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International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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APPEALS CHAMBER

The Hague, 30 June 2016

Appeal Judgement Summary for Stanišić and Župljanin

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

Pursuant to the Scheduling Order issued on 2 June 2016, the Appeals Chamber today delivers its Judgement in the case of The Prosecutor v. Mićo Stanišić and Stojan Župljanin. I shall now read out a summary of the central findings of the Appeals Chamber. The summary does not constitute the official and authoritative Judgement of the Appeals Chamber. The official Judgment is rendered in writing and will be distributed to the parties at the close of this hearing.

This case relates to events which took place in Bosnia and Herzegovina from at least 1 April 1992 to at least December 1992. Throughout this period, Mr. Stanišić was the Minister of the Ministry of Interior of the Republika Srpska (hereafter “RS MUP” and “RS”, respectively), by virtue of which he was also a member of the Government of the RS and Mr. Župljanin was the Chief of the Regional Security Services Centre (hereafter “CSB”). In addition, from at least 5 May 1992 until July 1992, Mr. Župljanin was a member of the Autonomous Region of Krajina (hereafter “ARK”) Crisis Staff. I will refer to Mr. Stanišić and Mr. Župljanin collectively as Appellants.

The Trial Chamber found that during the Indictment period, serious crimes were committed in the 20 municipalities listed in the Indictment (hereafter “Municipalities”), including the eight municipalities in the ARK affecting thousands of victims.

The Trial Chamber found that the Appellants participated in a joint criminal enterprise with the objective “to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state” (hereafter “JCE”). It found that this objective was implemented through the crimes of deportation, other inhumane acts (forcible transfer), and persecutions through underlying acts of forcible transfer and deportation as crimes against humanity (hereafter collectively, “JCE I Crimes”). The Trial Chamber further found that it was foreseeable to Mr. Stanišić that persecutions as a crime against humanity, murder, torture, and cruel treatment as violations of the laws or customs of war as well as murder, torture, and inhumane acts as crimes against humanity could be committed in the implementation of the JCE (hereafter collectively, “Mr. Stanišić’s JCE III Crimes”). The Trial Chamber found that it was foreseeable to Mr. Župljanin that the same crimes and extermination as a crime against humanity could be committed (hereafter collectively, “Mr. Župljanin’s JCE III Crimes”).

The Trial Chamber convicted the Appellants pursuant to the first category of JCE for persecutions through forcible transfer and deportation as a crime against humanity. It convicted them pursuant to the third category of JCE for persecutions through several underlying acts as a crime against humanity, and for murder and torture as violations of the law or customs of war. In addition, Mr. Župljanin was convicted pursuant to the third category of JCE for extermination and for ordering persecutions through plunder of property.

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The Trial Chamber also found the Appellants responsible for murder, torture, inhumane acts, deportation, and inhumane acts (forcible transfer) as crimes against humanity, and cruel treatment as a violation of the laws or customs of war but did not enter convictions for these crimes on the basis of the principles relating to cumulative convictions. The Appellants were both sentenced to 22 years of imprisonment.

Mr. Stanišić raises 16 grounds of appeal, Mr. Župljanin raises six grounds of appeal, and the Prosecution raises two grounds of appeal.

The Appeals Chamber heard oral submissions by the parties on 16 December 2015.

I will now summarise the Appeals Chamber's findings on the Appellants' and the Prosecution's appeals, addressing first the submissions made by the Appellants in relation to fair trial.

Fair Trial

Mr. Stanišić, in his ground of appeal 1bis, and Mr. Župljanin, in his sixth ground of appeal, submit that their right to a fair trial by an independent and impartial court was violated as a result of the participation of Judge Frederik Harhoff in the trial proceedings, which they argue invalidates their convictions.

The Appeals Chamber finds that, contrary to the Appellants' submissions, Judge Harhoff's disqualification in the Šešelj case does not automatically disqualify him from other cases and that the Appellants have failed to demonstrate that a reasonable observer, properly informed of all the relevant circumstances, would reasonably apprehend bias on the part of Judge Harhoff in this case. Accordingly, the Appellants have failed to rebut the presumption of impartiality and failed to firmly establish a reasonable appearance of bias on the part of Judge Harhoff.

