THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Case No. IT-08-91-A

IN THE APPEALS CHAMBER

Before: **Judge Carmel Agius, Presiding**
Judge Liu Daqun
Judge Christoph Flügge
Judge Fausto Pocar
Judge Koffi Kumelio A. Afanđe

Registrar: **Mr John Hocking**

Date Filed: **20 April 2016**

THE PROSECUTOR

v.

MICO STANISIC
STOJAN ZUPLJANIN

AMENDED
PUBLIC REDACTED

STOJAN ZUPLJANIN'S APPEAL BRIEF

The Office of the Prosecutor:

Ms Laurel Baig

Counsel for the Defence:

Mr Slobodan Zecevic and Mr Stéphane Bourgon for Mico Stanisic

Mr Dragan Krgovic, Ms Tatjana Cmeric, and Ms Christopher Gosnell for Stojan Zupljanin

STOJAN ZUPLJANIN'S APPEAL BRIEF

1. Mr Zupljanin files this *Appeal Brief* pursuant to relevant Articles, Rules, Practice Directions and a Decision of this Tribunal,[1] against a Judgement[2] that found him guilty[3] and sentenced him to a single sentence of 22 years of imprisonment.[4]

2. On 13 May 2013, Mico Stanisic and Stojan Zupljanin, as well as the Prosecution, filed their respective Notices of Appeal,[5] setting out a number of grounds of appeal against the Judgement.[6]

3. In accordance with the relevant Practice Directions,[7] Zupljanin seeks leave to vary the order in which sub-grounds are presented. Whilst the grounds of appeal are submitted in the order provided in the Appellant's Notice of Appeal, the sequence of some of the sub-grounds has been altered.

4. Zupljanin Appeal Brief has 36,725 words.

---

1 Article 25 of the Statute, Rules 107 and 111 of the Rules, paras. 4, 13 and 14 of the Practice Direction (IT/201) of 7 March 2002, para. 1 of the Practice Direction (IT/184/Rev.2), of 16 September 2005, and the Pre-Appeal Judge's Decision of 4 June 2013 (*See*, *Prosecutor v. Stanisic and Zupljanin* (IT-08-91-A), Decision on Mico Stanisic's and Stojan Zupljanin's Motions Seeking Variation of Time and Word Limits to File Appeal Briefs, 4 June 2013, p. 5).

2 *Prosecutor v. Stanisic and Zupljanin* (IT-08-91-T), Judgement, vol.I-III, 27 March 2013.

3 Judgement, vol.II, p. 312.

4 Judgement, vol.II, p. 313.

5 *Prosecutor v. Stanisic and Zupljanin* (IT-08-91-A), Notice of Appeal on Behalf of Mico Stanisic, 13 May 2013; Notice of Appeal on Behalf of Stojan Zupljanin, 13 May 2013 ("Notice of Appeal" or "Notice"); Prosecution Notice of Appeal, 13 May 2013.

6 *See*, also, *Prosecutor v. Stanisic and Zupljanin* (IT-08-91-A), Zupljanin Request to Correct His Notice of Appeal, 9 July 2013; Zupljanin Request to Amend Notice of Appeal, 12 August 2013.

7 Practice Direction (IT/201) of 7 March 2002, para. 4.

5. Pursuant to Rule 111(A) of the Rules and Articles 7-10 of the Practice Direction (IT/201) of 7 March 2002, the Defence will also file a Book of Authorities containing a separate compilation of the non-ICTY and non-ICTR authorities relied upon.

Respectfully submitted.

This 19th day of August 2013

Dragan Krgovic and Tatjana Cmeric
Counsel for Stojan Zupljanin

Word count: 346.

PUBLIC REDACTED

STOJAN ZUPLJANIN'S APPEAL BRIEF

TABLE OF CONTENTS

I. INTRODUCTION

1. Mr Zupljanin was a regional police chief in an area covering a number of municipalities in the northern part of the Republika Srpska in 1992. The municipalities were a theatre of violent armed conflict between organized armed forces, along with significant turmoil and civil unrest that made regular policing largely impossible. Many of the policemen who in peacetime would have devoted their time to civil law enforcement tasks under Mr Zupljanin's direction were instead seconded to the military and spent their time fighting or providing combat-support such as arresting and guarding suspected combatants or others considered to be a security threat.

2. The Trial Chamber ("Chamber") sentenced Stojan Zupljanin to twenty-two years in prison for having intended, as part of a JCE, to forcibly transfer the non-Serb population from the municipalities in his region. He was also found to have committed extermination, murder, persecution and other crimes on the basis of *dolus eventualis*.

3. Mr Zupljanin's conviction is unsound and unjust. The Chamber directly contradicted itself in respect of Mr. Zupljanin's intent in respect of the crime at the heart of the JCE: on the one hand, Mr Zupljanin was found to have intended the crime of forcible transfer, but not to have intended any of the coercive acts by which forcible transfer was to be committed. Those findings are irreconcilable, and arise from a flawed and imprecise definition of the common criminal purpose.

4. The Chamber also failed to address a central issue in the case: to what extent were the crimes committed by policemen while subordinated to the VRS and, hence, outside of Mr Zupljanin's authority and jurisdiction? That question had to be resolved because the Prosecution case rested heavily on Mr Zupljanin's alleged failures – *i.e.*, his omissions – to prevent crimes by those ostensibly under his

authority. The Chamber washed its hand of the entire issue, claiming that it was unnecessary since Mr Zupljanin was a member of a JCE – apparently without realizing that it relied on precisely those omissions to establish his membership in the JCE.

5. These core errors are accompanied by a host of legal and factual errors, as well as contradictions internal to the Judgement itself. The Chamber relied on reports submitted by Mr Zupljanin to the public prosecutor's office that allegedly failed to mention the names of known suspects as evidence of his hidden agenda to conceal crimes. The Chamber failed to note, however, that the names of all known suspects were identified in the attachments submitted in those same reports.[1] The Chamber accuses Mr Zupljanin of doing "what he could to ensure the impunity for the perpetrators" of the Koricanske Stijene massacre because he failed to disclose information about the crime during an international television interview, while completely ignoring his vigorous efforts to pursue the investigation, preserve the evidence, and charge those responsible.[2] The Chamber, contrary to its own findings, accuses Mr Zupljanin of permitting convicted criminals to join the Special Police Detachment whereas the Chamber made no such finding.[3] The list of such errors, small or great, is numerous.

6. The Chamber's errors, legal and factual, are central to its findings. They are often accompanied by incomplete and inadequate reasons. The errors in this case invalidate the Judgement and, in the truest sense of the expression, occasion a miscarriage of justice.

1 *See,* Appeal Brief, sub-Ground 1(e)(iii)(e).

2 *See*, Appeal Brief, sub-Ground 1(e)(iii)(f).

3 See Appeal Brief, sub-Ground 1(e)(iii)(b).

II. GROUNDS OF APPEAL

A. GROUND 1: Joint Criminal Enterprise (JCE I)

7. Stojan Zupljanin was convicted of committing all crimes charged in the Indictment through a joint criminal enterprise that he is said to have joined in April 1992. More particularly, he was found to have intended the common criminal purpose of forcible transfer of the non-Serb population from the municipalities of the ARK, and that he possessed *dolus eventualis* in respect of all other crimes charged. Further, the Chamber convicted and sentenced Mr Zupljanin as being criminally responsible through JCE for every incidence of these crimes committed in the ARK municipalities as found by the Chamber in its "crime-base" findings.

8. Mr Zupljanin's conviction is erroneous, first and foremost, because the Chamber contradicts its own finding that he intended forcible transfer by determining that he did not directly intend any of the coercive acts by which that forcible transfer was effectuated. A loosely-defined criminal purpose contributed to a confusion of direct intent with *dolus eventualis*, leading to the imposition of JCE I liability on Mr Zupljanin based on the latter standard. The Chamber further erred by excluding that Mr Zupljanin's conduct could be attributable to "simple negligence," incorrectly assuming that the absence of negligence demonstrated direct intent. Finally, the Chamber erred by inferring *mens rea* starting in April 1992 based on alleged conduct that occurred long after that date, but without offering any basis for a retroactive inference of intent. These legal grounds are addressed first as sub-Ground 1(f).

9. The second error invalidating the JCE conviction, addressed primarily in sub-Grounds 1(a) and (b) is the Chamber's legally and factually erroneous inference that Mr Zupljanin contributed to, and intended, the crime of forcible transfer by not intervening adequately to prevent or punish crimes against civilians. The Chamber failed to address the extent to which those committing crimes were not under his authority, or the crimes themselves were not under his jurisdiction. The 177,000 VRS soldiers in BiH by July 1992, for example, were not subject to Mr Zupljanin's police jurisdiction even if the victims were civilians. Policemen seconded to the VRS for the duration of their tasks were likewise subject to the sole authority and criminal justice jurisdiction of the military. The Chamber improperly washes its hand of these issues by claiming that they are irrelevant in the context of JCE, but then relying on Mr Zupljanin's alleged omissions in respect of those crimes precisely to infer his participation and intent in respect of the JCE. Further, the Chamber gives no consideration to the special care necessary before imputing liability to an accused on the basis of alleged omissions.

10. The third series of errors, set out in sub-Grounds 1(c) through 1(e) and 1(g), concern the Chamber's failure, because of both legal and factual errors, to properly assess Mr Zupljanin's conduct. Serb authorities were permitted, contrary to the Chamber assumption, to intern large numbers of actual or potential combatants during hostilities. Mr Zupljanin issued many orders to curb abuse of non-Serb prisoners and civilians, pursued investigations vigorously where he could, and did not, contrary to the Chamber's misreading of its own preliminary findings, permit criminals to be inducted into the Special Police Detachment. A disturbing aspect of many of the Chamber's findings on Mr Zupljanin's liability is that they are not footnoted or cross-referenced to the Chamber's own findings and often misstate those findings in key respects. The result is a series of ultimate findings that are internally contradictory, unsubstantiated by reasons, and manifestly wrong.

11. The legal errors presented in this ground, viewed individually or cumulatively in relation to related factual errors, invalidate Mr Zupljanin's conviction for forcible transfer by way of joint criminal enterprise. The proper remedy is to quash the finding that Mr Zupljanin participated in a joint criminal enterprise to commit forcible transfer, and to reverse all convictions based on that finding.

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

(i) Introduction

12. The Chamber's conclusion that Mr Zupljanin intended the crime of forcible transfer is contradicted by its own finding that Mr Zupljanin possessed only *dolus eventualis* in respect of each and every category of coercive act by which the forcible transfer was to be committed. Since unlawful coercive acts are an indispensible element of forcible transfer, the two findings are incompatible.

13. The erroneous conclusion derives from an erroneous *mens rea* standard, as reflected in particular in the claim that intent could be safely inferred because Zupljanin's conduct could not be attributable to "simple negligence."[4] The Chamber did not appreciate or consider that neither gross negligence nor even recklessness satisfy the *mens rea* of direct intent. The *criminal* purpose of the common enterprise was also not defined with adequate specificity, leading the Chamber to impermissibly confuse criminal and non-criminal objectives.

14. All convictions through JCE I and JCE III depend on the Chamber's finding that Mr Zupljanin intended forcible transfer as the common criminal purpose. The error as to *mens rea* invalidates those findings in their totality. The present sub-

[4] Judgement, vol.II, para. 519.

ground assumes that the Chamber's factual findings are correct and is, therefore, presented first in the sequence under Ground 1.

(ii) The Chamber Defined the Intended Common Criminal Purpose As The "Permanent Removal of Non-Serbs" Or As "Establish[ing] … An Ethnically Pure" Serb State

15. The Chamber defines a common criminal purpose of "the Bosnian Serb leadership" before considering whether Mr Zupljanin was a member of this JCE.[5] The Chamber found that a "majority" of the Bosnian Serb leadership aimed at "the establishment of a Serb state, as ethnically 'pure' as possible, through the permanent removal of the Bosnian Muslims and Bosnian Croats."[6] The common criminal objective is then slightly re-formulated as being "to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state."[7] Three crimes, henceforth collectively referred to as "forcible transfer", are identified as the means to accomplish this objective: (i) forcible transfer and deportation as persecution; (ii) deportation as a crime against humanity; and (iii) inhumane acts (forcible transfer) as a crime against humanity.[8] The Chamber found that the JCE came into existence "no later than 24 October 1991" and expressly found that "there is *insufficient evidence* to find that other crimes alleged in the Indictment were part of this joint criminal enterprise."[9] Some JCE members are identified by name, but the Chamber does not identify those within the Bosnian Serb leadership whom it did not consider to be members of the JCE, as implied by the word "majority".[10]

---

5 Judgement, vol.II, paras. 311, 312. The term "Serb leaders" is also used in the initial definition of the JCE.

6 Judgement, vol.II, paras. 311-312.

7 Judgement, vol.II, para. 313.

8 Judgement, vol II, para. 313.

9 Judgement, vol.II, para. 313 [italics added].

10 Judgement, vol II, para. 314.

16. The Chamber does not define the "goal" and the "means" of the common criminal objective in precisely identical terms. The objective ("goal") is defined as "permanently remov[ing] Bosnian Muslims and Bosnian Croats from the territory"; the means are identified as the crimes of forcible transfer and deportation.[11]

17. Forcible transfer is the displacement of persons "by expulsion or other forms of coercion such that the displacement is involuntary in nature, and the relevant persons had no genuine choice in their displacement."[12] The *actus reus* therefore requires either physical compulsion or coercive acts against the expellee.[13] Coercive acts have been said to include "the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such persons or another person, or by taking advantage of a coercive environment."[14]

18. The notions of "expulsion" and "coercion" imply that the act inducing the departure must itself be criminal. Measures authorized or permitted under the law of armed conflict could not, it is submitted, constitute the *actus reus* of forcible transfer. A lawful and legitimate military attack on a village, for example, does not constitute "forcible transfer" even though it might be foreseeable, or even certain, that the attack would induce a non-temporary departure of the civilian population because of fear.[15] A contrary approach would unjustifiably limit the

---

11 Judgement, vol.II, para. 311, 313.

12 *Stakic* AJ, para. 279.

13 *Stakic* AJ, para. 279; *Popovic et al.* TJ, para. 891 ("forms of coercion"); *Krnojelac* TJ, para. 474 ("by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.").

14 *Stakic* AJ, para. 281; Judgement, vol.I, paras. 61-63.

15 The Appeals Chamber has left this question open. *See*, *Gotovina* AJ, para. 114, fn. 330. The least that can be said, however, is that an otherwise lawful attack could not itself establish criminal intent. The situation could only arise if there was distinct and independent evidence (*i.e.*, something other than the

conduct of hostilities, and overthrow the fundamental principle that "humanitarian law is the *lex specialis* which applies in cases of an armed conflict."[16]

(iii) The Chamber Found That Zupljanin Did Not Directly Intend The "Coercive Acts" Underlying Forcible Transfer

19. The Chamber did not find that Mr Zupljanin was an original member of the JCE that started no later than October 1991; instead, it found that he "was a member of the JCE starting at least in April 1992 and throughout the rest of 1992."[17] Mr Zupljanin came to share the same "intended" common criminal objective as the Chamber had previously defined: "to achieve the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian State."[18] The means to achieve that objective also appear to be formulated in the same way: "*through* the commission of the crime of deportation as a crime against humanity, inhumane acts (forcible transfer) as crime against humanity, and the crimes of forcible transfer and deportation, as persecution, as a crime against humanity against Muslims and Croats in the ARK Municipalities."[19]

20. The Chamber exhaustively analyses, at paragraphs 521 through 528 of the Judgement, the coercive acts by which non-Serbs were induced to flee: killings, torture, cruel treatment, other inhumane acts, and all forms of persecution other than forcible transfer. The Chamber held that all crimes other than forcible transfer "need to be examined in the context of the third category of joint criminal

---

otherwise lawful act itself) showing beyond a reasonable doubt that the commander's intention was to commit forcible transfer.

16 Israeli Supreme Court, *Targeted Killings Case*, para. 18. That *lex specialis* applies here, given the Chamber's finding that "an armed conflict existed on the territory of the BiH at all times relevant to the Indictment period." Judgement, vol.I, para. 132.

17 Judgement, vol.II, para. 520.

18 Judgement, vol.II, para. 520.

19 Judgement, vol.II, para. 520 [italics added].

enterprise."[20] This included killings (counts 2 through 4); torture, cruel treatment and inhumane acts (Counts 5 through 8); and all acts of persecution other than "forcible transfer and deportation" (Count 1 (paragraph 27 of the Indictment)). Using a formula deployed repeatedly, the Chamber found:

> the *possibility* that Serb Forces could impose and maintain restrictive and discriminatory measures against non-Serbs in the ARK Municipalities in the execution of the common plan was sufficiently substantial so as to be *foreseeable to Stojan Zupljanin and he willingly took that risk*.[21]

21. The Chamber made the same finding in respect of unlawful detention;[22] killings;[23] torture, cruel treatment and other inhumane acts;[24] plunder and looting;[25] wanton destruction and damage of religious and cultural property;[26] and all the foregoing crimes when committed with the discriminatory intent specific to persecution.[27] Every such crime was found to have been *foreseeable* to him, and the he *undertook the risk* that they would be committed (*dolus eventualis*).[28] Mr Zupljanin was not found to have intended any of these crimes.

22. The one and only exception is "appropriation of property". The Chamber held that Mr Zupljanin *intended* this crime because he facilitated the implementation of a law capping the maximum amount of currency that could be removed from the RS at 300DM.[29] The imposition of a currency limitation, however, does not induce a person to leave, and the Chamber made no finding that this "appropriation of

---

20 Judgement, vol.II, para. 521.

21 Judgement, vol.II, para. 522.

22 Judgement, vol.II, para. 523.

23 Judgement, vol.II, para. 524.

24 Judgement, vol.II, para. 525.

25 Judgement, vol.II, para. 526.

26 Judgement, vol.II, para. 527.

27 Judgement, vol.II, para. 528.

28 Judgement, vol.II, paras. 521-528.

29 Judgement, vol.II, para. 526.

property" was, or was intended, as a coercive act designed to induce involuntary departures of non-Serbs from the ARK.[30]

23. No coercive acts other than those covered in paragraphs 521 through 528 are referred to by the Chamber, indicating that this was intended as an exhaustive review.

(iv) The Contradictory Findings Invalidate the Chamber's Conclusions On JCE

24. The Chamber's findings are contradictory and incompatible on their face. Neither the Parties nor the Appeals Chamber should be placed in the position of having to guess at what may have been intended by the Chamber:

> Neither the Appeals Chamber nor the Parties can be required to engage in speculation on the meaning of the Trial Chamber's findings – or lack thereof – in relation to such a central element of Krajisnik's individual criminal responsibility as the scope of the common objective of the JCE. Aside from merely stating that the common objective was "fluid", the Trial Chamber was required to precisely find how and when the scope of the common objective broadened in order to impute individual criminal responsibility to Krajisnik for those crimes that were not included in the original plan, *i.e*, the expanded crimes.[31]

That instruction applies with even greater force here where the defect involves starkly contradictory findings, rather than, as in *Krajisnik*, the absence of reasoning.

25. The Chamber's conclusion that Mr Zupljanin directly intended forcible transfer is incompatible with its finding that he did not intend any of the coercive acts by which the forcible transfer was effectuated. The result of this ambiguity, or

[30] Judgement, vol.II, para. 526.

[31] *Krajisnik* AJ, para. 176.

outright incompatibility, is that the Chamber's finding that Mr Zupljanin had the threshold *mens rea* for JCE liability is invalid.

(v) The Contradictory Findings Arise From a Lack of Precision In Defining the Common Purpose, and The Criminal Means To Achieve The Common Purpose

26. The Chamber's error, whatever may be its origin or reason, invalidates the finding that Mr Zupljanin shared the common criminal purpose of forcible transfer. The source of the error may nevertheless be relevant to its classification as legal, rather than factual.

27. A probable reason for the Chamber's error is the failure to have defined the common criminal purpose with precision. In particular, the Chamber did not define a common purpose that, *in and of itself,* "amounts to or involves the commission of a crime provided for in the Statute."[32]

28. The Chamber alternately describes the common objective as the "permanent removal" of non-Serbs from "the territory of the planned Serbian state" or as the creation of "a Serb state, as ethnically pure as possible."[33] These are said to be the "goal," "aims," or "objective."[34]

29. Neither of these objectives, and certainly not the latter, *in and of itself* involves criminal acts. As the *Martic* Trial Chamber held:

---

[32] *Brdjanin* AJ, para. 364.

[33] Judgement, vol.II, para. 311.

[34] Judgement, vol.II, para. 311 ("they all shared and worked towards the same *goal*"); ("the Chamber finds that the *goal* of these actions was the establishment of a Serb state, as ethnically 'pure' as possible"); ("the true *aims* of the majority of the Bosnian Serb leadership"); ("a common plan did exist, the *objective* of which was to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state").

> The Trial Chamber considers that such an objective, that is to unite with other ethnically similar areas, *in and of itself* does not amount to a common purpose within the meaning of the law on JCE pursuant to Article 7(1) of the Statute. However, where the creation of such territories is intended to be implemented through the commission of crimes within the Statute this may be sufficient to amount to a common criminal purpose.[35]

30. Creating an ethnically homogeneous state could be achieved lawfully, for example, through a negotiated settlement defining borders primarily according to ethnicity; through lawful armed conflict in which the borders of any new State correspond to pre-existing population patterns; through the permanent departure of civilians who, though not coerced by unlawful means, may flee armed conflict in the short term, and in the long-term may not wish to live as a minority in the new State; and through lawful inducements for voluntary resettlement. The *Plan Dalet*, to take but one example, sought to establish an ethnically homogenous state through armed conflict, but could not correctly be characterized as, in itself, expressive of a joint criminal enterprise.[36]

31. The Appeals Chamber has repeatedly affirmed that JCE is a form of commission, not accomplice liability,[37] and that the threshold *mens rea* is direct intent in respect of at least one crime.[38] The requisite *mens rea* of JCE is, in this sense, no different than when an individual acts alone – the only difference is that the *actus reus* is shared amongst a group of people acting in concert. A JCE to kill, for example, requires that each JCE participant "has the intent to kill."[39]

---

35 *Martic,* TJ, para. 442 [italics added].

36 Plan Dalet, 10 March 1948, General Section.

37 *Milutinovic* JCE Jurisdiction Decision, 21 May 2003, para. 20.

38 *Stakic* AJ, para. 65; *Kvocka et al.* AJ, para. 83 ("First, the accused must have the intention to participate in and contribute to the common criminal purpose"); *Vasiljevic* AJ, para. 101; *Stanisic and Simatovic* TJ, para. 1258, fn. 2193 ("It follows from that and the above that the first form of the JCE requires intent in the sense of *dolus directus*, and that recklessness or *dolus eventualis* does not suffice"); *See*, also, RUF AJ, Fisher Dissent, para. 19.

39 *Vasiljevic* AJ, para. 97.

32. These standards can be easily subverted through sloppy or loose definitions of the common purpose that merely involve an objective where it is probable that a crime will be committed in pursuit of the objective. That would reduce the threshold *mens rea* required for JCE I to *dolus eventualis* through the back door, with catastrophic consequences.

33. This is absolutely vital in the context of armed conflicts where individuals typically must associate in pursuit of lawful objectives that, nonetheless, will foreseeably involve crimes.[40] Those intentionally participating in otherwise lawful military campaign while foreseeing the likelihood that crimes would likely be committed at some point during the campaign would then be guilty of those crimes through JCE on the standard of *dolus eventualis*. If pursuing an ethnically homogeneous state is itself a criminal purpose, then anyone intentionally supporting such a movement would be criminally liable for crimes on a *dolus eventualis* standard. This would cast the net of criminality much too widely, and far wider than is accepted in customary international law.

34. These results are only avoided if the common purpose is rigorously defined as an objective that, in itself, involves the commission of a crime. The Appeals Chamber has insisted that the common criminal purpose be defined with precision.[41] The assessment of *mens rea* and *actus reus* must be confined to its criminal component to avoid over-extending the doctrine of JCE beyond all proper bounds.[42]

35. There are at least three indications that the Chamber defined a common purpose that was not, in itself, criminal and assessed Mr Zupljanin's *mens rea* with respect to that broader non-criminal purpose. First, the failure to find that Mr Zupljanin

40 *Perisic* AJ, paras. 53, 57, 65, 71.

41 *Krnojelac* AJ, para. 115 ("requires a strict definition of common purpose.").

42 *Brdjanin* AJ, paras. 429-431.

intended single crime of coercion is, in itself, indicative that the Chamber had a non-criminal purpose in mind as the common criminal purpose. Second, the Chamber refers frequently to "forcible takeovers" of municipalities, as if to imply that this is criminal in a legally relevant sense.[43] On the contrary, "Forcible takeover" is not a crime,[44] and any inferences of criminal intent arising therefrom would be erroneous. Third, the extra-judicial writings of one of the judges implies the view that JCE does not require a commonly-held direct criminal intent:

> Now apparently the commanders must have had a direct intention to commit crimes – and not just knowledge or suspicion that the crimes were or would be committed…. The result is now that not only has the court taken a significant step back from the lesson that commanding military leaders have to take responsibility for their subordinates' crimes (unless it can be proven that they knew nothing about it) – but also that the theory of responsibility under the specific "joint criminal enterprise" has now been reduced from contribution to crimes (in some way or another) to demanding a direct intention to commit crime (and so not just acceptance of the crimes being committed).[45]

36. The article, in fairness to the author, is written in an informal style that does not make entirely clear the operative assumptions for the foregoing statement. The implication that can nevertheless be gleaned from the letter is that JCE can be established merely on the basis of foresight and "acceptance" of the commission of crimes, rather than a criminal intent to commit such crimes.

---

43 Judgement, vol.I, paras. 331 ("Continuing in May 1992, other villages in the municipality of Kljuc were subjected to a forcible takeover by Serb military and paramilitary forces and by Serb police"), 1006, 1028; Judgement, vol.II, paras. 375 ("Zupljanin's alleged participation in formation of Bosnian Serb bodies and forces that implemented forcible takeovers of ARK Municipalities and participated in crimes charged in Indictment").

44 *Perisic* AJ, paras. 53, 57; *Prosecutor v Stanisic & Simatovic* TJ, paras. 2326, 2330, 2345, 2354 ("It cannot reasonably be excluded that the accuseds' intent in training and providing personnel to participate in operations in Croatia and Bosnia was to maintain Serb control in those areas, but not necessarily to forcibly expel the population. Therefore, even if the commission of crimes were foreseeable to them, their responsibility under the first form of JCE was not established.").

45 Harhoff Article, page 3.

37. The Chamber does include a criminal component to the common purpose by stating that it was to be achieved "through" the commission of the crime of forcible transfer.[46] The common purpose is therefore bifurcated into two components: (i) an overall "objective" that is not inherently criminal (the creation of an ethnically homogenous state); and (ii) using means that are inherently criminal (the crime of forcible transfer). The Chamber's findings seem to suggest that intending the former objective was sufficient for a finding of *mens rea* in relation to a JCE.

38. The same error arose in the *RUF case* before the SCSL, which illustrates how easily first principles can be perverted based on an improperly broad definition of the common purpose. There, a criminal purpose was defined as encompassing "the objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as means of achieving that objective."[47] Judge Fisher in her dissent, while not taking issue with the vaguely-defined common purpose, pointed out that Gbao's *mens rea* as established "was a legal impossibility, given that the evidence showed that he did not share the intent of the other participants in the JCE."[48] The Majority apparently accepted that Gbao was a member of the JCE simply because his intent was encompassed within the broadly-defined common purpose which, as Judge Fisher points out:

> collapses the distinction between the *mens rea* required for JCE I and the *mens rea* applicable to JCE 3 by holding that Gbao can be liable for crimes within the Common Criminal Purpose that he did not intend and that were only reasonably foreseeable to him. Such an extension of JCE liability blatantly violates the principles of *nullem crimen sine lege* because it imposes criminal responsibility without legal support in customary international law applicable at the time of the offence.[49]

---

46 Judgement, vol.II, paras. 313, 520.

47 RUF AJ, para. 305.

48 RUF AJ, Fisher Dissent, para. 25.

49 RUF AJ, Fisher Dissent, paras. 17-19.

39. The Chamber's findings are equally ambiguous and unsatisfactory. The common purpose is defined in such a way as to encompass goals that merely involve a possibility of crimes. No awareness is expressed, unlike in the *Martic* case, of the need to make specific findings about the necessarily criminal objectives. The conclusion set out in paragraph 520 either: (i) is logically incompatible with the findings in the following paragraphs, and is therefore based on a misapplication of JCE or the elements of the crime of forcible transfer; or (ii) fails to articulate a common criminal purpose at all.

