



"RSK" (IT-95-11)

MILAN MARTIĆ



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Convicted of murder, persecutions on political, racial and religious grounds, cruel treatment, imprisonment, deportation, plunder of public or private property, wanton destruction of villages or devastation not justified by military necessity, torture, inhumane acts, attacks on civilians



From 4 January 1991 until August 1995, held various leadership positions, such as President, Minister of Defence, Minister of Internal Affairs, in the so-called "Serbian Autonomous District (SAO) Krajina," and the so-called "Republic of Serbian Krajina" (RSK).

- Sentenced to 35 years' imprisonment

Crimes convicted of (examples):

Persecutions on political, racial and religious grounds, murder, imprisonment, torture, inhumane acts, deportation, inhumane acts (forcible transfers) (crimes against humanity)

Murder, torture, cruel treatment, wanton destruction of villages or devastation not justified by military necessity, destruction or wilful damage done to institutions dedicated to education or religion, plunder of public or private property, attacks on civilians (violations of the laws or customs of war)

- Milan Martić intended to forcibly displace the Croat and other non-Serb population from the SAO Krajina and the RSK, and he actively participated in the furtherance of the common purpose of the joint criminal enterprise (JCE). He actively worked together with the other JCE participants to fulfil the objective of a united Serb state, something which he expressed publicly on several occasions between 1991 and 1995.
- He was aware that the non-Serb population was being driven out as a result of the coercive atmosphere in the SAO Krajina and the RSK but he deliberately refrained from intervening against perpetrators who committed crimes against the non-Serb population.
- He ordered the shelling of Zagreb on 2 and 3 May 1995 causing the death of seven persons and injuries to 214 others.

Born	18 November 1954 near Knin, Croatia
Indictment	Initial indictment: 25 July 1995; amended indictment: 13 December 2002; second amended indictment: 5 September 2003
Surrendered	15 May 2002
Transferred to ICTY	15 May 2002
Initial and further appearances	21 May 2002, pleaded not guilty to all charges ; 28 January 2003, pleaded not guilty

Trial Chamber Judgement	12 June 2007, sentenced to 35 years' imprisonment
Appeals Chamber Judgement	8 October 2008, sentence affirmed
Serving sentence	26 June 2009, transferred to Estonia to serve his sentence

STATISTICS

Trial days	143
Witnesses called by Prosecution	45
Prosecution exhibits	901
Witnesses called by Defence	22
Defence exhibits	90
Chamber exhibits	24

TRIAL	
Commenced	13 December 2005
Closing arguments	10-12 January 2007
Trial Chamber I	Judge Bakone Justice Moloto (presiding), Judge Janet Nosworthy, Judge Frank Höpfel
Counsel for the Prosecution	Alex Whiting, Ana Richterova, Colin Black, Nisha Valabhji
Counsel for the Defence	Predrag Milovančević, Nikola Perović
Judgement	12 June 2007

APPEALS	
Appeals Chamber	Judge Fausto Pocar (presiding), Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Andréia Vaz, Judge Wolfgang Schomburg
Counsel for the Prosecution	Michelle Jarvis
Counsel for the Defence	Predrag Milovančević, Nikola Perović
Judgement	8 October 2008

RELATED CASES
MILAN BABIĆ (IT-03-72)
GORAN HADŽIĆ (IT-04-75)
SLOBODAN MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"
VOJISLAV ŠEŠELJ (IT-03-67)
STANIŠIĆ & SIMATOVIĆ (IT-03-69)

INDICTMENT AND CHARGES

The initial indictment against Milan Martić was confirmed and made public on 25 July 1995. An amended indictment was filed on 18 December 2002, pursuant to the Trial Chamber decision of 13 December 2002. The second amended indictment was filed on 9 September 2003 (the indictment has a signature date of 14 July 2003) pursuant to the Trial Chamber decision of 5 September 2003. The second amended indictment was re-filed by the Prosecution on 9 December 2005 to correct an error in pagination.

