

International Tribunal for the
Prosecution of Persons Responsible
for Serious Violations of International
Humanitarian Law Committed in the
Territory of the Former Yugoslavia
Since 1991

Case: IT-05-88/2-A
Date: 09 September 2013
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Khalida Richard Khan
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. John Hocking

PROSECUTOR
v.
ZDRAVKO TOLIMIR

PUBLIC

- AMENDED NOTICE OF APPEAL -

The Office of the Prosecutor

Mr. Serge Bramertz
Mr. Paul Rogers

The Defence

Zdravko Tolimir-Appellant
Dr. Aleksandar Gajić-Legal Adviser

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA
THE PROSECUTOR V. ZDRAVKO TOLIMIR
PUBLIC
AMENDED NOTICE OF APPEAL

INTRODUCTION

1. Zdravko Tolimir (Appellant) pursuant to Decision on Tolimir's Motion for Variation of the Grounds of Appeal and Amendment of the Appeal Brief, rendered on 04 September 2013, files this AMENDED NOTICE OF APPEAL to the Judgment of the Trial Chamber II in the case IT-05-88/2-T, pronounced on 12 December 2012.¹

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2. The Majority of the Trial Chamber, Judge Nyambe dissenting, founded the Appellant guilty pursuant to Article 7(1) of the Statute, through committing, on the following counts: Count 1-Genocide, Count 2-Conspiracy to Commit Genocide, Count 3-Extermination, Count 5-Murder, a violation of laws and customs of war, Count 6-Persecutions, a crime against humanity and Count 7 Inhuman Acts through Forcible Transfer, a crime against humanity. The Majority did not enter conviction on Count 4 – Murder, a crime against Humanity, and founded Appellant not guilty on Count 8, Deportation. The Majority, judge Nyambe dissenting, sentenced the Appellant to a sentence of life imprisonment.²
3. In submitting this Notice of Appeal, the Appellant was guided by the Direction on Formal Requirements for Appeals from the Judgment,³ as well as with the rule that on the appeal Parties must limit their arguments to legal errors that invalidate the Judgment of the Trial Chamber and to factual errors that result in a miscarriage of justice within the scope of Article 25 of the Statute, and to those legal errors that are of general significance to the Tribunal's jurisprudence.

¹ This Amended Notice of Appeal is exactly the same as the Notice of Appeal attached as Annex to the Motion for Variation of the Grounds of Appeal and Amendment of the Appeal Brief, filed on 06 August 2013., except introductory paragraph 1.

² The Judgment, paras. 1239-1242.

³ IT/201, 7 March 2002.

4. Each error of law alleged herein was such as to invalidate the decision,⁴ and each error of fact alleged herein, individually and/or cumulatively, occasioned a miscarriage of justice.
5. Unless otherwise specified, all paragraph number references relate to paragraphs of the Judgment. Reference to a paragraph of the Judgment also includes reference to related footnotes and paragraphs of the Judgment referred in that footnotes.
6. In order to avoid unnecessary repetition through various grounds of appeal, in the case of submission that the Trial Chamber erred in law (incorrect legal standard), the Appeals Chamber is requested to articulate the correct legal standard and review the relevant factual findings of the trial chamber accordingly, and when necessary, to apply the correct legal standard to the evidence contained in the trial record and to determine whether it is itself convicted beyond reasonable doubt as to the factual findings challenged before that finding is confirmed on appeal. In the case of submission that the Trial Chamber erred in fact, the Appeals Chamber is requested to substitute its own finding for that of the Trial Chamber and to overturn a decision taken by the trial chamber.

GROUND OF APPEAL

Ground 1: Adjudicated facts

7. The Trial Chamber erred in law in taking judicial notice of 523 adjudicated facts that significantly affected the outcome of the trial, and in assessment of judicially noticed adjudicated facts.

Identification of the challenged decisions, finding or ruling

8. Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B) of 17 December 2009 and Decision on Request for Certification of Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts dated 23 February 2010.⁵

⁴ “A party alleging an error of law must identify the alleged error, present arguments in support of its claim and explain how the alleged error invalidates the decision. An allegation of an error of law which has no chance of changing the outcome of a decision may be rejected on that ground” Lukić and Lukić, Appeals Chamber, Judgment, para. 11

9. Paragraphs 76, 77 as well as paragraphs 64, 65, 150, 159, 160, 162, 164, 180, 188, 196-198, 200, 204, 208, 2010-2012, 217, 222, 223, 230, 233-235, 237, 241-250, 252, 254-259, 265, 269, 270, 275, 277, 278, 280, 284, 285-289, 291, 293, 328-333, 349-352, 362, 369, 370, 33, 374, 376, 383, 385, 399, 400, 406, 417, 421, 426, 428, 433, 435, 436, 437, 488, 486, 487, 488, 495, 500, 502, 503, 504, 505, 512, 517, 518, 521, 558, 560, 618, 1012, 1023, 1218, and also relates to the Trial chamber findings in paragraphs 1010-1040, 1044-1072, 1077-1095, 1099-1129, 1136-1144, 1148-1155 of the Judgment.

10. Relief sought: This error invalidates the Judgment and caused many erroneous factual findings that caused miscarriage of justice. The Appeals Chamber is requested to articulate correct legal standard, and review the Trial Chamber findings accordingly.

Ground 2: Intercepted communications

11. The Trial Chamber erred in fact and law in finding that “overwhelming weight of evidence is in favor of the reliability and authenticity of the intercepts” and that “the intercepts have a high degree of validity to the conversations they purport to record.”⁶

12. The Trial Chamber erred in law in failing to consider evidence on the trial record concerning reliability of intercepted communications.

13. The Trial Chamber erred in law in taking judicial notice of adjudicated facts 595-604 that relates to intercepted communications.

