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JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

APPEALS CHAMBER

The Hague, 23 January 2014

Appeal Judgement Summary for Šainović et al.

Please find below the summary of the Judgement read out today by Judge Liu.

The Appeals Chamber convenes today, in accordance with the scheduling order issued on 15 November 2013 and pursuant to Rule 117(D) of the Tribunal's Rules of Procedure and Evidence, to deliver its Judgement in the case of Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić.

Following the practice of the Tribunal, I will not read out the text of the Judgement, except for the disposition, but instead will summarise the essential issues on appeal and the central findings of the Appeals Chamber. This oral summary does not constitute any part of the official and authoritative Judgement of the Appeals Chamber, which will be distributed in writing to the parties at the close of this hearing.

In the written Judgement, when referring to the names of geographic locations, both Albanian and the Bosnian/Croatian/Serbian versions are used. Solely for the convenience of today's summary, I will use only the Bosnian/Croatian/Serbian version.

Background of the Case

The events giving rise to this case took place between March and June 1999 and concern the forcible displacement of the Kosovo Albanian population in Kosovo. The Trial Chamber found that following the commencement of the NATO bombing on 24 March 1999, a campaign of violence was launched against the Kosovo Albanian civilian population, during which numerous Kosovo Albanians were forcibly displaced, incidents of killing and sexual assault took place, and mosques were intentionally destroyed. The Trial Chamber held that neither the NATO bombing, nor the ongoing armed conflict between the Kosovo Liberation Army, or "KLA", and the forces of the Federal Republic of Yugoslavia, or "FRY", and Serbia were the primary cause of the flight of the hundreds of thousands of Kosovo Albanians. Rather, the Trial Chamber held that it was the deliberate actions of the forces of the FRY and Serbia during the campaign of violence that caused the departure of at least 700,000 Kosovo Albanians from Kosovo.

The Trial Chamber further found that "during the time of the crimes alleged in the Indictment" a joint criminal enterprise, or "JCE" existed, the common purpose of which was to forcibly displace the Kosovo Albanian population both within and without Kosovo through a widespread and systematic campaign of terror and violence. The Trial Chamber found that this was to ensure continued control by the authorities of FRY and Serbia over Kosovo. The Trial Chamber also concluded that while the crimes of deportation and forcible transfer were within the ambit of the common purpose, the crimes of murder, as a violation of the laws or customs of war, and murder and persecution, through murder, sexual assault, and destruction of or damage to religious property, as crimes against humanity, fell outside the common purpose of the JCE. During the period relevant to the Indictment, Mr. Šainović was the Deputy Prime Minister of the FRY; Mr. Pavković was Commander of the 3rd Army of

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the Army of Yugoslavia, or “VJ”; Mr. Lazarević was Commander of the Priština Corps of the VJ; and Mr. Lukić was the Head of the Staff of the Ministry of the Interior of the Republic of Serbia in Priština, also referred to as the “MUP Staff”. I will refer to them collectively as Appellants.

The Trial Chamber concluded that Mr. Šainović, Mr. Pavković, and Mr. Lukić participated in the JCE as each of them shared the intent to forcibly displace the Kosovo Albanian population and significantly contributed to the JCE. With respect to the crimes falling outside the common purpose, the Trial Chamber found that the commission of murder and persecution, through murder and destruction of or damage to religious property, were reasonably foreseeable to Mr. Šainović, Mr. Pavković, and Mr. Lukić. The Trial Chamber further found that the commission of persecution through sexual assaults was reasonably foreseeable to Mr. Pavković, but not to Mr. Šainović and Mr. Lukić.

The Trial Chamber convicted Mr. Šainović of committing, through participation in the JCE, deportation, other inhumane acts (forcible transfer), murder, and persecution as crimes against humanity and murder as a violation of the laws or customs of war. He was sentenced to 22 years of imprisonment.

The Trial Chamber convicted Mr. Pavković of committing, through participation in the JCE, deportation, other inhumane acts (forcible transfer), murder, and persecution as crimes against humanity and murder as a violation of the laws or customs of war. He was sentenced to 22 years of imprisonment.

The Trial Chamber convicted Mr. Lukić of committing, through participation in the JCE, deportation, other inhumane acts (forcible transfer), murder, and persecution as crimes against humanity and murder as a violation of the laws or customs of war. He was sentenced to 22 years of imprisonment.

The Trial Chamber convicted Mr. Lazarević of aiding and abetting the crimes of deportation and other inhumane acts (forcible transfer) as crimes against humanity in which the VJ was involved. The Trial Chamber acquitted Mr. Lazarević of aiding and abetting murder as a crime against humanity, murder as a violation of the laws or customs of war, and persecution through murder as a crime against humanity. He was sentenced to 15 years of imprisonment.

Each of the Appellants challenged his conviction and sentence. The Office of the Prosecutor, hereinafter Prosecution, brought six grounds of appeal against the acquittal of each appellant on certain counts and in relation to their sentences.

The Appeals Chamber heard the oral submissions of the parties from 11 to 15 March 2013.

I now turn to the contentions of the Appellants and the Prosecution, addressing first the submissions regarding alleged errors in relation to fair trial.

Alleged Errors in Relation to Fair Trial

Mr. Pavković and Mr. Lukić both allege violations of their right to a fair trial due to the lack of adequate time and facilities for the preparation of their defence cases. Based on a holistic assessment of the Trial Chamber’s management of the proceedings, the Appeals Chamber finds that Mr. Pavković and Mr. Lukić were accorded adequate time and facilities for the preparation of their defence. In relation to Mr. Lukić’s remaining challenges, the Appeals Chamber finds no error in the Trial Chamber’s relevant determinations or any apprehension of bias on its part.

Alleged Errors in Relation to the Indictment

I now turn to the parties' submissions regarding alleged errors in relation to the Indictment.

Mr. Šainović argues that the Trial Chamber erred in convicting him as the political coordinator of the VJ and MUP forces in Kosovo as this allegation was not adequately pleaded in the Indictment. The Appeals Chamber finds that the term "political coordinator" does not constitute a material fact in itself that should have been pleaded in the Indictment and therefore dismisses Mr. Šainović's appeal, in this regard.

