paras. 25, 26; Stanišić Appeal Brief, paras. 187-226.

⁹⁵⁶ Stanišić Appeal Brief, paras. 187, 188. See also T. 24 January 2023 pp. 26-28, 30-32.

⁹⁵⁷ See Stanišić Appeal Brief, paras. 189, 191.

⁹⁵⁸ See Stanišić Appeal Brief, paras. 193-197. See also T. 24 January 2023 pp. 26-28.

abetting,⁹⁵⁹ except in relation to the Crkvina detention centre.⁹⁶⁰ Stanišić invites the Appeals Chamber to carry out its own assessment of the evidence in determining his appeal on sentencing.⁹⁶¹

306. Stanišić also submits that the Trial Chamber failed to individualize his sentence to reflect the fact that he was found guilty of aiding and abetting, the “weakest” form of complicity.⁹⁶² According to Stanišić, the Trial Chamber failed to give sufficient weight to factors demonstrating his “remote and minimal” contribution to the crimes committed in Bosanski Šamac, including, *inter alia*, the JNA’s control during the takeover of Bosanski Šamac, the limited nature of the training and deployment of the forces, his absence during the deployment and the takeover, as well as the fact that he did not exercise control over the perpetrators or direct them during the commission of the crimes.⁹⁶³

307. Stanišić further submits that the Trial Chamber erred in considering four ICTY cases, in which defendants received higher sentences, without explaining how these cases informed its sentencing analysis, and by failing to appreciate material differences between those cases and the circumstances of his case.⁹⁶⁴ He argues that the Trial Chamber erred by failing to consider other ICTY and ICTR cases wherein the defendants received sentences similar to or lower than his, notwithstanding that their degree of participation was more direct and/or that the crimes for which they were convicted were significantly more grave.⁹⁶⁵

308. Given these errors, Stanišić posits that the Trial Chamber failed to determine the proper “starting point” for his sentence,⁹⁶⁶ which he argues should have been around eight to nine years before mitigation.⁹⁶⁷ As a consequence, Stanišić submits that his sentence is manifestly excessive and requests that the Appeals Chamber quash it and impose a considerably lower sentence.⁹⁶⁸

309. The Prosecution responds that nothing less than a 12-year sentence reflects the gravity of Stanišić’s crimes and his participation in them.⁹⁶⁹ It argues that Stanišić’s appeal pertaining to the allegations of failure to provide a reasoned opinion should be summarily dismissed based on

⁹⁵⁹ See Stanišić Appeal Brief, paras. 193, 194, 196, *referring to, inter alia*, Trial Judgement, paras. 213, 221-226, 228-234. See also T. 24 January 2023 pp. 26, 27.

⁹⁶⁰ Stanišić Appeal Brief, para. 194.

⁹⁶¹ Stanišić Appeal Brief, para. 197. See also Stanišić Appeal Brief, para. 196.

⁹⁶² See Stanišić Appeal Brief, paras. 198-211. See also T. 24 January 2023 pp. 106, 107.

⁹⁶³ See Stanišić Appeal Brief, paras. 204-211. See also T. 24 January 2023 pp. 27, 28, 30.

⁹⁶⁴ See Stanišić Appeal Brief, paras. 190, 213, 220. See also Stanišić Appeal Brief, paras. 212, 214-219; T. 24 January 2023 pp. 30-32, 107.

⁹⁶⁵ Stanišić Appeal Brief, para. 221. See also Stanišić Appeal Brief, paras. 222-225; T. 24 January 2023 pp. 32, 107.

⁹⁶⁶ See Stanišić Appeal Brief, paras. 187, 192, 221, 226. See also T. 24 January 2023 pp. 27, 30-32.

⁹⁶⁷ Stanišić Appeal Brief, para. 226.

⁹⁶⁸ Stanišić Notice of Appeal, para. 27; Stanišić Appeal Brief, para. 257.

⁹⁶⁹ Prosecution Response to Stanišić Appeal, para. 153; T. 24 January 2023 p. 77.

Stanišić's failure to provide sentencing submissions at trial.⁹⁷⁰ It further submits that the Trial Chamber made all necessary findings of fact related to the scale and scope of the crimes, and that Stanišić improperly invites the Appeals Chamber to analyze the evidence *de novo*.⁹⁷¹ The Prosecution also responds that the sentence reflects the gravity of Stanišić's liability as an aider and abettor and that his submissions amount to mere disagreement with the Trial Judgement.⁹⁷² According to the Prosecution, Stanišić's sentence is comparable to sentences imposed in similar cases considered by the Trial Chamber, and the Trial Chamber satisfied its obligation to provide a reasoned opinion.⁹⁷³ Regarding the cases cited by Stanišić that he alleges the Trial Chamber failed to consider, the Prosecution responds that this argument should also be summarily dismissed due to his failure to raise it at trial and, alternatively, submits that the cases are not comparable to Stanišić's circumstances.⁹⁷⁴ It further contends that Annex A of the Stanišić Appeal Brief, which details cases referred to in Ground 5, should be stricken as it contains substantive argumentation.⁹⁷⁵

310. Stanišić replies that the Appeals Chamber should not summarily dismiss his arguments and that the Appeals Chamber should not disregard Annex A of his appeal brief as the cases cited in it are critical to demonstrating the Trial Chamber's failure to follow ICTY practice.⁹⁷⁶ He further submits that the Prosecution does not explain why any trial chamber would decline to estimate, as accurately as possible, facts such as the number of victims, when assessing the gravity of the crimes.⁹⁷⁷ Stanišić further replies that the Prosecution does not demonstrate how the Trial Chamber proportionately weighed the gravity of his crimes as well as the form and degree of his participation in them.⁹⁷⁸ He adds that the Prosecution's lack of examination of the four ICTY cases considered by the Trial Chamber and of the cases cited in his appeal brief supports his argument that the Trial Chamber erred in this respect.⁹⁷⁹

311. As a threshold matter, the Appeals Chamber does not consider it appropriate to summarily dismiss aspects of Ground 5 of Stanišić's appeal relating to the Trial Chamber's alleged failure to: (i) provide a reasoned opinion; or (ii) consider certain cases in its sentencing deliberations. These arguments could only be made once the Trial Chamber articulated its sentencing considerations in

⁹⁷⁰ See Prosecution Response to Stanišić Appeal, paras. 154-157, 177, 178.

⁹⁷¹ See Prosecution Response to Stanišić Appeal, paras. 162-164.

⁹⁷² See Prosecution Response to Stanišić Appeal, paras. 165-169; T. 24 January 2023 p. 77.

⁹⁷³ See Prosecution Response to Stanišić Appeal, paras. 170-176.

⁹⁷⁴ See Prosecution Response to Stanišić Appeal, paras. 154, 155, 157, 178, 179.

⁹⁷⁵ See Prosecution Response to Stanišić Appeal, para. 177.

⁹⁷⁶ See Stanišić Reply Brief, paras. 103-106, 128.

⁹⁷⁷ Stanišić Reply Brief, para. 110. See also T. 24 January 2023 p. 27.

⁹⁷⁸ Stanišić Reply Brief, para. 115. See also T. 24 January 2023 pp. 26-28, 106, 107.

⁹⁷⁹ See Stanišić Reply Brief, paras. 120-128. See also Stanišić Reply Brief, para. 105(i); T. 24 January 2023 pp. 32, 106, 107.

the Trial Judgement. However, the Appeals Chamber considers that Annex A contains argumentative summaries of cases that are also cited in Stanišić's appeal brief,⁹⁸⁰ rather than references, source materials, items from the record, exhibits, and other relevant non-argumentative material, which are allowed in view of the Practice Direction on Lengths of Briefs and Motions.⁹⁸¹ The Appeals Chamber will therefore disregard the argumentative summaries of cases in Annex A and will confine its analysis to arguments advanced in Stanišić's appeal and reply briefs.⁹⁸²

312. Regarding Stanišić's submission that the Trial Chamber failed to provide reasons for the factors considered in sentencing,⁹⁸³ the Appeals Chamber recalls that trial chambers are required to provide a reasoned opinion to ensure that adjudications are fair, allow for a meaningful exercise of the right of appeal by the parties, and enable the Appeals Chamber to understand and review the findings.⁹⁸⁴ Nevertheless, a trial chamber need not articulate every step of its reasoning.⁹⁸⁵ In determining Stanišić's sentence, the Trial Chamber recalled findings concerning the particular gravity and brutality of the crimes committed in connection with and following the takeover of Bosanski Šamac, their long-lasting effect on victims, as well as Stanišić's responsibility for having aided and abetted these crimes.⁹⁸⁶ The Trial Chamber also considered Stanišić's individual aggravating circumstances – namely, that he abused his position of authority within the Serbian Ministry of the Interior – as well as mitigating factors such as his age, the fact that he complied with the terms and conditions of his provisional release, his medical conditions, his assistance in the release of 300 UN Protection Force (“UNPROFOR”) hostages, captured French pilots, and an American journalist in Bijeljina, as well as his role at the Dayton Peace Conference in November 1995.⁹⁸⁷ The Appeals Chamber finds that the Trial Chamber sufficiently set out the pertinent factors in determining Stanišić's sentence and accordingly satisfied its obligation to provide a reasoned opinion.

313. As to Stanišić's argument that the Trial Chamber failed to appreciate the gravity and scale of the crimes that were relevant to his conviction, the Trial Chamber appropriately noted the following factors as relevant to assessing gravity: (i) the cruelty, nature, and circumstances of the crimes; (ii) the convicted person's position of authority; (iii) the vulnerability of the victims; and (iv) the

⁹⁸⁰ See Stanišić Appeal Brief, paras. 214-219, 222-225.

⁹⁸¹ See Practice Direction on Lengths of Briefs and Motions, MICT/11/Rev.1, 20 February 2019, para. 16.

⁹⁸² *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.1, Decision on Ratko Mladić's Appeal Against the Trial Chamber's Decisions on the Prosecution Motion for Judicial Notice of Adjudicated Facts, 12 November 2013, para. 14, n. 35; *Nshogoza Appeal Judgement*, para. 10.

⁹⁸³ See Stanišić Appeal Brief, paras. 189, 191.

⁹⁸⁴ See Article 21(2) of the Statute; Rule 122(C) of the Rules. See also *Mladić Appeal Judgement*, para. 437 and references cited therein.

⁹⁸⁵ *Mladić Appeal Judgement*, paras. 339, 423 and references cited therein.

⁹⁸⁶ See Trial Judgement, paras. 619-621.

⁹⁸⁷ Trial Judgement, paras. 626, 627.

consequences, effect, and impact of the crimes upon the broader targeted group.⁹⁸⁸ To this end, the Trial Chamber emphasized that the crimes committed were “particularly grave”,⁹⁸⁹ recalling prior findings that: (i) the non-Serb population of Bosanski Šamac was subjected to murders and numerous other acts of violence, their property was looted, and their religious buildings and cultural sites were destroyed; (ii) victims were forced to endure dire and inhumane conditions while in detention, where they were repeatedly beaten, tortured, forced to engage in sexual acts, and killed; (iii) the Crkvina massacre involving the murder of 16 detainees “stands out with its brutality”; (iv) the majority of the victims of crimes committed in Bosanski Šamac were “particularly vulnerable”; and (v) the crimes had long-lasting effects on their livelihood and caused physical and psychological suffering.⁹⁹⁰

314. In claiming that the Trial Chamber’s analysis regarding the gravity of the offences was limited to generalized and vague findings, Stanišić relies on paragraphs of the Trial Judgement containing mostly summaries of evidence,⁹⁹¹ as well as findings concerning the killings of 16 Muslim or Croat men at the Crkvina detention facility.⁹⁹² Recalling that a trial judgement is to be read as a whole,⁹⁹³ and that a trial chamber need not repeat considerations addressed elsewhere in the judgement,⁹⁹⁴ the Appeals Chamber finds that Stanišić fails to demonstrate that the Trial Chamber’s sentencing analysis is erroneously based on “generalised” or “vague” findings or that its conclusions as to the gravity of his offences are unreasonable in light of the findings and evidence he cites to on appeal.

315. The Appeals Chamber now turns to Stanišić’s argument that his sentence does not adequately reflect that he was found guilty of aiding and abetting the crimes. The Appeals Chamber observes that the Trial Chamber accounted for the fact that Stanišić did not commit the underlying crimes but was responsible for aiding and abetting them by organizing the training of Unit members and local Serb forces at the Pajzoš camp, and through the subsequent deployment of these forces during the takeover of Bosanski Šamac.⁹⁹⁵ The Trial Chamber was further cognizant that it was not proven that Stanišić exercised control over the perpetrators or directed them during the commission of such crimes.⁹⁹⁶ In this context, the Trial Chamber’s sentencing findings adequately reflect the indirect nature of Stanišić’s participation in the crimes for which he was convicted. As to Stanišić’s contention that the Trial Chamber failed to give sufficient weight to factors demonstrating his “remote and

⁹⁸⁸ See Trial Judgement, para. 618. See also *Stanišić and Župljanin* Appeal Judgement, para. 1106 and references cited therein.

⁹⁸⁹ Trial Judgement, para. 620.

⁹⁹⁰ Trial Judgement, paras. 619, 620. See also Trial Judgement, paras. 232-234.

⁹⁹¹ See Stanišić Appeal Brief, paras. 193-197, referring to Trial Judgement, paras. 213, 221-226, 228, 230, 231.

⁹⁹² See Stanišić Appeal Brief, paras. 193-197, referring to Trial Judgement, paras. 229, 232-234.

⁹⁹³ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

⁹⁹⁴ *Mladić* Appeal Judgement, para. 247 and references cited therein.

⁹⁹⁵ Trial Judgement, paras. 619, 621. See also Stanišić Appeal Brief, paras. 205, 209.

⁹⁹⁶ Trial Judgement, para. 621.

minimal” contribution to the crimes, Stanišić recites the Trial Chamber’s summaries of evidence or findings without showing discernible error or that the Trial Chamber failed to sufficiently consider them.⁹⁹⁷ He also repeats arguments made in Grounds 1 through 4 of his appeal,⁹⁹⁸ which the Appeals Chamber has dismissed.⁹⁹⁹ His arguments fail to demonstrate that the Trial Chamber committed a discernible error in its assessment of the degree and form of his participation.

316. With respect to Stanišić’s challenges to the Trial Chamber’s comparison of his case with certain ICTY cases, the Appeals Chamber observes that, in determining Stanišić’s sentence, the Trial Chamber considered sentences imposed in the cases of *Prosecutor v. Blagoje Simić* (“*Simić* appeal”) and *Prosecutor v. Mićo Stanišić and Stojan Župljanin* (“*Stanišić and Župljanin* case”), “to the extent that these cases held the accused responsible for crimes committed in Bosanski Šamac during the period covered by the Indictment in this case”.¹⁰⁰⁰ It also considered the case of *Prosecutor v. Vidoje Blagojević and Dragan Jokić* (“*Blagojević and Jokić* case”) to the extent that one of the accused in that case was convicted for aiding and abetting the crimes of murder, persecution, and forcible transfer, and further considered the case of *Prosecutor v. Milan Milutinović et al.* (“*Milutinović et al.* case”) “where two of the accused were held responsible for aiding and abetting the crime of forcible displacement, albeit on a larger scale than in the present case”.¹⁰⁰¹

317. While Stanišić argues that the Trial Chamber failed to provide a reasoned opinion in its comparison with the four ICTY cases, the Appeals Chamber observes that the Trial Chamber outlined its reasons for considering these particular cases.¹⁰⁰² Stanišić therefore does not demonstrate an error in this regard. As to his specific challenge that the Trial Chamber erred in its reliance on the four ICTY cases, the Appeals Chamber considers that, as Stanišić was found responsible for crimes committed in Bosanski Šamac, the Trial Chamber was entitled to consider the sentences imposed in cases where crimes were found to have been committed in that municipality. Stanišić’s submissions do not demonstrate otherwise. Specifically, in citing the *Stanišić and Župljanin* case and the *Simić* appeal, the Trial Chamber was clear – in the text of the Trial Judgement and footnotes – that it considered these cases to the extent that the accused were held responsible for crimes committed in Bosanski Šamac during the Indictment period of the present case.¹⁰⁰³ The Trial Chamber was also

⁹⁹⁷ See Stanišić Appeal Brief, paras. 204-209, referring to, *inter alia*, Trial Judgement, paras. 208, 213-218, 417, 418, 420-423, 621.

⁹⁹⁸ See Stanišić Appeal Brief, paras. 204-210.

⁹⁹⁹ See *supra* paras. 36, 99, 114, 132.

¹⁰⁰⁰ Trial Judgement, para. 634, n. 2423.

¹⁰⁰¹ Trial Judgement, para. 634.

¹⁰⁰² See Trial Judgement, para. 634, nn. 2423-2425.

¹⁰⁰³ See Trial Judgement, para. 634, n. 2423. In this respect, that the Trial Chamber may have referred to a paragraph of the *Stanišić and Župljanin* Appeal Judgement that may not have concerned crimes committed in Bosanski Šamac is of no import.

aware that, compared to Stanišić, Mićo Stanišić was held responsible for a larger crime base and for commission through participation in a joint criminal enterprise.¹⁰⁰⁴ In this respect, the Appeals Chamber notes that Mićo Stanišić was sentenced to 22 years of imprisonment.¹⁰⁰⁵

318. Given the mode of liability and the nature of the crimes for which Stanišić was held responsible, the Trial Chamber was also entitled to consider the convictions for aiding and abetting in the *Blagojević and Jokić* case as well as the *Milutinović et al.* case. The Appeals Chamber observes that, where necessary, the Trial Chamber acknowledged that the scale of the crime base was larger than in the present case.¹⁰⁰⁶ The Appeals Chamber is satisfied that the Trial Chamber appropriately considered both the sentences and the variable circumstances of pertinent ICTY cases and tailored Stanišić’s penalty to fit his individual circumstances and the gravity of his crimes. In the Appeals Chamber’s view, Stanišić merely disagrees with the Trial Chamber’s determination of his sentence and fails to demonstrate that the Trial Chamber abused its discretion in assessing these cases when making its sentencing determinations.

319. Turning to the cases that Stanišić argues should have been considered by the Trial Chamber, the Appeals Chamber recalls that comparison between cases is of limited assistance in challenging a sentence.¹⁰⁰⁷ Trial chambers are under no obligation to expressly compare the case of one accused to that of another,¹⁰⁰⁸ and “similar cases do not provide a legally binding tariff of sentences” on others.¹⁰⁰⁹ Stanišić merely points to cases in which lesser or similar sentences were imposed and which he contends are comparable to his,¹⁰¹⁰ without demonstrating a discernible error on the part of the Trial Chamber.

320. With respect to Stanišić’s contention that, given the aforementioned alleged errors, the Trial Chamber failed to determine the proper “starting point” for his sentence,¹⁰¹¹ the Appeals Chamber considers that this argument is based on a misreading of the Trial Judgement. At no point does the Trial Chamber set out a “starting point” for Stanišić’s sentence and, as a general matter, Stanišić fails to demonstrate that jurisprudence mandates trial chambers to articulate a starting point when determining a sentence. The Trial Chamber came to its determination of an appropriate sentence based on the combination of factors that are relevant to sentencing determinations – sentencing

¹⁰⁰⁴ Trial Judgement, para. 634, n. 2423.

¹⁰⁰⁵ *Stanišić and Župljanin* Appeal Judgement, para. 1193.

¹⁰⁰⁶ See Trial Judgement, para. 634, n. 2425.

¹⁰⁰⁷ *Nyiramasuhuko et al.* Appeal Judgement, para. 3400 and references cited therein.

¹⁰⁰⁸ *Karadžić* Appeal Judgement, para. 767 and references cited therein.

¹⁰⁰⁹ *Popović et al.* Appeal Judgement, para. 2093 and references cited therein.

¹⁰¹⁰ See Stanišić Appeal Brief, paras. 221-226. See also T. 24 January 2023 p. 32.

¹⁰¹¹ See Stanišić Appeal Brief, paras. 187, 192, 221, 226.

practices in the former Yugoslavia, the gravity of the relevant crimes, individual circumstances, and sentences imposed in other ICTY cases.¹⁰¹² Reiterating the Trial Chamber's broad discretion in determining the appropriate sentence,¹⁰¹³ and that the existence of mitigating factors does not automatically result in a reduction in a sentence,¹⁰¹⁴ the Appeals Chamber finds the Trial Chamber's approach to be within the framework of its discretion.

321. In light of the above, the Appeals Chamber concludes that Stanišić does not demonstrate that the Trial Chamber imposed a manifestly unreasonable sentence on him. The Appeals Chamber therefore dismisses Ground 5 of his appeal.

2. Alleged Errors of Law in Assessing Mitigating Factors (Grounds 6 through 8)

322. In determining Stanišić's sentence, the Trial Chamber observed that Stanišić did not make sentencing submissions and noted that it was not obliged to search for information related to mitigating circumstances that counsel did not put before it during closing arguments.¹⁰¹⁵ The Trial Chamber nonetheless accorded limited weight in mitigation to the following circumstances: (i) Stanišić's age; (ii) the fact that he complied, throughout the original trial and the retrial, with the terms and conditions of his provisional release; (iii) his medical conditions as documented in filed medical reports; and (iv) Stanišić's assistance in the release of 300 UNPROFOR hostages, captured French pilots, and an American journalist in Bijeljina, as well as his role at the Dayton Peace Conference in November 1995.¹⁰¹⁶

323. Stanišić submits that the Trial Chamber erred in law by declining to take the almost 20-year length of the proceedings into account as a mitigating factor, while recognising it as an extraordinary circumstance.¹⁰¹⁷ He also argues that the Trial Chamber erred by only giving limited weight in mitigation to his age and ill health when these circumstances, particularly in combination, should have been considered "a significant mitigating factor" or as "important mitigating circumstances".¹⁰¹⁸

¹⁰¹² See Trial Judgement, para. 616, 619-621, 626, 627, 634.

¹⁰¹³ *Mladić* Appeal Judgement, para. 539 and references cited therein.

¹⁰¹⁴ *Mladić* Appeal Judgement, para. 553 and references cited therein.

¹⁰¹⁵ Trial Judgement, paras. 613, 627.

¹⁰¹⁶ Trial Judgement, para. 627.

¹⁰¹⁷ See Stanišić Notice of Appeal, para. 28; Stanišić Appeal Brief, paras. 227-232; T. 24 January 2023 pp. 25, 26, 28-30, 107, 108. According to Stanišić, the "protracted nature of the trial process" was recognized by the Trial Chamber as a mitigating factor and there was no legal basis to disregard it. See Stanišić Appeal Brief, para. 228, referring to Trial Judgement, paras. 631, 632; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Decision on Modalities for Trial, 13 April 2017, para. 13.

¹⁰¹⁸ Stanišić Notice of Appeal, paras. 31, 32; Stanišić Appeal Brief, paras. 233, 236, referring to *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 898, *Bisengimana* Trial Judgement, para. 175, *Strugar* Trial Judgement, para. 469, *Rutaganira* Trial Judgement, para. 136, *Ntawukulilyayo* Trial Judgement, para. 476, *Milutinović et al.* Trial Judgement, para. 1188. See also Stanišić Appeal Brief, paras. 234, 235 (referring to cases that have considered age or ill health independently as mitigating factors).

He also contends that, throughout his proceedings before the ICTY and the Mechanism, he suffered numerous well-documented physical and mental health issues, which have been exacerbated by the length of his proceedings, as evidenced by the new physical and mental health ailments that arose during his retrial.¹⁰¹⁹

324. Finally, Stanišić submits that the Trial Chamber erred in law by failing to consider and accord appropriate weight in mitigation to the entirety of his acts of cooperation with the international community in the furtherance of peace and focusing solely on events in 1995.¹⁰²⁰ He submits that the Trial Chamber erroneously failed to consider in mitigation, *inter alia*: (i) his cooperation with the Government of the United States and the international community in furtherance of peace and to save lives throughout the period of 1991 to 1995;¹⁰²¹ (ii) that he steered the State Security Service's policy to provide support to peace efforts;¹⁰²² (iii) that he facilitated the arrest of certain paramilitaries;¹⁰²³ and (iv) his role in facilitating acceptance of the Vance plan.¹⁰²⁴ He further argues that the Trial Chamber erred in not admitting Witness RJS-01's evidence on the basis of Rule 76 of the Rules and, consequently, in not considering in mitigation the significant prospective evidence from this witness as to Stanišić's independence and attempts to find a peaceful solution to the conflict.¹⁰²⁵ Finally, Stanišić submits that the Trial Chamber erred by according only "some limited weight in mitigation" to his contributions to peace and points to the approach taken in the cases of *Prosecutor v. Biljana Plavšić* ("Plavšić case") and *Prosecutor v. Miodrag Jokić* ("Miodrag Jokić case"), wherein he contends that the trial chambers accorded significant weight in mitigation to conduct similar to his role in contributing to peace between 1991 and 1995.¹⁰²⁶ In light of all of the alleged errors, Stanišić requests that the Appeals Chamber quash his sentence and impose a considerably lower one.¹⁰²⁷

325. The Prosecution responds that Stanišić's sentence is appropriate and that Grounds 6 through 8 should be summarily dismissed as he made no sentencing submissions at trial.¹⁰²⁸ Alternatively, the Prosecution submits that the Trial Chamber correctly exercised its discretion in not recognizing the

¹⁰¹⁹ See Stanišić Appeal Brief, paras. 237-242.

¹⁰²⁰ See Stanišić Notice of Appeal, paras. 34, 35; Stanišić Appeal Brief, paras. 244-256. See also T. 24 January 2023 pp. 33-36.

¹⁰²¹ Stanišić Notice of Appeal, para. 34; Stanišić Appeal Brief, para. 245. See also T. 24 January 2023 p. 34.

¹⁰²² Stanišić Appeal Brief, para. 246. See also T. 24 January 2023 p. 34.

¹⁰²³ Stanišić Appeal Brief, para. 246.

¹⁰²⁴ Stanišić Notice of Appeal, para. 34; Stanišić Appeal Brief, para. 246. See also Stanišić Appeal Brief, para. 248. See also T. 24 January 2023 p. 34.

¹⁰²⁵ Stanišić Notice of Appeal, para. 34; Stanišić Appeal Brief, paras. 248-252. See also T. 24 January 2023 pp. 34-36.

¹⁰²⁶ See Stanišić Appeal Brief, paras. 254-256.

¹⁰²⁷ See Stanišić Notice of Appeal, paras. 30, 33, 36; Stanišić Appeal Brief, paras. 243, 257. Stanišić submits that his ill health will make his sentence harder than the equivalent sentence for a healthier man and that the Appeals Chamber must intervene so that detention does not further exacerbate it. See Stanišić Appeal Brief, paras. 242, 243.

¹⁰²⁸ Prosecution Response to Stanišić Appeal, para. 154; T. 24 January 2023 p. 76. See also Prosecution Response to Stanišić Appeal, paras. 152, 153, 155-157, 180-184.

length of the proceedings as a mitigating factor,¹⁰²⁹ and it argues that Stanišić fails to demonstrate that the Trial Chamber erred in deciding how much weight it accorded to his age and ill health in mitigation.¹⁰³⁰ It further contends that the Trial Chamber appropriately exercised its discretion in giving limited weight in mitigation to Stanišić's cooperation with the international community and that the Trial Chamber properly excluded Witness RJS-01's evidence.¹⁰³¹

326. Stanišić replies that Grounds 6 through 8 should not be summarily dismissed and that the Appeals Chamber should address his arguments on the merits.¹⁰³² According to Stanišić, the Prosecution fails to support its claim that the Trial Chamber did not err by declining to take the length of the proceedings into account as a mitigating factor¹⁰³³ and to engage with the jurisprudence regarding his age and health, which demonstrates that the Trial Chamber erred in its consideration of them as mitigating factors.¹⁰³⁴ Stanišić further argues that Rule 76 of the Rules did not provide a basis for the Trial Chamber to exclude Witness RJS-01's prospective evidence.¹⁰³⁵

327. The Appeals Chamber recalls that Rule 103(C) of the Rules provides that sentencing submissions shall be addressed during closing arguments, and the Trial Chamber correctly stated that a trial chamber is under no obligation to search for information that counsel did not put before it at the appropriate time in assessing mitigating factors.¹⁰³⁶ It is an accused's prerogative to identify any mitigating circumstances before the trial chamber, and if he fails to specifically refer in his final brief or closing arguments to a mitigating circumstance, he cannot raise it for the first time on appeal.¹⁰³⁷

328. Stanišić does not dispute the Trial Chamber's observation that he did not make any submissions related to sentencing at the conclusion of trial and his submissions on appeal provide no explanation for his failure to do so.¹⁰³⁸ The Appeals Chamber therefore considers that Stanišić has waived his right to identify mitigating circumstances on appeal and argue that the Trial Chamber

¹⁰²⁹ Prosecution Response to Stanišić Appeal, para. 180. *See also* T. 24 January 2023 p. 77. Additionally, the Prosecution underlines that both the original trial and the retrial proceedings were prolonged by Stanišić's request for a significantly reduced sitting schedule. *See* Prosecution Response to Stanišić Appeal, para. 181.

¹⁰³⁰ Prosecution Response to Stanišić Appeal, para. 183. *See also* T. 24 January 2023 p. 77.

¹⁰³¹ *See* Prosecution Response to Stanišić Appeal, paras. 185-190. *See also* T. 24 January 2023 pp. 76, 77. Stanišić challenges the Prosecution's submission that his ill health, which necessitated a reduced court schedule, should be held against him in contributing to the length of the proceedings. *See* T. 24 January 2023 p. 108.

¹⁰³² *See* Stanišić Reply Brief, paras. 103, 106. *See also* T. 24 January 2023 p. 33.

¹⁰³³ *See* Stanišić Reply Brief, paras. 105, 129-132. *See also* T. 24 January 2023 pp. 107, 108.

¹⁰³⁴ *See* Stanišić Reply Brief, paras. 105, 133, 134.

¹⁰³⁵ *See* Stanišić Reply Brief, paras. 105, 135-138.

¹⁰³⁶ *Dorđević* Appeal Judgement, para. 945; *Mrkšić and Šljivančanin* Appeal Judgement, para. 359; *Kamuhanda* Appeal Judgement, para. 354, n. 787; *Kupreškić et al.* Appeal Judgement, para. 414. *See also* *Bizimungu* Appeal Judgement, para. 389.

¹⁰³⁷ *Mladić* Appeal Judgement para. 555 and references cited therein.

¹⁰³⁸ *See, e.g.,* Stanišić Reply Brief, paras. 103-106.

erred by failing to consider them.¹⁰³⁹ The Appeals Chamber will only consider allegations of error in respect of the mitigating circumstances identified and considered by the Trial Chamber – namely, Stanišić’s age and health as well as his role in freeing hostages and the Dayton Peace Conference in November 1995.

329. Regarding Stanišić’s age and ill health, the Appeals Chamber observes that the Trial Chamber correctly recalled that the age of a convicted person has been considered as a mitigating factor,¹⁰⁴⁰ and that the ill health of a convicted person is to be considered as a mitigating factor only in exceptional circumstances.¹⁰⁴¹ It stated that it was mindful of Stanišić’s age, noted that his medical conditions were well documented in the medical reports filed throughout the proceedings, and, in combination with other factors, accorded these factors “some limited weight in mitigation”.¹⁰⁴² The jurisprudence Stanišić cites in support of his contention that these factors in combination constitute “a significant mitigating factor” or “important mitigating factors” does not demonstrate that the Trial Chamber erred in law when only according them limited weight in mitigation.¹⁰⁴³

330. The Appeals Chamber next considers Stanišić’s argument that the Trial Chamber erred by according only “some limited weight in mitigation” to his contributions to peace. He points to the approach taken in the *Plavšić* and *Miodrag Jokić* cases, wherein he contends that the relevant trial chambers accorded significant weight in mitigation to conduct similar to his role in contributing to peace between 1991 and 1995. The Appeals Chamber observes that, in the *Plavšić* case, where the accused pleaded guilty, the trial chamber found that Biljana Plavšić was, *inter alia*, instrumental in ensuring the adoption and implementation of the agreement following the Dayton Peace Conference, and it accorded “significant weight” in mitigation to her “considerable contribution to peace” in the region.¹⁰⁴⁴ In the *Miodrag Jokić* case, where the accused also pleaded guilty, the trial chamber

¹⁰³⁹ *Nyiramasuhuko et al.* Appeal Judgement, para. 3396; *Popović et al.* Appeal Judgement, para. 2060. See also *Mladić* Appeal Judgement para. 555; *Prlić et al.* Appeal Judgement, paras. 3296, 3302, 3310, 3316; *Stanišić and Župljanin* Appeal Judgement, paras. 1133, 1170; *Nzabonimana* Appeal Judgement, para. 459; *Bizimungu* Appeal Judgement, para. 389; *Dorđević* Appeal Judgement, para. 945.

¹⁰⁴⁰ Trial Judgement, para. 624.

¹⁰⁴¹ Trial Judgement, para. 625, n. 2407, referring to *Mladić* Appeal Judgement, paras. 554, 555, *Prlić et al.* Appeal Judgement, para. 3309, *Šainović et al.* Appeal Judgement, para. 1827, *Galić* Appeal Judgement, para. 436, *Blaškić* Appeal Judgement, para. 696.

¹⁰⁴² Trial Judgement, para. 627.

¹⁰⁴³ The trial chamber in the *Ntakirutimana and Ntakirutimana* case considered that one convicted person’s age of 78 and his “frail” health constituted “important mitigating circumstances”, and both the *Ntakirutimana and Ntakirutimana* and the *Bisengimana* trial chambers considered the combination of ill health and age as a mitigating circumstance. See *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 898; *Bisengimana* Trial Judgement, para. 175. None of the other trial judgements Stanišić refers to support the contention that advanced age and poor health considered independently or in combination are important or significant mitigating factors. See *Ntawukulilyayo* Trial Judgement, para. 476; *Milutinović et al.* Trial Judgement, Vol. 3, para. 1188; *Bisengimana* Trial Judgement, para. 175; *Strugar* Trial Judgement, para. 469; *Rutaganira* Trial Judgement, para. 136.

¹⁰⁴⁴ *Plavšić* Sentencing Trial Judgement, para. 94.

recalled that, in the *Plavšić* case, the “post-conflict conduct of an accused” was considered as an “important mitigating factor”, and it noted that Miodrag Jokić was instrumental in ensuring a comprehensive ceasefire.¹⁰⁴⁵

331. The Appeals Chamber is not persuaded that the determination by the trial chamber in the *Plavšić* case to give significant weight to her contribution to peace¹⁰⁴⁶ or the fact that the trial chamber in the *Miodrag Jokić* case noted this determination¹⁰⁴⁷ demonstrates that the Trial Chamber erred in according limited weight in mitigation to, *inter alia*, Stanišić’s assistance in the release of 300 UNPROFOR hostages, captured French pilots, and an American journalist in Bijeljina, as well as his role at the Dayton Peace Conference in November 1995. The Appeals Chamber recalls that a trial chamber is not bound by the sentencing conclusions of other trial chambers.¹⁰⁴⁸ Comparison between cases is therefore of limited assistance in challenging a sentence,¹⁰⁴⁹ given the broad discretion afforded to trial chambers in determining the appropriate sentence.¹⁰⁵⁰ In light of the above, the Appeals Chamber finds that Stanišić fails to demonstrate that the Trial Chamber erred in law in its assessment of mitigating circumstances related to his peace efforts.

332. In light of the foregoing, the Appeals Chamber finds that Stanišić has waived his right to raise new mitigating circumstances on appeal and has not demonstrated error in the Trial Chamber’s assessment of mitigating circumstances it considered in sentencing. Consequently, the Appeals Chamber dismisses Grounds 6 through 8 of Stanišić’s appeal.

B. Sentencing Appeal of Franko Simatović (Ground 3)

333. The Trial Chamber sentenced Simatović to a single sentence of 12 years of imprisonment for aiding and abetting the crimes of murder, deportation, forcible transfer, and persecution committed by Serb forces in Bosanski Šamac in connection with and following the takeover of the municipality in April 1992.¹⁰⁵¹ In determining his sentence, the Trial Chamber considered, *inter alia*, the gravity of Simatović’s offences, his individual circumstances, the general practice regarding prison sentences in the courts of the former Yugoslavia, and sentences in other cases at the ICTY.¹⁰⁵²

¹⁰⁴⁵ *Jokić* Sentencing Trial Judgement, para. 90.

¹⁰⁴⁶ *Plavšić* Sentencing Trial Judgement, para. 94.

¹⁰⁴⁷ See *Jokić* Sentencing Trial Judgement, paras. 90, 100-103.

¹⁰⁴⁸ See *Popović et al.* Appeal Judgement, para. 2093 and references cited therein. Cf. *Prlić et al.* Appeal Judgement, para. 3329; *Nyiramasuhuko et al.* Appeal Judgement, para. 1138; *Lukić and Lukić* Appeal Judgement, para. 260; *Aleksovski* Appeal Judgement, paras. 113, 114.

¹⁰⁴⁹ *Nyiramasuhuko et al.* Appeal Judgement, para. 3400 and references cited therein.

¹⁰⁵⁰ See *Mladić* Appeal Judgement, para. 539 and references cited therein.

¹⁰⁵¹ Trial Judgement, paras. 608, 609, 619, p. 270.

¹⁰⁵² See Trial Judgement, paras. 615, 616, 619-621, 628, 630, 634, 635, 637.

334. Simatović submits that the Trial Chamber erred in law and in fact in sentencing him to 12 years of imprisonment and that it should have imposed a considerably lower sentence.¹⁰⁵³ He appeals against his sentence.¹⁰⁵⁴ The Appeals Chamber observes, however, that sub-ground 1 of Ground 3 of Simatović’s appeal does not contain specific challenges but introduces alleged sentencing errors developed in the following sub-grounds.¹⁰⁵⁵ The Appeals Chamber will therefore address the specific challenges raised in the subsequent sub-grounds of Ground 3 of Simatović’s appeal in turn.

1. Alleged Errors in Assessing the Gravity of the Offences (sub-ground 2)

335. In considering the gravity of the offences, the Trial Chamber recalled that gravity must be determined by reference to the particular circumstances of the case as well as the form and degree of the accused’s participation in the crime.¹⁰⁵⁶ It stated that, while aiding and abetting is a lower form of liability, the gravity of the underlying crimes remains an important consideration in order to reflect the totality of the criminal conduct.¹⁰⁵⁷ The Trial Chamber noted the following factors as relevant to assessing gravity: (i) the cruelty, nature, and circumstances of the crimes; (ii) the convicted person’s position of authority; (iii) the vulnerability of the victims; and (iv) the consequences, effect, or impact of the crimes upon the broader targeted group.¹⁰⁵⁸ It emphasized that the crimes committed in connection with and following the takeover of Bosanski Šamac were “particularly grave”,¹⁰⁵⁹ recalling prior findings regarding, *inter alia*: (i) the murders and numerous other acts of violence that the non-Serb population was subjected to; (ii) the dire and inhumane conditions that victims were forced to endure in detention, where they were repeatedly beaten, tortured, forced to engage in sexual acts, and killed; (iii) the brutality of the Crkvina massacre; (iv) the particular vulnerability of the victims; and (v) the long-lasting effects of the crimes, and the resulting physical and psychological suffering.¹⁰⁶⁰

336. Simatović argues that the Trial Chamber erred in law and fact because it “misjudged” the gravity of his offences by only considering their consequences.¹⁰⁶¹ He contends that the Trial Chamber erred by failing to consider the form and degree of his participation in the crimes and that

¹⁰⁵³ Simatović Notice of Appeal, para. 39; Simatović Appeal Brief, paras. 269, 275; T. 24 January 2023 p. 62.

¹⁰⁵⁴ See Simatović Notice of Appeal, paras. 39-47; Simatović Appeal Brief, paras. 269-296. See also T. 24 January 2023 pp. 56-62.

¹⁰⁵⁵ See Simatović Notice of Appeal, para. 39; Simatović Appeal Brief, para. 269. See also Prosecution Response to Simatović Appeal, para. 155.

¹⁰⁵⁶ Trial Judgement, para. 617.

¹⁰⁵⁷ Trial Judgement, para. 617.

¹⁰⁵⁸ Trial Judgement, para. 618.

¹⁰⁵⁹ Trial Judgement, para. 620.

¹⁰⁶⁰ Trial Judgement, paras. 619, 620. See also Trial Judgement, paras. 232-234.

¹⁰⁶¹ See Simatović Notice of Appeal, para. 40; Simatović Appeal Brief, paras. 270-273, 275; T. 24 January 2023 pp. 56-58.

simply acknowledging that he aided and abetted them is insufficient.¹⁰⁶² In this respect, he points out that he was convicted for the organization of training and deployment to Bosanski Šamac, neither of which was done with the intent to commit crimes, and that the Trial Chamber should have assessed the gravity of his offences on this basis.¹⁰⁶³

337. The Prosecution responds that nothing less than a 12-year sentence reflects the gravity of Simatović's crimes and his participation in them, and that Simatović's arguments to the contrary should be dismissed.¹⁰⁶⁴ It submits that the Trial Chamber considered all relevant circumstances in assessing the gravity of Simatović's offences, and fully appreciated his role as an aider and abettor who deployed the forces knowing that crimes would be committed.¹⁰⁶⁵

338. Simatović replies that the Prosecution lists factors relevant to assessing the gravity of the offences but does not explain the lack of analysis in the Trial Judgement.¹⁰⁶⁶

339. The Appeals Chamber recalls that the fact that an accused did not physically commit a crime is relevant to the determination of an appropriate sentence,¹⁰⁶⁷ and that the assessment of the gravity of the offence must be determined by reference to the particular circumstances of the case, but also the form and degree of the accused's participation in the crimes.¹⁰⁶⁸ While aiding and abetting is considered as a lower form of liability, which may attract a lesser sentence, the gravity of the underlying crimes remains an important consideration in order to reflect the totality of the criminal conduct.¹⁰⁶⁹

340. The Appeals Chamber finds no merit in Simatović's contention that the Trial Chamber misjudged the gravity of the offences by solely considering the consequences of the crimes without assessing his form and degree of participation in them. As noted above, the Trial Chamber considered the circumstances of the crimes for which he was convicted, including their consequences, which are relevant to determining the gravity of the offences.¹⁰⁷⁰ Furthermore, the Trial Chamber accounted for the fact that Simatović did not commit the underlying crimes and was responsible for aiding and

¹⁰⁶² Simatović Appeal Brief, paras. 274, 275; T. 24 January 2023 pp. 56-58.

¹⁰⁶³ Simatović Appeal Brief, para. 273; T. 24 January 2023 pp. 57, 58.

¹⁰⁶⁴ Prosecution Response to Simatović Appeal, para. 154. *See also* T. 24 January 2023 p. 95.

¹⁰⁶⁵ *See* Prosecution Response to Simatović Appeal, paras. 156-158.

¹⁰⁶⁶ Simatović Reply Brief, paras. 99, 100. Simatović reiterates that there is no evidence suggesting that he knew that Serb forces would commit crimes in Bosanski Šamac, and he argues that the Prosecution's arguments in this respect are unfounded. *See* Simatović Reply Brief, para. 101.

¹⁰⁶⁷ *Mrkšić and Šljivančanin* Appeal Judgement, para. 407. *Cf. Strugar* Appeal Judgement, para. 381; *Blaškić* Appeal Judgement, para. 696.

¹⁰⁶⁸ *Mladić* Appeal Judgement, para. 545 and references cited therein.

¹⁰⁶⁹ *Mrkšić and Šljivančanin* Appeal Judgement, para. 407.

¹⁰⁷⁰ *See* Trial Judgement, paras. 618-620. *See also Stanišić and Župljanin* Appeal Judgement, para. 1106 and references cited therein.

abetting them by organizing the training of Unit members and local Serb forces at the Pajzoš camp, and through the subsequent deployment of these forces during the takeover of Bosanski Šamac.¹⁰⁷¹ The Trial Chamber also considered that it was not proven that Simatović exercised control over the perpetrators or directed them during the commission of the crimes.¹⁰⁷²

341. These conclusions are consistent with the detailed consideration of the evidence earlier in the Trial Judgement related to Simatović's conduct and the nature of the training and deployment that formed the basis of his aiding and abetting responsibility.¹⁰⁷³ Recalling that a trial judgement is to be read as a whole,¹⁰⁷⁴ and that a trial chamber need not repeat considerations addressed elsewhere in the judgement,¹⁰⁷⁵ Simatović does not demonstrate that, for the purposes of sentencing, further discussion was required by the Trial Chamber in assessing the form and degree of his participation in the crimes when making findings as to their gravity. Relatedly, the Appeals Chamber has already addressed and dismissed Simatović's contentions that the Trial Chamber erred in finding that he knew his acts provided practical assistance in the commission of the crimes.¹⁰⁷⁶ Therefore, the Appeals Chamber finds that Simatović does not show that the Trial Chamber erred in assessing the gravity of the offences for which he was convicted.

342. Based on the foregoing, the Appeals Chamber dismisses sub-ground 2 of Ground 3 of Simatović's appeal.

2. Alleged Errors in Assessing Aggravating Circumstances (sub-ground 3)

343. In determining Simatović's individual circumstances, the Trial Chamber recalled, *inter alia*, that aggravating circumstances must be proven beyond reasonable doubt and that the jurisprudence has identified an accused's abuse of his or her position of authority as an aggravating factor.¹⁰⁷⁷ The Trial Chamber further recalled that, at the time of the commission of the crimes in Bosanski Šamac, Simatović was a senior intelligence officer in the Second Administration of the State Security Service.¹⁰⁷⁸ The Trial Chamber found that, cloaked with the authority of Stanišić and the State

¹⁰⁷¹ Trial Judgement, paras. 619, 621.

¹⁰⁷² Trial Judgement, para. 621.

¹⁰⁷³ See Trial Judgement, paras. 409, 418, 419, 435, 436, 594-596, 605-607, 619, 621. See also Trial Judgement, paras. 218, 229, 232-234, 424.

¹⁰⁷⁴ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

¹⁰⁷⁵ *Mladić* Appeal Judgement, para. 247 and references cited therein.

¹⁰⁷⁶ See *supra* Section IV.B.3(c).

¹⁰⁷⁷ Trial Judgement, para. 623.

¹⁰⁷⁸ Trial Judgement, para. 628.

Security Service, Simatović abused his authority in utilizing the resources at his disposal to facilitate the commission of the crimes.¹⁰⁷⁹

344. Simatović submits that the Trial Chamber erred in finding that he was a senior intelligence officer in the Second Administration of the State Security Service and, consequently, that it erroneously considered his abuse of authority as an aggravating factor.¹⁰⁸⁰ Specifically, he argues that, at the time of the conduct for which he was convicted, he was not a senior intelligence officer in the Second Administration of the State Security Service but Chief of Section in the Administration of the city of Belgrade – namely, an “operational officer” in the “lowest” organizational unit in the State Security Service.¹⁰⁸¹

345. The Prosecution responds that the Trial Chamber did not consider Simatović’s specific position within the State Security Service as an aggravating factor but rather that he had abused his *de facto* authority within it by utilizing the resources at his disposal to facilitate the commission of the crimes.¹⁰⁸² The Prosecution submits that whether the Trial Chamber made an error in its description of Simatović’s formal title is irrelevant.¹⁰⁸³

346. Simatović replies that the Trial Chamber did not draw conclusions about any informal authority as a basis for finding that he abused his authority.¹⁰⁸⁴ He adds that his post at the time did not carry any authority that could be the subject of abuse and that, if Stanišić had great authority, it cannot be turned into an aggravating factor for Simatović.¹⁰⁸⁵

347. The Appeals Chamber recalls that the evidence reflects that Simatović worked in the Second “Branch” or “Department” of the State Security Service Administration in Belgrade rather than in the Second Administration of the State Security Service, as stated in paragraph 628 of the Trial Judgement.¹⁰⁸⁶ However, the Appeals Chamber has already determined that any error in this respect is one of form rather than substance given that the Trial Chamber’s description of Simatović’s responsibilities in this post accurately reflects the evidence on the record.¹⁰⁸⁷ Significantly, the Appeals Chamber has also determined that, when considering the Trial Judgement as a whole, the

¹⁰⁷⁹ Trial Judgement, para. 628.

¹⁰⁸⁰ Simatović Notice of Appeal, para. 41; Simatović Appeal Brief, paras. 276, 279; T. 24 January 2023 pp. 58, 59. See also T. 24 January 2023 pp. 46, 47, 51-56.

¹⁰⁸¹ See Simatović Appeal Brief, paras. 276-278. See also Simatović Appeal Brief, para. 280; T. 24 January 2023 pp. 46, 47, 51-56, 115.

¹⁰⁸² Prosecution Response to Simatović Appeal, para. 159. See also T. 24 January 2023 p. 96.

¹⁰⁸³ Prosecution Response to Simatović Appeal, para. 159. See also T. 24 January 2023 p. 96.

¹⁰⁸⁴ Simatović Reply Brief, para. 102.

¹⁰⁸⁵ Simatović Reply Brief, paras. 103, 104.

¹⁰⁸⁶ See *supra* para. 150.

¹⁰⁸⁷ See *supra* para. 150.

Trial Chamber's finding that Simatović abused his authority in utilizing the resources at his disposal to facilitate the commission of the crimes reflects an examination of his actual authority within the State Security Service based on evidence relating to the training and deployment that preceded the takeover of Bosanski Šamac.¹⁰⁸⁸ Simatović has not demonstrated error in this respect.

348. Consequently, the Appeals Chamber finds that Simatović does not demonstrate any error in the Trial Chamber's conclusion that he abused his authority and its finding that this constitutes an aggravating factor in the determination of his sentence. The Appeals Chamber dismisses sub-ground 3 of Ground 3 of Simatović's appeal.

3. Alleged Errors of Law and Fact in Assessing Mitigating Factors (sub-grounds 4 through 7)

349. In discussing mitigating factors, the Trial Chamber noted Simatović's age, general medical condition, and lack of prior criminal record.¹⁰⁸⁹ It also referred to his conduct in detention, during provisional release, and during the trial proceedings (including his regular court attendance).¹⁰⁹⁰ The Trial Chamber also noted that Simatović voluntarily appeared for a suspect interview with the Prosecution prior to being indicted, had the intent to surrender voluntarily, and declared that he accepted the jurisdiction of the ICTY before the Serbian authorities.¹⁰⁹¹ The Trial Chamber accorded these circumstances some limited weight in mitigation.¹⁰⁹² In addressing Simatović's submissions concerning the length of the proceedings, the Trial Chamber noted that the proceedings commenced over 18 years ago and were "lengthy".¹⁰⁹³ However, bearing in mind that the reason for this length was partly due to the ICTY Appeals Chamber's decision to order a full retrial on all counts, the Trial Chamber concluded that it was beyond its remit to take this decision into account in sentencing.¹⁰⁹⁴

350. The Trial Chamber noted Simatović's assertion that the "limited freedom" he had during his provisional release should be taken into account in determining his sentence.¹⁰⁹⁵ However, the Trial Chamber recalled that time spent on provisional release is not counted as time served in custody, and it noted it was not convinced that, as a general rule, time spent on provisional release should be taken into account as a mitigating factor.¹⁰⁹⁶ The Trial Chamber observed that the period of "limited freedom" Simatović had during his time on provisional release was prolonged due to the overall

¹⁰⁸⁸ See *supra* paras. 151, 152.

¹⁰⁸⁹ Trial Judgement, para. 630.

¹⁰⁹⁰ Trial Judgement, para. 630.

¹⁰⁹¹ Trial Judgement, para. 630.

¹⁰⁹² Trial Judgement, para. 630.

¹⁰⁹³ Trial Judgement, para. 631.

¹⁰⁹⁴ Trial Judgement, para. 631.

¹⁰⁹⁵ Trial Judgement, para. 632.

¹⁰⁹⁶ Trial Judgement, para. 632.

length of the proceedings which is tied, in part, to the decision of the ICTY Appeals Chamber to order a full retrial, an “exceptional” circumstance that the Trial Chamber was not in a position to take into account.¹⁰⁹⁷

351. The Trial Chamber further considered Simatović’s contentions that mitigation was warranted because of his low position within the hierarchy of the State Security Service and that he acted in compliance with the applicable law at the time.¹⁰⁹⁸ The Trial Chamber rejected these arguments concluding that, in view of his role in relation to the State Security Service’s special purpose unit, his position could not be accurately described as “relatively low”, and finding that the conduct for which he was held responsible was punishable under the Criminal Code of the Socialist Federal Republic of Yugoslavia.¹⁰⁹⁹

352. Simatović contends that the Trial Chamber failed to explain why it only provided limited weight to the factors it identified as mitigating.¹¹⁰⁰ He submits that the Trial Chamber did not give adequate weight to his conduct in detention and during the trial proceedings, including the fact that he has always “unreservedly expressed his respect for the Trial Chamber and the Prosecution” and attended all court hearings before the ICTY and the Mechanism.¹¹⁰¹ He also argues that the Trial Chamber, when assessing his age as a mitigating factor, failed to take into account the impact that the nearly 20 years of proceedings and resulting uncertainty, fear, courtroom effort, separation from family, and more than eight years of detention had on him.¹¹⁰²

353. Simatović further submits that the Trial Chamber erred in law and in fact by not accepting the overall length of the proceedings as a mitigating factor.¹¹⁰³ In particular, he contends that the Trial Chamber ignored its sentencing obligation to consider, *inter alia*, mitigating circumstances when determining that it was not within its remit to take into account the decision of the ICTY Appeals Chamber to order a full retrial, which contributed to the length of the proceedings.¹¹⁰⁴ Simatović also asserts that the Trial Chamber erred by not accepting the “limited freedom” he had during his time

¹⁰⁹⁷ Trial Judgement, para. 632.

¹⁰⁹⁸ Trial Judgement, paras. 614, 629.

¹⁰⁹⁹ Trial Judgement, paras. 614, 629. *See also* Criminal Code of the Socialist Federal Republic of Yugoslavia, adopted on 28 September 1976, entered into force on 1 July 1977, and repealed by the Criminal Code of the Republic of Serbia on 1 January 2006 (“SFRY” and “Criminal Code of the SFRY”, respectively).

¹¹⁰⁰ *See* Simatović Notice of Appeal, para. 43; Simatović Appeal Brief, paras. 282-284; Simatović Reply Brief, para. 107.

¹¹⁰¹ Simatović Appeal Brief, paras. 282, 283; Simatović Reply Brief, para. 108; T. 24 January 2023 pp. 59, 60.

¹¹⁰² Simatović Appeal Brief, para. 284.

¹¹⁰³ *See* Simatović Notice of Appeal, para. 44; Simatović Appeal Brief, paras. 285, 286; T. 24 January 2023 pp. 59-61, 115, 116.

¹¹⁰⁴ Simatović Appeal Brief, paras. 285, 286, *referring to, inter alia*, Simatović Final Trial Brief, paras. 1438-1444. Simatović adds that the duration of the proceedings cannot be attributed to him. *See* Simatović Appeal Brief, para. 287. *See also* T. 24 January 2023 pp. 115, 116.

on provisional release as a mitigating circumstance.¹¹⁰⁵ He argues that the Trial Chamber had the obligation to evaluate the “exceptionally long provisional release” and his conduct during this period of time as a “significant mitigating circumstance”, regardless of the fact that the overall length of the proceedings was tied, in part, to the ICTY Appeals Chamber’s decision to order a retrial.¹¹⁰⁶

354. Finally, Simatović submits that the Trial Chamber erred in failing to consider his position in the State Security Service.¹¹⁰⁷ According to Simatović, since the conduct for which he was found guilty was committed no later than 11 April 1992, no reasonable trier of fact could have rated his rank differently than “low” and not considered it as a mitigating circumstance.¹¹⁰⁸ He also contends that the Trial Chamber erred in finding that the organization of training and deployment of a military unit was punishable under the Criminal Code of the SFRY and did not provide any legal basis in this respect.¹¹⁰⁹ In light of these alleged errors, Simatović requests that the sentence imposed on him be replaced by a more lenient one.¹¹¹⁰

355. The Prosecution responds that Simatović fails to demonstrate that the Trial Chamber abused its discretion by either not considering relevant mitigating factors or giving them insufficient weight.¹¹¹¹ It also argues that the Trial Chamber did not err in failing to consider the overall length of the proceedings as a mitigating factor, since this alone is not a mitigating factor and the Trial Chamber did not conclude that Simatović’s right to a fair trial had been violated.¹¹¹² The Prosecution further asserts that the Trial Chamber correctly concluded that the time spent on provisional release was not tantamount to detention.¹¹¹³ The Prosecution adds that Simatović fails to show error in the Trial Chamber’s refusal to treat his rank as a mitigating factor.¹¹¹⁴ According to the Prosecution, the Trial Chamber did not find that the organization of training and deployment of a military unit constituted a criminal act under the Criminal Code of the SFRY, *per se*, but that Simatović’s conduct constituted aiding and abetting crimes against humanity and war crimes.¹¹¹⁵ In any event, the

¹¹⁰⁵ See Simatović Notice of Appeal, para. 45; Simatović Appeal Brief, paras. 289-291; T. 24 January 2023 pp. 61, 62.

¹¹⁰⁶ Simatović Appeal Brief, para. 291. See also T. 24 January 2023 pp. 61, 62, 116.

¹¹⁰⁷ Simatović Notice of Appeal, para. 42; Simatović Appeal Brief, para. 280. See also T. 24 January 2023 pp. 58, 59. Simatović argues in his notice of appeal that the Trial Chamber erred in failing to consider his attitude towards his unit as a mitigating factor, but he does not develop this contention elsewhere in his appeal submissions. See Simatović Notice of Appeal, para. 42. Consequently, the Appeals Chamber concludes that the argument is abandoned and will not consider it further. See *Mladić* Appeal Judgement, paras. 39, 78 and references cited therein.

¹¹⁰⁸ Simatović Appeal Brief, para. 280; T. 24 January 2023 pp. 58, 59. See also T. 24 January 2023 p. 115.

¹¹⁰⁹ Simatović Notice of Appeal, para. 42; Simatović Appeal Brief, para. 281; T. 24 January 2023 p. 59.

¹¹¹⁰ Simatović Notice of Appeal, para. 39; Simatović Appeal Brief, paras. 269, 288; T. 24 January 2023 p. 62.

¹¹¹¹ Prosecution Response to Simatović Appeal, para. 162.

¹¹¹² Prosecution Response to Simatović Appeal, para. 165; T. 24 January 2023 pp. 96-98. The Prosecution disputes Simatović’s contention that he did not contribute to the overall length of the proceedings. See Prosecution Response to Simatović Appeal, para. 167; T. 24 January 2023 pp. 98, 99.

¹¹¹³ Prosecution Response to Simatović Appeal, para. 168; T. 24 January 2023 pp. 95, 96.

¹¹¹⁴ Prosecution Response to Simatović Appeal, para. 160; T. 24 January 2023 p. 96.

¹¹¹⁵ Prosecution Response to Simatović Appeal, para. 161.

Prosecution argues that the Trial Chamber properly relied on the relevant sentencing provisions in the Criminal Code of the SFRY.¹¹¹⁶

356. Simatović replies that his good conduct during the trial deserved to be given adequate weight by the Trial Chamber.¹¹¹⁷ He further contends that the trauma of trial for almost 20 years on a 72-year-old man must be considered as a serious mitigating circumstance.¹¹¹⁸ He adds that his post in the State Security Service at the time did not carry any authority that could be the subject of abuse and that, if Stanišić had great authority, it cannot be turned into an aggravating factor for Simatović.¹¹¹⁹ Simatović also replies that the Criminal Code of the SFRY did not punish the organization of training and deployment of a military unit to a battlefield, and he submits that the Prosecution is offering reasoning that the Trial Chamber did not provide.¹¹²⁰

357. With regard to Simatović's contention that the Trial Chamber failed to explain why it only accorded "limited weight in mitigation" to the mitigating factors it identified, the Appeals Chamber recalls that, although a trial chamber is required to provide a reasoned opinion,¹¹²¹ it need not articulate every step of its reasoning.¹¹²² The Appeals Chamber observes that the Trial Chamber correctly recalled the circumstances identified as mitigating factors in the relevant jurisprudence and then made findings as to what factors it accorded some limited weight in mitigation.¹¹²³ The Appeals Chamber is not persuaded that the Trial Chamber was obligated to provide any further explanation as to why it accorded "limited weight" to the factors it identified as mitigating.