14. This Ground of appeal relates to paragraphs 63-65 of the Judgment, and to the Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B) of 17 December 2009, and Decision on Request for Certification of Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts dated 23 February 2010.⁷ This Trial Chamber error affected factual findings of the Trial Chamber in paragraphs

⁵ The Trial Chamber stated that the Decision to take judicial notice of adjudicated facts “does not involve issues that would significantly affect the outcome of the trial.”

⁶ Paragraphs 64-66. Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B) of 17 December 2009, and Decision on Request for Certification of Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts dated 23 February 2010

⁷ The Trial Chamber stated that the Decision to take judicial notice of adjudicated facts “does not involve issues that would significantly affect the outcome of the trial.”

15. This error invalidates the decision and caused a miscarriage of justice.

Ground 3: Expert evidence

16. The Trial Chamber erred in law in finding a Richard Butler to be an expert witness (para. 41 of the Judgment)

17. The Trial Chamber relied on evidence of Richard Butler as an evidence of expert witness, and taking his opinions “literally” committed a number of errors that invalidates the decision.

18. This Ground /also/ relates to errors enumerated in other grounds of appeal.

19. This Trial Chamber error invalidates the Judgment.

Ground 4: Evidence of the OTP investigators

20. The Trial Chamber erred in law in not demonstrating appropriate caution in estimation of evidence of the Prosecution investigators, particularly Dusan Janc, Richard Butler (the OTP considered him to be an expert witness), Jean Rene Ruez, Dean Manning, Erin Gallagher, Tomasz Blaszczyk, and Stefanie Friese. Particularly the Trial Chamber erred in law in applying very low standard for estimation of their evidence, and not applying a standard articulated in Martić case.⁸

21. The Trial Chamber erred in law in providing no caution in evaluating the evidence of the OTP investigators despite explicit statement in para. 38 of the Judgment

22. This error in law invalidates the Judgment.

Ground 5: Joint Criminal Enterprise as a mode of liability

23. The Trial Chamber erred in law when it held that the joint criminal enterprise is a mode of liability under international customary law.

⁸ The Prosecutor v. Milan Martić, IT-95-11-T, Trial Chamber, Judgement, 12 June 2007, para.35

24. The Trial Chamber erred in law in finding that “the word “committed” referred to in Article 7(1) of the Statute also includes a form of co-perpetration called Joint Criminal Enterprise” (Paragraph 885 of the Judgment)
25. The Trial Chamber erred in applying JCE type III as a mode of liability, erroneously holding that this mode of liability is well established in international customary law. (Paragraphs 884-898 of the Judgment).
26. There was no Majority concerning applicability of the JCE as a mode of liability. This error in law violates Rule 87A of the Rules of Procedure and Evidence.
27. This ground relates to paragraphs 884-898, 1157-1197 of the Judgment.
28. The Appeals Chamber is requested to correct the Trial Chamber errors and articulate correct legal standard and to review the Trial Chamber factual findings together with factual findings it may arrive in reviewing the Trial Chamber factual findings under other grounds of appeal. The Appeals Chamber is requested to acquit the accused on all charges.
29. Since the Trial Chamber entered convictions only on the basis of joint criminal enterprise as a mode of liability, the Defence will not address any potential legal errors in relation to other modes of liability discussed in paragraphs 899-911 of the Judgment.

Ground 6: Extermination as a crime against humanity and persons placed hors de combat

30. The Trial Chamber erred in law in not requiring that *mens rea* requirement for extermination as a crime against humanity must include civilian population as intended target of mass murder.
31. As a crime against humanity, the specific attack - a killing on a large scale- must be directed against civilian population.
32. The Trial Chamber erred in fact that the Bosnian Muslims males were targeted with little to no effort by the Bosnian Serb Forces to distinguish between civilians and combatant. (para. 708)

33. This error in law invalidates the Judgment, and error in fact occasioned a miscarriage of justice in respect of Count 3.
34. Appellants requests the Appeals Chamber to correct the Trial Chamber legal error, to review factual finding accordingly and to overturn the guilty finding entered by the Majority and to enter a judgment on acquittal on Count 3.

Ground 7: Forcible removal as an actus reus of genocide and evidence of intent

35. The Trial Chamber erred in law in articulation of “seriously bodily or mental harm” as *actus reus* of crime of genocide. (737-739)
36. The Trial Chamber erred in law in holding that forcible transfer can, in certain circumstances, be an underlying act causing seriously bodily and mental harm. (para.739), particularly, the Trial Chamber erred in holding that “forcible transfer can be an additional means by which to ensure the physical destruction of the group” (para. 764-765, 741)
37. The Trial Chamber erred in law in holding that the evidence of intent to forcibly remove may... constitute evidence of the intent to destroy a group “when considered in connection with other culpable acts systematically directed against the same group”. (para. 748)
38. These errors invalidate the Judgment.

Ground 8: Errors concerning “protected group” requirement

39. The Trial Chamber did not provide a reasoned opinion as required by Article 23 of the Statute why it considered Bosnian Muslims and Bosnian Muslims of Eastern Bosnia as a substantial component of entire group in the sense of Article 4 of the Statute, and thus made an error in law that invalidates the Judgment.
40. In addition, The Trial Chamber erred in law because in its findings in paragraphs 750 and 774, 775 relied on the Trial and Appeals Chamber conclusions from other cases (*Krstić*,

Blagojević and Jokić and Popović at all cases).⁹ The Trial Chamber did not take (and could not take) judicial notice of those facts and conclusions, and since those findings are not articulation of legal norms or standards, the Trial Chamber was obliged to make its own findings based on the evidence in Tolimir case.