Mr. Lazarević argues that the Trial Chamber erred in holding him responsible for deportation and forcible transfer committed in the area of the village of Ćirez in the Srbica municipality on the basis of acts that occurred outside of the time-frame specified in the Indictment. The Appeals Chamber considers that the time-frame set out in paragraph 72(c) of the Indictment, when read together with the allegations contained in the chapeau of the same paragraph, provides sufficient notice with respect to the timing of the acts. The Appeals Chamber thus finds that the Indictment adequately put Mr. Lazarević on notice as to the date of the crimes charged, and dismisses his appeal, to the extent that it alleges a defect in the Indictment.

Mr. Lukić argues that the Trial Chamber erred in holding him responsible for the murder of victims who were not listed in the Indictment. Having examined the parties' submissions, the Appeals Chamber finds that only four victims of murder referred to by Mr. Lukić were not mentioned by name in the Schedules annexed to the Indictment. Given the circumstances of this case, including the high number of victims alleged, Mr. Lukić's distance from the actual killings, and the fact that the Schedules to the Indictment were not meant to provide exhaustive lists, the Appeals Chamber finds that the omission of the victims' names does not amount to a defect in the Indictment. The Appeals Chamber therefore dismisses the relevant part of Mr. Lukić's appeal.

The Prosecution argues that the Trial Chamber erred in law in finding that the specific deportations and forcible transfers detailed in paragraph 72 of the Indictment were not charged as forms of persecution under Count 5. The Appeals Chamber finds that the Prosecution has failed to raise an objection to the Trial Chamber's interpretation of the Indictment when it could have reasonably done so. It further finds that the Prosecution has waived its right to raise this argument on appeal. The Appeals Chamber therefore dismisses the Prosecution's appeal in relevant part.

The Appeals Chamber observes that the crimes of deportation and other inhumane acts (forcible transfer) committed in Tušilje, in Srbica municipality, on 29 March 1999 were not pleaded in the Indictment. The Indictment was thus defective in this respect and the defect was not subsequently cured. The Appeals Chamber finds that the omission of the incident in Tušilje and the resulting lack of notice caused prejudice and materially impaired the Appellants in the preparation of their defence. Accordingly, the Appeals Chamber vacates the convictions of Mr. Šainović, Mr. Pavković, Mr. Lazarević, and Mr. Lukić in relation to the incident in Tušilje on 29 March 1999.

Alleged Errors Concerning the Mens Rea Chapeau Requirement of Article 5 of the Statute
Mr. Pavković raises a number of challenges to the Trial Chamber's findings in relation to the *mens rea chapeau* requirement of crimes against humanity. The Appeals Chamber holds that to satisfy the *mens rea chapeau* requirement of Article 5 of the Tribunal's Statute the accused must have known of the attack against the civilian population and that his acts comprised part of the attack, or at least must have taken the risk that his acts were part thereof. For the reasons set out in the Judgement, the Appeals Chamber discerns no error in the Trial Chamber's relevant findings. Accordingly, the Appeals Chamber dismisses Mr. Pavković's appeal in this regard.

Underlying Crimes

In all of the 13 municipalities where specific crimes were charged, the Trial Chamber found that during the spring of 1999, forces of the FRY and Serbia deliberately and forcibly displaced Kosovo Albanian civilians both within and outside of Kosovo. The Trial Chamber also found that during the forcible displacement of the Kosovo Albanian population, the FRY and Serbian forces killed at least 600 individuals, destroyed or damaged mosques, and sexually assaulted Kosovo Albanian women.

Mr. Lazarević and Mr. Lukić challenge the Trial Chamber's findings on the commission of forcible displacement by the FRY and Serbian forces. The Appeals Chamber finds that, with the exception of two locations, Mr. Lazarević and Mr. Lukić have failed to demonstrate an error in the Trial Chamber's findings. Only in relation to Kačanik town and Turićevac, the Appeals Chamber finds that no reasonable trier of fact could have concluded that the only reasonable inference was that members of the VJ forces, in relation to Kačanik town, and members of the VJ and MUP forces, in relation to Turićevac, caused the displacement of the population. Accordingly, the Appeals Chamber grants Mr. Lazarević's argument and vacates his conviction in relation to the incident in Kačanik town. The Appeals Chamber also vacates the convictions of Mr. Šainović, Mr. Pavković, Mr. Lazarević, and Mr. Lukić in relation to the incident in Turićevac.

The Prosecution has appealed against the Trial Chamber's acquittal of Mr. Lazarević in relation to villages in three municipalities. In this regard, the Prosecution submits that the Trial Chamber erred by failing to apply its own findings that the VJ participated in deportation and forcible transfer as crimes against humanity in these locations.

In volume 2 of the Trial Judgement, the Trial Chamber found that Kosovo Albanians from villages in Kosovska Mitrovica, Prizren, and Uroševac municipalities were forcibly displaced by MUP and VJ forces. However, in volume 3 of the Trial Judgement, the Trial Chamber did not hold Mr. Lazarević responsible for aiding and abetting the crimes of forcible displacement in these locations, stating that these crimes were carried out by the MUP, without the participation of the VJ. Recalling that a trial judgement must be read as a whole, the Appeals Chamber finds that the Trial Chamber's statement in volume 3 of the Trial Judgement was an oversight and that the Trial Chamber therefore erred in failing to apply its own factual finding that the VJ was involved in the commission of the crimes. Accordingly, the Appeals Chamber grants, in part, the Prosecution's appeal. However, the Appeals Chamber, Judge Ramarosan dissenting, declines to enter new convictions on appeal.

The Trial Chamber further found that a total of at least 600 individuals were killed by VJ and MUP forces during the course of their operations to forcibly displace the Kosovo Albanian civilian population. Mr. Lukić raises several challenges to the Trial Chamber's findings concerning these killings, including regarding the identification of the victims and the cause of their death.