(vi) The Chamber's Reference To "Simple Negligence" Suggests That It Applied An Erroneous Mens Rea *Standard*

40. The Chamber implies, or directly states, that Mr Zupljanin's *mens rea* could be inferred because his conduct could not have arisen from "simple negligence":

> Based on this evidence, the Trial Chamber finds that Zupljanin's failure to protect the Muslim and Croatian population formed part of the decision to discriminate against them and force them to leave the ARK Municipalities, and was not merely the consequence of *simple negligence*. With regard to the unlawful arrests, the evidence clearly shows Zupljanin was aware of the arrests, of their unlawfulness, and that in spite of this he actively contributed to the operations. Through the formation of a feigned commission and by providing false information to the judicial authorities, he endeavoured, and successfully managed, to shield his subordinates from criminal prosecution for the murder, unlawful arrests, looting, and cruel treatment of non-Serb prisoners, thus creating a climate of impunity that encouraged the perpetration of crimes against non-Serbs and made non-Serbs decide to leave the ARK municipalities. The Trial Chamber finds that all of Zupljanin's actions described above *were voluntary*.[50]

41. The Chamber then proceeds to find that Mr Zupljanin "intended" the common criminal purpose as defined.

42. Although the Chamber was correct to consider whether Mr Zupljanin's alleged conduct was consistent with a mental state falling below intent, it adopted an

[50] Judgement, vol.II, para. 519 [italics added].

erroneous standard for making that assessment. The absence of "simple negligence" does not establish direct intent. In between are the mental states of recklessness, *dolus eventualis*, gross negligence and knowledge that the omission assists a crime (as would be necessary, though not sufficient, for aiding and abetting liability). Indeed, the Chamber's discussion of intent includes the statement that Mr Zupljanin's conduct "encouraged the perpetration of crimes"[51] – implying a *mens rea* consistent with aiding and abetting, not commission.

43. A Trial Chamber, as the Appeals Chamber has held, "can only find that the accused has the requisite intent if this is the only reasonable inference on the evidence."[52] The reasoning enunciated by the Chamber does not eliminate the reasonable possibility that Mr Zupljanin's mental state was gross negligence, recklessness, *dolus eventualis*, or knowledge. The failure to do so is particularly significant in light of the Chamber's subsequent findings in paragraphs 521 through 528, determining that all of the crimes constituting coercive acts were merely foreseeable, and not intended, by Zupljanin. These findings show that the Chamber's failure to directly address these reasonable alternative mental states reflect the application of an erroneous *mens rea* standard for JCE, or a flawed standard of proof.

44. The Chamber's omission to address these issues[53] invalidates its findings on Mr Zupljanin's *mens rea*. The absence of such reasons in respect of the specific

---

51 Judgement, vol.II, para. 519.

52 *Brdjanin* AJ, para. 429.

53 *Brdjanin* AJ, para. 9 ("It is necessary for an appellant claiming an error of law because of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments, which the appellant submits the Trial Chamber omitted to address and to explain why this omission invalidated the decision"); *Zigiranyirazo* AJ, para. 46 ("Again, bearing in mind that the Trial Chamber did not discount the evidence of these witnesses, it is unacceptable that it did not address this evidence, which would significantly undermine the possibility of Zigiranyirazo travelling to Kesho Hill by any route on 8 April 1994. Accordingly, the Trial Chamber erred in law by failing to provide a reasoned opinion on the feasibility of Zigiranyirazo's travel between Kanombe and Kesho Hill.").

requirements of JCE has led to the reversal of all convictions based on the conclusion not supported by adequate reasons.[54] The inadequacy of the Chamber's reasons is even more significant, as it arises not only from an absence of reasons, but from diametrically opposed *mens rea* findings. The only appropriate remedy, as in *Krajisnik*, is to invalidate the Chamber's finding and reverse all convictions based on the defective reasoning.

(vii) The Chamber's Findings As To The Timing Of Mr Zupljanin Joining the JCE Do Not Coincide With the Timing of the Evidence On Which It Relied

45. The Chamber declared that Zupljanin "was a member of the JCE starting at least in April 1992,"[55] but relies heavily for that inference on his conduct on 14 August, 26 August and 8 September 1992.[56] Mr Zupljanin, according to the Chamber, formed a "feigned commission" to cover-up crimes and provided false information to the judicial authorities."[57] The Chamber relies on conduct right up to November 1992 to draw inferences about *mens rea* as of April.[58]

46. A person cannot be liable pursuant to JCE I unless and until it is established that the crime was committed at a time when it was part of the common criminal purpose. Precision is required in this regard. Even express findings that are ambiguous – such as a statement that common criminal purpose was "soon incorporated as an intended crime", or that the purpose was adopted "very soon"

---

54 *Krajisnik* AJ, para. 203 ("the Trial Chamber did not make the necessary findings with respect to the JCE members' *mens rea* in relation to the expanded crimes…. In the absence of such findings, the Appeals Chamber has found that the Trial Chamber committed a legal error by convicting Krajisnik for the expanded crimes.").

55 Judgement, vol.II, para. 520.

56 The "feigned commission" was allegedly appointed on 14 August 1992 (Judgement, vol.II, para. 514); and the two "false reporting" events occurred on 8 September 1992 (Judgement, vol II, paras. 474, 517) and 26 August 1992 (Judgement, vol II, para. 517).

57 Judgement, vol.II, para. 519.

58 Judgement, vol.II, para. 517.

in the implementation of a JCE – were not deemed sufficiently specific to impose liability for alleged crimes occurring in a particular month.[59]

47. The Chamber was not disentitled from relying on evidence of events after April 1992 to determine that that was the moment when Mr Zupljanin formed the requisite *mens rea*. At the very least, however, the Chamber was required to provide reasons explaining why Zupljanin's alleged conduct from August, September or even November 1992 was probative of his intent in April 1992. None were given. Further, the Chamber at no time indicated that it could have reached a finding of criminal intent without relying on the evidence from August, September and November 1992. Indeed, the special mention reserved for the three events on 14 August, 26 August and 8 September 1992 suggest otherwise. The implication is that the evidence of Zupljanin's conduct through the month of July 1992 was not sufficient to reveal his criminal intent as the only reasonable inference as of that date.

48. Further doubt in this regard is raised by the Chamber's failure to give an exact date on which Mr Zupljanin allegedly joined the JCE, or what conduct, event, or statement gave rise to the inference that the intent crystallized in that month. In the absence of any such indication, a plain reading of the Judgement is that the Chamber relied on all the events right through to November 1992 as part of its finding, but without being careful to assess how or whether these events could be used to provide an indication of intent retrospectively.

49. This is no mere technical oversight. Convictions for criminal liability thorough JCE were quashed in the *Krajisnik* case because of the Chamber's failure to indicate

> *when* the expanded crimes became incorporated into the common objective […] In those instances where the Trial Chamber referred to a particular month in which leading JCE members became aware of the

[59] *Krajisnik* AJ, para. 173.

> commission of expanded crimes, it did not specify the date when this happened or whether Krajisnik was among the leading JCE members who gained such awareness, let alone when leading JCE members went from being merely aware of the crime to intending it.[60]

If this level of specificity is required in respect of "expanded" crimes, then it should apply with even greater vigour in respect of a finding as to when an accused person joins a JCE.

(viii) The Chamber Made No Sufficient Findings That Mr Zupljanin Intended To Participate in the JCE

50. A necessary finding for a conviction under JCE is that "the accused must both intend the commission of the crime and intend to participate in a common plan aimed at its commission."[61] A Trial Chamber, as expressly required by the Appeals Chamber, must "make a finding that this criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal enterprise."[62] Thus, a coinciding *mens rea*, and even a substantial overlap in the crimes actually committed, does not suffice. As the Appeals Chamber held in the *Brdjanin* case, which involved the very same JCE:

> The Trial Chamber found that "[o]n the basis of the pattern of conduct by which [the] crimes were committed throughout the Bosnian Krajina, the Trial Chamber is satisfied that they were mostly perpetrated with a view to implement the Strategic Plan" and that Brdjanin "and many of the Relevant Physical Perpetrators espoused the Strategic Plan and acted towards its implementation." These findings … do not show that the Trial Chamber was satisfied that *all* of the crimes committed in the territory of the ARK *were committed by the RPPs in furtherance of the Strategic Plan*. Also, the Trial Chamber was not able to specify *which of these crimes had been committed in furtherance of the Strategic Plan, and which ones had not*. Significantly, the Prosecution has failed to address in a persuasive manner the concerns expressed by the Trial Chamber (albeit with a wording that suited the erroneous concept of JCE as requiring an additional agreement) that, based on the evidence led at

60 *Krajisnik* AJ, paras. 171, 173.

61 *Brdjanin* AJ, para. 365.

62 *Brdjanin* AJ, para. 430.

> trial, other reasonable inferences could be drawn by a trier of fact. Other inferences include, for example, that *Brdjanin and some RPPs might have shared a motive in furthering the commission of the same crime but were not members of the same JCE, or that the RPPs committed the crimes in question pursuant to orders and instructions received from their superiors, without themselves actually being members of the same JCE as Brdjanin*.[63]

51. These observations are directly apposite to the findings – or lack thereof – in respect of Zupljanin. Mr Zupljanin was not found to have been a founding member of the JCE, but that he joined it at some unspecified date in April 1992.

52. The Chamber in no way addresses this issue, merely incanting that he "intended, with other members of the JCE" to commit the common criminal purpose. No findings to exclude the reasonable possibility that his supposedly permissive attitude towards the commission of crimes was attributable to "a shared motive"; no findings as to which crimes attributed to him may have been committed without reference to the over-arching JCE, as specifically contemplated in the *Brdjanin* case with reference to the same JCE; and no findings that at least some, if not many, crimes were executed pursuant to orders issued by other individuals who may not have been members of the JCE. In effect, there is simply a presumption that Zupljanin's coincident intent meant that he became a member of the pre-existing JCE.

(ix) Conclusion

53. The Chamber (i) failed to find that Mr Zupljanin possessed the requisite *mens rea* for commission of any coercive act that constitutes the crime of forcible transfer; (ii) expressly found that he did not possess that *mens rea*, finding instead that Mr Zupljanin possessed only *dolus eventualis* in respect of that crime; (iii) failed to articulate, or make findings with reference to, a common criminal purpose defined with the requisite precision; (iv) adopted an unduly low threshold of intent, either

[63] *Brdjanin* AJ, paras. 447-448 [italics added].

by disregarding the requirements of forcible transfer, unduly expanding the common purpose, or by misapplying the meaning of "intent" as something below *dolus directus*; (v) inferred criminal intent as early as an unspecified date in April 1992 while relying, without further discussion, on evidence that presumptively would only indicate intent as late as November 1992; and (vi) failed to make a finding of common criminal purpose, as opposed to merely the same criminal purpose.

54. Each of these errors, independently and/or cumulatively, constitutes an error of law that invalidates the Chamber's findings as to Mr Zupljanin's *mens rea* in respect of JCE, and requires reversal of all convictions based on that form of liability.

Sub-ground 1(a): The Trial Chamber erred in fact and law in inferring Mr Zupljanin'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 his control.

(i) Introduction

55. The Chamber found that Mr Zupljanin substantially contributed to the JCE, and inferred his criminal intent, based on his alleged failure to adequately fulfil his duties as the regional police commander.[64] Two distinct duties are relied upon: (i) to "protect [the] entire civilian population"[65] in his region; and (ii) to prevent or

[64] Judgement, vol.II, paras. 519-520.

[65] Judgement, vol.II, paras. 441 ("[f]ailing, while under duty under laws and regulations applicable to MUP, to protect entire civilian population"), 499 ("the police in Banja Luka failed to protect…"); 510 ("Zupljanin issued orders for the protection of the population, upon which he did not follow up"); 513 ("Zupljanin failed to ensure that his police duly investigated crimes … thereby failing to fulfill his obligation…"); 518 ("failed to protect the non-Serb population"); 519 ("failure to protect the Muslim and Croatian population formed part of the decision to discriminate against them and force them to leave").

punish policemen alleged to be under his authority.[66] The duties derive from two distinct sources: the duty of a commander over subordinates (**the authority duty**); the obligation of a policeman to protect the civilian population regardless of the identity of the perpetrator (**the jurisdictional duty**).

56. The Chamber's approach to the authority duty was erroneous and manifestly deficient, arising from a failure to analyse two issues. First, the Chamber deliberately declined to determine the extent to which civilian policemen – or entire police stations, in some cases – were periodically re-subordinated to the military for specific functions or because of a declaration of military rule in a town. The Chamber acknowledged that authority to prevent or punish criminal acts by re-subordinated policemen may have been within the exclusive authority of the military, but reasoned that the contours of re-subordination were "primarily of importance"[67] to establishing superior responsibility liability, whereas Mr Zupljanin's liability was to be assessed according to JCE. Incoherently, however, the Chamber then proceeds to infer Mr Zupljanin's participation in the JCE based on his alleged failures to exercise his authority over those policemen. The consequence is to attribute to Mr Zupljanin a host of "omissions" without having determined whether he had the duty, much less the practical capacity, to act. The failure infects the Chamber's conclusion both as to substantial contribution (*actus reus*), and the inferences drawn about Mr Zupljanin's intent.

57. The Chamber commits the same error in respect of a second institution that exercised authority over local police stations: municipal crisis staffs. Omissions are attributed to Mr Zupljanin in several cases without having considered the extent to which local authorities, under the influence if not outright command of the VRS, exercised effective control over the local police to the exclusion of Mr Zupljanin's authority. The Chamber, in particular, failed to take account of its

[66] Judgement, vol.II, paras. 518 ("Zupljanin […] failed to […] discipline his subordinates").

[67] Judgement, vol.II, para. 342.

own findings that the Prijedor police, under the influence of the municipal authorities, were not under his effective or complete authority, much less control.

58. Even assuming that the Chamber had fully and appropriately established Mr Zupljanin's *de facto* and *de jure* authority over policemen committing crimes, this would not be the end of the required analysis. The Chamber would also have to have found that Mr Zupljanin failed to act knowingly, thus excluding the possibility that he could have misjudged the scope of his duty or ability to act. The Chamber does not come close to any such analysis, and yet infers his intent from his alleged omissions.

59. The legal and factual errors underlying the alleged jurisdictional duty are addressed primarily in sub-Grounds (b), (g) and (c), which follow in that sequence. The jurisdictional duty is inter-related with the authority duty, however, to the extent that Mr Zupljanin is said to have failed to adequately direct his own subordinates to discharge the police's duty of protecting the entire civilian population.

60. These errors invalidate the Chamber's conclusions and render the factual findings manifestly unreasonable and unsafe. The Chamber relied extensively on Mr Zupljanin's alleged "omissions" in coming to the view that he committed forcible transfer through a JCE and, in particular, inferring his criminal intent. The error has a pervasive impact on its conclusion concerning Mr Zupljanin's criminal intent and his contribution to the JCE. The only appropriate remedy is to reverse all convictions for committing forcible transfer through JCE.

(ii) The Chamber Relied Heavily on Omissions As The Basis To Infer Mr Zupljanin's Intent to Commit Forcible Transfer Through JCE, and His Substantial Contribution Thereto

61. The Chamber relied heavily, though not quite exclusively, on Mr Zupljanin's alleged failures to discharge his alleged duties as the regional police commander in the ARK to infer that he substantially contributed to the JCE (*actus reus*), and that he did so with the requisite direct criminal intent (*mens rea*).[68] The extent of the Chamber's reliance on these failures is reflected in its summary of findings on *actus reus*:

> i. "ordered and coordinated the disarming of the non-Serb population";
>
> ii. that he created a unit, the Special Police Detachment, that assisted in the takeover of municipalities;
>
> iii. *that he "failed to launch investigations and discipline his subordinates" who had committed crimes, "thus creating a climate of impunity which only increased the commission of crimes"; and*
>
> iv. *that he "failed to protect the non-Serb population even when they pleaded with him for protection.*"[69]

62. Seven distinct indicators of *mens rea* are relied on by the Chamber, at least two of which overlap with the omissions relied on in respect of the *actus reus*:

> - "Zupljanin's role in the blockade of Banja Luka";
> - "his ties to the SDS, demonstrated by the unreserved support given by top SDS leaders in the ARK to his appointment as Chief of the CSB and by his interactions with other SDS leaders";
> - "his attendance at the 14 February 1992 SDS Main Board meeting at the Holiday Inn in Sarajevo"

---

[68] *Simba* AJ, para. 266 (*mens rea* pertains to whether "at the moment of commission the perpetrators possessed the necessary intent.").

[69] Judgement, vol.II, para. 518.

- "his contribution to the implementation of SDS policies in Banja Luka and other municipalities";
- his "*failure to protect the non-Serb population* in conjunction with his enrolment of the SOS in the [Special Police] Detachment, his inaction in relation to the crimes committed by this unit, and his statements and actions taken in response to requests for protection by the Muslims of Banja Luka";
- *his failure to "take steps to ensure that [his own] orders [to protect the civilian population] were in fact carried out";*
- his "actively contribut[ing]" to the operation to "unlawful arrests";
- *"shield[ing] his subordinates from criminal prosecution … thus creating a climate of impunity that encouraged the perpetration of crimes against non-Serbs and made non-Serbs decide to leave the ARK Municipalities."*[70]

63. The failure to discharge ostensible legal duties is central to the Chamber's conclusion that Mr Zupljanin intended forcible transfer, and that he participated in a JCE in pursuit of that purpose.

64. Two distinct duties are relied on by the Chamber: to prevent or punish crimes by subordinates[71] (**the authority duty**); and the "duty under laws and regulations applicable to MUP, to protect the entire population within areas in ARK Municipalities"[72] (**the jurisdictional duty**). The jurisdictional duty is elsewhere described as a "duty to protect the population"[73] or to "protect the non-Serb population of the RS."[74] The Chamber bases that duty on Article 42 of the RS Law on Internal Affairs imposing on all official of the Ministry of the Interior a

[70] Judgement, vol.II, para. 519. The term "shielding" might imply some conduct more active than just an omission. As will be discussed later, the term is used in the context of Mr Zupljanin's alleged duty to bring subordinates to do so, and his failure to discharge that duty adequately. "Shielding" therefore does refer to an omission – *i.e.*, responsibility arising from a failure to discharge a legal duty.

[71] Judgement, vol.II, paras. 483-488, 505, 518, 519.

[72] Judgement, vol.II, paras. 441-455.

[73] Judgement, vol.II, para. 496.

[74] Judgement, vol.II, para. 513.

duty to maintain the constitutional order and otherwise ensure public safety.[75] This sub-ground focuses primarily on the authority duty, with the jurisdiction duty addressed in the sub-grounds that follow.

(iii) The Chamber Deliberately Declined to Determine Whether Mr Zupljanin Had A Duty To Prevent or Punish Particular Crimes By Failing to Determine the Scope of Re-Subordination of Policemen

65. Mr Zupljanin was the head of the Banja Luka "regional police centre" (the CSB) that encompassed the seven municipalities of the Autonomous Region of Krajina (ARK), which was itself a part of the fledgling Republika Srpska that came into practical existence in late March 1992. The Banja Luka CSB, according to the Chamber, was "reportedly" in "'total control'" of 25 local police stations (SJBs) in the ARK.[76] Mr Zupljanin, by virtue of his position as the head of the CSB, was found to have "had authority over and coordinated the activities of the ARK SJBs."[77] The authority ostensibly included "the power to appoint SJB chiefs and staff,"[78] the power to discipline heads of local police stations,[79] and responsibility to "investigat[e] crimes and fil[e] criminal reports for the competent courts."[80] The Chamber concluded that Mr Zupljanin "was the highest police authority in the ARK" and that he had "*de jure* and *de facto* authority over the SJBs in the ARK Municipalities."[81] This finding is made without any temporal or geographic limitation, thus apparently substantiating the basis on which the Chamber could attribute "omissions" to Mr Zupljanin.

---

75 Judgement, vol.II, paras. 354, 489 ("pursuant to Article 10 of the RS Constitution and Article 42 of the LIA, Stojan Zupljanin had a duty to protect the civilian population"). *See,* also, Ex. P530.

76 Judgement, vol.II, para. 350.

77 Judgement, vol.II, para. 355.

78 Judgement, vol.II, para. 356.

79 Judgement, vol.II, para. 368.

80 Judgement, vol.II, para. 356.

81 Judgement, vol.II, para. 493.

66. The Chamber acknowledged, however, that there were other governmental institutions exercising authority in the ARK municipalities in 1992, including "the Serb Forces, SDS party structure, [and] Crisis Staffs."[82] In particular, the Chamber recognized that the JNA or VRS periodically "re-subordinated" policemen – that is, exercised *de facto* and *de jure* control over their activities – for certain periods or in the performance of certain tasks.[83]

67. The Chamber held, after a lengthy review of the evidence,[84] that it was "unable to find whether it was the military or civilian authorities which may have been responsible for the investigation and prosecution of crimes against Muslims and Croats which may have been committed by policemen re-subordinated to the military."[85] The Chamber was unable to determine, therefore, whether Mr Zupljanin exercised *de jure* or *de facto* control of policemen while re-subordinated to the JNA or VRS, at least not to an extent that triggered any duty to protect or punish crimes that they may have committed while re-subordinated. Mr Zupljanin, according to the Chamber's own findings, had no authority duty to discharge unless the policemen committing the crime were not re-subordinated at the time.

68. The Chamber nonetheless deliberately declined to make any findings about the scope of re-subordination or to determine whether particular crimes were committed by re-subordinated policemen. No such findings were necessary because:

---

82 Judgement, vol.II, para. 311.

83 Judgement, vol.I, para. 637 ("Members of the Skender Vakuf SJB were 'resubordinated' to this military unit [the 122nd Brigade of the JNA]"); Judgement, vol.II, para. 58 ("in the course of combat, the police units were subordinate to the VRS albeit with the caveat that the units of MUP were to be directly commanded by the respective employees of the MUP.").

84 Judgement, vol.II, paras. 317-341.

85 Judgement, vol.II, para. 342.

> responsibility for actions of resubordinated policemen is primarily of importance for [the accuseds'] responsibility pursuant to Article 7(3) of the Statute. The Chamber has already found that there existed a joint criminal enterprise, the objective of which was to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state. In the subsequent sections of the Judgement, the Chamber finds that the members of the police, the JNA, and the VRS were all used as tools in the furtherance of the joint criminal enterprise and that the Accused were members of this enterprise. The Chamber will therefore consider whether the actions of policemen, which the Defence claims were re-subordinated to the military at the time of the commission of the crimes, can be imputed to a member of the JCE and ultimately to the Accused. It will do so in the section dealing with the Accused's individual criminal responsibility. In light of this, the Chamber finds that it is not necessary to make any further findings on the issue of re-subordination.[86]

69. Since Mr Zupljanin would still be liable for those crimes as long as he was a member of the JCE, there was no need to resolve the re-subordination issue.

(iv) The Chamber Inferred Mr Zupljanin's Participation in a JCE On The Basis of Failures to Discharge Legal Duties Without Making the Findings Necessary to Determine Whether The Legal Duties Existed

70. The problem with the Chamber's analysis is that the finding that Mr Zupljanin was a member of the JCE, no less than for superior responsibility, required a determination of the scope of his duties. Inferring that someone fulfilled the *actus reus* of a JCE because of a failure to discharge their legal duties at least requires showing: (i) the existence of the duty; (ii) the capacity to fulfil the duty; (iii) that the person knew that he had both the duty and the capacity to act, thus making the failure knowing and voluntary; and (iv) the failure to fulfil the duty.[87] A person who genuinely believed, albeit mistakenly, that they did not have either a duty or the capacity to act could not be deemed to have acted in furtherance of the JCE,

---

[86] Judgement, vol.II, para. 342.

[87] *Galic* AJ, para. 175 ("the omission of an act where there is a legal duty to act, can lead to individual criminal responsibility under Article 7(1)); *Oric* AJ, para. 43; *Brdjanin* AJ, para. 274; *Ntagerura* AJ, para. 334.

and certainly no inference of any *mens rea* could be drawn in such a case. The Appeals Chamber has further required in the context of aiding and abetting that omissions can count toward the *actus reus* only if the accused "had the ability to act but failed to do so."[88] The same logic must apply when the omission is said to be the *actus reus* of committing through a JCE. The burden to establish these factors beyond a reasonable doubt rests with the Prosecution.

71. The Chamber could not side-step the re-subordination issue by resorting to JCE. Mr Zupljanin's membership in the JCE was inferred on the basis of his alleged omissions.[89] Those omissions could only be characterized as omissions if, indeed, he had a duty to act. He only had a duty to act if the policemen were not-re-subordinated. That required a determination of the subordination issue.

72. The issue is not circumvented with reference to Mr Zupljanin's purported "jurisdiction authority" to protect the civilian population. As the Chamber acknowledged was possible,[90] crimes committed by subordinated persons – regardless of whether they were a regular soldier, reservist, Territorial Defence, or re-subordinated policeman – were subject to the exclusive jurisdiction of military justice. Re-subordination would thus be determinative of whether there was any civilian police jurisdiction over the crime.

---

88 *Mrksic and Sljivancanin* AJ, paras. 82, 99.

89 Judgement, vol.II, paras. 518-519.

90 Judgement, vol.II, paras. 324, 328, 332, 336 (reviewing but declining to make a final determination on evidence showing that the military had exclusive jurisdiction based on the identity of the perpetrator as a person subordinated to military hierarchy at the time of the act). *See*, ST-139, T.8488- 8489, 8501 (12 Apr 2010) (closed session); Draganovic (ST-173), T.3953 (1 Dec 2009); Njegus (ST-165), T.11344 (7 Jun 2010); Ex. P1284.07, Art.14 ("If a civilian has committed a crime falling within the jurisdiction of the military court in concurrence with a crime falling with the jurisdiction of another regular court, the military shall have jurisdiction over the court.").

73. The consequences of this error on the Chamber's JCE findings are pervasive. Mr Zupljanin was found to have failed in his duties in respect of every Indictment crime evaluated by the Chamber. No attempt is made to define the contours of re-subordination,[91] despite its recognition as a reasonable possibility.[92] Indeed, the Chamber heard considerable evidence that in the war-time environment of the ARK the JNA and VRS frequently re-subordinated policemen for military-related tasks. Mr Zupljanin indicated in an October 1992 report that more than 2000 policemen were engaged in military-related tasks for more than 40,000 days.[93]

74. The scope of those combat-related tasks extended beyond the front-line, as one would expect given that much of the ARK was a theatre of war in 1992. The police could be, and often were, re-subordinated to secure the depth of areas of operations, including arresting and detaining suspected combatants or arresting anyone who might pose a threat to military operations. As discussed below, in some municipalities the VRS went further and declared military rule, appointing police commanders and subordinating them directly and continuously to military command. The Defence presented evidence at trial and clearly argues that those tasks encompassed, at least on occasion:

- arresting military-age non-Serbs in combat areas where they could pose a security threat;
- guarding detainees arrested on that basis; and

---

91 Judgement, vol.II, paras. 441-519 (extensive discussion of an absence of duty because of re-subordination).

92 Judgement, vol.I, para. 637; Judgement, vol.II, paras. 58, 337 (not rejecting testimony that "civilian police sent by the SJB's to provide security to Manjaca became subordinated to the army as soon as they arrived at the camp").

93 Ex. P621, p. 7 ("a total of 1883 members took part in combat activities for a 28, 641 days …. Apart from that, 239 police members participated for 11,372 days in securing the reception and collection centres.").