41. This error invalidates the Judgment.

Ground 9: Errors concerning killing incidents and number of persons killed

42. The Trial Chamber (Majority) erred in fact in finding that Bosnian Serb Forces, in the specific circumstances alleged in paragraphs 21.1-21.4 of the Indictment killed 4970 Bosnian Muslim men, and that total of 5749 Bosnian Muslims from Srebrenica were killed by Bosnian Serb Forces (para. 751, 570)

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43. The Trial Chamber erred in law in calculating alleged total number of persons killed in the incidents not specified in the Indictment (para. 570, 583-591, 595-597)

44. The Trial Chamber erred in fact and in law in establishing facts that relate to number of killed at specific sites.

45. The Trial Chamber erred in fact in finding that *app. 1000-1500* Bosnian Muslims were shot and killed at Branjevo Military Farm. (Paragraph 495 of the Judgment) and 500 at Pilica Cultural Center (Paragraphs 491-500 of the Judgment).

46. The Trial Chamber erred in fact in finding that after 23 July 1995 members of Bosnian Serb Forces killed persons named in para. 533 (Bosnian Muslim Patients taken from the Milići Hospital) (Paragraph 533 of the Judgment)

47. The Trial Chamber erred in finding that members of Bosnian Serb forces killed 4 Bosnian Muslim men named in para. 541. (Paragraph 541 of the Judgment)¹⁰

48. The Trial Chamber (Majority) erred in fact in findings concerning number of Bosnian Muslim Males who died as a result of combat, suicide and other causes (para. 592-594, 60 and 61)

⁹ See fn. 3141, 3214 of the Judgment.

¹⁰ Almir Halilović, Sakib Kivirić, Emin Mustafić and Duad Dozić.

49. The Trial Chamber erred in fact in findings concerning the total number of Srebrenica related missing and identification of Srebrenica related missing, and estimation of total number of killed.
50. This ground relates to paragraphs 60, 61, 570-571, 491-500, 533, 541, 583-594, 595-597
51. These errors occasioned a miscarriage of justice and legal errors invalidate the Judgment.

Ground 10: Actus resus of Genocide

52. The Trial Chamber erred in fact and law in finding that “the suffering” of a group of men separated in Potočari and taken to White House, as well as the group of men who surrendered or were captured from the column through 13 July “amounted to serious bodily or mental harm.”
53. Paragraphs 753-754 of the Judgment.
54. The Trial Chamber erred in fact and law in finding that the harm caused to those who survived killings the events “was of such a nature as to contribute or tend to contribute to the destruction of all or part of the group in that their suffering prevented these members of the group from leading a normal and constructive life.”
55. Paragraph 755 of the Judgment.
56. The Trial Chamber erred in law and fact in finding that the suffering of the woman, children and the elderly who were forcibly transferred from Srebrenica to Tuzla is amount to serious bodily and mental harm.
57. Paragraphs 753-758 of the Judgment.
58. The Trial Chamber erred in fact and law in finding that “serious mental harm was inflicted upon the Bosnian Muslims who were forcibly transferred out of Žepa between 25 and 27 July 1995.”
59. The Trial Chamber erred in fact and law finding that “suffering of the Bosnian Muslim Population that was forcibly transferred from Srebrenica and Žepa raises to the level of serious bodily and mental harm” e. g. “as an act of genocide pursuant to Article 4(2)(b))
60. Paragraphs 753-759 of the Judgment
61. The Trial Chamber erred in fact in concluding that “the conditions resulting from the acts if Bosnian Serb Forces, as part of the combined effect of the forcible transfer and killing

operations were deliberately inflicted, and calculated to lead to the physical destruction of the Bosnian Muslim population of Eastern Bosnia and Herzegovina.”

62. Paragraphs 760-766 of the Judgment.

63. These errors invalidate the Judgment and caused miscarriage of justice.

Ground 11: Genocidal intent

64. The Trial Chamber erred in fact and law in finding that “Bosnian Serb Forces who committed the underlying acts set out in Article 4(2) (a)-(c) /of the Statute/ intended physical destruction of the Bosnian Muslim population of Eastern Bosnia and Herzegovina.

65. Paragraphs 769-780 of the Judgment

66. This error occasions a miscarriage of Justice and invalidates the Judgment in relation to Counts 1 and 2.

Ground 12: Genocidal Intent in relation to Mehmed Hajrić, Amir Imamović and Avdo Palić

67. The Trial Chamber erred in fact and law in finding “that Bosnian Serb Forces killed” Mehmed Hajrić, Amir Imamović and Avdo Palić “with the specific genocidal intent of destroying part of the Bosnian Muslim population as such”¹¹

68. Paragraphs 777-728 of the Judgment.

69. This error occasioned miscarriage of justice and invalidates the decision in relation to Count 1 of the Indictment.

¹¹ The Majority has founded (and erred in finding) that those three persons „were key to the survival of a small community“ para. 780.

Ground 13: Forcible Removal- Srebrenica and Žepa -errors in fact and law

70. The Trial Chamber (Majority) erred in fact and law in finding that “the bussing of approximately 25.000-30.000 Bosnian Muslims out of Potočari on 12 and 13 July 1995 and nearly 44000 Bosnian Muslims from Žepa constitutes crime of forcible transfer”¹²
71. This trial Chamber error is a consequence of erroneous factual findings enumerated in the following paragraphs of this Notice, failure to consider relevant evidence or erroneous evaluation of evidence on the record, erroneous application of relevant rules of international criminal law and international humanitarian law and in an omission to apply specific rules of international humanitarian law.
72. The Trial Chamber erred in fact in law in finding that Bosnian Muslim Civilians gathered in Potočari ... were forcibly displaced from Potočari¹³ (817) Particularly the TC failed to establish, in violation of Article 23 of the Statute that civilian population of Srebrenica and Žepa were moved “within a national border”
73. This ground of appeal relates to paragraphs 161-166, 174-175,180-182,184, 188, 195, 196-204, 196-204, 207-208, 207-208, 210-212,215-218, 220-225,228-240,237-238, 241-271,275-284,302-303,304, 702, 705-707,805-817, 1010-1015 202, 272-278, 600, 603-620, 623-638, 630, 635,641-643,645-649,702,796, 816, 817, 823-841, of the Judgment.
- Relief sought
74. These errors in law invalidate the decision and errors of fact occasioned a miscarriage of justice in relation to Count 6 and 7.