358. Regarding Simatović's claim that the Trial Chamber erred in not according sufficient weight in mitigation to his conduct in detention and during the trial proceedings, as well as his age, the Appeals Chamber notes that Simatović repeats submissions made at trial without demonstrating any discernible error on the part of the Trial Chamber.¹¹²⁴ The Appeals Chamber observes that the Trial Chamber considered these circumstances and that it accorded them some limited weight in mitigation.¹¹²⁵ Recalling that a trial chamber enjoys considerable discretion in determining what

¹¹¹⁶ Prosecution Response to Simatović Appeal, para. 161.

¹¹¹⁷ Simatović Reply Brief, paras. 107, 108; T. 24 January 2023 pp. 59, 60.

¹¹¹⁸ Simatović Reply Brief, para. 108; T. 24 January 2023 pp. 59-61. Simatović reiterates that he is not responsible for the length of the proceedings. *See* Simatović Reply Brief, para. 110; T. 24 January 2023 pp. 115, 116.

¹¹¹⁹ Simatović Reply Brief, paras. 103, 104.

¹¹²⁰ Simatović Reply Brief, paras. 105, 106; T. 24 January 2023 p. 59.

¹¹²¹ *See* Article 21(2) of the Statute; Rule 122(C) of the Rules. *See also* *Mladić* Appeal Judgement, para. 437 and references cited therein.

¹¹²² *Mladić* Appeal Judgement, paras. 339, 423 and references cited therein.

¹¹²³ *See* Trial Judgement, paras. 624, 625, 629-631.

¹¹²⁴ *Compare* Simatović Appeal Brief, paras. 283, 284 *with* Simatović Final Trial Brief, paras. 1454, 1458, 1459.

¹¹²⁵ Trial Judgement, para. 630. The ICTY Appeals Chamber has noted the limited weight given to advanced age as a mitigating factor in its jurisprudence. *See Stanišić and Župljanin* Appeal Judgement, para. 1170, n. 3847 and references cited therein.

constitutes a mitigating circumstance and the weight, if any, to be accorded to the factors identified,¹¹²⁶ the Appeals Chamber finds that Simatović fails to demonstrate that the Trial Chamber gave insufficient weight to his conduct in detention and during the trial proceedings as well as his age when assessing mitigating circumstances.

359. Turning to Simatović’s submission that the Trial Chamber erred by not accepting the overall length of the proceedings as a mitigating factor and determining that it was beyond its remit to take the decision of the ICTY Appeals Chamber to order a full retrial into account in sentencing, the Appeals Chamber notes that Simatović does not point to any jurisprudence supporting his contention. In this respect, the Appeals Chamber recalls that the ICTR Appeals Chamber noted that the length of the proceedings is not one of the factors that a trial chamber must consider, even as a mitigating circumstance, when determining a sentence.¹¹²⁷ Indeed, the ICTR Appeals Chamber has held that where a trial chamber had not found a violation of an accused’s fundamental right to an expeditious trial, it abused its discretion in considering as a mitigating circumstance the length of the proceedings, even when they had been lengthened unnecessarily.¹¹²⁸ In light of the above, the Appeals Chamber finds that Simatović demonstrates no error in the Trial Chamber referring to the proceedings as “lengthy”, but then concluding that it was beyond its remit to take into account, as a mitigating factor in sentencing, the decision of the ICTY Appeals Chamber to order a full retrial, which contributed to the overall length of the proceedings against Simatović.

360. With regard to Simatović’s assertion that the Trial Chamber should have considered his “limited freedom” during his time on provisional release as a mitigating circumstance, the Appeals Chamber observes that Simatović repeats on appeal arguments which did not succeed at trial.¹¹²⁹ On appeal, he does not show that the Trial Chamber abused its discretion by not considering as mitigating factors the length of time he spent on provisional release and the restrictions imposed on him. As for his conduct while on provisional release, the Appeals Chamber observes that the Trial Chamber considered this factor as a mitigating circumstance and accorded it limited weight in mitigation.¹¹³⁰ Based on the foregoing, these submissions are dismissed.

361. Turning to Simatović’s contention that the Trial Chamber erred in failing to consider his “low” position in the State Security Service as a mitigating factor, the Appeals Chamber observes that the Trial Chamber determined that Simatović was a senior intelligence officer in the State

¹¹²⁶ *Mladić* Appeal Judgement, para. 553 and references cited therein.

¹¹²⁷ *See Nahimana et al.* Appeal Judgement, para. 1073.

¹¹²⁸ *See Setako* Appeal Judgement, paras. 295-297.

¹¹²⁹ *Compare* Simatović Appeal Brief, paras. 289, 290 *with* Simatović Final Trial Brief, para. 1456.

¹¹³⁰ Trial Judgement, para. 630.

Security Service and that his role in relation to the State Security Service’s special purpose unit “cannot be accurately described as ‘relatively low’”.¹¹³¹ It consequently rejected this argument as a basis for mitigation.¹¹³² Simatović does not demonstrate that, in view of the record the Trial Chamber relied upon, it was unreasonable to reject his submission that he held a low position within the State Security Service. Moreover, recalling that a trial chamber enjoys considerable discretion in determining what constitutes a mitigating circumstance and the weight, if any, to be accorded to the factors identified,¹¹³³ Simatović does not demonstrate that, even if the Trial Chamber had agreed that his position was “low”, it would have been required to give weight to this consideration as a mitigating circumstance.

362. Turning to Simatović’s argument that the Trial Chamber erred in finding that the conduct for which he was convicted was punishable under the Criminal Code of the SFRY,¹¹³⁴ the Appeals Chamber observes that he was not convicted for organizing training and deploying Serb forces *per se* but that these acts, when considered in light of his *mens rea*, amounted to aiding and abetting the crimes for which he was convicted.¹¹³⁵ In this respect, Simatović does not demonstrate that this conduct was not punishable under the Criminal Code of the SFRY¹¹³⁶ or that the Trial Chamber erred by not considering his alleged compliance with the law as a mitigating circumstance. The Appeals Chamber finds that Simatović fails to demonstrate error in this respect.

363. In light of the above, the Appeals Chamber dismisses sub-grounds 4 through 7 of Ground 3 of Simatović’s appeal.

4. Alleged Errors of Law and Fact in Comparing Sentences from Other ICTY Cases (sub-ground 8)

364. In determining the appropriate sentence for Simatović, the Trial Chamber considered sentences imposed in the *Simić* appeal and the *Stanišić and Župljanin* case “to the extent that these cases held the accused responsible for crimes committed in Bosanski Šamac during the period covered by the Indictment in this case”.¹¹³⁷ It also considered the *Blagojević and Jokić* case to the extent that one of the accused was convicted of aiding and abetting the crimes of murder, persecution, and forcible transfer, and it further considered the *Milutinović et al.* case “where two of the accused

¹¹³¹ See Trial Judgement, paras. 628, 629.

¹¹³² Trial Judgement, para. 629.

¹¹³³ *Mladić* Appeal Judgement, para. 553 and references cited therein.

¹¹³⁴ Simatović Appeal Brief, para. 281.

¹¹³⁵ See Trial Judgement, paras. 604-608.

¹¹³⁶ The Prosecution disputes that Simatović’s conduct was not a crime under the Criminal Code of the SFRY. See Prosecution Response to Simatović Appeal, para. 161, n. 589, referring to Article 24 of the Criminal Code of the SFRY.

¹¹³⁷ Trial Judgement, para. 634, n. 2423.

were held responsible for aiding and abetting the crime of forcible displacement, albeit on a larger scale than in the present case”.¹¹³⁸

365. Simatović argues that the Trial Chamber erred in law and in fact when comparing his case with these ICTY cases and by omitting comparison of his case with more comparable cases.¹¹³⁹ According to Simatović, the comparison with the *Stanišić and Župljanin* case was “not adequate” because that case concerned a joint criminal enterprise that lasted for more than four years and extended over several municipalities throughout Bosnia and Herzegovina.¹¹⁴⁰ Simatović also argues that the Trial Chamber should not have considered the sentence imposed in the *Simić* appeal, as Blagoje Simić was considered “the first and most responsible man” for the events in Bosanski Šamac from September 1991 to 31 December 1993.¹¹⁴¹ According to Simatović, he “should have been given a much milder sentence” by the Trial Chamber, given that the accused in the *Blagojević and Jokić* case were sentenced to 15 and nine years of imprisonment, respectively, for having aided and abetted crimes committed in Srebrenica in July 1995.¹¹⁴² Simatović further contends that the Trial Chamber failed to consider the sentences imposed on Miroslav Tadić and Simo Zarić in the trial of *Prosecutor v. Blagoje Simić et al.* (“*Simić et al.* trial”), who were found guilty of having aided and abetted crimes that took place in Bosanski Šamac and who were sentenced, respectively, to eight and six years of imprisonment.¹¹⁴³

366. The Prosecution responds that Simatović fails to demonstrate that his sentence is excessive compared to sentences imposed in the similar cases considered by the Trial Chamber.¹¹⁴⁴ It notes that Simatović’s sentence of 12 years’ imprisonment is “much lower” than the 22-year sentence imposed on Mićo Stanišić,¹¹⁴⁵ is supported by the 15-year sentence given to Blagoje Simić,¹¹⁴⁶ and is not disproportionate to Vidoje Blagojević’s 15-year sentence.¹¹⁴⁷ The Prosecution further claims that no comparison can be made between Simatović’s sentence and those imposed on Miroslav Tadić and Simo Zarić.¹¹⁴⁸

¹¹³⁸ Trial Judgement, para. 634.

¹¹³⁹ See Simatović Notice of Appeal, para. 46; Simatović Appeal Brief, paras. 292-295.

¹¹⁴⁰ Simatović Appeal Brief, para. 292.

¹¹⁴¹ Simatović Appeal Brief, para. 293.

¹¹⁴² Simatović Appeal Brief, para. 293.

¹¹⁴³ Simatović Appeal Brief, para. 294.

¹¹⁴⁴ Prosecution Response to Simatović Appeal, para. 169.

¹¹⁴⁵ Prosecution Response to Simatović Appeal, para. 171.

¹¹⁴⁶ Prosecution Response to Simatović Appeal, para. 175.

¹¹⁴⁷ Prosecution Response to Simatović Appeal, para. 173.

¹¹⁴⁸ Prosecution Response to Simatović Appeal, para. 174.

367. Simatović replies that it was inappropriate to compare his case with Blagoje Simić’s given the temporal scale of Blagoje Simić’s crimes in Bosanski Šamac and his more direct involvement in them.¹¹⁴⁹ He further argues that Miroslav Tadić and Simo Zarić personally participated in the crimes in Bosanski Šamac for which they were convicted, while Simatović “did not even set foot” in that area, which demonstrates that the Trial Chamber erred in comparing their sentences.¹¹⁵⁰

368. With regard to Simatović’s contention that the Trial Chamber erred in considering the sentences imposed in the *Stanišić and Župljanin* case and the *Simić* appeal, the Appeals Chamber notes that the Trial Chamber indicated that it considered the sentences imposed in these cases to the extent that they held the accused responsible for crimes committed in Bosanski Šamac during the period covered by the Indictment.¹¹⁵¹ Furthermore, it focused on the sentence imposed on the accused convicted for crimes committed in Bosanski Šamac – namely, Mićo Stanišić – and was cognizant of the fact that, compared to Simatović, Mićo Stanišić was held responsible for a larger crime base and through his participation in a joint criminal enterprise.¹¹⁵² The Appeals Chamber therefore does not find discernible error in the Trial Chamber’s decision to consider the sentences imposed in this case.

369. Similarly, the Appeals Chamber is not persuaded that the Trial Chamber was precluded from considering the sentence imposed on Blagoje Simić notwithstanding differences as to the nature and length of Blagoje Simić’s participation in crimes in Bosanski Šamac.¹¹⁵³ The references cited in the Trial Judgement reflect that the Trial Chamber was mindful of the specific circumstances underpinning Blagoje Simić’s sentence, including the fact that he was convicted of one count of aiding and abetting the crimes of persecution, the specific conduct underlying this conviction, and his position in the municipality of Bosanski Šamac during the events.¹¹⁵⁴ The Appeals Chamber thus considers that Simatović has not demonstrated any discernible error based on the Trial Chamber’s consideration of this case.

370. With regard to Simatović’s assertion that he should have received a “much milder sentence” considering the sentences imposed in the *Blagojević and Jokić* case, the Appeals Chamber notes that the Trial Chamber focused on the sentence of 15 years of imprisonment imposed on Vidoje Blagojević, who was convicted of aiding and abetting the crime of murder, persecution, and forcible transfer.¹¹⁵⁵ Simatović does not show that the Trial Chamber was required to impose a sentence lower

¹¹⁴⁹ Simatović Reply Brief, para. 111.

¹¹⁵⁰ Simatović Reply Brief, para. 112.

¹¹⁵¹ Trial Judgement, para. 634.

¹¹⁵² Trial Judgement, para. 634, n. 2423.

¹¹⁵³ Simatović Appeal Brief, para. 293.

¹¹⁵⁴ Trial Judgement, para. 634, n. 2423.

¹¹⁵⁵ Trial Judgement, para. 634, n. 2424.

than 12 years of imprisonment because Vidoje Blagojević's convictions arose in relation to and after the fall of Srebrenica in Bosnia and Herzegovina in 1995. Finally, his mere reference to Dragan Jokić's sentence of nine years of imprisonment likewise fails to show that the Trial Chamber did not reasonably exercise its sentencing discretion.

371. Turning to Simatović's contention that the Trial Chamber should have taken into account the sentences imposed on Miroslav Tadić and Simo Zarić in the *Simić et al.* trial, the Appeals Chamber observes that Simatović did not direct the Trial Chamber to these cases in his sentencing submissions.¹¹⁵⁶ The Appeals Chamber further recalls that trial chambers are under no obligation to expressly compare the case of one accused to that of another,¹¹⁵⁷ and that "similar cases do not provide a legally binding tariff of sentences" on others.¹¹⁵⁸ The Appeals Chamber therefore finds that Simatović does not demonstrate that the Trial Chamber erred by failing to consider the sentences imposed on Miroslav Tadić and Simo Zarić and, moreover, that he does not show that his sentence of 12 years of imprisonment is out of reasonable proportion with their sentences of imprisonment of eight and six years, respectively.

372. In light of the above, the Appeals Chamber dismisses sub-ground 8 of Ground 3 of Simatović's appeal.

5. Alleged Errors of Law and Fact in Imposing the Same Sentence on the Co-Accused (sub-ground 9)

373. Stanišić and Simatović were each sentenced to 12 years of imprisonment by the Trial Chamber.¹¹⁵⁹ Simatović contends that the Trial Chamber erred in law and in fact in imposing the same sentence on him and Stanišić.¹¹⁶⁰ Simatović argues that the Trial Chamber failed to account for the difference in their respective positions of authority and roles at the time of the events.¹¹⁶¹ According to Simatović, the Trial Chamber was required to consider that Stanišić was Chief of the State Security Service and that all employees of that service, including Simatović, were bound to act on his orders and instructions, and, consequently, it should have imposed a "milder sentence" on Simatović.¹¹⁶²

¹¹⁵⁶ See Simatović Final Trial Brief, paras. 1433-1463; T. 13 April 2021 pp. 68-124; T. 14 April 2021 pp. 45-52.

¹¹⁵⁷ *Karadžić* Appeal Judgement, para. 767 and references cited therein.

¹¹⁵⁸ *Popović et al.* Appeal Judgement, para. 2093 and references cited therein.

¹¹⁵⁹ Trial Judgement, p. 270.

¹¹⁶⁰ Simatović Notice of Appeal, para. 47; Simatović Appeal Brief, para. 296.

¹¹⁶¹ Simatović Appeal Brief, para. 296.

¹¹⁶² Simatović Appeal Brief, para. 296.

374. The Prosecution responds that the Trial Chamber was mindful of the fact that Stanišić and Simatović played different but equally important roles in the events in Bosanski Šamac.¹¹⁶³

375. Simatović replies that his subordinate position as a civil servant should have been reflected in his sentence.¹¹⁶⁴

376. The Appeals Chamber notes that, when determining Stanišić's and Simatović's sentences, the Trial Chamber expressly stated that it "has considered the circumstances of each Accused separately, and has tailored the penalty to fit the individual circumstances of each Accused and the gravity of the offences".¹¹⁶⁵ Contrary to Simatović's contention, the Trial Chamber accounted for Stanišić's and Simatović's individual positions of authority¹¹⁶⁶ and the form and degree of their individual participation in the crimes in its sentencing considerations.¹¹⁶⁷ The Appeals Chamber also notes that the Trial Chamber separately assessed Stanišić's and Simatović's individual aggravating and mitigating circumstances.¹¹⁶⁸ Consequently, Simatović has not demonstrated that the Trial Chamber erred by failing to account for differences in his position or role in the crimes *vis-à-vis* Stanišić.

377. Based on the foregoing, the Appeals Chamber dismisses sub-ground 9 of Ground 3 of Simatović's appeal.

VI. APPEAL OF THE PROSECUTION

A. Alleged Errors Regarding Contributions to the Joint Criminal Enterprise (Ground 1 sub-ground A)

378. The Trial Chamber found proven beyond reasonable doubt that, from at least August 1991 and at all times relevant to the crimes charged in the Indictment, a common criminal purpose existed to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina, through the commission of the crimes of persecution, murder, deportation, and inhumane acts (forcible transfer) charged in the Indictment.¹¹⁶⁹ It further found that a joint criminal enterprise existed, in which the common criminal purpose was shared by senior political, military, and police leadership in Serbia, SAO Krajina, SAO SBWS, and *Republika Srpska*, with core members being Slobodan Milošević, Radmilo Bogdanović, Radovan Stojičić (Badža), Mihalj Kertes, Milan

¹¹⁶³ Prosecution Response to Simatović Appeal, para. 176.

¹¹⁶⁴ Simatović Reply Brief, para. 113.

¹¹⁶⁵ Trial Judgement, para. 611.

¹¹⁶⁶ Trial Judgement, paras. 618, 626, 628, 629.

¹¹⁶⁷ Trial Judgement, paras. 617, 619-621.

¹¹⁶⁸ Trial Judgement, paras. 622-632.

¹¹⁶⁹ Trial Judgement, paras. 379-381, 597. *See also* Trial Judgement, para. 378.

Martić, Milan Babić, Goran Hadžić, Radovan Karadžić, Ratko Mladić, Momčilo Krajišnik, Biljana Plavšić, and Željko Ražnatović (Arkan).¹¹⁷⁰

379. Having considered relevant evidence and conduct related to the Unit and the JATD,¹¹⁷¹ the Serbian Volunteer Guard and Željko Ražnatović (Arkan),¹¹⁷² the Scorpions,¹¹⁷³ SAO Krajina,¹¹⁷⁴ SAO SBWS,¹¹⁷⁵ as well as conduct in relation to certain joint criminal enterprise members from *Republika Srpska*,¹¹⁷⁶ the Trial Chamber found that Stanišić and Simatović contributed to the furtherance of the common criminal purpose through organizing the training of Unit members and local Serb forces at the Pajzoš camp and their subsequent deployment during the takeover of Bosanski Šamac in Bosnia and Herzegovina in April 1992.¹¹⁷⁷ However, the Trial Chamber found not proven beyond reasonable doubt that Stanišić and Simatović deployed or provided assistance to Serb forces under their control in connection with any other crimes charged in the Indictment or that they were personally involved in the planning or execution of operations that led to the forcible displacement of non-Serbs from the specific areas in Croatia and Bosnia and Herzegovina charged in the Indictment.¹¹⁷⁸ The Trial Chamber further concluded that the Prosecution had not proven beyond reasonable doubt that Stanišić and Simatović shared the intent to further the common criminal purpose.¹¹⁷⁹ Consequently, the Trial Chamber found that Stanišić and Simatović may not be held responsible for committing, through participation in a joint criminal enterprise, the crimes alleged in the Indictment.¹¹⁸⁰

380. The Prosecution submits that the Trial Chamber erred in assessing the contributions of Stanišić and Simatović to the common criminal purpose of the joint criminal enterprise.¹¹⁸¹ Specifically, it argues that the Trial Chamber: (i) adopted an incorrect legal standard for assessing contributions to the common criminal purpose and systematically failed to find numerous contributions to it,¹¹⁸² (ii) failed to adjudicate all the contributions of Stanišić and Simatović or failed

¹¹⁷⁰ Trial Judgement, paras. 380, 597.

¹¹⁷¹ See Trial Judgement, paras. 382-436.

¹¹⁷² See Trial Judgement, paras. 437-456, 591.

¹¹⁷³ See Trial Judgement, paras. 457-466, 591.

¹¹⁷⁴ See Trial Judgement, paras. 467-505.

¹¹⁷⁵ See Trial Judgement, paras. 506-537.

¹¹⁷⁶ See Trial Judgement, paras. 538-572.

¹¹⁷⁷ Trial Judgement, para. 597. See also Trial Judgement, paras. 424, 436, 590.

¹¹⁷⁸ Trial Judgement, para. 591. The regions and areas in which crimes were charged against Stanišić and Simatović included SAO Krajina, SAO SBWS, and the Bosnia and Herzegovina municipalities of Bijeljina, Bosanski Šamac, Doboj, Sanski Most, Trnovo, and Zvornik. See Indictment, paras. 22, 26-28, 30-32, 35-39, 42, 46-48, 50-52, 54-62, 64, 65.

¹¹⁷⁹ Trial Judgement, para. 597.

¹¹⁸⁰ Trial Judgement, para. 598.

¹¹⁸¹ See Prosecution Notice of Appeal, paras. 5-9, 15; Prosecution Appeal Brief, paras. 10, 16-127.

¹¹⁸² See Prosecution Appeal Brief, paras. 10, 16-59.

to provide a reasoned opinion in rejecting them;¹¹⁸³ (iii) failed to adjudicate their contributions to forcible displacement crimes in Sanski Most in 1995;¹¹⁸⁴ and (iv) failed to find that Stanišić and Simatović contributed to the common criminal purpose in additional ways.¹¹⁸⁵ The Prosecution requests that the Appeals Chamber correct the Trial Chamber's errors and find that Stanišić and Simatović contributed to the common criminal purpose in numerous ways in addition to conduct related to crimes committed in Bosanski Šamac, assess their *mens rea* on the basis of these additional contributions, find them guilty as members of the joint criminal enterprise, and increase their sentences accordingly.¹¹⁸⁶

1. Alleged Errors in Assessing Contributions to the Joint Criminal Enterprise (sub-ground A(i))

381. The Prosecution submits that the Trial Chamber adopted an incorrect standard for assessing what constitutes a contribution for the purpose of establishing joint criminal enterprise liability.¹¹⁸⁷ Specifically, it argues that the Trial Chamber erred: (i) by applying an incorrect legal standard and thereby systematically failing to consider alleged contributions to the common criminal purpose¹¹⁸⁸ in relation to operations involving Brčko,¹¹⁸⁹ Podrinje,¹¹⁹⁰ Operation Pauk, Treskavica/Trnovo, and in the Autonomous Region of Krajina,¹¹⁹¹ as well as by declining to consider contributions through the JATD,¹¹⁹² to Željko Ražnatović (Arkan) and his Serbian Volunteer Guard,¹¹⁹³ and to the Scorpions in relation to certain of the aforementioned operations;¹¹⁹⁴ (ii) by dismissing as potential contributions to the common criminal purpose communications with Radovan Karadžić prior to and following the establishment of *Republika Srpska* as well as the use of intelligence groups in *Republika Srpska*;¹¹⁹⁵ and (iii) by erroneously assessing contributions to the common criminal purpose individually, rather than in context, and improperly finding that they were not significant on that basis.¹¹⁹⁶ According to the Prosecution, had the Trial Chamber analyzed the evidence correctly, it would have found that

¹¹⁸³ See Prosecution Appeal Brief, paras. 10, 16, 60-80.

¹¹⁸⁴ See Prosecution Appeal Brief, paras. 10, 16, 81-94.

¹¹⁸⁵ See Prosecution Appeal Brief, paras. 10, 16, 95-117.

¹¹⁸⁶ See Prosecution Appeal Brief, paras. 118-127, 152; T. 25 January 2023 pp. 2, 3.

¹¹⁸⁷ See Prosecution Notice of Appeal, para. 6; Prosecution Appeal Brief, paras. 10, 16-59. See also T. 24 January 2023 p. 83; T. 25 January 2023 pp. 4-9, 15, 16, 29, 81, 82.

¹¹⁸⁸ See Prosecution Appeal Brief, paras. 17, 19-56. See also Prosecution Reply to Stanišić Response, paras. 6-8; Prosecution Reply to Simatović Response, para. 6; T. 24 January 2023 p. 83; T. 25 January 2023 pp. 4-9, 16, 29, 81, 82.

¹¹⁸⁹ See Prosecution Appeal Brief, paras. 22-26. See also T. 25 January 2023 pp. 29, 82.

¹¹⁹⁰ See Prosecution Appeal Brief, paras. 27-33. See also T. 25 January 2023 pp. 29, 82.

¹¹⁹¹ See Prosecution Appeal Brief, paras. 34-36. See also T. 25 January 2023 p. 82.

¹¹⁹² See Prosecution Appeal Brief, paras. 37-39.

¹¹⁹³ See Prosecution Appeal Brief, paras. 40-45.

¹¹⁹⁴ See Prosecution Appeal Brief, paras. 46-48.

¹¹⁹⁵ See Prosecution Appeal Brief, paras. 50-56.

¹¹⁹⁶ See Prosecution Appeal Brief, paras. 17, 57-59. See also T. 25 January 2023 pp. 8, 9.

Stanišić and Simatović contributed to the common criminal purpose on these bases.¹¹⁹⁷ These arguments are addressed in turn below.

(a) Alleged Errors Regarding Uncharged Operations and Uncharged Crimes (sub-grounds A(i)(a), A(i)(a)(i) through A(i)(a)(iv))¹¹⁹⁸

382. As noted above, the Trial Chamber found proven beyond reasonable doubt that, from at least August 1991 and at all times relevant to the crimes charged in the Indictment, a common criminal purpose existed to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina, through the commission of the crimes of persecution, murder, deportation, and inhumane acts (forcible transfer) charged in the Indictment.¹¹⁹⁹

383. In the evidentiary principles section of the Trial Judgement, the Trial Chamber stated that the Prosecution presented evidence in relation to various operations or areas that do not directly concern the locations of the crimes charged in the Indictment, including, for example, Operation Pauk, Operation Udar, and the events in Brčko.¹²⁰⁰ The Trial Chamber indicated that it had “fully considered this evidence in reaching its findings on [Stanišić’s and Simatović’s] alleged participation in a joint criminal enterprise, their intent, and [their] relationship with various Serb forces”.¹²⁰¹ However, the Trial Chamber stated that specific operations or incidents supported by such evidence serve principally as background and context in support of the charged crimes, and, therefore, also for the sake of brevity and clarity, it had not discussed such evidence in detail in the Trial Judgement.¹²⁰²

384. When assessing whether Stanišić and Simatović contributed to the furtherance of the common criminal purpose through the Unit, the Trial Chamber stated that it had “taken into account” other evidence, including in relation to the events in Brčko and the joint Podrinje operations and related training activities, cited by the Prosecution for the purpose of showing the continuity of the Unit, Stanišić’s and Simatović’s intent, and their activity and that of other alleged members of the joint criminal enterprise during this period.¹²⁰³ The Trial Chamber, however, concluded that it did not find it necessary to discuss this evidence in detail since it serves as background and concerns events and

¹¹⁹⁷ See Prosecution Appeal Brief, paras. 51, 53. See also Prosecution Appeal Brief, paras. 26, 33, 39, 45, 48, 56, 59.

¹¹⁹⁸ The Appeals Chamber addresses the Prosecution’s arguments in paragraphs 43 and 44 of the Prosecution Appeal Brief that relate to payments to the Serbian Volunteer Guard in connection with sub-ground A(iv)(c) of Ground 1 of its appeal. The arguments related to Western Srem in paragraph 49 of the Prosecution Appeal Brief are developed in sub-ground A(iv)(a) of Ground 1 of its appeal, and the Appeals Chamber will address them in relation to that part of the appeal.

¹¹⁹⁹ Trial Judgement, paras. 379, 597. See also Trial Judgement, paras. 378, 594.

¹²⁰⁰ Trial Judgement, para. 20.

¹²⁰¹ Trial Judgement, para. 20.

¹²⁰² Trial Judgement, para. 20.

¹²⁰³ Trial Judgement, para. 390.

operations that are not directly related to the charged crimes in the two territories in Croatia and the five municipalities in Bosnia and Herzegovina “that necessarily form the contours of the forcible displacement campaign pleaded in the Indictment”.¹²⁰⁴

385. When considering whether Stanišić and Simatović contributed to the furtherance of the common criminal purpose through the JATD – which the Trial Chamber found was established in early August 1993 and over which Stanišić and Simatović exercised authority¹²⁰⁵ – the Trial Chamber stated that it was not satisfied that the Prosecution had convincingly shown that trainings at Pajzoš, or others imputed to the JATD, including at Petrova Gora, were linked to crimes charged in the Indictment.¹²⁰⁶ The Trial Chamber further noted that there was evidence that the JATD or some of its members took part in the 1994 Operation Pauk and in the 1995 Treskavica/Trnovo, Autonomous Region of Krajina, and SAO SBWS operations but noted that these military operations did not relate, “except as otherwise discussed in the [Trial] Judgement”, to the crimes charged in the Indictment.¹²⁰⁷

386. When considering whether Stanišić and Simatović contributed to the furtherance of the common criminal purpose through Željko Ražnatović (Arkan) and the Serbian Volunteer Guard, the Trial Chamber was not convinced beyond reasonable doubt that Stanišić and Simatović directed and organized the formation, financing, training, logistical support, or any other substantial assistance or support to the Serbian Volunteer Guard that was involved in the commission of crimes in Croatia and Bosnia and Herzegovina as charged in the Indictment.¹²⁰⁸ The Trial Chamber concluded that it did not find beyond reasonable doubt that Stanišić and Simatović made a significant contribution to crimes charged in the Indictment in relation to Željko Ražnatović (Arkan) and the Serbian Volunteer Guard.¹²⁰⁹ In coming to this conclusion, the Trial Chamber considered the Prosecution’s arguments and evidence as to Stanišić’s and Simatović’s possible contributions to the Serbian Volunteer Guard during the 1995 operations in the Autonomous Region of Krajina but determined that the Prosecution had failed to establish its case with respect to the crimes charged in the Indictment.¹²¹⁰ The Trial Chamber also noted the existence of evidence in support of, *inter alia*, Stanišić’s and Simatović’s involvement in relation to Operation Pauk in 1994 and operations in Treskavica/Trnovo and the SAO

¹²⁰⁴ Trial Judgement, para. 390.

¹²⁰⁵ See Trial Judgement, para. 432.

¹²⁰⁶ Trial Judgement, para. 434.

¹²⁰⁷ Trial Judgement, para. 434.

¹²⁰⁸ Trial Judgement, para. 456. See also Trial Judgement, paras. 441, 444, 447-450, 452, 453.

¹²⁰⁹ Trial Judgement, para. 456. See also Trial Judgement, para. 591.

¹²¹⁰ Trial Judgement, paras. 450-454. In particular, the Trial Chamber found that, in relation to the 1995 operation in the Autonomous Region of Krajina, the Prosecution had not demonstrated that Stanišić and Simatović directed, deployed, enabled, sustained, protected, or otherwise facilitated the Serbian Volunteer Guard who were present in the Autonomous Region of Krajina in September 1995 and whose members committed murder and persecution in Sanski Most, as charged in the Indictment. See Trial Judgement, para. 450.

SBWS in 1995.¹²¹¹ The Trial Chamber considered that these military operations did not, for the most part, “directly relate to the crimes charged in the Indictment”.¹²¹² The Trial Chamber further found that, while evidence of Stanišić’s and Simatović’s contributions to these operations *vis-à-vis* Željko Ražnatović (Arkan) and his Serbian Volunteer Guard may have relevance, it did not compel the conclusion that Stanišić and Simatović “made a significant contribution to the commission of the crimes charged in the Indictment and for which [they] are alleged to be responsible”.¹²¹³

387. Regarding the Scorpions, the Trial Chamber was not satisfied beyond reasonable doubt that Stanišić and Simatović made a significant contribution to advance the common criminal purpose by directing, organizing the formation of, deploying, financing, training, providing logistical support, or giving other substantial assistance or support to the Scorpions in relation to crimes charged in the Indictment, including the killing of six Muslims in July 1995 during the Treskavica/Trnovo operations.¹²¹⁴ In addition, the Trial Chamber considered evidence relevant to Stanišić’s and Simatović’s control over the Scorpions in connection with the 1995 Treskavica/Trnovo operations and found the evidence insufficient to implicate them beyond reasonable doubt.¹²¹⁵ The Trial Chamber also noted evidence in support of Stanišić’s and Simatović’s involvement in relation to Operation Pauk in 1994 and the SAO SBWS operations in 1995 but indicated that these military operations did not, for the most part, directly relate to the crimes charged in the Indictment.¹²¹⁶ While the Trial Chamber considered that evidence of Stanišić’s and Simatović’s contributions to these operations *vis-à-vis* the Scorpions “may have relevance as circumstantial evidence, it found that such evidence did not compel as the only reasonable conclusion that [Stanišić and Simatović] made a significant contribution to the commission of the crimes by the Scorpions that are charged in the Indictment”.¹²¹⁷

388. In considering whether Stanišić and Simatović possessed the intent to further the common criminal purpose of the joint criminal enterprise, the Trial Chamber noted that the Prosecution had presented extensive evidence on their alleged involvement and on the participation of the Unit in other operations, including along the Posavina Corridor, in Eastern Bosnia and Herzegovina, in Operation Udar, in operations in the Podrinje region, and in Operation Pauk.¹²¹⁸ The Trial Chamber noted, however, that none of the crimes allegedly committed during these operations, which span

¹²¹¹ Trial Judgement, para. 455.

¹²¹² Trial Judgement, para. 455. *See also* Trial Judgement, para. 434.

¹²¹³ Trial Judgement, para. 455.

¹²¹⁴ Trial Judgement, paras. 462, 466. *See also* Trial Judgement, paras. 460-464, 591.

¹²¹⁵ Trial Judgement, para. 464.

¹²¹⁶ Trial Judgement, para. 465.

¹²¹⁷ Trial Judgement, para. 465.

¹²¹⁸ Trial Judgement, para. 592.

from 1992 until 1995, were charged in the Indictment.¹²¹⁹ The Trial Chamber further stated that, while it had “thoroughly considered the evidence presented by the Prosecution in this regard, it ha[d] found such evidence generally insufficient to conclude beyond reasonable doubt that [Stanišić and Simatović] shared the common criminal purpose through the commission of the crimes charged in the Indictment”.¹²²⁰ The Trial Chamber further concluded that it was “similarly not convinced that such evidence demonstrates [Stanišić’s and Simatović’s] continuing participation in the joint criminal enterprise, and thus their intent to further the common criminal purpose”.¹²²¹

389. The Prosecution submits that the Trial Chamber erred in law when it systematically failed to consider a number of Stanišić’s and Simatović’s contributions to the common criminal purpose because they were not directly “related” or “linked” to specific crimes charged in the Indictment.¹²²² According to the Prosecution, this is contrary to the ICTY Appeals Chamber’s instructions as well as jurisprudence, which make clear that no direct or specific link is required between an accused’s contribution and a particular crime forming part of the common criminal purpose.¹²²³

390. In view of this law, the Prosecution contends that the common criminal purpose as established by the Trial Chamber is broader than the crimes charged in the Indictment, as it includes forcible and permanent removal of the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina from at least August 1991.¹²²⁴ Thus, the Prosecution submits that the crimes committed in relation to ethnic cleansing operations – detailed below – and the support Stanišić and Simatović gave to them, while not charged as a basis for criminal liability, fall within and furthered the common criminal purpose as determined by the Trial Chamber.¹²²⁵

391. Specifically, the Prosecution argues that the Trial Chamber erred in not considering as contributions to the common criminal purpose the operation(s) in relation to Brčko in the Posavina Corridor in 1992, the 1993 Podrinje operations, Operation Pauk in 1994, and the operations in

¹²¹⁹ Trial Judgement, para. 592.

¹²²⁰ Trial Judgement, para. 592.

¹²²¹ Trial Judgement, para. 592.

¹²²² Prosecution Appeal Brief, paras. 17, 19, *referring to, inter alia*, Trial Judgement, paras. 162-168, 381, 388-390, 408, 434, 442-444, 448-451, 453, 455, 456, 462, 464-466, 480, 550, 559, 564, 568, 572, 597. *See also* Prosecution Reply to Stanišić Response, paras. 6-8; Prosecution Reply to Simatović Response, para. 6; T. 25 January 2023 pp. 5, 6.

¹²²³ *See* Prosecution Appeal Brief, paras. 18, 19, *referring to, inter alia*, *Stanišić and Simatović* ICTY Appeal Judgement, para. 82, *Prlić et al.* Appeal Judgement, para. 1535, *Karemera and Ngirumpatse* Appeal Judgement, paras. 109, 153; Prosecution Reply to Stanišić Response, para. 7; Prosecution Reply to Simatović Response, para. 6. *See also* Prosecution Appeal Brief, para. 18, *referring to, inter alia*, *Mladić* Appeal Judgement, para. 179, *Popović et al.* Appeal Judgement, paras. 1378, 1615, 1653, *Krajišnik* Appeal Judgement, paras. 215, 695, 696. *See also* T. 25 January 2023 pp. 5-7.

¹²²⁴ *See* Prosecution Appeal Brief, paras. 22, 27. *See also* T. 25 January 2023 pp. 4, 5.

¹²²⁵ *See* Prosecution Appeal Brief, paras. 22, 27, 35-37, 41, 44, 46, 47. *See also* T. 25 January 2023 pp. 4, 5, 81, 82.

Treskavica/Trnovo and the Autonomous Region of Krajina in 1995.¹²²⁶ The Prosecution further points to evidence of the involvement of the JATD, as well as support Stanišić and Simatović provided to Željko Ražnatović (Arkan), the Serbian Volunteer Guard, and the Scorpions in connection with certain of these operations which, in its view, furthered the common criminal purpose.¹²²⁷ The Prosecution contends that the evidence establishes that Stanišić and Simatović contributed to these uncharged operations and thereby furthered the common criminal purpose.¹²²⁸

392. Stanišić responds that the Prosecution's submissions are a distortion of its own case and of the Trial Chamber's findings, which took into account evidence related to events in Brčko, Podrinje, Operation Pauk, and the operations in Treskavica/Trnovo and the Autonomous Region of Krajina.¹²²⁹ In particular, Stanišić argues that the Prosecution indicated that it would rely on evidence related to uncharged operations and uncharged crimes as pattern evidence without any clear and consistent indication that such evidence, as it argues on appeal, would be used to establish contributions in furtherance of the common criminal purpose.¹²³⁰ Stanišić further submits that no reasonable trier of fact would have found that he contributed to the common criminal purpose in relation to these operations via the Unit, the JATD, the Serbian Volunteer Guard, or the Scorpions, and that the Prosecution fails to demonstrate otherwise on appeal.¹²³¹

393. Simatović responds that the Trial Chamber's findings are in line with the Indictment¹²³² and contends that, in any event, the Trial Chamber analyzed evidence beyond the scope of the Indictment.¹²³³ He also submits that the Prosecution's contention that Stanišić and Simatović contributed to the common criminal purpose through events in Brčko, Podrinje, Operation Pauk, and the operations in Treskavica/Trnovo and the Autonomous Region of Krajina is unsupported by the

¹²²⁶ See Prosecution Appeal Brief, paras. 21, 22, 27, 34, 37, 40-43, 46, 47. See also T. 24 January 2023 p. 83; T. 25 January 2023 pp. 4-9, 16, 29, 81, 82. The Prosecution also contends that, in relation to SAO SBWS, the Trial Chamber erred by: (i) rejecting Stanišić's and Simatović's contributions via Željko Ražnatović (Arkan) and the Serbian Volunteer Guard on the basis that the Prosecution had not identified instances of them providing specific logistical or financial support to, or being involved in the operations of, Željko Ražnatović (Arkan) and his Serbian Volunteer Guard in the commission of crimes charged in the Indictment; and (ii) failing to consider whether Stanišić's and Simatović's logistical and financial support to Željko Ražnatović (Arkan) and his Serbian Volunteer Guard contributed to their acts that furthered the common criminal purpose. See Prosecution Appeal Brief, para. 42, *referring to* Trial Judgement, para. 444. See also Prosecution Appeal Brief, para. 41. The Appeals Chamber observes, however, that this argument is not developed and the Appeals Chamber concludes that it is abandoned. See, e.g., Prosecution Reply to Simatović Response, para. 35 (introducing a new alleged error in respect to paragraph 465 of the Trial Judgement concerning SAO SBWS events in 1995).

¹²²⁷ See Prosecution Appeal Brief, paras. 36-48.

¹²²⁸ See, e.g., Prosecution Appeal Brief, paras. 23-26, 28-33, 35, 36, 38, 39, 44, 45, 47, 48.

¹²²⁹ See Stanišić Response Brief, paras. 6-27, 31-38, 69-77, 104-130.

¹²³⁰ See Stanišić Response Brief, paras. 6-27, 31-34, 69-73, 104-120; T. 25 January 2023 pp. 33, 34.

¹²³¹ See Stanišić Response Brief, paras. 39-64, 80-100, 131-169.

¹²³² See Simatović Response Brief, paras. 16, 17, 96, 122. See also Simatović Response Brief, paras. 39, 58, 82.

¹²³³ See T. 25 January 2023 pp. 54-56.

evidence it relies upon.¹²³⁴ He further argues that the Trial Chamber explicitly considered Stanišić's and Simatović's alleged contribution through the Serbian Volunteer Guard¹²³⁵ and the Scorpions.¹²³⁶

394. The Prosecution replies that the Indictment and its pre-trial submissions make clear that it intended to pursue these events as evidence of contributions to the common criminal purpose even if they were not charged as crimes against Stanišić and Simatović.¹²³⁷ In particular, it contends that it was always clear that operations not involving charged crimes would be used to show a pattern of criminal conduct.¹²³⁸ It further contends that the Trial Chamber also failed to consider that support provided in relation to the 1995 Treskavica/Trnovo and Autonomous Region of Krajina operations relates to specific crimes charged in the Indictment that occurred within these broader operations.¹²³⁹ Finally, the Prosecution argues that Stanišić and Simatović have failed to undermine its submissions regarding their contributions to the common criminal purpose in view of the evidence presented at trial.¹²⁴⁰

395. The Appeals Chamber recalls that, for an accused to be found criminally responsible on the basis of joint criminal enterprise liability, a trial chamber must be satisfied that the accused acted in furtherance of the common purpose of a joint criminal enterprise in the sense that he or she significantly contributed to the commission of the crimes involved in the common purpose.¹²⁴¹ In this context, an accused's contribution to the common criminal purpose need not be necessary or substantial,¹²⁴² it need not involve the commission of a crime,¹²⁴³ and the law does not foresee specific types of conduct which *per se* could not be considered a contribution to a joint criminal enterprise.¹²⁴⁴

396. At the outset, the Appeals Chamber finds that the Prosecution has mischaracterized the Trial Judgement in arguing that the common criminal purpose as established by the Trial Chamber is broader than the crimes charged in the Indictment. It advances this position by arguing that the language used by the Trial Chamber with respect to the common criminal purpose includes forcible

¹²³⁴ See Simatović Response Brief, paras. 23-38, 40-56, 60-79, 97-119, 133-156. See also T. 25 January 2023 pp. 56, 57.

¹²³⁵ See Simatović Response Brief, paras. 83-95.

¹²³⁶ See Simatović Response Brief, paras. 122-130.

¹²³⁷ Prosecution Reply to Stanišić Response, paras. 4, 10; Prosecution Reply to Simatović Response, paras. 4, 8. See also Prosecution Reply to Stanišić Response, para. 9; Prosecution Reply to Simatović Response, para. 7; T. 25 January 2023 pp. 81, 82.

¹²³⁸ See Prosecution Reply to Stanišić Response, paras. 8, 9; Prosecution Reply to Simatović Response, para. 7; T. 25 January 2023 p. 81.

¹²³⁹ See Prosecution Reply to Stanišić Response, paras. 39-41; Prosecution Reply to Simatović Response, para. 29.

¹²⁴⁰ See Prosecution Reply to Stanišić Response, paras. 11, 14-21, 28-35, 41-44; Prosecution Reply to Simatović Response, paras. 11-23, 26-39.

¹²⁴¹ *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹²⁴² *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹²⁴³ *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹²⁴⁴ *Mladić* Appeal Judgement, para. 186 and references cited therein.

and permanent removal of the majority of non-Serbs from “large areas of Croatia and Bosnia and Herzegovina” and is not limited to the specified regions of Croatia and municipalities within Bosnia and Herzegovina involving charged crimes.¹²⁴⁵ Read in context, however, the Appeals Chamber considers the phrase “large areas of Croatia and Bosnia and Herzegovina” to be a summary of the various regions in Croatia and municipalities in Bosnia and Herzegovina that correspond to the locations of “crimes charged in the Indictment”,¹²⁴⁶ in which the Trial Chamber concluded crimes had occurred.¹²⁴⁷ The Prosecution’s submissions do not demonstrate otherwise.

397. In this context, the Appeals Chamber considers that the Trial Chamber’s impugned conclusions in relation to Stanišić’s and Simatović’s alleged participation in a joint criminal enterprise – as summarized above – do not reflect a misapplication of the legal standard in assessing contributions to the common criminal purpose. Rather, they reflect the Trial Chamber’s factual consideration on a case-by-case basis that the evidence of uncharged operations and uncharged crimes fell outside the scope of the common criminal purpose and was insufficient to establish contributions to that purpose and the charged crimes that fell within it.¹²⁴⁸ Specifically, these findings reflect the actual remoteness of these uncharged operations and uncharged crimes to proving Stanišić’s and Simatović’s joint criminal enterprise liability for the crimes the Prosecution charged against them. The Appeals Chamber considers that, in the specific context of this case, the Trial Chamber’s

¹²⁴⁵ See Prosecution Appeal Brief, paras. 22, 27; Trial Judgement, para. 379.

¹²⁴⁶ See Trial Judgement, paras. 378 (finding that the evidence demonstrates a clearly discernible pattern of numerous crimes committed by Serb forces “in the areas of the SAO Krajina, the SAO SBWS, and the municipalities of Bijeljina, Zvornik, Bosanski Šamac, Doboj, and Sanski Most during the Indictment period”), 379 (considering that the most compelling evidence demonstrating the existence of a common criminal purpose pertains “to the systematic pattern of crimes committed against non-Serb civilians in all regions covered by the Indictment” and therefore finding proven beyond reasonable doubt that, from at least August 1991, “and at all times relevant to the crimes charged in the Indictment”, a common criminal purpose existed to forcibly and permanently remove, through the commission of the crimes of persecution, murder, deportation and inhumane acts (forcible transfer), the majority of non-Serbs, principally Croats, Bosnian Muslims and Bosnian Croats, from large areas of Croatia and Bosnia and Herzegovina), 592 (“While the Trial Chamber has thoroughly considered the evidence presented by the Prosecution in this regard, it has found such evidence generally insufficient to conclude beyond reasonable doubt that [Stanišić and Simatović] shared the common criminal purpose through the commission of the crimes charged in the Indictment”), 594 (finding that the only reasonable inference from the evidence is that Stanišić and Simatović were aware of the shared intent of the members of the joint criminal enterprise to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina, “through the commission of the crimes charged in [the] Indictment”), 597 (finding that, from at least August 1991, and at all times relevant to the crimes charged in the Indictment, a plurality of persons shared the common criminal purpose to forcibly and permanently remove, “through the commission of the crimes charged in the Indictment”, the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina). See also Trial Judgement, para. 390 (recalling that the “charged crimes in the two territories in Croatia and five municipalities in Bosnia and Herzegovina [...] necessarily form the contours of the forcible displacement campaign pleaded in the Indictment”).

¹²⁴⁷ See Trial Judgement, paras. 21, 34, 48, 64-67, 82, 84, 96, 103, 107, 157, 171, 182, 202, 203, 235, 254, 260, 271, 280, 285, 292, 293, 296, 297, 299, 300, 319, 324.

¹²⁴⁸ Whether an accused contributed to the joint criminal enterprise and whether an accused’s conduct amounts to a significant contribution upon which joint criminal enterprise liability may be based are questions of fact to be determined on a case-by-case basis. See *Mladić* Appeal Judgement, para. 228; *Stanišić and Župljanin* Appeal Judgement, para. 110; *Krajišnik* Appeal Judgement, para. 696. See also *Brđanin* Appeal Judgement, para. 427 (noting that “not every type of conduct would amount to a significant enough contribution for this to create criminal liability for the accused regarding the crime in question”).

approach is consistent with the requirement that, although an accused's contribution to the common criminal purpose need not be necessary or substantial, "it should at least be a significant contribution to the crimes for which the accused is found responsible".¹²⁴⁹

398. Moreover, the Prosecution had argued at trial that evidence related to uncharged operations involving uncharged crimes was intended to be used as pattern evidence and would not serve as a basis for conviction.¹²⁵⁰ Nevertheless, the Appeals Chamber observes that an accused's contributions to a common criminal purpose form part of the *actus reus* element necessary to establish an accused's joint criminal enterprise liability for charged crimes¹²⁵¹ and the extent of such contributions are a factor in sentencing a defendant convicted of joint criminal enterprise liability.¹²⁵² Bearing this in mind, the Prosecution does not point to jurisprudence or demonstrate on appeal that contributions to the common criminal purpose may appropriately be based upon such an extraordinary amount of "pattern evidence" of criminal conduct for which a defendant cannot ultimately be convicted.¹²⁵³ In view of the above, and in the specific context of this case, the Appeals Chamber is also not persuaded that more detailed findings as to whether or the extent to which Stanišić or Simatović contributed to uncharged operations resulting in uncharged crimes were essential to determining either's joint criminal enterprise liability as charged.¹²⁵⁴

399. Finally, the Prosecution's contentions – developed largely in its reply – that the Trial Chamber failed to consider alleged contributions to operations in Treskavica/Trnovo in July 1995 and in the Autonomous Region of Krajina in September 1995 that contributed to charged crimes are unpersuasive.¹²⁵⁵ The Appeals Chamber observes that the Trial Chamber rejected the Prosecution's contentions that Stanišić and Simatović contributed in this respect after consideration of much of the

¹²⁴⁹ *Krajišnik* Appeal Judgement, para. 215. See also *Nizeyimana* Appeal Judgement, para. 325; *Gotovina and Markač* Appeal Judgement, para. 89; *Simba* Appeal Judgement, para. 303; *Brđanin* Appeal Judgement, para. 430.

¹²⁵⁰ See, e.g., *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Prosecution Response to Stanišić Defence Request to Stay the Proceedings Until the Prosecution Respects the Principle of Finality and the Appeal[s] Chamber's Order for Retrial, 17 November 2016, para. 19, n. 52; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Prosecution Response to Annex B to Stanišić Defence Request to Stay the Proceedings Until the Prosecution Respects the Principle of Finality and the Appeal[s] Chamber's Order for Retrial, 2 December 2016 (public with confidential Annex A), para. 6, Annex A, pp. 24, 35-37; T. 19 April 2018 p. 77.

¹²⁵¹ See *supra* para. 395.

¹²⁵² See, e.g., *Brđanin* Appeal Judgement, para. 432; *Martić* Appeal Judgement, para. 84.

¹²⁵³ See Prosecution Reply to Stanišić Response, paras. 8, 9; Prosecution Reply to Simatović Response, para. 7, referring to, *inter alia*, *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.7, Decision on Appeal Against the Trial Chamber's Oral Decision of 9 January 2008, 11 March 2008, paras. 21-23.

¹²⁵⁴ See Trial Judgement, para. 20, n. 34, quoting *Hadžihasanović and Kubura* Appeal Judgement, para. 13 ("With regard to factual findings, a Trial Chamber is required only to make findings on those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record. In short, a Trial Chamber should limit itself to indicating in a clear and articulate, yet concise manner, which, among [...] the myriad of facts that emerged at trial, are the legal and factual findings on the basis of which it reached the decision either to convict or acquit an individual.") (internal reference omitted).

¹²⁵⁵ See, e.g., Prosecution Reply to Stanišić Response, paras. 39-41.

evidence it points to on appeal.¹²⁵⁶ Having reviewed all the evidence cited, the Appeals Chamber concludes that the Prosecution simply disagrees without demonstrating that the Trial Chamber's conclusions are unreasonable.

400. In view of the foregoing, the Appeals Chamber finds that the Prosecution has not demonstrated that the Trial Chamber erred in law by systematically failing to consider a number of Stanišić's and Simatović's alleged contributions to the furtherance of the common criminal purpose because they were not directly "related" or "linked" to specific crimes charged in the Indictment. Likewise, it has not demonstrated that the Trial Chamber's approach was contrary to the instructions received from the ICTY Appeals Chamber. Consequently, the Appeals Chamber concludes that there is no basis to analyze vast swaths of the trial record referred to by the Prosecution in order to assess whether Stanišić and Simatović contributed to uncharged operations that allegedly resulted in uncharged crimes falling outside the common criminal purpose as established by the Trial Chamber. Subject to the exceptions identified above,¹²⁵⁷ the Appeals Chamber dismisses sub-grounds A(i)(a), A(i)(a)(i) through A(i)(a)(iv), in part, of Ground 1 of the Prosecution's appeal.

(b) Alleged Errors in Assessing Contacts with Radovan Karadžić and Connections with the Republika Srpska Intelligence Groups (sub-grounds A(i)(a)(vi) and A(i)(a)(vii))

401. Having reviewed Stanišić's contacts with Radovan Karadžić in assessing his possible contributions to the joint criminal enterprise,¹²⁵⁸ the Trial Chamber found that the evidence generally demonstrated that Stanišić and Radovan Karadžić were in direct and frequent contact in 1991 in the lead up to and after the establishment of *Republika Srpska*, and that, in some instances, Stanišić facilitated contact between Radovan Karadžić and Slobodan Milošević.¹²⁵⁹ However, the Trial Chamber determined that the content of these communications was insufficient to conclude beyond reasonable doubt that Stanišić or Simatović exercised any degree of authority over Radovan Karadžić or "collaborated" with him from an early stage to organize separate Serb government structures in Bosnia and Herzegovina.¹²⁶⁰

¹²⁵⁶ With respect to the Treskavica/Trnovo operations in July 1995 and in connection with the charged killings, *compare* Prosecution Appeal Brief, para. 38, n. 72 *and* Prosecution Reply to Simatović Response, para. 27, n. 84 *and* Prosecution Reply to Stanišić Response, para. 39 *with* Trial Judgement, para. 464 and references cited therein. With respect to crimes committed in Sanski Most in September 1995 and the operations in the Autonomous Region of Krajina, *compare* Prosecution Appeal Brief, para. 38, n. 76 *and* Prosecution Reply to Stanišić Response, paras. 41, 42 *with* Trial Judgement, paras. 434, 452, n. 1736.

¹²⁵⁷ *See supra* n. 1198.

¹²⁵⁸ *See* Trial Judgement, paras. 549-555.

¹²⁵⁹ Trial Judgement, para. 556.

¹²⁶⁰ Trial Judgement, paras. 556, 572. *See also* Trial Judgement, para. 548.

402. When assessing the alleged contributions to the joint criminal enterprise through intelligence groups in *Republika Srpska*, the Trial Chamber found that the State Security Service had contact with these groups, and that Stanišić and Simatović received information on the political and security situation in *Republika Srpska* and other areas of the former Yugoslavia through these groups.¹²⁶¹ The Trial Chamber was not convinced, however, that the use of these groups contributed to or was done in furtherance of crimes committed in Bosnia and Herzegovina that may be attributed to Stanišić and Simatović.¹²⁶²

403. The Prosecution submits that the Trial Chamber erroneously dismissed as potential contributions Stanišić's communications with Radovan Karadžić prior to and following the establishment of *Republika Srpska*, because it was not convinced that these communications demonstrated the concrete nature of Stanišić's involvement in the creation of Serb structures in Bosnia and Herzegovina "related to the commission of crimes charged".¹²⁶³ It further submits that the Trial Chamber erroneously dismissed Stanišić's and Simatović's use of intelligence groups in *Republika Srpska*, because it was unable to determine whether the use of these groups contributed to or was done in furtherance of crimes committed in Bosnia and Herzegovina that may be attributed to them.¹²⁶⁴ The Prosecution argues that, had the Trial Chamber analyzed the evidence correctly, it would have found that Stanišić and Simatović contributed to the common criminal purpose on these bases.¹²⁶⁵

404. Stanišić responds, *inter alia*, that the Prosecution's submissions are a distortion of its case at trial and of the Trial Chamber's findings.¹²⁶⁶ He further argues that the Trial Chamber properly assessed the communications related to Radovan Karadžić and the *Republika Srpska* intelligence groups, and that the Prosecution fails to demonstrate a contribution to the common criminal purpose in these respects.¹²⁶⁷

405. Simatović responds that the Prosecution is seeking to criminalize intelligence activities of the State Security Service, and that the gathering of information through intelligence groups cannot be characterized as a contribution to the common criminal purpose.¹²⁶⁸

¹²⁶¹ Trial Judgement, para. 564. *See also* Trial Judgement, paras. 560-563.

¹²⁶² *See* Trial Judgement, para. 564.

¹²⁶³ Prosecution Appeal Brief, para. 50.

¹²⁶⁴ *See* Prosecution Appeal Brief, para. 52.

¹²⁶⁵ *See* Prosecution Appeal Brief, paras. 51, 53-56.

¹²⁶⁶ *See* Stanišić Response Brief, paras. 188-194, 205-211.

¹²⁶⁷ *See* Stanišić Response Brief, paras. 184, 195-200, 203, 212-222.

¹²⁶⁸ *See* Simatović Response Brief, paras. 164-173.

406. The Prosecution replies that, while gathering intelligence is not criminal *per se*, Simatović did more than gather information for legitimate state security purposes.¹²⁶⁹ It argues that this intelligence informed the decision-making process of joint criminal enterprise members and the State Security Service instructed operatives on arming Bosnian Serbs, equipped and instructed other intelligence groups, and shared significant intelligence with officials in *Republika Srpska*.¹²⁷⁰

407. The Appeals Chamber finds no merit in the Prosecution's submission that the Trial Chamber committed a legal error by dismissing Stanišić's communications with Radovan Karadžić as contributions to the common criminal purpose because they did not involve charged crimes. Rather, the Trial Judgement reflects that the Prosecution had not met its evidentiary burden with respect to these alleged contributions in view of the Trial Chamber's express findings that the Prosecution had failed to establish that Stanišić or Simatović had any degree of authority over Radovan Karadžić or "collaborated" with him from an early stage to organize separate Serb government structures in Bosnia and Herzegovina.¹²⁷¹ The Prosecution's bare suggestion – supported only by references to the Trial Judgement itself – that the Trial Chamber would have found that these contacts amounted to contributions to the common criminal purpose if it had analyzed them correctly reflects disagreement with the Trial Chamber without demonstrating any error.¹²⁷² These contentions are dismissed.

408. The Appeals Chamber turns to the Prosecution's contention that, had the Trial Chamber correctly analyzed the use of intelligence groups in *Republika Srpska*, it would have found that Stanišić and Simatović used them to influence and advance the common criminal purpose in Bosnia and Herzegovina. In support of its position, the Prosecution merely points to evidence concerning cooperation and exchanges of information between the intelligence groups and the State Security Service, as well as Stanišić and Simatović, which the Trial Chamber considered.¹²⁷³ The Prosecution's submissions do not demonstrate how the Trial Chamber would have been compelled to find as the only reasonable inference that this evidence establishes that Stanišić and Simatović contributed to the common criminal purpose of the joint criminal enterprise in view of the evidence it considered and its assessment of it.¹²⁷⁴ Furthermore, it fails to demonstrate that the Trial Chamber erred in considering that it was not convinced that the use of these groups contributed to or was done in

¹²⁶⁹ Prosecution Reply to Simatović Response, para. 39.

¹²⁷⁰ Prosecution Reply to Simatović Response, para. 39. The Prosecution replies that its pre-trial submissions detail Stanišić's relationship with *Republika Srpska* intelligence groups and that he fails to address how these contributions are not a concrete benefit to the common criminal purpose. See Prosecution Reply to Stanišić Response, para. 44.

¹²⁷¹ Trial Judgement, paras. 556, 572. See also Trial Judgement, para. 548.

¹²⁷² The Prosecution submitted no reply to either Stanišić's or Simatović's response briefs on this issue.

¹²⁷³ Compare Prosecution Appeal Brief, paras. 54, 55, nn. 110-116 with Trial Judgement, paras. 560-563, nn. 2240-2257.