- transporting detainees from one detention facility to another.[94]

75. The least that was required of the Chamber, in this context, was a determination as to which crimes were committed by re-subordinated, as opposed to non-re-subordinated, policemen. That would have been the only way, logically, to avoid imputing omissions to Mr Zupljanin where he had no duty to act. Only then could the Chamber properly assess what evidence it had of Mr Zupljanin's contribution to the JCE through omissions, whether this contribution was substantial, and whether it was unambiguous enough to demonstrate his intent beyond a reasonable doubt. Inferring *mens rea* or *actus reus* without making the determinations necessary to establish his duty to act was a mixed error of law and fact that affects the Chamber's analysis in its totality.

(v) Three Examples of The Chamber's Failure to Make Findings and Its Impact on Its JCE Findings

76. The following three examples illustrate the consequences of the Chamber's failure to address the re-subordination issues. The Appeals Chamber is not requested to substitute its own findings for those of the Chamber, because there are no findings to be substituted. The purpose of this exercise, rather, is to demonstrate: (i) the pervasive consequence of the Chamber's failure to address the re-subordination issue on its conclusions in respect of Mr Zupljanin participation in the JCE through an alleged failure to discharge his duties; and (ii) to show the manifest unreasonableness of the imputation of "omissions" to Mr Zupljanin both on the basis of the evidence and the Chamber's own findings.

[94] Zupljanin FTB, paras. 233-239, 255-277, 284, 289-291, 300-315, 331, 393. These arguments are relied on to show that the Chamber had full notice of the arguments and evidence, which it nevertheless chose not to address.

(a) All Inferences In Respect of the Municipalities of Donji Vakuf, Kljuc and Kotor Varos Are Defective Because of the Failure to Address, Let Alone Make Any Findings, Concerning VRS Town Commands

77. The Chamber acknowledged that a VRS "town command" was set up in Donji Vakuf as of 13 June 1992.[95] A "town command" is tantamount to direct military rule, where the military directly controls all civilian organs including the police.[96] The military town commander of Donji Vakuf, as the Chamber acknowledged, appointed the head of the SJB in the town, and appointed a VRS officer to be the commander of the police station.[97] This was done with the agreement of the local crisis staff, but without any evidence of an agreement by Mr Zupljanin as the head of the CSB for the area. At least as far as Donji Vakuf is concerned after 13 June 1992, the Chamber's own findings contradict, or at least limit, its sweeping finding that Mr Zupljanin exercised *de jure* and *de facto* control over all police stations in the ARK.[98]

78. The VRS-appointed police commander of Donji Vakuf indicated that even prior to the setting up of the Town Command on 13 June 1992, "[w]hile participating in combat operations, the SJB workers were re-subordinated to the Command of the RS Army (19th Krajina Brigade)."[99] The report indicates that "[t]here was a need at the time to set up a collection centre for Croatian and Muslim men, and we dealt with everything concerning their detentions and investigations *together with the military security organs*."[100] Joint SJB and military police checkpoints were set up in the aftermath of combat operations and anyone caught looting in a military uniform was handed over to the Military Police, *i.e.*, to the military

95 Judgement, vol.I, para. 241.

96 Ex. 1D473 ("all appointed organs and individuals shall be subordinated to the town commander").

97 Ex. 1D403.

98 Judgement, vol.II, paras. 356, 358, 493.

99 Ex. P1928, p. 2.

100 Ex. P1928, p. 2.

criminal justice jurisdiction.[101] The report also candidly admits that the police were working under difficult condition and "because of frequent participation in war operations, some tasks that we have already mentioned and that should be our responsibility have been neglected."[102]

79. The Chamber neither acknowledged nor rejected this documentary, as well as other testimonial evidence indicating that the police in a town or village were continuously re-subordinated to the VRS for the duration of the town command.[103] The alleged unlawful detentions in Donji Vakuf, and Mr Zupljanin's alleged failure to intervene, are nevertheless mentioned as being amongst the matters from which it inferred his involvement in the JCE.[104]

80. The Chamber also had evidence of the creation and authority of a VRS town command in Kotor Varos. The Chamber had direct documentary evidence, not contested by the Prosecution expert, that a "town command" as described above was set up for the town of Kotor Varos on, or had been set up by, 25 June 1992, again on the basis of direct communication between the local VRS unit and the local crisis staff.[105] The town commander, Captain Tepic, issued an order a month later that prescribes "security support" tasks to include "exercise[ing] complete control over the movement of the population. Tak[ing] prisoners of war to the brigade command, where they will interrogated, and then to a prison camp."[106]

81. Serious crimes are alleged to have been committed in Kotor Varos throughout the summer of 1992, including by local police and members of the Special Police Detachment. The Chamber had ample evidence that required it to consider

---

101 Ex. P1928, p. 2.

102 Ex. P1928, p. 4.

103 *See*, Bjelosevic (MS-001), T.19663-19664 (15 Apr 2011); Kovacevic (SZ-013), T.23684-23685 (6 Sep 2011). T.23766-23767 (7 Sep 2011).

104 Judgement, vol.II, paras. 247, 509.

105 Ex. 2D132; Brown (ST-097), T.19058-19062 (20 Jan 2011).

106 Ex. 2D132; Brown (ST-097), T.19058-19062 (20 Jan 2011). Ex. P1787, p. 6.

whether the crimes of those policemen were committed while subordinated to the VRS, either because they were performing tasks under military command, or because they were subordinated by virtue of entering the territory of the town command.

82. The Chamber considered that Mr Zupljanin knew about these crimes[107] and failed to act,[108] inferring on that basis that he had intended to commit, and did commit, forcible transfer. Again, the Chamber could not have drawn that inference without first determining that the policemen who committed those crimes were not re-subordinated to the VRS. Resolving the issue of re-subordination was a prerequisite to inferring intent and contribution from Mr Zupljanin's alleged inaction. Disturbingly, the Chamber did not even refer to the evidence establishing that military command was in effect in Kotor Varos at the time of the crimes.

83. The Chamber had direct evidence that a military town command being set up from 31 May 1992 onwards.[109] The document expressly appoints the "Chief of the Kljuc Public Security Station" as a member of the "Kljuc defence Command," which is assigned a variety of tasks including "controlling the routes of approach and the points of entrance into the municipality … making the functioning of the legitimate authorities of the municipality possible throughout the municipality, [and] establishing public peace and order."[110]

84. A July 1992 Information from the head of the Kljuc SJB says that, after the MUP splintered into Muslim and Serb components, the SJB's work was "exclusively linked to the Banja Luka CSB."[111] The comment, in context, does not address the

[107] Judgement, vol.II, paras. 426, 503.

[108] Judgement, vol.II, para. 503.

[109] Ex. P1783, p. 1.

[110] Ex. P1783, p. 1.

[111] Ex. P960.24, p. 3.

relative authority of military and civilian institutions, but rather the Muslim versus Serb parts of the MUP. On the contrary, the next sentence explains that the SJB "set up special activity and cooperation with the municipal TO staff and the competent organs of military security in order to collect all the people and details of events that were of interest to security, in other words, in order to monitor the security situation," and that "[a]ll members of the official authorities were part of the defence system."[112] The report then goes on to describe combat operations involving military and SJB forces of particular intensity at the end of May, and describes the close inter-relationship of combat and security operations:

> SJB officers took part in all the combat activities and mopping-up of the terrain in order to arrest the participation in the armed rebellion and to find weapons. [...] All operations were conducted in cooperation with the command of the 30th Division. We noticed on that occasion that, apart from the units in the first line of attach, the rest of the units are prone to looting and torching of abandoned houses. [...] In cooperation with the military security organs, 1,278 persons were sent to prisoner-of-war camp. The criteria used to send persons to the camp were agreed with the representatives of the military authorities, and are as follows:
>
> - persons who took part in the armed rebellion;
> - persons who belong to the so-called Muslim TO;
> - persons who took part in smuggling and dealing in arms;
> - persons who owned weapons without a permit and were not a part of a formation;
> - persons who actively took part in the organisation and formation of the so-called Muslim TO;
> - persons who took an active part in spreading propaganda in order to provoke ethnic hatred.
>
> There are grounds for initiating criminal proceedings against all these persons and they should be tried for the crimes they committed by a military court as soon as possible.[113]

85. No reasonable trial chamber, given this information, could have simply relied on the default peacetime statutory framework to conclude that Mr Zupljanin, as head of the CSB, had *de jure* and *de facto* control over all these activities. On the contrary, the Chamber acknowledged an abundance of evidence suggesting the

[112] Ex. P960.24, pp. 3, 4.

[113] Ex. P960.24, p. 8.

reasonable possibility that some or many of the crimes were committed, with or without the involvement of policemen, by soldiers.[114] Crimes committed by soldiers were outside civilian jurisdiction, and the extent of collaboration between the police and the military in these activities, combined with evidence of a Town Command including the head of police as a member, is suggestive that the police was either continuously re-subordinated to the military, or was re-subordinated to a substantial extent, including searching for combatants and others deemed to pose a threat to military security. The extent to which the police performed these combat-related tasks reflects, *at the least*, the possibility that policemen were re-subordinated to the military in the course of those activities.

86. The Chamber addresses none of this evidence, let alone makes any finding whatsoever as to the contours of re-subordination or which crimes were committed by whom. All crimes are simply lumped into the crimes that Mr Zupljanin allegedly "failed" to remedy. Again, no such finding could have been made without first addressing, in light of the evidence suggesting the contrary, that the crimes in Kljuc were within his jurisdiction. The complexity of the fact-finding that was required, arising from the mixture of forces or the fluidity of the situation, does not relieve the Chamber from grappling with these issues.

87. The conclusion that the crimes committed in Donji Vakuf, Kotor Varos and Kljuc were not addressed by Mr Zupljanin is predicated on a finding that the Chamber never makes: that he had jurisdiction over those crimes. The burden of proof beyond a reasonable doubt rested on the Prosecution. In light of the substantial evidence that the general finding of *de facto* and *de jure* control was inapplicable in respect of these three municipalities, the Chamber was duty-bound to address

[114] Judgement, vol.I, paras. 304 ("men in camouflage uniforms"), 311 ("army troops"), 312 ("soldier); 313 ("soldiers"), 314 ("soldiers"), 318 ("17th Light Infantry Brigade … jointly with the 6th Infantry Brigade and police squads"), 319 ("a military unit"), 323 ("Bosnian Serb soldiers"), 331 ("Serb military and paramilitary forces and Serb police"), 332 ("police, soldiers, paramilitary including the White Eagles"), 338 ("army").

this issue, articulate reasons and make findings. Its failure to do so negates its extensive attribution of "omissions" to Mr Zupljanin.

(b) The Chamber Failed to Make Findings As To Whether Police Serving In Military-Run Detention Centres Were Re-Subordinated

88. The commander of the Trnopolje Camp throughout its existence was the TO commander of Prijedor,[115] and the "camp guards were all dressed in military, rather than police uniforms."[116] The Manjaca Camp was commanded by a VRS commander and was a VRS facility.[117] Policemen were apparently present at both locations from time to time, questioning prisoners, bringing them into custody, or providing security, including "perimeter security" on the outside of the camps.[118]

89. The Chamber imputed to Mr Zupljanin "failures" in respect of crimes committed at both Manjaca and Trnopolje[119] without conducting any inquiry at all as to whether policemen, in any role, were re-subordinated to the military in the course of their activities there. This presumption of plenary authority, and the corollary

---

115 Judgement, vol.II, para. 638. *See*, also, ST-249, T.17859-17860 (26 Nov. 2010); ST-024, T.16140 (18 Oct 2010).

116 Judgement, vol.I, para. 619. *See*, also, ST-249, T.17859-17860 (26 Nov. 2010); Merdzanic (ST-067), T.18404 (9 Dec 2010); Ex. P671.

117 Judgement, vol.II, paras. 337, 506 ("the Manjaca camp, a military detention facility in the municipality of Banja Luka"); Judgement, vol.II, para. 802; Prosecution FTB, paras. 136-137.

118 Judgement, vol.I, para. 172 ("Security in the camp was provided mainly by military police, although the civilian police, starting in June 1992, also guarded the perimeter of the camp. Pursuant to regulations issued by the camp commander, the civilian and military police tasked with securing the external perimeter were not allowed to enter the camp. Only a special intervention patrol unit designated by the chief of the military police was authorised to enter.").

119 Judgement, vol.II, para. 465 (in respect of Zupljanin's allegedly insufficient report to the public prosecutor's office concerning an incident at Manjaca between 6 and 7 August in which "'unknown perpetrators'" subsequently identified as police officers "'killed eight so far unidentified person'"), Judgement, vol.II, para. 524.

attribution of omissions contributing to the JCE, was based on a failure to make adequate findings.

(c) The Chamber Failed to Address Whether Or To What Extent Mr Zupljanin Exercised Authority Over the Prijedor SJB, Including the Keraterm and Omarska Detention Centres

90. The Chamber relied on Mr Zupljanin's alleged inaction in respect of detentions in Prijedor Municipality to infer that he committed forcible transfer through a JCE, and that he intended to do so. Two distinct aspects of the detention are relied on: (i) the mere fact of detention, which the Chamber deemed unlawful;[120] and (ii) mistreatment while in detention.[121] The first aspect of detention, to which Zupljanin was said to have contributed actively as well as by omission, is addressed in the next sub-ground of the Appeal; the present section examines Zupljanin's alleged failure to intercede to prevent mistreatment. The Chamber appears to have placed particular reliance on an occasion when Mr Zupljanin was said to have been informed of "horrible conditions" in the Keraterm and Omarska camps, but that he allegedly remarked that "this sort of things happened in war and left hurriedly to attend a football game."[122] Whether he left hurriedly or otherwise is irrelevant unless he had a *duty* to intervene.

91. Detainees were allegedly mistreated at the Keraterm and Omarska detention camps between 25 May and late August 1992.[123] Both camps were set up on the orders of Simo Drljaca, the head of the SJB Prijedor, acting on the orders of the local Prijedor Crisis Staff.[124] Their purpose was to detain "persons captured in

[120] Judgement, vol.II, paras. 510 ("unlawful arrests"), 518 ("unlawful arrest"), 519 ("Zupljanin was aware of the arrests, of their unlawfulness").

[121] Judgement, vol.II, para. 508.

[122] Judgement, vol.II, paras. 423, 508.

[123] Judgement, vol.I, paras. 498, 581, 590 (Keraterm: 25 May through 5 August); Judgement, vol.I, paras. 498, 593 (Omarska: 31 May through end of August).

[124] Judgement, vol.I, paras. 563-564 (Omarska); Ex. 2D90, p. 1; OTP Adjudicated Fact 378 (Keraterm).

combat."[125] Security at Omarska was to be provided by the "Omarska Police Station,"[126] although "a large number of military men were security guards";[127] Keraterm was to be "under the supervision of employees of the Prijedor Public Security Station and the Prijedor Military Police."[128] Interrogations at the camps were conducted by civilian and military personnel. The worst incident of mistreatment, the killings of 128 people in a single incident at Keraterm, was committed by "Bosnian Serb army personnel."[129]

92. The Chamber found that Keraterm was "established, guarded, and run by Serb policemen", whereas Omarska was "operated jointly by Bosnian Serb police and military personnel."[130] This finding falls short of finding, however, that Omarska and Keraterm did not fall within the VRS's jurisdiction, nor does it mean that the policemen on duty there were not re-subordinated to the VRS while performing duties there.

93. There were several indicia that the Omarska and Keraterm camps were, indeed, under the VRS jurisdiction and that police officers were re-subordinated to the military while on duty there. First, this was undisputedly the case in respect of Manjaca, where police on duty *were* considered re-subordinated to the military.[131] Second, the order permitting a visit to Omarska by journalists in early August was issued by Ratko Mladic as commander of the VRS, authorizing a "plan to visit the following camps: Omarska, Trnopolje and Manjaca in the zone of the 1st Krajina

---

125 Exs. P1560; 2D90, p. 28 ("to accommodate those captured.").

126 Judgement, vol.I, para. 564; Ex. P1560.

127 Judgement, vol.I, para. 593 ("a large number of military men were security guards who manned machine gun nests, but at the gate and the reception desk, there were police officers from the Prijedor SJB in police uniforms.").

128 Ex. 2D90, p. 28.

129 Judgement, vol.I, paras. 589, 668 ("at least 128 people were killed in Room 3 at Keraterm by Bosnian Serb army personnel.").

130 Judgement, vol.I, paras. 678-679.

131 Judgement, vol.II, para. 337.

Corps and Lukavica prison in the zone of the Romanija Corps. Also, prepare all other POW camps in your zone of responsibility."[132] Third, as already discussed, the Trnopolje and Manjaca camps were both undoubtedly military facilities, subject to military jurisdiction. The greater percentage of policemen guarding the Omarska and Keraterm camps does not establish that they were not re-subordinated in the course of their functions there. Fourth, the stated purpose of the camps – to detain persons captured in combat – was directly relevant to core functions of the military, and not a presumptive police-related activity.

94. No reasonable trial chamber, properly directing itself as to the burden and standard of proof, could have rejected this convincing evidence that the camps were under VRS jurisdiction and that policemen serving there were re-subordinated. But the Appeals Chamber need not analyze whether that is the case because the Trial Chamber made no findings as to whether that was the case. It simply assumed, having found that Omarska and Keraterm were run to some degree by policemen, that they were subject to police jurisdiction. This is a fallacy. They could have been run to some degree by policemen and yet still subject to military jurisdiction, with policemen re-subordinated to the military while serving in that role.

95. Even assuming that the police were not re-subordinated to the military, the Chamber committed a second error by: (i) failing to determine when Zupljanin was sufficiently informed of abuses so as to indicated that his "failures" were a means of committing forcible transfer; and (ii) unreasonably finding that Zupljanin had effective control over the Prijedor SJB and its commander, Drljaca.

96. The Chamber found that Zupljanin was informed orally "[a]t some point in summer 1992" of bad conditions at the camps and abuse of prisoners.[133] Mr Zupljanin also visited Omarska on 16 July although there is no express finding

[132] Ex. P1683.

[133] Judgement, vol.I, para. 423, 508.

that he was then informed of the specific abuses identified by the Chamber. Importantly, there is no indication or finding that Zupljanin was informed of any of the beatings or killings, or that he refrained from punishing secret killings or beatings for the purpose of committing forcible transfer. Drljaca, upon the creation of Omarska, specifically "prohibit[ed] giving any information whatsoever concerning the functioning of this collection centre."[134] No evidence was heard, and the Chamber did not find, that Drljaca himself reported any mistreatment of prisoners to Mr Zupljanin. No such information was included in Drljaca's Work Report of the Prijedor SJB for the first half of 1992.[135]

97. The Chamber acknowledged, in the face of overwhelming evidence, that Drljaca "operated with a certain degree of independence" and, in particular, that he "implemented orders of the Prijedor Crisis Staff to provide security in detention camps."[136] Drljaca, as the Chamber recognized, set up two prison camps on the authority of the local crisis staff; ordered that the camps be kept secret; and openly obstructed or declined to follow his orders.[137]

98. Zupljanin protested in October 1992 against the "the functional 'detachment' of a number of SJBs" from his authority:

---

134 Ex. P1560.

135 Ex. P657.

136 Judgement, vol.II, para. 359.

137 *See*, sub-section (a) above concerning Drljaca's overt obstruction of Zupljanin's efforts to investigate the Koricanske Stijene killings; Judgement, vol.II, para. 358 ("Tomislav Kovac … testified that in his assessment Zupljanin was unable to 'cope' with the problems in the area of responsibility of the Banja Luka CSB, and that a direction intervention of the RS MUP with its political power was necessary to address the problems outlined in the report"); para. 360 ("according to Gajic, this dispatch showed that Drljaca, who had his own political ambitions and wanted a CSB to be formed in Prijedor with him as chief, was under the influence of the Prijedor municipal authorities. He added that Drljaca showed disrespect for Zupljanin and "just wanted to be the boss of the whole area.").

> Inefficiency, lack of professionalism and superficiality of work in a number of SJBs contributed to a large extent to the functional "detachment" of a number of SJBs from the Centre. This has gravely affected the overall unity and the social role of the security organs and services. Parallel to that, some of the SJBs connected themselves with the local politics and local political leaders, thereby neglecting their legal obligations and authorizations. Namely, the heading staff of some SJBs, instead of keeping a highly professional attitude towards their work, occupied themselves with issues which are outside of their domain and often of a political character, and requested approval of some political organs and person even for issues strictly pertaining to their profession…. It occurs on a quasi-regular basis that a number of SJBs pay no attention to requests from the Centre for information on certain issues, i.e. there is no timely reaction to certain requests from the Centre. This affects the unity and action capability of security organs and services as a unified security mechanism.[138]

99. He had written almost the same words in July, directly upbraiding the SJB chiefs for their "benevolent attitude towards escalating criminal activities of individuals and groups", and some "chiefs of public security stations, instead of having a highly profession attitude toward the Service, give themselves the right to deal with issues that are beyond the scope of their jobs … asking approval from certain political organs … for matters falling within the scope of their profession."[139]

100. The Chamber nevertheless found that Zupljanin's *failure to attempt* to remove Drljaca, despite no *de jure* authority to remove him,[140] was an omission attributable to him, and indicative of commission of forcible transfer through a JCE. The remarkable basis for this assertion is that Zupljanin had previously

---

138 Ex. P621, p. 43.

139 Ex. 2D25, pp. 2-3.

140 *See*, Ex. L32; Kovac (Chamber Witness), T.27101-27102, 27141 (8 Mar 2012); T.27185 (8 Mar 2012) ("Q. Stop. Stop. Because this is by the centre chief, Stojan Zupljanin, and it says within it it's with the prior approval of the minister. So it appears it has been done in compliance with the law; right? A. No, sir. I'm sorry. But these are things that I do know about. This is a flagrant contravention of the law, and the law was very clear on this. The Banja Luka centre cannot appoint a -- Q. Well -- A. -- public security station chief. Q. I'm sorry -- A. The centre chief is below the minister in the hierarchy and not the other way around.. The Prosecution also conceded that the Minister of the Interior was the one to appoint police chiefs"); T.27186 (8 Mar 2012). *See*, also, Bajagic (MS-007), T.20085 (3 May 2011).

ordered his police to use armed force to arrest members of a paramilitary group who were committing crimes in Teslic, and to prevent paramilitary forces from killing hundreds of non-Serbs in mid-May 1992, somewhere between Doboj and Banja Luka.[141] Military superiority of Group A over Group B does not imply effective control by Group A over Group B. An obvious reason is that the effective control implies a cognitive dimension – that Group B is reporting sufficient information to Group A to allow it to exercise control. Further, the Chamber is suggesting that Zupljanin was legally obliged to disregard the legal limitations on his power and, unlike the Teslic intervention, do so against the will of local political leaders. The Chamber's grounds for inferring effective control could not have been relied upon by any reasonable trial chamber.

101. The Chamber also attempts to impute responsibility to Mr Zupljanin for the crimes in Omarska and Keraterm camps because he failed to order the police to disregard the orders of local crisis staffs, and because he was himself a member of the regional crisis staff, which ostensibly had some authority over the local crisis staffs. As to the latter, the Chamber made no sufficient findings to establish any hierarchical relationship between the regional and the local crisis staffs.[142] As to the former, the Chamber had to acknowledge that Mr Zupljanin did order the

---

[141] Judgement, vol.II, para. 515.

[142] The scope of the ARK Regional Crisis Staff's authority was much less defined than the authority of the MUP, which was laid down in various statutory instruments. The balance of power between the Regional and Local Crisis Staffs, as the Chamber recognized, varied from municipality to municipality and there is evidence that the Municipal Crisis Staff were not required to, or did not, obey instructions from the Regional Crisis Staff. *See*, *e.g.*, Judgement, vol.II, para. 359 (concerning Simo Drljaca, head of the Prijedor SJB, "operat[ing] with a certain degree of independence"); Exs. P1830 (ostensibly replacing the ARK Crisis Staff with a War Presidency that was empowered to issue orders to the municipal authorities); P221. Further, Mr Zupljanin was only a member of the Regional Crisis Staff until 31 May 1992, and was not a member of its successor, the regional War Presidency. *See*, Ex. P442.

police to disregard local crisis staff instructions as of July.[143] The evidence does not suggest that that order was untimely or was delayed in order to facilitate crimes committed on the instruction of local authorities.

(vi) Even Assuming the Existence of A Duty In Particular Cases, The Chamber Failed To Determine Whether Mr Zupljanin Knew of the Duty And Whether His Failure to Act Was Intended As a Contribution to Forcible Transfer

102. An inference that Mr Zupljanin's failures were the *actus reus* of committing forcible transfer through a JCE requires a finding not only that he was legally obligated to intervene and did not do so, but that he knew of his legal obligation in any particular situation, and could not have been uninformed or mistaken. The Chamber compounds its failure to determine the scope of re-subordination by also failing to address any of these issues that should have been indispensible to its analysis.

103. Even assuming, for example, that Omarska and Keraterm were not within military jurisdiction, even assuming that policemen on duty there guarding individuals detained on the ostensible basis that they had been captured in combat, even assuming that Mr Zupljanin did have authority over Simo Drljaca sufficient to require his intervention to look into conditions in the camp and prevent any mistreatment, and even assuming that he had the practical ability to do so with the forces available to him, the question that remains is whether Mr Zupljanin's failures to act in these circumstance can be attributed to a criminal intent to commit forcible transfer. This would have required a finding that Mr Zupljanin could not have been mistaken about the scope of his authority or the means he could have adopted in order to inquire further into the situation in the camps and

[143] Judgement, vol.II, para. 367 ("in many cases municipal Crisis Staffs were in control, and they often requested the police to perform tasks outside their normal duties, without first consulting with the RS MUP.").

take remedial measures. Further, this finding would have been required in relation to the information available to Mr Zupljanin as the summer progressed, in relation to the actions he actually took. Mr Zupljanin's address at the 11 July 1992[144] demonstrates how general was his information was about conditions in Keraterm and Omarska as of that date. He brought what little information he did have to the attention of his superiors, and later set up a commission to investigate conditions and treatment of detainees, including the police involvement therein.[145]

104. The Chamber undertook no such analysis. It made no findings necessary to substantiate its inference that his omissions were a means of furthering forcible transfer, much less that it was done with the requisite intent. The Chamber simply assumed that the failures to act were animated by criminal intent, rather than that he may have been genuinely mistaken. The assumption is particularly troubling in light of the direct evidence, reflected in Mr Zupljanin's own contemporaneous reports, suggesting the contrary.

(vii) Conclusion: The Chamber's Failure to Address Re-subordination, Or Other Indications of a Lack of Authority, Vitiate Its Conclusions About Mr Zupljanin's Actus Reus *and* Mens Rea

105. Mr Zupljanin did not have plenary jurisdiction over crimes in the ARK. He had no *de jure* or *de facto* jurisdiction over the 177,000 VRS soldiers present in the BiH by July 1992;[146] he likewise had no *de jure* or *de facto* jurisdiction to punish crimes committed by TO soldiers or re-subordinated police officers; and he had no *de jure* or *de facto* control over police forces that were subject to town commands.

---

144 Ex. P160, p. 7.

145 Ex. P601.

146 Judgement, vol.II, para. 116.

106. The Chamber's reliance on Mr Zupljanin's failures to draw inferences about participation in a JCE required specific findings about the scope of his duties. This was the case no less than would have been required in order to impute superior responsibility. The failure to have done so affects all findings on which the Chamber relied to impose JCE liability. The only possible remedy, given the Chamber's substantial reliance on these "omissions," is to reverse the conclusion that Mr Zupljanin committed forcible transfer through a JCE.