THE TRIAL CHAMBER ERRORS CONCERNING RESPONSIBILITY OF THE ACCUSED

¹² Para. 842 of the Judgement.

¹³ Paragraph 817 of the Judgement.

75. The Trial Chamber made a number of legal and factual errors in determination of the criminal responsibility of the Appellant. Particularly, the Trial Chamber erred in fact in findings related to military principles and the role of the Accused as an Assistant Commander for Intelligence and Security Affairs, that he was a member of the two joint criminal enterprises alleged in the Indictment (JCE to Forcibly Remove and JCE to Murder). The Defence submits that no reasonable Trial Chamber could have found Zdravko Tolimir guilty on the Counts 1,2, 3, 4, 5, 6, and 7 of the Indictment.
76. The Trial Chamber findings concerning responsibility of the accused are majority findings, and Judge P. M. Nyambe dissented on all crucial findings, and provided well-reasoned Dissenting Opinion. This Dissenting Opinion provides a clear indication that crucial factual findings are not beyond a reasonable doubt, and that all of them have to be reviewed by the Appeals Chamber.
77. The following grounds of appeal are formulated having in mind both the concept of Joint Criminal Enterprise as applied in the jurisprudence of the Tribunal, and proper concept of co-perpetration under Article 7(1) of the Statute.

Ground 14: Command and direction (control) and control (rukovođenje, komandovanje i kontrola), position of the Appellant as a Assistant Commander for Intelligence and Security Affairs

78. The Trial Chamber made a number of errors in fact concerning military principles and rules applied by the VRS. The most significant factual findings regarding responsibility of the Appellant was based of erroneous understanding of the basic military principles and particularly of the command and control/direction/ (as commonly translated) and control (kontrola), and his position as an Assistant Commander for Intelligence and Security Affairs.
79. The Trial Chamber erred in fact and law in findings about the “military principles.” The Trial Chamber erred in law in not providing a reasoned opinion since it omit to address core rules applied by the VRS, and erred in fact in findings (description or understanding) the notions of the “command and control,” principle of subordination and principle of unity of command (paras. 88-94, 104)

- 80.** The Trial Chamber erred in fact in finding and operating with the terms “professional command” (para. 109, 1151), professional line of command (para. 128, 133,146,) Professional chain of command (para. 118, 131, 138, 1093, 1098, 1163) “subordination in respect of professional activities” (para. 113), “professional subordination” (para. 121, 128, 924), professional subordinates (para. 952, 1158)
- 81.** The Trail Chamber erred in fact confusing direction or management (frequently translated as control) with control (In Serbian -kontrola - always translated as control). That caused a much of confusion in the Trial Chamber’s findings. The Trial Chamber made no effort to resolve that issue what caused lots of errors in factual findings (particularly in drawing inferences). 104, 111, 1125, 1158
- 82.** The Trial Chamber erred in fact that in July 1995 Dragomir Pecanac worked for the Intelligence Administration (para. 115)¹⁴
- 83.** No reasonable trier of fact could have found that Mladić transferred certain authorities o the 410th Intelligence canter to the Accused (para. 917)
- 84.** The Trial Chamber erred in finding that Appellant “could ... take over command authority in the Mladić's absence“ and that he “was authorized to issue orders in Mladić names” (para. 919)
- 85.** The Trial Chamber erred in fact in finding that the Accused played a central role in convoy approval process and was instrumental in matters related to POW exchanges (para. 920)
- 86.** The Trial Chamber erred in fact in relying on witness General Smith’s opinion “Smith described Mladić and Accused as “closer to being equals” (para. 921, 1165,) and Milovanović’s statement that the Appellant was Mladić’s “eyes and ears” on the ground (paras. 915, 1074, 1109, 1165)
- 87.** The Trial Chambers findings challenged in this ground served as a basis for many erroneous inferences regarding the Appellants knowledge of the “murder operation” and his alleged participation in two JCEs.

¹⁴ Regarding position of the 410th Intelligence Center the Trial Chamber made and confused findings. But since this error is not of particular significance for the outcome of the case it will be addressed in the Brief only if necessary, or as an illustrative example. (para. 118)

88. The Trial Chamber erred in fact and law because the Appellant’s “connection to the crimes is entirely derived from the professional chain of command with those who commit these crimes”¹⁵
89. Paragraphs that relates to this ground of appeal 88-94, 104, 109, 1151, 128, 133,146, 118, 131, 138, 1093, 1098, 1163, 113, 121, 128, 924, 952, 1158, 913-921, 1165, 1074, 1109, 1165, 1076-1095, 1097-1129, 1139-1144, 1151-1154, 1157-1197.
90. These errors occasioned a miscarriage of justice and invalidate the decision. The Appeals Chamber is requested to grant this ground of appeal, to review the Trial Chamber’s findings, and to find the accused not guilty on all charged, e. g. to enter a Judgment of acquittal on Counts 1, 2, 3, 4, 5, 6 and 7.