¹²⁷⁴ See Trial Judgement, paras. 561-564.

furtherance of crimes committed in Bosnia and Herzegovina that may be attributed to Stanišić and Simatović.¹²⁷⁵

409. Based on the foregoing, the Appeals Chamber dismisses sub-grounds A(i)(a)(vi) and A(i)(a)(vii) of Ground 1 of the Prosecution’s appeal.

(c) Alleged Errors in Assessing the Significance of Stanišić’s and Simatović’s Contributions (sub-ground A(i)(b))

410. When considering whether Stanišić and Simatović contributed to the joint criminal enterprise through Željko Ražnatović (Arkan) and the Serbian Volunteer Guard in relation to Operation Pauk in 1994, and operations in Treskavica/Trnovo and SAO SBWS in 1995, the Trial Chamber found that the relevant evidence does not compel the conclusion that Stanišić and Simatović “made a significant contribution to the commission of the crimes charged in the Indictment and for which [they] are alleged to be responsible”.¹²⁷⁶ Concerning Stanišić’s and Simatović’s alleged contributions to the joint criminal enterprise through the Scorpions in support of their involvement in relation to Operation Pauk in 1994 and SAO SBWS operations in 1995, the Trial Chamber also found that evidence of their contributions does not compel as the only reasonable conclusion that Stanišić and Simatović “made a significant contribution to the commission of the crimes by the Scorpions that are charged in the Indictment”.¹²⁷⁷

411. In challenging these findings, which are set forth in paragraphs 455 and 465 of the Trial Judgement, the Prosecution argues that the Trial Chamber erred in law when considering that neither of these contributions, individually, was “a significant contribution” to the crimes charged.¹²⁷⁸ The Prosecution submits that significance is evaluated on the basis of the totality of an accused’s contributions, and that the Trial Chamber erred in failing to include and collectively assess these contributions when evaluating Stanišić’s and Simatović’s joint criminal enterprise liability.¹²⁷⁹

412. Stanišić responds that, contrary to the Prosecution’s argument, a plain reading of the Trial Judgement demonstrates that the Trial Chamber correctly assessed all alleged contributions in their entirety and determined that they were not, as a whole, significant.¹²⁸⁰ Simatović responds that the

¹²⁷⁵ See Trial Judgement, para. 564.

¹²⁷⁶ Trial Judgement, para. 455.

¹²⁷⁷ Trial Judgement, para. 465.

¹²⁷⁸ Prosecution Appeal Brief, paras. 57-59.

¹²⁷⁹ Prosecution Appeal Brief, paras. 57-59, referring to, *inter alia*, Stanišić and Župljanin Appeal Judgement, para. 905, Tolimir Appeal Judgement, para. 377, Šainović *et al.* Appeal Judgement, paras. 987-989, Krajišnik Appeal Judgement, paras. 216-218. See also T. 25 January 2023 pp. 8, 9.

¹²⁸⁰ Stanišić Response Brief, para. 224, referring to Trial Judgement, paras. 382-572.

Trial Chamber made findings on contributions to the joint criminal enterprise based on the physical perpetrators, location, and conduct as a whole.¹²⁸¹

413. The Trial Chamber considered that evidence existed to support Stanišić's and Simatović's involvement in the relevant operations in 1994 and 1995 *vis-à-vis* the Serbian Volunteer Guard and the Scorpions, but that this did not compel the conclusion that Stanišić and Simatović significantly contributed to crimes charged in the Indictment.¹²⁸² The Appeals Chamber observes that, while distinct conduct has been assessed collectively when evaluating the significance of an accused's contributions to the crimes of the joint criminal enterprise,¹²⁸³ what amounts to a significant contribution upon which joint criminal enterprise liability may be based is a question of fact to be considered on a case-by-case basis.¹²⁸⁴ In this context, the Appeals Chamber is not persuaded by the Prosecution's submission that the Trial Chamber, when making a factual assessment, applied an incorrect *legal* standard in assessing, on a case-by-case basis, the significance of the alleged contributions to the common criminal purpose in paragraphs 455 and 465 of the Trial Judgement. Furthermore, and recalling that a trial judgement should be read as a whole,¹²⁸⁵ the Appeals Chamber observes that the Trial Chamber broadly concluded, after considering the various contributions Stanišić and Simatović were alleged to have made to the Serbian Volunteer Guard and the Scorpions, that it was not satisfied that they had made a significant contribution to the crimes charged in the Indictment or a significant contribution to advance the common criminal purpose in relation to charged crimes.¹²⁸⁶ In this respect, the Prosecution has not substantiated that the Trial Chamber failed to collectively consider these and other alleged contributions to the common criminal purpose in determining whether they significantly contributed to it.

414. Consequently, the Appeals Chamber dismisses sub-ground A(i)(b) of Ground 1 of the Prosecution's appeal.

(d) Conclusion

415. For the foregoing reasons, the Appeals Chamber dismisses the arguments in sub-ground A(i) of Ground 1 of the Prosecution's appeal that are addressed above.

¹²⁸¹ See Simatović Response Brief, paras. 175-178; T. 25 January 2023 pp. 57, 58. See also T. 25 January 2023 p. 55.

¹²⁸² Trial Judgement, paras. 455, 465.

¹²⁸³ See *Stanišić and Župljanin* Appeal Judgement, para. 905; *Šainović et al.* Appeal Judgement, paras. 987-989, 1227, 1245, 1285; *Krajišnik* Appeal Judgement, para. 216.

¹²⁸⁴ See *Mladić* Appeal Judgement, para. 228; *Stanišić and Župljanin* Appeal Judgement, para. 110. See also *Krajišnik* Appeal Judgement, para. 696.

¹²⁸⁵ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

¹²⁸⁶ See Trial Judgement, paras. 434, 456, 466. See also Trial Judgement, para. 591.

2. Alleged Failure to Adjudicate or Provide a Reasoned Opinion on Contributions (sub-ground A(ii))

416. The Trial Chamber found that, from at least August 1991 and at all times relevant to the crimes charged in the Indictment, a common criminal purpose existed to forcibly and permanently remove, through the commission of the crimes charged in the Indictment, the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina.¹²⁸⁷ In assessing crimes committed in SAO SBWS, the Trial Chamber noted that, in September 1991, Serb forces attacked Bilje, the last village in Baranja not yet under Serb control, and that, during the attack, most non-Serbs left the village.¹²⁸⁸ It found that following attacks on villages and towns in SAO SBWS and crimes committed therein by Serb forces, the non-Serb population fled and the ethnic composition of the area changed significantly.¹²⁸⁹ The Trial Chamber further concluded that, from 31 March 1992 until at least September 1995, Serb forces launched attacks on towns and villages in municipalities in Bosnia and Herzegovina, including Doboj and Sanski Most, and committed numerous crimes and acts of violence against non-Serb civilians, which forced them to leave the areas.¹²⁹⁰ However, the Trial Chamber found the evidence insufficient to prove beyond reasonable doubt that Stanišić and Simatović contributed to the commission of crimes charged in the Indictment in Baranja, Doboj, and Sanski Most.¹²⁹¹

417. The Prosecution argues that the Trial Chamber failed to adjudicate or, alternatively, provide a reasoned opinion on whether Stanišić and Simatović contributed to the common criminal purpose by: (i) deploying Unit members who committed crimes in Bilje in September 1991; (ii) training Unit members at the Pajzoš and Ležimir camps who later committed crimes in Doboj in May 1992; and (iii) deploying 300 to 400 Serb forces to Sanski Most in 1995.¹²⁹² The Prosecution asserts that, had the Trial Chamber adjudicated these contributions, it would have found that this conduct contributed to the common criminal purpose.¹²⁹³ The Appeals Chamber will address these submissions in turn.

(a) Bilje (sub-ground A(ii)(a))

418. The Trial Chamber considered evidence that, in September 1991, the forces of Beli Manastir Territorial Defence, special police units from the Beli Manastir Secretariat of Internal Affairs, and

¹²⁸⁷ Trial Judgement, paras. 379, 597. *See also* Trial Judgement, paras. 378, 594.

¹²⁸⁸ Trial Judgement, para. 150. *See also* Trial Judgement, para. 147.

¹²⁸⁹ *See* Trial Judgement, paras. 169, 170.

¹²⁹⁰ Trial Judgement, para. 278. *See also* Trial Judgement, paras. 252, 253, 275-277.

¹²⁹¹ *See* Trial Judgement, paras. 388, 431, 450. *See also* Trial Judgement paras. 429, 430, 451-453, 537, 597.

¹²⁹² *See* Prosecution Notice of Appeal, para. 7; Prosecution Appeal Brief, paras. 60-80. *See also* Prosecution Appeal Brief, paras. 35, 37, 38.

¹²⁹³ Prosecution Appeal Brief, para. 60.

the “*Kninjas*”, attacked Bilje, with the Territorial Defence overseeing the operation and with support from the JNA.¹²⁹⁴ The Trial Chamber did not find that the Unit committed crimes charged in the Indictment between August 1991 and mid-April 1992, which includes Bilje, Baranja.¹²⁹⁵ It further concluded that Stanišić and Simatović did not contribute to the joint criminal enterprise, through the Unit or otherwise, in relation to crimes committed in SAO SBWS in general.¹²⁹⁶

419. The Prosecution argues that the Trial Chamber failed to adjudicate whether Stanišić and Simatović contributed to the common criminal purpose by deploying Unit members who committed crimes in Bilje in September 1991.¹²⁹⁷ According to the Prosecution, the evidence demonstrates that four Unit members who trained in the Golubić and Ležimir camps – Davor Subotić, Milenko Popović, Nikola Pilipović, and Borislav Kovačević – were deployed to and participated in the Bilje attack,¹²⁹⁸ and that Simatović’s speech in Kula in 1997 acknowledged the Unit’s participation in this operation.¹²⁹⁹ The Prosecution contends that, given the Trial Chamber’s findings that Stanišić and Simatović exercised authority over the Unit and determined its use and deployment from August or September 1991 until at least mid-April 1992, they would have deployed the Unit or its members for the Bilje operation.¹³⁰⁰ Alternatively, the Prosecution argues that the Trial Chamber failed to provide a reasoned opinion in the event that it implicitly concluded that the Unit did not participate in the crimes committed in Bilje.¹³⁰¹

420. Stanišić responds, *inter alia*, that the Prosecution did not specifically plead in the Indictment, its pre-trial brief, or opening statement that he furthered the common criminal purpose by deploying specific Unit members to Bilje in September 1991 or that Unit members trained in Golubić committed crimes in SAO SBWS.¹³⁰² He argues that, notwithstanding, the Trial Chamber assessed the Bilje operation and found, *inter alia*, that the Unit was not involved in crimes between August 1991 and mid-April 1992, which the Prosecution has ignored.¹³⁰³ Stanišić further responds that the Prosecution has failed to demonstrate that a reasonable trier of fact would have found that Stanišić contributed to

¹²⁹⁴ Trial Judgement, para. 150.

¹²⁹⁵ See Trial Judgement, paras. 156, 169, 388.

¹²⁹⁶ See Trial Judgement, para. 388 (finding that the Prosecution had not proven beyond reasonable doubt that the Unit perpetrated crimes charged in the Indictment in the period from August 1991 until mid-April 1992). See also Trial Judgement, paras. 537, 597.

¹²⁹⁷ See Prosecution Appeal Brief, paras. 61-63, 135; Prosecution Reply to Simatović Response, para. 40. See also Prosecution Reply to Stanišić Response, para. 47.

¹²⁹⁸ Prosecution Appeal Brief, paras. 64, 65; Prosecution Reply to Stanišić Response, paras. 46, 47.

¹²⁹⁹ Prosecution Appeal Brief, para. 66, referring to Exhibit P00256, pp. 10, 11; Exhibit P00258, p. 12.

¹³⁰⁰ Prosecution Appeal Brief, para. 67.

¹³⁰¹ Prosecution Appeal Brief, para. 68.

¹³⁰² See Stanišić Response Brief, paras. 228-232; T. 25 January 2023 p. 35.

¹³⁰³ Stanišić Response Brief, paras. 222, 233, 234, referring to, *inter alia*, Trial Judgement, para. 388.

the joint criminal enterprise by deploying the four alleged Golubić-trained Unit members to Bilje, since the training had taken place prior to the existence of the joint criminal enterprise.¹³⁰⁴

421. Simatović responds that the Prosecution’s submissions are unfounded and inaccurate and that the Trial Chamber did not fail to provide a reasoned opinion.¹³⁰⁵ He submits that the Trial Chamber analyzed all evidence relevant to Bilje, correctly found no evidence demonstrating that the Unit participated in crimes in Bilje, and implicitly concluded that the Unit was not involved.¹³⁰⁶ Simatović also contests the evidence put forward by the Prosecution to demonstrate that the four named individuals were Unit members, that the Unit participated in the Bilje attack, or that Simatović had a role in the deployment of Unit members to Bilje.¹³⁰⁷

422. The Prosecution replies that its pre-trial brief details Stanišić’s contributions concerning crimes in Bilje and that its case has always been that the Unit and specific members therein participated in this attack.¹³⁰⁸ It further replies that, contrary to Simatović’s submissions, the Trial Chamber did not find that there was “no evidence the Unit participated” in the Bilje attack, but rather it failed to adjudicate that Unit members were deployed to Bilje where they committed crimes.¹³⁰⁹

423. Turning first to the Prosecution’s submission that the Trial Chamber failed to adjudicate whether Stanišić and Simatović deployed Unit members to Bilje, the Appeals Chamber observes that, with regard to the charged crimes committed in Baranja, the Prosecution argued in its pre-trial brief that Stanišić and Simatović implanted the Unit in SAO SBWS and furthered the common criminal purpose through the Unit and Dragan Vasilković (Captain Dragan), who established a Unit base in Tikveš, Baranja, in August 1991.¹³¹⁰ In its final trial brief, the Prosecution similarly submitted that it was Dragan Vasilković (Captain Dragan) who expanded the Unit’s training activities into SAO SBWS by establishing the Tikveš training camp in early August 1991.¹³¹¹ The Prosecution claimed that, in Baranja, the Unit was called “Red Berets”, “*Knindžes*”, or “Frenki’s men”.¹³¹² The Prosecution also contended that Dragan Vasilković (Captain Dragan), together with part of the Unit under his command, trained local Serbs in Tikveš camp, and that he deployed them into operations,

¹³⁰⁴ Stanišić Response Brief, para. 237.

¹³⁰⁵ Simatović Response Brief, para. 182.

¹³⁰⁶ Simatović Response Brief, paras. 188, 189, 222. *See also* Simatović Response Brief, paras. 184-187.

¹³⁰⁷ *See* Simatović Response Brief, paras. 190-204, 206-211, 219, 220.

¹³⁰⁸ Prosecution Reply to Stanišić Response, paras. 45-47.

¹³⁰⁹ Prosecution Reply to Simatović Response, para. 40.

¹³¹⁰ Prosecution Pre-Trial Brief, para. 54. *See also* Indictment, paras. 15(b), 22-25, 64-66.

¹³¹¹ Prosecution Final Trial Brief, paras. 111, 279, 421.

¹³¹² Prosecution Final Trial Brief, para. 111.

including the attack on Bilje, and forcibly displaced the non-Serb population.¹³¹³ Notably, the Prosecution expressly identified Davor Subotić and Nikola Pilipović as Unit members that were deployed from Tikveš to expel non-Serbs from Bilje.¹³¹⁴

424. The Appeals Chamber observes that the Trial Chamber made express findings relevant to Stanišić's and Simatović's possible contributions to the common criminal purpose through the attack on Bilje as advanced by the Prosecution at trial. Specifically, the Trial Chamber concluded that it had doubts that the training conducted at Tikveš camp could be attributable to Stanišić and Simatović.¹³¹⁵ This conclusion was made after having reviewed evidence raising doubts as to Dragan Vasilković (Captain Dragan)'s continuing affiliation with Stanišić and Simatović as well as the Unit after his departure from SAO Krajina in the summer of 1991.¹³¹⁶

425. The Appeals Chamber recalls that a trial judgement must be read as a whole,¹³¹⁷ and these findings demonstrate that the Trial Chamber had doubts as to Stanišić's and Simatović's involvement in the training at Tikveš or the subsequent deployment to Bilje. Mindful of the Trial Chamber's more general conclusion that, from at least August or September 1991 until at least mid-April 1992, the Unit operated under the command and control of Stanišić and Simatović,¹³¹⁸ the Appeals Chamber considers that these specific doubts in relation to the training conducted at Tikveš extend to the Prosecution's argument that Stanišić and Simatović deployed Unit members – identified as Davor Subotić, Milenko Popović, Nikola Pilipović, and Borislav Kovačević – to participate in the training there and the subsequent attack on Bilje. As noted above, the Prosecution argued that Davor Subotić and Nikola Pilipović were deployed from Tikveš to Bilje. On appeal, it fails to demonstrate that it argued at trial that Stanišić and Simatović directly deployed any of these Unit members to Bilje and it does not point to evidence that eliminates all reasonable doubt that either did.

426. In light of the above, the Appeals Chamber finds that the Prosecution has not demonstrated that the Trial Chamber erred by failing to adjudicate Stanišić's and Simatović's contribution by deploying Unit members to Bilje who committed crimes, or alternatively, that it erred by failing to provide a reasoned opinion. The Appeals Chamber dismisses sub-ground A(ii)(a) of Ground 1 of the Prosecution's appeal.

¹³¹³ Prosecution Final Trial Brief, paras. 111, 279, 363, 421-423, 434, 435, 740. *See also* T. 12 April 2021 pp. 48-50, 56, 57.

¹³¹⁴ Prosecution Final Trial Brief, paras. 111, 279, nn. 457, 1200.

¹³¹⁵ Trial Judgement, para. 406. *See also* Trial Judgement, paras. 399, 400, 402.

¹³¹⁶ Trial Judgement, paras. 400, 406.

¹³¹⁷ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

¹³¹⁸ Trial Judgement, paras. 388, 405. *See also* Trial Judgement, para. 417.

(b) Doboj (sub-ground A(ii)(b))

427. The Trial Chamber found proven beyond reasonable doubt that Serb forces, including Unit members under Radojica Božović's command as well as local recruits who trained at Mt. Ozren, attacked and took control of Doboj town on 3 May 1992.¹³¹⁹ It further found that Serb forces committed crimes, including the murder of non-Serbs, who were used as human shields on 12 July 1992, and that the acts of violence by Serb forces during and after the takeover forced non-Serbs to leave Doboj.¹³²⁰ However, the Trial Chamber concluded that reasonable doubt existed as to whether Radojica Božović and the group that came with him from Pajzoš were deployed to Doboj by Stanišić and Simatović, and whether Stanišić and Simatović directed and supported their activities there, including the training at Mt. Ozren.¹³²¹

428. The Prosecution argues that the Trial Chamber failed to adjudicate whether Stanišić and Simatović contributed to the common criminal purpose by training Unit members at the Ležimir and Pajzoš camps, including Radojica Božović, who then committed crimes in Doboj in May 1992.¹³²² According to the Prosecution, given the Trial Chamber's finding that the training camps were under the control of Stanišić and Simatović, and its acceptance that Radojica Božović and Unit members came to Doboj from Ležimir and Pajzoš in April 1992, it should have found that Stanišić and Simatović contributed to the common criminal purpose by training these Unit members, who subsequently committed crimes.¹³²³ In the alternative, the Prosecution submits that the Trial Chamber failed to provide a reasoned opinion on why the training at Ležimir and Pajzoš did not constitute a contribution to the common criminal purpose.¹³²⁴

429. Stanišić responds that at no point during the ICTY trial or the retrial did the Prosecution particularize its claim or advance relevant evidence that the original Golubić-trained Unit members, including Radojica Božović, received training in Ležimir and Pajzoš.¹³²⁵ He argues that the Prosecution has also failed to particularize any culpable or causal link between trainings at Ležimir and Pajzoš and the subsequent crimes in Doboj.¹³²⁶

¹³¹⁹ Trial Judgement, paras. 252, 428. *See also* Trial Judgement, para. 242.

¹³²⁰ Trial Judgement, paras. 248, 252, 253, 301, 428.

¹³²¹ Trial Judgement, para. 431. *See also* Trial Judgement, paras. 429, 430.

¹³²² *See* Prosecution Appeal Brief, paras. 69-72. *See also* T. 25 January 2023 p. 23.

¹³²³ *See* Prosecution Appeal Brief, paras. 72, 73.

¹³²⁴ Prosecution Appeal Brief, para. 74.

¹³²⁵ *See* Stanišić Response Brief, paras. 240, 241, 244; T. 25 January 2023 p. 35. *See also* Stanišić Response Brief, paras. 243, 245-247.

¹³²⁶ Stanišić Response Brief, para. 242.

430. Simatović responds that the Prosecution misinterprets the Trial Chamber’s findings regarding Radojica Božović’s stay in Ležimir and Pajzoš.¹³²⁷ He argues that the Trial Chamber properly reviewed the record and concluded that there was insufficient evidence regarding Radojica Božović’s arrival to Doboj to establish whether Stanišić and Simatović deployed Unit members or made them available in Doboj.¹³²⁸

431. The Prosecution replies that its case has always been that Stanišić contributed to the common criminal purpose by having authority over a network of training camps to train Serb forces, including the Unit.¹³²⁹ The Prosecution points to evidence that training at the Ležimir camp was not only limited to recruits but that Unit members, including Radojica Božović and other Unit members who committed crimes in Doboj, received “further training” there.¹³³⁰ The Prosecution further replies that Simatović misstates its position and stresses that Radojica Božović and “his group” must have been at the Ležimir and Pajzoš camps while they were under Simatović’s control.¹³³¹

432. The Appeals Chamber first considers the Prosecution’s contention that the Trial Chamber should have considered whether Stanišić and Simatović contributed to crimes of the common criminal purpose in Doboj through training Radojica Božović and other Unit members at the Ležimir and Pajzoš camps prior to their deployment. The Appeals Chamber observes that the Trial Chamber did not address this form of contribution in relation to Doboj. Notwithstanding, neither the Indictment nor the Prosecution’s pre-trial brief pleaded Stanišić’s and Simatović’s contribution to the crimes in Doboj through the training of Radojica Božović and other Unit members at the Ležimir or Pajzoš camps prior to their deployment to Doboj, or that any such training was instrumental to the commission of crimes there. On the contrary, the Prosecution’s allegations in its pre-trial brief detailing contributions in relation to the attack on Doboj focus on trainings conducted by Radojica Božović and Unit members at Mt. Ozren and Doboj.¹³³² The Appeals Chamber further observes that the Prosecution’s submissions at the close of trial likewise did not contend that Stanišić and Simatović contributed to crimes of the common criminal purpose in Doboj through training Radojica Božović

¹³²⁷ Simatović Response Brief, para. 224.

¹³²⁸ See Simatović Response Brief, paras. 224, 225. See also Simatović Response Brief, paras. 235, 236.

¹³²⁹ Prosecution Reply to Stanišić Response, para. 50.

¹³³⁰ Prosecution Reply to Stanišić Response, para. 52.

¹³³¹ Prosecution Reply to Simatović Response, paras. 47, 48.

¹³³² See Prosecution Pre-Trial Brief, paras. 82 (“On 3 May the Unit and other groups trained under Unit member Radojica BOŽOVIĆ at the [State Security Service] camps at Mt. Ozren and Doboj attacked Doboj, again alongside the JNA, [Ministry of the Interior of Republika Srpska] and other Serb Forces.”), 170 (“As in Bosanski Šamac, local Serbs were recruited by municipal leaders in Doboj and trained by the Unit at [State Security Service] camps, this time on Mt. Ozren. On 3 May, Serb Forces—including approximately 300 Ozren-trained Unit members under [Radojica] BOŽOVIĆ, VUKMIROVIĆ aka Vuk and Davor SUBOTIĆ aka Riki—took over Doboj town by force, then attacked and took over surrounding towns.”) (internal citations omitted; emphasis added).

and other Unit members at the Ležimir and Pajzoš camps.¹³³³ Instead, and as noted by the Trial Chamber, the Prosecution argued that, by April 1992, Stanišić and Simatović deployed Radojica Božović from the Pajzoš camp with a group of Unit members to train Serbs from the surrounding areas at the Mt. Ozren camp and that, on 3 May 1992, upon Radojica Božović's order, Unit forces and other Serb forces attacked Doboj and committed crimes thereafter.¹³³⁴

433. The Appeals Chamber observes that, in this context, the Trial Chamber considered that the “main question” was whether Radojica Božović and any other original Unit member in Doboj were deployed by Stanišić and Simatović and whether their actions and those of local recruits (trained at Mt. Ozren) could be attributable to Stanišić and Simatović.¹³³⁵ The Trial Chamber concluded that reasonable doubt existed as to whether Radojica Božović and the group that came with him from Pajzoš were deployed to Doboj by Stanišić and Simatović, and whether Stanišić and Simatović directed and supported their activities there.¹³³⁶

434. Given the Prosecution's pre-trial pleadings and submissions at the conclusion of trial, the Appeals Chamber finds no error in the Trial Chamber's analysis focusing on whether Stanišić and Simatović contributed to the crimes in Doboj through the deployment of the Unit members under Radojica Božović's command and subsequent training of local recruits at Mt. Ozren, rather than assessing the impact of the training at the Ležimir and Pajzoš camps. The Prosecution has only clearly argued that Stanišić and Simatović contributed to the crimes committed in Doboj by trainings conducted at the Ležimir and Pajzoš camps for the first time on appeal – far too late in the proceedings in view of Stanišić's and Simatović's fundamental right to be informed promptly and in detail of the nature and cause of the charges against them.¹³³⁷ Indeed, the Prosecution's pre-trial and closing submissions concerning Stanišić's and Simatović's contributions based on the training conducted at the Ležimir and Pajzoš camps reflect that it was pursuing them in relation to the crimes committed by Unit members and local Serbs in connection with the takeover of Bosanski Šamac, without any clear indication that the training there contributed to crimes committed in Doboj.¹³³⁸

¹³³³ See, e.g., Prosecution Final Trial Brief, paras. 129, 130, 289, 290, 550-555, 834, 836, 837, 897. Indeed, the Prosecution's submissions regarding the formalization of the Unit also do not demonstrate how any training at the camps contributed to the ensuing crimes committed in Doboj. See, e.g., Prosecution Final Trial Brief, paras. 113-115.

¹³³⁴ Trial Judgement, para. 425, nn. 1694, 1695 and references cited therein. See also, e.g., Prosecution Pre-Trial Brief, paras. 82, 95, 111; Prosecution Final Trial Brief, paras. 123, 289, 550, 552-555, 834-851, 897, 898, 930, Annex A, para. 14.

¹³³⁵ Trial Judgement, para. 429. See also Trial Judgement, para. 425, n. 1696 and references cited therein.

¹³³⁶ Trial Judgement, para. 431.

¹³³⁷ See Article 19(4)(a) of the Statute. Cf. *Kupreškić et al.* Appeal Judgement, para. 92 (“[T]he Prosecution is expected to know its case before it goes to trial [and cannot] [...] mould [...] the case against the accused in the course of the trial depending on how the evidence unfolds.”). See also *Ntagerura et al.* Appeal Judgement, para. 27.

¹³³⁸ See Prosecution Pre-Trial Brief, paras. 75, 82, 95, 111, 162, 163; Prosecution Final Trial Brief, paras. 124, 536, 540, 819, 821, 823-832, 897.

435. In light of the foregoing, the Appeals Chamber finds that the Prosecution has not demonstrated that the Trial Chamber erred by failing to adjudicate Stanišić's and Simatović's contribution to crimes in Doboj by training Radojica Božović and other Unit members at the Ležimir or Pajzoš camps. For the same reasons, the Appeals Chamber also finds that the Prosecution has not shown that the Trial Chamber failed to provide a reasoned opinion.

436. The Appeals Chamber dismisses sub-ground A(ii)(b) of Ground 1 of the Prosecution's appeal.

(c) Sanski Most (sub-ground A(ii)(c))

437. The Trial Chamber found proven beyond reasonable doubt that, in September 1995, Željko Ražnatović (Arkan) and his Serbian Volunteer Guard arrived in Sanski Most and subsequently committed murder and persecution there, as charged in the Indictment.¹³³⁹ However, the Trial Chamber was not convinced beyond reasonable doubt that Stanišić and Simatović directed, deployed, enabled, sustained, protected, or otherwise facilitated the Serbian Volunteer Guard, whose members committed murder and persecution in Sanski Most in 1995, as part of the operation in the Autonomous Region of Krajina.¹³⁴⁰

438. In particular, the Trial Chamber considered entries from Ratko Mladić's diary (Exhibit P01960) that the Prosecution relied upon to prove that Stanišić and Simatović deployed 300 to 400 members of the Serbian Volunteer Guard to the Autonomous Region of Krajina in September 1995.¹³⁴¹ It found the entries "ambiguous", noting that the entry dated 29 September 1995 that "[Stanišić] gave 300 of his men and the US is begrudging us for having advertised Arkan" did not necessarily demonstrate that the 300 men were related to Željko Ražnatović (Arkan).¹³⁴² The Trial Chamber further considered that the entry dated 30 September 1995, in which Stanišić is recorded by Ratko Mladić as having said that "Arkan has embedded himself there, we sent 400 people", can be read to indicate that the men sent by Stanišić were separate from Željko Ražnatović (Arkan)'s group.¹³⁴³ The Trial Chamber concluded that the evidence was insufficient to find that Stanišić and Simatović deployed the Serbian Volunteer Guard.¹³⁴⁴

439. The Prosecution submits that the Trial Chamber failed to adjudicate whether Stanišić and Simatović contributed to the common criminal purpose by deploying Serb forces to Sanski Most in

¹³³⁹ See Trial Judgement, paras. 271, 275, 276, 278, 301, 302, 322, 323, 325, 442. See also Trial Judgement, paras. 272-274.

¹³⁴⁰ Trial Judgement, para. 450. See also Trial Judgement, paras. 451-453.

¹³⁴¹ Trial Judgement, paras. 450, 451.

¹³⁴² Trial Judgement, para. 451.

¹³⁴³ Trial Judgement, para. 451.

¹³⁴⁴ Trial Judgement, para. 451.

1995.¹³⁴⁵ According to the Prosecution, following the determination that the 300 to 400 men sent into the 1995 operation in the Autonomous Region of Krajina were not the Serbian Volunteer Guard, the Trial Chamber should have then assessed whether this deployment by Stanišić – even if not a deployment of the Serbian Volunteer Guard – amounted to a contribution to the common criminal purpose.¹³⁴⁶ In its view, had the Trial Chamber adjudicated this matter, it would have found that deploying these men contributed to the crimes and the common criminal purpose.¹³⁴⁷ In the alternative, the Prosecution argues that, should the Trial Chamber have implicitly adjudicated this matter, it failed to provide a reasoned opinion on why the deployment of 300 to 400 men did not constitute a contribution to the common criminal purpose.¹³⁴⁸

440. Stanišić responds that the Prosecution’s case at trial was limited to the argument that Stanišić and Simatović contributed to the common criminal purpose and crimes in Sanski Most and the Autonomous Region of Krajina in 1995 by deploying, to the exclusion of others, Željko Ražnatović (Arkan) and the Serbian Volunteer Guard (including the 300 to 400 men) as tools to further the joint criminal enterprise.¹³⁴⁹ Stanišić further argues that the Prosecution misrepresents the Trial Chamber’s findings, which did not “acknowledge” that he sent these 300 to 400 men, but rather that he did not send Željko Ražnatović (Arkan).¹³⁵⁰

441. Simatović responds that the Prosecution expands its case on appeal by stating that Stanišić and Simatović deployed “Serb forces” to Sanski Most in 1995.¹³⁵¹ Simatović submits that the Prosecution’s case at trial regarding Sanski Most in 1995 and these 300 to 400 men was limited to Željko Ražnatović (Arkan) and the Serbian Volunteer Guard, that it now fails to specify which “Serb forces” were deployed, and that, in this context, Simatović cannot properly defend himself.¹³⁵² Additionally, Simatović identifies evidence which, in his view, demonstrates that the 300 to 400 men were members of the Serbian Ministry of Internal Affairs Public Security Department and, thus, Simatović played no role in their deployment.¹³⁵³

¹³⁴⁵ Prosecution Appeal Brief, para. 75. *See also* Prosecution Appeal Brief, para. 76.

¹³⁴⁶ Prosecution Appeal Brief, paras. 77, 78; Prosecution Reply to Stanišić Response, para. 57; Prosecution Reply to Simatović Response, para. 49. *See also* Prosecution Appeal Brief, para. 35.

¹³⁴⁷ Prosecution Appeal Brief, para. 79.

¹³⁴⁸ Prosecution Appeal Brief, para. 80.

¹³⁴⁹ *See* Stanišić Response Brief, paras. 254, 256-261; T. 25 January 2023 pp. 35, 36. *See also* Stanišić Response Brief, paras. 262, 263.

¹³⁵⁰ Stanišić Response Brief, para. 264.

¹³⁵¹ Simatović Response Brief, para. 241; T. 25 January 2023 pp. 67, 68.

¹³⁵² *See* Simatović Response Brief, paras. 241-249; T. 25 January 2023 pp. 67, 68.

¹³⁵³ Simatović Response Brief, paras. 250, 269. *See also* Simatović Response Brief, paras. 254-268; T. 25 January 2023 p. 69.

442. The Prosecution replies that it is not expanding its case and Stanišić and Simatović were on notice regarding their contribution by deploying Serb forces to Sanski Most in 1995, as evidenced by Stanišić’s submissions in his final trial brief.¹³⁵⁴

443. With respect to the Prosecution’s argument that the Trial Chamber should have adjudicated whether Stanišić contributed to the common criminal purpose regardless of whether the 300 to 400 men deployed to Sanski Most were members of the Serbian Volunteer Guard, the Appeals Chamber notes that the Prosecution consistently alleged throughout trial that Stanišić and Simatović contributed to the joint criminal enterprise in Sanski Most in 1995 by deploying or otherwise providing support to Željko Ražnatović (Arkan) and the Serbian Volunteer Guard, who committed crimes in the municipality.¹³⁵⁵ Specifically, the Indictment alleges, *inter alia*, that, in September 1995, Željko Ražnatović (Arkan) and members of the Serbian Volunteer Guard arrived in Sanski Most at the request of “Bosnian Serb leaders” and killed non-Serbs.¹³⁵⁶ The Prosecution Pre-Trial Brief further specifies that Stanišić and Simatović sent “[Željko Ražnatović (Arkan)] and the [Serbian Volunteer Guard] into Sanski Most”.¹³⁵⁷ The Prosecution pursued this case by arguing in its final trial brief that Stanišić deployed 300 to 400 men, who were members of the Serbian Volunteer Guard, stating: “[c]learly, the 300 men ‘given’ by STANIŠIĆ, were the same ‘300 Arkan’s volunteers’”,¹³⁵⁸ and that Stanišić deployed this significant contingent of “Arkan’s [Serbian Volunteer Guard]” to Sanski Most.¹³⁵⁹ The Prosecution expressly repeated this argument in its oral closing submissions,¹³⁶⁰ and it disputed suggestions that this group was not the Serbian Volunteer Guard.¹³⁶¹ Thus, the Prosecution has not shown that it argued at trial that Stanišić and Simatović contributed to the common criminal purpose by specifically deploying the 300 to 400 men irrespective of their affiliation to Željko Ražnatović (Arkan) and the Serbian Volunteer Guard.

444. The Appeals Chamber observes that the Trial Chamber reasonably made findings based on the Prosecution’s case at trial and concluded that the evidence was insufficient to find that Stanišić and Simatović deployed the Serbian Volunteer Guard to Sanski Most.¹³⁶² As noted above, it reviewed

¹³⁵⁴ Prosecution Reply to Stanišić Response, para. 55; Prosecution Reply to Simatović Response, para. 49.

¹³⁵⁵ See, e.g., Indictment, paras. 55-57; Prosecution Pre-Trial Brief, paras. 89, 95, 181; Prosecution Final Trial Brief, paras. 659-664, 882-892; T. 12 April 2021 pp. 89, 90.

¹³⁵⁶ Indictment, paras. 55-57.

¹³⁵⁷ See Prosecution Pre-Trial Brief, para. 89. See also Prosecution Pre-Trial Brief, paras. 95, 181.

¹³⁵⁸ Prosecution Final Trial Brief, para. 661. See also Prosecution Final Trial Brief, paras. 659, 660.

¹³⁵⁹ Prosecution Final Trial Brief, para. 663.

¹³⁶⁰ See T. 12 April 2021 pp. 89, 90 (“Stanišić’s role in the deployment of Arkan and his men to Sanski Most is clearly reflected by Mladić in his notebook entries on four separate meetings, 22nd, 29th, 30th September and 3rd of October 1995, and on two separate occasions, Milošević records that Stanišić ‘gave 300 of his men’ and that he ‘sent 400 people.’”).

¹³⁶¹ See T. 12 April 2021 pp. 90, 91.

¹³⁶² Trial Judgement, paras. 451, 452.

entries in Ratko Mladić's diary (Exhibit P01960) regarding the affiliation of 300 to 400 men, examined whether these men were related to Željko Ražnatović (Arkan), and considered that a plain reading of the evidence can indicate that these men "were separate from Arkan's group".¹³⁶³ The Prosecution does not argue that this conclusion was unreasonable. Furthermore, and contrary to the Prosecution's position,¹³⁶⁴ the Appeals Chamber does not consider that the Trial Chamber's analysis reflects that it concluded beyond reasonable doubt that Stanišić and Simatović deployed 300 to 400 men unaffiliated to the Serbian Volunteer Guard to Sanski Most.¹³⁶⁵ The Prosecution, on appeal, does not point to evidence that eliminates all reasonable doubt that Stanišić and Simatović made such a deployment.¹³⁶⁶

445. The Prosecution is only clearly advancing this argument for the first time on appeal, which is far too late in the proceedings in view of Stanišić's and Simatović's fundamental right to be informed promptly and in detail of the nature and cause of the charges against them.¹³⁶⁷ The Prosecution fails to demonstrate any error warranting appellate intervention. For the same reasons, the Appeals Chamber also sees no merit in the Prosecution's alternative argument that the Trial Chamber failed to provide a reasoned opinion.

446. Based on the foregoing, the Appeals Chamber dismisses sub-ground A(ii)(c) of Ground 1 of the Prosecution's appeal.

(d) Conclusion

447. For the foregoing reasons, the Appeals Chamber dismisses sub-ground A(ii) of Ground 1 of the Prosecution's appeal.

3. Alleged Errors in Excluding from Adjudication Stanišić's and Simatović's Contributions to Forcible Displacement Crimes in Sanski Most in 1995 (sub-ground A(iii))

448. The Trial Chamber found that, on or about 20 and 21 September 1995, respectively, the Serbian Volunteer Guard transported and subsequently killed 75 non-Serb detainees and civilians in

¹³⁶³ Trial Judgement, para. 451.

¹³⁶⁴ See, e.g., Prosecution Appeal Brief, para. 78; Prosecution Reply to Stanišić Response, para. 57.

¹³⁶⁵ See Trial Judgement, para. 451.

¹³⁶⁶ See Prosecution Appeal Brief, para. 79, n. 159, referring to Prosecution Appeal Brief, paras. 34-45, 81-94; Prosecution Reply to Simatović Response, paras. 50, 51. Notably, the Trial Chamber considered the Prosecution's contention that Stanišić and Simatović also deployed the JATD to the Autonomous Region of Krajina but noted that this did not relate, except as otherwise discussed in the Trial Judgement, to crimes charged in the Indictment. Compare Prosecution Appeal Brief, para. 76 with Trial Judgement, para. 434. See also *supra* para. 399.

¹³⁶⁷ See Article 19(4)(a) of the Statute. Cf. *Kupreškić et al.* Appeal Judgement, para. 92 ("[T]he Prosecution is expected to know its case before it goes to trial [and cannot] [...] mould [...] the case against the accused in the course of the trial depending on how the evidence unfolds."). See also *Ntagerura et al.* Appeal Judgement, para. 27.

Sanski Most,¹³⁶⁸ and that this amounted to the crimes of murder and persecution.¹³⁶⁹ The Trial Chamber, however, was not satisfied beyond reasonable doubt that Stanišić and Simatović contributed to crimes charged in the Indictment through directing, organizing the formation of, financing, training, or providing logistical or giving other substantial assistance or support to the Serbian Volunteer Guard.¹³⁷⁰

449. Specifically, the Trial Chamber noted evidence that certain members of the Serbian Volunteer Guard – including Milorad Ulemek, Mihajlo Ulemek, Nenad Bujošević, Rade Rakonjac, Momir Ristić, Mladen Šarac, and Boris Batez – were in Sanski Most during the 1995 operation and were on payment lists of the State Security Service.¹³⁷¹ The Trial Chamber, however, concluded that the evidence was insufficient to find beyond reasonable doubt that these specific individuals or others on the payment lists participated in the commission of the 1995 killings in Sanski Most charged in the Indictment.¹³⁷² The Trial Chamber further stated that, while it was mindful that there was evidence that some of these individuals may have been involved in “other acts of violence” in the area, it concluded that these acts were not charged as murders, and that a review of the Prosecution Final Trial Brief indicated that the Prosecution was not pursuing the charges of forcible displacement based on the occurrence of these events.¹³⁷³

450. The Prosecution submits that the Trial Chamber erred when it declined to adjudicate whether Stanišić and Simatović financed members of Željko Ražnatović (Arkan)’s Serbian Volunteer Guard who were involved in forcible displacement crimes in Sanski Most in 1995.¹³⁷⁴ According to the Prosecution, the Trial Chamber erroneously determined, at paragraph 453 of the Trial Judgement, that the Prosecution was not pursuing the charges of forcible displacement in relation to events in Sanski Most in 1995,¹³⁷⁵ while in fact this was part of its case throughout the retrial.¹³⁷⁶ The Prosecution argues that the Trial Chamber misinterpreted the Prosecution Final Trial Brief and made this determination while at the same time acknowledging that the language of the Indictment was

¹³⁶⁸ Trial Judgement, paras. 275, 276.

¹³⁶⁹ See Trial Judgement, paras. 271, 275, 276, 278, 301, 302, 322, 323, 325, 442.

¹³⁷⁰ Trial Judgement, para. 456.

¹³⁷¹ Trial Judgement, para. 453.

¹³⁷² Trial Judgement, para. 453.

¹³⁷³ Trial Judgement, para. 453, n. 1827, *referring to* Prosecution Final Trial Brief, paras. 863-882.

¹³⁷⁴ Prosecution Notice of Appeal, para. 8; Prosecution Appeal Brief, paras. 81-94. *See also* Prosecution Appeal Brief, para. 43.

¹³⁷⁵ Prosecution Appeal Brief, para. 81, *referring to* Trial Judgement, para. 453. *See also* Prosecution Reply to Stanišić Response, para. 58; Prosecution Reply to Simatović Response, para. 52; T. 25 January 2023 pp. 13-17.

¹³⁷⁶ Prosecution Appeal Brief, paras. 83, 84, 86, 87, *referring to, inter alia,* Prosecution Pre-Trial Brief, para. 181, Prosecution Final Trial Brief, paras. 654, 864, 881, T. 12 April 2021 pp. 89, 92, Trial Judgement, paras. 260, 261. *See also* T. 25 January 2023 pp. 14, 15, 17.

broad and could encompass underlying acts of forcible displacement.¹³⁷⁷ It points to the Trial Chamber's factual findings that crimes and acts of violence committed by the Serbian Volunteer Guard in Sanski Most in September 1995 forced the non-Serb population to leave the area.¹³⁷⁸

451. The Prosecution contends that, had the Trial Chamber recognized that the forcible displacement charges also concerned crimes committed in 1995, it would have found that Stanišić and Simatović contributed to the common criminal purpose by financing the members of the Serbian Volunteer Guard who participated in the 1995 Sanski Most operations and committed crimes there.¹³⁷⁹ The Prosecution asks the Appeals Chamber to find that the Trial Chamber erred in concluding that the Prosecution dropped the charges of forcible displacement regarding events in Sanski Most in 1995 and further find that Stanišić and Simatović significantly contributed to the common criminal purpose by financing the Serbian Volunteer Guard during the 1995 operation in Sanski Most.¹³⁸⁰

452. Stanišić responds, *inter alia*, that the Trial Chamber correctly found that the Prosecution failed to plead forcible transfer charges pertaining to 1995, as it pleaded only specific crimes of murder effected either as part of a defensive operation or for the maintenance of territory, rather than an ethnic cleansing operation.¹³⁸¹ He further submits that the evidence is insufficient to support a finding that Stanišić and Simatović financed members of the Serbian Volunteer Guard who committed crimes in Sanski Most in 1995.¹³⁸²

453. Simatović responds, *inter alia*, that the Prosecution did not indict Stanišić and Simatović for contributing to the common criminal purpose by financing forcible displacement of non-Serbs from Sanski Most.¹³⁸³ He submits that the Trial Chamber correctly found that the Prosecution Final Trial Brief focuses on crimes committed in 1992 to support its forcible displacement charges,¹³⁸⁴ and that the evidence was insufficient to establish the responsibility of Stanišić and Simatović for financing Željko Ražnatović (Arkan) and the Serbian Volunteer Guard.¹³⁸⁵

¹³⁷⁷ Prosecution Appeal Brief, para. 82, *referring to, inter alia*, Trial Judgement, n. 1827, Indictment, paras. 64, 65. *See also* Prosecution Reply to Stanišić Response, para. 58; Prosecution Reply to Simatović Response, para. 52; T. 25 January 2023 pp. 14, 15. The Prosecution submits that, at the very least, the Trial Chamber should have sought confirmation of the Prosecution's position as to whether it was dropping this aspect of its case. *See* T. 25 January 2023 p. 15.

¹³⁷⁸ Prosecution Appeal Brief, para. 85, *referring to, inter alia*, Trial Judgement, paras. 270-278.

¹³⁷⁹ *See* Prosecution Appeal Brief, paras. 88-94.

¹³⁸⁰ *See* Prosecution Appeal Brief, paras. 93, 94.

¹³⁸¹ *See* Stanišić Response Brief, paras. 267, 269, 271-273. *See also* Stanišić Response Brief, paras. 266, 268, 270-278, 495.

¹³⁸² *See* Stanišić Response Brief, paras. 279-287.

¹³⁸³ *See* Simatović Response Brief, para. 272. *See also* Simatović Response Brief, paras. 271, 273-294.

¹³⁸⁴ *See* Simatović Response Brief, paras. 273-275.

¹³⁸⁵ Simatović Response Brief, para. 306. *See also* Simatović Response Brief, paras. 295-305.

454. The Prosecution replies that Stanišić and Simatović have been on notice since the beginning of the ICTY case that it was charging forcible displacement in Sanski Most not only in 1992, when the majority of non-Serbs were forcibly displaced, but also in 1995, and that they were accused of contributing to the common criminal purpose by financing Serb forces including the Serbian Volunteer Guard.¹³⁸⁶ It further responds that Stanišić’s characterization of the 1995 Sanski Most operation as a defensive operation is not dispositive.¹³⁸⁷

455. The Appeals Chamber observes that, in considering that the Prosecution was not pursuing forcible displacement crimes based on “other acts of violence” perpetrated in Sanski Most in 1995, the Trial Chamber noted that the language of the relevant parts of the Indictment was broad and could encompass this conduct.¹³⁸⁸ However, it observed that sections of the Prosecution Final Trial Brief addressing deportation and forcible transfer referred to acts of violence “principally in 1992” as the underlying criminal conduct leading to the forcible displacement of the non-Serb population in Sanski Most.¹³⁸⁹ The Trial Chamber then noted that, following submissions on forcible displacement, the Prosecution did not indicate the 1995 events in Sanski Most to be in furtherance of forcible displacement “but goes on to describe Arkan’s deployment at the time for the purpose of ‘maintain[ing] Serb control over the ethnically cleansed territory’”.¹³⁹⁰

456. The Appeals Chamber recalls that the Prosecution’s final trial brief reflects its position regarding the charges set out in the indictment and the relevant evidence led in the case.¹³⁹¹ The manner in which the Prosecution pleads its case at the conclusion of trial can demonstrate that it is no longer pursuing charges otherwise pleaded in an indictment.¹³⁹² Having reviewed the Trial Chamber’s assessment above in view of the language and structure of the Prosecution Final Trial Brief regarding crimes in Sanski Most,¹³⁹³ the Appeals Chamber finds that the Prosecution has not demonstrated any error in the Trial Chamber’s interpretation warranting appellate intervention. Consistent with the Trial Chamber’s analysis, the section entitled “Deportation and forcible

¹³⁸⁶ Prosecution Reply to Stanišić Response, para. 59; Prosecution Reply to Simatović Response, para. 53.

¹³⁸⁷ Prosecution Reply to Stanišić Response, para. 59.

¹³⁸⁸ See Trial Judgement, para. 453, n. 1827, *referring to, inter alia*, Indictment, paras. 64, 65. See also Trial Judgement, para. 260.

¹³⁸⁹ See Trial Judgement, para. 453, n. 1827, *referring to, inter alia*, Prosecution Final Trial Brief, paras. 863-881.

¹³⁹⁰ See Trial Judgement, n. 1827, *referring to* Prosecution Final Trial Brief, para. 882.

¹³⁹¹ See Rule 103 of the Rules; *Semanza* Appeal Judgement, para. 36.

¹³⁹² Cf. *Ntagerura et al.* Appeal Judgement, para. 149.

¹³⁹³ See Prosecution Final Trial Brief, paras. 863-882.

transfer”¹³⁹⁴ refers to “attacks, murders, and other crimes outlined above” that pre-date the crimes committed in relation to Sanski Most in 1995.¹³⁹⁵

457. The Prosecution’s references to its final trial brief purporting to show that it nonetheless continued to pursue the charges of forcible displacement in Sanski Most in 1995, as they relate to these other acts of violence, are unpersuasive.¹³⁹⁶ The Appeals Chamber observes that paragraph 863 of the Prosecution Final Trial Brief states that Željko Ražnatović (Arkan) and the Serbian Volunteer Guard were deployed to Sanski Most to defend previously cleansed territory and “purge the few remaining non-Serbs”.¹³⁹⁷ This is, however, general language at the introduction of the section addressing crimes committed in Sanski Most and does not clearly indicate that the Prosecution was pursuing acts of violence other than murder in 1995 in support of the charges pertaining to forcible displacement. The Prosecution further refers to its submission that, in September 1995, Serb forces, including the Serbian Volunteer Guard, were deployed to the Autonomous Region of Krajina to defend previously cleansed territory and “drive out the remaining non-Serbs”.¹³⁹⁸ While the Trial Chamber did not explicitly consider this portion of the Prosecution Final Trial Brief when assessing the scope of its arguments, the Appeals Chamber considers that this language, when viewed in the context of the brief as a whole, does not render the Trial Chamber’s interpretation of the overall structure and import of Section III.C.6 (discussing Sanski Most crimes) erroneous. These two isolated references do not demonstrate that the Prosecution continued to pursue other acts of violence in Sanski Most in 1995 in support of charges pertaining to forcible displacement.¹³⁹⁹

458. Furthermore, the Appeals Chamber is not persuaded by the Prosecution’s references to its oral closing submissions mentioning that crimes committed in Sanski Most in 1995 were “committed in furtherance of the criminal plan to remove non-Serbs and ensure the ethnic cleansing gains previously achieved in that region”.¹⁴⁰⁰ Rather, the language used – “ensure cleansing gains previously achieved” – reinforces the Trial Chamber’s interpretation of the Prosecution Final Trial Brief, that these other acts of violence in 1995 served to maintain Serb control over the ethnically cleansed territory instead of continuing forcible displacement. Accordingly, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber erred in limiting its findings with respect to forcible displacement crimes in light of the overall structure of and

¹³⁹⁴ See Prosecution Final Trial Brief, p. 376.

¹³⁹⁵ See Prosecution Final Trial Brief, paras. 863-881.

¹³⁹⁶ See Prosecution Appeal Brief, para. 86.

¹³⁹⁷ See Prosecution Appeal Brief, para. 86, *referring to* Prosecution Final Trial Brief, para. 863.

¹³⁹⁸ See Prosecution Appeal Brief, para. 86, *referring to* Prosecution Final Trial Brief, para. 654.

¹³⁹⁹ See Trial Judgement, n. 1827; Prosecution Final Trial Brief, paras. 863-881.

¹⁴⁰⁰ See Prosecution Appeal Brief, para. 87, *referring to* T. 12 April 2021 pp. 89, 92.

argumentation within the Prosecution Final Trial Brief that concerned the crimes committed in Sanski Most specifically.¹⁴⁰¹

459. In light of the above, the Appeals Chamber finds that the Prosecution has not demonstrated that the Trial Chamber erred in law or fact by misinterpreting its trial submissions and thereby failing to adjudicate the charges of forcible displacement in Sanski Most in 1995. The Prosecution's remaining contentions that the Trial Chamber erred by adopting an incorrect legal standard for assessing contributions to the joint criminal enterprise¹⁴⁰² and that it would have been compelled to find that Stanišić and Simatović contributed to forcible displacement crimes in view of evidence related to financing the Serbian Volunteer Guard members who were present in Sanski Most in 1995 are moot.¹⁴⁰³ Nevertheless, the Appeals Chamber, will consider these remaining contentions in connection with sub-ground A(iv)(c) of Ground 1 of the Prosecution's appeal that concerns charged murders in Sanski Most in 1995.

460. In light of the foregoing, the Appeals Chamber dismisses sub-ground A(iii) of Ground 1 of the Prosecution's appeal.

4. Alleged Failure to Find Contributions to the Common Criminal Purpose in Relation to Western Srem, Doboje, Sanski Most, and Bilje (sub-ground A(iv))

461. The Trial Chamber concluded that Stanišić and Simatović contributed to the joint criminal enterprise in connection with the crimes committed as part of the takeover of Bosanski Šamac.¹⁴⁰⁴ However, the Trial Chamber found not proven beyond reasonable doubt that Stanišić and Simatović deployed and/or provided assistance to Serb forces under their control in connection with any other crimes charged in the Indictment, or that they were personally involved in the planning or execution of operations that led to the forcible displacement of the non-Serb population from the specific areas charged in the Indictment.¹⁴⁰⁵

462. The Prosecution alleges that the Trial Chamber erred in fact by failing to find that Stanišić and Simatović contributed to the common criminal purpose in additional ways beyond the training and deployment to Bosanski Šamac in April 1992 and submits that no reasonable trial chamber could have failed to find that they contributed to the common criminal purpose: (i) by deploying Unit members who committed crimes in Western Srem; (ii) by deploying Radojica Božović and others

¹⁴⁰¹ Specifically, the Trial Chamber based its conclusions upon Section III.C.6 of the Prosecution Final Trial Brief.

¹⁴⁰² See Prosecution Appeal Brief, para. 90.

¹⁴⁰³ See Prosecution Appeal Brief, paras. 91, 92.

¹⁴⁰⁴ See Trial Judgement, paras. 424, 436, 590, 597.

¹⁴⁰⁵ Trial Judgement, para. 591.

who committed crimes in Doboj; (iii) by financing the Serbian Volunteer Guard who committed murders in Sanski Most in 1995; and (iv) in additional ways on which the Trial Chamber failed to adjudicate and/or provide a reasoned opinion.¹⁴⁰⁶ The Appeals Chamber will address each alleged error in turn.

(a) Western Srem (sub-grounds A(i)(a)(v) and A(iv)(a))

463. In connection with the Prosecution's allegations of deportation, forcible transfer, and persecution with respect to Western Srem,¹⁴⁰⁷ the Trial Chamber discussed evidence of attacks and crimes in Croat villages between August 1991 and January 1992.¹⁴⁰⁸ The Trial Chamber found proven beyond reasonable doubt that Serb forces, including the JNA, the Serbian Volunteer Guard, the SAO SBWS Territorial Defence, and the SAO SBWS police committed crimes forcing the non-Serb population of Western Srem to leave.¹⁴⁰⁹

464. In reviewing evidence related to military attacks on Bapska, Šarengrad, and Lovaš in October 1991 specifically, the Trial Chamber noted that it had received some evidence that the Unit participated in combat operations there but determined that the evidence was insufficient to conclude that Unit members were involved in the commission of the charged crimes.¹⁴¹⁰ Furthermore, in the section specifically addressing the Unit's and Stanišić's and Simatović's alleged contributions to the joint criminal enterprise, the Trial Chamber concluded that the Prosecution did not prove beyond reasonable doubt that the Unit perpetrated crimes charged in the Indictment in the period from August 1991 until mid-April 1992.¹⁴¹¹

465. The Prosecution contends that the Trial Chamber erred in law in assessing contributions to the joint criminal enterprise's common criminal purpose and that, had the Trial Chamber properly assessed the Unit's participation in combat operations in Western Srem, it would have found that Unit members furthered it.¹⁴¹² In particular, the Prosecution argues that the Trial Chamber erred in law by restricting its contribution analysis to whether Unit members were involved in the commission of

¹⁴⁰⁶ See Prosecution Notice of Appeal, para. 9; Prosecution Appeal Brief, paras. 95-117.

¹⁴⁰⁷ See Indictment, paras. 22-25, 64-66. See also Trial Judgement, para. 157.

¹⁴⁰⁸ See Trial Judgement, paras. 157, 160-166.

¹⁴⁰⁹ Trial Judgement, para. 168. The Trial Chamber considered evidence that the ethnic composition of Western Srem changed during the Indictment period. See Trial Judgement, para. 167.

¹⁴¹⁰ Trial Judgement, para. 162. See also Trial Judgement, para. 166 ("Although the Trial Chamber has also received some evidence regarding the presence of the 'Red Berets' in the Ilok area in 1992, it notes that they lack supporting details that would demonstrate any connections between them and the charged crimes.").

¹⁴¹¹ Trial Judgement, para. 388.

¹⁴¹² Prosecution Appeal Brief, paras. 49, 98. See also T. 25 January 2023 pp. 7-13, 80, 81.

charged criminal incidents.¹⁴¹³ It submits that it was not obligated to prove that Unit members committed specific crimes in Western Srem in order for Stanišić and Simatović to incur joint criminal enterprise liability and that it is sufficient to show that the participation of Unit members contributed to the common criminal plan by adding resources to the JNA-led efforts in Western Srem.¹⁴¹⁴

466. In any event, the Prosecution argues that, given the evidence of the Unit's involvement in the Western Srem operations and the large scale of the crimes, no reasonable trial chamber could have found that Unit members did not commit crimes in Western Srem and that Stanišić and Simatović did not contribute to the common criminal purpose by deploying Unit members there.¹⁴¹⁵ It submits, *inter alia*, that: (i) Witness RFJ-137's evidence reflects that the Unit assisted the JNA in the Western Srem operations,¹⁴¹⁶ in which the Trial Chamber found crimes were committed;¹⁴¹⁷ (ii) Exhibit P00261, Exhibit P02688, and Witness Vasiljević's evidence show that Unit members were involved in "capturing" Bapska and Šarengrad and "sweeping" or "clearing" the terrain around Bapska;¹⁴¹⁸ (iii) [REDACTED];¹⁴¹⁹ and (iv) [REDACTED].¹⁴²⁰ The Prosecution also challenges the Trial Chamber's reliance on Witness RFJ-137's evidence to suggest that the Unit was not involved in crimes in Western Srem generally.¹⁴²¹

467. Stanišić responds that the Prosecution has failed to demonstrate that the Trial Chamber erred in law or in fact in relation to Stanišić's and Simatović's contributions to the common criminal purpose through the Unit in Western Srem operations.¹⁴²² As to the error of law, Stanišić submits that the Prosecution's appeal is based on a distortion of the law on joint criminal enterprise and of its own case at trial.¹⁴²³ He argues that the Unit did not contribute to the Western Srem cleansing operations in furtherance of the common criminal purpose.¹⁴²⁴ Stanišić submits that the Trial Chamber's findings and the evidence the Prosecution relies upon establish, at best, that the Unit was present on one occasion on one day in one operation in either Bapska, Šarengrad, or Ilok,¹⁴²⁵ as confirmed by

¹⁴¹³ See T. 25 January 2023 pp. 7, 8, 13. See also Order for the Preparation of the Hearing of the Appeals, 13 January 2023 ("Order of 13 January 2023"), p. 2.

¹⁴¹⁴ T. 25 January 2023 p. 8. See also Order of 13 January 2023 p. 2.

¹⁴¹⁵ Prosecution Appeal Brief, paras. 96, 98, 100, 102. See also T. 25 January 2023 pp. 7, 9-13.

¹⁴¹⁶ Prosecution Appeal Brief, para. 100, n. 197. See also T. 25 January 2023 pp. 11-13.

¹⁴¹⁷ Prosecution Appeal Brief, paras. 49, 100, n. 196. See also T. 25 January 2023 pp. 11-13.