The second amended indictment alleged that from 4 January 1991 until August 1995, Milan Martić held various leadership positions in the so-called Serbian Autonomous District (SAO) Krajina located in north-eastern Croatia, which was later re-named the Republic of Serbian Krajina (RSK) and that, as such, Milan Martić participated in a joint criminal enterprise as a co-perpetrator. According to the indictment, the purpose of this joint criminal enterprise was the forcible removal of a majority of the Croat, Muslim and other non-Serb population from approximately one-third of the territory of the Republic of Croatia, and large parts of the Republic of Bosnia and Herzegovina, in order to make them part of a new Serb-dominated state through the commission of crimes. Specifically, this occurred in the SAO Krajina and the city of Zagreb in northern Croatia, and in the Autonomous Region of Krajina (ARK) in northern Bosnia and Herzegovina, in particular in Bosanski Novi, Bosanska Gradiška, Prnjavor, and Šipovo.

It was alleged that this joint criminal enterprise came into existence before 1 August 1991 and continued until at least August 1995, and that individuals participating in this joint criminal enterprise included Slobodan Milošević; Borisav Jović; Branko Kostić; Veljko Kadijević; Blagoje Adžić; Milan Babić; Goran Hadžić; Jovica Stanišić; Franko Simatović, also known as "Frenki"; Tomislav Simović; Vojislav Šešelj; Momir Bulatović; Radovan Stojičić, also known as "Badža"; Željko Ražnjatović, also known as "Arkan"; Radovan Karadžić; Momčilo Krajišnik; Biljana Plavšić; Momir Talić; Ratko Mladić and other members of the Yugoslav People's Army (JNA), later the Yugoslav Army (VJ); the army of the RSK (SVK); the army of the Republika Srpska (VRS); the Serb Territorial Defence (TO) of Croatia, Bosnia and Herzegovina, Serbia and Montenegro; local and Serbian police forces (MUP forces), including the State Security Service (DB) of the Republic of Serbia, and Serb police forces of the SAO Krajina and the RSK commonly referred to as "Martić's Police," "Martićevci," "SAO Krajina Police" or "SAO Krajina Milicija"; and members of Serbian, Montenegrin and Bosnian Serb paramilitary forces and volunteer units, including the "Wolves of Vučjak" who were trained by Milan Martić and Martić's Police, and other political figures from the (Socialist) Federal Republic of Yugoslavia, the Republic of Serbia, the Republic of Montenegro and the Bosnian Serb leadership.

In order for the joint criminal enterprise to succeed in its objective, Milan Martić worked in concert with or through several individuals named above. Each participant or co-perpetrator within the joint criminal enterprise played a role or roles that significantly contributed to the overall objective of the enterprise.

Among other things, the indictment alleged that Milan Martić, acting individually or in concert with others, participated in the joint criminal enterprise in the following ways:

- He participated in the creation, financing, supply, training and direction of "Martić's Police". These police forces were created and supported to assist in the execution of the joint criminal enterprise through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal.
- He participated in the creation, financing, supply, training and direction of Territorial Defence forces (TO) of the SAO Krajina and subsequently the RSK which participated in the crimes described in the indictment.
- He participated in the creation, training and direction of special police forces of the Serbian State Security Service which participated in the crimes described in this indictment.
- He personally participated in the military actions and subsequent crimes of these police and military forces.
- He participated in the planning, preparation and execution of the take-over of territories in the SAO Krajina and RSK territory, and the subsequent forcible removal of the Croat, Muslim and other non-Serb population.

- He openly espoused and encouraged the creation by violence of a homogeneous Serbian state encompassing the territories specified in the indictment and actively participated with his troops to achieve this end.
- He planned and ordered the shelling attacks on Zagreb in May 1995.