Ground 15: “Errors concerning Majority findings on alleged JCE to forcibly remove and alleged significant participation of the Appellant in the JCE to forcibly remove”

91. The Trial Chamber erred in fact and law that the Appellant was a member of the JCE to Forcibly Remove and that he provide a significant contribution to the JCE to forcible remove. More specifically, the Majority erred in fact and law concluding that “from at least from March 1995 to August 1995 the Accused actively contributed to the VRS implementation of the aims set out in Directive 7 to –create an unbearable situation of total insecurity with no hope of further survival of life for the inhabitants of Srebrenica and Žepa“ resulting in the forcible removal of ... Bosnian Muslims from the enclaves of Srebrenica and Žepa in a period of merely two weeks, and in finding that he is “criminally responsible as a member of the JCE, under Article 7 (1) of the Statute, for the forcible removal of the Bosnian Muslim population of Eastern BiH.”¹⁶

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92. The Trial Chamber erred in findings that by March 1995 the Appellant “was aware of that politically and military there was an aim to create conditions seeking to rid the enclaves of

¹⁵ Dissenting Opinion of Judge Nyambe, para.4.

¹⁶ Para. 1095 of the Judgment

its Bosnian Muslim Population.” (para. 1078, paragraphs 1077, 1078, 1010-1012, 162-165, 191, 1012)

93. The Majority erred in fact in finding that the policy of ethnic separation had been set in place as early as 1992 aimed to ridding the eastern enclaves of its Bosnian Muslim population. The Majority erred in law failing to establish real strategic objectives of the RS and the VRS, and relationship between directive 4 and directive 6, and also in failing to establish facts that concerning situation in Podrinje region 1992-1995, and erroneously interpreted Lazić’s evidence.
94. The Majority erred in fact in interpretation of Directive 7, its relationship with directive 7/1 and in finding that Directive 7 was implemented in relation to Srebrenica and Žepa. Particularly, the Majority erred in finding that the Directive 7/1 “was intended to amplify and supplement Directive 7 by providing more specific military tasks to individual corps, including Drina Corps.
95. The Majority erred in law as it failed to consider relevant evidence concerning Appellant’s knowledge about intentions of the ABiH, about crimes that committed sabotage-terrorist groups from the Srebrenica and Žepa enclaves, about abuse of the convoys, that the ABiH used COHA in order to arm itself and prepare for military offensive, including military offensive from the eastern enclaves.

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96. The Trial Chamber erred in finding that by March of 1995 through the fall of the enclaves, the Accused participated in restrictions of convoys entering the enclaves and that he actively contributed to the aim of limiting UNPROFOR’s ability to carry out his mandate. (para. 1079) This error in fact is a consequence of erroneous evaluation of the evidence on the record concerning UNPROFOR and humanitarian aid convoys, authority of the VRS and of the accused in the convoy approval process, the purpose of UNPROFOR and humanitarian aid convoys. Also, the Trial Chamber erred in law in not applying relevant rules of international humanitarian law concerning UNPROFOR resupply convoys and humanitarian aid, and omits to make relevant factual findings on the evidence on the record.

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97. The Trial Chamber erred in law in taking into consideration allegations of the so called “Tunnel Attack” in the night of 23/24 June 1995 as this incident is not even mentioned in the Indictment, particularly not in paragraph 60 of the Indictment.
98. The Trial Chamber erred in fact when considering that the “Tunnel Attack” had a ... function of ... terrorizing civilian population in line with the goal of making life inside the enclave unbearable” (para. 1081, 1021)The Trial Chamber erred in fact in finding that “position that the Accused was not present when this attack was approved .. is without foundation” (para. 1082)
99. The Trial Chamber erred in finding that “the Accused’s role in this incident is not is not as passive as Salapura’s testimony would suggest” (1083)
100. The Trial Chamber erred in fact in finding that the Appellant’s reference in daily intelligence report on 25 July – was made with the full awareness that this attack had taken place and had resulted in civilian casualties” (para. 1083)
101. The Trial Chamber erred in law in finding that “for the purpose of establishing whether by this act, the accused, together with other members of the JCE furthered the JCE to forcibly remove, the Majority considers that it suffices to conclude that the Accused know that this attack was carried out by 10th Sabotage Detachment, and of the fact that it resulted in wounding of civilians and civilian casualties”(para. 1083)
- *
102. The Trial Chamber erred in finding that “the Accused actively contributed to the aim of limiting UNPROFOR’s ability to carry out its mandate” (para. 1084) The Trial Chamber erred in finding that the attitude of the Appellant “towards the UN generally is demonstrated by his proposal that UN forces that had been taken hostage by the VRS following NATO airstrikes at the end of May 1995 be placed in an area of possible NATO air strikes” (1084, 923). The Trial Chamber erred in law because this incident was not mentioned in the Indictment; however it has on the record documents that indicate the high complexity of situation that arose after NATO bombing of the Republic of Srpska in May 1995.
103. Further, the trial Chamber erred in law in not considering evidence regarding the VRS and the Appellant’s attitude towards the UN, particularly after the COHA agreement.

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104. The Majority erred in law and fact in finding that Srebrenica and Žepa , because they were declared as safe areas were absolutely inviolable, and that in considering legality of the attacks against Srebrenica and Žepa take position that it is irrelevant that the ABiH committed material breach of Article 60 of the Additional Protocol I. The TC erred in law because it failed, in determination of the legality of those attacks to take into consideration relevant rules of International Humanitarian Law, and further failed to establish real reasons for the attacks against Srebrenica and Žeša. (para.704-706, 207-208, 210-212)

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105. The Trial Chamber erred in fact in findings (inferences) concerning the Appellants conversations with the UNPROFOR and his acts during Krivaja 95 and after represents contribution to the JCE to Forcibly Remove (para. 1084-1086) Further, the Trial Chamber, in findings concerning the Accused's alleged participation in JCE to remove failed to establish relevant facts of significant relevance for determination of his knowledge of relevant circumstances, state of mind and alleged participation in the attack on Srebrenica. The Majority inferences concerning his alleged contribution to the JCE to Forcebly Remove are completely erroneous (para. 1084-1086, 925-951)

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106. The Trial Chamber erred in findings that the Appellant was informed on the events on the ground (in Potočari) on 12 and 13 July by Radoslav Janković and, and through the involvement of subordinate officers of the security and intelligence organs at the brigade and corps level including Popović, Keserović and Momir Nikolić“ (para. 1087, 257, 258)

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107. The Trial Chamber erred in finding that the Appellant's involvement in Žepa operation (his acts and conduct during negotiations, military operation and evacuation of civilians) are significant contribution to the JCE to Forcibly Remove. (paras 1088-1092)

108. While almost all of the Trial Chamber's inferences in paras 1088-1092 are erroneous the Trial Chamber made several errors that demonstrate total absence of application of relevant standard of proof and rules concerning evaluation of evidence.