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

107. A criminal prohibition does not imply a general obligation to prevent the criminalized conduct. Individuals are not generally required to prevent someone else from committing murder, even if they are perfectly capable of doing so without any danger to themselves. National law sometimes imposes positive duties to prevent certain types of harm, including those caused by the criminal acts of others; but the breach of the duty is an offence in itself, usually with limited sanctions, and does not give rise to liability for the other person's crime.[147] Hence, a bystander is not guilty of murder for merely permitting a murder to take place, even if they were in a position to stop it without any harm to themselves, and even if doing so breached a statutory duty to rescue others from harm. Even

[147] French Penal Code, Article 223-6 ("Anyone who, being able to prevent by immediate action a felony or a misdemeanour against the bodily integrity of a person, without risk to himself or to third parties, wilfully abstains from doing so, is punished by five years' imprisonment and a fine of €75,000. The same penalties apply to anyone who wilfully fails to offer assistance to a person in danger which he could himself provide without risk to himself or to third parties, or by initiating rescue operations); Israeli Penal Code, s. 262 (maximum two years in prison for a similarly worded offence); Nigerian Criminal Code, s. 515 (maximum sentence of two years); Strafgesetzbuch, § 138, 323c (maximum sentence of five years for failure to report, and maximum one year sentence for failure to prevent or rescue). http://legislationline.org/documents/section/criminal-codes (accessed on 10 Aug 2013).

the failure of police officers to prevent a crime, in most countries, does not give rise to liability for the crime, although it may give rise to some other type of statutory breach.[148] Only certain particularly intense duties treat omissions as equivalent to actions and impose liability for the outcome.[149]

108. The Appeals Chamber has recognized only two legal duties to act[150] that give rise to liability where the duty is not performed: (i) superior responsibility;[151] and (ii) failure to take care of prisoner's in one's custody as mandated by various provisions of the Geneva Conventions.[152] No other duties have been recognized as giving rise to criminal responsibility for the result if they are not fulfilled.

109. The Chamber relied on Article 10 of the RS Constitution and Article 42 of the Law on Internal Affairs as the basis for Mr Zupljanin's alleged jurisdictional duty "to protect the entire civilian population within areas in ARK Municipalities and to take adequate steps to ensure that RS MUP forces protected Muslim, Croat, and other non-Serb populations residing in those areas."[153] The Chamber relied on this duty to infer that Mr Zupljanin contributed substantially to forcible transfer through a JCE, and to infer his criminal intent.[154]

---

148 *Damned If You Don't*, p. 122.

149 *Damned If You Don't*, pp. 117-122.

150 *Galic* AJ, para. 175 ("the omission of an act where there is a legal duty to act, can lead to individual criminal responsibility under Article 7(1)); *Oric* AJ, para. 43; *Brdjanin* AJ, para. 274; *Ntagerura* AJ, para. 334.

151 *Hadzihasanovic* AJ, para. 39 ("'Command responsibility is responsibility for omission, which is culpable due to the duty imposed by international law upon a commander.'").

152 *Blaskic* AJ, para. 663; *Mrksic and Sljivancanin* AJ, paras. 70, 71, 73.

153 Judgement, vol.II, paras. 354, 441-456, 489, 496 ("in spite of his duty to protect the population"), 513 ("thereby failing to fulfil his obligation under Article 10 of the Constitution and 42 of the LIA to protect the non-Serb population of RS"); 519 ("failure to protect the Muslim and Croatian population").

154 Judgement, vol.II, paras. 518 ("failed to protect the non-Serb population even when they pleaded with him for protection", 519 ("failure to protect the non-Serb population" or to "take steps to ensure that [his own] orders [to protect the civilian population] were in fact carried out").

110. The Chamber's reliance on non-fulfilment of these domestic legal obligations as a basis for criminal liability was legally wrong. First, doing so exceeded the subject-matter jurisdiction conferred in Articles 2 to 5 of the ICTY Statute, which restricts liability to crimes in international criminal law. Second, the Chamber erred in assuming that breach of the foregoing obligations gives rise to criminal liability, much less criminal liability for the outcome rather than for a separate offence of breaching the obligation, which accords with the pattern of liability imposed in most States.[155] Third, no reasons are given by the Chamber to justify its radical and unprecedented extension of omission liability in international criminal law. The absence of reasons, which substantially impairs the exercise of any appeal, in itself warrants reversal. Forcing Mr Zupljanin to challenge a wholesale and unprecedented extension of criminal liability without reasons impairs the exercise of the right of appeal. Fourth, existing Appeals Chamber jurisprudence reflects a general principle that the duties giving rise to liability in international criminal law for the outcome are narrowly defined indeed. A duty to protect "the entire civilian population" reflects a reckless extension that ignores the Appeals Chamber's careful jurisprudence concerning omission liability.

111. The error of law contributed substantially to the Chamber's erroneous findings as to Mr Zupljanin's *mens rea* and *actus reus*. The error invalidates the finding of JCE I and all crimes purportedly committed through that form of liability.

[155] *Damned If You Don't*, pp. 118-122 ("The French reticence to resolve these questions judicially reflects a deep attachment to a particular conception of legality that should not be lightly dismissed. As one commentator has observed, judges should not 'roam freely about our moral sentiments' in constructing the situations in which a failure is treated as equivalent to causing harm.").

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

(i) Introduction

112. The Chamber found that the arrests and detention of non-Serbs in the ARK were unlawful and that Mr Zupljanin's positive acts and omissions in relation to those arrests constituted a contribution to the JCE to commit forcible transfer, and indicated his criminal intent.[156]

113. The Chamber's unanalysed premise that the arrests and detention were unlawful is false. International law accords wide latitude for the arrest of suspected combatants and civilians for imperative security reasons, especially when faced with a massive armed insurrection as was the case in the ARK. Even assuming that the detentions at some point breached the obligations of the RS under the Geneva Conventions by failing to institute adequate judicial procedures, that omission cannot be attributed to Mr Zupljanin personally, much less can it be used as a basis to impute criminal responsibility to him.

(ii) International Law Accords Wide Latitude to Arrest and Detain Both Civilians and Suspected Combatants

114. Detentions are permitted in international armed conflict of: (i) civilians temporarily interned for security reasons under Articles 42 and 78 of GC IV; and (ii) combatants or direct participants in hostilities. Civilians may be detained when

[156] Judgement, vol II, para. 511 ("played a proactive role in the mass arrest operation … not only failed to stop the unlawful detention … but also agreed with it, actively participated in it"), 518 ("[h]was fully aware and took part in the unlawful arrest of non-Serbs and their forcible removal"), 519 ("actively contributed to the operation.") Acts of mistreatment, for which the Chamber attributed responsibility to Mr Zupljanin on the basis of his alleged omissions, is dealt with separately in sub-ground 1a. The present sub-ground addresses the legality of the detention operation itself.

it is "absolutely necessary"[157] or even just "necessary, for imperative reasons of security."[158] The occurrence of this condition, according to the ICRC commentary, is "left very largely to Governments to decide the measure of activity prejudicial to the internal or external security of the State which justifies internment or assigned residence."[159] As the *Kordic* Trial Chamber observed, "it is, to a large extent, up to the Party exercising this right to determine the activities that are prejudicial to the external or internal security of the State".[160] "Absolute necessity" could include, as the ICRC Commentary to Article suggests, where there is a danger of a military-aged person "*being able to join the enemy armed forces.*"[161]

115. Individual determinations are not a precondition of internment. As explained in the ICRC Commentary:

> the Diplomatic Conference discussed at great length whether the provision should be amended to state that any decision concerning assigned residence or internment "should be taken individually". The proposal was rejected, on the ground that there might be situations -- a threat of invasion for example -- which would force a government to act without delay to prevent hostile acts, and to take measures against certain categories without always finding it possible to consider individual cases.[162]

116. The purpose of internment is not to "punish previous acts" but to "prevent future danger to the security of the state or the public safety."[163] A military commander may order an initial detention of "any person suspect of committing criminal

---

157 GC IV, Article 42: ("only if the security of the Detaining Power makes it absolutely necessary.")

158 GC IV, Article 78 ("if the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.").

159 ICRC Commentary GC IV, Art. 42.

160 *Kordic and Cerkez* TJ, para. 254.

161 ICRC Commentary, GC IV, Art. 42.

162 ICRC Commentary, GC IV, Art. 41.

163 Salama, para. 6.

offences, and any person he considers harmful to the security of the area."[164] Detention upon suspicion may be purely for the purpose of preserving security pending further investigations.[165] During the first intifada, to give a sense of the scale of detention that might be required to ensure the security of an area in circumstances of uprising, Israel held 1,794 Palestinians in administrative detention.[166]

117. Detention may continue for as long as "the detainee endangers or may be a danger to security."[167] That assessment is to be made by "an appropriate court or administrative board" to review any such internment of civilians "as soon as possible" and, thereafter, at least "twice yearly."[168] No full-blown criminal procedure is required, and the review may be conducted by the military authorities themselves.[169] No exact definition of "as soon as possible" is prescribed by the Geneva Conventions, and no specific threshold has crystallized in State Practice. Even assuming that there was a failure to provide the opportunity for a hearing promptly enough, the Chamber made no Mr Zupljanin was responsible, as opposed, for example, to the Minister of Justice or the military, for providing such an opportunity.

(iii) Arrests and Detention on a Large Scale Were Not Unlawful Under International Law Given the Circumstances Prevailing in the ARK Between April and August 1992

118. The Chamber recited an abundance of evidence showing that there were a large number of non-Serb combatants engaging in hostilities in the ARK area between

164 Mar'ab, para. 21.

165 Mar'ab, para. 21.

166 Krebs, p. 654.

167 Mar'ab, para. 23.

168 ICRC Commentary, GC IV, Art. 43.

169 Krebs, pp. 660-662.

April and August 1992. The patchwork quilt of territorial control, in some cases to an extent that surprised the Serbian police, is epitomized in one typical incident:

> Nikola Vracar, a Serb reserve police officer living in Kljuc in 1992, testified that on 27 May 1992 he was a member of a team of four police officers that received an assignment to go to a village near Kljuc, called Peci, because the police had received information that barricades had been erected in the area from Kljuc to Sanski Most. Dusan Stojakovic, a Serb and Deputy Chief of the Kljuc SJB, was part of the team. The team travelled in a police car. Before they arrived at Peci, they came across a roadblock in the village of Krasulje. Before they could get out of the car, unidentified hostile forces hiding in the forest opened fire against them from all sides. Vracar and two of his colleagues were injured, and Dusan Stojakovic was killed. Vracar escaped through the forest in the direction of Kljuc. In the village of Gornji Ramici, he was helped by a Muslim doctor who drove him to Kljuc in an ambulance. The doctor stopped at Pudin Han, a Muslim village 2 or 3 km before Kljuc, before continuing on to Kljuc hospital. In front of Pudin Han's cultural centre, Vracar saw about 30 armed Muslim men wearing TO uniforms. Later, at the Kljuc hospital, Vracar saw five or six uniformed JNA soldiers who had been injured in Pudin Han by mortars and gunfire. Vracar testified that six soldiers died as a consequence of this attack.[170]

119. This event is significant as showing not only that there were large numbers of Muslim combatants nestled in the midst of the territory of the ARK municipalities, but also that these forces were sometimes surreptitiously located within just two kilometres of an SJB police station. Further, as of May 1992 and until at least July when the VRS managed to punch through towards Bijeljina, the ARK municipalities were physically severed from Serbia and other Serb areas of BiH to the south.[171] Not only was there a state of armed conflict in the ARK throughout the Indictment period,[172] not only was there a declared imminent threat of war in the RS throughout the Indictment period,[173] but the very survival of the ARK and its inhabitants was in serious doubt during this period.

---

170 Judgement, vol.I, para. 300 [footnote omitted].

171 Judgement, vol.I, para. 181, referencing to [REDACTED] (ST-172), T.5345-5347 (22 Jan 2010).

172 Judgement, vol.I, para. 340.

173 Judgement, vol.II, para. 112.

120. Serb forces were perfectly entitled in these circumstances to detain anyone suspected of being a combatant, and that would reasonably include, given the circumstances, any military-aged man possessing a long-barrelled rifle. Indeed, in certain areas Serb Forces would have acted well within the discretion conferred on them by arresting any and all Muslim military-aged men both on suspicion of having participated in armed conflict (either as combatants or as direct participants in hostilities) or because of the likelihood that they participate in armed conflict in the future.[174]

121. The Chamber erred in law in referring to "unlawful detention" and "unlawful arrests" given the circumstances. It therefore follows that it also erred in deducing that Mr Zupljanin contributed and intended to commit forcible transfer because he "not only failed to stop the unlawful detention of non-Serbs, but also agreed with it, actively participated in it, and even proposed to use unlawfully detained non-Serbs in prisoner exchanges."[175]

122. The Chamber relies on a dispatch from Mr Zupljanin for the proposition that he was in favour of holding detainees as "hostages." No reasonable trier of fact could have drawn such an inference; on the contrary, full quotation of the passage in context reveals that Mr Zupljanin was very concerned about the detention of individuals on insufficient grounds and the continued detention of all detainees to be adequately reviewed, and those held on insufficient grounds released:

> During these conflicts, representatives of Army of Serbian Republic of Bosnia and Herzegovina and Police arrested a great number of citizens of Muslim and Croat nationality [….] According to our information, this situation involves several thousand mostly military-aged men. They were subject to operational procedure by Military services, Service for national and public security, which then carried out selection of prisoners detained. After the operational procedure, three categories were determined. First and second category are of security interest to us and

174 Brown (ST-097), T.19112-19117 (21 Jan 2011).

175 Judgement, vol.II, para. 511. *See*, also, Judgement, vol.II, paras. 518-519.

> their activity can be classified as legal responsibility (active participants in enemy formations during the armed conflicts, illegal suppliers and financiers of arming of Muslim and Croatian people, secret and organized preparation of armed rebellion and elimination of Serbian individuals and so on), while the third category is made of adult men on which, so far, the Service doesn't have any information or security interest for us, *so they can be treated as hostages*. […] please contact the authority organs as well as Army […] and […] assume decisive position regarding the further status and treatment of the above-mentioned persons (should criminal charges be raised, who should continue securing these persons – police or the army, if and under which conditions an exchange for the citizens of Serbian nationality captured by the Muslim-Croat forces should be carried out, what about the third category (of no security interest to us) […]. This Security Service Centre has an opinion that the highest organs of Serbian Republic of Bosnia and Herzegovina should […] *[t]ry to exchange military aged men of no security interest to us, who can be treated only as hostages,* for citizens of Serbian nationality who have been detained in camps held by Muslim-Croatian forces, according to the same criteria.[176]

123. Far from revealing any knowledge, much less support, of any illegality in these detentions, Mr Zupljanin's position is exemplary. The bulk of the detentions, as reflected in the first two grounds, appear to him to be lawfully justified. Mr Zupljanin is pointing out in this letter, quite candidly, that the third category of detainees is not subject to detention and must be released lest they be viewed as "hostages." Any doubt about Mr Zupljanin's meaning arising from the first "hostage" reference is dispelled when it is read in light of the second reference: Mr Zupljanin is in no way urging the continued detention of that category; he is instead alerting his superiors of the need for their release, while at the same time, if possible, suggesting that their release be used to encourage the other side to do the same. Within weeks of this dispatch, large numbers of detainees were released.

124. The Chamber's inference that Mr Zupljanin "agreed" and "actively participated" in unlawful detentions is based on misunderstanding of the law of armed conflict and a flagrant misreading of Mr Zupljanin's dispatch of 20 July. Mr Zupljanin correctly directed himself according to the requirements of international law and

[176] Ex. P583, pp. 1-2.

notified his superiors for the need to release the third category, but did urge them to attempt to secure a negotiating advantage with the other side for an exchange. His use of the word "try" clearly suggest that if they had not been able to secure that advantage, the third category detainees still be released. In any event, the Chamber was obliged to eliminate that interpretation as unreasonable, which it did not do.

(iv) Conclusion

125. The Chamber's finding that the detention of non-Serbs was unlawful was legally wrong, as was, consequently, its reliance on Mr Zupljanin's alleged acts and omissions in support thereof as a contribution to the JCE, and as reflecting this criminal intent. 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.

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

(i) Introduction

126. The Chamber found that Mr Zupljanin "significantly contributed" to the common purpose of committing forcible transfer by placing heavy reliance on omissions.[177] The syllogism underlying this finding is: (i) Mr Zupljanin was an official of the MUP; (ii) MUP organs committed crimes or failed to prevent crimes; ergo (iii) Mr Zupljanin committed the *actus reus* of the crime committed, or not prevented, by the MUP organs.

[177] Judgement, vol.II, para. 518.

127. No reasonable trial chamber could have found that Mr Zupljanin had sufficiently direct control or influence over those perpetrating those crimes to convert his failures to stop crimes as constituting the *actus reus* of the crimes. The Chamber for the most part made no finding that Mr Zupljanin even possessed "effective control," let alone "an elevated degree of 'concrete influence.'"[178] The Chamber did not even expressly find that the heads of police in the seven municipalities within his "jurisdiction" were under his effective control.

128. The degree of the Chamber's manifestly erroneous reliance on omissions to constitute the JCE *actus reus* renders that finding unsafe and occasions a miscarriage.

(ii) The Chamber Established No Threshold of "Control" or "Influence" For Contributing to Crimes By Omission Before Evaluating Mr Zupljanin's Contribution Through Omission

129. The two omissions that the Chamber expressly relied on to constitute the *actus reus* of committing forcible by JCE were: (i) "fail[ing] to launch criminal investigations and discipline his subordinates […] thus creating a climate of impunity"; and (ii) "fail[ing] to protect the non-Serb population even when they pleaded with him for protection, thereby exacerbating their feeling of insecurity and strongly contributing to their flight out of the ARK Municipalities."[179] These statements relate to sub-findings referring to a wide range of different situations, none of which are expressly differentiated by the Chamber. For example, at the higher end of the spectrum of control between Mr Zupljanin and the perpetrators is his alleged "complete authority over the [Special Police] Detachment";[180] in the middle of the spectrum of control might be Drljaca, the head of the Prijedor SJB,

[178] *Oric* AJ, para. 41. *See*, also, *Blaskic* AJ, para. 663.

[179] Judgement, vol.II, para. 518.

[180] Judgement, vol.II, para. 501.

who "operated with a certain degree of independence,"[181] but whom the Chamber found Zupljanin could have successfully removed;[182] at the lowest of the spectrum, in the Chamber's view, might be the Donji Vakuf SJB which the Chamber's recognized was subject to rule by military command, including displacing Mr Zupljanin's authority over appointment of SJB officials.[183] The Chamber does not refer to these gradations in its own findings in reaching its ultimate conclusions as stated above.

(iii) The Actus Reus *of Commission By Omission, Including Through a JCE, Requires "An Elevated Degree of Concrete Influence"*

130. The Appeals Chamber has held that "[a]t a minimum, the *actus reus* of commission by omission requires an elevated degree of 'concrete influence.'"[184] The level of control or influence required for the *actus reus* of commission by omission is greater than that required for the *actus reus* of superior responsibility (*Blaskic*)[185] or the *actus reus* of aiding and abetting by omission (*Mrksic*).[186]

---

181 Judgement, vol.II, para. 359.

182 Judgement, vol.II, para. 515.

183 Judgement, vol.I, paras. 240-241.

184 *Oric* AJ, para. 41.

185 *Blaskic* AJ, para. 664 ("The distinguishing factor between the modes of responsibility expressed in Articles 7(1) and 7(3) of the Statute may be seen, *inter alia*, in the degree of concrete influence of the superior over the crime in which his subordinates participate: if the superior's intentional omission to prevent a crime takes place at a time when the crime has already become more concrete or currently occurs, his responsibility would also fall under Article 7(1) of the Statute.").

186 *Mrksic and Sljivancanin* AJ, para. 156 ("The Appeals Chamber recalls that, in the *Oric* case, it found that the *actus reus* for "commission by omission requires an elevated degree of 'concrete influence'", as distinct from the *actus reus* for aiding and abetting by omission, the latter requiring that the omission had a "substantial effect" upon the perpetration of the crime. The Appeals Chamber finds no merit in Sljivancanin's attempt to conflate the substantial contribution requirement with the notion of an elevated degree of influence, and notes that Sljivancanin himself does not provide any further support for his submission on this issue, beyond the vague statement that an "objective criteria" for assessing "substantial contribution" is warranted on the particular facts of his case.").

131. The Appeals Chamber's jurisprudence concerning the threshold for the *actus reus* of commission by omission should apply *mutatis mutandis* to all forms of direct perpetration commission, including JCE.[187] The *actus reus* of JCE, as it has been defined in relation to acts, need not be the physical perpetration of the crime itself, but must at "at least be a significant contribution to the crimes"[188] and the contribution must be "directed to the furthering of the common plan or purpose."[189] The correlative inquiry for omissions, therefore, is whether the omission is directed to, and contributes at least significantly, to furthering the common criminal purpose.

132. The authority of an accused, even prior to any evaluation of *mens rea*, is relevant to the assessment of *actus reus*. Kvocka's position in the camp structure was relevant to determining whether he participated in the JCE.[190] The same inquiry is all the more important in respect of omissions, lest anyone's failure to prevent crimes is presumptively categorized as forming part of the *actus reus* of a crime committed through JCE. "But for" causation is evidently neither a necessary nor a sufficient standard. Mere organizational connection has been expressly rejected.[191]

133. This is where the "concrete influence" standard comes in. The level of control or influence required for an omission to qualify as part of the *actus reus* of commission is higher than for triggering superior responsibility:

---

187 *Milutinovic* JCE Jurisdiction Decision, para. 20 ("The Appeals Chamber therefore regards joint criminal enterprise as a form of 'commission' pursuant to Article 7(1) of the Statute"); 31 ("the Appeals Chamber has already pointed out above that joint criminal enterprise is to be regarded, not as a form of accomplice liability, but as a form of "commission" and that liability stems not, as claimed by the Defence, from mere membership of an organization, but from participating in the commission of a crime as part of a criminal enterprise.").

188 *Brdjanin* AJ, para. 430.

189 *Tadic* AJ, para. 229.

190 *Kvocka et al.* AJ, paras. 101-103.

191 *Milutinovic* JCE Jurisdiction Decision, paras. 25-26.

> The distinguishing factor between the modes of responsibility in Article 7(1) and 7(3) of the Statute may be seen, inter alia, in the degree of concrete influence of the superior over the crime in which his subordinates participate: if the superior's intentional omission to prevent a crime takes place at a time when the crime has already become more concrete or currently occurs, his responsibility would also fall under Article 7(1) of the Statute.[192]

134. *Kvocka* does not hold otherwise. Even though the Trial Chamber there did not find a superior-subordinate relationship with specific guard-perpetrators, it was able to find that he exercised a high level of authority and influence in the Camp itself.[193] Indeed, the Appeals Chamber quoted from Kvocka's own apparent admission that he *was* in a superior-subordinate relationship with the guards in the camp.[194] The Appeals Chamber was not even sure whether the Trial Chamber had refrained from entering findings under 7(3) because the evidence was insufficient or because where both forms of liability are proven only 7(1) responsibility should be relied on.[195] Furthermore, Kvocka had contributed actively to the running of the camp which the Trial Chamber characterized as itself "a criminal endeavour."[196] The JCE *actus reus* was therefore satisfied not only by his omissions in relation to the acts of guards under his authority, but also by his acts that were directly referable to a "criminal endeavour."

---

192 *Blaskic* AJ, para. 664; *Mrksic and Sljivancanin* AJ, para. 156, fn. 554.

193 *Kvocka et al.* AJ, para. 142 (he had a "*de facto* position of authority" in the Omarska Camp, was the "the 'functional equivalent' of a deputy commander" of the police station running the camp).

194 *Kvocka et al.* AJ, para. 143.

195 *Kvocka et al.* AJ, para. 104 ("Where the legal requirements of both forms of responsibility are met, a conviction should be entered on the basis of Article 7(1) only, and the superior position should be taken into account as an aggravating factor in sentencing").

196 *Kvocka et al.* AJ, para. 238.

(iv) The Chamber Made No Findings That Mr Zupljanin Had a Level of Control That Would Equate His Omissions With Performing the Actus Reus *of Committing Forcible Transfer Through a JCE*

135. The Chamber assessed Mr Zupljanin's every inaction, his every deficient performance of his duties, every crime against non-Serbs committed in the seven ARK municipalities, as amongst the omissions constituting the *actus reus* of committing forcible transfer through JCE. These assessments are not predicated in each case on establishing Mr Zupljanin's authority over the perpetrators. No attempt is made to make particularized findings as to which events he had such a high degree of control that his "omission" could count as part of the *actus reus* of commission. The Chamber occasionally says that Mr Zupljanin could have taken this or that measure against "subordinates" – without ever making any finding of who was subordinate to him, with the possible exception of the Special Police Detachment.[197] No findings are made remotely resembling those made in *Blaskic* (or even *Mrksic*, for that matter) concerning the extent of control necessary for an omission to be categorized as part of the *actus reus* of the crime.

136. That failure is not remedied by saying that the Chamber relied on a mixture of acts and omissions. First, the MUP in the ARK was not found to constitute a "criminal enterprise," so as to convert general actions in support of that organ as constituting the *actus reus*.[198] This sets the case apart from *Kvocka*, where the accused was found to be participating directly through his actions in support of a "criminal enterprise." The criminal enterprise finding in Kvocka contrasts with the holding in *Perisic*, albeit in the context of the *actus reus* of aiding and abetting, that "the VRS was not an organisation whose actions were criminal *per*

[197] The Chamber occasionally mentions "his subordinates" in the police without identifying who these individuals are, with the possible exception of five "SNB inspectors." No findings support this classification, nor is there ever any discussion as to whether these various employees meet the standard of "effective control". The only discussion coming close is that concerning the Special Police Detachment discussed in sub-Ground 1(d).

[198] The Chamber's findings in respect of positive acts are addressed in sub-Ground 1(d).

se."[199] The implication that transcends aiding and abetting JCE liability is that support to broad organizations whose component parts may perpetrate crimes cannot be equated with support for crimes. This being the case, and given the nature of the alleged actions attributed to Mr Zupljanin, the Chamber in this case (unlike in *Kvocka*) was obliged to rely to a much greater extent on Mr Zupljanin's omissions to substantiate its finding of *actus reus*.

137. The frequency of the supposed "omissions" does not decrease the level of "control" or "influence" required before the omission can be considered as part of the *actus reus* of commission. The frequency of the alleged omissions does not convert them into the equivalent of acts contributing to the JCE. The elevated degree of control is required before any analysis of the extent of contribution can begin.

138. The Chamber made no sufficient findings permitting it to conclude that any and all "failures" and "failings" by Mr Zupljanin constituted the *actus reus* of commission by JCE. No reasonable trial chamber could have found on the evidence that the "failings" were equivalent to acts contributing directly and significantly to the JCE's criminal purpose.

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

(i) Introduction

139. No reasonable trier of fact could have found that Mr Zupljanin contributed to the JCE, either substantially or significantly, through (i) his actions in relation to the Special Police Detachment; (ii) assisting takeovers of municipalities; or (iii) participating in the disarming and detention operation.

[199] *Perisic* AJ, para. 53.

(ii) The Chamber Erred In Finding That "Zupljanin Exercised Complete Authority" Over the Special Police Detachment

140. The only express finding of Mr Zupljanin's authority over the perpetrators of crimes regards the MUP Special Police Detachment (SPD), over which Mr Zupljanin was found to have had "complete authority."[200] The SPD's crimes attributed to Mr Zupljanin are: (i) indiscriminate arrests and suspected beatings[201] of non-Serbs in Banja Luka;[202] (ii) arbitrary arrests, theft and abusing prisoners in Prijedor;[203] and (iii) violent crimes and other abuses in Kotor Varos.[204] He is also said to have notice of their criminal propensities as a result of being informed of alleged crimes in Doboj in May 1992, though he is not alleged to be responsible for these crimes.[205] Mr Zupljanin's significant contribution to the JCE therefore included, in an apparent reference to the SPD, having "failed to launch criminal investigations and discipline his subordinates […] thus creating a climate of impunity which only increased the commission of crimes against non-Serbs."[206]

141. The Chamber acknowledged that upon the inauguration of the SPD, Mr Zupljanin stated that "[i]f it is necessary for the detachment to fight together with the army, it will be made available."[207] Making a unit "available" implies that, as with any other policemen or unit, the SPD could be re-subordinated to the VRS for the duration of combat-related assignments. The Chamber, rather than addressing the duration and timing of re-subordination, merely determined that evidence that

200 Judgement, vol.II, para. 511.

201 Judgement, vol.I, para. 210 (no clear finding that members of the SPD beat non-Serbs).

202 Judgement, vol.II, paras. 415, 503.

203 Judgement, vol.II, para. 503.

204 Judgement, vol.I, paras. 475-479.

205 Judgement, vol II, paras. 440, 503.

206 Judgement, vol.II, para. 518.

207 Judgement, vol.II, para. 385.

"the Detachment was a military unit … is not credible."[208] This determination is not dispositive – indeed, does not address – the re-subordination issue.