The Appeals Chamber finds merit solely in Mr. Lukić's arguments concerning the murders committed in the course of the Reka valley operation in Đakovica municipality. In particular, Mr. Lukić argues that some of the 287 victims that the Trial Chamber found were murdered during the Reka valley operation could have been combatants. The Appeals Chamber notes that the Trial Chamber failed to determine whether, at the time of their death, each victim was a civilian taking no active part in the hostilities or was hors de combat. The Appeals Chamber considers that in the absence of sufficient evidence on the circumstances and status of each of the victims, the Trial Chamber erred to the extent it found that all 287 killings during the Reka valley operation amounted to murder as a crime against humanity and as a violation of the laws or customs of war. Having reviewed the relevant evidence, the Appeals Chamber is satisfied that it has only been established beyond reasonable doubt that 13 individuals killed were taking no active part in hostilities or were hors de combat at the time of their deaths. The Appeals Chamber therefore vacates both Mr. Pavković's and Mr. Lukić's convictions for murder under Articles 3 and 5 of the Statute with respect to 274 of the 287 Kosovo Albanians found to be murdered. The Appeals

Chamber dismisses Mr. Lukić's remaining challenges to the Trial Chamber's findings on murder.

With respect to the Trial Chamber's findings on the commission of sexual assault, the Prosecution argues that the Trial Chamber erred when it failed to find that the rapes of K31, K14, and K62 in Priština were committed with discriminatory intent and thus constituted persecution. The Trial Chamber found that the Prosecution had failed to present any evidence from which the discriminatory intent of the perpetrators of the rapes could be inferred, notwithstanding its finding that the rapes were committed by VJ and MUP forces in the course of the operation to remove large numbers of Kosovo Albanians from Priština town. The Appeals Chamber considers that the Trial Chamber failed to properly consider the context in which the rapes occurred and erred in finding that there was no evidence from which the discriminatory intent of the perpetrators could be inferred. The Appeals Chamber is satisfied that the only reasonable inference to be drawn from the evidence presented at trial is that K31, K14, and K62 were raped with discriminatory intent by members of the VJ and MUP and that these acts constitute persecution as a crime against humanity. The Appeals Chamber thus grants, in part, the Prosecution's appeal.

Joint Criminal Enterprise

I now turn to the submissions of Mr. Šainović, Mr. Pavković, and Mr. Lukić with regard to their individual criminal responsibility under JCE liability. I will first address their contentions concerning the common purpose of the JCE and subsequently turn to their arguments regarding their participation in the JCE.

The Existence of a Common Plan, Design, or Purpose

Mr. Šainović, Mr. Pavković, and Mr. Lukić submit that the Trial Chamber erred in concluding that it was established beyond reasonable doubt that there was a common purpose shared by the JCE members "during the time of the crimes alleged in the Indictment that amounted to or involved the commission of those crimes under the Statute" and that this common purpose was to forcibly displace a number of Kosovo Albanians both within and outside Kosovo.

The Appeals Chamber observes that the Trial Chamber made findings on the commission of crimes charged in the Indictment in relation to events starting from 24 March until the end of May 1999. Therefore, the Appeals Chamber understands the Trial Chamber's finding on the existence of the common purpose to be related to the period of the occurrence of those crimes, namely from 24 March until the end of May 1999.

The Appeals Chamber recalls that, while the Trial Chamber inferred the existence of the common purpose from several factors, it placed the most weight on the pattern of forcible displacement of Kosovo Albanians and the confiscation of their identification documents. Mr. Šainović, Mr. Pavković, and Mr. Lukić have failed to demonstrate that the Trial Chamber erred in its assessment of the evidence regarding these two factors. The Appeals Chamber finds that the evidence regarding these two factors is indeed sufficient for a reasonable trier of fact to find that the only reasonable inference is that there existed a common purpose as found by the Trial Chamber. The Appeals Chamber dismisses in their entirety Mr. Šainović's, Mr. Pavković's, and Mr. Lukić's arguments in relation to the Trial Chamber's finding on the existence of the common purpose.

The Existence and Authority of the Joint Command

I now turn to the submissions of Mr. Šainović, Mr. Pavković, and Mr. Lukić concerning an entity known as "the Joint Command for Kosovo and Metohija" or, simply, the "Joint Command".

The Trial Chamber found that an entity known as the Joint Command, composed of politicians and VJ and MUP members, was created around June 1998, and that it had influence over VJ and MUP forces in Kosovo and played a role in the coordination of these forces in the second half of 1998 and in the first half of 1999. The Trial Chamber considered Mr. Šainović's, Mr. Pavković's, and Mr. Lukić's respective roles in the coordination of the VJ and MUP forces through the Joint Command to infer their intent and contribution to the common purpose of the JCE. For the reasons set out in the Judgement, the Appeals Chamber, Judge Tuzmukhamedov dissenting, finds that Mr. Šainović, Mr. Pavković, and Mr. Lukić have failed to demonstrate any error in the Trial Chamber's findings on the existence and authority of the Joint Command. The Appeals Chamber, Judge Tuzmukhamedov dissenting, therefore dismisses their submissions in this regard.

Mr. Šainović's Participation in the JCE

I now turn to Mr. Šainović's arguments challenging the Trial Chamber's findings that he made a significant contribution to the common purpose of the JCE and that he shared the intent to forcibly displace part of the Kosovo Albanian population.

In its assessment of Mr. Šainović's participation in the JCE, the Trial Chamber found that he possessed extensive de facto powers over both the VJ and the MUP forces in Kosovo and was the crucial link between the then FRY President Slobodan Milošević, who was in Belgrade, and the VJ and MUP units that were operating in Kosovo. The Trial Chamber found that Mr. Šainović's role was, therefore, that of the political co-ordinator of the forces in Kosovo.

The Appeals Chamber, Judge Tuzmukhamedov dissenting, finds that Mr. Šainović has not demonstrated any error in the Trial Chamber's finding that he was one of the closest and most trusted associates of Slobodan Milošević in 1999. The Appeals Chamber further finds that Šainović has not demonstrated any error in the Trial Chamber's findings related to his leadership role during Joint Command meetings in 1998, his participation at meetings in 1998 at which the Plan for Combating Terrorism in Kosovo was discussed, his position as Chairman of the Commission for Cooperation with the Kosovo Verification Mission, his dealings with Ibrahim Rugova, and his participation at the MUP Staff meeting on 4 April 1999. The Appeals Chamber, Judge Tuzmukhamedov dissenting, further finds that Mr. Šainović has failed to show any error in the Trial Chamber's findings concerning the meeting on 4 May 1999 with Milošević, the meeting at the MUP Staff on 7 May 1999, and the 1 June 1999 Joint Command meeting. The Appeals Chamber, Judge Tuzmukhamedov dissenting, also dismisses Mr. Šainović's arguments concerning his role in liaising with and influencing the VJ and MUP forces. The Appeals Chamber also holds that Mr. Šainović has not demonstrated an error in the Trial Chamber's finding that he was able to make proposals, give suggestions, and issue instructions.