Mr. Stanišić's ground of appeal 1bis and Mr. Župljanin's sixth ground of appeal are therefore dismissed.

Before moving to the Appeals Chamber's findings on the remaining challenges by the Appellants, I note that the Appeals Chamber considers that in the section of the Trial Judgement dedicated to the conclusions on the Appellants' responsibility, the Trial Chamber did not provide cross-references to earlier findings or citations to the evidence on the record. The Appeals Chamber considers that this approach is regrettable as it has greatly convoluted the exercise of identifying underlying findings and analysis, for the parties, and the Appeals Chamber alike.

Common Purpose

Mr. Stanišić, under his third ground of appeal in part, and Mr. Župljanin, under his first ground of appeal in part, submit that the Trial Chamber erred in law in defining the common criminal purpose of the JCE, in particular, by conflating the legitimate political goal for Serbs to live in one state with the criminal objective of the JCE.

The Appeals Chamber finds that the Trial Chamber clearly determined that there existed a common purpose amounting to or involving the commission of crimes provided for in the Statute of the Tribunal. The Appellants have thus failed to demonstrate that the Trial Chamber erred in defining the common criminal purpose of the JCE. Mr. Stanišić's third ground of appeal in part and Mr. Župljanin's first ground of appeal in part are therefore dismissed.

Membership

Mr. Stanišić, in his second ground of appeal, and Mr. Župljanin, in his first ground of appeal in part, raise several challenges to the Trial Chamber's findings in relation to the

membership of the JCE. In particular, Mr. Stanišić submits that the Trial Chamber erroneously equated being part of the Bosnian Serb leadership with membership in the JCE. The Appeals Chamber finds that there is no basis for this argument and that the Appellants have failed to show that the Trial Chamber erred in its findings in relation to the membership of the JCE. The Appeals Chamber thus dismisses Mr. Stanišić's second ground of appeal in its entirety and Mr. Župljanin's first ground of appeal in part.

Mr. Stanišić's Participation in the JCE

I now turn to Mr. Stanišić's grounds of appeal related to his participation in the JCE. Under his seventh ground of appeal, Mr. Stanišić submits that the Trial Chamber erred in law and in fact by not according full probative value to his voluntary interview with the Prosecution conducted between 16 and 21 July 2007 and by failing to "grasp the thrust of the information provided".

The Appeals Chamber finds that Mr. Stanišić has failed to demonstrate that the Trial Chamber ventured outside the scope of its discretion in weighing and assessing the evidence in light of the entire trial record, and that, therefore, it erred in its assessment of the interview.

Mr. Stanišić's seventh ground of appeal is thus dismissed.

Under his first and fifth grounds of appeal in part, Mr. Stanišić submits that the Trial Chamber erred in law by failing to set out and apply the correct legal standard for contribution to a JCE through failure to act, and that consequently, it erred by finding that he contributed to the JCE.

The Appeals Chamber finds that the Trial Chamber applied the correct legal standard and dismisses Mr. Stanišić's first and fifth grounds of appeal in part.

Under his first, fifth, and sixth grounds of appeal in part, Mr. Stanišić submits that the Trial Chamber erred by failing to provide a reasoned opinion, when it failed to pronounce on whether the military or civilian authorities were responsible for the investigation and prosecution of crimes against non-Serbs committed by policemen re-subordinated to the military.

The Appeals Chamber finds that Mr. Stanišić has not demonstrated that the pronouncement on whether military or civilian authorities were responsible for the investigation and prosecution of crimes committed by re-subordinated policemen is a factual finding that was essential to the determination of his guilt, the lack of which would result in a failure to provide a reasoned opinion.

The Appeals therefore Chamber dismisses Mr. Stanišić's first, fifth, and sixth grounds of appeal in part.

Under his first and sixth grounds of appeal in part, Mr. Stanišić argues that the Trial Chamber made no findings as to whether and how he contributed to the JCE, and whether his purported contribution was significant, thereby failing to provide a reasoned opinion. In his fifth and sixth grounds of appeal in part, Mr. Stanišić further alleges numerous factual errors in the Trial Chamber's assessment of his contribution to the JCE.