Milan Martić was charged on the basis of individual criminal responsibility (Article 7(1) and 7 (3) of the Statute of the Tribunal) with:

- **Persecutions on political, racial and religious grounds; extermination; murder; imprisonment; torture; inhumane acts; deportation; inhumane acts (forcible transfers)** (crimes against humanity, Article 5)
- **Murder; torture; cruel treatment; wanton destruction of villages or devastation not justified by military necessity; destruction or wilful damage done to institutions dedicated to education or religion; plunder of public or private property; attacks on civilians** (violations of the laws or customs of war, Article 3)

PRE-TRIAL PROCEEDINGS - Rule 61:

In certain instances, such as the Milan Martić case, where the Tribunal has been unable to obtain custody of an accused, it has proceeded under Rule 61 of its Rules of Procedure and Evidence. In such proceedings a full Trial Chamber examines an indictment and the supporting evidence in public and, if it determines that there are reasonable grounds for believing that the accused committed any or all of the crimes charged, confirms the indictment and issues an international arrest warrant. The latter is intended to ensure that the accused will be arrested if he crosses international borders. In addition, if the Prosecutor satisfies the Chamber that the failure to service the arrest warrant on the accused was due to the failure to execute an arrest warrant or refusal of a State to co-operate with the Tribunal, the Chamber may so certify. The President of the Tribunal, in consultation with the presiding Judges of the Trial Chambers, may then notify the Security Council of such failure or refusal by a State. A Rule 61 hearing is not a trial *in absentia* and does not provide for a finding of guilt.

A Rule 61 hearing in the Milan Martić case was held on 27 February 1996, with Judge Jorda presiding. In addition to written evidence, the Prosecutor presented live testimony from four witnesses. On 8 March 1996, the Trial Chamber issued a decision confirming the initial indictment and issuing an international arrest warrant for Milan Martić which was sent to all States and to the NATO-led Implementation Force (IFOR) that was in Bosnia and Herzegovina at the time.

JOINDER PROCEEDINGS

On 30 May, 1 June and 19 July 2005, the Office of the Prosecutor submitted three identical motions to join its cases against Milan Martić, Jovica Stanišić and Franko Simatović, and Vojislav Šešelj. All four accused filed responses to the motions.

Rule 48 of the Tribunal's Rules of Procedure and Evidence provides that "[p]ersons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried." A "transaction" is defined in Rule 2 of the Rules as a "number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan."

If a Chamber decides that these requirements have been met, it may grant joinder or leave the cases to be tried separately. According to the Tribunal's case law, the following factors may be taken into account in making this determination: (i) promoting judicial economy; (ii) avoiding conflicts of interest that might cause serious prejudice to the accused; (iii) protecting the interests of justice, *inter alia*, by safeguarding the rights of the accused to a fair and expeditious trial; (iv) minimising hardship to witnesses, and (v) ensuring consistency of verdicts.

In its decision of 10 November 2005, the Trial Chamber decided that the crimes alleged in the indictments of Milan Martić, Jovica Stanišić and Franko Simatović, and Vojislav Šešelj were indeed committed in the course of the "same transaction" and were therefore eligible to be "jointly charged and tried." However, they also ruled that none of the other factors could be evaluated in favour of joining the three cases. The judges concluded that the factors of judicial economy and rights of the accused argued strongly against such a joinder because it would substantially increase the length of each accused's trial and in Milan Martić's case further delay its commencement. Accordingly, the Trial Chamber decided to refuse the request for joinder and to leave the three cases to be tried separately.

THE TRIAL

The Milan Martić trial commenced on 13 December 2005. The Prosecution completed its case-in-chief on 20 June 2006. On 3 July 2006, the Trial Chamber issued an oral decision pursuant to Rule 98*bis*. The defence began presenting its case on 11 July 2006 and concluded on 16 November 2006. The closing arguments of the Prosecution were presented on 10 January 2007 and of the Defence on 10, 11 and 12 January 2007.

RULE 98*bis* DECISION

After the conclusion of the presentation of Prosecution evidence, the Trial Chamber can rule whether there is a case to answer. If the Chamber believes that the Prosecution has not presented sufficient evidence to prove certain charges, it can dismiss those charges before the beginning of the presentation of defence evidence.

On 3 July 2006, the Trial Chamber in the Milan Martić case issued an oral decision in which it stated the following: "...the Chamber is therefore of the view that there is no basis on which it can enter a judgement of acquittal pursuant to Rule 98*bis*..."