While the Appeals Chamber finds that the Trial Chamber erred in relying on Mr. Šainović's presence at the meeting of 13 April 1999 with Zlatomir Pešić, it finds, Judge Tuzmukhamedov dissenting, that the Trial Chamber's error has no impact on its conclusion that in 1999 Mr. Šainović continued to liaise between the VJ and the MUP on the one hand and Milošević on the other.

Moreover, the Appeals Chamber, Judge Tuzmukhamedov dissenting, finds that Mr. Šainović has not demonstrated that the Trial Chamber erred in finding that he had extensive powers over the VJ and MUP forces and acted as the political coordinator of those forces in both 1998 and 1999, and that his contribution to the common purpose was significant.

The Trial Chamber further found that Mr. Šainović was well aware of displacements and crimes taking place in Kosovo in 1998 and continued to acquire information on the commission of crimes, including forcible displacement, throughout 1999. The Appeals Chamber considers that a reasonable trier of fact could have concluded that Mr. Šainović shared the intent to forcibly displace part of the Kosovo Albanian population in 1999. In this

regard, the Appeals Chamber upholds the Trial Chamber's finding that Mr. Šainović's statements insisting on the prevention and punishment of crimes were merely "window dressing".

Consequently, the Appeals Chamber, Judge Tuzmukhamedov dissenting, upholds the Trial Chamber's finding that Mr. Šainović participated in the JCE.

In addition, Mr. Šainović challenges the Trial Chamber's finding that he was responsible for the crimes of murder as a violation of the laws or customs of war and murder and persecution, through murder and destruction of or damage to religious property, as crimes against humanity pursuant to JCE III. The Appeals Chamber finds that in reaching its conclusion, the Trial Chamber erroneously applied a higher degree of foreseeability than that required under the correct legal standard. Further, the Appeals Chamber finds that, in assessing whether murder was foreseeable to Mr. Šainović, the Trial Chamber erred in concluding that he knew about the commission of murder in several locations.

Nevertheless, in light of the remaining factual findings of the Trial Chamber and applying the correct legal standard, the Appeals Chamber, Judge Liu dissenting, is satisfied that as of 7 May 1999, it was foreseeable to Mr. Šainović that murders could be committed and that he willingly took that risk. The Appeals Chamber therefore grants Mr. Šainović's appeal, in part, and quashes his convictions for murder as a violation of the laws or customs of war, and murder and persecution, through murder, as crimes against humanity, committed prior to 7 May 1999 pursuant to JCE III. The Appeals Chamber, Judge Liu dissenting, upholds Mr. Šainović's conviction for murder as a violation of the laws or customs of war, and murder and persecution, through murder, as crimes against humanity, committed at Dubrava around 25 May 1999 pursuant to JCE III. The Appeals Chamber further finds that Mr. Šainović has failed to demonstrate any error in the factual findings relied upon by the Trial Chamber in concluding that it was foreseeable to him that persecution, through destruction of or damage to religious property, would be committed and that he willingly took that risk. Since a higher degree of foreseeability was met, a lower degree of foreseeability is necessarily satisfied. Mr. Šainović's arguments are therefore dismissed.

Mr. Pavković's Participation in the JCE

I now turn to Mr. Pavković's arguments challenging the Trial Chamber's findings that he significantly contributed to the common purpose of the JCE and shared the intent to forcibly displace the Kosovo Albanian population. He also contests the Trial Chamber's findings that crimes of both the VJ and the MUP are imputable to him.

In reaching its conclusions, the Trial Chamber considered that, throughout the period in which the crimes were committed, Mr. Pavković, *inter alia*, ordered and supported the operations of the VJ in Kosovo, including joint operations with the MUP, mobilised the troops, and commanded them during these operations. The Trial Chamber also considered that Mr. Pavković contributed to the creation and maintenance of an environment of impunity by under-reporting crimes committed by forces under his control and failing to take effective measures in response to information thereon, which encouraged the commission of crimes by forces under the control of JCE members. In addition, the Trial Chamber considered Mr. Pavković's close working relationship to Slobodan Milošević in 1998 and 1999, which enabled him to by-pass the VJ chain of command. The Trial Chamber further found that Mr. Pavković knew of crimes committed by VJ and MUP members and allegations thereof in 1998 and 1999.

The Appeals Chamber finds that the Trial Chamber erred in finding that Mr. Pavković contributed to the JCE, prior to the existence of the common purpose, through his involvement in the process of arming the non-Albanian population and disarming the Kosovo Albanian population and by deploying additional VJ forces into Kosovo in breach of the agreements brokered in October 1998. Nevertheless, the Appeals Chamber considers that the Trial Chamber's overall conclusion that Mr. Pavković made a significant contribution to

the JCE is unaffected by these errors as the Trial Chamber's conclusion was based on an abundance of other evidence, including Mr. Pavković's other conduct which continued through 1999.

Mr. Pavković's remaining arguments have not demonstrated that the Trial Chamber erred in finding that he significantly contributed to the common purpose of the JCE and shared the intent to forcibly displace the Kosovo Albanian population. His submissions in this regard are thus dismissed. In addition, Mr. Pavković has failed to show that the Trial Chamber erred in concluding that crimes committed by both VJ and MUP forces are imputable to Mr. Pavković, pursuant to JCE I. His arguments in this respect are also dismissed.

The Appeals Chamber thus upholds the Trial Chamber's finding that Mr. Pavković participated in the JCE.

Furthermore, Mr. Pavković challenges the Trial Chamber's finding that he was responsible for the crimes of murder as a violation of the laws or customs of war and murder and persecution, through murder, sexual assault, and destruction of or damage to religious property, as crimes against humanity pursuant to JCE III.