With respect to the latter, the Appeals Chamber first finds that the Trial Chamber erred by considering the appointments of Stevan Todorović (Chief of Bosanski Šamac Public Security Station) and Krsto Savić (Chief of the Trebinje CSB) as Mr. Stanišić's direct appointments of JCE members to the RS MUP. Second, the Appeals Chamber finds that the Trial Chamber erred by concluding that Mr. Stanišić failed to take decisive action with respect to Luka detention camp. The Appeals Chamber dismisses the remainder of his arguments alleging factual errors in the Trial Chamber's assessment of his contribution to the JCE.

With regard to the alleged failure to provide a reasoned opinion, the Appeals Chamber agrees with Mr. Stanišić. It finds that the Trial Chamber's failure to enter express findings as to whether and how Mr. Stanišić's acts and conduct furthered the JCE and whether his contribution was significant, constitutes a failure to provide a reasoned opinion. Therefore the Trial Chamber committed an error of law. This error allows the Appeals Chamber to assess the Trial Chamber's findings and relevant evidence concerning Mr. Stanišić's acts and conduct to determine whether a reasonable trier of fact could have concluded beyond reasonable doubt that he significantly contributed to the JCE.

For reasons set out in the Judgement, the Appeals Chamber concludes that the Trial Chamber's findings – with the exception of overturned findings referenced above – as well as the evidence relied upon support a finding that a reasonable trier of fact could have concluded beyond reasonable doubt that Mr. Stanišić significantly contributed to the JCE. On the basis of the foregoing, the Appeals Chamber dismisses Mr. Stanišić's first, fifth, and sixth grounds of appeal in part.

Under his first and third grounds of appeal in part and fourth ground of appeal, Mr. Stanišić submits that the Trial Chamber erred in finding that he possessed the requisite intent for liability under the first category of JCE, and raises several legal and factual challenges in this regard, including a challenge as to whether the Trial Chamber provided a reasoned opinion.

With respect to the alleged error by failing to provide a reasoned opinion, the Appeals Chamber notes again the Trial Chamber's approach not to provide cross-references to earlier findings or citations to the evidence on the record. Moreover, it notes that with respect to a number of factors on which it relied to conclude that Mr. Stanišić possessed the requisite intent, the Trial Chamber adopted vague, generic, and non-descript terms to refer to factual findings in other sections of the Trial Judgement. This approach is problematic as it has complicated the Appeals Chamber's review of the Trial Chamber's reasoning. Nonetheless, the Appeals Chamber considers that through a careful and thorough examination of the Trial Judgement, the Trial Chamber's reasoning is discernable. Therefore, the Appeals Chamber concludes that ultimately the Trial Chamber did not fail to provide a reasoned opinion for concluding that he possessed the requisite intent and dismisses Mr. Stanišić's arguments in this regard.

The Appeals Chamber finds that the Trial Chamber committed two distinct factual errors in assessing Mr. Stanišić's knowledge of crimes. Namely, first, the Trial Chamber erred by finding, on the basis of the communications logbook of the RS MUP Headquarters and the Sarajevo CSB from 22 April 1992 to 2 January 1993, that Mr. Stanišić was "regularly informed throughout 1992 about crimes". Second, the Trial Chamber erred in finding that on 18 April 1992, he was informed that a certain "Zoka" had arrested Muslims in Sokolac. In addition, the Appeals Chamber finds that the Trial Chamber erred in fact in finding that Mr. Stanišić was a member of the Bosnian Serb Assembly when assessing his intent. Mr. Stanišić's remaining arguments with respect to his intent are dismissed.

On the basis of the remaining upheld findings of the Trial Chamber, the Appeals Chamber finds that the aforementioned errors do not impact the Trial Chamber's conclusion on Mr. Stanišić's intent. The Appeals Chamber therefore finds that Mr. Stanišić has failed to demonstrate that the Trial Chamber erred in finding that he possessed the requisite intent for the first category of JCE liability throughout the Indictment period, namely from at least 1 April 1992 until 31 December 1992.