¹⁴¹⁸ Prosecution Appeal Brief, para. 100, nn. 198, 199; T. 25 January 2023 p. 80. See also T. 25 January 2023 pp. 12, 13.

¹⁴¹⁹ Prosecution Appeal Brief, para. 100, n. 200. See also T. 25 January 2023 pp. 12, 80, 81.

¹⁴²⁰ Prosecution Appeal Brief, para. 100, n. 201. See also T. 25 January 2023 pp. 12, 80.

¹⁴²¹ Prosecution Appeal Brief, para. 101. See also Prosecution Reply to Stanišić Response, para. 64; Prosecution Reply to Simatović Response, para. 56; T. 25 January 2023 p. 13.

¹⁴²² See Stanišić Response Brief, paras. 171-181, 288-301. See also T. 25 January 2023 pp. 48-53.

¹⁴²³ See Stanišić Response Brief, paras. 172-181; T. 25 January 2023 p. 49.

¹⁴²⁴ Stanišić Response Brief, paras. 293-296.

¹⁴²⁵ Stanišić Response Brief, para. 292; T. 25 January 2023 p. 50.

Witness RFJ-137.¹⁴²⁶ Stanišić asserts that the sole evidence of his command over the Unit at that time was provided by Witness RFJ-137,¹⁴²⁷ whose evidence demonstrates that Stanišić forbade the Unit from participating in further operations with the JNA and that he was training an anti-terrorist unit and not a military one.¹⁴²⁸ Finally, he contends that there is no evidence demonstrating that he, as opposed to Simatović, utilized the Unit in furtherance of the common criminal purpose in Western Srem,¹⁴²⁹ and submits that the evidence underscores that the Unit “overrode [his authority] and deployed into Western Srem without his order or approval”.¹⁴³⁰

468. Simatović responds that the Prosecution has failed to demonstrate that the Trial Chamber erred in finding that he and Stanišić did not contribute to the common criminal purpose through events in Western Srem.¹⁴³¹ In his view, the Trial Chamber properly assessed the evidence regarding the Unit’s participation in a single combat operation not involving civilians, as well as reconnaissance and information-gathering activities in Western Srem.¹⁴³² Simatović submits that the Trial Chamber reasonably determined that, while there was some evidence of the Unit’s participation in combat operations in Western Srem, it was insufficient to conclude that members of the Unit were involved in the commission of the charged crimes or contributed to the joint criminal enterprise.¹⁴³³ Simatović also submits that Witness RFJ-137’s evidence and Exhibit P00500 demonstrate that Unit members did not participate in offensive operations with the JNA, the SAO SBWS Territorial Defence, and other Serb forces in Western Srem targeting the civilian population.¹⁴³⁴

469. The Prosecution replies that Stanišić mischaracterizes the evidence of Witnesses RFJ-137 and Vasiljević as well as Exhibit P00261, which demonstrates the Unit’s involvement in the Western Srem operations and its presence there on more than one occasion.¹⁴³⁵ The Prosecution asserts that Witness RFJ-137’s evidence confirms, *inter alia*, that Stanišić and Simatović could decide in which operations the Unit would participate and that Unit members always followed their orders.¹⁴³⁶ The Prosecution also argues that Stanišić’s suggestion that Simatović deployed the Unit to Western Srem ignores his authority over Simatović.¹⁴³⁷ Furthermore, it submits that Stanišić’s presence on the

¹⁴²⁶ Stanišić Response Brief, paras. 292, 294, 295, n. 572; T. 25 January 2023 p. 50.

¹⁴²⁷ See Stanišić Response Brief, paras. 297-299; T. 25 January 2023 pp. 50-52.

¹⁴²⁸ Stanišić Response Brief, paras. 299, 300, n. 586; T. 25 January 2023 pp. 51, 52.

¹⁴²⁹ Stanišić Response Brief, para. 301.

¹⁴³⁰ T. 25 January 2025 p. 51.

¹⁴³¹ See Simatović Response Brief, paras. 308-330; T. 25 January 2023 pp. 59-62.

¹⁴³² See Simatović Response Brief, paras. 312-316, 319, 321, 325-329; T. 25 January 2023 pp. 59-62.

¹⁴³³ See Simatović Response Brief, paras. 311, 317, 318; T. 25 January 2023 pp. 59, 61, 62.

¹⁴³⁴ See Simatović Response Brief, paras. 318, 319, 320.

¹⁴³⁵ Prosecution Reply to Stanišić Response, para. 63. See also Prosecution Reply to Stanišić Response, para. 64; Prosecution Reply to Simatović Response, paras. 54, 56; T. 25 January 2023 p. 80.

¹⁴³⁶ Prosecution Reply to Stanišić Response, para. 65. See also T. 25 January 2023 pp. 80, 81.

¹⁴³⁷ Prosecution Reply to Stanišić Response, para. 66.

ground the day after the Western Srem operation underscores his authority over the Unit and that it was operating under his overarching command.¹⁴³⁸ The Prosecution further replies that Simatović misquotes Witness RFJ-137's evidence¹⁴³⁹ and that his submissions confirm the Unit's participation in other offensive operations in the area.¹⁴⁴⁰

470. The Appeals Chamber observes that, in assessing Stanišić's and Simatović's contributions pertaining to Western Srem, the Trial Chamber indeed focused its examination on whether there was sufficient evidence to conclude that Unit members committed crimes. The Appeals Chamber recalls that, as it pertains to joint criminal enterprise liability, while an accused's contribution to the common criminal purpose should at least be significant to the crimes for which the accused is found responsible,¹⁴⁴¹ it need not be necessary or substantial,¹⁴⁴² it need not involve the commission of a crime,¹⁴⁴³ and the law does not foresee specific types of conduct which *per se* could not be considered a contribution to a joint criminal enterprise.¹⁴⁴⁴ In view of this jurisprudence, the Appeals Chamber finds that the Trial Chamber erred in law in restricting its examination as to whether Unit members physically committed crimes and by not evaluating whether Stanišić and Simatović, through the deployment of Unit members to operations in Western Srem, contributed to the common criminal purpose. Consequently, the Appeals Chamber shall review the evidence and the relevant factual findings in light of the correct legal standard articulated above.

471. The Appeals Chamber observes that the evidence considered by the Trial Chamber reflects that Unit members, which included Milenko Popović, Dragan Oluić, and Davor Subotić, went to Western Srem and actively participated in operations there.¹⁴⁴⁵ In particular, Witness RFJ-137's evidence, which the Trial Chamber relied upon, reflects that: (i) in September 1991, the Unit carried out observation activities in Bapska, Ilok, and Šarengrad and went on a combat mission in one of these places, where its task was to drive out Croatian forces from their stronghold located in the local church, and no civilians were there; and (ii) it was "effectively a JNA operation" and the Unit was

¹⁴³⁸ Prosecution Reply to Stanišić Response, para. 66. *See also* T. 25 January 2023 pp. 12, 13.

¹⁴³⁹ Prosecution Reply to Simatović Response, para. 54.

¹⁴⁴⁰ Prosecution Reply to Simatović Response, para. 55.

¹⁴⁴¹ *Krajišnik* Appeal Judgement, para. 215. *See also* *Nizeyimana* Appeal Judgement, para. 325; *Gotovina and Markač* Appeal Judgement, para. 89; *Simba* Appeal Judgement, para. 303; *Brđanin* Appeal Judgement, para. 430.

¹⁴⁴² *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹⁴⁴³ *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹⁴⁴⁴ *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹⁴⁴⁵ *See* Trial Judgement, para. 162, n. 779, referring to Witness RFJ-137, Exhibit P00245, paras. 8, 68-70, Exhibit P00500, p. 16, Exhibit P00261, p. 5, Exhibit P00267, p. 6. *See also* Prosecution Appeal Brief, para. 205 (listing Živojin Ivanović and Radojica Božović as additional Unit members).

“just assisting”.¹⁴⁴⁶ Additional evidence reflects that, in September 1991, the Unit moved to Bapska and, afterwards, “reconnaissance-in-force” was carried out.¹⁴⁴⁷

472. Furthermore, in considering that Unit members participated in combat operations in Western Srem, the Trial Chamber also considered Exhibit P00261, indicating that in September 1991, a Unit member (Dragan Oluić) was involved in capturing “Ba[p]ska and Šarengrad or, rather, Pajzoš”.¹⁴⁴⁸ Likewise, it noted Exhibit P00267, which indicates that Davor Subotić “went to fight” in, *inter alia*, “Bapska”.¹⁴⁴⁹ The Appeals Chamber observes that the Trial Chamber did not refer to Exhibit P02688 or Witness Vasiljević’s testimony, as highlighted by the Prosecution. While this evidence provides circumstantial support of the involvement of the Unit in operations in Bapska – as it details that a detachment from the Serbian Ministry of the Interior (a youth settlement at Fruška Gora) took part in “sweeping the terrain around Bapska” – it is second-hand and general.¹⁴⁵⁰

473. Having reviewed the evidence, the Appeals Chamber is not satisfied that the Prosecution – notwithstanding its submissions to the contrary – has eliminated all reasonable doubt that Unit members engaged in the charged crimes of deportation, forcible transfer, and persecution. The evidence related to the Unit’s operations in conducting reconnaissance or engaging in combat is ambiguous as to the nature of the operations or the intent of the Unit members in the conduct of them. This is particularly in light of Witness RFJ-137’s evidence reflecting that there were no civilians in the area during the combat operation in Bapska, Ilok, or Šarengrad, which was intended to drive Croatian forces out of their stronghold.¹⁴⁵¹

474. Turning to whether the deployment of Unit members to operations in Western Srem contributed to the common criminal purpose by supporting Serb forces involved in the commission of charged crimes, the Appeals Chamber observes that the evidence relied upon by the Prosecution, as set forth above, is remarkably general as to the nature and extent of the Unit’s assistance to Serb forces in combat operations in Western Srem. Indeed, Witness RFJ-137’s recorded statements

¹⁴⁴⁶ Trial Judgement, para. 162, n. 779, *referring to, inter alia*, Witness RFJ-137, Exhibit P00245, paras. 8, 68-70. While the Trial Chamber did not refer to the relevant portion of Witness RFJ-137’s testimony as cited by the Prosecution on appeal, the Prosecution does not demonstrate any error in this respect given its materially overlapping nature with the evidence in the witness’s statement contained in Exhibit P00245 on which the Trial Chamber relied. *Compare* Witness RFJ-137, T. 20 July 2017 pp. 50, 51 *with* Exhibit P00245, paras. 68-70. *See also* Prosecution Appeal Brief, para. 100, nn. 197, 200, 201.

¹⁴⁴⁷ Trial Judgement, para. 162, n. 779, *referring to, inter alia*, Exhibit P00500, p. 16.

¹⁴⁴⁸ Trial Judgement, para. 162, n. 779, *referring to, inter alia*, Exhibit P00261, p. 5. *Compare with* Prosecution Appeal Brief, para. 100, n. 198.

¹⁴⁴⁹ Trial Judgement, para. 162, n. 779, *referring to, inter alia*, Exhibit P00267, p. 6.

¹⁴⁵⁰ *See* Prosecution Appeal Brief, para. 100, n. 199, *referring to, inter alia*, Exhibit P02688, p. 2, Witness Vasiljević, T. 6 February 2019 pp. 46-48. *See also* Witness RFJ-137, Exhibit P00245, para. 68, T. 18 July 2017 p. 29.

¹⁴⁵¹ *See* Witness RFJ-137, Exhibit P00245, paras. 64, 69, Exhibit P00281, p. 9.

provide [REDACTED], but his testimony clarifies that the Unit made essentially no contribution to operations of the JNA and Serb forces given the limited and chaotic nature of the Unit's involvement due to the absence of JNA support.¹⁴⁵² As noted above, this evidence also reflects that following this operation, Stanišić and Simatović told the Unit not to engage in any action unless ordered by one of them.¹⁴⁵³ Reasonable doubt equally remains whether the evidence related to reconnaissance was at all connected to the conduct of Serb forces in the commission of their crimes.¹⁴⁵⁴ Consequently, the Appeals Chamber finds that the evidence on the record fails to eliminate all reasonable doubt that members of the Unit made any measurable contribution to the operations of Serb forces that, if attributable to Stanišić and Simatović,¹⁴⁵⁵ would establish a contribution to the common criminal purpose that could support joint criminal enterprise liability.

475. In view of the foregoing, the Appeals Chamber finds that the Trial Chamber erred in law in restricting its examination only as to whether Unit members committed crimes and by not evaluating whether the deployment of Unit members to operations in Western Srem, if attributable to Stanišić and Simatović, contributed to the furtherance of the common criminal purpose and, in particular, the commission of crimes charged in the Indictment. However, having reviewed the relevant evidence, the Appeals Chamber is not satisfied that the record establishes that the Unit contributed to the operations in Western Srem in a manner that would support Stanišić's and Simatović's joint criminal enterprise liability.

476. Based on the foregoing, the Appeals Chamber concludes that the Prosecution has failed to demonstrate that the Trial Chamber's error has occasioned a miscarriage of justice and dismisses sub-ground A(i)(a)(v) and sub-ground A(iv)(a) of Ground 1 of the Prosecution's appeal in their entirety.

(b) Doboj (sub-ground A(iv)(b))

477. The Trial Chamber found that, in April 1992, several Unit members under the command of Radojica Božović established a training camp at Mt. Ozren, near Doboj, where they trained several hundred local recruits from the area.¹⁴⁵⁶ It found that Serb forces, including those trained at Mt. Ozren

¹⁴⁵² See Witness RFJ-137, T. 18 July 2017 p. 61, T. 19 July 2017 pp. 46, 47, T. 20 July 2017 pp. 39, 40. See also Exhibit P02688, p. 2.

¹⁴⁵³ See Witness RFJ-137, T. 18 July 2017 p. 29, T. 20 July 2017 p. 51, Exhibit P00245, paras. 51, 70.

¹⁴⁵⁴ Exhibit P00500, p. 16; Witness RFJ-137, Exhibit P00245, paras. 68, 69.

¹⁴⁵⁵ The Appeals Chamber further notes that the witness's evidence in relation to the combat operation in Western Srem suggests that neither Stanišić nor Simatović deployed the Unit into it. See Witness RFJ-137, T. 18 July 2017 pp. 29, 61, 62, Witness RFJ-137, T. 19 July 2017 pp. 27-29, T. 20 July 2017 p. 51.

¹⁴⁵⁶ Trial Judgement, para. 428. The Trial Chamber referred to the month of April 1994 at paragraph 428 of the Trial Judgement. However, a comprehensive reading of Section V.D.2(b) demonstrates that this is a typographical error and that the Trial Chamber was, in fact, referring to April 1992.

and under Radojica Božović's command, attacked Doboj and took over the town on 3 May 1992, and committed crimes thereafter.¹⁴⁵⁷ According to the Trial Chamber, the question before it was whether Radojica Božović and any other original Unit members in Doboj were deployed by Stanišić and Simatović, and whether the actions of Radojica Božović and those under his command could be attributed to Stanišić and Simatović.¹⁴⁵⁸ The Trial Chamber concluded that there was reasonable doubt that Radojica Božović and the group that came with him from Pajzoš were deployed by Stanišić and Simatović to Doboj, or that Stanišić and Simatović directed and supported their activities there, including the training conducted at Mt. Ozren.¹⁴⁵⁹

478. The Prosecution submits that no reasonable trial chamber could have failed to find that Stanišić and Simatović contributed to the common criminal purpose by deploying Radojica Božović and the group who came with him from Pajzoš to Doboj, where they committed crimes.¹⁴⁶⁰ The Prosecution claims that the evidence the Trial Chamber failed to consider or discuss leaves no doubt that Stanišić and Simatović had authority over Radojica Božović and the Unit members that came with him during the operations in Doboj.¹⁴⁶¹ In particular, the Prosecution submits that the Trial Chamber overlooked evidence that the individuals who participated in the Doboj operations were Unit members – namely: (i) Exhibit P00256, indicating that three Unit members in Doboj – Davor Subotić, Đurica Banjać, and Nikola Lončar – were introduced as “veteran Unit members” during a 1997 ceremony at the Kostić Centre in Kula;¹⁴⁶² (ii) Exhibit P00500, reflecting that Milenko Popović, Nikola Lončar, and Njegoš Kušić, identified by the Trial Chamber as Unit members along with Radojica Božović in Doboj, were employees of the Serbian Ministry of the Interior;¹⁴⁶³ (iii) Exhibit P00256, Exhibit P00267, Exhibit P00500, and Exhibit P00553, setting forth that Davor Subotić, Đurica Banjać, and Milenko Popović remained in the Unit after it was renamed the JATD in August 1993;¹⁴⁶⁴ and (iv) Exhibit P00267, Exhibit P00500, and Exhibit P02706, indicating that Unit members Davor Subotić, Milenko Popović, and Milan Dimić participated in the Mt. Ozren training and Doboj operations as part of the Unit.¹⁴⁶⁵

¹⁴⁵⁷ Trial Judgement, paras. 242, 252, 428.

¹⁴⁵⁸ Trial Judgement, para. 429.

¹⁴⁵⁹ Trial Judgement, para. 431. *See also* Trial Judgement, paras. 429, 430. The Trial Chamber referred to Mt. Tara in paragraph 431 of the Trial Judgement. However, a comprehensive reading of Section V.D.2(b) demonstrates that this is a typographical error and that the Trial Chamber was, in fact, referring to Mt. Ozren.

¹⁴⁶⁰ Prosecution Appeal Brief, paras. 103, 111. *See also* Prosecution Reply to Stanišić Response, para. 67.

¹⁴⁶¹ *See* Prosecution Appeal Brief, paras. 105-111.

¹⁴⁶² Prosecution Appeal Brief, para. 106, nn. 213, 216.

¹⁴⁶³ Prosecution Appeal Brief, para. 106, nn. 215, 216. While the Prosecution identifies this person as Nedeljko Kušić, the Appeals Chamber understands, in view of the evidence of Exhibit P00500 and footnote 1709 of the Trial Judgement, that it refers, rather, to Njegoš Kušić.

¹⁴⁶⁴ Prosecution Appeal Brief, para. 106, n. 216.

¹⁴⁶⁵ Prosecution Appeal Brief, para. 108.

479. The Prosecution further argues that the Trial Chamber ignored the evidence of Witnesses RFJ-165, RFJ-092, and Edin Hadžović, as well as Exhibit P00256 and Exhibit P00537 showing that, after the takeover of Doboj, Unit members established another training camp in Vila, an area of Doboj town.¹⁴⁶⁶ According to the Prosecution, the Trial Chamber also ignored Witness RFJ-092's evidence, which it contends undermines the Trial Chamber's alternative inference that Unit members were operating under the chain of command of the *Republika Srpska* Ministry of the Interior.¹⁴⁶⁷ The Prosecution submits that other evidence not addressed by the Trial Chamber, such as Exhibit P01168 regarding the affiliation of an instructor at Mt. Ozren to Simatović and Radojica Božović, further "demonstrates the unreasonableness" of the Trial Chamber's conclusion regarding Stanišić's and Simatović's authority over Radojica Božović and those under his command in Doboj.¹⁴⁶⁸

480. The Prosecution contends that, had the Trial Chamber found that Radojica Božović and the Unit members remained under Stanišić's and Simatović's authority while in the Doboj area, it would have also found that the training conducted at Mt. Ozren took place under Stanišić's and Simatović's authority and, on that basis, that they contributed to the common criminal purpose by training, at Mt. Ozren, Doboj locals who committed crimes in the Doboj operation.¹⁴⁶⁹

481. Stanišić responds that the Trial Chamber correctly identified the issue before it and appropriately declined to conflate "strong indicia" of membership in the Unit as proof beyond reasonable doubt that Stanišić and Simatović exercised authority over the training and events in relation to Doboj.¹⁴⁷⁰ Stanišić argues that the evidence the Prosecution refers to is not dispositive of Stanišić having procured men in furtherance of the common criminal purpose,¹⁴⁷¹ that the Trial Chamber already examined Exhibit P00500 and Exhibit P00256,¹⁴⁷² and that the evidence of Witness RFJ-092 and Exhibit P01168 is not probative of any connection to Stanišić.¹⁴⁷³ Stanišić also submits that the totality of the evidence placed the JNA, the Territorial Defence, or the *Republika Srpska* Ministry of the Interior in overall command of the Doboj operations and not Radojica Božović, Stanišić, or the State Security Service.¹⁴⁷⁴ Finally, Stanišić submits that the evidence of Witness RFJ-165 – the only direct evidence suggesting that Stanišić exercised authority over men in Doboj – was

¹⁴⁶⁶ Prosecution Appeal Brief, para. 107.

¹⁴⁶⁷ Prosecution Appeal Brief, para. 109, n. 229.

¹⁴⁶⁸ Prosecution Appeal Brief, para. 110.

¹⁴⁶⁹ Prosecution Appeal Brief, paras. 111, 112; Prosecution Reply to Stanišić Response, para. 67.

¹⁴⁷⁰ Stanišić Response Brief, paras. 304-306.

¹⁴⁷¹ Stanišić Response Brief, para. 307.

¹⁴⁷² See Stanišić Response Brief, paras. 309-312.

¹⁴⁷³ Stanišić Response Brief, paras. 308, 313.

¹⁴⁷⁴ Stanišić Response Brief, para. 315.

“seriously flawed”, and that the evidence of Witness RFJ-092 does not establish command by the Serbian Ministry of the Interior.¹⁴⁷⁵

482. Simatović responds that the evidence does not support the Prosecution’s allegation that Stanišić and Simatović deployed Radojica Božović to Doboj.¹⁴⁷⁶ He contends that Radojica Božović was a member of the *Republika Srpska* Ministry of the Interior¹⁴⁷⁷ and that he and his group were subordinated to the Ozren Tactical Group.¹⁴⁷⁸ Simatović further submits that Witness RFJ-092 had no knowledge of the organization of the *Republika Srpska* Ministry of the Interior in the period from April to the end of July 1992¹⁴⁷⁹ and that there is no evidence that Radojica Božović was an employee of the State Security Service.¹⁴⁸⁰ He further contends that Exhibit P01168 does not prove a connection between Simatović and the camp at Mt. Ozren¹⁴⁸¹ and that there is no evidence of contact between Radojica Božović and Simatović and Stanišić from mid-April 1992 to August 1993.¹⁴⁸² Moreover, Simatović submits that he does not acknowledge that “Doboj/Vila camp” was established by the State Security Service and adds that the Prosecution’s claim to the contrary is based on the testimony of Witness RFJ-165, whose credibility the Trial Chamber doubted.¹⁴⁸³

483. The Prosecution replies that the Trial Chamber erred in finding that Stanišić only had “some authority” over Radojica Božović.¹⁴⁸⁴ It further contends that the evidence referred to by Simatović does not undermine that Radojica Božović and his group were Unit members¹⁴⁸⁵ and submits that Witness RFJ-092’s evidence is credible and reliable.¹⁴⁸⁶

484. Turning first to the contention that the Trial Chamber overlooked evidence regarding Unit members who participated in the trainings and operations in Doboj, the Prosecution places emphasis on evidence that: (i) Radojica Božović and Davor Subotić, Đurica Banjać, and Nikola Lončar were described as “veteran Unit members” in a 1997 ceremony in Kula;¹⁴⁸⁷ (ii) suggests that Milenko Popović, Nikola Lončar, and Njegoš Kušić were employees of the Serbian Ministry of the Interior;¹⁴⁸⁸ and (iii) Davor Subotić, Đurica Banjać, and Milenko Popović were members of the Unit after it was

¹⁴⁷⁵ Stanišić Response Brief, paras. 316, 317.

¹⁴⁷⁶ Simatović Response Brief, paras. 226, 236.

¹⁴⁷⁷ Simatović Response Brief, paras. 226, 227, 229.

¹⁴⁷⁸ Simatović Response Brief, para. 227. *See also* Simatović Response Brief, para. 229.

¹⁴⁷⁹ Simatović Response Brief, para. 228.

¹⁴⁸⁰ Simatović Response Brief, para. 231.

¹⁴⁸¹ Simatović Response Brief, para. 232.

¹⁴⁸² Simatović Response Brief, para. 233.

¹⁴⁸³ *See* Simatović Response Brief, paras. 234, 235.

¹⁴⁸⁴ Prosecution Reply to Stanišić Response, para. 67.

¹⁴⁸⁵ *See* Prosecution Reply to Simatović Response, paras. 57, 58, 60.

¹⁴⁸⁶ Prosecution Reply to Simatović Response, para. 59.

¹⁴⁸⁷ *See* Prosecution Appeal Brief, para. 106, n. 213, *referring to* Exhibit P00256.

¹⁴⁸⁸ *See* Prosecution Appeal Brief, para. 106, n. 215, *referring to* Exhibit P00500.

renamed the JATD in August 1993.¹⁴⁸⁹ However, the Appeals Chamber observes that the Trial Chamber, in addressing Stanišić's and Simatović's contribution in connection with the events in Doboj, explicitly considered the evidence to which the Prosecution refers.¹⁴⁹⁰ It also determined that specific individuals, including, *inter alios*, Davor Subotić, Đurica Banjać, Nikola Lončar, Milenko Popović, and Njegoš Kušić were members of the same unit as Radojica Božović "at least in April or May 1992".¹⁴⁹¹ The Prosecution fails to demonstrate that the Trial Chamber disregarded relevant evidence.

485. With respect to the assessment of the evidence above, the Appeals Chamber observes that the Trial Chamber stated that the "main question" was whether Radojica Božović and any other original Unit member in Doboj were deployed by Stanišić and Simatović, and whether the actions of those deployed (and local trainees under their command) could be attributed to Stanišić and Simatović.¹⁴⁹² In addressing this issue, the Trial Chamber considered that, in April 1992, a number of original Unit members under the command of Radojica Božović established a training camp at Mt. Ozren near Doboj, where they trained several hundred local recruits from the area, and that "Serb forces, including forces under the command of Radojica Božović, attacked and took control over Doboj on 3 May 1992".¹⁴⁹³ It further accepted that there were "strong indicia" that Radojica Božović and the other individuals from Pajzoš remained members of the Unit,¹⁴⁹⁴ but it nonetheless concluded that reasonable doubt existed as to whether this group acted under the authority of Stanišić and Simatović, given the lack of reliable evidence connecting Radojica Božović and others with Stanišić and Simatović during the Doboj operations.¹⁴⁹⁵ The Prosecution's submissions ignore the Trial Chamber's explicit consideration of the relevant evidence regarding membership in the Unit and do not show that it acted unreasonably by entertaining reasonable doubt as to Stanišić's and Simatović's continued authority over these individuals.

486. Furthermore, the Appeals Chamber dismisses the Prosecution's submission that the Trial Chamber erred by ignoring the evidence of Witnesses RFJ-165, RFJ-092, and Hadžović, as well as Exhibits P00256 and P00537 that Unit members established another training camp in Vila. The Trial Chamber considered evidence from these witnesses particularly in connection with the crimes that

¹⁴⁸⁹ See Prosecution Appeal Brief, para. 106, n. 216, *referring to* Exhibit P00256, Exhibit P00267, Exhibit P00500, Exhibit P00553.

¹⁴⁹⁰ See Trial Judgement, para. 429, nn. 1709-1711, *referring to, inter alia*, Exhibit P00256, Exhibit P00267, Exhibit P00500, Exhibit P00553, and Exhibit P02706.

¹⁴⁹¹ Trial Judgement, para. 429, n. 1709.

¹⁴⁹² Trial Judgement, para. 429.

¹⁴⁹³ Trial Judgement, para. 428.

¹⁴⁹⁴ Trial Judgement, para. 429.

¹⁴⁹⁵ Trial Judgement, para. 430.

followed the initial takeover of Doboj.¹⁴⁹⁶ The Prosecution fails to establish how the absence of any discussion in the Trial Judgement as it pertained to the establishment of a camp referred to as “Vila” following the takeover of Doboj, including reference to Exhibit P00537 in connection with it, was critical to the Trial Chamber’s assessment of Stanišić’s and Simatović’s possible contributions to the common criminal purpose with respect to training conducted at Mt. Ozren and ensuing crimes in Doboj.¹⁴⁹⁷ Indeed, and of principal significance, the Trial Chamber considered Exhibit P00256, and Simatović’s reference to the Mt. Ozren camp in his 1997 speech at Kula – when noting there existed “strong indicia” that Radojica Božović and other individuals deployed remained Unit members.¹⁴⁹⁸ The Prosecution’s submissions on appeal do not demonstrate that the Trial Chamber erred in its assessment of the evidence in this respect.

487. The Appeals Chamber is also not persuaded by the Prosecution’s contention that the Trial Chamber ignored Witness RFJ-092’s evidence, which it argues undermines the Trial Chamber’s alternative inference that Radojica Božović and the Unit members subordinated to him were operating under the chain of command of the *Republika Srpska* Ministry of the Interior. The Appeals Chamber observes that the Trial Chamber noted evidence that Radojica Božović and the group of original Unit members at Mt. Ozren were affiliated with and paid by the *Republika Srpska* Ministry of the Interior at the relevant time.¹⁴⁹⁹ It did not refer to Witness RFJ-092’s statement that he had “heard” from “many people” that the Red Berets in Doboj were under the Serbian Ministry of the Interior and were “only officially” part of the *Republika Srpska* Ministry of the Interior.¹⁵⁰⁰ Notwithstanding, the Trial Chamber extensively cited this exhibit in relation to events in Doboj,¹⁵⁰¹ and was cognizant that Radojica Božović and others may have been trying to conceal their true affiliation and that there may indeed have been a parallel chain of command.¹⁵⁰² However, as noted by the Trial Chamber, in the absence of any reliable evidence in connection with how Radojica Božović came to Mt. Ozren and that he was in fact in contact with Stanišić and Simatović, “it remains a reasonable possibility that [Radojica Božović] was operating under the chain of command of the *Republika Srpska* Ministry of Interior”.¹⁵⁰³ The Prosecution’s reliance on the hearsay evidence of Witness RFJ-092 regarding

¹⁴⁹⁶ See, e.g., Trial Judgement, paras. 238, 243, 244. Notably, the Trial Chamber referred to evidence that the Prosecution points to as demonstrating the existence of a camp at Vila. See Trial Judgement, paras. 243, 429, nn. 1101, 1105, 1711, referring to, *inter alia*, Exhibit P00256, p. 11, Witness RFJ-092, Exhibit P01163, para. 15.

¹⁴⁹⁷ The Appeals Chamber observes that a training camp at “Vila” is not mentioned in the Indictment or the Prosecution’s Pre-Trial Brief in connection with crimes committed in Doboj. See Indictment, paras. 51, 52, 54; Prosecution Pre-Trial Brief, paras. 78, 82, 93, 168-173.

¹⁴⁹⁸ See, e.g., Trial Judgement, para. 429.

¹⁴⁹⁹ Trial Judgement, para. 430, n. 1717.

¹⁵⁰⁰ See Exhibit P01163, para. 27.

¹⁵⁰¹ See, e.g., Trial Judgement, paras. 241-248, 250.

¹⁵⁰² Trial Judgement, para. 431.

¹⁵⁰³ Trial Judgement, para. 431.

Radojica Božović's affiliation with the State Security Service does not demonstrate that the Trial Chamber acted unreasonably in the foregoing assessment.

488. Finally, turning to other evidence the Trial Chamber allegedly disregarded, the Appeals Chamber observes that Exhibit P01168, the personnel file of Duško Drobić, indicates that he was an instructor in Radojica Božović's unit, whose commander was "Frenki", and that he was wounded in May 1992 in Ozren.¹⁵⁰⁴ The Trial Chamber did not refer to this exhibit in the Trial Judgement. Nevertheless, the Appeals Chamber recalls the presumption that the Trial Chamber has evaluated all the relevant evidence as long as there is no indication that it completely disregarded any particular piece of evidence.¹⁵⁰⁵ As noted above, the Trial Chamber considered evidence of a similar nature suggesting "strong indicia" that Radojica Božović and others from Pajzoš remained members of the Unit.¹⁵⁰⁶ However, it retained doubts that Radojica Božović acted as a member of the Unit under Stanišić's and Simatović's authority during his time at Mt. Ozren and in the conduct of operations in Doboj.¹⁵⁰⁷ It further emphasized that there was not a sufficient evidentiary basis concerning the circumstances of their arrival in Doboj to determine that Stanišić and Simatović deployed or made forces available.¹⁵⁰⁸ While Exhibit P01168 indicates "Frenki" as the commander of Radojica Božović's unit, it is vague and non-descript. The Appeals Chamber finds that the Prosecution does not demonstrate how Exhibit P01168 undermines the reasonableness of these conclusions.

489. Ultimately, the Appeals Chamber considers that the Prosecution seeks to demonstrate error by referring to evidence expressly considered by the Trial Chamber or to additional evidence that, although not cited in the Trial Judgement, is of little relevance or cumulative of the evidence the Trial Chamber expressly considered. The Appeals Chamber observes that all the evidence referred to by the Prosecution provides only circumstantial support that Radojica Božović and the other Unit members had links with Stanišić and Simatović in connection with the events in Doboj. However, the Prosecution's submissions on appeal fail to address the principal concern of the Trial Chamber – the absence of "any reliable evidence in connection with how [Radojica] Božović came to Mt. Ozren and that he was, in fact, in contact with [Stanišić and Simatović] in relation to operations during this period".¹⁵⁰⁹ In this context, the Appeals Chamber finds that the Prosecution has not demonstrated that the Trial Chamber acted unreasonably in its assessment of the evidence or eliminated all reasonable

¹⁵⁰⁴ See Exhibit P01168, pp. 1, 3.

¹⁵⁰⁵ See *Mladić* Appeal Judgement, paras. 199, 423 and references cited therein.

¹⁵⁰⁶ Trial Judgement, para. 429 and references cited therein.

¹⁵⁰⁷ Trial Judgement, para. 430.

¹⁵⁰⁸ Trial Judgement, para. 430. See also Trial Judgement, para. 431.

¹⁵⁰⁹ Trial Judgement, para. 431. See also Trial Judgement, paras. 429, 430.

doubt that Stanišić and Simatović contributed to the common criminal purpose in connection with the crimes committed in Doboj.

490. In view of the foregoing, the Appeals Chamber concludes that the Prosecution has failed to demonstrate that the Trial Chamber erred in assessing Stanišić's and Simatović's alleged contributions to the common criminal purpose in connection with crimes committed in Doboj. The Appeals Chamber dismisses sub-ground A(iv)(b) of Ground 1 of the Prosecution's appeal.

(c) Sanski Most (sub-grounds A(i)(a)(iii) in part and A(iv)(c))

491. The Trial Chamber found that, in connection with the 1995 operation in the Autonomous Region of Krajina, Željko Ražnatović (Arkan)'s Serbian Volunteer Guard committed murders of 11 non-Serbs in Trnova and 64 non-Serbs in Sasina, Sanski Most, in September 1995 and that the killings amounted to murder and persecution.¹⁵¹⁰ However, the Trial Chamber was not satisfied beyond reasonable doubt that Stanišić and Simatović directed, deployed, enabled, sustained, protected, or otherwise facilitated the Serbian Volunteer Guard whose members committed these crimes as charged in the Indictment.¹⁵¹¹ Notably, the Trial Chamber considered evidence of State Security Service payments to the Serbian Volunteer Guard and evidence indicating that certain Serbian Volunteer Guard members on these payment lists, including Milorad Ulemek (Legija), Mihajlo Ulemek (Mile), Nenad Bujošević, Rade Rakonjac, Momir Ristić, Mladen Šarac, and Boris Batez, were in Sanski Most during the 1995 operation.¹⁵¹² However, it was of the view that the evidence was insufficient to find beyond reasonable doubt that these specific individuals or others on the State Security Service payment lists participated in the 1995 killings in Sanski Most, as charged in the Indictment.¹⁵¹³ The Trial Chamber thus concluded that it was not satisfied beyond reasonable doubt that Stanišić and Simatović, in relation to Željko Ražnatović (Arkan) and the Serbian Volunteer Guard, made a significant contribution to the commission of the crimes charged in the Indictment.¹⁵¹⁴

492. The Prosecution submits that the Trial Chamber erred in law by limiting the definition of contribution to the common criminal purpose and erred in its factual assessment of whether Stanišić and Simatović contributed to the common criminal purpose based on payments from the State Security Service to the Serbian Volunteer Guard starting in late 1994 and throughout 1995, and more

¹⁵¹⁰ Trial Judgement, paras. 271, 275, 276, 301, 302, 322, 323, 325, 442. *See also* Trial Judgement, para. 456.

¹⁵¹¹ Trial Judgement, paras. 450, 456. *See also* Trial Judgement, paras. 451, 452; Indictment, paras. 26, 55-57.

¹⁵¹² Trial Judgement, paras. 453, 456.

¹⁵¹³ Trial Judgement, para. 453.

¹⁵¹⁴ Trial Judgement, para. 456. *See also* Indictment, para. 15(c); Prosecution Pre-Trial Brief, paras. 40, 93, 95, 181, 182.

specifically, in relation to the September 1995 Sanski Most operation.¹⁵¹⁵ In particular, it contends that the Trial Chamber erred in law at paragraph 453 of the Trial Judgement by restricting its contribution analysis to whether the State Security Service payments went to specific members of the Serbian Volunteer Guard who participated in the commission of the September 1995 killings in Sanski Most.¹⁵¹⁶ The Prosecution contends that it was not required to prove this and, as the present case is not against a “direct perpetrator” but against multiple joint criminal enterprise members using tools to commit crimes, it is sufficient to identify the perpetrators by group.¹⁵¹⁷

493. In any event, the Prosecution submits that no reasonable trial chamber could have failed to find that Stanišić and Simatović contributed to the common criminal purpose by financing the Serbian Volunteer Guard, whose members committed the charged murders in Sanski Most in 1995.¹⁵¹⁸ The Prosecution claims that documentary evidence and the evidence of Witnesses Dejan Slišković, RFJ-041, RFJ-011, and Dragoslav Krsmanović show that the State Security Service paid Serbian Volunteer Guard members from late 1994 and throughout 1995¹⁵¹⁹ and specifically in relation to the September 1995 Sanski Most operation.¹⁵²⁰ The Prosecution concludes that, given the systematic nature of the Serbian Volunteer Guard’s murder operations in Sanski Most, all Serbian Volunteer Guard members paid by the State Security Service “would have been involved” and submits that no reasonable trier of fact could have failed to find that the State Security Service paid Serbian Volunteer Guard members who committed the charged murders in Sanski Most.¹⁵²¹

494. Stanišić responds that the Trial Chamber did not err in law by too narrowly considering contributions to the joint criminal enterprise, as it more broadly concluded that the evidence was limited with respect to the extent the individuals on the State Security Service’s JATD per diem payment lists in fact participated in this operation and, more specifically, the crimes charged in

¹⁵¹⁵ See Prosecution Notice of Appeal, para. 6; Prosecution Appeal Brief, paras. 16-20, 43, 44, 88-93. See also T. 25 January 2023 pp. 15-21, 76-80.

¹⁵¹⁶ See T. 25 January 2023 pp. 15-17. See also Order of 13 January 2023, pp. 1, 2.

¹⁵¹⁷ See T. 25 January 2023 pp. 16-18, referring to, *inter alia*, *Karemera and Ngirumpatse* Appeal Judgement, para. 605.

¹⁵¹⁸ Prosecution Appeal Brief, paras. 113-116; T. 25 January 2023 pp. 18-21. See also Prosecution Appeal Brief, paras. 43, 91; Prosecution Reply to Simatović Response, para. 61.

¹⁵¹⁹ Prosecution Appeal Brief, paras. 43, 44, 88-94, 114.

¹⁵²⁰ Prosecution Appeal Brief, paras. 88-94, 114; T. 25 January 2023 pp. 19-21, 77, 78. The Prosecution argues that the State Security Service’s payment lists were grouped geographically and by unit, and it submits that the evidence related to payments eliminates all reasonable doubt that all persons on the same payment list as Serbian Volunteer Guard members who were in Sanski Most in 1995 would also have been Serbian Volunteer Guard members who were paid by the State Security Service and participating in that operation. See Prosecution Appeal Brief, paras. 91, 114, T. 25 January 2023 pp. 19-21, 77, 78.

¹⁵²¹ Prosecution Appeal Brief, paras. 115, 116; T. 25 January 2023 pp. 16-19, 79. See also Prosecution Appeal Brief, para. 89 (arguing that the crimes committed by four Serbian Volunteer Guard members were part of the forcible displacement crimes in Sanski Most in 1995). The Prosecution submits that the impact of Stanišić’s and Simatović’s support for the Serbian Volunteer Guard, under the control of joint criminal enterprise member Željko Ražnatović (Arkan), enabled the group to recruit and deploy in large numbers, which was critical to the success of the criminal campaign. See T. 25 January 2023 p. 21.

relation to Sanski Most.¹⁵²² He further contends that the Prosecution’s claim – that evidence regarding the payment of seven Serbian Volunteer Guard members can be equated to the payment of 300 to 400 others – misrepresents the evidence.¹⁵²³ In addition, he submits that, even if the evidence relied upon by the Prosecution is accepted, it suggests that only a limited number of the individuals who participated in the operations in Sanski Most in 1995 were paid and does not establish which individuals on the payment lists committed the charged killings or that such payments made a significant or substantial contribution to crimes committed.¹⁵²⁴ In this regard, he stresses that the evidence of Witnesses Krsmanović and RFJ-041 is not relevant to payments to the Serbian Volunteer Guard in Sanski Most in 1995.¹⁵²⁵ Stanišić further argues that Witness RFJ-088’s evidence, which the Trial Chamber viewed with caution, amounts to two uncorroborated accounts, and that the Prosecution has failed to demonstrate that Stanišić and Simatović paid the Serbian Volunteer Guard during its deployment in Sanski Most.¹⁵²⁶ Additionally, Stanišić disputes that the evidence demonstrates that the State Security Service paid the Serbian Volunteer Guard prior to the operation in Sanski Most.¹⁵²⁷ In particular, he contends that the Prosecution did not particularize which men on the respective payment lists were members of the Serbian Volunteer Guard at a given time and place¹⁵²⁸ or that such payments furthered the common criminal purpose.¹⁵²⁹

495. Simatović responds that the payment lists are unreliable as proof of payments to the Serbian Volunteer Guard and points to evidence of: (i) an individual listed on such payment lists who testified to not having received payments; (ii) a member of the Serbian Volunteer Guard who did not recognize persons on payment lists; and (iii) a witness who testified to having no knowledge of the State Security Service funding the Serbian Volunteer Guard.¹⁵³⁰ Simatović also contends that certain evidence relied upon by the Prosecution – namely the payment lists and the evidence of Witnesses

¹⁵²² See Stanišić Response Brief, paras. 285, 489; T. 25 January 2023 pp. 39, 43, *referring to* Trial Judgement, para. 534.

¹⁵²³ See Stanišić Response Brief, paras. 284, 320-322. See also T. 25 January 2023 pp. 38-41, 44, 45.

¹⁵²⁴ Stanišić Response Brief, paras. 280, 282, 285, 321. See also Stanišić Response Brief, para. 151; T. 25 January 2023 pp. 45, 46, 48. Stanišić argues that, while deployed in Sanski Most, Željko Ražnatović (Arkan) and his Serbian Volunteer Guard were principally supported by the *Republika Srpska* Ministry of the Interior and the Bosnian Serb Army, undermining the significance of a “handful of per diems”. See Stanišić Response Brief, para. 492; T. 25 January 2023 p. 46, *referring to* Trial Judgement, para. 452.

¹⁵²⁵ T. 25 January 2023 pp. 41, 42.

¹⁵²⁶ See Stanišić Response Brief, paras. 281, 282, 286, 287, 489. See also T. 25 January 2023 pp. 43, 45-48.

¹⁵²⁷ See Stanišić Response Brief, paras. 157-160, 162-165.

¹⁵²⁸ See Stanišić Response Brief, para. 157. Stanišić also argues in relation to the payments made in 1994 and 1995 that the State Security Service did not finance these payments, but “distributed the monies on behalf of Fikret Abdić”. See Stanišić Response Brief, para. 164.

¹⁵²⁹ Stanišić Response Brief, para. 160.

¹⁵³⁰ Simatović Response Brief, paras. 301, 303, 337-346, 447; T. 25 January 2023 pp. 70-72. Simatović contends that the Prosecution’s assertion that the payment lists were grouped geographically and by unit is incorrect and based on the evidence of unreliable witnesses. See Simatović Response Brief, paras. 335, 353. He further submits that the State Security Service kept Željko Ražnatović (Arkan) under surveillance, and notes that none of the payment lists indicate that he was paid. See Simatović Response Brief, paras. 450, 451; T. 25 January 2023 p. 72.

RFJ-041 and RFJ-011 – is contradictory and taken out of context and does not demonstrate that he contributed to the joint criminal enterprise by financing the Serbian Volunteer Guard.¹⁵³¹ Simatović further submits that Witness RFJ-088 is not credible and the witness’s statements and testimonies are inconsistent as to the source of funding and financial sponsors to Serbian Volunteer Guard members in September and October 1995.¹⁵³² Finally, Simatović argues that no evidence demonstrates that, in his position in the State Security Service, he had the capacity to provide logistical or financial support to the Serbian Volunteer Guard or that he signed the relevant payment lists.¹⁵³³

496. The Prosecution replies that findings of the Trial Chamber and the relevant evidence demonstrate that Stanišić and Simatović were involved in the relevant payments to the Serbian Volunteer Guard.¹⁵³⁴ It argues that the evidence Simatović relies on does not cast doubt on the reliability of the evidence regarding State Security Service payments to the Serbian Volunteer Guard.¹⁵³⁵ In relation to the credibility of Witness RFJ-088, the Prosecution replies that the Trial Chamber did not deem the witness’s evidence to entirely lack probative value and argues that this evidence is corroborated by the payment lists.¹⁵³⁶ The Prosecution further submits that, while Stanišić and Simatović have tried to “downplay the reliability of the payment lists”, Stanišić’s own witness testified to their authenticity.¹⁵³⁷

497. As noted above, the Trial Chamber considered evidence of the State Security Service payments to the Serbian Volunteer Guard and evidence indicating that certain Serbian Volunteer Guard members on these payment lists were in Sanski Most during the September 1995 operation.¹⁵³⁸ However, the Trial Chamber did not find the evidence sufficient to prove that members of the Serbian Volunteer Guard who appear on these payment lists, including Milorad Ulemek (Legija), Mihajlo

¹⁵³¹ Simatović Response Brief, para. 115; T. 25 January 2023 pp. 66, 67, 70-75. Simatović and Stanišić argue that Witness RFJ-041 was not in Sanski Most in September 1995. *See* T. 25 January 2023 pp. 42, 70, 71.

¹⁵³² *See* Simatović Response Brief, paras. 107-114, 304, 305, 347-352; T. 25 January 2023 pp. 66, 73.

¹⁵³³ *See* Simatović Response Brief, paras. 68, 69, 98, 99, 104-106, 115, 458; T. 25 January 2023 pp. 65, 66, 73. Simatović contends that logistical and financial support was handled by the Eighth Administration of the State Security Service and that its head, Milan Prodanić, was above him within the State Security Service’s hierarchy. *See* Simatović Response Brief, para. 104; T. 25 January 2023 pp. 65, 66. Simatović also argues that it would have been illogical for him to contribute to the common criminal purpose, which began in 1991, only at the end of 1994 and during 1995. *See* Simatović Response Brief, para. 119.

¹⁵³⁴ *See* Prosecution Reply to Simatović Response, paras. 30, 31; Prosecution Reply to Stanišić Response, para. 61; T. 25 January 2023 p. 20.

¹⁵³⁵ *See* Prosecution Reply to Simatović Response, paras. 30, 31, 62-66. *See also* Prosecution Reply to Simatović Response, paras. 84-86; Prosecution Reply to Stanišić Response, para. 62.

¹⁵³⁶ Prosecution Reply to Stanišić Response, para. 62; T. 25 January 2023 p. 77. *See also* T. 25 January 2023 pp. 19, 21.

¹⁵³⁷ *See* T. 25 January 2023 pp. 79, 80, *referring to* Exhibit 1D00385, p. 14661.

¹⁵³⁸ Trial Judgement, para. 453, nn. 1821, 1824.

Ulemek (Mile), Nenad Bujošević, Rade Rakonjac, Momir Ristić, Mladen Šarac, and Boris Batez, participated in the murders in Sanski Most in September 1995 as charged in the Indictment.¹⁵³⁹

498. The Appeals Chamber observes that, contrary to Stanišić's contention, the Trial Chamber's analysis in paragraph 453 of the Trial Judgement concerning the 1995 September operation in Sanski Most reflects that it focused on whether the evidence demonstrated that individuals on the payment lists participated "specifically in the crimes charged in relation to Sanski Most". The Appeals Chamber recalls that, as it pertains to joint criminal enterprise liability, while an accused's contribution to the common criminal purpose should at least be significant to the crimes for which the accused is found responsible,¹⁵⁴⁰ it need not be necessary or substantial,¹⁵⁴¹ it need not involve the commission of a crime,¹⁵⁴² and the law does not foresee specific types of conduct which *per se* could not be considered a contribution to a joint criminal enterprise.¹⁵⁴³ The Appeals Chamber further recalls that a trial chamber's duty is to identify the plurality of persons belonging to the joint criminal enterprise and not necessarily the principal perpetrators of the crime.¹⁵⁴⁴ Indeed, the decisive issue with regard to principal perpetrators of the crimes is whether they were used by the accused or by any other joint criminal enterprise member to carry out the *actus reus* of the crimes forming part of the common criminal purpose.¹⁵⁴⁵ In this regard, there is no requirement that a chamber establish how each physical perpetrator was used to commit the crimes, provided that the chamber identifies that one or more members of the joint criminal enterprise used the forces to which these physical perpetrators belonged in furtherance of the common plan.¹⁵⁴⁶

499. Given the foregoing jurisprudence, the Appeals Chamber concurs with the Prosecution's challenge that the Trial Chamber committed a legal error by restricting its analysis to whether the Prosecution had proven that payments from the State Security Service went to Serbian Volunteer Guard members "who participated in the commission of the 1995 killings in Sanski Most, charged in the Indictment" and by not assessing contributions to the Serbian Volunteer Guard that might have otherwise significantly contributed to the furtherance of the common criminal purpose in connection with those killings.¹⁵⁴⁷

¹⁵³⁹ Trial Judgement, para. 453.

¹⁵⁴⁰ *Krajišnik* Appeal Judgement, para. 215; *Simba* Appeal Judgement, para. 303; *Brđanin* Appeal Judgement, para. 430.

¹⁵⁴¹ *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹⁵⁴² *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹⁵⁴³ *Mladić* Appeal Judgement, para. 186 and references cited therein.

¹⁵⁴⁴ See *Karemera and Ngirumpatse* Appeal Judgement, para. 605.

¹⁵⁴⁵ See *Karemera and Ngirumpatse* Appeal Judgement, para. 605, referring to *Kvočka et al.* Appeal Judgement, para. 168.

¹⁵⁴⁶ See *Dorđević* Appeal Judgement, para. 165, referring to *Krajišnik* Appeal Judgement, paras. 235-237.

¹⁵⁴⁷ Trial Judgement, para. 453.

500. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the trial chamber accordingly.¹⁵⁴⁸ As the legal error arises from an appeal of the Prosecution, the Appeals Chamber shall determine whether, as the Prosecution has argued on appeal, the Trial Chamber's factual findings and the evidence contained in the trial record eliminate all reasonable doubt that Stanišić and Simatović contributed to the common criminal purpose through payments to the Serbian Volunteer Guard in view of the correct legal standard articulated above.¹⁵⁴⁹

501. The Appeals Chamber observes that the evidence reflects that Milorad Ulemek (Legija), Mihajlo Ulemek (Mile), Mladen Šarac, and Rade Rakonjac – whom the Trial Chamber acknowledged were in Sanski Most in September 1995 and on the payment lists during that period¹⁵⁵⁰ – held leadership positions in the Serbian Volunteer Guard and/or were involved in the delivery of money from the State Security Service to members of the Serbian Volunteer Guard.¹⁵⁵¹ As detailed below, there is also evidence that some of these individuals were on the payment lists in August and October 1995 with a significant number of other members of the Serbian Volunteer Guard. With respect to the general reliability of the payment lists, the Appeals Chamber has carefully considered Stanišić's argument suggesting that the records were recovered from an office that was in disarray but does not consider that it raises any reasonable doubt as to their accuracy or authenticity.¹⁵⁵² The Appeals Chamber also observes that Simatović's submissions that the payment lists cannot be relied upon are general in nature,¹⁵⁵³ the Trial Chamber expressed no concerns regarding their authenticity,¹⁵⁵⁴ and Witness Krsmanović, who was part of the JATD and the State Security Service, affirmed their reliability.¹⁵⁵⁵ The Appeals Chamber has no reasonable basis to doubt their authenticity or reliability.

502. The evidence of Witnesses RFJ-041 and RFJ-011, who [REDACTED], as well as Exhibit P00826, a payment list covering the period of 1 to 15 September 1995,¹⁵⁵⁶ convincingly establish that, at a minimum, around 180 individuals on this list were members of the Serbian Volunteer

¹⁵⁴⁸ See *supra* para. 15.

¹⁵⁴⁹ Cf. *Seromba* Appeal Judgement, para. 161. The Appeals Chamber will not review the entire trial record *de novo*; rather, it will in principle only take into account, *inter alia*, evidence referred to by the Trial Chamber in the body of the judgement or in a related footnote, or evidence contained in the trial record and referred to by the parties. See *supra* para. 15.

¹⁵⁵⁰ See Trial Judgement, para. 453.

¹⁵⁵¹ See, e.g., Witness Slišković, Exhibit P02539, paras. 45-47; Witness RFJ-088, Exhibit P02306, pp. 2-5, Exhibit P02304, pp. 9467, 9468, 9470, 9593, 9594, 9596, 9597, Exhibit P02307, pp. 3-5, 7-9, 11; Witness RFJ-011, Exhibit P02647, paras. 31-34, Exhibit P02649, p. 8893; Witness RFJ-041, Exhibit P01082, paras. 244, 250, 251, 254, 258.

¹⁵⁵² See T. 25 January 2023 p. 43, *referring to* Exhibit 1D00063.

¹⁵⁵³ See T. 25 January 2023 pp. 71, 72.

¹⁵⁵⁴ See Trial Judgement, para. 453.

¹⁵⁵⁵ See Witness Krsmanović, Exhibit 1D00385, p. 14661. See also Trial Judgement, para. 432.

¹⁵⁵⁶ Witness RFJ-011, Exhibit P02649 pp. 8886-8890, 8892, 8893; Exhibit P01128; Exhibit P00826, pp. 8-15 (JATD payment list for 1-15 September 1995).

Guard,¹⁵⁵⁷ including Milorad Ulemek (Legija), Mihajlo Ulemek (Mile), Nenad Bujošević, Rade Rakonjac, Mladen Šarac, and Boris Batez.¹⁵⁵⁸ Notably, these individuals are contained in a section including 265 individuals identified as receiving per diem payments.¹⁵⁵⁹ The Appeals Chamber further notes that the payment list for the period of 1 to 15 August 1995 contains approximately 130 members of the Serbian Volunteer Guard,¹⁵⁶⁰ and the list covering the period of 16 to 31 August 1995 includes around 220 members of the Serbian Volunteer Guard.¹⁵⁶¹ These payment lists also include Mladen Šarac, Milorad Ulemek (Legija), Rade Rakonjac, and Nenad Bujošević.¹⁵⁶² The payment list covering the period of 1 to 15 October 1995 includes approximately 50 members of the Serbian Volunteer Guard.¹⁵⁶³ This list also includes Mihajlo Ulemek (Mile) and Mladen Šarac.¹⁵⁶⁴ The list for 16 to 31 October 1995 includes reference to, at a minimum, 130 Serbian Volunteer Guard members¹⁵⁶⁵ and Nenad Bujošević, Boris Batez, and Aleksandar Aščerić are among those listed.¹⁵⁶⁶

503. The evidence of Witness RFJ-088 corroborates that sizeable payments were made by the State Security Service to Serbian Volunteer Guard members deployed in, *inter alia*, Sanski Most at that time. Specifically, Witness RFJ-088 provided evidence that the State Security Service covered most of the costs of the Serbian Volunteer Guard,¹⁵⁶⁷ and that, specifically in September and October 1995, [REDACTED].¹⁵⁶⁸ Witness RFJ-088 indicated that, around that time, the total amount of money delivered to the Serbian Volunteer Guard amounted to approximately 3 to 4 million German marks.¹⁵⁶⁹

¹⁵⁵⁷ Compare Exhibit P00826, pp. 8-15 with Exhibit P01128. The Appeals Chamber has only considered individuals that [REDACTED]. The Appeals Chamber notes duplicates and discrepancies in the spelling of some names on the lists. The Appeals Chamber has adopted the same approach with regard to all payment lists concerning the Serbian Volunteer Guard between 1 December 1994 and 31 December 1995 listed below.

¹⁵⁵⁸ See Exhibit P00826, p. 8.

¹⁵⁵⁹ See Exhibit P00826, pp. 8-15.

¹⁵⁶⁰ Compare Exhibit P01141, pp. 23-26 (JATD payment list for 1-15 August 1995) with Exhibit P01128.

¹⁵⁶¹ Compare Exhibit P00825, pp. 25-30 (JATD payment list for 16-31 August 1995) with Exhibit P01128.

¹⁵⁶² See Exhibit P01141, pp. 23, 26; Exhibit P00825, p. 30.

¹⁵⁶³ Compare Exhibit P00541, pp. 38, 43-55 (JATD payment list for 1-15 October 1995) with Exhibit P01128 and Exhibit P00826, pp. 8-15. The Appeals Chamber observes that Exhibit P01128 does not contain a list of Serbian Volunteer Guard members for the period of 1-15 October 1995. Nevertheless, the Appeals Chamber observes that at least 33 of the individuals mentioned in Exhibit P00541, pp. 38, 43, 44, 47, 48, 49, 50, 51, 52, 55 overlap with those identified in Exhibit P00826, pp. 8-15. Sixteen of the individuals mentioned in Exhibit P00541 also overlap with those identified in Exhibit P01128, p. 10.

¹⁵⁶⁴ See Exhibit P00541, pp. 52, 55.

¹⁵⁶⁵ Compare Exhibit P00543, pp. 53-56, 58, 59 (JATD payment list for 16-31 October 1995) with Exhibit P01128, p. 10. See also Trial Judgement, para. 453, n. 1822 (acknowledging evidence that several hundred members of the Serbian Volunteer Guard deployed throughout the region in the operations in the Autonomous Region of Krajina).

¹⁵⁶⁶ See Exhibit P00543, pp. 54, 56.

¹⁵⁶⁷ Witness RFJ-088, Exhibit P02304, pp. 9378, 9379.

¹⁵⁶⁸ Witness RFJ-088, Exhibit P02304, pp. 9467-9471, 9593-9597, Exhibit P02306, pp. 4, 5, Exhibit P02307, p. 11, Exhibit P02310, pp. 19454, 19455.

¹⁵⁶⁹ See Witness RFJ-088, Exhibit P02310, p. 19454, Exhibit P02307, p. 11.

504. The Appeals Chamber is mindful of the circumstantial and hearsay nature of Witness RFJ-088's evidence as to the source of this money. Nevertheless, the evidence further reflects that, generally, Serbian Volunteer Guard members in the field received per diems as suggested by Witness RFJ-088's evidence,¹⁵⁷⁰ and that members of the Serbian Volunteer Guard believed that they were paid by the State Security Service.¹⁵⁷¹ Bearing in mind Stanišić's and Simatović's challenges to Witness RFJ-088's credibility, the Appeals Chamber observes that, while the Trial Chamber viewed the witness's evidence with "appropriate caution", it did not find that it lacked all probative value in its entirety and relied on it when corroborated.¹⁵⁷²

505. In addition to payments around the time of the charged murders in Sanski Most in September 1995, the Appeals Chamber notes that, at least from 1 December 1994 and until 31 December 1995, members of the Serbian Volunteer Guard appear on several other payment lists identified by the Prosecution.¹⁵⁷³ In particular, the evidence reflects that, between 1 December 1994 and 31 July 1995, at a minimum, 54 individuals identified as members of the Serbian Volunteer Guard are included on the payment lists.¹⁵⁷⁴ Serbian Volunteer Guard members including Nenad Bujošević, Mladen Šarac, Rade Rakonjac, Jugoslav Simić, and Milorad Ulemek (Legija) are among those listed in the payment lists during this period.¹⁵⁷⁵ Approximately 130 individuals who were previously identified as Serbian Volunteer Guard members also appear on the payment lists from 16 November 1995 to 31 December 1995.¹⁵⁷⁶ Among those listed on the payment lists for this period were Nenad Bujošević, Boris Batez,

¹⁵⁷⁰ See Witness Slišković, Exhibit P02539, paras. 24, 68; Witness RFJ-041, Exhibit P01082, para. 258. Cf. Witness RFJ-011, Exhibit P02649, pp. 8886-8889.

