

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-08-91-A

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge William Hussein Sekule
Judge Patrick Robinson
Judge Liu Daqun
Judge Arlette Ramaroson

Registrar: Mr John Hocking

Date Filed: 22 April 2014

THE PROSECUTOR

v.

**MİĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

PUBLIC

**ŽUPLJANIN'S SUBMISSION OF SECOND AMENDED
NOTICE OF APPEAL**

The Office of the Prosecutor:

Ms Laurel Baig

Counsel for the Defence:

Mr Slobodan Zečević and Mr Stéphane Bourgon for Mićo Stanišić

**Mr Dragan Krgović, Ms Tatjana Čmerić, and Mr Christopher Gosnell for
Stojan Župljanin**

**ŽUPLJANIN'S SUBMISSION OF SECOND AMENDED
NOTICE OF APPEAL**

1. Pursuant to the Appeals Chamber's Decision,¹ Stojan Župljanin hereby files his amended Notice of Appeal attached as Annex A.

Respectfully submitted.

This 22nd day of April 2014



Dragan Krgović and Tatjana Čmerić
Counsel for Stojan Župljanin

Word count: 75.

¹ *Prosecutor v. Stanišić and Župljanin* (IT-08-91-A), Decision on Župljanin's Second Request to Amend His Notice of Appeal and Supplement His Appeal Brief, 14 April 2014, p. 7 ("Decision"). *See, also, Župljanin's Second Request to Amend His Notice of Appeal and Supplement His Appeal Brief*, 9 September 2013.

Public

ANNEX A

SECOND AMENDED
NOTICE OF APPEAL ON BEHALF OF STOJAN ŽUPLJANIN

NOTICE OF APPEAL ON BEHALF OF STOJAN ŽUPLJANIN

I INTRODUCTION

1. This Notice of Appeal is filed pursuant to Article 25 of the Statute of this Tribunal (“Statute”), Rules 107 and 108 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), Article 1 of the Practice Direction on Formal Requirements for Appeals from Judgement (IT/201) of 7 March 2002, and the Decision of 16 April 2013.¹
2. The Judgement under appeal is the Trial Chamber’s Judgement in the case of *The Prosecutor v. Mićo Stanišić and Stojan Župljanin* rendered on 27 March 2013 (“Judgement”).
3. Each error of law alleged herein invalidates the Judgement of the Trial Chamber. The factual errors, being factual conclusions that no reasonable trier of fact could have reached, individually and cumulatively give rise to a miscarriage of justice.²
4. Unless otherwise specified, all paragraph number references relate to paragraphs of the Judgement.
5. In addition to errors of law or fact raised in this *Notice*, Župljanin reserves the right to raise any and all other errors of fact and/or law after receiving a copy of the Judgement in his own language, as recognized under the Statute.
6. Župljanin also reserves the right to join, adopt or supplement any of the arguments advanced by the co-Appellant in this case.

¹ See, *Prosecutor v. Stanišić and Župljanin* (IT-08-91-A), Decision on Join Defence Motion Seeking Extension of Time to File Notice of Appeal, 16 April 2013 (“Decision”), p. 2.

² Article 25 of the Statute; Also see, e.g., *Prosecutor v. Kupreškić et al.* (IT-95-16-A), Appeals Chamber Judgement, 23 October 2001, paras. 21-22; *Prosecutor v. Brđjanin* (IT-99-36-A), Appeals Chamber Judgement, 3 April 2007, paras. 7-8.

II GROUNDS OF APPEAL

7. Župljanin puts forward the following Grounds of Appeal:

GROUND 1: Joint Criminal Enterprise (JCE I)

Sub-ground 1(a): The Trial Chamber erred in fact and law in inferring Mr Župljanin's *actus reus* and *mens rea* on the basis of alleged omissions or acts in relation to police forces re-subordinated to the military or not otherwise under control.

8. The Trial Chamber erred in fact and law in pervasively relying on Mr Župljanin's alleged omissions and/or acts in relation to forces that were re-subordinated to military authorities as a basis to infer both the *actus reus* and *mens rea* of the JCE.³ It did so despite also finding, *inter alia*, that it could not determine who possessed the authority to investigate and prosecute crimes committed by police forces so subordinated.⁴ In addition, it failed to make specific findings about authority over those forces.