TRIAL CHAMBER JUDGEMENT

Milan Martić was sentenced to 35 years' imprisonment for crimes committed during the early nineties against Croats and other non-Serbs in Croatia. He was convicted on 16 counts of the indictment including persecutions, murder, torture, deportation, attacks on civilians, wanton destruction of civilian areas and other crimes against humanity and violations of laws and customs of war. He was acquitted on one count of the indictment charging him with extermination.

On 21 December 1990 in Knin, the Serbian Autonomous Region (SAO) of Krajina was proclaimed by municipalities in the regions of Northern Dalmatia and Lika, in south-western Croatia. In January 1991, the SAO Krajina established a "Regional Secretariat for Internal Affairs" in Knin, and Milan Martić was appointed Secretary for Internal Affairs. The government of Croatia was informed that the Croatian Ministry of the Interior would no longer be considered as having authority within the SAO Krajina. On 27 June 1991, Milan Martić was appointed Minister of the Interior of the SAO Krajina. On 19 December 1991, the SAO Krajina was replaced by the Republic of Serbian Krajina. Milan Martić continued as Minister of Interior.

The Trial Chamber found that the evidence showed that the President of Serbia, Slobodan Milošević, openly supported the preservation of Yugoslavia as a federation of which the SAO Krajina would form a part. However, the evidence established that Slobodan Milošević *covertly* intended the creation of a Serb state. This state was to be created through the establishment of paramilitary forces and the provocation of incidents in order to create a situation where the JNA could intervene. Initially, the JNA would intervene to separate the parties but subsequently the JNA would intervene to secure the territories envisaged to be part of a future Serb state.

During the spring and summer of 1991, armed clashes took place between Croatian and SAO Krajina armed forces in several areas. There were also raids and attacks by SAO Krajina police and other forces on several Croat-majority areas, including Lovinac, Ljubovo, and Glina.

The evidence showed that the JNA intervened during these clashes in order to separate the two sides. However, this changed on 26 August 1991, when the JNA 9th Corps participated on the side of the SAO Krajina's *Milicija Krajine* and TO forces in an attack on the Croat-majority village of Kijevo, near Knin. The attack followed an ultimatum issued by Milan Martić, in which he stated that:

"You and your leadership have brought relations between the Serbian and Croatian populations to such a state that further co-existence in *our Serbian territories* of the SAO Krajina is impossible".

The attack on Kijevo marked a turning point in the JNA's role in the conflict in Croatia, and from that point, the JNA *participated* in attacks on majority-Croat areas and villages together with SAO Krajina MUP and TO forces. From August 1991 and into early 1992, these combined forces attacked several Croat-majority villages and areas, including Hrvatska Kostajnica, Cerovljani, Hrvatska Dubica, Baćin, Saborsko, Poljanak, Lipovača, Škabrnja and Nadin. The evidence showed that the attacks were carried out in order to connect Serb villages and areas across non-Serb areas. During these attacks, the crimes of murder, destruction, plunder, detention, torture, and cruel treatment were committed against the non-Serb population.

The plan to link up Serb villages and areas continued throughout 1992 with various armed clashes and attacks, including the so-called "Operation Corridor", which was a military operation aimed at linking the Croatian and Bosnian KRAJINAS with Serbia. RSK forces, under the command of among others Milan Martić, participated in this operation.

The Trial Chamber was presented with considerable evidence of acts of persecution carried out against the non-Serb population. Widespread acts of murder and violence, detention and intimidation became pervasive throughout the RSK territory from 1992 to 1995. These acts were committed by RSK TO and MUP forces, and by the JNA, as well as by members of the local Serb population, and created such a coercive atmosphere that the Croat and other non-Serb inhabitants of the RSK were left with no option but to flee or to be forcibly deported by RSK forces. In this respect, the Trial Chamber took particular note of the evidence that the RSK MUP forces directed the non-Serb population to collection points from which transport was organised to areas under Croatian control. By 1994, the RSK was virtually entirely Serb.