¹⁵⁷¹ See Witness RFJ-011, Exhibit P02649, pp. 8892, 8893; Witness RFJ-041, Exhibit P01082, para. 258.

¹⁵⁷² See Trial Judgement, paras. 453, 454, nn. 1821, 1822, 1824, 1825.

¹⁵⁷³ Prosecution Appeal Brief, n. 181.

¹⁵⁷⁴ Compare Exhibits P01132, pp. 20, 21, 25 (JATD payment list for 1-15 December 1994); Exhibit P01131, pp. 18-20 (JATD payment list for 16-31 December 1994); Exhibit P01134, pp. 2-4 (JATD payment list for 1-15 January 1995); Exhibit P01133, pp. 2-4; (JATD payment list for 16-31 January 1995); Exhibit P02527, pp. 5, 6 (JATD payment list for 1-15 February 1995); Exhibit P02529, pp. 3, 4 (JATD payment list for 16-28 February 1995); Exhibit P02530, pp. 7, 13 (JATD payment list for 1-15 March 1995); Exhibit P02528, pp. 4, 10 (JATD payment list for 16-31 March 1995); Exhibit P02532, pp. 13, 14 (JATD payment list for 1-15 April 1995); Exhibit P02531, pp. 14, 15 (JATD payment list for 16-30 April 1995); Exhibit P01135, pp. 17, 19 (JATD payment list for 1-15 May 1995); Exhibit P01136, pp. 5, 6 (JATD payment list for 16-31 May 1995); Exhibit P01137, pp. 2, 4 (JATD payment list for 1-15 June 1995); Exhibit P01138, pp. 12, 26 (JATD payment list for 16-30 June 1995); Exhibit P01139, pp. 8, 12 (JATD payment list for 1-15 July 1995); Exhibit P01140, pp. 23, 24 (JATD payment list for 16-31 July 1995) with Exhibit P01128.

¹⁵⁷⁵ See, e.g., Exhibit P01132, pp. 21, 25; Exhibit P01131, pp. 19, 20; Exhibit P01134, pp. 2, 4; Exhibit P01133, pp. 2, 3; Exhibit P02527, pp. 5, 6; Exhibit P02529, pp. 3, 4; Exhibit P02530, pp. 7, 13; Exhibit P02528, pp. 4, 10; Exhibit P02532, pp. 13, 14; Exhibit P02531, pp. 14, 15; Exhibit P01135, pp. 17, 19; Exhibit P01136, p. 5; Exhibit P01137, p. 4; Exhibit P01138, p. 26; Exhibit P01139, pp. 8, 12; Exhibit P01140, pp. 23, 24.

¹⁵⁷⁶ Compare Exhibit P00828, pp. 21-24, 26, 27 (JATD payment list for 16-31 November 1995); Exhibit P00829, pp. 55-59, 62, 63 (JATD payment list for 1-15 December 1995); Exhibit P01155, pp. 30-33, 35, 36, 41-43 (JATD payment list for 16-31 December 1995) with Exhibit P01128. The Appeals Chamber observes that Exhibit P01128 does not contain a list of Serbian Volunteer Guard members beyond 31 October 1995. Nevertheless, the Appeals Chamber notes that these lists include approximately 130 individuals identified in Exhibit P01128, p. 10 as members of the Serbian Volunteer Guard.

and Aleksandar Aščerić.¹⁵⁷⁷ Documentary evidence that the State Security Service paid members of the Serbian Volunteer Guard participating in the operations in 1994 and 1995 is corroborated by witness evidence.¹⁵⁷⁸

506. The Appeals Chamber considers that the evidence summarized above eliminates all reasonable doubt that, from at least December 1994 and throughout 1995, and, in particular, around the time of the charged murders in Sanski Most, the State Security Service, through JATD per diems, paid: (i) individuals who led and/or delivered money to the Serbian Volunteer Guard; and (ii) a significant number of Serbian Volunteer Guard members. In view of the intersections of Witness RFJ-088's evidence as to a substantial sum received around that time, witness evidence confirming that Serbian Volunteer Guards received per diems, and the payment lists reflecting consistent payment of money intended to cover the costs of daily living to a significant number of Serbian Volunteer Guards, the Appeals Chamber also finds that all reasonable doubt has been eliminated that substantial sums were paid from the State Security Service to the Serbian Volunteer Guard around the time of the charged murders in Sanski Most. The evidence that Simatović points to – reflecting that certain individuals on the payment lists did not receive corresponding payments,¹⁵⁷⁹ that a certain member of the Serbian Volunteer Guard was unable to positively identify persons on certain State Security Service payment lists as members of the Serbian Volunteer Guard,¹⁵⁸⁰ or that an associate of Željko Ražnatović (Arkan) was unaware of the Serbian Volunteer Guard receiving funding¹⁵⁸¹ – does not raise reasonable doubt with respect to these conclusions in view of the corroborative and convincing Prosecution evidence to the contrary. Stanišić's claims that the payment lists do not sufficiently identify members of the Serbian Volunteer Guard fail to account for the entire body of evidence discussed above.

507. Turning to whether such payments implicate Stanišić and Simatović, the Appeals Chamber observes that the Trial Chamber considered Stanišić's contentions that, *inter alia*, within the purview

¹⁵⁷⁷ See Exhibit P00828, pp. 22, 24; Exhibit P00829, pp. 53, 57, 58; Exhibit P01155, pp. 32, 33, 36. Witness RFJ-036, Exhibit P02392, paras. 70, 71. The Appeals Chamber notes that Aleksandar Aščerić is referred to under the nickname "Asteriks". Witness RFJ-036 identified Aleksandar Aščerić as the leader of "Arkan's men" in Trnovo. See Witness RFJ-036, Exhibit P02392, para. 70.

¹⁵⁷⁸ Witness RFJ-088, Exhibit P02307, p. 8 (discussing that the State Security Service "paid [our men] directly for Treskavica in June and July 1995"); Witness RFJ-041, Exhibit P01082, paras. 239, 258. See also Witness RFJ-041, Exhibit P01147, para. 14. The Appeals Chamber observes that while the Trial Chamber did not refer to paragraph 258 of Exhibit P01082 in the Trial Judgement, the Trial Chamber relied on several aspects of Witness RFJ-041's evidence, including Exhibit P01082, elsewhere in the Trial Judgement, without raising credibility and reliability concerns. See, e.g., Trial Judgement, paras. 128, 129, nn. 458, 686, 777, 1764. See also Witness RFJ-011, Exhibit P02649, pp. 8886-8890, 8892, 8893, 8948; Witness RFJ-011, Exhibit P02467, para. 26.

¹⁵⁷⁹ See Simatović Response Brief, paras. 337-340 and references cited therein.

¹⁵⁸⁰ See Simatović Response Brief, paras. 341-346 and references cited therein.

¹⁵⁸¹ See Simatović Response Brief, para. 447 and references cited therein.

of the Eighth Administration, supplies could be accessed without his approval or knowledge, and that it was not his role as Chief of the State Security Service to decide who received per diems, as his only role was to authorize the head of the JATD to approve payments for special expenditures up to 50,000 dinars.¹⁵⁸² The Trial Chamber nonetheless recalled that, as Chief of Service, Stanišić's duties included deciding on the application of equipment and methods within the State Security Service.¹⁵⁸³ The Appeals Chamber considers that, in view of Stanišić's position at the helm of the State Security Service during the relevant period,¹⁵⁸⁴ the corroborative evidence that substantial sums were paid from the State Security Service to the Serbian Volunteer Guard around the time of the charged murders in Sanski Most, and the evidence reflecting payments to the Serbian Volunteer Guard starting in December 1994 and carried on throughout 1995, no reasonable doubt exists that Stanišić was not only aware of, but was also responsible for, such payments.¹⁵⁸⁵ Furthermore, Stanišić's contention that certain payments made by the State Security Service were distributed on behalf of Fikret Abdić does not raise reasonable doubt as to his responsibility for such payments.

508. Indeed, the record confirms that these payments to the Serbian Volunteer Guard, through the JATD structure, were not only made under the authority of Stanišić, as Chief of the State Security Service, but under that of Simatović as well, who the Trial Chamber concluded was responsible for the JATD as the Assistant Chief of the State Security Service.¹⁵⁸⁶ According to Witness Krsmanović,¹⁵⁸⁷ the JATD payment lists: (i) were generally signed by Milan Radonjić,¹⁵⁸⁸ or by Krsmanović in the former's absence, and then they were initialled by Simatović; (ii) would be sent to the Eighth Administration of the State Security Service and would be approved by Milan Tepavčević; and (iii) would then be processed for payment.¹⁵⁸⁹ The Appeals Chamber observes that, consistent with this evidence, the JATD payment lists for September and October 1995 were signed

¹⁵⁸² Trial Judgement, para. 348.

¹⁵⁸³ See Trial Judgement, paras. 330, 348.

¹⁵⁸⁴ See Trial Judgement, para. 350 (finding that Stanišić was promoted to Chief of the State Security Service on 31 December 1991, "a position he maintained until October 1998").

¹⁵⁸⁵ For the reasons set forth above, the Appeals Chamber considers it unnecessary to determine whether payments to the Serbian Volunteer Guard in 1994 and 1995 and prior to the operations in Sanski Most contributed to uncharged crimes. See *supra* Section VI.A.1(a).

¹⁵⁸⁶ See Trial Judgement, para. 432. The Appeals Chamber has previously dismissed Simatović's contentions that the Trial Chamber erred in finding that, together with Stanišić, he exercised authority over the JATD from its creation in August 1993 until the end of the period covered by the Indictment. See *supra* Section IV.A.1. See also Trial Judgement, paras. 388, 432.

¹⁵⁸⁷ Witness Krsmanović was involved in the recruitment of JATD members. See Trial Judgement, para. 432.

¹⁵⁸⁸ Milan Radonjić was the Deputy Commander of the JATD and appointed by Stanišić. See Trial Judgement, para. 432.

¹⁵⁸⁹ Witness Krsmanović, Exhibit 1D00384, para. 49, Exhibit 1D00385, pp. 14507, 14508, 14654. See also Witness Krsmanović, Exhibit 1D00385 pp. 14643 ("The procedure was such that initials were placed after a document had been signed. Documents created by units went to Mr. Simatović for his signature or approval, whatever you call it."), 14656, 14657.

by Milan Radonjić.¹⁵⁹⁰ Witness Krsmanović, nevertheless, testified that Simatović initialled the payment lists, and identified Simatović's handwriting on lists dated December 1994, January 1995, and May 1995, which include individuals identified as members of the Serbian Volunteer Guard.¹⁵⁹¹ While the Prosecution did not present evidence that Simatović initialled the payment lists immediately around the time of the charged murders in Sanski Most, Witness Krsmanović's evidence reflects that he was uncertain as to whether the procedure was "always honoured".¹⁵⁹² Nevertheless, in view of this witness's evidence and the evidence the Trial Chamber considered regarding the structure of the JATD¹⁵⁹³ as well as the nature and extent of the payments through the JATD to the Serbian Volunteer Guard as discussed above, all reasonable doubt is eliminated that Stanišić and Simatović were jointly responsible for the payments to members of the Serbian Volunteer Guard around the time of the charged murders committed in Sanski Most. In reaching this conclusion, the Appeals Chamber has also reviewed the evidence that Simatović points to disputing that he had authority over the use and deployment of the JATD but concludes that such evidence does not impact the foregoing conclusion.¹⁵⁹⁴

509. The Appeals Chamber now turns to the question of whether this conduct amounts to a contribution to the common criminal purpose of the joint criminal enterprise based on the legal standard articulated above. The Appeals Chamber notes that the Prosecution has not pointed to direct evidence that all members of the Serbian Volunteer Guard deployed in Sanski Most in September 1995 received payments around that time.

510. Nevertheless, the findings above demonstrate that State Security Service per diem payments from the JATD went to a significant number of Serbian Volunteer Guard members – particularly around the deployment in Sanski Most – and to members of the Serbian Volunteer Guard who were in leadership positions and/or responsible for distributing payments.¹⁵⁹⁵ The Appeals Chamber finds that funding around the time of the charged murders in Sanski Most was critical to the Serbian Volunteer Guard's ability to carry out operations in Sanski Most in September 1995. Furthermore,

¹⁵⁹⁰ See Exhibit P00541, p. 81 (English translation); Exhibit P00543, p. 68 (English translation); Exhibit P00826 (BCS version).

¹⁵⁹¹ Witness Krsmanović, Exhibit 1D00385, pp. 14709, 14710, Exhibit 1D00400. Compare Exhibit P01131 (BCS version) and Exhibit P001134 (BCS version) and Exhibit P01136 (BCS version) with Exhibit P01128, pp. 1, 3, 4 and Witness RFJ-041, Exhibit P01082, paras. 239, 258 and Witness RFJ-011, Exhibit P02649, pp. 8886-8889.

¹⁵⁹² Witness Krsmanović, Exhibit 1D00385, p. 14668.

¹⁵⁹³ See Trial Judgement, para. 432.

¹⁵⁹⁴ See Simatović Response Brief, paras. 68, 69.

¹⁵⁹⁵ See Witness RFJ-011, Exhibit P02649, pp. 8886-8890, 8892, 8893; Exhibit P01128, p. 9; Exhibit P00826, pp. 8-14; Exhibit P00541, pp. 38, 43, 44, 48-52, 55, 76; Exhibit P00543, pp. 43, 54, 56, 57, 60, 61, 63-67; Witness RFJ-088, Exhibit P02304, pp. 9467-9471, 9593-9597, Exhibit P02306, pp. 4, 5, Exhibit P02307, p. 11, Exhibit P02310, pp. 19454, 19455. See also Trial Judgement, para. 453, nn. 1821, 1824.

the Trial Chamber's findings reflect that the charged murders in Sanski Most in September 1995 were the deliberate, coordinated, and collective action of Serbian Volunteer Guard members over the course of several days.¹⁵⁹⁶ Specifically, the undisputed evidence relied upon by the Trial Chamber demonstrates that the Serbian Volunteer Guard, *inter alia*, participated in setting up checkpoints in Sanski Most, arbitrarily arresting non-Serb civilian men, detaining some under inhumane conditions, transporting them to Sasina or Trnova, and systematically murdering them.¹⁵⁹⁷ Moreover, evidence on the record, including evidence acknowledged by the Trial Chamber, reflects that Serbian Volunteer Guard members on State Security Service payment lists participated in acts of violence in Sanski Most.¹⁵⁹⁸ This brutality, including the charged murders, is consistent with the Trial Chamber's findings elsewhere in the Trial Judgement as to the pattern of coordinated violence committed by Serbian Volunteer Guard members acting together in targeting non-Serbs throughout the Indictment period.¹⁵⁹⁹

511. In consideration of the record above, no reasonable doubt exists that the State Security Service, through JATD per diem payments, paid a substantial amount of money to a significant number of Serbian Volunteer Guard members particularly in the period around the charged murders in Sanski Most. The payments generally demonstrate systemic support to the ability of the Serbian Volunteer Guard, as an organization, to perpetrate organized criminal conduct targeting non-Serbs in Sanski Most in September 1995. Whether those who physically participated in the crimes in Sanski Most received such per diem payments is immaterial. Furthermore, the Appeals Chamber considers it is immaterial that Stanišić and Simatović did not otherwise direct, control, or support any member of the Serbian Volunteer Guard in its execution of these crimes or that the Serbian Volunteer Guard worked in coordination with other forces as identified by the Trial Chamber.¹⁶⁰⁰ Similarly, the evidence of other sources of income and support for the Serbian Volunteer Guard identified by Stanišić and Simatović does not minimize the significant contribution of the State Security Service's payments to the operations of the Serbian Volunteer Guard around this time that contributed to the furtherance of the common criminal purpose.¹⁶⁰¹ Based on the foregoing, the Appeals Chamber finds that the payments described above significantly contributed to the furtherance of the common criminal purpose and to the coordinated murder operations in Sanski Most – in particular the murders committed in Sasina and Trnova on or about 20 and 21 September 1995 as charged in the Indictment.

¹⁵⁹⁶ See Trial Judgement, paras. 271-276.

¹⁵⁹⁷ See Trial Judgement, paras. 271-276.

¹⁵⁹⁸ See Trial Judgement, n. 1826, referring to Witness RFJ-011, Exhibit P02647, para. 34, Witness RFJ-088, Exhibit P02306, p. 5, Exhibit P02307, p. 9, Exhibit P02310, p. 19489.

¹⁵⁹⁹ See, e.g., Trial Judgement, paras. 119, 122, 126, 131, 133, 136, 146, 168, 169, 181, 199, 300, 301.

¹⁶⁰⁰ See Trial Judgement, para. 452.

¹⁶⁰¹ See Simatović Response Brief, paras. 431-443. See also T. 25 January 2023 pp. 45, 46, 48.

512. In view of the foregoing, the Appeals Chamber finds that the Trial Chamber erred in law by limiting its consideration of contributions to the common criminal purpose with respect to the State Security Service's payments to the Serbian Volunteer Guard. The Appeals Chamber further finds that the Prosecution has eliminated all reasonable doubt that, through such payments – and, in particular, payments around the time of the Sanski Most operations – Stanišić and Simatović significantly contributed to the furtherance of the common criminal purpose and, in particular, the charged murders in Sanski Most.¹⁶⁰² Consequently, the Appeals Chamber grants, in part, sub-ground A(i)(a)(iii) and sub-ground A(iv)(c) of Ground 1 of the Prosecution's appeal.

(d) Additional Contributions in Bilje, Doboj, and Sanski Most (sub-ground A(iv)(d))

513. The Prosecution submits that, should the Appeals Chamber determine that the Trial Chamber adjudicated alleged contributions by Stanišić and Simatović to the common criminal purpose as described under sub-ground A(ii) of Ground 1 of the Prosecution's appeal, the Trial Chamber erred in fact in not having found them proven.¹⁶⁰³ Specifically, it contends that, for the reasons set forth in that sub-ground, no reasonable trier of fact could have failed to find that Stanišić and Simatović furthered the common criminal purpose through those contributions.¹⁶⁰⁴

514. Simatović responds that the Prosecution does not show that the Trial Chamber erred in its assessment of the alleged contributions to the common criminal purpose.¹⁶⁰⁵

515. The Appeals Chamber observes that the Prosecution relies exclusively on its submissions in sub-ground A(ii) of Ground 1 of its appeal, in which it alleges that the Trial Chamber failed to adjudicate or provide a reasoned opinion on alleged contributions by Stanišić and Simatović to the common criminal purpose regarding events in Bilje, Doboj, and Sanski Most.¹⁶⁰⁶ The Appeals Chamber considers that the basis for dismissing the Prosecution's contentions that the Trial Chamber erred with respect to Bilje, Doboj, and Sanski Most as set forth in sub-ground A(ii) of Ground 1 of the Prosecution's appeal applies with equal force to its contention here that the Trial Chamber erred in fact. Consequently, the Appeals Chamber dismisses sub-ground A(iv)(d) of Ground 1 of the Prosecution's appeal.

¹⁶⁰² The Prosecution submits that payments to the Serbian Volunteer Guard further contributed to the forcible displacement crimes in Sanski Most in 1995. *See* Prosecution Appeal Brief, paras. 88-94; T. 25 January 2023 p. 16. However, the Appeals Chamber recalls that it has dismissed the Prosecution's contention that the Trial Chamber erred in failing to adjudicate forcible displacement charges on the basis that its pleadings reflected that it was not pursuing them in relation to crimes committed in Sanski Most in 1995. *See supra* Section VI.A.3.

¹⁶⁰³ Prosecution Appeal Brief, para. 117.

¹⁶⁰⁴ Prosecution Appeal Brief, para. 117.

¹⁶⁰⁵ Simatović Response Brief, para. 354.

¹⁶⁰⁶ *See* Prosecution Appeal Brief, para. 117, *referring to* Prosecution Appeal Brief, paras. 60-80.

(e) Conclusion

516. In view of the foregoing, the Appeals Chamber grants, in part, sub-ground A(i)(a)(iii) and sub-ground A(iv)(c) of Ground 1 of the Prosecution's appeal. The Appeals Chamber dismisses the remainder of sub-ground A(iv) of Ground 1 of the Prosecution's appeal.

B. Impact of Findings of the Appeals Chamber on Joint Criminal Enterprise Liability

517. The Appeals Chamber shall now consider the impact of its findings in relation to having granted, in part, sub-grounds A(i)(a)(iii) and A(iv)(c) of Ground 1 of the Prosecution's appeal.

1. Stanišić's and Simatović's *Mens Rea* for Joint Criminal Enterprise Liability

518. The Trial Chamber found proven beyond reasonable doubt that, from at least August 1991 and at all times relevant to the crimes charged in the Indictment, a common criminal purpose existed to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina, through the commission of the crimes of persecution, murder, as well as deportation and inhumane acts (forcible transfer) charged in the Indictment.¹⁶⁰⁷ The Trial Chamber found that Stanišić and Simatović contributed to the furtherance of this common criminal purpose through organizing the training of Unit members and local Serb forces at the Pajzoš camp and through their subsequent deployment during the takeover of Bosanski Šamac.¹⁶⁰⁸ However, it concluded that, in relation to this operation, a reasonable alternative inference remained open on the evidence, namely that Stanišić and Simatović knew that their acts provided practical assistance in the commission of the crimes by Serb forces, without sharing the intent for their commission.¹⁶⁰⁹ Furthermore, the Trial Chamber ultimately concluded that the Prosecution had not proven beyond reasonable doubt that either Stanišić or Simatović shared the intent to further the common criminal purpose.¹⁶¹⁰ Accordingly, the Trial Chamber found that Stanišić and Simatović may not be held responsible for committing, through participation in a joint criminal enterprise, the crimes alleged in the Indictment.¹⁶¹¹

¹⁶⁰⁷ Trial Judgement, paras. 379, 597. *See also* Trial Judgement, paras. 378, 594.

¹⁶⁰⁸ Trial Judgement, para. 597. *See also* Trial Judgement, paras. 436, 590.

¹⁶⁰⁹ Trial Judgement, para. 596. In assessing whether Stanišić and Simatović could be held liable for aiding and abetting crimes committed in connection with the takeover of Bosanski Šamac, the Trial Chamber found that Stanišić and Simatović knew that their acts assisted in the commission of murder, deportation, forcible transfer, and persecution and that they were aware of their essential elements, including of the intent of the perpetrators. *See* Trial Judgement, paras. 606, 607.

¹⁶¹⁰ Trial Judgement, para. 597. *See also* Trial Judgement, paras. 378, 379, 596.

¹⁶¹¹ Trial Judgement, para. 598.

519. The Appeals Chamber recalls, however, its finding that the Trial Chamber erred in law by limiting its consideration of contributions to the common criminal purpose with respect to the State Security Service payments to the Serbian Volunteer Guard.¹⁶¹² Having reviewed the Trial Chamber's factual findings and the relevant evidence contained on the record, the Appeals Chamber has further concluded that the Prosecution has eliminated all reasonable doubt that, through such payments – and, in particular, payments around the time of the Sanski Most operations – Stanišić and Simatović significantly contributed to the furtherance of the common criminal purpose and, in particular, the charged murders in Sanski Most.¹⁶¹³

520. The Appeals Chamber recalls that the significance of an accused's contribution to the common criminal purpose is relevant to assessing his or her *mens rea* in connection with his or her alleged joint criminal enterprise liability.¹⁶¹⁴ Having erred in law and, consequently, not considered Stanišić's and Simatović's contributions in furtherance of the common criminal purpose in connection with the charged murders in Sanski Most in September 1995, the Trial Chamber's assessment as to whether Stanišić and Simatović possessed the requisite intent for joint criminal enterprise liability is deficient and must be re-evaluated.¹⁶¹⁵

521. As the legal error noted above and the finding of an additional contribution to the common criminal purpose on appeal arise from the Prosecution's appeal, the Appeals Chamber shall determine whether, as the Prosecution has argued on appeal, the relevant factual findings and the evidence contained in the trial record eliminate all reasonable doubt that Stanišić and Simatović possessed the requisite *mens rea* to be convicted pursuant to joint criminal enterprise liability.¹⁶¹⁶ In so doing, it is unnecessary to adjudicate each of the Prosecution's allegations that the Trial Chamber erred in evaluating Stanišić's and Simatović's *mens rea* in connection with joint criminal enterprise liability as set forth in sub-grounds B(i) through B(iii) of Ground 1 of its appeal.¹⁶¹⁷ The Appeals Chamber will, nevertheless, bear these arguments in mind, as well as the submissions of Stanišić and Simatović

¹⁶¹² See *supra* para. 512.

¹⁶¹³ See *supra* para. 512.

¹⁶¹⁴ *Prlić et al.* Appeal Judgement, para. 2780; *Kvočka et al.* Appeal Judgement, para. 97.

¹⁶¹⁵ See Trial Judgement, paras. 596, 597. Relatedly, the Trial Chamber's findings that Stanišić and Simatović only possessed the requisite *mens rea* to aid and abet the crimes committed in connection with the takeover of Bosanski Šamac must also be re-evaluated in light of the additional and significant contribution to the common criminal purpose. See Trial Judgement, paras. 606, 607.

¹⁶¹⁶ See *Ndahimana* Appeal Judgement, paras. 192, 201. Cf. *Seromba* Appeal Judgement, para. 161. The Appeals Chamber will not review the entire trial record *de novo*; rather, it will in principle only take into account, *inter alia*, evidence referred to by the Trial Chamber in the body of the judgement or in a related footnote, and evidence contained in the trial record and referred to by the parties. See *supra* para. 15.

¹⁶¹⁷ See Prosecution Notice of Appeal, paras. 11-13; Prosecution Appeal Brief, paras. 129-148; Prosecution Reply Brief to Stanišić, paras. 68-71; Prosecution Reply Brief to Simatović, paras. 68-73; T. 25 January 2023 pp. 3, 16, 23, 26-30, 82.

that the Prosecution has not met its burden in establishing their *mens rea* for joint criminal enterprise liability on appeal.¹⁶¹⁸

522. The Appeals Chamber recalls that the *mens rea* element for the first category of joint criminal enterprise liability requires that an accused share the intent to commit the crimes that form part of the common criminal purpose of the joint criminal enterprise and the intent to participate in a common plan aimed at their commission.¹⁶¹⁹ The *mens rea* for participation in a joint criminal enterprise may be inferred from an accused's knowledge of the common plan or the crimes it involves, combined with his or her continuous participation in the joint criminal enterprise, if this is the only reasonable inference available on the evidence.¹⁶²⁰ As noted above, the significance of an accused's contribution to the common criminal purpose is relevant to assessing his or her *mens rea* in connection with his or her alleged joint criminal enterprise liability.¹⁶²¹

523. The Trial Chamber found proven beyond reasonable doubt that Stanišić and Simatović were aware of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina during the Indictment period based on “the totality of the evidence before it, and in view of the scale and pattern of crimes that occurred during and in the aftermath of Serb military operations in the areas charged in the Indictment”.¹⁶²² The Trial Chamber considered that Stanišić and Simatović had comprehensive knowledge of the events on the ground in Croatia and Bosnia and Herzegovina during the Indictment period by virtue of their communications with members of the joint criminal enterprise and positions in the State Security Service.¹⁶²³ In particular, the Trial Chamber noted that Stanišić was in frequent contact with Radovan Karadžić and, in 1992, met and communicated with other Bosnian Serb leaders.¹⁶²⁴ In an intercepted conversation on 28 January 1992 – well before the contributions to the common criminal purpose in relation to Bosanski Šamac – Stanišić is recorded as telling Radovan Karadžić: “I don't know how much you know, but we know everything”.¹⁶²⁵

¹⁶¹⁸ See, in particular, Stanišić Response Brief, paras. 323-338; Simatović Response Brief, paras. 365-389. See also Stanišić Response Brief, paras. 493-496; Simatović Response Brief, paras. 448, 450, 453, 459; T. 25 January 2023 pp. 36, 57, 58.

¹⁶¹⁹ See *Popović et al.* Appeal Judgement, para. 1369; *Brđanin* Appeal Judgement, para. 365.

¹⁶²⁰ *Mladić* Appeal Judgement, para. 252 and references cited therein.

¹⁶²¹ *Prlić et al.* Appeal Judgement, para. 2780; *Kvočka et al.* Appeal Judgement, para. 97.

¹⁶²² Trial Judgement, para. 589.

¹⁶²³ See Trial Judgement, paras. 586-588.

¹⁶²⁴ Trial Judgement, para. 587, referring to Trial Judgement, paras. 549-556.

¹⁶²⁵ See Trial Judgement, para. 586, referring to Exhibit P02792, p. 7. The Trial Chamber also considered evidence of Stanišić attending meetings with Slobodan Milošević, Milan Babić, and Milan Martić, pertaining to events in SAO Krajina in mid-1990 and 1991, and in relation to the events in SAO SBWS, with Goran Hadžić, police officials, and other Serb forces throughout 1991. The Trial Chamber noted that in the end of 1991, Stanišić also received reports directly from Radoslav Kostić, who subsequently became Assistant Minister of the Interior of the Republic of Serbian Krajina, about the security situation in the region. See Trial Judgement, para. 586. See also Trial Judgement, para. 581; T. 25 January 2023 p. 28.

524. The Trial Chamber also considered that other evidence demonstrated that Stanišić had comprehensive knowledge of the events on the ground in Croatia and Bosnia and Herzegovina during the Indictment period, including detailed information of the strength, composition, and deployment of Serb forces in various regions of the conflict.¹⁶²⁶ In relation to Simatović's knowledge, the Trial Chamber noted that Simatović was an intelligence officer and would have had unimpeded access to information about events on the ground and that, as Simatović acknowledged, his primary task in the regions of Croatia and Bosnia and Herzegovina was collecting intelligence.¹⁶²⁷

525. On this basis, the Trial Chamber found that “[w]hen considered in the context of [Stanišić’s and Simatović’s] extensive and detailed knowledge of the events unfolding on the ground during the Indictment period, the only reasonable inference from the evidence is that [Stanišić and Simatović] were aware of the shared intent of the members of the joint criminal enterprise to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina, through the commission of the crimes charged in [the] Indictment”.¹⁶²⁸ These findings remain undisturbed on appeal.¹⁶²⁹ The Appeals Chamber considers that these findings are highly relevant to assessing whether Stanišić and Simatović possessed the shared intent to commit the crimes within the scope of the common criminal purpose and to further it.

526. Turning to Stanišić’s and Simatović’s continuous participation in the joint criminal enterprise, the Appeals Chamber recalls that, in connection with Bosanski Šamac, the Trial Chamber found that Stanišić and Simatović contributed to the furtherance of the common criminal purpose through organizing the training of Unit members and local Serb forces at the Pajzoš camp and through their

¹⁶²⁶ Trial Judgement, para. 587, n. 2332.

¹⁶²⁷ Trial Judgement, para. 588. *See also* T. 25 January 2023 pp. 46, 47, 80, 85.

¹⁶²⁸ Trial Judgement, para. 594. In the context of aiding and abetting liability, the Trial Chamber found that Stanišić and Simatović were aware of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina, of the shared intent of members of the joint criminal enterprise, and of the existing and clearly discernible pattern of crimes accompanying the takeover of territory by Serb forces in SAO Krajina, SAO SBWS, and certain municipalities in Bosnia and Herzegovina. *See* Trial Judgement, paras. 606, 607. *See also* Trial Judgement, paras. 372-378. These findings remain undisturbed on appeal.

¹⁶²⁹ The Appeals Chamber has considered Simatović’s challenge on appeal that the Trial Chamber’s conclusion as to his knowledge was “almost exclusively” based on circumstances related to Stanišić and that the Trial Chamber failed to individualize Simatović’s position and erroneously equated Stanišić’s contacts and influence at the highest levels with Simatović’s access to “undefined intelligence data”. *See* Simatović Response Brief, paras. 380-383, *referring to, inter alia*, Trial Judgement, para. 589. The Appeals Chamber finds, however, that Simatović does not substantiate his claim in this regard or show that it was unreasonable for the Trial Chamber to conclude that he had comprehensive knowledge of the events on the ground in Croatia and Bosnia and Herzegovina during the Indictment period in view of its other findings. *See also* Trial Judgement, paras. 564 (concluding that Stanišić and Simatović “received information on the political and security situation in *Republika Srpska* and in other areas of the former Yugoslavia”), 578 (noting that Stanišić and Simatović, on account of their “unfettered access to intelligence information through various channels, and their attendance at meetings or presence on the ground, were undoubtedly aware of the sentiment of local [Serb] leaders”).

subsequent deployment during the takeover of Bosanski Šamac.¹⁶³⁰ The Trial Chamber found that, following the takeover of Bosanski Šamac, Dragan Đorđević (Crni), Srećko Radovanović (Debeli), and Slobodan Miljković (Lugar), as well as other Unit members, committed crimes against non-Serb civilians, which, among others, included the massacre of 16 Muslim or Croat men by Slobodan Miljković (Lugar) and others at the Crkvina detention facility on or about 7 May 1992.¹⁶³¹ The Trial Chamber's findings as to Stanišić's and Simatović's contributions in this respect remain undisturbed on appeal.

527. Furthermore, the Appeals Chamber has concluded that Stanišić and Simatović significantly contributed to the furtherance of the common criminal purpose and, in particular, to the charged murders in Sanski Most through State Security Service payments to the Serbian Volunteer Guard.¹⁶³² In particular, the Appeals Chamber has found that the Prosecution has eliminated all reasonable doubt that, starting from at least December 1994 and throughout 1995, and, in particular, around the time of the charged murders in Sanski Most, the State Security Service, through JATD per diems, paid: (i) individuals who led and/or delivered money to the Serbian Volunteer Guard; (ii) a significant number of Serbian Volunteer Guard members; and (iii) substantial sums to the Serbian Volunteer Guard around that time.¹⁶³³ The Appeals Chamber recalls that this support followed the commission of numerous crimes by members of the Serbian Volunteer Guard in Croatia and Bosnia and Herzegovina during the Indictment period.¹⁶³⁴ In view of the Trial Chamber's undisturbed conclusions as to Stanišić's and Simatović's extensive knowledge of the events and crimes committed on the ground, the Appeals Chamber considers that no reasonable doubt exists that each was aware of the nature and the scope of crimes that had been committed by the Serbian Volunteer Guard as these payments were made.¹⁶³⁵

¹⁶³⁰ Trial Judgement, para. 597. *See also* Trial Judgement, paras. 436, 590. The Appeals Chamber is mindful of the Trial Chamber's conclusion that it was not convinced that Stanišić and Simatović directed or had command and control over Unit members over the course of the operation or the commission of crimes in Bosanski Šamac. *See* Trial Judgement, para. 424.

¹⁶³¹ *See* Trial Judgement, para. 604. *See also* Trial Judgement, paras. 222-234.

¹⁶³² *See supra* para. 512.

¹⁶³³ *See supra* para. 506.

¹⁶³⁴ *See, e.g.*, Trial Judgement, paras. 119, 122, 126, 131, 133, 136, 146, 168, 169, 181, 199, 275, 276, 278, 300, 301, 442, 448.

¹⁶³⁵ In reaching this conclusion, the Appeals Chamber finds unpersuasive Stanišić's contentions that the findings of the Trial Chamber as to his general knowledge are insufficient to establish his *mens rea* and that the Sanski Most operation was to maintain control rather than to drive out non-Serbs. *See* Stanišić Response Brief, paras. 494-496. The Appeals Chamber has also evaluated Simatović's contentions that the Prosecution failed to establish beyond reasonable doubt that he was aware of the criminal activities of Željko Ražnatović (Arkan) in Croatia and Bosnia and Herzegovina, particularly as he "dealt with foreign services" and gathered "information from enemy ranks" and because the evidence on which the Prosecution relies reflects that the Third Administration of the State Security Service monitored Željko Ražnatović (Arkan). *See* Simatović Response Brief, paras. 448-457, *referring to* Exhibit P00020, Exhibit P00593, Exhibit P00838. The Appeals Chamber considers that his submissions and the evidence to which he refers fail to raise any reasonable

528. In view of the undisturbed conclusions as to Stanišić's and Simatović's detailed and extensive knowledge of the events on the ground, their awareness of the intent of the joint criminal enterprise members, and their significant contributions to the common criminal purpose, the Appeals Chamber, as argued principally in sub-ground B(iii) of Ground 1 of the Prosecution appeal,¹⁶³⁶ must evaluate key pieces of evidence as well as the Trial Chamber's consideration of such evidence when it concluded that it had not been proven beyond reasonable doubt that Stanišić or Simatović possessed the shared intent to further the common criminal purpose.

529. At the outset, the Appeals Chamber observes that the Trial Chamber noted evidence indicating that:

particularly in relation to Bosnia and Herzegovina, due to the mixed demographics of the region, carving out a Serb statelet was necessarily going to involve violence, and that operations were conducted not only for the purpose of taking over territory, but also for the purpose of changing, through violence, the demographic character of the areas.¹⁶³⁷

The Appeals Chamber considers that this circumstance – which Stanišić and Simatović, as senior intelligence officials, undoubtedly would have been aware of – is highly relevant to assessing the *mens rea* of each in connection with their proven contributions to the common criminal purpose in Bosnia and Herzegovina.

530. Additionally, the Appeals Chamber notes the 22 January 1992 call between Stanišić and Radovan Karadžić – prior to the contributions to the Bosanski Šamac operation – wherein Radovan Karadžić informed Stanišić that the Croats are also worried about an independent Bosnia and Herzegovina and that, unless the Serbs and Croats resolve their contentions, “they are in for thirty years of torture”, with Stanišić responding by saying, “with killings”. In the same conversation, Stanišić stated that “[w]e'll then have to push them back to Belgrade” as “[t]here's nothing else left for us to do” and, after Radovan Karadžić agreed, Stanišić added “[o]r we'll exterminate them completely so let's see where we'll end up”.¹⁶³⁸ The Appeals Chamber also notes Stanišić's 5 July 1994 letter praising the Republic of Serbian Krajina police for their key role in establishing “Krajina's statehood”, acknowledging their contribution to law and order and protection of citizens, and “foreshadowed that ‘[w]e are now entering the decisive phase of the fight to achieve the goals of all

doubt that, by 1994 and 1995, Simatović would have been generally aware of the scope and nature of the preceding criminal activities of the Serbian Volunteer Guard – an organization that he was involved in funding.

¹⁶³⁶ See Prosecution Appeal Brief, paras. 138-148. As noted above, the Appeals Chamber finds it unnecessary to address every argument raised, including, in particular, arguments based on sub-grounds of appeal that have been dismissed. See Prosecution Appeal Brief, paras. 145, 147 (referring to challenges raised in sub-ground A(i) of Ground 1 of the Prosecution's appeal).

¹⁶³⁷ Trial Judgement, para. 377.

¹⁶³⁸ Trial Judgement, para. 581, referring to Exhibit P02790, pp. 6, 7. See also Trial Judgement, para. 555.

the Serbian lands, more determined and prepared than ever before”¹⁶³⁹ Notably, the Trial Chamber considered that, when viewed in the context of the widespread crimes and acts of violence committed against non-Serbs in Krajina in the preceding years, with direct participation of members of the local police, Stanišić’s words of praise not only appear misguided, but also imply his endorsement and moral support for the acts of the Republic of Serbian Krajina police.¹⁶⁴⁰

531. Nevertheless, the Trial Chamber considered Stanišić’s 22 January 1992 statement as an “unfortunate choice of words” and “not necessarily a literal expression of [his] intent”,¹⁶⁴¹ and that Stanišić’s comments in the 5 July 1994 letter allowed for another reasonable possibility – that Stanišić provided encouragement and support to the Republic of Serbian Krajina in the context of the political and military agenda pursued at the time.¹⁶⁴² The Trial Chamber also noted that, with respect to the 22 January 1992 conversation, “while Stanišić stated that, if they want it, then they’ll have ‘an all-out war’, this part of the exchange ends with Stanišić saying ‘[b]etter do it like decent people’”.¹⁶⁴³ The Appeals Chamber considers, however, when the 22 January 1992 statement and 5 July 1994 letter are considered together with Stanišić’s extensive and detailed knowledge of the events and crimes committed on the ground, his awareness of the shared intent of the members of the joint criminal enterprise to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through crimes charged in the Indictment, and his proven contributions in furtherance of the common criminal purpose, these statements evince Stanišić’s shared intent to further the common criminal purpose and to commit the underlying crimes.¹⁶⁴⁴

532. Furthermore, the Trial Chamber’s considerations that Stanišić demonstrated, on occasion, a willingness to resolve the conflict, that he worked towards peace, and that he facilitated the provision of humanitarian assistance, do not raise any reasonable doubt as to Stanišić’s intent to further the common criminal purpose and to commit the underlying crimes.¹⁶⁴⁵ Indeed, Stanišić’s role in

¹⁶³⁹ Trial Judgement, para. 583, *referring to* Exhibit P03726. *See also* T. 25 January 2023 p. 29.

¹⁶⁴⁰ Trial Judgement, para. 583.

¹⁶⁴¹ Trial Judgement, para. 581.

¹⁶⁴² Trial Judgement, para. 583.

¹⁶⁴³ *See* Trial Judgement, nn. 2227, 2319, *referring to* Exhibit P02790, p. 7.

¹⁶⁴⁴ The Appeals Chamber finds unpersuasive Stanišić’s contentions as they pertain to this conduct, and, in particular, his remarks during the 22 January 1992 conversation with Radovan Karadžić. *See, e.g.*, Stanišić Appeal Brief, paras. 191-194, 328. *See also* T. 24 January 2023 p. 107 (arguing that the Prosecution misused the “one [prejudicial] comment” which was “not even [targeted against] the Muslims” in the “five years of a bloody awful ethnic conflict”). The Appeals Chamber recalls that “explicit manifestations of criminal intent are, for obvious reasons, often rare in the context of criminal trials”. *See Kayishema and Ruzindana Appeal Judgement*, para. 159. In these circumstances, when considered together in the context of Stanišić’s knowledge and repeated contributions to the common criminal purpose discussed above, the absence of any other example of Stanišić using such extreme language in private or public conversations during the Indictment period no longer raises any reasonable doubt as to his shared intent to further the common criminal purpose and to commit the underlying crimes. *See* Trial Judgement, para. 581.

¹⁶⁴⁵ *See* Trial Judgement, paras. 349, 596. The Appeals Chamber has also considered evidence not expressly referred to by the Trial Chamber in the Trial Judgement. *See, e.g.*, T. 15 October 2019 pp. 15, 17-19 (confirming that Stanišić was

international peace negotiations, particularly the Dayton Peace Conference in November 1995, was in a highly scrutinized international political context, and his most significant humanitarian interventions were directed at freeing international hostages.¹⁶⁴⁶ The Appeals Chamber finds that these efforts, when viewed in light of the established knowledge and contributions discussed above, are not inconsistent with a conclusion that all reasonable doubt has been eliminated that Stanišić possessed the requisite *mens rea* to incur joint criminal enterprise liability.

533. With respect to Simatović, the Appeals Chamber underscores the Trial Chamber's undisturbed findings that Simatović personally briefed and authorized the deployment of Unit members and locals from Bosanski Šamac, who subsequently participated in crimes committed in Bosanski Šamac, which form part of the common criminal purpose.¹⁶⁴⁷ In relation to his proven contribution to the charged murders in Sanski Most, the payments to the Serbian Volunteer Guard, through the JATD structure, were not only made under the authority of Stanišić, as Chief of the State Security Service, but Simatović as well, who the Trial Chamber concluded was responsible for the JATD as the Assistant Chief of the State Security Service.¹⁶⁴⁸ Moreover, the Appeals Chamber observes that the evidence demonstrates that Simatović initialled State Security Service payment lists between December 1994 and December 1995 that include payments to the Serbian Volunteer Guard, including those in leadership positions.¹⁶⁴⁹ The Appeals Chamber has carefully considered arguments raised by Stanišić and Simatović that payments to the Serbian Volunteer Guard during these periods related to operations that were not ethnic cleansing operations.¹⁶⁵⁰ The Appeals Chamber finds, however, that in view of the continuous and notorious commission of the underlying crimes of the joint criminal enterprise by the Serbian Volunteer Guard, the continuous support to them through payments reflects Stanišić's and Simatović's intention for the commission of such crimes. The Appeals Chamber concludes that the relevant findings concerning Simatović's contributions to the common criminal purpose, his extensive knowledge of the crimes being committed on the ground

"the point man" for the release of the hostages and that Slobodan Milošević told the witness that Stanišić delivered his message that Radovan Karadžić would be killed if the hostages were not released); Exhibit 1D00441 (under seal), pp. 37-39, 41, 221, 222 (testifying about Stanišić's efforts to persuade Radovan Karadžić and Ratko Mladić to release hostages, his participation in the liberation of American journalist David Rohde and the French pilots captured in *Republika Srpska* in the second half of 1995, and his role in the implementation of the Dayton Accords); Exhibit 1D00548 (under seal), pp. 18, 19, 29, 33, 34, 37 (testifying about Stanišić's role in the release of hostages).

¹⁶⁴⁶ See Trial Judgement, paras. 349, 596 ("In this regard, the Trial Chamber recalls its earlier finding that Stanišić did, on occasion, demonstrate a willingness to resolve the conflict, worked towards peace, and facilitated the provision of humanitarian assistance during the relevant period."). See also Trial Judgement, para. 627 (when considering his sentencing, the Trial Chamber noted "Stanišić's assistance in the release of 300 UNPROFOR hostages, captured French pilots, and an American journalist in Bijeljina, as well as his role at the Dayton Peace Conference in November 1995").

¹⁶⁴⁷ See Trial Judgement, paras. 416-419, 436, 590, 597, 605.

¹⁶⁴⁸ See Trial Judgement, para. 432.

¹⁶⁴⁹ See *supra* para. 508.

¹⁶⁵⁰ See, e.g., Stanišić Response Brief, paras. 108, 165, 495; Simatović Response Brief, paras. 60-66, 132, 254, 255.

throughout the Indictment period, and his awareness of the shared intent of the members of the joint criminal enterprise to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through crimes charged in the Indictment eliminate all reasonable doubt that he possessed the intent to further the common criminal purpose and to commit the underlying crimes.

534. Finally, the Appeals Chamber recalls that the Trial Chamber expressed doubt that Stanišić and Simatović possessed the requisite intent for joint criminal enterprise liability on the basis of the limited evidence of crimes being committed by Serb forces that have been proven beyond reasonable doubt to be under either's authority.¹⁶⁵¹ Nevertheless, the Appeals Chamber recalls that the Trial Chamber failed to consider the full extent of Stanišić's and Simatović's contributions to the common criminal purpose, which, although not reflecting authority over the perpetrators when the crimes were committed, are consistent with their capacity to further the common criminal purpose based on Stanišić's and Simatović's positions in the State Security Service. Thus, their repeated contributions, notwithstanding any temporal gaps or the absence of authority over the perpetrators, reflect continuous participation in the common criminal purpose and not mere assistance with knowledge that crimes will be committed, as the Trial Chamber considered.¹⁶⁵² Rather, their proven conduct in light of their knowledge reflects that each possessed the requisite intent to participate in the common criminal purpose and to commit the underlying crimes.

535. In light of the foregoing, the Appeals Chamber concludes that all reasonable doubt has been eliminated that, at least from the time Stanišić and Simatović organized the training of Unit members and local Serb forces at the Pajzoš camp and through their subsequent deployment during the takeover of Bosanski Šamac in 1992, both Stanišić and Simatović shared the intent to further the common criminal purpose to forcibly and permanently remove, through the commission of the crimes of persecution, murder, as well as deportation and inhumane acts (forcible transfer) charged in the Indictment, the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina and the intent to commit the underlying charged crimes. The Appeals Chamber further concludes that all reasonable doubt has been eliminated that Stanišić and Simatović continued to share this intent through the period involving the commission of crimes in Sanski Most in September 1995.

536. In so concluding, the Appeals Chamber is mindful that where an underlying crime forming part of the common criminal purpose requires proof of a special intent, such as discriminatory intent,

¹⁶⁵¹ See Trial Judgement, para. 596.

¹⁶⁵² Trial Judgement, para. 596.

the accused must share the special intent.¹⁶⁵³ The crime of persecution under Article 5(h) of the ICTY Statute includes the special intent to discriminate on political, racial, or religious grounds.¹⁶⁵⁴ The Trial Chamber found that the charged killings and acts of forcible displacement, which it had found proven beyond reasonable doubt, were carried out with the intent to discriminate on the basis of the ethnicity of the victims¹⁶⁵⁵ and that all elements of persecution as a crime against humanity, punishable under Article 5(h) of the ICTY Statute, were satisfied.¹⁶⁵⁶ In view of the analysis above, which establishes Stanišić's and Simatović's participation in a joint criminal enterprise aimed at discriminating against Croats, Bosnian Muslims, and Bosnian Croats,¹⁶⁵⁷ the Appeals Chamber is also satisfied that all reasonable doubt has been eliminated that Stanišić and Simatović possessed the requisite discriminatory intent.

537. Consequently, the Appeals Chamber finds that all reasonable doubt has been eliminated that Stanišić and Simatović possessed the requisite intent for joint criminal enterprise liability. The Appeals Chamber shall now determine the extent of Stanišić's and Simatović's criminal responsibility as members of the joint criminal enterprise in view of the findings of Stanišić's and Simatović's contributions to the common criminal purpose and their shared intent to participate in it and to commit the underlying crimes.

2. Crimes Attributable to Stanišić and Simatović as Members of the Joint Criminal Enterprise

538. The Appeals Chamber recalls the undisturbed findings as to the existence of a plurality of persons and the shared common criminal purpose, as well as Stanišić's and Simatović's contributions to that purpose and their intent to further it and commit the underlying crimes.¹⁶⁵⁸ Consequently, the Appeals Chamber finds that Stanišić and Simatović bear responsibility under Article 1 of the Statute and Article 7(1) of the ICTY Statute for committing, based on their participation in a joint criminal enterprise (first category). The Appeals Chamber will now consider which charged crimes committed by members of the joint criminal enterprise or by principal perpetrators whose actions are imputable to any member of the joint criminal enterprise are attributable to Stanišić and Simatović.

¹⁶⁵³ See *Popović et al.* Appeal Judgement, para. 711; *Kvočka et al.* Appeal Judgement, para. 110. Cf. *Prlić et al.* Appeal Judgement, para. 1771; *Dorđević* Appeal Judgement, para. 470; *Mugenzi and Mugiraneza* Appeal Judgement, para. 135.

¹⁶⁵⁴ See Article 5(h) of the ICTY Statute. See also *Šešelj* Appeal Judgement, para. 159. The discriminatory intent of crimes cannot be inferred directly from the general discriminatory nature of an attack characterized as a crime against humanity. However, the discriminatory intent may be inferred from the context of the attack, provided it is substantiated by the surrounding circumstances of the crime. See, e.g., *Kvočka et al.* Appeal Judgement, para. 366.

¹⁶⁵⁵ Trial Judgement, paras. 322-325.

¹⁶⁵⁶ Trial Judgement, para. 325.

¹⁶⁵⁷ See, e.g., Trial Judgement, paras. 323, 324, 379.

¹⁶⁵⁸ See *supra* Sections VI.A, VI.A.4(c), VI.B.1.

(a) Introduction

539. The Trial Chamber concluded that the evidence demonstrates a clearly discernible pattern of numerous crimes committed by Serb forces in the areas of SAO Krajina, SAO SBWS, and the municipalities of Bijeljina, Zvornik, Bosanski Šamac, Doboje, and Sanski Most during the Indictment period.¹⁶⁵⁹ The Trial Chamber emphasized that the crimes were not committed in a random or disorganized manner, but rather during the course of well-planned and coordinated operations, demonstrating the existence of a common criminal purpose.¹⁶⁶⁰ In this respect, it emphasized the systematic pattern of crimes committed against non-Serb civilians in all regions covered by the Indictment.¹⁶⁶¹

540. In this context, the Trial Chamber concluded that these crimes formed part of the common criminal purpose to forcibly and permanently remove non-Serbs from large areas of Croatia and Bosnia and Herzegovina through the crimes of persecution, murder, deportation, and inhumane acts (forcible transfer) charged in the Indictment.¹⁶⁶² It further found that this common purpose was shared by senior political and military officials, including Slobodan Milošević, Radmilo Bogdanović, Radovan Stojičić (Badža), Mihalj Kertes, Milan Martić, Milan Babić, Goran Hadžić, Radovan Karadžić, Ratko Mladić, Momčilo Krajišnik, Biljana Plavšić, and Željko Ražnatović (Arkan).¹⁶⁶³

541. The Prosecution submits that the charged crimes committed in Croatia and certain municipalities in Bosnia and Herzegovina are attributable to Stanišić and Simatović because they were committed by forces controlled by them or other members of the joint criminal enterprise, or that Stanišić and Simatović acted together with the forces controlled by members of the joint criminal enterprise in the commission of the crimes.¹⁶⁶⁴

542. Stanišić responds that the Prosecution is lapsing into guilt by association and ignores the joint criminal enterprise “tools test”.¹⁶⁶⁵ He challenges the Prosecution’s suggestion that “previous or subsequent associations are sufficient” and that “generalities of deployment or contributions are enough to attribute [joint criminal enterprise] responsibilities”.¹⁶⁶⁶ Simatović responds that the Prosecution implies automatism in Simatović’s responsibility regardless of the existence of his

¹⁶⁵⁹ Trial Judgement, para. 378.

¹⁶⁶⁰ Trial Judgement, para. 378.

¹⁶⁶¹ Trial Judgement, para. 379.

¹⁶⁶² Trial Judgement, paras. 379, 597. *See also* Trial Judgement, paras. 378, 594.

¹⁶⁶³ Trial Judgement, para. 380.

¹⁶⁶⁴ Prosecution Appeal Brief, paras. 122-127. *See also* T. 24 January 2023 p. 71; T. 25 January 2023 pp. 2, 3.

¹⁶⁶⁵ *See* T. 24 January 2023 pp. 10, 11; T. 25 January 2023 p. 37, *referring to* *Brđanin* Appeal Judgement, paras. 428, 430.

¹⁶⁶⁶ T. 25 January 2023 p. 37. *See also* T. 24 January 2023 pp. 10, 11.

contribution, or interaction with other members of the joint criminal enterprise, and he argues that the Prosecution demands conviction for crimes for which he is not responsible.¹⁶⁶⁷

543. The Prosecution replies that Stanišić's and Simatović's contentions ignore settled law, which only requires that the principal perpetrators of the crimes were used by the accused or by any other member of the joint criminal enterprise in order to carry out the *actus reus* of the crime, forming part of the common criminal purpose.¹⁶⁶⁸

544. At the outset, the Appeals Chamber recalls that when all the elements of joint criminal enterprise liability are met, each member is "appropriately held liable also for those actions of other [joint criminal enterprise] members, or individuals used by them, that further the common criminal purpose".¹⁶⁶⁹ However, an individual cannot be held responsible for the crimes of the joint criminal enterprise committed during a time when he or she was not a member of it.¹⁶⁷⁰ In this respect, the Appeals Chamber recalls that all reasonable doubt has been eliminated that, at least from the time Stanišić and Simatović contributed to the common criminal purpose by organizing the training of Unit members and local Serb forces at the Pajzoš camp and through their subsequent deployment during the takeover of Bosanski Šamac in 1992, both Stanišić and Simatović shared the intent to commit the underlying crimes of persecution, murder, deportation, and forcible transfer, which form part of the common criminal purpose, and that each shared the intent to further it.¹⁶⁷¹ Consequently, the Appeals Chamber will only consider whether charged crimes perpetrated starting at the end of March 1992 – which marks the commencement of Stanišić's and Simatović's membership in the joint criminal enterprise through the training of Unit members and locals from Bosanski Šamac – may be attributable to either Stanišić or Simatović.¹⁶⁷²

¹⁶⁶⁷ Simatović Response Brief, para. 363. *See also* Simatović Response Brief, paras. 358-364.

¹⁶⁶⁸ T. 25 January 2023 pp. 75, 76, *referring to Karemera and Ngirumpatse Appeal Judgement*, para. 605, *Nizeyimana Appeal Judgement*, para. 325.

¹⁶⁶⁹ *Prlić et al. Appeal Judgement*, para. 1545; *Martić Appeal Judgement*, para. 172. *See also Brđanin Appeal Judgement*, para. 431.

¹⁶⁷⁰ *See Prlić et al. Appeal Judgement*, para. 1985; *Karemera and Ngirumpatse Appeal Judgement*, n. 25.

¹⁶⁷¹ *See supra* para. 535.

¹⁶⁷² *See Trial Judgement*, paras. 416 ("As mentioned above, at the end of March 1992, a group of around 20 men from Bosanski Šamac were trained by members of the Unit at Ležimir and Pajzoš. [...]. Also around this time, a group of former police from SAO SBWS, including Lugar, Debeli, and Witness RFJ-035, received similar training by Unit members."), 419 ("The Trial Chamber is also satisfied that in March 1992, following their training at the camps by the Unit, Debeli, Lugar, and Witness RFJ-035 were incorporated into the Unit, and that they were under the authority of [Stanišić and Simatović] prior to their deployment."), 436 ("The Trial Chamber is also satisfied that members of the Unit and others trained by them at the end of March 1992 were deployed by [Stanišić and Simatović] and participated in the crimes committed in Bosanski Šamac."). *See also Trial Judgement*, para. 407, n. 1645, *referring to Witness Todorović, Exhibit P01916*, pp. 23432, 23433 (stating that the camp was located "in the surroundings of Ilok" and that 20 men left the municipality for the training towards the end of March 1992), 23437, 23519, 23558, *Witness RFJ-035, T. 17 April 2018* pp. 12, 13, *Exhibit P02026*, paras. 29, 30. The Appeals Chamber's finding that no reasonable trier of fact could have

545. The Appeals Chamber further recalls that, to hold a member of a joint criminal enterprise liable for crimes committed by principal perpetrators who are not members of the joint criminal enterprise, it has to be shown that the crime can be imputed to one member of the joint criminal enterprise, and that this member – when using a principal perpetrator – acted in accordance with the common plan.¹⁶⁷³ Such a link is established by showing that the member of the joint criminal enterprise used the non-member to commit the *actus reus* of the crime forming part of the common criminal purpose.¹⁶⁷⁴ The establishment of a link between the crime in question and a member of the joint criminal enterprise is a matter to be assessed on a case-by-case basis.¹⁶⁷⁵ Factors indicative of such a link include evidence that the member of the joint criminal enterprise explicitly or implicitly requested the non-member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-member to commit the crime.¹⁶⁷⁶ As a matter of law, there is no requirement that a chamber establish how each physical perpetrator was used to commit the crimes, provided that the chamber identifies that one or more members of the joint criminal enterprise used the forces to which these physical perpetrators belonged in furtherance of the common plan.¹⁶⁷⁷

546. The Appeals Chamber shall now assess the findings of the Trial Chamber related to charged criminal conduct that occurred while Stanišić and Simatović were members of the joint criminal enterprise. At the outset, the Appeals Chamber concludes that, in view of the Trial Chamber's findings as to the existence of the common criminal purpose – and in particular the vast yet coordinated nature of the crimes committed – the only reasonable interpretation of these findings is that the Trial Chamber was satisfied beyond reasonable doubt that members of the joint criminal enterprise used forces to perpetrate such crimes and were acting in accordance with the common criminal purpose when doing so.

(b) Bosanski Šamac and Sanski Most (1995)

547. The Appeals Chamber recalls that the Trial Chamber found that Stanišić and Simatović contributed to the furtherance of the common criminal purpose through organizing the training of Unit members and local Serb forces at the Pajzoš camp and through their subsequent deployment during the takeover of Bosanski Šamac.¹⁶⁷⁸ In this respect, the Trial Chamber recalled that, following

concluded that locals from Bosanski Šamac were trained at the Ležimir camp does not undermine the reasonableness of the Trial Chamber's findings as to when the training commenced. *See supra* Section IV.B.2(b).

¹⁶⁷³ *Mladić* Appeal Judgement, para. 193 and references cited therein.

¹⁶⁷⁴ *Krajišnik* Appeal Judgement, paras. 225, 226; *Brđanin* Appeal Judgement, para. 410.

¹⁶⁷⁵ *Krajišnik* Appeal Judgement, para. 226.

¹⁶⁷⁶ *Krajišnik* Appeal Judgement, para. 226.