9. The Chamber erred in fact in finding that Mr Župljanin possessed authority over forces over whom the Municipal Crisis Staffs exercised effective control.⁵ The Chamber's consequent inferences in relation to both *actus reus* and *mens rea* were erroneous.

10. The errors arise from an error of law and/or an error of fact. Regardless of their exact characterization, these errors occasion a miscarriage of justice and invalidate all convictions based on joint criminal enterprise liability.

³ Judgement, paras. 348-368, 384-398, 404-406, 415-530 (Vol. II).

⁴ Judgement, paras. 317-342 (Vol. II).

⁵ Judgement, paras. 200-228, 260-285, 331-350, 453-494, 655-703, 782-817, 867-883 (Vol. I); paras. 357-368, 384-398, 404-406, 415-530, 799-803, 805, 828-830, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869 (Vol. II).

Sub-ground 1(b): The Trial Chamber erred in law in finding that Stojan Župljanin committed the *actus reus* of the joint criminal enterprise by failing to fulfil his domestic legal obligations.

11. The Trial Chamber erred in law in equating failure to prevent crime, in alleged breach of domestic legal or administrative obligations, with a contribution to the act of the perpetrator.⁶
12. This error of law invalidates the Trial Chamber's conclusions in respect of Mr Župljanin's liability on the basis of JCE for all counts.

Sub-ground 1(c): The Trial Chamber erred in fact in finding that Mr Župljanin's alleged failure to adequately discharge his domestic legal obligations constituted a substantial contribution to the alleged JCE

13. The Chamber erred in fact in finding that Župljanin's alleged failures contributed substantially to the JCE.⁷ The Chamber failed to distinguish between contributions to institutions, persons or non-criminal actions, and contributions to criminal actions. The Chamber also disregarded the evidence and erred in fact in finding that Župljanin did not do anything to reassure and protect the non-Serb population aside from issuing ineffective and general orders to the ARK SJBs exhorting them to respect the law, and that his orders were not genuinely meant to be effectuated.⁸

⁶ Judgement, paras. 200-228, 260-285, 331-350, 453-494, 655-703, 782-817, 867-883 (Vol. I); 128-316, 348-530, 799-803, 805, 828, 829, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869 (Vol. II).

⁷ Judgement, paras. 510-513, 518-530 (Vol. II).

⁸ Judgement, paras. 441-456, 496, 514, 953 (Vol. II).

Sub-ground 1(d): The Trial Chamber committed discrete factual errors as to specific actions of Mr Župljanin that contributed to its overall assessment of substantial contribution

14. Trial Chamber erred in fact in finding that Župljanin attended the 14 February 1992 SDS Main Board meeting at the Holiday Inn in Sarajevo.⁹
15. The Chamber erred in fact in finding that Stojan Župljanin was one of the key actors behind the organisation of the blockade and takeover of Banja Luka on 3 April 1992, and that he had had any involvement in planning the blockade beginning in March 1992.¹⁰
16. The Chamber erred in fact in finding that at least on two occasions, Župljanin knowingly misled the public prosecutor in investigations concerning the murder of non-Serbs perpetrated by the Prijedor police.¹¹
17. The Chamber erred in fact in finding that Župljanin used principal perpetrators within the CSB Special Police Detachment for the commission of crimes in furtherance of the JCE.¹²
18. These errors of fact are based on conclusion that could not have been reached by any trier of fact, occasion a miscarriage of justice, and individually or cumulatively invalidate all convictions based on joint criminal enterprise liability.

⁹ Judgement, paras. 352, 353, 495, 519 (Vol. II).

¹⁰ Judgement, paras. 495-499 (Vol. II).

¹¹ Judgement, paras. 516-517 (Vol. II).

¹² Judgement, paras. 384-398, 404-530 (Vol. II).