The Trial Chamber found that all crimes charged in the Indictment, with the exception of extermination under Count 2, were committed in the SAO Krajina and the RSK from August 1991 through 1995, including murder, imprisonment, torture, cruel treatment, destruction, including of buildings dedicated to religion, as well as plunder. However, the Trial Chamber stressed that there were incidents underlying the crimes charged for which the Trial Chamber did not find Milan Martić guilty.

In relation to extermination, the Trial Chamber recalled that a minimum number of victims was not required and that the crime might be established by an accumulation of separate and unrelated killings. The Trial Chamber in particular considered the evidence that the killings charged were committed within a limited period of time and within a limited territory. However, having considered these factors, as well as the totality of the evidence surrounding the killing incidents charged as extermination, the Trial Chamber found that the crime of extermination was not committed on an accumulated basis in this case.

The Trial Chamber found that with regard to Counts 3 to 14, and Count 1 insofar as it related to these counts, Milan Martić's individual criminal responsibility was one of participation in a joint criminal enterprise pursuant to Article 7(1) of the Statute.

The Trial Chamber found that from at least August 1991 the political objective to unite Serb areas in Croatia and in BiH with Serbia in order to establish a unified Serb territory was implemented through widespread and systematic armed attacks on predominantly Croat and other non-Serb areas and through the commission of acts of violence and intimidation. In the SAO Krajina and the RSK, this campaign of violence and intimidation against the Croat and non-Serb population was a consequence of the position taken by the leadership that co-existence with the Croats and other non-Serbs, in Milan Martić's words, "in our Serbian territories of the SAO Krajina" was impossible. Thus, the implementation of the political objective to establish a unified Serb territory in these circumstances necessitated the forcible removal of the Croat and other non-Serb population from the SAO Krajina and RSK. The Trial Chamber therefore found beyond reasonable doubt that the common purpose of the joint criminal enterprise was the establishment of an ethnically Serb territory through the displacement of the Croat and other non-Serb population, as charged in Counts 10 and 11.

The evidence established that the SAO Krajina and RSK leadership, including in particular Milan Martić, sought and received significant financial, logistical and military support from Serbia. The support came from the MUP and the State Security Service of Serbia, from the JNA and from the Republika Srpska in Bosnia and Herzegovina. Milan Martić stated that he "personally never ceased this cooperation" and that there was "good cooperation with the leadership of Serbia, notably the [MUP]." In fact, the relationship with Serbia was so close that the SAO Krajina police was mainly financed with funds and material from Serbia. The support from Serbia continued throughout the indictment period. One witness even described the Army of the RSK and the Yugoslav Army as one and the same organisation, only located at two separate locations.

The Trial Chamber therefore found that among others Blagoje Adžić, Milan Babić, Radmilo Bogdanović, Veljko Kadijević, Radovan Karadžić, Slobodan Milošević, Ratko Mladić, Vojislav Šešelj, Franko "Frenki" Simatović, Jovica Stanišić, and Captain Dragan Vasiljković participated in the furtherance of the common purpose of the joint criminal enterprise.

The evidence showed that Milan Martić's contacts with other members of the joint criminal enterprise were close and direct. As a result, substantive financial, logistical and military support was rendered to the SAO Krajina and the RSK. Milan Martić actively worked together with the other participants to achieve the objective of a united Serb state, something which he expressed publicly on several occasions. This objective he achieved by the forcible removal of the non-Serb population. Milan Martić was one of the most important and influential political figures in the SAO Krajina and RSK governments. As Minister of the Interior, Milan Martić exercised absolute authority over the MUP, including the power to intervene on an individual level by appointing and removing chiefs of public security stations, as well as the authority to disband units.

