

**UNITED
NATIONS**



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

Case No.: IT-04-74-A
Date: 29 November 2017
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IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Liu Daqun
Judge Fausto Pocar
Judge Theodor Meron
Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Judgement of: 29 November 2017

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PUBLIC WITH CONFIDENTIAL ANNEX C

**JUDGEMENT
Volume II**

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A

TABLE OF CONTENTS

VOLUME I

I. INTRODUCTION	1
A. BACKGROUND	1
B. THE APPEALS	5
1. Prlić's appeal.....	5
2. Stojić's appeal.....	6
3. Praljak's appeal.....	6
4. Petković's appeal	6
5. Ćorić's appeal	7
6. Pušić's appeal.....	7
7. Prosecution's appeal	7
C. APPEAL HEARING	8
II. STANDARD OF APPELLATE REVIEW	9
III. CHALLENGES CONCERNING FAIR TRIAL AND THE INDICTMENT	13
A. APPLICABLE LAW.....	13
1. Applicable law on the Right to a Fair Trial	13
2. Applicable law on the Indictment.....	13
B. ALLEGED ERRORS CONCERNING RELIANCE ON EVIDENCE RELATED TO FRANJO TUĐMAN (STOJIĆ'S GROUND 17)	15
C. ALLEGED ERRORS CONCERNING PRLIĆ'S RIGHT TO HAVE ADEQUATE TIME AND FACILITIES FOR THE DEFENCE (PRLIĆ'S GROUND 7)	17
D. ALLEGED ERRORS CONCERNING THE JCE THEORY (STOJIĆ'S GROUND 13, PETKOVIĆ'S SUB-GROUND 3.1)	20
1. Arguments of the Parties.....	22
2. Analysis.....	24
E. ALLEGED ERROR CONCERNING THE ATTACK ON THE VILLAGE OF SKROBUČANI (PETKOVIĆ'S SUB-GROUND 5.2.2.1 IN PART).....	29
F. ALLEGED ERRORS IN CONCLUDING THAT THE EXISTENCE OF A STATE OF OCCUPATION WAS PLEADED (ĆORIĆ'S SUB-GROUND 3.2.1)	30
G. ALLEGED ERRORS REGARDING NOTICE OF THE PROTECTED STATUS OF MUSLIM HVO MEMBERS (ĆORIĆ'S GROUND 4 IN PART)	32
H. ALLEGED ERRORS CONCERNING ĆORIĆ'S NOTICE OF ALLEGATIONS REGARDING HIS RESPONSIBILITY AS MINISTER OF THE INTERIOR (ĆORIĆ'S GROUND 11 IN PART).....	34
1. Arguments of the Parties.....	34
2. Analysis.....	36
(a) Whether the Indictment was defective	36
(b) Whether the defect in the Indictment was cured.....	39
(c) Whether Ćorić suffered any prejudice.....	40
I. CONCLUSION.....	43
IV. ADMISSIBILITY AND WEIGHT OF THE EVIDENCE	44
A. INTRODUCTION.....	44
B. THE MLADIĆ DIARIES (PRLIĆ'S GROUND 5, STOJIĆ'S GROUND 16, PRALJAK'S GROUND 50) ...	44
1. Introduction.....	44
2. Arguments of the Parties.....	44
(a) Prlić's, Stojić's, and Praljak's submissions	44
(b) The Prosecution's response.....	47
3. Analysis.....	49
(a) Admission into evidence of extracts from the Mladić Diaries in the reopening of the Prosecution's case.....	49

(b) Denial of Defence requests to reopen their cases and present evidence in rebuttal.....	50
(c) The Trial Chamber's assessment of the Mladić Diaries in the Trial Judgement.....	55
4. Conclusion	58
C. ADMISSION OF EVIDENCE	58
1. Denial of admission of Stojić's evidence (Stojić's Ground 5)	58
2. Denial of admission of Praljak's evidence (Praljak's Ground 51)	61
3. Erroneous decisions relating to evidence (Ćorić's Ground 12)	64
(a) Arguments of the Parties	64
(b) Analysis.....	66
(i) Admission of Prlić's Statements.....	66
(ii) Exhibit P03216/P03220	68
(iii) Exhibit P03666	70
D. ASSESSMENT OF EVIDENCE	71
1. Erroneous approach to the evaluation of evidence (Prlić's Ground 1).....	71
(a) Arguments of the Parties	71
(b) Analysis.....	72
2. Failure to explain assessment of documentary evidence (Prlić's Ground 3).....	75
(a) Arguments of the Parties	75
(b) Analysis.....	76
E. DISREGARD OF EVIDENCE.....	78
1. Prlić's witnesses (Prlić's Ground 2)	78
(a) Arguments of the Parties	78
(b) Analysis.....	79
2. Defence expert Witness Vlado Šakić's evidence (Praljak's Ground 53)	81
F. CONCLUSION.....	84
V. WITNESS CREDIBILITY.....	85
A. INTRODUCTION.....	85
B. EXPERT WITNESSES DONIA, TOMLIANOVICH, AND RIBIČIĆ (PRLIĆ'S GROUND 4).....	86
C. WITNESSES BA, BB, BC, BD, BEESE, BH, DZ, GALBRAITH, LANE, AND MANOLIĆ (PRLIĆ'S GROUND 6).....	89
1. Arguments of the Parties.....	89
2. Analysis.....	90
D. PRALJAK'S TESTIMONY (PRALJAK'S GROUND 55).....	92
1. Alleged denial of a reasoned opinion (Sub-ground 55.1).....	92
2. Alleged failure to properly assess Praljak's testimony (Sub-ground 55.2)	93
E. CONCLUSION	94
VI. CHALLENGES TO CHAPEAU REQUIREMENTS OF ARTICLE 2 OF THE STATUTE.....	95
A. EXISTENCE OF AN INTERNATIONAL ARMED CONFLICT.....	96
1. Scope of the international armed conflict	96
2. Alleged error of law with regard to the application of the overall control test (Praljak's Sub-ground 1.4 and Ćorić's Sub-ground 3.1 in part)	98
(a) Arguments of the Parties	98
(b) Analysis.....	99
3. Alleged errors of fact with regard to classifying the conflict as international (Prlić's Sub- ground 19.1, Praljak's Sub-grounds 1.1 and 1.2, Petković's Sub-grounds 7.1.1 in part, 7.1.2, and 7.1.4).....	100
(a) Arguments of the Parties	100
(b) Analysis.....	101
4. Challenges to Croatian intervention in the HVO-ABiH conflict.....	103
(a) Direct involvement of HV soldiers and units in the conflict (Prlić's Sub-grounds 19.1 in part and 19.2, Stojić's Sub-ground 54.1, Praljak's Sub-grounds 1.1 in part, 1.2 in part, 1.3	

in part, and 1.4 in part, Petković's Sub-grounds 7.1.1 in part, 7.1.3 and 7.1.4 in part, Čorić's Sub-ground 3.1 in part, and Pušić's Ground 7 in part).....	103
(i) Arguments of the Parties.....	103
(ii) Analysis	108
(b) Croatia's organisation, co-ordination, and planning of the HVO's military operations (Prlić's Sub-ground 19.3, Stojić's Sub-ground 54.2 in part, Praljak's Sub-grounds 1.3 in part and 1.4 in part, Petković's Sub-grounds 7.1.1 in part and 7.1.5 in part, Čorić's Sub-ground 3.1 in part, and Pušić's Ground 7 in part).....	113
(i) Arguments of the Parties.....	113
(ii) Analysis	117
(c) Other challenges – shared military reports (Stojić's Sub-ground 54.2, Praljak's Sub-ground 1.3, and Petković's Sub-ground 7.1.5, all in part)	120
(i) Arguments of the Parties.....	120
(ii) Analysis	122
5. Conclusion	123
B. THE STATE OF OCCUPATION.....	123
1. Whether the inquiry into a state of occupation was necessary (Prlić's Ground 20, Stojić's Ground 55, Praljak's Ground 2, Petković's Sub-ground 7.2, and Čorić's Sub-ground 3.2).....	123
2. The legal requirements of occupation (Prlić's Ground 20, Stojić's Ground 55, Praljak's Ground 2, Petković's Sub-ground 7.2 and Čorić's Sub-ground 3.2).....	125
(a) Arguments of the Parties	125
(b) Analysis.....	130
(c) Conclusion.....	143
C. THE PROTECTED PERSONS REQUIREMENT.....	143
1. Muslim members of the HVO (Stojić's Ground 42, Praljak's Ground 3, Petković's Sub-grounds 5.2.1.1 in part and 5.2.1.3 in part, and Čorić's Ground 4).....	144
(a) Arguments of the Parties	144
(b) Analysis.....	147
(c) Conclusion.....	150
2. Muslim men of military age (Praljak's Ground 4, Petković's Sub-grounds 5.2.1.1 in part, 5.2.1.2, and 5.2.1.4, Čorić's Ground 5, and Pušić's Sub-ground 7.1).....	150
(a) Arguments of the Parties	151
(b) Analysis.....	152
(c) Conclusion.....	155
3. Defences to detention (Petković Sub-grounds 5.2.1.1, 5.2.1.3, 5.2.1.4, all in part)	155
(a) Arguments of the Parties	155
(b) Analysis.....	156
(c) Conclusion.....	158
D. CONCLUSION.....	158
VII. CHALLENGES TO THE UNDERLYING CRIMES	160
A. INTRODUCTION.....	160
B. <i>MENS REA</i> FOR CRIMES AGAINST HUMANITY (STOJIĆ'S GROUND 26, PRALJAK'S GROUND 48, AND PETKOVIĆ'S SUB-GROUNDS 4.1 AND 4.4 BOTH IN PART)	160
1. Arguments of the Parties.....	161
2. Analysis.....	162
C. ALLEGED ERRORS RELATING TO WANTON DESTRUCTION OF CITIES, TOWNS OR VILLAGES, OR DEVASTATION NOT JUSTIFIED BY MILITARY NECESSITY (PROSECUTION'S GROUND 3 IN PART, PRALJAK'S GROUND 23, AND PETKOVIĆ'S SUB-GROUND 5.2.2.4 IN PART).....	164
1. Failure to enter convictions.....	164
(a) Arguments of the Parties	165
(b) Analysis.....	166
2. Challenges to the legal and factual findings upon which the wanton destruction findings were based	168

(a) General submissions concerning the Four Groups of Incidents and submissions related to Muslim property in Prozor Municipality and the ten mosques in Mostar Municipality.....	168
(b) The Old Bridge of Mostar	169
(i) Arguments of the Parties.....	170
(ii) Analysis	172
3. Conclusion on wanton destruction not justified by military necessity	174
4. Impact of errors in relation to the Old Bridge on the crimes of persecution and unlawful infliction of terror on civilians	174
(a) Arguments of the Parties	175
(b) Analysis.....	176
D. ATTACKS OF 18 JANUARY 1993 IN GORNJI VAKUF MUNICIPALITY AND RELATED CRIMES	179
1. The killing of seven civilians in Duša (Stojić's Sub-ground 45.1 and Praljak's Ground 12).....	179
(a) Arguments of the Parties	180
(b) Analysis.....	182
2. Wanton destruction of cities, towns or villages, or devastation not justified by military necessity in Gornji Vakuf Municipality (Prosecution's Ground 3 in part).....	185
(a) Arguments of the Parties	186
(b) Analysis.....	188
3. Burning of houses in Duša and Uzričje (Praljak's Ground 11)	189
(a) Arguments of the Parties	190
(b) Analysis.....	191
4. Arrest and detention of civilians from Duša, Hrasnica, Uzričje, and Ždrimci (Praljak's Ground 13).....	195
(a) Arguments of the Parties	196
(b) Analysis.....	198
5. Displacement of Muslims from Duša, Hrasnica, Uzričje, and Ždrimci (Praljak's Ground 14).....	205
(a) Arguments of the Parties	207
(b) Analysis.....	209
6. Commission of crimes by the Bruno Bušić Regiment in Ždrimci and Uzričje (Petković's Sub-grounds 5.2.2.2 and 5.2.3.1 both in part).....	212
E. ARREST, DETENTION, AND DISPLACEMENT OF MUSLIMS IN PROZOR MUNICIPALITY IN JULY-AUGUST 1993	213
1. Arrest and detention of civilians from Prozor (Praljak's Ground 8)	213
(a) Arguments of the Parties	215
(b) Analysis.....	216
2. Displacement of Muslims from Prozor Municipality (Praljak's Ground 9).....	222
(a) Arguments of the Parties	223
(b) Analysis.....	224
F. CRIMES COMMITTED IN MOSTAR MUNICIPALITY	227
1. The siege of East Mostar and related crimes.....	227
(a) Keeping Muslims of East Mostar crowded in an enclave (Stojić's Ground 50 and Praljak's Ground 25).....	228
(b) Humanitarian conditions during the siege of East Mostar (Praljak's Ground 26)	231
(c) Sniping campaign in Mostar (Praljak's Ground 20).....	233
(d) Shelling of East Mostar (Praljak's Ground 21 and Petković's Sub-ground 5.2.2.4 both in part).....	236
(i) Arguments of the Parties.....	238
(ii) Analysis	241
(e) Destruction of or damage to mosques in East Mostar (Praljak's Ground 24).....	248
2. Deaths of four Muslim men during the attack on Raštani (Praljak's Ground 27)	250
3. Commission of crimes by the Bruno Bušić Regiment at the Heliodrom (Petković's Sub-ground 5.2.3.1 in part)	252
G. CONCLUSION	253

VOLUME II

VIII. JOINT CRIMINAL ENTERPRISE	254
A. INTRODUCTION.....	254
B. JCE AND JCE III AS FIRMLY ESTABLISHED UNDER CUSTOMARY INTERNATIONAL LAW	256
1. Arguments of the Parties.....	256
2. Analysis.....	257
C. THE ULTIMATE PURPOSE OF THE JCE	260
1. Introduction.....	260
2. Alleged errors in the Trial Chamber's finding that Tuđman intended to expand the Croatian borders	260
(a) Challenges to underlying findings concerning Tuđman's intentions	261
(i) Tuđman's plan to expand the Croatian borders	261
a. Prlić's appeal (Sub-ground 9.2 in part).....	261
b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)	263
(ii) 25 March 1991 Karadordevo Meeting.....	265
a. Prlić's appeal (Sub-ground 9.3).....	266
i. Arguments of the Parties	266
ii. Analysis.....	266
b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)	268
c. Stojić's appeal (Ground 1 in part).....	269
(iii) Tuđman's double policy	270
a. Prlić's appeal (Sub-grounds 9.2 and 9.3 in part)	270
i. Arguments of the Parties	270
ii. Analysis.....	271
b. Praljak's appeal (Sub-grounds 5.1, 5.2, and 6.2 in part)	273
i. Arguments of the Parties	273
ii. Analysis.....	274
(iv) Tuđman's support for the creation of the HZ H-B on 18 November 1991	276
a. Prlić's appeal (Sub-ground 9.5).....	276
i. Arguments of the Parties	276
ii. Analysis.....	277
b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)	279
(v) Tuđman's references to the Croatian Banovina between January 1993 and March 1994.....	280
a. Prlić's appeal (Sub-ground 9.2 in part).....	281
b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)	282
(b) Challenges to the overall finding that Tuđman claimed that BiH was not supposed to exist as an independent State and that part of BiH was to be annexed to Croatia.....	284
(i) Prlić's appeal (Ground 9.2 in part).....	284
(ii) Stojić's appeal (Ground 1 in part).....	285
a. Arguments of the Parties	285
b. Analysis	286
(iii) Pušić's appeal (Ground 3 in part)	289
a. Arguments of the Parties	289
b. Analysis	290
3. Alleged errors in finding that the HZ(R) H-B leaders were involved in meetings and discussions concerning the partition of BiH	291
(a) Prlić's appeal (Sub-grounds 9.4, 9.7, and 9.8)	292
(b) Stojić's appeal (Ground 1 in part).....	293
(i) Arguments of the Parties.....	293
(ii) Analysis	294
(c) Praljak's appeal (Sub-grounds 6.1 in part and 6.4)	295
(i) Arguments of the Parties.....	295
(ii) Analysis	297
(d) Petković's appeal (Sub-grounds 2.2 and 2.3 in part)	298

4. Alleged errors in finding that the creation of the HZ H-B was not merely a temporary defence initiative.....	300
(a) Prlić's appeal (Sub-grounds 9.1 and 9.6)	300
(i) Arguments of the Parties.....	300
(ii) Analysis	302
(b) Stojić's appeal (Ground 1 in part).....	304
(c) Praljak's appeal (Ground 6.2 in part)	305
(i) Arguments of the Parties.....	305
(ii) Analysis	306
5. Alleged errors concerning the BiH Croat delegation's agreement with the Vance-Owen Peace Plan principles and Tudman's involvement in negotiations	307
(a) Prlić's appeal (Sub-ground 9.9).....	307
(b) Praljak's appeal (Sub-grounds 5.1 in part, 5.2 in part, and 5.3).....	309
(i) Arguments of the Parties.....	309
(ii) Analysis	310
6. Alleged errors in finding that the HZ H-B leaders established a "mini-State" within BiH.....	311
(a) Prlić's appeal (Sub-ground 9.10).....	312
(i) Arguments of the Parties.....	312
(ii) Analysis	313
(b) Praljak's appeal (Sub-grounds 5.1 and 5.2 in part).....	314
7. Alleged errors concerning the Ultimate Purpose of the JCE	315
(a) Stojić's appeal (Ground 1 in part)	315
(b) Praljak's appeal (Sub-ground 6.5).....	316
(c) Petković's appeal (Sub-grounds 2.1, 2.2 in part, and 2.3 in part)	317
(i) Arguments of the Parties.....	317
(ii) Analysis	318
(d) Pušić's appeal (Ground 3 in part).....	320
(i) Arguments of the Parties.....	320
(ii) Analysis	321
8. Conclusion	322
D. EXISTENCE OF THE COMMON CRIMINAL PLAN OF THE JCE.....	323
1. Introduction.....	323
2. Alleged errors regarding the definition of the CCP (Stojić's Ground 8 and Petković's Sub-grounds 3.2.1.1 and 3.2.1.2 in part)	324
(a) Arguments of the Parties	324
(b) Analysis.....	325
3. Alleged errors of law regarding the scope and expansion of the CCP	327
(a) Stojić's appeal (Grounds 11 and 12) and Praljak's appeal (Ground 7).....	328
(i) Arguments of the Parties.....	328
(ii) Analysis	329
(b) Stojić's appeal (Ground 4 in part).....	339
(i) Arguments of the Parties.....	339
(ii) Analysis	340
(c) Praljak's appeal (Ground 49).....	343
(d) Petković's appeal (Sub-ground 3.2.1.3)	344
4. Alleged errors as regards the constituent events of the CCP	345
(a) Introduction	345
(b) Alleged errors regarding the findings concerning the pre-CCP period.....	346
(i) Prlić's appeal (Sub-ground 10.1)	346
(ii) Praljak's appeal (Sub-ground 5.4 in part).....	347
(iii) Petković's appeal (Sub-ground 3.2.1.2 in part)	349
a. Arguments of the Parties	349
b. Analysis	349
(c) Alleged errors in the findings that the JCE commenced in mid-January 1993 and that Muslim civilians were removed from villages in Gornji Vakuf Municipality.....	351
(i) Prlić's appeal (Sub-grounds 10.2, 10.3, and 10.4 in part).....	351

a. Arguments of the Parties	351
b. Analysis	352
(ii) Stojić's appeal (Ground 10)	354
a. Arguments of the Parties	354
b. Analysis	355
(iii) Stojić's appeal (Ground 4 in part)	357
(iv) Praljak's appeal (Ground 15)	358
a. Arguments of the Parties	358
b. Analysis	360
(v) Petković's appeal (Sub-ground 3.2.2.1 in part)	361
a. Arguments of the Parties	361
b. Analysis	363
(vi) Impact of the Duša Reversal on the CCP	364
a. Arguments of the Parties	365
b. Analysis	367
(d) Alleged errors regarding events in Jablanica Municipality between February and May 1993	370
(i) Prlić's appeal (Sub-grounds 10.3 and 10.4 in part)	371
(ii) Petković's appeal (Sub-ground 3.2.2.1 in part)	372
a. Arguments of the Parties	372
b. Analysis	373
(e) Alleged errors in the findings on HVO offensive actions in Prozor Municipality	374
(i) Prlić's appeal (Sub-grounds 10.3 and 10.4 in part)	375
(ii) Petković's appeal (Sub-ground 3.2.2.1 in part)	375
(iii) Praljak's appeal (Ground 10)	376
a. Arguments of the Parties	376
b. Analysis	378
(f) Alleged errors in the findings on HVO actions in Mostar Municipality	379
(i) Prlić's appeal (Sub-ground 10.5)	380
a. Arguments of the Parties	380
b. Analysis	381
(ii) Prlić's appeal (Sub-grounds 10.6, 10.7, and 10.8)	384
a. Arguments of the Parties	384
b. Analysis	385
(iii) Stojić's appeal (Ground 47)	386
a. Arguments of the Parties	386
b. Analysis	387
(iv) Praljak's appeal (Ground 28)	390
(v) Petković's appeal (Sub-ground 3.2.2.1 in part)	392
(vi) Praljak's appeal (Sub-ground 6.3) and Petković's appeal (Sub-ground 3.2.2.3)	394
a. Arguments of the Parties	394
b. Analysis	395
(g) Alleged errors in the findings regarding the events before and after the attack on the HVO Tihomir Mišić Barracks in Mostar on 30 June 1993	397
(i) Prlić's appeal (Sub-grounds 10.10 and 10.15)	398
a. Arguments of the Parties	398
b. Analysis	399
(ii) Petković's appeal (Sub-ground 3.2.2.2)	401
a. Arguments of the Parties	401
b. Analysis	402
(h) Alleged errors in the findings as to events in late 1993	403
(i) Prlić's appeal (Sub-grounds 10.12, 10.13, and 10.14)	403
(ii) Praljak's appeal (Ground 32)	404
a. Arguments of the Parties	404
b. Analysis	405
(iii) Petković's appeal (Sub-ground 3.2.2.1 in part)	406

5. Other challenges to evidence and alternative reasonable inferences	407
(a) Alleged errors regarding the pattern of the crimes and the overall existence of the CCP (Prlić's Sub-grounds 10.16 and 10.17, Stojić's Ground 4 in part, and Pušić's Ground 3 in part)	407
(i) Arguments of the Parties	407
(ii) Analysis	410
(b) Alleged errors regarding the context of the conflict with the ABiH	412
(i) Stojić's appeal (Ground 2)	412
a. Arguments of the Parties	412
b. Analysis	414
(ii) Stojić's appeal (Ground 3)	417
a. Arguments of the Parties	417
b. Analysis	418
(iii) Petković's appeal (Sub-grounds 3.2.2 and 3.2.2.4)	420
a. Arguments of the Parties	420
b. Analysis	421
(iv) Ćorić's appeal (Ground 1 in part)	423
a. Arguments of the Parties	423
b. Analysis	424
6. Conclusion	427
E. ALLEGED ERRORS IN RELATION TO JADRANKO PRLIĆ'S PARTICIPATION IN THE JCE	429
1. Introduction	429
2. Prlić's role as President of the HVO/Government of the HZ(R) H-B	430
(a) Alleged errors related to Prlić's functions and responsibilities in civilian matters	430
(i) Prlić's decision-making powers (Prlić's Sub-ground 11.1)	431
a. Prlić's powers vis-à-vis other organs and officials	431
i. Arguments of the Parties	431
ii. Analysis	432
b. Prlić's statutory powers and role within the HVO/Government of the HZ(R) H-B	433
i. Arguments of the Parties	433
ii. Analysis	434
c. Distinction between the HZ H-B and the HR H-B	436
i. Arguments of the Parties	436
ii. Analysis	437
d. Government discussions	439
e. Conclusion	440
(ii) Expansion of Government powers (Prlić's Sub-ground 11.2)	441
(iii) Department/Ministry of Defence (Prlić's Sub-ground 11.3)	442
a. Arguments of the Parties	442
b. Analysis	443
(iv) Department/Ministry of the Interior (Prlić's Sub-ground 11.4)	445
a. Arguments of the Parties	446
b. Analysis	447
(v) Department/Ministry of Justice and General Administration (Prlić's Sub-ground 11.5)	449
(vi) Fiscal organs of the Government (Prlić's Sub-ground 11.6)	449
a. Arguments of the Parties	449
b. Analysis	450
(vii) Office for Displaced Persons and Refugees (Prlić's Sub-ground 11.7)	451
a. Arguments of the Parties	451
b. Analysis	452
(viii) Exchange Service (Prlić's Sub-ground 11.8)	454
(ix) Municipal governments (Prlić's Sub-ground 11.9)	456
(x) Conclusion	457
(b) Alleged errors regarding powers in military matters (Prlić's Ground 12)	457
(i) Introduction	457
(ii) The Government's and Prlić's powers in military matters (Prlić's Sub-ground 12.1)	457

a. The Government's powers in military matters	458
i. Arguments of the Parties	458
ii. Analysis	459
b. Prlić's powers in military matters.....	461
i. Arguments of the Parties	461
ii. Analysis.....	463
c. Conclusion	466
(iii) Prlić's knowledge of combat activities (Prlić's Sub-ground 12.2).....	466
(iv) Conclusion	467
(c) Alleged errors regarding Prlić's powers pertaining to humanitarian aid (Prlić's Ground 14).....	467
(i) Arguments of the Parties.....	467
(ii) Analysis	468
(d) Alleged errors regarding Prlić's role in the relations between HZ(R) H-B and Croatia.....	470
(i) Prlić's ties with leaders of Croatia (Prlić's Ground 15).....	470
(ii) Prlić's knowledge of an international armed conflict involving Croatia (Prlić's Sub-ground 16.16)	471
3. Alleged errors in relation to Prlić's significant contribution to the CCP and his intent	472
(a) Gornji Vakuf Municipality (Prlić's Sub-ground 16.1)	473
(i) The 15 January 1993 Ultimatum (Prlić's Sub-ground 16.1.1).....	473
a. Arguments of the Parties	473
b. Analysis	474
(ii) Military operations following the 15 January 1993 Ultimatum (Prlić's Sub-ground 16.1.2)	477
a. Arguments of the Parties	478
b. Analysis	479
(iii) Various findings concerning the January 1993 attacks on Gornji Vakuf (Prlić's Sub-ground 16.1.3)	480
a. Arguments of the Parties	481
b. Analysis	481
(iv) Prlić's intent concerning crimes in Gornji Vakuf (Prlić's Sub-ground 16.1.4)	483
a. Arguments of the Parties	484
b. Analysis	484
(b) The municipalities of Prozor and Jablanica (Prlić's Sub-ground 16.2)	486
(i) The 4 April 1993 Ultimatum (Prlić's Sub-grounds 16.2.1 and 16.2.2)	486
a. Arguments of the Parties	486
b. Analysis	489
(ii) Military operations following the 4 April 1993 Ultimatum (Prlić's Sub-grounds 16.2.3, 16.2.4, and 16.2.5)	492
a. Arguments of the Parties	493
b. Analysis	493
(iii) Removal of Muslims from Doljani and Sovići (Prlić's Sub-ground 16.2.6).....	495
(iv) <i>Mens rea</i> (Prlić's Sub-ground 16.2.7).....	496
(c) Prlić's involvement in the campaign of mass arrest of Muslims beginning on 30 June 1993 in several municipalities (Prlić's Sub-ground 16.3).....	497
(i) Arguments of the Parties.....	498
(ii) Analysis	500
(d) Mostar Municipality (Prlić's Sub-ground 16.4).....	502
(i) West Mostar	502
a. Alleged error in concluding that the Croatian culture was introduced (Prlić's Sub- ground 16.4.1).....	502
b. Alleged error regarding Prlić's acceptance of the arrest of Muslims that took place around 9 May 1993 (Prlić's Sub-ground 16.4.2).....	503
i. Arguments of the Parties	503
ii. Analysis.....	504
c. Alleged errors regarding Prlić's contribution to the eviction process (Prlić's Sub- grounds 16.4.3 and 16.4.4)	505

i. Arguments of the Parties	505
ii. Analysis.....	507
(ii) East Mostar	509
a. The HVO campaign of fire and shelling of East Mostar (Prlić's Sub-ground 16.4.5) ..	509
i. Arguments of the Parties	509
ii. Analysis.....	510
b. The living conditions in East Mostar (Prlić's Sub-ground 16.4.6).....	511
i. Arguments of the Parties	511
ii. Analysis.....	513
c. Prlić's contribution to blocking humanitarian aid to East Mostar (Prlić's Sub-ground 16.4.7).....	516
i. Arguments of the Parties	517
ii. Analysis.....	519
(e) Displacement of Croats from Vareš Municipality (Prlić's Sub-ground 16.5).....	523
(i) Arguments of the Parties.....	524
(ii) Analysis	526
(f) Prlić's contribution to a policy of population movement (Prlić's Sub-ground 16.6)	529
(i) Arguments of the Parties.....	529
(ii) Analysis	533
(g) Prlić's authority over detention centres.....	537
(i) Prlić's general powers over detention centres (Prlić's Ground 13 in part).....	537
a. Arguments of the Parties	537
b. Analysis	539
(ii) The Heliodrom.....	542
a. Prlić's power over the Heliodrom (Prlić's Sub-grounds 16.7.1 and 16.7.3)	542
b. Prlić's facilitation of and support for the detention of civilians in the Heliodrom (Prlić's Ground 13 in part and Sub-ground 16.7.2).....	543
i. Arguments of the Parties	544
ii. Analysis.....	545
c. Prlić's facilitation and acceptance of the use of Heliodrom detainees for front line labour (Prlić's Sub-ground 16.7.4).....	546
i. Arguments of the Parties	546
ii. Analysis.....	547
d. Prlić's planning and facilitation of the organisation of the departure of about 2,500 detainees from the Heliodrom to Croatia (Prlić's Sub-ground 16.7.5).....	548
(iii) Vojno Detention Centre (Prlić's Ground 13 in part and Sub-ground 16.8).....	549
(iv) Dretelj Prison (Prlić's Ground 13 in part and Sub-ground 16.9)	551
a. Arguments of the Parties	551
b. Analysis	553
(v) Gabela Prison (Prlić's Ground 13 in part and Sub-ground 16.11).....	554
a. Arguments of the Parties	554
b. Analysis	555
(vi) Prlić's facilitation of the departure of detainees to foreign countries via Croatia (Prlić's Sub-ground 16.10)	556
(h) Denial, concealment, and encouragement of crimes and failure to prevent or punish crimes (Prlić's Sub-grounds 16.12, 16.13, 16.14, and 16.15)	558
(i) Arguments of the Parties.....	558
(ii) Analysis	560
(i) <i>Mens rea</i> and <i>actus reus</i> of commission through a JCE (Prlić's Ground 18).....	562
(i) Arguments of the Parties.....	563
(ii) Analysis	564
4. Conclusion	566
F. ALLEGED ERRORS IN RELATION TO BRUNO STOJIĆ'S PARTICIPATION IN THE JCE.....	568
1. Introduction.....	568
2. Alleged errors in finding that Stojić commanded and had "effective control" over the HVO (Stojić's Ground 20)	569

(a) Stojić's administrative and logistical roles in the HVO	570
(b) Stojić's role in the establishment and organisation of the HVO	573
(c) Stojić's responsibility to inform the HZ(R) H-B Government of military operations and to make proposals which were adopted	575
(d) Stojić's authority to send military-related Government decisions through the military chain of command	577
(e) Stojić's authority to issue orders directly to the HVO and to ensure that they were carried out	579
(i) Arguments of the Parties	579
(ii) Analysis	580
(f) Stojić's responsibility for the human, financial, and logistical resources of the HVO	584
(i) Arguments of the Parties	584
(ii) Analysis	587
a. The logistical needs of the HVO	587
b. The finances of the HVO	590
c. Human resources	593
(g) Stojić's authority to designate representatives of the HVO in ceasefire negotiations	595
(h) Conclusion	596
3. Alleged errors in finding that Stojić commanded and had "effective control" over the Military Police (Stojić's Ground 21)	596
(a) Arguments of the Parties	596
(b) Analysis	599
(i) Stojić's involvement in appointments within the Military Police and his administrative roles	599
(ii) The authority of the Military Police Administration	600
(iii) Stojić's issuance of orders to the Military Police	601
(iv) Stojić's receipt of reports on Military Police activities	603
(c) Conclusion	606
4. Alleged errors concerning Stojić's failure to prevent and punish crimes committed by the HVO and the Military Police (Stojić's Ground 23)	606
(a) Stojić's <i>de facto</i> power to prevent and punish crimes (Stojić's Sub-ground 23.1)	607
(i) Arguments of the Parties	607
(ii) Analysis	608
(b) Whether Stojić did not intend to prevent or punish crimes (Stojić's Sub-ground 23.3)	612
(c) Stojić's power to prevent or punish the crimes committed by Naletilić's troops (Stojić's Sub-ground 23.2)	614
(d) Conclusion	615
5. Alleged errors concerning Stojić's powers and responsibilities (Stojić's Ground 24)	616
(a) Whether Stojić represented the Government in peace negotiations (Stojić's Sub-ground 24.1)	616
(b) Whether Stojić took part in formulating the defence policy of the HZ(R) H-B Government (Stojić's Sub-ground 24.2)	618
(c) Whether Stojić exercised the functions of the Head of the Department of Defence until 15 November 1993 (Stojić's Sub-ground 24.3)	621
(d) Conclusion	622
6. Alleged errors in identifying the members of the JCE (Stojić's Ground 7)	622
7. Alleged errors in finding that Stojić made a significant contribution to the JCE in general (Stojić's Ground 27)	624
(a) Alleged legal errors in the application of JCE liability (Stojić's Sub-ground 27.1, in part)	624
(b) Whether Stojić's assistance to military operations contributed to the JCE (Stojić's Sub- ground 27.1 in part)	627
(i) Arguments of the Parties	627
(ii) Analysis	627
(c) Whether Stojić's role as a link between the armed forces and the Government contributed to the JCE (Stojić's Sub-ground 27.2 in part)	630

(d) Whether Stojić used the HVO and Military Police to commit crimes (Stojić's Sub-grounds 27.2 (in part) and 27.3).....	631
(i) Arguments of the Parties.....	631
(ii) Analysis	632
(e) Conclusion.....	635
8. Alleged errors concerning Stojić's involvement in crimes committed in the municipalities and detention centres	635
(a) Prozor Municipality and Ljubuški Prison (Stojić's Ground 28).....	635
(i) Arguments of the Parties.....	635
(ii) Analysis	636
(iii) Conclusion	639
(b) Gornji Vakuf Municipality (Stojić's Ground 29).....	639
(i) Whether Stojić ordered Miro Andrić to capture Gornji Vakuf by force (Stojić's Sub-ground 29.1).....	640
(ii) Whether Stojić was aware of the commission of crimes based on reports from Željko Šiljeg (Stojić's Sub-ground 29.2)	643
(iii) Whether Stojić facilitated and closely followed the military operations in Gornji Vakuf and intended the crimes to be committed (Stojić's Sub-ground 29.3).....	646
(iv) Conclusion	648
(c) Jablanica Municipality (Stojić's Ground 30)	648
(i) Whether Stojić must have been aware of the plan in relation to the HVO military operations in Jablanica Municipality (Stojić's Sub-ground 30.2)	649
a. Arguments of the Parties	649
b. Analysis	650
(ii) Whether Stojić must have been aware of the crimes committed in Sovići and Doljani (Stojić's Sub-ground 30.1).....	653
a. Arguments of the Parties	653
b. Analysis	654
(iii) Conclusion	657
(d) The May 1993 operations in Mostar town (Stojić's Ground 31)	657
(i) Stojić's participation in preparing the troops and planning the HVO operations in Mostar (Stojić's Sub-ground 31.1)	657
(ii) Alleged errors in the assessment of and reliance on Expert Witness Davor Marijan's evidence (Stojić's Sub-ground 31.2).....	660
(iii) Stojić's participation in planning the acts of violence which accompanied the HVO operations in Mostar (Stojić's Sub-ground 31.3).....	663
(iv) Conclusion	664
(e) The eviction of the Muslim population from West Mostar (Stojić's Grounds 32 and 33)... 664	
(i) Whether Stojić received reports concerning the evictions of Muslims and crimes against them, and was involved in organising and conducting the eviction campaigns (Stojić's Sub-ground 33.1)	665
(ii) Whether Stojić and the HVO authorities genuinely intended to punish crimes against Muslims in Mostar (Stojić's Sub-ground 33.2)	669
(iii) Alleged errors in the assessment of Stojić's comments made on 17 July 1993 (Stojić's Sub-ground 33.3)	671
(iv) Alleged errors regarding Witness DZ's credibility and evidence (Stojić's Grounds 32 and 33.4)	674
a. Alleged errors regarding the credibility of Witness DZ (Stojić's Ground 32)	675
b. Alleged errors in relation to Witness DZ's hearsay evidence (Stojić's Sub-ground 33.4).....	677
(v) Stojić's intention that mistreatment be committed against Muslims during the eviction campaigns (Stojić's Sub-ground 33.5).....	679
(vi) Conclusion	680
(f) The siege of East Mostar (Stojić's Ground 34)	680
(i) Stojić's knowledge and acceptance of the harsh living conditions of the population in East Mostar (Stojić's Sub-ground 34.1).....	681

(ii) Stojić's control over HVO snipers in West Mostar and knowledge of sniper attacks in East Mostar (Stojić's Sub-grounds 34.2, 34.3, and 34.4)	684
(iii) Whether Stojić facilitated the hindering of humanitarian aid access (Stojić's Sub-ground 34.5).....	687
a. Arguments of the Parties	687
b. Analysis	688
(iv) Conclusion	690
(g) Čapljina Municipality (Stojić's Ground 35).....	690
(i) Whether Stojić was aware of and facilitated the detention of men who did not belong to any armed force (Stojić's Sub-ground 35.1).....	691
a. Arguments of the Parties	691
b. Analysis	693
(ii) Whether Stojić was informed of evictions in Čapljina and the manner in which they were carried out (Stojić's Sub-grounds 35.2 and 35.3)	696
(iii) Conclusion	700
(h) Vareš Municipality (Stojić's Ground 36).....	700
(i) Stojić's facilitation of the military operations in Vareš (Stojić's Sub-ground 36.2)	700
(ii) Stojić's knowledge and acceptance of crimes in Vareš Municipality (Stojić's Sub-grounds 36.1 and 36.3)	703
a. Arguments of the Parties	703
b. Analysis	704
(iii) Conclusion	707
(i) Detention Centres (Stojić's Ground 37).....	707
(i) Whether Stojić was responsible for the detention centres (Stojić's Sub-ground 37.1, in part).....	707
a. Arguments of the Parties	708
b. Analysis	710
(ii) Stojić's involvement in the Heliodrom and awareness of detention conditions (Stojić's Sub-grounds 37.1, in part, and 37.2).....	713
a. Whether Stojić was responsible for crimes committed at the Heliodrom (Stojić's Sub-ground 37.1, in part)	713
i. Arguments of the Parties	713
ii. Analysis.....	715
b. Whether Stojić was aware of the conditions at the Heliodrom (Stojić's Sub-ground 37.2).....	717
(iii) Stojić's involvement in Dretelj Prison and Gabela Prison (Stojić's Sub-ground 37.1, in part).....	719
i. Arguments of the Parties	720
ii. Analysis.....	722
(iv) Conclusion	724
9. Alleged errors regarding Stojić's <i>mens rea</i> and related challenges	725
(a) Alleged errors in finding that Tuđman and others directly collaborated in, and shared the intent for, the JCE (Stojić's Grounds 6 and 14).....	725
(b) Alleged errors concerning Stojić's knowledge of the JCE and its common criminal purpose (Stojić's Ground 15).....	727
(c) Alleged errors in finding that Stojić had the shared intent of the JCE (Stojić's Sub-ground 25.1)	729
(d) Alleged error in law in failing to make a specific finding on Stojić's intent to participate in the JCE (Stojić's Sub-ground 25.2)	731
(e) Alleged errors in inferring Stojić's intent from his general logistical assistance (Stojić's Sub-ground 25.3)	732
(f) Alleged errors concerning Stojić's intent to commit certain crimes (Stojić's Sub-ground 25.4)	733
(i) Arguments of the Parties.....	733
(ii) Analysis	734



a. Alleged errors regarding Stojić's intent to commit crimes under Counts 2, 3, 19, 20, and 21 of the Indictment.....	734
b. Alleged errors regarding Stojić's specific intent to commit the crime of unlawful infliction of terror on civilians.....	737
(iii) Conclusion.....	744
(g) Alleged errors concerning Stojić's specific intent to discriminate against the Muslim population (Stojić's Sub-ground 25.5).....	744
(h) Alleged errors concerning Stojić's intent to commit the crimes in Prozor, Jablanica, East Mostar, Čapljina, Vareš, and the detention centres (Stojić's Sub-ground 25.6).....	749
(i) Conclusion.....	752
10. Conclusion.....	752
G. ALLEGED ERRORS IN RELATION TO SLOBODAN PRALJAK'S PARTICIPATION IN THE JCE.....	754
1. Introduction.....	754
2. Alleged errors concerning the military chain of command (Praljak's Ground 37).....	755
(a) The OZ and HVO brigade commanders' authority over the Military Police in carrying out their "daily duties" (Praljak's Sub-ground 37.1).....	756
(i) Arguments of the Parties.....	756
(ii) Analysis.....	758
(b) The Main Staff's command authority over the KB (Praljak's Sub-ground 37.2).....	763
(i) Arguments of the Parties.....	763
(ii) Analysis.....	764
(c) Conclusion.....	768
3. Alleged errors relating to Praljak's functions and authority (Praljak's Ground 38).....	768
(a) Praljak's <i>de facto</i> command before 24 July 1993 (Praljak's Sub-ground 38.1).....	768
(i) Arguments of the Parties.....	768
(ii) Analysis.....	771
(b) Praljak's command authority and "effective control" over the HVO as of 24 July 1993 (Praljak's Sub-ground 38.2).....	776
(i) Arguments of the Parties.....	776
(ii) Analysis.....	777
(c) Praljak's command authority and "effective control" over the Military Police as of 24 July 1993 (Praljak's Sub-ground 38.3).....	780
(i) Arguments of the Parties.....	780
(ii) Analysis.....	781
(d) Conclusion.....	785
4. Alleged errors relating to Praljak's significant contribution to the JCE (Praljak's Ground 40).....	785
(a) Whether Praljak's JCE contribution was properly established (Praljak's Sub-ground 40.1 in part).....	786
(b) Whether Praljak's involvement in military operations amounted to a significant contribution and furthered the JCE (Praljak's Sub-grounds 40.2, 40.3, and 40.7).....	788
(c) Whether Praljak's role as a conduit between Croatia and the HZ(R) H-B was in furtherance of the JCE (Praljak's Sub-grounds 40.1 in part, 40.4, 40.5, and 40.6).....	791
(i) Praljak's conduct prior to the existence of the JCE.....	793
(ii) The Trial Chamber's assessment of the evidence and Praljak's participation in meetings.....	794
(iii) Praljak's efforts to obtain logistical support from Croatia.....	798
(iv) Whether Praljak's link to the Croatian government furthered the CCP.....	800
(v) Conclusion.....	801
5. Praljak's <i>mens rea</i> and related challenges.....	801
(a) Alleged errors in finding that Praljak was a member of the JCE (Praljak's Ground 39 and Sub-ground 5.4 in part).....	802
(i) Whether Croatian officials participated in the JCE (Praljak's Sub-ground 5.4 in part) ...	802
(ii) Praljak's awareness of the CCP (Praljak's Sub-ground 39.1).....	804
a. Arguments of the Parties.....	804
b. Analysis.....	805



(iii) Alleged failure to establish Praljak's shared criminal intent with all members of the JCE (Praljak's Sub-ground 39.2)	807
(iv) Alleged errors in finding that Praljak shared the criminal intent of the JCE members (Praljak's Sub-ground 39.3).....	808
(b) Alleged errors in finding that Praljak had the necessary <i>mens rea</i> (Praljak's Ground 41) ..	809
(i) Alleged errors in finding that Praljak knew that the HVO committed crimes (Praljak's Sub-ground 41.1)	809
(ii) Alleged errors in deducing Praljak's intent from his military functions and activities (Praljak's Sub-ground 41.2).....	812
(iii) Alleged errors in finding that Praljak possessed discriminatory intent (Praljak's Sub-ground 41.3).....	813
(iv) Alleged errors in finding that Praljak had the necessary intent for each JCE crime (Praljak's Sub-ground 41.4).....	815
(c) Conclusion.....	818
6. Alleged errors concerning Praljak's involvement in, knowledge of, and intent with regard to, crimes committed in the municipalities and detention centres	818
(a) Gornji Vakuf Municipality (Praljak's Ground 42).....	818
(i) Praljak's involvement in planning the events in Gornji Vakuf.....	819
(ii) Praljak's knowledge of events in Gornji Vakuf and his intent	820
a. Arguments of the Parties	820
b. Analysis	822
c. Conclusion	824
(b) Prozor Municipality (Praljak's Ground 43)	824
(i) Whether Praljak knew that detainees were being used for unlawful labour (Praljak's Sub-ground 43.1)	825
(ii) Whether Praljak had the required intent for crimes committed in Prozor (Praljak's Sub-ground 43.2).....	828
(iii) Conclusion	829
(c) Mostar Municipality (Praljak's Ground 44, Ground 21 in part, Ground 23 in part, and Sub-ground 40.7 in part).....	830
(i) Praljak's involvement in the events in Mostar (Praljak's Ground 23, Sub-grounds 40.7 and 44.1 all in part)	831
a. Arguments of the Parties	831
b. Analysis	833
i. Praljak's responsibility before 24 July and after 9 November 1993	833
ii. Praljak's responsibility between 24 July 1993 and 9 November 1993	836
a- Orders issued by Praljak.....	836
b- Praljak's attendance at the 7 November 1993 meeting.....	837
c- Praljak's responsibility for the shelling and sniping campaigns in East Mostar...	840
d- Praljak's responsibility for the destruction of or severe damage to the ten mosques in East Mostar.....	842
iii. Conclusion	844
(ii) Praljak's knowledge of the crimes committed in Mostar (Praljak's Sub-grounds 44.1 in part, 44.2).....	844
a. Arguments of the Parties	844
b. Analysis	846
(iii) Praljak's intent for the crime of unlawful infliction of terror on civilians under Article 3 of the Statute (Count 25) (Ground 21 (in part)).....	850
a. Arguments of the Parties	850
b. Analysis	851
c. Conclusion	855
(d) Vareš Municipality (Praljak's Grounds 45 and 54).....	855
(i) Alleged errors regarding the credibility of Witness EA (Praljak's Ground 54)	856
a. Arguments of the Parties	856
b. Analysis	857

(ii) Whether Praljak planned and/or directed the Vareš operations (Praljak's Sub-ground 45.1).....	859
a. Arguments of the Parties	859
b. Analysis	861
(iii) Praljak's role in and knowledge of crimes committed in Stupni Do (Praljak's Sub-ground 45.2 and 45.3).....	865
(iv) Praljak's participation in concealing the crimes committed in Stupni Do (Praljak's Sub-ground 45.4).....	868
a. Arguments of the Parties	868
b. Analysis	870
i. Alleged errors in finding that Praljak sought to prevent UNPROFOR from accessing Stupni Do.....	870
ii. Alleged errors in finding that Praljak intended to conceal the crimes in Stupni Do by signing the order of 8 November 1993.....	871
iii. Conclusion	872
(v) Conclusion	872
(e) Dretelj Prison and Gabela Prison (Praljak's Ground 46)	873
(i) Arguments of the Parties.....	874
(ii) Analysis	876
7. Conclusion	881
H. ALLEGED ERRORS IN RELATION TO MILIVOJ PETKOVIĆ'S PARTICIPATION IN THE JCE.....	882
1. Introduction.....	882
2. Alleged errors regarding Petković's powers and functions (Sub-grounds 5.1 and 5.2 both in part)	884
(a) Alleged errors regarding Petković's <i>de jure</i> command authority over the HVO.....	884
(i) Alleged errors regarding <i>de jure</i> command and control (Petković's Sub-ground 5.1.1.1).....	885
(ii) Alleged errors in respect of changes of competences of the Commander of the Main Staff (Petković's Sub-ground 5.1.1.2)	886
(iii) Alleged errors regarding the role of the HVO Supreme Commander (Petković's Sub-ground 5.1.1.3).....	887
a. Arguments of the Parties	887
b. Analysis	888
(iv) Alleged errors regarding Petković's <i>de jure</i> command authority over the KB and its ATGs as Chief and Deputy Commander of the HVO Main Staff (Petković's Sub-ground 5.1.1.4).....	890
a. Arguments of the Parties	890
b. Analysis	892
(v) Conclusion	893
(b) Alleged errors regarding Petković's powers within the Command of the HVO (Petković's Sub-grounds 5.1.1.6, 5.2.3.1 in part, and 5.1.1.5).....	893
(i) Alleged errors regarding Petković's "command and control authority and effective control" over the HVO (Petković's Sub-ground 5.1.1.6)	894
a. Arguments of the Parties	894
b. Analysis	895
(ii) Alleged errors regarding Petković's effective control over the KB and its ATGs as well as the Bruno Bušić Regiment (Petković's Sub-ground 5.2.3.1 in part).....	897
a. Arguments of the Parties	897
b. Analysis	898
(iii) Alleged errors regarding Petković's use of the HVO in military operations to commit crimes (Petković's Sub-ground 5.1.1.5)	899
a. Arguments of the Parties	899
b. Analysis	900
(c) Conclusion.....	901
3. Alleged errors regarding Petković's involvement in, knowledge of, and intent with regard to crimes committed in the municipalities and detention centres (Petković's Sub-ground 5.2.2 in part)	901

(a) Prozor Municipality (Petković's Sub-ground 5.2.2.1 in part)	902
(i) Alleged errors regarding crimes committed in April 1993	902
a. Arguments of the Parties	903
b. Analysis	903
(ii) Alleged errors regarding crimes committed in June 1993	904
a. Arguments of the Parties	905
b. Analysis	905
(iii) Alleged errors regarding crimes committed in July 1993	906
a. Arguments of the Parties	907
b. Analysis	908
(iv) Conclusion	910
(b) Gornji Vakuf Municipality (Petković's Sub-ground 5.2.2.2 in part)	910
(i) Alleged errors regarding Petković's involvement in the HVO operations	911
a. Arguments of the Parties	911
b. Analysis	913
(ii) Alleged errors regarding the finding that Petković had no genuine intention to punish perpetrators of crimes	917
a. Arguments of the Parties	918
b. Analysis	919
(iii) Conclusion	920
(c) Jablanica Municipality (Petković's Sub-grounds 4.3.1 in part, 4.3.2.2, and 5.2.2.3)	920
(i) Alleged errors regarding Petković's contribution to planning and directing the HVO operations	921
a. Arguments of the Parties	922
b. Analysis	923
(ii) Alleged errors regarding the destruction of Muslim houses and mosques	924
a. Arguments of the Parties	924
b. Analysis	925
(iii) Alleged errors concerning the obstruction of passage of international observers	926
a. Arguments of the Parties	927
b. Analysis	927
(iv) Alleged errors regarding the detention and relocation of Muslims from Sovići and Doljani	928
a. Arguments of the Parties	929
b. Analysis	930
(v) Conclusion	933
(d) Mostar Municipality (Petković's Sub-ground 5.2.2.4)	933
(i) Alleged errors regarding the evictions and removal of the Muslim population of West Mostar	934
a. Arguments of the Parties	935
b. Analysis	937
(ii) Alleged errors regarding the siege of East Mostar	938
a. Shelling of East Mostar	939
i. Petković's issuance of the 8 November 1993 Order	939
a- Arguments of the Parties	940
b- Analysis	941
ii. Petković's planning of the shelling of East Mostar	943
a- Arguments of the Parties	944
b- Analysis	944
b. Blocking of access of humanitarian aid and international organisations to East Mostar	945
i. Arguments of the Parties	946
ii. Analysis	947
c. Conclusion	949
(iii) Failure to provide a reasoned opinion with respect to Petković's convictions under Counts 2 and 3	949
a. Arguments of the Parties	950

b. Analysis	950
(iv) Conclusions	951
(e) Vareš Municipality (Petković's Sub-ground 5.2.2.6 in part)	951
(i) Alleged errors regarding Petković's contribution, and knowledge of crimes related to the operations in Vareš Municipality	952
a. Arguments of the Parties	953
b. Analysis	954
i. Contribution to the crimes in Vareš Municipality	954
ii. Knowledge of crimes committed during the operations in Vareš Municipality	957
(ii) Alleged errors regarding Petković's contribution to the launch of a fake investigation into the crimes in Stupni Do	959
a. Arguments of the Parties	959
b. Analysis	961
(iii) Conclusion	962
(f) Gabela Prison (Petković's Sub-ground 5.2.2.7.1)	962
(i) Arguments of the Parties	963
(ii) Analysis	964
(g) Dretelj Prison (Petković's Sub-ground 5.2.2.7.2)	966
(i) Arguments of the Parties	966
(ii) Analysis	967
(h) The Heliodrom (Petković's Sub-ground 5.2.2.7.3 in part)	968
(i) Arguments of the Parties	969
(ii) Analysis	970
(i) Vojno Detention Centre (Petković's Sub-ground 5.2.2.7.4 in part)	971
(i) Arguments of the Parties	972
(ii) Analysis	973
(j) Ljubuški Prison and Vitina-Otok Camp (Petković's Sub-ground 5.2.2.7.5)	974
(i) Arguments of the Parties	974
(ii) Analysis	975
(k) Conclusion	976
4. Alleged errors concerning Petković's responsibility for crimes committed by the KB, its ATGs, and the Bruno Bušić Regiment	976
(a) Alleged errors regarding Petković's failure to punish or prevent the crimes of the KB and its ATGs (Petković's Sub-ground 5.2.3.1 in part)	977
(i) Arguments of the Parties	977
(ii) Analysis	979
(b) Alleged errors regarding Petković's deployment and use of the Bruno Bušić Regiment (Petković's Sub-ground 5.2.3.1 in part)	981
(i) Crimes committed by members of the Bruno Bušić Regiment in Gornji Vakuf Municipality	982
a. Arguments of the Parties	982
b. Analysis	982
(ii) Crimes committed by members of the Bruno Bušić Regiment in Jablanica Municipality	983
a. Arguments of the Parties	983
b. Analysis	984
(iii) Crimes committed by members of the Bruno Bušić Regiment at the Heliodrom	984
a. Arguments of the Parties	985
b. Analysis	985
(iv) Conclusion	986
(c) Conclusion	987
5. General challenges regarding <i>mens rea</i>	987
(a) Alleged errors concerning the application of the <i>mens rea</i> standard (Petković's Sub-ground 4.3.1)	987
(i) Arguments of the Parties	987
(ii) Analysis	989



(b) Alleged errors concerning Petković's alleged mistakes of law (Petković's Sub-grounds 4.3.2.1 and 4.3.2.3).....	991
(i) Arguments of the Parties.....	991
(ii) Analysis.....	992
(c) Alleged errors concerning Petković's knowledge of the international armed conflict (Petković's Sub-ground 7.1.6).....	995
(i) Arguments of the Parties.....	995
(ii) Analysis.....	996
(d) Alleged errors regarding Petković's <i>mens rea</i> with respect to certain crimes (Petković's Sub-grounds 4.1 and 4.4 both in part).....	997
(i) Unlawful infliction of terror on civilians under Article 3 of the Statute (Count 25).....	997
(ii) Crimes including the notions of "wilful, unlawful, and wanton".....	1000
(iii) Conclusion.....	1000
(e) Conclusion.....	1001
6. Alleged errors regarding the Trial Chamber's conclusions on Petković's responsibility under JCE I (Petković's Sub-grounds 4.1.2, 4.2, 5.1.2, 5.1.3, and 5.2.3.2).....	1001
(a) Petković's direct contribution to the crimes committed by the HVO.....	1001
(b) Petković's intention to expel the Muslim population from the HZ(R) H-B.....	1004
(i) The Trial Chamber's alleged unreasonable inference.....	1004
(ii) The Trial Chamber's alleged failure to render a reasoned opinion.....	1005
(iii) The Trial Chamber's alleged failure to consider exculpatory evidence.....	1007
(iv) Conclusion.....	1010
(c) Petković's significant contribution to the JCE.....	1010
(d) Conclusion.....	1013
7. Alleged errors regarding Petković's responsibility for the destruction of mosques (Petković's Sub-ground 5.2.2.4 in part and Prosecution's Ground 1 in part).....	1013
(a) Arguments of the Parties.....	1013
(b) Analysis.....	1014
(i) Alleged errors concerning Petković's responsibility under JCE I for the destruction of the Baba Bešir and Skrobućani mosques.....	1014
(ii) Alternative Modes of Liability.....	1015
(c) Conclusion.....	1017
8. Alleged errors regarding the Trial Chamber's findings on the plurality of persons sharing the CCP (Petković's Sub-ground 5.2.3.3).....	1017
(a) Arguments of the Parties.....	1018
(b) Analysis.....	1019
9. Conclusion.....	1022
I. ALLEGED ERRORS IN RELATION TO VALENTIN ČORIĆ'S PARTICIPATION IN THE JCE.....	1024
1. Introduction.....	1024
2. Preliminary issues.....	1026
3. Alleged errors related to Čorić's powers regarding the command of the Military Police, his knowledge of the CCP crimes committed by the Military Police units, and his powers in fighting crime (Čorić's Grounds 2, 7, 10, 11, 13, and 14, all in part).....	1027
(a) Čorić's powers over the Military Police.....	1027
(i) Arguments of the Parties.....	1028
(ii) Analysis.....	1029
(b) Čorić's knowledge of the CCP crimes committed by the Military Police units.....	1032
(c) Čorić's powers in fighting crime.....	1033
(d) Summarily dismissed submissions.....	1035
4. Alleged errors related to Čorić's involvement in HVO detention centres (Čorić's Grounds 6, 7, 10, and 14, all in part).....	1036
(a) The Military Police Administration's and Čorić's involvement in detainee labour outside detention centres.....	1036
(i) The Military Police Administration's role in authorising Heliodrom detainee labour... ..	1037
(ii) Čorić's power to authorise Heliodrom detainee labour.....	1038
(iii) Čorić's involvement in the work of detainees from Vitina-Otok Camp.....	1041

(b) Ćorić's power regarding security of detainees in Dretelj Prison.....	1042
(c) Ćorić's power to grant detention centre access to representatives of international organisations and the HVO	1043
(d) Ćorić's knowledge of detainees' mistreatment and poor conditions at the Heliodrom	1044
(e) Ćorić's role in the release of detainees.....	1046
(i) Ćorić's order to release Muslims held in detention in Ljubuški Municipality	1046
a. Arguments of the Parties	1046
b. Analysis	1047
(ii) Ćorić's planning and facilitation of the forced departure of Muslims from BiH territory by participating in establishing the procedure for the release of Heliodrom detainees	1049
(iii) Violation of the principle of <i>non bis in idem</i> in relation to the findings on Ćorić's involvement in the release of detainees	1050
(f) Alleged errors concerning Ćorić's <i>mens rea</i> for JCE I in relation to his involvement in HVO detention centres.....	1051
(i) Ćorić's <i>mens rea</i> stemming from errors in findings related to conditions of detention	1051
(ii) Ćorić's <i>mens rea</i> stemming from errors in findings related to the mistreatment of detainees during detention	1052
(g) Summarily dismissed submissions.....	1053
5. Alleged errors related to Ćorić's involvement in crimes in municipalities (Ćorić's Grounds 2, 7, 10, 11, 13, and 14, all in part).....	1057
(a) Mostar Municipality	1057
(i) Ćorić's involvement in the HVO military operations in East Mostar.....	1057
a. Arguments of the Parties	1057
b. Analysis	1058
(ii) Ćorić's responsibility for a killing incident in Buna (south of Mostar).....	1060
(iii) Ćorić's involvement in isolating the population of East Mostar and blocking humanitarian aid	1062
a. Ćorić's participation in the blockade of the Muslim population of East Mostar and impediment of the delivery of humanitarian aid.....	1062
b. Ćorić's involvement in crime-fighting in Mostar.....	1063
(b) Gornji Vakuf Municipality	1065
(c) Summarily dismissed submissions	1067
6. Conclusion	1068
J. ALLEGED ERRORS IN RELATION TO BERISLAV PUŠIĆ'S PARTICIPATION IN THE JCE.....	1069
1. Introduction.....	1069
2. Powers and contribution to the JCE (Pušić's Grounds 1 and 6)	1070
(a) Overview of the arguments of the Parties	1070
(b) Preliminary issues	1073
(c) The network of HVO detention centres.....	1076
(i) Overall decision-making powers	1076
a. Arguments of the Parties	1076
b. Analysis	1077
(ii) Identification of subordinates	1078
a. Arguments of the Parties	1078
b. Analysis	1080
(iii) Testimony of Witness Marijan Biškić	1081
a. Arguments of the Parties	1081
b. Analysis	1082
(iv) Role as an HVO representative before the international community, including in relation to prisoner exchange and release	1084
a. Arguments of the Parties	1084
b. Analysis	1087
(v) Role as President of the Detention Commission.....	1090
a. Arguments of the Parties	1090
b. Analysis	1092
(vi) Registration and classification of detainees	1092

a. Arguments of the Parties	1093
b. Analysis	1095
(vii) Access to detention centres	1096
a. Arguments of the Parties	1097
b. Analysis	1098
(viii) Release of detainees	1099
a. Arguments of the Parties	1099
b. Analysis	1102
(ix) Forced labour	1105
a. Arguments of the Parties	1105
b. Analysis	1108
(x) Conditions of detention, mistreatment, and transfer of detainees	1111
a. Arguments of the Parties	1112
b. Analysis	1115
(d) Jablanica Municipality	1118
(i) Arguments of the Parties	1118
(ii) Analysis	1120
(e) Prozor Municipality	1121
(i) Arguments of the Parties	1121
(ii) Analysis	1122
(f) Čapljina Municipality	1122
(i) Arguments of the Parties	1123
(ii) Analysis	1124
(g) Mostar Municipality	1125
(i) Pušić's role in the arrest, detention, and displacement of Muslims from West Mostar ..	1125
a. Arguments of the Parties	1125
b. Analysis	1127
(ii) Pušić's role in siege-related crimes	1128
a. Arguments of the Parties	1128
b. Analysis	1130
(h) False information	1131
(i) Arguments of the Parties	1132
(ii) Analysis	1134
(i) Significant contribution	1135
(i) Arguments of the Parties	1136
(ii) Analysis	1137
(j) Impact of the Trial Chamber's errors with regard to Pušić's powers and contribution to the JCE	1138
3. <i>Mens rea</i> (Pušić's Ground 5)	1139
(a) Pušić's general challenges regarding <i>mens rea</i>	1139
(i) Arguments of the Parties	1140
(ii) Analysis	1141
(b) Counts 2 (Murder) and 3 (Wilful killing)	1142
(i) Arguments of the Parties	1143
(ii) Analysis	1145
(c) Counts 24 (Unlawful attack on civilians) and 25 (Unlawful infliction of terror on civilians) ..	1147
(i) Arguments of the Parties	1148
(ii) Analysis	1148
(d) Counts 19-21 (Destruction of property)	1149
(i) Arguments of the Parties	1149
(ii) Analysis	1150
(e) Counts 12-17 (Inhumane acts, inhuman treatment, and cruel treatment)	1151
(i) Arguments of the Parties	1151
(ii) Analysis	1152
(f) Counts 6-9 (Displacement crimes)	1153
(i) Arguments of the Parties	1153

(ii) Analysis	1154
(g) Count 1 (Persecution).....	1156
(i) Arguments of the Parties.....	1156
(ii) Analysis	1156
(h) Knowledge of international armed conflict.....	1157
(i) Conclusion	1159
4. Alleged errors in concluding that Pušić was a member of the JCE (Pušić's Ground 4)....	1159
(a) Arguments of the Parties	1159
(b) Analysis.....	1160
5. Conclusion (Pušić's Grounds 1, 4-6).....	1160

VOLUME III

K. THIRD CATEGORY OF JCE.....	1162
1. Introduction.....	1162
2. Applicable Law on the Third Category of JCE	1163
3. Defence Appellants' challenges to JCE III convictions	1165
(a) Prlić's appeal (Ground 17)	1165
(i) Prlić's challenges	1166
(ii) Impact of the Duša Reversal.....	1166
(iii) Conclusion	1171
(b) Stojić's appeal (Grounds 39, 40, and 41).....	1171
(i) Alleged errors in finding that there was a climate of extreme violence in the municipalities of Gornji Vakuf and Mostar and that Stojić knew of this climate (Stojić's Ground 40)	1173
a. Arguments of the Parties	1173
b. Analysis	1174
(ii) Alleged errors in finding that theft and sexual abuse were foreseeable to Stojić (Stojić's Ground 41)	1177
a. Arguments of the Parties	1177
b. Analysis	1179
(iii) Alleged errors in convicting Stojić for rape and sexual assaults committed by the members of the Vinko Škrobo ATG unit in Mostar (Stojić's Ground 39)	1185
(iv) Conclusion	1187
(c) Praljak's appeal (Grounds 35, 36, and 47)	1187
(i) Alleged errors in finding that there was a climate of extreme violence in Gornji Vakuf Municipality and in Raštani, Mostar Municipality (Praljak's Ground 35).....	1188
(ii) Alleged errors concerning thefts committed in Gornji Vakuf Municipality and in Raštani, Mostar Municipality (Praljak's Grounds 36 and 47)	1190
a. Arguments of the Parties	1190
b. Analysis	1191
i. Whether JCE III crimes were natural and foreseeable consequences of the JCE	1191
ii. Alleged errors in finding that Praljak could have foreseen the commission of thefts and "knowingly" took that risk.....	1193
(iii) Conclusion	1195
(d) Petković's appeal (Ground V).....	1196
(i) Alleged error regarding the <i>mens rea</i> standard for JCE III liability (Petković's Sub-Ground 6.1)	1197
a. Arguments of the Parties	1197
b. Analysis	1198
(ii) Alleged factual and legal errors regarding categories of crimes (Petković's Sub-ground 6.2).....	1199
a. Alleged errors concerning rape and sexual assault in the municipalities of Mostar and Vareš (Petković's Sub-grounds 5.2.2.6 in part and 6.2.1).....	1199
i. Incidents in West Mostar.....	1200
a- Arguments of the Parties.....	1200

b- Analysis.....	1201
ii. Incidents in Vareš town.....	1203
a- Arguments of the Parties.....	1204
b- Analysis.....	1205
iii. Conclusion	1208
b. Alleged errors concerning thefts in the municipalities of Gornji Vakuf, Jablanica, Mostar, and Vareš (Petković's Sub-ground 6.2.2)	1209
i. Municipalities of Gornji Vakuf and Jablanica (Sovići and Doljani) (Petković's Sub-ground 6.2.2.1)	1209
a- Arguments of the Parties.....	1209
b- Analysis.....	1210
ii. Mostar Municipality (Petković's Sub-ground 6.2.2.2)	1213
a- Arguments of the Parties.....	1214
b- Analysis.....	1215
iii. Vareš Municipality (Petković's Sub-ground 6.2.2.3)	1219
a- Arguments of the Parties.....	1219
b- Analysis.....	1220
iv. Conclusion.....	1222
c. Alleged errors concerning the destruction of mosques in Jablanica Municipality (Sovići and Doljani) (Petković's Sub-ground 6.2.3)	1222
i. Arguments of the Parties	1223
ii. Analysis.....	1224
(iii) Conclusion	1225
(e) Ćorić's appeal (Grounds 7 in part and 8)	1225
(i) Alleged errors concerning Ćorić's JCE III liability for crimes committed in Gornji Vakuf Municipality	1227
a. Whether the Trial Chamber applied the wrong standard in adjudicating Ćorić's JCE III liability	1227
b. Alleged error in finding that Ćorić could have foreseen and willingly took the risk that thefts would be committed in Gornji Vakuf.....	1229
(ii) Alleged errors concerning Ćorić's JCE III liability in relation to crimes in West Mostar, Mostar Municipality	1231
a. Alleged errors in findings on Ćorić's liability for thefts during eviction operations ..	1231
i. Arguments of the Parties	1231
ii. Analysis.....	1232
b. Whether the Trial Chamber erred in finding that Ćorić willingly took the risk that sexual violence would be committed as of May 1993.....	1233
(iii) Alleged errors concerning Ćorić's JCE III liability in relation to crimes committed at Dretelj Prison	1235
a. Alleged errors regarding Ćorić's liability for the August 1993 murders.....	1236
i. Arguments of the Parties	1236
ii. Analysis.....	1237
(iv) Conclusion	1238
4. The Prosecution's challenges to JCE III acquittals (Prosecution's Ground 1).....	1239
(a) Introduction	1239
(b) Preliminary matter: alleged defects in the Indictment concerning the pleading of JCE III liability	1243
(i) Arguments of the Parties.....	1243
(ii) Analysis	1244
(c) Alleged error regarding the applicable <i>mens rea</i> for JCE III liability (Prosecution's Sub-ground 1(A) in part)	1246
(i) Arguments of the Parties.....	1246
(ii) Analysis	1249
(iii) Conclusion	1253
(d) Alleged errors concerning the assessment of evidence (Prosecution's Sub-grounds 1(B) and 1(E) both in part)	1254

(i) Alleged errors concerning the assessment of evidence in relation to Prlić's responsibility for certain killing incidents	1255
a. Alleged error of law in the assessment of evidence (Prosecution's Sub-ground 1(B) in part).....	1255
i. Arguments of the Parties	1255
ii. Analysis.....	1256
b. Alleged error of fact in the assessment of evidence (Prosecution's Sub-ground 1(E) in part).....	1258
i. Argument of the Parties.....	1258
ii. Analysis.....	1260
iii. Conclusion	1264
(ii) Alleged errors concerning the assessment of evidence in relation to Petković's responsibility for certain killing incidents	1265
a. Alleged error of law in the assessment of evidence (Prosecution's Sub-ground 1(B) in part).....	1265
i. Arguments of the Parties	1265
ii. Analysis.....	1267
b. Alleged error of fact in the assessment of evidence (Prosecution's Sub-ground 1(E), in part).....	1268
i. Arguments of the Parties	1268
ii. Analysis.....	1270
iii. Conclusion	1275
(e) Alleged failure to adjudicate or to provide a reasoned opinion in relation to certain incidents (Prosecution's Sub-ground 1(C), in part)	1275
(i) Arguments of the Parties.....	1276
(ii) Analysis	1282
a. Alleged failure to adjudicate.....	1282
b. Alleged failure to provide a reasoned opinion.....	1289
(iii) Conclusion	1301
(f) Implications of the Appeals Chamber's findings on the Prosecution's sub-grounds of appeal 1(A) and 1(C) and remedy sought	1301
(i) Arguments of the Parties.....	1302
(ii) Analysis	1304
IX. SUPERIOR RESPONSIBILITY	1309
A. INTRODUCTION.....	1309
B. ALLEGED ERRORS CONCERNING THE PLEADING OF SUPERIOR RESPONSIBILITY IN THE INDICTMENT	1310
1. Arguments of the Parties.....	1310
2. Analysis.....	1310
C. ALLEGED FAILURE TO ADJUDICATE PRLIĆ'S, STOJIĆ'S, PRALJAK'S, PETKOVIĆ'S, AND ĆORIĆ'S SUPERIOR RESPONSIBILITY (PROSECUTION'S GROUND 2).....	1313
1. Arguments of the Parties.....	1313
2. Analysis.....	1315
D. ALLEGED ERRORS IN CONVICTING ĆORIĆ FOR FAILING TO PUNISH SUBORDINATES (ĆORIĆ'S GROUND 9).....	1318
1. Arguments of the Parties.....	1319
2. Analysis.....	1323
(a) Alleged errors in the assessment of the evidence	1323
(b) Alleged errors in finding that Ćorić exercised effective control over the perpetrators	1326
(c) Alleged errors in finding that Ćorić knew or had reason to know of crimes	1327
(d) Alleged errors in finding that Ćorić failed to punish his subordinates for the crimes	1330
3. Conclusion	1332
E. CONCLUSION	1332

X. CUMULATIVE CONVICTIONS	1333
A. ALLEGED ERRORS RELATING TO CUMULATIVE CONVICTIONS (ĆORIĆ'S GROUND 15)	1333
1. Introduction.....	1333
2. Arguments of the Parties.....	1333
3. Analysis.....	1335
4. Conclusion	1337
XI. SENTENCING.....	1338
A. APPLICABLE LAW AND STANDARD OF APPELLATE REVIEW ON SENTENCING	1338
B. ALLEGED ERRORS REGARDING THE GRAVITY OF THE CRIMES	1339
1. Introduction.....	1339
2. Prosecution's appeal (Ground 4 in part)	1340
(a) The nature of the crimes	1340
(i) Arguments of the Parties.....	1340
(ii) Analysis	1343
(b) The form and degree of participation of the Appellants in the commission of the crimes	1345
(i) Arguments of the Parties.....	1346
(ii) Analysis	1350
(c) Ćorić's superior responsibility	1352
3. Stojić's appeal (Sub-grounds 56.2 in part and 56.3).....	1353
4. Petković's appeal (Sub-ground 8.1 in part)	1355
5. Pušić's appeal (Ground 8 in part)	1358
6. Conclusion	1359
C. ALLEGED ERRORS REGARDING AGGRAVATING CIRCUMSTANCES.....	1360
1. Introduction.....	1360
2. Prlić's appeal (Sub-ground 21.2 in part).....	1360
3. Stojić's appeal (Sub-ground 56.2 in part).....	1362
4. Petković's appeal (Sub-ground 8.2 in part)	1364
5. Ćorić's appeal (Ground 16 in part)	1367
6. Pušić's appeal (Ground 8 in part)	1370
7. Conclusion	1371
D. ALLEGED ERRORS REGARDING MITIGATING CIRCUMSTANCES.....	1371
1. Introduction.....	1371
2. Prlić's appeal (Sub-ground 21.1 in part).....	1371
3. Petković's appeal (Sub-ground 8.3).....	1373
4. Ćorić's appeal (Ground 16 in part)	1375
5. Pušić's appeal (Ground 8 in part)	1377
6. Conclusion	1380
E. ALLEGED ERRORS REGARDING THE CALCULATION OF TIME SERVED	1380
1. Introduction.....	1380
2. Arguments of the Parties (Stojić's Ground 57, Petković's Sub-ground 8.4, Ćorić's Ground 17, and Pušić's Ground 8 in part).....	1380
3. Analysis.....	1383
4. Conclusion	1389
F. ALLEGED ERRORS REGARDING COMPARISON OF SENTENCES.....	1389
1. Prosecution's appeal (Ground 4 in part)	1389
(a) Comparison to sentencing practice at the Tribunal	1389
(b) Comparison to national sentencing practice.....	1391
2. Ćorić's appeal (Ground 16 in part)	1393
3. Pušić's appeal (Ground 8 in part)	1394
4. Conclusion	1395
G. CONCLUSION	1395
H. IMPACT OF THE APPEALS CHAMBER'S FINDINGS ON SENTENCES	1395

XII. DISPOSITION	1400
XIII. PARTIALLY DISSENTING, DISSENTING OPINIONS AND DECLARATION OF JUDGE LIU DAQUN	1
A. DECLARATION: ALLEGED ERRORS CONCERNING THE JCE THEORY	1
B. DISSENTING OPINION: UNLAWFUL INFLICTION OF TERROR ON CIVILIANS (MUNICIPALITY OF MOSTAR).....	4
C. DISSENTING OPINIONS: PROSECUTION’S CHALLENGES TO JCE III ACQUITTALS (PROSECUTION’S GROUND 1)	5
1. Alleged error regarding the applicable <i>mens rea</i> for JCE III liability (Prosecution’s Sub-ground 1(A) in part)	5
2. Alleged errors concerning the assessment of evidence (Prosecution’s Sub-ground 1(E) in part)	8
3. Alleged failure to provide a reasoned opinion in relation to certain incidents (Prosecution’s Sub-ground 1(C) in part).....	11
D. PARTIALLY DISSENTING OPINION: ALLEGED ERRORS REGARDING THE CALCULATION OF TIME SERVED	13
XIV. DISSENTING OPINIONS OF JUDGE FAUSTO POCAR	1
A. ALLEGED ERRORS CONCERNING THE JCE THEORY (STOJIĆ’S GROUND 13, PETKOVIĆ’S SUB-GROUND 3.1).....	1
B. ALLEGED ERRORS RELATING TO WANTON DESTRUCTION OF CITIES, TOWNS OR VILLAGES OR DEVASTATION NOT JUSTIFIED BY MILITARY NECESSITY	3
1. The Old Bridge of Mostar (Praljak’s Ground 23 in part, Petković’s Ground 5.2.2.4 in part and Praljak’s responses to Prosecution’s Ground 3	3
(a) Military necessity	4
(b) The notion of proportionality	6
(c) The implications of the Old Bridge of Mostar being cultural property.....	7
(d) The destruction of the Old Bridge of Mostar under Counts 1 and 25.....	9
C. CONCLUSION	11
XV. ANNEX A: PROCEDURAL HISTORY	1
A. COMPOSITION OF THE APPEALS CHAMBER	1
B. NOTICES OF APPEAL	1
C. APPEAL BRIEFS	2
1. Extensions of time and word limits of briefs	2
2. Prosecution’s appeal	3
3. Defence appeals	4
(a) Prlić’s appeal	4
(b) Stojić’s appeal	4
(c) Praljak’s appeal	4
(d) Petković’s appeal.....	4
(e) Ćorić’s appeal.....	5
(f) Pušić’s appeal	5
D. MOTIONS FOR PROVISIONAL RELEASE AND EARLY RELEASE	5
1. Prlić	5
2. Stojić	6
3. Petković.....	6
4. Ćorić.....	6
5. Pušić.....	7
E. DECISION PURSUANT TO RULE 115.....	7
F. LEGAL REPRESENTATION.....	7
G. OTHER PRE-APPEAL DECISIONS AND ORDERS.....	8
H. STATUS CONFERENCES	8

I. APPEAL HEARING	9
XVI. ANNEX B: GLOSSARY	1
A. FILINGS IN THIS CASE	1
B. PROVISIONAL RELEASE DECISIONS AT TRIAL AND ON APPEAL IN THIS CASE	7
C. ICTY JUDGEMENTS AND DECISIONS	16
D. ICTR JUDGEMENTS AND DECISIONS	23
E. OTHER JURISPRUDENCE	25
1. ICC	25
2. ICJ	26
3. SCSL	26
4. ECtHR	26
5. <i>Miscellaneous</i>	27
F. ICTY DOCUMENTS	27
G. TABLE OF OTHER AUTHORITIES	28
1. International legal instruments and commentaries	28
2. Military Manuals	29
3. Books and Articles	29
H. TABLE OF SHORT FORMS	31
I. TABLE OF ABBREVIATIONS	40
XVII. ANNEX C: CONFIDENTIAL ANNEX	1

VIII. JOINT CRIMINAL ENTERPRISE

A. Introduction

580. The Trial Chamber found that the Appellants were members of a JCE,¹⁹⁵⁸ the common criminal purpose of which was “domination by the HR H-B Croats through ethnic cleansing of the Muslim population”,¹⁹⁵⁹ and entailed the commission of a wide range of crimes to that effect.¹⁹⁶⁰ The Trial Chamber further found that the JCE members, including the Appellants, used the political and military apparatus of the HZ(R) H-B to achieve this goal.¹⁹⁶¹ It found that, as JCE members, the Appellants shared the intent to expel the Muslim population from the HZ(R) H-B through the commission of various crimes and made a significant contribution to that end.¹⁹⁶² It accordingly convicted them, pursuant to Article 7(1) of the Statute, of the crimes charged in Counts 1-3, 6-13, 15-16, 18-19, 21, and 24-25 of the Indictment.¹⁹⁶³

581. The Trial Chamber also found that certain established crimes did not form part of the CCP.¹⁹⁶⁴ It nevertheless concluded that Prlić, Stojić, Praljak, Petković, and Čorić were responsible

¹⁹⁵⁸ Trial Judgement, Vol. 4, paras 66-67, 1231-1232.

¹⁹⁵⁹ Trial Judgement, Vol. 4, para. 41.

¹⁹⁶⁰ Trial Judgement, Vol. 4, paras 65-66, 68. The crimes which the Trial Chamber found formed part of the CCP were: persecution as a crime against humanity (Count 1); murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva Conventions (Count 3); deportation as a crime against humanity (Count 6); unlawful deportation of a civilian as a grave breach of the Geneva Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9); imprisonment as a crime against humanity (Count 10); unlawful confinement of a civilian as a grave breach of the Geneva Conventions (Count 11); inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); cruel treatment as a violation of the laws or customs of war (Count 17); unlawful labour as a violation of the laws or customs of war (Count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 19); wanton destruction of cities, towns, or villages, or devastation not justified by military necessity as a violation of the laws or customs of war (Count 20); destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); unlawful attack on civilians as a violation of the laws or customs of war (Count 24); and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). See Trial Judgement, Vol. 4, para. 68.

¹⁹⁶¹ Trial Judgement, Vol. 4, para. 41. See also Trial Judgement, Vol. 4, para. 1232.

¹⁹⁶² Trial Judgement, Vol. 4, paras 276, 428-429, 627-628, 817-818, 1004, 1208-1209.

¹⁹⁶³ Trial Judgement, Vol. 4, Disposition, pp. 430-431. See also *supra*, fn. 1960. The Trial Chamber found that the following violations of the laws or customs of war also fell within the framework of the CCP, but did not enter convictions for them based on the principles relating to cumulative convictions: cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); cruel treatment as a violation of the laws or customs of war (Count 17); and wanton destruction of cities, towns, or villages, or devastation not justified by military necessity (Count 20). See Trial Judgement, Vol. 4, para. 68, Disposition, pp. 430-431. See also Trial Judgement, Vol. 4, paras 1260-1266.

¹⁹⁶⁴ These crimes are those committed during eviction operations and in detention which were found to constitute: murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva Conventions (Count 3); rape as a crime against humanity (Count 4); inhuman treatment (sexual assault) as a grave breach of the Geneva Convention (Count 5); extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 22); and plunder of public or private property as a violation of the laws or customs of war (Count 23). Trial Judgement, Vol. 4, paras 70, 72. The Trial Chamber also found that instances of destruction or wilful damage done to institutions dedicated to religion or education as a violation

for a number of these crimes pursuant to JCE III and entered convictions against them on that basis.¹⁹⁶⁵

582. The Appellants raise challenges in relation to the Trial Chamber's findings concerning their individual criminal responsibility under JCE I and JCE III.¹⁹⁶⁶ In addition, the Prosecution submits that the Trial Chamber erred in failing to convict the Appellants of certain JCE III crimes.¹⁹⁶⁷ The Appeals Chamber will address these submissions in turn.

of the laws or customs of war (Count 21) which took place prior to June 1993 were not part of the CCP. Trial Judgement, Vol. 4, paras 342, 433, 1213-1214, 1216. See also Trial Judgement, Vol. 4, paras 71, 73.

¹⁹⁶⁵ Trial Judgement, Vol. 4, paras 288 (finding Prlić guilty of Counts 2-5, 21-23), 450 (finding Stojić guilty of Counts 2-5, 22-23), 644 (finding Praljak guilty of Counts 22-23), 853 (finding Petković guilty of Counts 4-5, 21-23), 1021 (finding Ćorić responsible for Counts 2-5, 22-23), Disposition, pp. 430-431. The Trial Chamber did not find Pušić responsible for any crimes under JCE III. See Trial Judgement, Vol. 4, paras 1213-1216.

¹⁹⁶⁶ Prlić's grounds of appeal 8-18; Stojić's grounds of appeal 1-4, 6-8, 10-12, 14-15, 20-21, 23-25, 27-31, 33-37, 39-41, 47; Praljak's grounds of appeal 5-7, 10, 15, 21.4 (in part), 28, 32, 34-47, 49; Petković's grounds of appeal I-V; Ćorić's grounds of appeal 1-2, 6-8, 10-11 (in part), 13-14; Pušić's grounds of appeal 1-6.

¹⁹⁶⁷ Prosecution's ground of appeal 1.



B. JCE and JCE III as Firmly Established Under Customary International Law

583. The Trial Chamber held that, in accordance with the jurisprudence of the Appeals Chamber, “JCE was a mode of responsibility firmly established under customary international law” at the time of the commission of the crimes at issue and that the “settled case-law of the Tribunal” recognises the three forms of JCE liability.¹⁹⁶⁸ On appeal, Prlić, Praljak, Čorić, and Pušić contend that the Trial Chamber erred in so holding.¹⁹⁶⁹

1. Arguments of the Parties

584. Prlić, Praljak, Čorić, and Pušić argue that there are cogent reasons for the Appeals Chamber to depart from its prior jurisprudence that JCE, in all of its forms, was a mode of liability firmly established under customary international law at the time of the commission of the crimes falling under the Tribunal’s jurisdiction.¹⁹⁷⁰ Relying upon the Judge Antonetti Dissent on this issue, case-law from the ICC and the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), as well as the personal opinions of former Judges Shahabuddeen and Schomburg, Prlić, Praljak, Čorić, and Pušić challenge the correctness of the *Tadić* Appeal Judgement.¹⁹⁷¹ They argue that, contrary to the *Tadić* Appeal Judgement, JCE, and in particular JCE III, were not part of customary international law at the time of the commission of the crimes at issue and, therefore, the application of JCE as a mode of liability violates the principle of *nullum crimen sine lege*.¹⁹⁷² Čorić refutes JCE as a mode of liability completely and relies upon the Judge Antonetti Dissent and ICC case-law for support. He argues that there is no basis for JCE liability in the Tribunal’s Statute and no uniform state practice on this mode of liability during the relevant time period.¹⁹⁷³ Specifically with respect

¹⁹⁶⁸ Trial Judgement, Vol. 1, paras 202-205, 210.

¹⁹⁶⁹ Prlić’s Appeal Brief, paras 218-231; Praljak’s Appeal Brief, paras 339-345; Čorić’s Appeal Brief, paras 6-17; Pušić’s Appeal Brief, paras 65-70. The Appeals Chamber notes that Stojić had raised the same issue in his Notice of Appeal, but explicitly withdrew the relevant ground in his appeal brief. See Stojić’s Notice of Appeal, para. 45; Stojić’s Appeal Brief, p. 127.

¹⁹⁷⁰ Prlić’s Appeal Brief, paras 218, 220, 227; Praljak’s Appeal Brief, para. 344; Čorić’s Appeal Brief, paras 12, 14; Pušić’s Appeal Brief, para. 67.

¹⁹⁷¹ Prlić’s Appeal Brief, paras 218, 223-224, 226-230; Praljak’s Appeal Brief, paras 340-343; Čorić’s Appeal Brief, paras 9-11, 13-15; Pušić’s Appeal Brief, paras 66-70. In particular, Čorić notes that the Judge Antonetti Dissent cites numerous Special Court for Sierra Leone (“SCSL”) cases that call the JCE doctrine into question. See Čorić’s Appeal Brief, para. 10. Prlić and Praljak, in turn, challenge the *Tadić* Appeal Judgement’s reliance on the International Convention for the Suppression of Terrorist Bombings. See Prlić’s Appeal Brief, para. 222; Praljak’s Appeal Brief, para. 340. Concerning ECCC case-law, Prlić further argues that the *Dorđević* Appeal Judgement misstated the relevant ECCC findings and thus erred in rejecting JCE-related arguments based on the jurisprudence of the ECCC. See Prlić’s Appeal Brief, paras 226-229. Prlić, finally, also points to the position expressed in an article by Judge Shahabuddeen, who presided over the *Tadić* appeal, that the *Tadić* Appeal Judgement erred in upholding the customary status of the JCE doctrine. See Prlić’s Appeal Brief, paras 218, 227.

¹⁹⁷² Prlić’s Appeal Brief, paras 218, 220, 222, 224-225, 230; Praljak’s Appeal Brief, paras 339-340, 342-345; Čorić’s Appeal Brief, paras 6, 9-10, 13-15; Pušić’s Appeal Brief, paras 67-68.

¹⁹⁷³ Čorić’s Appeal Brief, paras 9-10, 13, 16. Prlić and Pušić agree with the Judge Antonetti Dissent that JCE and JCE III in particular, should be abandoned as a form of liability. Prlić’s Appeal Brief, paras 230-231; Pušić’s Appeal Brief, paras 69-70. Pušić further proposes that the Tribunal adopt co-perpetration in place of JCE. Pušić’s Appeal Brief, para. 70.

to JCE III, Prlić and Ćorić argue that this extended form of JCE liability finds no basis in the Statute, state practice, or *opinio juris*, and amounts to collective responsibility.¹⁹⁷⁴ Finally, Ćorić challenges the Trial Chamber's summary dismissal of arguments on this issue which, according to him, amounts to a lack of reasoning and an error of law under Article 23(2) of the Statute.¹⁹⁷⁵

585. The Prosecution responds that Prlić, Praljak, Ćorić, and Pušić have failed to provide cogent reasons for the Appeals Chamber to depart from its settled jurisprudence.¹⁹⁷⁶ The Prosecution observes that the Appeals Chamber has consistently affirmed the status of JCE, and JCE III in particular, as a mode of liability grounded in customary international law at the time of the commission of the crimes and argues that their application in this case did not violate the principle of *nullum crimen sine lege*.¹⁹⁷⁷ The Prosecution defends the analysis in the *Tadić* Appeal Judgement as sound and notes that the Appeals Chamber has previously rejected similar challenges.¹⁹⁷⁸ The Prosecution finally contends that the Trial Judgement was adequately reasoned in this respect.¹⁹⁷⁹

2. Analysis

586. At the outset, the Appeals Chamber rejects Ćorić's contention that the Trial Chamber failed to issue a reasoned opinion. The Appeals Chamber notes that the Trial Chamber methodically laid out the law on JCE as established by the Appeals Chamber and dismissed arguments to the contrary as "fail[ing] to justify calling into question the settled case-law of the Tribunal with regard to JCE".¹⁹⁸⁰ It considers that this was sufficient reasoning; the well-established case-law of the Tribunal amply justified the dismissal of these arguments.¹⁹⁸¹

¹⁹⁷⁴ Prlić's Appeal Brief, paras 219, 221-225; Ćorić's Appeal Brief, para. 14. In this respect, Prlić, *inter alia*, cites a study by the Max Planck Institute purporting to show a lack of uniform state practice with respect to JCE III. Prlić's Appeal Brief, para. 221. Ćorić, in turn, refers to Judge Liu's dissent in the *Šainović et al.* Appeal Judgement concerning the application of JCE III to specific intent crimes. Ćorić's Appeal Brief, para. 11. The Appeals Chamber, however, rejects the latter argument as irrelevant, as no Appellant in this case was convicted of a specific intent crime through the third form of the JCE mode of liability. See Trial Judgement, Vol. 4, paras 288, 450, 644, 853, 1021, 1214-1216. See also Appeal Hearing, AT. 175 (20 Mar 2017), AT. 252-253 (21 Mar 2017), AT. 583-584 (24 Mar 2017).

¹⁹⁷⁵ Ćorić's Appeal Brief, paras 7-11. Ćorić additionally argues that the application of JCE to leadership cases inappropriately dilutes the standard for superior responsibility. Ćorić's Appeal Brief, para. 17. The Appeals Chamber dismisses this argument as vague and undeveloped, as Ćorić fails to elaborate further upon the alleged correlation between these two modes of liability.

¹⁹⁷⁶ Prosecution's Response Brief (Prlić), para. 130; Prosecution's Response Brief (Praljak), paras 291, 294; Prosecution's Response Brief (Ćorić), paras 8-9, 11, 15, 18; Prosecution's Response Brief (Pušić), paras 58, 61.

¹⁹⁷⁷ Prosecution's Response Brief (Prlić), paras 130, 132; Prosecution's Response Brief (Praljak), paras 291-292; Prosecution's Response Brief (Ćorić), paras 8-9, 14; Prosecution's Response Brief (Pušić), paras 56-57.

¹⁹⁷⁸ Prosecution's Response Brief (Prlić), paras 133-135, 137; Prosecution's Response Brief (Praljak), para. 293; Prosecution's Response Brief (Ćorić), paras 11-13, 15-16; Prosecution's Response Brief (Pušić), paras 59-60.

¹⁹⁷⁹ Prosecution's Response Brief (Ćorić), para. 10.

¹⁹⁸⁰ Trial Judgement, Vol. 1, para. 210. See also Trial Judgement, Vol. 1, 202-205, 211-221.

¹⁹⁸¹ See *Aleksovski* Appeal Judgement, para. 113 (holding that "the *ratio decidendi* of [the Appeals Chamber's] decisions is binding on Trial Chambers"). Moreover, the Appeals Chamber recalls that "it is in the discretion of the Trial Chamber as to which legal arguments to address". See *Kvočka et al.* Appeal Judgement, para. 23 (explaining that "the right to a reasoned opinion under Article 23 of the Statute and Rule 98ter(C) of the Rules [...] relates to the

587. The Appeals Chamber recalls that it is the settled jurisprudence of the Tribunal that the three forms of JCE, as forms of commission of a crime, have been established in customary international law since at least 1992.¹⁹⁸² The Appeals Chamber has repeatedly affirmed the relevant analysis in *Tadić*, which examined post-World War II war crimes cases extensively in concluding that joint criminal enterprise as a mode of criminal responsibility is firmly established in customary international law, and has recognised three forms of this mode of liability – JCE I, JCE II, and JCE III.¹⁹⁸³ The Appeals Chamber has also held that “the long and consistent stream of judicial decisions, international instruments, and domestic legislation in force at the time” provided “reasonable notice that committing an international crime on the basis of participating in a JCE incurs individual criminal liability”.¹⁹⁸⁴

588. The Appeals Chamber also recalls that it may exceptionally depart from its previous decisions if there are cogent reasons to do so.¹⁹⁸⁵ The notion of “cogent reasons” encompasses considerations that are clear and compelling.¹⁹⁸⁶ As such, cogent reasons requiring a departure from previous decisions in the interests of justice include situations where a previous decision was made “on the basis of a wrong legal principle” or given *per incuriam*, that is, “wrongly decided, usually because the judge or judges were ill informed about the applicable law”.¹⁹⁸⁷ It is for the party advocating a departure to demonstrate that there are cogent reasons in the interests of justice that justify such departure.¹⁹⁸⁸

589. The Appeals Chamber finds that Prlić, Praljak, Čorić, and Pušić have failed to make a showing that there are cogent reasons in the interests of justice that justify such departure. It notes that it has squarely addressed and rejected arguments similar to those raised in the present instance challenging the *Tadić* Appeal Judgement’s reliance upon international instruments. In *Popović et al.*

Trial Chamber’s Judgement; the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial”).

¹⁹⁸² *Tadić* Appeal Judgement, paras 195-226; *Kvočka et al.* Appeal Judgement, paras 79-80; *Brđanin* Appeal Judgement, paras 363, 405, 410; *Krajišnik* Appeal Judgement, para. 662.

¹⁹⁸³ See *Tadić* Appeal Judgement, paras 195-226; *Kvočka et al.* Appeal Judgement, paras 79-80, 82-83; *Brđanin* Appeal Judgement, paras 363-364; *Krajišnik* Appeal Judgement, para. 659; *Dorđević* Appeal Judgement, paras 35, 40-41, 58; *Popović et al.* Appeal Judgement, para. 1673.

¹⁹⁸⁴ *Popović et al.* Appeal Judgement, para. 1672 (internal quotation marks omitted). The Appeals Chamber has also addressed and rejected in the past the argument that JCE III amounts to collective responsibility, holding that an accused has “done far more than merely associate with criminal persons” when all of the requirements for liability under JCE III have been met. *Brđanin* Appeal Judgement, para. 431.

¹⁹⁸⁵ *Dorđević* Appeal Judgement, para. 23; *Krajišnik* Appeal Judgement, para. 655; *Galić* Appeal Judgement, para. 117; *Aleksovski* Appeal Judgement, para. 107. See also *Stanišić and Župljanin* Appeal Judgement, para. 596.

¹⁹⁸⁶ *Dorđević* Appeal Judgement, para. 24.

¹⁹⁸⁷ *Dorđević* Appeal Judgement, para. 24; *Aleksovski* Appeal Judgement, para. 108. See also *Stanišić and Župljanin* Appeal Judgement, para. 596.

¹⁹⁸⁸ *Dorđević* Appeal Judgement, para. 24; *Krajišnik* Appeal Judgement, para. 655; *Galić* Appeal Judgement, para. 117. See also *Stanišić and Župljanin* Appeal Judgement, para. 596. Contrary to the Appellants’ suggestions, the extrajudicial opinions expressed by former Judges of the Tribunal in scholarly articles do not constitute a cogent reason for departing from the Appeals Chamber’s well-established jurisprudence. Cf. *Stanišić and Župljanin* Appeal Judgement, para. 974; *Dorđević* Appeal Judgement, para. 83.

the Appeals Chamber observed that its consideration in the *Tadić* Appeal Judgement of the International Convention for the Suppression of Terrorist Bombings and the ICC Statute was “limited to demonstrating the consistent legal view of a large number of States on the existence of a notion of a ‘common criminal purpose’ as such”.¹⁹⁸⁹ In *Dorđević*, the Appeals Chamber also rejected the argument that it had erroneously relied, in *Tadić*, upon Article 25(3) of the ICC Statute in support of its JCE analysis.¹⁹⁹⁰ The Appeals Chamber noted that in *Tadić*, it had “relied on the ICC Statute only as evidence revealing the existence of a mode of liability based on ‘a group of persons acting with a common purpose’ distinct from aiding and abetting”, and reasoned that ICC jurisprudence elaborating on that form of liability was “based on the [...] ICC Statute” and did not exclude or even address the existence of JCE in customary international law.¹⁹⁹¹ Prlić, Praljak, Čorić, and Pušić offer no new arguments to compel the Appeals Chamber to revisit and depart from these holdings.

590. Prlić’s, Praljak’s, and Čorić’s reliance on ECCC jurisprudence is also misplaced. In this regard, the Appeals Chamber recalls that it is not bound by the findings of other courts – domestic, international, or hybrid – and that, even though it might take them into consideration, it may, after careful consideration, come to a different conclusion on a matter than that reached by another judicial body.¹⁹⁹² Moreover, they have not shown that ECCC case-law demonstrates a clear mistake in the Appeals Chamber’s JCE precedent. Indeed, in *Dorđević*, the Appeals Chamber recognised that the ECCC “identified flaws in the reasoning of the *Tadić* Appeals Chamber”, but remained “satisfied that the sources of law examined by the *Tadić* Appeals Chamber are reliable” and that JCE III is “well-established in both customary international law and the jurisprudence of this Tribunal”.¹⁹⁹³ The Appeals Chamber sees no reason to depart from these holdings.

591. For the foregoing reasons, the Appeals Chamber concludes that Prlić, Praljak, Čorić, and Pušić have failed to establish that the Trial Chamber erred in holding that JCE, including JCE III, was firmly established under customary international law at the time of the relevant events. Accordingly, the Appeals Chamber dismisses Prlić’s ground of appeal 8, Praljak’s ground of appeal 34, Čorić’s ground of appeal 1.A, and Pušić’s ground of appeal 2 in their entirety.

¹⁹⁸⁹ *Popović et al.* Appeal Judgement, para. 1673.

¹⁹⁹⁰ *Dorđević* Appeal Judgement, paras 35-39.

¹⁹⁹¹ *Dorđević* Appeal Judgement, para. 38.

¹⁹⁹² *Stanišić and Župljanin* Appeal Judgement, para. 598; *Popović et al.* Appeal Judgement, para. 1674. See also *Dorđević* Appeal Judgement, para. 50 (holding that ECCC jurisprudence is not binding on the Appeals Chamber and, “as such, does not constitute a cogent reason to depart from its well-established case law”).

¹⁹⁹³ *Dorđević* Appeal Judgement, paras 51-52.

C. The Ultimate Purpose of the JCE

1. Introduction

592. The Trial Chamber found that: (1) at all times relevant under the Indictment, the ultimate purpose of the HZ(R) H-B leaders and Franjo Tuđman was to set up a Croatian entity that reconstituted, at least in part, the borders of the Banovina, thereby facilitating the reunification of the Croatian people; and (2) such entity was either supposed to be annexed to Croatia directly or to become an independent State within BiH with close ties to Croatia (“Ultimate Purpose of the JCE”).¹⁹⁹⁴ In reaching its conclusion on the Ultimate Purpose of the JCE, the Trial Chamber found that: (1) between 1991 and 1994, Tuđman sought to expand the borders of Croatia by incorporating the HZ(R) H-B either directly or indirectly;¹⁹⁹⁵ (2) between 1992 and 1993, the HZ(R) H-B leaders, including Prlić, Stojić, Praljak, and Petković were involved in meetings and discussions on the partition of BiH;¹⁹⁹⁶ (3) although the HZ H-B was created in the context of the “Serb aggression”, it was not merely a temporary defence initiative;¹⁹⁹⁷ (4) the representatives of the “delegation of BiH Croats” accepted the principles of the Vance-Owen Peace Plan, although they were not genuinely in agreement with such principles;¹⁹⁹⁸ and (5) with the proclamation of the HR H-B, the HZ H-B leaders established a “mini-State” within BiH.¹⁹⁹⁹

2. Alleged errors in the Trial Chamber’s finding that Tuđman intended to expand the Croatian borders

593. The Trial Chamber found that Tuđman: (1) sought to expand the Croatian borders into BiH directly or indirectly; (2) participated in several meetings from 1990 to 1992, including one at Karadorđevo on 25 March 1991 to discuss the plans concerning the division of BiH (“25 March 1991 Karadorđevo Meeting”); (3) adopted a double policy, advocating in public respect for the existing BiH borders, while privately supporting the partition of BiH and sharing his desire for the reunification of the Croatian people; (4) supported the creation of the HZ H-B on 18 November 1991; (5) “continued to be pre-occupied” with the Croatian Banovina between January 1993 and March 1994; and (6) abandoned his plan to expand the Croatian borders, under the force of international pressure, only around 21 February 1994.²⁰⁰⁰

¹⁹⁹⁴ Trial Judgement, Vol. 4, para. 24. See also Trial Judgement, Vol. 4, para. 43.

¹⁹⁹⁵ Trial Judgement, Vol. 4, paras 9-15, 17-18, 22-23.

¹⁹⁹⁶ Trial Judgement, Vol. 4, paras 13, 18-19.

¹⁹⁹⁷ Trial Judgement, Vol. 4, paras 15-16.

¹⁹⁹⁸ Trial Judgement, Vol. 4, para. 20.

¹⁹⁹⁹ Trial Judgement, Vol. 4, para. 21.

²⁰⁰⁰ Trial Judgement, Vol. 4, paras 9-12, 14-15, 17-18, 20, 22-23.

594. Prlić, Stojić, and Praljak submit that the Trial Chamber erred in assessing evidence with respect to specific findings underlying its conclusion on Tuđman's intentions.²⁰⁰¹ Additionally, Prlić, Stojić, and Pušić argue that the Trial Chamber committed errors vis-à-vis its overall conclusion on Tuđman's intentions.²⁰⁰² The Prosecution responds that the Trial Chamber's findings were reasonable and the Appellants' arguments should be dismissed.²⁰⁰³ The Appeals Chamber will address the arguments in turn.

(a) Challenges to underlying findings concerning Tuđman's intentions

(i) Tuđman's plan to expand the Croatian borders

595. The Trial Chamber noted the evidence of Witnesses AR and Peter Galbraith that according to Tuđman, BiH was not supposed to exist as a sovereign State and that a substantial part of it was supposed to be annexed to the territory of Croatia.²⁰⁰⁴ It also highlighted the evidence of Witness Josip Manolić that Tuđman wanted to annex Western Herzegovina as it was "ethnically pure" and adjacent to Croatia.²⁰⁰⁵ Lastly, it noted that Witness Herbert Okun testified that Tuđman's plan to expand the Croatian borders was supposed to be implemented either directly or by incorporating the HR H-B "in some way or other".²⁰⁰⁶ The Trial Chamber found that in connection with this plan "Tuđman advocated dividing BiH between Croatia and Serbia, incorporating part of BiH into Croatia, or at least, the existence of an autonomous Croatian territory within BiH that would enjoy close ties with Croatia."²⁰⁰⁷

a. Prlić's appeal (Sub-ground 9.2 in part)

596. Prlić submits that the Trial Chamber mischaracterised and ignored Manolić's evidence in relation to "Tuđman's attitudes and actions towards BiH".²⁰⁰⁸ Specifically, he points to Manolić's evidence that Tuđman: (1) promoted the referendum for the independence of BiH; (2) supported the sovereignty of BiH and was against changing borders; (3) accepted all peace plans and proposed the

²⁰⁰¹ Prlić's Appeal Brief, paras 237-261; Stojić's Appeal Brief, paras 8-9, 19; Praljak's Appeal Brief, paras 70-83, 85-88, 114.

²⁰⁰² Prlić's Appeal Brief, para. 236; Stojić's Appeal Brief, paras 8-16; Pušić's Appeal Brief, paras 84-98.

²⁰⁰³ Prosecution's Response Brief (Prlić), paras 139-141; Prosecution's Response Brief (Stojić), paras 9, 19; Prosecution's Response Brief (Praljak), paras 31-32, 103; Prosecution's Response Brief (Pušić), paras 62-64.

²⁰⁰⁴ Trial Judgement, Vol. 4, para. 9.

²⁰⁰⁵ Trial Judgement, Vol. 4, para. 9.

²⁰⁰⁶ Trial Judgement, Vol. 4, para. 9.

²⁰⁰⁷ Trial Judgement, Vol. 4, para. 10.

²⁰⁰⁸ Prlić's Appeal Brief, para. 237, referring to Trial Judgement, Vol. 4, para. 9.

deployment of UN forces on the borders; (4) was against the borders of the Banovina and supported the internationally-recognised borders; and (5) never stated that he was for the partition of BiH.²⁰⁰⁹

597. The Prosecution responds that Prlić fails to show any error in the Trial Chamber's reliance on Manolić's corroborated evidence, while declining to rely on potentially conflicting testimony.²⁰¹⁰

598. With respect to the Trial Chamber's finding that Tuđman advocated the division of BiH and either its partial annexation to Croatia or the creation of an autonomous entity with close ties to Croatia, the Appeals Chamber observes that the Trial Chamber considered Manolić's evidence that Tuđman wished to annex Western Herzegovina because it was ethnically pure and adjacent to Croatia.²⁰¹¹ The Appeals Chamber finds that Prlić fails to show how the Trial Chamber misrepresented Manolić's evidence and dismisses his contention. Further, in claiming that the Trial Chamber disregarded Manolić's evidence concerning Tuđman's attitudes and actions towards BiH, Prlić fails to appreciate that the Trial Chamber's reliance on Manolić's testimony was confined to only assessing Tuđman's aspiration to annex Western Herzegovina.²⁰¹² As such, Prlić does not show that Manolić's evidence on Tuđman's support for the referendum and the international arbitration, his proposal to deploy a peacekeeping force, and his acceptance of the peace plans can affect the Trial Chamber's reliance on another portion of Manolić's testimony that Tuđman desired to annex Western Herzegovina to Croatia. Moreover, the Appeals Chamber observes that Manolić's testimony concerning Tuđman's desire to annex Western Herzegovina was largely corroborated by the evidence provided by Witness AR, Galbraith, and Okun.²⁰¹³ Based on these considerations and recalling that it is within the discretion of a trial chamber to evaluate inconsistencies in the evidence and to consider whether the evidence taken as a whole is reliable and credible,²⁰¹⁴ the Appeals Chamber dismisses these arguments.

²⁰⁰⁹ Prlić's Appeal Brief, para. 237, referring to Josip Manolić, T. 4276-4277, 4282-4283, 4290-4291, 4296, 4281-4282 (3 July 2006), 4494-4495, 4585-4586, 4601-4602 (5 July 2006), 4631-4632, 4685-4686, 4707-4708 (6 July 2006). See also Appeal Hearing, AT. 147-148 (20 Mar 2017).

²⁰¹⁰ Prosecution's Response Brief (Prlić), para. 146. See also Prosecution's Response Brief (Prlić), paras 142-143.

²⁰¹¹ See Trial Judgement, Vol. 4, para. 9, referring to Josip Manolić, T(F). 4323, 4325 (4 July 2006).

²⁰¹² Trial Judgement, Vol. 4, para. 9. See Josip Manolić, T. 4323 (4 July 2006) ("President Tudjman wanted to annex Western Herzegovina to Croatia. This was a wish. It was the request of those seven or eight municipalities, the names of which we read out yesterday. The people who lived in those areas felt that their future and their security could be found within the borders of the Republic of Croatia. However, wishes are one thing and realistic possibilities of realising your desire are something else, and there were no realistic preconditions for realising that wish. Therefore, this was in dispute between me and President Tudjman, and we never agreed on it until the very last day, until the Washington agreements were signed which put an end to this dilemma and created the federation of Croats and Muslims in that area").

²⁰¹³ See Trial Judgement Vol. 4, para. 9.

²⁰¹⁴ *Nyiramasuhuko et al.* Appeal Judgement, para. 1661; *Karemera and Ngirumpatse* Appeal Judgement, para. 467; *Hategekimana* Appeal Judgement, para. 82; *Setako* Appeal Judgement, para. 31; *Rukundo* Appeal Judgement, para. 207.

599. Turning to Prlić's argument that the Trial Chamber ignored Manolić's testimony that Tuđman was against the borders of Banovina and supported the internationally-recognised borders, a review of this portion of the transcripts does not show with clarity Tuđman's position in this regard.²⁰¹⁵ By contrast, the Appeals Chamber observes that Manolić testified that Tuđman did not agree with such borders²⁰¹⁶ and that his main goal was the realisation of the Banovina borders.²⁰¹⁷ Accordingly, this argument is dismissed.

600. Further, the Appeals Chamber observes that in claiming that Manolić testified that Tuđman never stated that he was for the partition of BiH, Prlić refers to a portion of the trial record which does not support his argument.²⁰¹⁸

601. The Appeals Chamber therefore finds that Prlić has failed to demonstrate that the Trial Chamber erred in concluding that Tuđman advocated the division of BiH, and dismisses the relevant part of his sub-ground of appeal 9.2.

b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)

602. Praljak submits that the Trial Chamber's conclusion concerning Tuđman's support for the division of BiH is "contradictory *per se*" since the Trial Chamber could not find that "Tuđman supported the incorporation of a part of BiH in Croatia and left a possibility of [the] establishment of an autonomous Croatian entity within BiH", which, in Praljak's view, does not imply its division.²⁰¹⁹ Praljak further argues that the Trial Chamber failed to consider Tuđman's position that he was always in favour of the independence and integrity of BiH as a union of three constituent peoples.²⁰²⁰ Specifically, Praljak avers that Tuđman: (1) was against the division of BiH as it ran

²⁰¹⁵ See Josip Manolić, T. 4281-4282, 4290-4291, 4296 (3 July 2006). Specifically, the Appeals Chamber observes that from the transcript it is not clear whether Manolić is testifying about Tuđman's position concerning the Banovina borders. See Josip Manolić, T. 4283 (3 July 2006).

²⁰¹⁶ See Josip Manolić, T. 4275-4276 (3 July 2006) ("A. Well, essentially it was the position that Mesic and I advocated and that is that one should [...] accept the AVNOJ borders which existed between the republics in the former Yugoslavia, and that it wouldn't be realistic or wise to tamper with those borders, the AVNOJ borders. Q. And did Mr. Tuđman hold a different view as to what borders should exist? A. Well, the very fact that he talked to Milošević about the division of that particular territory, that fact alone speaks that the position was different at that point in time"). See also Josip Manolić, T. 4280-4281 (3 July 2006).

²⁰¹⁷ See Josip Manolić, T. 4281 (3 July 2006).

²⁰¹⁸ Prlić's Appeal Brief, para. 237, referring to Josip Manolić, T. 4602 (5 July 2006), 4631-4632 (6 July 2006).

²⁰¹⁹ Praljak's Appeal Brief, para. 71, referring to Trial Judgement, Vol. 4, paras 10, 16; Appeal Hearing, AT. 385 (22 Mar 2017). See also Praljak's Appeal Brief, para. 70.

²⁰²⁰ Praljak's Appeal Brief, para. 73, referring to Exs. P00366, P00498, P01544, P00167, Josip Manolić, T. 4315, 4318 (3 July 2006). See also Praljak's Appeal Brief, para. 75, referring to Ex. P00167. According to Praljak, the failure to consider the evidence regarding Tuđman's position favouring the BiH as an independent State led the Trial Chamber to distort and erroneously assess his acts and statements, as well as conclude that Tuđman: (1) attended several meetings with Milošević in 1991 and 1992 to discuss the division of BiH, although it only identified such a meeting at Karadordevo; and (2) supported the creation of the HZ(R) H-B in connection with his plan to expand the Croatian borders. Praljak's Appeal Brief, paras 76, 78. Praljak also submits that Tuđman's approach was entirely consistent with BiH's position and its constitution. Praljak's Appeal Brief, para. 73, referring to Exs. 1D02994, 1D01236.

counter to Croatia's interest;²⁰²¹ and (2) maintained his position during the conflict between Croats and Muslims of BiH.²⁰²² Praljak further argues that, had Tuđman had the intention to annex part of BiH territory, he would not have recognised BiH's independence.²⁰²³

603. The Prosecution responds that there is no contradiction in the Trial Chamber's reasonable finding that the Ultimate Purpose of the JCE could be accomplished by the HZ(R) H-B either joining Croatia or through an alliance with Croatia.²⁰²⁴ The Prosecution also submits that Tuđman concealed his real intentions concerning the division of BiH while publicly supporting its independence and territorial integrity.²⁰²⁵ It further argues that Praljak repeats arguments already made at trial and raises challenges without showing any error or impact.²⁰²⁶

604. The Appeals Chamber observes that when concluding that Tuđman advocated the division of BiH between Croatia and the Republic of Serbia ("Serbia"), incorporating part of BiH into Croatia or, at least, the existence of an autonomous Croatian territory within BiH that would enjoy close ties with Croatia, the Trial Chamber took into account Okun's evidence that for Tuđman, the plan to expand the Croatian borders was "supposed to occur either directly or by incorporating the HR H-B into Croatia in some way or other".²⁰²⁷ Praljak argues that the Trial Chamber's finding is contradictory *per se* as the creation of an autonomous Croatian entity in BiH "does not imply" its division. The Appeals Chamber considers that, contrary to Praljak's argument that the Trial Chamber made contradictory findings, it simply concluded that Tuđman envisaged two different ways to realise his plan. Thus, as long as the incorporation of part of BiH into Croatia and the creation of an autonomous Croatian entity in BiH are compatible with Tuđman's plan to expand the Croatian borders – as the Trial Chamber found – there is no contradiction in its conclusion. Accordingly, this argument is dismissed.

605. The Appeals Chamber turns to Praljak's argument that the Trial Chamber failed to consider evidence that Tuđman was always in favour of the independence and integrity of BiH as a union of three constituent peoples. The Appeals Chamber notes that some evidence referred to by Praljak was explicitly considered by the Trial Chamber in its analysis of Tuđman's position towards BiH,

²⁰²¹ Praljak's Appeal Brief, para. 72, referring to, *inter alia*, Ex. P06454; Appeal Hearing, AT. 385 (22 Mar 2017). Praljak also argues that the division of BiH was a solution considered by the international community and that in any case Tuđman was aware that BiH depended on its decision. Praljak's Appeal Brief, para. 72, referring to Judge Antonetti Dissent, pp. 9-10, Ex. P00108; Appeal Hearing, AT. 385 (22 Mar 2017).

²⁰²² Praljak's Appeal Brief, para. 74, referring to Exs. P02302, P03112, P00336, P06454, P00134; Appeal Hearing, AT. 386 (22 Mar 2017).

²⁰²³ Praljak's Appeal Brief, para. 75, referring to Judge Antonetti Dissent, p. 375.

²⁰²⁴ Prosecution's Response Brief (Praljak), para. 41, referring to Trial Judgement, Vol. 4, paras 10, 24. See also Prosecution's Response Brief (Praljak), para. 40; Appeal Hearing, AT. 420 (22 Mar 2017).

²⁰²⁵ Prosecution's Response Brief (Praljak), para. 37, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 12, 17.

²⁰²⁶ Prosecution's Response Brief (Praljak), para. 41. See also Prosecution's Response Brief (Praljak), para. 42.

²⁰²⁷ Trial Judgement, Vol. 4, para. 9, referring to Herbert Okun, T(F). 16996 (5 Apr 2007).

in particular, when finding that he publicly supported the territorial integrity of BiH while continuing to affirm his desire for reunification of the Croatian people.²⁰²⁸ With respect to the remaining evidence which Praljak claims the Trial Chamber disregarded,²⁰²⁹ the Appeals Chamber observes that while not expressly stated, the Trial Chamber discussed at length evidence similar in nature that shows Tuđman's support for the independence of BiH and concluded that it reflected his double policy.²⁰³⁰ In light of its repetitive character, the Appeals Chamber is not persuaded that the Trial Chamber disregarded the evidence concerned, but rather that the Trial Chamber found that the evidence did not prevent it from reaching its conclusion.²⁰³¹ Therefore, the Appeals Chamber rejects this contention.

606. Lastly, the Appeals Chamber rejects Praljak's argument that had Tuđman had expansionist intentions with regard to BiH, he would not have recognised its independence, as it falls short of showing an error in the Trial Chamber's conclusion.

607. The Appeals Chamber therefore finds that Praljak has failed to demonstrate that the Trial Chamber erred in concluding that Tuđman advocated the division of BiH between Croatia and Serbia, incorporating part of BiH into Croatia or, at least, the existence of an autonomous Croatian territory within BiH that would enjoy close ties with Croatia. Accordingly, the Appeals Chamber dismisses Praljak's sub-grounds of appeal 5.1 and 5.2 in relevant part.

(ii) 25 March 1991 Karadordevo Meeting

608. Relying on the evidence of, *inter alios*, Witness AR, Manolić, Galbraith, Okun, and Ciril Ribičić, the Trial Chamber found that between 1990 and 1992, Tuđman participated in several meetings, including the 25 March 1991 Karadordevo Meeting with Slobodan Milošević, concerning the finalisation of "plans [...] to divide BiH between Croatia and Serbia".²⁰³²

²⁰²⁸ See Trial Judgement, Vol. 4, para. 17, referring to Exs. P00336, P01544, P00108, P02302, P00167. See also Trial Judgement, Vol. 4, para. 15, referring, *inter alia*, to Josip Manolić, T(F). 4313-4315, 4344, 4345 (3 July 2006), Exs. P00498, P02302, P06454, P00167.

²⁰²⁹ See Praljak's Appeal Brief, para. 72, referring to Exs. P03112, P00134, 1D01236, Josip Manolić, T. 4318 (3 July 2006).

²⁰³⁰ See Trial Judgement, Vol. 4, paras 12, 17.

²⁰³¹ Moreover, the Appeals Chamber observes that Praljak points to Exhibits P03112, P00134, and 1D01236, without providing the precise references to information allegedly disregarded by the Trial Chamber.

²⁰³² Trial Judgement, Vol. 4, para. 11.

a. Prlić's appeal (Sub-ground 9.3)

i. Arguments of the Parties

609. Prlić submits that the Trial Chamber erred in finding that during the 25 March 1991 Karadordevo Meeting, Tudman and Milošević planned to finalise the division of BiH.²⁰³³ Prlić argues that: (1) Manolić denied having knowledge of the 25 March 1991 Karadordevo Meeting or of any agreement between Milošević and Tudman as he noted that the referendum held a year later confirmed BiH's independence and that "in 1991 Yugoslavia was still in existence and BiH was not on the agenda for discussion";²⁰³⁴ (2) Witness AR's evidence indicates that Tudman was prepared to accept an independent BiH;²⁰³⁵ (3) Okun could not have known Tudman's intentions in 1991 since he became involved in peace negotiations in September 1992;²⁰³⁶ (4) Galbraith arrived in Croatia in June 1993 and did not testify about meetings between Milošević and Tudman;²⁰³⁷ and (5) Ribičić's evidence concerning Tudman and Milošević's plan is based on a portion of the Presidential Transcripts which is "an unreliable and inappropriate source for basing legal/constitutional expertise".²⁰³⁸

610. The Prosecution responds that the Trial Chamber reasonably found that Tudman met Milošević during the 25 March 1991 Karadordevo Meeting to negotiate a partition of BiH, relying on evidence reflecting "Tudman's own admissions".²⁰³⁹ It argues that the evidence of Manolić, Witness AR, and Okun in fact confirms the Trial Chamber's conclusion in this regard.²⁰⁴⁰

ii. Analysis

611. The Appeals Chamber considers that Prlić misrepresents Manolić's testimony with respect to the 25 March 1991 Karadordevo Meeting. A review of Manolić's evidence reflects that Tudman told Manolić that he met with Milošević during the 25 March 1991 Karadordevo Meeting and that they discussed the division of BiH.²⁰⁴¹ Moreover, the Appeals Chamber finds that Prlić has failed to

²⁰³³ Prlić's Appeal Brief, paras 244-246.

²⁰³⁴ Prlić's Appeal Brief, para. 245.

²⁰³⁵ Prlić's Appeal Brief, para. 246, referring to Witness AR, Ex. P10027(confidential), T. 4703-4706, 4712-4714, 4726-4730, 4739, 4744-4746 (closed session) (8 Dec 1997).

²⁰³⁶ Prlić's Appeal Brief, para. 247, referring to Herbert Okun, T. 16653 (9 May 2006).

²⁰³⁷ Prlić's Appeal Brief, para. 248, referring to Peter Galbraith, T. 6422-6423 (12 Sept 2006).

²⁰³⁸ Prlić's Appeal Brief, para. 249, referring to Ex. 1D02036, Ciril Ribičić, T. 25549-25555 (11 Dec 2007), Milan Cvikić, T. 35384-35386 (14 Jan 2009), Prlić's ground of appeal 4.3.

²⁰³⁹ Prosecution's Response Brief (Prlić), para. 152. See also Prosecution's Response Brief (Prlić), para. 151.

²⁰⁴⁰ Prosecution's Response Brief (Prlić), para. 152.

²⁰⁴¹ Josip Manolić, T. 4274, 4277-4278 (3 July 2006). See also Josip Manolić, T. 4672-4673 (6 July 2006). The Appeals Chamber observes that Prlić's claim that Manolić acknowledged not knowing about the 25 March 1991 Karadordevo Meeting is unsupported by the evidence he relies on. See Prlić's Appeal Brief, para. 245, referring to Josip Manolić, T. 4726 (3 July 2006). With respect to his argument that Manolić denied knowing any agreement between Milošević and Tudman, Prlić refers to a portion of Manolić's evidence that during the 25 March 1991 Karadordevo Meeting, Tudman and Milošević, rather than agreeing on the partition of BiH, discussed its division. Prlić's Appeal Brief,

show that Manolić's testimony on the referendum on the independence of BiH or the fact that Yugoslavia was still a State in 1991 affects the Trial Chamber's finding on the meeting.²⁰⁴²

612. Further, Prlić refers to aspects of Witness AR's testimony which do not contradict or undermine this witness's evidence that Tuđman told him that he met with Milošević in Karadorđevo in March 1991 to discuss the partition of BiH as referred to by the Trial Chamber.²⁰⁴³ Accordingly, the Appeals Chamber finds that Prlić has failed to show that the Trial Chamber unreasonably assessed Witness AR's evidence and dismisses Prlić's arguments in this regard.

613. With respect to Prlić's contention that Okun "could not have known Tuđman's intention in 1991", the Appeals Chamber observes that the Trial Chamber referred to Okun's testimony that Tuđman and Gojko Šušak discussed the division of BiH in Okun's presence in 1992.²⁰⁴⁴ It finds that the Trial Chamber relied on Okun's testimony in relation to its overall conclusion that Tuđman participated in several meetings with Milošević to discuss the partition of BiH "from 1990 until at least 1992", rather than to support the more specific finding concerning the 25 March 1991 Karadorđevo Meeting.²⁰⁴⁵ Against this background, the Appeals Chamber fails to see how the fact that Okun did not know Tuđman's intentions in 1991 disturbs the Trial Chamber's impugned finding. Prlić's argument is therefore dismissed.

614. Turning to Prlić's argument that Galbraith did not testify about meetings between Tuđman and Milošević, the Appeals Chamber observes that a review of the relevant trial record shows that Galbraith's evidence concerns Tuđman's aspiration to annex Bosnian territories to Croatia, rather than meetings between Tuđman and Milošević.²⁰⁴⁶ As such, the Appeals Chamber considers that no reasonable trier of fact could have relied on this aspect of Galbraith's testimony when concluding that Tuđman and Milošević met several times in order to discuss the division of BiH. However, Prlić fails to explain how this error would impact the Trial Chamber's conclusion as well as its reliance on various other pieces of evidence, including the testimonies of Manolić, Witness AR,

para. 245, referring to Josip Manolić, T. 4494 (5 July 2006). However, the Appeals Chamber finds that this reference does not show any error in the Trial Chamber's assessment of Manolić's evidence. Furthermore, the Appeals Chamber is of the view that the other portions of Manolić's evidence referred to by Prlić do not support his contention in this regard. See Prlić's Appeal Brief, para. 245, referring to Josip Manolić, T. 4473-4475 (5 July 2006), 4636, 4671-4476, 4682 (6 July 2006).

²⁰⁴² See Prlić's Appeal Brief, para. 245, referring to Josip Manolić, T. 4274-4278 (3 July 2006), T. 4633-4635 (6 July 2006).

²⁰⁴³ Witness AR, Ex. P10027 (confidential), T. 4715 (closed session) (8 Dec 1997). See Trial Judgement, Vol. 4, para. 11.

²⁰⁴⁴ See Trial Judgement, Vol. 4, para. 11, referring to, *inter alia*, Herbert Okun, T(F). 16711-16713 (2 Apr 2007), Ex. P00829, p. 5.

²⁰⁴⁵ See Trial Judgement, Vol. 4, para. 11.

²⁰⁴⁶ See Trial Judgement, Vol. 4, para. 11, referring to, *inter alia*, Peter Galbraith, T(F). 6429, 6436 (12 Sept 2006), 6580 (13 Sept 2006).



and Okun.²⁰⁴⁷ Accordingly, the Appeals Chamber finds that this error has no impact on the relevant finding. Moreover, the Appeals Chamber sees no merit in Prlić's undeveloped contention that Ribičić's evidence on Tuđman and Milošević's plan was based on a portion of the Presidential Transcripts.²⁰⁴⁸ Prlić's argument therefore fails.

615. The Appeals Chamber therefore finds that Prlić has failed to show that the Trial Chamber erroneously found that during the 25 March 1991 Karadordevo Meeting, Tuđman and Milošević planned to finalise the division of BiH, and dismisses Prlić's sub-ground of appeal 9.3.

b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)

616. Praljak submits that the Trial Chamber erred in concluding that between 1990 and 1992, Tuđman and Milošević discussed the division of BiH.²⁰⁴⁹ He specifically claims that the Trial Chamber ignored that the 25 March 1991 Karadordevo Meeting took place "before the conception of the alleged JCE", which the Trial Chamber found was established in January 1993.²⁰⁵⁰ He further contends that: (1) at the time of the meeting, the Socialist Federal Republic of Yugoslavia ("SFRY") still existed and thus BiH was neither an independent State nor at war;²⁰⁵¹ and (2) the Trial Chamber concluded that the 25 March 1991 Karadordevo Meeting addressed the plans concerning the partition of BiH, while acknowledging that it did not receive any conclusive evidence on this plan.²⁰⁵²

617. The Prosecution responds that the Trial Chamber correctly assessed the evidence concerning the 25 March 1991 Karadordevo Meeting, and that Praljak repeats arguments raised at trial without demonstrating any error by the Trial Chamber.²⁰⁵³

618. The Appeals Chamber observes that Praljak's contentions do not articulate a specific error in the Trial Chamber's finding concerning the 25 March 1991 Karadordevo Meeting. He merely argues that the Trial Chamber did not consider the fact that the 25 March 1991 Karadordevo Meeting occurred before the conception of the JCE, but fails to explain how this factor undermines the Trial Chamber's conclusion. Likewise, Praljak does not show how the fact that SFRY still existed and thus BiH was neither an independent State nor at war at the time of the meeting renders unreasonable the Trial Chamber's conclusion that the plans concerning the partition of BiH were

²⁰⁴⁷ See Trial Judgement, Vol. 4, para. 11.

²⁰⁴⁸ Moreover, the Appeals Chamber notes that in this context, Prlić refers to submissions in his ground of appeal 4, which the Appeals Chamber dismisses elsewhere. See *supra*, paras 206-211.

²⁰⁴⁹ Praljak's Appeal Brief, para. 76, referring to Trial Judgement, Vol. 4, para. 11.

²⁰⁵⁰ Praljak's Appeal Brief, para. 76.

²⁰⁵¹ Praljak's Appeal Brief, para. 76; Appeal Hearing, AT. 386-387 (22 Mar 2017).

²⁰⁵² Praljak's Appeal Brief, para. 77.

²⁰⁵³ Prosecution's Response Brief (Praljak), paras 39, 41.

addressed at this meeting. With respect to Praljak's contention that the Trial Chamber did not receive details of the plans concerning the division of BiH discussed by Tuđman and Milošević, the Appeals Chamber observes that the Trial Chamber relied on corroborating evidence reflecting that during the 25 March 1991 Karadorđevo Meeting, Tuđman and Milošević discussed the partition of BiH.²⁰⁵⁴ Against this background, the Appeals Chamber finds that Praljak fails to explain how the absence of the details of these plans renders the relevant finding erroneous.

619. Accordingly, the Appeals Chamber finds that Praljak has failed to show an error in relation to the Trial Chamber's conclusion concerning the 25 March 1991 Karadorđevo Meeting and dismisses the relevant parts of his sub-grounds of appeal 5.1 and 5.2.

c. Stojić's appeal (Ground 1 in part)

620. Stojić submits that the Trial Chamber erred in reaching its conclusion about the 25 March 1991 Karadorđevo Meeting, as it disregarded the testimony of Manolić that the agreements reached were only "stories and rumours", as well as evidence from Witness Stjepan Kljujić.²⁰⁵⁵ Stojić concludes that no reasonable trier of fact could have relied on this meeting as evidence of the Ultimate Purpose of the JCE.²⁰⁵⁶

621. The Prosecution responds that Stojić ignores Manolić's evidence which supports the existence of an agreement between Tuđman and Milošević concerning the partition of BiH.²⁰⁵⁷ It also responds that Kljujić only testified that while he heard rumours of a "secret agreement" on partition, Tuđman did not discuss it with Kljujić.²⁰⁵⁸

622. With respect to Stojić's argument regarding Manolić's evidence, the Appeals Chamber considers that Stojić mischaracterises his testimony, taking the evidence out of context. A careful review of the relevant evidence shows that Manolić did not testify that the agreements between Tuđman and Milošević were only "stories and rumours". In fact, Manolić stated that Tuđman's decision that the Croats should take part in the referendum for the independence of BiH was "in contradiction with all the stories and rumours [...] and the agreements that he had with Milošević about the division of [BiH]".²⁰⁵⁹ The Appeals Chamber further observes that Manolić gave evidence about Tuđman and Milošević's negotiation concerning the division of BiH during the

²⁰⁵⁴ See Trial Judgement, Vol. 4, para. 11, fns 20-21.

²⁰⁵⁵ Stojić's Appeal Brief, para. 19, referring to Josip Manolić, T. 4277 (3 July 2006), Stjepan Kljujić, T. 3845-3846 (26 June 2006).

²⁰⁵⁶ Stojić's Appeal Brief, paras 19, 22.

²⁰⁵⁷ Prosecution's Response Brief (Stojić), para. 17, referring to, *inter alia*, Josip Manolić, T. 4275-4276 (3 July 2006).

²⁰⁵⁸ Prosecution's Response Brief (Stojić), para. 17, referring to Stjepan Kljujić, T. 3845-3846 (26 June 2006).

²⁰⁵⁹ See Josip Manolić, T. 4277 (3 July 2006) (emphasis added).

25 March 1991 Karadordevo Meeting.²⁰⁶⁰ Stojić's argument on this point is dismissed.²⁰⁶¹ Finally, the Appeals Chamber rejects Stojić's argument that the Trial Chamber failed to consider Kljujić's testimony since he fails to demonstrate how the evidence affects the Trial Chamber's conclusion regarding the 25 March 1991 Karadordevo Meeting.

623. The Appeals Chamber therefore finds that Stojić has failed to show that the Trial Chamber erroneously found that during the 25 March 1991 Karadordevo Meeting, Tuđman and Milošević planned to finalise the division of BiH. Accordingly, the Appeals Chamber dismisses the relevant part of Stojić's ground of appeal 1.

(iii) Tuđman's double policy

624. Relying on the evidence of Manolić and Witness AR, as well as on portions of the Presidential Transcripts concerning the presidential meetings of 27 December 1991 and 17 July 1993, the Trial Chamber found that Tuđman "spoke equivocally, advocating, on the one hand, respect for the existing borders of BiH, knowing that the international community was opposed to dividing BiH, and, on the other, the partition of BiH between the Croats and Serbs".²⁰⁶² Similarly, the Trial Chamber concluded that, in 1992, while Tuđman publicly supported BiH's independence advocating the constitutional or confederative model, he continued, with other Croatian governmental representatives, to assert his desire to reunify the Croatian people.²⁰⁶³ The Trial Chamber observed that Tuđman repeatedly spoke of unifying the Croatian people and dividing BiH during presidential meetings held on 11 and 17 September 1992 ("11 September 1992 Presidential Meeting" and "17 September 1992 Presidential Meeting", respectively), as well as during a meeting at Brioni on 28 November 1992 ("28 November 1992 Brioni Meeting").²⁰⁶⁴

a. Prlić's appeal (Sub-grounds 9.2 and 9.3 in part)

i. Arguments of the Parties

625. Prlić submits that in concluding that Tuđman adopted a double policy, the Trial Chamber ignored Tuđman's assistance to BiH in accepting refugees and ABiH soldiers in Croatia and providing logistics to the ABiH and financial support.²⁰⁶⁵ He also argues that the Trial Chamber misrepresented the relevant portions of the Presidential Transcripts, which, in his view, demonstrate

²⁰⁶⁰ See Josip Manolić, T. 4274-4276 (3 July 2006).

²⁰⁶¹ In relation to Stojić's argument that the Trial Chamber found no evidence on the trial record concerning the details of the plans discussed during the 25 March 1991 Karadordevo Meeting (Stojić's Appeal Brief, para. 19), the Appeals Chamber recalls that it has dismissed similar arguments made by Praljak. See *supra*, para. 618.

²⁰⁶² Trial Judgement, Vol. 4, para. 12.

²⁰⁶³ Trial Judgement, Vol. 4, para. 17.

²⁰⁶⁴ Trial Judgement, Vol. 4, para. 18.

that Tuđman: (1) stated on 27 December 1991 that discussions with Alija Izetbegović and Radovan Karadžić must be held to find a peaceful solution, stressing that he was for a sovereign BiH; and (2) denied any agreement with Milošević on 17 July 1993.²⁰⁶⁶ Prlić contends that “Tuđman was transparent during his meetings, never advocated carving up BiH between Croatia and Serbia and opposed BiH’s division”.²⁰⁶⁷

626. Moreover, Prlić submits that the Trial Chamber mischaracterised Tuđman’s remark during the 17 September 1992 Presidential Meeting, since the Presidential Transcripts do not reflect a statement by Tuđman that the HR H-B had to be incorporated into Croatia.²⁰⁶⁸ With respect to the 28 November 1992 Brioni Meeting, Prlić contends that the Trial Chamber ignored contradictions in Okun’s evidence, arguing that Okun’s contemporaneous notes do not reflect any discussions about the partition of BiH between Croats and Serbs.²⁰⁶⁹

627. The Prosecution responds that Prlić’s contention regarding Muslims and Croats’ co-operation is immaterial and, in any event, the Trial Chamber noted the co-operation in certain circumstances.²⁰⁷⁰ With respect to Prlić’s argument that Tuđman publicly denied any agreement with Milošević, the Prosecution contends that such evidence reflects his “two track policy”.²⁰⁷¹ Concerning the 17 September 1992 Presidential Meeting, the Prosecution contends that Prlić provides an implausible interpretation of the evidence and fails to show that the Trial Chamber acted unreasonably.²⁰⁷² Lastly, the Prosecution submits that the Trial Chamber reasonably relied on Okun’s description of the 28 November 1992 Brioni Meeting.²⁰⁷³

ii. Analysis

628. The Appeals Chamber observes that the Trial Chamber did not expressly refer to the evidence concerning Tuđman’s co-operation with BiH which Prlić references.²⁰⁷⁴ Yet, when discussing Tuđman’s double policy, the Trial Chamber relied on Manolić’s evidence that Croatia’s

²⁰⁶⁵ Prlić’s Appeal Brief, para. 250, referring to, *inter alia*, Exs. 3D03720, 3D02633; Appeal Hearing, AT. 128-129 (20 Mar 2017).

²⁰⁶⁶ Prlić’s Appeal Brief, para. 250, referring to, *inter alia*, Exs. P00089, P03517, Miomir Žužul, T. 27631 (6 May 2008). See also Appeal Hearing, AT. 127-128 (20 Mar 2017).

²⁰⁶⁷ Prlić’s Appeal Brief, para. 250 (internal references omitted). See also Prlić’s Appeal Brief, para. 251, referring to Prlić’s Appeal Brief, ground of appeal 19.

²⁰⁶⁸ Prlić’s Appeal Brief, para. 239, referring to Ex. P00498; Appeal Hearing, AT. 237-240 (20 Mar 2017). Prlić also submits that the HR H-B was established 11 months after that meeting, referring to sub-ground of appeal 1.3. See Prlić’s Appeal Brief, para. 239.

²⁰⁶⁹ Prlić’s Appeal Brief, para. 238, referring to Herbert Okun, T. 16711-16714 (2 Apr 2007), Ex. P00829, p. 2.

²⁰⁷⁰ Prosecution’s Response Brief (Prlić), para. 149.

²⁰⁷¹ Prosecution’s Response Brief (Prlić), para. 152.

²⁰⁷² Prosecution’s Response Brief (Prlić), para. 145; Appeal Hearing, AT. 200-201 (20 Mar 2017). See also Prosecution’s Response Brief (Prlić), para. 142.

²⁰⁷³ Prosecution’s Response Brief (Prlić), para. 148. See also Prosecution’s Response Brief (Prlić), para. 142.

²⁰⁷⁴ See Trial Judgement, Vol. 4, para. 12.

efforts to offer military and humanitarian assistance to BiH reflected Tuđman's "dual policy".²⁰⁷⁵ Recalling that a trial chamber need not refer to every witness testimony or every piece of evidence on the record and that there is a presumption that the trial chamber evaluated all the evidence presented to it as long as there is no indication that the trial chamber completely disregarded evidence which is clearly relevant,²⁰⁷⁶ the Appeals Chamber finds that Prlić has failed to show that the Trial Chamber disregarded the evidence he references concerning Tuđman's co-operation with BiH.

629. The Appeals Chamber is similarly not persuaded that the Trial Chamber mischaracterised the Presidential Transcripts. A careful review of the relevant portions of the Presidential Transcripts shows that Tuđman stated that while he previously supported the sovereignty of BiH "because the greater Serbian policy raised the issue of Serbian areas in Croatia", he was in favour of the demarcation of the BiH borders even if he did not want to raise this position openly for "tactical reasons".²⁰⁷⁷ With respect to Prlić's submission that on 17 July 1993 Tuđman denied any agreement with Milošević, the Appeals Chamber observes that Tuđman's statement merely reflects his public position and, consequently, does not affect the finding concerning his double policy.²⁰⁷⁸

630. Further, the Appeals Chamber considers that in contending that "Tuđman was transparent during his meetings, never advocated carving up BiH between Croatia and Serbia and opposed BiH's division", Prlić merely disagrees with the Trial Chamber's interpretation of the evidence without identifying any error.²⁰⁷⁹ The Appeals Chamber dismisses this challenge.

631. The Appeals Chamber turns to Prlić's argument that the Trial Chamber misrepresented evidence by finding that during the 17 September 1992 Presidential Meeting, Tuđman envisioned incorporating the HR H-B into Croatia while the HR H-B was only established 11 months later. A review of the relevant portion of the Presidential Transcripts shows that while Tuđman does not specifically refer to the HR H-B, he argues that part of BiH should be annexed into Croatia if the interests of the Croatian people were not taken care of.²⁰⁸⁰ As such, the Appeals Chamber does not

²⁰⁷⁵ See Trial Judgement, Vol. 4, para. 12, referring to Josip Manolić, T(F). 4490-4493 (5 July 2006). Moreover, the Appeals Chamber observes that the Trial Chamber explicitly considered evidence reflecting efforts of co-operation between Croatia and BiH. See, e.g., Trial Judgement, Vol. 1, paras 440-441.

²⁰⁷⁶ See *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, para. 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.

²⁰⁷⁷ Ex. P00089, pp. 29-30.

²⁰⁷⁸ See Ex. P03517, p. 5.

²⁰⁷⁹ The Appeals Chamber also notes that Prlić broadly refers to submissions in his ground of appeal 19, which the Appeals Chamber dismisses elsewhere. See *supra*, paras 249, 275, 289, 382.

²⁰⁸⁰ Ex. P00498, pp. 80-81 ("[t]herefore, I said, either a Bosnia that would also provide for the interests of the Croatian people, or separation, on the provision, I said, that one part went to Serbia, one part to Croatia, with perhaps a small Muslim statelet remaining in the middle [...]").

find that such a minor discrepancy – the Trial Chamber’s reference to the HR H-B – could impact on the Trial Chamber’s conclusion.²⁰⁸¹ Prlić’s contention is dismissed.

632. Prlić asserts that the Trial Chamber failed to consider contradictions between Okun’s testimony and his contemporaneous notes as the latter do not provide any reference to discussions about the partition of BiH at the 28 November 1992 Brioni Meeting.²⁰⁸² By contrast, a review of the portion of Okun’s notes referred to by the Trial Chamber reflects Tuđman and Šušak’s discussion concerning the partition of BiH.²⁰⁸³ Accordingly, Prlić has failed to demonstrate any inconsistency between Okun’s notes and his testimony on this matter. The Appeals Chamber therefore finds no error in the Trial Chamber’s assessment of Okun’s evidence in this respect and dismisses Prlić’s argument.

633. Accordingly, the Appeals Chamber finds that Prlić has failed to show an error in the Trial Chamber’s assessment of the evidence invalidating its conclusion on Tuđman’s double policy. The Appeals Chamber therefore dismisses the relevant part of Prlić’s sub-grounds of appeal 9.2 and 9.3.

b. Praljak’s appeal (Sub-grounds 5.1, 5.2, and 6.2 in part)

i. Arguments of the Parties

634. Praljak submits that the Trial Chamber erred in finding that “Tuđman spoke equivocally”, arguing that it: (1) failed to provide any example of “Tuđman[’s] double language preferring to refer [to] Manolić[’s] testimony”;²⁰⁸⁴ and (2) erred in assessing the testimony of Manolić since he did not testify about “double language but about [a] double policy”.²⁰⁸⁵ Praljak also avers that Tuđman consistently supported BiH’s sovereignty and independence when he was in the “Croat circle”.²⁰⁸⁶

635. Further, Praljak contends that, contrary to the Trial Chamber’s finding concerning the 11 and 17 September 1992 Presidential Meetings, BiH’s independence and sovereignty was never called into question during those meetings.²⁰⁸⁷ He avers that “the political aim of the HVO was

²⁰⁸¹ See Trial Judgement, Vol. 4, para. 17. The Appeals Chamber also notes that Prlić refers to submissions in his sub-ground of appeal 1.3, which the Appeals Chamber dismisses elsewhere. See *supra*, paras 168-176.

²⁰⁸² Prlić’s Appeal Brief, para. 238.

²⁰⁸³ See Ex. P00829, p. 5 (“FT says he supports this idea for more than a decade, even wrote about it [.] GS: [The] problem is we can’t do it. Looks like [a] collusion of future partition of BiH”). See also Herbert Okun, T. 16711-16712 (2 Apr 2007); Trial Judgement, Vol. 4, para. 18.

²⁰⁸⁴ Praljak’s Appeal Brief, para. 86.

²⁰⁸⁵ Praljak’s Appeal Brief, para. 86.

²⁰⁸⁶ Praljak’s Appeal Brief, para. 86, referring to, *inter alia*, Judge Antonetti Dissent, pp. 392-393, Ex. P00822. See also Praljak’s Appeal Brief, para. 87.

²⁰⁸⁷ Praljak’s Appeal Brief, para. 114.

formulated as the forming and ordering of BiH in accordance with the EC principles, but Croats [...] were also permanently pursuing the goal to end the war”.²⁰⁸⁸ With respect to the 17 September 1992 Presidential Meeting, Praljak argues that the question of the division of BiH was only mentioned as a solution the international community once considered,²⁰⁸⁹ and that Tuđman recalled that Croatia’s position was in favour of organising BiH into three constituent peoples and that the Croatian people’s interests could be assured in BiH.²⁰⁹⁰

636. Additionally, Praljak submits that the Trial Chamber erred in concluding that during the 28 November 1992 Brioni Meeting, Tuđman repeatedly made reference to the division of BiH.²⁰⁹¹ He argues that Okun’s testimony on which the Trial Chamber relied is contradicted by his contemporaneous notes²⁰⁹² and that the other evidence on the record shows that Tuđman had no intention to divide BiH in November 1992.²⁰⁹³

637. The Prosecution responds that there is no merit in Praljak’s argument that the Trial Chamber erred when concluding that Tuđman spoke equivocally since Manolić’s and Okun’s evidence supports the Trial Chamber’s conclusion.²⁰⁹⁴ Moreover, the Prosecution contends, Praljak repeats arguments already made at trial and raises challenges without demonstrating any error or impact.²⁰⁹⁵

ii. Analysis

638. The Appeals Chamber sees no merit in Praljak’s contention that the Trial Chamber did not provide any example of Tuđman’s “double language” and preferred to refer to Manolić’s testimony. When concluding that Tuđman “spoke equivocally”, the Trial Chamber relied, in addition to Manolić’s testimony, on various pieces of evidence which Praljak does not challenge.²⁰⁹⁶ With respect to Praljak’s claim that Manolić testified about Tuđman’s “double policy” rather than “double language”, the Appeals Chamber finds that the difference between the two notions is a mere question of semantics. Accordingly, his argument is dismissed.

639. The Appeals Chamber further rejects Praljak’s contention that Tuđman consistently supported BiH’s sovereignty and independence when he was in the “Croat circle”. Rather than

²⁰⁸⁸ Praljak’s Appeal Brief, para. 114, referring to Ex. P00498, pp. 28, 72.

²⁰⁸⁹ Praljak’s Appeal Brief, para. 80, referring to Ex. P00498, pp. 80-81.

²⁰⁹⁰ Praljak’s Appeal Brief, para. 80. Praljak also argues that Croatia recognised BiH independence and Tuđman made all possible efforts to cooperate with Muslims. Praljak’s Appeal Brief, para. 81, referring to Ex. 1D00896, p. 3; Appeal Hearing, AT. 386 (22 Mar 2017).

²⁰⁹¹ Praljak’s Appeal Brief, para. 82, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 18.

²⁰⁹² Praljak’s Appeal Brief, para. 82.

²⁰⁹³ Praljak’s Appeal Brief, para. 82, referring to, *inter alia*, Exs. P00080, p. 46, P00498, pp. 80, 82, P00822, p. 52. See also Praljak’s Appeal Brief, para. 83.

²⁰⁹⁴ Prosecution’s Response Brief (Praljak), para. 38; Appeal Hearing, AT. 421 (22 Mar 2017).

²⁰⁹⁵ Prosecution’s Response Brief (Praljak), para. 41.

identifying an error in the Trial Chamber's analysis, Praljak merely seeks to substitute his own interpretation of the evidence for that of the Trial Chamber.²⁰⁹⁷ His argument is dismissed.

640. Turning to Praljak's challenges to the Trial Chamber's findings on the 11 and 17 September 1992 Presidential Meetings, the Appeals Chamber observes that the Trial Chamber found that: (1) at the 11 September 1992 Presidential Meeting, Tudman recalled his territorial ambitions for a Croatian Banovina; and (2) at the 17 September 1992 Presidential Meeting, Tudman still envisioned incorporating the HR H-B into Croatia.²⁰⁹⁸ The Appeals Chamber considers that when arguing that the BiH's independence and sovereignty was undisputed at the meetings and that the HVO's political aim was "formulated as the forming and ordering of BiH in accordance with the EC principles, but Croats, concerned by victims, were also permanently pursuing the goal to end the war",²⁰⁹⁹ Praljak merely disagrees with the Trial Chamber's conclusion on Tudman's positions expressed at these meetings and fails to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did. Praljak's assertion is therefore dismissed.

641. Praljak claims that during the 17 September 1992 Presidential Meeting, the division of BiH was mentioned as a solution the international community previously considered. In this respect, the Appeals Chamber notes that from the portion of the Presidential Transcripts Praljak refers to, it is unclear whether Tudman made reference to the division of BiH in the context suggested by Praljak.²¹⁰⁰ However, in reaching its conclusion that Tudman affirmed his desire for the reunification of the Croatian people in 1992, the Trial Chamber relied, in addition, upon the evidence that Tudman spoke of the division of BiH during the 11 September 1992 Presidential Meeting and the 28 November 1992 Brioni Meeting.²¹⁰¹ Thus, the Appeals Chamber finds that, by only pointing to the respective portion of the Presidential Transcripts, Praljak fails to show that the Trial Chamber was unreasonable in reaching the impugned finding based on the remaining evidence and, accordingly, dismisses his argument.

642. Finally, the Appeals Chamber rejects Praljak's challenge to the Trial Chamber's assessment of Okun's evidence regarding the 28 November 1992 Brioni Meeting. The Appeals Chamber

²⁰⁹⁶ See Trial Judgement, Vol. 4, para. 12 & fn. 22, referring to Witness AR, Ex. P10027 (confidential), T(F). 4744, 4778 (closed session) (8 Dec 1997); Ex. P00089, pp. 29-30, Ex. P03517, p. 5.

²⁰⁹⁷ The Appeals Chamber further observes that in support of his contention, Praljak also relies upon the Judge Antonetti Dissent. See Praljak's Appeal Brief, para. 86, referring to Judge Antonetti Dissent, pp. 392-393. In this regard, the Appeals Chamber recalls that the mere existence of a dissent does not render the majority's conclusion unreasonable. See, e.g., *Galić* Appeal Judgement, para. 226.

²⁰⁹⁸ Trial Judgement, Vol. 4, para. 18.

²⁰⁹⁹ Praljak's Appeal Brief, para. 114.

²¹⁰⁰ See Ex. P00498, p. 81.

²¹⁰¹ See Trial Judgement, Vol. 4, paras 17-18.

reiterates that Okun's notes confirm, rather than contradict, his evidence in court.²¹⁰² Similarly, the Appeals Chamber finds that in arguing that "the other evidence" shows that in November 1992, Tuđman had no intention to divide BiH, Praljak simply attempts to substitute his assessment of the evidence for that of the Trial Chamber without showing an error. Accordingly, these arguments are dismissed.

643. The Appeals Chamber therefore finds that Praljak has failed to show that the Trial Chamber erroneously found that Tuđman adopted a double policy. Therefore, the Appeals Chamber dismisses the relevant parts of Praljak's sub-grounds of appeal 5.1, 5.2, and 6.2.

(iv) Tuđman's support for the creation of the HZ H-B on 18 November 1991

644. The Trial Chamber found that, in connection with the plan to expand Croatian borders, Tuđman supported the creation of the HZ H-B on 18 November 1991, which was defined as a Croatian entity protecting the rights of the Croats and defending the "ethnically and historically Croatian" territories, inspired by the territorial borders of the Banovina.²¹⁰³ The Trial Chamber also found that Tuđman, Praljak, and the founders of the HZ H-B, including Mate Boban, repeatedly mentioned the Banovina.²¹⁰⁴

a. Prlić's appeal (Sub-ground 9.5)

i. Arguments of the Parties

645. Prlić submits that the Trial Chamber erred in concluding that Tuđman supported the creation of the HZ H-B as part of the plan to expand Croatian borders since it contradicted its own previous finding in paragraph 423 of Volume 1 of the Trial Judgement.²¹⁰⁵ He further argues that the Trial Chamber failed to properly assess all relevant evidence.²¹⁰⁶ Specifically, he submits that the Trial Chamber ignored evidence showing that "HDZ[-]BiH's policy was always for BiH".²¹⁰⁷ Moreover, according to Prlić, "the actions of HDZ-BiH cannot [be] fully appreciated in the absence

²¹⁰² See *supra*, para. 632.

²¹⁰³ Trial Judgement, Vol. 4, para. 14.

²¹⁰⁴ Trial Judgement, Vol. 4, para. 14.

²¹⁰⁵ Prlić's Appeal Brief, para. 255. See also Prlić's Appeal Brief, para. 255 & fn. 723, referring to Trial Judgement, Vol. 1, paras 423, 428, Vol. 4, paras 14, 17.

²¹⁰⁶ Prlić's Appeal Brief, paras 256, 258-261. See also Prlić's Appeal Brief, para. 257, referring to Prlić's Appeal Brief, sub-grounds of appeal 1.1-1.2; Appeal Hearing, AT. 136 (20 Mar 2017).

²¹⁰⁷ Prlić's Appeal Brief, para. 258. Specifically, Prlić points at evidence on the record allegedly showing that HDZ-BiH's policy was "for BiH" since HDZ-BiH: (1) reacted to the war in Croatia which was conducted in part from BiH; (2) acted because the BiH government was unable to protect BiH and Croats in BiH; (3) organised a defence with different measures, "including establishing a number of Croatian communities inside HDZ"; and (4) offered a defence to Muslims. Prlić's Appeal Brief, para. 258.

of context: the Muslim policy of pursuing a unitary/Muslim dominated state, and how the [BiH] government became a Muslim government”.²¹⁰⁸

646. Prlić also avers that the Trial Chamber failed to consider: (1) the testimony of “Tudman’s close associates” about Tudman’s reference to the Banovina;²¹⁰⁹ (2) evidence concerning Tudman’s opposition to the change of the internationally recognised borders;²¹¹⁰ (3) Praljak’s testimony on the 17 September 1992 Presidential Meeting that “Banovina was not the goal” and the HZ H-B would cease to exist “upon solving BiH’s internal organization”;²¹¹¹ and (4) Prlić’s remarks at the 17 September 1992 Presidential Meeting, which confirm “his understanding of an inviolable BiH of three constituent peoples”.²¹¹²

647. The Prosecution responds that Prlić fails to show that the Trial Chamber erred in finding that the HZ H-B was created for future annexation or alliance to Croatia.²¹¹³ The Prosecution argues that the Trial Chamber considered Defence arguments that the HZ(R) H-B served defence or administrative purposes, concluding that while it may have also served these aims, it was designed to be annexed or allied to Croatia.²¹¹⁴ The Prosecution further responds that Prlić ignores the Trial Chamber’s adverse credibility findings with respect to Praljak’s testimony.²¹¹⁵

ii. Analysis

648. The Appeals Chamber is not persuaded that the Trial Chamber’s finding that Tudman supported the creation of the HZ H-B conflicts with its finding made elsewhere that during the 39th session of the Supreme Council of Croatia on 18 November 1991, he announced that the establishment of the HZ H-B did not constitute a decision to separate from BiH.²¹¹⁶ On the contrary, a reading of the Trial Judgement as a whole suggests that the fact that Tudman publicly advocated the respect of BiH borders while privately supporting the separation of BiH is consistent with the Trial Chamber’s finding on Tudman’s double policy.²¹¹⁷ This argument is thus dismissed.

649. The Appeals Chamber now moves to Prlić’s argument that the Trial Chamber failed to properly assess all relevant evidence. Insofar as he inserts by reference arguments raised in his

²¹⁰⁸ Prlić’s Appeal Brief, para. 259 (internal references omitted).

²¹⁰⁹ See Prlić’s Appeal Brief, para. 260.

²¹¹⁰ Prlić’s Appeal Brief, para. 260.

²¹¹¹ Prlić’s Appeal Brief, para. 261.

²¹¹² Prlić’s Appeal Brief, para. 261.

²¹¹³ Prosecution’s Response Brief (Prlić), paras 155-156.

²¹¹⁴ Prosecution’s Response Brief (Prlić), para. 159, referring to Trial Judgement, Vol. 4, paras 15-16.

²¹¹⁵ Prosecution’s Response Brief (Prlić), para. 147.

²¹¹⁶ See Prlić’s Appeal brief, para. 255, referring to Trial Judgement, Vol. 1, para. 423.

²¹¹⁷ See Trial Judgement, Vol. 4, para. 12.

sub-grounds of appeal 1.1 and 1.2, the Appeals Chamber notes that it dismisses these arguments elsewhere.²¹¹⁸

650. With respect to Prlić's contention that the Trial Chamber failed to consider the evidence concerning the "HDZ-BiH's policy", Prlić fails to show how the evidence he cites is relevant to the Trial Chamber's conclusion on Tuđman's intentions and his support for the creation of the HZ H-B. Similarly, the Appeals Chamber dismisses as unsubstantiated Prlić's blanket argument that the actions of HDZ-BiH cannot be fully appreciated in the absence of context. Prlić's arguments thus fail.

651. Turning to Prlić's challenge that the Trial Chamber failed to consider the evidence of Tuđman's close associates regarding Tuđman's reference to the Banovina, the Appeals Chamber observes that Prlić misrepresents the testimony of Ribičić and Witness Miomir Žužul.²¹¹⁹ They did not testify about the meaning of Tuđman's references to the Banovina during his speeches and utterances, but rather about the reference to the Banovina and its meaning in the preamble of the Croatian Constitution.²¹²⁰ Prlić's argument is dismissed.

652. The Appeals Chamber also rejects Prlić's contention that the Trial Chamber failed to consider evidence that Tuđman was against the change of the borders recognised by the international community as he merely claims that the Trial Chamber failed to consider the evidence without properly articulating an error. Moreover, he does not attempt to show how, based on this evidence, no reasonable trier of fact could have reached the same conclusion.²¹²¹ Accordingly, Prlić's arguments are dismissed.

653. Similarly, the Appeals Chamber rejects Prlić's claims that the Trial Chamber failed to consider Praljak's testimony concerning the 17 September 1992 Presidential Meeting and Prlić's remarks at this meeting.²¹²² The Trial Chamber explained that while it found Praljak's testimony credible on certain points, it found his evidence "hardly credible" when he attempted to limit his responsibility, and consequently did not accept it in those instances.²¹²³ Therefore, the Appeals Chamber finds that the Trial Chamber did not disregard Praljak's testimony, but rather considers that the Trial Chamber weighed his testimony and concluded that this evidence did not prevent it from arriving at its findings. Accordingly, this argument is dismissed.

²¹¹⁸ Prlić's Appeal Brief, paras 256-257, referring to Prlić's Appeal Brief, sub-grounds of appeal 1.1-1.2. See *supra*, paras 168-176.

²¹¹⁹ See Prlić's Appeal Brief, para. 260, referring to, *inter alios*, Ciril Ribičić, T. 25466-25468, 25570 (10 Dec 2008), Miomir Žužul, T. 27648-27651 (7 May 2008).

²¹²⁰ Ciril Ribičić, T. 25466-25468, 25570 (10 Dec 2008), Miomir Žužul, T. 27648-27651 (7 May 2008).

²¹²¹ See *supra*, para. 25.

²¹²² See Prlić's Appeal Brief, para. 260.

²¹²³ Trial Judgement, Vol. 1, para. 399.

654. The Appeals Chamber therefore finds that Prlić has failed to show that the Trial Chamber erroneously found that Tuđman supported the creation of the HZ H-B on 18 November 1991 as part of the plan to expand Croatian borders, and dismisses Prlić's sub-ground of appeal 9.5.

b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)

655. Praljak argues that the Trial Chamber erred in finding that Tuđman supported the creation of the HZ(R) H-B in connection with the plan to expand Croatian borders.²¹²⁴ Praljak asserts that: (1) Croatia was only concerned about its defence;²¹²⁵ and (2) Tuđman stated that the proclamation of the HZ(R) H-B was not a decision to establish the Community of Herceg-Bosna, but a declaration that the BiH Croats were working to establish a community without separating from BiH, which contradicts the Trial Chamber's finding on Tuđman's intentions to divide BiH.²¹²⁶

656. Praljak also argues that after the signing of the Vance-Owen Peace Plan, Tuđman expressed his reservations about the position of some Croats who wanted to proclaim Herceg-Bosna as part of Croatia, constantly made reference to the need for co-operation with Muslims, and supported BiH's independence.²¹²⁷

657. The Prosecution responds that the Trial Chamber's finding was reasonable.²¹²⁸ It also argues that Praljak fails to show the impact of the alleged errors on the Trial Chamber's finding and makes unsubstantiated claims showing no error in the Trial Chamber's assessment of the evidence.²¹²⁹

658. The Appeals Chamber notes that in support of his submission that Croatia was only concerned about its defence, Praljak refers to the evidence that a week before the creation of the HZ H-B, Tuđman told Boban that Croatia would support and co-ordinate military organs of seven municipalities, which were situated close to Croatian areas involved in the conflict.²¹³⁰ However, Praljak makes no attempt to explain how this evidence undermines the Trial Chamber's conclusion. Praljak's argument is dismissed.

659. With respect to Praljak's argument that Tuđman stated that the proclamation of the HZ(R) H-B did not constitute a decision to separate from BiH,²¹³¹ the Appeals Chamber observes that the Trial Chamber explicitly relied upon the evidence referred to by Praljak in its analysis of

²¹²⁴ Praljak's Appeal Brief, para. 78, referring to Trial Judgement, Vol. 4, para. 14.

²¹²⁵ Praljak's Appeal Brief, para. 78, referring to Ex. P00068.

²¹²⁶ Praljak's Appeal Brief, para. 78, referring to Ex. P00080.

²¹²⁷ See Praljak's Appeal Brief, para. 85. According to Praljak, "whatever the position of HZ(R) H-B Leaders and/or Croats living in BiH might have been, Tuđman[s] and Croatia[s] position was to preserve BiH as a sovereign and independent State in its internationally recognized borders". Praljak's Appeal Brief, para. 85.

²¹²⁸ Prosecution's Response Brief (Praljak), para. 40.

²¹²⁹ Prosecution's Response Brief (Praljak), para. 41.

²¹³⁰ Praljak's Appeal Brief, para. 78, referring to Ex. P00068.

the proclamation of the HZ H-B.²¹³² Praljak does not show how this evidence contradicts the Trial Chamber's conclusion that Tuđman supported the creation of the HZ H-B in connection with the plan to expand Croatian borders.²¹³³ The Appeals Chamber also rejects Praljak's contention regarding Tuđman's reservations about the position of some Croats who wanted to proclaim Herceg-Bosna as part of Croatia, as well as his contention concerning Tuđman's support for both co-operation with Muslims and BiH's independence, as he merely points to the evidence without articulating any error vis-à-vis the Trial Chamber's conclusion. In any event, the Appeals Chamber observes that in support of his contention, Praljak refers to evidence reflecting a speech of Tuđman during a meeting with Cyrus Vance, David Owen, Ambassador Martti Ahtisaari, Boban, and Izetbegović.²¹³⁴ In this regard, the Appeals Chamber does not find that this evidence could show an error in the impugned finding as it is consistent with the Trial Chamber's conclusion concerning Tuđman's double policy, namely that while Tuđman publicly supported the independence and the territorial integrity of BiH, he continued to affirm his desire to reunify the Croatian people in private with other Croatian governmental representatives.²¹³⁵ Accordingly, the Appeals Chamber dismisses this claim.

660. The Appeals Chamber therefore finds that Praljak has failed to show that the Trial Chamber erroneously found that in connection with the plan to expand the Croatian borders, Tuđman supported the creation of the HZ H-B on 18 November 1991. The Appeals Chamber dismisses the relevant parts of Praljak's sub-grounds of appeal 5.1 and 5.2.

(v) Tuđman's references to the Croatian Banovina between January 1993 and March 1994

661. The Trial Chamber concluded that between January 1993 and March 1994, Tuđman was still "pre-occupied with the borders of Croatia and by the Croatian Banovina".²¹³⁶ Specifically, the Trial Chamber found that Tuđman: (1) asserted on 20 May 1993 that "Croats surely cannot agree to lose some areas that used to be a part of the Banovina"; (2) stated on 6 July 1993 that the BiH Croats would not conquer the territories of others, but rather the lands that belonged to the Croats for centuries; (3) stated on 21 September 1993 that Stolac and the entire region of Jablanica-Konjic had formed part of the Banovina; and (4) reiterated at a presidency meeting on 6 January 1994 that his military support for Croats in BiH was to ensure that certain BiH territories did not fall into

²¹³¹ Praljak's Appeal Brief, para. 78, referring to Ex. P00080.

²¹³² Trial Judgement, Vol. 1, para. 423, referring to Ex. P00080.

²¹³³ See *supra*, para. 648. See also Trial Judgement, Vol. 4, paras 12, 14.

²¹³⁴ See Praljak's Appeal Brief, para. 85, referring to Ex. P01558, p. 45.

²¹³⁵ Trial Judgement, Vol. 4, para. 17. See also Trial Judgement, Vol. 4, para. 12.

²¹³⁶ Trial Judgement, Vol. 4, para. 22.

Muslim hands, to preserve the territories considered Croatian, and to determine the future borders of the Croatian State “perhaps for centuries”.²¹³⁷

a. Prlić’s appeal (Sub-ground 9.2 in part)

662. Prlić submits that the Trial Chamber erroneously found that Tuđman remained preoccupied with the Banovina borders by: (1) relying on selective portions of the Presidential Transcripts; (2) failing to consider evidence from witnesses who attended relevant meetings; and (3) ignoring “contextually relevant” events during the meetings.²¹³⁸ Specifically, he argues that “Tuđman cannot be understood without considering the [Owen-Stoltenberg Peace Plan] and the signing of a secret agreement between Tuđman and Izetbegović connecting the Muslim and Croat Republics in BiH, and a confederation with Croatia”.²¹³⁹

663. Prlić contends that the Trial Chamber mischaracterised other portions of the Presidential Transcripts which show that Tuđman: (1) supported an independent BiH and asked UNPROFOR to protect the border between BiH and Croatia;²¹⁴⁰ and (2) mentioned the Banovina as an argument against demographic changes in BiH or changes of the borders of Croatia.²¹⁴¹ Prlić further asserts that Tuđman: (1) did not refer to the Banovina in the context of dividing or annexing BiH and the term was “merely a reference point during negotiations about the internal organization of BiH”; (2) supported the independence of BiH regardless of the audience; and (3) was consistently for a peaceful solution.²¹⁴²

664. The Prosecution responds that the evidence to which Prlić refers demonstrates the continuing preoccupation that members of the JCE had with the Banovina, including Tuđman.²¹⁴³

665. The Appeals Chamber observes that in arguing that the Trial Chamber relied selectively on the Presidential Transcripts, Prlić merely refers to certain evidence without explaining how the Trial Chamber unreasonably assessed it. Similarly, his submission that the Trial Chamber failed to consider evidence and contextually relevant events fails to show how, based on this evidence and events, no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did.

²¹³⁷ Trial Judgement, Vol. 4, para. 22.

²¹³⁸ Prlić’s Appeal Brief, para. 240. Prlić points to a portion of the Presidential Transcripts dated 5 November 1993 that the Trial Chamber cited. See Prlić’s Appeal Brief, para. 240 & fn. 687, referring to, *inter alia*, Ex. P06454, pp. 1-2, Slobodan Praljak, T. 41763-41765 (22 June 2009), Trial Judgement, Vol. 4, para. 22. See also Appeal Hearing, AT. 235-236 (20 Mar 2017).

²¹³⁹ Prlić’s Appeal Brief, para. 240. See also Prlić’s Appeal Brief, para. 241, referring to Prlić’s Appeal Brief, sub-ground of appeal 1.3.

²¹⁴⁰ Prlić’s Appeal Brief, para. 242, referring to Exs. P04740, P03324, P02452.

²¹⁴¹ Prlić’s Appeal Brief, para. 242, referring to Exs. P02466, P03279.

²¹⁴² Prlić’s Appeal Brief, para. 243. See also Prlić’s Appeal Brief, para. 242.

The Appeals Chamber further considers that Prlić's assertion that "Tudman cannot be understood without considering the [Owen-Stoltenberg Peace Plan] and the signing of a secret agreement with Izetbegović connecting the Muslim and Croat Republics in BiH, and a confederation with Croatia"²¹⁴⁴ reflects a different interpretation of the evidence without demonstrating an error warranting appellate intervention.²¹⁴⁵ Accordingly, the Appeals Chamber dismisses Prlić's arguments.

666. The Appeals Chamber also finds that when claiming that the Trial Chamber mischaracterised parts of the Presidential Transcripts, Prlić merely disagrees with the Trial Chamber's assessment of evidence but fails to show how the Trial Chamber erred in such assessment. In relation to his claims that the Trial Chamber erred in assessing Tudman's reference to the Banovina, the Appeals Chamber notes that Prlić supports this assertion by referring to evidence on the record without showing that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber.²¹⁴⁶ Recalling that mere assertions that the Trial Chamber failed to give sufficient weight to evidence or failed to interpret evidence in a particular manner warrant a dismissal, the Appeals Chamber declines to consider Prlić's unsubstantiated argument.

667. The Appeals Chamber finds that Prlić has failed to show that the Trial Chamber erroneously concluded that between January 1993 and March 1994, Tudman continued to be preoccupied by the Banovina and with the borders of Croatia. Accordingly, the Appeals Chamber dismisses Prlić's sub-ground of appeal 9.2 in relevant part.

b. Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)

668. Praljak submits that the Trial Chamber misconstrued Tudman's references to the Banovina, because they were historical rather than political in character.²¹⁴⁷ He mentions in particular the presidential meeting of 20 May 1993 ("20 May 1993 Presidential Meeting") where Tudman refers to the Banovina in the frame of the Vance-Owen Peace Plan, which reaffirmed BiH's independence and sovereignty within its internationally recognised borders.²¹⁴⁸ Praljak contends that two weeks

²¹⁴³ Prosecution's Response Brief (Prlić), para. 144. See also Prosecution's Response Brief (Prlić), para. 142. The Prosecution also submits that Prlić fails to show any error in the Trial Chamber's conclusion as he relies on Praljak's evidence, which the Trial Chamber deemed unreliable. Prosecution's Response Brief (Prlić), para. 147.

²¹⁴⁴ Prlić's Appeal Brief, para. 240.

²¹⁴⁵ The Appeals Chamber also notes that Prlić refers to submissions in his sub-ground of appeal 1.3, which the Appeals Chamber dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

²¹⁴⁶ See Prlić's Appeal Brief, para. 243.

²¹⁴⁷ Praljak's Appeal Brief, para. 79 & fn. 146, referring to Judge Antonetti Dissent, p. 391; Appeal Hearing, AT. 386-387 (22 Mar 2017).

²¹⁴⁸ Praljak's Appeal Brief, para. 79, referring to, *inter alia*, Ex. P02466.

later, Tudman reaffirmed his intention to persuade BiH Croats to remain in a “confederal BiH” and informed Izetbegović that the Croats supported BiH.²¹⁴⁹

669. The Prosecution responds that Praljak’s argument that Tudman’s references to the Banovina were merely historical is contradicted by Praljak’s own admission that achieving the separation from BiH with borders matching the Banovina was “Croatia’s policy, and Tudman’s, and Jadranko Prlić’s and all of us”.²¹⁵⁰ The Prosecution further submits that the Trial Chamber agreed with Praljak when it found that in order to achieve the Ultimate Purpose of the JCE, the JCE members forcibly seized the territories linked to the Banovina to demarcate borders based on their control over these provinces.²¹⁵¹

670. The Appeals Chamber notes that in support of his contention that Tudman’s references to the Banovina were historical in character, Praljak relies upon the Judge Antonetti Dissent.²¹⁵² The Appeals Chamber recalls that the mere existence of a dissent does not render the majority’s conclusion unreasonable.²¹⁵³ In relation to Praljak’s claim that during the 20 May 1993 Presidential Meeting, Tudman made reference to the Banovina in the frame of the Vance-Owen Peace Plan, the Appeals Chamber observes that in reaching its conclusion that Tudman was still concerned with the Banovina, the Trial Chamber took into account Tudman’s remarks during four different meetings, including the 20 May 1993 Presidential Meeting.²¹⁵⁴ The Appeals Chamber finds that Praljak challenges the Trial Chamber’s reliance on the 20 May 1993 Presidential Meeting without explaining how the impugned finding could not stand on the basis of the remaining evidence. With regard to Praljak’s argument that Tudman reaffirmed his intention to persuade BiH Croats to remain in a “confederal BiH”, and that Tudman informed Izetbegović of the Croat’s support for BiH, the Appeals Chamber considers that Praljak only points to excerpts of the Presidential Transcripts without showing how such evidence would disturb the impugned finding. The Appeals Chamber finds that Praljak fails to show that no reasonable trier of fact could have reached the impugned conclusion.

671. The Appeals Chamber therefore finds that Praljak has failed to show that the Trial Chamber erroneously concluded that between 1993 and 1994, Tudman was still “pre-occupied with the borders of Croatia and by the Croatian Banovina”. Accordingly, the Appeals Chamber dismisses the relevant part of Praljak’s sub-grounds of appeal 5.1 and 5.2.

²¹⁴⁹ Praljak’s Appeal Brief, para. 79, referring to Exs. P02613, P02719.

²¹⁵⁰ Prosecution’s Response Brief (Praljak), para. 36, referring to Slobodan Praljak, T. 43370-43371 (17 Aug 2009).

²¹⁵¹ Prosecution’s Response Brief (Praljak), para. 36, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 18, 22.

²¹⁵² See *supra*, fn. 2147.

²¹⁵³ See, e.g., *Galić* Appeal Judgement, paras 226-227.

²¹⁵⁴ Trial Judgement, Vol. 4, para. 22.

(b) Challenges to the overall finding that Tuđman claimed that BiH was not supposed to exist as an independent State and that part of BiH was to be annexed to Croatia

(i) Prlić's appeal (Ground 9.2 in part)

672. Prlić submits that the Trial Chamber erroneously concluded that Tuđman claimed that BiH was not supposed to exist as an independent State and that part of BiH was to be annexed to Croatia.²¹⁵⁵ Specifically, he argues that the Trial Chamber relied on “selective snippets” of the evidence, including the Presidential Transcripts, and the evidence of Witness AR, Galbraith, Manolić, and Okun,²¹⁵⁶ and failed to consider relevant evidence from the Presidential Transcript that shows Tuđman's co-operation with the BiH government.²¹⁵⁷

673. The Prosecution responds that the Trial Chamber reasonably found that the JCE members sought to reclaim the Banovina borders and unify the Croatian people by establishing an autonomous Croat entity in BiH in preparation for future integration or alliance with Croatia.²¹⁵⁸ The Prosecution also contends that Prlić's argument regarding Croat-Muslim co-operation is irrelevant.²¹⁵⁹

674. The Appeals Chamber observes that Prlić provides no support for his assertion that the Trial Chamber relied on “selective snippets” of the Presidential Transcripts. Furthermore, in challenging the testimony of Witness AR, Prlić refers to Žužul's and Robert Donia's evidence without explaining how their testimony would render unreasonable the Trial Chamber's reliance on Witness AR.²¹⁶⁰ With respect to the testimonies of Galbraith and Manolić, Prlić simply cross-references other grounds of appeal, which the Appeals Chamber dismisses elsewhere.²¹⁶¹ Lastly, as to Okun's evidence, Prlić points to portions of his testimony without providing any explanation.²¹⁶² The Appeals Chamber finds that Prlić fails to show any error in the Trial Chamber's assessment of the evidence of Witness AR, Galbraith, Manolić, or Okun and, therefore, dismisses these arguments.

²¹⁵⁵ Prlić's Appeal Brief, para. 236, referring to Trial Judgement, Vol. 1, para. 428, Vol. 4, paras 9, 18, 22-24; Appeal Hearing, AT. 127-128 (20 Mar 2017). See also Appeal Hearing, AT. 237 (20 Mar 2017).

²¹⁵⁶ Prlić's Appeal Brief, para. 236, referring to Miomir Žužul, T. 31155-31163 (22 July 2008), Robert Donia, T. 1931-1933 (11 May 2006), Prlić's Appeal Brief, sub-ground of appeal 6.2.

²¹⁵⁷ Prlić's Appeal Brief, para. 236, referring to, *inter alia*, Exs. P00312, P00414, P00466.

²¹⁵⁸ Prosecution's Response Brief (Prlić), para. 142; Appeal Hearing, AT. 188-190 (20 Mar 2017).

²¹⁵⁹ Prosecution's Response Brief (Prlić), para. 149.

²¹⁶⁰ Prlić's Appeal Brief, para. 236, referring to Miomir Žužul, T. 31155-31163 (22 July 2008), Robert Donia, T. 1931-1933 (11 May 2006).

²¹⁶¹ See Prlić's Appeal Brief, para. 236, referring to Prlić's Appeal Brief, sub-ground of appeal 6.2. See also *supra*, paras 213, 216-218.

²¹⁶² Prlić's Appeal Brief, para. 236, referring to Herbert Okun, T. 16653 (2 Apr 2007).

675. Turning to Prlić's argument that the Trial Chamber disregarded evidence reflecting Tuđman's co-operation with the BiH government, the Appeals Chamber reiterates that the Trial Chamber considered Tuđman's efforts to co-operate with BiH and concluded that they reflected his double policy.²¹⁶³ Against this background, Prlić merely asserts that the Trial Chamber failed to consider certain evidence without showing that, based on this evidence, no reasonable trier of fact could have reached the same conclusion as the Trial Chamber. Accordingly this argument is dismissed.

676. The Appeals Chamber finds that Prlić has failed to show that the Trial Chamber erred in reaching its conclusion about Tuđman's intentions. Accordingly, the Appeals Chamber dismisses the relevant part of Prlić's ground of appeal 9.2.

(ii) Stojić's appeal (Ground 1 in part)

a. Arguments of the Parties

677. Stojić submits that when concluding that Tuđman had intentions to reconstitute the Banovina, the Trial Chamber failed to consider relevant evidence.²¹⁶⁴ Specifically, he argues that the Trial Chamber's analysis of presidential meetings is wholly inadequate as the Trial Chamber only relied on a limited part of the Presidential Transcripts, "while disregarding other relevant documents entirely", in contrast to the detailed analysis provided by Judge Antonetti in his dissent.²¹⁶⁵ Stojić contends that the relevant evidence from the Presidential Transcripts which the Trial Chamber disregarded is inconsistent with its conclusion on Tuđman's intentions,²¹⁶⁶ and shows that Tuđman: (1) advocated the independence of BiH as a confederation of three constituent peoples;²¹⁶⁷ and (2) placed importance on co-operation with Muslims and on "international opinion".²¹⁶⁸

²¹⁶³ See *supra*, para. 624. See also Trial Judgement, Vol. 1, paras 440-441, 463-464, 467, 471-472, 477, Vol. 2, paras 696-697.

²¹⁶⁴ Stojić's Appeal Brief, paras 10-16.

²¹⁶⁵ Stojić's Appeal Brief, para. 10, referring to Judge Antonetti Dissent, pp. 7-50; Appeal Hearing, AT. 258-262, 266-267 (21 Mar 2017). See also Stojić's Appeal Brief, para. 16.

²¹⁶⁶ Stojić's Appeal Brief, paras 11, 15, referring to Trial Judgement, Vol. 4, paras 9, 14.

²¹⁶⁷ Stojić's Appeal Brief, para. 11; Appeal Hearing, AT. 260-261 (21 Mar 2017), referring to, *inter alia*, Exs. P00080, P00167, P00336, P04740, P07198, P00822, P00498, P00882, P00866, P01544, P01883, P02302, P03704, P03517.

²¹⁶⁸ Stojić's Appeal Brief, para. 12; Appeal Hearing, AT. 262-263, 301 (21 Mar 2017). In particular, Stojić refers to portions from the Presidential Transcripts reflecting that Tuđman: (1) insisted on co-operation with Bosnian Muslims; (2) criticised HVO leaders for fighting with Muslims; (3) reproached Boban for his remark that he did not believe in joint politics with Muslims; (4) "was concerned about what outcome would be acceptable to Europe and the world"; and (5) supported solutions "within the international order", fearing international sanctions. Stojić's Appeal Brief, para. 12, referring to Exs. P01297, P01883, P07198, P07480, P07485, P03112, P06930, P00108, P02122, P02466, Judge Antonetti Dissent, p. 51. According to Stojić, these statements were also consistent with Croatia's actions, including its invitation of international observers to its borders. Stojić's Appeal Brief, para. 12, referring to Exs. P00324, P03467, P02613.

678. Moreover, Stojić contends that the Trial Chamber also disregarded: (1) evidence showing that Croatia agreed to a succession of peace plans;²¹⁶⁹ (2) evidence from Witness 4D-AB that there was no Croatian policy in the area;²¹⁷⁰ and (3) evidence from Manolić that Tuđman was not enthusiastic about the reconstitution of the Banovina.²¹⁷¹ Finally, Stojić argues that the Trial Chamber made contradictory findings when it concluded that Tuđman supported the creation of the HZ H-B in order to expand and also to protect the borders of Croatia.²¹⁷²

679. The Prosecution responds that the Trial Chamber did not disregard the evidence referred to by Stojić and reasonably relied on the evidence showing the “two-track policy” of the JCE members.²¹⁷³ The Prosecution submits that: (1) the Trial Chamber reasonably gave more weight to the “overwhelming evidence from the JCE members’ contemporaneous statements” supporting the Ultimate Purpose of the JCE than to the testimony of Witness 4D-AB;²¹⁷⁴ and (2) contrary to Stojić’s submission, Manolić testified that Tuđman’s main goal was the reconstitution of “the Banovina Croatia borders”.²¹⁷⁵ Finally, the Prosecution contends that there is no inconsistency in the Trial Chamber’s finding regarding Tuđman’s intentions to protect and expand the Croatian borders as Tuđman stated that “the question above all others is how to preserve the Republic of Croatia, how to gain as much as possible” in BiH.²¹⁷⁶

680. Stojić replies that the Prosecution’s argument concerning the double policy is contradicted by evidence which reflects that in his private statements in 1992 and 1993, Tuđman supported the independence of BiH as a “union of the three constituent peoples”,²¹⁷⁷ and he was willing to help Bosnian Muslims.²¹⁷⁸

b. Analysis

681. With respect to Stojić’s argument that the Trial Chamber failed to consider the evidence from the Presidential Transcripts indicating that Tuđman advocated for the independence of BiH and placed emphasis on co-operation with Bosnian Muslims and on international opinion, the

²¹⁶⁹ Stojić’s Appeal Brief, para. 13, referring to Exs. 3D03720, P09276, P01391, P01038, Trial Judgement, Vol. 1, paras 438, 444, 451, 462, 482 (concerning the Cutileiro Plan, the Vance-Owen Peace Plan, and the Owen-Stoltenberg Peace Plan).

²¹⁷⁰ Stojić’s Appeal Brief, para. 14, referring to Witness 4D-AB, T. 47098 (23 Nov 2009).

²¹⁷¹ Stojić’s Appeal Brief, para. 14, referring to Josip Manolić, T. 4282-4283 (3 July 2006).

²¹⁷² Stojić’s Appeal Brief, para. 15, referring to Trial Judgement, Vol. 4, paras 14-15.

²¹⁷³ Prosecution’s Response Brief (Stojić), paras 10-13; Appeal Hearing, AT. 348-349 (21 Mar 2017). See also Prosecution’s Response Brief (Stojić), para. 9.

²¹⁷⁴ Prosecution’s Response Brief (Stojić), para. 15.

²¹⁷⁵ Prosecution’s Response Brief (Stojić), para. 14.

²¹⁷⁶ Prosecution’s Response Brief (Stojić), para. 15, referring to Ex. P05237.

²¹⁷⁷ Stojić’s Reply Brief, para. 5, referring to Ex. P01544.

²¹⁷⁸ Stojić’s Reply Brief, para. 5, referring to Exs. P00822, P00866. Stojić also points to evidence showing that Tuđman encouraged co-operation and criticised the crimes committed by the HVO. Stojić’s Reply Brief, para. 6, referring to Exs. P06581, P01798. See also Appeal Hearing, AT. 263-264 (21 Mar 2017).

Appeals Chamber notes that a review of the relevant findings shows that the Trial Chamber expressly considered most of the evidence Stojić references in its analysis concerning the Ultimate Purpose of the JCE, including in its conclusion concerning Tudman's double policy, according to which Tudman publicly supported BiH's existing borders, while privately advocating for its division.²¹⁷⁹ The Appeals Chamber therefore finds that Stojić does not show that the Trial Chamber disregarded the evidence. As regards the remaining evidence Stojić relies on,²¹⁸⁰ the Appeals Chamber observes that it is similar to the evidence expressly relied on by the Trial Chamber in finding that Tudman adopted a double policy.²¹⁸¹ Accordingly, the Appeals Chamber is not persuaded that the Trial Chamber disregarded this evidence, but rather that the Trial Chamber assessed it and concluded that it did not prevent it from reaching its conclusion. Stojić's arguments are therefore dismissed.

682. With respect to Stojić's contention that the Trial Chamber disregarded evidence showing that Croatia agreed to a succession of peace plans, the Appeals Chamber notes that he supports his contention by pointing to evidence which was expressly considered in relation to the international peace plans and negotiations,²¹⁸² or by referring to the Trial Chamber's findings without explaining how these findings support his argument that it disregarded relevant evidence.²¹⁸³ Accordingly, the Appeals Chamber finds that Stojić fails to show an error in the Trial Chamber's conclusion.

683. With respect to the statements of Tudman reflected in Exhibits P01544, P00866, and P00822, referred to by Stojić in his reply, the Appeals Chamber notes that the respective portions of Exhibits P01544 and P00866 were expressly considered by the Trial Chamber in its conclusions that Tudman spoke equivocally when advocating for the existence and the legitimacy of the BiH.²¹⁸⁴ A careful review of Exhibits P01544 and P00866 suggests that, rather than advocating for the independence of BiH during these Presidential Meetings, Tudman was simply describing his public position in this regard,²¹⁸⁵ or showing his doubts about the possibility of BiH remaining

²¹⁷⁹ See Trial Judgement, Vol. 4, paras 12 (referring to Exs. P03517, P00108), 15 (referring to Exs. P00167, P00036, P00498, P00866), 17 (referring to Exs. P00336, P01544, P02302, P00167), 22 (referring to Exs. P04740, P07485, P02466).

²¹⁸⁰ See Stojić's Appeal Brief, paras 11 (referring to Exs. P00080, P07198, P00882, P01883, P03704), 12 (referring to Exs. P01297, P01883, P07198, P07480, P03112, P06930, P02122).

²¹⁸¹ See Exs. P00080, P07198, P00822, P01883, P03704, P01297, P07480, P03112, P06930, P02122. Specifically, the Appeals Chamber reiterates that the Trial Chamber noted evidence concerning Tudman's efforts to co-operate with BiH in concluding that it reflected his double policy. See *supra*, para. 624.

²¹⁸² See Trial Judgement, Vol. 1, paras 445-446, 451, 455 (referring to Ex. P01038), 461-462 (referring to Ex. P01391); Vol. 4, paras 14 (referring to Ex. P09276), 681 (referring to Ex. 3D03720).

²¹⁸³ See Stojić's Appeal Brief, para. 13, referring to Trial Judgement, Vol. 1, paras 438, 444, 451, 462, 482.

²¹⁸⁴ See Trial Judgement, Vol. 4, paras 15 (referring to Ex. P00866), 17 (referring to Ex. P01544).

²¹⁸⁵ See Ex. P01544, pp. 23-24 ("Gentlemen, due to both our interest in a definitive solution and international relations, because in this Croatia is in a very delicate position in relation to Europe, America and the Islamic world, because they were actually looking for a possibility to put pressure on Croatia as it apparently has no correct attitude, it apparently made [an] agreement to divide Bosnia etc. So, we must persevere in our stand that Bosnia and Herzegovina is to remain independent, but only as a union of the three constituent peoples [...]. There is something, the Bosnian Muslims are

united.²¹⁸⁶ Against this background, the Appeals Chamber finds that Stojić merely attempts to give a different interpretation of the evidence without articulating an error warranting appellate intervention. As to Stojić's reference to Exhibit P00822, the relevant portion of the evidence does not clearly indicate the extent to which Tuđman advocated for the independence of BiH.²¹⁸⁷ In any event, the Appeals Chamber finds that Stojić fails to show how this piece of evidence could impair the Trial Chamber's assessment of various pieces of evidence in support of its conclusion that Tuđman adopted a double policy with respect to the integrity and independence of BiH.²¹⁸⁸ Accordingly, this argument is dismissed.

684. Further, considering that the Trial Chamber took into account the overwhelming evidence reflecting Tuđman's concerns for the Banovina, the Appeals Chamber sees no error in the Trial Chamber's decision not to address Witness 4D-AB's testimony that there was no Croatian policy in the area.²¹⁸⁹ Turning to Stojić's claim that the Trial Chamber disregarded the evidence from Manolić that Tuđman was "not enthusiastic" about reconstituting the Banovina, the Appeals Chamber considers that Stojić mischaracterises Manolić's testimony. A review of the portion of the evidence referred to by Stojić shows that Manolić testified that Tuđman was "not enthusiastic" about the situation of the borders of Istria and Baranja, rather than about the reconstitution of the Banovina.²¹⁹⁰ Accordingly, the Appeals Chamber finds that Stojić fails to show any error in the Trial Chamber's impugned conclusion vis-à-vis Tuđman's intentions.

striving and partly succeeding in convincing the world that they are not fundamentalists. Fundamentalists in the Shia sense, as West looks on Iranian fundamentalists. But, gentlemen, OZAL was greeted outside the mosque Bosnia, Allah. So they are not fundamentalists in the Shia sense, but in practice they want to dominate anyway and this is manifested in reality in all areas and it is in this context that we must explain to the world what this is about").

²¹⁸⁶ See Ex. P00866, pp. 9-10 ("But, looking at the whole, we can say that even in this – in this sense of state, politics and strategy – we won the battle to prevent Bosnia and Herzegovina be included in a greater Serbia. And today it can be discussed that Bosnia and Herzegovina survives as/sic/, if it survives as a confederate community of three nations. So, that Croat people in Bosnia and Herzegovina have full independence in the area – to say it in this way, the Herzeg-Bosnia community, and even the international recognition, that we have the right to that part of Bosanska Posavina that was predominately inhabited by Croat population. And, between us – but please do not say it in the street – whether this is the thing that Bosnia and Herzegovina can really survive only as such confederate community. /sic/ But, to you people of responsibility in the Croatian Army, I have to make it known to you that many international signs indicate that those most responsible European and American factors alike are asking themselves about the possibility and expedience of the survival of Bosnia and Herzegovina").

²¹⁸⁷ Ex. P00822, p. 52.

²¹⁸⁸ Trial Judgement, Vol. 4, paras 12, 15, 17.

²¹⁸⁹ See also Trial Judgement, Vol. 4, paras 9-12, 14-15, 17-18, 22-23.

²¹⁹⁰ Josip Manolić, T. 4282-4283 (3 July 2006) ("Q. Sir, can you tell us when President Tudjman came back from [Karadordevo], did he have a view that by his agreement with Milosevic the Banovina borders could be recreated in Bosnia? A. No, because President Tudjman was not very enthusiastic about those borders since a new situation had arisen. Within the Croatian Banovina, there was no Istria or Baranja at the time, and those were areas that the Croatian state wanted preserved. They didn't want these borders changed in that area. So President Tudjman did not insist on the Banovina borders of Croatia. [...] This new situation was that the borders of the Banovina of Croatia were unrealistic in the newly arisen situation where Croatia had acquired Istria after World War II and Baranja also became part of the Socialist Republic of Yugoslavia. This was too important. The historical Banovina could not be justified because of this").

685. Finally, the Appeals Chamber rejects Stojić's argument that the Trial Chamber made contradictory findings in assessing Tuđman's intentions vis-à-vis his support for the creation of HZ H-B. Specifically, the Appeals Chamber is not persuaded that the intention to protect the Croatian border would negate the aim to expand it. The Appeals Chamber further observes that the Trial Chamber's conclusions in this regard are consistent with its earlier findings that "Tuđman advocated dividing BiH between Croatia and Serbia, incorporating part of BiH into Croatia, or at least, the existence of an autonomous Croatian territory within the BiH that would enjoy close ties with Croatia".²¹⁹¹ Accordingly, this argument is dismissed.

686. In light of the foregoing, the Appeals Chamber finds that Stojić has failed to show that the Trial Chamber erred in its relevant findings concerning Tuđman's intentions. Accordingly, the Appeals Chamber dismisses the relevant part of Stojić's ground of appeal 1.

(iii) Pušić's appeal (Ground 3 in part)

a. Arguments of the Parties

687. Pušić submits that the Trial Chamber erred in reaching its conclusion concerning Tuđman's intentions, by failing to apply the beyond reasonable doubt standard of proof and ignoring other reasonable inferences available from the evidence.²¹⁹² In particular, relying extensively on the Judge Antonetti Dissent, Pušić contends that the evidence on the trial record does not support: (1) the Trial Chamber's findings concerning Tuđman's intentions to divide BiH or to intervene in BiH with the aim to create a Greater Croatia;²¹⁹³ (2) the Trial Chamber's "assumption" that Tuđman controlled the HZ(R) H-B's military activities due to "a joint command structure";²¹⁹⁴ and (3) the Trial Chamber's finding of Tuđman's "two-track policy".²¹⁹⁵ According to Pušić, another

²¹⁹¹ See Trial Judgement, Vol. 4, para. 10. See also Trial Judgement, Vol. 4, paras 16, 24.

²¹⁹² Pušić's Appeal Brief, paras 84-97. See also Pušić's Reply Brief, para. 23; Appeal Hearing, AT. 675, 678, 680 (27 Mar 2017).

²¹⁹³ Pušić's Appeal Brief, paras 86-91, 97(a)-(b), 98; Appeal Hearing, AT. 678 (27 Mar 2017). Specifically, Pušić argues that the Presidential Transcripts as well as other evidence on the record show that Tuđman: (1) frequently changed his position making it difficult to ascertain "his true motives"; (2) often emphasised his preference to cooperate with the international community and Muslims to find a solution to the conflict and to reach an agreeable settlement; (3) supported the idea of the Banovina only as a measure of last resort in response to Serb aggression; and (4) supported the independence of BiH and the inviolability of the BiH borders. Pušić's Appeal Brief, paras 88, 90, 91, 97(a)-(b).

²¹⁹⁴ Pušić's Appeal Brief, paras 92-94; Appeal Hearing, AT. 676-679 (27 Mar 2017). Pušić argues that the Presidential Transcripts show that Tuđman: (1) only authorised the deployment of volunteers and "certain individual officers" to the HZ(R) H-B with some logistical support; and (2) denied that the HVO forces were present in BiH and did not have full knowledge of the extent of military operations. Pušić's Appeal Brief, para. 92, referring to, *inter alia*, Judge Antonetti Dissent, pp. 38-39. Pušić also highlights that there were "significant divisions of opinion" between Tuđman and the HZ(R) H-B leaders. Pušić's Appeal Brief, paras 93-94, referring to Judge Antonetti Dissent, pp. 45, 49, 376, 381, 385, 393.

²¹⁹⁵ Pušić's Appeal Brief, para. 98. Pušić argues that: (1) the Prosecution's theory on Tuđman's double policy "presupposes that Tuđman was playing a highly dangerous and risky double game [...] in his communications with international negotiators" at a time when Croatia's position, as an emerging nation state, was not secured; and (2) Tuđman repeated the statements made to international representatives, and relied upon by the Trial Chamber in its

reasonable inference based on the evidence is that Tuđman “harboured a desire for a Greater Croatia which he did not want to see implemented through criminal means” as this would have put Croatia’s relationship with the international community at risk.²¹⁹⁶

688. Additionally, Pušić submits that in no other case concerning Croats in BiH has the Tribunal ever made findings “confirming the existence” of the Ultimate Purpose of the JCE, and that the *Gotovina et al.* Trial Judgement did not infer the existence of a JCE from Tuđman’s speeches.²¹⁹⁷

689. The Prosecution responds that Pušić fails to show that no reasonable trier of fact could have reached the conclusion on the Ultimate Purpose of the JCE.²¹⁹⁸ The Prosecution specifically submits that the mere existence of a dissent does not render the majority’s conclusion unreasonable and that a trial chamber is not obliged to discuss other inferences it considered as long as it was satisfied that the one it retained was the only one reasonable.²¹⁹⁹ The Prosecution also contends that ample evidence from the record supports the Trial Chamber’s reasoning as to Tuđman’s preoccupation with the Banovina and his desire to ensure that this territory be dominated by Croats.²²⁰⁰

b. Analysis

690. With respect to Pušić’s contentions that the evidence does not prove Tuđman’s intentions to divide BiH, the Appeals Chamber observes that Pušić bases his arguments almost entirely on the Judge Antonetti Dissent.²²⁰¹ In this regard, the Appeals Chamber reiterates that the mere existence of a dissent does not render the majority’s conclusion unreasonable.²²⁰² Accordingly, Pušić fails to

conclusion of his double policy, to his closest allies as well. Pušić’s Appeal Brief, para. 98, referring to Judge Antonetti Dissent, pp. 374-375, 384, 392.

²¹⁹⁶ Pušić’s Appeal Brief, para. 97(c), referring to Judge Antonetti Dissent, pp. 32, 385, 391. In support of his contention, Pušić argues that Tuđman could not take action to implement his aspirations for a Greater Croatia at the time because: (1) Tuđman was not elected on a “Greater Croatia platform”; (2) as Croatia was newly constituted and facing Serb aggression, Tuđman did not have the internal or international support to realise his vision; (3) the idea of “a Greater Croatian Republic project” was in contradiction to Tuđman’s effort to assert Croatia’s identity and security; (4) by promoting the “Greater Croatia idea” Tuđman “would *ipso facto* have to accept the Serbs[’] vision of a Greater Serbia”; and (5) Croatia was not able to bear the economic burden of absorbing the population from a Croat dominated territory in BiH. Pušić’s Appeal Brief, para. 97(d)(i)-(v), referring to Judge Antonetti Dissent, pp. 385, 393, 417-418.

²¹⁹⁷ Pušić’s Appeal Brief, paras 95-96, referring to Judge Antonetti Dissent, pp. 146, 369, 373, 377.

²¹⁹⁸ Prosecution’s Response Brief (Pušić), paras 72, 74-76.

²¹⁹⁹ Prosecution’s Response Brief (Pušić), para. 73.

²²⁰⁰ Prosecution’s Response Brief (Pušić), paras 74-76. See also Prosecution’s Response Brief (Pušić), paras 62-64, 66-67; Appeal Hearing, AT. 709 (27 Mar 2017).

²²⁰¹ The Appeals Chamber observes that a close reading of Pušić’s arguments shows that they are predicated on, and closely mirror, the Judge Antonetti Dissent which elaborates on and interprets evidence concerning Tuđman’s intentions. Compare Pušić’s Appeal Brief, paras 86-91, 97(a)-(b), 98 & fns 142-147, 162-164 with Judge Antonetti Dissent, *inter alia*, pp. 9-10, 21-25, 32-33, 50, 375-376, 383-389, 417-418. The Appeals Chamber further observes that in support of his allegations, Pušić also relies upon the Presidential Transcripts and Witness AR’s evidence. Pušić’s Appeal Brief, paras 90-91. The Appeals Chamber finds that Pušić simply refers to the evidence without showing that the Trial Chamber was unreasonable in reaching its conclusion.

²²⁰² See *supra*, para. 670.

show any error in the Trial Chamber's assessment of the evidence. The Appeals Chamber dismisses these contentions.

691. Turning to Pušić's contention that the evidence does not support the Trial Chamber's conclusion on the Ultimate Purpose of the JCE as it is based on the assumption that the existence of a joint command structure allowed Tudman to control the HZ(R) H-B's military activities, the Appeals Chamber observes that in no part of the analysis concerning the Ultimate Purpose of the JCE did the Trial Chamber make such a finding.²²⁰³ The Appeals Chamber also observes that in support of his contention, Pušić refers to the Trial Chamber's analysis concerning the international character of the conflict without explaining how the findings therein are relevant to the Trial Chamber's conclusion on the Ultimate Purpose of the JCE.²²⁰⁴ Accordingly, Pušić's argument is dismissed.

692. The Appeals Chamber further rejects Pušić's challenge concerning Tudman's double policy. The Appeals Chamber observes that in support of his submission, Pušić advances unsupported and speculative assertions,²²⁰⁵ and relies entirely on the Judge Antonetti Dissent without showing that no reasonable trier of fact could have reached this conclusion.²²⁰⁶ Finally, the Appeals Chamber sees no merit in Pušić's comparison between this case and a trial judgement assessing the evidence in another case. The Appeals Chamber recalls in this regard that an error cannot be established by merely pointing to the fact that another trial chamber has reached a different conclusion.²²⁰⁷ Pušić's argument is dismissed.

693. The Appeals Chamber finds that Pušić has failed to show that the Trial Chamber erred in its relevant findings concerning Tudman's intentions and therefore dismisses the relevant part of Pušić's ground of appeal 3.

3. Alleged errors in finding that the HZ(R) H-B leaders were involved in meetings and discussions concerning the partition of BiH

694. The Trial Chamber found that on 6 May 1992, representatives of the Croatian community of BiH, including Boban, met with representatives of the Serbian community of BiH, including Karadžić, to discuss the division of BiH in accordance with the demarcation of the Croatian

²²⁰³ Trial Judgement, Vol. 4, paras 9-24.

²²⁰⁴ Trial Judgement, Vol. 3, paras 526-528.

²²⁰⁵ Pušić's Appeal Brief, para. 98 (claiming that the Prosecution's theory on Tudman's double policy "presupposes that Tudman was playing a highly dangerous and risky double game (considering the public and the media scrutiny he was under) in his communications with international negotiators").

²²⁰⁶ Pušić's Appeal Brief, para. 98, referring to Judge Antonetti Dissent, pp. 374-375, 384, 392.

²²⁰⁷ See *Stanišić and Župljanin* Appeal Judgement, para. 652; *Dorđević* Appeal Judgement, para. 257; *Krnojelac* Appeal Judgement, para. 12.

Banovina at Graz in Austria (“6 May 1992 Graz Meeting”).²²⁰⁸ It further concluded that on 5 and 26 October 1992, Prlić, Stojić, Praljak, and Petković, as part of a delegation from Croatia and the HZ H-B, met with Ratko Mladić to discuss the partition of BiH (“5 October 1992 Meeting”, “26 October 1992 Meeting”, and collectively, “5 and 26 October 1992 Meetings”).²²⁰⁹ According to the Trial Chamber, Praljak stated during these meetings that “[t]he goal is Banovina or nothing” and that “it is in our interest that the Muslims get their own canton so they have somewhere to move to”.²²¹⁰ The Trial Chamber also noted the testimony of Raymond Lane that during an interview with Prlić, Prlić drew a circle dividing BiH in two parts with the Serbs on one side and the Croats on the other, without any mention of the Muslims.²²¹¹

(a) Prlić’s appeal (Sub-grounds 9.4, 9.7, and 9.8)

695. Prlić submits that the Trial Chamber erred in concluding that the 6 May 1992 Graz Meeting was connected to the plan to divide BiH so as to expand Croatia along the borders of the Banovina, by: (1) ignoring Witness Franjo Boras’s testimony about internal administrative arrangements, rather than the division of BiH;²²¹² and (2) mischaracterising the testimony of Witness Zdravko Sančević as he did not testify about the meeting.²²¹³ He also argues that the Trial Chamber erred in finding that he met with Mladić to discuss the partition of BiH during the 5 and 26 October 1992 Meetings.²²¹⁴ Prlić further submits that the Trial Chamber erred in law and fact when it concluded that during an interview with Lane, Prlić drew a circle dividing BiH between Serbs and Croats, without any evidence corroborating Lane’s testimony.²²¹⁵

696. The Prosecution responds that the Trial Chamber reasonably relied on Boras’s evidence with respect to its findings on the 6 May 1992 Graz Meeting.²²¹⁶ It also contends that Prlić fails to articulate any error in the Trial Chamber’s finding that Prlić and other BiH Croat leaders met with Mladić to discuss the partition during the 5 and 26 October 1992 Meetings.²²¹⁷ Similarly, the Prosecution argues that Prlić’s contention that the Trial Chamber erred in relying on the uncorroborated evidence of Lane is unsubstantiated and should be dismissed.²²¹⁸

²²⁰⁸ Trial Judgement, Vol. 4, para. 13.

²²⁰⁹ Trial Judgement, Vol. 4, para. 18.

²²¹⁰ Trial Judgement, Vol. 4, para. 18.

²²¹¹ Trial Judgement, Vol. 4, para. 19.

²²¹² Prlić’s Appeal Brief, paras 252-254.

²²¹³ Prlić’s Appeal Brief, paras 252-254, referring to Zdranko Sančević, T. 28744-28746 (28 May 2008). The Appeals Chamber notes that Prlić also refers to his sub-ground of appeal 1.1. Prlić’s Appeal Brief, para. 253.

²²¹⁴ Prlić’s Appeal Brief, paras 269-270, referring to Prlić’s ground of appeal 5.

²²¹⁵ Prlić’s Appeal Brief, paras 271-272, referring to Prlić’s Appeal Brief, paras 202-203 (sub-ground of appeal 6.2).

²²¹⁶ Prosecution’s Response Brief (Prlić), para. 153.

²²¹⁷ Prosecution’s Response Brief (Prlić), para. 154; Appeal Hearing, AT. 201-203 (20 Mar 2017).

²²¹⁸ Prosecution’s Response Brief (Prlić), para. 150.

697. The Appeals Chamber notes that while Prlić argues that the Trial Chamber ignored Boras's evidence that the 6 May 1992 Graz Meeting was to address internal administrative arrangements, the portion of Boras's evidence Prlić refers to does not support this assertion.²²¹⁹ The Appeals Chamber further considers that Prlić has failed to substantiate his claim that the Trial Chamber mischaracterised Sančević's evidence as it is clear from the Trial Judgement that the Trial Chamber only referenced Sančević's evidence when explaining the historical and geographic background of the "Croatian Banovina".²²²⁰ Prlić's arguments are therefore dismissed.

698. With regard to Prlić's argument that the Trial Chamber erred in finding that he met with Mladić to discuss the partition of BiH during the 5 and 26 October 1992 Meetings, the Appeals Chamber notes that Prlić bases his argument entirely on a cross-reference to his ground of appeal 5, which the Appeals Chamber dismisses elsewhere.²²²¹ As regards Prlić's contention in relation to the Trial Chamber's reliance on Lane's uncorroborated evidence, the Appeals Chamber observes that during the examination by the Prosecution, Lane stated that Prlić drew a circle representing BiH divided between Croats and Serbs without any reference to Muslims.²²²² Recalling that nothing prohibits a Trial Chamber from relying on uncorroborated but otherwise credible evidence,²²²³ the Appeals Chamber finds that Prlić fails to show that the Trial Chamber erred in reaching the challenged finding.²²²⁴ His arguments are thus dismissed.

699. In light of the above, the Appeals Chamber finds that Prlić has failed to demonstrate that the Trial Chamber erred in its findings on the 6 May 1992 Graz Meeting as well as the 5 and 26 October 1992 Meetings. The Appeals Chamber dismisses Prlić's sub-grounds of appeal 9.4, 9.7, and 9.8.

(b) Stojić's appeal (Ground 1 in part)

(i) Arguments of the Parties

700. Relying on Boras's evidence, Stojić submits that the Trial Chamber erred by misinterpreting the 6 May 1992 Graz Meeting and failing to take into account evidence that this meeting was part

²²¹⁹ See Prlić's Appeal Brief, paras 252-254, referring to Franjo Boras, T. 29248 (9 June 2008). The Appeals Chamber observes that the transcript page number he cites reflects discussions on procedural matters.

²²²⁰ Trial Judgement, Vol. 4, para. 13 & fn. 26, referring to, *inter alia*, Zdravko Sančević, T(F). 28745 (28 May 2008).

²²²¹ See *supra*, paras 136, 138.

²²²² Raymond Lane, T. 23711-23712 (15 Oct 2007), T. 23749-23750 (16 Oct 2007). See also Raymond Lane, T. 23757-23760 (16 Oct 2007), T. 23955-23956 (17 Oct 2007); Ex. P10319, para. 47.

²²²³ See, e.g., *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.

²²²⁴ The Appeals Chamber further notes that when challenging the Trial Chamber's finding based on Lane's evidence, Prlić cross-references another ground of appeal, in which he challenges the Trial Chamber's failure to consider the reliability of Lane's evidence. The Appeals Chamber dismisses this specific challenge elsewhere. See *supra*, paras 217-218.

of the framework of the Cutileiro Plan and that there were similar negotiations underway between Bosnian Croats and Muslims.²²²⁵ Stojić also argues that the Trial Chamber failed to consider its previous finding that the meeting ended without any agreement.²²²⁶ He further contends that no evidence on the record supports the Trial Chamber's finding that the purpose of the 5 and 26 October 1992 Meetings was to discuss the division of BiH.²²²⁷ Stojić argues that the meetings were "hardly cooperative", no agreement was reached, and the only outcome they reached was a release of prisoners.²²²⁸ Stojić concludes that no reasonable trier of fact could have relied on these meetings as evidence of the Ultimate Purpose of the JCE.²²²⁹

701. The Prosecution responds that the Trial Chamber correctly found that the JCE members' efforts to negotiate the division of BiH with the Serbs proved the Ultimate Purpose of the JCE and that this finding is supported by ample evidence.²²³⁰ With respect to the 6 May 1992 Graz Meeting, the Prosecution contends that the Trial Chamber did not misconstrue this meeting and that it is immaterial whether the meeting was part of the framework of the Cutileiro Plan or was unsuccessful.²²³¹ As to Stojić's argument that similar negotiations were also underway between the Bosnian Croats and Bosnian Muslims, the Prosecution argues that they were not "equivalent" to the meetings between Croats and Serbs and that in any event, this contention is immaterial with respect to the Trial Chamber's conclusion on the Ultimate Purpose of the JCE.²²³² As to the 5 and 26 October 1992 Meetings, the Prosecution avers that, contrary to Stojić's submission, evidence confirms that these meetings took place to discuss the partition of BiH.²²³³

(ii) Analysis

702. With respect to Stojić's contention that the Trial Chamber disregarded Boras's evidence that the 6 May 1992 Graz Meeting occurred in the framework of the Cutileiro Plan, the Appeals Chamber considers that Stojić fails to show why this evidence is relevant to the Trial Chamber's finding that during the meeting, representatives of the Croatian community of BiH discussed the division of BiH with representatives of the Serbian community of BiH. Further, the facts that similar negotiations were underway between Bosnian Croats and Muslims and that the

²²²⁵ Stojić's Appeal Brief, para. 20, referring to Franjo Boras, T. 28952-28953 (2 June 2008).

²²²⁶ Stojić's Appeal Brief, para. 20, referring to Trial Judgement, Vol. 1, para. 439. See also Stojić's Appeal Brief, para. 22.

²²²⁷ Stojić's Appeal Brief, para. 21, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 18, Exs. P11380, P11376. Stojić also refers to paragraph 130 of his appeal brief, which is related to his ground of appeal 16.

²²²⁸ Stojić's Appeal Brief, para. 21.

²²²⁹ Stojić's Appeal Brief, para. 19. See also Stojić's Appeal Brief, para. 22; Stojić's Reply Brief, para. 7.

²²³⁰ Prosecution's Response Brief (Stojić), para. 17.

²²³¹ Prosecution's Response Brief (Stojić), para. 17. The Prosecution also refers to evidence on the record showing that between 1991 and 1992, discussions about the partition of BiH were ongoing between Bosnian Serbs and Bosnian Croats. See Prosecution's Response Brief (Stojić), para. 17, referring to Exs. P00089, P00108, P00185.

²²³² Prosecution's Response Brief (Stojić), para. 17.

6 May 1992 Graz Meeting ended without signing any agreement do not call into question the Trial Chamber's finding.²²³⁴ Stojić's arguments are thus dismissed.

703. With respect to Stojić's challenge to the Trial Chamber's conclusion on the objectives of the 5 and 26 October 1992 Meetings, the Appeals Chamber observes that the Trial Chamber based its finding on portions of the Mladić Diaries – Exhibits P11376 and P11380.²²³⁵ The Trial Chamber found that Praljak stated at the 5 October 1992 Meeting that “[t]he goal is Banovina or nothing”²²³⁶ and at the 26 October 1992 Meeting that “it is in our interest that the Muslims get their own canton so they have somewhere to move to”.²²³⁷ As such, the Appeals Chamber finds no merit in Stojić's assertion that there is no evidence supporting the Trial Chamber's conclusion. The Appeals Chamber further considers that it is immaterial to the Trial Chamber's Ultimate Purpose finding that the meetings were hostile and that no agreement was reached. Stojić's arguments therefore fail.

704. In light of the above, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in its findings concerning the 6 May 1992 Graz Meeting, as well as the 5 and 26 October 1992 Meetings, and its assessment of the Mladić Diaries in relation to the latter meetings. Accordingly, the Appeals Chamber dismisses Stojić's ground of appeal 1 in relevant part.

(c) Praljak's appeal (Sub-grounds 6.1 in part and 6.4)

(i) Arguments of the Parties

705. Praljak submits that the Trial Chamber erred in finding that during the 6 May 1992 Graz Meeting, representatives of the Croatian community of BiH and their Serbian counterparts discussed the division of BiH. He argues that the Trial Chamber: (1) accorded improper weight to “hear-say evidence and media reports”; and (2) misconstrued and discarded direct evidence.²²³⁸ Specifically regarding the first aspect of his challenge, Praljak contends that the joint statement issued by Boban and Karadžić following the meeting (“Joint Statement”) does not support the Trial Chamber's findings.²²³⁹ He also argues that the Trial Chamber erred in relying on: (1) Witness Robert Donia's testimony and his expert report, arguing that they are merely based on public

²²³³ Prosecution's Response Brief (Stojić), para. 17, referring to Exs. P11376, P11380.

²²³⁴ Trial Judgement, Vol. 1, para. 439.

²²³⁵ Trial Judgement, Vol. 4, para. 18, referring to Exs. P11376, p. 1, P11380, pp. 1-2. With regard to Stojić's specific challenge to these exhibits, see *supra*, paras 112, 114.

²²³⁶ Trial Judgement, Vol. 4, para. 18, referring to Ex. P11376, p. 1. The Appeals Chamber notes that Praljak's statement appears on page 2 of Exhibit P11376, not on page 1.

²²³⁷ Trial Judgement, Vol. 4, para. 18, referring to Ex. P11380, p. 3.

²²³⁸ Praljak's Appeal Brief, paras 101-106, referring to Trial Judgement, Vol. 1, para. 439, Vol. 4, para. 13.

²²³⁹ Praljak's Appeal Brief, paras 102-103, referring to Exs. P00187, 1D00428. See also Praljak's Appeal Brief, para. 101.

information;²²⁴⁰ and (2) Okun's testimony, as it is based on media reports and, as acknowledged by him, he does not have direct knowledge of the 6 May 1992 Graz Meeting.²²⁴¹ As to the second aspect of his challenge, Praljak submits that, *inter alia*, the Trial Chamber failed to consider that: (1) Izetbegović suspended international negotiations after the Serbs had accepted the principles of further organisation of BiH and that the EC then suggested bilateral meetings;²²⁴² (2) bilateral meetings with Muslims were held at the same time;²²⁴³ (3) there were frequent bilateral negotiations and agreements throughout the war with the international community's active involvement;²²⁴⁴ and (4) the 6 May 1992 Graz Meeting was held as part of a series of meetings encouraged by the international community.²²⁴⁵

706. Praljak contends that the 5 and 26 October 1992 Meetings were not about dividing BiH, but about finding a solution to end the war or at least minimise "its disastrous consequences".²²⁴⁶ Praljak further submits that the Trial Chamber erred in inferring the existence of the JCE based on events that occurred before the creation of the JCE, arguing that the Trial Chamber refers to the political meetings and negotiations in 1991 and 1992, where some of the Appellants and Croatian officials met "in [a] political environment drastically different [from] the situation in which the JCE would be created".²²⁴⁷ He claims that the Trial Chamber: (1) relied on meetings and negotiations when BiH was not an independent State to demonstrate the Croatian position and intention; and (2) "presented only one side of these negotiations leaving completely aside Muslim positions and neglecting the international proposals in the frame of which Croatian officials and BiH Croats expressed their positions".²²⁴⁸

707. The Prosecution contends that the evidence shows that Praljak and other JCE members met with Mladić during the 5 and 26 October 1992 Meetings to discuss the division of BiH.²²⁴⁹ It also

²²⁴⁰ Praljak's Appeal Brief, para. 104, referring to, *inter alia*, Exs. P09536, pp. 39-40, 52, 71, P00192, p. 3, Robert Donia, T. 1832 (10 May 2006).

²²⁴¹ Praljak's Appeal Brief, para. 105, referring to Herbert Okun, T. 16662-16663 (2 Apr 2007), T. 16831 (3 Apr 2007).

²²⁴² Praljak's Appeal Brief, para. 101, referring to Ex. P09526.

²²⁴³ Praljak's Appeal Brief, para. 101, referring to Exs. P09526, 1D02739, Franjo Boras, T. 29149-29152 (4 June 2008).

²²⁴⁴ Praljak's Appeal Brief, para. 101, referring to Exs. 1D00475, P00339, 2D00798, 1D01543, P00717, 1D02853, P01988, P02259, P02344, P02564 (confidential), 1D02404, P02726, 4D01234. Praljak also argues that the Trial Chamber's conclusion that during the period of tri-partite negotiations, the HVO negotiated with the Serbs over the partition of BiH suggests that "the HVO negotiations with Serbs were conducted secretly in parallel with tri-partite negotiations." Praljak's Appeal Brief, para. 101 referring to Trial Judgement, Vol. 1, para. 439.

²²⁴⁵ Praljak's Appeal Brief, para. 101, referring to, *inter alia*, Franjo Boras, T. 28954 (2 June 2008).

²²⁴⁶ Praljak's Appeal Brief, para. 114, referring to Ex. P00498, pp. 73, 76. Praljak also argues that the Trial Chamber drew an erroneous conclusion from documents which should not have been admitted and are unreliable, cross-referencing his ground of appeal 50.

²²⁴⁷ Praljak's Appeal Brief, para. 125, referring to Trial Judgement, Vol. 4, paras 11, 13-15, 17-18, 43. See also Praljak's Appeal Brief, para. 126.

²²⁴⁸ Praljak's Appeal Brief, para. 126, referring to Ex. 1D00896, p. 3.

²²⁴⁹ Prosecution's Response Brief (Praljak), para. 39.

responds that the Trial Chamber correctly exercised its discretion in relying on “pre-JCE events” to infer the existence of the JCE, including the 6 May 1992 Graz Meeting.²²⁵⁰

(ii) Analysis

708. The Appeals Chamber observes that when examining evidence related to events following the creation of Herceg-Bosna, the Trial Chamber detailed the 6 May 1992 Graz Meeting.²²⁵¹ The Trial Chamber found that the meeting was held in the absence of Muslim representatives to discuss BiH’s future. Following the meeting, Boban and Karadžić issued the Joint Statement which they described “as a ‘peace agreement’, which provided for the territorial division of BiH based on the 1939 borders of Croatian Banovina and called for a general cease-fire”.²²⁵² The Trial Chamber also concluded that: (1) the proposed division did not include certain regions over which the parties wanted the EU to arbitrate their respective claims; and (2) ultimately the parties did not sign an agreement.²²⁵³ In so finding, the Trial Chamber took into account, *inter alia*, the Joint Statement, Donia’s expert report and testimony, and Okun’s testimony.²²⁵⁴ Although Praljak points to other parts of the Joint Statement, he fails to demonstrate that no reasonable trier of fact could have relied on this evidence to reach the Trial Chamber’s conclusion. The Appeals Chamber also finds no error in the Trial Chamber’s reliance on Donia’s report and his testimony, as well as Okun’s testimony. In this regard, the Appeals Chamber recalls that a trial chamber is best placed to assess the credibility of a witness and reliability of the evidence adduced,²²⁵⁵ and therefore has broad discretion in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.²²⁵⁶ Praljak’s arguments are thus dismissed.

709. The Appeals Chamber notes that Praljak also alleges that the Trial Chamber disregarded the surrounding contextual circumstances, including Izetbegović’s suspension of international negotiations, ongoing bilateral meetings with Muslims, as well as frequent bilateral agreements and negotiations, including the 6 May 1992 Graz Meeting as being one of a series of meetings encouraged by the international community.²²⁵⁷ However, Praljak fails to show how these factors and the evidence he cites demonstrate that the Trial Chamber erred in finding that the relevant

²²⁵⁰ Prosecution’s Response Brief (Praljak), para. 39.

²²⁵¹ Trial Judgement, Vol. 1, para. 439.

²²⁵² Trial Judgement, Vol. 1, para. 439.

²²⁵³ Trial Judgement, Vol. 1, para. 439.

²²⁵⁴ Trial Judgement, Vol. 1, para. 439, fns 1030-1035, referring to, *inter alia*, Exs. P00187, P00192, P09536, pp. 44-45 (French translation), Robert Donia, T(F). 1833-1835 (10 May 2006), Herbert Okun, T(F). 16663-16664 (2 Apr 2007).

²²⁵⁵ See, e.g., *Tadić* Appeal Judgement, para. 64; *Šainović et al.* Appeal Judgement, paras 437, 464, 1296; *Stanišić and Župljanin* Appeal Judgement, para. 99; *Tolimir* Appeal Judgement, para. 469.

²²⁵⁶ See, e.g., *Haradinaj et al.* Appeal Judgement, para. 1291; *Stanišić and Župljanin* Appeal Judgement, para. 99; *Tolimir* Appeal Judgement, para. 76.

²²⁵⁷ Praljak’s Appeal Brief, para. 101.

representatives held the 6 May 1992 Graz Meeting to discuss the division of BiH along the Banovina borders. His arguments are dismissed.

710. Turning to Praljak's contention that the purpose of the 5 and 26 October 1992 Meetings was not to discuss BiH's partition, but to find a solution to end the war or minimise its results, the Appeals Chamber notes that Praljak points to a portion of the Presidential Transcripts which has no plain and direct bearing on these meetings.²²⁵⁸ The Appeals Chamber also rejects Praljak's contention that the Trial Chamber drew an erroneous conclusion from unreliable documents which should not have been admitted, as his submission is based entirely on a cross-reference to another ground of appeal, which the Appeals Chamber dismisses elsewhere.²²⁵⁹ His arguments are thus dismissed.

711. Finally, the Appeals Chamber finds no merit in Praljak's contention that the Trial Chamber erred in inferring the existence of the JCE from events before its creation and considering them out of context.²²⁶⁰ Specifically, the Appeals Chamber observes that the Trial Chamber relied on events which occurred before the JCE in order to infer the circumstances surrounding the formation of the JCE in January 1993 as well as its CCP.²²⁶¹ Insofar as the Trial Chamber's reliance on this evidence was not used to convict the Appellants for conduct predating his contribution to the JCE, the Appeals Chamber finds no error in such an approach. In any event, the Appeals Chamber has already considered specific arguments relating to "meetings and negotiations" that took place prior to the formation of the JCE and dismissed them elsewhere.²²⁶² Praljak's argument is therefore dismissed.

712. In light of the above, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber erred in its findings on the meetings held in 1991-1992 generally, and specifically, the 6 May 1992 Graz Meeting, as well as the 5 and 26 October 1992 Meetings. The Appeals Chamber therefore dismisses Praljak's grounds of appeal 6.1 in relevant part and 6.4.

(d) Petković's appeal (Sub-grounds 2.2 and 2.3 in part)

713. Petković submits that the Trial Chamber erred in finding that he and other HZ H-B leaders met with Mladić at the 5 and 26 October 1992 Meetings to discuss the division of BiH.²²⁶³ Specifically, Petković contends that: (1) he was not present during the 5 October 1992 Meeting; and

²²⁵⁸ See Praljak's Appeal Brief, para. 114, referring to Ex. P00498, pp. 73, 76.

²²⁵⁹ See *supra*, paras 120-121, 129-132, 134-135, 138.

²²⁶⁰ The Appeals Chamber notes that Praljak refers to Exhibit 1D00896 without articulating how this document supports his contention. See Praljak's Appeal Brief, para. 126.

²²⁶¹ Trial Judgement, Vol. 4, paras 9-24, 41, 43-44.

²²⁶² See *supra*, paras 608-643.

²²⁶³ Petković's Appeal Brief, para. 11. See also Petković's Appeal Brief, para. 14.

(2) the 26 October 1992 Meeting, which he attended, did not address the partition of BiH but the “realization of the previous agreement to calm the front line near Mostar and to re-connect [the] electric power in Jajce”.²²⁶⁴

714. The Prosecution responds that the fact that Petković did not attend the meeting on 5 October 1992 is immaterial to the Trial Chamber’s finding.²²⁶⁵ With respect to the meeting of 26 October 1992, the Prosecution avers that Petković’s argument focuses on other topics discussed during this meeting, ignoring Praljak’s statement of the division of BiH.²²⁶⁶

715. Petković replies that the Prosecution: (1) implicitly acknowledges that he did not participate in the 5 October 1992 Meeting; and (2) misinterprets Praljak’s statement about the “Muslim canton” at the meeting of 26 October 1992 as referring to the division of BiH, while “the word ‘canton’ necessarily implies an *internal organizational unit*” within BiH.²²⁶⁷

716. The Appeals Chamber notes that the Trial Chamber’s finding implies that Petković, among others, attended both meetings in October 1992,²²⁶⁸ although one of the Mladić Diaries does not explicitly indicate that Petković was part of the Croatian delegation at the 5 October 1992 Meeting.²²⁶⁹ Nevertheless, the Appeals Chamber considers that Petković has failed to demonstrate that the issue of his absence at this meeting has any impact on the Trial Chamber’s finding that a delegation from Croatia and the HZ H-B met with Ratko Mladić to discuss the division of BiH. Regarding Petković’s challenge to the 26 October 1992 Meeting, the Appeals Chamber observes that the Trial Chamber arrived at the conclusion that the division of BiH was addressed at this meeting by taking into account Praljak’s statement that “it is in our interest that the Muslims get their own canton so they have somewhere to move to”.²²⁷⁰ The Appeals Chamber considers that, while one of the Mladić Diaries, which Petković relies on, shows that Praljak also addressed the adherence to the agreement on the front line near Mostar and the electric power near Jajce at this meeting,²²⁷¹ this does not affect the Trial Chamber’s finding on the purpose of the meeting itself.

717. Based on the foregoing, the Appeals Chamber finds that Petković has failed to show any error in the Trial Chamber’s findings on the 5 and 26 October 1992 Meetings which occasioned a miscarriage of justice. The Appeals Chamber therefore dismisses the relevant part of Petković’s sub-grounds of appeal 2.2 and 2.3 in relevant part.

²²⁶⁴ Petković’s Appeal Brief, para. 11, referring to Exs. P11376, P11380, pp. 1-2.

²²⁶⁵ Prosecution’s Response Brief (Petković), para. 14.

²²⁶⁶ Prosecution’s Response Brief (Petković), para. 14.

²²⁶⁷ Petković’s Reply Brief, para. 3 (emphasis in original).

²²⁶⁸ Trial Judgement, Vol. 4, para. 18.

²²⁶⁹ Ex. P11376, p. 1.

²²⁷⁰ Trial Judgement, Vol. 4, para. 18, referring to Ex. P11380, p. 3.

²²⁷¹ Ex. P11380, p. 1.

4. Alleged errors in finding that the creation of the HZ H-B was not merely a temporary defence initiative

718. The Trial Chamber found that, although the HZ H-B was created in response to the “Serb aggression”, its establishment “was not merely a temporary defence initiative”.²²⁷² The Trial Chamber noted: (1) Ribičić’s evidence that the reference to the right to self-determination in the decision establishing the HZ H-B proved that its establishment was not just an interim defensive measure but was aimed at creating a “mini-State”;²²⁷³ and (2) Okun’s testimony that the creation of the HZ H-B was designed to facilitate the annexation of the Croat-majority BiH territories to Croatia and not merely to provide self-defence.²²⁷⁴ Based on the evidence of, *inter alios*, Witnesses Ole Brix-Andersen, Ribičić, Lane, and Suad Ćupina, the Trial Chamber concluded that the “autonomous territorial entity desired by the HZ H-B was to exist either within BiH by forming an alliance with Croatia, or directly as a[n] integral part of Croatia”.²²⁷⁵

(a) Prlić’s appeal (Sub-grounds 9.1 and 9.6)

(i) Arguments of the Parties

719. Prlić submits that the Trial Chamber erred by failing to consider whether there was a legitimate purpose for establishing the HZ(R) H-B,²²⁷⁶ specifically, that it was needed to “take care of all Croats in BiH”²²⁷⁷ because they received inadequate protection and governmental services.²²⁷⁸ Prlić also argues that the Trial Chamber failed to properly assess all relevant evidence.²²⁷⁹ He contends that the evidence shows that the HZ H-B was always part of BiH as an interim structure, and was established “to fill a vacuum left by the defunct BiH state government”.²²⁸⁰ He asserts that the Trial Chamber disregarded evidence showing that any BiH municipality could join the HZ H-B “debunking the notion that the HZ H-B had defined borders [as] more than 50 municipalities joined” the HZ H-B.²²⁸¹ He argues that: (1) as the HZ H-B areas had no boundaries and covered a

²²⁷² Trial Judgement, Vol. 4, para. 15. See Trial Judgement, Vol. 1, paras 420-425, Vol. 4, para. 14.

²²⁷³ Trial Judgement, Vol. 4, para. 15 & fn. 39, referring to Ciril Ribičić, T(F). 25451 (10 Dec 2007), Exs. P08973, pp. 48-49, P00302, P00078, p. 1.

²²⁷⁴ Trial Judgement, Vol. 4, para. 15.

²²⁷⁵ Trial Judgement, Vol. 4, para. 16 (internal references omitted).

²²⁷⁶ Prlić’s Appeal Brief, paras 233, 235. See Prlić’s Appeal Brief, para. 232. See also Appeal Hearing, AT. 125-126, 130-131, 154-157 (20 Mar 2017).

²²⁷⁷ Prlić’s Appeal Brief, para. 235 & fn. 666, referring to, *inter alia*, Zdravko Sančević, T. 28605-28609, 28688-28695 (27 May 2008), 28744-28746 (28 May 2008), Radmilo Jašak, T. 48881-48882 (25 Jan 2010).

²²⁷⁸ Prlić’s Appeal Brief, para. 235, referring to Prlić’s Appeal Brief, paras 30, 51 (sub-grounds of appeal 1.1-1.2). See also Appeal Hearing, AT. 129-130, 132 (20 Mar 2017). Prlić also argues that the Trial Chamber failed to consider evidence necessary to understanding the chronology of events. Prlić’s Appeal Brief, para. 234, referring to Prlić’s Appeal Brief, paras 27-28, 36-41 (sub-ground of appeal 1.1).

²²⁷⁹ Prlić’s Appeal Brief, para. 262.

²²⁸⁰ Prlić’s Appeal Brief, para. 267, referring to, *inter alia*, Mile Akmandžić, T. 29445-29448, 29625-29631 (17 June 2008).

²²⁸¹ Prlić’s Appeal Brief, para. 268. See also Appeal Hearing, AT. 134 (20 Mar 2017).

large part of BiH, the view that the HZ H-B was an attempt to reconstitute the Banovina borders was absurd;²²⁸² and (2) the HVO was devoted to defending BiH sovereignty.²²⁸³

720. Moreover, Prlić submits that, in finding that the HZ H-B was established to create a “mini-State” aligned with Croatia, the Trial Chamber erroneously relied on the evidence of Ribičić, Brix-Andersen, Lane, and Okun.²²⁸⁴ According to Prlić, Ribičić testified that the HZ H-B was not a “mini-State”,²²⁸⁵ and his evidence that the goal of the HZ H-B was to be connected with Croatia is speculative.²²⁸⁶ Prlić argues that the Trial Chamber ignored that, in his book, Ribičić explained that he changed his analysis of the HZ H-B after reading the Presidential Transcript of 27 December 1991.²²⁸⁷ Prlić further contends that: (1) Brix-Andersen’s evidence is speculative as he had no personal knowledge about BiH and never met with Boban, Prlić, Stojić, or Krešimir Zubak;²²⁸⁸ (2) Lane was unreliable and “demonstrated a profound ignorance of the HZ H-B’s structure, its leadership, BiH, and the ongoing peace plans while he was *in situ*”,²²⁸⁹ and (3) Čupina gave contradictory testimony and lacked credibility.²²⁹⁰

721. The Prosecution responds that Prlić “identifies no authority supporting his novel ‘legitimate purpose’ rule”,²²⁹¹ and that the Trial Chamber found that while the HZ(R) H-B may also have served defence-related purposes, it was designed to be annexed or closely allied to Croatia.²²⁹² The Prosecution submits that while Prlić claims that the HZ H-B never had defined borders, in June 1993 he asserted otherwise.²²⁹³ It also contends that Prlić’s assertions on Ribičić’s testimony

²²⁸² Prlić’s Appeal Brief, para. 268; Appeal Hearing, AT. 136 (20 Mar 2017). Prlić also argues that the HZ H-B never sought independence. Prlić’s Appeal Brief, para. 268; Appeal Hearing, AT. 136 (20 Mar 2017).

²²⁸³ Prlić’s Appeal Brief, para. 268.

²²⁸⁴ Prlić’s Appeal Brief, para. 262, referring to Prlić’s Appeal Brief, grounds of appeal 4 and 6. Prlić also adopts his submissions made in his sub-grounds of appeal 1.1 and 1.3, which the Appeals Chamber dismisses elsewhere. Prlić’s Appeal Brief, para. 263, referring to Prlić’s Appeal Brief, paras 36, 82 (sub-grounds of appeal 1.1 and 1.3). See *supra*, paras 168-176.

²²⁸⁵ Prlić’s Appeal Brief, para. 264, referring to Ciril Ribičić, T. 25462-25463 (10 Dec 2007), T. 25586-25588 (11 Dec 2007).

²²⁸⁶ Prlić’s Appeal Brief, para. 264, referring to Ex. P08973, p. 52, Milan Cvikl, T. 35384-35386 (14 Jan 2009).

²²⁸⁷ Prlić’s Appeal Brief, para. 264, referring to Ex. 1D02036, pp. 6-7, Ciril Ribičić, T. 25554-25555, 25582-25583 (11 Dec 2007).

²²⁸⁸ Prlić’s Appeal Brief, para. 265, referring to Ex. P10356, pp. 10742, 10752, 10792. Prlić argues that Brix-Andersen’s evidence was that “there was never a clear agenda”. Prlić’s Appeal Brief, para. 265, referring to Ex. P10356, p. 10831.

²²⁸⁹ Prlić’s Appeal Brief, para. 266, referring to Raymond Lane, T. 23703-23704, 23721-23733, 23739-23740, 23770-23771, 23775-23776, 23779-23781, 23789-23794 (15 Oct 2007), Prlić’s Appeal Brief, paras 202-203 (sub-ground of appeal 6.2).

²²⁹⁰ Prlić’s Appeal Brief, para. 266, referring to Safet Idrizović, T. 9898 (9 Nov 2006), Slobodan Praljak, T. 40391-40393 (19 May 2009), Exs. 2D00073, 2D00072, 2D00076.

²²⁹¹ Prosecution’s Response Brief (Prlić), para. 159. The Prosecution argues that Prlić fails to explain the relevance of the chronology of the events leading to the establishment of the HZ H-B and how it renders the Trial Chamber’s conclusions unreasonable. Prosecution’s Response Brief (Prlić), para. 160.

²²⁹² Prosecution’s Response Brief (Prlić), para. 159. See Prosecution’s Response Brief (Prlić), para. 155. The Prosecution argues that Prlić ignores his own admission that Tudman, Boban, and Šušak created another plan to integrate a part of BiH into Croatia. Prosecution’s Response Brief (Prlić), para. 159, referring to Ex. P09078, pp. 64-66.

²²⁹³ Prosecution’s Response Brief (Prlić), para. 160, referring to Exs. P07856, pp. 46-47, P09712 (confidential), p. 14.

are contradicted by his own evidence,²²⁹⁴ and that he fails to show how the Trial Chamber unreasonably relied on the evidence of Brix-Andersen, Lane, Okun, and Čupina.²²⁹⁵

(ii) Analysis

722. Prlić's first argument is essentially that the conclusion that the HZ H-B was intended to facilitate the establishment of a Croatian entity, that was either to join Croatia or be an autonomous entity within BiH forming an alliance with Croatia, is not the only reasonable inference that can be drawn from the evidence.²²⁹⁶ Notably, Prlić argues that the HZ H-B was necessary to "take care of all Croats in BiH", but the evidence he relies on does not call into question the Trial Chamber's assessment and findings.²²⁹⁷ In this respect, the Appeals Chamber observes that the Trial Chamber did consider the "Serb aggression",²²⁹⁸ assertions that the Bosnian Croats were subject to direct occupation by Serbia, and the need for protection due to the lack of action by the government,²²⁹⁹ as well as evidence that the HZ H-B "was defined as being a Croatian entity that guaranteed the rights of Croats".²³⁰⁰ Thus, Prlić's argument concerning the purpose for establishing the HZ H-B is dismissed.²³⁰¹

723. Regarding Prlić's arguments that the HZ H-B was always part of BiH and functioned as an interim structure within BiH, the Appeals Chamber considers that Prlić neither explains how these assertions would impact the Trial Chamber's findings nor shows how the evidence he refers to supports his claims. Specifically, Prlić's assertion that the HZ H-B was always part of BiH does not stand in contradiction with the Trial Chamber's particular finding that "the said autonomous territorial entity desired by the HZ [H-B] was to exist either within BiH by forming an alliance with Croatia, or directly as a[n] integral part of Croatia".²³⁰²

724. In relation to Prlić's argument that the HZ H-B had no boundaries, the Appeals Chamber observes that the Trial Chamber considered various pieces of evidence in concluding that the

²²⁹⁴ Prosecution's Response Brief (Prlić), para. 157. See also Prosecution's Response Brief (Prlić), para. 156, referring to Ex. P00498.

²²⁹⁵ Prosecution's Response Brief (Prlić), para. 158.

²²⁹⁶ See Prlić's Appeal Brief, paras 232-233, 235.

²²⁹⁷ See Zdravko Sančević, T. 28688-28695 (27 May 2008) (testimony that he, as an ambassador, was concerned with the protection of the Croatian people who were in BiH); Radmilo Jašak, T. 48881 (25 Jan 2010) (testimony that the HZ H-B was organised to help all Croats in villages where they were in the majority).

²²⁹⁸ Trial Judgement, Vol. 4, para. 15.

²²⁹⁹ Trial Judgement, Vol. 1, para. 413 & fn. 951. See Trial Judgement, Vol. 1, para. 415. See also Trial Judgement, Vol. 4, para. 7 (summary of similar arguments presented at trial by the Appellants).

²³⁰⁰ Trial Judgement, Vol. 4, para. 14.

²³⁰¹ With regard to Prlić's argument on the chronology of the events, the Appeals Chamber notes that it is entirely based on a cross-reference to his sub-ground of appeal 1.1, which the Appeals Chamber dismisses elsewhere. See *supra*, paras 168-176.

²³⁰² Trial Judgement, Vol. 4, para. 16 (internal references omitted). See Trial Judgement, Vol. 4, para. 10. The Appeals Chamber also dismisses Prlić's argument that the HZ H-B never sought independence as the evidence he cites in support thereof is not relevant. See Miomir Žužul, T. 27696-27698 (7 May 2008).

intention was to set up a Croatian entity that reconstituted, at least in part, the borders of the Banovina.²³⁰³ Against this background, Prlić's reference to evidence indicating that 50 municipalities joined the HZ H-B²³⁰⁴ falls short of showing any error in the Trial Chamber's assessment of the relevant evidence as well as in its conclusion. The Appeals Chamber also considers Prlić's contention that the HVO defended BiH sovereignty to be unpersuasive, especially as he fails to address the Trial Chamber's consideration of evidence showing that the HVO was established "as the supreme body for the defence of the Croatian people in the HZ H-B".²³⁰⁵ Thus, the Appeals Chamber finds that Prlić fails to show that no reasonable trier of fact could have arrived at the Trial Chamber's conclusions.²³⁰⁶ Prlić's arguments are therefore dismissed.

725. As regards Prlić's argument that the Trial Chamber ignored evidence of Ribičić changing his analysis on the HZ H-B after having read the Presidential Transcript of 27 December 1991, the Appeals Chamber recalls that a trial chamber need not refer to every witness testimony or every piece of evidence on the record and that there is a presumption that the trial chamber evaluated all the evidence presented to it, as long as there is no indication that the trial chamber completely disregarded evidence which is clearly relevant.²³⁰⁷ The Appeals Chamber is not convinced that the Presidential Transcript of 27 December 1991, to which Prlić refers, is clearly relevant to the reasons for establishing the HZ H-B. Additionally, the Appeals Chamber finds that neither Ribičić's testimony nor his book which Prlić cites show that Ribičić "changed his legal analysis and opinion".²³⁰⁸ Further, Prlić's assertion that Ribičić testified that the HZ H-B was not a "mini-State" is not supported by the section of the evidence which he cites.²³⁰⁹

²³⁰³ Trial Judgement, Vol. 4, paras 13-16, 22, 24, and references cited therein. Notably, the Trial Chamber concluded that the HZ H-B consisted of 30 municipalities. Trial Judgement, Vol. 1, para. 425, Vol. 4, para. 14.