As already mentioned with respect to Mr. Šainović, the Appeals Chamber finds that, in reaching its conclusions on JCE III, the Trial Chamber erroneously applied a higher degree of foreseeability than that required under the correct legal standard. The Appeals Chamber finds that Mr. Pavković has failed to demonstrate any error in the factual findings relied upon by the Trial Chamber in reaching its conclusion on his foreseeability of the relevant crimes and the risk he took. Consequently, the Appeals Chamber considers that the error of law committed by the Trial Chamber as to the degree of foreseeability has no impact on Mr. Pavković's conviction. Since a higher degree of foreseeability was met, a lower degree of foreseeability is necessarily satisfied. Mr. Pavković's further arguments have also failed to demonstrate that the Trial Chamber erred in finding that these crimes outside the scope of the common purpose were imputable to him. Accordingly, the Appeals Chamber dismisses Mr. Pavković's arguments with regard to his JCE III liability.

Mr. Lukić's Participation in the JCE

I now turn to Mr. Lukić's arguments challenging the Trial Chamber's findings as to his role as Head of the MUP Staff, his participation in and contribution to the implementation of the common purpose of the JCE, and that he shared the intent to forcibly displace the Kosovo Albanian population.

The Trial Chamber found that Mr. Lukić made a significant contribution to the JCE as he was the de facto commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999, the "bridge" between the policy-planners in Belgrade and those on the ground in Kosovo, and was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans.

The Appeals Chamber finds that the Trial Chamber erred in finding that Mr. Lukić contributed to the JCE, prior to the existence of the common purpose, through his involvement in the process of arming the non-Albanian population and disarming the Kosovo Albanian population. Nonetheless, the Appeals Chamber considers that the Trial Chamber's conclusion that Mr. Lukić made a significant contribution to the JCE is unaffected by this error as it was based on an abundance of other evidence, including Mr. Lukić's other conduct as the Head of the MUP Staff which continued through 1999. The Appeals Chamber finds that Mr. Lukić has failed to demonstrate an error in the Trial Chamber's remaining findings concerning the MUP Staff's authority, his role as Head of the MUP Staff and his contribution to the JCE.

In reaching the conclusion that Mr. Lukić shared the intent with other JCE members to forcibly displace the Kosovo Albanian population, the Trial Chamber considered, inter alia, the information Mr. Lukić received both in 1998 and 1999. Having due regard to the Trial Chamber's findings on Mr. Lukić's awareness of serious allegations of criminal activity by various forces in Kosovo in mid-to late 1998, and the information he received about the commission of crimes and the mass departure of the civilian population in 1999, the Appeals Chamber finds that the Trial Chamber's conclusion on Mr. Lukić's knowledge of crimes based on the totality of the evidence was reasonable. Mr. Lukić's remaining challenges to the Trial Chamber's findings in relation to his sharing the intent to forcibly displace part of the Kosovo Albanian population are dismissed.

The Appeals Chamber thus upholds the Trial Chamber's finding that Mr. Lukić participated in the JCE.

Mr. Lukić also challenges the Trial Chamber's finding that he was responsible pursuant to JCE III for the crimes of murder as a violation of the laws or customs of war and murder and persecution, through murder and destruction of or damage to religious property, as crimes against humanity. As already expressed with respect to Mr. Šainović and Mr. Pavković, the Appeals Chamber finds that, in reaching its conclusions on JCE III, the Trial Chamber erroneously applied a higher degree of foreseeability than that required under the correct legal standard. Further, the Appeals Chamber finds that, in assessing whether murder was foreseeable to Mr. Lukić, the Trial Chamber erred in relying on the information he received about the incident in Gornje Obrinje.

In light of the remaining factual findings of the Trial Chamber and in applying the correct legal standard, the Appeals Chamber grants Mr. Lukić's appeal concerning his responsibility for murder pursuant to JCE III, in part, and quashes his convictions for murder as a violation of the laws or customs of war and murder and persecution, through murder, as crimes against humanity committed prior to or on 1 April 1999 pursuant to JCE III. The Appeals Chamber upholds Mr. Lukić's convictions for murder as a violation of the laws or customs of war and murder and persecution, through murder, as crimes against humanity committed at Korenica and Meja on 27 April 1999, near Gornja Sudimlja in relation to the convoy on 2 and 3 May 1999, and at Dubrava around 25 May 1999 pursuant to JCE III. The Appeals Chamber further finds that Mr. Lukić has not demonstrated any error in the Trial Chamber's finding in relation to his JCE III liability for the destruction of or damage to religious property. Since on the basis of the Trial Chamber's factual findings a higher degree of foreseeability was met, a lower degree of foreseeability is satisfied a fortiori.

Prosecution' Appeal in relation to JCE III

I now turn to the Prosecution's appeal concerning Mr. Šainović's and Mr. Lukić's acquittals for persecution through sexual assaults committed in Beleg, Ćirez, and Priština pursuant to JCE III liability and Mr. Pavković's acquittal for persecution through sexual assaults committed in Priština pursuant to JCE III.

Regarding Mr. Šainović and Mr. Lukić, the Prosecution argues that the Trial Chamber erred in law by applying an incorrect legal standard for the JCE III mens rea. It requests the Appeals Chamber to apply the correct legal standard to the facts of the case and convict Mr. Šainović and Mr. Lukić for persecution through sexual assaults. Regarding Mr. Pavković, the Prosecution submits that the Appeals Chamber should convict him for persecution through sexual assaults committed in Priština/Prishtina pursuant to JCE III.

As already explained with respect to the appeals of Mr. Šainović, Mr. Pavković, and Mr. Lukić, the Appeals Chamber finds that the Trial Chamber erred in law in concluding that for JCE III liability to arise, it must be foreseeable to the accused that the crime "would be committed". The correct legal standard for the JCE III mens rea requires that it was foreseeable to the accused that such a crime might be committed by a member of the JCE or one or more of the persons used by any member of the JCE in order to carry out the

actus reus of the crimes forming part of the common purpose, and the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise. The Appeals Chamber has thus applied the correct legal standard for the JCE III mens rea to the evidence in the record. In relation to Mr. Šainović, it finds, Judge Liu dissenting, that it was foreseeable to him that persecution through sexual assaults might be committed in Beleg, Ćirez, and Priština and that he willingly took that risk. In relation to Mr. Lukić, the Appeals Chamber finds that it was foreseeable to him that persecution through sexual assaults might be committed in Beleg, Ćirez, and Priština and that he willingly took that risk. In relation to Mr. Pavković, the Appeals Chamber finds that it was foreseeable to him that persecution through sexual assaults might be committed in Priština and that he willingly took that risk.