Sub-ground 1(e): The Trial Chamber erred in fact and law in inferring Stojan Župljanin's *mens rea* from his alleged acts and omissions.¹³

19. The Trial Chamber erred in inferring that Mr Župljanin possessed the *mens rea* of the alleged common criminal purpose on the basis of his alleged inadequate fulfilment of his domestic legal obligations. The Chamber erred in law to the extent it drew this inference on the basis of alleged non-fulfilment of domestic legal obligations. Even assuming no such error, the Chamber erred in fact in concluding that the only reasonable inference for this alleged inadequate performance was a criminal intent. No reasonable Trial Chamber could have reached that conclusion given the totality of the evidence.

20. The Trial Chamber also repeatedly placed weight on events about which it made no findings,¹⁴ and accorded insufficient weight to evidence manifestly incompatible with its finding of *mens rea*.¹⁵

21. This sub-ground is based on errors of fact, errors of law, or mixed errors of fact and law. Regardless of their exact characterization, the errors occasion a miscarriage of justice and invalidate all convictions based on joint criminal enterprise liability.

Sub-ground 1(f): The Trial Chamber erred in law by applying an incorrect *mens rea* standard.

22. The Trial Chamber applied an erroneous *mens rea* standard, finding that his conduct could not be attributable to mere negligence.¹⁶ Even assuming this to be true, that finding does not meet the criminal *mens rea*. The Trial Chamber's

¹³ Judgement, paras. 128-316, 348-530, 801-803, 805, 828, 829, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869 (Vol. II).

¹⁴ Judgement, paras. 404-530 (Vol. II).

¹⁵ Judgement, paras. 515, 517 (Vol. II).

¹⁶ Judgement, para. 519 (Vol. II).

erroneous statement indicates that it applied an incorrect standard of *mens rea* in respect of all its findings.¹⁷

Sub-ground 1(g): The Trial Chamber erred in law in determining that the arrest and detention of non-Serbs was “unlawful.”

23. The Chamber erred in law in finding that the arrest and detention of non-Serbs in the ARK were “unlawful.”¹⁸ The error, viewed individually or cumulatively with other errors, invalidates the Chamber’s finding of commission through a JCE and occasions a miscarriage of justice.

GROUND 2: Joint Criminal Enterprise (JCE III)

Sub-ground 2(a): The Trial Chamber erred in law in imposing criminal liability on Mr Župljanin pursuant to the doctrine of JCE III for crimes of much more serious gravity, and for which the Chamber found he had no criminal *mens rea*.

24. The Trial Chamber erred in law in imposing criminal liability on Mr Župljanin for crimes in respect of which it found he had no *mens rea* on the basis of the doctrine of JCE III where the JCE III crimes are of much greater gravity than the crimes for which he was found to have *mens rea*.

25. The error is one of law that invalidates all convictions based on Joint Criminal Enterprise (III) liability.¹⁹

¹⁷ Judgement, paras. 200-228, 260-285, 331-350, 453-494, 655-703, 782-817, 867-883 (Vol. I); 128-316, 348-530, 799-803, 805, 828, 829, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869 (Vol. II).

¹⁸ Judgement, paras. 506-512; 518-519 (Vol. II).

¹⁹ Judgement, paras. 200-228, 260-285, 331-350, 453-494, 655-703, 782-817, 867-883 (Vol. I); 799-800, 801-803, 805, 828-830, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869 (Vol. II).

Sub-ground 2(b): The Trial Chamber erred in fact and law in failing to find that crimes charged in Counts 1 to 8 of the Indictment were a natural and foreseeable consequence of the joint criminal enterprise

26. The Chamber failed to make specific findings that crimes charged in Counts 1 to 8 of the Indictment were a natural and foreseeable consequence of the JCE to permanently remove Bosnian Muslims, Bosnian Croats and other non-Serbs from the territory. This error arises from an error of law and/or an error of fact. Regardless of its exact characterization, the error occasions a miscarriage of justice and invalidates the Chamber's decision.

Sub-ground 2(c): The Chamber erred in finding that Župljanin possessed the required *mens rea* for JCE III

27. The Prosecution failed to prove beyond reasonable doubt Župljanin's intention to participate in and contribute to the common criminal purpose.²⁰

Sub-ground 2(d): The Trial Chamber erred in fact in finding that the JCE III crimes were foreseeable to Stojan Župljanin.