²³⁰⁴ The Appeals Chamber notes that, under his sub-ground of appeal 9.1, Prlić cites testimony concerning the HZ H-B having no borders. Prlić's Appeal Brief, para. 235. See, e.g., Zdravko Sančević, T. 28745 (28 May 2008); Zoran Buntić, T. 30796-30797 (16 July 2008); Filip Filipović, T. 47762 (7 Dec 2009) (testifying that the territory of Herceg-Bosna was never defined to his knowledge). The Appeals Chamber considers that by doing so, Prlić in effect challenges the weight given by the Trial Chamber to these pieces of evidence. Recalling the broad discretion afforded to the Trial Chamber in assessing the appropriate weight to be accorded to the evidence, the Appeals Chamber finds that Prlić fails to show an error by the Trial Chamber in this regard. See *Popović et al.* Appeal Judgement, para. 131.

²³⁰⁵ Trial Judgement, Vol. 1, para. 436. See also Trial Judgement, Vol. 4, para. 15.

²³⁰⁶ See *supra*, para. 719.

²³⁰⁷ *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.

²³⁰⁸ See Ex. 1D02036, pp. 6-7 (a foreword in a book authored by Ribičić stating that the Presidential Transcript of 27 December 1991 "considerably influenced [his] final opinion on Herceg-Bosna and its mistakes"); Cyril Ribičić, T. 25554-25555 (in which Ribičić confirmed that he placed a high premium on the Presidential Transcript of 27 December 1991), 25582-25583 (in which the parties discussed procedure issues about Ribičić's testimony concerning the Presidential Transcript of 27 December 1991) (11 Dec 2007). See Prlić's Appeal Brief, para. 264 & fns 739-740.

²³⁰⁹ Cyril Ribičić, T. 25462-25463 (10 Dec 2007), T. 25586-25588 (11 Dec 2007).

726. The Appeals Chamber is also not persuaded by Prlić's argument that Ribičić and Brix-Andersen speculated about the goal of the HZ H-B.²³¹⁰ In this respect, the Appeals Chamber notes that the Trial Chamber clearly accepted Ribičić's and Brix-Andersen's statements after considering various pieces of evidence.²³¹¹ Notably, Brix-Andersen expressed his evaluation of the situation, while expressly stating his position and sources of information.²³¹² Prlić merely offers his own assessment of the evidence without showing that the Trial Chamber erred in giving weight to this contested evidence. Similarly, the Appeals Chamber dismisses Prlić's contention that Lane was an unreliable witness, as he only seeks to replace the Trial Chamber's assessment of Lane's evidence with his own without showing an error.²³¹³ Finally, with regard to Čupina, the Appeals Chamber observes that the Trial Chamber considered that certain discrepancies weakened the credibility of his testimony in part,²³¹⁴ but in relation to the issue at hand, it relied on his testimony along with other evidence.²³¹⁵ Thus, the Appeals Chamber is not satisfied that the Trial Chamber erred in relying on the evidence of Ribičić, Brix-Andersen, Lane, or Okun,²³¹⁶ and dismisses Prlić's arguments accordingly.

727. In light of the above, the Appeals Chamber dismisses Prlić's sub-grounds of appeal 9.1 and 9.6 challenging the Trial Chamber's findings that the creation of the HZ H-B was not merely a temporary defence initiative.

(b) Stojić's appeal (Ground 1 in part)

728. Stojić submits that, in reaching its conclusion about the Ultimate Purpose of the JCE, the Trial Chamber "disregarded the context of Serbian aggression".²³¹⁷ Stojić argues that the Trial Chamber focused only on the creation of the HZ H-B in November 1991 and disregarded its own findings or clearly relevant evidence on the HVO formation, namely, that the HVO was created as a defensive response to the Serbian offensive against BiH,²³¹⁸ and to protect the

²³¹⁰ See Prlić's Appeal Brief, para. 264, referring to Ex. P08973, p. 52 (Ribičić's legal analysis in which he says that it did not proceed directly from certain enactments that the intention was to integrate with Croatia, "although it could have been the well concealed, ultimate goal in establishing the HZ H-B"), Milan Cviki, T. 35384-35386 (14 Jan 2009) (expressing surprise at Ribičić's report).

²³¹¹ Trial Judgement, Vol. 4, para. 15 & fns 36, 39, 41-42.

²³¹² See Ex. P10356, pp. 10724-10725.

²³¹³ The Appeals Chamber notes that it considers and dismisses Prlić's arguments concerning Lane's elsewhere. See *supra*, paras 215-218.

²³¹⁴ See Trial Judgement, Vol. 1, para. 285 (considering Čupina's evidence on whether there were ABiH prisoners in Mostar).

²³¹⁵ Trial Judgement, Vol. 4, para. 15, fn. 42.

²³¹⁶ The Appeals Chamber notes that Prlić does not present any specific arguments on the Trial Chamber's reliance on Okun's evidence.

²³¹⁷ Stojić's Appeal Brief, para. 17. See Stojić's Appeal Brief, paras 9, 18.

²³¹⁸ Stojić's Appeal Brief, paras 17-18, referring to Trial Judgement, Vol. 1, paras 408, 415, 434, 436, Vol. 4, paras 14-15; Appeal Hearing, AT. 264-265, 290-291 (21 Mar 2017).

“Croatian people as well as other peoples”.²³¹⁹ In reply, Stojić argues that the inferences drawn from the evidence were not the only reasonable ones available.²³²⁰

729. The Prosecution responds that the Trial Chamber: (1) “did not disregard the context of Serb aggression” and that its conclusions were reasonable;²³²¹ and (2) considered the evidence Stojić cites, which states that the HVO was not established only for defence purposes.²³²²

730. The Appeals Chamber recalls that the Trial Chamber considered the context of the “Serb aggression” in arriving at its conclusions²³²³ as well as the evidence Stojić cites.²³²⁴ In this respect, the Appeals Chamber finds that Stojić’s arguments regarding HVO policies show no error in the Trial Chamber’s findings. Further, insofar as Stojić argues that there is another reasonable inference that can be drawn from the evidence, the Appeals Chamber finds that he merely disagrees with the Trial Chamber’s conclusion without showing an error. Therefore, the relevant parts of Stojić’s ground of appeal 1 are dismissed.

(c) Praljak’s appeal (Ground 6.2 in part)

(i) Arguments of the Parties

731. Praljak submits that the Trial Chamber erred in concluding that the HZ H-B officials established a Croatian “mini-State” within BiH by failing to consider various factors.²³²⁵ Praljak contends that, at the time of the first meetings between the Croat leaders, BiH was not an independent State and there was a legitimate fear concerning Serb aggression.²³²⁶ He also contends that the only conclusion that can be drawn from the HZ H-B’s establishment – which was consistent with the SRBiH Constitution – is that the Croat people wished to exercise their right of self-determination.²³²⁷ Praljak also submits that the HZ H-B’s establishment was in line with international plans and agreements to strengthen the RBiH as a State of three constituent nations,

²³¹⁹ Stojić’s Appeal Brief, para. 18, referring to Exs. P08973, p. 44, P00151, Arts 1-2; Appeal Hearing, AT. 265-266 (21 Mar 2017).

²³²⁰ Stojić’s Reply Brief, para. 7.

²³²¹ Prosecution’s Response Brief (Stojić), para. 16, referring to Trial Judgement, Vol. 4, para. 15. The Prosecution also repeats its argument that Tudman, Boban, and Šušak created another plan to integrate a part of BiH into Croatia. Prosecution’s Response Brief (Stojić), para. 16, referring to Ex. P09078, pp. 64-66. See *supra*, fn. 2292.

²³²² Prosecution’s Response Brief (Stojić), para. 16, referring to Ex. P08973, pp. 44, 48-49, 51. The Prosecution asserts that one of the HVO’s objectives was to defend “the sovereignty” of the HZ H-B. Prosecution’s Response Brief (Stojić), para. 16, referring to Ex. P00151, Art. 2.

²³²³ See *supra*, paras 718, 722.

²³²⁴ See Trial Judgement, Vol. 1, para. 436 & fn. 1015 (referring to Ex. P00151 concerning the HVO’s establishment), Vol. 4, para. 15, fn. 33 (referring to Ex. P08973, p. 44).

²³²⁵ Praljak’s Appeal Brief, heading before para. 107. See Praljak’s Appeal Brief, para. 118.

²³²⁶ Praljak’s Appeal Brief, paras 107, 109, 111. Praljak argues that the Serbs had *de facto* control over a great portion of the territory when the future of BiH was uncertain. Praljak’s Appeal Brief, para. 111.

and that it was never intended to establish a separate State.²³²⁸ According to Praljak, the HVO was established to protect all people in the HZ(R) H-B and was necessary in light of the Serb offensive actions in BiH.²³²⁹ Praljak further contends that the Trial Chamber should have more carefully assessed the evidence of, *inter alios*, Okun and Galbraith, “who pursued [...] the policy of their States”.²³³⁰

732. The Prosecution responds that Praljak ignores the Trial Chamber’s findings and evidence relied on, raises irrelevant issues, and repeats his trial arguments without showing an error.²³³¹

(ii) Analysis

733. The Appeals Chamber first recalls that the Trial Chamber considered that the HZ H-B was created against a backdrop of “Serb aggression”²³³² and finds that Praljak fails to show how the fact that BiH was not an independent State at the relevant time impacts on the Trial Chamber’s findings. Praljak also fails to demonstrate that the alleged desire of the BiH Croats to exercise their right of self-determination is in contradiction to the Trial Chamber’s conclusions.²³³³ Further, by arguing that this is the only conclusion that can be drawn, Praljak merely offers his own interpretation of the evidence without showing that the Trial Chamber’s conclusions were unreasonable. In this regard, the Appeals Chamber observes that the Trial Chamber specifically referred to Ribičić’s evidence that the reference to the right to self-determination in the decision establishing the HZ H-B proved that its establishment was not just an interim defensive measure but was aimed at creating a “mini-State”.²³³⁴ For the same reasons, the Appeals Chamber finds Praljak’s argument that the HZ H-B was never intended to be a separate State to be unconvincing and also finds that the evidence he cites does not call into question the Trial Chamber’s findings.²³³⁵ Notably, the Trial Chamber evaluated issues similar to those Praljak raises in support of his argument.²³³⁶ Regarding Praljak’s

²³²⁷ Praljak’s Appeal Brief, paras 108, 117. See Praljak’s Appeal Brief, para. 111; Praljak’s Reply Brief, para. 24. Praljak also contends that the only objective of the Croatian BiH leaders was to ensure equality of rights for the BiH Croats with the two other constituent people. Praljak’s Appeal Brief, para. 116.

²³²⁸ Praljak’s Appeal Brief, paras 115-117. Praljak argues that the “BiH Croats never ceased to participate in BiH central organs and continuously made efforts [for] coordinated/joint actions”. Praljak’s Appeal Brief, para. 116.

²³²⁹ Praljak’s Appeal Brief, para. 113, referring to Ex. P00152. Praljak asserts that the HVO had no objective contrary to the overall BiH interests and became an integral part of the united forces of the RBiH. Praljak’s Appeal Brief, para. 113.

²³³⁰ Praljak’s Appeal Brief, para. 117.

²³³¹ Prosecution’s Response Brief (Praljak), paras 41-42. See Prosecution’s Response Brief (Praljak), para. 40. The Prosecution submits that “Praljak points to no evidence showing HVO support to the ABiH [...] detrimental to the HVO’s campaigns in the HZ(R) H-B”. Prosecution’s Response Brief (Praljak), para. 37.

²³³² See *supra*, paras 718, 722, 730.

²³³³ See Trial Judgement, Vol. 4, para. 15.

²³³⁴ Trial Judgement, Vol. 4, para. 15.

²³³⁵ See Praljak’s Appeal Brief, paras 108, 112-113, 115, referring to, *inter alia*, Exs. 1D00896, 1D00892, 1D01312.

²³³⁶ See, *e.g.*, Trial Judgement, Vol. 1, paras 423 (noting Tudman’s announcement that the HZ H-B’s establishment did not constitute a decision to separate from BiH), 438 (noting that the principles of the Cutileiro Plan envisaged the continuity of BiH while nevertheless dividing the State into three, non-contiguous territorial entities), 446 (noting that the Vance-Owen Peace Plan was based on multi-ethnicity, decentralisation and democracy).

argument that the HVO was created to protect all people in BiH, the Appeals Chamber notes that the Trial Chamber, relying on various pieces of evidence, including Exhibit P00152 (an 8 April 1992 decision signed by Boban on the creation of the HVO) cited by Praljak,²³³⁷ found that the HVO was established to defend the Croatian people in the HZ H-B.²³³⁸ Moreover, Praljak fails to show an error in the Trial Chamber's finding that the establishment of the HZ-H-B was aimed at creating a mini-State. Additionally, the Appeals Chamber considers Praljak's final argument regarding the Trial Chamber's assessment of certain witnesses' testimonies to be speculative and notes that he fails to provide any support for this contention. Thus, the Appeals Chamber dismisses the relevant parts of Praljak's sub-ground of appeal 6.2.

5. Alleged errors concerning the BiH Croat delegation's agreement with the Vance-Owen Peace Plan principles and Tuđman's involvement in negotiations

734. The Trial Chamber found that, during the international peace negotiations in January 1993, the constitutional principles of the Vance-Owen Peace Plan were proposed.²³³⁹ The Trial Chamber noted Okun's testimony that the "delegation of BiH Croats", which consisted of Tuđman, Boban, Petković, and Mile Akmadžić was not genuinely in agreement with these principles, but accepted them "in order to get the Serbs to sign", while being fully aware that they would be amended later.²³⁴⁰ The Trial Chamber also observed, in relying on Okun's testimony, that, while not officially the head of the BiH Croat delegation, Tuđman "was so in fact", as Boban needed his approval before taking decisions.²³⁴¹

(a) Prlić's appeal (Sub-ground 9.9)

735. Prlić submits that the Trial Chamber, relying exclusively on Okun's uncorroborated testimony, erred in finding that Tuđman was the *de facto* head of the BiH Croatian delegation at the ICFY.²³⁴² Prlić argues that Tuđman was asked by the international community to participate in peace negotiations and that the Trial Chamber ignored evidence of this role.²³⁴³ He also contends

²³³⁷ Praljak's Appeal Brief, para. 113, referring to Ex. P00152.

²³³⁸ Trial Judgement, Vol. 1, para. 436. See *supra*, para. 724.

²³³⁹ Trial Judgement, Vol. 1, para. 445, Vol. 4, para. 20, referring to, *inter alia*, Herbert Okun, T(F). 16731-16732 (2 Apr 2007). See Trial Judgement, Vol. 1, paras 442-444, 446-451.

²³⁴⁰ Trial Judgement, Vol. 4, para. 20, referring to Herbert Okun, T(F). 16673-16674, 16735-16736 (2 Apr 2007). See Trial Judgement, Vol. 1, para. 443.

²³⁴¹ Trial Judgement, Vol. 1, para. 443, Vol. 4, para. 20, referring to Herbert Okun, T(F). 16675 (2 Apr 2007).

²³⁴² Prlić's Appeal Brief, para. 273.

²³⁴³ Prlić's Appeal Brief, paras 273-274, referring to, *inter alia*, Miomir Žužul, T. 27820-27821 (8 May 2008), T. 31137-31138 (22 July 2008).

that the diaries authored by Okun did not mention Tuđman as the *de facto* head of the delegation.²³⁴⁴

736. The Prosecution responds that Prlić fails to show how the impugned finding affects the verdict but that, in any event, the Trial Chamber reasonably relied on Okun's first-hand account of events.²³⁴⁵

737. The Appeals Chamber observes that by solely relying on Okun's testimony, the Trial Chamber stated that while Tuđman was not officially the head of the BiH Croat delegation, he "was so in fact".²³⁴⁶ To the extent that Prlić argues that the Trial Chamber's impugned finding was supported only by Okun's uncorroborated testimony, the Appeals Chamber recalls that a trial chamber has the discretion to decide in the circumstances of each case whether corroboration is necessary or whether to rely on uncorroborated, but otherwise credible, witness testimony.²³⁴⁷ It also notes that Prlić does not contest Okun's credibility in this context. The Appeals Chamber therefore finds Prlić's argument to be unpersuasive. Regarding Tuđman's role in the peace negotiations, the Appeals Chamber considers that Prlić fails to explain how this role is inconsistent with the Trial Chamber's finding that Tuđman was in fact the head of the BiH Croatian delegation.²³⁴⁸ Further, whether Tuđman was asked to participate in peace negotiations is irrelevant to the issue of his authority, and the evidence that Prlić contends was ignored by the Trial Chamber does not call into question the impugned finding.²³⁴⁹ His arguments are therefore dismissed.

738. In relation to the contention that Okun's diaries did not mention Tuđman as the *de facto* head of the BiH Croatian delegation, the Appeals Chamber notes that the only evidence cited by Prlić refers to the cross-examination of Okun during which he specifically clarified that his diaries indicated that Tuđman was in fact the representative of the Croat people.²³⁵⁰ The Appeals Chamber observes that the Trial Chamber noted that Boban sought Tuđman's approval before taking decisions.²³⁵¹ Further, the Trial Chamber considered Okun's testimony and concluded that "Tuđman

²³⁴⁴ Prlić's Appeal Brief, para. 273, referring to Herbert Okun, T. 16656-16658 (2 Apr 2007), T. 16821-16823 (3 Apr 2007), T. 16888-16889 (4 Apr 2007).

²³⁴⁵ Prosecution's Response Brief (Prlić), para. 162. See also Appeal Hearing, AT. 182 (20 Mar 2017).

²³⁴⁶ See *supra*, para. 734.

²³⁴⁷ *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.

²³⁴⁸ See, e.g., Trial Judgement, Vol. 1, para. 443, Vol. 4, para. 20.

²³⁴⁹ See Miomir Žužul, T. 27820-27821 (8 May 2008) (testifying that the international community wanted Tuđman to participate in peace negotiations as it would be more efficient), T. 31137-31138 (22 July 2008) (stating that the international community asked Tuđman to use his influence in the peace negotiations and that Tuđman "had quite an influence over the Croat representatives").

²³⁵⁰ Herbert Okun, T. 16821-16823 (3 Apr 2007).

²³⁵¹ Trial Judgement, Vol. 1, para. 443, referring to Herbert Okun, T(F). 16675 (2 Apr 2007).

also took part in the negotiations, and had influence over the BiH Croatian representatives”.²³⁵² On this issue, the Appeals Chamber recalls that a trial chamber has broad discretion in assessing the appropriate weight and credibility to be accorded to the evidence.²³⁵³ Thus, even if Prlić’s contention is accurate, the Appeals Chamber finds that he has failed to show that the Trial Chamber erred in giving little or no weight to the alleged absence of any mention in Okun’s diaries that Tuđman was in fact the head of the delegation. Prlić’s argument is thus dismissed.

739. In light of the above, the Appeals Chamber finds that Prlić has failed to show that no reasonable trier of fact could have concluded that Tuđman, although not officially the head of the BiH Croatian delegation at the ICFY, was so in fact. Prlić’s sub-ground of appeal 9.9 is dismissed.

(b) Praljak’s appeal (Sub-grounds 5.1 in part, 5.2 in part, and 5.3)

(i) Arguments of the Parties

740. Praljak submits that the Trial Chamber erroneously considered Okun’s speculative testimony that the BiH Croats accepted the Vance-Owen Peace Plan principles despite not being genuinely in agreement with them.²³⁵⁴ Praljak argues that the Trial Chamber went “even beyond [Okun’s] statement” as he was not able to ascertain that the Croats were fully aware that the principles would be amended.²³⁵⁵ Praljak also argues that the Trial Chamber failed to consider Exhibit P00866, which indicates that shortly before the plan’s acceptance, “Tuđman stated that it was now possible to discuss the internal organisation of BiH as a federal community of three nations”.²³⁵⁶

741. Praljak further submits that the Trial Chamber improperly assessed Okun’s testimony in finding that Tuđman was the “real chief” of the BiH Croatian delegation at the ICFY and that Boban needed to obtain his approval.²³⁵⁷ Specifically, he argues that Okun’s testimony did not show or support a finding that: (1) Tuđman took part in the negotiations;²³⁵⁸ (2) Boban stated that he needed Tuđman’s approval;²³⁵⁹ and (3) a conversation which Okun had with Tuđman confirmed

²³⁵² Trial Judgement, Vol. 1, para. 443. In a passage cited by Prlić, Okun also testified that Tuđman “was the boss” and was “the very important person”. Herbert Okun, T. 16888 (4 Apr 2007). See Prlić’s Appeal Brief, para. 273.

²³⁵³ *Popović et al.* Appeal Judgement, para. 131.

²³⁵⁴ Praljak’s Appeal Brief, para. 84.

²³⁵⁵ Praljak’s Appeal Brief, para. 84, referring to Herbert Okun, T. 16735-16736 (2 Apr 2007).

²³⁵⁶ Praljak’s Appeal Brief, para. 84, referring to Ex. P00866, p. 9.

²³⁵⁷ Praljak’s Appeal Brief, paras 89, 92. See Praljak’s Appeal Brief, paras 90-91.

²³⁵⁸ Praljak’s Appeal Brief, paras 90-92, referring to Herbert Okun, T. 16673, 16675 (2 Apr 2007); Appeal Hearing, AT. 387 (22 Mar 2017).

²³⁵⁹ Praljak’s Appeal Brief, paras 90, 92. According to Praljak, Okun’s testimony concerning consultations between Boban and Tuđman is based on what Boban might have said to Okun in informal conversations, and is not a reflection of Boban’s remarks during negotiations. Praljak’s Appeal Brief, para. 90, referring to Herbert Okun, T. 16675 (2 Apr 2007).

that the latter was in fact the head of the delegation.²³⁶⁰ Praljak also argues that had Tuđman participated in negotiations, he would not have needed to ask Okun to keep him informed or to express his readiness to deal with the issues raised.²³⁶¹

742. The Prosecution responds that Praljak repeats his trial arguments without showing an error or an impact,²³⁶² and seeks to substitute his assessment of evidence for that of the Trial Chamber.²³⁶³

(ii) Analysis

743. Regarding the acceptance of the Vance-Owen Peace Plan principles by the BiH Croatian delegation, the Appeals Chamber has reviewed the portion of Okun's evidence relied on by the Trial Chamber.²³⁶⁴ Okun testified that "[the BiH Croatian delegation] did not like the principles but went along with them because they knew, again, that there would have to be, or they thought there would have to be, some adjustment in the principles if the co-chairmen were to gain Serb acceptance".²³⁶⁵ Based on these considerations, Praljak fails to show that the Trial Chamber unreasonably relied upon this evidence in concluding that the BiH Croatian delegation was "fully aware that [the principles] would later be amended".²³⁶⁶ Thus, Praljak's arguments on this issue are unconvincing, particularly as Okun's testimony was based on his first-hand knowledge of the events. In this regard, the Appeals Chamber finds that Praljak fails to show that the Trial Chamber improperly assessed or erroneously exercised its broad discretion in considering this evidence.²³⁶⁷

744. Concerning Tuđman's statement reflected in Exhibit P00866 regarding his readiness to discuss the internal organisation of BiH,²³⁶⁸ the Appeals Chamber notes that the Trial Chamber was aware of and considered this evidence in noting that Tuđman advocated the existence and legitimacy of the BiH Croatian people to protect the Croatian borders.²³⁶⁹ Moreover, Praljak does not show any error by the Trial Chamber, particularly as Tuđman's statement is in line with the impugned finding. Praljak's argument is dismissed.

²³⁶⁰ Praljak's Appeal Brief, paras 91-92.

²³⁶¹ Praljak's Appeal Brief, para. 91, referring to Herbert Okun, T. 16675 (2 Apr 2007).

²³⁶² Prosecution's Response Brief (Praljak), para. 41, referring to, *inter alia*, Ex. P00866, p. 9.

²³⁶³ Prosecution's Response Brief (Praljak), para. 34.

²³⁶⁴ Trial Judgement, Vol. 4, para. 20.

²³⁶⁵ Herbert Okun, T. 16735-16736 (2 Apr 2007). Okun also testified that the Croatian delegation "could accept the Vance-Owen Plan in the secure knowledge that it would not go anywhere because of Bosnian Serb rejection". Herbert Okun, T. 16735 (2 Apr 2007).

²³⁶⁶ Trial Judgement, Vol. 4, para. 20.

²³⁶⁷ See *Popović et al.* Appeal Judgement, para. 131.

²³⁶⁸ See *supra*, para. 740.

²³⁶⁹ Trial Judgement, Vol. 4, para. 15 & fn. 35.

745. Turning to Praljak's arguments on Tudman's role in the negotiations, insofar as he argues that the Trial Chamber relied only on Okun's testimony, the Appeals Chamber has considered and dismissed a similar argument,²³⁷⁰ and Praljak fails to present any new submissions on this point. The Appeals Chamber recalls that the Trial Chamber considered that Tudman took part in the negotiations, had influence over the BiH Croatian representatives,²³⁷¹ and while not officially the head of the BiH Croatian delegation, was so in fact because Boban needed his approval before taking decisions.²³⁷² Praljak disputes these findings by citing the same evidence considered by the Trial Chamber and therefore merely offers his own interpretation of the evidence without showing an error in the Trial Chamber's assessment of the same.²³⁷³

746. The Appeals Chamber also considers Praljak's remaining argument – that had Tudman participated in negotiations, he would not have needed to ask Okun to keep him informed or to express his readiness to deal with the issues raised – to be unmeritorious.²³⁷⁴ Regardless, Praljak fails to show how the argument, particularly on Tudman's request to be informed and his willingness to deal with issues, calls the Trial Chamber's findings into question. His arguments are thus dismissed.

747. For the foregoing reasons, the Appeals Chamber finds that Praljak has failed to demonstrate an error in the Trial Chamber's assessment of Okun's testimony regarding the Croatian delegation's acceptance of the Vance-Owen Peace Plan principles at the ICFY and Tudman's role in the negotiations. The Appeals Chamber therefore dismisses Praljak's sub-grounds of appeal 5.1 and 5.2, both in part, as well as his sub-ground of appeal 5.3.

6. Alleged errors in finding that the HZ H-B leaders established a "mini-State" within BiH

748. The Trial Chamber found that in the months following the signing of the Vance-Owen Peace Plan by the BiH Croats and until August 1993, the HZ H-B leaders gradually established a Croatian "mini-State" within BiH, with the primary objective of preserving the so-called Croatian

²³⁷⁰ See *supra*, para. 738.

²³⁷¹ Trial Judgement, Vol. 1, para. 443. See *supra*, para. 738.

²³⁷² Trial Judgement, Vol. 1, para. 443, Vol. 4, para. 20, referring to Herbert Okun, T(F). 16675 (2 Apr 2007).

²³⁷³ See Herbert Okun, T. 16673-16675 (2 Apr 2007). Okun testified that: (1) the principal representatives or participants of the BiH Croat party included Tudman and Boban (see Herbert Okun, T. 16673 (2 Apr 2007)); and (2) Tudman was not formally the head of the delegation, but that he was the *de facto* head (see Herbert Okun, T. 16675 (2 Apr 2007)). Okun also testified that ("Well, I should state at the outset that most of our dealings were with Mate Boban, but President Tudjman took a very active interest in the affairs of the conference and the conflict in Bosnia and Herzegovina, and made it plain to Mr. Vance and me that he, A, was in charge; B, wished to be kept informed, and; C, would be happy to deal with us on these issues. And also in conversation, everyday conversation, Mate Boban might say to me, 'Yes, Mr. Ambassador, I think that's possible, but I'd have to check with President Tudjman'"). See Herbert Okun, T. 16675 (2 Apr 2007).

²³⁷⁴ See *supra*, para. 741.

territories claimed under the Vance-Owen Peace Plan.²³⁷⁵ The Trial Chamber concluded that: (1) the proclamation of the HR H-B on 28 August 1993 formalised the creation of the “mini-State” within BiH; (2) the HR H-B was defined as a “community-state” and an integral and indivisible democratic state of the Croatian people in BiH; (3) in a statement of the HR H-B Chamber of Deputies on 8 February 1994, the HR H-B proclaimed itself the sole legitimate “government” of the BiH Croats, expressing the need to consolidate its statehood (“HR H-B Chamber of Deputies’ Proclamation of 8 February 1994”); and (4) at the meeting on 13 February 1994 (“13 February 1994 Meeting”), Prlić said to several leaders, including Tudman, that the HR H-B displayed every single attribute of a state and that it needed to obtain the widest possible borders which could be attained by military means.²³⁷⁶

(a) Prlić’s appeal (Sub-ground 9.10)

(i) Arguments of the Parties

749. Prlić submits that the Trial Chamber erred in concluding that the leaders of the HZ H-B created a “mini-State” by relying on and misrepresenting Ribičić’s evidence, as well as disregarding other relevant evidence.²³⁷⁷ Prlić also argues that the Trial Chamber relied on two documents which do not support its conclusion that the primary objective of the HZ H-B leaders was to preserve the Croatian territories claimed under the Vance-Owen Peace Plan.²³⁷⁸ In this regard, Prlić submits that: (1) Zrinko Tokić testified that Exhibit P02486, an Ante Starčević Brigade military report, expresses his own opinion,²³⁷⁹ and (2) Exhibit P05391, a document from the 1st Knez Domagoj Brigade, was admitted from the bar table.²³⁸⁰ He also contends that the Trial Chamber misrepresented the HR H-B Chamber of Deputies’ Proclamation of 8 February 1994, which was a mere depiction of HR H-B’s support for the Owen-Stoltenberg Peace Plan.²³⁸¹ Prlić further submits that the Trial Chamber mischaracterised the 13 February 1994 Meeting, arguing that he stated at the meeting that “we have created a state in Herceg Bosna with all systems [...], in accordance with the competencies of the Republic envisaged by the Union of Republics [of BiH]”.²³⁸²

²³⁷⁵ Trial Judgement, Vol. 4, para. 21.

²³⁷⁶ Trial Judgement, Vol. 4, para. 21.

²³⁷⁷ Prlić’s Appeal Brief, para. 275, referring to Trial Judgement, Vol. 1, paras 409-490, Vol. 4, para. 21. Prlić also refers to his sub-ground of appeal 1.3 in support of his challenge in this regard, and his sub-ground of appeal 4.3 in respect of challenges related to Ribičić. Prlić’s Appeal Brief, paras 275-276.

²³⁷⁸ Prlić’s Appeal Brief, para. 277, referring to Exs. P02486, P05391.

²³⁷⁹ Prlić’s Appeal Brief, para. 277, referring to Ex. P02486, Zrinko Tokić, T. 45533-45537 (1 Oct 2009).

²³⁸⁰ Prlić’s Appeal Brief, para. 277, referring to Ex. P05391.

²³⁸¹ Prlić’s Appeal Brief, para. 278, referring to Ex. P07825.

²³⁸² Prlić’s Appeal Brief, para. 278, referring to Exs. P07856, 1D02911, p. 47, P03990, p. 14, Art. 3.

750. The Prosecution responds that the Trial Chamber reasonably concluded that a Croatian “mini-State” within BiH was formalised with the proclamation of the HR H-B and that Prlić fails to show any error in the Trial Chamber’s reliance on the evidence in support of its findings.²³⁸³

(ii) Analysis

751. The Appeals Chamber notes that Prlić’s challenge to the Trial Chamber’s conclusion on the creation of a “mini-State” within BiH is entirely based on cross-references to other grounds of appeal, which the Appeals Chamber dismisses elsewhere.²³⁸⁴ With respect to Prlić’s contention that the Trial Chamber erred when concluding that the HZ H-B leaders’ main objective was to preserve the Croatian territories claimed under the Vance-Owen Peace Plan, the Appeals Chamber observes that in support of the impugned finding, the Trial Chamber relied on Petković’s testimony that the purpose of the HVO was to “preserve as much territory inhabited by Croats as possible”.²³⁸⁵ The Appeals Chamber further notes that Prlić does not challenge the Trial Chamber’s reliance on this evidence, which thus remains undisturbed. In addition, with regard to Exhibit P05391, the Appeals Chamber notes that by challenging the Trial Chamber’s reliance on it, Prlić merely submits that the document was admitted from the bar table,²³⁸⁶ conflating the issue of admissibility of the evidence with its weight. Prlić has also failed to show how his remaining challenge with regard to the Trial Chamber’s reliance on Exhibit P02486 would have an impact on the impugned finding. Prlić’s arguments are therefore dismissed.

752. As regards Prlić’s submission that the Trial Chamber misrepresented the HR H-B Chamber of Deputies’ Proclamation of 8 February 1994 as it merely shows the HR H-B’s support for the Owen-Stoltenberg Peace Plan, the Appeals Chamber observes the Trial Chamber’s finding that this evidence indicated that: (1) the HR H-B proclaimed itself the sole legitimate “government” of the BiH Croats and needed to work to consolidate its statehood; and (2) within the “Union of the Republics of Bosnia and Herzegovina”, the HR H-B was to ensure the right of the Croatian people to self-determination and to attain a state, with respect for the rights of the other two constituent

²³⁸³ Prosecution’s Response Brief (Prlić), para. 161.

²³⁸⁴ See *supra*, paras 176, 211.

²³⁸⁵ See Trial Judgement, Vol. 4, para. 21, referring to, *inter alia*, Milivoj Petković, T(F). 49482 (16 Feb 2010). See also Milivoj Petković, T. 49483 (16 Feb 2010).

²³⁸⁶ See Prlić’s Appeal Brief, para. 277. The Appeals Chamber notes that Exhibit P05391 was admitted into evidence on 11 December 2007. See *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić*, Case No. IT-04-74-T, *Décision portant sur la demande d’admission d’éléments de preuve documentaire présentée par l’Accusation (Deux requêtes HVO/Herceg-Bosna)*, 11 December 2007, Annex 2.

nations.²³⁸⁷ The Appeals Chamber considers that Prlić merely proposes an alternative interpretation of this proclamation, without showing an error in the Trial Chamber's conclusion.²³⁸⁸

753. Concerning Prlić's argument that the Trial Chamber mischaracterised the 13 February 1994 Meeting, the Appeals Chamber observes that the Trial Chamber specifically considered the transcript of the meeting. It concluded that at this meeting, Prlić said to several leaders from Croatia, including Tudman, that the HR H-B displayed every single attribute of a state, and that this state needed to attain the widest possible borders, comprising all of Central Bosnia, which could be achieved by military means.²³⁸⁹ Other than pointing to a different part of the statement that he made at the same meeting, Prlić fails to demonstrate that the Trial Chamber mischaracterised the 13 February 1994 Meeting and committed any error in its finding. His arguments are therefore dismissed.

754. In light of the above, the Appeals Chamber finds that Prlić has failed to show that no reasonable trier of fact could have concluded that the HZ H-B leaders gradually established a Croatian "mini-State" within BiH, the objective of which was the preservation of so-called Croatian territories claimed under the Vance-Owen Peace Plan. Prlić has also failed to show any error in the Trial Chamber's findings on the HR H-B's proclamation and the 13 February 1994 Meeting. Prlić's sub-ground of appeal 9.10 is therefore dismissed.

(b) Praljak's appeal (Sub-grounds 5.1 and 5.2 in part)

755. Praljak submits that the Trial Chamber erred in concluding that the HZ H-B was gradually established as a "mini-State", and argues that the Trial Chamber misunderstood political developments in BiH after the Vance-Owen Peace Plan since the HZ H-B leaders only tried to implement the plan.²³⁹⁰

756. The Prosecution responds that Praljak's contention in this regard is unsubstantiated and shows no error in the Trial Chamber's assessment of the evidence.²³⁹¹

757. The Appeals Chamber finds that Praljak has failed to provide any support for his contention that the Trial Chamber misinterpreted political developments in BiH after the signing of the Vance-Owen Peace Plan because the HZ H-B leaders only attempted to carry out this plan. The

²³⁸⁷ Trial Judgement, Vol. 4, para. 21 & fns 71-72, referring to, *inter alia*, Ex. P07825, pp. 1-2.

²³⁸⁸ The Appeals Chamber also dismisses Prlić's contention that the Trial Chamber "ignored contextual evidence" as undeveloped and unsubstantiated. See Prlić's Appeal Brief, para. 278.

²³⁸⁹ Trial Judgement, Vol. 4, para. 21 & fns 73-74, referring to Ex. P07856, pp. 46-47. The Appeals Chamber considers that Ex. 1D02911 is identical to Ex. P07856 with regard to the parts to which Prlić refers and on which the Trial Chamber relied in its findings.

²³⁹⁰ Praljak's Appeal Brief, para. 85.

Trial Chamber clearly determined that, in the months that followed the signing of the Vance-Owen Peace Plan, the HZ H-B leaders gradually created a Croatian “mini-State” with a view to preserving so-called Croatian territories claimed under the Vance-Owen Peace Plan.²³⁹² The Appeals Chamber therefore dismisses his argument as unsubstantiated and failing to articulate any error.

758. Accordingly, the Appeals Chamber finds that Praljak has failed to show an error in the Trial Chamber’s findings in this regard. The Appeals Chamber therefore dismisses the relevant parts of Praljak’s sub-grounds of appeal 5.1 and 5.2.

7. Alleged errors concerning the Ultimate Purpose of the JCE

759. The Trial Chamber found that:

the ultimate purpose of the HZ(R) H-B leaders and of Franjo Tudman at all times relevant under the Indictment was to set up a Croatian entity that reconstituted, at least in part, the borders of the Banovina of 1939, and facilitated the reunification of the Croatian people. This Croatian entity in BiH was either supposed to be joined to Croatia directly subsequent to a possible dissolution of BiH, or otherwise, to be an independent state within BiH with close ties to Croatia.²³⁹³

(a) Stojić’s appeal (Ground 1 in part)

760. Stojić submits that the Trial Chamber’s conclusion on the Ultimate Purpose of the JCE was ambiguous, arguing that when referring to the “HZ(R) H-B leaders”, the Trial Chamber failed to determine: (1) the identity of the “leaders”; and (2) whether all of the Appellants fall in this category “at all times”.²³⁹⁴ Stojić argues that the Trial Chamber’s conclusion was based primarily on Tudman’s intentions, not his, and that given the scarcity of findings on the HZ(R) H-B leadership, the Trial Chamber failed to appropriately consider individual criminal responsibility.²³⁹⁵

761. The Prosecution responds that the Trial Chamber identified individuals, including the Appellants, who shared the intent to achieve the ultimate purpose by criminal means, while the identity of other HZ(R) H-B leaders sharing the ultimate purpose is immaterial.²³⁹⁶

762. The Appeals Chamber observes that an overall reading of the Trial Judgement shows that the Trial Chamber identified Stojić as among the “HZ(R) H-B leaders” sharing the Ultimate Purpose of the JCE. In the relevant analysis, the Trial Judgement specifies that as one of the participants of the 5 and 26 October 1992 Meetings, Stojić met with Mladić to discuss the division

²³⁹¹ Prosecution’s Response Brief (Praljak), para. 42.

²³⁹² See *supra*, para. 748.

²³⁹³ Trial Judgement, Vol. 4, para. 24. See also Trial Judgement, Vol. 4, para. 43.

²³⁹⁴ Stojić’s Appeal Brief, paras 9, 23; Appeal Hearing, AT. 257-258, 295 (21 Mar 2017).

²³⁹⁵ Appeal Hearing, AT. 258, 284 (21 Mar 2017).

²³⁹⁶ Prosecution’s Response Brief (Stojić), para. 18, referring to Trial Judgement, Vol. 4, para. 1232. See also Appeal Hearing, AT. 350-351 (21 Mar 2017).

of BiH.²³⁹⁷ Similarly, in the sections concerning the existence of the CCP, the Trial Chamber found that no later than October 1992, Stojić knew that the implementation of the Ultimate Purpose of the JCE would involve the Muslim population moving outside the territory of the HZ H-B.²³⁹⁸ Accordingly, Stojić's argument is dismissed.

763. Therefore, the Appeals Chamber finds that Stojić has failed to show any error in the Trial Chamber's conclusion concerning the Ultimate Purpose of the JCE and rejects the relevant part of his ground of appeal 1.

(b) Praljak's appeal (Sub-ground 6.5)

764. Praljak submits that the Trial Chamber erred in its conclusion vis-à-vis the Ultimate Purpose of the JCE by taking "events and evidence" out of context.²³⁹⁹ He contends that the "Croatian political views, particularly those expressed before BiH became an independent State, are irrelevant for determining the criminal responsibility of the individuals".²⁴⁰⁰ Moreover, Praljak contends that as the Trial Chamber "could not establish the CCP", it engaged in political considerations outside of its mandate.²⁴⁰¹

765. The Prosecution responds that Praljak's arguments ignore the Trial Chamber's "detailed JCE analysis".²⁴⁰²

766. The Appeals Chamber considers that Praljak challenges the Trial Chamber's reliance on "events and evidence" and "political views" without providing any argument in support of his contention. The Appeals Chamber declines to address Praljak's unsubstantiated allegations of error, and dismisses them.²⁴⁰³ With regard to Praljak's argument that the Trial Chamber engaged in political considerations outside of its mandate since it "could not establish the CCP", the Appeals Chamber notes that Praljak refers to his submissions in his ground of appeal 7, which the Appeals Chamber dismisses elsewhere.²⁴⁰⁴

767. The Appeals Chamber therefore finds that Praljak has failed to show any error in the Trial Chamber's conclusion concerning the Ultimate Purpose of the JCE and rejects his sub-ground of appeal 6.5.

²³⁹⁷ Trial Judgement, Vol. 4, para. 18.

²³⁹⁸ Trial Judgement, Vol. 4, para. 43, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 426-490, Vol. 4, paras 9-24, 326-431.

²³⁹⁹ Praljak's Appeal Brief, para. 128, referring to Praljak's Appeal Brief, paras 125-126 (sub-ground of appeal 6.4).

²⁴⁰⁰ Praljak's Appeal Brief, para. 127; Appeal Hearing, AT. 385-386 (22 Mar 2017).

²⁴⁰¹ Praljak's Appeal Brief, para. 127, referring to Praljak's Appeal Brief, paras 130-134 (sub-ground of appeal 7.1).

²⁴⁰² Prosecution's Response Brief (Praljak), para. 34.

(c) Petković's appeal (Sub-grounds 2.1, 2.2 in part, and 2.3 in part)(i) Arguments of the Parties

768. Petković submits that to the extent that the Trial Chamber found that he was among the HZ(R) H-B leaders sharing the Ultimate Purpose of the JCE, no evidence on the record allows for such a conclusion.²⁴⁰⁵ Petković contends that: (1) during his testimony, he denied having discussed or shared the Ultimate Purpose of the JCE;²⁴⁰⁶ (2) the Trial Chamber failed to provide any reasoned opinion when rejecting Petković's evidence that he did not share the Ultimate Purpose of the JCE;²⁴⁰⁷ (3) there is no evidence on the record that shows that he supported this purpose;²⁴⁰⁸ (4) no reasonable inference vis-à-vis his views could be drawn from his presence during meetings or views expressed by others in those meetings;²⁴⁰⁹ and (5) there is no evidence that he knew the content of other meetings or the views expressed therein.²⁴¹⁰

769. The Prosecution responds that: (1) Petković reiterates arguments rejected at trial; (2) the Trial Judgement is sufficiently clear that Petković was among the HZ(R) H-B leaders who shared the Ultimate Purpose of the JCE; and (3) the Trial Chamber rejected his "self-serving" evidence adduced during his testimony.²⁴¹¹

770. Petković replies that the Prosecution fails to point to "any [Trial] Chamber's *reasoning*" or any evidence supporting that he shared the Ultimate Purpose of the JCE.²⁴¹²

²⁴⁰³ The Appeals Chamber also notes that Praljak refers to his submissions in his sub-ground of appeal 6.4, which the Appeals Chamber dismisses elsewhere. See *supra*, paras 705-712.

²⁴⁰⁴ See *infra*, paras 793-814.

²⁴⁰⁵ Petković's Appeal Brief, paras 8, 10, 14. Furthermore, Petković submits that the Trial Chamber erred in finding that Tudman and the HZ H-B leaders sought to create a Croatian entity in BiH through the division of BiH between Croatia and Serbia. Petković's Appeal Brief, para. 8. According to Petković, the evidence on the record proves that: (1) Herceg-Bosna was established before BiH became independent; (2) BiH became independent after the referendum; (3) "all documents of the international community [...] established the firm rule that the borders of Yugoslav republics [could not] be changed by force"; (4) the international community planned on offering a "composite" internal organisation of BiH based on the premise that BiH should be composed of three constituent people; (5) the HZ H-B leaders stated that BiH was to be organised as a composite federation; and (6) the HVO was established as an *ad hoc* wartime army and as a component of the ABiH. See Petković's Appeal Brief, para. 8.

²⁴⁰⁶ Petković's Appeal Brief, para. 13. Petković also argues that the Prosecution did not question him or any other witness about whether Petković shared the Ultimate Purpose of the JCE. See Petković's Appeal Brief, para. 13.

²⁴⁰⁷ Petković's Appeal Brief, paras 6-7, 13. Petković also submits that the Trial Chamber failed to identify which of the Accused shared the Ultimate Purpose of the JCE. See Petković's Appeal Brief, para. 5.

²⁴⁰⁸ Petković's Appeal Brief, para. 13.

²⁴⁰⁹ Petković's Appeal Brief, para. 13, referring to *Mugenzi and Mugiraneza* Appeal Judgement, paras 88, 92.

²⁴¹⁰ Petković's Appeal Brief, para. 13.

²⁴¹¹ Prosecution's Response Brief (Petković), paras 9, 12-13. The Prosecution argues that the Trial Chamber found that all the Accused shared the Ultimate Purpose of the JCE. Prosecution's Response Brief (Petković), para. 12. In addition, the Prosecution contends that it cross-examined Petković on his awareness of the Ultimate Purpose of the JCE. See Prosecution's Response Brief (Petković), para. 13. The Prosecution further responds that Petković's claim that the Trial Chamber erred in finding that Tudman and the HZ H-B leaders sought to create a Croatian entity in BiH has no merit. See Prosecution's Response Brief (Petković), paras 10-11.

²⁴¹² Petković's Reply Brief, paras 2, 4 (emphasis in original). See also Petković's Reply Brief, para. 3.

(ii) Analysis

771. The Appeals Chamber recalls its previous finding that no error has been shown in the Trial Chamber's conclusion that during the 26 October 1992 Meeting, Prlić, Stojić, Praljak, and Petković, as part of a delegation from Croatia and the HZ H-B, met with Mladić to discuss the partition of BiH.²⁴¹³ Concerning Petković's contention that the Trial Chamber did not provide a reasoned opinion when rejecting his evidence that he did not share the Ultimate Purpose of the JCE, the Appeals Chamber observes that the Trial Judgement reflects Petković's closing arguments that he never mentioned "'Greater Croatia', the Banovina, the purported intent to redraw the ethnic map of BiH or any other political questions of this nature with Franjo Tuđman [...] or any other person".²⁴¹⁴ The Appeals Chamber recalls that a trial chamber is not required to articulate every step of its reasoning²⁴¹⁵ as long as it indicates clearly the legal and factual findings on the basis of which it reached the decision either to convict or acquit an individual.²⁴¹⁶ Moreover, Petković fails to appreciate that the Trial Chamber specifically concluded that while it accepted Petković's testimony to be credible "on certain points", it found him not credible when he attempted to limit his responsibility and consequently did not accept those portions of his evidence.²⁴¹⁷ Recalling that a trial judgement should be read as a whole,²⁴¹⁸ the Appeals Chamber finds that Petković does not demonstrate that the Trial Chamber failed to provide a reasoned opinion vis-à-vis its analysis of his evidence concerning the Ultimate Purpose of the JCE.²⁴¹⁹ Accordingly, this argument is dismissed.²⁴²⁰

772. The Appeals Chamber further rejects Petković's unsubstantiated argument that no evidence shows that he expressed support for the Ultimate Purpose of the JCE. Specifically, the Appeals Chamber finds that the mere absence of evidence showing Petković's clear utterance in this regard does not prevent a reasonable trier of fact, on the basis of the totality of the evidence

²⁴¹³ See *supra*, paras 695-717.

²⁴¹⁴ Trial Judgement, Vol. 4, para. 7, referring to Petković's Final Brief, para. 41.

²⁴¹⁵ *Stanišić and Župljanin* Appeal Judgement, paras 378, 1063; *Popović et al.* Appeal Judgement, paras 972, 1906; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490; *Kvočka et al.* Appeal Judgement, para. 398. See also *Kvočka et al.* Appeal Judgement, para. 23.

²⁴¹⁶ *Stanišić and Župljanin* Appeal Judgement, para. 137; *Stanišić and Simatović* Appeal Judgement, para. 78; *Popović et al.* Appeal Judgement, para. 1906; *Hadžihasanović and Kubura* Appeal Judgement, para. 13.

²⁴¹⁷ Trial Judgement, Vol. 1, para. 399.

²⁴¹⁸ *Stanišić and Župljanin* Appeal Judgement, para. 202; *Šainović et al.* Appeal Judgement, paras 306, 321; *Bošković and Tarčulovski* Appeal Judgement, para. 67.

²⁴¹⁹ The Appeals Chamber also recalls that when faced with competing versions of the same event, it is the prerogative of the trier of fact to decide which version it considers more credible. See, e.g., *Nyiramasuhuko et al.* Appeal Judgement, para. 645 and references cited therein. The Appeals Chamber also fails to see the relevance of Petković's argument that the Prosecution did not question him or any other witness on the Ultimate Purpose of the JCE. In any event, a review of the trial transcripts shows that the Prosecution did in fact cross-examine him in this regard. See Milivoj Petković, T. 50466 (4 Mar 2010).

²⁴²⁰ Additionally, the Appeals Chamber rejects Petković's argument concerning the Trial Chamber's failure to identify which of the Accused shared the Ultimate Purpose of the JCE as he fails to show how this alleged error is material vis-à-vis his responsibility.

accepted by the Trial Chamber, from finding that he nonetheless shared the Ultimate Purpose of the JCE. In any event, Petković merely repeats the arguments unsuccessfully made at trial without showing an error.²⁴²¹

773. As for Petković's claim that no reasonable inference regarding his intention could be drawn from his presence during meetings, the Appeals Chamber observes that in support of this contention Petković merely refers to the *Mugenzi and Mugiraneza* Appeal Judgement.²⁴²² The mere reference to a conclusion in a different appeal judgement concerning an error of fact vis-à-vis the *mens rea* of the crime of conspiracy to commit genocide does not show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did in the present case based on the evidence adduced at trial. In addition, the issue at hand is not pertinent to the *mens rea* of conspiracy to commit genocide. Accordingly, the Appeals Chamber dismisses this contention. Additionally, and contrary to Petković's argument, the Trial Chamber did not depend only on Petković's mere presence at meetings in support of its conclusion. Specifically, the Appeals Chamber observes that the Trial Chamber also expressly referred to Okun's evidence that during the international peace negotiations in January 1993 the "delegation of BiH Croats", which included Petković, was not genuinely in agreement with the constitutional principles of the Vance-Owen Peace Plan.²⁴²³

774. Lastly, with respect to Petković's contention that there is no evidence that he knew about the views expressed in meetings in which he did not participate, the Appeals Chamber recalls that, in its analysis concerning the Ultimate Purpose of the JCE, the Trial Chamber specifically found that Petković: (1) participated as part of the delegation from Croatia and the HZ H-B in the 26 October 1992 Meeting to discuss the partition of BiH with Mladić;²⁴²⁴ and (2) was part of the "delegation of BiH Croats" at international peace negotiations in January 1993 which was not genuinely in agreement with the constitutional principles of the Vance-Owen Peace Plan.²⁴²⁵ Against this background, the Appeals Chamber finds that Petković fails to show that his convictions rely on the Trial Chamber's findings concerning other meetings he did not attend. Accordingly, this contention is dismissed.²⁴²⁶

²⁴²¹ See Petković's Final Brief, paras 41, 537(iv), 537(ix).

²⁴²² See Petković's Appeal Brief, para. 13, referring to *Mugenzi and Mugiraneza* Appeal Judgement, paras 88, 92.

²⁴²³ Trial Judgement, Vol. 4, para. 20.

²⁴²⁴ See *supra*, paras 694, 713-717.

²⁴²⁵ Trial Judgement, Vol. 4, para. 20.

²⁴²⁶ With respect to Petković's arguments that the evidence on the record disproves the Trial Chamber's conclusion on the Ultimate Purpose of the JCE, the Appeals Chamber considers that his arguments reflect mere disagreement with the Trial Chamber's assessment and he simply points to the evidence on the record without showing how the Trial Chamber's conclusion is unreasonable. Accordingly, the Appeals Chamber dismisses this argument.

775. The Appeals Chamber therefore finds that Petković has failed to show any error in the Trial Chamber's conclusion concerning the Ultimate Purpose of the JCE and rejects his sub-grounds of appeal 2.1, 2.2 in relevant part, and 2.3 in relevant part.

(d) Pušić's appeal (Ground 3 in part)

(i) Arguments of the Parties

776. Pušić submits that the Trial Chamber's definition of the "stated aims (statements of intent, written in broad terms) contradict the objectives (specific statements which define measurable outcomes) of the JCE ultimate purpose".²⁴²⁷ Pušić argues that the creation of an independent Croatian State within BiH – one of the objectives – is inconsistent with the alleged aims to reconstitute the Banovina and facilitate the reunification of the Croatian people.²⁴²⁸ Pušić also argues that the Trial Chamber used vague terminology when defining the nature of the Ultimate Purpose of the JCE, arguing that the terms used "have multiple possible interpretations".²⁴²⁹

777. Moreover, Pušić contends that the evidence on the record demonstrates that there was "no shared ultimate purpose between the Accused" but instead "a multitude of such purposes".²⁴³⁰ He further argues that the Trial Chamber erred in law, as the ultimate purpose "theory" does not reflect the complexity of the historical reality.²⁴³¹

778. The Prosecution responds that the Trial Chamber's conclusion on the Ultimate Purpose of the JCE was not contradictory and was supported by the evidence on the record that the JCE members considered the creation of the HZ(R) H-B as the first step towards the reunification of the Croatian people.²⁴³² It also argues that the Trial Chamber was not vague in terms of the

²⁴²⁷ Pušić's Appeal Brief, para. 77. Pušić specifically argues that the aims the Trial Chamber found consisted of multi-faceted non-criminal ingredients, namely a desire to set up a Croatian entity, reconstructing, at least in part, the borders of the Banovina to facilitate the reunification of the Croatian people. Pušić's Appeal Brief, para. 78, referring to Trial Judgement, Vol. 4, para. 24. According to Pušić, the objectives of the JCE included a Croatian entity which was either to: (1) be incorporated by Croatia after the dissolution of BiH; or (2) remain an independent state within BiH with close ties to Croatia. See Pušić's Appeal Brief, para. 79, referring to Trial Judgement, Vol. 4, para. 24.

²⁴²⁸ Pušić's Appeal Brief, para. 80. See also Pušić's Appeal Brief, para. 81.

²⁴²⁹ Pušić's Appeal Brief, para. 82 (submitting that "[w]hat is meant by the terms 'Croatian entity' and the import of the phrases with 'the aim of reconstituting, at least in part, the borders of the 1939 Banovina' in order to 'facilitate the reunification' of the 'Croatian people' is unclear").

²⁴³⁰ Pušić's Appeal Brief, para. 102, referring to Judge Antonetti Dissent, p. 408. See also Appeal Hearing, AT. 678-689 (27 Mar 2017). Pušić also argues that there was no CCP. See Pušić's Appeal Brief, para. 102. See also Pušić's Appeal Brief, para. 103.

²⁴³¹ Pušić's Appeal Brief, para. 103. Pušić submits, *inter alia*, that the Trial Chamber: (1) erred in trying "to take on the mantle of an 'arbiter[] of historical truth'"; (2) failed to strike the correct balance between "history and law or between context and act"; and (3) erred "in trying such issues 'in the context of criminal proceedings'" without input from Croatia or in the absence of Tudman or other senior leaders. See Pušić's Appeal Brief, paras 104-105; Appeal Hearing, AT. 680-681 (27 Mar 2017).

²⁴³² Prosecution's Response Brief (Pušić), para. 68. According to the Prosecution, Pušić's liability is not affected by what the JCE members were planning to do after they achieved their political aim of Croatian control. See Prosecution's Response Brief (Pušić), para. 69. See also Appeal Hearing, AT. 709 (27 Mar 2017).

geographical scope or the target group of the Ultimate Purpose of the JCE, and that Pušić fails to appreciate the Trial Chamber's distinction between the JCE members' political goals – the ultimate purpose – and the criminal means.²⁴³³ Responding to Pušić's argument that the evidence does not support a shared ultimate purpose, the Prosecution submits that Pušić fails to show any error in the Trial Chamber's analysis.²⁴³⁴ It also argues that Pušić fails to show any impact on his conviction when arguing that the Trial Chamber erred in attempting to arbitrate the historical truth.²⁴³⁵

(ii) Analysis

779. Regarding Pušić's argument that the Trial Chamber made contradictory findings on the objectives of the Ultimate Purpose of the JCE, the Appeals Chamber observes that it has already considered similar allegations of error concerning Tuđman's intention and found no contradiction in this regard.²⁴³⁶ This argument is therefore dismissed. Moreover, the Appeals Chamber finds no merit in Pušić's contention concerning the ambiguity of the impugned finding. Pušić merely argues that some terms are "unclear" and "have multiple possible interpretations",²⁴³⁷ failing to show how this alleged ambiguity affects the Trial Chamber's finding on the Ultimate Purpose of the JCE and, ultimately, his conviction.

780. The Appeals Chamber further observes that, in contending that the evidence on the record demonstrates that there was no shared ultimate purpose but a multitude of purposes, Pušić entirely relies on the Judge Antonetti Dissent without further substantiating his submission.²⁴³⁸ Recalling that the mere existence of a dissenting opinion does not render the majority's conclusion unreasonable,²⁴³⁹ the Appeals Chamber rejects this submission.²⁴⁴⁰ Finally, the Appeals Chamber finds that Pušić's argument that the Trial Chamber's ultimate purpose "theory" does not reflect the complexity of the historical reality fails to identify an error in the Trial Chamber's conclusion concerning the Ultimate Purpose of the JCE. His arguments are therefore dismissed.

781. The Appeals Chamber, therefore, finds that Pušić has failed to show any error in the Trial Chamber's conclusion concerning the Ultimate Purpose of the JCE and rejects the relevant part of his ground of appeal 3.

²⁴³³ Prosecution's Response Brief (Pušić), paras 70-71.

²⁴³⁴ Prosecution's Response Brief (Pušić), para. 89.

²⁴³⁵ Prosecution's Response Brief (Pušić), para. 77.

²⁴³⁶ See *supra*, para. 604.

²⁴³⁷ Pušić's Appeal Brief, para. 82.

²⁴³⁸ Pušić's Appeal Brief, para. 102, referring to Judge Antonetti Dissent, p. 408.

²⁴³⁹ See *supra*, para. 670.

²⁴⁴⁰ Similarly, the Appeals Chamber dismisses as unsubstantiated Pušić's argument that there was no CCP.

8. Conclusion

782. In light of the foregoing, the Appeals Chamber dismisses all challenges to the Trial Chamber's findings related to the Ultimate Purpose of the JCE.



D. Existence of the Common Criminal Plan of the JCE

1. Introduction

783. The Trial Chamber concluded that as of December 1991, the leaders of the HZ(R) H-B, including Boban, and leaders of Croatia, including Tuđman, believed that in order to achieve the Ultimate Purpose of the JCE, it was necessary to change the ethnic make-up of the territories claimed to form part of the HZ H-B.²⁴⁴¹ The Trial Chamber also found that from no later than October 1992, Prlić, Stojić, Praljak, and Petković knew that the implementation of the Ultimate Purpose of the JCE ran counter to the peace negotiations being conducted in Geneva and would involve the Muslim population moving outside the territory of the HZ H-B.²⁴⁴² The Trial Chamber then concluded that the evidence demonstrated that from mid-January 1993, the leaders of the HVO and certain Croatian leaders aimed to consolidate HVO control over Provinces 3, 8, and 10, and to eliminate all Muslim resistance within these provinces and to “ethnically cleanse” the Muslims so that the provinces would become in “majority or nearly exclusively Croatian”.²⁴⁴³ It thus found that a JCE was established to implement the Ultimate Purpose of the JCE from at least as early as mid-January 1993, the common criminal plan of which was “domination by the HR H-B Croats through ethnic cleansing of the Muslim population” (the “Common Criminal Plan” or “CCP”).²⁴⁴⁴

784. The Trial Chamber found that the JCE was then implemented in “stages”,²⁴⁴⁵ by way of crimes that “tended to follow a clear pattern of conduct”.²⁴⁴⁶ In this regard, the Trial Chamber took account of: (1) crimes committed pursuant to military campaigns in the municipalities of Gornji Vakuf, Prozor, Jablanica, and Mostar between January and June 1993;²⁴⁴⁷ (2) the expansion of the CCP with the siege of East Mostar from June 1993 to April 1994;²⁴⁴⁸ (3) the organised system of deportation of Muslims introduced following the ABiH attack on 30 June 1993;²⁴⁴⁹ (4) the relocation of Croats from June 1993 to April 1994;²⁴⁵⁰ and (5) the events in and around Vareš in October 1993.²⁴⁵¹

²⁴⁴¹ Trial Judgement, Vol. 4, para. 43.

²⁴⁴² Trial Judgement, Vol. 4, para. 43.

²⁴⁴³ Trial Judgement, Vol. 4, para. 44.

²⁴⁴⁴ Trial Judgement, Vol. 4, paras 41, 43-44.

²⁴⁴⁵ Trial Judgement, Vol. 4, para. 45.

²⁴⁴⁶ Trial Judgement, Vol. 4, para. 65.

²⁴⁴⁷ Trial Judgement, Vol. 4, paras 45-54, 56-58.

²⁴⁴⁸ Trial Judgement, Vol. 4, para. 59.

²⁴⁴⁹ Trial Judgement, Vol. 4, paras 57, 64.

²⁴⁵⁰ Trial Judgement, Vol. 4, paras 54-55, 60, 62-63.

²⁴⁵¹ Trial Judgement, Vol. 4, paras 61-63.

785. The Appellants allege errors regarding: (1) the definition of the CCP;²⁴⁵² (2) the Trial Chamber's approach to its scope and expansion;²⁴⁵³ (3) the Trial Chamber's findings on the stages of implementation of the CCP;²⁴⁵⁴ and (4) a number of other findings made as part of the CCP analysis.²⁴⁵⁵

2. Alleged errors regarding the definition of the CCP (Stojić's Ground 8 and Petković's Sub-grounds 3.2.1.1 and 3.2.1.2 in part)

786. The Trial Chamber concluded that there was "only one, single [CCP] – domination by the HR H-B Croats through ethnic cleansing of the Muslim population".²⁴⁵⁶

(a) Arguments of the Parties

787. Stojić submits that although the Trial Chamber indicated that there was "one, single" CCP, it failed to consistently identify such a single purpose.²⁴⁵⁷ In his view, the Trial Chamber vacillated between "five different common purposes", namely: (1) "domination" by the HR H-B Croats; (2) "reconstituting the Banovina"; (3) "modifying the ethnic composition of the territory"; (4) "expelling the Muslim population"; and (5) "ethnic cleansing".²⁴⁵⁸ In the course of his submissions that the Trial Chamber erred in law and fact in holding that "the only reasonable inference was that the crimes were the result of the implementation of a common criminal plan",²⁴⁵⁹ Petković asserts that the Trial Chamber referred to the CCP variously as "domination", "ethnic cleansing", and "political purpose".²⁴⁶⁰ Stojić argues that these inconsistencies violate his right to a "reasoned decision" and invalidate the Trial Judgement.²⁴⁶¹ Similarly, Petković argues that the Trial Chamber failed to explain what "ethnic cleansing" meant, thus breaching his right to a

²⁴⁵² Stojić seeks acquittal on all counts as a result of this alleged error. See Stojić's Appeal Brief, paras 7, 86. See also Petković's Appeal Brief, para. 27.

²⁴⁵³ Stojić and Praljak seek acquittals on all counts as a result of this alleged error. See Stojić's Appeal Brief, paras 7, 58, 101, 108; Praljak's Appeal Brief, paras 129, 134, 138, 544; Stojić's Reply Brief, para. 31.

²⁴⁵⁴ The Appellants seek acquittals on some or all counts as a result of the alleged errors. See Prlić's Appeal Brief, paras 311-312; Stojić's Appeal Brief, paras 7, 94, 398, 402; Praljak's Appeal Brief, paras 100, 162, 232, 324; Petković's Appeal Brief, paras 33, 53, 58, 67, 70, 76, 80, 85.

²⁴⁵⁵ The Appellants seek acquittals on some or all counts as a result of the alleged errors. See Prlić's Appeal Brief, paras 311-312; Stojić's Appeal Brief, paras 7, 37, 47, 58; Petković's Appeal Brief, para. 85; Ćorić's Appeal Brief, para. 5; Pušić's Appeal Brief, paras 108-109.

²⁴⁵⁶ Trial Judgement, Vol. 4, para. 41.

²⁴⁵⁷ Stojić's Appeal Brief, heading before para. 81, paras 83, 85, referring to Trial Judgement, Vol. 4, para. 41. See also Stojić's Appeal Brief, paras 81-82.

²⁴⁵⁸ Stojić's Appeal Brief, para. 83, referring to Trial Judgement, Vol. 4, paras 41, 43, 65, 429, 1232. See also Stojić's Appeal Brief, para. 81. Stojić also submits that the Trial Chamber oscillated between defining ethnic cleansing as the common purpose of the JCE to be achieved through the perpetration of other crimes, or as the criminal means to realise the common purpose. Stojić's Appeal Brief, para. 84, referring to Trial Judgement, Vol. 4, paras 41, 43, 65, 429, 1232. See also Stojić's Appeal Brief, para. 82.

²⁴⁵⁹ Petković's Appeal Brief, heading 3.2.1 before para. 25.

²⁴⁶⁰ Petković's Appeal Brief, para. 26.

²⁴⁶¹ Stojić's Appeal Brief, heading before para. 81, paras 81, 85-86, referring to, *inter alia*, Krajišnik Appeal Judgement, para. 724, Limaj *et al.* Appeal Judgement, para. 81.

reasoned opinion.²⁴⁶² Further, both Stojić and Petković argue in this context that the Trial Chamber’s classification of the CCP as “ethnic cleansing” did not amount to, or involve, the commission of crimes within the Statute.²⁴⁶³ Petković also argues that the Trial Chamber erred in equating “the crime of deportation/forcible transfer” with ethnic cleansing since a small number of deportations and/or forcible transfers in an area cannot amount to ethnic cleansing and yet the Trial Chamber concluded that the CCP was implemented even in those locations where only a small number of civilians were deported or forcibly transferred.²⁴⁶⁴

788. The Prosecution responds that the Trial Chamber correctly identified a single CCP, namely to establish, by criminal means, a Croatian entity reconstituting the Banovina borders.²⁴⁶⁵ It asserts that the Trial Chamber consistently distinguished between the political purpose and its criminal implementation,²⁴⁶⁶ and was also consistent in describing the CCP as domination by the HR H-B Croats through “ethnic cleansing”.²⁴⁶⁷ The Prosecution also responds that the Trial Chamber enumerated the specific crimes which made up the CCP, and thus did not err in using the term “ethnic cleansing”.²⁴⁶⁸ It finally argues that Petković’s allegation of lack of reasoned opinion should be summarily dismissed, particularly given his subsequent acknowledgment that the Trial Chamber explained what it meant by “ethnic cleansing”.²⁴⁶⁹

(b) Analysis

789. Regarding the allegations of ambiguity in the Trial Chamber’s approach to identifying the CCP, the Appeals Chamber considers that the Trial Chamber consistently identified the CCP as the ethnic cleansing of the Muslim population in pursuit of the Ultimate Purpose of the JCE.²⁴⁷⁰ In this regard, the Appeals Chamber also notes that the Trial Chamber clearly distinguished between the

²⁴⁶² Petković’s Appeal Brief, para. 28. Petković also argues that “it could be inferred that the Trial Chamber used the term ‘ethnic cleansing’ as the synonym for [the] creation of [an] ethnically homogenous geographic area supposed to be [a] Croatian entity (provinces, federal or confederal unit) through [the] removal of Muslim population[s].” Petković’s Appeal Brief, para. 29.

²⁴⁶³ Stojić’s Appeal Brief, heading before para. 81, para. 86; Petković’s Appeal Brief, paras 26-27, referring to Trial Judgement, Vol. 4, paras 41, 44. Stojić raises this challenge with regard to the classification of the CCP as ethnic cleansing, in the alternative to his submission that the Trial Chamber failed to clearly identify what the CCP was. See Stojić’s Appeal Brief, heading before para. 81, paras 83, 85. Stojić submits that domination by the HR H-B Croats or ethnic cleansing is not a crime proscribed by the Statute, and Petković argues that “domination”, “ethnic cleansing”, and “political purpose” do not amount to a crime under the Statute. See Stojić’s Appeal Brief, para. 86; Petković’s Appeal Brief, para. 26. See also Stojić’s Appeal Brief, para. 82; Petković’s Appeal Brief, para. 25; Petković’s Reply Brief, paras 7-8; Appeal Hearing, AT. 287, 292-295, 299 (21 Mar 2017); AT. 483, 490-493 (23 Mar 2017).

²⁴⁶⁴ See Petković’s Appeal Brief, para. 27; Appeal Hearing, AT. 485-486, 491 (23 Mar 2017).

²⁴⁶⁵ Prosecution’s Response Brief (Stojić), para. 59. See also Prosecution’s Response Brief (Petković), paras 16, 23.

²⁴⁶⁶ Prosecution’s Response Brief (Stojić), paras 59-61, 63, referring to Trial Judgement, Vol. 4, paras 24, 43-44, 65, 1232. See also Prosecution’s Response Brief (Stojić), para. 62.

²⁴⁶⁷ Prosecution’s Response Brief (Stojić), para. 63, referring to Trial Judgement, Vol. 4, paras 65-66, 68, 1232. See also Prosecution’s Response Brief (Stojić), para. 62; Appeal Hearing, AT. 345-346 (21 Mar 2017).

²⁴⁶⁸ Prosecution’s Response Brief (Stojić), para. 64; Prosecution’s Response Brief (Petković), para. 24, referring to Trial Judgement, Vol. 4, paras 41, 43-44, 65-66, 68. See also Prosecution’s Response Brief (Stojić), para. 65.

²⁴⁶⁹ Prosecution’s Response Brief (Petković), para. 27. See also Prosecution’s Response Brief (Petković), paras 28-29.

Ultimate Purpose of the JCE – the territorial political aspirations of the JCE members – and the criminal means by which it was implemented.²⁴⁷¹ In particular, no ambiguity is presented by the fact that in some cases, the Trial Chamber referred to the Ultimate Purpose of the JCE as context when discussing the CCP,²⁴⁷² while in others, it did not.²⁴⁷³ The Appeals Chamber also finds that the Trial Chamber’s use of different, but substantively identical, phrasing to describe the “ethnic cleansing” process does not reflect any ambiguity.²⁴⁷⁴ Stojić’s and Petković’s submissions are thus dismissed in relevant part.

790. As for the allegations that the Trial Chamber erred in defining the CCP as “ethnic cleansing” which did not necessarily involve the commission of crimes, the Appeals Chamber recalls that for JCE liability to be established, the Prosecution must prove “the existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute”.²⁴⁷⁵ In the present case, the Trial Chamber found that in pursuit of the Ultimate Purpose of the JCE, the JCE members devised a CCP to ethnically cleanse Muslims from Provinces 3, 8, and 10,²⁴⁷⁶ and it outlined the precise crimes which were committed to implement the JCE in stages.²⁴⁷⁷ The Appeals Chamber finds no error or inconsistency in this approach, and Stojić’s and Petković’s arguments on these points are rejected. Considering that the CCP was carefully particularised by the Trial Chamber so as to include various crimes through which “ethnic cleansing” was achieved, including but not limited to forcible transfer and deportation, the Appeals Chamber also finds that the Trial Chamber provided adequate reasons for its conclusion that “ethnic cleansing” occurred, and dismisses Petković’s submission in this respect. As a result, the Appeals Chamber dismisses, as unsubstantiated and unsupported, Petković’s arguments that the Trial Chamber equated ethnic cleansing with forcible transfer/deportation and failed to make adequate findings regarding the occurrence of “ethnic cleansing” in practice.²⁴⁷⁸ Further, given that “ethnic cleansing” can be achieved through a number of different crimes,²⁴⁷⁹ as indeed was found by the Trial Chamber in

²⁴⁷⁰ See Trial Judgement, Vol. 4, paras 44, 65, 1232.

²⁴⁷¹ See Trial Judgement, Vol. 4, paras 2-24, 41-73.

²⁴⁷² See Trial Judgement, Vol. 4, paras 43-44, 65.

²⁴⁷³ See Trial Judgement, Vol. 4, paras 429, 1232. See also Trial Judgement, Vol. 4, para. 276.

²⁴⁷⁴ The Appeals Chamber notes that in the paragraphs referred to by Stojić the Trial Chamber refers to a plan “seeking to modify the ethnic composition of the so-called Croatian provinces” and “to ethnically cleanse the Muslim population from the territory claimed as Croatian”. See Trial Judgement, Vol. 4, paras 65, 1232. See also Trial Judgement, Vol. 4, paras 41 (“there was only one, single common criminal purpose – domination by the HR H-B Croats through ethnic cleansing of the Muslim population”), 428 (“Bruno Stojić intended to expel the Muslim population from the HZ(R) H-B”).

²⁴⁷⁵ *Tadić* Appeal Judgement, para. 227(ii). See also *Šainović et al.* Appeal Judgement, paras 610-611; *Stakić* Appeal Judgement, para. 64; *Brđanin* Appeal Judgement, paras 364, 418.

²⁴⁷⁶ See Trial Judgement, Vol. 4, paras 41, 44, 65, 1232.

²⁴⁷⁷ Trial Judgement, Vol. 4, paras 45-68.

²⁴⁷⁸ See Petković’s Appeal Brief, para. 27.

²⁴⁷⁹ See *Stakić* Appeal Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, para. 50 (stating that ethnic cleansing “is not a crime in its own right under customary international law” but rather a “policy” the general purpose of which can be used “to draw inferences as to the existence of elements of crimes referred to in the Statute”). See also

relation to the CCP, the Appeals Chamber considers Petković's argument that a few instances of deportation and forcible transfer cannot amount to ethnic cleansing to be premised on a misunderstanding of the relevant jurisprudence and accordingly rejects his argument in that respect.²⁴⁸⁰

791. In light of the above, the Appeals Chamber finds that Stojić and Petković have failed to demonstrate an error in the Trial Chamber's findings on the definition of the CCP. Stojić's ground of appeal 8 and Petković's sub-grounds of appeal 3.2.1.1 and 3.2.1.2 in relevant part are therefore dismissed.

3. Alleged errors of law regarding the scope and expansion of the CCP

792. As noted earlier, the Trial Chamber found that the evidence demonstrated that there was one single CCP, namely, the "domination by the HR H-B Croats through ethnic cleansing of the Muslim population".²⁴⁸¹ The Trial Chamber also found that the JCE came into being in mid-January 1993 and was carried out "in stages".²⁴⁸² It found that between January and June 1993, the stages included military campaigns in the municipalities of Gornji Vakuf, Jablanica, Prozor, and Mostar, and relocations of Croatian civilians.²⁴⁸³ The Trial Chamber also found that the CCP expanded from June 1993, with the siege of East Mostar.²⁴⁸⁴ The Trial Chamber also held that the CCP became more efficient with the implementation of an organised system of deportation from July 1993.²⁴⁸⁵ Finally, in its discussion of the applicable law, the Trial Chamber referred to the Appeals Chamber jurisprudence that the "criminal activities implementing the JCE may evolve over time", that a joint criminal enterprise may expand to encompass crimes other than those originally contemplated, and that in these circumstances proof of an agreement concerning its expansions is subject to the same requirements applicable to the original agreement.²⁴⁸⁶ Further, relying on the *Krajišnik* Appeal Judgement, the Trial Chamber noted that it was "required to make findings that the members of the JCE were informed of the expansion of criminal activities, that they did nothing to prevent this and

United Nations, Security Council, Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), 27 May 1994, UN Doc. S/1994/674 (1994), Part III: General Studies, B. Ethnic Cleansing, para. 129, p. 33 referring to para. 55 of the Interim Report S/25274 (noting that ethnic cleansing in the region was carried out not only by means of forcible displacement and deportation but also by means of, *inter alia*, deliberate attacks on civilians, arbitrary arrest and detention, and wanton destruction of property).

²⁴⁸⁰ See also *infra*, paras 872, 894.

²⁴⁸¹ Trial Judgement, Vol. 4, para. 41.

²⁴⁸² Trial Judgement, Vol. 4, paras 44-45.

²⁴⁸³ Trial Judgement, Vol. 4, paras 45-63.

²⁴⁸⁴ Trial Judgement, Vol. 4, para. 59.

²⁴⁸⁵ Trial Judgement, Vol. 4, paras 57, 64.

²⁴⁸⁶ Trial Judgement, Vol. 1, para. 212 (2).

persisted in implementing the expansion of the common design and determine at which precise point in time the additional crimes were integrated into the common design”.²⁴⁸⁷

(a) Stojić’s appeal (Grounds 11 and 12) and Praljak’s appeal (Ground 7)

(i) Arguments of the Parties

793. Stojić and Praljak submit that the Trial Chamber erred in law in failing to define which crimes were part of the original JCE and which were part of the expanded JCE.²⁴⁸⁸ Specifically, Stojić argues that it is unclear whether the expanded JCE from June 1993 was limited to Counts 24-26 only, or “perhaps extend[ed] to all crimes committed after June 1993”.²⁴⁸⁹ As an example, he submits that it is unclear whether the deportations which began in June 1993 formed part of the original or the expanded JCE.²⁴⁹⁰ Both Appellants submit that the Trial Chamber erred in law in failing to make findings showing that leading JCE members were informed of the expanded crimes or failed to prevent their recurrence.²⁴⁹¹

794. Stojić argues in addition that the Trial Chamber failed to make findings on: (1) whether the “local component” of the JCE or the Croatian leaders of the JCE had knowledge of the expanded crimes;²⁴⁹² and (2) when “leading JCE members went from being merely aware of the crime[s] to intending [them]”.²⁴⁹³ Stojić argues that the absence of such findings in the Trial Chamber’s CCP analysis cannot be cured by reference to other sections of the Trial Judgement,²⁴⁹⁴ or by reference to the Prosecution’s trial pleadings regarding the expanded crimes, which were rejected by the Trial Chamber.²⁴⁹⁵ Praljak also submits that the Trial Chamber particularly erred as regards him, as it had found that no evidence supported his role in criminal events in Mostar before 24 July 1993,

²⁴⁸⁷ Trial Judgement, Vol. 1, para. 212 (2).

²⁴⁸⁸ Stojić’s Appeal Brief, paras 97, 102-103, 108; Praljak’s Appeal Brief, paras 132, 134, 137. See also Stojić’s Appeal Brief, paras 95-96. Praljak also raises arguments regarding the non-criminal nature of the plan and the means of identifying the CCP. Praljak’s Appeal Brief, paras 130-131; Appeal Hearing, AT. 382-383 (22 Mar 2017) (arguing further that the term “ethnic cleansing” is not a legal term and is too vague to specify the alleged crimes). These arguments have been considered and dismissed above. See *supra*, paras 789-790.

²⁴⁸⁹ Stojić’s Appeal Brief, para. 98.

²⁴⁹⁰ Stojić’s Appeal Brief, para. 98.

²⁴⁹¹ Stojić’s Appeal Brief, heading before para. 102, paras 104-105; Praljak’s Appeal Brief, paras 132, 136; Stojić’s Reply Brief, paras 27, 31; Appeal Hearing, AT. 383 (22 Mar 2017). See also Stojić’s Reply Brief, paras 28-30. Stojić also alleges that the Trial Chamber erred in fact and failed to provide a “reasoned decision”. Stojić’s Appeal Brief, heading before para. 102.

²⁴⁹² Stojić’s Appeal Brief, para. 106. See also Stojić’s Reply Brief, paras 28-29, 31.

²⁴⁹³ Stojić’s Appeal Brief, para. 107, referring to *Krajišnik* Appeal Judgement, para. 173. See Stojić’s Reply Brief, paras 28-31.

²⁴⁹⁴ Stojić’s Appeal Brief, paras 98, 106.

²⁴⁹⁵ Stojić’s Appeal Brief, para. 99. Stojić points to the fact that the Prosecution pled that the original JCE crimes were Counts 1, 6-9, and 19-20, and that the JCE was later expanded to include Counts 10-11, 12-18, and 22-26.

so that it is unclear when and how Praljak would have acquired knowledge about the expansion of the CCP.²⁴⁹⁶

795. Stojić and Praljak both argue, pointing to the alleged ambiguities, that the Appeals Chamber cannot be required to speculate on the meaning of the Trial Chamber's findings on the scope of the CCP, which is a central element of criminal responsibility.²⁴⁹⁷ Furthermore, according to Stojić, the alleged ambiguities compromise his right to a fair trial and make it impossible for him to challenge the Trial Chamber's findings.²⁴⁹⁸ Stojić and Praljak both submit that the alleged legal errors invalidate the Trial Chamber's findings on JCE, and request that the Trial Judgement be set aside and their convictions overturned on all counts.²⁴⁹⁹

796. The Prosecution responds that the Trial Judgement identified Counts 21, 24, and 25 as the crimes that were part of the expanded JCE, and that all other counts for which the Appellants were convicted under JCE I were the crimes that were part of the CCP from the beginning.²⁵⁰⁰ It submits that the Trial Chamber made sufficient findings that all the Appellants, including Stojić and Praljak, knew about, and shared the intent for, the expanded crimes.²⁵⁰¹ Whether the Trial Chamber made findings that non-accused JCE members also accepted the expanded crimes, the Prosecution claims, is irrelevant.²⁵⁰² Finally, the Prosecution argues that Praljak was correctly held liable for the expanded crimes committed by other JCE members regardless of the fact that his own direct contribution to these crimes was limited to the time period from 24 July 1993 to 9 November 1993.²⁵⁰³

(ii) Analysis

797. The Appeals Chamber will first address the argument that the Trial Chamber failed to identify the crimes that formed part of the expanded CCP and will then proceed to consider whether the Trial Chamber adopted the correct legal approach in this regard.

²⁴⁹⁶ Praljak's Appeal Brief, para. 137; Praljak's Reply Brief, para. 28; Appeal Hearing, AT. 384-385 (22 Mar 2017). See also Stojić's Reply Brief, para. 30. Praljak also argues that there was another reasonable inference for the events in Mostar. These submissions are addressed below. See *infra*, paras 927, 941-946.

²⁴⁹⁷ Stojić's Appeal Brief, para. 98; Praljak's Appeal Brief, para. 133, referring to *Krajišnik* Appeal Judgement, para. 176. See Stojić's Reply Brief, para. 26. Praljak argues that if the CCP is "unspecified, as it is in the present case, it is impossible to impute the responsibility for crimes to anyone except the direct perpetrator". Praljak's Appeal Brief, para. 133.

²⁴⁹⁸ Stojić's Appeal Brief, para. 100.

²⁴⁹⁹ Stojić's Appeal Brief, paras 101, 108; Praljak's Appeal Brief, paras 129, 134, 138.

²⁵⁰⁰ Prosecution's Response Brief (Stojić), paras 72-76; Prosecution's Response Brief (Praljak), paras 44-45. See also Prosecution's Response Brief (Praljak), para. 49.

²⁵⁰¹ Prosecution's Response Brief (Stojić), paras 79, 81-83; Prosecution's Response Brief (Praljak), paras 44, 46-48.

²⁵⁰² Prosecution's Response Brief (Stojić), para. 84.

²⁵⁰³ Prosecution's Response Brief (Praljak), paras 47-48.

798. The Appeals Chamber recalls that a trial judgement should be read as a whole.²⁵⁰⁴ In the present case, the Trial Chamber found that, “[f]rom June 1993, the [CCP] was expanded with the siege of East Mostar and encompassed new crimes”.²⁵⁰⁵ The Trial Chamber then proceeded to describe the crimes that took place in East Mostar, including shelling and firing at the Muslim population of East Mostar, with the consequence of killing and injuring many inhabitants, forcing them to live in very harsh conditions, impeding or blocking the passage of humanitarian aid, and deliberately targeting the members of international organisations, killing and wounding some of them.²⁵⁰⁶ The Trial Chamber also referred to: (1) the destruction of the Old Bridge by the HVO, which caused harm to the Muslim population of East Mostar out of proportion to the legitimate military objective sought; and (2) the severe damage and/or destruction of ten East Mostar mosques.²⁵⁰⁷ With respect to (1), the Appeals Chamber recalls that it has reversed the Trial Chamber’s findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and has therefore acquitted the Appellants of these charges insofar as they concern the Old Bridge.²⁵⁰⁸ Accordingly, as the destruction of the Old Bridge is no longer part of any remaining counts in this case, the Appeals Chamber will not rely in its subsequent analysis on the Trial Chamber’s findings concerning that destruction.

799. In view of the above and contrary to Stojić’s submission, the Trial Chamber did not consider that *all* the crimes committed after June 1993 were new and thus encompassed by the expanded JCE. Instead, it considered that the new crimes were the whole of Count 24 (unlawful attack on civilians – Mostar) and the whole of Count 25 (unlawful infliction of terror on civilians – Mostar),²⁵⁰⁹ which were therefore not part of the CCP before June 1993. In addition, the destruction of or severe damage to the ten mosques in East Mostar²⁵¹⁰ also forms a part of Count 21 (destruction or wilful damage to institutions dedicated to religion or education).²⁵¹¹ As for the other incidents forming part of that count, the Trial Chamber explained elsewhere in the Trial Judgement

²⁵⁰⁴ *Stanišić and Župljanin* Appeal Judgement, para. 138; *Popović et al.* Appeal Judgement, para. 2006; *Orić* Appeal Judgement, para. 38; *Naletilić and Martinović* Appeal Judgement, para. 435; *Stakić* Appeal Judgement, para. 344.

²⁵⁰⁵ Trial Judgement, Vol. 4, para. 59.

²⁵⁰⁶ Trial Judgement, Vol. 4, para. 59.

²⁵⁰⁷ Trial Judgement, Vol. 4, para. 59.

²⁵⁰⁸ See *supra*, para. 426. The Appeals Chamber also reversed the Trial Chamber’s conclusion that the destruction of the Old Bridge constituted wanton destruction of cities, towns, or villages or devastation not justified by military necessity as a violation of the laws or customs of war. See *supra*, para. 416.

²⁵⁰⁹ See Trial Judgement, Vol. 3, paras 1684-1692.

²⁵¹⁰ Trial Judgement, Vol. 4, para. 59.

²⁵¹¹ See Trial Judgement, Vol. 3, paras 1609-1610. The remaining part of Count 21 in relation to Mostar, as found by the Trial Chamber, concerns a crime committed prior to June 1993. See Trial Judgement, Vol. 3, para. 1608. See also Trial Judgement, Vol. 3, para. 1611.

that Count 21 was not part of the CCP before June 1993,²⁵¹² thus making it clear that it fell within the scope of the CCP only when it expanded to include events in East Mostar, that is, from June 1993 onwards.

800. As regards Stojić's assertion that it is unclear whether the Trial Chamber considered deportation to be an expanded crime or part of the original CCP, the Appeals Chamber recalls that the Trial Chamber was explicit in its finding that only the new crimes that took place with the siege of East Mostar in June 1993 constituted the expanded CCP.²⁵¹³ However, the Trial Chamber found no instances of deportation by the HVO of Muslims living in East Mostar. Further, the Trial Chamber found that, from mid-May 1993, the HVO forced the Muslim population from West Mostar across a *de facto* border and thus committed the crime of deportation.²⁵¹⁴ The Trial Chamber also found that, following the deportations in Mostar, subsequent instances of deportation occurred in other municipalities, particularly from detention centres located therein.²⁵¹⁵ Later, in its analysis of the existence of the CCP, the Trial Chamber recounted the events in Mostar in May 1993.²⁵¹⁶ It also held that subsequent to an ABiH attack on 30 June 1993 the implementation of the JCE became more efficient, with the HVO arresting and detaining Muslims and sending them to, among others, third countries,²⁵¹⁷ and that "at least as of 30 June 1993", the HZ(R) H-B authorities introduced "a system of deportation utilising the release of Muslim detainees from the HVO detention centres contingent upon their departure from Croatia".²⁵¹⁸ Thus, the Trial Chamber's findings regarding deportation show that instances of deportation began occurring in mid-May 1993 and that the JCE became "more efficient" from 30 June 1993 because a system of deportation was devised by the HZ(R) H-B authorities. Accordingly, the Appeals Chamber considers that, reading the Trial Judgement as a whole, deportation was found by the Trial Chamber to be part of the CCP before the JCE expanded in June 1993 and thus it was not deemed by the Trial Chamber as one of the expanded crimes that became part of the CCP in June 1993. The Appeals Chamber is further reinforced in this view by the fact that, in contrast to its conclusion as regards Count 21,²⁵¹⁹ the Trial Chamber made no findings indicating that deportation became part of the CCP only in June 1993. Accordingly, Stojić's argument regarding deportation is dismissed.

801. As to whether the Trial Chamber made the necessary legal findings to support its conclusion that Counts 21, 24, and 25 formed the expanded crimes, the Appeals Chamber recalls that the

²⁵¹² Trial Judgement, Vol. 4, paras 342, 433, 1213. See also Trial Judgement, Vol. 4, paras 71, 148, 718, 822; *infra*, paras 2447-2455. See also *infra*, paras 2443-2446.

²⁵¹³ See *supra*, para. 798.

²⁵¹⁴ Trial Judgement, Vol. 3, paras 783-784, 813-814. See Trial Judgement, Vol. 4, paras 56-57.

²⁵¹⁵ Trial Judgement, Vol. 3, paras 786-809, 810-839.

²⁵¹⁶ Trial Judgement, Vol. 4, paras 56-57.

²⁵¹⁷ Trial Judgement, Vol. 4, para. 57.

²⁵¹⁸ Trial Judgement, Vol. 4, para. 64.

Trial Chamber held, relying on the *Krajišnik* Appeal Judgement, that it was required to determine at which point the additional crimes became integrated into the common plan and make findings that “the members of the JCE” were informed of the expansion of criminal activities but did nothing to prevent it and continued to implement the expansion.²⁵²⁰

802. The Appeals Chamber observes that the *Krajišnik* Appeals Chamber found that, as is the case with a common criminal plan in its inception, it is not necessary for the JCE members to explicitly agree to the expansion of criminal means; instead, as with the original criminal plan, that agreement may materialise extemporaneously and be inferred from circumstantial evidence.²⁵²¹ Noting that the *Krajišnik* Trial Chamber found that expanded crimes were added to the JCE after “leading members” of that JCE were informed of them, the Appeals Chamber in *Krajišnik* stated:

The Appeals Chamber notes that in order to impute responsibility to leading JCE members, including *Krajišnik*, for the expanded crimes, the Trial Chamber was therefore required to make findings as to (1) whether leading members of the JCE were informed of the crimes, (2) whether they did nothing to prevent their recurrence and persisted in the implementation of this expansion of the common objective, and (3) *when* the expanded crimes became incorporated into the common objective.²⁵²²

It then concluded that the *Krajišnik* Trial Chamber failed to find: (1) who the leading JCE members were, including whether Momčilo Krajišnik was one of them; (2) at which specific point in time the expanded crimes became part of the common plan; and (3) whether JCE members had any intent for those crimes.²⁵²³ It also found that the *Krajišnik* Trial Chamber did not find when the members of the “local component” of the JCE became aware of the expanded crimes and thus when those crimes became incorporated in the common objective.²⁵²⁴

803. As a preliminary matter, the Appeals Chamber notes that in *Krajišnik* it focused on the knowledge of “leading JCE members” primarily because the *Krajišnik* Trial Chamber did the same.²⁵²⁵ However, contrary to Stojić’s argument, this does not necessarily lead to the conclusion that the elements elucidated by the Appeals Chamber in *Krajišnik* require that in every case where the expansion of a JCE is an issue, *all* JCE members, including both accused and non-accused JCE members, must be found to have been informed of the expanded crimes in order to show that they had agreed to expand the JCE. Accordingly, while the knowledge of the expanded crimes on the

²⁵¹⁹ See Trial Judgement, Vol. 4, para. 71. See also *supra*, para. 798.

²⁵²⁰ Trial Judgement, Vol. 1, para. 212(2), referring to, *inter alia*, *Krajišnik* Appeal Judgement, paras 171, 175-176, 193-194. See also *supra*, para. 792.

²⁵²¹ *Krajišnik* Appeal Judgement, para. 163.

²⁵²² *Krajišnik* Appeal Judgement, paras 170-171 (emphasis in original).

²⁵²³ *Krajišnik* Appeal Judgement, paras 172-173 & fn. 432.

²⁵²⁴ *Krajišnik* Appeal Judgement, para. 174.

²⁵²⁵ *Krajišnik* Appeal Judgement, paras 162, 170-173. Indeed, the *Krajišnik* Trial Chamber’s own analysis of how an expansion of a JCE is to be established refers to the knowledge of leading JCE members about the expanded crimes and

part of the “local component” of the JCE was important in the *Krajišnik* case in order to ascertain when those crimes became part of the common plan,²⁵²⁶ the Appeals Chamber considers that it was not necessary in this case as the Trial Chamber inferred that the agreement to expand the JCE materialised between the Appellants in relation to the crimes in East Mostar in June 1993. As noted above,²⁵²⁷ as is the case with an original common criminal plan, an expansion of criminal means may be inferred from circumstantial evidence. Determining when additional crimes became integrated into a common criminal plan will therefore be different from case to case. Accordingly, the Trial Chamber in the present case was under no obligation to conduct its expansion analysis in relation to the local component.

804. Concerning Stojić’s argument that the Trial Chamber failed to make findings on the knowledge of Croatian leaders, the Appeals Chamber notes that it was necessary to consider the knowledge of “leading JCE members” in the *Krajišnik* case because it was a single-accused case in which the Trial Chamber had to establish a plurality of persons, both for the original and for the expanded JCE. However, the present case is a multi-accused case and thus, once it made findings regarding the Appellants and their membership in the original JCE, the Trial Chamber was not required to concern itself with the knowledge of the Croatian leaders, namely Tudman, Bobetko, and Šušak. Indeed, when outlining what requirements it had to satisfy before it could attribute the new crimes to the Appellants, the Trial Chamber noted that it was required to make findings that “the members of the JCE” were informed of the expansion of criminal activities, did nothing to prevent them, and persisted in implementing the expansion of the CCP.²⁵²⁸ The Trial Chamber then proceeded to do so in relation to the Appellants who were all deemed to be JCE members. Moreover, the Trial Chamber made findings that Prlić, Stojić, Praljak, and Petković were among the most important members of the JCE, and thus considered them to be “leading JCE members”.²⁵²⁹ As a result, and in light of the Trial Chamber’s analysis outlined below regarding the Appellants’ knowledge and intent in relation to East Mostar which indicates that an agreement to expand the relevant crimes materialised between them,²⁵³⁰ the Appeals Chamber considers that it was not necessary for the Trial Chamber to assess whether other members of the JCE, including Tudman, Bobetko, and Šušak, agreed to that expansion. In any event, the Trial Chamber made findings that

their failure to take measures to prevent them as well as their persistence in implementing the common objective. See *Krajišnik* Appeal Judgement, para. 162, referring to *Krajišnik* Trial Judgement, para. 1098.

²⁵²⁶ *Krajišnik* Appeal Judgement, para. 174.

²⁵²⁷ See *supra*, para. 802.

²⁵²⁸ See *supra*, para. 801.

²⁵²⁹ Trial Judgement, Vol. 4, paras 276, 429, 628, 818.

²⁵³⁰ See *infra*, paras 806-812.



indicate that these Croatian leaders did so agree.²⁵³¹ Stojić's argument that the Trial Chamber erred in law in not addressing the knowledge of the Croatian leaders or the local component is therefore rejected.

805. In addressing whether the Trial Chamber made the necessary findings to impute criminal responsibility for the expanded crimes, the Appeals Chamber will examine the Trial Chamber's analysis concerning each of the Appellants' involvement in the events in East Mostar, as well as whether the Trial Chamber made findings it said it would, namely findings concerning the precise point at which the CCP expanded and, in that connection, found that the Appellants were informed of the expansion of the criminal activities, did nothing to prevent their occurrence, and went on to persist in implementing the expansion of the common design.²⁵³²

806. Starting with Prlić, the Trial Chamber found that he "knew about the HVO crimes committed during the HVO campaign of fire and shelling against East Mostar – that is, the murders and destruction of property" – and that by minimising them or attempting to deny them he accepted, encouraged, and supported these crimes and the campaign of shelling and sniping.²⁵³³ It further found that he knew about the difficulties international humanitarian organisations had to access East Mostar and that he contributed to this by blocking the delivery of humanitarian aid there from June to at least December 1993, therefore intending to cause "great suffering" to the Mostar population.²⁵³⁴ The Appeals Chamber finds that the Trial Chamber made the necessary findings relating to Prlić's knowledge about the expanded crimes, the fact that he did nothing to prevent their recurrence, and that he persisted in implementing the expanded JCE.²⁵³⁵

807. As for Stojić, the Trial Chamber found that he knew of the "HVO's plan of action" with regard to East Mostar, entailing "the murders and the destruction of property, including mosques, related to the shelling and the harsh living conditions of the population of [East Mostar] caused by the lack of food and water".²⁵³⁶ This conclusion is supported by findings that Stojić acquired knowledge of HVO crimes in Mostar as early as May 1993,²⁵³⁷ and by other findings that Stojić

²⁵³¹ Trial Judgement, Vol. 4, paras 1219, 1222-1223 (finding, *inter alia*, that there was a "continuous link" between Praljak on one side and Tudman, Bobetko, and Šušak on the other). See also Trial Judgement, Vol. 4, paras 522-523, 529-530, 540.

²⁵³² See *supra*, paras 792, 802.

²⁵³³ Trial Judgement, Vol. 4, para. 176. See Trial Judgement, Vol. 4, paras 174-175, 272 (finding that Prlić was well aware of the shelling and sniping of East Mostar, particularly against civilians and international organisations, and that he attempted to conceal the HVO's responsibility for the destruction of the Old Bridge).

²⁵³⁴ Trial Judgement, Vol. 4, para. 185. See Trial Judgement, Vol. 4, paras 179-184, 272 (finding that Prlić deliberately impeded the attempts to repair the water supply system in East Mostar, did nothing to improve the living conditions in East Mostar, and on a number of occasions refused to grant authorisation for humanitarian convoys to enter East Mostar).

²⁵³⁵ See *infra*, paras 1276-1285.

²⁵³⁶ Trial Judgement, Vol. 4, para. 363. See Trial Judgement, Vol. 4, paras 359-362.

²⁵³⁷ Trial Judgement, Vol. 4, para. 359.

participated in the evictions of Muslims from West Mostar as of June 1993²⁵³⁸ that led to an increased concentration of the Muslim population in East Mostar.²⁵³⁹ The Trial Chamber also found that Stojić knew that HVO forces destroyed Muslim property in January 1993²⁵⁴⁰ and mosques in particular in April 1993,²⁵⁴¹ which Stojić also knew occurred during the HVO's campaign in East Mostar.²⁵⁴² Further, the Trial Chamber found that Stojić controlled all HVO snipers in West Mostar and knew about and accepted that they sniped civilians and members of international organisations in East Mostar.²⁵⁴³ It also found that he facilitated the hindering of access of humanitarian aid to East Mostar at times between June and December 1993.²⁵⁴⁴ The Trial Chamber found that Stojić had knowledge of the HVO crimes in East Mostar but nevertheless continued to exercise his functions in the HVO, which it took as him accepting those crimes.²⁵⁴⁵ The Appeals Chamber finds therefore that the Trial Chamber made the necessary findings relating to Stojić's knowledge about the expanded crimes, the fact that he did nothing to prevent their recurrence, and that he persisted in implementing the expanded JCE.

808. With regard to Praljak, the Trial Chamber found that it had no evidence to "support a finding on Slobodan Praljak's role *in the criminal events* in the Municipality of Mostar between 9 May and 24 July 1993".²⁵⁴⁶ At the same time, the Trial Chamber found that he arrived in Mostar on 11 May 1993²⁵⁴⁷ and "participated in directing and planning the HVO operations in the Municipality of Mostar between July and early November 1993".²⁵⁴⁸ It then recalled, *inter alia*, the events in East Mostar, including that from early June 1993 it was subjected to intense sniping and shelling by the HVO, which resulted in many deaths and woundings and in the destruction of East Mostar mosques.²⁵⁴⁹ The Trial Chamber then concluded that, insofar as Praljak was directing the HVO military operations which it found were "orchestrated by the HZ(R) H-B leadership" and were not random acts, he knew that "*these crimes* would be committed during the operations in

²⁵³⁸ Trial Judgement, Vol. 4, para. 355.

²⁵³⁹ Trial Judgement, Vol. 2, paras 1198-1200.

²⁵⁴⁰ Trial Judgement, Vol. 4, paras 336-337.

²⁵⁴¹ Trial Judgement, Vol. 4, para. 342. See Trial Judgement, Vol. 4, para. 341.

²⁵⁴² Trial Judgement, Vol. 4, para. 363. See Trial Judgement, Vol. 4, para. 359.

²⁵⁴³ Trial Judgement, Vol. 4, paras 368-370.

²⁵⁴⁴ Trial Judgement, Vol. 4, para. 372.

²⁵⁴⁵ Trial Judgement, Vol. 4, paras 363, 370. See Trial Judgement, Vol. 4, para. 372. See also *infra*, paras 1800-1804.

²⁵⁴⁶ Trial Judgement, Vol. 4, para. 577 (emphasis added). See Trial Judgement, Vol. 4, para. 576.

²⁵⁴⁷ Trial Judgement, Vol. 4, para. 576, referring to Slobodan Praljak, T(F). 41519 (16 June 2009). Other findings made by the Trial Chamber confirm that Praljak was in and around Mostar during the relevant time-period, as he was found to have been present in the municipalities of Gornji Vakuf, Ljubuški, Prozor, Jablanica, and Mostar for long periods before 24 July 1993 and was found to have participated in a meeting in the village of Međugorje near Mostar on 18 May 1993. Trial Judgement, Vol. 4, paras 470, 526.

²⁵⁴⁸ Trial Judgement, Vol. 4, para. 581. See Trial Judgement, Vol. 4, para. 579 ("Generally speaking, Slobodan Praljak played an important role in planning and directing the military operations in the Municipality of Mostar between 24 July 1993 and 9 November 1993."). See also Trial Judgement, Vol. 4, para. 580.

²⁵⁴⁹ Trial Judgement, Vol. 4, paras 582-583.

Raštani and Mostar”.²⁵⁵⁰ As a consequence, it inferred that Praljak “intended to have buildings in East Mostar destroyed, including mosques” as well as that he intended “to deliberately target civilians, to have murders, wounding, physical and psychological abuse and attacks on members of international organisations committed and, lastly, to have women and children removed”.²⁵⁵¹ In doing so, the Trial Chamber did not restrict its conclusion on Praljak’s intent to post-24 July 1993. Instead, it held Praljak responsible under Counts 21, 24, and 25 for crimes committed in Mostar Municipality.²⁵⁵² Further, it held that “[i]nsofar as Slobodan Praljak committed these crimes with the aim of furthering the [CCP]” he was responsible not only for the crimes explicitly set out by the Trial Chamber²⁵⁵³ but also for all other crimes forming part of the CCP.²⁵⁵⁴

809. On the basis of the above, the Trial Chamber considered that Praljak was responsible for the expanded crimes even before 24 July 1993, as made clear in its finding that all the Appellants intended to further the CCP, including the expanded crimes.²⁵⁵⁵ The Appeals Chamber considers that a reasonable trier of fact could have made this inference despite not having evidence to “support a finding” on Praljak’s role “in the criminal events” in Mostar between 9 May and 24 July 1993,²⁵⁵⁶ particularly as: (1) the jurisprudence²⁵⁵⁷ is clear that a member of a JCE need not contribute to an *actus reus* of each specific crime; (2) the Trial Chamber found that in the period between autumn 1992 to 24 July 1993 Praljak had *de facto* command authority over the HVO and the Military Police, and was present in various municipalities, including in Mostar, between January and June 1993,²⁵⁵⁸ and (3) the Trial Chamber held that Praljak planned and directed HVO military operations in Mostar between July and November 1993.²⁵⁵⁹ The Appeals Chamber finds therefore that the Trial Chamber made the necessary findings relating to Praljak’s knowledge about the expanded crimes, the fact that he did nothing to prevent their recurrence, and that he persisted in implementing the expanded JCE. Indeed, in its final analysis of Praljak’s responsibility, having recalled its findings that Praljak was informed of HVO crimes through internal HVO channels, the Trial Chamber found “that the only reasonable inference it can draw from the fact that Slobodan Praljak participated in the planning of the HVO military operations” in, *inter alia*, Mostar “during

²⁵⁵⁰ Trial Judgement, Vol. 4, para. 586 (emphasis added). It is clear from the Trial Chamber’s findings that “these crimes” included the shelling and the sniping of East Mostar starting already from early June 1993. See Trial Judgement, Vol. 4, paras 59, 582-584, 586 (referring to “the crimes described above”, namely described in paragraphs 582-584).

²⁵⁵¹ Trial Judgement, Vol. 4, para. 586. See also Trial Judgement, Vol. 4, para. 625.

²⁵⁵² Trial Judgement, Vol. 4, para. 630.

²⁵⁵³ See Trial Judgement, Vol. 4, para. 630.

²⁵⁵⁴ Trial Judgement, Vol. 4, para. 631.

²⁵⁵⁵ Trial Judgement, Vol. 4, paras 67-68. See Trial Judgement, Vol. 4, para. 59.

²⁵⁵⁶ Trial Judgement, Vol. 4, para. 577. See Trial Judgement, Vol. 4, para. 576.

²⁵⁵⁷ *Krajišnik* Appeal Judgement, paras 695-696 (holding that a contribution to the JCE need not be criminal *per se* and that the accused need not physically commit or participate in the *actus reus* of a perpetrated crime, but that it is sufficient that he perform acts that are in some way directed to the furthering of the JCE).

²⁵⁵⁸ Trial Judgement, Vol. 4, paras 470, 472-482.



the summer of 1993” and that “he continued to exercise control over the armed forces while knowing that its members were committing crimes in other municipalities in BiH, is that he intended to have these crimes committed”.²⁵⁶⁰ As the Trial Chamber made findings on Praljak’s knowledge and activities in the relevant period, its statement that it had no evidence to support a finding about his exact role in the “criminal events” in Mostar between 9 May and 24 July 1993 does not undermine its conclusion. Accordingly, the Appeals Chamber dismisses Praljak’s argument regarding the Trial Chamber’s consideration of his role in Mostar prior to 24 July 1993.²⁵⁶¹

810. As for Petković, the Trial Chamber found that he planned the shelling of East Mostar and knew that HVO forces were shelling and firing on the population of East Mostar “causing deaths, injuries and the destruction of property, including mosques”.²⁵⁶² The Trial Chamber found that he knew that members of international organisations were affected by the HVO shelling, and that the Muslim population of East Mostar lived in a state of terror.²⁵⁶³ It found, insofar as he ordered and contributed to planning this shelling, that Petković intended to have these crimes committed.²⁵⁶⁴ Further, the Trial Chamber made findings that Petković was aware that HVO military operations before June 1993 involved the destruction of mosques.²⁵⁶⁵ The Trial Chamber also found that Petković had “the power to allow humanitarian convoys to pass through and reach East Mostar” and occasionally let them through, but that, when he failed to do so, he intended to hinder the humanitarian convoys.²⁵⁶⁶ The Appeals Chamber therefore finds that the Trial Chamber made the necessary findings relating to Petković’s knowledge about the expanded crimes, the fact that he did nothing to prevent their recurrence, and that he persisted in implementing the expanded JCE.²⁵⁶⁷

811. With regard to Ćorić, the Trial Chamber found that he had knowledge of the HVO campaign of fire, shelling, and sniping against the population of East Mostar and the crimes committed during that campaign.²⁵⁶⁸ It further found that, inasmuch as he lent support to the campaigns, Ćorić intended to facilitate the crimes directly linked to the HVO military operations against East Mostar, namely, “the murders and destruction of property, including mosques, resulting from the shelling”.²⁵⁶⁹ Moreover, it found that, around January 1993, Ćorić knew that the

²⁵⁵⁹ Trial Judgement, Vol. 4, para. 581.

²⁵⁶⁰ Trial Judgement, Vol. 4, para. 625.

²⁵⁶¹ See also *infra*, paras 1982, 2003.

²⁵⁶² Trial Judgement, Vol. 4, paras 747, 750.

²⁵⁶³ Trial Judgement, Vol. 4, para. 750.

²⁵⁶⁴ Trial Judgement, Vol. 4, para. 750. See also Trial Judgement, Vol. 4, para. 815.

²⁵⁶⁵ Trial Judgement, Vol. 4, paras 695, 699, 729-730.

²⁵⁶⁶ Trial Judgement, Vol. 4, para. 755.

²⁵⁶⁷ See also *infra*, paras 2226-2258, 2397-2402, 2406.

²⁵⁶⁸ Trial Judgement, Vol. 4, para. 938. See also Trial Judgement, Vol. 4, para. 945.

²⁵⁶⁹ Trial Judgement, Vol. 4, para. 938. See also Trial Judgement, Vol. 4, para. 945.

destruction of mosques formed part of the HVO military operations.²⁵⁷⁰ The Trial Chamber also found that on 1 June 1993, in light of checkpoints he directed, Čorić knew of the difficult humanitarian conditions that prevailed in East Mostar and nevertheless impeded the delivery of humanitarian aid, thereby contributing to the creation of unbearable living conditions for the Muslim population of East Mostar.²⁵⁷¹ Consequently, the Appeals Chamber finds that the Trial Chamber made the necessary findings relating to Čorić's awareness of the expanded crimes, the fact that he did nothing to prevent their recurrence, and that he persisted in implementing the expansion of the common design.²⁵⁷²

812. Lastly, with regard to Pušić, the Trial Chamber found that he knew that the HVO was "intensively and continuously shelling East Mostar",²⁵⁷³ and that it was being subjected to "continuous shooting and shelling as part of a siege between June 1993 and April 1994".²⁵⁷⁴ It further found that he knew that this was causing destruction to buildings dedicated to religion and deaths among the population, and knew about the difficulties international organisations were having in gaining access to East Mostar, as well as the extremely harsh conditions the population was living in.²⁵⁷⁵ The Trial Chamber found that Pušić worsened the living conditions in East Mostar by obstructing humanitarian evacuations.²⁵⁷⁶ As a result, the Trial Chamber found that Pušić accepted the expanded crimes in East Mostar.²⁵⁷⁷ Referring later to his knowledge of the living conditions in East Mostar caused by the HVO siege, the Trial Chamber concluded that the only reasonable inference was that Pušić intended the siege-related crimes.²⁵⁷⁸ The Appeals Chamber therefore finds that the Trial Chamber made the necessary findings relating to Pušić's knowledge of the expanded crimes, the fact that he did nothing to prevent their recurrence, and that he persisted in implementing the expanded JCE.²⁵⁷⁹

813. In light of the findings above, the Appeals Chamber dismisses Stojić's and Praljak's arguments that the Trial Chamber erred in law in failing to make findings on when leading members of the JCE were informed of the expanded crimes or whether they did anything to prevent their recurrence.²⁵⁸⁰ With regard to Stojić's argument that it failed to find when leading JCE

²⁵⁷⁰ Trial Judgement, Vol. 4, para. 923. See Trial Judgement, Vol. 4, paras 919-922.

²⁵⁷¹ Trial Judgement, Vol. 4, paras 940, 944-945.

²⁵⁷² See also *infra*, paras 2566-2569, 2580-2581.

²⁵⁷³ Trial Judgement, Vol. 4, para. 1120.

²⁵⁷⁴ Trial Judgement, Vol. 4, para. 1122.

²⁵⁷⁵ Trial Judgement, Vol. 4, para. 1122.

²⁵⁷⁶ Trial Judgement, Vol. 4, para. 1122.

²⁵⁷⁷ Trial Judgement, Vol. 4, para. 1122. See Trial Judgement, Vol. 4, para. 59.

²⁵⁷⁸ Trial Judgement, Vol. 4, para. 1206.

²⁵⁷⁹ See also *infra*, paras 2748-2753, 2800-2802, 2806.

²⁵⁸⁰ In reaching this conclusion, the Appeals Chamber has relied on sections of the Trial Judgement discussing the Appellants' responsibility. The Appeals Chamber considers that Stojić fails to substantiate his claim that one cannot do

members “went from being merely aware of the crime to intending it”,²⁵⁸¹ the Appeals Chamber considers that the Trial Chamber found that when the JCE members became aware of the expanded crimes, and did not take any measures to prevent their recurrence but contributed to them and persisted in implementing the common objective, they thereby came to intend those expanded crimes.²⁵⁸² Stojić fails to demonstrate an error in this approach.²⁵⁸³ Therefore, the Appeals Chamber dismisses Stojić’s argument.

814. Reading the Trial Judgement as a whole, the Appeals Chamber considers that the Trial Chamber sufficiently understood and explained Counts 21 (in part), 24, and 25 as consisting of the crimes that were added as part of the expanded JCE, hence distinguishing them from the remaining crimes that the Trial Chamber found were part of the CCP from the beginning. Given that the Trial Chamber identified explicitly that the expanded crimes became part of the CCP in June 1993, with the siege of East Mostar,²⁵⁸⁴ and came to that conclusion based on the findings it made in relation to each individual Appellant as set out above, the Appeals Chamber finds that the Trial Chamber described with sufficient precision when and under what circumstances the scope of the CCP broadened. Thus, the Appeals Chamber finds that Stojić and Praljak have not demonstrated that the Trial Chamber erred in failing to define which crimes were part of the original JCE and which were part of the expanded JCE.²⁵⁸⁵ Consequently, it dismisses Praljak’s ground of appeal 7 as well as Stojić’s grounds of appeal 11 and 12.

(b) Stojić’s appeal (Ground 4 in part)

(i) Arguments of the Parties

815. Referring to several Tribunal trial judgements, Stojić submits that the Trial Chamber erred in law in failing to consider whether each individual crime in each municipality and each detention centre had the objective of furthering the CCP.²⁵⁸⁶ Specifically, he submits that the Trial Chamber erred in: (1) omitting to analyse whether crimes in Gornji Vakuf, Prozor, Mostar, Čapljina, and Stolac, as well as at the Heliodrom and Ljubuški, Dretelj, and Gabela Prisons, were part of the

so. See Stojić’s Appeal Brief, para. 106. In light of its conclusion, the Appeals Chamber also dismisses Stojić’s claim that the Trial Chamber erred in fact and failed to provide a “reasoned decision”. See *supra*, fn. 2491.

²⁵⁸¹ Stojić’s Appeal Brief, para. 107.

²⁵⁸² See *supra*, paras 806-812; Trial Judgement, Vol. 4, paras 67-68 (where the Trial Chamber found that all the Appellants intended the crimes that were part of the CCP, including the expanded crimes). See also *infra*, paras 1800-1804.

²⁵⁸³ Cf. *Krajišnik* Appeal Judgement, paras 171-172.

²⁵⁸⁴ Trial Judgement, Vol. 4, para. 59.

²⁵⁸⁵ See also *infra*, paras 874-886.

²⁵⁸⁶ Stojić’s Appeal Brief, para. 50, referring to *Tolimir* Trial Judgement, paras 1021-1024, 1028-1030, *Kupreškić et al.* Trial Judgement, paras 163-164, 336-338, *Boškoski and Tarčulovski* Trial Judgement, para. 572. See also Stojić’s Appeal Brief, heading before para. 48, paras 48-49; Stojić’s Reply Brief, para. 23; Appeal Hearing, AT. 276 (21 Mar 2017).

CCP,²⁵⁸⁷ (2) failing to address the crimes at Vojno Detention Centre in its CCP assessment;²⁵⁸⁸ (3) “expressly declin[ing]” to determine the underlying purpose of HVO actions in Jablanica;²⁵⁸⁹ and (4) wrongly including the Stupni Do attack in Vareš Municipality in its analysis having found that it was not ordered by “HVO leaders”.²⁵⁹⁰

816. The Prosecution responds that the Trial Chamber exhaustively analysed the crimes elsewhere in the Trial Judgement.²⁵⁹¹ In particular, it asserts that the Trial Chamber: (1) examined the HVO actions in Jablanica and concluded that these events were part of the CCP;²⁵⁹² (2) found that Vojno Detention Centre was “within the network of detention centres used to implement” the CCP, thus making it unnecessary to mention the crimes that took place there in its CCP assessment;²⁵⁹³ and (3) reasonably found that the crimes in Stupni Do were committed pursuant to the CCP.²⁵⁹⁴

(ii) Analysis

817. With respect to Stojić’s submission that the Trial Chamber failed to assess whether each individual crime in each municipality and each detention centre formed part of the CCP, the Appeals Chamber recalls that JCE liability requires proof of a common purpose “which amounts to or involves the commission of a crime”.²⁵⁹⁵ In this regard, the Appeals Chamber observes that the Trial Chamber found that the CCP – a common criminal plan to ethnically cleanse the provinces considered Croatian – came into being in mid-January 1993, and was implemented through various crimes that took place in a number of different municipalities and detention centres.²⁵⁹⁶ The

²⁵⁸⁷ Stojić’s Appeal Brief, para. 51, referring to Trial Judgement, Vol. 2, paras 80-91, 343-488, 758-1377, 1379-1663, 1787-1878, 1879-2034, 2035-2191, Vol. 3, paras 1-274, Vol. 4, paras 45, 47, 56-59.

²⁵⁸⁸ Stojić’s Appeal Brief, para. 52, referring to Trial Judgement, Vol. 4, paras 41-68.

²⁵⁸⁹ Stojić’s Appeal Brief, para. 52, referring to Trial Judgement, Vol. 2, para. 526.

²⁵⁹⁰ Stojić’s Appeal Brief, para. 52, referring to Trial Judgement, Vol. 4, para. 61. See also Stojić’s Appeal Brief, para. 58.

²⁵⁹¹ Prosecution’s Response Brief (Stojić), para. 33, referring to Trial Judgement, Vol. 2, paras 1-2191, Vol. 3, paras 1-1741.

²⁵⁹² Prosecution’s Response Brief (Stojić), para. 37, referring to Trial Judgement, Vol. 2, paras 538-543, Vol. 4, paras 146, 341, 714, 717.

²⁵⁹³ Prosecution’s Response Brief (Stojić), para. 37, referring to Trial Judgement, Vol. 4, para. 890. The Prosecution submits that for instance, Heliodrom detainees were transported to Vojno Detention Centre, held in very harsh conditions, mistreated, and even murdered while performing forced labour, and that some detainees agreed to leave for ABiH-controlled territories or other countries. See Prosecution’s Response Brief (Stojić), para. 37, referring to Trial Judgement, Vol. 2, paras 1650, 1654-1655, 1662, 1694-1700, 1703-1709, 1721, 1723-1724, 1726, 1731, 1740, 1749, 1757, Vol. 4, para. 64.

²⁵⁹⁴ Prosecution’s Response Brief (Stojić), para. 37, referring to Trial Judgement, Vol. 3, paras 492, 503, 507, 699-700, 752-753, 1294-1295, 1396-1397, 1498-1499, 1554-1556, 1596-1599, 1740-1741, Vol. 4, paras 61-63, 65-66, 68, 202, 594, 596-597, 621, 623, 626, 765, 767, 772, 775-777, 805, 815-816, 1220. The Prosecution does not expressly respond to Stojić’s challenges to the Trial Chamber’s approach to the crimes in Gornji Vakuf, Prozor, Mostar, Čapljina, and Stolac, as well as at the Heliodrom and Ljubuški, Dretelj, and Gabela Prisons. See Prosecution’s Response Brief (Stojić), para. 33.

²⁵⁹⁵ *Tadić* Appeal Judgement, para. 227(ii). See also *Šainović et al.* Appeal Judgement, para. 611; *Stakić* Appeal Judgement, para. 64; *Brđanin* Appeal Judgement, paras 364, 418; *supra*, para. 790.

²⁵⁹⁶ Trial Judgement, Vol. 4, paras 44-65. See *supra*, paras 789-790.

Trial Chamber found that the CCP came into being in mid-January 1993 based on a number of factors, including the presentation of the Vance-Owen Peace Plan on 2 January 1993, and the ultimatum adopted by the HVO HZ-HB envisaging the subordination of the ABiH to the HVO (“the 15 January 1993 Ultimatum”).²⁵⁹⁷ The Trial Chamber’s factual findings regarding the crimes in Gornji Vakuf, Prozor, Mostar, Čapljina, and Stolac, as well as at the Heliodrom and Ljubuški, Dretelj, and Gabela Prisons, were then expressly referenced or cross-referenced by the Trial Chamber in its CCP analysis, including by finding that the JCE was carried out in stages.²⁵⁹⁸ Further, in the same section of the Trial Judgement, the Trial Chamber made clear that it considered that these events, among others, formed part of the CCP because they “tended to follow a clear pattern of conduct”.²⁵⁹⁹

818. Regarding the crimes at Vojno Detention Centre, the Appeals Chamber observes that the Trial Chamber did not expressly refer to these crimes in its analysis of the CCP.²⁶⁰⁰ However, the Trial Chamber made clear that the entire CCP analysis was underpinned by factual findings regarding, *inter alia*, the detention centres,²⁶⁰¹ and found that the overall system of detention centres formed an integral part of the system for deporting the Muslim population of the HR H-B.²⁶⁰² The Appeals Chamber also recalls that the Trial Judgement must be read as a whole,²⁶⁰³ and observes that the Trial Chamber’s analysis of Prlić’s, Petković’s, and Pušić’s criminal responsibility made clear that the crimes at Vojno Detention Centre fell within the CCP.²⁶⁰⁴ The Appeals Chamber finds that Stojić has failed to demonstrate an error with regard to the Trial Chamber’s approach to these crimes. This submission is rejected.

819. Regarding Stojić’s assertion that the Trial Chamber erred in “expressly declin[ing]” to determine the underlying purpose of HVO actions in Jablanica, the Appeals Chamber observes that the Trial Chamber concluded that it was unable to determine the underlying reason for the clashes between the HVO and ABiH in Jablanica Municipality.²⁶⁰⁵ The Trial Chamber, however, concluded that the events in Jablanica fell within the CCP because the crimes that were committed there

²⁵⁹⁷ Trial Judgement, Vol. 1, paras 445, 451-452, Vol. 4, paras 44, 125. See also *infra*, paras 852-853.

²⁵⁹⁸ Trial Judgement, Vol. 4, paras 45, 47-48, 57, 59, 61, 64 & fns 124 (referring to Gornji Vakuf), 126 (referring to findings on Prozor), 127-128 (referring to Jablanica and Gornji Vakuf), 154-157 (referring to Prozor, Čapljina, Stolac, the Heliodrom, and Ljubuški and Gabela Prisons), 165-167 (referring to Mostar), 169-172 (referring to Vareš), 175-177 (referring to Mostar, the Heliodrom, and Ljubuški, Dretelj, and Gabela Prisons).

²⁵⁹⁹ Trial Judgement, Vol. 4, para. 65. See also Trial Judgement, Vol. 4, paras 45-64.

²⁶⁰⁰ See Trial Judgement, Vol. 2, paras 1664-1716.

²⁶⁰¹ See Trial Judgement, Vol. 4, para. 45.

²⁶⁰² See Trial Judgement, Vol. 4, paras 66, 68, 1298. See also Trial Judgement, Vol. 4, para. 890.

²⁶⁰³ *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379. See also *Kalimanzira* Appeal Judgement, para. 227.

²⁶⁰⁴ See Trial Judgement, Vol. 4, paras 236-239, 274, 797-798, 1186-1187, 1203. See also Trial Judgement, Vol. 4, paras 240, 287-288, 1215.

²⁶⁰⁵ Trial Judgement, Vol. 2, para. 526 (“Whatever the underlying reasons may have been, clashes between the HVO and the ABiH did break out on 13-14 April 1993 in Jablanica Municipality.”).

formed part of “a clear pattern of conduct”.²⁶⁰⁶ The explanation for the clashes between the HVO and ABiH thus forms background context, and has no direct bearing on this conclusion. Stojić fails to explain how this omission has an impact on his conviction. This argument is dismissed.

820. As regards Stojić’s challenge to the findings on the attack at Stupni Do on 23 October 1993, the Appeals Chamber observes that although the Trial Chamber found that the HVO leaders did not order the attack, it still found that the crimes committed there fell within the CCP because they formed part of the said pattern of conduct and because of the HVO leaders’ attempts to conceal them.²⁶⁰⁷ In that respect, the Trial Chamber focused on two leaders specifically, namely Praljak and Petković, and their involvement in concealment of Stupni Do crimes.²⁶⁰⁸ Further, the Trial Chamber found that both Praljak and Petković participated in planning and directing the HVO operations in Vareš Municipality in October 1993.²⁶⁰⁹ Similarly, the Trial Chamber found that Stojić facilitated the HVO military operations in Vareš Municipality.²⁶¹⁰ The Appeals Chamber discerns no issue with this approach and notes that the absence of an order by HVO leaders to attack Stupni Do does not necessarily result in a conclusion that the crimes that took place during the attack were not part of the CCP, so long as there are other factors that can be used to lead to that conclusion, such as the pattern of crimes. In that regard, the Appeals Chamber notes the reversal of some of the Vareš-Municipality-related findings concerning Petković and Praljak, namely that Petković contributed to the commission of crimes in Vareš town and Stupni Do,²⁶¹¹ and that Praljak facilitated the crimes in Stupni Do by contributing to their concealment and by planning and directing the operations in Vareš Municipality.²⁶¹² However, a number of the Trial Chamber’s other findings concerning the events in Vareš Municipality remain undisturbed, including that: (1) Praljak planned and directed the HVO operations in Vareš Municipality; (2) Petković contributed to concealment of the Stupni Do crimes; (3) Stojić facilitated the HVO military operations in Vareš Municipality; (4) Stojić, Petković, and Praljak were all informed of Stupni Do crimes soon after they happened; and (5) Stojić and Petković accepted these crimes.²⁶¹³ Further, all three were found to have intended the type of crimes that took place in Stupni Do months before the Stupni Do attack and, additionally, continued to participate in the JCE following that attack.²⁶¹⁴ The Appeals Chamber considers that these undisturbed findings provide a sufficient link between the JCE members and the crimes that

²⁶⁰⁶ Trial Judgement, Vol. 4, paras 46, 48, 65.

²⁶⁰⁷ Trial Judgement, Vol. 4, paras 61-62, 65. See Trial Judgement, Vol. 3, paras 484-486, 492.

²⁶⁰⁸ Trial Judgement, Vol. 4, para. 61.

²⁶⁰⁹ Trial Judgement, Vol. 4, paras 591-594, 597, 767.

²⁶¹⁰ Trial Judgement, Vol. 4, paras 380, 383.

²⁶¹¹ See *infra*, paras 2275-2280.

²⁶¹² See *infra*, paras 2059-2062.

²⁶¹³ See *infra*, paras 1698, 1701-1703, 1707, 1709-1711, 2028, 2042-2047, 2050-2054, 2283-2284, 2289-2294.

²⁶¹⁴ See Trial Judgement, Vol. 4, paras 68, 1225, 1227-1228.

took place in Stupni Do.²⁶¹⁵ As a result, and recalling again that the Trial Chamber considered that Stupni Do crimes were part of a clear pattern of conduct, the Appeals Chamber finds that Stojić has failed to demonstrate any error in the Trial Chamber's conclusion that Stupni Do events fell within the CCP.

821. Based on the above, the Appeals Chamber concludes that Stojić has not shown that the Trial Chamber erred in failing to specifically address whether each individual crime had the objective of furthering the CCP. Stojić's ground of appeal 4 is dismissed in relevant part.

(c) Praljak's appeal (Ground 49)

822. Praljak submits that the Trial Chamber failed to provide a reasoned opinion for its conclusions on crimes charged under JCE I and his responsibility for those crimes, thereby denying him his right to an effective appeal.²⁶¹⁶ Specifically, Praljak claims a lack of reasoned opinion as regards: (1) his conviction under JCE I for murders in Mostar which the Trial Chamber held not to form part of the CCP;²⁶¹⁷ (2) the variation in crimes included in the CCP as between different municipalities;²⁶¹⁸ and (3) whether he was found guilty of crimes committed in Jablanica, Stolac, Ljubuški, and Čapljina.²⁶¹⁹

823. The Prosecution responds that the Trial Chamber clearly established the scope of Praljak's convictions, with sufficient reasoning, thereby allowing him to exercise his right of appeal.²⁶²⁰ With regard to Mostar, the Prosecution contends that Praljak was convicted under JCE I for murders

²⁶¹⁵ In this respect, the Appeals Chamber recalls that for JCE I liability "it is sufficient for the participant to perform acts that in some way are directed to the furthering" of the common plan or purpose. *Tadić* Appeal Judgement, para. 229. See *Popović et al.* Appeal Judgement, paras 1378, 1653; *Šainović et al.* Appeal Judgement, para. 1445; *Krajišnik* Appeal Judgement, para. 695 ("It is sufficient that the accused 'perform acts that in some way are directed to the furthering' of the JCE in the sense that he significantly contributes to the commission of the crimes involved in the JCE"). See also *Karemera and Ngirumpatse* Appeal Judgement, paras 109 ("the Trial Chamber was not required to find that he personally contributed to each criminal act, but rather that he made a significant contribution to the common purpose and that each of the criminal acts for which he was held responsible formed part of that purpose"), 153.

²⁶¹⁶ Praljak's Appeal Brief, paras 539-540, 543-544; Praljak's Reply Brief, paras 112-113. See Appeal Hearing, AT. 383 (22 Mar 2017).

²⁶¹⁷ Praljak's Appeal Brief, para. 541.

²⁶¹⁸ Praljak's Appeal Brief, para. 541.

²⁶¹⁹ Praljak's Appeal Brief, para. 542. Praljak also claims under this ground of appeal that the Trial Chamber failed to provide a reasoned opinion in relation to the scope of the CCP and its expansion and when concluding that crimes committed in Gornji Vakuf Municipality fell within the CCP. Praljak's Appeal Brief, paras 540, 542. However, these arguments are premised on his submissions in other grounds of appeal, which the Appeals Chamber dismisses elsewhere. See Praljak's Appeal Brief, para. 540 & fns 1238-1239 (referring to, *inter alia*, sub-grounds of appeal 7.1-7.2, 39.2), para. 542. See also *supra*, para. 814; *infra*, paras 867, 1921. Accordingly, the Appeals Chamber will not consider them here.

²⁶²⁰ Prosecution's Response Brief (Praljak), paras 272-274, 276.

other than those which the Trial Chamber considered not to form part of the CCP.²⁶²¹ The Prosecution argues that Praljak's other arguments warrant summary dismissal.²⁶²²

824. With regard to Praljak's argument that the Trial Chamber failed to provide a reasoned opinion in relation to how the crimes included in the CCP could vary between different municipalities, the Appeals Chamber considers that Praljak does not explain why a criminal plan perpetrated across a wide geographical area would have to be exactly consistent in the crimes committed in different locations. With regard to Praljak's argument that the Trial Chamber failed to provide a reasoned opinion in relation to his conviction under JCE I for murders in Mostar which it held not to form part of the CCP, the Appeals Chamber notes that the Trial Chamber found that certain murders committed during the HVO's detention and eviction operations were not part of the CCP.²⁶²³ However, the Trial Chamber also found that murders committed "during attacks", including during the HVO attacks on East Mostar and during the HVO attack on the village of Raštani in Mostar, formed part of the CCP.²⁶²⁴ Praljak was accordingly convicted of those specific murders rather than murders that did not form part of the CCP. He misrepresents the Trial Chamber's findings and his argument is therefore dismissed. Finally, Praljak's argument that the Trial Chamber failed to make clear findings as regards his responsibility for the crimes committed in Jablanica, Stolac, Ljubuški, and Čapljina misrepresents the Trial Judgement. Although the Trial Chamber found that Praljak had not personally contributed to the crimes in these municipalities,²⁶²⁵ it found that these crimes formed part of the CCP,²⁶²⁶ and that Praljak, as a JCE member, was responsible for these crimes.²⁶²⁷ The Appeals Chamber finds that Praljak has failed to show that the Trial Chamber violated his right to a reasoned opinion, and dismisses his ground of appeal 49.

(d) Petković's appeal (Sub-ground 3.2.1.3)

825. Petković argues that the Trial Chamber was required to establish through a reasoned opinion that each underlying crime charged was a consequence of the implementation of the JCE.²⁶²⁸ In the

²⁶²¹ Prosecution's Response Brief (Praljak), para. 275.

²⁶²² Prosecution's Response Brief (Praljak), para. 274. The Prosecution does not specifically address Praljak's submission regarding Jablanica, Stolac, Ljubuški, and Čapljina.

²⁶²³ Trial Judgement, Vol. 4, paras 70, 72.

²⁶²⁴ Trial Judgement, Vol. 4, paras 59, 66. See also Trial Judgement, Vol. 2, paras 948-963.

²⁶²⁵ See Trial Judgement, Vol. 4, para. 630.

²⁶²⁶ Trial Judgement, Vol. 4, paras 48, 57. See also Trial Judgement, Vol. 4, para. 63.

²⁶²⁷ Trial Judgement, Vol. 4, para. 631.

²⁶²⁸ Petković's Appeal Brief, para. 34, referring to *Zigiranyirazo* Trial Judgement, para. 418, *Limaj et al.* Trial Judgement, para. 669, *Limaj et al.* Appeal Judgement, para. 99. Petković argues in particular that jurisprudence demands this step in order to exclude the possibilities that: (1) crimes might have occurred in the absence of a specific plan, or independently thereof; or (2) the perpetrators' relationship to the JCE members was too tenuous. Petković's Appeal Brief, para. 34.

present case, he submits that the Trial Chamber erred in assuming that the crimes were the result of the implementation of the CCP.²⁶²⁹

826. The Prosecution responds that the Trial Chamber did not assume that the crimes were part of the CCP, but engaged in a detailed analysis of the pattern of the crimes committed in various municipalities.²⁶³⁰

827. The Appeals Chamber recalls that the Trial Chamber was required to provide clear findings as to the scope of the JCE,²⁶³¹ and further recalls its finding that the Trial Chamber complied with this test in the present case.²⁶³² Moreover, Petković merely claims that the Trial Chamber unreasonably assumed that the crimes occurred as a result of the implementation of the CCP, without supporting the argument with any evidence. The Appeals Chamber finds that Petković fails to show an error in the inference the Trial Chamber drew, and thus dismisses his sub-ground of appeal 3.2.1.3.

4. Alleged errors as regards the constituent events of the CCP

(a) Introduction

828. While noting that the Prosecution alleged the existence of several JCEs set up at various times and under various forms, the Trial Chamber found that there was only one, single CCP, namely “domination by the HR H-B Croats through ethnic cleansing of the Muslim population.”²⁶³³ The Trial Chamber also found that already as of December 1991, leaders of HZ(R) H-B and leaders of Croatia, including Tudman, believed that in order to achieve the Ultimate Purpose of the JCE, it was necessary to change the ethnic make-up of the territories claimed to form part of the HZ H-B.²⁶³⁴ Additionally, it found that from no later than October 1992, Prlić, Stojić, Praljak, and Petković knew that the implementation of the Ultimate Purpose of the JCE ran counter to the peace negotiations being conducted in Geneva and would involve the Muslim population moving outside the territory of the HZ H-B.²⁶³⁵ The Trial Chamber found that the JCE came into being in mid-January 1993, and was carried out in stages.²⁶³⁶ In particular, it referenced and cross-referenced

²⁶²⁹ Petković’s Appeal Brief, paras 35-36. Petković submits in particular that the Trial Chamber’s decision was based on unproven factual presumptions, namely that: (1) all crimes were the consequence of a plan and had no other cause; (2) the underlying crimes were the consequence of that particular plan and no other; (3) the plan was implemented in each and every location where the crimes were allegedly committed; and (4) all of the Appellants partook in and shared that common plan. Petković’s Appeal Brief, para. 36. See also Petković’s Reply Brief, para. 12.

²⁶³⁰ Prosecution’s Response Brief (Petković), para. 33.

²⁶³¹ See *Krajišnik* Appeal Judgement, paras 161-178. See also *supra*, para. 817.

²⁶³² See also *supra*, paras 817-821, 824.

²⁶³³ Trial Judgement, Vol. 4, para. 41.

²⁶³⁴ Trial Judgement, Vol. 4, para. 43.

²⁶³⁵ Trial Judgement, Vol. 4, para. 43.

²⁶³⁶ Trial Judgement, Vol. 4, paras 44-45.

its findings that the HVO committed crimes: (1) in Gornji Vakuf Municipality between January and April 1993;²⁶³⁷ (2) in Jablanica Municipality in April 1993;²⁶³⁸ (3) in Prozor Municipality in April 1993;²⁶³⁹ (4) in Mostar Municipality between April 1993 and April 1994;²⁶⁴⁰ (5) following the ABiH attack on the Tihomir Mišić Barracks on 30 June 1993;²⁶⁴¹ and (6) in Vareš Municipality in October 1993.²⁶⁴²

(b) Alleged errors regarding the findings concerning the pre-CCP period

(i) Prlić's appeal (Sub-ground 10.1)

829. Prlić argues that the Trial Chamber erred in concluding that the CCP existed.²⁶⁴³ He submits that the Trial Chamber erroneously relied on "selective evidence" in concluding that the HZ(R) H-B leaders sought to change the ethnic make-up of the territories, and that Prlić knew that the implementation of the plan ran counter to the peace negotiations being conducted in Geneva.²⁶⁴⁴

830. The Prosecution responds that Prlić makes mere assertions unsupported by evidence²⁶⁴⁵ with "redundant and unexplained cross-references to arguments" made elsewhere in his appeal brief.²⁶⁴⁶ The Prosecution submits that these arguments do not warrant detailed consideration and thus should be summarily dismissed.²⁶⁴⁷

831. The Appeals Chamber notes that in asserting that the Trial Chamber erred in relying on "selective evidence", Prlić simply references a single paragraph of the Trial Judgement, without explaining how the Trial Chamber erred. The Appeals Chamber also observes that Prlić merely makes reference, without explaining their relevance, to a number of his sub-grounds of appeal

²⁶³⁷ Trial Judgement, Vol. 4, paras 45, 48 & fns 124, 127.

²⁶³⁸ Trial Judgement, Vol. 4, paras 46, 48.

²⁶³⁹ Trial Judgement, Vol. 4, para. 47.

²⁶⁴⁰ Trial Judgement, Vol. 4, paras 49, 51, 53, 56-59.

²⁶⁴¹ Trial Judgement, Vol. 4, paras 57, 64.

²⁶⁴² Trial Judgement, Vol. 4, paras 61-63.

²⁶⁴³ Prlić's Appeal Brief, para. 281.

²⁶⁴⁴ Prlić's Appeal Brief, para. 282, referring to Trial Judgement, Vol. 4, para. 43. Prlić also adopts by reference his sub-grounds of appeal 1.1, 1.3, 9.6, 9.7, 16.1, 16.2, and 16.3. See Prlić's Appeal Brief, para. 283. See also Appeal Hearing, AT. 141-142, 159-162, 169 (20 Mar 2017) (where he argues, *inter alia*, that the CCP did not exist and that the Croat plans about division of territory were based on various international peace plans which in turn never called for ethnic cleansing).

²⁶⁴⁵ Prosecution's Response Brief (Prlić), para. 166, referring to *Dordević* Appeal Judgement, para. 20(ix), *Galić* Appeal Judgement, para. 246.

²⁶⁴⁶ Prosecution's Response Brief (Prlić), paras 166-167.

²⁶⁴⁷ Prosecution's Response Brief (Prlić), para. 166. See also Prosecution's Response Brief (Prlić), paras 163-165. The Prosecution further submits that the evidence and the pattern of events in BiH clearly show that the goal was to change the ethnic composition of Herceg-Bosna through crimes and that this was ultimately achieved. See Appeal Hearing, AT. 180, 190-192 (20 Mar 2017).

which it considers and dismisses elsewhere.²⁶⁴⁸ The Appeals Chamber therefore rejects Prlić's sub-ground of appeal 10.1.²⁶⁴⁹

(ii) Praljak's appeal (Sub-ground 5.4 in part)

832. Praljak challenges the Trial Chamber's conclusion that as of December 1991, HZ(R) H-B leaders and Croatian leaders believed that in order to achieve the Ultimate Purpose of the JCE, it was necessary to change the ethnic make-up of the territories claimed to form part of HZ(R) H-B. Praljak submits that this finding contradicts other findings in which the Trial Chamber considered that "the possible aim" of the plan was to establish an autonomous Croatian entity in BiH.²⁶⁵⁰ Praljak also argues that the Trial Chamber confused the CCP with political aims when concluding that the JCE was established to accomplish the political purpose of establishing an autonomous Croatian entity in BiH, as this purpose was legitimate and not criminal.²⁶⁵¹ In addition, he contends that the Trial Chamber "recognized that Tudman was solely led by" Croatia, which indicates that Tudman was concerned about Croatia's interests.²⁶⁵²

833. The Prosecution responds that Praljak's semantic argument about contradiction between a Croatian entity in BiH and partition disregards the findings on partition discussions between the Croats and Serbs.²⁶⁵³ The Prosecution also submits that the Trial Chamber did not confuse the CCP and the Ultimate Purpose of the JCE, but rather identified a single common criminal purpose, namely, to establish, by criminal means, a Croatian entity in BiH reconstituting at least in part the Banovina borders.²⁶⁵⁴ It further asserts that Praljak selectively cites passages from the

²⁶⁴⁸ See *supra*, paras 170-176, 697-699, 722-727. See also *infra*, paras 1146-1221.

²⁶⁴⁹ With respect to Prlić's argument that the plans for division of territory did not call for ethnic cleansing as they were based on various international peace plans, the Appeals Chamber notes that Prlić made the same argument in his Final Brief. See Prlić's Final Brief, paras 239-262. This argument was rejected by the Trial Chamber. Prlić now repeats his arguments using his own interpretation of the evidence without showing that no reasonable trier of fact could have interpreted this evidence as the Trial Chamber did. For that reason, Prlić's argument regarding ethnic cleansing is also dismissed.

²⁶⁵⁰ Praljak's Appeal Brief, para. 93, referring to Praljak's Appeal Brief, para. 71 (Praljak's sub-grounds of appeal 5.1-5.2), Trial Judgement, Vol. 4, paras 10, 24, 43. Praljak also takes issue with the Trial Chamber's finding that the CCP was established in January 1993, arguing that: (1) any idea Tudman had ever had to divide BiH vanished in early 1992 with the proclamation of BiH's independence; and (2) following the proclamation, Tudman reiterated that the Croatian people's future was within BiH. Praljak's Appeal Brief, para. 94, referring to, *inter alia*, Praljak's Appeal Brief, paras 73-75, 79-80, 82-85 (Praljak's sub-grounds of appeal 5.1-5.2).

²⁶⁵¹ Praljak's Appeal Brief, para. 95, referring to Trial Judgement, Vol. 4, para. 44; Appeal Hearing, AT. 382 (22 Mar 2017).

²⁶⁵² Praljak's Appeal Brief, para. 96, referring to Trial Judgement, Vol. 4, para. 15.

²⁶⁵³ Prosecution's Response Brief (Praljak), para. 40.

²⁶⁵⁴ Prosecution's Response Brief (Praljak), para. 33. See also Prosecution's Response Brief (Praljak), para. 41.

Trial Judgement out of context and fails to read the Trial Judgement as a whole, thus ignoring the detailed JCE analysis.²⁶⁵⁵

834. Praljak replies that contrary to the Prosecution's assertion, the Trial Chamber did not establish a single common criminal purpose.²⁶⁵⁶

835. To the extent that Praljak argues that there is a contradiction between the findings on the CCP and those on the Ultimate Purpose of the JCE, the Appeals Chamber notes that he refers to submissions in his sub-grounds of appeal 5.1 and 5.2, which are dismissed elsewhere.²⁶⁵⁷ In any event, the Appeals Chamber observes that, contrary to Praljak's contention that the political aim was to establish an autonomous Croatian province in BiH, the Trial Chamber concluded that the Ultimate Purpose of the JCE was to set up a Croatian entity that reconstituted, at least in part, the Banovina borders and facilitated the reunification of the Croatian people and that such entity was either supposed to be joined to Croatia directly or to be an independent state within BiH with close ties to Croatia.²⁶⁵⁸

836. Praljak's claim that the Trial Chamber confused the CCP with legitimate political aims also has no merit as the Trial Chamber consistently identified the CCP as the ethnic cleansing of the Muslim population in pursuit of the Ultimate Purpose of the JCE.²⁶⁵⁹ Given that the Trial Chamber found that the ethnic cleansing was to be achieved through a number of different crimes, it clearly distinguished between the Ultimate Purpose of the JCE – the territorial political aspirations of the JCE members – and the criminal means by which it was implemented.²⁶⁶⁰ Praljak's argument is therefore dismissed. Finally, the Appeals Chamber considers that when claiming that the Trial Chamber recognised that Tuđman was solely led by Croatia and he was mainly concerned about Croatia's interests, Praljak mischaracterises the relevant finding, namely that Tuđman was "advocating the existence and the legitimacy of the BiH Croatian people in order to protect the borders of Croatia".²⁶⁶¹ Praljak fails to show any error in the Trial Chamber's findings concerning the CCP. Therefore, this contention is dismissed.

²⁶⁵⁵ Prosecution's Response Brief (Praljak), para. 34. The Prosecution also argues that Praljak repeats trial arguments. Prosecution's Response Brief (Praljak), para. 40, referring to, *inter alia*, Trial Judgement Vol. 4, paras 432-433, Praljak's Appeal Brief, para. 94.

²⁶⁵⁶ Praljak's Reply Brief, para. 20.

²⁶⁵⁷ See *supra*, paras 602-607.

²⁶⁵⁸ Trial Judgement, Vol. 4, para. 24. See also Trial Judgement, Vol. 4, paras 10, 16.

²⁶⁵⁹ See Trial Judgement, Vol. 4, paras 44, 1232. See also Trial Judgement, Vol. 4, para. 65 (referring to modification of the ethnic composition of the Croatian provinces).

²⁶⁶⁰ See *supra*, para. 789.

²⁶⁶¹ Trial Judgement, Vol. 4, para. 15.

837. The Appeals Chamber therefore finds that Praljak has failed to demonstrate any error in the impugned Trial Chamber's findings and dismisses Praljak's sub-ground of appeal 5.4 in relevant part.

(iii) Petković's appeal (Sub-ground 3.2.1.2 in part)

a. Arguments of the Parties

838. Petković submits that the Trial Chamber erroneously inferred that “‘ethnic cleansing’ was [a] necessary implication of the establishment of a Croatian entity in BiH” and failed to give a reasoned opinion about this inference, or to refer to relevant evidence.²⁶⁶² In this regard, he argues that the international community envisaged BiH not as a unitary state, but as one composed of territorial units based on criteria of nationality.²⁶⁶³ Petković also challenges the evidence underpinning the finding that JCE members believed that in order to achieve the Ultimate Purpose of the JCE it was necessary to change the ethnic make-up of the territories claimed to form HZ(R) H-B.²⁶⁶⁴ In particular, he argues that neither of the two documents relied on by the Trial Chamber – Exhibits P00089 and P00021 – supports this finding.²⁶⁶⁵

839. The Prosecution responds that the Trial Chamber reasonably determined that Petković and the other JCE members intended to ethnically cleanse the Muslim population in order to achieve the Ultimate Purpose of the JCE.²⁶⁶⁶ It submits that the Trial Chamber did not rely solely on Exhibits P00089 and P00021, but on numerous well-supported findings, and argues that Exhibits P00089 and P00021 in any event provided further support for the Trial Chamber's conclusion.²⁶⁶⁷

b. Analysis

840. At the outset, the Appeals Chamber considers that Petković's argument regarding the intentions of the international community for BiH is a mere assertion unsupported by evidence, and

²⁶⁶² Petković's Appeal Brief, para. 30 (emphasis in original), referring to Trial Judgement, Vol. 4, para. 41. See also Petković's Appeal Brief, paras 32-33; Appeal Hearing, AT. 493 (23 Mar 2017). Petković raises this argument in the alternative to his submission that the Trial Chamber failed to provide a clear definition of the term “ethnic cleansing”. See Petković's Appeal Brief, paras 28-29; *supra*, paras 787-790.

²⁶⁶³ Petković's Appeal Brief, para. 30.

²⁶⁶⁴ Petković's Appeal Brief, para. 31, referring to Trial Judgement, Vol. 4, para. 43.

²⁶⁶⁵ Petković's Appeal Brief, para. 31, referring to Trial Judgement, Vol. 4, para. 43 & fn. 120; Appeal Hearing, AT. 493 (23 Mar 2017).

²⁶⁶⁶ Prosecution's Response Brief (Petković), para. 25.

²⁶⁶⁷ Prosecution's Response Brief (Petković), paras 25-26, referring to Trial Judgement, Vol. 4, paras 11-12, 18-19, 43, 45-66. In particular, the Prosecution refers to the findings that: (1) JCE members such as Prlić and Boban made statements that Muslims had to be removed from the HZ(R) H-B; (2) on 26 October 1992, Praljak made a statement that “it is in our interest that the Muslims get their own canton so they have somewhere to move to”; (3) Petković and others made efforts to divide BiH between the Croats and Serbs, leaving little or no space for Muslims; and (4) widespread ethnic cleansing by the HVO forces occurred throughout the HZ(R) H-B during the JCE time period, following a clear pattern. See also Prosecution's Response Brief (Petković), paras 16-18; Appeal Hearing, AT. 660 (24 Mar 2017).

dismisses this argument. The remainder of Petković's challenges relate to the exhibits cited by the Trial Chamber as support for the conclusion that as of December 1991 the leaders of the HZ(R) H-B, including Boban, and leaders of Croatia, including Tudman, believed that changing the ethnic make-up of the provinces was necessary in order to achieve the Ultimate Purpose of the JCE,²⁶⁶⁸ namely Exhibits P00089 and P00021.

841. Exhibit P00089 is the Presidential Transcript of 27 December 1991, with the referenced pages containing part of a speech by Tudman, in which the establishment of a purely Croatian community "inside the widest possible borders" is discussed.²⁶⁶⁹ The Appeals Chamber notes that in the course of this discussion, Boban refers to "cleansing border areas".²⁶⁷⁰ However, the relevant parts of the Presidential Transcripts do not, as a whole, reflect a clear consensus regarding a political purpose that would have ethnic cleansing as its logical corollary.²⁶⁷¹ Turning to Exhibit P00021, a 1991 book by Ante Valenta, entitled "Dividing Bosnia and Struggling for Its Integrity", the Appeals Chamber notes that the book discusses the relocation of Muslims to central BiH.²⁶⁷² The Appeals Chamber also notes, however, that although Valenta occupied the position of HZ(R) H-B Vice-President in 1993,²⁶⁷³ his book does not support the broader proposition that JCE members held this belief in December 1991.

842. The Appeals Chamber considers, however, that these ambiguities have no impact on the Trial Chamber's conclusions. The Trial Chamber made a number of findings elsewhere demonstrating that the HZ(R) H-B leaders and Tudman acquired the intention to change the ethnic make-up of the territories claimed to form part of the HZ(R) H-B – namely to ethnically cleanse the Muslims from the territory claimed as Croatian – before the JCE came into being in mid-January 1993.²⁶⁷⁴ These are not challenged by Petković in this sub-ground of appeal.²⁶⁷⁵ In any

²⁶⁶⁸ Trial Judgement, Vol. 4, para. 43, referring to Exs. P00021, P00089, pp. 34-35. The Appeals Chamber notes that while it could appear from footnote 120 of Volume 4 of the Trial Judgement that the Trial Chamber relied on pages 18-24 of Exhibit P00021 for this finding, page numbers 18-24 do not correspond fully to the two pages of the book that were admitted during trial under Exhibit P00021, namely pages 43 and 66 of the BCS version of the exhibit. See Philip Roger Watkins, T. 18803-18804; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order to Admit Evidence Regarding Witness Philip Watkins, 30 August 2007. The Appeals Chamber notes that only page 23 of the English version corresponds to page 66 of the BCS version. The Appeals Chamber therefore considers that the reference to pp. 18-24 is a typographical error.

²⁶⁶⁹ Ex. P00089, pp. 34-35. The Appeals Chamber notes that there appear to be two translations of Exhibit P00089 on the judicial record and considers that the Trial Chamber's finding relates to the most recently added translation, ET 0085-0386-0085-0510.

²⁶⁷⁰ Ex. P00089, p. 35.

²⁶⁷¹ See Trial Judgement, Vol. 4, para. 12 ("The Chamber notes that Franjo Tudman spoke equivocally, advocating, on the one hand, respect for the existing borders of BiH, knowing that the international community was opposed to dividing BiH, and, on the other, the partition of BiH between the Croats and the Serbs"), referring to, *inter alia*, Ex. P00089, pp. 29-30.

²⁶⁷² See Ex. P00021, p. 40; Ex. 1D01538, pp. 42-43.

²⁶⁷³ See Trial Judgement, Vol. 1, para. 524 & fn. 1281.

²⁶⁷⁴ See Trial Judgement, Vol. 4, paras 9-24, 44, 1232.

²⁶⁷⁵ See *infra*, paras 868-873.

event, the Appeals Chamber observes that the Trial Chamber expressly found that the CCP came into existence only by mid-January 1993, because the evidence was insufficient to reach a finding as to its existence at an earlier stage.²⁶⁷⁶ The Appeals Chamber considers therefore that Petković fails to demonstrate that ambiguities in the evidential basis proffered by the Trial Chamber would have any impact on his conviction.

843. The Appeals Chamber therefore finds that Petković has not demonstrated that the Trial Chamber failed to provide a reasoned opinion or failed to refer to relevant evidence when finding that ethnic cleansing was necessary in order to achieve the Ultimate Purpose of the JCE. His sub-ground of appeal 3.2.1.2 is dismissed in relevant part.

(c) Alleged errors in the findings that the JCE commenced in mid-January 1993 and that Muslim civilians were removed from villages in Gornji Vakuf Municipality

844. The Trial Chamber concluded that the JCE began to be implemented in January 1993 when, as the HZ H-B leaders were participating in peace talks, the HVO conducted military campaigns in the provinces it considered Croatian in order to consolidate its presence.²⁶⁷⁷ In particular, the Trial Chamber found that on 18 January 1993, the HVO launched an attack on the town of Gornji Vakuf and the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality,²⁶⁷⁸ and removed members of the Muslim population.²⁶⁷⁹

(i) Prlić's appeal (Sub-grounds 10.2, 10.3, and 10.4 in part)

a. Arguments of the Parties

845. Prlić argues that the Trial Chamber erred in concluding that the CCP came into being in January 1993.²⁶⁸⁰ He submits that the Trial Chamber erred in relying "solely" on the unsubstantiated evidence of international witnesses, whose lack of credibility the Trial Chamber overlooked,²⁶⁸¹ while ignoring other relevant evidence.²⁶⁸² Further, pointing to the evidence of Prosecution Witness Cedric Thornberry, Prlić argues that the Trial Chamber overlooked that the evidence from the international witnesses was based on "unsubstantiated perceptions".²⁶⁸³ Prlić also alleges errors in the finding that the HZ H-B leaders carried out the JCE in stages, and more specifically that the

²⁶⁷⁶ Trial Judgement, Vol. 4, para. 44.

²⁶⁷⁷ Trial Judgement, Vol. 4, para. 45.

²⁶⁷⁸ Trial Judgement, Vol. 4, para. 561. See also Trial Judgement, Vol. 2, paras 343-388, 396-468, Vol. 4, para. 45.

²⁶⁷⁹ Trial Judgement, Vol. 4, para. 48.

²⁶⁸⁰ Prlić's Appeal Brief, para. 284, referring to Trial Judgement, Vol. 1, paras 452-464, Vol. 2, paras 330-342, 503-506, 514, 521, Vol. 4, para. 44.

²⁶⁸¹ Prlić's Appeal Brief, para. 284, referring to Christopher Beese, T. 5328-5332 (private session) (22 Aug 2006), Ex. P02787.

²⁶⁸² Prlić's Appeal Brief, para. 284.

HVO launched an attack in Gornji Vakuf on 18 January 1993, shelled villages, took control over them, and conducted military campaigns in the provinces considered as Croatian.²⁶⁸⁴

846. The Prosecution responds that Prlić's challenges should be summarily dismissed as misrepresenting factual findings or evidence.²⁶⁸⁵ Specifically, the Prosecution submits that: (1) the Trial Chamber relied on evidence other than that of international witnesses,²⁶⁸⁶ and Prlić does not support his argument that these witnesses lacked credibility and their evidence was unsubstantiated;²⁶⁸⁷ and (2) Prlić does not identify evidence that the Trial Chamber ignored.²⁶⁸⁸ In relation to Prlić's challenge to the Trial Chamber's finding on the implementation of the JCE in stages, the Prosecution argues that he makes "mere assertions unsupported by any evidence" coupled with redundant and unexplained cross-references", warranting summary dismissal.²⁶⁸⁹

b. Analysis

847. In respect of Prlić's argument that the Trial Chamber erred in relying solely on the uncorroborated evidence of international witnesses, the Appeals Chamber notes that contrary to his submission, the Trial Chamber's conclusion regarding the formation of the JCE was based not only on the evidence of international witnesses, but on findings made elsewhere in the Trial Judgement,²⁶⁹⁰ which were in turn based on a range of evidence.²⁶⁹¹ Prlić fails to explain why the conclusion should not stand on the basis of these other findings. In addition, as for his argument regarding the lack of credibility of international witnesses, Prlić argues that the Trial Chamber "overlooked" the testimony of Witness Christopher Beese, in which Beese confirmed that the ECMM reports prepared by international witnesses were criticised by Lord David Owen for lacking

²⁶⁸³ Prlić's Appeal Brief, para. 284, referring to Ex. P10041, para. 42 (witness statement of Witness Cedric Thornberry).

²⁶⁸⁴ Prlić's Appeal Brief, paras 286(a)-(c), 287(a) (referring to sub-ground of appeal 16.1). The Appeals Chamber notes that Prlić also cross-references his sub-ground of appeal 16.2. See Prlić's Appeal Brief, para. 288.

²⁶⁸⁵ Prosecution's Response Brief (Prlić), para. 168, referring to *Dorđević* Appeal Judgement, para. 20(i).

²⁶⁸⁶ Prosecution's Response Brief (Prlić), para. 169, referring to Trial Judgement, Vol. 1, paras 452-464, Vol. 2, paras 330-342, 503-506, 514, 521, Vol. 4, para. 44.

²⁶⁸⁷ Prosecution's Response Brief (Prlić), para. 170.

²⁶⁸⁸ Prosecution's Response Brief (Prlić), para. 172.

²⁶⁸⁹ Prosecution's Response Brief (Prlić), para. 166, referring to *Dorđević* Appeal Judgement, para. 20(ix), *Galić* Appeal Judgement, para. 246.

²⁶⁹⁰ See Trial Judgement, Vol. 4, para. 44, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 442-451 ("Negotiations within the Framework of the Vance-Owen Plan (August 1992-January 1993)"), 452-476 ("Subsequent History of the Vance-Owen Plan; Attempts to Implement the Principles of this Plan in the Field (January 1993-August 1993)").

²⁶⁹¹ See Trial Judgement, Vol. 1, paras 443 (referring to, *inter alia*, Exs. 1D00288, 1D00289, p. 2, 1D02664, pp. 13-16, 1D02848, p. 2, 1D02849, p. 1, 1D02850, 1D02851, 4D00830), 445 (referring to, *inter alia*, Ex. 1D01521), 446 (referring to, *inter alia*, 3D03720), 447 (referring to, *inter alia*, Ex. 1D02935 (confidential)), 451 (referring to, *inter alia*, Ex. 1D01521), 455 (referring to, *inter alia*, Ex. 1D01195), 457 (referring to, *inter alia*, Exs. 3D01537, 1D01195, pp. 1-2), 458 (referring to, *inter alia*, Ex. 1D01521), 459 (referring to Ex. 1D01195, pp. 1-2), 460 (referring to, *inter alia*, Exs. 1D02729, 2D00206), 461 (referring to, *inter alia*, Exs. 2D00093, 4D00358), 462 (referring to, *inter alia*, Ex. 4D01235), 463 (referring to, *inter alia*, Exs. 2D01111, pp. 1-2, 2D00289), 464 (referring to, *inter alia*, Ex. 4D00557), 465 (referring to, *inter alia*, Exs. 1D02903, 1D01193, 1D01822, 1D02890), 473 (referring to, *inter alia*, Ex. 1D00817, p. 4), 476 (referring to Exs. 1D01281, 1D01388, p. 2).

analysis and being irrelevant.²⁶⁹² Although the Trial Chamber did not refer to this testimony in the portions of the Trial Judgement Prlić points to,²⁶⁹³ the Appeals Chamber recalls that a trial chamber need not refer to the testimony of every witness or every piece of evidence on the trial record and that there is a presumption that the trial chamber evaluated all evidence presented to it, as long as there is no indication that it completely disregarded evidence which is clearly relevant.²⁶⁹⁴ Given that the Trial Chamber relied on Beese's evidence at various points in the Trial Judgement, including in the section discussing the formation of the JCE, it is clear that it did not disregard his evidence.²⁶⁹⁵ Accordingly, Prlić fails to explain how no reasonable trier of fact could have reached the same conclusion as the Trial Chamber.²⁶⁹⁶ As for Prlić's challenge in respect of Thornberry's evidence, Prlić merely refers to the paragraph of the witness's statement which he claims is an "unsubstantiated perception" without providing any support for this assertion, and thus fails to explain why the Trial Chamber erred in relying on it.²⁶⁹⁷ The Appeals Chamber further notes that the Trial Chamber relied on a range of other evidence to corroborate Thornberry's evidence that Croats were contemplating ethnic cleansing in BiH.²⁶⁹⁸ The Appeals Chamber also dismisses, as undeveloped, Prlić's submission that the Trial Chamber disregarded relevant evidence, as he fails to explain what evidence was disregarded or how it had any impact on the Trial Chamber's findings.²⁶⁹⁹

848. As for Prlić's challenge to the Trial Chamber's findings on the HVO's military campaigns from January 1993 and in particular the attacks in Gornji Vakuf, the Appeals Chamber notes that Prlić makes his argument solely by cross-reference to his grounds of appeal 16.1 and 16.2, which the Appeals Chamber dismisses elsewhere.²⁷⁰⁰ This argument is thus rejected.

849. The Appeals Chamber finds that Prlić has failed to show that the Trial Chamber erred in concluding that the JCE crystallised in mid-January 1993 and that the HZ H-B leaders carried out the JCE in stages. Prlić's sub-grounds of appeal 10.2, 10.3, and 10.4 in relevant part are therefore dismissed.

²⁶⁹² See Prlić's Appeal Brief, para. 284, referring to Christopher Beese, T. 5328-5332 (private session) (22 Aug 2006).

²⁶⁹³ See Prlić's Appeal Brief, para. 284, referring to Trial Judgement, Vol. 1, paras 452-464, Vol. 2, paras 330-342, 503-506, 514, 521, Vol. 4, para. 44.

²⁶⁹⁴ *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.

²⁶⁹⁵ See, e.g., Trial Judgement, Vol. 4, paras 21, 45, 54-55 & fns 66, 123, 149, 152-153.

²⁶⁹⁶ See *Mrkšić and Šljivančanin* Appeal Judgement, para. 224.

²⁶⁹⁷ See Trial Judgement, Vol. 4, para. 44, referring to, *inter alia*, Ex. P10041, para. 42.

²⁶⁹⁸ See Trial Judgement, Vol. 4, para. 44, referring to, *inter alia*, Witness BH, T(F). 17534-17535 (closed session) (25 Apr 2007), Ole Brix-Andersen, Ex. P10356 ("*Kordić and Čerkez Case*") T. 10752, 10777-10779 & T(F). 10871-10872, Ex. P01353 (confidential), p. 1, Ex. P02327 (confidential), p. 6, Ex. P02787, p. 4.

²⁶⁹⁹ The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 16.1, which the Appeals Chamber dismisses elsewhere. See *infra*, paras 1147-1174.

(ii) Stojić's appeal (Ground 10)a. Arguments of the Parties

850. Stojić submits that the Trial Chamber failed to provide a “reasoned decision” in entering its finding that the JCE was established “at least as early as mid-January 1993”.²⁷⁰¹ He also submits, in the alternative, that no reasonable trial chamber could have made this finding.²⁷⁰² In support of both submissions, Stojić first argues that the Trial Chamber relied on evidence that does not support the conclusion that the JCE came into being by mid-January 1993,²⁷⁰³ and that the Trial Chamber could not rely on earlier findings in the Trial Judgement because they were “strictly historical and brief”.²⁷⁰⁴ Second, Stojić argues that the Trial Chamber’s finding that the JCE came into being by mid-January 1993 was inconsistent with its other findings that, at the same time, the HZ H-B leaders were participating in peace talks with the BiH Muslims and then, after 30 January 1993, attempted to co-operate with them.²⁷⁰⁵ Third, Stojić submits that the Trial Chamber offered insufficient reasons for its finding that the military actions in Gornji Vakuf formed part of the JCE, whereas those in Prozor in 1992 did not.²⁷⁰⁶ He posits that the Trial Chamber found that the military actions in Prozor in 1992 fell outside the JCE because they were not alleged against Pušić, but since the same was true for the military actions in Gornji Vakuf, they too must also have fallen outside the JCE.²⁷⁰⁷ Last, Stojić argues that there was no change of circumstances in January 1993 that could lead a reasonable trial chamber to find that a JCE came into existence at this time and that, in particular, the attack on Gornji Vakuf was a result of escalating tensions that began there in September 1992.²⁷⁰⁸

851. The Prosecution responds that the Trial Chamber reasonably concluded that the CCP existed by mid-January 1993²⁷⁰⁹ and identified the evidentiary basis for its finding.²⁷¹⁰ It argues that there was no inconsistency between the findings that a CCP existed and that peace talks were ongoing at

²⁷⁰⁰ The Appeals Chamber notes that Prlić’s sub-ground of appeal 16.1 concerns his significant contribution to the the JCE in Gornji Vakuf, whereas his sub-ground of appeal 16.2 concerns his significant contribution to the JCE in Prozor, Sovići, and Doljani. See *infra*, paras 1146-1208.

²⁷⁰¹ Stojić’s Appeal Brief, paras 87-88, referring to Trial Judgement, Vol. 4, para. 44. See Stojić’s Appeal Brief, para. 93.

²⁷⁰² Stojić’s Appeal Brief, paras 88, 92-93.

²⁷⁰³ Stojić’s Appeal Brief, para. 89, referring to Cedric Thornberry, T. 26166-26168, 26173-26176 (14 Jan 2008), Witness BH, T. 17534-17535 (closed session) (25 Apr 2007), Exs. P10041, para. 42, P01353 (confidential), P10356, pp. 10752, 10777-10779, 10871-10872, P02327 (confidential), P02787.

²⁷⁰⁴ Stojić’s Appeal Brief, para. 89. See Stojić’s Appeal Brief, para. 87.

²⁷⁰⁵ Stojić’s Appeal Brief, para. 90.

²⁷⁰⁶ Stojić’s Appeal Brief, para. 91, referring to Trial Judgement, Vol. 4, para. 69.

²⁷⁰⁷ Stojić’s Appeal Brief, para. 91, referring to Trial Judgement, Vol. 4, para. 69 & fn. 179. See Stojić’s Appeal Brief, para. 87.

²⁷⁰⁸ Stojić’s Appeal Brief, paras 92-93.

²⁷⁰⁹ Prosecution’s Response Brief (Stojić), para. 66.

²⁷¹⁰ Prosecution’s Response Brief (Stojić), para. 70. See Prosecution’s Response Brief (Stojić), para. 68.

the same time, and that Stojić ignores the connection the Trial Chamber drew between the two.²⁷¹¹ Further, the Prosecution contends that Stojić misunderstands the Trial Chamber's reason for not finding the attack in Prozor in 1992 to be part of the CCP, which was that it was not convinced beyond reasonable doubt that the JCE members were acting in concert at that time.²⁷¹² Finally, the Prosecution argues that the preceding tensions in Gornji Vakuf did not preclude the Trial Chamber from finding that the JCE members used the 18 January 1993 attack to implement the CCP.²⁷¹³

b. Analysis

852. The Trial Chamber found that the JCE was established "at least as early as mid-January 1993".²⁷¹⁴ The Trial Chamber explained that, from that date:

the leaders of the HVO and certain Croatian leaders aimed to consolidate HVO control over Provinces 3, 8 and 10, which under the Vance-Owen Plan, were attributed to the BiH Croats, and, as the HVO leaders interpreted it, to eliminate all Muslim resistance within these provinces and to "ethnically cleanse" the Muslims so that the provinces would become majority or nearly exclusively Croatian.²⁷¹⁵

853. Regarding Stojić's claims that the evidence the Trial Chamber relied on cannot support these findings, the Appeals Chamber considers that the Trial Chamber reasonably relied on evidence, emanating from as early as January 1993, indicating that the HVO aimed to consolidate control over territories that it considered to be Croatian.²⁷¹⁶ Further, the finding that a JCE existed as of mid-January 1993 is supported by two previous sections of the Trial Judgement detailing, among other things, evidence of orders issued in mid-January 1993 to implement the 15 January 1993 Ultimatum.²⁷¹⁷ While Stojić claims that these previous sections may not be relied on because they were "strictly historical and brief",²⁷¹⁸ the Appeals Chamber considers that the Trial Chamber was not barred from relying on them to support subsequent findings. To the extent that the previous findings impact on criminal responsibility,²⁷¹⁹ the Trial Chamber addressed their significance in the chapter discussing the CCP and the criminal responsibility of the Appellants, which included explaining how the events in mid-January 1993 formed part of the CCP.²⁷²⁰ The Appeals Chamber

²⁷¹¹ Prosecution's Response Brief (Stojić), para. 67. See also Prosecution's Response Brief (Stojić), para. 68; Appeal Hearing, AT. 347-348 (21 Mar 2017) (arguing that Stojić ignores the Trial Chamber's findings that the JCE members relied on their own interpretation of the Vance-Owen Peace Plan to implement the CCP).

²⁷¹² Prosecution's Response Brief (Stojić), para. 69.

²⁷¹³ Prosecution's Response Brief (Stojić), para. 68.

²⁷¹⁴ Trial Judgement, Vol. 4, para. 44.

²⁷¹⁵ Trial Judgement, Vol. 4, para. 44.

²⁷¹⁶ See Trial Judgement, Vol. 4, fn. 122, referring to, *inter alia*, Ex. P01353 (confidential), p. 1. See also Trial Judgement, Vol. 4, paras 44 *et seq.* and references cited therein.

²⁷¹⁷ See Trial Judgement, Vol. 4, fn. 122, referring to, *inter alia*, Trial Judgement, Vol. 1, "Negotiations within the Framework of the Vance-Owen Plan (August 1992 – January 1993)", "Subsequent History of the Vance-Owen Plan; Attempts to Implement the Principles of this Plan in the Field (January 1993 – August 1993)".

²⁷¹⁸ Stojić's Appeal Brief, para. 89, citing Trial Judgement, Vol. 1, para. 408.

²⁷¹⁹ See Trial Judgement, Vol. 1, para. 408.

²⁷²⁰ See Trial Judgement, Vol. 4, paras 44-45, 65. See also Trial Judgement, Vol. 4, paras 125-128.

finds no fault in this approach and dismisses Stojić's argument that the Trial Chamber's conclusion was not supported by the evidence and findings on which it relied.

854. As to Stojić's argument that the Trial Chamber's findings are inconsistent, the Appeals Chamber finds that the establishment of a JCE by mid-January 1993 is not, in itself, contradicted by the findings that BiH Croats and Muslims participated in peace talks and attempted to co-operate after 30 January 1993.²⁷²¹ Stojić ignores relevant Trial Chamber findings, notably that the HVO conducted military campaigns in the provinces it considered Croatian while conducting peace talks and that JCE members sought "to modify the ethnic composition of the so-called Croatian provinces in light of their interpretation of the Vance-Owen Plan" according to which those provinces were to become "majority or nearly exclusively Croatian".²⁷²² Accordingly, the Appeals Chamber dismisses Stojić's argument.

855. Turning to Stojić's argument regarding the Prozor attack, the Appeals Chamber notes that the Trial Chamber found that "the evidence does not support a finding that the crimes committed in Prozor in October 1992 formed part of the [CCP inasmuch as the Trial Chamber] was not in a position to establish that, at that time, the members of the JCE were acting in concert".²⁷²³ The Appeals Chamber also observes that, in a footnote at the end of this finding, the Trial Chamber recalled that "Pušić [was] not being prosecuted for the crimes committed in Prozor in October 1992".²⁷²⁴ The Appeals Chamber sees no ambiguity with the inclusion of this footnote.

856. Moreover, the Appeals Chamber recalls that the Trial Chamber found that the CCP came into being in January 1993 based on a number of factors, including in particular the presentation of the Vance-Owen Peace Plan on 2 January 1993 and the 15 January 1993 Ultimatum,²⁷²⁵ as well as the evidence discussed above.²⁷²⁶ Further, the Trial Chamber explicitly found that "many crimes committed by HVO forces from January 1993 to April 1994 tended to follow a clear pattern of conduct" and that in the vast majority of cases these crimes were not committed by chance or randomly.²⁷²⁷ Accordingly, the Trial Chamber's finding on the start of the JCE was not based on the membership of the JCE alone but rather also on the pattern of events starting in January 1993. The

²⁷²¹ See also *infra*, paras 985-990.

²⁷²² Trial Judgement, Vol. 4, paras 44-45, 65. See also Trial Judgement, Vol. 4, paras 46, 52, 54-55.

²⁷²³ Trial Judgement, Vol. 4, para. 69.

²⁷²⁴ Trial Judgement, Vol. 4, para. 69 & fn. 179.

²⁷²⁵ Trial Judgement, Vol. 1, paras 445, 451-452, Vol. 4, paras 44, 125. See also *supra*, paras 852-853.

²⁷²⁶ See *supra*, para. 853.

²⁷²⁷ Trial Judgement, Vol. 4, para. 65. The Appeals Chamber also notes in this regard that the Trial Chamber found that the operations in Gornji Vakuf villages unfolded "in exactly the same way" and that "[b]earing in mind the total similarity in the way the operations unfolded and the crimes committed in each of these villages" it was satisfied that they "corresponded to a preconceived plan". Trial Judgement, Vol. 4, para. 561. See also Trial Judgement, Vol. 4, para. 704.

Appeals Chamber therefore considers that, reading the Trial Judgement as a whole,²⁷²⁸ the Trial Chamber clearly explained why it found that the CCP came into being in January 1993 and not in October 1992.

857. As for Stojić's argument that tensions began escalating in Gornji Vakuf in September 1992, the Appeals Chamber considers that this did not preclude the Trial Chamber from finding that a JCE was established by mid-January 1993 and that the 18 January 1993 attack on Gornji Vakuf was evidence of the implementation of the CCP.²⁷²⁹ Further, the Appeals Chamber considers that the Trial Chamber's findings do reflect a change of circumstances in January 1993, notably the presentation of the Vance-Owen Peace Plan on 2 January 1993 and the 15 January 1993 Ultimatum, as discussed above.²⁷³⁰ Finally, the Appeals Chamber recalls that the Trial Chamber found that the JCE was established "at least as early as mid-January 1993".²⁷³¹ The Appeals Chamber therefore dismisses Stojić's argument.

858. In light of the above, the Appeals Chamber considers that the Trial Chamber's selection of the date of mid-January 1993 was neither arbitrary nor unreasoned.²⁷³² The Appeals Chamber therefore dismisses Stojić's arguments that the Trial Chamber failed to provide a reasoned opinion. Further, having dismissed all of his submissions above, the Appeals Chamber also rejects his alternative argument that no reasonable trier of fact could have found that the JCE came into being in mid-January 1993. Stojić's ground of appeal 10 is therefore dismissed.

(iii) Stojić's appeal (Ground 4 in part)

859. Stojić argues that the Trial Chamber erred in finding that the 18 January 1993 attacks in Gornji Vakuf Municipality fell within the JCE.²⁷³³ He submits that the 18 January 1993 attacks cannot be divorced from the fighting that broke out in Gornji Vakuf Municipality on 11 January 1993, and that the Trial Chamber thus unreasonably found that the earlier episode of fighting was not part of the JCE, whereas its continuation on 18 January 1993 was.²⁷³⁴

860. The Prosecution responds that the Trial Chamber acknowledged HVO-ABiH clashes prior to 18 January 1993 in Gornji Vakuf Municipality, but reasonably found that the crimes committed

²⁷²⁸ *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379. See *Kalimanzira* Appeal Judgement, para. 227.

²⁷²⁹ Trial Judgement, Vol. 4, paras 44-45.

²⁷³⁰ Trial Judgement, Vol. 1, paras 445, 451-452, Vol. 4, paras 44, 125. See *supra*, paras 855-856.

²⁷³¹ Trial Judgement, Vol. 4, para. 44 (emphasis added).

²⁷³² See Stojić's Appeal Brief, para. 93.

²⁷³³ Stojić's Appeal Brief, para. 56, referring to Trial Judgement, Vol. 4, paras 44-45, 69.

²⁷³⁴ Stojić's Appeal Brief, para. 56, referring to Trial Judgement, Vol. 2, paras 336-337. See Stojić's Reply Brief, para. 22; Appeal Hearing, AT. 276-277 (21 Mar 2017) (arguing that had there been a JCE to take over Banovina, the HVO would have taken over the whole of Gornji Vakuf Municipality but did not do so).

by the HVO during and after 18 January 1993 formed part of the CCP.²⁷³⁵ In particular, the Prosecution highlights the “total similarity” in the way in which the operations and the crimes in January 1993 unfolded.²⁷³⁶

861. The Appeals Chamber considers that Stojić mischaracterises the Trial Chamber’s approach regarding the 11 and 18 January 1993 attacks. The Trial Chamber’s finding that the 18 January 1993 attacks formed part of the CCP is based on findings regarding: (1) the crystallisation of the CCP by mid-January 1993, on the basis of broader geopolitical circumstances, such as the presentation of the Vance-Owen Peace Plan on 2 January 1993 and the 15 January 1993 Ultimatum;²⁷³⁷ (2) the “total similarity in the way the operations unfolded and the crimes [were] committed” in particular during the HVO attacks of the villages of Duša, Hrasnica, Uzričje, and Ždrimci on 18 January 1993, which led the Trial Chamber to find that they “corresponded to a preconceived plan”;²⁷³⁸ and (3) the fact that these events formed part of a “pattern of conduct” with later crimes.²⁷³⁹ Stojić fails to show how the clashes between the HVO and ABiH earlier in the month of January 1993 – which the Trial Chamber took into account²⁷⁴⁰ – had any impact on the finding that the 18 January 1993 attacks formed part of the CCP. Stojić’s submission is dismissed. The Appeals Chamber therefore finds that Stojić has failed to show that the Trial Chamber erred in finding that the 18 January 1993 attacks in Gornji Vakuf Municipality fell within the JCE, and rejects his ground of appeal 4 in relevant part.

(iv) Praljak’s appeal (Ground 15)

a. Arguments of the Parties

862. Praljak submits that the Trial Chamber erred when it concluded that the crimes in Gornji Vakuf in January 1993, including the killings in the village of Duša, fell within the CCP.²⁷⁴¹ In this regard, he submits that as fighting broke out in Gornji Vakuf Municipality on 11 January 1993, the finding that the CCP was established in mid-January 1993 is contradictory,²⁷⁴² and an alternative reasonable inference was that HVO attacks occurred in response to military operations initiated by the ABiH and that the HVO had no interest in military activities against the

²⁷³⁵ Prosecution’s Response Brief (Stojić), para. 37.

²⁷³⁶ Prosecution’s Response Brief (Stojić), para. 37, referring to Trial Judgement, Vol. 4, para. 561. See also Appeal Hearing, AT. 347-348 (21 Mar 2017).

²⁷³⁷ Trial Judgement, Vol. 1, paras 445, 451-452, Vol. 4, paras 44, 125, 131, 142, 271.

²⁷³⁸ Trial Judgement, Vol. 4, para. 561. See also Trial Judgement, Vol. 4, paras 562, 704, 708, 922.

²⁷³⁹ Trial Judgement, Vol. 4, para. 65.

²⁷⁴⁰ Trial Judgement, Vol. 2, paras 336-337.

²⁷⁴¹ Praljak’s Appeal Brief, paras 239-245. See Appeal Hearing, AT. 399 (22 Mar 2017).

²⁷⁴² Praljak’s Appeal Brief, paras 233, 238. Praljak argues in particular that the fact that HVO activities ceased without taking over the entire Gornji Vakuf Municipality shows that the actions were not planned. See Praljak’s Appeal Brief, para. 236; Appeal Hearing, AT. 402 (22 Mar 2017). See also Praljak’s Appeal Brief, paras 242, 244-245.

ABiH.²⁷⁴³ Praljak also argues that while a common criminal plan need not be previously arranged or formulated and may materialise extemporaneously, it must be established prior to the commission of an action or a crime,²⁷⁴⁴ and that the Trial Chamber erred in law when it inferred the existence of a plan from the “sole commission” of the crimes in Gornji Vakuf.²⁷⁴⁵ Finally, Praljak contends that the Trial Chamber did not give reasons why the killings in Duša should be included in the CCP.²⁷⁴⁶ He argues that the Trial Chamber did not properly establish that all JCE members “shared [the] intent to perpetrate this crime”,²⁷⁴⁷ and “did not establish the required intent for the said crime”, referring to his arguments made elsewhere challenging the Trial Chamber’s findings that the HVO intended to cause serious bodily harm to civilians in Duša and thus committed murder and wilful killing in that village.²⁷⁴⁸

863. The Prosecution responds that the Trial Chamber reasonably concluded that the crimes in Gornji Vakuf Municipality in the latter part of January 1993 formed part of the CCP.²⁷⁴⁹ In particular, the Prosecution responds that: (1) there was no alternative reasonable explanation for the events in Gornji Vakuf;²⁷⁵⁰ (2) Praljak repeats his failed trial arguments or merely offers an alternative interpretation of the evidence;²⁷⁵¹ (3) as the Trial Chamber reasonably concluded, the JCE members were actively involved in the progress of HVO operations in Gornji Vakuf, which “unfolded in exactly the same way” and “were part of an attack plan for the capture of the municipality by the HVO”,²⁷⁵² and (4) the Trial Chamber’s finding on the commencement of the CCP was not based “solely on” the occurrence of the crimes in Gornji Vakuf Municipality, but on broader factors including the Vance-Owen Peace Plan and the 15 January 1993 Ultimatum, as well as the similarity between the Gornji Vakuf crimes and other military operations.²⁷⁵³

²⁷⁴³ Praljak’s Appeal Brief, paras 234-236, 243, 245. Praljak also submits that: (1) the HVO tried to calm tensions in conflicts in the municipality; (2) the HVO Main Staff instructed all HVO commands to solve the problems through talks; and (3) at the relevant time, the HVO and ABiH were allies against the VRS. See Praljak’s Appeal Brief, para. 235. See also Praljak’s Appeal Brief, para. 243; Appeal Hearing, AT. T. 472 (22 Mar 2017).

²⁷⁴⁴ Praljak’s Appeal Brief, paras 237-238, referring to *Brdanin* Appeal Judgement, para. 418, *Stakić* Appeal Judgement, para. 64, *Vasiljević* Appeal Judgement, para. 100, *Kvočka et al.* Appeal Judgement, para. 117, *Tadić* Appeal Judgement, para. 227.

²⁷⁴⁵ Praljak’s Appeal Brief, para. 237, referring to Trial Judgement, Vol. 4, para. 45.

²⁷⁴⁶ Praljak’s Appeal Brief, heading before para. 239, paras 239-241.

²⁷⁴⁷ Praljak’s Appeal Brief, para. 240, referring to *Tadić* Appeal Judgement, para. 228, *Stakić* Appeal Judgement, para. 65; Appeal Hearing, AT. 400 (22 Mar 2017).

²⁷⁴⁸ Praljak’s Appeal Brief, para. 240, referring to Praljak’s Appeal Brief, paras 196-198 (sub-ground of appeal 12.2).

²⁷⁴⁹ Prosecution’s Response Brief (Praljak), para. 107. See also Prosecution’s Response Brief (Praljak), paras 104, 106.

²⁷⁵⁰ Prosecution’s Response Brief (Praljak), paras 107-108, 112.

²⁷⁵¹ Prosecution’s Response Brief (Praljak), para. 107, referring to Praljak’s Appeal Brief, paras 234-236, 243, Praljak’s Final Trial Brief, paras 231-232, 235, 243, Praljak Closing Arguments, T. 52485 (17 Feb 2011).

²⁷⁵² Prosecution’s Response Brief (Praljak), paras 110-111, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 126-127, 130-132, 330-334, 336, 561.

²⁷⁵³ Prosecution’s Response Brief (Praljak), paras 108-109. The Prosecution responds in respect of Praljak’s arguments with regard to Duša that the Trial Chamber: (1) properly applied the law as regards JCE liability; and (2) did not make any error with regard to its findings as to Duša, given the broader basis for the conclusion that the CCP existed. See Prosecution’s Response Brief (Praljak), para. 107.

b. Analysis

864. The Appeals Chamber turns first to Praljak's argument that the Trial Chamber erred in including the 18 January 1993 events within the CCP, as it failed to consider the alternative reasonable inference that these events were a defensive response to earlier clashes with the ABiH. The Appeals Chamber discerns no contradiction between the finding that clashes between the HVO and ABiH occurred on 11-12 January 1993, and that the JCE came into existence "as early as mid-January 1993".²⁷⁵⁴ While the Trial Chamber did not specifically refer to the fighting that broke out on 11-12 January 1993 when reaching this conclusion, the Appeals Chamber recalls the Trial Chamber's finding that the 18 January 1993 Gornji Vakuf events fell within the CCP was based on a number of findings,²⁷⁵⁵ and was not affected by the fact that conflict with the ABiH continued.²⁷⁵⁶ For this reason, the Appeals Chamber also dismisses the assertion that the Trial Chamber based its conclusion that the CCP came into existence on the events in Gornji Vakuf alone.²⁷⁵⁷ The Appeals Chamber finds that Praljak has not demonstrated that no reasonable trier of fact could conclude that the only reasonable inference from the evidence was that the attacks on Gornji Vakuf Municipality were part of the CCP. The Appeals Chamber finds no legal error in the Trial Chamber's finding. Praljak's argument in this regard therefore fails.

865. Regarding Praljak's submissions that the Trial Chamber did not give reasons why the killings in Duša should be included in the CCP, the Appeals Chamber observes that the Trial Chamber did not expressly refer to those killings.²⁷⁵⁸ However, the Trial Chamber explained, based on a number of factors, as stated earlier,²⁷⁵⁹ that in furtherance of the CCP the HVO launched the attack on 18 January 1993 on the town of Gornji Vakuf and "several surrounding villages", including Duša.²⁷⁶⁰ The Trial Chamber then noted that the HVO "first shelled these sites", and provided a cross-reference to its earlier findings on the crimes that occurred in this village,²⁷⁶¹ including that the HVO killed seven people through shelling in Duša.²⁷⁶² The Appeals Chamber therefore considers that the Trial Chamber included the killings in Duša within the scope of the

²⁷⁵⁴ Trial Judgement, Vol. 4, para. 44.

²⁷⁵⁵ See *supra*, paras 852, 858, 861.

²⁷⁵⁶ See Trial Judgement, Vol. 1, paras 460-461. See also Trial Judgement, Vol. 4, para. 45.

²⁷⁵⁷ Cf. Praljak's Appeal Brief, paras 237-238. The Appeals Chamber also rejects Praljak's submissions regarding alleged HVO co-operation with the ABiH on the basis that he fails to show how this would impact on the Trial Chamber's CCP findings relevant to his conviction. Cf. Praljak's Appeal Brief, paras 234-236, 243, 245.

²⁷⁵⁸ See Trial Judgement, Vol. 4, para. 45.

²⁷⁵⁹ See *supra*, paras 852, 858, 861.

²⁷⁶⁰ Trial Judgement, Vol. 4, para. 45. See Trial Judgement, Vol. 2, paras 358-368, 398-410.

²⁷⁶¹ See Trial Judgement, Vol. 4, para. 45 & fn. 124 (referring to "the Chamber's factual findings with regard to the Municipality of Gornji Vakuf"). See also Trial Judgement, Vol. 2, paras 358-368, 398-410.

²⁷⁶² See Trial Judgement, Vol. 2, paras 366, 368 and references cited therein. See also Trial Judgement, Vol. 3, paras 663, 711.

CCP, as illustrated also by its finding that, with the exception of Pušić, all the Appellants intended the crimes in Gornji Vakuf and possessed intent for murder at that point in time.²⁷⁶³

866. However, as found earlier in relation to Praljak's ground of appeal 12, the Appeals Chamber has overturned the Trial Chamber's finding that the deaths of seven civilians in Duša constituted murder and wilful killing ("Duša Reversal") and, as a result, has overturned the Appellants' convictions related to those deaths under Counts 1, 2, 3, 15, and 16.²⁷⁶⁴ On that basis, the Appeals Chamber considers that Praljak has demonstrated that the deaths of seven civilians in Duša were not part of the CCP. Accordingly, the Appeals Chamber dismisses his remaining arguments on this issue as moot. The impact of this finding, as far as the scope of the CCP is concerned, will be examined below.²⁷⁶⁵

867. For the foregoing reasons, the Appeals Chamber grants Praljak's ground of appeal 15, in part, and reverses the Trial Chamber's finding that the Duša killings were part of the CCP. As for the remainder of ground 15, the Appeals Chamber finds that Praljak has failed to show that the Trial Chamber erred in finding that the crimes in Gornji Vakuf Municipality in January 1993, with the exception of the killings in Duša, fell within the CCP.²⁷⁶⁶

(v) Petković's appeal (Sub-ground 3.2.2.1 in part)

a. Arguments of the Parties

868. Petković argues that the evidence and findings relied upon by the Trial Chamber do not support the inference that the plan to ethnically cleanse Provinces 3, 8, and 10 had crystallised by mid-January 1993.²⁷⁶⁷ Petković also alleges errors in the conclusion that the HVO removed the Muslim population from the villages of Duša, Hrasnica, Uzričje, and Ždrimci in Gornji Vakuf Municipality to ethnically cleanse the municipality.²⁷⁶⁸ In this regard, he submits that with the exception of an "unknown number" of citizens from Duša and Hrasnica, the Trial Chamber's findings show that most of the villagers of Duša, Hrasnica, Uzričje, and Ždrimci stayed within

²⁷⁶³ Trial Judgement, Vol. 4, paras 134, 337, 562, 710, 923. With respect to Pušić, as noted earlier, he was found to have been a member of the JCE only from April 1993. See *supra*, para. 855.

²⁷⁶⁴ See *supra*, paras 441-443.

²⁷⁶⁵ See *infra*, paras 874 *et seq.*

²⁷⁶⁶ See also *infra*, para. 883.

²⁷⁶⁷ Petković's Appeal Brief, para. 43, referring to, *inter alia*, Exs. P10041, para. 42, P01353 (confidential), p. 1, P02327 (confidential), p. 6, P02787, p. 4, P10356, Cedric Thornberry, T. 26166-26168, 26173-26176 (14 Jan 2008), Witness BH, T. 17478-17479 (closed session) (24 Apr 2007). See also Petković's Appeal Brief, paras 42, 44.

²⁷⁶⁸ Petković's Appeal Brief, para. 46. See also Petković's Appeal Brief, para. 45. Petković also submits that the Appellants were not charged "with the deportation/forcible transfer of Muslims" from Gornji Vakuf. Petković Appeal Brief, para. 46.

Gornji Vakuf Municipality.²⁷⁶⁹ In Petković's view, given that the "ethnic map of the Municipality remained unchanged", no reasonable trier of fact could have concluded that HVO military actions in Gornji Vakuf in January 1993 fell within the CCP, or that the local Muslim population was "ethnically cleansed" from this municipality.²⁷⁷⁰

869. The Prosecution responds that the Trial Chamber reasonably found that the JCE existed from at least mid-January 1993.²⁷⁷¹ It argues that Petković ignores the Trial Chamber's findings about the events following the 15 January 1993 Ultimatum, as well as other evidence and findings relied upon to support the conclusion that the CCP commenced by mid-January 1993.²⁷⁷² As for the crimes in Gornji Vakuf Municipality, the Prosecution submits that they were reasonably found to further the CCP, given the similarities between these crimes and later ones in other municipalities.²⁷⁷³ The Prosecution also argues, relying on the *Dorđević* Appeal Judgement, that the Tribunal's jurisprudence disproves Petković's claim that the ethnic composition of a region needs to change for ethnic cleansing to occur.²⁷⁷⁴ It notes that, in any event, Petković ignores that the crime of forcible displacement occurred on a "massive scale" and thus the ethnic map was redrawn in several municipalities, including Gornji Vakuf.²⁷⁷⁵

870. Petković replies that the *Dorđević* Appeals Chamber's finding confirms that at least a temporary change in ethnic balance is necessary in order to establish a common criminal plan.²⁷⁷⁶

²⁷⁶⁹ Petković's Appeal Brief, paras 47-50, referring to Trial Judgement, Vol. 2, paras 405, 426-427, 452-454, 466-468, Vol. 3, paras 845-848, 899-900, 902, 904, 906. Petković argues that the Trial Chamber based its findings regarding the removal of Muslims from Hrasnica on Exhibits P09710 (confidential) and P10106. See Petković's Appeal Brief, para. 47. Petković also asserts that an unidentified number of civilians asked UNPROFOR to take them to the municipality of Bugojno. See Petković's Appeal Brief, para. 49.

²⁷⁷⁰ Petković's Appeal Brief, para. 50. See also Petković's Appeal Brief, paras 44, 51; Appeal Hearing, AT. 485-486, 494-495, 524 (23 Mar 2017).

²⁷⁷¹ Prosecution's Response Brief (Petković), para. 38. See Prosecution's Response Brief (Petković), paras 16-18.

²⁷⁷² Prosecution's Response Brief (Petković), paras 38-39, referring to, *inter alia*, Trial Judgement, Vol. 4, fn. 122. In particular, the Prosecution argues that Petković disregards: (1) further findings elsewhere in the Trial Judgement regarding the 15 January 1993 Ultimatum; (2) Exhibit P01353 (confidential), as well as Cedric Thornberry's testimony confirming Exhibit P01353's accuracy; (3) the evidence of Ole Brix-Anderson; (4) the testimony of Witness BH; (5) Exhibit P02327 (confidential); and (6) Exhibit P02787. See Prosecution's Response Brief (Petković), para. 39, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 452-454, 460, Vol. 4, para. 112, fns 1092-1093, 2449, Cedric Thornberry, T. 26175-26176 (14 Jan 2008), Ex. P10356, pp. 3, 34, Witness BH, T. 17534-17353 (closed session) (25 Apr 2007).

²⁷⁷³ Prosecution's Response Brief (Petković), para. 41; Appeal Hearing, AT. 533 (23 Mar 2017). See also Prosecution's Response Brief (Petković), para. 40.

²⁷⁷⁴ Prosecution's Response Brief (Petković), para. 42, referring to *Dorđević* Appeal Judgement, para. 154. See Appeal Hearing, AT. 532-533 (23 Mar 2017).

²⁷⁷⁵ Prosecution's Response Brief (Petković), para. 43; Appeal Hearing, AT. 533, 546-550 (23 Mar 2017). The Prosecution also argues that the Trial Chamber's findings regarding the forcible removals from Hrasnica village were based on more than the exhibits (Exs. P09710 (confidential) and P10106) to which Petković refers. See Prosecution's Response Brief (Petković), para. 43. See also Prosecution's Response Brief (Petković), para. 44.

²⁷⁷⁶ Petković's Reply Brief, para. 14(i), referring to *Dorđević* Appeal Judgement, para. 154; Appeal Hearing, AT. 567 (23 Mar 2017).

b. Analysis

871. Regarding Petković's evidential challenges in relation to the finding that the JCE came into existence as of mid-January 1993, the Appeals Chamber notes that he points to the evidence underpinning the Trial Chamber's inference that the leaders of the HVO and certain Croatian leaders aimed, by mid-January 1993, to ethnically cleanse the Muslim population in order to achieve the Ultimate Purpose of the JCE,²⁷⁷⁷ and argues that the evidence and findings do not support the Trial Chamber's conclusion. In other words, Petković offers his own interpretation of the evidence without showing that no reasonable trier of fact could have interpreted this evidence as the Trial Chamber did. Accordingly, Petković's submissions are dismissed.

872. As for Petković's submissions regarding the change in the ethnic composition of Gornji Vakuf Municipality, the Appeals Chamber notes that the findings pointed to by Petković indeed indicate that only some, as opposed to all, of the occupants of the villages left the municipality.²⁷⁷⁸ However, the Appeals Chamber considers there to be no error in the Trial Chamber's conclusion that, despite this, the events in Gornji Vakuf formed part of the CCP as the Trial Chamber relied on a number of factors in addition to the removal of villagers from the municipality. For example, the Trial Chamber found that the crimes in Gornji Vakuf, as well as subsequent crimes, "tended to follow a clear pattern of conduct".²⁷⁷⁹ The Trial Chamber also drew explicit parallels between the HVO operations in Gornji Vakuf and its subsequent operations in the municipalities of Jablanica and Prozor, showing in turn that these operations, and the resulting crimes, were part of the CCP.²⁷⁸⁰ Further, in the present case, the Trial Chamber concluded that the removal of persons from villages in Gornji Vakuf Municipality amounted to crimes on the basis of, *inter alia*, the serious mental harm that these transfers engendered,²⁷⁸¹ and the deprivation of civilians' right to enjoy a normal family life.²⁷⁸² The Trial Chamber also expressly took account of the fact that the transfers affected a particular portion of the population, namely women, children,

²⁷⁷⁷ See Trial Judgement, Vol. 4, para. 44 & fn. 122, referring to the evidence of Witnesses Cedric Thornberry, BH, Ole Brix-Andersen, Exs. P02327 (confidential), P02787, Trial Judgement, Vol. 1, paras 441-451 ("Negotiations within the Framework of the Vance-Owen Plan (August 1992-January 1993)"), 452-456 ("Subsequent History of the Vance-Owen Plan; Attempts to Implement the Principles of this Plan in the Field (January 1993 – August 1993)").

²⁷⁷⁸ See Trial Judgement, Vol. 2, paras 405, 426-427, 466-468, Vol. 3, paras 845-848, 899-906. The Appeals Chamber notes that paragraphs 452-454 of Volume 2 of the Trial Judgement refer to the removal of named individual civilians in the village of Uzričje and do not directly support the conclusion that only some citizens were affected.

²⁷⁷⁹ Trial Judgement, Vol. 4, para. 65. In this respect, the Appeals Chamber notes that contrary to Petković's submission, the Appellants were charged with forcible transfer in Gornji Vakuf Municipality (Count 8), as well as unlawful transfer of a civilian (Count 9), and that he himself was convicted for those crimes in relation to Gornji Vakuf. Trial Judgement, Vol. 4, para. 820.

²⁷⁸⁰ Trial Judgement, Vol. 4, paras 45-48. See also Trial Judgement, Vol. 4, para. 142 (finding that the 4 April 1993 Ultimatum which led to crimes in Prozor was identical to the 15 January 1993 Ultimatum).

²⁷⁸¹ Trial Judgement, Vol. 3, paras 845-848. See also Trial Judgement, Vol. 4, paras 94-95, 141, 197, 251, 315.

²⁷⁸² Trial Judgement, Vol. 3, paras 899-906. See also Trial Judgement, Vol. 4, paras 94-95, 141, 197, 251, 315.

and the elderly.²⁷⁸³ Finally, the Appeals Chamber notes that, contrary to Petković's argument, the *Dorđević* Appeal Judgement does not assist him as it holds that, as a matter of law, a common purpose need not be achieved in order for a trial chamber to conclude that a plurality of persons shared it or that crimes were committed in furtherance of a joint criminal enterprise.²⁷⁸⁴ The Appeals Chamber thus finds that Petković fails to demonstrate any error in the Trial Chamber's conclusion that the crimes in Gornji Vakuf formed part of the CCP. Petković's argument is therefore dismissed.

873. The Appeals Chamber finds that Petković has failed to show that the Trial Chamber erred in inferring that the plan to ethnically cleanse Provinces 3, 8, and 10 had crystallised by mid-January 1993 and that the military actions in Gornji Vakuf Municipality formed part of the CCP. Petković's sub-ground of appeal 3.2.2.1 is dismissed in relevant part.

(vi) Impact of the Duša Reversal on the CCP

874. Elsewhere in the Judgement, the Appeals Chamber has overturned the Trial Chamber's findings that the deaths of seven civilians in Duša in January 1993 constituted the crimes of murder and wilful killing and, as a result, has overturned the Appellants' convictions related to those killings under Counts 1, 2, 3, 15, and 16.²⁷⁸⁵ The Appeals Chamber will now examine what impact, if any, the Duša Reversal has on the Trial Chamber's conclusions concerning the scope of the CCP and, more particularly, the crimes that formed part of it.²⁷⁸⁶

875. As a preliminary matter, the Appeals Chamber notes that the Trial Chamber found that certain murders and wilful killings charged under Counts 2 and 3 formed part of the CCP, while others did not. Specifically, the Trial Chamber found that murders and wilful killings committed during attacks on villages ("attack murders") or in the context of the systematic use of detainees for labour on the front line or as human shields ("forced labour murders") formed part of the CCP (collectively, "CCP murders"), whereas murders and wilful killings committed during evictions (or closely linked thereto), or as a result of mistreatment or poor conditions of confinement during detention, did not.²⁷⁸⁷

²⁷⁸³ Trial Judgement, Vol. 3, paras 845-848, 899-906.

²⁷⁸⁴ See *Dorđević* Appeal Judgement, para. 154 ("The Appeals Chamber considers that this goal [of demographically modifying Kosovo] does not require a finding that the ethnic balance be changed permanently, or that all members of the JCE shared the intent to permanently remove [...]. [T]he Trial Chamber's conclusion that the common purpose was to change the ethnic balance of Kosovo to ensure Serb control over the province would still be reasonable even if the shift in ethnic balance was temporary and the purpose in fact not achieved."). Cf. Petković's Reply Brief, para. 14(i).

²⁷⁸⁵ See *supra*, paras 441-443, 866.

²⁷⁸⁶ See *supra*, para. 866.

²⁷⁸⁷ Compare Trial Judgement, Vol. 4, paras 59, 61, 66, 68, with Trial Judgement, Vol. 4, paras 70-71, 281, 433, 632, 822, 1008, 1213.

876. The Trial Chamber found that the deaths of seven civilians in Duša, along with the established crimes in the Gornji Vakuf Municipality, marked the very start of the JCE. In addition, according to the Trial Chamber's findings, these deaths were, with one exception, the sole established attack murders that occurred in the period from January 1993 until June 1993,²⁷⁸⁸ the latter date marking the expansion of the CCP with the addition of East Mostar-related crimes.²⁷⁸⁹ This one exception is the 19 April 1993 incident in the village of Toščanica in Prozor Municipality, where the Trial Chamber found that HVO soldiers killed two unarmed men during the HVO attack on the village.²⁷⁹⁰ In contrast to this period, a number of attack murders was found by the Trial Chamber to have occurred from June 1993, starting with the East Mostar siege.²⁷⁹¹ As for forced labour murders, the Trial Chamber found that the Heliodrom detainees were killed during forced labour in the period between May 1993 and March 1994.²⁷⁹² However, a close analysis of the evidence relied upon for this finding shows that no forced labour murders in fact occurred before June 1993 and that the majority occurred in July 1993 and onwards.²⁷⁹³ Accordingly, the Trial Chamber made an error of fact in relation to its finding that the Heliodrom killings during forced labour took place already in May 1993. The impact of this error will be considered below.²⁷⁹⁴

a. Arguments of the Parties

877. The incident in Duša being such a significant event in relation to the scope of the CCP, the Appeals Chamber invited the Parties to make submissions at the Appeal Hearing as to the impact a

²⁷⁸⁸ See generally Trial Judgement, Vol. 3, paras 655-756 (containing the Trial Chamber's legal findings with respect to Counts 2 and 3 concerning murder and wilful killing, respectively).

²⁷⁸⁹ See *supra*, paras 792-814.

²⁷⁹⁰ The Appeals Chamber notes that, having found that two unarmed men were killed during an attack on the village, the Trial Chamber made legal findings under Counts 2 and 3 for those murders. See Trial Judgement, Vol. 2, para. 91, Vol. 3, paras 656-657, 705-706. However, there is no discussion of those murders in the Appellants' responsibility sections concerning their contribution and intent for crimes in Prozor Municipality. See Trial Judgement, Vol. 4, paras 141, 147 (Prlić), 329 (Stojić), 573 (Praljak), 692-693, 699 (Petković), 998 (Ćorić), 1099 (Pušić). While for Prlić the Trial Chamber appears to have found him responsible for Counts 2 and 3 in relation to Prozor Municipality, Prlić's responsibility section establishes only that, given his contribution to the events in Prozor, he accepted the commission of crimes committed against Muslims in Prozor, "namely the destruction of Muslim property and the arrests and removal of the Muslim population" and makes no mention of the Prozor killings. See Trial Judgement, Vol. 4, paras 141, 146-147. Cf. Trial Judgement, Vol. 4 para. 278 (listing Counts 2 and 3 under Prozor Municipality as being among the crimes for which it found Prlić guilty through his participation in a joint criminal enterprise).

²⁷⁹¹ See Trial Judgement, Vol. 3, paras 672-679, 681, 683, 699-700, 721-722, 724-729, 732, 734, 752-753. The first such murder took place in East Mostar on 6 June 1993. See Trial Judgement, Vol. 2, paras 1061-1070. The Appeals Chamber also notes that the Trial Chamber found that East Mostar was subjected to intense and uninterrupted firing and shelling from June 1993 to March 1994. See Trial Judgement, Vol. 2, para. 1018.

²⁷⁹² See Trial Judgement, Vol. 3, paras 674-676, 724-726 & fns 1310, 1369 (referring to the Trial Chamber's factual findings regarding the forced labour murders in the Heliodrom).

²⁷⁹³ See Trial Judgement, Vol. 2, paras 1600-1604 and references cited therein. See also Trial Judgement, Vol. 2, para. 1616 (stating that the evidence showed the use of human shields only in the months of July to September 1993), Vol. 3, paras 677-679, 727-729.

²⁷⁹⁴ See *infra*, paras 881-882 (& fn. 2810), 2792.

potential reversal of the murder of the seven civilians in Duša would have, if any, on the CCP and on the *mens rea* of each of the Appellants.²⁷⁹⁵

878. While Prlić and Petković fail to address this specific issue,²⁷⁹⁶ Praljak argues that should the Trial Chamber's findings regarding the HVO's intent for killings in Duša be overturned, "the events" in Gornji Vakuf could not be part of the CCP and should be seen as an incident between the HVO and ABiH, which did not spread to the entire area of the HZ H-B.²⁷⁹⁷ As for the impact on his *mens rea*, Praljak refers to his ground of appeal 12 and submits that the evidence did not support the finding that he intended civilians to be killed in Duša.²⁷⁹⁸ Ćorić makes a similar argument, namely that the events in Gornji Vakuf were an isolated local incident. He also submits that if the murders in Duša are overturned no basis would exist for the Trial Chamber's findings that there was a pattern of crimes and the resulting conclusion that he was responsible for murder and wilful killing, even in relation to the killing incidents that occurred after June 1993 in Mostar and the Heliodrom.²⁷⁹⁹ Ćorić further argues that since murder was found to be part of the clear pattern of conduct by the Trial Chamber, it is "essential" to the finding that the CCP existed such that its removal means that Ćorić cannot be said to have had any JCE I liability and should be fully acquitted under Counts 2 and 3.²⁸⁰⁰ Pušić acknowledges that the Duša convictions do not apply to him due to his JCE membership starting later but argues that should the Appeals Chamber reverse convictions of other Appellants under Counts 2 and 3, then the same should happen for him.²⁸⁰¹

879. The Prosecution argues that even if the Duša murder findings are overturned, neither the scope of the CCP nor the *mens rea* of the Appellants as regards murder and wilful killing would be affected. According to the Prosecution, this is because the Trial Chamber included attack murders within the CCP on the ground that they were a part of the "entire system designed for deporting the Muslim population", which in turn was a finding based on the Trial Chamber's overall assessment of the pattern of crimes throughout the existence of the JCE.²⁸⁰² The Prosecution adds that this pattern of crimes was one of extreme violence, which included not only the CCP murders but also mistreatment of Muslims during evictions and cruel and inhumane treatment of Muslims detained in

²⁷⁹⁵ See Order for the Preparation of the Appeal Hearing, 1 March 2017, p. 6 (question 4(a) and (b)).

²⁷⁹⁶ Stojić addressed the issue at the Appeal Hearing but did so only in a written submission he referred to as a "skeleton" argument. However, the Appeals Chamber will not consider the skeleton argument because it was not admitted into the judicial record. Stojić made no oral submissions on this issue during the Appeal Hearing despite being encouraged to do so. See Appeal Hearing, AT. 255-256, 301-302 (21 Mar 2017).

²⁷⁹⁷ Appeal Hearing, AT. 398-401 (22 Mar 2017).

²⁷⁹⁸ Appeal Hearing, AT. 400-401 (22 Mar 2017).

²⁷⁹⁹ Appeal Hearing, AT. 584-585 (24 Mar 2017).

²⁸⁰⁰ Appeal Hearing, AT. 585 (24 Mar 2017).

²⁸⁰¹ Appeal Hearing, AT. 682-683 (27 Mar 2017). Pušić also submits that since the Trial Chamber made no findings as to his *mens rea* in relation to the Duša killings, the reversal should have no impact on his *mens rea* for JCE. Appeal Hearing, AT. 683 (27 Mar 2017).

²⁸⁰² Appeal Hearing, AT. 219-220 (20 Mar 2017).

HVO detention centres.²⁸⁰³ In addition, the Prosecution submits that the overall conduct of attacks in Gornji Vakuf shows that the HVO employed an extreme level of violence indicating that murder was an acceptable means of achieving the objective of ethnic cleansing, which was then confirmed by subsequent attacks in Prozor, Jablanica, East Mostar, Raštani, and Stupni Do and by use of prisoners for labour on the front line who were killed as a result.²⁸⁰⁴

b. Analysis

880. As noted earlier, with the Duša Reversal, the CCP murders, bar one, started occurring only from June 1993, with the siege of East Mostar, which was some four-and-a-half months after the start of the JCE.²⁸⁰⁵ In other words, in the period from January 1993 until June 1993 “a clear pattern of conduct” in HVO crimes found by the Trial Chamber²⁸⁰⁶ included only one instance of CCP murders.²⁸⁰⁷ Based on these circumstances and contrary to the Prosecution’s submission, the Appeals Chamber considers that no reasonable trier of fact could conclude that there was a pattern of conduct with respect to the attack or forced labour murders such that they were a part of the “entire system designed for deporting the Muslim population” in the period from January 1993 until June 1993. Similarly, with respect to the Prosecution’s argument that the Trial Chamber’s findings show a pattern of violence throughout the existence of the JCE such that the Duša Reversal has no effect on its scope, the Appeals Chamber considers that such pattern of violence is not enough, on its own and with only one incident involving two murders during an attack on the village of Tošćanica in April 1993, to infer – as the only reasonable conclusion – that murder and wilful killing were part of the CCP from January 1993. This is particularly so when, with the exception of

²⁸⁰³ Appeal Hearing, AT. 219-220 (20 Mar 2017), AT. 648 (24 Mar 2017), AT. 731 (27 Mar 2017), AT. 762-763 (28 Mar 2017).

²⁸⁰⁴ Appeal Hearing, AT. 220-222 (20 Mar 2017). To illustrate this submission, the Prosecution refers to the HVO attack on Muslim civilians in Hrasnica in Gornji Vakuf Municipality in January 1993, their subsequent rounding up by the HVO, and the execution of one of the Muslim men by an HVO soldier. However, the Prosecution also acknowledges that the Trial Chamber made no findings on this incident. It further cites to the Trial Chamber’s findings relating to the murder of two unarmed men during an attack on the village of Tošćanica in April 1993 in Prozor Municipality. Appeal Hearing, AT. 220-221 (20 Mar 2017). See also *supra*, fn. 2790.

²⁸⁰⁵ See *supra*, para. 876 & fn. 2793. While the Prosecution refers to the Hrasnica execution, the Appeals Chamber notes that the Trial Chamber made no findings relating to that killing incident and, furthermore, explicitly held that it had no evidence to find that the “death of villagers resulted from the HVO attack and artillery fire on the village of Hrasnica”. See Trial Judgement, Vol. 2, paras 369-373. Accordingly, that incident will not be considered by the Appeals Chamber for the purposes of this discussion.

²⁸⁰⁶ See Trial Judgement, Vol. 4, para. 65.

²⁸⁰⁷ The Appeals Chamber notes that a number of other killings took place in that period but those were not considered by the Trial Chamber to have been part of the CCP and, as such, are not relevant to this discussion. See *supra*, para. 874.

Pušić,²⁸⁰⁸ all the Trial Chamber's remaining findings relating to the Appellants' contribution to and intent for the CCP murders concern the period starting from June 1993.²⁸⁰⁹

881. With respect to the Appellants' *mens rea*, the Prosecution's submission that the Appellants' intent for murder and wilful killing are not affected by the Duša Reversal suggests that all the Appellants, with the exception of Pušić who joined the JCE later, must have had the intent for murder and wilful killing months before the first proven CCP killing occurred. In this case, however, again with the exception of Pušić,²⁸¹⁰ the Trial Chamber's remaining findings do not establish beyond reasonable doubt that the Appellants had the intent for murder and wilful killing prior to June 1993.²⁸¹¹ Further, while the Trial Chamber made its conclusions on the nature of the CCP and its commencement based on factors other than just the events in municipalities and crimes on the ground, these factors also do not establish that the Appellants intended murder and wilful killing from January 1993.²⁸¹²

882. Accordingly, in light of the Trial Chamber's error regarding the civilian deaths in Duša, and considering the lack of any pattern of CCP murders or findings concerning the Appellants' intent for murder and wilful killing from January 1993 until June 1993, the Appeals Chamber considers that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP in the period from January 1993 until June 1993. The Trial Chamber's remaining findings, including the lone intent finding for Pušić regarding forced labour murders, do not establish beyond reasonable doubt that murder and wilful killing were part of the CCP from January 1993 until June 1993.

883. On the other hand, and contrary to Praljak's and Čorić's submissions, insofar as other crimes that took place in Gornji Vakuf are concerned, they are enough to sustain the Trial Chamber's conclusion that the events in Gornji Vakuf formed part of the CCP. This is because the other HVO crimes which the Trial Chamber considered as forming a clear pattern of

²⁸⁰⁸ See *infra*, para. 881.

²⁸⁰⁹ See Trial Judgement, Vol. 4, paras 174, 176, 232, 237-238, 272, 274 (Prljić), 362-363, 368-370, 395, 426 (Stojić), 579-582, 585-586, 625 (Praljak), 749-750, 790-796, 798, 815 (Petković), 936-938, 964-966, 971, 1000-1004 (Čorić), 1120-1122, 1147-1151, 1186-1187, 1206 (Pušić)

²⁸¹⁰ See *supra*, para. 876 & fn. 2793. Pušić challenges this intent finding in his ground of appeal 5. See *infra*, paras 2791-2792. Ultimately, the Appeals Chamber does not consider that this intent finding is relevant for the purposes of the incorporation of murder and wilful killing in the CCP as it is not enough, on its own, to conclude that these crimes were intended by all JCE members and thus were part of the CCP before June 1993.

²⁸¹¹ See *supra*, fn. 2809. While the Prosecution cites to two killing incidents that took place in January and April 1993, the Appeals Chamber considers that these are not enough to establish intent on the part of the Appellants, particularly since: (1) the Trial Chamber made no factual findings relating to the January 1993 killing in Hrasnica and therefore did not enter any intent findings in relation thereto; and (2) as noted earlier, the Trial Chamber did not discuss the killings in Tošćanica in any of the Appellants' responsibility sections when considering their intent for the crimes in Prozor. See *supra*, para. 876 & fn. 2790.

²⁸¹² See *supra*, paras 847, 856-858, 861, 864, 872.

conduct,²⁸¹³ such as forcible transfers and imprisonment of civilians in Gornji Vakuf, remain unaffected by the Duša Reversal.²⁸¹⁴ Accordingly, Praljak's submission that the events in Gornji Vakuf should be removed from the CCP and Ćorić's submission that Gornji Vakuf was an isolated incident not connected to the CCP are dismissed.

884. The Appeals Chamber will now examine whether, on the basis of the Trial Chamber's remaining findings, it remains established that murder and wilful killing were part of the CCP from June 1993.²⁸¹⁵ As noted above, the Trial Chamber made extensive findings concerning all of the Appellants' contribution to, knowledge of, and intent for the crimes that took place in East Mostar, including murder and wilful killing.²⁸¹⁶ These findings were made for the purpose of: (1) assessing whether crimes that were not already found to be part of the CCP, namely unlawful attack on civilians in East Mostar, unlawful infliction of terror on civilians in East Mostar, and destruction of religious property in East Mostar, became part of the CCP in June 1993; and (2) establishing the Appellants' responsibility for crimes committed in East Mostar that the Trial Chamber considered to be original CCP crimes.²⁸¹⁷ In making those findings, the Trial Chamber specifically noted the Appellants' knowledge and acceptance of killings that took place in East Mostar due to the HVO fire on the city.²⁸¹⁸ The Appeals Chamber is satisfied that the Trial Chamber's findings in relation to the expansion of crimes in East Mostar establish beyond reasonable doubt that murder and wilful killing were also expanded crimes, particularly since those findings show that the Trial Chamber considered: (1) that murder and wilful killing were part of the CCP in June 1993; and (2) that the Appellants were informed of murder and wilful killings but did nothing to prevent them.²⁸¹⁹ Further, the Trial Chamber also found that despite their knowledge of the killings in East Mostar, the Appellants continued to participate in the CCP and therefore accepted the crimes in question.²⁸²⁰

²⁸¹³ See Trial Judgement, Vol. 4, para. 65.

²⁸¹⁴ See *supra*, paras 468-481.

²⁸¹⁵ The Appeals Chamber notes that the Trial Chamber found that the first murder in East Mostar occurred on 6 June 1993 and was a result of HVO sniper fire. See Trial Judgement, Vol. 2, paras 1061-1070.

²⁸¹⁶ See *supra*, paras 792-814. With respect to Prlić, the Appeals Chamber notes that the Trial Chamber made findings regarding his intent for and contribution to both sniping and shelling, and yet did not include murder and wilful killing in its list of crimes for which Prlić was found directly responsible in relation to Mostar. See Trial Judgement, Vol. 4, paras 174-176, 272. Cf. Trial Judgement, Vol. 4, para. 278. Reading the Trial Judgement as a whole, however, including the above-mentioned East Mostar findings, it is clear that the Trial Chamber was satisfied that Prlić had the intent for murder and wilful killing of civilians in East Mostar and that he contributed to them. See Trial Judgement, Vol. 4, paras 174-176 ("Prlić knew about the HVO crimes committed during the HVO campaign of fire and shelling against East Mostar – that is, the murders and destruction of property ... by minimising them or attempting to deny them, he accepted and encouraged them"), 272 ("Prlić supported the HVO campaign of fire and shelling against East Mostar and its impact on the civilian population ... and accepted the crimes directly linked to the HVO military operations against East Mostar"). Accordingly, the Appeals Chamber considers the omission of Counts 2 and 3 from the list of crimes to have been an inadvertent omission on part of the Trial Chamber. See also *infra*, para. 1245.

²⁸¹⁷ See, e.g., *supra*, paras 798-799.

²⁸¹⁸ See *supra*, paras 798, 805-812.

²⁸¹⁹ See *supra*, paras 806-812 and references cited therein.

²⁸²⁰ See *supra*, paras 806-812 and references cited therein.

885. The Appeals Chamber also notes that, contrary to Ćorić's submission, the Trial Chamber's findings regarding the Appellants' contribution to, knowledge of, and intent for the crimes in East Mostar – including murder and wilful killing – were not dependent on the Trial Chamber's conclusion that there was a pattern of conduct in the HVO crimes. Rather, the Trial Chamber focused on the evidence concerning the Appellants' involvement in and knowledge of the events in East Mostar.²⁸²¹ Accordingly, the Duša Reversal does not affect those findings. Further, given the small number of CCP murders found by the Trial Chamber to have been committed in the period from January 1993 until June 1993 the removal of murder and wilful killing from the CCP in that period does not impact the Trial Chamber's finding that there was a pattern of crimes or that the CCP existed, such that Ćorić should be relieved of any JCE liability or acquitted on Counts 2 and 3.

886. Accordingly, the Appeals Chamber finds, on the basis of the Trial Chamber's remaining findings, that there is no impact on the Trial Chamber's conclusion that murder and wilful killing were part of the CCP as of June 1993, when the CCP murders started occurring more regularly and when the Appellants were all found to have had the requisite intent. As the remaining findings do not establish that murder and wilful killing were part of the CCP in April 1993, the Appeals Chamber considers that Prlić's conviction pursuant to JCE I for the murders of two unarmed men in Prozor must be reversed.²⁸²² Insofar as the other Appellants, as members of the JCE, were also found responsible pursuant to JCE I for these murders, the Appeals Chamber reverses their convictions as well.²⁸²³ The impact of these findings on the Appellants' sentences, if any, will be assessed below.

(d) Alleged errors regarding events in Jablanica Municipality between February and May 1993

887. The Trial Chamber found that in Jablanica Municipality, tensions between the HVO and ABiH mounted between the beginning of February and mid-April 1993.²⁸²⁴ On 15 April 1993, the HVO commenced shelling the town of Jablanica, and on 17 April 1993, the HVO launched an attack in the Jablanica Valley, shelling the villages of Sovići and Doljani and ultimately taking control of these villages.²⁸²⁵ Given the context of the broader attack in the Jablanica Valley, the Trial Chamber concluded that the attack on 17 April 1993 was not a "purely defensive" reaction to

²⁸²¹ See Trial Judgement, Vol. 4, paras 174-176, 179-184, 336-337, 341-342, 355, 359, 362-363, 368-370, 372, 579-582, 586, 745-756, 936, 938, 940-945, 1118-1122.

²⁸²² See also *supra*, fn. 2810; *infra*, paras 2791-2792.

²⁸²³ As it has not been asked to do so by the Parties, the Appeals Chamber will not engage in an analysis of whether the elements of JCE III liability are met with respect to the Appellants in connection to these incidents, particularly since doing so would require the Appeals Chamber to have a comprehensive understanding of the entire trial record. See also *infra*, para. 3125.

²⁸²⁴ Trial Judgement, Vol. 4, para. 46.

the ABiH attack on the same day.²⁸²⁶ The Trial Chamber also found that these military campaigns were accompanied by: (1) arrests and detentions of Muslims under harsh conditions (ABiH members and non-members alike); (2) the removal of ABiH members as well as several other men to Ljubuški Prison; and (3) the removal of the remaining Muslim population outside Jablanica Municipality.²⁸²⁷

(i) Prlić's appeal (Sub-grounds 10.3 and 10.4 in part)

888. Prlić submits that the Trial Chamber erred in concluding that the HZ H-B leaders carried out the JCE in stages, by finding that the HVO attacked Sovići and Doljani on 17 April 1993, and in concluding that this attack was not a defensive reaction to an ABiH attack.²⁸²⁸ In support of his assertions, Prlić adopts his sub-ground of appeal 16.2 by reference.²⁸²⁹

889. The Prosecution responds that Prlić's arguments are unsupported assertions and warrant summary dismissal.²⁸³⁰ In relation to Prlić's challenge to the Trial Chamber's finding on the implementation of the JCE in stages, the Prosecution argues that his unsupported assertions are coupled with redundant and unexplained cross-references, which also warrant summary dismissal.²⁸³¹

890. The Appeals Chamber notes that beyond referring to arguments made elsewhere in his appeal brief, Prlić fails to explain why the Trial Chamber erred in concluding that the HVO attacked Sovići and Doljani on 17 April 1993, and in concluding that this attack was not a purely defensive reaction to the ABiH attack on the same day. In this regard, the Appeals Chamber notes that it dismisses the submissions in Prlić's sub-ground of appeal 16.2 elsewhere.²⁸³² The Appeals Chamber thus finds that Prlić has failed to demonstrate an error and dismisses Prlić's sub-grounds of appeal 10.3 and 10.4 in relevant part.

²⁸²⁵ Trial Judgement, Vol. 4, para. 46. The Trial Chamber also found that on 5 May 1993, in the village of Sovići, approximately 450 women, children, and the elderly were moved by HVO soldiers from the Sovići School and the houses of Junuzovići hamlet towards Gornji Vakuf. Trial Judgement, Vol. 2, para. 609.

²⁸²⁶ Trial Judgement, Vol. 4, para. 46.

²⁸²⁷ Trial Judgement, Vol. 4, para. 48.

²⁸²⁸ Prlić's Appeal Brief, paras 286(d), 287, referring to Trial Judgement, Vol. 1, paras 452-476, Vol. 2, paras 84, 87, 89, 330-342, 346-395, 445, 465-467, 503-506, 514, 521-536, 538-549, 753, Vol. 4, paras 45-47, 668, 1220.

²⁸²⁹ Prlić's Appeal Brief, para. 288, referring to Prlić's sub-ground of appeal 16.2. Prlić submits that the Trial Chamber "mischaracterized events and actions, failed to provide reasoned opinions, and applied an incorrect legal standard in assessing the evidence". Prlić's Appeal Brief, para. 311. See also Prlić's Appeal Brief, paras 281, 312.

²⁸³⁰ Prosecution's Response Brief (Prlić), paras 166-167. The Prosecution submits that Prlić fails to explain how his arguments made under other grounds of appeal support the claims he makes in this instance. Prosecution's Response Brief (Prlić), para. 167.

²⁸³¹ Prosecution's Response Brief (Prlić), para. 166, referring to *Dorđević* Appeal Judgement, para. 20(ix); *Galić* Appeal Judgement, para. 246. See also Appeal Hearing, AT. 182-183 (20 Mar 2017).

²⁸³² See *infra*, paras 1177-1208.

(ii) Petković's appeal (Sub-ground 3.2.2.1 in part)a. Arguments of the Parties

891. Petković submits that the evidence does not support the Trial Chamber's conclusions that: (1) 450 women, children, and the elderly were moved from Sovići on 5 May 1993 in the direction of Gornji Vakuf, causing serious mental suffering; and (2) the purpose of HVO actions in the region was to ensure that BiH Muslims were moved outside Jablanica Municipality, not to return.²⁸³³ He asserts in this regard that the Trial Chamber disregarded evidence demonstrating that the civilians from Sovići were later transported from Gornji Vakuf to Jablanica, which, in his view, shows that the removal of citizens to Gornji Vakuf was just a temporary solution and did not result in a permanent change in the ethnic composition of Jablanica Municipality.²⁸³⁴ Petković also argues that the Trial Chamber erred when concluding that the HVO attack on Sovići and Doljani was part of the CCP, given its acknowledgement that this attack was at least in part a defensive reaction to the ABiH attack on the same day.²⁸³⁵

892. The Prosecution responds that the Trial Chamber reasonably concluded that the crimes in Jablanica Municipality formed part of the CCP, given that they were systematically committed pursuant to a well-organised and orchestrated plan.²⁸³⁶ It asserts that these events formed part of the attempt to enforce the JCE members' interpretation of the Vance-Owen Peace Plan,²⁸³⁷ and responds that Petković's argument that the ethnic map of Jablanica must change for the crimes to fall within the CCP runs contrary to the *Dorđević* Appeal Judgement.²⁸³⁸ The Prosecution also submits that Petković's argument regarding a military justification for the attack on Jablanica should be summarily dismissed as a repetition of his trial argument without a demonstration of error, asserting that in any event, Appeals Chamber jurisprudence demonstrates that the existence of

²⁸³³ Petković's Appeal Brief, paras 54-56, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 609, 613, Vol. 3, paras 850, 908, Vol. 4, paras 30, 48. See also Petković's Reply Brief, para. 14(iii).

²⁸³⁴ Petković's Appeal Brief, paras 55-56, referring to Trial Judgement, Vol. 2, para. 613, Ex. P02825, Nihad Kovač, T. 10311 (16 Nov 2006), Witness CA, T. 10042 (13 Nov 2006). See also Appeal Hearing, AT. 485-486, 496-497 (23 Mar 2017).

²⁸³⁵ Petković's Appeal Brief, para. 57, referring to Trial Judgement, Vol. 4, para. 46. See also Petković's Appeal Brief, para. 58.

²⁸³⁶ Prosecution's Response Brief (Petković), para. 47, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 142, 146, 271, 341, 717.

²⁸³⁷ Prosecution's Response Brief (Petković), para. 47.

²⁸³⁸ Prosecution's Response Brief (Petković), para. 48, referring to, *inter alia*, Prosecution's Response Brief (Petković), para. 42, *Dorđević* Appeal Judgement, para. 154. See Appeal Hearing, AT. 532-533 (23 Mar 2017). The Prosecution argues that the Trial Chamber was aware that Witness CA returned to Jablanica in June 1993. Prosecution's Response Brief (Petković), para. 48, referring to Trial Judgement, Vol. 2, para. 612.

a defensive element to operations “does not undermine their link to the common criminal purpose”.²⁸³⁹

893. Petković replies that the *Dorđević* Appeals Chamber finding confirms that at least a temporary change in ethnic balance is necessary in order to establish the common criminal plan.²⁸⁴⁰

b. Analysis

894. As for Petković’s challenge regarding the Trial Chamber’s findings on Sovići, the Appeals Chamber notes that the Trial Chamber found that on 5 May 1993, approximately 450 villagers (women, children, and the elderly) were moved towards Gornji Vakuf.²⁸⁴¹ It then concluded that it did not have sufficient evidence to establish what happened next to the affected civilians.²⁸⁴² The Appeals Chamber recalls that a common criminal plan to demographically modify a certain region “does not require a finding that the ethnic balance be changed permanently”.²⁸⁴³ Accordingly, whether or not Petković is correct that the Trial Chamber disregarded evidence showing that the population from Sovići returned to Jablanica Municipality²⁸⁴⁴ is irrelevant. As a result, the Appeals Chamber considers that the Trial Chamber did not err in finding that the crimes that took place in Jablanica Municipality, including the removal of the population from Sovići, fell within the CCP. Further, the Trial Chamber concluded that the removal of civilians on 5 May 1993 amounted to crimes,²⁸⁴⁵ having taken account of, *inter alia*, a number of contemporaneous circumstances, including that the transfer was pre-planned by the HVO,²⁸⁴⁶ caused serious mental suffering to a particularly vulnerable group of civilians,²⁸⁴⁷ and deprived victims of the right to a normal social, family, and cultural life.²⁸⁴⁸ Thus, the Appeals Chamber finds that Petković has failed to demonstrate an error in the Trial Chamber’s finding and his submission is dismissed.

895. Turning to Petković’s assertion that the Trial Chamber erred in failing to take account of the fact that the HVO’s attack on the villages of Sovići and Doljani was a defensive response to an

²⁸³⁹ Prosecution’s Response Brief (Petković), para. 49, referring to Trial Judgement, Vol. 2, para. 523, *Kordić and Čerkez* Appeal Judgement, para. 812, *Tolimir* Appeal Judgement, paras 345-347.

²⁸⁴⁰ Petković’s Reply Brief, para. 14(i), referring to *Dorđević* Appeal Judgement, para. 154; Appeal Hearing, AT. 567 (23 Mar 2017). See also Petković’s Reply Brief, para. 14(iii).

²⁸⁴¹ See Trial Judgement, Vol. 2, paras 609-615, Vol. 3, paras 849, 907.

²⁸⁴² Trial Judgement, Vol. 2, para. 613.

²⁸⁴³ See *supra*, fn. 2784. Cf. Petković’s Reply Brief, para. 14(i).

²⁸⁴⁴ See Petković’s Appeal Brief, paras 55-56, referring to Ex. P02825, p. 2 (a report indicating that there were buses carrying refugees from Gornji Vakuf to Jablanica between 10 and 15 June 1993), Nihad Kovač, T. 10311 (16 Nov 2006) (noting that the witness went to Jablanica from Gornji Vakuf); Witness CA, T. 10042 (13 Nov 2006) (noting that the witness returned to Jablanica). The Appeals Chamber notes that in any event, the Trial Chamber did take account of Witness CA’s testimony regarding the return to Jablanica in June 1993. See Trial Judgement, Vol. 2, para. 612.

²⁸⁴⁵ Trial Judgement, Vol. 3, paras 852, 910, 1703, 1706. See also Trial Judgement, Vol. 4, paras 145, 718, 723, 1103.

²⁸⁴⁶ See, e.g., Trial Judgement, Vol. 3, paras 851, 909.

²⁸⁴⁷ See, e.g., Trial Judgement, Vol. 3, paras 850-851. See also Trial Judgement, Vol. 3, para. 907.

²⁸⁴⁸ See, e.g., Trial Judgement, Vol. 3, paras 850, 908.

ABiH attack, the Appeals Chamber observes that the Trial Chamber stated that it could not find that the attack on Sovići and Doljani was “purely a defensive reaction to the ABiH attack on that same day”,²⁸⁴⁹ indicating that the attacks may have been, at least in part, motivated by offensive considerations. However, the Appeals Chamber recalls that “whether an attack was ordered as pre-emptive, defensive or offensive is from a legal point of view irrelevant, [...] [t]he issue at hand is whether the way the military action was carried out was criminal or not”.²⁸⁵⁰ In the present case, the Trial Chamber found that on 17 April 1993, the HVO launched an attack in the Jablanica Valley, shelling several localities, including Sovići and Doljani and committing crimes during and following the attack.²⁸⁵¹ Considering the evidence pertaining to the attack on the entire Jablanica Valley, the Trial Chamber found that these crimes formed part of the CCP on the basis that they occurred as part of the campaigns which were committed systematically and “had to be the result of a preconceived HVO plan”.²⁸⁵² Finally, it concluded that the crimes formed part of a “clear pattern of conduct”, along with other crimes that were committed by the HVO between January 1993 and April 1994.²⁸⁵³ Accordingly, even if the attack on Sovići and Doljani was partly defensive, this has no bearing on the Trial Chamber’s ultimate conclusion that it resulted in crimes which it reasonably found formed part of the CCP. Petković’s argument is therefore dismissed.²⁸⁵⁴

896. The Appeals Chamber therefore finds that Petković has failed to show that the Trial Chamber erred in its conclusion that the crimes in Jablanica Municipality fell within the CCP, and dismisses Petković’s sub-ground of appeal 3.2.2.1 in relevant part.

(e) Alleged errors in the findings on HVO offensive actions in Prozor Municipality

897. The Trial Chamber found that, between 17 and 19 April 1993, the HVO was conducting “offensive actions” and took possession of several villages in Prozor Municipality, committing acts of violence such as setting fire to Muslim houses, causing the Muslim population to flee, and

²⁸⁴⁹ Trial Judgement, Vol. 4, para. 46, referring to, *inter alia*, Ex. P01915, p. 2 (indicating that the HVO attack on the village of Sovići was to start on 16 April 1993).

²⁸⁵⁰ *Kordić and Čerkez* Appeal Judgement, para. 812.

²⁸⁵¹ Trial Judgement, Vol. 4, paras 46, 48.

²⁸⁵² Trial Judgement, Vol. 4, para. 146.

²⁸⁵³ Trial Judgement, Vol. 4, para. 65. See Trial Judgement, Vol. 4, paras 46-48 (noting, *inter alia*, that while the attack on Sovići and Doljani was taking place, the HVO was also conducting “offensive actions” in several villages in the Municipality of Prozor).

²⁸⁵⁴ The Appeals Chamber recalls its reversal of the Trial Chamber’s finding that murder and willful killing were part of the CCP in the period from January 1993 until June 1993. See *supra*, paras 874-886. Since the Trial Chamber found that no Jablanica killings were in fact part of the CCP, the Appeals Chamber does not consider that the change in the scope of the CCP in the period from January 1993 until June 1993 affects in any way the Trial Chamber’s reasoning that the crimes in Jablanica which were part of the CCP followed a pattern of conduct that took place in other municipalities. See *supra*, para. 876. See also Trial Judgement, Vol. 2, paras 580-581, Vol. 4, para. 72.

thereby preventing any possibility of return.²⁸⁵⁵ The Trial Chamber concluded that these actions fell within the CCP.²⁸⁵⁶

(i) Prlić's appeal (Sub-grounds 10.3 and 10.4 in part)

898. Prlić argues that the Trial Chamber wrongly concluded that the HZ H-B leaders carried out the JCE in stages by erroneously finding that, *inter alia*, the HVO attacked villages in Prozor Municipality between 17 and 19 April 1993, committing acts of violence and causing the Muslim population to flee.²⁸⁵⁷ He also relies by reference on submissions made in his sub-ground of appeal 16.2.²⁸⁵⁸

899. The Prosecution responds that Prlić's sub-ground of appeal in relevant part consists of mere assertions unsupported by any evidence coupled with unexplained cross-references to arguments he makes elsewhere, and requests that it be summarily dismissed.²⁸⁵⁹

900. The Appeals Chamber dismisses Prlić's sub-grounds of appeal 10.3 and 10.4 in relevant part as undeveloped, since he fails to reference any part of the trial record in support of the mere assertion that the findings on the Prozor attacks are erroneous and fails to particularise how or why his submissions in his sub-ground of appeal 16.2 support his present contentions.

(ii) Petković's appeal (Sub-ground 3.2.2.1 in part)

901. Petković submits that the Trial Chamber erred in finding that the HVO military actions in Prozor Municipality in April 1993 that caused the Muslim population to flee were launched pursuant to the CCP.²⁸⁶⁰ He argues that no reasonable trier of fact could conclude this because the Trial Chamber found that the crimes in relation to the removal of Muslims from Prozor Municipality (forcible transfer and unlawful transfer of civilians) were only committed on 28 August and 14 November 1993.²⁸⁶¹

902. The Prosecution responds that the Trial Chamber reasonably concluded that crimes committed during the HVO operations in Prozor Municipality in April 1993 furthered the CCP.²⁸⁶² The Prosecution argues that although the Trial Chamber only found crimes of deportation and

²⁸⁵⁵ Trial Judgement, Vol. 4, para. 47.

²⁸⁵⁶ Trial Judgement, Vol. 4, paras 44-45, 47, 65-66.

²⁸⁵⁷ Prlić's Appeal Brief, para. 286(d). See also Prlić's Appeal Brief, para. 281.

²⁸⁵⁸ Prlić's Appeal Brief, para. 288.

²⁸⁵⁹ Prosecution's Response Brief (Prlić), paras 166-167. See also Appeal Hearing, AT. 183 (20 Mar 2017).

²⁸⁶⁰ Petković's Appeal Brief, paras 52-53. See also Petković's Appeal Brief, paras 24, 42-44; Petković's Reply Brief, para. 14.

²⁸⁶¹ Petković's Appeal Brief, para. 52; Petković's Reply Brief, para. 14; Appeal Hearing, AT. 497-498 (23 Mar 2017).

²⁸⁶² Prosecution's Response Brief (Petković), para. 45.

forcible transfer in Prozor Municipality in August 1993,²⁸⁶³ the Trial Chamber's factual findings link the April 1993 crimes to the CCP because the HVO offensive in Prozor Municipality involved violent crimes causing the Muslim population to flee and preventing their return.²⁸⁶⁴

903. The Appeals Chamber considers that the Trial Chamber based its conclusion on the CCP on, *inter alia*, its findings that the HVO offensive in Prozor Municipality in April 1993 involved acts of violence such as the burning of Muslim houses, "causing the Muslim population to flee, and thereby preventing any possibility of return".²⁸⁶⁵ The finding that these violent acts, among other facts, support the conclusion on the CCP is not dependent on the findings regarding the crimes of forcible transfer and unlawful transfer of civilians.²⁸⁶⁶ The Appeals Chamber therefore dismisses Petković's sub-ground of appeal 3.2.2.1 in relevant part.

(iii) Praljak's appeal (Ground 10)

a. Arguments of the Parties

904. Praljak submits that the Trial Chamber erred in concluding that the crimes in Prozor Municipality formed part of the CCP.²⁸⁶⁷ In support, he argues that the Trial Chamber: (1) did not establish the identity of the "authors" of the CCP that resulted in the commission of crimes in Prozor,²⁸⁶⁸ or the "common action" of the JCE members, including Croatian officials;²⁸⁶⁹ (2) did not have evidence that the Croatian officials allegedly involved in the JCE had any knowledge of the Prozor events before they occurred;²⁸⁷⁰ (3) reached its conclusion on the basis of Exhibit P11380, which was admitted erroneously;²⁸⁷¹ (4) found that the Prozor crimes were not discussed among the JCE members;²⁸⁷² and (5) in basing its conclusion on circumstantial evidence only, erred in disregarding evidence providing an alternative reasonable explanation for the events in Prozor, namely that they were a consequence of ABiH military activities threatening the population.²⁸⁷³ In

²⁸⁶³ Prosecution's Response Brief (Petković), para. 46. The Prosecution notes that contrary to Petković's submissions, the Trial Chamber found that crimes of forcible displacement were not established in Prozor for November 1993. Prosecution's Response Brief (Petković), para. 46 & fn. 168.