For these reasons, the Appeals Chamber dismisses Mr. Stanišić's first and third grounds of appeal in part, and his fourth ground of appeal in its entirety.

I now move to Mr. Stanišić's challenges concerning his conviction pursuant to the third category of JCE, in particular his first ground of appeal in part and his eight to eleventh grounds of appeal.

In his eight ground of appeal, Mr. Stanišić submits that the Trial Chamber erred in law by entering convictions for the specific intent crime of persecutions as a crime against humanity pursuant to the third category of JCE.

The Appeals Chamber finds that Mr. Stanišić has failed to show that cogent reasons exist to depart from its well established case law allowing for such convictions. It dismisses Mr. Stanišić's eight ground of appeal.

In his first ground of appeal in part and his ninth ground of appeal, Mr. Stanišić argues that the Trial Chamber failed to make the required findings on the subjective element of the third category of JCE in relation to the following crimes: (i) murder as a crime against humanity and as a violation of the laws or customs of war; (ii) torture as a crime against humanity and as a violation of the laws or customs of war; (iii) cruel treatment as a violation of the laws or customs of war; and (iv) inhumane acts as a crime against humanity. The Appeals Chamber is of the view that the Trial Chamber made the required findings. Therefore, Mr. Stanišić's first ground of appeal in part and ninth ground of appeal in its entirety are dismissed.

In his first ground of appeal in part and his tenth and eleventh grounds of appeal, Mr. Stanišić further alleges several errors with respect to: (i) whether Mr. Stanišić's JCE III Crimes were natural and foreseeable consequences of the JCE; (ii) whether Mr. Stanišić's JCE III Crimes were foreseeable to Mr. Stanišić, including whether the Trial Chamber provided a reasoned opinion for its conclusion in this regard; and (iii) whether he willingly took the risk that they might be committed.

The Appeals Chamber finds that Mr. Stanišić has failed to show an error in the Trial Chamber's findings. As such, the Appeals Chamber dismisses his first ground of appeal in part and his tenth and eleventh grounds of appeal in their entirety.

Mr. Župljanin's Participation in the JCE

I now turn to Mr. Župljanin's grounds of appeal related to his participation in the JCE. I will first address Mr. Župljanin's first ground of appeal in part challenging the Trial Chamber's findings in relation to his responsibility pursuant to the first category of JCE.

Mr. Župljanin alleges legal and factual errors in relation to the Trial Chamber's reliance on his failures to act, in particular, his failures to launch criminal investigations, to discipline his subordinates, and to protect the non-Serb population, in concluding that he significantly contributed to the JCE and that he possessed the intent to further the JCE.

The Appeals Chamber rejects Mr. Župljanin's argument that the Trial Chamber erred in law by failing to apply the correct legal standard when it considered instances of his failures to act to determine whether he contributed to the JCE and had the requisite intent. In addition, the Appeals Chamber finds that Mr. Župljanin has not demonstrated that the Trial Chamber erred by failing to make findings that he had sufficient control or authority over the police as a result of declining to pronounce on issues of re subordination of the police to the military. The Appeals Chamber also dismisses Mr. Župljanin's remaining arguments in relation to the Trial Chamber's findings on the aforementioned failures to act on his part. Consequently, the Appeals Chamber finds that Mr. Župljanin has failed to demonstrate that the Trial Chamber erred in relying on these failures to act to infer his contribution to the JCE and his intent.

Furthermore, Mr. Župljanin raises challenges in relation to the Trial Chamber's findings on his knowledge of and role in the unlawful arrests and detentions of non-Serbs in the ARK Municipalities. The Appeals Chamber finds that Mr. Župljanin has failed to demonstrate that

the Trial Chamber erred in concluding that the arrests and detentions of non-Serbs in the ARK Municipalities were unlawful and that the Trial Chamber erred in relying on his knowledge of and role in the unlawful arrests and detentions to establish his contribution to the JCE and his intent.

Mr. Župljanin also argues that the Trial Chamber erred in relying on several of his other positive acts to conclude that he significantly contributed to the JCE and/or that he had possessed the requisite intent.