109. The Majority failed to establish proper reasons for the attack on Žepa, and erred in rejecting the Appellant's arguments that Žepa operation (Stupčanica 95) was not directed against civilian population. Also, the TC failed to consider events in the months before the attack on Žepa in reaching conclusions concerning legality of the attack. The TC also failed to apply relevant rules of IHL in determination of the legality of the attack.

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110. The Trial chamber erred in fact in findings (description) of the meeting of 13 July 1995 on Bokšanica and surrounding circumstances (1088, 604-611)

111. The Trial Chamber erred in fact and law that the Appellant's "proposal to capture Žepa within 21 hours so as to avoid condemnation and reaction from the international community demonstrates ... that he was well aware that there was nothing legal in Žepa's takeover" (para. 1089) By way of this inference the Trial Chamber erred in law concerning legality of the "Žepa's takeover"

112. The Trial Chamber erred in findings concerning Ex. P488 (626, 973, 974, 1090, 1091) those findings are partly based on wrong understanding of the document (probably because of erroneous translation). The Trial Chamber, particularly erred in fact in finding that "the intended victims included Bosnian Muslim civilians, a violation of international humanitarian law" (para. 1091)

113. The Trial Chamber erred in law in failing to note and to give appropriate weight to the fact that proposal contained in P488 have never been implemented.

114. The Trial Chamber erred in law in failing to articulate a legal standard that proposal that has never been implemented can be considered as significant contribution to the JCE. (in relation to P488, paras. 1090, 1091, 1094)

115. The Trial Chamber erred in finding that the accused was involved "in the provision of sufficient fuel" (para. 1092, 640)

116. The TC erred in fact and law that 24 July Agreement was not genuine (para. 1035)

117. The Trial Chamber erred in findings regarding Appellants involvement in negotiations and erred in finding that the members of War Presidency was not authorized with any issues related to the ABiH. (para. 1090) Further, The Trial Chamber erred in law

because participation in negotiations after 13 July was not covered by para. 60 of the Indictment.

118. The Trial Chamber erred in fact in finding that the Accused “contributed to the to the threatening atmosphere during “ process of evacuation “by pointing out pistol up at the sky intended to frightened the Bosnian Muslim civilians” (para. 1092, 758, 982)
119. The Trial Chamber erred in fact in finding concerning the Appellant’s behavior described in para. 987.
120. The Trial Chamber erred in law because it did not consider or rely on relevant evidence for the determination of the role of the Accused during evacuation of Žepa.

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121. This ground of appeal relates to paragraphs 1076-1095, and also 922-1006 of the Judgment, as well as paragraphs referred in footnotes of those paragraphs.
122. Trial Chamber’s errors invalidate the Judgment and caused a miscarriage of Justice. The Appeals Chamber is requested to find the Appellant not guilty on Counts 3-7.

Ground 16: The Trial Camber errors concerning alleged significant participation of the Appellant in the JCE to Murder

123. The Trial Chamber erred in fact and law that the Appellant was a member of the JCE to murder and that he, through his actions “contributed significantly to the common purpose of the JCE to Murder, sharing the intent to implement it with other /alleged/ members of this JCE” (paras. 1096-1115)
124. This erroneous conclusion is based on a series of errors of fact the Trial Chamber made in its conclusions in paragraphs 1096-1115 and 922-1006 and paragraphs referred in related footnotes.

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125. The Trial Chamber erred in fact in finding that the Appellant “had knowledge of murder operation at latest by the afternoon of 13 July, and form the moment he come o know it, he started actively being involved in the accomplishment of the murder plan”

126. The Trial Chamber erred in finding that the Appellant was informed (or was aware of) separation of Bosnian Muslim Males from Potočari (para. 1100)
127. The Trial Chamber erred in fact in finding that Tolimir directed Milenko Todorović to prepare the Batkovići Concentration Center for arrival of app. 1000-1300 soldiers (para. 1100, 931)
128. The Trial Chamber erred in fact in finding that Tolimir, in response to Milenko Todorović's inquiry about non-arrival of the anticipated 1000-1333 ABiH soldiers, the Appellant replied "that all preparations should stop." (para. 1103, 951)
129. The Trial Chamber failed to establish relevant factual findings concerning the Accused's proposals and reasons for those proposals expressly stated in the documents authored by the Appellant.
130. The Trial Chamber erred in findings (interpretation) of ex. D64 that statement from this document "conspicuously reassembles Mladić's /alleged/ remark in Potočari that the men would be screened to identify war criminals" (para. 1045, 258)
131. The Trial Chamber erred in fact that "the Accused was kept in touch with all relevant personnel and organs and was made aware of the situation transpired on the ground in Srebrenica" (para. 1101)
132. The Trial Chamber erred in finding about authenticity of P125, or in alternative that alleged proposed measures "reflect the coordinated effort to conceal the despicable plan contemplate among the members of the JCE to Murder", and that this document "demonstrates his intent to contribute to the JE to Murder" (para. 1103, 936, 937-944)
133. The Trial Chamber erred in finding that the presence of the Appellant's subordinates in Srebrenica, together with other circumstances, provide a basis for the conclusion that "the existence of the Accused's knowledge on the murder plan" by 13 July "is palpable" (para. 1104)
134. The Trial Chamber erred in not considering D49 as exculpatory evidence (para. 1104-1106) and drawing inference that "the Accused was looking for a place for prisoners to be out of the sight with an aim to further the goal shared with the other JCE members" (para.1006.)
135. The Trial Chamber erred in law by concluding that "while there is a possibility that the Accused was not timely informed of where the prisoners would be transferred and