²⁸⁶⁴ Prosecution's Response Brief (Petković), para. 46.

²⁸⁶⁵ Trial Judgement, Vol. 4, para. 47. See Trial Judgement, Vol. 4, paras 44-45, 65-66.

²⁸⁶⁶ Cf. Trial Judgement, Vol. 3, paras 840-842, 894-896, Vol. 4, para. 47.

²⁸⁶⁷ Praljak's Appeal Brief, paras 163-164, 167-168, 173-174.

²⁸⁶⁸ Praljak's Appeal Brief, para. 163.

²⁸⁶⁹ Praljak's Appeal Brief, para. 168.

²⁸⁷⁰ Praljak's Appeal Brief, para. 168.

²⁸⁷¹ Praljak's Appeal Brief, para. 165 & fn. 380. Praljak argues, relying on his ground of appeal 50, that Exhibit P11380 – one of the Mladić Diaries – was admitted erroneously because it was admitted in violation of his fundamental right to a fair trial. Praljak's Appeal Brief, para. 165 & fn. 381.

²⁸⁷² Praljak's Appeal Brief, para. 164.

²⁸⁷³ Praljak's Appeal Brief, paras 166-167, 169-171, 173-174. In this regard, Praljak further argues that the Trial Chamber ignored evidence: (1) regarding the population in Prozor consisting of 62.2 per cent Croats (which would render any plan to change the ethnic composition in favour of Croats absurd); and (2) that Croats were seeking refuge

this respect, Praljak argues, *inter alia*, that the Trial Chamber erred in disregarding evidence on the great influx of Muslims into central BiH fleeing Serb-controlled territories disrupting the ethnic balance between Croats and Muslims and contributing to the outbreak of the war.²⁸⁷⁴

905. The Prosecution responds that the Trial Chamber reasonably concluded that crimes committed in Prozor during HVO operations in 1993 furthered the CCP.²⁸⁷⁵ Specifically, the Prosecution submits that: (1) Praljak's arguments regarding the identity of the authors of the CCP and the JCE members' common action ignore the Trial Chamber's clear finding that the crimes in Prozor were linked to the implementation of the 4 April 1993 Ultimatum, and followed the pattern of HVO crimes committed in other locations; (2) it is unnecessary to show that every JCE member knew precisely how the CCP would be implemented in Prozor;²⁸⁷⁶ (3) the Trial Chamber's findings regarding the plan of ethnic cleansing in Prozor are not dependent on Exhibit P11380;²⁸⁷⁷ (4) whether Prozor was discussed in certain meetings is irrelevant;²⁸⁷⁸ and (5) the Prozor crimes were not a legitimate response to ABiH military activities nor solely the consequence of the existing situation in Prozor or of the instability caused by the arrival of refugees²⁸⁷⁹ but were, rather, a part of the JCE members' CCP to consolidate HVO control over Prozor by "'ethnically cleans[ing]' the Muslims".²⁸⁸⁰ The Prosecution argues, in particular, that the ABiH's Neretva 93 offensive was launched in September 1993 and was therefore after the Prozor crimes.²⁸⁸¹

906. Praljak replies that the ABiH offensive during which Croats were expelled started well before summer 1993.²⁸⁸²

from an ABiH offensive in central BiH in, *inter alia*, Prozor, which resulted in a chaotic situation. Praljak's Appeal Brief, paras 169, 171. See also Appeal Hearing, AT. 472 (22 Mar 2017).

²⁸⁷⁴ Praljak's Appeal Brief, paras 171-172.

²⁸⁷⁵ Prosecution's Response Brief (Praljak), para. 146.

²⁸⁷⁶ Prosecution's Response Brief (Praljak), para. 150.

²⁸⁷⁷ Prosecution's Response Brief (Praljak), para. 153.

²⁸⁷⁸ Prosecution's Response Brief (Praljak), para. 150. The Prosecution further submits that in any event Prozor was discussed. Prosecution's Response Brief (Praljak), para. 150.

²⁸⁷⁹ Prosecution's Response Brief (Praljak), paras 151-152. The Prosecution argues that Praljak's submission that the Prozor events were a consequence of an ABiH offensive merely repeats trial arguments without showing an error. Prosecution's Response Brief (Praljak), para. 146. The Prosecution claims that, in arguing that any plan to modify the ethnic composition in Prozor would have been absurd, Praljak misunderstands the CCP, which included consolidating HVO control to make so-called Croatian provinces nearly exclusively Croatian. Prosecution's Response Brief (Praljak), para. 152. Furthermore, the Prosecution responds that the Trial Chamber did not ignore Prozor's pre-conflict demographics or evidence of Croat refugees moving from central BiH to Prozor in mid-1993. Prosecution's Response Brief (Praljak), para. 152. It also argues that the Trial Chamber reasonably found that the objective to detain Prozor's Muslim women, children, and the elderly was to accommodate the Croats arriving in Prozor Municipality. Prosecution's Response Brief (Praljak), para. 152.

²⁸⁸⁰ Prosecution's Response Brief (Praljak), para. 151. See Prosecution's Response Brief (Praljak), paras 147-149. In this respect, the Prosecution argues that Praljak ignores key findings. Prosecution's Response Brief (Praljak), para. 146.

²⁸⁸¹ Prosecution's Response Brief (Praljak), para. 151.

²⁸⁸² Praljak's Reply Brief, para. 72. See also Praljak's Reply Brief, paras 69-71.

b. Analysis

907. With regard to Praljak's arguments that the Trial Chamber failed to make findings as to the identity of the "authors" of the CCP that resulted in the commission of crimes in Prozor and as to the common action of the JCE members, the Appeals Chamber notes that he both fails to identify the challenged factual findings and ignores other relevant factual findings.²⁸⁸³ It therefore dismisses these arguments. With respect to his claim that there was no evidence that the Croatian officials allegedly involved in the JCE had prior knowledge of the Prozor events, the Appeals Chamber notes that the Trial Chamber found that the CCP entailed consolidating HVO control over the so-called Croatian provinces under the Vance-Owen Peace Plan, which included Prozor Municipality.²⁸⁸⁴ Further, it found that the crimes that took place in Prozor "tended to follow a clear pattern of conduct" as did the crimes that took place in other municipalities between January 1993 and April 1994.²⁸⁸⁵ Consequently, the Trial Chamber found that the criminal plan of the JCE members, including the Croatian leaders, did encompass Prozor Municipality. The Appeals Chamber further notes that the Trial Chamber was not required to establish that a participant in the JCE knew about each specific crime committed pursuant to the JCE.²⁸⁸⁶ Likewise, the lack of a finding that the JCE members discussed events in Prozor does not undermine the Trial Chamber's ultimate conclusion that Prozor crimes fell within the CCP. The Appeals Chamber further notes that this conclusion was based on many sources of evidence and is not dependent on Exhibit P11380.²⁸⁸⁷ Praljak's argument is therefore dismissed.²⁸⁸⁸

908. Turning finally to Praljak's argument that the Trial Chamber ignored evidence suggesting an alternative reasonable explanation for the Prozor events, namely that they were a consequence of ABiH military operations threatening the population, the Appeals Chamber notes that the

²⁸⁸³ The Appeals Chamber notes that: (1) the Trial Chamber explicitly found that the attacks on the Prozor villages in April 1993 "were planned by Milivoj Petković, pursuant to an ultimatum issued by Jadranko Prlić to the ABiH" (Trial Judgement, Vol. 4, paras 1220, 1231 (internal references omitted)); and (2) the Trial Chamber made further findings as to how the JCE members, including Croatian leaders, collaborated as a plurality of persons in implementing the CCP (Trial Judgement, Vol. 4, paras 1217-1232; see, in particular, Trial Judgement, Vol. 4, paras 1219, 1222-1223, 1231).

²⁸⁸⁴ See, e.g., Trial Judgement, Vol. 1, para. 446 & fn. 1062, para. 447 & fn. 1065 (both referring to Ex. P09276, map 11), Vol. 4, paras 44, 47, 65.

²⁸⁸⁵ Trial Judgement, Vol. 4, paras 47, 65.

²⁸⁸⁶ *Šainović et al.* Appeal Judgement, para. 1491; *Kvočka et al.* Appeal Judgement, para. 276.

²⁸⁸⁷ Trial Judgement, Vol. 4, paras 41-68. See, in particular, Trial Judgement, Vol. 4, para. 47 and the section of the Trial Judgement referenced therein with underlying findings and evidence. The Appeals Chamber notes that, in any event, it addresses and dismisses the arguments Praljak makes regarding the allegedly erroneous admission of Exhibit P11380 elsewhere. See *supra*, para. 121.

²⁸⁸⁸ The Appeals Chamber recalls its reversal of the Trial Chamber's finding that murder and willful killing were part of the CCP from January 1993 until June 1993. See *supra*, paras 874-886. Ultimately, however, the Appeals Chamber does not consider that this change in the scope of the CCP in the period from January 1993 until June 1993 affects the Trial Chamber's reasoning concerning the clear pattern of conduct in relation to crimes in Prozor Municipality particularly since, as noted earlier, the Trial Chamber found that only two murders that formed part of the CCP occurred in Tošćanica, which is in contrast to June 1993 and onwards. See *supra*, para. 876 & fn. 2790. See also Trial Judgement, Vol. 4, paras 47, 65.

Trial Chamber expressly considered evidence and reached findings on the various topics to which Praljak refers, partly relying on the same evidence he now cites.²⁸⁸⁹ Accordingly, the relevant evidence to which Praljak refers in support of his argument was not ignored by the Trial Chamber in its reasoning.²⁸⁹⁰ Moreover, the Appeals Chamber observes that, having considered these topics and underlying evidence, the Trial Chamber nevertheless concluded that the events in Prozor Municipality involving HVO acts of violence, including setting fire to Muslim houses, fell within the CCP to consolidate HVO control over provinces considered Croatian under the Vance-Owen Peace Plan by modifying their ethnic composition.²⁸⁹¹ In this regard, the Appeals Chamber notes, in particular, that ethnic tensions in Prozor Municipality caused by the influx of Muslim refugees, contrary to Praljak's submission, do not contradict this finding. The Appeals Chamber further notes that the Trial Chamber considered other evidence and findings in this respect, including in relation to the pattern of the many crimes committed and the context of enforcing the HZ(R) H-B leaders' interpretation of the Vance-Owen Peace Plan.²⁸⁹² In sum, Praljak has failed to demonstrate that no reasonable trier of fact could have reached, as the only reasonable inference, the conclusion that the crimes committed in Prozor Municipality in April 1993 fell within the CCP. The Appeals Chamber therefore dismisses Praljak's ground of appeal 10.

(f) Alleged errors in the findings on HVO actions in Mostar Municipality

909. The Trial Chamber found that: (1) on 15 April 1993 the Mostar municipal HVO adopted a decision on the rights of refugees and displaced and deported persons ("15 April 1993 Decision"), and, as a result, Muslims had no access to humanitarian aid forcing them to leave Mostar;²⁸⁹³ (2) an HVO policy existed that entailed drastically reducing the Muslim population of the HZ H-B, especially in Mostar, while increasing the Croatian population there;²⁸⁹⁴ (3) the HVO arranged removals of Croats to Provinces 8 and 10, including those not fearing real danger due to combat, either by force or voluntarily, and by so doing could have altered the balance of power in these

²⁸⁸⁹ The Trial Chamber considered evidence and found that: (1) the Croats constituted around 63 per cent of Prozor Municipality's population in 1991 (Trial Judgement, Vol. 2, paras 5, 8; cf. Praljak's Appeal Brief, para. 169); (2) some of the Croats moving from central BiH were under threat from the ABiH (Trial Judgement, Vol. 4, paras 53 (referring to, *inter alia*, Ex. 3D00837), 54-55; cf. Praljak's Appeal Brief, para. 171, referring to the same exhibit); and (3) many of them arrived in Prozor (Trial Judgement, Vol. 4, paras 53, 60, 63; see also Trial Judgement, Vol. 2, paras 5-6; cf. Praljak's Appeal Brief, para. 171).

²⁸⁹⁰ In any event, the Appeals Chamber notes that the Trial Chamber was not required to refer to the testimony of every witness and to every piece of evidence on the record. See *Mrkšić and Šljivančanin* Appeal Judgement, para. 224.

²⁸⁹¹ Trial Judgement, Vol. 4, paras 44-45, 47, 55, 65-66.

²⁸⁹² See Trial Judgement, Vol. 4, paras 44, 65. See also Trial Judgement, Vol. 4, paras 45-64.

²⁸⁹³ Trial Judgement, Vol. 4, para. 49.

²⁸⁹⁴ Trial Judgement, Vol. 4, para. 51.

provinces so that it favoured the Croats;²⁸⁹⁵ and (4) the HVO launched an attack on Mostar on 9 May 1993.²⁸⁹⁶ The Trial Chamber further found that these actions fell within the CCP.²⁸⁹⁷

(i) Prlić's appeal (Sub-ground 10.5)

a. Arguments of the Parties

910. Prlić contends that the Trial Chamber erred in concluding that the Mostar municipal HVO adopted the 15 April 1993 Decision which led to discrimination against Muslims.²⁸⁹⁸ He argues that the Trial Chamber erred in concluding that Croats became the majority in Mostar Municipality in May-June 1992 and that a subsequent influx of refugees again changed the demographic structure in Mostar in May 1993, this time in favour of Muslims.²⁸⁹⁹

911. Prlić further argues that the Trial Chamber erred in concluding that the 15 April 1993 Decision denied Muslim refugees humanitarian aid, forcing them to leave Mostar, as well as that at the beginning of May 1993, the HVO issued an ultimatum to Muslims occupying abandoned homes to leave by 9 May 1993 and that evictions started on 8 May 1993.²⁹⁰⁰ In support of his argument, he submits that the Trial Chamber: (1) erroneously relied on adjudicated facts and Prosecution Witnesses BA's and BB's uncorroborated statements, excluding other relevant evidence such as evidence showing their lack of credibility;²⁹⁰¹ (2) ignored Witness BB's "demonstrated lack of knowledge" of relevant issues;²⁹⁰² (3) ignored Defence Witness Martin Raguž's testimony that the 15 April 1993 Decision was in accordance with the law on refugees, which regulated the obligations of military conscripts, and, in reality, changed nothing concerning the status of displaced persons regardless of their ethnicity;²⁹⁰³ and (4) ignored Defence Witness Marinko Šimunović's testimony that: (i) similar decisions were adopted by Muslim-majority municipalities, (ii) there was no connection between the 15 April 1993 Decision and the movement of people or distribution of aid,²⁹⁰⁴ (iii) the level of humanitarian aid went down in April 1993 in

²⁸⁹⁵ Trial Judgement, Vol. 4, para. 55.

²⁸⁹⁶ Trial Judgement, Vol. 2, para. 775, Vol. 4, para. 56.

²⁸⁹⁷ Trial Judgement, Vol. 4, paras 44-45, 49, 51, 54-56, 65-66.

²⁸⁹⁸ Prlić's Appeal Brief, para. 289. See also Prlić's Appeal Brief, para. 281.

²⁸⁹⁹ Prlić's Appeal Brief, para. 290. In support, Prlić argues that the Trial Chamber relied on: (1) Witness BA's unsubstantiated statement; (2) "mischaracterized documents"; and (3) the testimony of Witness CS, whose evidence, when compared with Exhibit 1D00936, is inconclusive. Furthermore, he argues that the Trial Chamber ignored evidence, *inter alia*: (1) that data from the ODP and ICRC from May 1993 onwards related only to West Mostar; and (2) from Witness CS that by May 1992, 7,905 refugees occupied abandoned apartments in Mostar town illegally. Prlić's Appeal Brief, para. 290.

²⁹⁰⁰ Prlić's Appeal Brief, para. 291, referring to Trial Judgement, Vol. 2, paras 739-742, Vol. 4, paras 49, 159.

²⁹⁰¹ Prlić's Appeal Brief, para. 291; Prlić's Reply Brief, para. 56.

²⁹⁰² Prlić's Appeal Brief, para. 291.

²⁹⁰³ Prlić's Appeal Brief, para. 292. See also Prlić's Reply Brief, para. 57.

²⁹⁰⁴ Prlić's Appeal Brief, para. 293. See also Prlić's Reply Brief, para. 57.

part because of the 15 April 1993 Decision,²⁹⁰⁵ (iv) contrary to international reports, no one lost refugee status due to this decision,²⁹⁰⁶ (v) humanitarian aid was distributed transparently and without discrimination in Mostar Municipality,²⁹⁰⁷ and (vi) the Red Cross was independent and distributed aid equally.²⁹⁰⁸

912. The Prosecution responds that Prlić misrepresents the record in challenging the Trial Chamber's finding regarding the 15 April 1993 Decision denying Muslims humanitarian aid, arguing that Witnesses BA and BB corroborate each other and are corroborated by other evidence cited by the Trial Chamber.²⁹⁰⁹ The Prosecution also claims that Prlić does not substantiate his claim that the Trial Chamber ignored Witness BB's "demonstrated lack of knowledge" and does not explain how this renders the Trial Chamber's reliance on the evidence unreasonable.²⁹¹⁰ It further argues that Prlić misrepresents the record with his assertion that the Trial Chamber ignored testimony from Raguž and Šimunović.²⁹¹¹ Finally, the Prosecution contends that Prlić fails to show how the alleged errors could have affected the verdict.²⁹¹²

b. Analysis

913. Turning first to Prlić's arguments that the Trial Chamber erred in concluding that Croats became the majority in Mostar Municipality in May-June 1992, and that a subsequent influx of refugees changed the demographic structure in Mostar in May 1993 in favour of Muslims, the Appeals Chamber notes that these arguments are made within the scope of his overarching challenge under ground of appeal 10 concerning the Trial Chamber's finding that the HZ(R) H-B had a CCP to dominate the Muslim population through ethnic cleansing.²⁹¹³ The Appeals Chamber considers that the findings regarding the existence of the CCP and, consequently, Prlić's convictions,²⁹¹⁴ do not rely on the demographic findings challenged under his sub-ground of appeal 10.5.²⁹¹⁵ The Appeals Chamber therefore dismisses these arguments.

²⁹⁰⁵ Prlić's Appeal Brief, para. 293. See also Prlić's Reply Brief, para. 57.

²⁹⁰⁶ Prlić's Appeal Brief, para. 293. See also Prlić's Reply Brief, para. 57.

²⁹⁰⁷ Prlić's Appeal Brief, para. 294. See also Prlić's Reply Brief, para. 57.

²⁹⁰⁸ Prlić's Appeal Brief, para. 294. See also Prlić's Reply Brief, para. 57.

²⁹⁰⁹ Prosecution's Response Brief (Prlić), para. 173. See also Prosecution's Response Brief (Prlić), para. 168.

²⁹¹⁰ Prosecution's Response Brief (Prlić), para. 174. The Prosecution contends that, in any event, Prlić's assertions regarding Witness BB's ignorance are untrue. Prosecution's Response Brief (Prlić), para. 174.

²⁹¹¹ Prosecution's Response Brief (Prlić), para. 175. See also Prosecution's Response Brief (Prlić), para. 168.

²⁹¹² Prosecution's Response Brief (Prlić), para. 176.

²⁹¹³ Prlić's Appeal Brief, para. 281.

²⁹¹⁴ See, e.g., Trial Judgement, Vol. 4, para. 278.

²⁹¹⁵ See Prlić's Appeal Brief, para. 290, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 672-673. In this regard, the Appeals Chamber notes that Prlić fails to explain how the finding regarding the influx of mostly Muslim refugees into Mostar changing the demography there in May 1993 should have any impact on the Trial Chamber's findings regarding the existence of the CCP to dominate the Muslim population through ethnic cleansing. Cf. *Brđanin* Appeal Judgement, para. 22. The Appeals Chamber further notes that the finding that the Croats became the majority in Mostar

914. The Appeals Chamber turns to Prlić's contention that the Trial Chamber erred in concluding that the 15 April 1993 Decision denied Muslim refugees humanitarian aid, forcing them to leave Mostar, as well as that at the beginning of May 1993 the HVO issued an ultimatum to Muslims occupying abandoned homes to leave by 9 May 1993 and that evictions started on 8 May 1993.²⁹¹⁶ With regard to his argument that Witnesses BA's and BB's statements are uncorroborated, the Appeals Chamber observes that the Trial Chamber's findings indicate that it found that these two witnesses corroborated each other,²⁹¹⁷ and were corroborated by other evidence and adjudicated facts.²⁹¹⁸ In any event, there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible.²⁹¹⁹ Further, Prlić's argument that the Trial Chamber excluded evidence showing Witnesses BA's and BB's lack of credibility relies on his ground of appeal 6, which the Appeals Chamber dismisses elsewhere.²⁹²⁰ As for his argument that the Trial Chamber ignored Witness BB's lack of knowledge on a number of issues, Prlić fails to demonstrate how this renders the Trial Chamber's reliance on Witness BB's evidence with regard to the 15 April 1993 Decision unreasonable.

915. With regard to Prlić's arguments that the Trial Chamber ignored the evidence of Raguž and Šimunović, the Appeals Chamber observes that Prlić challenges two sets of Trial Chamber findings: (1) that the 15 April 1993 Decision denied Muslim refugees humanitarian aid and forced them to leave Mostar,²⁹²¹ and (2) that, at the beginning of May 1993, the HVO issued an ultimatum to Muslims occupying abandoned homes to leave by 9 May 1993 and that evictions started on 8 May 1993.²⁹²² The Appeals Chamber considers that the evidence of Raguž and Šimunović highlighted by Prlić concerns the 15 April 1993 Decision,²⁹²³ and is thus irrelevant to the latter finding.²⁹²⁴ To the extent that the allegedly ignored evidence is relevant to the former finding,²⁹²⁵ the Appeals

Municipality in May-June 1992 relates to a period outside of the time frame of the CCP. See Trial Judgement, Vol. 4, paras 44 *et seq.*

²⁹¹⁶ Prlić's Appeal Brief, para. 291, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 739-742, Vol. 4, paras 49, 159.

²⁹¹⁷ Trial Judgement, Vol. 2, para. 739, referring to, *inter alia*, Ex. P09712 (confidential), paras 23, 26, Witness BA, T(F). 7173 (closed session) (25 Sept 2006), Witness BB, T(F). 17142, 17144 (closed session) (16 Apr 2007).

²⁹¹⁸ Trial Judgement, Vol. 2, paras 739 (referring to, *inter alia*, Ex. P09840 (confidential), para. 5), 741-742 (referring to, *inter alia*, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006, 7 September 2006, Adjudicated Fact no. 79, Ex. P02227, p. 2). Prlić's mere assertion that the Trial Chamber erroneously relied on adjudicated facts is dismissed.

²⁹¹⁹ *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.

²⁹²⁰ See Prlić's Appeal Brief, para. 291; Prlić's Reply Brief, para. 56, referring to Prlić's Appeal Brief, paras 182-183, 189-190 (Prlić's ground of appeal 6). See *supra*, para. 218. The Appeals Chamber understands that Prlić intended to refer to Witness BB, not Witness BC. Cf. Prlić's Appeal Brief, para. 291; Prosecution's Response Brief (Prlić), fn. 591; Prlić's Reply Brief, para. 56). Prlić's argument that the Trial Chamber erroneously excluded "other relevant evidence" without any further specification is dismissed as a mere assertion.

²⁹²¹ See Prlić's Appeal Brief, para. 291, referring to Trial Judgement, Vol. 2, paras 739-741, Vol. 4, paras 49, 159.

²⁹²² See Prlić's Appeal Brief, para. 291, referring to Trial Judgement, Vol. 2, para. 742.

²⁹²³ See Prlić's Appeal Brief, paras 292-293, and references cited therein.

²⁹²⁴ See Prlić's Appeal Brief, para. 291, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 742.

²⁹²⁵ See Prlić's Appeal Brief, para. 291, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 739-741, Vol. 4, para. 49.

Chamber considers that Prlić fails to provide support for his claim that Raguž testified that the 15 April 1993 Decision in reality changed nothing concerning the status of displaced persons regardless of their ethnicity.²⁹²⁶ He also fails to support his submission that Šimunović testified that there was no connection between that decision and the movement of people or distribution of humanitarian aid.²⁹²⁷ Further, Prlić's claim that contrary to international reports no one lost refugee status based on the 15 April 1993 Decision is not borne out by the testimony he cites.²⁹²⁸ As for the remainder of the allegedly ignored evidence, the Appeals Chamber considers that Prlić fails to explain how this evidence could impugn the challenged finding.²⁹²⁹ Prlić's arguments that the Trial Chamber ignored testimony from Raguž and Šimunović are therefore dismissed.

916. Having dismissed the arguments above, the Appeals Chamber considers that Prlić has failed to demonstrate that the Trial Chamber erred in concluding that: (1) the Mostar municipal HVO adopted the 15 April 1993 Decision, which led to discrimination against Muslims; (2) Croats became the majority in Mostar Municipality in May-June 1992, and that a new influx of refugees changed the demographic structure in Mostar in May 1993 in favour of Muslims; (3) the 15 April 1993 Decision denied Muslim refugees humanitarian aid, forcing them to leave Mostar; and (4) at the beginning of May 1993, the HVO issued an ultimatum to Muslims occupying

²⁹²⁶ The Appeals Chamber notes that the references to Raguž's testimony that Prlić cites in his appeal brief, fn. 809, do not support this assertion. The Appeals Chamber notes that Raguž testified that the 15 April 1993 Decision envisaged who could be granted refugee or displaced person status and that it regulated the entitlement to refugee cards and aid in Mostar Municipality. Martin Raguž, T. 31481, 31483 (27 Aug 2008). See also Martin Raguž, T. 31284 (25 Aug 2008). The Appeals Chamber fails to see how the assertion that the 15 April 1993 Decision was in accordance with the law on refugees, which regulated the obligations of military conscripts, carries any relevance to the challenged finding.

²⁹²⁷ The Appeals Chamber notes that the references to Šimunović's testimony that Prlić cites in his appeal brief, fn. 810, do not support this assertion. Šimunović, to the contrary, testified that he and the Red Cross had to distribute aid according to the criteria of the 15 April 1993 Decision. Marinko Šimunović, T. 33588, 33596-33597 (22 Oct 2008). The Appeals Chamber further notes that, in addition, Šimunović testified that in accordance with the 15 April 1993 Decision: (1) internally displaced persons moved to their formerly abandoned homes when they were able to do so; and (2) displaced persons accommodated in schools were to be relocated to other buildings. Marinko Šimunović, T. 33444-33445 (20 Oct 2008), T. 33594 (22 Oct 2008). The Appeals Chamber fails to see how the assertion that decisions similar to the 15 April 1993 Decision were adopted in Muslim-majority municipalities is relevant to the impugned finding.

²⁹²⁸ The Appeals Chamber again notes that the references to Šimunović's testimony that Prlić cites in his appeal brief, fn. 812, do not support his assertion. To the contrary, Šimunović testified that the number of beneficiaries, in particular in the category of militarily able-bodied men, did change as a result of the 15 April 1993 Decision. Marinko Šimunović, T. 33632-33633 (22 Oct 2008).

²⁹²⁹ The Appeals Chamber fails to see how the assertion that the level of international humanitarian aid went down in April 1993 in part because of the 15 April 1993 Decision could cast doubt on the challenged finding. It further notes that the evidence that Prlić cites in support in his appeal brief, fns 813-814, does not support his assertions that the aid was distributed in Mostar Municipality in a non-discriminatory manner and that the Red Cross distributed it equally. Insofar as Marinko Šimunović testified that: (1) the Mostar Red Cross "did its job" irrespective of persons' ethnic background (Marinko Šimunović, T. 33681 (23 Oct 2008)); (2) the Mostar Red Cross operated free from the influence of the executive authorities (Marinko Šimunović, T. 33409 (20 Oct 2008)); and (3) the Muslims were receiving humanitarian aid under the same conditions as the Croats (Marinko Šimunović, T. 33527 (21 Oct 2008)), the Appeals Chamber notes that he also testified that he distributed aid according to the 15 April 1993 Decision. See *supra*, fn. 2927. The Appeals Chamber notes that the witness also stated that the Red Cross relied for the determination as to who required aid on lists of persons created by "professional services of the municipality and the Social Services on the ground". Marinko Šimunović, T. 33419 (20 Oct 2008). See Marinko Šimunović, T. 33418, 33420-33421 (20 Oct 2008). See also Marinko Šimunović, T. 33495-33496 (21 Oct 2008).

abandoned homes to leave by 9 May 1993 and that evictions started on 8 May 1993. The Appeals Chamber therefore dismisses Prlić's sub-ground of appeal 10.5.

(ii) Prlić's appeal (Sub-grounds 10.6, 10.7, and 10.8)

a. Arguments of the Parties

917. Prlić asserts that the Trial Chamber erred in concluding that an HVO policy existed to drastically reduce the Muslim population of the HZ H-B, especially in Mostar, through removing the Muslim population and increasing the Croatian population.²⁹³⁰ Prlić argues that the Trial Chamber relied on Witness BA's testimony without other supporting evidence, and disregarded all contrary evidence.²⁹³¹ Prlić also claims that the Trial Chamber erred in concluding that there was a new influx of people in Mostar around 5 May 1993, changing the demography in favour of Muslims.²⁹³² He further claims that the Trial Chamber erred in concluding that Prlić requested humanitarian organisations' assistance in moving Croats to areas considered to be Croatian.²⁹³³ Lastly, Prlić submits that the Trial Chamber erred in concluding that the HVO arranged the removal of Croats to Provinces 8 and 10 to alter the balance of power.²⁹³⁴ In support of his submission, Prlić argues that Prosecution Witnesses Beese's and BD's evidence was unsubstantiated, and that it "defies logic" that Croats would ethnically cleanse Croats from Province 10 to Province 8, which in 1992 was already 90 per cent Croatian.²⁹³⁵

918. The Prosecution responds that Prlić fails to show an error in arguing that Witness BA's evidence was not supported by other evidence, and that he ignores ample evidence corroborating the existence of an HVO policy of ethnic cleansing.²⁹³⁶ The Prosecution argues that Prlić's claim that the Trial Chamber disregarded all evidence contrary to Witness BA's testimony is unsubstantiated, fails to identify the allegedly contrary evidence, and is contradicted by the Trial Chamber's express consideration of Prlić's case denying such a policy.²⁹³⁷ Finally, the Prosecution argues that the Ultimate Purpose of the JCE is not contradicted by the Trial Chamber's finding on the HVO seeking to move Croats from Province 10 to Province 8, since the HVO lost control of Travnik (the capital of Province 10) to the ABiH in mid-June 1993.²⁹³⁸

²⁹³⁰ Prlić's Appeal Brief, paras 295-296, referring to Prlić's grounds of appeal 16.5, 16.6.2, 16.6.5-16.6.6. See also Prlić's Appeal Brief, para. 281.

²⁹³¹ Prlić's Appeal Brief, para. 295. See Prlić's Appeal Brief, para. 296.

²⁹³² Prlić's Appeal Brief, para. 297.

²⁹³³ Prlić's Appeal Brief, para. 298. See Prlić's Appeal Brief, para. 299.

²⁹³⁴ Prlić's Appeal Brief, para. 300.

²⁹³⁵ Prlić's Appeal Brief, para. 300.

²⁹³⁶ Prosecution's Response Brief (Prlić), para. 177. See also Appeal Hearing, AT. 184-185 (20 Mar 2017).

²⁹³⁷ Prosecution's Response Brief (Prlić), para. 177.

²⁹³⁸ Prosecution's Response Brief (Prlić), para. 178.

b. Analysis

919. Turning first to Prlić's challenge to the Trial Chamber's finding on the existence of an HVO policy entailing the drastic reduction of the Muslim population while increasing the Croat population in HZ H-B, the Appeals Chamber considers that Prlić fails to articulate any error when arguing that Witness BA's evidence is not supported by other evidence, given that there is no legal requirement for corroboration.²⁹³⁹ Moreover, the Appeals Chamber observes that, contrary to Prlić's assertion, the Trial Chamber considered ample corroborating evidence.²⁹⁴⁰ The Appeals Chamber also dismisses Prlić's claim that the Trial Chamber disregarded all contrary evidence, as it is unsupported by any evidence.²⁹⁴¹ Further, Prlić fails to particularise how his submissions in sub-grounds of appeal 16.5, 16.6.2, 16.6.5, and 16.6.6 support his present arguments, and, therefore, they are dismissed as undeveloped.²⁹⁴²

920. The Appeals Chamber further dismisses as undeveloped Prlić's claims that the Trial Chamber erred in concluding that: (1) there was a new influx of people in Mostar around 5 May 1993, changing the demography in favour of Muslims;²⁹⁴³ and (2) Prlić requested humanitarian organisations' assistance in moving Croats to areas considered to be Croatian. In this regard, Prlić fails to particularise how his submissions in sub-ground of appeal 16.6.2 support his claims.

921. With regard to Prlić's submission that the Trial Chamber erred in concluding that the HVO arranged removals of the Croat population to alter the balance of power, the Appeals Chamber notes that he fails to support his claim that the evidence of Beese and Witness BD is unsubstantiated. This argument is therefore dismissed as undeveloped. The Appeals Chamber further considers that Prlić's argument that it "defies logic"²⁹⁴⁴ that Croats would ethnically cleanse other Croats from Province 10 to Province 8 (which in 1992 was already 90 per cent Croatian) is baseless, given that the Trial Chamber clearly explained how these relocations formed an integral

²⁹³⁹ *Kordić and Čerkez* Appeal Judgement, para. 274. See *Krajišnik* Appeal Judgement, para. 21. Furthermore, Prlić's argument regarding Witness BA relies on his challenges to the witness's credibility under sub-ground of appeal 6.1, which the Appeals Chamber dismisses elsewhere. See *supra*, para. 218.

²⁹⁴⁰ See, e.g., Trial Judgement, Vol. 4, para. 51, referring to Bo Pellnäs, T(F). 19511-19512 (5 June 2007), Witness BB, T(F). 17185, 17188 (16 April 2007) (closed session), Exs. P09593, para. 3 (confidential), P09712, paras 24-25 (confidential).

²⁹⁴¹ The Appeals Chamber also notes that the Trial Chamber specifically considered both of Prlić's arguments that there was no plan or any measures designed to ethnically cleanse the regions controlled by the HZ(R) H-B or the surrounding regions, and that the accusations of "reverse ethnic cleansing" were without any basis. Trial Judgement, Vol. 4, para. 39.

²⁹⁴² The Appeals Chamber notes that, in any event, it dismisses elsewhere the submissions made under these sub-grounds. See *infra*, paras 1287-1298, 1300-1317.

²⁹⁴³ The Appeals Chamber notes that it dismisses elsewhere Prlić's sub-ground of appeal 10.5, to which he refers in this submission. See Prlić's Appeal Brief, fn. 817; *supra*, paras 910-916.

²⁹⁴⁴ Prlić's Appeal Brief, para. 300.

part of the project to consolidate HVO control by criminal means.²⁹⁴⁵ Prlić simply attempts to substitute his own evaluation of this evidence for that of the Trial Chamber and, therefore, this argument is dismissed.

922. For the foregoing reasons, the Appeals Chamber finds that Prlić has failed to show that the Trial Chamber erred in concluding that an HVO policy existed to drastically reduce the Muslim population of the HZ H-B, especially in Mostar, through removing the Muslim population and increasing the Croatian population. The Appeals Chamber therefore dismisses Prlić's sub-grounds of appeal 10.6, 10.7, and 10.8.

(iii) Stojić's appeal (Ground 47)

a. Arguments of the Parties

923. Stojić submits that the Trial Chamber erred in fact and law and failed to give a "reasoned decision" in finding that the HVO launched the attack on Mostar on 9 May 1993.²⁹⁴⁶ First, given that the Trial Chamber acknowledged that the evidence remained "very divided",²⁹⁴⁷ Stojić argues that it was "impossible" to conclude beyond reasonable doubt that the attack was launched by the HVO.²⁹⁴⁸ Second, Stojić argues that no witness could reliably establish that the HVO launched the attack.²⁹⁴⁹ In particular, he contends that: (1) the local witnesses did not give evidence that adequately supported this conclusion; (2) contrary to the Trial Chamber's conclusion, most of the international witnesses were not in Mostar on 9 May 1993;²⁹⁵⁰ and (3) there is another reasonable inference to be drawn from the HVO radio broadcast on the need to establish law and order which the civilian witnesses heard, namely, that the attack could have been a response to ABiH actions.²⁹⁵¹ Third, Stojić claims that the Trial Chamber failed to explain why it disregarded submissions and evidence suggesting that the ABiH initiated the attack, in particular that: (1) the ABiH was planning an attack on Mostar in April 1993; (2) military and technical equipment was supplied to the ABiH in Mostar in May 1993 by the HVO; (3) only five or six men were present at the relevant HVO command post just before the attack commenced; (4) none of the Appellants were in Mostar; and

²⁹⁴⁵ See, e.g., Trial Judgement, Vol. 4, paras 51-56, 60-64.

²⁹⁴⁶ Stojić's Appeal Brief, heading before para. 398, paras 398-402.

²⁹⁴⁷ Stojić's Appeal Brief, para. 399, referring to Trial Judgement, Vol. 2, para. 764.

²⁹⁴⁸ Stojić's Appeal Brief, paras 399-400.

²⁹⁴⁹ Stojić's Appeal Brief, para. 400.

²⁹⁵⁰ Stojić's Appeal Brief, para. 400, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 775. Stojić refers here to Witnesses BF, Beese, and Klaus Johann Nissen. He further argues that Witness Grant Finlayson was in the relevant area, but was unable to explain the basis for concluding that the HVO started the attack. Stojić's Appeal Brief, para. 400.

²⁹⁵¹ Stojić's Appeal Brief, para. 400, referring to Trial Judgement, Vol. 2, para. 765.

(5) the HVO needed to call reinforcements to Mostar.²⁹⁵² Stojić contends that these errors led the Trial Chamber to find that the events in Mostar were part of the CCP, as opposed to a defensive response to the ABiH attack.²⁹⁵³

924. The Prosecution responds that the Trial Chamber, having considered the totality of the evidence, reasonably concluded that the HVO launched the attack on Mostar on 9 May 1993.²⁹⁵⁴ It argues that the inhabitants of Mostar all gave similar accounts of the 9 May 1993 events – consistent with the evidence from the international witnesses – that the HVO attacked the town.²⁹⁵⁵ The Prosecution further responds that Stojić misrepresents the evidence, considering that local witnesses were able to establish that the HVO started the attack.²⁹⁵⁶ Lastly, the Prosecution argues that the Trial Chamber considered the evidence Stojić referred to, but ultimately relied, instead, on other evidence regarding the attack.²⁹⁵⁷

b. Analysis

925. Turning first to Stojić's claim that the evidence of local witnesses failed to reliably establish that the HVO launched the attack on Mostar, the Appeals Chamber notes that contrary to Stojić's claim, evidence, including that of several local witnesses, supports the Trial Chamber's finding that the initial attack came from Hum mountain and West Mostar,²⁹⁵⁸ which were controlled by the HVO.²⁹⁵⁹ The Trial Chamber also took account of the fact that Mostar residents testified that at around 9:00 a.m. on 9 May 1993, the HVO broadcast an official press announcement to the effect that the HVO had undertaken a "large-scale action" to restore law and order and called on the

²⁹⁵² Stojić's Appeal Brief, para. 401, referring, *inter alia*, to Exs. P01962, P01970, 3D01010, 3D01023, 3D01008, 3D01009. In support of his submission that MTS was supplied to the ABiH in Mostar in May 1993, Stojić refers to paragraph 29 and footnotes 85 and 86 of his appeal brief, under his ground of appeal 2.

²⁹⁵³ Stojić's Appeal Brief, paras 398, 402.

²⁹⁵⁴ Prosecution's Response Brief (Stojić), para. 364.

²⁹⁵⁵ Prosecution's Response Brief (Stojić), paras 365-368, 371. The Prosecution submits that it is immaterial that most of the international witnesses were not in Mostar during the attack, as they testified about reports they received from observers present in Mostar. Prosecution's Response Brief (Stojić), para. 367. It also maintains that according to inhabitants of Mostar the shelling was coming from HVO controlled areas and was directed at ABiH-controlled areas. Prosecution's Response Brief (Stojić), para. 365. The Prosecution further argues that contemporaneous reports of international observers also describe HVO shelling of ABiH positions. Prosecution's Response Brief (Stojić), para. 366.

²⁹⁵⁶ Prosecution's Response Brief (Stojić), para. 369. Furthermore, the Prosecution submits that the evidence of the HVO radio broadcast together with the other evidence supports the Trial Chamber's finding that the HVO launched the 9 May 1993 attack. Prosecution's Response Brief (Stojić), para. 370.

²⁹⁵⁷ Prosecution's Response Brief (Stojić), para. 371. See Prosecution's Response Brief (Stojić), para. 364.

²⁹⁵⁸ Trial Judgement, Vol. 2, para. 765 & fn. 1767, referring to Ex. P09805 (confidential), p. 2 (Witness CT heard that the shooting came from the upper part of the settlement formerly called Bakamluk, renamed Vatican); Ex. P10032, para. 7 (Witness Mujo Čopelj stated that he was awoken by the sounds of shelling coming from the "Western side" and from Mount Hum and Bakina Luka); Ex. P10033, para. 7 (Witness Muris Marić stated that "the HVO" launched the offensive from the "West side"); Ex. P10034 (confidential), paras 6-7 (Witness DY stated that she was told that the shelling came from Hum hill and from the Velež stadium); Ex. 3D03101, p. 4 (excerpt of a book by Ismet Haždiosmanović stating that the "HVO firing" came from the locality of Hum hill as he could clearly see from his apartment).

²⁹⁵⁹ See Trial Judgement, Vol. 2, paras 761, 769. The Appeals Chamber notes that Stojić does not challenge these findings under the present ground of appeal.

Muslims to place white flags in their windows “as a sign of their capitulation”.²⁹⁶⁰ Finally, the Appeals Chamber observes that when discussing the evidence of local witnesses, the Trial Chamber also relied on Adjudicated Fact no. 81 which states that the “HVO attacked Mostar using artillery, mortars, heavy weapons and small arms”.²⁹⁶¹ The Appeals Chamber finds that Stojić has failed to show that, in light of the totality of this evidence, no reasonable trier of fact could have interpreted it in the way the Trial Chamber did. Accordingly, the Appeals Chamber finds no error in the conclusion that the evidence of local witnesses supported the finding that the HVO launched the attack on 9 May 1993.

926. As for Stojić’s claim that “most” of the international witnesses relied upon by the Trial Chamber were not in Mostar on 9 May 1993, the Appeals Chamber observes as a preliminary matter that the Trial Chamber relied on the evidence of a large number of international witnesses in respect of the events of 9 May 1993, including the three witnesses referred to by Stojić.²⁹⁶² As Stojić points out, Beese, Nissen, and Witness BF testified that they were not in Mostar on 9 May 1993.²⁹⁶³ However, when making a finding that the “observers from the international community in Mostar on 9 May 1993 confirmed the description of the fighting on 9 May provided by the inhabitants of Mostar”,²⁹⁶⁴ the Trial Chamber did not rely on the evidence of Beese, Nissen, and Witness BF. Rather, it relied on a number of other international witnesses and documents, including relevant international reports.²⁹⁶⁵ Thus, the Appeals Chamber finds that the Trial Chamber considered the evidence of Beese, Nissen, and Witness BF only as corroborative of its findings about the incident which were based on eyewitness testimony.²⁹⁶⁶ The Appeals Chamber thus finds no error in the Trial Chamber’s approach to the evidence of Beese, Nissen, and Witness BF, and dismisses Stojić’s argument to the contrary.

²⁹⁶⁰ Trial Judgement, Vol. 2, para. 766.

²⁹⁶¹ Trial Judgement, Vol. 2, fn. 1764. See also *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006, 7 September 2006, p. 16.

²⁹⁶² See Trial Judgement, Vol. 2, paras 771-772, and references cited therein. See also Trial Judgement, Vol. 2, para. 764.

²⁹⁶³ See Stojić’s Appeal Brief, para. 400, referring to Christopher Beese, T. 3156, 3167 (14 June 2006) (Beese testified that he left Mostar on the afternoon of 8 May 1993 for Split, and was on leave from 9 May 1993), Klaus Johann Nissen, T. 20602 (27 June 2007) (Nissen was on leave on 9 May 1993), Witness BF, T. 25909 (8 Jan 2008) (closed session), T. 25959 (9 Jan 2009) (closed session). See also Trial Judgement, Vol. 2, paras 771 & fn. 1795 (referring, *inter alia*, to Klaus Johann Nissen, T(F). 20601-20601 (27 June 2007)), 772 (referring, *inter alia*, to Christopher Beese, T(F). 3167-3169 (14 June 2006), Witness BF, T(F). 25909-25910 (14 June 2006)).

²⁹⁶⁴ Trial Judgement, Vol. 2, para. 771 (emphasis added).

²⁹⁶⁵ Trial Judgement, Vol. 2, para. 771 & fn. 1794. The Trial Chamber also observed later in the same paragraph that some of the international observers were able to see that the HVO was shelling Mostar intensely. This finding also did not depend on the evidence of Beese, Nissen, and Witness BF. See Trial Judgement, Vol. 2, para. 771 & fn. 1796.

²⁹⁶⁶ The Trial Chamber took account of, *inter alia*, Nissen’s evidence to support the finding that the HVO had restricted the movement of international observers (see Trial Judgement, Vol. 2, para. 771 & fn. 1795), and Beese’s, Nissen’s, and Witness BF’s evidence to support the conclusion that the HVO had started the attack on 9 May 1993 (see Trial Judgement, Vol. 2, para. 772 & fn. 1798).

927. As regards Stojić's argument that there was an alternative reasonable inference in respect of the HVO's radio broadcast, namely, that the attack could have been a response to ABiH actions, the Appeals Chamber recalls that Mostar residents testified that around 9:00 a.m. on 9 May 1993, the HVO broadcast an official press announcement to the effect that the HVO had undertaken a large-scale action to restore law and order.²⁹⁶⁷ The Appeals Chamber considers that Stojić merely suggests a different interpretation of the evidence without demonstrating that the Trial Chamber unreasonably concluded, based on the totality of evidence, that the attack on 9 May 1993 was launched by the HVO.

928. As for Stojić's submission that the Trial Chamber failed to explain why it disregarded submissions and evidence suggesting that the ABiH initiated the attack, the Appeals Chamber notes that contrary to Stojić's submission, the Trial Chamber expressly considered evidence that only five or six men were present at the relevant HVO command post just before the attack commenced,²⁹⁶⁸ that none of the Appellants were in Mostar,²⁹⁶⁹ and that the HVO needed to call reinforcements to Mostar.²⁹⁷⁰ Further, as regards Stojić's argument that the Trial Chamber disregarded evidence that military and technical equipment was supplied to the ABiH in Mostar in May 1993, the Appeals Chamber notes that the Trial Chamber found that the HVO and ABiH co-operated militarily from May 1992 against the JNA and VRS.²⁹⁷¹ It further found, considering, *inter alia*, the evidence referred to by Stojić, that in furtherance of this co-operation, the HVO supplied the ABiH with medical aid, weapons, and military equipment in 1992 and 1993.²⁹⁷² Lastly, with regard to Stojić's argument that the Trial Chamber disregarded evidence that the ABiH was planning an attack on Mostar in April 1993, the Appeals Chamber recalls that a trial judgement should be read as a whole,²⁹⁷³ and notes that the Trial Chamber found that both the HVO and the ABiH seemed to be preparing for a potential attack on the eve of 9 May 1993.²⁹⁷⁴ It also considered evidence suggesting that it was the ABiH that attacked the HVO on the morning of 9 May 1993 but nevertheless concluded that it was the HVO that launched an attack on Mostar on that day.²⁹⁷⁵ Accordingly, the

²⁹⁶⁷ Trial Judgement, Vol. 2, para. 766.

²⁹⁶⁸ Trial Judgement, Vol. 2, para. 768.

²⁹⁶⁹ Trial Judgement, Vol. 2, para. 773.

²⁹⁷⁰ Trial Judgement, Vol. 2, paras 770 (referring to, *inter alia*, Exs. 3D01007, 3D01008, 3D01009, 3D01010, 3D01023), 772 (noting testimony to the effect that the HVO redeployment orders could be explained by the fact that the HVO was surprised by the ABiH's strong resistance).

²⁹⁷¹ See Trial Judgement, Vol. 1, para. 440.

²⁹⁷² See Trial Judgement, Vol. 1, para. 440 & fns 1037-1039, Vol. 2, para. 696 & fn. 1562, Vol. 4, para. 308 & fn. 732. Cf. Stojić's Appeal Brief, para. 29 & fns 85-86, referring to, *inter alia*, Anđelko Makar, T. 38447-38448, 38453-38456 (23 Mar 2009), Exs. 2D01107, 2D01108. See also Trial Judgement, Vol. 1, fn. 1114. Cf. Stojić's Appeal Brief, fn. 86, referring to, *inter alia*, Anđelko Makar, T. 38447-38448 (23 Mar 2009). See generally *infra*, paras 985-990.

²⁹⁷³ *Stanišić and Župljanin* Appeal Judgement, para. 202; *Šainović et al.* Appeal Judgement, paras 306, 321; *Bošković and Tarčulovski* Appeal Judgement, para. 67.

²⁹⁷⁴ Trial Judgement, Vol. 2, para. 774.

²⁹⁷⁵ Trial Judgement, Vol. 2, paras 768-770, 775.

Appeals Chamber finds that Stojić does not demonstrate that the Trial Chamber failed to provide a reasoned opinion by not expressly considering the evidence regarding events in April 1993.

929. Turning finally to Stojić's claim that the Trial Chamber erred in relying on "divided evidence" when concluding that the HVO initiated the attack, the Appeals Chamber notes that the Trial Chamber observed that "the evidence remains very divided with respect to how the attack of 9 May 1993 started".²⁹⁷⁶ The Appeals Chamber considers that there is no error, *per se*, in the Trial Chamber making a finding adverse to Stojić's submission while recognising that the evidence in respect of the attack was very divided. Moreover, Stojić fails to highlight any inconsistencies that the Trial Chamber left unresolved.²⁹⁷⁷

930. In conclusion, the Appeals Chamber finds that Stojić has not demonstrated that the Trial Chamber failed to provide a reasoned opinion, and has not succeeded in showing that no reasonable trier of fact could have concluded that the HVO launched the attack on Mostar on 9 May 1993. Stojić's ground of appeal 47 is dismissed.

(iv) Praljak's appeal (Ground 28)

931. Praljak submits that the Trial Chamber erred in concluding that the crimes in Mostar formed part of the CCP.²⁹⁷⁸ In support, he argues that: (1) this is not the only reasonable conclusion from the evidence since the events in Mostar were a consequence of ABiH attacks and not "part of any plan";²⁹⁷⁹ (2) the Trial Chamber did not establish the identity of the "authors" of the CCP that resulted in the commission of crimes in Mostar, nor Praljak's involvement in these crimes before 24 July 1993,²⁹⁸⁰ nor the common action of the JCE members, including Croatian leaders, in Mostar,²⁹⁸¹ and (3) there is no evidence that either Praljak or the Croatian officials allegedly involved in the JCE had any knowledge of actions in Mostar before they occurred.²⁹⁸²

²⁹⁷⁶ Trial Judgement, Vol. 2, para. 764.

²⁹⁷⁷ See *Kupreškić et al.* Appeal Judgement, para. 31 (stating that it is "certainly" within the discretion of the trial chamber to evaluate any inconsistencies, and that it is the trial chamber that has the main responsibility to resolve any inconsistencies that may arise within and/or among witnesses' testimonies).

²⁹⁷⁸ Praljak's Appeal Brief, paras 326, 329; Praljak's Reply Brief, para. 79.

²⁹⁷⁹ Praljak's Appeal Brief, paras 325, 328-329; Appeal Hearing, AT. 383-384, 400 (22 Mar 2017). Praljak further contends that the ABiH attacks forced the HVO to protect itself and the Croatian population and to engage in battle in a populated urban environment; most of the resulting victims were collateral damage. Praljak's Appeal Brief, para. 328. With regard to some crimes that might have been committed by HVO members, Praljak asserts that these were isolated acts and not part of any criminal plan. Praljak's Appeal Brief, para. 328.

²⁹⁸⁰ Praljak's Appeal Brief, para. 326; Praljak's Reply Brief, paras 79, 81. Praljak submits that the Trial Chamber's findings show that his actions, contrary to HVO policy, aimed at assisting international organisations in bringing humanitarian aid into Mostar. Praljak's Reply Brief, para. 81.

²⁹⁸¹ Praljak's Appeal Brief, para. 327.

²⁹⁸² Praljak's Appeal Brief, para. 327; Praljak's Reply Brief, para. 80.

932. The Prosecution responds that the Trial Chamber reasonably concluded that crimes committed in Mostar formed part of the CCP.²⁹⁸³ In particular, the Prosecution submits that: (1) Praljak's claim that the Mostar events were a consequence of ABiH attacks ignores several Trial Chamber findings and repeats failed trial arguments;²⁹⁸⁴ (2) his argument regarding the identity of the authors of the CCP resulting in the Mostar crimes likewise ignores key findings;²⁹⁸⁵ (3) the Trial Chamber's finding that Praljak did not contribute to crimes committed in Mostar before 24 July 1993 has no impact on whether such crimes formed part of the CCP, particularly in light of the Trial Chamber's findings that these crimes were part of a preconceived plan, implemented in a co-ordinated manner by other JCE members;²⁹⁸⁶ (4) his argument regarding the JCE members' common action ignores various Trial Chamber findings;²⁹⁸⁷ and (5) his insistence on evidence that Croatia's representatives had prior knowledge of HVO activities in Mostar is misplaced.²⁹⁸⁸

933. With regard to Praljak's argument that the Mostar events were a consequence of ABiH attacks and not part of a plan, the Appeals Chamber notes that he both fails to identify the challenged factual findings and ignores other relevant factual findings.²⁹⁸⁹ The same is the case with his arguments that the Trial Chamber omitted to make findings as to the identity of the "authors" of the CCP that resulted in the commission of the crimes in Mostar and as to the common action of the JCE members including Croatian leaders in Mostar.²⁹⁹⁰ The Appeals Chamber therefore dismisses these submissions.

934. With respect to Praljak's claim that there was no evidence that he or the Croatian officials who were allegedly involved in the JCE had prior knowledge of the actions in Mostar, the

²⁹⁸³ Prosecution's Response Brief (Praljak), para. 173.

²⁹⁸⁴ Prosecution's Response Brief (Praljak), para. 175. See Prosecution's Response Brief (Praljak), para. 174. The Prosecution further submits that the HVO's crimes cannot be justified as mere collateral damage, considering that HVO shelling: (1) also targeted civilians and civilian objects; (2) included the use of indiscriminate weapons; and (3) affected the whole of East Mostar. Prosecution's Response Brief (Praljak), para. 175.

²⁹⁸⁵ Prosecution's Response Brief (Praljak), paras 173-174.

²⁹⁸⁶ Prosecution's Response Brief (Praljak), para. 176.

²⁹⁸⁷ Prosecution's Response Brief (Praljak), para. 176.

²⁹⁸⁸ Prosecution's Response Brief (Praljak), para. 176.

²⁹⁸⁹ Notably, Praljak ignores various findings on events in Mostar that clearly do not qualify as responses to ABiH military action, such as withholding humanitarian aid from Muslims, large-scale arrests and systematic eviction operations of civilians, and impeding or blocking humanitarian convoys. See, e.g., Trial Judgement, Vol. 4, paras 49, 57-59, 64.

²⁹⁹⁰ See Praljak's Appeal Brief, para. 327 & fn. 792. The Appeals Chamber notes in this respect that the Trial Chamber explicitly found that the Appellants, all of whom were found to be JCE members, contributed to the crimes that took place in Mostar. See, e.g., Trial Judgement, Vol. 4, paras 165, 171, 348-349, 355-357, 581, 586, 734-735, 738, 928, 933-934, 1110, 1112, 1116. The Appeals Chamber further notes that the Trial Chamber made findings as to how the JCE members, including Croatian leaders, collaborated as a plurality of persons in implementing the CCP. See Trial Judgement, Vol. 4, paras 1219, 1222-1223, 1231. See also Trial Judgement, Vol. 4, paras 1217-1218, 1220-1221, 1224-1230, 1232. To the extent Praljak argues that the JCE members were not present in Mostar, the Appeals Chamber recalls that it is not necessary that a participant in a JCE be physically present at the site of the crime at the time it is committed. See *Kvočka et al.* Appeal Judgement, para. 112; *Krnjelac* Appeal Judgement, para. 81.

Appeals Chamber notes that the Trial Chamber found that the CCP entailed consolidating HVO control over the so-called Croatian provinces under the Vance-Owen Peace Plan, which included Mostar Municipality.²⁹⁹¹ Further, it found that the crimes that took place in Mostar “tended to follow a clear pattern of conduct” along with the crimes that took place in other municipalities between January 1993 and April 1994.²⁹⁹² Consequently, the Trial Chamber found that the criminal plan of the JCE members, including the Croatian leaders, did encompass Mostar Municipality.²⁹⁹³ The Appeals Chamber further notes that the Trial Chamber was not required to establish that a participant in the JCE knew about each specific crime committed pursuant to the JCE.²⁹⁹⁴ Praljak’s argument that the Trial Chamber did not establish his involvement in the Mostar crimes before 24 July 1993 is not determinative as to whether the crimes in Mostar formed part of the CCP.²⁹⁹⁵ The Appeals Chamber therefore concludes that Praljak has failed to show that no reasonable trier of fact could have concluded that the crimes in Mostar formed part of the CCP. The Appeals Chamber dismisses Praljak’s ground of appeal 28.

(v) Petković’s appeal (Sub-ground 3.2.2.1 in part)

935. Petković submits that the Trial Chamber erred when it found that “ethnic cleansing” began in Mostar in mid-May 1993 and that Muslims were forcibly transferred from West Mostar to East Mostar on 26 May 1993.²⁹⁹⁶ Petković argues that neither of these findings is supported by the cited evidence which was either not concerned with the second half of May or did not relate to evictions and expulsions at all.²⁹⁹⁷ Petković further argues that the totality of the evidence shows that, in fact, the 26 May 1993 transfer was a voluntary exchange of Croats and Muslims.²⁹⁹⁸

²⁹⁹¹ See, e.g., Trial Judgement, Vol. 1, para. 446 & fn. 1062, para. 447 & fn. 1065 (both referring to Ex. P09276, map 11), para. 449, Vol. 4, paras 44, 49-52, 54-58, 65.

²⁹⁹² Trial Judgement, Vol. 4, paras 49, 51, 54-58, 65. The Appeals Chamber recalls its reversal of the Trial Chamber’s finding that murder and willful killing were part of the CCP from January 1993 until June 1993. See *supra*, paras 874-886. Ultimately, however, the Appeals Chamber does not consider that this change in the scope of the CCP in that period affects the Trial Chamber’s reasoning concerning the clear pattern of conduct in relation to crimes, particularly since not many instances of murders which were part of the CCP took place in that period, in contrast to June 1993 and onwards. See *supra*, para. 876 & fn. 2790.

²⁹⁹³ This included the expanded crimes that took place in East Mostar from June 1993 as the Trial Chamber made findings indicating that the Croatian leaders were informed about events in BiH, including in East Mostar, mainly through Praljak but also through other Appellants. See *supra*, paras 2453, 2458, 2531.

²⁹⁹⁴ *Šainović et al.* Appeal Judgement, para. 1491; *Kvočka et al.* Appeal Judgement, para. 276.

²⁹⁹⁵ See, e.g., *Karemera and Ngirumpatsé* Appeal Judgement, para. 153. To the extent that Praljak challenges his own participation in the JCE, the Appeals Chamber addresses this argument below. See *infra*, paras 1975-2014.

²⁹⁹⁶ Petković’s Appeal Brief, para. 66. See Petković’s Appeal Brief, paras 60, 63. See also Petković’s Appeal Brief, paras 24, 42-44, 59; Petković’s Reply Brief, para. 14; Appeal Hearing, AT. 498-499 (23 Mar 2017).

²⁹⁹⁷ Petković’s Appeal Brief, paras 61-62, 64, 66, referring to Exs. P02425, P09677 (confidential), P09384 (witness statement of Miro Salčin), para. 9; Petković’s Reply Brief, para. 14.

²⁹⁹⁸ Petković’s Appeal Brief, paras 65-66; Petković’s Reply Brief, para. 14, referring to Exs. P02512, P02524, Witness A, T. 14111 (closed session) (14 Feb 2007).

936. The Prosecution responds that the Trial Chamber reasonably concluded that crimes committed during HVO operations in Mostar furthered the CCP.²⁹⁹⁹ It argues that the Trial Chamber's finding that the HVO forcibly removed Muslims from West Mostar to East Mostar in the second half of May 1993 is supported by a wide range of evidence, and that Petković fails to show that the Trial Chamber erred in this regard.³⁰⁰⁰ The Prosecution submits that Petković wrongly asserts that there was a voluntary population exchange of Croats and Muslims.³⁰⁰¹

937. Turning first to Petković's argument that the finding regarding the transfer of Muslims starting in mid-May 1993 was not supported by the evidence, the Appeals Chamber observes that he misrepresents the evidence on which the Trial Chamber relied,³⁰⁰² and ignores other relevant factual findings.³⁰⁰³ With regard to Petković's challenge to the Trial Chamber's finding that "the HVO [moved] at least 300 Muslims from West Mostar to East Mostar on 26 May 1993 without their having the possibility of returning to West Mostar",³⁰⁰⁴ the Appeals Chamber notes that Petković incorrectly claims that it was based on one exhibit, P09677, which does not support it.³⁰⁰⁵ In fact, Exhibit P09677 supports the finding,³⁰⁰⁶ which is furthermore based on a much broader spectrum of evidence and other relevant factual findings that Petković ignores.³⁰⁰⁷ Regarding the assertion that the transfers took place on a voluntary basis, the Appeals Chamber observes that Petković points to evidence indicating that the transfer was part of an organised exchange between the HVO and ABiH, who drew up lists of "individuals who want[ed] to move from one local community to another".³⁰⁰⁸ However, the Appeals Chamber notes that the Trial Chamber also made findings on the violent context in which these movements were occurring, including that: (1) the Muslims were forcibly expelled from their homes and transported either to the Heliodrom or directly to East Mostar; (2) in some cases, the Muslims had to move to collection centres or sleep on the streets; (3) one witness testified that he felt so unsafe in West Mostar that he signed up to be

²⁹⁹⁹ Prosecution's Response Brief (Petković), para. 50. See also Prosecution's Response Brief (Petković), paras 16-17.

³⁰⁰⁰ Prosecution's Response Brief (Petković), paras 52, 54. See also Prosecution's Response Brief (Petković), paras 18, 51.

³⁰⁰¹ Prosecution's Response Brief (Petković), para. 53.

³⁰⁰² Trial Judgement, Vol. 2, fn. 1899, referring to Miro Salčin, T(F). 14232, 14234 (15 Feb 2007), T(F). 14300 (19 Feb 2007), Exs. P02425 (confidential), para. 12, P09834, para. 9. The Appeals Chamber observes that much of this evidence relates to expulsions from West Mostar to East Mostar on 9 May 1993 and onwards, which would therefore include the mid-May period, and considers that Petković fails to demonstrate an error in the Trial Chamber's statement that "[a]ccording to evidence received by the Chamber, between 1,200 and 2,000 Muslim inhabitants were forced to leave West Mostar during this HVO operation". Trial Judgement, Vol. 2, para. 814.

³⁰⁰³ See Trial Judgement, Vol. 2, paras 812-813, 815. Cf. Petković's Appeal Brief, para. 62 (claiming that "there is no evidence that the HVO soldiers forced Muslims to leave West Mostar in the second half of May 1993").

³⁰⁰⁴ Trial Judgement, Vol. 2, para. 818.

³⁰⁰⁵ See Petković's Appeal Brief, para. 64, referring to Ex. P09677 (confidential).

³⁰⁰⁶ See, in particular, Ex. P09677 (confidential), para. 2 (reporting from Mostar on 26 May 1993 that "approximately 300 civilians were escorted from the West to East Bank [who] appear to have been Muslim DP/Rs or Muslim residents of the West Bank who were recently evicted from their flats").

³⁰⁰⁷ See Trial Judgement, Vol. 2, paras 816-817 and references cited therein.

³⁰⁰⁸ Ex. P02512, para. 2. See also Witness A, T. 14111 (closed session) (14 Feb 2007); Ex. P02524.

moved to East Mostar; and (4) the Muslims were then prevented from returning to West Mostar.³⁰⁰⁹ In ignoring these findings, Petković fails to demonstrate any error in the Trial Chamber's approach in this regard.

938. The Appeals Chamber finds that Petković has failed to demonstrate any error in the Trial Chamber's conclusions as regards the transfers that began in Mostar in mid-May 1993, and dismisses Petković's sub-ground of appeal 3.2.2.1 in relevant part.

(vi) Praljak's appeal (Sub-ground 6.3) and Petković's appeal (Sub-ground 3.2.2.3)

a. Arguments of the Parties

939. Both Praljak and Petković submit that the Trial Chamber erred in fact in finding that the HVO organised the displacement of Croats to Provinces 8 and 10 in order to alter the balance of power in favour of the Croats.³⁰¹⁰ Praljak argues that the Trial Chamber ignored the fact that Croats left central BiH because the ABiH and the Mujahideen threatened them,³⁰¹¹ while Petković argues that since the Trial Chamber acknowledged that Croatian population movements were at least partly caused by fear of the ABiH, it was not justified "to consider that assistance of the HVO authorities to refugees of Croatian ethnicity was part of the [CCP]".³⁰¹² Praljak also contends that, contrary to what the Trial Chamber found, the HVO requested the assistance of international organisations for moving the Croats because of their disastrous situation in Zenica.³⁰¹³ Praljak further argues that the Trial Chamber misunderstood the meaning of the expression "evacuation in [an] organized manner" used by the HVO authorities with regard to what to do with the expelled Croats.³⁰¹⁴ Praljak also points out that the Trial Chamber itself found that Croats were displaced from Travnik, "that is, from Province 8 [*sic*]".³⁰¹⁵ Finally, he argues that the displaced Croats were only temporarily accommodated on the territory of the HZ(R) H-B before being transferred to Croatia.³⁰¹⁶

³⁰⁰⁹ See, e.g., Trial Judgement, Vol. 2, paras 812-813, 817, Vol. 4, para. 57.

³⁰¹⁰ Praljak's Appeal Brief, para. 124; Petković's Appeal Brief, paras 77, 79. See also Praljak's Appeal Brief, para. 100; Praljak's Reply Brief, para. 25; Petković's Appeal Brief, paras 24, 42-44.

³⁰¹¹ Praljak's Appeal Brief, paras 122-123. See Praljak's Appeal Brief, para. 119; Praljak's Reply Brief, para. 25.

³⁰¹² Petković's Appeal Brief, para. 78. See Petković's Appeal Brief, para. 77; Appeal Hearing, AT. 498 (23 Mar 2017). Petković further argues that the Trial Chamber erred by failing to distinguish between the Croats who were expelled by the ABiH and those whom the HVO allegedly removed, thereby treating the removal of all Croats as a part of the alleged CCP. Petković's Appeal Brief, para. 79.

³⁰¹³ Praljak's Appeal Brief, para. 121.

³⁰¹⁴ Praljak's Appeal Brief, para. 120, referring to Exs. P02142, p. 4, 1D01829, 1D01672, p. 2. Praljak argues that this expression was used by HVO authorities to show that the expelled Croats would be taken in by the HVO authorities and that their reception and accommodation would be organised. Praljak Appeal Brief, para. 120.

³⁰¹⁵ Praljak's Appeal Brief, para. 124. The Appeals Chamber notes that Travnik was in Province 10. See Trial Judgement, Vol. 1, fn. 1062, referring to, *inter alia*, Ex. P09276, map 11.

³⁰¹⁶ Praljak's Appeal Brief, para. 124. See Praljak's Reply Brief, para. 25.

940. The Prosecution responds that the Trial Chamber reasonably found that JCE members moved Croats into the HZ(R) H-B to alter the ethnic balance in favour of Croats.³⁰¹⁷ With respect to Praljak's arguments, the Prosecution argues that: (1) he ignores the Trial Chamber's assessment of the evidence and repeats his trial arguments without identifying any error;³⁰¹⁸ (2) the displacement of Croats from Travnik, located in Province 10, to Province 8 is consistent with the Ultimate Purpose of the JCE since the ABiH took control of Travnik from the HVO in mid-June 1993;³⁰¹⁹ and (3) the common purpose to change the ethnic balance existed even if JCE members only partially succeeded and the ethnic balance was only temporarily altered.³⁰²⁰ As for Petković, the Prosecution contends that his argument regarding HVO assistance to ethnic Croats is undermined by the fact that the HVO used force and propaganda to encourage their displacement.³⁰²¹ The Prosecution also submits that, contrary to Petković's submission, the Trial Chamber did distinguish between the Croats forced to flee by the ABiH and those forced to flee by the HVO.³⁰²²

b. Analysis

941. With regard to Praljak's argument that the Trial Chamber ignored the fact that Croats left central BiH because the ABiH and the Mujahideen threatened them, the Appeals Chamber first observes that the Trial Chamber noted evidence indicating that Croats from central BiH were under threat from the ABiH and the Mujahideen and that some of them fled the fighting on their own initiative, as well as evidence indicating that the HVO was stirring up fears in these Croats in order to make them leave.³⁰²³ The Appeals Chamber consequently finds that the Trial Chamber did not ignore evidence that some Croats left central BiH under threat from the ABiH and the Mujahideen, and that Praljak merely advances his own preferred interpretation of the evidence. His argument is dismissed.

942. In addition, and concerning Petković's argument that the Trial Chamber was not justified in considering the assistance of HVO authorities to Croatian refugees as part of the CCP given its findings on the motives for the movement of Croatian refugees, the Appeals Chamber recalls that the Trial Chamber found that the HVO was animated by a dual purpose:

It is clear from all the evidence that the HVO arranged these removals to Provinces 8 and 10, not merely to come to the rescue of one part of the Croatian population located in combat zones, but

³⁰¹⁷ Prosecution's Response Brief (Praljak), para. 43; Prosecution's Response Brief (Petković), para. 28. See Prosecution's Response Brief (Petković), paras 16-17, 29-30.

³⁰¹⁸ Prosecution's Response Brief (Praljak), para. 43.

³⁰¹⁹ Prosecution's Response Brief (Praljak), para. 43.

³⁰²⁰ Prosecution's Response Brief (Praljak), para. 43.

³⁰²¹ Prosecution's Response Brief (Petković), para. 31, referring to, *inter alia*, Petković's Appeal Brief, para. 78. See also Prosecution's Response Brief (Petković), para. 18.

³⁰²² Prosecution's Response Brief (Petković), para. 31. See also Prosecution's Response Brief (Petković), para. 18.

³⁰²³ Trial Judgement, Vol. 4, paras 53-54.

also to remove the other part of the population that did not fear any real danger, doing so either by force or voluntarily. By doing this, the HVO could alter the balance of power in these provinces so that it favoured the Croats.³⁰²⁴

The Appeals Chamber cannot see why the first of these purposes would undercut the second and finds that Petković has failed to articulate an error in this regard. Furthermore, with regard to Petković's argument that the Trial Chamber erred by failing to distinguish between Croats expelled by the ABiH or HVO, thereby treating the removal of all Croats as a part of the alleged CCP, the Appeals Chamber observes that the Trial Chamber did make that distinction,³⁰²⁵ and that Petković merely asserts, without providing any support, that the Trial Chamber treated the removal of all Croats as a part of the CCP.

943. As for Praljak's contention that the HVO requested the assistance of international organisations for moving the Croats because of their disastrous situation in Zenica, the Trial Chamber considered evidence that the request for assistance was made due to the threat the Croats were facing in central BiH, but it nevertheless arrived at the conclusion that the HVO arranged removals of Croats to Provinces 8 and 10, including removals of those not fearing real danger.³⁰²⁶ Praljak fails to demonstrate that no reasonable trier of fact could have reached the same conclusion.

944. Regarding Praljak's argument that the Trial Chamber misunderstood the meaning of the expression "evacuation in [an] organized manner" used by HVO authorities,³⁰²⁷ the Appeals Chamber notes that in support of this argument Praljak does not refer to a specific part of the Trial Judgement but simply cites to three exhibits, two of which contain the relevant expression.³⁰²⁸ The Appeals Chamber further notes that the relevant paragraph where the Trial Chamber analysed the reasons for the movements of Croats refers to two of those exhibits without mentioning the relevant expression; rather the Trial Chamber cited to these exhibits, among many others, while noting that certain documents, originating with the HVO, suggest that the movement of the population was due to ABiH threats.³⁰²⁹ The Trial Chamber then proceeded to outline evidence to the contrary, and found that the removals were in fact organised not only to protect one part of the Croatian population but also to remove the other part that had nothing to fear, in order to alter the balance of power in Provinces 8 and 10 in favour of Croats.³⁰³⁰ Accordingly,

³⁰²⁴ Trial Judgement, Vol. 4, para. 55 (internal references omitted).

³⁰²⁵ See Trial Judgement, Vol. 4, paras 54-55.

³⁰²⁶ Trial Judgement, Vol. 4, paras 54-55, referring to, *inter alia*, Ex. P02714, p. 2.

³⁰²⁷ Praljak's Appeal Brief, para. 120.

³⁰²⁸ See Praljak's Appeal Brief, para. 120, referring to Exs. P02142, 1D01829, 1D01672.

³⁰²⁹ Trial Judgement, Vol. 4, paras 53-54 & fns 142, 148, referring to Exs. P02142, 1D01672. While the Trial Chamber used the phrase "in an organised manner" in a subsequent finding, that finding appears to have no relevance to Praljak's challenges here. See Trial Judgement, Vol. 4, para. 60.

³⁰³⁰ Trial Judgement, Vol. 4, paras 54-55 & fns 149-153 and references cited therein.

Praljak fails to show that the Trial Chamber gave any particular significance to this expression. His argument is therefore dismissed. With regard to Praljak's point about Croats being displaced from Travnik, the Appeals Chamber observes that the subsequent displacement of Croats from Travnik is not inconsistent with the challenged finding.³⁰³¹ Further, the Trial Chamber found that in mid-June 1993, HVO members drove Muslims out of West Mostar, telling them that they needed to make way for Croats coming from Travnik.³⁰³²

945. Turning to Praljak's final argument that the displaced Croats were only temporarily accommodated on the territory of the HZ(R) H-B before being transferred to Croatia, the Appeals Chamber notes that he refers to evidence indicating that some displaced Croats transited through the territory of the HZ(R) H-B and continued on to Croatia.³⁰³³ This is not inconsistent with the Trial Chamber's finding that the HVO arranged removals to Provinces 8 and 10 to alter the balance of power in these provinces so that it favoured the Croats.³⁰³⁴ In addition, the Appeals Chamber recalls that, as a matter of law, the objective or common purpose of a JCE does not need to be achieved in order for a trial chamber to conclude that a plurality of persons shared a common purpose or that crimes were committed in furtherance of a JCE.³⁰³⁵ Praljak's argument is dismissed.

946. For these reasons, the Appeals Chamber finds that Praljak has failed to show that the Trial Chamber erred in finding that the HVO organised the displacement of Croats to Provinces 8 and 10 in order to alter the balance of power in favour of the Croats. It therefore dismisses Praljak's sub-ground of appeal 6.3. Similarly, the Appeals Chamber finds that Petković has failed to demonstrate any error in the Trial Chamber's conclusions regarding the removal of Croats, and dismisses Petković's sub-ground of appeal 3.2.2.3.

(g) Alleged errors in the findings regarding the events before and after the attack on the HVO Tihomir Mišić Barracks in Mostar on 30 June 1993

947. The Trial Chamber found that "in the opinion of the international organisations present", the process of "ethnic cleansing", which began in Mostar and surrounding areas, appeared irreversible.³⁰³⁶ In this regard, the Trial Chamber observed that, on 4 June 1993, during a meeting in

³⁰³¹ The Appeals Chamber further observes that the Prosecution points to evidence indicating that the ABiH took control of Travnik from the HVO in mid-June 1993, which Praljak does not contest in his reply brief. Cf. Prosecution's Response Brief (Praljak), para. 43 & fn. 211 and references cited therein; Praljak's Reply Brief, para. 25.

³⁰³² Trial Judgement, Vol. 4, para. 57.

³⁰³³ See Praljak's Appeal Brief, para. 124 & fn. 304 and references cited therein.

³⁰³⁴ Trial Judgement, Vol. 4, para. 55.

³⁰³⁵ *Dorđević* Appeal Judgement, para. 154.

³⁰³⁶ Trial Judgement, Vol. 4, para. 58, referring to, *inter alia*, Witness BB, T(F). 17185, 17188 (closed session) (16 Apr 2007), Ex. P09677 (confidential).

Divulje in Croatia (“4 June 1993 Divulje Meeting”) with Prlić, Petković, and Boban, Witness DZ spoke of “ethnic cleansing” in these areas.³⁰³⁷ It also found that all the participants, including Boban, denied the existence of ethnic cleansing, although Boban stated that the Muslims in BiH had to be chased out of Mostar and BiH entirely.³⁰³⁸

948. The Trial Chamber further concluded that after the ABiH attacked the HVO Tihomir Mišić Barracks in Mostar on 30 June 1993, the implementation of the JCE became “more efficient”.³⁰³⁹ It found that the HVO arrested Muslims from the municipalities of Mostar, Stolac, Čapljina, Ljubuški, and Prozor, detaining them in HVO detention centres or sending them to ABiH-controlled territories and to third countries via Croatia.³⁰⁴⁰ In this regard, the Trial Chamber found that the HZ(R) H-B authorities implemented a “system of deportation utilising the release of Muslim detainees from the HVO detention centres contingent upon their departure from Croatia – often with their families – where they were supposed to stay only temporarily prior to being transferred to a third country”.³⁰⁴¹ Moreover, the Trial Chamber found that due to the “very harsh conditions of confinement” which could lead to detainee deaths, Muslim detainees agreed to leave for ABiH-controlled territories or for another country rather than remain in confinement.³⁰⁴²

(i) Prlić’s appeal (Sub-grounds 10.10 and 10.15)

a. Arguments of the Parties

949. Prlić submits that the Trial Chamber erred in concluding that the arrests and detentions of Muslims from Mostar, Stolac, Čapljina, Ljubuški, and Prozor and their forcible removal after the Attack on the HVO Tihomir Mišić Barracks were part of the JCE.³⁰⁴³ Further, Prlić argues that the Trial Chamber erred when it concluded that the JCE became “more efficient” as the HZ(R) H-B authorities introduced, on 30 June 1993, a system of deportation predicated upon the release of

³⁰³⁷ Trial Judgement, Vol. 4, para. 58, referring to, *inter alia*, Witness DZ, T(F). 26469 (closed session) (22 Jan 2008), Exs. P09677 (confidential), P02652.

³⁰³⁸ Trial Judgement, Vol. 4, para. 58, referring to Witness DZ, T(F). 26550, 26552-26554 (closed session) (22 Jan 2008), Ex. P10367 (confidential), para. 63.

³⁰³⁹ Trial Judgement, Vol. 4, paras 57, 64.

³⁰⁴⁰ Trial Judgement, Vol. 4, para. 57. See also Trial Judgement, Vol. 4, para. 64.

³⁰⁴¹ Trial Judgement, Vol. 4, para. 64.

³⁰⁴² Trial Judgement, Vol. 4, para. 64.

³⁰⁴³ Prlić’s Appeal Brief, para. 301, referring to Trial Judgement, Vol. 2, paras 921-923, 1642-1655, Vol. 3, paras 140-145, 264-266, 270, 272-274, Vol. 4, paras 57-58. Prlić argues in this respect that the Trial Chamber disregarded evidence that: (1) Muslim HVO members were arrested in response to the ABiH attack; (2) there were international negotiations and an agreement reached in September 1993 concerning the release of HVO and ABiH prisoners; and (3) Croats from Travnik “were not accommodated” in Mostar. Prlić’s Appeal Brief, para. 302, referring to Prlić’s sub-grounds of appeal 1.3, 16.3.1, 16.5.1-16.5.2.

Muslims from HVO detention centres, which was contingent upon their departure to Croatia and their subsequent transfer to a third country.³⁰⁴⁴

950. Prlić submits that the Trial Chamber erred in finding that the process of “ethnic cleansing” was irreversible, by solely relying on Exhibit P09677, a report of Witness BB.³⁰⁴⁵ He also contends that the Trial Chamber ignored evidence indicating that international organisations adopted “different approaches” and that “civilians from different communes were organized in agreement with the UN and ECOMM with the same number crossing over from East to West Mostar”.³⁰⁴⁶ Prlić contends that the Trial Chamber mischaracterised Exhibit P02652, a report on the 4 June 1993 Divulje Meeting, as this meeting focused on: (1) the implementation of the Vance-Owen Peace Plan; (2) the establishment of the provisional government; and (3) the cessation of hostilities, specifically in the Konjic area.³⁰⁴⁷ He further contends that “contrary to [Witness] DZ”, Exhibit P02652 does not reflect Boban’s remarks that “BiH Muslims had to be chased out from Mostar and BiH entirely”.³⁰⁴⁸

951. The Prosecution responds that Prlić’s arguments have no merit as they are based on mere assertions, misrepresentations, and unexplained claims that are not inconsistent with, nor contradictory to, the Trial Chamber’s finding.³⁰⁴⁹ It also argues that Prlić relies on other sub-grounds of his appeal without explaining how they support his arguments.³⁰⁵⁰ With respect to Prlić’s allegation of error concerning the 4 June 1993 Divulje Meeting, the Prosecution contends that the Trial Chamber’s finding on Boban’s remarks was not based on Exhibit P02652, but rather on Witness DZ’s evidence.³⁰⁵¹

b. Analysis

952. The Appeals Chamber rejects Prlić’s contentions that the Trial Chamber erred in finding that the arrests and detentions of Muslims from Mostar, Stolac, Čapljina, Ljubuški, and Prozor and their forcible removal following the Attack on the HVO Tihomir Mišić Barracks were part of the JCE and that the JCE became more efficient after the introduction of a system of deportation as of 30 June 1993. In this regard, the Appeals Chamber observes that, in support of his arguments, Prlić

³⁰⁴⁴ Prlić’s Appeal Brief, paras 308-309, referring to Prlić’s sub-grounds of appeal 1.1, 1.3, 16.1-16.3.

³⁰⁴⁵ Prlić’s Appeal Brief, paras 303, referring to Ex. P09677 (confidential).

³⁰⁴⁶ Prlić’s Appeal Brief, para. 303, referring to Witness BC, T. 18481-18484 (closed session) (15 May 2007), Klaus Johann Nissen, T. 20655-20658 (private session) (27 June 2007), Exs. P02512, P02547 (confidential), p. 7, 6D00007, 4D00496, p. 1. In this regard, Prlić adopts his submissions of sub-grounds of appeal 16.4.3-16.4.4 by reference. Prlić’s Appeal Brief, para. 304.

³⁰⁴⁷ Prlić’s Appeal Brief, para. 305, referring to Ex. P02652 (confidential), ground of appeal 6.1.

³⁰⁴⁸ Prlić’s Appeal Brief, para. 305.

³⁰⁴⁹ Prosecution’s Response Brief (Prlić), paras 166-167, 179-180. See also Prosecution’s Response Brief (Prlić), para. 182; Appeal Hearing, AT. 185-187 (20 Mar 2017).

³⁰⁵⁰ Prosecution’s Response Brief (Prlić), paras 166-167.

merely cross-references his sub-grounds of appeal 1.1, 1.3, 16.1-16.3, 16.3.1, and 16.5.1-16.5.2, which the Appeals Chamber dismisses elsewhere.³⁰⁵² Accordingly, the Appeals Chamber dismisses Prlić's arguments in this regard.

953. As to Prlić's submission that the Trial Chamber erred in finding that the process of ethnic cleansing was irreversible since it "solely" relied on Exhibit P09677, the Appeals Chamber observes that in reaching the impugned conclusion, the Trial Chamber also relied on Witness BB's testimony confirming the contents of Exhibit P09677.³⁰⁵³ Prlić's argument is thus dismissed. Similarly, the Appeals Chamber rejects Prlić's undeveloped arguments that the Trial Chamber ignored evidence showing "the different approaches used by the international organizations, and that civilians from different communes were organized in agreement with the UN and ECMM with the same number crossing over from East to West Mostar"³⁰⁵⁴ for lack of clarity.³⁰⁵⁵ In any event, Prlić fails to explain how the cited evidence would materially impact the impugned finding. Moreover, the Appeals Chamber observes that in support of this argument Prlić refers to his submissions in sub-grounds of appeal 16.4.3-16.4.4, which it dismisses elsewhere.³⁰⁵⁶ Accordingly, these arguments are dismissed.

954. Further, the Appeals Chamber sees no merit in Prlić's contention that the Trial Chamber misrepresented confidential Exhibit P02652 which reported on the 4 June 1993 Divulje Meeting. Prlić simply argues that this meeting focused on the implementation of the Vance-Owen Peace Plan, the establishment of the provisional government, and the cessation of hostilities without showing any error in the Trial Chamber's finding. A review of the relevant finding shows that, rather than relying on Exhibit P02652, the Trial Chamber referred to Witness DZ's testimony as well as his Rule 92 *ter* statement, which plainly support Boban's utterance as recalled in the impugned conclusion.³⁰⁵⁷ Accordingly, the Appeals Chamber dismisses this contention.

955. In light of the foregoing, the Appeals Chamber finds that Prlić has failed to show that the Trial Chamber erroneously found that the arrests and detentions of Muslims from Mostar, Stolac, Čapljina, Ljubuški, and Prozor and their forcible removal were part of the JCE. He has also failed to show an error in relation to the Trial Chamber's conclusions that the process of "ethnic cleansing" appeared irreversible to the international organisations and that the JCE became more efficient after

³⁰⁵¹ Prosecution's Response Brief (Prlić), para. 181, referring to Trial Judgement, Vol. 4, para. 58 & fn. 164.

³⁰⁵² See *supra*, para. 176; *infra*, paras 1146-1221, 1286-1298.

³⁰⁵³ See Trial Judgement, Vol. 4, para. 58 & fn. 161, referring to Witness BB, T(F). 17185, 17188 (closed session) (16 Apr 2007), Ex. P09677 (confidential), para. 12.

³⁰⁵⁴ Prlić's Appeal Brief, para. 303 (internal reference omitted).

³⁰⁵⁵ See *supra*, para. 24.

³⁰⁵⁶ See *infra*, paras 1232-1241.

³⁰⁵⁷ Trial Judgement, Vol. 4, para. 58, referring to Witness DZ, T(F). 26552-26554 (closed session) (22 Jan 2008), Ex. P10367 (confidential), para. 63.

the Attack on the HVO Tihomir Mišić Barracks. The Appeals Chamber therefore dismisses his sub-grounds of appeal 10.10 and 10.15.

(ii) Petković's appeal (Sub-ground 3.2.2.2)

a. Arguments of the Parties

956. Petković submits that the Trial Chamber erred in concluding that the "HVO measures of 30 June 1993 were taken to further [the CCP] of 'ethnic cleansing in a more efficient manner'".³⁰⁵⁸ He argues that this conclusion contradicts the Trial Chamber's factual findings on the events, namely that on 30 June 1993 the ABiH launched an offensive in co-operation with HVO soldiers of Muslim ethnicity and that, in response to this offensive, the HVO "took certain actions".³⁰⁵⁹ Petković further argues that the Trial Chamber failed to evaluate evidence about the ABiH's offensives after April 1993 and its territorial expansion.³⁰⁶⁰ He submits, therefore, that the evidence supports the conclusion that "the underlying reason for taking special security measures by the HVO leaders on 30 June 1993 was [in response to the] broad military offensive of the ABiH and HVO's losing control over certain areas".³⁰⁶¹ Petković concludes that the Trial Chamber's inferences that the HVO leaders decided to implement the JCE more efficiently and that the HVO's authorities and forces launched political and military activities to further the CCP as of 30 June 1993 should be reversed, as should his conviction for "expanded core crimes".³⁰⁶²

957. The Prosecution responds that Petković fails to show an error in the impugned findings as he merely repeats arguments raised at trial and that his arguments should be summarily dismissed.³⁰⁶³ The Prosecution also submits that Petković misconstrues the Trial Chamber's findings since its conclusion on the increased efficiency of the implementation of the CCP has no bearing on the expanded crimes, but on the crimes which were part of the criminal means from the outset of the CCP.³⁰⁶⁴

³⁰⁵⁸ Petković's Appeal Brief, para. 75. See Petković's Appeal Brief, para. 73, referring to Trial Judgement, Vol. 2, paras 880-886; Appeal Hearing, AT. 502 (23 Mar 2017). See also Petković's Appeal Brief, paras 71-72; Petković's Reply Brief, para. 16, referring to *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-T, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*, 17 February 1999 ("*Kupreškić et al. Tu Quoque* Decision").

³⁰⁵⁹ Petković's Appeal Brief, para. 73, referring to Trial Judgement, Vol. 2, paras 880-886; Appeal Hearing, AT. 502-512 (23 Mar 2017).

³⁰⁶⁰ Petković's Appeal Brief, para. 74. By contrast, according to Petković, the Trial Chamber "indirectly acknowledged" ABiH expansion when considering the relocation of Croats from central BiH. Petković's Appeal Brief, para. 74, referring to Trial Judgement, Vol. 3, para. 284, Vol. 4, para. 60. See also Petković's Appeal Brief, paras 71-72.

³⁰⁶¹ Petković's Appeal Brief, para. 75.

³⁰⁶² Petković's Appeal Brief, para. 76.

³⁰⁶³ Prosecution's Response Brief (Petković), paras 61-63, referring to Petković's Final Brief, para. 133.

³⁰⁶⁴ Prosecution's Response Brief (Petković), paras 58-60.

b. Analysis

958. The Appeals Chamber notes that the Trial Chamber concluded that following the Attack on the HVO Tihomir Mišić Barracks, the implementation of the JCE became more efficient as HZ(R) H-B authorities introduced “a system of deportation utilising the release of Muslim detainees from the HVO detention centres contingent upon their departure from Croatia”.³⁰⁶⁵ The Trial Chamber further found that the evidence showed the occurrence of: (1) arrests and detention of Muslims from Mostar, Stolac, Čapljina, Ljubuški, and Prozor; and (2) their transfer to ABiH-controlled territories and third countries via Croatia after their detention in HVO detention centres.³⁰⁶⁶ The Appeals Chamber observes that in arguing that the “security measures taken by the HVO” subsequent to the Attack on the HVO Tihomir Mišić Barracks were in response to the ABiH offensives, rather than part of the CCP,³⁰⁶⁷ Petković simply repeats unsuccessful submissions already raised at trial without demonstrating how the Trial Chamber erred in this regard.³⁰⁶⁸ Moreover, Petković’s argument that the Trial Chamber’s conclusions as to the events of 30 June 1993 are contradicted by other factual findings also amounts to a further attempt to reargue his submission that these events were a defensive response to the ABiH. These submissions are dismissed.

959. The Appeals Chamber also rejects Petković’s argument that the Trial Chamber failed to consider relevant evidence about the ABiH’s offensives after April 1993 and its territorial expansion as he does not identify any relevant piece of evidence in this regard.³⁰⁶⁹ Finally, with respect to Petković’s contention that his conviction for the “expanded core crimes” should be reversed, the Appeals Chamber observes that he misunderstands the relevant findings because the increased efficiency of the CCP implementation concerns the introduction of a deportation system rather than any “expanded core crimes”.³⁰⁷⁰ Accordingly, the Appeals Chamber finds no merit in Petković’s submission. His argument thus fails.

³⁰⁶⁵ Trial Judgement, Vol. 4, para. 64.

³⁰⁶⁶ Trial Judgement, Vol. 4, paras 57, 64. See also Trial Judgement, Vol. 3, paras 889-900. The Appeals Chamber also notes that the Trial Chamber found that the crimes against Muslims – either members of the HVO or the ABiH – who were held in the detention centres formed part of the widespread and systematic attack on the Muslim civilian population. Trial Judgement, Vol. 3, para. 650.

³⁰⁶⁷ Petković’s Appeal Brief, para. 73. See Petković’s Appeal Brief, para. 75.

³⁰⁶⁸ See Petković’s Final Brief, paras 133-151, 525-526. Moreover, the Appeals Chamber finds Petković’s reliance on the *Kupreškić et al. Tu Quoque* Decision inapposite since it deals with the admission of evidence rather than its assessment. See *Kupreškić et al. Tu Quoque* Decision, pp. 2-5.

³⁰⁶⁹ The Appeals Chamber also fails to see how the fact that the Trial Chamber considered the “expansion of the territory under the control of the ABiH” materially affects its conclusion concerning the CCP. See Petković’s Appeal Brief, para. 74.

³⁰⁷⁰ Trial Judgement, Vol. 4, para. 64. In addition, the Appeals Chamber recalls that it has already concluded that the expanded crimes of the JCE only encompassed those encapsulated in Counts 21 (in part), 24, and 25. See *supra*, paras 798, 814.

960. In light of the foregoing, the Appeals Chamber finds that Petković has failed to show that the Trial Chamber unreasonably found that the JCE became more efficient following the Attack on the HVO Tihomir Mišić Barracks and dismisses his sub-ground of appeal 3.2.2.2.

(h) Alleged errors in the findings as to events in late 1993

961. The Trial Chamber concluded that from early June 1993 until late that year, approximately 22,000 to 24,000 Croats arrived in the territory of the HZ(R) H-B, in particular in Prozor, Stolac, Čapljina, and Ljubuški.³⁰⁷¹ It also found that in October 1993, the HVO arrested and detained Muslim men from the town of Vareš,³⁰⁷² and conducted an attack on Stupni Do on 23 October 1993, killing part of the Muslim population.³⁰⁷³ The Trial Chamber concluded that after this attack, the HVO warned the Croatian population of an imminent risk of reprisal by the ABiH and requested that they leave Vareš Municipality urgently.³⁰⁷⁴ Some of the Croatian population were forced to leave Vareš Municipality, whereas other persons left of their own accord.³⁰⁷⁵ While the Trial Chamber concluded that the HVO leaders did not order the attack on Stupni Do,³⁰⁷⁶ it found that they attempted to conceal the HVO's responsibility for these crimes inasmuch as this encouraged the Croatian population to leave the Vareš region.³⁰⁷⁷

(i) Prlić's appeal (Sub-grounds 10.12, 10.13, and 10.14)

962. Prlić submits that the Trial Chamber mischaracterised and ignored evidence when it concluded that: (1) "22,000-24,000 Croats" from Travnik, Novi Travnik, Vareš, Kiseljak, and Bugojno arrived in HZ(R) H-B territory in an organised manner; (2) in October 1993, the HVO forced Croats to leave Vareš; and (3) HVO leaders concealed events in Štupni Do in order to encourage the Croats of Vareš to move in accordance with "their plan".³⁰⁷⁸

963. The Prosecution responds that Prlić's arguments should be summarily dismissed as he fails to explain how or why the Trial Chamber erred, and does not show how the referenced sub-grounds of appeal are relevant or support his contention.³⁰⁷⁹

³⁰⁷¹ Trial Judgement, Vol. 4, para. 60.

³⁰⁷² Trial Judgement, Vol. 4, para. 61.

³⁰⁷³ Trial Judgement, Vol. 4, para. 61.

³⁰⁷⁴ Trial Judgement, Vol. 4, para. 61.

³⁰⁷⁵ Trial Judgement, Vol. 4, para. 61.

³⁰⁷⁶ Trial Judgement, Vol. 4, para. 61.

³⁰⁷⁷ Trial Judgement, Vol. 4, para. 62.

³⁰⁷⁸ Prlić's Appeal Brief, para. 306, referring to Trial Judgement, Vol. 2, paras 227, 232, 824, 874, 1786, Vol. 3, paras 502, 508, Vol. 4, paras 60-62. Prlić adopts his sub-grounds of appeal 16.5 and 16.6 by reference. Prlić's Appeal Brief, para. 307.

³⁰⁷⁹ Prosecution's Response Brief (Prlić), paras 166-167. See also Appeal Hearing, AT. 187 (20 Mar 2017).

964. The Appeals Chamber notes that beyond reference to arguments made elsewhere in his appeal brief, which the Appeals Chamber has dismissed,³⁰⁸⁰ Prlić fails to particularise his allegations of error. The Appeals Chamber thus finds that Prlić has failed to demonstrate an error and dismisses Prlić's sub-grounds of appeal 10.12, 10.13, and 10.14.

(ii) Praljak's appeal (Ground 32)

a. Arguments of the Parties

965. Praljak submits that the Trial Chamber ignored relevant evidence and made contradictory findings when concluding that the events in Vareš formed part of the CCP.³⁰⁸¹ He asserts that the Trial Chamber failed to consider the alternative reasonable inference that these events were a consequence of the ABiH offensive that began earlier in 1993, as well as the "chaotic situation" provoked by the consequential influx of Croats.³⁰⁸² Praljak also argues that the Trial Chamber erred in not taking into account evidence that in October 1993, the HVO tried to calm hostilities,³⁰⁸³ and in ignoring the fact that the ethnic composition of Vareš Municipality was already weighted in favour of Croats.³⁰⁸⁴ Praljak further submits that the contention that HVO leaders tried to conceal the crimes in Stupni Do is baseless, given that the attack on Stupni Do was planned by soldiers and local HVO commanders without the knowledge of HVO leaders.³⁰⁸⁵ According to Praljak, the same applies to the conclusion that the HVO concealed events to encourage the Croatian population to leave Vareš Municipality.³⁰⁸⁶

966. The Prosecution responds that the Trial Chamber reasonably concluded that the crimes committed in Vareš Municipality formed part of the CCP,³⁰⁸⁷ and submits that Praljak simply disagrees with the Trial Chamber's findings, as opposed to showing an error.³⁰⁸⁸ In particular, the Prosecution submits that the Trial Chamber reasonably found that: (1) the HVO crimes in Vareš followed a clear pattern of conduct, as opposed to defensive measures;³⁰⁸⁹ (2) the crimes

³⁰⁸⁰ See *infra*, paras 1287-1298, 1300-1317.

³⁰⁸¹ Praljak's Appeal Brief, para. 336.

³⁰⁸² Praljak's Appeal Brief, paras 330, 336-337, referring to, *inter alia*, Praljak's Appeal Brief, paras 170-171 (sub-ground of appeal 10.2), Ex. 3D00800. Praljak also argues that the Trial Chamber "did not take into account that [the] situation in Vareš[š] was specific with many problems". Praljak's Appeal Brief, para. 331.

³⁰⁸³ Praljak's Appeal Brief, para. 331, referring to, *inter alia*, Exs. 3D00807 (confidential), 3D00809.

³⁰⁸⁴ Praljak's Appeal Brief, paras 332, 335, referring to, *inter alia*, Ex. P00020.

³⁰⁸⁵ Praljak's Appeal Brief, para. 337. Praljak submits that the HVO Main Staff had no control or authority over persons who committed crimes and that the HVO Main Staff did not even know what happened in Stupni Do. See Praljak's Appeal Brief, para. 334, referring to Exs. P06026, P06091, P06104, P06140, P06144. See also Praljak's Reply Brief, paras 97-99.

³⁰⁸⁶ Praljak's Appeal Brief, para. 335, referring to Trial Judgement, Vol. 3, para. 508, Vol. 4, para. 62. Praljak argues that this is contradicted by the Trial Chamber's finding that the departure of Croats was caused by the threat of ABiH attacks. See Praljak's Appeal Brief, para. 336.

³⁰⁸⁷ Prosecution's Response Brief (Praljak), para. 232.

³⁰⁸⁸ Prosecution's Response Brief (Praljak), paras 232, 237.

³⁰⁸⁹ Prosecution's Response Brief (Praljak), para. 235. See Prosecution's Response Brief (Praljak), paras 232-234.

encouraged the Croatian population to leave Vareš;³⁰⁹⁰ and (3) although the evidence does not indicate that Praljak or Petković were directly involved in the decision to attack Stupni Do, the Trial Chamber reasonably found that they participated in planning and directing the HVO's operations in Vareš in October 1993, took steps to conceal HVO responsibility for the crimes, and had effective control over soldiers in the field.³⁰⁹¹

b. Analysis

967. The Appeals Chamber turns first to Praljak's argument that the Trial Chamber failed to consider alternative reasonable inferences for the events in Vareš Municipality. In this regard, the Appeals Chamber notes that the Trial Chamber concluded that the events fell within the CCP because the HVO leaders attempted to conceal the HVO's responsibility for the crimes committed in Stupni Do in order to "encourage the Croatian population of the Vareš region to move in the direction of BiH, which suited their plan"³⁰⁹² and because they formed part of a pattern of conduct with other crimes.³⁰⁹³ In reaching this conclusion, the Trial Chamber was well aware of the broader context of ABiH attacks, as well as the consequential relocation of Croatian civilians.³⁰⁹⁴ Recalling that a trial chamber does not have to discuss other inferences it may have considered, as long as it is satisfied that the inference it retained was the only reasonable one,³⁰⁹⁵ the Appeals Chamber finds that Praljak fails to demonstrate any error in the Trial Chamber's conclusion. The Appeals Chamber also considers that Praljak fails to explain how the evidence indicating that the HVO tried to calm hostilities in Vareš,³⁰⁹⁶ or as regards the ethnic composition of Vareš,³⁰⁹⁷ was relevant to the Trial Chamber's finding that the events in Vareš Municipality formed part of the CCP. Praljak's submissions are thus dismissed.³⁰⁹⁸

³⁰⁹⁰ Prosecution's Response Brief (Praljak), paras 236, 238-240. The Prosecution also submits that: (1) the Trial Chamber did not ignore the demographic composition of Vareš, but that Praljak misunderstands the Trial Chamber's findings on this; (2) Praljak does not explain how an omission to refer to earlier ABiH fighting would affect any relevant factual findings; (3) evidence cited to support the claim that the HVO sought to prevent conduct in Vareš mainly refers to conduct unrelated to the CCP; and (4) the Trial Chamber did consider the "chaotic situation" in Vareš. See Prosecution's Response Brief (Praljak), para. 237.

³⁰⁹¹ Prosecution's Response Brief (Praljak), paras 238-240.

³⁰⁹² Trial Judgement, Vol. 4, para. 62. See also Trial Judgement, Vol. 4, para. 61.

³⁰⁹³ Trial Judgement, Vol. 4, para. 65.

³⁰⁹⁴ Trial Judgement, Vol. 3, paras 283-285, 502, Vol. 4, paras 57, 60-61. See also Trial Judgement, Vol. 3, paras 311-312, 411.

³⁰⁹⁵ See, e.g., *Dorđević* Appeal Judgement, para. 157, referring to *Krajišnik* Appeal Judgement, para. 192.

³⁰⁹⁶ See Ex. 3D00807 (confidential); Ex. 3D00809 (chronology of events prepared by the Bobovac Brigade Commander dated 20 October 1993 affirming that the HVO attempted to maintain peace in this area).

³⁰⁹⁷ See Ex. P00020 (census for BiH giving the population numbers for the different ethnicities in each municipalities, dated 1991). See also Trial Judgement, Vol. 3, para. 283, referring to, *inter alia*, Ex. P09276, p. 31 (indicating the composition of Vareš Municipality in 1991).

³⁰⁹⁸ The Appeals Chamber recalls its reversal of the Trial Chamber's finding that murder and willful killing were part of the CCP from January 1993 until June 1993. See *supra*, paras 874-886. Ultimately, however, the Appeals Chamber does not consider that this change in the scope of the CCP in that period affects the Trial Chamber's reasoning

968. Regarding Praljak's challenges to the Trial Chamber's findings in respect of the HVO's involvement in the Stupni Do crimes, the Appeals Chamber considers that he mischaracterises the Trial Chamber's findings. The Trial Chamber expressly took account of the HVO leaders not having ordered the attack and acknowledged that Ivica Rajić did not inform Petković of his decision to launch the attack on Stupni Do until it was launched on 23 October 1993.³⁰⁹⁹ However, as stated earlier,³¹⁰⁰ the Trial Chamber's finding that these crimes were part of the CCP was based not only on the HVO leaders' attempts to conceal the crimes in Stupni Do, but also on the pattern of crimes it found to have existed between January 1993 and April 1994 and the links between the attack in Stupni Do and Stojić, Praljak, and Petković.³¹⁰¹

969. In light of the foregoing, the Appeals Chamber finds that Praljak has failed to show that the Trial Chamber ignored relevant evidence and made contradictory findings when concluding that the events in Vareš Municipality formed part of the CCP, and dismisses Praljak's ground of appeal 32.

(iii) Petković's appeal (Sub-ground 3.2.2.1 in part)

970. Petković submits that the Trial Chamber failed to provide a reasoned opinion by not expressly establishing that the HVO actions in Vareš and Stupni Do in October 1993 were committed to further the CCP.³¹⁰² Further, Petković submits that the Trial Chamber erred in law and fact as "[t]here is no evidence about forcible transfer or deportation of Muslims, and the Trial Chamber did not even infer otherwise".³¹⁰³

971. The Prosecution responds that the Trial Chamber reasonably found that the crimes committed during the HVO operations in Vareš Municipality furthered the CCP, as did the subsequent movement of the Croatian population.³¹⁰⁴ It also submits that Petković's focus on the fact that forcible displacement was not established for Vareš fails to demonstrate any error as regards the other crimes committed there as part of the CCP.³¹⁰⁵

972. With reference to the assertion that the Trial Chamber did not make the findings necessary to conclude that the events in Vareš formed part of the CCP, the Appeals Chamber observes that the Trial Chamber, in its analysis of the CCP, made detailed findings with respect to the events which

concerning the clear pattern of conduct, particularly since not many instances of murder as part of the CCP took place in that period, in contrast to June 1993 and onwards but before the events in Vareš. See *supra*, para. 876 & fn. 2790.

³⁰⁹⁹ Trial Judgement, Vol. 4, para. 61. See also Trial Judgement, Vol. 3, paras 409-412.

³¹⁰⁰ See *supra*, para. 820.

³¹⁰¹ Trial Judgement, Vol. 4, paras 61-62, 65. See Trial Judgement, Vol. 3, paras 484-486, 492. See also *supra*, fn. 3098.

³¹⁰² Petković's Appeal Brief, paras 68-69, referring to Trial Judgement, Vol. 4, paras 61-63. See also Petković's Appeal Brief, paras 24, 70, 284-286.

³¹⁰³ Petković's Appeal Brief, para. 70; Appeal Hearing, AT. 499 (23 Mar 2017). See also Petković's Appeal Brief, para. 68; Petković's Reply Brief, para. 15.

³¹⁰⁴ Prosecution's Response Brief (Petković), para. 55. See also Prosecution's Response Brief (Petković), paras 16-17.

took place in Vareš Municipality, including killings, detention, and the destruction of buildings.³¹⁰⁶ The Trial Chamber also found that these crimes, *inter alia*, “tended to follow a clear pattern of conduct” with the other crimes committed by HVO forces from January 1993 to April 1994.³¹⁰⁷ The Appeals Chamber thus considers that the Trial Chamber clearly explained the basis for its conclusion that the crimes in Vareš Municipality, including in Stupni Do, were committed in furtherance of the CCP. Petković’s submission is dismissed.

973. The Appeals Chamber therefore finds that Petković has failed to demonstrate that the Trial Chamber erred in not providing a reasoned opinion by not expressly establishing that the HVO actions in Vareš Municipality and Stupni Do in October 1993 were committed to further the CCP and dismisses Petković’s sub-ground of appeal 3.2.2.1 in relevant part.

5. Other challenges to evidence and alternative reasonable inferences

974. The Appellants raise certain other challenges to the CCP, alleging errors as regards: (1) the conclusion regarding a pattern of the crimes and the overall existence of the CCP; and (2) the context of the conflict between the HVO and ABiH.

(a) Alleged errors regarding the pattern of the crimes and the overall existence of the CCP (Prlić’s Sub-grounds 10.16 and 10.17, Stojić’s Ground 4 in part, and Pušić’s Ground 3 in part)

975. The Trial Chamber concluded that the crimes committed by HVO forces from January 1993 to April 1994 tended to “follow a clear pattern of conduct” and “[i]n the vast majority of cases [...] were not committed by chance or randomly”.³¹⁰⁸ The Trial Chamber found that the only reasonable inference was that these crimes were committed as part of the CCP,³¹⁰⁹ and that the JCE members “lent support and co-ordination to field operations for the purpose of carrying out [...] the crimes”.³¹¹⁰

(i) Arguments of the Parties

976. Prlić, Stojić, and Pušić all challenge the existence of the CCP and the Trial Chamber’s conclusion that there was a clear pattern of conduct with respect to the HVO activities. More specifically, Prlić submits that the Trial Chamber erred in failing to offer any supporting authority

³¹⁰⁵ Prosecution’s Response Brief (Petković), para. 56.

³¹⁰⁶ See Trial Judgement, Vol. 4, paras 61-63. See also Trial Judgement, Vol. 3, paras 333-399 (arrest and detention in Vareš), 400-404 (thefts and sexual abuse in Vareš), 426-429 (sexual abuse in Stupni Do), 430-464 (killings and deaths in Stupni Do), 465-467 (burning and destruction of Muslim property).

³¹⁰⁷ Trial Judgement, Vol. 4, para. 65. See also *supra*, fn. 3098.

³¹⁰⁸ Trial Judgement, Vol. 4, para. 65.

³¹⁰⁹ Trial Judgement, Vol. 4, para. 65.

³¹¹⁰ Trial Judgement, Vol. 4, para. 66.

for its conclusions that a clear pattern of conduct existed, and that “HZ(R)HB political and military leaders, especially Prlić” assisted in the implementation of the JCE.³¹¹¹ Similarly, Stojić argues that no reasonable trier of fact could have concluded that all the events – in Gornji Vakuf, Jablanica, Prozor, Mostar, Vareš, as well as at the Heliodrom and Ljubuški, Dretelj, and Gabela Prisons³¹¹² – formed part of the CCP.³¹¹³ He asserts that had the events unfolded pursuant to a single common criminal plan, “the result would have been a consistent wave of attacks implementing that plan”³¹¹⁴ but that this was not the case, because there was a three-month “hiatus” after the conflict in Gornji Vakuf,³¹¹⁵ and a “further gap” between the events of June 1993 and the military activities in Vareš in October 1993.³¹¹⁶ Stojić also alleges other errors, arguing that: (1) the findings that the crimes “tended to follow a clear pattern” and the “vast majority” were not committed by chance, were “erroneously unspecific”;³¹¹⁷ (2) the finding that crimes committed from January 1993 to March 1994 were “the result of a plan established by the leaders of the HZ(R) H-B” is erroneous, because the Trial Chamber found that the JCE also included the “leaders of Croatia”;³¹¹⁸ and (3) the Trial Chamber disregarded evidence showing that witnesses were not aware of a common criminal plan or did not believe that events had occurred pursuant to a single plan.³¹¹⁹ Finally, Pušić submits that the Trial Chamber failed to consider that “the ethnic cleansing in BiH” was the result of the “unplanned effects of the new situation created by the influx of refugees who by their very presence upset the demographic equilibrium between the ethnicities”.³¹²⁰ He submits that the Trial Chamber’s failure to address this inference demonstrates a failure to provide a reasoned opinion that invalidates the Trial Judgement.³¹²¹

977. The Prosecution responds that Prlić ignores the Trial Chamber’s overall findings as to the events and crimes that formed part of the CCP, and asserts that his sub-grounds of appeal

³¹¹¹ Prlić’s Appeal Brief, para. 310, referring to Trial Judgement, Vol. 4, paras 65-67.

³¹¹² Stojić’s Appeal Brief, para. 48.

³¹¹³ Stojić’s Appeal Brief, paras 49, 58; Appeal Hearing, AT. 275-276 (21 Mar 2017).

³¹¹⁴ Stojić’s Appeal Brief, para. 53.

³¹¹⁵ Stojić’s Appeal Brief, para. 53. Stojić submits that the HVO ceased actions in January 1993 without attempting to take over the whole municipality of Gornji Vakuf. See Stojić’s Reply Brief, para. 20; Appeal Hearing, AT. 276-277 (21 Mar 2017).

³¹¹⁶ Stojić’s Appeal Brief, para. 53. Stojić contends that “there were never any standing conflicts [...] only sporadic conflicts here and there”. Stojić’s Appeal Brief, paras 53, 58, referring to Judge Antonetti Dissent, pp. 394-395.

³¹¹⁷ Stojić’s Appeal Brief, para. 55. See also Trial Judgement, Vol. 4, para. 44.

³¹¹⁸ Stojić’s Appeal Brief, para. 54, referring to Trial Judgement, Vol. 4, paras 43, 65, 1222.

³¹¹⁹ Stojić’s Appeal Brief, para. 57, referring to Klaus Johann Nissen, T. 20649-20650 (27 June 2007), Andrew Pringle, T. 24259 (7 Nov 2007), Radmilo Jasak, T. 48682-48683 (20 Jan 2010), Dragan Ćurčić, T. 45809 (12 Oct 2009), Hamid Bahto, T. 37911-37913 (11 Mar 2009). See also Stojić’s Reply Brief, para. 21.

³¹²⁰ Pušić’s Appeal Brief, para. 100, referring to Judge Antonetti Dissent, p. 370. Pušić argues in particular that the influx stemmed from the “ethnic cleansing by Serb forces driving Croat[s] and Muslims into central [BiH] creating overcrowding and conflict”. Pušić’s Appeal Brief, para. 100, referring to Judge Antonetti Dissent, pp. 369-370. See also Pušić’s Appeal Brief, para. 99; Pušić’s Reply Brief, para. 23; Appeal Hearing, AT. 675-678, 681 (27 Mar 2017).

³¹²¹ Pušić’s Appeal Brief, para. 101.

10.16-10.17 ought to be summarily dismissed.³¹²² With respect to Stojić's arguments, the Prosecution responds that the identification of a common criminal plan is a fact-based inquiry that can turn on a number of factors, and does not require a "consistent wave of attacks".³¹²³ It also submits that: (1) the HVO halted its Gornji Vakuf operations in January 1993 only after having captured a number of villages;³¹²⁴ (2) the violence recurred in April 1993 in a similar fashion; and (3) there was no gap in hostilities between June 1993 and the activities in October 1993.³¹²⁵ As for Stojić's remaining challenges, the Prosecution responds that: (1) the Trial Chamber's findings were not erroneously unspecific;³¹²⁶ (2) although the Trial Chamber "inadvertently" failed to list the Croatian leadership among those who devised the CCP in one paragraph, it made clear elsewhere – including in the next paragraph – that the JCE members included both Croatian and HVO leaders;³¹²⁷ and (3) Stojić's "general reference" to witness testimony demonstrates no error in the Trial Chamber's findings regarding the CCP.³¹²⁸ Concerning Pušić, the Prosecution responds that the Trial Chamber acknowledged that population movement occurred because of fighting in the municipalities relevant to this case and other BiH regions, but reasonably concluded both that the JCE members knew by October 1992 that achieving their territorial objectives would require moving the Muslim population from HZ(R) H-B, and that from mid-January 1993 they started implementing this plan by conducting military attacks, arrests, detentions, and evictions aimed at the Muslim population.³¹²⁹

978. In reply, Stojić argues that he did not submit that the CCP "requires" a consistent wave of attacks,³¹³⁰ but that the fluctuation in hostilities shows that the events of 1993 were better understood as reflective of "isolated flashpoints, rather than a unified purpose".³¹³¹

³¹²² Prosecution's Response Brief (Prlić), para. 182, referring to Trial Judgement, Vol. 4, paras 41-64, 67; Appeal Hearing, AT. 180 (20 Mar 2017). The Appeals Chamber notes that the Prosecution mistakenly characterises its response paragraph as going to Prlić's sub-grounds of appeal 10.15-10.16. However it relates to sub-grounds of appeal 10.16-10.17.

³¹²³ Prosecution's Response Brief (Stojić), para. 35.

³¹²⁴ Prosecution's Response Brief (Stojić), para. 35.

³¹²⁵ Prosecution's Response Brief (Stojić), para. 36. See also Appeal Hearing, AT. 344-346 (21 Mar 2017) (arguing that the basis of the Trial Chamber's findings regarding the CCP was "the very obvious pattern of criminal activity targeted at Muslims during and after HVO operations", as well as various statements by JCE members).

³¹²⁶ Prosecution's Response Brief (Stojić), para. 33.

³¹²⁷ Prosecution's Response Brief (Stojić), para. 34, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 44, 66, 1231.

³¹²⁸ Prosecution's Response Brief (Stojić), para. 38.

³¹²⁹ Prosecution's Response Brief (Pušić), para. 87, referring to Trial Judgement, Vol. 4, paras 43, 45-51, 53-54, 56-59, 61, 64, 66. The Prosecution also submits that the Trial Chamber reasonably based its conclusions regarding the CCP on, *inter alia*, the pattern of crimes, the collaboration of the political and military leadership of the HZ(R) H-B, and direct statements of intent by JCE members, all of which are ignored by Pušić. Prosecution's Response Brief (Pušić), para. 80, referring to Trial Judgement, Vol. 4, paras 51, 54, 58, 62-66, 1219; Appeal Hearing, AT. 709-710 (27 Mar 2017). See also Prosecution's Response Brief (Pušić), paras 81-85, 88.

³¹³⁰ Stojić's Reply Brief, para. 19, referring to Prosecution's Response Brief (Stojić), para. 35.

³¹³¹ Stojić's Reply Brief, paras 19-20; Appeal Hearing, AT. 275-276 (21 Mar 2017).

(ii) Analysis

979. Starting with Prlić, the Appeals Chamber finds that he misrepresents the Trial Chamber's findings. Contrary to his submission, the Trial Chamber discussed at length the evidence regarding crimes in various municipalities and detention centres throughout the Trial Judgement and then expressly cross-referenced the factual findings regarding those crimes in its CCP analysis, in order to reach the finding that there existed a pattern of crimes.³¹³² Further, even though the Trial Chamber's finding that murder and wilful killing were part of the CCP in the period from January 1993 until June 1993 has been reversed,³¹³³ the Appeals Chamber does not consider that this change in the scope of the CCP in that period affects the Trial Chamber's reasoning concerning the clear pattern of conduct in relation to crimes forming part of the CCP, particularly since not many instances of murders which were considered to have been part of the CCP took place in that period, in contrast to the period after June 1993.³¹³⁴ Prlić fails to demonstrate any error in the Trial Chamber's approach.

980. With regard to Stojić's claim that there was no consistent wave of attacks implementing the CCP, the Appeals Chamber notes that the Trial Chamber found that the CCP crystallised in January 1993, and was implemented in "stages", including: (1) crimes committed in Gornji Vakuf in January 1993; (2) crimes committed in Prozor and Jablanica in April 1993; and (3) crimes committed in and around Vareš in October 1993.³¹³⁵ The Appeals Chamber considers that Stojić mischaracterises the Trial Chamber's approach when considering the implementation of the CCP, as the Trial Chamber focused on the overall pattern of events from January 1993 until April 1994 when reaching its conclusions, which in turn is not affected by a hiatus in attacks.³¹³⁶ In particular, the Trial Chamber found that the events in Jablanica in April 1993 took place in the context of conflicts between the HVO and ABiH, which had been underway since the beginning of February 1993,³¹³⁷ and also found that from June 1993, the CCP expanded with the siege of East Mostar and became more efficient with the system of deportation.³¹³⁸ The Appeals Chamber finds that Stojić fails to demonstrate any error in the Trial Chamber's approach, and rejects his submission.

³¹³² Trial Judgement, Vol. 4, paras 43-65 and references cited therein.

³¹³³ See *supra*, paras 874-886.

³¹³⁴ See *supra*, para. 876 & fn. 2790.

³¹³⁵ Trial Judgement, Vol. 4, paras 45-47, 61.

³¹³⁶ See Trial Judgement, Vol. 4, para. 65. See also Trial Judgement, Vol. 4, para. 66. As noted earlier, this pattern is also not affected by the change in the scope of the CCP in the period from January 1993 until June 1993. See *supra*, para. 979.

³¹³⁷ Trial Judgement, Vol. 4, para. 46.

³¹³⁸ Trial Judgement, Vol. 4, paras 57, 59, 64. See also Trial Judgement, Vol. 4, para. 66.

981. As for Stojić's argument that certain parts of the Trial Chamber's findings were "erroneously unspecific", the Appeals Chamber considers that the relevant findings evince no ambiguity,³¹³⁹ appearing as overall conclusions following a detailed and full analysis in which the Trial Chamber explained which crimes formed part of the CCP, and why.³¹⁴⁰ This submission is rejected. As for Stojić's argument regarding the Croatian leadership findings, the Appeals Chamber notes that in an isolated paragraph, the Trial Chamber suggested that the crimes were "the result of a plan established by the leaders of the HZ(R) H-B".³¹⁴¹ However, it is clear from a broader reading of the Trial Judgement that this sentence contains an unintentional omission, as the Trial Chamber consistently held elsewhere that the JCE members also included Croatian leaders, who were involved in planning and implementing the CCP.³¹⁴² This argument is also dismissed. Finally, in relation to Stojić's challenges to witnesses' evidence, the Appeals Chamber notes that he simply makes general allegations regarding the Trial Chamber's omission to consider the evidence of certain witnesses,³¹⁴³ without explaining why the Trial Chamber erred in reaching the conclusions it did regarding the CCP on the basis of other evidence and findings.³¹⁴⁴ This argument is thus also dismissed.

982. As for Pušić's arguments, the Appeals Chamber first notes that in support of his submission, Pušić relies entirely on the Judge Antonetti Dissent without showing that no reasonable trier of fact could have inferred as the Trial Chamber did. In any event, the Majority expressly took account of the fact that some population movements were generated as a consequence of fighting, and others occurred deliberately as part of the CCP.³¹⁴⁵ However, after a detailed assessment of the evidence,³¹⁴⁶ the Majority concluded that the CCP came into existence in mid-January 1993 on the basis of broader geopolitical circumstances, such as the presentation of the Vance-Owen Peace Plan on 2 January 1993 and the 15 January 1993 Ultimatum,³¹⁴⁷ and that the HVO's interpretation of the Vance-Owen Peace Plan resulted in the commission of crimes which formed part of a "clear pattern of conduct".³¹⁴⁸

983. In sum, as Prlić has failed to demonstrate any error on the part of the Trial Chamber, his sub-grounds of appeal 10.16 and 10.17 are dismissed. Similarly, as Stojić has failed to show that no

³¹³⁹ See Trial Judgement, Vol. 4, para. 65 (observing that the crimes committed from January 1993 to April 1994 "tended to follow a clear pattern of conduct", and in the "vast majority of cases" were not committed by chance or randomly).

³¹⁴⁰ See Trial Judgement, Vol. 4, paras 41-64. See also Trial Judgement, Vol. 4, paras 66-73.

³¹⁴¹ Trial Judgement, Vol. 4, para. 65.

³¹⁴² See, e.g., Trial Judgement, Vol. 4, paras 44, 66, 1222, 1231.

³¹⁴³ See *supra*, fn. 3119.

³¹⁴⁴ See Trial Judgement, Vol. 4, para. 44.

³¹⁴⁵ See Trial Judgement, Vol. 4, paras 43, 51, 54, 60-61.

³¹⁴⁶ See Trial Judgement, Vol. 4 paras 46-64 and references cited therein.

³¹⁴⁷ See Trial Judgement, Vol. 1, paras 445, 451-452, Vol. 4, paras 44, 125, 131, 142, 271.

³¹⁴⁸ Trial Judgement, Vol. 4, para. 65. See also *supra*, para. 979.

reasonable trier of fact could have concluded that the only reasonable inference from the evidence was that all the events formed part of a single common criminal plan, Stojić's ground of appeal 4 is dismissed in relevant part. The Appeals Chamber also finds that Pušić has not demonstrated any error in the Trial Chamber's finding, including a failure by the Trial Chamber to provide a reasoned opinion. His ground of appeal 3 is therefore also dismissed in relevant part.

(b) Alleged errors regarding the context of the conflict with the ABiH

984. In its analysis of the CCP, the Trial Chamber took account of the fact that the crimes took place in the context of conflict between the HVO and ABiH, considering, *inter alia*, that: (1) "tensions between the ABiH and the HVO mounted" in Jablanica Municipality, "particularly between the beginning of February and mid-April 1993";³¹⁴⁹ (2) the JCE became more efficient with the introduction of a system of detention and deportation after the Attack on the HVO Tihomir Mišić Barracks on 30 June 1993;³¹⁵⁰ and (3) the events in Vareš in October 1993 took place subsequent to the attack conducted by the ABiH on the village of Kopjari.³¹⁵¹ Elsewhere in the Trial Judgement, the Trial Chamber also made findings on the existence of co-operation between the HVO and ABiH in 1992 and 1993, particularly as to, *inter alia*: (1) military co-operation between the HVO and ABiH when fighting the JNA and VRS;³¹⁵² (2) the HVO's provision of MTS and medical aid to the ABiH;³¹⁵³ (3) the creation of joint commands and commissions between the HVO and ABiH;³¹⁵⁴ and (4) the inclusion of Muslims within the ranks of the HVO.³¹⁵⁵

(i) Stojić's appeal (Ground 2)

a. Arguments of the Parties

985. Stojić submits that the Trial Chamber failed to give a "reasoned decision" by finding that there was a JCE without proper consideration of evidence proffered and his submissions at trial of the substantial co-operation between Croatia "and/or" the HVO and ABiH.³¹⁵⁶ Stojić argues that the Trial Chamber disregarded evidence and submissions – or failed to evaluate their effect on the alleged existence of the JCE³¹⁵⁷ – demonstrating that: (1) Croatia and the HVO delivered and/or

³¹⁴⁹ Trial Judgement, Vol. 4, para. 46.

³¹⁵⁰ Trial Judgement, Vol. 4, para. 57.

³¹⁵¹ Trial Judgement, Vol. 4, para. 61.

³¹⁵² Trial Judgement, Vol. 1, para. 440, Vol. 2, paras 695-697. See also Trial Judgement, Vol. 4, para. 308.

³¹⁵³ Trial Judgement, Vol. 1, para. 440, Vol. 2, para. 696, Vol. 4, para. 308.

³¹⁵⁴ Trial Judgement, Vol. 1, paras 441, 463-464. See also Trial Judgement, Vol. 1, paras 458-477.

³¹⁵⁵ Trial Judgement, Vol. 1, para. 774.

³¹⁵⁶ Stojić's Appeal Brief, heading before para. 25, paras 27, 37. See Stojić's Appeal Brief, paras 25-26, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 9-73. See also Stojić's Reply Brief, paras 8, 13; Appeal Hearing, AT. 267-275 (21 Mar 2017).

³¹⁵⁷ Stojić's Appeal Brief, paras 25-27, 37; Stojić's Reply Brief, para. 15. See also Stojić's Appeal Brief, para. 33.

provided MTS and other forms of aid to the ABiH;³¹⁵⁸ (2) the HVO and ABiH engaged in close military co-operation, fighting side by side and establishing effective joint commands and commissions as common parts of the BiH armed forces;³¹⁵⁹ and (3) Muslims made up a substantial proportion of the HVO armed forces.³¹⁶⁰ Stojić asserts that: (1) the only reasonable conclusion from the evidence is that the HVO and Croatia did not regard the ABiH as their enemy;³¹⁶¹ and (2) had the Trial Chamber evaluated the evidence and submissions, it could not have concluded that a JCE existed.³¹⁶²

986. The Prosecution responds that Stojić does not demonstrate that the Trial Chamber failed to consider co-operation between the HV/HVO and the ABiH, nor how such co-operation would render the Trial Chamber's CCP findings unreasonable.³¹⁶³ It submits that Stojić: (1) cites evidence confirming that the HV/HVO only supplied the ABiH with MTS at locations and times the ABiH was fighting Serbs³¹⁶⁴ and allowed only a meagre amount of humanitarian supplies through to East Mostar;³¹⁶⁵ and (2) fails to explain how certain evidence – much of which was expressly considered or related to exhibits deemed inadmissible – invalidates or undermines the Trial Chamber's findings.³¹⁶⁶ The Prosecution argues that, contrary to Stojić's assertion, the Trial Chamber made express findings concerning joint HVO-ABiH commands and commissions and that Stojić, regardless, fails to demonstrate how piecemeal co-operation contradicts the "clear pattern" of HVO crimes.³¹⁶⁷ Finally, it submits that the evidence Stojić cites regarding Muslims in the HVO

³¹⁵⁸ Stojić's Appeal Brief, paras 25, 28-29, 35; Stojić's Reply Brief, paras 9-11; Appeal Hearing, AT. 269-272, 356 (21 Mar 2017), AT. 812-813 (28 Mar 2017). See also Stojić's Appeal Brief, heading before para. 25. Stojić submits that the MTS was: (1) portable (thus its deployment was not controlled by the donor); and (2) provided even in areas where there was conflict between the HVO and ABiH. Stojić's Appeal Brief, para. 36. See also Stojić's Reply Brief, paras 9-12. As to aid other than MTS, Stojić submits, *inter alia*, that medical supplies were sent to the ABiH, Muslim civilians and ABiH members were treated in Mostar and Croatian hospitals, humanitarian organisations operated in Croatia for the ABiH's benefit, and the ABiH operated offices in Zagreb and Split. Stojić's Appeal Brief, paras 29, 35; Appeal Hearing, AT. 272-273 (21 Mar 2017).

³¹⁵⁹ Stojić's Appeal Brief, paras 30-32, 35. See also Stojić's Appeal Brief, para. 34; Appeal Hearing, AT. 272-273 (21 Mar 2017).

³¹⁶⁰ Stojić's Appeal Brief, para. 33. See also Stojić's Reply Brief, para. 14; Appeal Hearing, AT. 273-274 (21 Mar 2017).

³¹⁶¹ Stojić's Appeal Brief, para. 35. See also Stojić's Reply Brief, paras 8, 11-12; Appeal Hearing, AT. 275 (21 Mar 2017).

³¹⁶² Stojić's Appeal Brief, para. 37. See also Stojić's Appeal Brief, paras 25-26, 35; Stojić's Reply Brief, paras 8, 11-14; Appeal Hearing, AT. 267, 274-275 (21 Mar 2017).

³¹⁶³ Prosecution's Response Brief (Stojić), para. 20; Appeal Hearing, AT. 346-347 (21 Mar 2017). See also Prosecution's Response Brief (Stojić), para. 26.

³¹⁶⁴ Prosecution's Response Brief (Stojić), para. 22. See Prosecution's Response Brief (Stojić), para. 21.

³¹⁶⁵ Prosecution's Response Brief (Stojić), para. 23. The Prosecution submits that the JCE members' manipulation of humanitarian aid access supports the Trial Chamber's findings. Prosecution's Response Brief (Stojić), para. 23.

³¹⁶⁶ Prosecution's Response Brief (Stojić), paras 22(4)-(5), 23. See also Prosecution's Response Brief (Stojić), para. 21.

³¹⁶⁷ Prosecution's Response Brief (Stojić), para. 24. The Prosecution contends, moreover, that it was only in the context of peace negotiations and joint initiatives that the ABiH "recognised" the HVO as a constituent part of the BiH armed forces. Prosecution's Response Brief (Stojić), para. 24.

demonstrates a progressive decimation that was consistent with the JCE members' goal of ethnic domination and mirrored demographic changes across the HZ(R) H-B.³¹⁶⁸

b. Analysis

987. With respect to Stojić's assertion that the Trial Chamber disregarded evidence on the existence of co-operation between Croatia "and/or" the HVO and ABiH, the Appeals Chamber recalls that a trial judgement should be read as a whole.³¹⁶⁹ In this respect, the Appeals Chamber notes that the Trial Chamber made factual findings on the issue of co-operation throughout the Trial Judgement, expressly considering and relying upon, *inter alia*, numerous pieces of evidence to which Stojić refers. First, the Trial Chamber found that the HVO and ABiH co-operated militarily in 1992 and 1993 when fighting the JNA and VRS and that, in particular, an independent Mostar battalion made up of Muslims and Croats was created in April 1992, co-operating closely with the HVO in the defence of Mostar.³¹⁷⁰ It additionally found that, in furtherance of this co-operation, the HVO supplied the ABiH with, *inter alia*, medical aid, weapons, and military equipment in 1992 and 1993.³¹⁷¹ Moreover, the Trial Chamber found that: (1) on 21 July 1992, Tuđman and Izetbegović signed a treaty, proclaiming the HVO an integral part of the ABiH that was to be represented within the joint command of the Republic of Bosnia and Herzegovina ("RBiH") armed forces;³¹⁷² and (2) the HVO itself included Muslims within its ranks in 1992 and 1993, although the evidence showed that the Muslims left the ranks of the HVO *en masse* in May and June 1993.³¹⁷³ The Trial Chamber also discussed at length peace negotiations and the creation of joint commissions and commands between the HVO and ABiH during 1993 in several municipalities in order to implement the Vance-Owen Peace Plan³¹⁷⁴ and noted that clashes between the HVO and ABiH broke out in the

³¹⁶⁸ Prosecution's Response Brief (Stojić), para. 25.

³¹⁶⁹ *Popović et al.* Appeal Judgement, para. 2006; *Orić* Appeal Judgement, para. 38; *Naletilić and Martinović* Appeal Judgement, para. 435; *Stakić* Appeal Judgement, para. 344.

³¹⁷⁰ Trial Judgement, Vol. 1, para. 440 & fn. 1037, Vol. 2, paras 695-697 & fns 1563-1564. *Cf.* Stojić's Appeal Brief, para. 30, referring to, *inter alia*, Exs. 3D00208, 3D00211, 4D00615, P00708. See also Trial Judgement, Vol. 4, para. 308.

³¹⁷¹ Trial Judgement, Vol. 1, para. 440 & fns 1037-1039, Vol. 2, para. 696 & fns 1559, 1561-1562, Vol. 4, para. 308 & fns 730, 732. *Cf.* Stojić's Appeal Brief, paras 26, 28-29, 35, referring to, *inter alia*, Mile Akmadžić, T. 29443 (17 June 2008), 29611-29612 (19 June 2008), Hamid Bahto, T. 37897-37911 (11 Mar 2009), Nedžad Čengić, T. 37950-37951 (11 Mar 2009), Tihomir Majić, T. 37850-37852 (9 Mar 2009), Anđelko Makar, T. 38417-38418, 38447-38448, 38453-38456 (23 Mar 2009), T. 38472 (24 Mar 2009), Slobodan Praljak, T. 40138-40140 (14 May 2009), T. 40141-40142 (private session) (14 May 2009), 41132-41134 (3 June 2009), T. 42146 (29 June 2009), Exs. 2D00320, 2D00325, 2D00502, 2D00522, 2D00809, 2D01101, 2D01111; Stojić's Reply Brief, paras 9-10 & fns 21-22, 24-25. See also Trial Judgement, Vol. 1, fn. 1114. *Cf.* Stojić's Appeal Brief, para. 28 & fn. 86, referring to, *inter alia*, Anđelko Makar, T. 38447-38448 (23 Mar 2009).

³¹⁷² Trial Judgement, Vol. 1, para. 441.

³¹⁷³ Trial Judgement, Vol. 1, para. 774 & fn. 1807. *Cf.* Stojić's Appeal Brief, para. 33, referring to, *inter alia*, Ex. 2D00150. See also Trial Judgement, Vol. 1, fn. 1806.

³¹⁷⁴ Trial Judgement, Vol. 1, paras 463-464 & fns 1115-1119. See Trial Judgement, Vol. 1, paras 440-441, 458-477 & fns 1037, 1133, 1140, 1144, Vol. 4, paras 45, 127 & fns 123, 368. *Cf.* Stojić's Appeal Brief, para. 32, referring to, *inter alia*, Bo Pellnäs, T. 19753 (7 June 2007), Exs. 4D01700, pp. 5, 7-8, P01238, paras 1, 3, P01467, paras 1-3, P01709, para. 8, P02016, pp. 2-4.

municipalities during this period of co-operation.³¹⁷⁵ In terms of the HVO providing aid to the ABiH, the Appeals Chamber notes that the Trial Chamber found that the HVO: (1) hindered the delivery of humanitarian aid to East Mostar between June and December 1993 by restricting access of international organisations to East Mostar; and (2) provided sporadic humanitarian aid to East Mostar between June and September 1993 that was conditional on obtaining certain advantages.³¹⁷⁶ Accordingly, the Appeals Chamber finds that Stojić fails to demonstrate that the Trial Chamber disregarded evidence on the existence of co-operation between Croatia “and/or” the HVO and the ABiH. Rather, he simply attempts to substitute his own interpretation of this evidence for that of the Trial Chamber. His argument is therefore dismissed.

988. Concerning Stojić’s submissions in relation to evidence not referred to by the Trial Chamber when making the aforementioned findings on co-operation,³¹⁷⁷ the Appeals Chamber notes that much, but not all, of the evidence Stojić refers to concerns co-operation in 1992 and is therefore temporally outside the scope of the JCE, which came into being in mid-January 1993.³¹⁷⁸ Stojić does not demonstrate how this evidence would have an impact on the impugned finding. The same applies to the evidence which Stojić argues concerns co-operation in 1993. The Appeals Chamber considers that he merely asserts that the Trial Chamber failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. Thus, his argument is dismissed.

989. When submitting that the Trial Chamber disregarded his trial submissions concerning the co-operation, Stojić claims that the Trial Chamber “did not even mention them in its summary of the Defence arguments on the JCE”.³¹⁷⁹ The Appeals Chamber considers that Stojić misrepresents the Trial Chamber’s approach, as its brief summary of each Appellant’s submissions was not

³¹⁷⁵ See, e.g., Trial Judgement, Vol. 1, paras 460, 470, 477, Vol. 4, para. 45.

³¹⁷⁶ Trial Judgement, Vol. 2, paras 1243-1244 & fns 3100-3101. Cf. Stojić’s Appeal Brief, para. 29, referring to, *inter alia*, Exs. 2D00119, 2D00120, 2D00321, 2D00322, 2D00323, 2D00333, 2D00455, 2D00504, P02703 (confidential), para. 5, P02782 (confidential), para. 3, P02929 (confidential), para. 1.

³¹⁷⁷ See Stojić’s Appeal Brief, paras 28 (referring to, *inter alia*, Marijan Biškić, T.15194 (6 Mar 2007), Dragutin Čehulić, T. 38700 (1 Apr 2009), Mario Miloš, T. 38656-38657, 38659-38660, 38662 (30 Mar 2009), Exs. 2D00229, 2D00311, 2D00527, 2D00955, 2D01046, 2D01048, 2D01050, 2D01068, 2D01069, 2D01070, 2D01078, 2D01086, 2D01091, 2D01093, 2D01095, 2D01097, 2D01100, 2D01107, 2D01108, 2D01110, 2D01116, 2D01243, 3D00299, 3D00314, 3D00436, 3D00437), 29 (referring to, *inter alia*, Exs. 1D01302, 2D00317, 2D00318, 2D00319, 2D00324, 2D00602, 2D00603, 3D00615, 3D00667, 3D01034, P02731 (confidential), para. 5, P02923 (confidential), para. 3), 30 (referring to, *inter alia*, Exs. 2D01278, 2D01279, 2D01281, 2D01283, 2D01284, 2D01285, 2D01286, 2D01287, 2D01289, 2D01290, 2D01291, 2D01292, 2D01293, 2D03057, P00492), 31-32 (referring to, *inter alia*, Filip Filipović, T. 47444 (30 Nov 2009), Witness 4D-AB, T. 47190 (24 Nov 2009), Exs. 2D00643, 4D00434 4D00554), 33 (referring to, *inter alia*, Ex. P03260, pp. 2, 4-5), 34 (referring to, *inter alia*, Ex. P01675), 36 & fns 94-97, 99-100, 111-113, 115-116, 125 and references cited therein. See also Stojić’s Reply Brief, fns 20, 24, 32 and references cited therein.

³¹⁷⁸ See Trial Judgement, Vol. 4, paras 44-45.

³¹⁷⁹ Stojić’s Appeal Brief, para. 26, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 39. See Stojić’s Reply Brief, para. 15.

intended to be an exhaustive enumeration thereof.³¹⁸⁰ Further, the Trial Chamber was not under an obligation to justify its findings in relation to every submission made during the trial. The Appeals Chamber recalls, rather, that the Trial Chamber maintained the discretion as to which legal arguments to address.³¹⁸¹ The Appeals Chamber thus sees no merit in Stojić's assertion that no reasonable trier of fact could have concluded that the JCE existed had it evaluated the evidence and submissions. His submission is dismissed.

990. Turning to Stojić's assertion regarding the Trial Chamber's alleged failure to evaluate the effect of evidence of co-operation between Croatia "and/or" the HVO and ABiH when finding that a JCE existed, thus breaching his right to a "reasoned decision", the Appeals Chamber recalls that a trial chamber is obliged to provide a reasoned opinion ensuring that an appellant can exercise his right of appeal in a meaningful manner and that the Appeals Chamber can understand and review the trial chamber's findings as well as its evaluation of the evidence.³¹⁸² In the present case, the Appeals Chamber notes that, in addition to the various factual findings regarding co-operation mentioned above,³¹⁸³ in its analysis of the CCP the Trial Chamber explicitly considered co-operation between the two sides only insofar as it found that the HZ H-B leaders participated in peace talks at the outset of the JCE while the HVO conducted military campaigns in the provinces it considered Croatian in order to consolidate its presence.³¹⁸⁴ However, the Trial Chamber nevertheless concluded that a JCE came into being in mid-January 1993 on the basis of circumstances such as the presentation of the Vance-Owen Peace Plan on 2 January 1993 and the 15 January 1993 Ultimatum,³¹⁸⁵ finding that the JCE was then implemented by numerous criminal acts, which took place pursuant to a "clear pattern of conduct" from January 1993 to April 1994.³¹⁸⁶ The Appeals Chamber considers that Stojić fails to show an error in the Trial Chamber's approach or how the existence of co-operation between Croatia "and/or" the HVO and ABiH necessarily invalidates these findings. Thus, his argument that the Trial Chamber failed to provide a reasoned opinion is dismissed.³¹⁸⁷ For similar reasons, his assertion that the only reasonable conclusion from the evidence is that the HVO and Croatia did not regard the ABiH as their enemy is dismissed.

991. The Appeals Chamber therefore finds that Stojić has failed to show that the Trial Chamber did not provide a reasoned opinion in finding that there was a JCE without properly considering the submissions and evidence proffered at trial regarding the existence and impact of substantial

³¹⁸⁰ See Trial Judgement, Vol. 4, para. 39, referring to, *inter alia*, Stojić's Final Brief, paras 64-152.

³¹⁸¹ *Kvočka et al.* Appeal Judgement, para. 23.

³¹⁸² Art. 23(2) of the Statute; Rule 98 *ter*(C) of the Rules. See *Stanišić and Župljanin* Appeal Judgement, para. 137; *Popović et al.* Appeal Judgement, paras 1123 (and references cited therein), 1367, 1771.

³¹⁸³ See *supra*, para. 987.

³¹⁸⁴ Trial Judgement, Vol. 4, para. 45. See also Trial Judgement, Vol. 4, para. 46.

³¹⁸⁵ Trial Judgement, Vol. 1, paras 445, 451-452, Vol. 4, paras 44, 125. See also *supra*, paras 852-858.

³¹⁸⁶ Trial Judgement, Vol. 4, para. 65.

co-operation between Croatia “and/or” the HVO and the ABiH. Stojić’s ground of appeal 2 is dismissed.

(ii) Stojić’s appeal (Ground 3)

a. Arguments of the Parties

992. Stojić submits that the Trial Chamber failed to provide a “reasoned decision” by not properly taking account of trial submissions and underlying evidence that demonstrate that the HVO military actions from January 1993 were a reaction to specific ABiH offensives.³¹⁸⁸ Stojić first argues that the Trial Chamber erred when it failed to determine why clashes between the HVO and ABiH broke out in April 1993, disregarding the significance of Defence evidence that the HVO action in April 1993 occurred in response to an ABiH offensive that started on 13 and 14 April 1993 and was directed at Konjic, Jablanica, and Prozor.³¹⁸⁹ Second, Stojić argues that the Trial Chamber: (1) failed to consider the purpose of the April 1993 attacks in Prozor; and (2) erred in concluding that the attacks on Sovići and Doljani in Jablanica Municipality were not a “defensive reaction to the ABiH attack that same day”, because it failed to take account of the fact that the attack was a response to the ABiH offensive in the area rather than on that day alone.³¹⁹⁰ Third, Stojić argues that the Trial Chamber failed to consider evidence and submissions showing that the HVO actions following 30 June 1993 were a response to an ABiH offensive in central BiH which included the Attack on the HVO Tihomir Mišić Barracks.³¹⁹¹ Stojić also avers that the Trial Chamber failed to provide a reasoned opinion in concluding that the deportation system implemented after this attack was merely a “more efficient” implementation of the CCP.³¹⁹²

993. The Prosecution responds that the Trial Chamber explained why the crimes committed by the HVO formed part of the CCP.³¹⁹³ In particular, it submits that: (1) the Trial Chamber specified the purpose of the HVO’s April 1993 attacks in Prozor Municipality, which was to take control of

³¹⁸⁷ Regarding the clear pattern of conduct, see also *supra*, para. 979.

³¹⁸⁸ Stojić’s Appeal Brief, heading before para. 38, paras 38-39; Stojić’s Reply Brief, paras 16-17. See also Stojić’s Appeal Brief, para. 47; Appeal Hearing, AT. 275-276, 282-282 (21 Mar 2017). Stojić also argues that HVO actions in Mostar in May 1993 were a response to an ABiH attack on 9 May 1993, referring to his ground of appeal 47. See Stojić’s Appeal Brief, para. 38; *supra*, paras 923-929.

³¹⁸⁹ Stojić’s Appeal Brief, paras 40-41. Stojić argues that the Trial Chamber abrogated its responsibility to provide a reasoned opinion in choosing not to determine why clashes between the HVO and ABiH broke out at this time. Stojić’s Appeal Brief, para. 41, referring to Trial Judgement, Vol. 2, para. 526.

³¹⁹⁰ Stojić’s Appeal Brief, para. 42, referring to Trial Judgement, Vol. 2, para. 543, Vol. 4, para. 46. Stojić argues that the Trial Chamber erred in finding that these events fell within the CCP. Stojić’s Appeal Brief, para. 42. See also Stojić’s Appeal Brief, paras 43-44.

³¹⁹¹ Stojić’s Appeal Brief, paras 45-46, referring to Stojić’s Final Brief, paras 141-151, Trial Judgement, Vol. 2, paras 882-895. Stojić also argues that while the Trial Chamber linked the detention of Muslim men in Mostar, Stolac, Čapljina, Ljubuški, and Prozor to the Attack on the HVO Tihomir Mišić Barracks, it failed to explain how these arrests were connected to the CCP established in January 1993. Stojić’s Appeal Brief, para. 46.

³¹⁹² Stojić’s Appeal Brief, para. 46, referring to Trial Judgement, Vol. 4, paras 57, 64.

³¹⁹³ Prosecution’s Response Brief (Stojić), para. 27. See also Prosecution’s Response Brief (Stojić), para. 31.

villages by acts of violence against the Muslim population, and the attacks were part of the implementation of the 4 April 1993 Ultimatum;³¹⁹⁴ (2) the existence of a “defensive component” to the HVO attacks against the villages of Sovići and Doljani does not undermine the link of these events to the CCP;³¹⁹⁵ and (3) the Trial Chamber explained how the arrests and detentions of Muslim men after 30 June 1993 formed part of the CCP, as well as how the CCP became more efficient.³¹⁹⁶

b. Analysis

994. Considering first the Trial Chamber’s conclusions regarding the conflict between the HVO and ABiH in Jablanica Municipality in April 1993, the Appeals Chamber notes that the Trial Chamber concluded that “clashes between the HVO and the ABiH” broke out in the municipality on 13 and 14 April 1993.³¹⁹⁷ The Trial Chamber also stated that, having considered Defence evidence and submissions that HVO engagements in mid-April 1993 were intended to repel the ABiH offensive in the area,³¹⁹⁸ it was unable to determine the reason for the clashes.³¹⁹⁹ The Appeals Chamber considers that Stojić fails to demonstrate any error in the Trial Chamber’s conclusion that these events fell within the CCP despite being aware of this context. As for Stojić’s submission that the Trial Chamber failed to appreciate the broader context of the entire ABiH offensive in Jablanica, the Appeals Chamber observes that the Trial Chamber found, in addition to referring to the clashes on 13 and 14 April 1993, that on 15 April 1993, the HVO commenced shelling the town of Jablanica and that on 17 April 1993, the HVO launched an attack in Jablanica Valley, which was not purely defensive, shelling several localities, including Sovići and Doljani, and committing crimes during and following the attack.³²⁰⁰ Thus, contrary to Stojić’s submission, the Trial Chamber clearly considered the broader context of the events in Jablanica. As for Prozor, the Trial Chamber found that the HVO’s “offensive actions” in Prozor Municipality in April 1993 resulted in taking possession of several villages, committing acts of violence such as setting fire to Muslim houses, causing the Muslim population to flee, and thus preventing any possibility of return.³²⁰¹ It also considered that these crimes in Jablanica and Prozor, along with others, formed

³¹⁹⁴ Prosecution’s Response Brief (Stojić), para. 28.

³¹⁹⁵ Prosecution’s Response Brief (Stojić), para. 28.

³¹⁹⁶ Prosecution’s Response Brief (Stojić), paras 29-30.

³¹⁹⁷ Trial Judgement, Vol. 2, para. 526. See also Trial Judgement, Vol. 2, paras 524-525.

³¹⁹⁸ Trial Judgement, Vol. 2, paras 523-524. See also Stojić’s Final Brief, paras 133-140.

³¹⁹⁹ Trial Judgement, Vol. 2, para. 526 (“Whatever the underlying reasons may have been, clashes between the HVO and the ABiH did break out on 13-14 April 1993 in Jablanica Municipality.”).

³²⁰⁰ Trial Judgement, Vol. 4, paras 46, 48. The Trial Chamber also found that on 5 May 1993, in the village of Sovići, approximately 450 women, children, and the elderly were moved by the HVO soldiers from the Sovići School and the houses of Junuzovići hamlet towards Gornji Vakuf. See Trial Judgement, Vol. 2, para. 609. See also *supra*, paras 819, 895.

³²⁰¹ Trial Judgement, Vol. 4, para. 47.

part of a clear “pattern of conduct”.³²⁰² As noted earlier, the Appeals Chamber considers that this pattern of conduct, rather than the offensive or defensive nature of the operations, was the basis of the Trial Chamber’s conclusions concerning the events that fell within the CCP.³²⁰³ Stojić thus fails to show that the Trial Chamber did not provide a reasoned opinion in this regard.³²⁰⁴

995. Turning to Stojić’s challenges to the events following 30 June 1993, the Appeals Chamber notes that in its analysis of the CCP the Trial Chamber recalled that the ABiH attacked the HVO Tihomir Mišić Barracks on that day.³²⁰⁵ In doing so the Trial Chamber cross-referenced its factual findings concerning this attack.³²⁰⁶ The Trial Chamber nevertheless found that after this event, “the implementation of the JCE became more efficient”,³²⁰⁷ finding that the HVO “arrested and detained many Muslims” from a number of municipalities, before sending them to ABiH-controlled territories or to third countries via Croatia, or putting them in HVO detention centres, including the Heliodrom and Ljubuški, Gabela, and Dretelj Prisons.³²⁰⁸ In light of these conclusions, the Appeals Chamber considers that, contrary to Stojić’s submission, the Trial Chamber did not fail to consider evidence and submissions showing that the HVO actions following 30 June 1993 were a response to an ABiH offensive in central BiH which included the Attack on the HVO Tihomir Mišić Barracks. Rather, having considered that evidence, it came to the conclusion that the Attack on the HVO Tihomir Mišić Barracks was a catalyst that made the JCE implementation more efficient. The Appeals Chamber finds that Stojić has failed to show any error and dismisses his arguments.

996. As for Stojić’s contention that the Trial Chamber offered no explanation for concluding that the system of deportation implemented after 30 June 1993 was simply a more efficient implementation of the “original” CCP, the Appeals Chamber notes that it has already dealt with, and dismissed, this argument.³²⁰⁹

997. In light of the foregoing, the Appeals Chamber finds that Stojić has failed to show that the Trial Chamber did not provide a reasoned opinion and did not properly consider trial submissions and underlying evidence that demonstrate that the HVO military actions from January 1993 were a reaction to specific ABiH offensives. The Appeals Chamber dismisses his ground of appeal 3.

³²⁰² Trial Judgement, Vol. 4, paras 46-48, 65. Regarding this pattern of conduct, see also *supra*, para. 979.

³²⁰³ See *supra*, para. 895.

³²⁰⁴ See, e.g., *Popović et al.* Appeal Judgement, paras 1367, 1402, 1771; *Kvočka et al.* Appeal Judgement, para. 25.

³²⁰⁵ Trial Judgement, Vol. 4, para. 57.

³²⁰⁶ Trial Judgement, Vol. 4, fn. 155, referring to Trial Judgement, Vol. 2, paras 878-886.

³²⁰⁷ Trial Judgement, Vol. 4, para. 57.

³²⁰⁸ Trial Judgement, Vol. 4, para. 57.

³²⁰⁹ See *supra*, para. 800.

(iii) Petković's appeal (Sub-grounds 3.2.2 and 3.2.2.4)a. Arguments of the Parties

998. Petković first argues that the Trial Chamber erred when it concluded that HVO military operations formed part of a plan, and that although the Trial Chamber took note of the need to “carefully distinguish between the legitimate/missible use of military force and the commission of crimes that might accompany such instances”, it failed to do so.³²¹⁰ Petković also argues, relying on evidence concerning the events in Stupni Do, that the finding that the crimes were planned by the Appellants is contradicted by “evidence of multiple reactions to these crimes, which were duly reported up the chain of command and condemned by supposed JCE-members”.³²¹¹

999. Second, Petković submits that the Trial Chamber erred because it concluded that there was a “clear pattern of conduct” in the crimes committed as a result of the implementation of the CCP, as opposed to a pattern of military operations.³²¹² In support, he asserts that damage to civilian property is often collateral to military operations.³²¹³ In addition, Petković submits that the Trial Chamber “had to carefully evaluate destruction of Muslim houses on each location to establish whether the destruction was done for special, underlying purpose of ‘ethnic cleansing’ or not”.³²¹⁴ In this regard, he asserts that no reasonable trier of fact could have concluded that the destruction of Muslim houses in Gornji Vakuf, Jablanica, and Prozor formed part of the CCP.³²¹⁵ Petković argues in particular that: (1) the demographic composition of the municipalities of Gornji Vakuf and Prozor stayed the same; and (2) crimes in the villages of Sovići and Doljani were committed as “an act of revenge of members of one HVO unit”.³²¹⁶

1000. The Prosecution responds that the Trial Chamber reasonably relied on evidence of the pattern of crimes committed throughout the JCE period in finding that the CCP existed.³²¹⁷ In response to Petković's first challenge, the Prosecution submits that the Trial Chamber properly distinguished between legitimate aspects of military operations and the commission of crimes

³²¹⁰ Petković's Appeal Brief, paras 37-38, referring to Trial Judgement, Vol. 4, para. 39; Petković's Reply Brief, paras 12-13. Petković also argues that the Trial Chamber reasoned that because both military operations and the crimes were planned, they must have been committed pursuant to the same plan. See Petković's Appeal Brief, paras 38-40. See also Petković's Appeal Brief, para. 37.

³²¹¹ Petković's Appeal Brief, para. 41, referring to Exs. P02050, P02059, P02088, P02112, P09494, Milivoj Petković, T. 49438-49446, 49450-49451 (15 Feb 2010).

³²¹² Petković's Appeal Brief, paras 81-82, 84. See also Appeal Hearing, AT. 484, 575 (23 Mar 2017).

³²¹³ Petković's Appeal Brief, para. 82.

³²¹⁴ Petković's Appeal Brief, para. 83.

³²¹⁵ Petković's Appeal Brief, para. 83.

³²¹⁶ Petković's Appeal Brief, para. 83, referring to Trial Judgement, Vol. 2, para. 643, Vol. 3, paras 1526-1529, 1559-1563; Appeal Hearing, AT. 494-495, 497-498, 524 (23 Mar 2017).

³²¹⁷ Prosecution's Response Brief (Petković), para. 32.

during such operations.³²¹⁸ The Prosecution also asserts that the Trial Chamber was aware of the evidence cited by Petković as regards the reporting of crimes up the chain of command, but found that the JCE members failed to follow up on initial reports or condemnations, and denied or concealed the crimes committed.³²¹⁹ In response to Petković's second challenge, the Prosecution submits that: (1) crimes such as those at issue are never permitted, even in connection with military operations;³²²⁰ and (2) the Trial Chamber carefully examined how the criminal destruction of property fits within the CCP.³²²¹

b. Analysis

1001. The Appeals Chamber turns first to Petković's argument that the Trial Chamber failed to distinguish between legitimate use of military force and crimes that might accompany such instances. The Appeals Chamber recalls that, in the present case, crimes were charged in the context of an armed conflict.³²²² Contrary to Petković's assertion, in considering whether those crimes were committed, the Trial Chamber made findings that certain incidents did not amount to crimes because the possibility of legitimate military conduct could not be excluded.³²²³ Having found that a wide range of crimes did occur, however, the Trial Chamber then concluded that the numerous criminal acts committed during military campaigns were carried out in furtherance of the CCP and formed a pattern of conduct.³²²⁴ The Appeals Chamber finds no error in the Trial Chamber's reasoning,³²²⁵ and therefore dismisses Petković's argument that the Trial Chamber failed to distinguish between legitimate use of military force and crimes that might accompany such instances. Further, and as a consequence, Petković's argument that the Trial Chamber failed to

³²¹⁸ Prosecution's Response Brief (Petković), para. 34.

³²¹⁹ Prosecution's Response Brief (Petković), para. 35.

³²²⁰ Prosecution's Response Brief (Petković), para. 36.

³²²¹ Prosecution's Response Brief (Petković), para. 37.

³²²² See, e.g., Trial Judgement, Vol. 3, paras 514-589. See also Trial Judgement, Vol. 2, paras 34-299, 326-488, 520-655.

³²²³ See, e.g., Trial Judgement, Vol. 3, paras 655 (the Trial Chamber could not exclude the possibility that villagers were taking part in hostilities and could not find that those villagers were civilian victims of the crime of murder), 701 (the Trial Chamber could not establish whether certain individuals belonged to the village guard or were members of the ABiH, and therefore could not find that they were victims of murder), 704 (the Trial Chamber could not establish the source of shots that were fired when HVO soldiers broke down the door of a house, and could not exclude the possibility that its occupants were taking part in the hostilities, and therefore was unable to find that certain villagers were victims of wilful killing), 706 (the Trial Chamber recalled that an individual was armed and could not find that the individual was a victim of wilful killing), 950 (the Trial Chamber could not find that those who were being detained were civilians, and therefore could not find that the crime of imprisonment was committed), 1525 (the Trial Chamber could not exclude the possibility that Muslims inside the house took part in the combat activities, thus making the house a legitimate military target for the HVO soldiers), 1558 (the Trial Chamber could not exclude the possibility that the destruction of a house was justified by military necessity), 1563 (the Trial Chamber could not exclude the possibility that the destruction caused during an HVO attack was justified by military necessity).

³²²⁴ Trial Judgement, Vol. 4, paras 45-47, 56, 59, 61, 65. Regarding this pattern of conduct, see also *supra*, para. 979.

³²²⁵ The Appeals Chamber also considers that Petković fails to substantiate his assertion that the Trial Chamber concluded that as both military operations and criminal acts were planned, they must have formed part of the same plan. Furthermore, the Appeals Chamber notes that the Trial Chamber did not find that military operations *per se* formed part



consider that damage to civilian property may be deemed collateral damage in military campaigns is also dismissed.

1002. As for Petković's submission, relying on the events in Stupni Do, that the conclusion that the crimes were planned by the Appellants was contradicted by evidence of crimes being reported up the chain of command and JCE members' reaction to the crimes, the Appeals Chamber notes that the Trial Chamber considered this in its analysis of the CCP. It, however, found that despite not taking part in the decision to attack Stupni Do on 23 October 1993, Petković, among others, attempted to conceal the crimes and thereby furthered the CCP.³²²⁶ The Appeals Chamber therefore finds no error in the Trial Chamber's analysis. Petković's submission is thus dismissed.

1003. The Appeals Chamber also rejects the submission that the Trial Chamber erred in concluding that there was a clear pattern of crimes as opposed to a pattern of military operations, noting that the Trial Chamber's conclusion in this regard was based on the findings that a large number of crimes were committed, in "stages", in order to implement the JCE.³²²⁷ Accordingly, Petković's arguments are dismissed.

1004. As for Petković's argument that the Trial Chamber erred in concluding that destruction of Muslim houses in Gornji Vakuf, Jablanica, and Prozor formed part of the CCP, the Appeals Chamber recalls that it has considered, and dismissed, the submission that the absence of permanent demographic change has any bearing on the conclusion that crimes were committed.³²²⁸ The Appeals Chamber thus dismisses Petković's challenges insofar as they relate to Gornji Vakuf, Jablanica, and Prozor. As for the argument that the Trial Chamber erred in failing to consider that crimes committed in Sovići and Doljani in Jablanica Municipality were an act of revenge of members of one HVO unit,³²²⁹ the Appeals Chamber finds that Petković merely suggests a different interpretation of the evidence without showing that the Trial Chamber reached an unreasonable conclusion.³²³⁰ His arguments thus fail.

1005. The Appeals Chamber therefore finds that Petković has failed to show that the Trial Chamber erred when it concluded that: (1) HVO military operations formed part of a plan by failing to distinguish the crimes and legitimate military conduct; and (2) there was a "clear pattern

of the CCP, and considered only the crimes which – in certain incidents – accompanied such operations. This submission is also dismissed. See *supra*, fn. 3210.

³²²⁶ See Trial Judgement, Vol. 4, paras 61-62. See also Trial Judgement, Vol. 3, paras 317-326, 411-425, 476-498, Vol. 4, paras 760-777, 846-849. See also *infra*, paras 2289-2294.

³²²⁷ Trial Judgement, Vol. 4, para. 45. See Trial Judgement, Vol. 4, paras 46-66. See also *supra*, para. 979.

³²²⁸ See *supra*, paras 872, 894. See also Petković's Appeal Brief, paras 27, 79.

³²²⁹ See Trial Judgement, Vol. 2, para. 643.

³²³⁰ See, e.g., Trial Judgement, Vol. 4, para. 146.

of conduct” in the crimes committed as a result of the implementation of the CCP. Petković’s sub-grounds of appeal 3.2.2 and 3.2.2.4 are dismissed.

(iv) Ćorić’s appeal (Ground 1 in part)

a. Arguments of the Parties

1006. Ćorić argues that the Trial Chamber erred in concluding that the CCP existed, having failed to take into account reasonable alternative inferences and having ignored certain evidence.³²³¹ He argues that “[n]o such plan was shown to exist in documents, orders and meeting notes introduced into evidence”.³²³² Ćorić submits that there was “abundant evidence” showing that the acts of the HZ H-B were defensive, pointing to: (1) witness testimony,³²³³ (2) documentary evidence regarding the establishment of the HZ H-B as a temporary response to aggression,³²³⁴ (3) the HVO co-operation with the ABiH,³²³⁵ (4) the fact that the ABiH was involved in planning attacks against the HZ H-B even whilst participating in peace negotiations,³²³⁶ and (5) the lack of discrimination against Muslims, which was evidenced by, *inter alia*, Muslims joining the HVO.³²³⁷ Ćorić also

³²³¹ Ćorić’s Appeal Brief, paras 18, 20, 29. See also Ćorić’s Appeal Brief, paras 19, 21.

³²³² Ćorić’s Appeal Brief, para. 22.

³²³³ Ćorić’s Appeal Brief, para. 23, referring to Ex. 5D05110 (confidential) (witness statement of Prosecution Witness NO), para. 10, Zdenko Andabak, T. 50965 (15 Mar 2010), Dragan Ćurčić, T. 45809 (12 Oct 2009), Radmilo Jasak, T. 48682-48685 (20 Jan 2010), Klaus Johann Nissen, T. 20648-20650 (27 June 2007), Slobodan Praljak, T. 41832-41833 (23 June 2007), Andrew Pringle, T. 24259 (7 Nov 2007), Zvonko Vidović, T. 51462 (29 Mar 2010).

³²³⁴ Ćorić’s Appeal Brief, paras 24-25, referring to Exs. 1D00410, 1D02147, 1D02314, 1D02441, 1D02096, 1D02908, 2D00093, P00047, P00050, P00052, P00060, P00078, P00079, P00081, P00117, P00128, P00151, P00152, P00289, P00292, P00303, P00339, P01467, P00498, P00543, P01798, P01467, P01988, P02088, Mile Akmadžić, T. 28482 (17 June 2008), Stjepan Kljuić, T. 3937-3938, (27 June 2006), T. 4216-4217 (28 June 2006), Ciril Ribičić, T. 25462-25463 (10 Dec 2007).

³²³⁵ Ćorić’s Appeal Brief, para. 26, referring to Exs. 1D00507, 1D02147, 1D02432, 1D02441, 1D02664, 2D00147, 2D00311, 2D00522, 2D00523, 2D00630, 2D00809, 2D01177, 2D01185, 2D01253, 3D00008, 3D00437, 4D00397, 4D00410, 4D00476, 4D00478, 4D01026, 4D01048, 4D01521, P00151, P00155, P00339, P01988, P02002, P02091, Witness DE, T. 15615, 15597-15598 (closed session) (13 Mar 2007), T. 15671 (closed session) (14 Mar 2007), Stjepan Kljuić, T. 4187-4188 (27 June 2006), Robert Donia, T. 1830 (10 May 2006), Borislav Puljić, T. 32251-32252 (16 Sept 2008), Mile Akmadžić, T. 29424-29426 (17 June 2008), T. 29601, 29603-29604 (18 June 2008), Hamid Bahto, T. 37916-37918 (11 Mar 2009), Tihomir Majjić, T. 37850-37851 (9 Mar 2009), Filip Filipović, T. 47778 (7 Dec 2009), Mario Miloš, T. 38651 (30 Mar 2009), Bo Pellnäs, T. 19730 (7 June 2007), Dragan Pinjuh, T. 37700 (4 Mar 2009), Mirko Zelenika, T. 33248 (15 Oct 2008), Anđelko Makar, T. 38381-38386 (23 Mar 2009).

³²³⁶ Ćorić’s Appeal Brief, para. 27, referring to Exs. 1D01264, 1D01662, 1D01652, 1D02729, 2D00229, 2D00253, 2D01107, 3D00837, 4D00568, 4D00895, 4D00896, 4D01700, P00633, P01240, P01305, P01317, P01675, P02346, P02760, P02849, P03038, P03337, Zoran Buntić, T. 30723-30724 (15 July 2008), Filip Filipović, T. 47444 (30 Nov 2009), Dragan Jurić, T. 39308, 39345-39346 (27 Apr 2009), Witness DE, T. 15698-15699 (closed session) (14 Mar 2007). Ćorić asserts that against this backdrop, it is evident that “self-defence was the guiding principle of the HVO, not any pre-conceived plan to ethnically cleanse Muslims”. Ćorić’s Appeal Brief, para. 27.

³²³⁷ Ćorić’s Appeal Brief, paras 28-29, referring to Exs. 1D00442, 1D00669, 1D01153, 1D02001, 1D02124, 1D02381, 2D00439, 4D00455, P00128, P00672, P00824, P01097, P01264, P01439, P01511, P01536, P01563, P01627, P01652, P02059, P02091, P02155, P03673, P04008, P04111, P04699, P04735, P07279, P07674, P10220 (confidential), Witness CQ, T. 11424 (private session) (11 Dec 2006), Milivoj Petković, T. 49342 (11 Feb 2010), Zoran Buntić, T. 30724-30725 (15 July 2008), Anđelko Makar, T. 38414 (23 Mar 2009), Witness CJ, T. 10952 (closed session) (30 Nov 2006). Ćorić submits in particular that: (1) Muslims were appointed to all levels of the HZ-HB and steps were taken to oppose demographic changes; and (2) the disarming and detention of Muslim members of the HVO was a military necessity which came about following the Attack on the HVO Tihomir Mišić Barracks on 30 June 1993. See Ćorić’s Appeal Brief, paras 28-29. See also Ćorić’s Appeal Brief, para. 27.

submits that the Trial Chamber's failure to consider the totality of evidence invalidates its conclusion that a JCE existed, arguing that the Trial Chamber: (1) "could not distinguish criminal events during the attacks and after"; and thus (2) could not "distinguish damage and injury that occurred as part of legitimate combat apart from those that were criminally incurred".³²³⁸

1007. The Prosecution responds that: (1) the majority of Ćorić's arguments warrant summary dismissal as they were made in his final brief;³²³⁹ and (2) the evidence he refers to does not support his own claims.³²⁴⁰ It points to the Trial Chamber's findings on the CCP and argues that Ćorić ignores the evidence relied on by the Trial Chamber which demonstrates that the events were part of a JCE, as opposed to a defensive reaction to the ABiH offensive.³²⁴¹ In particular, the Prosecution argues that given the "massive scope, scale, duration and similarity" of the crimes, the Trial Chamber reasonably concluded that a JCE existed despite ABiH planning of attacks during ongoing negotiations and the inclusion of Muslims in the HVO.³²⁴²

b. Analysis

1008. The Appeals Chamber will first address Ćorić's assertion that the Trial Chamber found that it could not distinguish between criminal events occurring during military attacks and criminal events occurring after the HVO takeover of villages. It considers that Ćorić takes this solitary finding out of context. In assessing evidence concerning the alleged destruction of Muslim houses and thefts of their property in the village of Hrasnica, the Trial Chamber referred to paragraph 67 of the Indictment which alleges that "*following* the HVO attack on Duša, Hrasnica, Uzričje and Ždrimci the HVO plundered and burned Bosnian Muslim houses and property in and around these villages"³²⁴³ and stated that "[t]he evidence did not always facilitate distinguishing the criminal events alleged to have occurred during the actual attack of the village from the criminal events once the HVO took over the village".³²⁴⁴ Noting, however, that some witnesses provided sufficient detail, the Trial Chamber concluded that HVO members committed thefts and plundered Muslim houses in Hrasnica but that it had no evidence to find that the HVO stole valuables from some Muslims

³²³⁸ Ćorić's Appeal Brief, para. 29, referring to Trial Judgement, Vol. 2, para. 412.

³²³⁹ Prosecution's Response Brief (Ćorić), para. 19.

³²⁴⁰ Prosecution's Response Brief (Ćorić), para. 24.

³²⁴¹ Prosecution's Response Brief (Ćorić), paras 20-24.

³²⁴² Prosecution's Response Brief (Ćorić), para. 26. The Prosecution argues in particular that: (1) the fact that the HVO was "careful enough" to avoid explicit reference to the CCP in documentation is irrelevant; (2) arguments regarding efforts to oppose demographic changes are undermined by the HVO's active role in the displacement of Muslims; and (3) regardless of whether disarming and detentions of Muslims became a military necessity following June 1993, it did not justify the crimes which occurred. Prosecution's Response Brief (Ćorić), paras 21, 25-26; Appeal Hearing, AT. 659-660 (24 Mar 2017).

³²⁴³ Indictment, para. 67 (emphasis added); Trial Judgement, Vol. 2, para. 413. See also Trial Judgement, Vol. 2, para. 411.

³²⁴⁴ See Trial Judgement, Vol. 2, para. 412.

during their arrests in Hrasnica.³²⁴⁵ Accordingly, contrary to Ćorić's submission, this conclusion by the Trial Chamber has no impact on the existence of the JCE.

1009. The remainder of Ćorić's arguments essentially go to the assertion that the Trial Chamber failed to consider evidence demonstrating that the acts of the HZ H-B were acts of self-defence as opposed to being part of the CCP.³²⁴⁶ Considering first Ćorić's argument in relation to witness evidence, the Appeals Chamber notes that Ćorić argues that the Trial Chamber disregarded the evidence of a number of witnesses to the effect that they did not know of or participate in a criminal plan, as well as other testimony which, in his view, supports the hypothesis that the acts of the HZ H-B were defensive. The Appeals Chamber notes that contrary to Ćorić's submission, the Trial Chamber considered much of the testimonial evidence he points to at various junctures in the Trial Judgement.³²⁴⁷ Further, the Appeals Chamber considers that Ćorić fails to explain how the conclusion that the CCP existed – made on the basis of other evidence and findings, which Ćorić does not challenge³²⁴⁸ – is affected by this evidence. Ćorić simply attempts to substitute his own interpretation of the evidence for that of the Trial Chamber, often repeating submissions made at trial without showing an error by the Trial Chamber.³²⁴⁹ His argument is thus dismissed.

1010. The Appeals Chamber turns next to Ćorić's argument that the Trial Chamber failed to consider evidence demonstrating that the HZ H-B was established as a temporary response to aggression. The Appeals Chamber recalls that it has considered, and dismissed, identical challenges to this finding above.³²⁵⁰ The Appeals Chamber also notes that the Trial Chamber found, based on a range of evidence, including the evidence referenced by Ćorić, that the HZ H-B was created against a backdrop of war in response to Serbian aggression, but was not solely an "interim defensive measure to counter aggression but was instead sought to create a 'mini-state' separate from the RBiH".³²⁵¹ Similarly, with respect to Ćorić's argument that the Trial Chamber failed to take account of the fact that the ABiH was planning attacks against the HZ H-B, the Appeals Chamber notes that the Trial Chamber took account of the fact that clashes between the HVO and ABiH broke out in the municipalities during the period of co-operation in 1993.³²⁵² It also took account, in its analysis of the CCP, of a number of specific ABiH attacks, including the Attack on the HVO Tihomir Mišić

³²⁴⁵ See Trial Judgement, Vol. 2, paras 413, 415. See also Trial Judgement, Vol. 2, para. 414.

³²⁴⁶ The Appeals Chamber has considered, and dismissed, a number of arguments in this regard above. See *supra*, paras 861, 864, 895, 908, 928, 958, 967, 979, 982.

³²⁴⁷ See, e.g., Trial Judgement, Vol. 1, para. 946 & fn. 2344 (referring to Ex. 5D05110 (confidential)), Vol. 2, paras 40 (referring to Zdenko Andabak, T(F). 50965 (15 Mar 2010)), 513, 524, 880-881 (referring to, *inter alia*, Radmilo Jasak, T(F). 48684-48685 (20 Jan 2010)).

³²⁴⁸ See Trial Judgement, Vol. 4, paras 44-73.

³²⁴⁹ See, e.g., Ćorić's Final Brief, paras 153-155, 160.

³²⁵⁰ See *supra*, paras 728-733.

³²⁵¹ Trial Judgement, Vol. 4, para. 14 & fn. 31 (referring to Ex. P00078), para. 15 & fns 34, 39 (referring to Exs. P00052, P00078).

³²⁵² See, e.g., Trial Judgement, Vol. 1, paras 460, 470, 477, Vol. 4, para. 45.

Barracks.³²⁵³ Further, the majority of evidence Čorić refers to in this respect was considered by the Trial Chamber throughout the Trial Judgement, and used to make findings on co-operation between the two sides during which clashes erupted between them.³²⁵⁴ Accordingly, the Appeals Chamber again finds that Čorić simply attempts to substitute his own evaluation of the evidence for that of the Trial Chamber, repeating submissions made at trial,³²⁵⁵ without showing an error by the Trial Chamber.

1011. Regarding Čorić's challenges concerning the question of HVO co-operation with the ABiH, the Appeals Chamber recalls that the Trial Chamber did not expressly consider this issue in its analysis of the CCP, apart from referring to the HZ H-B leaders' participation in peace talks.³²⁵⁶ However, as stated earlier, the Trial Chamber made a number of findings on the issue throughout the Trial Judgement.³²⁵⁷ The Appeals Chamber also recalls that it has found that the Trial Chamber's findings on co-operation did not impact on the conclusion that the CCP came into being in mid-January 1993.³²⁵⁸ For the same reasons, the Appeals Chamber finds that the further evidence of co-operation that Čorić pointed to – the vast majority of which was again considered in the Trial Judgement and used to make findings on co-operation between the two sides³²⁵⁹ – fails to demonstrate any error in the Trial Chamber's conclusion. This argument is also rejected.

1012. The Appeals Chamber also rejects Čorić's submissions regarding the Trial Chamber's approach to evidence with respect to the alleged lack of discriminatory intent against Muslims. The Appeals Chamber notes that the Trial Judgement is replete with findings concerning attacks on Muslims and crimes committed against them,³²⁶⁰ including the conclusion that "in all the municipalities the evictions were accompanied in many instances by episodes of violence directed

³²⁵³ See Trial Judgement, Vol. 4, paras 46, 57, 61.

³²⁵⁴ Trial Judgement, Vol. 1, para. 440 & fn. 1037 (referring to Ex. 4D01700), para. 460 & fn. 1105 (referring to Ex. 1D02729), para. 462 & fns 1110-1111 (referring to Ex. P01240), para. 754 & fn. 1762 (referring to Ex. P00633), Vol. 2, para. 1896 & fn. 4729 (referring to Ex. 4D00568), Vol. 3, para. 284 & fns 636-637 (referring to Ex. 1D01264), Vol. 4, para. 53 (referring to Exs. 3D00837, P02760). Other evidence cited to by Čorić was also evaluated and considered by the Trial Chamber, albeit in contexts other than co-operation and clashes between the two sides. See Trial Judgement, Vol. 1, para. 740 & fns 1738, 1740 (referring to Exs. 4D00895, P03337, 4D00896), Vol. 4, para. 88 & fn. 235 (referring to Ex. P01317). The Appeals Chamber recalls that it is to be presumed that the Trial Chamber evaluated all the evidence presented to it as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. See *Popović et al.* Appeal Judgement, para. 306; *Dordević* Appeal Judgement, fn. 2527. Given that the Trial Chamber was aware of Exhibits 4D00895, P03337, 4D00896, and P01317, Čorić fails to demonstrate that the Trial Chamber erred in not expressly referring to these exhibits in relation to the issue of discrimination against the Muslims.

³²⁵⁵ See, e.g., Čorić's Final Brief, paras 153-155, 160.

³²⁵⁶ See *supra*, para. 990.

³²⁵⁷ See *supra*, para. 987.

³²⁵⁸ See *supra*, paras 987-991. See also *supra*, para. 861.

³²⁵⁹ Trial Judgement, Vol. 1, para. 440 & fns 1037-1038 (referring to Exs. 4D00478, 4D01026, 4D01048, 4D01521, Mile Akmadžić, T(F). 29443, 29602-29606 (17 June 2008)), para. 443 & fn. 1054 (referring to Ex. 1D02664), para. 472 & fns 1145-1147 (referring to Ex. P02091), para. 754 & fn. 1762 (referring to Ex. P02002), Vol. 2, paras 696-697 & fns 1559-1564 (referring to Exs. 2D00523, 2D00522).

³²⁶⁰ See Trial Judgement, Vol. 2, paras 1-2191, Vol. 3, paras 1-1741.

against Muslims”.³²⁶¹ Furthermore, the Trial Chamber found that while the HVO included Muslims within its ranks in 1992 and 1993, the evidence showed that the Muslims left the ranks of the HVO *en masse* in May and June 1993.³²⁶² It also noted in the context of the CCP that the 15 April 1993 Decision denied some 16,000 to 20,000 people, “primarily Muslims”, the status of displaced persons, as a result of which Muslims had no access to humanitarian aid.³²⁶³ The Trial Chamber also observed that following the ABiH attack on 30 June 1993, the implementation of the CCP became “more efficient” with, *inter alia*, the arrests and detentions of a number of Muslims.³²⁶⁴ In light of these findings, the Appeals Chamber finds that Ćorić fails to show how the evidence he cites to – much of which was considered elsewhere in the Trial Judgement to make various findings³²⁶⁵ – would have an impact on the Trial Chamber’s finding that the CCP existed.

1013. In sum, the Appeals Chamber finds that Ćorić has failed to demonstrate that no reasonable trier of fact could have found that the existence of the CCP was the only reasonable inference. Ćorić’s ground of appeal 1 is therefore dismissed in relevant part.

6. Conclusion

1014. The Appeals Chamber recalls that it has granted Praljak’s ground of appeal 15 in part and reversed the Trial Chamber’s finding that the deaths of seven civilians in Duša were part of the CCP. As a consequence, the Appeals Chamber has also: (1) reversed the Trial Chamber’s finding that murder and wilful killing were part of the CCP from January 1993; (2) found that the remaining findings establish that murder and wilful killing were part of the CCP from June 1993; and (3) reversed the Appellants’ convictions for murder and wilful killing in relation to two killings in Prozor. The impact of the reversal of these findings on sentencing, if any, will be addressed

³²⁶¹ Trial Judgement, Vol. 3, para. 645.

³²⁶² Trial Judgement, Vol. 1, para. 774 & fn. 1807.

³²⁶³ Trial Judgement, Vol. 4, para. 49.

³²⁶⁴ Trial Judgement, Vol. 4, para. 57.

³²⁶⁵ Some of the evidence cited by Ćorić was used by the Trial Chamber to make findings on topics indirectly relevant to the issue of discrimination against Muslims, including for example the co-operation between the two sides through the establishment of a joint command, desertion of Muslims from the HVO, the establishment of a commission to deal with war crimes allegations, and appointments of judges and prosecutors to the civil and military courts. See Trial Judgement, Vol. 1, para. 472 & fn. 1145 (referring to Ex. P02091), para. 522 & fn. 1275 (referring to Exs. P00824, P01652), para. 548 & fn. 1330 (referring to Ex. P01511), para. 649 & fn. 1533 (referring to Ex. P01536), Vol. 2, para. 882 & fn. 2066 (referring to Ex. P04699), para. 1552 & fn. 3911 (referring to Ex. P03673), Vol. 4, para. 52 & fn. 141 (referring to Ex. P02059), para. 158 & fn. 428 (referring to Ex. P00672). Much of the evidence now cited by Ćorić was also considered and used by the Trial Chamber, but in another context. See Trial Judgement, Vol. 1, para. 519 & fn. 1268 (referring to Ex. P00128), para. 537 & fn. 1311 (referring to Ex. P07674), para. 544 & fn. 1327 (referring to Ex. P01097), para. 777 & fn. 1816 (referring to Ex. P10220 (confidential)), para. 978 & fn. 2461 (referring to Ex. ID02124), Vol. 4, para. 88 & fns 235, 252 (referring to Exs. P01264, P04111, P07279, P01439). The Appeals Chamber recalls that it is to be presumed that the Trial Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. See *Popović et al.* Appeal Judgement, para. 306; *Dorđević* Appeal Judgement, fn. 2527. Given that the Trial Chamber was aware of much of the evidence now cited by Ćorić and given that it analysed it throughout the Trial Judgement, Ćorić fails to demonstrate

below.³²⁶⁶ The Appeals Chamber further recalls that it has dismissed the Appellants' remaining challenges with respect to the CCP.

that the Trial Chamber erred in not expressly considering it when making its findings concerning discrimination against Muslims.

³²⁶⁶ See *infra*, paras 3359-3365.



E. Alleged Errors in Relation to Jadranko Prlić's Participation in the JCE

1. Introduction

1015. Starting on 14 August 1992, Prlić served as the President of the HVO HZ H-B and after the establishment of the HR H-B on 28 August 1993, as the President of the Government of HR H-B.³²⁶⁷ On 16 February 1994, Prlić also became a member of the Presidential Council of the HR H-B.³²⁶⁸ The Trial Chamber found that Prlić had significant *de jure* and *de facto* powers in coordinating and directing the work of the HVO/Government of the HZ(R) H-B. It found in particular that he chaired high-level meetings, in which decisions on the political and military strategy in the HZ(R) H-B were taken collectively, could issue military decisions that were sent through the military chain of command, played a key role in the relations of the HVO/Government of the HZ(R) H-B with the Government of Croatia, and had powers over detention centres.³²⁶⁹

1016. Further, the Trial Chamber found that Prlić was a principal member of the JCE and significantly contributed to it from January 1993 to April 1994.³²⁷⁰ In particular, the Trial Chamber found that he contributed to the JCE in the municipalities of Gornji Vakuf, Jablanica, Prozor,³²⁷¹ and Mostar,³²⁷² and through his involvement in blocking the delivery of humanitarian aid,³²⁷³ the campaign of mass arrest of Muslims,³²⁷⁴ the movement of the population,³²⁷⁵ and the concealment of crimes.³²⁷⁶ Finally, the Trial Chamber found that Prlić intended to implement the CCP and shared with the other members of the JCE the discriminatory intent to expel the Muslim population from the HZ(R) H-B.³²⁷⁷ The Trial Chamber convicted Prlić under Article 7(1) of the Statute of committing, pursuant to JCE I liability, various crimes amounting to grave breaches of the Geneva Conventions, violations of the laws or customs of war, and/or crimes against humanity under Articles 2, 3, and 5 of the Statute, respectively.³²⁷⁸ Prlić was sentenced to a single sentence of 25 years of imprisonment.³²⁷⁹

³²⁶⁷ Trial Judgement, Vol. 4, para. 82. See Trial Judgement, Vol. 1, paras 483, 516, 524, 534.

³²⁶⁸ Trial Judgement, Vol. 4, para. 82. See Trial Judgement, Vol. 1, para. 497.

³²⁶⁹ Trial Judgement, Vol. 4, para. 270.

³²⁷⁰ Trial Judgement, Vol. 4, paras 276, 1225, 1230.

³²⁷¹ Trial Judgement, Vol. 4, para. 271.

³²⁷² Trial Judgement, Vol. 4, para. 272.

³²⁷³ Trial Judgement, Vol. 4, para. 272.

³²⁷⁴ Trial Judgement, Vol. 4, para. 272. See Trial Judgement, Vol. 4, para. 155.

³²⁷⁵ Trial Judgement, Vol. 4, para. 275.

³²⁷⁶ Trial Judgement, Vol. 4, paras 273-274.

³²⁷⁷ Trial Judgement, Vol. 4, para. 276.

³²⁷⁸ Trial Judgement, Vol. 4, paras 68, 278, Disposition, p. 430. These crimes are: persecution as a crime against humanity (Count 1); murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva Conventions (Count 3); deportation as a crime against humanity (Count 6); unlawful deportation of a civilian as a grave breach of the Geneva Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9); imprisonment as a crime against humanity (Count 10); unlawful confinement of a civilian as a grave breach of the Geneva Conventions (Count 11);

1017. Prlić challenges these and related findings of the Trial Chamber with regard to his JCE contribution and *mens rea*.³²⁸⁰ These challenges will be addressed in the following sections.

2. Prlić's role as President of the HVO/Government of the HZ(R) H-B

1018. In the present section, the Appeals Chamber will address Prlić's challenges to the Trial Chamber's findings regarding his: (1) powers in civilian matters; (2) powers in military matters; (3) powers pertaining to humanitarian aid; and (4) role in the relations between HZ(R) H-B and Croatia.

(a) Alleged errors related to Prlić's functions and responsibilities in civilian matters

1019. The Trial Chamber found that Prlić, as President of the HVO/Government of the HZ(R) H-B, had various powers in civilian matters.³²⁸¹ Prlić submits that the Trial Chamber erred in law and fact by finding that he had significant *de jure* and *de facto* powers in co-ordinating and directing the work of the HVO/Government of the HZ(R) H-B.³²⁸² As a result, Prlić submits that he should be acquitted on all Counts.³²⁸³ The Prosecution responds that Prlić's submissions should be dismissed.³²⁸⁴

1020. The Appeals Chamber will examine Prlić's challenges relating to: (1) his decision-making powers; (2) the expansion of Government powers; and (3) his powers over various official bodies, namely the Departments/Ministries of Defence, the Interior, and Justice, as well as fiscal organs of

inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); unlawful labour as a violation of the laws or customs of war (Count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 19); destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); unlawful attack on civilians as a violation of the laws or customs of war (Count 24); and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). The Trial Chamber found that the following crimes also fell within the framework of the JCE, meaning Prlić was also responsible for them, but did not enter convictions for them based on the principles relating to cumulative convictions: cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); cruel treatment as a violation of the laws or customs of war (Count 17); and wanton destruction of cities, towns, or villages, or devastation not justified by military necessity as a violation of the laws or customs of war (Count 20). See Trial Judgement, Vol. 4, para. 68, Disposition, p. 430. See also Trial Judgement, Vol. 4, paras 1260-1266. The Appeals Chamber discusses Prlić's convictions pursuant to JCE III below. See *infra*, para. 2833 *et seq.*

³²⁷⁹ Trial Judgement, Vol. 4, Disposition, p. 430.

³²⁸⁰ Prlić's Appeal Brief, paras 313-629, 642-651. See also Appeal Hearing, AT. 173, 177-178, 233-234, 245-246 (20 Mar 2017).

³²⁸¹ Trial Judgement, Vol. 4, paras 88-105.

³²⁸² Prlić's Appeal Brief, paras 313, 379. Similarly, Prlić contends that the Trial Chamber repeatedly erred in its assessment of his *de jure* and *de facto* powers by repeating that he was "involved in the supervision and activities" of all HVO HZ H-B departments, sub-departments, and offices. Prlić's Appeal Brief, para. 341. The Appeals Chamber deals with those allegations below. See *infra*, paras 1048-1092.

³²⁸³ Prlić's Appeal Brief, para. 380.

³²⁸⁴ Prosecution's Response Brief (Prlić), para. 186. See Prosecution's Response Brief (Prlić), paras 183-185; Appeal Hearing, AT. 195 (20 Mar 2017).

the Government, the Office for Displaced Persons and Refugees (“ODPR”), the Exchange Service, and municipal governments.

(i) Prlić’s decision-making powers (Prlić’s Sub-ground 11.1)

1021. The Trial Chamber found that Prlić: (1) participated in the HVO/Government of the HZ(R) H-B meetings and was informed of the situation in the territory of the HZ(R) H-B; (2) contributed to the adoption of decisions taken collectively, which comprised HVO policy, by taking an active part in drawing them up, including decisions relating to the appointment and dismissal of some members of the HVO; and (3) signed laws, decisions, and decrees adopted by the HVO/Government of the HZ(R) H-B.³²⁸⁵

a. Prlić’s powers vis-à-vis other organs and officials

i. Arguments of the Parties

1022. Prlić submits that the Trial Chamber erroneously assessed the functions and responsibilities of the HZ H-B President, the HR H-B President, the HZ H-B Presidency, the HR H-B House of Representatives, the HVO HZ H-B President, and the President of the HR H-B Government.³²⁸⁶ He further submits that the Trial Chamber erred by not distinguishing the HVO HZ H-B from the HR H-B Government.³²⁸⁷ He argues that the Trial Chamber ignored evidence that: (1) HDZ-BiH played a significant role in the division of powers in BiH and the HZ H-B;³²⁸⁸ and (2) Mate Boban was the supreme authority in the HZ H-B.³²⁸⁹ Prlić also submits that the Trial Chamber failed to assess the powers of the HR H-B President and that it wrongly found that it was Boban who appointed him to the Presidential Council.³²⁹⁰ He argues that the Trial Chamber erroneously assessed his powers by ignoring that HVO HZ H-B Vice-President Krešimir Zubak’s powers were much greater than his.³²⁹¹ Finally, Prlić argues that the Trial Chamber ignored evidence showing the differences in the functioning of the HZ H-B and the HVO HZ H-B executive, the HR H-B, and the HR H-B Government and municipalities during different periods of war in 1991-1994.³²⁹²

³²⁸⁵ Trial Judgement, Vol. 4, para. 90. See Trial Judgement, Vol. 4, paras 88-89.

³²⁸⁶ Prlić’s Appeal Brief, para. 314. See Prlić’s Appeal Brief, para. 315, referring to Prlić’s Appeal Brief, paras 45-76 (sub-ground of appeal 1.2), sub-ground of appeal 1.4.

³²⁸⁷ Prlić’s Appeal Brief, para. 316.

³²⁸⁸ Prlić’s Appeal Brief, para. 317. See Prlić’s Appeal Brief, para. 318, referring to Prlić’s Appeal Brief, sub-ground of appeal 1.1.

³²⁸⁹ Prlić’s Appeal Brief, para. 319. See Prlić’s Appeal Brief, para. 320, referring to Prlić’s Appeal Brief, paras 50-51, 54-55 (sub-ground of appeal 1.2).

³²⁹⁰ Prlić’s Appeal Brief, para. 321.

³²⁹¹ Prlić’s Appeal Brief, para. 322. See also Appeal Hearing, AT. 139 (20 Mar 2017).

³²⁹² Prlić’s Appeal Brief, para. 323. See Prlić’s Appeal Brief, para. 324, referring to Prlić’s Appeal Brief, paras 45-57 (sub-ground of appeal 1.2), 83-86 (sub-ground of appeal 1.4).

1023. The Prosecution responds that Prlić fails to explain the relevance of the evidence on the HDZ-BiH's role.³²⁹³ The Prosecution argues that the Trial Chamber addressed Boban's authority in his various functions, that Prlić fails to explain how evidence of Boban's authority as HZ H-B President renders unreasonable the Trial Chamber's findings on Prlić's authority as President of its Government, and that Prlić's claim that Boban made decisions that had to be implemented by the HVO HZ H-B is not supported by the evidence he cites.³²⁹⁴ The Prosecution further argues that it is irrelevant who appointed Prlić to the Presidential Council and that, in any event, Prlić fails to show that the Trial Chamber unreasonably relied on Boban's decision appointing him.³²⁹⁵ It contends that Prlić's claim that Vice-President Zubak's powers exceeded those of Prlić is not supported by the cited evidence.³²⁹⁶ Finally, the Prosecution argues that Prlić fails to connect to any findings the evidence the Trial Chamber allegedly ignored on the differences in the functioning of various organs.³²⁹⁷

ii. Analysis

1024. With respect to Prlić's argument that the Trial Chamber erroneously assessed the functions and responsibilities of the HZ H-B President, the HR H-B President, the HZ H-B Presidency, the HR H-B House of Representatives, the HVO HZ H-B President, and the President of the HR H-B Government, the Appeals Chamber observes that Prlić only references a section of the Trial Judgement in which the Trial Chamber reached some conclusions on Prlić's actions as President of the HVO/Government of the HZ(R) H-B, without explaining how the Trial Chamber erred or showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion.³²⁹⁸ The Appeals Chamber therefore dismisses Prlić's argument.

1025. Regarding the alleged error in not distinguishing the HVO HZ H-B from the Government of the HR H-B,³²⁹⁹ the Appeals Chamber observes that Prlić does not explain how this alleged failure resulted in the Trial Chamber making any specific erroneous finding. The Appeals Chamber further considers that Prlić does not explain how the evidence regarding the role played by the HDZ-BiH, which the Trial Chamber allegedly ignored, demonstrates that the Trial Chamber's findings were

³²⁹³ Prosecution's Response Brief (Prlić), para. 193.

³²⁹⁴ Prosecution's Response Brief (Prlić), para. 192.

³²⁹⁵ Prosecution's Response Brief (Prlić), para. 196.

³²⁹⁶ Prosecution's Response Brief (Prlić), para. 194. The Prosecution also argues that Prlić fails to explain how the Presidential Council, of which he was a member, undermined his powers as Government President. Prosecution's Response Brief (Prlić), para. 195.

³²⁹⁷ Prosecution's Response Brief (Prlić), para. 197.

³²⁹⁸ See Prlić's Appeal Brief, para. 314, referring to Trial Judgement, Vol. 4, paras 88-90. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 1.2 and 1.4, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³²⁹⁹ The Appeals Chamber notes that the Trial Chamber made this distinction. See, e.g., Trial Judgement, Vol. 1, paras 515-521, Vol. 4, para. 82. See also *infra*, paras 1034-1039.

unreasonable.³³⁰⁰ Finally, regarding the Trial Chamber's alleged disregard for evidence showing that Boban was the supreme authority in HZ H-B, the Appeals Chamber observes that the Trial Chamber examined Boban's powers and various positions,³³⁰¹ and that Prlić has failed to show that the allegedly ignored evidence would have had any impact on the Trial Chamber's findings.³³⁰² These arguments are dismissed.

1026. The Appeals Chamber further dismisses Prlić's submission that the Trial Chamber wrongly found that Boban appointed him to the Presidential Council, as the Trial Chamber's finding is supported by the referenced evidence,³³⁰³ while Prlić's submission is not.³³⁰⁴ With regard to the Trial Chamber's alleged disregard for HVO HZ H-B Vice-President Zubak's powers, the Appeals Chamber considers that Prlić merely points to evidence of Zubak taking certain actions, without demonstrating that Zubak's powers "far exceeded"³³⁰⁵ his own. The argument is therefore dismissed.

1027. Turning lastly to Prlić's argument that the Trial Chamber ignored evidence showing the differences in the functioning of the HZ H-B and the HVO HZ H-B executive, the HR H-B, and the HR H-B Government and municipalities during different periods of war in 1991-1994, the Appeals Chamber observes that this argument is based on a reference to vast portions of an expert report and fails to identify any specific challenged findings.³³⁰⁶ Prlić has failed to demonstrate any error and his argument is dismissed.

b. Prlić's statutory powers and role within the HVO/Government of the HZ(R) H-B

i. Arguments of the Parties

1028. Prlić submits that the Trial Chamber erroneously concluded that as HVO HZ H-B President, he played a significant role within the HVO HZ H-B because he signed official documents, directed debates about adopting decisions, organised votes, and sometimes proposed revisions to "texts".³³⁰⁷ He submits that the Trial Chamber based this conclusion on: (1) documentary evidence introduced

³³⁰⁰ The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 1.1, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³³⁰¹ Trial Judgement, Vol. 1, paras 493-510, 691-708. See also Trial Judgement, Vol. 1, para. 511.

³³⁰² The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 1.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³³⁰³ Trial Judgement, Vol. 1, para. 497, referring to, *inter alia*, Ex. P07876.

³³⁰⁴ See Prlić's Appeal Brief, para. 321 & fns 851, 853 and references cited therein.

³³⁰⁵ Prlić's Appeal Brief, para. 322.

³³⁰⁶ See Prlić's Appeal Brief, para. 323 & fn. 859. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 1.2 and 1.4, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³³⁰⁷ Prlić's Appeal Brief, para. 325; Appeal Hearing, AT. 137 (20 Mar 2017).

through a bar table motion;³³⁰⁸ (2) a misinformed interpretation of the “Statutory Decision of 3 July 1993” [*sic*];³³⁰⁹ (3) Witness Davor Marijan’s biased and discredited testimony; and (4) Witness Zoran Perković’s accurate testimony.³³¹⁰ Prlić further argues that the HVO HZ H-B departments never submitted programs to the HVO HZ H-B, despite his requests.³³¹¹ Prlić also claims that, in assessing his responsibilities, the Trial Chamber ignored changes in legislation after Boban relinquished his position to Prlić.³³¹² Finally, he contends that the Trial Chamber ignored evidence when reaching conclusions on the decision-making process in the HVO HZ H-B and argues that he had a vote equal to others but no power to appoint anyone.³³¹³

1029. The Prosecution responds that Prlić’s interpretation of the Statutory Decision of 3 July 1992 is not supported by the evidence he cites.³³¹⁴ It argues that Prlić’s assertion that HVO HZ H-B departments never submitted work programs to the HVO HZ H-B does not undermine Prlić’s statutory powers and is contradicted by evidence on one such program.³³¹⁵ The Prosecution also argues that Prlić fails to address evidence on which the Trial Chamber relied and which shows him exercising his statutory powers,³³¹⁶ and furthermore relies on evidence that affirms the findings he challenges.³³¹⁷ Finally, it argues that Prlić fails to identify the alleged changes in legislation after Boban relinquished his position to Prlić or to explain how they impacted his authority.³³¹⁸

ii. Analysis

1030. The Trial Chamber found that:

[...] the President of the HVO played a more significant role within the Government of the HVO than the Prlić Defence suggests. In fact, under the Statutory Decision of 3 July 1992, the President of the HVO was in charge of and responsible for the activities of the HVO. The President signed the official HVO documents, such as decrees and decisions, including certain decisions to appoint. Article 9 of the said Decision also indicates that the President of the HVO was supposed to ensure

³³⁰⁸ Prlić’s Appeal Brief, para. 325.

³³⁰⁹ Prlić’s Appeal Brief, paras 325-326, referring to Prlić’s Appeal Brief, sub-grounds of appeal 1.2.4 and 1.2.5. Prlić claims in this regard that the Trial Chamber “ignored evidence showing, *de facto*, that Article 9 [of the Statutory Decision of 3 July 1992] could not be implemented after Prlić replaced Boban on 14 August 1992, ignoring the Decree on the Organization and Responsibilities of Departments and Commissions of the HVOHZHB”. He submits that Article 5 of this Decree required the HVO HZ H-B departments and commissions to execute policies and apply regulations and other acts of the HZ H-B Presidency, and thus department heads and commissions were directly responsible to the HZ H-B Presidency and not to the HVO HZ H-B President. Prlić’s Appeal Brief, para. 326.

³³¹⁰ Prlić’s Appeal Brief, para. 325.

³³¹¹ Prlić’s Appeal Brief, para. 327.

³³¹² Prlić’s Appeal Brief, para. 328, referring to Prlić’s Appeal Brief, paras 47-57 (sub-ground of appeal 1.2). Prlić further argues that the Trial Chamber mischaracterised his words regarding how the power of the HVO HZ H-B President was reduced by the changes in legislature after Boban ceased to be its President, leaving Prlić unable to make any decisions independently. Prlić’s Appeal Brief, para. 337.

³³¹³ Prlić’s Appeal Brief, para. 336; Appeal Hearing, AT. 137, 234 (20 Mar 2017). Prlić further argues that he “signed all decisions even though in theory he could have been against them”. Appeal Hearing, AT. 137 (20 Mar 2017).

³³¹⁴ Prosecution’s Response Brief (Prlić), para. 188. See Prosecution’s Response Brief (Prlić), para. 187.

³³¹⁵ Prosecution’s Response Brief (Prlić), para. 188 & fn. 648.

³³¹⁶ Prosecution’s Response Brief (Prlić), para. 189.

³³¹⁷ Prosecution’s Response Brief (Prlić), para. 190; Appeal Hearing, AT. 195-196 (20 Mar 2017).

³³¹⁸ Prosecution’s Response Brief (Prlić), para. 191.

unity of political and administrative action within the HVO and to cooperate with the other organs of the HZ H-B. In legislative affairs, Jadranko Prlić, as President of the [...] HVO, directed debates during discussions over adopting a statute or a decree, organised votes and sometimes even proposed revisions to the texts.³³¹⁹

1031. The Appeals Chamber considers that in arguing that the Trial Chamber relied on documentary evidence introduced through a bar table motion, Prlić fails to articulate an error.³³²⁰ Further, the Appeals Chamber considers that in attempting to demonstrate that the Trial Chamber misinterpreted the Statutory Decision of 3 July 1992, Prlić advances arguments that are unsupported³³²¹ or disconnected from any specific impugned findings.³³²² The Appeals Chamber also observes that while Prlić impugns the credibility of Marijan alleging that he “could not grasp basic legal issues relevant to understanding the collective decision-making process of the HVOHZHB”,³³²³ the Trial Chamber relied on his testimony merely to find that the President of the HVO signed certain decisions to appoint,³³²⁴ a fact that Prlić concedes.³³²⁵ The Appeals Chamber finds that Prlić has failed to demonstrate that the Trial Chamber’s assessment of Marijan’s evidence was wholly erroneous.³³²⁶ Finally, the Appeals Chamber observes that Perković’s testimony, which Prlić submits was accurate, confirms in part the impugned finding.³³²⁷ All these arguments are therefore dismissed.

1032. The Appeals Chamber further observes that Prlić’s argument that the HVO HZ H-B departments never submitted programs to the HVO HZ H-B fails to articulate an error in the Trial Chamber’s findings and dismisses it on this basis. The Appeals Chamber also notes that Prlić’s claim that the Trial Chamber ignored changes in legislation after Boban relinquished his

³³¹⁹ Trial Judgement, Vol. 1, para. 536 (internal references omitted). See also Trial Judgement, Vol. 4, paras 88-90.

³³²⁰ The Appeals Chamber notes in particular its standing jurisprudence that the admission of documents from the bar table is permissible. See, e.g., *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005, paras 16-17.

³³²¹ Specifically, the Appeals Chamber observes that Prlić fails to provide support for his claim that “Article 9 [of the Statutory Decision of 3 July 1992] could not be implemented after Prlić replaced Boban on 14 August 1992”. Prlić’s Appeal Brief, para. 326.

³³²² Specifically, the Appeals Chamber considers that Prlić’s submission that department heads and commissions were directly responsible to the HZ H-B Presidency fails to demonstrate that the Trial Chamber reached any specific erroneous findings by ignoring the Decree on the Organisation and Responsibilities of Departments and Commissions of the HVO HZ H-B. See Prlić’s Appeal Brief, para. 326. Prlić points to the findings that he signed official documents, directed debates about adopting decisions, organised votes, and sometimes proposed revisions to texts. See Prlić’s Appeal Brief, para. 325, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 536. The Appeals Chamber considers that Prlić’s argument is not inconsistent with these challenged findings. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 1.2.4 and 1.2.5, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³³²³ See Prlić’s Appeal Brief, para. 325 & fn. 862, referring to Davor Marijan, T. 35716-35728 (21 Jan 2009).

³³²⁴ Trial Judgement, Vol. 1, para. 536 & fn. 1307, referring to Davor Marijan, T(F). 35717, 35721 (21 Jan 2009).

³³²⁵ See Prlić’s Appeal Brief, para. 336.

³³²⁶ See *Popović et al.* Appeal Judgement, para. 131, referring to, *inter alia*, *Kupreškić et al.* Appeal Judgement, paras 30, 41, 130, 225.

³³²⁷ See, in particular, Zoran Perković, T. 31726-31727 (2 Sept 2008).

position to Prlić is entirely based on a cross-reference to his sub-ground of appeal 1.2, which the Appeals Chamber dismisses elsewhere.³³²⁸

1033. Regarding Prlić's contention that the Trial Chamber ignored evidence when reaching conclusions on the decision-making process in the HVO HZ H-B, the Appeals Chamber observes that the evidence Prlić claims the Trial Chamber ignored, allegedly indicating that he had a vote equal to others but no power to appoint anyone, is not inconsistent with the Trial Chamber's findings on the HVO HZ H-B decision-making process to which he points.³³²⁹ This argument is therefore dismissed.

c. Distinction between the HZ H-B and the HR H-B

i. Arguments of the Parties

1034. Prlić submits that the Trial Chamber erroneously assessed his *de jure* decision-making powers between August 1992 and April 1994 by not distinguishing between the HZ H-B and the HR H-B at all relevant times and in all relevant circumstances.³³³⁰ Prlić argues that the Trial Chamber erroneously concluded that he presided over "cabinet" meetings of the HR H-B Government, which had the power to make urgent decisions on defence and security, relying exclusively on documentary evidence introduced through a bar table motion, whereas there is no evidence that "cabinet" meetings ever took place.³³³¹ Prlić further argues that the Trial Chamber erroneously concluded that at the recommendation of the President of the HR H-B Government, the Government appointed and removed heads and deputy heads of the "cabinet", relying exclusively on irrelevant documentary evidence introduced through a bar table motion.³³³² Finally, Prlić argues that the Trial Chamber, by relying on irrelevant evidence, erred in finding that Ćorić, as Chief of the Military Police Administration, attended HVO HZ H-B sessions, whereas there is no evidence that he ever did so.³³³³

1035. The Prosecution responds that Prlić's claim that the Trial Chamber erred in conflating his powers as President of the HVO HZ H-B and President of the Government of the HR H-B ignores the finding that the Law on the Government of the HR H-B granted Prlić similar powers in both

³³²⁸ See *supra*, paras 168-176. The Appeals Chamber further dismisses Prlić's argument that the Trial Chamber mischaracterised his words as it is not supported by his references to the trial record.

³³²⁹ See Prlić's Appeal Brief, fn. 883, referring to Trial Judgement, Vol. 1, para. 536, Vol. 4, paras 89-90. Similarly, Prlić's argument that he signed all decisions whether or not he agreed with them is not inconsistent with these findings.

³³³⁰ Prlić's Appeal Brief, para. 329.

³³³¹ Prlić's Appeal Brief, para. 330, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3.

³³³² Prlić's Appeal Brief, para. 331, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3. Prlić submits that the evidence "came into effect" during a period outside the Indictment period, was not relevant to the HR H-B, and/or concerned the appointments and dismissals of "head of offices" rather than the heads of the "cabinet". Prlić's Appeal Brief, para. 331.

positions.³³³⁴ As for Prlić's claim that the Trial Chamber erred with regard to "cabinet" meetings, the Prosecution argues that he fails to demonstrate that any such error would have any impact since the Government regularly met and discussed and decided matters of defence and security.³³³⁵ The Prosecution further contends that Prlić's argument regarding the appointment and removal of heads and deputy heads of the "cabinet" has no impact on the verdict.³³³⁶ Finally, the Prosecution argues that it is irrelevant whether Čorić attended Government sessions as Chief of the Military Police Administration and that the Trial Chamber properly relied on minutes of Government meetings showing Čorić in attendance.³³³⁷

ii. Analysis

1036. Regarding Prlić's argument that the Trial Chamber erroneously concluded that he presided over "cabinet" meetings of the HR H-B Government, the Appeals Chamber recalls the Trial Chamber's finding that "between August 1992 and April 1994, Jadranko Prlić organised and presided over many meetings of the HVO/Government of the HZ(R) H-B, which met at least once a week, as well as those of the 'cabinet' of the Government of the HR H-B, which had the authority to make urgent decisions on defence and security when the circumstances did not allow for a meeting of the government to be held".³³³⁸ The Appeals Chamber notes that none of the evidence on which the Trial Chamber relied with regard to the "cabinet" supports that Prlić actually presided over such "cabinet" meetings,³³³⁹ as the cabinet is defined by the Law on Government of the HR H-B: "Government shall have a close cabinet which shall be comprised of president, vice presidents and ministers of defence and internal affairs."³³⁴⁰ The Appeals Chamber therefore finds that no reasonable trier of fact could have made this finding based on the evidence on which the Trial Chamber relied. As such, the Trial Chamber erred in fact. However, the Appeals Chamber notes that the Trial Chamber found that Prlić presided over many meetings of the HVO/Government of the HZ(R) H-B,³³⁴¹ and sees no indication that the Trial Chamber relied specifically on Prlić presiding over "cabinet" meetings to make any adverse findings against

³³³³ Prlić's Appeal Brief, para. 330.

³³³⁴ Prosecution's Response Brief (Prlić), para. 198.

³³³⁵ Prosecution's Response Brief (Prlić), para. 199.

³³³⁶ Prosecution's Response Brief (Prlić), para. 201.

³³³⁷ Prosecution's Response Brief (Prlić), para. 200.

³³³⁸ Trial Judgement, Vol. 4, para. 88 (internal references omitted). See also Trial Judgement, Vol. 1, para. 527.

³³³⁹ See Trial Judgement, Vol. 4, para. 88 & fn. 236, referring to Exs. P05517, p. 2, P06667, P07279, P07310, P08092. See also Prosecution's Response Brief (Prlić), para. 199.

³³⁴⁰ Ex. P05517, p. 2 (Article 9).

³³⁴¹ Trial Judgement, Vol. 4, para. 88.

him.³³⁴² Consequently, the Appeals Chamber finds that Prlić has not demonstrated that this error resulted in a miscarriage of justice, and consequently dismisses his argument.

1037. The Appeals Chamber turns to Prlić's argument that the Trial Chamber erroneously concluded that at the recommendation of the President of the Government, the Government appointed and removed the heads and deputy heads of the "cabinet", relying exclusively on irrelevant documentary evidence introduced through a bar table motion. In making this finding,³³⁴³ the Trial Chamber relied on evidence that does not appear to concern the "cabinet".³³⁴⁴ To this extent, it erred in fact. However, the Appeals Chamber sees no indication that the Trial Chamber relied specifically on this erroneous finding to make any adverse findings against Prlić.³³⁴⁵ The Appeals Chamber therefore finds that this error did not result in a miscarriage of justice and dismisses his argument.

1038. Prlić's argument that the Trial Chamber relied on irrelevant evidence in finding that Ćorić, as Chief of the Military Police Administration, attended HVO HZ H-B sessions, appears to be based on a misreading of the Trial Judgement. The Trial Chamber relied on the evidence in question to find that Ćorić was the Chief of the Military Police Administration, not that he attended HVO HZ H-B sessions.³³⁴⁶ Further, the Trial Chamber found that a number of persons, including Ćorić, attended meetings of "the HVO/Government of the HZ(R) H-B", *i.e.* either the HVO HZ H-B or the HR H-B Government, and referred in support to examples of evidence indicating Ćorić's presence at HR H-B Government meetings, but not at HVO HZ H-B meetings.³³⁴⁷ In light of the broad scope of the finding, covering the meetings of both bodies, this does not amount to an error of fact. In any event, Prlić has not demonstrated any miscarriage of justice based on the alleged absence of evidence that Ćorić ever attended any HVO HZ H-B sessions. The Appeals Chamber therefore dismisses Prlić's argument.

1039. The Appeals Chamber dismisses above all arguments advanced by Prlić in support of his contention that the Trial Chamber erroneously assessed his *de jure* decision-making powers between August 1992 and April 1994 by not distinguishing between the HZ H-B and the HR H-B at all relevant times and in all relevant circumstances. In addition, the Appeals Chamber observes that Prlić has failed to explain why the Trial Chamber was required to make this distinction, considering

³³⁴² See, in particular, Trial Judgement, Vol. 4, para. 90.

³³⁴³ Trial Judgement, Vol. 1, para. 537.

³³⁴⁴ See Trial Judgement, Vol. 1, fn. 1312, referring to Exs. 1D01402, Art. 27, p. 10, P06817, P07461. The Appeals Chamber considers that, although Exhibit 1D01402 appears on its face to have entered into force in June 1994, Prlić fails to demonstrate that the evidence was not relevant to the HR H-B or "came into effect" during a period outside the Indictment period. See Ex. 1D01402, pp. 2, 16.

³³⁴⁵ See, in particular, Trial Judgement, Vol. 1, paras 536-537, Vol. 4, paras 89-90.

³³⁴⁶ Compare Prlić's Appeal Brief, para. 330 & fn. 875, with Trial Judgement, Vol. 4, para. 88 & fn. 242.

³³⁴⁷ See Trial Judgement, Vol. 4, para. 88 & fn. 241, referring to, *e.g.*, Exs. P06667, P07082, P07514.

the Trial Chamber's finding, which Prlić ignores, that his powers as President of the HVO HZ H-B and as President of the Government of the HR H-B were similar.³³⁴⁸ Thus, Prlić's contention is dismissed.

d. Government discussions

1040. Prlić submits that the Trial Chamber erroneously concluded that from August 1992 to April 1994 the "HVO/Government of the HZ(R)H-B" discussed: (1) measures to ensure the observance of the code of war, as it relied on unsupportive evidence;³³⁴⁹ (2) the budget of the "HZ(R)HB", as it relied on unsupportive evidence and ignored other relevant evidence;³³⁵⁰ and (3) the location, detention conditions, and exchange of "prisoners of war" with the ABiH, as it wrongly assessed the evidence.³³⁵¹

1041. The Prosecution responds that Prlić fails to demonstrate any error in the Trial Chamber's findings that the Government discussed the above topics.³³⁵²

1042. As a preliminary matter, the Appeals Chamber understands that the Trial Chamber's expression "HVO/Government of the HZ(R) H-B" covers all forms of the Government between August 1992 and April 1994.³³⁵³ Regarding Prlić's challenge to the Trial Chamber's finding that during this time period the Government discussed measures to ensure the observance of the "codes of war",³³⁵⁴ the Appeals Chamber considers that Prlić has failed to establish that no reasonable trier of fact could have made this finding based on the evidence on which the Trial Chamber relied,

³³⁴⁸ Trial Judgement, Vol. 1, para. 537. See Trial Judgement, Vol. 1, para. 536.

³³⁴⁹ Prlić's Appeal Brief, para. 332. Specifically, Prlić argues that the Trial Chamber relied on Witness Philip Roger Watkins's testimony and report (Exhibit P06687 (confidential)), which cannot be used to assess Prlić's responsibilities as HVO HZ H-B President, as the HVO HZ H-B did not exist at the time of the report. He also argues that the report contains nothing about the HR H-B Government discussing measures to be taken for ensuring the observance of the code of war. Prlić's Appeal Brief, para. 332.

³³⁵⁰ Prlić's Appeal Brief, para. 333, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3. See also Prlić's Reply Brief, para. 58. Specifically, Prlić argues that the Trial Chamber erroneously relied on Exhibit 2D01262, which concerned the HZ H-B Presidency rather than the HVO HZ H-B, and Exhibit P01097, which was admitted into evidence through the bar table. He further argues that the Trial Chamber ignored Witness Neven Tomić's testimony that: (1) on 28 August 1993 the HZ H-B Presidency ceded its competency over the budget to the House of Representatives of the HR H-B; (2) the HZ H-B budget was never enacted; and (3) the first law on the budget was proposed and enacted in 1994 by the House of Representatives of the HR H-B. Finally, Prlić submits that Exhibit P08092, admitted into evidence through the bar table, concerns the HR H-B and therefore does not show that the HVO HZ H-B had a budget. Prlić's Appeal Brief, para. 333; Prlić's Reply Brief, para. 58.

³³⁵¹ Prlić's Appeal Brief, para. 334. See Prlić's Appeal Brief, para. 335, referring to Prlić's Appeal Brief, ground of appeal 13. Specifically, Prlić argues that the HVO HZ H-B never discussed the exchange of prisoners of war. In support, he submits that: (1) Exhibit P01439 concerns a proposal of the Exchange Commission to exchange 30 civilians from Glamoč (controlled by Serb forces) and Livno (controlled by HVO forces); (2) Exhibit P02679 concerns military prisons, which were not for detaining prisoners of war; and (3) Exhibit P03560 concerns an emergency situation when the issue of accommodation of prisoners of war was discussed based on a request of the municipal HVO Čapljina. Prlić's Appeal Brief, para. 334.

³³⁵² Prosecution's Response Brief (Prlić), paras 202-204. See also Prosecution's Response Brief (Prlić), para. 205.

³³⁵³ See Trial Judgement, Vol. 4, para. 88. See also *supra*, para. 1015.

³³⁵⁴ Prlić's Appeal Brief, para. 332, referring to Trial Judgement, Vol. 4, para. 88.

which included an exhibit containing information about Prlić, President of the Government, discussing measures to ensure the observance of the “Codes of War” in November 1993.³³⁵⁵ The Appeals Chamber further observes that the Trial Chamber’s finding that the budget of the HZ(R) H-B was discussed at Government meetings between August 1992 and April 1994, is supported by the evidence the Trial Chamber relied on, such as minutes of meetings held in October 1992, January 1993, and March 1994.³³⁵⁶ The Appeals Chamber finds that Prlić has failed to demonstrate any error in this regard.³³⁵⁷ Finally, the Trial Chamber’s finding that the location, detention conditions, and exchange of “prisoners of war” with the ABiH were discussed, is supported by evidence,³³⁵⁸ which Prlić fails to challenge in any convincing manner.³³⁵⁹ All these submissions are therefore dismissed.

e. Conclusion

1043. For the foregoing reasons, the Appeals Chamber dismisses Prlić’s sub-ground of appeal 11.1.

³³⁵⁵ Trial Judgement, Vol. 4, para. 88 & fn. 249, referring to Ex. P06687 (confidential), p. 2; Philip Roger Watkins, T(F). 18798-18799 (21 May 2007). Since the Trial Chamber’s finding covers all incarnations of the Government between August 1992 and April 1994, the Appeals Chamber considers that Prlić’s assertion that the HVO HZ H-B did not exist at the time of confidential Exhibit P06687 shows no error.

³³⁵⁶ Trial Judgement, Vol. 4, para. 88 & fn. 250, referring to, e.g., Exs. 2D01262 (minutes of a HZ H-B Presidency meeting of 17 October 1992), P01097 (minutes of an HVO HZ H-B working meeting on 11 January 1993), p. 3, P08092 (minutes of an HR H-B Government meeting on 19 March 1994). Regarding Exhibits P01097 and P08092, the Appeals Chamber recalls that the Trial Chamber’s finding covered all incarnations of the Government between August 1992 and April 1994, and considers that Prlić has failed to articulate an error in alleging that the Trial Chamber relied on evidence admitted from the bar table. Regarding Exhibit 2D01262, the Appeals Chamber considers that while it is the minutes of an HZ H-B Presidency meeting rather than a Government meeting, several members of the Government were present at that meeting, and in any event the Trial Chamber’s finding remains supported by Exhibits P01097 and P08092. Finally, the Appeals Chamber considers that Tomic’s testimony, as Prlić’s represents it, is not inconsistent with the finding that the Government discussed the budget, regardless of who had competency over it and when the first budget was actually enacted.

³³⁵⁷ The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

³³⁵⁸ Trial Judgement, Vol. 4, para. 88 & fn. 252, referring to, e.g., Exs. P01439, P02679, P03560, item 7, P04841, conclusion 1.

³³⁵⁹ Prlić misunderstands on which part of Exhibit P01439 the Trial Chamber relied. See Ex. P01439, p. 5, third dash (“The meeting [of the “International Red Cross”] will be held on 11 and 12 February 1993 in Geneva and it will pertain to the exchange of prisoners.”). Cf. Prlić’s Appeal Brief, para. 334, referring to Ex. P01439, p. 5, second dash (“The proposal submitted by the Commission for the exchange of prisoners on the exchange of 30 civilians from Glamoč and Livno is accepted.”). See also Prosecution’s Response Brief (Prlić), para. 204. With regard to Exhibit P02679, Prlić fails to provide any support for his assertion that military prisons were not for detaining prisoners of war. See Prlić’s Appeal Brief, para. 334. Prlić’s submission regarding Exhibit P03560 – that it concerns an emergency situation when the issue of accommodation of prisoners of war was discussed based on a request of the municipal HVO Čapljina – fails to articulate any error. Finally, Prlić does not challenge Exhibit P04841, which provides further support for the Trial Chamber’s finding. See Trial Judgement, Vol. 4, para. 88 & fn. 252. The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 13, which it dismisses elsewhere in the Judgement. See *infra*, paras 1318-1333, 1335-1343, 1356-1373.

(ii) Expansion of Government powers (Prlić's Sub-ground 11.2)

1044. The Trial Chamber found that despite being subordinated to the Presidency of the HZ H-B, the HVO HZ H-B gradually arrogated to itself all executive, administrative, and some legislative power, without effective oversight by the Presidency of the HZ H-B.³³⁶⁰

1045. Prlić submits that the Trial Chamber erred in concluding that the HVO HZ H-B progressively appropriated all executive and administrative powers including legislative functions because the Presidency of the HZ H-B met infrequently and lacked oversight.³³⁶¹ Prlić argues that the Trial Chamber mischaracterised Witnesses Neven Tomić's and Zoran Buntić's testimonies.³³⁶² Prlić further points to evidence allegedly contrary to the Trial Chamber's finding.³³⁶³

1046. The Prosecution responds that the Trial Chamber's finding was based on evidence about events happening at the time and that Prlić – relying primarily on evidence regarding the *de jure* relationship between the Presidency of the HZ H-B and the HVO HZ H-B – fails to show that it was unreasonable.³³⁶⁴

1047. The Appeals Chamber observes that the impugned finding is based in part on the testimonies of Tomić and Buntić.³³⁶⁵ Having examined these in relevant parts,³³⁶⁶ the Appeals Chamber finds no indication that the Trial Chamber mischaracterised them, and observes that the witnesses testified about the transfer of powers from the Presidency of the HZ H-B to the HVO HZ H-B, which exercised considerable powers. The Appeals Chamber further observes that the allegedly contrary evidence indicates, notably, that the HVO HZ H-B exercised substantial *de facto* powers as the Presidency of the HZ H-B ceased to convene.³³⁶⁷ As such, Prlić fails to

³³⁶⁰ Trial Judgement, Vol. 1, para. 522, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 511.

³³⁶¹ Prlić's Appeal Brief, para. 338.

³³⁶² Prlić's Appeal Brief, paras 338-339, referring to Prlić's Appeal Brief, para. 54 (sub-ground of appeal 1.2).

³³⁶³ Prlić's Appeal Brief, paras 338, 340. Prlić claims that expert Witness Ciril Ribičić "acknowledged that the HVOHZHB adopted decrees on an interim basis in emergency situations and exceptional circumstances to be confirmed by the HZHB Presidency; a common practice permitting the HZHB Presidency (the Presidents of municipal HVOs) to retain power." Prlić's Appeal Brief, para. 338. He further claims: "Articles 38-43 of the Rules of Procedures of the HZHB Presidency (P00596) show that the HZHB Presidency was superior to the HVOHZHB. As the supreme administrative body, the HZHB Presidency was kept fully informed. The changes to Article 18 of the Statutory Decision enabled the HVOHZHB to pass pressing decrees for immediate enactment until determined otherwise by the HZHB Presidency. The HVOHZHB urged the HZHB Presidency to meet. Similar measures in emergency situations were prescribed in the BiH legal system (All People's Defence system)." Prlić's Appeal Brief, para. 340 (internal references omitted).

³³⁶⁴ Prosecution's Response Brief (Prlić), paras 206-207.

³³⁶⁵ See Trial Judgement, Vol. 1, para. 511 & fn. 1246, para. 522 & fn. 1274, referring to, *inter alia*, Zoran Buntić, T(F). 30761-30762 (15 July 2008), 30889-30890 (17 July 2008), Neven Tomić, T(F). 34145-34146 (3 Nov 2008).

³³⁶⁶ Zoran Buntić, T(F). 30761-30762 (15 July 2008), 30889-30890 (17 July 2008), Neven Tomić, T(F). 34145-34146 (3 Nov 2008).

³³⁶⁷ See Prlić's Appeal Brief, paras 338, 340 and references cited therein.

demonstrate that no reasonable trier of fact could have made the impugned finding.³³⁶⁸ Consequently, the Appeals Chamber dismisses Prlić's sub-ground of appeal 11.2.

(iii) Department/Ministry of Defence (Prlić's Sub-ground 11.3)

1048. The Trial Chamber found that Prlić was involved in the supervision and activities of the Department/Ministry of Defence of the HZ(R) H-B.³³⁶⁹

a. Arguments of the Parties

1049. Prlić challenges this finding, submitting that the Trial Chamber ignored contrary evidence.³³⁷⁰ Prlić argues in particular that the HZ H-B Presidency established the Defence Department, which enjoyed a certain independence,³³⁷¹ and that neither the HVO HZ H-B nor he could issue orders to the Head of the Defence Department.³³⁷² Prlić further submits that the Trial Chamber erroneously concluded, on the basis of insufficient evidence, that he participated in setting up the military and defence program and structures of the HZ(R) H-B.³³⁷³ He also submits that the Trial Chamber wrongly concluded on the evidence that he approved the methodology for adopting defence plans and participated in the adoption of the decision on the control of HZ(R) H-B airspace.³³⁷⁴ In addition, Prlić submits that the Trial Chamber, by ignoring relevant evidence, erroneously concluded that Stojić regularly reported to "his President" on defence matters including the military situation on the ground.³³⁷⁵ Prlić contends that the Trial Chamber erroneously concluded that the "HVO agreed" that he would organise a special working meeting with the collegiums of the Departments of Defence and the Interior, by misinterpreting evidence and ignoring evidence to the contrary.³³⁷⁶ Prlić also submits that the Trial Chamber erroneously concluded, by mischaracterising evidence, that he appointed Biškić as a Deputy Defence Minister.³³⁷⁷ Moreover, Prlić contends that the Trial Chamber "erred regarding Jukić's appointment".³³⁷⁸ Finally, he contends that the Trial Chamber erred by ignoring evidence showing the differences between the HVO HZ H-B and the HR H-B Government.³³⁷⁹

³³⁶⁸ The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 1.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³³⁶⁹ Trial Judgement, Vol. 4, para. 92. See Trial Judgement, Vol. 4, para. 91.

³³⁷⁰ Prlić's Appeal Brief, paras 341-343; Appeal Hearing, AT. 137 (20 Mar 2017). See Prlić's Appeal Brief, para. 344, referring to Prlić's Appeal Brief, para. 52 (sub-ground of appeal 1.2), (sub-)grounds of appeal 1.2.4, 1.2.5, 12.

³³⁷¹ Prlić's Appeal Brief, para. 343; Appeal Hearing, AT. 137-138 (20 Mar 2017).

³³⁷² Prlić's Appeal Brief, para. 342.

³³⁷³ Prlić's Appeal Brief, para. 345, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3.

³³⁷⁴ Prlić's Appeal Brief, para. 346, referring to, *inter alia*, Prlić's Appeal Brief, grounds of appeal 3, 12.

³³⁷⁵ Prlić's Appeal Brief, para. 347, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3.

³³⁷⁶ Prlić's Appeal Brief, para. 348.

³³⁷⁷ Prlić's Appeal Brief, para. 349, referring to, *inter alia*, Prlić's Appeal Brief, sub-ground of appeal 11.1.

³³⁷⁸ Prlić's Appeal Brief, para. 350.

³³⁷⁹ Prlić's Appeal Brief, para. 351, referring to, *inter alia*, Prlić's Appeal Brief, para. 51 (sub-ground of appeal 1.2).

1050. The Prosecution responds that clear evidence supports the Trial Chamber's finding that Prlić participated in the supervision and activities of the Department/Ministry of Defence, and that Prlić fails to demonstrate any errors in the impugned findings.³³⁸⁰

b. Analysis

1051. With regard to Prlić's submission that the Trial Chamber ignored evidence contrary to the finding that he was involved in the supervision and activities of the Department/Ministry of Defence of the HZ(R) H-B, the Appeals Chamber considers that neither of his assertions in this regard – that the HZ H-B Presidency established the Department of Defence, which enjoyed a certain independence, and that the HVO HZ H-B and he could not issue orders to the Head of the Defence Department – are inconsistent with the impugned finding. To the extent that Prlić argues that the Department/Ministry of Defence was so independent that there was no room for him to be involved in its supervision and activities, the Appeals Chamber considers that his claims are not borne out by the evidence on which he relies.³³⁸¹ For these reasons, Prlić's submission is dismissed.

1052. Regarding Prlić's challenge to the Trial Chamber's finding that "Prlić participated in particular in setting up the military and defence programme and structures of the HZ(R) H-B",³³⁸² the Appeals Chamber finds that a reasonable trier of fact could have made this finding based on the evidence on which the Trial Chamber relied.³³⁸³ The Appeals Chamber notes in this regard that Exhibit P00518 sets out that "The Service Regulations of the Armed Forces and the Decision on the Basic Organisation of the Defence Department have been drafted and will be signed by the President of the HZ H-B", and that Exhibit P00988, a 1993 "Decision on the Internal Organisation of Defence Offices and Administrations within the Croatian Community of Herceg-Bosna", bears Prlić's name.³³⁸⁴ Prlić has failed to demonstrate an error.³³⁸⁵ His challenge is dismissed.

1053. The Appeals Chamber turns to Prlić's challenge to the Trial Chamber's findings that he "approved the methodology for adopting defence plans" and "participated in the adoption of the

³³⁸⁰ Prosecution's Response Brief (Prlić), paras 208-215. See Appeal Hearing, AT. 208-209 (20 Mar 2017).

³³⁸¹ See Appeal Hearing, AT. 137 (20 Mar 2017), referring to Exs. P00303, Arts 2-22, 1D00001, Arts 2-7, P00434 (not admitted into evidence), 1D00010, 1D00171, 1D00173, 1D00174; Prlić's Appeal Brief, para. 343 & fns 903, 907 and references cited therein (testimony of Witnesses Neven Tomić, Slobodan Božić, and "I", as well as Ex. P00588, Art. 170). The Appeals Chamber notes that, for example, Exhibits 1D00010 and 1D00171, decisions on the appointment of heads of the Department of Education, Culture, and Sport and the Department of Economic Affairs, do not show that the Department/Ministry of Defence was so independent that there was no room for Prlić to be involved in its supervision and activities. The Appeals Chamber also notes that Prlić refers to his submissions in (sub-)grounds of appeal 1.2, 1.2.4, 1.2.5, and 12, which it dismisses elsewhere in the Judgement. See *infra*, paras 168-176, 1098-1127.

³³⁸² Trial Judgement, Vol. 4, para. 91.

³³⁸³ Trial Judgement, Vol. 4, fns 262-263, referring to Exs. P00518, p. 3, P00988. See also *supra*, paras 1044-1047.

³³⁸⁴ Exhibits P00518, p. 3, P00988.

³³⁸⁵ The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

decision on the control of HZ(R) H-B airspace”.³³⁸⁶ In making these findings, the Trial Chamber relied on minutes of Government meetings, where Prlić was present and in which the participants unanimously adopted a decision on the methodology for making defence plans³³⁸⁷ and a decision to control the airspace of the HR H-B.³³⁸⁸ The Appeals Chamber considers that Prlić has failed to show any error in the Trial Chamber’s findings.³³⁸⁹ His challenge is dismissed.

1054. With respect to Prlić’s challenge to the Trial Chamber’s finding that “Stojić regularly reported to his President on defence matters, including the military situation on the ground”,³³⁹⁰ the Appeals Chamber observes that this finding was based on minutes of Government meetings, over which Prlić presided and at which Stojić reported on such matters.³³⁹¹ Prlić contends that the Trial Chamber ignored relevant evidence, namely the minutes of another Government meeting which state: “[i]t was recommended that in the future the Department of Defence should issue timely reports about the situation at the front line to the public and to the members of leading bodies of the HVO of the HZHB”.³³⁹² The Appeals Chamber considers that this evidence is not inconsistent with the challenged finding, and consequently dismisses Prlić’s argument.³³⁹³

1055. The Appeals Chamber understands that Prlić challenges the Trial Chamber’s finding that “on 29 July 1993, because of the overall military situation in the territory of the HZ H-B, especially in the Mostar area, the HVO [HZ H-B] agreed that Jadranko Prlić would organise special working meetings with the collegiums of the departments of defence and the interior”.³³⁹⁴ The Appeals Chamber observes that this narrowly tailored finding is based on verbatim support in the minutes of the HVO HZ H-B meeting held on 29 July 1993,³³⁹⁵ and considers that it is unclear how any of Prlić’s factual assertions could undermine the finding.³³⁹⁶ His challenge in this regard is therefore dismissed.

1056. Next, Prlić challenges the Trial Chamber’s finding that Prlić “made some appointments, for example, Marijan Biškić who on 1 December 1993 was appointed Deputy Minister responsible for

³³⁸⁶ Trial Judgement, Vol. 4, para. 91.

³³⁸⁷ Ex. P00767, pp. 1, 3-4; Trial Judgement, Vol. 4, para. 91 & fn. 264.

³³⁸⁸ Ex. P07310, pp. 1, 7; Trial Judgement, Vol. 4, para. 91 & fn. 265.

³³⁸⁹ The Appeals Chamber also notes that Prlić refers to his submissions in grounds of appeal 3 and 12, which it dismisses elsewhere in the Judgement. See *infra*, paras 177-183, 1098-1127.

³³⁹⁰ Trial Judgement, Vol. 4, para. 91.

³³⁹¹ Trial Judgement, Vol. 4, para. 91 & fn. 267, referring in particular to Exs. P01324, pp. 2-3, 1D02179.

³³⁹² Prlić’s Appeal Brief, para. 347, referring to, *inter alia*, Ex. P03796, p. 5.

³³⁹³ The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

³³⁹⁴ Trial Judgement, Vol. 4, para. 91.

³³⁹⁵ Trial Judgement, Vol. 4, para. 91, referring to Ex. P03796, p. 5.

³³⁹⁶ See Prlić’s Appeal Brief, para. 348. In particular, Prlić’s assertion that he “could not independently organize working meetings with the department, but only with the approval of the collective body/HVOHZHB” is not inconsistent with the challenged finding. Prlić’s Appeal Brief, para. 348.

security in the Ministry of Defence of the HR H-B”,³³⁹⁷ with reference to evidence that indicates that the appointment was a collective decision.³³⁹⁸ Nevertheless, considering that the Trial Chamber relied on evidence showing Prlić’s involvement in the appointment of Biškić,³³⁹⁹ as the President of the Government of HR H-B who signed the decision of appointment,³⁴⁰⁰ the Appeals Chamber finds that Prlić has failed to show that no reasonable trial chamber could have made the impugned finding. His challenge is therefore dismissed.³⁴⁰¹

1057. Regarding Prlić’s contention that the Trial Chamber “erred regarding Jukić’s appointment”, the Appeals Chamber notes that he does not explain how the Trial Chamber erred. Since he fails to articulate an error, his argument is dismissed. Finally, concerning Prlić’s contention that the Trial Chamber erred by ignoring evidence showing the differences between the HVO HZ H-B and the HR H-B Government, the Appeals Chamber is unable to discern which findings he challenges. Consequently, it dismisses his argument on the basis that he has failed to identify the challenged findings.³⁴⁰²

1058. For the foregoing reasons, the Appeals Chamber dismisses Prlić’s sub-ground of appeal 11.3.

(iv) Department/Ministry of the Interior (Prlić’s Sub-ground 11.4)

1059. The Trial Chamber found that Prlić was involved in the supervision and activities of the Department/Ministry of the Interior of the HZ(R) H-B.³⁴⁰³

³³⁹⁷ Trial Judgement, Vol. 4, para. 91.

³³⁹⁸ See Prlić’s Appeal Brief, para. 349 & fn. 919 and references cited therein.

³³⁹⁹ Trial Judgement, Vol. 4, para. 91, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 608, referring to, *inter alia*, Ex. P06994, Marijan Biškić, T(F). 15039, 15048-15049 (5 Mar 2007). *Cf.* Trial Judgement, Vol. 4, para. 92.

³⁴⁰⁰ Trial Judgement, Vol. 4, para. 92; Ex. P06994.

³⁴⁰¹ The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 11.1, which the Appeals Chamber dismisses above. See *supra*, paras 1022-1043.

³⁴⁰² In addition, the Appeals Chamber notes that Prlić’s challenge is entirely based on a cross-reference to his sub-ground of appeal 1.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³⁴⁰³ Trial Judgement, Vol. 4, para. 94. See Trial Judgement, Vol. 4, para. 93.

a. Arguments of the Parties

1060. Prlić challenges this finding,³⁴⁰⁴ arguing that the Trial Chamber erroneously relied on evidence that he signed appointments to conclude that he had power over the other members of the HVO HZ H-B, while ignoring evidence that he only signed collectively adopted decisions.³⁴⁰⁵

1061. Prlić contends that the fact that he presided over meetings of the HVO/Government of the HZ(R) H-B, during which decisions about the Ministry of the Interior and its activities were adopted, does not prove that he was involved in the supervision and activities of the Ministry of the Interior.³⁴⁰⁶ He argues in this regard that the Trial Chamber relied on exhibits admitted through a bar table motion that: (1) do not concern the Indictment period; (2) do not mention his presence at meetings; (3) do not mention decisions about the Ministry of the Interior; or – in one case – (4) concern a decision the implementation of which is not supported by any evidence.³⁴⁰⁷

1062. Prlić also submits that the Trial Chamber erroneously concluded that: (1) the HVO HZ H-B agreed that he would organise special working meetings with the collegiums of the Departments of Defence and the Interior;³⁴⁰⁸ and (2) he, rather than Boban, proposed to Tudman that Ćorić be appointed Minister of the Interior of the HR H-B.³⁴⁰⁹

1063. Finally, Prlić submits that, in assessing the “supervision” over the Department/Ministry of the Interior, the Trial Chamber ignored evidence that the Departments/Ministries of Defence and the Interior independently decided about the engagement of police forces.³⁴¹⁰ By contrast, Prlić argues, there is no evidence that he issued orders to the Department of the Interior.³⁴¹¹

1064. The Prosecution responds that Prlić’s assertion that the Government’s collective decision-making process absolves him of responsibility for its powers and decisions is unfounded.³⁴¹² It argues that Prlić fails to explain how no reasonable trial chamber could have found, based on explicit evidence, that he would organise special meetings with the collegiums of the Departments of Defence and the Interior.³⁴¹³ With regard to Prlić presiding over Government

³⁴⁰⁴ Prlić’s Appeal Brief, para. 352; Appeal Hearing, AT. 137 (20 Mar 2017).

³⁴⁰⁵ Prlić’s Appeal Brief, para. 353. See Prlić’s Appeal Brief, para. 354, referring to Prlić’s Appeal Brief, para. 52 (sub-ground of appeal 1.2), sub-grounds of appeal 1.2.4 and 1.2.5, para. 350 (sub-ground of appeal 11.3); Appeal Hearing, AT. 137 (20 Mar 2017).

³⁴⁰⁶ Prlić’s Appeal Brief, para. 356.

³⁴⁰⁷ Prlić’s Appeal Brief, para. 356, referring to, *inter alia*, Prlić’s Appeal Brief, ground of appeal 3.

³⁴⁰⁸ Prlić’s Appeal Brief, para. 355, referring to, *inter alia*, Prlić’s Appeal Brief, sub-ground of appeal 11.3.

³⁴⁰⁹ Prlić’s Appeal Brief, para. 357. Specifically, Prlić argues that the Trial Chamber erred in relying on Exhibit P06581 in finding that he proposed to Tudman that Ćorić be appointed Minister of the Interior of the HR H-B. Prlić’s Appeal Brief, para. 357.

³⁴¹⁰ Prlić’s Appeal Brief, paras 358-359; Appeal Hearing, AT. 137 (20 Mar 2017).

³⁴¹¹ Prlić’s Appeal Brief, para. 359.

³⁴¹² Prosecution’s Response Brief (Prlić), para. 216.