The Appeals Chamber therefore grants the Prosecution's appeal, in relevant part and finds, Judge Liu dissenting in relation to Mr. Šainović, that the Trial Chamber erred by not finding Mr. Šainović and Mr. Lukić liable for persecution, through sexual assaults, as a crime against humanity in Beleg, Ćirez, and Priština. The Appeals Chamber further finds that the Trial Chamber erred by not finding Mr. Pavković liable for persecution, through sexual assaults, as a crime against humanity in Priština. However, the Appeals Chamber, Judge Ramaroson dissenting, declines to enter new convictions on appeal.

Aiding and Abetting

Mr. Lazarević's Conviction for Aiding and Abetting

I turn now to Mr. Lazarević's arguments challenging the Trial Chamber's findings that he fulfilled the *actus reus* and *mens rea* of aiding and abetting the crimes of deportation and inhumane acts (forcible transfer).

Referring to the Perišić Appeal Judgement, Mr. Lazarević submits that the Trial Chamber erred in failing to determine whether his alleged acts and omissions were specifically directed to assist the deportation and forcible transfer and thus in concluding that he aided and abetted these crimes.

The Appeals Chamber disagrees with the holding in the Perišić Appeal Judgement that the Mrkšić and Šljivančanin and the Lukić and Lukić Appeal Judgements support that specific direction is an element of the *actus reus* of aiding and abetting. For the reasons set out in the Judgement, the Appeals Chamber considers that the Mrkšić and Šljivančanin and the Lukić and Lukić Appeal Judgements, on one hand, and the Perišić Appeal Judgement, on the other, diverge on the issue of whether specific direction is an element of the *actus reus* of aiding and abetting liability. The Appeals Chamber recalls that where it is faced with previous decisions that are conflicting, it is obliged to determine which decision it will follow, or whether to depart from both decisions for cogent reasons in the interests of justice. In view of the divergence between the judgements, the Appeals Chamber, Judge Tuzmukhamedov dissenting, will determine the correct approach.

To this end, the Appeals Chamber has carefully examined the jurisprudence of the Tribunal and the ICTR as well as customary international law, and concludes, Judge Tuzmukhamedov dissenting, that "specific direction" is not an element of aiding and abetting liability. Consequently, the Appeals Chamber, Judge Tuzmukhamedov dissenting, rejects the approach adopted in the Perišić Appeal Judgement as it is in direct and material conflict with the prevailing jurisprudence on the *actus reus* of aiding and abetting liability and with customary international law in this regard.

In light of the foregoing, the Appeals Chamber finds that in assessing the *actus reus* of aiding and abetting, the Trial Chamber was not required to determine whether Mr. Lazarević's acts were specifically directed to assist, encourage or lend moral support to the commission of the crimes by the VJ. Thus, his arguments to the contrary are dismissed.

Mr. Lazarević also contends that the Trial Chamber erred in finding that he provided practical assistance, encouragement, and moral support to the VJ forces engaging in forcible displacement and that his conduct had a substantial effect upon the commission of crimes. He first challenges the Trial Chamber's findings concerning his involvement and participation in the planning and execution of joint operations of the MUP and the VJ in Kosovo in 1999. The Appeals Chamber finds that in assessing Mr. Lazarević's conduct, the Trial Chamber erred in relying upon his issuance of the Grom 3 order to the Priština Corps units on 7 February 1999 as, at the time of issuance of the order, he did not have the requisite *mens rea*. However, in light of the other evidence relied upon by the Trial Chamber, the Appeals Chamber finds that this error does not affect the Trial Chamber's conclusion on Mr. Lazarević's participation in the planning and execution of joint operations in Kosovo.

Mr. Lazarević also challenges the Trial Chamber's finding that he failed to take adequate measures to ensure the proper investigation of serious crimes committed by the VJ, and through this omission, thereby aided and abetting the forcible displacement committed by the VJ forces. The Appeals Chamber considers that while Mr. Lazarević's failure to take investigative and punitive measures against the commission of forcible displacement may have had an effect on the ability of the military prosecutor to pursue perpetrators of such crimes, this in itself is not conclusive for the purposes of establishing aiding and abetting liability. Rather in order to fulfil the *actus reus* of aiding and abetting, it must be demonstrated that any such omission substantially contributed to the continued commission of forcible displacement. Absent such analysis in the Trial Judgement and in light of the circumstances of this case, the Appeals Chamber considers that irrespective of any failure on Mr. Lazarević's part to take more adequate measures to report, investigate, and initiate disciplinary measures, no reasonable trier of fact could have found beyond reasonable doubt that his omission in this respect had a substantial effect on the commission of the forcible displacement. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in finding that Mr. Lazarević aided and abetted the commission of forcible displacement through his failure to take adequate measures to secure the proper investigation of serious crimes committed by the VJ.

Mr. Lazarević further challenges the Trial Chamber's finding that his inspection of the VJ units provided encouragement and moral support to the VJ forces engaging in forcible displacement. The Appeals Chamber recalls that encouragement and moral support can only form a substantial contribution to a crime when the principal perpetrators are aware of it. The Appeals Chamber finds that the Trial Chamber erred in concluding that the only reasonable inference was that Mr. Lazarević's inspection of the Priština Corps units provided encouragement and moral support to the perpetrators. Mr. Lazarević's conduct in this respect could therefore not be considered as aiding and abetting the commission of deportation and forcible transfer by the VJ forces.

The Appeals Chamber considers, however, that the identified errors have no impact on the Trial Chamber's ultimate conclusion that Mr. Lazarević provided practical assistance to members of the VJ involved in the commission of forcible transfer and deportation and that this had a substantial effect on the commission of these crimes. The Appeals Chamber recalls that the Trial Chamber found that Mr. Lazarević participated in the planning and execution of the joint operations conducted by the VJ and thereby substantially contributed to the commission of the crimes by the VJ as such conduct provided assistance in terms of soldiers on the ground to carry out the acts, organising and equipping VJ units, and the provision of weaponry, including tanks, to assist these acts.