¹⁶⁷⁷ *See Dorđević* Appeal Judgement, para. 165, referring to *Krajišnik* Appeal Judgement, paras. 235-237.

¹⁶⁷⁸ Trial Judgement, para. 597. *See also* Trial Judgement, paras. 436, 590. *See also* Indictment, paras. 4, 6, 9, 12, 22-26, 46-50, 64-66; Prosecution Pre-Trial Brief, paras. 75, 82, 95, 111, 162-167.

the takeover of Bosanski Šamac, Dragan Đorđević (Crni), Srećko Radovanović (Debeli), and Slobodan Miljković (Lugar), as well as other Unit members, committed crimes against non-Serb civilians, which, among others, included the massacre of 16 Muslim or Croat men by Slobodan Miljković (Lugar) and others at the Crkvina detention facility on or about 7 May 1992.¹⁶⁷⁹ The Trial Chamber found Stanišić and Simatović responsible for aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces in Bosanski Šamac and convicted each under Counts 1 to 5 of the Indictment in relation to these crimes.¹⁶⁸⁰ The findings related to Stanišić's and Simatović's contributions to these crimes have been affirmed on appeal.

548. The Trial Chamber also concluded that the Serbian Volunteer Guard committed murder and persecution in connection with the killing of 11 non-Serbs in Trnova and 64 non-Serbs in Sasina, Sanski Most, in September 1995.¹⁶⁸¹ Furthermore, the Prosecution, on appeal, has eliminated all reasonable doubt that, through the State Security Service's payments to the Serbian Volunteer Guard – and, in particular, payments around the time of the Sanski Most operations – Stanišić and Simatović significantly contributed to the furtherance of the common criminal purpose and, in particular, the charged murders in September 1995.

549. The Appeals Chamber observes that the principal perpetrators of the above-referenced crimes were not found to be expressly identified members of the joint criminal enterprise. Stanišić argues that no reasonable trier of fact could find that the “tools” test for joint criminal enterprise liability is satisfied in connection with payments to the Serbian Volunteer Guard.¹⁶⁸² His arguments, in substance, however, have been addressed and dismissed above.¹⁶⁸³ The Appeals Chamber concludes that, in view of the findings as to Stanišić's and Simatović's contributions to the common criminal purpose – and in connection with the crimes committed in Bosanski Šamac and in Sanski Most in September 1995 specifically – both availed themselves of the principal perpetrators in the commission of the crimes. Therefore, the crimes are attributable to Stanišić and Simatović. Furthermore, as joint criminal enterprise liability most appropriately reflects the full scope of Stanišić's and Simatović's criminal conduct in connection with and following the takeover of Bosanski Šamac, the Appeals Chamber sets aside their convictions for aiding and abetting liability

¹⁶⁷⁹ Trial Judgement, para. 604. *See also* Trial Judgement, paras. 223, 229, 232-234.

¹⁶⁸⁰ Trial Judgement, para. 608, p. 270.

¹⁶⁸¹ Trial Judgement, paras. 271, 275, 276, 278, 301, 302, 319, 322, 323, 325, 442. *See also* Indictment, paras. 4, 6, 9, 12, 15, 22-26, 55-57, 64-66; Prosecution Pre-Trial Brief, paras. 40, 89, 93, 181, 182. The Appeals Chamber recalls that it has dismissed the Prosecution's contention that the Trial Chamber erred in failing to adjudicate forcible displacement charges on the basis that its pleadings reflected that it was not pursuing them in relation to crimes committed in Sanski Most in 1995. *See supra* Section VI.A.3.

¹⁶⁸² *See* Stanišić Response Brief, paras. 282.

¹⁶⁸³ *See supra* Section VI.A.4(c).

for murder, deportation, inhumane acts (forcible transfer), and persecution based on the same conduct.¹⁶⁸⁴

(c) Bijeljina

550. The Trial Chamber found proven beyond reasonable doubt that Željko Ražnatović (Arkan)'s Serbian Volunteer Guard crossed into Bosnia and Herzegovina from Serbia on 31 March 1992 and joined certain local Serbs in Bijeljina to forcibly take control over the town and, in the process, killed at least 48 civilians, mostly non-Serbs.¹⁶⁸⁵ Thereafter, the Serb forces, which included the Serbian Volunteer Guard – as well as the Whites Eagles, Serbian National Guard under Ljubiša Savić (Mauzer), and local police – continued to engage in criminal activities, such as lootings, rapes, mistreatment, and killings of non-Serbs in the municipality.¹⁶⁸⁶ The Trial Chamber found proven beyond reasonable doubt that these acts of violence forced the non-Serbs to leave Bijeljina and amounted to crimes of persecution, deportation, and forcible transfer.¹⁶⁸⁷

551. The Trial Chamber's findings reflect that the crimes in Bijeljina were committed, among others, by Željko Ražnatović (Arkan) and his Serbian Volunteer Guard.¹⁶⁸⁸ The Trial Chamber noted that Željko Ražnatović (Arkan) founded the Serbian Volunteer Guard on 11 October 1990.¹⁶⁸⁹ A review of adjudicated facts and evidence on the record further reflects that Željko Ražnatović (Arkan) continued to have authority over the Serbian Volunteer Guard at the time when the crimes in Bijeljina were committed¹⁶⁹⁰ and appeared to be in control of Bijeljina after the takeover.¹⁶⁹¹ The Trial Chamber noted that, on 4 April 1992, Biljana Plavšić met with Željko Ražnatović (Arkan) in Bijeljina and asked him to hand over control of Bijeljina to the JNA, to which he replied that he had not yet finished his "business" there.¹⁶⁹² It further noted that Biljana Plavšić did not persist with her request, repeatedly praised the good job Željko Ražnatović (Arkan) had done in saving the local Serbs from the threat of the Muslims, and publicly thanked him.¹⁶⁹³ The evidence considered by the Trial

¹⁶⁸⁴ See Article 23(2) of the Statute ("The Appeals Chamber may affirm, reverse or revise the decisions taken by the [...] Trial Chamber"). See also *Ndahimana* Appeal Judgement, para. 201.

¹⁶⁸⁵ Trial Judgement, para. 181. See also Indictment, paras. 4, 6, 12, 22-25, 64-66; Prosecution Pre-Trial Brief, paras. 40, 76, 80, 95, 153-155.

¹⁶⁸⁶ Trial Judgement, paras. 178, 181.

¹⁶⁸⁷ Trial Judgement, paras. 178, 181, 314, 318, 322-325. See also Trial Judgement, paras. 442, 448 (recalling findings earlier in the Trial Judgement that Željko Ražnatović (Arkan) and his Serbian Volunteer Guard participated in persecution and forcible displacement in Bijeljina in 1992). The Trial Chamber noted that Stanišić and Simatović did not contest that crimes were committed by Serb forces in Bijeljina. See Trial Judgement, para. 172.

¹⁶⁸⁸ See Trial Judgement, paras. 181, 442, 448.

¹⁶⁸⁹ Trial Judgement, para. 441.

¹⁶⁹⁰ See, e.g., Adjudicated Facts 933, 937, 944, 946, 952. See also Witness RFJ-034, Exhibit P00435, pp. 18033-18039, 18050, 18075-18079. See also Trial Judgement, paras. 175-181.

¹⁶⁹¹ Adjudicated Fact 946. See also Adjudicated Fact 950.

¹⁶⁹² See Trial Judgement, paras. 177, 376, n. 1800. See also Adjudicated Facts 936, 941, 947.

¹⁶⁹³ See Trial Judgement, paras. 177, 376, n. 1800. See also Adjudicated Facts 947-949.

Chamber also reflects that Serb forces and other paramilitaries – including the Territorial Defence and White Eagles – who participated in the takeover of Bijeljina, acted in coordination with, or under the control of, Željko Ražnatović (Arkan).¹⁶⁹⁴ In light of the above, the Appeals Chamber is satisfied that the crimes of persecution, deportation, and forcible transfer committed in connection with the takeover of Bijeljina by the Serbian Volunteer Guard as well as Serb forces and paramilitaries that worked in coordination with it,¹⁶⁹⁵ can be imputed to Željko Ražnatović (Arkan), a member of the joint criminal enterprise.¹⁶⁹⁶

(d) Zvornik

552. In connection with the crimes committed in Zvornik, the Trial Chamber found proven beyond reasonable doubt that Serb forces, including Željko Ražnatović (Arkan)'s Serbian Volunteer Guard, volunteers under the command of Ljubiša Savić (Mauzer), Šešelj's men, and JNA units, attacked Zvornik town on or about 8 April 1992,¹⁶⁹⁷ during which Željko Ražnatović (Arkan)'s Serbian Volunteer Guard and/or Šešelj's men killed 12 civilians.¹⁶⁹⁸ The Trial Chamber concluded that the acts of violence committed by Serb forces during and after the takeover of Zvornik forced non-Serbs to leave, and that the crimes amounted to murder, deportation, forcible transfer, and persecution.¹⁶⁹⁹ These findings reflect that the murders committed during the takeover of Zvornik on or about 8 April 1992 were perpetrated by Željko Ražnatović (Arkan)'s Serbian Volunteer Guard and/or Šešelj's men in coordination with them.¹⁷⁰⁰ Furthermore, the Trial Chamber noted evidence and adjudicated facts that Serb forces attacked Zvornik town pursuant to the order of Željko Ražnatović (Arkan),¹⁷⁰¹ and that he was present in the midst of the commission of crimes.¹⁷⁰² In light of the above, the Appeals Chamber finds that the crimes of murder, deportation, forcible transfer, and persecution¹⁷⁰³ committed in relation to the takeover in Zvornik by the Serbian Volunteer Guard or forces working

¹⁶⁹⁴ See Exhibit P01634, pp. 1, 2; Exhibit 1D00067, pp. 1-3; Witness RFJ-037, Exhibit P01616, paras. 101, 104, 107.

¹⁶⁹⁵ See *Martić* Appeal Judgement, paras. 195, 196, 205, 206.

¹⁶⁹⁶ Trial Judgement, para. 380.

¹⁶⁹⁷ Trial Judgement, para. 199. See also Trial Judgement, paras. 188-191.

¹⁶⁹⁸ Trial Judgement, para. 199. See also Indictment, paras. 4, 6, 12, 22-26, 62-66; Prosecution Pre-Trial Brief, paras. 79-81, 95, 156-159, 161.

¹⁶⁹⁹ Trial Judgement, paras. 181, 201, 278, 301, 302, 309, 314, 315, 318, 322-325. See also Trial Judgement, paras. 442, 448 (recalling findings earlier in the Trial Judgement that Željko Ražnatović (Arkan) and his Serbian Volunteer Guard participated in murders, persecution, and forcible displacement in Zvornik in 1992). The Trial Chamber noted that Stanišić and Simatović did not contest the murder of approximately 20 non-Serb civilians during the attack and takeover of Zvornik by Serb forces, including Željko Ražnatović (Arkan)'s Serbian Volunteer Guard, and the persecution, forcible transfer, and deportation of non-Serbs thereafter in the surrounding villages. See Trial Judgement, para. 184.

¹⁷⁰⁰ Trial Judgement, paras. 189, 190.

¹⁷⁰¹ Trial Judgement, para. 189 and references cited therein.

¹⁷⁰² Trial Judgement, para. 190.

¹⁷⁰³ Trial Judgement, paras. 201, 278, 301, 302, 309, 314, 315, 318, 322, 324, 325, 442, 448.

in coordination with it¹⁷⁰⁴ are attributable to Željko Ražnatović (Arkan), a member of the joint criminal enterprise.¹⁷⁰⁵

553. The Appeals Chamber also notes evidence referred to by the Trial Chamber that the JNA and other paramilitary groups, in cooperation with the JNA, participated in the attack on Zvornik and recalls the Trial Chamber's finding that the JNA was training and supplying weapons to the Serbian Volunteer Guard during the 1992 operations in Bosnia and Herzegovina.¹⁷⁰⁶ During the relevant period, Slobodan Milošević acted as the President of Serbia.¹⁷⁰⁷ Notably, the Trial Chamber considered evidence that Slobodan Milošević was the most powerful individual in Serbia, and by virtue of his authority, could appoint, support, or remove individuals at high level positions in the military, police, and civilian structures of Serbia and the Federal Republic of Yugoslavia.¹⁷⁰⁸ Furthermore, the Appeals Chamber has reviewed adjudicated facts and evidence reflecting that, around the time of the relevant events, Slobodan Milošević exercised authority over the JNA¹⁷⁰⁹ and influenced decisions concerning operational arrangements of the JNA, including retention and transfer of personnel and arms.¹⁷¹⁰ Consequently, the Appeals Chamber concludes that all reasonable doubt has been eliminated that crimes committed by the JNA, or forces working in coordination with it or subordinated thereto,¹⁷¹¹ during and after the takeover of Zvornik and prior to the 12 May 1992¹⁷¹² are attributable to Slobodan Milošević, a joint criminal enterprise member.¹⁷¹³

(e) Doboj

554. With respect to the crimes committed by Serb forces in Doboj between May and July 1992, the Trial Chamber concluded beyond reasonable doubt that Serb forces – including Serb paramilitaries, the JNA, forces under Milovan Stanković's command, the Serb police, as well as forces under Radojica Božović's command, including those trained at Mt. Ozren – attacked Doboj

¹⁷⁰⁴ See *Martić* Appeal Judgement, paras. 195, 196, 205, 206.

¹⁷⁰⁵ Trial Judgement, para. 380.

¹⁷⁰⁶ See Trial Judgement, paras. 189, 448, n. 857.

¹⁷⁰⁷ See Adjudicated Fact 74.

¹⁷⁰⁸ Trial Judgement, para. 368 and references cited therein.

¹⁷⁰⁹ See Witness Babić, Exhibit P01246, pp. 13130-13132. The Appeals Chamber recalls and has fully accounted for the particular circumstances the Trial Chamber noted in relation to Witness Babić's evidence. See Trial Judgement, paras. 14, 15.

¹⁷¹⁰ See, e.g., Adjudicated Facts 76, 768-770. See also Witness Theunens, Exhibit P01980, Part II, pp. 4, 5, Part III, pp. 6, 7; Witness Theunens, T. 6 March 2018 pp. 11, 12. Stanišić argues in his reply brief that Slobodan Milošević did not control the JNA in 1991. See Stanišić Reply Brief, para. 93, referring to Stanišić Final Trial Brief, paras. 605-609. However, in light of the relevant Trial Chamber findings, adjudicated facts, and evidence on the record discussed above, there is no reasonable doubt that Slobodan Milošević used the JNA in connection with the events in Zvornik discussed above.

¹⁷¹¹ See *Martić* Appeal Judgement, paras. 195, 196, 205, 206.

¹⁷¹² See Adjudicated Facts 763 (finding that, on 12 May 1992, the JNA was transformed into the VRS), 792 (stating that the withdrawal of JNA forces from Bosnia and Herzegovina was announced on 19 May 1992).

¹⁷¹³ Trial Judgement, para. 380.

town on 3 May 1992.¹⁷¹⁴ The Trial Chamber noted evidence that as a result of the takeover of Doboj town, the threats and intimidation of non-Serbs, and the rumours of incidents occurring in Bratunac and Bijeljina, many thousands of non-Serbs left the town for the Tešanj municipality and that Doboj town was “completely cleansed” of non-Serbs on 7 May 1992.¹⁷¹⁵ It further found proven beyond reasonable doubt that, in the weeks following the attack, Serb forces took over other non-Serb villages and, during these attacks, destroyed mosques and at least one Catholic church, looted and stole property, forcibly expelled, and arbitrarily detained, mistreated, and killed non-Serb civilians, including in various detention centres.¹⁷¹⁶ It also found proven beyond reasonable doubt that, on 12 July 1992, Serb forces, including members of Predrag Kujundžić’s and Slobodan Karagić’s units, killed 16 non-Serbs while using them as human shields.¹⁷¹⁷ Based on these findings, the Trial Chamber found proven beyond reasonable doubt that acts of violence committed by Serb forces caused non-Serbs to leave¹⁷¹⁸ and that the crimes amounted to murder, forcible transfer, and persecution.¹⁷¹⁹

555. The Trial Chamber’s findings above and evidence on the record reflect that certain crimes committed during the takeover of Doboj town were perpetrated by, among others, the JNA, forces under Radojica Božović’s command, and those under the command of Milovan Stanković. The Trial Chamber noted evidence that during the operation in Doboj, forces under Radojica Božović’s command acted in coordination with the JNA,¹⁷²⁰ which was under the authority of Slobodan Milošević at that time.¹⁷²¹ Evidence considered by the Trial Chamber also shows that Milovan Stanković operated under JNA command, while holding a position of the Commander of the Doboj Territorial Defence and a JNA/Army of the *Republika Srpska* (“VRS”) commander.¹⁷²² The Appeals Chamber therefore considers that the crimes of forcible transfer and persecution¹⁷²³ committed by the JNA, forces under Radojica Božović’s command, as well as forces under Milovan Stanković’s

¹⁷¹⁴ Trial Judgement, paras. 242, 252. *See also* Indictment, paras. 4, 6, 12, 22-26, 52-54, 64-66; Prosecution Pre-Trial Brief, paras. 82, 95, 168-173.

¹⁷¹⁵ Trial Judgement, para. 242.

¹⁷¹⁶ Trial Judgement, paras. 243, 244, 252.

¹⁷¹⁷ Trial Judgement, paras. 245-248, 252, 253.

¹⁷¹⁸ Trial Judgement, paras. 253, 278.

¹⁷¹⁹ Trial Judgement, paras. 301, 302, 314-318, 322-325. The Trial Chamber noted that Stanišić and Simatović did not dispute that crimes were committed in the region. *See* Trial Judgement, para. 237.

¹⁷²⁰ Trial Judgement, para. 242, n. 1089, *referring to, inter alia*, Witness RFJ-165, Exhibit P02366, paras. 7, 32. *See also* Witness RFJ-165, Exhibit 1D00118, pp. 2867, 2868; Witness Theunens, Exhibit P01980, p. 6958 (noting that, in relation to the operation in Doboj, the report states that the “Red Berets” training centre in Mt. Ozren was established in late April 1992 under the command of Radojica Božović and subordinated to the JNA 1st Ozren light infantry brigade).

¹⁷²¹ *See supra* para. 553.

¹⁷²² Trial Judgement, n. 1089, *referring to* Witness RFJ-165, Exhibit P02366, paras. 7, 32, Exhibit 1D00118, p. 2868.

¹⁷²³ Trial Judgement, paras. 314-318, 322-325.

command during the takeover of Doboj can be attributed to Slobodan Milošević, a joint criminal enterprise member.¹⁷²⁴

556. With respect to the crimes committed in other villages in Doboj municipality following the takeover of Doboj town and the murder of detainees used as human shields in July 1992, the Appeals Chamber observes that, while the Prosecution seeks to attribute the crimes of murder and persecution committed by forces under the command of Predrag Kujundžić and/or Slobodan Karagić to Stanišić and Simatović, it fails to provide any specific submission, much less eliminate all reasonable doubt, as to how their crimes are attributable to a member of the joint criminal enterprise.¹⁷²⁵ The Appeals Chamber considers that the Trial Chamber's findings and related evidence, including those highlighted by the Prosecution on appeal, are insufficient to establish that these later crimes are attributable to a member of the joint criminal enterprise.¹⁷²⁶

(f) Sanski Most (1992)

557. In relation to the crimes committed in Sanski Most municipality in April and May 1992,¹⁷²⁷ the Trial Chamber found proven beyond reasonable doubt that the acts of violence committed by the Serb forces during and after the attacks on Sanski Most municipality forced non-Serbs to leave.¹⁷²⁸ The Trial Chamber found proven beyond reasonable doubt that the acts of violence committed in Sanski Most between April and May 1992 amounted to deportation, forcible transfer, and persecution.¹⁷²⁹

558. In relation to these events, the Trial Chamber considered evidence that, on 19 April 1992, the Serbian Democratic Party took control over Sanski Most town through an armed attack on the municipality building conducted by the JNA's 6th Light Partisan Brigade, Territorial Defence forces, and members of a Bosnian Serb paramilitary group known as the Red Berets.¹⁷³⁰ Following this attack

¹⁷²⁴ Trial Judgement, para. 380. In reaching this conclusion, the Appeals Chamber is also mindful of evidence considered by the Trial Chamber that Radojica Božović and the group of original Unit members at Mt. Ozren were affiliated with and paid by the *Republika Srpska* Ministry of the Interior. *See* Trial Judgement, para. 430.

¹⁷²⁵ *See* Prosecution Appeal Brief, paras. 125, 126, nn. 276, 277, 300, 301. *See also* Prosecution Appeal Brief, para. 112.

¹⁷²⁶ *See* Trial Judgement, paras. 243-246; Prosecution Appeal Brief, paras. 125, 126. *See also* Prosecution Final Trial Brief, paras. 289, 553, n. 1271; Stanišić Final Trial Brief, paras. 1098, 1100; Simatović Final Trial Brief, paras. 633, 638, 639, 641, 646, 647.

¹⁷²⁷ Indictment, paras. 6, 9, 12, 22-25, 64-66. *See also* Prosecution Pre-Trial Brief, paras. 83, 177-180. The Appeals Chamber notes that fundamental features of the evidence related to the crimes committed during and after the attack on Sanski Most municipality in April and May 1992 are not disputed. *See* Trial Judgement, para. 263.

¹⁷²⁸ Trial Judgement, paras. 277, 278. *See also* Trial Judgement, paras. 265, 313. The Trial Chamber noted evidence that by October 1992, 20,000 of the 32,000 Bosnian Muslims and Bosnian Croats from the Sanski Most municipality had moved out of the region, and the remaining 10,000 wished to do the same. *See* Trial Judgement, para. 270.

¹⁷²⁹ Trial Judgement, paras. 309, 314, 318, 322-325. *See also* Trial Judgement, paras. 375-377. The Trial Chamber noted that Stanišić and Simatović did not contest that crimes were committed during and following the attack on Sanski Most municipality in April and May 1992. *See* Trial Judgement, para. 262.

¹⁷³⁰ Trial Judgement, para. 265.

and other preceding acts of violence in March and April 1992, including destruction of mosques and attacks on non-Serb properties, many Muslims and Croats left the municipality.¹⁷³¹ The Trial Chamber further considered evidence that, on 26 May 1992, Serb forces, which included the JNA 6th Light Partisan Brigade, the VRS, and paramilitary units, attacked Sanski Most town, pursuant to the order of Nedeljko Aničić, commander of the Sanski Most Territorial Defence.¹⁷³² The Trial Chamber noted that a day prior to the attack, on 25 May 1992, broadcasts called on Bosnian Muslim inhabitants to surrender their weapons, identify their houses with white flags, and for certain wealthy Muslims and intellectuals to surrender.¹⁷³³ According to the evidence considered by the Trial Chamber, within three days of this attack, almost the entire municipality was under Serb control.¹⁷³⁴

559. Thereafter, Serb forces continued the pattern of attacks against other non-Serb villages in the municipality, including in Mahala, Muhići, Hrustovo, Begići, and Vrholje, where they committed crimes.¹⁷³⁵ This included the killing of Muslim men from Begići hamlet and in Kenjari hamlet, the killing of women and children in Hrustovo area, the destruction of mosques, or forcing women and children to leave.¹⁷³⁶ Continuing throughout 1992, Serb forces arrested about 1,600 able-bodied Bosnian Muslims and Bosnian Croats, kept them in horrendous and “absolutely inhumane conditions”, including in the Betonikra factory facilities or Krings factory hall, and subjected them to beatings.¹⁷³⁷ According to the evidence considered by the Trial Chamber, from 26 May 1992 until 10 October 1995, Sanski Most was “hell” for all non-Serbs.¹⁷³⁸

560. Based on the above findings, the crimes committed during the attack of the Sanski Most municipal building on 19 April 1992 and during the takeover of Sanski Most town on 26 May 1992, were perpetrated by, among others, the JNA’s 6th Light Partisan Brigade, Territorial Defence forces of Sanski Most, and the VRS. The Appeals Chamber concludes that the crimes of deportation, forcible transfer, and persecution committed on 19 April 1992 by the JNA’s 6th Light Partisan Brigade and forces acting in coordination with it are attributable to Slobodan Milošević.¹⁷³⁹ Concerning the crimes committed in May 1992, relevant adjudicated facts show that around the time of the attack of Sanski Most town in May 1992, the Territorial Defence of Sanski Most was incorporated under the command of the JNA’s 6th Light Partisan Brigade headed by Colonel Basara,¹⁷⁴⁰ who was subordinated to

¹⁷³¹ Trial Judgement, para. 265.

¹⁷³² Trial Judgement, para. 266.

¹⁷³³ Trial Judgement, para. 266.

¹⁷³⁴ Trial Judgement, para. 266, n. 1199.

¹⁷³⁵ Trial Judgement, para. 267.

¹⁷³⁶ Trial Judgement, para. 267.

¹⁷³⁷ Trial Judgement, para. 268.

¹⁷³⁸ Trial Judgement, para. 269.

¹⁷³⁹ *See supra* para. 553.

¹⁷⁴⁰ Adjudicated Facts 1253, 1254.

General Momir Talić of the First Krajina Corps,¹⁷⁴¹ which was part of the VRS.¹⁷⁴² Following the announcement of the withdrawal of the JNA forces from Bosnia and Herzegovina on 19 May 1992, Ratko Mladić became the Commander of the VRS Main Staff,¹⁷⁴³ which operated on the principle of “unity of command”.¹⁷⁴⁴ Therefore, the crimes of deportation, forcible transfer, and persecution committed in connection with the attack of Sanski Most town on 26 May 1992 by the VRS and the JNA’s 6th Light Partisan Brigade together with the forces subordinated to it are attributable to Ratko Mladić, a member of the joint criminal enterprise.¹⁷⁴⁵

561. The Trial Chamber noted that in June 1992, the Crisis Staff of the Serbian Municipality of Sanski Most decided that about 150 detainees should be deported to Manjača camp in Prijedor.¹⁷⁴⁶ However, the Appeals Chamber finds that the Prosecution has not eliminated all reasonable doubt that such conduct can be attributable to a member of the joint criminal enterprise. Furthermore, the Trial Chamber’s other findings as to the principal perpetrators of the crimes committed after the takeover of Sanski Most town on 26 May 1992, including those summarized above,¹⁷⁴⁷ are insufficiently precise to attribute them to a member of the joint criminal enterprise.¹⁷⁴⁸ The Prosecution’s submissions on appeal have not eliminated all reasonable doubt that Stanišić or Simatović bear responsibility for these subsequent crimes.¹⁷⁴⁹

(g) Trnovo

562. Turning to the crimes committed in Trnovo in July 1995, the Trial Chamber considered evidence that, following the fall of Srebrenica in July 1995, Slobodan Medić (Boca) was ordered to transport Muslims, including six Muslim men and boys, to various locations, to be killed.¹⁷⁵⁰ The Trial Chamber found proven beyond reasonable doubt that the Scorpions, acting upon the orders of Slobodan Medić (Boca), killed the six Muslim men and boys in the rural area at Godinjske Bare¹⁷⁵¹

¹⁷⁴¹ Adjudicated Facts 1253, 1264.

¹⁷⁴² Adjudicated Facts 799, 812, 815.

¹⁷⁴³ See Adjudicated Facts 792 (stating that the withdrawal of JNA forces from Bosnia and Herzegovina was announced on 19 May 1992), 802-806, 817, 818, 1222.

¹⁷⁴⁴ See Adjudicated Fact 795.

¹⁷⁴⁵ Trial Judgement, para. 380.

¹⁷⁴⁶ See Trial Judgement, para. 268.

¹⁷⁴⁷ See *supra* para. 559.

¹⁷⁴⁸ See Trial Judgement, paras. 267-270, 277.

¹⁷⁴⁹ See Prosecution Appeal Brief, paras. 125, 126.

¹⁷⁵⁰ Trial Judgement, paras. 257-259. See Indictment, paras. 9, 12, 22-26, 61; Prosecution Pre-Trial Brief, paras. 88, 174-176. See also Indictment, paras. 58-60.

¹⁷⁵¹ See Trial Judgement, paras. 257, 258.

and concluded that these crimes amounted to murder and persecution, as charged in the Indictment.¹⁷⁵²

563. The Appeals Chamber observes that, at the time the crimes were committed, the Scorpions were operating under the direction of Bosnian Serb forces.¹⁷⁵³ Evidence on the record corroborates that the Scorpions acted in coordination with the VRS during the relevant period in Trnovo.¹⁷⁵⁴ The Appeals Chamber recalls that, in May 1992, following the withdrawal of the JNA forces from Bosnia and Herzegovina, Ratko Mladić became the Commander of the VRS.¹⁷⁵⁵ The Appeals Chamber is therefore satisfied that, in light of the close cooperation between the Scorpions and the VRS during the events in Trnovo in July 1995, the charged crimes of murder and persecution committed by the Scorpions are attributable to Ratko Mladić, a joint criminal enterprise member.¹⁷⁵⁶

(h) Crimes Committed in Croatia after March 1992

564. With respect to the crimes committed in SAO SBWS,¹⁷⁵⁷ the Trial Chamber found proven beyond reasonable doubt that the Serbian Volunteer Guard and the Serbian National Security killed, among others, Marija Senaši, who disappeared in Daljska Planina on 3 June 1992, and that this amounted to murder and persecution.¹⁷⁵⁸ According to the evidence received by the Trial Chamber, upon the orders of Mihajlo Ulemek (Mile), members of the Serbian National Security took Marija Senaši to the basement of a house, on the road between Erdut and Aljmaš, that had been turned into a prison and used for interrogation.¹⁷⁵⁹ The Trial Chamber noted that “[p]rior to her death,” Senaši told Witness RFJ-052, who saw her with visible physical injuries between 9 November 1991 and 3

¹⁷⁵² Trial Judgement, paras. 278, 301, 302, 322-325. The Trial Chamber noted that Stanišić and Simatović accepted that the Scorpions committed these murders. *See* Trial Judgement, para. 255.

¹⁷⁵³ Adjudicated Fact 1244 (“The Chamber finds that following the fall of Srebrenica, the Scorpions Unit, which at the time was operating under the direction of Bosnian Serb Forces, summarily killed six Bosnian Muslim males from Srebrenica near the town of Trnovo”). *Cf.* Trial Judgement, para. 463 (“With respect to the Scorpions’ deployment in the framework of the Treskavica/Trnovo operations, the Trial Chamber notes that the parties do not dispute that, during a meeting in May 1995, [Radovan Stojičić (Badža)] proposed their deployment to the area to assist the *Republika Srpska* Army.”).

¹⁷⁵⁴ *See* Exhibit P02416, paras. 2, 3 (report dated 23 July 1995 from commander of Sarajevo Romanija Corps, Dragomir Milošević, to the VRS Main Staff in relation to the situation in Trnovo, referring to the Scorpions as “our forces” which successfully repelled an enemy attack alongside the Drina Corps). The Drina Corps was subordinated to the VRS Main Staff. *See* Adjudicated Facts 797, 1221.

¹⁷⁵⁵ *See* Adjudicated Facts 792 (stating that the withdrawal of JNA forces from Bosnia and Herzegovina was announced on 19 May 1992), 802-806, 818, 1222.

¹⁷⁵⁶ Trial Judgement, para. 380.

¹⁷⁵⁷ Indictment, paras. 4, 6, 12, 22-26, 38; Prosecution Pre-Trial Brief, para. 144.

¹⁷⁵⁸ Trial Judgement, paras. 129, 131, 300, 302, 322-325.

¹⁷⁵⁹ Trial Judgement, para. 129.

June 1992, that she had been badly beaten on two occasions, and her house had been looted several times by members of the Serbian Volunteer Guard and men in camouflage uniforms.¹⁷⁶⁰

565. The Trial Chamber's findings demonstrate that Mihajlo Ulemek (Mile), who was a member of the Serbian Volunteer Guard, as well as members of the Serbian National Security were responsible for the murder of Marija Senaši.¹⁷⁶¹ The Trial Chamber acknowledged evidence that the Serbian National Security and the Serbian Volunteer Guard closely cooperated including in relation to killings of non-Serb civilians and lootings.¹⁷⁶² The Appeals Chamber concludes that the Trial Chamber's findings, relevant adjudicated facts, and evidence on the record, demonstrate beyond reasonable doubt that this killing, which amounts to murder and persecution, is attributable to Željko Ražnatović (Arkan), a member of the joint criminal enterprise.¹⁷⁶³

566. The Appeals Chamber has reviewed the Trial Chamber's findings in relation to numerous crimes committed in Croatia in 1992 and 1993, including in the Knin area in SAO Krajina as well as the Grabovac village and villages in the Darda area in Baranja, SAO SBWS.¹⁷⁶⁴ However, the Appeals Chamber considers that the Trial Chamber's conclusions as to the perpetrators of these crimes are insufficiently precise to attribute liability for them to members of the joint criminal enterprise. The Prosecution's submissions on appeal also fail to eliminate all reasonable doubt in this respect.¹⁷⁶⁵

3. Conclusion

567. The Appeals Chamber has found that Stanišić and Simatović availed themselves of the principal perpetrators in the commission of the crimes of murder, deportation, inhumane acts (forcible transfer), and persecution in connection with and following the takeover of Bosanski Šamac and murder and persecution committed by the Serbian Volunteer Guard in Sanski Most in September 1995. These crimes are, therefore, attributable to Stanišić and Simatović. The Appeals Chamber further finds that the following crimes can be attributed to Stanišić and Simatović through other members of the joint criminal enterprise: (i) deportation, inhumane acts (forcible transfer), and persecution committed in connection with the takeover of Bijeljina by the Serbian Volunteer Guard as well as Serb forces and paramilitaries that worked in coordination with it; (ii) murder, deportation,

¹⁷⁶⁰ Trial Judgement, para. 129.

¹⁷⁶¹ Trial Judgement, para. 129. *See also* Trial Judgement, paras. 128, 453.

¹⁷⁶² *See* Trial Judgement, para. 526, n. 2115, *referring to* Trial Judgement Section II.B.1(a)(iv). *See also* Trial Judgement, para. 442 (recalling its finding that Željko Ražnatović (Arkan) and the Serbian Volunteer Guard participated in the murders, persecution, and forcible displacement committed in the SAO SBWS in 1991 and 1992).

¹⁷⁶³ Trial Judgement, para. 380.

¹⁷⁶⁴ *See* Trial Judgement, paras. 98, 100-102, 148, 149, 153-156.

¹⁷⁶⁵ *See* Prosecution Appeal Brief, paras. 123, 124, 126.

inhumane acts (forcible transfer), and persecution committed in relation to the takeover in Zvornik by the Serbian Volunteer Guard and the JNA and forces working in coordination with them; (iii) inhumane acts (forcible transfer) and persecution committed by the JNA, forces under Radojica Božović's command, as well as forces under Milovan Stanković's command during the takeover of Doboj; (iv) deportation, inhumane acts (forcible transfer), and persecution committed by the JNA's 6th Light Partisan Brigade, the VRS, and/or forces subordinated to or acting in coordination with them in April and May 1992 in Sanski Most; (v) murder and persecution committed by the Scorpions in Trnovo in July 1995; and (vi) murder and persecution committed by the Serbian Volunteer Guard in cooperation with the Serbian National Security in relation to the killing of Marija Senaši in Daljska Planina, SAO SBWS, in June 1992.

C. Alleged Errors Regarding New Evidence (Ground 1 sub-ground C and Ground 2 sub-ground C)

568. In determining the appropriate remedy in light of the nature and scale of the errors identified in the *Stanišić and Simatović* ICTY Appeal Judgement, the ICTY Appeals Chamber considered that, *inter alia*, should the case be remitted to a newly composed trial chamber to make necessary findings on the basis of the original record, it would encounter similar difficulties to those which would be encountered by the ICTY Appeals Chamber as a result of “not having directly heard the witnesses”.¹⁷⁶⁶ The ICTY Appeals Chamber observed that, while Stanišić and Simatović had spent five years and four years and eight months, respectively, in detention, it was of the view that the alleged offences are of the utmost gravity, and considered that, in the circumstances of this case, the interests of justice would not be well served if a retrial were not ordered.¹⁷⁶⁷ The ICTY Appeals Chamber, consequently, ordered that Stanišić and Simatović be retried under all counts of the Indictment.¹⁷⁶⁸

569. On 2 February 2017, the Trial Chamber issued a decision on the basis of a motion filed by Stanišić arguing that, through its pre-trial submissions, the Prosecution sought to impermissibly expand the case against him.¹⁷⁶⁹ In assessing this contention, the Trial Chamber recalled the right to be tried without undue delay enshrined in Article 19(4)(c) of the Statute and the “high risk” that the presentation of new evidence by the Prosecution may result in “undue prejudice” to Stanišić and Simatović.¹⁷⁷⁰ In particular, the Trial Chamber considered that the presentation of new evidence by

¹⁷⁶⁶ *Stanišić and Simatović* ICTY Appeal Judgement, para. 126.

¹⁷⁶⁷ *Stanišić and Simatović* ICTY Appeal Judgement, para. 127.

¹⁷⁶⁸ *Stanišić and Simatović* ICTY Appeal Judgement, para. 131.

¹⁷⁶⁹ Decision of 2 February 2017, para. 15.

¹⁷⁷⁰ Decision of 2 February 2017, para. 21.

the Prosecution would “inevitably prolong the proceedings” as the Defence would have to conduct further investigations requiring additional time and resources and the presentation of new evidence would require additional court time.¹⁷⁷¹ The Trial Chamber further considered that the “retrial has effectively given the Prosecution a second chance to make its case and that, in such circumstances, it is particularly important to safeguard the rights of [Stanišić and Simatović] through means such as imposing a limitation on the new evidence that the Prosecution may adduce at the retrial” and that “such a limitation, if carefully calibrated, would not result in prejudice to the Prosecution”.¹⁷⁷²

570. In the Decision of 2 February 2017, the Trial Chamber further noted that, on appeal before the ICTY Appeals Chamber, the Prosecution “explicitly stated that ‘the problem is not with the existing evidentiary record [...] [t]he problem is one of failure to properly adjudicate the evidence already on that record’” and, therefore, requested that the ICTY Appeals Chamber enter convictions on appeal or remand the case to a trial bench to determine Stanišić’s and Simatović’s guilt.¹⁷⁷³ The Trial Chamber further considered that, given that the Prosecution did not allege errors in relation to the evidence admitted at trial and did not request the admission of any new evidence on appeal, the Prosecution was satisfied with the evidence presented during the original trial and that there was therefore no reason that it should not present the same evidence, if available, at the retrial.¹⁷⁷⁴ The Trial Chamber considered that this in no way limited the Prosecution’s ability to present its evidence in a manner that it deemed best to prove its case.¹⁷⁷⁵

571. Consequently, the Trial Chamber decided, *inter alia*, to limit the Prosecution’s evidence in the retrial primarily to the evidence that was presented during the original trial.¹⁷⁷⁶ It also decided that, in limited or exceptional instances, the Prosecution may be permitted to present new evidence, including when the new evidence: (i) may be necessary due to circumstances outside of the Prosecution’s control where evidence presented during the original trial has become unavailable; or (ii) was unavailable during the original trial and appeal proceedings, could not have been discovered through the exercise of due diligence, and its admission is in the interests of justice.¹⁷⁷⁷ The Trial Chamber concluded that, having balanced the need to ensure Stanišić’s and Simatović’s right to a fair trial, the gravity of the alleged offences, and the interests of the victims, it was satisfied that its decision to limit the Prosecution’s ability to present new evidence serves the interests of justice.¹⁷⁷⁸

¹⁷⁷¹ Decision of 2 February 2017, para. 21.

¹⁷⁷² Decision of 2 February 2017, para. 22.

¹⁷⁷³ Decision of 2 February 2017, para. 22.

¹⁷⁷⁴ Decision of 2 February 2017, para. 22.

¹⁷⁷⁵ Decision of 2 February 2017, para. 22.

¹⁷⁷⁶ Decision of 2 February 2017, para. 23.

¹⁷⁷⁷ Decision of 2 February 2017, para. 23.

¹⁷⁷⁸ Decision of 2 February 2017, para. 23.

Consequently, the Trial Chamber ordered the Prosecution to file an amended pre-trial brief and witness and exhibit lists consistent with its decision.¹⁷⁷⁹

572. The Trial Chamber subsequently denied the Prosecution's request seeking certification to appeal the Decision of 2 February 2017,¹⁷⁸⁰ as well as other requests for certification to appeal, *inter alia*, decisions that relied on it in denying the admission of evidence that was not presented in the original trial.¹⁷⁸¹ On 3 October 2018, the Prosecution requested that the Appeals Chamber enforce its order for a full retrial and order the Trial Chamber to determine the admissibility of evidence in a manner consistent with the Rules and applicable jurisprudence.¹⁷⁸² The Appeals Chamber dismissed the motion as inadmissible, holding that, in the absence of certification to appeal the Decision of 2 February 2017 by the Trial Chamber, the Prosecution may only challenge this decision and subsequent decisions applying it in an appeal from judgement.¹⁷⁸³

573. On appeal, the Prosecution submits that the Trial Chamber erred in law in limiting the Prosecution's evidence primarily to that presented during the original trial and, consequently, excluding and/or not relying on relevant and probative evidence that was not admitted in the original trial.¹⁷⁸⁴ Specifically, the Prosecution argues that the Decision of 2 February 2017 violated the ICTY Appeals Chamber's determination that a full retrial was required, which was selected over remittance.¹⁷⁸⁵ In this context, it submits that a retrial is a hearing *de novo*, which includes the possibility of hearing evidence that was not presented during the original proceedings.¹⁷⁸⁶ It

¹⁷⁷⁹ Decision of 2 February 2017, para. 30.

¹⁷⁸⁰ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Decision on Requests for Certification to Appeal Decision on Stanišić's Request for Stay of Proceedings, 1 March 2017, paras. 12, 13.

¹⁷⁸¹ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of RFJ-037 Pursuant to Rule 111, 1 May 2018 (confidential) ("Decision of 1 May 2018"), paras. 9, 13; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 112, 16 May 2018 ("Decision of 16 May 2018"), pp. 1-3; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Consolidated Request for Certification to Appeal Decisions on Prosecution Motions for Admission of Evidence of RFJ-040 and RFJ-104 Pursuant to Rule 111, 26 September 2018 ("Decision of 26 September 2018"), pp. 1, 2; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution's First, Second, and Third Omnibus Motions for Admission of Evidence Pursuant to Rule 111, 2 October 2018, pp. 1, 2; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Fourth Omnibus Motion for Admission of Evidence Pursuant to Rule 111, 5 November 2018, pp. 1, 2.

¹⁷⁸² *The Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Prosecution Motion for Enforcement of Order for Retrial, 3 October 2018, paras. 1, 2, 15.

¹⁷⁸³ Decision of 14 December 2018, paras. 10-12.

¹⁷⁸⁴ See Prosecution Notice of Appeal, paras. 14, 20; Prosecution Appeal Brief, paras. 153-166, 220.

¹⁷⁸⁵ Prosecution Appeal Brief, paras. 153, 161, 163, *referring to, inter alia, Stanišić and Simatović* ICTY Appeal Judgement, paras. 122-131.

¹⁷⁸⁶ Prosecution Appeal Brief, para. 162.

emphasizes that any restrictions to a retrial must be made explicit by the Appeals Chamber and submits that the ICTY Appeals Chamber declined to impose any.¹⁷⁸⁷

574. The Prosecution further argues that the Decision of 2 February 2017 and its application improperly constricted the Prosecution's choice of evidence to witnesses and exhibits adduced in the original proceedings.¹⁷⁸⁸ Specifically, the Prosecution contends that, pursuant to Article 14 of the Statute, it is vested with the responsibility to investigate and prosecute before the Mechanism.¹⁷⁸⁹ It further contends that it is empowered by Rules 70(E)(ii) and 70(E)(iii) of the Rules to select witnesses and the exhibits it intends to offer and has the authority under Rule 102 of the Rules to call witnesses and present evidence.¹⁷⁹⁰ It also relies on jurisprudence to argue that, while a trial chamber can impose limits on the total number of witnesses the parties may present and the time available for the presentation of evidence, matters of trial strategy, developing and pursuing litigation strategies, and the selection of the evidence fall exclusively within the purview of the parties.¹⁷⁹¹

575. The Prosecution also argues that the Trial Chamber did not explain its conclusion that allowing new evidence "would inevitably prolong the proceedings" and offers a number of alternative solutions that could have addressed concerns related to delay.¹⁷⁹² It likewise disputes the Trial Chamber's reasoning that the Prosecution would be content to present the same evidence on retrial, as once the retrial was ordered, it was "impossible to recreate the original trial record".¹⁷⁹³

576. The Prosecution asserts that applying the limitations on new evidence in accordance with the Decision of 2 February 2017 prevented the Trial Chamber from determining the admissibility of such evidence in accordance with the Rules.¹⁷⁹⁴ Specifically, it argues that the Trial Chamber failed to genuinely exercise its discretion under Rules 105(C) and (D) of the Rules and assess the admissibility of evidence as it was proffered, and it contends that the Trial Chamber excluded an entire category of evidence, including evidence that it "conceded appeared relevant".¹⁷⁹⁵ It argues that the appellate jurisprudence from the *Prosecutor v. Ramush Haradinaj et al.* proceedings, which the Trial Chamber

¹⁷⁸⁷ Prosecution Appeal Brief, para. 162.

¹⁷⁸⁸ Prosecution Appeal Brief, paras. 153, 156.

¹⁷⁸⁹ Prosecution Appeal Brief, para. 157. The Prosecution also refers to Article 16 of the Statute and Rule 35 of the Rules. See Prosecution Appeal Brief, para. 157.

¹⁷⁹⁰ See Prosecution Appeal Brief, para. 157.

¹⁷⁹¹ Prosecution Appeal Brief, para. 157. See also Prosecution Appeal Brief, para. 158 (arguing that only the parties can determine which witnesses will best advance their respective cases and identifying a number of circumstances that inform such decisions and of which a Chamber is not aware).

¹⁷⁹² See Prosecution Appeal Brief, para. 159. See also Prosecution Appeal Brief, para. 165 (arguing that the Trial Chamber did not genuinely assess whether new evidence would cause delay, noting that it asked for slightly less time for its direct examinations in retrial than it had sought in the original trial).

¹⁷⁹³ See Prosecution Appeal Brief, para. 160.

¹⁷⁹⁴ Prosecution Appeal Brief, paras. 164, 166.

¹⁷⁹⁵ See Prosecution Appeal Brief, paras. 153, 164, 165.

relied upon, did not create a new area of discretion that would allow it to “effectively ignore an Appeals Chamber’s order for a full retrial”.¹⁷⁹⁶

577. Finally, the Prosecution submits that, as a consequence of the Decision of 2 February 2017: (i) it was forced to remove 24 witnesses from its witness list filed pursuant to Rule 70 of the Rules;¹⁷⁹⁷ (ii) the Trial Chamber rejected motions to admit the evidence of 30 witnesses and denied the admission of over 450 exhibits notwithstanding determinations that some of this evidence “appeared relevant”;¹⁷⁹⁸ and (iii) the Trial Chamber limited the scope of the evidence of five new witnesses.¹⁷⁹⁹ The Prosecution originally sought relief through the admission of evidence erroneously excluded by the Trial Chamber as additional evidence on appeal pursuant to Rule 142 of the Rules.¹⁸⁰⁰ However, in light of the decision of the Appeals Chamber denying the Prosecution’s request for admission of additional evidence on appeal, it now only seeks relief in the form of the Appeals Chamber declaring that the Trial Chamber erred in law in its Decision of 2 February 2017.¹⁸⁰¹

578. Stanišić argues that the Trial Chamber gave effect to the ICTY Appeals Chamber’s order for a full retrial and that it acted within its broad discretion to limit the admissibility of new evidence during a retrial.¹⁸⁰² He contends that the Trial Chamber appropriately limited the admissibility of new evidence after a careful assessment of its impact on the fairness and expeditiousness of the proceedings and its determination that admitting new evidence would result in undue delay and prejudice to him and Simatović.¹⁸⁰³ Stanišić further asserts that the Decision of 2 February 2017 did not amount to a blanket exclusion of new evidence but instead provided exceptions that were applied liberally by the Trial Chamber and allowed the Prosecution to have new evidence admitted.¹⁸⁰⁴ Stanišić claims that, under these exceptions, the Prosecution called 16 new witnesses, it elicited hundreds of pages of new or updated evidence from witnesses who testified in the original proceedings, and the Trial Chamber admitted 1350 new Prosecution exhibits into evidence.¹⁸⁰⁵

¹⁷⁹⁶ Prosecution Appeal Brief, para. 166, referring to *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-bis-AR73.1, Decision on Haradinaj’s Appeal on Scope of Partial Retrial, 31 May 2011 (“*Haradinaj et al.* Decision of 31 May 2011”).

¹⁷⁹⁷ Prosecution Appeal Brief, para. 154.

¹⁷⁹⁸ Prosecution Appeal Brief, paras. 155.

¹⁷⁹⁹ Prosecution Appeal Brief, para. 155.

¹⁸⁰⁰ See Prosecution Appeal Brief, paras. 167, 220, 222; Prosecution Reply to Stanišić Response, para. 72; Prosecution Reply to Simatović Response, para. 75.

¹⁸⁰¹ See T. 25 January 2023 pp. 3, 4. See also Decision of 20 December 2022, paras. 64, 65.

¹⁸⁰² See Stanišić Response Brief, paras. 347, 349-359.

¹⁸⁰³ See Stanišić Response Brief, paras. 349, 360-367.

¹⁸⁰⁴ See Stanišić Response Brief, paras. 349, 368-378.

¹⁸⁰⁵ See Stanišić Response Brief, paras. 375-377.

579. Simatović responds that the Appeals Chamber should reject this aspect of the Prosecution’s appeal.¹⁸⁰⁶ He argues that the Prosecution was not “harmed” by the Decision of 2 February 2017, emphasizing that new evidence was led in the retrial.¹⁸⁰⁷ Simatović submits that, while the ICTY Appeals Chamber ordered a retrial on all counts of the Indictment, it did not give the Prosecution the right to change or expand its case.¹⁸⁰⁸ Simatović contends that the Prosecution was advantaged in the retrial as, *inter alia*, it knew the details of the Defence’s case and could adapt its case accordingly,¹⁸⁰⁹ and, for this reason, the limitation with regard to new evidence “was the minimum protection of procedural rights of the [D]efence”.¹⁸¹⁰

580. The Prosecution replies that, contrary to Stanišić’s contentions, the “discretion afforded to a trial chamber to ensure a fair and expeditious trial does not extend to prescribing the list of witnesses from which the Prosecution must select”.¹⁸¹¹ It contends that the exceptions that allowed new evidence in the retrial did not sufficiently address the unavailability or deterioration of evidence from the original trial.¹⁸¹² It also argues that, contrary to Simatović’s submissions, it is not attempting to expand or amend its case on retrial.¹⁸¹³

581. The Appeals Chamber observes that sub-grounds C of Grounds 1 and 2 of the Prosecution’s appeal raise alleged errors of law resulting from the Decision of 2 February 2017 and its application in subsequent decisions denying the admission of evidence not presented in the original trial. These decisions concern, *inter alia*, trial management and the admission of evidence,¹⁸¹⁴ which are matters falling within a trial chamber’s discretion.¹⁸¹⁵ The Appeals Chamber recalls that it is well established that trial chambers enjoy broad discretion in various types of decisions for the purposes of fair and expeditious management of a trial, including in relation to the admission or presentation of evidence.¹⁸¹⁶ In reviewing such decisions, the Appeals Chamber accords deference to the trial

¹⁸⁰⁶ Simatović Response Brief, paras. 396, 460.

¹⁸⁰⁷ Simatović Response Brief, para. 391. In this regard, Simatović refers to his arguments developed under sub-ground 3 of Ground 4 of his appeal. *See* Simatović Response Brief, paras. 391, 394. *See also* Simatović Response Brief, paras. 392, 460.

¹⁸⁰⁸ Simatović Response Brief, para. 392.

¹⁸⁰⁹ Simatović Response Brief, para. 393.

¹⁸¹⁰ Simatović Response Brief, para. 394. *See also* Simatović Response Brief, para. 395.

¹⁸¹¹ Prosecution Reply to Stanišić Response, para. 73.

¹⁸¹² Prosecution Reply to Stanišić Response, para. 75.

¹⁸¹³ Prosecution Reply to Simatović Response, para. 74.

¹⁸¹⁴ *See* Decision of 2 February 2017, para. 14; Decision of 14 December 2018, para. 8. *See also, e.g.*, Decision of 1 May 2018, paras. 11, 12; Decision of 16 May 2018, p. 2; Decision of 26 September 2018, p. 2.

¹⁸¹⁵ *Mladić* Appeal Judgement, paras. 63, 70, 75 and references cited therein; *Karadžić* Appeal Judgement, paras. 177, 198 and references cited therein. *See also Kanyarukiga* Appeal Judgement, paras. 26, 52.

¹⁸¹⁶ *Mladić* Appeal Judgement, paras. 70, 75 and references cited therein; *Karadžić* Appeal Judgement, para. 304 and references cited therein. *See also Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-AR73.1, Decision on Interlocutory Appeal Against Second Decision Precluding the Prosecution from Adding General Wesley Clark to its 65th Witness List, 20 April 2007 (“*Milutinović et al.* Decision of 20 April 2007”), para. 8.

chamber, in recognition of its “organic familiarity with the day-to-day conduct of the parties and practical demands of the case”.¹⁸¹⁷ In order to successfully challenge a discretionary decision, a party must demonstrate that the trial chamber committed a discernible error resulting in prejudice to that party.¹⁸¹⁸ The Appeals Chamber will only reverse a trial chamber’s discretionary decision where it is found to be: (i) based on an incorrect interpretation of the governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) where it is so unfair or unreasonable as to constitute an abuse of the trial chamber’s discretion.¹⁸¹⁹

582. The Appeals Chamber first considers the Prosecution’s argument that the Decision of 2 February 2017 violated the ICTY Appeals Chamber’s order for a “full retrial” without any restrictions. The Appeals Chamber is not persuaded that the Decision of 2 February 2017, or subsequent decisions applying it, are inherently contrary to the ICTY Appeals Chamber’s order for a retrial on all counts of the Indictment. As noted by the Appeals Chamber when the Prosecution first sought to raise this matter before it, the Trial Chamber was conducting the retrial on all counts in the Indictment as ordered by the ICTY Appeals Chamber.¹⁸²⁰ The Appeals Chamber determined that the Prosecution’s appeal at that stage of the trial did not concern the Appeals Chamber’s inherent powers to enforce the order for a retrial but only “a limited aspect of the trial proceedings [...] concerning the admission of evidence”.¹⁸²¹ The Appeals Chamber continues to hold this view.

583. In addition, neither the Statute nor the Rules address the scope of evidence to be adduced in a retrial. In any retrial, the new trial chamber is vested with the discretion to determine the scope of the evidence to be admitted, subject to the Rules and jurisprudence concerning the admission of evidence, as well as any additional restrictions imposed by the Appeals Chamber.¹⁸²² While the case law reflects that the Prosecution may adduce evidence in a retrial that was not adduced in the original trial,¹⁸²³ the Appeals Chamber observes that appellate jurisprudence, particularly in the context of a retrial following an acquittal: (i) emphasizes that any potential for undue prejudice to a defendant should be addressed through the Appeals Chamber’s careful delineation of a retrial’s parameters and by the trial chamber’s continuing duty to apply fair trial principles;¹⁸²⁴ and (ii) directs the relevant

¹⁸¹⁷ See *Milutinović et al.* Decision of 20 April 2007, para. 8.

¹⁸¹⁸ *Mladić* Appeal Judgement, paras. 63, 107, n. 261 and references cited therein.

¹⁸¹⁹ *Mladić* Appeal Judgement, paras. 63, 107 and references cited therein.

¹⁸²⁰ Decision of 14 December 2018, para. 8.

¹⁸²¹ Decision of 14 December 2018, para. 8.

¹⁸²² *Haradinaj et al.* Decision of 31 May 2011, para. 23, citing *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-AR73, Decision on the Prosecutor’s Appeal Concerning the Scope of Evidence to be Adduced in the Retrial, 24 March 2009 (“*Muvunyi* Decision of 24 March 2009”), para. 13.

¹⁸²³ *Muvunyi* Decision of 24 March 2009, para. 13. See also *Haradinaj et al.* Decision of 31 May 2011, para. 24.

¹⁸²⁴ *Haradinaj et al.* Decision of 31 May 2011, para. 26.

trial chamber to be “particularly mindful of any potential prejudice that the admission of new evidence may cause to the fair trial rights of the Accused”.¹⁸²⁵

584. The Appeals Chamber observes that the Trial Chamber recalled these obligations in the Decision of 2 February 2017, after having detailed the significant length, scale, and complexity of the proceedings against Stanišić before the ICTY, the time Stanišić had already spent in detention, his health condition, and the implications of these factors on his right to be tried within a reasonable time.¹⁸²⁶ In particular, the Trial Chamber observed:

Specifically, nearly 14 years have passed since Stanišić’s arrest and initial transfer to the United Nations Detention Unit in The Hague on 11 June 2003, with the original pre-trial and trial proceedings lasting approximately 10 years and appeal proceedings lasting over two years. Stanišić has spent nearly five years in detention. A factor contributing to the length of the original proceedings was Stanišić’s history of chronic health conditions, which caused the adjournment of the original trial for over a year, followed by the adoption of a modified trial schedule. Stanišić’s chronic health conditions are also an issue in this retrial. In addition, the original trial was of significant scale, scope and complexity, with a trial record containing 4,843 exhibits and the testimony and/or written statements of 133 witnesses, the contents of which relate to wide areas of Croatia and Bosnia and Herzegovina over a four and a half year period, and pertain to multiple statutory crimes, numerous armed groups, and various high-ranking alleged members of a joint criminal enterprise. Considering that the ICTY Appeals Chamber ordered that Stanišić be retried on all counts of the Indictment, the Trial Chamber anticipates that the retrial would be of a similar scale, scope, and complexity as the original trial. The Trial Chamber is mindful that all these factors and the right to be tried within a reasonable time are equally applicable to Stanišić’s co-accused, Simatović.¹⁸²⁷

585. The Prosecution does not argue that the Trial Chamber erred in relying upon these factors in deciding to prospectively limit the admission of new evidence that had not been presented in the original trial. By simply arguing that a retrial is a trial *de novo* that necessarily allows for the presentation of new evidence, the Prosecution ignores the Trial Chamber’s justified concern that it was required to ensure a fair and expeditious trial under Article 18(1) of the Statute and that the period to be considered for undue delay continued to run through the period of the retrial.¹⁸²⁸ The Appeals Chamber finds that, in the particular circumstances of this case, the prospective limitations imposed by the Decision of 2 February 2017 did not violate the ICTY Appeals Chamber’s order for a retrial on all counts of the Indictment, and consequently do not amount to discernible error.

586. The Appeals Chamber considers that the particular length of the proceedings that preceded the retrial, the vast scope and complexity of the case to be retried, the health of Stanišić and Simatović, as well as the significant amount of new evidence that the Prosecution sought to introduce in the retrial reflect materially different circumstances than those in two prior cases where the Appeals

¹⁸²⁵ *Haradinaj et al.* Decision of 31 May 2011, para. 26.

¹⁸²⁶ Decision of 2 February 2017, paras. 19, 20.

¹⁸²⁷ Decision of 2 February 2017, para. 19 (internal citations omitted).

¹⁸²⁸ Decision of 2 February 2017, paras. 14, 21.

Chambers of the ICTY and the ICTR were called upon to consider limitations imposed on the Prosecution's ability to present evidence in retrials that was not adduced in the original trials.¹⁸²⁹ While the principles of law articulated in those cases are not diminished by these differences, it nevertheless must be recalled that the context of each retrial is "unique".¹⁸³⁰ The Prosecution's extensive reliance on these cases to demonstrate error, in the particular circumstances of this case, is unpersuasive.