³⁴¹³ Prosecution’s Response Brief (Prlić), para. 217.

meetings during which decisions about the Ministry of the Interior and its activities were adopted, the Prosecution submits that he repeatedly misrepresents the evidence supporting the Trial Chamber's findings, while ignoring other evidence that supports them.³⁴¹⁴ It also argues that Prlić fails to demonstrate that the Trial Chamber unreasonably concluded, despite clear evidence in support, that he proposed the appointment of Ćorić as Minister of the Interior.³⁴¹⁵ Finally, the Prosecution argues that the evidence of the Interior and/or Defence Department and/or military authorities issuing orders relating to deployment of police forces does not undermine the Trial Chamber's finding on Prlić's supervisory role.³⁴¹⁶

b. Analysis

1065. In arguing that the Trial Chamber erroneously relied on evidence – specifically Exhibits P03791 and 1D00190³⁴¹⁷ – that he signed appointments to conclude that he had power over the other members of the HVO HZ H-B, Prlić misrepresents the Trial Chamber's findings.³⁴¹⁸ The Trial Chamber did not conclude on the basis of this evidence that he had power over the other members of the HVO HZ H-B, but rather concluded, based on this and other evidence,³⁴¹⁹ that he “was involved in the supervision and activities of the Department/Ministry of the Interior of the HZ(R) H-B”.³⁴²⁰ Prlić has failed to demonstrate how the Trial Chamber erred in relying on the evidence he cites in reaching this conclusion and his argument is therefore dismissed.³⁴²¹

1066. As for Prlić's argument that the fact that he presided over Government meetings during which decisions about the Ministry of the Interior and its activities were adopted, does not prove that he was involved in the supervision and activities of the Ministry of the Interior, the Appeals Chamber first notes that this was only one consideration – among many others – supporting the impugned finding.³⁴²² Further, the Appeals Chamber considers that a reasonable trier of fact could have found the fact that Prlić presided over Government meetings, during which

³⁴¹⁴ Prosecution's Response Brief (Prlić), para. 218, referring to, *inter alia*, Prlić's Appeal Brief, para. 356.

³⁴¹⁵ Prosecution's Response Brief (Prlić), para. 221.

³⁴¹⁶ Prosecution's Response Brief (Prlić), para. 219. The Prosecution adds that, in any event, Prlić and the Government could, and did, make decisions directly impacting the deployment of police forces. Prosecution's Response Brief (Prlić), para. 219. See also Prosecution's Response Brief (Prlić), para. 220.

³⁴¹⁷ See Prlić's Appeal Brief, para. 353, referring to, *inter alia*, Exs. P03791, 1D00190 (decisions relating to the Department of the Interior, bearing Prlić's name and published in the official gazette of the HZ H-B).

³⁴¹⁸ See Prlić's Appeal Brief, paras 352 (referring to Trial Judgement, Vol. 4, paras 93-94), 353 (which appears to relate to the first two sentences in Trial Judgement, Vol. 4, para. 93).

³⁴¹⁹ See Trial Judgement, Vol. 4, para. 93 and references cited therein.

³⁴²⁰ Trial Judgement, Vol. 4, para. 94. To the extent that Prlić argues that the Department/Ministry of the Interior was so independent that there was no room for him to be involved in its supervision and activities, the Appeals Chamber considers that his claims are not borne out by the evidence on which he relies. See Appeal Hearing, AT. 137 (20 Mar 2017), referring to Exs. P00303, Arts 2-22, 1D00001, Arts 2-7, P00434 (not admitted into evidence), 1D00010, 1D00171, 1D00173, 1D00174. See also *supra*, para. 1051 & fn. 3381.

³⁴²¹ The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 1.2, 1.2.4, 1.2.5, and 11.3, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176, 1048-1058.

³⁴²² See Trial Judgement, Vol. 4, paras 93-94.

decisions about the Ministry of the Interior and its activities were adopted, to be an indicator of his involvement in the supervision and activities of the Ministry of the Interior. With regard to Prlić's challenge to the Trial Chamber's reliance on exhibits admitted through a bar table motion, the Appeals Chamber finds that he repeatedly misrepresents the evidence on which the Trial Chamber based its finding.³⁴²³ This evidence includes minutes of Government meetings, dated within the Indictment period, which indicate that Prlić was present and that decisions about the Ministry of the Interior were made.³⁴²⁴ The existence of evidence as to whether one of the adopted decisions was implemented or not has no impact on the impugned finding, which does not deal with the question of implementation. Consequently, the Appeals Chamber dismisses Prlić's argument.³⁴²⁵

1067. Regarding Prlić's challenge to the Trial Chamber's finding that the HVO HZ H-B agreed that he would organise special working meetings with the collegiums of the Departments of Defence and the Interior,³⁴²⁶ the Appeals Chamber recalls that it has previously dismissed a challenge to a similar finding supported by the same evidence.³⁴²⁷ Prlić does not add any discernible argument under the present sub-ground of appeal, and his challenge is consequently dismissed.

1068. With regard to Prlić's submission that the Trial Chamber erroneously concluded that he, rather than Boban, proposed to Tudman that Čorić be appointed Minister of the Interior of the HR H-B, the Appeals Chamber notes that he ignores evidence on which the Trial Chamber based its finding, which explicitly supports this finding.³⁴²⁸ His argument is therefore dismissed.

1069. Finally, with respect to Prlić's submission that the Trial Chamber ignored evidence that the Departments/Ministries of Defence and the Interior independently decided about the engagement of police forces, the Appeals Chamber observes that this alleged fact is not inconsistent with the impugned finding.³⁴²⁹ Therefore, the Appeals Chamber dismisses the argument.

1070. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 11.4.

³⁴²³ See Trial Judgement, Vol. 4, para. 93 & fns 271-272 and references cited therein. Cf. Prlić's Appeal Brief, para. 356.

³⁴²⁴ Exs. P01403, pp. 1, 3-4; P06667, pp. 1, 4; P07354, pp. 1-3.

³⁴²⁵ The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

³⁴²⁶ Trial Judgement, Vol. 4, para. 93.

³⁴²⁷ See *supra*, para. 1055. See also Prlić's Appeal Brief, para. 355, referring to, *inter alia*, Prlić's Appeal Brief, para. 348 (sub-ground of appeal 11.3).

³⁴²⁸ Trial Judgement, Vol. 4, para. 93 & fn. 274, referring to, *inter alia*, Ex. P06583 ("[T]he President of the Croatian Republic of Herceg-Bosna, Mr. Mate Boban, has appointed Dr. Jadranko Prlić Prime Minister. At the Prime Minister's suggestion, the following people were appointed members of the government: [...] Valentin Čorić – interior minister".) Prlić fails to explain why the Trial Chamber's conclusion could not stand on the basis of this evidence. As such, the Appeals Chamber dismisses his argument that the Trial Chamber erred in relying on Exhibit P06581, among other evidence, in finding that he proposed to Tudman that Čorić be appointed Minister of the Interior of the HR H-B.

³⁴²⁹ See also *supra*, para. 1051 & fn. 3381.

(v) Department/Ministry of Justice and General Administration (Prlić's Sub-ground 11.5)

1071. The Trial Chamber found that Prlić was involved in the supervision and activities of the Department/Ministry of Justice and General Administration of the HZ(R) H-B.³⁴³⁰

1072. Prlić challenges this finding, submitting that it was based on the fact that he presided over HVO/Government of the HZ(R) H-B meetings and signed some appointments.³⁴³¹ He argues in this regard that presiding over these meetings did not give him the power to supervise those bodies,³⁴³² and that the Trial Chamber ignored evidence that the HVO HZ H-B was responsible for judicial appointments.³⁴³³

1073. The Prosecution responds that Prlić cites no evidence to support his claim that his presiding role gave him no power of supervision.³⁴³⁴ The Prosecution also argues that the Trial Chamber did rely on the allegedly ignored evidence, which furthermore supports the impugned finding.³⁴³⁵

1074. The Appeals Chamber dismisses Prlić's argument that he had no power of supervision as it is not borne out by the evidence on which he relies.³⁴³⁶ The Appeals Chamber further dismisses the argument that the Trial Chamber ignored evidence that the HVO HZ H-B was responsible for judicial appointments, as this alleged fact is not inconsistent with the impugned finding. Thus, the Appeals Chamber dismisses Prlić's sub-ground of appeal 11.5.³⁴³⁷

(vi) Fiscal organs of the Government (Prlić's Sub-ground 11.6)

1075. The Trial Chamber found that Prlić directed and controlled the fiscal organs of the HVO/Government of the HZ(R) H-B and its budget.³⁴³⁸

a. Arguments of the Parties

1076. Prlić submits that this finding was erroneous, as the Trial Chamber relied on documents covering the period when the Ministry of Finance did not function and mischaracterised the

³⁴³⁰ Trial Judgement, Vol. 4, para. 96. See Trial Judgement, Vol. 4, para. 95.

³⁴³¹ Prlić's Appeal Brief, para. 360.

³⁴³² Prlić's Appeal Brief, para. 360; Appeal Hearing, AT. 137 (20 Mar 2017). See Prlić's Appeal Brief, para. 361, referring to Prlić's Appeal Brief, para. 52 (sub-ground of appeal 1.2), sub-grounds of appeal 1.2.4-1.2.5.

³⁴³³ Prlić's Appeal Brief, para. 362.

³⁴³⁴ Prosecution's Response Brief (Prlić), para. 222.

³⁴³⁵ Prosecution's Response Brief (Prlić), para. 222.

³⁴³⁶ See Appeal Hearing, AT. 137 (20 Mar 2017), referring to Exs. P00303, Arts 2-22, 1D00001, Arts 2-7, P00434 (not admitted into evidence), 1D00010, 1D00171, 1D00173, 1D00174. See also *supra*, para. 1051 & fn. 3381.

³⁴³⁷ The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 1.2, 1.2.4, and 1.2.5, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176.

³⁴³⁸ Trial Judgement, Vol. 4, para. 98. See Trial Judgement, Vol. 4, para. 97.

testimony of Witness Miroslav Rupčić,³⁴³⁹ whereas Prlić argues that he could only act with authorisation from the HVO HZ H-B.³⁴⁴⁰ Prlić further challenges the Trial Chamber's underlying findings that he: (1) directed, supported, and facilitated raising or collecting funds, arguing that no decrees proposed by the Department of Finance and enacted by the HVO HZ H-B gave him such power, and Rupčić's evidence does not support the Trial Chamber's conclusions;³⁴⁴¹ and (2) drew up, supervised, and controlled the budget of the HVO/Government of the HZ(R) H-B, which Prlić argues was based on a mischaracterisation of the evidence.³⁴⁴²

1077. The Prosecution responds that Prlić: (1) neither provides support for his claim that the Ministry of Finance did not function during unspecified dates, nor explains how that would undermine the Trial Chamber's findings on his powers;³⁴⁴³ (2) ignores that he himself signed the decrees on which he relies,³⁴⁴⁴ and fails to explain how the Trial Chamber erred in relying on the evidence of Rupčić;³⁴⁴⁵ and (3) fails to substantiate his claim that the Trial Chamber mischaracterised evidence that squarely supports its finding that he drew up, supervised, and controlled the budget.³⁴⁴⁶

b. Analysis

1078. Turning first to Prlić's challenge to the Trial Chamber's conclusion that he directed and controlled the fiscal and financial organs of the HVO/Government of the HZ(R) H-B and its budget, the Appeals Chamber notes that Prlić provides no support for his assertions that the Ministry of Finance did not function during a certain period and that he could only act with authorisation from the HVO HZ H-B. He furthermore fails to demonstrate that the Trial Chamber mischaracterised the testimony of Rupčić.³⁴⁴⁷ Prlić's challenge amounts to a mere assertion and is dismissed as such.³⁴⁴⁸

³⁴³⁹ The Appeals Chamber understands that the witness Prlić describes as "Witness I" is Rupčić.

³⁴⁴⁰ Prlić's Appeal Brief, para. 363. See Prlić's Appeal Brief, para. 364, referring to Prlić's Appeal Brief, para. 52 (sub-ground of appeal 1.2), sub-grounds of appeal 1.2.4-1.2.5, 11.1. See also Appeal Hearing, AT. 133 (20 Mar 2017).

³⁴⁴¹ Prlić's Appeal Brief, para. 365.

³⁴⁴² Prlić's Appeal Brief, para. 366. Specifically, Prlić submits that: (1) in Exhibits 1D02135 and 1D02136 the HVO HZ H-B is reminding the Finance Department of its obligations – pursuant to HVO HZ H-B decrees – to estimate the inflow of funds in the budget; (2) the House of Representatives was in charge of the HR H-B budget, as found by the Trial Chamber; (3) the Head of the Finance Department of the HVO HZ H-B was vested with the executive authority to implement the budget without any authorisation from the HVO HZ H-B President; and (4) in 1992 and 1993 expenditures were made pursuant to HVO HZ H-B decisions and only in 1994 was the first HR H-B budget adopted. Prlić's Appeal Brief, para. 366. See Appeal Hearing, AT. 133 (20 Mar 2017).

³⁴⁴³ Prosecution's Response Brief (Prlić), para. 223.

³⁴⁴⁴ Prosecution's Response Brief (Prlić), para. 223.

³⁴⁴⁵ Prosecution's Response Brief (Prlić), para. 223. See Prosecution's Response Brief (Prlić), fn. 749.

³⁴⁴⁶ Prosecution's Response Brief (Prlić), para. 224.

³⁴⁴⁷ See Trial Judgement, Vol. 4, paras 97-98, referring to, *inter alia*, Exs. P00102, P01097, p. 1, 1D00036, Art. 2, Miroslav Rupčić, T(F). 23448-23451 (9 Oct 2007).

³⁴⁴⁸ The Appeals Chamber notes that Prlić refers to his submissions in sub-grounds of appeal 1.2, 1.2.4, 1.2.5, and 11.1, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176, 1021-1043.

1079. Regarding Prlić's challenge to the Trial Chamber's finding that he directed, supported, and facilitated raising or collecting funds,³⁴⁴⁹ the Appeals Chamber notes that this finding is supported by official publications of HVO HZ H-B decrees, bearing Prlić's name, concerning the raising or collection of funds.³⁴⁵⁰ Prlić has failed to demonstrate that no reasonable trier of fact could have made this finding. His arguments in this regard are therefore dismissed.

1080. Finally, concerning Prlić's challenge to the Trial Chamber's finding that he drew up, supervised, and controlled the budget of the HVO/Government of the HZ(R) H-B,³⁴⁵¹ the Appeals Chamber notes that this finding is supported by evidence showing his role in this regard.³⁴⁵² Prlić either ignores this evidence³⁴⁵³ or fails to show that the Trial Chamber mischaracterised it.³⁴⁵⁴ His challenge is therefore dismissed.

1081. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 11.6.

(vii) Office for Displaced Persons and Refugees (Prlić's Sub-ground 11.7)

1082. The Trial Chamber found that Prlić was involved in directing and organising the activities of the ODPH and had the power to direct and control it.³⁴⁵⁵

a. Arguments of the Parties

1083. Prlić challenges this finding, submitting that it contradicts another finding that the ODPH was accountable to the HVO HZ H-B and not to Prlić.³⁴⁵⁶ He argues in this regard that the

³⁴⁴⁹ Trial Judgement, Vol. 4, para. 97.

³⁴⁵⁰ See Trial Judgement, Vol. 4, para. 97, referring to, *inter alia*, Exs. P00102, P00408/1D00013, 1D00025, 1D00028, 1D00030, 1D00034.

³⁴⁵¹ Trial Judgement, Vol. 4, para. 97.

³⁴⁵² Trial Judgement, Vol. 4, para. 97, referring to Exs. P00412, P00511, P01403, pp. 3-4, P06189, p. 2, P07628, 1D02135, 1D02136, Miroslav Rupčić, T(F). 23342-23343 (8 Oct 2007).

³⁴⁵³ Compare Prlić's Appeal Brief, para. 366, with Trial Judgement, Vol. 4, fn. 283.

³⁴⁵⁴ Regarding Prlić's submission that in Exhibits 1D02135 and 1D02136 the HVO HZ H-B is reminding the Finance Department of its obligations – pursuant to HVO HZ H-B decrees – to estimate the inflow of funds in the budget, the Appeals Chamber considers that both exhibits relate to the Government of the HR H-B and support the impugned finding. Concerning Prlić's submission that the House of Representatives was in charge of the HR H-B budget, the Appeals Chamber observes that the Trial Chamber found that the House of Representatives of the HR H-B, established on 28 August 1993, was charged with *adopting* the budget of the HR H-B. Trial Judgement, Vol. 1, para. 508 (emphasis added). Prlić fails to demonstrate that this finding (or the evidence to which he refers in support) is inconsistent with the impugned finding. See Prlić Appeal Brief, fns 944-945 and references cited therein. With regard to Prlić's submission that the Head of the Finance Department of the HVO HZ H-B was vested with the executive authority to implement the budget without any authorisation from the HVO HZ H-B President, the Appeals Chamber observes that he cites to a single exhibit discussing a draft decree yet to be adopted. See Prlić's Appeal Brief, fn. 946, referring to Ex. P00578, p. 2. Finally, the Appeals Chamber fails to see how Prlić's last submission – that in 1992 and 1993 expenditures were made pursuant to HVO HZ H-B decisions and only in 1994 was the first HR H-B budget adopted – shows any error in the impugned finding.

³⁴⁵⁵ Trial Judgement, Vol. 4, para. 100. See Trial Judgement, Vol. 4, para. 99.

³⁴⁵⁶ Prlić's Appeal Brief, para. 367.

Trial Chamber erred by basing its conclusion on HVO HZ H-B decisions signed by him and by mischaracterising Witness Martin Raguž's testimony.³⁴⁵⁷ Prlić further submits that the Trial Chamber erred in finding that he "instructed" the ODPR to assist with regard to a visit by experts from the Croatian ODPR, when in fact he was just pleading on behalf of the HVO HZ H-B.³⁴⁵⁸ Finally, Prlić submits that the Trial Chamber wrongly found, based on a single exhibit, that he participated in a meeting attended by Zubak and Tadić, during which they allegedly "informed an international organization of their plan to negotiate with the Croatian ODPR for transit visas for Muslims".³⁴⁵⁹ Prlić argues in this regard that nothing supports the conclusion that he ever directed or controlled the ODPR.³⁴⁶⁰

1084. The Prosecution responds that the Trial Chamber reasonably found that Prlić had the power to direct and control the ODPR and that he was involved in directing and organising its activities.³⁴⁶¹ It argues that Prlić fails to establish the alleged contradiction in the Trial Chamber's findings,³⁴⁶² and has not explained how the Trial Chamber erred in relying on, or in interpreting, certain evidence.³⁴⁶³

b. Analysis

1085. With regard to Prlić's argument that the impugned finding is contradicted by the Trial Chamber's finding that the ODPR was accountable to the HVO HZ H-B and not to Prlić, the Appeals Chamber notes that in the section discussing Prlić's powers with respect to the ODPR, the Trial Chamber first recalled "its findings that, at the organisational level, the ODPR was accountable to the HVO HZ H-B and not to its president personally".³⁴⁶⁴ The Trial Chamber then considered documentary and witness evidence indicating that Prlić was personally involved in the activities of the ODPR and its management, on the basis of which it reached the impugned finding.³⁴⁶⁵ The Appeals Chamber therefore considers that Prlić does not demonstrate any contradiction in the Trial Chamber's findings. The Appeals Chamber further considers that Prlić's argument that the Trial Chamber erred by basing its conclusion on HVO HZ H-B decisions signed by him is an undeveloped assertion that also ignores other evidence on which the Trial Chamber

³⁴⁵⁷ Prlić's Appeal Brief, para. 367 & fn. 952, referring to Martin Raguž, T. 31310-31316 (25 Aug 2008).

³⁴⁵⁸ Prlić's Appeal Brief, para. 368.

³⁴⁵⁹ Prlić's Appeal Brief, para. 369.

³⁴⁶⁰ Prlić's Appeal Brief, paras 369. See Prlić's Appeal Brief, para. 370, referring to Prlić's Appeal Brief, sub-grounds of appeal 16.6.3-16.6.4. Prlić also submits that: "[t]he Headquarters for refugees was formed due to the gravity of the humanitarian situation at the time, for activities usually performed by the municipalities. Zubak headed the Headquarters and was authorized to make autonomous decisions in the Headquarters' area of responsibility, with the ODPR becoming more autonomous." Prlić's Appeal Brief, para. 371 (internal references omitted).

³⁴⁶¹ Prosecution's Response Brief (Prlić), para. 225.

³⁴⁶² Prosecution's Response Brief (Prlić), para. 226.

³⁴⁶³ Prosecution's Response Brief (Prlić), para. 226.

³⁴⁶⁴ Trial Judgement, Vol. 4, para. 99, referring to Trial Judgement, Vol. 1, paras 629-631.

relied.³⁴⁶⁶ Finally, the Appeals Chamber finds that Prlić merely asserts that the Trial Chamber mischaracterised the testimony of Raguž without demonstrating an error.³⁴⁶⁷ Prlić's arguments are therefore dismissed.

1086. Turning to Prlić's submission that the Trial Chamber erroneously concluded that he "instructed" the ODPR to assist with regard to a visit by experts from the Croatian ODPR when he was just pleading on behalf of the HVO HZ H-B, the Appeals Chamber notes that the Trial Chamber based this finding on Exhibit 1D02141,³⁴⁶⁸ a letter signed by Prlić which reads: "We ask that you provide".³⁴⁶⁹ The Appeals Chamber finds that a reasonable trier of fact could have found that this amounted to an instruction, notwithstanding the irrelevant evidence on which Prlić relies to argue that he was pleading rather than instructing.³⁴⁷⁰ Prlić's submission is therefore dismissed.

1087. Turning at last to Prlić's challenge to the Trial Chamber's conclusion that he participated in a meeting attended by Zubak and Tadić, during which they informed an international organisation of their plan to negotiate with the Croatian ODPR for transit visas for approximately 10,000 Muslims "wishing to leave",³⁴⁷¹ the Appeals Chamber notes that the Trial Chamber's finding is explicitly supported by the exhibit on which it relied,³⁴⁷² and that Prlić fails to develop why the Trial Chamber would have erred in basing this finding on a single piece of evidence. In light of the fact that the finding is explicitly supported by the evidence, and that the Trial Chamber also relied on other evidence to find that Prlić was involved in directing and organising the activities of the ODPR and had the power to direct and control it,³⁴⁷³ the Appeals Chamber also dismisses Prlić's final submission that nothing supports the conclusion that he ever directed or controlled the ODPR.³⁴⁷⁴

³⁴⁶⁵ Trial Judgement, Vol. 4, paras 99-100.

³⁴⁶⁶ Compare Prlić's Appeal Brief, para. 367 & fns 951-952 and references cited therein, with Trial Judgement, Vol. 4, paras 99-100 and references cited therein.

³⁴⁶⁷ The Appeals Chamber notes that the part of Raguž's testimony cited by Prlić squarely supports the Trial Chamber's finding that "[o]n 31 May 1993, [Prlić] proposed to the HVO HZ H-B that Martin Raguž be appointed Deputy Head of the ODPR and signed the decision to that effect". Trial Judgement, Vol. 4, para. 99 & fn. 287, referring to, *inter alia*, Martin Raguž, T(F). 31310-31316 (25 Aug 2008).

³⁴⁶⁸ Trial Judgement, Vol. 4, para. 99 & fn. 297.

³⁴⁶⁹ Ex. 1D02141.

³⁴⁷⁰ See Prlić's Appeal Brief, para. 368 & fn. 953 and references cited therein.

³⁴⁷¹ Trial Judgement, Vol. 4, para. 99.

³⁴⁷² Trial Judgement, Vol. 4, fn. 296, referring to Ex. P09679 (confidential), p. 1.

³⁴⁷³ See *supra*, paras 1085-1086; Trial Judgement, Vol. 4, paras 99-100.

³⁴⁷⁴ See Prlić's Appeal Brief, para. 369. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 16.6.3 and 16.6.4, which it dismisses elsewhere in the Judgement. See *infra*, paras 1300, 1304-1306, 1308-1309, 1315, 1317. Prlić's submissions regarding the "Headquarters for refugees" and Zubak's role in that regard are not inconsistent with the impugned finding.

1088. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 11.7.

(viii) Exchange Service (Prlić's Sub-ground 11.8)

1089. The Trial Chamber found that Prlić exercised direct authority over the Exchange Service by supervising its establishment, organisation, and activities and by being kept informed of its activities.³⁴⁷⁵

1090. Prlić submits that the Trial Chamber erroneously concluded that he exercised direct power over the Exchange Service, in particular by supervising its establishment, organization, and activities and by being kept informed of its activities.³⁴⁷⁶ Prlić argues that the Trial Chamber erroneously relied on: (1) Exhibit P03796, introduced through a bar table motion;³⁴⁷⁷ (2) Exhibit P07102, which allegedly bears no indicia of reliability – specifically no signature or stamp – and is not corroborated by any evidence indicating that it is genuine and was ever sent to or received by the HR H-B Government or Prlić;³⁴⁷⁸ and (3) three “uncorroborated” “reports” not identified by exhibit numbers, in disregard of other evidence showing that the Service was: (a) an autonomous body communicating directly with other entities; and (b) not accountable to the HVO HZ H-B, as shown by the fact that it is not referenced in Government reports.³⁴⁷⁹

1091. The Prosecution responds that the Trial Chamber reasonably found that Prlić exercised direct authority over the Exchange Service.³⁴⁸⁰ The Prosecution argues that Prlić misidentifies the evidence on which the Trial Chamber relied, makes misleading, irrelevant, incorrect, and unsupported claims, and fails to demonstrate how the Trial Chamber erred in its assessment of evidence.³⁴⁸¹

1092. The Appeals Chamber notes that in arguing that the Trial Chamber erroneously relied on Exhibit P03796, Prlić has failed to articulate any error and dismisses the argument on this basis.³⁴⁸² With regard to Exhibit P07102, the Appeals Chamber observes that while the document is not signed or stamped, the Trial Chamber accepted its authenticity in light of other evidence on the

³⁴⁷⁵ Trial Judgement, Vol. 4, para. 104. See Trial Judgement, Vol. 4, paras 101-103.

³⁴⁷⁶ Prlić's Appeal Brief, para. 372.

³⁴⁷⁷ Prlić's Appeal Brief, para. 372, referring to Ex. P03796, Prlić's Appeal Brief, ground of appeal 3.

³⁴⁷⁸ Prlić's Appeal Brief, para. 372.

³⁴⁷⁹ Prlić's Appeal Brief, para. 373 & fn. 962, referring to Exs. P07178, P07246, P07468.

³⁴⁸⁰ Prosecution's Response Brief (Prlić), para. 227.

³⁴⁸¹ Prosecution's Response Brief (Prlić), para. 228. The Prosecution further argues that Prlić improperly raises for the first time on appeal a challenge to the authenticity of Exhibit P07102, which moreover bears indicia of reliability. Prosecution's Response Brief (Prlić), para. 228 & fn. 779.

³⁴⁸² Cf. Trial Judgement, Vol. 4, para. 102, referring to Ex. P03796. The Appeals Chamber notes that Prlić also refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

record.³⁴⁸³ In this regard, the Appeals Chamber recalls that the final assessment of a piece of evidence is based on the totality of the evidence in a given case.³⁴⁸⁴ As such, the Appeals Chamber finds that Prlić has failed to establish that no reasonable trier of fact could have considered it to be authentic or could have relied on it.³⁴⁸⁵ Concerning the three reports on which the Trial Chamber relied, the Appeals Chamber notes that the Trial Chamber described them and referenced them with sufficient specificity,³⁴⁸⁶ allowing Prlić to identify them.³⁴⁸⁷ The Appeals Chamber further notes that the aforementioned reports all concern information on the release of prisoners transmitted by Pušić, the head of the Exchange Service,³⁴⁸⁸ to the Government of the HR H-B and thus corroborate each other insofar as they show that Prlić was kept informed of the service's activities, and are in any event corroborated by other evidence on the record³⁴⁸⁹ supporting the concluding finding that Prlić was kept informed.³⁴⁹⁰ Prlić therefore establishes no error in this regard. Finally, with respect to the allegedly disregarded evidence that the Exchange Service was an autonomous body not accountable to the HVO HZ H-B, the Appeals Chamber considers that Prlić's submissions that this body communicated directly with various entities and is not referenced in Government reports are not inconsistent with the challenged finding.³⁴⁹¹ For these reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 11.8.

³⁴⁸³ See Trial Judgement, Vol. 4, paras 1062, 1089, 1092, 1127 *et seq.*, referring to, *inter alia*, Ex. P07102. The Appeals Chamber notes that these portions of the Trial Judgement relate to Pušić's liability and that Pušić does not challenge the authenticity of Exhibit P07102.

³⁴⁸⁴ See *Lukić and Lukić* Appeal Judgement, para. 261.

³⁴⁸⁵ The Appeals Chamber observes that the impugned finding makes no mention of Exhibit P07102 being sent to or received by the HR H-B Government or Prlić. Trial Judgement, Vol. 4, para. 103 ("Moreover, in a letter dated 10 December 1993, Berislav Pušić proposed to Jadranko Prlić, among other things, that a body other than the [Exchange Service] be entrusted with the classification of prisoners and that the Government of the HR H-B, whose President was Jadranko Prlić, approve a list of 'persons [civilians] who voluntarily want to leave the area of the HR H-B' drawn up by the Service for the Exchange of Prisoners and Other Persons.").

³⁴⁸⁶ Trial Judgement, Vol. 4, para. 103 & fn. 302 and references cited therein.

³⁴⁸⁷ See Prlić's Appeal Brief, fn. 962, referring to Exs. P07178, P07246, P07468.

³⁴⁸⁸ Trial Judgement, Vol. 4, para. 101 & fn. 299.

³⁴⁸⁹ Trial Judgement, Vol. 4, para. 103 & fn. 301 and reference cited therein.

³⁴⁹⁰ Trial Judgement, Vol. 4, para. 104.

³⁴⁹¹ See Prlić's Appeal Brief, para. 373 & fns 963-964 and references cited therein.

(ix) Municipal governments (Prlić's Sub-ground 11.9)

1093. The Trial Chamber found that Prlić directed and supervised the work of the HVO municipal authorities, considering that the Government: (1) co-ordinated the work of the municipal administrative bodies; (2) could dissolve the municipal HVOs, annul their enactments, and appoint and dismiss their members; and (3) could abrogate the decisions of the municipal HVOs that contravened the regulations in force.³⁴⁹²

1094. Prlić challenges this finding,³⁴⁹³ arguing that the Trial Chamber erroneously found, based on unsupportive documents admitted from the bar table, that he: (1) participated in the dissolution of the municipal HVOs that did not conform to HZ(R) H-B policies; (2) received reports from the municipal HVOs; and (3) participated in the appointment of members of various municipal HVO councils.³⁴⁹⁴

1095. The Prosecution responds that the Trial Chamber's findings are reasonable and that Prlić fails to explain his claims to the contrary.³⁴⁹⁵

1096. Regarding Prlić's submissions that the Trial Chamber erred in making findings based on unsupportive bar table documents, the Appeals Chamber finds that the impugned findings are supported by the exhibits on which the Trial Chamber relied,³⁴⁹⁶ and dismisses Prlić's submissions as they misrepresent the evidence.³⁴⁹⁷ The Appeals Chamber dismisses Prlić's sub-ground of appeal 11.9.

³⁴⁹² Trial Judgement, Vol. 4, para. 105.

³⁴⁹³ Prlić's Appeal Brief, para. 374. See Prlić's Appeal Brief, para. 375, referring to Prlić's Appeal Brief, paras 54-55 (sub-ground of appeal 1.2), sub-ground of appeal 1.2.6.

³⁴⁹⁴ Prlić's Appeal Brief, paras 376-378; Prlić's Reply Brief, para. 59, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3.

³⁴⁹⁵ Prosecution's Response Brief (Prlić), paras 229-230.

³⁴⁹⁶ See Trial Judgement, Vol. 4, para. 105 and references cited therein. Specifically, the finding that Prlić "participated in the decision of 22 March 1993 on the dissolution of the municipal HVOs which did not conform to the policies in force in the HZ(R) H B, for example the Ljubuški HVO because of the difficulties linked to the mobilisation of conscripts in that municipality" is supported by Exhibits P01781 ("By the decision of Jadranko Prlić, President of the HVO HZ H-B, which was adopted on 22 March 1993, the Ljubuški HVO was dismissed") and P01700 (Prlić's decision dated 22 March 1993, referring to "the difficulties to mobilise conscripts" in Ljubuški Municipality). The finding that Prlić "received reports from the municipal HVOs" is supported by Exhibits P01853 (a report of the Travnik HVO addressed to, *inter alios*, Prlić), P06292 (a report on the work of the Vitez Defence Office addressed to, *inter alios*, Prlić), and 2D00852 (containing a request – adopted by the HVO HZ H-B with Prlić in attendance – for all municipal HVOs to submit detailed reports). Finally, the finding that "Prlić participated in the appointment of members of various municipal HVO councils, among others, those of the municipalities of Vareš, Jablanica and Ljubuški" is supported by Exhibits P05805 (a letter from the President of the Ljubuški municipal HVO to Prlić, requesting a decision on the appointment of the Ljubuški municipal HVO) and P08239 (Minutes of a session of the Government of the HR H-B, at which Prlić was present, setting out appointments to, *inter alia*, the Vareš and Jablanica municipal councils).

³⁴⁹⁷ The Appeals Chamber notes that Prlić refers to his submissions in (sub-)grounds of appeal 1.2, 1.2.6, and 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176, 177-183.

(x) Conclusion

1097. The Appeals Chamber dismisses Prlić's ground of appeal 11 in its entirety.

(b) Alleged errors regarding powers in military matters (Prlić's Ground 12)(i) Introduction

1098. Prlić submits that the Trial Chamber erred in law and fact in finding that he and the Government had power in military matters (sub-ground of appeal 12.1) and that reports on HVO combat activities were routinely sent to the Government (sub-ground of appeal 12.2),³⁴⁹⁸ undermining his JCE convictions,³⁴⁹⁹ and warranting his acquittal on Counts 1-25.³⁵⁰⁰ The Prosecution responds that Prlić's submissions should be dismissed.³⁵⁰¹

(ii) The Government's and Prlić's powers in military matters (Prlić's Sub-ground 12.1)

1099. The Trial Chamber found that the HVO/Government of the HZ(R) H-B had the power and responsibility to control, in general and particularly in terms of the military strategy, the HVO.³⁵⁰² The Trial Chamber also found that, as President of the HVO/Government of the HZ(R) H-B, Prlić had an influence on the defence strategy and the military operations of the HVO.³⁵⁰³ It found that he specifically had the power to: (1) preside over and participate in meetings at which decisions on the strategy and the military situation in the HZ(R) H-B were taken; (2) adopt decisions and decrees on such matters; (3) be informed about the military situation; and (4) if necessary, "take decisions directly which had a direct impact" on the course of the military operations of the HVO.³⁵⁰⁴

1100. The Appeals Chamber will address in turn Prlić's challenges to the Trial Chamber's findings on the Government's powers in military matters and his own powers in that regard.

³⁴⁹⁸ Prlić's Appeal Brief, paras 382, 403, 408. Specifically, Prlić alleges that by ignoring evidence, the Trial Chamber failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence, amounting to an error of law. Prlić's Appeal Brief, para. 408.

³⁴⁹⁹ Prlić's Appeal Brief, paras 381, 408.

³⁵⁰⁰ Prlić's Appeal Brief, para. 409.

³⁵⁰¹ Prosecution's Response Brief (Prlić), para. 233. See Prosecution's Response Brief (Prlić), paras 231-232.

³⁵⁰² Trial Judgement, Vol. 4, para. 106, referring to Trial Judgement, Vol. 1, paras 517-521.

³⁵⁰³ Trial Judgement, Vol. 4, para. 106.

³⁵⁰⁴ Trial Judgement, Vol. 4, para. 111. See Trial Judgement, Vol. 4, paras 106-110.

a. The Government's powers in military matters

i. Arguments of the Parties

1101. Prlić first argues that the Trial Chamber erred in finding that the HVO HZ H-B played a role in military matters.³⁵⁰⁵ He submits that the Trial Chamber based this finding exclusively on the Amended 3 July 1992 Decree on the Armed Forces (Exhibit P00588) (“3 July 1992 Decree on the Armed Forces”),³⁵⁰⁶ which requires the production of defence plans, while ignoring other evidence indicating that such plans had “nothing to do with the usage of military forces”.³⁵⁰⁷

1102. Prlić argues that the Trial Chamber mischaracterised Petković’s evidence when claiming that he acknowledged that the HVO HZ H-B – as the civilian authority in the HZ H-B – exercised control over the HVO/military authorities.³⁵⁰⁸ In addition, Prlić argues that the Trial Chamber erroneously relied on Petković’s Final Brief, which has no legal authority.³⁵⁰⁹

1103. Prlić also submits that the Trial Chamber misinterpreted Petković’s testimony when claiming he acknowledged that the civilian authorities of the HVO HZ H-B were asked to set the “overall strategy” of the HZ H-B, and based this finding on evidence that could not sustain a finding beyond reasonable doubt.³⁵¹⁰ He contends that the Trial Chamber also erroneously relied on the 3 July 1992 Decree on the Armed Forces (Exhibit P00289), which was only in effect before Mate Boban relinquished his executive authority within the HVO HZ H-B.³⁵¹¹ Finally, Prlić contends that the Trial Chamber relied on a HVO HZ H-B report (Exhibit P00128), which does not show that the HVO HZ H-B made political or “overall strategy” decisions.³⁵¹²

1104. Prlić challenges the Trial Chamber’s finding that “[t]he government was allowed to make proposals and form conclusions concerning issues of a military nature, which the Ministry of Defence could then forward to the Senior Main Staff or to the principal commanding officers, but

³⁵⁰⁵ Prlić’s Appeal Brief, paras 382-383; Appeal Hearing, AT. 137 (20 Mar 2017).

³⁵⁰⁶ The decree was amended on 17 October 1992. Exhibit P00588, a decree issued by Mate Boban on 17 October 1992 on the armed forces of the Croatian Community of Herceg Bosna (edited version) (“Amended 3 July 1992 Decree on the Armed Forces”); p. 1.

³⁵⁰⁷ Prlić’s Appeal Brief, para. 383, referring to, *inter alia*, Prlić’s Appeal Brief, ground of appeal 3. See Prlić’s Reply Brief, paras 60-61. Prlić also submits that there is no evidence of any HVO HZ H-B defence plans. Prlić’s Appeal Brief, para. 383; Appeal Hearing, AT. 138 (20 Mar 2017).

³⁵⁰⁸ Prlić’s Appeal Brief, para. 384.

³⁵⁰⁹ Prlić’s Appeal Brief, para. 385, referring to, *inter alia*, Prlić’s Appeal Brief, para. 161 (ground of appeal 5).

³⁵¹⁰ Prlić’s Appeal Brief, para. 386, referring to, *inter alia*, Prlić’s Appeal Brief, paras 455-459 (sub-ground of appeal 16.1.1).

³⁵¹¹ Prlić’s Appeal Brief, para. 387. In this regard, Prlić also argues that: (1) the 3 July 1992 Decree on the Armed Forces was then amended, stripping the HVO HZ H-B and its President of any power over the HVO; (2) Witness Davor Marijan “carelessly” analysed the 3 July 1992 Decree on the Armed Forces although “this blunder was exposed when he testified”; and (3) the Amended 3 July 1992 Decree on the Armed Forces provides an accurate account of the HVO HZ H-B’s actual powers or lack thereof over the HVO. Prlić’s Appeal Brief, para. 387; Appeal Hearing, AT. 137-138 (20 Mar 2017).

lacked authority to give orders of a military nature”,³⁵¹³ as it mischaracterised Petković’s testimony.³⁵¹⁴

1105. Finally, Prlić contends that the Trial Chamber misrepresented Marijan’s testimony – and ignored other evidence – when concluding that he stated that the “Government of the HVO” adopted reports and decisions concerning issues related to defence and as a consequence provided instructions for their enforcement.³⁵¹⁵

1106. The Prosecution responds that the Trial Chamber did not base its finding that the HVO HZ H-B played a role in military matters exclusively on the Amended 3 July 1992 Decree on the Armed Forces and that Prlić fails to explain the relevance of his argument regarding defence plans.³⁵¹⁶ The Prosecution also argues that the Trial Chamber did not mischaracterise Petković’s evidence,³⁵¹⁷ that the Trial Chamber’s reference to Petković’s Final Brief is irrelevant,³⁵¹⁸ and that the Trial Chamber did not err in relying on the 3 July 1992 Decree on the Armed Forces.³⁵¹⁹ Finally, it argues that Prlić does not demonstrate that the Trial Chamber misrepresented Marijan’s evidence and that the other evidence he refers to fails to show any error in the Trial Chamber’s findings.³⁵²⁰

ii. Analysis

1107. The Appeals Chamber observes that the Trial Chamber did not base its finding that the HVO HZ H-B played a role in military matters exclusively on the Amended 3 July 1992 Decree on the Armed Forces. Rather, the Trial Chamber assessed “the Prlić Defence’s theory that reforms in the Decree on the Armed Forces of 3 July 1992 stripped the HVO of its role in military matters”,³⁵²¹

³⁵¹² Prlić’s Appeal Brief, para. 388 & fn. 982.

³⁵¹³ Trial Judgement, Vol. 1, para. 519. See Prlić’s Appeal Brief, para. 389, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 519; Appeal Hearing, AT. 234 (20 Mar 2017).

³⁵¹⁴ Prlić’s Appeal Brief, paras 389-390. Prlić also submits that: (1) Praljak, the second Chief of the Main Staff, testified that neither Prlić nor the HVO HZ H-B could give him orders and that the HVO was only obliged to implement Boban’s orders; and (2) the Trial Chamber found that the Chief of the Main Staff was directly accountable to the Supreme Commander with regard to strategic planning and the use of the HVO. Prlić’s Appeal Brief, para. 391.

³⁵¹⁵ Prlić’s Appeal Brief, para. 392, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 519. The quote is from the Trial Judgement.

³⁵¹⁶ Prosecution’s Response Brief (Prlić), para. 234.

³⁵¹⁷ Prosecution’s Response Brief (Prlić), paras 235-238.

³⁵¹⁸ Prosecution’s Response Brief (Prlić), para. 236.

³⁵¹⁹ Prosecution’s Response Brief (Prlić), para. 234. The Prosecution further argues that Prlić repeats his trial argument that the amendment of the 3 July 1992 Decree on the Armed Forces stripped the Government of power over the HVO, without showing that the Trial Chamber erred in rejecting this argument. Prosecution’s Response Brief (Prlić), para. 234.

³⁵²⁰ Prosecution’s Response Brief (Prlić), paras 239-240.

³⁵²¹ Trial Judgement, Vol. 1, para. 518.

and reviewed a number of pieces of evidence before reaching its conclusions to the contrary.³⁵²² Prlić misrepresents the factual findings and his argument is therefore dismissed.

1108. With regard to Prlić's argument that the Trial Chamber mischaracterised Petković's evidence when claiming that he acknowledged that the HVO HZ H-B exercised control over the HVO, the Appeals Chamber considers that the evidence cited by the Trial Chamber supports its summary of Petković's testimony and that Prlić has failed to demonstrate any error in this regard.³⁵²³ As the Trial Chamber's assessment of this evidence is supported by the record, the Appeals Chamber considers that the Trial Chamber's additional reference to Petković's Final Brief is inconsequential.³⁵²⁴ Prlić's arguments are therefore dismissed.

1109. Turning to Prlić's argument that the Trial Chamber erred in claiming that Petković acknowledged that the civilian authorities of the HVO HZ H-B were asked to set the "overall strategy" of the HZ H-B, the Appeals Chamber again considers that the evidence cited by the Trial Chamber supports the Trial Chamber's summary of Petković's testimony and that Prlić has failed to demonstrate any error in this regard.³⁵²⁵ The Appeals Chamber further dismisses Prlić's arguments regarding the Trial Chamber's reliance on the 3 July 1992 Decree on the Armed Forces (Exhibit P00289) and HVO HZ H-B report (Exhibit P00128), as he has failed to demonstrate that no reasonable trier of fact could have found as the Trial Chamber did, based on the other evidence on which it relied.³⁵²⁶

1110. As for Prlić's challenge to the Trial Chamber's finding that "[t]he government was allowed to make proposals and form conclusions concerning issues of a military nature, which the Ministry of Defence could then forward to the Senior Main Staff or to the principal commanding officers, but lacked authority to give orders of a military nature",³⁵²⁷ the Appeals Chamber considers that he merely makes factual assertions that either are not supported by the evidence to which he refers,³⁵²⁸

³⁵²² Trial Judgement, Vol. 1, paras 518-521. The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

³⁵²³ See Trial Judgement, Vol. 1, para. 519 & fn. 1264, referring to, *inter alia*, Milivoj Petković, T(F). 50014-50015 (25 Feb 2010), 50342 (3 Mar 2010). Regarding Prlić's submissions that: (1) Praljak testified that neither Prlić nor the HVO HZ H-B could give him orders and that the HVO was only obliged to implement Boban's orders; and (2) the Trial Chamber found that the Chief of the Main Staff was directly accountable to the Supreme Commander with regard to strategic planning and the use of the HVO, the Appeals Chamber considers that Prlić has failed to articulate an error.

³⁵²⁴ See Trial Judgement, Vol. 1, para. 519 & fn. 1264, referring to, *inter alia*, Petković's Final Brief, paras 55, 64(ii). The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 5, which it dismisses elsewhere in the Judgement. See *supra*, paras 107-138.

³⁵²⁵ See Trial Judgement, Vol. 1, para. 519 & fn. 1265 and references cited therein. See, in particular, Milivoj Petković, T. 50350 (3 Mar 2010). The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 16.1.1, which it dismisses elsewhere in the Judgement. See *infra*, paras 1146-1153.

³⁵²⁶ See Trial Judgement, Vol. 1, para. 519 at fns 1265, 1268 and references cited therein.

³⁵²⁷ Trial Judgement, Vol. 1, para. 519.

³⁵²⁸ See Prlić's Appeal Brief, para. 390 & fns 985-986, referring to Milivoj Petković, T. 49771 (22 Feb 2010), 50186-50188 (1 Mar 2010). The Appeals Chamber considers that the evidence relied on by Prlić does not support his assertions that only the Supreme Commander and the Main Staff could decide on military matters and that the HVO HZ

or are not inconsistent with the challenged finding.³⁵²⁹ Thus, Prlić has failed to demonstrate that no reasonable trier of fact could have made this finding and his arguments are therefore dismissed.

1111. Regarding Prlić's contention that the Trial Chamber misrepresented Marijan's testimony, the Appeals Chamber notes that, according to the Trial Chamber, "*Davor Marijan* stated that although the Government of the HVO did not form part of the chain of command of the armed forces, during its sittings, it adopted reports and decisions concerning issues related to defence, and as a consequence, provided instructions for their enforcement".³⁵³⁰ The Appeals Chamber considers that the evidence cited by the Trial Chamber supports its summary of Marijan's testimony, although there is no explicit reference to enforcement. This, however, has no discernible impact on any ensuing finding of the Trial Chamber and therefore does not occasion any miscarriage of justice.³⁵³¹ With regard to the allegedly ignored evidence, the Appeals Chamber considers that Prlić merely makes factual assertions that are either not supported by the evidence to which he refers,³⁵³² or are not inconsistent with the challenged finding.³⁵³³ These arguments are dismissed.

b. Prlić's powers in military matters

i. Arguments of the Parties

1112. Prlić contends that the Trial Chamber erroneously concluded that the Government, with his participation, discussed the HVO's military strategy and adopted regulations concerning the mobilisation of military personnel, in contradiction to: (1) its previous finding that "areas related to mobilization and appointment constituted some of the stated powers wielded directly by Mate Boban"; and (2) evidence that only Boban was authorised to proclaim mobilisation, with the Defence Department having the obligation to prepare and execute mobilisation.³⁵³⁴

1113. Prlić further submits that the Trial Chamber incorrectly found that Petković testified that Prlić could issue operative orders to the armed forces through the Defence Department, in contradiction to: (1) Petković's explicit testimony to the contrary; and (2) other findings of the

H-B was not part of the military. The first citation appears to be an error. The second citation makes no mention of the HVO HZ H-B and only relates to the Supreme Commander's and the Main Staff's position in the command structure of the combat component of the HVO without asserting that they had exclusive authority in military matters.

³⁵²⁹ See Prlić's Appeal Brief, paras 389-391 at fns 984, 987-991.

³⁵³⁰ Trial Judgement, Vol. 1, para. 519 (internal references omitted), referring to, *inter alia*, Ex. 2D02000, pp. 11-12, para. 13.

³⁵³¹ Namely, the concluding findings on the powers of Prlić and the HVO/Government of the HZ(R) H-B in military matters. See Trial Judgement, Vol. 1, paras 518-521, Vol. 4, paras 106-111.

³⁵³² See Prlić's Appeal Brief, para. 392 & fn. 997.

³⁵³³ See Prlić's Appeal Brief, para. 392 at fns 993-996.

³⁵³⁴ Prlić's Appeal Brief, para. 393, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 106. See Prlić's Appeal Brief, para. 394, referring to, *inter alia*, Prlić's Appeal Brief, sub-grounds of appeal 16.1-16.2; Appeal Hearing, AT. 137 (20 Mar 2017).

Trial Chamber.³⁵³⁵ Moreover, he contends that the Trial Chamber erroneously concluded that he issued decisions that had a direct impact on military operations, based on evidence that does not support the conclusion.³⁵³⁶ In this regard, Prlić argues that the Trial Chamber mischaracterised Exhibit P02967, which is not signed by Boban and does not relate to military issues.³⁵³⁷

1114. Prlić also contends that the Trial Chamber placed undue weight on the statements of representatives of the international community that he appeared to be very well-informed about the situation on the ground, whereas “[o]ther documents in support of this statement actually show” that he had neither knowledge nor power in military affairs.³⁵³⁸ He submits that the Trial Chamber erroneously concluded that he played a key role in a series of ceasefire negotiations in Gornji Vakuf and Mostar, whereas there is no credible evidence supporting this conclusion.³⁵³⁹ Finally, Prlić contends that the Trial Chamber erroneously found, based on unsupportive evidence and contradicting itself, that he had the power to co-ordinate the deployment of civilian police units that were under the direct power of the Ministry of the Interior.³⁵⁴⁰

1115. The Prosecution responds that Prlić fails to explain how the Trial Chamber erroneously concluded that the Government, with his participation, discussed military matters, or how the Trial Chamber allegedly contradicted itself.³⁵⁴¹ It further argues that Petković did testify that Prlić could issue operative orders to the armed forces through the Defence Department, and that Prlić ignores relevant evidence.³⁵⁴² The Prosecution contends that Prlić shows no error in the Trial Chamber’s finding that he could issue decisions that had a direct impact on military operations.³⁵⁴³ The Prosecution further argues that Prlić fails to articulate an error when contending that the Trial Chamber placed undue weight on the statements of representatives of the international community that he appeared to be very well-informed about the situation on the ground.³⁵⁴⁴ It also argues that, contrary to Prlić’s claim, there is credible evidence supporting the Trial Chamber’s

³⁵³⁵ Prlić’s Appeal Brief, para. 395.

³⁵³⁶ Prlić’s Appeal Brief, paras 396-397. See Prlić’s Appeal Brief, para. 399, referring to, *inter alia*, Prlić’s Appeal Brief, sub-ground of appeal 16.3.

³⁵³⁷ Prlić’s Appeal Brief, para. 398.

³⁵³⁸ Prlić’s Appeal Brief, para. 400.

³⁵³⁹ Prlić’s Appeal Brief, para. 401, referring to, *inter alia*, Prlić’s Appeal Brief, paras 184-185 (sub-ground of appeal 6.1), 202-203 (sub-ground of appeal 6.2). Prlić argues that Witness DZ was not in a position to comment on ceasefire agreements, since he admitted to having no business in military matters. Prlić’s Appeal Brief, para. 401.

³⁵⁴⁰ Prlić’s Appeal Brief, para. 402, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 110; Prlić’s Reply Brief, para. 62.

³⁵⁴¹ Prosecution’s Response Brief (Prlić), para. 241. See also Prosecution’s Response Brief (Prlić), para. 245.

³⁵⁴² Prosecution’s Response Brief (Prlić), para. 237.

³⁵⁴³ Prosecution’s Response Brief (Prlić), paras 243-245. See Appeal Hearing, AT. 208-209 (20 Mar 2017). The Prosecution argues in this regard that Prlić is correct that the order with exhibit number P02967 is not signed by Boban, but this only supports the Trial Chamber’s finding on Prlić’s power by demonstrating that Boban’s signature was not required. Prosecution’s Response Brief (Prlić), para. 244.

³⁵⁴⁴ Prosecution’s Response Brief (Prlić), para. 242.

finding that he played a key role in ceasefire negotiations.³⁵⁴⁵ Finally, the Prosecution submits that the Trial Chamber's finding that he had the power to co-ordinate the deployment of civilian police units is well-supported by the evidence.³⁵⁴⁶

ii. Analysis

1116. Turning first to Prlić's contention that the Trial Chamber erroneously concluded that the Government discussed, with his participation, the HVO's military strategy and adopted regulations concerning the mobilisation of military personnel, the Appeals Chamber considers that Prlić has failed to demonstrate any contradiction between these findings³⁵⁴⁷ and the finding that the areas related to mobilisation and appointment constituted some of the stated powers wielded directly by Boban.³⁵⁴⁸ Specifically, Prlić has not demonstrated that either the Government or Boban had exclusive power in the area of mobilisation. To the contrary, he points to evidence allegedly showing that only Boban was authorised to proclaim mobilisation, with the Defence Department having the obligation to prepare and execute mobilisation. These assertions are not inconsistent with the challenged finding that the Government *adopted regulations* concerning mobilisation.³⁵⁴⁹ The Appeals Chamber consequently dismisses Prlić's arguments in this regard.

1117. Regarding Prlić's submission that the Trial Chamber incorrectly found that Petković testified that Prlić could issue operative orders to the armed forces through the Defence Department, the Appeals Chamber has reviewed the evidence relied on by the Trial Chamber and the evidence cited by Prlić. The Appeals Chamber considers that he has failed to demonstrate that no reasonable trier of fact could have made the challenged finding.³⁵⁵⁰ In this regard, the Appeals Chamber considers that Prlić has failed to demonstrate the alleged contradictions.³⁵⁵¹ It considers in particular that Petković's testimony, cited in relation to the challenged finding that Prlić could issue operative orders to the armed forces through the Defence Department, squarely supports that finding.³⁵⁵² The Appeals Chamber further notes that the citations by Prlić, in support of his contention that Petković explicitly testified that Prlić could not issue operative orders to the military, are about other

³⁵⁴⁵ Prosecution's Response Brief (Prlić), para. 246.

³⁵⁴⁶ Prosecution's Response Brief (Prlić), para. 247.

³⁵⁴⁷ See Trial Judgement, Vol. 4, para. 106.

³⁵⁴⁸ Trial Judgement, Vol. 1, para. 704 & fn. 1651, referring to Ex. P00289, Arts 29, 34, Ex. P00588, Arts 29, 34.

³⁵⁴⁹ The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 16.1 and 16.2, which it dismisses elsewhere in the Judgement. See *infra*, paras 1146-1208.

³⁵⁵⁰ Trial Judgement, Vol. 4, para. 107 & fn. 321 and references cited therein.

³⁵⁵¹ The alleged contradiction at Prlić's Appeal Brief, fn. 1003, is not supported by the references to the evidence. The alleged contradiction at Prlić's Appeal Brief, fn. 1004, is not inconsistent with the challenged finding. The alleged contradiction at Prlić's Appeal Brief, fn. 1005, is obscure and vague.

³⁵⁵² Trial Judgement, Vol. 4, para. 107 & fn. 321, referring to Milivoj Petković, T(F). 50009-50010 (25 Feb 2010), 50342-50343 (3 Mar 2010).

matters³⁵⁵³ or only state that nobody outside the chain of command (namely Mate Boban and Stojić) issued orders to Petković or the army.³⁵⁵⁴ His arguments are dismissed.

1118. With regard to Prlić's challenge to the Trial Chamber's finding that he "issued decisions which had a direct impact on the course of the military operations",³⁵⁵⁵ the Appeals Chamber notes that the Trial Chamber based its finding on documents, signed by Prlić, relating to military matters.³⁵⁵⁶ While the impugned finding does not refer to any evidence concerning the direct impact of these documents on the course of the military operations of the HVO, the Appeals Chamber recalls that a trial judgement must be read as a whole.³⁵⁵⁷ Since the Trial Chamber made findings elsewhere in the Trial Judgement regarding the direct impact of these decisions,³⁵⁵⁸ and Prlić does not demonstrate any error in those findings,³⁵⁵⁹ the Appeals Chamber concludes that Prlić has failed to show that no reasonable trier of fact could have made the impugned finding.

1119. Prlić's contention that the Trial Chamber placed undue weight on the statements of representatives of the international community that he appeared to be very well-informed of the situation on the ground,³⁵⁶⁰ does not adequately address the broad range of evidence on which the Trial Chamber relied,³⁵⁶¹ offering only an unsupported claim about one allegedly contradictory piece of evidence.³⁵⁶² Thus, the contention is dismissed as a mere assertion that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber.

1120. With regard to Prlić's submission that the Trial Chamber erroneously concluded that he played a key role in a series of ceasefire negotiations in Gornji Vakuf and Mostar, the Appeals Chamber considers that the Trial Chamber's findings in this regard are based on clearly supportive evidence. For instance, the Trial Chamber relied on Ray Lane who testified to a meeting

³⁵⁵³ This includes, for example, Petković's description of his first time encounter with Prlić in July 1992 and the need for a decision made at the political level expressed at an HVO-ABiH meeting to remodel the command structure to improve efficiency. Prlić's Appeal Brief, para. 395 & fn. 1003, referring to, *inter alia*, Milivoj Petković, T. 49762-49764 (22 Feb 2010), 50775-50777 (10 Mar 2010).

³⁵⁵⁴ Prlić's Appeal Brief, para. 395 & fn. 1003, referring to, *inter alia*, Milivoj Petković, T. 50361-50362 (3 Mar 2010).

³⁵⁵⁵ Trial Judgement, Vol. 4, para. 107.

³⁵⁵⁶ See Trial Judgement, Vol. 4, para. 107 & fns 322-324, referring to, *inter alia*, Exs. P01184, P02967, P03038, p. 1, 1D01588. The Appeals Chamber dismisses Prlić's claim that Exhibit P02967 does not relate to military issues, considering that the exhibit contains an explicit order to military authorities. Further, the Appeals Chamber considers that even on the assumption that the Trial Chamber erred in finding that Exhibit P02967 was co-signed by Boban, Prlić fails to demonstrate that this would lead to any miscarriage of justice. See Trial Judgement, Vol. 4, para. 107 & fn. 323.

³⁵⁵⁷ *Šainović et al.* Appeal Judgement, paras 306, 321 and references cited therein.

³⁵⁵⁸ See, e.g., Trial Judgement, Vol. 2, paras 884-885 (referring to, *inter alia*, Ex. P03038, p. 1), Vol. 4, paras 126-127 (referring to, *inter alia*, Ex. P01184), 151-154 (referring to, *inter alia*, Ex. P03038), 265-267 (referring to, *inter alia*, Exs. P01184, P03038). See *infra*, paras 1149-1152, 1159-1160, 1165, 1171.

³⁵⁵⁹ See, e.g., *infra*, para. 1160 & fn. 3679 (referring to Ex. P01184), para. 1218 & fns 3820-3821 (referring to, *inter alia*, Ex. P03038).

³⁵⁶⁰ Trial Judgement, Vol. 4, para. 108.

³⁵⁶¹ See Trial Judgement, Vol. 4, fn. 325.

attended, *inter alios*, by Prlić that aimed at terminating the hostility in Gornji Vakuf, and on Exhibit 1D0218, a report on a meeting to find an interim arrangement for Mostar which, *inter alios*, Prlić attended.³⁵⁶³ Prlić bases his challenge to the credibility of this evidence on cross-references to his ground of appeal 6, which the Appeals Chamber dismisses elsewhere.³⁵⁶⁴ As such, he fails to demonstrate that the evidence lacks credibility. Further, he makes factual assertions that are not inconsistent with the impugned conclusions.³⁵⁶⁵ Thus, he has failed to show that no reasonable trier of fact could have made those findings. His submission is dismissed.

1121. Turning finally to Prlić's challenge to the Trial Chamber's finding that he had the power to co-ordinate the deployment of civilian police units that were under the direct authority of the Ministry of the Interior,³⁵⁶⁶ the Appeals Chamber considers that this finding was based on evidence on the basis of which a reasonable trier of fact could have made the impugned finding³⁵⁶⁷ and that Prlić has failed to point to evidence to the contrary.³⁵⁶⁸ The Trial Chamber relied, namely, on a letter from the Ministry of the Interior to, *inter alios*, Prlić, referring to a prior agreement on the governmental level as reflected in a statement by Prlić, that the civilian police be withdrawn from the front line, and the decision dated 20 October 1993 of the government of the HR H-B, signed by Prlić, on the same issue.³⁵⁶⁹ Prlić has also failed to demonstrate that the Trial Chamber contradicted itself when it found that he had the power to co-ordinate the deployment of these civilian police, and that his direct authority over HZ(R) H-B civilian police was not proven beyond a reasonable doubt, as these two findings are not mutually exclusive.³⁵⁷⁰ Prlić's challenge is therefore dismissed.

³⁵⁶² See Prlić's Appeal Brief, para. 400 & fns 1015-1016.

³⁵⁶³ See Trial Judgement, Vol. 4, para. 109, referring to, *e.g.*, Raymond Lane, T(F). 23687-23688 (15 Oct 2007), Ex. 1D02189 (confidential), p. 1.

³⁵⁶⁴ See *supra*, paras 212-218. Further, the Appeals Chamber fails to see why Witness DZ's statement that "the military conflict was not part of my business" (Witness DZ, T. 26494 (closed session) (22 Jan 2008)) would prevent him from providing credible evidence about Prlić's involvement in the ceasefire negotiations. See Trial Judgement, Vol. 4, para. 109 & fn. 327.

³⁵⁶⁵ Prlić's Appeal Brief, para. 401 at fns 1018 ("Petković and Pašalić signed the Order to stop the fighting in Gornji Vakuf after Petković received Boban's order."), 1019 ("P01215 confirms that Petković and Pašalić agreed that a joint order by the ABiH and HVO high commands be sent to the local commanders in Gornji Vakuf to ease tensions."), 1022 ("Boban was directly involved in ceasefire negotiations in relation to Mostar through his proposal for an interim agreement, although the Muslims did not accept it because they wanted Prlić to be the leader of both sides."). None of these assertions are inconsistent with the impugned Trial Chamber conclusions that Prlić played a key role in a series of ceasefire negotiations in Gornji Vakuf in January 1993 and in Mostar in December 1993 and around January 1994. Trial Chamber, Vol. 4, para. 109.

³⁵⁶⁶ Trial Judgement, Vol. 4, para. 110.

³⁵⁶⁷ See Trial Judgement, Vol. 4, para. 110, referring to Exs. P05963, P06837.

³⁵⁶⁸ See Prlić's Appeal Brief, para. 402 & fn. 1025 and references cited therein.

³⁵⁶⁹ Exs. P05963, P06837.

³⁵⁷⁰ Trial Judgement, Vol. 1, para. 655. The Appeals Chamber notes that the Trial Chamber expressly recalled this finding in Trial Judgement, Vol. 4, para. 110.

c. Conclusion

1122. For the foregoing reasons, the Appeals Chamber concludes that Prlić has failed to demonstrate that the Trial Chamber erred in concluding that he had power in military matters and that the HVO/Government of the HZ(R) H-B had the power and responsibility to control the HVO. As a result, the Appeals Chamber dismisses Prlić's sub-ground of appeal 12.1.

(iii) Prlić's knowledge of combat activities (Prlić's Sub-ground 12.2)

1123. The Trial Chamber found that reports on the HVO's combat activities were compiled by the Main Staff and routinely sent to the President of the HZ H-B, the Government, and the Head of the Department of Defence.³⁵⁷¹

1124. Prlić submits that the Trial Chamber erred in concluding that reports on combat activities of the HVO were routinely sent to the Government,³⁵⁷² arguing that the cited documents are not reports on combat activities³⁵⁷³ and that the Trial Chamber ignored relevant evidence.³⁵⁷⁴

1125. The Prosecution responds that Prlić ignores other findings demonstrating that he and his Government were well-informed of the military situation and, in any event, fails to show how the impugned finding, even if erroneous, could have impacted the verdict.³⁵⁷⁵

1126. The Appeals Chamber notes that the impugned finding was based, in part, on reports that included information on HVO combat activities,³⁵⁷⁶ and therefore dismisses Prlić's argument to the contrary. Regarding the allegedly ignored evidence, the Appeals Chamber considers that Prlić's factual assertions are not inconsistent with the impugned finding, as they do not deal with whether information on HVO combat activities was sent to the Government,³⁵⁷⁷ and therefore dismisses his argument in this regard. In any event, Prlić ignores other factual findings which further support the impugned finding.³⁵⁷⁸ For these reasons, the Appeals Chamber considers that Prlić has failed to establish that no reasonable trier of fact could have reached the Trial Chamber's conclusion.³⁵⁷⁹ Prlić's sub-ground of appeal 12.2 is dismissed.

³⁵⁷¹ Trial Judgement, Vol. 1, paras 767. See Trial Judgement, Vol. 1, paras 766, 768.

³⁵⁷² Prlić's Appeal Brief, para. 403; Appeal Hearing, AT. 138 (20 Mar 2017).

³⁵⁷³ Prlić's Appeal Brief, paras 403, 405.

³⁵⁷⁴ Prlić's Appeal Brief, paras 404, 406. See Prlić's Appeal Brief, para. 407, referring to Prlić's Appeal Brief, sub-ground of appeal 11.3.

³⁵⁷⁵ Prosecution's Response Brief (Prlić), para. 248. See Prosecution's Response Brief (Prlić), para. 232.

³⁵⁷⁶ See Trial Judgement, Vol. 1, para. 767 & fn. 1786, referring to, *inter alia*, Exs. P07302, pp. 2-4, 4D00830, pp. 1-2.

³⁵⁷⁷ See Prlić's Appeal Brief, paras 404, 406.

³⁵⁷⁸ See Trial Judgement, Vol. 1, paras 767-768.

³⁵⁷⁹ The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 11.3, which it dismisses elsewhere in the Judgement. See *supra*, paras 1048-1058.

(iv) Conclusion

1127. Having dismissed Prlić's sub-grounds of appeal 12.1 and 12.2, the Appeals Chamber finds that he has failed to demonstrate any error regarding his JCE convictions under his ground of appeal 12, which is consequently dismissed in its entirety.

(c) Alleged errors regarding Prlić's powers pertaining to humanitarian aid (Prlić's Ground 14)

1128. The Trial Chamber found that Prlić held the power to negotiate and authorise the delivery of humanitarian aid in the territory of the HZ(R) H-B and in BiH.³⁵⁸⁰ This finding was based on, *inter alia*, the finding that in June to August 1993, Prlić participated in many meetings with representatives of international organisations negotiating free access for humanitarian convoys to the HZ(R) H-B.³⁵⁸¹

(i) Arguments of the Parties

1129. Prlić submits that the Trial Chamber erred in law and fact in concluding that he, as President of the HVO/Government of the HZ(R) H-B, had the power to negotiate and authorise the delivery of humanitarian aid in the territory of the HZ(R) H-B and BiH.³⁵⁸² Prlić argues that the Trial Chamber erroneously relied on: (1) Exhibit 1D00898, which does not grant authorisation to negotiate and authorise delivery of humanitarian aid;³⁵⁸³ (2) Witness Klaus Johann Nissen's speculative testimony;³⁵⁸⁴ and (3) the testimony of Witness BA who was not responsible for convoys and lacked credibility.³⁵⁸⁵

1130. Prlić further contends that the Trial Chamber erroneously concluded that from June to August 1993 he participated in many meetings between representatives of international organisations and the HVO negotiating free access for humanitarian convoys, as none of the

³⁵⁸⁰ Trial Judgement, Vol. 4, para. 118.

³⁵⁸¹ Trial Judgement, Vol. 4, para. 117. See Trial Judgement, Vol. 4, paras 115-116, 118.

³⁵⁸² Prlić's Appeal Brief, paras 428, 437; Appeal Hearing, AT. 145 (20 Mar 2017). Specifically, Prlić alleges that by attaching undue weight to certain evidence, and ignoring other evidence, the Trial Chamber failed to provide a reasoned opinion and applied an incorrect standard in the assessment of evidence, amounting to an error of law. Prlić's Appeal Brief, para. 437.

³⁵⁸³ Prlić's Appeal Brief, para. 435, referring to Ex. 1D00898 (a decision appointing Prlić member of the RBiH Government Staff for the Collection of Items to Help the RBiH Population Survive). See Prlić's Appeal Brief, para. 436, referring to Prlić's Appeal Brief, sub-ground of appeal 16.4.7.

³⁵⁸⁴ Prlić's Appeal Brief, para. 428.

³⁵⁸⁵ Prlić's Appeal Brief, para. 429, referring to, *inter alia*, Prlić's Appeal Brief, paras 182-183 (sub-ground of appeal 6.2). See Prlić's Reply Brief, paras 66-67. Prlić further argues that the Trial Chamber inferred from a bar table document the conclusion, which was speculative and not the only plausible one, that since the UNHCR reported an incident to Prlić in February 1993 and Ćorić responded to that report, Prlić must have entrusted Ćorić with the matter. Prlić's Appeal Brief, para. 430, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3.

evidence it relied on refers to “negotiations of free access of humanitarian aid” with him.³⁵⁸⁶ Finally, Prlić claims that the Trial Chamber ignored evidence relevant to the agreement made on 10 July 1993 between the ABiH and the HVO on the free passage of humanitarian convoys, (“Makarska Agreement”),³⁵⁸⁷ as well as evidence that other persons had the power to approve the passage of humanitarian aid, whereas there is no evidence that he had any such power.³⁵⁸⁸ As a result, Prlić argues that he should be acquitted of Count 25.³⁵⁸⁹

1131. The Prosecution responds that Prlić misrepresents the factual findings and the evidence, fails to substantiate his claims that the Trial Chamber improperly assessed or ignored evidence, and fails to demonstrate that no reasonable trial chamber could have made the challenged findings.³⁵⁹⁰

(ii) Analysis

1132. Turning first to Prlić’s challenge based on Exhibit 1D00898, the Appeals Chamber observes that the Trial Chamber relied on this exhibit to find that “on 17 November 1992, Mile Akmadžić, President of the Government of the RBiH, appointed Jadranko Prlić as the representative of the BiH Government, in particular, for co-operation with the logistics centres of the Republic of Croatia in the distribution of humanitarian aid to the inhabitants of BiH”,³⁵⁹¹ a finding supported by that exhibit and relevant to the impugned finding.³⁵⁹² The Appeals Chamber further observes that in the part of Nissen’s testimony on which the Trial Chamber relied, he appears to infer Prlić’s authority regarding humanitarian convoys from Prlić’s position.³⁵⁹³ The Appeals Chamber considers that Prlić has failed to demonstrate that no reasonable trier of fact could have relied on this evidence, in combination with other evidence, to reach the impugned finding.³⁵⁹⁴ Further, the Appeals Chamber considers that Prlić has failed to demonstrate that Witness BA lacked credibility or, considering

³⁵⁸⁶ Prlić’s Appeal Brief, para. 431. See Prlić’s Appeal Brief, para. 432, referring to Prlić’s Appeal Brief, sub-ground of appeal 16.4.

³⁵⁸⁷ Prlić’s Appeal Brief, para. 433.

³⁵⁸⁸ Prlić’s Appeal Brief, para. 434.

³⁵⁸⁹ Prlić’s Appeal Brief, para. 438. See also Prlić’s Reply Brief, para. 65.

³⁵⁹⁰ Prosecution’s Response Brief (Prlić), paras 261-268.

³⁵⁹¹ Trial Judgement, Vol. 4, para. 115, referring to Ex. 1D00898.

³⁵⁹² The Appeals Chamber observes that the cited exhibit refers to Prlić being a representative of, and supporting the distribution of humanitarian aid to the inhabitants of, the “RBiH” rather than “BiH”, but considers this difference to be immaterial in the context of the Trial Chamber’s assessment of Prlić’s powers pertaining to humanitarian aid. The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 16.4.7, which it dismisses elsewhere in the Judgement. See *infra*, paras 1262-1285.

³⁵⁹³ Klaus Johann Nissen, T. 20467-20468 (25 June 2007) (“Q. We see in -- in this document on the third page there’s a list of people who attended – there’s a list of people who attended the meeting. It says: ‘For the Croatian Defence Council, Dr. Jadranko Prlić[ć].’ Are you in a position to comment on his authority regarding matters such as these, humanitarian convoys, to conclude such an agreement? A. I think he was authorised to conclude such an agreement, because he was the head, as I might call him, of the HVO, and it concerned the HVO as a whole, politically and militarily, to agree to such convoys to the north, to middle Bosnia”).

³⁵⁹⁴ See Trial Judgement, Vol. 4, paras 115-118. The Appeals Chamber also notes that Prlić’s assertions regarding Nissen’s whereabouts, knowledge, and testimony are not supported by his references to the trial record. See Prlić’s Appeal Brief, para. 428 at fns 1108-1110.

his/her background, that no reasonable trier of fact could have relied on his/her evidence because the witness was not responsible for convoys.³⁵⁹⁵ These arguments are dismissed.

1133. Turning to Prlić's challenge to the Trial Chamber's finding that from June to August 1993 he participated in many meetings with representatives of international organisations negotiating free access for humanitarian convoys, the Appeals Chamber observes that in making this finding the Trial Chamber recalled a series of factual findings pertaining to Prlić's participation in contemporaneous meetings concerning freedom of access for humanitarian convoys.³⁵⁹⁶ Regarding Prlić's argument that none of the evidence the Trial Chamber relied on refers to "negotiations of free access of humanitarian aid" with him, the Appeals Chamber considers that the Trial Chamber relied on evidence of several meetings dealing with access of humanitarian convoys in which Prlić participated,³⁵⁹⁷ and that Prlić has failed to demonstrate that no reasonable trier of fact could have relied on that evidence to make the impugned finding.³⁵⁹⁸ As to Prlić's argument that the Trial Chamber ignored evidence relevant to the Makarska Agreement, the Appeals Chamber considers that he has failed to explain why his assertions in this regard are inconsistent with the challenged finding.³⁵⁹⁹ Finally, the Appeals Chamber considers that Prlić is wrong when he states that there is no evidence that he had any power to approve the passage of humanitarian aid.³⁶⁰⁰ As such, his assertion that other persons had that power is not inconsistent with the impugned finding. These arguments are dismissed.

1134. In light of the foregoing, the Appeals Chamber dismisses Prlić's ground of appeal 14.

³⁵⁹⁵ See Trial Judgement, Vol. 4, para. 116 & fn. 344 and references cited therein. The Appeals Chamber notes in this regard that Prlić refers to his submissions in sub-ground of appeal 6.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218. With regard to the alleged error in interpreting a bar table document, the Appeals Chamber considers that Prlić fails to demonstrate that no reasonable trial chamber could have drawn the inference that Prlić must have entrusted Ćorić with the matter, in light of Witness BA's evidence on Prlić's role with regard to the passage of humanitarian convoys. See Trial Judgement, Vol. 4, para. 116 & fn. 344. The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

³⁵⁹⁶ Trial Judgement, Vol. 4, para. 117, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1230, 1238-1239.

³⁵⁹⁷ Trial Judgement, Vol. 2, paras 1230 (referring to, *inter alia*, Ex. P09712 (confidential), para. 64), 1238 (referring to, *inter alia*, Witness BC, T(F). 18360-18365 (closed session) (14 May 2007), Ex. P09999 (confidential)), 1239 (referring to, *inter alia*, Exs. P10367 (confidential), para. 79, P04027 (confidential), pp. 1-2). For context, see Exs. P09712 (confidential), paras 62-63, 65, P10367 (confidential), paras 80-81. See also Trial Judgement, Vol. 4, para. 117, referring to, *inter alia*, Ex. P10264.

³⁵⁹⁸ The Appeals Chamber notes that Prlić makes factual assertions that are not inconsistent with the challenged finding. See Prlić's Appeal Brief, para. 431 at fns 1117-1118. The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 16.4, which it dismisses elsewhere in the Judgement. See *infra*, paras 1222-1285.

³⁵⁹⁹ See Prlić's Appeal Brief, para. 433. Cf. Prlić's Appeal Brief, paras 428, 431; Trial Judgement, Vol. 4, para. 117. The Appeals Chamber notes that Prlić does not challenge in his ground of appeal 14 any findings on his *mens rea*.

³⁶⁰⁰ See *supra*, para. 1132.

(d) Alleged errors regarding Prlić's role in the relations between HZ(R) H-B and Croatia(i) Prlić's ties with leaders of Croatia (Prlić's Ground 15)

1135. The Trial Chamber found that between September 1992 and the end of April 1994, Prlić attended five meetings in Croatia with Franjo Tuđman, President of Croatia, and other Croatian leaders.³⁶⁰¹ The Trial Chamber also found that Prlić worked on economic co-operation between the HZ(R) H-B and Croatia and co-operated with the Croatian ODPB in organising the departure of Muslims "wishing to leave" the HZ H-B for Croatia or third countries.³⁶⁰²

1136. Prlić submits that the Trial Chamber erred in law and fact by finding that he, as President of the HVO/Government of the HZ(R) H-B, played a key role in the relations of the HVO/Government of the HZ(R) H-B with the Government of Croatia.³⁶⁰³ Prlić first challenges the finding that from September 1992 to April 1994 he attended five meetings in Croatia with Tuđman and other Croatian leaders, arguing that the evidence shows that after the first meeting on 17 September 1992 he did not meet with Tuđman again until 5 November 1993.³⁶⁰⁴ Second, Prlić submits that the Trial Chamber erroneously concluded that he worked on economic co-operation between HZ(R) H-B and Croatia, when in fact no economic issue or co-operation was discussed.³⁶⁰⁵ Finally, Prlić submits that the Trial Chamber erroneously found that he co-operated with the Croatian ODPB in organising the departure of Muslims, relying on one document from Witness BA and one bar table document.³⁶⁰⁶ As a result, Prlić argues that the Trial Chamber's findings on his JCE membership and significant contribution to the JCE are erroneous and that he should be acquitted on Counts 1-25.³⁶⁰⁷

1137. The Prosecution responds that the Trial Chamber's findings are reasonable and that Prlić fails to show otherwise, instead making unsubstantiated or irrelevant assertions and offering alternative explanations of the evidence.³⁶⁰⁸ In addition, the Prosecution argues that Prlić fails to

³⁶⁰¹ Trial Judgement, Vol. 4, para. 119.

³⁶⁰² Trial Judgement, Vol. 4, para. 120.

³⁶⁰³ Prlić's Appeal Brief, paras 439, 447. Specifically, Prlić alleges that by attaching undue weight to certain evidence, and ignoring other evidence, the Trial Chamber failed to provide a reasoned opinion and applied an incorrect standard in the assessment of evidence, amounting to an error of law. Prlić's Appeal Brief, para. 447.

³⁶⁰⁴ Prlić's Appeal Brief, para. 439. See Prlić's Appeal Brief, para. 440, referring to Prlić's Appeal Brief, ground of appeal 18. See also Prlić's Appeal Brief, para. 441. Prlić also argues that the Trial Chamber erred in relying on the Mladić Diaries. Prlić's Appeal Brief, para. 442. See Prlić's Appeal Brief, para. 443, referring to Prlić's Appeal Brief, ground of appeal 5.

³⁶⁰⁵ Prlić's Appeal Brief, para. 444; Prlić's Reply Brief, para. 68.

³⁶⁰⁶ Prlić's Appeal Brief, para. 445. See Prlić's Appeal Brief, para. 446, referring to Prlić's Appeal Brief, sub-grounds of appeal 16.6.3-16.6.4.

³⁶⁰⁷ Prlić's Appeal Brief, paras 439, 448.

³⁶⁰⁸ Prosecution's Response Brief (Prlić), paras 269-273, 275; Appeal Hearing, AT. 196-200, 203-205 (20 Mar 2017).

show how his arguments, even if accepted, would warrant reversing his convictions on Counts 1-25.³⁶⁰⁹

1138. The Appeals Chamber observes that Prlić's argument that, after the first meeting on 17 September 1992, he did not meet Tuđman again until 5 November 1993 is not inconsistent with the impugned finding that they met five times between September 1992 and the end of April 1994. Further, the evidence on which the Trial Chamber relied supports the fact that Prlić met with Tuđman five times within this time period.³⁶¹⁰ The Appeals Chamber therefore dismisses this argument. The Appeals Chamber further considers that Prlić has failed to show that no reasonable trier of fact could have concluded that he worked on economic co-operation between HZ(R) H-B and Croatia, as the two exhibits on which the Trial Chamber relied support its finding.³⁶¹¹ His submission in this regard is therefore dismissed. Finally, the Appeals Chamber considers that the Trial Chamber's finding that Prlić co-operated with the Croatian ODPB in organising the departure of Muslims is supported by the evidence on which the Trial Chamber relied³⁶¹² and dismisses Prlić's submission accordingly.³⁶¹³

1139. For the foregoing reasons, the Appeals Chamber dismisses Prlić's ground of appeal 15.

(ii) Prlić's knowledge of an international armed conflict involving Croatia (Prlić's Sub-ground 16.16)

1140. The Trial Chamber found that Prlić knew that an international armed conflict between the HVO/HV and the ABiH was taking place while he held the posts of "HVO President" and President of the Government of the HR H-B, as he: (1) was informed of the HVO military operations against the ABiH; and (2) knew about the participation of Croatia in this conflict, and facilitated it.³⁶¹⁴

³⁶⁰⁹ Prosecution's Response Brief (Prlić), paras 270, 274.

³⁶¹⁰ Trial Judgement, Vol. 4, para. 119 & fn. 348, referring to Exs. P00498, P06454, P06581, P07570, P07856. The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 18, which it dismisses elsewhere in the Judgement. See *infra*, paras 1391-1399. In addition, the Appeals Chamber dismisses as irrelevant the factual submissions made in Prlić's Appeal Brief, para. 441. With regard to Prlić's claim that the Trial Chamber erred in relying on the Mladić Diaries, the Appeals Chamber notes that it is entirely based on a cross-reference to his ground of appeal 5, which it dismisses elsewhere in the Judgement. See *supra*, paras 107-138.

³⁶¹¹ See Trial Judgement, Vol. 4, para. 120 & fn. 353, referring to Exs. P00498, p. 30 (referring to discussions on customs), P06454, pp. 37-39. The Appeals Chamber observes that the latter reference does not directly concern economic co-operation with Croatia. As pointed out by the Prosecution, other parts of Exhibit P06454 provide support for the relevant factual finding. See Prosecution's Response Brief (Prlić), fn. 935, referring to, *inter alia*, Ex. P06454, pp. 31, 34. Noting that the Trial Chamber relied on these pages elsewhere in the relevant section of the Trial Judgement, the Appeals Chamber finds that Prlić does not demonstrate a factual error resulting in a miscarriage of justice. See Trial Judgement, Vol. 4, para. 119 & fn. 349, referring to, *inter alia*, Ex. P06454, pp. 30-39 (referring to, *inter alia*: (1) co-operation between the respective ministries of finance; and (2) potential Croatian investments).

³⁶¹² See Trial Judgement, Vol. 4, para. 120 & fn. 355, referring to Exs. P07019, P09679 (confidential), p. 1.

³⁶¹³ The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 16.6.3 and 16.6.4, which it dismisses elsewhere in the Judgement. See *infra*, paras 1300, 1304-1306, 1308-1309, 1315, 1317.

³⁶¹⁴ Trial Judgement, Vol. 4, para. 277.

1141. Prlić submits that the Trial Chamber erroneously concluded that he facilitated Croatia's participation in the armed conflict and knew that it was international in character.³⁶¹⁵ Prlić argues in this regard that: (1) there was no international armed conflict; and (2) Witness Ray Lane's evidence that he was informed of the HVO military operations against the ABiH is unsubstantiated.³⁶¹⁶

1142. The Prosecution responds that the Trial Chamber reasonably found that Prlić was aware of the international character of the armed conflict and his submissions should be summarily dismissed.³⁶¹⁷

1143. The Appeals Chamber notes that Prlić provides no support for his argument that there was no international armed conflict; rather, he refers to the Trial Chamber's finding that there *was* an international conflict.³⁶¹⁸ The Appeals Chamber therefore dismisses this argument as a mere assertion unsupported by any evidence. With regard to Prlić's challenge to Lane's evidence, the Appeals Chamber notes that the Trial Chamber based the impugned finding only in part on the evidence of Lane. Prlić ignores the remaining evidentiary basis of the finding³⁶¹⁹ without explaining why the conviction should not stand on the basis of the remaining evidence.³⁶²⁰ The Appeals Chamber therefore dismisses this argument. For these reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 16.16.

3. Alleged errors in relation to Prlić's significant contribution to the CCP and his intent

1144. The Trial Chamber found that Prlić, by his acts or failures to act in exercising his functions, was a principal member of the JCE, significantly contributed to it, and intended to implement the CCP, an intention he shared with the other JCE members.³⁶²¹

1145. In the present section, the Appeals Chamber will address Prlić's challenges to the Trial Chamber's findings regarding his: (1) contribution to the JCE in the municipalities of Gornji Vakuf, Prozor, Jablanica, Mostar, and Vareš; (2) involvement in the arrest and detention of Muslims, the movement of population, and the concealment of crimes; and (3) *mens rea* and *actus reus* of commission through a JCE.

³⁶¹⁵ Prlić's Appeal Brief, paras 624-625.

³⁶¹⁶ Prlić's Appeal Brief, para. 624. See Prlić's Appeal Brief, para. 626, referring to Prlić's Appeal Brief, paras 202-203 (sub-ground of appeal 6.2), ground of appeal 15, para. 649 (ground of appeal 18).

³⁶¹⁷ Prosecution's Response Brief (Prlić), para. 398.

³⁶¹⁸ See Prlić's Appeal Brief, para. 624 & fn. 1598, referring to Trial Judgement, Vol. 4, para. 277.

³⁶¹⁹ See Trial Judgement, Vol. 4, para. 277, referring to Ray Lane, T(F). 23681-23684, 23687-23688, 23691, 23697 (15 Oct 2007), Exs. P01215, P03038, Trial Judgement, Vol. 4, paras 119-120.

³⁶²⁰ The Appeals Chamber also notes that Prlić refers to his submissions in (sub-)grounds of appeal 6.2, 15, and 18, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218, 1135-1139; *infra*, paras 1391-1399.

³⁶²¹ See Trial Judgement, Vol. 4, paras 122-276.

(a) Gornji Vakuf Municipality (Prlić's Sub-ground 16.1)(i) The 15 January 1993 Ultimatum (Prlić's Sub-ground 16.1.1)

1146. The Trial Chamber found that on 15 January 1993, Prlić signed a decision, adopted at an HVO session that same day, whereby all ABiH units stationed in the so-called Croatian provinces 3, 8, and 10 were to submit themselves to the command of the HVO Main Staff within five days ("15 January 1993 Ultimatum").³⁶²² It further found that by drafting, *inter alia*, this ultimatum, Prlić significantly contributed to the implementation of the JCE in Gornji Vakuf Municipality.³⁶²³

a. Arguments of the Parties

1147. Prlić submits that the Trial Chamber erred in making these findings by mischaracterising evidence and disregarding relevant evidence.³⁶²⁴ He asserts in particular that: (1) the 15 January 1993 Ultimatum and "orders by Stojić and Petković" did not represent an "ultimatum" to the ABiH;³⁶²⁵ (2) the Trial Chamber ignored evidence that Alija Izetbegović signed the constitutional principles of the Vance-Owen Plan, and that its Annex VII provided for a withdrawal of all formations into provinces where the ethnic group of their affiliation represented the majority until complete demilitarisation was reached;³⁶²⁶ (3) the 15 January 1993 Ultimatum implemented the agreement reached in Zagreb on the same day;³⁶²⁷ and (4) after Izetbegović reneged on this agreement, Mate Boban accordingly issued an order to withdraw the 15 January 1993 Ultimatum, with which the HVO HZ H-B complied.³⁶²⁸ Finally, Prlić argues that the Trial Chamber erred in

³⁶²² Trial Judgement, Vol. 4, paras 125, 127.

³⁶²³ Trial Judgement, Vol. 4, para. 271.

³⁶²⁴ Prlić's Appeal Brief, para. 451. See Appeal Hearing, AT. 139-142, 162 (20 Mar 2017). Prlić also argues that the Trial Chamber erred in relying on Witness William Tomljanovich. Prlić's Appeal Brief, para. 451, referring to Prlić's ground of appeal 4.2. See also Prlić's Appeal Brief, paras 449-450, 627-629.

³⁶²⁵ Prlić's Appeal Brief, para. 452; Appeal Hearing, AT. 139-142, 160-162, 169-170, 243 (20 Mar 2017). See Prlić's Appeal Brief, para. 451. See also Appeal Hearing, AT. 244 (20 Mar 2017). In this regard, Prlić further argues, *inter alia*, that: (1) the decision and orders called for reciprocity in re-subordination, the establishment of an ABiH-HVO joint command, and HVO commanders to initiate talks with ABiH commanders on the best way of setting up joint commands; (2) the decision and orders prescribed no measures for lack of compliance (referring to Witness Christopher Beese's evidence); (3) weapons flowed freely from the HZ H-B to the ABiH at that time, including the area of Gornji Vakuf; and (4) the HVO HZ H-B resolved to provide help to HVO units in Provinces 1, 5, and 9 according to the Vance-Owen Peace Plan which were to be subordinated to the ABiH. Prlić's Appeal Brief, para. 452; Appeal Hearing, AT. 139-140 (20 Mar 2017).

³⁶²⁶ See Prlić's Appeal Brief, para. 455; Appeal Hearing, AT. 159-160, 243 (20 Mar 2017). See also Appeal Brief, para. 454. In this regard, Prlić further contends that the ICFY's co-chairmen concurred that it was up to the ABiH and HVO to make arrangements concerning this withdrawal. Prlić's Appeal Brief, para. 455.

³⁶²⁷ Prlić's Appeal Brief, paras 456-459; Appeal Hearing, AT. 160-162, 170, 243 (20 Mar 2017). See Appeal Hearing, AT. 140 (20 Mar 2017). Prlić submits that this agreement had to be implemented swiftly due to the tensions erupting in Gornji Vakuf. Appeal Hearing, AT. 160-162, 169-170, 241-244 (20 Mar 2017). In particular, Prlić contends that the Trial Chamber disregarded its own finding that on 18 January 1993, Mate Boban and Mile Akmadžić sent a letter to Alija Izetbegović explaining that the 15 January 1993 Ultimatum was "in accordance with the Geneva Conference". Prlić's Appeal Brief, para. 457; Appeal Hearing, AT. 140 (20 Mar 2017). See also Prlić's Appeal Brief, para. 456.

³⁶²⁸ Prlić's Appeal Brief, para. 459; Appeal Hearing, AT. 141, 160-161, 243 (20 Mar 2017). See also Appeal Hearing, AT. 133-134 (20 Mar 2017).

finding that HVO Colonel Miro Andrić issued two orders for subordination, on 14 and 16 January 1993 considering: (1) that an order issued on 14 January 1993 could not have been based on the 15 January 1993 Ultimatum; and (2) the lack of corroborating evidence that there was any other “decision” or “subordination order”.³⁶²⁹

1148. The Prosecution responds that the Trial Chamber’s findings on the 15 January 1993 Ultimatum are reasonable.³⁶³⁰ It contends further that in claiming that there was no ultimatum, Prlić makes irrelevant and erroneous assertions.³⁶³¹ The Prosecution argues that the Trial Chamber considered evidence “that Izetbegović signed the constitutional principles” since it found that the Muslims accepted those principles.³⁶³² It contends that Prlić mischaracterises the evidence and the Trial Judgement by suggesting that the 15 January 1993 Ultimatum was in accordance with the Vance-Owen Peace Plan.³⁶³³ The Prosecution further submits that Prlić’s claim of a Zagreb agreement relies almost entirely on the self-serving claims of Praljak, who even conceded that Izetbegović never signed the document containing the alleged agreement.³⁶³⁴ The Prosecution contends that: (1) Prlić’s claim that Boban “withdrew” the 15 January 1993 Ultimatum is not supported by the evidence cited;³⁶³⁵ and (2) he erroneously claims that the Trial Chamber found that two “subordination orders” existed.³⁶³⁶

b. Analysis

1149. The Appeals Chamber turns first to Prlić’s submission that the Trial Chamber mischaracterised the evidence and disregarded relevant evidence.³⁶³⁷ With regard to Prlić’s argument that the 15 January 1993 Ultimatum and orders by Stojić and Petković did not represent an “ultimatum” to the ABiH, the Appeals Chamber considers that a reasonable trier of fact could have reached the conclusion of the Trial Chamber,³⁶³⁸ based on, notably, the findings, supported by ample evidence, that: (1) the 15 January 1993 Ultimatum contained an order to all ABiH units in

³⁶²⁹ Prlić’s Appeal Brief, para. 453, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 125.

³⁶³⁰ Prosecution’s Response Brief (Prlić), paras 280-282; Appeal Hearing, AT. 181, 192, 208-210 (20 Mar 2017). See also Prosecution’s Response Brief (Prlić), paras 276-279.

³⁶³¹ Prosecution’s Response Brief (Prlić), para. 281. See Appeal Hearing, AT. 181 (20 Mar 2017).

³⁶³² Prosecution’s Response Brief (Prlić), para. 282.

³⁶³³ Prosecution’s Response Brief (Prlić), para. 282; Appeal Hearing, AT. 182 (20 Mar 2017).

³⁶³⁴ Prosecution’s Response Brief (Prlić), para. 283. It asserts that Prlić fails to demonstrate that the Trial Chamber acted unreasonably when it declined to credit Slobodan Praljak’s testimony, which is contradicted by contemporaneous records. Prosecution’s Response Brief (Prlić), para. 283.

³⁶³⁵ Prosecution’s Response Brief (Prlić), para. 284. The Prosecution further contends that Prlić fails to explain how the Trial Chamber disregarded its finding on the 18 January 1993 letter. Prosecution’s Response Brief (Prlić), para. 283.

³⁶³⁶ Prosecution’s Response Brief (Prlić), para. 285.

³⁶³⁷ With regard to Prlić’s argument that the Trial Chamber erred in relying on Tomljanovich, the Appeals Chamber notes that it is entirely based on a cross-reference to his sub-ground of appeal 4.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 204-211.

³⁶³⁸ See, in particular, Exs. P01139, nos 4, 8, P01140, nos 2-3, 7, P01146/P01155, nos 1, 4-5. The Appeals Chamber understands Prlić to refer for the finding of an “ultimatum” to the challenged findings in Trial Judgement, Vol. 4, paras 127, 271, which in turn are based on challenged findings in Trial Judgement, Vol. 4, para. 125, and underlying findings.

the so-called Croatian provinces under the Vance-Owen Peace Plan to subordinate themselves to the HVO within five days;³⁶³⁹ (2) Stojić's order down the chain of command of the same day, implementing the decision, prescribed measures in case of failure to comply;³⁶⁴⁰ and (3) Stojić's order was restated in substance in the order of the same day sent down the chain of command by Petković.³⁶⁴¹

1150. The evidence that Prlić refers to in support of his argument that the decision and orders at issue do not represent an ultimatum³⁶⁴² does not show that no reasonable trier of fact could have reached the findings of the Trial Chamber.³⁶⁴³ Prlić's submissions in this regard amount to a mere disagreement with the Trial Chamber's interpretation of the evidence. In particular, contrary to his assertions,³⁶⁴⁴ the evidence he refers to supports the Trial Chamber's findings that the 15 January 1993 Ultimatum as implemented by the orders down the HVO chain of command foresaw measures for lack of compliance.³⁶⁴⁵ This argument is dismissed.

1151. The Appeals Chamber notes that the Trial Chamber explicitly found that the Muslims accepted the constitutional principles of the Vance-Owen Peace Plan³⁶⁴⁶ and therefore dismisses Prlić's claim that the Trial Chamber ignored evidence to this effect. Insofar as Prlić calls into question the findings on the character of the decision and the orders as an ultimatum by referring to Annex VII of the Vance-Owen Peace Plan providing for a withdrawal of all units into their ethnic majority provinces until complete demilitarisation, the Appeals Chamber considers that Prlić has failed to demonstrate that an agreement concerning withdrawal had been reached.³⁶⁴⁷ Similarly,

³⁶³⁹ Trial Judgement, Vol. 4, para. 125, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 452.

³⁶⁴⁰ Trial Judgement, Vol. 4, para. 125, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 453.

³⁶⁴¹ Trial Judgement, Vol. 4, para. 125, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 454.

³⁶⁴² Prlić's Appeal Brief, para. 452 & fn. 1145.

³⁶⁴³ Further, the Appeals Chamber notes that the referenced evidence does not provide support for Prlić's assertions that the 15 January 1993 Ultimatum and the two orders down the chain of command did not contain an ultimatum since (as Prlić appears to assert by way of referencing evidence to this effect) an agreement on a joint command was allegedly reached in Zagreb. See *infra*, fn. 3648. Other evidence that Prlić refers to supports the Trial Chamber's findings of an ultimatum (see, e.g., Exs. P01139 nos 4, 8, P01140, nos 2-3, 7, P01146/P01155, nos 1, 4-5) or is irrelevant (see, e.g., Exs. P01032, p. 16 (referring to an HVO order in relation to Travnik, Mostar, and Posavina only), P03642, pp. 1-2). The Appeals Chamber notes in particular that Prlić's assertions regarding reciprocal subordination and an ABiH-HVO joint command are not inconsistent with the finding of the 15 January 1993 decision's and the orders' nature as an ultimatum. See also Trial Judgement, Vol. 1, para. 399.

³⁶⁴⁴ Prlić's Appeal Brief, para. 452 & fn. 1148.

³⁶⁴⁵ Exs. P01139, nos 4, 8, P01140, nos 2-3, 7, P01146/P01155, nos 4-6. Beese's lack of knowledge of such measures is of no assistance to Prlić's argument. Christopher Beese, T. 5205-5206 (21 Aug 2006). Further, the Appeals Chamber considers that Prlić's assertions on the free flow of weapons into Gornji Vakuf and the resolve of the HVO HZ H-B to assist HVO units in Provinces 1, 5, and 9 are irrelevant to his challenge to the characterisation as an "ultimatum" of the 15 January 1993 decision and the two orders.

³⁶⁴⁶ Trial Judgement, Vol. 1, para. 451.

³⁶⁴⁷ See Prlić's Appeal Brief, para. 455. Prlić makes submissions and refers to evidence suggesting that agreement on this matter had yet to be reached. See *supra*, fn. 3626. See also Trial Judgement, Vol. 1, para. 451.

Prlić has failed to demonstrate the existence of a “Zagreb agreement”.³⁶⁴⁸ The Appeals Chamber therefore dismisses these arguments.³⁶⁴⁹

1152. As for Prlić’s argument that Izetbegović reneged on the alleged Zagreb agreement, and that as a result, Boban issued an order to withdraw the 15 January 1993 Ultimatum, which was complied with, the Appeals Chamber has examined the evidence that Prlić cites in support of this argument.³⁶⁵⁰ At the outset, the Appeals Chamber observes that since Prlić has failed to demonstrate the existence of a “Zagreb agreement”,³⁶⁵¹ it follows that he fails to show that Izetbegović reneged on it. In this regard, the Appeals Chamber further observes that Exhibit P01158 does not confirm that he reneged on the alleged agreement – rather, Gojko Šušak, speaking to Izetbegović, refers to a “gentleman’s agreement that you *would work on this*”,³⁶⁵² and the exhibit contains no answer from Izetbegović confirming that he was distancing himself from any such agreement. With regard to Praljak’s testimony on the matter,³⁶⁵³ the Appeals Chamber recalls that the Trial Chamber found parts of Praljak’s testimony “hardly credible”.³⁶⁵⁴ Finally, concerning the alleged withdrawal of the 15 January 1993 Ultimatum, the Appeals Chamber notes that the evidence on which Prlić relies concerns a change of the deadline of the 15 January 1993 Ultimatum, not its withdrawal.³⁶⁵⁵ For these reasons, the Appeals Chamber dismisses Prlić’s argument.

1153. With regard to Prlić’s argument that the Trial Chamber erred in finding that two orders for subordination by Andrić existed, dated 14 and 16 January 1993, the Appeals Chamber notes that he essentially only advances arguments militating against the existence of and concerning the finding on the earlier order.³⁶⁵⁶ The Appeals Chamber recalls the Trial Chamber’s findings that:

³⁶⁴⁸ The Appeals Chamber has examined the evidence Prlić cites in support and finds it unclear and unconvincing in this regard. See Prlić’s Appeal Brief, paras 456-459 and references cited therein. In addition, with regard to Praljak’s testimony, the Appeals Chamber recalls that the Trial Chamber found parts of it “hardly credible”. Trial Judgement, Vol. 1, para. 399. In these circumstances, the Appeals Chamber considers that Prlić has failed to demonstrate that the Trial Chamber erred in its assessment of the evidence relating to the alleged “Zagreb agreement”.

³⁶⁴⁹ The Appeals Chamber considers that Prlić fails to show that the Trial Chamber disregarded its own finding that in the letter addressed to Alija Izetbegović on 18 January 1993, Mate Boban and Mile Akmadžić recalled that the 15 January 1993 Ultimatum was “in accordance with the ‘Geneva Conference’”, since the finding on the content of the letter is not a finding on the truth of the matter asserted therein and that, in any event, this does not show that an agreement was reached as asserted by Prlić. See Trial Judgement, Vol. 1, para. 458.

³⁶⁵⁰ See Prlić’s Appeal Brief, para. 459, referring to Slobodan Praljak, T. 40572-40576 (21 May 2009). 40617-40622 (25 May 2009), 41959-41962, 41975-41976 (24 June 2009), Exs. P01158, P01240, pp. 5-19, P01267, 1D00820, 1D00821; Appeal Hearing, AT. 141 (20 Mar 2017), referring to Exs. P01267, P02046/1D01655, 1D00820, 1D00821.

³⁶⁵¹ See *supra*, para. 1151.

³⁶⁵² Ex. P01158, p. 51 (emphasis added).

³⁶⁵³ See Prlić’s Appeal Brief, fn. 1177 and references cited therein. See also Prlić’s Appeal Brief, fn. 1178 and references cited therein.

³⁶⁵⁴ Trial Judgement, Vol. 1, para. 399.

³⁶⁵⁵ See Prlić’s Appeal Brief, fns 1179-1180, referring to Exs. 1D00820, 1D00821, P01267. Cf. Ex. P01146/P01155, no 5.

³⁶⁵⁶ Prlić’s Appeal Brief, para. 453, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 125. Prlić’s reference to Trial Judgement, Vol. 2, para. 330 appears to be mistaken.

On 16 January 1993, implementing an HVO decision adopted the same day, Miro Andrić, a colonel in the HVO Main Staff, passed on the general order on subordination issued by Milivoj Petković on 15 January 1993 to the representatives of the ABiH in Gornji Vakuf and again demanded that all the ABiH forces subordinate themselves to the HVO forces. The Chamber recalls that, according to *Fahrudin Agić*, on 14 January 1993 Miro Andrić had demanded the subordination of all the ABiH forces to the HVO forces in the Municipality of Gornji Vakuf. *Fahrudin Agić* also stated that Miro Andrić issued the order on the basis of documents signed by Jadranko Prlić. On 16 and 17 January 1993, the ABiH rejected Miro Andrić's orders to subordinate.³⁶⁵⁷

The Appeals Chamber observes, first, that the Trial Chamber did not claim that the order issued on 14 January 1993 was based on the 15 January 1993 Ultimatum.³⁶⁵⁸ Further, the Appeals Chamber considers that the Trial Chamber based its finding that Andrić issued a subordination order on 14 January 1993 on the testimony of Witness Fahrudin Agić³⁶⁵⁹ and that there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible.³⁶⁶⁰ Even assuming that no reasonable trier of fact could have found that Andrić issued two separate subordination orders, the Appeals Chamber sees no indication that the Trial Chamber relied specifically on the existence of *two* such orders to make any adverse findings against Prlić.³⁶⁶¹ Consequently, the Appeals Chamber finds that any such error would not have resulted in a miscarriage of justice. The Appeals Chamber consequently dismisses this argument. Sub-ground of appeal 16.1.1 is dismissed.

(ii) Military operations following the 15 January 1993 Ultimatum (Prlić's Sub-ground 16.1.2)

1154. The Trial Chamber found that the 15 January 1993 Ultimatum was followed by systematic and widespread military operations undertaken through the chain of command of the HVO, including in Gornji Vakuf in January 1993, which involved the commission of many crimes against the Muslim population as part of a single preconceived plan.³⁶⁶² The Trial Chamber further found, as one of many findings on which it based the aforementioned conclusion, that on 18 January 1993, Colonel Miro Andrić ordered HVO troops in Gornji Vakuf to use force to compel the ABiH to implement the ceasefire agreement of 13 January 1993 and to capture the village of Uzričje in order to open a route to Gornji Vakuf, in accordance with an order sent by his "superiors".³⁶⁶³ Another such underlying finding was that Prlić sent a letter on 18 January 1993 to the Gornji Vakuf municipal HVO and its Croatian population, assuring them of the support of his government which

³⁶⁵⁷ Trial Judgement, Vol. 4, para. 125 (internal references omitted). See also Trial Judgement, Vol. 4, fns 362, 364.

³⁶⁵⁸ See Trial Judgement, Vol. 4, para. 125 & fn. 364.

³⁶⁵⁹ Trial Judgement, Vol. 4, para. 125 & fn. 363, referring to, *inter alia*, Fahrudin Agić, T(F). 9285-9288 (31 Oct 2006).

³⁶⁶⁰ *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274; Trial Judgement, Vol. 4, fn. 362.

³⁶⁶¹ See Trial Judgement, Vol. 4, paras 125-135.

³⁶⁶² Trial Judgement, Vol. 4, para. 271. See Trial Judgement, Vol. 1, para. 460.

³⁶⁶³ Trial Judgement, Vol. 4, para. 126. See Trial Judgement, Vol. 4, para. 127.

would not leave them “at the mercy of the Muslim extremists”, promising assistance by the HVO as necessary.³⁶⁶⁴

a. Arguments of the Parties

1155. Prlić submits that the Trial Chamber erred in finding that the 15 January 1993 Ultimatum was followed by military operations in Gornji Vakuf by contradicting its own findings and by mischaracterising and ignoring evidence.³⁶⁶⁵ In particular, Prlić submits that the Trial Chamber: (1) ignored testimony by Witness Milan Gorjanc that Petković’s orders (Exhibits P01135 and P01139) did not represent orders to attack the ABiH, and that the latter order on the contrary obliged operative zone commanders to initiate talks with ABiH commanders in order to establish joint commands;³⁶⁶⁶ (2) mischaracterised Andrić’s report of 27 January 1993, arguing that Andrić’s actions were unrelated to the 15 January 1993 Ultimatum;³⁶⁶⁷ and (3) mischaracterised the HVO HZ H-B letter dated 18 January 1993 addressed to Gornji Vakuf and erroneously referred to it as “Prlić’s letter”.³⁶⁶⁸

1156. The Prosecution responds that Prlić fails to show that no reasonable trial chamber could have found that the 15 January 1993 Ultimatum resulted in HVO attacks on Gornji Vakuf involving crimes against the Muslim population forming part of the CCP.³⁶⁶⁹ In particular, it submits that Prlić fails to show any error in his attempts to “recharacterise” Petković’s order as unrelated to the 15 January 1993 Ultimatum.³⁶⁷⁰ It further contends that the Trial Chamber reasonably interpreted Andrić’s report and that the evidence Prlić cites does not support that the Gornji Vakuf attacks were unrelated to the 15 January 1993 Ultimatum.³⁶⁷¹ The Prosecution further submits that Prlić fails to explain how the Trial Chamber mischaracterised his 18 January 1993 letter.³⁶⁷²

³⁶⁶⁴ Trial Judgement, Vol. 4, para. 126.

³⁶⁶⁵ Prlić’s Appeal Brief, para. 460. See Prlić’s Appeal Brief, paras 461-463.

³⁶⁶⁶ Prlić’s Appeal Brief, para. 461; Appeal Hearing, AT. 141 (20 Mar 2017). See Appeal Hearing, AT. 149-150 (20 Mar 2017).

³⁶⁶⁷ Prlić’s Appeal Brief, para. 462; Prlić’s Reply Brief, para. 69; Appeal Hearing, AT. 140-141 (20 Mar 2017). Prlić further submits that the Trial Chamber ignored testimony by Praljak and Witness Zrinko Tokić and Exhibit 4D00356 when finding that military operations in Gornji Vakuf followed the 15 January 1993 Ultimatum. Prlić’s Appeal Brief, para. 460 & fn. 1182. Prlić also argues that the Trial Chamber relied on an erroneous translation of Andrić’s report of 27 January 1993 (Ex. 3D03065/4D00348), which correctly reads in relevant parts “following a higher order” instead of “following an order from [their] superiors”, resulting in erroneous findings. Prlić’s Reply Brief, para. 69, referring to, *inter alia*, Prlić’s Response Brief, para. 177 (Prosecution’s ground 3).

³⁶⁶⁸ Prlić’s Appeal Brief, para. 463.

³⁶⁶⁹ Prosecution’s Response Brief (Prlić), para. 286; Appeal Hearing, AT. 182 (20 Mar 2017). See also Prosecution’s Response Brief (Prlić), para. 288; Appeal Hearing, AT. 192, 210-211 (20 Mar 2017).

³⁶⁷⁰ Prosecution’s Response Brief (Prlić), para. 287.

³⁶⁷¹ Prosecution’s Response Brief (Prlić), para. 288; Appeal Hearing, AT. 208-210 (20 Mar 2017).

³⁶⁷² Prosecution’s Response Brief (Prlić), para. 289.

b. Analysis

1157. The Appeals Chamber turns first to Prlić's claim that the Trial Chamber, in reaching the challenged findings that the 15 January 1993 Ultimatum was followed by military operations in Gornji Vakuf, contradicted its own findings. The Appeals Chamber notes that the portion of the Trial Judgement that Prlić references as containing the findings that are allegedly contradicted is irrelevant to the findings on military operations in Gornji Vakuf in January 1993 that he challenges.³⁶⁷³ The Appeals Chamber dismisses this undeveloped assertion.

1158. Turning to Prlić's argument concerning Petković's orders, the Appeals Chamber notes that Gorjanc, in his testimony referenced by Prlić, asserted that he could not glean from one of Petković's orders (Exhibit P01135) that it contained an order for military operations against the ABiH. However, he confirmed the HVO's heightened readiness to resort to armed force in Gornji Vakuf, which supports rather than undermines the challenged findings on military operations in Gornji Vakuf following the 15 January 1993 Ultimatum.³⁶⁷⁴ The HVO's heightened readiness is also evident from Exhibit P01135 itself and other evidence Prlić refers to.³⁶⁷⁵ In light of this, Prlić's reliance on the instruction contained in Petković's other order (Exhibit P01139) to HVO commanders to initiate talks with ABiH commanders on joint commands, in support of his challenge to the Trial Chamber's findings, also fails. Prlić's arguments do not show that no reasonable trier of fact could have reached the impugned findings and are therefore dismissed.

1159. Further, having reviewed the relevant Trial Chamber findings and supporting evidence, the Appeals Chamber finds no merit in Prlić's assertion that the Trial Chamber mischaracterised Andrić's 27 January 1993 report.³⁶⁷⁶ Turning to Prlić's assertion that "Andrić's actions", which the Appeals Chamber understands to refer to his 18 January 1993 order to the HVO to attack the ABiH, were unrelated to the 15 January 1993 Ultimatum, the Appeals Chamber notes that none of the

³⁶⁷³ Prlić's Appeal Brief, para. 460, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 336-337, which pertain to findings on changes in the ethnic composition in "Herceg-Bosna" in the period 1991-1994.

³⁶⁷⁴ Milan Gorjanc, T. 46380-46382 (2 Nov 2009).

³⁶⁷⁵ See Prlić's Appeal Brief, para. 461, referring to, *e.g.*, Ex. P01163, pp. 2-4 (report dated 16 January 1993 on an HVO general's message to the ABiH in Gornji Vakuf to subordinate and abide by further conditions while pointing to the presence of two HVO brigades, artillery, and tanks in Prozor, which would be ready to advance on Gornji Vakuf should the HVO demands not be met by the following day).

³⁶⁷⁶ The Trial Chamber found, *inter alia*, based on the report, that "[o]n 18 January 1993, Colonel Miro Andrić ordered the HVO troops in Gornji Vakuf to use force to compel the ABiH to implement the terms of the ceasefire agreement of 13 January 1993 and to capture the village of Uzričje in order to open a route to Gornji Vakuf, in accordance with the order sent by his 'superiors'". Trial Judgement, Vol. 4, para. 126, referring to Ex. 3D03065/4D00348. Prlić asserts, based on the report, that "on 18 January [1993] Andrić ordered the implementation of the 13 January 1993 [ceasefire] Agreement". Prlić's Appeal Brief, para. 462. The Appeals Chamber fails to see any inconsistency between the two statements. Insofar as Prlić challenges the finding that Andrić's actions were "in accordance with the order sent by his 'superiors'", the Appeals Chamber can see no relevant material difference between this formulation and the alternative translation "following a higher order". See also *supra*, paras 177-183, *infra*, fn. 5050. Prlić merely offers an alternative interpretation of the evidence without showing that no reasonable trier of fact could have made the impugned findings.

references Prlić cites support his assertion.³⁶⁷⁷ On the contrary, many referenced exhibits indicate that the use of force on 18 January 1993 was a reaction to the ABiH not bowing to the conditions of the 15 January 1993 Decision.³⁶⁷⁸ Prlić therefore has failed to show that no reasonable trier of fact could have reached the impugned findings and the Appeals Chamber dismisses his arguments.

1160. Turning to Prlić's argument concerning the HVO HZ H-B letter dated 18 January 1993, the Appeals Chamber considers that the text of the letter supports the impugned finding and that Prlić has failed to show that no reasonable trier of fact could have made this finding or characterised the letter – bearing his typed name – as Prlić's.³⁶⁷⁹ Further, he has failed to explain the relevance of his remaining assertions regarding the letter to his challenge to the Trial Chamber's finding on the letter.³⁶⁸⁰

1161. In light of the above, sub-ground of appeal 16.1.2 is dismissed.³⁶⁸¹

(iii) Various findings concerning the January 1993 attacks on Gornji Vakuf (Prlić's Sub-ground 16.1.3)

1162. The Trial Chamber found that: (1) Prlić was directly involved in planning the attack on Gornji Vakuf, the 15 January 1993 Ultimatum signed by him, and its implementation on the ground until the ceasefire when he ordered the cessation of HVO attacks on 25 January 1993;³⁶⁸² (2) on 19 January 1993, Prlić attended ceasefire negotiations in Mostar concerning Gornji Vakuf Municipality;³⁶⁸³ (3) Colonel Miro Andrić stated that his "superiors" had ordered him to use force in Gornji Vakuf, and that Prlić was one of his "superiors";³⁶⁸⁴ and (4) Prlić said at a meeting on

³⁶⁷⁷ The same applies to the testimony of Praljak and Tokić and Exhibit 4D00356 to which Prlić refers as allegedly ignored by the Trial Chamber in reaching the impugned finding that military operations in Gornji Vakuf followed the 15 January 1993 Ultimatum. For Slobodan Praljak, T. 44073-44074, 44085 (31 Aug 2009), the Appeals Chamber also recalls that the Trial Chamber found Praljak's evidence "hardly credible" on certain points. Trial Judgement, Vol. 1, para. 399. This argument is dismissed.

³⁶⁷⁸ Exs. P01163; P01174; P01182; P01185, p. 4; P01226; P01236, pp. 3-4; 1D00816. See also Exs. P01227, p. 1; 3D03065/4D00348, pp. 2-3. Regarding Slobodan Praljak, T. 40578-40581 (21 May 2009), 40591-40594 (25 May 2009), the Appeals Chamber again recalls that the Trial Chamber found Praljak's evidence "hardly credible" on certain points. Trial Judgement, Vol. 1, para. 399.

³⁶⁷⁹ Ex. P01184.

³⁶⁸⁰ See Prlić's Appeal Brief, para. 463.

³⁶⁸¹ The Appeals Chamber recalls that it has overturned the Trial Chamber's findings regarding the deaths of seven civilians in Duša and that murder and wilful killing were part of the CCP in the period from January until June 1993. See *supra*, paras 441-443, 882. The Appeals Chamber does not consider that these changes affect the Trial Chamber's finding that is challenged under this ground insofar as it concerns the remaining crimes, namely that the HVO operations following the 15 January 1993 Ultimatum, including those in Gornji Vakuf, involved the commission of many crimes against the Muslim population as part of a single preconceived plan. This is in particular so since the Duša killings were the only killings among those crimes. See *supra*, para. 876.

³⁶⁸² Trial Judgement, Vol. 4, para. 131. See also Trial Judgement, Vol. 4, paras 126-127, 132, 134.

³⁶⁸³ Trial Judgement, Vol. 4, para. 127.

³⁶⁸⁴ Trial Judgement, Vol. 4, paras 126-127, 133.

25 January 1993 with an ECMM representative in Mostar that he had ordered the HVO commander in Gornji Vakuf to stop all attacks immediately.³⁶⁸⁵

a. Arguments of the Parties

1163. Prlić submits that the Trial Chamber erred in concluding that: (1) he was involved in planning the attack on Gornji Vakuf; (2) on 19 January 1993, he attended ceasefire negotiations, considering that Witness Ray Lane's evidence was not reliable;³⁶⁸⁶ (3) Prlić was one of Andrić's superiors, by relying solely on one sentence in one exhibit;³⁶⁸⁷ (4) he stated on 25 January 1993 that he had ordered the HVO in Gornji Vakuf to stop all attacks;³⁶⁸⁸ and (5) Željko Šiljeg's reports on Gornji Vakuf were "particularly" sent to the HVO HZ H-B.³⁶⁸⁹

1164. The Prosecution responds that Prlić fails to show that no reasonable trial chamber could have found that he was directly involved in planning the attack on Gornji Vakuf, the 15 January 1993 Ultimatum, and its implementation on the ground.³⁶⁹⁰ Notably, it argues that the Trial Chamber's findings are supported by the evidence and that Prlić fails to explain how the Trial Chamber acted unreasonably and how his submissions impact the challenged findings.³⁶⁹¹

b. Analysis

1165. The Appeals Chamber will first address Prlić's challenge to the finding that he was one of Andrić's "superiors". It notes that Prlić reproduces the findings he claims contradict the challenged

³⁶⁸⁵ Trial Judgement, Vol. 4, para. 129.

³⁶⁸⁶ Prlić's Appeal Brief, para. 464; Prlić's Reply Brief, paras 70-73, referring to Prlić's Appeal Brief, paras 202-203 (sub-ground of appeal 6.2). See also Prlić's Appeal Brief, para. 466. With regard to the finding on negotiations, Prlić submits in particular that Lane was a poor witness who did not recall the meeting's location and what was discussed, and that he speculated about Prlić's powers. He further argues that Lane was discredited by Exhibit P01215, p. 1, which suggests that Petković, Arif Pašalić, and Prlić met separately. Prlić's Appeal Brief, para. 464; Prlić's Reply Brief, paras 70-73. Further, he submits that the Trial Chamber erred in concluding that the 20 January 1993 order by Petković and Pašalić to abort all combat activities in Gornji Vakuf was based on a meeting of these two persons with Prlić and Jean-Jacques Beausou. This contradicts, in Prlić's submission, another finding that the order by Petković and Pašalić rather "concurrent" with an order by Mate Boban, as corroborated by other evidence. Prlić's Appeal Brief, para. 465.

³⁶⁸⁷ Prlić's Appeal Brief, para. 466, referring to Ex. 3D03065/4D00348, p. 2. In particular, Prlić submits that there is no evidence that the HVO HZ H-B or Prlić had any power to issue orders to the military, that no such orders exist, and that the Trial Chamber correctly concluded that Prlić was outside the chain of command. Prlić's Appeal Brief, para. 466.

³⁶⁸⁸ Prlić's Appeal Brief, para. 468. In particular, Prlić argues that the Trial Chamber ignored evidence indicating that Prlić merely said that an order had been given, not that he himself had issued the order. In this regard, Prlić submits that: (1) another report, Exhibit P01309, which reported that Prlić himself had issued the order to stop the fighting, faultily reproduced Exhibit P01303; and (2) Šiljeg's 24 January 1993 order to respect the ceasefire (Ex. P01300) was issued pursuant to an HVO Main Staff order (Ex. 4D00048 (confidential)). Prlić's Appeal Brief, para. 468 and references cited therein.

³⁶⁸⁹ Prlić's Appeal Brief, para. 467. In particular, Prlić submits that these reports were sent to the HZ H-B presidency, the Defence Department, the HVO Main Staff, and the North-West OZ. Prlić's Appeal Brief, para. 467, referring to, *inter alia*, Prlić's ground of appeal 3.

³⁶⁹⁰ Prosecution's Response Brief (Prlić), para. 290.

³⁶⁹¹ Prosecution's Response Brief (Prlić), paras 290-294.

finding in an incomplete manner and misrepresents them.³⁶⁹² Prlić alleges that the Trial Chamber found that he was not in the military chain of command, but omits that the Trial Chamber qualified this finding by determining that: (1) as President of the Government he had influence on the defence strategy and military operations of the HVO; (2) the HVO/Government of HZ(R) H-B, as a civilian authority, had the power and responsibility to control, in general and particularly in terms of military strategy, the HVO; (3) that during meetings between August 1992 and April 1994, in which Prlić participated as President of the Government, the situation and military strategy of the HVO in the territory claimed to be part of the HZ(R) H-B were discussed and the Government adopted various regulations, concerning, for instance, mobilisation of military personnel and the supply of weapons.³⁶⁹³ Notably, the Trial Chamber considered in this respect the 15 January 1993 Ultimatum.³⁶⁹⁴ In light of these findings, the Appeals Chamber concludes that Prlić has failed to show that no reasonable trier of fact could have found that Andrić stated that his “superiors” had ordered him to use force in Gornji Vakuf, and that Prlić was one of his “superiors”.³⁶⁹⁵

1166. Prlić further claims that the Trial Chamber erred in concluding that he was involved in planning the attack on Gornji Vakuf, but offers no arguments in support of this assertion. Insofar as Prlić’s argument that he was not Andrić’s superior could be interpreted as a submission in support of this assertion, this argument has been dismissed above.³⁶⁹⁶ Consequently, the Appeals Chamber dismisses as undeveloped Prlić’s challenge to the Trial Chamber’s finding that he was involved in planning the attack on Gornji Vakuf. Prlić has failed to show that no reasonable trier of fact could have found, relying on Lane, that he attended the 19 January 1993 ceasefire negotiations.³⁶⁹⁷ The Appeals Chamber further finds that Prlić has failed to demonstrate that no reasonable trier of fact could have found that he said at a meeting on 25 January 1993 with an ECMM representative in

³⁶⁹² Prlić’s Appeal Brief, para. 466, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 708, 743-768, Vol. 4, para. 106.

³⁶⁹³ Trial Judgement, Vol. 4, para. 106.

³⁶⁹⁴ Trial Judgement, Vol. 4, para. 106.

³⁶⁹⁵ Trial Judgement, Vol. 4, paras 126-127, 133 (quotation marks in original). These findings also rebut Prlić’s assertions that there is no evidence that the HVO HZ H-B or Prlić had any power to issue orders to the military, and that no such orders exist. See *supra*, paras 1098-1127; *infra*, paras 1212, 1214, 1219.

³⁶⁹⁶ See *supra*, para. 1165.

³⁶⁹⁷ Trial Judgement, Vol. 4, para. 127. The Appeals Chamber notes that with regard to his claims of Lane’s poor memory, Prlić refers to his submissions in his sub-ground of appeal 6.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218. Prlić fails to explain in which regard his assertion that Lane speculated about his powers is relevant to the impugned finding on his attendance at the 19 January 1993 negotiations. This argument is therefore dismissed. With regard to Prlić’s assertion that Exhibit P01215, p. 1, suggests that Petković, Pašalić, and Prlić met separately, the Appeals Chamber has examined the exhibit in its entirety and finds that a reasonable trial chamber could have found that there was only one meeting. See Ex. P01215, pp. 1-3. See also Ray Lane, T. 23681-23685 (15 October 2007). Prlić fails to identify any challenged factual finding by way of reference to a paragraph of the Trial Judgement with regard to his assertion that the Trial Chamber erred in finding that the 20 January 1993 order by Petković and Pašalić to abort all fighting in Gornji Vakuf was based on a meeting of Petković, Pašalić, Prlić, and Beaussou. Since it is unclear which is the challenged finding, this argument is dismissed. See Practice Direction on Formal Requirements, para. 4(b)(ii). To the extent that Prlić intended to challenge with these submissions any of the other findings that he challenges under this ground, he fails to explain how these submissions impact any of these other findings.

Mostar that he had ordered the HVO commander in Gornji Vakuf to stop all attacks immediately.³⁶⁹⁸ Finally, with regard to Prlić's argument that the Trial Chamber erred in finding that Šiljeg's reports on Gornji Vakuf were "particularly" sent to the HVO HZ H-B, the Appeals Chamber notes that this argument is entirely based on a cross-reference to his ground of appeal 3, which it dismisses elsewhere.³⁶⁹⁹

1167. For all of the reasons set out above, sub-ground of appeal 16.1.3 is dismissed.

(iv) Prlić's intent concerning crimes in Gornji Vakuf (Prlić's Sub-ground 16.1.4)

1168. The Trial Chamber found that since Prlić participated in planning the attack on Gornji Vakuf, knew about the course of operations and the crimes committed, and continued to exercise his functions in the HVO/Government of the HZ(R) H-B, he intended that those crimes be committed, namely the destruction of Muslim houses, the murder and detention of Muslims who did not belong to any armed force, and the removal of the region's inhabitants to Gornji Vakuf by the HVO in January 1993.³⁷⁰⁰ The Trial Chamber based this finding on, *inter alia*, its finding that between 19 and 30 January 1993, Željko Šiljeg, Commander of the North-West OZ, sent several reports particularly to the HVO HZ H-B on the situation in Gornji Vakuf, reporting, *inter alia*, that: (1) several buildings were on fire in Gornji Vakuf town and in the villages of Uzričje and Duša; (2) most buildings in Donja Hrsanica had been burnt down or demolished; (3) no civilian population remained in Donja Hrsanica and Gornja Hrsanica; and (4) a number of Muslim houses had been torched and items stolen in Uzričje, Duša, and Trnovača, and seven Muslim "civilians" had been killed during the HVO shelling of Duša.³⁷⁰¹

³⁶⁹⁸ With regard to Prlić's argument that the Trial Chamber ignored evidence indicating that he merely said that an order had been given, not that he himself had issued the order, the Appeals Chamber notes that he points to a report dated 25 January 1993 stating that Prlić said that an order had been given "on Saturday" to Colonel Šiljeg to stop immediately any attack. Prlić's Appeal Brief, para. 468, referring to Ex. P01303 (confidential). However, the Appeals Chamber considers that none of the evidence that Prlić cites to support his assertion that another report, Exhibit P01309, which stated that Prlić himself had issued the order to stop the fighting, faultily reproduced Exhibit P01303. Lane was not present at the meeting which is documented in the two reports and was in no position to comment. Ray Lane, T. 23784-23786 (16 Oct 2007). Likewise, the other evidence Prlić cites as allegedly having been ignored does not support his claim that it indicates that he merely said that an order had been given, not that he himself had issued the order. Witness Christopher Beese could not comment on the version of events that Prlić's counsel put to him ("It's quite difficult to respond to this. [...] I am not in a position really to comment on how this was addressed [...] I can only offer explanations I don't know"). Christopher Beese, T. 5314-5315 (private session) (22 Aug 2006). Lastly, Prlić's submission that Šiljeg's 24 January 1993 order to respect the ceasefire (Ex. P01300) was issued pursuant to an HVO Main Staff order (Ex. 4D00048 (confidential)), suggesting that this was the order referred to in Exhibits P01303 and P01309, fails to acknowledge that Šiljeg's order contained in Exhibit P01300 in fact dates from 25 January 1993 and refers to Main Staff orders dated 20 and 24 January 1993 (see also Exs. P01238/1D00819, P01293), whereas in Exhibit P01303 (confidential), Prlić is reported to have stated that the order was given "on Saturday", which would have been 23 January 1993. These arguments are dismissed.

³⁶⁹⁹ See *supra*, paras 177-183.

³⁷⁰⁰ Trial Judgement, Vol. 4, para. 134.

³⁷⁰¹ Trial Judgement, Vol. 4, paras 127, 130.

a. Arguments of the Parties

1169. Prlić claims that the Trial Chamber erred in concluding that he intended the crimes in Gornji Vakuf.³⁷⁰² He argues that Šiljeg's reports dated 19, 29, and 30 January 1993 were sent to the HZ H-B Presidency, the HVO HZ H-B Defence Department, the HVO Main Staff, and the North-West OZ, and do not show that he or the HVO HZ H-B were aware of developments in the field on 15 to 25 January 1993.³⁷⁰³ Prlić submits further that no such awareness can be gleaned from the minutes of HVO HZ H-B meetings.³⁷⁰⁴ Finally, Prlić claims that the Trial Chamber ignored evidence showing that neither he nor the HVO HZ H-B had any involvement in the Gornji Vakuf military operations, pointing to various orders calling for the identification of the persons responsible for clashes and to evidence that the military commanders executed these orders.³⁷⁰⁵

1170. The Prosecution responds that the Trial Chamber's finding on Prlić's intention concerning crimes in Gornji Vakuf is based on extensive evidence.³⁷⁰⁶ It submits that Prlić fails to show that the Trial Chamber acted unreasonably in concluding that he was informed of the contents of Šiljeg's January 1993 reports.³⁷⁰⁷ The Prosecution submits that: (1) these reports expressly state that they were sent to the Government, as Prlić admitted at trial; and (2) the minutes of Government meetings over which Prlić presided clearly show his interest in the developments in Gornji Vakuf.³⁷⁰⁸ The Prosecution further submits that the evidence Prlić cites does not support his claim that neither he nor his Government were involved in any way in the Gornji Vakuf military operations.³⁷⁰⁹ It argues, finally, that Prlić's powers in military matters were amply demonstrated.³⁷¹⁰

b. Analysis

1171. At the outset, the Appeals Chamber recalls that it has overturned the Trial Chamber's finding that the deaths of seven civilians in Duša in January 1993 constituted murder and wilful killing, and that as a result, it has vacated Prlić's convictions under Counts 1, 2, 3, 15, and 16 with

³⁷⁰² Prlić's Appeal Brief, para. 469. See Prlić's Appeal Brief, para. 470, referring to Prlić's sub-ground of appeal 16.1.3.

³⁷⁰³ Prlić's Appeal Brief, para. 471, referring to, *inter alia*, Exs. P01206, P01351, P01357. The Appeals Chamber notes that the date of one of Šiljeg's reports (Exhibit P01351) is illegible as it reads "2/?/January 1993" but that its contents concern the situation in Gornji Vakuf on 28 January 1993. Ex. P01351. The Appeals Chamber also notes that the Trial Chamber referred to the date of this report at times as 29 January 1993 and at times as 28 January 1993. See Trial Judgement, Vol. 2, para. 445, Vol. 4, paras 333, 705 (referring to the date as 28 January 1993); Trial Judgement, Vol. 2, paras 367, 398, Vol. 4, paras 130, 333 (referring to the date as 29 January 1993). Given that there is no dispute between the Parties on the date of this report and that the Trial Chamber relied on it as evidence of some Appellants' knowledge of crimes, the Appeals Chamber adopts the Trial Chamber's determination of the date of this report as 29 January 1993, which is to the benefit of the Appellants.

³⁷⁰⁴ Prlić's Appeal Brief, para. 471.

³⁷⁰⁵ Prlić's Appeal Brief, para. 472.

³⁷⁰⁶ Prosecution's Response Brief (Prlić), para. 295.

³⁷⁰⁷ Prosecution's Response Brief (Prlić), para. 296.

³⁷⁰⁸ Prosecution's Response Brief (Prlić), para. 296.

³⁷⁰⁹ Prosecution's Response Brief (Prlić), para. 297.

³⁷¹⁰ Prosecution's Response Brief (Prlić), para. 297.

regard to these killings.³⁷¹¹ Consequently, the Appeals Chamber dismisses as moot Prlić's submissions under this sub-ground to the extent that they challenge the finding that he intended that murders be committed in Gornji Vakuf in January 1993.

1172. The Appeals Chamber notes that all three of Šiljeg's reports to which Prlić refers are addressed to the HVO HZ H-B,³⁷¹² a fact which Prlić ignores when he lists the recipients. It therefore finds that Prlić misrepresents the evidence and fails to show that no reasonable trier of fact could have found that the reports were sent, or particularly sent, to the HVO HZ H-B.³⁷¹³ The evidence Prlić cites does not support his claim that his awareness of the developments in Gornji Vakuf cannot be gleaned from minutes of HVO HZ H-B meetings, which, on the contrary, show that the situation in Gornji Vakuf was discussed.³⁷¹⁴ These arguments are dismissed.³⁷¹⁵

1173. With respect to Prlić's argument that the Trial Chamber ignored evidence that neither he nor the HVO HZ H-B had any involvement in the Gornji Vakuf military operations, the Appeals Chamber recalls that the Trial Chamber's conclusion that Prlić participated in planning the attack on Gornji Vakuf is based on, *inter alia*, the findings that he: (1) signed the 15 January 1993 Ultimatum ordering the subordination of ABiH units to HVO command; (2) assured the municipal HVO and the population of Gornji Vakuf of his Government's support on the day of the attack on 18 January 1993; and (3) attended ceasefire negotiations on 19 January 1993 for Gornji Vakuf, at which he stated that in order to show his "good will" the HVO would not enact by force "the decision [...] whose deadline was 20 January 1993".³⁷¹⁶ In addition, the Trial Chamber found that the facts that: (1) the attacks on Gornji Vakuf's villages followed the same pattern; and (2) Šiljeg's reports failed to refer to the unlawful nature of destruction and appropriation of property in these villages, support the conclusion that the capture of these villages and ensuing crimes were part of the attack plan for the capture of the municipality by the HVO.³⁷¹⁷ In light of these underlying findings, neither Prlić's claims that various orders called for identifying the persons responsible for clashes and that these orders were executed, nor the evidence he cites in support, show that no

³⁷¹¹ See *supra*, para. 441-443.

³⁷¹² Exs. P01206, p. 1, P01351, p. 1, P01357, p. 1.

³⁷¹³ Trial Judgement, Vol. 4, paras 127, 130. Counsel for Prlić at trial conceded that the period following 15 January 1993 was the only period when the HVO HZ H-B emerged as one of the addressees when information was submitted on the situation that unfolded in Gornji Vakuf. Jadranko Prlić, T. 27572 (6 May 2008). The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 16.1.3, which it dismisses elsewhere in the Judgement. See *supra*, paras 1162-1167.

³⁷¹⁴ Exs. P01227, P01324, pp. 1-3, P01403, p. 3.

³⁷¹⁵ See also *infra*, para. 3052 & fn. 10012.

³⁷¹⁶ Trial Judgement, Vol. 4, paras 125-127.

³⁷¹⁷ Trial Judgement, Vol. 4, para. 131. The Appeals Chamber recalls that it has overturned the Trial Chamber's findings regarding the deaths of seven civilians in Duša and that murder and wilful killing were part of the CCP in the period from January until June 1993. See *supra*, paras 441-443, 882. The Appeals Chamber does not consider that these changes affect the Trial Chamber's reasoning and conclusion, insofar as it concerns the remaining crimes, that the

reasonable trier of fact could have found that he participated in planning the attack on Gornji Vakuf. Prlić's arguments are dismissed.

1174. Having dismissed all of Prlić's arguments pertaining to the basis for the Trial Chamber's finding on his intent,³⁷¹⁸ the Appeals Chamber concludes that he has failed to demonstrate that the Trial Chamber erred in concluding that he intended the crimes in Gornji Vakuf, excluding the crimes of murder and wilful killing as discussed above.³⁷¹⁹ Thus, Prlić's sub-ground of appeal 16.1.4 fails.

(b) The municipalities of Prozor and Jablanica (Prlić's Sub-ground 16.2)

(i) The 4 April 1993 Ultimatum (Prlić's Sub-grounds 16.2.1 and 16.2.2)

1175. The Trial Chamber found that on 3 April 1993, the HVO HZ H-B adopted an ultimatum, published on 4 April 1993 – that is, the 4 April 1993 Ultimatum –, envisaging that, if the Muslim authorities refused to sign a statement on the subordination of the ABiH to the HVO in Provinces 3, 8, and 10 by 15 April 1993, the HVO would apply it unilaterally, including by military means.³⁷²⁰ Based on, *inter alia*, that finding, the Trial Chamber concluded that in April 1993 the HVO planned an attack on villages in the municipalities of Prozor and Jablanica (located in Province 8³⁷²¹) to implement the 4 April 1993 Ultimatum by force, and that by drafting this ultimatum, Prlić significantly contributed to the implementation of the JCE in these municipalities.³⁷²²

1176. The Trial Chamber further found that on 15 April 1993 and the days that followed, orders were given to the HVO aiming to consolidate the HVO's positions and to enforce subordination of the ABiH forces.³⁷²³

a. Arguments of the Parties

1177. Prlić argues that the Trial Chamber erred in making the above findings on the 4 April 1993 Ultimatum by: (1) mischaracterising evidence; (2) erroneously relying on Witness William Tomljanovich, Witness DZ, and uncorroborated hearsay news reports;³⁷²⁴ and (3) ignoring

capture of these villages and ensuing crimes were part of the attack plan for the capture of the municipality by the HVO, particularly since the Duša killings were the only killings among those crimes. See *supra*, para. 876.

³⁷¹⁸ See *supra*, para. 1168.

³⁷¹⁹ See *supra*, para. 1171.

³⁷²⁰ Trial Judgement, Vol. 1, paras 467-468, Vol. 4, paras 138-140.

³⁷²¹ See Trial Judgement, Vol. 1, para. 446 & fn. 1062, referring, in particular, to Ex. P09276, map 11.

³⁷²² See Trial Judgement, Vol. 4, paras 138-147, 271. See also Trial Judgement, Vol. 1, paras 465-476, Vol. 2, para. 89, Vol. 4, para. 1220.

³⁷²³ Trial Judgement, Vol. 1, para. 469.

³⁷²⁴ Prlić's Appeal Brief, paras 473-474, 479, 486. For his submissions on Tomljanovich, see Prlić's Appeal Brief, fn. 1219, referring to Prlić's sub-ground of appeal 4.2. With respect to Witness DZ, Prlić submits that he was not competent to testify on the 4 April 1993 Ultimatum, since he: (1) relied on a January 1993 document and newspaper

reliable evidence that no ultimatum was issued, showing that the media reports were incorrect.³⁷²⁵ Prlić asserts in particular that the Trial Chamber ignored evidence, which, he submits, is essential to understanding the 3 April 1993 conclusions of the HVO HZ H-B, namely evidence that: (1) Alija Izetbegović undertook efforts to restructure the BiH by forming new districts, which Prlić claims was unconstitutional and contrary to the Vance-Owen Peace Plan and a 3 March 1993 agreement between Muslims and Croats;³⁷²⁶ (2) on 13 March 1993, the BiH Presidency dismissed the legally elected presidents of the municipal assemblies in Konjic and Jablanica; (3) on 20 March 1993, Safet Ćibo was illegally appointed “to the 4th Corps of ABiH” and to the regional board of the SDA for Herzegovina; and (4) the HVO HZ H-B had doubts about the sincerity of the Muslim leadership, in particular that of Izetbegović.³⁷²⁷

1178. Prlić further challenges the findings on the 4 April 1993 Ultimatum by pointing to allegedly ignored evidence on: (1) Izetbegović’s and Mate Boban’s agreement to implement the Vance-Owen Peace Plan;³⁷²⁸ (2) Lord David Owen’s statement that after their “bilateral agreement” on the Vance-Owen Peace Plan on 25 March 1993 it was decided that both sides would try to reach an agreement on controversial issues;³⁷²⁹ (3) the proposed Izetbegović-Boban joint statement’s compliance with the terms of the Vance-Owen Peace Plan;³⁷³⁰ (4) the minutes of the 3 April 1993 HVO HZ H-B meeting showing that Boban made arrangements for the Vance-Owen Peace Plan’s implementation with regard to interim provincial governments;³⁷³¹ and (5) the 25 April 1993 joint statement on the establishment of a co-ordinating body to implement the Vance-Owen Peace Plan and a joint command.³⁷³²

1179. Prlić also submits that a reasonable trial chamber would have concluded that the 4 April 1993 Ultimatum was not linked to a JCE, pointing to a number of documents.³⁷³³ Finally, in arguing that the Trial Chamber erred in finding that on 15 April 1993 and the days that followed,

articles; (2) [Redacted, see Annex C – Confidential Annex]; (3) never referred to the Vance-Owen Peace Plan in his statement; (4) was not involved in its implementation; and (5) was ignorant of its provisions. Prlić’s Appeal Brief, para. 486.

³⁷²⁵ Prlić’s Appeal Brief, paras 478-479, 482; Appeal Hearing, AT. 142 (20 Mar 2017).

³⁷²⁶ Prlić’s Appeal Brief, paras 475-478; Appeal Hearing, AT. 143 (20 Mar 2017).

³⁷²⁷ Prlić’s Appeal Brief, para. 478. See Appeal Hearing, AT. 132, 142-143 (20 Mar 2017).

³⁷²⁸ Prlić’s Appeal Brief, para. 480. Prlić submits that the Trial Chamber found that both sides had signed the entire Vance-Owen Peace Plan on 25 March 1993. Prlić’s Appeal Brief, para. 480.

³⁷²⁹ Prlić’s Appeal Brief, para. 482; Appeal Hearing, AT. 142 (20 Mar 2017). Prlić submits that Owen stated that the command/control of “the two military forces” remained a controversial issue between the parties, and that “[i]t was then decided that both sides would try, as much as they could, to reach an agreement and if an agreement was not reached within 14 days, the two Co-Chairmen would offer their good services”. Prlić’s Appeal Brief, para. 482.

³⁷³⁰ Prlić’s Appeal Brief, para. 483.

³⁷³¹ Prlić’s Appeal Brief, para. 481, referring to, *inter alia*, Ex. P01798.

³⁷³² Prlić’s Appeal Brief, para. 484; Appeal Hearing, AT. 143 (20 Mar 2017). Prlić submits further that the Trial Chamber ignored its own findings and that an isolated view on these documents and events presents a distorted picture, but when viewed in context the documents allow for the only reasonable conclusion that no JCE existed. Prlić’s Appeal Brief, para. 484, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 472.

³⁷³³ Prlić’s Appeal Brief, para. 487.

the HVO was ordered to enforce the ABiH's subordination, Prlić alleges that the Trial Chamber disregarded several orders issued as of March 1993 aimed at "ensur[ing] greater performance of assignments in operational zones" of directly subordinated units and preventing misunderstandings between the HVO and ABiH.³⁷³⁴

1180. The Prosecution responds that Prlić fails to show that the findings concerning the 4 April 1993 Ultimatum are unreasonable.³⁷³⁵ The Prosecution argues in particular that: (1) he fails to explain the relevance of the alleged unilateral acts by the SDA/ABiH in March 1993 and how they would render the Trial Chamber's findings unreasonable; (2) Prlić's claim that Izetbegović had signed the entire Vance-Owen Peace Plan on 25 March 1993 is irrelevant, since the plan expressly stated that the question of subordination was to be resolved in future negotiations;³⁷³⁶ (3) Prlić wrongly submits that the "proposed Boban-Izetbegović 'Joint Statement'" of 2 April 1993 complied with the terms of the Vance-Owen Peace Plan in light of the unilateral demand for subordination, which had not been settled under the plan;³⁷³⁷ and (4) to the extent that Prlić submits that the unilateral demand for subordination under threat of military force was meant to implement a "peace plan", this assertion is untenable.³⁷³⁸

1181. The Prosecution contends that in arguing that the 4 April 1993 Ultimatum was unrelated to the JCE, Prlić only refers to evidence unrelated to subordination or dating from late April and fails to explain how it renders the Trial Chamber's findings unreasonable.³⁷³⁹ It further submits that he fails to show that no reasonable trier of fact could have concluded that commencing on 15 April 1993, the HVO was enforcing the ABiH's subordination, and fails to explain the relevance of the March 1993 orders he cites.³⁷⁴⁰

1182. The Prosecution asserts that Prlić fails to show an error in the Trial Chamber's reliance on multiple media reports³⁷⁴¹ and Witness DZ's corroborated evidence³⁷⁴² when making its findings on

³⁷³⁴ Prlić's Appeal Brief, para. 485. In particular, he submits that these orders were unrelated to the 3 April 1993 HVO HZ H-B meeting and that during that time, weapons flowed freely from the HZ H-B to the ABiH. Prlić's Appeal Brief, para. 485.

³⁷³⁵ Prosecution's Response Brief (Prlić), paras 298-299; Appeal Hearing, AT. 182 (20 Mar 2017). See Appeal Hearing, AT. 192 (20 Mar 2017). The Prosecution asserts that he instead makes irrelevant and/or erroneous assertions and denies that the HVO's threat of unilateral implementation represented an "ultimatum". Prosecution's Response Brief (Prlić), para. 299.

³⁷³⁶ Prosecution's Response Brief (Prlić), paras 298-299.

³⁷³⁷ Prosecution's Response Brief (Prlić), paras 298-299.

³⁷³⁸ Prosecution's Response Brief (Prlić), para. 299.

³⁷³⁹ Prosecution's Response Brief (Prlić), para. 303.

³⁷⁴⁰ Prosecution's Response Brief (Prlić), para. 301. The Prosecution submits further that the evidence of weapons transport Prlić cites to is unrelated to the area in question and only shows that the HVO allowed such transports to ABiH regions where it was fighting the Serbs jointly with the ABiH, an uncontested fact. Prosecution's Response Brief (Prlić), para. 301.

³⁷⁴¹ Prosecution's Response Brief (Prlić), para. 300. The Prosecution submits in particular that Prlić fails to explain how no reasonable trier of fact could have preferred the Defence Department's spokesperson's (Veso Vegar's) contemporaneous statement to the press that "[i]t is definitely an ultimatum" over his implausible later assertion that he

the 4 April 1993 Ultimatum.³⁷⁴³ The Prosecution further submits that Prlić fails to demonstrate that the Trial Chamber acted unreasonably in not crediting his public denial in late April 1993, given the wealth of contrary evidence, including his own concession shortly after issuing the 4 April 1993 Ultimatum that it could “lead to bloodshed”.³⁷⁴⁴

1183. Prlić replies that the Prosecution wrongly claims that he conceded shortly after the 4 April 1993 Ultimatum that it could “lead to bloodshed”.³⁷⁴⁵

b. Analysis

1184. With regard to Prlić’s argument that the Trial Chamber erred in relying on the evidence of Tomljanovich, the Appeals Chamber notes that this argument is entirely based on a cross-reference to his sub-ground of appeal 4.2, which it dismisses elsewhere.³⁷⁴⁶ The Appeals Chamber notes further that in making the impugned findings on the 4 April 1993 Ultimatum,³⁷⁴⁷ the Trial Chamber relied on Witness DZ’s evidence in combination with ample other evidence.³⁷⁴⁸ Prlić has failed to show any error in this regard,³⁷⁴⁹ and his argument concerning Witness DZ is dismissed.

1185. With regard to Prlić’s argument that the Trial Chamber erroneously relied on “uncorroborated” media reports in its findings on the 4 April 1993 Ultimatum, the Appeals Chamber notes that the challenged findings are based not only on the media reports, but also on other corroborating evidence, notably the very minutes of the HVO HZ H-B meeting at which the ultimatum was adopted, Exhibit P01798.³⁷⁵⁰ With regard to Prlić’s submissions that the

“did not give any statements” during this period. Prosecution’s Response Brief (Prlić), para. 300. See also Prosecution’s Response Brief (Prlić), para. 298.

³⁷⁴² Prosecution’s Response Brief (Prlić), para. 302.

³⁷⁴³ Prosecution’s Response Brief (Prlić), para. 300.

³⁷⁴⁴ Prosecution’s Response Brief (Prlić), para. 300.

³⁷⁴⁵ Prlić’s Reply Brief, para. 74.

³⁷⁴⁶ See *supra*, paras 204-211.

³⁷⁴⁷ Trial Judgement, Vol. 4, para. 140.

³⁷⁴⁸ Trial Judgement, Vol. 4, paras 138-139.

³⁷⁴⁹ Trial Judgement, Vol. 4, para. 139. With regard to Prlić’s claim that Witness DZ relied on newspaper articles and a document from January 1993, the Appeals Chamber observes that the transcript pages that Prlić cites indicate that the witness relied on various first-hand sources. Witness DZ, T. 26483-26485 (closed session) (22 Jan 2008). The Appeals Chamber notes further that the witness [Redacted, see Annex C – Confidential Annex]. Witness DZ, T. 26473-26475, 26480 (closed session) (22 Jan 2008); Ex. P10367 (confidential), paras 4-7. Noting that the witness testified on the Vance-Owen Peace Plan in his *viva voce* testimony, the Appeals Chamber sees no merit in Prlić’s submission that his written statement does not contain any reference to this plan. Witness DZ, T. 26480, 26483-26485 (closed session) (22 Jan 2008). Prlić’s claim that the witness was not involved in the peace plan’s implementation is irrelevant for the reliability of his testimony on the plan. Prlić’s claim that the witness was ignorant of the plan’s provisions is not supported by the cited testimony, which deals with a separate document. Witness DZ, T. 26729-26730 (closed session) (24 Jan 2008). On the contrary, he testified that as soon as he arrived in the region he carefully reviewed the Vance-Owen Peace Plan, which he considered to be the very basis of all initiatives taking place in the region at the time. Witness DZ, T. 26480-26481 (closed session) (22 Jan 2008).

³⁷⁵⁰ The Appeals Chamber understands Prlić’s argument to refer to the findings in Trial Judgement, Vol. 1, para. 468 at fns 1131-1134, Vol. 4, para. 139 at fn. 396. Other evidence corroborating the media reports in question (Exs. P01804, P01808, P10675) includes Witness DZ, T(F). 26482-26483 (closed session) (22 Jan 2008) and Exhibits P02045, pp. 1-2 and P09545, pp. 83-85. To the extent that Prlić also intends to challenge the reliance on the media reports for the

Trial Chamber ignored reliable evidence showing that the media reports were incorrect and that no ultimatum was issued, the Appeals Chamber has considered the evidence he refers to and finds that Prlić has failed to show that no reasonable trier of fact could have reached the impugned findings.³⁷⁵¹ Specifically, the Appeals Chamber considers that: (1) Prlić fails to demonstrate that no reasonable trier of fact could have preferred the evidence on which the Trial Chamber based the impugned findings to the testimony of Witness Veso Vegar; and (2) Exhibit P09519 and the testimony of Witness Neven Tomić are not inconsistent with the impugned findings, notwithstanding Tomić's understanding of the word "ultimatum". Prlić has also failed to show that the Trial Chamber, in making the impugned findings, mischaracterised evidence.³⁷⁵² These arguments are dismissed.

1186. The Appeals Chamber fails to see how Prlić's assertions on Izetbegović's unilateral efforts to restructure BiH's districts, the BiH Presidency's dismissal of legally elected presidents of municipal assemblies, Safet Ćibo's illegal appointment to the ABiH's 4th Corps and the regional board of the Herzegovina SDA, and the HVO HZ H-B's mistrust towards the Muslim leadership are relevant to and could have impacted the challenged findings that the HVO HZ H-B adopted an ultimatum on 3 April 1993 for the Muslim authorities to subordinate the ABiH to the HVO.³⁷⁵³ Prlić merely asserts that this evidence is "essential to understanding the 3 April 1993 HVOHZHB conclusions"³⁷⁵⁴ but does not elaborate on – and therefore fails to clarify – the alleged connection between these issues and the challenged findings. As such, the Appeals Chamber concludes that he has failed to show that no reasonable trier of fact, based on the evidence, could have reached the conclusions of the Trial Chamber. To the extent that Prlić argues that these alleged facts provide ulterior motives for the HVO HZ H-B's ultimatum, negating any link to the JCE, the Appeals Chamber considers, in light of his deficient and unclear submissions, that he has failed to demonstrate that no reasonable trier of fact could have found a link to the JCE. These arguments are dismissed.

findings in Trial Judgement, Vol. 4, para. 138 at fns 392-393, the Appeals Chamber notes that the reports provide direct evidence for the findings that the 4 April 1993 Ultimatum was released to the press on 4 April 1993 and that several newspaper articles referred to it as an "ultimatum" with a deadline of 15 April 1993. Prlić has failed to show any error.

³⁷⁵¹ See Prlić's Appeal Brief, para. 479, referring to Veso Vegar, T. 37071-37075 (17 Feb 2009), 37083-37088, 37150-37152 (18 Feb 2009), Ex. P09519, Neven Tomić, T. 34710-34714 (17 Nov 2008). See also Appeal Hearing, AT. 142 (20 Mar 2017), referring to Exs. P01883, P02059, P03642, 1D02159, 2D00689, 2D00891.

³⁷⁵² Prlić claims that the Trial Chamber mischaracterised Exhibits P01798 and P02046/1D01655. See Prlić's Appeal Brief, para. 474 & fn. 1221, para. 482 & fn. 1241. With regard to Exhibit P01798, the Appeals Chamber understands that Prlić challenges the Trial Chamber's findings in Trial Judgement, Vol. 1, para. 468 at fns 1130-1131, 1133-1135, Vol. 4, para. 138 at fns 388-389, 391. With regard to Exhibit P02046/1D01655, the Appeals Chamber understands that Prlić challenges the Trial Chamber's finding in Trial Judgement, Vol. 1, para. 468 at fn. 1133, Vol. 4, para. 138 at fn. 394. The Appeals Chamber can see no indication that the Trial Chamber mischaracterised either exhibit in these findings.

³⁷⁵³ See *supra*, para. 1175. See also *supra*, para. 1176.

³⁷⁵⁴ Prlić's Appeal Brief, para. 478.

1187. With regard to Prlić's submission that the Trial Chamber ignored evidence on the agreement between Izetbegović and Boban regarding the implementation of the Vance-Owen Peace Plan, the Appeals Chamber finds that this agreement is irrelevant to the challenged findings, since the plan expressly foresaw further negotiations and agreement between the two sides with regard to the deployment of ABiH and HVO forces in Provinces 5, 8, 9, and 10.³⁷⁵⁵ This submission is therefore dismissed.

1188. With regard to Prlić's claim that the proposed Izetbegović-Boban joint statement complied with the terms of the Vance-Owen Peace Plan, the Appeals Chamber notes that the proposed joint statement foresaw a three-day deadline for the withdrawal of outside forces from the designated provinces and the subordination of HVO forces in Provinces 1, 5, and 9 to ABiH command, and of ABiH forces in Provinces 3, 8, and 10 to HVO command.³⁷⁵⁶ The Vance-Owen Peace Plan, however, did not envisage this.³⁷⁵⁷ The Appeals Chamber therefore finds that Prlić has failed to show that the proposed Izetbegović-Boban joint statement complied with the terms of the Vance-Owen Peace Plan, and dismisses his submission. Turning to Prlić's claim that the minutes of the 3 April 1993 HVO HZ H-B meeting show that Boban made arrangements for the Vance-Owen Peace Plan's implementation with regard to interim provincial governments, the Appeals Chamber notes that any steps taken towards implementation of the plan concerning such government institutions bear no relevance to the challenged findings that the HVO HZ H-B at that meeting adopted an ultimatum to the ABiH for subordination in certain provinces. It therefore dismisses this claim.

1189. The Appeals Chamber notes that the 25 April 1993 Croatian and Muslim joint statement on the establishment of a co-ordinating body to implement the Vance-Owen Peace Plan and a joint command, to which Prlić points and which the Trial Chamber considered, postdates the 4 April 1993 Ultimatum.³⁷⁵⁸ The Appeals Chamber fails to see why this evidence should render the

³⁷⁵⁵ Ex. P01398, p. 30, heading E. This is further supported by the quote of Lord Owen that the issue of command/control of the two military forces remained controversial between the Croatian and the Muslim sides after their agreement to the Vance-Owen Peace Plan, and that "[i]t was then decided that both sides would try, as much as they could, to reach an agreement" on this issue within a fortnight. Ex. P02059, p. 2. Prlić's argument that the Trial Chamber ignored this statement by Lord Owen setting out the next steps expected of the Croat and Muslim sides after their "bilateral agreement" on the Vance-Owen Peace Plan on 25 March 1993 is therefore dismissed. See also Herbert Okun, T. 16798 (3 Apr 2007). As a result, Prlić also fails to demonstrate the relevance of his submission that the Trial Chamber found that both sides had signed the entire Vance-Owen Peace Plan on 25 March 1993.

³⁷⁵⁶ Ex. P01798, pp. 2-3. The proposed joint statement was not even signed by the Muslim side, a fact that Prlić does not challenge. Trial Judgement, Vol. 1, paras 467-468; Ex. P01798, pp. 2-4; Prlić's Appeal Brief, para. 483.

³⁷⁵⁷ See *supra*, fn. 3755. See also Ex. 1D02908, p. 12, heading E.

³⁷⁵⁸ Prlić's Appeal Brief, para. 484, referring to, *inter alia*, Exs. P02078, P02088. The Trial Chamber expressly considered the 25 April 1993 joint statement in Trial Judgement, Vol. 1, para. 472. The Appeals Chamber therefore dismisses Prlić's allegation that the Trial Chamber ignored this finding. Prlić also refers, without any explanation as to why it should impact the impugned finding on the 4 April 1993 Ultimatum, to Exhibit P02054 (confidential), the relevance of which is unclear to the Appeals Chamber.

impugned findings unreasonable.³⁷⁵⁹ Prlić's submission regarding the 25 April 1993 joint statement is therefore dismissed.

1190. The Appeals Chamber notes that the documents which Prlić cites in support of his claim that a reasonable trial chamber would have concluded that the 4 April 1993 Ultimatum was not linked to a JCE, relate to a different time frame and/or subject matter than the subordination of ABiH units to HVO command in certain provinces as envisaged in the 4 April 1993 Ultimatum. As such, these documents fail to show that no reasonable trier of fact could have concluded that by drafting this ultimatum, Prlić significantly contributed to the implementation of the JCE in the municipalities of Prozor and Jablanica.³⁷⁶⁰ Prlić's claim regarding the link to a JCE is therefore dismissed.

1191. Finally, with regard to the orders issued as of March 1993, the Appeals Chamber fails to see their relevance to Prlić's challenge to the finding that, on 15 April 1993 and the days that followed, the HVO was ordered to enforce the ABiH's subordination.³⁷⁶¹ The Appeals Chamber therefore dismisses this challenge.

1192. For the foregoing reasons, Prlić's sub-grounds of appeal 16.2.1 and 16.2.2 fail.

(ii) Military operations following the 4 April 1993 Ultimatum (Prlić's Sub-grounds 16.2.3, 16.2.4, and 16.2.5)

1193. The Trial Chamber found that the HVO operations in the municipalities of Prozor and Jablanica in April 1993 resulted from a preconceived HVO plan to implement the 4 April 1993 Ultimatum by force.³⁷⁶² As part of this implementation, on 16 April 1993, Željko Šiljeg, Commander of the North-West OZ, drew up a "plan" for an attack on several villages in Prozor Municipality, including the village of Parcani, and sent it to the Main Staff.³⁷⁶³

³⁷⁵⁹ The Appeals Chamber also fails to see how the documents and events to which Prlić refers, when viewed in a broader context, demonstrate that the Trial Chamber erred in concluding that a JCE existed, and therefore dismisses Prlić's submission that an isolated view of these documents and events presents a distorted picture.

³⁷⁶⁰ See also Trial Judgement, Vol. 1, paras 464-473, referring to, *inter alia*, Exs. P01983, P02078, 1D02903, 3D00320; Trial Judgement, Vol. 4, paras 45-46. Cf. Prlić's Appeal Brief, para. 487 and references cited therein.

³⁷⁶¹ The Appeals Chamber further observes that in reaching this finding the Trial Chamber relied upon some of the orders that Prlić alleges it disregarded, but those orders in fact date from April 1993. See Trial Judgement, Vol. 1, para. 469, referring to, *inter alia*, Exs. P01900, P01913. Cf. Prlić's Appeal Brief, para. 485 and references cited therein. Likewise, the Appeals Chamber fails to see in which way his reference to evidence on the transport of weapons to the ABiH from the HZ H-B is relevant to the impugned finding, considering that the evidence pertains to March 1993. See Prlić's Appeal Brief, para. 485 and references cited therein.

³⁷⁶² Trial Judgement, Vol. 4, para. 146. See Trial Judgement, Vol. 4, paras 138-145. In paragraph 146, Volume 4, of the Trial Judgement, the Trial Chamber inadvertently referred to "the ultimatum of 15 April 1993". However, it is clear from the context of the Trial Judgement that the Trial Chamber meant to refer to the 4 April 1993 Ultimatum, which set the deadline on 15 April 1993. See Trial Judgement, Vol. 4, paras 138-140, 142.

³⁷⁶³ Trial Judgement, Vol. 4, paras 141-142.

a. Arguments of the Parties

1194. Prlić submits that the Trial Chamber erroneously concluded that the 4 April 1993 Ultimatum caused clashes around Jablanica Municipality (in particular in Sovići and Doljani) and was followed by systematic and widespread HVO military operations around Prozor.³⁷⁶⁴ He contends that the Trial Chamber erred in finding that, following this ultimatum, a plan to attack villages in Prozor Municipality was drawn up, as it relied on exhibits introduced through a bar table motion and ignored Witness Radmilo Jasak's testimony that no plan for attack existed and that the HVO action was a reaction to an ABiH offensive that had commenced on 13 April 1993.³⁷⁶⁵ Prlić further alleges that the Trial Chamber made contradictory findings in concluding on the one hand that the HVO started shelling the town of Jablanica on 15 April 1993, and on the other hand that clashes between the HVO and the ABiH started on 13-14 April 1993.³⁷⁶⁶ Finally, Prlić argues that the Trial Chamber disregarded evidence showing that the HVO did not plan to take control of Jablanica and was rather defending against an ABiH offensive that began on 23 March 1993.³⁷⁶⁷

1195. The Prosecution responds that the Trial Chamber reasonably concluded, based on various findings and evidence, that: (1) the HVO operations in the municipalities of Prozor and Jablanica resulted from the HVO's plan to implement the 4 April 1993 Ultimatum by force;³⁷⁶⁸ and (2) the HVO drew up a plan of attack on Prozor.³⁷⁶⁹

b. Analysis

1196. Turning to Prlić's contention that the Trial Chamber erred in finding that following the 4 April 1993 Ultimatum, a plan to attack villages in Prozor Municipality was drawn up, the Appeals Chamber finds that Prlić's submission that the Trial Chamber relied upon exhibits admitted by decision on a bar table motion fails to show that no reasonable trier of fact could have reached the impugned finding based on the evidence before it.³⁷⁷⁰ Concerning Jasak's testimony, the

³⁷⁶⁴ Prlić's Appeal Brief, para. 488.

³⁷⁶⁵ Prlić's Appeal Brief, para. 489, referring to, *inter alia*, Prlić's Appeal Brief, ground of appeal 3. See also Appeal Hearing, AT. 144 (20 Mar 2017).

³⁷⁶⁶ Prlić's Appeal Brief, para. 490.

³⁷⁶⁷ Prlić's Appeal Brief, para. 491. See also Appeal Hearing, AT. 142-143 (20 Mar 2017).

³⁷⁶⁸ Prosecution's Response Brief (Prlić), paras 304, 306. The Prosecution submits in particular that to the extent that Prlić relies on Petković's "self-serving" statement that the HVO never planned to take control of Jablanica to show that it did not plan to attack Sovići and Doljani, this claim is contradicted by several contemporaneous reports to Petković. Prosecution's Response Brief (Prlić), para. 306. The Prosecution further argues that there is no contradiction between the Trial Chamber's findings that: (1) HVO-ABiH clashes broke out in Jablanica Municipality on 13-14 April 1993, with the HVO surrounding the town of Jablanica; and (2) the HVO commenced shelling the town of Jablanica on 15 April 1993. Prosecution's Response Brief (Prlić), para. 306.

³⁷⁶⁹ Prosecution's Response Brief (Prlić), para. 305. The Prosecution submits further that Prlić fails to demonstrate how the Trial Chamber acted unreasonably in favouring the plain words of contemporaneous reports over Jasak's self-serving testimony. Prosecution's Response Brief (Prlić), para. 305.

³⁷⁷⁰ The Appeals Chamber notes in particular that the Trial Chamber in reaching the impugned finding relied on HVO reports setting out the plan on raiding, *inter alia*, Parcani in Prozor Municipality, implementing the plan, and reporting

Appeals Chamber notes that he testified that there was no plan *at the level of the Main Staff* whereas the Trial Chamber found that the plan for attack was drawn up by Šiljeg, Commander of the North-West OZ, and sent to the Main Staff; Jasak's testimony is therefore not inconsistent with the impugned finding.³⁷⁷¹ Further, the Appeals Chamber recalls that where a trial chamber does not refer to evidence it is to be presumed that it assessed and weighed the evidence, provided that there is no indication that the trial chamber completely disregarded evidence which is clearly relevant.³⁷⁷² In the present case, the Appeals Chamber considers that Prlić has failed to rebut the presumption that the Trial Chamber assessed the evidence. These arguments are therefore dismissed.

1197. The Appeals Chamber further sees no contradiction between the Trial Chamber's findings that the HVO commenced shelling Jablanica town on 15 April 1993, and that clashes between the HVO and the ABiH broke out on 13-14 April 1993 in Jablanica Municipality.³⁷⁷³ The argument is dismissed.

1198. With regard to Prlić's argument that the Trial Chamber disregarded evidence showing that the HVO did not plan to take control of Jablanica and was rather defending against an ABiH offensive that began on 23 March 1993, the Appeals Chamber first notes that Prlić does not point to any finding that the HVO *planned* to take control of Jablanica but rather to a finding concerning the capture of two villages in Jablanica Municipality.³⁷⁷⁴ The Appeals Chamber further notes that his assertions that the HVO action constituted a defence against an ABiH offensive do not detract from and are not inconsistent with the finding that the HVO eventually captured the villages. To the extent that Prlić suggests that these submissions are inconsistent with the Trial Chamber's finding that the HVO military operations in the municipalities of Jablanica and Prozor resulted from an HVO plan to implement by force the 4 April 1993 Ultimatum,³⁷⁷⁵ the Appeals Chamber fails to see how ABiH military operations that began on 23 March 1993 could show that no reasonable trier of fact could have found that HVO military operations in April 1993 were carried out pursuant to the 4 April 1993 Ultimatum.

thereon. Trial Judgement, Vol. 4, para. 141, referring to, *inter alia*, Exs. P01909, P01917, P01936, P01952. Further, the Appeals Chamber notes that in making this argument, Prlić refers to his submissions under ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

³⁷⁷¹ Radmilo Jasak, T. 48951 (26 Jan 2010); Trial Judgement, Vol. 4, para. 141. Moreover, the possibility that the HVO action may have been a reaction to an ABiH offensive that had commenced on 13 April 1993, allegedly suggested in Jasak's testimony, is not inconsistent with the impugned finding that the "plan" for an attack on several villages in Prozor Municipality was drawn up as part of the implementation of the 4 April 1993 Ultimatum.

³⁷⁷² *Tolimir* Appeal Judgement, para. 53; *Popović et al.* Appeal Judgement, paras 925, 1017; *Kvočka et al.* Appeal Judgement, para. 23.

³⁷⁷³ See Trial Judgement, Vol. 2, paras 526, 528, Vol. 4, para. 143. The Appeals Chamber observes in addition that all references to Trial Chamber findings contained in Prlić's Appeal Brief, para. 490, are erroneous, and recalls that an appellant is expected to provide precise reference to relevant paragraphs in the trial judgement to which the challenges are being made. See *supra*, para. 24.

³⁷⁷⁴ See Prlić's Appeal Brief, para. 491, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 144.

³⁷⁷⁵ Trial Judgement, Vol. 4, para. 146. See *supra*, fn. 3762.

1199. Having dismissed all arguments under the present sub-grounds of appeal, the Appeals Chamber considers that Prlić has failed to demonstrate that the Trial Chamber erroneously concluded that the 4 April 1993 Ultimatum caused clashes around Jablanica Municipality and was followed by systematic and widespread HVO military operations around Prozor.³⁷⁷⁶

1200. For the foregoing reasons, Prlić's sub-grounds of appeal 16.2.3, 16.2.4, and 16.2.5 fail.

(iii) Removal of Muslims from Doljani and Sovići (Prlić's Sub-ground 16.2.6)

1201. The Trial Chamber found that on 5 May 1993, the President of the Gornji Vakuf HVO, Ivan Šarić, wrote to Prlić informing him that the HVO had removed approximately 300 Muslims from Doljani and Sovići, and that Prlić did nothing to protect them.³⁷⁷⁷

1202. Prlić submits that the Trial Chamber erred in finding, solely relying on Exhibit P02191, that he was personally informed of the removal of these civilians and did nothing to protect them, while no evidence supports a finding that he received this document or was informed of its content.³⁷⁷⁸ He claims that the Trial Chamber found no involvement of the HVO HZ H-B or Prlić in the evacuation of civilians.³⁷⁷⁹

1203. The Prosecution responds that Prlić fails to show that the impugned finding was unreasonable, since it is based on a 5 May 1993 report addressed directly to him and bearing a stamp confirming receipt on the same day.³⁷⁸⁰ It submits that his remaining assertions are irrelevant.³⁷⁸¹

1204. The Appeals Chamber notes that the Trial Chamber found that the report (Exhibit P02191) was received by the HVO Main Staff in Mostar on the same day that it was sent, and was addressed to the President of the HVO HZ H-B in Mostar.³⁷⁸² It finds that Prlić has failed to show that no reasonable trier of fact could have found, relying on this exhibit, that he was personally informed of the removal of civilians from Sovići and Doljani.³⁷⁸³ Regarding Prlić's submission that the Trial Chamber found no involvement of the HVO HZ H-B or Prlić in the evacuation of civilians,

³⁷⁷⁶ Prlić's Appeal Brief, para. 488. The Appeals Chamber notes that Prlić fails to identify the impugned finding by way of reference to the Trial Judgement, but understands his challenges to refer to the finding in the first sentence in Trial Judgement, Vol. 4, para. 146, recalled *supra*, para. 1193 at fn. 3762.

³⁷⁷⁷ Trial Judgement, Vol. 2, para. 613, Vol. 4, paras 145-146.

³⁷⁷⁸ Prlić's Appeal Brief, para. 492, referring to, *inter alia*, Prlić's ground of appeal 3.

³⁷⁷⁹ Prlić's Appeal Brief, para. 493.

³⁷⁸⁰ Prosecution's Response Brief (Prlić), para. 307.

³⁷⁸¹ Prosecution's Response Brief (Prlić), para. 307.

³⁷⁸² Trial Judgement, Vol. 2, para. 613, Vol. 4, para. 145.

³⁷⁸³ Prlić's Appeal Brief, para. 492, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 613, Vol. 4, paras 145-146. The Appeals Chamber notes that Prlić also refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

the Appeals Chamber fails to see its relevance to the impugned finding. Prlić's sub-ground of appeal 16.2.6 is dismissed.

(iv) Mens rea (Prlić's Sub-ground 16.2.7)

1205. The Trial Chamber found that, being aware of the HVO crimes committed against the Muslim population in the wake of the 15 January 1993 Ultimatum, Prlić had reason to know that the similar 4 April 1993 Ultimatum would have the same outcome, namely the commission of crimes by the HVO against the Muslim population, and that he intended this to happen.³⁷⁸⁴ Thus, the Trial Chamber found that by participating in drafting the latter ultimatum, Prlić accepted the destruction of Muslim property and the arrests and removal of the Muslim population in the municipalities of Jablanica and Prozor in mid-April 1993.³⁷⁸⁵

1206. Prlić submits that the Trial Chamber erred in concluding that by participating in drafting the 4 April 1993 Ultimatum he intended that crimes be committed against Muslims in the municipalities of Prozor and Jablanica, as it ignored evidence that the alleged crimes were investigated and that it was Boban, rather than Prlić or the HVO HZ H-B, who was involved in the investigations.³⁷⁸⁶

1207. The Prosecution responds that: (1) the impugned finding is reasonable; (2) the alleged investigations were in fact only preliminary inquiries that were never followed through and which the Trial Chamber did not ignore; and (3) Prlić fails to explain how his lack of involvement in this regard demonstrates that he did not intend the crimes.³⁷⁸⁷

1208. The Appeals Chamber notes that Prlić relies on Petković's evidence that there were investigations into crimes committed by the Convicts' Battalion in the second half of April 1993 in Sovići and Doljani in Jablanica Municipality.³⁷⁸⁸ Contrary to Prlić's assertion, the Trial Chamber did not ignore Petković's evidence on this topic.³⁷⁸⁹ The Trial Chamber found in this regard that: "It is clear from all the evidence that not only were no measures taken, but moreover, these units, which were known since 1993 to be violent and dangerous, took part in HVO numerous military operations during which many crimes were committed."³⁷⁹⁰ As for the submission that it was Boban who was involved, the Appeals Chamber notes that Prlić refers to some evidence indicating that

³⁷⁸⁴ Trial Judgement, Vol. 4, paras 146-147. See *supra*, fn. 3762.

³⁷⁸⁵ Trial Judgement, Vol. 4, paras 146-147.

³⁷⁸⁶ Prlić's Appeal Brief, para. 494, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 146-147; Ex. 2D00089; Ex. P02088, Milivoj Petković, T. 49439-49442 (15 Feb 2010).

³⁷⁸⁷ Prosecution's Response Brief (Prlić), para. 308.

³⁷⁸⁸ See Prlić's Appeal Brief, para. 494 & fn. 1281 and references cited therein.

³⁷⁸⁹ See Trial Judgement, Vol. 4, para. 806 & fn. 1522.

³⁷⁹⁰ Trial Judgement, Vol. 4, para. 806. See *infra*, paras 2338-2349.

Boban had some involvement in investigations into crimes.³⁷⁹¹ However, the Appeals Chamber finds that the mere fact that someone else may have been involved in the investigation rather than Prlić cannot show an error in the Trial Chamber's finding on his *mens rea*.³⁷⁹² His sub-ground of appeal 16.2.7 is therefore dismissed.

(c) Prlić's involvement in the campaign of mass arrest of Muslims beginning on 30 June 1993 in several municipalities (Prlić's Sub-ground 16.3)

1209. The Trial Chamber found that on 30 June 1993, following an ABiH attack on HVO positions, Prlić and Stojić issued a joint proclamation ("30 June 1993 Joint Proclamation"), containing a call to arms to the Croatian people in BiH to defend themselves against the Muslim aggression.³⁷⁹³ Despite the fact that the 30 June 1993 Joint Proclamation did not, *per se*, call for the mass arrest of Muslims, the Trial Chamber concluded that Prlić accepted, knew, and intended to have Muslim men arrested indiscriminately and *en masse*, and placed in detention.³⁷⁹⁴ In reaching this conclusion, the Trial Chamber considered that the "chronological account of the events that occurred after the [30 June 1993 Joint Proclamation] attests to the implementation of a preconceived plan",³⁷⁹⁵ including the actions undertaken by the military authorities after the 30 June 1993 Joint Proclamation.³⁷⁹⁶ In this regard, the Trial Chamber found that: (1) the military chain of command perceived the 30 June 1993 Joint Proclamation, which Stojić was charged with implementing,³⁷⁹⁷ "in the same way it did" the 15 January 1993 Ultimatum and the 4 April 1993 Ultimatum; and (2) based on the testimony of Petković, the military authorities could not have

³⁷⁹¹ Prlić's Appeal Brief, para. 494, referring to, *inter alia*, Ex. 2D00089, Ex. P02088, Milivoj Petković, T. 49439-49442 (15 Feb 2010).

³⁷⁹² The Appeals Chamber recalls that it has overturned the Trial Chamber's findings regarding the deaths of seven civilians in Duša and Prlić's convictions for the 19 April 1993 killings in the village of Tošćanica in Prozor Municipality. See *supra*, paras 441-443, 876 & fn. 2790, para. 886. The Appeals Chamber does not consider that these changes affect the Trial Chamber's finding that is challenged under this ground, insofar as it concerns the remaining crimes, *i.e.* that Prlić, being aware of the HVO crimes committed against the Muslim population in the wake of the 15 January 1993 Ultimatum, had reason to know that the similar 4 April 1993 Ultimatum would have the same outcome, namely the commission of crimes by the HVO against the Muslim population, and that he intended this to happen. See Trial Judgement, Vol. 4, para. 146; *supra*, fn. 3762. This is in particular so since not many instances of murder took place in that period. See *supra*, para. 876.

³⁷⁹³ Trial Judgement, Vol. 4, paras 151, 154.

³⁷⁹⁴ Trial Judgement, Vol. 4, paras 154-155.

³⁷⁹⁵ Trial Judgement, Vol. 4, para. 154.

³⁷⁹⁶ Trial Judgement, Vol. 4, paras 151 (the Commander of the North-West OZ, Željko Šiljeg, requested "instructions for work" from Petković and Stojić on the basis of the 30 June 1993 Joint Proclamation and forwarded "the order of the Defence Department and the HVO HZ H-B" to the Rama Brigade and the 2nd Military Police Battalion, among others), 152 (Radoslav Lavrić sent an order, pursuant to the 30 June 1993 Joint Proclamation, to all the departments and sections of the Military Police Administration and to all Military Police battalions demanding, *inter alia*, the arrest of all conscripts who had not regulated their status).

³⁷⁹⁷ Trial Judgement, Vol. 4, para. 151.

made arrests without the approval of the civilian authorities, including the consent of President Prlić.³⁷⁹⁸

(i) Arguments of the Parties

1210. Prlić challenges the Trial Chamber's findings regarding his involvement in the campaign of arrests and mass detention of Muslims beginning on 30 June 1993 in several municipalities.³⁷⁹⁹ First, Prlić argues that the Trial Chamber ignored evidence of a Muslim offensive starting on 30 June 1993 and made contradictory findings when concluding that Prlić and Stojić called on the Croats to arm themselves against the Muslims in the 30 June 1993 Joint Proclamation,³⁸⁰⁰ rather than accepting this proclamation as an act of defence.³⁸⁰¹ Second, Prlić claims that the Trial Chamber erred in concluding that the 30 June 1993 Joint Proclamation was linked to a JCE, while it ignored evidence that the HVO: (1) was surprised by the ABiH attack; (2) had not taken any preventive measures; and (3) had made no preparations for the arrests resulting from the ABiH attack and killings of HVO Croats by HVO Muslims.³⁸⁰²

1211. Prlić also submits that the Trial Chamber erred in concluding that the military chain of command perceived the 30 June 1993 Joint Proclamation in the same way as it perceived the 15 January 1993 Ultimatum and the 4 April 1993 Ultimatum.³⁸⁰³ He specifically submits that the evidence does not support the Trial Chamber's finding that Stojić was tasked with implementing this proclamation.³⁸⁰⁴

³⁷⁹⁸ Trial Judgement, Vol. 4, para. 154.

³⁷⁹⁹ Prlić's Appeal Brief, para. 495. See Prlić's Appeal Brief, para. 503. See also Prlić's Appeal Brief, para. 449.

³⁸⁰⁰ Prlić's Appeal Brief, paras 496-497; Appeal Hearing, AT. 144-145 (20 Mar 2017).

³⁸⁰¹ Prlić's Appeal Brief, para. 498. See Prlić's Appeal Brief, paras 496-497. Prlić specifically argues that the attack on 30 June 1993 was an act of treason by Muslim HVO soldiers and that he himself issued no orders to military units and made no inflammatory remarks demonising Muslims or the ABiH. Prlić's Appeal Brief, paras 497-498.

³⁸⁰² Prlić's Appeal Brief, para. 499. See Prlić's Appeal Brief, para. 500, referring to Witness Klaus Johann Nissen's and Witness Božo Pavlović's testimonies; Appeal Hearing, AT. 144-145 (20 Mar 2017).

³⁸⁰³ Prlić's Appeal Brief, para. 503. See Prlić's Appeal Brief, para. 504, referring to Prlić's sub-grounds of appeal 16.1-16.2.

³⁸⁰⁴ Prlić's Appeal Brief, paras 505-506. Prlić submits that the Trial Chamber erred in finding that the 30 June 1993 Joint Proclamation was the basis for the following acts: (1) Šiljeg's request, Exhibit P03026, for "instructions for work"; and (2) Lavrić's order to the Military Police, Exhibit P03077, demanding, *inter alia*, the arrest of all conscripts who had not regulated their status. Prlić's Appeal Brief, paras 507-508. Prlić contends that the 30 June 1993 Joint Proclamation was never sent to the HVO Main Staff or any military structure. Prlić's Appeal Brief, para. 507. Prlić also submits that the Trial Chamber contradicted itself regarding who ordered the mobilisation and ignored the following evidence: (1) Lavrić's order "conformed" to Stojić's order; (2) the arrests were based on HVO Main Staff orders; and (3) Petković's order of 30 June 1993 was based on an authorisation from Boban and did not refer to the 30 June 1993 Joint Proclamation. Prlić's Appeal Brief, paras 507-509.

1212. In addition, Prlić claims that the Trial Chamber erred in concluding that the military authorities could not have made arrests without the approval of the civilian authorities, including Prlić, as it mischaracterised Petković's testimony.³⁸⁰⁵

1213. Finally, regarding his knowledge and intent, Prlić submits that the Trial Chamber erred in concluding that he knew of "the plan" and intended to have Muslim men arrested indiscriminately and *en masse*, and placed in detention.³⁸⁰⁶ Prlić argues that the Trial Chamber ignored evidence of his attempts to reduce tension and improve the situation by: (1) informing the "internationals" about the arrests as soon as he became aware; and (2) appealing to all sides in BiH not to use humanitarian operations as a weapon in the conflict.³⁸⁰⁷

1214. The Prosecution responds that Prlić fails to show an error in the Trial Chamber's findings.³⁸⁰⁸ It submits that the Trial Chamber specifically considered the attack launched by the ABiH forces and that it is irrelevant whether this attack came as a surprise or not.³⁸⁰⁹ The Prosecution also argues that Prlić's attempts to distance himself from Stojić's "mobilisation order" are unfounded.³⁸¹⁰ Further, it claims that Prlić failed to demonstrate an error in the Trial Chamber's conclusion that the 30 June 1993 Joint Proclamation and Petković's order caused orders to be issued down the military chain of command.³⁸¹¹ With respect to Petković's testimony, the Prosecution argues that Prlić fails to explain how the Trial Chamber erred in relying on his evidence that the HVO was structured for the civilian authorities to "exert control over the military".³⁸¹²

³⁸⁰⁵ Prlić's Appeal Brief, para. 501. See Prlić's Appeal Brief, para. 502, referring to Prlić's sub-ground of appeal 12.1.

³⁸⁰⁶ Prlić's Appeal Brief, para. 510. See Prlić's Appeal Brief, para. 511, referring to Prlić's sub-grounds of appeal 16.3.1-16.3.2.

³⁸⁰⁷ Prlić's Appeal Brief, para. 512, referring to, *inter alia*, Prlić's Appeal Brief, para. 433 (Prlić's ground of appeal 14).

³⁸⁰⁸ Prosecution's Response Brief (Prlić), paras 309-310. See Appeal Hearing, AT. 192 (20 Mar 2017).

³⁸⁰⁹ Prosecution's Response Brief (Prlić), para. 312. The Prosecution notes that in any event, Prlić relies on evidence indicating that the HVO had envisaged that the situation in Mostar could escalate. Prosecution's Response Brief (Prlić), para. 312.

³⁸¹⁰ Prosecution's Response Brief (Prlić), para. 311.

³⁸¹¹ Prosecution's Response Brief (Prlić), para. 313. See also Prosecution's Response Brief (Prlić), para. 315. The Prosecution further submits that the 30 June 1993 Joint Proclamation was indeed forwarded to military units. Prosecution's Response Brief (Prlić), para. 313. In addition, the Prosecution argues that Prlić fails to explain how the Trial Chamber erred in relying on Petković's testimony to find that the military authorities could not have carried out the mass arrests without the approval of the civilian authorities, including Prlić. Prosecution's Response Brief (Prlić), para. 314.

³⁸¹² Prosecution's Response Brief (Prlić), para. 314. See Prosecution's Response Brief (Prlić), fn. 1101. The Prosecution submits further that it is beside the point whether Petković's order was based on authority from Boban. Prosecution's Response Brief (Prlić), para. 315.

1215. Finally, the Prosecution submits that Prlić's knowledge and intent are amply demonstrated by his attempt to justify the mass detentions and arrests, and that his submissions to the contrary are unfounded.³⁸¹³

(ii) Analysis

1216. The Appeals Chamber turns first to Prlić's argument that the Trial Chamber ignored evidence of a Muslim offensive starting on 30 June 1993 and made contradictory findings when concluding that the 30 June 1993 Joint Proclamation called on the Croats to arm themselves against the Muslims. The Appeals Chamber recalls that the Trial Chamber concluded that early on 30 June 1993, the ABiH launched an offensive on the HVO Tihomir Mišić Barracks, located in the north of the town of Mostar, and that following this and other attacks that took place during the course of several days, the ABiH succeeded in taking control of the north zone of East Mostar.³⁸¹⁴ The Trial Chamber also found that the 30 June 1993 Joint Proclamation called for the Croatian people in BiH to defend themselves against the Muslim aggression.³⁸¹⁵ Considering these findings, the Appeals Chamber finds that Prlić fails to show that the Trial Chamber ignored evidence of a Muslim offensive starting on 30 June 1993, and is merely offering his own interpretation of the evidence.³⁸¹⁶ Further, Prlić fails to explain how the Trial Chamber contradicted itself.³⁸¹⁷ Consequently, the Appeals Chamber dismisses his argument.

1217. Concerning Prlić's second challenge that this proclamation was not linked to the JCE, the Appeals Chamber finds that the allegedly ignored evidence does not provide clear support for Prlić's assertions that the HVO was surprised, had not taken any preventive measures with regard to the ABiH attack, and had made no preparations for the arrests.³⁸¹⁸ In any event, Prlić fails to explain why the mass arrest of Muslims could not be linked to the JCE if it had not been planned prior to the ABiH attack.³⁸¹⁹ The Appeals Chamber dismisses his argument accordingly.

1218. With respect to Prlić's challenge that the Trial Chamber erred in finding that the military chain of command perceived the 30 June 1993 Joint Proclamation in the same way as it did the

³⁸¹³ Prosecution's Response Brief (Prlić), para. 316. The Prosecution also submits that Prlić's appeal of 6 July 1993 not to use humanitarian operations as a weapon is irrelevant to the arrest campaign and only highlights his failure to take action in that regard. Prosecution's Response Brief (Prlić), para. 317.

³⁸¹⁴ Trial Judgement, Vol. 2, paras 880-881. See also Trial Judgement, Vol. 4, paras 57, 64.

³⁸¹⁵ Trial Judgement, Vol. 4, para. 151.

³⁸¹⁶ See Prlić's Appeal Brief, para. 497.

³⁸¹⁷ See Prlić's Appeal Brief, para. 496 & fn. 1287, referring to Trial Judgement, Vol. 2, paras 879-884.

³⁸¹⁸ See Prlić's Appeal Brief, para. 499, referring to, *inter alia*, Ex. 4D00702, Radmilo Jašak, T. 48700-48701 (20 Jan 2010), Milivoj Petković, T. 49585, 49589 (17 Feb 2010).

³⁸¹⁹ The Appeals Chamber further finds no merit in Prlić's reference to Nissen's evidence, in which he speculated about, but acknowledged having no personal knowledge of, any plan or preparations for mass arrests of Muslims, and to Pavlović's testimony, in which he said that he did not recall the 30 June 1993 Joint Proclamation. See Prlić's Appeal Brief, para. 500 and references cited therein.

15 January 1993 Ultimatum and the 4 April 1993 Ultimatum, the Appeals Chamber finds, having reviewed the Trial Chamber's findings regarding the issuance and chain of command in respect of the 30 June 1993 Joint Proclamation and the supporting evidence, that Prlić has failed to articulate an error that would invalidate the Trial Chamber's conclusion in this respect. The Appeals Chamber notes in particular that the Trial Chamber's findings on how the military chain of command perceived the 30 June 1993 Joint Proclamation find explicit support in the evidence on which it relied.³⁸²⁰ The Appeals Chamber further considers that a reasonable trier of fact could have found, based on the 30 June 1993 Joint Proclamation and events that followed, that Stojić was tasked with implementing this proclamation.³⁸²¹ Bearing in mind the Trial Chamber's findings with respect to, and in particular the chronology of events following the signing of, the 15 January 1993 Ultimatum and the 4 April 1993 Ultimatum,³⁸²² the Appeals Chamber finds that a reasonable trier of fact could have made the impugned finding. The Appeals Chamber therefore dismisses Prlić's challenge.

1219. Concerning Prlić's challenge to the Trial Chamber's conclusion that the military authorities could not have made arrests without the approval of the civilian authorities, the Appeals Chamber considers that Prlić fails to explain how Petković's statement that Prlić's influence was limited by the decree on armed forces would show that the Trial Chamber mischaracterised his testimony. The Appeals Chamber observes that the Trial Chamber specifically considered Petković's testimony that Prlić could only issue operative orders to the armed forces through the Department of Defence, but also noted that he, as President of the HVO Government, issued decisions that had a direct impact on the course of military operations of the HVO.³⁸²³ Against this background, the Appeals Chamber finds that Prlić merely disagrees with the Trial Chamber's finding without showing an error and dismisses his argument.³⁸²⁴

³⁸²⁰ See Trial Judgement, Vol. 4, paras 151-152, referring to Exs. P03026, P03038, P03039, P03077. Notably, Šiljeg's order, Exhibit P03026, specifically states that it is based on, *inter alia*, "the command issued by the Head of Defence Department and the President of the HVO HB HZB". Exhibit P03077 similarly indicates that it was issued "[p]ursuant to the order by the Head of the Defence Department, Mr Bruno Stojić, and the HZ H-B HVO President, Dr. J. Prlić". In addition, the Appeals Chamber finds that Prlić has failed to demonstrate that the 30 June 1993 Joint Proclamation "was never sent to the HVO Main Staff or to any military structure". Prlić's Appeal Brief, para. 507. See Ex. P03039 (forwarding the 30 June 1993 Joint Proclamation to, *inter alia*, all HVO representatives in municipalities, all Defence Offices in municipalities, and Military Police command). The Appeals Chamber also finds no contradiction in the Trial Chamber's findings regarding who ordered the mobilisation. Compare Trial Judgement, Vol. 2, para. 884, with Trial Judgement, Vol. 4, paras 151-152. Finally, the Appeals Chamber considers that Prlić fails to show that the allegedly ignored evidence is relevant to or impacts the impugned finding.

³⁸²¹ See Trial Judgement, Vol. 4, para. 151, referring to, *inter alia*, Ex. P03038. The Appeals Chamber considers that Prlić fails to point to any evidence that would show an error in this regard. See Prlić's Appeal Brief, para. 506. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 16.1 and 16.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 1146-1208.

³⁸²² Trial Judgement, Vol. 4, paras 125, 138-140. See *supra*, paras 1149-1152, 1184-1189.

³⁸²³ Trial Judgement, Vol. 4, para. 107. See also Trial Judgement, Vol. 4, para. 106; *supra*, para. 1118.

³⁸²⁴ The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 12.1, which it dismisses elsewhere in the Judgement. See *supra*, paras 1099-1122.

1220. Finally, turning to Prlić's arguments concerning his intent and knowledge of the plan to have Muslim men arrested indiscriminately and *en masse*, and placed in detention, the Appeals Chamber notes that these challenges are based in part on mere cross-reference to arguments that were considered and dismissed above.³⁸²⁵ Regarding the argument that the Trial Chamber ignored evidence of his attempts to reduce tension and improve the situation by informing the "internationals" about the arrests, the Appeals Chamber notes that the Trial Chamber specifically found, *inter alia*, that Prlić informed representatives of an international organisation of the 6,000 Muslim military-aged men whom the HVO had arrested for security reasons and placed in detention.³⁸²⁶ The Appeals Chamber thus dismisses his argument as he ignores relevant findings. In relation to the argument that the Trial Chamber ignored evidence of Prlić's appeal to all sides in BiH not to use humanitarian operations as a weapon, the Appeals Chamber finds that Prlić has failed to show how such evidence demonstrates that the Trial Chamber's findings regarding the campaign of arrests and mass detention of Muslims are unreasonable and dismisses his argument accordingly.³⁸²⁷

1221. In light of the above, the Appeals Chamber finds that Prlić has failed to show any error in the impugned findings and dismisses his sub-ground of appeal 16.3.

(d) Mostar Municipality (Prlić's Sub-ground 16.4)

(i) West Mostar

a. Alleged error in concluding that the Croatian culture was introduced (Prlić's Sub-ground 16.4.1)

1222. Prlić submits that the Trial Chamber erred in finding, by relying on the testimony of Tomljanovich, while ignoring other evidence, that he approved the introduction of a Croatian culture in HZ(R) H-B through the use of the Croatian language and Dinar and the HZ H-B coat of arms and flag.³⁸²⁸

³⁸²⁵ Specifically, Prlić refers to his challenges in sub-grounds of appeal 16.3.1 and 16.3.2 (Prlić's Appeal Brief, paras 496-500), which concern the 30 June 1993 Joint Proclamation. See Prlić's Appeal Brief, para. 511; *supra*, paras 1210, 1216-1217.

³⁸²⁶ Trial Judgement, Vol. 2, para. 894 & fn. 2091, specifically noting the testimony of Petković that "the HVO had never tried to conceal the isolation measures against HVO Muslim soldiers and Muslims fit for combat from the international observers", referring to, *inter alia*, Milivoj Petković, T(F). 49581-49584 (17 Feb 2010). See also Trial Judgement, Vol. 2, para. 895, Vol. 4, para. 153.

³⁸²⁷ The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 14, which it dismisses elsewhere in the Judgement. See *supra*, paras 1128-1134.

³⁸²⁸ Prlić's Appeal Brief, paras 514-520.

1223. The Prosecution responds that Prlić's conviction does not rely on the findings made on his involvement in "Croatisation" and as such his arguments should be summarily dismissed.³⁸²⁹

1224. The Appeals Chamber notes that while the Trial Chamber found that Prlić did debate and sign regulations approving the introduction of a Croatian culture, it did not find that Prlić promoted the municipal HVO's policy of discrimination against Muslims, thus encouraging their departure from Mostar.³⁸³⁰ It also did not find that he was informed of such a policy.³⁸³¹ As Prlić challenges factual findings on which his conviction does not rely,³⁸³² the Appeals Chamber dismisses his sub-ground of appeal 16.4.1.

b. Alleged error regarding Prlić's acceptance of the arrest of Muslims that took place around 9 May 1993 (Prlić's Sub-ground 16.4.2)

1225. The Trial Chamber found that the situation in Mostar was discussed during the 38th session of the HVO on 17 May 1993, and that:

[...] The HVO expressed its support for the relocation of civilians to the Heliodrom and said that the women, children and elderly people had been released. The Chamber considers that by participating in the meeting and raising no objections while continuing to exercise his functions at the head of the HVO, Jadranko Prlić accepted the arrests of Muslim men of Mostar who did not belong to any armed forces carried out around 9 May 1993.³⁸³³

i. Arguments of the Parties

1226. Prlić challenges the above finding arguing that the Trial Chamber misconstrued Exhibit 1D01666 (minutes of the 38th HVO meeting), the single document on which it based its conclusion.³⁸³⁴ According to Prlić, the HVO HZ H-B did not express its support for the relocation of civilians to the Heliodrom but for the activities of the ODPR.³⁸³⁵ Prlić submits that the Trial Chamber ignored evidence and its own findings that the ODPR did not participate in the relocation of civilians.³⁸³⁶ Further, he submits that nothing suggests that only Muslims were relocated.³⁸³⁷ He also submits that the Trial Chamber ignored evidence that he and the HVO HZ H-B were not involved in any "activities or agreements during this period".³⁸³⁸

³⁸²⁹ Prosecution's Response Brief (Prlić), para. 319.

³⁸³⁰ Trial Judgement, Vol. 4, para. 158.

³⁸³¹ Trial Judgement, Vol. 4, para. 160.

³⁸³² Cf. Trial Judgement, Vol. 4, paras 270-276. See *supra*, paras 1149-1152, 1157-1159, & fn. 3677, para. 1190; *infra*, paras 1314, 1317 & fns 4077, 4092.

³⁸³³ Trial Judgement, Vol. 4, para. 165.

³⁸³⁴ Prlić's Appeal Brief, para. 521, referring to Prlić's Appeal Brief, ground of appeal 3.

³⁸³⁵ Prlić's Appeal Brief, para. 522.

³⁸³⁶ Prlić's Appeal Brief, para. 522.

³⁸³⁷ Prlić's Appeal Brief, paras 523-524.

³⁸³⁸ Prlić's Appeal Brief, para. 524.

1227. The Prosecution responds that Prlić fails to show that no reasonable trial chamber could have relied on the plain words of the minutes of the 38th HVO meeting to reach its conclusions.³⁸³⁹ According to the Prosecution, these minutes clearly demonstrate that the Government expressed support for the ODPR's activities in the context of its moving civilians from Mostar to the Heliodrom.³⁸⁴⁰ The Prosecution argues that the Trial Chamber's findings and the evidence show that only Muslims were relocated.³⁸⁴¹ Lastly, the Prosecution submits that Prlić ignores contrary evidence as to his and the Government's involvement in "activities" at this time.³⁸⁴²

ii. Analysis

1228. The Appeals Chamber notes that the impugned finding was based on the minutes of the 38th HVO meeting, held on 17 May 1993, which state that:

[...] Support was expressed for the activities of the [ODPR] which has been active since the first day civilians were relocated from Mostar to the former Military Gymnasium and Heliodrom, after the commencement of combat activities in Mostar. [...] The HVO HZ H-B was informed that all elderly persons, women and children have already been sent back to their homes, and that some of them have been sent, at their own request, to the part of town on the left bank of the river Neretva.³⁸⁴³

The Appeals Chamber considers with regard to Prlić's argument that the HVO HZ H-B did not express its support for the relocation of civilians to the Heliodrom but rather for the activities of the ODPR, that based on a contextual reading of the minutes of the 38th HVO meeting, a reasonable trier of fact could have concluded that the HVO HZ H-B expressed its support for such relocation of civilians.³⁸⁴⁴ The Appeals Chamber therefore dismisses Prlić's argument.

1229. As to Prlić's submission that the Trial Chamber ignored evidence and its own findings that the ODPR did not participate in the relocation of civilians, the Appeals Chamber considers that this submission is not supported by the references on which Prlić relies.³⁸⁴⁵ For instance, he refers to Petković's testimony on an agreement between him and Sefer Halilović concerning, *inter alia*, displaced persons and the fact that Petković was informed of civilians being released from the Heliodrom,³⁸⁴⁶ which the Appeals Chamber does not consider demonstrates that the ODPR did not participate in relocating civilians. The Appeals Chamber thus dismisses Prlić's argument as a mere

³⁸³⁹ Prosecution's Response Brief (Prlić), para. 320.

³⁸⁴⁰ Prosecution's Response Brief (Prlić), para. 320.

³⁸⁴¹ Prosecution's Response Brief (Prlić), para. 321.

³⁸⁴² Prosecution's Response Brief (Prlić), para. 321.

³⁸⁴³ Ex. 1D01666, pp. 1-2.

³⁸⁴⁴ Having dismissed the argument that the Trial Chamber misconstrued Exhibit 1D01666 (the minutes of the 38th HVO meeting), the Appeals Chamber notes that Prlić does not clearly articulate any error in the Trial Chamber's reliance on "a single document". In this regard, the Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

³⁸⁴⁵ See Prlić's Appeal Brief, fns 1343-1344 and references cited therein.

assertion and misrepresentation of the evidence. The Appeals Chamber further dismisses Prlić's claim that the evidence does not indicate that only Muslims were relocated, as he ignores other relevant findings of the Trial Chamber.³⁸⁴⁷ Lastly, Prlić's argument that neither he nor the HVO HZ H-B participated in "activities or agreements during this period" is vague and irrelevant to the challenged factual finding and is dismissed on this basis.

1230. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 16.4.2.

c. Alleged errors regarding Prlić's contribution to the eviction process (Prlić's Sub-grounds 16.4.3 and 16.4.4)

1231. The Trial Chamber found that on 6 July 1993, Prlić signed a decree on the use of apartments abandoned by the tenants ("Decree of 6 July 1993"),³⁸⁴⁸ and that he thereby accepted the HVO HZ H-B's practice of appropriating the apartments of Muslims expelled from West Mostar and contributed to their eviction because once the Muslims were deprived of their apartments, their return to Mostar became unrealistic.³⁸⁴⁹ It also found that from at least June 1993, Prlić was repeatedly alerted to the forcible evictions of Muslims, which continued until February 1994.³⁸⁵⁰ By failing to act, by validating the loss of apartments belonging to Muslims in Mostar, and by remaining in power while fully aware of the crimes committed against Muslims, Prlić contributed to the climate of violence and accepted the commission of acts of violence linked to the eviction campaign.³⁸⁵¹

i. Arguments of the Parties

1232. Prlić challenges these findings.³⁸⁵² Specifically, Prlić claims that there is no evidence that the HVO HZ H-B appropriated the apartments of expelled Muslims from West Mostar or allocated apartments of expelled Muslims to soldiers and Croatian families, and that the Trial Chamber made findings supporting this view.³⁸⁵³

³⁸⁴⁶ Prlić's Appeal Brief, fn. 1344, referring to, *inter alia*, Milivoj Petković, T. 49552-49553 (16 Feb 2010), 49555 (24 Feb 2010).

³⁸⁴⁷ The Trial Chamber found that between 9 and 11 May 1993 Muslims were arrested and transported to the Heliodrom and, following that, only Muslims were detained in the Heliodrom. Trial Judgement, Vol. 2, paras 805, 1495, 1497-1498.

³⁸⁴⁸ Trial Judgement, Vol. 4, para. 169; Ex. P03089.

³⁸⁴⁹ Trial Judgement, Vol. 4, para. 170.

³⁸⁵⁰ Trial Judgement, Vol. 4, para. 171. See Trial Judgement, Vol. 4, para. 170.

³⁸⁵¹ Trial Judgement, Vol. 4, para. 171.

³⁸⁵² Prlić's Appeal Brief, para. 525.

³⁸⁵³ Prlić's Appeal Brief, para. 526.

1233. Prlić further argues that the Trial Chamber mischaracterised the Decree of 6 July 1993, which was similar to a 1992 BiH law on abandoned apartments.³⁸⁵⁴ He also claims that the Trial Chamber ignored evidence showing: (1) the “chaotic” use of socially-owned abandoned apartments; (2) efforts made by municipal authorities to introduce order in the use of apartments; (3) that the aim of the Decree of 6 July 1993 was to standardise legislation in all municipalities; (4) that this decree was more in line with human rights than the 1992 BiH law; and (5) that the majority of abandoned apartments were allotted to Muslims and ABiH soldiers.³⁸⁵⁵

1234. Prlić also challenges the Trial Chamber’s conclusion that when Muslims were deprived of their apartments “their return became unrealistic” as, according to him, the Trial Chamber ignored evidence that the HVO HZ H-B adopted measures to protect private property and to preserve the demographic structure by decreeing that refugees and displaced persons retain their places of domicile in the places of residence as of 1 April 1992.³⁸⁵⁶

1235. The Prosecution responds that Prlić shows no error in the Trial Chamber’s conclusions and that the Trial Chamber reasonably found that he endorsed the practice of evicting Muslims and appropriating their apartments.³⁸⁵⁷ According to the Prosecution, Prlić ignores relevant evidence³⁸⁵⁸ and does not explain how the similarities between the Decree of 6 July 1993 and the 1992 BiH law render the Trial Chamber’s findings unreasonable.³⁸⁵⁹ The Prosecution further avers that Prlić fails to explain how the “chaotic use” of abandoned apartments, efforts made by municipal authorities to introduce order in the use of apartments, and assertions that the Decree of 6 July 1993 aimed to standardise municipal legislation and was more in line with human rights than the 1992 BiH law on abandoned apartments, are relevant to the impugned finding.³⁸⁶⁰ Finally, the Prosecution submits that Prlić fails to support his claim that the majority of abandoned apartments were allotted to Muslims and ABiH soldiers.³⁸⁶¹

1236. With regard to Prlić’s challenge to the Trial Chamber’s finding that once Muslims were deprived of their apartments, their return became unrealistic, the Prosecution submits that Prlić ignores the plain language of the Decree of 6 July 1993 – giving the previous tenant only seven days after a declaration of cessation of imminent threat of war to retake occupancy.³⁸⁶² The

³⁸⁵⁴ Prlić’s Appeal Brief, para. 527. See Appeal Hearing, AT. 148 (20 Mar 2017).

³⁸⁵⁵ Prlić’s Appeal Brief, para. 528; Appeal Hearing, AT. 148 (20 Mar 2017).

³⁸⁵⁶ Prlić’s Appeal Brief, para. 529; Appeal Hearing, AT. 149 (20 Mar 2017). See Appeal Hearing, AT. 148 (20 Mar 2017). See also Prlić’s Appeal Brief, para. 530, referring to Prlić’s Appeal Brief, sub-ground of appeal 10.5.

³⁸⁵⁷ Prosecution’s Response Brief (Prlić), paras 322-323.

³⁸⁵⁸ Prosecution’s Response Brief (Prlić), para. 324.

³⁸⁵⁹ Prosecution’s Response Brief (Prlić), para. 324.

³⁸⁶⁰ Prosecution’s Response Brief (Prlić), para. 325.

³⁸⁶¹ Prosecution’s Response Brief (Prlić), para. 325.

³⁸⁶² Prosecution’s Response Brief (Prlić), para. 326.

Prosecution submits that Prlić also fails to explain how alleged Government measures to protect property and restrict property transactions facilitated the return of Muslim tenants to their apartments.³⁸⁶³ Further, the Prosecution claims that, in light of the ongoing violent HVO ethnic cleansing campaign, Prlić's suggestion that the aim of a decree that refugees and displaced persons were to maintain their registered domicile as of 1 April 1992 was to prevent demographic change, is untenable.³⁸⁶⁴

ii. Analysis

1237. The Appeals Chamber will first address Prlić's argument that there is no evidence that the HVO HZ H-B appropriated the apartments of expelled Muslims from West Mostar or that it allocated apartments of expelled Muslims to soldiers and Croatian families. The Appeals Chamber recalls that the Trial Chamber found that it was HVO forces who evicted Muslims from their apartments and allocated them to HVO soldiers and Croatian families.³⁸⁶⁵ The Appeals Chamber also recalls that the Trial Chamber found that by signing the Decree of 6 July 1993, issued by the HVO HZ H-B itself,³⁸⁶⁶ Prlić accepted the HVO HZ H-B practice of appropriating the apartments of the Muslims expelled from West Mostar and knew about it as of June 1993.³⁸⁶⁷ In these circumstances, the Appeals Chamber considers that Prlić has failed to show that no reasonable trier of fact could have made the impugned finding. The Appeals Chamber further considers that the fact that the Trial Chamber was unable to find that in July and August 1993, apartments from which Muslims had been evicted were allocated to Bosnian Croat *civilians* is not inconsistent with the impugned finding.³⁸⁶⁸ For these reasons, Prlić's argument is dismissed.

1238. With regard to Prlić's claim that the Trial Chamber mischaracterised the Decree of 6 July 1993, the Appeals Chamber considers that he selectively refers to articles of the Decree of 6 July 1993 that purportedly support his claim, without demonstrating that the Trial Chamber misinterpreted them or other relevant articles.³⁸⁶⁹ Specifically, the Appeals Chamber considers that Prlić ignores Articles 7 and 12 of the Decree of 6 July 1993 stating that an abandoned apartment, except for the HZ H-B's own military apartments, "may be allocated for temporary use to HVO members or other active participants in the struggle against the enemy or to persons who have been deprived of a dwelling place because of the war". It also recalls that Article 10, to which Prlić refers, only gives seven days' time, after a proclamation of a "cessation of imminent danger of war"

³⁸⁶³ Prosecution's Response Brief (Prlić), para. 326.

³⁸⁶⁴ Prosecution's Response Brief (Prlić), para. 327.

³⁸⁶⁵ See Trial Judgement, Vol. 2, paras 824, 827, 864-866, 872-874, 919-920, 930, 937.

³⁸⁶⁶ See Ex. P03089.

³⁸⁶⁷ See Trial Judgement, Vol. 4, para. 170.

³⁸⁶⁸ See Trial Judgement, Vol. 2, para. 938.

³⁸⁶⁹ See Prlić's Appeal Brief, para. 527, referring to, *inter alia*, Ex. P03089, Arts 1-3, 9-11.

for a tenant to reclaim occupancy of an apartment, otherwise “the apartment shall be considered to have been permanently vacated”.³⁸⁷⁰ Prlić’s claim is therefore dismissed. The Appeals Chamber considers that Prlić has not explained how any similarities to a 1992 BiH law on abandoned apartments render the Trial Chamber’s findings erroneous and dismisses this contention as irrelevant.

1239. The Appeals Chamber notes that Prlić’s argument that the Trial Chamber ignored evidence showing the “chaotic” use of abandoned apartments is not supported by any reference to the trial record. Thus, it is a mere assertion unsupported by any evidence and the Appeals Chamber dismisses it as such. Regarding Prlić’s argument that the Trial Chamber ignored evidence showing the efforts made by municipal authorities to introduce order in the use of apartments and that the Decree of 6 July 1993 was meant to standardise the legislation in all municipalities and was more in line with human rights than the 1992 BiH law on abandoned apartments, the Appeals Chamber fails to see its relevance to the impugned finding and notes that Prlić provides no explanation in this regard. The Appeals Chamber therefore dismisses the argument as irrelevant. As to Prlić’s argument that the Trial Chamber ignored evidence showing that the majority of abandoned apartments were allotted to Muslims and ABiH soldiers, the Appeals Chamber considers that Prlić points to evidence which is not specific to the relevant time period, and dismisses his argument as temporally irrelevant.³⁸⁷¹

1240. With regard to Prlić’s argument that the Trial Chamber erroneously concluded, because it ignored evidence, that when Muslims were deprived of their apartments “their return to Mostar became unrealistic”,³⁸⁷² the Appeals Chamber notes that the Trial Chamber relied on the wording of the Decree of 6 July 1993, which stated that “[w]hen cessation of imminent danger of war is proclaimed and the holder of tenancy rights [...] fails to take up occupancy of the apartment within seven days, the apartment shall be considered to have been permanently vacated”.³⁸⁷³ The Appeals Chamber considers that Prlić has failed to show that no reasonable trier of fact, based on

³⁸⁷⁰ Ex. P03089, Arts 7, 10, 12. See Trial Judgement, Vol. 4, para. 169 & fn. 454.

³⁸⁷¹ See Prlić’s Appeal Brief, para. 528(e), referring to Exs. 3D01027 (dated September 1992), 1D00641 (dated September 1992), 3D00734 (dated October 1992), Borislav Puljić, T. 32291-32292 (17 Sept 2008) (on Ex. 3D01027), Veso Vegar, T. 37054-37058 (17 Feb 2007) (on Ex. 3D01027). Cf. Trial Judgement, Vol. 4, paras 169-171, fn. 455 (referring to May/June 1993 and onwards). With regard to the HVO member Jašak’s testimony that in August 1993 there was no available housing for him, the Appeals Chamber considers this evidence not to be inconsistent with the impugned finding. See Prlić’s Appeal Brief, fn. 1361, referring to Radmilo Jašak, T. 48802-48804 (25 Jan 2010). Finally, the Appeals Chamber considers Prlić’s reference to “Puljić [...] 32309/21-32210/3” to be defective. Prlić’s Appeal Brief, fn. 1360.

³⁸⁷² See Trial Judgement, Vol. 4, para. 170.

³⁸⁷³ Trial Judgement, Vol. 4, para. 169 & fn. 454, referring to, *inter alia*, Ex. P03089, Art. 10.

this evidence, and notwithstanding the allegedly ignored evidence,³⁸⁷⁴ could have reached the same conclusion as the Trial Chamber.³⁸⁷⁵

1241. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-grounds of appeal 16.4.3 and 16.4.4.

(ii) East Mostar

a. The HVO campaign of fire and shelling of East Mostar (Prlić's Sub-ground 16.4.5)

1242. The Trial Chamber found that Prlić knew about the HVO crimes committed during the HVO campaign of fire and shelling against East Mostar – namely the murders and destruction of property, including mosques and the Old Bridge – and that by minimising or attempting to deny them, he accepted and encouraged them.³⁸⁷⁶ The Trial Chamber concluded on this basis that Prlić supported the HVO campaign of fire and shelling against East Mostar as well as its impact on the population of East Mostar.³⁸⁷⁷

i. Arguments of the Parties

1243. Prlić challenges these findings.³⁸⁷⁸ He claims there is no evidence that he in any way encouraged the murders and destruction in East Mostar.³⁸⁷⁹ Prlić also argues that in finding that he minimised or concealed the HVO's responsibility in the destruction of the Old Bridge, the Trial Chamber misinterpreted his comments at a meeting with Franjo Tuđman and in a BBC interview and ignored evidence that from 7 to 11 November 1993 he was not in Mostar.³⁸⁸⁰

1244. The Prosecution responds that Prlić incorrectly claims that there is no evidence that he encouraged crimes that accompanied the HVO campaign of firing and shelling against East Mostar.³⁸⁸¹ In the Prosecution's view, Prlić misrepresents his comments in his meeting with Tuđman and to the BBC, which in fact support the Trial Chamber's finding that he sought to

³⁸⁷⁴ See Prlić's Appeal Brief, para. 529 and references cited therein.

³⁸⁷⁵ The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 10.5, which it dismisses elsewhere in the Judgement. See *supra*, paras 910-916.

³⁸⁷⁶ Trial Judgement, Vol. 4, para. 176. See Trial Judgement, Vol. 4, paras 173-175, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1347-1351.

³⁸⁷⁷ Trial Judgement, Vol. 4, para. 176.

³⁸⁷⁸ Prlić's Appeal Brief, para. 531.

³⁸⁷⁹ Prlić's Appeal Brief, para. 531.

³⁸⁸⁰ Prlić's Appeal Brief, paras 531-533. With regard to the BBC interview, Prlić points specifically to his comments that the destruction of the Old Bridge "is terrible", that there was no political or military reason to destroy it, and that he still hoped that Muslims, Croats, and Serbs could live harmoniously in the region. Prlić's Appeal Brief, para. 533.

³⁸⁸¹ Prosecution's Response Brief (Prlić), para. 328. See Appeal Hearing, AT. 192-193 (20 Mar 2017).

conceal or minimise HVO responsibility in the destruction of the Old Bridge.³⁸⁸² Finally, the Prosecution submits that his argument that he was not in Mostar from 7 to 11 November 1993 is irrelevant.³⁸⁸³

ii. Analysis

1245. The Appeals Chamber recalls that the Trial Chamber found, based on supporting evidence,³⁸⁸⁴ that Prlić accepted and encouraged the murders and destruction of property in Mostar by *minimising or attempting to deny* these crimes that he knew had been committed.³⁸⁸⁵ This included evidence relating specifically to East Mostar.³⁸⁸⁶ The Appeals Chamber thus dismisses Prlić's assertion that there is no evidence that he in any way encouraged the murders and destruction in East Mostar.³⁸⁸⁷

1246. Turning to the Old Bridge, the Appeals Chamber recalls that it has reversed the Trial Chamber's findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and has therefore acquitted the Appellants of these charges insofar as they concern the Old Bridge.³⁸⁸⁸ In its analysis of Prlić's contribution to the JCE, the Trial Chamber referred to its finding that the destruction of the Old Bridge amounted to wanton destruction not justified by military necessity³⁸⁸⁹ and found that Prlić knew about the *crime* of the destruction of the Old Bridge by the HVO.³⁸⁹⁰ Thus, the Appeals Chamber considers that the Trial Chamber's findings on Prlić's contribution to the JCE, as far as the Old Bridge is concerned, are premised on the destruction of the Old Bridge being a crime. Consequently, the Appeals Chamber reverses the Trial Chamber's finding – insofar as it concerns the Old Bridge – that Prlić knew about the HVO crimes committed during the HVO campaign of fire and shelling against East Mostar and that by minimising or attempting to deny them, he accepted and encouraged them.³⁸⁹¹ As a result, Prlić's submissions with regard to the Old Bridge are moot.

1247. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 16.4.5.

³⁸⁸² Prosecution's Response Brief (Prlić), para. 329.

³⁸⁸³ Prosecution's Response Brief (Prlić), para. 329.

³⁸⁸⁴ See Trial Judgement, Vol. 2, paras 1347-1351, Vol. 4, paras 174-176 and references cited therein.

³⁸⁸⁵ Trial Judgement, Vol. 4, para. 176.

³⁸⁸⁶ See Trial Judgement, Vol. 4, para. 174.

³⁸⁸⁷ See *supra*, fn. 2816.

³⁸⁸⁸ See *supra*, para. 426. The Appeals Chamber also reversed the Trial Chamber's conclusion that the destruction of the Old Bridge constituted wanton destruction not justified by military necessity as a violation of the laws or customs of war (Count 20). See *supra*, para. 414.

³⁸⁸⁹ Trial Judgement, Vol. 4, para. 175 & fn. 469.

b. The living conditions in East Mostar (Prlić's Sub-ground 16.4.6)

1248. The Trial Chamber found that in June 1993, the HVO hindered repair works on the water supply system in East Mostar proposed by the THW Company.³⁸⁹² The Trial Chamber accepted Witnesses BA's and BC's evidence that despite Prlić's assurances that there would be no obstacles to repairing the water supply system and that he would permit repair work to go ahead, the HVO constantly raised bureaucratic obstacles to prevent the repair.³⁸⁹³ The Trial Chamber considered the only possible explanation to be that Prlić deliberately impeded the attempts to repair the water supply system by placing bureaucratic obstacles in the way.³⁸⁹⁴ The Trial Chamber nevertheless noted that between July and November 1993, the HVO attempted to repair the hydraulic system.³⁸⁹⁵ The Trial Chamber also noted Prlić's proposals of 2 December 1993 to alleviate the suffering of the population of East Mostar, but found no evidence that the proposals were ever implemented.³⁸⁹⁶ The Trial Chamber found that Prlić knew of the bad living conditions of the population of East Mostar, in particular the lack of food and water, and had the power to intervene but failed to act to improve such conditions.³⁸⁹⁷

i. Arguments of the Parties

1249. Prlić submits that the Trial Chamber erroneously concluded that, having had the power to intervene, he failed to act to improve the living conditions of the population of East Mostar.³⁸⁹⁸ He argues that the Trial Chamber disregarded evidence showing his efforts to facilitate the flow of humanitarian aid and his negotiation efforts at the end of 1993 to find a solution for Mostar.³⁸⁹⁹

1250. Prlić also claims the Trial Chamber erred in concluding, based on selective evidence and uncorroborated hearsay, that in June 1993 the HVO hindered repair on the water supply in East Mostar,³⁹⁰⁰ and that, by creating "bureaucratic obstacles", he deliberately impeded the THW Company's attempts to have it repaired.³⁹⁰¹ Prlić further submits that the Trial Chamber mischaracterised some evidence and ignored other evidence which demonstrates that there were

³⁸⁹⁰ Trial Judgement, Vol. 4, para. 176.

³⁸⁹¹ Trial Judgement, Vol. 4, para. 176.

³⁸⁹² Trial Judgement, Vol. 2, paras 1213, 1218, Vol. 4, para. 179.

³⁸⁹³ Trial Judgement, Vol. 2, para. 1213, Vol. 4, paras 179-180.

³⁸⁹⁴ Trial Judgement, Vol. 4, para. 180.

³⁸⁹⁵ Trial Judgement, Vol. 2, paras 1215, 1218, Vol. 4, para. 179.

³⁸⁹⁶ Trial Judgement, Vol. 2, paras 1203, 1222, Vol. 4, para. 181.

³⁸⁹⁷ Trial Judgement, Vol. 4, para. 182.

³⁸⁹⁸ Prlić's Appeal Brief, para. 534.

³⁸⁹⁹ Prlić's Appeal Brief, para. 534, referring to, *inter alia*, Prlić's Appeal Brief, paras 397 (ground of appeal 12), 433 (ground of appeal 14), 544, 546 (sub-ground of appeal 16.4.7).

³⁹⁰⁰ Prlić's Appeal Brief, para. 535.

³⁹⁰¹ Prlić's Appeal Brief, para. 535, referring to, *inter alia*, Prlić's Appeal Brief, paras 179-180 (ground of appeal 6), 186-187 (sub-ground of appeal 6.2). Prlić claims in this regard that Witness BA offered no specifics for his claims that the HVO constantly raised "bureaucratic obstacles". Prlić's Appeal Brief, para. 535.

other reasons why the water supply system had not been repaired, such as security reasons, that West Mostar also lacked water, that the Mostar municipal authority controlled the water supply, and that bridges had to be repaired before the water supply could be fixed.³⁹⁰² He submits that it is “illogical” for the Trial Chamber to conclude that the HVO obstructed the repairs on the water supply in June 1993 when it found that from July until November 1993, the HVO attempted to manage the water supply issues in Mostar and performed the necessary repairs.³⁹⁰³

1251. Prlić further argues that the Trial Chamber erroneously concluded that his proposals to alleviate the suffering of the population of East Mostar were not followed through, implying his non-commitment or obstruction, while ignoring its own finding that there was a front line separating Mostar and evidence that the ABiH rejected all offers for help from West Mostar and that the possibilities to help were limited.³⁹⁰⁴ Finally, Prlić submits that the Trial Chamber ignored evidence that the peace proposal after the inauguration of the HR H-B Government reaffirmed previous efforts to provide necessary utilities and healthcare for all inhabitants of Mostar, that the new government, having more powers, played a more prominent role in humanitarian issues, and that Prlić sincerely tried to find solutions for all of Mostar and its inhabitants.³⁹⁰⁵

1252. The Prosecution responds that Prlić shows no error in the Trial Chamber’s conclusion that he failed to intervene to improve living conditions in East Mostar.³⁹⁰⁶ It argues that the Trial Chamber relied on corroborated evidence to conclude that he deliberately impeded repairs to the water system³⁹⁰⁷ and that it did not mischaracterise the evidence supporting its finding that the HVO impeded repairs on the water system.³⁹⁰⁸ According to the Prosecution, the Trial Chamber considered evidence, analogous to the evidence Prlić claims it ignored, of objective obstacles and ABiH non-co-operation.³⁹⁰⁹ Finally, the Prosecution submits that none of the other evidence Prlić refers to undermines the Trial Chamber’s findings.³⁹¹⁰

³⁹⁰² Prlić’s Appeal Brief, para. 536.

³⁹⁰³ Prlić’s Appeal Brief, para. 536.

³⁹⁰⁴ Prlić’s Appeal Brief, para. 537.

³⁹⁰⁵ Prlić’s Appeal Brief, para. 538.

³⁹⁰⁶ Prosecution’s Response Brief (Prlić), para. 330.

³⁹⁰⁷ Prosecution’s Response Brief (Prlić), para. 331.

³⁹⁰⁸ Prosecution’s Response Brief (Prlić), para. 332.

³⁹⁰⁹ Prosecution’s Response Brief (Prlić), para. 333.

³⁹¹⁰ Prosecution’s Response Brief (Prlić), paras 333-335. As to the evidence Prlić cites to argue that the HR H-B Government sought to provide utilities and healthcare for all inhabitants of Mostar, the Prosecution notes that he only refers to one such effort: the establishment of a soup kitchen in West Mostar. Further, the Prosecution argues that Prlić’s suggestion that it was only with the creation of the HR H-B that the Government had the necessary power to intervene with respect to humanitarian issues ignores the Trial Chamber’s findings on the Government’s consistent authority throughout the relevant period. Prosecution’s Response Brief (Prlić), para. 335.

ii. Analysis

1253. The Appeals Chamber notes that the Trial Chamber considered evidence showing Prlić's negotiation efforts at the end of 1993 to find a solution for Mostar, at times even the specific evidence that Prlić claims it ignored, and accordingly dismisses Prlić's claims to the contrary.³⁹¹¹ Further, Prlić's argument that the Trial Chamber disregarded evidence of his efforts to facilitate the flow of humanitarian aid is based on a cross-reference to his (sub-)grounds of appeal 12, 14, and 16.4.7, which the Appeals Chamber dismisses elsewhere.³⁹¹²

1254. With respect to Prlić's argument that the Trial Chamber relied on selective evidence and uncorroborated hearsay to find that he and the HVO hindered repair on the water supply in East Mostar in June 1993,³⁹¹³ the Appeals Chamber notes that the Trial Chamber relied on several pieces of mutually corroborating evidence to reach this finding.³⁹¹⁴ Prlić's argument is therefore dismissed.

1255. With regard to Prlić's claim that the Trial Chamber mischaracterised evidence that showed that there were other reasons for the non-repair of the water supply in East Mostar, the Appeals Chamber considers that the Trial Chamber characterised this evidence in a manner similar to that of Prlić.³⁹¹⁵ In particular the Trial Chamber found that:

THW ultimately broke off its activities at the end of June 1993, but the evidence shows that this was for security reasons linked to the escalating combat in Mostar. [...] Furthermore, since one part of the infrastructure was located on HVO-controlled territory and the other on ABiH-controlled territory, repairs to water pipes could be done only when the respective troops of the HVO and the ABiH withdrew from the zone where the infrastructure was located. However, neither the HVO nor the ABiH co-operated fully and withdrew their troops so the pipes could be repaired.³⁹¹⁶

³⁹¹¹ See Trial Judgement, Vol. 4, paras 109 (referring to, *inter alia*, the testimony of Witness DZ and Ex. 1D02189 (confidential)), 181 (referring to, *inter alia*, Exs. 1D01874, P07008). See also Trial Judgement, Vol. 2, para. 1203 and references cited therein. Cf. Prlić's Appeal Brief, para. 534 & fn. 1375; *supra*, para. 1120.

³⁹¹² See *supra*, paras 1098-1134; *infra*, paras 1262-1285.

³⁹¹³ Trial Judgement, Vol. 2, para. 1218, Vol. 4, paras 179-180, 182.

³⁹¹⁴ See Trial Judgement, Vol. 2, para. 1213 & fns 3035-3037, referring to, *inter alia*, Exs. P09712 (confidential), paras 43, 65, P09842 (confidential), p. 3, Witness BC, T(F). 18331-18332 (closed session) (14 May 2007). As to Prlić's claim that Witness BA offered no specifics for his claims that the HVO constantly raised "bureaucratic obstacles", the Appeals Chamber considers that it fails to demonstrate that no reasonable trial chamber could have found that the HVO created bureaucratic obstacles to prevent the repair works in June 1993, based on the evidence of Witnesses BA and BC. Trial Judgement, Vol. 2, para. 1213, Vol. 4, paras 179-180. The Appeals Chamber also notes that Prlić refers to his submissions within ground of appeal 6, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218.

³⁹¹⁵ See Prlić's Appeal Brief, para. 536 at fns 1379-1380.

³⁹¹⁶ Trial Judgement, Vol. 2, paras 1214 (referring to, *inter alia*, Klaus Johann Nissen, T(F). 20511 (26 June 2007)), 1217 (internal references omitted) (referring to, *inter alia*, Ex. P02598, Grant Finlayson, T(F). 18151-18156 (8 May 2007)). The Appeals Chamber notes that Prlić also refers to document 2D00156, which was not admitted into evidence. Cf. Prlić's Appeal Brief, fns 1379-1380.

Neither the evidence supporting this finding nor the allegedly ignored evidence³⁹¹⁷ is inconsistent with the challenged conclusion. The Appeals Chamber therefore dismisses Prlić's arguments in this regard.

1256. The Appeals Chamber further considers that Prlić fails to explain how the Trial Chamber's finding that, between July and November 1993, the HVO had attempted to manage the water supply issues in Mostar and perform the necessary repairs,³⁹¹⁸ but that in June 1993 it had not,³⁹¹⁹ was "illogical", as one finding does not preclude the other. The Appeals Chamber therefore dismisses the argument.

1257. Turning to Prlić's argument that the Trial Chamber erroneously found that his proposals to help the population of East Mostar were not followed through,³⁹²⁰ the Appeals Chamber first considers that Prlić has failed to show how the factual finding that there was a front line dividing Mostar³⁹²¹ is inconsistent with the impugned findings. The Appeals Chamber further considers that Prlić's claim that the Trial Chamber ignored evidence showing that the ABiH rejected all offers to help mainly relies on the testimony of Witness Ivan Bagarić who testified that, at the time, he thought that the Muslim leadership was refusing offers of medical help as a political tactic.³⁹²² The Appeals Chamber notes that the other evidence Prlić refers to is similar to that which the Trial Chamber considered.³⁹²³ The Appeals Chamber considers that the Trial Chamber thus duly considered evidence of a similar nature, but nevertheless concluded that the evidence did not demonstrate that such offers were ever implemented.³⁹²⁴ Prlić has failed to demonstrate that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber. These arguments are dismissed.

1258. As to Prlić's related argument that there were limited possibilities to help East Mostar, the evidence to which he refers only indicates that the ABiH allowed inhabitants of East Mostar permission to leave it in extreme medical cases.³⁹²⁵ Prlić has failed to show how this evidence is

³⁹¹⁷ See Prlić's Appeal Brief, para. 536 at fns 1381-1384.

³⁹¹⁸ See Trial Judgement, Vol. 2, paras 1215-1218, Vol. 4, para. 179.

³⁹¹⁹ See Trial Judgement, Vol. 2, paras 1213, 1218, Vol. 4, para. 179.

³⁹²⁰ See Trial Judgement, Vol. 2, paras 1203, 1222, Vol. 4, para. 181.

³⁹²¹ See Trial Judgement, Vol. 2, para. 992. The Appeals Chamber considers that Prlić's reference to Vol. 1 of the Trial Judgement is erroneous and was meant to refer to Vol. 2. See Prlić's Appeal Brief, para. 537 & fn. 1387.

³⁹²² See Ivan Bagarić, T. 39161-39166 (22 Apr 2009), 39176-39177 (23 Apr 2009).

³⁹²³ See Ex. P02923 (confidential) (a report on which Bagarić testified); Ivan Bagarić, T. 38973-38974 (21 Apr 2009), 39213-39216, (23 Apr 2009); Witness BD, T. 20951-20952 (closed session) (5 July 2007); Trial Judgement, Vol. 2, para. 1222 and references cited therein. Cf. Prlić's Appeal Brief, fn. 1388.

³⁹²⁴ The Appeals Chamber observes moreover that the Trial Chamber merely found that there was no evidence to support a finding that such proposals were ever implemented, rather than finding that such proposals were not implemented as Prlić asserts. See Trial Judgement, Vol. 4, para. 181; Prlić's Appeal Brief, para. 537.

³⁹²⁵ See Witness BC, T. 18486-18487 (closed session) (15 May 2007).

inconsistent with the impugned findings.³⁹²⁶ The Appeals Chamber therefore dismisses the argument.

1259. With respect to Prlić's argument that the Trial Chamber ignored evidence that the peace proposal after the inauguration of the HR H-B Government reaffirmed previous efforts to provide utilities and healthcare for all inhabitants of Mostar, the Appeals Chamber considers that the evidence Prlić relies upon amounts to one effort to set up a soup kitchen in West Mostar.³⁹²⁷ It finds that Prlić has failed to show that no reasonable trier of fact could have reached the impugned finding in light of this evidence and dismisses his argument.³⁹²⁸ With regard to his argument that the new government had more powers to play a more prominent role in humanitarian issues, Prlić relies on two letters he sent at the end of November and beginning of December 1993 to the commander of UNPROFOR and one witness's interpretation of these letters, stating Prlić's *intentions* to improve the humanitarian situation.³⁹²⁹ Again, the Appeals Chamber considers that Prlić fails to show that, in light of this evidence, no reasonable trier of fact could have reached the impugned findings that there was "no evidence to support a finding that the proposals [to improve the suffering of the population of East Mostar] were ever implemented",³⁹³⁰ or that, "even though he was aware of the appalling overall situation of the inhabitants of East Mostar and had the power to intervene, Jadranko Prlić failed to act to improve the living conditions of the population of East Mostar".³⁹³¹ Consequently, the Appeals Chamber dismisses this argument.

1260. Similarly, with regard to Prlić's final argument that the Trial Chamber ignored evidence that he sincerely tried to find solutions for all of Mostar and its inhabitants, the Appeals Chamber has considered the evidence he points to,³⁹³² which at most indicates that Prlić made some efforts in this regard, namely, that he mentioned at a meeting with internationals "his own initiatives [...] referring to the [...] provision of public kitchens for Muslims [and] provision of hospital facilities for Muslims".³⁹³³ The Appeals Chamber finds that Prlić has failed to show that no reasonable trier of fact could have reached the impugned findings based on the remaining evidence.³⁹³⁴ The argument is therefore dismissed.

³⁹²⁶ See also Trial Judgement, Vol. 2, para. 1217.

³⁹²⁷ Marinko Simunović, T. 33519-33521 (21 Oct 2008); Exs. 1D02764, 1D02765, 1D02766, 1D02767. See Prlić's Appeal Brief, fn. 1390.

³⁹²⁸ See Trial Judgement, Vol. 2, para. 1203, Vol. 4, paras 181-182.

³⁹²⁹ Zoran Perković, T. 31799-31800 (2 Sept 2008); Exs. 1D01873, 1D01912. See Prlić's Appeal Brief, fn. 1391.

³⁹³⁰ Trial Judgement, Vol. 4, para. 181. See Trial Judgement, Vol. 2, paras 1203, 1222.

³⁹³¹ Trial Judgement, Vol. 4, para. 182.

³⁹³² See Prlić's Appeal Brief, fn. 1392 and references cited therein. Witness DZ talks favourably about Prlić's role in the December 1993 negotiations and that the ABiH wanted him as a negotiating partner. Witness DZ, T. 26689 (23 Jan 2008), 26701-26704, 26716 (closed session) (24 Jan 2008).

³⁹³³ Ex. 1D02189, p. 2.

³⁹³⁴ See Trial Judgement, Vol. 2, paras 1203, 1222, Vol. 4, paras 181-182 and references cited therein.

1261. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-ground of appeal 16.4.6.

c. Prlić's contribution to blocking humanitarian aid to East Mostar (Prlić's Sub-ground 16.4.7)

1262. The Trial Chamber found that by contributing to blocking the delivery of humanitarian aid to East Mostar, from June to at least December 1993, Prlić must have foreseen that it would cause serious bodily harm to the inhabitants of East Mostar and would constitute a serious attack on their human dignity, and therefore he intended to cause great suffering to the Mostar population.³⁹³⁵ The Trial Chamber also found that in a meeting on 10 June 1993, Prlić and other HVO officials informed Witness BA that the ODPH had laid down stricter administrative requirements for the movement of humanitarian aid convoys, requiring that each convoy be individually approved by the HVO.³⁹³⁶

1263. Further, the Trial Chamber found that Prlić was one of the HVO officials with the authority to grant passage to the international and humanitarian organisations to deliver humanitarian aid to East Mostar.³⁹³⁷ It also found that the HVO impeded the regular delivery of humanitarian aid, at least between June and December 1993, by restricting access to East Mostar for international organisations, in particular through administrative restrictions, and that the HVO completely blocked access for humanitarian convoys for almost two months in the summer of 1993 and in December 1993.³⁹³⁸ The Trial Chamber found that Prlić knew of the difficulties the international organisations, particularly humanitarian ones, had regarding access to East Mostar, that he had the power to grant them access, and that between June and at least December 1993, he created numerous administrative barriers in order to restrict the delivery of humanitarian aid to East Mostar.³⁹³⁹

1264. The Trial Chamber further found that the frequent meetings between representatives of the international organisations and the HVO in July and August 1993 held to negotiate free access for humanitarian convoys to East Mostar, including the meeting held on 8 August 1993 in Makarska, attested to the difficulties faced by the international organisations in obtaining permission for the delivery of humanitarian aid.³⁹⁴⁰

³⁹³⁵ Trial Judgement, Vol. 4, para. 185.

³⁹³⁶ Trial Judgement, Vol. 2, para. 1230, Vol. 4, para. 184.

³⁹³⁷ Trial Judgement, Vol. 2, para. 1231, Vol. 4, para. 183.

³⁹³⁸ Trial Judgement, Vol. 2, para. 1244, Vol. 4, para. 183. See also Trial Judgement, Vol. 2, paras 1227, 1237-1242.

³⁹³⁹ Trial Judgement, Vol. 4, para. 185.

³⁹⁴⁰ Trial Judgement, Vol. 2, para. 1239, Vol. 4, para. 184.

i. Arguments of the Parties

1265. Prlić submits that the Trial Chamber erroneously concluded that he foresaw and intended the suffering and attack on human dignity of East Mostar inhabitants by contributing to the blocking of humanitarian aid delivery to East Mostar from June to at least the end of December 1993.³⁹⁴¹

1266. According to Prlić, the Trial Chamber erroneously concluded, based on Witness BA's uncorroborated evidence, that in a meeting held on 10 June 1993, international organisations were informed that the ODPH had decided to set administrative requirements for the movement of humanitarian aid convoys.³⁹⁴² Prlić submits in this regard that Witness BA [Redacted, see Annex C – Confidential Annex].³⁹⁴³

1267. Prlić also submits that the Trial Chamber erred in finding that he had the power to grant passage to organisations delivering humanitarian aid.³⁹⁴⁴ He argues that he needed the permission of the HVO to move about.³⁹⁴⁵

1268. Prlić contends further that the Trial Chamber erroneously concluded, by mischaracterising Witness BC's evidence, that in July 1993, he refused to authorise access for international organisations to East Mostar.³⁹⁴⁶ Prlić argues that the Trial Chamber ignored evidence that just after the Makarska Agreement and when a joint Muslim-Croat convoy was ready for departure from Croatia, the ABiH attacked the municipalities of Stolac and Čapljina on 12 July 1993, thereby preventing any movement from the south.³⁹⁴⁷ Prlić argues that this is an alternative plausible explanation for the blocking of delivery of humanitarian aid.³⁹⁴⁸

1269. Prlić also argues that the Trial Chamber's findings that "during some periods [he] blocked all access to the area" were unsubstantiated by the evidence and also contradicted by the evidence on the "milk convoy" and evidence that it was Boban, not Prlić, who decided on the movement of representatives of international organisations in July 1993.³⁹⁴⁹

1270. Prlić claims the Trial Chamber erroneously concluded, relying on mischaracterised and irrelevant evidence, that the meeting held on 8 August 1993 in Makarska attests to difficulties faced by international organisations in obtaining permission to deliver humanitarian aid to the inhabitants

³⁹⁴¹ Prlić's Appeal Brief, para. 539.

³⁹⁴² Prlić's Appeal Brief, para. 540.

³⁹⁴³ Prlić's Appeal Brief, para. 540, referring to Prlić's Appeal Brief, paras 179-180 (ground of appeal 6).

³⁹⁴⁴ Prlić's Appeal Brief, para. 541.

³⁹⁴⁵ Prlić's Appeal Brief, para. 541. See also Prlić's Appeal Brief, para. 542, referring to Prlić's Appeal Brief, ground of appeal 14.

³⁹⁴⁶ Prlić's Appeal Brief, para. 543 and references cited therein.

³⁹⁴⁷ Prlić's Appeal Brief, para. 543 and references cited therein.

³⁹⁴⁸ Prlić's Appeal Brief, para. 543.

of East Mostar, when the Makarska Agreement was in fact organised to eliminate obstacles in the delivery of humanitarian aid.³⁹⁵⁰

1271. Prlić also argues that the Trial Chamber ignored evidence that some administrative procedures were necessary, and that all convoys were approved and reached their destinations.³⁹⁵¹ Similarly, according to Prlić, the Trial Chamber ignored evidence on the “Joint Commission” initiated by him and the “Protocol”, instructions on the passage of humanitarian convoys,³⁹⁵² which ensured the unhindered passage of humanitarian convoys in BiH from June to December 1993, as confirmed by the UNHCR.³⁹⁵³ Finally, Prlić contends that the Trial Chamber ignored evidence that, despite his limited powers, he endeavoured to ensure the free flow of humanitarian aid, as shown by his request to Praljak to use his influence to persuade protesters to allow convoys to enter East Mostar in late August 1993.³⁹⁵⁴

1272. The Prosecution responds that Prlić demonstrates no error in the Trial Chamber’s finding that he deliberately participated in blocking humanitarian aid to East Mostar, intending to cause great suffering to the population.³⁹⁵⁵ It submits that Prlić misrepresents the record when claiming that the Trial Chamber erred by relying on the evidence of Witness BA³⁹⁵⁶ and ignores contrary evidence to challenge the Trial Chamber’s finding that he could approve the passage of humanitarian aid.³⁹⁵⁷ The Prosecution argues that Prlić misconstrues the evidence in his attempt to show that no movement from the south was possible for security reasons due to an ABiH attack on 12 July 1993.³⁹⁵⁸

1273. In the Prosecution’s view, the Trial Chamber’s conclusion that Prlić blocked all access to Mostar during certain periods is not “unsubstantiated”.³⁹⁵⁹ The Prosecution also claims that Prlić mischaracterises the Trial Judgement when he suggests that the Trial Chamber relied solely on the meeting held on 8 August 1993 in Makarska to conclude that international organisations encountered difficulties in negotiating humanitarian convoy access.³⁹⁶⁰

³⁹⁴⁹ Prlić’s Appeal Brief, para. 544.