142. The evidence shows, in particular, that the SPD was re-subordinated to the VRS, at least for certain intervals. The clearest example is Kotor Varos. As previously discussed, a VRS Town Command had been set up there, followed by heavy fighting and counter-insurgency operations.[209] Witnesses testified that there were large numbers of men in regular military uniforms and carrying long-barrelled rifles at the Kotor Varos police station.[210] Although the Chamber rejected SZ-002's evidence that the unit was "a military unit under the authority of Colonel Stevilovic," it did not reject the SZ-002's more concrete testimony that the deployment, implicitly in Kotor Varos, was determined "in coordination with Colonel Peulic" – the VRS town commander of Kotor Varos.[211] The manifest deficiency in the Chamber's analysis of the evidence is reflected in its failure, aside from a passing reference, to even mention Colonel Peulic's name in its 147-paragraph analysis of events in Kotor Varos.[212]

143. The real possibility that the SPD was also re-subordinated for intervals during its engagements in Prijedor and Banja Luka is reflected in the composition of the unit itself: the commander and the deputy-commander were both military commanders; a certain Colonel Stevilovic had a major role in the functioning of the unit; and the unit was based in a military facility.[213] The Chamber acknowledged evidence that the Detachment has "taken part, 'in cooperation' with VRS units, in combat operations in […] Prijedor, Sanski Most, Kljuc, Donji

---

208 Judgement, vol.II, para. 501.

209 *See*, Ground 1(a).

210 Judgement, vol.I, para. 406.

211 Judgement, vol.II, paras. 393, 501. *See*, also, Ex. 2D132.

212 Judgement, vol.I, paras. 351-494.

213 Judgement, vol.II, para. 393.

Vakuf […] Doboj and Kotor Varos."[214] While it may have been within the Chamber's margin of appreciation to determine that the SPD was not a military unit *per se*, no reasonable trier of fact could have ignored that by its leadership, its composition, purpose and direct evidence, the SPD was intermittently and easily subordinated to the VRS throughout 1992. The least that was required were specific findings as to when the SPD was – and was not – subordinated during the perpetration of the crimes that Mr Zupljanin allegedly failed to prevent, thereby contributing to the commission of forcible transfer by omission.

144. No reasons are given expressing any awareness that the only burden on the Defence was to raise a reasonable doubt, whereas it was for the Prosecution to show beyond a reasonable doubt. The fact that Mr Zupljanin may have been acquiescing in the secondment of the SPD to the VRS certainly does not establish his "effective" control for the duration of that operation.[215]

145. The Chamber asserts that "by enrolling SOS members in the Detachment, including commanding positions, Zupljanin created a unit comprised of Serb nationalists with criminal records."[216] This claim misstates the evidence. There is no evidence that Mr Zupljanin knowingly permitted anyone with a criminal record to join the SPD. On the contrary, as the Chamber recognized, Zupljanin was at pains to prevent even *suspected* criminals from amongst the SOS from joining the SPD.[217] Indeed, he specifically said in a public interview that there were those "who claim to be members of the SOS" who had engaged in "unlawful measures

---

214 Judgement, vol.II, para. 405.

215 Judgement, vol.II, para. 502 (the finding that Zupljanin was responsible for "dispatch[ing] platoons of the Detachment" to municipalities is in no way determinative that he was exercising operational control over them, or that they were not subordinated to the VRS while so deployed).

216 Judgement, vol.II, para. 499.

217 Judgement, vol.II, para. 387 ("*some* SOS members were incorporated into the Banja Luka CSB Special Police Detachment") [italics added].

and activities" and who were not welcome in the SPD or any successor of the SOS.[218]

146. Rather than accepting even suspected criminals from the SOS into the SPD, Zupljanin issued a Work Plan on 25 May 1992 for Banja Luka ordering:

- the arrest of members of the SOS who were suspect of having committed crimes;
- the arrest of those allegedly involved with the "red van" group that had harassed non-Serbs in Banja Luka in April;
- the investigation into individuals believed to be associated with the murder of a Muslim man;
- investigations into the bombing of the Arnaudija Mosque; and
- an annex of robberies to be investigated involving non-Serb and Serb victims alike.[219]

147. The Chamber acknowledges the existence of this plan and that "[s]ome" of the measures were implemented, but then comments that one (out of the twenty-nine individuals arrested) "was reportedly committing crimes against in September 1992. The evidence does not establish the circumstances of his release."[220]

148. Is the Chamber implying that the absence of evidence concerning the release of this individual undermines the sincerity or robustness of the plan? Is that being attributed to Zupljanin? And why place emphasis on this fact rather than that the plan was *secret*,[221] suggesting that it was genuinely meant rather than the product of Machiavellian dissimulation? And more importantly, how could the Chamber

[218] Judgement, vol.II, para. 404; Ex. P560, p. 4.

[219] Judgement, vol.II, para. 457; Ex. 1D198.

[220] Judgement, vol.II, para. 498.

[221] Judgement, vol.II, para. 457.

have reached a factual conclusion about the SOS members being knowingly enrolled in the SPD whereas the evidence suggested precisely the contrary?

149. A contributing factor may have been the total absence of footnotes in the 32 paragraphs of the Judgement where the Chamber makes its principal findings in respect of Mr Zupljanin. Only two vague footnotes are dropped in referring to entire sections of the Judgement. The lack of specific reference to the evidence and sub-findings sets this Judgement apart from most others, which are usually assiduously footnoted to ensure conformity between the ultimate findings and the rest of the Judgement.[222]

150. The Chamber also faults, and characterizes as an omission amounting to a contribution, Mr Zupljanin's failure to punish, prevent or otherwise discipline specific members of the SPD upon being informed of crimes that they may have committed starting in May 1992. First, there is no discussion of any element of elevated control between Mr Zupljanin and the alleged perpetrators that would convert the alleged failure into the *actus reus* of commission by omission. Second, on the contrary, the crimes in Doboj of which Zupljanin was supposedly informed occurred while the unit was not subordinated to him and was outside the ARK municipalities within his supposed jurisdiction.[223] Third, members of the SPD were indeed suspended and criminal proceedings initiated in some cases, in particular because of their suspected involvement in crimes in Kotor Varos.[224] Fourth, the SPD was disbanded in early August 1992 and placed directly under the command of the VRS, in part based on concerns about discipline. The Chamber had no evidence indicating that Mr Zupljanin resisted this measure; on the contrary, the evidence was that he agreed with it.[225]

---

222 *See*, e.g., *Popovic et al.* TJ, paras. 1929-1979; *Oric* TJ, paras. 677-716; *Haradinaj Retrial* TJ, paras. 628-668.

223 Judgement, vol.II, para. 440.

224 Ex. P631, p. 2.

225 Ex. P631, though relied on by the Chamber for this proposition (Judgement, vol.II, para. 440), does not confirm this view, which is contradicted by SZ-002, T.25468 (9 Nov 2011).

151. The Chamber's ultimate conclusion and subsidiary findings were unreasonable. They are often not supported by articulated reasons or evidence, and frequently contradict previous findings in the Judgement. No reasonable trier of fact could have concluded that Mr Zupljanin's failures to discipline the SPD during its existence between 12 May and early August 1992 constituted a contribution to the crime of forcible transfer.

(iii) The "Blockade" of Banja Luka and the "Takeover" of Other Municipalities Was Not "Illegal" In Any Manner Significant to the Charges Against Mr Zupljanin

152. Zupljanin is said to have actively contributed to the crime of forcible transfer by participating in the "takeovers of the ARK Municipalities" by RS organs of authority.[226] Doing so was not illegal under international law. The Chamber's reference to the blockade of Banja Luka being "illegal" may refer to some illegality under domestic law, but was not illegal under international law.[227] Internal armed conflict is an unfortunate reality that is nevertheless recognized as lawful under international law. Any active contributions thereto by Mr Zupljanin were not part of the *actus reus* of any crime.

(iv) The Disarming And Arrest Operation Was Not Illegal In Any Way Probative of the Charges Against Mr Zupljanin

153. The Chamber found that the arrests and detention of non-Serbs in the ARK were unlawful and that Mr Zupljanin's positive acts and omissions in relation to those arrests constituted a contribution to the JCE to commit forcible transfer, and

[226] Judgement, vol.II, para. 518.

[227] Judgement, vol.II, para. 499.

indicated his criminal intent.[228] Such operations, as have been previously discussed were perfectly lawful under international law. Any participation in the formation of organs of authority was permissible and lawful. Those acts do not constitute any contribution to the *actus reus* of forcible transfer.

(v) Conclusion

154. Neither the failure to discipline the SPD, nor the other positive actions attributed to Mr Zupljanin, constituted any contribution to the crime of forcible transfer whatsoever, nor are they indicative of any direct intent to commit that crime. No reasonable trier of fact could have reached these conclusions which, viewed individually or cumulatively, occasion a miscarriage of justice.

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

(i) Introduction

155. None of the eight factors relied on by the Chamber to infer Mr Zupljanin's intent, viewed cumulatively or individually, were sufficient to infer the requisite *mens rea*. The five categories of positive action imputed to Zupljanin – his "role in the blockade of Banja Luka", his "ties to the SDS", his alleged attendance at the 14 February 1992 Holiday Inn meeting, his contribution to SDS policies in Banja Luka, and his participation in the arrests operation – are not in any way probative of his intent to commit forcible as opposed to merely setting up and maintaining the existence of a separate political entity in the ARK.

[228] Judgement, vol.II, paras. 500, 511 ("played a proactive role in the mass arrest operation … not only failed to stop the unlawful detention … but also agreed with it, actively participated in it"), 518 ("[h]was fully aware and took part in the unlawful arrest of non-Serbs and their forcible removal"), 519 ("actively contributed to the operation"), 518. Acts of mistreatment, for which the Chamber attributed responsibility to Mr Zupljanin on the basis of his alleged omissions, is dealt with separately in sub-ground 1a. The present sub-ground addresses the legality of the detention operation itself.

156. The three categories of alleged omission – failing to protect the non-Serb population, failing to take steps to ensure that his orders to protect the civilian population were carried out, and shielding his subordinates from prosecution – are derived from manifest failures to assess the totality of the evidence and an indiscriminate and overly broad assessment of Mr Zupljanin's legally relevant duties. But even assuming no such errors, no reasonable could have inferred that the only mental state consistent with those omissions[229] was direct intent to commit the crime of forcible transfer.

(ii) Zupljanin's Positive Actions Are Not Probative Of Any Criminal Intent

157. Mr Zupljanin's alleged participation in negotiating with those who set up the Banja Luka blockade, alleged attendance at the Holiday Inn meeting, and his alleged ties to and support of the SDS is not probative of anything more than setting up and defending a separate political entity in the ARK. This objective was not unlawful, and it did not require recourse to any criminal means to be carried out.[230] The salient question is whether anything in the Chamber's findings in respect of Mr Zupljanin involvement in these actions is probative of an intent to resort to criminal means in pursuit of that objective.

158. The evidence accepted by the Chamber as reliable showed that Mr Zupljanin stayed at the hotel on the night of 14 February and that Mr Karadzic has said that

[229] *Bagosora* AJ, para. 515 ("a Trial Chamber may infer the existence of a particular fact upon which the guilt of the accused depends from circumstantial evidence only if it is the only reasonable conclusion that could be drawn from the evidence presented. If there is another conclusion which is also reasonably open from the evidence, and which is consistent with the non-existence of that fact, the conclusion of guilt beyond reasonable doubt cannot be drawn").

[230] *Perisic* AJ, para. 57; *Stanisic and Simatovic* TJ, para. 2415 (Separate Opinion of Judge Orie): "[a]nother inference, also reasonable in my view, would be that the Accused wanted to assist in establishing and maintaining Serb military and civilian control").

he could meet with "Stojan" during "breaks" in the meeting.[231] The Chamber made no findings, and no evidence was presented, concerning the content of any conversations between Mr Zupljanin and Mr Karadzic. Even accepting the Chamber's reliance on this evidence to be correct, it is not probative of pursuit of the lawful objective by unlawful means. It would be a gross fallacy to infer that the content of that any discussion involving Mr Zupljanin – which could have been quite brief, according to the available evidence – included discussing the adoption of criminal methods merely because crimes were committed during the intense military conflict that ensued.[232]

159. Mr Zupljanin's alleged collusion[233] in setting up Banja Luka blockade is likewise not probative of any criminal intent. The blockade may have been unlawful under the law of Bosnia and Herzegovina (as were most actions of the Bosnian government under SFRY law), but it was neither unlawful nor criminal under international law. To the extent that any violence was perpetrated in the context of this uprising, Mr Zupljanin did undertake efforts, as discussed in I(d)(ii) above, to ensure that those crimes were investigated and prosecuted.

160. Close ties with SDS political leaders is likewise probative of no criminal intent. Most leading Bosnian Serb politicians were affiliated with the SDS and it would have been simply impossible to function as a police chief in a fledgling political entity such as the ARK or RS without having extensive contacts with SDS leaders. The Chamber's reliance on this factor to prove criminal intent is misguided: "[t]o go too easily from presence at meetings via the commission of

231 Judgement, vol.II, para. 352.

232 *See*, *Stanisic and Simatovic* TJ, para. 2315 ("The Trial Chamber has not received evidence about what was discussed at the meeting called by Stanisic. Absent such information, the majority, Judge Picard dissenting, is unable to infer that Stanisic's presence at the meeting is evidence that he shared the common criminal purpose."). Also, *see*, para. 2233.

233 Judgement, vol.II, paras. 399-403.

crimes to the intent for crimes of each participant of that meeting comes dangerously close to attributing guilt by association."[234]

161. Finally amongst positive acts, the Chamber relied on Mr Zupljanin's "proactive role" in the mass arrests of non-Serbs.[235] The lawfulness of those arrests and detentions has already been addressed.[236] Those arrests and detentions were not categorically unlawful. Assuming that the detentions may have exceeded to some degree the duration permitted without some administrative review, this does not automatically convert the ongoing unlawful detentions into criminal acts, nor did the Chamber determine that providing administrative reviews within a certain time-period was Mr Zupljanin's responsibility.

(iii) Mr Zupljanin's Alleged Omissions Are Insufficient To Establish Any Criminal Mens Rea*, Much Less Gross Negligence Or Even Recklessness*

(a) Introduction

162. The Chamber's failure to address the re-subordination issue, as previously addressed,[237] led it to erroneously find that the failure to prevent or punish any and all Indictment crimes was legally attributable to Mr Zupljanin. The scope and implications of that error need not be repeated here, other than to say that the Chamber inferred Zupljanin's criminal intent primarily from those "failures".

---

234 *Stanisic and Simatovic* TJ, para. 2415 (Separate Opinion of Judge Orie).

235 Judgement, vol.II, para. 511 ("played a proactive role in the mass arrest operation … not only failed to stop the unlawful detention … but also agreed with it, actively participated in it"), 518 ("[h]was fully aware and took part in the unlawful arrest of non-Serbs and their forcible removal"), 519 ("actively contributed to the operation.").

236 Sub-ground 1(g).

237 Sub-ground 1(a).

163. Even assuming no such error, the Chamber unjustifiably dismissed the evidence of Mr Zupljanin's efforts to suppress crimes, saying that the orders he did give "were not genuinely meant to be effectuated"[238] because he:

- "hired criminal members of the SOS unit" to be part of the SPD just a few days before issuing an order prohibiting hiring individuals with police records;
- appointed a commission to investigate crimes at prisons in Prijedor by the "very people who were in charge of interrogating" the detainees;
- appointed the former warden of prisons in Sanski Most, whose officers may have committed crimes, to be the crime inspector for white collar crimes, and failed to remove Drljaca as head of the Prijedor SJB;
- filed reports identifying the perpetrators as unknown in respect of two important crimes.

(b) The Chamber Never Found That Zupljanin Hired Members of the SOS Who Were Suspected of Having Committed Crimes, Much Less Those With Criminal Records

164. The Chamber never found, nor did the evidence show, that anyone suspected of having committed a crime, let alone with a criminal record, was permitted to join the SPD, let alone that Zupljanin knew that anyone permitted to join the SPD was suspected of having committed a crime or was a person with a criminal record.[239] The mere fact that some members of the SOS were accepted into the SPD and that some members of the SOS were suspected to have committed crimes during the blockade of Banja Luka in no way establishes the fact relied on by the Chamber, particularly because the evidence showed that Mr Zupljanin was alert to the need to exclude – and arrest – some members of the SOS who were suspected of

238 Judgement, vol.II, para. 514.

239 *See*, sub-Ground 1(d).

having committed crimes. The Chamber's reliance on this fact to infer broadly that his orders were "not genuinely meant" was therefore wrong.

(c) Zupljanin's Appointment of Those With Direct Knowledge of the Prijedor Prisons Was No Indication of Any Intention to Collude in a Whitewash

165. The Chamber never determined, as previously addressed,[240] whether the police seconded to security duties at Trnopolje, Omarska and Keraterm were subordinated to the VRS for the duration of that function and, hence, made no determination beyond a reasonable doubt that Mr Zupljanin possessed jurisdiction over any crimes that may have been committed there by police officers, let alone that he was responsible for crimes committed by VRS soldiers and officers at those camps.

166. Zupljanin nevertheless did appoint officers within the national security service to report on crimes that may have been committed at those locations and, rather obviously, individuals were appointed who had some knowledge of the prisons. Mr Zupljanin agreed at trial that the report was a self-serving whitewash, but this does not substantiate the entirely unsupported speculation by the Chamber that Mr Zupljanin acted with ulterior motives or criminally.

(d) Appointing the Former Warden of the Sanski Most Prison to a Different Position and Failing to Remove Drljaca Do Not Reveal a Hidden Agenda to Commit Crimes

167. The Chamber considered the appointment of Drago Vujanic in October 1992 as a white-collar crime inspector to be probative of Mr Zupljanin's concealed criminal intent to commit forcible transfer.[241] Vujanic was the warden of Sanski Most

[240] Sub-Ground 1(a).

[241] Judgement, vol.II, paras. 487, 514.

prisons in July 1992 when twenty prisoners died of asphyxia in the back of a refrigerator truck while being transported, ostensibly by Sanski Most police, to Manjaca.[242] Further, the Chamber accepted the possibility that the killings may have resulted from mere negligence, rather than intent to kill.[243] The Chamber later incorrectly states that it had found that they were "murdered."[244]

168. The Chamber found that Mr Zupljanin had been informed of this incident, but did not make any findings that investigations had not been pursued, or whether Mr Vujanic handled the matter improperly.[245] Is the Chamber suggesting that because individuals under Vujanic's authority may have committed manslaughter, without any further findings, he should have been disqualified from being appointed a white-collar crime inspector? How would such an appointment, made three months after the events in question and after almost all Indictment crimes had been committed, reveal Mr Zupljanin's otherwise concealed intention to commit forcible transfer? The conclusion is manifestly unsound and based on a series of unaddressed issues and findings. The incident merely reflects an assumption of a hidden intent, rather than indicative of that intent.

169. The Defence has already addressed the alleged non-removal of Drljaca,[246] which is similarly not indicative of any concealed criminal intent on Mr Zupljanin's part.

---

242 Judgement, vol.I, para. 205.

243 Judgement, vol.I, para. 215 ("the police officers knew or should have known that with their actions they could have caused the victims' deaths").

244 Judgement, vol.II, para. 419 ("recalls its finding in the Sanski Most section that these prisoners had been murdered").

245 Judgement, vol.I, para. 190; vol.II, para. 424. The Chamber could not simply rely on the absence of evidence to conclude that there were not investigations: *Martic* AJ, para. 142 ("it was not for Martic to bring evidence that he took action to punish the perpetrators of crimes committed against non-Serbs, but rather for the Prosecution to prove that he failed to do so.").

246 Appeal Brief, sub-Ground 1(e)(iii).

(e) Mr Zupljanin Did Not Fail to Disclose the Names of Known Suspects In Reports to the Public Prosecutor

170. Heavy reliance was placed on Mr Zupljanin submitting two reports to the public prosecutor's office that, in the Chamber's mind, concealed the names of suspected perpetrators.[247] Nothing could be further from the truth.

171. The Chamber observes, correctly, that in the reports themselves the names of the perpetrators are indicated as "unknown." However, both reports were accompanied by the statements of all witnesses to the events – including the names of all the suspected perpetrators and everything else known about the incidents.[248] The suspected involvement of policemen in those events, to the extent it was known to Mr Zupljanin himself, was handed over the public prosecutor. His conduct is no evidence of concealment of crimes, much less of a concealed intent to further such crimes; on the contrary, these reports must be considered along with the many others in which Mr Zupljanin forthrightly identifies crimes and recommends or directs immediate action to address the crimes.

(f) The Finding That Mr Zupljanin "Did What He Could to Ensure Impunity" for the Perpetrators of the Koricanske Stijene Massacre Reflects A Troubling Disregard of the Evidence

172. One of the worst crimes committed during the Indictment period occurred during the transfer of prisoners between these two VRS/TO facilities on 21 August 1992, at a place called Koricanske Stijene.[249] The prisoners apparently had been initially detained at Trnopolje because they were believed to have "taken part in or

247 Judgement, vol.II, paras. 516-517.

248 Exs. P1567, pp. 4-13; 2D71, pp. 12-23.

249 Judgement, vol.I, para. 638.

financed the Muslim 'attack' on Prijedor."[250] Police officers from the Prijedor police station escorted the convoy between the two military detention facilities.[251] During that transfer, "'[l]ocal soldiers'"[252] boarded the bus in Skender Vakuf, a town where, according to the Chamber, the "[m]embers of the Skender Vakuf SJB were 'resubordinated' to" the 22nd Light Brigade of the VRS."[253] The Chamber's acknowledgement that the Skender Vakuf SJB was re-subordinated to the VRS is one of the two examples of the Chamber anecdotally recognising that re-subordination of policemen did occur, and apparently for an extended period.

173. Somewhere outside of Skender Vakuf, the prisoners were ordered off the bus by someone in a police uniform who appeared to be in charge. The prisoners were then shot by, *inter alia*, "two soldiers" and grenades were used. A VRS infantry unit in the area reported that the crime had been committed by policemen from Prijedor and Sanski Most, accusing them of "genocide," and asked its superior command, the 1st Krajina Corps,[254] to investigate the incident.[255]

174. Zupljanin initiated investigations into this event promptly even though there may have been some doubt as to the affiliation of the perpetrators or whether they were subordinated to the military at the time of the crime. He attended the crime scene almost immediately; discovered what he could about the identity of the perpetrators, learning from the police chief in Skender Vakuf that some policemen from Prijedor had admitted to the crime; convened a meeting of the police chiefs with jurisdiction over the scene and the suspects and insisted "on the recovery, burial, and identification of the bodies and the prosecution of the perpetrators of this crime";[256] and demanded that a survivor of the massacre be brought to him

[250] Judgement, vol.I, para. 637.

[251] Judgement, vol.I, para. 638.

[252] Judgement, vol.I, para. 640.

[253] Judgement, vol.I, para. 637.

[254] Judgement, vol.I, para. 644.

[255] Judgement, vol.II, para. 467; vol.I, para. 644.

[256] Judgement, vol.II, para. 470.

personally in Banja Luka so he could be interviewed[257] and handed over safely to the Red Cross.[258] After a series of other investigations, which included a visit to the site by an investigating judge, Mr Zupljanin submitted a criminal report on the incident to the Banja Luka Public Prosecutor's Office on 8 September against unidentified perpetrators[259] and on 11 September ordered the Prijedor police station to take statements from all those alleged to have been involved in escorting the convoy.[260] The Prijedor police chief obstructed the investigation, reacting with "contempt" toward Zupljanin during the meeting on 24 August[261] and, upon receiving the instruction from Mr Zupljanin to take witness statements, claimed that "the policemen who had escorted the convoy had been mobilised into the army and deployed at the front line" in Han Pijesak, some 300 kilometres away.[262] Zupljanin then repeated the request, along with additional requests, on 7 October and was again told that the escorts were deployed on the front-line in Han Pijesak. The matter was then passed to the public prosecutor's office, which the Chamber appears to have acknowledged was responsible, in conjunction with the Prijedor police station, for any all future steps in the investigation and prosecution of the perpetrators.[263] The VRS Main Staff, to which the perpetrators were allegedly subordinated after 9 September,[264] had in the meantime been informed at least

---

257 Judgement, vol.II, para. 477 ("Marinko Kovacevic testified that he, as deputy public prosecutor, attended interviews with five survivors of the killings at Koricanske Stijene conducted by the investigative judge Jevto Jankovic, between 16 and 17 September 1992.").

258 Judgement, vol.II, para. 471; Krejic (ST-195), T.14094-14096 (2 Sep 2010).

259 Judgement, vol.II, para. 474. The Chamber erroneously gives the date of 8 October at paragraph 517.

260 Judgement, vol.II, para. 475.

261 Krejic (ST-195), T.14079 (1 Sep 2010) ("Simo Drljaca again reacted with contempt towards what Stojan Zupljanin said. And I must say I had never seen Stojan Zupljanin lose his calm. This time he was really wagging his finger and saying that somebody will answer for that crime, that the perpetrators would be tried.").

262 Judgement, vol.II, para. 475.

263 Judgement, vol.II, para. 482.

264 Judgement, vol.II, para. 476 ("the policemen who escorted the convoy had been mobilized into the army").

twice about the incident and the alleged involvement of members of the Prijedor police.[265]

175. The Chamber inferred that Mr Zupljanin's conduct was probative of his involvement in the JCE because he (i) failed to indicate in his criminal report to the Prosecutor's Office that he had grounds to believe that the perpetrators were "members of the Prijedor police";[266] and (ii) denied in a media interview that there were survivors of the incident and that it was under investigation (though he did indicate that investigation was ongoing).[267] The Chamber's finding – the very last before embarking on its "conclusion" on Mr Zupljanin's criminal responsibility: he "did what he could to ensure impunity for the perpetrators."[268]

176. Nothing could be further from the truth, nor could a more incorrect and false conclusion have been reached. The Chamber fails to mention that the report to the Prosecutor's Office included the statements of all witnesses to the event, identifying every single suspected perpetrator and their probable affiliation with the Prijedor Police.[269] No reasonable trier of fact would have committed such a serious error in appreciating the evidence, particular where that evidence is relied on to make such a damning and wide-ranging inference. The failure to disclose details of the investigation on international television is in no way probative that Mr Zupljanin was obstructing, or intended to obstruct, the investigation.

177. In order to infer that Zupljanin handled his duties *with the intention* of furthering forcible transfer, the Chamber would have had to eliminate the possibility that: Mr Zupljanin genuinely believed (albeit mistakenly) that the police officers were re-subordinated to the military, which may have affected the extent of his efforts;

---

265 Judgement, vol.II, paras. 644-646.

266 Judgement, vol.II, paras. 471, 517.

267 Judgement, vol.II, paras. 481, 517.

268 Judgement, vol.II, para. 517.

269 Ex. P1567, pp. 4-13.

that he tried his best; that he did the best he felt he could do in all the circumstances; that he was merely negligent; that he was grossly negligent; that he was reckless in respect of the potential impact on future crimes; or that some his acts, such as not announcing a massacre to the world on Nightline, were in pursuit of non-criminal goals, such as avoiding a public relations disaster or avoiding fear among the non-Serb population in the ARK. The Chamber does not come close to analysing any of these alternatives to the *mens rea* required for commission through JCE.