587. The Appeals Chamber next turns to the Prosecution's contention that the Trial Chamber improperly constricted the Prosecution's choice of evidence to witnesses and exhibits adduced in the original proceedings. The Prosecution principally supports this argument with reference to Article 14 of the Statute, which vests the Prosecution with the responsibility to investigate and prosecute persons within the Mechanism's jurisdiction.¹⁸³¹ The Appeals Chamber recalls, however, that the true intent and extent of the independence accorded to the Prosecutor under this article is to ensure that no government or other institution or person, including the Judges of the Mechanism, can direct the Prosecutor as to whom he or she is to investigate or to charge; it is erroneous to suggest that this independence extends to the way in which its case is to be presented before a trial chamber.¹⁸³²

588. Regarding the Prosecution's additional references to Article 16 of the Statute (concerning the Prosecutor's power to investigate and prepare indictments) and Rules 70(E)(ii) and (iii), and 102 of the Rules (governing the filing of witness and exhibit lists and the order of the presentation of evidence), the Appeals Chamber considers that these provisions do not imbue the Prosecution with the sole authority to have admitted in trial any evidence it deems relevant to its case. These articles and rules do not support the Prosecution's submissions that the Trial Chamber committed discernible error in the Decision of 2 February 2017 or its subsequent application. Similarly, while it is for the Prosecution to select its witnesses in the first instance, the Prosecution fails to demonstrate how the jurisprudence it relies upon pertaining to "matters of trial strategy", the development and pursuit of litigation strategies, or the ability of trial chambers under the Rules to limit the total number of witnesses a party may call or the time available to present its case demonstrates discernible error in the Decision of 2 February 2017 or its subsequent application.¹⁸³³ The Appeals Chamber dismisses these contentions.

¹⁸²⁹ See *Haradinaj et al.* Decision of 31 May 2011, paras. 2, 5; *Muvunyi* Decision of 24 March 2009, paras. 2, 3, 18.

¹⁸³⁰ See *Haradinaj et al.* Decision of 31 May 2011, para. 26.

¹⁸³¹ See also Rule 35 of the Rules (setting forth the functions of the Prosecutor as delineated in Article 14 of the Statute).

¹⁸³² See, *mutatis mutandis*, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case, 6 February 2007, para. 20.

¹⁸³³ See Prosecution Appeal Brief, para. 157, referring to, *inter alia*, *Bikindi* Appeal Judgement, paras. 10, 22, 44, *Nchamihigo* Appeal Judgement, para. 5, *Rutaganda* Appeal Judgement, paras. 7, 241, 242, *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, para. 7.

589. The Appeals Chamber also finds unpersuasive the Prosecution’s contention that it was erroneous for the Trial Chamber to conclude that allowing new evidence “would inevitably prolong the proceedings”. In particular, the Prosecution fails to undermine the reasonableness of the Trial Chamber’s concerns about delay related to Defence investigations into new evidence not presented in the original trial in view of the considerable amount of new evidence – which, by its own account, included 24 new witnesses – that it intended to lead in the retrial as reflected in its pre-trial submissions.¹⁸³⁴ Furthermore, while the Prosecution raises concerns and strategic considerations as to why it may wish to present new evidence as opposed to retendering evidence from the original trial, it does not argue, much less substantiate, that these concerns were realized or that its trial strategies were hampered in the retrial. Accordingly, these contentions are dismissed.

590. The Appeals Chamber next considers the Prosecution’s contention that the Decision of 2 February 2017 and its subsequent application prevented the Trial Chamber from genuinely assessing and determining the admissibility of the evidence in accordance with the Rules,¹⁸³⁵ and, in particular, led the Trial Chamber to exclude evidence which it conceded “appeared relevant”. The Appeals Chamber recalls that Rule 105(C) of the Rules provides that a trial chamber may admit any relevant evidence which it deems to have probative value, while Rule 105(D) of the Rules provides that a trial chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. As is evident from a plain reading of these two rules, any determination that prospective evidence appears to be relevant does not require the trial chamber to admit it.

591. The Appeals Chamber finds that the Prosecution’s general references to decisions the Trial Chamber took in declining to admit evidence that was not presented in the original trial, even though it conceded such evidence “appeared relevant”, do not demonstrate discernible error. Indeed, while the Decision of 2 February 2017 was not *per se* a decision as to the admissibility of evidence, it provided a road map on how the Trial Chamber intended to exercise its broad discretion under the Rules in relation to admission of Prosecution evidence not presented in the original trial in view of the specific circumstances of this case – *i.e.* Stanišić’s and Simatović’s right to be tried without undue delay as enshrined in Article 19(4)(c) of the Statute and the “high risk” that the presentation of new evidence by the Prosecution may result in “undue prejudice to the Accused”.¹⁸³⁶ Indeed, the Prosecution concedes that the Trial Chamber admitted new evidence that did not comply with the restrictions set forth in the Decision of 2 February 2017, reflecting the Trial Chamber’s continuing exercise of its discretion to admit evidence under the Rules on a case-by-case basis.¹⁸³⁷ Viewed in

¹⁸³⁴ See Prosecution Appeal Brief, para. 154, n. 369.

¹⁸³⁵ Prosecution Appeal Brief, paras. 164, 166.

¹⁸³⁶ Decision of 2 February 2017, para. 21.

¹⁸³⁷ See Prosecution Appeal Brief, n. 366. *Cf.* Trial Judgement, para. 10.

this context, and by simply listing instances where prospective evidence was not admitted or limited in light of the Decision of 2 February 2017, the Prosecution fails to demonstrate that the Trial Chamber exceeded the bounds of its discretion as set forth in the Rules.¹⁸³⁸ These contentions are therefore dismissed.

592. In light of the foregoing, the Appeals Chamber finds that the Prosecution has not demonstrated discernible error in the Decision of 2 February 2017 or its application in preventing or limiting the presentation of evidence in the retrial that was not presented in the original trial. Moreover, the Appeals Chamber recalls that the Prosecution bears the burden on appeal of demonstrating that the Trial Chamber committed a discernible error resulting in prejudice to it.¹⁸³⁹ However, the Prosecution simply lists prospective evidence that was not admitted or limited in light of the application of the Decision of 2 February 2017.¹⁸⁴⁰ It does not specify – with references to this prospective evidence and to the Trial Judgement – how this undermined “its ability to prove its case” resulting in prejudice to it.¹⁸⁴¹ Consequently, the Prosecution has not met its burden in connection with sub-grounds C of Grounds 1 and 2 of its appeal and its request for declaratory relief is denied.

593. Based on the foregoing, the Appeals Chamber dismisses sub-grounds C of Grounds 1 and 2 of the Prosecution’s appeal.

D. Alleged Errors Regarding Aiding and Abetting (Ground 2)

594. The Trial Chamber found that Stanišić and Simatović may not be held responsible for the crimes alleged in the Indictment based on committing through participation in a joint criminal enterprise.¹⁸⁴² The Trial Chamber then examined whether they could be held responsible pursuant to one of the alternative modes of liability pleaded in the Indictment.¹⁸⁴³ Subsequently, the Trial Chamber referred to the Prosecution’s allegations in the Indictment and its final trial brief that Stanišić’s and Simatović’s contributions to the joint criminal enterprise also amount to acts of aiding and abetting.¹⁸⁴⁴ The Trial Chamber set out the law applicable to aiding and abetting liability¹⁸⁴⁵ and concluded that it was proven beyond reasonable doubt that Stanišić and Simatović aided and abetted

¹⁸³⁸ See also Rule 105(B) of the Rules (“In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law”).

¹⁸³⁹ See *supra* para. 581.

¹⁸⁴⁰ See Prosecution Appeal Brief, paras. 154, 155, nn. 369-374.

¹⁸⁴¹ See Prosecution Appeal Brief, paras. 153-155.

¹⁸⁴² Trial Judgement, paras. 597, 598.

¹⁸⁴³ Trial Judgement, para. 598. See also Trial Judgement, paras. 604-608.

¹⁸⁴⁴ Trial Judgement, paras. 599, 600.

¹⁸⁴⁵ See Trial Judgement, paras. 601-603.

the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces in Bosanski Šamac.¹⁸⁴⁶ However, the Trial Chamber found that the Prosecution had not proven beyond reasonable doubt that Stanišić and Simatović were responsible for, *inter alia*, aiding and abetting any other crime charged in the Indictment.¹⁸⁴⁷

595. The Prosecution argues that, should the Appeals Chamber not find Stanišić and Simatović guilty as members of the joint criminal enterprise in relation to crimes under Ground 1 of its appeal, it should find them guilty of aiding and abetting to the extent those crimes are included under Ground 2 of its appeal.¹⁸⁴⁸ The Appeals Chamber, in connection with Ground 1 of the Prosecution's appeal, has determined that Stanišić and Simatović bear responsibility as members of the joint criminal enterprise in relation to crimes committed in, *inter alia*, Doboj and Sanski Most. Consequently, the Prosecution's submissions that Stanišić and Simatović should be held liable for aiding and abetting those crimes in Doboj and Sanski Most as advanced in sub-grounds A, in part, B(iii), in part, and B(iv) of Ground 2 of its appeal are now moot and will not be considered further.

596. In this context, the Prosecution maintains that the Trial Chamber, having determined that Stanišić and Simatović were not responsible for committing crimes in SAO Krajina and SAO SBWS as joint criminal enterprise members, erred in failing to convict them for aiding and abetting those crimes.¹⁸⁴⁹ Specifically, it argues that the Trial Chamber erred by failing to: (i) adjudicate and/or provide a reasoned opinion on whether Stanišić and Simatović aided and abetted crimes in SAO Krajina and SAO SBWS;¹⁸⁵⁰ and (ii) hold them responsible for aiding and abetting crimes in SAO Krajina and SAO SBWS.¹⁸⁵¹ The Prosecution requests that the Appeals Chamber find Stanišić and Simatović guilty under Counts 1 to 5 of the Indictment for aiding and abetting crimes committed in SAO Krajina and SAO SBWS and increase their sentences accordingly.¹⁸⁵²

1. Alleged Failure to Adjudicate or Provide a Reasoned Opinion on Whether Stanišić and Simatović Aided and Abetted Crimes in SAO Krajina and SAO SBWS (sub-ground A)

597. As noted above, the Trial Chamber found Stanišić and Simatović responsible for aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb

¹⁸⁴⁶ See Trial Judgement, paras. 604-608.

¹⁸⁴⁷ Trial Judgement, para. 608.

¹⁸⁴⁸ Prosecution Appeal Brief, paras. 14, 222; T. 25 January 2023 pp. 3, 22, 23, 25, 26.

¹⁸⁴⁹ See Prosecution Notice of Appeal, paras. 16-21; Prosecution Appeal Brief, paras. 168-209, 218, 219.

¹⁸⁵⁰ See Prosecution Notice of Appeal, para. 18; Prosecution Appeal Brief, paras. 169-176; T. 25 January pp. 22, 23.

¹⁸⁵¹ See Prosecution Notice of Appeal, para. 19; Prosecution Appeal Brief, paras. 177-209, 218, 219; T. 25 January pp. 22, 23. Sub-ground C of Ground 2 of the Prosecution appeal has been dismissed. See *supra* Section VI.C.

¹⁸⁵² See Prosecution Notice of Appeal, para. 21; Prosecution Appeal Brief, paras. 175, 176, 218-222.

forces in connection with the takeover of Bosanski Šamac.¹⁸⁵³ With regard to their liability for the remaining crimes charged against Stanišić and Simatović, the Trial Chamber concluded that the Prosecution had not proven beyond reasonable doubt that Stanišić and Simatović were “responsible for planning, ordering, or aiding and abetting any other crime charged in the Indictment”.¹⁸⁵⁴

598. The Prosecution submits that the Trial Chamber erred in law by failing to adjudicate or, alternatively, provide a reasoned opinion on whether Stanišić and Simatović aided and abetted crimes in SAO Krajina and SAO SBWS.¹⁸⁵⁵ It contends that the Trial Chamber addressed Stanišić’s and Simatović’s liability for aiding and abetting crimes in locations other than Bosanski Šamac in a single sentence, which, it argues, falls short of what is required for adjudication, or alternatively, a reasoned opinion.¹⁸⁵⁶ Furthermore, the Prosecution asserts that, since the timing of a contribution is not a relevant factor for aiding and abetting liability, had the Trial Chamber properly analyzed Stanišić’s and Simatović’s contributions to the crimes in SAO Krajina and SAO SBWS, including conduct prior to the formation of the common criminal purpose, it would have found that they: (i) substantially contributed to the crimes of deportation, forcible transfer, persecution, and murder in those locations; and (ii) were aware of the probability that these crimes would occur and that their conduct would assist in their commission.¹⁸⁵⁷ The Prosecution requests that the Appeals Chamber correct the Trial Chamber’s errors by finding that Stanišić and Simatović substantially contributed to the aforementioned crimes, and that they did so with the requisite *mens rea* for aiding and abetting liability.¹⁸⁵⁸

599. Stanišić responds, *inter alia*, that the Trial Chamber’s approach was reasonable, as the Prosecution failed to plead and provide notice of any specific aiding and abetting charges, claiming instead that all of the alleged contributions to the joint criminal enterprise should double as acts of assistance to aiding and abetting charges not otherwise defined.¹⁸⁵⁹ Simatović responds, *inter alia*, that the Prosecution’s arguments are unfounded, that the Trial Chamber carefully and thoroughly analyzed his possible contributions to crimes, and that there is no reason for the Appeals Chamber to intervene.¹⁸⁶⁰

¹⁸⁵³ See Trial Judgement, paras. 604-608.

¹⁸⁵⁴ Trial Judgement, para. 608.

¹⁸⁵⁵ See Prosecution Notice of Appeal, para. 18; Prosecution Appeal Brief, paras. 169-176; T. 25 January 2023 pp. 22, 23.

¹⁸⁵⁶ See Prosecution Appeal Brief, paras. 169-172. The Prosecution also argues that there is no indication that the Trial Chamber “ever turned its mind” to any alternative modes of liability for crimes other than those committed in Bosanski Šamac. See T. 25 January 2023 pp. 22, 82.

¹⁸⁵⁷ Prosecution Appeal Brief, paras. 173, 174.

¹⁸⁵⁸ Prosecution Appeal Brief, para. 175. See also Prosecution Appeal Brief, para. 218.

¹⁸⁵⁹ See Stanišić Response Brief, paras. 382-413. See also T. 25 January 2023 pp. 31, 33, 34.

¹⁸⁶⁰ See Simatović Response Brief, paras. 398-402, 405; T. 25 January 2023 p. 58.

600. The Prosecution replies that Stanišić has been on notice since the ICTY case and throughout the retrial that he was charged with aiding and abetting.¹⁸⁶¹ It further argues that it met all requirements for pleading aiding and abetting.¹⁸⁶² The Prosecution replies that Simatović fails to show that the Trial Chamber carefully and thoroughly analyzed whether a conviction could be entered for aiding and abetting the crimes in SAO Krajina and SAO SBWS.¹⁸⁶³

601. As noted above, the Trial Chamber concluded that the Prosecution had not proven beyond reasonable doubt that Stanišić and Simatović were “responsible for planning, ordering, or aiding and abetting any [...] crime charged in the Indictment” other than those committed in Bosanski Šamac.¹⁸⁶⁴ Consequently, there is no merit in the Prosecution’s contention that the Trial Chamber failed to adjudicate whether Stanišić and Simatović aided and abetted crimes in SAO Krajina and SAO SBWS. This contention is dismissed.

602. In considering the Prosecution’s alternative argument that the Trial Chamber erred in its obligation to provide a reasoned opinion, the Appeals Chamber recalls that trial chambers are required to provide a reasoned opinion to ensure that adjudications are fair, allow for a meaningful exercise of the right of appeal by the parties, and enable the Appeals Chamber to understand and review the findings.¹⁸⁶⁵ Nevertheless, a trial chamber need not articulate every step of its reasoning.¹⁸⁶⁶ The Appeals Chamber is further guided by the principle that a trial judgement should be read as a whole.¹⁸⁶⁷

603. Bearing this in mind, the Appeals Chamber observes that, with respect to alleged contributions made by Stanišić and Simatović following the existence of the joint criminal enterprise, the Trial Chamber expressly found throughout the Trial Judgement that the Prosecution had failed to prove beyond reasonable doubt that Stanišić and Simatović contributed to the furtherance of the common criminal purpose in connection with SAO Krajina and SAO SBWS.¹⁸⁶⁸ It likewise considered the implication of Stanišić’s and Simatović’s role in the formation of the Unit and their alleged contributions to ensuing crimes.¹⁸⁶⁹ Since joint criminal enterprise liability is predicated on an accused’s “significant contribution” to crimes for which he or she may be convicted, which is a

¹⁸⁶¹ Prosecution Reply to Stanišić Response, para. 78.

¹⁸⁶² See Prosecution Reply to Stanišić Response, paras. 79, 80.

¹⁸⁶³ Prosecution Reply to Simatović Response, para. 76.

¹⁸⁶⁴ Trial Judgement, para. 608.

¹⁸⁶⁵ See Article 21(2) of the Statute; Rule 122(C) of the Rules; *Mladić* Appeal Judgement, para. 437 and references cited therein.

¹⁸⁶⁶ *Mladić* Appeal Judgement, paras. 339, 423 and references cited therein.

¹⁸⁶⁷ *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

¹⁸⁶⁸ See, e.g., Trial Judgement, paras. 505, 537, 591.

¹⁸⁶⁹ See, e.g., Trial Judgement, paras. 388, 409, 419, 424, 435, 436, 605.

lower standard than the “substantial contribution” required for aiding and abetting liability,¹⁸⁷⁰ these findings necessarily precluded the Trial Chamber from convicting Stanišić and Simatović of aiding and abetting on the basis of the same conduct. These contentions are dismissed.

604. As to the Prosecution’s argument that the Trial Chamber failed to provide a reasoned opinion with respect to assessing Stanišić’s and Simatović’s aiding and abetting liability based on contributions that pre-dated the formation of the common criminal purpose, the Appeals Chamber observes that the Prosecution, in certain instances,¹⁸⁷¹ refers to alleged contributions through weapons distributions in SAO SBWS that were not established beyond reasonable doubt.¹⁸⁷² The Prosecution fails to demonstrate how this could provide a basis for convicting Stanišić and Simatović for any form of liability. These arguments are dismissed.

605. Turning to other potential contributions that pre-dated the existence of the joint criminal enterprise, the Appeals Chamber notes that the Prosecution refers to the Trial Chamber’s findings concerning Stanišić’s and Simatović’s contributions in relation to: (i) the training of members of the SAO Krajina police, the SAO Krajina Territorial Defence, and other volunteers at the Golubić camp until around the end of July 1991 through the use of State Security Service affiliated trainers; and (ii) providing the SAO Krajina police with weapons, communication equipment, and some limited technical assistance in late 1990 and early 1991, as well as financial support between late 1990 and the first half of 1991.¹⁸⁷³ The Trial Chamber stated that these contributions were made prior to the existence of the common criminal plan and, therefore, do not constitute contributions to the furtherance of it.¹⁸⁷⁴

606. While the Trial Chamber did not discuss how this conduct did not also satisfy the *actus reus* requirement for aiding and abetting any ensuing crimes committed by the groups or persons they assisted, it expressly addressed Stanišić’s and Simatović’s *mens rea* with respect to this conduct. The Trial Chamber noted Stanišić’s and Simatović’s actions supporting the SAO Krajina police in late 1990 and the first half of 1991, their “unfettered access to intelligence information”, and their undoubted awareness of the sentiment of local leaders for Serbs in SAO Krajina and to defend Serbian land.¹⁸⁷⁵ It considered, however, that it was not until Milan Martić’s ultimatum prior to the attack on

¹⁸⁷⁰ See *Ndahimana* Appeal Judgement, n. 526; *Gotovina and Markač* Appeal Judgement, para. 149. See also *Kvočka et al.* Appeal Judgement, para. 97; *Tadić* Appeal Judgement, para. 229.

¹⁸⁷¹ See Prosecution Appeal Brief, para. 173, n. 407, *referring to, inter alia*, Trial Judgement, paras. 536, 537.

¹⁸⁷² See *infra* paras. 641, 642.

¹⁸⁷³ See Trial Judgement, paras. 495, 504, 505. See also Trial Judgement, para. 488 (finding that the evidence is insufficient to conclude that Simatović exercised any degree of authority over Milan Martić).

¹⁸⁷⁴ See Trial Judgement, paras. 403, 409, 435, 505. See also Trial Judgement, para. 579.

¹⁸⁷⁵ Trial Judgement, para. 578.

the village of Kijevo in August 1991 and the subsequent destruction of the village and expulsion of its Croat population that his intent to achieve his goals through the commission of crimes unequivocally manifested.¹⁸⁷⁶ In the Trial Chamber's view:

[a]ny assistance provided by [Stanišić and Simatović] to Martić and the Milicija Krajina up to this point, could have reasonably been provided with the intent to assist the Krajina Serbs' efforts in setting up structures to ensure their security in a rapidly escalating situation of fear and general uncertainty, and in the context of their political strive for independence from Croatia.¹⁸⁷⁷

The Appeals Chamber finds that this analysis explains why the Trial Chamber also did not convict Stanišić or Simatović of aiding and abetting on the basis of this conduct. Specifically, the *mens rea* element of aiding and abetting liability requires, *inter alia*, that the aider and abettor knew that his acts or omissions assisted the commission of the specific crime by the principal perpetrator, and that the aider and abettor was aware of the essential elements of the crime which was ultimately committed, including the intent of the principal perpetrator.¹⁸⁷⁸ The Trial Chamber's findings above demonstrate that this *mens rea* element was not established with respect to any of Stanišić's and Simatović's actions in SAO Krajina in 1990 and the first half of 1991.

607. Indeed, the Trial Chamber's conclusion that Stanišić and Simatović possessed the *mens rea* for aiding and abetting the crimes in Bosanski Šamac is predicated on, *inter alia*, Stanišić's and Simatović's knowledge of the "campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina and the shared intent of the members of the joint criminal enterprise" that came into existence from at least August 1991.¹⁸⁷⁹ However, this knowledge did not exist in relation to the contributions Stanišić and Simatović were found to have made between late 1990 and the first half of 1991. The Appeals Chamber considers that this reasoning necessarily precludes the finding that either possessed the *mens rea* for aiding and abetting at that time.

608. Based on the foregoing, the Prosecution has not demonstrated that the Trial Chamber erred in law in failing to adjudicate or, alternatively, provide a reasoned opinion on whether Stanišić and Simatović aided and abetted crimes in SAO Krajina and SAO SBWS. Consequently, the Appeals Chamber dismisses sub-ground A of Ground 2 of the Prosecution's appeal.

¹⁸⁷⁶ Trial Judgement, para. 578.

¹⁸⁷⁷ Trial Judgement, para. 578.

¹⁸⁷⁸ See *Popović et al.* Appeal Judgement, para. 1732; *Šainović et al.* Appeal Judgement, para. 1772.

¹⁸⁷⁹ See Trial Judgement, paras. 597, 607. See also Trial Judgement, para. 594.

2. Alleged Failure to Find that Stanišić and Simatović Aided and Abetted Crimes in SAO Krajina and SAO SBWS (sub-ground B)

609. As noted above, the Trial Chamber found that Stanišić and Simatović aided and abetted the crimes committed by Serb forces in Bosanski Šamac.¹⁸⁸⁰ However, the Trial Chamber concluded that the Prosecution had not proven beyond reasonable doubt that they could be held responsible for, *inter alia*, aiding and abetting any other crime charged in the Indictment.¹⁸⁸¹

610. The Prosecution argues that, on the basis of the Trial Chamber's own findings and the evidence on the record, no reasonable trial chamber could have found that Stanišić and Simatović were only responsible for aiding and abetting crimes in Bosanski Šamac.¹⁸⁸² According to the Prosecution, the Trial Chamber erred by failing to find that Stanišić and Simatović aided and abetted crimes committed in: (i) SAO Krajina by Serb forces, including Unit members and the SAO Krajina police and Territorial Defence, from 26 August 1991 until at least December 1991;¹⁸⁸³ (ii) SAO SBWS, by the SAO SBWS police and Territorial Defence, between May 1991 and late 1991/early 1992;¹⁸⁸⁴ and (iii) Bilje in early September 1991 and Western Srem in early October 1991.¹⁸⁸⁵ The Appeals Chamber will address these submissions in turn.

(a) Alleged Failure to Find that Stanišić and Simatović Aided and Abetted Crimes Committed by Unit Members and the SAO Krajina Police and Territorial Defence in SAO Krajina (sub-ground B(i))

611. The Trial Chamber found that, starting with the attack on the Croat village of Kijevo on 26 August 1991 and continuing at least until December 1991, Serb forces, including members of the JNA, the SAO Krajina police, and Territorial Defence, launched a series of attacks on Croat villages on the territory of SAO Krajina, in the course of which they committed various crimes and acts of violence against non-Serb civilians.¹⁸⁸⁶ It further found that these crimes and acts of violence targeted almost exclusively non-Serb civilians, forcing them to leave the area.¹⁸⁸⁷ The Trial Chamber found that the crimes committed in SAO Krajina amounted to murder, deportation, inhumane acts (forcible transfer), and persecution.¹⁸⁸⁸

¹⁸⁸⁰ Trial Judgement, paras. 604-608.

¹⁸⁸¹ Trial Judgement, para. 608.

¹⁸⁸² See Prosecution Notice of Appeal, paras. 16, 19; Prosecution Appeal Brief, paras. 177-217; T. 25 January 2023 pp. 3, 22, 82.

¹⁸⁸³ See Prosecution Appeal Brief, paras. 178-187.

¹⁸⁸⁴ See Prosecution Appeal Brief, paras. 188-200.

¹⁸⁸⁵ See Prosecution Appeal Brief, paras. 201-209.

¹⁸⁸⁶ Trial Judgement, para. 102.

¹⁸⁸⁷ Trial Judgement, para. 102.

¹⁸⁸⁸ See Trial Judgement, paras. 299, 302, 311, 316-318, 322-325.

612. Concerning Stanišić's and Simatović's roles in this context, the Trial Chamber found that they were involved in the provision of weapons and financial assistance to the SAO Krajina police, as well as in the delivery of communication equipment and some limited technical support, between late 1990 and the first half of 1991.¹⁸⁸⁹ It further found that Stanišić and Simatović contributed to the training of members of the SAO Krajina police, Territorial Defence, and other volunteers at the Golubić camp between May and the end of July 1991, including through the provision of State Security Service affiliated instructors.¹⁸⁹⁰ Notwithstanding, the Trial Chamber considered that, since the joint criminal enterprise did not come into existence until at least August 1991, none of this conduct constituted a contribution by Stanišić or Simatović to the furtherance of the common criminal purpose.¹⁸⁹¹

613. Furthermore, in assessing Stanišić's and Simatović's *mens rea* in relation to the joint criminal enterprise, the Trial Chamber considered that the support provided to Milan Martić¹⁸⁹² and the SAO Krajina forces, prior to the formation of the common criminal purpose, was not conclusive of their shared intent to further the common criminal purpose of the joint criminal enterprise, once the latter came into existence.¹⁸⁹³ In its view, while this remained a possible inference, it was not the only reasonable inference from the evidence.¹⁸⁹⁴

614. The Trial Chamber did not find proven beyond reasonable doubt that Stanišić and Simatović contributed to the joint criminal enterprise or were responsible for aiding and abetting crimes committed in SAO Krajina.¹⁸⁹⁵

615. The Prosecution submits that no reasonable trial chamber could have failed to find that Stanišić and Simatović aided and abetted the crimes committed in SAO Krajina by facilitating the training of future Unit members as well as the SAO Krajina police and Territorial Defence at the Golubić camp, and by arming and equipping Milan Martić and the SAO Krajina police.¹⁸⁹⁶ Regarding the *actus reus*, it argues that, based on the Trial Chamber's findings, Stanišić and Simatović substantially contributed to the crimes committed by Unit members and the SAO Krajina police and Territorial Defence, by providing Milan Martić and the SAO Krajina police with weapons,

¹⁸⁸⁹ Trial Judgement, paras. 491, 498, 504, 505. *See also* Trial Judgement, paras. 494, 495, 499-501.

¹⁸⁹⁰ Trial Judgement, paras. 396, 397, 403, 409, 435. *See also* Trial Judgement, para. 482.

¹⁸⁹¹ *See* Trial Judgement, paras. 397, 403, 435, 505.

¹⁸⁹² According to the Trial Judgement, Milan Martić served as the Minister of Defence and subsequently the Minister of the Interior in SAO Krajina from 27 June 1991 until early 1994, when he was elected President of the Republic of Serbian Krajina. *See* Trial Judgement, paras. 478, 481.

¹⁸⁹³ Trial Judgement, para. 579.

¹⁸⁹⁴ *See* Trial Judgement, paras. 578, 579.

¹⁸⁹⁵ Trial Judgement, paras. 397, 403, 505, 597, 598, 608.

¹⁸⁹⁶ *See* Prosecution Notice of Appeal, paras. 16, 19; Prosecution Appeal Brief, paras. 178-187.

communication equipment, technical assistance and financial support, and by contributing to the training of “several hundred members” of the SAO Krajina police and Territorial Defence and other volunteers.¹⁸⁹⁷ The Prosecution further notes that the Trial Chamber recognized the link between the assistance that Stanišić and Simatović provided and the ensuing crimes, including Golubić trainees participating in crimes in SAO Krajina and providing weapons which were used in SAO Krajina operations in the second half of 1991.¹⁸⁹⁸

616. The Prosecution further argues that Stanišić and Simatović possessed the *mens rea* to aid and abet the crimes committed in SAO Krajina.¹⁸⁹⁹ It submits that, according to the evidence and Trial Chamber findings, Stanišić and Simatović made the aforementioned contributions with awareness of the probability that SAO Krajina forces would commit murder, persecution, and forcible displacement, and that their acts would assist in the commission of those crimes.¹⁹⁰⁰ The Prosecution points to the Trial Chamber’s findings that, *inter alia*, during the Indictment period, commencing in April 1991, Stanišić and Simatović were aware of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina, including Milan Martić’s intent to achieve his goals through the commission of crimes, which it argues manifested prior to August 1991.¹⁹⁰¹

617. Stanišić responds that the Prosecution fails to demonstrate how his conduct substantially contributed to or was linked to any crime committed in SAO Krajina.¹⁹⁰² With regard to *mens rea*, Stanišić submits that the Prosecution’s arguments are based on an erroneous interpretation of the Trial Judgement, the jurisprudence, and the evidence.¹⁹⁰³ He contends, *inter alia*, that the totality of the assistance the Prosecution relies on occurred prior to August 1991 and that it has ignored a critical Trial Chamber finding that Milan Martić did not manifest his criminal intent until after Stanišić was found to have assisted him.¹⁹⁰⁴

618. Simatović responds, *inter alia*, that all conclusions regarding armaments are unfounded as are allegations regarding his role in the training at Golubić or the financing of the SAO Krajina police.¹⁹⁰⁵ As to his *mens rea*, Simatović submits that the Prosecution’s submissions of his awareness that SAO

¹⁸⁹⁷ Prosecution Appeal Brief, para. 179.

¹⁸⁹⁸ Prosecution Appeal Brief, para. 181.

¹⁸⁹⁹ Prosecution Appeal Brief, paras. 182-187.

¹⁹⁰⁰ See Prosecution Appeal Brief, paras. 182, 187. See also Prosecution Reply to Stanišić Response, para. 82; Prosecution Reply to Simatović Response, para. 81.

¹⁹⁰¹ See Prosecution Appeal Brief, paras. 183, 184, 186, 187. See also Prosecution Appeal Brief, para. 185; Prosecution Reply to Stanišić Response, para. 83; Prosecution Reply to Simatović Response, para. 81.

¹⁹⁰² See Stanišić Response Brief, paras. 416-424; T. 25 January 2023 p. 36.

¹⁹⁰³ See Stanišić Response Brief, paras. 425-430; T. 25 January 2023 p. 36.

¹⁹⁰⁴ Stanišić Response Brief, paras. 426, 427; T. 25 January 2023 p. 36. See also Stanišić Response Brief, para. 428.

¹⁹⁰⁵ See Simatović Response Brief, paras. 409-412. See also T. 25 January 2023 p. 58.

Krajina police would commit crimes are without basis.¹⁹⁰⁶ He further contends that the Prosecution's claim that he must have been aware of the campaign of forcible displacement in Croatia and Bosnia and Herzegovina is untenable, given the Trial Chamber's findings that there were no examples of forcible displacement until after mid-1991.¹⁹⁰⁷

619. The Prosecution replies, *inter alia*, that Stanišić fails to demonstrate that it used an erroneous *mens rea* standard, and it reiterates that he was aware of the probability that perpetrators would commit crimes in SAO Krajina.¹⁹⁰⁸ The Prosecution further replies, *inter alia*, that Simatović's submissions challenging the armament and financing of SAO Krajina police as well as the training at Golubić do not undermine its submissions that he substantially contributed to the crimes in SAO Krajina.¹⁹⁰⁹

620. The Appeals Chamber recalls that the *actus reus* of aiding and abetting consists of practical assistance, encouragement, or moral support, which has a substantial effect on the perpetration of the crime.¹⁹¹⁰ The Appeals Chamber observes that the Prosecution's submissions regarding Stanišić's and Simatović's substantial contributions to crimes in SAO Krajina are based primarily on findings made in the Trial Judgement.¹⁹¹¹ As set out above, the Trial Chamber found that Stanišić and Simatović were involved in the provision of weapons and financial assistance to the SAO Krajina police, as well as in the delivery of communication equipment and some limited technical support, between late 1990 and the first half of 1991.¹⁹¹² It further found that Stanišić and Simatović contributed to the training of SAO Krajina forces at the Golubić camp between May and the end of July 1991.¹⁹¹³ According to the Trial Chamber, starting with the attack on the Croat village of Kijevo on 26 August 1991 and continuing at least until December 1991, Serb forces, including members of the JNA, the SAO Krajina police, and the Territorial Defence, launched a series of attacks on Croat villages on the territory of SAO Krajina, in the course of which they committed various crimes and acts of violence against non-Serb civilians,¹⁹¹⁴ which forced them to leave the area.¹⁹¹⁵ The Trial Chamber considered evidence that trainees from Golubić camp took part in the attacks on the village

¹⁹⁰⁶ Simatović Response Brief, para. 414.

¹⁹⁰⁷ See Simatović Response Brief, paras. 415-417.

¹⁹⁰⁸ See Prosecution Reply to Stanišić Response, paras. 81-83.

¹⁹⁰⁹ See Prosecution Reply to Simatović Response, paras. 77-81.

¹⁹¹⁰ *Šešelj* Appeal Judgement, n. 594; *Nyiramasuhuko et al.* Appeal Judgement, para. 3343; *Stanišić and Simatović* ICTY Appeal Judgement, para. 104; *Popović et al.* Appeal Judgement, para. 1758; *Šainović et al.* Appeal Judgement, para. 1649.

¹⁹¹¹ See Prosecution Appeal Brief, paras. 179-181, *referring to, inter alia*, Trial Judgement, paras. 31, 32, 58-66, 81-82, 388, 396, 397, 399, 400, 405, 409, 435, 491, 494, 495, 498, 501, 505.

¹⁹¹² Trial Judgement, paras. 491, 498, 504, 505. See also Trial Judgement, paras. 494, 495, 499-501.

¹⁹¹³ Trial Judgement, paras. 396, 397, 403, 409, 435. See also Trial Judgement, para. 482.

¹⁹¹⁴ Trial Judgement, para. 102.

¹⁹¹⁵ Trial Judgement, para. 102. See also Trial Judgement, paras. 299, 302, 311, 316-318, 322-325.

of Kijevo on 26 August 1991,¹⁹¹⁶ on Škabrnja on 18 and 19 November 1991,¹⁹¹⁷ and on the village of Saborsko, between August and November 1991.¹⁹¹⁸ It also noted the evidence of Witness RFJ-066, which the Trial Chamber considered with caution,¹⁹¹⁹ that Simatović delivered weapons that were used by Serb forces in SAO Krajina during the fighting in the summer and fall of 1991.¹⁹²⁰

621. The Appeals Chamber observes that the Trial Chamber did not expressly examine or make findings as to whether Stanišić's and Simatović's aforementioned conduct in relation to SAO Krajina, which occurred prior to the existence of the joint criminal enterprise in August 1991, contributed substantially to the ensuing crimes charged in the Indictment when finding that neither could be convicted for, *inter alia*, aiding and abetting the crimes.¹⁹²¹ Notwithstanding, and mindful that a trial judgement should be read as a whole,¹⁹²² the Trial Chamber explicitly considered Stanišić's and Simatović's involvement in the provision of weapons, financial support, and communication equipment, as well as their assistance in training SAO Krajina forces at Golubić when assessing their *mens rea vis-à-vis* the joint criminal enterprise.¹⁹²³ In this respect, however, the Trial Chamber determined that it was not until Milan Martić's ultimatum prior to the attack on the village of Kijevo in August 1991 and the subsequent destruction of the village and the expulsion of its Croat population that his intent to achieve his goals through the commission of crimes unequivocally manifested.¹⁹²⁴ Consequently, the Trial Chamber concluded that any assistance provided by Stanišić and Simatović to Milan Martić and the SAO Krajina forces up to August 1991 "could have reasonably been provided with the intent to assist the Krajina Serbs' efforts in setting up structures to ensure their security in a rapidly escalating situation of fear and general uncertainty, and in the context of their political strive for independence from Croatia".¹⁹²⁵ This conclusion necessarily reflects that neither possessed the requisite *mens rea* for aiding and abetting – which requires that Stanišić and Simatović would have had to provide assistance in 1990 and up to mid-1991 with the knowledge that their acts assisted the

¹⁹¹⁶ Trial Judgement, para. 31.

¹⁹¹⁷ Trial Judgement, para. 81.

¹⁹¹⁸ Trial Judgement, para. 58.

¹⁹¹⁹ See Trial Judgement, paras. 16, 494, 501.

¹⁹²⁰ Trial Judgement, para. 499, n. 1997. The Appeals Chamber observes that, with respect to Witness RFJ-066's evidence, the Trial Chamber only relied on it "to the extent that it demonstrates that Stanišić and Simatović were involved in the provision of weapons to the SAO Krajina police in late 1990 and early 1991, but not in relation to the specific details of such support". See Trial Judgement, para. 501. See also Trial Judgement, paras. 16, 494.

¹⁹²¹ See Trial Judgement, paras. 397, 403, 409, 435, 505, 608.

¹⁹²² *Mladić* Appeal Judgement, paras. 258, 339, 380, 423, 425, 440 and references cited therein.

¹⁹²³ See Trial Judgement, paras. 577-579.

¹⁹²⁴ See Trial Judgement, para. 578.

¹⁹²⁵ Trial Judgement, para. 578.

commission of the specific crime by the principal and that they were aware of both the essential elements of the crime, which was ultimately committed, and the intent of the principal perpetrator.¹⁹²⁶

622. In arguing that this conclusion is unreasonable, the Prosecution contends that the Trial Chamber's findings and evidence show that Stanišić and Simatović contributed through the provision of training as well as through financing and arming the SAO Krajina forces, with the awareness of the probability that the principal perpetrators would commit crimes and that their acts would assist in the commission of those crimes.¹⁹²⁷ At the outset, and contrary to the Prosecution's reading of the Trial Judgement, the Appeals Chamber observes that the Trial Chamber did not find that Stanišić and Simatović were aware of the campaign of forcible displacement targeting non-Serbs in Croatia and Bosnia and Herzegovina "commencing in April 1991". The Prosecution isolates text in paragraphs 589 and 607 of the Trial Judgement to support this contention.¹⁹²⁸ However, this text, when read in combination with the remainder of the text in those paragraphs and the detailed findings elsewhere in the Trial Judgement as to the crimes that were relied upon as evidence of Stanišić's and Simatović's knowledge of a campaign of forcible displacement, reflect that this awareness – particularly in connection with crimes in SAO Krajina – necessarily started in August 1991 and in parallel with the formation of the common criminal purpose.¹⁹²⁹ This contention is dismissed.

623. As further indication that Stanišić and Simatović possessed the requisite *mens rea*, the Prosecution refers to the Trial Chamber's finding in paragraph 310 of the Trial Judgement that, as ethnic tensions were growing in Croatia in 1990 and 1991, local Serb authorities in SAO Krajina and SAO SBWS started setting up new political and security structures and instituting discriminatory policies against non-Serbs living in the area, and crimes started being committed against them.¹⁹³⁰ Notably, however, the Trial Chamber did not make findings beyond reasonable doubt that the "early crimes and acts of violence" – including arbitrary detention and arrest, restrictions of movement and harassment, dismissal from jobs, and destruction or theft of property – were attributable to Serb forces in SAO Krajina that the Trial Chamber found Stanišić and Simatović assisted in 1990 and 1991.¹⁹³¹ This is in contrast to the Trial Chamber's explicit finding in paragraph 311 of the Trial Judgement that the attack on the village of Kijevo in August 1991 "marked the sharp escalation" of the conflict in SAO Krajina and the "commencement of what constituted a pattern of attacks by Serb forces in the area", including the JNA as well as the SAO Krajina police and the Territorial Defence, resulting

¹⁹²⁶ *Popović et al.* Appeal Judgement, para. 1732; *Šainović et al.* Appeal Judgement, para. 1772.

¹⁹²⁷ See Prosecution Appeal Brief, paras. 183-187.

¹⁹²⁸ See Prosecution Appeal Brief, para. 183.

¹⁹²⁹ See Trial Judgement, paras. 102, 311, 372-379, 589, 597, 607.

¹⁹³⁰ Prosecution Appeal Brief, para. 184, referring to Trial Judgement, para. 310.

¹⁹³¹ See Trial Judgement, para. 310.

in the “massive exodus” of non-Serbs from the area.¹⁹³² Consequently, the Prosecution’s reliance on early acts of violence prior to August 1991 to demonstrate Stanišić’s or Simatović’s *mens rea* is unpersuasive.

624. The Prosecution further points to evidence considered in paragraph 97 of the Trial Judgement that, by May 1991, the SAO Krajina police disarmed Croat villages in the Knin area, including Potkonje and Vrpolje.¹⁹³³ The Prosecution references evidence considered by the Trial Chamber that, in June 1991, Witness RFJ-153 met with displaced Croats from the Knin area who blamed Milan Martić’s police for destroying their homes and livelihoods.¹⁹³⁴ Again, the Prosecution fails to address the fact that, in contrast to attacks starting from August 1991,¹⁹³⁵ the Trial Chamber did not make findings beyond reasonable doubt with respect to this alleged conduct, and, indeed, considered the evidence “inconclusive” as to the discriminatory intent with respect to the acts of the SAO Krajina police.¹⁹³⁶ In this context, the Prosecution fails to demonstrate that a reasonable trier of fact would have been compelled to conclude that Stanišić and Simatović possessed the requisite *mens rea* for aiding and abetting on this basis.

625. The Prosecution also argues that the Trial Chamber found that Milan Martić played a key role in provoking and escalating tensions through violent acts directed against non-Serbs in SAO Krajina from October 1990 and, in this context, signaled his intent to commit crimes prior to August 1991.¹⁹³⁷ The Appeals Chamber observes that, although the Trial Chamber considered evidence of Milan Martić’s possible role in crimes – and in particular that the Council of Serb National Resistance that Milan Martić commanded, *inter alia*, “[blew]-up Croat-owned businesses” – the Prosecution’s reference includes no such finding beyond reasonable doubt by the Trial Chamber.¹⁹³⁸ This contention is also dismissed.

626. Finally, having reviewed the evidence cited by the Prosecution in relation to Milan Martić’s abuse of police authority,¹⁹³⁹ his extremist views,¹⁹⁴⁰ his alleged public statement declining to

¹⁹³² Trial Judgement, para. 311. *See also* Trial Judgement, para. 102.

¹⁹³³ *See* Prosecution Appeal Brief, para. 185, n. 433, *referring to* Trial Judgement, para. 97.

¹⁹³⁴ *Compare* Prosecution Appeal Brief, para. 185, n. 434 *with* Trial Judgement, para. 97, n. 451.

¹⁹³⁵ *See* Trial Judgement, paras. 102, 311.

¹⁹³⁶ *See* Trial Judgement, para. 97.

¹⁹³⁷ *See* Prosecution Appeal Brief, para. 186.

¹⁹³⁸ *Compare* Prosecution Appeal Brief, para. 186, n. 437 *with* Trial Judgement, para. 473, n. 1902.

¹⁹³⁹ *See* Prosecution Appeal Brief, para. 186, n. 438, *referring to* Witness RFJ-107, Exhibit P00313, paras. 33-37, Witness RFJ-153, Exhibit P00002, para. 64.

¹⁹⁴⁰ *See* Prosecution Appeal Brief, para. 186, n. 439, *referring to* Witness Stanišić, T. 18 July 2019 p. 18.

investigate crimes in April 1991,¹⁹⁴¹ as well as Simatović's presence in Knin prior to August 1991,¹⁹⁴² the Appeals Chamber considers that this evidence would not have compelled a reasonable trier of fact to find that Stanišić and Simatović knew that the assistance they were found to have provided in 1990 and the first half of 1991 was done with, *inter alia*, the knowledge that it would assist the commission of the specific crimes by the principal perpetrators.

627. In this respect, the Trial Chamber extensively considered evidence related to Milan Martić's outward hostility towards non-Serbs¹⁹⁴³ as well as the escalating ethnic tensions in SAO Krajina prior to August 1991, and it acknowledged that non-Serbs in Croatia in 1990 and 1991 faced early crimes and acts of violence with "no redress from the local Serb authorities who were often accomplices".¹⁹⁴⁴ The Trial Chamber also noted that Stanišić and Simatović had "unfettered access to intelligence information", comprehensive knowledge of events on the ground, and that they were undoubtedly aware of the sentiment of local leaders, including Martić, in SAO Krajina.¹⁹⁴⁵ Notwithstanding, and as noted above, the Trial Chamber determined that it was not until Milan Martić's ultimatum prior to the attack on the village of Kijevo in August 1991 and the subsequent destruction of the village and the expulsion of its Croat population that his intent to achieve his goals through the commission of crimes unequivocally manifested.¹⁹⁴⁶ Consequently, the Trial Chamber was of the view that any assistance provided by Stanišić and Simatović to Milan Martić and the SAO Krajina forces prior to August 1991 "could have reasonably been provided with the intent to assist the Krajina Serbs' efforts in setting up structures to ensure their security in a rapidly escalating situation of fear and general uncertainty, and in the context of their political strive for independence from Croatia".¹⁹⁴⁷ The Prosecution has failed to demonstrate that this analysis, which undermines the Prosecution's contention that Stanišić and Simatović possessed the *mens rea* for aiding and abetting, is unreasonable.

628. Based on the above, the Appeals Chamber finds that the Prosecution fails to demonstrate that the Trial Chamber erred in failing to convict Stanišić and Simatović for aiding and abetting the crimes

¹⁹⁴¹ See Prosecution Appeal Brief, para. 186, n. 440, *referring to* Exhibit P00321, Witness RFJ-107, Exhibit P00313, para. 40, Witness Babić, Exhibit P01248, pp. 1547, 1548, Witness RFJ-153, Exhibit P00002, para. 113.

¹⁹⁴² See Prosecution Appeal Brief, para. 187, n. 443, *referring to* Witness Babić, Exhibit P01246, pp. 13106, 13118, 13119, Exhibit P01247, p. 3378, Exhibit P01248, p. 1429, Witness RFJ-066, Exhibit P00202, paras. 38, 97, 119, T. 10 July 2017 p. 29, RFJ-137, T. 18 July 2017 pp. 25, 26, Exhibit P00245, para. 32, Exhibit P00247, Exhibit P00211, Exhibit P00843, Witness Nielsen, T. 15 November 2017 pp. 45, 46, Trial Judgement, paras. 26, 351.

¹⁹⁴³ See, e.g., Trial Judgement, paras. 28, 30, 32, 369, 373, 578.

¹⁹⁴⁴ See, e.g., Trial Judgement, paras. 97, 310, 472-475.

¹⁹⁴⁵ See Trial Judgement, para. 578. See also Trial Judgement, paras. 587, 588.

¹⁹⁴⁶ See Trial Judgement, para. 578.

¹⁹⁴⁷ Trial Judgement, para. 578.

committed in SAO Krajina. Consequently, the Appeals Chamber dismisses sub-ground B(i) of Ground 2 of the Prosecution's appeal.

(b) Alleged Failure to Find that Stanišić Aided and Abetted Crimes Committed by the SAO SBWS Security Forces in SAO SBWS (sub-ground B(ii))

629. The Trial Chamber noted that attacks on Croat-majority villages in SAO SBWS started in late spring 1991, but intensified from early August 1991, with the takeover by Serb forces – including the JNA, the local Territorial Defence and paramilitary groups – of towns and villages, including the villages of Dalj and Erdut and their surroundings in Eastern Slavonia, and almost the entirety of Baranja.¹⁹⁴⁸ The Trial Chamber found that, following the takeovers, Serb forces including the SAO SBWS Territorial Defence and local police committed crimes forcing the non-Serb population to flee.¹⁹⁴⁹ The Trial Chamber determined that Goran Hadžić¹⁹⁵⁰ and Radovan Stojičić (Badža),¹⁹⁵¹ respectively in late June and July 1991 and from August 1991 onwards, had leading roles in the formation of the SAO SBWS police, but the Trial Chamber was not convinced that Stanišić played a role in this regard.¹⁹⁵² It also noted that Ilija Kojić, a State Security Service employee from April 1993,¹⁹⁵³ and Radoslav Kostić, a State Security Service operative from December 1990 until his death on 21 November 1994,¹⁹⁵⁴ were also key individuals in the formation of the SAO SBWS police.¹⁹⁵⁵

630. In analyzing their relationship with Stanišić and Simatović, the Trial Chamber examined whether Stanišić and Simatović may have exercised authority over Ilija Kojić and Radoslav Kostić and directed them in their activities.¹⁹⁵⁶ The Trial Chamber, however, considered that reliable evidence of Stanišić's and Simatović's interactions with Ilija Kojić and Radoslav Kostić, which principally consisted of providing intelligence reports, and the inferences that could be drawn from the evidence, were limited.¹⁹⁵⁷ Mindful of the main role of the Public Security Service in the local SAO SBWS security structures through Radovan Stojičić (Badža), as well as the possibility that Ilija

¹⁹⁴⁸ See Trial Judgement, para. 312. See also Trial Judgement, paras. 111, 112, 115, 142, 143, 150-152, 169, 294.

¹⁹⁴⁹ Trial Judgement, para. 169. See also Trial Judgement, paras. 111, 112, 119, 143, 146, 150, 156, 168, 170, 312, 374. For ease of reference, the SAO SBWS Territorial Defence and the SAO SBWS police will be collectively referred to as the SAO SBWS security forces.

¹⁹⁵⁰ Goran Hadžić was President of the Serbian National Council from January 1991, and was subsequently appointed as President of the SAO SBWS government on 25 September 1991. See Trial Judgement, para. 510.

¹⁹⁵¹ Radovan Stojičić (Badža) arrived in SAO SBWS in August 1991 as a representative of the Serbian Public Security Service ("Public Security Service"), was appointed by Goran Hadžić as commander of the SAO SBWS Territorial Defence in August or September 1991 and served in that role until the end of 1991, when he returned to Belgrade as head of the Public Security Service. See Trial Judgement, para. 517.

¹⁹⁵² Trial Judgement, para. 525.

¹⁹⁵³ See Trial Judgement, paras. 507, 529, 531.

¹⁹⁵⁴ See Trial Judgement, paras. 507, 530, 531.

¹⁹⁵⁵ Trial Judgement, para. 525.

¹⁹⁵⁶ See Trial Judgement, paras. 527-531.

¹⁹⁵⁷ See Trial Judgement, para. 531. See also Trial Judgement, paras. 528, 530.

Kojić and Radoslav Kostić operated under local leaders and the military command, the Trial Chamber expressed doubts that Stanišić and Simatović had a role in the formation of the SAO SBWS police, or that these operatives' employment and periodic cooperation with the State Security Service "implicate[d] the criminal responsibility" of Stanišić and Simatović.¹⁹⁵⁸

631. The Trial Chamber also considered that there were "clear indications in the evidence" that the State Security Service provided some assistance in connection with arming the SAO SBWS security forces in the first half of 1991 through secret channels involving Ilija Kojić and Radoslav Kostić, and that Stanišić was "likely involved to some degree".¹⁹⁵⁹ However, recalling that the common criminal plan did not come into existence until at least August 1991, the Trial Chamber found the evidence insufficient to demonstrate beyond reasonable doubt that Stanišić was involved in the distribution of weapons "during the relevant period".¹⁹⁶⁰

632. The Trial Chamber did not find proven beyond reasonable doubt that Stanišić and Simatović contributed to the joint criminal enterprise or were responsible for aiding and abetting crimes committed in SAO SBWS.¹⁹⁶¹

633. The Prosecution submits that no reasonable trier of fact could have failed to find that Stanišić aided and abetted the crimes committed in SAO SBWS by the SAO SBWS security forces.¹⁹⁶² According to the Prosecution, Stanišić substantially contributed to these crimes by empowering Ilija Kojić and Radoslav Kostić to form the SAO SBWS police.¹⁹⁶³ The Prosecution argues that, while the Trial Chamber found that Ilija Kojić and Radoslav Kostić were key in the formation of the SAO SBWS police and that Stanišić may have exercised authority over them given their employment in the State Security Service, it erred in finding that this was not the only reasonable inference.¹⁹⁶⁴ The Prosecution contends that the Trial Chamber's alternate inference – that the Public Security Service organized and directed the SAO SBWS police – is untenable because the Public Security Service was not involved until late July 1991, by which time Radoslav Kostić and Ilija Kojić had already made substantial progress in establishing the local police.¹⁹⁶⁵ The Prosecution further argues that the Trial Chamber accepted evidence that Stanišić, in a meeting with SAO SBWS police representatives in June 1991, directed them to Radoslav Kostić and Ilija Kojić to "meet their needs" with regard to the

¹⁹⁵⁸ See Trial Judgement, paras. 525, 531. See also Trial Judgement, paras. 529, 530, 537.

¹⁹⁵⁹ Trial Judgement, paras. 536, 537.

¹⁹⁶⁰ See Trial Judgement, paras. 536, 537.

¹⁹⁶¹ See Trial Judgement, paras. 537, 608.

¹⁹⁶² See Prosecution Notice of Appeal, paras. 16, 19; Prosecution Appeal Brief, paras. 188-200.

¹⁹⁶³ See Prosecution Appeal Brief, paras. 188, 189, 194.

¹⁹⁶⁴ See Prosecution Appeal Brief, paras. 190, 192, 193.

¹⁹⁶⁵ Prosecution Appeal Brief, para. 191.

provision of assistance for the establishment of the local police, and that the Trial Chamber did not identify any evidence that Radoslav Kostić was acting independently or under anyone other than Stanišić when organizing the SAO SBWS police in mid-1991.¹⁹⁶⁶ In this respect, the Prosecution asserts that Exhibit P00522 reflects that Stanišić signed the decision “deploying [Radoslav] Kostić to his assignment on 21 June 1991”.¹⁹⁶⁷

634. The Prosecution also submits that Stanišić contributed to crimes in SAO SBWS by providing weapons and equipment to the SAO SBWS security forces.¹⁹⁶⁸ According to the Prosecution, the Trial Chamber accepted that Stanišić and the State Security Service, through secret channels, were involved in arming the SAO SBWS security forces in the first half of 1991, and the evidence demonstrates that Stanišić substantially contributed to crimes.¹⁹⁶⁹ The Prosecution specifically points to evidence that Slobodan Milošević gave, *inter alios*, Stanišić *carte blanche* in the distribution of weapons, that Stanišić instructed the SAO SBWS police to collect material support through Radoslav Kostić and Ilija Kojić, which was complied with, and that Stanišić declared in September 1991 that all necessary equipment for operations had been provided to the SAO SBWS police.¹⁹⁷⁰ The Prosecution also refers to evidence and Trial Chamber findings to demonstrate that Stanišić collaborated with State Security Service operatives to supply weapons to the SAO SBWS security forces.¹⁹⁷¹

635. The Prosecution further submits that Stanišić made the aforementioned contributions to crimes in SAO SBWS with the requisite *mens rea* for aiding and abetting.¹⁹⁷² It relies on the Trial Chamber’s findings regarding Stanišić’s knowledge of events in Croatia and Bosnia and Herzegovina in the spring of 1991, including the forcible displacement campaign,¹⁹⁷³ his monitoring of developments in SAO SBWS since January 1991 and contacts with Goran Hadžić,¹⁹⁷⁴ as well as his statements to the SAO SBWS police in September 1991.¹⁹⁷⁵

636. Stanišić responds that the Prosecution does not demonstrate any error of fact and that it is attempting a “counter-narrative” on the basis of findings that led the Trial Chamber to conclude that

¹⁹⁶⁶ Prosecution Appeal Brief, paras. 191, 193.

¹⁹⁶⁷ See Prosecution Appeal Brief, para. 192, n. 459.

¹⁹⁶⁸ Prosecution Appeal Brief, paras. 188, 195, 198.

¹⁹⁶⁹ See Prosecution Appeal Brief, paras. 196-198.

¹⁹⁷⁰ Prosecution Appeal Brief, para. 196.

¹⁹⁷¹ Prosecution Appeal Brief, para. 197.

¹⁹⁷² Prosecution Appeal Brief, paras. 199, 200.

¹⁹⁷³ Prosecution Appeal Brief, para. 199.

¹⁹⁷⁴ Prosecution Appeal Brief, para. 200.

¹⁹⁷⁵ Prosecution Appeal Brief, para. 200.

he played no role in the formation of the SAO SBWS police.¹⁹⁷⁶ Stanišić submits that the Prosecution misrepresents findings and evidence and fails to demonstrate a link between Ilija Kojić's and Radoslav Kostić's "progress" in the formation of the SAO SBWS police and the crimes.¹⁹⁷⁷ Stanišić adds that Goran Hadžić and Radovan Stojičić (Badža), over whom he exercised no authority, had leading roles in this regard and that his interactions with State Security Service operatives in SAO SBWS only concerned the gathering of intelligence.¹⁹⁷⁸ Stanišić further responds that the Prosecution misrepresents the evidence and the Trial Chamber's findings regarding the provision of weapons and equipment.¹⁹⁷⁹ He argues that the Trial Chamber considered the evidence referenced by the Prosecution and concluded that it was not definitive of Stanišić's involvement in the distribution of weapons and to what extent.¹⁹⁸⁰ As for his alleged *mens rea*, Stanišić argues that the Prosecution applies an incorrect legal standard, misrepresents Trial Chamber findings, and fails to demonstrate any error of fact.¹⁹⁸¹

637. The Prosecution replies that it has correctly applied the *mens rea* standard for aiding and abetting and disputes Stanišić's interpretation of it.¹⁹⁸²

638. The Appeals Chamber observes that, to support the contention that Stanišić substantially contributed to the crimes by empowering Ilija Kojić and Radoslav Kostić to form the SAO SBWS police, the Prosecution relies primarily on the Trial Chamber's findings and summaries of evidence,¹⁹⁸³ as well as two transcripts regarding Radoslav Kostić's affiliation to the State Security Service,¹⁹⁸⁴ which the Trial Chamber considered.¹⁹⁸⁵ As summarized above, while the Trial Chamber acknowledged the role of Ilija Kojić and Radoslav Kostić in the formation of the SAO SBWS police, it determined that the evidence did not compel the conclusion beyond reasonable doubt that Stanišić was involved.¹⁹⁸⁶ In doing so, the Trial Chamber examined Ilija Kojić's and Radoslav Kostić's relationship with the State Security Service, noting that Ilija Kojić was employed from April 1993 onwards and that Radoslav Kostić was an operative from December 1990 until November 1994.¹⁹⁸⁷

¹⁹⁷⁶ See Stanišić Response Brief, paras. 431, 433-439. See also Stanišić Response Brief, para. 448.

¹⁹⁷⁷ See Stanišić Response Brief, paras. 435-437, 439.

¹⁹⁷⁸ See Stanišić Response Brief, paras. 435, 437, 438.

¹⁹⁷⁹ See Stanišić Response Brief, paras. 441-445.

¹⁹⁸⁰ See Stanišić Response Brief, paras. 442-444.

¹⁹⁸¹ See Stanišić Response Brief, paras. 446-448.

¹⁹⁸² See Prosecution Reply to Stanišić Response, paras. 81-83.

¹⁹⁸³ See Prosecution Appeal Brief, paras. 189-193, *referring to, inter alia*, Trial Judgement, paras. 347, 445, 499, 501, 521, 524, 525, 530, 531, 534, nn. 1473, 1780, 1994, 2082.

¹⁹⁸⁴ See Prosecution Appeal Brief, para. 192, nn. 457, 458, *referring to, inter alia*, Witness Krsmanović, T. 1 October 2019 pp. 8, 9, Witness RFJ-113, T. 28 September 2017 p. 5.

¹⁹⁸⁵ See Trial Judgement, paras. 529, 530, nn. 2126, 2130, *referring to, inter alia*, Witness Krsmanović, T. 1 October 2019 pp. 8, 9, Witness RFJ-113, T. 28 September 2017.

¹⁹⁸⁶ See Trial Judgement, paras. 525, 530, 531.