³⁹⁵⁰ Prlić’s Appeal Brief, para. 545. See Prlić’s Appeal Brief, para. 546.

³⁹⁵¹ Prlić’s Appeal Brief, para. 546.

³⁹⁵² See Prlić’s Appeal Brief, fn. 1412, referring to, *inter alia*, Exs. 1D01855, 1D02024, 1D02025.

³⁹⁵³ Prlić’s Appeal Brief, para. 546.

³⁹⁵⁴ Prlić’s Appeal Brief, para. 547.

³⁹⁵⁵ Prosecution’s Response Brief (Prlić), para. 336.

³⁹⁵⁶ Prosecution’s Response Brief (Prlić), para. 337.

³⁹⁵⁷ Prosecution’s Response Brief (Prlić), para. 338.

³⁹⁵⁸ Prosecution’s Response Brief (Prlić), para. 339. The Prosecution further argues that the fact that a humanitarian convoy was cancelled due to fighting does not undermine the Trial Chamber’s conclusion that Prlić contributed to the blocking of humanitarian aid. Prosecution’s Response Brief (Prlić), para. 340.

³⁹⁵⁹ Prosecution’s Response Brief (Prlić), para. 341. According to the Prosecution, Prlić misleadingly refers to the “milk convoy” in July 1993, which did not go through. Prosecution’s Response Brief (Prlić), para. 341.

³⁹⁶⁰ Prosecution’s Response Brief (Prlić), para. 342.

1274. Further, the Prosecution argues that Prlić's claim that some administrative procedures were necessary cannot explain the deliberate nature of the obstruction to access for humanitarian convoys.³⁹⁶¹ Moreover, according to the Prosecution, Prlić's claim that all convoys were approved and reached their destination ignores clear contrary evidence.³⁹⁶² In the Prosecution's view, Prlić's assertion that the UNHCR "confirmed" a Joint Commission had ensured the unhindered passage of humanitarian convoys in BiH between June and December 1993, relies solely on one piece of evidence which is vague and unsubstantiated.³⁹⁶³

1275. The Prosecution also submits that Prlić's contention that he endeavoured to ensure the free flow of humanitarian aid is not supported by the evidence he cites and that he ignores other relevant evidence.³⁹⁶⁴ Lastly, the Prosecution avers that Prlić fails to explain how his request for Praljak to intervene to allow a convoy to enter Mostar renders the Trial Chamber's overall conclusion unreasonable.³⁹⁶⁵

ii. Analysis

1276. At the outset, the Appeals Chamber observes that the Trial Chamber relied on the evidence of Witness BA to find that, in a 10 June 1993 meeting, Prlić and other HVO officials informed Witness BA that the ODPR had laid down stricter administrative requirements for the movement of humanitarian aid convoys.³⁹⁶⁶ With regard to Witness BA's testimony allegedly being uncorroborated, the Appeals Chamber recalls that there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible.³⁹⁶⁷ The other reasons Prlić proffers for not crediting Witness BA's evidence – [Redacted, see Annex C – Confidential Annex] – are not, in the Appeals Chamber's opinion, sufficient to affect the credibility of Witness BA.³⁹⁶⁸ The Appeals Chamber thus rejects this argument.

1277. The Appeals Chamber further notes that Prlić's argument that he himself needed permission from the HVO to move about is not inconsistent with the challenged finding that he had the

³⁹⁶¹ Prosecution's Response Brief (Prlić), para. 343.

³⁹⁶² Prosecution's Response Brief (Prlić), para. 343.

³⁹⁶³ Prosecution's Response Brief (Prlić), para. 343. Moreover, the Prosecution submits that Prlić contradicts his own claim by citing evidence showing that this Joint Commission was only formed following a 17 October 1993 meeting. Prosecution's Response Brief (Prlić), para. 343.

³⁹⁶⁴ Prosecution's Response Brief (Prlić), para. 344.

³⁹⁶⁵ Prosecution's Response Brief (Prlić), para. 345.

³⁹⁶⁶ Trial Judgement, Vol. 2, para. 1230 & fn. 3066, Vol. 4, para. 184 & fn. 481, referring to Ex. P09712 (confidential), para. 64.

³⁹⁶⁷ *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.

³⁹⁶⁸ The Appeals Chamber notes that Prlić also refers to his submissions in ground of appeal 6, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218.

authority to grant passage to organisations to deliver humanitarian aid to East Mostar.³⁹⁶⁹ This argument is therefore dismissed.

1278. With regard to Prlić's challenge to the allegedly mischaracterised evidence of Witness BC, which the Trial Chamber relied upon to find that, in July 1993, Prlić refused international organisations access to East Mostar, the Appeals Chamber notes that the Trial Chamber based its finding on the testimony of Witness BC and Prlić's letter dated 14 July 1993.³⁹⁷⁰ Witness BC testified that in a meeting with Prlić and others, held some time between 10 and 15 July 1993, Prlić linked "humanitarian access to East Mostar [...] to the military situation on the ground".³⁹⁷¹ This link recurs in Prlić's letter dated 14 July 1993:

By this letter we would like to warn both the addressee and the public of the unpredictable and immeasurable consequences of [the Muslim party's] violations of the Makarska Agreement [...] [aimed at procuring free passage for humanitarian convoys]. HVO will have to reconsider its duties and obligations concerning the implementation of this agreement unless B-H Army stops their offensive in the Neretva valley at once.³⁹⁷²

Witness BC further testified that Prlić "said as long as the military situation continues as it is, [...] referring to the events [...] at the north barracks, then [the Bosnian Croat leadership] would not be in a position to grant humanitarian access to East Mostar".³⁹⁷³ The Appeals Chamber considers that Prlić has failed to demonstrate that no reasonable trier of fact, based on this evidence, could have reached the impugned finding.

1279. With respect to Prlić's argument that the Trial Chamber ignored evidence that the ABiH's attack on 12 July 1993 on the municipalities of Stolac and Čapljina (located to the south of Mostar) had prevented any movement from the south, and that this was an alternative plausible explanation for the blocking of the delivery of humanitarian aid, the Appeals Chamber recalls that a trial chamber need not refer to every witness testimony or every piece of evidence on the record and that there is a presumption that the trial chamber evaluated all evidence presented to it, as long as there is no indication that the trial chamber completely disregarded evidence which is clearly relevant.³⁹⁷⁴ The Appeals Chamber notes that the Trial Chamber did not refer to this particular ABiH attack in the context of considering the blocking of humanitarian aid.³⁹⁷⁵ The Appeals Chamber has

³⁹⁶⁹ Trial Judgement, Vol. 2, para. 1231, Vol. 4, para. 183. The Appeals Chamber also notes that Prlić refers to his submission in ground of appeal 14, which it dismisses elsewhere in the Judgement. See *supra*, paras 1128-1134.

³⁹⁷⁰ Trial Judgement, Vol. 2, para. 1238, Vol. 4, para. 184, referring to Witness BC, T(F). 18360-18365 (closed session) (14 May 2007), Ex. P09999 (confidential).

³⁹⁷¹ Witness BC, T. 18362 (closed session) (14 May 2007). See Witness BC, T. 18360-18361 (closed session) (14 May 2007).

³⁹⁷² Ex. P09999 (confidential).

³⁹⁷³ Witness BC, T. 18362 (closed session) (14 May 2007).

³⁹⁷⁴ *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 229; *Popović et al.* Appeal Judgement, paras 925, 1017.

³⁹⁷⁵ See Trial Judgement, Vol. 2, para. 1233, Vol. 4, para. 184.

considered the evidence Prlić points to and notes that it indicates that an ABiH attack had taken place and as a result a humanitarian convoy destined for the Heliodrom in Mostar Municipality could not go through.³⁹⁷⁶ The Appeals Chamber also considers that Prlić relies on evidence which indicates that the same humanitarian convoy could not go through because of fighting *and* because “access was prevented”.³⁹⁷⁷ The Appeals Chamber therefore finds that Prlić has failed to demonstrate that the allegedly ignored evidence was so clearly relevant that the Trial Chamber’s lack of reference to the 12 July 1993 attack amounts to disregard. Therefore, the Appeals Chamber finds that Prlić has failed to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber: that in July 1993, Prlić refused to authorise access to East Mostar for representatives of international organisations.³⁹⁷⁸

1280. Turning to Prlić’s challenges to the Trial Chamber’s finding that during some periods he blocked all access to the area, the Appeals Chamber first observes that Prlić’s argument regarding the “milk convoy” disregards relevant evidence that the convoy did not go through.³⁹⁷⁹ The Appeals Chamber also considers that Prlić has failed to show how Boban’s authority to grant international organisations access to East Mostar precludes the Trial Chamber from finding on the evidence that he also had such authority.³⁹⁸⁰ The Appeals Chamber considers that Prlić has failed to show, based on the evidence relied upon by the Trial Chamber, that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber: that, at times, Prlić blocked all access of humanitarian aid to the area.³⁹⁸¹ The Appeals Chamber thus rejects Prlić’s challenges.

1281. As to his argument that the Trial Chamber mischaracterised evidence and relied upon irrelevant evidence to erroneously conclude that the meeting held on 8 August 1993 in Makarska attested to difficulties faced by international organisations in obtaining permission to deliver humanitarian aid to the population of East Mostar, the Appeals Chamber notes that Prlić misrepresents the factual finding.³⁹⁸² It reads as follows:

The frequent meetings held between July and August 1993 between the representatives of the international organisations and the HVO – like the one on 8 August 1993 in Makarska [...] to negotiate unobstructed access for humanitarian convoys to East Mostar attest to the difficulties

³⁹⁷⁶ See Prlić’s Appeal Brief, para. 543 & fns 1400-1404 and references cited therein. See also Trial Judgement, Vol. 2, para. 1233, Vol. 4, para. 184 and references cited therein.

³⁹⁷⁷ Klaus Johann Nissen, T. 20564 (26 June 2007). See also Klaus Johann Nissen, T. 20564 (26 June 2007) (testifying that, contrary to what happened in July 1993, a humanitarian convoy had entered East Mostar in June 1993, in spite of ongoing sniping).

³⁹⁷⁸ See Trial Judgement, Vol. 1, para. 1238, Vol. 4, para. 184.

³⁹⁷⁹ Ex. P10367 (confidential), para. 73. See also Witness BD, T. 20720, 20729 (closed session) (3 July 2007), Ex. P03530 (confidential).

³⁹⁸⁰ See Trial Judgement, Vol. 2, para. 1231, Vol. 4, paras 183-184, referring to, *inter alia*, Witness BD, T(F). 20700 (closed session) (3 July 2007).

³⁹⁸¹ See Trial Judgement, Vol. 4, paras 183-185, referring to, *inter alia*, Witness BC, T(F). 18360-18365 (closed session) (14 May 2007), Exs. P09712 (confidential), para. 64, P09999 (confidential).

³⁹⁸² Trial Judgement, Vol. 2, para. 1239. See also Trial Judgement, Vol. 4, para. 184.

*faced by the international organisations in obtaining permission to deliver humanitarian aid to the population of East Mostar [...].*³⁹⁸³

Prlić's allegations that the Trial Chamber relied on mischaracterised and irrelevant evidence misconstrue how and why it relied on this evidence.³⁹⁸⁴ The Appeals Chamber considers that Prlić has failed to demonstrate any error and dismisses his argument.

1282. As to Prlić's submission that the Trial Chamber ignored evidence that some administrative procedures were necessary, the Appeals Chamber notes that the Trial Chamber did not explicitly refer to this evidence when considering the blocking of access to East Mostar of members of international organisations and humanitarian aid.³⁹⁸⁵ The Appeals Chamber has reviewed the evidence Prlić relies upon, which indicates that checkpoints were necessary, for example, to combat criminal activities, and has in particular considered the evidence indicating that some humanitarian convoys had been found to carry weapons and ammunition destined for Muslims.³⁹⁸⁶ The Appeals Chamber however considers that Prlić has failed to show how this evidence is inconsistent with the impugned findings³⁹⁸⁷ or would justify blocking – as opposed to placing more stringent control measures on – the delivery of humanitarian aid to East Mostar. As such, he has also failed to demonstrate that the Trial Chamber disregarded clearly relevant evidence.³⁹⁸⁸ Prlić's submission is therefore dismissed.

1283. With regard to Prlić's argument that all convoys were approved and reached their destinations, the Appeals Chamber considers that Prlić misconstrues the evidence³⁹⁸⁹ and ignores other relevant contrary evidence on which the Trial Chamber relied to find that this was not always the case.³⁹⁹⁰ Similarly, as to his argument that the Trial Chamber ignored evidence that the Joint Commission and the Protocol ensured unhindered passage of humanitarian convoys in BiH from June to December 1993, the Appeals Chamber considers that Prlić has failed to provide evidence

³⁹⁸³ Trial Judgement, Vol. 2, para. 1239 (emphasis added; internal references omitted).

³⁹⁸⁴ See Trial Judgement, Vol. 2, para. 1239, referring to, *inter alia*, Exs. P04027 (confidential), pp. 1-2, P04420 (confidential), p. 1, Witness BD, T(F). 20719-20720 (closed session) (3 July 2007). Cf. Prlić's Appeal Brief, para. 545, referring to Trial Judgement, Vol. 2, para. 1239, Vol. 4, para. 184, Exs. P04027 (confidential), P04420 (confidential), Witness BD, T. 20720-20721 (closed session) (3 July 2007). The evidence referenced in Prlić's Appeal Brief, fn. 1411, also fails to demonstrate any error in this regard.

³⁹⁸⁵ Compare Prlić's Appeal Brief, para. 546 & fn. 1410 and references cited therein, with Trial Judgement, Vol. 2, paras 1224-1244, Vol. 4, paras 183-185 and references cited therein.

³⁹⁸⁶ See Prlić's Appeal Brief, para. 546 & fn. 1410 and references cited therein.

³⁹⁸⁷ See *supra*, fn. 3985. See, *e.g.*, *supra*, paras 1265, 1269.

³⁹⁸⁸ See *supra*, para. 1279.

³⁹⁸⁹ The Appeals Chamber considers that Witness Martin Raguž testified that every request that was submitted by an international organisation for safe passage for a humanitarian convoy that followed the Protocol was approved. He also testified, however, that it was "another matter whether some convoys were stopped and whether they had problems en route". Martin Raguž, T. 31357-31358 (26 Aug 2008).

³⁹⁹⁰ See Trial Judgement, Vol. 2, paras 1233, 1238-1242, Vol. 4, paras 183-184 and references cited therein.

that humanitarian convoys passed unhindered to East Mostar during this time period,³⁹⁹¹ and as such fails to demonstrate an error in any impugned finding. The Appeals Chamber therefore rejects Prlić's arguments.

1284. With regard to Prlić's claim that the Trial Chamber ignored evidence that he had endeavoured to ensure the free flow of humanitarian aid, the Appeals Chamber notes that the Trial Chamber did rely on evidence similar to that which Prlić points to with regard to Praljak's involvement.³⁹⁹² In fact, the Trial Chamber found that, on 21 and 25 August 1993, humanitarian convoys were able to get into East Mostar, supplies were air dropped, and that Praljak intervened to ensure the security of the convoy on 25 August 1993.³⁹⁹³ The Appeals Chamber further recalls that the Trial Chamber also found that between June and September 1993, the HVO itself provided humanitarian aid, albeit sporadically, to East Mostar but that such sporadic aid was conditional on obtaining certain advantages,³⁹⁹⁴ and did "not cast doubt on the observation that the HVO obstructed the delivery of the humanitarian aid to East Mostar".³⁹⁹⁵ The Appeals Chamber further considers that while the Trial Chamber did not expressly refer to evidence indicating that Prlić, at times, spoke in favour of allowing humanitarian aid to pass,³⁹⁹⁶ Prlić fails to show that no reasonable trier of fact, based on the evidence on which the Trial Chamber relied,³⁹⁹⁷ could have reached the same conclusion as the Trial Chamber. The Appeals Chamber thus rejects this claim.

1285. Having dismissed all of Prlić's arguments, the Appeals Chamber finds that he has failed to demonstrate that the Trial Chamber erroneously concluded that he foresaw and intended the suffering and attack on human dignity of East Mostar inhabitants by contributing to the blocking of humanitarian aid delivery to East Mostar from June to at least the end of December 1993. Thus, the Appeals Chamber dismisses Prlić's sub-ground of appeal 16.4.7.

(e) Displacement of Croats from Vareš Municipality (Prlić's Sub-ground 16.5)

1286. The Trial Chamber found that: (1) Vareš Municipality was not included in Provinces 3, 8, and 10 of the Vance-Owen Peace Plan; (2) in June 1993, between 10,000 and 15,000 BiH Croats from Kakanj arrived in Vareš town; and (3) after 23 October 1993 and the events in Stupni Do, the

³⁹⁹¹ See Prlić's Appeal Brief, para. 546 & fns 1412-1414 and references cited therein. The Appeals Chamber notes further that the Protocol on which Prlić relies dates to 1994 and is therefore not relevant to the time-frame in question. See Prlić's Appeal Brief, para. 546, referring to, *inter alia*, Exs. 1D01855, 1D02024, 1D02025.

³⁹⁹² See Prlić's Appeal Brief, para. 547 & fn. 1418, referring to Trial Judgement, Vol. 2, para. 1240 and references cited therein.

³⁹⁹³ Trial Judgement, Vol. 2, para. 1240.

³⁹⁹⁴ Trial Judgement, Vol. 2, para. 1243.

³⁹⁹⁵ Trial Judgement, Vol. 2, para. 1244. See also Trial Judgement, Vol. 2, para. 1241.

³⁹⁹⁶ See, e.g., Exs. P03673, 1D01529, 1D02070; Slobodan Praljak, T. 44394-44395 (3 Sept 2009).

HVO political authorities called on the Croatian population to leave this municipality because of the risk of a response by the ABiH.³⁹⁹⁸ The Trial Chamber also found that Prlić contributed to the organisation of the removal of the Croats from the municipalities of Kakanj and Vareš and their rehousing in the HZ(R) H-B in August 1993, considering, *inter alia*, that he communicated on 18 August 1993 a decision to evacuate Croats from Vareš Municipality to western Herzegovina.³⁹⁹⁹ The Trial Chamber further found that in October 1993 Prlić was concerned about the arrival of Croatian refugees and that he attended the HR H-B Government meeting on 4 November 1993 where it was decided that the ODPR would take care of the receipt and accommodation of the Croatian “refugees”.⁴⁰⁰⁰ Based on these and other facts, the Trial Chamber then concluded that:

Prlić knew that some HZ(R) H-B officials did not wish that municipality to be included in the area of BiH considered “Croatian”. Inasmuch as he contributed to the movement of the Croatian population in the territories of the HZ(R) H-B and continued to exercise his functions in the HVO/Government of the HZ(R) H-B, the Chamber finds that he shared that wish.⁴⁰⁰¹

(i) Arguments of the Parties

1287. Prlić submits that the Trial Chamber erred in finding that he was involved in the displacement of Croats from Vareš to territories claimed to be part of the HZ H-B.⁴⁰⁰² He first contends that the Trial Chamber erred in concluding that this displacement occurred because some HZ(R) H-B officials did not wish Vareš Municipality to be included in the “area of BiH considered Croatian”, arguing that there was no evidence to support this conclusion.⁴⁰⁰³

1288. Prlić also contends that the Trial Chamber erred in finding that he contributed to organising the removal of the Croats from the municipalities of Kakanj and Vareš and their rehousing in the HZ(R) H-B in August 1993, arguing that the Trial Chamber ignored evidence that in June 1993 between 10,000 and 15,000 Bosnian Croats arrived in Vareš town, escaping from ABiH attacks, and that his 18 August 1993 letter did not communicate to the Mostar Municipal HVO a decision to

³⁹⁹⁷ See Trial Judgement, Vol. 2, paras 1230, 1238-1239, Vol. 4, paras 184-185, referring to, *inter alia*, Witness BC, T(F). 18360-18365 (closed session) (14 May 2007), Exs. P09999 (confidential), P04420 (confidential), Witness BD, T(F). 20719-20720 (closed session) (3 July 2007).

³⁹⁹⁸ See Trial Judgement, Vol. 4, paras 198-199, 202, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 284.

³⁹⁹⁹ Trial Judgement, Vol. 4, para. 200.

⁴⁰⁰⁰ Trial Judgement, Vol. 4, paras 200-203.

⁴⁰⁰¹ Trial Judgement, Vol. 4, para. 204.

⁴⁰⁰² Prlić’s Appeal Brief, paras 548-549.

⁴⁰⁰³ Prlić’s Appeal Brief, paras 549-550. See Prlić’s Appeal Brief, para. 557. Prlić also argues that the HZ H-B never had defined borders and was established to protect all BiH Croats, and that Vareš was always part of the HZ H-B. Prlić’s Appeal Brief, para. 550; Appeal Hearing, AT. 136 (20 Mar 2017). Prlić further claims that the Trial Chamber ignored evidence that Croats were expelled from Travnik, Bugojno, Fojnica, and Konjic, areas designated by international negotiators as part of Croat-majority provinces, yet Croats did not leave from Kiseljak and Kreševo, areas that were not designated as Croat-majority provinces. See Prlić’s Appeal Brief, para. 551.

evacuate Kakanj Croats, but was addressed to the Vareš Municipal HVO in response to repeated requests for evacuation.⁴⁰⁰⁴

1289. Prlić further contends that the Trial Chamber erred in finding that the HVO political authorities called on Croats to leave Vareš Municipality after the events in Stupni Do, as it relied on “one document of unsubstantiated hearsay” (Exhibit P02980), which did not identify the authorities.⁴⁰⁰⁵

1290. Further, challenging the findings that the HR H-B Government decided on 4 November 1993 that the ODPR would receive and accommodate refugees and that Vareš town fell to the ABiH on 5 November 1993, Prlić argues that the Trial Chamber ignored evidence that: (1) the town actually fell on 3 November 1993; (2) the citizens left it early on 3 November 1993; (3) the HVO Main Staff then asked UNPROFOR to pull out the civilians from the battle zone; and (4) on 4 November 1993 the HR H-B Government was reacting to this humanitarian catastrophe.⁴⁰⁰⁶

1291. Finally, Prlić contends that the Trial Chamber erred in concluding that he shared the wish to displace Croats from Vareš Municipality because it was not considered to be Croatian, considering that his October 1993 letter shows that neither he nor the HVO HZ H-B expected the arrival of Vareš Croats in November 1993.⁴⁰⁰⁷

1292. The Prosecution responds that there is clear support in the evidence for the Trial Chamber’s finding that Prlić and other HZ(R) H-B officials wished to exclude Vareš Municipality from the territories considered Croatian.⁴⁰⁰⁸ Further, the Prosecution submits that Prlić does not contest his role in removing Kakanj Croats, but merely argues that he responded to a request for evacuation.⁴⁰⁰⁹ Concerning Prlić’s challenge that the Trial Chamber relied on one unsubstantiated hearsay document to find that the HVO political authorities called on Croats to leave Vareš Municipality after the events in Stupni Do, the Prosecution submits that: (1) Prlić ignores UNPROFOR’s first-

⁴⁰⁰⁴ Prlić’s Appeal Brief, para. 552. Prlić further challenges the Trial Chamber’s finding regarding his direct power over the ODPR and argues that the Trial Chamber ignored evidence that all Croats displaced from Vareš ended up in Croatia. Prlić’s Appeal Brief, paras 553-554. See Appeal Hearing, AT. 235 (20 Mar 2017).

⁴⁰⁰⁵ Prlić’s Appeal Brief, para. 555, referring to, *inter alia*, Prlić’s Appeal Brief, ground of appeal 3. In addition, Prlić argues that the arrival of 5,000 refugees in Herzegovina “had nothing to do with the alleged call of ‘the HVO political authorities’ to the Croats to leave Vareš”. Prlić’s Appeal Brief, para. 555.

⁴⁰⁰⁶ Prlić’s Appeal Brief, para. 556. See Appeal Hearing, AT. 148-149 (20 Mar 2017).

⁴⁰⁰⁷ Prlić’s Appeal Brief, paras 549, 557.

⁴⁰⁰⁸ Prosecution’s Response Brief (Prlić), paras 346-347. The Prosecution further submits that Prlić’s submission that the HZ(R) H-B “never had defined borders” is contradicted by, *inter alia*, his own stated goal of “rounding off territories” that were believed to be “Croatian”. Prosecution’s Response Brief (Prlić), para. 348. It submits that it is irrelevant whether Vareš was always part of the HZ H-B as it was not part of the historic Banovina, and HZ(R) H-B leaders accepted its exclusion from the so-called Croatian provinces under the Vance-Owen Peace Plan. Prosecution’s Response Brief (Prlić), para. 349.

⁴⁰⁰⁹ Prosecution’s Response Brief (Prlić), para. 350. The Prosecution submits that only 1,770 out of the 5,500 Croats from Vareš moved to Croatia, while the rest stayed in Čapljina. Prosecution’s Response Brief (Prlić), para. 354.

hand account of the events; and (2) the document in question was authenticated and corroborated.⁴⁰¹⁰ It further submits that the evidence cited by Prlić with respect to the date when Vareš town fell is consistent with the Trial Chamber's finding in this regard.⁴⁰¹¹ The Prosecution also contends that the evidence refutes Prlić's submission that the Government was merely reacting to a "humanitarian catastrophe".⁴⁰¹²

(ii) Analysis

1293. Turning to Prlić's challenge that there is no evidence supporting the Trial Chamber's finding that the HZ(R) H-B officials did not "wish" to include Vareš Municipality in areas they considered Croatian, the Appeals Chamber observes that the Trial Chamber considered that, *inter alia*, Praljak indicated in April 1993 that Vareš Municipality would not be included in the territory of the HZ H-B.⁴⁰¹³ The Trial Chamber also noted Prlić's remark during a meeting on 5 November 1993, in the context of the fall of Vareš town:

We must move closer to rounding off territories. As a government, last spring we defined both the proposals and the conclusions, even with regard to moving certain brigades from some areas, which would include moving the population from those areas and concentrating it in certain directions that we think could become and remain Croatian areas.⁴⁰¹⁴

Finally, the Trial Chamber considered the fact that Vareš Municipality was not placed in a province under Croatian control, in accordance with the Vance-Owen Peace Plan.⁴⁰¹⁵ Against this background, the Appeals Chamber finds that Prlić ignores relevant factual findings, as well as the evidence underlying them. The Appeals Chamber therefore dismisses his argument.⁴⁰¹⁶

1294. With respect to Prlić's argument that the Trial Chamber ignored evidence indicating that several thousands of BiH Croats arrived in Vareš in June 1993, escaping from ABiH attacks, the Appeals Chamber observes that the Trial Chamber specifically noted that in June 1993, "between 10,000 and 15,000 BiH Croats arrived in the town of Vareš",⁴⁰¹⁷ in addition to noting that this

⁴⁰¹⁰ Prosecution's Response Brief (Prlić), para. 352, referring to, *inter alia*, Prlić's Appeal Brief, para. 555.

⁴⁰¹¹ Prosecution's Response Brief (Prlić), para. 353.

⁴⁰¹² Prosecution's Response Brief (Prlić), para. 351.

⁴⁰¹³ Trial Judgement, Vol. 4, para. 198.

⁴⁰¹⁴ Trial Judgement, Vol. 4, para. 214. See Trial Judgement, Vol. 4, para. 191. See also *infra*, para. 1316.

⁴⁰¹⁵ Trial Judgement, Vol. 4, para. 198.

⁴⁰¹⁶ Similarly, considering the Trial Chamber's findings recalled above, the Appeals Chamber dismisses Prlić's arguments that the HZ H-B never had defined borders and was established to protect all BiH Croats, and that Vareš was always part of the HZ H-B, as they fail to demonstrate any error in the impugned finding. See *supra*, paras 719-723. Further, regarding Prlić's submission that Croats were expelled from Travnik, Bugojno, Fojnica, and Konjic, areas designated by international negotiators as part of Croat-majority provinces, yet Croats did not leave from Kiseljak and Kreševo, which were not designated as a Croat-majority provinces, the Appeals Chamber finds that Prlić has failed to show the relevance of his argument to the impugned finding, which concerns HZ(R) H-B officials' intentions with regard to Vareš Municipality. This argument is also dismissed.

⁴⁰¹⁷ Trial Judgement, Vol. 4, para. 199. See Trial Judgement, Vol. 3, paras 284, 502.

happened “[f]ollowing an ABiH attack” on Kakanj Municipality.⁴⁰¹⁸ His argument is thus dismissed. Regarding Prlić’s challenge raised with respect to his letter dated 18 August 1993, the Appeals Chamber agrees that the letter was addressed to the Vareš Municipal HVO.⁴⁰¹⁹ However, it finds that this does not undermine the Trial Chamber’s finding that Prlić contributed to the organisation of the removal of Croats from the municipality and their resettlement in HZ(R) H-B territory. On the contrary, the letter supports the Trial Chamber’s finding, as it is signed by Prlić and states that “we have decided to secure the evacuation [of Kakanj Croats exiled from Vareš Municipality who are children, women, sick, or elderly] in the region of Western Herzegovina”.⁴⁰²⁰ The Appeals Chamber therefore dismisses his argument.⁴⁰²¹

1295. Concerning the Trial Chamber’s finding that the HVO political authorities called on the Croatian population to leave Vareš Municipality because of the risk of a response by the ABiH,⁴⁰²² and noting Prlić’s challenge related to the Trial Chamber’s reliance on Exhibit P02980,⁴⁰²³ an UNPROFOR diary, the Appeals Chamber observes that the finding is referenced to a single excerpt of this diary, covering events in Vareš Municipality on 29-30 October 1993.⁴⁰²⁴ The most relevant part reads as follows: “We came by information indicating that the HVO were encouraging people to flee by spreading rumours about Muslim atrocities and by making transportation possibilities available.”⁴⁰²⁵ The Appeals Chamber observes that this evidence neither specifically indicates that the HVO *political authorities* called on them to leave nor reveals the source of the quoted information. Regardless, the Appeals Chamber considers that the Trial Chamber’s conclusion⁴⁰²⁶ is sufficiently supported by the Trial Chamber’s other findings,⁴⁰²⁷ and therefore finds that Prlić has failed to demonstrate an error of fact which has occasioned a miscarriage of justice. The Appeals Chamber therefore dismisses his argument.

⁴⁰¹⁸ Trial Judgement, Vol. 3, para. 284.

⁴⁰¹⁹ See Trial Judgement, Vol. 4, para. 200 & fn. 515, referring to Ex. P04282. Prlić incorrectly cites to Exhibit P04248. See Prlić’s Appeal Brief, para. 522 & fn. 1431.

⁴⁰²⁰ Ex. P04282.

⁴⁰²¹ Regarding Prlić’s challenge to the Trial Chamber’s finding related to his direct power over the ODPR, the Appeals Chamber notes that his challenges to his powers in relation to ODPR and Croatia are addressed and dismissed above. See *supra*, para. 1085. Concerning his challenge that the Trial Chamber ignored that displaced Croats ended up in Croatia, the Appeals Chamber finds that Prlić in essence relies on one document that supports the Trial Chamber’s finding and thus dismisses his argument. Compare Ex. 1D00927 with Trial Judgement, Vol. 4, para. 199.

⁴⁰²² Trial Judgement, Vol. 3, para. 503, Vol. 4, para. 202.

⁴⁰²³ The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

⁴⁰²⁴ Trial Judgement, Vol. 3, para. 503 & fn. 1071, Vol. 4, para. 202 & fn. 520, referring to Ex. P02980, p. 21.

⁴⁰²⁵ Ex. P02980, p. 21.

⁴⁰²⁶ See *supra*, para. 1286.

⁴⁰²⁷ See Trial Judgement, Vol. 4, paras 198-203; *supra*, para. 1293. With regard to Prlić’s argument that the arrival of 5,000 refugees in Herzegovina had nothing to do with the alleged call of the HVO political authorities to the Croats to leave Vareš, the Appeals Chamber considers that Prlić fails to demonstrate that the Trial Chamber made any such connection and therefore dismisses his argument. See Trial Judgement, Vol. 4, para. 202.

1296. Turning to Prlić's challenges to the Trial Chamber's findings that the HR H-B Government decided on 4 November 1993 that the ODPH would receive and accommodate refugees, and that Vareš town fell on 5 November 1993, the Appeals Chamber observes that the Trial Chamber took into account the state of affairs in Vareš Municipality, including the ongoing battle between the HVO and ABiH,⁴⁰²⁸ the Government's actions,⁴⁰²⁹ as well as the departure of Croats.⁴⁰³⁰ With regard to Prlić's claim that Vareš town fell already on 3 November 1993, the Appeals Chamber recalls that the Trial Chamber found that Vareš town fell *into ABiH hands* on 5 November 1993,⁴⁰³¹ which is consistent with all of the evidence to which he refers.⁴⁰³² As a result, the Appeals Chamber finds that Prlić has failed to demonstrate that any of the other allegedly ignored evidence shows an error in the impugned findings and dismisses his arguments accordingly.

1297. Finally, regarding Prlić's challenge, based on his letter from October 1993, to the Trial Chamber's conclusion that he shared the wish that Vareš Municipality not be included in the area of BiH considered "Croatian", the Appeals Chamber first observes that the Trial Chamber relied on several findings before reaching its conclusion.⁴⁰³³ In support of his claim that this letter affirms that he and the HVO HZ H-B did not expect the arrival of Vareš Croats in November 1993, Prlić cites the following portion: "if there is no new aggression on the territories inhabited with Croatian population, by the winter period all of the displaced persons will be taken care of, in the adequate and to human needs appropriate way."⁴⁰³⁴ The first part of this sentence reads as a hypothetical qualifying the assertion in the second part of the sentence. As such, the Appeals Chamber can draw no inference from this sentence as to Prlić's or the HVO HZ H-B's actual expectations with regard to the arrival of Vareš Croats in November 1993. In any event, Prlić's argument is not inconsistent with the challenged finding. For these reasons, the Appeals Chamber dismisses this argument.

1298. In light of the above, the Appeals Chamber finds that Prlić has failed to show that the Trial Chamber erred in finding that he was involved in the displacement of Croats from Vareš and dismisses his sub-ground of appeal 16.5.

⁴⁰²⁸ Trial Judgement, Vol. 3, para. 503, Vol. 4, para. 203.

⁴⁰²⁹ Trial Judgement, Vol. 4, paras 203, 214.

⁴⁰³⁰ Trial Judgement, Vol. 3, paras 504-506.

⁴⁰³¹ Trial Judgement, Vol. 3, para. 507, Vol. 4, para. 203.

⁴⁰³² See Prlić's Appeal Brief, para. 556 & fn. 1441, referring to Exs. 3D00971, 3D00984, 4D00519, p. 11, Milivoj Petković, T. 49610-49611 (17 Feb 2010). Exhibit 4D00519 (confirmed by Petković in his testimony), p. 11, states that Vareš fell on 3 November 1993, but only describes the HVO leaving that day, not the ABiH coming. Exhibit 3D00971, dated 3 November 1993, refers to intense ongoing battle in and around Vareš but not to its fall. Exhibit 3D00984, dated 4 November 1993, suggests that Vareš was not yet in ABiH hands.

⁴⁰³³ Trial Judgement, Vol. 4, paras 198-204.

⁴⁰³⁴ See Prlić's Appeal Brief, para. 557, referring to Ex. 1D00927, p. 2.

(f) Prlić's contribution to a policy of population movement (Prlić's Sub-ground 16.6)

1299. The Trial Chamber found that Prlić supported the policy of moving Muslim detainees and their families outside the HZ(R) H-B and planned and facilitated the movement of the Croatian population to the areas claimed to belong to the HZ(R) H-B.⁴⁰³⁵ It further found that even though the latter movement could be partly justified by the ongoing fighting, it was also prompted by the HVO and constituted part of a policy by the HZ(R) H-B leadership.⁴⁰³⁶

(i) Arguments of the Parties

1300. Prlić submits that the Trial Chamber erred in reaching these conclusions,⁴⁰³⁷ by challenging a number of findings on which the Trial Chamber relied. First, he submits that the Trial Chamber erred in finding that on 1 February 1993, the HVO HZ H-B established the Commission for the Question of the Migration of Population by relying on one document introduced through a bar table motion, although there is no evidence that this commission ever existed.⁴⁰³⁸ He also challenges the finding that at a meeting on 5 May 1993, Prlić advocated a population and property exchange program, giving the example that a Muslim in Mostar and a Croat in Zenica could exchange their flats, arguing that the Trial Chamber erred in relying on Witness BA's testimony and excluding other relevant evidence.⁴⁰³⁹

1301. Prlić further challenges the Trial Chamber's finding that according to a 13 June 1993 ECMM report, the HVO was conducting a large-scale propaganda campaign to provoke a mass exodus of the Croatian population from Travnik Municipality to the north, claiming that the Trial Chamber erroneously gave weight to ECMM reports and Witness Christopher Beese's testimony.⁴⁰⁴⁰ Prlić also contends that in finding that the HVO HZ H-B organised the anticipated

⁴⁰³⁵ Trial Judgement, Vol. 4, paras 215, 275.

⁴⁰³⁶ Trial Judgement, Vol. 4, para. 215.

⁴⁰³⁷ Prlić's Appeal Brief, paras 558-559, 561, 575-577, 583. See Prlić's Appeal Brief, para. 560, referring to Prlić's sub-grounds of appeal 16.4.3, 16.9-16.10.

⁴⁰³⁸ Prlić's Appeal Brief, para. 562, referring to, *inter alia*, Prlić's ground of appeal 3.

⁴⁰³⁹ Prlić's Appeal Brief, para. 563, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 208. Prlić specifically argues, pointing to evidence in support, that: (1) Witness BA was not informed about Zenica in the spring of 1993; (2) Croats wished to escape Zenica as they were under attack; (3) there was no resettlement policy of Croats from Zenica; (4) Boban's 7 May 1993 letter to the UN sought the protection of Croats "to enable the free movement of Croats entering and leaving the areas of Zenica, Konjic and Jablanica"; (5) the Croatian exodus was due to ABiH attacks (referring to Prlić's Appeal Brief, paras 497 (sub-ground of appeal 16.3.1), 499 (sub-ground of appeal 16.3.2), 566 (sub-ground of appeal 16.6.2), 582 (sub-grounds of appeal 16.6.3 and 16.6.4)); (6) evacuation was requested for the wounded; and (7) the Mujahideen were "real and frightening". He further submits that there is no evidence on any property exchange, "forbidden by the HVOHZHB". Prlić's Appeal Brief, para. 563, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 208.

⁴⁰⁴⁰ Prlić's Appeal Brief, para. 564 & fn. 1459, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 209, Prlić's Appeal Brief, paras 200-201 (sub-ground of appeal 6.2). Prlić also points to evidence in support of his claim. See Prlić's Appeal Brief, para. 564. See also Prlić's Appeal Brief, para. 565, referring to Prlić's Appeal Brief, sub-ground of appeal 16.5. Prlić argues in particular that Beese's testimony that the movement was an effort to change the voting pattern is unsustainable in light of evidence that the HVO HZ H-B took measures to the contrary and that his testimony that the

relocation of many Croats from central Bosnia, the Trial Chamber misinterpreted two documents and ignored evidence.⁴⁰⁴¹ In particular, Prlić argues that the Trial Chamber ignored evidence on: (1) ABiH attacks in the Travnik area where civilians had to be evacuated to Serb-controlled territory; (2) the HVO HZ H-B's proposals, in light of the information about the imminent threat to central Bosnian Croats, to the HZ(R) H-B Presidency to take action; and (3) the expulsion of 30,000 Croats from central Bosnia when the ABiH captured Travnik on 9 June 1993 and Kakanj on 13 June 1993.⁴⁰⁴²

1302. Prlić further claims that the Trial Chamber erroneously found that Muslims were forced to leave West Mostar in order to accommodate the arriving Croats, in light of contrary evidence and a lack of evidence on a policy to forcibly remove Muslims and settle Croats in Mostar or Herzegovina.⁴⁰⁴³

1303. Referring to the Trial Chamber's finding that on 21 June 1993 Prlić signed a decision creating a staff for organising and co-ordinating efforts concerning expelled persons and refugees, Prlić argues that the HVO HZ H-B created this staff to deal with the high number of displaced persons arriving in HZ H-B territories in June 1993 due to the ABiH offensive in central Bosnia.⁴⁰⁴⁴ Further, Prlić challenges the Trial Chamber's reliance on Witness DZ's evidence that during a meeting on 23 June 1993, Vladislav Pogarčić, Boban's Chief of Staff, expressed, *inter alia*, Prlić's wish to gather the Croatian population in one Croatian entity, claiming that there is no evidence linking Pogarčić to Prlić, or that Witness DZ "reported this claim".⁴⁰⁴⁵

1304. Prlić also claims that the Trial Chamber erred in finding that at a meeting on 16 July 1993 he stated that 10,000 Muslims wished to leave Mostar for third countries and that he negotiated with Croatia for transit visas for Muslims to go through its territory.⁴⁰⁴⁶ He argues that the Trial Chamber erroneously relied on Witness BA⁴⁰⁴⁷ and ignored and mischaracterised evidence indicating, notably, that transit visas were not intended for Muslims alone.⁴⁰⁴⁸ Prlić also submits that the

danger from the Mujahideen was propaganda was not credible. Prlić submits further that it "defies logic to suggest that the HZHB/HVOHZHB would pursue a reverse ethnic cleansing policy to resettle Croats from a designated Croat-majority province", submitting that Travnik was the capital of one of the Croat-majority provinces according to the Vance-Owen Peace Plan. Prlić's Appeal Brief, para. 564.

⁴⁰⁴¹ Prlić's Appeal Brief, para. 566 & fn. 1464, referring to Trial Judgement, Vol. 4, para. 209, Prlić's Appeal Brief, ground of appeal 3.

⁴⁰⁴² Prlić's Appeal Brief, paras 566-567.

⁴⁰⁴³ Prlić's Appeal Brief, para. 568.

⁴⁰⁴⁴ Prlić's Appeal Brief, para. 569 & fn. 1476, referring to Trial Judgement, Vol. 4, para. 210.

⁴⁰⁴⁵ Prlić's Appeal Brief, para. 570 & fn. 1479, referring to Trial Judgement, Vol. 4, para. 211.

⁴⁰⁴⁶ Prlić's Appeal Brief, para. 577, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 212.

⁴⁰⁴⁷ Prlić's Appeal Brief, para. 578. Prlić submits in particular that contrary to Witness BA's testimony, confidential Exhibit 6D00577 does not mention his presence at the meeting. Prlić's Appeal Brief, para. 578.

⁴⁰⁴⁸ Prlić's Appeal Brief, paras 577-581, referring to, *inter alia*, Prlić's Appeal Brief, paras 182-183 (sub-ground of appeal 6.1).

Trial Chamber erred in finding that he directed or participated in expelling Muslims from HZ(R) H-B territories, as it ignored evidence that Muslim refugees returned to HVO-controlled areas.⁴⁰⁴⁹

1305. Finally, Prlić claims that the Trial Chamber erred: (1) in finding that he participated in organising and facilitating the departure of the Croatian population of central Bosnia to Herzegovina between August and November 1993;⁴⁰⁵⁰ (2) in finding that the ODPH sent him a letter on 3 November 1993;⁴⁰⁵¹ (3) by ignoring the context of his statement, made at a meeting held on 5 November 1993, about population movements into areas that “could become and remain Croatian”;⁴⁰⁵² and (4) in finding that the HVO exerted pressure on Croats to leave Vareš, implying that some Croats from Vareš were removed as part of the JCE.⁴⁰⁵³

1306. The Prosecution responds that Prlić fails to demonstrate an error in the Trial Chamber’s conclusion that he played a key role in removing the Muslim population from territory claimed by the HZ(R) H-B and simultaneously settling Croats from central Bosnia there.⁴⁰⁵⁴ It submits that Prlić ignores the bulk of the findings and evidence supporting the Trial Chamber’s conclusion regarding his contribution and intent to remove Muslims from the HZ(R) H-B.⁴⁰⁵⁵ Regarding the allegation that there is no evidence of moving Muslims out of West Mostar and the resettling of Croats in Mostar or Herzegovina, the Prosecution contends that Prlić himself cites evidence demonstrating the resettlement of Croats throughout Herzegovina, and that he ignores extensive evidence in support of the impugned finding.⁴⁰⁵⁶ Similarly, regarding the claim that no Muslims

⁴⁰⁴⁹ Prlić’s Appeal Brief, para. 583. See also Prlić’s Appeal Brief, para. 584, referring to Prlić’s sub-grounds of appeal 16.6.2, 16.6.3-16.6.4.

⁴⁰⁵⁰ Prlić’s Appeal Brief, para. 571. Prlić argues that the Trial Chamber erred in relying on its finding that at a 29 July 1993 meeting of the HVO HZ H-B, the organisation and logistics concerning the anticipated arrival of 10,000 Croats from central Bosnia were discussed. Prlić’s Appeal Brief, paras 571, 582. Prlić further submits that the Trial Chamber ignored evidence showing why 10,000 Croats fled from central Bosnia and why they ultimately arrived in Croatia. Prlić’s Appeal Brief, para. 571. See also Prlić’s Appeal Brief, fn. 1482, referring to, *inter alia*, Prlić’s sub-ground of appeal 16.6.2. He also submits that the Trial Chamber ignored evidence concerning the 29 July 1993 meeting, showing that the ODPH had no goal of ethnically cleansing territory of Muslims. Prlić’s Appeal Brief, para. 582.

⁴⁰⁵¹ Prlić’s Appeal Brief, para. 572. Prlić argues in particular that the letter was sent to the Presidents of the municipal HVOs. Prlić’s Appeal Brief, para. 572.

⁴⁰⁵² Prlić’s Appeal Brief, para. 573, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 214, Prlić’s Appeal Brief, para. 240 (sub-ground of appeal 9.2). Prlić submits that he stated that Herzegovina could not accommodate Croats from Vareš and that Croatia should accommodate them. Prlić’s Appeal Brief, para. 573.

⁴⁰⁵³ Prlić’s Appeal Brief, para. 574; Appeal Hearing, AT. 148-149 (20 Mar 2017). Prlić argues in particular that this contradicts the Trial Chamber’s finding that even if the HVO exerted this pressure “the threat of attacks by the ABiH and the fact that they did happen were sufficient to bring about the departure of Croats from the municipality”, and that there was no policy to relocate Croats from central Bosnia to HZ(R) H-B territories. Prlić’s Appeal Brief, para. 574; Appeal Hearing, AT. 148-149 (20 Mar 2017).

⁴⁰⁵⁴ Prosecution’s Response (Prlić), para. 355. See Appeal Hearing, AT. 228 (20 Mar 2017).

⁴⁰⁵⁵ Prosecution’s Response (Prlić), paras 356-357.

⁴⁰⁵⁶ Prosecution’s Response (Prlić), para. 359.

were expelled, the Prosecution argues that Prlić ignores many underlying findings and his own prior admission.⁴⁰⁵⁷

1307. With respect to Prlić's challenge to the Trial Chamber's finding regarding his conduct at the meeting on 5 May 1993, the Prosecution argues that Prlić fails to explain how the evidence he cites renders the Trial Chamber's finding unreasonable.⁴⁰⁵⁸ With regard to the challenged finding concerning a 13 June 1993 ECMM report on an HVO campaign to provoke a mass exodus of the population in Travnik, the Prosecution submits that Prlić misrepresents Beese's testimony and shows no error in the Trial Chamber's reliance on this witness's evidence.⁴⁰⁵⁹

1308. The Prosecution also submits that Prlić fails to show that the Trial Chamber acted unreasonably in crediting Witness DZ's testimony, considering that any lack of connection between Pogarčić and Prlić is beside the point and Witness DZ's evidence is corroborated.⁴⁰⁶⁰ With respect to the Trial Chamber's findings regarding Prlić's statements at the 16 July 1993 meeting, the Prosecution submits that Prlić fails to demonstrate that no reasonable trial chamber could have relied on Witness BA's first-hand and corroborated testimony.⁴⁰⁶¹

1309. The Prosecution submits that the Trial Chamber reasonably concluded that Prlić planned and facilitated the movement of Central Bosnian Croats into territory claimed by the HZ(R) H-B as part of a policy.⁴⁰⁶² It contends that he incorrectly argues that the Trial Chamber ignored evidence that Croats were fleeing ABiH attacks.⁴⁰⁶³ It further argues that Prlić's claims concerning the 3 November 1993 letter are irrelevant since the Government echoed its content at a meeting on the following day.⁴⁰⁶⁴ In the Prosecution's submission, Prlić's challenges to findings concerning HVO

⁴⁰⁵⁷ Prosecution's Response (Prlić), para. 358. The Prosecution submits that Prlić ignores evidence showing that the return of some expelled Muslims, if any, to HVO-controlled territory was contrary to the JCE members' intentions. Prosecution's Response Brief (Prlić), para. 358.

⁴⁰⁵⁸ Prosecution's Response Brief (Prlić), para. 367. The Prosecution argues further that Prlić's claims regarding events in Zenica ignore that Zenica was mentioned in the impugned finding only as an illustrative example of a possible exchange. Prosecution's Response Brief (Prlić), para. 367.

⁴⁰⁵⁹ Prosecution's Response Brief (Prlić), para. 364, referring to, *inter alia*, Prlić's Appeal Brief, para. 564, Trial Judgement, Vol. 4, para. 209. The Prosecution further argues that the evidence Prlić cites does not support his claim. With regard to Prlić's argument that it defies logic that the HVO would remove Croats from Travnik in Province 10, the Prosecution claims that Prlić ignores the fact that the HVO lost control of this area in mid-June 1993, which explains the relocation of Croats from Travnik. Prosecution's Response Brief (Prlić), para. 364.

⁴⁰⁶⁰ Prosecution's Response Brief (Prlić), para. 368.

⁴⁰⁶¹ Prosecution's Response Brief (Prlić), para. 360. The Prosecution further submits that Prlić relies on evidence that relates to a different meeting. Prosecution's Response Brief (Prlić), para. 360. See also Prosecution's Response Brief (Prlić), para. 361.

⁴⁰⁶² Prosecution's Response Brief (Prlić), para. 362. The Prosecution further argues that Prlić's attempts to attribute this influx solely to external factors is at odds with the evidence. Prosecution's Response Brief (Prlić), para. 362.

⁴⁰⁶³ Prosecution's Response Brief (Prlić), para. 363.

⁴⁰⁶⁴ Prosecution's Response Brief (Prlić), para. 366.

pressure on Vareš Croats and his statement on 5 November 1993 about population movements are likewise without merit.⁴⁰⁶⁵

(ii) Analysis

1310. With regard to Prlić's argument that the Trial Chamber erred in finding that on 1 February 1993 the HVO HZ H-B established the Commission for the Question of the Migration of Population, the Appeals Chamber considers that a reasonable trier of fact could have made this finding based on the documentary evidence relied on by the Trial Chamber.⁴⁰⁶⁶ It is irrelevant for the challenged finding whether there was evidence on the commission's existence after its establishment.⁴⁰⁶⁷ Prlić's argument is therefore dismissed.

1311. Turning to Prlić's challenge to the Trial Chamber's finding that during a meeting on 5 May 1993, he advocated a population and property exchange programme whereby, for example, a Muslim in Mostar could exchange his flat for a flat occupied by a Croat in Zenica, the Appeals Chamber finds that Prlić fails to demonstrate that the Trial Chamber erred by relying on Witness BA's evidence, which directly supports the impugned finding.⁴⁰⁶⁸ The Appeals Chamber further finds that the evidence which Prlić alleges the Trial Chamber ignored was either considered by the Trial Chamber,⁴⁰⁶⁹ or does not show that the impugned finding was unreasonable.⁴⁰⁷⁰ Thus, this challenge fails.

1312. Concerning Prlić's challenge to the Trial Chamber's finding that according to an ECMM report dated 13 June 1993, the HVO was conducting a large-scale propaganda campaign to provoke

⁴⁰⁶⁵ Prosecution's Response Brief (Prlić), para. 365, referring to, *inter alia*, Prlić's Appeal Brief, para. 573. In particular, with regard to the former finding, the Prosecution submits that Prlić fails to identify any contradiction. Prosecution's Response Brief (Prlić), para. 365. See also Prosecution's Response Brief (Prlić), para. 366. With regard to the latter finding, the Prosecution argues that Prlić's claims are not supported by the evidence he cites. Prosecution's Response Brief (Prlić), para. 365.

⁴⁰⁶⁶ Trial Judgement, Vol. 4, para. 207, referring to Ex. P01388, point 6, p. 2.

⁴⁰⁶⁷ The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

⁴⁰⁶⁸ Trial Judgement, Vol. 4, para. 208, referring to Ex. P09712 (confidential), para. 38. For context, see Ex. P09712 (confidential), para. 37.

⁴⁰⁶⁹ The Appeals Chamber notes that the Trial Chamber specifically considered that one part of the Croatian population of central Bosnia was actually fleeing the fighting between the ABiH and HVO. See, *e.g.*, Trial Judgement, Vol. 4, paras 53-55, 215. The Appeals Chamber also notes that Prlić refers in this respect to his submissions in sub-grounds of appeal 16.3.1 and 16.3.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 1209-1211, 1213-1218, 1220-1221.

⁴⁰⁷⁰ The Appeals Chamber finds Prlić's arguments concerning Zenica unpersuasive since the reference to Zenica in the impugned finding provides just an example to illustrate how the programme would operate. It further considers that Boban's 7 May 1993 letter to the UN seeking the free movement of Croats entering and leaving the areas of Zenica, Konjic, and Jablanica is not inconsistent with the impugned finding. Compare Ex. P09606, p. 2, with Trial Judgement, Vol. 4, para. 208. Finally, the Appeals Chamber considers that the evidence that Prlić cites does not support his claim that property exchange was forbidden by the HVO HZ H-B. See Prlić's Appeal Brief, fn. 1455 and references cited therein.

a mass exodus of the Croatian population from Travnik Municipality,⁴⁰⁷¹ the Appeals Chamber considers that the evidence Prlić points to fails to demonstrate that the Trial Chamber erred in the weight it gave to the ECMM reports and Beese's testimony that support the impugned finding.⁴⁰⁷² This argument is therefore dismissed. Further, regarding Prlić's contention that the Trial Chamber misinterpreted two documents in reaching its finding that the HVO HZ H-B organised the anticipated relocation of many Croats from central Bosnia, the Appeals Chamber finds that the finding is well supported by the contents of the documents and that Prlić has failed to show any error in this respect.⁴⁰⁷³ Concerning Prlić's argument that the Trial Chamber ignored evidence, the Appeals Chamber observes that, contrary to Prlić's submissions, the Trial Chamber specifically considered that one part of the Croatian population of central Bosnia, including Travnik Municipality, was fleeing the fighting between the ABiH and HVO.⁴⁰⁷⁴ Similarly, contrary to Prlić's suggestions, the Trial Chamber considered evidence regarding the HVO HZ H-B's proposals to the Presidency to take action after having been informed of the imminent threat to central Bosnian Croats.⁴⁰⁷⁵ The Appeals Chamber considers that Prlić merely asserts that the Trial Chamber has failed to interpret the evidence in a particular manner. Consequently, the Appeals Chamber dismisses all these arguments.

1313. The Appeals Chamber further considers that Prlić has failed to show that no reasonable trier of fact could have found that between 400 and 650 Muslims were forced to leave their homes in West Mostar in order to accommodate the Croats from other areas in BiH and in particular from

⁴⁰⁷¹ Trial Judgement, Vol. 4, para. 209 & fn. 533 and references cited therein.

⁴⁰⁷² With regard to Prlić's argument that Beese's testimony that the movement was an effort to change the voting pattern is unsustainable, the Appeals Chamber notes that the Trial Chamber did not specifically rely on this part of Beese's testimony for the impugned finding, and dismisses Prlić's argument accordingly. See Trial Judgement, Vol. 4, para. 209 & fn. 533 and references cited therein. The Appeals Chamber further observes that Prlić's claim that Beese "incredibly" noted that the danger from the Mujahideen was propaganda is not supported by the cited evidence. See Prlić's Appeal Brief, para. 564 & fn. 1463, referring to Christopher Beese, T. 5442-5443 (23 Aug 2006). Prlić's submission that Travnik was part of a designated Croat-majority province and that it would therefore defy logic to resettle Croats from there fails to account for Prlić's own statement that the ABiH took control of Travnik on 9 June 1993. See Prlić's Appeal Brief, para. 566. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 6.2 and 16.5, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218, 1286-1298.

⁴⁰⁷³ Trial Judgement, Vol. 4, para. 209 & fn. 534, referring to Exs. 1D01668, conclusion 3 (Minutes of an HVO HZ H-B meeting held on 15 June 1993, which Prlić chaired, recording the following conclusion: "A proposal was made to the Presidency of the HZ H-B and the HVO Supreme Commander to adopt a decision to pull out all military units from areas outside the designated Croatian provinces, together with the Croatian inhabitants living there. To this effect, demand cooperation and assistance from UNPROFOR and UNHCR"), P03413, p. 1 (Letter from Prlić to the President of the HZ H-B dated 13 July 1993, referring to the conclusion reached by the HVO HZ H-B on 15 June 1993 as follows: "A proposal has been put to the Presidency of the HZ H-B and the Supreme Commander of the HVO to reach the decision to withdraw all military units together with the local Croatian population from the areas outside of the defined Croat provinces. For that purpose an assistance of UNPROFOR and UNHCR needs to be requested in a form of an ultimatum."). The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

⁴⁰⁷⁴ See *supra*, fn. 4069. The Appeals Chamber therefore sees no merit in Prlić's assertion that the Trial Chamber ignored evidence on the expulsion of 30,000 Croats from central Bosnia when the ABiH captured Travnik on 9 June 1993 and Kakanj on 13 June 1993. Prlić's Appeal Brief, para. 566.

⁴⁰⁷⁵ Trial Judgement, Vol. 4, para. 209 & fn. 534 and references cited therein. Cf. Prlić's Appeal Brief, paras 566-567 & fns 1466-1467, 1469-1470 and references cited therein.

Travnik. In particular, it dismisses Prlić's challenge that there is no evidence on a policy that Muslims were forced to leave Mostar or Herzegovina in order to accommodate Croats, since the Trial Chamber's finding to the contrary is based on ample evidence, which Prlić fails to address.⁴⁰⁷⁶

1314. With respect to Prlić's challenge to the finding that on 21 June 1993, he signed a decision creating a staff for organising and co-ordinating the effort to accommodate and provide for expelled people and refugees, the Appeals Chamber considers that Prlić's submission that the staff aimed to deal with the humanitarian crisis fails to articulate an error. Further, Prlić's argument is irrelevant to the impugned finding, which concerns the staff's creation, and does not demonstrate an error in the Trial Chamber's overarching conclusion.⁴⁰⁷⁷ This argument is therefore dismissed. Next, concerning the Trial Chamber's reliance on Witness DZ's evidence that during a meeting on 23 June 1993, Pogarčić, speaking on behalf of, *inter alios*, Prlić, expressed Prlić's wish to gather the Croatian population in one Croatian entity, the Appeals Chamber considers that evidence of a specific link between Pogarčić and Prlić is not required for the finding that, according to Witness DZ, the former reported about the latter's wishes.⁴⁰⁷⁸ Similarly, the Appeals Chamber considers that a reasonable trier of fact could have made this finding, based on the evidence relied on by the Trial Chamber, even in the absence of further evidence that Witness DZ "reported this claim".⁴⁰⁷⁹ In this regard, the Appeals Chamber notes Witness DZ's evidence stating that, during the 23 June 1993 meeting, "Pogarčić was voicing the idea expressed by [...] Prlić, [...] that they would absorb the Croat population from other areas of [BiH] into a Croat entity".⁴⁰⁸⁰ Prlić's arguments are dismissed.

1315. As regards Prlić's challenges to the findings that in a meeting held on 16 July 1993 Prlić stated that 10,000 Muslims wished to leave Mostar for third countries, and that he negotiated with Croatia for transit visas to be granted to the Muslims wishing to go to third countries,⁴⁰⁸¹ the Appeals Chamber first considers that Prlić fails to show that confidential Exhibit 6D00577, which he alleges the Trial Chamber ignored, concerns that specific meeting.⁴⁰⁸² Regarding Prlić's argument that the Trial Chamber ignored and mischaracterised evidence indicating, notably, that transit visas were not intended for Muslims alone, the Appeals Chamber finds that Prlić has failed to demonstrate that no reasonable trier of fact could have reached the relevant conclusions of the

⁴⁰⁷⁶ Trial Judgement, Vol. 4, para. 209 & fn. 535, referring to Trial Judgement, Vol. 2, paras 860-876. See, in particular, Trial Judgement, Vol. 2, paras 874-876.

⁴⁰⁷⁷ See *supra*, para. 1299.

⁴⁰⁷⁸ Trial Judgement, Vol. 4, para. 211.

⁴⁰⁷⁹ Trial Judgement, Vol. 4, para. 211, referring to Ex. P10367 (confidential), para. 70; Witness DZ, T(F). 26564 (closed session) (22 Jan 2008), 26577 (closed session) (23 Jan 2008).

⁴⁰⁸⁰ Ex. P10367 (confidential), para. 70. See also Witness DZ, T(F). 26577 (closed session) (23 Jan 2008).

⁴⁰⁸¹ Trial Judgement, Vol. 4, para. 212.

⁴⁰⁸² See Trial Judgement, Vol. 4, para. 212, referring to, *inter alia*, Ex. P09679 (confidential), para. 1.

Trial Chamber in light of the evidence on which it relied,⁴⁰⁸³ notwithstanding the evidence to which Prlić refers.⁴⁰⁸⁴ Finally, the Appeals Chamber finds that in submitting that the Trial Chamber ignored evidence that Muslim refugees returned to, *inter alia*, HVO-controlled areas, indicating they were not expelled, Prlić ignores many of the Trial Chamber's factual findings in support of the impugned finding that there existed a policy of moving Muslim detainees and their families outside the HZ(R) H-B.⁴⁰⁸⁵ In light of this, Prlić's assertion that Muslims later returned is of no consequence. Prlić's arguments are therefore dismissed.

1316. Regarding Prlić's challenge to the finding that he participated in organising and facilitating the departure of the Croatian population of central Bosnia to Herzegovina between August and November 1993, the Appeals Chamber considers that he misrepresents the basis of the finding,⁴⁰⁸⁶ and fails to show that no reasonable trier of fact could have reached this conclusion.⁴⁰⁸⁷ As regards Prlić's challenge to the finding that the ODPH sent him a letter on 3 November 1993, the Appeals Chamber notes that the letter indicates that it was sent to the "President, personally".⁴⁰⁸⁸ In light of this, the Appeals Chamber finds that a reasonable trier of fact could have reached this finding.⁴⁰⁸⁹ Finally, the Appeals Chamber finds that Prlić has failed to demonstrate, on the basis of the evidence he cites, any error in how the Trial Chamber interpreted the transcript of the meeting held on 5 November 1993, containing Prlić's statement on the population movements into Croatian areas,⁴⁰⁹⁰ or in its finding that the HVO exerted pressure on the Croats to leave Vareš.⁴⁰⁹¹ All these arguments are dismissed.

⁴⁰⁸³ See Trial Judgement, Vol. 4, paras 212, 275 & fns 538-539. See also Trial Judgement, Vol. 2, para. 1446, Vol. 4, paras 64, 969.

⁴⁰⁸⁴ See Prlić's Appeal Brief, paras 578-581 & fns 1495-1503 and references cited therein. The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 6.1, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218.

⁴⁰⁸⁵ See, e.g., Trial Judgement, Vol. 2, paras 814, 876, 2101-2104, 2115, 2131, 2161. In any event, Prlić fails to show that no reasonable trial chamber could have made the impugned finding.

⁴⁰⁸⁶ See Trial Judgement, Vol. 4, para. 213 & fn. 541, referring to Trial Judgement, Vol. 4, paras 196-204 ("Jadranko Prlić's Involvement in Moving Croats from Vareš"). Cf. Prlić's Appeal Brief, para. 571 (Prlić incorrectly claims that the Trial Chamber, in reaching the impugned finding, relied on its finding contained in Trial Judgement, Vol. 4, para. 212, that at a 29 July 1993 meeting of the HVO HZ H-B, the organisation and logistics concerning the anticipated arrival of 10,000 Croats from central Bosnia were discussed).

⁴⁰⁸⁷ The Appeals Chamber notes that Prlić fails to explain in which regard the allegedly ignored evidence on the reasons why the 10,000 Croats fled central Bosnia and why they ended up in Croatia and not in Herzegovina undermines the impugned finding. In any event, the Trial Chamber considered that one part of the Croatian population of central Bosnia was actually fleeing the fighting. See *supra*, fn. 4069. See also Trial Judgement, Vol. 4, para. 209 & fn. 534, referring to Exs. 1D01668, conclusion 3, P03413, p. 1. In light of the above, the Appeals Chamber considers that Prlić has failed to explain how the allegedly ignored evidence concerning the 29 July 1993 meeting, relating to the goal of the ODPH, would show an error in the relevant conclusions of the Trial Chamber regarding Prlić. Compare Trial Judgement, Vol. 4, para. 212, with Prlić's Appeal Brief, para. 582. See also *supra*, para. 1299.

⁴⁰⁸⁸ Trial Judgement, Vol. 4, para. 213 & fn. 542, referring to, *inter alia*, Ex. 1D01354.

⁴⁰⁸⁹ The Appeals Chamber also considers that Prlić's claims are in any event inconsequential in light of the finding that the Government meeting on the following day, 4 November 1993, which Prlić attended, dealt with the same issues as those addressed in the letter. Trial Judgement, Vol. 4, para. 213.

⁴⁰⁹⁰ Trial Judgement, Vol. 4, para. 214. See also *supra*, para. 1293. Cf. Ex. P06454, pp. 36, 38. Prlić's submission that he stated that Herzegovina could not accommodate Croats from Vareš and that Croatia should accommodate them is not

1317. Having dismissed the supporting arguments, the Appeals Chamber therefore also dismisses Prlić's challenges to the Trial Chamber's concluding findings.⁴⁰⁹² Thus, the Appeals Chamber dismisses Prlić's sub-ground of appeal 16.6.

(g) Prlić's authority over detention centres

(i) Prlić's general powers over detention centres (Prlić's Ground 13 in part)

1318. The Trial Chamber found that Prlić had authority over detention facilities, particularly to open and close them.⁴⁰⁹³ It also found that he had the power to grant international organisations access thereto.⁴⁰⁹⁴

1319. The Trial Chamber further found that Prlić knew of the harsh conditions under which the Muslims arrested by the HVO were being detained at the prisons in Dretelj, Gabela, and the Heliodrom, yet justified such detentions, denied that the situation was bad, and on occasion took some measures which were insufficient to address the situation.⁴⁰⁹⁵

1320. The Trial Chamber held that Prlić accepted and encouraged the extremely precarious conditions and the mistreatment of the detainees in the prisons in Dretelj, Gabela, and the Heliodrom.⁴⁰⁹⁶ It concluded on the basis of this and other findings that Prlić's contribution to the JCE was significant and showed his intention to implement the CCP to expel the Muslim population from the HZ(R) H-B.⁴⁰⁹⁷

a. Arguments of the Parties

1321. Prlić claims that the Trial Chamber erred in law and fact in concluding that he was a member of a JCE and made a significant contribution to it, having power over the detention centres

supported by the evidence to which he refers. See Prlić's Appeal Brief, para. 573 & fn. 1487, referring to Ex. P06454, p. 38. The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 9.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 595-601, 625-633, 661-667, 672-676.

⁴⁰⁹¹ Trial Judgement, Vol. 4, para. 214. See also *supra*, paras 1293-1296. Prlić fails to show any contradiction between this finding and the Trial Chamber's finding that "even if the HVO forces exerted pressure on the Croats to leave Vareš, the threat of attacks by the ABiH and the fact that they did happen were sufficient to bring about the departure of Croats from the municipality". Trial Judgement Vol. 3, para. 508. Further, the Appeals Chamber fails to see how Prlić's argument that expelled Croats mainly ended up in Croatia is inconsistent with the challenged finding that HVO forces exerted pressure on Croats to leave Vareš.

⁴⁰⁹² See *supra*, paras 1299-1300 & fn. 4037. The Appeals Chamber notes that in challenging the Trial Chamber's concluding findings, Prlić refers to his submissions in sub-grounds of appeal 16.4.3, 16.9, and 16.10, which it dismisses elsewhere in the Judgement. See *supra*, paras 1231-1241; *infra*, paras 1360-1367, 1374-1376.

⁴⁰⁹³ Trial Judgement, Vol. 4, paras 112, 114, 218, 270.

⁴⁰⁹⁴ Trial Judgement, Vol. 4, paras 113-114.

⁴⁰⁹⁵ Trial Judgement, Vol. 4, para. 273.

⁴⁰⁹⁶ Trial Judgement, Vol. 4, para. 273.

⁴⁰⁹⁷ Trial Judgement, Vol. 4, para. 276.

of the HZ(R) H-B.⁴⁰⁹⁸ Prlić submits that there is no evidence connecting him or the HVO HZ H-B to the 17 detention centres identified by the Trial Chamber.⁴⁰⁹⁹ In particular, Prlić submits that the Trial Chamber ignored evidence on the differences between detention centres – for POWs – and civilian or military prisons – for persons subject to criminal proceedings.⁴¹⁰⁰

1322. Further, Prlić argues that the municipal HVO had authority over Dretelj and Gabela military facilities.⁴¹⁰¹ Prlić also contends that contrary to the Trial Chamber’s findings, the HVO HZ H-B did not approve any request from the HVO Čapljina to move detainees elsewhere, and that HVO HZ H-B officials were not tasked with finding space for prisoners in other detention centres, but in other municipalities.⁴¹⁰² He also asserts that the HVO HZ H-B had no power to force the municipal HVOs to accommodate detainees to help the HVO Čapljina.⁴¹⁰³

1323. Prlić submits that the Trial Chamber erroneously concluded, based on selective evidence, that he could close detention centres.⁴¹⁰⁴ He argues that his alleged representation that “it was his intention to close POW camps” is not proof of his *de jure* or *de facto* powers over detention centres.⁴¹⁰⁵ Prlić also argues that the Trial Chamber ignored evidence that, *inter alia*, Mate Boban had begun closing detention centres in July 1993 and asserts that based on a joint declaration of 14 September 1993, signed by Franjo Tuđman and Alija Izetbegović (“Tuđman-Izetbegović Declaration”), Boban decided to close all detention centres by 10 December 1993.⁴¹⁰⁶ Prlić further argues that the Trial Chamber misconstrued the letters he sent in December 1993 on behalf of the HR H-B Government.⁴¹⁰⁷

1324. Finally, Prlić contends that the Trial Chamber erroneously concluded that he had the power to grant international organisations access to detention centres by relying on one uncorroborated piece of evidence, which was also hearsay.⁴¹⁰⁸ He also argues that the Trial Chamber ignored

⁴⁰⁹⁸ Prlić’s Appeal Brief, paras 410, 426. Specifically, Prlić alleges that by mischaracterising evidence, attaching undue weight to certain evidence, and failing to consider alternatives, the Trial Chamber applied an incorrect legal standard in assessing the evidence, amounting to an error of law. Prlić’s Appeal Brief, para. 426.

⁴⁰⁹⁹ Prlić’s Appeal Brief, para. 414. Nor is there evidence, according to Prlić, that: (1) information was exchanged between the detention centres and him or the HVO HZ H-B; or (2) the latter budgeted for or financed the detention centres. Prlić’s Appeal Brief, para. 415.

⁴¹⁰⁰ Prlić’s Appeal Brief, paras 412-413; Appeal Hearing, AT. 147 (20 Mar 2017). See Prlić’s Reply Brief, paras 63-64.

⁴¹⁰¹ Prlić’s Appeal Brief, paras 416-417. See Appeal Hearing, AT. 145 (20 Mar 2017).

⁴¹⁰² Prlić’s Appeal Brief, para. 417, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 211.

⁴¹⁰³ Prlić’s Appeal Brief, para. 417. See also Prlić’s Appeal Brief, para. 418, referring to Prlić’s Appeal Brief, sub-grounds of appeal 1.2.6, 11.9.

⁴¹⁰⁴ Prlić’s Appeal Brief, para. 421; Appeal Hearing, AT. 145 (20 Mar 2017). Prlić further submits that district prisons are different from detention centres. Prlić’s Appeal Brief, para. 421, referring to Prlić’s Appeal Brief, paras “413-416”.

⁴¹⁰⁵ Prlić’s Appeal Brief, para. 421, referring to, *inter alia*, Prlić’s Appeal Brief, paras 181-182 (sub-ground of appeal 6.1).

⁴¹⁰⁶ Prlić’s Appeal Brief, paras 422-423. See also Prlić’s Appeal Brief, para. 606 (under Prlić’s sub-ground of appeal 16.9).

⁴¹⁰⁷ Prlić’s Appeal Brief, para. 424.

⁴¹⁰⁸ Prlić’s Appeal Brief, para. 425, referring to, *inter alia*, Prlić’s Appeal Brief, ground of appeal 3.

evidence that international organisations regularly visited the Heliodrom in May to July 1993, without seeking his authorisation.⁴¹⁰⁹ Prlić concludes that he should be acquitted on Counts 1-3 and 6-18.⁴¹¹⁰

1325. The Prosecution responds that the impugned findings are reasonable and that Prlić fails to show otherwise.⁴¹¹¹ The Prosecution avers that the Trial Chamber reasonably relied on evidence to find that Prlić opened and closed Gabela Prison and that he fails to explain the relevance in this regard of any distinction between prisons for persons subject to criminal proceedings and detention centres for POWs.⁴¹¹² The Prosecution contends that there is ample evidence demonstrating Prlić's and the Government's authority over detention facilities.⁴¹¹³ Further, the Prosecution argues that Prlić fails to show that the Trial Chamber unreasonably relied on his statements and letters as evidence of his authority.⁴¹¹⁴ In the Prosecution's view, Prlić misconstrues and ignores evidence showing that he had authority to grant humanitarian access to detention centres.⁴¹¹⁵ Finally, the Prosecution submits that evidence of international organisations visiting the Heliodrom without his permission does not undermine the Trial Chamber's conclusion on his authority.⁴¹¹⁶

b. Analysis

1326. The Appeals Chamber observes at the outset that the Trial Chamber's finding that Prlić had authority over detention centres is substantiated by several pieces of evidence.⁴¹¹⁷ In particular, the Appeals Chamber considers that in making this finding the Trial Chamber relied on evidence that Prlić signed decisions to, or presided over meetings of the HVO HZ H-B in which decisions were taken to, *inter alia*: (1) open and appoint a director of Gabela Prison and to then close it;⁴¹¹⁸ (2) set up a working group to visit Čapljina Municipality, inspect the detention sites, and propose measures to improve the conditions of confinement;⁴¹¹⁹ and (3) establish the Exchange Service with Pušić as its head.⁴¹²⁰ The Trial Chamber specifically addressed in more detail Prlić's participation in the

⁴¹⁰⁹ Prlić's Appeal Brief, para. 425.

⁴¹¹⁰ Prlić's Appeal Brief, para. 427.

⁴¹¹¹ Prosecution's Response Brief (Prlić), paras 249-250. See Appeal Hearing, AT. 193, 226-231 (20 Mar 2017).

⁴¹¹² Prosecution's Response Brief (Prlić), paras 254-256. In any case, the Prosecution submits that the distinction is irrelevant as no differentiation was made in fact among Gabela Prison detainees who included Muslim members of the HVO, ABiH members, and Muslim civilians, some of whom were subject to criminal proceedings. Prosecution's Response Brief (Prlić), para. 255.

⁴¹¹³ Prosecution's Response Brief (Prlić), paras 252-253. See Appeal Hearing, AT. 232 (20 Mar 2017).

⁴¹¹⁴ Prosecution's Response Brief (Prlić), paras 257-258.

⁴¹¹⁵ Prosecution's Response Brief (Prlić), para. 259.

⁴¹¹⁶ Prosecution's Response Brief (Prlić), para. 260.

⁴¹¹⁷ See Trial Judgement, Vol. 4, paras 112-114, 218-219 and references cited therein.

⁴¹¹⁸ See Trial Judgement, Vol. 3, para. 154 & fns 359 (referring to Exs. P02679, P03350, p. 3), 360 (referring to Exs. P02674, P03350, p. 3), para. 155 & fn. 364 (referring to Ex. P07668), para. 156. See also *infra*, paras 1368-1373.

⁴¹¹⁹ See Trial Judgement, Vol. 3, paras 59, 211 & fns 117, 483, referring to, *inter alia*, Ex. P03560.

⁴¹²⁰ See Trial Judgement, Vol. 4, para. 101 & fn. 299. See also Trial Judgement, Vol. 4, paras 102-104.

crimes committed in the Heliodrom, Vojno Detention Centre, and Dretelj and Gabela Prisons.⁴¹²¹ Further, the Appeals Chamber considers that Prlić himself points to evidence that indicates the Government's responsibility for detention facilities and prisoners.⁴¹²² Based on the foregoing, the Appeals Chamber considers that Prlić has failed to show an error and thus dismisses the argument that there is no evidence connecting him or the HVO HZ H-B to the detention centres.⁴¹²³

1327. As to Prlić's claim that the Trial Chamber ignored evidence as to a distinction between detention centres – for POWs – and prisons – for persons subject to criminal proceedings – Prlić fails to explain how evidence that there was such a distinction would impact the impugned finding in light of the Trial Chamber's finding that no distinction was in practice made at Gabela Prison between detainees based on their status.⁴¹²⁴ Based on the above, the Appeals Chamber considers that Prlić has failed to show that no reasonable trier of fact could have reached the impugned finding.

1328. With regard to his argument that the municipal HVO had authority over Dretelj and Gabela military facilities, the Appeals Chamber considers that Prlić misrepresents the Trial Chamber's finding.⁴¹²⁵ In any event, even assuming that Prlić had demonstrated that the local HVO had some authority over detention centres,⁴¹²⁶ he has failed to show that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber, based on the remaining evidence,⁴¹²⁷ that Prlić had authority over detention centres. The Appeals Chamber thus dismisses his argument.

1329. Turning to Prlić's challenge to the Trial Chamber's findings that the HVO HZ H-B approved the request from the HVO Čapljina to move detainees and tasked certain persons with finding alternative accommodation for detainees in other detention facilities, the Appeals Chamber considers that these findings are amply supported by the evidence on which they are based,⁴¹²⁸ and

⁴¹²¹ See Trial Judgement, Vol. 4, para. 220 *et seq.*

⁴¹²² See Prlić's Appeal Brief, para. 412, referring to, *inter alia*, Ex. P00292, Zoran Buntić, T. 30655 (14 July 2008), Zoran Perković, T. 31982 (4 Sept 2008).

⁴¹²³ The Appeals Chamber also considers that Prlić has failed to explain how the alleged absence of evidence on exchanges of information between the detention centres and Prlić or the HVO HZ H-B, or on the latter's budgeting for or financing of detention centres, affect the impugned finding, given the remaining evidence the Trial Chamber relied upon. The Appeals Chamber thus dismisses these arguments.

⁴¹²⁴ See Trial Judgement, Vol. 3, paras 200, 203-204. See also Trial Judgement, Vol. 3, paras 194-195.

⁴¹²⁵ See Trial Judgement, Vol. 2, para. 2081 (finding that Stojić issued an order on 3 July 1993 transferring the management of detention of Muslim men of military age in Čapljina Municipality to the local HVO but also finding that it had no evidence showing that the local HVO took responsibility for the detention of the Muslim men arrested).

⁴¹²⁶ Prlić's Appeal Brief, para. 416, referring to, *inter alia*, Exs. 1D01105, 2D01019; Zoran Buntić, T. 30499-30500, 30502-30503 (9 July 2008).

⁴¹²⁷ See *supra*, para. 1326.

⁴¹²⁸ See Trial Judgement, Vol. 3, para. 211 & fns 481, 486, referring to, *inter alia*, Exs. P03560, pp. 1, 4 ("After a discussion of the request by the HVO of Čapljina municipality to relocate prisoners [...] unanimous approval was given to [...] designate new sites and transfer prisoners of war"), 5, P03573 (An HVO HZ H-B work group "has visited Čapljina municipality and assessed the existing conditions concerning [...] the accommodation of prisoners of war and isolated individuals [and] proposes the relocation of the part of the detained individuals from Čapljina [...]. The

finds that Prlić has failed to show that no reasonable trier of fact could have reached these findings. As to his argument that the HVO HZ H-B could not force the municipal HVOs to help the HVO Čapljina in accommodating detainees, the Appeals Chamber considers that even if no municipality was willing to help the Čapljina Municipality by taking in a number of detainees, as the evidence Prlić points to indicates,⁴¹²⁹ Prlić has failed to show that this is inconsistent with the challenged finding that he had power over detention centres. The Appeals Chamber thus dismisses it accordingly.⁴¹³⁰

1330. With regard to the challenge to the finding that Prlić had the power to close detention centres, the Appeals Chamber considers that a reasonable trier of fact could have made this finding based on the evidence on which the Trial Chamber relied.⁴¹³¹ Further, the Appeals Chamber observes that the Trial Chamber considered Boban's decision of 10 December 1993 to close detention centres, to which Prlić refers,⁴¹³² and found that Boban, among others, had power over them.⁴¹³³ As to the Trial Chamber's reliance on letters sent by Prlić in December 1993, in which he discussed the process of closing detention facilities, the Appeals Chamber considers that Prlić has failed to show that no reasonable trier of fact could have inferred Prlić's authority over detention centres from these letters, which Prlić sent in his official capacity.⁴¹³⁴ Accordingly, the Appeals Chamber dismisses all these arguments.

1331. Turning to Prlić's contention that the Trial Chamber erroneously concluded that he had the power to grant international organisations access to detention centres by relying on one uncorroborated document containing hearsay, the Appeals Chamber recalls that in assessing the probative value of hearsay evidence, the surrounding circumstances must be considered.⁴¹³⁵ In the circumstances of this case, the Appeals Chamber considers that the author of the document relied upon by the Trial Chamber, a report by an international organisation, wrote what Prlić had said to him in person in a meeting the night before and considers that a reasonable trier of fact could have

following individuals are assigned [...] to explore possibilities to accommodate a certain number of detained individuals from Čapljina"), Zoran Buntić, T(F). 30585 (10 July 2008) (regarding other municipalities' lack of willingness to accommodate detainees from Čapljina in their own facilities).

⁴¹²⁹ See Zoran Buntić, T. 30582-30586 (10 July 2008).

⁴¹³⁰ The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 1.2.6 and 11.9, which it dismisses elsewhere in the Judgement. See *supra*, paras 168-176, 1093-1096.

⁴¹³¹ See Trial Judgement, Vol. 3, para. 158, Vol. 4, paras 112, 254, referring to, *inter alia*, Exs. P06965 (UN report of 30 November 1993 referring to Prlić's statement that he intended to close POW camps), para. 6, P07668 (HR H-B decree dated 23 December 1993 closing Gabela Prison and bearing Prlić's name). Prlić's submission that district prisons are different from detention centres is dismissed elsewhere. See *supra*, para. 1326. The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 6.1, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218.

⁴¹³² See Prlić's Appeal Brief, para. 423. See also *infra*, para. 1366.

⁴¹³³ Trial Judgement, Vol. 2, para. 1441, Vol. 3, para. 191. See also Trial Judgement, Vol. 3, para. 158, to which Prlić refers. See Prlić's Appeal Brief, fn. 1099; *infra*, para. 1372.

⁴¹³⁴ See Trial Judgement, Vol. 4, para. 112 & fns 335-336 and references cited therein.

⁴¹³⁵ *Lukić and Lukić* Appeal Judgement, para. 303. See also *Popović et al.* Appeal Judgement, paras 1276, 1307.

relied upon it.⁴¹³⁶ Further, the Appeals Chamber notes that there is evidence on the record confirming that this meeting took place and was reported in the document in question,⁴¹³⁷ as well as evidence corroborating Prlić's power to grant international organisations access to detention centres.⁴¹³⁸ The Appeals Chamber therefore dismisses Prlić's argument.

1332. With respect to Prlić's allegation that the Trial Chamber ignored evidence that international organisations regularly visited the Heliodrom in May to July 1993 without seeking his authorisation, the Appeals Chamber recalls that the Trial Chamber found that Prlić was one of several persons who regulated access to the Heliodrom for representatives of international organisations,⁴¹³⁹ and finds that Prlić's argument is not inconsistent with the challenged finding that Prlić also had the power to grant international organisations access to detention centres. The Appeals Chamber thus dismisses this argument.

1333. Having dismissed the arguments above, the Appeals Chamber finds that Prlić has failed to demonstrate that no reasonable trier of fact could have found that he had power over detention centres,⁴¹⁴⁰ or power to grant international organisations access to them. The Appeals Chamber therefore dismisses Prlić's ground 13 in part.

(ii) The Heliodrom

a. Prlić's power over the Heliodrom (Prlić's Sub-grounds 16.7.1 and 16.7.3)

1334. Prlić submits that the Trial Chamber erroneously concluded that he had power over the Heliodrom and that he was involved in and/or had the power to grant representatives of international organisations access to it.⁴¹⁴¹ The Prosecution responds that Prlić's mere assertions should be summarily dismissed.⁴¹⁴² The Appeals Chamber considers that Prlić's submissions are

⁴¹³⁶ See Trial Judgement, Vol. 2, para. 1437 (referring to Ex. P09846 (confidential)), Vol. 4, para. 113. The Appeals Chamber considers in particular that a reasonable trial chamber could have understood the statement in the report in question – "I was offered a visit to Rodoc" – to refer to the Heliodrom. See, e.g., Philip Roger Watkins, T. 18868 (22 May 2007) ("Rodoc is also sometimes referred to as the Heliodrom"). The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183.

⁴¹³⁷ Witness BB, T. 17284-17285 (closed session) (17 Apr 2007).

⁴¹³⁸ Ex. P03573 (Minutes of the 47th session of the HVO HZ H-B held on 20 July 1993 over which Prlić presided and at which the following conclusion was reached: "The access is allowed to the International Red Cross and other international organizations in order to inspect the conditions in the facilities where detained individuals are accommodated."). The Appeals Chamber notes that the Trial Chamber relied on this exhibit to find, notably, that the Government discussed the situation of the detainees in the detention centres and possible actions in that regard. See Trial Judgement, Vol. 4, para. 219 & fn. 558, para. 224 & fn. 569.

⁴¹³⁹ See Trial Judgement, Vol. 2, para. 1441.

⁴¹⁴⁰ The Appeals Chamber addresses Prlić's specific challenges with regard to the Heliodrom, Vojno Detention Centre, Dretelj Prison, and Gabela Prison elsewhere in the Judgement. See *infra*, paras 1334-1373.

⁴¹⁴¹ Prlić's Appeal Brief, paras 586-587, 592-593, referring to Prlić's Appeal Brief, ground of appeal 13.

⁴¹⁴² Prosecution's Response Brief (Prlić), para. 369.

entirely based on cross-references to his ground of appeal 13, which it dismisses elsewhere in this Judgement.⁴¹⁴³ Prlić's sub-grounds of appeal 16.7.1 and 16.7.3 are dismissed.

b. Prlić's facilitation of and support for the detention of civilians in the Heliodrom (Prlić's Ground 13 in part and Sub-ground 16.7.2)

1335. The Trial Chamber held that at the 38th session of the HVO on 17 May 1993, attended, *inter alios*, by Prlić, the HVO expressed its support for the relocation of civilians from Mostar to the Heliodrom, stating that the women, children, and the elderly had been released.⁴¹⁴⁴ The Trial Chamber found that at several meetings of the HVO/Government of the HZ(R) H-B attended by Prlić, particularly those held on 19 and 20 July 1993, the situation of the detainees in the detention centres was raised, and the Government conceded that efforts had to be made to improve the detention conditions but did not consider itself responsible for that.⁴¹⁴⁵

1336. The Trial Chamber also found that Prlić was informed at the meetings on 19 and 20 July 1993 of the precarious situation of the detained Muslims at the detention centres.⁴¹⁴⁶ The Trial Chamber held that by issuing the press release on 23 July 1993 – stating that the detainees in all the detention centres, including the Heliodrom, were men of military age, that the women, children, and elderly had been released from there, and that medical checks had been carried out on all the detainees and those with any medical problems were released regardless of age – Prlić imparted information about the detention of Muslims which he knew was inaccurate.⁴¹⁴⁷

1337. The Trial Chamber considered that the fact that Prlić took measures to improve the detention conditions of the detainees, but did not deem himself responsible for their implementation, did not exonerate him.⁴¹⁴⁸ The Trial Chamber further found that Prlić ought to have ensured the actual implementation of the decision of 19 July 1993 but that, instead, on 23 July 1993, Prlić publicly justified the detention of Muslims at the Heliodrom and denied that their situation was bad.⁴¹⁴⁹ The Trial Chamber thus found that Prlić facilitated the detention of civilians and the bad conditions in which the detainees were living.⁴¹⁵⁰

⁴¹⁴³ See *supra*, paras 1318-1333; *infra*, paras 1335-1343, 1356-1373.

⁴¹⁴⁴ Trial Judgement, Vol. 4, para. 222.

⁴¹⁴⁵ Trial Judgement, Vol. 4, para. 224.

⁴¹⁴⁶ Trial Judgement, Vol. 4, paras 224-225.

⁴¹⁴⁷ Trial Judgement, Vol. 4, paras 223 (referring to Ex. P03673, p. 2), 225.

⁴¹⁴⁸ Trial Judgement, Vol. 4, para. 225.

⁴¹⁴⁹ Trial Judgement, Vol. 4, para. 225.

⁴¹⁵⁰ Trial Judgement, Vol. 4, para. 225.

i. Arguments of the Parties

1338. Prlić submits that the Trial Chamber erroneously concluded, by “effectively” relying on one document, the minutes of the 38th session of the HVO HZ-HB meeting held on 17 May 1993, that he and the HVO HZ-HB facilitated and supported the detention of civilians and the bad conditions in the Heliodrom.⁴¹⁵¹

1339. Prlić further submits that the Trial Chamber erroneously concluded that the HVO HZ H-B “conceded that efforts had to be made to improve the detention conditions” and that by issuing the press release on 23 July 1993, having been previously informed of the bad situation of the detained Muslims on 19 and 20 July 1993, publicly denying such bad conditions, he knowingly gave inaccurate information.⁴¹⁵² Prlić contends that the 19 and 20 July 1993 meetings related to the Čapljina prisons, not the Heliodrom.⁴¹⁵³ Prlić argues further that the Trial Chamber ignored contextual evidence when assessing the press release.⁴¹⁵⁴

1340. The Prosecution responds that Prlić’s claim that the Trial Chamber relied on one document to conclude that he facilitated and supported the detention of civilians and the bad conditions in the Heliodrom is incorrect, articulates no error, and fails to show that the Trial Chamber unreasonably interpreted that document.⁴¹⁵⁵ The Prosecution avers that Prlić fails to show that no reasonable trial chamber could have concluded that he knowingly imparted inaccurate information through the 23 July 1993 press release, and argues that while the Government meetings of 19 and 20 July 1993 focused on the conditions in Čapljina prisons, the minutes reflect an awareness of generally poor detention conditions.⁴¹⁵⁶

⁴¹⁵¹ Prlić’s Appeal Brief, paras 588-589, referring to, *inter alia*, Ex. 1D01666, Prlić’s Appeal Brief, ground of appeal 3 and sub-ground of appeal 16.4.2. See also Prlić’s Appeal Brief, para. 414(g).

⁴¹⁵² Prlić’s Appeal Brief, para. 590.

⁴¹⁵³ Prlić’s Appeal Brief, para. 590, referring to Prlić’s Appeal Brief, para. 417 (ground of appeal 13).

⁴¹⁵⁴ Specifically, Prlić argues that: (1) he issued the press release in response to Mate Granić’s appeal to address the deteriorating humanitarian situation in BiH at the time; (2) the information in the press release came from the authorities in charge of the detention centres; (3) there is no evidence that those in charge of the Heliodrom were obliged to send information to him or the HR H-B Government, or that any such information was exchanged; (4) he had no *de jure* power over any of the detention centres, including the Heliodrom; (5) there is no evidence that he “exceeded his legitimate powers”; and (6) he could not implement any measures in the Heliodrom. Prlić’s Appeal Brief, para. 590. See Prlić’s Appeal Brief, para. 591, referring to Prlić’s Appeal Brief, ground of appeal 13.

⁴¹⁵⁵ Prosecution’s Response Brief (Prlić), para. 370.

⁴¹⁵⁶ Prosecution’s Response Brief (Prlić), para. 371. See Appeal Hearing, AT. 228-229 (20 Mar 2017). The Prosecution also refers to other findings and supporting evidence, which it argues show that Prlić lied on 23 July 1993. Prosecution’s Response Brief (Prlić), para. 371. In the Prosecution’s view, it was irrelevant that the press release was in response to Granić’s appeal. Prosecution’s Response Brief (Prlić), para. 371. Finally, the Prosecution argues that Prlić’s claim that the information in the press release came from the authorities in charge of detention centres ignores information which he actually had. Prosecution’s Response Brief (Prlić), para. 372.

ii. Analysis

1341. At the outset, the Appeals Chamber considers that Prlić misrepresents the challenged factual finding when he claims that the Trial Chamber effectively relied on one document. The Appeals Chamber considers that the Trial Chamber reached the impugned finding after a discussion of various pieces of evidence, including the minutes of the 38th session of the HVO HZ H-B on 17 May 1993, a press release dated 23 July 1993, minutes of the HVO HZ H-B sessions held on 19 and 20 July 1993, as well as other findings.⁴¹⁵⁷ As Prlić has failed to demonstrate any error in the Trial Chamber's finding, the Appeals Chamber dismisses this argument.

1342. The Appeals Chamber now turns to the impugned findings that the HVO HZ H-B conceded that efforts were needed to improve detention conditions and that Prlić, despite knowing about these bad conditions, publicly denied them and thus knowingly gave inaccurate information. With regard to Prlić's argument that the 19 and 20 July 1993 meetings related to the Čapljina prisons, not the Heliodrom, the Appeals Chamber has reviewed the underlying evidence and considers that, based on this evidence, a reasonable trier of fact could have found that the discussion revolved around all detention centres and not just Čapljina prisons.⁴¹⁵⁸ With regard to Prlić's argument that the Trial Chamber ignored contextual evidence when assessing the press release, the Appeals Chamber considers that he has failed to explain how the evidence he submits the Trial Chamber ignored is inconsistent with the challenged findings.⁴¹⁵⁹ It thus dismisses all these arguments.

1343. The Appeals Chamber therefore dismisses Prlić's ground of appeal 13 in part, as well as his sub-ground of appeal 16.7.2.

⁴¹⁵⁷ See Trial Judgement, Vol. 4, paras 222-224, referring to, *inter alia*, Exs. P03560, P03573, P03673, 1D01666. The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 3 and sub-ground of appeal 16.4.2, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183, 1225-1230.

⁴¹⁵⁸ Trial Judgement, Vol. 4, para. 224 & fn. 569, referring to Exs. P03560, p. 4, P03573. The Appeals Chamber notes in particular that Exhibit P03560, minutes of the 46th session of the HVO HZ H-B held on 19 July 1993, states that: "[a]fter a discussion of the request by the HVO of Čapljina municipality to relocate prisoners and a discussion of the status and accommodation conditions of prisoners and persons in isolation, with the aim of improving their accommodation conditions and overcoming the newly-arisen situation, unanimous approval was given to adopt the following [c]onclusions [...] [s]ecure accommodation conditions, material and medical support for prisoners of war in accordance with the Geneva Convention relative to the Treatment of Prisoners of War." Ex. P03560, p. 4 (emphasis added). The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 13, which it dismisses elsewhere in the Judgement. See *supra*, paras 1318-1333, *infra*, paras 1356-1373.

⁴¹⁵⁹ See *supra*, fn. 4154. The Appeals Chamber also notes that Prlić refers to his submissions in ground of appeal 13, which it dismisses elsewhere in the Judgement. See *supra*, paras 1318-1333; *infra*, paras 1356-1373.

c. Prlić's facilitation and acceptance of the use of Heliodrom detainees for front line labour (Prlić's Sub-ground 16.7.4)

1344. The Trial Chamber found that Prlić was one of the HZ(R) H-B officials who were informed of incidents during the work at the front line of detainees from the Heliodrom and elsewhere.⁴¹⁶⁰ The Trial Chamber found that Prlić, once notified of these incidents, had the power to intervene and put an end to the practice and by failing to act, he both facilitated the use of detainees from the Heliodrom for work at the front line and as human shields and accepted their abuse and the death of some of them.⁴¹⁶¹

i. Arguments of the Parties

1345. Prlić submits that the Trial Chamber erred in finding that he facilitated the use of the detainees from the Heliodrom for work at the front line and as human shields, that he had the power to intervene, and that he accepted their abuse and the death of some of them.⁴¹⁶² Prlić argues that he had no power over the military or over those authorised at the Heliodrom to assign detainees to forced labour.⁴¹⁶³ He submits that the HVO Main Staff had authority over such matters and prohibited the taking of prisoners for labour in dangerous zones, and that the Defence Minister issued orders to prevent such practices.⁴¹⁶⁴

1346. Prlić submits that the Trial Chamber erroneously concluded, by relying on selective evidence, including letters from the ICRC on which he was copied, that he was informed of the forced labour carried out by detainees.⁴¹⁶⁵ He argues that there is no evidence that he received these letters and even if he did, they were not proof of his *de jure* and *de facto* powers, let alone that he "acquiesced by dereliction".⁴¹⁶⁶ Prlić also argues that the Trial Chamber ignored evidence that the ICRC sent a report in November 1993 on the issue of forced labour to Boban and Pogarčić, who – unlike Prlić – were responsible, that Marijan Biškić received the ICRC's letters, that the Military Police as the competent authority and the SIS responded to each letter, and that measures were taken to investigate the allegations made in the ICRC's letters.⁴¹⁶⁷

1347. The Prosecution responds that Prlić shows no error in the impugned finding that he facilitated the use of detainees for work on the front line since he was aware of the practice and

⁴¹⁶⁰ Trial Judgement, Vol. 2, paras 1481, 1492, Vol. 4, para. 229.

⁴¹⁶¹ Trial Judgement, Vol. 4, para. 232. See Trial Judgement, Vol. 4, para. 274.

⁴¹⁶² Prlić's Appeal Brief, para. 594. See Prlić's Appeal Brief, para. 595, referring to Prlić's Appeal Brief, grounds of appeal 12-13.

⁴¹⁶³ Prlić's Appeal Brief, para. 596.

⁴¹⁶⁴ Prlić's Appeal Brief, para. 596.

⁴¹⁶⁵ Prlić's Appeal Brief, para. 597.

⁴¹⁶⁶ Prlić's Appeal Brief, para. 597.

failed to intervene.⁴¹⁶⁸ It argues that he ignores the Trial Chamber's findings on his authority over the military and the Department of Defence whose officials were found to have authority over the use of Heliodrom detainees for forced labour.⁴¹⁶⁹ It also avers that there is evidence that he was personally informed of the use of Heliodrom detainees for front line labour.⁴¹⁷⁰ In the Prosecution's view, evidence that the Military Police and SIS "reacted" to this issue does not undermine the Trial Chamber's findings on Prlić's failure to intervene.⁴¹⁷¹ In any case, the Prosecution argues that Prlić points to no evidence reflecting actual prevention or punishment, or evidence otherwise undermining the Trial Chamber's finding that no HVO member was ever sanctioned for using Heliodrom prisoners for forced labour.⁴¹⁷²

ii. Analysis

1348. Concerning Prlić's argument that he had no power over the military or over those authorised at the Heliodrom to assign detainees to forced labour, the Appeals Chamber recalls that it dismisses elsewhere Prlić's general challenges to his powers in military matters and over detention centres.⁴¹⁷³ The Trial Chamber listed several persons, not including Prlić, who had power to authorise the use of Heliodrom detainees for forced labour, but included him among the persons who were informed of the incidents during forced labour performed by Heliodrom detainees.⁴¹⁷⁴ The Trial Chamber found that Prlić had the power to intervene and end the practice based on his position of authority.⁴¹⁷⁵ In light of the above, the Appeals Chamber considers that Prlić's arguments concerning the HVO Main Staff's authority and the Defence Minister's orders are not inconsistent with the impugned finding that Prlić facilitated the use of detainees from the Heliodrom for work at the front line and as human shields, and accepted their abuse and the death of some of them.⁴¹⁷⁶ The Appeals Chamber thus dismisses these arguments.

1349. With regard to Prlić's argument that the Trial Chamber erroneously relied on selective evidence – *i.e.* a report of an international organisation on a meeting with him, dated 17 August 1993, and two letters dated 18 February and 16 March 1994 by an international organisation – to conclude that he was informed of the work of the detainees,⁴¹⁷⁷ the

⁴¹⁶⁷ Prlić's Appeal Brief, para. 597; Prlić's Reply Brief, para. 75.

⁴¹⁶⁸ Prosecution's Response Brief (Prlić), para. 373; Appeal Hearing, AT. 229 (20 Mar 2017).

⁴¹⁶⁹ Prosecution's Response Brief (Prlić), para. 374.

⁴¹⁷⁰ Prosecution's Response Brief (Prlić), para. 375.

⁴¹⁷¹ Prosecution's Response Brief (Prlić), para. 376.

⁴¹⁷² Prosecution's Response Brief (Prlić), para. 376.

⁴¹⁷³ See *supra*, paras 1098-1127, 1318-1333.

⁴¹⁷⁴ Trial Judgement, Vol. 2, para. 1492.

⁴¹⁷⁵ Trial Judgement, Vol. 4, para. 232.

⁴¹⁷⁶ See Prlić's Appeal Brief, para. 594, referring to Trial Judgement, Vol. 4, para. 232.

⁴¹⁷⁷ See Trial Judgement, Vol. 2, para. 1481 & fn. 3749, Vol. 4, para. 229 & fn. 575, referring to Exs. P07895, p. 1, P08079 (confidential), p. 2, P09846 (confidential).

Appeals Chamber observes that the 17 August 1993 document reported on a personal meeting with Prlić the previous evening where he “brushed over” ICRC allegations on the use of prisoners from the Heliodrom and elsewhere to work on the front line.⁴¹⁷⁸ The Appeals Chamber also considers that Prlić was copied on the 18 February and 16 March 1994 letters, and that based on these three documents, a reasonable trier of fact could have made the impugned finding. Further, the Appeals Chamber considers that the Trial Chamber did not find that Prlić had the power to intervene to stop detainees from the Heliodrom being used to work on the front line, nor that he “acquiesced by dereliction”, based on the two letters.⁴¹⁷⁹ The Appeals Chamber thus dismisses these arguments.

1350. As to Prlić’s final argument that the Trial Chamber ignored evidence that other officials received a report and letters from the ICRC on this issue, that the Military Police and SIS responded to each letter, and that measures were taken to investigate the allegations made, the Appeals Chamber considers that, regardless of the allegedly ignored evidence,⁴¹⁸⁰ Prlić has failed to show that the conclusion of the Trial Chamber could not stand on the basis of the above-mentioned evidence that Prlić was also informed of the use of detainees for work on the front line.⁴¹⁸¹ The Appeals Chamber therefore dismisses this argument.

1351. For the foregoing reasons, the Appeals Chamber rejects Prlić’s sub-ground of appeal 16.7.4.

d. Prlić’s planning and facilitation of the organisation of the departure of about 2,500 detainees from the Heliodrom to Croatia (Prlić’s Sub-ground 16.7.5)

1352. The Trial Chamber found that, at least on one occasion in July 1993, Prlić planned and facilitated the organisation of the departure of about 2,500 detainees from the Heliodrom to Croatia, although he knew that an international organisation had called the plan “ethnic cleansing”.⁴¹⁸²

1353. Prlić submits that the Trial Chamber erred in making this finding, relying on limited and uncorroborated evidence.⁴¹⁸³ He argues that there is no evidence that he was involved in releasing persons from the Heliodrom.⁴¹⁸⁴ In Prlić’s view, the Trial Chamber ignored evidence making no mention of 10,000 persons wishing to leave Mostar and that only 71 persons, of the 502 who

⁴¹⁷⁸ See Ex. P09846 (confidential).

⁴¹⁷⁹ See Trial Judgement, Vol. 4, para. 232 (“Given his position of authority”). See also *supra*, paras 1021-1127, 1318-1333.

⁴¹⁸⁰ See Prlić’s Appeal Brief, para. 597, referring to, *inter alia*, Ex. P00284 and the testimony of Marijan Biškić.

⁴¹⁸¹ See *supra*, paras 1348-1349.

⁴¹⁸² See Trial Judgement, Vol. 4, para. 235.

⁴¹⁸³ Prlić’s Appeal Brief, para. 598.

⁴¹⁸⁴ Prlić’s Appeal Brief, para. 598. See Prlić’s Appeal Brief, para. 599, referring to Prlić’s Appeal Brief, sub-grounds 16.6.3-16.6.4.

applied for transit visas to Croatia for family, security, employment, or health-related reasons, were from Mostar.⁴¹⁸⁵

1354. The Prosecution responds that Prlić misrepresents the evidence the Trial Chamber relied upon.⁴¹⁸⁶ The Prosecution argues that Prlić ignores evidence showing his central role in organising the displacement of prisoners, and that the fact that others had authority to release detainees does not undermine the Trial Chamber's conclusion that Prlić "planned and facilitated" the departure of Heliodrom detainees.⁴¹⁸⁷ It also argues that even if some of the 2,500 persons had applied for transit visas this does not undermine the Trial Chamber's finding that the departure was involuntary.⁴¹⁸⁸

1355. With regard to the argument that the Trial Chamber relied on limited and uncorroborated evidence, the Appeals Chamber observes that Prlić misrepresents in both regards the Trial Chamber's findings, which were based on several pieces of mutually corroborating evidence.⁴¹⁸⁹ As to Prlić's challenge that there is no evidence that he was involved in releasing persons from the Heliodrom, the Appeals Chamber considers that the Trial Chamber's finding that the Military Police and other HVO authorities – not listing Prlić – had the power to release detainees,⁴¹⁹⁰ does not preclude it from making the impugned finding, which is supported by evidence.⁴¹⁹¹ Similarly, the Appeals Chamber considers that Prlić has failed to explain how the allegedly ignored evidence undermines the impugned finding.⁴¹⁹² For these reasons, the Appeals Chamber dismisses all of Prlić's arguments, as well as Prlić's sub-ground of appeal 16.7.5.

(iii) Vojno Detention Centre (Prlić's Ground 13 in part and Sub-ground 16.8)

1356. The Trial Chamber found that, as of 20 January 1994, Prlić was informed that detainees from Vojno Detention Centre were being used to work at the front line and that several had been mistreated, wounded, and killed during such work.⁴¹⁹³ The Trial Chamber also found that by continuing to exercise his functions, and because he took no measures to stop the crimes which

⁴¹⁸⁵ Prlić's Appeal Brief, para. 600.

⁴¹⁸⁶ Prosecution's Response Brief (Prlić), para. 377.

⁴¹⁸⁷ Prosecution's Response Brief (Prlić), para. 379.

⁴¹⁸⁸ Prosecution's Response Brief (Prlić), para. 378. The Prosecution also submits that Prlić refers to scant or irrelevant evidence and ignores relevant findings of the Trial Chamber. Prosecution's Response Brief (Prlić), para. 378.

⁴¹⁸⁹ See Trial Judgement, Vol. 4, paras 234-235 & fns 588-591 and references cited therein. Cf. Prlić's Appeal Brief, para. 598 & fn. 1533. In any event, there is no general requirement that the testimony of a witness be corroborated if deemed otherwise credible. *Popović et al.* Appeal Judgement, paras 243, 1264; *D. Milošević* Appeal Judgement, para. 215. See also *Kordić and Čerkez* Appeal Judgement, para. 274.

⁴¹⁹⁰ See Trial Judgement, Vol. 2, paras 1445-1452.

⁴¹⁹¹ See Trial Judgement, Vol. 4, paras 234-235 and references cited therein. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 16.6.3 and 16.6.4, which it dismisses elsewhere in the Judgement. See *supra*, paras 1300, 1304-1306, 1308-1309, 1315, 1317.

⁴¹⁹² See Prlić's Appeal Brief, para. 600, referring to Exs. P03554 (confidential), P09682 (confidential), pp. 3-4, Adalbert Rebić, T. 28462-28465 (partly private session) (22 May 2008). Cf. Ex. P09679 (confidential).

⁴¹⁹³ Trial Judgement, Vol. 4, paras 238, 274. See Trial Judgement, Vol. 4, paras 236-237. See also Trial Judgement, Vol. 2, paras 1685-1686.

continued until the end of January 1994, Prlić accepted the use of detainees at the front line and their consequent death and wounding.⁴¹⁹⁴

1357. Prlić submits that the Trial Chamber erroneously concluded that he had power over Vojno Detention Centre and its detainees.⁴¹⁹⁵ Prlić further asserts that the Trial Chamber erroneously concluded that he accepted the use of detainees at the front line and their death and wounding based on letters sent by the ICRC to others, on which he was copied.⁴¹⁹⁶

1358. The Prosecution responds that the Trial Chamber's findings were reasonable and that Prlić's arguments should be summarily dismissed.⁴¹⁹⁷

1359. At the outset, the Appeals Chamber recalls that it dismisses Prlić's challenge to his overall authority over detention centres in another part of the Judgement,⁴¹⁹⁸ and considers that he fails to demonstrate any error specifically with regard to his authority over Vojno Detention Centre.⁴¹⁹⁹ With regard to Prlić's claim that the Trial Chamber erroneously concluded that he accepted the use of detainees at the front line and the death and wounding of some of them based on letters sent by the ICRC, on which he was copied,⁴²⁰⁰ the Appeals Chamber considers that a reasonable trier of fact could have found that he was informed on the basis of this evidence⁴²⁰¹ and therefore finds that Prlić has failed to show that the Trial Chamber erred. It further considers that Prlić misrepresents the impugned finding. The Appeals Chamber notes that while the Trial Chamber inferred his knowledge of the use of detainees at the front line and their ensuing death and wounding from the

⁴¹⁹⁴ Trial Judgement, Vol. 4, paras 238, 274.

⁴¹⁹⁵ Prlić's Appeal Brief, paras 414(h), 601.

⁴¹⁹⁶ Prlić's Appeal Brief, para. 601. See Prlić's Appeal Brief, para. 602, referring to Prlić's Appeal Brief, (sub-)grounds of appeal 12.1, 13, 16.7.4.

⁴¹⁹⁷ Prosecution's Response Brief (Prlić), para. 380.

⁴¹⁹⁸ See *supra*, paras 1318-1333.

⁴¹⁹⁹ The Appeals Chamber notes in particular that Prlić partly relies on the Trial Chamber's findings that other persons and bodies had authority over Vojno Detention Centre, but considers that this does not preclude the Trial Chamber from finding that Prlić had a general authority over detention facilities, particularly to open and close them. See Prlić's Appeal Brief, para. 414(h), referring to Trial Judgement, Vol. 2, paras 1669-1682. See also *supra*, paras 1318, 1326. The Appeals Chamber further considers that Prlić fails to demonstrate that the Trial Chamber relied on him being copied on letters sent by the ICRC to conclude that he had power over Vojno Detention Centre and its detainees. See Prlić's Appeal Brief, para. 601 & fn. 1537, referring to Trial Judgement, Vol. 2, paras 1685, 1694, 1711, 1729.

⁴²⁰⁰ See Trial Judgement, Vol. 2, para. 1620 & fn. 4107, Vol. 4, paras 236-237 & fns 592-594, referring to, *inter alia*, Exs. P07636, p. 1, P07660, P08079 (confidential), p. 1.

⁴²⁰¹ See Exs. P07636 (ICRC letter dated 20 January 1994), p. 1 ("The majority of the prisoners were wounded by shelling or rifle fire, while working on the frontline, in Mostar, Vojno or Vrđi; they either died on the spot or during the transfer to the hospital. In August and September [1993], during military offensives, a large number[] of prisoners were made to work on the frontline in Mostar."); P07660 (ICRC letter dated 24 January 1994) ("[P]risoners are again being used for work on the front line [...] a large number of detainees are still held under working obligation in front line areas like Vo[j]no, Hum, Mostar and Vrđi [...] the detainees held in these places are used for work of military character, such as building fortifications, and [...] several of them have been injured."); P08079 (confidential) (ICRC letter dated 16 March 1994), p. 1 ("On the 8th of November [1993], 75 prisoners were transferred from Rodoc to Vojno. They worked everyday on the frontline, starting at 6 am.") The letter proceeds to describe in detail the alleged mistreatment and wounding of the prisoners by the soldiers guarding them. See also Ex. P08079 (confidential), p. 2 (regarding detainees killed on the front line).

ICRC letters,⁴²⁰² his knowledge of such crimes being committed was only one of the considerations leading the Trial Chamber to conclude that he accepted such crimes – the other two were his continued exercise of his functions and the fact that he took no measures to stop the commission of such crimes.⁴²⁰³ The Appeals Chamber therefore rejects this argument. For the foregoing reasons, the Appeals Chamber dismisses Prlić’s ground of appeal 13 in part, as well as his sub-ground of appeal 16.8.

(iv) Dretelj Prison (Prlić’s Ground 13 in part and Sub-ground 16.9)

1360. The Trial Chamber found that in July 1993, in meetings of the HVO/Government of the HZ(R) H-B in which Prlić participated, decisions were taken to improve the conditions of detention of detainees.⁴²⁰⁴ These decisions did not bring about the expected improvements, however, because at the end of September 1993, the conditions were still as bad.⁴²⁰⁵ The Trial Chamber found that, while exercising his functions in the HVO/Government of HZ(R) H-B, Prlić continued to be informed of the bad conditions of detention and the mistreatment of detainees.⁴²⁰⁶ It also found that instead of having the detainees released, they were moved to other detention centres or to third countries via Croatia.⁴²⁰⁷ The Trial Chamber concluded therefore that Prlić accepted the extremely precarious conditions and the mistreatment of detainees in Dretelj Prison and “even facilitated them by not releasing the detainees”, and facilitated their departure to foreign countries through his failure to act.⁴²⁰⁸

a. Arguments of the Parties

1361. Prlić submits that the Trial Chamber erroneously concluded that he had power over Dretelj Prison and its detainees and that he accepted the precarious conditions and mistreatment of detainees.⁴²⁰⁹ He challenges the Trial Chamber’s reliance on the minutes of two HVO HZ H-B meetings to find that the decision taken in July 1993 to improve the conditions of detention “did not bring about the expected improvements because in September 1993 the detention conditions were still just as bad”.⁴²¹⁰ In his submission, the HVO HZ H-B’s holding discussions to find solutions for

⁴²⁰² See also Trial Judgement, Vol. 2, para. 1685 & fn. 4237, referring to, *inter alia*, Ex. P07895 regarding his knowledge of similar events that were occurring in the Heliodrom.

⁴²⁰³ See Trial Judgement, Vol. 4, para. 238. The Appeals Chamber also notes that Prlić refers to his submissions in (sub-)grounds of appeal 12.1, 13, and 16.7.4, which it dismisses elsewhere in the Judgement. See *supra*, paras 1099-1122, 1318-1333, 1335-1351; *infra*, paras 1360-1373.

⁴²⁰⁴ Trial Judgement, Vol. 4, para. 248.

⁴²⁰⁵ Trial Judgement, Vol. 4, para. 248.

⁴²⁰⁶ Trial Judgement, Vol. 4, para. 249.

⁴²⁰⁷ Trial Judgement, Vol. 4, para. 249.

⁴²⁰⁸ Trial Judgement, Vol. 4, para. 249.

⁴²⁰⁹ Prlić’s Appeal Brief, paras 414(l), 603. See Prlić’s Appeal Brief, paras 604 (referring to Prlić’s (sub-)grounds of appeal 12.1, 13, 16.7.4), 606 & fn. 1556 (referring to Prlić’s Appeal Brief, ground of appeal 13).

⁴²¹⁰ Prlić’s Appeal Brief, para. 605.

problems outside its responsibility and powers, and to which it did not contribute, “does not impute *de jure* or *de facto* responsibility”.⁴²¹¹

1362. Prlić further asserts that the Trial Chamber erred, by ignoring relevant evidence regarding the 20 September 1993 meeting with international organisations, in concluding that he moved prisoners from Dretelj Prison to other locations.⁴²¹² Referring to the joint Tudman-Izetbegović Declaration, which provided for the disbanding of detention camps and the release of detainees, Prlić argues that Mate Granić and Haris Silajdžić, charged with implementing this agreement, took measures to abolish Dretelj Prison and release detainees from this facility, in co-operation with international organisations and based on the free will of the detainees.⁴²¹³ Prlić claims that neither the HVO HZ H-B nor he were “involved in these matters”.⁴²¹⁴

1363. The Prosecution responds that there is ample evidence to show that Prlić accepted and facilitated the precarious conditions and mistreatment of detainees in Dretelj Prison.⁴²¹⁵ It avers that the Trial Chamber logically inferred that Prlić facilitated the movement of prisoners from Dretelj Prison to other detention centres or to third countries by failing to take genuine steps to improve detention conditions and/or release detainees.⁴²¹⁶ The Prosecution notes that the evidence on which Prlić relies to show his purported non-involvement in fact underscores his and his Government’s failure to use their authority to take appropriate steps to release prisoners.⁴²¹⁷

1364. The Prosecution also argues that the Trial Chamber did not ignore relevant evidence and took note of evidence of: (1) the 20 September 1993 meeting attended by Prlić relating to the implementation of the joint Tudman-Izetbegović Declaration; and (2) the ICRC transferring a certain number of detainees following this meeting.⁴²¹⁸ In the Prosecution’s view, neither of these pieces of evidence undermines the impugned finding.⁴²¹⁹ It also argues that Prlić cites irrelevant evidence in claiming that Dretelj Prison detainees were transferred based on their “free will” and that, in any case, this argument cannot account for clear contrary evidence.⁴²²⁰

⁴²¹¹ Prlić’s Appeal Brief, para. 605, referring to, *inter alia*, Prlić’s Appeal Brief, (sub-)grounds of appeal 3, 16.7.

⁴²¹² Prlić’s Appeal Brief, para. 606.

⁴²¹³ Prlić’s Appeal Brief, para. 606. See Prlić Appeal Brief, para. 423 (under Prlić’s ground of appeal 13).

⁴²¹⁴ Prlić’s Appeal Brief, para. 606 & fn. 1556, referring to Prlić’s Appeal Brief, ground of appeal 13.

⁴²¹⁵ Prosecution’s Response Brief (Prlić), para. 381. See also Prosecution’s Response Brief (Prlić), para. 382; Appeal Hearing, AT. 229-230 (20 Mar 2017).

⁴²¹⁶ Prosecution’s Response Brief (Prlić), para. 383. See Appeal Hearing, AT. 228 (20 Mar 2017).

⁴²¹⁷ Prosecution’s Response Brief (Prlić), para. 383.

⁴²¹⁸ Prosecution’s Response Brief (Prlić), paras 384-385.

⁴²¹⁹ Prosecution’s Response Brief (Prlić), paras 384-385.

⁴²²⁰ Prosecution’s Response Brief (Prlić), para. 385.

b. Analysis

1365. At the outset, the Appeals Chamber recalls that it dismisses elsewhere Prlić's general challenges to his overall authority over detention centres.⁴²²¹ It therefore turns to Prlić's specific claim that the Trial Chamber erred in finding that the HVO/Government's decision in July 1993 to take measures to improve conditions of detention did not bring about the expected improvements and that detention conditions remained as bad in September 1993. The Appeals Chamber notes that in support of this finding, the Trial Chamber relied on the minutes of HVO HZ(R) H-B meetings held in July and September 1993, the latter of which recorded a conclusion that detention conditions were still bad in September.⁴²²² It also referred to other evidence in this regard.⁴²²³ Prlić's argument makes no attempt to explain how the Trial Chamber erred in relying on the minutes, ignores the other evidence, and as such amounts to mere assertion.⁴²²⁴ It is dismissed as such. Further, the Appeals Chamber notes that, contrary to what Prlić suggests, the Trial Chamber did not "impute *de jure* or *de facto* responsibility"⁴²²⁵ to the HVO/Government of the HZ(R) H-B on the basis of these minutes.⁴²²⁶ This claim is therefore also dismissed.

1366. With respect to Prlić's claim that the Trial Chamber ignored evidence relevant to the 20 September 1993 meeting in finding that he moved prisoners from Dretelj Prison to other locations, the Appeals Chamber considers that he misrepresents the challenged finding, which is limited to him facilitating their departure to foreign countries through his failure to act.⁴²²⁷ Further, while the Trial Chamber did not refer to the joint Tuđman-Izetbegović Declaration *per se*,⁴²²⁸ it relied extensively on a report of the 20 September 1993 meeting of an international organisation, which cited the start of the implementation of this joint Tuđman-Izetbegović Declaration as the reason for such meeting.⁴²²⁹ Moreover, the Appeals Chamber considers that the Trial Chamber in fact relied on some of the same evidence that Prlić claims was ignored.⁴²³⁰ The Appeals Chamber also notes that the evidence referred to by Prlić does not support his contention that detainees were

⁴²²¹ See *supra*, paras 1318-1333.

⁴²²² See Trial Judgement, Vol. 4, paras 241, 244 & fns 598, 603, referring to, *inter alia*, Exs. P03573, P04841, pp. 1-2.

⁴²²³ See Trial Judgement, Vol. 4, paras 241, 244 & fns 598, 603, referring to, *inter alia*, Zoran Buntić, T(F). 30585 (10 July 2008), Andrew Pringle, T(F). 24145-24151, 24155 (6 Nov 2007), Ex. P04863 (confidential). See also Trial Judgement, Vol. 4, para. 245 & fns 605-606, referring to, *inter alia*, Ex. P05219 (confidential).

⁴²²⁴ Prlić's Appeal Brief, para. 605.

⁴²²⁵ Prlić's Appeal Brief, para. 605.

⁴²²⁶ See Trial Judgement, Vol. 4, paras 248-249. The Appeals Chamber also notes that Prlić refers to his submissions in (sub-)grounds of appeal 3 and 16.7, which it dismisses elsewhere in the Judgement. See *supra*, paras 177-183, 1334-1355.

⁴²²⁷ See Trial Judgement, Vol. 4, para. 249.

⁴²²⁸ See Ex. P05051.

⁴²²⁹ See Trial Judgement, Vol. 4, para. 245 & fns 605-608, 610, referring to, *inter alia*, Ex. P05219 (confidential), pp. 1-2.

⁴²³⁰ See Trial Judgement, Vol. 4, para. 245 & fns 604 (referring to Ex. P04863 (confidential)), 606-608 (referring to, *inter alia*, Zdravko Sančević, T(F). 28815-28818 (29 May 2008), Adalbert Rebić, T(F). 28312-28313 (20 May 2008), Ex. 1D01936, p. 1).

transferred from Dretelj Prison based on their “free will”; in particular, none of the evidence speaks to their consent to being transferred.⁴²³¹ Moreover, even if there is some evidence that the ICRC confirmed the release of 516 detainees from Dretelj Prison on medical grounds in September 1993⁴²³² and that some were treated as refugees while in transit in Croatia,⁴²³³ Prlić fails to show how this detracts from the challenged finding. Similarly, as to Prlić’s claim that neither the HVO HZ-HB nor he were involved “in these matters”, the Appeals Chamber recalls that the Trial Chamber found that he facilitated their departure by *failing to act*.⁴²³⁴ These arguments are dismissed.

1367. For the foregoing reasons, the Appeals Chamber considers that Prlić has failed to demonstrate that the Trial Chamber erroneously concluded that he had power over Dretelj Prison and its detainees and that he accepted the precarious conditions and mistreatment of the detainees.⁴²³⁵ The Appeals Chamber therefore dismisses Prlić’s ground of appeal 13 in part, as well as his sub-ground of appeal 16.9.

(v) Gabela Prison (Prlić’s Ground 13 in part and Sub-ground 16.11)

1368. The Trial Chamber found that on 8 June 1993, Prlić, as President of the HVO HZ H-B, officially established Gabela Prison and appointed its warden, and that on 22 December 1993, when he was President of the HR H-B, he officially closed the prison.⁴²³⁶

a. Arguments of the Parties

1369. Prlić submits that the Trial Chamber erroneously concluded that he and/or the HVO HZ H-B had power over Gabela Prison and established and closed it.⁴²³⁷ He contends that the Trial Chamber erroneously concluded that Gabela Prison was established on 8 June 1993 pursuant to his decision, by relying on the HVO HZ H-B decision to set up a County Military Prison and County Prison in Gabela and by ignoring evidence on the difference between detention centres and civilian or military prisons.⁴²³⁸ He also argues that there is no evidence that the decision

⁴²³¹ See Prlić’s Appeal Brief, fn. 1553 and references cited therein.

⁴²³² See Ex. P05304.

⁴²³³ See Adalbert Rebić, T. 28317 (20 May 2008), 28501-28502 (22 May 2008); Ex. 1D02735.

⁴²³⁴ See Trial Judgement, Vol. 4, para. 249.

⁴²³⁵ The Appeals Chamber notes that Prlić refers to his submissions under (sub-)grounds of appeal 12.1, 13, and 16.7.4, which the Appeals Chamber dismisses, in relevant part, elsewhere in the Judgement. See *supra*, paras 1099-1122, 1318-1333, 1344-1351.

⁴²³⁶ Trial Judgement, Vol. 3, paras 154-158, Vol. 4, para. 251. See also Trial Judgement, Vol. 4, para. 112.

⁴²³⁷ Prlić’s Appeal Brief, paras 414(m), 609.

⁴²³⁸ Prlić’s Appeal Brief, para. 411. See Prlić’s Appeal Brief, paras 412-413; Prlić’s Reply, para. 64. Prlić adds that the decision was not his and he did not set up a detention centre. Prlić’s Appeal Brief, para. 411. Prlić also argues that there is no evidence indicating that Gabela Prison was referred to as the “County Military Prison”. Prlić’s Appeal Brief, para. 419.

establishing Gabela Prison was in force given that it had not been officially published.⁴²³⁹ Prlić further submits that the Trial Chamber's conclusion that he or the HVO HZ-HB established and closed Gabela Prison is contrary to its findings that Gabela Prison functioned within the military structure as of April 1993, and that the Gabela authorities implemented Boban's order to close all detention centres by releasing prisoners.⁴²⁴⁰ Lastly, Prlić asserts that reports on and information about Gabela Prison were sent to the Office of the HR H-B President and not to him or the Government.⁴²⁴¹

1370. The Prosecution responds that Prlić fails to show any error in the Trial Chamber's conclusion that he opened and closed Gabela Prison.⁴²⁴² With respect to Prlić's argument that his orders did not relate to Gabela Prison, the Prosecution submits that Prlić ignores the testimony of former detainees who identified the warden, whom he had appointed, as the warden of Gabela Prison.⁴²⁴³ The Prosecution submits that Prlić fails to show that no reasonable trial chamber could conclude that both Boban and Prlić had and exercised the power to close detention facilities.⁴²⁴⁴ Further, the Prosecution avers that the facts that Gabela Prison took in detainees as of April 1993, and that Gabela Prison authorities began implementing Boban's order of 10 December 1993 to close all detention centres, do not contradict the Trial Chamber's findings that Prlić officially established Gabela Prison on 8 June 1993 and that he officially closed it on 22 December 1993.⁴²⁴⁵ Finally, the Prosecution argues that Prlić's claim that reports relating to Gabela Prison were sent to Boban but not to Prlić or the Government is undercut by his reliance on material generated by his own Government.⁴²⁴⁶

b. Analysis

1371. The Appeals Chamber first turns to Prlić's contention that the Trial Chamber erroneously concluded that Gabela Prison was established on 8 June 1993 pursuant to his decision. First, the Appeals Chamber considers that Prlić has failed to show that no reasonable trier of fact could have relied on, for the impugned finding, the HVO HZ H-B decision, signed by Prlić, to set up a County Military Prison and County Prison in Gabela.⁴²⁴⁷ Concerning the allegedly ignored evidence, the

⁴²³⁹ Prlić's Appeal Brief, para. 419.

⁴²⁴⁰ Prlić's Appeal Brief, para. 420. See Prlić's Appeal Brief, para. 416.

⁴²⁴¹ Prlić's Appeal Brief, paras 420, 609. See Prlić's Appeal Brief, para. 610, referring to Prlić's Appeal Brief, (sub-)grounds of appeal 12.1, 13, 16.7, 16.9.

⁴²⁴² Prosecution's Response Brief (Prlić), paras 254, 387. See Appeal Hearing, AT. 227 (20 Mar 2017).

⁴²⁴³ Prosecution's Response Brief (Prlić), para. 255.

⁴²⁴⁴ Prosecution's Response Brief (Prlić), para. 256.

⁴²⁴⁵ Prosecution's Response Brief (Prlić), para. 256.

⁴²⁴⁶ Prosecution's Response Brief (Prlić), para. 387.

⁴²⁴⁷ See Trial Judgement, Vol. 3, para. 154, Vol. 4, para. 251, referring to, *inter alia*, Ex. P02679. With respect to Prlić's claim that there is no evidence that Gabela Prison was referred to as the "County Military Prison", the Appeals Chamber notes that Prlić has failed to demonstrate that no reasonable trier of fact, based on the testimonies of former

Appeals Chamber recalls that it dismisses elsewhere Prlić's submissions on the difference between detention centres and civilian or military prisons.⁴²⁴⁸ Finally, the Appeals Chamber considers that Prlić fails to demonstrate that no reasonable trier of fact could have reasoned that his decision of 22 December 1993 overturning the decisions of 8 June 1993 – establishing Gabela Prison and appointing its warden – indicated, among other evidence, that the 8 June 1993 decision had entered into force.⁴²⁴⁹ His arguments are therefore dismissed.

1372. Regarding Prlić's argument that the Trial Chamber's findings on who opened and closed Gabela Prison are contradicted by other findings, the Appeals Chamber considers that neither the findings that Gabela Prison had already begun operating in April 1993 and functioned within the military structure,⁴²⁵⁰ nor the finding that the Gabela Prison authorities implemented Boban's order to close all detention centres by releasing prisoners,⁴²⁵¹ detract from the impugned findings that he or the HVO HZ H-B officially established Gabela Prison on 8 June 1993 and officially closed it on 22 December 1993.⁴²⁵² His argument is therefore dismissed. Finally, the Appeals Chamber considers that Prlić's claim that reports of and information about Gabela Prison were sent to the Office of the HR H-B President, not to him or the Government, is not inconsistent with his or the Government's specific authority over Gabela Prison as set out in the challenged finding.⁴²⁵³ His argument in this regard also fails.

1373. For the foregoing reasons, the Appeals Chamber dismisses Prlić's ground of appeal 13 in part, as well as his sub-ground of appeal 16.11.

(vi) Prlić's facilitation of the departure of detainees to foreign countries via Croatia (Prlić's Sub-ground 16.10)

1374. Prlić claims that the Trial Chamber erroneously concluded that he facilitated the departure of detainees to foreign countries via Croatia.⁴²⁵⁴ In this regard, he argues that the Trial Chamber

Gabela Prison detainees who recognised the warden of Gabela Prison, Boško Previšić, Prlić's appointee, could have concluded that the evidence related to Gabela Prison. His argument is therefore dismissed. See Trial Judgement, Vol. 3, paras 236-237, 251, Vol. 4, para. 251 and references cited therein.

⁴²⁴⁸ See *supra*, paras 1321, 1325, 1327.

⁴²⁴⁹ See Trial Judgement, Vol. 3, para. 155. See also Exs. P02674, P02679, P07668.

⁴²⁵⁰ See Trial Judgement, Vol. 3, paras 157, 165-166.

⁴²⁵¹ See Trial Judgement, Vol. 3, paras 264-265. See also Trial Judgement, Vol. 3, para. 158.

⁴²⁵² See Trial Judgement, Vol. 3, paras 154-158, Vol. 4, para. 251. See also Trial Judgement, Vol. 4, para. 112.

⁴²⁵³ See Trial Judgement, Vol. 3, paras 154-158, Vol. 4, para. 251. See also Trial Judgement, Vol. 4, para. 112. The Appeals Chamber notes that Prlić refers to his submissions in (sub-)grounds of appeal 12.1, 13, 16.7, and 16.9, which it dismisses elsewhere in the Judgement. See *supra*, paras 1099-1122, 1318-1367.

⁴²⁵⁴ Prlić's Appeal Brief, para. 607.

ignored evidence that under the authority of the ICRC, detainees “voluntarily chose where to be released” to.⁴²⁵⁵

1375. The Prosecution responds that Prlić’s reliance on evidence regarding the ICRC does not support the suggestion that he participated in genuinely voluntary departures and that Prlić ignores that detainees had no genuine choice given the extremely harsh conditions of detention to which he contributed.⁴²⁵⁶

1376. The Appeals Chamber has reviewed the evidence Prlić claims the Trial Chamber ignored,⁴²⁵⁷ and notes that the Trial Chamber explicitly considered some of it.⁴²⁵⁸ The Appeals Chamber therefore dismisses Prlić’s argument insofar as this evidence is concerned. As to the remaining evidence, the Appeals Chamber recalls that when a trial chamber does not refer to certain evidence, it is to be presumed that the trial chamber evaluated all the evidence presented to it, as long as there is no indication that the trial chamber completely disregarded evidence which is clearly relevant.⁴²⁵⁹ The Appeals Chamber considers that Prlić does not rebut this presumption as he fails to show how the evidence to which he refers undermines the impugned finding.⁴²⁶⁰ Thus, the Appeals Chamber finds that he has failed to demonstrate that no reasonable trier of fact could have reached the same conclusion as the Trial Chamber based on the other evidence before it.⁴²⁶¹ Prlić also ignores other relevant factual findings that detainees did not exercise a real choice when they departed to third countries, given their other option was to remain in harsh conditions of detention.⁴²⁶² In light of all of the above, Prlić’s argument fails, and the Appeals Chamber dismisses his sub-ground of appeal 16.10.

⁴²⁵⁵ Prlić’s Appeal Brief, para. 607. See Prlić’s Appeal Brief, para. 608, referring to Prlić’s Appeal Brief, sub-grounds of appeal 16.4.3, 16.9.

⁴²⁵⁶ Prosecution’s Response Brief (Prlić), para. 386. The Prosecution further contends that, in any event, the evidence cited by Prlić post-dates the findings of the Trial Chamber and much of it says nothing about detainees exercising any choice with respect to the terms of their departure. Prosecution’s Response Brief (Prlić), para. 386.

⁴²⁵⁷ See Prlić’s Appeal Brief, fn. 1558 and references cited therein. See *infra*, fns 4258-4260.

⁴²⁵⁸ See Trial Judgement, Vol. 2, para. 1647, referring to Exs. 1D00938 (ICRC letter dated 7 October 1993), 1D02213 (Official Note Defence Ministry HR H-B dated 7 March 1994).

⁴²⁵⁹ See *Tolimir* Appeal Judgement, para. 53; *Kvočka et al.* Appeal Judgement, para. 23.

⁴²⁶⁰ The Appeals Chamber notes that the evidence includes a list of detainees wishing to move to third countries (Ex. P07371), Witness Marijan Biškić’s testimony that the ICRC representatives were involved in the implementation of the decision to release detainees (Marijan Biškić, T. 15319-15322 (8 Mar 2007)), internal official documents discussing where detainees should go (Exs. P07148, P07149, 6D00499), and an UNPROFOR document reporting Prlić as saying that the wishes of the detainees with regard to their destination on release “including third countries [...] must be strictly honored” (Ex. P06965, p. 3).

⁴²⁶¹ See Trial Judgement, Vol. 4, paras 64, 233-234 and references cited therein. See also Trial Judgement, Vol. 4, para. 249.

⁴²⁶² See Trial Judgement, Vol. 3, paras 787, 805, 817, 835, Vol. 4, paras 64, 233 and references cited therein. The Appeals Chamber notes that Prlić refers to his submissions in sub-grounds of appeal 16.4.3 and 16.9, which it dismisses elsewhere in the Judgement. See *supra*, paras 1231-1241, 1360-1367.

(h) Denial, concealment, and encouragement of crimes and failure to prevent or punish crimes (Prlić's Sub-grounds 16.12, 16.13, 16.14, and 16.15)

1377. The Trial Chamber found that Prlić knowingly sought to minimise or conceal the crimes committed by the HVO in order to facilitate the implementation of the JCE.⁴²⁶³ The Trial Chamber also found that Prlić through his official and public statements engendered fear, mistrust, and hatred of Bosnian Muslims among Bosnian Croats and exacerbated nationalist sentiments, thus he contributed to the realisation of the JCE.⁴²⁶⁴ The Trial Chamber concluded that Prlić denied, concealed, and encouraged the crimes against Muslims and took no appropriate measures to prevent the crimes or punish the perpetrators.⁴²⁶⁵ With respect to his ability to do so, the Trial Chamber found that Prlić had the authority and power to intervene within the hierarchy of the HVO and HR H-B, particularly in relation to the other Appellants, and thus change the course of events.⁴²⁶⁶

(i) Arguments of the Parties

1378. With respect to the Trial Chamber's finding that he knowingly sought to minimise or conceal crimes committed by the HVO, Prlić argues that the Trial Chamber erred by relying only on the testimony of Witness BA, which it mischaracterised.⁴²⁶⁷ Prlić further refers to evidence showing his views that evictions were not an official policy, were carried out by "gangster elements", and were contrary to Croat interests.⁴²⁶⁸ He also contends that the Trial Chamber ignored evidence that there were "random evictions", which were carried out by irregular forces, and that the Military Police regularly reported these crimes.⁴²⁶⁹ Prlić also submits that the Trial Chamber relied on unsubstantiated evidence in concluding that in August 1993 he informed an international representative that Muslims from Ljubuški were being interned for their own safety.⁴²⁷⁰

1379. Prlić further contends that the Trial Chamber erroneously concluded that through his official and public statements, he engendered fear, mistrust, and hatred of Bosnian Muslims among Bosnian Croats and exacerbated nationalist sentiments, and thus contributed to the realisation of the JCE.⁴²⁷¹ Prlić submits in this regard that the Trial Chamber erroneously concluded that a letter of

⁴²⁶³ Trial Judgement, Vol. 4, para. 263.

⁴²⁶⁴ Trial Judgement, Vol. 4, para. 267.

⁴²⁶⁵ Trial Judgement, Vol. 4, para. 269.

⁴²⁶⁶ Trial Judgement, Vol. 4, para. 268.

⁴²⁶⁷ Prlić's Appeal Brief, para. 612, referring to Prlić's Appeal Brief, sub-ground of appeal 6.1. See also Prlić's Appeal Brief, paras 449, 627-629.

⁴²⁶⁸ Prlić's Appeal Brief, para. 612.

⁴²⁶⁹ Prlić's Appeal Brief, para. 612.

⁴²⁷⁰ Prlić's Appeal Brief, para. 613, referring to, *inter alia*, Prlić's Appeal Brief, paras 187-188 (ground of appeal 6.2). Prlić adds that, even if he did make these remarks, considering the ongoing events, "they were not beyond the ken". Prlić's Appeal Brief, para. 613. See also Prlić's Appeal Brief, para. 614, referring to Prlić's Appeal Brief, (sub-)grounds of appeal 13, 16.7.

18 January 1993 and a proclamation of 30 June 1993 were issued at crucial times and influenced an HVO attack and a campaign of mass arrests of Muslims.⁴²⁷² Prlić also contends that the Trial Chamber ignored all of his other statements against population movement and the war.⁴²⁷³

1380. Finally, Prlić contends that the Trial Chamber erroneously concluded that despite having the hierarchical power to intervene with respect to members of the JCE he did nothing to prevent crimes and to punish perpetrators.⁴²⁷⁴ In this regard he argues that the Trial Chamber failed to establish that he had power over the perpetrators of crimes and that he had the power to intervene within the hierarchy of the HVO and the HZ(R) H-B.⁴²⁷⁵ Prlić further argues that the Trial Chamber ignored evidence which was contrary to its conclusion that he did not sincerely condemn crimes, as well as evidence of efforts to prosecute and combat crimes.⁴²⁷⁶

1381. The Prosecution responds that Prlić fails to demonstrate any error.⁴²⁷⁷ It argues that the Trial Chamber neither mischaracterised nor relied exclusively on Witness BA's evidence in reaching its conclusion that Prlić denied and concealed crimes against Muslims.⁴²⁷⁸ It submits that Prlić cites no relevant evidence in arguing that the Trial Chamber ignored evidence of "random evictions" by "irregular forces" and fails to address the Trial Chamber's findings on systematic eviction operations carried out by the HVO and Prlić's knowledge thereof.⁴²⁷⁹ The Prosecution also argues that Prlić fails to show that no reasonable trial chamber could have relied on specific evidence that Prlić informed an international representative that Muslims were being interned for their own safety.⁴²⁸⁰

1382. The Prosecution further submits that Prlić fails to articulate any error in the Trial Chamber's conclusion that he publicly incited fear, mistrust, and hatred of Bosnian Muslims among Croats and

⁴²⁷¹ Prlić's Appeal Brief, para. 615. See Prlić's Appeal Brief, para. 616, referring to Prlić's Appeal Brief, sub-grounds of appeal 16.1.2, 16.3.1.

⁴²⁷² Prlić's Appeal Brief, para. 617.

⁴²⁷³ Prlić's Appeal Brief, para. 618. See also Appeal Hearing, AT. 133-134 (20 Mar 2017).

⁴²⁷⁴ Prlić's Appeal Brief, paras 611, 619.

⁴²⁷⁵ Prlić's Appeal Brief, para. 619. Prlić also argues that the evidence contradicts the Trial Chamber's assumption that he had such powers. Prlić's Appeal Brief, paras 619-620, referring to Prlić's Appeal Brief, grounds of appeal 11-13.

⁴²⁷⁶ Prlić's Appeal Brief, paras 621-623. See Appeal Hearing, AT. 145-147 (20 Mar 2017).

⁴²⁷⁷ Prosecution's Response Brief (Prlić), para. 389. See Prosecution's Response Brief (Prlić), paras 390-397. See also Prosecution's Response Brief (Prlić), paras 276-279.

⁴²⁷⁸ Prosecution's Response Brief (Prlić), para. 390.

⁴²⁷⁹ Prosecution's Response Brief (Prlić), para. 391. The Prosecution also submits that Prlić's argument in this regard is contradicted by his prior admission that the evictions were carried out by military authorities with the backing of politicians. Further, it argues that Prlić mischaracterises the content of reports to imply that evictions were punished and ignores the contrary findings of the Trial Chamber in this regard. Prosecution's Response Brief (Prlić), para. 391.

⁴²⁸⁰ Prosecution's Response Brief (Prlić), para. 392. The Prosecution submits that he also ignores that HVO authorities conducted no case-by-case evaluation of possible safety reasons for detention. Prosecution's Response Brief (Prlić), para. 392.

that he fails to explain why the evidence he referred to rendered the Trial Chamber's findings unreasonable.⁴²⁸¹

1383. The Prosecution also submits that Prlić incorrectly claims that the Trial Chamber failed to establish that he had hierarchical powers to prevent and punish crimes, given its detailed findings in this regard.⁴²⁸² Finally, the Prosecution argues that Prlić's statements condemning crimes are consistent with the Trial Chamber's finding that, in the majority of cases, he did not sincerely condemn crimes committed by the HVO, and that the evidence he cites does not undermine the Trial Chamber's findings on his failure to take appropriate steps to prevent or punish the mass crimes committed against Muslims.⁴²⁸³

(ii) Analysis

1384. Turning to Prlić's challenge to the Trial Chamber's finding that he knowingly sought to minimise or conceal crimes committed by the HVO, the Appeals Chamber notes that, contrary to Prlić's submission, the Trial Chamber neither mischaracterised⁴²⁸⁴ nor relied exclusively on Witness BA's evidence in reaching its conclusion.⁴²⁸⁵ The evidence referred to by Prlić, in which he represented that evictions were not an official policy, were carried out by "gangster elements", and were contrary to Croat interests, is not inconsistent with the challenged finding.⁴²⁸⁶ His arguments in this regard are therefore dismissed.

1385. Regarding Prlić's challenge that the Trial Chamber ignored evidence that there were "random evictions" which were carried out by irregular forces, the Appeals Chamber notes that he ignores the Trial Chamber findings on the involvement of the HVO in eviction operations and his knowledge of such operations.⁴²⁸⁷ Further, with respect to Prlić's submission that the Trial Chamber failed to consider evidence that the Military Police regularly reported the acts allegedly carried out by irregular forces, he has failed to show how his submission is in any way inconsistent with the challenged finding, which concerns crimes carried out by the HVO. His argument is therefore dismissed.

⁴²⁸¹ Prosecution's Response Brief (Prlić), para. 393.

⁴²⁸² Prosecution's Response Brief (Prlić), para. 394. The Prosecution contends that Prlić cites evidence that does not undermine his authority and ignores evidence in which he confirmed it to international representatives. Prosecution's Response Brief (Prlić), para. 395.

⁴²⁸³ Prosecution's Response Brief (Prlić), paras 396-397.

⁴²⁸⁴ See Trial Judgement, Vol. 4, para. 259 & fn. 633 and references cited therein. The Appeals Chamber also notes that Prlić refers to his submissions in sub-ground of appeal 6.1, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218.

⁴²⁸⁵ Trial Judgement, Vol. 4, paras 259-263 and references cited therein.

⁴²⁸⁶ Prlić's Appeal Brief, para. 612, referring to, *inter alia*, Exs. P09712 (confidential), para. 73, P09846 (confidential).

⁴²⁸⁷ See Trial Judgement, Vol. 2, paras 815, 822-823, 876, 900, 919-920, 985-987, Vol. 4, paras 166-171, 259. See *supra*, paras 1231-1241.

1386. In addition, Prlić has failed to show that no reasonable trier of fact could have concluded that he informed an international representative in August 1993 that Muslims from Ljubuški were being interned for their own safety. Contrary to his submission, the Appeals Chamber can see no indication that the evidence on which the Trial Chamber relied in reaching this conclusion was unsubstantiated.⁴²⁸⁸ His argument is therefore dismissed.

1387. The Appeals Chamber now turns to Prlić's contention that the Trial Chamber erroneously concluded that through his official and public statements, he engendered fear, mistrust, and hatred of Bosnian Muslims among Bosnian Croats and exacerbated nationalist sentiments, and thus contributed to the realisation of the JCE.⁴²⁸⁹ Considering the letter of 18 January 1993 and the proclamation of 30 June 1993 referred to by Prlić, the Appeals Chamber notes that he merely asserts that the Trial Chamber erroneously reached a conclusion as to the meaning and effect of this evidence, but fails to articulate an error in this regard. Regarding Prlić's contention that the Trial Chamber ignored his statements against population movement and the war, the Appeals Chamber notes that it is clear from the Trial Judgement that the Trial Chamber expressly considered some of the evidence to which Prlić refers.⁴²⁹⁰ With respect to other evidence, Prlić merely asserts that the Trial Chamber must have failed to consider it, but fails to show any relevance of this evidence⁴²⁹¹ or that the Trial Chamber did not consider it. In this regard, the Appeals Chamber recalls that the Trial Chamber need not refer to every witness testimony or every piece of evidence on the record and that there is a presumption that the trial chamber evaluated all evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded evidence which is clearly relevant.⁴²⁹² The Appeals Chamber finds that this is not the case here, noting that the Trial Chamber considered similar evidence.⁴²⁹³ His argument is therefore dismissed.

⁴²⁸⁸ See Trial Judgement, Vol. 4, para. 260, referring to, *inter alia*, Ex. P09846 (confidential), Witness BB, T(F). 17284-17286 (closed session) (17 Apr 2007). The Appeals Chamber dismisses as obscure Prlić's argument that these remarks "were not beyond the ken". The Appeals Chamber also notes that Prlić refers to his submissions in (sub-)grounds of appeal 6.2, 13, and 16.7, which it dismisses elsewhere in the Judgement. See *supra*, paras 212-218, 1318-1373.

⁴²⁸⁹ The Appeals Chamber notes that Prlić refers to his submissions in sub-grounds of appeal 16.1.2 and 16.3.1, which it dismisses elsewhere in the Judgement. See *supra*, paras 1154-1161, 1209-1210, 1214, 1216, 1221.

⁴²⁹⁰ See, e.g., Prlić's Appeal Brief, fns 1576-1581, referring to, *inter alia*, Exs. P01015, P01215, 1D01655, 1D02189. See also Trial Judgement, Vol. 1, fn. 1073, Vol. 2, fns 944, 3410, Vol. 3, fn. 463, Vol. 4, paras 15, 109 & fns 37, 200, 325-328, 368, 393-394.

⁴²⁹¹ See, e.g., Prlić's Appeal Brief, fns 1577-1578, 1580-1581, referring to, *inter alia*, Exs. P00672, P02046, P02124.

⁴²⁹² *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.

⁴²⁹³ See Prlić's Appeal Brief, fns 1576-1581, referring to, *inter alia*, Exs. P00578, P00921, P01317, P02021, P06510, 1D00190, 1D00193, 1D00818, 1D02076, 1D02078, 1D02123, 1D02124, 1D02149, 1D02225, 1D02379, Belinda Giles, T. 2061-2062, 2064-2073 (15 May 2006), Witness DZ, T. 26689 (23 Jan 2008), T. 26701-26704, 26716 (24 Jan 2008), Prlić's Opening Statement, T. 27555 (6 May 2008), Borislav Puljić, T. 32126-32131 (15 Sept 2008), T. 32238-32241 (16 Sept 2008), Miroslav Palameta, T. 32789-32790 (29 Sept 2008), Neven Tomić, T. 34677-34688 (17 Nov 2008).

1388. With respect to Prlić's submission that the Trial Chamber erroneously concluded that despite having the hierarchical power to intervene with respect to members of the JCE, he did nothing to prevent crimes and to punish perpetrators, the Appeals Chamber notes that the Trial Chamber made general findings on Prlić's powers, to which it referred, and which support its conclusion that he had such hierarchical powers.⁴²⁹⁴ Prlić merely asserts that the Trial Chamber did not establish these hierarchical powers, but fails to show that no reasonable trier of fact, based on the evidence, could have reached the same conclusion.⁴²⁹⁵ His argument therefore fails.

1389. While Prlić refers to evidence in which he condemned crimes,⁴²⁹⁶ the Appeals Chamber notes that this evidence is not inconsistent with the Trial Chamber's conclusion that in the majority of cases he did not sincerely condemn the crimes committed by the HVO.⁴²⁹⁷ In addition, Prlić fails to show how the evidence he cites, which refers to some measures taken to prosecute and combat crimes,⁴²⁹⁸ undermines the Trial Chamber's conclusion that *he* took no appropriate measures to prevent crimes or punish the perpetrators of those crimes.⁴²⁹⁹ The Appeals Chamber notes that Prlić does not identify any such appropriate measures that he took and recalls that it has upheld the Trial Chamber's finding that he had the authority and power to intervene within the hierarchy of the HVO and HR H-B and thus change the course of events.⁴³⁰⁰ Prlić has failed to show that no reasonable trier of fact, based on the evidence, could have reached the conclusion that he took no appropriate measures to prevent crimes or punish the perpetrators of those crimes. In light of the above, the Appeals Chamber dismisses the argument that the Trial Chamber ignored evidence which was contrary to its conclusion that he did not sincerely condemn crimes, as well as evidence of efforts to prosecute and combat crimes.

1390. For the foregoing reasons, the Appeals Chamber dismisses Prlić's sub-grounds of appeal 16.12, 16.13, 16.14, and 16.15.

(i) Mens rea and actus reus of commission through a JCE (Prlić's Ground 18)

1391. The Trial Chamber found that: (1) Prlić made a significant contribution to, and was one of the "principal members" of, the JCE; (2) his contribution showed his intention to implement the

⁴²⁹⁴ Trial Judgement, Vol. 4, para. 268 & fn. 654, referring to Trial Judgement, Vol. 4, paras 84-121.

⁴²⁹⁵ Prlić's Appeal Brief, paras 619-620. The Appeals Chamber notes that Prlić refers to his submissions in grounds of appeal 11, 12, and 13, which it dismisses elsewhere in the Judgement. See *supra*, paras 1021-1127, 1318-1333, 1335-1343, 1356-1373.

⁴²⁹⁶ See Prlić's Appeal Brief, fns 1585-1588, 1595 and references cited therein.

⁴²⁹⁷ Trial Judgement, Vol. 4, para. 268.

⁴²⁹⁸ See Prlić's Appeal Brief, fns 1589-1594, 1596 and references cited therein. See also Appeal Hearing, AT. 146 (20 Mar 2017), referring to, *inter alia*, Exs. 5D05024, 5D05027.

⁴²⁹⁹ Trial Judgement, Vol. 4, paras 268-269 and references cited therein.

⁴³⁰⁰ See *supra*, paras 1377, 1388.

CCP; and (3) he shared with the other members of the JCE a discriminatory intent to expel the Muslim population from the HZ(R) H-B.⁴³⁰¹

(i) Arguments of the Parties

1392. Prlić submits that the Trial Chamber erred in law and fact in concluding that he possessed the requisite *mens rea* for membership in the JCE and that he carried out the *actus reus* of the JCE.⁴³⁰² He asserts that an omission may only constitute a contribution to a JCE if it is combined with a duty to act and authority over the perpetrators.⁴³⁰³ Prlić argues that the Trial Chamber “essentially applied a strict liability standard”, finding him responsible by virtue of his position and the continued exercise of his functions.⁴³⁰⁴ Prlić further submits that the Trial Chamber erroneously interpreted “legislative decisions in light of subsequent events” and found that by participating in drafting those decisions, he intended the crimes.⁴³⁰⁵ Prlić refers to a number of conclusions reached by the Trial Chamber relating to his *mens rea*, which in his submission are “premised on erroneous inferences from selective evidence, ignoring other relevant evidence and alternative plausible explanations”.⁴³⁰⁶ Prlić further submits that the Trial Chamber failed to consider evidence regarding his mental state and ignored several relevant factors, namely his: (1) Government service in BiH from 1989 to 2003 based on free democratic elections; (2) understanding of the HZ H-B as forming part of a tri-national BiH; (3) negotiation efforts at the end of 1993 to find a solution for Mostar; (4) ideas for the future of BiH; (5) aims for the HVO HZ H-B; (6) efforts to prevent crimes and punish perpetrators; and (7) non-membership in the Croatian Democratic Union during the Indictment period.⁴³⁰⁷ Prlić concludes that he should be acquitted on Counts 1-25.⁴³⁰⁸

1393. The Prosecution responds that the Trial Chamber did not apply a strict liability standard or find Prlić responsible simply by virtue of his position and the continued exercise of his

⁴³⁰¹ Trial Judgement, Vol. 4, para. 276.

⁴³⁰² Prlić’s Appeal Brief, paras 642, 646, 650. Specifically, Prlić alleges that by ignoring evidence and alternative plausible explanations, the Trial Chamber failed to provide reasoned opinions and applied an incorrect legal standard in assessing the evidence, amounting to an error of law invalidating the Trial Judgement. Prlić’s Appeal Brief, para. 650. Prlić also contends that no reasonable trier of fact would find that he assumed the risk of reasonably foreseeable crimes being committed outside the alleged JCE. Prlić’s Appeal Brief, para. 650.

⁴³⁰³ Prlić’s Appeal Brief, para. 643. See Prlić’s Appeal Brief, para. 648.

⁴³⁰⁴ Prlić’s Appeal Brief, para. 646; Prlić Reply Brief, para. 76. See also Prlić’s Appeal Brief, paras 643-645.

⁴³⁰⁵ Prlić’s Appeal Brief, para. 646-647, referring to, *inter alia*, *Gotovina and Markač* Appeal Judgement, paras 93-98; Prlić Reply Brief, para. 76.

⁴³⁰⁶ Prlić’s Appeal Brief, para. 648, referring to, *inter alia*, Prlić’s Appeal Brief, (sub-)grounds of appeal 6.1, 10, 11, 16.1-16.15, 17.

⁴³⁰⁷ Prlić’s Appeal Brief, para. 649, referring to, *inter alia*, Prlić’s Appeal Brief, sub-grounds of appeal 16.12-16.15; Appeal Hearing, AT. 135-136, 138 (20 Mar 2017). See also Appeal Hearing, AT. 134, 139 (20 Mar 2017). Prlić argues that the Trial Chamber failed to take into account that he took measures in order to set up effective organs of authority in BiH “with the intent of applying international plan of construction of a normal Bosnia-Herzegovina, attempting to include third parties in this”. Appeal Hearing, AT. 138 (20 Mar 2017).

⁴³⁰⁸ Prlić’s Appeal Brief, para. 651. See also Appeal Hearing, AT. 173, 177-178 (20 Mar 2017).

functions.⁴³⁰⁹ The Prosecution avers that the Trial Chamber found that Prlić made active contributions to each of the assessed crime bases and that his contributions through omissions complemented his active conduct.⁴³¹⁰ It further contends that Prlić's suggestion that his omissions could not constitute contributions to the CCP is based on an erroneous premise that he did not have actual powers which would trigger a duty to act.⁴³¹¹ The Prosecution argues that Prlić's mere assertion that the Trial Chamber interpreted legislative decisions in light of subsequent events should be summarily dismissed.⁴³¹² The Prosecution also submits that Prlić wrongly claims that the Trial Chamber found that he intended crimes based only on his participation in drafting legislative decisions.⁴³¹³ Lastly, the Prosecution avers that Prlić did not establish that the Trial Chamber failed to consider any evidence which was relevant to his mental state, instead listing factors that: (1) he fails to explain; (2) bear no apparent relevance to his *mens rea*; and/or (3) the Trial Chamber did consider.⁴³¹⁴

(ii) Analysis

1394. The Appeals Chamber interprets Prlić's statement that an omission may only constitute a contribution to a JCE if it is combined with a duty to act and authority over the perpetrators as an allegation that the Trial Chamber erred in law in this regard. The Appeals Chamber recalls that "when establishing an accused's participation in a joint criminal enterprise through his failure to act, the existence of a legal duty to act deriving from a rule of criminal law is not required".⁴³¹⁵ The Appeals Chamber further recalls that a failure to act has been taken into account in assessing an accused's contribution to a joint criminal enterprise and intent, where the accused had some power and influence or authority over the perpetrators to prevent or halt the abuses, but failed to exercise such powers.⁴³¹⁶ The existence of such influence or authority is a factual matter to be determined on a case-by-case basis.⁴³¹⁷ The Appeals Chamber notes that Prlić advances no factual challenge to his

⁴³⁰⁹ Prosecution's Response Brief (Prlić), paras 400-401. It contends that Prlić fails to demonstrate that no reasonable trial chamber could have relied on his continued exercise of his functions as a relevant factor in inferring intent or as a fact relevant to his failure to use his authority to intervene. Prosecution's Response Brief (Prlić), para. 401.

⁴³¹⁰ Prosecution's Response Brief (Prlić), paras 400, 407.

⁴³¹¹ Prosecution's Response Brief (Prlić), para. 408. In this regard, the Prosecution notes that the Trial Chamber found that his failure to prevent and punish crimes was a culpable omission given his hierarchical authority and power to intervene and that Prlić's duties were grounded in international law and in HZ(R) H-B legislation. Prosecution's Response Brief (Prlić), paras 408-409.

⁴³¹² Prosecution's Response Brief (Prlić), para. 402.

⁴³¹³ Prosecution's Response Brief (Prlić), para. 403. The Prosecution further submits that having mischaracterised the Trial Chamber's method of analysis, Prlić's attempt to draw an analogy to the method used by the *Gotovina et al.* trial chamber should be summarily dismissed. Prosecution's Response Brief (Prlić), para. 404.

⁴³¹⁴ Prosecution's Response Brief (Prlić), paras 400, 405-406.

⁴³¹⁵ *Stanišić and Župljanin* Appeal Judgement, para. 110. See *Popović et al.* Appeal Judgement, para. 1653; *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696; *Brđanin* Appeal Judgement, para. 427; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 99; *Tadić* Appeal Judgement, para. 227.

⁴³¹⁶ *Stanišić and Župljanin* Appeal Judgement, para. 752.

⁴³¹⁷ *Stanišić and Župljanin* Appeal Judgement, para. 752.

authority over the perpetrators under the present ground of appeal.⁴³¹⁸ The Appeals Chamber concludes that Prlić has failed to establish an error of law and dismisses his argument.

1395. Regarding Prlić's argument that the Trial Chamber erred by essentially applying a "strict liability" standard, finding him responsible by virtue of his position and the continued exercise of his functions, the Appeals Chamber notes that the Trial Chamber properly articulated the requisite *mens rea* for JCE I liability, which is "the intent to commit a specific crime, an intent that must be shared by all the co-participants".⁴³¹⁹ Applying this standard, the Trial Chamber found that Prlić shared with the other members of the JCE a discriminatory intent to expel the Muslim population from the HZ(R) H-B.⁴³²⁰ Prlić's position and continued exercise of his functions were only two of several factors assessed by the Trial Chamber which led it to conclude that he significantly contributed to, and shared the intent of, the JCE.⁴³²¹ Other factors included his actions, his contemporaneous knowledge of crimes committed, his attempts at minimising or concealing such crimes, and his failure to stop or prevent such crimes when he had the *de jure* and/or *de facto* power to do so.⁴³²² Further, the Appeals Chamber finds that Prlić fails to demonstrate that no reasonable trier of fact could have relied on the relevant factors of his position and continued exercise of his functions in its assessment. In this respect, the Appeals Chamber also recalls that the fact that the participation of an accused amounted to no more than his or her routine duties will not exculpate the accused – what matters is whether the act in question furthered the CCP and whether it was carried out with the requisite intent.⁴³²³ Prlić's argument is therefore dismissed.

1396. Regarding Prlić's submission that the Trial Chamber erred in interpreting "legislative decisions in light of subsequent events", the Appeals Chamber considers Prlić's reliance on the *Gotovina and Markač* Appeal Judgement to be inapposite, as the majority of the Appeals Chamber in that case did not find that the trial chamber erred by interpreting evidence in light of subsequent events; rather, having reversed the trial chamber's findings with regard to those subsequent events, the Majority found that the trial chamber's interpretation of the evidence in question was no longer

⁴³¹⁸ See, in particular, Prlić's Appeal Brief, paras 648-649. See also *infra*, paras 1397-1398.

⁴³¹⁹ Trial Judgement, Vol. 1, para. 214, referring to, *inter alia*, *Vasiljević* Appeal Judgement, para. 101, *Tadić* Appeal Judgement, paras 196, 228.

⁴³²⁰ Trial Judgement, Vol. 4, para. 276.

⁴³²¹ Regarding Prlić's position and continued exercise of his functions, see Trial Judgement, Vol. 4, paras 134, 147, 165, 168, 174, 204, 232, 238, 249, 270-276.

⁴³²² See Trial Judgement, Vol. 4, paras 121, 134, 147, 165, 168, 174, 185, 204, 232, 238, 249, 263, 269-275. Insofar as the Trial Chamber relied on Prlić's contemporaneous knowledge of crimes committed (see Trial Judgement, Vol. 4, paras 134, 147, referring to January and April 1993), the Appeals Chamber recalls that it has overturned the Trial Chamber's findings regarding the deaths of seven civilians in Duša. See *supra*, paras 441-443. The Appeals Chamber does not consider that these changes affect the Trial Chamber's reasoning and conclusion, insofar as it concerns the remaining crimes, that he significantly contributed to, and shared the intent of, the JCE, based on, *inter alia*, this contemporaneous knowledge, particularly since not many instances of murder took place in that period. See *supra*, para. 876.

the only reasonable one.⁴³²⁴ The Appeals Chamber also considers that in the present case the Trial Chamber inferred Prlić's *mens rea* from his contribution after assessing the totality of the evidence, not merely from "legislative decisions".⁴³²⁵ His submission is therefore dismissed.

1397. With regard to Prlić's claim that the Trial Chamber's findings on his *mens rea* were premised on erroneous inferences from selective evidence, ignoring other relevant evidence and alternative plausible explanations, the Appeals Chamber notes that this claim is entirely based on cross-references to his (sub-)grounds of appeal 6.1, 10, 11, 16.1-16.15, and 17, which it dismisses elsewhere.⁴³²⁶

1398. With respect to Prlić's submission that the Trial Chamber failed to consider evidence regarding his mental state, the Appeals Chamber observes that the Trial Chamber in fact relied on some of the evidence Prlić indicates,⁴³²⁷ and considers that he fails to substantiate the relevance of the factors which he lists.⁴³²⁸ The submission is dismissed.

1399. Having rejected the arguments above, the Appeals Chamber considers that Prlić has failed to demonstrate that the Trial Chamber erred in concluding that he possessed the requisite *mens rea* for membership in the JCE and that he carried out the *actus reus* of the JCE.⁴³²⁹ The Appeals Chamber therefore dismisses Prlić's ground of appeal 18.

4. Conclusion

1400. In light of the foregoing, the Appeals Chamber dismisses all challenges to the Trial Chamber's findings related to Prlić's contribution to, and his *mens rea* for, the JCE. The Appeals Chamber recalls, however, that it reverses above the Trial Chamber's finding – insofar as it

⁴³²³ *Stanišić and Župljanin* Appeal Judgement, para. 154. See also *Stanišić and Župljanin* Appeal Judgement, paras 182, 244.

⁴³²⁴ *Gotovina and Markač* Appeal Judgement, para. 93. See *Gotovina and Markač* Appeal Judgement, paras 91-92, 94-98.

⁴³²⁵ See Trial Judgement, Vol. 4, paras 122-276.

⁴³²⁶ See *supra*, paras 212-218, 1021-1097, 1146-1317, 1334-1390, 2837-2848.

⁴³²⁷ See Trial Judgement, Vol. 4, paras 109 (concerning Prlić's role in ceasefire negotiations in Mostar), 932 (regarding Prlić's efforts to fight crime). See also Trial Judgement, Vol. 4, para. 75. *Cf.* Prlić's Appeal Brief, para. 649.

⁴³²⁸ With regard to Prlić's submission that he took measures in order to set up effective organs of authority in BiH "with the intent of applying international plan of construction of a normal Bosnia-Herzegovina, attempting to include third parties in this", the Appeals Chamber notes that the Trial Chamber considered similar submissions at trial. See Trial Judgement, Vol. 4, para. 75 & fn. 186, referring to Prlić's Final Brief, paras 316, 332. The Appeals Chamber finds that this explanation of the relevance to his intent does not demonstrate an error in the Trial Chamber's finding on his *mens rea*, based on its detailed analysis of his position, actions, contemporaneous knowledge of crimes committed (see also *supra*, fn. 4322), attempts at minimising or concealing such crimes, failure to stop or prevent such crimes when he had the power to do so, and continued exercise of his functions. See, in particular, *supra*, paras 1391, 1395 & fns 4321-4322 and references cited therein; *infra*, para. 1400. With regard to the remaining factors advanced, Prlić does not even attempt to explain their relevance. See *supra*, para. 1392 & fn. 4307, referring to, *inter alia*, Prlić's Appeal Brief, para. 649. The Appeals Chamber also notes that Prlić refers to his submissions in sub-grounds of appeal 16.12, 16.13, 16.14, and 16.15, which it dismisses elsewhere in the Judgement. See *supra*, paras 1377-1390.

concerns the Old Bridge – that Prlić knew about the HVO crimes committed during the HVO campaign of fire and shelling against East Mostar and that by minimising or attempting to deny them, he accepted and encouraged them.⁴³³⁰

⁴³²⁹ Regarding Prlić's contention that no reasonable trier of fact would find that he assumed the risk of reasonably foreseeable crimes being committed outside the alleged JCE, see 2837-2848.

⁴³³⁰ See *supra*, para. 1246.

F. Alleged Errors in Relation to Bruno Stojić's Participation in the JCE

1. Introduction

1401. Bruno Stojić was appointed the Head of the Department of Defence within the HZ(R) H-B Government on 3 July 1992 and exercised the functions of the position until 15 November 1993, after which he was the head of the department for the production of military equipment.⁴³³¹ The Trial Chamber found that Stojić contributed to the JCE from January 1993 to 15 November 1993,⁴³³² and concluded that his contribution was significant.⁴³³³ The Trial Chamber concluded that Stojić was one of the most important JCE members as he controlled the HVO and the Military Police, and served as the link between the HVO and the Government.⁴³³⁴ The Trial Chamber also found that Stojić used the HVO, including the Military Police to commit crimes that formed part of the CCP.⁴³³⁵ It made several findings concerning Stojić's contributions to the JCE including, *inter alia*, that: (1) he had significant *de jure* and *de facto* powers over most components of the HVO and the Military Police, which he exercised by taking decisions related to military operations and having those decisions implemented through the armed forces' chain of command, forwarding Government decisions down the armed forces' chain of command, and making proposals to the Government about military matters which were approved;⁴³³⁶ (2) he continued to exercise effective control knowing that HVO members had committed crimes;⁴³³⁷ (3) he made no serious efforts to stop the HVO and the Military Police from committing crimes,⁴³³⁸ and (4) he participated in some HVO military operations in the municipalities.⁴³³⁹

1402. The Trial Chamber convicted Stojić under Article 7(1) of the Statute of committing, pursuant to JCE I liability, various crimes amounting to grave breaches of the Geneva Conventions, violations of the laws or customs of war, and/or crimes against humanity under Articles 2, 3, and 5 of the Statute, respectively.⁴³⁴⁰ Stojić was sentenced to a single sentence of 20 years of imprisonment.⁴³⁴¹

⁴³³¹ Trial Judgement, Vol. 1, paras 555-557, Vol. 4, paras 293, 325, 425, 1227. See Trial Judgement, Vol. 1, paras 539-554, 558-584.

⁴³³² Trial Judgement, Vol. 4, paras 1227, 1230.

⁴³³³ Trial Judgement, Vol. 4, para. 429.

⁴³³⁴ Trial Judgement, Vol. 4, paras 425, 429.

⁴³³⁵ Trial Judgement, Vol. 4, paras 429, 1232.

⁴³³⁶ Trial Judgement, Vol. 4, paras 304, 312, 425. The Appeals Chamber interprets that where the Trial Chamber stated that Stojić "forwarded HVO decisions down the chain of command and made proposals to the HVO about military matters which were then approved by that collective body" (see Trial Judgement, Vol. 4, para. 425), it referred to the political component of the HVO, *i.e.* the "Government".

⁴³³⁷ Trial Judgement, Vol. 4, paras 425-426. See Trial Judgement, Vol. 4, para. 429.

⁴³³⁸ Trial Judgement, Vol. 4, para. 427.

⁴³³⁹ Trial Judgement, Vol. 4, paras 426, 430.

⁴³⁴⁰ Trial Judgement, Vol. 4, paras 431-432, Disposition, p. 430. These crimes are: persecution as a crime against humanity (Count 1); murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva

1403. Regarding Stojić's *mens rea* under JCE I liability, the Trial Chamber concluded that he: (1) intended the crimes committed in the various municipalities,⁴³⁴² at times inferring his intent from his failure to make any serious efforts to stop the HVO and the Military Police from committing crimes;⁴³⁴³ (2) shared the intent to expel the Muslim population from the territory of Herceg-Bosna with other JCE members;⁴³⁴⁴ and (3) intended to discriminate against Muslims in order to facilitate their eviction from the territory of Herceg-Bosna.⁴³⁴⁵

1404. Stojić challenges several findings of the Trial Chamber with regard to his contribution to the JCE and his *mens rea*.⁴³⁴⁶ These challenges will be addressed below.

2. Alleged errors in finding that Stojić commanded and had "effective control" over the HVO
(Stojić's Ground 20)

1405. The Trial Chamber was satisfied beyond reasonable doubt that Stojić, as Head of the Department of Defence, commanded and had "effective control" over the HVO.⁴³⁴⁷ In coming to this conclusion, the Trial Chamber considered that Stojić: (1) played a fundamental role in the establishment and organisation of the HVO;⁴³⁴⁸ (2) was regularly informed of the military operations conducted by the HVO;⁴³⁴⁹ (3) was the member of the HZ(R) H-B Government in charge of informing it about the military operations;⁴³⁵⁰ (4) had the authority to send military-related

Conventions (Count 3); deportation as a crime against humanity (Count 6); unlawful deportation of civilians as a grave breach of the Geneva Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9); imprisonment as a crime against humanity (Count 10); unlawful confinement of a civilian as a grave breach of the Geneva Conventions (Count 11); inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); unlawful labour as a violation of the laws or customs of war (Count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 19); destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); unlawful attack on civilians as a violation of the laws or customs of war (Count 24); and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). The Trial Chamber found that the following crimes also fell within the framework of the JCE, meaning Stojić was also responsible for them, but did not enter convictions for them based on the principles relating to cumulative convictions: cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); cruel treatment as a violation of the laws or customs of war (Count 17); and wanton destruction of cities, towns, or villages, or devastation not justified by military necessity (Count 20). See Trial Judgement, Vol. 4, para. 68, Disposition, p. 430. See also Trial Judgement, Vol. 4, paras 1260-1266. The Appeals Chamber discusses Stojić's convictions pursuant to JCE III *infra*, paras 2833-2834, 2849-2880.

⁴³⁴¹ Trial Judgement, Vol. 4, Disposition, p. 430.

⁴³⁴² Trial Judgement, Vol. 4, para. 426.

⁴³⁴³ Trial Judgement, Vol. 4, para. 427.

⁴³⁴⁴ Trial Judgement, Vol. 4, para. 428.

⁴³⁴⁵ Trial Judgement, Vol. 4, para. 429.

⁴³⁴⁶ Stojić's Appeal Brief, paras 122-126, 139-369.

⁴³⁴⁷ Trial Judgement, Vol. 4, para. 312. See Trial Judgement, Vol. 4, paras 425-429.

⁴³⁴⁸ Trial Judgement, Vol. 4, paras 299, 312.

⁴³⁴⁹ Trial Judgement, Vol. 4, paras 300, 302, 312.

⁴³⁵⁰ Trial Judgement, Vol. 4, paras 300, 312, 425.

Government decisions through the military chain of command and used that authority;⁴³⁵¹ (5) had the authority to issue orders directly to the HVO and to ensure that they were carried out, which he used;⁴³⁵² (6) received reports from the HVO Military Intelligence Service (“VOS”) on a daily basis;⁴³⁵³ (7) was responsible for all the logistical and financial aspects as well as the human resources of the HVO;⁴³⁵⁴ and (8) had the authority to designate representatives of the HVO in peace negotiations.⁴³⁵⁵ The Trial Chamber also found that Stojić made proposals about defence which were then adopted by the Government.⁴³⁵⁶

1406. Stojić contends that the Trial Chamber erred by finding that he commanded and had effective control over the HVO.⁴³⁵⁷ Specifically, he: (1) asserts that the Trial Chamber erroneously inferred that he had “effective operational authority” over the HVO from evidence that he had “limited administrative competences”; and (2) further challenges some of the underlying findings.⁴³⁵⁸

(a) Stojić’s administrative and logistical roles in the HVO

1407. Stojić argues that the Trial Chamber erroneously inferred that he had “effective operational authority” over the HVO from evidence that he had “limited administrative competences” or logistical functions.⁴³⁵⁹ Specifically, Stojić contends that the Trial Chamber failed to properly distinguish the functions of a civilian administrator from the command of combat operations.⁴³⁶⁰ He asserts that the Trial Chamber “entirely disregarded” his qualifications and experience, which did not include combat experience.⁴³⁶¹ Stojić also argues that the functions of the Department of Defence were limited to administrative and logistical matters, which is demonstrated by the Trial Chamber’s findings and the fact that no operational order was signed by him alone.⁴³⁶² He also submits that the Trial Chamber, disregarding its previous conclusions, failed to distinguish between

⁴³⁵¹ Trial Judgement, Vol. 4, paras 304-305, 312, 425.

⁴³⁵² Trial Judgement, Vol. 4, paras 306, 312, 425.

⁴³⁵³ Trial Judgement, Vol. 4, paras 301, 312.

⁴³⁵⁴ Trial Judgement, Vol. 4, paras 308-310, 312.

⁴³⁵⁵ Trial Judgement, Vol. 4, paras 311-312.

⁴³⁵⁶ Trial Judgement, Vol. 4, paras 300, 425. The Appeals Chamber interprets the Trial Chamber’s finding that Stojić “made proposals about defence which were then adopted by the HVO” (see Trial Judgement, Vol. 4, para. 300), as a reference to the political component of the HVO or, in other words, the Government.

⁴³⁵⁷ Stojić’s Appeal Brief, paras 139-140, 146, 166. Stojić avers that this finding is the basis for the Trial Chamber’s findings that he had the necessary intent and that he significantly contributed to the JCE. Stojić’s Appeal Brief, paras 139, 166.

⁴³⁵⁸ Stojić’s Appeal Brief, paras 139-140, 146, 166. The Appeals Chamber notes that Stojić does not directly challenge, under this ground of appeal, the Trial Chamber’s finding that he was regularly informed of the military operations conducted by the HVO or that he received reports from the VOS on a daily basis.

⁴³⁵⁹ Stojić’s Appeal Brief, paras 140-141, 145.

⁴³⁶⁰ Stojić’s Appeal Brief, para. 141. See Stojić’s Appeal Brief, paras 142-145; Stojić’s Reply Brief, para. 37.

⁴³⁶¹ Stojić’s Appeal Brief, para. 142. Stojić submits that it is “inconceivable that a man with no operational experience could have the authority to issue operational orders”. Stojić’s Appeal Brief, para. 142.

substantive and administrative competences in relation to his power of appointment as he merely administered appointments initiated by others.⁴³⁶³ Stojić further argues that “only operational command can justify the vital conclusions that [he] directly participated in specific operations and ‘used’ the armed forces to commit crimes”.⁴³⁶⁴

1408. The Prosecution responds that Stojić fails to show an error, and argues that the Trial Chamber considered and rejected his argument that he was a mere civilian administrator.⁴³⁶⁵ It submits that Stojić’s “logistical and administrative competencies as [Department of Defence] Head strengthened his control over the HVO armed forces by giving him authority over, *inter alia*, arming, financing and human resource matters, all factors indicative of his effective control”.⁴³⁶⁶

1409. The Appeals Chamber will first address Stojić’s more specific challenges. Regarding Stojić’s qualifications and experience, the Appeals Chamber notes that the Trial Chamber did summarise his background leading up to his appointment as Head of the Department of Defence.⁴³⁶⁷ Regardless, Stojić fails to show that his alleged lack of operational experience was so relevant to the Trial Chamber’s determination of his role and conduct during the JCE period that a consideration of the same would have had an impact on any of the Trial Chamber’s findings. Further, the Trial Chamber considered Stojić’s arguments at trial that his role in appointments was purely administrative,⁴³⁶⁸ but still found that the Head of the Department of Defence: (1) appointed, and removed from office, brigade commanders and high-ranking officers;⁴³⁶⁹ (2) had the power to appoint officers within the HVO brigades up to and including the rank of Deputy Brigade Commander;⁴³⁷⁰ and (3) appointed deputy commanders for security in the OZs and in the brigades on the advice of the deputy chief for security of the Department of Defence.⁴³⁷¹ Stojić relies on the latter finding to argue that his role was purely administrative,⁴³⁷² but fails to provide any further

⁴³⁶² Stojić’s Appeal Brief, para. 143, referring to Trial Judgement, Vol. 1, paras 544, 565, Vol. 4, paras 304-305, 308-310, 312, *Orić* Trial Judgement, para. 312.

⁴³⁶³ Stojić’s Appeal Brief, para. 144, referring to Trial Judgement, Vol. 1, paras 571-575, 577-578, Vol. 4, para. 303.

⁴³⁶⁴ Stojić’s Reply Brief, para. 37 (internal references omitted).

⁴³⁶⁵ Prosecution’s Response Brief (Stojić), para. 106, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 557, Vol. 4, paras 295, 409. The Prosecution also asserts that the fact that Stojić made some appointments on the advice of others does not undermine the Trial Chamber’s finding that he exercised the power to appoint officers in the HVO brigades, or suggests that his role was “purely administrative”. Prosecution’s Response Brief (Stojić), para. 126.

⁴³⁶⁶ Prosecution’s Response Brief (Stojić), para. 106 (internal references omitted), referring to *Nahimana et al.* Appeal Judgement, para. 606, *Blaškić* Trial Judgement, para. 522, *Musema* Trial Judgement, para. 880.

⁴³⁶⁷ Trial Judgement, Vol. 4, para. 293.

⁴³⁶⁸ Trial Judgement, Vol. 1, para. 568.

⁴³⁶⁹ Trial Judgement, Vol. 1, para. 571.

⁴³⁷⁰ Trial Judgement, Vol. 1, para. 573, Vol. 4, para. 303.

⁴³⁷¹ Trial Judgement, Vol. 1, para. 575, Vol. 4, para. 303.

⁴³⁷² In arguing that the Trial Chamber found that “he only made appointments on the advice of others, his role was appointing or ‘consent[ing] to’ appointments” (see Stojić’s Appeal Brief, para. 144), Stojić refers to findings on his involvement in appointing staff within the SIS and the Military Police Administration, the Deputy Chief of the Main Staff as well as its assistant chiefs, and the heads of Defence administration in the municipalities. See Trial Judgement,

support. The Appeals Chamber finds that Stojić fails to call into question the Trial Chamber's findings on his power to make appointments. His arguments are dismissed.

1410. The Appeals Chamber now turns to Stojić's overarching challenge that "effective operational authority" cannot be inferred from administrative and logistical functions. The Appeals Chamber first notes that the Trial Chamber did not find that Stojić had "effective operational authority".⁴³⁷³ Rather, it found that Stojić "commanded and had effective control over the HVO armed forces".⁴³⁷⁴ Moreover, the Trial Chamber was not required to find that Stojić had "effective operational authority".⁴³⁷⁵ The Appeals Chamber recalls that the *actus reus* for liability under JCE I is the participation of the accused in the common criminal plan which may take the form of assistance in, or contribution to, the execution of this plan,⁴³⁷⁶ and that this contribution to the crimes is significant.⁴³⁷⁷ Whether an accused significantly contributed to a JCE is a matter of evidence.⁴³⁷⁸ Thus, conduct pursuant to an "administrative" or "logistical" function can be a factor in determining whether Stojić's contribution to the JCE was significant.⁴³⁷⁹ Stojić provides no support for his argument that only "operational command", which he does not define, can justify the conclusion that he participated in operations and used the HVO and the Military Police to commit crimes and thus significantly contributed to the JCE.⁴³⁸⁰

1411. Moreover, the Appeals Chamber rejects Stojić's contention that his functions were limited to "administrative" and "logistical" matters. To the contrary, the Trial Chamber considered that Stojić, *inter alia*: (1) ordered the mobilisation of Croatian conscripts and imposed a curfew in the HZ H-B;⁴³⁸¹ (2) issued an order to units in charge of the Military Police checkpoints in Mostar

Vol. 1, paras 574-575, 577-578. The Appeals Chamber finds that Stojić fails to show that this involvement is inconsistent with the Trial Chamber's finding on his power to make appointments.

⁴³⁷³ *Contra* Stojić's Appeal Brief, para. 140.

⁴³⁷⁴ See *supra*, para. 1405. See also Trial Judgement, Vol. 4, paras 326 ("Stojić had effective control over the activities of the components of the HZ(R) H-B armed forces"), 426 (Stojić "continued to exercise effective control over the armed forces"). Stojić challenges the underlying findings that the Trial Chamber relied on in coming to this conclusion, and the Appeals Chamber dismisses these challenges below. See *infra*, paras 1414-1415, 1418-1419, 1422-1423, 1427-1435, 1441-1453, 1456.

⁴³⁷⁵ See also *infra*, paras 1528-1530.

⁴³⁷⁶ *Popović et al.* Appeal Judgement, para. 1615; *Krajišnik* Appeal Judgement, para. 695; *Stakić* Appeal Judgement, para. 64; *Tadić* Appeal Judgement, para. 227(iii).

⁴³⁷⁷ *Popović et al.* Appeal Judgement, para. 1378; *Krajišnik* Appeal Judgement, para. 706; *Brdanin* Appeal Judgement, para. 430. See *Popović et al.* Appeal Judgement, para. 1653; *Sainović et al.* Appeal Judgement, para. 1445; *Krajišnik* Appeal Judgement, para. 695 ("It is sufficient that the accused 'perform acts that in some way are directed to the furthering' of the JCE in the sense that he significantly contributes to the commission of the crimes involved in the JCE" (internal references omitted)).

⁴³⁷⁸ See *Krajišnik* Appeal Judgement, para. 696 ("Beyond that, the law does not foresee specific types of conduct which *per se* could not be considered a contribution to the common purpose. Within these legal confines, the question of whether the accused contributed to a JCE is a question of fact to be determined on a case-by-case basis").

⁴³⁷⁹ See *Popović et al.* Appeal Judgement, paras 1544-1545 (in considering Radivoje Miletić's "technical" role in the UNPROFOR convoy notification procedure, the Appeals Chamber concluded that "[w]hether an act is 'technical' does not *per se* preclude it from being a contribution to a JCE").

⁴³⁸⁰ Stojić's Appeal Brief, paras 139-141, 145, 166; Stojić's Reply Brief, para. 37.

⁴³⁸¹ Trial Judgement, Vol. 4, para. 305, referring to Ex. P03038. See *infra*, para. 1422.

instructing them to check all vehicles leaving the town;⁴³⁸² (3) issued orders directly to the HVO, particularly with regard to ceasefires, the detention centres, the freedom of movement of humanitarian or international organisations, and the mobilisation and reinforcement of HVO troops;⁴³⁸³ (4) ordered a commanding officer to allow the passage of UNPROFOR convoys in the Central Bosnia Operating Zone (“Central Bosnia OZ”) on 23 February 1993;⁴³⁸⁴ and (5) ordered Miro Andrić, a colonel in the Main Staff, to capture the Gornji Vakuf area by the use of force, which resulted in crimes.⁴³⁸⁵

1412. Further, the Appeals Chamber considers that Stojić interprets the Trial Chamber’s finding that he “commanded and had effective control” over the HVO as a finding that he had “effective operational authority” or “effective operational control”.⁴³⁸⁶ On this issue, the Appeals Chamber considers that “commanded” necessarily means that Stojić had sufficient influence and authority over the HVO so as to be able to control its members effectively.⁴³⁸⁷ Thus, Stojić does not demonstrate that the influence and authority he obtained by his direct control over the human, financial, and logistical resources of the HVO⁴³⁸⁸ cannot be considered as a factor in determining his command authority.⁴³⁸⁹ Notably, Stojić’s command authority was not based only on his administrative and logistical functions.⁴³⁹⁰ Stojić’s argument that the Trial Chamber erroneously inferred his command authority from, *inter alia*, his administrative or logistical functions is dismissed.

(b) Stojić’s role in the establishment and organisation of the HVO

1413. Stojić submits that the Trial Chamber’s finding that he played a fundamental role in the establishment and organisation of the HVO is unsupported by the evidence, *i.e.* Exhibit P00646,

⁴³⁸² Trial Judgement, Vol. 4, para. 316, referring to Ex. P02578.

⁴³⁸³ Trial Judgement, Vol. 4, para. 306, referring to Exs. P00610, P00619, P05232, P05235, 4D00461. See also Trial Judgement, Vol. 1, para. 795, referring to Ex. P01316. See *infra*, para. 1429.

⁴³⁸⁴ Trial Judgement, Vol. 1, para. 562, referring to Ex. 2D00984.

⁴³⁸⁵ Trial Judgement, Vol. 4, paras 330, 334, referring to Ex. 4D00348. See *infra*, paras 1565-1569. In addition, the Trial Chamber found, *inter alia*, that Stojić: (1) ordered all the HZ H-B MUP military units in Mostar to be re-subordinated on 2 July 1993 (see Trial Judgement, Vol. 2, para. 703); and (2) issued orders directly to the HVO, including for the immediate halt of offensive operations against the ABiH in April 1993 (see Trial Judgement, Vol. 1, para. 562, referring to Ex. P02093).

⁴³⁸⁶ See Trial Judgement, Vol. 4, para. 312; Stojić’s Appeal Brief, paras 140-141.

⁴³⁸⁷ See *Stanišić and Župljanin Appeal Judgement*, paras 111, 734 (a failure to intervene to prevent recurrence of crimes or to halt abuses has been taken into account in assessing an accused’s contribution to a joint criminal enterprise and his intent “where the accused had some power and influence or authority over the perpetrators sufficient to prevent or halt the abuses but failed to exercise such power”).

⁴³⁸⁸ Trial Judgement, Vol. 4, paras 308, 312. See *infra*, paras 1414-1415, 1418, 1422-1423, 1427-1435, 1441-1453, 1456.

⁴³⁸⁹ See *Nahimana et al. Appeal Judgement*, para. 606. See also *Blaškić Trial Judgement*, para. 522; *Musema Trial Judgement*, para. 880.

⁴³⁹⁰ See *supra*, para. 1410.

and contradicted by the fact that the Main Staff and the HVO existed prior to his appointment.⁴³⁹¹ The Prosecution responds that the Trial Chamber's finding is supported by Exhibit P00646,⁴³⁹² and that Stojić's role in creating the Main Staff as well as evidence on its organisation was considered.⁴³⁹³

1414. The Appeals Chamber first notes that the Trial Chamber was aware that the HVO and the Main Staff existed as of April 1992,⁴³⁹⁴ whereas Stojić was appointed as the Head of the Department of Defence on 3 July 1992.⁴³⁹⁵ However, the Trial Chamber considered that while there was a chief of the Main Staff as early as April 1992, "the structure of the Main Staff was not officially introduced until September 1992"⁴³⁹⁶ and that it was not until the "close of 1992" that the HVO developed its structure.⁴³⁹⁷ Consistent with these observations, the Trial Chamber noted that on 15 September 1992, Mate Boban issued a decision establishing the overall structure of the Main Staff,⁴³⁹⁸ and that on 18 September 1992, Stojić announced its provisional establishment.⁴³⁹⁹ Moreover, the Trial Chamber considered that between September 1992 and November 1993, Stojić participated in approximately 40 Government sessions and meetings at which legislation including, *inter alia*, the amended decree on the HVO, was adopted.⁴⁴⁰⁰ The Appeals Chamber therefore considers that Stojić fails to show how the fact that the Main Staff and the HVO existed before his appointment could have impacted on the Trial Chamber's findings on his role in their establishment and organisation.

1415. Additionally, in making its finding, the Trial Chamber considered that on 24 October 1992 Stojić prepared an operations programme for the HVO which "explained the structure of the various components of the armed forces, including the Military Police, and set the objectives and the work plan for each of them".⁴⁴⁰¹ The Trial Chamber relied on Exhibit P00646 in which the operations programme for the Military Police was set out and it was noted that the operations programme for

⁴³⁹¹ Stojić's Appeal Brief, para. 147; Stojić's Reply Brief, para. 39. Stojić contends that the only evidence relied on by the Trial Chamber – Exhibit P00646 – contains no targets, objectives, or work plans, and is irrelevant to the establishment of the armed forces. Stojić's Appeal Brief, para. 147; Stojić's Reply Brief, para. 39.

⁴³⁹² Prosecution's Response Brief (Stojić), paras 107-108.

⁴³⁹³ Prosecution's Response Brief (Stojić), para. 109, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 711-712, fn. 1668. The Prosecution also submits that the Trial Chamber was aware that the Main Staff was in existence prior to the issuance of Exhibit P00646. Prosecution's Response Brief (Stojić), para. 109.

⁴³⁹⁴ The Trial Chamber noted that Petković became Chief of the Main Staff in April 1992 and that the "HVO armed forces spontaneously organised on the territory of the HZ H-B" during the first half of 1992. Trial Judgement, Vol. 1, paras 715, 780, Vol. 4, para. 651. These dates are consistent with the evidence cited by Stojić to support his contention that the Main Staff and HVO existed prior to his appointment. Stojić's Appeal Brief, fn. 373; Ex. 1D02716; Ex. P00154.

⁴³⁹⁵ Trial Judgement, Vol. 4, para. 293.

⁴³⁹⁶ Trial Judgement, Vol. 1, para. 715.

⁴³⁹⁷ Trial Judgement, Vol. 1, para. 780.

⁴³⁹⁸ Trial Judgement, Vol. 1, para. 711.

⁴³⁹⁹ Trial Judgement, Vol. 1, para. 712.

⁴⁴⁰⁰ Trial Judgement, Vol. 4, para. 297. See *infra*, paras 1509-1513.

⁴⁴⁰¹ Trial Judgement, Vol. 4, para. 299, referring to Ex. P00646.

the Main Staff was attached.⁴⁴⁰² Thus, considering the above,⁴⁴⁰³ the Appeals Chamber is not convinced by Stojić's contention that the Trial Chamber's finding was unsupported. Stojić fails to show that no reasonable trier of fact could have concluded, on the basis of this evidence and the Trial Chamber's findings, that he played a fundamental role in the establishment and organisation of the HVO. His arguments are dismissed.

(c) Stojić's responsibility to inform the HZ(R) H-B Government of military operations and to make proposals which were adopted

1416. Stojić asserts that there is no basis for the Trial Chamber's finding that he informed the Government about the military situation and made proposals about defence which were adopted.⁴⁴⁰⁴ He argues that the evidence the Trial Chamber analysed – concerning the events in Gornji Vakuf in January 1993 and in Vareš in October 1993 – merely shows that he reported on issues that were already well-known and that no decisions resulted from his reports.⁴⁴⁰⁵ Specifically, he asserts that: (1) his 19 January 1993 report on the situation in Gornji Vakuf repeated the contents of reports that had already been received by the Government;⁴⁴⁰⁶ and (2) a 4 November 1993 decision by the Government that the ODPR would be responsible for refugees from Vareš was based on information sent by the ODPR that it was already working on refugee services in the area, rather than on information provided by Stojić.⁴⁴⁰⁷ Stojić contends that any instructions issued in the remaining evidence cited related to "purely administrative matters".⁴⁴⁰⁸

1417. The Prosecution responds that, in addition to reports on the Gornji Vakuf and Vareš events, the minutes of other Government meetings show that Stojić regularly informed the Government of the military and security situation, and that decisions were made based on those briefings.⁴⁴⁰⁹

⁴⁴⁰² Ex. P00646, pp. 1-2. Exhibit P00646 also states that the operations programme for the SIS "was specially developed and as such [would] be presented by the chief of the Defence Department". Ex. P00646, p. 1.

⁴⁴⁰³ See *supra*, paras 1414-1415.

⁴⁴⁰⁴ Stojić's Appeal Brief, para. 148, referring to Trial Judgement, Vol. 4, para. 300. The Appeals Chamber interprets that where the Trial Chamber stated that Stojić "informed the HVO – both through reports and during HVO sessions – about the military and security situation on the ground and made proposals about defence which were then adopted by the HVO", (see Trial Judgement, Vol. 4, para. 300), it was referring to the political component of the HVO, *i.e.* the Government.

⁴⁴⁰⁵ Stojić's Appeal Brief, paras 148-149, referring to, *inter alia*, Exs. P01227, P01206, P01197, p. 4, 1D01354; Stojić's Reply Brief, para. 42.

⁴⁴⁰⁶ Stojić's Appeal Brief, para. 148, referring to Trial Judgement, Vol. 4, para. 300, Exs. P01227, P01206, P01197, p. 4.

⁴⁴⁰⁷ Stojić's Appeal Brief, para. 149, referring to Trial Judgement, Vol. 4, para. 300, Ex. 1D02179.

⁴⁴⁰⁸ Stojić's Appeal Brief, para. 149, referring to Exs. 1D01609, P01197, 1D01667, 1D01610, 1D01608, P00518, 2D00851, 4D00508, P05799, P05769.

⁴⁴⁰⁹ Prosecution's Response Brief (Stojić), paras 122-125, referring to, *inter alia*, Exs. P01227, pp. 1-2, 1D02179, p. 1. The Prosecution also argues that the Trial Chamber's finding is not undermined by the fact that the information presented by Stojić may have already been well-known to Government members or included in other reports. Prosecution's Response Brief (Stojić), paras 123-124.

1418. The Appeals Chamber notes that in finding that Stojić “informed the [Government] – both through reports and during [Government] sessions – about the military and security situation on the ground and made proposals about defence which were then adopted by the [Government]”,⁴⁴¹⁰ the Trial Chamber not only analysed Stojić’s reports of events in Gornji Vakuf and Vareš,⁴⁴¹¹ but also relied on the minutes of numerous meetings at which Stojić briefed the Government on military and security situations.⁴⁴¹² Turning to Stojić’s specific challenges, the Appeals Chamber notes that the Trial Chamber relied on Exhibit 1D02179 which is the minutes of the 4 November 1993 meeting at which the Government took a decision to continue measures to protect displaced Croats after a briefing of the military situation in Vareš given by Stojić.⁴⁴¹³ Stojić’s assertion that the ODPR had previously reported to the Government that it was working with refugees in Vareš does not call into question the Trial Chamber’s reliance on this exhibit to support its finding, in particular that Stojić informed the Government about the military and security situation on the ground.⁴⁴¹⁴ Moreover, Stojić’s assertion that he “merely reported on issues that were already well-known”⁴⁴¹⁵ does not undermine the Trial Chamber’s finding that he was the member of the Government responsible for informing it of military operations, and in fact did so. His argument in relation to the Trial Chamber’s reliance on his 19 January 1993 report on the situation in Gornji Vakuf is therefore also dismissed.

1419. Moreover, the Appeals Chamber notes, in particular, that the Trial Chamber relied on Exhibit 2D00851, the minutes of a 15 June 1993 Government meeting, at which Stojić gave a report on the military situation in the territory of the HZ H-B highlighting the shortage of materiel and

⁴⁴¹⁰ Trial Judgement, Vol. 4, para. 300. See Trial Judgement, Vol. 4, paras 312, 425. The Appeals Chamber interprets that where the Trial Chamber stated that Stojić “informed the HVO – both through reports and during HVO sessions – about the military and security situation on the ground and made proposals about defence which were then adopted by the HVO” (Trial Judgement, Vol. 4, para. 300), it is referring to the political component of the HVO, which is referred to as the Government by the Appeals Chamber.

⁴⁴¹¹ Trial Judgement, Vol. 4, para. 300.

⁴⁴¹² Trial Judgement, Vol. 4, fn. 707, citing Exs. P01197, p. 4 (the Government sent encouragement to the HVO and Croatian population in Gornji Vakuf on the basis of a report on the military situation submitted by the Department of Defence during a meeting attended by Stojić), P01227, pp. 1-2 (Stojić reported on the situation in Gornji Vakuf and that Muslim forces were being depicted in a positive light and proposed that measures be taken to counter misinformation in the media), 1D01609, pp. 1-2 (Government decisions were made after Stojić’s involvement in discussions on the implementation of the Vance-Owen Plan, recruitment, and materiel shortages), 1D01667, p. 2 (Stojić reported about the military and security situation in the HZ H-B), 1D01610, pp. 1-2 (a draft decision on troop mobilisation submitted by the Department of Defence was adopted, and Stojić reported on the military and security situation in Central Bosnia), 1D01608, pp. 1-3 (Stojić reported about the current military and security situation in the HZ H-B), 4D00508, p. 1, P05769/P05799, p. 2 (Stojić, along with Praljak and Petković, submitted a report on the military and security situation and warned of the harmful consequences of inconsistent implementation of regulations on the combat readiness and morale of the soldiers, after which the Government issued a decision for consistent implementation), 2D00851, pp. 1, 3 (Stojić gave a report on the military situation highlighting the shortage of materiel and technical equipment and made proposals which were upheld by the Government), P00518 (report from Stojić on Department of Defence activities including, *inter alia*: (1) drafting documents for the functioning of the department such as the Decree on the Treatment of Persons Captured in Armed Conflicts in the HZ H-B and Regulations on Military Discipline; (2) dividing the military into OZs; (3) forming brigades; and (4) establishing training centres).

⁴⁴¹³ Trial Judgement, Vol. 4, fn. 707, citing Ex. 1D02179, pp. 1-2.

⁴⁴¹⁴ Trial Judgement, Vol. 4, para. 312.

technical equipment. Notably, at this meeting Stojić made proposals which were upheld by the Government.⁴⁴¹⁶ Stojić's assertion that there is no basis for the Trial Chamber's finding that he made proposals about defence which were adopted is, therefore, dismissed. To the extent that Stojić argues that his reports and proposals concerned "purely administrative issues", the Appeals Chamber recalls its finding that he has not shown that an administrative role cannot evidence command authority.⁴⁴¹⁷ Thus, Stojić fails to show an error and the Appeals Chamber dismisses his arguments.

(d) Stojić's authority to send military-related Government decisions through the military chain of command

1420. Stojić challenges the Trial Chamber's reliance on him forwarding Government decisions to the Main Staff,⁴⁴¹⁸ as the three orders it cited show that he forwarded them within his administrative competence.⁴⁴¹⁹ Specifically, Stojić submits that he forwarded one order only as an "administrative conduit"⁴⁴²⁰ and that the other two orders were co-signed by him because they contained administrative or logistical matters.⁴⁴²¹ He argues that forwarding decisions made by others does not amount to effective control.⁴⁴²² Stojić asserts that reliance on orders that he merely co-signed was misplaced as they do not prove that he, as opposed to the other signatory, had effective control.⁴⁴²³

1421. The Prosecution responds that the Trial Chamber reasonably relied on evidence showing that Stojić did not just "forward decisions", but also enforced military-related Government decisions on matters beyond administration and logistics.⁴⁴²⁴

⁴⁴¹⁵ Stojić's Appeal Brief, para. 148.

⁴⁴¹⁶ Ex. 2D00851, pp. 1, 3.

⁴⁴¹⁷ See *supra*, paras 1410-1412. See also *supra*, para. 1401.

⁴⁴¹⁸ Stojić's Appeal Brief, paras 143, 150, referring to Trial Judgement, Vol. 4, paras 304-305.

⁴⁴¹⁹ Stojić's Appeal Brief, paras 143, 150, referring to Exs. P01140, P03038, P03128; Stojić's Reply Brief, para. 40.

Stojić argues that he was unable to issue operational orders. Stojić's Appeal Brief, para. 150.

⁴⁴²⁰ Stojić's Appeal Brief, para. 150, referring to Ex. P01140.

⁴⁴²¹ Stojić's Appeal Brief, para. 150, referring to Exs. P03038, P03128.

⁴⁴²² Stojić's Appeal Brief, paras 143, 150.

⁴⁴²³ Stojić's Reply Brief, para. 38.

⁴⁴²⁴ Prosecution's Response Brief (Stojić), paras 110-113. The Prosecution submits, as examples, that: (1) Stojić implemented the 15 January 1993 Ultimatum by ordering ABiH units to subordinate to the HVO, and rather than merely acting as an "administrative conduit", he instructed that he personally receive reports every eight hours (Prosecution's Response Brief (Stojić), para. 111, referring to Trial Judgement, Vol. 4, para. 304, Exs. P01140, P01146); (2) in June 1993, Stojić implemented the 30 June 1993 Joint Proclamation by ordering mobilisation and imposing a curfew (Prosecution's Response Brief (Stojić), para. 112, referring to Trial Judgement, Vol. 4, para. 305, Ex. P03038); and (3) in July 1993, Stojić and Petković ordered HVO units to carry out tasks "with the aim of eliminating" Muslim troops in the South-East OZ, and there is no indication that Stojić signed the order strictly due to logistical tasks within it (Prosecution's Response Brief (Stojić), para. 113, citing Ex. P03128). The Prosecution argues that Exhibits P01140 and P03128 are combat orders that exemplify Stojić's authority over military operations. Prosecution's Response Brief (Stojić), para. 114.

1422. The Trial Chamber, in analysing Stojić's role within the military chain of command, recalled that "as Head of the Department of Defence, Bruno Stojić forwarded [the] decisions of the Government of the HZ H-B to the HVO Main Staff which then forwarded them to the commanders of the units deployed on the ground to implement them."⁴⁴²⁵ In this regard, the Trial Chamber considered a chain of orders in which Stojić was instructed to implement a decision issued by Prlić that certain ABiH units subordinate themselves to the HVO, Stojić ordered the Main Staff and the Military Police Administration to carry out Prlić's decision, and Petković forwarded Stojić's order to the commanders of the OZs.⁴⁴²⁶ The Trial Chamber further noted that following the 30 June 1993 Joint Proclamation from Prlić and Stojić in relation to defending against ABiH attacks: (1) Stojić, as Head of the Department of Defence, ordered the mobilisation of Croatian conscripts and imposed a curfew in the HZ H-B, after which Čorić issued a further implementation order;⁴⁴²⁷ and (2) Stojić and Petković co-signed an order on 2 July 1993 to all HVO units in the South-East OZ to "eliminate" the Muslim troops in the area.⁴⁴²⁸ Thus, the Appeals Chamber is not convinced by Stojić's contention that he merely forwarded Government decisions as an "administrative conduit".⁴⁴²⁹ Notably, in Stojić's order for the implementation of Prlić's decision, he also ordered that chiefs of the Main Staff and the Military Police Administration would be responsible to him regarding the implementation of his order.⁴⁴³⁰ The Appeals Chamber considers that a reasonable trier of fact could have concluded that these orders cited by the Trial Chamber show that Stojić not only forwarded them, but also implemented and enforced Government orders.⁴⁴³¹

1423. The Appeals Chamber is also not convinced by Stojić's submission that he merely co-signed some of the orders as he does not show that any authority his co-signatories had precludes him from also having authority.⁴⁴³² Moreover, the Appeals Chamber dismisses elsewhere Stojić's argument that an administrative role cannot evidence command authority.⁴⁴³³ Therefore, Stojić fails to demonstrate that the Trial Chamber unreasonably considered his role in forwarding and implementing Government decisions as a relevant factor in determining his command authority over the HVO. His arguments are dismissed.

⁴⁴²⁵ Trial Judgement, Vol. 4, para. 304.

⁴⁴²⁶ Trial Judgement, Vol. 4, para. 304, referring to, *inter alia*, Exs. P01146, P01140, P01139.

⁴⁴²⁷ Trial Judgement, Vol. 4, para. 305, referring to Exs. P03038, P03077.

⁴⁴²⁸ Trial Judgement, Vol. 4, para. 305, referring to Ex. P03128.

⁴⁴²⁹ Stojić's Appeal Brief, para. 150.

⁴⁴³⁰ Ex. P01140, pp. 1-2.

⁴⁴³¹ See Trial Judgement, Vol. 4, para. 425 ("Stojić took decisions related to military operations and had them implemented through the armed forces' chain of command", and "forwarded HVO decisions down the chain of command").

⁴⁴³² See Ex. P03038 (co-signed by Prlić); Ex. P03128 (co-signed by Petković).

⁴⁴³³ See *supra*, para. 1412. See also *supra*, para. 1401.

(e) Stojić's authority to issue orders directly to the HVO and to ensure that they were carried out(i) Arguments of the Parties

1424. Stojić argues that the Trial Chamber unreasonably found that he could issue operational orders to the HVO and ensure they were carried out.⁴⁴³⁴ Stojić submits that the Trial Chamber erred by disregarding previous relevant conclusions to the contrary, including its findings that: (1) the Head of the Department of Defence was not *de jure* part of the military chain of command;⁴⁴³⁵ (2) only “administrative and technical tasks” were assigned to the Department of Defence;⁴⁴³⁶ (3) the “classic” chain of command proceeded through the Main Staff;⁴⁴³⁷ (4) the “few occasions” on which Stojić issued orders did not “upset the proper functioning of the military chain of command”;⁴⁴³⁸ (5) the Main Staff was the pivotal link in the chain of command;⁴⁴³⁹ and (6) key parts of the armed forces – the VOS and the Anti-Terrorist Groups (“ATGs”) – were not *de jure* within the Department of Defence.⁴⁴⁴⁰ He also asserts that the orders cited by the Trial Chamber were confined to mostly logistical matters, were not combat orders, and do not demonstrate that he had overall authority.⁴⁴⁴¹

1425. Stojić further contends that the conclusion that he issued orders on specified topics is unsupported by the evidence cited.⁴⁴⁴² He specifically asserts that: (1) Exhibit P00610 is a report sent by Ćorić to the HVO generally without referring to any order issued by Stojić and was not addressed to him; (2) of the orders relating to mobilisation, namely Exhibits P05232 and P05235, only one was signed by him but was corrected and signed by Praljak; (3) Exhibit P00582 is an order to withdraw stamps which is an administrative activity; (4) Exhibit 4D00461 is “inauthentic and unreliable”; and (5) Exhibits P02292 and P03026 were merely requests for instructions addressed to Stojić and Petković without any evidence that Stojić responded.⁴⁴⁴³ Stojić also argues that the Trial Chamber erroneously relied on Article 30 of the Amended Decree Regarding the Armed Forces of 17 October 1992 (“Amended 3 July 1992 Decree on the Armed Forces”), which indicates that certain command responsibilities could be delegated to the Head of the Department of Defence,

⁴⁴³⁴ Stojić's Appeal Brief, para. 151.

⁴⁴³⁵ Stojić's Appeal Brief, para. 152, referring to Trial Judgement, Vol. 4, para. 306.

⁴⁴³⁶ Stojić's Appeal Brief, para. 152, referring to Trial Judgement, Vol. 1, para. 559.

⁴⁴³⁷ Stojić's Appeal Brief, para. 152, referring to Trial Judgement, Vol. 1, para. 791.

⁴⁴³⁸ Stojić's Appeal Brief, para. 152, referring to Trial Judgement, Vol. 1, para. 796.

⁴⁴³⁹ Stojić's Appeal Brief, para. 152, referring to Trial Judgement, Vol. 1, para. 708.

⁴⁴⁴⁰ Stojić's Appeal Brief, para. 152, referring to Trial Judgement, Vol. 4, paras 301, 307; Stojić's Reply Brief, para. 40. Stojić also asserts that the SIS did not send regular reports to the Department of Defence. Stojić's Appeal Brief, para. 152, referring to Trial Judgement, Vol. 4, para. 302.

⁴⁴⁴¹ Stojić's Appeal Brief, para. 153; Stojić's Reply Brief, para. 41.

⁴⁴⁴² Stojić's Appeal Brief, paras 153-154, referring to Trial Judgement, Vol. 4, para. 306 (“Stojić [...] did issue orders [...] particularly with regard to the ceasefires, the detention centres, the troop movements, the reorganisation of the military units, the assignment of the troops as reinforcements for other units, freedom of movement of humanitarian or international organisations and the mobilisation of HVO troops”).

because no such delegation occurred.⁴⁴⁴⁴ He further contends that no evidence was cited to support the finding that he could ensure that his orders were carried out⁴⁴⁴⁵ and that the Trial Chamber disregarded its own conclusions that orders he issued were not followed.⁴⁴⁴⁶

1426. The Prosecution responds that Stojić issued orders to the HVO and could ensure their compliance. It argues that: (1) the Trial Chamber found that Stojić issued orders on a range of matters;⁴⁴⁴⁷ (2) Stojić's challenges to the Trial Chamber's reliance on certain orders issued by him are unpersuasive;⁴⁴⁴⁸ and (3) regardless of whether Boban formally delegated command responsibilities under Article 30 of the Amended 3 July 1992 Decree on the Armed Forces, Stojić did issue orders directly to the HVO, thus demonstrating his command authority.⁴⁴⁴⁹ The Prosecution contends that Stojić merely offers his own interpretation of the evidence without showing an error.⁴⁴⁵⁰

(ii) Analysis

1427. The Trial Chamber was satisfied that the "evidence showed that even though the Head of the Department of Defence was not *de jure* part of the military chain of command, Bruno Stojić, as head of that department, did issue orders directly to the HZ(R) H-B armed forces".⁴⁴⁵¹ Stojić challenges this conclusion by asserting that the Trial Chamber disregarded its own previous relevant conclusions.⁴⁴⁵² In this respect, the Appeals Chamber first notes that Stojić is overly broad in asserting that the Trial Chamber found that "only 'administrative and technical tasks' were assigned to the [Department of Defence]".⁴⁴⁵³ In fact, the Trial Chamber merely observed that "administrative and logistical tasks" were assigned to the Department of Defence by Article 10 of the Amended 3 July 1992 Decree on the Armed Forces, but did not suggest that these were the "only" tasks performed by the Department of Defence.⁴⁴⁵⁴ Stojić ignores the Trial Chamber's subsequent analysis which considered the authority held by the Head of the Department of Defence beyond Article 10 of the Amended 3 July 1992 Decree on the Armed Forces. In particular, it considered that, theoretically, the President of the HZ H-B could delegate certain command responsibilities to the Head of the Department of Defence and that several orders from Stojić

⁴⁴⁴³ Stojić's Appeal Brief, para. 154.

⁴⁴⁴⁴ Stojić's Appeal Brief, para. 157, referring to Trial Judgement, Vol. 1, para. 562, Vol. 4, para. 306.

⁴⁴⁴⁵ Stojić's Appeal Brief, para. 155, referring to Trial Judgement, Vol. 2, para. 2081, Vol. 4, para. 1039.

⁴⁴⁴⁶ Stojić's Appeal Brief, para. 155, referring to Trial Judgement, Vol. 2, para. 2081, Vol. 4, paras 480, 1039.

⁴⁴⁴⁷ Prosecution's Response Brief (Stojić), paras 115-117.

⁴⁴⁴⁸ Prosecution's Response Brief (Stojić), paras 118-119, referring to Stojić's Appeal Brief, para. 154.

⁴⁴⁴⁹ Prosecution's Response Brief (Stojić), para. 120.

⁴⁴⁵⁰ Prosecution's Response Brief (Stojić), paras 142-143.

⁴⁴⁵¹ Trial Judgement, Vol. 4, para. 306. See Trial Judgement, Vol. 1, para. 565.

⁴⁴⁵² Stojić's Appeal Brief, paras 151-152.

⁴⁴⁵³ Stojić's Appeal Brief, para. 152 (emphasis added).

⁴⁴⁵⁴ Trial Judgement, Vol. 1, para. 559, referring to Ex. P00588, Art. 10, p. 3.

addressed directly to the HVO had been admitted into evidence.⁴⁴⁵⁵ Thus, Stojić fails to show that the Trial Chamber later disregarded this observation, and his argument is dismissed. Moreover, the Appeals Chamber has already found that Stojić has not demonstrated that an administrative or logistical role cannot evidence command authority.⁴⁴⁵⁶ Therefore, Stojić does not show that the Trial Chamber erroneously considered his orders on logistical matters as an indicator of his control authority. Stojić's argument is dismissed.

1428. Turning to Stojić's submissions in relation to the Trial Chamber's findings on the functioning of the HVO's chain of command,⁴⁴⁵⁷ the Appeals Chamber notes that while the Trial Chamber held that "the classic chain of command of the armed forces proceeded from the Main Staff, which was in direct contact with the OZs, which directed the HVO brigades",⁴⁴⁵⁸ it specifically found that exceptions occurred whereby Stojić issued orders directly to the OZs and brigade commanders.⁴⁴⁵⁹ Further, Stojić takes the Trial Chamber's finding that it was "incontrovertible that orders intended for the armed forces customarily flowed through the chain of command, whose pivotal link was the Main Staff"⁴⁴⁶⁰ out of context. In making this finding, the Trial Chamber was addressing an assertion that Boban "bypassed" the Main Staff "when it suited him" to issue orders directly to the HVO.⁴⁴⁶¹ In this context, the Trial Chamber again noted that while orders "customarily flowed" through the Main Staff, there were exceptions whereby orders were transmitted directly to the HVO without going through the Main Staff.⁴⁴⁶² The Appeals Chamber therefore considers that Stojić fails to show how the Trial Chamber's finding that the Main Staff was the pivotal link within the military chain of command undermines the Trial Chamber's finding that Stojić had the authority to issue orders directly to the HVO. Moreover, Stojić does not substantiate his assertion that the Trial Chamber's findings that the VOS and ATGs were not within the hierarchy of the Department of Defence and that the SIS did not send regular reports to the Department of Defence are inconsistent with the finding that Stojić issued orders to the HVO.⁴⁴⁶³ Stojić's arguments are thus dismissed.

1429. The Appeals Chamber will now turn to Stojić's challenges to the Trial Chamber's reliance on certain evidence in finding that he issued orders directly to the HVO, "particularly with regard to the ceasefires, the detention centres, the troop movements, the reorganisation of the military units, the assignment of the troops as reinforcements for other units, freedom of movement of

⁴⁴⁵⁵ Trial Judgement, Vol. 1, paras 560-565. See *infra*, para. 1433.

⁴⁴⁵⁶ See *supra*, para. 1412. See also *supra*, para. 1401.

⁴⁴⁵⁷ See *supra*, para. 1424.

⁴⁴⁵⁸ Trial Judgement, Vol. 1, para. 791.

⁴⁴⁵⁹ Trial Judgement, Vol. 1, para. 795. See Trial Judgement, Vol. 1, paras 562, 565, Vol. 4, para. 306.

⁴⁴⁶⁰ Trial Judgement, Vol. 1, para. 708.

⁴⁴⁶¹ Trial Judgement, Vol. 1, paras 701, 704, 708.

⁴⁴⁶² Trial Judgement, Vol. 1, para. 708.

humanitarian or international organisations and the mobilisation of HVO troops”.⁴⁴⁶⁴ The Appeals Chamber notes that Exhibit P00610, a report by Ćorić to the HVO, indicates that troop movements had been implemented “[b]y order from the head of the Defence Department”.⁴⁴⁶⁵ The Appeals Chamber further notes that Exhibit P05232 is an order signed by Stojić not only for immediate mobilisation of forces “following the incursion of MOS /Muslim armed forces/ terrorist groups”, but also for the mobilised forces to be used to “eliminate the infiltrated terrorist groups without compromise”.⁴⁴⁶⁶ The content of this order signed by Stojić is almost identical to that of Exhibit P05235 issued on the same day by Praljak.⁴⁴⁶⁷ In challenging the Trial Chamber’s reliance on this order, Stojić asserts that Exhibit P05235 shows that it was Praljak, not him, who had operational command.⁴⁴⁶⁸ However, the Appeals Chamber notes that not only does Praljak’s order state that it was being issued “with regard to the Order from the Head of the Defence Department”,⁴⁴⁶⁹ but also that Praljak testified that he issued his order “immediately pursuant” to Stojić’s order.⁴⁴⁷⁰ Praljak’s testimony that he made a correction to Stojić’s original order⁴⁴⁷¹ does not undermine the Trial Chamber’s finding in relation to Stojić’s authority to issue such orders.⁴⁴⁷²

1430. The Appeals Chamber further notes that in Exhibit P00582, Zdravko Šagolj, commander of the Herceg Stjepan Brigade, noted that he had acted “[i]n line with orders issued verbally by Mr. Bruno STOJIĆ”.⁴⁴⁷³ Stojić’s assertion that this order is “a clear example of administrative activity”,⁴⁴⁷⁴ does not satisfy the Appeals Chamber that the Trial Chamber erred in relying on it to find that Stojić issued orders directly to the HVO.⁴⁴⁷⁵ Finally, by only cross-referencing another ground of appeal, Stojić does not show that the Trial Chamber erred in relying on Exhibit 4D00461.⁴⁴⁷⁶ Thus, considering the above, Stojić fails to show that no reasonable trier of fact could have concluded on the basis of the evidence discussed, as well as other relevant evidence cited by the Trial Chamber,⁴⁴⁷⁷ that he issued orders directly to the HVO on the specified topics.

⁴⁴⁶³ See Stojić’s Appeal Brief, para. 152.

⁴⁴⁶⁴ Trial Judgement, Vol. 4, para. 306. See Stojić’s Appeal Brief, para. 154.

⁴⁴⁶⁵ Ex. P00610, p. 1. *Contra* Stojić’s Appeal Brief, para. 154.

⁴⁴⁶⁶ Ex. P05232, p. 1.

⁴⁴⁶⁷ Ex. P05235 (stating that the mobilised forces are to be used to “destroy, in an uncompromising manner, the MOS terrorist groups that have infiltrated /the area/”).

⁴⁴⁶⁸ Stojić’s Appeal Brief, para. 154.

⁴⁴⁶⁹ Ex. P05235, p. 1.

⁴⁴⁷⁰ Slobodan Praljak, T. 42081 (25 June 2009).

⁴⁴⁷¹ Praljak testified that Stojić’s order mistakenly referred to “Mostar” and that he corrected it to “Ljubuski” and clarified that he “signed it to indicate that [he] had made the correction”. Slobodan Praljak, T. 42081-42082 (25 June 2009).

⁴⁴⁷² *Contra* Stojić’s Appeal Brief, para. 154.

⁴⁴⁷³ Ex. P00582.

⁴⁴⁷⁴ Stojić’s Appeal Brief, para. 154.

⁴⁴⁷⁵ See *supra*, para. 1412. See also *supra*, para. 1401.

⁴⁴⁷⁶ See *infra*, paras 1676, 1681-1684 (finding that the Trial Chamber reasonably considered Exhibit 4D00461 as reliable).

⁴⁴⁷⁷ See Trial Judgement, Vol. 1, fns 1362-1364, Vol. 4, fn. 725.

1431. Moreover, the Appeals Chamber notes that the Trial Chamber did not disregard its finding that Stojić was not *de jure* part of the military chain of command, as Stojić asserts.⁴⁴⁷⁸ Rather the Trial Chamber specifically considered this argument before it found that the above described orders⁴⁴⁷⁹ provided evidence that “even if the Head of the Department of Defence did not fit *de jure* into the chain of military command, Bruno Stojić, as Head of the Department of Defence, did dispatch orders directly to [the HVO]”.⁴⁴⁸⁰ Stojić fails to show an error and his argument is dismissed.

1432. In addition to concluding that Stojić issued orders to the HVO, the Trial Chamber also considered, on the basis of Exhibits P02292 and P03026, that “on at least two occasions, the commander of the forward command post of the South-East OZ requested instructions from both Bruno Stojić and Milivoj Petković about the conduct of the military operations in central Bosnia and Herzegovina”.⁴⁴⁸¹ The Appeals Chamber notes that the Trial Chamber assessed these requests in the context of the evidence cited above and considers that Stojić has not shown that it erred in considering that they support its finding on his ability to issue operational orders.⁴⁴⁸² Stojić’s assertion that there is no evidence that he responded to these requests is irrelevant. Thus, his argument is dismissed.

1433. Furthermore, Stojić has not demonstrated that the Trial Chamber erred by relying on Article 30 of the Amended 3 July 1992 Decree on the Armed Forces to find that Boban, as Supreme Commander of the Armed Forces, could delegate certain command responsibilities to the Head of the Department of Defence.⁴⁴⁸³ Contrary to Stojić’s assertion that no such delegation occurred,⁴⁴⁸⁴ the Trial Chamber made no finding on this issue, but rather, only noted that it had no evidence referring to a transfer of authority from Boban to Stojić.⁴⁴⁸⁵ It then considered that it had received “several orders” from Stojić addressed directly to the HVO.⁴⁴⁸⁶ Within this context, Stojić has not shown that no reasonable trier of fact could have concluded that Article 30 of the Amended 3 July 1992 Decree on the Armed Forces provided some support for a finding that Stojić issued orders directly to the HVO.⁴⁴⁸⁷

⁴⁴⁷⁸ See Stojić’s Appeal Brief, para. 152, referring to Trial Judgement, Vol. 4, para. 306.

⁴⁴⁷⁹ See *supra*, paras 1428-1429.

⁴⁴⁸⁰ Trial Judgement, Vol. 1, para. 565. See Trial Judgement, Vol. 1, paras 560-564, Vol. 4, para. 306. See also *supra*, para. 1429.

⁴⁴⁸¹ Trial Judgement, Vol. 4, para. 306, referring to Exs. P02292, P03026.

⁴⁴⁸² See Stojić’s Appeal Brief, para. 154.

⁴⁴⁸³ Trial Judgement, Vol. 1, para. 560, referring to, *inter alia*, Ex. P00588, p. 10.

⁴⁴⁸⁴ Stojić’s Appeal Brief, para. 157.

⁴⁴⁸⁵ Trial Judgement, Vol. 1, para. 562.

⁴⁴⁸⁶ Trial Judgement, Vol. 1, para. 562.

⁴⁴⁸⁷ See Trial Judgement, Vol. 4, para. 306 & fn. 725, referring to, *inter alia*, Ex. P00588.

1434. Finally, the Appeals Chamber notes that the Trial Chamber did not make a general conclusion that Stojić's orders were not followed.⁴⁴⁸⁸ Rather, in the findings referenced by Stojić the Trial Chamber noted that: (1) it had no evidence that the HVO took responsibility for the detention of Muslim men following an order from Stojić transferring the management of their detention from the 1st Knez Domagoj Brigade to the local HVO;⁴⁴⁸⁹ (2) Praljak intervened when an HVO unit blocked the passage of an UNPROFOR convoy that had an authorisation for passage issued by Stojić;⁴⁴⁹⁰ and (3) it had no evidence that the Detention Commission which was created on the order of Stojić,⁴⁴⁹¹ accomplished the tasks assigned to it.⁴⁴⁹² The Appeals Chamber is not convinced this undermines the Trial Chamber's finding that Stojić had the authority to ensure that his orders were carried out. The Appeals Chamber dismisses elsewhere a similar challenge by Stojić that the Trial Chamber disregarded instances where his orders were disobeyed and where he relies on the same sections of the Trial Judgement.⁴⁴⁹³ Additionally, as the above evidence demonstrates,⁴⁴⁹⁴ Stojić's orders were regularly followed.⁴⁴⁹⁵ Stojić has not shown that the Trial Chamber erred in finding that he had the authority to not only issue orders, but also to ensure that they were followed.

1435. For the above reasons, the Appeals Chamber dismisses Stojić's contention that the Trial Chamber erred in finding that he had the authority to issue orders directly to the HVO and to ensure that they were carried out.

(f) Stojić's responsibility for the human, financial, and logistical resources of the HVO

(i) Arguments of the Parties

1436. Stojić challenges the Trial Chamber's finding that he "directly controlled" the human, financial, and logistical resources of the HVO.⁴⁴⁹⁶ He contends that the evidence relied on by the Trial Chamber does not support a finding that he had direct control over finances as: (1) Exhibit 2D01443 predates the JCE; (2) Exhibit P04399/3D01206 is a request that Stojić be informed of financial problems but does not show that he had the power to resolve those problems;

⁴⁴⁸⁸ *Contra* Stojić's Appeal Brief, para. 155.

⁴⁴⁸⁹ Trial Judgement, Vol. 2, para. 2081.

⁴⁴⁹⁰ Trial Judgement, Vol. 4, para. 480.

⁴⁴⁹¹ Trial Judgement, Vol. 1, para. 622. The Commission for Prisons and Detention Centres was a commission created on 6 August 1993 by the Department of Defence to take charge of all detention units and prisons in which POWs and military detainees were held, and which began its work as of 10 August 1993 ("Detention Commission"). Trial Judgement, Vol. 1, paras 622, 624, referring to, *inter alia*, Ex. P03995.

⁴⁴⁹² Trial Judgement, Vol. 4, para. 1039.

⁴⁴⁹³ See *infra*, para. 1487 & fn. 4743. See Stojić's Appeal Brief, para. 155, referring to Trial Judgement, Vol. 1, para. 772, Vol. 2, para. 2081, Vol. 4, paras 480, 1039.

⁴⁴⁹⁴ See *supra*, para. 1429.

⁴⁴⁹⁵ See, e.g., Trial Judgement, Vol. 4, paras 304-305, 330, 334, 354-355.

(3) Exhibit 2D01246 demonstrates that technical resources for the care of the wounded were provided by the municipal HVOs, rather than by him; (4) Exhibit P06807 relates to the administrative redistribution of telephone lines; and (5) Exhibit P00970 is a report on Military Police activities, which is irrelevant, and it was not proven that it was sent to Stojić.⁴⁴⁹⁷

1437. In relation to logistics, Stojić contends that the evidence of Witness Christopher Beese, which the Trial Chamber relied on to conclude that Stojić bought arms for the HVO from German arms dealers, was uncorroborated and speculative.⁴⁴⁹⁸ He also argues that a finding that he was authorised to request weapons and materiel from the HV is unsupported as Exhibits P01164 and 2D00809 are irrelevant, and Exhibit P03998, is but one request, “made in a state of emergency”.⁴⁴⁹⁹ Stojić similarly submits that the Trial Chamber’s finding that he organised the purchase of weapons from the VRS is not supported as the evidence only establishes that he was aware of the purchase of weapons and occasionally relayed information about pricing.⁴⁵⁰⁰

1438. Stojić further argues that the Trial Chamber’s underlying finding that he directly financed the HVO disregards “clearly relevant” evidence and findings which established that the pertinent funding came from the Department of Finance or the municipalities.⁴⁵⁰¹ Specifically, he contends that the Trial Chamber disregarded: (1) Exhibits 1D01609, 1D01934, P06689, and P08118, all of which indicate that by default the Department of Finance controlled the finances of the armed forces; (2) 25 exhibits, including Exhibit 1D03036, which all indicate that the HVO was financed by the municipalities; and (3) his trial submissions as well as Witness Petković’s testimony.⁴⁵⁰² Stojić further challenges the Trial Chamber’s underlying findings that: (1) he was responsible for preparing the budget of the Department of Defence, asserting that the Trial Chamber relied on one paragraph in Exhibit 2D02000 but disregarded the following paragraph which indicated that no budget was prepared, and that Exhibit P08118 “confirms that the lack of a budget contributed to a significant lack of clarity on the financing of the HVO”;⁴⁵⁰³ (2) he contacted the Croatian Department of Defence for the payment of wages, arguing that Exhibits P10291, P00910, and

⁴⁴⁹⁶ Stojić’s Appeal Brief, para. 158, referring to Trial Judgement, Vol. 4, paras 308-310. See Stojić’s Appeal Brief, para. 143.

⁴⁴⁹⁷ Stojić’s Appeal Brief, para. 160.

⁴⁴⁹⁸ Stojić’s Appeal Brief, para. 161, referring to Christopher Beese, T. 5386 (23 Aug 2006). Stojić asserts that none of the other evidence cited by the Trial Chamber – namely the evidence of Witnesses Stipo Buljan, BF, and Davor Korac – corroborates Beese’s evidence. Stojić’s Appeal Brief, para. 161 & fn. 431.

⁴⁴⁹⁹ Stojić’s Appeal Brief, para. 162. Stojić asserts that Exhibit P03998 does not prove that he regularly sent requests to the HV or generally had the authority to do so. Stojić’s Appeal Brief, para. 162.

⁴⁵⁰⁰ Stojić’s Appeal Brief, para. 162; Stojić’s Reply Brief, para. 43. Stojić suggests that the cited evidence of Witness Radmilo Jasak was not relevant to weapons procurement. Stojić’s Appeal Brief, para. 162, fn. 434, referring to Radmilo Jasak, T. 49026 (27 Jan 2010).

⁴⁵⁰¹ Stojić’s Appeal Brief, para. 159, referring to Trial Judgement, Vol. 1, paras 675, 679, 681; Stojić’s Reply Brief, para. 43.

⁴⁵⁰² Stojić’s Appeal Brief, para. 159.

P10290 were not signed by him and Exhibits P00098 and P00910, as well as the testimony of Witness Miroslav Rupčić, do not relate to loan requests from Croatia;⁴⁵⁰⁴ and (3) he could authorise others to withdraw money from HVO bank accounts.⁴⁵⁰⁵

1439. Finally, Stojić asserts that the Trial Chamber's finding that he was responsible for financing the training centres and mobilising the HVO is unsupported by the evidence it relied on.⁴⁵⁰⁶ He argues that: (1) Exhibits P00907, P00965, P04074, 2D01459, and P01350 provide no support; and (2) Exhibit 3D01460, a request sent to both Stojić and Petković for changes to the military recruitment and admissions process, illustrates a mere administrative competence.⁴⁵⁰⁷ Moreover, Stojić asserts that the Trial Chamber misrepresented Witness Praljak's testimony. He argues that when Praljak said that the Government, through Stojić, looked after the army's training, food, and mobilisation, his point was that Stojić did not possess operational authority. Stojić adds that Praljak clearly did not believe that he was under Stojić's command.⁴⁵⁰⁸

1440. The Prosecution responds that the Trial Chamber reasonably found that Stojić directly controlled the human, financial, and logistical aspects of the HVO.⁴⁵⁰⁹ It argues that the Trial Chamber did not find that Stojić "bought arms for the HVO from German arms dealers", but rather that he "had to see to the logistical needs, in material and weapons, of the HVO", a matter, it adds, that Stojić conceded at trial.⁴⁵¹⁰ The Prosecution further argues that: (1) Stojić's role in the procurement of weapons was supported by the evidence;⁴⁵¹¹ (2) the Trial Chamber relied on various pieces of evidence to find that Stojić was authorised to request weapons and materiel from the HV;⁴⁵¹² and (3) the evidence relied on by the Trial Chamber shows that Stojić was heavily involved in organising weapons purchases from the VRS.⁴⁵¹³ It asserts that as the Trial Chamber was mindful of Stojić's trial arguments regarding the funding of the HVO and the evidence cited supports the

⁴⁵⁰³ Stojić's Appeal Brief, para. 163, referring to Trial Judgement, Vol. 4, para. 309; Stojić's Reply Brief, para. 43. Stojić argues that "[n]o relevant budget was admitted into evidence". Stojić's Appeal Brief, para. 163.

⁴⁵⁰⁴ Stojić's Appeal Brief, para. 164. Stojić submits that the testimony of Witness Davor Marijan also does not relate to loan requests from Croatia. Stojić's Appeal Brief, para. 164.

⁴⁵⁰⁵ Stojić's Appeal Brief, para. 164. Stojić asserts that: (1) Exhibit 2D01352, an HVO payroll he signed, simply lists the employees of the Office of the Head of the Department of Defence; (2) Exhibit P10301 and the testimony of Rupčić evidences a single incident in which Stojić requested a cash withdrawal, which was authorised by Rupčić, and does not, on its own, establish general authority; and (3) Exhibit P00098 only establishes that he was one of five individuals authorised to sign payment orders. Stojić's Appeal Brief, para. 164.

⁴⁵⁰⁶ Stojić's Appeal Brief, para. 165, referring to Trial Judgement, Vol. 4, para. 310.

⁴⁵⁰⁷ Stojić's Appeal Brief, para. 165.

⁴⁵⁰⁸ Stojić's Appeal Brief, para. 165.

⁴⁵⁰⁹ Prosecution's Response Brief (Stojić), paras 127, 132, 139.

⁴⁵¹⁰ Prosecution's Response Brief (Stojić), para. 127, referring to Stojić's Final Brief, para. 254.

⁴⁵¹¹ Prosecution's Response Brief (Stojić), paras 127-128. The Prosecution further submits that Stojić's challenges to the evidence cited by the Trial Chamber in footnote 729 of Volume 4 of the Trial Judgement "misapprehend[] the Judgement". Prosecution's Response Brief (Stojić), para. 138.

⁴⁵¹² Prosecution's Response Brief (Stojić), para. 129, referring to Exs. P03998, P01164, P00098.

⁴⁵¹³ Prosecution's Response Brief (Stojić), para. 130.

Trial Chamber's finding, Stojić fails to show any error.⁴⁵¹⁴ Moreover, the Prosecution submits that Stojić ignores Exhibit P01521 which further supports the Trial Chamber's finding that he was responsible for the HVO's finances.⁴⁵¹⁵ It also submits that Stojić fails to show any error regarding the remaining Trial Chamber findings that he challenges in this regard.⁴⁵¹⁶

(ii) Analysis

a. The logistical needs of the HVO

1441. In finding that Stojić was "responsible for all the logistical and financial aspects and for the human resources of the armed forces"⁴⁵¹⁷ the Trial Chamber first considered that "Stojić had to see to the logistical needs, in materiel and weapons, of the HVO armed forces."⁴⁵¹⁸ The Trial Chamber based this conclusion, in part, on Exhibit 2D01443,⁴⁵¹⁹ the minutes of a Department of Defence meeting held on 24 November 1992, at which Stojić issued an order so that the costs of barracks reconstruction could be examined.⁴⁵²⁰ While this meeting predates the JCE and his contribution to the CCP,⁴⁵²¹ Stojić does not substantiate his assertion that the Trial Chamber erred in relying on it to determine his responsibilities as Head of the Department of Defence as his conduct pursuant to these responsibilities extended into the JCE period.⁴⁵²² The Trial Chamber also relied on Exhibit P04399 in which the assistant commander of the Information and Propaganda Department asked that Stojić be informed of problems in relation to the supply of newspapers to soldiers and a shortage in workspace, specifically "with the aim of improving the conditions of work and life".⁴⁵²³ The Appeals Chamber rejects Stojić's assertion that this does not support that he had the power to resolve such problems.⁴⁵²⁴ Thus, Stojić fails to show how the Trial Chamber erred in considering Exhibit P04399 as evidence that he saw "to the logistical needs" of the HVO.⁴⁵²⁵ Similarly, the Appeals Chamber also rejects Stojić's contentions that: (1) Exhibit 2D01246, an order from Stojić

⁴⁵¹⁴ Prosecution's Response Brief (Stojić), para. 136.

⁴⁵¹⁵ Prosecution's Response Brief (Stojić), para. 137.

⁴⁵¹⁶ Prosecution's Response Brief (Stojić), paras 133-135, 139-141.

⁴⁵¹⁷ Trial Judgement, Vol. 4, para. 312.

⁴⁵¹⁸ Trial Judgement, Vol. 4, para. 308.

⁴⁵¹⁹ Trial Judgement, Vol. 4, para. 308. The Appeals Chamber notes that Stojić challenges the Trial Chamber's reliance on Exhibit 2D01443, as well as certain other evidence, by arguing that it does not establish that he "had direct control over finances". Stojić's Appeal Brief, para. 160, referring to Exs. 2D01443, P04399/3D01206, 2D01246, P06807, P00970. This argument misinterprets the Trial Chamber's reliance on this evidence: the Trial Chamber relied on it to support its finding that "Stojić had to see to the logistical needs, in materiel and weapons, of the HVO armed forces." Trial Judgement, Vol. 4, para. 308, fn. 729. The Appeals Chamber will consider whether a reasonable trial chamber could have relied on this evidence to conclude that Stojić was responsible for logistical resources.

⁴⁵²⁰ Ex. 2D01443, p. 2.

⁴⁵²¹ Trial Judgement, Vol. 4, para. 1230.

⁴⁵²² See *Šainović et al.* Appeal Judgement, fn. 3858 ("certain conduct of a JCE member which started prior to, and continued during, the period when a common purpose of a JCE was found to have existed could constitute an act in furtherance of the common purpose by virtue of the continuation of this conduct"). See *infra*, para. 1891.

⁴⁵²³ Ex. P04399, pp. 3-4.

⁴⁵²⁴ *Contra* Stojić's Appeal Brief, para. 160. See *supra*, para. 1436.

to OZ commanders that they provide business space and technical resources, “in cooperation with the president of municipal HVO[s]”⁴⁵²⁶ shows that he did not provide such resources;⁴⁵²⁷ (2) the Trial Chamber unreasonably relied on Exhibit P06807, which relates to the administrative redistribution of telephone lines for the HVO;⁴⁵²⁸ and (3) Exhibit P00970, which reports that military equipment was allowed to be transported to Central Bosnia “with the approval of Mr. STOJIC”,⁴⁵²⁹ is irrelevant.

1442. The Appeals Chamber further notes that the Trial Chamber also relied on the evidence of Witness Christopher Beese to support its conclusion that Stojić was responsible for the HVO’s logistical needs.⁴⁵³⁰ Beese testified, and stated in a contemporaneous report, that on multiple occasions he saw persons in Stojić’s office – whom he was later told were German arms salesmen – with what Beese recognised as munitions boxes.⁴⁵³¹ [Redacted, see Annex C – Confidential Annex]⁴⁵³² [Redacted, see Annex C – Confidential Annex]⁴⁵³³ Thus, Stojić does not show that Beese’s evidence was uncorroborated or so speculative that the Trial Chamber erred in relying on it.⁴⁵³⁴ Stojić does not show that no reasonable trier of fact could have relied on this evidence in concluding that he was responsible for the HVO’s logistical needs, in materiel and weapons.

1443. The Trial Chamber further considered that in order to see to the logistical needs of the HVO, Stojić was authorised to send requests for materiel and weapons directly to the HV.⁴⁵³⁵ In reaching this finding, the Trial Chamber relied on: (1) Exhibit P01164, a Military Police order, issued pursuant to the order by the Head of the Department of Defence among others, which stipulates, *inter alia*, that “documentation for arms, military equipment, and ammunition imported from the Republic of Croatia or another country that needs to cross over checkpoints [...] should be signed by the head of the defense department of HZ HB, Bruno [last name illegible, probably STOJIC]”,⁴⁵³⁶ (2) Exhibit 2D00809, minutes of a meeting attended by Stojić at which an

⁴⁵²⁵ See Trial Judgement, Vol. 4, para. 308.

⁴⁵²⁶ Ex. 2D01246, p. 1. See also Stipo Buljan, T. 36753 (11 Feb 2009).

⁴⁵²⁷ *Contra* Stojić’s Appeal Brief, para. 160.

⁴⁵²⁸ Ex. P06807. *Contra* Stojić’s Appeal Brief, para. 160.

⁴⁵²⁹ Ex. P00970, p. 7. The Appeals Chamber also considers that it is immaterial whether this report was sent to Stojić. *Contra* Stojić’s Appeal Brief, para. 160.

⁴⁵³⁰ Trial Judgement, Vol. 4, para. 308, fn. 729.

⁴⁵³¹ Christopher Beese, T. 5385-5387 (23 Aug 2006). Beese further testified that he recognised the boxes from his experience as a British army officer. Christopher Beese, T. 5387-5388 (23 Aug 2006). See Ex. P02620, p. 2.

⁴⁵³² Witness BF, T. 25835 (closed session) (8 Jan 2008).