Mr. Lazarević also argues that the Trial Chamber erred in finding that he possessed the requisite *mens rea* for aiding and abetting the crimes of deportation and forcible transfer committed by the VJ. Mr. Lazarević submits that the Trial Chamber erred in finding that based on his knowledge of events and crimes in 1998, he was aware that similar excessive uses of force and forcible displacements were likely to occur if he ordered the VJ to operate in Kosovo in 1999. The Appeals Chamber notes that the Trial Chamber did not find

that forcible displacement took place in 1998. At most, the information Mr. Lazarević received in 1998 made him aware of the probability that the VJ forces would use excessive and indiscriminate force or commit other crimes if ordered to operate in Kosovo in 1999. However, the Appeals Chamber considers that on the basis of such knowledge alone no reasonable trier of fact could have concluded that the only reasonable inference was that Mr. Lazarević was aware that forcible displacement was likely to occur if he ordered the VJ to operate in Kosovo in 1999. The Appeals Chamber thus finds that the Trial Chamber erred in this respect.

However, for the reasons set out in the Judgement, the Appeals Chamber finds that a reasonable trier of fact could have concluded that the only reasonable inference from the evidence is that, as of 24 March 1999 when the first crimes in Priština/Prishtina took place, Mr. Lazarević was aware of the campaign of terror, violence, and forcible displacement carried out by VJ and MUP forces against the Kosovo Albanian population. Therefore, the Appeals Chamber dismisses the relevant parts of Mr. Lazarević's appeal.

The Appeals Chamber thus upholds the Trial Chamber's finding that Mr. Lazarević aided and abetted the crimes of deportation and inhumane acts (forcible transfer).

Prosecution's Appeal in relation to Mr. Lazarević

I now turn to the Prosecution's appeal concerning Mr. Lazarević's acquittal of the charges of murder as a crime against humanity, murder as a violation of the laws or customs of war, and persecution through murder as a crime against humanity.

The Trial Chamber found that killings were not intended aims of the VJ and MUP organised campaign. For this reason, despite finding that Mr. Lazarević was aware of VJ members killing Kosovo Albanians in some instances, the Trial Chamber concluded that he was not aware that VJ and MUP forces were going into the specific crime sites in order to commit killings.

The Prosecution argues that in acquitting Mr. Lazarević of aiding and abetting murder, the Trial Chamber erred in law in relation to the *mens rea* standard of aiding and abetting. The Appeals Chamber finds that the Trial Chamber applied a standard whereby it required that Mr. Lazarević be aware of the essential elements of the specific crime committed, including the mental state of the perpetrators. The Appeals Chamber is therefore satisfied that the Trial Chamber applied the correct legal standard.

In the alternative, the Prosecution contends that the Trial Chamber erred in fact by acquitting Mr. Lazarević of aiding and abetting murder. However, the Appeals Chamber finds that the Prosecution has failed to show an error in the Trial Chamber's conclusion that Mr. Lazarević did not have the requisite *mens rea*. The Appeals Chamber therefore dismisses the Prosecution's appeal, in relevant part, and upholds Mr. Lazarević's acquittal for aiding and abetting murder.

Sentencing

I now turn to the question of sentencing. The Appellants and the Prosecution have all appealed against the sentences imposed by the Trial Chamber.

Having considered the parties' arguments carefully, the Appeals Chamber finds merit in the arguments of the Prosecution, Mr. Šainović, and Mr. Lukić pertaining to the Trial Chamber's failure to individualise the sentences as well as Mr. Lukić's arguments regarding the assessment of his surrender as a mitigating circumstance. Accordingly, the Appeals Chamber grants, in relevant parts, the appeals of the Prosecution, Mr. Šainović, and Mr. Lukić. The Appeals Chamber dismisses all other grounds of appeal raised by the Appellants and the Prosecution relating to sentencing.

I now turn to the impact of the Appeals Chamber's findings on sentence. In this context, the Appeals Chamber recalls that in addition to its findings on the parties' appeals against sentence, it reversed certain convictions in relation to each Appellant. The Appeals Chamber considers that, in light of the circumstances of this case, as well as the gravity of the crimes for which the Appellants are responsible, and taking into account the principle of proportionality, a limited reduction in the sentences imposed by the Trial Chamber is warranted in relation to Mr. Šainović, Mr. Lazarević, and Mr. Lukić.

Disposition

I shall now read out the full operative text of the Appeals Chamber's disposition.

For the foregoing reasons, **THE APPEALS CHAMBER,**

PURSUANT TO Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the parties and the arguments they presented at the appeal hearing on 11-15 March 2013;

SITTING in open session;

Mr. Šainović, will you please stand.

WITH RESPECT TO NIKOLA ŠAINOVIĆ,

GRANTS in part Šainović's fourth ground of appeal and **REVERSES** his convictions for committing through his participation in a JCE murder as a violation of the laws or customs of war and murder and persecution, through murder, as crimes against humanity at Bela Crkva/Bellacërka, Mala Kruša/Krusha e Vogël, Suva Reka/Suhareka town, Izbica/Izbicë, Đakovica/Gjakova town, Korenica/Korenicë and Meja/Mejë, and near Gornja Sudimlja/Studimja e Epërme (Count 3 in part, Count 4 in part, and Count 5 in part);

GRANTS sub-ground 7(3) of Šainović's appeal concerning sentencing;

DISMISSES, Judge Liu and Judge Tuzmukhamedov dissenting, Šainović's appeal in all other respects;

REVERSES *proprio motu* Šainović's convictions as a participant in a JCE for deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Tušilje/Tushila (Count 1 in part and Count 2 in part);

REVERSES Šainović's convictions as a participant in a JCE for deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Turićevac/Turiçec (Count 1 in part and Count 2 in part), as a result of granting sub-ground 1(f) of Lazarević's appeal in part;

AFFIRMS, Judge Liu and Judge Tuzmukhamedov dissenting, the remainder of Šainović's convictions under Counts 1 to 5;

ALLOWS in part, Judge Liu and Judge Tuzmukhamedov dissenting, the Prosecution's third and fourth grounds of appeal and **FINDS**, Judge Liu and Judge Tuzmukhamedov dissenting, that the Trial Chamber incorrectly found Šainović not guilty for committing through his participation in a JCE persecution, through sexual assaults, as a crime against humanity in Beleg, Ćirez/Qirez, and Priština/Prishtina (Count 5 in part), but **DECLINES**, Judge Ramarosan dissenting, to enter new convictions against him in this regard;

GRANTS in part the Prosecution's sixth ground of appeal concerning sentencing;

DISMISSES the Prosecution's appeal concerning Šainović in all other respects;

SETS ASIDE the sentence of 22 years of imprisonment and **IMPOSES** a sentence of 18 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

Mr. Šainović, you may be seated.