The Trial Chamber considered that the sheer scale of the widespread and pervasive crimes perpetrated against the non-Serb population must have rendered such crimes common knowledge. Crimes committed within the territory of the RSK were even discussed at RSK government sessions. The evidence also showed that Milan Martić and the MUP were informed by the United Nations Civilian Police of the multitude of crimes committed against non-Serbs. In fact, Milan Martić himself issued detailed instructions concerning the cooperation of the MUP with the United Nations Civilian Police. In addition, at a meeting in 1993 with Cedric Thornberry, the UNPROFOR Director of Civil Affairs, Milan Martić requested that Croats who wished to leave the RSK sign statements that no one had put pressure on them to leave. There was therefore absolutely no doubt that Milan Martić was aware that the non-Serb population was being driven out as a result of the coercive atmosphere and widespread acts of violence and intimidation in the SAO Krajina and the RSK.

However, despite the overwhelming evidence of crimes committed throughout SAO Krajina and RSK territory, the Trial Chamber was only presented with evidence of a few examples where Milan Martić intervened to punish members of the MUP who had behaved in a criminal manner. The Trial Chamber could not but conclude that Milan Martić deliberately refrained from intervening against perpetrators who committed such crimes.

The Trial Chamber found that the crimes perpetrated against the non-Serb population under Counts 3 to 9, Counts 12 to 14, and Count 1 insofar as it related to those counts, were outside of the common purpose of the joint criminal enterprise. However, the Trial Chamber recalled that Milan Martić was aware that the non-Serb population was being subjected to widespread and systematic crimes, including murder, unlawful detentions, beatings while detained, and crimes against property, following the coercive atmosphere in the SAO Krajina and the RSK. The Trial Chamber considered that this atmosphere was created and sustained by the actions of Milan Martić and other members of the joint criminal enterprise. The Trial Chamber therefore found that the crimes found to be outside the common purpose of the JCE were foreseeable to Milan Martić. Furthermore, the evidence included only scarce reference to Milan Martić acting to take measures to prevent or punish such crimes. In fact, despite the overwhelming evidence of the scale and gravity of the crimes being committed against the non-Serb population, Milan Martić persisted in pursuing the common purpose of the joint criminal enterprise. Thus, the Trial Chamber considered it proven beyond reasonable doubt that Milan Martić willingly took the risk that the crimes which had been found to be outside the common purpose might be perpetrated against the non-Serb population. The Trial Chamber therefore found that Milan Martić incurred individual criminal responsibility pursuant to Article 7(1) of the Statute for Counts 3 to 14, and Count 1, Persecution, insofar as it related to these counts.

The Trial Chamber found that Milan Martić's responsibility for the attacks on Zagreb on 2 and 3 May 1995 was most appropriately described as "ordering", pursuant to Article 7(1) of the Statute. Other modes of liability were therefore not considered. In reaching this finding, the Trial Chamber considered the substantial evidence that Milan Martić from 1992 onwards considered attacking Zagreb as a response to Croatian attacks on the RSK. The Trial Chamber also considered Milan Martić's repeated admissions in the media that he ordered the attacks, as well as the evidence that Milan Martić and Milan Čeleketić were not in favour of a peaceful solution to Operation Flash. Milan Martić was also present when Milan Čeleketić ordered the shelling of Sisak. The Trial Chamber considered the totality of the evidence established that Milan Martić was involved from the beginning in the RSK's military response to Operation Flash.

On 12 June 2007, the Trial Chamber rendered its judgement, convicting Milan Martić, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal), with:

- Persecution (crime against humanity)
- Murder (crime against humanity)
- Murder (violation of the laws or customs of war)
- Imprisonment (crime against humanity)
- Torture (crime against humanity)
- Inhumane acts (crime against humanity)
- Torture (violation of the laws or customs of war)
- Cruel treatment (violation of the laws or customs of war)
- Deportation (crime against humanity)
- Forcible transfer (crime against humanity)
- Wanton destruction of villages, or devastation not justified by military necessity (violation of the laws or customs of war)
- Destruction of wilful damage done to institutions dedicated to education or religion (violation of the laws or customs of war)
- Plunder of public or private property (violation of the laws or customs of war)
- Murder (crime against humanity)
- Inhumane acts (crime against humanity)
- Attacks on civilians (violation of the laws or customs of war)

He was found not guilty of the following count:

- Extermination (crime against humanity)

Sentence: 35 years' imprisonment

Credit was given for 1855 days spent in detention.