28. No reasonable trier of fact could have found that the JCE III crimes were foreseeable to Mr Župljanin.²¹

29. The error of fact occasions a miscarriage of justice and invalidates the Trial Chamber's convictions under Counts 1, 2, 4 and 6.

²⁰ Judgement, paras. 518-528, 801-803, 805, 828, 829, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869 (Vol. II).

²¹ Judgement, paras. 518-528, 801-803, 805, 828, 829, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869 (Vol. II).

GROUND 3: Extermination

Sub-ground 3(a): The Chamber erred in fact and law in finding that the crime of extermination was committed.

30. The Trial Chamber erred in fact and law in finding that the crime of extermination was committed.²² The Chamber applied an incorrect legal standard of extermination and/or relied on factual determinations that could have been made by no reasonable trier of fact, and on the basis of a failure to give reasons.

31. The error arises from an error of law and/or an error of fact. Regardless of its exact characterization, the error occasions a miscarriage of justice and invalidates the Chamber's convictions under Count 2.

Sub-ground 3(b): The Trial Chamber erred in law and in fact by finding that crimes were intended to be committed on a massive scale.

32. The Prosecution failed to prove beyond reasonable doubt that principal perpetrators possessed the required *mens rea* to either to kill on a massive scale or to systematically subject a large number of people to conditions of living that would lead to their deaths.²³ The principal perpetrators did not act with the intent of furthering a common plan to exterminate non-Serbs in the Autonomous Region of Krajina.

33. The error arises from an error of law and/or an error of fact. Regardless of its exact characterization, the error occasions a miscarriage of justice and invalidates the Chamber's convictions under Count 2.

²² Judgement, paras. 200-228, 331-350, 453-494, 655-703 (Vol. I); paras. 801-803, 805, 841-843, 845-848, 850, 855-857, 859 (Vol. II).

²³ Judgement, paras. 200-228, 331-350, 453-494, 655-703 (Vol. I); paras. 801-803, 805, 841-843, 845-848, 850, 855-857, 859 (Vol. II).

Sub-ground 3(c): The Trial Chamber erred in finding that Župljanin meets the knowledge requirement for the crime of extermination

34. The Chamber erred in fact and in law in concluding that Župljanin was aware the extermination would be committed in the territory of the AR Krajina.²⁴ No reasonable Chamber would have reached such conclusion when other inferences were available on the evidence.

35. The error arises from an error of law and/or an error of fact. Regardless of its exact characterization, the error occasions a miscarriage of justice and invalidates the Chamber's convictions under Count 2.

Sub-ground 3(d): The Trial Chamber erred in assessing Župljanin's contribution to the crime of extermination.

36. The Chamber erred in fact and in law in finding that Župljanin substantially contributed to commission of the crime of extermination.²⁵ No reasonable Chamber would have reached such conclusion when other inferences were available on the evidence.

37. The error arises from an error of law and/or an error of fact. Regardless of its exact characterization, the error occasions a miscarriage of justice and invalidates the Chamber's convictions under Count 2.

²⁴ Judgement, paras. 200-228, 331-350, 453-494, 655-703 (Vol. I); paras. 801-803, 805, 841-843, 845-848, 850, 855-857, 859 (Vol. II).

²⁵ Judgement, paras. 200-228, 331-350, 453-494, 655-703 (Vol. I); paras. 801-803, 805, 841-843, 845-848, 850, 855-857, 859 (Vol. II).

GROUND 4: Sentencing

Sub-ground 4(a): Trial Chamber erred in law and fact in failing to give due weight or any weight at all, to relevant considerations. It erred in failing to take into account a number of mitigating circumstances when concerning the sentence to be imposed on Župljanin.