¹⁹⁸⁷ Trial Judgement, paras. 529, 530. See also Trial Judgement, para. 445.

With regard to Radoslav Kostić, the Trial Chamber considered that there was insufficient reliable and credible evidence showing beyond reasonable doubt that Stanišić provided instructions to him or influenced the conduct of his functions within the local security structures in SAO SBWS.¹⁹⁸⁸ The Trial Chamber further considered that the only reliable evidence of Stanišić’s and Simatović’s interactions with these operatives consisted of the provision of intelligence reports and that the inferences that could be drawn from the evidence were limited.¹⁹⁸⁹ In this respect, the Prosecution fails to substantiate its claim that the Trial Chamber accepted that Stanišić met in late June 1991 with SAO SBWS police representatives “regarding the provision of assistance for the setup of the local police” and that he directed them to Radoslav Kostić and Ilija Kojić to meet their needs.¹⁹⁹⁰

639. The Appeals Chamber observes that the Prosecution isolates findings in the Trial Judgement or evidence of Ilija Kojić’s and Radoslav Kostić’s involvement in the formation of the SAO SBWS police, which the Trial Chamber considered, to argue that they must have been acting pursuant to Stanišić’s instructions without demonstrating that the Trial Chamber’s conclusions regarding the absence of credible and reliable evidence to this effect were unreasonable. Having reviewed the relevant extract of Exhibit P00522, the Appeals Chamber fails to see how this exhibit, reflecting Radoslav Kostić’s re-assignment from the Fourth Administration to the First Administration of the State Security Service, would have required a reasonable trier of fact to find that Stanišić deployed or exercised authority over Radoslav Kostić *vis-à-vis* his role in the formation of the SAO SBWS police.¹⁹⁹¹ The Prosecution further relies on evidence that Radoslav Kostić and Stanišić were involved in the provision of weapons to the SAO Krajina police in late 1990 and early 1991,¹⁹⁹² but it does not demonstrate how this impacts Stanišić’s role in the formation of the SAO SBWS police. In this regard, the Appeals Chamber considers that the Prosecution merely disagrees with the Trial Chamber’s assessment of the evidence without demonstrating that it was unreasonable.

640. Likewise, the Prosecution further fails to demonstrate that it was unreasonable for the Trial Chamber to rely on the main role the Public Security Service appeared to have played through Radovan Stojičić (Badža) in, *inter alia*, local security structures as raising doubts as to whether Ilija Kojić’s and Radoslav Kostić’s employment and periodic cooperation with the State Security Service “implicate[d] the criminal responsibility of [Stanišić]”.¹⁹⁹³ The Prosecution does not substantiate its contention that the evidence concerning contributions made by Ilija Kojić and Radoslav Kostić to the

¹⁹⁸⁸ Trial Judgement, para. 530.

¹⁹⁸⁹ Trial Judgement, para. 531. *See also* Trial Judgement, paras. 528-530.

¹⁹⁹⁰ *Compare* Prosecution Appeal Brief, para. 191, n. 454 *with* Trial Judgement, para. 534.

¹⁹⁹¹ *See* Exhibit P00522, p. 27.

¹⁹⁹² *See* Prosecution Appeal Brief, para. 192, n. 457.

¹⁹⁹³ *See* Trial Judgement, para. 531.

formation of the SAO SBWS police prior to Radovan Stojičić (Badža)’s arrival necessarily compels the conclusion that Stanišić was involved or to an extent that would implicate him criminally.¹⁹⁹⁴

641. Turning to the distribution of weapons and equipment, the Appeals Chamber observes that the Prosecution also relies primarily on the evidence considered by the Trial Chamber.¹⁹⁹⁵ The Appeals Chamber notes that the Trial Chamber, when assessing pieces of evidence and related findings concerning weapons distributions, did not conclude beyond reasonable doubt that Stanišić was involved in weapons distributions to the SAO SBWS security forces in the first half of 1991.¹⁹⁹⁶ The Appeals Chamber finds that the Prosecution fails to demonstrate that a reasonable trier of fact would have been compelled to reach such a conclusion beyond reasonable doubt given the ambiguities in the evidence and its circumstantial nature as identified by the Trial Chamber in the Trial Judgement.¹⁹⁹⁷

642. The Appeals Chamber further observes that the Trial Chamber, when making its findings, considered that “there are clear indications” that the State Security Service provided assistance to the arming of the SAO SBWS security forces in the first half of 1991.¹⁹⁹⁸ However, its language – that Stanišić was “likely involved to some degree” or “may have been involved” – reflects that the Trial Chamber was not convinced beyond reasonable doubt as to his involvement in weapons distributions in the first half of 1991.¹⁹⁹⁹ This is in contrast to the definitive language used by the Trial Chamber when finding that Stanišić and Simatović were involved in the distribution of weapons and equipment *vis-à-vis* SAO Krajina in 1990 and the first half of 1991.²⁰⁰⁰ Equally telling that the Trial Chamber did not find beyond reasonable doubt that Stanišić contributed to the distribution of weapons to the SAO SBWS security forces in the first half of 1991 is the fact that it did not consider this conduct when assessing his *mens rea* with respect to the joint criminal enterprise. On the contrary, the Trial Chamber expressly considered Stanišić’s and Simatović’s involvement in the distribution of weapons

¹⁹⁹⁴ See Prosecution Appeal Brief, para. 191, *referring to* Trial Judgement, paras. 521, 534, n. 2082.

¹⁹⁹⁵ The Appeals Chamber observes that the Prosecution references evidence cited in the Trial Judgement without challenging such evidence. *Compare e.g.*, Prosecution Appeal Brief, para. 196, nn. 466-469 *with* Trial Judgement, paras. 522, 533, 534, 536, nn. 2098, 2139-2146, 2154, 2155.

¹⁹⁹⁶ See Trial Judgement, paras. 532-535. See also Trial Judgement, para. 534 (wherein the Trial Chamber stated that evidence suggesting Stanišić’s involvement in weapons distributions was “not definitive”).

¹⁹⁹⁷ See Trial Judgement, paras. 532 (noting witness evidence that Mihalj Kertes was behind the arming of Serbs in SAO SBWS), 533 (noting that witnesses were unable to provide “concrete details” of the State Security Service being the source of weapons and finding that the statement from Mihalj Kertes that he and Stanišić had *carte blanche* in weapons distributions provided some indication that Stanišić was involved but that this evidence did not clarify how or to what extent), 534 (noting circumstantial evidence that, “while not definitive, also suggests the involvement of Stanišić in the distribution of weapons” and noting Stanišić’s involvement in a similar role in the provision of weapons in SAO Krajina in the first half of 1991), 535 (noting uncertainties in Witness Savić’s evidence implicating the State Security Service and Stanišić in weapons distributions).

¹⁹⁹⁸ Trial Judgement, para. 536.

¹⁹⁹⁹ See Trial Judgement, paras. 536, 537.

²⁰⁰⁰ See Trial Judgement, paras. 504, 505.

and equipment to SAO Krajina forces prior to the formation of the common criminal purpose in assessing their *mens rea*.²⁰⁰¹ In this context, the Prosecution's reliance on the Trial Chamber's supposed "finding" at paragraph 536 of the Trial Judgement as reflective of Stanišić's substantial contribution to crimes in SAO SBWS through his involvement in the distribution of weapons in the first half of 1991 is without basis.

643. Additionally, the Trial Chamber was not convinced beyond reasonable doubt that Stanišić was involved in the distribution of weapons in SAO SBWS after the first half of 1991.²⁰⁰² In coming to this conclusion, the Trial Chamber considered evidence that Stanišić, in September 1991, arrived at an SAO SBWS government building shouting at the police for failing to takeover Vukovar despite having all the required equipment.²⁰⁰³ However, the Trial Chamber also noted that, as the armed conflict escalated between July and August 1991, the relevant evidence largely reflected that the JNA was supervising the distribution of arms.²⁰⁰⁴

644. The Appeals Chamber has reviewed the evidence relied upon by the Prosecution to argue that no reasonable trial chamber could have failed to find that Stanišić provided weapons and equipment to the SAO SBWS security forces in 1991. As noted above, the Trial Chamber considered much of this evidence and weighed its implications as to Stanišić's involvement in the distribution of weapons but did not conclude beyond reasonable doubt that he was involved. Furthermore, the Appeals Chamber considers that the Prosecution's references to evidence of Stanišić's collaboration with Mihalj Kertes, Ilija Kojić, Radoslav Kostić, and Lazar Šarac,²⁰⁰⁵ much of which the Trial Chamber considered,²⁰⁰⁶ do not provide any more direct evidence of Stanišić's involvement in the distribution of weapons to the SAO SBWS security forces.²⁰⁰⁷ The Prosecution does not demonstrate that a reasonable trier of fact would have been compelled to conclude beyond reasonable doubt that Stanišić was involved in such weapons distributions on the basis of it.

645. As the Prosecution has not demonstrated that the Trial Chamber erred with respect to these conclusions, it likewise has failed to eliminate all reasonable doubt that Stanišić substantially contributed to crimes charged in SAO SBWS. Submissions regarding his *mens rea* are therefore moot.

²⁰⁰¹ See Trial Judgement, paras. 577-579.

²⁰⁰² Trial Judgement, para. 536.

²⁰⁰³ Trial Judgement, para. 536.

²⁰⁰⁴ Trial Judgement, para. 536, n. 2153 and references cited therein.

²⁰⁰⁵ See Prosecution Appeal Brief, para. 197, nn. 471-474.

²⁰⁰⁶ Compare Prosecution Appeal Brief, nn. 471-474 with Trial Judgement, paras. 347, 445, 503, 513-515, 521, 523, 524, 527, 529, 530, 532-535, nn. 1474, 1779, 2010, 2041, 2044, 2050, 2082, 2087, 2102, 2109, 2120, 2126, 2128, 2130, 2132, 2133, 2135, 2136, 2138, 2142-2147, 2152.

²⁰⁰⁷ See Prosecution Appeal Brief, para. 197, nn. 471-474, referring to, *inter alia*, Exhibit P01718, p. 957, Exhibit P02445, p. 90, Exhibit P01801, para. 11, Exhibit 1D00123, p. 1, Exhibit P02435, Exhibit P00059, pp. 9, 10, Exhibit 2D00041, Exhibit 1D00060, p. 1, Exhibit 2D00040, Exhibit P02723.

Consequently, the Prosecution has not demonstrated that the Trial Chamber erred by failing to convict Stanišić of aiding and abetting crimes committed in SAO SBWS.

646. Based on the foregoing, the Appeals Chamber dismisses sub-ground B(ii) of Ground 2 of the Prosecution's appeal.

(c) Alleged Failure to Find that Stanišić and Simatović Aided and Abetted Crimes Committed by the Unit in SAO SBWS (sub-ground B(iii))

647. In assessing crimes committed in SAO SBWS, the Trial Chamber considered that, in September 1991, the Beli Manastir Territorial Defence, special police units from the Beli Manastir Secretariat of Internal Affairs, and the “*Kninjas*” attacked Bilje, a village in Baranja, with the Territorial Defence overseeing the operation and receiving support from the JNA, causing most non-Serbs to flee the village.²⁰⁰⁸ The Trial Chamber did not find that the Unit committed crimes charged in the Indictment between August 1991 and mid-April 1992.²⁰⁰⁹ The Trial Chamber also discussed evidence that, between September 1991 and January 1992, Serb forces committed crimes against non-Serbs in Western Srem, forcing them to leave,²⁰¹⁰ but it did not find the evidence sufficient to prove beyond reasonable doubt that Unit members were involved in the commission of charged crimes in Western Srem.²⁰¹¹ The Trial Chamber concluded that Stanišić and Simatović did not contribute to the joint criminal enterprise, through the Unit or otherwise, in relation to crimes committed in SAO SBWS.²⁰¹²

648. The Trial Chamber, in view of all the relevant findings, concluded that Stanišić and Simatović were not responsible for, *inter alia*, aiding and abetting the crimes committed in SAO SBWS as charged in the Indictment.²⁰¹³

649. The Prosecution submits that no reasonable trier of fact could have failed to find that Unit members committed crimes in Bilje starting in September 1991 and Western Srem starting in October 1991 and that Stanišić and Simatović aided and abetted the commission of these crimes.²⁰¹⁴ According to the Prosecution, the Trial Chamber's findings and evidence on the record establish that certain Unit members, who received training at the Golubić and/or Ležimir camps, joined other Serb

²⁰⁰⁸ See Trial Judgement, paras. 150, 156.

²⁰⁰⁹ See Trial Judgement, paras. 156, 169, 388.

²⁰¹⁰ See Trial Judgement, paras. 161-168.

²⁰¹¹ Trial Judgement, paras. 162, 168. See also Trial Judgement, paras. 166, 388.

²⁰¹² See Trial Judgement, paras. 388, 537. See also Trial Judgement, para. 597.

²⁰¹³ See Trial Judgement, para. 608.

²⁰¹⁴ See Prosecution Notice of Appeal, paras. 16, 19; Prosecution Appeal Brief, paras. 201-210. See also T. 25 January 2023 pp. 25, 26.

forces in forcible displacement operations and committed crimes in Bilje and Western Srem.²⁰¹⁵ The Prosecution argues that Stanišić and Simatović contributed to crimes committed by these Unit members through forming and exercising authority over the Unit,²⁰¹⁶ through their contributions to the Golubić camp between May and September 1991 as well as their control of the Ležimir and Pajzoš camps until April 1992,²⁰¹⁷ and through deploying Unit members to Bilje and Western Srem.²⁰¹⁸ It submits that by forming the Unit, and training and deploying its members, Stanišić and Simatović provided them with the structure, preparedness, resources, and equipment necessary to participate in the operations in Bilje and Western Srem, and that Stanišić and Simatović, therefore, substantially contributed to persecution and forcible displacement in these areas.²⁰¹⁹ The Prosecution further contends that Stanišić and Simatović possessed the requisite *mens rea* for aiding and abetting in relation to crimes committed by Unit members, by virtue of their knowledge of the events, including the forcible displacement campaign against non-Serbs in Croatia and Bosnia and Herzegovina.²⁰²⁰

650. Stanišić responds that the Prosecution's submissions should be summarily dismissed as they are unsubstantiated and disregard relevant Trial Chamber findings.²⁰²¹ According to Stanišić, the Prosecution's submissions fail to show that the seven Unit members participated in forcible transfer operations in Bilje or Western Srem in the course of which they committed crimes,²⁰²² or that he trained or deployed men to these locations.²⁰²³ He also argues that there is no sufficient link between his conduct and the relevant crimes to satisfy the substantial contribution requirement for aiding and abetting liability.²⁰²⁴ Stanišić further responds that the Prosecution misapplied the law on *mens rea* and has failed to address the preparation, planning, and actions of any alleged perpetrator, establishing Stanišić's *mens rea* for aiding and abetting.²⁰²⁵

²⁰¹⁵ See Prosecution Appeal Brief, paras. 201, 205. According to the Prosecution the following Unit members participated in forcible displacement operations and committed crimes: (i) Živojin Ivanović in Baranja and Western Srem; (ii) Radojica Božović in Western Srem; (iii) Davor Subotić in Bilje and Western Srem; (iv) Milenko Popović in Bilje and Western Srem; (v) Nikola Pilipović in Baranja (Bilje); (vi) Borislav Kovačević in "all of the Unit's operations" including in Bilje; and (vii) Dragan Oluić in Western Srem. See also Prosecution Reply to Stanišić Response, para. 85.

²⁰¹⁶ See Prosecution Appeal Brief, paras. 202, 204, 208.

²⁰¹⁷ See Prosecution Appeal Brief, paras. 202, 204, 206, 208.

²⁰¹⁸ Prosecution Appeal Brief, para. 207.

²⁰¹⁹ Prosecution Appeal Brief, para. 208.

²⁰²⁰ Prosecution Appeal Brief, para. 209.

²⁰²¹ See Stanišić Response Brief, paras. 451-470, 472, 480.

²⁰²² See Stanišić Response Brief, paras. 454, 458-465.

²⁰²³ See Stanišić Response Brief, paras. 466-471; T. 25 January 2023 pp. 51, 52.

²⁰²⁴ See Stanišić Response Brief, paras. 472-477.

²⁰²⁵ See Stanišić Response Brief, paras. 455, 478-480.

651. Simatović responds that, since Bilje and Western Srem are not listed in the Indictment, he cannot be found guilty of aiding and abetting crimes committed there²⁰²⁶ and, in any event, there is no evidence that he aided and abetted crimes in these locations.²⁰²⁷

652. The Prosecution replies, *inter alia*, that Stanišić's submission – claiming that the Prosecution's appeal is bereft of details – overlooks evidence set out in earlier parts of its appellant's brief.²⁰²⁸ The Prosecution further replies that Simatović had notice of the charges related to SAO SBWS.²⁰²⁹

653. Turning first to the Prosecution's contention that Stanišić and Simatović substantially contributed to crimes committed in Bilje in September 1991, the Appeals Chamber observes that the Prosecution principally relies on its submissions in sub-ground A(ii) of Ground 1 of its appeal,²⁰³⁰ including references to evidence regarding the involvement of the four Unit members it argues committed crimes in Bilje.²⁰³¹ However, the Appeals Chamber has dismissed this sub-ground of appeal, emphasizing that the Trial Chamber's findings reflect that it had doubts as to whether Stanišić and Simatović deployed Unit members – including Davor Subotić, Milenko Popović, Nikola Pilipović, and Borislav Kovačević – to Bilje and that the Prosecution, on appeal, does not point to specific evidence eliminating all reasonable doubt that either did.²⁰³² The Prosecution's present submissions in this sub-ground of its appeal do not demonstrate otherwise.

654. Furthermore, the Appeals Chamber observes that the Trial Chamber determined that the Prosecution had not proven beyond reasonable doubt that the Unit was involved in crimes between August 1991 and mid-April 1992.²⁰³³ The Appeals Chamber has reviewed the evidence the Prosecution points to with respect to Živojin Ivanović, Davor Subotić, Milenko Popović, Nikola Pilipović, and Borislav Kovačević.²⁰³⁴ While reflecting that these men were present in, *inter alia*, the Golubić or Ležimir camps and/or in Baranja, the Appeals Chamber finds that it does not demonstrate

²⁰²⁶ Simatović Response Brief, para. 420; T. 25 January 2023 p. 58.

²⁰²⁷ Simatović Response Brief, para. 423; T. 25 January 2023 pp. 59, 60, 62.

²⁰²⁸ Prosecution Reply to Stanišić Response, para. 86, n. 263.

²⁰²⁹ Prosecution Reply to Simatović Response, para. 82.

²⁰³⁰ See Prosecution Appeal Brief, para. 205, n. 491; Prosecution Reply to Stanišić Response, para. 86, n. 263.

²⁰³¹ In relation to Davor Subotić, *compare* Prosecution Appeal Brief, para. 64, n. 131 *with* Prosecution Appeal Brief, para. 205, n. 508. In relation to Milenko Popović, *compare* Prosecution Appeal Brief, para. 64, n. 132 *with* Prosecution Appeal Brief, para. 205, n. 512. In relation to Nikola Pilipović, *compare* Prosecution Appeal Brief, para. 64, n. 133 *with* Prosecution Appeal Brief, para. 205, n. 515. In relation to Borislav Kovačević, *compare* Prosecution Appeal Brief, para. 65, nn. 135, 136 *with* Prosecution Appeal Brief, para. 205, nn. 517, 518.

²⁰³² See *supra* para. 425.

²⁰³³ Trial Judgement, para. 388.

²⁰³⁴ See Prosecution Appeal Brief, para. 205.

that the above-referenced conclusion is unreasonable.²⁰³⁵ Consequently, the Prosecution has neither substantiated its contention nor eliminated all reasonable doubt that Unit members committed crimes in Bilje, and, consequently, that Stanišić and Simatović substantially contributed to them.

655. Concerning Stanišić's and Simatović's alleged substantial contributions to crimes committed in Western Srem in early October 1991, the Prosecution also relies on arguments previously raised in sub-ground A(iv) of Ground 1 of its appeal.²⁰³⁶ The Appeals Chamber recalls its conclusions that the Trial Chamber erred in law in restricting its examination as to whether Unit members physically committed crimes and by not evaluating whether Stanišić and Simatović, through the deployment of Unit members to operations in Western Srem, contributed to the common criminal purpose. Nevertheless, the Appeals Chamber has also found that, having reviewed the relevant evidence, it is not satisfied that the record establishes that the Unit contributed to the crimes committed in Western Srem.²⁰³⁷ Consequently, the Prosecution has also failed to eliminate all reasonable doubt that Stanišić and Simatović substantially contributed to such crimes.

656. Given the conclusions above, the Prosecution's submissions regarding Stanišić's and Simatović's alleged *mens rea* for aiding and abetting charged crimes committed in Bilje and Western Srem are moot. Based on the foregoing, the Appeals Chamber dismisses sub-ground B(iii) of Ground 2 of the Prosecution's appeal.

E. Impact of Findings of the Appeals Chamber on Sentencing

657. The Appeals Chamber recalls that it has granted, in part, sub-grounds A(i)(a)(iii) and A(iv)(c) of Ground 1 of the Prosecution's appeal. The Appeals Chamber has further concluded that all reasonable doubt has been eliminated that Stanišić and Simatović possessed the requisite *mens rea* for joint criminal enterprise liability. Consequently, the Appeals Chamber has concluded that Stanišić and Simatović bear criminal responsibility under Article 1 of the Statute and Articles 3, 5, and 7(1) of the ICTY Statute for committing, based on their participation in a joint criminal enterprise (first category), the following crimes committed in Bosnia and Herzegovina and Croatia: (i) deportation, inhumane acts (forcible transfer), and persecution committed in connection with the takeover of Bijeljina by the Serbian Volunteer Guard as well as Serb forces and paramilitaries that worked in coordination with it; (ii) murder, deportation, inhumane acts (forcible transfer), and persecution

²⁰³⁵ Exhibit P00253, pp. 1-3; Exhibit 2D00385, pp. 78, 133, 134; Exhibit P00271, p. 1; Exhibit P00245, paras. 87, 95, 104; Exhibit P00260, pp. 23, 29; Exhibit P00246, para. 5; Exhibit 2D00012, p. 39; Exhibit P00258, pp. 12, 32; Exhibit P02688, p. 2; T. 28 January 2019 p. 32; Exhibit P00267, pp. 5, 6, 10, 11; Exhibit P02366, paras. 11, 13; Exhibit P00500, pp. 3, 4, 16; Exhibit P00264, pp. 7, 13, 19, 20.

²⁰³⁶ See Prosecution Appeal Brief, paras. 201, 205, nn, 486, 492; Prosecution Reply to Stanišić Response, para. 86, n. 263.

²⁰³⁷ See *supra* Section VI.A.4(a).

committed in relation to the takeover in Zvornik by the Serbian Volunteer Guard and the JNA and forces working in coordination with them; (iii) murder, deportation, inhumane acts (forcible transfer), and persecution in connection with and following the takeover of Bosanski Šamac; (iv) inhumane acts (forcible transfer) and persecution committed by the JNA, forces under Radojica Božović's command, as well as forces under Milovan Stanković's command during the takeover of Doboj; (v) deportation, inhumane acts (forcible transfer), and persecution committed by the JNA's 6th Light Partisan Brigade, the VRS, and/or forces subordinated to or acting in coordination with them in April and May 1992 in Sanski Most; (vi) murder and persecution committed by the Scorpions in Trnovo in July 1995 and by the Serbian Volunteer Guard in Sanski Most in September 1995; and (vii) murder and persecution committed by the Serbian Volunteer Guard in cooperation with the Serbian National Security in relation to the killing of Marija Senaši in Daljska Planina, SAO SBWS, in June 1992.²⁰³⁸ Because joint criminal enterprise liability most appropriately reflects the full scope of Stanišić's and Simatović's criminal conduct in connection with Bosanski Šamac, the Appeals Chamber has set aside Stanišić's and Simatović's aiding and abetting liability for murder, deportation, inhumane acts (forcible transfer), and persecution based on the same conduct.²⁰³⁹

658. The Prosecution requests that, should the Appeals Chamber find Stanišić and Simatović criminally responsible as members of the joint criminal enterprise, it should "increase their sentences accordingly".²⁰⁴⁰ While Stanišić and Simatović contest their sentences as imposed by the Trial Chamber and dispute that they may be held liable as participants in the joint criminal enterprise, they do not make specific submissions in response to the Prosecution's argument that their sentences should be increased on appeal if they are found to bear joint criminal enterprise liability.

659. Pursuant to Article 22 of the Statute, the Appeals Chamber has taken into account the general sentencing practice of the former Yugoslavia, the gravity of the offence, and the individual circumstances of Stanišić and Simatović, including relevant health issues.²⁰⁴¹ However, the gravity of the offence is the primary factor to be taken into account in imposing a sentence, and the inherent gravity of a 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.²⁰⁴²

660. Stanišić and Simatović bear responsibility for committing under Article 1 of the Statute and Articles 3, 5, and 7(1) of the ICTY Statute the crimes charged under Counts 1 through 5 of the

²⁰³⁸ See *supra* Section VI.B.3.

²⁰³⁹ See *supra* Section VI.B.2(b).

²⁰⁴⁰ Prosecution Appeal Brief, paras. 127, 152.

²⁰⁴¹ See Article 22 of the Statute; *Šešelj* Appeal Judgement, para. 179. See, *mutatis mutandis*, *Seromba* Appeal Judgement, para. 228.

²⁰⁴² See *Martić* Appeal Judgement, para. 350 and references cited therein.

Indictment based on their participation in a joint criminal enterprise (first category). Notably, Stanišić and Simatović were found to have made significant contributions to the common criminal purpose of this joint criminal enterprise in connection with the crimes committed in relation to the takeover of Bosanski Šamac in 1992 and the charged murders in Sanski Most in 1995. Thus, the form and degree of both Stanišić's and Simatović's individual participation in the crimes for which each has been convicted on appeal have changed materially from their convictions at trial for aiding and abetting the crimes charged under Counts 1 through 5 of the Indictment only in relation to the takeover of Bosanski Šamac in 1992. The Appeals Chamber further observes that the extent of their criminal liability has increased considerably by virtue of their membership in the joint criminal enterprise and the additional crimes attributable to them during their membership.

661. Nevertheless, Stanišić and Simatović have not been found to be involved in the planning or execution of any of the crimes for which they have been convicted. Nor has it been established that either directed or had authority over any of the perpetrators as the crimes were committed. Furthermore, Stanišić's and Simatović's responsibility for crimes committed in Bijeljina, Zvornik, Doboj, Sanski Most in 1992, Trnovo, and in Daljska Planina, SAO SBWS, is established by virtue of their membership in the joint criminal enterprise rather than for any direct involvement in those crimes. In this respect, the Appeals Chamber recalls that "disparities [...] between [joint criminal enterprise] members who make overwhelmingly large contributions and [joint criminal enterprise] members whose contributions, though significant, are not as great" may be "adequately dealt with at the sentencing stage".²⁰⁴³

662. Finally, the Appeals Chamber recalls that neither Stanišić nor Simatović has demonstrated error in the sentence of 12 years of imprisonment imposed by the Trial Chamber. Nevertheless, the Appeals Chamber considers that, in the particular circumstances of this case and in light of the required sentencing considerations, this sentence tends towards the higher range of what is a reasonable exercise of sentencing discretion. This circumstance carries significant weight in the sentencing considerations of the Appeals Chamber.

663. In light of the above, and having accounted for all the relevant sentencing considerations set forth in Article 22 of the Statute, the Appeals Chamber imposes a sentence of 15 years of imprisonment for Stanišić and a sentence of 15 years of imprisonment for Simatović.

²⁰⁴³ *Brđanin* Appeal Judgement, para. 432.

VII. DISPOSITION

664. For the foregoing reasons, **THE APPEALS CHAMBER**,

PURSUANT to Article 23 of the Statute and Rule 144 of the Rules;

NOTING the written submissions of the parties and their oral arguments presented at the hearing of the appeals on 24 and 25 January 2023;

SITTING in open session;

DISMISSES Stanišić's and Simatović's appeals in their entirety;

GRANTS, in part, Ground 1 of the Prosecution's appeal and **FINDS** Stanišić and Simatović **GUILTY** under Article 1 of the Statute and Articles 3, 5, and 7(1) of the ICTY Statute for committing, based on their participation in a joint criminal enterprise (first category), the following crimes charged under Counts 1 to 5 of the Indictment: (i) deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity committed in connection with the takeover of Bijeljina; (ii) murder as a violation of the laws or customs of war as well as murder, deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity committed in relation to the takeover of Zvornik; (iii) murder as a violation of the laws or customs of war as well as murder, deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity in connection with and following the takeover of Bosanski Šamac; (iv) inhumane acts (forcible transfer) and persecution as crimes against humanity committed during the takeover of Doboj; (v) deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity committed in Sanski Most in April and May 1992; (vi) murder as a violation of the laws or customs of war as well as murder and persecution as crimes against humanity committed in Trnovo in July 1995 and Sanski Most in September 1995; and (vii) murder as a violation of the laws or customs of war as well as murder and persecution as crimes against humanity for the killing of Marija Senaši in Daljska Planina, SAO SBWS, in June 1992;

SETS ASIDE the Trial Chamber's finding that Stanišić and Simatović are responsible under Article 1 of the Statute and Article 7(1) of the ICTY Statute for aiding and abetting the crimes, charged under Counts 1 to 5 of the Indictment, committed in Bosanski Šamac;

DISMISSES the Prosecution's appeal in all other respects;

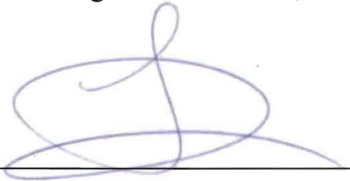
SETS ASIDE Stanišić's sentence of 12 years of imprisonment and **IMPOSES** a sentence of 15 years of imprisonment, subject to credit being given under Rules 125(C) and 131 of the Rules for the 2,634 days spent in detention as of 31 May 2023;

SETS ASIDE Simatović's sentence of 12 years of imprisonment and **IMPOSES** a sentence of 15 years of imprisonment, subject to credit being given under Rules 125(C) and 131 of the Rules for the 3,048 days spent in detention as of 31 May 2023;

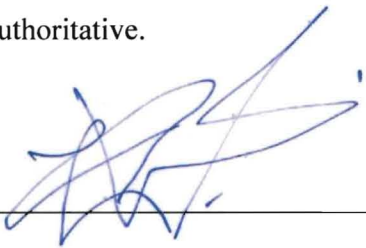
RULES that this Judgement shall be enforced immediately pursuant to Rule 145(A) of the Rules; and

ORDERS that, in accordance with Rules 127(C) and 131 of the Rules, Stanišić and Simatović shall remain in the custody of the Mechanism pending the finalization of the arrangements for their transfer to the State where their sentences will be served.

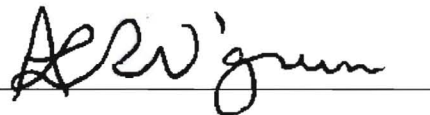
Done in English and French, the English text being authoritative.



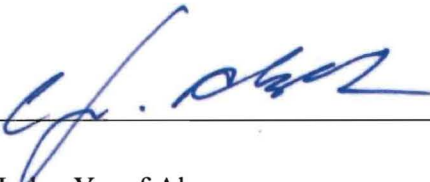
Judge Graciela Gatti Santana, Presiding



Judge Lee G. Muthoga



Judge Aminatta Lois Runeni N'gum



Judge Yusuf Aksar



Judge Claudia Hofer

Done this 31st day of May 2023 at The Hague, the Netherlands.

[Seal of the Mechanism]

VIII. ANNEX A – PROCEDURAL HISTORY

665. The main aspects of the appeal proceedings are summarized below.

A. Composition of the Appeals Chamber

666. On 10 September 2021, the President of the Mechanism ordered that the Bench in the present case be composed of Judges Carmel Agius (presiding), Lee G. Muthoga, Aminatta Lois Runeni N’gum, Yusuf Aksar, and Claudia Hoefler.²⁰⁴⁴ On 15 September 2021, Judge Agius designated himself as the Pre-Appeal Judge in this case.²⁰⁴⁵ On 5 July 2022, Judge Graciela Gatti Santana assigned herself to replace Judge Agius, following her appointment as President of the Mechanism.²⁰⁴⁶ On 12 July 2022, Judge Gatti designated herself as Pre-Appeal Judge.²⁰⁴⁷

B. The Appeals

667. Stanišić, Simatović, and the Prosecution filed their respective notices of appeal on 6 September 2021.²⁰⁴⁸ On 1 October 2021, the Appeals Chamber dismissed, *inter alia*, Stanišić’s motion requesting to strike and/or amend the Prosecution’s notice of appeal.²⁰⁴⁹

668. On 29 October 2021, the Pre-Appeal Judge granted all parties a four-week extension of time, until 31 January 2022, for filing their respective respondent’s briefs.²⁰⁵⁰ On 16 November 2021, the Pre-Appeal Judge dismissed Stanišić’s request for a further two-week extension of time.²⁰⁵¹

669. On 22 November 2021, Stanišić, Simatović, and the Prosecution filed their respective appellant’s briefs.²⁰⁵² On 14 December 2021, the Pre-Appeal Judge granted Stanišić’s and Simatović’s requests for an extension of the word limit for their respondent’s briefs by 10,000 words to 40,000 words, and dismissed their requests for a further extension of time to file their respondent’s

²⁰⁴⁴ Order Assigning Judges to a Case Before the Appeals Chamber, 10 September 2021, p. 1.

²⁰⁴⁵ Order Assigning a Pre-Appeal Judge, 15 September 2021, p. 1.

²⁰⁴⁶ Order Replacing a Judge in a Case Before the Appeals Chamber, 5 July 2022, p. 1.

²⁰⁴⁷ Order Assigning a Pre-Appeal Judge, 12 July 2022, p. 1.

²⁰⁴⁸ Stanišić Defence Notice of Appeal, 6 September 2021; Simatović Defence Notice of Appeal, 6 September 2021; Prosecution Notice of Appeal, 6 September 2021.

²⁰⁴⁹ Decision on Jovica Stanišić’s Motion to Strike and/or Amend Prosecution Notice of Appeal and on a Request to Expedite, 1 October 2021, pp. 1, 3.

²⁰⁵⁰ Decision on Prosecution Motion for Extension of Time for the Filing of Respondent’s Briefs, 29 October 2021, pp. 1, 3.

²⁰⁵¹ Decision on Jovica Stanišić’s Motion for Additional Time to File Respondent’s Briefs, 16 November 2021, pp. 1, 3.

²⁰⁵² Stanišić Defence Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 13 October 2022); Simatović Defence Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 21 November 2022); Prosecution Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 19 May 2022).

briefs.²⁰⁵³ All parties filed their respective respondent's briefs on 31 January 2022,²⁰⁵⁴ and their respective reply briefs on 15 February 2022.²⁰⁵⁵

C. Decisions Pursuant to Rule 142 of the Rules

670. On 17 March 2022, the Prosecution filed a motion requesting the admission of additional evidence on appeal,²⁰⁵⁶ which the Appeals Chamber denied on 20 December 2022.²⁰⁵⁷ On 8 December 2021, Stanišić filed a motion requesting the admission of additional evidence on appeal,²⁰⁵⁸ which the Appeals Chamber denied on 21 December 2022.²⁰⁵⁹

D. Status Conferences

671. In accordance with Rule 69 of the Rules, Status Conferences were held on 16 December 2021,²⁰⁶⁰ 1 April 2022,²⁰⁶¹ 23 June 2022,²⁰⁶² 22 September 2022,²⁰⁶³ 19 January 2023,²⁰⁶⁴ and 17 May 2023.²⁰⁶⁵

E. Hearing of the Appeals

672. The Appeals Chamber heard the parties' oral arguments at the hearing of the appeals held in The Hague, The Netherlands on 24 and 25 January 2023.²⁰⁶⁶

²⁰⁵³ Decision on Requests for Extensions of Time and Word Limits for Respondent's Briefs, 14 December 2021, pp. 1, 4.

²⁰⁵⁴ Stanišić Defence Response to Prosecution Appeal Brief, 31 January 2022 (confidential); Simatović Defence Respondent's Brief, 31 January 2022 (confidential); Prosecution Response to Stanišić Defence Appeal Brief, 31 January 2022 (confidential; public redacted version filed on 9 November 2022); Prosecution Response to Simatović Defence Appeal Brief, 31 January 2022 (confidential; public redacted version filed on 12 December 2022).

²⁰⁵⁵ Stanišić Defence Reply to Prosecution Response to Stanišić Defence Appeal Brief, 15 February 2022 (confidential); Simatović Defence Reply to Prosecution Response to Simatović Defence Appeal Brief, 15 February 2022 (confidential); Prosecution Reply to Stanišić Defence Response to Prosecution Appeal Brief, 15 February 2022 (confidential); Prosecution Reply to Simatović Defence Respondent's Brief, 15 February 2022 (confidential).

²⁰⁵⁶ Prosecution Motion for Admission of Additional Evidence, 17 March 2022 (confidential).

²⁰⁵⁷ Decision on Prosecution Motion for Admission of Additional Evidence, 20 December 2022 (confidential), para. 65.

²⁰⁵⁸ Stanišić Motion for Admission of Additional Evidence, 8 December 2021.

²⁰⁵⁹ Decision on Jovica Stanišić's Motion for Admission of Additional Evidence, 21 December 2022, para. 17.

²⁰⁶⁰ T. 16 December 2021 pp. 1-7. *See also* Order Scheduling a Status Conference, 15 November 2021, p. 1.

²⁰⁶¹ T. 1 April 2022 pp. 1-6. *See also* Order Scheduling a Status Conference, 7 March 2022, p. 2.

²⁰⁶² T. 23 June 2022 pp. 1-15. *See also* Order Scheduling a Status Conference, 12 May 2022, p. 1.

²⁰⁶³ T. 22 September 2022 pp. 1-7. *See also* Order Scheduling a Status Conference, 9 August 2022, p. 2.

²⁰⁶⁴ T. 19 January 2023 pp. 1-5. *See also* Order Scheduling a Status Conference, 22 November 2022, p. 2.

²⁰⁶⁵ T. 17 May 2023 pp. 1-7. *See also* Order Scheduling a Status Conference, 3 March 2023, p. 2.

²⁰⁶⁶ T. 24 January 2023 pp. 1-117; T. 25 January 2023 pp. 1-83. *See also* Scheduling Order for the Hearing of the Appeals, 5 December 2022, pp. 1, 2; Order for the Preparation of the Hearing of the Appeals, 13 January 2023, p. 1.

IX. ANNEX B – CITED MATERIALS AND DEFINED TERMS

A. Jurisprudence

1. Mechanism

KARADŽIĆ, Radovan

Prosecutor v. Radovan Karadžić, Case No. MICT-13-55-A, Judgement, 20 March 2019 (“*Karadžić Appeal Judgement*”)

MLADIĆ, Ratko

Prosecutor v. Ratko Mladić, Case No. MICT-13-56-A, Judgement, 8 June 2021 (“*Mladić Appeal Judgement*”)

ŠEŠELJ, Vojislav

Prosecutor v. Vojislav Šešelj, Case No. MICT-16-99-A, Judgement, 11 April 2018 (“*Šešelj Appeal Judgement*”)

STANIŠIĆ, Jovica, and SIMATOVIĆ, Franko

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Order for the Preparation of the Hearing of the Appeals, 13 January 2023 (“*Order of 13 January 2023*”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Decision on Prosecution Motion for Admission of Additional Evidence, 20 December 2022 (confidential) (“*Decision of 20 December 2022*”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Scheduling Order for the Hearing of the Appeals, 5 December 2022

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Simatović’s Request for Certification to Appeal Decision in Relation to Witness Jovan Krstić (OFS-30), 15 September 2020

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Simatović’s Request for Video-Conference Link for Witness Jovan Krstić (OFS-30), 20 August 2020 (“*Decision of 20 August 2020*”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Order in Relation to Prosecution Request for Clarification of Decision on Adjudicated Facts, 15 January 2019, Corrected Annex to Decision on Judicial Notice of Adjudicated Facts (“*Adjudicated Facts*”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-AR.Misc, Decision on a Prosecution Motion for Enforcement of Order for Retrial, 14 December 2018 (“*Decision of 14 December 2018*”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Simatović Defence Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112, 12 November 2018

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Fourth Omnibus Motion for Admission of Evidence Pursuant to Rule 111, 5 November 2018

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution's First, Second, and Third Omnibus Motions for Admission of Evidence Pursuant to Rule 111, 2 October 2018

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Consolidated Request for Certification to Appeal Decisions on Prosecution Motions for Admission of Evidence of RFJ-040 and RFJ-104 Pursuant to Rule 111, 26 September 2018 ("Decision of 26 September 2018")

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Simatović's Defence Request for Certification to Appeal Decision on Admission of Evidence of Witness RFJ-084, 25 September 2018

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112, 24 September 2018 (confidential) ("Decision of 24 September 2018")

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Simatović's Consolidated Request for Certification to Appeal Decisions on Prosecution Motions for Admission of Evidence of Witnesses RFJ-017, RFJ-174, and RFJ-083 Pursuant to Rule 111, 8 June 2018 (confidential)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of Witness RFJ-084 Pursuant to Rule 111, 6 June 2018 (confidential) ("Decision of 6 June 2018")

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Notice of Filing of Evidence of RFJ-088 and RFJ-002 Pursuant to Rule 111, 16 May 2018

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 112, 16 May 2018 ("Decision of 16 May 2018")

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of RFJ-037 Pursuant to Rule 111, 1 May 2018 (confidential) ("Decision of 1 May 2018")

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of RFJ-017 Pursuant to Rule 111, 20 April 2018 (confidential) ("Decision of 20 April 2018")

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Motion for Admission of Evidence of RFJ-174 and RFJ-083 Pursuant to Rule 111, 19 April 2018 (confidential) ("Decision of 19 April 2018")

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 112, 22 February 2018

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Decision on Prosecution Motions for Admission of Evidence of RFJ-037 Pursuant to Rule 111 and for Protective Measures, 25 January 2018 (confidential) (“Decision of 25 January 2018”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-PT, Decision on Prosecution Motions for Protective Measures for Witnesses, 15 May 2017 (confidential) (“Decision of 15 May 2017”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-PT, Decision on Modalities for Trial, 13 April 2017

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-PT, Decision on Requests for Certification to Appeal Decision on Stanišić’s Request for Stay of Proceedings, 1 March 2017

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-PT, Decision on Stanišić’s Request for Stay of Proceedings, 2 February 2017 (“Decision of 2 February 2017”)

2. ICTR

BIKINDI, Simon

Simon Bikindi v. The Prosecutor, Case No. ICTR-01-72-A, Judgement, 18 March 2010 (“*Bikindi* Appeal Judgement”)

BISENGIMANA, Paul

The Prosecutor v. Paul Bisengimana, Case No. ICTR-00-60-T, Judgement and Sentence, 13 April 2006; Corrigendum – Judgement and Sentence, 20 April 2006; Corrigendum – Judgement and Sentence, 9 March 2007 (“*Bisengimana* Trial Judgement”)

BIZIMUNGU, Augustin

Augustin Bizimungu v. The Prosecutor, Case No. ICTR-00-56B-A, Judgement, 30 June 2014 (“*Bizimungu* Appeal Judgement”)

HATEGEKIMANA, Ildephonse

Ildephonse Hategekimana v. The Prosecutor, Case No. ICTR-00-55B-A, Judgement, 8 May 2012 (“*Hategekimana* Appeal Judgement”)

KAMUHANDA, Jean de Dieu

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-99-54A-A, Judgement, 19 September 2005 (“*Kamuhanda* Appeal Judgement”)

KANYARUKIGA, Gaspard

Gaspard Kanyarukiga v. The Prosecutor, Case No. ICTR-02-78-A, Judgement, 8 May 2012 (“*Kanyarukiga* Appeal Judgement”)

KAREMERA, Édouard, and NGIRUMPATSE, Matthieu

Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor, Case No. ICTR-98-44-A, Judgement, 29 September 2014 (“*Karemera and Ngirumpatse Appeal Judgement*”)

KAYISHEMA, Clément, and RUZINDANA, Obed

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgment (Reasons), signed on 1 June 2001, filed on 19 July 2001 (originally filed in French, English translation filed on 4 December 2001) (“*Kayishema and Ruzindana Appeal Judgement*”)

MUGENZI, Justin, and MUGIRANEZA, Prosper

Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor, Case No. ICTR-99-50-A, Judgement, 4 February 2013 (“*Mugenzi and Mugiraneza Appeal Judgement*”)

MUVUNYI, Tharcisse

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-2000-55A-AR73, Decision on the Prosecutor’s Appeal Concerning the Scope of Evidence to be Adduced in the Retrial, 24 March 2009 (“*Muvunyi Decision of 24 March 2009*”)

NAHIMANA, Ferdinand, et al.

Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze v. The Prosecutor, Case No. ICTR-99-52-A, Judgement, 28 November 2007 (originally filed in French, English translation filed on 16 May 2008) (“*Nahimana et al. Appeal Judgement*”)

NCHAMIHIGO, Siméon

Siméon Nchamihigo v. The Prosecutor, Case No. ICTR-01-63-A, Judgement, 18 March 2010 (“*Nchamihigo Appeal Judgement*”)

NDAHIMANA, Grégoire

Grégoire Ndahimana v. The Prosecutor, Case No. ICTR-01-68-A, Judgement, 16 December 2013 (“*Ndahimana Appeal Judgement*”)

NDINDILYIMANA, Augustin, et al.

Augustin Ndindiliyimana, François-Xavier Nzuwonemeye, and Innocent Sagahutu v. The Prosecutor, Case No. ICTR-00-56-A, Judgement, signed on 11 February 2014, filed on 27 February 2014 (“*Ndindiliyimana et al. Appeal Judgement*”)

NIZEYIMANA, Ildéphonse

Ildéphonse Nizeyimana v. The Prosecutor, Case No. ICTR-00-55C-A, Judgement, 29 September 2014 (“*Nizeyimana Appeal Judgement*”)

NSHOGOZA, Léonidas

Léonidas Nshogoza v. The Prosecutor, Case No. ICTR-07-91-A, Judgement, 15 March 2010 (“*Nshogoza Appeal Judgement*”)

NTAGERURA, André

The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe, Case No. ICTR-99-46-A, Judgement, 7 July 2006 (originally filed in French, English translation filed on 29 March 2007) (“*Ntagerura et al.* Appeal Judgement”)

NTAKIRUTIMANA, Elizaphan and Gérard

The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case Nos. ICTR-96-10 and ICTR-96-17-T, Judgement and Sentence, 21 February 2003 (“*Ntakirutimana and Ntakirutimana* Trial Judgement”)

NTAWUKULILYAYO, Dominique

Dominique Ntawukulilyayo v. The Prosecutor, Case No. ICTR-05-82-T, Judgement and Sentence, 6 August 2010 (“*Ntawukulilyayo* Trial Judgement”)

NYIRAMASUHUKO, Pauline, et al.

The Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, and Élie Ndayambaje, Case No. ICTR-98-42-A, Judgement, 14 December 2015; Corrigendum to Judgement of 14 December 2015, 18 December 2015 (“*Nyiramasuhuko et al.* Appeal Judgement”)

NZABONIMANA, Callixte

Callixte Nzabonimana v. The Prosecutor, Case No. ICTR-98-44D-A, Judgement, 29 September 2014 (“*Nzabonimana* Appeal Judgement”)

RENZAHO, Tharcisse

Tharcisse Renzaho v. The Prosecutor, Case No. ICTR-97-31-A, Judgement, 1 April 2011 (“*Renzaho* Appeal Judgement”)

RUKUNDO, Emmanuel

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-2001-70-A, Judgement, 20 October 2010 (“*Rukundo* Appeal Judgement”)

RUTAGANDA, Georges Anderson Nderubumwe

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement, 26 May 2003 (originally filed in French, English translation filed on 9 February 2004) (“*Rutaganda* Appeal Judgement”)

RUTAGANIRA, Vincent

The Prosecutor v. Vincent Rutaganira, Case No. ICTR-95-1C-T, Judgement and Sentence, 15 March 2005 (originally filed in French, English translation filed on 15 September 2006) (“*Rutaganira* Trial Judgement”)

SEMANZA, Laurent

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement, 20 May 2005 (“*Semanza* Appeal Judgement”)

SEROMBA, Athanase

The Prosecutor v. Athanase Seromba, Case No. ICTR-01-66-A, Judgement, 12 March 2008 (“*Seromba Appeal Judgement*”)

SETAKO, Ephrem

Ephrem Setako v. The Prosecutor, Case No. ICTR-04-81-A, Judgement, 28 September 2011 (“*Setako Appeal Judgement*”)

SIMBA, Aloys

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement, 27 November 2007 (“*Simba Appeal Judgement*”)

3. ICTY**ALEKSOVSKI, Zlatko**

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski Appeal Judgement*”)

BLAGOJEVIĆ, Vidoje, and JOKIĆ, Dragan

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement, 9 May 2007 (“*Blagojević and Jokić Appeal Judgement*”)

BLAŠKIĆ, Tihomir

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić Appeal Judgement*”)

BRĐANIN, Radoslav

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement, 3 April 2007 (“*Brđanin Appeal Judgement*”)

ĐORĐEVIĆ, Vlastimir

Prosecutor v. Vlastimir Đorđević, Case No. IT-05-87/1-A, Judgement, 27 January 2014 (“*Đorđević Appeal Judgement*”)

GALIĆ, Stanislav

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 November 2006 (“*Galić Appeal Judgement*”)

Prosecutor v. Stanislav Galić, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001

GOTOVINA, Ante, and MARKAČ, Mladen

Prosecutor v. Ante Gotovina and Mladen Markač, Case No. IT-06-90-A, Judgement, 16 November 2012 (“*Gotovina and Markač Appeal Judgement*”)

HADŽIHASANOVIĆ, Enver, and KUBURA, Amir

Prosecutor v. Enver Hadžihasanović and Amir Kubura, Case No. IT-01-47-A, Judgement, 22 April 2008 (“*Hadžihasanović and Kubura Appeal Judgement*”)

HARADINAJ, Ramush, et al.

Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj, Case No. IT-04-84-bis-AR73.1, Decision on Haradinaj’s Appeal on Scope of Partial Retrial, 31 May 2011 (“*Haradinaj et al. Decision of 31 May 2011*”)

HARAQIJA, Astrit, and BAJRUSH, Morina

Prosecutor v. Astrit Haraqija and Bajrush Morina, Case No. IT-04-84-R77.4-A, Judgement, 23 July 2009 (“*Haraqija and Morina Appeal Judgement*”)

JOKIĆ, Miodrag

Prosecutor v. Miodrag Jokić, Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004 (“*Jokić Sentencing Trial Judgement*”)

KRAJIŠNIK, Momčilo

Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, Judgement, 17 March 2009 (“*Krajišnik Appeal Judgement*”)

KRSTIĆ, Radislav

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 April 2004 (“*Krstić Appeal Judgement*”)

KUPREŠKIĆ, Zoran, et al.

Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, and Vladimir Šantić, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 (“*Kupreškić et al. Appeal Judgement*”)

KVOČKA, Miroslav, et al.

Prosecutor v. Miroslav Kvočka, Mlađo Radić, Zoran Žigić, and Dragoljub Prcać, Case No. IT-98-30/1-A, Judgement, 28 February 2005 (“*Kvočka et al. Appeal Judgement*”)

LUKIĆ, Milan and Sredoje

Prosecutor v. Milan Lukić and Sredoje Lukić, Case No. IT-98-32/1-A, Judgement, 4 December 2012 (“*Lukić and Lukić Appeal Judgement*”)

MARTIĆ, Milan

Prosecutor v. Milan Martić, Case No. IT-95-11-A, Judgement, 8 October 2008 (“*Martić Appeal Judgement*”)

MILOŠEVIĆ, Slobodan

Prosecutor v. Slobodan Milošević, Case Nos. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002

MILUTINOVIĆ, Milan, et al.

Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić, Case No. IT-05-87-T, Judgement, 26 February 2009 (“*Milutinović et al. Trial Judgement*”)

Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić, Case No. IT-05-87-AR73.1, Decision on Interlocutory Appeal Against Second Decision Precluding the Prosecution from Adding General Wesley Clark to its 65th Witness List, 20 April 2007 (“*Milutinović et al. Decision of 20 April 2007*”)

MLADIĆ, Ratko

Prosecutor v. Ratko Mladić, Case No. IT-09-92-AR73.1, Decision on Ratko Mladić’s Appeal Against the Trial Chamber’s Decisions on the Prosecution Motion for Judicial Notice of Adjudicated Facts, 12 November 2013

MRKŠIĆ, Mile, and ŠLJIVANČANIN, Veselin

Prosecutor v. Mile Mrkšić and Veselin Šljivančanin, Case No. IT-95-13/1-A, Judgement, 5 May 2009 (“*Mrkšić and Šljivančanin Appeal Judgement*”)

PERIŠIĆ, Momčilo

Prosecutor v. Momčilo Perišić, Case No. IT-04-81-A, Judgement, 28 February 2013 (“*Perišić Appeal Judgement*”)

PLAVŠIĆ, Biljana

Prosecutor v. Biljana Plavšić, Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003 (“*Plavšić Sentencing Trial Judgement*”)

POPOVIĆ, Vujadin, et al.

Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević, Case No. IT-05-88-A, Judgement, 30 January 2015 (“*Popović et al. Appeal Judgement*”)

Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, Milan Gvero, and Vinko Pandurević, Case No. IT-05-88-T, Decision on Motion on Behalf of Drago Nikolić Seeking Admission of Evidence Pursuant to Rule 92 *Quater*, 18 December 2008 (confidential; public redacted version filed on 19 February 2009)

PRLIĆ, Jadranko, et al.

Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-A, Judgement, 29 November 2017 (public with confidential Annex C) (“*Prlić et al. Appeal Judgement*”)

Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber’s Ruling Reducing Time for the Prosecution Case, 6 February 2007

ŠAINOVIĆ, Nikola, et al.

Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić, Case No. IT-05-87-A, Judgement, 23 January 2014 (“*Šainović et al.* Appeal Judgement”)

ŠEŠELJ, Vojislav

Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-AR73.7, Decision on Appeal Against the Trial Chamber’s Oral Decision of 9 January 2008, 11 March 2008

STANIŠIĆ, Jovica, and SIMATOVIĆ, Franko

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-A, Judgement, 9 December 2015 (“*Stanišić and Simatović* ICTY Appeal Judgement”)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-T, Judgement, 30 May 2013 (public with confidential Appendix C) (“*Stanišić and Simatović* ICTY Trial Judgement”)

STANIŠIĆ, Mićo, and ŽUPLJANIN, Stojan

Prosecutor v. Mićo Stanišić and Stojan Župljanin, Case No. IT-08-91-A, Judgement, 30 June 2016 (public with confidential Annex C) (“*Stanišić and Župljanin* Appeal Judgement”)

STRUGAR, Pavle

Prosecutor v. Pavle Strugar, Case No. IT-01-42-A, Judgement, 17 July 2008 (“*Strugar* Appeal Judgement”)

Prosecutor v. Pavle Strugar, Case No. IT-01-42-T, Judgement, 1 January 2005 (“*Strugar* Trial Judgement”)

TADIĆ, Duško

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement, 15 July 1999 (“*Tadić* Appeal Judgement”)

TODOROVIĆ, Stevan

Prosecutor v. Stevan Todorović, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 (“*Todorović* Sentencing Judgement”)

TOLIMIR, Zdravko

Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2-A, Judgement, 8 April 2015 (“*Tolimir* Appeal Judgement”)

B. Selected Filings

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Prosecution Motion for Enforcement of Order for Retrial, 3 October 2018

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-PT, Prosecution Response to Annex B to Stanišić Defence Request to Stay the Proceedings Until the Prosecution Respects the Principle of Finality and the Appeal[s] Chamber’s Order for Retrial, 2 December 2016 (public with confidential Annex A)

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-PT, Prosecution Response to Stanišić Defence Request to Stay the Proceedings Until the Prosecution Respects the Principle of Finality and the Appeals Chamber’s Order for Retrial, 17 November 2016 (public with confidential Annex A)

C. Defined Terms and Abbreviations

Appeals Chamber

Appeals Chamber of the Mechanism

Criminal Code of the SFRY

Criminal Code of the Socialist Federal Republic of Yugoslavia, adopted on 28 September 1976, entered into force on 1 July 1977, and repealed by the Criminal Code of the Republic of Serbia on 1 January 2006

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

ICTR Rules

ICTR Rules of Procedure and Evidence

ICTR Statute

Statute of the ICTR

ICTY

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

ICTY Rules

ICTY Rules of Procedure and Evidence

ICTY Statute

Statute of the ICTY

Indictment

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-PT, Prosecution Notice of Filing of Third Amended Indictment, 10 July 2008

JATD

Unit for Anti-Terrorist Activities of the Serbian State Security Service

JNA

Yugoslav People's Army (*Jugoslavenska Narodna Armija*)

Mechanism

International Residual Mechanism for Criminal Tribunals

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paragraph (paragraphs)

Practice Direction on Lengths of Briefs and Motions

Practice Direction on Lengths of Briefs and Motions, MICT/11/Rev.1, 20 February 2019

Prosecution

Office of the Prosecutor of the ICTY or the Mechanism

Prosecution Appeal Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Prosecution Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 19 May 2022)

Prosecution Final Trial Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Prosecution Final Trial Brief, 12 March 2021 (confidential; public redacted version filed on 29 September 2021); Corrigendum to Prosecution Final Trial Brief, 7 April 2021 (confidential); Second Corrigendum to Prosecution Final Trial Brief, 17 September 2021 (confidential)

Prosecution Notice of Appeal

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Prosecution Notice of Appeal, 6 September 2021

Prosecution Pre-Trial Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-PT, Prosecution Notice of Rule 70(E) Filings Pursuant to the Trial Chamber's Decision of 2 February 2017, 9 March 2017 (public with confidential Annexes A, B and D and confidential and *ex parte* Annexes C and E), Annex A, Prosecution Revised Pre-Trial Brief

Prosecution Reply to Simatović Response

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Prosecution Reply to Simatović Defence Respondent’s Brief, 15 February 2022 (confidential)

Prosecution Reply to Stanišić Response

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Prosecution Reply to Stanišić Defence Response to Prosecution Appeal Brief, 15 February 2022 (confidential)

Prosecution Response to Simatović Appeal

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Prosecution Response to Simatović Defence Appeal Brief, 31 January 2022 (confidential; public redacted version filed on 12 December 2022)

Prosecution Response to Stanišić Appeal

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Prosecution Response to Stanišić Defence Appeal Brief, 31 January 2022 (confidential; public redacted version filed on 9 November 2022)

Public Security Service

Serbian Public Security Service (pre-1992)/ “Serbian Public Security Department” (post-1992) of the Serbian Ministry of the Interior

Rome Statute

Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3, entered into force 1 July 2002

Rules

Rules of Procedure and Evidence of the Mechanism

SAO Krajina

Serbian Autonomous Region of Krajina

SAO SBWS

Serbian Autonomous Region of Slavonia, Baranja, and Western Srem

Security Council Resolution 1966 (2010)

UN Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010

SFRY

Socialist Federal Republic of Yugoslavia

Simatović Appeal Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Simatović Defence Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 21 November 2022)

Simatović Final Trial Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Simatović Defence Final Trial Brief, 12 March 2021 (confidential)

Simatović Notice of Appeal

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Simatović Defence Notice of Appeal, 6 September 2021

Simatović Reply Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Simatović Defence Reply to Prosecution Response to Simatović Defence Appeal Brief, 15 February 2022 (confidential)

Simatović Response Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Simatović Defence Respondent's Brief, 31 January 2022 (confidential)

Stanišić Appeal Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Stanišić Defence Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 13 October 2022)

Stanišić Final Trial Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Stanišić Final Trial Brief, 13 March 2021 (confidential)

Stanišić Notice of Appeal

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Stanišić Defence Notice of Appeal, 6 September 2021

Stanišić Reply Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Stanišić Defence Reply to Prosecution Response to Stanišić Defence Appeal Brief, 15 February 2022 (confidential)

Stanišić Response Brief

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-A, Stanišić Defence Response to Prosecution Appeal Brief, 31 January 2022 (confidential)

State Security Service/Department

State Security Service or Department of the Serbian Ministry of the Interior

Statute

Statute of the Mechanism

Trial Chamber

Trial Chamber of the Mechanism seized of the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T

Trial Judgement

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. MICT-15-96-T, Judgement, pronounced on 30 June 2021, filed in writing on 6 August 2021

UNPROFOR

United Nations Protection Force

VRS

Army of the *Republika Srpska*