- executed, this does not negate his accumulate knowledge of the common purpose by then and intent to contribute to it” (para. 1107)
136. The Trial Chamber erred in fact in concluding that the accused warning concerning unmanned aircraft (Exhibits 128, P121, P147, P148) was sent “in order that the murder operation would be carried without being detected” (para. 1108)
137. The Trial Chamber erred in fact in finding that the accused “possessed a high level of knowledge of the scale of murder operation, supported criminal activities his subordinates were engaging in, and coordinated their work (para. 1109) The Trial Chamber further erred in fact in concluding that “the accused was informed about the ongoing murder operation in Zvornik area” (para. 1109)
138. The Trial Chamber erred in fact in concluding that the accused supervised the evacuation of wounded and the local MSF staff in Srebrenica, and also that it was done “with the view to divert attention and pressure from international community about the Bosnian Muslim males from Srebrenica, and that it “notably corresponds to his competence – to obscure the VRS’s real goals.” (para. 1110)
139. The Trial Chamber erred in fact concluding that “given /the Accused’s/ authority, it is inconceivable that the Accused was kept in the dark about the murders in the relevant sites at the time, instead, he tacitly approved to make this murder happen” and that he “shared the intent to carry out these criminal activities” (paragraph 1112 of the Judgment) (The Trial Chamber erred in fact – in finding that the Accused was informed about activities of 10 Sabotage unit on 16 and 23 July) as well as that Intelligence Administration had in the relevant time period any information about 10 Sabotage Unit engagements on 16 and 23 July in Branjevo and Bišina. (para. 1111-1112) – Particularly the Trial Chamber erred in finding that the Accused was communicating with Salapura on 16 July and in connecting conversation with Popović on 22 July with Bišina killings.
140. The Trial Chamber erred in fact concluding that the submission that On 10 July 1995 the 10th Sabotage Detachment was resubordinated to the Dina Corps Command “is not supported by the evidence before the Chamber” (paragraph 1112, fn. 4366)
141. The Trial Chamber erred in fact in finding that the accused in July 1995, (Ex. P494) in finding that the accused was concerned about diverting pressure from the ABiH

with respect to the missing Bosnian Muslim males from Srebrenica, and his involvement in concealing the fate of Bosnian Muslim males (para. 1113)

142. The Trial Chamber erred in law in considering P2751 and P2250 and P2433 as the accused involvement in concealing the murder operation. Those documents are irrelevant on many grounds, first relevant knowledge is one at the time of alleged murder operation (and those documents are issued after the July 1995), and those document does not reveal whether the accused possessed relevant knowledge about alleged murder operation (para. 1114)
143. The Trial Chamber erred in fact and law that the Accused failed to exercise its duty to protect POWs from Srebrenica, that he had material ability to protect the Bosnian Muslim prisoners from Srebrenica, that the Accused's role was to facilitate the implementation murder operation, and that he done that on the Mladić's orders (para. 1126)
144. The Trial Chamber erred in finding that "the Accused chose not to act, resulting in the commission of the crimes" namely murders of Bosnian Muslim males from Srebrenica, and that Accused's failure to protect the Bosnian Muslim males from Srebrenica significantly contributed to the JCE to Murder. (1116-1128)
145. The Trial Chamber failed to establish on the evidence on the record the Accused's attitude towards prisoners of war.

Conclusion and relief sought

146. The Trial Chamber errors indicated in this Ground invalidates the Judgment and occasioned miscarriage of justice. The Appeals Chamber is requested to grant this ground of appeal, and to find the Appellant not guilty on Counts 1, 2, 3, 4, 5 and 6.

Ground 17: The Trial Chamber erred in fact and law that persecutory acts and opportunistic killings were reasonably feasible to the accused.

147. The Trial Chamber erred in fact and law in finding that persecutory acts and opportunistic killings that occurred on the night of 13 July and after that date (para. 22.2d, 22b-c, 22.3 and 22.4 of the Indictment) were reasonably feasible to the Accused on the basis of his membership in the JCE and that he willingly accepted the risk of persecutory

acts including murder. (para. 1136-1144) Ground 14 also form a part of this ground of appeal.

Ground 18: Alleged Foreseeable Targeted killings of Three Muslim Leaders from Žepa

148. The Trial Chamber erred in finding that it was foreseeable to the Appellant that the killings of Avdo Palić, Amir Imamović and Mehmed Hajrić “might be committed by Bosnian Serb Forces in the completion of the JCE to forcibly remove the Bosnian Muslim population from Žepa, and that he “willingly accepted the risk by participating in the JCE with the awareness that these crimes were a possible consequence of its implementation (paragraphs 1150, 1148-1149 of the Judgment)
149. The Trial Chamber erred in law in finding the Accused criminally responsible for the killing of Avdo Palić, Amir Imamović and Mehmed Hajrić. (paragraphs 1148- 1154 of the Judgment)
150. These errors occasioned a miscarriage of justice and invalidate the Judgment in relation to Counts 1-7.