Mr. Pavković, will you please stand.

WITH RESPECT TO NEBOJŠA PAVKOVIĆ,

DISMISSES Pavković's appeal in its entirety;

REVERSES *proprio motu* Pavković's convictions as a participant in a JCE for deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Tušilje/Tushila (Count 1 in part and Count 2 in part);

REVERSES Pavković's convictions as a participant in a JCE for deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Turićevac/Turićec (Count 1 in part and Count 2 in part), as a result of granting sub-ground 1(f) of Lazarević's appeal in part;

REVERSES Pavković's convictions as a participant in a JCE for murder as a violation of the laws or customs of war and murder and persecution, through murder, as crimes against humanity with respect to 274 of the 287 Kosovo Albanians killed in and around Korenica/Korenice and Meja/Meje during the Reka/Caragoj valley operation (Count 3 in part, Count 4 in part, and Count 5 in part), as a result of granting ground Q of Lukić's appeal in part;

AFFIRMS the remainder of Pavković's convictions under Counts 1 to 5;

ALLOWS in part the Prosecution's fourth ground of appeal and **FINDS** that the Trial Chamber incorrectly found Pavković not guilty for committing through his participation in a JCE persecution, through sexual assaults, as a crime against humanity in Priština/Prishtina (Count 5 in part), but **DECLINES**, Judge Ramaroson dissenting, to enter new convictions against him in this regard;

GRANTS in part the Prosecution's sixth ground of appeal concerning sentencing;

DISMISSES the Prosecution's appeal concerning Pavković in all other respects;

AFFIRMS the sentence of 22 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

Mr. Pavković, you may be seated.

Mr. Lazarević, will you please stand.

WITH RESPECT TO VLADIMIR LAZAREVIĆ,

GRANTS in part sub-grounds 1(f) and 1(i) of Lazarević's appeal and **REVERSES** his convictions for aiding and abetting deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Turićevac/Turićec and Kačanik/Kaçanik town (Count 1 in part and Count 2 in part);

GRANTS in part sub-grounds 3(e), 3(h), and 3(i) of Lazarević's appeal and **SETS ASIDE** the Trial Chamber's findings that: (i) his failure to take adequate investigative and punitive

measures substantially contributed to the commission of the crimes of forcible transfer and deportation by VJ forces; and (ii) his inspection of the VJ units provided encouragement and moral support to the VJ forces engaging in forcible displacement;

DISMISSES Lazarević's appeal in all other respects;

REVERSES *proprio motu* Lazarević's convictions for aiding and abetting deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Tušilje/Tushila (Count 1 in part and Count 2 in part);

AFFIRMS the remainder of Lazarević's convictions under Counts 1 and 2;

ALLOWS in part the Prosecution's fifth ground of appeal and **FINDS** that the Trial Chamber incorrectly found Lazarević not guilty for aiding and abetting deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Žabare/Zhabar, Dušanovo/Dushanova, Sojevo/Sojeva, Staro Selo/Fshat i Vjetër, and Miroslavlje/Mirosala (Count 1 in part and Count 2 in part), but **DECLINES**, Judge Ramarosan dissenting, to enter new convictions against him in this regard;

GRANTS in part the Prosecution's sixth ground of appeal concerning sentencing;

DISMISSES the Prosecution's appeal concerning Lazarević in all other respects;

SETS ASIDE the sentence of 15 years of imprisonment and **IMPOSES** a sentence of 14 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

Mr. Lazarević, you may be seated.

Mr. Lukić, will you please stand.

WITH RESPECT TO SRETEN LUKIĆ,

GRANTS in part sub-ground O(1)(e) and ground Q of Lukić's appeal and **REVERSES** his convictions for committing through his participation in a JCE murder as a violation of the laws or customs of war and murder and persecution, through murder, as crimes against humanity at Bela Crkva/Bellacërka, Mala Kruša/Krusha e Vogël, Suva Reka/Suhareka town, Izbica/Izbicë, and Đakovica/Gjakova town as well as with respect to 274 of the 287 Kosovo Albanians killed in and around Korenica/Korenicë and Meja/Mejë during the Reka/Caragoj valley operation (Count 3 in part, Count 4 in part, and Count 5 in part);

GRANTS sub-grounds KK(3) and KK(1), in part, of Lukić's appeal concerning sentencing;

DISMISSES Lukić's appeal in all other respects;

REVERSES *proprio motu* Lukić's convictions as a participant in a JCE for deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Tušilje/Tushila (Count 1 in part and Count 2 in part);

REVERSES Lukić's convictions as a participant in a JCE for deportation and inhumane acts (forcible transfer) as crimes against humanity committed in Turičevac/Turiçec (Count 1 in part and Count 2 in part), as a result of granting sub-ground 1(f) of Lazarević's appeal in part;

AFFIRMS the remainder of Lukić's convictions under Counts 1 to 5;

ALLOWS in part the Prosecution's third and fourth grounds of appeal and **FINDS** that the Trial Chamber incorrectly found Lukić not guilty for committing through his participation in

a JCE persecution, through sexual assaults, as a crime against humanity in Beleg, Ćirez/Qirez, and Priština/Prishtina (Count 5 in part), but **DECLINES**, Judge Ramaroson dissenting, to enter new convictions against him in this regard;

GRANTS in part the Prosecution's sixth ground of appeal concerning sentencing;

DISMISSES the Prosecution's appeal concerning Lukić in all other respects;

SETS ASIDE the sentence of 22 years of imprisonment and **IMPOSES** a sentence of 20 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has already spent in detention;

Mr. Lukić, you may be seated.

RULES that this Judgement shall be enforced immediately pursuant to Rule 118 of the Rules;

ORDERS that, in accordance with Rules 103(C) and 107 of the Rules, the Appellants are to remain in the custody of the Tribunal pending the finalisation of arrangements for their transfer to the State where their sentences will be served.

Judge Liu Daqun appends a partially dissenting opinion and a declaration.

Judge Arlette Ramaroson appends a dissenting opinion.

Judge Bakhtiyar Tuzmukhamedov appends a dissenting opinion.

Copies of the Judgement will be delivered to the parties after this hearing.

This hearing of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia stands adjourned.