The Appeals Chamber finds that the Trial Chamber erred in finding that Mr. Župljanin was present at the Serbian Democratic Party Main Board meeting at the Holiday Inn in Sarajevo on 14 February 1992 (hereafter, “Holiday Inn Meeting”) and in relying on this factor when assessing his intent to further the JCE. Mr. Župljanin’s remaining arguments concerning his other positive acts are dismissed.

I now turn to Mr. Župljanin challenges to the Trial Chamber’s overall approach in finding that he significantly contributed to the JCE. The Appeals Chamber dismisses Mr. Župljanin’s arguments in this respect. Moreover, recalling that he has not shown any error in relation to the Trial Chamber’s reliance on the factors relevant to his significant contribution, the Appeals Chamber finds that he has not shown that no reasonable trier of fact could have found that he significantly contributed to the JCE.

Mr. Župljanin further raises challenges to the Trial Chamber’s overall approach in finding that he shared the requisite intent under the first category of JCE. The Appeals Chamber dismisses Mr. Župljanin’s arguments in this respect, and in particular, finds that he has failed to demonstrate that the Trial Chamber applied an incorrect standard for the subjective element of the first category of JCE. Moreover, while the Appeals Chamber has found that the Trial Chamber erred in relying on Mr. Župljanin’s purported attendance at the Holiday Inn Meeting, he has failed to show that the Trial Chamber’s conclusion that he possessed the requisite intent during the Indictment period would not stand on the basis of the remaining factors. Consequently, the Appeals Chamber finds that Mr. Župljanin has failed to demonstrate that no reasonable trier of fact could have found that he possessed the requisite intent pursuant to the first category of JCE.

In light of the foregoing, the Appeals Chamber dismisses Mr. Župljanin’s first ground of appeal in part.

In his second ground of appeal, Mr. Župljanin alleges various errors of law and fact concerning his convictions pursuant to the third category of JCE in general, including that the Trial Chamber erred in failing to make specific findings that he possessed the intent to participate in and further the common purpose of the JCE, and by finding him liable pursuant to the third category of JCE for crimes of “greater gravity” than the JCE I Crimes. He further raises arguments with respect as to whether Mr. Župljanin’s JCE III Crimes were natural and foreseeable consequences of the JCE and the Trial Chamber’s findings that Mr. Župljanin’s JCE III Crimes were foreseeable to him and he willingly took the risk that they might be committed. For reasons set out in its Judgement, the Appeals Chamber is not persuaded by Mr. Župljanin’s arguments and dismisses his second ground of appeal in its entirety.

In his third ground of appeal, Mr. Župljanin challenges his conviction pursuant to the third category of JCE for extermination as a crime against humanity.

The Appeals Chamber is not convinced by Mr. Župljanin’s submission that the Trial Chamber erred in finding that the *actus reus* of extermination was met in relation to certain incidents.

The Appeals Chamber further finds *proprio motu* that the Trial Chamber erred in law by failing to make a clear finding on whether the principal perpetrators of the incident in

which 20 detainees died during their transportation from Betonirka detention camp in Sanski Most to Manjača detention camp in Banja Luka municipality (hereafter “Sanski Most Incident”) possessed the required *mens rea* of extermination. This constitutes a failure to provide a reasoned opinion. However, following an assessment of the relevant evidence and factual findings, the Appeals Chamber concludes that a reasonable trier of fact could have found beyond reasonable doubt that the perpetrators acted with the required *mens rea*. Therefore, the Trial Chamber’s error does not invalidate the Trial Judgement.

Mr. Župljanin also argues that the Trial Chamber erred in finding that extermination was foreseeable to him. The Appeals Chamber agrees that the Trial Chamber erred in relying on certain evidence to find that Mr. Župljanin knew of the Sanski Most Incident. However, it finds that despite this error, a reasonable trier of fact could have found that Mr. Župljanin was informed of the incident shortly after it occurred and relied on this knowledge to find that extermination was foreseeable to Mr. Župljanin and that he willingly took, and continued to take, the risk that extermination could be committed. The Appeals Chamber rejects all remaining arguments advanced by Mr. Župljanin in this ground of appeal and therefore dismisses his third ground of appeal in its entirety.