(iv) Even Assuming That All of the Chamber's Factual Findings Are Correct, It Does Not Support An Inference Of Criminal Intent To The Exclusion of All Other Reasonable Possibilities

178. Even assuming that every finding by the Chamber was correct, it still does not establish Mr Zupljanin's *mens rea* to the requisite standard. The Chamber did not address other reasonable explanations for his alleged lack of action including: (i) genuinely believing, albeit mistakenly, that crimes being perpetrated were beyond his authority or ability to control, given the primary involvement of the VRS in the directing the conduct of hostilities; (ii) gross negligence; (iii) reckless disregard of the potential consequences; (iv) being overwhelmed by the scale of events; and (v) failing to intervene in all cases because he believed that he did the most he could to curb the worst excesses of the violence. Mr Zupljanin himself wrote at the time that "it appears that the situation is increasingly getting out of control of the organs of legal authority" and specifically noted that a large percentage of police resources were being co-opted by the military in the form of re-subordinated police.[270]

179. The Chamber's inquiry was not to examine in retrospect whether Mr Zupljanin met the Nelson Mandela standard of public service; its inquiry was to determine whether the only possible explanation for his conduct was an intent to commit

[270] Ex. P621, pp. 7, 43.

forcible transfer. The Chamber failed to adequately consider any of these alternative possibilities, simply assuming that omissions could be treated as being as transparent reflection of intention as actions. The failure to have done so yielded a manifestly unreasonable outcome.

(v) Conclusion

180. The Chamber's errors are made no less severe because they relate to a variety of different incidents. As recently stated, "Mathematically speaking, if on five different occasions I was each time 70 per cent convinced that the Accused shared the necessary intent, this would not necessarily result in me being 100 per cent convinced, let alone 350%. In fact, generally speaking, the likelihood remains at 70 per cent."[271]

181. The Chamber's false conclusions that Mr Zupljanin filed reports designed to mislead the public prosecutor, and that he "did what he could to ensure impunity" for the Koricanske Stijene murders stand out as striking examples of irrational fact-finding based on a flagrant disregard or misunderstanding of the evidence. Far from proving Mr Zupljanin's criminal intent, they are strongly probative of the absence of criminal intent against a sea of circumstantial, ambiguous and inconclusive evidence. The Chamber's reasoning is deficient and faulty, invalidating the judgement and occasioning a blatant miscarriage of justice.

[271] *Stanisic & Simatovic* TJ, para. 2418 (Separate Opinion of Judge Orie).

B. GROUND 2: Joint Criminal Enterprise (JCE III)

1. Introduction

182. Mr Zupljanin's second ground of appeal concerns his convictions pursuant to the third category of Joint Criminal Enterprise under Article 7(1). The sub-grounds are addressed in a slightly different order than found in Mr Zupljanin's Notice of appeal, but the substance of the sub-grounds have not changed. Additionally, sub-grounds 2(b), 2(c), and 2(d) have been addressed together.

2. Sub-Grounds 2(b), 2(c) and 2(d)

(i) Overview of Issues Common to the Three Sub-Grounds

183. The Trial Chamber erred in finding that Mr Zupljanin possessed the required *mens rea* for JCE III.

184. In order to establish an accused's *mens rea* for JCE III, a Trial Chamber must first establish that all of the elements of JCE I have been met.[272] In addition, it must also be established beyond reasonable doubt:

a. that the accused possessed the intent to participate in and contribute to the common criminal purpose,[273] and

b. (i) that the crimes were a natural and foreseeable consequence of the JCE ("the Objective Element"), and (ii) that the accused was aware that such

[272] *Brdjanin* AJ, paras. 411, 428, 429. The Zupljanin Defence has already raised a number of challenges to the Chamber's findings regarding Zupljanin's *mens rea* in the JCE I section (Ground 1). Many of those principles and challenges are equally applicable here. In particular, see sub-Grounds 1(a), 1(e), and 1(f).

[273] *Kvocka et al*. AJ, para. 83.

crime was a possible consequence of the execution of that enterprise and with that awareness, willingly took the risk.[274]

185. A Chamber must make specific findings on each element of an accused's alleged liability—and in finding an accused guilty, must be satisfied that each and every element has been proved beyond reasonable doubt by the Prosecution.[275] The "beyond reasonable doubt" standard applies to all facts which are "indispensable for entering a conviction",[276] including facts from which presumptions or inferences are drawn.[277]

(ii) The Chamber's Methodology

186. The Chamber first analyzed the "crime base" evidence for each municipality individually.[278] In these sections, the Trial Chamber made findings on whether the evidence proved that the alleged crimes occurred and whether they met the requisite legal requirements. The Trial Chamber also made findings on the perpetrators of the crimes, usually identified by group or unit.

187. In its section on Zupljanin's individual responsibility,[279] however, the Chamber made only broad findings regarding categories of crimes, without making specific findings regarding individual crimes or individual municipalities. Of particular relevance to this sub-ground, in paragraphs 522-528 (vol. II), the Chamber considered the subjective foreseeability to Mr Zupljanin of crimes committed by unspecified "Serb Forces" in the ARK Municipalities as a whole.

---

274 *Martic* AJ, para. 168; *Brdjanin* AJ, paras. 365, 411; *Stakic* AJ, paras. 65, 87; *Kvocka et al*. AJ, para. 83; *Blaskic* AJ, para. 33; *Krajisnik* TJ, para. 882; *Brdjanin and Talic* Pre-Trial Decision, para. 30.

275 *D. Milosevic* AJ, para. 21.

276 *Ntagerura* AJ, para. 174.

277 *Halilovic* AJ, paras. 111-129.

278 Judgement, vol.I, paras. 134-1691.

279 Judgement, vol.II, paras. 518-530.

188. The Chamber then moved to its findings on responsibility for the municipalities. In this section, however, the Chamber returned to analyzing each municipality individually.[280]

Sub-ground 2(c): The Trial Chamber failed to make any specific findings with regard to Mr Zupljanin's intent to participate in and to further the criminal purpose of the JCE

189. The Chamber erred in law, however, by failing to properly apply the law to the evidence on the record. The paragraphs devoted to Zupljanin's *mens rea* under JCE III liability make no mention of his intent.[281]

190. Instead, paragraphs 521-528 (vol.II) deal solely with Mr Zupljanin's foresight of crimes outside of the common criminal purpose.[282] Nothing in the remainder of the section devoted to assessing Zupljanin's criminal responsibility[283] can be understood to be an analysis of his intentions as required by JCE III.

191. The similarity between the language of JCE I *mens rea* regarding the voluntary participation and the language of JCE III *mens rea* regarding intent to participate in the JCE may mean that the Chamber equated its finding in paragraph 520 (vol. II)—that he shared the intent with other members of the JCE to achieve the permanent removal of Bosnian Muslims and Bosnian Croats—with the intent to participate in the JCE as part of its JCE III analysis.[284] The additional requirement of proof of intent to contribute, however, necessitates an independent analysis; no such analysis was undertaken by the Trial Chamber.

---

280 Judgement, vol.II, paras. 799 *et seq*.

281 Judgement, vol.II, paras. 521-528.

282 Dealt with below in Ground 2(d).

283 Judgement, vol.II, paras. 343-530.

284 But *see*, *Tadic* AJ, para. 228, in which the Appeals Chamber sets out three *mens rea* elements apparently unique to JCE III.

192. Because of the Chamber's failure to apply the correct legal standard, the Appeals Chamber is requested to invalidate the convictions and apply the correct legal standard to the evidence on the record. Multiple reasonable inferences were available on the record, including inferences consistent with the innocence of Mr Zupljanin. The Chamber's failure to make specific findings represents the lack of evidence on the record supporting Mr Zupljanin's intentions.

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

193. The Chamber's seven paragraphs devoted to JCE III make no determination that those crimes were a *natural and foreseeable consequence* of the JCE, as was required to establish the Objective Element.[285] The Chamber later makes reference to a "finding" that the JCE III crimes were "foreseeable consequences" of the execution of the common plan,[286] but without any citation in the Judgement to where this finding was made. The Chamber was mistaken in stating that it had previously made such a finding, perhaps confusing subjective foreseeability, for which it did make a finding at paragraphs 521 through 528, and objective foreseeability, for which no finding was made at all.

(i) Error of Law

194. The Chamber committed an error of law by failing to make any findings on whether the crimes charged in Counts 1-8 of the Indictment were an objectively natural and foreseeable consequence of the common purpose. The failure to make

[285] Judgement, vol.II, paras. 522-528.

[286] For findings related specifically to Mr Zupljanin, *see*, Judgement, vol.II, paras. 805, 832, 845, 850, 859, 864, 869.

a finding in respect of an essential element of liability invalidates the Chamber's conviction by way of JCE III.

195. Thus, Zupljanin requests the Appeals Chamber to quash his conviction and enter a judgement of not guilty for the JCE III crimes.

(ii) Error of Fact

196. No reasonable trier of fact, in any event, could have reached such a finding. The common criminal purpose, as defined by the Chamber, was the permanent removal of Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state. The Chamber expressly excluded violent crimes from the common criminal purpose. Indeed, the Chamber excluded every form of unlawful coercion charged in the Indictment.

197. The key notion here is that the crimes of violence must be a "consequence" of the JCE. Crimes of violence are not a natural and foreseeable *consequence* of the objective to see the permanent departure of non-Serbs from the ARK. Many factors contributed to the occurrence of crimes, including opportunism driven by ethnic hatred, a desire to revenge perceived atrocities by the other side, and a lack of adequate command and control in military operations. Indeed, many of the crimes appear to have been committed without the perpetrators' having the slightest interest in inducing the victims to flee.

198. A closer question is whether non-violent crimes were a foreseeable and natural consequence. This question might hinge on precisely what forms of coercion the Chamber considered to be within the common criminal purpose. As discussed under Ground 1(f), this is a matter of pure speculation given that the Chamber excluded from the common purpose not only violent crimes, but also all non-violent unlawful measures of coercion. In the absence of any meaningful definition of what was intended within the common criminal purpose, it is

impossible to come to any determination that even the non-violent crimes were natural and foreseeable consequences thereof.

199. This error is compounded by the Chamber's failure to make any particularized findings in respect of the foreseeability of specific crimes, much less the foreseeability in respect of specific municipalities. A finding that an unspecified crime at an unspecified location was a foreseeable and natural consequence of the JCE would substantially and dangerously diminish the objective threshold of JCE liability.

200. No reasonable trial of fact could have reached the verdict of guilt beyond reasonable doubt based on the lack of evidence presented and the lack of necessary, underlying findings regarding the objective foreseeability of the JCE III crimes.

Sub-ground 2(d): The Trial Chamber also in fact in finding that the JCE III crimes were foreseeable to Stojan Zupljanin and that he willing to took the risk

(i) Dolus Eventualis

201. The Chamber impermissibly generalized and distorted factual findings in order to find Zupljanin could foresee that crimes could be committed and willingly accepted that risk. The conclusions reached do not accurately reflect either the previous findings made or the chronological timeline of those findings.

202. The entire section regarding Zupljanin's individual criminal responsibility pursuant to JCE III is devoid of footnotes (outside of a single reference to a Zupljanin Defence argument during closing arguments).[287] This lack of a properly

[287] Judgement, vol.II, paras. 522-528.

footnoted decision precludes the Defence and the Appeals Chamber from assessing and tracing back through the Trial Chamber's findings, and the parties and Appeal Chamber are erroneously left to speculate or surmise how the Trial Chamber arrived at the findings that it did.[288]

203. Similarly, the section on Mr Zupljanin's responsibility for the municipalities[289] lacks any footnotes or internal references (except for footnotes summarizing which acts constitute persecution according to the Trial Chamber findings). It is not explained how the generic findings in paragraphs 522-528 (vol. II) regarding the "Serb Forces" or the ARK Municipalities as a whole can be applied equally to each municipality. Indeed, the "crime base" findings in Volume I, differing from municipality to municipality, demonstrate that each municipality must be analyzed individually.

204. A brief comparison of the Chamber's findings for each municipality demonstrates the error in its approach. The events in each municipality took place in a unique context, with differing ethnic compositions, sequences of events, and people in power or decision-making positions. This lack of references makes it impossible to see how the Chamber parsed through this complex context or to understand how it grouped together findings from disparate and unique municipalities into broad statements relating to Mr Zupljanin's foreseeability.

205. For example, in its "Conclusions on Responsibility of Accused for Crimes Committed in Municipalities",[290] the Chamber began its analysis of each municipality by listing the units or groups it found to be the perpetrators of the

[288] *Krajisnik* AJ, para. 176. Furthermore, the Appeals Chamber has recognized that every accused has the right to a reasoned opinion pursuant to Article 23 of the Statute and Rule 98*ter*(C) of the Rules. *Kvocka et al.* AJ, para. 23.

[289] Judgement, vol.II, paras. 801-803, 805, 828, 829, 832, 841-843, 845-848, 850, 855-857, 859-862, 864-867, 869.

[290] Judgement, vol.II, para. 799 *et seq*.

underlying crimes. Each municipality has a different group of perpetrators. For example, some municipalities include paramilitary groups,[291] while most do not.[292] Some municipalities refer to the SOS,[293] while others do not. In some municipalities, the crimes were committed by JNA or VRS soldiers. In fact, each municipality includes reference to at least one group or unit operating *only* within that municipality.[294] Each group or unit had different responsibilities, duties, motivations, as well as being part of different command structures (or not part of any command structure at all). It cannot be said that the foreseeable actions for one group would be equally foreseeable for another group, nor is there any indication that Mr Zupljanin did or even could know where each group was operating and when, or what tasks each group was performing.

206. Thus, the Chamber erred by making unsupported generalizations about the eight ARK municipalities as a whole and then using those generalizations to make further unsupported findings about each municipality when each municipality was unique and required independent analysis. No reasonable trier of fact would have reached the conclusions regarding foreseeability had the evidence been properly analyzed.

207. In any event, the generalizations made by the Chamber regarding foreseeability are unreasonable that no reasonable trier of fact would have made them. For example, in paragraph 524 (vol. II), the Trial Chamber assesses the purported

---

[291] Kljuc (vol.II, para. 841); Kotor Varos (vol.II, para. 846); Teslic (Vol.II, para. 865).

[292] Banja Luka (vol.II, para. 801); Donji Vakuf (vol.II, para. 828); Prijedor and Skender Vakuf (vol.II, para. 855); Sanski Most (vol.II, para. 860).

[293] Banja Luka (vol.II, para. 801); Sanski Most (vol.II, para. 860).

[294] Banja Luka (ARK Crisis Staff); Donji Vakuf (19th Partisan Division, later the 19th Infantry Brigade); Kljuc (30th Partisan Brigade); Kotor Varos (Kotor Varos SJB); Prijedor and Skender Vakuf (Prijedor Intervention Platoon, 343rd Motorised Brigade of the Banja Luka Corps of the JNA); Sanski Most (members of the TO Prijedor refers to the 5th Kozara Brigade of the TO, but there is no indication that these groups have any relationship to one another); Teslic (Teslic SJB, Red Berets/Mice Group).

factors that made it foreseeable to Zupljanin of the possibility that Serb Forces would commit murders and extermination of Muslims and Croats in the execution of the JCE.

208. First, the Chamber refers to the enrollment in the Detachment of "seasoned criminals"[295] and that Mr Zupljanin had received reports of the "lack of discipline and criminal activities" carried out by the Detachment. The former claim is based on a glaring factual error, and inconsistency in the Chamber's own findings, that has already been addressed.[296] Even assuming no such factual error, the Chamber's reasoning is so vague that it fails to demonstrate Zupljanin's foresight, much less that he undertook the risk that crimes would be committed. What does the Chamber mean by "seasoned criminals" and what is that assertion based on? How would such knowledge, whatever it might have been, establish foresight of crimes in all municipalities? How would it establish foresight that the crimes at the most violent end of the spectrum, namely *murder* and *extermination*, could take place? None of this can be addressed, much less decided beyond a reasonable doubt, without some specific findings.

209. The same defect arises from the Chamber's reliance on unspecified "crimes" being committed against non-Serbs in Banja Luka. The Chamber does not explain what crimes would be foreseeable to Mr Zupljanin based on what he allegedly did know (would those crimes include murder and extermination?) nor in what locations they would be foreseeable (would crimes in Teslic, where the SPD was never present be foreseeable because of harassment allegedly known to him to have been inflicted by the SPD in Banja Luka?).

---

295 Judgement, vol.II, para. 524.

296 *See*, sub-Ground 1(d)(ii).

210. The Chamber relies on the deaths of 20 non-Serb detainees on 7 July 1992 to establish Mr Zupljanin's foresight and undertaking the risk. The Chamber does not imply that these deaths were themselves foreseeable; indeed, the Chamber accepts the possibility that they may not have even been intentional.[297] The Chamber seems to reproach Mr Zupljanin for not thereafter prohibiting the Sanski Most police from supervising the detention or transportation of prisoners, but also fails to identify any criminal behaviour, specifically murder or extermination, after the 7 July 1992 incident involving the Sanski Most police.

211. The Chamber refers to the murder of eight non-Serb detainees at the Manjaca camp between 6 and 7 August 1992, and the killings at Koricanske Stijene on 21 August 1992 as evidence of Zupljanin's subjective foresight. The factual errors underlying these findings have already been addressed; but even assuming those findings to be correct, the inference of Mr Zupljanin's foresight is unsustainable. First, no crimes were found to have been committed by the Prijedor police after 21 August 1992, rendering the finding of foresight irrelevant. Second, as previously discussed, all the police officers allegedly involved in the Koricanske killings were transferred out of the Prijedor police and sent to a faraway frontline. Third, the preliminary information on the incident of 6-7 August was not finalized until 26 August 1992, which was after the Koricanske Stijene killings. The Chamber failed to assess foresight in relation to what Mr Zupljanin knew prior to that incident.

212. Finally, the Trial Chamber refers to Mr Zupljanin's tasking of the Prijedor police with escorting buses of non-Serb detainees to Croatia in September 1992. No crimes are alleged to have occurred on this occasion, and certainly not any violent crimes. The Chamber's finding is therefore irrelevant or moot.

[297] Judgement, vol.I, para. 215 ("the police officers knew *or should have known* that this way of transporting the detainees could result in their death") [emphasis added].

213. The foregoing particularized analysis of the factors relied on by the Chamber shows that the Chamber's findings are either insufficiently specific, or based on *non sequitur* reasoning. Either way, no reasonable trier of fact could have found, based on the evidence on the record, that murder and extermination were foreseeable to Mr Zupljanin and that he "willingly took the risk".

(ii) Failure to Link Crimes to JCE Members

214. The Trial Chamber also erred in failing to properly link the physical perpetrators to members of the JCE. As the Chamber correctly noted in summarizing the law, when the physical perpetrators of the JCE crimes are not JCE members, the Prosecution must prove beyond a reasonable doubt that the physical perpetrators were "linked" to JCE members. Such a link is established by a showing that the JCE member used the non-JCE member to commit a crime pursuant to the common criminal purpose of the JCE.[298]

215. The language of the law is straightforward: it must be established that the JCE member *used* the non-JCE member to commit a crime.[299] Thus, there must be some proof of an act by the JCE member in order to use the non-JCE members as tools to further the JCE.

216. In its section "Conclusion on Responsibility of Accused for Crimes Committed in Municipalities", the Chamber assesses "whether the crimes committed in the Municipalities can be imputed to Mico Stanisic, Stojan Zupljanin, or any other members of the JCE."[300] The Chamber utilized an identical pattern for analyzing each municipality: it began by summarizing its findings on the physical perpetrators; it then analyzed how those physical perpetrators were connected, if at all, to any members of the JCE, or what command structure the units or groups

[298] Judgement, vol.I, para. 104. *See,* also, *Brdjanin* AJ, paras. 412-413.

[299] Judgement, vol.I, para. 104.

[300] Judgement, vol.II, para. 799.

were in; and finished the paragraph by finding that the "JCE members, *when using these Serb Forces in [municipality] to commit crimes*, acted in accordance with the common plan." The difficulty with this finding is that there is actually no evidence, nor any preliminary findings explaining how the JCE members actually *used* the "Serb Forces" to commit crimes as part of the JCE.[301] Establishing that a relationship between the JCE members and non-JCE members existed does not allow for the only reasonable inference to be that the JCE members "used" the non-JCE member in furtherance of the common criminal purpose.

217. The Chamber's errors in this regard invalidate Mr Zupljanin's convictions pursuant to JCE III liability. As noted above, the perpetrators in each municipality differed, as well as their roles, duties, obligations, and command structures. Thus, how JCE members "used" the physical perpetrators is an important aspect of any potential foreseeability on Zupljanin's part. The Chamber's failure to properly establish the link between JCE members and the non-JCE physical perpetrators undercuts any foreseeability imputed to Mr Zupljanin. The unsafe convictions require the intervention of the Appeals Chamber.

(iii) Conclusion

218. The Chamber's errors regarding Zupljanin's *mens rea* were unreasonable such that no reasonable trier of fact would have made such findings. The evidence does not support the findings and Mr Zupljanin requests the Appeals Chamber to overturn the convictions pursuant to JCE III liability and enter a judgement of not guilty instead.

[301] *See,* also, Judgement, vol.II, para. 316, which similarly finds that the objective of the JCE was implemented by members of the JCE by using Serb Forces as physical perpetrators, but likewise fails to support this finding and ultimately defers its finding on the establishment of a "link" between the physical perpetrators and a member of the JCE to a subsequent section.

Sub-ground 2(a): The Trial Chamber erred in law in imposing criminal liability on Mr Zupljanin 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*

219. JCE III liability, as a matter of law, should not be imposed where the "foreseeable" crime is of substantially greater gravity and seriousness than the intended crime. A legal standard of this order is required to ensure that JCE III is kept within proper bounds, and reflects the actual holdings of previous Appeals Chamber case law. Mr Zupljanin should not have been convicted for crimes of extreme violence – extermination, murder, torture and cruel treatment – where his intent was limited to non-violent crimes.

220. Appeals Chamber case law reflects that JCE III liability for a violent crime is always predicated on some element of violence or the likelihood of violence. In *Tadic*, for example, the Appeals Chamber contemplated the possibility of JCE III for murder in respect of expulsions intentionally carried out "at gunpoint" or by "burning their houses."[302] In *Stakic*, the accused was found guilty of extermination JCE III in part based on the Trial Chamber's finding that he had "intent to kill" required for murder.[303]

221. Judge Cassese has similarly noted that liability should not be extended by way of JCE III to special intent crimes unless the intended crime includes the requisite intent. Liability should not be extended in such cases because the "distance" between the *mens rea* of the foreseeable crime and the intended crime "must not be so dramatic."[304]

---

302 *Tadic* AJ, para. 204.

303 *Stakic* TJ, para. 656; *Stakic* AJ, para. 96.

304 Cassese, pp. 121-122.

222. Many "felony-murder" statutes in common law jurisdictions similarly restrict the "distance" between the intended and the foreseeable crime. Some limit the underlying felonies to a short list specified by statute, others to those offenses inherently dangerous, and still other jurisdictions according to whether the felonies are dangerous in the way committed by defendants.[305] A typical example that illustrates the point is the difference between a group of thieves who commonly intend to commit armed robbery of a bank, and a group of bank tellers who agree to defraud the bank by working together to submit false withdrawal slips. If one of the bank tellers is spotted by a supervisor preparing a fake invoice and takes out a gun and kills the supervisor, most felony-murder statutes would not impose liability on the other co-conspirators for the murder. Liability would be imposed in the case of an armed robbery, however, where the likelihood of a murder arises directly from the means adopted for the intended crime.

223. The notion of "foreseeability" alone, which has an objective and subjective dimension in respect of JCE III liability, is insufficient to ensure that there are no quantum leaps in the gravity of the intended crime as compared to the gravity of the foreseen crime. The Appeals Chamber should adopt a standard that directly ensures that liability for foreseeable violent crimes unless, at the least, violent means are intended by the accused.

224. No findings have been made that Zupljanin intended the adoption of any violent means to effectuate the common purpose. To the extent that violence was foreseeable, it would have been foreseeable from the ongoing armed conflict including perhaps the lawful detentions that would be permitted as part of the

[305] Binder, p. 406, *citing* Samuel H. Pillsbury, Judging Evil: Rethinking the Law of Murder and Manslaughter 106, 108 (1998). *See also*, UK Homicide Act, Ch. 11, Part 1, section 1(1), (Prior to the Homicide Act, a murder committed during the commission of *any felony* could be charged as murder with malice aforethought under the concept of constructive malice. The Homicide Act abolished constructive malice and limited the transference of intent only where murder was committed in the commission of another felony in which the offender possessed the intent for murder.).

armed conflict. The Chamber made no finding, unlike in the *Stakic* case, that Zupljanin intended recourse to any violent means.

225. The adoption of such an additional condition for imposition of JCE III liability would respond to many of the concerns that have expressed about the potential untrammelled breadth of JCE III.[306] Some commentators, for example, have proposed the radical solution that JCE III be abolished in favour of the concept of aiding and abetting a joint criminal enterprise to better reflect the actual *mens rea* relative to the crime.[307] Others have proposed a much more robust causation element.[308] A more modest approach such as that now proposed would respond to those concerns without radically altering the basis structure of JCE III.

226. The imposition of commission liability on Mr Zupljanin for the violent crimes of extermination, murder, torture and cruel treatment – without any indication of a violent intent – overstates his culpability and is plainly unjust. The Chamber's failure to consider the absence of any connection between the intended and the foreseeable crimes was an error of law that invalidates the convictions entered against Mr Zupljanin pursuant to the third category of Joint Criminal Enterprise for at least those crimes of violence.

---

306 *Brdjanin* TJ, para. 355; *Brdjanin* AJ, Separate Opinion of Judge Shahabuddeen, para. 18, asserting that a physical perpetrator of a JCE crime must be part of the JCE; *Martic* AJ, Separate Opinion of Judge Schomburg, para. 3, expressing concern that the definition of JCE III "lacks in both specificity and objective criteria", and para. 7. Also*, see*, ECCC Decision on JCE, para. 83, holding that the Chamber was not satisfied that JCE III formed part of customary international law at the time relevant to the case.

307 Ambos, pp. 8-13; Ohlin, p. 19.

308 Cassese, pp. 118-120.

C. GROUND 3: Extermination

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

227. The Trial Chamber erred in fact and law in finding that the crime of extermination was committed.[309] 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.

228. The Chamber found that incidents ranging between 20 and 800 victims meet the required standard for the crime of extermination.[310] It is, however, unclear on what basis the Chamber set the threshold of large-scale killing at 20 victims.[311] Nor does the Chamber offer any explanation for connecting various killings at or from Omarska occurring over a period spanning from late June to the end July 1992,[312] without any single "mass killing"[313] event occurring.

---

309 Judgement, vol.I, paras. 200-228, 331-350, 453-494, 655-703; and vol.II, paras. 801-803, 805, 841-843, 845-848, 850, 855-857, 859.

310 Judgement, vol.I, paras. 189, 190, 205, 215, 219, 310-321, 337, 343-344, 436,457, 529-555, 572, 578, 583-617, 641-648, 663, 666-668, 677, 683, 688-689, 690, 692-697.

311 ICTY and ICTR trial chambers have held that "responsibility for a single or a limited number of killings is insufficient" (*Vasiljevic* TJ, para. 228; *Gacumbitsi* TJ, para. 309; *Ntagerura* TJ, para. 701). In other cases, they have held that a perpetrator may be guilty of extermination if he kills, or creates the conditions of life that kills a single person, as long as he is aware that his act or omission forms part of a mass killing event (*Kayishema*, TJ, para. 147; *Bagilishema*, TJ, para. 88).

312 Judgement, vol.I, paras. 694-695.

313 With possible exception of an incident in which 18 persons were killed by the guards one night in July 1992, but this incident has not been found by the Chamber to amount to extermination (*see*, Judgement, vol.I, paras. 612, 671.

229. The crime of extermination has "a more destructive connotation meaning the annihilation of a mass of people,"[314] and "must be collective in nature rather than directed towards singled out individuals.[315]

230. The Chamber failed to give reasons as to what combination of factors it took into account to arrive at the 20-victim threshold. The distinction appears arbitrary, particularly in light of some events with just slightly fewer victims not being categorized as extermination.[316] The absence of explanation is a failure to give reasons at best, or simply arbitrary, and impairs Zupljanin's right of appeal.[317] The error is one of law, rendering the extermination convictions invalid.