⁴⁵³³ Witness BF, T. 25835-25836 (closed session) (8 Jan 2008).

⁴⁵³⁴ The Appeals Chamber notes that Stojić argues that the evidence of Witnesses Stipo Buljan and Davor Korać does not corroborate Witness Beese’s evidence, See *supra*, fn. 4498. The Appeals Chamber notes, however, that the evidence of Witnesses Buljan and Korać was not cited by the Trial Chamber to corroborate the evidence of Witness Beese and has no bearing on the reliability of Witness Beese’s testimony.

⁴⁵³⁵ Trial Judgement, Vol. 4, para. 308. The Trial Chamber also found that Stojić was authorised to make payments from HVO accounts, but Stojić does not challenge this consideration. Trial Judgement, Vol. 4, para. 308.

⁴⁵³⁶ Ex. P01164, p. 1.

agreement was reached for the transport of supplies to produce ammunition;⁴⁵³⁷ and (3) Exhibit P03998, a request from Stojić to the HV for weapons.⁴⁵³⁸ The Appeals Chamber considers that Stojić's arguments concerning Exhibits P01164 and P03998 are unpersuasive.⁴⁵³⁹ As Exhibit 2D00809 does not specifically speak to the HV's involvement in the supply of materiel and weapons, the Trial Chamber erred in relying on this exhibit. However, Stojić fails to show that no reasonable trier of fact could have arrived at the impugned finding on the basis of the remaining evidence. Moreover, Stojić ignores the Trial Chamber's reliance on Exhibit P00098, a request from Boban to open a bank account "for the purpose of performing financial transactions with the Republic of Croatia", which lists Stojić as one individual authorised to sign payment orders.⁴⁵⁴⁰ In sum, Stojić merely offers his own interpretation of the evidence without showing that no reasonable trier of fact could have interpreted this evidence as the Trial Chamber did.

1444. The Trial Chamber also considered that Stojić, on behalf of the HVO, organised the purchase of weapons from the VRS.⁴⁵⁴¹ In doing so, it relied on a series of communications in June 1993 between Stojić and Ivica Rajić, an HVO commander,⁴⁵⁴² discussing the negotiation for and transfer of weapons from the VRS to the HVO.⁴⁵⁴³ Notably, in one communication Rajić relays that he asked his VRS contact to negotiate the price of weapons with Stojić and that he was awaiting Stojić's instructions on how to proceed.⁴⁵⁴⁴ The Trial Chamber also relied on subsequent communications which included: (1) a report sent from Rajić to Stojić, "as per request", listing the weapons and ammunition received from the VRS;⁴⁵⁴⁵ (2) a proposed price list for armaments in which Rajić requests that Stojić confirm that the criteria will be "sorted out at the Government level";⁴⁵⁴⁶ and (3) a request from Rajić, addressed to Boban, Petković, and Stojić, in which he requests that they reach "an urgent agreement" with the VRS for the use of "heavy and armoured equipment".⁴⁵⁴⁷ In arguing that this evidence "establishes only that Stojić was aware of the purchase of weapons from the VRS and that on occasions he relayed information about pricing agreements",⁴⁵⁴⁸ but that it "does not establish any personal involvement in the purchases

⁴⁵³⁷ Ex. 2D00809.

⁴⁵³⁸ Ex. P03998.

⁴⁵³⁹ See *supra*, para. 1436, fn. 4499.

⁴⁵⁴⁰ Ex. P00098. See Miroslav Rupčić, T. 23338-23339 (8 Oct 2007).

⁴⁵⁴¹ Trial Judgement, Vol. 4, para. 308.

⁴⁵⁴² See Trial Judgement, Vol. 1, fn. 1650.

⁴⁵⁴³ Ex. P09820; Ex. P02934; Ex. P02966. The testimony of Radmilo Jasak supports the interpretation that references in these documents to "the XY side" refer to Serbia. Radmilo Jasak, T. 49024-49028 (27 Jan 2010).

⁴⁵⁴⁴ Ex. P02966.

⁴⁵⁴⁵ Ex. P06364.

⁴⁵⁴⁶ Ex. P09967, p. 3.

⁴⁵⁴⁷ Ex. P03403, p. 1.

⁴⁵⁴⁸ Stojić's Appeal Brief, para. 162.

themselves”,⁴⁵⁴⁹ Stojić merely offers his own interpretation of the evidence without showing an error on the part of the Trial Chamber. Stojić’s arguments are therefore dismissed.

b. The finances of the HVO

1445. Turning to the Trial Chamber’s finding that Stojić “was responsible for the finances of the armed forces of the HZ(R) H-B”,⁴⁵⁵⁰ the Trial Chamber relied exclusively on Exhibit 2D02000 to find that Stojić “prepared the budget of the Department of Defence”.⁴⁵⁵¹ Exhibit 2D02000 indicates that when Stojić took over as Head of the Department of Defence, preparing its budget was one of 12 “priority tasks”.⁴⁵⁵² Contrary to Stojić’s assertion,⁴⁵⁵³ Exhibit 2D02000 merely notes that “some” of the listed tasks were not completed, but makes no reference to the budget and, therefore, does not indicate that no budget was prepared.⁴⁵⁵⁴ Moreover, Exhibit P08118 does not confirm that “the lack of a budget contributed to a significant lack of clarity on the financing of the HVO”,⁴⁵⁵⁵ rather the concerns it raised revolve around a lack of funds.⁴⁵⁵⁶ The Appeals Chamber considers that the evidence cited by the Trial Chamber establishes only that Stojić was responsible for preparing the budget and that no reasonable trial chamber could have relied on it to find that Stojić did, in fact, prepare one. However, considering the discussion below,⁴⁵⁵⁷ the Appeals Chamber finds that Stojić fails to show how this error could have an impact on the Trial Chamber’s overall conclusion that he was responsible for the finances of the HVO.

1446. The Trial Chamber also found that Stojić was “responsible for the payment of salaries to the members of the armed forces as he was authorised to withdraw funds from the HVO bank accounts” and that he “contacted the Department of Defence of Croatia for money to pay the salaries.”⁴⁵⁵⁸ In relation to the latter, the Trial Chamber relied on Exhibits P10291, P00910, and P10290, requests from Stojić to the Croatian Department of Defence to transfer money to an HVO bank account for the payment of salaries.⁴⁵⁵⁹ The Trial Chamber accepted that while the requests are not personally signed by Stojić, they are signed on his behalf.⁴⁵⁶⁰ The Trial Chamber further relied on: (1) Exhibit P00910, an order from Gojko Šušak that the HVO be given a loan for the

⁴⁵⁴⁹ Stojić’s Appeal Brief, para. 162.

⁴⁵⁵⁰ Trial Judgement, Vol. 4, para. 309.

⁴⁵⁵¹ Trial Judgement, Vol. 4, para. 309, referring to Ex. 2D02000.

⁴⁵⁵² Ex. 2D02000, para. 94.

⁴⁵⁵³ Stojić’s Appeal Brief, para. 163.

⁴⁵⁵⁴ Ex. 2D02000, para. 95.

⁴⁵⁵⁵ Stojić’s Appeal Brief, para. 163.

⁴⁵⁵⁶ Ex. P08118, p. 4.

⁴⁵⁵⁷ See *infra*, paras 1446-1450.

⁴⁵⁵⁸ Trial Judgement, Vol. 4, para. 309.

⁴⁵⁵⁹ Trial Judgement, Vol. 4, para. 309, referring to Exs. P10291, P10290, P00910.

⁴⁵⁶⁰ See Trial Judgement, Vol. 4, para. 309, referring to, *inter alia*, Davor Marijan, T(F). 35736 (21 Jan 2009). In the questioning of Witness Marijan, it was suggested that when “za” appeared on a BCS document this signified that the

payment of HVO salaries;⁴⁵⁶¹ (2) Exhibit P00098, a request from Boban to open a bank account “for the purpose of performing financial transactions with the Republic of Croatia” which lists Stojić as one individual authorised to sign payment orders;⁴⁵⁶² and (3) the testimony of Rupčić addressing paperwork used in transactions for the payment of HVO salaries, including Exhibits P10290 and P10291, by the Department of Defence of Croatia.⁴⁵⁶³ The Appeals Chamber is not convinced that, as argued by Stojić, this evidence does “not actually relate to requests for loans from Croatia” for the payment of HVO salaries.⁴⁵⁶⁴ Stojić fails to show an error by the Trial Chamber.⁴⁵⁶⁵

1447. The Trial Chamber also found that “[a]s the person in charge of the finances of the Department of Defence, Bruno Stojić could authorise other people to withdraw funds from the HVO bank accounts”.⁴⁵⁶⁶ The Trial Chamber relied on, *inter alia*, Exhibit P10301, a bank slip that indicates that money was withdrawn by Rupčić “based on the request for cash withdrawal issued by Bruno STOJIC”.⁴⁵⁶⁷ Stojić does not substantiate his assertion that a single incident cannot demonstrate that he had the authority to authorise others to withdraw funds and therefore he fails to show an error by the Trial Chamber in this respect. Moreover, the Trial Chamber also relied on Exhibit P01521,⁴⁵⁶⁸ an order from Stojić in which he designated individuals within the HVO with “authority to deal with material and financial /?/supplies”⁴⁵⁶⁹ and detailed instructions on the procedure. Stojić does not challenge the Trial Chamber’s reliance on this document.

1448. Stojić further asserts that the Trial Chamber unreasonably found that he “directly financed the armed forces” because it disregarded evidence and findings that relevant funding came from the Department of Finance or the municipalities.⁴⁵⁷⁰ The Appeals Chamber first considers that at trial, Stojić raised similar arguments.⁴⁵⁷¹ The Appeals Chamber also notes that the Trial Chamber did not find that Stojić “directly financed the armed forces”, but rather found that he “directly controlled” and “was responsible” for HVO finances.⁴⁵⁷² Further, the Trial Chamber considered the role of the

document was being signed on behalf of someone, which was not denied by the witness. Davor Marijan, T. 35736-34737 (21 Jan 2009).

⁴⁵⁶¹ Trial Judgement, Vol. 4, para. 309, referring to Ex. P00910.

⁴⁵⁶² Trial Judgement, Vol. 4, para. 309, referring to Ex. P00098.

⁴⁵⁶³ Trial Judgement, Vol. 4, para. 309, referring to Miroslav Rupčić, T(F). 23366-23369, 23387 (8 Oct 2007).

⁴⁵⁶⁴ *Contra* Stojić’s Appeal Brief, para. 164.

⁴⁵⁶⁵ See *supra*, para. 1438.

⁴⁵⁶⁶ Trial Judgement, Vol. 4, para. 309.

⁴⁵⁶⁷ Ex. P10301. See Miroslav Rupčić, T. 23387-23388 (8 Oct 2007). The Trial Chamber also relied on Exhibit 2D01352, a payroll signed by Stojić. The Appeals Chamber does not consider that this supports the Trial Chamber’s conclusion that Stojić could authorise others to withdraw funds, however this has no impact on the Trial Chamber’s finding. Ex. 2D01352, p. 3.

⁴⁵⁶⁸ Trial Judgement, Vol. 4, fn. 734.

⁴⁵⁶⁹ Ex. P01521, p. 1.

⁴⁵⁷⁰ Stojić’s Appeal Brief, para. 159.

⁴⁵⁷¹ Stojić’s Final Brief, paras 315, 359-361.

⁴⁵⁷² Trial Judgement, Vol. 4, paras 308, 309, 312.

Department of Finance and noted that it was responsible for collecting taxes and duties, establishing a customs system, and deciding a Government budget.⁴⁵⁷³ The Trial Chamber also noted evidence that “the HVO initiated the implementation of a centralised system of taxation for the purpose of financing the HZ H-B”.⁴⁵⁷⁴ Regarding the municipalities, the Trial Chamber noted evidence that they financed the military units.⁴⁵⁷⁵ It also reviewed “evidence indicating that the municipalities used their own resources to finance their municipal defences”⁴⁵⁷⁶ and that municipalities were forced to collect revenue on their own.⁴⁵⁷⁷ While those findings were not made in the section of the Trial Judgement discussing Stojić’s responsibility, the Appeals Chamber observes that the Trial Chamber considered some of the same evidence Stojić now cites.⁴⁵⁷⁸ Thus, the Trial Chamber was cognisant of the involvement of the Department of Finance and the municipalities in financing the municipalities’ defences.

1449. Additionally, although Exhibit 1D01609 – the minutes of a 26 May 1993 Government meeting – indicates that the Department of Finance was in charge of implementing measures to ensure continuous payment of soldiers’ salaries, to fulfil contracts for the production of materiel and technical equipment, and the payment of taxes, the relevant decisions were taken after Stojić briefed the Government on problems with recruitment and shortages in materiel and technical equipment.⁴⁵⁷⁹ The Appeals Chamber also notes that Stojić points to Exhibit P06689, a letter from Prlić indicating the need for a unified financial system and that any payments outside of the budget to, *inter alios*, soldiers would be considered illegal, and calling for the Ministry of Defence and the Ministry of Finance, among others, to undertake the legal steps.⁴⁵⁸⁰ However, this exhibit does not provide direct support for Stojić’s contention that the Department of Finance controlled the finances of the armed forces by default. Similarly, the Appeals Chamber is not convinced by Stojić’s reliance on Exhibit P08118, a Defence Department Annual Report, which does not suggest that the Department of Finance controlled the finances of the armed forces, as asserted by Stojić.⁴⁵⁸¹ Further, the Appeals Chamber notes that the Trial Chamber expressly considered that Witness Petković testified that “Stojić was to contact the Government of the HZ H-B for material and

⁴⁵⁷³ Trial Judgement, Vol. 1, paras 640-644.

⁴⁵⁷⁴ Trial Judgement, Vol. 1, para. 643.

⁴⁵⁷⁵ Trial Judgement, Vol. 1, para. 679.

⁴⁵⁷⁶ Trial Judgement, Vol. 1, para. 679.

⁴⁵⁷⁷ Trial Judgement, Vol. 1, para. 681.

⁴⁵⁷⁸ Trial Judgement, Vol. 1, fns 1595 (referring to, *inter alia*, Exs. 1D01771, 2D00538, 1D01759, 1D00307), 1598 (referring to, *inter alia*, Exs. 1D00559, 1D00561). See Stojić’s Appeal Brief, para. 159 & fn. 419, referring to, *inter alia*, Exs. 1D01771, 2D00538, 1D01759, 1D00307, 1D00559, 1D00561.

⁴⁵⁷⁹ Ex. 1D01609, p. 2.

⁴⁵⁸⁰ Ex. P06689. See Ex. 1D01934 (a report from the Head of the Department of Finance outlining its decisions to prevent potential consequences of implementing a functioning financial system).

⁴⁵⁸¹ Specifically, the articles cited by Stojić indicate that the Defence Department was limited in its ability to provide logistical support for the HVO due to: (1) “[t]he lack of a uniform finance system”; (2) “[t]he self-financing of HVO

financial resources for the HVO armed forces”, but found that the evidence showed that Stojić “directly controlled the human and financial resources of the HVO armed forces”.⁴⁵⁸² The Appeals Chamber finds that, by only asserting that the Trial Chamber “discarded without explanation” Witness Petković’s evidence and “disregarded” his trial submissions, Stojić ignores the Trial Chamber’s relevant findings and evidence relied upon and fails to show an error.⁴⁵⁸³

1450. Moreover, as found above, the Trial Chamber reasonably concluded that Stojić: (1) was responsible for the payment of salaries to the members of the HVO; (2) was authorised to withdraw funds from HVO bank accounts; (3) was authorised to request funds from Croatia to pay salaries; and (4) could authorise others to withdraw funds from HVO bank accounts.⁴⁵⁸⁴ Stojić does not demonstrate that any alleged role that either the Department of Finance or the municipalities played in the funding of the HVO calls into question the Trial Chamber’s finding that Stojić, as Head of the Department of Defence, was responsible for its finances. Stojić’s arguments are dismissed.

1451. For the foregoing reasons, the Appeals Chamber dismisses Stojić’s contention that the Trial Chamber erred in finding that he was responsible for the finances of the HVO.

c. Human resources

1452. Regarding the management of HVO human resources, the Trial Chamber found that Stojić was responsible for “ensuring the financing of the training centres and the mobilisation of the members of the HZ(R) H-B armed forces.”⁴⁵⁸⁵ In reaching this conclusion, the Trial Chamber relied on: (1) Exhibit P00907, a report from Petković to Stojić which describes the military situation and addresses problems associated with mobilisation;⁴⁵⁸⁶ (2) Exhibit P00965, a report from the Assistant Chief of the Main Staff for Professional Units, Ivica Primorac, to Stojić and Petković describing the composition and capabilities of professional units within the HVO;⁴⁵⁸⁷ (3) Exhibit P04074, an order from Praljak, “[p]ursuant to the order of the Defence Department [...] regarding the training of recruits”;⁴⁵⁸⁸ (4) Exhibit 2D01459, an order issued by Stojić appointing the “chief of Administration for military obligation and mobilization”;⁴⁵⁸⁹ (5) Exhibit 2D01350,⁴⁵⁹⁰ a request from Primorac to

units through municipal bodies”; (3) “[t]he lack of regulations governing salaries of individuals financed through the budget”; and (4) “[t]he lack of a single market”. Ex. P08118, p. 4.

⁴⁵⁸² Trial Judgement, Vol. 4, para. 308, referring to Milivoj Petković, T(F). 50344-50345 (3 Mar 2010).

⁴⁵⁸³ Stojić’s Appeal Brief, para. 159. See *Popović et al.* Appeal Judgement, para. 131 (the Trial Chamber has “broad discretion in assessing the appropriate weight and credibility to be accorded to the testimony of a witness”); *Kvočka et al.* Appeal Judgement, para. 23 (“the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial”).

⁴⁵⁸⁴ See *supra*, paras 1446-1447, fn. 4535.

⁴⁵⁸⁵ Trial Judgement, Vol. 4, para. 310.

⁴⁵⁸⁶ Ex. P00907, p. 6.

⁴⁵⁸⁷ Ex. P00965.

⁴⁵⁸⁸ Ex. P04074, p. 1.

⁴⁵⁸⁹ Ex. 2D01459.

Stojić and Petković for the resolution of a personnel dispute about the transfer of soldiers to the professional units;⁴⁵⁹¹ (6) Exhibit 3D01460, a “Request to resolve a problem” addressed to Stojić and Petković, in which Željko Šiljeg outlines problems related to mobilisation and requests certain action to remedy the situation;⁴⁵⁹² and (7) Praljak’s testimony that the Government, through Stojić, was competent to ensure that mobilisation was in place for the HVO.⁴⁵⁹³

1453. From the outset, the Appeals Chamber notes that while Exhibit P04074 suggests that the Department of Defence, and therefore Stojić, had the authority to issue orders in relation to the training of recruits, nothing in the evidence cited by the Trial Chamber supports its specific finding that Stojić “was responsible for ensuring the financing of the training centres”.⁴⁵⁹⁴ However, Stojić has not shown that the cited evidence does not support the Trial Chamber’s finding that he was responsible for the mobilisation of members of the HVO. Specifically in relation to Exhibit 3D01460, the fact that Šiljeg addressed his request to both Stojić and Petković does not demonstrate that it was Petković, and not Stojić, who had the authority to resolve the problem, particularly within the context of the other cited evidence demonstrating Stojić’s role in relation to mobilisation. Further, while Praljak testified that he did not consider himself to be under Stojić’s command,⁴⁵⁹⁵ he also clearly stated that Stojić did have the competency to ensure that “mobilisation was in place”.⁴⁵⁹⁶ Therefore, Stojić’s assertion that the Trial Chamber’s finding that he was responsible for the mobilisation of the HVO is not supported by the evidence is dismissed. Moreover, while the Trial Chamber erred in considering that Stojić was responsible for the financing of the training centres, in light of the above analysis upholding the Trial Chamber’s finding that Stojić was responsible for HVO finances,⁴⁵⁹⁷ Stojić has not shown how this error impacts the Trial Chamber’s overall finding that he was responsible for “all the logistical and

⁴⁵⁹⁰ The Appeals Chamber notes that Stojić challenges the Trial Chamber’s reliance on Exhibit P01350, however, the Appeals Chamber considers this to be an editorial mistake as the Trial Chamber cited Exhibit 2D01350, not Exhibit P01350. See *supra*, para. 1439; Trial Judgement, Vol. 4, fn. 737.

⁴⁵⁹¹ Ex. 2D01350, p. 1.

⁴⁵⁹² Ex. 3D01460.

⁴⁵⁹³ Slobodan Praljak, T. 40422-40423 (20 May 2009).

⁴⁵⁹⁴ Trial Judgement, Vol. 4, para. 310, referring to Exs. P04074 (an order dated 10 August 1993 from Praljak, pursuant to an order from the Department of Defence, in relation to the assignment of recruits to further training), 3D01460, p. 1 (a communication dated 24 July 1993 from Željko Šiljeg to Stojić requesting that he resolve problems associated with recruitment), 2D01459 (an order dated 9 June 1993 by Stojić appointing the Chief of Administration for military obligation and mobilisation), 2D01350 (communication dated 31 July 1993 from Ivica Primorac to Stojić requesting that he resolve an issue associated with the assignment of volunteers to certain units), P00907 (a report dated 15 December 1992 from Petković to the Main Staff noting, *inter alia*, the difficulty in mobilising HVO units due to differing requirements in the municipalities).

⁴⁵⁹⁵ Slobodan Praljak, T. 40421-40422 (20 May 2009).

⁴⁵⁹⁶ Slobodan Praljak, T. 40422-40423 (20 May 2009).

⁴⁵⁹⁷ See *supra*, paras 1445-1451.

financial aspects and for the human resources of the armed forces” or that he had command authority over the HVO.⁴⁵⁹⁸ His arguments are dismissed.

(g) Stojić’s authority to designate representatives of the HVO in ceasefire negotiations

1454. Stojić disputes that he had the authority to designate representatives of the HVO in ceasefire negotiations,⁴⁵⁹⁹ as: (1) Petković was found to be in charge of negotiations;⁴⁶⁰⁰ (2) the only reasonable inference from the orders cited by the Trial Chamber was that Stojić communicated authority already possessed by Petković;⁴⁶⁰¹ and (3) there is no evidence that Stojić himself had the power to represent the HVO in ceasefire negotiations.⁴⁶⁰²

1455. The Prosecution responds that Stojić merely offers his own interpretation of the evidence without showing an error on the part of the Trial Chamber.⁴⁶⁰³

1456. The Trial Chamber relied on two documents to support its finding that Stojić had the authority to designate individuals to represent the HVO in ceasefire negotiations: (1) Exhibit P00811, an appointment of Dario Kordić as Petković’s deputy at tripartite negotiations, signed by Stojić and dated 26 November 1992;⁴⁶⁰⁴ and (2) Exhibit P03922, a communication dated 3 August 1993 from Stojić to UNPROFOR indicating that Petković, “as Chief of the HVO Main Staff, commands all HVO forces, and as the sole such /individual/ has full authority in negotiations”.⁴⁶⁰⁵ In relation to Exhibit P00811, the Appeals Chamber considers that a plain reading of the document, in particular the language that “KORDIĆ is hereby appointed”,⁴⁶⁰⁶ belies Stojić’s assertion that it was merely paperwork indicating an appointment made by Petković. Moreover, in support of his argument, Stojić cites Exhibit P00812 which is an order dated 26 November 1992 from both Stojić and Petković directing Kordić to attend the negotiations.⁴⁶⁰⁷ Thus, this exhibit does not demonstrate that it was Petković, and not Stojić, who had the authority to make such an appointment. Regarding Exhibit P03922, the Appeals Chamber is not convinced by Stojić’s argument as this exhibit supports the Trial Chamber’s finding that Stojić designated persons. Even if he was only communicating that Petković had pre-existing authority, the Appeals Chamber

⁴⁵⁹⁸ Trial Judgement, Vol. 4, para. 312.

⁴⁵⁹⁹ Stojić’s Appeal Brief, para. 156, referring to Trial Judgement, Vol. 4, para. 311.

⁴⁶⁰⁰ Stojić’s Reply Brief, para. 44, citing Trial Judgement, Vol. 4, para. 680. See Stojić’s Appeal Brief, para. 156.

⁴⁶⁰¹ Stojić’s Appeal Brief, para. 156; Stojić’s Reply Brief, para. 44. Stojić submits that Exhibit P00811 indicates that Dario Kordić had been appointed as deputy for one meeting whereas Exhibit P00812, which was disregarded by the Trial Chamber, shows that this delegation of authority was actually made by Petković. He asserts that Exhibit P03922 is merely an explanation he provided on the existing command structure. Stojić’s Appeal Brief, para. 156.

⁴⁶⁰² Stojić’s Appeal Brief, para. 156.

⁴⁶⁰³ Prosecution’s Response Brief (Stojić), paras 142-143.

⁴⁶⁰⁴ Trial Judgement, Vol. 4, para. 311, referring to Ex. P00811.

⁴⁶⁰⁵ Ex. P03922, p. 1. See Trial Judgement, Vol. 4, para. 311, referring to Ex. P03922.

⁴⁶⁰⁶ Ex. P00811.

⁴⁶⁰⁷ Ex. P00812. See *supra*, fn. 4601.

considers that Stojić fails to show how this would preclude a finding that he had the authority to designate persons to represent the HVO, especially since the Trial Chamber's finding is supported by other evidence.⁴⁶⁰⁸ Further, the Trial Chamber's finding that Petković, as Deputy Commander of the Main Staff, was able to negotiate with the international community on behalf of the HVO⁴⁶⁰⁹ is not inconsistent with the impugned finding. Stojić merely offers his own interpretation of the evidence without showing an error. His arguments are thus dismissed.

(h) Conclusion

1457. On the basis of the foregoing, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred by finding that he commanded and had "effective control" over the HVO. The Appeals Chamber dismisses Stojić's ground of appeal 20.

3. Alleged errors in finding that Stojić commanded and had "effective control" over the Military Police (Stojić's Ground 21)

1458. The Trial Chamber concluded that it was satisfied beyond reasonable doubt that Stojić, as Head of the Department of Defence, commanded and had "effective control" over the Military Police.⁴⁶¹⁰ In reaching this finding, the Trial Chamber considered that Stojić: (1) issued instructions for the reorganisation of the Military Police units;⁴⁶¹¹ (2) appointed its most senior officers with the exception of the Chief of the Military Police Administration;⁴⁶¹² (3) was regularly informed about its activities;⁴⁶¹³ (4) had the authority to issue orders to the Chief of the Military Police Administration, including those directly linked to operations on the ground such as resubordination;⁴⁶¹⁴ and (5) was responsible for all aspects of logistics and staffing.⁴⁶¹⁵

(a) Arguments of the Parties

1459. Stojić contends that the Trial Chamber arrived at the unreasonable conclusion that he commanded and had effective control over the Military Police on the basis of his "limited administrative competences".⁴⁶¹⁶ In addition to arguing that he was not involved in the appointment of the Chief of the Military Police Administration, Stojić submits that he was not a decision-maker

⁴⁶⁰⁸ Ex. P00811; Ex. P00812.

⁴⁶⁰⁹ Trial Judgement, Vol. 1, para. 748.

⁴⁶¹⁰ Trial Judgement, Vol. 4, para. 320. See Trial Judgement, Vol. 4, paras 293, 425.

⁴⁶¹¹ Trial Judgement, Vol. 4, paras 319-320.

⁴⁶¹² Trial Judgement, Vol. 1, para. 859, Vol. 4, paras 313, 320.

⁴⁶¹³ Trial Judgement, Vol. 4, paras 318, 320.

⁴⁶¹⁴ Trial Judgement, Vol. 4, paras 314-316, 320.

⁴⁶¹⁵ Trial Judgement, Vol. 4, paras 317, 320.

⁴⁶¹⁶ Stojić's Appeal Brief, paras 168, 176. See Stojić's Appeal Brief, para. 167; Stojić's Reply Brief, paras 45, 53. Stojić avers that this finding was critical to the Trial Chamber's findings that he had the necessary intent and that he significantly contributed to the JCE. Stojić's Appeal Brief, para. 177.

and merely administered appointments initiated by others.⁴⁶¹⁷ He also submits that his administrative roles in logistics, staffing, and the re-organisation of the Military Police units do not evidence effective control or command authority.⁴⁶¹⁸ Stojić argues that, even if he was hierarchically superior to the Chief of the Military Police Administration, this did not mean that he exercised effective control over the Military Police as: (1) the powers of the Chief of the Military Police Administration were administrative and diminished over time;⁴⁶¹⁹ and (2) the Military Police had a “fuzzy” chain of command creating reasonable doubt about the operative chain of command.⁴⁶²⁰

1460. Regarding the orders he issued, Stojić contends that the Trial Chamber failed to consider whether issuing only nine orders throughout the Indictment period suggested effective control, and argues that these orders were administrative or logistical.⁴⁶²¹ He submits that the Trial Chamber disregarded its previous conclusion that it was not persuaded that he issued a substantial number of orders to the Military Police units.⁴⁶²² Stojić also submits that none of the evidence relied on by the Trial Chamber supported its finding that he issued orders consistent with operational command and that he could ensure that the orders were implemented.⁴⁶²³ Stojić avers that the orders: (1) demonstrated that command authority resided in the Main Staff; (2) were not addressed to, or issued by, him alone and thus do not prove that he exercised command authority as opposed to the other signatories or addressees; and (3) were administrative and related to internal discipline.⁴⁶²⁴

1461. Stojić further contends that the Trial Chamber erroneously concluded that he received regular reports about the activities of the Military Police as the evidence showed that he received only a limited number of reports on specific occasions.⁴⁶²⁵ Particularly, Stojić submits that the evidence relied on by the Trial Chamber: (1) showed that reporting was sporadic; (2) included two requests for reports which indicated *ad hoc* reporting; or (3) was irrelevant to the reporting procedure. Stojić also argues that the Trial Chamber failed to establish that various Military Police

⁴⁶¹⁷ Stojić’s Appeal Brief, para. 169.

⁴⁶¹⁸ Stojić’s Appeal Brief, paras 173-174.

⁴⁶¹⁹ Stojić’s Appeal Brief, para. 170; Stojić’s Reply Brief, paras 46, 48.

⁴⁶²⁰ Stojić’s Appeal Brief, para. 170; Stojić’s Reply Brief, para. 47.

⁴⁶²¹ Stojić’s Appeal Brief, para. 171. See Stojić’s Reply Brief, para. 49.

⁴⁶²² Stojić’s Appeal Brief, para. 171.

⁴⁶²³ Stojić’s Appeal Brief, para. 172.

⁴⁶²⁴ Stojić’s Appeal Brief, para. 172; Stojić’s Reply Brief, para. 50. Stojić replies that the orders for subordination to the armed forces, for redeployment, and in relation to checkpoints were exclusively administrative or logistical. Stojić’s Reply Brief, para. 49.

⁴⁶²⁵ Stojić’s Appeal Brief, para. 175. See Stojić’s Reply Brief, para. 51.

reports were actually received by him.⁴⁶²⁶ Stojić avers that the “simple receipt of reports, in the absence of evidence that [he] actually acted on their contents, does not prove effective control”.⁴⁶²⁷

1462. The Prosecution responds that the Trial Chamber’s findings were reasonable and the evidence correctly considered.⁴⁶²⁸ The Prosecution submits that Stojić possessed and exercised his power to make appointments within the Military Police.⁴⁶²⁹ It also argues that an accused’s power to control finances or organise troops is relevant to establishing effective control.⁴⁶³⁰ The Prosecution submits that Stojić repeats his trial arguments that the powers of the Chief of the Military Police Administration were administrative without showing an error.⁴⁶³¹ It argues that: (1) confusion in the dual chain of command of the Military Police, does not mean that the Military Police Administration lacked effective control;⁴⁶³² and (2) Stojić ignores his effective control over the Military Police along the HVO chain of command.⁴⁶³³

1463. The Prosecution also submits that the Trial Chamber’s finding that Stojić did not issue a substantial number of orders directly to the Military Police units did not include orders to the Chief of the Military Police Administration.⁴⁶³⁴ It further submits that Stojić also issued orders that were directly linked to operations on the ground,⁴⁶³⁵ and that his challenges to the evidence relied on by the Trial Chamber are undeveloped.⁴⁶³⁶ The Prosecution also responds that Stojić fails to show that the Trial Chamber’s finding that he received regular reports is undermined,⁴⁶³⁷ and that the receipt of reports is relevant for assessing effective control.⁴⁶³⁸

⁴⁶²⁶ Stojić’s Appeal Brief, para. 175, referring to Exs. P01053, P03314 (confidential), P02863.

⁴⁶²⁷ Stojić’s Appeal Brief, para. 175.

⁴⁶²⁸ Prosecution’s Response Brief (Stojić), paras 145-146, 152, 158, 160. See also Prosecution’s Response Brief (Stojić), para. 161. See also Appeal Hearing, AT. 325-327 (21 Mar 2017).

⁴⁶²⁹ Prosecution’s Response Brief (Stojić), paras 158-159. The Prosecution argues that Stojić, as the most senior officer in the Department of Defence, could appoint senior Military Police leaders and denies that he merely administered appointments initiated by others. Prosecution’s Response Brief (Stojić), para. 159.

⁴⁶³⁰ Prosecution’s Response Brief (Stojić), para. 160, referring to, *inter alia*, *Nahimana et al.* Appeal Judgement, para. 606.

⁴⁶³¹ Prosecution’s Response Brief (Stojić), para. 147. The Prosecution submits that the Trial Chamber did not disregard its previous findings and that it found that Ćorić’s authority was not purely administrative. Prosecution’s Response Brief (Stojić), para. 147, referring to Trial Judgement, Vol. 1, para. 971.

⁴⁶³² Prosecution’s Response Brief (Stojić), para. 148.

⁴⁶³³ Prosecution’s Response Brief (Stojić), para. 148, referring to Trial Judgement, Vol. 4, para. 312.

⁴⁶³⁴ Prosecution’s Response Brief (Stojić), para. 149. The Prosecution argues that the fact that Stojić could issue orders directly to the Military Police units when needed supports the conclusion that he had effective control. Prosecution’s Response Brief (Stojić), para. 149.

⁴⁶³⁵ Prosecution’s Response Brief (Stojić), para. 150, referring to Trial Judgement, Vol. 1, para. 965, Vol. 4, paras 304, 315, 320.

⁴⁶³⁶ Prosecution’s Response Brief (Stojić), para. 151.

⁴⁶³⁷ Prosecution’s Response Brief (Stojić), paras 153-156. The Prosecution also argues that Stojić received and requested regular reports about Military Police activities and was kept apprised of related activities. Prosecution’s Response Brief (Stojić), para. 152.

⁴⁶³⁸ Prosecution’s Response Brief (Stojić), para. 157, referring to, *inter alia*, *Popović et al.* Appeal Judgement, para. 1861, *Popović et al.* Trial Judgement, para. 2024.

1464. Stojić replies that the Prosecution fails to address the regularity of the reports he received, and that this limited flow of information is inconsistent with effective control.⁴⁶³⁹

(b) Analysis

(i) Stojić's involvement in appointments within the Military Police and his administrative roles

1465. Stojić first disputes the Trial Chamber's finding that he "appointed the people who would hold the most senior posts within the [Military Police] units and the Military Police Administration".⁴⁶⁴⁰ Notably, the Trial Chamber expressly considered that the Chief of the Military Police Administration was an exception,⁴⁶⁴¹ but observed that he was appointed on the advice of the Head of the Department of Defence.⁴⁶⁴² In this regard, the Appeals Chamber considers that Stojić fails to show that he "had no involvement at all in the appointment of the most senior person in the department"⁴⁶⁴³ and, regardless, he does not demonstrate how his contention would have had an impact on the Trial Chamber's finding.

1466. The Appeals Chamber is also not persuaded by Stojić's argument that he was not the decision-maker but merely administered appointments. Referring to various pieces of evidence, the Trial Chamber found that Stojić appointed, *inter alios*, the deputy chief and the Assistant Chief of the Military Police Administration, the heads of department and the chiefs of section as well as the commanders and the deputy commanders of the Military Police battalions "on the advice of the Chief of the Military Police and with the approval of the assistant chief for Security of the Department of Defence".⁴⁶⁴⁴ Stojić relies only on the latter part of this Trial Chamber finding⁴⁶⁴⁵ without showing how taking advice or obtaining approval from others affected his decision-making powers. Thus, Stojić fails to show that no reasonable trier of fact could have considered his involvement in the appointment of senior staff within the Military Police as a relevant indicator that he had "effective control" and command authority over the Military Police.⁴⁶⁴⁶ Stojić's arguments are dismissed.

⁴⁶³⁹ Stojić's Reply Brief, para. 51. Stojić argues that the evidence shows, at its highest, that he received 13 reports in 16 months of office. Stojić's Reply Brief, para. 51. Stojić also submits that Exhibit P08548, a history of the Military Police from 1992 to 1995, does not mention him thus proving his lack of authority. Stojić's Reply Brief, para. 52.

⁴⁶⁴⁰ Trial Judgement, Vol. 4, para. 313. See Trial Judgement, Vol. 1, para. 859.

⁴⁶⁴¹ Trial Judgement, Vol. 1, para. 859, Vol. 4, para. 313.

⁴⁶⁴² Trial Judgement, Vol. 1, fn. 2029, referring to Ex. P00837, p. 4. See Ex. P00837, p. 4 ("At the proposal of the head of the Defence Department, the HVO HZ HB appoints the chief of administration of the military police.").

⁴⁶⁴³ Stojić's Appeal Brief, para. 169.

⁴⁶⁴⁴ Trial Judgement, Vol. 1, para. 575. See Trial Judgement, Vol. 1, paras 858-859, 954.

⁴⁶⁴⁵ See Stojić's Appeal Brief, para. 169.

⁴⁶⁴⁶ See *supra*, para. 1412. See also *supra*, para. 1401.

1467. Stojić also challenges the Trial Chamber's consideration of his responsibility for "the logistical and staffing needs of the Military Police, including the payment of salaries to its members and mobilisation",⁴⁶⁴⁷ and the instructions he gave for the reorganisation of the Military Police units.⁴⁶⁴⁸ The Appeals Chamber notes that Stojić only contends that these matters "cannot support a finding of", or "do[] not evidence", "effective control" and operational command over the Military Police.⁴⁶⁴⁹ Stojić merely offers his own conclusions without showing that the Trial Chamber erroneously considered his role in logistics, staffing, and the reorganisation of units as an indicator of authority. To the extent that Stojić argues that his roles concerned "purely administrative matters", he does not support his argument that an administrative role cannot be a factor to consider as evidence of command authority,⁴⁶⁵⁰ and more broadly, that such a role cannot contribute to the implementation of a JCE.⁴⁶⁵¹ Moreover, Stojić does not show that any alleged error by the Trial Chamber in this regard would affect the overall finding that he exercised "effective control" and command authority, which was based on several other factors.⁴⁶⁵² The Appeals Chamber therefore dismisses Stojić's argument.

(ii) The authority of the Military Police Administration

1468. Regarding Stojić's arguments concerning the authority of the Military Police Administration,⁴⁶⁵³ the Appeals Chamber notes that the Trial Chamber considered numerous orders issued by Ćorić with regard to the establishment of checkpoints, the freedom of movement, and unit deployment. In so doing, the Trial Chamber rejected arguments made at trial by Stojić that the role of the Military Police Administration was "purely administrative".⁴⁶⁵⁴ The Appeals Chamber further notes that Stojić merely relies on the Trial Chamber's observation that witnesses stated that the Military Police Administration had jurisdiction over the Military Police units in an administrative and logistical sense.⁴⁶⁵⁵ However, the Trial Chamber then observed that "it seems that the Military Police Administration occasionally acted in order [...] to issue orders to the Military Police which went beyond the administrative and logistical framework and that it could in fact [...] order their resubordination"⁴⁶⁵⁶ before addressing evidence of these orders and power of

⁴⁶⁴⁷ Trial Judgement, Vol. 4, para. 317.

⁴⁶⁴⁸ Trial Judgement, Vol. 4, para. 319. See Ex. P00957; Ex. P00960.

⁴⁶⁴⁹ See Stojić's Appeal Brief, paras 173-174.

⁴⁶⁵⁰ See *supra*, para. 1412, referring to *Nahimana et al.* Appeal Judgement, para. 606. See also *Blaškić* Trial Judgement, para. 522; *Musema* Trial Judgement, para. 880.

⁴⁶⁵¹ See *Popović et al.* Appeal Judgement, paras 1544-1545 (in considering Radivoje Miletić's "technical" role in the UNPROFOR convoy notification procedure, the Appeals Chamber concluded that "[w]hether an act is 'technical' does not *per se* preclude it from being a contribution to a JCE"); *supra*, para. 1401.

⁴⁶⁵² See *supra*, para. 1458.

⁴⁶⁵³ See *supra*, para. 1459.

⁴⁶⁵⁴ Trial Judgement, Vol. 1, para. 971. See Trial Judgement, Vol. 4, paras 871, 887, 915.

⁴⁶⁵⁵ Trial Judgement, Vol. 1, para. 953. See Stojić's Appeal Brief, para. 170.

⁴⁶⁵⁶ Trial Judgement, Vol. 1, para. 953.

resubordination.⁴⁶⁵⁷ Thus Stojić repeats his unsuccessful trial arguments and fails to show an error by the Trial Chamber.

1469. Furthermore, the Trial Chamber also found that: (1) Ćorić, as Chief of the Military Police Administration, had command and control power over the Military Police units;⁴⁶⁵⁸ (2) the Military Police Administration gradually relinquished its power to exercise direct command over the Military Police units but that this did not lead to a complete renunciation of its command;⁴⁶⁵⁹ and (3) the Military Police had a dual chain of command which led to confusion.⁴⁶⁶⁰ The Trial Chamber therefore was aware of, and made findings on, the same factors which, according to Stojić, show that he did not necessarily have “effective control” and command authority over the Military Police units by virtue of being Ćorić’s hierarchical superior. While those findings were not made in the section of the Trial Judgement discussing Stojić’s responsibility, the Appeals Chamber recalls that the Trial Judgement is to be read as a whole.⁴⁶⁶¹ Stojić thus fails to show that the Trial Chamber “overlooked” its other findings;⁴⁶⁶² especially as these other findings are not inconsistent with Stojić having command authority over the Military Police units through his ability to give orders to Ćorić regarding various areas.⁴⁶⁶³ Stojić’s arguments are thus dismissed.⁴⁶⁶⁴

(iii) Stojić’s issuance of orders to the Military Police

1470. In relation to the Trial Chamber’s consideration of the orders he issued to the Military Police, Stojić’s argument suggesting that issuing only nine orders throughout the Indictment period is not indicative of “effective control” is unpersuasive.⁴⁶⁶⁵ First, Stojić’s argument is premised on the Trial Chamber’s alleged reliance on “only” nine orders in finding that he could issue orders to the Chief of the Military Police Administration.⁴⁶⁶⁶ However, the Trial Chamber referred to additional evidence – some of which the Appeals Chamber will address below – in concluding that

⁴⁶⁵⁷ Trial Judgement, Vol. 1, paras 959-974.

⁴⁶⁵⁸ Trial Judgement, Vol. 4, para. 1000. See Trial Judgement, Vol. 4, paras 871, 887, 915.

⁴⁶⁵⁹ Trial Judgement, Vol. 1, paras 963-964. Similarly, the Trial Chamber found that Ćorić’s power of command over the Military Police units weakened as of July 1993 but “did not disappear completely”. Trial Judgement, Vol. 4, para. 868.

⁴⁶⁶⁰ Trial Judgement, Vol. 1, paras 971, 974. Regarding the Military Police’s dual chain of command, the Appeals Chamber further notes that Stojić had *de facto* powers over the HVO through the HVO military chain of command, which included the Military Police units embedded in the HVO brigades, thus any confusion on the ground on where orders emanated from would not necessarily affect Stojić’s command authority. See Trial Judgement, Vol. 1, paras 961, 971, 974, Vol. 4, paras 306, 312, 425. See also *supra*, para. 1457.

⁴⁶⁶¹ *Stanišić and Župljanin* Appeal Judgement, paras 138, 376, 705; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379. See *Kalimanzira* Appeal Judgement, para. 227.

⁴⁶⁶² See Stojić’s Appeal Brief, para. 170.

⁴⁶⁶³ Trial Judgement, Vol. 4, para. 314.

⁴⁶⁶⁴ Regarding Stojić’s argument on Exhibit P08548, the Appeals Chamber notes that this publication does not list the entire chain of command over the Military Police and that thus does not call into question the Trial Chamber’s finding regarding Stojić’s authority. See Stojić’s Reply Brief, para. 52.

⁴⁶⁶⁵ See Stojić’s Appeal Brief, para. 171.

⁴⁶⁶⁶ Stojić’s Appeal Brief, para. 171, referring to Trial Judgement, Vol. 4, para. 314.

Stojić did issue orders to the Military Police and that these orders were implemented.⁴⁶⁶⁷ Moreover, the Appeals Chamber considers that Stojić's argument that the issuance of nine orders is insufficient to show that he had "effective control" or command authority is inapposite as the Trial Chamber's consideration of his ability to issue orders to the Military Police does not relate to his responsibility as a commander pursuant to Article 7(3) of the Statute. The Appeals Chamber recalls that the *actus reus* for liability under JCE I is the participation of the accused in the common criminal plan which may take the form of assistance in, or contribution to, the execution of this plan,⁴⁶⁶⁸ and that this contribution to the crimes is significant.⁴⁶⁶⁹ As such, in and of itself, the number of orders Stojić issued to the Military Police has no bearing on the Trial Chamber's conclusion that he contributed to the furtherance of the JCE through their issuance. Thus, Stojić's argument is dismissed.

1471. In addition, Stojić's contention that the Trial Chamber disregarded its earlier finding that it was not persuaded that Stojić issued "a substantial number of orders" directly to Military Police units⁴⁶⁷⁰ ignores the context of this observation. The Trial Chamber continued to say that it was not persuaded that the number of orders issued directly to the Military Police units implied that Stojić was circumventing the Military Police Administration's authority.⁴⁶⁷¹ Stojić's contention is thus dismissed.

1472. Stojić also argues that the orders relied on by the Trial Chamber do not substantiate its findings. Regarding his first contention in support,⁴⁶⁷² while Exhibits P00875, 5D02002, and 5D00548 indicate that the Main Staff had authority over the Military Police units resubordinated to the HVO command,⁴⁶⁷³ Stojić does not show that this precludes his authority over the same units. In this regard, the Appeals Chamber considers that authority over a unit can be exercised by various

⁴⁶⁶⁷ Trial Judgement, Vol. 4, paras 315-316. In addition to the evidence Stojić challenges and which is addressed below (see *infra*, para. 1472), the Trial Chamber referred to other testimony and exhibits showing that Stojić issued orders to the Military Police, which were implemented. Trial Judgement, Vol. 4, paras 315-316, fns 741-745. These orders, *inter alia*: (1) concerned the movement of people and goods in Jablanica; (2) prohibited the carrying of long barrel weapons by civilians and members of military units as well as restricted the carrying of short barrel weapons, and instructed checkpoints to implement the order; (3) concerned the prevention of banned movement of goods and weapons; (4) concerned the detention of trucks with trailers; (5) increased control of exit and entry points in Mostar; and (6) concerned inspection of all persons and motor vehicles leaving Mostar due to increased number of thefts of both public and private property. See Trial Judgement, Vol. 4, paras 315-316, referring to, *inter alia*, Exs. P01164, p. 1, P01121, pp. 1-4, P01517, P03327 (confidential), p. 5, P01868, p. 1, P02578.

⁴⁶⁶⁸ *Popović et al.* Appeal Judgement, para. 1615; *Krajišnik* Appeal Judgement, para. 695; *Stakić* Appeal Judgement, para. 64; *Tadić* Appeal Judgement, para. 227(iii).

⁴⁶⁶⁹ *Popović et al.* Appeal Judgement, para. 1378; *Krajišnik* Appeal Judgement, para. 706; *Brdanin* Appeal Judgement, para. 430.

⁴⁶⁷⁰ Trial Judgement, Vol. 1, para. 965. See Stojić's Appeal Brief, para. 171.

⁴⁶⁷¹ Trial Judgement, Vol. 1, para. 965.

⁴⁶⁷² See *supra*, para. 1460.

⁴⁶⁷³ See Trial Judgement, Vol. 4, para. 315 & fns 741-742, 744, referring to Exs. P00875, 5D02002, 5D00548.

persons within the chain of command.⁴⁶⁷⁴ Notably, Stojić as Head of the Department of Defence had authority over the Main Staff and, in fact, two of the exhibits cited by Stojić were signed by him.⁴⁶⁷⁵ Similarly, Stojić's contention that his command authority was not proven from the cited evidence as the orders or requests did not come to or from him alone is unconvincing and insufficient to show an error by the Trial Chamber. In this respect, Stojić does not substantiate the assertion that he could not exercise authority on his own accord or that it was the other signatories that had command authority. Thus, Stojić fails to show that no reasonable trier of fact could have concluded that he had command authority over the Military Police after assessing the evidence cited by the Trial Chamber. Likewise, the Appeals Chamber dismisses elsewhere Stojić's argument as far as it concerns the administrative or logistical nature of his involvement as evidence of command authority, which necessarily includes the orders he issued.⁴⁶⁷⁶ Notably, Stojić had the authority to issue orders to the Chief of the Military Police Administration, including those directly linked to operations on the ground such as release of detainees, resubordination of Military Police units, and the engagement of Military Police forces.⁴⁶⁷⁷ Furthermore, his references to two exhibits being "purely administrative orders relating to internal discipline"⁴⁶⁷⁸ and a confidential exhibit cited by the Trial Chamber among other various pieces of evidence⁴⁶⁷⁹ fail to demonstrate an error by the Trial Chamber in its assessment of the evidence. Thus, Stojić's arguments are dismissed.

(iv) Stojić's receipt of reports on Military Police activities

1473. Stojić also contests the Trial Chamber's finding that he regularly received reports about the activities of the Military Police,⁴⁶⁸⁰ by arguing that the reports were sporadic.⁴⁶⁸¹ Notably, the Trial Chamber cited various pieces of evidence to support its finding,⁴⁶⁸² but Stojić only challenges the reliance on one exhibit and states that other reports prepared by the author of that exhibit were not sent to him.⁴⁶⁸³ The Appeals Chamber is unconvinced by this argument as Stojić fails to show how any alleged "sporadic" reporting from one individual affects the Trial Chamber's finding that he received regular reports which did clearly emanate from various sources.⁴⁶⁸⁴ Stojić also argues that

⁴⁶⁷⁴ See *Popović et al.* Appeal Judgement, para. 1892 ("the exercise of effective control by one commander does not necessarily exclude effective control being exercised by a different commander").

⁴⁶⁷⁵ See Ex. P00875; Ex. 5D02002.

⁴⁶⁷⁶ See *supra*, paras 1412, 1467. See also *supra*, para. 1401.

⁴⁶⁷⁷ Trial Judgement, Vol. 4, paras 314-316, 320.

⁴⁶⁷⁸ Stojić's Appeal Brief, para. 172, referring to Exs. P01121, P01098.

⁴⁶⁷⁹ See Stojić's Appeal Brief, para. 172, referring to Ex. P03327 (confidential); Trial Judgement, Vol. 4, para. 315 & fn. 741, referring to, *inter alia*, Ex. P03327 (confidential).

⁴⁶⁸⁰ Trial Judgement, Vol. 4, para. 318. See Trial Judgement, Vol. 4, para. 320.

⁴⁶⁸¹ Stojić's Appeal Brief, para. 175. See *supra*, para. 1460.

⁴⁶⁸² Trial Judgement, Vol. 4, para. 318 & fns 747-749.

⁴⁶⁸³ See Stojić's Appeal Brief, para. 175, referring to Ex. P03314 (confidential).

⁴⁶⁸⁴ See Trial Judgement, Vol. 4, para. 318, referring to, *inter alia*, Exs. P03274 (order from Stojić that various personnel including the Chief of the Military Police Administration submit reports to the Department of Defence),

as Exhibits P03274 and P00518 were requests for reports, this showed *ad hoc* reporting.⁴⁶⁸⁵ The Appeals Chamber notes that Exhibit P00518 is not a request for reports but a report sent by Stojić, on 22 September 1992, to the HVO and the Government, reporting, *inter alia*, on the activities of the Military Police, including how many reports it had filed by that point.⁴⁶⁸⁶ As such, it indicates that Stojić and the Department of Defence were aware of the activities of the Military Police.

1474. With respect to Exhibit P03274, the Appeals Chamber notes that it is Stojić's request, directed to *all* HVO bodies, in which he asks for an "assessment of the current situation in your area" in order for the Department of Defence to be able to submit its own report to the Government for the period January 1993 to July 1993. Stojić does not explain how this request calls into question the Trial Chamber's finding that he received regular reports about the activities of the Military Police,⁴⁶⁸⁷ particularly given the other documents cited by the Trial Chamber in support of its finding, including an "interim report" sent by Ćorić to Stojić personally informing him of the Military Police units' activities in Gornji Vakuf in early January 1993.⁴⁶⁸⁸ Furthermore, given that this request was directed to all HVO bodies and that Stojić asked for the "assessment of the current situation", his assertion that if he had regular reports from the Military Police he would not have needed to request them is speculative. Accordingly, he fails to show an error.

1475. As it concerns Stojić's submission that two of the exhibits cited by the Trial Chamber are irrelevant to the reporting procedure, the Appeals Chamber notes that although Exhibits 2D02000 and P01409 do not directly speak to Stojić receiving reports, they concern activities of the Military Police and clearly indicate that he would have been informed of these activities.⁴⁶⁸⁹ In this regard, the Appeals Chamber notes that Exhibit 2D02000 lists one of Stojić's priority tasks as ensuring that the Military Police submit reports to the military courts,⁴⁶⁹⁰ while Exhibit P01409 is an order issued by Stojić on 3 February 1993 regarding the mobilisation of the Military Police.⁴⁶⁹¹ Thus, Stojić fails to show that there are reasonable inferences that can be drawn from these exhibits other than that he was kept informed of Military Police activities. A reasonable trier of fact could have considered these exhibits as evidence of a reporting procedure and Stojić's arguments are thus dismissed.

P01053 (report to Stojić personally from Ćorić), P02863 (report to, *inter alios*, Stojić personally from the Deputy Commander of the Rama Brigade).

⁴⁶⁸⁵ See *supra*, para. 1460.

⁴⁶⁸⁶ Ex. P00518, pp. 4, 6.

⁴⁶⁸⁷ See Stojić's Appeal Brief, para. 175.

⁴⁶⁸⁸ See Ex. P01053. Although Exhibit P01053 predates the JCE, the Appeals Chamber is of the view that the Trial Chamber reasonably considered it as supporting the finding that Stojić was regularly informed of the Military Police units' activities. See also Exs. P02863 (report from the deputy commander of the Military Police units in Prozor informing Stojić and Ćorić of the activities of Tuta's men in Prozor Municipality), P03314 (confidential) (report from the commander of the Military Police units in Prozor informing Stojić and Ćorić of the influx of civilians and soldiers in Prozor Municipality).

⁴⁶⁸⁹ See Ex. 2D02000, para. 94(7); Ex. P01409.

⁴⁶⁹⁰ Ex. 2D02000, para. 94(7).

Consequently, Stojić's argument that the "limited flow of information" is inconsistent with "effective control"⁴⁶⁹² is also dismissed, since he fails to demonstrate the irregularity of reports.

1476. With regard to Stojić's argument that the Trial Chamber failed to establish that he actually received three Military Police reports,⁴⁶⁹³ the Appeals Chamber notes that the Trial Chamber found that he regularly received reports about Military Police activities and cited these three reports as support.⁴⁶⁹⁴ Considering that the three reports in question were addressed to Stojić personally,⁴⁶⁹⁵ and the Trial Chamber made numerous findings on the reporting procedure involving Stojić, he does not demonstrate that the Trial Chamber failed to find that he received these three reports. In this regard, the Trial Chamber found that Stojić had ordered all heads of units, including the Military Police Administration, to submit reports on their activities to him.⁴⁶⁹⁶ In addition, the Trial Chamber found that Stojić received reports from other organs and exercised a reporting function in relation to the Government; reports which would include the activities of Military Police units embedded in the HVO brigades.⁴⁶⁹⁷ Thus, the Trial Chamber found, *inter alia*, that: (1) Stojić received reports on the situation in BiH, in particular the military situation, sent by the Main Staff;⁴⁶⁹⁸ and (2) Stojić, in turn, informed the HZ(R) H-B Government, both through reports and during Government sessions, about the military and security situation on the ground.⁴⁶⁹⁹

1477. Further, the Trial Chamber, in discussing Stojić's authority over the HVO, relied on evidence⁴⁷⁰⁰ which also shows that he ordered several units, including the Military Police Administration, to provide him with written reports every eight hours on the implementation of the 15 January 1993 Ultimatum.⁴⁷⁰¹ The Appeals Chamber also notes that some of the reports relied on by the Trial Chamber were addressed to Stojić or the Department of Defence,⁴⁷⁰² and considers that he does not present any arguments demonstrating that the flow of information was interrupted in those instances thus preventing his receipt of the reports. Therefore, in light of the reporting function Stojić was found to have exercised on the basis of various reports sent to him, the Appeals Chamber concludes that Stojić fails to show that no reasonable trier of fact could have concluded

⁴⁶⁹¹ Ex. P01409.

⁴⁶⁹² Stojić's Reply Brief, para. 51.

⁴⁶⁹³ See Stojić's Appeal Brief, para. 175, referring to Exs. P01053, P03314 (confidential), P02863.

⁴⁶⁹⁴ Trial Judgement, Vol. 4, para. 318, referring to, *inter alia*, Exs. P01053, P03314 (confidential), P02863. See *supra*, para. 1473.

⁴⁶⁹⁵ Ex. P01053; Ex. P03314 (confidential); Ex. P02863.

⁴⁶⁹⁶ Trial Judgement, Vol. 4, para. 318.

⁴⁶⁹⁷ See *supra*, paras 1418-1419.

⁴⁶⁹⁸ Trial Judgement, Vol. 4, para. 300. See Trial Judgement, Vol. 1, paras 767-768.

⁴⁶⁹⁹ Trial Judgement, Vol. 4, para. 300.

⁴⁷⁰⁰ Trial Judgement, Vol. 4, para. 304, referring to, *inter alia*, Ex. P01140. See Trial Judgement, Vol. 1, paras 453, 562.

⁴⁷⁰¹ Ex. P01140, para. 9. See Ex. P01053 (Interim Report sent by Ćorić to Stojić on 5 January 1993). See also Prosecution's Response Brief (Stojić), para. 153.

⁴⁷⁰² Ex. P01053; Ex. P02863; Ex. P03314 (confidential); Ex. P04224. See Trial Judgement, Vol. 4, para. 318 & fns 747-749.

that the Military Police reports addressed and sent to him, particularly the three reports he challenges on appeal, were also received by him.

1478. Stojić further argues that “effective control” is not proven by the receipt of reports unless he acted on their contents.⁴⁷⁰³ The Appeals Chamber first considers that the receipt of information and regular reports on the activities of the Military Police, as part of the information flow, can be a relevant indicator in determining Stojić’s authority over the Military Police.⁴⁷⁰⁴ Moreover, the Appeals Chamber notes that acting on the contents of a report is not a necessary requirement in determining command authority.⁴⁷⁰⁵ As Stojić fails to show the contrary, his arguments are dismissed.

(c) Conclusion

1479. In sum, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred by finding that he commanded and had “effective control” over the Military Police. Stojić’s ground of appeal 21 is dismissed.

4. Alleged errors concerning Stojić’s failure to prevent and punish crimes committed by the HVO and the Military Police (Stojić’s Ground 23)

1480. The Trial Chamber found that “Stojić did not intend to prevent or punish the crimes by the HVO armed forces, including the Military Police, whereas he had the *de facto* power to do so”.⁴⁷⁰⁶ It concluded that “if [Stojić] did not issue orders to prevent or punish crimes or if those orders were not obeyed, it was because he knowingly did not want to take those measures”.⁴⁷⁰⁷ The Trial Chamber also found that Stojić was informed about the serious discipline problems within the KB unit under the command of Mladen Naletilić, alias “Tuta”, and their crimes. It concluded that, although Stojić had the power to prevent or punish the crimes committed by Naletilić’s men, he had no intention of doing so and in fact accepted and encouraged the crimes by praising the unit.⁴⁷⁰⁸

1481. Stojić challenges these findings of the Trial Chamber, and argues that it erroneously: (1) found that he had the power to prevent and punish crimes committed by the HVO, including the Military Police, and Naletilić’s troops and deliberately failed to do so;⁴⁷⁰⁹ and (2) relied on his

⁴⁷⁰³ Stojić’s Appeal Brief, para. 175.

⁴⁷⁰⁴ Cf. *Popović et al.* Appeal Judgement, para. 1861.

⁴⁷⁰⁵ Cf. *Popović et al.* Appeal Judgement, para. 1860.

⁴⁷⁰⁶ Trial Judgement, Vol. 4, para. 423. See Trial Judgement, Vol. 4, paras 410-415, 421-422, 427.

⁴⁷⁰⁷ Trial Judgement, Vol. 4, para. 415. See Trial Judgement, Vol. 4, paras 410-414, 427.

⁴⁷⁰⁸ Trial Judgement, Vol. 4, para. 420. See Trial Judgement, Vol. 4, paras 416-419, 427.

⁴⁷⁰⁹ Stojić’s Appeal Brief, paras 178-188.

failure to prevent and punish crimes as a basis for its conclusion that he significantly contributed to the JCE and shared the intent of other JCE members.⁴⁷¹⁰

(a) Stojić's *de facto* power to prevent and punish crimes (Stojić's Sub-ground 23.1)

(i) Arguments of the Parties

1482. Stojić submits that the Trial Chamber erred by failing to provide a reasoned “decision” regarding its finding that he had the *de facto* power to prevent and punish crimes.⁴⁷¹¹ Specifically, Stojić argues that the Trial Chamber failed to identify any *de jure* or *de facto* power he possessed or any mechanism he could have used to prevent and punish crimes.⁴⁷¹² He avers that the “vague reference to ‘operative orders’ is insufficient” as it failed to explain how such orders could prevent or punish crimes.⁴⁷¹³ Stojić also submits that the Trial Chamber’s conclusion is inconsistent with, and opposite to, an earlier finding that he did not have the *de jure* obligation to prevent or punish crimes.⁴⁷¹⁴ He contends that having found that he had no obligation to punish crimes, the Trial Chamber “should not have relied on any omission to prevent or punish crimes as a way of establishing his culpability”.⁴⁷¹⁵ Stojić also submits that the Trial Chamber disregarded: (1) its earlier finding that crimes could not be effectively opposed;⁴⁷¹⁶ and (2) clearly relevant Defence submissions and cited evidence that the Department of Justice and Administration (“DoJA”) was responsible for setting up and administering the military judiciary.⁴⁷¹⁷

1483. The Prosecution responds that the Trial Chamber specified how Stojić could have taken measures to prevent and punish crimes on the basis of his power to issue and enforce orders to the HVO, including the Military Police and identified two types of operative orders he issued as examples.⁴⁷¹⁸ The Prosecution further argues that Stojić: (1) issued other orders which demonstrate his effective control, such as orders relating to, *inter alia*, manpower, the formation and dissolution

⁴⁷¹⁰ Stojić’s Appeal Brief, para. 189. Stojić argues that these errors invalidate the Trial Judgement and his convictions on all counts should be overturned. Stojić’s Appeal Brief, para. 189.

⁴⁷¹¹ Stojić’s Appeal Brief, para. 178.

⁴⁷¹² Stojić’s Appeal Brief, para. 179.

⁴⁷¹³ Stojić’s Appeal Brief, para. 179, referring to Trial Judgement, Vol. 4, para. 414. See also Appeal Hearing, AT. 291 (21 Mar 2017).

⁴⁷¹⁴ Stojić’s Appeal Brief, para. 180, referring to Trial Judgement, Vol. 4, para. 413. In this regard, Stojić highlights the Trial Chamber’s findings that the Military Police had a dual chain of command which resulted in a “fuzzy” chain of command and that the Military Police Administration’s control diminished over time. Stojić’s Appeal Brief, para. 180, referring to Trial Judgement, Vol. 1, paras 949-950, 964, 971, 974.

⁴⁷¹⁵ Stojić’s Appeal Brief, para. 180. See also Appeal Hearing, AT. 291 (21 Mar 2017).

⁴⁷¹⁶ Stojić’s Appeal Brief, para. 181, referring to Trial Judgement, Vol. 1, paras 972, 986; Stojić’s Reply Brief, para. 56.

⁴⁷¹⁷ Stojić’s Appeal Brief, para. 182, referring to Stojić’s Final Brief, para. 406, referring to Exs. P03350, 1D01974, P01536, P01652, 1D01179, P00559. Stojić argues that the Trial Chamber only considered that the DoJA *de facto* proposed military judicial appointments and disregarded the remainder of the Defence submissions. Stojić’s Appeal Brief, para. 182.

⁴⁷¹⁸ Prosecution’s Response Brief (Stojić), para. 164, referring to Trial Judgement, Vol. 4, paras 312, 320, 410, 413-415.

of units, and the tasking and removal of military personnel;⁴⁷¹⁹ and (2) “could have spoken out against crimes”.⁴⁷²⁰ It further responds that the Trial Chamber found that Stojić had *de facto* power to prevent and punish through his orders.⁴⁷²¹ The Prosecution submits that the Trial Chamber did not base its findings on whether Stojić could refer matters to the military courts,⁴⁷²² and that the Defence submissions at trial on the DoJA “have no bearing on measures Stojić could have taken to suppress crimes”.⁴⁷²³

1484. Stojić replies that as “effective control” requires the material ability to prevent or punish crimes all factors which might impede this material ability must be taken into account,⁴⁷²⁴ and thus argues that the Trial Chamber should have considered the non-compliance with his orders.⁴⁷²⁵

(ii) Analysis

1485. Regarding Stojić’s contention that the Trial Chamber failed to identify the powers he possessed or any mechanism he could have used to prevent or punish crimes, the Appeals Chamber recalls that the Trial Chamber found that the evidence did “not support a finding that Bruno Stojić had the *de jure* obligation to apply [his] instructions to punish the members of the HVO armed forces and the Military Police who had committed a crime”.⁴⁷²⁶ Thus, the relevant issue is the *de facto* powers which the Trial Chamber found Stojić possessed.⁴⁷²⁷ In this regard, the Appeals Chamber observes that the Trial Chamber made various findings, including that Stojić: (1) had “the power to issue operative orders to [the HVO and the Military Police] as well as the power to have his orders forwarded through the chain of command of the HVO armed forces, including the Military Police”;⁴⁷²⁸ (2) had the power to issue orders directly to the HVO and the Military Police and to ensure they were carried out and used that authority;⁴⁷²⁹ (3) issued orders directly to the

⁴⁷¹⁹ Prosecution’s Response Brief (Stojić), para. 164 & fns 629-636, referring to, *inter alia*, Ex. P01098. As part of its response to Stojić’s ground of appeal 21, the Prosecution submits that Exhibit P01098 demonstrates Stojić’s ability to punish military personnel without authorisation through the Chief of the Military Police Administration. See Prosecution’s Response Brief (Stojić), para. 151.

⁴⁷²⁰ Prosecution’s Response Brief (Stojić), para. 164. See also Appeal Hearing, AT. 333-334 (21 Mar 2017).

⁴⁷²¹ Prosecution’s Response Brief (Stojić), para. 166. See also Appeal Hearing, AT. 333 (21 Mar 2017).

⁴⁷²² Prosecution’s Response Brief (Stojić), para. 167. See also Appeal Hearing, AT. 339 (21 Mar 2017).

⁴⁷²³ Prosecution’s Response Brief (Stojić), para. 168.

⁴⁷²⁴ Stojić’s Reply Brief, para. 55. Stojić replies that Exhibit P01098, which the Prosecution argues shows his ability to punish military personnel, actually “shows that his authority was limited to requesting a ‘report to the competent court’”. Stojić’s Reply Brief, para. 59.

⁴⁷²⁵ Stojić’s Reply Brief, para. 57. Stojić replies that there was no evidence that he could ensure that his orders were carried out, and that his material ability to prevent or punish was negated by the inability of the Military Police to function. Stojić’s Reply Brief, paras 56-57.

⁴⁷²⁶ Trial Judgement, Vol. 4, para. 413. See *supra*, para. 1428. The Appeals Chamber also notes that the Trial Chamber similarly found that the Head of the Department of Defence was not *de jure* part of the military chain of command. Trial Judgement, Vol. 1, para. 565, Vol. 4, para. 306.

⁴⁷²⁷ Trial Judgement, Vol. 4, para. 423.

⁴⁷²⁸ Trial Judgement, Vol. 4, para. 414. See *supra*, paras 1427-1435, 1470-1472.

⁴⁷²⁹ Trial Judgement, Vol. 4, paras 312, 410. See Trial Judgement, Vol. 4, paras 304-311, 325-326, 423. See also *supra*, paras 1427-1435, 1470-1472.

HVO, particularly with regard to ceasefires, detention centres, troop movements, reorganisation of military units, assignments and mobilisation of troops, and freedom of movement of humanitarian or international organisations;⁴⁷³⁰ and (4) had the authority to issue orders to the Chief of the Military Police Administration, including those directly linked to operations on the ground, such as resubordination.⁴⁷³¹ The Appeals Chamber recalls that it dismisses elsewhere Stojić's challenges to these findings on his powers and the evidence the Trial Chamber relied on in concluding that he could issue various orders.⁴⁷³² Stojić's contention is dismissed.

1486. Concerning whether the Trial Chamber was required to explain how the orders, which Stojić had the power to issue, could have been used to prevent or punish crimes, the Appeals Chamber finds this argument to be unpersuasive for the following reasons. Among the findings noted above,⁴⁷³³ the Trial Chamber considered that Stojić issued orders to conduct autopsies whenever the commission of a war crime was suspected and for HVO commanders to respect international humanitarian law.⁴⁷³⁴ The Trial Chamber also observed that Stojić: (1) had the power to issue instructions about matters of discipline in the HVO;⁴⁷³⁵ (2) had the power to have his orders forwarded through the chain of command;⁴⁷³⁶ and (3) was hierarchically superior to Ćorić.⁴⁷³⁷ Moreover, the Trial Chamber noted that the Main Staff was an integral part of the Department of Defence.⁴⁷³⁸ The Trial Chamber then concluded that in light of these powers, Stojić's failure to issue orders to prevent or punish crimes, and any failure to obey the orders he did issue, was the result of him making no serious effort to prevent or punish crimes.⁴⁷³⁹ In light of this analysis, the Appeals Chamber finds that it was unnecessary for the Trial Chamber to expand on or discuss further how Stojić's orders could have prevented or punished crimes. The Appeals Chamber therefore dismisses Stojić's argument.

1487. Stojić also argues, in reply, that he did not have the "material ability" to prevent or punish crimes and that the Trial Chamber should have considered the non-compliance with his orders as an impediment to his ability to prevent and punish.⁴⁷⁴⁰ In this regard, the Appeals Chamber notes that the Trial Chamber was not required to establish that Stojić had a "material ability" to prevent or

⁴⁷³⁰ Trial Judgement, Vol. 1, paras 562, 564-565, 795, Vol. 4, para. 306. See Trial Judgement, Vol. 4, para. 413. See also *supra*, paras 1427-1435, 1470-1472.

⁴⁷³¹ Trial Judgement, Vol. 4, paras 314, 320. See *supra*, paras 1458, 1472.

⁴⁷³² See *supra*, paras 1424-1435, 1470-1472.

⁴⁷³³ See *supra*, para. 1485.

⁴⁷³⁴ Trial Judgement, Vol. 4, paras 412, 414.

⁴⁷³⁵ Trial Judgement, Vol. 4, para. 413.

⁴⁷³⁶ Trial Judgement, Vol. 4, paras 414-415.

⁴⁷³⁷ Trial Judgement, Vol. 1, paras 854, 862, Vol. 4, para. 314.

⁴⁷³⁸ Trial Judgement, Vol. 4, para. 306.

⁴⁷³⁹ Trial Judgement, Vol. 4, paras 415, 423, 427.

⁴⁷⁴⁰ Stojić's Reply Brief, para. 57, referring to *Strugar* Appeal Judgement, paras 256-257. See *supra*, para. 1484.

punish crimes given that it conducted its analysis in the context of Stojić's JCE I liability.⁴⁷⁴¹ However, the Appeals Chamber also notes that a failure to intervene to prevent recurrence of crimes or to halt abuses has been taken into account in assessing an accused's contribution to a joint criminal enterprise and his intent "where the accused had some power and influence or authority over the perpetrators sufficient to prevent or halt the abuses but failed to exercise such power".⁴⁷⁴² Nonetheless, Stojić refers only to four instances in the Trial Judgement which do not clearly speak to his direct orders being disobeyed.⁴⁷⁴³ He also does not address the fact that the Trial Chamber did note that "if [his] orders were not obeyed, it was because he knowingly did not want to take those measures".⁴⁷⁴⁴ Thus, Stojić fails to show that his orders were not complied with to such an extent that any alleged failure by the Trial Chamber to consider this factor was an error. He fails to demonstrate that these four instances cited could have impacted the Trial Chamber's findings on his ability to issue orders.

1488. Stojić also argues that the Trial Chamber's conclusions that he had no *de jure* obligation to prevent and punish crimes and that he had the *de facto* power to prevent and punish crimes are inconsistent.⁴⁷⁴⁵ Stojić, however, fails to substantiate his argument and does not address the distinguishing features between *de jure* and *de facto* powers, in that, having *de facto* powers does not necessarily mean that *de jure* powers must also exist.⁴⁷⁴⁶ In this respect, the Appeals Chamber recalls that Stojić was found to have had command authority and "effective control" over most of the HVO and the Military Police through his *de facto* powers.⁴⁷⁴⁷ Thus, Stojić does not show an inconsistency in the Trial Chamber's findings and his argument is dismissed. For the same reasons, the Appeals Chamber dismisses Stojić's remaining assertion – that the Trial Chamber erred in relying on his failure to prevent and punish crimes – as the basis of his culpable omission stems from his *de facto* powers.⁴⁷⁴⁸ In any event, provided the accused shares the intent to implement the common purpose by criminal means, the Appeals Chamber recalls that "when establishing an

⁴⁷⁴¹ See *supra*, para. 1410.

⁴⁷⁴² *Stanišić and Župljanin* Appeal Judgement, paras 111, 734.

⁴⁷⁴³ Trial Judgement, Vol. 1, para. 772 ("Although the evidence shows that mobilisation was a challenging process, particularly due to the lack of response to the call to arms and due to desertion [...] the armed forces of the HVO in late 1992 already numbered 45,000 men"), Vol. 2, para. 2081 (the Trial Chamber's finding that it had no evidence that one order Stojić issued on 3 July 1993 – to transfer the management of the detention of Muslim men of military age arrested in Čapljina Municipality from the 1st Knez Domagoj Brigade to the local HVO – was implemented), Vol. 4, paras 480 (the Trial Chamber observed that Praljak intervened when an HVO unit blocked the passage of an UNPROFOR convoy authorised by Stojić, allowing for the convoy to pass through), 1039 (the Trial Chamber's finding that it was not aware of evidence showing that the Detention Commission – under the authority of the Department of Defence – accomplished its tasks).

⁴⁷⁴⁴ Trial Judgement, Vol. 4, para. 415. See also *infra*, para. 1494.

⁴⁷⁴⁵ See Trial Judgement, Vol. 4, paras 413, 423.

⁴⁷⁴⁶ The Appeals Chamber has made this clear in the context of its discussions regarding Article 7(3) responsibility. See *Čelebići* Appeal Judgement, para. 193 ("The power or authority to prevent or to punish does not solely arise from *de jure* authority conferred through official appointment"). See also *Nahimana et al.* Appeal Judgement, para. 625; *Kayishema and Ruzindana* Appeal Judgement, para. 294, quoting *Čelebići* Appeal Judgement, para. 192.

⁴⁷⁴⁷ Trial Judgement, Vol. 4, paras 306, 312, 320, 326. See also *supra*, para. 1457.



accused's participation in a joint criminal enterprise through his failure to act, the existence of a legal duty to act deriving from a rule of criminal law is not required".⁴⁷⁴⁹ In addition, any alleged error in this regard does not impact on the Trial Chamber's consideration of whether Stojić used his authority to undertake measures which could have prevented or punished crimes as a factor in inferring his JCE I intent.⁴⁷⁵⁰

1489. Stojić also contends that the Trial Chamber disregarded his trial submissions on the role of the DoJA in prosecuting crimes;⁴⁷⁵¹ however, he does not explain how these trial submissions could have impacted on the Trial Chamber's findings. In particular, the Appeals Chamber notes that the Trial Chamber did discuss that the DoJA "was tasked with establishing effective judicial authority".⁴⁷⁵² Recalling that the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial,⁴⁷⁵³ Stojić's contention is dismissed.

1490. Regarding Stojić's argument that the Trial Chamber disregarded its earlier finding that crimes could not be effectively opposed, the Appeals Chamber takes note of the Trial Chamber's discussion on the difficulties experienced by organs involved in taking criminal action against the HVO, and in particular, its finding that because the Military Police was forced to devote major parts of its force to combat operations, "crime within the ranks of the HVO armed forces – including the Military Police – [...] could not, for example, be effectively opposed, especially inasmuch as the civilian police forces and the military tribunals failed to operate in satisfactory fashion".⁴⁷⁵⁴ Nonetheless, even if the organs involved in investigating and prosecuting crimes experienced difficulties, the Appeals Chamber considers that this did not preclude the Trial Chamber from finding that Stojić had command authority and "effective control" over the HVO and the Military Police as he had other avenues available to prevent and punish crimes.⁴⁷⁵⁵ Stojić's *de facto* powers gave him sufficient power or influence to deal with crimes, which he has not shown was hindered in such a way that he could not at least make inquiries, initiate investigations, or report the perpetrators to the competent authorities. For example, as noted by the Trial Chamber, on 6 February 1993 Stojić ordered the brigades of the North-West OZ to conduct autopsies whenever there were suspicions of a war crime; further, on 23 April 1993, having heard of the killings and

⁴⁷⁴⁸ See *supra*, para. 1482.

⁴⁷⁴⁹ *Stanišić and Župljanin* Appeal Judgement, para. 110. See *Stanišić and Župljanin* Appeal Judgement, para. 111.

⁴⁷⁵⁰ Trial Judgement, Vol. 4, paras 423, 427-428. See *Šainović et al.* Appeal Judgement, para. 1045. See also *Popović et al.* Appeal Judgement, paras 1368-1369; *infra*, para. 2081 ("For the purposes of establishing the *mens rea* element of commission through participation in a JCE [...], it was within the Trial Chamber's discretion to consider, among other factors, whether Praljak used his command authority to undertake measures which could have prevented or punished the commission of crimes.").

⁴⁷⁵¹ Stojić's Appeal Brief, para. 182, referring to Stojić's Final Brief, para. 406. See *supra*, para. 1482.

⁴⁷⁵² Trial Judgement, Vol. 1, para. 646. See Trial Judgement, Vol. 1, paras 645, 647-650.

⁴⁷⁵³ *Kvočka et al.* Appeal Judgement, para. 23. See *Popović et al.* Appeal Judgement, paras 305, 1841.

⁴⁷⁵⁴ Trial Judgement, Vol. 1, para. 972. See also Trial Judgement, Vol. 4, para. 411.

⁴⁷⁵⁵ See Trial Judgement, Vol. 4, paras 312, 320, 410, 415, 425-427.

torching of houses in Jablanica, he issued a joint order with Petković instructing the HVO commanders to respect international humanitarian law.⁴⁷⁵⁶ Stojić's argument is dismissed as he fails to show that no reasonable trier of fact, after finding that some organs involved in opposing crime were not operating in a satisfactory fashion, could have concluded that he had the *de facto* power to prevent or punish crimes.

1491. In sum, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in finding that he had the *de facto* power to prevent and punish crimes committed by the HVO and the Military Police. Stojić's sub-ground of appeal 23.1 is dismissed.

(b) Whether Stojić did not intend to prevent or punish crimes (Stojić's Sub-ground 23.3)

1492. Stojić submits that no reasonable trier of fact could have concluded that he "did not intend to prevent or punish the crimes".⁴⁷⁵⁷ In this regard, Stojić argues that he issued instructions encouraging the investigation of crimes, ordered commanders to respect international humanitarian law, and promulgated regulations for the treatment of POWs.⁴⁷⁵⁸ Stojić also contends that the Trial Chamber failed to explain its conclusion that he "knowingly did not want to take measures", especially in light of its findings that the judicial system was "seriously limited" and that crime could not be effectively opposed.⁴⁷⁵⁹ Stojić argues that alternative reasonable inferences include that he did not have the power to ensure that his instructions were carried out.⁴⁷⁶⁰

1493. The Prosecution responds that Stojić fails to show that no reasonable trier of fact could have found that he did not intend to prevent or punish crimes.⁴⁷⁶¹ It argues that the Trial Chamber was cognisant of the unenforced orders Stojić issued, was mindful of difficulties in the judicial system, and reasonably concluded that he made "no serious effort" to prevent or punish crimes.⁴⁷⁶²

⁴⁷⁵⁶ See Trial Judgement, Vol. 4, paras 340, 342, 412, 414. In addition, while Stojić submits, referring to Exhibit P01098, that "his authority was limited to requesting a 'report to the competent court'", the Appeals Chamber considers that this was nevertheless an authority he had and could exercise. See Stojić's Reply Brief, para. 59. Furthermore, in the Appeals Chamber's view, Exhibit P01098 demonstrates that Stojić could in fact initiate criminal proceedings against military personnel through the Chief of the Military Police Administration. See Ex. P01098, p. 2 (where Stojić instructs that "[a]ny person who opens fire in an inhabited area without authorisation shall be immediately arrested and detained, and a report submitted to the competent organ").

⁴⁷⁵⁷ Stojić's Appeal Brief, paras 186-187, referring to Trial Judgement, Vol. 4, para. 423.

⁴⁷⁵⁸ Stojić's Appeal Brief, para. 187, referring to Exs. P02578, p. 1, P02050, P01474.

⁴⁷⁵⁹ Stojić's Appeal Brief, para. 188, referring to Trial Judgement, Vol. 1, paras 972, 986.

⁴⁷⁶⁰ Stojić's Appeal Brief, para. 188; Stojić's Reply Brief, para. 58. See Stojić's Reply Brief, para. 57.

⁴⁷⁶¹ Prosecution's Response Brief (Stojić), para. 165. See Prosecution's Response Brief (Stojić), para. 163. The Prosecution submits that Stojić instead concealed crimes and commended and secured promotions for perpetrators he knew had participated in crimes. Prosecution's Response Brief (Stojić), para. 165.

⁴⁷⁶² Prosecution's Response Brief (Stojić), paras 165, 167. See Prosecution's Response Brief (Stojić), para. 163. See also Appeal Hearing, AT. 333-337, 339 (21 Mar 2017).

1494. Stojić challenges the Trial Chamber's conclusion that "he knowingly did not want to take" measures to prevent or punish crimes.⁴⁷⁶³ In this regard, the Appeals Chamber recalls that a Trial Judgement must be read as a whole,⁴⁷⁶⁴ and notes that the Trial Chamber made numerous findings which put the impugned conclusion into context. In addition to Stojić's ability to issue orders to punish and prevent crimes,⁴⁷⁶⁵ the Trial Chamber also found that he: (1) participated in or planned HVO military operations and knew of crimes being committed and thus intended to have those crimes committed;⁴⁷⁶⁶ (2) encouraged crimes committed by Naletilić's troops and commended Naletilić;⁴⁷⁶⁷ (3) requested and obtained a promotion for Ivica Rajić knowing that he committed crimes;⁴⁷⁶⁸ and (4) denied to international representatives that the evictions of Muslims from West Mostar were being carried out by the HVO which proved that the HVO authorities did not genuinely intend to prevent crimes.⁴⁷⁶⁹ The Trial Chamber also considered evidence that Stojić wished to punish offences but could not do so in practice because of the situation in BiH at the time, including that the military courts were not functioning,⁴⁷⁷⁰ as well as his trial submissions that he was not in a position to prevent or punish crimes.⁴⁷⁷¹ It is on the basis of these findings and considerations that the Trial Chamber concluded that Stojić "did not intend to prevent or punish the crimes"⁴⁷⁷² and that "he knowingly did not want to take" such measures.⁴⁷⁷³ The Appeals Chamber finds that Stojić fails to demonstrate that the Trial Chamber erred in concluding that his intention not to prevent or punish crimes was the only reasonable inference available from the evidence. The Appeals Chamber also dismisses Stojić's assertions on crimes not being effectively opposed, the limitation of the judicial system, and his lack of power to ensure compliance with his orders.⁴⁷⁷⁴

1495. Further, the Trial Chamber was aware of, and considered, Stojić's: (1) order on 23 April 1993 to the commanders of all OZs to treat civilians and detainees in accordance with international law;⁴⁷⁷⁵ (2) promulgation of regulations on 11 February 1993 for the treatment of POWs imprisoned in detention centres;⁴⁷⁷⁶ and (3) order for vehicles exiting the town of Mostar to

⁴⁷⁶³ Trial Judgement, Vol. 4, para. 415.

⁴⁷⁶⁴ *Stanišić and Župljanin* Appeal Judgement, paras 138, 376, 705; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379. See *Kalimanžira* Appeal Judgement, para. 227.

⁴⁷⁶⁵ See *supra*, paras 1485-1486.

⁴⁷⁶⁶ Trial Judgement, Vol. 4, para. 426. See also *infra*, paras 1534-1537, 1541-1542, 1545-1550.

⁴⁷⁶⁷ Trial Judgement, Vol. 4, paras 423, 427. See Trial Judgement, Vol. 4, paras 416-420. See also *infra*, paras 1498-1499.

⁴⁷⁶⁸ Trial Judgement, Vol. 4, para. 427. See Trial Judgement, Vol. 4, paras 380-383. See also *infra*, para. 1707 (limiting consideration that Stojić requested and obtained a promotion for Ivica Rajić knowing that he committed crimes in Vareš town, and not Stupni Do).

⁴⁷⁶⁹ Trial Judgement, Vol. 4, paras 421-422, 427. See *infra*, paras 1625-1630.

⁴⁷⁷⁰ Trial Judgement, Vol. 4, para. 411. See Trial Judgement, Vol. 1, paras 972, 980-986. See also *supra*, para. 1489.

⁴⁷⁷¹ Trial Judgement, Vol. 4, para. 409.

⁴⁷⁷² Trial Judgement, Vol. 4, para. 423.

⁴⁷⁷³ Trial Judgement, Vol. 4, para. 415.

⁴⁷⁷⁴ See *supra*, paras 1486-1489, 1492.

⁴⁷⁷⁵ Trial Judgement, Vol. 4, para. 340, referring to Ex. P02050.

⁴⁷⁷⁶ Trial Judgement, Vol. 4, para. 386, referring to, *inter alia*, Ex. P01474. See Trial Judgement, Vol. 4, para. 387.

be checked in an attempt to combat thefts.⁴⁷⁷⁷ Stojić fails to show how these actions call into question the Trial Chamber's conclusion that he "made no serious effort to prevent or punish the crimes" based on its findings discussed above.⁴⁷⁷⁸ Stojić's sub-ground of appeal 23.3 is therefore dismissed.

(c) Stojić's power to prevent or punish the crimes committed by Naletilić's troops (Stojić's Sub-ground 23.2)

1496. Stojić submits that the Trial Chamber's finding that he had the power to prevent or punish the crimes committed by Naletilić's troops was unreasonable and inconsistent with earlier findings.⁴⁷⁷⁹ Stojić argues that the Trial Chamber found elsewhere that the ATGs reported directly to the Main Staff and that he was not in their chain of command.⁴⁷⁸⁰ He also submits that no evidence was presented showing that he had command authority over the KB and its ATGs.⁴⁷⁸¹

1497. The Prosecution responds that the Trial Chamber reasonably found that Stojić had the power to prevent or punish crimes committed by the KB and its ATGs.⁴⁷⁸² The Prosecution avers that this finding is unaffected by the fact that the Trial Chamber could not find that Stojić exercised a power of command over the KB and its ATGs under Naletilić's command.⁴⁷⁸³ It argues that the findings show that Stojić accepted and encouraged crimes committed by the KB and its ATGs.⁴⁷⁸⁴

1498. The Trial Chamber found that, although "there were structural and operational ties between Bruno Stojić and Mladen Naletilić and his ATGs",⁴⁷⁸⁵ it had "no evidence supporting a finding that the Department of Defence exercised a power of command over the KB and its ATGs under Mladen Naletilić's command".⁴⁷⁸⁶ The Trial Chamber also concluded that "Stojić had effective control over the activities of the components of the HZ(R) H-B armed forces – save the KB – and over the Military Police".⁴⁷⁸⁷ Stojić argues that the former finding is contradictory to the holding by the Trial Chamber that he had the power to prevent or punish crimes committed by "Tuta's men"

⁴⁷⁷⁷ Trial Judgement, Vol. 4, para. 446, referring to Ex. P02578, p. 1.

⁴⁷⁷⁸ Trial Judgement, Vol. 4, para. 423. See Stojić's Appeal Brief, para. 187, referring to Exs. P02578, p. 1, P02050, P01474.

⁴⁷⁷⁹ Stojić's Appeal Brief, paras 183, 185; Stojić's Reply Brief, para. 60.

⁴⁷⁸⁰ Stojić's Appeal Brief, para. 184, referring to Trial Judgement, Vol. 1, paras 565, 708, 791, 795-796, 829, 835.

⁴⁷⁸¹ Stojić's Appeal Brief, para. 184; Stojić's Reply Brief, para. 60, referring to Trial Judgement, Vol. 1, para. 835.

⁴⁷⁸² Prosecution's Response Brief (Stojić), para. 170.

⁴⁷⁸³ Prosecution's Response Brief (Stojić), para. 170, referring to Trial Judgement, Vol. 1, para. 835, Vol. 4, paras 307, 420. The Prosecution argues that the Main Staff was an integral part of the Department of Defence, and that the absence of direct orders from Stojić to the KB or the ATGs does not exclude his effective control over them. Prosecution's Response Brief (Stojić), para. 170.

⁴⁷⁸⁴ Prosecution's Response Brief (Stojić), para. 171, referring to Trial Judgement, Vol. 4, paras 416-418, Exs. P02770, P04401 (confidential), pp. 4-5, P03928 (0300-3205). See Appeal Hearing, AT. 337-338 (21 Mar 2017).

⁴⁷⁸⁵ Trial Judgement, Vol. 4, para. 307. See Trial Judgement, Vol. 1, paras 832-835.

⁴⁷⁸⁶ Trial Judgement, Vol. 4, para. 307. See Trial Judgement, Vol. 1, para. 835.

⁴⁷⁸⁷ Trial Judgement, Vol. 4, para. 326.

but had no intention of doing so.⁴⁷⁸⁸ However, in arriving at this impugned finding, the Trial Chamber also: (1) considered evidence that Stojić was asked “to use his authority and influence” to put an end to a situation involving “Tuta’s men” and their “severe discipline problems”;⁴⁷⁸⁹ (2) observed various instances where Stojić stated that he had confidence in “Tuta” and commended the KB and its commander “Tuta”;⁴⁷⁹⁰ and (3) found that there were structural and operational ties between Stojić and Naletilić and his ATGs.⁴⁷⁹¹

1499. Moreover, Stojić fails to take into consideration that the Trial Chamber also found that: (1) the Main Staff was an integral part of the Department of Defence;⁴⁷⁹² (2) he had the power to have his orders forwarded through the chain of command;⁴⁷⁹³ (3) he had the *de facto* power to prevent and punish crimes by the HVO;⁴⁷⁹⁴ and (4) the KB and its ATGs, under Naletilić’s command, were integrated into the overall HVO chain of command and reported directly to the Main Staff.⁴⁷⁹⁵ Thus, Stojić would have been able to issue orders to, or could have used his position and influence over, the Main Staff, and more specifically Petković and then subsequently Praljak as Chief/Commander of the Main Staff, regarding the prevention or punishment of crimes committed by the units under Naletilić’s command. Considering the authority that Stojić could have exercised over the Main Staff as well as the “structural and operational ties” between him and Naletilić, the Appeals Chamber is not persuaded by his argument that the Trial Chamber’s findings were inconsistent or contradictory.⁴⁷⁹⁶ Stojić’s sub-ground of appeal 23.2 is therefore dismissed.

(d) Conclusion

1500. In sum, Stojić has failed to demonstrate that the Trial Chamber erred in: (1) finding that he had the power to prevent and punish crimes committed by the HVO, including the Military Police, and Naletilić’s troops and deliberately failed to do so; and (2) relying on his failure to prevent and punish crimes as a basis for its conclusion that he significantly contributed to the JCE and shared the intent of other JCE members. Stojić’s ground of appeal 23 is dismissed.

⁴⁷⁸⁸ Trial Judgement, Vol. 4, para. 420.

⁴⁷⁸⁹ Trial Judgement, Vol. 4, para. 419.

⁴⁷⁹⁰ Trial Judgement, Vol. 1, para. 834, Vol. 4, paras 418, 420, 427.

⁴⁷⁹¹ Trial Judgement, Vol. 4, para. 307. See Trial Judgement, Vol. 1, paras 832-835.

⁴⁷⁹² Trial Judgement, Vol. 4, para. 306.

⁴⁷⁹³ Trial Judgement, Vol. 4, para. 414.

⁴⁷⁹⁴ Trial Judgement, Vol. 4, para. 423. See Trial Judgement, Vol. 4, paras 410-415, 421-422, 427.

⁴⁷⁹⁵ Trial Judgement, Vol. 1, para. 829.

⁴⁷⁹⁶ The Appeals Chamber further finds that Stojić’s remaining arguments highlight the Trial Chamber’s findings, which he does not challenge, and thus he fails to show how these arguments would impact on the conclusions of the Trial Chamber. See Stojić’s Appeal Brief, para. 184; *supra*, para. 1496.

5. Alleged errors concerning Stojić's powers and responsibilities (Stojić's Ground 24)

(a) Whether Stojić represented the Government in peace negotiations (Stojić's Sub-ground 24.1)

1501. Stojić submits that the Trial Chamber erred in finding that he represented "the HVO" in peace negotiations at the highest level based on the three meetings it relied on.⁴⁷⁹⁷ Stojić argues that: (1) the meeting on 25 March 1993 merely concerned an attempt to resolve a specific issue in the Konjic area;⁴⁷⁹⁸ (2) he did not attend the 18 April 1993 meeting as he "interrupted" this meeting with news about an ABiH offensive causing the meeting to be postponed;⁴⁷⁹⁹ and (3) the only evidence on his involvement in the 2 June 1993 meeting is not that he attended the negotiation but that he later ratified the resulting agreement.⁴⁸⁰⁰ He asserts that the evidence, at most, shows that he participated in local meetings on isolated occasions, and that there is no evidence that he attended any high-level or international negotiation.⁴⁸⁰¹

1502. The Prosecution responds that the Trial Chamber's finding was reasonable.⁴⁸⁰² It argues that Stojić: (1) minimises the importance of the 25 March 1993 meeting;⁴⁸⁰³ (2) ignores the evidence of ECMM monitor, Klaus Johann Nissen, that Stojić represented the HZ(R) H-B at the 18 April 1993 meeting concerning, *inter alia*, a ceasefire and withdrawal of troops, and his late attendance does not undermine the finding;⁴⁸⁰⁴ and (3) misrepresents the evidence on the 2 June 1993 meeting regarding joint HVO-ABiH Mostar patrols.⁴⁸⁰⁵

1503. The Appeals Chamber notes that the Trial Chamber found that Stojić was "one of the HVO HZ H-B officials authorised to represent that body in peace negotiations at the highest level".⁴⁸⁰⁶ In doing so, it considered evidence showing that Stojić participated in meetings aimed at resolving the conflicts between the HVO and the ABiH, as well as evidence of an agreement he signed setting up

⁴⁷⁹⁷ Stojić's Appeal Brief, para. 190, referring to Trial Judgement, Vol. 4, paras 321-324. The Appeals Chamber notes that Stojić refers to the "HVO" in this sub-ground of appeal without clarifying whether this refers to the HVO armed forces or the HVO Government. Given that he is challenging the Trial Chamber's findings in paragraphs 321 to 324 of Volume 4 of the Trial Judgement, which in turn concern Stojić's representation of the Government, the Appeals Chamber interprets Stojić's use of the term "HVO" in this particular sub-ground of appeal as a reference to the HVO Government.

⁴⁷⁹⁸ Stojić's Appeal Brief, para. 190, referring to Ex. 2D00643.

⁴⁷⁹⁹ Stojić's Appeal Brief, para. 190, referring to Ex. P01950 (confidential), para. 4, [Redacted, see Annex C – Confidential Annex]

⁴⁸⁰⁰ Stojić's Appeal Brief, para. 190, referring to Exs. P02652 (confidential), p. 1, P10367 (confidential), para. 58.

⁴⁸⁰¹ Stojić's Appeal Brief, para. 191.

⁴⁸⁰² Prosecution's Response Brief (Stojić), para. 174. See Prosecution's Response Brief (Stojić), para. 173. See also Appeal Hearing, AT. 325 (21 Mar 2017).

⁴⁸⁰³ Prosecution's Response Brief (Stojić), para. 174.

⁴⁸⁰⁴ Prosecution's Response Brief (Stojić), para. 174, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 322, Klaus Johann Nissen, T. 20417 (25 June 2007).

⁴⁸⁰⁵ Prosecution's Response Brief (Stojić), para. 174.

⁴⁸⁰⁶ Trial Judgement, Vol. 4, para. 324.

a joint patrol of HVO and ABiH soldiers.⁴⁸⁰⁷ In challenging the Trial Chamber's reliance on this evidence, Stojić contends that the 25 March 1993 meeting was aimed at resolving a specific issue but cites evidence which the Trial Chamber took into account.⁴⁸⁰⁸ The Appeals Chamber considers that Stojić fails to demonstrate that this evidence or his assertion is inconsistent with the Trial Chamber's finding that this meeting was aimed at resolving the conflicts between the HVO and the ABiH in the municipalities of Konjic and Jablanica.⁴⁸⁰⁹ In any event, as Stojić does not challenge that he participated in these negotiations as one of the representatives of the HVO HZ H-B, he fails to show how his assertion could affect the Trial Chamber's overall finding.

1504. Regarding the 18 April 1993 meeting, the Appeals Chamber observes that the Trial Chamber found that Prlić, Stojić, and Petković attended this meeting on behalf of the HVO.⁴⁸¹⁰ In support of this finding, the Trial Chamber relied solely on the evidence of the ECMM monitor Klaus Johann Nissen who testified that Stojić was one of the participants in the meeting along with Prlić and Petković on the "HVO side".⁴⁸¹¹ The Appeals Chamber notes, however, that Exhibit P01950 indicates that Stojić interrupted the meeting and reported on a large scale offensive of the ABiH in central Bosnia.⁴⁸¹² [Redacted, see Annex C – Confidential Annex].⁴⁸¹³ The Trial Chamber did not refer to this evidence. The Appeals Chamber considers that Stojić's alleged late arrival to and interruption of the 18 April 1993 meeting is not consistent with Nissen's evidence that he was a participant in this meeting.⁴⁸¹⁴ Nonetheless, given the limited scope of the Trial Chamber's finding of Stojić's attendance at this meeting on behalf of the HVO, the Appeals Chamber does not consider that this inconsistency impugns its overall finding that he represented "the HVO" in peace negotiations at the highest level.

1505. Regarding the 2 June 1993 "meeting", the Trial Chamber in fact considered that on 2 June 1993, Boban, Stojić, and Petković signed an agreement on setting up joint HVO and ABiH patrols, and not that they attended a meeting on that date.⁴⁸¹⁵ Stojić's argument that he did not attend a negotiation around that date⁴⁸¹⁶ therefore shows a misunderstanding of the Trial Chamber's reliance on the relevant evidence. The Appeals Chamber considers that the Trial Chamber considered the agreement as evidence that Stojić was authorised to sign agreements concerning the

⁴⁸⁰⁷ Trial Judgement, Vol. 4, paras 321-323.

⁴⁸⁰⁸ See Stojić's Appeal Brief, para. 190, referring to Ex. 2D00643; Trial Judgement, Vol. 4, para. 321, referring to, *inter alia*, Ex. 2D00643.

⁴⁸⁰⁹ Trial Judgement, Vol. 4, para. 321.

⁴⁸¹⁰ Trial Judgement, Vol. 4, para. 322.

⁴⁸¹¹ Trial Judgement, Vol. 4, para. 322, referring to Klaus Johann Nissen, T(F). 20416-20417 (25 June 2007).

⁴⁸¹² Ex. P01950 (confidential), para. 4.

⁴⁸¹³ [Redacted, see Annex C – Confidential Annex]

⁴⁸¹⁴ Klaus Johann Nissen, T. 20417 (25 June 2007).

⁴⁸¹⁵ Trial Judgement, Vol. 4, para. 323.

⁴⁸¹⁶ See Stojić's Appeal Brief, para. 190.

HVO.⁴⁸¹⁷ Furthermore, Stojić does not dispute that he was one of the competent authorities empowered to sign agreements resulting from peace negotiations. Thus, his argument is dismissed.

1506. The Appeals Chamber also dismisses Stojić's argument that there is no evidence that he attended any high-level or international negotiation. Notably, the 25 March 1993 and 18 April 1993 meetings, as well as the agreement signed on 2 June 1993, all concern resolutions discussed between senior representatives of the HVO HZ H-B and the SDA/ABiH/HDZ, and thus Stojić fails to show that the Trial Chamber erred in considering these meetings to be held at "the highest level".⁴⁸¹⁸ The Appeals Chamber therefore finds that Stojić fails to demonstrate that no reasonable trier of fact could have concluded that he was one of the officials within the HVO HZ H-B authorised to represent that body in peace negotiations at the highest level. Stojić's sub-ground of appeal 24.1 is dismissed.

(b) Whether Stojić took part in formulating the defence policy of the HZ(R) H-B Government (Stojić's Sub-ground 24.2)

1507. Stojić submits that the Trial Chamber erred in finding that he took part in the formulation of the HZ(R) H-B Government's defence policy based on his participation in meetings of the Government.⁴⁸¹⁹ Stojić argues that mere attendance at a meeting only establishes that he knew about the subject-matter under discussion, and that the Trial Chamber failed to assess what contributions he made to the meetings.⁴⁸²⁰ In particular, Stojić contends that the cited evidence shows no direct or relevant contribution by him,⁴⁸²¹ pre-dates the JCE,⁴⁸²² or does not establish that his contributions related to the formulation of defence policy.⁴⁸²³ Stojić further contends that the Trial Chamber erred in finding that defence policy was formulated during the Government meetings as: (1) the military situation was discussed in two meetings but no decisions were made;⁴⁸²⁴ and (2) the detention

⁴⁸¹⁷ Trial Judgement, Vol. 4, para. 323; Ex. P10367 (confidential), para. 58; Ex. P02652 (confidential), p. 2.

⁴⁸¹⁸ Trial Judgement, Vol. 4, para. 324.

⁴⁸¹⁹ Stojić's Appeal Brief, paras 192, 194, 196. While Stojić refers to "meetings of the HVO" in his submissions relating to this ground of appeal, the Appeals Chamber notes that he challenges a finding of the Trial Chamber which concerns Stojić's attendance at Government meetings. See Trial Judgement, Vol. 4, heading before para. 297.

⁴⁸²⁰ Stojić's Appeal Brief, paras 193-194, referring to *Krstić* Appeal Judgement, para. 87, *Milutinović et al.* Trial Judgement, Vol. 3, para. 143. Stojić submits that the evidence only establishes that he attended Government meetings during which various topics were discussed and does not show that he played a leading role in these meetings. Stojić's Appeal Brief, para. 196.

⁴⁸²¹ Stojić's Appeal Brief, para. 194, referring to Exs. P00559, p. 3, 1D01666, P05955. See Stojić's Appeal Brief, para. 196.

⁴⁸²² Stojić's Appeal Brief, para. 194, referring to Exs. P00578, p. 5, P00672, pp. 4, 6. According to Stojić, the evidence which pre-dates the JCE has no relevance to the formulation of defence policy during the JCE period. See Stojić's Appeal Brief, para. 194.

⁴⁸²³ Stojić's Appeal Brief, para. 194. Stojić argues that in the meeting of 6 September 1993 he spoke on administrative issues and not the establishment of detention centres, and that during a meeting on 4 November 1993 he only provided an update on the situation in Vareš. Stojić's Appeal Brief, para. 194, referring to Exs. P04841, pp. 3-4, 1D01354.

⁴⁸²⁴ Stojić's Appeal Brief, para. 195, referring to Exs. 1D02179, 1D01666.

centres and technical rules relating to military service were discussed at one Government session.⁴⁸²⁵

1508. The Prosecution responds that the Trial Chamber's finding was reasonable,⁴⁸²⁶ and contends that Stojić's arguments fail to show an error.⁴⁸²⁷ It argues that even if Stojić did not voice his opinion during the Government meetings, he participated by exercising his vote.⁴⁸²⁸ The Prosecution submits that Stojić: (1) disseminated information and made defence-related proposals to the Government;⁴⁸²⁹ and (2) participated in meetings where discussions took place, and proposals were adopted, concerning, *inter alia*, the armed forces' organisational structure, the mobilisation of forces, the detention and treatment of POWs, the detention centres, and the military and security situation.⁴⁸³⁰

1509. The Appeals Chamber notes that the Trial Chamber found that Stojić participated in many Government meetings in his capacity as Head of the Department of Defence, and "in that context took part in formulating defence policy of the HZ(R) H-B".⁴⁸³¹ The Trial Chamber considered that decisions were taken at these meetings on various subjects including: (1) the status of refugees and displaced persons; (2) the amended decree on the armed forces; (3) the decree imposing the war tax in the territory of the HZ H-B; (4) the military situation on the ground; (5) the mobilisation of the HVO; and (6) the situation in the HVO detention centres.⁴⁸³² Notably, the evidence relied on by the Trial Chamber shows that a majority of proposals were unanimously adopted during these meetings, and Stojić does not argue that he abstained or voted against any of the proposals or decisions.⁴⁸³³ Further, there is evidence of Stojić actively participating in some meetings by making proposals and providing reports and updates on the military situation.⁴⁸³⁴ Thus, a reasonable trier of fact could have concluded that Stojić participated in these meetings by providing reports as well as by voting on the proposals discussed and adopted.

⁴⁸²⁵ Stojić's Appeal Brief, para. 195, referring to Ex. P04841. See Stojić's Appeal Brief, para. 196.

⁴⁸²⁶ Prosecution's Response Brief (Stojić), para. 175. See Prosecution's Response Brief (Stojić), para. 173.

⁴⁸²⁷ Prosecution's Response Brief (Stojić), para. 178.

⁴⁸²⁸ Prosecution's Response Brief (Stojić), para. 175.

⁴⁸²⁹ Prosecution's Response Brief (Stojić), para. 175.

⁴⁸³⁰ Prosecution's Response Brief (Stojić), paras 176-178. The Prosecution argues that the pre-JCE Government meetings demonstrated Stojić's role in formulating defence policy. Prosecution's Response Brief (Stojić), para. 178. See also Appeal Hearing, AT. 325 (21 Mar 2017).

⁴⁸³¹ Trial Judgement, Vol. 4, para. 298. See *supra*, para. 1418.

⁴⁸³² Trial Judgement, Vol. 4, para. 297, referring to, *inter alia*, Exs. P00559, p. 7, P00578, p. 5, P00672, p. 3, P01097, P05955, 1D01666, 1D02179, P04841.

⁴⁸³³ Trial Judgement, Vol. 4, para. 297, referring to, *inter alia*, Exs. P00559, p. 7, P00578, p. 5, P00672, p. 3, P01097, P04841, P05955, 1D02179. See Ex. P00543, p. 7; Ex. P00921; Ex. P01227; Ex. P01324; Ex. P02606, p. 2; Ex. P05610, p. 2; Ex. 1D01181, pp. 3-5; Ex. 1D01669.

⁴⁸³⁴ Ex. P05799; Ex. 1D01608, pp. 2-3; Ex. 1D01668; Ex. 1D01275, pp. 2-3. See Trial Judgement, Vol. 4, paras 300 & fns 235, 247.

1510. The Appeals Chamber is also not convinced by Stojić's argument that a finding on his personal contributions to the meetings was required in order to conclude, as the Trial Chamber did, that he took part in formulating the defence policy of the HZ(R) H-B by virtue of his participation.⁴⁸³⁵ Considering that the case-law cited by Stojić is distinguishable from his case,⁴⁸³⁶ the Appeals Chamber also finds his argument to be unsupported. His arguments are thus dismissed.

1511. Further, the Appeals Chamber is not convinced by Stojić's contentions that no defence policies were formulated during the meetings and that some meetings cited as evidence by the Trial Chamber pre-date the JCE.⁴⁸³⁷ The evidence relied on by the Trial Chamber shows that various issues affecting the defence policy were discussed and formulated at these meetings, including the military situation on the ground and the mobilisation of the HVO.⁴⁸³⁸ Stojić only supports his argument by asserting that evidence of discussions on the military situation and the detention centres in three meetings is insufficient to support the Trial Chamber's finding.⁴⁸³⁹ The Appeals Chamber recalls that it is to be presumed that the Trial Chamber evaluated all the evidence presented to it as long as there is no indication that the Trial Chamber completely disregarded any evidence which is clearly relevant.⁴⁸⁴⁰ In this regard, the Trial Chamber specifically referred to over 40 Government sessions and meetings that Stojić attended when making its findings thus indicating that the evidence on the ten meetings it cited to explicitly did not encompass all the evidence it considered.⁴⁸⁴¹ Since Stojić fails to address the other evidence on the record,⁴⁸⁴² the Appeals Chamber is not convinced that he has shown an error in the Trial Chamber's reasoning and the ultimate finding.

1512. Finally, as the Trial Chamber took account of various meetings held between January and November 1993, the Appeals Chamber finds that Stojić fails to show how any alleged error in the Trial Chamber's consideration of, *inter alia*, the evidence on meetings which pre-date the JCE

⁴⁸³⁵ See *Šainović et al.* Appeal Judgement, para. 925 (The Appeals Chamber considered that, apart from being present at a meeting, Nikola Šainović did not issue any instructions or make any statements and thus did not exert any influence; it considered though that his presence showed his continuous involvement with the issues).

⁴⁸³⁶ See *Krstić* Appeal Judgement, paras 85-87 (The Appeals Chamber considered that Radislav Krstić's presence at two meetings could at most establish his knowledge of decisions taken and that there is no evidence suggesting that he was aware of any genocidal intent of Ratko Mladić as it was highly unlikely that Mladić would have discussed this in front of UNPROFOR leaders or the foreign media present); *Milutinović et al.* Trial Judgement, Vol. 3, paras 132, 142-143 (In discussing the Prosecution's argument that Milan Milutinović's presence at meetings conferred legitimacy to the decisions taken, it was considered that Milutinović only attended a limited number of meetings and that he did not play a significant role in them).

⁴⁸³⁷ Stojić's Appeal Brief, paras 194-195. See *supra*, para. 1418.

⁴⁸³⁸ See *supra*, fn. 4833.

⁴⁸³⁹ Stojić's Appeal Brief, para. 195.

⁴⁸⁴⁰ *Tolimir* Appeal Judgement, para. 53; *Popović et al.* Appeal Judgement, paras 925, 1017; *Kvočka et al.* Appeal Judgement, para. 23.

⁴⁸⁴¹ Trial Judgement, Vol. 4, para. 297.

⁴⁸⁴² See *supra*, fns 4833-4834.

could have affected its finding that he participated in the formulation of the defence policy of the HZ(R) H-B both before and after the JCE came into effect.⁴⁸⁴³

1513. In light of the above, the Appeals Chamber finds that Stojić has failed to demonstrate that no reasonable trier of fact could have concluded that by providing reports, taking part in, and voting in the Government sessions and meetings Stojić participated in the formulation of the defence policy of HZ(R) H-B. Stojić's sub-ground of appeal 24.2 is thus dismissed.

(c) Whether Stojić exercised the functions of the Head of the Department of Defence until 15 November 1993 (Stojić's Sub-ground 24.3)

1514. Stojić submits that no reasonable trier of fact could have concluded that he left the office of the Head of the Department of Defence on 15 November 1993.⁴⁸⁴⁴ Stojić argues that his successor was appointed on 10 November 1993 and that he took up his new position at the Department for the Production of Military Equipment on the same day.⁴⁸⁴⁵ He also argues that there is no evidence that he performed any function related to the Department of Defence after 10 November 1993.⁴⁸⁴⁶

1515. The Prosecution responds that the Trial Chamber's finding was reasonable, and that Stojić ignores Exhibit 2D00416, a transfer of duties he signed on 15 November 1993.⁴⁸⁴⁷

1516. The Appeals Chamber notes that the Trial Chamber found that by a declaration of 10 November 1993, Boban appointed Perica Jukić as Minister of Defence⁴⁸⁴⁸ and that Stojić exercised his functions as Head of the Department of Defence until 15 November 1993.⁴⁸⁴⁹ Stojić does not address Exhibit 2D00416, the evidence relied on by the Trial Chamber in concluding that the transfer of responsibilities from Stojić to Jukić was made official on 15 November 1993.⁴⁸⁵⁰ Thus, Stojić fails to demonstrate that no reasonable trier of fact could have concluded based on the evidence that he exercised the functions of the Head of the Department of Defence until 15 November 1993. Moreover, Stojić fails to explain how any alleged error in this regard would have an impact on his convictions. His arguments in his sub-ground of appeal 24.3 are dismissed.

⁴⁸⁴³ See *supra*, para. 1441 & fn. 4522.

⁴⁸⁴⁴ Stojić's Appeal Brief, para. 197.

⁴⁸⁴⁵ Stojić's Appeal Brief, para. 197, referring to Trial Judgement, Vol. 4, para. 293, Exs. P06583, 2D03001.

⁴⁸⁴⁶ Stojić's Appeal Brief, para. 197.

⁴⁸⁴⁷ Prosecution's Response Brief (Stojić), para. 179, referring to Ex. 2D00416. See Prosecution's Response Brief (Stojić), para. 173.

⁴⁸⁴⁸ Trial Judgement, Vol. 1, para. 556, referring to, *inter alia*, Ex. P06583.

⁴⁸⁴⁹ Trial Judgement, Vol. 4, para. 293.

⁴⁸⁵⁰ Trial Judgement, Vol. 1, para. 556, Vol. 4, fn. 687, referring to Ex. 2D00416.

(d) Conclusion

1517. In sum, Stojić's ground of appeal 24 is dismissed.⁴⁸⁵¹

6. Alleged errors in identifying the members of the JCE (Stojić's Ground 7)

1518. Stojić contends that the Trial Chamber erred in law by failing to identify the members of the JCE with sufficient specificity.⁴⁸⁵² He asserts that the Trial Chamber's finding that the JCE included "notably commanders of the HVO armed forces, political and administrative officials of the HVO/government and municipal HVOs"⁴⁸⁵³ fails to identify whether all or only some of the individuals encompassed in these groups were JCE members.⁴⁸⁵⁴ Stojić contends that the impugned finding is extraordinarily broad and vague as, *inter alia*, it has no temporal or geographic limitation.⁴⁸⁵⁵ Stojić asserts that the Trial Chamber's failure to unambiguously identify the JCE members, "which is an essential precursor to a finding that there was a JCE at all",⁴⁸⁵⁶ necessitates a reversal of its finding that a JCE existed, and that his convictions must be set aside.⁴⁸⁵⁷

1519. The Prosecution responds that the Trial Chamber exceeded the requirement of identifying JCE members by groups or categories when it named ten members, including the Appellants.⁴⁸⁵⁸ It asserts that as the crimes were attributable to Stojić, either directly or via the other Appellants, the fact that additional JCE members were not identified in detail has no impact on his convictions.⁴⁸⁵⁹

1520. Stojić replies that the Trial Chamber's "failure to define the JCE membership precisely is not remedied by its blanket finding that all crimes perpetrated by non-members are attributable to JCE-members,"⁴⁸⁶⁰ as a link must be established between the perpetrator and a JCE member.⁴⁸⁶¹

1521. The Appeals Chamber first notes that the Trial Chamber correctly stated the law on the element of "plurality of persons" in relation to the *actus reus* of JCE participation.⁴⁸⁶² After a

⁴⁸⁵¹ Given that the Appeals Chamber dismisses all three sub-grounds of appeal under ground of appeal 24, it does not need to address Stojić's argument that these three alleged errors of fact cumulatively occasion a miscarriage of justice. See Stojić's Appeal Brief, para. 198.

⁴⁸⁵² Stojić's Appeal Brief, paras 79-80. See Stojić's Appeal Brief, paras 76-77.

⁴⁸⁵³ Stojić's Appeal Brief, para. 78, referring to Trial Judgement, Vol. 4, para. 1231.

⁴⁸⁵⁴ Stojić's Appeal Brief, paras 77-79, referring to *Krajišnik* Appeal Judgement, para. 157.

⁴⁸⁵⁵ Stojić's Appeal Brief, para. 79. Stojić also argues that by using the word "notably", the Trial Chamber signalled that it "thought that there were other entirely unidentified members beyond even the vague categories identified". Stojić's Appeal Brief, para. 79.

⁴⁸⁵⁶ Stojić's Appeal Brief, para. 80.

⁴⁸⁵⁷ Stojić's Appeal Brief, para. 80. See also Appeal Hearing, AT. 256-257 (21 Mar 2017).

⁴⁸⁵⁸ Prosecution's Response Brief (Stojić), para. 57, referring to Trial Judgement, Vol. 4, para. 1231. See also Prosecution's Response Brief (Stojić), para. 58.

⁴⁸⁵⁹ Prosecution's Response Brief (Stojić), para. 57.

⁴⁸⁶⁰ Stojić's Reply Brief, para. 24.

⁴⁸⁶¹ Stojić's Reply Brief, para. 24. Stojić submits, by way of example, that there is no basis for a finding that a JCE member used the perpetrators to commit crimes in Stupni Do and that "[t]he *assumption* that all crimes are imputable to a JCE-member is thus insufficient." Stojić's Reply Brief, para. 25 (emphasis in the original).

detailed analysis of how the CCP was implemented through a joint and concerted action, including the means by which the Appellants contributed to it,⁴⁸⁶³ the Trial Chamber concluded that “a plurality of persons consulted each other to devise and implement the [CCP].”⁴⁸⁶⁴ It found that “[t]he group included Franjo Tuđman, Gojko Šušak, Janko Bobetko, Mate Boban, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić.”⁴⁸⁶⁵ In identifying these individuals, the Appeals Chamber considers that the Trial Chamber fulfilled the requirement of establishing that a plurality of persons shared the CCP.⁴⁸⁶⁶ In this ground of appeal, Stojić does not dispute the Trial Chamber’s findings as far as they concern the plurality of persons and the named individuals, but challenges the identification of the remaining JCE members.

1522. In this regard, the Appeals Chamber recalls that “[t]he plurality of persons can be sufficiently identified by referring to ‘categories or groups of persons’, and it is not necessary to name each of the individuals involved”.⁴⁸⁶⁷ The Appeals Chamber also notes that the Trial Chamber made detailed findings on the timing and geographical scope of the JCE.⁴⁸⁶⁸ Considering the above, the Appeals Chamber is not convinced by Stojić’s submission that the Trial Chamber’s description of the plurality of persons belonging to the JCE had “extraordinary breadth and vagueness”⁴⁸⁶⁹ or that it was required in this case to find whether all or only some of the individuals from these groups were JCE members.⁴⁸⁷⁰ Furthermore, the Appeals Chamber finds that Stojić fails to show how any alleged ambiguity regarding the unidentified JCE members would affect the Trial Chamber’s findings that the named individuals were JCE members,⁴⁸⁷¹ and that a JCE existed. Additionally, his allegations, if any, that the Trial Chamber incorrectly attributed crimes to members of the JCE will be considered when addressing Stojić’s related challenges.⁴⁸⁷²

⁴⁸⁶² Trial Judgement, Vol. 1, para. 212, Vol. 4, para. 1217.

⁴⁸⁶³ Trial Judgement, Vol. 4, paras 1217-1230.

⁴⁸⁶⁴ Trial Judgement, Vol. 4, para. 1231.

⁴⁸⁶⁵ Trial Judgement, Vol. 4, para. 1231.

⁴⁸⁶⁶ See *Popović et al.* Appeal Judgement, para. 1409; *Dorđević* Appeal Judgement, para. 141; *Brdanin* Appeal Judgement, para. 364; *Tadić* Appeal Judgement, para. 227. See also *Gatete* Appeal Judgement, para. 239.

⁴⁸⁶⁷ *Dorđević* Appeal Judgement, para. 141, referring to *Krajišnik* Appeal Judgement, para. 156. See *Brdanin* Appeal Judgement, para. 430; *Karemera and Ngirumpatse* Appeal Judgement, para. 150.

⁴⁸⁶⁸ See, e.g., Trial Judgement, Vol. 4, paras 41-66, 1218-1230. See also *supra*, paras 783-784, 813-814.

⁴⁸⁶⁹ Stojić’s Appeal Brief, para. 79.

⁴⁸⁷⁰ See *Tolimir* Appeal Judgement, para. 436 (referring to *Tolimir* Trial Judgement, para. 1071: “[The Trial Chamber] is convinced that this plan was carried out by a plurality of persons, including numerous high-ranking VRS officers and their subordinates, and members of the Bosnian Serb MUP”); *Popović et al.* Appeal Judgement, para. 1409 (finding that the “plurality of persons” requirement was met with the identification of categories or groups and the naming of the appellants as participants in the JCE); *Karemera and Ngirumpatse* Appeal Judgement, para. 150 (finding no error in the description that the JCE members were “‘political leaders’, ‘persons of authority within the military, the *Interahamwe*, and the territorial administration’, and ‘influential businessmen’” as some members of these groups were identified by name in other findings). *Contra Krajišnik* Appeal Judgement, para. 157.

⁴⁸⁷¹ See *Krajišnik* Appeal Judgement, para. 231.

⁴⁸⁷² See *Popović et al.* Appeal Judgement, para. 1410.

1523. In light of the foregoing, the Appeals Chamber finds that Stojić has not demonstrated that the Trial Chamber erred in law in the manner in which it identified the members of the JCE. Stojić's ground of appeal 7 is thus dismissed.

7. Alleged errors in finding that Stojić made a significant contribution to the JCE in general
(Stojić's Ground 27)

1524. In concluding that Stojić made a significant contribution to the implementation of the CCP,⁴⁸⁷³ the Trial Chamber found, *inter alia*, that he: (1) commanded, controlled, and had "effective control" over most of the HVO and the Military Police;⁴⁸⁷⁴ (2) was the link between the HZ(R) H-B Government and the HVO and the Military Police;⁴⁸⁷⁵ (3) controlled the human and financial resources of the HVO and their logistics;⁴⁸⁷⁶ and (4) was in charge of the logistical and staffing needs of the Military Police.⁴⁸⁷⁷ Furthermore, the Trial Chamber found that Stojić "used the armed forces and the Military Police to commit crimes that were part of the common criminal purpose"⁴⁸⁷⁸ and that their actions were attributable to him.⁴⁸⁷⁹ Stojić submits that the Trial Chamber erred in finding that he significantly contributed to the CCP in general.⁴⁸⁸⁰

(a) Alleged legal errors in the application of JCE liability (Stojić's Sub-ground 27.1, in part)

1525. Stojić contends that the Trial Chamber erroneously based its findings that he significantly contributed to the JCE on a finding that he had "effective control" over the HVO and the Military Police.⁴⁸⁸¹ He argues that "effective control" is not directly relevant for an analysis of his contribution, and thus the Trial Chamber blurred the tests for superior responsibility and JCE liability.⁴⁸⁸² He avers that this resulted in a "lower threshold" by establishing his criminal responsibility without considering whether he significantly contributed to the crimes or had control over specific perpetrators.⁴⁸⁸³

1526. The Prosecution responds that the Trial Chamber did not blur the tests for superior responsibility and JCE or consider effective control at the expense of determining Stojić's

⁴⁸⁷³ Trial Judgement, Vol. 4, para. 429. See *supra*, para. 568.

⁴⁸⁷⁴ Trial Judgement, Vol. 4, paras 312, 320, 425, 429.

⁴⁸⁷⁵ Trial Judgement, Vol. 4, paras 425, 429.

⁴⁸⁷⁶ Trial Judgement, Vol. 4, paras 308, 312.

⁴⁸⁷⁷ Trial Judgement, Vol. 4, paras 317, 320.

⁴⁸⁷⁸ Trial Judgement, Vol. 4, para. 429.

⁴⁸⁷⁹ Trial Judgement, Vol. 4, para. 429.

⁴⁸⁸⁰ Stojić's Appeal Brief, paras 231-232.

⁴⁸⁸¹ Stojić's Appeal Brief, para. 236.

⁴⁸⁸² Stojić's Appeal Brief, para. 236.

⁴⁸⁸³ Stojić's Appeal Brief, para. 236.

significant contribution,⁴⁸⁸⁴ and avers that it was unnecessary for the Trial Chamber to decide whether he controlled specific perpetrators.⁴⁸⁸⁵

1527. The Trial Chamber found that Stojić commanded and had “effective control” over the HVO and Military Police.⁴⁸⁸⁶ After making this determination, the Trial Chamber proceeded to analyse the extent to which Stojić contributed to the commission of the crimes perpetrated by the HVO and the Military Police in the various municipalities and detention centres,⁴⁸⁸⁷ as well as his denial of crimes and his failure to prevent crimes and punish the perpetrators.⁴⁸⁸⁸ The Trial Chamber, in its conclusions, considered that Stojić: (1) had powers over the HVO and the Military Police, which he exercised;⁴⁸⁸⁹ (2) continued to exercise “effective control” after being informed of crimes;⁴⁸⁹⁰ and (3) made no serious effort to stop the commission of crimes.⁴⁸⁹¹

1528. The Appeals Chamber first considers that nothing prevented the Trial Chamber from considering Stojić’s “effective control” over most of the HVO and the Military Police as a factor in determining whether his contribution to the JCE was significant.⁴⁸⁹² In this regard, the Appeals Chamber recalls that although authority or control over principal perpetrators “is not a necessary element to establish JCE liability”, it is “one of the various factors that a chamber *may* take into account in determining whether crimes of principal perpetrators were linked with the accused”.⁴⁸⁹³ Notably, the Trial Chamber considered that Stojić “controlled the HVO armed forces and the Military Police” and “used the armed forces and the Military Police to commit crimes that were part of the common criminal purpose”,⁴⁸⁹⁴ before concluding that the actions of the HVO and the Military Police were attributable to him.⁴⁸⁹⁵ Thus, the Appeals Chamber dismisses Stojić’s contention that “effective control” is not directly relevant to a finding on his significant contribution.

1529. Further, in addition to his role in linking the HZ(R) H-B Government with its military component and his participation in military operations,⁴⁸⁹⁶ the Trial Chamber considered that Stojić’s intent and significant contribution stemmed from the fact that he made no serious efforts to

⁴⁸⁸⁴ Prosecution’s Response Brief (Stojić), para. 197.

⁴⁸⁸⁵ Prosecution’s Response Brief (Stojić), paras 197-198.

⁴⁸⁸⁶ Trial Judgement, Vol. 4, paras 312, 320.

⁴⁸⁸⁷ Trial Judgement, Vol. 4, paras 326-407.

⁴⁸⁸⁸ Trial Judgement, Vol. 4, paras 408-423.

⁴⁸⁸⁹ Trial Judgement, Vol. 4, para. 425.

⁴⁸⁹⁰ Trial Judgement, Vol. 4, para. 426.

⁴⁸⁹¹ Trial Judgement, Vol. 4, para. 427.

⁴⁸⁹² See, e.g., *Dorđević* Appeal Judgement, para. 264. See also *supra*, para. 1410.

⁴⁸⁹³ *Šainović et al.* Appeal Judgement, para. 1520 (emphasis in original).

⁴⁸⁹⁴ Trial Judgement, Vol. 4, para. 429.

⁴⁸⁹⁵ Trial Judgement, Vol. 4, para. 429.

⁴⁸⁹⁶ Trial Judgement, Vol. 4, paras 425-426.

stop the commission of crimes despite having power over the HVO and the Military Police.⁴⁸⁹⁷ In this regard, an accused's shared intent and contribution to a JCE can be inferred from his control and command authority over the perpetrators and his failure to intervene in order to stop or punish the crimes committed pursuant to the CCP.⁴⁸⁹⁸ Thus, the Appeals Chamber finds that Stojić fails to show that the Trial Chamber "blurred the tests for command responsibility and JCE"⁴⁸⁹⁹ or erred by considering his command authority and powers over the HVO and the Military Police as factors establishing his significant contribution.

1530. To the extent that Stojić argues that the Trial Chamber relied on his "effective control" in assessing his significant contribution without first determining his control over specific perpetrators and thus his ability to prevent or punish their crimes,⁴⁹⁰⁰ the Appeals Chamber recalls that "JCE liability does not require, as a constitutive element, the failure of an accused to punish subordinates' crimes despite his knowledge thereof".⁴⁹⁰¹ Since the Trial Chamber convicted Stojić as a participant in a JCE and not as a superior pursuant to Article 7(3) of the Statute, all it had to establish was his significant contribution to the JCE. However, the Appeals Chamber also notes that a failure to intervene to prevent recurrence of crimes or to halt abuses has been taken into account in assessing an accused's contribution to a joint criminal enterprise and his intent "where the accused had some power and influence or authority over the perpetrators sufficient to prevent or halt the abuses but failed to exercise such power".⁴⁹⁰² Accordingly, once it established that Stojić had command authority over the HVO and the Military Police in general and assessed that his failure to use it to prevent or punish crimes in general amounted, along with other factors, to a significant contribution to the JCE, it was unnecessary also to find that he controlled the specific perpetrators of specific crimes such that he was able to punish them or prevent their crimes.⁴⁹⁰³ Therefore, Stojić fails to show that the Trial Chamber applied a "lower threshold" in considering his significant contribution.

1531. Based on the foregoing, the Appeals Chamber dismisses Stojić's sub-ground of appeal 27.1 as it relates to the Trial Chamber's consideration of his command authority over the HVO and the Military Police in determining his significant contribution to the JCE.

⁴⁸⁹⁷ See Trial Judgement, Vol. 4, paras 425, 427-429.

⁴⁸⁹⁸ *Šainović et al.* Appeal Judgement, para. 1242. See *Šainović et al.* Appeal Judgement, paras 1233, 1237.

⁴⁸⁹⁹ Stojić's Appeal Brief, para. 236.

⁴⁹⁰⁰ See Stojić's Appeal Brief, para. 236. The Appeals Chamber will consider Stojić's challenges regarding his significant contribution to specific crimes below. See *infra*, paras 1551-1748.

⁴⁹⁰¹ *Šainović et al.* Appeal Judgement, para. 1237. See *Šainović et al.* Appeal Judgement, para. 1233.

⁴⁹⁰² *Stanišić and Župljanin* Appeal Judgement, paras 111, 734.

⁴⁹⁰³ See *Šainović et al.* Appeal Judgement, paras 1256-1257 ("Close cooperation between a principal perpetrator and a JCE member, including the accused, is but one of various factors from which a chamber may infer that a crime formed part of the common purpose and is thus imputable to JCE members" and "it is not a prerequisite for imputing the crime to JCE members"). Cf. *Šainović et al.* Appeal Judgement, para. 1237 (considering Nebojša Pavković's argument that his knowledge of specific crimes was not established and finding that his general knowledge of crimes and failure to intervene etc., were correctly considered as evidence of his intent and contribution to a JCE).

(b) Whether Stojić's assistance to military operations contributed to the JCE (Stojić's Sub-ground 27.1 in part)

(i) Arguments of the Parties

1532. Stojić contends that the Trial Chamber erred by considering the "general assistance" he provided to the military as significant contribution because such assistance had no direct link to the individual crimes and was not necessarily directed at furthering a JCE.⁴⁹⁰⁴ Specifically, Stojić argues that the Trial Chamber failed to assess whether any of his orders contributed to the crimes, and that his logistical support cannot amount to a contribution to the commission of specific crimes.⁴⁹⁰⁵ Stojić also submits that logistical assistance and arranging finance for the armed forces are too equivocal and remote to find that he furthered a JCE.⁴⁹⁰⁶

1533. The Prosecution responds that the Trial Chamber's findings on Stojić's significant contribution were reasonable, and that his conduct was not "general assistance".⁴⁹⁰⁷ It argues that the Trial Chamber considered Stojić's control of finances and logistical resources in addition to other factors, such as the orders he issued.⁴⁹⁰⁸

(ii) Analysis

1534. Stojić argues that his "general assistance" to the military did not further the JCE. The Appeals Chamber notes that the Trial Chamber analysed Stojić's conduct in detail,⁴⁹⁰⁹ and did not classify his activities as only "general assistance", but rather concluded that he, *inter alia*: (1) played a fundamental role in the establishment and the organisation of the HVO and took part in formulating the defence policy;⁴⁹¹⁰ (2) was regularly informed about the HVO military operations and Military Police activities and was in charge of keeping the Government informed;⁴⁹¹¹ (3) issued orders directly to the HVO⁴⁹¹² and had the authority to issue orders to the Chief of the Military Police Administration, including orders directly linked to operations on the ground, such as orders

⁴⁹⁰⁴ Stojić's Appeal Brief, paras 233-234, referring to Trial Judgement, Vol. 4, para. 429. See also Stojić's Appeal Brief, paras 231, 242.

⁴⁹⁰⁵ Stojić's Appeal Brief, para. 235. See also Stojić's Reply Brief, para. 68.

⁴⁹⁰⁶ Stojić's Reply Brief, para. 68.

⁴⁹⁰⁷ Prosecution's Response Brief (Stojić), para. 196. See Prosecution's Response Brief (Stojić), para. 195. The Prosecution lists, as examples, Stojić's planning and/or facilitating of HVO operations, his hindrance of the delivery of humanitarian aid to the civilian population of East Mostar, and his encouragement to perpetrators to continue committing crimes. Prosecution's Response Brief (Stojić), para. 196. See also Appeal Hearing, AT. 324-325 (21 Mar 2017).

⁴⁹⁰⁸ Prosecution's Response Brief (Stojić), para. 197. See also Appeal Hearing, AT. 325-327 (21 Mar 2017).

⁴⁹⁰⁹ See, e.g., Trial Judgement, Vol. 4, paras 298, 305, 312, 320, 324, 337, 348-349, 355, 357, 372, 380, 415-418, 420, 423, 425-427, 429, 1220.

⁴⁹¹⁰ Trial Judgement, Vol. 4, paras 298-299, 312. See *supra*, paras 1509-1513.

⁴⁹¹¹ Trial Judgement, Vol. 4, paras 300, 312, 318, 320. See *supra*, paras 1418, 1473-1478.

⁴⁹¹² Trial Judgement, Vol. 4, paras 306, 312. See *supra*, paras 1427-1435.

on resubordination;⁴⁹¹³ (4) had the authority to designate persons to represent the HVO in ceasefire negotiations, and personally represented the Government in peace negotiations;⁴⁹¹⁴ (5) reorganised the Military Police and appointed its most senior officers;⁴⁹¹⁵ and (6) planned or facilitated the HVO military operations in Gornji Vakuf, Mostar, and Vareš,⁴⁹¹⁶ and was involved in organising and conducting the eviction campaigns in West Mostar.⁴⁹¹⁷ Further, in arriving at its findings, the Trial Chamber considered, and rejected, Stojić's arguments at trial that his role was solely administrative and logistical, and that he had no command or control authority over the armed forces.⁴⁹¹⁸ Thus, the Appeals Chamber is not convinced by Stojić's mischaracterisation of his contribution, which is merely an attempt to minimise his involvement with the HVO and the Military Police. Nonetheless, the Appeals Chamber recalls that the administrative and logistical roles played by Stojić were considered, among others, by the Trial Chamber in its determination of whether he commanded and had "effective control" over the HVO and the Military Police.⁴⁹¹⁹

1535. Further, with respect to Stojić's submission that his logistical assistance did not have a direct link to individual crimes, the Appeals Chamber notes that the jurisprudence of the Tribunal does not require a direct link between an accused's contribution and crimes as the accused does not have to contribute to a specific crime in order to be held responsible for it⁴⁹²⁰ and because a contribution to a JCE may take the form of contribution to the execution of a common criminal purpose.⁴⁹²¹ Therefore, Stojić fails to demonstrate an error regarding whether his "general assistance" was directly linked to crimes as this is unnecessary for JCE liability. His arguments are dismissed.

1536. Regarding Stojić's argument that the Trial Chamber failed to evaluate whether his orders contributed to the crimes, the Appeals Chamber notes that Stojić had *de facto* command over the HVO and the Military Police which extended beyond financial and logistical powers.⁴⁹²² In support of his argument, Stojić relies on the Trial Chamber's findings that he issued orders on "mobilisations, troop movements, reorganisation of units, assignment of reinforcements, free

⁴⁹¹³ Trial Judgement, Vol. 4, paras 314-315, 320. See *supra*, paras 1470-1472.

⁴⁹¹⁴ Trial Judgement, Vol. 4, paras 311-312, 324. See *supra*, paras 1456, 1503-1506.

⁴⁹¹⁵ Trial Judgement, Vol. 4, paras 319-320. See *supra*, paras 1465-1467.

⁴⁹¹⁶ Trial Judgement, Vol. 4, paras 334-335, 337, 348, 380-381. See *infra*, paras 1579-1580, 1605, 1611, 1598, 1654-1625, 1703.

⁴⁹¹⁷ Trial Judgement, Vol. 4, paras 355, 357. See *infra*, paras 1617-1653.

⁴⁹¹⁸ Trial Judgement, Vol. 1, paras 557, 563, 565, Vol. 4, paras 295, 312, 320. See *supra*, paras 1401-1412.

⁴⁹¹⁹ See *supra*, paras 1409-1412.

⁴⁹²⁰ See *Kvočka et al.* Appeal Judgement, para. 263; *Karemera and Ngirumpatse* Appeal Judgement, paras 109, 153.

⁴⁹²¹ *Krajišnik* Appeal Judgement, para. 695 (internal references omitted). See *Popović et al.* Appeal Judgement, para. 1378; *Šainović et al.* Appeal Judgement, para. 987.

⁴⁹²² See *supra*, paras 1429-1432, 1457, 1468-1472, 1479. Cf. Stojić's Appeal Brief, para. 235, referring to Trial Judgement, Vol. 4, paras 306, 314.

movement of convoys and ceasefires”.⁴⁹²³ However, while some of Stojić’s orders may be considered logistical, the Trial Chamber also found that he issued operational orders, such as those concerning the detention centres,⁴⁹²⁴ Military Police checkpoints,⁴⁹²⁵ and the redeployment and resubordination of Military Police units.⁴⁹²⁶ Specifically, the Appeals Chamber notes, as examples, that Stojić ordered: (1) all HVO units in the South-East OZ to “eliminate” the Muslim troops in the area;⁴⁹²⁷ (2) a commanding officer to allow the passage of UNPROFOR convoys in Central Bosnia OZ on 23 February 1993;⁴⁹²⁸ and (3) Miro Andrić, a colonel in the Main Staff, to capture the Gornji Vakuf area by the use of force, which resulted in crimes.⁴⁹²⁹ The Appeals Chamber is therefore satisfied that the Trial Chamber implicitly considered that Stojić’s orders, whether logistical or operational, contributed to the commission of the crimes. Thus, Stojić’s *de facto* command over the HVO and the Military Police was not based only on the logistical or financial orders that he issued.⁴⁹³⁰ Regardless, considering the above,⁴⁹³¹ Stojić does not demonstrate that his “logistical support cannot amount to a contribution to the commission of specific crimes”,⁴⁹³² or that this assistance was “too remote”.⁴⁹³³ The Appeals Chamber therefore dismisses Stojić’s arguments in this regard.

1537. Based on the foregoing, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in considering his logistical assistance to the military operations as a factor establishing his significant contribution. The Appeals Chamber therefore dismisses Stojić’s sub-ground of appeal 27.1 in part.

⁴⁹²³ Stojić’s Appeal Brief, para. 235, referring to Trial Judgement, Vol. 4, paras 306, 314.

⁴⁹²⁴ Trial Judgement, Vol. 4, para. 306.

⁴⁹²⁵ Trial Judgement, Vol. 4, para. 316.

⁴⁹²⁶ Trial Judgement, Vol. 1, para. 965, Vol. 4, paras 315, 320.

⁴⁹²⁷ Trial Judgement, Vol. 4, para. 305.

⁴⁹²⁸ Trial Judgement, Vol. 1, para. 562. See also Trial Judgement, Vol. 1, para. 795.

⁴⁹²⁹ Trial Judgement, Vol. 4, paras 330, 334, referring to Ex. 4D00348. In addition, the Trial Chamber found, *inter alia*, that Stojić: (1) ordered a general mobilisation and imposed a curfew in all municipalities of HZ H-B (see Trial Judgement, Vol. 2, para. 884); (2) ordered all the HZ H-B MUP military units in Mostar to be re-subordinated on 2 July 1993 (see Trial Judgement, Vol. 2, para. 703); and (3) issued orders directly to the HVO, including for the immediate halt of offensive operations against the ABiH in April 1993 (see Trial Judgement, Vol. 1, para. 562, referring to Ex. P02093). See *infra*, paras 1562-1569.

⁴⁹³⁰ See *supra*, paras 1414-1415, 1418, 1422-1423, 1456-1457, 1468, 1473-1479. Stojić: (1) was involved in military operations in central BiH (see Trial Judgement, Vol. 4, para. 306); (2) was regularly informed of the military operations conducted by the armed forces and in turn informed the Government accordingly (see Trial Judgement, Vol. 4, para. 306); and (3) sent military-related Government decisions through the military chain of command (see Trial Judgement, Vol. 4, para. 312).

⁴⁹³¹ See *supra*, paras 1534-1536.

⁴⁹³² Stojić’s Appeal Brief, para. 235. See *supra*, paras 1401-1412.

⁴⁹³³ See *supra*, para. 1532.

(c) Whether Stojić's role as a link between the armed forces and the Government contributed to the JCE (Stojić's Sub-ground 27.2 in part)

1538. Stojić submits that the Trial Chamber's finding that he formed a link between the HVO and the Government could not "in itself establish that he made a significant contribution to crimes", since this link was "not inherently unlawful".⁴⁹³⁴ Stojić also contends that linking the civilian government with the military is too equivocal and remote to support a finding that he furthered a JCE.⁴⁹³⁵

1539. The Prosecution responds that Stojić translated Government decisions into ground-level action⁴⁹³⁶ and thus used his link between HVO and the Government to plan the crimes.⁴⁹³⁷

1540. The Trial Chamber found that Stojić was the link between the civilian government of the HZ(R) H-B and the HVO military component.⁴⁹³⁸ It considered that "Stojić took decisions related to military operations and had them implemented through the armed forces' chain of command, forwarded HVO [Government] decisions down the chain of command and made proposals to the HVO [Government] about military matters which were then approved by that collective body".⁴⁹³⁹

1541. Regarding Stojić's submission that the link itself cannot amount to significant contribution, the Appeals Chamber notes that the Trial Chamber analysed evidence on how Stojić used his role as a "link" to further the JCE. These activities included his participation in approximately 40 HVO Government sessions and meetings, which involved discussions and decision-making on the military situation on the ground, the mobilisation of the HVO, and the situation in the detention centres.⁴⁹⁴⁰ Stojić also received reports on the military operations and informed the Government about the situation on the ground thus facilitating the decision-making process.⁴⁹⁴¹ These decisions were then forwarded by Stojić to the Main Staff and the Military Police for implementation.⁴⁹⁴² Furthermore, the Trial Chamber also found that Stojić played a fundamental role in the

⁴⁹³⁴ Stojić's Appeal Brief, para. 238. See Stojić's Appeal Brief, para. 237. See also Stojić's Appeal Brief, paras 231, 242; Stojić's Reply Brief, para. 68.

⁴⁹³⁵ Stojić's Reply Brief, para. 68.

⁴⁹³⁶ Prosecution's Response Brief (Stojić), para. 199. The Prosecution lists several of Stojić's activities, such as his enforcement of the 15 January 1993 Ultimatum and his participation in the planning of indiscriminate arrests of Muslim males. Prosecution's Response Brief (Stojić), para. 199.

⁴⁹³⁷ Prosecution's Response Brief (Stojić), para. 200. The Prosecution argues that "it makes no difference whether Stojić's link between the Government and armed forces/MP was 'inherently unlawful'". Prosecution's Response Brief (Stojić), para. 200. See Prosecution's Response Brief (Stojić), para. 195.

⁴⁹³⁸ Trial Judgement, Vol. 4, paras 425, 429.

⁴⁹³⁹ Trial Judgement, Vol. 4, para. 425. See Trial Judgement, Vol. 4, paras 297, 300, 304, 312. See also *supra*, paras 1418-1419, 1422-1423.

⁴⁹⁴⁰ Trial Judgement, Vol. 4, para. 297. See *supra*, paras 1418, 1509-1513.

⁴⁹⁴¹ Trial Judgement, Vol. 4, para. 300. Notably, Stojić informed the Government about the consequences of the implementation of the 15 January 1993 Ultimatum as well as the military situation in Vareš on 4 November 1993. Trial Judgement, Vol. 4, para. 300. See *supra*, paras 1418, 1422-1423.

⁴⁹⁴² Trial Judgement, Vol. 4, para. 304. See *supra*, paras 1422-1423.

establishment and organisation of the HVO,⁴⁹⁴³ and had the authority to make appointments in HVO brigades up to the level of deputy brigade commanders and assistant commanders for security.⁴⁹⁴⁴ Thus, the Appeals Chamber finds that Stojić fails to demonstrate that no reasonable trier of fact could have concluded that he used his role to ensure that Government decisions were communicated to the HVO and Military Police and implemented, thus furthering the JCE. Likewise, Stojić fails to show that his role as a link between the Government and the HVO military component was “too remote”.

1542. In light of the above, Stojić’s sub-ground of appeal 27.2 is dismissed in part.

(d) Whether Stojić used the HVO and Military Police to commit crimes (Stojić’s Sub-grounds 27.2 (in part) and 27.3)

(i) Arguments of the Parties

1543. Stojić contends that the Trial Chamber erred by finding that he used the HVO and the Military Police to commit crimes that were part of the CCP.⁴⁹⁴⁵ Stojić asserts that the Trial Chamber erred by finding that all the actions of the HVO and Military Police were attributable to him as it failed to articulate a legal basis for its conclusion.⁴⁹⁴⁶ He argues that the Trial Chamber thus imposed a form of superior responsibility without establishing that he controlled the direct perpetrators of any specific crimes.⁴⁹⁴⁷ According to Stojić, the Trial Chamber did not cite any evidence in support nor explain how he used these forces to commit crimes.⁴⁹⁴⁸ He also argues that the Trial Chamber’s finding was inconsistent with other findings that he was not in the military chain of command and only issued logistical orders.⁴⁹⁴⁹ Stojić further avers that the Trial Chamber failed to analyse each Appellant’s significant contribution individually as it used identical language in relation to him, Praljak, and Petković without distinguishing between the functions and powers of civilian leaders and military generals.⁴⁹⁵⁰

1544. The Prosecution responds that the Trial Chamber’s finding was reasonable, and refers to findings on Stojić’s involvement in HVO operations.⁴⁹⁵¹ The Prosecution submits that it was irrelevant that Stojić was not *de jure* within the military chain of command because of his ability to

⁴⁹⁴³ Trial Judgement, Vol. 4, para. 299. See *supra*, paras 1414-1415.

⁴⁹⁴⁴ Trial Judgement, Vol. 4, para. 303. See *supra*, paras 1409, 1465-1467.

⁴⁹⁴⁵ Stojić’s Appeal Brief, para. 240, referring to Trial Judgement, Vol. 4, para. 429. See also Stojić’s Appeal Brief, paras 231, 242.

⁴⁹⁴⁶ Stojić’s Appeal Brief, para. 239.

⁴⁹⁴⁷ Stojić’s Appeal Brief, para. 239.

⁴⁹⁴⁸ Stojić’s Appeal Brief, para. 240.

⁴⁹⁴⁹ Stojić’s Appeal Brief, para. 240, referring to Trial Judgement, Vol. 1, para. 565, Vol. 4, para. 306.

⁴⁹⁵⁰ Stojić’s Appeal Brief, para. 241.

⁴⁹⁵¹ Prosecution’s Response Brief (Stojić), para. 202. See Prosecution’s Response Brief (Stojić), para. 195.

issue orders to the HVO and Military Police beyond logistical matters and his “effective control” over them.⁴⁹⁵² It also submits that the crimes were correctly attributed to Stojić because he used the HVO and the Military Police to commit crimes within the CCP.⁴⁹⁵³ The Prosecution argues that the Trial Chamber did not impose a form of superior responsibility, and that authority or control over the principal perpetrators is not a necessary element of JCE liability.⁴⁹⁵⁴ It argues that the Trial Chamber’s findings on Praljak and Petković show that Stojić and “his fellow JCE members” worked together to further the CCP.⁴⁹⁵⁵

(ii) Analysis

1545. In relation to Stojić’s submission that the Trial Chamber erroneously attributed all actions of the HVO and the Military Police to him,⁴⁹⁵⁶ the Appeals Chamber observes that Stojić does not address the Trial Chamber’s relevant findings. Notably, the Trial Chamber found that Stojić: (1) commanded and had “effective control” over most of the HVO and the Military Police;⁴⁹⁵⁷ (2) planned or facilitated various military operations involving these armed forces;⁴⁹⁵⁸ and (3) made no serious effort to prevent or punish the commission of crimes by these armed forces.⁴⁹⁵⁹ The Trial Chamber also concluded that Stojić and other JCE members used the HVO and the Military Police to commit crimes forming part of the CCP.⁴⁹⁶⁰ The Appeals Chamber recalls that under JCE liability, once it is established that an accused participated in a JCE,⁴⁹⁶¹ “he is appropriately held liable also for those actions of other JCE members, or individuals used by them, that further the common criminal purpose (first category of JCE) [...], or that are a natural and foreseeable consequence of the carrying out of this crime (third category of JCE)”.⁴⁹⁶² Further, as the Trial Chamber did correctly set out the law on the *actus reus* for participation in a JCE,⁴⁹⁶³ Stojić’s assertion that the Trial Chamber failed to articulate a legal basis for attributing to him the actions of the HVO and the Military Police is without merit.⁴⁹⁶⁴ Therefore, Stojić fails to demonstrate that the

⁴⁹⁵² Prosecution’s Response Brief (Stojić), para. 202.

⁴⁹⁵³ Prosecution’s Response Brief (Stojić), para. 201.

⁴⁹⁵⁴ Prosecution’s Response Brief (Stojić), para. 201, referring to *Šainović et al.* Appeal Judgement, para. 1520.

⁴⁹⁵⁵ Prosecution’s Response Brief (Stojić), para. 203.

⁴⁹⁵⁶ See *supra*, para. 1543.

⁴⁹⁵⁷ Trial Judgement, Vol. 4, paras 312, 320, 425. See *supra*, paras 1457, 1479.

⁴⁹⁵⁸ Trial Judgement, Vol. 4, paras 337, 357, 378, 383, 426, 1220.

⁴⁹⁵⁹ Trial Judgement, Vol. 4, paras 423, 427. See *supra*, paras 1480, 1491, 1494-1495, 1498-1499.

⁴⁹⁶⁰ Trial Judgement, Vol. 4, paras 429, 1232.

⁴⁹⁶¹ See *Brdanin* Appeal Judgement, paras 429-430; *Stakić* Appeal Judgement, para. 64; *Tadić* Appeal Judgement, para. 227.

⁴⁹⁶² *Martić* Appeal Judgement, para. 172. See *Šainović et al.* Appeal Judgement, para. 1520; *Brdanin* Appeal Judgement, para. 431.

⁴⁹⁶³ Trial Judgement, Vol. 1, para. 212. The Trial Chamber specifically noted that “for a participant in a JCE to be held responsible for a crime committed by a person outside of the JCE, it is necessary to prove that the crime may be imputed to one of the members of the JCE” and that “such person – utilising the direct perpetrator of the crime – acted in furtherance of the common plan”. Trial Judgement, Vol. 1, para. 212(1).

⁴⁹⁶⁴ See *supra*, para. 1543.

Trial Chamber erred in law by concluding that the actions of the HVO and the Military Police were attributable to him. His arguments are dismissed.

1546. Regarding Stojić's assertion that there is no evidentiary basis for the Trial Chamber's finding that he used the HVO and the Military Police to commit crimes that were part of the CCP,⁴⁹⁶⁵ the Appeals Chamber notes that the Trial Chamber made numerous findings establishing his role and power in relation to these armed forces. Specifically, the Trial Chamber found that, *inter alia*, Stojić: (1) planned and facilitated the HVO military operations, and was informed of the crimes committed, in Gornji Vakuf,⁴⁹⁶⁶ Mostar,⁴⁹⁶⁷ West Mostar,⁴⁹⁶⁸ Čapljina,⁴⁹⁶⁹ and Vareš;⁴⁹⁷⁰ (2) facilitated the hindering of the delivery of humanitarian aid to the civilian population in East Mostar;⁴⁹⁷¹ (3) praised the direct perpetrators of crimes thus accepting and encouraging the crimes;⁴⁹⁷² and (4) allowed perpetrators within the HVO and the Military Police to continue committing crimes by failing to punish them.⁴⁹⁷³ The Appeals Chamber considers that, on the basis of these findings, a reasonable trier of fact could conclude that Stojić used both the HVO and the Military Police under his control to commit the crimes that were part of the CCP. The Appeals Chamber also observes that, in making these findings, the Trial Chamber referred extensively to evidence, both exhibits and witness testimony.⁴⁹⁷⁴ Recalling that a Trial Judgement must be read as whole,⁴⁹⁷⁵ the fact that the Trial Chamber did not cite evidence in its conclusion,⁴⁹⁷⁶ which is based on its prior analysis, is not indicative of an error.

1547. Notably, Stojić does not challenge the Trial Chamber's findings on the principal perpetrators of the crimes in this ground of appeal, but disputes his "use" of them. Specifically, in arguing that the Trial Chamber erred by finding that all the actions of the HVO and the Military Police were attributable to him, Stojić ignores that the crimes falling within the JCE are attributable

⁴⁹⁶⁵ See *supra*, para. 1543.

⁴⁹⁶⁶ Trial Judgement, Vol. 4, para. 337. See Trial Judgement, Vol. 4, paras 330, 334-335, referring to, *inter alia*, Exs. 4D00348, P01206, P01357, P01351, Slobodan Praljak, T(F). 40689-40690 (26 May 2009). See *infra*, paras 1561, 1565-1569, 1572-1575, 1578-1579.

⁴⁹⁶⁷ Trial Judgement, Vol. 4, paras 344-349, referring to, *inter alia*, Witness A, T(F). 14009 (closed session) (13 Feb 2007), Exs. P01868, P04238 (44:22-44:52). See *infra*, paras 1598, 1601-1605, 1608-1611, 1614-1598.

⁴⁹⁶⁸ Trial Judgement, Vol. 4, paras 354-355, referring to Ex. P10367 (confidential), paras 33, 69. See *infra*, paras 1617, 1621-1625, 1628-1631, 1633-1637, 1646-1649, 1652, 1654-1655, 1658-1661, 1664-1667.

⁴⁹⁶⁹ Trial Judgement, Vol. 4, para. 375. See *infra*, paras 1681-1688, 1691-1696.

⁴⁹⁷⁰ Trial Judgement, Vol. 4, paras 380-383, referring to Exs. P06219, P06267, P06307, P06328, P06339, P06362. See *infra*, paras 1701-1703, 1707-1711.

⁴⁹⁷¹ Trial Judgement, Vol. 2, paras 1227-1244, Vol. 4, para. 372, referring to, *inter alia*, Exs. P09712 (confidential), para. 64, P03900 (confidential), p. 2, Klaus Johann Nissen, T(F). 20453-20454, 20457 (25 June 2007). See *infra*, paras 1670-1674.

⁴⁹⁷² Trial Judgement, Vol. 4, paras 416-420 (referring to Exs. P02770, P04401 (confidential), pp. 4-5, P05303) 423. See *supra*, paras 1480, 1485-1491, 1494-1495, 1498-1500.

⁴⁹⁷³ Trial Judgement, Vol. 4, paras 410-415. See *infra*, paras 1628-1625.

⁴⁹⁷⁴ See *supra*, fns 4966-4971.

⁴⁹⁷⁵ *Stanišić and Župljanin* Appeal Judgement, paras 138, 376, 705; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379. See *Kalimanzira* Appeal Judgement, para. 227.

⁴⁹⁷⁶ Trial Judgement, Vol. 4, para. 429. See Stojić's Appeal Brief, para. 240.

to him once it is proven that he or other JCE members used the principal perpetrators to commit these crimes.⁴⁹⁷⁷ In this regard, the Appeals Chamber notes that, for each of the crime sites, the Trial Chamber identified a link between the specific group or unit of the HVO and Military Police involved in crimes and at least one JCE member,⁴⁹⁷⁸ and at times, Stojić himself.⁴⁹⁷⁹ The Appeals Chamber recalls that the link between the underlying crime or physical perpetrator in question and a JCE member can be inferred from various factors, including “evidence that the JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit the crime”.⁴⁹⁸⁰ Considering the above,⁴⁹⁸¹ Stojić fails to show that the Trial Chamber’s finding that he, and other JCE members, used the HVO and the Military Police to commit crimes has no evidentiary basis. Similarly, Stojić’s contention that the Trial Chamber imposed a form of superior responsibility without establishing that he controlled the direct perpetrators is dismissed,⁴⁹⁸² as his control over the perpetrators is not a requirement under JCE liability.

1548. Concerning Stojić’s assertion that the Trial Chamber’s findings are inconsistent,⁴⁹⁸³ the Appeals Chamber notes that, although the Trial Chamber found that Stojić was not *de jure* part of the military chain of command,⁴⁹⁸⁴ he nevertheless had command and “effective control” over the HVO and the Military Police based on his *de facto* powers.⁴⁹⁸⁵ Further, the Appeals Chamber dismisses elsewhere Stojić’s arguments concerning the logistical nature of his orders.⁴⁹⁸⁶ Thus, Stojić fails to demonstrate that there is any inconsistency concerning the Trial Chamber’s findings. Regarding Stojić’s submission that the Trial Chamber used identical language in its findings on Praljak’s and Petković’s significant contribution, the Appeals Chamber notes that similar language was used in the concluding paragraphs.⁴⁹⁸⁷ However, the Appeals Chamber observes that the

⁴⁹⁷⁷ See *supra*, para. 1545.

⁴⁹⁷⁸ See, e.g., Trial Judgement, Vol. 4, paras 558, 562 (Praljak in Gornji Vakuf), 694, 699 (Petković in Prozor), 711-724 (Petković in Jablanica), 928 (Čorić in West Mostar), 1147, 1151 (Pušić in relation to the Heliodrom), 1220 (the Appellants’ involvement in planning, facilitating, or conducting military operations).

⁴⁹⁷⁹ See, e.g., Trial Judgement, Vol. 4, paras 334-337 (Gornji Vakuf), 354-355, 357 (West Mostar), 363, 368-370, 372 (East Mostar), 378 (Čaplina), 380-383 (Vareš), 395 (the Heliodrom), 396 (Ljubuški Prison), 407 (Dretelj Prison and Gabela Prison). For example, the Trial Chamber found that Stojić: (1) ordered Miro Andrić, a colonel in the Main Staff, to capture the Gornji Vakuf area by the use of force, and crimes were committed during this operation (see Trial Judgement, Vol. 4, paras 330, 334; *infra*, paras 1565-1569); (2) was actively involved in eviction campaigns in West Mostar, with evidence that he ordered that “people” be evicted from their homes and their houses burned by HVO members (see Trial Judgement, Vol. 4, paras 354-357; *infra*, paras 1621-1618); and (3) controlled the HVO snipers in East Mostar (see Trial Judgement, Vol. 4, paras 368-370; *infra*, paras 1664-1667).

⁴⁹⁸⁰ *Popović et al.* Appeal Judgement, para. 1050, quoting *Krajišnik* Appeal Judgement, para. 226. See *Šainović et al.* Appeal Judgement, paras 1257, 1259.

⁴⁹⁸¹ See *supra*, paras 1545-1547, fn 4978-4979.

⁴⁹⁸² See *supra*, para. 1543.

⁴⁹⁸³ See *supra*, para. 1543.

⁴⁹⁸⁴ Trial Judgement, Vol. 1, para. 565, Vol. 4, para. 306.

⁴⁹⁸⁵ Trial Judgement, Vol. 4, paras 312, 320. See *supra*, paras 1427-1428, 1457, 1479.

⁴⁹⁸⁶ See *supra*, paras 1409-1412, 1419, 1423, 1427, 1467, 1534, 1536.

⁴⁹⁸⁷ See Trial Judgement, Vol. 4, paras 427, 429, 626, 628, 816, 818.

relevant distinctions were made in the detailed analysis on each Appellant's participation in the JCE and their responsibility under JCE liability,⁴⁹⁸⁸ particularly with regard to their functions and powers.⁴⁹⁸⁹ Stojić's argument is thus dismissed as unmeritorious.

1549. In sum, the Appeals Chamber finds that Stojić fails to show that no reasonable trier of fact could have concluded on the basis of the evidence that he, and other JCE members, used the HVO and Military Police to commit crimes pursuant to the CCP, and that the actions of these armed forces are attributable to him. Stojić's sub-grounds of appeal 27.2, in part, and 27.3 are dismissed.

(e) Conclusion

1550. Based on the foregoing, Stojić's ground of appeal 27 is dismissed.

8. Alleged errors concerning Stojić's involvement in crimes committed in the municipalities and detention centres

(a) Prozor Municipality and Ljubuški Prison (Stojić's Ground 28)

1551. The Trial Chamber found that Stojić was informed on 13 July 1993 that detained men, including prisoners of war, but also men who did not belong to any armed force, were relocated from Prozor Secondary School to Ljubuški Prison. It further found that since Stojić continued to exercise his functions, the only reasonable inference was that he accepted the detention of men not belonging to any armed force at Ljubuški Prison in July 1993.⁴⁹⁹⁰ Notably, in reaching this conclusion the Trial Chamber relied on one report from Željko Šiljeg to Stojić and Petković on 13 July 1993 ("Šiljeg's Report of 13 July 1993").⁴⁹⁹¹

(i) Arguments of the Parties

1552. Stojić submits that no reasonable trier of fact could have arrived at the Trial Chamber's finding on his knowledge on the basis of Šiljeg's Report of 13 July 1993.⁴⁹⁹² He asserts that because this report was found to be insufficient to establish Petković's knowledge of the detentions, it was equally insufficient regarding his own knowledge of those detentions.⁴⁹⁹³ Stojić also argues that the only relevant paragraph in Šiljeg's Report of 13 July 1993 does not support the inference that he

⁴⁹⁸⁸ See Trial Judgement, Vol. 4, paras 299-424, 469-623, 657-813,

⁴⁹⁸⁹ See Trial Judgement, Vol. 4, paras 299-325, 469-511, 657-686.

⁴⁹⁹⁰ Trial Judgement, Vol. 4, paras 329, 396.

⁴⁹⁹¹ Trial Judgement, Vol. 4, paras 329, 396, referring to Ex. P03418, p. 4. See Trial Judgement, Vol. 2, para. 149.

⁴⁹⁹² Stojić's Appeal Brief, para. 244. See Stojić's Appeal Brief, paras 243, 248. See also Stojić's Reply Brief, para. 70.

⁴⁹⁹³ Stojić's Appeal Brief, para. 244, referring to Trial Judgement, Vol. 4, para. 799. See Appeal Hearing, AT. 361-362 (21 Mar 2017). Stojić asserts that the Trial Chamber concluded the opposite with regard to Petković and that its inconsistency is "unjustifiable". Stojić's Appeal Brief, para. 244.

knew about the detention of civilians.⁴⁹⁹⁴ Furthermore, Stojić asserts that the Trial Chamber erred by inferring that he accepted the detention of civilians at Ljubuški Prison because, *inter alia*, he had no personal responsibility for this detention centre.⁴⁹⁹⁵ He also contends that he did not have the authority to intervene which is shown by the fact that Petković responded to Šiljeg without copying Stojić.⁴⁹⁹⁶ Stojić avers that “the receipt of a single report relating to detentions at a facility outside of [his] control, which was being addressed by [the] Main Staff”, cannot amount to a significant contribution to the relevant crime.⁴⁹⁹⁷

1553. The Prosecution responds that the Trial Chamber’s findings were reasonable,⁴⁹⁹⁸ and that it correctly classified the “men who did not belong to any armed force” as civilians.⁴⁹⁹⁹ The Prosecution submits that given Stojić’s role in planning the indiscriminate arrests, he knew that Muslim men who did not belong to any armed force had been arrested.⁵⁰⁰⁰ It argues that it is irrelevant that Petković did not copy Stojić in his response to Šiljeg,⁵⁰⁰¹ and that the Trial Chamber’s inconsistent finding on Petković’s knowledge based on Šiljeg’s Report of 13 July 1993 does not impact on Stojić’s conviction.⁵⁰⁰²

(ii) Analysis

1554. Regarding Stojić’s argument that Šiljeg’s Report of 13 July 1993 does not support the inference that he knew about the detention of civilians, the Appeals Chamber notes that the Trial Chamber considered that, through Šiljeg’s Report of 13 July 1993, Stojić and Petković were informed that Šiljeg “had relocated detainees – mostly prisoners of war, but also some ‘civilians’” from Prozor Secondary School to Ljubuški Prison.⁵⁰⁰³ Notably, this report states only that Šiljeg had requested a reply “regarding relocating Muslims v/o /liable for military service/ from Rama to

⁴⁹⁹⁴ Stojić’s Appeal Brief, para. 245, referring to Ex. P03418, para. 13. Stojić also submits that Šiljeg’s Report of 13 July 1993 did not inform him that individuals were detained at Ljubuški Prison, but indicated that their accommodation was “unclear”. Stojić’s Appeal Brief, para. 246.

⁴⁹⁹⁵ Stojić’s Appeal Brief, para. 247. See Stojić’s Appeal Brief, para. 248. See also Stojić’s Reply Brief, para. 70.

⁴⁹⁹⁶ Stojić’s Appeal Brief, para. 247, referring to Ex. P03455, para. 12.

⁴⁹⁹⁷ Stojić’s Appeal Brief, para. 248. See Stojić’s Appeal Brief, para. 249. Stojić replies that it was not established that he saw Šiljeg’s Report of 13 July 1993. Stojić’s Reply Brief, para. 70.

⁴⁹⁹⁸ Prosecution’s Response Brief (Stojić), paras 206-207, 209.

⁴⁹⁹⁹ Prosecution’s Response Brief (Stojić), para. 207, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 951-952, 1001-1002, Vol. 4, para. 329, Exs. P03380, P03971.

⁵⁰⁰⁰ Prosecution’s Response Brief (Stojić), paras 206-207, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 57, 151-155, 953, 973, 984, 996, 1220. The Prosecution also argues that the Trial Chamber reasonably found from Šiljeg’s Report of 13 July 1993 that detainees were taken to Ljubuški Prison and then sent to Dretelj Prison. Prosecution’s Response Brief (Stojić), para. 209.

⁵⁰⁰¹ Prosecution’s Response Brief (Stojić), para. 210. The Prosecution further submits that the HVO and the Military Police operating in Ljubuški Prison were under Stojić’s control and that he was found to have issued detention-related orders. Prosecution’s Response Brief (Stojić), para. 211, referring to Trial Judgement, Vol. 4, paras 312, 320. The Prosecution also asserts that, regardless of his authority over Ljubuški Prison, Stojić planned the arrests of Muslims detained there. Prosecution’s Response Brief (Stojić), para. 212.

⁵⁰⁰² Prosecution’s Response Brief (Stojić), para. 208.

⁵⁰⁰³ Trial Judgement, Vol. 4, paras 329, 396, referring to Ex. P03418, p. 4. See Trial Judgement, Vol. 2, para. 149.

Herzegovina”,⁵⁰⁰⁴ and that “there was no reply until we had, on our own initiative, driven them into Ljubuški”.⁵⁰⁰⁵ On reviewing the exhibit, the Appeals Chamber considers that Šiljeg’s Report of 13 July 1993, neither includes an explicit reference to civilians, nor sufficient information about the detainees to conclude that Stojić knew that Šiljeg was referring to the relocation of “civilians”. In addition, there is no reference in the report to the Prozor Secondary School, but only the statement that the persons referred to were transported from Rama to Herzegovina.⁵⁰⁰⁶ The Appeals Chamber notes, however, that the Trial Chamber considered that Prozor Municipality was also called “Rama”.⁵⁰⁰⁷ Considering the above, the exhibit – on its face – only speaks to the relocation of Muslims “liable for military service” from Prozor Municipality to Ljubuški.⁵⁰⁰⁸

1555. The Appeals Chamber takes particular note of the fact that the Trial Chamber made no finding that the phrase “Muslims liable for military service” necessarily denoted “men who did not belong to any armed force”. Thus, the phrase is not sufficient – by itself – to conclude that at least some of these men and boys did not belong to any armed force.⁵⁰⁰⁹ Therefore, the Appeals Chamber finds that no reasonable trier of fact could have concluded from Šiljeg’s Report of 13 July 1993 alone that the only reasonable inference was that Stojić had been informed about the detention of “civilians” or “men and boys who did not belong to any armed force” in Prozor Municipality or Ljubuški Prison.⁵⁰¹⁰

1556. On whether Šiljeg’s Report of 13 July 1993 read together with the Trial Chamber’s other findings could support the inference that Stojić knew of detentions, the Appeals Chamber notes that the Trial Chamber also referred to its previous factual findings when arriving at its conclusion on Stojić’s knowledge.⁵⁰¹¹ The section of the Trial Judgement on Prozor Secondary School outlines evidence that: (1) in the summer of 1993, between 400 and 500 people were held at Prozor Secondary School;⁵⁰¹² (2) most of the detainees were Muslim men who were members of the TO/ABiH and between 16 and 60 years of age;⁵⁰¹³ (3) there were seven detainees under 16 years of

⁵⁰⁰⁴ Ex. P03418, para. 13, p. 4.

⁵⁰⁰⁵ Ex. P03418, para. 13, p. 4.

⁵⁰⁰⁶ Ex. P03418, para. 13, p. 4.

⁵⁰⁰⁷ Trial Judgement, Vol. 2, para. 5 (“Prozor, which means ‘window’ and is also called *Rama*, is the entry point from Herzegovina into Central Bosnia”). The Appeals Chamber also notes that the “Military Prison of the *Rama* Brigade” was “[t]he official name of the [Prozor] Secondary School as a detention facility”. Trial Judgement, Vol. 2, para. 138.

⁵⁰⁰⁸ See Ex. P03227 (an order from Šiljeg referring to the Prozor area as “Rama”).

⁵⁰⁰⁹ See Trial Judgement, Vol. 2, para. 146, Vol. 4, para. 799.

⁵⁰¹⁰ See *infra*, paras 2150, 2154-2156 (discussing Šiljeg’s Report of 13 July 1993, the Appeals Chamber found that “it is not satisfied that a reasonable trier of fact could have concluded, as the only reasonable inference, that Petković knew that men who did not belong to any armed force were being detained at the Prozor Secondary School and were transferred to Ljubuški Prison in July 1993”, see *infra*, para. 2155).

⁵⁰¹¹ Trial Judgement, Vol. 4, paras 329, 396 & fns 764, 857, referring to Trial Judgement, Vol. 2, paras 145-156, 1800-1818.

⁵⁰¹² Trial Judgement, Vol. 2, para. 145.

⁵⁰¹³ Trial Judgement, Vol. 2, para. 146, referring to, *inter alia*, Exs. P09731 (confidential), pp. 4-5, P09197, p. 11, P03266, P09925, p. 3.

age and 40 detainees over 60 years of age, “who did not belong to any armed force”,⁵⁰¹⁴ and (4) 237 detainees, described as “not prisoners of war”, were moved to Ljubuški Prison.⁵⁰¹⁵ However, the Appeals Chamber observes that the evidence cited by the Trial Chamber in its discussion only shows that there were men who did not belong to any armed force detained at Prozor Secondary School, but not that Stojić had been informed of this detention, and particularly, that civilians or men and boys who did not belong to any armed force were detained and relocated.⁵⁰¹⁶

1557. Furthermore, in the Trial Chamber’s analysis of the evidence on the arrival and transfer of detainees of Ljubuški Prison no mention is made of Stojić or his knowledge of events in the factual findings or in the evidence cited.⁵⁰¹⁷ On a broader scale, the Trial Chamber did not refer to any involvement by Stojić in the events taking place in Ljubuški Municipality or Ljubuški Prison.⁵⁰¹⁸ Considering the above,⁵⁰¹⁹ the Appeals Chamber finds that even when reading the Trial Chamber’s findings on the detention of civilians at Prozor Secondary School and Ljubuški Prison in conjunction with Šiljeg’s Report of 13 July 1993, no reasonable trier of fact could have concluded that the only reasonable inference was that Stojić was informed of the detention and relocation of civilians or men and boys who did not belong to any armed force in Prozor Municipality and at Ljubuški Prison in July 1993.

1558. Moreover, the Appeals Chamber notes that Stojić was involved in planning some of the HVO’s military operations, and more relevantly, planned and was informed of the campaign of arrests and mass detentions of Muslims who did not belong to any armed force in Čapljina.⁵⁰²⁰ Elsewhere, the Appeals Chamber has noted the Trial Chamber’s finding that following the 30 June 1993 Joint Proclamation issued by Stojić and Prlić “the chain of command was set in

⁵⁰¹⁴ Trial Judgement, Vol. 2, para. 146, referring to, *inter alia*, Exs. P09685, P09699, p. 2, P09722, p. 2, Witness BL, T(F). 5856-5857, 5859-5860 (31 Aug 2006).

⁵⁰¹⁵ Trial Judgement, Vol. 2, para. 148, referring to, *inter alia*, Exs. P03380, P09989, p. 5, P09925, p. 3, P03418.

⁵⁰¹⁶ See Trial Judgement, Vol. 2, paras 145-156, fns 351-378, and evidence cited therein. Notably, the Trial Chamber referred to two reports of Luka Markešić from the SIS which state that “civilians” were among the detainees, but these reports were not sent to Stojić or the Department of Defence. Thus, neither of Markešić’s reports establish that Stojić was informed of the detention of men and boys who did not belong to any armed force at Prozor Secondary School. See Trial Judgement, Vol. 2, paras 148 (referring to Ex. P03380, p. 1), 152 (referring to Ex. P03971).

⁵⁰¹⁷ See Trial Judgement, Vol. 2, paras 1800-1818, and evidence cited therein. Specifically on the transfer of detainees from Prozor Municipality to Ljubuški Prison in July 1993, the evidence cited by the Trial Chamber does not give any indication that Stojić, or the Department of Defence, was informed of the detention and relocation of civilians or men and boys who did not belong to any armed force from Prozor Municipality. Trial Judgement, Vol. 2, para. 1813, and evidence cited therein.

⁵⁰¹⁸ Trial Judgement, Vol. 2, paras 1765-1878. See Trial Judgement, Vol. 2, paras 1768, 1774. *Cf.* Trial Judgement, Vol. 2, para. 1789 (the Prosecution argued at trial that Stojić, *inter alios*, was responsible for running Ljubuški Prison, however, the Trial Chamber made no finding on this issue).

⁵⁰¹⁹ See *supra*, paras 1554-1557, fns 5016-5017.

⁵⁰²⁰ Trial Judgement, Vol. 4, paras 373-375, 1220 & fn. 2283. See Trial Judgement, Vol. 4, paras 151-152, 154, 341-342, 388-389, 397-398, 406-407, 953. See also *infra*, paras 1687-1688, 1696.

motion in order to arrest Muslims” in the municipalities of Mostar, Stolac, Čapljina, and Prozor.⁵⁰²¹ However, the Trial Chamber made no findings on Stojić’s involvement in the July 1993 events in Prozor and Ljubuški, other than the receipt of Šiljeg’s Report of 13 July 1993.⁵⁰²² Absent a determination that Stojić participated in planning, directing, or facilitating the July 1993 operations in Prozor and Ljubuški, the Appeals Chamber is not satisfied that a reasonable trier of fact could have concluded that the only reasonable inference was that Stojić was informed and knew of the detention of civilians or men and boys who did not belong to any armed force in Prozor Municipality and Ljubuški Prison.

1559. In light of the above, the Trial Chamber also erred in concluding, as the only reasonable inference, that Stojić accepted the detention of men who did not belong to any armed forces at Ljubuški Prison.⁵⁰²³ Stojić’s argument on the Trial Chamber’s erroneous reliance on Šiljeg’s Report of 13 July 1993 is granted. Thus, the Appeals Chamber finds that it is unnecessary to deal with Stojić’s remaining arguments in this regard, which are moot.

(iii) Conclusion

1560. Based on the foregoing, the Appeals Chamber grants Stojić’s ground of appeal 28 in part, and reverses the Trial Chamber’s findings that Stojić was informed of the detention of civilians in Prozor and Ljubuški Prison based on Šiljeg’s Report of 13 July 1993, and that he accepted the detention of men who did not belong to any armed forces at Ljubuški Prison. The impact of this reversal of findings on Stojić’s contribution to the JCE, *mens rea*, and convictions, if any, will be discussed in the relevant sections below.⁵⁰²⁴

(b) Gornji Vakuf Municipality (Stojić’s Ground 29)

1561. The Trial Chamber found that, on 18 January 1993, the HVO and the Military Police attacked Gornji Vakuf Municipality, which resulted in the destruction of Muslim houses, the murder and detention of Muslims who did not belong to any armed force, and the removal of women, children and the elderly from the area.⁵⁰²⁵ The Trial Chamber considered that, as Stojić sent Colonel Miro Andrić to Gornji Vakuf who then reported to Stojić on the situation in Gornji Vakuf

⁵⁰²¹ See *infra*, para. 1687.

⁵⁰²² Trial Judgement, Vol. 4, paras 329, 396. Cf. *infra*, para. 1586 (noting Stojić’s knowledge of a preconceived plan regarding events in Prozor in April 1993 following the 4 April 1993 Ultimatum).

⁵⁰²³ See Trial Judgement, Vol. 4, paras 329, 396.

⁵⁰²⁴ See *infra*, paras 1806-1807.

⁵⁰²⁵ Trial Judgement, Vol. 2, paras 344-345, 347, 358, 368-369, 374, 381, Vol. 4, para. 331. The Appeals Chamber recalls that it has reversed the Trial Chamber’s finding that the killing of the seven civilians in Duša amounted to murder and wilful killing, and thus has overturned the findings on these crimes in Gornji Vakuf Municipality and Stojić’s conviction thereof. On the same basis, the Appeals Chamber considers elsewhere that no reasonable trier of fact

and Prozor in a report dated 27 January 1993 (“Andrić’s Report”), the only reasonable inference it could draw was that Stojić was one of Andrić’s superiors who ordered him to capture the Gornji Vakuf area by force.⁵⁰²⁶ It also found that Stojić facilitated and closely followed the HVO operations in the area.⁵⁰²⁷ The Trial Chamber further found that Stojić was aware of the reports sent by Željko Šiljeg about the situation in Gornji Vakuf and was thus informed of the destruction of Muslim houses, the murder and detention of Muslim civilians, and the removal of inhabitants of the area by the HVO.⁵⁰²⁸ The Trial Chamber concluded that “inasmuch as Bruno Stojić planned and facilitated the HVO military operations in Gornji Vakuf in January 1993 and was informed of the crimes committed during the operations, he intended to commit those crimes”.⁵⁰²⁹

(i) Whether Stojić ordered Miro Andrić to capture Gornji Vakuf by force (Stojić’s Sub-ground 29.1)

1562. Stojić submits that the Trial Chamber erred in finding that he was one of the superiors who ordered Andrić to use force in Gornji Vakuf, and that this inference is not supported by Andrić’s Report.⁵⁰³⁰ He contends that this report shows that he ordered Andrić to resolve the situation peacefully.⁵⁰³¹ Further, Stojić submits that Andrić’s Report is addressed to him personally, and as it uses his name when referring to his orders, “[i]t is inconceivable that later in the same document Andrić would have referred to an order from Stojić as an order ‘from our superiors’ without identifying him by name”.⁵⁰³² Stojić also contends that Andrić sending the report nine days after the attack, on 27 January 1993, would be “astonishing” if he was one of Andrić’s superiors.⁵⁰³³

1563. Stojić also submits that the Trial Chamber’s finding is inconsistent with its findings on the military chain of command.⁵⁰³⁴ He contends that he was not part of the military chain of command

could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. Thus, the following section will only focus on the remaining crimes committed in Gornji Vakuf. See *supra*, paras 441-443, 882.

⁵⁰²⁶ Trial Judgement, Vol. 4, para. 334. See Trial Judgement, Vol. 2, para. 338, Vol. 4, para. 330. The Appeals Chamber notes that the Trial Chamber found that Andrić’s Report was sent to Stojić on 22 January 1993. Trial Judgement, Vol. 4, paras 330, 334. However, it is clear from the signature page of Andrić’s Report that it was signed by Andrić on 27 January 1993. See Ex. 4D00348/3D03065, p. 3.

⁵⁰²⁷ Trial Judgement, Vol. 4, para. 335.

⁵⁰²⁸ Trial Judgement, Vol. 4, para. 336. See Trial Judgement, Vol. 4, paras 331-333.

⁵⁰²⁹ Trial Judgement, Vol. 4, para. 337.

⁵⁰³⁰ Stojić’s Appeal Brief, paras 251-252, 255, referring to Trial Judgement, Vol. 4, para. 334, Ex. 4D00348/3D03065, pp. 1-2. See Appeal Hearing, AT. 356-358 (21 Mar 2017).

⁵⁰³¹ Stojić’s Appeal Brief, para. 252, referring to Ex. 4D00348/3D03065, p. 1. See Appeal Hearing, AT. 356-357 (21 Mar 2017).

⁵⁰³² Stojić’s Appeal Brief, para. 252, referring to Ex. 4D00348/3D03065, p. 1. Stojić argues that there was a mistranslation as the order actually says “following a higher order” instead of “following an order from our superiors” which further distances him from the order. Stojić’s Appeal Brief, fn. 637. See Appeal Hearing, AT. 358 (21 Mar 2017).

⁵⁰³³ Stojić’s Appeal Brief, para. 252, referring to Ex. 4D00348/3D03065, p. 3.

⁵⁰³⁴ Stojić’s Appeal Brief, para. 253.

and that he did not send direct combat orders.⁵⁰³⁵ Stojić argues that the usual chain of command, which went through the Main Staff, was operational in Gornji Vakuf at the time.⁵⁰³⁶ In this regard, he contends that: (1) Andrić was in the Main Staff and thus his reference to “our superiors” could not relate to Stojić;⁵⁰³⁷ (2) Praljak consulted with Andrić on 15 or 16 January 1993 after Andrić’s last evidenced contact with Stojić;⁵⁰³⁸ (3) on 16 January 1993, Praljak told the ABiH that they would be annihilated if they did not comply with the 15 January 1993 Ultimatum;⁵⁰³⁹ (4) on 18 January 1993, Praljak ordered that weapons be sent to Gornji Vakuf;⁵⁰⁴⁰ and (5) the order to cease combat operations came from Boban and was transmitted by Petković.⁵⁰⁴¹

1564. The Prosecution responds that the evidence relied on by the Trial Chamber demonstrates that Andrić acted under the authority of Stojić,⁵⁰⁴² and argues that Andrić: (1) managed the situation in Gornji Vakuf following a verbal order from Stojić;⁵⁰⁴³ (2) transmitted the order containing the 15 January 1993 Ultimatum from Petković, which was issued pursuant to an order from Stojić;⁵⁰⁴⁴ and (3) reported to Stojić on the capture of Gornji Vakuf Municipality after the ABiH rejected the 15 January 1993 Ultimatum.⁵⁰⁴⁵ It argues that, although Andrić indicated that he was sent on 12 January 1993 to resolve the situation peacefully, “this is not inconsistent with the interpretation that Stojić later ordered Andrić to use force after the HVO’s demands had not been met”.⁵⁰⁴⁶ It further argues that Stojić’s argument that Andrić’s Report identifies him by name whenever referencing him is flawed.⁵⁰⁴⁷ The Prosecution contends that it is immaterial whether Stojić was in the *de jure* military chain of command and whether this chain of command functioned in Gornji Vakuf.⁵⁰⁴⁸

⁵⁰³⁵ Stojić’s Appeal Brief, para. 253, referring to Trial Judgement, Vol. 1, paras 565, 791-796, Vol. 4, para. 306.

⁵⁰³⁶ Stojić’s Appeal Brief, paras 253-254.

⁵⁰³⁷ Stojić’s Appeal Brief, para. 253, referring to Trial Judgement, Vol. 2, para. 338.

⁵⁰³⁸ Stojić’s Appeal Brief, para. 254, referring to Ex. P01174.

⁵⁰³⁹ Stojić’s Appeal Brief, para. 254, referring to Ex. P01162.

⁵⁰⁴⁰ Stojić’s Appeal Brief, para. 254, referring to Ex. P01202.

⁵⁰⁴¹ Stojić’s Appeal Brief, para. 254, referring to Exs. 1D00472, P01238, P01286. Stojić argues that a similar order was sent by Boban on 27 January 1993, and transmitted by Petković. Stojić’s Appeal Brief, para. 254, referring to Exs. P01329, P01322.

⁵⁰⁴² Prosecution’s Response Brief (Stojić), para. 215.

⁵⁰⁴³ Prosecution’s Response Brief (Stojić), para. 215, referring to Trial Judgement, Vol. 2, para. 338, Vol. 4, paras 330, 334-335.

⁵⁰⁴⁴ Prosecution’s Response Brief (Stojić), para. 215, referring to Trial Judgement, Vol. 4, para. 304.

⁵⁰⁴⁵ Prosecution’s Response Brief (Stojić), para. 215, referring to Trial Judgement, Vol. 2, paras 341, 345, Vol. 4, paras 45, 330, 334. See also Appeal Hearing, AT. 327-328 (21 Mar 2017).

⁵⁰⁴⁶ Prosecution’s Response Brief (Stojić), para. 216, referring to Ex. 4D00348/3D03065, p. 1, Trial Judgement, Vol. 4, para. 334.

⁵⁰⁴⁷ Prosecution’s Response Brief (Stojić), para. 217.

⁵⁰⁴⁸ Prosecution’s Response Brief (Stojić), para. 218. The Prosecution asserts that Praljak was also not *de jure* within the military chain of command in January 1993. Prosecution’s Response Brief (Stojić), para. 218. It also argues that Stojić ordered that the 15 January 1993 Ultimatum be executed, sent Andrić to manage the situation in Gornji Vakuf, and received and relayed reports on the situation to the Government. Prosecution’s Response Brief (Stojić), para. 218, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 338, Vol. 4, paras 127, 304, 334-336.

1565. The Appeals Chamber notes that the Trial Chamber, relying on Andrić's Report, found that: (1) further to an oral order of 12 January 1993 from Stojić, Andrić went to Prozor on 13 January 1993 in order to calm down the situation in Gornji Vakuf Municipality;⁵⁰⁴⁹ and (2) on 18 January 1993, Andrić ordered the HVO forces in Gornji Vakuf to use force to ensure that the ABiH honoured the ceasefire agreement concluded on 13 January 1993 and that the HVO take Uzričje village so as to open a route to Gornji Vakuf.⁵⁰⁵⁰ The Appeals Chamber notes that in Andrić's Report, he stated that he arrived "in Prozor in the early morning hours of 13 January", familiarised himself with the situation, saw that the situation was tense and clashes were likely, and scheduled a meeting with representatives of the OS BH at the camp of UNPROFOR in Gornji Vakuf.⁵⁰⁵¹ Andrić then reports that he arrived in Gornji Vakuf, that negotiations were very difficult,⁵⁰⁵² and that "[d]uring the entire time between 13 January and 17 January 1993 we met several times in the UN camp and appealed to the OS BH".⁵⁰⁵³

1566. The Appeals Chamber further recalls the Trial Chamber's finding that on 16 January 1993, at a meeting between representatives of the HVO and the ABiH, Andrić transmitted the general subordination order issued by Petković the previous day – pursuant to the orders of Prlić and Stojić⁵⁰⁵⁴ – to the ABiH representatives, insisting on the subordination of all ABiH forces to the HVO.⁵⁰⁵⁵ The Trial Chamber found that on 16 and 17 January 1993, the ABiH rejected these subordination orders.⁵⁰⁵⁶ Moreover, following the HVO attack in Gornji Vakuf on 18 January 1993, Andrić reported to Stojić on the operations. Based on this sequence of events and the related Trial Chamber findings, the Appeals Chamber considers that Stojić fails to show that the Trial Chamber's inference – that he was one of Andrić's "superiors" who ordered the use of force – was not the only

⁵⁰⁴⁹ Trial Judgement, Vol. 2, paras 337-338, Vol. 4, para. 330.

⁵⁰⁵⁰ Trial Judgement, Vol. 4, paras 330, 334, referring to Ex. 4D00348/3D03065, p. 2 ("On 18 January 1993, following a higher order, it was decided to use force to exert pressure on the [ABiH] and to force them to honour what they had agreed, while the simultaneous taking of Uzričje would open a route to Gornji Vakuf."). See Trial Judgement, Vol. 4, paras 124, 126. The Appeals Chamber notes that the authoritative translation of the exhibit reads as "following a higher order" instead of the phrase which was considered by the Trial Chamber, *i.e.* "following an order from our superiors". See Decision on Prlić's Motion to Replace Translation of Exhibits 4D00348 and 3D03065, 11 March 2015, p. 2.

⁵⁰⁵¹ Ex. 4D00348/3D03065, p. 1.

⁵⁰⁵² Ex. 4D00348/3D03065, p. 1.

⁵⁰⁵³ Ex. 4D00348/3D03065, p. 2. The Appeals Chamber notes that in the section dealing with Stojić's responsibility, the Trial Chamber also found – recalling a factual finding in a previous section of the Trial Judgement related to Gornji Vakuf Municipality – that it was Stojić who had sent Andrić to Gornji Vakuf. See Trial Judgement, Vol. 2, para. 334 ("In the part relating to the structure of the Municipality of Gornji Vakuf, the Chamber notes that it was Bruno Stojić who had sent Colonel Miro Andrić to Gornji Vakuf"). Upon review of the factual finding relied upon by the Trial Chamber to make this finding, the Appeals Chamber notes, however, that this earlier finding relates to Stojić dispatching Andrić, on 12 January 1993, "to manage the situation in Gornji Vakuf", and not to go to Gornji Vakuf. See Trial Judgement, Vol. 2, para. 338. In reading this finding together with paragraph 330 of Volume 4 of the Trial Judgement, it is evident that Stojić dispatched Andrić to Prozor to attend meetings relating to the situation in Gornji Vakuf. As such, the Trial Chamber erred when finding that Stojić sent Andrić to Gornji Vakuf. However, the Appeals Chamber does not consider the issue of whether Stojić physically sent Andrić to Gornji Vakuf to be determinative of the issue at hand, namely, whether Stojić was one of the superiors who ordered Andrić to use force.

⁵⁰⁵⁴ Trial Judgement, Vol. 2, fn. 816.

⁵⁰⁵⁵ Trial Judgement, Vol. 2, para. 339.

reasonable one. Additionally, Stojić does not demonstrate how the references in Andrić's Report to the instructions Andrić received to resolve differences peacefully⁵⁰⁵⁷ would have an impact on the Trial Chamber's finding in this regard.

1567. With regard to Stojić's argument that, because of the contents of the report, it is "inconceivable" that he was one of the superiors who ordered the use of force, the Appeals Chamber considers this argument to be speculative and merely his own interpretation of the evidence without him showing an error.⁵⁰⁵⁸ The Appeals Chamber is also not convinced by Stojić's contention that a report on events sent nine days after those events occurred indicates that he was not one of the "superiors".⁵⁰⁵⁹ Stojić's arguments are dismissed.

1568. The Appeals Chamber notes that Stojić's argument that he was not part of the military chain of command ignores the Trial Chamber's findings that the Main Staff was an integral part of the Department of Defence and that, although the Head of the Department of Defence was not *de jure* part of the military chain of command, Stojić commanded and had "effective control" over the HVO and the Military Police by, *inter alia*, issuing orders directly to the HVO.⁵⁰⁶⁰ Thus, the Main Staff's involvement, and particularly that of Praljak and Petković, does not call into question the conclusion that Stojić was one of Andrić's "superiors". Stojić's arguments are dismissed.

1569. In light of the above, Stojić fails to demonstrate that the Trial Chamber erred in finding that he was one of Andrić's superiors who ordered him to capture the Gornji Vakuf area by force. Stojić's sub-ground of appeal 29.1 is dismissed.

(ii) Whether Stojić was aware of the commission of crimes based on reports from Željko Šiljeg (Stojić's Sub-ground 29.2)

1570. Stojić submits that the Trial Chamber erred in finding that he was aware of the crimes committed in Gornji Vakuf through the reports from Šiljeg.⁵⁰⁶¹ He contends that the Trial Chamber failed to analyse the reliability of one of these reports, Exhibit P01357, which he argues is a compilation of documents with different dates and recipients and the authenticity of which cannot

⁵⁰⁵⁶ Trial Judgement, Vol. 2, para. 341.

⁵⁰⁵⁷ See Ex. 4D00348/3D03065, p. 1. See also Trial Judgement, Vol. 4, paras 126, 334.

⁵⁰⁵⁸ The Appeals Chamber is also not convinced that any alleged error in the translation of Exhibit 4D00348 would have an impact on the Trial Chamber's findings. See *supra*, fns 5032, 5050.

⁵⁰⁵⁹ The Appeals Chamber recalls that the Trial Chamber erroneously found that Exhibit 4D00348 was sent to Stojić on 22 January 1993 as the exhibit is dated 27 January 1993. See *supra*, fn. 5026. However, this error has no impact, particularly as Andrić recounts in his report that he was wounded on 22 January 1993 and thus had to dictate this report from his hospital bed. See Ex. 4D00348/3D03065, p. 3.

⁵⁰⁶⁰ Trial Judgement, Vol. 4, paras 303-306, 312, 320. See *supra*, paras 1435, 1457, 1470-1472, 1479 (dismissing Stojić's challenges to the findings that he commanded the HVO and the Military Police).

⁵⁰⁶¹ Stojić's Appeal Brief, paras 256-257, referring to Trial Judgement, Vol. 4, para. 336. See Stojić's Appeal Brief, para. 260.

be established.⁵⁰⁶² Stojić argues that there is no evidence that he received these reports.⁵⁰⁶³ He also submits that Šiljeg's reports were addressed "simply" to the Department of Defence, that the Trial Chamber relied on its "flawed" inference that he ordered the use of force, and that it cannot be inferred that he was aware of all subsequent reports from Gornji Vakuf Municipality.⁵⁰⁶⁴ Stojić contends that, even if he had read the reports, their contents do not support an inference that he was aware of the destruction of Muslim homes, the detention and removal of civilians, or the murders.⁵⁰⁶⁵ He argues that the reports state that properties were on fire or destroyed and record the number of civilian casualties, but maintains that this was in the context of the ongoing hostilities.⁵⁰⁶⁶ He submits that nothing in the reports refers to civilian detentions,⁵⁰⁶⁷ the HVO's responsibility, or the occurrence of crimes.⁵⁰⁶⁸

1571. The Prosecution responds that Stojić's late challenge to the authenticity of Exhibit P01357 should be dismissed.⁵⁰⁶⁹ The Prosecution also responds that, in addition to its inference that Stojić ordered the use of force, the Trial Chamber relied on Stojić's overall control over the HVO and the Military Police as well as his "deep" involvement in the Gornji Vakuf operations.⁵⁰⁷⁰ It submits that Šiljeg's reports were sent to the Department of Defence, received by Stojić, and confirmed that HVO forces committed crimes in Gornji Vakuf.⁵⁰⁷¹ The Prosecution contends that the Trial Chamber correctly assessed the totality of the evidence, namely Šiljeg's reports and Stojić's knowledge of the military operations.⁵⁰⁷² It further submits that Stojić incorrectly asserts that no report mentions the detention of civilians and refers to a report dated 30 January 1993 from Šiljeg which alerted Stojić to the fact that there were civilian detainees.⁵⁰⁷³

⁵⁰⁶² Stojić's Appeal Brief, para. 257, referring to Ex. P01357.

⁵⁰⁶³ Stojić's Appeal Brief, para. 257. See Appeal Hearing, AT. 280 (21 Mar 2017), 804-806 (28 Mar 2017).

⁵⁰⁶⁴ Stojić's Appeal Brief, para. 258, referring to Exs. P01206, p. 1, P01357, p. 1, P01351, p. 1. See also Appeal Hearing, AT. 280 (21 Mar 2017), 804-806 (28 Mar 2017).

⁵⁰⁶⁵ Stojić's Appeal Brief, para. 259.

⁵⁰⁶⁶ Stojić's Appeal Brief, para. 259, referring to Exs. P01206, P01357, P01351.

⁵⁰⁶⁷ Stojić's Appeal Brief, para. 259. Stojić argues that Exhibit P01351 confirms that there were detainees but that they were all members of the ABiH. Stojić's Appeal Brief, para. 259, referring to Ex. P01351.

⁵⁰⁶⁸ Stojić's Appeal Brief, para. 259. Stojić submits the Trial Chamber erroneously concluded, from a report stating that "there [was] no civilian population left", that the HVO removed the inhabitants of the area as this conclusion cannot follow from a reading of this report. Stojić's Appeal Brief, para. 259, referring to Ex. 01357, p. 6, Trial Judgement, Vol. 4, para. 336.

⁵⁰⁶⁹ Prosecution's Response Brief (Stojić), para. 223, referring to *Šainović et al.* Appeal Judgement, paras 532-533. The Prosecution further argues that Stojić mischaracterises the exhibit as it is a single report in which several orders and reports are reproduced and referenced. Prosecution's Response Brief (Stojić), para. 223, referring to Ex. P01357.

⁵⁰⁷⁰ Prosecution's Response Brief (Stojić), para. 220, referring to Trial Judgement, Vol. 4, paras 300, 312, 334-336.

⁵⁰⁷¹ Prosecution's Response Brief (Stojić), paras 220-221, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 334, Exs. P01206, p. 1, P01357, p. 1, P01351, p. 1.

⁵⁰⁷² Prosecution's Response Brief (Stojić), para. 221, referring to Trial Judgement, Vol. 4, paras 131, 561. The Prosecution contends that Stojić knew that the references in Šiljeg's reports documented HVO crimes. Prosecution's Response Brief (Stojić), para. 221. See also Appeal Hearing, AT. 328-330 (21 Mar 2017).

⁵⁰⁷³ Prosecution's Response Brief (Stojić), para. 222, referring to Ex. P01357. The Prosecution argues that this 30 January 1993 report indicated that no civilian population was left in Gornja and Donja Hrasnica and that "some of the population were taken prisoner [...] and taken to Trnovača". Prosecution's Response Brief (Stojić), para. 222,

1572. Regarding Stojić's knowledge of the Gornji Vakuf crimes, the Appeals Chamber notes that the Trial Chamber relied on Exhibit P01357 as well as other reports from Šiljeg to find that Stojić was aware of the crimes committed there.⁵⁰⁷⁴ The Appeals Chamber notes that Stojić challenged the authenticity or reliability of Exhibit P01357 during trial by arguing that the original document was partly illegible, and that information contained therein could not be admitted based only on a draft translation.⁵⁰⁷⁵ The Trial Chamber rejected this argument and concluded that the exhibit had sufficient indicia of reliability, relevance and probative value.⁵⁰⁷⁶ By only submitting that the Trial Chamber "failed to analyse the reliability" of Exhibit P01357 as "[i]ts authenticity cannot be established",⁵⁰⁷⁷ Stojić fails to show that the Trial Chamber erred in exercising its broad discretion regarding the admissibility or reliability of this exhibit.⁵⁰⁷⁸

1573. On the issue of whether Stojić received or was aware of Šiljeg's reports, Exhibits P01357, P01206, and P01351 were all addressed to the Department of Defence.⁵⁰⁷⁹ However, in the Appeals Chamber's view, the fact that the reports were not addressed to Stojić personally does not undermine the Trial Chamber's finding that he, as Head of the Department of Defence, was aware of these reports due to his: (1) involvement in the Gornji Vakuf operations; and (2) position as the member of the Government who was "responsible for the armed forces".⁵⁰⁸⁰ With respect to the latter, the Appeals Chamber recalls that Stojić was found to have exercised a reporting function vis-à-vis the Government and would receive various reports from different military organs in order to be able to exercise that function.⁵⁰⁸¹ Accordingly, in light of the reporting function Stojić was found to have exercised and taking into account the Trial Chamber's findings as to his involvement in the Gornji Vakuf operations, the Appeals Chamber concludes that Stojić fails to show that no reasonable trier of fact could have concluded that he received Šiljeg's reports concerning the operations in Gornji Vakuf.

referring to Ex. P01357, pp. 6-7. It also asserts that Stojić learned of allegations of mistreatment in Trnovača through an earlier report. Prosecution's Response Brief (Stojić), para. 222, referring to Ex. P01351, p. 4.

⁵⁰⁷⁴ Trial Judgement, Vol. 4, paras 331-333, 336, referring to Exs. P01206, P01357, P01351.

⁵⁰⁷⁵ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Joint Defence Response to Prosecution Motion for Admission of Documentary Evidence, 8 October 2007 (confidential) ("Joint Response"), p. 12. For other exhibits, Stojić specifically objected to the lack of authenticity, the lack of probative value, and the lack of relevance. Joint Response, pp. 11-15.

⁵⁰⁷⁶ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Prosecution Motion for Admission of Documentary Evidence (Two Motions: HVO and Herceg-Bosna), 24 January 2008 (French original filed on 11 December 2007), para. 32, p. 9, Annex 1, p. 4 (admitting document with Rule 65 *ter* number 01357, which later became Ex. P01357, into evidence).

⁵⁰⁷⁷ Stojić's Appeal Brief, para. 257.

⁵⁰⁷⁸ See *Stanišić and Župljanin* Appeal Judgement, paras 99, 470 ("the Appeals Chamber recalls that a trial chamber is best placed to assess the credibility of a witness and reliability of the evidence adduced"). See also *Popović et al.* Appeal Judgement, paras 74, 131.

⁵⁰⁷⁹ Ex. P01357, p. 1; Ex. P01206, p. 1; Ex. P01351, p. 1. See *supra*, fn. 3703.

⁵⁰⁸⁰ See Trial Judgement, Vol. 4, para. 336.

⁵⁰⁸¹ See *supra*, paras 1418-1419, 1476.

1574. Regarding Stojić's argument that it cannot be inferred from Šiljeg's reports that he knew of the crimes committed, the Appeals Chamber notes that: (1) Exhibit P01206 states that several facilities were on fire;⁵⁰⁸² (2) Exhibit P01351 mentions persons, including "civilians" as being killed and the destruction of houses through torching and shelling;⁵⁰⁸³ and (3) Exhibit P01357 states that most buildings in Donja Hrasnica were burned down or demolished, that there "[was] no civilian population left in Gornja Hrasnica and Donja Hrasnica", and that "some of the population were taken prisoners [...] and some fled".⁵⁰⁸⁴ In this regard, the Appeals Chamber finds that although the reports, by themselves, do not expressly state that the HVO were committing the relevant crimes, Stojić's awareness of the crimes stems from the reports read in conjunction with his overall role in and knowledge of the operations. Notably, in considering these exhibits, the Trial Chamber recalled its previous findings that the Gornji Vakuf operations involved the HVO burning down and destroying buildings and houses, forcibly removing the women, children and the elderly, and detaining people.⁵⁰⁸⁵ Considering the Trial Chamber's findings and the evidence cited above, as well as the finding that Stojić facilitated and closely followed the Gornji Vakuf operations, the Appeals Chamber finds that Stojić fails to demonstrate that the Trial Chamber erred in concluding that he was aware of the destruction of Muslim houses, detention of Muslims who did not belong to any armed force, and the removal of the inhabitants of the area through Šiljeg's reports.⁵⁰⁸⁶ Stojić's argument is thus dismissed.

1575. Based on the foregoing, the Appeals Chamber finds that Stojić has failed to demonstrate that no reasonable trier of fact could have found that he was aware of the crimes committed during the Gornji Vakuf operations. Stojić's sub-ground of appeal 29.2 is dismissed.

(iii) Whether Stojić facilitated and closely followed the military operations in Gornji Vakuf and intended the crimes to be committed (Stojić's Sub-ground 29.3)

1576. Stojić submits that the Trial Chamber's finding that he facilitated and closely followed the operations in Gornji Vakuf is "a remarkable construction".⁵⁰⁸⁷ He contends that the Trial Chamber

⁵⁰⁸² Ex. P01206, p. 1.

⁵⁰⁸³ Ex. P01351, pp. 2-4. See *supra*, fn. 3703. The Appeals Chamber recalls that it has reversed the Trial Chamber's finding that the killing of the seven civilians in Duša amounted to murder and wilful killing, and thus has overturned the findings on these crimes in Gornji Vakuf Municipality and Stojić's conviction thereof. Moreover, the Appeals Chamber has overturned the Trial Chamber's finding that the destruction of Muslim houses in Duša resulting from shelling was wanton and not justified by military necessity. See *supra*, paras 435, 441-443, 452.

⁵⁰⁸⁴ Ex. P01357, pp. 6-7. Šiljeg also recounts a conversation with "BIJEDIĆ", from the Muslim delegation, who told Šiljeg that he could raze Gornji Vakuf to the ground but he could not kill every single person. Ex. P01357, pp. 1-2.

⁵⁰⁸⁵ Trial Judgement, Vol. 4, paras 331-333.

⁵⁰⁸⁶ See Trial Judgement, Vol. 4, para. 336. The Appeals Chamber recalls that it has reversed the Trial Chamber's finding that the killing of the seven civilians in Duša amounted to murder and wilful killing, and thus has overturned the findings on these crimes in Gornji Vakuf Municipality and Stojić's conviction thereof. On the same basis, the Appeals Chamber considers elsewhere that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, paras 441-443, 882.

made several inferences based on other inferences, and specifically that he facilitated and closely followed the military operations, then as a result he must have been aware of the reports sent by Šiljeg, before concluding that he planned and intended the commission of crimes in Gornji Vakuf.⁵⁰⁸⁸ Stojić argues that the only direct evidence is that he sent Andrić to Gornji Vakuf on 12 January 1993 “to calm the situation” and Andrić’s Report.⁵⁰⁸⁹ He asserts that this evidence cannot lead to the inference that he planned or facilitated the HVO military operations.⁵⁰⁹⁰ Further, Stojić submits that his receipt of a report nine days after the attack does not amount to “‘closely following’ events” and thus the first inference cannot be sustained.⁵⁰⁹¹

1577. The Prosecution responds that the Trial Chamber’s findings were reasonable.⁵⁰⁹² The Prosecution submits that Stojić incorrectly argues that the only direct evidence relied on was Andrić’s Report⁵⁰⁹³ and ignores the evidence which shows his involvement in implementing the 15 January 1993 Ultimatum,⁵⁰⁹⁴ and that he received Šiljeg’s reports.⁵⁰⁹⁵ It also submits that the Trial Chamber’s finding that Stojić intended the crimes is supported by the findings that he planned the operations, failed to punish the perpetrators, and continued contributing to the CCP.⁵⁰⁹⁶

1578. The Appeals Chamber notes that the Trial Chamber’s finding that Stojić closely followed and facilitated the military operations in Gornji Vakuf is based on the fact that: (1) he ordered Andrić to become involved in negotiations in order to calm down the situation in Gornji Vakuf; (2) Andrić then ordered the HVO to use force in Gornji Vakuf to ensure that the ABiH honoured the ceasefire agreement concluded on 13 January 1993; and (3) Andrić subsequently informed Stojić about the results of the military operations and the negotiations with the ABiH.⁵⁰⁹⁷ Other than asserting that the Trial Chamber’s reliance on Andrić’s Report “cannot support an inference” that

⁵⁰⁸⁷ Stojić’s Appeal Brief, para. 261, referring to Trial Judgement, Vol. 4, paras 335-337.

⁵⁰⁸⁸ Stojić’s Appeal Brief, para. 261, referring to Trial Judgement, Vol. 4, paras 335-337. See Stojić’s Appeal Brief, paras 250, 262-263.

⁵⁰⁸⁹ Stojić’s Appeal Brief, para. 262, referring to Ex. 4D00348/3D03065.

⁵⁰⁹⁰ Stojić’s Appeal Brief, para. 262.

⁵⁰⁹¹ Stojić’s Appeal Brief, para. 262.

⁵⁰⁹² Prosecution’s Response Brief (Stojić), para. 224, referring to Trial Judgement, Vol. 4, para. 337. See Prosecution’s Response Brief (Stojić), para. 214.

⁵⁰⁹³ Prosecution’s Response Brief (Stojić), para. 225.

⁵⁰⁹⁴ Prosecution’s Response Brief (Stojić), para. 225, referring to Trial Judgement, Vol. 4, paras 125, 127, 304, 919. See also Appeal Hearing, AT. 327-328 (21 Mar 2017).

⁵⁰⁹⁵ Prosecution’s Response Brief (Stojić), para. 225, referring to Trial Judgement, Vol. 4, paras 331-333, 336. See also Appeal Hearing, AT. 328-330 (21 Mar 2017).

⁵⁰⁹⁶ Prosecution’s Response Brief (Stojić), para. 226, referring to Trial Judgement, Vol. 4, paras 337, 415, 423, 426. See also Appeal Hearing, AT. 327-328 (21 Mar 2017).

⁵⁰⁹⁷ Trial Judgement, Vol. 4, para. 335. See *supra*, paras 1565-1566. The Appeals Chamber notes the Trial Chamber’s findings made elsewhere that: (1) Stojić was responsible for the implementation of the 15 January 1993 Ultimatum; (2) he ordered the HVO and the Military Police to implement the 15 January 1993 Ultimatum; and (3) he analysed the implementation during a meeting chaired by Prlić on 19 January 1993 where he also stated that the situation in Gornji Vakuf had finally calmed down thus showing that he was aware of the events in Gornji Vakuf even prior to receiving Andrić’s Report on 27 January 1993. Trial Judgement, Vol. 4, paras 125, 127, 304. See Trial Judgement, Vol. 4,

he planned and facilitated the operations, Stojić does not offer any other reasonable inferences that can be drawn from the evidence. Similarly, Stojić's argument on his belated receipt of Andrić's Report is unpersuasive.⁵⁰⁹⁸ For both arguments, Stojić merely provides his own interpretation of the evidence without showing an error. Accordingly, Stojić's arguments are dismissed. As the remainder of Stojić's contentions are based on his challenge to the inference that he planned and facilitated the Gornji Vakuf operations, and he only asserts that the Trial Chamber erroneously used this inference to make further inferences on his knowledge and intention, these contentions are also dismissed.

1579. Based on the above, Stojić has failed to show that the Trial Chamber erroneously found that he planned and facilitated the Gornji Vakuf operations and intended the crimes committed during these operations. Stojić's sub-ground of appeal 29.3 is dismissed.

(iv) Conclusion

1580. In sum, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in determining his contribution and intent regarding the crimes committed in Gornji Vakuf Municipality.⁵⁰⁹⁹ Stojić's ground of appeal 29 is therefore dismissed.

(c) Jablanica Municipality (Stojić's Ground 30)

1581. The Trial Chamber found that on 17 April 1993 the HVO launched an attack on the Jablanica area, shelling the villages of Sovići and Doljani.⁵¹⁰⁰ The Trial Chamber held that the HVO operations in Jablanica Municipality followed a preconceived plan of which Stojić "must have been informed".⁵¹⁰¹ It also found that Stojić must have been aware of the crimes committed by the HVO in Sovići and Doljani, that is, the destruction of buildings and mosques as well as the arrest of people not belonging to any armed forces.⁵¹⁰² It further found that Stojić must have been aware of these crimes, especially as on 23 April 1993 he – along with Petković – ordered the commanders of all the OZs to respect international law ("23 April 1993 Order").⁵¹⁰³ In arriving at its findings, the Trial Chamber also considered that Stojić was informed of: (1) the military operations in Jablanica through a report dated 23 April 1993 from Ivica Primorac, Assistant Chief of the Main Staff

paras 142, 146 (noting that the HVO committed crimes in Gornji Vakuf Municipality following the 15 January 1993 Ultimatum).

⁵⁰⁹⁸ See also *supra*, fn. 5059.

⁵⁰⁹⁹ See *supra*, fns 5025, 5086 (excluding murder and wilful killing (Counts 2 and 3)).

⁵¹⁰⁰ Trial Judgement, Vol. 4, para. 338.

⁵¹⁰¹ Trial Judgement, Vol. 4, para. 341.

⁵¹⁰² Trial Judgement, Vol. 4, para. 341. The Trial Chamber excluded the destruction of mosques in Jablanica Municipality from the CCP and therefore considered the related crimes within the framework of JCE III liability. Trial Judgement, Vol. 4, paras 73, 342, 449.

⁵¹⁰³ Trial Judgement, Vol. 4, paras 340-341, referring to Ex. P02050.

(“Primorac’s Report of 23 April 1993”);⁵¹⁰⁴ and (2) crimes committed by the HVO through an ICRC report dated 20 April 1993 (“ICRC Report of 20 April 1993”).⁵¹⁰⁵ It concluded that Stojić knew about the crimes, continued to exercise his functions, making no “apparent efforts” to ensure that the 23 April 1993 Order was respected, and thus accepted these crimes.⁵¹⁰⁶

(i) Whether Stojić must have been aware of the plan in relation to the HVO military operations in Jablanica Municipality (Stojić’s Sub-ground 30.2)

a. Arguments of the Parties

1582. Stojić submits that the Trial Chamber erred in inferring that he knew about the HVO military operations in Jablanica before they took place and that the events followed a preconceived plan.⁵¹⁰⁷ Specifically, Stojić argues that: (1) the only report cited – Primorac’s Report of 23 April 1993 – was a general update on various locations six days after the attack;⁵¹⁰⁸ (2) the attack in Jablanica was directed by the “usual military chain of command”, and since he was not in the military chain of command, the orders the Trial Chamber referred to do not mention him, and thus it was unreasonable to infer that he was aware of the operations in advance;⁵¹⁰⁹ and (3) his knowledge could not be established as the only reasonable inference from Primorac’s Report of 23 April 1993, which stated that the HVO had conquered Sovići and Doljani, and from the ICRC Report of 20 April 1993.⁵¹¹⁰ Stojić asserts that “evidence of such meagre involvement cannot support a finding that [he] significantly contributed to those crimes”.⁵¹¹¹

1583. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić knew of the plan to attack Jablanica Municipality. According to the Prosecution, Stojić was aware that the 4 April 1993 Ultimatum would be enforced through crimes in Jablanica Municipality the same way as the 15 January 1993 Ultimatum was enforced in Gornji Vakuf.⁵¹¹² It also submits that Stojić:

⁵¹⁰⁴ Trial Judgement, Vol. 4, paras 339, 341, referring to Ex. 4D01034.

⁵¹⁰⁵ Trial Judgement, Vol. 4, paras 340-341, referring to Ex. P01989.

⁵¹⁰⁶ Trial Judgement, Vol. 4, para. 342.

⁵¹⁰⁷ Stojić’s Appeal Brief, paras 269-273.

⁵¹⁰⁸ Stojić’s Appeal Brief, para. 270, referring to Ex. 4D01034.

⁵¹⁰⁹ Stojić’s Appeal Brief, para. 271, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 565, 791-796, Vol. 4, para. 306, Exs. P01896, P01915, p. 2, P01932, P02037, p. 1.

⁵¹¹⁰ Stojić’s Appeal Brief, para. 272.

⁵¹¹¹ Stojić’s Appeal Brief, para. 272.

⁵¹¹² Prosecution’s Response Brief (Stojić), para. 229. The Appeals Chamber recalls that the Trial Chamber found that on 3 April 1993 the HZ(R) H-B Government held a session in which it was decided that if the subordination of the ABiH armed forces to the HVO in provinces 3, 8, and 10, and the establishment of a joint HVO/ABiH command in other provinces by 15 April 1993 was refused, then the HVO would apply it unilaterally, including by military means, and this statement (the 4 April 1993 Ultimatum) was released on 4 April 1993. Trial Judgement, Vol. 4, para. 138. Referring to the 4 April 1993 Ultimatum, the Prosecution submits that Stojić: (1) was present at the Government session held on 3 April 1993; (2) was in charge of implementing the 15 January 1993 Ultimatum; (3) planned the violent operations in Gornji Vakuf; and (3) received reports documenting violent crimes against Muslims in Gornji Vakuf operations. Prosecution’s Response Brief (Stojić), para. 229. See also Prosecution’s Response Brief (Stojić), para. 228.

(1) commanded and had “effective control” over the HVO and was informed of military operations;⁵¹¹³ and (2) was informed of the progress of the operations by Primorac’s Report of 23 April 1993.⁵¹¹⁴

b. Analysis

1584. Regarding Stojić’s argument that no evidence was cited by the Trial Chamber that he knew of the HVO military operations in Jablanica “before” they happened,⁵¹¹⁵ the Appeals Chamber notes that this does not correspond with the Trial Chamber’s finding. Notably, the Trial Chamber found that “Stojić must have been informed of that plan” and that he “must have been aware of the crimes committed by the HVO troops in Sovići and Doljani”.⁵¹¹⁶ The Appeals Chamber finds that the Trial Chamber did not infer that Stojić was necessarily informed *in advance* of the military operations, but relied on, *inter alia*, the ICRC Report of 20 April 1993, Primorac’s Report of 23 April 1993, and a report submitted by Marko Rozić to Slobodan Božić on 23 April 1993 (“Rozić’s Report of 23 April 1993”)⁵¹¹⁷ to conclude that he must have been informed of the plan and the crimes.⁵¹¹⁸ Further, Stojić’s knowledge of the plan *before* the operations occurred is not a necessary factor in determining his participation in those operations. Therefore, Stojić’s argument is dismissed as it concerns his knowledge of the plan before the operations took place.

1585. In any event, the Appeals Chamber is not convinced by Stojić’s challenges to the Trial Chamber’s findings. Concerning Stojić’s submission that the Trial Chamber erred by inferring that events in Jablanica followed a preconceived plan, the Appeals Chamber observes that the existence of a preconceived plan was not “entirely unexplained”.⁵¹¹⁹ The Appeals Chamber notes that elsewhere in the Trial Judgement, the Trial Chamber found that the HVO operations in Jablanica and Prozor followed a “systematic course of action”,⁵¹²⁰ and that the 4 April 1993 Ultimatum resulted in a “plan” for an attack on several villages in Prozor before discussing a similar attack in

⁵¹¹³ Prosecution’s Response Brief (Stojić), para. 230. The Prosecution points to one exhibit, a report from Šiljeg, concerning preparations for the Jablanica operations which was sent to the Department of Defence. Prosecution’s Response Brief (Stojić), para. 230, referring to Ex. P01915.

⁵¹¹⁴ Prosecution’s Response Brief (Stojić), para. 231.

⁵¹¹⁵ Stojić’s Appeal Brief, paras 270, 272.

⁵¹¹⁶ Trial Judgement, Vol. 4, para. 341.

⁵¹¹⁷ The Appeals Chamber considers that the Trial Chamber mistakenly cited Primorac’s Report of 23 April 1993 in the second sentence of paragraph 341 in Volume 4 of the Trial Judgement as it is Rozić’s Report of 23 April 1993 which speaks to the destruction of houses and mosques pursuant to superior orders. Thus, the Appeals Chamber finds that the Trial Chamber was in fact referring to Rozić’s Report of 23 April 1993. See Trial Judgement, Vol. 4, paras 338, 341, Ex. P02063. Cf. Ex. 4D01034. See also Prosecution’s Response Brief (Stojić), fn. 955; *infra*, fn. 5150. Marko Rozić was the HVO Defence Bureau Chief in Jablanica (see Trial Judgement, Vol. 2, para. 649), and his report stated that “[w]hen the conflict had ceased, by order of the senior commanders, all Muslim houses were burnt down and two mosques were demolished” and sought instructions on the further treatment of “the prisoners”. Ex. P02063.

⁵¹¹⁸ Trial Judgement, Vol. 4, paras 338-341.

⁵¹¹⁹ Stojić’s Appeal Brief, para. 271.

⁵¹²⁰ Trial Judgement, Vol. 4, paras 146, 341. See Trial Judgement, Vol. 4, para. 717 (“the HVO operations in Jablanica were part of a well-organised and orchestrated plan by the HVO leadership”).

Jablanica.⁵¹²¹ The Trial Chamber reasonably considered the above as evidence of a preconceived plan. The Trial Chamber also noted Rozić's Report of 23 April 1993, which refers to orders from superior HVO commanders to set fire to Muslim houses and mosques, in this respect.⁵¹²² Further, the Trial Chamber made other findings from which a preconceived plan regarding Jablanica could be reasonably inferred, including that: (1) Petković ordered on 15 April 1993 that combat readiness be raised in the Jablanica area;⁵¹²³ (2) Zdravko Šagolj, the Herceg Stjepan Brigade commander, requested reinforcements on 15 April 1993 from the Main Staff and various OZs and for them to "act IMMEDIATELY in accordance with our previous agreement";⁵¹²⁴ and (3) on 16 April 1993, heavy artillery batteries and assault tanks had already taken up positions around Sovići, HVO soldiers were kept in reserve in case they were needed, and "coordination" with "Tuta" was planned.⁵¹²⁵ Thus, Stojić fails to show that the Trial Chamber erred in considering that a preconceived plan existed.

1586. Stojić further contests the Trial Chamber's finding that he must have been aware of the preconceived plan by arguing that the attack in Jablanica was directed by the "usual military chain of command" and that Stojić was not part of this chain of command.⁵¹²⁶ In support of this argument, he cites to a number of reports from Šiljeg and orders given by Petković relating to the HVO's operations in Jablanica that do not refer to Stojić by name.⁵¹²⁷ The Appeals Chamber first notes that the Trial Chamber did not rely on these reports or orders to find that Stojić must have been aware of the preconceived plan.⁵¹²⁸ Moreover, one of the reports – the report sent by Šiljeg on 16 April 1993 to the Department of Defence – stated that "[w]e continue to work according to plan".⁵¹²⁹ Regarding Stojić's role in the military chain of command, the Appeals Chamber recalls that the Trial Chamber reasonably found that he: (1) commanded and had "effective control" over the HVO and the Military Police;⁵¹³⁰ (2) was informed about their military actions;⁵¹³¹ (3) informed the HZ(R) H-B Government, both through reports and during Government sessions, about the military and security situation on the ground;⁵¹³² and (4) was not *de jure* part of the military chain of

⁵¹²¹ Trial Judgement, Vol. 4, paras 142-146.

⁵¹²² Trial Judgement, Vol. 4, para. 341. See *supra*, fn. 5117.

⁵¹²³ Trial Judgement, Vol. 4, paras 712-713.

⁵¹²⁴ Trial Judgement, Vol. 2, para. 533, quoting Ex. 4D00453.

⁵¹²⁵ Trial Judgement, Vol. 2, para. 534.

⁵¹²⁶ Stojić's Appeal Brief, para. 271.

⁵¹²⁷ Stojić's Appeal Brief, para. 271. See also Stojić's Appeal Brief, fn. 688.

⁵¹²⁸ Trial Judgement, Vol. 4, para. 341.

⁵¹²⁹ Ex. P01915, p. 3. See Trial Judgement, Vol. 4, para. 46 & fn. 125, referring to Ex. P01915.

⁵¹³⁰ Trial Judgement, Vol. 4, paras 312, 320. See *supra*, paras 1457, 1479.

⁵¹³¹ Trial Judgement, Vol. 4, paras 300-301, 312, 318, 320. See *supra*, paras 1418, 1473-1476.

⁵¹³² Trial Judgement, Vol. 4, para. 300. See *supra*, para. 1476.

command but had *de facto* powers.⁵¹³³ Thus, Stojić fails to show that his position in the military chain of command calls into question the Trial Chamber's findings.

1587. Further, the Trial Chamber established that the 4 April 1993 Ultimatum was developed during the 3 April 1993 meeting which Stojić attended.⁵¹³⁴ Additionally, Stojić facilitated and closely followed the operations in Gornji Vakuf which implemented the 15 January 1993 Ultimatum.⁵¹³⁵ Notably, the Trial Chamber found that the attack on Prozor in April 1993 was a result of the implementation of the 4 April 1993 Ultimatum which was "identical" to the 15 January 1993 Ultimatum.⁵¹³⁶ It also found that "the HVO operations in the municipalities of Prozor and Jablanica followed a systematic course of action and therefore had to be the result of a preconceived HVO plan to implement the ultimatum of 15 April 1993 by force".⁵¹³⁷ Thus, in addition to the Trial Chamber's reliance on Primorac's Report of 23 April 1993,⁵¹³⁸ the Appeals Chamber considers that similarities in the military operations could also be reasonably used to infer Stojić's knowledge of the plan in relation to Jablanica. The Appeals Chamber finds that Stojić fails to show that no reasonable trier of fact could have inferred, as the only reasonable inference, that he was aware of the preconceived plan. His arguments are dismissed.⁵¹³⁹

1588. Based on the foregoing, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred by finding that he must have been aware of the plan concerning the HVO operations in Jablanica.⁵¹⁴⁰ Stojić's sub-ground of appeal 30.2 is thus dismissed.

⁵¹³³ Trial Judgement, Vol. 1, para. 565, Vol. 4, paras 304, 306, 423. The Appeals Chamber dismisses elsewhere Stojić's challenges to the findings on his command authority. See *supra*, paras 1457, 1479.

⁵¹³⁴ Trial Judgement, Vol. 4, para. 138.

⁵¹³⁵ Trial Judgement, Vol. 4, paras 331-333, 336. See *supra*, paras 1578-1579.

⁵¹³⁶ Trial Judgement, Vol. 4, para. 142.

⁵¹³⁷ Trial Judgement, Vol. 4, para. 146. The Trial Chamber found that the ultimatum was released to the press on 4 April 1993 with a deadline of 15 April 1993, thus the Appeals Chamber considers that the Trial Chamber was in fact referring to the 4 April 1993 Ultimatum. Trial Judgement, Vol. 4, paras 138, 140.

⁵¹³⁸ Trial Judgement, Vol. 4, para. 341.

⁵¹³⁹ The Appeals Chamber will address Stojić's submissions concerning the ICRC Report of 20 April 1993 and Primorac's Report of 23 April 1993 in the section below. See *infra*, paras 1591-1595.

⁵¹⁴⁰ To the extent that the "preconceived" plan included a pattern of conduct regarding murder and wilful killing, the Appeals Chamber recalls that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993 due to the Duša reversal and the lack of any pattern of CCP murders. See *supra*, para. 882. However, given that no killings that formed part of the CCP were found to have occurred in Jablanica, this change in the scope of the CCP has no impact on the Trial Chamber's findings above concerning Stojić's responsibility for the events in Jablanica. See *supra*, para. 876.

(ii) Whether Stojić must have been aware of the crimes committed in Sovići and Doljani (Stojić's Sub-ground 30.1)

a. Arguments of the Parties

1589. Stojić submits that the Trial Chamber erred in its conclusion that he knew about the crimes committed in Sovići and Doljani, as there was no evidence in support.⁵¹⁴¹ He argues that the ICRC Report of 20 April 1993 does not identify these villages as places where crimes were committed, but only mentions Doljani as a location “cut-off by the fighting” and disconnected from humanitarian aid.⁵¹⁴² Further, Stojić contends that the Trial Chamber unreasonably found that the ICRC Report of 20 April 1993 informed him of the destruction of mosques and the detention of civilians, since these crimes were not mentioned in the report.⁵¹⁴³ Stojić also avers that the Trial Chamber erred by concluding that the 23 April 1993 Order was linked to Sovići and Doljani as: (1) the order was sent to all commanders and soldiers; (2) there is no indication that the order was precipitated by events in any particular location or by the ICRC Report of 20 April 1993, which did not refer to these two villages, but to all “HVO/BiH controlled areas”.⁵¹⁴⁴ Stojić further contends that it was unreasonable to conclude from the term “cleansing” in Primorac’s Report of 23 April 1993 that he had knowledge about the crimes, because this term is ambiguous and could also refer to lawful clean-up operations following military actions.⁵¹⁴⁵

1590. The Prosecution responds that the Trial Chamber reasonably relied on the ICRC Report of 20 April 1993 to establish Stojić’s awareness of HVO crimes.⁵¹⁴⁶ It argues that as Stojić knew that Sovići and Doljani would be attacked and the Muslims removed,⁵¹⁴⁷ upon receipt of the ICRC Report of 20 April 1993 he knew that crimes were committed there.⁵¹⁴⁸ The Prosecution submits that Rozić alerted Stojić to HVO crimes in Sovići and Doljani.⁵¹⁴⁹ In addition, it contends that the

⁵¹⁴¹ Stojić’s Appeal Brief, para. 265. See Stojić’s Appeal Brief, para. 264. See also Stojić’s Reply Brief, para. 70.

⁵¹⁴² Stojić’s Appeal Brief, para. 265, referring to Ex. P01989, p. 1.

⁵¹⁴³ Stojić’s Appeal Brief, para. 266, referring to Ex. P01989, p. 1.

⁵¹⁴⁴ Stojić’s Appeal Brief, para. 267.

⁵¹⁴⁵ Stojić’s Appeal Brief, para. 268, referring to Trial Judgement, Vol. 2, paras 558, 561, *Kordić and Čerkez* Appeal Judgement, para. 403. Stojić also contends that there is no evidence that he received this report. Stojić’s Appeal Brief, fn. 679.

⁵¹⁴⁶ Prosecution’s Response Brief (Stojić), para. 233. The Prosecution also responds that Stojić received information that the HVO had committed crimes in Jablanica Municipality but did not enforce the 23 April 1993 Order. Prosecution’s Response Brief (Stojić), para. 232.

⁵¹⁴⁷ Prosecution’s Response Brief (Stojić), para. 233, referring to Prosecution’s Response Brief (Stojić), paras 229-231. See also *supra*, para. 1583.

⁵¹⁴⁸ Prosecution’s Response Brief (Stojić), para. 233. In addition, the Prosecution submits that the ICRC Report of 20 April 1993 urged for the proper treatment of captured combatants and civilians. Prosecution’s Response Brief (Stojić), para. 233, referring to Ex. P01989, p. 3.

⁵¹⁴⁹ Prosecution’s Response Brief (Stojić), para. 234, referring to Ex. P02063 (referenced in Trial Judgement, Vol. 2, paras 641, 648). The Prosecution submits that Rozić’s Report of 23 April 1993 was addressed to Stojić’s immediate subordinate, Slobodan Božić, who would have alerted Stojić to the report, due to its contents. Prosecution’s Response

Trial Chamber did not rely on Primorac's Report of 23 April 1993 to establish Stojić's knowledge of crimes in Sovići and Doljani, but rather his awareness of the military operations in these villages.⁵¹⁵⁰

b. Analysis

1591. The Trial Chamber relied on the ICRC Report of 20 April 1993 to conclude that "since the ICRC informed Bruno Stojić of the crimes committed by the HVO armed forces in [Jablanica Municipality], he must have been aware of the crimes committed [...] in Sovići and Doljani during the operations".⁵¹⁵¹ The Trial Chamber considered that the ICRC Report of 20 April 1993 informed Stojić that: (1) since 15 April 1993, people had been killed and "civilian" houses regularly torched in the areas under the HVO control, including Jablanica; and (2) the security situation was so difficult that the ICRC delegates had to be evacuated from that municipality.⁵¹⁵² Regarding Stojić's challenges to the Trial Chamber's reliance on the ICRC Report of 20 April 1993, the Appeals Chamber observes that the ICRC reported that "the situation in HVO/BiH controlled areas ha[d] greatly deteriorated since April 15th,"⁵¹⁵³ and specifically noted that "[s]ummary executions, hostage-taking, indiscriminate shelling such as that on Zenica market [...], and the deliberate destruction of numerous homes have resulted in the flight of hundreds of terrorized civilians."⁵¹⁵⁴ Further, the ICRC informed that: (1) "[s]everal villages and municipalities, such as Doljani, Jablanica [...], Zenica and Tuzla ha[d] been cut-off by the fighting",⁵¹⁵⁵ and (2) "[f]or security reasons, the ICRC delegates in Jablanica had to be evacuated temporarily".⁵¹⁵⁶

1592. Although Stojić argues that only the crimes committed in Zenica were mentioned in the ICRC Report of 20 April 1993,⁵¹⁵⁷ the Appeals Chamber notes that the report also lists crimes committed in HVO/BiH controlled areas since 15 April 1993 and uses an incident of indiscriminate shelling on the Zenica market as an example. Further, the report refers in this context to several villages and municipalities "such as" Doljani and Jablanica, which were "cut-off by the fighting".⁵¹⁵⁸ Sovići is a part of Jablanica Municipality and is not excluded from the listed

Brief (Stojić), para. 234. Slobodan Božić was the assistant to the Head of the Department of Defence from mid-January 1993 to November 1993. Trial Judgement, Vol. 2, para. 649.

⁵¹⁵⁰ Prosecution's Response Brief (Stojić), para. 235. The Prosecution asserts that the Trial Chamber incorrectly stated that Primorac's Report of 23 April 1993, rather than Rozić's Report of 23 April 1993, indicated that houses and mosques were destroyed. Prosecution's Response Brief (Stojić), fn. 955. See *supra*, fn. 5117.

⁵¹⁵¹ Trial Judgement, Vol. 4, para. 341.

⁵¹⁵² Trial Judgement, Vol. 4, para. 340, referring to Ex. P01989.

⁵¹⁵³ Ex. P01989, p. 2.

⁵¹⁵⁴ Ex. P01989, p. 2.

⁵¹⁵⁵ Ex. P01989, p. 2. The ICRC Report of 20 April 1993 also states that "[t]he ICRC has neither been able to provide relief and medical assistance, nor protection to those in need". Ex. P01989, p. 3.

⁵¹⁵⁶ Ex. P01989, p. 3.

⁵¹⁵⁷ Stojić's Appeal Brief, para. 265.

⁵¹⁵⁸ Ex. P01989, p. 2.

places.⁵¹⁵⁹ Therefore, the Appeals Chamber finds that the Trial Chamber reasonably concluded that Stojić was informed through the ICRC Report of 20 April 1993 that crimes were committed in Jablanica Municipality. Thus, Stojić's argument that the ICRC Report of 20 April 1993 does not identify Doljani and Sovići as crime sites is dismissed.

1593. Concerning Stojić's submission that the Trial Chamber unreasonably found that the ICRC Report of 20 April 1993 informed him of the destruction of mosques and the detention of civilians, the Appeals Chamber considers that Stojić misinterprets the Trial Judgement. As noted above, the Trial Chamber found that Stojić was informed by the ICRC Report of 20 April 1993 that people had been killed and civilian houses regularly torched in the areas under HVO control, including Jablanica.⁵¹⁶⁰ The Appeals Chamber considers that the Trial Chamber then inferred that Stojić must have been aware of the crimes committed by the HVO in Sovići and Doljani, having also taken into account that: (1) the operations in Jablanica Municipality were a result of a preconceived plan of which Stojić must have been informed,⁵¹⁶¹ (2) the houses and mosques in Sovići and Doljani had been destroyed pursuant to an order by superior HVO officials in the execution of that preconceived plan,⁵¹⁶² (3) Primorac's Report of 23 April 1993, sent to Stojić, referred to the "cleansing" of Doljani on 19 April 1993;⁵¹⁶³ and (4) after he was informed of the commission of crimes, including killings and the deliberate destruction of houses, by the ICRC Report of 20 April 1993, Stojić issued the 23 April 1993 Order for HVO commanders to "treat the civilians and detainees in accordance with international law".⁵¹⁶⁴ Therefore, the Appeals Chamber considers that Stojić fails to demonstrate that the Trial Chamber unreasonably inferred that Stojić must have been aware of the crimes committed by the HVO in Sovići and Doljani, that is, the destruction of buildings, including mosques, and the arrests of people who did not belong to any armed force. Stojić's argument is dismissed.

1594. In relation to Primorac's Report of 23 April 1993, the Trial Chamber noted that the report referred to the "cleansing" of Doljani on 19 April 1993.⁵¹⁶⁵ The Appeals Chamber is not convinced by Stojić's argument that, since the term "cleansing" is ambiguous, it was unreasonable for the Trial Chamber to rely on this term to find that he must have been aware of the crimes.⁵¹⁶⁶ Stojić refers to

⁵¹⁵⁹ See Trial Judgement, Vol. 2, para. 538, Vol. 4, para. 338.

⁵¹⁶⁰ See *supra*, para. 1591.

⁵¹⁶¹ Trial Judgement, Vol. 4, para. 341.

⁵¹⁶² Trial Judgement, Vol. 4, paras 338, 341, referring to, *inter alia*, Ex. P02063.

⁵¹⁶³ Trial Judgement, Vol. 4, paras 339, 341. See *infra*, para. 1594.

⁵¹⁶⁴ Trial Judgement, Vol. 4, para. 340, referring to Ex. P02050. See Trial Judgement, Vol. 4, para. 341.

⁵¹⁶⁵ Trial Judgement, Vol. 2, para. 563, Vol. 4, para. 339, referring to Ex. 4D01034.

⁵¹⁶⁶ Stojić's Appeal Brief, para. 268. See *supra*, para. 1589. The Appeals Chamber dismisses Stojić's argument that there is no evidence establishing that he received this report, as the report is addressed to him and he does not submit any further arguments on why he would not have received it. See Stojić's Appeal Brief, fn. 679.

evidence that the term meant the “taking of an area” during military actions⁵¹⁶⁷ in arguing that the term referred to lawful clean-up operations,⁵¹⁶⁸ but fails to show that the Trial Chamber did not take this evidence into account. Notably, in addition to the reference to “cleansing” in Primorac’s Report of 23 April 1993, the Trial Chamber considered several pieces of evidence that the women, children, and the elderly residing in Doljani after the attack were arrested.⁵¹⁶⁹ Thus, the Appeals Chamber finds that Stojić fails to show an error in the Trial Chamber’s approach of considering, *inter alia*, Primorac’s Report of 23 April 1993 as evidence that Stojić must have been aware of the crimes. His argument is thus dismissed.

1595. With regard to Stojić’s argument that the Trial Chamber erred by linking the 23 April 1993 Order to the operations in Sovići and Doljani,⁵¹⁷⁰ the Appeals Chamber notes that the Trial Chamber found that “Stojić must have been aware of the crimes committed by the HVO troops in Sovići and Doljani especially as he then ordered the commanders of all the OZs to respect international law”.⁵¹⁷¹ In the Appeals Chamber’s view, such an order, especially since the HVO operations were regularly conducted in a similar way,⁵¹⁷² was relevant to all military staff involved in military operations. Notably, the Trial Chamber also considered this issue by taking account of the fact that the 23 April 1993 Order was sent “to the commanders of all OZs”.⁵¹⁷³ Stojić therefore fails to demonstrate how the fact that the order was not addressed only to the HVO in Sovići and Doljani calls into question the Trial Chamber’s finding that he must have been aware of the crimes committed in Sovići and Doljani especially as he then issued the 23 April 1993 Order.⁵¹⁷⁴ Further, as the 23 April 1993 Order addressed what was requested in the ICRC Report of 20 April 1993 – the medical assistance and behaviour in accordance with international law⁵¹⁷⁵ – a reasonable trier of fact could have concluded, as the only reasonable inference, that this order had been triggered by the ICRC Report of 20 April 1993. Thus, Stojić’s arguments are dismissed.

1596. The Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erroneously inferred that he knew about the crimes committed in Sovići and Doljani and his sub-ground of appeal 30.1 is dismissed. In light of the above,⁵¹⁷⁶ Stojić’s general argument that no

⁵¹⁶⁷ Witness 4D-AA, T. 49217 (closed session) (9 Feb 2010).

⁵¹⁶⁸ Stojić’s Appeal Brief, para. 268, referring to Witness 4D-AA, T. 49217 (closed session) (9 Feb 2010).

⁵¹⁶⁹ Trial Judgement, Vol. 2, paras 562-563.

⁵¹⁷⁰ Stojić’s Appeal Brief, para. 267. See *supra*, para. 1589.

⁵¹⁷¹ Trial Judgement, Vol. 4, para. 341.

⁵¹⁷² Trial Judgement, Vol. 4, paras 142-144, 146. See *supra*, para. 1586.

⁵¹⁷³ Trial Judgement, Vol. 4, para. 340.

⁵¹⁷⁴ Trial Judgement, Vol. 4, para. 341.

⁵¹⁷⁵ Ex. P02050; Ex. P01989, p. 3.

⁵¹⁷⁶ See *supra*, paras 1584-1588, 1591-1595.

reasonable trier of fact “could have constructed the further inference that he accepted” the crimes committed in Sovići and Doljani⁵¹⁷⁷ is also dismissed.