APPEALS CHAMBER JUDGEMENT

On 12 July 2007, both the Prosecution and the Defence filed their notices of appeal against the judgement. The Prosecution filed its appeal brief on 25 September 2007.

On 14 January 2008, the Defence filed a new notice of appeal. The final version of its appeal brief was filed on 5 May 2008.

The appeals hearing took place on 25 and 26 June 2008.

Milan Martić brought ten grounds of appeal against the Trial Judgement, requested a finding of not guilty or a re-trial on the basis of alleged errors of law and fact. The Prosecution presented one ground of appeal, asking for a revision of the sentence due to an alleged error of law.

The Appeals Chamber dismissed nine grounds of Milan Martić's appeal and accepted two sub-grounds of the fifth ground of appeal, reversing his convictions relating to specific alleged crimes committed in Benkovac, Cerovljani, Vukovići and Poljanak.

In Milan Martić's fifth ground of appeal, in relation to his conviction for crimes committed in Benkovac, he submitted that the Trial Chamber erred in making these findings because the evidence upon which the Trial Chamber relied was unsupported and uncorroborated. The Appeals Chamber noted that the Prosecution acknowledged that these convictions should be reversed for reasons of fairness as they did not

form part of the case against Milan Martić. The Appeals Chamber therefore found that the Trial Chamber erred in convicting Milan Martić for crimes committed in Benkovac and reversed his conviction for Counts 8 and 9 in respect of the crimes perpetrated against Ivan Atelj and Šime Čačić in Benkovac, and Counts 7 and 9 in respect of the crimes perpetrated against the three children detained in a kindergarten in Benkovac.

Also in his fifth ground of appeal, Milan Martić alleged errors of fact in the Trial Chamber's findings relating to the general requirements of Articles 3 and 5 of the Statute, the existence of the joint criminal enterprise, his participation in the joint criminal enterprise and the crimes committed in furtherance of the common criminal purpose of the joint criminal enterprise. In addition, Milan Martić also argued under various grounds of appeal that the Trial Chamber erred in failing to properly establish a link between him and the principal perpetrators of the crimes.

The Appeals Chamber considered the Trial Chamber's findings on the crimes for which Milan Martić was convicted as a participant in a joint criminal enterprise, to determine whether there was a sufficient link between the principal perpetrators of the crimes and Milan Martić. The Trial Chamber had considered that the JNA, the police and other Serb forces active on the territory of the SAO Krajina and the RSK were structured hierarchically and closely coordinated with each other. Furthermore, the Trial Chamber identified the plurality of persons participating in the joint criminal enterprise and found that Milan Martić participated "willingly" in the JCE. Finally, the Trial Chamber explicitly found that the objective of uniting Serb areas was implemented "through widespread and systematic armed attacks...and through the commission of acts of violence and intimidation". The Appeals Chamber found that, while it would have been preferable for the Trial Chamber to make an explicit finding that members of the joint criminal enterprise, when using these forces, were acting in accordance with the common plan, this omission did not invalidate the Trial Judgement. Such attacks could not have been implemented without the participation of forces under the JCE members' control.

Therefore, with regard to the crimes committed by the *Milicija Krajine*, the JNA, the TO, the MUP or a combination thereof in Hrvatska Dubica, Cerovljani, Baćin, Burška, the JNA 9th corps barracks in Knin, the old hospital in Knin and the Titova Korenica facility, the Appeals Chamber found that the Trial Chamber did not err in establishing the required link between Milan Martić and the perpetrators. Similarly, the Appeals Chamber found no error in the Trial Chamber's finding that a sufficient link existed between the principal perpetrators and Milan Martić with regard to the crimes committed in Lipovača by Serb paramilitary forces, crimes committed in Škabrnja and Nadin, and Saborsko by a combination of JNA soldiers or TO soldiers or other units, and crimes of persecution and deportation committed by the JNA, the TO, the *Milicija Krajine*, the MUP, the armed forces or police officers of the SAO Krajina and the RSK. The Appeals Chamber dismissed this sub-ground of appeal in relation to these crimes.