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

231. 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

---

[314] *Krstic* TJ, para. 496. When determining the *actus reus* of extermination as a crime against humanity, the Chamber in *Krstic* stated that "[t]he very term "extermination" strongly suggests the commission of a massive crime, which in turn assumes a substantial degree of preparation and organisation." (*Krstic* TJ, para. 501. *See,* also, *Gacumbitsi* AJ, para. 84 ("Proof of a policy or a plan, though not a prerequisite to a conviction for extermination, is evidentially relevant")).

[315] *Stakic* TJ, para. 639.

[316] *E.g.,* a number of men killed in front of Manjaca camp on 6 August 1992; a number of men who died as a result of beatings at Vrbas Promet factory; a number of men who died as a result of beatings at the TO warehouse; or, particularly an incident in which 18 persons are alleged to have been killed by the guards in the Omarska camp one night in July 1992 (Judgement, vol.I, paras. 671, 694-695).

[317] *Naletilic and Martinovic* AJ, para. 603, referencing to *Hadjianastassiou v. Greece*, European Court of Human Rights, no. 69/1991/321/393, [1992] ECHR Ser. A., No. 252, Judgement of 16 December 1992, para. 33.

to systematically subject a large number of people to conditions of living that would lead to their deaths.[318]

232. The *mens rea* standard for extermination is the same as the *mens rea* required for murder as a crime against humanity with the difference that 'extermination can be said to be murder on a massive scale'. It requires that the person intended, by his acts or omissions, either killing on a large scale, or the subjection of a widespread number of people, or the systematic subjection of a number of people, to conditions of living that would lead to their deaths.[319] This includes the requirement that the perpetrator's mental state encompasses all objective elements of the crime: the annihilation of a mass of people.[320]

233. Recklessness or gross negligence has never been held to satisfy the *mens rea* of extermination, and there is no reason to believe that the *mens rea* is, or would be, lower than that required for committing murder – *i.e.*, *dolus directus*.[321]

234. The Chamber accepted that the 20 victims of asphyxia while being transported from Sanski Most to Manjaca may have resulted from mere negligence, rather than intent to kill.[322] The perpetrators therefore did not commit extermination, and that event cannot be so characterized, nor imputed as such to the JCE even if it was foreseeable. This was an error of law, arising from a misstatement of the Chamber's own findings, that invalidates the Chamber's legal conclusion.

---

[318] Judgement, vol.I, paras. 200-228, 331-350, 453-494, 655-703; vol.II, paras. 801-803, 805, 841-843, 845-848, 850, 855-857, 859.

[319] *Stakic* AJ, para. 259, referencing to *Ntakirutimana* AJ, para. 522.

[320] *Stakic* TJ, para. 641.

[321] *Brdjanin*, TJ, para. 395; *See also Stakic,* AJ, paras. 100-103; *Krstic*, TJ, para. 495; *Stakic* TJ, paras. 638, 642.

[322] Judgement, vol.I, para. 215 ("the police officers knew or should have known that with their actions they could have caused the victims' deaths").

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

235. The Chamber erred in fact and in law in concluding that it was foreseeable to Zupljanin or that he was aware, that the extermination would be committed in the territory of the AR Krajina.[323] No reasonable Chamber would have reached such conclusion when other inferences were available on the evidence.

236. Assuming the extermination did take place as found by the Chamber, the issue is whether Zupljanin, even with the full knowledge of the plan, could have had the foresight that the crimes of such gravity would take place. This error arises from a legally erroneous evaluation of foreseeability. Applying JCE III in this manner was legally wrong. The issue, therefore, is whether participants in the plan would know from the outset that the execution of that plan might foreseeably involve the commission of crimes by other members of the JCE.

237. All incidents and situations listed as indicators that the possibility that Serb Forces could commit murders and extermination of Muslims and Croats in the execution of the common plan was sufficiently substantial as to be foreseeable to Zupljanin (and that he willingly took that risk),[324] are either misinterpreted or plainly wrong.

238. The police criminal activities referred to in Zupljanin's dispatch of 30 April 1992 cannot be characterized as a proper sign to Zupljanin that ARK police would commit extermination against non-Serbs.[325] The one serious crime – murder mentioned in the dispatch was in fact committed by two members of the Banja

---

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

324 Judgement, vol.II, para. 524.

325 Ex. P1002.

Luka police against a Serb, and both policemen were suspended and ultimately their service was terminated.[326]

239. Further, Zupljanin was not the one in charge of designating policemen to transport the detainees. Likewise, there is no evidence that Zupljanin knew about conditions in which detainees were being transported from one location to another. The Chamber heard testimony of a Muslim witness that those escorting the detainees on a bus "ordered them to lie on the floor" when the bus was passing through Banja Luka, because they "wanted to make [the bus] look empty".[327]

240. Zupljanin's possible knowledge about the death of 20 detainees while transported on 7 July 1992 could only have come from a semi-annual report that most likely did not reach him until sometime in January 1993.[328] [REDACTED],[329] not to mention that there is no evidence it ever reached Zupljanin in person. Zupljanin's conduct towards the murder investigations, as well as the information he had and the steps he took concerning the killing incident at Koricanske Stijene, as dealt with elsewhere in this Brief, show that it was not the only reasonable inference a trier of fact could have made. As for the September 1992 dispatch tasking, *inter alia*, the Prijedor police with escorting buses of non-Serb detainees to Croatia,[330] came as a result of a decision of the RS Government and pursuant to an agreement reached between the RS Government and the ICRC.[331] There is no evidence that any incidents occurred during this task or that those taking part in the Koricanske Stijene killings were assigned to perform the escort. Finally, the dispatch was signed on behalf of Zupljanin and not by him in person. Hence, to infer any criminal aim from such a document, let alone Zupljanin's foresight or *mens rea* for the crime of extermination defies any logic and is entirely erroneous.

---

326 Rodic (ST-125), T.8814 (16 Apr 2010).

327 Murselovic (ST-227), T.15720-15721 (11 Oct 2010).

328 *E.g.,* Ex. P386.

329 [REDACTED].

330 Ex. P1905.

331 Judgement, vol.I, para. 636.

241. The Chamber failed to define as of when Zupljanin became aware of the foreseeability of extermination, or when he undertook the risk of extermination.

242. 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.

D. GROUND 4: Sentencing

243. Mr Zupljanin's sentence is manifestly excessive and inappropriate. The conditions of imposing JCE III liability are such that a person may be convicted of crimes while at the same time having taken substantial efforts to prevent or minimize those crimes. A mountain of evidence showed that Mr Zupljanin did just that by: taking prompt action to prevent a paramilitary group from massacring up to 600 non-Serbs; continuously reporting serious crimes and instructing and exhorting SJB heads to stop them; pursuing investigations to the extent he could, particularly when very serious crimes were involved.[332] Previous jurisprudence has accorded such actions "significant weight" in mitigation.[333] The Chamber not only failed to give adequate weight to these considerations – it gave them no consideration at all in its two-paragraph analysis of mitigating factors.

244. The Chamber also gave no regard to the overwhelming and chaotic circumstances Mr Zupljanin was facing, and his own uncertainty as to his capacity to intercede.

245. Notwithstanding the Chamber's broad discretion in respect of sentencing, it manifestly "failed to take into account what it ought to have taken into account" and "ventured outside its discretionary framework."[334] That failure is all the more unacceptable given that Mr Zupljanin, even though he could not foresee the basis on which he might ultimately be convicted, squarely raised at trial his efforts to suppress serious crimes as a factor in mitigation of sentence.[335] The great deference usually accorded to trial chambers in matters of sentencing requires an equally great solicitude by the trial chamber to remain within the appropriate framework of analysis to avoid imposing an arbitrary, irrational and disproportionate sentence. Having manifestly failed to address relevant factors in

---

[332] Judgement, vol.II, para. 515.

[333] *Popovic at al.* TJ, para. 2222.

[334] *D. Nikolic* JSA, para. 9; *Munyakazi* AJ, para. 166.

[335] Zupljanin Closing Arguments, T.27628-27621, 27640-27641 (1 Jun 2012).

mitigation, the Chamber's sentence is not entitled to deference. On the contrary, it cries out for reduction.

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 considering the sentence to be imposed on Zupljanin

(i) Introduction

246. The Chamber disregarded its own findings as well as considerable evidence that Mr Zupljanin (i) made substantial efforts to suppress violence when he felt that he was able to do so; (ii) reported the most serious crimes of which he became aware and urged others to take stronger measures to suppress more serious forms of violence; (iii) investigated crimes involving serious violence to the greatest extent he could; and (iv) faced exigent and chaotic conditions that, while not excusing the crimes of which he was convicted, ought nevertheless to be an extenuating circumstance that mitigates sentence. The Chamber's finding that Mr Zupljanin's failures revealed an intent to commit forcible transfer does not mean that the efforts he did take – both within and outside of his jurisdiction – to lessen the severity and impact of the violence even on the victims of forcible transfer should be disregarded in assessing his sentence.

(ii) The Chamber Disregarded Mr Zupljanin's Efforts to Suppress Serious Violence As Reflected In Direct Action, Reporting and Investigations

247. The Chamber found that in May 1992, Zupljanin intervened to protect "a group of 300-600 people primarily of Roma and Muslim ethnicity" when he heard that they were under threat of being killed by a paramilitary group. Zupljanin told policemen near the scene "to make every effort to avert the imminent crime and that he would make sure that assistance would be on its way, if necessary" and he

indeed sent those reinforcements.[336] The Chamber concluded that "*owing to this intervention* the massacre was prevented."[337]

248. No reference to this event is made in the Chamber's deliberations on sentencing. A vague reference is made to evidence that Zupljanin "always tried to help people regardless of their backgrounds," but the witnesses relied were those who provided general information about Mr Zupljanin's character, not about this specific event.[338] Thus, in rejecting this evidence on the basis that it was only in "specific and isolated instances,"[339] the Chamber did not direct its mind or address a major intervention to save up to 600 souls.

249. This event, given the substantial harm prevented, warranted direct consideration by the Chamber as a mitigating factor for sentence. Similar acts in previous cases have been taken into account as mitigation.[340] The Chamber here gave it no consideration. In other words, the Chamber did not at all consider whether saving 600 people from death was a factor to have been considered in mitigation.

250. The Chamber systematically disregarded Mr Zupljanin's continuous reporting about serious crimes and his exhortations that crimes be prevented and suspected perpetrators investigated and disciplined. One of Mr Zupljanin's earliest dispatches as head of the CSB expressly urged the SJB's that "[i]t is in our interest to preserve the ethnic representation of the SJB employees in accordance

336 Judgement, vol.II, paras. 456, 515.

337 Judgement, vol.II, para. 456 [emphasis added].

338 Judgement, vol.II, para. 953, fn. 2057-2058.

339 Judgement, vol.II, para. 953.

340 *Blagojevic and Jokic* TJ, para. 854 (affirmed in *Blagojevic and Jokic* AJ, para. 342) (assisting young Muslims to pass safely through a minefield considered as a mitigating factor); *Popovic et al.* TJ, para. 2220 (taking into account an act that saved thousands of lives, even if it may have been motivated by military considerations), and para. 2194 (taking into account mere involvement in the decision to open the corridor that permitted thousands of Muslim soldiers to pass through without being attacked).

with the ethnic structure of the population in the municipalities," and a Muslim witness testified that Zupljanin "pleaded with the staff to stay and that no one was prevented from signing."[341] A Zupljanin dispatch of 30 April underlined that "[o]n several occasions, this Centre has emphasized that Security Service employees must behave in a legal, competent and professional way," but noted that "some SJB do not observe and put into practice the above-mentioned principles, which is obvious from the latest information on failure to carry out the orders of this Centre and on the instances of criminal activities of some authorized officials."[342] Mr Zupljanin urged police during a meeting on 6 May to do everything within their powers to "preserve the peace."[343]

251. During a media interview on 12 May 1992, Zupljanin was asked about the incidence of "explosions, shootings, robberies" to which he responded that one of the purposes of the imposition of a curfew was to reduce such violence and that

> [t]he Service has information that several sabotage groups have been infiltrated into the area of the Centre, their aim being to knock down buildings, especially religious and sacred buildings, and upset citizens. And so on. We do not have the forces to protect all these buildings, but we do have the forces to oppose these groups and individuals. I expect that in the coming period the number of explosions will be brought down to a negligible amount.[344]

252. Just several days later, Zupljanin issued an "Operative Work Plan for solving robberies, terrorism, extortion, etc., which have escalated in the territory of the Banja Luka SJB since the beginning of April 1992."[345] The plan, aimed at arresting and punishing persons accused of committing crimes (including many

341 Ex. P355; Judgement, vol.II, para. 383.

342 Ex. P1002.

343 Ex. P367, p. 2.

344 Ex. P560, p. 3.

345 Ex. 1D198; Judgement, vol.II, para. 457.

committed by Serbs against non-Serbs),[346] was "at least in part, implemented,"[347] and a series of measures, including "arrests and remands in custody in relation to some of the crimes listed in the work plan" were made.[348]

253. Mr Zupljanin gave an unvarnished report about the incidence of crime and the lack of cooperation by certain members of the police during a meeting with fellow heads of the CSBs and his superiors at the RS MUP Collegium held on 11 July 1992.[349] He openly criticized attitude of the army and civilian authorities towards the non-Serb population; highly inadequate conditions in "undefined camps" in a blatant breach of "international norms"; as well as the break down in the communication system, and complete failure of the military and civilian judiciary where

> several thousand court cases have not been completed, there are no judges for criminal cases, they are afraid, they are being threatened in some municipalities [...] courts are not functioning, and hardened criminal are being released from prisons, which has an impact of the establishment and functioning of the rule of law and on the work of the internal affairs organs."[350]

254. On 30 July, Zupljanin wrote a report condemning "gross violations of the law in the work of a number of employees of the Public Security Service" including their participation in "criminal acts" and "their tolerant attitude toward criminal incidents. All of this is contributing to a loss of confidence in the legal institutions of the system of and a general sense of uneasiness among citizens."[351] Specific examples are provided and the reasons diagnosed. Zupljanin then issues a series of orders, including to "take appropriate and vigorous measures to prevent any

---

346 Mandic (ST-187), T.9753, 9757 (7 May 2010); Ex. P860; *See,* also, Ex. 2D65, p.5; ST-225, T.17280-17281 (11 Nov 2010) (closed session).

347 Judgement, vol.II, paras. 459-460. Exs. 1D201; 1D202.

348 Judgement, vol.II, para. 458. Another plan was also prepared in October 1992 (Ex. 2D71, pp. 18-19).

349 Exs. P160; 1D63; ST-121, T.3769 (24 Nov 09). *See*, also, Krulj (ST-202), T.2182-2183 (28 Oct 2009).

350 Ex. P160, p. 8.

351 Ex. 2D25, p.1.

bringing into custody or arrest of citizens, regardless of their ethnic affiliation, by unauthorised groups and individuals and immediately take appropriate legal measures against those responsible for such actions."[352]

255. A summary report issued by Zupljanin in October includes an extensive review of crimes committed, including crimes committed by "uniformed armed persons, members of reserve forces" and by "armed groups and individuals of Serbian ethnic origin" who tried to "violently seize control over relevant issues and events in municipalities."[353]

256. The Chamber swept all this aside by relying on a statement made in relation to Mr Zupljanin's liability, finding that he "did not do anything to reassure and protect the non-Serb population, aside from issuing ineffective and general orders, which were not genuinely meant to be effectuated."[354]

257. It was within the Chamber's discretion to conclude, based on its JCE I finding, that Mr Zupljanin did not genuinely intend orders any orders that were contrary to that intent. The fallacy indulged by the Chamber in repeating that finding in the sentencing section is the unexamined presumption that that finding should be deemed to apply to any and all orders to suppress serious violence – which the Chamber did not find were within Mr Zupljanin's intent. The distinction is obviously of vital significance in sentencing.

258. The overbreadth of the Chamber's assertion is also reflected in the concrete investigations undertaken by Mr Zupljanin personally. As previously discussed, he personally intervened to the extent of his powers to ensure that the Koricanske Stijene massacre was investigated.[355] He condemned the crime in no uncertain

---

352 Ex. 2D25, p.3.

353 Ex. P621, p. 9.

354 Judgement, vol.II, para. 953. *See*, also, para. 514.

355 Exs. 2D139; P1380; Krejic (ST-195), T.14037, T.14067, 14077-14080 (1 Sep 2010).

terms[356] and issued a strict order that any survivors were "to reach Banja Luka safe and sound" and that any failure on their part to ensure this would incur their "personal responsibility".[357] He took similar actions on many other occasions.[358] He ordered an investigation into the Manjaca/Vrbas river killings,[359] as well as the arrest of a person, believed by a Prosecution witness to have been one of the persons from the red kombi van.[360] Witnesses testified that he was opposed to any effort to conceal murders.[361] The Chamber, notwithstanding its broad assertion mentioned earlier, never found otherwise. This information, at the least, ought to have compelled the chair to weigh in mitigation that Mr Zupljanin opposed murder as a means to accomplish forcible transfer.[362]

259. Murder was not the only crime that Mr Zupljanin actively opposed. Mr Zupljanin filed criminal reports in a number of cases of violence against non-Serbs,[363] and made frequent inquiries to the SJBs to obtain more information about violent crimes.[364]

260. The Chamber did not act within its discretion in failing to consider any of this. Failing to consider saving 600 non-Serbs and failing to consider that Mr Zupljanin

---

356 Krejic (ST-195), T.14048 (1 Sep 2010).

357 Exs. P607; P608. *See*, also, Krejic (ST-195), T.14037 (1 Sep 2010), T.14094-14096, 14131 (2 Sep 2010).

358 Exs. P595; 1D63; ST-121, T.3769 (24 Nov 2009); ST-225, T.17277-17278 (11 Nov 2010) (closed session).

359 Ex. 2D71.

360 ST-225, T.17289-17290 (11 Nov 2010) (closed session); *See*, also, Ex. 2D126.

361 Krejic (ST-195), T.14131 (2 Sep 2010).

362 *Karemera and Ngirumpatse* TJ, para. 1724; *Krajisnik* AJ, paras. 816-817; Blaskic AJ, para. 696; *Babic* JSA, para. 43; *Deronjic* SJ, para. 156; *Sikirica et al.* SJ, paras 195 and 229.

363 *E.g.*, Exs. 1D371; 1D372; 1D373.

364 SZ-003, T.24568-24569 (22 Sep 2011) (private session); Raljic (ST-167), T.12453-12455 (30 Jun 2010); Rakovic (ST-166), T.6985-6986 (26 Feb 2010); Hanson (ST-158), T.4635-4636 (11 Dec 2009); Exs. P1002; 2D25; P596; 1D82; P617; 2D83; P625, pp. 16-18.

took significant steps to oppose violent crimes – which required renewed consideration of the scope of its liability findings – were matters that the Chamber was obliged to consider in mitigation.

(iii) The Chamber Failed to Take Into Account the Exigent Circumstances That Made Fulfilling His Duties Difficult Or Dangerous

261. The difficulty of performing tasks was rejected by the Chamber as a factor excusing liability on the basis that his obligations under Serbian law required him to discharge his tasks even when doing so placed his life in danger.[365] While it is permissible to reject any factors falling short of duress in respect of liability, sentencing is precisely where the Chamber ought to have taken such factors into account. The difficulty of enforcing order and discipline in war-time, while not relieving criminal liability, has previously been taken into account as a factor in sentencing.[366]

262. The Chamber does not address these considerations. No consideration was given anywhere to evidence that Zupljanin received death threats.[367] The Chamber made countless findings about the chaotic circumstances of the time and the political cross-winds and military influence that affected the obedience of supposed subordinates at the SJBs. The chaos of war, influx of refugees, lack of proper communication system, inadequate operation of the local courts and prosecutor's offices, to name just a few of the exigent factors Zupljanin coped with on a daily basis, coupled with the fact that he was a police officer and a professional, and not a political figure,[368] made otherwise regular police tasks and assignments far more burdensome.

---

365 Judgement, vol.II, para. 354.

366 *Blaskic* AJ, para. 711.

367 Majkic (ST-172), T.3200-3201 (16 Nov 2009).

368 Zupljanin was never a member of the SDS. Nielsen (ST-092), T.5581 (27 Jan 2010).

263. Yet, in a palpable breach of the discretionary powers vested in it, the Chamber chose to ignore all these significant aspects of Zupljanin's peculiar position and daunting tasks he was facing.

264. This error negatively affects the sentence imposed and necessitates due consideration by the Appeals Chambers and appropriate reduction of Mr Zupljanin's sentence.

(iv) Other Mitigating Factors Not Relied Upon by the Trial Chamber

265. Although age is routinely used as a mitigating factor in sentencing,[369] yet the Chamber did not consider it at all. Mr Zupljanin is now 62 years old. The natural physical deterioration associated with advanced years and accompanying medical issues make serving a long-term sentence of imprisonment harder for an older person. If Zupljanin were to serve his entire sentence of 22 years, he would be nearly 80 years old when released. It is reasonable to assume that he may not even leave to see the day of his release.

266. Inextricably associated with the latter factor is the issue of serving sentence in a foreign country, in the circumstances where the accused does not speak the language of the host country and where there is a much less prospect for regular family visits, if any. These are circumstances that may be hard to bear, and they should normally amount to a factor in mitigation of sentence.[370] Again, the Chamber failed to take this factor into account.

---

[369] In *Krnojelac*, the advanced age of accused was a factor taken into consideration by the Trial Chamber in passing the sentence (*Krnojelac* TJ, para. 533); Also, the *Plavsic* Judgement relies on physical deterioration and likely no good-quality life left upon release as the policy reasons for mitigating a sentence due to the age of the Accused (*Plavsic* SJ, paras. 105-106). *See*, also, *Erdemovic* SJ, para. 16; *Simic et al.* TJ, para. 1099.

[370] RUF SJ, para. 206.

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

267. The Chamber's sentencing discussion contain no reference at all to the nature of its liability finding: that he intended forcible transfer, and that all other crimes were deemed merely foreseeable. The Chamber states generally that it had "taken into account" the fact that "Zupljanin has been found to have committed the majority of these crimes through his participation in a JCE."[371] That sentence is perplexing, given that Zupljanin's liability is predicated on JCE liability for all crimes except misappropriation of property. More importantly, the Chamber at no time addresses how it should take into account the relatively low threshold of liability required for the JCE III crimes, other than to state generally that Zupljanin "was a high-level police official at the time.".[372]

268. Liability through JCE III, as with other forms of liability requiring less than direct intent, is generally less culpable than JCE I.[373] The Chamber's own liability findings were that Zupljanin did not intend any crime, much less any violent crime. The Chamber could not simply reason, as it appears to have done, that the crimes are serious and the accused's position is high, therefore sentence must be heavy. Sentence cannot be determined on the basis of the 'objective' gravity of the crimes; rather, it entails the particular circumstances of the case, the form and degree of the participation of the accused in the crimes, and the number of victims.[374]

---

371 Judgement, vol.II, para. 947.

372 Judgement, vol.II, para 946.

373 *Kajelijeli* TJ, para. 963; *Krstic* AJ, para. 268; *Martic* AJ, para. 350.

374 *Blaskic* AJ, para. 683. *See*, also, *Karemera and Ngirumpatse* TJ, para. 1719, referencing to *Munyakazi* AJ, para. 185; *Mrksic and Sljivancanin* AJ, para. 375, 407; *Rukundo* AJ, para. 243; *Kordic and Cerkez* AJ, para. 1061; *Popovic et al.* TJ, para. 2134; *Nahimana et al*. AJ, para. 1038; *Aleksovski* AJ, para. 182; *Martic* AJ, para. 350; *Galic* AJ, para. 409; *Delalic et al.* ASJ, para. 39; *Delalic et al.* AJ, para. 731.

269. Zupljanin was not the key mover in the campaign of persecutions. As acknowledged by the Prosecution "he wasn't a Brdjanin, he wasn't a Vukic, he wasn't a Kalinic."[375] His participation in JCE, if any, was not substantial, but rather limited.[376] Zupljanin used neither his authority nor his power to *commit* a crime, and the Chamber plainly failed to have regard to the fact that he was not exhorting the JCE. In *Krstic*, the Appeals Chamber stated "Krstic remained largely passive in the face of his knowledge of what was going on; he is guilty, but his guilt is palpably less than others who devised and supervised the executions all through that week and who remain at large."[377]

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

270. The Chamber alleges that Zupljanin's orders to suppress violence were "not genuinely meant to be effectuated."[378] This finding is based on two sub-findings: (i) a finding that Zupljanin had hired "criminal members" of the SOS to be part of the Special Police Detachment notwithstanding a previous order to the reserve police not to hire people with criminal records; and (ii) appointing a commission to investigate abuses in the Prijedor prison camps comprised of "the very people who were in charge of interrogating detainees in these camps."[379]

271. The Chamber heard no evidence that the "criminal members" of the SOS were convicted criminals; that the supposed "criminal members" were even suspected to be criminals at the time; or that Zupljanin knew that any suspected criminals were being inducted into the Special Police Detachment. The facts are in no way probative of Mr Zupljanin's intentions, much less do they prove that Mr Zupljanin

375 OTP Closing Arguments, T.27365 (29 May 2012).

376 Appeal Brief, Grounds 1 and 2.

377 *Krstic* TJ, para. 724.

378 Judgement, vol.II, para. 953.

379 Judgement, vol.II, para. 514.

did not intend his orders to be carried out. Similarly, the appointment of the commission to investigate abuses in Prijedor does not imply an intent that his orders should not be carried out, but merely that those most responsible for the camps should be the ones in the first instance to give an account of conditions there. The sweeping conclusion that all of Mr Zupljanin orders (both before and after the appointed of this commission) were not intended to be carried out is facially untenable and irrational.

272. This finding, unproven beyond a reasonable doubt,[380] apparently was given great weight in sentencing. It substantiated the Chamber's decision to disregard all of Mr Zupljanin's orders to suppress violence and reporting, and generally imputed to him a deceptive and dissimulating character. No reasonable trier could have reached this finding, nor accorded it such sweeping significance in respect of all the efforts made by Mr Zupljanin in chaotic and exigent circumstances.

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

273. The failure to considering the preceding factors induced the Chamber to impose a manifestly excessive sentence.

274. The excessive sentence also may have arisen from the Chamber impermissibly taking into account the same factors under both gravity and aggravation, which is impermissible.[381] The Chamber took Zupljanin's participation in the JCE into

[380] *Blaskic* AJ, para. 686; *Delalic et al.* AJ, para. 763; *Kunarac et al.* TJ, para. 850. *See*, also, *Karemera and Ngirumpatse* TJ, para. 1724, referencing to *Nahimana et al.* AJ, para. 1038, and *Kajelijeli* AJ, paras. 82, 294.

[381] *See*, *e.g., Limaj et al.* AJ, para. 143 ("factors taken into consideration as aspects of the gravity of a crime cannot additionally be taken into account as separate aggravating circumstances, and *vice versa*"); *M. Nikolic* JSA, para. 58. *Krstic* TJ, para. 707; *Blaskic* AJ, para. 693; *Vasiljevic* AJ, paras. 172-173. *See*, also, *Karemenra and Ngirumpatse* TJ, para. 1724, referencing to *Ndindabahizi* AJ, para. 137.

account when assessing the gravity of the crimes,[382] and then again as an aggravating circumstance.[383] In the section dealing with the gravity, the Chamber stated that "[t]he fact that Zupljanin has been found to have committed the majority of these crimes through his participation in a JCE has been taken into account in the determination of his sentence."[384] It then moved on to discuss the aggravating factors and the first thing it did was to refer to its finding that "Zupljanin participated in a JCE", and to "Zupljanin's active and direct participation in the JCE."[385]

275. The same error was committed in respect of Zupljanin's position of authority which was counted both as a matter of gravity[386] and aggravation.[387] The Chamber basically held that, during the Indictment period, Zupljanin held a "position of power and authority"[388] and the fact that he contributed to the JCE in several ways constituted "abuse of his position"[389] which the Chamber then counted as an aggravating factor.[390] Effectively, the Chamber counted as abuse of position precisely what it had relied on to impute criminal responsibility to Zupljanin in the first place. The Appeals Chamber has previously held that position of authority or as a superior cannot be simultaneously counted in gravity and aggravating factors.[391]

---

382 Judgement, vol.II, para. 947.

383 Judgement, vol.II, para. 948.

384 Judgement, vol.II, para. 947.

385 Judgement, vol.II, para. 948.

386 Judgement, vol.II, para. 946.

387 Judgement, vol.II, para. 948.

388 Judgement, vol.II, para. 948.

389 Judgement, vol.II, para. 948.

390 Judgement, vol.II, para. 950.

391 *M. Nikolic* JSA, para. 61; *Stakic* AJ, para. 411. *See*, also, *Deronjic* SAJ, para. 106; *Rajic* SJ, para.107.