38. The Trial Chamber erred in law by failing to take into account substantial and serious efforts made by Stojan Župljanin to reduce violence and save lives. The Chamber did not consider sufficiently, or at all, the concrete and significant steps taken by Mr Župljanin to save lives and ensure security in a situation of volatility and violence.²⁶

39. The Chamber failed to properly assess Župljanin's good character and no prior criminal convictions.²⁷ It also did not properly identify all the mitigating factors, as it failed to give weight to Župljanin's good conduct while in detention.²⁸

40. The errors invalidate the sentence imposed and justify the substitution of a sentence that takes into account these substantial mitigating factors.

Sub-ground 4(b): The Trial Chamber failed to adequately consider the nature of forms of participation found in relation to sentence.

41. The Trial Chamber erred by failing to acknowledge that the most serious crimes of which it found Mr Župljanin liable were purportedly committed through JCE III. The Trial Chamber makes no mention in its discussion of sentencing that this is the form of liability imposed, nor does it discuss how

²⁶ Judgement, paras. 937-953 (Vol. II).

²⁷ Judgement, para. 952 (Vol. II).

²⁸ Judgement, paras. 946-953 (Vol. II).

the much lower standard of *mens rea* required for such a conviction should have affected its assessment of culpability.²⁹

42. The error invalidates the sentence imposed and justifies the substitution of a sentence that takes into account the substantial mitigating factor.

Sub-ground 4(c): The Trial Chamber erred in law and fact by taking into account factors not proven beyond reasonable doubt

43. The Chamber abused its discretion in sentencing procedure by taking into account factors not proven beyond reasonable doubt, in violation of the principle that only matters which are proved beyond reasonable doubt against a convicted person may taken into account in aggravation of that sentence.³⁰

44. The error invalidates the sentence imposed and justifies the substitution of a sentence that takes into account the substantial mitigating factor.

Sub-ground 4(d): The Trial Chamber erred in fact in imposing a manifestly excessive sentence.

45. The Trial Chamber made a discernible error by imposing a manifestly disproportionate sentence.³¹ Given the nature of Župljanin's involvement, the nature, number and relation of aggravating and mitigating factors, no reasonable trier of fact could have imposed a sentence of twenty-two years.

46. The error invalidates the sentence imposed and justifies the substitution of a sentence that takes into account the substantial mitigating factor.

²⁹ Judgement, paras. 937-953 (Vol. II).

³⁰ Judgement, paras. 948-953 (Vol. II).

³¹ Judgement, paras. 937-953, pp. 312-313 (Vol. II).

GROUND 5: Appropriation of Property

Ground 5: The Trial Chamber erred in law and fact in determining that Stojan Župljanin committed persecution by way of appropriation of property through a JCE.³²

47. The Chamber erred in determining that Mr Župljanin ordered “appropriation of property” as persecution by conveying an order to chiefs of police stations that individuals were not allowed to leave the ARK with more than 300DM in cash.³³
48. The error as to the definition of appropriation invalidates the conclusion that Mr Župljanin ordered appropriation of property, and the Chamber’s failure to assess the impact of this rule, either individually or in general, invalidate its classification of a form of persecution.

GROUND 6: Right to a Fair Trial by an Impartial Court

Ground 6: Stojan Župljanin’s right to a fair trial, including by an impartial, independent and competent court, was violated by the participation of Judge Frederick Harhoff, whose comments subsequent to the issuance of the Judgement reveal either an actual or reasonable apprehension of bias.

49. The participation of a judge who was biased, or who displays a reasonable apprehension of bias, is such a fundamental breach of Mr Župljanin’s right to a fair trial that it, in itself, invalidates his conviction. In the alternative, the participation of such a judge renders all legal and factual findings unsafe, invalidates the entire Judgement and every conviction entered against Mr Župljanin.

³² Judgement, paras. 409, 512, 526 (Vol. II).

³³ Judgement, paras. 526, 805 (Vol. II).

III RELIEF SOUGHT

50. The Defence submits that the Appeals Chamber should:

- (1) allow the appeal, grant the appeal grounds and quash Župljanin's convictions; and
- (2) quash all Župljanin's convictions and enter a verdict of acquittal or, in the alternative, reduce the sentence of 22 years of imprisonment passed upon him.

Respectfully submitted.

This 22nd Day of April 2014



Dragan Krgović and Tatjana Čmerić
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Word count: 3,046.