Ground 19: Kravica killings

151. The Trial Chamber erred in fact and law in finding that killings at Kravica Warehouse were executed so as to achieve the common plan. (para. 1054-1055), e. g. that Kravica Warehouse killings are part of the JCE to Murder.
152. This error occasioned a miscarriage of justice and invalidates the decision.

Ground 20: Trnovo Killings

153. The Trial Chamber erred in fact and law in holding that killings committed in Trnovo by Scorpion units are part of the JCE to Murder. The Trial Chamber erred in fact in numerous findings in paragraph 547-551 and particularly in related footnotes (fns.2422-2436)
154. The Trial Chamber erred in fact and law that killings at Trnovo committed by so called Scorpion Unit are part of the JCE to Murder. The Trial Chamber’s conclusion is

implicit in its findings concerning those killings expressed in paragraphs 1063, 551, 547, 568 of the Judgment.

155. These errors invalidate the decision and caused a miscarriage of Justice.

Ground 21 – Genocide and Conspiracy to commit genocide

156. The Trial Chamber erred in fact and law in considering the Accused’s “education, his experience as an officer, his general capabilities especially with respect to his duties and responsibilities stemming from his specific professional position” as factors for the assessment of the Accused’s genocidal intent (para.1161) The Trial Chamber also erred in law because it was guided “by the jurisprudence of the Tribunal that as indications of genocidal intent “are rarely overt” (para. 1161)

157. In addition to errors in fact enumerated under other grounds of appeal the Trial Chamber erred in law in considering the Appellant’s relation with Mladić in drawing conclusions regarding his alleged genocidal intent (para. 1165)

158. The Trial Chamber erred in fact and law in finding that the Accused had knowledge that the murder operation was being carried out with genocidal intent (para. 1161-1166)

159. The Trial Chamber erred in finding that the Appellant “encouraged the use of derogatory terms so as to provoke ethnic haltered among members of the Bosnian Serb Forces and an attitude that the Bosnian Muslims were human beings of a lesser value, with a view to eradicate this particular group of the population from the Eastern BiH. (1168-1169)

160. The Trial Chamber erred in fact in relying on P488 in drawing inference regarding genocidal intent of the Appellant (paragraph 1117)

Ground 22: Responsibility for conspiracy to commit genocide

161. The Trial Chamber erred in fact and law in finding that the Appellant is criminally responsible for conspiracy to commit genocide (Count 2)
162. The Trial Chamber erred in fact in finding that the accused had genocidal intent, that he was actively engaged in concealing the murder operation and failure to protect Bosnian Muslim prisoners was a deliberate inaction with view to assist the common purpose shared with the other members, resulting in commission of crimes. (para. 1175-1176,)
163. These errors in fact occasioned a miscarriage of justice and error in law invalidates the decision.

Ground 23 Crimes under Article 5 of the Statute crimes against humanity – knowledge and act of the accused

164. The Trial Chamber erred in fact in finding that the accused had knowledge that attacks on Srebrenica and Žepa was attacks against civilian population (paras. 1178-1179)
165. These errors invalidate the Judgment and caused a miscarriage of justice.

Ground 24: Cumulative convictions

166. The Trial Chamber erred in law in finding that convictions for persecution (Article 5h) murders (5a) are permissively cumulative. (paragraph 1203 of the Judgment)
167. The Trial Chamber erred in law in finding that it is permissible to enter convictions for forcible transfer as an “other inhumane acts” and forcible transfer as a persecutory act. (paragraph 1204 of the Judgment)
168. The Trial Chamber erred in law in entering simultaneous convictions for genocide and conspiracy to commit genocide as well as genocide and extermination as a crime against humanity, genocide and murder as a crime against humanity or violations of laws and customs of war(1205, 1206-1207)
169. These errors invalidate the Judgment.

Ground 25: Manifestly excessive sentence

170. The Trial Chamber made a discernible error in the exercise of its discretionary authority when it sentenced the Appellant to a life imprisonment, which is a manifestly excessive and disproportionate sentence.
171. The Trial Chamber erred in findings concerning alleged impact of the crimes on victims. (paras. 1215-1218)
172. The Majority erred in finding that the accused “abused his position” in the VRS, that the accused “played the pivotal role in the two JCEs” and that his actions and omission were deliberate.
173. The Trial Chamber erred in fact and law in not identifying all mitigating factors that may be established from the trial record.
174. The Trial Chamber erred in law in not taking Appellant’s ill health as a mitigating circumstance.
175. The Trial Chamber erred in fact in comparing behavior of the accused during pre-trial phase of the proceedings with his behavior during trial proceedings, without inquiring the position of the accused upon his arrest, place of his arrest, and problems he had in not providing to him appropriate legal help significant time after his arrest.
176. The Trial Chamber erred in law in imposing sentence that could not be imposed in national jurisdiction of the accused.
177. This ground concerns paragraphs 1213-1231 of the Judgment.
178. This error invalidates the Judgment. The Appeals Chamber is requested to reverse and significantly reduce the sentence given to the Appellant.

Overall relief sought

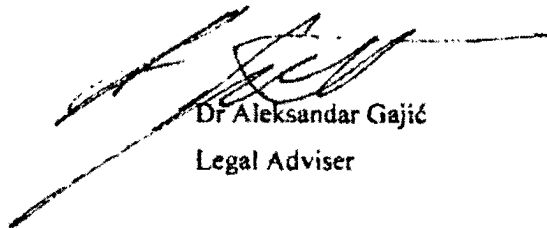
179. For all of the reasons set forth in 25 grounds of appeal, whether taken individually or cumulatively, the Judgment must be overturned.

180. The Appellant submits that the Appeals Chamber should allow the appeal, grant the appeal grounds, overturn all convictions; e. g. to found the Appellant NOT GUILTY on Counts 1, 2, 3, 4, 5, 6 and 7, or, in alternative, to significantly reduce his sentence.

Word count: 8.120



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