276. The Chamber failed to address important elements in mitigation, inappropriately assumed that its liability finding precluded any further need to evaluate the extent to which Mr Zupljanin tried to suppress violence, and failed to give any consideration to the nature and degree of his liability relative to the crimes. The result was a sentence that is dramatically disproportionate to his culpability and is inappropriate.

277. Stojan Zupljanin does not deserve such a harsh sentence. He was never driven in his personal or professional life by hatred, intolerance, or desire to discriminate on any grounds whatsoever. He may not have done enough to avoid any liability for forcible transfer, and for other crimes through JCE III, but he does not deserve to be convicted as if he was an active proponent of all the JCE III crimes. Not even the Chamber could make this finding, and yet it sentenced him as if it had.

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

278. The Chamber erred in determining that Mr Zupljanin ordered the crime of "appropriation of property" as a form of 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.[392]

279. No findings were made that civilians could not otherwise deposit their savings in banks, leave their money with friends, or even that the seizure of money by the police constituted permanent forfeiture. On the contrary, the dispatch as issued by Mr Zupljanin specified that the police should "issue certificates of temporary seizure" in respect of any amounts confiscated.[393] Temporary seizure cannot qualify as appropriation of property, which implies permanence.

280. The temporary confiscation of currency, even assuming that it could constitute appropriation, does not meet the threshold of being "of gravity equal to the crimes listed in Article 5 of the Statute"[394], *i.e.*, murder, extermination, enslavement, deportation, imprisonment, torture and rape. The outright destruction of a car[395] or personal belongings[396] have been found of insufficient gravity to constitute the crime of persecution. The Chamber made no findings concerning what options were available to civilians to preserve their assets while still complying with the currency cap. Further, no findings were made as to how much money was confiscated and from how many people. In the absence of such findings, the Chamber was not in a position to make any determination as to impact of these

---

392 Judgement, vol.II, paras. 526, 805.

393 Judgement, vol.II, para. 409.

394 *Blaskic* AJ, para. 135.

395 *Kupreskic et al.* TJ para. 631 [emphasis added, footnotes omitted].

396 *Blagojevic and Jokic* TJ, para. 620.

temporary confiscations. No finding could be made in such circumstances that the appropriation of property as persecution was analogous to the crimes of rape, unlawful imprisonment or torture.

281. The gravity of the impact must also be assessed against the pre-existing legal regulations. SFRY law imposed a similar cap going back to the Communist era and would, accordingly, have been anticipated by those leaving the ARK.[397] The continued enforcement of an existing law would not have imposed an unforeseen or avoidable burden by those seeking to shelter large quantities of cash or moveable property of great value.

282. The error as to the definition of appropriation invalidates the conclusion that Mr Zupljanin 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.

[397] Ex. P594, p.1.

III. OVERALL RELEIF SOUGHT

283. The Defence submits that the Appeals Chamber should:

(i) allow the appeal;
(ii) grant the appeal grounds; and

(iii) quash all Zupljanin's convictions and enter a verdict of acquittal
(iv) or, in the alternative, reduce the sentence of 22 years of imprisonment passed upon him.

Public

ANNEX A
TO STOJAN ZUPLJANIN'S APPEAL BRIEF

ANNEX A *Public*

GLOSSARY

AJ	Appeals Chamber Judgement
ARK	Autonomous Region of Krajina
BiH	Bosnia and Herzegovina
CSB	Services Security Centre
ECCC	Extraordinary Chambers in the Courts of Cambodia
Ex., Exs.	Exhibit, exhibits
fn.	Footnote
ICRC	International Committee for the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY / Tribunal	International Criminal Tribunal for the Former Yugoslavia
JCE	Joint Criminal Enterprise
JNA	Yugoslav People's Army
MUP	Republika Srpska Ministry of the Interior
OTP/Prosecution	Office of the Prosecutor
para., paras.	Paragraph, paragraphs
POW	Prisoner(s) of war
Practice Direction (IT/201)	Practice Direction on Formal Requirements for Appeals from Judgement (IT/201), 7 March 2002
Practice Direction (IT/184/Rev.2)	Practice Direction on the Length of Briefs and Motions (IT/184/Rev.2), 16 September 2005
RS	Republika Srpska
Rules	Rules of the Procedure and Evidence of the ICTY
SCSL	Special Court for Sierra Leone

SDS	Serb Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
SJB	Public Security Station
SOS	Serb Armed Formation
SPD	Special Police Detachment
Statute	Statute of the ICTY
T.	Trial transcript
TJ	Trial Chamber Judgement
TO	Territorial Defence
vol.	Volume
VRS	Army of Republika Srpska
Zupljanin	The accused Stojan Zupljanin

Public

ANNEX B
TO STOJAN ZUPLJANIN'S APPEAL BRIEF

TABLE OF AUTHORITIES

CONVENTIONS AND DOCUMENTS

ABBREVIATION	FULL CITATION
Chamber	Trial Chamber in *Prosecutor v. Mico Stanisic and Stojan Zupljanin* (IT-08-91-T)
GC IV	International Committee of the Red Cross, Geneva Convention Relative to the Protection of Civilian Persons in Times of War, of 12 August 1949
ICRC Commentary, GC IV	International Committee of the Red Cross, Commentary to IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Pictet (ed. 1958)
Indictment	*Prosecutor v. Mico Stanisic and Stojan Zupljanin* (IT-08-91-T), Second Amended Consolidated Indictment, 10 September 2009
Judgement	*Prosecutor v. Mico Stanisic and Stojan Zupljanin* (IT-08-91-T), Trial Chamber, Judgement, 27 March 2013
OTP Adjudicated Fact	*Prosecutor v. Mico Stanisic and Stojan Zupljanin* (IT-08-91-T), Decision Granting in Part Prosecution's Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 1 April 2010, Annex A
Prosecution FTB	*Prosecutor v. Mico Stanisic and Stojan Zupljanin* (IT-08-91-T), Prosecution Final Trial Brief, 14 May 2012
Zupljanin FTB	Prosecutor v. Mico Stanisic and Stojan Zupljanin, Zupljanin Defence Final Trial Brief, 14 May 2012

OTHER ICTY AUTHORITIES	
ABBREVIATION	**FULL CITATION**
Aleksovski AJ	*Prosecutor v. Zlatko Aleksovski* (IT-95-14/1-A), Appeals Chamber, Judgement, 24 March 2000
Babic JSA	*Prosecutor v. Milan Babic* (IT-03-72-A), Appeals Chamber, Judgement on Sentencing Appeal, 18 July 2005
Blaskic AJ	*Prosecutor v. Tihomir Blaskic* (IT-95-14-A), Appeals Chamber, Judgement, 29 July 2004
Blagojevic and Jokic AJ	*Prosecutor v. Vidoje Blagojevic and Dragan Jokic* (IT-02-60-A), Appeals Chamber, Judgement, 9 May 2007
Blagojevic and Jokic TJ	*Prosecutor v. Vidoje Blagojevic and Dragan Jokic* (IT-02-60-T), Trial Chamber, Judgement, 17 January 2005
Brdjanin AJ	*Prosecutor v. Radoslav Brdjanin* (IT-99-36-A), Appeals Chamber, Judgement, 3 April 2007
Brdjanin and Talic Pre-Trial Decision	*Prosecutor v. Radoslav Brdjanin and Momir Talic* (IT-99-36), Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001
Brdjanin TJ	*Prosecutor v. Radoslav Brdjanin* (IT-99-36-T), Trial Chamber, Judgement, 1 September 2004

Delalic et al. AJ	*Prosecutor v. Delalic et al.* (IT-96-21-A), Appeals Chamber, Judgement, 20 February 2001
Delalic et al. ASJ	Prosecutor v. Delalic et al. (IT-96-21-A), Appeals Chamber, Judgement on Sentence Appeal, 8 April 2003
Deronjic SAJ	*Prosecutor v. Miroslav Deronjic* (IT-02-61-A), Appeals Chamber, Judgement on Sentencing Appeal, 20 July 2005
Deronjic SJ	*Prosecutor v. Miroslav Deronjic* (IT-02-61-S), Trial Chamber, Sentencing Judgement, 30 March 2004
D. Nikolic JSA	*Prosecutor v. Dragan Nikolic* (IT-94-2-A), Appeals Chamber, Judgement on Sentencing Appeal, 4 February 2005
D. Milosevic AJ	*Prosecutor v. Dragomir Milosevic* (IT-98-29/1-A), Appeal Chamber, Judgement, 12 November 2009
Erdemovic SJ	*Prosecutor v. Drazen Erdemovic* (IT-96-22-T), Trial Chamber, Sentencing Judgement, 29 November 1996
Galic AJ	*Prosecutor v. Stanislav Galic* (IT-98-29-A), Appeals Chamber, Judgement, 30 November 2006
Gotovina AJ	*Prosecutor v. Ante Gotovina and Mladen Markac* (IT-06-90-A), Appeals Chamber, Judgement, 16 November 2012
Hadzihasanovic AJ	*Prosecutor v. Enver Hadzihasanovic and Amir Kubura* (IT-01-47-A), Appeals Chamber, Judgement, 22 April 2008

Halilovic AJ	*Prosecutor v. Sefer Halilovic* (IT-01-48-A), Appeals Chamber, Judgement, 16 October 2007
Haradinaj Retrial TJ	*Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* (IT-04-84bis-T), Trial Chamber, Judgement, 29 November 2012
Kordic and Cerkez AJ	*Prosecutor v. Dario Kordic and Mario Cerkez* (IT-95-14/2-A), Appeals Chamber, Judgement, 17 December 2004
Kordic and Cerkez TJ	*Prosecutor v. Dario Kordic and Mario Cerkez* (IT-95-14/2-T), Trial Chamber, Judgement, 26 February 2001
Krajisnik AJ	*Prosecutor v. Momcilo Krajisnik* (IT-00-39-A), Appeals Chamber, Judgement, 17 March 2009
Krajisnik TJ	*Prosecutor v. Momcilo Krajisnik* (IT-00-39-T), Trial Chamber, Judgement, 27 September 2006
Krnojelac AJ	*Prosecutor v. Milorad Krnojelac* (IT-97-25-A), Appeals Chamber, Judgement, 17 September 2003
Krnojelac TJ	*Prosecutor v. Milorad Krnojelac* (IT-97-25-T), Trial Chamber, Judgement, 15 March 2002
Krstic TJ	*Prosecutor v. Radislav Krstic* (IT-98-33-A), Appeals Chamber, Judgement, 2 August 2001
Kunarac et al. TJ	*Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (IT-96-23-T&IT-96-23/1-T), Trial Chamber, Judgement, 22 February 2001

Kupreskic et al. TJ	*Prosecutor v. Zoran Kupreskic, Mirjan Kupreskic, Vlatko Kupreskic, Drago Josipovic, Dragan Papic, Vladimir Santic (aka "Vlado")* (IT-95-16-T), Trial Chamber, Judgement, 14 January 2000
Kvocka et al. AJ	*Prosecutor v. Miroslav Kvocka, Milojica Kos, Mladjo Radic, Zoran Zigic and Dragoljub Prcac* (IT-98-30/1-A), Appeals Chamber, Judgement, 28 February 2005
Limaj et al. AJ	*Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu* (IT-03-66-A), Appeals Chamber, Judgement, 27 September 2007
Martic AJ	*Prosecutor v. Milan Martic* (IT-95-11-A), Appeals Chamber, Judgement, 8 October 2008
Martic TJ	*Prosecutor v. Milan Martic* (IT-95-11-T), Trial Chamber, Judgement, 12 June 2007
Milutinovic JCE Jurisdiction Decision	*Prosecutor v. Milan Milutinovic, Nikola Sainovic and Dragoljub Ojdanic* (IT-99-37-AR72), Appeals Chamber, Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction - *Joint Criminal Enterprise* , 21 May 2003
M. Nikolic JSA	*Prosecutor v. Momir Nikolic* (IT-02-60/1-A), Appeals Chamber, Judgement On Sentencing Appeal, 8 March 2006
Mrksic and Sljivancanin AJ	*Prosecutor v. Mile Mrksic and Veselin Sljivancanin* (IT-95-13/1-A), Appeals Chamber, Judgement, 5 May 2009
Naletilic and Martinovic AJ	*Prosecutor v. Mladen Naletilic and Vinko Martinovic* (IT-98-34- A) Appeals Chamber, Judgement, 3 May 2006
Oric AJ	*Prosecutor v. Naser Oric* (IT-03-68-A), Appeals Chamber, Judgement, 3 July 2008

Oric TJ	*Prosecutor v. Naser Oric* (IT-03-68-T), Trial Chamber, Judgement, 30 June 2006
Perisic AJ	*Prosecutor v. Momcilo Perisic* (IT-04-81-A), Appeals Chamber, Judgement, 28 February 2013
Plavsic SJ	*Prosecutor v. Biljana Plavsic* (IT-00-39&40/1-S), Trial Chamber, Sentencing Judgement, 27 February 2003
Popovic et al. TJ	*Prosecutor v. Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Ljubomir Borovcanin, Radivoje Miletic, Milan Gvero and Vinko Pandurevic* (IT-05-88-T), Trial Chamber, Judgement, 10 June 2010
Rajic SJ	*Prosecutor v. Ivica Rajic a.k.a. Viktor Andric* (IT-95-12-S), Trial Chamber, Sentencing Judgement, 8 May 2006
Sikirica et al. SJ	*Prosecutor v. Dusko Sikirica, Damir Dosen and Dragan Kolundzija* (IT-95-8-S), Trial Chamber, Sentencing Judgement, 13 November 2001
Simic et al. TJ	*Prosecutor v. Blagoje Simic, Miroslav Tadic and Simo Zaric* (IT-95-9-T), Trial Chamber, Judgement, 17 October 2003
Stakic AJ	*Prosecutor v. Milomir Stakic* (IT-97-24-A), Appeal Chamber, Judgement, 22 March 2006
Stakic TJ	*Prosecutor v. Milomir Stakic* (IT-97-24-T), Trial Chamber, Judgement, 31 July 2003
Stanisic and Simatovic TJ	*Prosecutor v. Jovica Stanisic and Franko Simatovic* (IT-03-69-T), Trial Chamber, Judgement, 30 May 2013

Tadic AJ	*Prosecutor v. Dusko Tadic* (IT-94-1-A), Appeals Chamber, Judgement, 15 July 1999
Vasiljevic AJ	*Prosecutor v. Mitar Vasiljevic* (IT-98-32-A), Appeals Chamber, Judgement, 25 February 2004
Vasiljevic TJ	*Prosecutor v. Mitar Vasiljevic* (IT-98-32-T), Trial Chamber, Judgement, 29 November 2002

ICTR AUTHORITIES	
ABBREVIATION	**FULL CITATION**
Bagilishema TJ	*Prosecutor v. Ignace Bagilishema* (ICTR-95-1A-T), Trial Chamber, Judgement, 7 June 2001
Bagosora AJ	*Prosecutor v. Théoneste Bagosora and Anatole Nsengiyumva* (ICTR-98-41-A), Appeals Chamber, Judgement, 14 December 2011
Gacumbitsi AJ	*Prosecutor v. Sylvestre Gacumbitsi* (ICTR-2001-64-A), Appeals Chamber, Judgement, 7 July 2006
Gacumbitsi TJ	*Prosecutor v. Sylvestre Gacumbitsi* (ICTR-2001-64-T), Trial Chamber, Judgement, 17 June 2004
Kajelijeli AJ	*Prosecutor v. Juvenal Kajelijeli* (ICTR-98-44 A-A), Appeals Chamber, Judgement, 23 May 2005

Kajelijeli TJ	*Prosecutor v. Juvenal Kajelijeli* (ICTR-98-44 A-T), Trial Chamber, Judgement, 1 December 2003
Kayishema TJ	*Prosecutor v. Clement Kayishema and Obed Ruzindana* (ICTR-95-1-T), Trial Chamber, Judgement, 21 may 1999
Karemera and Ngirumpatse TJ	*Prosecutor v. Edouard Karemera and Matthieu Ngirumpatse* (ICTR-98-44-T), Trial Chamber, Judgement, 2 February 2012
Munyakazi AJ	*Prosecutor v. Yussuf Munyakazi* (ICTR-97-36 A-A), Appeals Chamber, Judgement, 28 September 2011
Nahimana AJ	*Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze* (ICTR-99-52-A), Appeals Chamber, Judgement, 28 November 2007
Ndindabahizi AJ	*Prosecutor v. Emmanuel Ndindabahizi* (ICTR-2001-71-A), Appeals Chamber, Judgement, 16 January 2007
Ntagerura AJ	*Prosecutor v. André Ntagerura, Emmanuel Bagambiki & Samuel Imanishimwe* (ICTR-99-46-A), Appeals Chamber, Judgement and Sentence, 7 July 2006
Ntagerura TJ	*Prosecutor v. André Ntagerura, Emmanuel Bagambiki & Samuel Imanishimwe* (ICTR-99-46-T), Trial Chamber, Judgement and Sentence, 25 February 2004
Ntakirutimana AJ	*Prosecutor v Ntakirutimana & Ntakirutimana* (ICTR-96-10-A and ICTR-96-17-A), Appeals Chamber, Judgement, 13 December 2004
Rukundo AJ	*Prosecutor v. Emmanuel Rukundo* (ICTR-2001-70-A), Appeals Chamber, Judgement, 20 October 2010

Simba AJ	*Prosecutor v. Aloys Simba* (ICTR-01-76-A), Appeals Chamber, Judgement, 27 November 2007
Zigiranyirazo AJ	*Prosecutor v. Protais Zigiranyirazo* (ICTR-01-73-A), Appeals Chamber, Judgement, 16 November 2009

ECCC CASES	
ABBREVIATION	**FULL CITATION**
Ambos	Ambos, Kai, Amicus Curiae concerning (ECCC) Criminal Case File No. 001/18-07-2007-ECCC/OCIJ (PTC02), 27 October 2008
ECCC Decision on JCE	ECCC, Criminal Case File No. 002/19-01-2007-ECCC/OCIJ (PTC38), Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010

SCSL CASES	
ABBREVIATION	**FULL CITATION**
RUF AJ	*Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-A), Appeals Chamber, Judgement, 26 October 2009.
RUF SJ	*Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T), Trial Chamber, Sentencing Judgement, 8 April 2009

OTHER CASES AND LITERATURE	
ABBREVIATION	**FULL CITATION**
Binder	Binder, Guyora, Felony Murder and Mens Rea Default Rules: A Study in Statutory Interpretation, Buffalo Criminal Law Review, Vol 4:399 (2000)
Cassese	Cassese, Antonio, The Proper Limits of Individual Responsibility under the Doctrine of Joint Criminal Enterprise, Journal of International Criminal Justice 5 (2007)
Damned If You Don't	Gosnell, Christopher, Damned If You Don't: Liability for Omissions, The Ashgate Research Companion to International Criminal Law (2013)
Harhoff Article	Harhoff, Frederik, Email to 56 Contacts, Danish Newspaper BT, 6 June 2013.
Krebs	Krebs, Shiri, Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court, Vanderbilt Journal of Translational Law, Vol. 45, Number 3, May 2012
Mar'ab	*Iad Ashak Mahmud Marab et al. v. IDF Commander in the West Bank and Judea and Samaria Brigade Headquarters* (Case No. HCJ 3239/02), The Supreme Court Sitting as the High Court of Justice, Judgement, 2 May 2003
Ohlin	Ohlin, Jens David, Joint Intentions to Commit International Crimes
Plan Dalet	Plan Dalet (Plan D), 10 March 1948, General Section (Translated by Walid Khalidi – as it appears in Journal of Palestine Studies. V XVIII Number 1, 1988)

Israeli Supreme Court, Targeted Killings Case	*The Public Committee Against Torture in Israel and the Palestinian Society for the Protection of Human Rights and Environment v. The Government of Israel et al.* (Case No. HCJ 769/02), The Supreme Court Sitting as the High Court of Justice, Judgement, 13 December 2006
Salama	*Louie Salama et al. v. Israel Defence Force (IDF) Commander in Judea and Samaria and the Judge of the Military Appeals Court* (Case No. HCJ 5784/03, HCJ 6024/03, HCJ 6-25/03), Petition to The Supreme Court Sitting as the High Court of Justice, 11 August 2003
UK Homicide Act	United Kingdom, Homicide Act, 1957, 5 & 6 Eliz. 2, Ch 11

Public

ANNEX C
TO STOJAN ZUPLJANIN'S APPEAL BRIEF

Annex C *Public*

EXIBITS CITED OR REFERRED TO IN THE BRIEF

Exhibit No.	DESCRIPTION
L32	Law on State Administration, 23 March 1992
P160	Minutes of the Republika Srpska Ministry of Interior meeting held on 11 July 1992 in Belgrade
P221	Minutes of a meeting regarding change in Statute of ARK Crisis Staff/War Presidency to make its decisions binding on local municipalities, 31 May 1992
P355	Dispatch of the Banja Luka CSB about Conclusions from Expanded Center Council meeting on 6th April 1992, and the reorganization of the RS MUP, Security Services Centers and Public Security Stations, 10 April 1992
P367	Document of the Banja Luka CSB reporting the Conclusions reached at the expanded meeting of the Centre Council held on 6 May 1992, 20 May 1992
P386	Report on the Work of Public Security Station Sanski Most for the /First/ Six Months of 1992, 20 July 1992
P391	Dispatch of Public Security Station Sanski Most to National Security Service of Security Services Center Banja Luka providing a Report about detention centers in Sanski Most, 18 August 1992
P442	AR Krajina Instructions on Municipal Crisis Staffs and War Presidencies, No. 03-465/92, 11 June 1992
P530	Law on Internal Affairs, 23 March 1992
P560	"Glas" Newspaper Article entitled "We Guarantee the Peace" featuring an interview with Stojan ZUPLJANIN, 12 May 1992
P583	Dispatch by Stojan Zupljanin to Mico Stanisic About Activities in the ARK, 20 July 1992
P594	Order of Security Services Center Banja Luka to all Public Security Station limiting the amount of foreign currency to be taken by departing Non-Serbs, 31 July 1992
P595	Banja Luka CSB, Report on the Work of Security Services Center Banja Luka for the Period 1 January to 30 June 1992, dated July 1992

P596	Stojan Zupljanin to chiefs of all SJBs requesting submission of data, 3 August 1992
P601	Decision on Forming of the Commission to visit Municipalities and Public Security Stations of Prijedor, Bosanski Novi and Sanski Most, 14 August 1992
P607	Banja Luka CSB providing information on the closing of collection centres, 21 August 1992
P608	Dispatch No. 11-1/01-OD-445/92 by Stojan Zupljanin to Chiefs of all SJBs and Command of the 1st Krajina Corps, 22 August 1992
P617	Request of Security Services Center Banja Luka to Public Security Station Prijedor for delivery of information on investigation of the massacre in Koricanske Stijene, 7 October 1992
P621	Report of Banja Luka CSB on the Work of the SJB Banja Luka for the Period from 1 July to 30 September 1992, dated October 1992
P625	RS MUP, Annual Report on Work in the period April – December 1992, dated January 1993
P631	Report on Performed Inspection of the CSB and SJBs on the territory of the ARK, 5 August 1992
P657	Report of the Prijedor SJB to the Banja Luka CSB on Activities in the First Half of 1992, dated June 1992
P671	Dispatch Number No. 11-12-2188, containing Report of the Prijedor SJB Chief to the Chief of Banja Luka CSB regarding activity at Omarska and Trnopolje camps, 9 August 1992
P860	Banja Luka CSB, Information on Security Incidents and the Increase in Crime on the territory in April 1992, 17 April 1992
P960.24	Information of Public Security Station Kljuc on the Work and Activities of Public Security Station Kljuc During Combat Operations on the Territory of Kljuc Municipality, July 1992
P1002	Complaints by Stojan ZUPLJANIN regarding the work ethics of Security Services staff members and the execution of orders by Security Services Center Banja Luka, 30 April 1992
P1284.07	Decree on the Proclamation of the Law on Military Courts, signed by President Tito, 24 December 1976
P1380	Dispatch from Zupljanin to the Chief of SJB Prijedor ordering a full investigation of the killing of 150 Muslims in area of Skender Vakuf municipality, 11 September 1992

P1560	Order by Simo Drljaca for Institution of Omarska and Handling of Detainees, 31 May 1992
P1567	Amalgamated Vlasic Mountain Exhibits – Report to Banja Luka Public Prosecutor Office, 8 September 1992
P1683	Order from Ratko Mladic to the VRS Main Staff, 3 August 1992
P1783	Dispatch of the Command of the 30th Partisan Division to the 1st KK Command providing orders relating to the defence of Kljuc, 31 May 1992
P1787	Order of the Command of the Light Infantry Brigade at Kotor Varos to the Command of the 82mm Mortar Platoon for the Conduct of Military Operations, 23 July 1992
P1830	Official Gazette notification on abolition of ARK Crisis Staff and creation of War Presidency, 31 May 1992
P1905	Dispatch of the Banja Luka CSB to Public Security Stations in Prijedor and Bosanski Novi instructing that freedom of movement is to be granted to a convoy of buses carrying 1,561 persons from Trnopolje to the Republic of Croatia, 29 September 1992
P1928	Report on the work of the Donji Vakuf Public Security Station between 1 April 1992 and 25 December 1992, dated January 1993
1D63	MUP to all CSBs – questionnaire on perpetrators of war crimes and war crime victims, 19 July 1992
1D82	Dispatch by Zupljanin requesting all SJB to respond to previous dispatches, 18 August 1992
1D198	Operational plan on discovering crimes of robberies, terrorism, extortion, etc., 25 May 1992
1D201	Criminal file against Brano Palackovic at al. No. KU-123/92, 23 June 1992
1D202	RS MUP, Banja Luka CSB, Analysis of fires during the first six months in the area of CSB Banja Luka with cover letter, 15 July 1992
1D371	Crime committed against Kadro Vehabovic – criminal report with entire file, September 1992
1D372	Case against unknown perpetrator for crime against Husref Smajlagic – entire file, September 1992
1D373	Banja Luka SJB, Case No. Ku-3925/92, Criminal report against unknown perpetrator for crime committed against Emir Nezirevic, September 1992

1D403	Order Appointing "Defence Command" of the Town of Donji Vakuf, 13 June 1992
1D473	Order Setting Up Town Command in Bosanski Brod, 7 October 1992
2D25	CSB Banja Luka to all SJB Chiefs, Command of 1st and 2nd Krajina Corps and MUP of the RS providing Information on the Security Situation, sent by Stojan Zupljanin, 30y Jul 1992
2D65	Banja Luka CSB Information on activities from 16-Nov-91 to 23-Sep-1991, dated 23 September 1991
2D71	Banja Luka CSB – criminal report regarding dead bodies found in the Vrbas river, 26 Aug 1992; Criminal Report, Official Notes, 14 Sep 1992; Work Plan for Further Investigation on the Murders, 28 October 1992
2D83	A telex from Banja Luka CSB to all Public Security Stations in the region requesting data concerning serious crimes committed since 1 January 1992 to be submitted not later than 22 November 1992, 1 November 1992
2D90	Report of Simo Drljaca, 14 August 1992
2D126	Criminal Charge against Goran Gataric (Gavrin), 12 March 1993
2D132	Excerpt of a Meeting of the Crisis Staff of Kotor Varos held on 25 June 1992 regarding recent events in the field, tasks for the members of the Crisis Staff and current problems, 25 June 1992
2D139	Witness statement of Branko (Brane) BUHAVAC, 27 July 2003