Mr. Župljanin’s Conviction for Ordering Persecutions through Plunder of Property

Under his fifth ground of appeal, Mr. Župljanin challenges the Trial Chamber’s finding that he ordered persecutions through plunder of property through his Order of 31 July 1992. For reasons set out in its written Judgement, the Appeals Chamber finds that Mr. Župljanin has failed to demonstrate an error on the part of the Trial Chamber and dismisses his fifth ground of appeal in its entirety.

Cumulative Convictions

In its second ground of appeal, the Prosecution submits that the Trial Chamber erred in law by failing to enter convictions for the crimes of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity in addition to the convictions it entered for the crime of persecutions as a crime against humanity through the same underlying acts.

Recalling the well-established jurisprudence that convictions for the crime of persecutions and other crimes against humanity based on the same conduct are permissibly cumulative, the Appeals Chamber finds that the Trial Chamber committed an error of law when it failed to enter convictions for the crimes of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity. Accordingly, the Appeals Chamber grants the Prosecution’s second ground of appeal. However, for reasons set out in its Judgement, the Appeals Chamber declines to enter new convictions on appeal.

Sentencing

I now turn to sentencing.

The Appellants and the Prosecution have each appealed the sentences of 22 years of imprisonment imposed by the Trial Chamber.

Mr. Stanišić, in his twelfth through fifteenth grounds of appeal, and Mr. Župljanin, in his fourth ground of appeal, allege a number of errors of law and fact in relation to their sentence, including with respect to the Trial Chamber’s consideration of the gravity of their conduct, aggravating factors, and mitigating factors. They also allege that the Trial Chamber erred by double counting certain factors.

The Prosecution submits, in its first ground of appeal, that the Trial Chamber erred by imposing manifestly inadequate sentences on the Appellants

The Appeals Chamber finds that it has not been shown that the Trial Chamber committed a discernible error and therefore dismisses the grounds of appeal raised by the Appellants and the Prosecution relating to sentencing, in their entirety.

II. DISPOSITION

I will now read out the Disposition of the Appeal Judgement.

Mr. Stanišić and Mr. Župljanin will you please rise.

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

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

NOTING the respective written submissions of the parties and the arguments they presented at the Appeal Hearing on 16 December 2015;

SITTING in open session;

DISMISSES Mićo Stanišić's appeal in its entirety;

DISMISSES Stojan Župljanin's appeal in its entirety;

AFFIRMS Mićo Stanišić's convictions under Counts 1, 4, and 6 and Stojan Župljanin's convictions under Counts 1, 2, 4, and 6;

GRANTS the Prosecution's second ground of appeal and **FINDS** that the Trial Chamber erred by: (i) finding that convictions for the crime of persecutions as a crime against humanity under Article 5 of the Statute are impermissibly cumulative with convictions for other crimes against humanity based on the same conduct; and (ii) failing to enter convictions for Mićo Stanišić and Stojan Župljanin pursuant to Article 7(1) of the Statute under Counts 3, 5, 9, and 10, but **DECLINES** to enter new convictions against Mićo Stanišić and Stojan Župljanin on appeal under these counts;

DISMISSES the Prosecution's appeal in all other respects;

AFFIRMS the sentences of 22 years of imprisonment imposed by the Trial Chamber against Mićo Stanišić and Stojan Župljanin, respectively, subject to credit being given under Rule 101(C) of the Rules for the periods they have already spent in detention;

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

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

Judge Liu Daqun appends a declaration.

Judge Koffi Kumelio A. Afandé appends a separate opinion.

Mr. Stanišić and Mr. Župljanin, you may be seated.

Registrar, would you please distribute copies of the Judgement to the parties.

Finally, I would like to express my sincere thanks to everyone in this courtroom and outside this courtroom who helped us throughout these proceedings and in this case, which has now reached its conclusion. I will now conclude this hearing. The Appeals Chamber stands adjourned.