(iii) Conclusion

1597. Based on the foregoing, Stojić’s ground of appeal 30 is dismissed.

(d) The May 1993 operations in Mostar town (Stojić’s Ground 31)

1598. The Trial Chamber found that the HVO attacked Mostar town on 9 May 1993,⁵¹⁷⁸ resulting in crimes against its Muslim inhabitants.⁵¹⁷⁹ The Trial Chamber found that the only inference it could draw was that Stojić participated in planning these Mostar military operations,⁵¹⁸⁰ and that “he also participated in planning the acts of violence which accompanied the operations”.⁵¹⁸¹ The Trial Chamber considered as evidence a British Broadcasting Corporation interview with Stojić after 9 May 1993 (“BBC Video”), in which he explained that “the HVO could clear its part of the town in several hours”.⁵¹⁸² The Trial Chamber concluded that, in the BBC Video, Stojić presented himself as an HVO military chief who had control over West Mostar in May 1993.⁵¹⁸³ In arriving at this conclusion, the Trial Chamber rejected the evidence of Defence expert Witness Davor Marijan, that the BBC Video did not prove that Stojić was in charge of the May 1993 operations in Mostar, on the basis that he, *inter alia*, was biased in favour of Stojić and the HVO.⁵¹⁸⁴ The Trial Chamber also found that Stojić “participated in the preparation of the HVO troops in Mostar in the days preceding the attack of 9 May 1993” and “knew of the troops’ plans, of their ability and of their plan of action”.⁵¹⁸⁵

(i) Stojić’s participation in preparing the troops and planning the HVO operations in Mostar (Stojić’s Sub-ground 31.1)

1599. Stojić submits that no reasonable trial chamber could have inferred that he participated in preparing the troops and planning the HVO military operations on the basis of the BBC Video.⁵¹⁸⁶ In particular, he argues that the inference is not supported as: (1) the interview occurred after

⁵¹⁷⁷ Stojić’s Appeal Brief, para. 272.

⁵¹⁷⁸ Trial Judgement, Vol. 2, para. 775.

⁵¹⁷⁹ Trial Judgement, Vol. 2, paras 822-824, 826-827, 1494-1498, Vol. 4, para. 347. See also Trial Judgement, Vol. 2, paras 797-806, 812-818.

⁵¹⁸⁰ Trial Judgement, Vol. 4, para. 348.

⁵¹⁸¹ Trial Judgement, Vol. 4, para. 349.

⁵¹⁸² Trial Judgement, Vol. 4, para. 344, referring to Ex. P04238, 44:22-44:52. The Appeals Chamber refers to the video clip corresponding to Exhibit P04238, 43:22-44:33 as the BBC Video. Notably, the partial transcript of this video clip is provided under the same exhibit number, Exhibit P04238. See Ex. P04238, p. 3.

⁵¹⁸³ Trial Judgement, Vol. 4, para. 346.

⁵¹⁸⁴ Trial Judgement, Vol. 4, paras 345-346.

⁵¹⁸⁵ Trial Judgement, Vol. 4, para. 348.

⁵¹⁸⁶ Stojić’s Appeal Brief, paras 276, 279. See also Stojić’s Appeal Brief, para. 274.

9 May 1993;⁵¹⁸⁷ (2) the only words directly attributed to him were not clear enough as they were voiced over by the journalist, no plan was mentioned,⁵¹⁸⁸ and the Trial Chamber failed to consider whether the statement that the troops could clear their part of the city in five hours was realistic given that the conflict continued for months;⁵¹⁸⁹ and (3) the Trial Chamber failed to consider the context surrounding the relevant statement, which was only a snippet of an interview and did not address the 9 May 1993 attack or the eviction operations.⁵¹⁹⁰ Stojić contends that the Trial Chamber failed to consider other inferences, such as whether “an individual might want to present an image of strength or control which was not the situation on the ground.”⁵¹⁹¹

1600. The Prosecution responds that the Trial Chamber reasonably relied on Stojić’s comment in the BBC Video,⁵¹⁹² and that it is immaterial that the interview was recorded after 9 May 1993.⁵¹⁹³ It also argues that Stojić presents no basis to question the accuracy of the words attributed to him.⁵¹⁹⁴ The Prosecution argues that Stojić’s comment on clearing Mostar in five hours showed that he knew of his troops’ plans and ability to execute them, and was consistent with the conduct of HVO operations.⁵¹⁹⁵ It further submits that it is irrelevant that Stojić did not specifically refer to the 9 May 1993 attack or the evictions as his comments came in the midst of the HVO operations in May 1993.⁵¹⁹⁶

1601. Regarding Stojić’s first argument, the Appeals Chamber considers that he fails to explain why the Trial Chamber could not rely on the BBC Video to infer his participation in the operations merely because the interview was recorded after the 9 May 1993 attack began.⁵¹⁹⁷ The Appeals Chamber notes that there is no requirement that such evidence must refer to conduct that occurred at the same time as, or before, the military operations. In any event, it is clear from the context that this interview was recorded contemporaneously with the events in Mostar town in May 1993.⁵¹⁹⁸ With regard to Stojić’s contention that the relevant statement in the BBC Video was voiced over by a journalist, the Appeals Chamber notes that he merely repeats his argument at trial without

⁵¹⁸⁷ Stojić’s Appeal Brief, para. 276.

⁵¹⁸⁸ Stojić’s Appeal Brief, para. 277. See Stojić’s Appeal Brief, para. 275. Stojić argues that these words could not support the finding that he knew of the troops’ plan. Stojić’s Appeal Brief, para. 277.

⁵¹⁸⁹ Stojić’s Appeal Brief, para. 277, referring to Trial Judgement, Vol. 2, paras 1184, 1196. Stojić argues that these words did not support the finding that he knew of the troops’ ability. Stojić’s Appeal Brief, para. 277.

⁵¹⁹⁰ Stojić’s Appeal Brief, para. 278.

⁵¹⁹¹ Stojić’s Appeal Brief, para. 278.

⁵¹⁹² Prosecution’s Response Brief (Stojić), para. 238. See Prosecution’s Response Brief (Stojić), para. 237. The Prosecution argues that the Trial Chamber reasonably found that how Stojić presented himself in the BBC Video was consistent with his actual role. Prosecution’s Response Brief (Stojić), para. 242, referring to Trial Judgement, Vol. 4, para. 346. See also Appeal Hearing, AT. 330-331 (21 Mar 2017).

⁵¹⁹³ Prosecution’s Response Brief (Stojić), para. 239.

⁵¹⁹⁴ Prosecution’s Response Brief (Stojić), para. 240.

⁵¹⁹⁵ Prosecution’s Response Brief (Stojić), para. 240, referring to Trial Judgement, Vol. 2, paras 805, 812-815, 826-828, Vol. 4, paras 347-348.

⁵¹⁹⁶ Prosecution’s Response Brief (Stojić), para. 241.

⁵¹⁹⁷ See Trial Judgement, Vol. 4, para. 344.

demonstrating how its rejection by the Trial Chamber constituted an error.⁵¹⁹⁹ Nonetheless, Stojić fails to show how the Trial Chamber erred in relying on the journalist's account of Stojić's words, given that it had the discretion to rely on hearsay evidence.⁵²⁰⁰ Stojić's arguments are thus dismissed.

1602. As for Stojić's argument that no plan was mentioned in the BBC Video, the Appeals Chamber considers that the statement attributed to Stojić – that the HVO troops could clear its part of Mostar – plainly indicates his awareness of the events on the ground and thus any plan being executed.⁵²⁰¹ Moreover, this statement is consistent with the actions of the troops that took place, which was to engage “in a campaign aimed at evicting the Muslims of West Mostar from their flats” shortly following the 9 May 1993 attack.⁵²⁰² The Trial Chamber considered that these operations were conducted in “waves and in an orchestrated manner” involving recurring acts of violence that indicated that they were part of a “preconceived plan”.⁵²⁰³ Additionally, the Trial Chamber also considered that Stojić knew that the HVO implemented a plan aimed at intensifying control over the town of Mostar by placing HVO forces, including the Military Police, on alert since 14 April 1993, which further supports the conclusion that he knew of a plan regarding Mostar.⁵²⁰⁴ Stojić thus fails to show that no reasonable trier of fact could have found that he “knew of the troops' plans” simply on the basis that no plan was mentioned in the BBC Video.⁵²⁰⁵

1603. Further, Stojić fails to show how the estimate given in the BBC Video that this “clearing” could be done in five hours is inconsistent with the finding that he knew of the troops' ability.⁵²⁰⁶ Stojić argues that this estimate “bore no resemblance to reality”, asserting that “the conflict in Mostar continued for months rather than hours”.⁵²⁰⁷ In supporting the assertion that the conflict continued for months, Stojić refers to findings relating to the campaign of sniping and the siege of East Mostar beginning in June 1993, and not findings on the May 1993 operations in West Mostar discussed in the BBC Video.⁵²⁰⁸ The Appeals Chamber notes the Trial Chamber's finding that the

⁵¹⁹⁸ See Trial Judgement, Vol. 4, paras 344-347.

⁵¹⁹⁹ Compare Stojić's Appeal Brief, para. 277 with Stojić Closing Arguments, T. 52380 (16 Feb 2011). See Trial Judgement, Vol. 4, paras 344-346.

⁵²⁰⁰ *Stanišić and Župljanin* Appeal Judgement, para. 510; *Popović et al.* Appeal Judgement, paras 1276, 1307; *Šainović et al.* Appeal Judgement, para. 846.

⁵²⁰¹ The Appeals Chamber notes that the transcript of the BBC Video states the following: “the Minister says his forces could clear their part of the city in five hours”. Ex. P04238, p. 3. In the BBC Video, however, the words actually used were: “the Minister says his forces could clear their *half* of the city in five hours” (emphasis added). Ex. P04238, 43:58-44:03.

⁵²⁰² Trial Judgement, Vol. 4, para. 347. See also Trial Judgement, Vol. 2, paras 797-806, 812-818, 822-824, 826-827, 1494-1498.

⁵²⁰³ Trial Judgement, Vol. 4, para. 347.

⁵²⁰⁴ Trial Judgement, Vol. 4, para. 344, referring to, *inter alia*, Ex. P01868.

⁵²⁰⁵ Trial Judgement, Vol. 4, para. 348.

⁵²⁰⁶ Trial Judgement, Vol. 4, para. 348.

⁵²⁰⁷ Stojić's Appeal Brief, para. 277.

⁵²⁰⁸ See Stojić's Appeal Brief, para. 277, referring to Trial Judgement, Vol. 2, paras 1184, 1196.

initial eviction operations in West Mostar, in fact, took place between 9 and 11 May 1993,⁵²⁰⁹ which is relatively consistent with the estimate provided in the BBC Video. Stojić's arguments that the statement attributed to him was not clear enough to support the finding that he participated in planning the Mostar operations⁵²¹⁰ are therefore dismissed.

1604. The Appeals Chamber further considers that the Trial Chamber's findings are not undermined by the absence of express references to the 9 May 1993 attack or eviction operations in the BBC Video, particularly considering the above analysis.⁵²¹¹ Stojić fails to show that no reasonable trier of fact could have reached its findings in light of the evidence it considered.⁵²¹² With regard to Stojić's argument that the Trial Chamber failed to consider other inferences that could be drawn from the BBC Video, the Appeals Chamber notes that the Trial Chamber considered that the BBC Video "speaks for itself";⁵²¹³ namely, that "Stojić present[ed] himself as an HVO military chief who had control over West Mostar in May 1993."⁵²¹⁴ Stojić provides no evidentiary support for his alternative inference that he "may" have been trying to "present an image of strength or control which was not the situation on the ground",⁵²¹⁵ and does not show how this inference would impact the impugned finding, which was based on various other factors.⁵²¹⁶ His arguments are thus dismissed.

1605. In light of the above, the Appeals Chamber finds that Stojić has failed to demonstrate, in his sub-ground of appeal 31.1, that the Trial Chamber erred in relying on the BBC Video to conclude that he participated in preparing the troops and planning the Mostar military operations. His sub-ground of appeal 31.1 is dismissed.

(ii) Alleged errors in the assessment of and reliance on Expert Witness Davor Marijan's evidence (Stojić's Sub-ground 31.2)

1606. Stojić submits that the Trial Chamber erred in rejecting certain aspects of Witness Marijan's evidence while relying on other parts.⁵²¹⁷ Stojić argues that the Trial Chamber's finding that Marijan was biased in favour of him and the HVO was inconsistent with its reliance on Marijan's evidence, which it "routinely accepted" throughout the Trial Judgement, including that Stojić did

⁵²⁰⁹ Trial Judgement, Vol. 2, paras 805 (the round-up and detention of Muslim inhabitants of West Mostar between 9 and 11 May 1993), 812-815 (Muslims were expelled from their homes and made to cross the front line towards East Mostar or placed in the Heliodrom in the second half of May 1993), 816-818 (at least 300 Muslims were moved from West Mostar to East Mostar on 26 May 1993).

⁵²¹⁰ See *supra*, para. 1599.

⁵²¹¹ See *supra*, paras 657, 1601-1602, fn. 5197.

⁵²¹² Trial Judgement, Vol. 4, paras 344, 346-349, and evidence cited therein.

⁵²¹³ Trial Judgement, Vol. 4, para. 346.

⁵²¹⁴ Trial Judgement, Vol. 4, para. 346.

⁵²¹⁵ See *supra*, para. 1599.

⁵²¹⁶ See *supra*, para. 1598.

not issue any “combat orders”.⁵²¹⁸ He further argues that the Trial Chamber erred in rejecting Marijan’s evidence on the basis that he “merely offered hypotheses”⁵²¹⁹ since, as an expert witness, Marijan was entitled to offer opinions within his expertise which do not have to be based on firsthand knowledge.⁵²²⁰ Stojić also contends that the Trial Chamber failed to give sufficient reasons for rejecting Marijan’s conclusions, arguing that it did not consider: (1) whether the maps and the office shown in the BBC Video were of a military nature; (2) the absence of documentary evidence that he directed military operations in Mostar; and (3) Witness Slobodan Božić’s corroborative testimony that everyone wore uniforms at that time.⁵²²¹ Stojić submits that had Marijan’s evidence been taken into account, the Trial Chamber could not have inferred from the BBC Video that he participated in planning the military operations in Mostar.⁵²²²

1607. The Prosecution responds that the Trial Chamber reasonably rejected Marijan’s evidence concerning the BBC Video, and that its decision was reasoned.⁵²²³ It submits that the Trial Chamber was not inconsistent in its approach regarding Marijan’s evidence, relying on it only when uncontroversial and corroborated.⁵²²⁴ The Prosecution argues that Stojić mischaracterises or misconceives the Trial Chamber’s approach to Marijan’s entire testimony.⁵²²⁵ It contends that the Trial Chamber rejected Marijan’s evidence on the BBC Video because it was found to be unconvincing.⁵²²⁶ The Prosecution further contends that Stojić fails to show how Božić’s testimony – whose credibility was “extremely weak”⁵²²⁷ – undermines the Trial Chamber’s finding.⁵²²⁸

1608. The Appeals Chamber notes that the Trial Chamber held that, after having heard his entire testimony, Marijan “had a bias in favour of Bruno Stojić and the HVO”.⁵²²⁹ It considered that Marijan was a former HVO soldier and that, throughout his testimony and expert report, he sought to exonerate Stojić instead of providing objective answers as an expert.⁵²³⁰ Regarding Stojić’s argument that the Trial Chamber treated Marijan’s evidence inconsistently, the Appeals Chamber

⁵²¹⁷ Stojić’s Appeal Brief, para. 281.

⁵²¹⁸ Stojić’s Appeal Brief, para. 281, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 559, 565.

⁵²¹⁹ Stojić’s Appeal Brief, para. 282, referring to Trial Judgement, Vol. 4, para. 346.

⁵²²⁰ Stojić’s Appeal Brief, para. 282, referring to *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 27 (“*Popović et al.* Decision of 30 January 2008”), *Semanza* Appeal Judgement, para. 303.

⁵²²¹ Stojić’s Appeal Brief, para. 283, referring to Slobodan Božić, T. 36315 (private session) (3 Feb 2009).

⁵²²² Stojić’s Appeal Brief, para. 284.

⁵²²³ Prosecution’s Response Brief (Stojić), para. 243.

⁵²²⁴ Prosecution’s Response Brief (Stojić), para. 244. The Prosecution argues that Stojić ignores instances where the Trial Chamber noted inconsistencies within Marijan’s evidence or with other evidence. Prosecution’s Response Brief (Stojić), para. 244, referring to Trial Judgement, Vol. 1, paras 561, 867.

⁵²²⁵ Prosecution’s Response Brief (Stojić), paras 244-245, referring to Trial Judgement, Vol. 1, paras 559, 565, Vol. 4, para. 312.

⁵²²⁶ Prosecution’s Response Brief (Stojić), para. 246.

⁵²²⁷ Prosecution’s Response Brief (Stojić), para. 247, referring to Trial Judgement, Vol. 1, para. 551.

⁵²²⁸ Prosecution’s Response Brief (Stojić), para. 247.

⁵²²⁹ Trial Judgement, Vol. 4, para. 346.

⁵²³⁰ Trial Judgement, Vol. 4, para. 346.

first recalls that “it is for the Trial Chamber to accept or reject, in whole or in part, the contribution of an expert witness”.⁵²³¹ The Appeals Chamber further observes that, with regard to the BBC Video, the Trial Chamber provided specific reasons for rejecting Marijan’s conclusion, namely that it found his answers unconvincing, that he was not in the office at the time of the interview, and that his hypotheses were “uncorroborated by the evidence.”⁵²³² In the other parts of the Trial Judgement where Marijan’s evidence was accepted, the Appeals Chamber observes that it was generally corroborated by other evidence.⁵²³³ Further, the Trial Chamber did not “routinely” accept Marijan’s evidence, and notably, it found that Stojić issued operational orders directly to the HVO⁵²³⁴ contrary to the evidence Marijan gave that the Head of the Department of Defence did not issue orders related to combat activities.⁵²³⁵ Therefore, the Appeals Chamber finds that Stojić has failed to show that the Trial Chamber’s reliance on Marijan’s evidence was inconsistent throughout the Trial Judgement or demonstrated a discernible error.⁵²³⁶ His arguments are dismissed.

1609. With regard to Stojić’s argument that the Trial Chamber erroneously rejected Marijan’s evidence because he offered hypotheses, the Appeals Chamber notes that the views of expert witnesses need not be based upon firsthand knowledge or experience.⁵²³⁷ However, the Appeals Chamber recalls that, just as for any other evidence presented, trial chambers have the discretion to assess the reliability and probative value of expert reports and testimony.⁵²³⁸ Bearing in mind the reasons given by the Trial Chamber for rejecting Marijan’s evidence,⁵²³⁹ and as Stojić has failed to show that the Trial Chamber rejected Marijan’s evidence solely on the basis that he offered hypotheses or provided evidence that was not firsthand, the Appeals Chamber dismisses Stojić’s argument.

1610. As for Stojić’s argument that the Trial Chamber failed to provide sufficient reasons for rejecting Marijan’s conclusion, the Appeals Chamber recalls that a trial chamber is not “required to set out in detail why it accepted or rejected a particular testimony”.⁵²⁴⁰ In this regard, the Appeals Chamber is not persuaded that the deficiencies Stojić alleges concerning the maps, the office, or the

⁵²³¹ *Strugar* Appeal Judgement, para. 58. See *Popović et al.* Appeal Judgement, para. 132 (“a trial chamber can reasonably accept certain parts of a witness’s testimony and reject others.”).

⁵²³² Trial Judgement, Vol. 4, para. 346.

⁵²³³ See, e.g., Trial Judgement, Vol. 1, paras 495, 505, 544, 600, 640, 676, 679, 694, 702, 767, 772, 855, 924, 946. The Appeals Chamber notes that on one occasion, the Trial Chamber rejected Marijan’s evidence for being contradictory. Trial Judgement, Vol. 1, para. 561.

⁵²³⁴ Trial Judgement, Vol. 1, para. 565. See *supra*, paras 1427-1435.

⁵²³⁵ See Trial Judgement, Vol. 1, para. 559, referring to, *inter alia*, Davor Marijan, T(F). 35693 (20 Jan 2009), 36073-36074 (27 Jan 2009), Ex. 2D02000, para. 86.

⁵²³⁶ See *Popović et al.* Appeal Judgement, para. 131.

⁵²³⁷ *Popović et al.* Decision of 30 January 2008, para. 27, citing *Nahimana et al.* Appeal Judgement, para. 198, *Semanza* Appeal Judgement, para. 303.

⁵²³⁸ *Tolimir* Appeal Judgement, para. 69. See *Popović et al.* Appeal Judgement, paras 131-132.

⁵²³⁹ See *supra*, para. 1608.

⁵²⁴⁰ *Popović et al.* Appeal Judgement, para. 133; *Krajišnik* Appeal Judgement, para. 139.

lack of documentary evidence undermine the Trial Chamber's reasoning, especially as the Trial Chamber expressly noted these issues.⁵²⁴¹ In relation to Witness Božić's evidence, the Appeals Chamber considers that there is no indication that the Trial Chamber relied only on the fact that Stojić was wearing a uniform in the BBC Video to arrive at its findings, having also taken into account his conduct and words in concluding that he presented himself as an HVO military chief who had control over West Mostar in May 1993.⁵²⁴² Thus, Stojić has failed to show that any disregard of this evidence would impact on the Trial Chamber's findings. Stojić's arguments are dismissed.

1611. Based on the foregoing, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in rejecting Marijan's evidence concerning the BBC Video and thus inferring from this video that he participated in planning the Mostar operations. Stojić's sub-ground of appeal 31.2 is dismissed.

(iii) Stojić's participation in planning the acts of violence which accompanied the HVO operations in Mostar (Stojić's Sub-ground 31.3)

1612. Stojić submits that the Trial Chamber erroneously inferred, from his participation in planning the military operations in Mostar, that he participated in planning the acts of violence, and that it gave no explanation for this inference.⁵²⁴³ Specifically, he argues that he did not participate in planning the military operations and that, even if he did, it does not follow that he participated in planning the acts of violence, given that there are other reasonable inferences available from the evidence. Stojić also contends that there was no evidence that he was involved in planning the details of how the operations were to be carried out.⁵²⁴⁴

1613. The Prosecution responds that the Trial Chamber's conclusion was reasonable.⁵²⁴⁵ It argues that the Trial Chamber did not merely rely on its conclusion that Stojić planned the operations, but found that acts of violence were an intrinsic part of those operations.⁵²⁴⁶

1614. The Appeals Chamber notes that it has dismissed Stojić's arguments challenging his participation in planning the Mostar military operations above.⁵²⁴⁷ Regarding Stojić's argument that

⁵²⁴¹ Trial Judgement, Vol. 4, para. 345.

⁵²⁴² Trial Judgement, Vol. 4, paras 344, 346. See *infra*, para. 1621.

⁵²⁴³ Stojić's Appeal Brief, para. 285. See also Stojić's Appeal Brief, para. 286; Stojić's Reply Brief, paras 70-71.

⁵²⁴⁴ Stojić's Appeal Brief, para. 285.

⁵²⁴⁵ Prosecution's Response Brief (Stojić), para. 248.

⁵²⁴⁶ Prosecution's Response Brief (Stojić), para. 249, referring to Trial Judgement, Vol. 4, para. 349. See Prosecution's Response Brief (Stojić), para. 250. The Prosecution also argues that the Trial Chamber's findings show that the HVO "systematically and violently evicted Muslims." Prosecution's Response Brief (Stojić), para. 249, referring to Trial Judgement, Vol. 4, para. 356.

⁵²⁴⁷ See *supra*, paras 1601-1605, 1611.

the Trial Chamber gave no explanation for inferring that he participated in planning the acts of violence, the Appeals Chamber notes that the Trial Chamber found that as Stojić participated in, among other things, planning the HVO operations in Mostar on 9 May 1993 and continued to exercise control over the HVO and Military Police knowing that they were committing crimes in other municipalities, he intended them.⁵²⁴⁸ It also found that, during the days that followed the attack of 9 May 1993, the HVO engaged in a campaign aimed at evicting Muslims of West Mostar from their flats and detaining between 1,500 and 2,500 Muslims in an orchestrated manner.⁵²⁴⁹ This orchestrated campaign was accompanied by acts of violence on a scale that indicated that these crimes “were part of a preconceived plan and were in no way the acts of a few undisciplined individuals.”⁵²⁵⁰ Thus, the Appeals Chamber considers that it was unnecessary for the Trial Chamber to give further reasons having already found that: (1) the crimes and violent acts committed during the operations were done in pursuance of “an orchestrated and organised plan”;⁵²⁵¹ and (2) Stojić participated in planning those operations.⁵²⁵² Stojić fails to support his contention that an inference that he participated in planning the violent acts does not follow from these previous findings. Similarly, the Appeals Chamber finds that Stojić fails to show that this inference was one that no reasonable trier of fact could have drawn, particularly as he offers no other reasonable inference. His arguments are dismissed.

1615. In light of the above, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in concluding that he participated in planning the acts of violence accompanying the Mostar military operations. His sub-ground of appeal 31.3 is dismissed.

(iv) Conclusion

1616. In sum, Stojić’s ground of appeal 31 is dismissed.

(e) The eviction of the Muslim population from West Mostar (Stojić’s Grounds 32 and 33)

1617. The Trial Chamber found that, beginning in June 1993, the HVO expelled many Muslims from West Mostar, evicting them from their homes and committing crimes against them.⁵²⁵³ It

⁵²⁴⁸ Trial Judgement, Vol. 4, para. 426.

⁵²⁴⁹ Trial Judgement, Vol. 4, para. 347. See also Trial Judgement, Vol. 2, paras 823, 827, 866, 868, 872, 876, 924, 928, 930-931, 934, 937, 980-987, Vol. 4, para. 356.

⁵²⁵⁰ Trial Judgement, Vol. 4, para. 347. See also Trial Judgement, Vol. 2, paras 823, 827, 866, 868, 872, 876, 924, 928, 930-931, 934, 937, 980-987, Vol. 4, para. 356. To the extent that the “preconceived” plan included a pattern of conduct regarding murder and wilful killing, the Appeals Chamber recalls that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993 due to the Duša reversal and the lack of any pattern of CCP murders. See *supra*, para. 882.

⁵²⁵¹ Trial Judgement, Vol. 4, para. 349. See Trial Judgement, Vol. 2, paras 797-806, 812-818, 822-824, 826-827, 1494-1498, Vol. 4, para. 347.

⁵²⁵² Trial Judgement, Vol. 4, paras 344, 346, 348-349, 426.

⁵²⁵³ Trial Judgement, Vol. 2, paras 876, 900, 914, 920, 934-935, Vol. 4, paras 57, 356.

concluded that Stojić was not only informed of the evictions but was also “actively involved in organising and conducting the eviction campaigns”,⁵²⁵⁴ and intended to have the acts of violence linked to the eviction campaigns committed.⁵²⁵⁵ In this respect, the Trial Chamber considered that: (1) Stojić received a report from Dragan Ćurčić dated 2 June 1993 (“Ćurčić’s Report of 2 June 1993”)⁵²⁵⁶ informing him of the occupancy of vacant flats in Čapljina and Mostar assigned to members of the HVO; (2) a Main Staff report dated 14 June 1993 (“CED Report”), informing him of the evictions of Muslims from West Mostar,⁵²⁵⁷ and (3) Stojan Vrlić’s report dated 5 July 1993 (“Vrlić’s Report of 5 July 1993”), containing a list of Muslim homes to be raided that evening.⁵²⁵⁸ The Trial Chamber also considered that: (1) as of 16 June 1993, international representatives alerted, *inter alios*, Stojić to the evictions of Muslims from West Mostar to East Mostar based on, *inter alia*, Exhibits P03804 and P09712;⁵²⁵⁹ (2) Stojić told international representatives at a dinner on 17 July 1993 that “the loss of territory in some areas was part of a preconceived strategy of the HVO whose objective was to exert maximum pressure on the southern part of the town of Mostar”, expressed his “concern” for the Muslim civilians living in the ABiH-controlled areas in East Mostar, suggested that the largest possible number of these civilians should be evacuated and offered his assistance, and estimated that the conflict between the Muslims and Croats in Mostar would be resolved in 20 days;⁵²⁶⁰ and (3) Witness DZ was told that Stojić was in charge of implementing the plan to cleanse Mostar town, and heard HVO members say that Stojić ordered evictions and destruction of homes.⁵²⁶¹

(i) Whether Stojić received reports concerning the evictions of Muslims and crimes against them, and was involved in organising and conducting the eviction campaigns (Stojić’s Sub-ground 33.1)

1618. Stojić submits that the Trial Chamber erroneously disregarded clearly relevant evidence in reaching its conclusions.⁵²⁶² Referring to his trial arguments, Stojić contends that the Trial Chamber disregarded the evidence of Witness Slobodan Božić,⁵²⁶³ who testified that any documents received by the Department of Defence were stamped, registered, and signed by Stojić.⁵²⁶⁴ As the CED

⁵²⁵⁴ Trial Judgement, Vol. 4, para. 355.

⁵²⁵⁵ Trial Judgement, Vol. 4, para. 357.

⁵²⁵⁶ Ex. P02608. See Trial Judgement, Vol. 4, para. 351, referring to, *inter alia*, Ex. P02608.

⁵²⁵⁷ Trial Judgement, Vol. 4, para. 351, referring to, *inter alia*, Ex. P02770.

⁵²⁵⁸ Ex. P03181. See Trial Judgement, Vol. 4, para. 352, referring to, *inter alia*, Ex. P03181.

⁵²⁵⁹ Trial Judgement, Vol. 4, para. 350, referring to, *inter alia*, Exs. P02806 (confidential), P03804 (confidential), P09712 (confidential).

⁵²⁶⁰ Trial Judgement, Vol. 4, para. 353.

⁵²⁶¹ Trial Judgement, Vol. 4, para. 354.

⁵²⁶² Stojić’s Appeal Brief, para. 295.

⁵²⁶³ Stojić’s Appeal Brief, para. 295, referring to Stojić’s Final Brief, para. 482, Stojić Closing Arguments, T. 52399 (16 Feb 2011).

⁵²⁶⁴ Stojić’s Appeal Brief, para. 295, referring to Slobodan Božić, T. 36246-36247 (3 Feb 2009).

Report and Vrlić's Report of 5 July 1993 were neither stamped nor signed by him, Stojić submits that the Trial Chamber erred in concluding that they were received.⁵²⁶⁵ He argues that elsewhere the Trial Chamber disregarded another document because it lacked a signature, stamp, and seal.⁵²⁶⁶ Stojić avers that the intake register indicating whether the documents were received was not entered into evidence.⁵²⁶⁷ He also argues that Ćurčić's Report of 2 June 1993 is irrelevant because he had no role in the distribution of flats,⁵²⁶⁸ and that Exhibits P03804 and P09712 do not relate to him.⁵²⁶⁹ Stojić contends that no reasonable trier of fact could have found, based on the single report that international representatives alerted him to evictions on 16 June 1993, that the only reasonable inference was his active involvement in organising and conducting the evictions.⁵²⁷⁰

1619. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić knew of evictions of Muslims in West Mostar, having received the relevant reports.⁵²⁷¹ It submits that the Trial Chamber considered Slobodan Božić's credibility to be "extremely weak",⁵²⁷² and that Stojić's lack of involvement in the distribution of flats is irrelevant to his knowledge of the contents of Ćurčić's Report of 2 June 1993.⁵²⁷³ It also argues that Exhibits P03804 and P09712 show that Stojić and other JCE members acted together to further the expulsion campaign, and that the Trial Chamber reasonably relied on them.⁵²⁷⁴ The Prosecution further asserts that it was "impossible" for Stojić, who was based in West Mostar at the time of the crimes, to be unaware of their occurrence.⁵²⁷⁵

1620. Stojić replies that demonstrating that a document was sent to the Department of Defence in general does not establish beyond reasonable doubt that he saw it.⁵²⁷⁶

⁵²⁶⁵ Stojić's Appeal Brief, para. 295. Stojić asserts that the name "Bruno" handwritten on the CED Report (Exhibit P02770) casts further doubt that it was seen by him, and that Vrlić's Report of 5 July 1993 (Exhibit P03181) bears the stamp of the Military Police, showing that the latter received it. Stojić's Appeal Brief, para. 295.

⁵²⁶⁶ Stojić's Appeal Brief, para. 295, referring to Trial Judgement, Vol. 3, para. 117.

⁵²⁶⁷ Stojić's Appeal Brief, para. 295, referring to Ex. 2D01399.

⁵²⁶⁸ Stojić's Appeal Brief, para. 295, referring to Trial Judgement, Vol. 2, paras 730-733.

⁵²⁶⁹ Stojić's Appeal Brief, para. 295.

⁵²⁷⁰ Stojić's Appeal Brief, para. 296.

⁵²⁷¹ Prosecution's Response Brief (Stojić), para. 257, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 351-352, 355. The Prosecution specifies that Stojić: (1) ignores that Vrlić's Report of 5 July 1993 (Exhibit P03181) was personally addressed to him and has Department of Defence stamps on it; (2) incorrectly refers to the stamp as one from the Military Police as it is a Department of Defence stamp with the Military Police abbreviation, "MP", written on it; and (3) acknowledges that his first name "Bruno" is written on the CED Report (Exhibit P02770) but his argument is illogical. Prosecution's Response Brief (Stojić), para. 258. See also Appeal Hearing, AT. 330-332, 336-337 (21 Mar 2017). Moreover, regarding the CED Report, the Prosecution argues that witnesses "confirmed that Stojić received reports generated by the HVO Main Staff's electronic operations centre, the CED". Appeal Hearing, AT. 336 (21 Mar 2017), referring to Trial Judgement, Vol. 1, para. 736, Vol. 2, para. 870.

⁵²⁷² Prosecution's Response Brief (Stojić), para. 258, referring to Trial Judgement, Vol. 1, para. 551.

⁵²⁷³ Prosecution's Response Brief (Stojić), para. 259.

⁵²⁷⁴ Prosecution's Response Brief (Stojić), para. 260.

⁵²⁷⁵ Prosecution's Response Brief (Stojić), para. 261.

⁵²⁷⁶ Stojić's Reply Brief, para. 70.

1621. The Appeals Chamber recalls that it is to be presumed that the Trial Chamber evaluated all the evidence presented to it as long as there is no indication that the Trial Chamber completely disregarded any evidence which is clearly relevant.⁵²⁷⁷ Concerning Slobodan Božić's testimony, the Appeals Chamber notes that this witness testified as to "how documents were received and processed" by the Department of Defence, namely that they would receive a reception stamp, and Stojić would sign them and indicate where they were to be forwarded for processing.⁵²⁷⁸ The Trial Chamber did not expressly take account of this witness's evidence when reaching its conclusions about the reports received by Stojić in relation to West Mostar.⁵²⁷⁹ However, the Appeals Chamber also notes that, earlier in the Trial Judgement, the Trial Chamber held that it had "heard and analysed [Slobodan Božić's] entire testimony", but found his credibility to be "extremely weak" on one issue,⁵²⁸⁰ recalled that "it assigned very little credibility to [Slobodan Božić]",⁵²⁸¹ and concluded that, "[t]hroughout his testimony, Slobodan Božić remained extremely vague in respect of any question regarding [the] possible responsibility of the Accused Stojić".⁵²⁸² The Appeals Chamber is therefore satisfied that the Trial Chamber did not disregard Slobodan Božić's evidence on the receipt of reports by the Department of Defence but rather considered his evidence with caution, generally relying on his testimony when it was corroborated by other evidence.⁵²⁸³ Recalling that a trial chamber can reasonably accept certain parts of a witness's testimony and reject others,⁵²⁸⁴ Stojić fails to demonstrate that the Trial Chamber erred in not expressly considering Slobodan Božić's evidence in its discussion of the reports concerning the evictions of the West Mostar Muslims. This argument is thus dismissed.

1622. Regarding the exhibits themselves, the Appeals Chamber notes that the CED Report has "Bruno" handwritten on it, while Ćurčić's Report of 2 June 1993 and Vrlić's Report of 5 July 1993 were both personally addressed to Stojić, which a reasonable trier of fact could have concluded meant that they were in fact brought to his attention.⁵²⁸⁵ The Appeals Chamber also rejects the

⁵²⁷⁷ *Tolimir* Appeal Judgement, para. 53; *Popović et al.* Appeal Judgement, paras 925, 1017; *Kvočka et al.* Appeal Judgement, para. 23.

⁵²⁷⁸ Slobodan Božić, T. 36246-36247 (3 Feb 2009).

⁵²⁷⁹ Trial Judgement, Vol. 4, paras 351-352, 355.

⁵²⁸⁰ Trial Judgement, Vol. 1, para. 551 (discussing the powers assigned to the Department of Defence Collegium).

⁵²⁸¹ Trial Judgement, Vol. 1, para. 573.

⁵²⁸² Trial Judgement, Vol. 1, para. 551.

⁵²⁸³ See, e.g., Trial Judgement, Vol. 1, paras 472, 495, 556, 573 (the Trial Chamber explained that, although it assigned very little credibility to Slobodan Božić, other evidence nevertheless supported his evidence concerning the appointment of power of the President of the HZ H-B and the Head of the Department of Defence), 583, 675, 834, Vol. 2, paras 765, 768, 784, 1231, 1455, 1496, Vol. 3, paras 16, 57, Vol. 4, paras 82, 293, 300, 325 (the Trial Chamber found that, as of 15 November 1993, Stojić no longer had any control over the armed forces and the Military Police in view of: (1) Slobodan Božić's testimony that after November 1993 Stojić never again came to the Department of Defence; and (2) the absence of other evidence).

⁵²⁸⁴ *Popović et al.* Appeal Judgement, para. 132.

⁵²⁸⁵ Ex. P02770, p. 1; Ex. P02608, p. 2; Ex. P03181, p. 2. The Appeals Chamber also considers that Stojić fails to explain why Exhibit P03181 should be disregarded as it features a stamp showing that it was received by the Department of Defence. See Ex. P03181, p. 2.

assertion that the Trial Chamber disregarded another piece of evidence from a different department on the basis that it was not stamped or signed as the Trial Chamber doubted the authenticity of that document on other bases.⁵²⁸⁶ With regard to the intake registry, as Stojić acknowledges,⁵²⁸⁷ the document was not admitted into evidence.⁵²⁸⁸ Thus, the Trial Chamber could not be expected to consider the intake registry in its determinations. As for Exhibits P03804 and P09712, the Appeals Chamber notes that the Trial Chamber did not rely on these documents on the basis that Stojić had received them and knew of their contents.⁵²⁸⁹ In light of the above, the Appeals Chamber finds that Stojić fails to show that the Trial Chamber erroneously considered Ćurčić's Report of 2 June 1993, Vrljić's Report of 5 July 1993, and the CED Report on the basis that he did not receive them.⁵²⁹⁰

1623. In relation to Ćurčić's Report of 2 June 1993, the Appeals Chamber notes that the Trial Chamber relied on Stojić's knowledge of vacant flats, in addition to other evidence, to demonstrate that he was aware that evictions were occurring, and not to find that he had a role in the distribution of such flats.⁵²⁹¹ Thus, Stojić's submission on this issue is rejected. Regarding Exhibits P03804 and P09712, although they do not specifically mention Stojić, the Appeals Chamber notes that the Trial Chamber relied on other evidence explicitly stating that he told international representatives on 16 June 1993 that the evictions were carried out by criminals not under HVO control.⁵²⁹² Thus, Stojić fails to demonstrate that the finding could not stand on the basis of the remaining evidence. In this respect, Stojić also fails to substantiate his argument that no reasonable trier of fact could have reached its conclusion on the basis of the report of 16 June 1993, particularly as he offers no other reasonable inference. Stojić's arguments are dismissed.

1624. For the above reasons, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in finding that he received reports concerning the eviction of Muslims and crimes against them in Mostar beginning in June 1993 and was also actively involved in organising and conducting the eviction campaigns. His sub-ground of appeal 33.1 is dismissed.

⁵²⁸⁶ Trial Judgement, Vol. 3, paras 116-117.

⁵²⁸⁷ Stojić's Appeal Brief, para. 295.

⁵²⁸⁸ See Ex. 2D01399 (letter from the Croatian Ministry of Justice stating that it had no archive material from the Department of Defence).

⁵²⁸⁹ See Trial Judgement, Vol. 4, para. 350. See also *supra*, para. 1617.

⁵²⁹⁰ See Trial Judgement, Vol. 4, paras 351-352.

⁵²⁹¹ Trial Judgement, Vol. 4, paras 351, 355.

⁵²⁹² Trial Judgement, Vol. 4, fn. 788, referring to Antoon van der Grinten, T(F). 21046, 21048 (10 July 2007), Ex. P02806 (confidential), p. 2. See Antoon van der Grinten, T. 21046-21050 (10 July 2007).

(ii) Whether Stojić and the HVO authorities genuinely intended to punish crimes against Muslims in Mostar (Stojić's Sub-ground 33.2)

1625. The Trial Chamber considered evidence that on 2 June 1993, Stojić informed the HVO of measures taken to prevent thefts in flats,⁵²⁹³ along with further evidence that on 16 June 1993, when representatives of the international community informed Ćorić, Pušić, Stojić, and Prlić that evictions were occurring, they responded that the evictions were carried out by “criminals who were not under HVO control”.⁵²⁹⁴ The Trial Chamber thus concluded that the HVO authorities did not genuinely intend to prevent crimes against Muslims.⁵²⁹⁵ The Trial Chamber also held that in light of the evidence, as well as the fact that the HVO continued to commit crimes throughout the Indictment period and that Stojić encouraged the commission of the crimes by Naletilić's troops, he did not intend to prevent or punish the crimes committed by the HVO, including the Military Police, despite having the *de facto* power to do so.⁵²⁹⁶

1626. Stojić submits that no reasonable trier of fact could have concluded that the only reasonable inference was that he did not intend to punish crimes against Muslims.⁵²⁹⁷ He argues that the Trial Chamber: (1) disregarded evidence of the minutes of an HZ(R) H-B meeting on 31 May 1993 (“Minutes of 31 May 1993”),⁵²⁹⁸ requiring that appropriate measures be taken for the prevention of crimes in Mostar;⁵²⁹⁹ (2) failed to properly consider his order of the same day (“Stojić's Order of 31 May 1993”),⁵³⁰⁰ ordering a curfew, vehicle checks, and arrests;⁵³⁰¹ and (3) ignored other evidence showing the steps taken to combat crime in Mostar.⁵³⁰² Stojić argues that his statement to the representatives of the international community that the evictions were carried out by “criminals who were not under HVO control” supports the conclusion that he took steps to prevent crimes.⁵³⁰³

1627. The Prosecution responds that the Trial Chamber's conclusion was reasonable and is not undermined by Stojić's order of 31 May 1993 and the other evidence he cites.⁵³⁰⁴

⁵²⁹³ Trial Judgement, Vol. 4, para. 422.

⁵²⁹⁴ Trial Judgement, Vol. 4, para. 422. See Trial Judgement, Vol. 4, para. 350.

⁵²⁹⁵ Trial Judgement, Vol. 4, para. 422.

⁵²⁹⁶ Trial Judgement, Vol. 4, para. 423. See Trial Judgement, Vol. 4, para. 320.

⁵²⁹⁷ Stojić's Appeal Brief, paras 297-298, referring to Trial Judgement, Vol. 4, paras 422-423.

⁵²⁹⁸ Ex. P02575. See Stojić's Appeal Brief, para. 298, referring to Ex. P02575.

⁵²⁹⁹ Stojić's Appeal Brief, para. 298, referring to Ex. P02575, pp. 1-2.

⁵³⁰⁰ Ex. P02578. See Stojić's Appeal Brief, para. 298, referring to Ex. P02578.

⁵³⁰¹ Stojić's Appeal Brief, para. 298, referring to Ex. P02578, p. 1.

⁵³⁰² Stojić's Appeal Brief, para. 298, referring to Exs. P04111, 2D00854, P06730, P07035.

⁵³⁰³ Stojić's Appeal Brief, para. 298, referring to Ex. P02806 (confidential).

⁵³⁰⁴ Prosecution's Response Brief (Stojić), para. 262. See also Prosecution's Response Brief (Stojić), para. 256. The Prosecution further points to the ongoing campaign of mass and systematic HVO crimes against Muslims and underscores the Trial Chamber's findings on Stojić's failure to prevent or punish such crimes. Prosecution's Response Brief (Stojić), para. 263, referring to Trial Judgement, Vol. 4, paras 415, 423, 427, Ex. P07035, pp. 4, 6, 11.

1628. In relation to crime-fighting measures taken on 31 May 1993, the Appeals Chamber notes that the Minutes of 31 May 1993 refer, *inter alia*, to the need to ensure that “all appropriate measures are taken for the prevention of crime, especially the looting of private property from apartments in the territory of the Mostar Municipality,”⁵³⁰⁵ while Stojić’s Order of 31 May 1993 instructs all Military Police and civilian police at checkpoints around Mostar to enforce a curfew and mandatory vehicle checks, as well as to arrest persons with goods of unidentified origin in Mostar.⁵³⁰⁶ The Appeals Chamber notes that the Trial Chamber did not expressly consider the Minutes of 31 May 1993, but carefully assessed Stojić’s Order of 31 May 1993, and in particular took account of the fact that Stojić and Branko Kvesić, Head of the Department of the Interior, had issued that order so as to combat thefts.⁵³⁰⁷

1629. Moreover, the Appeals Chamber recalls that the conclusion that Stojić did not intend to prevent or punish the crimes was also based on other findings and considerations,⁵³⁰⁸ including that: (1) the HVO continued to commit crimes throughout the relevant time period;⁵³⁰⁹ (2) Stojić participated in or planned HVO military operations throughout this period, knew of crimes being committed, and thus intended to have those crimes committed;⁵³¹⁰ and (3) he encouraged the commission of the crimes by Naletilić’s troops by commending them on several occasions while knowing that they were committing crimes.⁵³¹¹ In light of this, the Appeals Chamber considers the evidence cited by Stojić – which further underlines that he knew that crimes were occurring, and failed to take adequate measures to address this – fails to demonstrate any error in the Trial Chamber’s findings. The Appeals Chamber also dismisses, for the same reasons, the assertions that the Trial Chamber erred in disregarding other evidence showing Stojić’s involvement in crime-fighting, some of which occurred after his JCE membership ended in November 1993,⁵³¹² or in its assessment of his statement to the representatives of the international community. Stojić fails to show how this evidence could call into question the relevant Trial Chamber finding. These arguments are rejected.

⁵³⁰⁵ Ex. P02575, p. 2 (emphasis omitted).

⁵³⁰⁶ Ex. P02578, p. 1.

⁵³⁰⁷ Trial Judgement, Vol. 4, para. 446, referring to Ex. P02578.

⁵³⁰⁸ See *supra*, paras 1491-1492, 1494-1495.

⁵³⁰⁹ Trial Judgement, Vol. 4, para. 423.

⁵³¹⁰ Trial Judgement, Vol. 4, para. 426. See *supra*, para. 1494.

⁵³¹¹ Trial Judgement, Vol. 4, paras 420, 423. See *supra*, paras 1498-1499.

⁵³¹² See Exs. P04111 (minutes of an HZ(R) H-B meeting on 11 August 1993 calling for crime prevention measures in general), 2D00854 (minutes of a meeting on 17 September 1993 discussing steps to establish a judicial system and fight crime), P06730 (a police report of 18 November 1993 detailing criminal investigation in connection with evictions), P07035 (a report of 4 December 1993 to the Croatian Information Service detailing findings on crimes).

1630. The Appeals Chamber therefore finds that Stojić has failed to demonstrate that the Trial Chamber erred in finding that he and the HVO authorities did not genuinely intend to punish the crimes against Muslims. His sub-ground of appeal 33.2 is dismissed.

(iii) Alleged errors in the assessment of Stojić's comments made on 17 July 1993 (Stojić's Sub-ground 33.3)

1631. Stojić submits that no reasonable trier of fact could have concluded, based on his statements made at the dinner on 17 July 1993, that the only reasonable inference was that he was actively involved in organising and conducting the Mostar eviction campaigns.⁵³¹³ In particular, Stojić argues that: (1) the statements refer to military pressure on the ABiH as opposed to the evictions of civilians;⁵³¹⁴ (2) none of the comments attributed to him “reflect the way in which events subsequently unfolded”,⁵³¹⁵ in that the conflict in Mostar was not resolved within 20 days and that the next HVO attack occurred on 24 August 1993;⁵³¹⁶ (3) he expressed concern for the civilians and offered his assistance in evacuating them, which is inconsistent with the Trial Chamber's inference;⁵³¹⁷ (4) the Trial Chamber failed to consider that it was “hardly likely” that he would have made incriminating statements at an informal dinner with international representatives;⁵³¹⁸ and (5) the Trial Chamber disregarded the alternative reasonable inference that he was trying to present a confident and powerful position to international observers in the face of military difficulty.⁵³¹⁹

1632. The Prosecution responds that: (1) Stojić ignores that the international representatives surmised from his comments that the HVO military pressure would drive Muslim civilians out of East Mostar;⁵³²⁰ (2) East Mostar was the target of a prolonged HVO military attack;⁵³²¹ (3) the Trial Chamber was correct not to accept his professed concern for civilians as genuine;⁵³²² (4) Stojić's argument that he would not likely have said anything incriminatory shows no error;⁵³²³ and (5) even if he was trying to present a confident and powerful position, this does not show that the Trial Chamber unreasonably relied on his comments.⁵³²⁴ The Prosecution also submits that the Trial

⁵³¹³ Stojić's Appeal Brief, para. 306. See Stojić's Appeal Brief, paras 299-300.

⁵³¹⁴ Stojić's Appeal Brief, para. 301, referring to, *inter alia*, Exs. P03545 (confidential), p. 9, P03547, p. 3.

⁵³¹⁵ Stojić's Appeal Brief, para. 302.

⁵³¹⁶ Stojić's Appeal Brief, para. 302, referring to Trial Judgement, Vol. 2, paras 945-972, Exs. P10217 (confidential), para. 125, P03530 (confidential), para. 3.

⁵³¹⁷ Stojić's Appeal Brief, para. 303. Further, Stojić argues that the Trial Chamber failed to address the “significant inconsistency” between Witness DZ's witness statement and his oral testimony. Stojić's Appeal Brief, para. 303, referring to Witness DZ, T. 26791 (closed session) (24 Jan 2008); Ex. P10367 (confidential), para. 34.

⁵³¹⁸ Stojić's Appeal Brief, para. 304, referring to *Krstić* Appeal Judgement, para. 87.

⁵³¹⁹ Stojić's Appeal Brief, para. 305, referring to Exs. P03545 (confidential), p. 8, P03530 (confidential), p. 5.

⁵³²⁰ Prosecution's Response Brief (Stojić), para. 265, referring to Trial Judgement, Vol. 4, para. 361.

⁵³²¹ Prosecution's Response Brief (Stojić), para. 265, referring to Trial Judgement, Vol. 2, paras 1018, 1378.

⁵³²² Prosecution's Response Brief (Stojić), para. 265.

⁵³²³ Prosecution's Response Brief (Stojić), para. 265.

⁵³²⁴ Prosecution's Response Brief (Stojić), para. 265. See also Appeal Hearing, AT. 330-331 (21 Mar 2017).

Chamber's reasonable conclusion is further supported by other evidence of Stojić's role and involvement in the Mostar events.⁵³²⁵

1633. As a preliminary matter, the Appeals Chamber notes that the Trial Chamber did not reach the conclusion that Stojić was actively involved in the eviction campaigns in Mostar on the basis of the statements he made at the dinner of 17 July 1993 alone, but also on the basis of other evidence and findings.⁵³²⁶ To the extent to which Stojić alleges the contrary,⁵³²⁷ this submission is dismissed.

1634. With regard to Stojić's argument that the comments attributed to him related not to the evictions of civilians but to applying military pressure on the ABiH, the Appeals Chamber notes that, in the section on his knowledge of the East Mostar crimes, the Trial Chamber observed that Stojić commented that the HVO strategy was to place "maximum pressure on the southern part of the town of Mostar while leaving one route open [...] to allow the ABiH to escape".⁵³²⁸ It also took account of the fact that the analysis of the situation from members of the international organisations indicated that: (1) Stojić seemed convinced of his troops' ability to achieve a definitive military solution to the "Muslim problem" in Mostar town;⁵³²⁹ and (2) the HVO military pressure, in tandem with the shelling and isolation of East Mostar, would lead to shortages of food and water thus driving out the civilians.⁵³³⁰ Therefore, the Appeals Chamber notes that the Trial Chamber did consider Stojić's statement related to the HVO's military strategy concerning the ABiH. However, the Trial Chamber also considered the effect such a strategy would have had on the civilian population and concluded that "the plan of action to which Bruno Stojić referred was necessarily directed against the entire population of East Mostar *and not only against the ABiH*".⁵³³¹ Stojić does not argue, much less demonstrate, that these goals of the HVO strategy were mutually exclusive. Moreover, the Trial Chamber also found that Stojić knew of the shelling of East Mostar, the attacks on representatives of international organisations in that part of town, and the shortages of food and water suffered by the Muslim population.⁵³³² The Appeals Chamber therefore finds that Stojić only asserts one interpretation of his statements which was acknowledged by the Trial Chamber. In light of the above, the Appeals Chamber finds that Stojić fails to show that the Trial Chamber erred in considering his statements on the basis that his comment concerned applying pressure on the ABiH. Stojić's argument is dismissed.

⁵³²⁵ Prosecution's Response Brief (Stojić), para. 264, and evidence cited therein.

⁵³²⁶ See Trial Judgement, Vol. 4, paras 350-352, 354. See *supra*, para. 1617.

⁵³²⁷ See Stojić's Appeal Brief, para. 299.

⁵³²⁸ Trial Judgement, Vol. 4, para. 361, referring to Ex. P03545 (confidential), p. 8. See also Ex. P03547, p. 3; Trial Judgement, Vol. 4, para. 353.

⁵³²⁹ Trial Judgement, Vol. 4, para. 361, referring to Ex. P03545 (confidential), p. 9. See also Ex. P03547, p. 3.

⁵³³⁰ Trial Judgement, Vol. 4, paras 361-362.

⁵³³¹ Trial Judgement, Vol. 4, para. 362 (emphasis added).

⁵³³² Trial Judgement, Vol. 4, para. 362.

1635. Turning to Stojić's argument that his comments are inconsistent with the fact that there was no HVO attack until 24 August 1993, the Appeals Chamber considers that Stojić misrepresents the Trial Chamber's findings. The Trial Chamber did conclude that there was an HVO attack in Mostar which began on 23 August 1993 in the section of the Trial Judgement pointed to by Stojić,⁵³³³ but also found that "the HVO forces carried out a new round of operations in mid-July 1993 in which they expelled Muslims from West Mostar, including the women, children and the elderly" and that these operations "continued throughout the second half of July and in August 1993".⁵³³⁴ These attacks occurred contemporaneously with Stojić's comments, and thus his argument to the contrary is rejected. As to Stojić's argument on his estimation of the duration of the conflict, the Appeals Chamber is not persuaded that his statement that the conflict would be resolved within 20 days was necessarily inconsistent with his appraisal of the situation on 17 July 1993. Stojić therefore fails to demonstrate that no reasonable trier of fact could have relied on the evidence. Regardless, Stojić does not show how this alleged inconsistency could impact on the impugned finding which was based on various other factors.⁵³³⁵ This argument is rejected.

1636. As for Stojić's argument that the Trial Chamber's reliance on these statements is inconsistent with his concern for, and offer to help, the civilian population, the Appeals Chamber notes that the Trial Chamber explicitly considered evidence that Stojić "expressed his 'concern'" and "suggested that the largest possible number of these civilians be evacuated and offered his assistance".⁵³³⁶ Nevertheless, the Trial Chamber concluded, on the basis of the evidence as a whole, that Stojić participated in organising and conducting the eviction campaigns.⁵³³⁷ Thus, the Appeals Chamber finds that the Trial Chamber gave Stojić's concern and offer to help little or no weight and did not accept these statements as genuine. Stojić simply seeks to substitute his own interpretation of the evidence for that of the Trial Chamber, and fails to demonstrate that no reasonable trier of fact could have reached this conclusion. His argument is dismissed.⁵³³⁸ Further, the Appeals Chamber dismisses Stojić's argument that it was "hardly likely" that he would have made

⁵³³³ See Trial Judgement, Vol. 2, paras 947-972.

⁵³³⁴ Trial Judgement, Vol. 2, para. 920. See Trial Judgement, Vol. 2, para. 919, referring to Ex. P10038, para. 24 ("[o]n 22 July 1993, six HVO soldiers came to the flat belonging to *Jasmina Čišić* and took her and her family to Semovac, north of Mostar; once there, the soldiers told them that they were 'allowed to leave the West area'.") (internal references omitted).

⁵³³⁵ See *supra*, paras 1617, 1633.

⁵³³⁶ Trial Judgement, Vol. 4, para. 353, referring to Witness DV, T(F). 22895-22896 (private session) (1 Oct 2007), Exs. P10217 (confidential), para. 124, P03545 (confidential), p. 9. See also Trial Judgement, Vol. 4, para. 361, referring to Ex. P03545 (confidential), p. 9.

⁵³³⁷ Trial Judgement, Vol. 4, para. 355. See *supra*, paras 1598, 1601-1604, 1610-1611, 1614-1615, 1617, 1621-1624.

⁵³³⁸ The Appeals Chamber also rejects Stojić's argument that the Trial Chamber failed to address the inconsistency between Witness DZ's witness statement and testimony, given that the content of the witness's testimony was considered by the Trial Chamber. Therefore, Stojić does not establish that evidence of a similar nature could have had an impact on the Trial Chamber's conclusions. Trial Judgement, Vol. 4, paras 353, 355. See Witness DZ, T. 26791 (closed session) (24 Jan 2008); Ex. P10367 (confidential), para. 34. See *infra*, paras 1641-1643.

incriminating statements at the dinner as unconvincing.⁵³³⁹ Regarding Stojić's contention that the Trial Chamber failed to take account of another reasonable inference, *i.e.* that he was simply trying to present a confident and powerful position, the Trial Chamber considered the evidence he now cites in its discussion on his participation in events.⁵³⁴⁰ Moreover, the Appeals Chamber considers that Stojić fails to show how this possible inference is inconsistent with the Trial Chamber's conclusion that he was actively involved in organising and conducting the eviction campaigns in Mostar. Stojić's argument is dismissed.

1637. Based on the foregoing, the Appeals Chamber finds that Stojić fails to demonstrate that the Trial Chamber erred in relying on statements attributed to him at a dinner on 17 July 1993 to support its finding that he was actively involved in organising and conducting the eviction campaigns. His sub-ground of appeal 33.3 is dismissed.

(iv) Alleged errors regarding Witness DZ's credibility and evidence (Stojić's Grounds 32 and 33.4)

1638. The Trial Chamber relied on the evidence of Witness DZ in various instances when addressing Stojić's responsibility. Specifically, Witness DZ's evidence was used, with other evidence, to conclude that Stojić represented the HVO in peace negotiations.⁵³⁴¹ Further, in concluding that Stojić participated in planning the operations to evict Muslims from West Mostar and thus intended acts of violence linked to these operations,⁵³⁴² the Trial Chamber considered, *inter alia*, that Witness DZ: (1) was told by Vladislav Pogarčić that Stojić was in charge of implementing the plan to cleanse Mostar town; and (2) heard HVO members say that Stojić ordered people to be evicted from their homes and their houses burned in Mostar.⁵³⁴³ The Trial Chamber also considered Witness DZ's evidence as well as other evidence in finding that Stojić knew of crimes in East Mostar such as shelling and attacks on representatives of the international community.⁵³⁴⁴

⁵³³⁹ The Appeals Chamber considers that the case-law cited by Stojić in support is legally and factually distinguishable from his case. See *Krstić* Appeal Judgement, para. 87 (the Appeals Chamber considered that Radislav Krstić's presence at three meetings did not suggest that he was aware of any genocidal intent of Ratko Mladić as it was unlikely that Mladić would have discussed this in front of UNPROFOR leaders or the foreign media present).

⁵³⁴⁰ Trial Judgement, Vol. 4, fns 796 (referring to Exhibit P03545), 797 (referring to Exhibits P03545 and P03530).

⁵³⁴¹ Trial Judgement, Vol. 4, para. 323; referring to Witness DZ, T(F). 26546 (closed session) (22 Jan 2008), Ex. P10367 (confidential), para. 58.

⁵³⁴² See *supra*, para. 1617.

⁵³⁴³ Trial Judgement, Vol. 4, para. 354, referring to Ex. P10367 (confidential), paras 33, 69. The Trial Chamber also relied on Witness DZ's evidence, in combination with other evidence, to conclude that Stojić estimated that the conflict between Muslims and Croats in Mostar could be resolved in 20 days. Trial Judgement, Vol. 4, para. 353 & fn. 797. See *supra*, paras 1631-1636, fn. 5338.

⁵³⁴⁴ Trial Judgement, Vol. 4, para. 359 & fn. 801.

a. Alleged errors regarding the credibility of Witness DZ (Stojić's Ground 32)

1639. Stojić argues that the Trial Chamber erred in law and/or fact by failing to assess and/or give a “reasoned decision” on Witness DZ’s reliability and credibility.⁵³⁴⁵ Specifically, Stojić submits that the Trial Chamber erred in law by disregarding the Defence submission that the witness was not credible, making no express findings on his credibility, failing to address inconsistencies in his evidence, and relying on his written evidence while disregarding his oral evidence.⁵³⁴⁶ Stojić argues that no reasonable trial chamber could have found Witness DZ credible and relied on his evidence since: (1) he failed to explain, and was evasive about, why none of his contemporaneous reports contain the allegations he made against Stojić at trial; (2) he distorted the facts at trial, deliberately painting a negative picture of Stojić, thereby showing his bias; (3) his working relationships were persistently bad; and (4) he lacked background knowledge.⁵³⁴⁷ Stojić concludes that this undermines the findings that he participated in planning eviction operations in West Mostar and knew about attacks on international organisations in East Mostar, since they are primarily based on the evidence of Witness DZ, and therefore calls for setting aside his convictions on Counts 1-3, 6-11, 15-17, 20, and 22-25.⁵³⁴⁸

1640. The Prosecution responds that Stojić fails to demonstrate that the Trial Chamber erred when assessing Witness DZ’s credibility.⁵³⁴⁹ The Prosecution argues that the right to a reasoned opinion does not require an explicit analysis of Witness DZ’s credibility and that large parts of his evidence were well corroborated.⁵³⁵⁰ With regard to Stojić’s factual allegations, the Prosecution contends that: (1) Witness DZ’s reports were not all available and did not cover all topics; (2) the witness was not biased against Stojić and did not distort the facts; (3) Stojić fails to demonstrate how being disliked by peers impacts on the witness’s credibility; and (4) his alleged lack of background knowledge is irrelevant to the assessment of his credibility.⁵³⁵¹

1641. The Appeals Chamber turns first to Stojić’s assertion that the impugned findings are “primarily” based on Witness DZ’s evidence. It notes that the Trial Chamber’s finding that Stojić was “actively involved in organising and conducting the eviction campaigns” against Muslims from West Mostar is based on a variety of other testimonial and documentary evidence.⁵³⁵² Equally, the

⁵³⁴⁵ Stojić’s Appeal Brief, heading before para. 287, paras 288-289. See Stojić’s Reply Brief, paras 67-68, 70-71.

⁵³⁴⁶ Stojić’s Appeal Brief, heading before para. 287, para. 288.

⁵³⁴⁷ Stojić’s Appeal Brief, heading before para. 287, paras 289-293.

⁵³⁴⁸ Stojić’s Appeal Brief, paras 287-288, 293.

⁵³⁴⁹ Prosecution’s Response Brief (Stojić), paras 252, 255.

⁵³⁵⁰ Prosecution’s Response Brief (Stojić), paras 252-254.

⁵³⁵¹ Prosecution’s Response Brief (Stojić), para. 254.

⁵³⁵² Trial Judgement, Vol. 4, para. 355. See Trial Judgement, Vol. 4, paras 352-353, referring to, *inter alia*, Antoon van der Grinten, T(F). 21079-21080 (10 July 2007), Witness DV, T(F). 22895-22896, 22899 (closed session) (1 Oct 2007), Ex. P03181, Ex. P03547, p. 3, Ex. P10217 (confidential), paras 122-125.

Trial Chamber's finding regarding Stojić's knowledge of the targeting of international organisations by the HVO is based on extensive other evidence.⁵³⁵³ Thus, Stojić has failed to show that the impugned findings are "primarily" based on Witness DZ's evidence or that it was the principal evidence on which the Trial Chamber relied to convict him.⁵³⁵⁴ Moreover, the Appeals Chamber recalls that a trial chamber has broad discretion in assessing the appropriate weight and credibility to be accorded to the testimony of a witness,⁵³⁵⁵ and thus Stojić must demonstrate a discernible error.⁵³⁵⁶

1642. Although the Trial Chamber did not explicitly address Stojić's trial arguments challenging the credibility of Witness DZ, it stated that to "rule on the alleged acts [in Mostar Municipality], the Chamber assessed a great amount of evidence" including the evidence of Witness DZ.⁵³⁵⁷ The Trial Chamber then proceeded to rely on both Witness DZ's *viva voce* testimony and his/her witness statement in numerous instances, alongside other evidence, when determining the factual narrative of events in Mostar.⁵³⁵⁸ Thus, the Trial Chamber clearly considered Witness DZ to be credible despite Stojić's trial arguments to the contrary. In this regard, the Appeals Chamber recalls that "an accused's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of particular witnesses",⁵³⁵⁹ however, a trial chamber must provide reasons for accepting testimony despite alleged or material inconsistencies when it is the principal evidence relied upon to convict an accused.⁵³⁶⁰ Having determined that Witness DZ's evidence was not the principal evidence relied upon to convict Stojić for events in Mostar, the Appeals Chamber considers that Stojić has not identified any material inconsistencies in Witness DZ's evidence that the Trial Chamber was required to address.⁵³⁶¹ Therefore, Stojić fails to demonstrate that the Trial Chamber committed a discernible error by not providing an explicit analysis on Witness DZ's credibility.

⁵³⁵³ Trial Judgement, Vol. 4, paras 359, 362, 367, referring to, *inter alia*, Antoon van der Grinten, T(F). 21046, 21076-21078 (10 July 2007), 21186-21187 (11 July 2007), Witness DW, T(F). 23087 (3 Oct 2007), Ex. P02806 (confidential), Ex. P03162 (confidential), p. 1, Ex. P03184 (confidential), p. 2, Ex. P10287 (confidential), para. 30.

⁵³⁵⁴ See *supra*, para. 1639.

⁵³⁵⁵ *Popović et al.* Appeal Judgement, para. 131; *Dorđević* Appeal Judgement, paras 781, 797, 819; *Lukić and Lukić* Appeal Judgement, paras 86, 235, 363, 375.

⁵³⁵⁶ *Popović et al.* Appeal Judgement, para. 131. See *Popović et al.* Appeal Judgement, para. 131 ("In such cases the Appeals Chamber will deem that the witness evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or that the evaluation of the evidence was 'wholly erroneous'", and proceed to substitute its own finding for that of the Trial Chamber).

⁵³⁵⁷ Trial Judgement, Vol. 2, para. 667.

⁵³⁵⁸ See Trial Judgement, Vol. 2, paras 1228, 1235, 1239, 1259-1260, 1263, 1266.

⁵³⁵⁹ *Popović et al.* Appeal Judgement, para. 133; *Kajelijeli* Appeal Judgement, para. 60.

⁵³⁶⁰ *Popović et al.* Appeal Judgement, para. 133; *Haradinaj et al.* Appeal Judgement, paras 129, 134, 252; *Kupreškić et al.* Appeal Judgement, paras 135, 202.

⁵³⁶¹ See Stojić's Appeal Brief, paras 288-290 (arguing that Witness DZ's contemporary reports of events did not contain any allegations against him, and referring to evidence on the release of UN interpreters – an event which was not considered in the Trial Judgement).

1643. Moreover, in arguing that no reasonable trier of fact could have found Witness DZ credible and relied on his evidence, Stojić repeats his arguments that were unsuccessful at trial⁵³⁶² without demonstrating that their rejection constituted a discernible error. Accordingly, the Appeals Chamber dismisses his ground of appeal 32.

b. Alleged errors in relation to Witness DZ's hearsay evidence (Stojić's Sub-ground 33.4)

1644. Stojić submits that the Trial Chamber erred in according any weight to Witness DZ's hearsay evidence.⁵³⁶³ In particular, he asserts that: (1) Witness DZ's evidence is uncorroborated;⁵³⁶⁴ (2) one of the statements is "multiple hearsay" from unidentified HVO soldiers on unspecified occasions, which was translated by an unidentified interpreter;⁵³⁶⁵ (3) the Trial Chamber disregarded Witness DZ's failure to record "important" statements in any contemporaneous report;⁵³⁶⁶ and (4) Witness DZ was unable to recall the dates of conversations and who translated them for him.⁵³⁶⁷

1645. The Prosecution responds that the Trial Chamber properly relied on Witness DZ's evidence,⁵³⁶⁸ as: (1) it was corroborated;⁵³⁶⁹ (2) it was based on what he learnt directly from Pogarčić in English;⁵³⁷⁰ and (3) his contemporaneous reports were only a summary such that the parts of it which are on the record do not represent all of his communications with Pogarčić.⁵³⁷¹

1646. The Appeals Chamber recalls that a trial chamber may rely on evidence, including hearsay evidence, provided that it is reliable and credible.⁵³⁷² The Appeals Chamber also recalls that a trial

⁵³⁶² Compare Stojić Closing Arguments, T. 52322-52337 (15 Feb 2011) with Stojić's Appeal Brief, paras 288-292.

⁵³⁶³ Stojić's Appeal Brief, paras 309, 311. See also Stojić's Appeal Brief, paras 307-308.

⁵³⁶⁴ Stojić's Appeal Brief, para. 309.

⁵³⁶⁵ Stojić's Appeal Brief, para. 309, referring to Ex. P10367 (confidential), para. 33.

⁵³⁶⁶ Stojić's Appeal Brief, para. 310, referring to Witness DZ, T. 26781-26782 (closed session) (24 Jan 2008), Ex. P02930.

⁵³⁶⁷ Stojić's Appeal Brief, para. 310, referring to Witness DZ, T. 26778 (closed session) (24 Jan 2008).

⁵³⁶⁸ Prosecution's Response Brief (Stojić), para. 266. See also Appeal Hearing, AT. 332-333 (21 Mar 2017).

⁵³⁶⁹ Prosecution's Response Brief (Stojić), para. 266, referring to Trial Judgement, Vol. 4, para. 350, Prosecution's Response Brief (Stojić), paras 237-242, 257-259, 264-265. The Prosecution also asserts that Stojić ignores that Witness DZ's evidence is compatible with other reliable evidence. Prosecution's Response Brief (Stojić), para. 269. See Prosecution's Response Brief (Stojić), para. 267.

⁵³⁷⁰ Prosecution's Response Brief (Stojić), para. 268, referring to Witness DZ, T. 26554, 26572-26573 (closed session) (22 Jan 2008), Ex. P10367 (confidential), paras 25-26, 69.

⁵³⁷¹ Prosecution's Response Brief (Stojić), para. 269, referring to Witness DZ, T. 26763-26764, 26864 (closed session) (24 Jan 2008).

⁵³⁷² *Popović et al.* Appeal Judgement, para. 1276. See *Šainović et al.* Appeal Judgement, para. 846.

chamber has wide discretion as to the assessment of the weight and probative value of hearsay evidence, but must proceed with caution in the assessment of such evidence.⁵³⁷³

1647. With regard to Stojić's argument that Witness DZ's hearsay evidence is uncorroborated, the Appeals Chamber recalls that two pieces of *prima facie* credible evidence are corroborative when they are compatible with one another regarding the same fact or a sequence of linked facts.⁵³⁷⁴ In this regard, the Appeals Chamber considers that Witness DZ's evidence regarding Stojić's role in the implementation of the evictions is corroborated by evidence showing that Stojić: (1) presented himself as "an HVO military chief who had control over West Mostar in May 1993";⁵³⁷⁵ (2) received reports from HVO officials regarding events that occurred during the course of the eviction campaigns;⁵³⁷⁶ and (3) hosted a dinner at his house attended by international representatives, during which he informed them of HVO strategies and objectives regarding Mostar.⁵³⁷⁷ In relation to Witness DZ's evidence that Stojić ordered homes to be burned, the Appeals Chamber notes that the evidence was not relied on to establish his responsibility for the burning of houses, but to establish that Stojić was actively involved in organising and conducting the eviction campaign,⁵³⁷⁸ which, as discussed above, is corroborated to some extent by other evidence. Thus, Stojić's argument on the lack of corroboration of Witness DZ's evidence is dismissed.

1648. As to the assertion that Witness DZ's statements relied on hearsay from unidentified HVO soldiers on unspecified occasions, which was translated by an unidentified interpreter,⁵³⁷⁹ the Appeals Chamber notes that the source of the information is one of the factors that should be considered when assessing the weight and probative value of hearsay evidence.⁵³⁸⁰ In this case, the source of the information has been identified as HVO soldiers whose discussions Witness DZ heard and understood.⁵³⁸¹ The Appeals Chamber considers that more specific identification of the source of the information was not necessary under the circumstances, and finds that Stojić does not demonstrate an error in the Trial Chamber's decision to find Witness DZ's evidence reliable, taking

⁵³⁷³ *Lukić and Lukić* Appeal Judgement, para. 577. See *Popović et al.* Appeal Judgement, para. 1307 ("It is settled that the weight and probative value to be afforded to hearsay evidence will ultimately depend upon 'the infinitely variable circumstances which surround hearsay evidence'").

⁵³⁷⁴ *Gatete* Appeal Judgement, para. 125; *Nahimana et al.* Appeal Judgement, para. 428. See *Popović et al.* Appeal Judgement, paras 243 (a trial chamber has the discretion to decide in the circumstances of each case whether corroboration is necessary or whether to rely on uncorroborated, but otherwise credible, witness testimony"), 1264; *D. Milošević* Appeal Judgement, para. 215.

⁵³⁷⁵ Trial Judgement, Vol. 4, para. 346. See Trial Judgement, Vol. 4, para. 344, referring to Ex. P04238. See also *supra*, paras 1598, 1601-1604, 1610-1611, 1614-1615, 1617, 1621-1624.

⁵³⁷⁶ Trial Judgement, Vol. 4, paras 351-352, referring to, *inter alia*, Exs. P02608, P02770, P03181. See *supra*, paras 1617, 1621-1624.

⁵³⁷⁷ Trial Judgement, Vol. 4, para. 353, and references cited therein. See *supra*, para. 1617.

⁵³⁷⁸ Trial Judgement, Vol. 4, para. 355.

⁵³⁷⁹ Stojić's Appeal Brief, para. 309, referring to Ex. P10367 (confidential), para. 33.

⁵³⁸⁰ *Lukić and Lukić* Appeal Judgement, para. 577.

into account the evidence as a whole. Finally, as to Stojić's argument that Witness DZ's evidence should have been less reliable as the witness did not record this evidence in contemporary reports, the Appeals Chamber considers that there is no requirement for a witness to do so before his or her evidence can be relied on by a trial chamber. This argument is dismissed.

1649. In sum, the Appeals Chamber finds that Stojić has failed to show that the Trial Chamber erred in relying on Witness DZ's evidence in establishing that Stojić was actively involved in organising and conducting the eviction campaigns. Stojić's sub-ground of appeal 33.4 is dismissed.

(v) Stojić's intention that mistreatment be committed against Muslims during the eviction campaigns (Stojić's Sub-ground 33.5)

1650. Stojić submits that no reasonable trier of fact could have concluded, as the only reasonable inference, that he intended that the mistreatment linked to the eviction campaigns be committed.⁵³⁸² Specifically, he argues that this conclusion was not based on any evidence and is inconsistent with the evidence that he expressed concern about civilians and sought the evacuation of children.⁵³⁸³ Stojić also asserts that there is no evidence that he intended the acts of violence.⁵³⁸⁴

1651. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić intended the acts of violence that occurred during the expulsion campaign.⁵³⁸⁵ It submits that there was evidence that acts of violence were committed systematically to expel Muslims,⁵³⁸⁶ and that the Trial Chamber "was right not to accept that Stojić genuinely cared about East Mostar civilians".⁵³⁸⁷

1652. With regard to Stojić's argument that the Trial Chamber failed to explain the evidential basis for its conclusion that he intended acts of violence, the Appeals Chamber notes that the paragraph of the Trial Judgement referred to by Stojić does not cite evidence.⁵³⁸⁸ However, the Appeals Chamber finds no error in this regard, as the contested paragraph clearly contains the conclusion, summarising the findings made previously in that section.⁵³⁸⁹ The Appeals Chamber dismisses elsewhere his challenges to those findings – including challenges on the basis of Stojić's expressed concern about civilians.⁵³⁹⁰ This challenge is also dismissed. In respect of the alleged lack of evidence of his intention, the Appeals Chamber recalls that the Trial Chamber permissibly

⁵³⁸¹ Ex. P10367 (confidential), para. 33.

⁵³⁸² Stojić's Appeal Brief, paras 312-313, referring to Trial Judgement, Vol. 4, para. 357.

⁵³⁸³ Stojić's Appeal Brief, para. 313.

⁵³⁸⁴ Stojić's Appeal Brief, para. 313. See Stojić's Appeal Brief, para. 314.

⁵³⁸⁵ Prosecution's Response Brief (Stojić), para. 270.

⁵³⁸⁶ Prosecution's Response Brief (Stojić), para. 271, referring to Trial Judgement, Vol. 2, paras 827, 866, 868, 872, 876, 924, 928, 930, 934, 981-987, Vol. 4, paras 356-357.

⁵³⁸⁷ Prosecution's Response Brief (Stojić), para. 272.

⁵³⁸⁸ Stojić's Appeal Brief, para. 313, referring to Trial Judgement, Vol. 4, para. 357.

⁵³⁸⁹ Trial Judgement, Vol. 4, paras 350-356.

based its inference not on direct evidence but on its other findings that the acts of violence were part of a preconceived plan and that Stojić participated in planning the operations resulting in these violent acts.⁵³⁹¹ Stojić merely makes an assertion without pointing to any other reasonable inference that could be drawn from the evidence. Thus, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in concluding, as the only reasonable inference, that he intended that Muslims be mistreated during the course of the eviction campaigns beginning in Mostar in June 1993. His sub-ground of appeal 33.5 is dismissed.

(vi) Conclusion

1653. In sum, Stojić's grounds of appeal 32 and 33 are dismissed.

(f) The siege of East Mostar (Stojić's Ground 34)

1654. The Trial Chamber found that, between June 1993 and April 1994, the HVO laid siege to East Mostar and committed crimes.⁵³⁹² It found, *inter alia*, that: (1) the town was the target of a prolonged military attack by the HVO that included intense constant shooting and shelling, including sniper fire, that resulted in many inhabitants being injured or killed; (2) the population could not leave East Mostar of its own free will and had to live under extremely harsh conditions, without food, water, electricity and appropriate medical care; and (3) the HVO hindered and, at times, completely blocked the arrival of humanitarian aid and deliberately targeted the members of the international organisations, killing and wounding some of them.⁵³⁹³

1655. The Trial Chamber found that Stojić knew about the HVO's plan of action to exert pressure on East Mostar to force the ABiH to leave the sector and the impact it had on civilians.⁵³⁹⁴ It concluded that, inasmuch as he continued to exercise his functions in the HVO/Government of the HR H-B, he "accepted the crimes directly linked to the HVO military operations against East Mostar, that is, the murders and the destruction of property, including mosques, related to the shelling and the harsh living conditions of the population of that part of the town caused by the lack of food and water".⁵³⁹⁵ In reaching this conclusion it relied on, *inter alia*: (1) its earlier finding that

⁵³⁹⁰ See *supra*, paras 1621-1624, 1628-1630, 1633-1637, 1646-1649.

⁵³⁹¹ Trial Judgement, Vol. 4, para. 357.

⁵³⁹² Trial Judgement, Vol. 2, para. 1378. See Trial Judgement, Vol. 2, paras 992-1377; Vol. 4, para. 59.

⁵³⁹³ Trial Judgement, Vol. 2, para. 1378. See Trial Judgement, Vol. 2, paras 992-1377; Vol. 4, para. 59.

⁵³⁹⁴ Trial Judgement, Vol. 4, para. 363. See Trial Judgement, Vol. 4, paras 361-362.

⁵³⁹⁵ Trial Judgement, Vol. 4, para. 363. The Appeals Chamber notes that the Trial Chamber concluded that: (1) Stojić's JCE membership ended on 15 November 1993 (see *supra*, paras 1401, 1516; Trial Judgement, Vol. 4, para. 1227); and (2) sniping incidents 13 and 14 occurred in 1994 (see *infra*, para. 1995). Moreover, the Appeals Chamber finds that for seven of the ten mosques destroyed or severely damaged in Mostar, "no reasonable trier of fact could have concluded beyond reasonable doubt that they were severely damaged or destroyed before 9 November 1993, and thus before Praljak's membership in the JCE ended". See *infra*, para. 2002). Based on the same reasoning detailed in Praljak's section below (see *infra*, paras 1984-1985, 2000-2003), the Appeals Chamber finds *proprio motu* that – to the extent the

Stojić was kept informed by the representatives of the international community about the crimes committed by HVO members in Mostar, such as the shelling and the incidents when representatives of the international community were targeted by the HVO;⁵³⁹⁶ (2) Stojić being informed through a report on 21 August 1993 that there were shortages of food, water, and electricity in East Mostar;⁵³⁹⁷ and (3) Stojić's statement to international representatives on 17 July 1993 that the HVO's plan of action was to put pressure on East Mostar in order to force the ABiH to leave the sector, which, as found by the Trial Chamber, was necessarily directed against the entire population of East Mostar and not only against the ABiH.⁵³⁹⁸ In relation to the sniping campaign, the Trial Chamber considered, *inter alia*, that Stojić told Witness Antoon van der Grinten that certain snipers were under his control,⁵³⁹⁹ before concluding that Stojić must have controlled all HVO snipers in West Mostar since their actions always followed the same *modus operandi*.⁵⁴⁰⁰ The Trial Chamber concluded, based on this finding and other considerations, including the testimony of Witness DZ, that Stojić must have known that the snipers in West Mostar were targeting civilians and members of international organisations in East Mostar.⁵⁴⁰¹ It also concluded that inasmuch as Stojić did nothing to remove the obstacles hindering access to humanitarian aid though he had the power and the obligation to do so, he facilitated that obstruction.⁵⁴⁰²

(i) Stojić's knowledge and acceptance of the harsh living conditions of the population in East Mostar (Stojić's Sub-ground 34.1)

1656. Stojić submits that the Trial Chamber erred in finding that he knew about and accepted the harsh living conditions of the population in East Mostar.⁵⁴⁰³ He argues that the Trial Chamber disregarded clearly relevant evidence showing that the Department of Defence took steps to supply medicine and medical equipment to Muslim civilians and the ABiH,⁵⁴⁰⁴ namely the evidence: (1) of

Trial Chamber so found – Stojić cannot be held responsible for crimes occurring after 15 November 1993, including sniping incidents 13 and 14 as well as the destruction of or severe damage to seven mosques in Mostar as it relates to Count 21. The impact of this finding on sentencing, if any, will be addressed below. See *infra*, para. 3361.

⁵³⁹⁶ Trial Judgement, Vol. 4, para. 359, referring to, *inter alia*, Witness DZ, T(F). 26472-26473, 26484-26485 (closed session) (22 Jan 2008). See also Trial Judgement, Vol. 2, para. 1266, referring to, *inter alia*, Witness DZ, T(F). 26484-26485, 26489-26490 (closed session) (22 Jan 2008).

⁵³⁹⁷ Trial Judgement, Vol. 4, para. 360, referring to Ex. P04403.

⁵³⁹⁸ Trial Judgement, Vol. 4, para. 362. See *supra*, paras 1633-1637.

⁵³⁹⁹ Trial Judgement, Vol. 4, para. 365, referring to Antoon van der Grinten, T(F). 21046-21048, 21051, 21248 (10 July 2007), Ex. P02806 (confidential), p. 2.

⁵⁴⁰⁰ Trial Judgement, Vol. 4, paras 368-369.

⁵⁴⁰¹ Trial Judgement, Vol. 4, para. 369. See Trial Judgement, Vol. 2, para. 1266 (referring to Witness DZ, T(F). 26484-26485, 26489-26490 (closed session) (22 Jan 2008), Ex. P10367 (confidential), para. 21), Vol. 4, paras 359 (and references cited therein), 364-365 (referring to, *inter alia*, Exs. 2D00116, 2D00117).

⁵⁴⁰² Trial Judgement, Vol. 4, para. 372. See Trial Judgement, Vol. 2, para. 1244.

⁵⁴⁰³ Stojić's Appeal Brief, paras 315-316, 319. See Stojić's Appeal Brief, para. 331; Stojić's Reply Brief, para. 71.

⁵⁴⁰⁴ Stojić's Appeal Brief, para. 316, referring to Stojić's Appeal Brief, fn. 92. Stojić also argues that the Trial Chamber's conclusion is inconsistent with its finding that, between June and September 1993, the HVO provided humanitarian aid to East Mostar. Stojić's Appeal Brief, fn. 782, referring to Trial Judgement, Vol. 2, para. 1243.

Witness Ivan Bagarić;⁵⁴⁰⁵ (2) that the HVO offered unconditional help with supplying medical aid, facilitated by UNPROFOR;⁵⁴⁰⁶ (3) that the HVO offered to accommodate wounded Muslim civilians and ABiH soldiers at hospitals, with equal treatment;⁵⁴⁰⁷ and (4) that Muslim civilians were evacuated for medical treatment.⁵⁴⁰⁸ Further, Stojić asserts that the Trial Chamber erroneously found that he accepted shortages of food and water without finding that he had the power to improve the situation, and that there was no evidence that he had such control.⁵⁴⁰⁹ He also contends that the Trial Chamber's finding that the HVO "attempted to manage the problem of water and electricity supplies" is inconsistent with its finding that he accepted the harsh living conditions.⁵⁴¹⁰ Stojić also argues that the Trial Chamber drew unreasonable inferences from his statements at the dinner on 17 July 1993, given that "no plan [he referred] to at that meeting actually materialised".⁵⁴¹¹

1657. The Prosecution responds that the Trial Chamber's conclusion was reasonable⁵⁴¹² and that Stojić knew of the shelling and sniping attacks and appeared "well-informed" of events.⁵⁴¹³ It also contends that the Trial Chamber considered the HVO's sporadic aid but reasonably found that this did not undermine its conclusion.⁵⁴¹⁴ The Prosecution argues that it is immaterial that the Trial Chamber did not expressly find that Stojić had the power to improve the situation in Mostar given that he aggravated that situation.⁵⁴¹⁵ It further asserts that Stojić's comments on 17 July 1993 confirmed his knowledge and involvement in the HVO's plan in East Mostar.⁵⁴¹⁶

1658. The Appeals Chamber first notes that, in disputing the Trial Chamber's finding that he accepted the shortages of food and water suffered by the Muslim population in East Mostar,⁵⁴¹⁷ Stojić does not explicitly challenge the finding that he knew of these shortages.⁵⁴¹⁸ Moreover, Stojić's argument concerning his statements at the 17 July 1993 dinner is only supported by a cross-

⁵⁴⁰⁵ Stojić's Appeal Brief, para. 316, referring to Ivan Bagarić, T. 38880, 38937, 38946-38948, 38962 (20 Apr 2009).

⁵⁴⁰⁶ Stojić's Appeal Brief, para. 316, referring to Antoon van der Grinten, T. 21164 (11 July 2007), Exs. P02731 (confidential), P02782 (confidential), 2D00119, 2D00321, 2D00504.

⁵⁴⁰⁷ Stojić's Appeal Brief, para. 316, referring to Exs. P02923 (confidential), 2D00123, 2D00455.

⁵⁴⁰⁸ Stojić's Appeal Brief, para. 316, referring to Exs. 3D00615, 3D01034.

⁵⁴⁰⁹ Stojić's Appeal Brief, para. 317.

⁵⁴¹⁰ Stojić's Appeal Brief, para. 317, referring to Trial Judgement, Vol. 2, para. 1218.

⁵⁴¹¹ Stojić's Appeal Brief, para. 318, referring to Stojić's Appeal Brief, para. 302 (Stojić's Ground 33.3).

⁵⁴¹² Prosecution's Response Brief (Stojić), para. 275. See Prosecution's Response Brief (Stojić), para. 274.

⁵⁴¹³ Prosecution's Response Brief (Stojić), para. 276, referring to, *inter alia*, Antoon van der Grinten, T. 21076 (10 July 2007). The Prosecution submits that Stojić knew of the dire situation facing Muslim civilians, given "his false concern" offering to evacuate civilians from East Mostar. Prosecution's Response Brief (Stojić), para. 276.

⁵⁴¹⁴ Prosecution's Response Brief (Stojić), para. 278. The Prosecution argues that the evidence, at best, shows that the HVO only provided limited medical supplies on three occasions. Prosecution's Response Brief (Stojić), para. 278.

⁵⁴¹⁵ Prosecution's Response Brief (Stojić), para. 279. The Prosecution asserts that any attempt by the HVO to manage the water and electricity situation is undermined by its crimes. Prosecution's Response Brief (Stojić), para. 279.

⁵⁴¹⁶ Prosecution's Response Brief (Stojić), para. 277, and evidence cited therein.

⁵⁴¹⁷ See *supra*, para. 1656.

⁵⁴¹⁸ See Trial Judgement, Vol. 4, para. 362.

reference to arguments he made elsewhere which have already been considered and dismissed.⁵⁴¹⁹ This argument is therefore also dismissed.

1659. Stojić, though, does argue that the Trial Chamber disregarded evidence that the HVO supplied medical aid to Muslim civilians and the ABiH. However, the Appeals Chamber notes that the Trial Chamber's finding which Stojić challenges was limited to his acceptance of the "crimes directly linked to the HVO military operations against East Mostar, that is, the murders and the destruction of property, including mosques, related to the shelling and *the harsh living conditions of the population [...] caused by the lack of food and water*".⁵⁴²⁰ Thus, the Appeals Chamber is not convinced that any evidence on the supply of medical aid would have an impact on the Trial Chamber's finding challenged under this sub-ground of appeal. Nonetheless, the Appeals Chamber also notes that the Trial Chamber made factual findings on the issue, in support of which it expressly considered and relied on, *inter alia*, some of the evidence that Stojić cites. Specifically, the Trial Chamber found that between June and September 1993, the HVO provided sporadic humanitarian aid to East Mostar, conditional on the HVO obtaining certain advantages, which did not bring into question the finding that the HVO impeded the delivery of humanitarian aid.⁵⁴²¹ Stojić thus fails to demonstrate that the Trial Chamber disregarded relevant evidence and fails to show how this evidence could undermine the conclusion that he accepted the East Mostar crimes. His argument is dismissed.

1660. The Appeals Chamber turns to Stojić's argument that the Trial Chamber was inconsistent in finding that the HVO attempted to manage the water and electricity problems in East Mostar and that he accepted the harsh living conditions there. The Appeals Chamber notes that the Trial Chamber found that the HVO hindered proposed water supply repairs in June 1993 but also concluded that the HVO – namely, its municipal office for reconstruction in Mostar⁵⁴²² – did indeed attempt to manage the water and electricity shortages from July 1993 until at least November 1993 by performing necessary repairs and thus it could not find that the HVO willingly refused to restore water supplies.⁵⁴²³ The Appeals Chamber therefore considers that the Trial Chamber erred in considering, as a part of his responsibility, that Stojić accepted the water shortage as a component of the harsh living conditions endured by the East Mostar population.⁵⁴²⁴ However, the Appeals Chamber considers that this error has no impact on Stojić's conviction, given that the Trial

⁵⁴¹⁹ See *supra*, paras 1634-1637.

⁵⁴²⁰ Trial Judgement, Vol. 4, para. 363 (emphasis added). See Trial Judgement, Vol. 4, para. 362.

⁵⁴²¹ Trial Judgement, Vol. 2, para. 1243 & fns 3100-3101, referring to, *inter alia*, Exs. 2D00119, 2D00504, 2D00321, 2D00123, 2D00455, P02782 (confidential), Antoon van der Grinten, T. 21164 (11 July 2007). See *supra*, fns 5406-5407. See also Trial Judgement, Vol. 4, para. 372.

⁵⁴²² See Trial Judgement, Vol. 2, para. 1215.

⁵⁴²³ Trial Judgement, Vol. 2, para. 1218. See Trial Judgement, Vol. 2, paras 1212-1215.

⁵⁴²⁴ Trial Judgement, Vol. 4, paras 362-363.

Chamber also reached its conclusion on the basis that he knew of and accepted the food shortage suffered by the Muslim population.⁵⁴²⁵ Although Stojić also challenges this aspect of the finding by arguing that he had no control over the food supply, the Appeals Chamber notes the Trial Chamber's finding that the food shortage was due to the large number of people in East Mostar, the confinement of this part of the town, and the obstruction of humanitarian aid,⁵⁴²⁶ which were causes that were all attributed to the HVO.⁵⁴²⁷ Taking into account the Trial Chamber's findings concerning Stojić's contribution to the appalling living conditions of Muslim inhabitants in East Mostar, and specifically by hindering the regular arrival of humanitarian aid which included food convoys,⁵⁴²⁸ the Appeals Chamber considers that he fails to show that the Trial Chamber's finding that he knew of and accepted the food shortage suffered by the Muslim population is undermined by any lack of evidence regarding his control over the food supply.⁵⁴²⁹ This argument is dismissed.

1661. For the above reasons, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in finding that Stojić accepted the harsh living conditions of the population in East Mostar caused by the lack of food. Stojić's sub-ground of appeal 34.1 is dismissed.

(ii) Stojić's control over HVO snipers in West Mostar and knowledge of sniper attacks in East Mostar (Stojić's Sub-grounds 34.2, 34.3, and 34.4)

1662. Stojić submits that no reasonable trier of fact could have found that he controlled all the HVO snipers in Mostar,⁵⁴³⁰ as Witness van der Grinten clarified his testimony that Stojić controlled all the snipers as meaning that they were "under HVO control".⁵⁴³¹ He argues that this interpretation is consistent with Exhibit P02806 and findings on his limited powers since he was not in the military chain of command.⁵⁴³² Further, Stojić asserts that there was no evidential basis for the Trial Chamber's finding that he knew about HVO attacks on international organisations,⁵⁴³³ and that: (1) Witness DZ, who was generally unreliable,⁵⁴³⁴ was unsure whether he raised the issue of sniping attacks with Stojić or unable to specify whether he received a response from Stojić;⁵⁴³⁵ and (2) the

⁵⁴²⁵ Trial Judgement, Vol. 4, paras 362-363.

⁵⁴²⁶ Trial Judgement, Vol. 2, para. 1202.

⁵⁴²⁷ See Trial Judgement, Vol. 2, paras 1198-1200, 1244, 1255.

⁵⁴²⁸ See Trial Judgement, Vol. 2, para. 1202, Vol. 4, paras 361-363, 372. See *infra*, paras 1670-1674.

⁵⁴²⁹ See *infra*, paras 1670-1672.

⁵⁴³⁰ Stojić's Appeal Brief, paras 320-323. Stojić also argues that the finding that he controlled all HVO snipers in West Mostar went beyond the allegations in the Indictment. See Stojić's Appeal Brief, heading before para. 322. See also Stojić's Appeal Brief, para. 331; Stojić's Reply Brief, para. 71.

⁵⁴³¹ Stojić's Appeal Brief, para. 323, referring to Antoon van der Grinten, T. 21050-21051 (10 July 2007). See also Appeal Hearing, AT. 359-360 (21 Mar 2017).

⁵⁴³² Stojić's Appeal Brief, para. 323, referring to Trial Judgement, Vol. 1, paras 565, 708, 796, Ex. P02806 (confidential), para. 5.

⁵⁴³³ Stojić's Appeal Brief, paras 320-321.

⁵⁴³⁴ Stojić's Appeal Brief, para. 321, referring to Stojić's Ground 32.

⁵⁴³⁵ Stojić's Appeal Brief, para. 321, referring to Witness DZ, T. 26486-26487, 26497-26498 (closed session) (22 Jan 2008), Ex. P10367 (confidential), para. 21.

HVO's investigation on the death of a SpaBat lieutenant, which found that the HVO was not responsible, was based on inaccurate information from that battalion.⁵⁴³⁶ In addition, Stojić submits that the Trial Chamber's finding that he must have known that HVO snipers were targeting civilians and international organisations is unsustainable, as it is based on the impugned finding that he controlled all HVO snipers.⁵⁴³⁷

1663. The Prosecution responds that the Trial Chamber reasonably found that Stojić controlled all HVO snipers in West Mostar, and knew about HVO attacks on internationals and Muslim civilians in East Mostar.⁵⁴³⁸ The Prosecution argues that all the HVO snipers shared the same *modus operandi* as the snipers Stojić admitted were under his control, and that he exercised command and "effective control" over the armed forces.⁵⁴³⁹ It further contends that Witness van der Grinten's evidence shows that he considered HVO control over snipers to be synonymous with Stojić's control, which is consistent with the evidence.⁵⁴⁴⁰ As for the targeting of international organisations and civilians, it asserts that Witness DZ's evidence and the incorrect information Stojić received regarding the SpaBat lieutenant's death shows no error in the Trial Chamber's finding.⁵⁴⁴¹

1664. Turning first to Stojić's argument regarding his control over all HVO snipers in West Mostar, the Appeals Chamber notes that the Trial Chamber arrived at its inference after considering: (1) the testimony of Witness van der Grinten that Stojić admitted to controlling the snipers in two locations, which was supported by documentary evidence;⁵⁴⁴² (2) that all the sniping in West Mostar had the same targets and followed the same *modus operandi*;⁵⁴⁴³ and (3) that Stojić controlled most of the HVO.⁵⁴⁴⁴ Having already dismissed Stojić's challenges regarding the Trial Chamber's finding that he commanded the HVO,⁵⁴⁴⁵ the Appeals Chamber is not convinced that the alleged clarification made by Witness van der Grinten calls into question the Trial Chamber's conclusion.⁵⁴⁴⁶ Stojić merely seeks to substitute his own interpretation of the evidence for that of

⁵⁴³⁶ Stojić's Appeal Brief, para. 321, referring to Trial Judgement, Vol. 4, paras 364, 369, Exs. 2D00116, 2D00117.

⁵⁴³⁷ Stojić's Appeal Brief, para. 324.

⁵⁴³⁸ Prosecution's Response Brief (Stojić), paras 280, 283. In reaching the findings on Stojić's knowledge on East Mostar crimes, the Prosecution submits that the Trial Chamber also relied on his knowledge of the HVO's East Mostar plan and consistent witness evidence. Prosecution's Response Brief (Stojić), para. 280, and evidence cited therein. See also Appeal Hearing, AT. 335 (21 Mar 2017).

⁵⁴³⁹ Prosecution's Response Brief (Stojić), para. 283. See Prosecution's Response Brief (Stojić), para. 284.

⁵⁴⁴⁰ Prosecution's Response Brief (Stojić), para. 284, referring to Antoon van der Grinten, T. 21051 (10 July 2007), Ex. P02806 (confidential), p. 2.

⁵⁴⁴¹ Prosecution's Response Brief (Stojić), paras 281-282.

⁵⁴⁴² Trial Judgement, Vol. 4, paras 365, 368.

⁵⁴⁴³ Trial Judgement, Vol. 4, para. 368.

⁵⁴⁴⁴ Trial Judgement, Vol. 4, para. 368.

⁵⁴⁴⁵ See *supra*, para. 1457.

⁵⁴⁴⁶ See Antoon van der Grinten, T. 21050-21051 (10 July 2007) (evidence that Stojić said that "he had all snipers under control", and the witness agreeing with a question from the Bench that the snipers were under HVO control).

the Trial Chamber without demonstrating that its evaluation was erroneous.⁵⁴⁴⁷ His argument is dismissed.⁵⁴⁴⁸

1665. With regard to Stojić's argument that there was no evidential basis for the Trial Chamber's conclusion that he knew about HVO attacks on international organisations, the Appeals Chamber recalls that its dismissal of Stojić's arguments on Witness DZ's general reliability.⁵⁴⁴⁹ Furthermore, the Appeals Chamber observes that, in the portions of testimony highlighted by the parties, Witness DZ testified that he told Stojić about the shelling and sniping directed at international organisations,⁵⁴⁵⁰ and he later stated that Stojić had "no particular response" and that the matter was left "in the air".⁵⁴⁵¹ The Appeals Chamber considers that Stojić fails to demonstrate that no reasonable trier of fact could have relied on this testimony in reaching its findings that he was informed about those crimes.⁵⁴⁵² Moreover, the Appeals Chamber notes that the Trial Chamber, in reaching this finding, also relied on other evidence to conclude that Stojić knew that international organisations were being targeted by the HVO.⁵⁴⁵³ As for Stojić's argument that an HVO investigation found that the HVO was not responsible for a SpaBat lieutenant's death, the Appeals Chamber notes that the Trial Chamber relied on Stojić's control of the snipers in West Mostar and his statement that the snipers had not fired on the day the lieutenant died – not the findings of the HVO investigation or his involvement in it – to find that he knew that the snipers were targeting civilians and members of international organisations.⁵⁴⁵⁴ Therefore, Stojić fails to show how the incorrect information provided by SpaBat, which was acknowledged by the Trial Chamber,⁵⁴⁵⁵ has an impact on the relevant findings.

1666. The Appeals Chamber now turns to Stojić's argument that the Trial Chamber erred in finding that he must have known that HVO snipers were targeting civilians and international organisations, which he argues is unsustainable solely because the Trial Chamber erred in finding that he controlled all of the snipers in Mostar.⁵⁴⁵⁶ However, the Appeals Chamber notes the finding that he knew about HVO attacks on international organisations and in particular Witness DZ's

⁵⁴⁴⁷ See Stojić's Appeal Brief, para. 323.

⁵⁴⁴⁸ Regarding Stojić's argument that the Trial Chamber's finding that he controlled all the HVO snipers in West Mostar went beyond the allegations in the Indictment, the Appeals Chamber finds that as he fails to develop or provide support for this assertion, it is dismissed. See *supra*, fn. 5430.

⁵⁴⁴⁹ See *supra*, paras 1641-1643.

⁵⁴⁵⁰ Witness DZ, T. 26486-26487 (closed session) (22 Jan 2008). See Trial Judgement, Vol. 2, para. 1266, referring to, *inter alia*, Ex. P10367 (confidential), para. 21.

⁵⁴⁵¹ Witness DZ, T. 26497-26498 (closed session) (22 Jan 2008).

⁵⁴⁵² Trial Judgement, Vol. 2, para. 1266, Vol. 4, paras 359, 362, 367, 369.

⁵⁴⁵³ Trial Judgement, Vol. 4, paras 359, 362, 367, referring to, *inter alia*, Antoon van der Grinten T(F). 21046, 21076-21078 (10 July 2007), 21186-21187 (11 July 2007), Witness DW, T(F). 23087 (3 Oct 2007), Exs. P02806 (confidential), P03162 (confidential), p. 1, P03184 (confidential), p. 2, P10287 (confidential), para. 30. See *supra*, paras 1641-1643.

⁵⁴⁵⁴ Trial Judgement, Vol. 4, paras 365, 369. See Trial Judgement, Vol. 4, para. 364.

⁵⁴⁵⁵ Trial Judgement, Vol. 4, para. 364.

evidence.⁵⁴⁵⁷ Specifically regarding the targeting of civilians, the Trial Chamber inferred that Stojić “must have known” of this sniping as: (1) Stojić controlled all the snipers in West Mostar; (2) the actions of the snipers followed the same pattern; and (3) civilians were regularly targeted by snipers.⁵⁴⁵⁸ Having dismissed his arguments against the finding that he controlled the snipers above,⁵⁴⁵⁹ the Appeals Chamber also dismisses his challenge against the finding that he must have known that HVO snipers were targeting civilians and members of international organisations as Stojić provides no additional argumentation to support his challenge.⁵⁴⁶⁰ In particular, Stojić has not shown that the Trial Chamber’s conclusion was not the only reasonable inference available from the factors and evidence it considered.

1667. In sum, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in finding that he controlled all the HVO snipers in West Mostar, and that he was aware that the HVO was targeting civilians and members of international organisations in East Mostar. Stojić’s sub-grounds of appeal 34.2, 34.3, and 34.4 are dismissed.

(iii) Whether Stojić facilitated the hindering of humanitarian aid access (Stojić’s Sub-ground 34.5)

a. Arguments of the Parties

1668. Stojić submits that: (1) no reasonable trier of fact could have found that he facilitated the hindering of humanitarian aid access to Mostar or that his contribution in this regard was significant;⁵⁴⁶¹ and (2) the Trial Chamber did not sufficiently explain its conclusion by failing to cite the evidence it relied on.⁵⁴⁶² Stojić contends that his power to grant access could not be established from Exhibit P03900, given that the document suggests that the HVO – and not Stojić personally – approved access, and that the Trial Chamber failed to consider that there is no evidence that Prlić raised the issue with him.⁵⁴⁶³ Further, Stojić argues that the Trial Chamber disregarded clearly relevant evidence and submissions that matters concerning the access of humanitarian organisations were ordinarily addressed by Prlić, the ODPR, or the Main Staff.⁵⁴⁶⁴ Stojić also asserts that the Trial Chamber erred in finding that international representatives refuted

⁵⁴⁵⁶ See *supra*, para. 1662.

⁵⁴⁵⁷ See *supra*, para. 1665.

⁵⁴⁵⁸ Trial Judgement, Vol. 4, paras 366, 369.

⁵⁴⁵⁹ See *supra*, para. 1664.

⁵⁴⁶⁰ See Stojić’s Appeal Brief, para. 324; *supra*, para. 1662.

⁵⁴⁶¹ Stojić’s Appeal Brief, para. 330.

⁵⁴⁶² Stojić’s Appeal Brief, para. 326. See also Stojić’s Appeal Brief, para. 331; Stojić’s Reply Brief, para. 71.

⁵⁴⁶³ Stojić’s Appeal Brief, para. 327.

⁵⁴⁶⁴ Stojić’s Appeal Brief, para. 328, referring to Stojić’s Final Brief, paras 447-459, Martin Raguž, T. 31353-31354 (26 Aug 2008), Exs. P03346 (confidential), P03895, P04027 (confidential), P04358, P05138, P09846 (confidential).

security justifications for refusing access to Mostar as the only witness relied on, Witness Klaus Johann Nissen, agreed with the security justifications.⁵⁴⁶⁵

1669. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić obstructed humanitarian aid delivery to East Mostar.⁵⁴⁶⁶ The Prosecution contends that Exhibit P03900 indicates that Stojić had the authority to grant international organisations access to East Mostar,⁵⁴⁶⁷ which is consistent with other evidence confirming Stojić's authority to regulate humanitarian aid delivery.⁵⁴⁶⁸ It further submits that international observers rejected Stojić's security considerations justifying the blockade, and that Witness Nissen only agreed on the justification in diplomatic terms.⁵⁴⁶⁹ The Prosecution also argues that the Trial Chamber did not ignore Stojić's submissions that others controlled the flow of humanitarian aid.⁵⁴⁷⁰

b. Analysis

1670. With regard to Stojić's argument that the Trial Chamber failed to cite evidence in support of its finding that he hindered the access of humanitarian aid to East Mostar, the Appeals Chamber notes that, in the paragraph in question, the Trial Chamber cited to its earlier findings in the Trial Judgement.⁵⁴⁷¹ These earlier findings, which are supported by ample evidence, include that: (1) the power and authority for the distribution of humanitarian aid were conferred on the Department of Defence, and that Stojić in particular had the authority to issue passes to local humanitarian organisations;⁵⁴⁷² (2) the Head of the Department of Defence could give orders to the Chief of the Military Police Administration on the freedom of movement of convoys (including humanitarian convoys);⁵⁴⁷³ (3) Stojić had the legal authority to authorise the passage of humanitarian convoys, and did in fact issue orders allowing the passage of UNPROFOR convoys;⁵⁴⁷⁴ (4) the decision whether to grant access to international organisations could be taken by Stojić, among others;⁵⁴⁷⁵

⁵⁴⁶⁵ Stojić's Appeal Brief, para. 329, referring to Trial Judgement, Vol. 2, para. 1236, Klaus Johann Nissen, T. 20456-20457 (25 June 2007).

⁵⁴⁶⁶ Prosecution's Response Brief (Stojić), para. 285.

⁵⁴⁶⁷ Prosecution's Response Brief (Stojić), paras 286-288, referring to Trial Judgement, Vol. 2, para. 1231, Ex. P03900 (confidential).

⁵⁴⁶⁸ Prosecution's Response Brief (Stojić), paras 286, 288, referring, *inter alia*, to Exs. P02291, P02419 (confidential), p. 1, Witness DV, T. 22903-22904 (1 Oct 2007), Trial Judgement, Vol. 4, paras 372, 753.

⁵⁴⁶⁹ Prosecution's Response Brief (Stojić), para. 286, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1236, Vol. 4, para. 372, Ex. P03196, Klaus Johann Nissen, T. 20455-20457 (25 June 2007).

⁵⁴⁷⁰ Prosecution's Response Brief (Stojić), para. 289.

⁵⁴⁷¹ Trial Judgement, Vol. 4, para. 372 & fn. 819.

⁵⁴⁷² Trial Judgement, Vol. 1, para. 554, referring to Exs. 1D01609, pp. 1-2, 2D00552, 2D00553, 2D00555, 2D00556, 2D00557, 2D00986.

⁵⁴⁷³ Trial Judgement, Vol. 1, para. 862, Vol. 4, para. 314, referring to Exs. P01316, P00864. The Appeals Chamber also notes the Trial Chamber's findings that the Military Police was tasked with preventing unauthorised persons, including unauthorised convoys, from entering into areas where military operations were ongoing. Trial Judgement, Vol. 1, paras 928, 930-937.

⁵⁴⁷⁴ Trial Judgement, Vol. 1, paras 562, 635, 795.

⁵⁴⁷⁵ Trial Judgement, Vol. 2, para. 1231, referring to Ex. P03900 (confidential), p. 2.

and (5) the HVO hindered the regular delivery of humanitarian aid to East Mostar between June and December 1993 through, *inter alia*, erecting administrative obstacles and completely blocking entry by humanitarian convoys for two months in the summer of 1993 and during December 1993.⁵⁴⁷⁶ Stojić's argument that the Trial Chamber failed to cite supporting evidence thus fails.

1671. In challenging the Trial Chamber's reliance on Exhibit P03900, the Appeals Chamber observes that this exhibit supports the Trial Chamber's finding that Stojić had the power to grant access to East Mostar to the international organisations.⁵⁴⁷⁷ In any event, Stojić ignores that the Trial Chamber also relied on other evidence to arrive at this finding.⁵⁴⁷⁸ In particular, the Trial Chamber also relied on evidence that Stojić issued passes to members of humanitarian organisations granting them freedom of movement or transport on the territory of HZ H-B,⁵⁴⁷⁹ and made findings that Stojić dispatched orders directly to the HVO on the freedom of movement of humanitarian or international organisations.⁵⁴⁸⁰ The Appeals Chamber considers that Stojić fails to explain how the finding should not stand on the basis of this other evidence. His argument is dismissed.

1672. As for Stojić's argument that the Trial Chamber disregarded relevant submissions, the Appeals Chamber recalls that a trial chamber is "not under the obligation to justify its findings in relation to every submission made during the trial".⁵⁴⁸¹ Stojić fails to show that the Trial Chamber erred in explicitly referring to only a part of his trial submissions. The Appeals Chamber is also not persuaded by Stojić's argument that the Trial Chamber disregarded evidence that access of humanitarian organisations was ordinarily addressed by others, and notes that the Trial Chamber expressly considered most of the evidence Stojić refers to in finding that, *inter alios*, Prlić,⁵⁴⁸² the ODP, ⁵⁴⁸³ and the Main Staff,⁵⁴⁸⁴ could grant such access. The Appeals Chamber considers that the remainder of the evidence Stojić points to, which was not expressly considered, was substantively addressed by the Trial Chamber's findings noted above.⁵⁴⁸⁵ Stojić's argument that the Trial

⁵⁴⁷⁶ Trial Judgement, Vol. 2, para. 1244. See also Trial Judgement, Vol. 2, paras 1227-1243, and evidence cited therein. The Appeals Chamber notes the Trial Chamber's finding that the sporadic aid that the HVO brought in, which was conditional on obtaining certain advantages, did not cast doubt on the finding that the HVO obstructed the delivery of humanitarian aid to East Mostar. Trial Judgement, Vol. 2, para. 1244.

⁵⁴⁷⁷ Ex. P03900 (confidential), p. 2. See Trial Judgement, Vol. 4, para. 372.

⁵⁴⁷⁸ See *supra*, para. 1670.

⁵⁴⁷⁹ Trial Judgement, Vol. 1, paras 554, 562, referring to, *inter alia*, Exs. 2D00552, 2D00553, 2D00555, 2D00556, 2D00557, 2D00986.

⁵⁴⁸⁰ Trial Judgement, Vol. 1, para. 565, Vol. 4, para. 306.

⁵⁴⁸¹ *Kvočka et al.* Appeal Judgement, para. 23.

⁵⁴⁸² Trial Judgement, Vol. 2, para. 1437 & fn. 3595, Vol. 4, paras 116-118 & fn. 345. See Trial Judgement, Vol. 2, para. 1231, Vol. 4, paras 183, 185. Cf. Stojić's Appeal Brief, para. 328, referring to, *inter alia*, Exs. P04027 (confidential), P04358, P09846 (confidential).

⁵⁴⁸³ Trial Judgement, Vol. 1, paras 635-636 & fn. 1504, Vol. 2, para. 1230. Cf. Stojić's Appeal Brief, para. 328.

⁵⁴⁸⁴ Trial Judgement, Vol. 1, para. 752 & fn. 1758. See also Trial Judgement, Vol. 1, para. 936. Cf. Stojić's Appeal Brief, para. 328, referring to, *inter alia*, Ex. P03895.

⁵⁴⁸⁵ See *supra*, fns 5482-5484.

Chamber disregarded relevant evidence thus fails. Moreover, he fails to show how the involvement of others precludes his authority and ability to grant access. His arguments are dismissed.

1673. Turning to Stojić's argument challenging the finding that international representatives rejected the security issues he raised, the Appeals Chamber notes that the Trial Chamber relied on, *inter alia*, the testimony of Witness Nissen on the issue.⁵⁴⁸⁶ Although the witness testified that Stojić's justification that the ECMM's security could not be guaranteed was correct "in diplomatic terms",⁵⁴⁸⁷ the witness also testified that he tried to persuade Stojić to grant them access with an armoured vehicle with "no success".⁵⁴⁸⁸ The Appeals Chamber finds no error in the Trial Chamber's evaluation that the international representatives rejected security issues raised by Stojić⁵⁴⁸⁹ given that the witness viewed his attempt to negotiate access with Stojić as unsuccessful. Stojić merely seeks to offer his own interpretation of the evidence without showing an error. His argument is dismissed.

1674. Based on the foregoing, the Appeals Chamber finds that Stojić fails to demonstrate that the Trial Chamber erred in finding that he had the power to grant access to East Mostar to the international organisations, and did nothing to remove the obstacles hindering access of humanitarian aid, having, in fact, facilitated them. Stojić's sub-ground of appeal 34.5 is dismissed.

(iv) Conclusion

1675. In sum, Stojić's ground of appeal 34 is dismissed.

(g) Čapljina Municipality (Stojić's Ground 35)

1676. The Trial Chamber found that, in July 1993, Stojić knew of and facilitated the detention of men who did not belong to any armed force in Čapljina.⁵⁴⁹⁰ In reaching this conclusion it referred to Exhibit 4D00461 – an order from Stojić dated 3 July 1993 – through which he transferred the "management of the detention of the Muslim men of military age arrested in the Municipality of Čapljina from the 1st Knez Domagoj Brigade to the local HVO" ("Stojić's Order of 3 July 1993").⁵⁴⁹¹ The Trial Chamber also found that Stojić was informed about the allegations of evictions in Čapljina from at least 20 July 1993.⁵⁴⁹² In this respect, the Trial Chamber referred to Exhibit P03573, namely the minutes of the 47th session of Government held on 20 July 1993

⁵⁴⁸⁶ Trial Judgement, Vol. 2, para. 1236, referring to, *inter alia*, Klaus Johann Nissen, T(F). 20453-20455, 20457 (25 June 2007), Ex. P03196 (confidential), p. 1.

⁵⁴⁸⁷ Klaus Johann Nissen, T. 20456-20457 (25 June 2007).

⁵⁴⁸⁸ Klaus Johann Nissen, T. 20456-20457 (25 June 2007).

⁵⁴⁸⁹ Trial Judgement, Vol. 2, para. 1236.

⁵⁴⁹⁰ Trial Judgement, Vol. 4, para. 375.

⁵⁴⁹¹ Trial Judgement, Vol. 4, para. 373. See Trial Judgement, Vol. 2, para. 2081, fn. 5087.

attended by Stojić (“Minutes of the 47th Government Session”).⁵⁴⁹³ The Trial Chamber found that it was noted during this Government session that a working group visit to Čapljina Municipality established that the media reports concerning alleged expulsions of Muslims from that municipality were not true.⁵⁴⁹⁴ The Trial Chamber further found that the operations were carried out according to a preconceived plan and concluded that as Stojić had “effective control” over most of the HVO and the Military Police who carried out the Čapljina evictions and “since he himself contributed to planning the evictions following the same plan as in West Mostar, it [could] only find that he was also informed about the evictions in Čapljina and the manner in which they were carried out.”⁵⁴⁹⁵ It then concluded that the only inference it could reasonably draw was that Stojić also intended to have Muslim property destroyed.⁵⁴⁹⁶

1677. Stojić argues that the Trial Chamber made a number of errors which “take away the foundation for the finding that [he] significantly contributed to the commission of crimes in Čapljina and intended to have Muslim property destroyed.”⁵⁴⁹⁷ The Prosecution responds that Stojić’s involvement in the Čapljina operations furthered the CCP.⁵⁴⁹⁸

(i) Whether Stojić was aware of and facilitated the detention of men who did not belong to any armed force (Stojić’s Sub-ground 35.1)

a. Arguments of the Parties

1678. Stojić submits that the Trial Chamber erred by failing to properly assess the weight to be attached to Stojić’s Order of 3 July 1993 – the only evidence cited as support for the finding that he knew of and facilitated the Čapljina detentions. According to Stojić, because he had challenged the authenticity of this order during trial, the Trial Chamber was obliged to provide a reasoned assessment of its weight, including its authenticity.⁵⁴⁹⁹ Stojić contends that the Trial Chamber failed to do so and, instead: (1) relied on its earlier assessment that Stojić’s Order of 3 July 1993 was sufficiently reliable for admission into evidence confusing the test for admissibility with weight;⁵⁵⁰⁰ (2) considered only three Defence submissions relating to the reliability of the order and ignored the

⁵⁴⁹² Trial Judgement, Vol. 4, para. 378.

⁵⁴⁹³ Trial Judgement, Vol. 4, para. 376.

⁵⁴⁹⁴ Trial Judgement, Vol. 4, para. 376.

⁵⁴⁹⁵ Trial Judgement, Vol. 4, para. 378. See Trial Judgement, Vol. 4, para. 377.

⁵⁴⁹⁶ Trial Judgement, Vol. 4, para. 378.

⁵⁴⁹⁷ Stojić’s Appeal Brief, para. 345. See Stojić’s Reply Brief, para. 71. Stojić therefore submits that the Appeals Chamber should overturn his convictions on Counts 1, 6-11, and 19-21. Stojić’s Appeal Brief, para. 345.

⁵⁴⁹⁸ Prosecution’s Response Brief (Stojić), para. 291. The Prosecution responds that Stojić’s assertion that his convictions on Counts 1, 6-11, and 19-21 should be vacated if an error is found is incorrect in law. Prosecution’s Response Brief (Stojić), para. 302 & fn. 1262.

⁵⁴⁹⁹ Stojić’s Appeal Brief, para. 333.

⁵⁵⁰⁰ Stojić’s Appeal Brief, para. 334, referring to Trial Judgement, Vol. 2, para. 2081, fn. 5087.

remaining submissions;⁵⁵⁰¹ and (3) gave insufficient reasons for relying on Stojić's Order of 3 July 1993, such as noting the evidence of Witness CG – who could not assist on authenticity – and merely stating that the order was similar to other orders.⁵⁵⁰²

1679. Stojić also contends that the Trial Chamber failed to: (1) assess Stojić's Order of 3 July 1993 in light of the whole trial record which shows that the 1st Knez Domagoj Brigade continued to be in charge of the detainees contrary to Stojić's Order of 3 July 1993 and that there was no reason for him to issue this order since he was not a member of the working group concerned with these individuals nor was he in charge of the relevant detention centres;⁵⁵⁰³ and (2) scrutinise Stojić's Order of 3 July 1993 "with particular vigour" given that it was the only document relied upon to establish that he facilitated the detention of civilians in Čapljina.⁵⁵⁰⁴ In addition, Stojić claims that even if authentic, Stojić's Order of 3 July 1993 was not followed and therefore had no causal effect on the detentions.⁵⁵⁰⁵

1680. The Prosecution responds that the Trial Chamber provided a reasoned assessment for relying on Stojić's Order of 3 July 1993 and did not disregard Stojić's trial arguments.⁵⁵⁰⁶ It also contends that: (1) the Trial Chamber reasonably observed that Witness CG confirmed the Čapljina detentions; (2) it is immaterial that the Trial Chamber did not receive any evidence of the implementation of Stojić's Order of 3 July 1993; and (3) the Trial Chamber reasonably relied on the order's form and appearance when finding it similar to Stojić's other orders.⁵⁵⁰⁷ Further, according to the Prosecution, there is no need to show a causal connection between Stojić's Order of 3 July 1993 and the unlawful detentions as JCE liability requires a significant contribution to the common criminal purpose rather than to specific crimes.⁵⁵⁰⁸ The Prosecution claims that, in any event, Stojić's Order of 3 July 1993 Order is not the only evidence demonstrating Stojić's knowledge of and role in the detention of Muslim males in Čapljina.⁵⁵⁰⁹ The Prosecution also responds that Stojić ignores the Trial Chamber's findings on his authority over the relevant detention centres and argues that it is irrelevant that Stojić was not a member of the working group that assessed conditions within those centres.⁵⁵¹⁰

⁵⁵⁰¹ Stojić's Appeal Brief, para. 335, referring to Trial Judgement, Vol. 2, para. 2081, fn. 5087, Stojić's Final Brief, paras 545-547.

⁵⁵⁰² Stojić's Appeal Brief, para. 336, referring to Trial Judgement, Vol. 2, para. 2081, fn. 5087, Witness CG, T. 10843-10844 (28 Nov 2006).

⁵⁵⁰³ Stojić's Appeal Brief, para. 337, referring to, *inter alia*, Exs. P03197, P03216, P03442, P03573, P05133.

⁵⁵⁰⁴ Stojić's Appeal Brief, para. 338.

⁵⁵⁰⁵ Stojić's Appeal Brief, para. 339.

⁵⁵⁰⁶ Prosecution's Response Brief (Stojić), para. 292.

⁵⁵⁰⁷ Prosecution's Response Brief (Stojić), paras 293-294.

⁵⁵⁰⁸ Prosecution's Response Brief (Stojić), para. 295.

⁵⁵⁰⁹ Prosecution's Response Brief (Stojić), para. 295, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 154.

⁵⁵¹⁰ Prosecution's Response Brief (Stojić), paras 296-297.

b. Analysis

1681. Addressing Stojić's submissions regarding the Trial Chamber's assessment of Stojić's Order of 3 July 1993 first, the Appeals Chamber recalls at the outset that a trial chamber has a broad discretion when deciding the weight to be accorded to an exhibit.⁵⁵¹¹ In any event, the Appeals Chamber is satisfied that the Trial Chamber did in fact provide a reasoned assessment of the reliability and weight of Stojić's Order of 3 July 1993. Contrary to Stojić's submission, the Trial Chamber did not ignore his arguments in relation to the authenticity of the order, as evidenced by the fact that it cited all the relevant challenges he had made in his Final Brief.⁵⁵¹² While the Trial Chamber then chose to outline three of those challenges in the Trial Judgement,⁵⁵¹³ the Appeals Chamber considers that Stojić's remaining challenges on the matter were closely related to and, in fact, subsumed within those three, such that there was no need to explicitly discuss them as well.⁵⁵¹⁴ Stojić fails to demonstrate that the Trial Chamber erred.

1682. Further, in its analysis of the *authenticity* of Stojić's Order of 3 July 1993 the Trial Chamber recalled its earlier finding that it "offered indicia of reliability, relevance and probative value *sufficient for admission into evidence.*"⁵⁵¹⁵ Thus, contrary to Stojić's argument, it is clear that the Trial Chamber was mindful of the fact that its earlier assessment was made for the purpose of admitting Stojić's Order of 3 July 1993 into evidence. Stojić fails to show how the Trial Chamber confused the test for the admissibility of evidence with the weight to be accorded to that evidence once admitted. Similarly, it is also clear from the way in which the Trial Chamber's analysis is structured that this was merely one of the factors listed in support of the conclusion that Stojić's Order of 3 July 1993 was authentic and reliable.⁵⁵¹⁶

1683. With respect to Stojić's claim that the Trial Chamber gave insufficient reasons for relying on Stojić's Order of 3 July 1993, the Appeals Chamber notes that Witness CG partially confirmed the content of the order, namely that the Muslim men referred to therein were indeed detained in Čapljina.⁵⁵¹⁷ Thus, the Appeals Chamber considers that it was not unreasonable for the Trial Chamber to use this evidence to infer the authenticity of Stojić's Order of 3 July 1993, particularly

⁵⁵¹¹ See *Stanišić and Župljanin* Appeal Judgement, para. 470; *Popović et al.* Appeal Judgement, para. 131 (the Trial Chamber has "broad discretion in assessing the appropriate weight and credibility to be accorded to the testimony of a witness"); *Kvočka et al.* Appeal Judgement, para. 23.

⁵⁵¹² Trial Judgement, Vol. 2, fn. 5087, referring to Stojić's Final Brief, paras 544-547.

⁵⁵¹³ Trial Judgement, Vol. 2, fn. 5087.

⁵⁵¹⁴ See *Kvočka et al.* Appeal Judgement, para. 23 ("the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial").

⁵⁵¹⁵ Trial Judgement, Vol. 2, fn. 5087 (emphasis added).

⁵⁵¹⁶ The other factors considered by the Trial Chamber were: (1) its rejection of the admission into evidence of Exhibit 2D0388, tendered by Stojić to call into question Stojić's Order of 3 July 1993; (2) Witness CG's testimony when shown Stojić's Order of 3 July 1993; and (3) the fact that Stojić's Order of 3 July 1993 was similar to other orders Stojić had issued. See Trial Judgement, Vol. 2, fn. 5087.

as it was coupled with other factors.⁵⁵¹⁸ Indeed, the Trial Chamber also noted that Stojić's Order of 3 July 1993 was similar to other orders signed by Stojić and admitted into evidence during the trial.⁵⁵¹⁹ While the Trial Chamber did not at that point provide a list of such orders, only several pages earlier the Trial Chamber discussed Stojić's ability to issue orders to the HVO, including with respect to detention centres, and listed a number of his orders in support, one of which concerned Čapljina and was similar to Stojić's Order of 3 July 1993 in form and appearance.⁵⁵²⁰ Thus, Stojić fails to show an error by the Trial Chamber on these issues.

1684. Additionally, the Trial Chamber's reference to similar orders also indicates that it considered Stojić's Order of 3 July 1993 in light of all the evidence in the case, contrary to Stojić's submission. The fact that Stojić was not a member of the working group concerned with conditions of detention in Čapljina or that he may not have been in charge of the relevant Čapljina detention centres, namely Dretelj Prison and Gabela Prison, does not in any way affect the Trial Chamber's findings that he was able to issue orders such as Stojić's Order of 3 July 1993, particularly bearing in mind his position and his authority over the HVO and the Military Police.⁵⁵²¹ Furthermore, Stojić ignores the Trial Chamber's explicit findings demonstrating that Dretelj Prison and Gabela Prison "fell within [his] responsibility" and that he was able to issue orders relevant to the Muslim men detained there.⁵⁵²² Finally, the fact that the Trial Chamber noted that it had no evidence that Stojić's Order of 3 July 1993 was ever complied with⁵⁵²³ also does not call into question its authenticity or the reasoning behind the issuance of such an order. Based on the above, the Appeals Chamber dismisses Stojić's arguments concerning the authenticity of Stojić's Order of 3 July 1993 and the Trial Chamber's assessment of its weight.⁵⁵²⁴

1685. Turning to the Trial Chamber's use of Stojić's Order of 3 July 1993, the Appeals Chamber notes that, contrary to his submission, the Trial Chamber's finding that Stojić knew of and facilitated the detention of Muslim men who did not belong to any armed force in Čapljina was not based solely on Stojić's Order of 3 July 1993. In this regard, the Trial Chamber also recalled its earlier findings that the arrests of Muslim men in Čapljina were undertaken between 30 June 1993

⁵⁵¹⁷ Witness CG, T. 10843-10844 (28 Nov 2006).

⁵⁵¹⁸ See Trial Judgement, Vol. 2, fn. 5087.

⁵⁵¹⁹ Trial Judgement, Vol. 2, fn. 5087. See also *supra*, fn. 5516.

⁵⁵²⁰ Trial Judgement, Vol. 4, paras 304-306, 312, fn. 725 (referring to, *inter alia*, Ex. P05232). See *supra*, para. 1429. See also Trial Judgement, Vol. 1, paras 562-565. Additionally, the Prosecution cited a number of orders similar in appearance, namely Exhibits 2D00985, P03146, P03163, which were also relied on by the Trial Chamber. See Prosecution's Response Brief (Stojić), para. 294 & fn. 1227; Trial Judgement, Vol. 1, paras 795, 965, fn. 1383.

⁵⁵²¹ See Trial Judgement, Vol. 4, paras 397-407. In relation to Stojić's challenges regarding the Trial Chamber's findings on his authority over Dretelj Prison and Gabela Prison, see *infra*, paras 1736-1748.

⁵⁵²² Trial Judgement, Vol. 4, paras 399, 406-407. See Trial Judgement, Vol. 4, paras 306, 312, 320.

⁵⁵²³ Trial Judgement, Vol. 2, para. 2081.

⁵⁵²⁴ Accordingly, Stojić's argument that the Trial Chamber was obliged to scrutinise Stojić's Order of 3 July 1993 with "particular vigour" is therefore dismissed as moot.

and mid-July 1993 by the 1st Knez Domagoj Brigade, the 3rd Company of the 3rd Military Police Battalion, the Čapljina MUP, and members of the HVO.⁵⁵²⁵ As noted earlier, Stojić was found to have exercised “effective control” over the HVO and the Military Police⁵⁵²⁶ as well as a reporting function vis-à-vis the Government, regarding military matters.⁵⁵²⁷ The Trial Chamber then referred to the fact that Stojić continued to exercise his functions “in the HVO/Government of the HR H-B” and thus inferred that he accepted the detention of Muslim men who did not belong to any armed force.⁵⁵²⁸ Further, the Trial Chamber was cognisant of the 30 June 1993 Joint Proclamation in which Stojić and Prlić called on all Croats in BiH to take up arms against the Muslims and which, the Trial Chamber found, was the catalyst for the arrests of Muslim men in Čapljina and other municipalities.⁵⁵²⁹ The Trial Chamber also considered that “the military authorities could not have made arrests without the approval of the civilian authorities”.⁵⁵³⁰

1686. The Appeals Chamber acknowledges that the Trial Chamber did not explicitly refer to the 30 June 1993 Joint Proclamation in the part of the Trial Judgement dealing with Stojić’s responsibility for the arrests in Čapljina,⁵⁵³¹ or in the factual narrative outlining those arrests.⁵⁵³² However, the Trial Chamber noted the proclamation in the section dealing with Stojić’s control over the HVO, only several pages prior to embarking on the discussion of his responsibility regarding the events in Čapljina.⁵⁵³³ Further, the Trial Chamber discussed the 30 June 1993 Joint Proclamation in various other parts of the Trial Judgement including in the sections concerning: (1) the factual narrative surrounding the Attack on the HVO Tihomir Mišić Barracks on 30 June 1993;⁵⁵³⁴ (2) Prlić’s responsibility, since Prlić was a co-signatory of the proclamation;⁵⁵³⁵ and (3) Ćorić’s responsibility because, on 1 July 1993, Radoslav Lavrić, on behalf of Ćorić, issued an order invoking the 30 June 1993 Joint Proclamation and demanding the arrest of “all conscripts who had not ‘regulated their status’”.⁵⁵³⁶ Accordingly, the Appeals Chamber is satisfied that, when discussing Stojić’s responsibility, the Trial Chamber was fully cognisant of the existence of the 30 June 1993 Joint Proclamation and its significance as a catalyst for the arrests of Muslim men in Čapljina. In addition, as it will become clear from the analysis below,⁵⁵³⁷ the Trial Chamber was

⁵⁵²⁵ Trial Judgement, Vol. 4, paras 373-374.

⁵⁵²⁶ See *supra*, paras 1405, 1457-1458, 1479-1480, 1485-1491.

⁵⁵²⁷ See *supra*, paras 1418-1419, 1476, 1572.

⁵⁵²⁸ Trial Judgement, Vol. 4, para. 375.

⁵⁵²⁹ Trial Judgement, Vol. 4, paras 151-154, 305. See Trial Judgement, Vol. 4, paras 953, 973, 984, 996, 1220. See also *supra*, para. 1422.

⁵⁵³⁰ Trial Judgement, Vol. 4, para. 154.

⁵⁵³¹ See Trial Judgement, Vol. 4, paras 373-378.

⁵⁵³² See Trial Judgement, Vol. 2, paras 2078-2083.

⁵⁵³³ Trial Judgement, Vol. 4, para. 305.

⁵⁵³⁴ See Trial Judgement, Vol. 2, para. 884.

⁵⁵³⁵ See Trial Judgement, Vol. 4, para. 151.

⁵⁵³⁶ See Trial Judgement, Vol. 4, para. 953; Ex. P03077.

⁵⁵³⁷ See *infra*, para. 1692.

also aware of Stojić's authority and position within the Government, insofar as it concerned detention of Muslim men in the detention centres in Čapljina.

1687. With respect to Stojić's claim that the Trial Chamber erred in law when concluding that he facilitated or significantly contributed to the commission of crimes because Stojić's Order of 3 July 1993 was not followed, the Appeals Chamber notes that this argument is premised on the view that the order was the only evidence relied upon by the Trial Chamber. However, as explained in the preceding paragraphs,⁵⁵³⁸ this was not the case. The Appeals Chamber notes that, even if Stojić's Order of 3 July 1993 was ultimately not implemented,⁵⁵³⁹ the Trial Chamber, in the section dealing with Prlić's responsibility, referred to the 30 June 1993 Joint Proclamation, noted that it was followed up by Lavrić's order of 1 July 1993, and then found that following the 30 June 1993 Joint Proclamation, "the chain of command was set in motion in order to arrest Muslims" in the municipalities of Mostar, Stolac, Čapljina, and Prozor.⁵⁵⁴⁰ The Appeals Chamber therefore considers that a reasonable trier of fact could have concluded that Stojić both facilitated and knew of the arrests in Čapljina. In other words, this finding by the Trial Chamber is not affected by its statement that it received no evidence of the implementation of Stojić's Order of 3 July 1993 on the ground.

1688. Based on the foregoing, the Appeals Chamber considers that Stojić has failed to show that no reasonable trier of fact could have relied on Stojić's Order of 3 July 1993 or concluded that he knew of and facilitated the detention of Muslim men who did not belong to any armed forces in Čapljina. Stojić's sub-ground of appeal 35.1 is therefore dismissed.

(ii) Whether Stojić was informed of evictions in Čapljina and the manner in which they were carried out (Stojić's Sub-grounds 35.2 and 35.3)

1689. Stojić argues that no reasonable chamber could have concluded that he was informed of the Čapljina evictions on the basis of the Minutes of the 47th Government Session, given that it was reported during that session that the allegations of expulsions were not true.⁵⁵⁴¹ Stojić further argues that the finding relating to his contribution to the planning of the evictions is ambiguous because it is unclear whether he planned the evictions in Čapljina which followed the same plan as those in West Mostar or whether he was informed of evictions in Čapljina because he had planned similar

⁵⁵³⁸ See *supra*, paras 1685-1686.

⁵⁵³⁹ Rather than concluding that Exhibit 4D00461 was not followed, the Trial Chamber noted that it received no evidence that the local HVO took responsibility for the detention of the Muslim men. Trial Judgement, Vol. 2, para. 2081. See *supra*, paras 1434, 1486.

⁵⁵⁴⁰ Trial Judgement, Vol. 4, paras 151-154. See also *supra*, para. 1422.

⁵⁵⁴¹ Stojić's Appeal Brief, para. 344. See Stojić's Appeal Brief, para. 343.

evictions in West Mostar.⁵⁵⁴² According to Stojić, neither interpretation withstands scrutiny because: (1) there is no evidence that he planned the evictions in Čapljina, particularly since the Trial Chamber later stated that he only found out about the evictions after they had taken place;⁵⁵⁴³ and (2) no reasonable trial chamber could have found that the only reasonable inference from an earlier finding that he planned the evictions in West Mostar was that he was also informed about the operations in Čapljina.⁵⁵⁴⁴

1690. The Prosecution responds that the Trial Chamber reasonably relied on the Minutes of the 47th Government Session since Stojić would have known, in light of: (1) his role in the planning of expulsions in Čapljina and other municipalities; (2) his authority over the perpetrators; and (3) his knowledge of HVO crimes across the BiH, that the allegations discussed in the session were well-founded.⁵⁵⁴⁵ The Prosecution also responds that the finding that Stojić planned the evictions in Čapljina Municipality is neither ambiguous nor unreasonable when his role in the indiscriminate arrests of Muslim males, particularly those in West Mostar, is considered.⁵⁵⁴⁶ The Prosecution further contends that the Trial Chamber's finding – made in the context of JCE III liability – that Stojić learned of the Čapljina evictions after they had taken place is not inconsistent with his role in planning them.⁵⁵⁴⁷

1691. The Appeals Chamber notes that the Trial Chamber's conclusion relating to Stojić's responsibility for the evictions in Čapljina was based on four different but related findings, namely that: (1) Stojić was informed about the allegations of evictions from at least 20 July 1993 as shown by the Minutes of the 47th Government Session;⁵⁵⁴⁸ (2) the nature of evictions in Čapljina carried out by the HVO, which was in line with the *modus operandi* employed in other municipalities, demonstrated that it followed a preconceived plan to evict Muslims;⁵⁵⁴⁹ (3) Stojić had "effective control" over most of the HVO and the Military Police;⁵⁵⁵⁰ and (4) Stojić had, in fact, personally contributed to planning the evictions.⁵⁵⁵¹

⁵⁵⁴² Stojić's Appeal Brief, para. 341. See Stojić's Appeal Brief, para. 340, referring to Trial Judgement, Vol. 4, para. 378.

⁵⁵⁴³ Stojić's Appeal Brief, para. 342, referring to Trial Judgement, Vol. 4, para. 448.

⁵⁵⁴⁴ Stojić's Appeal Brief, para. 342. See also Stojić's Reply Brief, para. 70. Stojić asserts that planning one specific operation cannot support a finding that an individual was informed of an entirely separate operation. Stojić's Appeal Brief, para. 342.

⁵⁵⁴⁵ Prosecution's Response Brief (Stojić), para. 301.

⁵⁵⁴⁶ Prosecution's Response Brief (Stojić), paras 298-299. The Prosecution submits that findings concerning the arrest and eviction operations demonstrate that the arrests of Muslim men occurred in conjunction with evictions of Muslim women, children, and the elderly, and that Stojić's involvement in planning and supporting the former provided a reasonable basis from which to infer that he also planned the latter. Prosecution's Response Brief (Stojić), para. 298.

⁵⁵⁴⁷ Prosecution's Response Brief (Stojić), para. 300.

⁵⁵⁴⁸ Trial Judgement, Vol. 4, paras 376, 378.

⁵⁵⁴⁹ Trial Judgement, Vol. 4, paras 377-378.

⁵⁵⁵⁰ Trial Judgement, Vol. 4, para. 378.

⁵⁵⁵¹ Trial Judgement, Vol. 4, para. 378.

1692. With respect to Stojić's argument that no reasonable trier of fact could have relied on the Minutes of the 47th Government Session to establish that he was informed about the evictions, the Appeals Chamber notes that the Trial Chamber found that Stojić knew of the *allegations* of such evictions from that exhibit, not of the evictions themselves.⁵⁵⁵² In reaching this conclusion, the Trial Chamber was fully aware that the working group reported to Stojić and others that these allegations were not true, but this did not affect its finding that he was aware of the allegations.⁵⁵⁵³ In that respect, the Minutes of the 47th Government Session show that the working group did not deny that expulsions were taking place in Čapljina at the time, but rather denied that *all* Čapljina Muslims had been expelled.⁵⁵⁵⁴ The minutes also show that following the debate on the working group's report, including the information that at least 2000 Muslims were accommodated in various locations in Čapljina, Stojić and others agreed to: (1) support the opening of a "transit centre" in Ljubuški for those who "want to leave the war affected areas and depart to third countries"; and (2) assign certain individuals, including Prlić himself, to "explore possibilities" of accommodating a number of "detained individuals" away from Čapljina in order to "create conditions in Čapljina in compliance with international standards".⁵⁵⁵⁵

1693. Before making its ultimate finding that Stojić was in fact aware of the expulsions, the Trial Chamber, as mentioned above, referred also to Stojić's authority over most of the HVO and the Military Police, as well as the fact that the HVO conducted the campaign of evictions in Čapljina based on a preconceived plan.⁵⁵⁵⁶ Further, the Trial Chamber made multiple findings on Stojić's involvement in planning the expulsions in West Mostar and other municipalities⁵⁵⁵⁷ and on his knowledge that the HVO conducted evictions across the BiH.⁵⁵⁵⁸ The Appeals Chamber therefore considers that the Trial Chamber reasonably relied on the Minutes of the 47th Government Session to conclude that Stojić knew of the allegations of expulsions – and that this knowledge was one of several factors it used to infer that he was in fact informed about the evictions in Čapljina. Thus, Stojić does not demonstrate an error by the Trial Chamber in its reliance on the Minutes of the 47th Government Session.

⁵⁵⁵² Trial Judgement, Vol. 4, para. 378. See Trial Judgement, Vol. 4, para. 376.

⁵⁵⁵³ Trial Judgement, Vol. 4, para. 376.

⁵⁵⁵⁴ Ex. P03573, pp. 1-2 ("Work[ing] group has ascertained that the reports in some media concerning the alleged expulsion of all Muslims from Čapljina Municipality were not true. Namely it was established that Čapljina Student Centre and holiday homes in Počitelj polje, Ševač polje, Bivolje brdo and Višići accommodate more than two thousand Muslims mainly [from] Eastern Herzegovina.").

⁵⁵⁵⁵ Ex. P03573, p. 2.

⁵⁵⁵⁶ Trial Judgement, Vol. 4, para. 378.

⁵⁵⁵⁷ See, e.g., Trial Judgement, Vol. 4, paras 335-337, 347-349, 355. See also Trial Judgement, Vol. 4, para. 1220.

⁵⁵⁵⁸ See, e.g., Trial Judgement, Vol. 4, paras 331-335, 350-352, 355, 357, 416-417. See also *supra*, paras 1561, 1575, 1580, 1617, 1653.



1694. In relation to Stojić's argument that the Trial Chamber's finding that since he "contributed to planning the evictions following the same plan as in West Mostar, it can only find that he was also informed about the evictions in Čapljina" is ambiguous, the Appeals Chamber acknowledges that it is not immediately clear from the Trial Chamber's language whether it was referring to the planning of Čapljina evictions specifically.⁵⁵⁵⁹ However, this is ultimately irrelevant as the Appeals Chamber considers that it was not unreasonable of the Trial Chamber to rely on Stojić's involvement in planning the evictions in West Mostar, as one of several factors going to the finding that he was informed of the Čapljina evictions, particularly as the operations followed "the same plan" and began within a month of each other.⁵⁵⁶⁰ Whether an inference that the planning of one specific operation by an individual can support a finding that the individual was informed of a different operation can be made will ultimately depend on the context, including the similarities between the operations, as well as the position of the individual in question. In this particular case, the Trial Chamber found that the operations were similar and that Stojić had "effective control" over most of the HVO and over the Military Police who carried out both operations.⁵⁵⁶¹

1695. Moreover, as stated above, the similarities between the eviction campaigns in West Mostar and Čapljina was just one of the factors that the Trial Chamber considered in reaching the conclusion that Stojić was informed about evictions in Čapljina – the other factors being: (1) the Minutes of the 47th Government Session; (2) the fact that the evictions conducted by the HVO followed a preconceived plan; and (3) the findings relating to Stojić's "effective control" over most of the HVO and Military Police. The Appeals Chamber thus finds that Stojić fails to demonstrate that no reasonable trier of fact could have concluded that the only reasonable inference was that he was informed of the Čapljina evictions after considering the combination of these factors.⁵⁵⁶²

1696. Accordingly, the Appeals Chamber considers that Stojić has failed to show that no reasonable trier of fact could have concluded that he knew of the evictions in Čapljina, and the manner in which they were carried out. Based on the foregoing, the Appeals Chamber dismisses Stojić's sub-grounds of appeal 35.2 and 35.3.

⁵⁵⁵⁹ The Appeals Chamber notes that the Trial Chamber's analysis relating to Stojić's responsibility for theft under JCE III suggests that it did not find that Stojić planned the Čapljina evictions *per se* but rather that he was merely informed of them from at least 20 July 1993. Trial Judgement, Vol. 4, para. 448 (Stojić "learned of the operations to evict Muslims from the Municipality of Čapljina on 20 July 1993, that is, after they had taken place").

⁵⁵⁶⁰ See Trial Judgement, Vol. 4, paras 355-357, 377-378.

⁵⁵⁶¹ See Trial Judgement, Vol. 4, para. 378.

⁵⁵⁶² See Trial Judgement, Vol. 4, paras 423, 426-427.

(iii) Conclusion

1697. In sum, the Appeals Chamber dismisses Stojić's ground of appeal 35.⁵⁵⁶³

(h) Vareš Municipality (Stojić's Ground 36)

1698. The Trial Chamber found that the HVO military operations in Vareš Municipality beginning in October 1993 resulted in the commission of crimes.⁵⁵⁶⁴ Specifically, these operations included: (1) the arrests, detention, and mistreatment of Muslim civilians and ABiH members in the town of Vareš between 23 October 1993 and 3-4 November 1993,⁵⁵⁶⁵ and (2) the attack on the village of Stupni Do on 23 October 1993 which resulted in deaths and destruction of property.⁵⁵⁶⁶ The Trial Chamber found that: (1) "in view of the fact" that the Government officials Boban and Prlić, and "those in charge of the Main Staff" Petković and Praljak knew about the murders and destruction committed by Rajić's troops in Stupni Do; (2) that Stojić was the Government member in charge of the HVO, facilitated the HVO military operations in Vareš in October 1993 and considered them to be carried out satisfactorily, the only reasonable inference it could draw was that Stojić was also informed about the deaths of Muslims, both members of the ABiH and non-members, and the destruction of their property as of 4 November 1993.⁵⁵⁶⁷ It also found that, by continuing to exercise his functions while knowing of the crimes and by obtaining a promotion for Ivica Rajić, Stojić accepted the murders and destruction of property.⁵⁵⁶⁸

(i) Stojić's facilitation of the military operations in Vareš (Stojić's Sub-ground 36.2)

1699. Stojić argues that the Trial Chamber erroneously concluded that he facilitated the military operations in Vareš based on communications between Rajić and himself.⁵⁵⁶⁹ Stojić submits that the Trial Chamber misunderstood these communications⁵⁵⁷⁰ and that it "cannot be assumed" that his contact with Rajić on 30 October 1993 was in response to Rajić's request on 29 October 1993.⁵⁵⁷¹ Stojić argues that these communications cannot be reasonably linked to the Vareš crimes as:

⁵⁵⁶³ Accordingly, Stojić's assertion that his convictions on Counts 1, 6-11, and 19-21 should be vacated is also dismissed.

⁵⁵⁶⁴ Trial Judgement, Vol. 4, para. 61. See Trial Judgement, Vol. 3, paras 303-508.

⁵⁵⁶⁵ Trial Judgement, Vol. 3, paras 339-340, 342-348, 352-399. The Trial Chamber also found that thefts and sexual abuse occurred during the operations in Vareš town. Trial Judgement, Vol. 3, paras 401-404.

⁵⁵⁶⁶ Trial Judgement, Vol. 3, paras 417, 421-422, 464, 466-467. The Trial Chamber also found that thefts and sexual abuse occurred during the operations in Stupni Do. Trial Judgement, Vol. 3, paras 429, 465, 467.

⁵⁵⁶⁷ Trial Judgement, Vol. 4, para. 383. See Trial Judgement, Vol. 4, paras 380-382. See *supra*, para. 820.

⁵⁵⁶⁸ Trial Judgement, Vol. 4, para. 383. See Trial Judgement, Vol. 4, paras 380-382.

⁵⁵⁶⁹ Stojić's Appeal Brief, paras 349, 353. See Stojić's Appeal Brief, para. 355.

⁵⁵⁷⁰ Stojić's Appeal Brief, para. 349. Stojić asserts that, on 29 October 1993, Rajić asked him to establish contact with "Kovačević" in relation to the movement of men to and from Vareš, and then on 30 October 1993, he contacted Rajić with instructions regarding the movement of a convoy "along the Berkovići-Nevesinje-Borci-Konjic route". Stojić's Appeal Brief, para. 349, referring to Exs. P06219, P06267.

⁵⁵⁷¹ Stojić's Appeal Brief, para. 349. Stojić asserts that in the later communication he asked Rajić to issue an approval to be sent to "Kovačević", while Rajić's request was that he contact "Kovačević". Stojić's Appeal Brief, para. 349.

(1) they concern the movement of HVO troops along the Berkovići-Konjic route which was unrelated to Vareš since HVO convoys needed this route in order to reach an HVO enclave near Konjic;⁵⁵⁷² (2) the attack on Stupni Do ended on 26 October 1993, the communications post-date the operations;⁵⁵⁷³ and (3) the usual military chain of command – which did not include him – functioned during the operations, and that the relevant orders passed through the Main Staff to Rajić and the HVO.⁵⁵⁷⁴

1700. The Prosecution responds that the Trial Chamber reasonably relied on Stojić's communications with Rajić to find that Stojić facilitated the military operations in Vareš.⁵⁵⁷⁵

1701. In assessing the evidence, the Trial Chamber considered that: (1) on 29 October 1993, Rajić informed Stojić, Praljak, and Petković that the VRS were not allowing his troops through to Vareš, contrary to an agreement;⁵⁵⁷⁶ (2) on the following day, Stojić informed Rajić that an agreement had been reached with the VRS for the passage of an HVO convoy along the Berkovići-Nevesinje-Borci-Konjic route and ordered him to send relevant documents to "Minister Kovačević";⁵⁵⁷⁷ and (3) on 31 October 1993, Rajić confirmed with Stojić that the VRS was implementing the original agreement.⁵⁵⁷⁸ The Trial Chamber concluded that these communications showed that Stojić facilitated the military operations in Vareš in October 1993.⁵⁵⁷⁹ Having considered the evidence cited by Stojić, which is the same evidence relied on by the Trial Chamber,⁵⁵⁸⁰ the Appeals Chamber is not convinced that the Trial Chamber "misunderstood" these communications. In this regard: (1) Exhibit P06219, a communication from Rajić to Stojić and others dated 29 October 1993, states that the "XY" side was not implementing an agreement, and that it was "necessary to urgently establish contact between Mr. STOJIC and Mr. KOVAČEVIĆ in order to get this going so that assistance can be provided to Vareš";⁵⁵⁸¹ (2) Exhibit P06267, a communication from Stojić to Rajić dated 30 October 1993, states that pursuant to agreements reached, Rajić was to send an approval for the passage of convoys to Minister Kovačević;⁵⁵⁸² and (3) Exhibit P06307, a communication from Rajić to Stojić dated 31 October 1993, states that "the realisation of the

⁵⁵⁷² Stojić's Appeal Brief, para. 350, referring to Exs. P07622 (confidential), para. 1.1, P09276, Dragan Jurić, T. 39331-39332 (27 Apr 2009). Stojić contends that Vareš is 100km away from Konjic. Stojić's Appeal Brief, para. 350, referring to Ex. P09276.

⁵⁵⁷³ Stojić's Appeal Brief, para. 351.

⁵⁵⁷⁴ Stojić's Appeal Brief, para. 352, referring to Trial Judgement, Vol. 3, paras 313-330. Stojić asserts that none of the relevant orders on the Vareš operations mentioned him. Stojić's Appeal Brief, para. 352.

⁵⁵⁷⁵ Prosecution's Response Brief (Stojić), para. 306. The Prosecution asserts that the operations in Vareš were ongoing when Stojić facilitated the movement of Rajić's troops, and that the HVO withdrew from Vareš Municipality around 3 November 1993. Prosecution's Response Brief (Stojić), para. 307.

⁵⁵⁷⁶ Trial Judgement, Vol. 4, para. 380, referring to Ex. P06219.

⁵⁵⁷⁷ Trial Judgement, Vol. 4, para. 380, referring to Ex. P06267.

⁵⁵⁷⁸ Trial Judgement, Vol. 4, para. 380, referring to Ex. P06307.

⁵⁵⁷⁹ Trial Judgement, Vol. 4, para. 380. See *supra*, para. 820.

⁵⁵⁸⁰ Compare Stojić's Appeal Brief, para. 349 with Trial Judgement, Vol. 4, para. 380 & fns 830-832.

⁵⁵⁸¹ Ex. P06219, p. 2.

agreement between General PETKOVIĆ and General MILOVANOVIĆ is under way”.⁵⁵⁸³ Thus, the Appeals Chamber considers that this evidence is consistent with the Trial Chamber’s underlying findings noted above⁵⁵⁸⁴ and reasonably supports the conclusion that Stojić facilitated the Vareš military operations in October 1993. Further, Stojić merely argues that it “cannot be assumed” that the communications relate to each other and thus only offers his own interpretation of the evidence without showing an error. His argument on the Trial Chamber’s interpretation of the evidence is dismissed.

1702. Regarding Stojić’s argument contesting the link between the communications and the crimes committed during the Vareš military operations, the Appeals Chamber first dismisses his contention that the communications post-date the attack on Stupni Do.⁵⁵⁸⁵ On this issue, the Appeals Chamber considers that the Trial Chamber’s conclusion that Stojić facilitated the Vareš military operations, during which the crimes were committed, was not limited to the attack on Stupni Do but extended to events in Vareš Municipality, and more specifically, the operations in Vareš town.⁵⁵⁸⁶ The Appeals Chamber recalls that operations in the town of Vareš began on 23 October 1993 and ended around 3 or 4 November 1993.⁵⁵⁸⁷ Concerning Stojić’s place in the military chain of command, the Appeals Chamber recalls that he was correctly found to have had *de facto* powers over most of the HVO and the Military Police.⁵⁵⁸⁸ Moreover, even if none of the orders leading up to, or in the beginning of, the Vareš operations mentioned Stojić or were sent to him,⁵⁵⁸⁹ the Appeals Chamber is satisfied that this does not impact on the Trial Chamber’s finding that Stojić *facilitated* those operations, particularly as the Trial Chamber did not find that he planned or directed the operations.⁵⁵⁹⁰ Stojić also argues that the movement of troops addressed by the communications was unrelated to events in Vareš. However, the evidence he cites does not call into question the Trial Chamber’s assessment of this issue.⁵⁵⁹¹ Notably, in Exhibit P06219, the communication dated 29 October 1993, Rajić stated that because the VRS was not implementing the agreement “for two days now they have not been allowing me to transfer my men to Vareš and to bring back the ones who have already been there for seven days” and that Stojić was to urgently

⁵⁵⁸² Ex. P06267.

⁵⁵⁸³ Ex. P06307.

⁵⁵⁸⁴ See *supra*, para. 1701.

⁵⁵⁸⁵ The Appeals Chamber notes that, contrary to Stojić’s assertion, the attack on Stupni Do only occurred on 23 October 1993. Trial Judgement, Vol. 3, paras 417-422, 465-466.

⁵⁵⁸⁶ See Trial Judgement, Vol. 4, para. 380. See also *supra*, para. 820.

⁵⁵⁸⁷ Trial Judgement, Vol. 3, paras 339-340, 342-348, 352-399.

⁵⁵⁸⁸ See *supra*, paras 1457, 1479, 1491.

⁵⁵⁸⁹ The Appeals Chamber notes that Stojić only refers to paragraphs 313 to 330 of Volume 3 of the Trial Judgement which addresses the events between 22 and 26 October 1993 and not specifically the attack on Vareš town and Stupni Do. See Stojić’s Appeal Brief, para. 352.

⁵⁵⁹⁰ See Trial Judgement, Vol. 4, paras 380-381, 383.

⁵⁵⁹¹ See Ex. P07622 (confidential), para. 1.1.

contact Kovačević “in order to get this going so that assistance can be provided to Vareš”.⁵⁵⁹² Thus, Stojić fails to show that the movement of troops referenced in the communications was unrelated to the events in Vareš. Stojić’s arguments are dismissed.

1703. In sum, the Appeals Chamber finds that Stojić has failed to demonstrate that the Trial Chamber erred in concluding that he facilitated the military operations in Vareš in October 1993. Stojić’s sub-ground of appeal 36.2 is therefore dismissed.

(ii) Stojić’s knowledge and acceptance of crimes in Vareš Municipality (Stojić’s Sub-grounds 36.1 and 36.3)

a. Arguments of the Parties

1704. Stojić argues that the Trial Chamber erroneously inferred that he knew of murders and destruction of property in Vareš as there is no evidentiary basis for such an inference.⁵⁵⁹³ Specifically, he contends that: (1) there is no evidence that any report on the crimes was sent to him or circulated within the Department of Defence;⁵⁵⁹⁴ (2) he did not attend a meeting on 4 November 1993 during which the crimes were discussed;⁵⁵⁹⁵ and (3) no witness testified about his awareness of the crimes.⁵⁵⁹⁶ Stojić also submits that, even if he knew of the crimes, there was no basis for finding that he accepted them. He argues that, as he was appointed to a different post by 10 November 1993, “he did not continue in office”,⁵⁵⁹⁷ and that “he did not obtain the promotion of Rajić *after* allegedly learning of his crimes”.⁵⁵⁹⁸ On the latter point, Stojić contends that he requested Rajić’s promotion on 1 November 1993 but the Trial Chamber found that he knew of the crimes as of 4 November 1993. He argues that as the Trial Chamber did not establish that he knew of the crimes before requesting the promotion, it erred in finding that he approved of or accepted the crimes.⁵⁵⁹⁹

1705. The Prosecution responds that Stojić “must have known” that Rajić’s troops had committed crimes in Vareš, at the very latest, by the end of October 1993.⁵⁶⁰⁰ Specifically, it asserts that Stojić’s knowledge was based on reports that reached his superiors, immediate subordinates, and

⁵⁵⁹² Ex. P06219, p. 2.

⁵⁵⁹³ Stojić’s Appeal Brief, para. 347. See Stojić’s Appeal Brief, paras 346, 355. Stojić suggests that the Trial Chamber’s finding on his knowledge was based only on his official role. Stojić’s Appeal Brief, para. 347.

⁵⁵⁹⁴ Stojić’s Appeal Brief, para. 347.

⁵⁵⁹⁵ Stojić’s Appeal Brief, para. 347, referring to Ex. P06454. See *infra*, fns 5608-5609 (clarifying that the relevant meeting occurred on 5 November 1993).

⁵⁵⁹⁶ Stojić’s Appeal Brief, para. 347.

⁵⁵⁹⁷ Stojić’s Appeal Brief, para. 348, referring to Trial Judgement, Vol. 4, para. 1227.

⁵⁵⁹⁸ Stojić’s Appeal Brief, para. 348 (emphasis in original).

⁵⁵⁹⁹ Stojić’s Appeal Brief, para. 354.

⁵⁶⁰⁰ Prosecution’s Response Brief (Stojić), paras 304-305, 309.

the local HVO leaders.⁵⁶⁰¹ The Prosecution also argues that, even if Stojić only learned of the crimes on 4 November 1993, he did nothing to reverse the promotion or sanction Rajić which demonstrates his acceptance of the crimes.⁵⁶⁰²

1706. Stojić replies that the Prosecution: (1) argues that he knew of crimes prior to 4 November 1993 without having appealed the Trial Chamber's finding;⁵⁶⁰³ and (2) ignores that Stupni Do investigations appeared to be underway while failing to identify any power he had to reverse a promotion.⁵⁶⁰⁴

b. Analysis

1707. The Appeals Chamber will first address the challenges to Stojić's knowledge of crimes in Vareš prior to 4 November 1993. The Appeals Chamber notes that the Trial Chamber concluded that Stojić requested and obtained Rajić's promotion although he knew that Rajić had committed crimes.⁵⁶⁰⁵ The Trial Chamber's conclusion is supported by its findings that Stojić: (1) communicated with Rajić between 29 and 31 October 1993 concerning the military operations in Vareš and facilitated those operations which he thought had been carried out satisfactorily;⁵⁶⁰⁶ (2) requested Rajić's promotion on 1 November 1993;⁵⁶⁰⁷ and (3) informed the Government about the military situation in the Vareš area during a meeting on 4 November 1993.⁵⁶⁰⁸ However, the Trial Chamber's finding on Stojić's knowledge of crimes as of 4 November 1993 specifically concerned the crimes committed in Stupni Do.⁵⁶⁰⁹ Notably, in the impugned finding, the Trial Chamber referred to Stojić being informed of "the deaths" and "the destruction of property" as of 4 November 1993.⁵⁶¹⁰ Those crimes occurred in Stupni Do.⁵⁶¹¹ Thus, the Appeals Chamber

⁵⁶⁰¹ Prosecution's Response Brief (Stojić), paras 304-305.

⁵⁶⁰² Prosecution's Response Brief (Stojić), para. 309. The Prosecution asserts that, by requesting and obtaining Rajić's promotion, Stojić showed that he shared the CCP. Prosecution's Response Brief (Stojić), paras 303, 308.

⁵⁶⁰³ Stojić's Reply Brief, para. 70.

⁵⁶⁰⁴ Stojić's Reply Brief, para. 70, referring to Trial Judgement, Vol. 3, paras 487-491, 494-495, Vol. 4, para. 381.

⁵⁶⁰⁵ Trial Judgement, Vol. 4, paras 383, 427.

⁵⁶⁰⁶ Trial Judgement, Vol. 4, paras 380-381.

⁵⁶⁰⁷ Trial Judgement, Vol. 4, para. 381.

⁵⁶⁰⁸ Trial Judgement, Vol. 4, para. 300, referring to Ex. 1D02179. Notably, Exhibit 1D02179 is the minutes of a Government meeting held on 4 November 1993, and attended by Prlić, Stojić and others, which discussed the military and security situation in the Vareš area. Ex. 1D02179.

⁵⁶⁰⁹ Trial Judgement, Vol. 4, paras 383, 443. The Trial Chamber seemed to have based the finding that Stojić knew of the deaths and destruction of property on its earlier finding that, on 4 November 1993, key members of the Government, including Prlić, Praljak, and Boban attended a meeting which analysed the ramifications of the Stupni Do events as well as the involvement of Rajić and his troops in the area which had become public knowledge. Trial Judgement, Vol. 4, paras 382-383, referring to Ex. P06454, pp. 57-60, 72-73. Notably, the minutes of that meeting are dated 5 November 1993 (see Ex. P06454, p. 1) and elsewhere the Trial Chamber referred to this meeting being held on 5 November 1993 (see Trial Judgement, Vol. 4, paras 203, 595). Thus, the Appeals Chamber considers that the Trial Chamber mistakenly referred to this meeting as being held on 4 November 1993 in paragraphs 382 and 761 of the Trial Judgement. However, whether Stojić had the relevant knowledge as of 4 or 5 November 1993, and considering that Stojić did in fact attend another Government meeting on 4 November 1993 in which he briefed the attendees on the Vareš situation, the Trial Chamber's mistake has no impact. See Trial Judgement, Vol. 4, paras 203, 300.

⁵⁶¹⁰ Trial Judgement, Vol. 4, para. 383.

considers that the Trial Chamber found that Stojić: (1) facilitated the military operations of Rajić's troops in Vareš in October 1993, and considered that the operations were satisfactorily carried out justifying Rajić's promotion; and (2) was informed of the crimes in Stupni Do as of 4 or 5 November 1993.⁵⁶¹²

1708. In light of the above, Stojić's involvement in Rajić's promotion therefore predates his awareness of the Stupni Do crimes. Notably, Rajić's promotion was granted by Boban on the same day that Stojić requested it, *i.e.* on 1 November 1993.⁵⁶¹³ The Appeals Chamber also notes that neither the Trial Chamber nor the Parties refer to any evidence on Stojić's ability to reverse a promotion granted by Boban. The Appeals Chamber finds that, to the extent that the Trial Chamber relied on Stojić's involvement in Rajić's promotion to find that he accepted the murders and destruction of property in Stupni Do,⁵⁶¹⁴ the Trial Chamber erred. The impact of this error, if any, will be addressed below.⁵⁶¹⁵ However, the Appeals Chamber is satisfied that Stojić's involvement in Rajić's promotion reasonably supports the Trial Chamber's conclusion that Stojić facilitated the Vareš military operations carried out by Rajić's troops and considered that these operations were carried out satisfactorily.⁵⁶¹⁶

1709. Stojić further disputes the Trial Chamber's inference that he was informed of the murders and destruction of property in Stupni Do as of 4 November 1993 by arguing a lack of evidence. The Appeals Chamber reiterates that a trial chamber may rely on either direct or circumstantial evidence to underpin its findings.⁵⁶¹⁷ Specifically, a trial chamber may draw inferences to establish a fact on which a conviction relies based on circumstantial evidence as long as it is the only reasonable inference that could be drawn from the evidence presented.⁵⁶¹⁸ Regarding Stojić's awareness of these crimes, the Trial Chamber considered that: (1) Government officials – Boban and Prlić – as well as those in charge of the Main Staff – Praljak and Petković – knew of these crimes in Stupni Do which had become public knowledge and were discussed during a meeting on

⁵⁶¹¹ Trial Judgement, Vol. 3, paras 699-703, 752-756, 1554-1556, 1596-1599. See *supra*, para. 1698. See also Trial Judgement, Vol. 4, paras 763, 767.

⁵⁶¹² See *supra*, fn. 5609.

⁵⁶¹³ Trial Judgement, Vol. 4, para. 381, referring to Exs. P06328, P06339, P06362. The Appeals Chamber notes that Exhibit P06362 is a document issued by Stojić on 2 November 1993 stating that Rajić was promoted by a decree from Boban. Ex. P06362.

⁵⁶¹⁴ See Trial Judgement, Vol. 4, para. 383 ("Moreover, insofar as he [...] requested and obtained Ivica Rajić's promotion, the [Trial] Chamber holds that the only reasonable inference it can draw is that Bruno Stojić accepted the murders and the destruction").

⁵⁶¹⁵ See *infra*, paras 1710-1712.

⁵⁶¹⁶ Trial Judgement, Vol. 4, paras 380-381, 383.

⁵⁶¹⁷ *Stanišić and Župljanin* Appeal Judgement, para. 172; *Popović et al.* Appeal Judgement, para. 971; *Stakić* Appeal Judgement, para. 219.

⁵⁶¹⁸ *Stanišić and Župljanin* Appeal Judgement, para. 375; *Popović et al.* Appeal Judgement, para. 1278; *Stakić* Appeal Judgement, para. 219.

5 November 1993;⁵⁶¹⁹ (2) Stojić was the Government member in charge of the armed forces; and (3) Stojić facilitated the Vareš military operations and considered them to have been carried out satisfactorily.⁵⁶²⁰ Notably, Stojić has not challenged the first of these considerations, and the Appeals Chamber dismisses elsewhere his submissions disputing his control over the HVO and the Military Police,⁵⁶²¹ as well as his facilitation of the Vareš military operations.⁵⁶²² The Trial Chamber also found that Stojić briefed the HZ(R) H-B Government about the military and security situation in the Vareš area during another meeting on 4 November 1993.⁵⁶²³ Thus, despite a lack of direct evidence that he was informed of the Stupni Do crimes,⁵⁶²⁴ Stojić fails to show that no reasonable trier of fact could have arrived at the Trial Chamber's conclusion that the only reasonable inference was that by 4 November 1993,⁵⁶²⁵ he was so informed. Stojić's argument is therefore dismissed.

1710. In addition to considering Stojić's role in Rajić's promotion, the Trial Chamber also took account of his continued exercise of his functions while knowing of the crimes in concluding that he accepted those crimes.⁵⁶²⁶ Notably, the Trial Chamber concluded that the HVO informed the international community that investigations into the Stupni Do crimes were underway but that this was intended to deceive the international community.⁵⁶²⁷ The Appeals Chamber notes in this regard that the Trial Chamber did not make any finding on this issue as it concerns Stojić, nor does Stojić point to any evidence that he was informed of an investigation of the crimes. Thus, Stojić's assertion that Stupni Do investigations "appeared to be underway" does not impact on the Trial Chamber's finding that he accepted the crimes. In this regard, the Appeals Chamber recalls that the Trial Chamber found that Stojić exercised his functions as Head of the Department of Defence until 15 November 1993,⁵⁶²⁸ thus he had approximately ten days in which he could have taken some action after learning of the Stupni Do crimes.⁵⁶²⁹ Further, the Trial Chamber found that despite Stojić's power and authority over the HVO and the Military Police,⁵⁶³⁰ he made no serious

⁵⁶¹⁹ Trial Judgement, Vol. 4, paras 382-383, referring to Ex. P06454, pp. 57-60, 72-73. See *supra*, fn. 5608 (clarifying that the relevant meeting occurred on 5 November 1993).

⁵⁶²⁰ Trial Judgement, Vol. 4, para. 383. See Trial Judgement, Vol. 4, paras 380-382. The Trial Chamber also found elsewhere that Stojić briefed the HZ(R) H-B Government about the military and security situation in the Vareš area during another meeting on 4 November 1993. Trial Judgement, Vol. 4, paras 203, 300, referring to Ex. 1D02179.

⁵⁶²¹ See *supra*, paras 1457, 1479, 1491.

⁵⁶²² See *supra*, para. 1703. The Appeals Chamber also rejects Stojić's assertion that the Trial Chamber relied only on his official role to conclude that he had knowledge of the crimes. See *supra*, fn. 5593.

⁵⁶²³ Trial Judgement, Vol. 4, paras 203, 300, referring to Ex. 1D02179.

⁵⁶²⁴ See *supra*, para. 1704.

⁵⁶²⁵ See *supra*, fn. 5609.

⁵⁶²⁶ Trial Judgement, Vol. 4, para. 383.

⁵⁶²⁷ Trial Judgement, Vol. 3, paras 480, 484, 488-492.

⁵⁶²⁸ Trial Judgement, Vol. 4, para. 293. See *supra*, para. 1516.

⁵⁶²⁹ See *supra*, para. 1490.

⁵⁶³⁰ See *supra*, paras 1405, 1457-1458, 1479-1480, 1500.



effort to stop the commission of crimes by their members.⁵⁶³¹ By failing to do so, even with the short time-frame available,⁵⁶³² the Appeals Chamber finds that the Trial Chamber reasonably concluded, as the only available inference from the evidence, that Stojić accepted the murders and destruction of property. Stojić's arguments on this point are dismissed.

1711. Moreover, based on the above,⁵⁶³³ the Appeals Chamber finds that the Trial Chamber's error in relying on Rajić's promotion to find that Stojić accepted the murders and destruction of property in Stupni Do does not impact its overall conclusion on his acceptance of the crimes. Further, Stojić's continued participation in the JCE after being aware of the events in Vareš Municipality – albeit for a short time frame – was also reasonably used to infer his shared intent. Stojić's sub-grounds of appeal 36.1 and 36.3 are dismissed.

(iii) Conclusion

1712. In sum, Stojić's ground of appeal 36 is dismissed as he has failed to demonstrate an error by the Trial Chamber that impacts on its consideration of his participation in the JCE based on his involvement in the military operations in Vareš Municipality.

(i) Detention Centres (Stojić's Ground 37)

(i) Whether Stojić was responsible for the detention centres (Stojić's Sub-ground 37.1, in part)

1713. In discussing Stojić's responsibility for the detention centres, the Trial Chamber found that on 6 August 1993 Stojić ordered that the "procedures for interrogation and release of detainees in the HZ H-B detention centres be better organised".⁵⁶³⁴ The Trial Chamber also noted that during a 6 September 1993 meeting attended by Stojić, the Government took decisions to bring the detention centres for "prisoners of war" in line with the standards of international law and tasked the DoJA as well as the Department of Defence with overseeing the implementation of these decisions.⁵⁶³⁵ Furthermore, the Trial Chamber found that Boban ordered the Department of Defence and the Main

⁵⁶³¹ Trial Judgement, Vol. 4, para. 427.

⁵⁶³² Cf. *Popović et al.* Appeal Judgement, para. 1898 & fn. 5324 (considering that Vinko Pandurević had about 30 hours to prevent his subordinates from committing crimes and finding that while he "would have indeed needed to act quickly, issuing orders requires little time and responsibility for this could have been delegated if necessary."); paras 1914 (finding that Pandurević had a few hours in which he might have made the relevant inquiries or issued orders in relation to preventing his subordinates from committing crimes), 1915 (finding that Pandurević had less than 24 hours but had ample time and opportunity to initiate action to prevent his subordinates from participating in persecution).

⁵⁶³³ See *supra*, para. 1710.

⁵⁶³⁴ Trial Judgement, Vol. 4, para. 384, referring to Ex. P04002, p. 1.

⁵⁶³⁵ Trial Judgement, Vol. 4, para. 385, referring to Ex. P04841.

Staff to comply with international law in the treatment of POWs.⁵⁶³⁶ It pointed out that the regulations for the treatment of POWs in the detention centres, promulgated by Stojić on 11 February 1993, were still in force in November 1993 and provided for, *inter alia*, the sanitary, dietary, and working conditions.⁵⁶³⁷ The Trial Chamber inferred from this evidence that Stojić was informed of the detention of Muslims and that this detention was not in conformity with international law.⁵⁶³⁸ It also concluded that even if Stojić “did seek to improve the detention conditions and the treatment of detainees – as the [Trial] Chamber found in the parts relating to the various detention centres – the conditions and treatment remained poor until the day the centres were closed down.”⁵⁶³⁹

a. Arguments of the Parties

1714. According to Stojić, the Trial Chamber erred in inferring that he was responsible for the conditions at detention centres from the measures which were promulgated to improve those conditions and which were ultimately ineffective.⁵⁶⁴⁰ Stojić submits that the Trial Chamber failed to articulate a basis for finding that he was responsible for detained civilians as they were under the responsibility of the ODPB or the DoJA.⁵⁶⁴¹ He argues that it was the ODPB that was tasked with improving conditions concerning accommodation and diet during the Government meeting of 6 September 1993,⁵⁶⁴² and that Exhibits P04841, the minutes of the Government working meeting of 6 September 1993, and P05104, Boban’s follow up order of 15 September 1993, did not place additional responsibilities on the Department of Defence.⁵⁶⁴³ In the same vein, Stojić contends that the order that Boban issued after this Government meeting contained only action for the Main Staff to process.⁵⁶⁴⁴ Similarly, Stojić argues that the fact that the requests of the Health Section of the Department of Defence for improvement in conditions were not implemented does not mean that he accepted or was responsible for the poor conditions. Stojić contends that another alternative inference is that he failed to improve the conditions because he lacked the power to do so,⁵⁶⁴⁵ and

⁵⁶³⁶ Trial Judgement, Vol. 4, para. 385, referring to Ex. P05104.

⁵⁶³⁷ Trial Judgement, Vol. 4, para. 386.

⁵⁶³⁸ Trial Judgement, Vol. 4, para. 387.

⁵⁶³⁹ Trial Judgement, Vol. 4, para. 387.

⁵⁶⁴⁰ Stojić’s Appeal Brief, para. 366, referring to Trial Judgement, Vol. 4, paras 384-386, 395, 407. Stojić refers to the Detention Commission that he attempted to establish in August 1993 for improving the prison conditions and notes that the Trial Chamber found no evidence that it carried out its functions. Stojić’s Appeal Brief, para. 366, referring to Ex. P03995, Trial Judgement, Vol. 1, para. 625. Stojić replies that his acceptance of unlawful detentions is not the only reasonable inference available from the fact that Gabela Prison detainees were not categorised. Stojić’s Reply Brief, para. 69.

⁵⁶⁴¹ Stojić’s Appeal Brief, para. 359, referring to, *inter alia*, Exs. P03995, 1D01666, 5D01004, 4D01105, P02925, P02915.

⁵⁶⁴² Stojić’s Appeal Brief, para. 359, referring to Ex. P04841.

⁵⁶⁴³ Stojić’s Appeal Brief, para. 359.

⁵⁶⁴⁴ Stojić’s Appeal Brief, para. 359, referring to Exs. P05104, P05199, P05188.

⁵⁶⁴⁵ Stojić’s Appeal Brief, para. 366, referring to, *inter alia*, Exs. P04145, 2D00412, P05503, 2D02000, para. 70. 2D00717, Trial Judgement, Vol. 4, para. 405.

submits in that regard that there was no evidence that the Health Section had *de jure* powers to order improvements.⁵⁶⁴⁶ He also claims that there is no evidence that the rules he issued in February 1993, before POWs were detained, were followed, arguing that the Heliodrom operated according to the rules issued by Ćorić in September 1992.⁵⁶⁴⁷

1715. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić exercised authority over the Heliodrom, Dretelj Prison, and Gabela Prison and that he had authority to improve the detention conditions.⁵⁶⁴⁸ The Prosecution also contends that Stojić ignores the role he and the authorities under his control played in operating these detention centres.⁵⁶⁴⁹ According to the Prosecution, the evidence Stojić cites does not show that the ODPR or the DoJA displaced his authority over detained civilians.⁵⁶⁵⁰ It further argues that the Trial Chamber reasonably relied on Stojić's 11 February 1993 instructions regulating the treatment of POWs and that the fact that these instructions were not followed shows that he took no steps to ensure compliance.⁵⁶⁵¹ The Prosecution also submits that the Health Section of the Department of Defence could issue orders concerning health-care provisions at Dretelj Prison, Gabela Prison, and the Heliodrom and yet no such care was provided in the first two, while some detainees received no medical care in the Heliodrom.⁵⁶⁵² In that regard, the Prosecution submits that Stojić misrepresents the Trial Judgement by claiming that the Trial Chamber found there was no evidence of the Health Section's *de jure* powers to order improvements.⁵⁶⁵³

⁵⁶⁴⁶ Stojić's Appeal Brief, para. 366, referring to Trial Judgement, Vol. 1, para. 619.

⁵⁶⁴⁷ Stojić's Appeal Brief, para. 366, referring to Trial Judgement, Vol. 2, paras 1407, 1415, 1458, Vol. 4, para. 386, Exs. P01474, P00352, p. 14. The Appeals Chamber notes that Stojić mistakenly dates Ćorić's instructions as September 1993 and considers this to be a typographical error.

⁵⁶⁴⁸ Prosecution's Response Brief (Stojić), paras 313 (referring to, *inter alia*, Trial Judgement, Vol. 4, paras 312, 320, 384-386, 388, 390-395, 398-407, 423, 427, Ex. P03995), 332. According to the Prosecution, a decree of 3 July 1992 concerning the treatment of persons captured during combat in the HZ H-B signed by Mate Boban placed the Department of Defence in charge of HVO detention centres. Prosecution's Response Brief (Stojić), para. 313, referring to Ex. P00292. See Trial Judgement, Vol. 1, para. 648.

⁵⁶⁴⁹ Prosecution's Response Brief (Stojić), para. 328. The Prosecution avers that Stojić recognised his responsibility for detained civilians as he formed the Detention Commission and that he accepted unlawful detentions as nothing was done to categorise Gabela Prison detainees. Prosecution's Response Brief (Stojić), para. 329, referring to Trial Judgement, Vol. 3, paras 202-204, Vol. 4, para. 407, Ex. P03995.

⁵⁶⁵⁰ Prosecution's Response Brief (Stojić), para. 330. The Prosecution asserts that: (1) Stojić relies on the 6 September 1993 meeting but ignores the fact that the Department of Defence was tasked at that meeting with improving detention conditions; and (2) Stojić cites evidence showing that the Military Police – which was found to have been under his command and effective control – allowed Heliodrom detainees to be taken to work. Prosecution's Response Brief (Stojić), para. 330, referring to Trial Judgement, Vol. 4, para. 320, Exs. P02915, P04841, pp. 1-3.

⁵⁶⁵¹ Prosecution's Response Brief (Stojić), para. 331, referring to Trial Judgement, Vol. 2, para. 1431, Vol. 4, paras 386, 395, 397-399.

⁵⁶⁵² Prosecution's Response Brief (Stojić), para. 332, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1461-1463, Vol. 3, paras 30, 177, 180.

⁵⁶⁵³ Prosecution's Response Brief (Stojić), para. 332, referring to Trial Judgement, Vol. 1, para. 619.

b. Analysis

1716. The Appeals Chamber recalls that a trial judgement must be read as a whole,⁵⁶⁵⁴ and that the subsection dealing with Stojić's responsibility for detention centres should be read together with the other parts of the Trial Judgement. Bearing this in mind, the Appeals Chamber considers that the Trial Chamber did not err in inferring that Stojić was responsible for the conditions in detention centres on the basis that the promulgated measures were ineffective as submitted by Stojić.⁵⁶⁵⁵ The implication of Stojić's submission here is that the Trial Chamber relied solely on these unsuccessful measures in order to infer his responsibility for those conditions, which is not the case. Notably, the Trial Chamber made findings on the identity of the personnel that operated those detention centres including the armed forces deployed to these centres,⁵⁶⁵⁶ and found that Stojić commanded and had "effective control" over most of these armed forces and was hierarchically superior to Ćorić.⁵⁶⁵⁷ Moreover, the Trial Chamber concluded that Stojić could issue orders directly to the HVO regarding the detention centres and to Ćorić on the release of detainees.⁵⁶⁵⁸ The Trial Chamber also made findings relating to Stojić's personal involvement with respect to the Heliodrom's security arrangements, access by international organisations and journalists, and release of detainees.⁵⁶⁵⁹

1717. Further, in the introductory paragraphs of the subsection titled "Detention Centres", the Trial Chamber, in reaching its conclusion about Stojić's knowledge of conditions of detention in detention centres, discussed the level of authority Stojić had regarding those conditions based on the tasks given to the Department of Defence in relation thereto, and based on certain actions Stojić took in 1993, in accordance with that authority.⁵⁶⁶⁰ Thus, the Trial Chamber found that the Department of Defence was tasked by the Government and Boban to ensure compliance with standards of international law in relation to the detention centres and treatment of prisoners.⁵⁶⁶¹ In respect of Exhibit P05104, namely Boban's order of 15 September 1993 for conditions of detention and treatment of POWs to be improved in compliance with the Geneva Conventions, the Appeals Chamber rejects Stojić's argument that Boban's order contained only action that was to be implemented by the Main Staff as this order was clearly addressed to both the Main Staff and the

⁵⁶⁵⁴ *Stanišić and Župljanin* Appeal Judgement, paras 138, 376, 705; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

⁵⁶⁵⁵ See *supra*, para. 1714.

⁵⁶⁵⁶ See Trial Judgement, Vol. 2, paras 1400-1405, 1407-1412, 1415-1416, 1428, 1441, 1452, 1456, 1464, 1472-1473, 1476, 1492 (the Heliodrom), Vol. 3, paras 17-21, 25-28, 30, 32-36 (Dretelj Prison), 165, 168-169, 171, 173-175, 180, 187-192 (Gabela Prison), Vol. 4, paras 955, 959, 964, 968, 988, 991 (Ćorić's involvement in the detention centres).

⁵⁶⁵⁷ See Trial Judgement, Vol. 4, paras 302, 312, 314, 320, 326.

⁵⁶⁵⁸ Trial Judgement, Vol. 4, paras 306, 314. See Trial Judgement, Vol. 1, para. 915.

⁵⁶⁵⁹ Trial Judgement, Vol. 2, paras 1410, 1429, 1431-1432, 1441, 1450, 1452.

⁵⁶⁶⁰ Trial Judgement, Vol. 4, paras 384-386. Stojić's other actions and omissions were discussed in the sections on the specific detention centres. See Trial Judgement, Vol. 4, paras 388-395, 397-407.

⁵⁶⁶¹ See Trial Judgement, Vol. 4, para. 385; *supra*, para. 1713.

Department of Defence.⁵⁶⁶² In the Appeals Chamber's view, a reasonable trier of fact could have interpreted the fact that the order was sent to both organs as indicating that the Department of Defence was to ensure that the Main Staff and the HVO complied with the order and implemented it on the ground.⁵⁶⁶³ As such, the Trial Chamber's finding that Boban ordered both the Department of Defence and the Main Staff to ensure compliance with international law in combat and treatment of prisoners is not contradicted.⁵⁶⁶⁴ Accordingly, Stojić fails to show that the Trial Chamber could not rely on Exhibit P05104 to reach its conclusions.

1718. Moreover, in the Appeals Chamber's view, the fact that some documents show that the ODPB or the DoJA dealt with civilians detained in detention centres⁵⁶⁶⁵ does not impact on the fact that the Department of Defence was tasked with improving conditions of detention. In this respect, Stojić fails to demonstrate that any authority exercised by the ODPB or the DoJA precludes him from also exercising authority over the detention centres. Contrary to Stojić's submission, the minutes of the Government's working group meeting of 6 September 1993 clearly show that the Department of Defence was tasked with, *inter alia*, improving conditions in detention centres and that it was given a deadline of 15 days to do so.⁵⁶⁶⁶ Stojić does not show how the fact that the ODPB was required to improve the accommodation and diet of the detainees or that the DoJA was tasked jointly with the Department of Defence to adopt regulations pertaining to the procedure towards detained persons affects the Trial Chamber's finding. Accordingly, the Appeals Chamber considers that it was reasonable for the Trial Chamber to rely on Exhibit P04841 to reach its conclusions. Similarly, the Appeals Chamber also considers that Stojić's submission that his regulations of 11 February 1993 were never followed is unpersuasive and he does not show how this affects the Trial Chamber's findings. In the Appeals Chamber's view, a reasonable trier of fact could have relied on these regulations to arrive at the conclusions the Trial Chamber reached regarding Stojić's knowledge and therefore consider them a relevant factor in determining his authority and responsibility over detained civilians.⁵⁶⁶⁷

1719. Stojić also challenges the Trial Chamber's consideration of information given to him that preventive measures recommended by the Health Section of the Department of Defence for Gabela

⁵⁶⁶² See Ex. P05104.

⁵⁶⁶³ In that regard, the Appeals Chamber recalls that the Trial Chamber found that the Main Staff was accountable to the Department of Defence with regards to a number of matters and that the HVO brigade commanders were subordinated to, *inter alia*, the Head of the Department of Defence. See Trial Judgement, Vol. 1, para. 564. See also *supra*, paras 1409-1410, 1422-1423, 1427-1435.

⁵⁶⁶⁴ See Trial Judgement, Vol. 4, para. 385.

⁵⁶⁶⁵ See Exs. 1D01666, 5D01004, P02925. While Stojić also relies on Exhibit P02915 to show that the DoJA had authority over detained civilians in the Heliodrom, the Appeals Chamber notes that this exhibit makes no reference to the DoJA and instead shows that the Military Police was allowed to take detainees from the Heliodrom to work. Furthermore, the exhibit also bears the stamp of the Department of Defence. Ex. P02915.

⁵⁶⁶⁶ Ex. P04841, pp. 2-3.

⁵⁶⁶⁷ See Trial Judgement, Vol. 4, paras 386-387.

Prison were not implemented.⁵⁶⁶⁸ The fact that these recommendations were ultimately not implemented, despite the specific mandate of the Department of Defence in relation to conditions of detention, was referred to by the Trial Chamber in its conclusion that even if Stojić “did seek to improve the detention conditions and the treatment of detainees – as the [Trial] Chamber found in the parts relating to the various detention centres – the conditions and treatment remained poor until the day the centres were closed down”.⁵⁶⁶⁹ It was also referred to later in the discussion on Dretelj Prison and Gabela Prison when the Trial Chamber found that Stojić – even though informed of the continued bad conditions and the lack of compliance with the Health Section’s recommendations – did nothing, leading to the conclusion that he “accepted the extremely precarious conditions and the mistreatment in the prisons of Dretelj and Gabela”.⁵⁶⁷⁰

1720. In arguing that there is no evidence that the Health Section had *de jure* powers to make requests for improvement of conditions, Stojić relies on the Trial Chamber’s finding that it had no evidence regarding the “full complement of powers” given to the Health Section.⁵⁶⁷¹ However, he ignores the Trial Chamber’s finding only two paragraphs later, that the Health Section was tasked with visiting HVO detention centres, of which it informed Stojić.⁵⁶⁷² The Trial Chamber then proceeded to find later in the Trial Judgement that the Health Section was directly involved with the provision of medical care at the Heliodrom, Dretelj Prison, and Gabela Prison.⁵⁶⁷³ Thus, Stojić’s argument, to the extent it concerns any lack of authority of the Health Section, is dismissed. Moreover, Stojić ignores the fact that the finding that he accepted the poor detention conditions was not based only on the non-implementation of the Health Section’s recommendations.⁵⁶⁷⁴

1721. Based on the above, the Appeals Chamber considers that the Trial Chamber did not only consider the ineffective promulgated measures but a multitude of other factors, most importantly, the role that Stojić, and the authorities he controlled, played in operating, assessing, and improving those detention centres, as well as his knowledge about the conditions therein. Therefore, Stojić has not shown that the Trial Chamber erred with regard to his authority over, and responsibility for the conditions at, the detention centres. Moreover, Stojić has not demonstrated that the Trial Chamber erred in considering the ineffective measures taken to improve detention conditions as a factor in determining Stojić’s responsibility. His arguments to the contrary are dismissed.

⁵⁶⁶⁸ See Trial Judgement, Vol. 4, para. 405.

⁵⁶⁶⁹ Trial Judgement, Vol. 4, para. 387.

⁵⁶⁷⁰ Trial Judgement, Vol. 4, para. 407. See Trial Judgement, Vol. 4, paras 405-406.

⁵⁶⁷¹ Trial Judgement, Vol. 1, para. 619. See Stojić’s Appeal Brief, para. 366.

⁵⁶⁷² Trial Judgement, Vol. 1, para. 621.

⁵⁶⁷³ Trial Judgement, Vol. 2, paras 1461-1464, Vol. 3, paras 30, 177-180. See Trial Judgement, Vol. 4, paras 392, 404-405.

⁵⁶⁷⁴ The Appeals Chamber also does not see how Stojić’s arguments regarding the fact that the Detention Commission did not carry out its function assists him. If anything, it affirms the Trial Chamber’s findings that he made no genuine efforts to improve the situation in the detention centres. His argument is dismissed.

(ii) Stojić's involvement in the Heliodrom and awareness of detention conditions (Stojić's Sub-grounds 37.1, in part, and 37.2)

1722. Having made its finding about Stojić's knowledge of conditions of detention in the detention centres generally,⁵⁶⁷⁵ the Trial Chamber turned to Stojić's involvement with the Heliodrom. The Trial Chamber first recalled its findings about the harsh conditions of detention that existed there.⁵⁶⁷⁶ It also found that various officials, including the Heliodrom wardens, informed Stojić on several occasions about the conditions of detention there and about the detainees' work on the front line which resulted in the death and wounding of some detainees.⁵⁶⁷⁷ The Trial Chamber determined that Stojić took no measures to rectify those conditions and found that "[i]nasmuch as he continued to exercise his functions in the [Government], [...] Stojić accepted the bad detention conditions at the Heliodrom".⁵⁶⁷⁸

a. Whether Stojić was responsible for crimes committed at the Heliodrom (Stojić's Sub-ground 37.1, in part)

i. Arguments of the Parties

1723. Stojić argues that the Trial Chamber erred in finding that he failed to rectify the detention conditions at the Heliodrom without making "an unequivocal preliminary finding that he had the power to do so"⁵⁶⁷⁹ which, he claims, was inconsistent with the approach the Trial Chamber used in relation to other detention centres.⁵⁶⁸⁰ Stojić also claims that no reasonable chamber could have found that he was responsible for conditions at the Heliodrom as: (1) he was not found to have had any role in establishing it; (2) he merely formalised Mile Pušić's appointment as the warden of the Heliodrom, as ordered by Ćorić; (3) the logistics, access to the Heliodrom, and the release of the detainees were controlled by the military chain of command; and (4) there is no evidence that he issued orders to the Heliodrom wardens or was involved in its daily activities.⁵⁶⁸¹ Stojić avers that he was only one of several recipients of reports about the detention conditions – most of which he did not receive, and that the only remaining report he received from the Health Section, namely

⁵⁶⁷⁵ Trial Judgement, Vol. 4, paras 384-387.

⁵⁶⁷⁶ Trial Judgement, Vol. 4, para. 394, recalling Trial Judgement, Vol. 2, paras 1517-1545, 1552-1565, 1594-1605.

⁵⁶⁷⁷ Trial Judgement, Vol. 4, paras 388-392, 395, relying on Exs. P04186, P04352, P05812, P05503.

⁵⁶⁷⁸ Trial Judgement, Vol. 4, para. 395.

⁵⁶⁷⁹ Stojić's Appeal Brief, para. 357. See Stojić's Appeal Brief, para. 356.

⁵⁶⁸⁰ Stojić's Appeal Brief, paras 357 (referring to Trial Judgement, Vol. 2, paras 1379-1663, Vol. 4, paras 388-395), 367. According to Stojić, the Trial Chamber made no findings that he was responsible for Vojno Detention Centre, Ljubuški Prison, and Vitina-Otok Camp and thus made no findings that he failed to rectify the conditions there. Stojić's Appeal Brief, para. 357, referring to Trial Judgement, Vol. 2, paras 1675-1686, 1789-1799, 1852-1857.

⁵⁶⁸¹ Stojić's Appeal Brief, para. 358, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1395, 1416, 1428, 1445-1456, Exs. P00452, p. 1, P00352, pp. 12-13. Stojić avers that the order for detention of HVO Muslims at the Heliodrom came from Petković and was then passed through the military chain of command. Stojić's Appeal Brief, para. 359, referring to, *inter alia*, Exs. P03019, P04745.

Exhibit P05503, does not establish that he was responsible for medical care or security at the Heliodrom.⁵⁶⁸²

1724. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić exercised authority over the Heliodrom and its detention conditions,⁵⁶⁸³ and argues that any lack of findings regarding other detention centres is irrelevant.⁵⁶⁸⁴ Specifically, regarding the Heliodrom, the Prosecution argues that: (1) it was established by Ćorić who was under Stojić's control;⁵⁶⁸⁵ (2) the Trial Chamber acknowledged Stojić's decision of 3 September 1992 to establish a central military prison at its site, and his appointment of Mile Pušić on that day;⁵⁶⁸⁶ and (3) Stojić was not involved in its administration simply because he did not want to be involved.⁵⁶⁸⁷ With respect to the Health Section report, the Prosecution responds that ultimately Boban directed his order to both the Main Staff and the Department of Defence.⁵⁶⁸⁸ It also argues that Stojić misrepresents the Trial Judgement by asserting that he was not responsible for medical care or security at the Heliodrom since he had control over: (1) the Military Police that secured the Heliodrom, and the units of the armed forces that provided medical supplies and supervised medical treatment;⁵⁶⁸⁹ and (2) the personnel from the HVO, Military Police, and the SIS who dealt with logistics, prison access, and prisoner release.⁵⁶⁹⁰

⁵⁶⁸² Stojić's Appeal Brief, para. 360, referring to Trial Judgement, Vol. 2, paras 1408, 1460, Ex. P05503. See *infra*, para. 1732. Stojić asserts that Exhibit P05503 was produced in response to Boban's order to the Main Staff that the conditions be improved. Stojić's Appeal Brief, para. 360, referring to Ex. P05104.

⁵⁶⁸³ Prosecution's Response Brief (Stojić), para. 313, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 390-392, 395, 399-407, 423, 427. See also Appeal Hearing, AT. 334-335 (21 Mar 2017).

⁵⁶⁸⁴ Prosecution's Response Brief (Stojić), para. 314.

⁵⁶⁸⁵ Prosecution's Response Brief (Stojić), para. 315, referring to Trial Judgement, Vol. 2, para. 1395, Vol. 4, para. 320.

⁵⁶⁸⁶ Prosecution's Response Brief (Stojić), para. 315, referring to Trial Judgement, Vol. 2, paras 1391, 1395. The Prosecution also submits that: (1) Ćorić acknowledged that Stojić's decision of 3 September 1992 was taken following the request of the Military Police Administration; and (2) Ćorić's subsequent order regarding Mile Pušić's appointment demonstrated Stojić's control over Ćorić. Prosecution's Response Brief (Stojić), para. 315, referring to Trial Judgement, Vol. 2, para. 1394.

⁵⁶⁸⁷ Prosecution's Response Brief (Stojić), para. 316. The Prosecution also argues that while authorities reported problems in the Heliodrom to Stojić and requested that he solve them, he did nothing. It further avers that Stojić's intervention would not have been requested if he was powerless. Prosecution's Response Brief (Stojić), paras 316 (referring to, *inter alia*, Trial Judgement, Vol. 4, paras 393, 395, 423, 427, Josip Praljak, T. 14734 (27 Feb 2007), Exs. P03209, P04186, P04352, P05812), 319.

⁵⁶⁸⁸ Prosecution's Response Brief (Stojić), para. 317, referring to Trial Judgement, Vol. 4, para. 385.

⁵⁶⁸⁹ Prosecution's Response Brief (Stojić), para. 318, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1405, 1407-1409, 1412, 1464, Vol. 4, paras 312, 320. The Prosecution argues that the provision of medical supplies was initially the Department of Defence's responsibility and the Health Section was directly involved in the provision of health treatment at the Heliodrom. Prosecution's Response Brief (Stojić), para. 318.

⁵⁶⁹⁰ Prosecution's Response Brief (Stojić), para. 319, referring to Trial Judgement, Vol. 2, paras 1416, 1428, 1441, 1452, 1456, Vol. 4, paras 302, 312, 320. The Prosecution further submits that it is irrelevant that the Muslim HVO members were detained at the Heliodrom pursuant to Petković's order. Prosecution's Response Brief (Stojić), para. 320.

1725. Stojić replies that the Prosecution concedes that no explicit findings were made on his authority over the Heliodrom. He argues that “[a] reasoned decision requires an express finding on such a critical issue”, and that any implicit finding is untenable given the lack of evidence.⁵⁶⁹¹

ii. Analysis

1726. The Trial Chamber found that Stojić took no measures to rectify the detention conditions in the Heliodrom and concluded that “[i]nasmuch as he continued to exercise his functions in the [Government], [...] Stojić accepted the bad detention conditions at the Heliodrom and the use of detainees for work on the front line”.⁵⁶⁹² Concerning Stojić’s argument that the Trial Chamber failed to make an unequivocal finding that he had the power to improve the conditions in the Heliodrom, the Appeals Chamber accepts that it would have been preferable for the Trial Chamber to expressly find that Stojić had the authority over the Heliodrom, as it did with Gabela Prison and Dretelj Prison, and that by not doing so the Trial Chamber failed to provide a reasoned opinion. However, as noted above,⁵⁶⁹³ the Trial Chamber did find that the Department of Defence was tasked with improving the conditions of detention of POWs and that Stojić had “effective control” over most of the HVO and Military Police deployed to the detention centres, including the Heliodrom. Thus, it is clear that the evidence outlined in the introductory paragraphs was used by the Trial Chamber to show the mandate Stojić had to improve the conditions of detention in the detention centres generally and thus in the Heliodrom.

1727. Moreover, the Trial Chamber: (1) heard evidence that Stojić was responsible for resolving issues likely to arise in detention centres and could take the decision to close those centres;⁵⁶⁹⁴ (2) found that Stojić had authority over the release of detainees;⁵⁶⁹⁵ (3) found that Stojić participated in Government meetings and took decisions on the situation in the detention centres;⁵⁶⁹⁶ and (4) observed that Stojić issued orders concerning the detention centres.⁵⁶⁹⁷ As indicated earlier, the Trial Chamber also made findings relating to Stojić’s personal involvement with respect to the Heliodrom’s security arrangements, access by international organisations and journalists, and release of detainees.⁵⁶⁹⁸ The Appeals Chamber notes that Stojić does not challenge most of these

⁵⁶⁹¹ Stojić’s Reply Brief, para. 69, citing *Haradinaj et al.* Appeal Judgement, para. 128, *Krajišnik* Appeal Judgement, para. 139.

⁵⁶⁹² Trial Judgement, Vol. 4, para. 395.

⁵⁶⁹³ See *supra*, paras 1713, 1716-1718.

⁵⁶⁹⁴ Trial Judgement, Vol. 1, para. 542.

⁵⁶⁹⁵ Trial Judgement, Vol. 1, paras 862, 915.

⁵⁶⁹⁶ Trial Judgement, Vol. 4, para. 297.

⁵⁶⁹⁷ Trial Judgement, Vol. 4, para. 306.

⁵⁶⁹⁸ See *supra*, para. 1716.

findings.⁵⁶⁹⁹ Considering all this, the Appeals Chamber is satisfied that the Trial Chamber made sufficient factual findings to show that Stojić had authority over the Heliodrom. Accordingly, the Appeals Chamber finds that a reasonable trier of fact could have found that Stojić had authority over the detention centres, including the Heliodrom, and thus could have taken measures to improve the detention conditions.⁵⁷⁰⁰

1728. The Appeals Chamber now turns to Stojić's more specific arguments. First, the Appeals Chamber notes that, in finding that Stojić received continuous reports on the Heliodrom,⁵⁷⁰¹ the Trial Chamber considered a report from Stanko Božić, the Heliodrom warden, on logistical problems concerning lack of food and space at the Heliodrom and requesting that Stojić find a solution.⁵⁷⁰² It also considered that various officials, including the Heliodrom wardens, informed Stojić on several occasions about the conditions of detention and the detainees' work on the front line which resulted in the death and wounding of some detainees.⁵⁷⁰³ The Appeals Chamber is satisfied that a reasonable trier of fact could have concluded that the reports sent to Stojić by the Heliodrom wardens show that he was viewed as someone who could improve the detention conditions. Stojić's assertion that he was only one of many recipients of these reports is insufficient to show an error.

1729. Moreover, the Trial Chamber reasonably relied on these reports to find that Stojić knew of the detention conditions.⁵⁷⁰⁴ Other than challenging his receipt of these reports, Stojić argues that Exhibit P05503, that is, the report from the Health Section addressed to him personally, does not establish his responsibility for medical care or security. In this respect, the Trial Chamber considered this report – which described the various problems at the Heliodrom such as insufficient guards, overcrowding, and disastrous hygienic conditions – as evidence that Stojić was informed of

⁵⁶⁹⁹ While Stojić challenges the finding that he had authority over the release of detainees and that he could issue orders to the Heliodrom wardens, the Appeals Chamber dismisses this challenge elsewhere. See *supra*, para. 1723, *infra*, para. 1728.

⁵⁷⁰⁰ In addition, the Appeals Chamber considers that Stojić's arguments relating to Vojno Detention Centre, Ljubuški Prison, and Vitina-Otok Camp, are speculative and dismisses them as such. The Appeals Chamber notes that Stojić merely speculates that the Trial Chamber did not discuss Vojno Detention Centre and Vitina-Otok Camp in relation to his JCE responsibility due to his lack of authority over them but does not present convincing arguments or address the lack of evidence as to his direct involvement in those centres. As for Ljubuški Prison, while correct that the Trial Chamber did not conclude that Stojić failed to rectify conditions in Ljubuški and made no explicit findings on his authority over it, he was nevertheless convicted for the crimes that took place there on the basis that he had notice of and accepted the crimes committed there. Trial Judgement, Vol. 4, para. 396. See *supra*, para. 1560 (reversing the findings on Stojić's knowledge and acceptance of the detention of Muslim men who did not belong to any armed forces at Ljubuški Prison).

⁵⁷⁰¹ Trial Judgement, Vol. 4, para. 395.

⁵⁷⁰² Trial Judgement, Vol. 4, para. 388, referring to Ex. P04186.

⁵⁷⁰³ Trial Judgement, Vol. 4, paras 388-391, referring to Exs. P04352 (noting that an ICRC representative who visited the Heliodrom complained that the conditions of detention, specifically the inadequate food, the use of detainees for work, and the isolation cells, contravened the Geneva Conventions and informing Stojić that the number of wounded and killed detainees was increasing by the day), P05812 (informing Stojić, among other things, that detainees were beaten while at work and expressing concern about the large numbers of severely wounded and suffering detainees).

⁵⁷⁰⁴ The Appeals Chamber dismisses Stojić's challenges to his receipt of reports elsewhere. See *infra*, para. 1734.

the detention conditions.⁵⁷⁰⁵ Thus, Stojić misinterprets the Trial Chamber's reliance on the report from the Health Section. Furthermore, as noted earlier, the Trial Chamber also made findings relating to Stojić's personal involvement with respect to the Heliodrom's security arrangements and the release of detainees, as well as with regard to the personnel operating in the Heliodrom, all of whom were found to be under Stojić's control.⁵⁷⁰⁶ Thus, Stojić's argument that Exhibit P05503 does not establish his responsibility is dismissed as unpersuasive.

1730. Likewise, the Appeals Chamber dismisses Stojić's remaining contentions on his alleged lack of involvement in the establishment of the Heliodrom and its daily activities, and the control exercised through the military chain of command. In light of the above considerations and his "effective control" over most of the HVO and the Military Police deployed to detention centres,⁵⁷⁰⁷ Stojić fails to show how these contentions could call into question the Trial Chamber's findings. Notably, while the Trial Chamber held that it could not draw any conclusions as to the "precise role" Stojić played in establishing the Heliodrom, it was ultimately satisfied that Ćorić, whom it found to be under Stojić's control in some respects, ordered its establishment.⁵⁷⁰⁸

1731. Therefore, on the basis of the foregoing, the Appeals Chamber considers that Stojić has failed to show that the Trial Chamber erred in concluding that he took no measures to rectify the bad detention conditions at the Heliodrom.

b. Whether Stojić was aware of the conditions at the Heliodrom (Stojić's Sub-ground 37.2)

1732. Stojić submits that the Trial Chamber erred in finding that he knew about the conditions at the Heliodrom through reports and letters because there is no evidence that he actually received or read any of these reports.⁵⁷⁰⁹ Stojić contends that reports received by the Department of Defence were marked with a "receipt stamp", recorded in an intake register, and then signed by him.⁵⁷¹⁰ He argues that none of the documents were stamped or signed by him,⁵⁷¹¹ and that the intake register

⁵⁷⁰⁵ Trial Judgement, Vol. 4, paras 392, 395.

⁵⁷⁰⁶ See *supra*, para. 1716, fns 5656 & 5657. The Appeals Chamber also finds that the sections of the Trial Judgement cited by Stojić as support for his contention that it was expressly found that he was not responsible for medical care or security at the Heliodrom (see Stojić's Appeal Brief, para. 360 & fn. 885) in fact do not speak to Stojić or make any such finding. See Trial Judgement, Vol. 2, paras 1408, 1460.

⁵⁷⁰⁷ See *supra*, paras 1716, 1726-1728.

⁵⁷⁰⁸ Trial Judgement, Vol. 2, para. 1395. See Trial Judgement, Vol. 4, paras 314, 320. The Appeals Chamber notes that the Trial Chamber also referred to Stojić's decision of 3 September 1992 to establish a central military prison at the Heliodrom site and to appoint Mile Pušić as its warden. Trial Judgement, Vol. 2, para. 1391, referring to Ex. P00452, p. 1.

⁵⁷⁰⁹ Stojić's Appeal Brief, para. 368, referring to Trial Judgement, Vol. 4, paras 388-392. See Stojić's Reply Brief, para. 70.

⁵⁷¹⁰ Stojić's Appeal Brief, para. 368, referring to Slobodan Božić, T. 36246-36247 (3 Feb 2009).

⁵⁷¹¹ Stojić's Appeal Brief, para. 368, referring to Exs. P04352, P05812, P04186.

was not entered into evidence.⁵⁷¹² According to Stojić, Stanko Božić, who wrote several of the reports, “did not give evidence”.⁵⁷¹³ Stojić also submits that the fact that he did not visit the Heliodrom shows that he was not aware of the conditions there.⁵⁷¹⁴ He asserts that the Trial Chamber’s finding that he failed to improve conditions at the Heliodrom is contingent on his knowledge of the conditions.⁵⁷¹⁵

1733. The Prosecution responds that the Trial Chamber reasonably found that Stojić was aware of the conditions at the Heliodrom,⁵⁷¹⁶ and reasonably relied on the reports from Stanko Božić.⁵⁷¹⁷ It also responds that Stojić received other information concerning the detention conditions at the Heliodrom.⁵⁷¹⁸ According to the Prosecution, Stojić’s failure to visit the Heliodrom does not show that he had no knowledge of the situation there but instead shows that he accepted the crimes.⁵⁷¹⁹

1734. With regard to Stojić’s argument that there is no evidence that he actually received and read the reports related to the conditions in the Heliodrom,⁵⁷²⁰ the Appeals Chamber notes that his only support for this argument is the evidence of Slobodan Božić and the intake registry. As the Appeals Chamber dismisses elsewhere the same arguments concerning this evidence and document, Stojić’s argument under this ground of appeal is likewise dismissed.⁵⁷²¹ Moreover, the fact that the author of several of these reports, Stanko Božić, did not testify does not take away from the fact that they were written and sent to the Department of Defence and were addressed to Stojić personally.⁵⁷²² Having been personally addressed to Stojić, the Appeals Chamber finds that Stojić does not present any arguments demonstrating that the flow of information was interrupted in those instances thus preventing his receipt of the reports. Additionally, the Appeals Chamber notes that Stojić conceded to having received the report of 30 September 1993 from the Health Section which addressed the conditions in the Heliodrom and which was considered by the Trial Chamber in determining that he knew of the detention conditions.⁵⁷²³ The Appeals Chamber also considers that Stojić’s argument

⁵⁷¹² Stojić’s Appeal Brief, para. 368, referring to Ex. 2D01399.

⁵⁷¹³ Stojić’s Appeal Brief, para. 368, referring to Trial Judgement, Vol. 4, paras 388, 390-391.

⁵⁷¹⁴ Stojić’s Appeal Brief, para. 368, referring to Trial Judgement, Vol. 4, para. 393. See Stojić’s Reply Brief, para. 69.

⁵⁷¹⁵ Stojić’s Appeal Brief, para. 369.

⁵⁷¹⁶ Prosecution’s Response Brief (Stojić), para. 333, referring to Trial Judgement, Vol. 2, para. 1566, Vol. 4, para. 395, Prosecution’s Response Brief (Stojić), paras 316-317. See also Appeal Hearing, AT. 334-335 (21 Mar 2017).

⁵⁷¹⁷ Prosecution’s Response Brief (Stojić), para. 333, referring to Exs. P04186, P04352, P05812. The Prosecution contends that Stojić’s arguments are based on the absence of the intake register which could not be located and the evidence of Slobodan Božić, whose credibility the Trial Chamber found “extremely weak”. Prosecution’s Response Brief (Stojić), para. 333, referring to Trial Judgement, Vol. 1, para. 551. See also Appeal Hearing, AT. 334-335 (21 Mar 2017).

⁵⁷¹⁸ Prosecution’s Response Brief (Stojić), para. 334, referring to, *inter alia*, Exs. P04841, pp. 1-2, P06167, p. 2, P05503.

⁵⁷¹⁹ Prosecution’s Response Brief (Stojić), para. 335.

⁵⁷²⁰ Notably, Stojić only identifies three of the reports for which he claims that there is no evidence that he received them. See Stojić’s Appeal Brief, para. 368, referring to Exs. P04352, P05812, P04186.

⁵⁷²¹ See *supra*, paras 1618, 1621. See also *supra*, para. 1622.

⁵⁷²² See Ex. P04352; Ex. P05812; Ex. P04186.

⁵⁷²³ See Stojić’s Appeal Brief, para. 360; Trial Judgement, Vol. 4, para. 392, referring to Ex. P05503.

that his failure to visit the Heliodrom shows that he was unaware of the situation is unconvincing, particularly as he merely offers his own interpretation of the evidence. In this respect, the Trial Chamber expressly considered Stojić's failure to visit the Heliodrom in its discussion on his failure to take measures to rectify the detention conditions at that location.⁵⁷²⁴

1735. For the above reasons, the Appeals Chamber finds that Stojić fails to demonstrate that the Trial Chamber erred in finding that he knew about the detention conditions at the Heliodrom and that he failed to rectify them thereby accepting the crimes. Stojić's sub-ground of appeal 37.2 is dismissed.

(iii) Stojić's involvement in Dretelj Prison and Gabela Prison (Stojić's Sub-ground 37.1, in part)

1736. The Trial Chamber found that Dretelj Prison and Gabela Prison were within the remit of the South-East OZ, were effectively military prisons, and fell within Stojić's responsibility.⁵⁷²⁵ In reaching these conclusions, the Trial Chamber relied on: (1) Petković's order to the South-East OZ, dated 30 June 1993, according to which the military authorities were to isolate the combat-aged Muslim men from villages in their zone of responsibility,⁵⁷²⁶ and (2) its earlier finding that combat-aged Muslim men were indeed detained in Dretelj Prison and Gabela Prison.⁵⁷²⁷ According to the Trial Chamber, this meant that they were effectively military prisons, despite Stojić's statement to the contrary during the Department of Defence meeting on 2 September 1993.⁵⁷²⁸ Further, in considering Stojić's responsibility for these prisons, the Trial Chamber noted the fact that it was decided at that Department of Defence meeting on 2 September 1993 that the SIS, the Military Police Administration, and the Health Section would submit reports to Stojić on Dretelj Prison and Gabela Prison by 8 September 1993.⁵⁷²⁹

1737. The Trial Chamber also found that Stojić knew of and accepted the "extremely precarious conditions" in which the Muslims, some of whom did not belong to the ABiH, were detained in Dretelj Prison and Gabela Prison.⁵⁷³⁰ It considered a number of meetings which Stojić attended, namely: (1) a Government session on 20 July 1993 where a proposal was made by a working group that visited Čapljina to resolve the problem of overcrowding in Dretelj Prison and Gabela

⁵⁷²⁴ Trial Judgement, Vol. 4, paras 393, 395.

⁵⁷²⁵ Trial Judgement, Vol. 4, paras 397, 399.

⁵⁷²⁶ Trial Judgement, Vol. 4, para. 397, referring to Ex. P03019, Andrew Pringle, T(F). 24144-24145 (6 Nov 2007). See Andrew Pringle, T. 24141-24143 (6 Nov 2007).

⁵⁷²⁷ Trial Judgement, Vol. 4, para. 397.

⁵⁷²⁸ Trial Judgement, Vol. 4, para. 397; Ex. P04756, p. 4 ("My opinion is that we have two military prisons *Heliodrom* and the military prison at Ljubuški. As for the other places where detainees are held (Gabela and Dretelj), I do not consider them as military facilities and refuse to personally endorse the work of these institutions.")

⁵⁷²⁹ Trial Judgement, Vol. 4, para. 398.

Prison;⁵⁷³¹ (2) a Government meeting on 6 September 1993 where the discussion concerned bad conditions of detention in various prisons which “could harm the interests of the HR H-B”;⁵⁷³² and (3) a meeting Stojić, Prlić, Pušić, and others had with an ICRC representative on 20 September 1993 who said that he had seen about 20 Dretelj detainees showing signs of malnutrition.⁵⁷³³ The Trial Chamber also noted that Stojić received a report dated 29 September 1993 from the head of the infectious diseases services of the Department of Defence stating that the number of detainees at Gabela Prison significantly exceeded the prison’s capacities, increasing the risk of an epidemic, and that several detainees were malnourished.⁵⁷³⁴

i. Arguments of the Parties

1738. Stojić submits that the Trial Chamber’s finding that he was responsible for Dretelj Prison and Gabela Prison is “manifestly inconsistent with earlier factual findings” because: (1) there is no finding that he was involved in the establishment of the two prisons; and (2) the conditions of detention in both were controlled “wholly and exclusively” by the Commander of the 1st Knez Domagoj Brigade Colonel Nedjeljko Obradović, while the wardens were appointed by Boban and Prlić.⁵⁷³⁵ Stojić argues that the conclusion that he was responsible for Dretelj Prison and Gabela Prison because they fell under the remit of South-East OZ and reports on their conditions were to be submitted to him is unreasonable as the Main Staff commanded the South-East OZ and he was not part of the “classic military chain of command”.⁵⁷³⁶

1739. Stojić also claims that the Trial Chamber erred in its assessment of the 2 September 1993 meeting because it failed to consider that his statement regarding the status of the two prisons was not challenged by anyone present.⁵⁷³⁷ According to Stojić, the Trial Chamber disregarded evidence that: (1) Dretelj Prison was a municipal prison within the remit of Čapljina Municipality and the Department of Defence had to request authorisation in order to visit;⁵⁷³⁸ (2) no representative of the

⁵⁷³⁰ Trial Judgement, Vol. 4, paras 400, 406-407.

⁵⁷³¹ Trial Judgement, Vol. 4, para. 401, referring to Ex. P03573, Zoran Buntić, T(F). 30585 (10 July 2008).

⁵⁷³² Trial Judgement, Vol. 4, para. 402, referring to Ex. P04841, pp. 1-2 (noting, with respect to conditions of detention, that “the situation was declared unsatisfactory and harmful to the reputation and interests of the Croatian Republic of Herceg-Bosna” and making various conclusions regarding improvements in detention centres) Andrew Pringle, T(F). 24145-24151, 24155 (6 Nov 2007). The Trial Chamber further noted that the minutes of this meeting indicated that “the situation was not considered to fall under the Government’s responsibility”. Trial Judgement, Vol. 4, para. 402.

⁵⁷³³ Trial Judgement, Vol. 4, para. 403, referring to Ex. P05219 (confidential).

⁵⁷³⁴ Trial Judgement, Vol. 4, para. 404, referring to Ex. P05485, pp. 2-3. The Trial Chamber also noted that, on 27 October 1993, Stojić was informed by the Health Section that the measures it recommended for Gabela Prison had not yet been implemented. Trial Judgement, Vol. 4, para. 405, referring to Ex. P06167, p. 2.

⁵⁷³⁵ Stojić’s Appeal Brief, para. 361, referring to Trial Judgement, Vol. 3, paras 16, 25-35, 156-157, 169-192, Exs. P07341, P05133, 5D01064, P03462, P03197, P03161.

⁵⁷³⁶ Stojić’s Appeal Brief, para. 362, referring to Trial Judgement, Vol. 1, paras 595, 708, 747, 755, 781, 791, 795-796, Vol. 4, para. 306.

⁵⁷³⁷ Stojić’s Appeal Brief, para. 363, referring to Trial Judgement, Vol. 4, para. 397, Ex. P04756, p. 4.

⁵⁷³⁸ Stojić’s Appeal Brief, para. 364, referring to Zoran Buntić, T. 30578, 30580 (10 July 2008), Ex. P05133.

Department of Defence was assigned to the working group established on 29 July 1993 to relocate Dretelj and Gabela detainees;⁵⁷³⁹ (3) he left the 20 September 1993 meeting with the ICRC immediately after it started;⁵⁷⁴⁰ and (4) the reports on the two detention centres which were supposed to be submitted by 8 September 1993 were not sent to him but directly to Boban.⁵⁷⁴¹

1740. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić exercised authority over Dretelj Prison and Gabela Prison and could have improved their detention conditions.⁵⁷⁴² The Prosecution argues that Stojić's arguments are contradictory and unclear because he first argues that Dretelj Prison and Gabela Prison were controlled by Obradović, but then he claims that they were not military prisons as evidenced by his refusal to recognise them as such during the 2 September 1993 meeting.⁵⁷⁴³ The Prosecution further argues that any control exercised by Obradović does not undermine Stojić's power since the latter commanded and exercised "effective control" over the armed forces, including the 1st Knez Domagoj Brigade, as well as the Military Police and the SIS who also played a role in operating those prisons.⁵⁷⁴⁴

1741. The Prosecution further contends that the fact that Prlić and Boban appointed the wardens and that Dretelj Prison was under municipal control does not show an error in the Trial Chamber's determination on Stojić's authority and power.⁵⁷⁴⁵ The Prosecution also submits that the evidence cited by Stojić shows that the Department of Defence was involved in running Dretelj Prison and Gabela Prison,⁵⁷⁴⁶ and given that role, it is irrelevant that none of its members were assigned to explore the relocation of detainees or that Stojić left the 20 September 1993 meeting.⁵⁷⁴⁷ Further, it argues that the Trial Chamber reasonably relied on the 2 September 1993 meeting and that Stojić's argument that the reports were not sent to him but directly to Boban is unsupported.⁵⁷⁴⁸

⁵⁷³⁹ Stojić's Appeal Brief, para. 364, referring to Trial Judgement, Vol. 4, para. 401, Ex. P03573.

⁵⁷⁴⁰ Stojić's Appeal Brief, para. 364, referring to Trial Judgement, Vol. 4, para. 403, Ex. P05219 (confidential), p. 2.

⁵⁷⁴¹ Stojić's Appeal Brief, para. 365, referring to Trial Judgement, Vol. 4, para. 398, Exs. 2D00926, P05222, P05225, Slobodan Božić, T. 36283-36284 (3 Feb 2009).

⁵⁷⁴² Prosecution's Response Brief (Stojić), para. 313, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 390-392, 395, 399-407, 423, 427.

⁵⁷⁴³ Prosecution's Response Brief (Stojić), paras 321, 323-324.

⁵⁷⁴⁴ Prosecution's Response Brief (Stojić), para. 323, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 20, 25-28, 36, 192, Vol. 4, paras 302, 306, 312, 320.

⁵⁷⁴⁵ Prosecution's Response Brief (Stojić), paras 322, 324.

⁵⁷⁴⁶ Prosecution's Response Brief (Stojić), para. 325, referring to Ex. P05133. The Prosecution argues that SIS members played an important role in interrogating detainees. Prosecution's Response Brief (Stojić), para. 325, referring to Trial Judgement, Vol. 3, paras 33, 36, 190, 192, Ex. P05647, p. 3.

⁵⁷⁴⁷ Prosecution's Response Brief (Stojić), para. 326.

⁵⁷⁴⁸ Prosecution's Response Brief (Stojić), para. 327. According to the Prosecution, although the reports were sent to Boban by Stojić's immediate subordinate Ivica Lučić, Slobodan Božić's testimony did not exclude that Stojić received these reports and his credibility was considered to be "extremely weak". Prosecution's Response Brief (Stojić), para. 327, referring to, *inter alia*, Slobodan Božić, T. 36283 (3 Feb 2009), Trial Judgement, Vol. 1, para. 551.

1742. Stojić replies that his submission that the Trial Chamber's findings did not "prove" his responsibility for Dretelj Prison and Gabela Prison was not inconsistent with his submission that they were not military prisons.⁵⁷⁴⁹

ii. Analysis

1743. First, in light of the foregoing discussion, the Appeals Chamber considers that whether or not Dretelj Prison and Gabela Prison were strictly military facilities and thus fell within the responsibility of Stojić on that basis does not ultimately affect the Trial Chamber's findings that he nevertheless had certain authority over them. As noted earlier, Stojić was tasked with improving the conditions of detention in the detention centres which held "prisoners of war", as distinct from institutions that held persons subject to criminal proceedings.⁵⁷⁵⁰ Given that military-aged Muslim men in Čapljina Municipality were found by the Trial Chamber to have been isolated and detained by the "military authorities" and then placed in Dretelj Prison and Gabela Prison, the Appeals Chamber considers that the Trial Chamber reasonably concluded that they were effectively military prisons.⁵⁷⁵¹

1744. In any event, the Appeals Chamber considers that a reasonable trier of fact could have concluded that the fact that these prisons were run by Colonel Obradović, an HVO commander, shows that they were military facilities and thus also within Stojić's remit.⁵⁷⁵² Further, Stojić's own statement during the 2 September 1993 meeting regarding the status of these two prisons was duly considered by the Trial Chamber and rejected.⁵⁷⁵³ The Appeals Chamber concludes that the fact that the Trial Chamber did not explicitly refer to the lack of objections to Stojić's statement does not mean that the reactions at the meeting were not considered by the Trial Chamber. Thus, Stojić fails to show how the lack of objections could have an impact on the Trial Chamber finding.⁵⁷⁵⁴ Furthermore, Stojić's challenge to the Trial Chamber's consideration of the fact that Dretelj Prison and Gabela Prison fell under the remit of the South-East OZ because that operational zone was controlled by the Main Staff is wholly unpersuasive. In this regard, the Appeals Chamber recalls

⁵⁷⁴⁹ Stojić's Reply Brief, para. 69.

⁵⁷⁵⁰ See *supra*, paras 1713, 1716-1717.

⁵⁷⁵¹ Trial Judgement, Vol. 4, para. 397.

⁵⁷⁵² On a related point, the control that Obradović exercised over Dretelj Prison and Gabela Prison does not, in the Appeals Chamber's view, undermine Stojić's authority over those prisons since he commanded and exercised "effective control" over most of the armed forces, including the 1st Knez Domagoj Brigade and the Military Police, and had authority over the SIS, all of whom played a role in operating the prisons. Cf. *Popović et al.* Appeal Judgement, para. 1892 ("the exercise of effective control by one commander does not necessarily exclude effective control being exercised by a different commander"). See *Nizeyimana* Appeal Judgement, para. 201. See also *supra*, para. 1716 & fns 5656-5657.

⁵⁷⁵³ Trial Judgement, Vol. 4, paras 397-399, 406.

⁵⁷⁵⁴ Indeed, the Appeals Chamber notes that, contrary to Stojić's claim, the minutes of the meeting show that Ivica Lučić responded to Stojić, stating that "we cannot just pass over the problem of the Gabela and Dretelj prisons like that" as it could "cause us a lot of harm". Ex. P04756, p. 5.

that Stojić was found to have had “effective control” over most of the HVO and the Military Police deployed in detention centres although he was not *de jure* within the military chain of command.⁵⁷⁵⁵ Thus, Stojić fails to show that the Trial Chamber’s finding was unreasonable on this issue.⁵⁷⁵⁶

1745. Moreover, other findings made by the Trial Chamber, such as: (1) Stojić’s command authority over forces involved in the operation of these prisons and his ability to issue order directly to the HVO regarding detention centres; and (2) the fact that it was agreed during the 2 September 1993 meeting that Stojić would receive reports about the conditions of detention in Dretelj Prison and Gabela Prison by 8 September 1993, from, among others, the personnel that operated in the two prisons,⁵⁷⁵⁷ support its conclusion that Stojić had certain authority over Dretelj Prison and Gabela Prison.⁵⁷⁵⁸ The Appeals Chamber therefore considers that the Trial Chamber could rely on these factors to conclude that Stojić had authority over Dretelj Prison and Gabela Prison and particularly the conditions of detention that existed there. Accordingly, the fact that Stojić did not participate in the establishment of Dretelj Prison and Gabela Prison, that Prlić and Boban appointed the wardens in those prisons, and that no Department of Defence representative was assigned to the working group established on 29 July 1993 does not undermine the Trial Chamber’s findings that Stojić had authority over the two prisons including insofar as their conditions of detention were concerned.

1746. Similarly, the fact that Dretelj Prison may have fallen under the remit of Čapljina Municipality does not affect the finding that Stojić and the Department of Defence had authority over it, given the evidence discussed by the Trial Chamber. Specifically, the Appeals Chamber considers that the evidence cited by Stojić does not call into question the Trial Chamber’s finding. Witness Zoran Buntić testified that Dretelj Prison was established as a municipal prison by virtue of a decision by the municipal council of Čapljina Municipality and was under the municipality’s remit.⁵⁷⁵⁹ However, the Appeals Chamber notes that, on this issue, Stojić repeats his trial argument and the same evidence he cited at trial which was expressly noted by the Trial Chamber,⁵⁷⁶⁰ before it nonetheless found that Dretelj Prison fell under Stojić’s responsibility.⁵⁷⁶¹ By simply repeating his argument, Stojić fails to show an error in the Trial Chamber’s consideration of this evidence and its

⁵⁷⁵⁵ Trial Judgement, Vol. 4, paras 306, 312, 320.

⁵⁷⁵⁶ See Stojić’s Appeal Brief, para. 362.

⁵⁷⁵⁷ See Trial Judgement, Vol. 4, para. 398. The Appeals Chamber notes that the Trial Chamber did not determine whether Stojić ultimately received these reports and thus did not use it in its discussion as to the notice he had in relation to the conditions of detention in Dretelj Prison and Gabela Prison. Accordingly, Stojić’s argument in relation to the receipt of these reports is irrelevant. See Trial Judgement, Vol. 4, paras 398-407.

⁵⁷⁵⁸ See *supra*, para. 1716, and references cited therein.

⁵⁷⁵⁹ Zoran Buntić, T. 30575-30580 (10 July 2008). See Ex. P03573.

⁵⁷⁶⁰ Trial Judgement, Vol. 3, para. 38, referring to Stojić’s Final Brief, para. 512 (citing Zoran Buntić, T. 30578, 30580 (10 July 2008)).

⁵⁷⁶¹ Trial Judgement, Vol. 4, para. 399.

ultimate conclusion on his authority. Furthermore, Exhibit P05133 does not assist Stojić. While this exhibit shows that the Department of Defence requested access to Dretelj Prison for SIS operatives, this does not necessarily mean that Stojić lacked authority. The Trial Chamber clearly assessed this exhibit and referred to it in noting evidence that “agents of the SIS were able to request authorisation to go to the collection centres or the prisons [...] in order to collect information”.⁵⁷⁶² Notably, SIS operatives were found by the Trial Chamber to have been involved in the interrogation and release of the detainees in Dretelj Prison.⁵⁷⁶³ Thus, Stojić’s arguments contesting that Dretelj Prison and Gabela Prison fell within his responsibility are dismissed.

1747. Having considered the notice that he had with respect to the harsh conditions of detention and the mistreatment of detainees, the Trial Chamber concluded that Stojić accepted these conditions and mistreatment, as well as the fact that Muslims not belonging to any armed force were detained in these locations.⁵⁷⁶⁴ In doing so, the Trial Chamber relied on, among other things, a report of a meeting with an ICRC representative on 20 September 1993 during which conditions in Dretelj Prison and Gabela Prison were discussed.⁵⁷⁶⁵ However, the Appeals Chamber notes that Stojić is recorded as having left the meeting before it started.⁵⁷⁶⁶ Accordingly, the Appeals Chamber considers that the Trial Chamber erred in its reliance on this report. However, given the other evidence relied on by the Trial Chamber to conclude that Stojić was on notice of the conditions of detention in Dretelj Prison and Gabela Prison, in particular the meeting of 6 September 1993 where it was noted that the situation in the detention centres could harm the interests of the Government,⁵⁷⁶⁷ the Appeals Chamber considers that the Trial Chamber’s finding is sufficiently supported and thus this error has no impact on the ultimate conclusion.

(iv) Conclusion

1748. In sum, the Appeals Chamber finds that, in reaching its conclusions on Stojić’s responsibility for detention centres, the Trial Chamber was cognisant not only of his specific actions and omissions in relation thereto, but also of: (1) the level of authority he had with respect to those detention centres, including the personnel working there; and (2) his mandate in relation to the improvement of conditions of detention. Stojić has not demonstrated that the Trial Chamber’s conclusions on his authority and powers, or his knowledge, concerning the detention conditions at

⁵⁷⁶² Trial Judgement, Vol. 1, para. 614, referring to, *inter alia*, Ivan Bandić, T(F). 38084-38085, 38091 (17 Mar 2009), 38248-38251 (18 Mar 2009), Ex. P05133.

⁵⁷⁶³ Trial Judgement, Vol. 3, paras 26 (referring to, *inter alia*, Ex. P05133), 33, 36.

⁵⁷⁶⁴ Trial Judgement, Vol. 4, para. 407.

⁵⁷⁶⁵ See *supra*, para. 1737.

⁵⁷⁶⁶ Ex. P05219 (confidential), p. R020-9291 (Registry pagination) (noting that Stojić “left immediately [after] the meeting started – presumably he was called away on urgent business”).

⁵⁷⁶⁷ Trial Judgement, Vol. 4, paras 401-402, 404-405. See *supra*, para. 1737.

the Heliodrom, Dretelj Prison, and Gabela Prison were erroneous. Stojić has therefore failed to show that no reasonable trier of fact could have concluded that the only reasonable inference was that he accepted the crimes that took place in the Heliodrom, Dretelj Prison, and Gabela Prison. Stojić's ground of appeal 37 is therefore dismissed.

9. Alleged errors regarding Stojić's *mens rea* and related challenges

(a) Alleged errors in finding that Tuđman and others directly collaborated in, and shared the intent for, the JCE (Stojić's Grounds 6 and 14)

1749. Under his ground of appeal 14, Stojić contends that the Trial Chamber erred in finding that Tuđman, Šušak, and Bobetko directly collaborated with HVO leaders and authorities in order to further the JCE.⁵⁷⁶⁸ He submits that the Trial Chamber relied on evidence that "shows only general discussions [...] but not direct collaboration in either the JCE or the commission of crimes",⁵⁷⁶⁹ and disregarded evidence.⁵⁷⁷⁰ He asserts that without the conclusion that Tuđman and others directly collaborated in the JCE, the Trial Chamber could not have found that Tuđman, Šušak, and Bobetko were JCE members, and its conclusions on the JCE would "unravel".⁵⁷⁷¹ Stojić further contends, under his ground of appeal 6, that the Trial Chamber erred in finding that Tuđman, Šušak, Bobetko, Boban, and other unnamed JCE members shared the intent for the JCE, without making the necessary findings that they intended the commission of specific crimes, and that the evidence would not support such findings.⁵⁷⁷² He submits that "in order to find a JCE, it is necessary to find that *all* the participants intended the indictment crimes to be committed",⁵⁷⁷³ thus, inadequate findings on the shared intent of all participants invalidate the finding that there was a JCE.⁵⁷⁷⁴

1750. The Prosecution responds that the Trial Chamber reasonably found that Tuđman, Šušak, and Bobetko collaborated with HVO leaders to further the CCP⁵⁷⁷⁵ and relied on this to establish their

⁵⁷⁶⁸ Stojić's Appeal Brief, paras 117, 121, referring to Trial Judgement, Vol. 4, paras 1222-1223.

⁵⁷⁶⁹ Stojić's Appeal Brief, para. 121. See Stojić's Appeal Brief, para. 117. Stojić asserts that the Trial Chamber: (1) failed to identify a link between the discussions documented in the cited evidence and a JCE or the commission of crimes; and (2) unreasonably relied on transcripts of meetings about Stupni Do and Mostar Old Bridge as evidence of direct collaboration when they "actually show the absence of any shared intent". Stojić's Appeal Brief, paras 118-119.

⁵⁷⁷⁰ Stojić's Appeal Brief, para. 120.

⁵⁷⁷¹ Stojić's Appeal Brief, para. 121. See also Appeal Hearing, AT. 294 (21 Mar 2017).

⁵⁷⁷² Stojić's Appeal Brief, paras 70-75. Stojić asserts that: (1) the finding that Tuđman, Šušak, Bobetko, and Boban "'devise[d] and implement[ed]' the common purpose or that their ultimate purpose was to reconstitute the Banovina is insufficient" (Stojić's Appeal Brief, para. 72, referring to Trial Judgement, Vol. 4, para. 1231); (2) the Trial Chamber cited no evidence about the intent of Šušak or Bobetko (Stojić's Appeal Brief, para. 73); and (3) the Trial Chamber erred in fact in finding that Tuđman intended the Indictment crimes (Stojić's Appeal Brief, para. 74). See also Appeal Hearing, AT. 275, 284, 294-295, 297-298 (21 Mar 2017).

⁵⁷⁷³ Stojić's Appeal Brief, para. 71 (emphasis in original).

⁵⁷⁷⁴ Stojić's Appeal Brief, para. 75. See Stojić's Appeal Brief, para. 74; Appeal Hearing, AT. 294-295 (21 Mar 2017).

⁵⁷⁷⁵ Prosecution's Response Brief (Stojić), paras 48, 50-52. See Appeal Hearing, AT. 349 (21 Mar 2017). The Prosecution asserts, *inter alia*, that: (1) Tuđman, Šušak, and Bobetko provided the HVO with military support and participated in planning HVO military operations to implement the CCP; (2) In November 1993, Prlić conferred with

shared intent.⁵⁷⁷⁶ It asserts that the JCE crimes can be attributed to Stojić either directly or via the other Appellants, and that the Trial Chamber's JCE conclusions are not dependent on its findings in relation to Tuđman, Šušak, Bobetko, Boban, or unnamed JCE members.⁵⁷⁷⁷

1751. Stojić challenges the Trial Chamber's conclusion that "[t]he evidence [...] shows that Croatian leaders Franjo Tuđman, Gojko Šušak and Janko Bobetko directly collaborated with the HVO leaders and authorities to further the JCE."⁵⁷⁷⁸ While Stojić asserts that a reversal of this finding would negate the Trial Chamber's conclusion that these three individuals were JCE members, he does not show that it would also negate the Trial Chamber's finding that the remaining JCE members, including Stojić and the other Appellants, formed a plurality of persons who consulted with each other to devise and implement the CCP.⁵⁷⁷⁹ In this respect, the Appeals Chamber notes that the Trial Chamber provided a detailed analysis of how Stojić and the other Appellants collaborated with each other in order to implement the CCP, independent of the involvement of Tuđman, Šušak, and Bobetko.⁵⁷⁸⁰ Further, the Appeals Chamber rejects Stojić's assertion that any alleged inadequacies in the findings on the shared intent of Tuđman, Šušak, Bobetko, Boban, and unnamed JCE members invalidate its finding that there was a JCE. To the contrary, the Appeals Chamber recalls that it is not required, as a matter of law, that a trial chamber make a separate finding on the intent of each member of a JCE.⁵⁷⁸¹ After a detailed discussion,⁵⁷⁸² the Trial Chamber found that Stojić shared the intent with the other members of the JCE: (1) to expel the Muslim population from the HZ(R) H-B territories;⁵⁷⁸³ and (2) that the JCE I crimes be committed in order to further the CCP.⁵⁷⁸⁴ Thus, it was not required to examine the individual actions or scrutinise the intent of each JCE member who was not an accused in this case.

Tuđman about the plan to move BiH Croats into HZ(R) H-B territories they thought "could become and remain Croatian"; and (3) Tuđman, Šušak, and Bobetko maintained a privileged and continuous link with Praljak on BiH-related issues and discussed Croatia's policy in BiH "with a view to furthering the common criminal purpose". Prosecution's Response Brief (Stojić), para. 50.

⁵⁷⁷⁶ Prosecution's Response Brief (Stojić), paras 48, 50, 53. See Prosecution's Response Brief (Stojić), para. 54. The Prosecution also asserts that the evidence supports the Trial Chamber's finding that Tuđman, Šušak, and Bobetko intended the crimes. Prosecution's Response Brief (Stojić), paras 51-52; Appeal Hearing, AT. 349-356 (21 Mar 2017).

⁵⁷⁷⁷ Prosecution's Response Brief (Stojić), para. 55. See Appeal Hearing, AT. 349 (21 Mar 2017).

⁵⁷⁷⁸ Trial Judgement, Vol. 4, para. 1222.

⁵⁷⁷⁹ Trial Judgement, Vol. 4, para. 1231.

⁵⁷⁸⁰ Trial Judgement, Vol. 4, paras 1219-1221.

⁵⁷⁸¹ *Dordević* Appeal Judgement, para. 141 ("[I]n order to conclude that persons identified as joint criminal enterprise members acted in furtherance of the joint criminal enterprise, a trial chamber is required to identify the plurality of persons belonging to the joint criminal enterprise and establish that they shared a common criminal purpose", and it "is therefore not required, as a matter of law, that a trial chamber make a separate finding on the individual actions and the intent of each member of a joint criminal enterprise to establish that a plurality of persons acted together in implementing the common purpose.").

⁵⁷⁸² Trial Judgement, Vol. 4, paras 43-68.

⁵⁷⁸³ Trial Judgement, Vol. 4, para. 428. See *infra*, paras 1759-1760.

⁵⁷⁸⁴ Trial Judgement, Vol. 4, paras 67-68, 426. See *infra*, paras 1770, 1773.

1752. Therefore, considering also that none of the crimes committed in furtherance of the CCP were attributed to the JCE through Tuđman, Šušak, Bobetko, Boban, or the unnamed members of the JCE,⁵⁷⁸⁵ Stojić fails to show that any alleged error by the Trial Chamber in concluding that they directly collaborated with the HVO leaders and authorities to further the JCE and shared the common criminal intent, would have an impact on his convictions. Stojić's grounds of appeal 6 and 14 are thus dismissed.

(b) Alleged errors concerning Stojić's knowledge of the JCE and its common criminal purpose (Stojić's Ground 15)

1753. Stojić argues that the Trial Chamber erroneously found that he was a member of the JCE as it made no finding that he knew of the JCE and its CCP.⁵⁷⁸⁶ According to Stojić, to the extent that the Trial Chamber made any such finding, it failed to provide a reasoned opinion.⁵⁷⁸⁷ He submits that throughout its discussion of the CCP, the Trial Chamber used the generic term "leaders of the HZ(R) H-B", which did not necessarily include him.⁵⁷⁸⁸ Stojić further contends that the sole relevant finding is on his knowledge in October 1992, but as the JCE was only established in mid-January 1993, this finding could only relate to his knowledge of a long-term political purpose.⁵⁷⁸⁹ Stojić also submits that his knowledge could not be inferred simply from his position, and contends that many important findings pre-date his appointment as Head of the Department of Defence and that he did not attend any of the presidential meetings with Tuđman.⁵⁷⁹⁰

1754. The Prosecution responds that the Trial Chamber reasonably concluded, based on a thorough analysis, that Stojić was a JCE member from mid-January 1993 to 15 November 1993.⁵⁷⁹¹ It argues that "[i]t is inherent in the [Trial] Chamber's shared intent finding that Stojić was aware of the common criminal purpose",⁵⁷⁹² thus an express finding on this issue was unnecessary.⁵⁷⁹³

1755. The Trial Chamber found that "the only possible inference it [could] reasonably draw [from all the evidence was] that Bruno Stojić intended to expel the Muslim population from the HZ(R) H-

⁵⁷⁸⁵ See Trial Judgement, Vol. 4, para. 1232.