However, the Appeals Chamber found that the Trial Chamber erred in finding that the required link existed between Milan Martić and the principal perpetrators with regard to crimes committed in Cerovljani by armed Serbs from Živaja led by Nikola Begović, crimes committed in Vukovići and Poljanak by unidentified Serbs or soldiers, and crimes committed in Vukovići by a combination of JNA soldiers or TO soldiers and other units. With regard to these crimes, the Appeals Chamber found that a miscarriage of justice resulted and reversed Milan Martić's convictions under Counts 1, 3, 4, 12 and 13 insofar as they related to these crimes. Judge Schomburg appended a separate opinion on the matter of joint criminal enterprise.

The Appeals Chamber dismissed all other grounds of appeal by Milan Martić.

The Appeals Chamber granted the Prosecution's sole ground of appeal in which it claimed that the Trial Chamber erred in law when it found that persons *hors de combat*, i.e. soldiers who are incapable of taking part in the hostilities (for example because injured or detained), could not be victims of crimes against humanity. In support of this, the Prosecution argued that the definition of "civilians" when used in the context of crimes against humanity should not be limited to its definition under international humanitarian law but should also include other categories of people. While the Appeals Chamber considered that certain terms have been defined differently in international humanitarian law and international criminal law, the fundamental character of the notion of "civilian" in international humanitarian law and international criminal law weighs against giving them different definitions under Article 3 and Article 5 of the Statute. The Appeals Chamber therefore found that the definition of civilian

contained in Article 50 of Additional Protocol I reflects the definition of civilian for the purposes of Article 5 of the Statute and did not include people *hors de combat*.

However, the Appeals Chamber noted that the relevance of the "civilian population" in Article 5 of the Statute is to the *chapeau* requirement that there be a widespread or systematic attack against a civilian population. There was nothing in the text of Article 5 of the Statute or previous authorities of the Appeals Chamber that required individual victims of crimes against humanity to be civilians. A person *hors de combat* may thus be the victim of an act amounting to a crime against humanity provided that all the other necessary conditions are met, including that the crimes occur as part of a widespread or systematic attack against the civilian population.

The Appeals Chamber found that the Trial Chamber erred in law in this respect and had it not done so, it would have entered convictions under Article 5 for seven victims of murder (Count 3), about 26 victims of torture (Count 6), about 28 victims of inhumane acts (Count 7) and about 23 victims persecution (Count 1) for acts committed against victims who were *hors de combat* at the time of the commission of the offence. The Appeals Chamber found that all elements of these offences had been met in relation to these victims and entered convictions for these crimes, with the exception of those crimes committed in Benkovac, as Martić's convictions for crimes committed there were reversed by the Appeals Chamber elsewhere in its judgement.

Concerning the impact of its findings on sentencing, the Appeals Chamber noted that it allowed a number of Milan Martić's sub-grounds of appeal under his fifth ground of appeal, as well as the Prosecutor's sole ground of appeal. In light of this, the Appeals Chamber gave consideration to whether an adjustment in Milan Martić's sentence was appropriate.

The new convictions entered under Article 5 of the Statute served to reflect the full culpability of the accused. However, the Appeals Chamber found that these convictions related to underlying conduct already taken into account by the Trial Chamber when entering convictions under Article 3. In relation to the convictions reversed on appeal, the Appeals Chamber considered that these reversals had minimal impact on Milan Martić's overall culpability in light of the remaining crimes for which he was convicted and the impact they had on the victims. The Appeals Chamber concluded that the reversals on appeal did not warrant a revision of sentence.

On 8 October 2008, the Appeals Chamber affirmed the sentence imposed by the Trial Chamber and sentenced Milan Martić to 35 years' imprisonment.

On 26 June 2009, Milan Martić was transferred to Estonia to serve his sentence.