⁵⁷⁸⁶ Stojić's Appeal Brief, paras 122-124, 126. Stojić avers that the Trial Chamber's finding that he was a member of the JCE should be overturned. Stojić's Appeal Brief, para. 126.

⁵⁷⁸⁷ Stojić's Appeal Brief, paras 122, 124.

⁵⁷⁸⁸ Stojić's Appeal Brief, para. 123, referring to Trial Judgement, Vol. 4, paras 24, 43.

⁵⁷⁸⁹ Stojić's Appeal Brief, para. 124, referring to Trial Judgement, Vol. 4, paras 43-44.

⁵⁷⁹⁰ Stojić's Appeal Brief, para. 125. See also Appeal Hearing, AT. 360-361 (21 Mar 2017). Stojić submits that he was not involved in the creation of the HZ H-B and that his primary contribution to the meetings on 5 and 26 October 1992 concerned the release of prisoners. Stojić's Appeal Brief, para. 125, referring to Trial Judgement, Vol. 4, paras 14-15, 18, 24, Ex. P11380, p. 3.

⁵⁷⁹¹ Prosecution's Response Brief (Stojić), para. 91.

⁵⁷⁹² Prosecution's Response Brief (Stojić), para. 92. See Prosecution's Response Brief (Stojić), para. 91.

⁵⁷⁹³ Prosecution's Response Brief (Stojić), para. 92, referring to *Đorđević* Appeal Judgement, para. 468, *Krajišnik* Appeal Judgement, paras 706-707.

B”, and that he shared this intention with other JCE members.⁵⁷⁹⁴ It also found that: (1) “Stojić knew that crimes were being committed against the Muslims with the sole purpose of forcing them to leave the territory of BiH”;⁵⁷⁹⁵ (2) a plurality of persons, including Stojić, consulted with one another to devise and implement the CCP;⁵⁷⁹⁶ and (3) Stojić and other JCE members used the HVO and the Military Police to commit the crimes that were part of the CCP.⁵⁷⁹⁷ The Appeals Chamber considers that Stojić ignores these relevant findings and focuses only on the findings made in the general section discussing the establishment of the JCE and its CCP. In this regard, the Appeals Chamber recalls that “the *mens rea* required for liability under the first category of joint criminal enterprise is that the accused shares the intent with the other participants to carry out the crimes forming part of the common purpose”.⁵⁷⁹⁸ The Trial Chamber found that Stojić shared the required intent and thus it is evident that he knew of the common criminal purpose of the JCE.⁵⁷⁹⁹ Stojić’s argument that the Trial Chamber failed to make a finding that he knew of the JCE and its common criminal purpose is unmeritorious and is therefore dismissed. Similarly, the Appeals Chamber dismisses Stojić’s argument that the Trial Chamber failed to provide a reasoned opinion.⁵⁸⁰⁰

1756. To the extent Stojić argues that no reasonable trier of fact could have concluded that he knew of the CCP and the Ultimate Purpose of the JCE, the Appeals Chamber notes that Stojić again fails to address the Trial Chamber’s detailed discussion on his involvement in the relevant events,⁵⁸⁰¹ which led to findings that he knew of and intended the crimes being committed and shared the necessary intent. Specifically, the Trial Chamber found, *inter alia*, that: (1) during meetings between September 1992 and November 1993, Stojić discussed and took decisions on the military situation on the ground, the mobilisation of the HVO, and the situation in the HVO detention centres;⁵⁸⁰² (2) Stojić was informed of HVO military operations;⁵⁸⁰³ (3) Stojić facilitated and closely followed all HVO operations in Gornji Vakuf;⁵⁸⁰⁴ (4) Stojić participated in planning the HVO military operations, and the accompanying acts of violence, in Mostar that began on 9 May 1993;⁵⁸⁰⁵ (4) Stojić was not only informed of the evictions of Muslims from West Mostar as of June 1993, but was also actively involved in organising and conducting the eviction

⁵⁷⁹⁴ Trial Judgement, Vol. 4, para. 428. See *infra*, paras 1759-1760.

⁵⁷⁹⁵ Trial Judgement, Vol. 4, para. 429.

⁵⁷⁹⁶ Trial Judgement, Vol. 4, para. 1231.

⁵⁷⁹⁷ Trial Judgement, Vol. 4, para. 1232.

⁵⁷⁹⁸ *Dorđević* Appeal Judgement, para. 468, referring to *Tadić* Appeal Judgement, paras 220, 228, *Krajišnik* Appeal Judgement, para. 707. See *Popović et al.* Appeal Judgement, para. 1652.

⁵⁷⁹⁹ See *infra*, paras 1759-1760.

⁵⁸⁰⁰ See *supra*, para. 19.

⁵⁸⁰¹ See Trial Judgement, Vol. 4, paras 297-430, 1220-1221, 1227, 1230-1232.

⁵⁸⁰² Trial Judgement, Vol. 4, paras 297-298. See *supra*, paras 1509-1513.

⁵⁸⁰³ See, e.g., Trial Judgement, Vol. 4, para. 312.

⁵⁸⁰⁴ Trial Judgement, Vol. 4, paras 335, 337. See *supra*, paras 1578-1579.

⁵⁸⁰⁵ Trial Judgement, Vol. 4, paras 348-349. See *supra*, paras 1601-1605, 1608-1611, 1614-1615.

campaigns;⁵⁸⁰⁶ and (5) Stojić knew of the HVO's plan of action against East Mostar and the impact it had on the civilian population and accepted the crimes directly linked to this military operation.⁵⁸⁰⁷ The Appeals Chamber thus considers that Stojić misunderstands the basis of the Trial Chamber's findings on his knowledge when he argues that this knowledge cannot be inferred from "simply" his position. This argument is dismissed. Further, recalling the *mens rea* requirement for JCE I,⁵⁸⁰⁸ Stojić's contentions that many of the findings concerning the formation of HZ H-B and the Ultimate Purpose to set up a Croatian entity pre-date his involvement⁵⁸⁰⁹ are irrelevant and he fails to show how any alleged error would impact on his membership in the JCE. These contentions and Stojić's ground of appeal 15 are dismissed.

(c) Alleged errors in finding that Stojić had the shared intent of the JCE (Stojić's Sub-ground 25.1)

1757. Stojić argues that the Trial Chamber erred in law in finding that he possessed the shared intent of the JCE.⁵⁸¹⁰ Specifically, Stojić submits that the Trial Chamber's finding on his intent "does not mirror", and is narrower than, the finding on the "shared criminal purpose".⁵⁸¹¹ In this respect, he compares the finding that he intended to expel the Muslim population from the HZ(R) H-B territory⁵⁸¹² with the finding that the CCP of the JCE was the domination of the HR H-B Croats through the ethnic cleansing of the Muslim population.⁵⁸¹³ Stojić asserts that conduct such as murder and destruction of property encompassed within the CCP does "not necessarily" fall within the intent to expel the Muslim population.⁵⁸¹⁴

1758. The Prosecution responds that the Trial Chamber's findings are not inconsistent and that Stojić fails to read the finding on his intent in conjunction with an earlier finding specifying the types of crimes through which the CCP was achieved.⁵⁸¹⁵

1759. The Appeals Chamber notes that the Trial Chamber concluded that Stojić intended to expel the Muslim population from the HZ(R) H-B territory and shared this intention with the other JCE members.⁵⁸¹⁶ Earlier in the Trial Judgement, the Trial Chamber found that the CCP was the domination by the HR H-B Croats through the ethnic cleansing of the Muslim population, and that

⁵⁸⁰⁶ Trial Judgement, Vol. 4, para. 355. See *supra*, paras 1621-1624, 1633-1637, 1646-1649, 1652.

⁵⁸⁰⁷ Trial Judgement, Vol. 4, para. 363. See *supra*, paras 1658-1661, 1664-1667, 1670-1674.

⁵⁸⁰⁸ See *supra*, para. 1755.

⁵⁸⁰⁹ See Stojić's Appeal Brief, para. 125, referring to Trial Judgement, Vol. 4, paras 14-15, 18, 24.

⁵⁸¹⁰ Stojić's Appeal Brief, para. 202. See Stojić's Appeal Brief, paras 200-201. See also Appeal Hearing, AT. 282-283 (21 Mar 2017). Stojić argues that the Trial Chamber's legal error invalidates the Trial Judgement and that all his convictions should be overturned. Stojić's Appeal Brief, para. 202.

⁵⁸¹¹ Stojić's Appeal Brief, para. 202. See Stojić's Reply Brief, paras 61, 63.

⁵⁸¹² Stojić's Appeal Brief, paras 200, 202, referring to Trial Judgement, Vol. 4, para. 428.

⁵⁸¹³ Stojić's Appeal Brief, paras 200, 202, referring to Trial Judgement, Vol. 4, para. 41.

⁵⁸¹⁴ Stojić's Appeal Brief, para. 202. See Stojić's Reply Brief, para. 62.

⁵⁸¹⁵ Prosecution's Response Brief (Stojić), para. 182, referring to Trial Judgement, Vol. 4, paras 67-68. See Prosecution's Response Brief (Stojić), para. 181.

to accomplish this purpose, the JCE members, including the Appellants, made use of the political and military apparatus of the HZ(R) H-B.⁵⁸¹⁷ In this regard, the Trial Chamber found that JCE members “implemented an entire system for deporting the Muslim population of the HR H-B” which included the removal and placement in detention of civilians; murders and the destruction of property during attacks; mistreatment and devastation caused during evictions operations; mistreatment and poor conditions of confinement and the widespread use of detainees on the front lines for labour or as human shields, as well as murders and mistreatment related thereto; and the removal of detainees and their families outside of the territory of the BiH once they were released.⁵⁸¹⁸ The Trial Chamber also found that Stojić and the other Appellants, as JCE members, intended that the relevant crimes be committed in order to further the CCP.⁵⁸¹⁹

1760. Therefore, the Appeals Chamber considers that, in concluding that “Stojić intended to expel the Muslim population” and that he “shared that intention with other members of the JCE”,⁵⁸²⁰ the Trial Chamber was referring to the shared intent for the JCE – which it found earlier in the Trial Judgement to have existed – to be perpetuated. Reading the Trial Judgement as a whole,⁵⁸²¹ the Appeals Chamber considers that the Trial Chamber’s finding that Stojić shared the intent to expel the Muslim population from the HZ(R) H-B territory is indistinguishable from its finding that he had the intent to ethnically cleanse the Muslim population through an “entire system for deporting the Muslim population of the HR H-B”, effectuated through a range of crimes under the Statute.⁵⁸²² In this regard, Stojić does not show that the finding on his shared intent is “narrower” than the finding on the purpose of the JCE. Moreover, it is clear that conduct such as murder and destruction of property⁵⁸²³ – found to have been a part of the system for deporting the Muslim population – fell within the Trial Chamber’s findings that Stojić intended to expel the Muslim population and intended the relevant crimes. In light of the above, the Appeals Chamber finds that Stojić has failed to demonstrate a legal error on the part of the Trial Chamber in determining his shared intent to perpetuate the JCE and further its CCP. Stojić’s sub-ground of appeal 25.1 is thus dismissed.

⁵⁸¹⁶ Trial Judgement, Vol. 4, para. 428.

⁵⁸¹⁷ Trial Judgement, Vol. 4, paras 41, 43-44. See *supra*, paras 786, 789-790; Trial Judgement, Vol. 4, para. 1232.

⁵⁸¹⁸ Trial Judgement, Vol. 4, para. 66. The Appeals Chamber recalls its finding that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, para. 882. While this means that Stojić did not have the intent for murder and wilful killing from January 1993 until June 1993, it does not affect the Trial Chamber’s remaining findings concerning his contributions and intent for various crimes – including murder and wilful killing from June 1993 – particularly as only a few murders forming part of the CCP were found to have occurred prior to June 1993. See *supra*, para. 876.

⁵⁸¹⁹ Trial Judgement, Vol. 4, paras 67, 426, 429. See Trial Judgement, Vol. 4, paras 66, 68.

⁵⁸²⁰ Trial Judgement, Vol. 4, para. 428.

⁵⁸²¹ *Stanišić and Župljanin* Appeal Judgement, paras 138, 376, 705; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

⁵⁸²² Trial Judgement, Vol. 4, para. 66.

⁵⁸²³ See Trial Judgement, Vol. 4, para. 70 (excluding murders committed during expulsion campaigns in certain municipalities and in the detention centres from the CCP).

(d) Alleged error in law in failing to make a specific finding on Stojić's intent to participate in the JCE (Stojić's Sub-ground 25.2)

1761. Stojić submits that the Trial Chamber did not make an express finding concerning his intent to participate in the JCE.⁵⁸²⁴ He argues that this defect cannot be remedied by inferring his intent from other findings as: (1) the Trial Chamber's "failure to address an element of a crime is too serious to be lightly remedied";⁵⁸²⁵ and (2) the existing findings regarding his intent "do not inevitably lead to the inference that [he] intended to participate in a JCE".⁵⁸²⁶

1762. The Prosecution responds that it was unnecessary for the Trial Chamber to separately find that Stojić intended to participate in the JCE as this is inherent in its finding on his shared intent.⁵⁸²⁷

1763. The Appeals Chamber notes that the Trial Judgement does not contain a finding which explicitly states that Stojić "intended to participate in the JCE". However, the Appeals Chamber considers that the Trial Chamber found that Stojić had the shared intent with the other JCE members to expel the Muslim population from the HZ(R) H-B territory,⁵⁸²⁸ and that he intended the crimes committed in furtherance of the CCP.⁵⁸²⁹ The Appeals Chamber observes that the *mens rea* requirement in the Tribunal's jurisprudence at times has been phrased differently, such as: (1) "the *mens rea* required for liability under the first category of joint criminal enterprise is that the accused shares the intent with the other participants to carry out the crimes forming part of the common purpose";⁵⁸³⁰ and (2) "the accused must share both the intent to commit the crimes that form part of the common purpose of the JCE and the intent to participate in a common plan aimed at their commission".⁵⁸³¹ Despite the differences, these formulations are substantively consistent. Although the Trial Chamber did not use the terminology "intended to participate in the JCE", its findings are consistent with the jurisprudence outlined above.

⁵⁸²⁴ Stojić's Appeal Brief, para. 204, referring to Trial Judgement, Vol. 4, paras 425-431. See Stojić's Appeal Brief, para. 203, referring to *Brdanin* Appeal Judgement, paras 365, 429, *Krajišnik* Appeal Judgement, para. 685. See also Appeal Hearing, AT. 282 (21 Mar 2017).

⁵⁸²⁵ Stojić's Appeal Brief, para. 205.

⁵⁸²⁶ Stojić's Appeal Brief, para. 205 (emphasis in original), referring to Trial Judgement, Vol. 4, paras 337, 357, 428-429. Furthermore, Stojić contends that the intent to participate in a JCE "is a discreet issue which connects the intent to commit specific crimes with contribution to the common purpose". Stojić's Appeal Brief, para. 205.

⁵⁸²⁷ Prosecution's Response Brief (Stojić), para. 183, referring to *Popović et al.* Appeal Judgement, paras 1369, 1652, 1654, *Dordević* Appeal Judgement, para. 468, *Brdanin* Appeal Judgement, paras 364-365, Trial Judgement, Vol. 4, para. 428.

⁵⁸²⁸ Trial Judgement, Vol. 4, para. 428. See *supra*, paras 1759-1760.

⁵⁸²⁹ Trial Judgement, Vol. 4, paras 67-68. See *infra*, paras 1770, 1772, 1800-1804.

⁵⁸³⁰ *Dordević* Appeal Judgement, para. 468, referring to *Tadić* Appeal Judgement, paras 220, 228, *Krajišnik* Appeal Judgement, para. 707. See *Stanišić and Simatović* Appeal Judgement, para. 77 ("The *mens rea* element for the first category of JCE liability is the intent to perpetrate a certain crime (this being the shared intent on the part of all co-perpetrators)"); *Šainović et al.* Appeal Judgement, paras 996 ("The Trial Chamber correctly articulated the requisite *mens rea* for the first category of JCE, explaining that it had to be proved 'that the accused shared with the other joint criminal enterprise members the intent to commit the crime or underlying offence.'"), 1286, 1470.

1764. Thus, the Appeals Chamber finds that the Trial Chamber – having determined that Stojić possessed the required shared intent⁵⁸³² – did not also have to find that he intended to participate in the JCE. Moreover, Stojić’s intent to participate in the JCE, as the only reasonable inference, is clearly evident from the findings that he shared the intent of the JCE and to commit the JCE I crimes, and that he significantly contributed to the JCE.⁵⁸³³ By merely asserting that the Trial Chamber’s findings “do not inevitably” lead to this inference, when in fact they do, Stojić fails to present any persuasive argument to the contrary. Stojić’s sub-ground of appeal 25.2 is dismissed.

(e) Alleged errors in inferring Stojić’s intent from his general logistical assistance (Stojić’s Sub-ground 25.3)

1765. Stojić argues that insofar as the Trial Chamber inferred his intent to commit the relevant crimes from the general logistical support that he provided to the military operations, including the financing of the armed forces, it erred.⁵⁸³⁴ He submits that there “is no necessary connection between [his] general logistical acts, lawful in themselves, and the commission of crimes”.⁵⁸³⁵ Stojić also avers that the Trial Chamber’s statement that his intent was based on “all the evidence analysed above” made it “impossible” to understand which evidence was relied on.⁵⁸³⁶

1766. The Prosecution responds that the Trial Chamber’s analysis of Stojić’s intent was neither unclear nor based on his general logistical support to the armed forces.⁵⁸³⁷

1767. The Trial Chamber concluded that “[i]n view of all the evidence analysed above, [...] the only possible inference it [could] reasonably draw [was] that Bruno Stojić intended to expel the Muslim population from the HZ(R) H-B.”⁵⁸³⁸ This conclusion was made in the final section of the Trial Judgement section addressing Stojić’s responsibility after the Trial Chamber summarised its findings, made in the preceding sub-sections, regarding Stojić’s contribution to the JCE and his intent.⁵⁸³⁹ The Appeals Chamber considers that, while it would have been preferable for the Trial Chamber to have provided cross-references to the evidence and findings it relied on, it was not “impossible” for Stojić to ascertain on what basis the Trial Chamber inferred his intent. On his more specific argument, the Appeals Chamber finds that it is evident that the Trial Chamber did not rely

⁵⁸³¹ *Popović et al.* Appeal Judgement, paras 1369, 1652; *Brđanin* Appeal Judgement, para. 365. See *Stanišić and Župljanin* Appeal Judgement, paras 915, 917.

⁵⁸³² See *supra*, paras 1759-1760.

⁵⁸³³ Trial Judgement, Vol. 4, paras 426, 428-429.

⁵⁸³⁴ Stojić’s Appeal Brief, para. 207, heading before para. 206. See Stojić’s Appeal Brief, para. 206.

⁵⁸³⁵ Stojić’s Appeal Brief, para. 207. Stojić also asserts that the Trial Chamber failed to consider the absence of evidence that he ordered the commission of any crime. Stojić’s Appeal Brief, heading before para. 206.

⁵⁸³⁶ Stojić’s Appeal Brief, paras 206-207, referring to Trial Judgement, Vol. 4, para. 428.

⁵⁸³⁷ Prosecution’s Response Brief (Stojić), para. 187.

⁵⁸³⁸ Trial Judgement, Vol. 4, para. 428.

⁵⁸³⁹ Trial Judgement, Vol. 4, paras 425-427. See *infra*, para. 1792.

on Stojić's administrative or logistical assistance to the armed forces and the military operations to infer his intent. Rather, the Appeals Chamber recalls that this assistance was explicitly considered by the Trial Chamber in determining Stojić's command authority and "effective control" over the HVO and the Military Police⁵⁸⁴⁰ as well as his significant contribution to the JCE.⁵⁸⁴¹ Thus, Stojić's arguments and sub-ground of appeal 25.3 are dismissed.⁵⁸⁴²

(f) Alleged errors concerning Stojić's intent to commit certain crimes (Stojić's Sub-ground 25.4)

(i) Arguments of the Parties

1768. Stojić submits that the Trial Chamber failed to make clear and reasoned findings that he had the requisite intent for certain crimes.⁵⁸⁴³ Although the convictions in the *Dorđević* case were upheld despite the failure to make precise findings on intent for each crime, Stojić contends that the crimes in the present case are less connected to the CCP and more complex, thus requiring the Trial Chamber to make individual intent findings.⁵⁸⁴⁴ In this regard, he argues that the Trial Chamber failed to find that he intended to: (1) cause death or grievous bodily harm to victims (Counts 2 and 3) in any municipality;⁵⁸⁴⁵ (2) destroy property or had reckless disregard to the likelihood of such destruction (Counts 19 and 20) in Jablanica, Mostar, or Vareš;⁵⁸⁴⁶ (3) destroy protected property (Count 21) in Mostar;⁵⁸⁴⁷ or (4) spread terror among the civilian population (Count 25).⁵⁸⁴⁸ Further, Stojić argues that any finding that he intended the murders in Mostar is inconsistent with an earlier finding that those murders did not fall within the CCP because there was a "lack of common

⁵⁸⁴⁰ See *supra*, paras 1409-1412, 1441-1453, 1470-1472.

⁵⁸⁴¹ See *supra*, paras 1534-1537.

⁵⁸⁴² The Appeals Chamber also dismisses Stojić's assertion – found only in a heading – on his alleged lack of orders as he fails to develop this argument or explain how evidence of an order is required in order to infer his intent.

⁵⁸⁴³ Stojić's Appeal Brief, heading before para. 208, paras 210, 215. See Stojić's Appeal Brief, para. 208; Stojić's Reply Brief, paras 61, 64, referring to, *inter alia*, *Brđanin* Appeal Judgement, para. 365, *Krajišnik* Appeal Judgement, para. 200. See also Appeal Hearing, AT. 282-284 (21 Mar 2017).

⁵⁸⁴⁴ Stojić's Appeal Brief, para. 209 (referring to *Dorđević* Appeal Judgement, para. 930); Stojić's Reply Brief, paras 62-63 (referring to *Dorđević* Appeal Judgement, paras 468, 470); Appeal Hearing, AT. 283-284 (21 Mar 2017). Stojić replies that as it only found that he intended to expel the Muslim population, the Trial Chamber should have made separate findings that he intended each diverse crime and that this is essential. Stojić's Reply Brief, paras 62-63; Appeal Hearing, AT. 284 (21 Mar 2017).

⁵⁸⁴⁵ Stojić's Appeal Brief, para. 211, referring to Trial Judgement, Vol. 4, paras 330-337, 343-372, 379-383, 388-395, *Kvočka et al.* Appeal Judgement, para. 259, *Kordić and Čerkez* Appeal Judgement, paras 36-38.

⁵⁸⁴⁶ Stojić's Appeal Brief, para. 212, referring to Trial Judgement, Vol. 4, paras 342, 363, 370, 383, *Kordić and Čerkez* Appeal Judgement, para. 74. Stojić also argues that the Trial Chamber was ambiguous in finding that he intended to commit "those crimes" in Gornji Vakuf without specifying which crimes or what *mens rea* standard it applied. Stojić's Appeal Brief, para. 212, referring to Trial Judgement, Vol. 4, para. 337.

⁵⁸⁴⁷ Stojić's Appeal Brief, para. 213, referring to Trial Judgement, Vol. 1, para. 176, Vol. 4, para. 363.

⁵⁸⁴⁸ Stojić's Appeal Brief, para. 214, referring to Trial Judgement, Vol. 1, para. 197, Vol. 4, paras 343-372, *Galić* Appeal Judgement, para. 104.

intent”.⁵⁸⁴⁹ He also contends that the Trial Chamber’s approach was inconsistent, making particular findings on his intent regarding crimes in some municipalities while failing to do so for others.⁵⁸⁵⁰

1769. The Prosecution responds that it was sufficient for the Trial Chamber to have clearly set out the types of crimes within the CCP and determine that Stojić shared the intent with the other JCE members to commit those crimes.⁵⁸⁵¹ It argues that, in any event, the Trial Chamber made exact findings that Stojić intended the commission of particular crimes in specific locations, including the destruction of property and mosques.⁵⁸⁵² According to the Prosecution, the Trial Chamber’s findings are consistent as it was the murders committed during evictions and in detention centres which the Trial Chamber found were not JCE I crimes.⁵⁸⁵³

(ii) Analysis

a. Alleged errors regarding Stojić’s intent to commit crimes under Counts 2, 3, 19, 20, and 21 of the Indictment

1770. The Appeals Chamber recalls the Trial Chamber’s finding that Stojić shared the intent to expel the Muslim population from the HZ(R) H-B territory, and that this finding is indistinguishable from the Trial Chamber’s finding that Stojić had the intent to ethnically cleanse the Muslim population through an “entire system for deporting the Muslim population of the HR H-B”, effectuated through a range of crimes under the Statute.⁵⁸⁵⁴ It also found that Stojić and the other Appellants, as JCE members, intended that the relevant crimes be committed in order to further the CCP, and then proceeded to list these crimes.⁵⁸⁵⁵ Notably, the crimes enumerated by the Trial Chamber as falling within the CCP included murder (Count 2),⁵⁸⁵⁶ wilful killing (Count 3), extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly (Count 19), wanton destruction of cities, towns, or villages or devastation not justified by military necessity (Count 20), destruction or wilful damage done to institutions dedicated to religion

⁵⁸⁴⁹ Stojić’s Appeal Brief, para. 211, referring to Trial Judgement, Vol. 4, para. 70.

⁵⁸⁵⁰ Stojić’s Appeal Brief, paras 199, 213; Stojić’s Reply Brief, para. 61.

⁵⁸⁵¹ Prosecution’s Response Brief (Stojić), para. 184, referring to Trial Judgement, Vol. 4, paras 67-68, 428, *Dordević* Appeal Judgement, paras 468, 470. See Prosecution’s Response Brief (Stojić), paras 181, 183.

⁵⁸⁵² Prosecution’s Reponse Brief (Stojić), para. 185, referring to Trial Judgement, Vol. 4, paras 336-337, 349, 355-357, 378.

⁵⁸⁵³ Prosecution’s Response Brief (Stojić), para. 186, referring to Trial Judgement, Vol. 4, paras 65-66, 70.

⁵⁸⁵⁴ See *supra*, paras 1759-1760.

⁵⁸⁵⁵ Trial Judgement, Vol. 4, paras 67-68, 426. See Trial Judgement, Vol. 4, para. 66.

⁵⁸⁵⁶ See *infra*, para. 1773. The Appeals Chamber recalls its finding that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, para. 882. While this means that Stojić did not have the intent for murder and wilful killing from January 1993 until June 1993, this does not affect the Trial Chamber’s remaining findings concerning his contributions and intent for various crimes – including murder and wilful killing from June 1993 – particularly since only a few murders forming part of the CCP were found to have occurred prior to June 1993. See *supra*, para. 876.

or education (Count 21), and unlawful infliction of terror on civilians in Mostar (Count 25).⁵⁸⁵⁷ The Trial Chamber elaborated on these findings by determining that Stojić planned, intended, and accepted the crimes discussed in relation to the various municipalities,⁵⁸⁵⁸ and concluded that the only inference it could reasonably draw was that he intended to have those crimes committed.⁵⁸⁵⁹ Moreover, the Appeals Chamber recalls that the Trial Chamber explicitly found that Stojić encouraged crimes and did not intend to prevent or punish crimes committed by the HVO and the Military Police, which it later considered in inferring his intent.⁵⁸⁶⁰ Before analysing whether these findings were sufficient, the Appeals Chamber will first consider Stojić's arguments on what the Trial Chamber was required to find with respect to his intent.

1771. Stojić argues that the Trial Chamber was required to make findings on the underlying elements of *mens rea* in relation to each crime, such as – in the case of murder and wilful killing – the intent to cause death or grievous bodily harm which he reasonably must have known might lead to death.⁵⁸⁶¹ The Appeals Chamber notes, however, that none of the authorities Stojić cites support this proposition, and his attempt at distinguishing the *Dorđević* Appeal Judgement is not convincing. In the *Dorđević* case, the Appeals Chamber found no error in the approach of identifying the crimes that were part of the JCE in that case and then finding that Vlastimir Dorđević “shared the requisite intent for these crimes”.⁵⁸⁶² While the CCP in this case involves various types of crimes, the Trial Chamber clearly identified the crimes which it found all the Appellants shared the intent to commit.⁵⁸⁶³ Moreover, in discussing the specific intent required for persecution under JCE I liability, it was noted in the *Dorđević* Appeal Judgement that it would be preferable for a trial chamber to make “separate findings on [the accused’s] intent in relation to each of the crimes that were within the JCE”, but nonetheless no error was found as the essence of the JCE was clearly discriminatory.⁵⁸⁶⁴

⁵⁸⁵⁷ Trial Judgement, Vol. 4, para. 68. See *supra*, fn. 5856

⁵⁸⁵⁸ See Trial Judgement, Vol. 4, paras 337, 342, 349, 357, 363, 370, 378, 383, 389, 395, 407. See *infra*, paras 1800-1804. The Appeals Chamber recalls here its finding overturning Stojić's convictions for murder and wilful killing in relation to the deaths of civilians in Duša, Gornji Vakuf Municipality, and in relation to two killings in Tošćanica, Prozor Municipality. See *supra*, paras 441-443, 880-882.

⁵⁸⁵⁹ Trial Judgement, Vol. 4, para. 426.

⁵⁸⁶⁰ Trial Judgement, Vol. 4, paras 423, 427.

⁵⁸⁶¹ See *supra*, para. 1768.

⁵⁸⁶² *Dorđević* Appeal Judgement, para. 468. See also *Šainović et al.* Appeal Judgement, para. 996 (the Appeals Chamber found that there was no error in the Trial Chamber's approach regarding *mens rea* by concluding that the common purpose of the JCE was to be achieved through forcibly displacing the Kosovo Albanian population, and subsequently finding that Šainović “shared the intent to forcibly displace part of the Kosovo Albanian population”); *Karemera and Ngirumpatse* Appeal Judgement, paras 137, 154 (the trial chamber did not err in finding that the accused acted with the requisite *mens rea* when it considered that the JCE members acted with the intent to destroy the Tutsi population after expressly considering the massive scale of the killings, systematically and publicly targeting Tutsi civilians).

⁵⁸⁶³ See *supra*, paras 1759-1760, 1770.

⁵⁸⁶⁴ *Dorđević* Appeal Judgement, para. 470.

1772. Furthermore, the Appeals Chamber considers that the Trial Chamber made the requisite findings in respect of the crimes challenged by Stojić. Of particular note is the fact that the Trial Chamber set out correctly the applicable law on the various crimes and JCE liability.⁵⁸⁶⁵ Importantly, the Trial Chamber also made extensive findings on the required *actus reus* and *mens rea* of the physical perpetrators for all crimes which it found were the means through which the CCP was achieved.⁵⁸⁶⁶ Specifically, for the crimes of murder and wilful killing,⁵⁸⁶⁷ the Appeals Chamber notes the Trial Chamber's findings that Stojić knew of, accepted, and intended: (1) the murders and wounding of Muslim civilians in East Mostar during the siege of that part of the town;⁵⁸⁶⁸ (2) the murders in Stupni Do;⁵⁸⁶⁹ and (3) the wounding and death of some of the detainees at the Heliodrom used for work on the front line.⁵⁸⁷⁰ In relation to the crimes of extensive destruction of property and wanton destruction or devastation of cities, towns, or villages in Jablanica, Mostar, and Vareš, and destruction or wilful damage to institutions dedicated to religion or education in Mostar, the Trial Chamber found that Stojić knew of, accepted, and intended: (1) the destruction of property, including mosques, in Jablanica;⁵⁸⁷¹ (2) the destruction of property, including mosques, related to the shelling and harsh living conditions of the population of East Mostar;⁵⁸⁷² and (3) the destruction of property in Stupni Do.⁵⁸⁷³ In light of these findings, the Appeals Chamber considers that the Trial Chamber made separate findings on Stojić's intent in relation to each of the crimes as required. Thus, Stojić fails to demonstrate that the requisite intent findings were not made or that they were unclear. His arguments discussed above are dismissed.

1773. The Appeals Chamber now turns to Stojić's argument that the Trial Chamber was inconsistent in its findings concerning the murders in Mostar. The Appeals Chamber notes that the Trial Chamber excluded certain murders in Mostar from the CCP, to the extent that they occurred specifically "during the HVO campaigns to expel the Muslims or while they were in detention".⁵⁸⁷⁴ The Trial Chamber thus appropriately made no findings on Stojić's intent for any murders in West Mostar,⁵⁸⁷⁵ although it did find that he intended murders in East Mostar in respect of the crimes connected with the siege there.⁵⁸⁷⁶ Thus, the Appeals Chamber considers that the Trial Chamber's

⁵⁸⁶⁵ Trial Judgement, Vol. 1, paras 31-221.

⁵⁸⁶⁶ Trial Judgement, Vol. 3, paras 509-1741, Vol. 4, para. 68.

⁵⁸⁶⁷ The Appeals Chamber recalls its finding that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, para. 882.

⁵⁸⁶⁸ Trial Judgement, Vol. 4, paras 369-370. See *infra*, paras 1773, 1800-1804.

⁵⁸⁶⁹ Trial Judgement, Vol. 4, para. 383.

⁵⁸⁷⁰ Trial Judgement, Vol. 4, para. 395. See *infra*, paras 1773, 1800-1804.

⁵⁸⁷¹ Trial Judgement, Vol. 4, para. 342. See *infra*, paras 1773, 1800-1804. The Trial Chamber considered the destruction of mosques committed in Jablanica under Count 21 as a JCE III crime. Trial Judgement, Vol. 4, para. 342.

⁵⁸⁷² Trial Judgement, Vol. 4, para. 363. See *infra*, paras 1773, 1800-1804.

⁵⁸⁷³ Trial Judgement, Vol. 4, para. 383.

⁵⁸⁷⁴ Trial Judgement, Vol. 4, para. 70. See Trial Judgement, Vol. 4, paras 56-58, 348-349, 357.

⁵⁸⁷⁵ Trial Judgement, Vol. 4, paras 347-349, 357.

⁵⁸⁷⁶ Trial Judgement, Vol. 4, paras 363, 369-370.

findings were consistent in this respect. With regard to Stojić's argument that the Trial Chamber's approach was inconsistent in finding that he intended crimes in particular municipalities while making no such findings in others, the Appeals Chamber considers that he misinterprets the Trial Chamber's findings. The Appeals Chamber recalls that JCE I intent can be inferred from circumstantial evidence, such as a person's knowledge of the common criminal purpose or the crime(s) involved, combined with his continuing participation in the crimes or in the implementation of the common criminal purpose, if this is the only reasonable inference available on the evidence.⁵⁸⁷⁷ In the paragraphs where Stojić alleges no intent finding was made,⁵⁸⁷⁸ the Trial Chamber found that he: (1) participated in planning the crimes;⁵⁸⁷⁹ or (2) knew about the relevant crimes, but continued to participate in the JCE, and thus "accepted" those crimes.⁵⁸⁸⁰ The Trial Chamber then concluded that the only inference it could reasonably draw was that he intended to have those crimes committed.⁵⁸⁸¹ The Appeals Chamber considers that Stojić fails to demonstrate any error or inconsistency in the Trial Chamber's approach. Stojić's arguments on inconsistencies are dismissed.

b. Alleged errors regarding Stojić's specific intent to commit the crime of unlawful infliction of terror on civilians

1774. The Appeals Chamber next turns to Stojić's argument that the Trial Chamber failed to find that he possessed the intent required for the crime of unlawful infliction of terror on civilians under Article 3 of the Statute. The Appeals Chamber recalls that the *mens rea* for this crime requires the general intent to make the civilian population or individual civilians not taking direct part in hostilities the object of the acts of violence or threats thereof and the "specific intent to spread terror among the civilian population".⁵⁸⁸² While spreading terror must be the primary purpose of the acts or threats of violence, it need not be the only one and can be inferred from the "nature, manner, timing, and duration" of the acts or threats.⁵⁸⁸³

⁵⁸⁷⁷ *Stanišić and Simatović* Appeal Judgement, para. 81; *Popović et al.* Appeal Judgement, paras 1369, 1652. See *Stanišić and Župljanin* Appeal Judgement, para. 393.

⁵⁸⁷⁸ Stojić's Appeal Brief, fn. 541.

⁵⁸⁷⁹ Trial Judgement, Vol. 4, para. 349.

⁵⁸⁸⁰ Trial Judgement, Vol. 4, paras 342, 363, 369-370, 383. See *infra*, paras 1800-1804.

⁵⁸⁸¹ Trial Judgement, Vol. 4, para. 426.

⁵⁸⁸² *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104. The *actus reus* of the crime of unlawful infliction of terror consists of "[a]cts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population". *D. Milošević* Appeal Judgement, para. 31. See *Galić* Appeal Judgement, para. 100.

⁵⁸⁸³ *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104. See *infra*, para. 2017.

1775. In response to Stojić's argument that the Trial Chamber failed to find that he intended to spread terror among the civilian population,⁵⁸⁸⁴ the Prosecution concedes that the Trial Chamber made no explicit finding on Stojić's specific intent to commit terror.⁵⁸⁸⁵ Nonetheless, the Prosecution argues that the only reasonable reading of the Trial Judgement as a whole results in the inherent conclusion that Stojić possessed the specific intent to commit terror.⁵⁸⁸⁶ It avers that this conclusion is inherent from the Trial Chamber's findings on Stojić's heavy involvement in the Mostar operations, his knowledge of the same, and his shared intent for the CCP.⁵⁸⁸⁷ The Prosecution also contends that "when the [Trial] Chamber found that the HVO possessed the specific intent to spread terror [...], one of the people within the HVO that the [Trial] Chamber must have been referring to was Stojić".⁵⁸⁸⁸ It concludes that the Trial Chamber "had clearly satisfied itself that Stojić possessed the specific intent to spread terror".⁵⁸⁸⁹ The Prosecution also responds that, if there was a failure to provide a reasoned opinion on this issue, the findings and the evidence leads to "the same inescapable conclusion".⁵⁸⁹⁰

1776. Stojić replies that the evidence is incompatible with a finding that he intended to spread terror, referring to: (1) his statements at the 17 July 1993 dinner indicating that the HVO's primary purpose in East Mostar was to gain a military advantage and that he offered to assist evacuations;⁵⁸⁹¹ (2) evidence that he provided medical supplies to Muslim civilians and the ABiH in Mostar,⁵⁸⁹² and (3) a Trial Chamber finding that, between July and November 1993, the HVO attempted to manage the electricity and water supply problem in Mostar.⁵⁸⁹³ Stojić also submits that a finding on his specific intent to commit terror is such a fundamental and basic finding, that its absence from the Trial Judgement can only result in the reversal of his conviction, particularly as it relates to an expanded JCE crime and requires speculation.⁵⁸⁹⁴

1777. The Appeals Chamber recalls that, in the section on Stojić's individual responsibility pursuant to JCE I, the Trial Chamber found that Stojić "accepted the crimes directly linked to the HVO military operations against East Mostar, that is, the murders and the destruction of property, including mosques, related to shelling and the harsh living conditions of the population of that part

⁵⁸⁸⁴ Stojić's Appeal Brief, para. 214, referring to Trial Judgement, Vol. 1, para. 197, Vol. 4, paras 343-372, *Galić* Appeal Judgement, para. 104. See *supra*, para. 1768.

⁵⁸⁸⁵ Appeal Hearing, AT. 339-340 (21 Mar 2017).

⁵⁸⁸⁶ Appeal Hearing, AT. 340, 342-343 (21 Mar 2017).

⁵⁸⁸⁷ Appeal Hearing, AT. 340-342 (21 Mar 2017), referring to Trial Judgement, Vol. 2, paras 1231, 1246, Vol. 4, paras 359, 362, 372.

⁵⁸⁸⁸ Appeal Hearing, AT. 340 (21 Mar 2017), referring to Trial Judgement, Vol. 3, para. 1692. See Appeal Hearing, AT. 341-342 (21 Mar 2017).

⁵⁸⁸⁹ Appeal Hearing, AT. 340 (21 Mar 2017), referring to Trial Judgement, Vol. 4, paras 428, 431.

⁵⁸⁹⁰ Appeal Hearing, AT. 342 (21 Mar 2017). See Appeal Hearing, AT. 343-344 (21 Mar 2017).

⁵⁸⁹¹ Appeal Hearing, AT. 362-363 (21 Mar 2017), referring to Trial Judgement, Vol. 4, para. 361.

⁵⁸⁹² Appeal Hearing, AT. 363 (21 Mar 2017), referring to Stojić's Appeal Brief, para. 316.

⁵⁸⁹³ Appeal Hearing, AT. 362-363 (21 Mar 2017), referring to Trial Judgement, Vol. 2, para. 1218.

of the town caused by the lack of food and water”.⁵⁸⁹⁵ The Trial Chamber also found that Stojić “must have known that the snipers in West Mostar were targeting civilians and members of international organisations in East Mostar”⁵⁸⁹⁶ and “accepted the murders and wounding of Muslim civilians in East Mostar during the siege of that part of the town”.⁵⁸⁹⁷ It also found that he facilitated the hindering of access of humanitarian aid to East Mostar.⁵⁸⁹⁸ Furthermore, the Trial Chamber found that Stojić intended to expel the Muslim population from HZ(R) H-B, and that he shared this intent with other JCE members.⁵⁸⁹⁹ The Trial Chamber then found Stojić responsible for committing the crime of unlawful infliction of terror on civilians in Mostar Municipality.⁵⁹⁰⁰

1778. The Appeals Chamber concludes that, in making the intent findings above⁵⁹⁰¹ and holding Stojić responsible for the crime of unlawful infliction of terror on civilians, the Trial Chamber considered that he had the required *mens rea* for this crime. However, the Appeals Chamber finds that the Trial Chamber’s approach falls short of what is required under its obligation under Article 23(2) of the Statute, translated into Rule 98 *ter*(C) of the Rules, to give a reasoned opinion in writing, meaning that “all the constituent elements of a crime have to be discussed and supporting evidence has to be assessed by the Trial Chamber”.⁵⁹⁰² Although the Appeals Chamber considers that the intent findings for Stojić provided by the Trial Chamber satisfy the general intent requirement that he intended to make the civilian population or individual civilians not taking direct part in hostilities the object of the acts of violence, they do not satisfy the specific intent requirement, namely, whether he committed the offence with the primary purpose of spreading terror among the civilian population.⁵⁹⁰³ In this regard, the Appeals Chamber notes that, in the section outlining its legal findings, the Trial Chamber explicitly found that the HVO had “the specific intention [...] to spread terror among the civilian population of East Mostar”⁵⁹⁰⁴ and “committed acts of violence, the main aim of which was to inflict terror on the population”.⁵⁹⁰⁵ However, no similar findings were made in the individual criminal responsibility section to clarify whether Stojić shared this specific intent.⁵⁹⁰⁶

⁵⁸⁹⁴ Appeal Hearing, AT. 362-363 (21 Mar 2017).

⁵⁸⁹⁵ Trial Judgement, Vol. 4, para. 363. See *supra*, para. 1661, fn. 5395.

⁵⁸⁹⁶ Trial Judgement, Vol. 4, para. 369. See *supra*, para. 1667.

⁵⁸⁹⁷ Trial Judgement, Vol. 4, para. 370.

⁵⁸⁹⁸ Trial Judgement, Vol. 4, para. 372. See *supra*, para. 1674.

⁵⁸⁹⁹ Trial Judgement, Vol. 4, para. 428. See Trial Judgement, Vol. 4, para. 429. See also *supra*, para. 1760.

⁵⁹⁰⁰ Trial Judgement, Vol. 4, para. 431. See Trial Judgement, Vol. 3, paras 1689-1692.

⁵⁹⁰¹ See *supra*, para. 1777.

⁵⁹⁰² *Kordić and Čerkez* Appeal Judgement, para. 383. See also *Kordić and Čerkez* Appeal Judgement, para. 385.

⁵⁹⁰³ See *supra*, para. 1774.

⁵⁹⁰⁴ Trial Judgement, Vol. 3, para. 1691. See *supra*, paras 546-565.

⁵⁹⁰⁵ Trial Judgement, Vol. 3, para. 1692. See *supra*, paras 546-565.

⁵⁹⁰⁶ See *infra*, para. 2019.

1779. In these circumstances, the Appeals Chamber finds that the Trial Chamber failed to provide a reasoned opinion, by neglecting to set out in a clear and articulate manner the factual and legal *mens rea* findings on the basis of which it reached the decision to convict Stojić for the crime of unlawful infliction of terror.⁵⁹⁰⁷ The Appeals Chamber will therefore determine whether this error of law invalidates the Trial Chamber's decision to convict Stojić for this crime. In so doing, the Appeals Chamber will assess, on the basis of the Trial Chamber's findings, as well as evidence referred to by the Trial Chamber, whether a reasonable trier of fact could be satisfied beyond reasonable doubt – and as the only reasonable inference available – that Stojić intended that the acts of violence be committed with the primary purpose of spreading terror among the civilian population.⁵⁹⁰⁸

1780. The Appeals Chamber notes that, in the portion of the Trial Judgement relating to the legal findings on the crime of unlawful infliction of terror, the Trial Chamber, having described the “appalling living conditions” in East Mostar, found that:

The [Trial] Chamber is satisfied that the deliberate isolation of a population in an area as small as East Mostar for several months – and doing so after forcibly transferring a large part of the population there – and thus the exacerbation of their distress and difficult living conditions is part of the same plan and demonstrates the specific intention of the HVO to spread terror among the civilian population of East Mostar.⁵⁹⁰⁹

1781. It reached this conclusion, having considered, *inter alia*, that: (1) between June 1993 and March 1994, the HVO subjected the civilian population of East Mostar to intense, daily, and frequent shelling and firing which resulted in the death and injury of a large number of Muslim civilians;⁵⁹¹⁰ (2) these attacks were indiscriminate particularly as they were intense and uninterrupted over a period of nine months, they were not limited to specific targets;⁵⁹¹¹ (3) the civilian inhabitants of East Mostar were subjected to a campaign of HVO sniper fire involving the targeting of women, children, and elderly people who were going about their daily business, including firemen aiding and assisting the population;⁵⁹¹² (4) the constant and intense shelling and fire – including sniper fire – had the effect of terrifying the population of East Mostar;⁵⁹¹³ (5) between June 1993 and December 1993, the HVO deliberately destroyed ten mosques in East Mostar, which had no military value, as well as the Old Bridge of Mostar on 8 November 1993, the destruction of which had a major psychological impact on the morale of the population and the

⁵⁹⁰⁷ See *Bizimungu* Appeal Judgement, para. 18, referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 13.

⁵⁹⁰⁸ See *Stanišić and Župljanin* Appeal Judgement, para. 356, referring to *Kordić and Čerkez* Appeal Judgement, paras 383-388, *Nyiramasuhuko et al.* Appeal Judgement, para. 977, *Bizimungu* Appeal Judgement, para. 23, *Ndindiliyimana et al.* Appeal Judgement, para. 293. See also *supra*, para. 20; *infra*, para. 2020.

⁵⁹⁰⁹ Trial Judgement, Vol. 3, para. 1691. See also *infra*, para. 2021.

⁵⁹¹⁰ Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 546-565.

⁵⁹¹¹ Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 546-565.

⁵⁹¹² Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 540-545.

⁵⁹¹³ Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 546-565.

HVO had to be aware of that impact, in light of the great symbolic, cultural, and historical value the mosques and the Old Bridge had;⁵⁹¹⁴ and (6) the HVO aggravated the appalling living conditions to which the Muslim inhabitants of East Mostar were subjected by blocking or hindering the regular provision of humanitarian aid or access of the international organisations to East Mostar, including by deliberately attacking the members of the international organisations, and by deliberately keeping the civilian population in the small and overcrowded enclave of East Mostar from June 1993 to April 1994.⁵⁹¹⁵ The Appeals Chamber recalls, in this regard, that the challenges presented to the Trial Chamber's finding that the HVO committed the crime of unlawful infliction of terror on the population of East Mostar have been considered and dismissed, with the exception of the challenges to the Old Bridge. Specifically, the Appeals Chamber recalls that it has found the Trial Chamber's conclusion that the destruction of the Old Bridge was unlawful to be erroneous.⁵⁹¹⁶ Thus, the Trial Chamber's findings on the Old Bridge will not be considered in determining whether Stojić had the specific intent to terrorise.

1782. The Appeals Chamber considers that, to the extent that Stojić had knowledge of and contributed to the appalling living conditions in East Mostar caused by the HVO, the Trial Chamber's reasoning outlined above is relevant for the assessment of Stojić's own specific intent for the crime of unlawful infliction of terror. Thus, in relation to his involvement in the crimes, the Appeals Chamber recalls the Trial Chamber's findings that Stojić "commanded and had effective control over the HVO armed forces" from 3 July 1992 to 15 November 1993.⁵⁹¹⁷ The Trial Chamber found, in particular, that Stojić had the power to "send military-related government decisions through the military chain of command and used that authority [and] that he had the authority to issue orders directly to the armed forces and to ensure they were carried out and used that authority".⁵⁹¹⁸

1783. In relation to how Stojić exercised this authority in Mostar Municipality, the Appeals Chamber observes that the Trial Chamber noted Stojić's admission that he controlled the snipers positioned in the glass-walled bank building and the secondary school in Mostar.⁵⁹¹⁹ The Trial Chamber found that, inasmuch as Stojić controlled most of the HVO armed forces and as all the

⁵⁹¹⁴ Trial Judgement, Vol. 3, para. 1690. See *supra*, paras 405-426.

⁵⁹¹⁵ Trial Judgement, Vol. 3, para. 1691. See *supra*, paras 536-539.

⁵⁹¹⁶ The Appeals Chamber recalls that it has reversed the Trial Chamber's conclusion that the destruction of the Old Bridge constituted wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or customs of war. The Appeals Chamber has also reversed the Trial Chamber's findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and has therefore acquitted the Appellants of these charges insofar as they concern the Old Bridge. See *supra*, paras 411-414, 426, 548-565. See also *infra*, para. 2021.

⁵⁹¹⁷ Trial Judgement, Vol. 4, para. 312. See *supra*, paras 1405, 1457-1458, 1479.

⁵⁹¹⁸ Trial Judgement, Vol. 4, para. 312. See *supra*, paras 1422-1423, 1435, 1457.

⁵⁹¹⁹ Trial Judgement, Vol. 4, para. 368.

sniping in West Mostar had the same targets and followed the same *modus operandi*, the only inference it could draw was that Stojić controlled all the snipers in West Mostar.⁵⁹²⁰ The Appeals Chamber notes here the Trial Chamber's findings that the HVO snipers in West Mostar subjected the civilian population of East Mostar to a campaign of sniper fire, involving the targeting of women, children, and elderly people who were going about their daily business, including firemen aiding and assisting the population,⁵⁹²¹ and that this sniper fire terrified the population of East Mostar.⁵⁹²² The Appeals Chamber recalls also the Trial Chamber's findings that Stojić knew that the snipers in West Mostar were targeting civilians and members of international organisations and thereby accepted the murders and wounding of Muslim civilians in East Mostar during the siege.⁵⁹²³

1784. The Appeals Chamber further notes that the Trial Chamber made findings regarding Stojić's involvement in the shelling of East Mostar and the harsh living conditions endured by the population of that part of the town. In this respect, the Trial Chamber noted evidence that on 17 July 1993, Stojić told members of international organisations that the HVO plan of action was to put pressure on East Mostar to force the ABiH to leave the sector, which the Trial Chamber considered was necessarily directed against the entire population of East Mostar and not only against the ABiH.⁵⁹²⁴ In this regard, the Appeals Chamber dismisses elsewhere Stojić's arguments on his statements made on 17 July 1993.⁵⁹²⁵

1785. Additionally, the Trial Chamber considered evidence that: (1) Stojić was kept informed by representatives of the international community about crimes committed by HVO members in Mostar, such as the shelling and incidents when representatives of the international community were targeted by the HVO;⁵⁹²⁶ and (2) Branko Kvesić, Head of the Department of the Interior of the HZ H-B, informed Stojić that there was no water or electricity in East Mostar and that there was less and less food and medical equipment there.⁵⁹²⁷ The Trial Chamber found, in view of this evidence, that Stojić knew of the shelling of East Mostar, the attacks on representatives of international organisations, and the shortages of food and water suffered by the Muslim population.⁵⁹²⁸ In this regard, the Appeals Chamber dismisses elsewhere Stojić's arguments concerning the medical assistance given by the HVO.⁵⁹²⁹ However, the Appeals Chamber has granted Stojić's contentions regarding the HVO's attempts at managing the water supply and

⁵⁹²⁰ Trial Judgement, Vol. 4, para. 368. See *supra*, para. 1667.

⁵⁹²¹ Trial Judgement, Vol. 3, para. 1689, Vol. 4, paras 369-370. See *supra*, paras 540-545.

⁵⁹²² Trial Judgement, Vol. 3, para. 1689. See also Trial Judgement, Vol. 2, para. 1015.

⁵⁹²³ Trial Judgement, Vol. 4, paras 369-370. See *supra*, para. 1667.

⁵⁹²⁴ Trial Judgement, Vol. 4, paras 361-362. See *supra*, para. 1658.

⁵⁹²⁵ See *supra*, paras 1631, 1634, 1636.

⁵⁹²⁶ Trial Judgement, Vol. 4, para. 359.

⁵⁹²⁷ Trial Judgement, Vol. 4, para. 360. See *supra*, paras 1658-1660.

⁵⁹²⁸ Trial Judgement, Vol. 4, para. 362. See *supra*, para. 1658.

⁵⁹²⁹ See *supra*, paras 1656, 1658.

concluded that the Trial Chamber erred in considering that he accepted the water shortage as a component of the harsh living conditions endured by the civilian population.⁵⁹³⁰ However, the Trial Chamber's finding that Stojić accepted the harsh living condition caused by the lack of food is maintained, thus any error in relation to the water shortage would not impact on Stojić's knowledge and intent, particularly in light of the various other findings supporting the conclusion that he knew of and accepted the harsh living conditions.

1786. The Appeals Chamber also recalls the Trial Chamber's findings that the shelling was indiscriminate,⁵⁹³¹ and also had the effect of terrifying the population.⁵⁹³² The Trial Chamber concluded that Stojić knew of the HVO's plan of action and the impact it had on the civilian population of East Mostar and that, inasmuch as he continued to exercise his functions in the HVO/Government of the HR H-B, he "accepted the crimes directly linked to the HVO military operations against East Mostar, that is, the murders and the destruction of property, including mosques, related to the shelling and the harsh living conditions of the population of that part of the town caused by the lack of food".⁵⁹³³

1787. The Appeals Chamber also recalls the Trial Chamber's finding that the HVO had to be aware of the major psychological impact that the destruction of the mosques, which had no military value, had on the morale of the population.⁵⁹³⁴ The Trial Chamber found that Stojić accepted the destruction of the mosques related to the shelling of East Mostar.⁵⁹³⁵ In light of this, the Appeals Chamber considers that a reasonable trier of fact could conclude that Stojić must have been aware that the destruction of the mosques would have a psychological impact on the morale of the population.⁵⁹³⁶ Furthermore, the Appeals Chamber notes the Trial Chamber's finding that, inasmuch as Stojić did nothing to remove the obstacles hindering access of humanitarian aid to East Mostar even though he had the power and obligation to do so, he in fact facilitated them.⁵⁹³⁷

1788. In light of all of the above, the Appeals Chamber observes that, despite not explicitly finding that Stojić had the specific intent to spread terror, the Trial Chamber considered that Stojić had extensive knowledge of, and accepted nearly all, the underlying acts that the Trial Chamber earlier considered demonstrated the HVO's specific intent to spread terror.⁵⁹³⁸ Accordingly, the

⁵⁹³⁰ See *supra*, paras 1656, 1660.

⁵⁹³¹ Trial Judgement, Vol. 3, para. 1689. See Trial Judgement, Vol. 2, para. 1008; *supra*, paras 546-565.

⁵⁹³² Trial Judgement, Vol. 3, para. 1689. See Trial Judgement, Vol. 2, para. 1015; *supra*, paras 546-565.

⁵⁹³³ Trial Judgement, Vol. 4, para. 363. See Trial Judgement, Vol. 4, para. 362. See also *supra*, para. 1661.

⁵⁹³⁴ Trial Judgement, Vol. 3, para. 1690.

⁵⁹³⁵ Trial Judgement, Vol. 4, para. 363. See *supra*, fn. 5395.

⁵⁹³⁶ The Appeals Chamber is of the view that the finding that Stojić is responsible for the destruction of only three of the ten mosques does not have an impact on this conclusion. See *supra*, fn. 5395. See also *infra*, para. 2023 & fn. 6911.

⁵⁹³⁷ Trial Judgement, Vol. 4, para. 372. See *supra*, para. 1674.

⁵⁹³⁸ See *supra*, paras 1780-1781.



Appeals Chamber concludes in the specific circumstances of this case, and given Stojić's command authority over the HVO,⁵⁹³⁹ that a reasonable trier of fact could be satisfied beyond reasonable doubt – and as the only reasonable inference available – that Stojić intended that the acts of violence be committed with the primary purpose of spreading terror among the civilian population. Therefore, Stojić fails to show that the Trial Chamber's failure to provide a reasoned opinion invalidates his conviction for the crimes of unlawful infliction of terror on civilians. Stojić's argument is dismissed.⁵⁹⁴⁰

(iii) Conclusion

1789. In sum, the Appeals Chamber finds that the Trial Chamber erred in failing to provide a reasoned opinion on Stojić's intent for the crime of unlawful infliction of terror on civilians under Article 3 of the Statute but concludes that Stojić fails to show how this error invalidates his conviction for the crime. Additionally, Stojić has failed to demonstrate any other error in the Trial Chamber's findings with respect to his intent to commit the JCE I crimes. Thus, Stojić's sub-ground of appeal 25.4 is dismissed.

(g) Alleged errors concerning Stojić's specific intent to discriminate against the Muslim population (Stojić's Sub-ground 25.5)

1790. Stojić argues that the Trial Chamber failed to provide a reasoned "decision" when it found that, based on "all the evidence analysed above", he knew that crimes were being committed against the Muslims with the sole purpose of forcing them to leave the territory of BiH.⁵⁹⁴¹ According to Stojić, the Trial Chamber failed to sufficiently explain the basis for its finding that the crimes were committed solely for that purpose, or that he knew that the crimes were committed solely for that purpose.⁵⁹⁴² Further, Stojić claims that the Trial Chamber failed to identify the evidence on which it relied and that the generic reference to "all the evidence analysed above" does not allow him to understand the finding and prejudices his ability to challenge it on appeal.⁵⁹⁴³ He also avers that the Trial Chamber failed to explain its conclusion that mere participation in the JCE was sufficient to conclude that he had the specific intent to discriminate.⁵⁹⁴⁴ Stojić submits that in finding that he had discriminatory intent, the Trial Chamber disregarded clearly relevant evidence about his general

⁵⁹³⁹ See *supra*, paras 1457, 1782.

⁵⁹⁴⁰ See *infra*, para. 2024.

⁵⁹⁴¹ Stojić's Appeal Brief, paras 216, 218, referring to Trial Judgement, Vol. 4, para. 429.

⁵⁹⁴² Stojić's Appeal Brief, para. 218.

⁵⁹⁴³ Stojić's Appeal Brief, para. 218.

⁵⁹⁴⁴ Stojić's Appeal Brief, para. 218.

attitude to Muslims⁵⁹⁴⁵ such as: (1) witness testimony that he helped Muslims and did not express any prejudiced views;⁵⁹⁴⁶ and (2) its own findings that Stojić himself supplied materiel and technical equipment to the ABiH and that the Department of Defence provided humanitarian aid to East Mostar.⁵⁹⁴⁷ Stojić asserts that since the Trial Chamber failed to give a reasoned “decision” on a required element of the crime of persecution, the Appeals Chamber should reverse the finding that he intended to discriminate against Muslims and overturn his conviction on Count 1.⁵⁹⁴⁸

1791. The Prosecution responds that the Trial Chamber reasonably concluded that Stojić possessed discriminatory intent since the CCP he shared entailed the ethnic cleansing of Muslims and thus was clearly discriminatory.⁵⁹⁴⁹ It argues that the Trial Chamber reasonably relied on its factual findings regarding Stojić’s JCE participation in this regard⁵⁹⁵⁰ and did not disregard evidence favourable to him.⁵⁹⁵¹ The Prosecution also submits that Stojić was not impaired in challenging this finding due to a lack of reasoned opinion.⁵⁹⁵²

1792. The Appeals Chamber notes that in making its findings in relation to Stojić’s responsibility under JCE I, the Trial Chamber found that Stojić had *de facto* and *de jure* powers over most of the components of the HVO and the Military Police, that he was the link between the Government and the HVO,⁵⁹⁵³ and he made no serious effort to stop the commission of crimes.⁵⁹⁵⁴ Notably, the Trial Chamber made numerous findings on Stojić’s knowledge or participation in the planning of the crimes in, *inter alia*, Gornji Vakuf, Mostar, and Čapljina, which targeted the Muslim population.⁵⁹⁵⁵

⁵⁹⁴⁵ Stojić’s Appeal Brief, para. 219. Stojić argues in reply that there is no discussion of evidence suggesting that he did not intend crimes or share the CCP anywhere in the Trial Judgement’s section on his responsibility. Stojić’s Reply Brief, para. 65, referring to Trial Judgement, Vol. 4, paras 425-431.

⁵⁹⁴⁶ Stojić’s Appeal Brief, para. 219, referring to Hamid Bahto, T. 37937 (11 Mar 2009), Nedžad Čengić, T. 37943-37944 (11 Mar 2009), Antoon van der Grinten, T. 21023-21024 (10 July 2007), Davor Korać, T. 38827, 38829-38830 (7 Apr 2009), Tomislav Krešić, T. 38736 (2 Apr 2009), Stipo Buljan, T. 36751-36752, 36766, 36768 (11 Feb 2009), Ivan Bagarić, T. 38879-38880, 38947-38948 (20 Apr 2009).

⁵⁹⁴⁷ Stojić’s Appeal Brief, para. 219, referring to Trial Judgement, Vol. 2, para. 1243, Vol. 4, para. 308. See also Stojić’s Appeal Brief, para. 217. Stojić also submits that the Trial Chamber’s misunderstanding of this evidence is demonstrated by the fact that it was only used in the context of mitigation whereas he submitted that this evidence went to his intent. Stojić’s Appeal Brief, para. 219, referring to Trial Judgement, Vol. 4, para. 1334, Stojić Closing Arguments, T. 52302-52303 (15 Feb 2011).

⁵⁹⁴⁸ Stojić’s Appeal Brief, para. 220.

⁵⁹⁴⁹ Prosecution’s Response Brief (Stojić), para. 188, referring to Trial Judgement, Vol. 4, paras 41, 65, 429, 1232.

⁵⁹⁵⁰ Prosecution’s Response Brief (Stojić), para. 188, referring to *Đorđević* Appeal Judgement, para. 470.

⁵⁹⁵¹ Prosecution’s Response Brief (Stojić), para. 188, referring to *Krajišnik* Appeal Judgement, paras 139, 141, *Kvočka et al.* Appeal Judgement, paras 23-24.

⁵⁹⁵² Prosecution’s Response Brief (Stojić), para. 188, referring to, *inter alia*, *Haradinaj et al.* Appeal Judgement, para. 128, *Krajišnik* Appeal Judgement, para. 139, *Limaj et al.* Appeal Judgement, para. 81.

⁵⁹⁵³ Trial Judgement, Vol. 4, para. 425.

⁵⁹⁵⁴ Trial Judgement, Vol. 4, para. 427. See also *supra*, paras 1494-1495.

⁵⁹⁵⁵ Trial Judgement, Vol. 4, paras 336 (Stojić was aware of the destruction of Muslim houses and detention of Muslims in Gornji Vakuf), 349 (Stojić participated in planning the operations and acts of violence against Muslims in Mostar town and during eviction campaigns in West Mostar), 362-363 (Stojić knew of HVO’s plan of action for the siege of East Mostar and knew of the shortages of food and water suffered by the Muslim population), 378 (Stojić knew of the evictions of the Muslim population from Čapljina and the manner in which they were carried out), 406-407 (Stojić knew of the detention of Muslims in extremely precarious conditions in Dretelj Prison and Gabela Prison and their

Having found that he shared the intent to expel the Muslim population from the HZ(R) H-B territory,⁵⁹⁵⁶ the Trial Chamber then concluded that “all the evidence analysed above” shows that Stojić knew that crimes were being committed with the sole purpose of forcing Muslims to leave BiH and that, by participating in the JCE, Stojić intended to discriminate against the Muslims in order to facilitate their eviction from BiH.⁵⁹⁵⁷

1793. The Appeals Chamber sees no issue with the Trial Chamber’s analysis. As found by the Trial Chamber, the CCP: (1) was the ethnic cleansing of the Muslim population which entailed the expulsion of the Muslim population from the HZ(R) H-B territory through the commission of a range of crimes under the Statute;⁵⁹⁵⁸ (2) was accomplished by the JCE members, including Stojić, through the “use of the political and military apparatus of the HZ(R) H-B”;⁵⁹⁵⁹ and (3) was intended by Stojić who shared that intent with the other JCE members.⁵⁹⁶⁰ Additionally, as recalled above, the Trial Chamber made numerous findings on Stojić’s knowledge or participation in the planning of the crimes against Muslims.⁵⁹⁶¹ Further, the Trial Chamber found that Stojić knew of the crimes being committed against the Bosnian Muslims, and continued to participate in the JCE until November 1993.⁵⁹⁶² Bearing in mind, moreover, that the essence of the JCE was inherently discriminatory as it consisted of the expulsion of the Muslim population from the HZ(R) H-B territory through a range of crimes under the Statute, the Appeals Chamber is of the view that the Trial Chamber did not err in its approach in concluding that Stojić possessed the specific intent to discriminate against the Muslim population.

mistreatment), 426. See Trial Judgement, Vol. 3, paras 1694-1741 (findings on the various HVO crimes which specifically targeted Muslims and thereby the underlying crimes of persecution under Count 1).

⁵⁹⁵⁶ Trial Judgement, Vol. 4, para. 428. The Trial Chamber defined the CCP as the domination of the HR H-B Croats through the ethnic cleansing of the Muslim population. Trial Judgement, Vol. 4, para. 41. As noted above, the Appeals Chamber is of the view that the Trial Chamber’s finding that Stojić shared the intent to expel the Muslim population from the HZ(R) H-B territory is one and the same as the one that he had the intent to ethnically cleanse the Muslim population through a “system for deporting the Muslim population of the HR H-B”. See *supra*, paras 1759-1760.

⁵⁹⁵⁷ Trial Judgement, Vol. 4, para. 429.

⁵⁹⁵⁸ Trial Judgement, Vol. 4, paras 41, 66, 428.

⁵⁹⁵⁹ Trial Judgement, Vol. 4, para. 41. See *supra*, paras 786, 789-790.

⁵⁹⁶⁰ Trial Judgement, Vol. 4, para. 428. See *supra*, paras 1755-1756, 1759-1760.

⁵⁹⁶¹ See *supra*, para. 1792. The Appeals Chamber notes the following: (1) the Trial Chamber found that the recurrence and scale of acts of violence against Muslims during the eviction campaigns in Mostar following the attack of 9 May 1993 and during the summer of 1993 were part of a preconceived plan and that Stojić participated in planning these acts of violence following the attack of 9 May 1993 and intended those acts during the summer of 1993 (see Trial Judgement, Vol. 4, paras 347, 349, 357; *supra*, paras 1598, 1612-1615, 1617, 1652); (2) in its factual narrative of the expulsion of Muslims families from West Mostar after the Attack on the HVO Tihomir Mišić Barracks, the Trial Chamber considered Vrlić’s Report of 5 July 1993, which was personally sent to Stojić and provided a list of Muslim families who had a member in the ABiH – which Vrlić called a “*balija* unit” – that included the address of each family mentioned indicating that a raid would be carried out in the course of the evening (see Trial Judgement, Vol. 2, para. 897, Vol. 4, para. 352, referring to Ex. P03181; *supra*, paras 1617, 1622); and (3) Stojić’s statement to international representatives on 17 July 1993 that the HVO’s plan of action was to put pressure on East Mostar in order to force the ABiH to leave the sector, which, as found by the Trial Chamber, was necessarily directed against the entire population of East Mostar and not only against the ABiH (in so finding the Trial Chamber considered evidence from members of international organisations that Stojić seemed convinced of his troops’ ability to achieve a military solution

1794. The Appeals Chamber also finds that Stojić fails to show an error regarding the Trial Chamber's reference to "all the evidence analysed above". It is clear from the structure of its analysis what evidence the Trial Chamber relied on to determine that Stojić knew of crimes being committed against Muslims with the sole purpose of forcing them to leave BiH. Indeed, in the section titled "Bruno Stojić's Responsibility under JCE 1", the Trial Chamber systematically outlined, under various subsections, the evidence showing Stojić's knowledge of crimes against the Muslims in the municipalities and detention centres, including his knowledge of evictions of Muslims, and made relevant findings.⁵⁹⁶³ Following that analysis, the Trial Chamber arrived at a number of conclusions, including the conclusion as to Stojić's knowledge, consistently referring to the evidence it outlined in the section as a whole.⁵⁹⁶⁴ Stojić's argument that he is prejudiced by the Trial Chamber's reference to "all the evidence analysed above" is therefore not persuasive.⁵⁹⁶⁵

1795. As for Stojić's submission that the Trial Chamber disregarded evidence favourable to him when considering his discriminatory intent, the Appeals Chamber notes that the Trial Chamber did not refer to this evidence when concluding on Stojić's discriminatory intent.⁵⁹⁶⁶ However, the Appeals Chamber recalls that a trial chamber is not under an obligation to refer to the testimony of every witness and that it is to be presumed that it evaluated all the evidence presented to it, as long as there is no indication that it completely disregarded any evidence which is clearly relevant.⁵⁹⁶⁷ A trial chamber is also not required to set out in detail why it accepted or rejected a particular testimony.⁵⁹⁶⁸ However, a trial chamber must provide reasons for accepting testimony despite alleged or material inconsistencies when it is the principal evidence relied upon to convict an accused.⁵⁹⁶⁹ Additionally, the Appeals Chamber recalls that if a trial chamber failed to refer to the evidence given by a witness, even if it is in contradiction to its finding, it is to be presumed that the

to what the HVO considered was a "Muslim problem" in Mostar town (see Trial Judgement, Vol. 2, para. 1246, Vol. 4, paras 361-362, referring to Ex. P03545; *supra*, paras 1634-1637, 1655, 1658).

⁵⁹⁶² See *supra*, fn. 5955.

⁵⁹⁶³ See Trial Judgement, Vol. 4, paras 326-424. See also *supra*, para. 1792 & fn. 5955. For example, the Trial Chamber found that Stojić knew of the evictions of Muslims in Čapljina and participated in organising the eviction of Muslims in West Mostar. Trial Judgement, Vol. 4, paras 350-357, 373-378. It also found that he knew of the harsh conditions the Muslim detainees suffered in the Heliostrom, Dretelj Prison, and Gabela Prison. Trial Judgement, Vol. 4, paras 384-395, 397-407.

⁵⁹⁶⁴ See Trial Judgement, Vol. 4, paras 426 ("As it established above"), 428 ("In view of all the evidence analysed above"), 429 ("all the evidence analysed above").

⁵⁹⁶⁵ See *supra*, para. 1767.

⁵⁹⁶⁶ See Trial Judgement, Vol. 4, para. 429.

⁵⁹⁶⁷ *Tolimir* Appeal Judgement, para. 53; *Popović et al.* Appeal Judgement, paras 925, 1017; *Kvočka et al.* Appeal Judgement, para. 23.

⁵⁹⁶⁸ *Popović et al.* Appeal Judgement, para. 133; *Krajišnik* Appeal Judgement, para. 139.

⁵⁹⁶⁹ *Popović et al.* Appeal Judgement, para. 133; *Haradinaj et al.* Appeal Judgement, paras 129, 134, 252; *Kupreškić et al.* Appeal Judgement, paras 135, 202.

trial chamber assessed and weighed that evidence, but found that it did not prevent it from making its findings.⁵⁹⁷⁰

1796. The Appeals Chamber notes that, in the context of his control over the HVO and in sentencing, the Trial Chamber discussed some of the evidence Stojić relies on here going to his relationships with the Muslim side and to his good character,⁵⁹⁷¹ which indicates that it was cognisant of and assessed this evidence but found that it did not prevent it from reaching its conclusions on Stojić's discriminatory intent. With respect to other evidence raised by Stojić,⁵⁹⁷² the Appeals Chamber, having analysed that evidence,⁵⁹⁷³ finds that Stojić does not show that it calls into question the findings of the Trial Chamber, particularly as he knew of the crimes targeting Muslims and continued to participate in the JCE. Thus, it was reasonable for the Trial Chamber not to refer to that evidence when discussing Stojić's discriminatory intent. Similarly, the fact that the Trial Chamber found that Stojić supplied materiel and technical equipment to ABiH and that the Department of Defence provided humanitarian aid to East Mostar, shows that despite being cognisant of these facts, the Trial Chamber did not consider them important enough to affect its finding on Stojić's discriminatory intent. Indeed, with respect to the supply of humanitarian aid to East Mostar, the Trial Chamber also noted that it was sporadic and conditional on securing "gains" in negotiations with ABiH.⁵⁹⁷⁴ In any event, even if these findings were considered to be favourable to Stojić, the evidence of limited and selective assistance towards a few individuals does not preclude a trier of fact from reasonably finding that the requisite intent to discriminate existed.⁵⁹⁷⁵

1797. Accordingly, for all the reasons outlined above, Stojić has failed to demonstrate that the Trial Chamber erred in concluding that he possessed discriminatory intent. Stojić's sub-ground of appeal 25.5 is therefore dismissed.

⁵⁹⁷⁰ *Kvočka et al.* Appeal Judgement, para. 23.

⁵⁹⁷¹ Trial Judgement, Vol. 4, paras 308, 1334 & fns 732, 2481, referring to Hamid Bahto, T(F). 37900 (11 Mar 2009), Nedžad Čengić, T(F). 37943-37945, 37951 (11 Mar 2009). The Appeals Chamber observes that the Trial Chamber noted that Witness Nedžad Čengić and Stojić were friends. Trial Judgement, Vol. 4, fn. 2481.

⁵⁹⁷² Stojić's Appeal Brief, para. 219 (referring to the evidence of Witnesses Antoon van der Grinten, Davor Korać, Tomislav Krešić, Stipo Buljan, and Ivan Bagarić).

⁵⁹⁷³ Antoon van der Grinten, T. 21023-21024 (10 July 2007) (stating that the Appellants, including Stojić, expressed no derogatory views concerning Muslims); Davor Korać, T. 38827, 38829-38830 (7 Apr 2009) (stating that Stojić, while serving as the Assistant Minister of the Interior of BiH prior to the conflict, did not have any issues with different ethnicities working at that ministry); Tomislav Krešić, T. 38736 (2 Apr 2009) (stating that some of Stojić's best friends before the conflict were Muslims and Serbs); Stipo Buljan, T. 36751-36752, 36766, 36768 (11 Feb 2009) (stating that Stojić made an effort to look after all HVO members regardless of their ethnicity); Ivan Bagarić, T. 38879-38880, 38947-38948 (20 Apr 2009) (stating that the Health Section of the Department of Defence looked after anyone who needed medical care, regardless of their ethnicity, and that it also employed experts regardless of their ethnicity).

⁵⁹⁷⁴ Trial Judgement, Vol. 2, para. 1243. The Trial Chamber also dismissed the supply of MTS as a factor that would demonstrate good character on behalf of Stojić. Trial Judgement, Vol. 4, para. 1334.

⁵⁹⁷⁵ See *Ndahimana* Appeal Judgement, para. 195; *Muhimana* Appeal Judgement, para. 32; *Rutaganda* Appeal Judgement, para. 537. See also *Kvočka et al.* Appeal Judgement, para. 233 (finding that evidence that Miroslav Kvočka was a tolerant and politically moderate man who was close to the Muslim community did not preclude a conclusion that he intended to further a joint criminal enterprise whose purpose was to persecute non-Serbs).

(h) Alleged errors concerning Stojić's intent to commit the crimes in Prozor, Jablanica, East Mostar, Čapljina, Vareš, and the detention centres (Stojić's Sub-ground 25.6)

1798. Stojić submits that the Trial Chamber failed to expressly find that he intended the crimes committed in Prozor, Jablanica, East Mostar, Čapljina, Vareš, and the detention centres, as it simply inferred that he "accepted" the crimes because he knew they had been committed and yet continued to exercise his official functions.⁵⁹⁷⁶ According to Stojić, the Trial Chamber erred in law in inferring his intent in this way since intent must be assessed at the time the crime is committed whereas his knowledge of crimes was usually obtained from reports, after the crimes took place.⁵⁹⁷⁷ He further asserts that in inferring his intent in this way, the Trial Chamber eradicated the distinction between JCE I and JCE III as knowledge and acceptance of crimes are intrinsic elements of the latter, not the former.⁵⁹⁷⁸ Stojić also claims that intent is not the only reasonable inference from his continuation in office as that can be motivated by many factors, including "general support for the HZHB".⁵⁹⁷⁹ Finally, Stojić submits that no reasonable chamber could have concluded that he knew that crimes had been committed in the five municipalities and the detention centres.⁵⁹⁸⁰

1799. The Prosecution responds that the Trial Chamber reasonably relied on Stojić's knowledge of crimes and his continuation in office when finding that he had the shared intent since, by remaining as Head of the Department of Defence, he continued to contribute to the CCP.⁵⁹⁸¹ It further submits that the Trial Chamber's approach did not confuse JCE I and JCE III liability.⁵⁹⁸²

1800. As noted above, the Trial Chamber inferred Stojić's intent for the crimes that took place in the municipalities and detention centres from his participation in the HVO military operations in Mostar and Vareš, and from his continued exercise of control over the armed forces while knowing of the crimes they committed in other municipalities.⁵⁹⁸³ Thus, the fact that he was found to have known of and accepted the crimes in Prozor, Jablanica, East Mostar, Čapljina, Vareš, and detention

⁵⁹⁷⁶ Stojić's Appeal Brief, para. 221, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 329, 342, 363, 370, 378, 383, 395-396, 407. See also Stojić's Appeal Brief, para. 222. Stojić contends that his convictions pertaining to these locations should be overturned and that the Trial Chamber's errors "fatally undermine" his responsibility under JCE I liability. Stojić's Appeal Brief, para. 227.

⁵⁹⁷⁷ Stojić's Appeal Brief, para. 223, referring to Trial Judgement, Vol. 4, paras 338-339.

⁵⁹⁷⁸ Stojić's Appeal Brief, para. 224, referring to *Stanišić and Simatović* Trial Judgement, Vol. 2, paras 2326, 2412-2415.

⁵⁹⁷⁹ Stojić's Appeal Brief, para. 225. Stojić also contends that "mere continuation in office is an insufficient foundation for an inference of intent because there is no nexus between continuation in office and specific crimes". Stojić's Appeal Brief, para. 225.

⁵⁹⁸⁰ Stojić's Appeal Brief, para. 226 (referring to his submissions in his grounds of appeal 28, 29.2, 30, 33.1, 33.3, 34.1, 34.4, 35, 36.1, 36.3, 37.2, and 40). See also Stojić's Reply Brief, para. 66.

⁵⁹⁸¹ Prosecution's Response Brief (Stojić), para. 189, referring to Trial Judgement, Vol. 4, para. 426, *Dorđević* Appeal Judgement, paras 512-513, *Krajišnik* Appeal Judgement, para. 697. The Prosecution submits that Stojić's continuation in office was not the only factor relied on to find that he had the shared intent. Prosecution's Response Brief (Stojić), para. 189.

⁵⁹⁸² Prosecution's Response Brief (Stojić), para. 189.

⁵⁹⁸³ See *supra*, para. 1792.

centres was merely one of the factors used by the Trial Chamber to find his intent for all the crimes that formed part of the CCP. The Appeals Chamber recalls here that the requisite *mens rea* for a conviction under JCE I can be inferred from a person's knowledge of the common plan, combined with his continuous participation in the JCE, if this is the only reasonable inference available on the evidence.⁵⁹⁸⁴ In this case, the Trial Chamber considered that Stojić was the link between the Government and the HVO military component and that he continued exercising his official functions despite having knowledge of the crimes committed by that military component.⁵⁹⁸⁵ It also found that he shared the intent to further the CCP together with the other JCE members⁵⁹⁸⁶ and that his contribution to the JCE was significant.⁵⁹⁸⁷ Stojić fails to show an error in the Trial Chamber's reasoning in this respect.

1801. While Stojić submits that there was another reasonable inference to be drawn from his continuation in office, he also claims that "[i]n the absence of other evidence or findings, mere continuation in office" is insufficient to infer intent.⁵⁹⁸⁸ However, the Appeals Chamber reiterates that Stojić's continuation in office, and thereby his continued control over the armed forces perpetrating the crimes, was not the only factor used in the Trial Chamber's conclusion. Rather, as outlined above,⁵⁹⁸⁹ the Trial Chamber also relied on other factors such as his planning of the HVO military operations in Mostar and his involvement in evictions in West Mostar. In light of those activities, considered together with the Trial Chamber's findings that Stojić continued in office despite knowing of crimes and that he failed to stop or punish those crimes,⁵⁹⁹⁰ Stojić fails to show that the Trial Chamber erred in concluding that the only reasonable inference it could draw was that he intended those crimes.

1802. Moreover, the Appeals Chamber is not convinced by Stojić's submission that knowledge of crimes typically obtained from reports after the fact cannot support an inference that he possessed the requisite intent to commit the crimes in question. Importantly, the Trial Chamber found that Stojić, with the other JCE members, intended the crimes falling within the CCP, *i.e.* Counts 1, 6-9, 10-20, 24-25,⁵⁹⁹¹ based on his participation in military operations, knowledge and acceptance of crimes, and his failure to act coupled with his continued participation in the JCE.⁵⁹⁹² Notably, the Trial Chamber made clear findings that Stojić planned, facilitated, and knew of the crimes

⁵⁹⁸⁴ *Popović et al.* Appeal Judgement, para. 1652, referring to, *inter alia*, *Đorđević* Appeal Judgement, para. 512, *Krajišnik* Appeal Judgement, paras 202, 204, 697, *Brđanin* Appeal Judgement, paras 428-429.

⁵⁹⁸⁵ Trial Judgement, Vol. 4, paras 425-426, 429. See Trial Judgement, Vol. 4, paras 1227, 1230.

⁵⁹⁸⁶ Trial Judgement, Vol. 4, para. 428. See also *supra*, paras 1759-1760.

⁵⁹⁸⁷ Trial Judgement, Vol. 4, para. 429.

⁵⁹⁸⁸ Stojić's Appeal Brief, para. 225.

⁵⁹⁸⁹ See *supra*, paras 1792, 1800.

⁵⁹⁹⁰ See Trial Judgement, Vol. 4, paras 415, 423, 427.

⁵⁹⁹¹ Trial Judgement, Vol. 4, paras 68, 426, 428-429.

⁵⁹⁹² See *supra*, para. 1800.

committed in Gornji Vakuf in January 1993.⁵⁹⁹³ It then found that Stojić knew of the crimes that were being committed later during the JCE period, including in Jablanica, East Mostar, Čapljina, Vareš, and the detention centres, and yet continued to participate in the JCE.⁵⁹⁹⁴ In this regard, the Appeals Chamber recalls that it is not necessary for a participant in a JCE to know of each specific crime committed in order to be criminally liable for it.⁵⁹⁹⁵ Rather, it suffices that a JCE member knows that crimes are being committed according to a common plan and knowingly participates in that plan in a way that facilitates the commission of a crime or which allows the criminal enterprise to function effectively or efficiently.⁵⁹⁹⁶ Therefore, it was not a requirement for the Trial Chamber to find, as an example, that Stojić knew the specific evictions in Čapljina at the time they occurred as he was found to have intended evictions as part of the CCP from January 1993. Stojić thus fails to show any error in the Trial Chamber's reasoning, even if he received reports on some criminal incidents committed in certain locations after they occurred.

1803. Further, the Appeals Chamber rejects Stojić's argument that, by using knowledge and acceptance of crimes to infer intent for those crimes, the Trial Chamber eradicated the distinction between the requirements of JCE I and JCE III.⁵⁹⁹⁷ The crimes forming part of the CCP, including the crimes in Prozor, Jablanica, East Mostar, Čapljina, Vareš, and detention centres, were specifically intended by Stojić and the other JCE members.⁵⁹⁹⁸ Further, contrary to Stojić's submission, knowledge and acceptance of crimes by continued participation are not "intrinsic elements" of JCE III. Rather, liability under JCE III arises when crimes are committed which, while not part of the common criminal plan, were foreseeable to the accused and he willingly took that risk.⁵⁹⁹⁹ As such, this form of liability does not necessarily require knowledge and/or acceptance of

⁵⁹⁹³ See *supra*, paras 1561, 1569, 1575, 1579.

⁵⁹⁹⁴ Trial Judgement, Vol. 4, paras 342, 363, 378, 426. The Appeals Chamber recalls that it has reversed the findings that Stojić knew of and accepted the detention of men who did not belong to any armed forces in Prozor and Ljubuški Prison. See *supra*, paras 1560, 1710, 1712.

⁵⁹⁹⁵ *Tolimir* Appeal Judgement, para. 474; *Kvočka et al.* Appeal Judgement, para. 276. See *Šainović et al.* Appeal Judgement, para. 1491 (where the Appeals Chamber concluded that as a participant in the joint criminal enterprise, Sreten Lukić need not have known of each specific crime committed in order to be criminally liable. It concluded that it sufficed "that he shared the intent for the commission of these crimes and acted in furtherance of the common purpose". Therefore, the Appeals Chamber found that Lukić's submission that he lacked specific knowledge of the crimes committed in Prizren municipality to be inapposite).

⁵⁹⁹⁶ *Tolimir* Appeal Judgement, para. 474. See *Šainović et al.* Appeal Judgement, para. 1491 ("It suffices that he shared the intent for the commission of [the] crimes and acted in furtherance of the common purpose").

⁵⁹⁹⁷ Stojić's Appeal Brief, para. 224.

⁵⁹⁹⁸ The Appeals Chamber recalls its finding that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, para. 882. This means that Stojić did not have the intent for murder and wilful killing from January 1993 until June 1993. In that respect, the Appeals Chamber recalls its finding overturning his convictions for murder and wilful killing in relation to two killings in Tošćanica, Prozor Municipality. See *supra*, paras 880-882.

⁵⁹⁹⁹ *Stanišić and Župljanin* Appeal Judgement, para. 967; *Popović et al.* Appeal Judgement, para. 1431, quoting *Brđanin* Appeal Judgement, para. 365. See *Tolimir* Appeal Judgement, para. 514 (requiring that the possibility be "reasonably foreseeable to the accused"); *Šainović et al.* Appeal Judgement, paras 1078, 1538, 1575.

deviatory crimes but rather the knowledge that they were a natural and foreseeable consequence of the common criminal purpose.⁶⁰⁰⁰

1804. Based on the foregoing, Stojić fails to show that no reasonable trier of fact could have concluded that he had the intent to commit the JCE I crimes in Prozor, Jablanica, East Mostar, Čapljina, Vareš, and the detention centres. His sub-ground of appeal 25.6 is therefore dismissed.⁶⁰⁰¹

(i) Conclusion

1805. In sum, the Appeals Chamber has dismissed all of Stojić's challenges to his *mens rea* under his sub-ground of appeal 25.

10. Conclusion

1806. Based on the above sections addressing his challenges to the findings on his JCE contribution and *mens rea*, the Appeals Chamber concludes that Stojić has failed to demonstrate any error which has an impact on the Trial Chamber's findings that: (1) a plurality of persons, including Stojić, consulted with each other to devise and implement the CCP; (2) Stojić continuously contributed to the JCE between January 1993 and 15 November 1993; (3) Stojić's contribution, which included the use of the HVO and the Military Police to commit crimes, was significant and furthered the CCP; (4) Stojić shared the intent to expel the Muslim population from the territory of Herceg-Bosna with other JCE members; (5) Stojić shared the intent to carry out the crimes forming part of the CCP; and (6) Stojić intended to discriminate against Muslims in order to facilitate their eviction from the territory of Herceg-Bosna.⁶⁰⁰² Therefore, the Appeals Chamber upholds the majority of Stojić's convictions under JCE I for the various crimes forming part of the CCP and committed prior to the end of his JCE membership on 15 November 1993.

1807. Furthermore, the Appeals Chamber recalls that it has reversed the findings that Stojić knew of and accepted the detention of men who did not belong to any armed forces in Prozor and Ljubuški Prison.⁶⁰⁰³ However, it also recalls that the crimes resulting from the detention of civilians – except for murder in Prozor Municipality – were crimes forming part of the CCP which were intended by Stojić to be committed. Thus, the reversal of a finding that he knew of and accepted specific criminal incidents does not affect his conviction for those crimes under JCE I liability.

⁶⁰⁰⁰ See *Kvočka et al.* Appeal Judgement, paras 83, 86.

⁶⁰⁰¹ With respect to Stojić's argument that no reasonable trial chamber could have concluded that he knew that the crimes had been committed in Prozor, Jablanica, East Mostar, Čapljina, Vareš, and the detention centres, the Appeals Chamber notes that it has dismissed most of his challenges in that respect. This argument is therefore moot. See *supra*, paras 1551-1748.

⁶⁰⁰² Trial Judgement, Vol. 4, paras 425-430, 1220, 1227, 1230-1232.

⁶⁰⁰³ See *supra*, para. 1560.

Lastly, the impact, if any, on sentencing with regard to the finding that Stojić cannot be held responsible for crimes occurring after 15 November 1993, including certain incidents of sniping and destruction of mosques in Mostar under Count 21, will be addressed below.⁶⁰⁰⁴

⁶⁰⁰⁴ See *supra*, fn. 5395. See *infra*, para. 3361.



G. Alleged Errors in Relation to Slobodan Praljak's Participation in the JCE

1. Introduction

1808. From approximately March 1992 to 15 June 1993, Slobodan Praljak was Croatia's Assistant Minister of Defence and then its Deputy Minister of Defence, first at the rank of brigadier and then as major-general of the HV.⁶⁰⁰⁵ The Trial Chamber observed that it had no evidence that Praljak held official functions in the HVO between mid-May 1992 and 24 July 1993.⁶⁰⁰⁶ From 24 July 1993 to 9 November 1993, Praljak was the commander of the Main Staff.⁶⁰⁰⁷ The Trial Chamber found that Praljak contributed to the JCE from January 1993 to 9 November 1993,⁶⁰⁰⁸ and that his contribution was significant.⁶⁰⁰⁹ It concluded that Praljak was one of the most important JCE members as he controlled the HVO and the Military Police, and served as a link between Croatia and the HZ(R) H-B.⁶⁰¹⁰ The Trial Chamber also found that Praljak used the HVO, including the Military Police, to commit crimes that formed part of the CCP.⁶⁰¹¹ It made several findings concerning Praljak's contributions including, *inter alia*, that: (1) he had significant *de facto* and subsequently *de jure* and *de facto* authority over the HVO and Military Police and that he exercised this authority;⁶⁰¹² (2) he made decisions regarding the HVO military operations and had them carried out through the chain of command;⁶⁰¹³ (3) he was "a conduit between Croatia and the HVO government [and ...] participated in forwarding instructions and policies from Croatia to the HZ(R) H-B and vice-versa, and facilitated obtaining military and logistical support from Croatia to the HVO";⁶⁰¹⁴ (4) he participated in the planning of several HVO military operations;⁶⁰¹⁵ and (5) despite his authority he made no serious efforts to stop the HVO and the Military Police from committing crimes.⁶⁰¹⁶

1809. Regarding Praljak's *mens rea* under JCE I liability, the Trial Chamber concluded that he: (1) intended the crimes committed in the various municipalities,⁶⁰¹⁷ at times inferring his intent from his failure to make any serious efforts to stop the HVO and the Military Police from

⁶⁰⁰⁵ Trial Judgement, Vol. 4, para. 457.

⁶⁰⁰⁶ Trial Judgement, Vol. 4, para. 459.

⁶⁰⁰⁷ Trial Judgement, Vol. 4, para. 459. The Trial Chamber observed that after Praljak was replaced as Commander of the Main Staff, he returned to Croatia and was appointed advisor to the Croatian Minister of Defence for the ministry's archival facilities. Trial Judgement, Vol. 4, para. 459.

⁶⁰⁰⁸ Trial Judgement, Vol. 4, paras 1228, 1230.

⁶⁰⁰⁹ Trial Judgement, Vol. 4, para. 628.

⁶⁰¹⁰ Trial Judgement, Vol. 4, para. 628.

⁶⁰¹¹ Trial Judgement, Vol. 4, para. 628.

⁶⁰¹² Trial Judgement, Vol. 4, paras 624-625.

⁶⁰¹³ Trial Judgement, Vol. 4, para. 624.

⁶⁰¹⁴ Trial Judgement, Vol. 4, para. 624.

⁶⁰¹⁵ Trial Judgement, Vol. 4, para. 625.

⁶⁰¹⁶ Trial Judgement, Vol. 4, para. 626.

⁶⁰¹⁷ Trial Judgement, Vol. 4, para. 625.

committing crimes;⁶⁰¹⁸ (2) shared the intent to expel the Muslim population from the territory of Herceg-Bosna with other JCE members;⁶⁰¹⁹ and (3) intended to discriminate against Muslims in order to facilitate their eviction from the territory of Herceg-Bosna.⁶⁰²⁰

1810. The Trial Chamber convicted Praljak under Article 7(1) of the Statute of committing, pursuant to JCE I liability, various crimes amounting to grave breaches of the Geneva Conventions, violations of the laws or customs of war, and/or crimes against humanity under Articles 2, 3, and 5 of the Statute, respectively.⁶⁰²¹ Praljak was sentenced to a single sentence of 20 years imprisonment.⁶⁰²²

1811. Praljak challenges these and related findings of the Trial Chamber with regard to his JCE contribution and *mens rea*.⁶⁰²³ These challenges will be addressed in the following sections.

2. Alleged errors concerning the military chain of command (Praljak's Ground 37)

1812. The Trial Chamber found that the Military Police answered to a dual chain of command which meant that they were under the command of the OZ and HVO brigade commanders in executing their regular daily duties in addition to being under the command of the Military Police Administration in areas such as appointments, discipline or training their members.⁶⁰²⁴ The Trial Chamber further concluded that "the division of responsibilities under the Military Police Administration, on the one hand, and the OZ commanders, on the other, was not quite so clear cut

⁶⁰¹⁸ Trial Judgement, Vol. 4, paras 626-627.

⁶⁰¹⁹ Trial Judgement, Vol. 4, para. 627. See Trial Judgement, Vol. 4, para. 628.

⁶⁰²⁰ Trial Judgement, Vol. 4, para. 628.

⁶⁰²¹ Trial Judgement, Vol. 4, paras 68, 630, Disposition, p. 430. These crimes are: persecution as a crime against humanity (Count 1); murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva Conventions (Count 3); deportation as a crime against humanity (Count 6); unlawful deportation of a civilian as a grave breach of the Geneva Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9); imprisonment as a crime against humanity (Count 10); unlawful confinement of a civilian as a grave breach of the Geneva Conventions (Count 11); inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); unlawful labour as a violation of the laws or customs of war (Count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 19); destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); unlawful attack on civilians as a violation of the laws or customs of war (Count 24); and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). The Trial Chamber found that the following crimes also fell within the framework of the JCE, meaning Praljak was also responsible for them, but did not enter convictions for them based on the principles relating to cumulative convictions: cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); cruel treatment as a violation of the laws or customs of war (Count 17); and wanton destruction of cities, towns, or villages, or devastation not justified by military necessity (Count 20). See Trial Judgement, Vol. 4, para. 68, Disposition, p. 430. See also Trial Judgement, Vol. 4, paras 1260-1266. The Appeals Chamber discusses Praljak's convictions pursuant to JCE III *infra*, paras 2833-2834, 2881-2898.

⁶⁰²² Trial Judgement, Vol. 4, Disposition, p. 430.

⁶⁰²³ Praljak's Appeal Brief, paras 358-469.

⁶⁰²⁴ Trial Judgement, Vol. 1, paras 945, 949, 971. See Trial Judgement, Vol. 1, paras 953-970.

in the field”.⁶⁰²⁵ Moreover, the Trial Chamber found that “inasmuch as the HVO brigades were subordinated to the Chief of the Main Staff *via* the OZs, the official in charge of the Main Staff also had command authority over the Military Police platoons embedded in those brigades”⁶⁰²⁶ and thus the Main Staff had final authority over the Military Police battalions as they carried out their daily duties.⁶⁰²⁷ It also found that the KB fell within the HVO’s military chain of command and reported directly to the Main Staff.⁶⁰²⁸

(a) The OZ and HVO brigade commanders’ authority over the Military Police in carrying out their “daily duties” (Praljak’s Sub-ground 37.1)

(i) Arguments of the Parties

1813. Praljak submits that the Trial Chamber erred in concluding that the Military Police was under the command of the OZ and HVO brigade commanders in executing their regular daily duties.⁶⁰²⁹ Praljak argues that as the Trial Chamber concluded that the chain of command for the Military Police was “complex, unclear, and fuzzy”, it should have carefully scrutinised the evidence.⁶⁰³⁰ He contends that, because the Military Police’s subordination was an important factor in determining his responsibility, the Trial Chamber erroneously failed to give reasons for its rejection of an ECMM report stating that the Military Police answered only to Stojić and Mate Boban.⁶⁰³¹ Praljak also submits that the Trial Chamber improperly interpreted the Provisional Instructions for the Work of the Military Police Units of April 1992 (“Provisional Instructions”) by considering its content in isolation.⁶⁰³² Particularly, he argues that the Trial Chamber ignored the provisions according to which: (1) the Military Police Administration led and commanded all Military Police units within the framework of operative groups, organisational units, or within the administration;⁶⁰³³ and (2) the lower units, in executing their work, were responsible to the Military Police battalion commander, who then answered to the Military Police Administration.⁶⁰³⁴

1814. Praljak also submits that the Military Police units were not completely subordinated to the HVO brigade commanders as they were still under the Military Police Administration’s supreme

⁶⁰²⁵ Trial Judgement, Vol. 1, para. 971.

⁶⁰²⁶ Trial Judgement, Vol. 1, para. 950.

⁶⁰²⁷ Trial Judgement, Vol. 1, para. 950.

⁶⁰²⁸ Trial Judgement, Vol. 1, para. 829.

⁶⁰²⁹ Praljak’s Appeal Brief, heading before para. 359. See Praljak’s Appeal Brief, para. 358.

⁶⁰³⁰ Praljak’s Appeal Brief, para. 359, referring to Trial Judgement, Vol. 1, paras 846, 974.

⁶⁰³¹ Praljak’s Appeal Brief, para. 366, referring to Trial Judgement, Vol. 1, para. 973, Ex. P02803, p. 4, para. 16.

⁶⁰³² Praljak’s Appeal Brief, para. 362, referring to Ex. P00837 (entitled “Instructions for the Work of Military Police Units of the Croatian Defence Council/HVO/Croatian Community of Herceg-Bosna/HZ HB”).

⁶⁰³³ Praljak’s Appeal Brief, para. 362, referring to Ex. P00837, p. 4, para. 1. See Praljak’s Appeal Brief, para. 363.

⁶⁰³⁴ Praljak’s Appeal Brief, para. 362, referring to Ex. P00837, p. 5, para. 5.

command.⁶⁰³⁵ He avers that “the HVO-MP [was] unique and [was] linked to battalions and companies under the command of the MPA Chief”.⁶⁰³⁶ Praljak submits that the Military Police’s responsibility to a brigade ceased when it was used for general military and police affairs, and that his authority over the Military Police was limited to combat activities.⁶⁰³⁷ He further contends that only the Military Police units in a brigade were subordinated to the brigade commander regarding their daily duties, as all other units carried out all the Military Police’s work “in the OZ of the 1st MP Battalion” which was directly subordinated to the Military Police Administration.⁶⁰³⁸

1815. Praljak asserts that it seems that the Trial Chamber considered that the Military Police “submitted only to the classic military hierarchy”, *i.e.* via the commanding officers of the OZs and brigades, when it performed its daily duties.⁶⁰³⁹ Regarding those daily duties, Praljak argues that the Trial Chamber erroneously decided to assess them, and the operative chain of command, on a case-by-case basis as they cannot be specified in such a way.⁶⁰⁴⁰ He asserts that documents from the Military Police Administration indicate that these daily duties were “solely duties to secure barracks and commands, military transport for the brigade, entry into the frontline in the brigade’s zone of responsibility and the taking into custody/detention of individuals for the brigade”.⁶⁰⁴¹ Praljak submits that it was impossible to conclude that the Military Police submitted only to the classic military hierarchy when it performed its daily duties as the Military Police Administration issued numerous orders to it concerning its daily duties such as the establishment of checkpoints.⁶⁰⁴² Praljak also argues that the Trial Chamber failed to properly define the HVO military commanders’ scope of authority over the Military Police as it omitted to identify the daily duties of the Military Police.⁶⁰⁴³ Thus, he concludes that the Trial Chamber was prevented from properly establishing responsibility for the acts committed by members of the Military Police.⁶⁰⁴⁴

1816. The Prosecution responds that the Trial Chamber: (1) considered the Provisional Instructions as a whole and in the context of other evidence;⁶⁰⁴⁵ (2) considered the evidence, which does not undermine its findings;⁶⁰⁴⁶ and (3) reasonably rejected the ECMM report in light of other

⁶⁰³⁵ Praljak’s Appeal Brief, para. 363, referring to Ex. P00957, p. 5.

⁶⁰³⁶ Praljak’s Appeal Brief, para. 363, referring to Ex. P04922.

⁶⁰³⁷ Praljak’s Appeal Brief, para. 364, referring to Ex. P04922; Praljak’s Reply Brief, para. 36.

⁶⁰³⁸ Praljak’s Appeal Brief, para. 365, referring to Ex. P00957, p. 5.

⁶⁰³⁹ Praljak’s Appeal Brief, para. 361, referring to Trial Judgement, Vol. 1, para. 949.

⁶⁰⁴⁰ Praljak’s Appeal Brief, para. 364, referring to Trial Judgement, Vol. 1, para. 947.

⁶⁰⁴¹ Praljak’s Appeal Brief, para. 364, referring to Exs. P04922, P00957, p. 5, 2D02000, p. 27, para. 49.

⁶⁰⁴² Praljak’s Appeal Brief, para. 365, referring to Trial Judgement, Vol. 1, para. 971.

⁶⁰⁴³ Praljak’s Appeal Brief, para. 367.

⁶⁰⁴⁴ Praljak’s Appeal Brief, para. 367.

⁶⁰⁴⁵ Prosecution’s Response Brief (Praljak), para. 65, referring to Trial Judgement, Vol. 1, paras 945-950, 959.

⁶⁰⁴⁶ Prosecution’s Response Brief (Praljak), para. 65, referring to Trial Judgement, Vol. 1, para. 952, Ex. P04922.

evidence demonstrating the existence of a dual chain of command.⁶⁰⁴⁷ It also submits that the Trial Chamber's case-by-case assessment of the chain of command was not erroneous.⁶⁰⁴⁸

(ii) Analysis

1817. The Trial Chamber found that the Military Police units answered to a dual chain of command.⁶⁰⁴⁹ In this context, the Trial Chamber observed that two principles governed the chain of command and control in the Military Police units: on the one hand, the HVO Military Police units in furtherance of their "daily duties" in their areas of responsibility, were subordinated to the commanders of the HVO unit to which they were attached, on the other hand, when a Military Police unit travelled outside its area of responsibility, it was required to place itself under the authority of the unit responsible for that area in connection with its "daily duties", namely the commander of the OZ or brigade in question.⁶⁰⁵⁰ It proceeded to note the difficulties in defining these "daily duties",⁶⁰⁵¹ and recalled that they "must have included some of the 20 duties of the Military Police enumerated in the [Provisional Instructions] as pointed out by Witness NO".⁶⁰⁵² Regarding these "daily duties", the Trial Chamber stated that it would "assess whether the Military Police units reported to the Military Police chain of command or that of the OZ commanders on a case-by-case basis".⁶⁰⁵³

1818. The Appeals Chamber will first address Praljak's challenges to the Trial Chamber's assessment of the evidence. Regarding the ECMM report, the Trial Chamber concluded that "as [it] concerns the existence of a dual chain of command over the military police units, [it could not] accept the [ECMM report] stating that the Military Police answered only to the orders of the Head of the Department of Defence and to those of Mate Boban".⁶⁰⁵⁴ This conclusion followed an in-depth analysis of the command and control authority exercised by the OZ and HVO brigade commanders⁶⁰⁵⁵ as well as the Military Police Administration⁶⁰⁵⁶ over the Military Police, wherein

⁶⁰⁴⁷ Prosecution's Response Brief (Praljak), para. 65, referring to Trial Judgement, Vol. 1, para. 973.

⁶⁰⁴⁸ Prosecution's Response Brief (Praljak), para. 66. The Prosecution also argues that the Military Police Administration's issuance of orders does not undermine the finding that the Military Police was subordinated to the HVO brigade commanders. Prosecution's Response Brief (Praljak), para. 66.

⁶⁰⁴⁹ Trial Judgement, Vol. 1, para. 945 (internal references omitted). See Trial Judgement, Vol. 1, para. 949. See also *supra*, para. 1812.

⁶⁰⁵⁰ Trial Judgement, Vol. 1, para. 949.

⁶⁰⁵¹ Trial Judgement, Vol. 1, paras 942-944, 946.

⁶⁰⁵² Trial Judgement, Vol. 1, para. 947, fn. 2347. See Trial Judgement, Vol. 1, paras 946 (noting Witness NO's evidence), 952 (identifying some of the daily duties).

⁶⁰⁵³ Trial Judgement, Vol. 1, para. 947.

⁶⁰⁵⁴ Trial Judgement, Vol. 1, para. 973, referring to Ex. P02803. The ECMM report, which is authored by the Deputy to the ECMM Chief and dated 16 June 1993, states in relevant part that "[i]n particular the military police answer only to HVO Minister of Defence Stojić and Mate Boban, and are a major force in the control of traffic moving through South Central Bosnia-Herzegovina". Ex. P02803, para. 16.

⁶⁰⁵⁵ Trial Judgement, Vol. 1, paras 942-952, and evidence cited therein.

⁶⁰⁵⁶ Trial Judgement, Vol. 1, paras 953-972, and evidence cited therein.

the Trial Chamber considered and weighed numerous pieces of evidence, including various exhibits as well as evidence from Praljak,⁶⁰⁵⁷ Petković,⁶⁰⁵⁸ Ćorić,⁶⁰⁵⁹ Witness NO,⁶⁰⁶⁰ and Witness Marijan Biškić.⁶⁰⁶¹ Thus, the Appeals Chamber considers that it is clear from the Trial Chamber's analysis and conclusions on the Military Police's dual chain of command that it rejected the relevant statement in the ECMM report because of the substantial evidence showing the existence of a dual chain of command. In this regard, the Appeals Chamber recalls that a trial chamber is not required to set out in detail why it accepted or rejected a particular testimony, and that an accused's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of particular witnesses.⁶⁰⁶² However, a trial chamber must provide reasons for accepting testimony despite alleged or material inconsistencies when it is the principal evidence relied upon to convict an accused.⁶⁰⁶³ Additionally, the Appeals Chamber recalls that if a trial chamber failed to refer to the evidence given by a witness, even if it is in contradiction to its finding, it is to be presumed that the trial chamber assessed and weighed that evidence, but found that it did not prevent it from making its findings.⁶⁰⁶⁴ The Appeals Chamber is therefore satisfied that the Trial Chamber was not required to set out in detail why it rejected the relevant statement in the ECMM report because of the substantial evidence showing the existence of a dual chain of command, despite the importance of the subject-matter. Praljak's argument is dismissed.

1819. As to Praljak's submission that the Trial Chamber ignored or improperly interpreted the Provisional Instructions, the Appeals Chamber notes that the Trial Chamber explicitly considered the same provisions identified by Praljak in its discussion on the command and control authority exercised by the Chief of the Military Police Administration over the Military Police units.⁶⁰⁶⁵ The Trial Chamber recalled that the Provisional Instructions "stipulat[ed] that the Chief of the Military Police Administration commanded and controlled all military police units",⁶⁰⁶⁶ and that "[a]lthough [...] the Military Police battalion and unit commanders were subordinated to the OZ and brigade commanders under whose authority they stood in carrying out their 'daily duties'",⁶⁰⁶⁷ it seemed

⁶⁰⁵⁷ Trial Judgement, Vol. 1, paras 945, 949 & fns 2340-2341, 2352.

⁶⁰⁵⁸ Trial Judgement, Vol. 1, paras 945-946 & fns 2343, 2345.

⁶⁰⁵⁹ Trial Judgement, Vol. 1, para. 945.

⁶⁰⁶⁰ Trial Judgement, Vol. 1, paras 946, 961 & fns 2344, 2346.

⁶⁰⁶¹ Trial Judgement, Vol. 1, para. 950.

⁶⁰⁶² *Popović et al.* Appeal Judgement, para. 133. The Appeals Chamber recalls that a trial chamber has broad discretion in assessing the appropriate weight and credibility to be accorded to the evidence. *Popović et al.* Appeal Judgement, para. 131.

⁶⁰⁶³ *Popović et al.* Appeal Judgement, para. 133; *Haradinaj et al.* Appeal Judgement, paras 129, 134, 252; *Kupreškić et al.* Appeal Judgement, paras 135, 202.

⁶⁰⁶⁴ *Kvočka et al.* Appeal Judgement, para. 23.

⁶⁰⁶⁵ Trial Judgement, Vol. 1, paras 959-974.

⁶⁰⁶⁶ Trial Judgement, Vol. 1, para. 959, referring to Exs. P00837, p. 4 (stating that "[t]he Military Police Administration is organised within the framework of the Croatian Defence Council and it leads and commands all Military Police units within the framework of operative groups, organisational units or within the Military Police Administration"), P00978.

⁶⁰⁶⁷ Trial Judgement, Vol. 1, para. 959.

that “all Military Police units were responsible for their work and carrying out their assigned tasks to the Military Police Administration through the Military Police Battalions organised in each OZ”.⁶⁰⁶⁸ Moreover, it relied on the Provisional Instructions in observing that directives issued regarding the work of the Military Police served as a reminder that all subordinate units of the Military Police within the OZs formed part of the Military Police battalions.⁶⁰⁶⁹ Considering the above, the Appeals Chamber finds that Praljak fails to show that the Trial Chamber “neglected” or ignored the provisions he cites.⁶⁰⁷⁰ As far as he argues that the Trial Chamber improperly interpreted these provisions, the Appeals Chamber finds that Praljak fails to explain how the Trial Chamber misinterpreted the evidence. His arguments are dismissed.

1820. Regarding Praljak’s contentions that the Military Police units were not completely subordinated to the HVO brigade commanders and were linked to battalions under the command of the Chief of the Military Police Administration, the Appeals Chamber considers that he fails to explain or demonstrate that these contentions call into question the Trial Chamber’s findings. Recalling the Trial Chamber’s observations noted above,⁶⁰⁷¹ and the finding that the Military Police had a dual chain of command,⁶⁰⁷² Praljak’s contentions are not inconsistent with the Trial Chamber’s findings.⁶⁰⁷³ Similarly, the Appeals Chamber is not persuaded by Praljak’s argument that because the Military Police Administration issued orders to the Military Police concerning their “daily duties”, it was “impossible” for the Trial Chamber to arrive at its findings.⁶⁰⁷⁴ His contentions are dismissed as he fails to demonstrate any impact on the Trial Chamber’s findings.

1821. Praljak also argues that his authority over the Military Police was limited to combat activities but relies only on Exhibit P04922, which is an extract from the Provisional Instructions, as support. The Appeals Chamber concludes that Praljak specifically relies on the paragraph which states that “[b]rigade platoons within the framework of Military Police companies and battalions can be used for general military and police affairs under the command of the company commander, with the agreement of the brigade commander, and at that time their responsibilities towards the brigade shall cease”.⁶⁰⁷⁵ However, the Appeals Chamber notes that Exhibit P04922 also specifies

⁶⁰⁶⁸ Trial Judgement, Vol. 1, para. 959, referring to Ex. P00837, p. 5 (stating that “[t]he commanders of lower units are responsible for their work and execution of tasks to the commander of the battalion military police, and he answers to the Military Police administration”).

⁶⁰⁶⁹ Trial Judgement, Vol. 1, para. 864, referring to Ex. P00837, p. 5.

⁶⁰⁷⁰ See Praljak’s Appeal Brief, para. 362.

⁶⁰⁷¹ See *supra*, para. 1819; Trial Judgement, Vol. 1, para. 950.

⁶⁰⁷² See Trial Judgement, Vol. 1, paras 864, 949, 952, 959, 971, 973-974.

⁶⁰⁷³ See Trial Judgement, Vol. 1, paras 959-964. Compare Praljak’s Appeal Brief, para. 363, referring to Exs. P00957, p. 5, P04922 with Trial Judgement, Vol. 1, para. 949, referring to, *inter alia*, Exs. P00957, P04922. See also Ex. P00957, p. 5; Ex. P04922.

⁶⁰⁷⁴ See Trial Judgement, Vol. 1, para. 971 (noting that the division of responsibilities between the Military Police Administration and the OZ commanders were not quite so clear cut in the field).

⁶⁰⁷⁵ Ex. P04922, p. 1.

that the “brigade Military Police is authorised to secure barracks and commands, military transports for the brigade, entry into the front line in the brigade’s zone of responsibility and the taking into custody and detention of individuals for the brigade”,⁶⁰⁷⁶ and that the “brigade Military Police has no other jurisdiction except for what has been described above and cannot perform territorial military and police tasks *outside the brigade’s zone of responsibility*”.⁶⁰⁷⁷ Thus, Exhibit P04922 does not support the contention that the tasks of the Military Police units embedded in the HVO brigades were limited to combat activities. Further, the Appeals Chamber recalls the Trial Chamber’s finding that the Main Staff had authority over the Military Police units in their “daily duties”,⁶⁰⁷⁸ which included the same duties expressed in Exhibit P04922.⁶⁰⁷⁹ Praljak fails to show that Exhibit P04922 is inconsistent with this Trial Chamber finding. Additionally, he does not explain how his argument that the Military Police, when used for general military and police affairs, ceased to be responsible to the HVO brigades affects the finding on his “effective control” over Military Police units embedded in the HVO brigades.⁶⁰⁸⁰ On the same basis, the Appeals Chamber dismisses Praljak’s submission regarding the Military Police not assigned to an HVO brigade.⁶⁰⁸¹ Praljak’s contention that his authority over the Military Police was limited to combat activities is thus dismissed.⁶⁰⁸²

1822. Turning to Praljak’s arguments on the “daily duties” of Military Police units, the Appeals Chamber first considers that he partially misinterprets the Trial Chamber’s case-by-case approach. To the extent that he argues that the Trial Chamber assessed the “daily duties” on a case-by-case basis,⁶⁰⁸³ it was the determination on which chain of command operated that was assessed in this way.⁶⁰⁸⁴ Regarding the “daily duties” themselves, the Trial Chamber did consider these assignments as “providing barracks security and security for the brigade command, escorting and guarding brigade convoys, establishing points of entry at the borders of the brigade’s area of responsibility and arresting and detaining individuals in the brigade’s jail cells”.⁶⁰⁸⁵ Praljak argues that these listed tasks were the *sole* “daily duties”, and while he cites evidence – which was considered by the Trial Chamber⁶⁰⁸⁶ – that could be interpreted as supporting this contention,⁶⁰⁸⁷ the Trial Chamber

⁶⁰⁷⁶ Ex. P04922, p. 1.

⁶⁰⁷⁷ Ex. P04922, p. 1 (emphasis added).

⁶⁰⁷⁸ Trial Judgement, Vol. 1, para. 950. See Trial Judgement, Vol. 1, para. 952.

⁶⁰⁷⁹ Trial Judgement, Vol. 1, paras 949, 952, fn. 2347.

⁶⁰⁸⁰ Trial Judgement, Vol. 4, para. 490 (“inasmuch as the HVO brigades were subordinated to the Commander of the Main Staff via the OZs, Slobodan Praljak as commander of the Main Staff likewise had command authority over the Military Police platoons embedded in those brigades”). See Trial Judgement, Vol. 1, para. 950.

⁶⁰⁸¹ See *supra*, para. 1814.

⁶⁰⁸² See Trial Judgement, Vol. 1, para. 950 (“the Main Staff did have final authority over the Military Police battalions as they carried out their ‘daily duties’”).

⁶⁰⁸³ Praljak’s Appeal Brief, para. 364. See *supra*, para. 1815.

⁶⁰⁸⁴ Trial Judgement, Vol. 1, para. 947. See *supra*, para. 1817.

⁶⁰⁸⁵ Trial Judgement, Vol. 1, para. 952, referring to, *inter alia*, Exs. P04922, P00957, p. 5, 2D02000, para. 49.

⁶⁰⁸⁶ See *supra*, fns 6041, 6085.

considered other evidence which showed that additional tasks were delegated to the Military Police in the brigades – such as securing crime sites, informing relevant authorities about criminal investigations, checking apartments of persons mobilised, confiscating weaponry, and patrolling and recording improper parking of vehicles.⁶⁰⁸⁸ Praljak does not contest the Trial Chamber’s consideration of this other evidence. The Appeals Chamber therefore finds that the Trial Chamber did not provide an exhaustive list of the “daily duties” of the Military Police.⁶⁰⁸⁹ Praljak thus fails to demonstrate an error in the Trial Chamber’s findings on the “daily duties” identified and his argument is dismissed. Based on the foregoing,⁶⁰⁹⁰ the Appeals Chamber also finds unpersuasive Praljak’s arguments that the Trial Chamber failed to properly define the scope of authority that the HVO brigade commanders exercised over the Military Police units and that its case-by-case assessment on the operative chain of command was erroneous. Praljak does not put forward sufficient support demonstrating an error.

1823. Finally, as far as Praljak argues that his responsibility for the crimes committed by the Military Police could not be established as their “daily duties” – and thus the scope of authority which the military commanders had over them – were not sufficiently defined,⁶⁰⁹¹ the Appeals Chamber recalls that Praljak was found responsible, and convicted, for crimes committed pursuant to JCE I and JCE III liability.⁶⁰⁹² Thus, it is not a necessary element that Praljak or the HVO military commanders had authority over all the Military Police units who committed crimes in furtherance of the JCE.⁶⁰⁹³ Any allegations that the Trial Chamber incorrectly attributed crimes committed by the Military Police to the JCE members will be considered when addressing Praljak’s related challenges. Praljak’s argument is dismissed.

1824. In sum, the Appeals Chamber finds that Praljak has failed to show that the Trial Chamber erroneously concluded that the Military Police was under the command of the OZ and HVO brigade commanders in executing their “daily duties”. His sub-ground of appeal 37.1 is dismissed.

⁶⁰⁸⁷ See Ex. P04922; Ex. 2D02000, para. 49.

⁶⁰⁸⁸ See Ex. 3D03815; Ex. 3D03816; Trial Judgement, Vol. 1, para. 952, fn. 2362, and evidence cited therein. Notably Exhibit P00957, after identifying the same duties noted by Praljak and the Trial Chamber, states that “[i]n performing their daily duties, the commanders of [Military Police] battalions in operations zones are directly subordinate to the Operations Zone Commander and carry out all orders relating to military police work in accordance with the powers and responsibilities of the [Military Police]”. Ex. P00957, p. 5.

⁶⁰⁸⁹ See Trial Judgement, Vol. 1, paras 944, 947, 952, fns 2347, 2362.

⁶⁰⁹⁰ See *supra*, paras 1817, 1819.

⁶⁰⁹¹ See *supra*, para. 1815.

⁶⁰⁹² See Trial Judgement, Vol. 4, paras 630, 644.

⁶⁰⁹³ See *Popović et al.* Appeal Judgement, para. 1050; *Dorđević* Appeal Judgement, paras 165, 169; *Brdanin* Appeal Judgement, paras 364, 410-412; *Tadić* Appeal Judgement, para. 227.

(b) The Main Staff's command authority over the KB (Praljak's Sub-ground 37.2)(i) Arguments of the Parties

1825. Praljak contends that the Trial Chamber failed to properly analyse evidence in finding that the KB fell within the HVO's military chain of command and reported to the Main Staff, thus erroneously attributing responsibility to him for crimes committed by them.⁶⁰⁹⁴ Specifically, Praljak asserts that in finding that Mladen Naletilić, "Tuta", was the KB commander,⁶⁰⁹⁵ the Trial Chamber: (1) failed to consider that Ivan Andabak "[himself] recognized and affirmed that he was the order-issuing authority in the KB";⁶⁰⁹⁶ and (2) "did not make any effort" to establish Andabak's functions within the KB, and, thus, could not have affirmed that Naletilić was the KB commander.⁶⁰⁹⁷ He also submits that Naletilić and Andabak were employees of the Department of Defence.⁶⁰⁹⁸ Praljak argues that: (1) Andabak stated that the KB was responsible exclusively to Boban;⁶⁰⁹⁹ (2) the Trial Chamber recognised testimony that the KB was under Boban's authority, but "should have given more persuasive reasons" on why it gave more weight to Boban's lack of orders to the KB;⁶¹⁰⁰ and (3) problems with the KB were not reported to the Main Staff, but to Boban directly.⁶¹⁰¹

1826. Praljak further submits that documents relied on by the Trial Chamber only show that the KB participated in some HVO military actions and not their integration into the HVO's military chain of command.⁶¹⁰² He also contends that the Trial Chamber misinterpreted an order he issued as there is no evidence that the referenced unit, "ATG TUTA", was linked to "Naletilic-Tuta".⁶¹⁰³ Praljak submits that the Trial Chamber made improper inferences from the fact that an ATG unit under the Main Staff's command was formed from KB members in December 1993 as this does not indicate the Main Staff's authority before this date or that the KB itself was ever under its command.⁶¹⁰⁴ Finally, Praljak argues that the Trial Chamber's conclusions that members of the KB and the ATGs engaged in "criminal" conduct, had serious disciplinary problems, and were often in

⁶⁰⁹⁴ Praljak's Appeal Brief, paras 371, 375-376. Praljak asserts that the Trial Chamber's failure to provide a reasoned opinion requires a *de novo* review of the evidence by the Appeals Chamber. Praljak's Appeal Brief, para. 376.

⁶⁰⁹⁵ Praljak's Appeal Brief, para. 368, referring to Trial Judgement, Vol. 1, para. 817.

⁶⁰⁹⁶ Praljak's Appeal Brief, para. 368, referring to Ex. 4D01356.

⁶⁰⁹⁷ Praljak's Appeal Brief, para. 369; Praljak's Reply Brief, para. 37.

⁶⁰⁹⁸ Praljak's Appeal Brief, para. 370, referring to Ex. P00464. Praljak asserts that "all documents" written and signed by Naletilić and Andabak in their KB functions were on the department's letterhead and that the KB commanders addressed correspondence directly to the Department of Defence. Praljak's Appeal Brief, para. 370, referring to Exs. P01701, P02118, P02783, P03309, P01776.

⁶⁰⁹⁹ Praljak's Appeal Brief, para. 370, referring to Ex. 4D01356.

⁶¹⁰⁰ Praljak's Appeal Brief, paras 370-371, referring to Trial Judgement, Vol. 1, para. 825.

⁶¹⁰¹ Praljak's Appeal Brief, para. 371, referring to Ex. P05226.

⁶¹⁰² Praljak's Appeal Brief, para. 372, referring to Trial Judgement, Vol. 1, para. 829, fn. 1948.

⁶¹⁰³ Praljak's Appeal Brief, para. 373, referring to Trial Judgement, Vol. 1, para. 826. Praljak argues that a reference in the order to the "ATG TUTA" did not concern "Tuta's ATG", and that the "ATG TUTA" is not listed as a unit belonging to the KB. Praljak's Appeal Brief, para. 373, referring to Exs. P04131, P07009.

⁶¹⁰⁴ Praljak's Appeal Brief, para. 374, referring to Trial Judgement, Vol. 1, para. 827.

conflict with HVO units, indicate that the KB was not integrated into the “regular HVO forces”,⁶¹⁰⁵ and that the Main Staff did not have complete control over all HVO units.⁶¹⁰⁶

1827. The Prosecution responds that Praljak repeats arguments that were rejected at trial and fails to show that no reasonable trier of fact could have concluded that the KB and its ATGs were subordinated to Praljak and the Main Staff in the HVO chain of command.⁶¹⁰⁷

(ii) Analysis

1828. In the section of the Trial Judgement addressing the structure of the armed forces, the Trial Chamber found that Mladen Naletilić, alias “Tuta”, was the commander of the KB and its ATGs at least between 22 February 1993 and 2 December 1993.⁶¹⁰⁸ The Trial Chamber also found that the KB and its ATGs, under the command of Naletilić, were “deployed in the OZs pursuant to the orders issued by the Main Staff and [...] were integrated into the overall chain of command and reported directly to the Main Staff”.⁶¹⁰⁹ The Trial Chamber relied on: (1) an order dated 12 August 1993 from Praljak in which he expressly ordered the Main Staff to exercise direct command over “Tuta’s ATG”;⁶¹¹⁰ (2) an order dated 23 December 1993, issued by Ante Roso, the then Chief of the Main Staff, in which an ATG unit was formed out of KB units and placed under the command of the Main Staff;⁶¹¹¹ and (3) several orders and reports referring to deployments of the KB and its ATGs in the South-East OZ, particularly in Mostar starting in July 1993 and continuing until at least January 1994, deployments which were carried out pursuant to orders of the Chief of the Main Staff.⁶¹¹² In the section of the Trial Judgement addressing Praljak’s powers specifically, the Trial Chamber recalled that, from at least 12 August 1993, he had direct command authority over the KB and the ATGs.⁶¹¹³

1829. Regarding Praljak’s challenges to the Trial Chamber’s reliance on the evidence noted above,⁶¹¹⁴ the Appeals Chamber is first not convinced by his assertion that the Trial Chamber erred in considering that the “TUTA ATG” unit referenced in the 12 August 1993 order referred to the KB and its ATGs commanded by Naletilić, alias “Tuta”.⁶¹¹⁵ This challenge is dismissed.⁶¹¹⁶

⁶¹⁰⁵ Praljak’s Appeal Brief, para. 375, referring to Trial Judgement, Vol. 1, para. 820.

⁶¹⁰⁶ Praljak’s Reply Brief, para. 37.

⁶¹⁰⁷ Prosecution’s Response Brief (Praljak), para. 67. The Prosecution further submits that Praljak fails to explain how the Trial Chamber’s inability to determine Andabak’s precise functions in the KB rendered its findings on the Main Staff’s command over the KB unreasonable. Prosecution’s Response Brief (Praljak), para. 67.

⁶¹⁰⁸ Trial Judgement, Vol. 1, paras 817-818.

⁶¹⁰⁹ Trial Judgement, Vol. 1, para. 829.

⁶¹¹⁰ Trial Judgement, Vol. 1, para. 826, referring to Ex. P04131.

⁶¹¹¹ Trial Judgement, Vol. 1, para. 827, referring to Exs. P07315, P07377.

⁶¹¹² Trial Judgement, Vol. 1, para. 828, referring to, *inter alia*, Exs. P03466, p. 2, P03128, P03260, P04499.

⁶¹¹³ Trial Judgement, Vol. 4, para. 493. See Trial Judgement, Vol. 1, para. 826.

⁶¹¹⁴ See *supra*, paras 1826, 1828.

⁶¹¹⁵ Trial Judgement, Vol. 1, paras 826, 829.

Similarly, the Appeals Chamber is not persuaded by Praljak's assertion that the Trial Chamber erred in relying on Roso's order.⁶¹¹⁷ Rather, a reasonable trier of fact could have found that this order, in which the Chief of the HVO Main Staff re-assigned members of the KB, demonstrated that the Main Staff had authority over the KB at that time. Praljak merely offers his own interpretation of the evidence and thus fails to show that no reasonable trier of fact could have considered that this order issued by Roso, in combination with the other cited evidence,⁶¹¹⁸ supported a finding that the KB fell within the HVO's chain of command. Further, Praljak disputes the Trial Chamber's findings by asserting that the deployment orders, dated from July 1993 until at least January 1994, show only that the KB and its ATGs participated in HVO military actions. However, Praljak does not show that the Trial Chamber erred in finding that "these deployments were carried out pursuant to the orders of the Chief of the Main Staff of the HVO", and that once deployed, the units were placed under the OZ's commanding officer.⁶¹¹⁹ The Appeals Chamber finds that Praljak merely seeks to offer his own interpretation of the evidence considered by the Trial Chamber without showing an error. Praljak's arguments are therefore dismissed.

1830. With regard to Praljak's challenge to the Trial Chamber's finding that Naletilić was the KB commander,⁶¹²⁰ the Appeals Chamber notes that the Trial Chamber relied on multiple exhibits⁶¹²¹ which were signed by, or on behalf of, Mladen Naletilić – Tuta, as the Commander of the Convicts Battalion and ATGs and dated between February 1993 and December 1993.⁶¹²² Praljak does not challenge the Trial Chamber's reliance on this evidence.⁶¹²³ Further, contrary to Praljak's submission, the Trial Chamber did not ignore evidence that Andabak "[himself] recognized and affirmed that he was the order-issuing authority in the KB".⁶¹²⁴ Rather, the Trial Chamber considered Exhibit 4D01356,⁶¹²⁵ the news article cited by Praljak, in which Andabak is quoted as saying: "I signed orders and Tuta was [the] political and ideological figure in the Convict[s] Battalion. We all followed his visions".⁶¹²⁶ Relying on, *inter alia*, this exhibit, the Trial Chamber

⁶¹¹⁶ See *supra*, para. 25.

⁶¹¹⁷ Praljak's Appeal Brief, para. 374, referring to Trial Judgement, Vol. 1, para. 827.

⁶¹¹⁸ See *supra*, para. 1828.

⁶¹¹⁹ Trial Judgement, Vol. 1, para. 828.

⁶¹²⁰ See *supra*, para. 1825.

⁶¹²¹ Trial Judgement, Vol. 1, para. 817 & fn. 1924.

⁶¹²² Ex. P01531; Ex. P01701; Ex. P02118; Ex. P02783; Ex. P03309; Ex. P05432; Ex. P06664; Ex. P07009.

⁶¹²³ The Appeals Chamber notes that Praljak himself cites some of these exhibits which refer to Naletilić, or "Tuta", as the commander of the KB to support his other arguments made in this sub-ground of appeal. See Praljak's Appeal Brief, paras 370, 373, referring to Exs. P01776, P07009.

⁶¹²⁴ *Contra* Praljak's Appeal Brief, para. 368, referring to Ex. 4D01356. See Trial Judgement, Vol. 1, para. 817, fn. 1925.

⁶¹²⁵ Trial Judgement, Vol. 1, fn. 1925.

⁶¹²⁶ Ex. 4D01356, p. 1.

recognised that Andabak also exercised command responsibilities within the KB.⁶¹²⁷ In light of the evidence cited above, the Appeals Chamber considers that Praljak fails to show that Exhibit 4D01356 calls into question the Trial Chamber's finding that Naletilić served as the KB commander.⁶¹²⁸ Similarly, the Appeals Chamber is not convinced by Praljak's contention that the Trial Chamber's inability to precisely establish Andabak's functions in the KB undermines its findings.⁶¹²⁹ Praljak's arguments are thus dismissed.

1831. Concerning Praljak's submission that both Naletilić and Andabak were employees of the Department of Defence,⁶¹³⁰ the Appeals Chamber first notes that the Trial Chamber considered, and rejected, arguments and evidence that the KB was under the authority of the Department of Defence.⁶¹³¹ The Appeals Chamber also notes that the Trial Chamber considered the majority of the evidence cited by Praljak,⁶¹³² including a certificate dated 10 September 1992 and signed by Stojić, indicating that Naletilić was an "employee" of the Department of Defence.⁶¹³³ Further, the Trial Chamber noted, from this cited evidence, that Naletilić corresponded with the Head of the Department of Defence on several occasions,⁶¹³⁴ as well as from other evidence, that Stojić twice congratulated the KB on military operations,⁶¹³⁵ before concluding that "there were structural and operational ties between Bruno Stojić and Mladen [Naletilić] and his ATGs".⁶¹³⁶ However, the Trial Chamber also considered that it did not have "any order sent by the Head of the Department of Defence to Mladen Naletilić, to the KB or to its ATGs or any testimony to support a finding that the Department of Defence exercised command authority over the KB and its ATGs under the command of Mladen Naletilić".⁶¹³⁷ The Appeals Chamber therefore finds that – to the extent that he argues that it was the Department of Defence, and not the Main Staff, that had command authority over the KB and its ATGs – Praljak fails to demonstrate that no reasonable trier of fact could have arrived at the Trial Chamber's conclusions in this regard. His argument is dismissed.

⁶¹²⁷ Trial Judgement, Vol. 1, para. 817, fn. 1925. The Appeals Chamber notes that the Trial Chamber also considered additional evidence of witnesses who stated that Andabak was the commander of the KB, as well as an adjudicated fact that Mario Hrkać and Andabak were under the orders of Naletilić. Trial Judgement, Vol. 1, fn. 1925.

⁶¹²⁸ Trial Judgement, Vol. 1, para. 817.

⁶¹²⁹ Cf. *Popović et al.* Appeal Judgement, para. 1892 ("the exercise of effective control by one commander does not necessarily exclude effective control being exercised by a different commander").

⁶¹³⁰ See *supra*, para. 1825.

⁶¹³¹ Trial Judgement, Vol. 1, paras 822, 830-835.

⁶¹³² Trial Judgement, Vol. 1, paras 833-834, referring to, *inter alia*, Exs. P00464, P02118, P02783, P01701, P01776. The Appeals Chamber notes that the other piece of evidence cited by Praljak, Exhibit P03309, only shows that "Mladen Naletilić, aka, Tuta" sent a request from the "Defence Department". Ex. P03309, p. 1.

⁶¹³³ Trial Judgement, Vol. 1, para. 833, referring to Ex. P00464.

⁶¹³⁴ Trial Judgement, Vol. 1, para. 834, referring to, *inter alia*, Exs. P02118, P02783, P01701, P01776.

⁶¹³⁵ Trial Judgement, Vol. 1, para. 834, referring to Exs. P03823, P05303.

⁶¹³⁶ Trial Judgement, Vol. 1, para. 835. The Appeals Chamber notes that there is a typographical error in the English translation of the Trial Judgement as the original French version refers to "Mladen Naletilić" and not "Mladen Stojić".

⁶¹³⁷ Trial Judgement, Vol. 1, para. 835.

1832. The Appeals Chamber further notes that the Trial Chamber also considered evidence that the KB was under the authority of Boban, not the Main Staff,⁶¹³⁸ including the same evidence Praljak cites in support of his argument on this issue.⁶¹³⁹ Notably, the Trial Chamber specifically considered: (1) Exhibit 4D01356, in which Andabak is quoted as saying that he was responsible “[e]xclusively to the Ministry of Defence of the Republic of Croatia, to Gojko [Šušak] and to Mate Boban”;⁶¹⁴⁰ and (2) the evidence of several witnesses, including Petković.⁶¹⁴¹ The Trial Chamber found, however, that it had “no order in its possession sent by Mate Boban to the KB and its ATGs nor any other document from the HVO which could attest to Mate Boban’s directing [of] the KB and its ATGs.”⁶¹⁴² The Appeals Chamber recalls that a trial chamber is not required to set out in detail why it accepted or rejected a particular testimony, and an accused’s right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of particular witnesses.⁶¹⁴³ However, a trial chamber must provide reasons for accepting testimony despite alleged or material inconsistencies when it is the principal evidence relied upon to convict an accused.⁶¹⁴⁴ Additionally, the Appeals Chamber recalls that if a trial chamber failed to refer to the evidence given by a witness, even if it is in contradiction to its finding, it is to be presumed that the trial chamber assessed and weighed that evidence, but found that it did not prevent it from making its findings.⁶¹⁴⁵ The Appeals Chamber is therefore satisfied that the Trial Chamber was not required to give “more persuasive reasons” as to why it did not rely on evidence suggesting that the KB was under the authority of Boban.⁶¹⁴⁶ Praljak’s argument is thus dismissed as he fails to show an error.

1833. Regarding Praljak’s argument that the Trial Chamber’s conclusions on the behaviour of members of the KB and the ATGs demonstrate the Main Staff’s lack of control over the units,⁶¹⁴⁷ the Appeals Chamber considers that he fails to place these conclusions in their proper context. Notably, this submission ignores the Trial Chamber’s: (1) consideration that Praljak and Željko Šiljeg intervened and calmed a situation where “Tuta’s men” led an assault on the Military Police building in Prozor in June 1993;⁶¹⁴⁸ and (2) subsequent discussion on the placement of the KB and

⁶¹³⁸ Trial Judgement, Vol. 1, para. 825, referring to, *inter alia*, Exs. 4D01356, P05226.

⁶¹³⁹ See Praljak’s Appeal Brief, paras 370-371, referring to Exs. 4D01356, P05226; *supra*, para. 1825.

⁶¹⁴⁰ Ex. 4D01356. See Trial Judgement, Vol. 1, fn. 1945, referring to Ex. 4D01356.

⁶¹⁴¹ Trial Judgement, Vol. 1, fn. 1945.

⁶¹⁴² Trial Judgement, Vol. 1, para. 825.

⁶¹⁴³ *Popović et al.* Appeal Judgement, para. 133.

⁶¹⁴⁴ *Popović et al.* Appeal Judgement, para. 133; *Haradinaj et al.* Appeal Judgement, paras 129, 134, 252; *Kupreškić et al.* Appeal Judgement, paras 135, 202.

⁶¹⁴⁵ *Kvočka et al.* Appeal Judgement, para. 23.

⁶¹⁴⁶ See *Popović et al.* Appeal Judgement, para. 131 (recalling that a trial chamber has broad discretion in assessing the appropriate weight and credibility to be accorded to the evidence).

⁶¹⁴⁷ See *supra*, para. 1826.

⁶¹⁴⁸ Trial Judgement, Vol. 1, para. 820. The Appeals Chamber notes that Željko Šiljeg was the commander of the North-West OZ at the relevant time. Trial Judgement, Vol. 1, para. 783, fn. 1839.

the ATGs within the military chain of command.⁶¹⁴⁹ The Trial Chamber was therefore aware of the behavioural issues and lack of discipline within the KB and the ATGs, but nonetheless found that these units were integrated into the overall military chain of command and reported directly to the Main Staff.⁶¹⁵⁰ The Appeals Chamber finds that Praljak fails to show that no reasonable trier of fact could have so found as he only asserts his own conclusions. His argument is dismissed.

1834. For the above reasons, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber erroneously concluded that the KB was within the HVO's chain of command and under the command authority of the Main Staff. Praljak's sub-ground of appeal 37.2 is thus dismissed.

(c) Conclusion

1835. In sum, the Appeals Chamber dismisses Praljak's ground of appeal 37.

3. Alleged errors relating to Praljak's functions and authority (Praljak's Ground 38)

(a) Praljak's de facto command before 24 July 1993 (Praljak's Sub-ground 38.1)

1836. The Trial Chamber concluded that Praljak had *de facto* command authority over the HVO and the Military Police from autumn 1992 to 24 July 1993 and that he exercised these powers.⁶¹⁵¹ In arriving at these conclusions, the Trial Chamber found that Praljak directed the HVO by: (1) taking command over certain operations; (2) issuing orders to units and receiving reports from commanders in the field; (3) representing the HVO in the efforts to set up a joint command with the ABiH; and (4) commanding certain Military Police units.⁶¹⁵² It also found that Praljak played roles in mediating the tension between various HVO components and in drafting the 15 January 1993 Ultimatum.⁶¹⁵³

(i) Arguments of the Parties

1837. Praljak submits that the Trial Chamber erroneously found that he had *de facto* command authority over the HVO,⁶¹⁵⁴ and over Military Police units, before 24 July 1993.⁶¹⁵⁵ Praljak argues that, contrary to the Trial Chamber's observation, he did not acknowledge his *de facto* authority as

⁶¹⁴⁹ Trial Judgement, Vol. 1, paras 822-829.

⁶¹⁵⁰ Trial Judgement, Vol. 1, para. 829.

⁶¹⁵¹ Trial Judgement, Vol. 4, paras 472, 476, 482, 624. See Trial Judgement, Vol. 4, para. 459 (The Trial Chamber observed that it had no evidence that Praljak held official functions in the HVO between mid-May 1992 and 24 July 1993).

⁶¹⁵² Trial Judgement, Vol. 4, para. 482. See Trial Judgement, Vol. 4, paras 469-477.

⁶¹⁵³ Trial Judgement, Vol. 4, para. 482. See Trial Judgement, Vol. 4, paras 475, 478-481.

⁶¹⁵⁴ Praljak's Appeal Brief, paras 378-390.

⁶¹⁵⁵ Praljak's Appeal Brief, para. 387, referring to Praljak's Appeal Brief, paras 396-401.

he testified that he had some authority in providing assistance based on “his force of persuasion”.⁶¹⁵⁶ He asserts that he went to BiH before July 1993 for short periods of time, and that the Trial Chamber ignored evidence that he went there, with Alija Izetbegović’s consent, to calm the situation in order to avoid conflict.⁶¹⁵⁷ Praljak also argues that his command over HVO units in May 1992 is irrelevant as at that time the HVO was comprised of Muslims and Croats who fought together against JNA and VRS forces.⁶¹⁵⁸

1838. Praljak contends that the Trial Chamber misinterpreted, and relied on, evidence which did not support its conclusion on his *de facto* command.⁶¹⁵⁹ Specifically, he argues that the documents issued in October 1992 and February 1993 were not orders, were not issued by him, and though he co-signed them, he had no authority otherwise it would have been unnecessary for Stojić and Petković to sign and issue them.⁶¹⁶⁰ Referring to an order issued in May 1993, Praljak submits that Petković did not order the subordination of an HVO unit in Ljubuški to him, but rather only ordered that the commander report to him. Praljak further submits that there is no evidence contradicting his testimony that he was briefly in the Prozor area in May 1993 and his explanation for his role in the reception of the Ljubuški unit.⁶¹⁶¹ Praljak also asserts that the report from Tihomir Blaškić was only copied to him as it was logical for him to be informed of its contents, and if he received the report it was from Stojić not Blaškić.⁶¹⁶² He further submits that there is no evidence that he had any command role in the Bokševica operation, as while he was nominated as a member of the operation command, he “was there only as [a] simple soldier”.⁶¹⁶³

1839. Praljak also submits that the Trial Chamber’s finding on his *de facto* command was erroneously based on: (1) the events in Gornji Vakuf in January 1993, as it “is impossible” to conclude his authority from these events;⁶¹⁶⁴ and (2) his role as a mediator, as the Trial Chamber did not give any reasons on why this role is relevant to a finding on *de facto* command.⁶¹⁶⁵ Praljak also argues that the orders he issued attempting to set up a joint command between the HVO and the ABiH were never executed and the joint command never became effective. He further argues

⁶¹⁵⁶ Praljak’s Appeal Brief, para. 378, referring to Trial Judgement, Vol. 4, para. 469, Slobodan Praljak, T. 43935, 43938 (26 Aug 2009). Praljak also refers to his “moral authority”. Praljak’s Appeal Brief, para. 379.

⁶¹⁵⁷ Praljak’s Appeal Brief, para. 379, referring to, *inter alia*, Slobodan Praljak, T. 41873-41874 (23 June 2009), T. 43934-43935 (26 Aug 2009), Safet Idrizović, T. 9602-9605, 9616-9618, 9627 (6 Nov 2006), T. 9630-9638 (7 Nov 2006), T. 9833-9834 (8 Nov 2006).

⁶¹⁵⁸ Praljak’s Appeal Brief, para. 380. See Praljak’s Reply Brief, para. 31.

⁶¹⁵⁹ Praljak’s Appeal Brief, para. 379.

⁶¹⁶⁰ Praljak’s Appeal Brief, para. 381, referring to Exs. 2D01335, 2D00195. Praljak asserts that Exhibit 2D01335 was an approval issued by Stojić to an ABiH unit, while Exhibit 2D00195 was a permission issued by Petković. Praljak’s Appeal Brief, para. 381.

⁶¹⁶¹ Praljak’s Appeal Brief, para. 382, referring to Ex. P02526, Slobodan Praljak, T. 43934-43939 (26 Aug 2009).

⁶¹⁶² Praljak’s Appeal Brief, para. 383, referring to, *inter alia*, Ex. P01864.

⁶¹⁶³ Praljak’s Appeal Brief, para. 385, referring to Ex. P03246, Slobodan Praljak, T. 40773 (26 May 2009). See Praljak’s Reply Brief, para. 30.

⁶¹⁶⁴ Praljak’s Appeal Brief, para. 384, referring to Praljak’s Appeal Brief, paras 462-468 (Praljak’s Ground 42).

that these orders do not prove his command authority but only show his attempt to stabilise the situation, to allow Muslims and Croats to continue working together, and to avoid conflict.⁶¹⁶⁶

1840. According to Praljak, the Trial Chamber's finding on his *de facto* command is contradicted by its findings on his role in the events before 24 July 1993.⁶¹⁶⁷ Praljak asserts that the Trial Chamber erred in law as effective control is necessary in order to establish *de facto* command authority, and that the mere influence on persons is insufficient to prove either.⁶¹⁶⁸ He also argues that the Trial Chamber's erroneous conclusion was based on isolated actions which were temporally and geographically limited, and were misinterpreted.⁶¹⁶⁹

1841. The Prosecution responds that the Trial Chamber's conclusion on Praljak's *de facto* command was reasonable and that the evidence established that he directed the HVO before 24 July 1993.⁶¹⁷⁰ The Prosecution submits that the Trial Chamber noted and rejected Praljak's argument that he was a "simple soldier" peddling 'advice' based only on 'moral' authority".⁶¹⁷¹ It argues that Praljak's authority was grounded in his high-level positions, *i.e.* Assistant/Deputy Minister of Defence as an HV Brigadier and then as Major-General, as well as his privileged and continuous ties with Croatia's senior leadership.⁶¹⁷² The Prosecution also responds that the Trial Chamber did not find that Praljak had effective control over the HVO before his appointment as Commander of the Main Staff, and that – in any event – JCE contribution does not depend on effective control.⁶¹⁷³

1842. The Prosecution further argues that Praljak seeks to reinterpret the evidence without showing an error.⁶¹⁷⁴ Specifically, it submits that: (1) Praljak's orders issued jointly with other senior HVO leaders show that he worked closely with high-ranking HVO officials and, despite his unofficial status, "was recognised as wielding authority sufficient to sign important orders"; (2) whether the HVO was comprised of Muslims and Croats in May 1992 is immaterial as Praljak demonstrated his authority by commanding HVO troops; (3) whether the joint command was ever

⁶¹⁶⁵ Praljak's Appeal Brief, para. 388.

⁶¹⁶⁶ Praljak's Appeal Brief, para. 386, referring to, *inter alia*, Slobodan Praljak, T. 40466-40475 (20 May 2009), T. 40672-40676 (25 May 2009), T. 43289-43290 (17 Aug 2009), Exs. 3D00647, 1D00507, 2D00628, 4D00410, 3D03510, 3D00561/P01739, 3D00289, P01622, P01738, 1D02432, 3D02666, 3D02233. See also Appeal Hearing, AT. 414-417 (22 Mar 2017).

⁶¹⁶⁷ Praljak's Appeal Brief, para. 389.

⁶¹⁶⁸ Praljak's Appeal Brief, para. 390, referring to *Čelebići* Appeal Judgement, para. 197.

⁶¹⁶⁹ Praljak's Appeal Brief, para. 390.

⁶¹⁷⁰ Prosecution's Response Brief (Praljak), para. 51, referring to, *inter alia*, Exs. 3D00424, P03516, p. 4, Zdenko Andabak, T. 51011 (17 Mar 2010). See Prosecution's Response Brief (Praljak), para. 50.

⁶¹⁷¹ Prosecution's Response Brief (Praljak), para. 51. The Prosecution also submits that the Trial Chamber rejected Praljak's arguments that he did not have command authority and that his authority was limited to providing advice and assistance. Prosecution's Response Brief (Praljak), para. 53.

⁶¹⁷² Prosecution's Response Brief (Praljak), para. 51.

⁶¹⁷³ Prosecution's Response Brief (Praljak), para. 54.

⁶¹⁷⁴ Prosecution's Response Brief (Praljak), para. 52. See Prosecution's Response Brief (Praljak), para. 50.

realised does not affect the Trial Chamber's conclusions on Praljak's authority to give orders; (4) Blaškić's report confirmed that Praljak's authority within the HVO was accepted, regardless of who transmitted it; (5) Petković's May 1993 order concerning the deployment of the HVO unit in Ljubuški to Prozor and his nomination of Praljak to the operational command of the Bokševica operation both show that Petković accepted Praljak's authority over HVO forces; and (6) Praljak's role as a mediator confirmed his *de facto* authority as his interventions "were taken seriously".⁶¹⁷⁵

1843. Praljak replies that his *de facto* command, as an important factor in his JCE contribution, should have been properly established which needed a determination on his effective control.⁶¹⁷⁶

(ii) Analysis

1844. The Appeals Chamber recalls that the Trial Chamber was satisfied beyond reasonable doubt that Praljak had *de facto* command authority over the HVO and the Military Police from autumn 1992 to 24 July 1993, when he was appointed commander of the Main Staff.⁶¹⁷⁷ Regarding his positions and official functions during this period, the Trial Chamber found that Praljak was the Assistant Minister of Defence and then Deputy Minister of Defence of Croatia from approximately March 1992 to 15 June 1993, first at the rank of brigadier and then as major-general of the HV.⁶¹⁷⁸ With regard to his functions in the HVO, it found that Praljak was the commander of the South-Eastern Herzegovina operations group between early April 1992 and mid-May 1992. The Trial Chamber observed that it had no evidence establishing that Praljak held official functions in the HVO between mid-May 1992 and 24 July 1993.⁶¹⁷⁹

1845. Praljak argues that the Trial Chamber erred in law by failing to establish his effective control over the HVO before 24 July 1993. The Appeals Chamber recalls that "the ability to exercise 'effective control' over the perpetrators of the crime is not a requirement for establishing responsibility for commission through participation in a JCE".⁶¹⁸⁰ Further, the Trial Chamber found that Praljak had *de facto* command authority but did not make any findings on his "effective control" for the time-period prior to 24 July 1993.⁶¹⁸¹ Although the Trial Chamber considered Praljak's *de facto* authority as a factor in assessing his contribution to the JCE,⁶¹⁸² the Appeals

⁶¹⁷⁵ Prosecution's Response Brief (Praljak), para. 52.

⁶¹⁷⁶ Praljak's Reply Brief, para. 32.

⁶¹⁷⁷ Trial Judgement, Vol. 4, paras 459, 482.

⁶¹⁷⁸ Trial Judgement, Vol. 4, para. 457. Praljak was Commander of the Main Staff from 24 July 1993 to 9 November 1993. Trial Judgement, Vol. 4, para. 459.

⁶¹⁷⁹ Trial Judgement, Vol. 4, para. 459.

⁶¹⁸⁰ *Šainović et al.* Appeal Judgement, para. 1368. See *Tadić* Appeal Judgement, paras 227-228. See also *Šainović et al.* Appeal Judgement, para. 988. Cf. *Šainović et al.* Appeal Judgement, para. 1520.

⁶¹⁸¹ Trial Judgement, Vol. 4, para. 482. Cf. Trial Judgement, Vol. 4, para. 506 (finding that Praljak had command and control authority and "effective control" over the HVO between 24 July 1993 and 9 November 1993).

⁶¹⁸² See, e.g., Trial Judgement, Vol. 4, paras 530, 545, 624.

Chamber is not convinced by Praljak's argument that a finding on "effective control" was essential to a determination of his *de facto* authority. One factor the Trial Chamber considered in finding that Praljak significantly contributed to the JCE was his *de facto* command over the HVO and the Military Police as evidenced through him directing the HVO by, *inter alia*, taking command over certain operations and issuing orders to units and receiving reports from commanders in the field.⁶¹⁸³ Therefore, as the Trial Chamber found that Praljak's actions in this regard furthered the implementation of the CCP, the Appeals Chamber finds that Praljak fails to show that the Trial Chamber erred in considering his *de facto* command authority as a factor in assessing his contribution to the JCE, absent an assessment of his "effective control".⁶¹⁸⁴ Praljak's argument is dismissed.

1846. Before discussing his command authority prior to 24 July 1993, the Trial Chamber noted, as a preliminary issue, that although Praljak "acknowledged his *de facto* authority in BiH before being appointed commander of the Main Staff, he nevertheless stated that he did not have command authority but rather authority and power limited to providing advice and assistance".⁶¹⁸⁵ The Trial Chamber then considered that Praljak was present in BiH alongside the HVO for long periods prior to 24 July 1993, and with this as background information it went on to address the evidence on his command authority.⁶¹⁸⁶ Praljak argues that he did not acknowledge his *de facto* authority, only that he had "a certain amount of authority when it [came] to assistance".⁶¹⁸⁷ However, the Appeals Chamber considers that as the Trial Chamber's observation concerning Praljak's acknowledgement was not a basis for its finding on his *de facto* authority, Praljak fails to show how any alleged misinterpretation of his testimony on this point would affect the Trial Chamber's finding. Similarly, Praljak fails to explain how his contention that he went to BiH prior to July 1993 with Izetbegović's consent and to calm the situation could affect the Trial Chamber's finding on his *de facto* authority. Concerning the length of time he was present in BiH prior to July 1993, Praljak only cites his testimony that he was present in Prozor for "a very short period" of time.⁶¹⁸⁸ The Appeals Chamber is therefore not persuaded that the Trial Chamber erred in noting that Praljak was present in BiH

⁶¹⁸³ Trial Judgement, Vol. 4, para. 482. See *supra*, paras 1836, 1844; *infra*, paras 1846-1852.

⁶¹⁸⁴ See *Šainović et al.* Appeal Judgement, para. 1368 ("While not every position of authority necessarily leads to superior responsibility under Article 7(3) of the Statute, this does not preclude a trial chamber from considering the accused's authority over the direct perpetrators in finding him responsible pursuant to Article 7(1) of the Statute").

⁶¹⁸⁵ Trial Judgement, Vol. 4, para. 469.

⁶¹⁸⁶ Trial Judgement, Vol. 4, paras 470-471.

⁶¹⁸⁷ Slobodan Praljak, T. 43935 (26 Aug 2009). See Praljak's Appeal Brief, para. 378, fn. 891. Praljak testified that he "had a certain amount of authority" and "had the force of persuasion, to a certain extent". Slobodan Praljak, T. 43938 (26 Aug 2009).

⁶¹⁸⁸ Slobodan Praljak, T. 43934-43935 (26 Aug 2009). See Praljak's Appeal Brief, para. 379, fn. 893.

“for long periods”, and was “regularly present in the South-East OZ and the Municipality of Prozor between October and December 1992”.⁶¹⁸⁹ Praljak’s arguments are dismissed.

1847. Praljak contests the Trial Chamber’s reliance on and interpretation of the evidence as well as its conclusions underlying the finding on his *de facto* command. The Trial Chamber first observed that, in May 1992, Praljak commanded the HVO troops deployed on the front line with Serbian forces.⁶¹⁹⁰ Praljak argues that this is irrelevant,⁶¹⁹¹ but fails to explain how the fact that the HVO units were comprised of both Croats and Muslims could have affected the Trial Chamber’s consideration of his command over these units as showing his authority. Second, the Trial Chamber noted that Praljak issued orders to: (1) HVO military units in October 1992 and February 1993 authorising free movement of people in the zones controlled by the HVO;⁶¹⁹² and (2) HVO troops deployed in the field, and particularly concerning the conduct of the Gornji Vakuf operations in January 1993.⁶¹⁹³ The Appeals Chamber notes that the “order” issued in October 1992 is labelled as an approval and signed by both Stojić and Praljak,⁶¹⁹⁴ and the “order” issued in February 1993 is a permit for free travel and signed by both Petković and Praljak.⁶¹⁹⁵ Regardless of whether these documents were orders, approvals, or permits, the Appeals Chamber considers that their designation does not call into question their use by the Trial Chamber to show Praljak’s involvement and influence. For the same reason, Praljak’s argument that the fact that he co-signed these documents showed that he had no authority is unpersuasive. The Appeals Chamber also finds Praljak’s contention that it “is impossible” to conclude from the Gornji Vakuf operations that he had *de facto* command to be unmeritorious as he only refers to another ground of appeal and fails to explain how the Trial Chamber erred in considering the orders he issued in relation to these operations.⁶¹⁹⁶ Praljak’s arguments are dismissed.

1848. The Trial Chamber also considered that, on 26 May 1993, Petković ordered the deployment of brigade troops from Ljubuški to Prozor and their on-site subordination to Praljak.⁶¹⁹⁷ The evidence in support of this conclusion is Exhibit P02526, which is Petković’s order stating that company-strength forces were to be sent to Prozor and that the company commander report to

⁶¹⁸⁹ Trial Judgement, Vol. 4, para. 470.

⁶¹⁹⁰ Trial Judgement, Vol. 4, para. 472.

⁶¹⁹¹ See *supra*, para. 1837.

⁶¹⁹² Trial Judgement, Vol. 4, para. 472, referring to Exs. 2D01335, 2D00195.

⁶¹⁹³ Trial Judgement, Vol. 4, para. 472, referring to, *inter alia*, Exs. P01172, P01202, P01162, p. 3, P01277.

⁶¹⁹⁴ Ex. 2D01335 (entitled: “Approval for undisturbed leave of soldiers to the Jajce position”).

⁶¹⁹⁵ Ex. 2D00195.

⁶¹⁹⁶ See Trial Judgement, Vol. 4, para. 472; Ex. P01172 (order dated 16 January 1993 and issued by Praljak concerning the situation in Gornji Vakuf and for the supply of eight multiple grenade launchers); Ex. P01202 (order dated 18 January 1993 and issued by Praljak concerning the situation in Gornji Vakuf and for the supply of five multiple grenade launchers); Ex. P01162, p. 3 (report dated 16 January 1993 noting that Praljak sent a message to enemy forces that “they will be annihilated if they do not accept the decisions of the HZ BH”); *supra*, para. 1839.

⁶¹⁹⁷ Trial Judgement, Vol. 4, para. 472.

Praljak. The Appeals Chamber also notes Praljak's testimony that he was only briefly in Prozor, denying that Petković's order suggested that he had command authority, and explaining that he was on good terms with the men from Ljubuški and they had to be persuaded to assist in Prozor.⁶¹⁹⁸ Based on the evidence cited by the Trial Chamber and Praljak, even if the Ljubuški unit was not subordinated to Praljak, the fact that the commander was ordered to report to him could reasonably be considered as a factor showing that he had some authority or influence. Praljak only disputes this consideration by citing his own evidence at trial which the Trial Chamber took into account.⁶¹⁹⁹ The Appeals Chamber thus finds that Praljak offers his own interpretation of the evidence without showing an error. Further, whether or not Praljak's explanation – that he only had “a certain amount of authority when it [came] to assistance”⁶²⁰⁰ as it concerns the Ljubuški unit deployed to Prozor – has merit, the Appeals Chamber notes that the Trial Chamber's finding on his *de facto* command authority before 24 July 1993 was based on various pieces of evidence.⁶²⁰¹ Thus, the Appeals Chamber is not satisfied that any possible error by the Trial Chamber concerning Praljak's authority over the Ljubuški unit deployed to Prozor is such that the Trial Chamber's overall finding is erroneous.

1849. Praljak contests the Trial Chamber's consideration of a report dated 13 April 1993 from Blaškić by arguing that “[w]hile the document seems to be addressed to two persons, the end of the report indicates that it was actually addressed only to one person”.⁶²⁰² This report was addressed to both Praljak and Stojić,⁶²⁰³ but Praljak seeks to argue that because the last page of the report says: “To: 1 x addressee”,⁶²⁰⁴ he was only copied on the report. The Appeals Chamber is not persuaded by this argument, and regardless, the Trial Chamber did not find that the report was addressed to Praljak but that he received it.⁶²⁰⁵ Similarly, his argument on how he received the report is irrelevant to its assessment. Further, the Appeals Chamber observes that the report concerned a visit of HV officers to inspect the HVO troops in the Central Bosnia OZ, and noted, *inter alia*, that the officers did rounds and made an assessment of the situation in the brigade and the battalion commands based on their levels of combat readiness.⁶²⁰⁶ Praljak fails to show that the Trial Chamber erred in considering a report that he received, whether it was addressed or copied to him,

⁶¹⁹⁸ Slobodan Praljak, T. 43934-43935 (26 Aug 2009). Praljak testified that he “was to assist with their reception, with explaining to them the reasons for their arrival there, why they had left their municipalities, with regard to assisting [Š]iljeg, to incorporate them in the command structure. It was a matter of assistance”. Slobodan Praljak, T. 43936 (26 Aug 2009). See Slobodan Praljak, T. 43937-43939 (26 Aug 2009).

⁶¹⁹⁹ Trial Judgement, Vol. 4, paras 469, 472, fns 935, 943, referring to Slobodan Praljak, T(F). 43933-43935 (26 Aug 2009).

⁶²⁰⁰ Slobodan Praljak, T. 43935 (26 Aug 2009).

⁶²⁰¹ See Trial Judgement, Vol. 4, paras 472-481.

⁶²⁰² Praljak's Appeal Brief, para. 383. See *supra*, para. 1838; Trial Judgement, Vol. 4, para. 473.

⁶²⁰³ Ex. P01864, p. 1.

⁶²⁰⁴ Ex. P01864, p. 3.

⁶²⁰⁵ Trial Judgement, Vol. 4, para. 473.

⁶²⁰⁶ Ex. P01864, pp. 1-2.

on the assessment of HVO troops and their combat readiness as an indicator of his command authority. His arguments are dismissed.

1850. Praljak also disputes the Trial Chamber's observation that he, as Major-General, was part of the operational command of the Bokševica operation in the Prozor area in early July 1993.⁶²⁰⁷ The Trial Chamber relied on Exhibit P03246, which is an order issued by Petković concerning the Bokševica operation and lists Praljak as a member of the operational command.⁶²⁰⁸ The only evidence Praljak cites to support his argument that he was involved in the Bokševica operation "as [a] simple soldier" is his own testimony.⁶²⁰⁹ Although not specific to the Bokševica operation, the Trial Chamber did consider Praljak's testimony that "he was a simple soldier at the time, without a specific rank, but that he had moral authority and power limited to providing advice and assistance".⁶²¹⁰ Nevertheless, the Trial Chamber's conclusion that Praljak had *de facto* command authority can be supported by Exhibit P03246, which a reasonable trier of fact could interpret as showing that Praljak was deemed to have some authority or influence. The Appeals Chamber thus finds that Praljak fails to show an error by the Trial Chamber in considering that he was part of the Bokševica operational command.

1851. The Appeals Chamber also finds Praljak's contention that the Trial Chamber failed to explain the relevance of his role as a mediator to his *de facto* authority to be unconvincing.⁶²¹¹ It is apparent from the Trial Chamber's discussion on his role as a mediator, which involved calming the tension between the various components of the HVO, that his actions taken under this role demonstrated that he had sufficient influence and power to effect change.⁶²¹² Similarly, the Appeals Chamber is not persuaded by Praljak's arguments concerning the Trial Chamber's regard of the joint command he attempted to set up.⁶²¹³ The Trial Chamber noted that Praljak had issued orders on behalf of the HVO aimed at setting up a joint command for the HVO and ABiH, and that his testimony was that he took over setting up this joint command because of the chaotic situation.⁶²¹⁴ The Appeals Chamber first considers that Praljak does not substantiate his contention that his orders "were never really executed" as he does not cite any evidence to this effect. Second, regardless of whether the joint command became effective or Praljak's intention behind setting it up, his

⁶²⁰⁷ See Trial Judgement, Vol. 4, para. 472; *supra*, para. 1838.

⁶²⁰⁸ Ex. P03246, p. 1. See Trial Judgement, Vol. 4, para. 472, referring to Ex. P03246, p. 1.

⁶²⁰⁹ Slobodan Praljak, T. 40773 (26 May 2009) ("So I was just an ordinary soldier in a way, in the second half of June [1993]. And as an ordinary soldier, I went to Bok[š]evica"). The Appeals Chamber notes the Trial Chamber's finding that Praljak was officially released from active military service in the HV on 15 June 1993. Trial Judgement, Vol. 1, para. 716.

⁶²¹⁰ Trial Judgement, Vol. 4, para. 478.

⁶²¹¹ See *supra*, para. 1839.

⁶²¹² Trial Judgement, Vol. 4, paras 478-482.

⁶²¹³ See *supra*, para. 1839.

⁶²¹⁴ Trial Judgement, Vol. 4, para. 474.

involvement can reasonably support a conclusion that he exercised some authority. Thus, Praljak has not shown that the Trial Chamber erroneously considered it as a factor. Praljak's arguments are dismissed. As Praljak has not identified any contradictions between the Trial Chamber's findings on his *de facto* command authority and his role in events,⁶²¹⁵ and fails to show an error in the Trial Chamber's interpretation of his actions,⁶²¹⁶ his remaining arguments are also dismissed.

1852. In light of the above, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber erred in concluding that he had *de facto* command authority over the HVO and the Military Police before 24 July 1993. Praljak's sub-ground of appeal 38.1 is therefore dismissed.

(b) Praljak's command authority and "effective control" over the HVO as of 24 July 1993 (Praljak's Sub-ground 38.2)

(i) Arguments of the Parties

1853. Praljak submits that the Trial Chamber erroneously concluded that he had command authority and effective control over all HVO components between 24 July 1993 and 9 November 1993.⁶²¹⁷ Praljak argues that his authority over HVO military operations did not mean that he had effective control over all the HVO components, particularly when they were not engaged in military operations.⁶²¹⁸ He also argues that he could only have ensured the proper functioning of the chain of command and asserted his authority in the area where he was present.⁶²¹⁹ Praljak contends that the fact that a unit operated within a framework established by the Main Staff, by itself, did not prove that he had effective control over that unit.⁶²²⁰ Praljak submits that the HVO did not have a single chain of command,⁶²²¹ or a properly functioning one.⁶²²² He asserts that the Main Staff orders were not implemented,⁶²²³ municipal authorities interfered with military orders,⁶²²⁴ and some units and individuals acted independently.⁶²²⁵

⁶²¹⁵ See *supra*, para. 1840.

⁶²¹⁶ See *supra*, para. 1840.

⁶²¹⁷ Praljak's Appeal Brief, para. 391.

⁶²¹⁸ Praljak's Appeal Brief, para. 392.

⁶²¹⁹ Praljak's Appeal Brief, para. 393.

⁶²²⁰ Praljak's Appeal Brief, para. 395, referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 209. Praljak seems to argue that *de jure* authority *per se* is insufficient to prove effective control. Praljak's Appeal Brief, para. 395.

⁶²²¹ Praljak's Appeal Brief, para. 394, referring to *Slobodan Praljak*, T. 41220-41221 (4 June 2009), Exs. P05772, p. 4, para. 8, 3D00793. See Praljak's Reply Brief, para. 33.

⁶²²² Praljak's Appeal Brief, para. 394.

⁶²²³ Praljak's Appeal Brief, para. 394, referring to Exs. P03706, P04640, P06269, 3D01098.

⁶²²⁴ Praljak's Appeal Brief, para. 394, referring to Ex. P06454, pp. 51, 67.

⁶²²⁵ Praljak's Appeal Brief, para. 394, referring to Exs. P04594, pp. 4-5, 3D01169, 3D01178. Praljak also argues that some units, namely the KB, were not integrated into the chain of command. Praljak's Appeal Brief, para. 394, referring to Praljak's Appeal Brief, paras 370-376.

1854. The Prosecution responds that the Trial Chamber was reasonable in its conclusions and refers to its various findings.⁶²²⁶ The Prosecution argues that, contrary to Praljak's submission regarding the HVO not engaged in military operations, the Main Staff's command and control authority over the OZs and brigades extended beyond their field operations.⁶²²⁷ It also argues that Praljak's orders demonstrated his broad authority, including his control regarding discipline.⁶²²⁸ Concerning Praljak's arguments on the chain of command, the Prosecution contends that he seeks to re-litigate arguments made at trial, and cites evidence the Trial Chamber considered, without showing that the Trial Chamber's overall conclusions were unreasonable.⁶²²⁹ The Prosecution also contends that, irrespective of his location, Praljak issued orders directly to the OZs and brigades.⁶²³⁰

(ii) Analysis

1855. The Trial Chamber found that, as Commander of the Main Staff, Praljak "had command and control authority and effective control over all the components of the HVO armed forces between 24 July 1993 and 9 November 1993".⁶²³¹ The Trial Chamber arrived at this conclusion after discussing various aspects of Praljak's authority, including his management of discipline within the HVO, his direct command over military operations, and the orders he issued.⁶²³² Specifically, the Trial Chamber found that Praljak had "*de jure* and *de facto* broad authority over the administration and control of the HVO armed forces, in particular authority over the general organisation of the armed forces, control and discipline of the HVO armed forces, communication within the HVO armed forces [...] and the training of HVO soldiers".⁶²³³ Besides his direct command over military operations, it also considered that Praljak ordered that the HVO units be deployed in the field and prepared for combat, and ordered the cessation of hostilities as well as the passage of international organisations and humanitarian convoys.⁶²³⁴

⁶²²⁶ Prosecution's Response Brief (Praljak), para. 56. The Prosecution refers to the Trial Chamber's findings on the Main Staff's central mission to command the armed forces and conduct military operations, the Main Staff's direct authority over the four OZs, Praljak's command authority over Military Police platoons within the HVO brigades, and Praljak's broad authority over administration and control of the HVO. Prosecution's Response Brief (Praljak), para. 56.

⁶²²⁷ Prosecution's Response Brief (Praljak), para. 57. The Prosecution also argues that the Trial Chamber considered Praljak's similar arguments at trial and reasonably concluded otherwise. Prosecution's Response Brief (Praljak), para. 57.

⁶²²⁸ Prosecution's Response Brief (Praljak), para. 57.

⁶²²⁹ Prosecution's Response Brief (Praljak), para. 58.

⁶²³⁰ Prosecution's Response Brief (Praljak), para. 59. The Prosecution asserts that the Trial Chamber's finding on Praljak's effective control and presence in the field is consistent. Prosecution's Response Brief (Praljak), para. 59.

⁶²³¹ Trial Judgement, Vol. 4, para. 506. See Trial Judgement, Vol. 4, paras 459, 483-484, 624-625. Notably, the HVO armed forces included the Military Police; however, Praljak's arguments on his "effective control" over the Military Police as of 24 July 1993 will be addressed below in his sub-ground of appeal 38.3.

⁶²³² Trial Judgement, Vol. 4, paras 495-505.

⁶²³³ Trial Judgement, Vol. 4, para. 495. See Trial Judgement, Vol. 4, paras 496, 503, 506.

⁶²³⁴ Trial Judgement, Vol. 4, para. 503. See Trial Judgement, Vol. 4, paras 504-505.

1856. Referring to the Trial Chamber's recollection that the primary mission of the Main Staff was to command the armed forces and direct military operations,⁶²³⁵ Praljak argues that his authority to command military operations does not equate to "effective control".⁶²³⁶ The Appeals Chamber finds that Praljak ignores that his authority to direct military operations was not the sole basis of the Trial Chamber's conclusion on his command authority and "effective control".⁶²³⁷ The Appeals Chamber therefore finds that Praljak fails to show an error in the Trial Chamber's consideration of his authority to command HVO military operations as one factor indicating his "effective control". For the same reasons, the Appeals Chamber finds Praljak's argument on his "effective control" over a specific unit because that unit operated within the Main Staff's framework, to be unpersuasive.⁶²³⁸ Praljak's arguments are thus dismissed.

1857. In arriving at its conclusion on Praljak's authority, the Trial Chamber considered that "Praljak was very present in the field to ensure the proper functioning of the chain of command and to assert his authority".⁶²³⁹ Praljak, though, argues that he could have only done so in the area he was located and the fact that he had to go into the field to assert his authority confirms his lack of "effective control". However, Praljak does not support his contention that his authority was limited to the area he was located. In this regard, the Appeals Chamber considers the various occasions where the Trial Chamber noted evidence of orders issued by Praljak to all four OZs.⁶²⁴⁰ Further, the Appeals Chamber notes that the Trial Chamber did take into account the fact that there were instances where Praljak's orders were not followed and that there were co-ordination problems but it concluded that these operational difficulties did not affect the proper functioning of the military chain of command.⁶²⁴¹ Thus, Praljak fails to demonstrate that the Trial Chamber erroneously considered his presence in the field as an indicator of his "effective control".

1858. Regarding Praljak's submission that the HVO did not have a single chain of command during his tenure as Commander of the Main Staff, the Appeals Chamber takes into account the evidence he cites.⁶²⁴² Praljak refers to: (1) his own testimony that "there wasn't only my line of

⁶²³⁵ Trial Judgement, Vol. 4, para. 483. See Trial Judgement, Vol. 1, para. 747.

⁶²³⁶ See Praljak's Appeal Brief, para. 392.

⁶²³⁷ See *supra*, para. 1855.

⁶²³⁸ See *supra*, para. 1853. The Appeals Chamber considers that Praljak's reliance on the *Hadžihasanović and Kubura* Appeal Judgement does not assist as, in that case, the Appeals Chamber found that the fact that a detachment took part in combat operations within a specific framework did not necessarily prove effective control but went on to note that the detachment maintained a significant degree of independence on various issues. *Hadžihasanović and Kubura* Appeal Judgement, para. 209. The Appeals Chamber notes that Praljak does not argue clearly, in this ground of appeal, that a specific component of the HVO operated with a significant degree of independence. See *infra*, para. 1860 (discussing Praljak's general argument that some units acted independently).

⁶²³⁹ Trial Judgement, Vol. 4, para. 489.

⁶²⁴⁰ Trial Judgement, Vol. 1, paras 718-720 (considering Praljak's statements on the geographic division of tasks, and finding that he issued orders to the four OZs and to the brigades), 747, 750-751, Vol. 4, paras 486, 488, 496.

⁶²⁴¹ Trial Judgement, Vol. 4, para. 489. See Trial Judgement, Vol. 1, paras 790-796.

⁶²⁴² See *supra*, para. 1853 & fn. 6221.

command” and that commanders “wouldn’t respect the line”,⁶²⁴³ (2) a report from Željko Šiljeg dated 9 October 1993, which notes that “[o]rders to brigades have been forwarded [from] the HVO Main Staff on a number of occasions without previously informing the command of the Operations zone”,⁶²⁴⁴ and that “everyone seems to have their own /independent/ chain of command”,⁶²⁴⁵ and (3) conclusions resulting from a meeting on 7 November 1993 between the “ZGS HVO” and Military District commanders and brigades which included the conclusion to “[e]stablish one and only command line”.⁶²⁴⁶ The Appeals Chamber considers that these pieces of evidence point to one chain of command but that this chain may not have always been respected.

1859. However, the Appeals Chamber notes that while the Trial Chamber did not explicitly refer to the evidence Praljak now cites in its discussion on the HVO’s chain of command, it considered evidence that: (1) the Main Staff occasionally gave direct orders to brigades, regiments or battalions, without going through every echelon in the chain of command;⁶²⁴⁷ and (2) there was no effective chain of command within the HVO between 1992 and early 1994,⁶²⁴⁸ but still concluded that, in view of all the evidence, the operational problems were not such as to upset the proper functioning of the chain of command between the Main Staff, the OZs, the brigades, and the lower echelons.⁶²⁴⁹ The Trial Chamber was therefore aware of the difficulties that existed along this chain of command. Regardless of whether there were multiple chains of command, Praljak does not contest his authority and command within the classic chain of command which proceeded from the Main Staff.⁶²⁵⁰ In this respect, the Appeals Chamber recalls that “the exercise of effective control by one commander does not necessarily exclude effective control being exercised by a different commander”.⁶²⁵¹ Praljak’s argument is dismissed.

1860. Praljak also argues that the HVO did not have a properly functioning chain of command. While the evidence cited by Praljak does indicate that orders from Main Staff were not always implemented,⁶²⁵² the Appeals Chamber observes that the Trial Chamber did consider that some orders issued by Praljak were not implemented but recalls that it nonetheless concluded that there was a properly functioning chain of command between the Main Staff, the OZs, the brigades and

⁶²⁴³ Slobodan Praljak, T. 41220 (4 June 2009). See Slobodan Praljak, T. 41221 (4 June 2009). See *supra*, fn. 6221.

⁶²⁴⁴ Ex. P05772, p. 4, para. 6. See *supra*, fn. 6221.

⁶²⁴⁵ Ex. P05772, p. 4, para. 8. See *supra*, fn. 6221.

⁶²⁴⁶ Ex. 3D00793, p. 1. See *supra*, fn. 6221. The Appeals Chamber notes that the BCS version of Exhibit 3D00793 indicates that “ZGS HVO” means the commander of the HVO Main Staff.

⁶²⁴⁷ Trial Judgement, Vol. 1, para. 793, Vol. 4, para. 488.

⁶²⁴⁸ Trial Judgement, Vol. 1, para. 790.

⁶²⁴⁹ Trial Judgement, Vol. 1, paras 791, 796, Vol. 4, para. 489.

⁶²⁵⁰ See Trial Judgement, Vol. 1, para. 791, Vol. 4, para. 488.

⁶²⁵¹ *Popović et al.* Appeal Judgement, para. 1892 (considering that two parallel chains of command existed, see *Popović et al.* Appeal Judgement, paras 1890-1891).

⁶²⁵² See Ex. P03706; Ex. P04640; Ex. P06269; Ex. 3D01098. See also *supra*, fn. 6223.

the lower echelons.⁶²⁵³ Further, the only evidence Praljak cites in support of his contention that municipal authorities interfered with military orders, by itself, is insufficient to call into question the Trial Chamber's conclusions on the chain of command.⁶²⁵⁴ Praljak also argues generally that some units and individuals acted independently, however, the Appeals Chamber is not persuaded that the evidence he cites⁶²⁵⁵ shows that these units operated with a significant degree of independence such that it would render erroneous the Trial Chamber's conclusions that there was a properly functioning chain of command, and that Praljak exercised "effective control" over the HVO. Thus, Praljak's arguments on the proper functioning of the HVO chain of command are dismissed.

1861. In light of the above, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber erred in concluding that he had command and control authority and "effective control" over all the components of the HVO between 24 July 1993 and 9 November 1993. Praljak's sub-ground of appeal 38.2 is therefore dismissed.

(c) Praljak's command authority and "effective control" over the Military Police as of 24 July 1993 (Praljak's Sub-ground 38.3)

(i) Arguments of the Parties

1862. Praljak submits that the Trial Chamber erroneously concluded that he had command authority over the Military Police units embedded in the HVO brigades.⁶²⁵⁶ Praljak argues that, due to the chaotic situation and the HVO's lack of organisation, his command authority over the HVO and the Military Police was not secured.⁶²⁵⁷ He submits that the Military Police had a dual chain of command with the Military Police Administration having general and supreme control,⁶²⁵⁸ and that even during combat activities the Military Police reported to the Chief of the Military Police Administration.⁶²⁵⁹ Praljak argues that this dual chain of command undermined his authority.⁶²⁶⁰ He also contends that commanders of subordinated units had to secure functional links between the

⁶²⁵³ Trial Judgement, Vol. 1, para. 796, Vol. 4, para. 489, referring to, *inter alia*, Ex. P03706. See *supra*, para. 1858.

⁶²⁵⁴ See Ex. P06454, pp. 51, 67. See also *supra*, fn. 6224.

⁶²⁵⁵ See Praljak's Appeal Brief, para. 394, referring to Exs. P04594, pp. 4-5 (noting that the ATGs and other independent units caused great disorder), 3D01169 (report by Žarko Tole denying involvement in the attack on Mostar), 3D01178 (a request from Praljak on the whereabouts of members of a professional battalion within the Petar Krešimir IV Brigade). The Appeals Chamber notes that the Trial Chamber considered evidence that members of the KB and ATGs engaged in criminal conduct, had serious disciplinary problems, and were often in conflict with the HVO, but still concluded that they were integrated into the overall chain of command and reported directly to the Main Staff. Trial Judgement, Vol. 1, paras 820, 829. The Appeals Chamber dismisses Praljak's arguments on the KB elsewhere. See *supra*, paras 1828-1834 (Praljak's sub-ground of appeal 37.2).

⁶²⁵⁶ Praljak's Appeal Brief, para. 396, referring to Trial Judgement, Vol. 4, para. 490.

⁶²⁵⁷ Praljak's Appeal Brief, para. 396, referring to Praljak's Appeal Brief, para. 394.

⁶²⁵⁸ Praljak's Appeal Brief, paras 397, 399, referring Praljak's Appeal Brief, para. 363.

⁶²⁵⁹ Praljak's Appeal Brief, para. 397, referring to Exs. P03950, P05497, P05731, P03762, P03934, 5D04394.

⁶²⁶⁰ Praljak's Reply Brief, para. 34. See Praljak's Reply Brief, para. 35.

Military Police and its administration, with the latter being informed of all significant events. Praljak further argues that the Military Police was not automatically subordinated to him as such subordination had to be requested from the Military Police Administration.⁶²⁶¹ Praljak submits that he could not independently take any decision regarding the Military Police, issue orders directly to its units, or sanction its members.⁶²⁶² Citing the principle *in dubio pro reo*, Praljak argues that, as the Military Police's chain of command was "fuzzy",⁶²⁶³ the Trial Chamber could not have concluded that he exercised effective control over the Military Police.⁶²⁶⁴

1863. The Prosecution responds that the Trial Chamber reasonably concluded that Praljak had command authority over the Military Police re-subordinated to the HVO,⁶²⁶⁵ and that Praljak's authority was not undermined by the Military Police's dual chain of command.⁶²⁶⁶ The Prosecution argues that the evidence Praljak cites – to suggest that he could not take decisions regarding the Military Police or issue orders – confirms his authority.⁶²⁶⁷

1864. Praljak replies that, as the Main Staff did not have control over all HVO units,⁶²⁶⁸ the Trial Chamber should have established, for each incident, his effective control over the units involved in criminal activities.⁶²⁶⁹

(ii) Analysis

1865. The Appeals Chamber recalls that Praljak was found to have had command authority and "effective control" over the HVO, including the Military Police, between 24 July 1993 and 9 November 1993.⁶²⁷⁰ Specifically, the Trial Chamber found that "inasmuch as the HVO brigades were subordinated to the Commander of the Main Staff via the OZs, Slobodan Praljak as commander of the Main Staff likewise had command authority over the Military Police platoons embedded in those brigades".⁶²⁷¹ In this regard, the Appeals Chamber also recalls that the Trial

⁶²⁶¹ Praljak's Appeal Brief, para. 398, referring to Exs. P03778, P03762.

⁶²⁶² Praljak's Appeal Brief, paras 399-400, referring to Exs. P05376, P03829, 3D01202, 3D01192. Praljak argues that the fact that he issued orders to the Military Police does not mean *per se* that he had effective control over it. Praljak's Reply Brief, para. 35.

⁶²⁶³ Praljak's Appeal Brief, para. 401. See Trial Judgement, Vol. 1, para. 974.

⁶²⁶⁴ Praljak's Appeal Brief, para. 401. See Praljak's Reply Brief, para. 34.

⁶²⁶⁵ Prosecution's Response Brief (Praljak), para. 60. See Prosecution's Response Brief (Praljak), para. 63, referring to Ex. P04125.

⁶²⁶⁶ Prosecution's Response Brief (Praljak), para. 61.

⁶²⁶⁷ Prosecution's Response Brief (Praljak), para. 62. The Prosecution also points to other evidence it argues confirms Praljak's authority over the Military Police. Prosecution's Response Brief (Praljak), para. 62, referring to Exs. P05188, paras 3-4, P05104, para. 7.

⁶²⁶⁸ Praljak refers to his challenges concerning the KB and the ATGs. Praljak's Reply Brief, para. 37, referring to Praljak's Appeal Brief, paras 368-369, 375.

⁶²⁶⁹ Praljak's Reply Brief, paras 34, 37.

⁶²⁷⁰ Trial Judgement, Vol. 4, para. 506. See Trial Judgement, Vol. 4, paras 459, 483-484, 624-625; *supra*, para. 1855, fn. 6231.

⁶²⁷¹ Trial Judgement, Vol. 4, para. 490. See Trial Judgement, Vol. 1, para. 950.

Chamber found that the Military Police units had a dual chain of command – they were subordinated to the commanding officer of the OZ in which they were active or the brigade commanders in carrying out their “daily duties”, and to the Military Police Administration in other areas, such as discipline or training.⁶²⁷² The Trial Chamber further concluded that “the division of responsibilities under the Military Police Administration, on the one hand, and the OZ commanders, on the other, was not quite so clear cut in the field”.⁶²⁷³

1866. Praljak first argues that his command authority over the Military Police was not secured, but relies only on his submission – that the HVO did not have a properly functioning chain of command – made in his sub-ground of appeal 38.2.⁶²⁷⁴ Having considered and dismissed his prior submission,⁶²⁷⁵ the Appeals Chamber finds that Praljak fails to show that his authority was “not secured” over the Military Police. Regarding Praljak’s argument that his “effective control” over the HVO units involved in each criminal incident should have been established, the Appeals Chamber notes that this submission was raised for the first time in his reply and is not a counter-argument to any response from the Prosecution. Thus, as the Prosecution did not have the opportunity to address this submission, the Appeals Chamber will not consider it further.⁶²⁷⁶ His arguments are dismissed.

1867. Praljak also argues that the Military Police’s dual chain of command undermined his authority. The Appeals Chamber first considers that, as far as Praljak’s argument concerns the existence of the dual chain of command, the Military Police units reporting to Ćorić, and the maintenance of links between the Military Police units and the Military Police Administration, these factors were considered by the Trial Chamber in its discussion on the distribution of the command and control authority over the Military Police.⁶²⁷⁷ Additionally, the Appeals Chamber notes that Praljak’s submission that the Military Police Administration had “general and supreme control” over the Military Police is only supported by a cross-reference to sub-ground 37.1 of his

⁶²⁷² Trial Judgement, Vol. 1, paras 945, 949-950, 952, 959, 961, 971, 973. See Trial Judgement, Vol. 1, paras 946-948, 953, 962-966, 974; *supra*, paras 1812, 1817-1823. Additionally, the Appeals Chamber recalls that the Trial Chamber concluded that when a Military Police unit travelled outside its area of responsibility, it was required to place itself under the authority of the unit responsible for that area in connection with its “daily duties”, namely the commander of the OZ or brigade in question. Trial Judgement, Vol. 1, para. 949.

⁶²⁷³ Trial Judgement, Vol. 1, para. 971.

⁶²⁷⁴ See *supra*, paras 1853, 1862.

⁶²⁷⁵ See *supra*, para. 1860. See also *supra*, para. 1858.

⁶²⁷⁶ See *Popović et al.* Appeal Judgement, para. 314; *Martić* Appeal Judgement, para. 229; *Mugenzi and Mugiraneza* Appeal Judgement, fn. 273.

⁶²⁷⁷ Trial Judgement, Vol. 1, paras 953, 959-964 (command and control authority of the Chief of the Military Police Administration over the Military Police), 971, 974 (dual chain of command). The Appeals Chamber also notes that some of the evidence Praljak cites was considered by the Trial Chamber in its analysis of the Military Police’s command structure. Trial Judgement, Vol. 1, paras 939 (Exs. P03762, P03778), 950 (Ex. 5D04394), 962 (Ex. P03762), 968-969 (Ex. P03778), 971 (Ex. P03762), 974 (Ex. 5D04394), Vol. 4, paras 490 (Exs. P03934, 5D04394), 492 (Ex. P03778).

appeal, which the Appeals Chamber dismisses elsewhere.⁶²⁷⁸ Nonetheless, whether the Military Police Administration exercised command and control authority over the Military Police and had to be informed of significant events does not, by itself, demonstrate that Praljak's authority as Commander of the Main Staff was undermined. Relevantly, the Appeals Chamber recalls the Trial Chamber's finding that "the Main Staff did have final authority over the Military Police battalions as they carried out their 'daily duties'".⁶²⁷⁹ The Trial Chamber also concluded that the evidence it cited to show that the Military Police units were subordinated to the HVO brigade commander in carrying out their "daily duties" did not prevent it from noting evidence on the Military Police Administration's command and control authority over these units in several areas.⁶²⁸⁰ The Appeals Chamber finds that Praljak fails to show that his command authority over the Military Police was undermined by its dual chain of command.⁶²⁸¹ Thus, his argument is dismissed.

1868. Further, Praljak disputes his "effective control" by relying on the Trial Chamber's observation that "the units of the Military Police operated under the authority of a fuzzy chain of command and carried out assignments for which they were not originally designed".⁶²⁸² The Appeals Chamber, though, finds that this observation by the Trial Chamber must be considered in the context of its prior discussion on the Military Police's chain of command. Notably, the Trial Chamber found that: (1) the Military Police units answered to a dual chain of command;⁶²⁸³ (2) "the division of responsibilities under the Military Police Administration, on the one hand, and the OZ commanders, on the other, was not quite so clear cut in the field";⁶²⁸⁴ and (3) the dual chain of command led to confusion among the Military Police unit commanders but two reforms were introduced in July and December 1993 to clarify this chain of command.⁶²⁸⁵ The Appeals Chamber considers that by referring to a "fuzzy chain of command", the Trial Chamber only sought to highlight the confusion between the responsibilities falling under each chain of command. This confusion in responsibilities does not affect the existence of these chains of command or the *de jure* authority held by Praljak along the HVO chain of command. Considering that the Trial Chamber determined Praljak's *de jure* authority and detailed his *de facto* command over the HVO and the Military Police, the Appeals Chamber finds that any confusion in the field does not necessarily

⁶²⁷⁸ See *supra*, paras 1814, 1820.

⁶²⁷⁹ Trial Judgement, Vol. 1, para. 950. See Trial Judgement, Vol. 1, para. 952. See also *supra*, para. 1812, fn. 6082.

⁶²⁸⁰ Trial Judgement, Vol. 1, para. 952. See Trial Judgement, Vol. 1, para. 961.

⁶²⁸¹ See *Popović et al.* Appeal Judgement, para. 1892 (discussing whether Vinko Pandurević's command authority over a brigade was negated by others when two parallel chains of command existed, see *Popović et al.* Appeal Judgement, paras 1890-1891). See *Nizeyimana* Appeal Judgement, para. 201. The Appeals Chamber also dismisses Praljak's argument that his issuance of orders to the Military Police does not mean *per se* that he had "effective control", as it is clear from the Trial Chamber's findings that this was not the only basis for its finding on his command authority and "effective control". See Trial Judgement, Vol. 4, paras 506, 624.

⁶²⁸² Trial Judgement, Vol. 1, para. 974.

⁶²⁸³ Trial Judgement, Vol. 1, paras 945, 949-950, 952, 959, 961, 971, 973.

⁶²⁸⁴ Trial Judgement, Vol. 1, para. 971. See Trial Judgement, Vol. 1, paras 959-960.

⁶²⁸⁵ Trial Judgement, Vol. 1, para. 974.

undermine Praljak's "effective control". Further, Praljak does not refer to any supporting evidence or Trial Chamber findings, which could indicate that uncertainty regarding his authority over the Military Police existed or that any of his orders were not implemented due to this uncertainty. Thus, Praljak fails to show that no reasonable trier of fact, even considering the Military Police's "fuzzy chain of command", could have concluded that he exercised "effective control" over the Military Police. His submission is dismissed.

1869. As it concerns Praljak's arguments that the Military Police were not automatically subordinated to him, the Appeals Chamber notes that the Trial Chamber did set out the procedure for the re-subordination of the Military Police units. This procedure ended with the Military Police Administration issuing the re-subordination order.⁶²⁸⁶ In any event, the Appeals Chamber considers that Praljak does not explain how the procedure for the re-subordination of the Military Police units would affect the Trial Chamber's finding that he had command authority over these units *once they were embedded in the HVO brigades*.⁶²⁸⁷ Praljak also contends that he could not independently take any decision regarding, or issue orders directly to, the Military Police. However, the Appeals Chamber notes that the Trial Chamber took into account various orders issued by Praljak concerning the Military Police,⁶²⁸⁸ noted that whenever the situation on the ground was too "serious" Praljak could directly re-subordinate Military Police units,⁶²⁸⁹ and concluded that "[i]t even appears that the Chief of the Main Staff occasionally issued direct orders to [the Military Police] platoons".⁶²⁹⁰ The evidence cited by Praljak does not call into question the Trial Chamber's findings as, at best, some of the exhibits only show that at times Praljak's orders concerning the Military Police were relayed through Ćorić.⁶²⁹¹ Notably, the Trial Chamber did consider some of this evidence in concluding that the Main Staff did have final authority over the Military Police as they carried out their "daily duties",⁶²⁹² and that Praljak sometimes issued orders directly to Military

⁶²⁸⁶ Trial Judgement, Vol. 1, para. 966. The Trial Chamber also found that this procedure did not "appear to have been applicable in cases where the situation on the ground was too 'serious'", and gave examples such as an order from Praljak for the mobilisation of all resources in certain areas, including the Military Police, who were to be placed under the command of the South-East OZ commander. Trial Judgement, Vol. 1, para. 967, referring to Ex. P04125.

⁶²⁸⁷ See *supra*, para. 1865.

⁶²⁸⁸ Trial Judgement, Vol. 1, paras 950, 961, 963, 967, fns 2355, 2407, Vol. 4, paras 476, 490-491.

⁶²⁸⁹ Trial Judgement, Vol. 1, para. 967, Vol. 4, para. 491. See *supra*, fn. 6286.

⁶²⁹⁰ Trial Judgement, Vol. 1, para. 950, referring to Ex. 5D04394. The Trial Chamber similarly considered that the evidence showed that Petković sometimes issued orders directly to Military Police platoons. Trial Judgement, Vol. 4, para. 490. However, the evidence cited by the Trial Chamber shows that the orders in question came from Praljak and not Petković, and the examples given by the Trial Chamber are orders issued by Praljak. Trial Judgement, Vol. 4, para. 490, referring to Exs. 5D04394, P03934, P05376, Slobodan Praljak, T. 43991, 43997 (27 Aug 2009). Thus, the Appeals Chamber considers that the Trial Chamber's reference to Petković was a typographical error.

⁶²⁹¹ See Exs. P05376 (instructions dated 25 September 1993 from Ćorić to the commander of the 6th Battalion of the Military Police to carry out military and police tasks and stating that, by the order of Praljak, certain criteria was to be observed), P03829 (order dated 30 July 1993 from Praljak to Ćorić demanding information on the Military Police members who had, *inter alia*, detained and beaten humanitarian aid drivers), 3D01202 (order dated 21 August 1993 from Praljak to the OZs stating that military policemen should implement the order), 3D01192 (request from Praljak to Stojić and Ćorić for disciplinary measures to be imposed on a commander of a Military Police unit).

⁶²⁹² Trial Judgement, Vol. 1, para. 950, fn. 2355, referring to, *inter alia*, Ex. P03829.

Police platoons.⁶²⁹³ Considering the above, the Appeals Chamber finds that Praljak fails to show that no reasonable trier of fact could have found that he could issue orders directly to, or take action concerning, the Military Police units embedded in the HVO brigades.

1870. Based on the foregoing, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber erred in concluding that he had command authority and “effective control” over the Military Police. Praljak’s sub-ground of appeal 38.3 is therefore dismissed.

(d) Conclusion

1871. In sum, the Appeals Chamber dismisses Praljak’s ground of appeal 38.

4. Alleged errors relating to Praljak’s significant contribution to the JCE (Praljak’s Ground 40)

1872. As recalled above,⁶²⁹⁴ the Trial Chamber found that Praljak contributed to the JCE from January 1993 to 9 November 1993,⁶²⁹⁵ and that his contribution was significant.⁶²⁹⁶ It concluded that Praljak was one of the most important JCE members as he controlled the HVO and the Military Police, and served as a link between Croatia and the HZ(R) H-B.⁶²⁹⁷ The Trial Chamber also found that Praljak used the HVO, including the Military Police, to commit crimes that formed part of the CCP.⁶²⁹⁸ It made several findings concerning Praljak’s contributions including, *inter alia*, that: (1) he made decisions regarding the HVO military operations and had them carried out through the chain of command;⁶²⁹⁹ (2) he was “a conduit between Croatia and the HVO government [and ...] participated in forwarding instructions and policies from Croatia to the HZ(R) H-B and vice-versa, and facilitated obtaining military and logistical support from Croatia to the HVO”;⁶³⁰⁰ (3) he participated in the planning of several HVO military operations, namely operations in Prozor and Mostar in the summer of 1993 and in Vareš in October 1993;⁶³⁰¹ and (4) despite his authority he made no serious efforts to stop the HVO and the Military Police from committing crimes.⁶³⁰²

⁶²⁹³ Trial Judgement, Vol. 4, para. 490, referring to, *inter alia*, Ex. P05376. See *supra*, fn. 6290.

⁶²⁹⁴ See *supra*, para. 1808.

⁶²⁹⁵ Trial Judgement, Vol. 4, paras 1228, 1230.

⁶²⁹⁶ Trial Judgement, Vol. 4, para. 628.

⁶²⁹⁷ Trial Judgement, Vol. 4, para. 628.

⁶²⁹⁸ Trial Judgement, Vol. 4, para. 628.

⁶²⁹⁹ Trial Judgement, Vol. 4, para. 624.

⁶³⁰⁰ Trial Judgement, Vol. 4, para. 624.

⁶³⁰¹ Trial Judgement, Vol. 4, para. 625.

⁶³⁰² Trial Judgement, Vol. 4, para. 626.

(a) Whether Praljak's JCE contribution was properly established (Praljak's Sub-ground 40.1 in part)

1873. Praljak argues that the Trial Chamber failed to clearly and unambiguously establish his contribution to the JCE.⁶³⁰³ He contends that the Trial Chamber was required to define specifically which of his acts it considered to be a significant contribution.⁶³⁰⁴ In particular, Praljak asserts that the Trial Chamber satisfied itself by stating that he used the HVO and the Military Police to commit crimes. Praljak argues that this finding is too vague to challenge as the Trial Chamber referred to no evidence and did not specify the period, geographical scope, or the crimes to which the finding relates.⁶³⁰⁵ He further contends that this finding is in contradiction to other Trial Chamber findings on his role as a conduit between Croatia and the HZ(R) H-B and his role in the crimes.⁶³⁰⁶

1874. The Prosecution responds that the Trial Chamber's explicit findings show that it clearly determined Praljak's contributions in a manner well-grounded in evidence.⁶³⁰⁷ It avers that Praljak ignores the Trial Chamber's analysis,⁶³⁰⁸ and fails to explain his assertion on contradictory findings.⁶³⁰⁹

1875. The Appeals Chamber notes that in concluding that Praljak's contribution to the implementation of the CCP was significant,⁶³¹⁰ the Trial Chamber provided an extensive analysis on his various powers, authority, and control over the HVO and the Military Police,⁶³¹¹ before discussing his responsibility under JCE I with regard to the crimes committed in specific municipalities, and detention centres, his denial of crimes committed and failure to prevent or punish crimes as well as his role as a conduit between Croatia and the HZ(R) H-B.⁶³¹² Specifically, in its concluding paragraphs on his JCE I responsibility, the Trial Chamber found that Praljak: (1) controlled the HVO and the Military Police;⁶³¹³ (2) used the HVO and the Military Police to commit crimes that formed part of the CCP and that their actions were attributable to him,⁶³¹⁴ and (3) served as a link between Croatia and the HZ(R) H-B, forwarding instructions and policies from Croatia to the HZ(R) H-B and vice-versa, and facilitating military and logistical support from

⁶³⁰³ Praljak's Appeal Brief, paras 419, 424. See Praljak's Appeal Brief, paras 421-422.

⁶³⁰⁴ Praljak's Appeal Brief, para. 422. See Praljak's Appeal Brief, para. 423.

⁶³⁰⁵ Praljak's Appeal Brief, paras 419, 423; Praljak's Reply Brief, para. 42.

⁶³⁰⁶ Praljak's Appeal Brief, para. 420.

⁶³⁰⁷ Prosecution's Response Brief (Praljak), para. 69. See Prosecution's Response Brief (Praljak), para. 68. See also Appeal Hearing, AT. 430-438 (22 Mar 2017).

⁶³⁰⁸ Prosecution's Response Brief (Praljak), paras 68-69. See also Appeal Hearing, AT. 429-431 (22 Mar 2017). The Prosecution also submits that Praljak's claim that he is required to speculate is untenable. Prosecution's Response Brief (Praljak), para. 69.

⁶³⁰⁹ Prosecution's Response Brief (Praljak), para. 70.

⁶³¹⁰ Trial Judgement, Vol. 4, para. 628.

⁶³¹¹ Trial Judgement, Vol. 4, paras 457-511.

⁶³¹² Trial Judgement, Vol. 4, paras 512-623.

⁶³¹³ Trial Judgement, Vol. 4, paras 624, 628. See Trial Judgement, Vol. 4, paras 472-506.

Croatia to the HVO.⁶³¹⁵ Notably, the Trial Chamber also found that Praljak participated in planning HVO military operations in the Prozor, Mostar, and Vareš Municipalities,⁶³¹⁶ and that he made no serious efforts to stop the HVO and the Military Police from committing crimes.⁶³¹⁷ Thus, the Appeals Chamber concludes that the Trial Chamber clearly expressed which of Praljak's conduct it considered amounted to a significant contribution. Praljak fails to show that these findings were unclear or ambiguous. His argument is dismissed.

1876. Regarding the Trial Chamber's finding that Praljak used the HVO and Military Police to commit crimes, the Appeals Chamber recalls that it has dismissed most of Praljak's challenges – under other grounds of appeal – to the Trial Chamber's findings concerning his control and authority over the HVO and the Military Police who committed crimes pursuant to the CCP,⁶³¹⁸ and his knowledge of their crimes.⁶³¹⁹ More specifically, the Trial Chamber clearly found that: (1) Praljak planned and directed military operations during which the HVO and the Military Police had committed JCE crimes;⁶³²⁰ (2) “the machinery, structures and members of the HVO were used to implement the various aspects of the common criminal purpose”;⁶³²¹ and (3) in carrying out his *de jure* and *de facto* powers, Praljak used the members and structures of the HVO to commit the crimes that were part of the CCP.⁶³²² Considering the Trial Chamber's discussion and findings on the crimes committed pursuant to the JCE, the Appeals Chamber is not persuaded by Praljak's argument that the finding that “he used the HVO and Military Police” is “too vague”.⁶³²³ The Appeals Chamber further finds Praljak's assertion on contradictory findings to be unsupported as he does not specify any finding which belies the Trial Chamber's conclusion, much less identify a contradiction. Moreover, Praljak fails to show that “the Trial Chamber satisfied itself by stating that he used the HVO and the Military Police to commit crimes” as the finding that he significantly contributed to the JCE was based on several factors.⁶³²⁴ Praljak's arguments are dismissed, and thus his sub-ground of appeal 40.1 is dismissed in part.

⁶³¹⁴ Trial Judgement, Vol. 4, paras 624, 628. See Trial Judgement, Vol. 4, paras 1220, 1228, 1230, 1232.

⁶³¹⁵ Trial Judgement, Vol. 4, paras 624, 628. See Trial Judgement, Vol. 4, paras 515-545.

⁶³¹⁶ Trial Judgement, Vol. 4, para. 625. See Trial Judgement, Vol. 4, paras 563-598, 624.

⁶³¹⁷ Trial Judgement, Vol. 4, paras 617-623, 626.

⁶³¹⁸ See Trial Judgement, Vol. 4, paras 469-511. See *supra*, paras 1824, 1834, 1852, 1861, 1870.

⁶³¹⁹ See Trial Judgement, Vol. 4, paras 625, 628. See *infra*, paras 1928-1929, 1933, 1954-1956, 1963-1967, 1970, 2008-2026, 2042-2047, 2050-2052, 2059-2062, 2072-2082.

⁶³²⁰ See *supra*, paras 1808, 1875.

⁶³²¹ Trial Judgement, Vol. 4, para. 1232.

⁶³²² Trial Judgement, Vol. 4, para. 1232.

⁶³²³ See Praljak's Appeal Brief, para. 419.

⁶³²⁴ See *supra*, paras 1808, 1875.

(b) Whether Praljak's involvement in military operations amounted to a significant contribution and furthered the JCE (Praljak's Sub-grounds 40.2, 40.3, and 40.7)

1877. Praljak argues that the Trial Chamber erred in deducing from his involvement in military operations that he contributed to specific crimes.⁶³²⁵ Praljak contends that his participation in the military operations in Gornji Vakuf and Prozor is insufficient to conclude that his conduct was aimed at furthering the CCP.⁶³²⁶ Specifically, he argues that his activities in Gornji Vakuf were aimed at calming down the situation and that the Trial Chamber failed to explain how these activities related to crimes.⁶³²⁷ Regarding Prozor, Praljak asserts that he was the Commander of the Main Staff, thus "it [was] natural and logical that he was involved in the HVO military operations".⁶³²⁸ Praljak also argues that the Trial Chamber: (1) satisfied itself with his functions in order to convict him without having established that his acts concerning Mostar constituted a significant contribution;⁶³²⁹ and (2) made unclear and contradictory findings on his involvement in the Vareš operations.⁶³³⁰

1878. Praljak further contends that "[t]here is no doubt that [he] participated in planning/directing of many military actions"⁶³³¹ between 24 July 1993 and 9 November 1993 as this was in fulfilment of his functions.⁶³³² He asserts that the Trial Chamber erred in considering his positive acts aimed at preventing crimes as a contribution to the crimes.⁶³³³ Praljak further argues that the Trial Chamber failed to determine any link between his acts and the CCP and thus did not establish that he acted in furtherance of the JCE.⁶³³⁴ He asserts that the Trial Chamber erroneously considered that the contribution to individual crimes also constituted the contribution to the CCP.⁶³³⁵

1879. The Prosecution responds that the Trial Chamber was not required to find that Praljak made a contribution to each criminal act forming part of the JCE. It also responds that the Trial Chamber correctly relied on Praljak's contributions to crimes committed during operations in Gornji Vakuf,

⁶³²⁵ Praljak's Appeal Brief, headings before para. 425.

⁶³²⁶ Praljak's Appeal Brief, paras 426-427.

⁶³²⁷ Praljak's Appeal Brief, para. 426, referring to Praljak's Appeal Brief, paras 462-466 (Praljak's Ground 42). See also Praljak's Reply Brief, para. 44.

⁶³²⁸ Praljak's Appeal Brief, para. 427.

⁶³²⁹ Praljak's Appeal Brief, para. 428, referring to Praljak's Appeal Brief, paras 482, 484-488 (Praljak's Ground 44.1). In reply, Praljak argues that the Trial Chamber "would have convicted any person holding [his] position regardless [of] the concrete individual actions and intentions". Praljak's Reply Brief, para. 43.

⁶³³⁰ Praljak's Appeal Brief, para. 429, referring to Trial Judgement, Vol. 4, paras 61, 524.

⁶³³¹ Praljak's Appeal Brief, para. 430.

⁶³³² Praljak's Appeal Brief, paras 430-431. See also Appeal Hearing, AT. 394 (22 Mar 2017).

⁶³³³ Praljak's Appeal Brief, para. 431, referring to Trial Judgement, Vol. 4, paras 574, 600, 602, 608-609, 611-613. See also Appeal Hearing, AT. 394 (22 Mar 2017).

⁶³³⁴ Praljak's Appeal Brief, para. 434. See Praljak's Appeal Brief, para. 433.

⁶³³⁵ Praljak's Appeal Brief, paras 432-433. Praljak argues that the "contribution to specific crimes amounts to aiding and abetting". Praljak's Appeal Brief, para. 433.

Prozor, Mostar, and Vareš to conclude that he made a significant contribution to the CCP.⁶³³⁶ The Prosecution also argues that Praljak does not show that no reasonable trier of fact could have concluded that his personal involvement in the military operations was directed at furthering the CCP.⁶³³⁷ It argues that Praljak was not convicted for fulfilling his professional functions or engaging in legitimate military operations,⁶³³⁸ and that he misconstrues his “so-called ‘positive actions’”.⁶³³⁹

1880. Regarding Praljak’s arguments on the link between his acts and the CCP, the Appeals Chamber recalls that the *actus reus* for liability under JCE I is the participation of the accused in the common criminal plan which may take the form of assistance in, or contribution to, the execution of this plan,⁶³⁴⁰ and that this contribution to the crimes is significant.⁶³⁴¹ In this regard, it is not disputed that an accused’s acts must in some way be directed to the furthering of the common criminal plan of the JCE,⁶³⁴² which is an essential consideration in determining whether the contribution to the JCE was significant. In Praljak’s case, the Trial Chamber concluded that “the evidence shows beyond a reasonable doubt” that his contribution to the implementation of the CCP was significant.⁶³⁴³ Thus, having found that Praljak significantly contributed to the JCE, the Appeals Chamber finds that it was unnecessary for the Trial Chamber to expressly find that his contribution furthered the CCP as this is, at the very least, implicit. The Appeals Chamber therefore finds that Praljak’s argument on the alleged failure to establish that his acts furthered the CCP is unpersuasive.

1881. In relation to Praljak’s submission that contribution to crimes does not automatically amount to a contribution to the CCP,⁶³⁴⁴ the Appeals Chamber finds that nothing prevented the Trial Chamber from considering Praljak’s involvement in the commission of crimes as a contribution to the execution of the JCE. Notably, “[w]hat is required is that [the accused]

⁶³³⁶ Prosecution’s Response Brief (Praljak), para. 79.

⁶³³⁷ Prosecution’s Response Brief (Praljak), para. 80.

⁶³³⁸ Prosecution’s Response Brief (Praljak), para. 80.

⁶³³⁹ Prosecution’s Response Brief (Praljak), para. 81. The Prosecution points out, *inter alia*, that the Trial Chamber reasonably found that Praljak’s conduct with respect to Gabela Prison and Dretelj Prison did not constitute a genuine effort to remedy the poor conditions. Prosecution’s Response Brief (Praljak), para. 81.

⁶³⁴⁰ *Popović et al.* Appeal Judgement, para. 1615; *Krajišnik* Appeal Judgement, para. 695; *Stakić* Appeal Judgement, para. 64; *Tadić* Appeal Judgement, para. 227(iii).

⁶³⁴¹ *Popović et al.* Appeal Judgement, para. 1378; *Krajišnik* Appeal Judgement, para. 706; *Brdanin* Appeal Judgement, para. 430.

⁶³⁴² *Popović et al.* Appeal Judgement, paras 1378, 1653; *Šainović et al.* Appeal Judgement, para. 1445; *Krajišnik* Appeal Judgement, para. 695 (“It is sufficient that the accused ‘perform acts that in some way are directed to the furthering’ of the JCE in the sense that he significantly contributes to the commission of the crimes involved in the JCE”).

⁶³⁴³ Trial Judgement, Vol. 4, para. 628.

⁶³⁴⁴ See Praljak’s Appeal Brief, para. 433.

voluntarily participated in at least one aspect” of the common criminal purpose.⁶³⁴⁵ By only asserting that it is not automatic,⁶³⁴⁶ Praljak fails to show that no reasonable trier of fact could have concluded that his involvement in the commission of crimes – and his use of the HVO and Military Police to commit crimes – furthered the CCP and amounted to a significant contribution to the JCE. Praljak’s arguments are dismissed.

1882. As it concerns Praljak’s involvement in the Prozor operations, he merely asserts that by virtue of his position it was “natural and logical” that he was involved. The Appeals Chamber recalls that, provided the accused shares the intent to implement the common purpose by criminal means, “participation [in the JCE] does not have to be in and of itself criminal, as long as the accused performs acts that in some way contribute to the furtherance of the common purpose of the JCE”,⁶³⁴⁷ and “the fact that [the accused’s] participation amounted to no more than his or her ‘routine duties’ will not exculpate the accused”.⁶³⁴⁸ Therefore, regardless of whether it was “natural” for Praljak to be involved in the planning or directing of the military operations in Prozor, this is not exculpatory. The Appeals Chamber thus finds that Praljak fails to show that his involvement in the Prozor operations “does not in itself demonstrate his contribution to the JCE”,⁶³⁴⁹ and that he fails to show any error by the Trial Chamber in this regard. Moreover, the Appeals Chamber notes that Praljak’s arguments concerning Gornji Vakuf and Mostar are only supported by cross-references to his grounds of appeal 42 and 44, and these arguments are addressed and dismissed below.⁶³⁵⁰ On the same basis, Praljak’s general argument that his participation in military operations was in fulfilment of his professional functions is also dismissed. Further, the Appeals Chamber also dismisses, as unsupported, Praljak’s argument regarding the Vareš operations since he fails to show any contradiction between the sections of the Trial Judgement which he cites.⁶³⁵¹

1883. Regarding Praljak’s argument that the Trial Chamber erroneously considered his “positive actions” as contributions to the crimes committed, the Appeals Chamber finds that he misinterprets the Trial Chamber’s evaluation of these “positive actions”. The Trial Chamber in fact concluded that Praljak “did not make any serious efforts to stop [the HVO and the Military Police] from

⁶³⁴⁵ *Šainović et al.* Appeal Judgement, para. 1510; *Vasiljević* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, para. 196.

⁶³⁴⁶ See Praljak’s Appeal Brief, para. 433. To the extent that Praljak argues that his intent to further the CCP must be established, the Appeals Chamber dismisses this in the section on his *mens rea*. See *infra*, paras 1918, 1921, 1944.

⁶³⁴⁷ *Popović et al.* Appeal Judgement, para. 1653. See *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696.

⁶³⁴⁸ *Popović et al.* Appeal Judgement, para. 1653, quoting *Blagojević and Jokić* Appeal Judgement, para. 189. See *Popović et al.* Appeal Judgement, paras 1615, 1666.

⁶³⁴⁹ Praljak’s Appeal Brief, para. 427.

⁶³⁵⁰ See *infra*, paras 1949, 1954, 1988.

⁶³⁵¹ See Praljak’s Appeal Brief, para. 429, referring to Trial Judgement, Vol. 4, paras 61, 524, Praljak’s Appeal Brief, paras 499, 503-515 (Praljak’s Ground 45.1).

committing crimes”.⁶³⁵² Notably, the Trial Chamber: (1) considered that Praljak issued an order on 17 August 1993 to the Prozor command post stating that all detainees used for labour should be withdrawn;⁶³⁵³ (2) found that he knew detainees were being used for labour;⁶³⁵⁴ but (3) concluded that he “did not take any measures to prevent detainees from working on the front line *prior to 17 August 1993* and thus accepted it”.⁶³⁵⁵ Thus, the Trial Chamber did not consider Praljak’s order of 17 August 1993 as a contribution to the JCE, but his failure to take action prior to that order. Further, the remainder of the “positive actions” cited by Praljak were considered by the Trial Chamber to infer his knowledge and acceptance of the conditions of confinement at Gabela Prison and Dretelj Prison,⁶³⁵⁶ and were found not to constitute any real effort on his part to remedy these poor conditions.⁶³⁵⁷ Praljak does not demonstrate that the Trial Chamber’s finding that these actions were not “real” efforts to remedy detention conditions is unreasonable. Thus, Praljak’s argument that his “positive actions” were erroneously considered as contributions to the crimes is dismissed.

1884. In sum, the Appeals Chamber dismisses Praljak’s sub-grounds of appeal 40.2, 40.3, and 40.7 as discussed above.

(c) Whether Praljak’s role as a conduit between Croatia and the HZ(R) H-B was in furtherance of the JCE (Praljak’s Sub-grounds 40.1 in part, 40.4, 40.5, and 40.6)

1885. The Trial Chamber concluded that “as part of a project to establish Croatian control over the HZ(R) H-B territories, Slobodan Praljak served as a conduit between Croatia and the HZ(R) H-B to further the common criminal purpose of the JCE”;⁶³⁵⁸ a conclusion which it considered in determining that his contribution to the JCE was significant.⁶³⁵⁹ In arriving at this conclusion, the Trial Chamber made numerous relevant findings, including that from April 1992 to November 1993, Praljak participated in meetings of the senior Croatian leadership at which Croatia’s policy in BiH was discussed and defined with a view to furthering the CCP.⁶³⁶⁰ It considered that: (1) during these meetings Praljak was informed of and championed this policy and contributed to discussions;⁶³⁶¹ (2) Praljak championed Croatia’s political positions in BiH and was

⁶³⁵² Trial Judgement, Vol. 4, para. 626.

⁶³⁵³ Trial Judgement, Vol. 4, para. 574. See *infra*, paras 1958, 1963-1967, 1970-1971.

⁶³⁵⁴ Trial Judgement, Vol. 4, para. 574. See *infra*, paras 1958, 1963-1967, 1970-1971.

⁶³⁵⁵ Trial Judgement, Vol. 4, para. 575 (emphasis added). See *infra*, paras 1958, 1963-1967, 1970-1971.

⁶³⁵⁶ Trial Judgement, Vol. 4, paras 600, 602, 608-614. See *infra*, paras 2064, 2072-2082.

⁶³⁵⁷ Trial Judgement, Vol. 4, paras 611, 614. See *infra*, paras 2064, 2072-2082.

⁶³⁵⁸ Trial Judgement, Vol. 4, para. 545.

⁶³⁵⁹ Trial Judgement, Vol. 4, paras 624, 628.

⁶³⁶⁰ Trial Judgement, Vol. 4, paras 522, 530. See Trial Judgement, Vol. 4, paras 523-529. Notably, during a meeting on 11 September 1992 which Praljak attended, Tudman recalled “his territorial ambitions regarding the Croatian Banovina and stated that the area which previously constituted the Croatian Banovina was demographically and geopolitically part of Croatia and also called for ‘Croatia’ to be ‘cleansed’”. Trial Judgement, Vol. 4, para. 522, referring to Ex. P00466, p. 56.

⁶³⁶¹ Trial Judgement, Vol. 4, paras 522, 530. See Trial Judgement, Vol. 4, paras 523-529.

involved in applying them in BiH territory, notably by informing the HVO and Military Police of these policies and issuing instructions to HVO commanders;⁶³⁶² and (3) Praljak informed the Croatian leadership about the military and political situation in BiH.⁶³⁶³

1886. In arriving at the above conclusions, the Trial Chamber specifically discussed, among other evidence, the following meetings in which Praljak participated: (1) various meetings in 1992, namely on 6 April 1992, 1 August 1992, 11 September 1992, 26 September 1992, 5 October 1992, and 26 October 1992;⁶³⁶⁴ (2) meetings on 13 January 1993 and 18 May 1993 where he presented and supported the Croatian position on HZ(R) H-B at international meetings;⁶³⁶⁵ (3) meetings on 15 September 1993 and 5 November 1993 where in the latter he called for Croatia to give logistical support to HR H-B;⁶³⁶⁶ (4) a meeting on 6 November 1993 where Šušak referred to Praljak's assessment of the military situation on the field in BiH showing Praljak's influence among the Croatian leadership;⁶³⁶⁷ (5) a meeting on 15 January 1993 where Praljak – in his capacity as envoy between Tuđman and Izetbegović – gave his consent to HVO commanders to demand that the ABiH issue a denial of HVO crimes before the commanders took part in negotiations on 16 January 1993 to resolve the conflict in Gornji Vakuf;⁶³⁶⁸ and (6) meetings on 11 September 1992, 29 January 1993, and 2 April 1993 showing that Praljak informed the HVO and the Military Police of Croatian polices in BiH and informed Croatian leaders about the situation in BiH.⁶³⁶⁹

1887. The Trial Chamber found that “from at least April 1992 to November 1993, Slobodan Praljak [...] effectively took part in transmitting information, instructions, orders, requests and policies between the leadership of the Croatian government and the HZ(R) H-B leadership with the aim of furthering the common criminal purpose”.⁶³⁷⁰ It also found that “Praljak facilitated securing military support from Croatia in the form of manpower to the HVO armed forces by encouraging and directly contributing to the enrolment of the HV officers in the HVO between the spring of 1992 and October 1993”.⁶³⁷¹

⁶³⁶² Trial Judgement, Vol. 4, paras 530-537.

⁶³⁶³ Trial Judgement, Vol. 4, para. 538.

⁶³⁶⁴ Trial Judgement, Vol. 4, paras 522-523, 525.

⁶³⁶⁵ Trial Judgement, Vol. 4, paras 524, 526-527.

⁶³⁶⁶ Trial Judgement, Vol. 4, para. 523.

⁶³⁶⁷ Trial Judgement, Vol. 4, para. 528.

⁶³⁶⁸ Trial Judgement, Vol. 4, para. 534.

⁶³⁶⁹ Trial Judgement, Vol. 4, paras 531-532, 538.

⁶³⁷⁰ Trial Judgement, Vol. 4, para. 540.

⁶³⁷¹ Trial Judgement, Vol. 4, para. 544.

(i) Praljak's conduct prior to the existence of the JCE

1888. Praljak submits that the Trial Chamber erroneously relied on his activities undertaken before the CCP existed, which should be analysed in light of the situation that existed, *i.e.* that the HVO and the ABiH were allies.⁶³⁷² In this regard, Praljak points to him providing information to Croatian leaders about the situation in the field, which he avers could not further the CCP.⁶³⁷³ Specifically, he argues that meetings held before January 1993 cannot constitute a contribution to the CCP as such a plan did not exist at that time.⁶³⁷⁴

1889. The Prosecution responds that it was within the Trial Chamber's discretion to rely on Praljak's pre-January 1993 conduct as this was considered when assessing the existence of a common criminal plan, his shared intent to carry out the JCE crimes, his discriminatory intent, and his subsequent role in the JCE.⁶³⁷⁵ It points out that Praljak's role as a conduit and his ties to Croatian authorities continued throughout the JCE period,⁶³⁷⁶ and thus, even if the Trial Chamber considered Praljak's pre-January 1993 conduct as a contribution this would not be a legal error.⁶³⁷⁷

1890. Praljak replies that it is not always the case that an accused's pre-JCE conduct, which continues into the JCE period, is in furtherance of the common criminal plan. He avers that this is so in his case as the situation in 1992 was "completely different" from that in 1993.⁶³⁷⁸

1891. The Appeals Chamber notes that in its discussion on whether Praljak served as a conduit between Croatia and the HZ(R) H-B, the Trial Chamber considered evidence on his participation in meetings and peace negotiations held before January 1993.⁶³⁷⁹ However, the Trial Chamber also considered meetings and peace negotiations subsequent to the establishment of the JCE during which Praljak suggested that Croatia intervene by providing logistical support and made other recommendations,⁶³⁸⁰ presented and supported the Croatian position and even represented the

⁶³⁷² Praljak's Appeal Brief, para. 442; Praljak's Reply Brief, para. 40.

⁶³⁷³ Praljak's Appeal Brief, para. 441, referring to Trial Judgement, Vol. 4, para. 538.

⁶³⁷⁴ Praljak's Appeal Brief, para. 443. See Praljak's Reply Brief, para. 39.

⁶³⁷⁵ Prosecution's Response Brief (Praljak), paras 71-72, referring to *Dorđević* Appeal Judgement, para. 297. See also Appeal Hearing, AT. 423-428 (22 Mar 2017). The Prosecution responds that the Trial Chamber confined its assessment of Praljak's contribution to the JCE to the period of January 1993 to November 1993. Prosecution's Response Brief (Praljak), para. 71.

⁶³⁷⁶ Prosecution's Response Brief (Praljak), para. 72, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 528, 530, 540, 1228, 1230. See also Appeal Hearing, AT. 423-428 (22 Mar 2017).

⁶³⁷⁷ Prosecution's Response Brief (Praljak), para. 73, referring to, *inter alia*, *Šainović et al.* Appeal Judgement, fn. 3858, *Krajišnik* Appeal Judgement, paras 162, 209-218. The Prosecution alternatively submits that any resulting error would have no impact on the Trial Chamber's conclusion that Praljak significantly contributed to the JCE. Prosecution's Response Brief (Praljak), para. 74.

⁶³⁷⁸ Praljak's Reply Brief, para. 39, referring to *Šainović et al.* Appeal Judgement, para. 1177.

⁶³⁷⁹ Trial Judgement, Vol. 4, paras 522-523, 525, 538.

⁶³⁸⁰ Trial Judgement, Vol. 4, para. 523 (meetings held on 15 September 1993 and the 5 November 1993 with the Croatian presidency).

Croatian delegation in a meeting held in Medugorje on 18 May 1993,⁶³⁸¹ and informed and gave instructions to the HVO and the Military Police about Croatian policies such as the importance of creating a Croatian state within BiH and “Zagreb’s position” on how military operations should be implemented.⁶³⁸² Recalling that the Trial Chamber expressly stated that Praljak’s relevant conduct spanned from April 1992 to November 1993,⁶³⁸³ the Appeals Chamber is satisfied that Praljak’s pre-JCE conduct which was noted by the Trial Chamber continued into the JCE period. In this regard, the Appeals Chamber considers that “certain conduct of a JCE member which started prior to, and continued during, the period when a common purpose of a JCE was found to have existed could constitute an act in furtherance of the common purpose by virtue of the continuation of this conduct”.⁶³⁸⁴ Similarly, Praljak’s submission concerning his provision of information on the situation in the field is also dismissed as the Trial Chamber referred to both his pre-JCE conduct as well as his actions after January 1993.⁶³⁸⁵ The Appeals Chamber thus finds that Praljak fails to show an error in the Trial Chamber’s consideration of his pre-JCE conduct. His arguments are therefore dismissed.

(ii) The Trial Chamber’s assessment of the evidence and Praljak’s participation in meetings

1892. Praljak argues that the Trial Chamber failed to establish that his role as a conduit between Croatia and the HZ(R) H-B was aimed at furthering the CCP.⁶³⁸⁶ Praljak contends that if he went to BiH as an envoy for Tudman and Izetbegović, he could convey only those instructions agreed to by both of them which served the interests of both Croatia and BiH.⁶³⁸⁷ Praljak also contends that the Trial Chamber misinterpreted or erroneously relied on evidence as: (1) he did not explain, in a meeting on 29 January 1993, Zagreb’s position on how some military operations should be implemented, as he explained “the position he brought from Zagreb” where the meetings involved Croatian leaders, Izetbegović, Owen, and Vance,⁶³⁸⁸ (2) he did not attend a meeting on 2 April 1993 in any official capacity, his aim was to explain the benefits of the Vance-Owen Plan, and while he

⁶³⁸¹ Trial Judgement, Vol. 4, paras 524-526.

⁶³⁸² Trial Judgement, Vol. 4, paras 531-532, 534-535. See *supra*, fn. 6360.

⁶³⁸³ See *supra*, para. 1885.

⁶³⁸⁴ *Šainović et al.* Appeal Judgement, fn. 3858, referring to *Krajišnik* Appeal Judgement, paras 162, 209-218, *Martić* Appeal Judgement, para. 117, *Martić* Trial Judgement, paras 445, 448. See *Dorđević* Appeal Judgement, para. 297. Cf. *Šainović et al.* Appeal Judgement, para. 1177.

⁶³⁸⁵ Trial Judgement, Vol. 4, para. 538, referring to Exs. P06454, pp. 49-57, 62, P05080, pp. 18-20.

⁶³⁸⁶ Praljak’s Appeal Brief, para. 442. Praljak argues that while at times he had an intermediary role, which was normal and useful in a conflict situation, this role was never used to further the CCP. Praljak’s Appeal Brief, para. 435. Praljak replies that the Trial Chamber’s conclusions and the Prosecution’s arguments in response are founded on the erroneous premise that the Croatian leaders were JCE members. Praljak’s Reply Brief, para. 41, referring to Praljak’s Appeal Brief, paras 93-99 (Praljak’s Ground 5).

⁶³⁸⁷ Praljak’s Appeal Brief, para. 436, referring to Trial Judgement, Vol. 4, para. 534.

⁶³⁸⁸ Praljak’s Appeal Brief, para. 437, referring to Trial Judgement, Vol. 4, para. 531, Slobodan Praljak, T. 41599, 41601 (17 June 2009).

spoke about the homogenisation, it concerned all BiH populations;⁶³⁸⁹ (3) the SpaBat report dated 27 August 1993 did not refer to his mission on 15 June 1993 in BiH territory “to ‘control’ the political leadership of the HVO of the HZ-HB with whom Zagreb ‘did not agree’” and provided no details on the matter;⁶³⁹⁰ and (4) Witness Peter Galbraith’s evidence on Praljak’s issuance of permits to German journalists to access Gabela Prison was aimed at harming him as there was no evidence that the permit issuance was based on any intervention.⁶³⁹¹ He further submits that “[n]o reasonable trier of fact could conclude that on [5 November 1993 Tudman] referred to instructions that he would have given to Praljak” regarding defence in various locations as, at most, the evidence showed that they discussed the matter.⁶³⁹²

1893. Praljak argues that the Trial Chamber erroneously considered his participation in meetings with Croatian officials as a contribution to the JCE.⁶³⁹³ Specifically, Praljak argues that: (1) the purpose of two meetings held after January 1993 was not criminal and was aimed at restoring peace;⁶³⁹⁴ (2) it was not established that the CCP existed at the time a meeting with the French delegation took place on 13 January 1993, and that this meeting’s primary aim was to discuss the possibility of a Muslim-Croat joint action;⁶³⁹⁵ and (3) it is unclear whether the Trial Chamber considered his presence at a meeting in Medugorje on 18 May 1993 as a contribution to the JCE.⁶³⁹⁶ Praljak also asserts that the Trial Chamber failed to determine how his knowledge of the Croatian positions obtained through meetings furthered the CCP.⁶³⁹⁷

1894. The Prosecution responds that the Trial Chamber reasonably found that Praljak used his role as a link between Croatia and the HZ(R) H-B to further the CCP, and that he fails to address the explicit findings on this issue.⁶³⁹⁸ It argues that Praljak “merely invites the Appeals Chamber to re-examine the evidence, without showing any error”.⁶³⁹⁹ Specifically, the Prosecution contends that Praljak disagrees with the Trial Chamber’s interpretation of the evidence, mischaracterises the

⁶³⁸⁹ Praljak’s Appeal Brief, para. 438, referring to Slobodan Praljak, T. 43382-43383, 43393 (18 Aug 2009), Ex. P01788, p. 2.

⁶³⁹⁰ Praljak’s Appeal Brief, para. 439, referring to Trial Judgement, Vol. 4, para. 533, Ex. P04573, p. 5.

⁶³⁹¹ Praljak’s Appeal Brief, para. 439, referring to Trial Judgement, Vol. 4, para. 535, Ex. P04716. Praljak asserts that “[e]ven if Galbraith intervened for issuance of this permit, which [was] highly unlikely, there is no evidence that his intervention reached Praljak”. Praljak’s Appeal Brief, para. 439, referring to Peter Galbraith, T. 6506-6509 (12 Sept 2006), T. 6541 (13 Sept 2006).

⁶³⁹² Praljak’s Appeal Brief, para. 440, referring to Ex. P06454, p. 54.

⁶³⁹³ Praljak’s Appeal Brief, para. 443.

⁶³⁹⁴ Praljak’s Appeal Brief, para. 443, referring to Trial Judgement, Vol. 4, para. 523, Praljak’s Appeal Brief, para. 406 (Praljak’s Ground 39.1).

⁶³⁹⁵ Praljak’s Appeal Brief, para. 444, referring to Trial Judgement, Vol. 4, para. 524, Ex. 3D00482.

⁶³⁹⁶ Praljak’s Appeal Brief, para. 444, referring to Trial Judgement, Vol. 4, para. 526. Praljak asserts that his presence at the Medugorje meeting cannot be considered as a contribution. Praljak’s Appeal Brief, para. 444.

⁶³⁹⁷ Praljak’s Appeal Brief, para. 445, referring to Trial Judgement, Vol. 4, para. 530.

⁶³⁹⁸ Prosecution’s Response Brief (Praljak), paras 75, 77. See also Appeal Hearing, AT. 422-423, 430-438 (22 Mar 2017).

⁶³⁹⁹ Prosecution’s Response Brief (Praljak), para. 77.

evidence, or fails to demonstrate an error with regard to: (1) the two meetings on 15 September 1993 and 5 November 1993, and Tuđman's comments in the latter;⁶⁴⁰⁰ (2) the 2 April 1993 meeting;⁶⁴⁰¹ (3) the 27 August 1993 SpaBat report;⁶⁴⁰² (4) Galbraith's evidence;⁶⁴⁰³ (5) the 13 January 1993 meeting with the French delegation;⁶⁴⁰⁴ (6) the 18 May 1993 meeting at Međugorje;⁶⁴⁰⁵ and (7) Praljak acting as an envoy of Tuđman and Izetbegović.⁶⁴⁰⁶

1895. Praljak challenges the Trial Chamber's consideration of evidence showing that before negotiations on 16 January 1993, two HVO representatives consulted him in Prozor and he "gave them his consent to demand that the ABiH issue a denial about the HVO's involvement in several crimes based on [his] statements made [...] in his capacity as the envoy of President Tuđman and Alija Izetbegović".⁶⁴⁰⁷ In this regard, Praljak fails to show how his assertion that he could only convey instructions which served the interests of both Croatia and BiH could affect the Trial Chamber's findings, particularly as his assertion is consistent with the overall finding that he served as a conduit between Croatia and the HZ(R) H-B. On the same basis, the Appeals Chamber also dismisses Praljak's argument concerning his explanation of Zagreb's position in the meeting on 29 January 1993.⁶⁴⁰⁸ Additionally, the Appeals Chamber finds that Praljak fails to show how any error by the Trial Chamber in considering the instance where he may have been communicating positions shared by both Tuđman and Izetbegović,⁶⁴⁰⁹ could impact on its overall findings.

1896. Regarding the meeting held on 2 April 1993, the Trial Chamber noted that during this meeting Praljak "mentioned the importance of creating a Croatian state within BiH and

⁶⁴⁰⁰ Prosecution's Response Brief (Praljak), paras 76-77. The Prosecution argues that Praljak does not dispute that during these meetings he advised the Croatian leadership on the situation in the field, and that it is clear that he participated in these meetings as a trusted advisor to the leadership. Prosecution's Response Brief (Praljak), para. 76. See also Appeal Hearing, AT. 434-435 (22 Mar 2017).

⁶⁴⁰¹ Prosecution's Response Brief (Praljak), para. 77. The Prosecution contends that Exhibit P01788 shows that Praljak championed Croatia's political positions during this meeting. Prosecution's Response Brief (Praljak), para. 77. See also Appeal Hearing, AT. 433-434 (22 Mar 2017).

⁶⁴⁰² Prosecution's Response Brief (Praljak), para. 77. The Prosecution submits that this report is consistent with findings on Praljak's involvement in applying Croatia's policies. Prosecution's Response Brief (Praljak), para. 77. See also Appeal Hearing, AT. 436-437 (22 Mar 2017).

⁶⁴⁰³ Prosecution's Response Brief (Praljak), para. 77.

⁶⁴⁰⁴ Prosecution's Response Brief (Praljak), para. 77. The Prosecution avers that the Trial Chamber properly assessed and relied on Exhibit 3D00482 to conclude that Praljak presented and supported Croatia's position at international meetings. Prosecution's Response Brief (Praljak), para. 77.

⁶⁴⁰⁵ Prosecution's Response Brief (Praljak), para. 77. The Prosecution argues that the Trial Chamber properly relied on Praljak's participation in this meeting to conclude that he represented Croatia in international meetings and thus knew of Croatia's political positions. Prosecution's Response Brief (Praljak), para. 77.

⁶⁴⁰⁶ Prosecution's Response Brief (Praljak), para. 77. See also Appeal Hearing, AT. 432 (22 Mar 2017).

⁶⁴⁰⁷ Trial Judgement, Vol. 4, para. 534.

⁶⁴⁰⁸ Compare Trial Judgement, Vol. 4, para. 531 ("On 29 January 1993, [...] Praljak explained to the [M]ilitary [P]olice Zagreb's position regarding how military operations in Gornji Vakuf and Central Bosnia were unfolding and how they should be implemented in the field") with Praljak's Appeal Brief, para. 437 ("Praljak did not explain[] Zagreb's position, he explained the position he brought from Zagreb where he had meetings with Croatian leaders but also with Izetbegović, Owen and Vance and where he was mandated by Tuđman and Izetbegović to calm the conflict" in Gornji Vakuf). See Slobodan Praljak, T. 41599, 41601 (17 June 2009).

⁶⁴⁰⁹ See *supra*, paras 1892, 1895.

homogenising the Croatian population within the borders, all the while informing the attendees of the measures proposed under the Vance-Owen Plan”.⁶⁴¹⁰ Regardless of whether he attended the meeting in any official capacity, Praljak’s assertions concerning this meeting⁶⁴¹¹ fail to show any error by the Trial Chamber in considering the same evidence he cites. Praljak merely seeks to offer his own interpretation of the evidence. Similarly, Praljak’s contention regarding the SpaBat report dated 27 August 1993 is also dismissed.⁶⁴¹² Praljak further disputes the Trial Chamber’s reliance on Galbraith’s testimony that following pressure applied on Tuđman by an embassy of the United States of America, Praljak – on the request of Croatia – allowed German journalists to film inside Gabela Prison.⁶⁴¹³ The Appeals Chamber notes, however, that Praljak does not demonstrate any error in the Trial Chamber’s acceptance of Galbraith’s evidence on this issue. Praljak again only offers his own interpretation of the evidence. Further, the Trial Chamber considered that on 5 November 1993, Tuđman referred to the instructions he gave Praljak regarding defence in Novi Travnik, Vitez, and Busovača,⁶⁴¹⁴ and cited the minutes of the meeting in which Tuđman stated to Praljak that “I know that, I told you that this line – Novi Travnik, Vitez, Busovača, that it had to be defended and ensure this...”.⁶⁴¹⁵ Thus, the Appeals Chamber finds that Praljak fails to show that no reasonable trier of fact could have arrived at the Trial Chamber’s conclusion based on the evidence cited. His arguments discussed above are all dismissed.

1897. The Appeals Chamber now turns to Praljak’s challenges to the findings on his participation in meetings. Regarding the meetings held on 15 September 1993 and 5 November 1993, Praljak only supports his argument on the purpose of these meetings by cross-referencing arguments made elsewhere. As the Appeals Chamber dismisses these arguments elsewhere,⁶⁴¹⁶ Praljak’s current argument is unsupported. Further, the Appeals Chamber finds that whether the primary aim of the 13 January 1993 meeting with the French delegation was to discuss a Muslim-Croat joint action, the Trial Chamber considered, *inter alia*, Praljak’s participation in this meeting as well as the 18 May 1993 meeting in Međugorje as evidence that he presented and supported the Croatian

⁶⁴¹⁰ Trial Judgement, Vol. 4, para. 532, referring to Ex. P01788, pp. 1-4, Slobodan Praljak, T(F). 43381-43404 (18 Aug 2009).

⁶⁴¹¹ See *supra*, para. 1892.

⁶⁴¹² Compare Trial Judgement, Vol. 4, para. 533 (noting that the SpaBat report maintained that one of Praljak’s missions on BiH territory, as of 15 June 1993, was to “control” the HVO’s political leadership with whom Zagreb “did not agree” but also noting that the report did not give any additional details) with Praljak’s Appeal Brief, para. 439 (arguing that the SpaBat report did not give details). See Slobodan Praljak, T. 41599, 41601 (17 June 2009).

⁶⁴¹³ Trial Judgement, Vol. 4, para. 535, referring to Peter Galbraith, T(F). 6538-6540 (13 Sept 2006), Ex. P04716. See Peter Galbraith, T. 6541 (13 Sept 2006).

⁶⁴¹⁴ Trial Judgement, Vol. 4, para. 537, referring to Ex. P06454, p. 54.

⁶⁴¹⁵ Ex. P06454, p. 54.

⁶⁴¹⁶ See *infra*, para. 1915.

position on Herceg-Bosna at international meetings.⁶⁴¹⁷ Praljak fails to show that the Trial Chamber erred in its approach. His arguments are dismissed.

(iii) Praljak's efforts to obtain logistical support from Croatia

1898. Praljak contends that the Trial Chamber's finding that he requested, organised, and facilitated military reinforcements from the HV to the HVO with the aim of furthering the JCE is not supported.⁶⁴¹⁸ Specifically, Praljak argues that the Trial Chamber erred in considering his posting of HV members to the HVO as: (1) they were assigned equally to the HVO and the ABiH;⁶⁴¹⁹ and (2) many of the appointments, including that of Vladimir Primorac in April 1992, were not linked to the subsequent conflict between the Croats and the Muslims.⁶⁴²⁰ Praljak also submits that the Trial Chamber erroneously found that, at his request, the Croatian government continued paying the salaries of HV soldiers who joined the HVO.⁶⁴²¹ He argues that the Trial Chamber referred to documents dated 1992, which are irrelevant to his contribution to the CCP, and issued when the HVO fought together with the Muslims against the JNA/VRS.⁶⁴²² Praljak further argues that these documents do not support the Trial Chamber's finding but rather show that he, as an employee of the Croatian Ministry of Defence, applied the policy established.⁶⁴²³

1899. The Prosecution responds that Praljak fails to show that the Trial Chamber unreasonably concluded that he facilitated securing military and logistical support from Croatia in furtherance of the CCP. It also submits that there is evidence demonstrating that Praljak continued to arrange military support for the HVO during the JCE period in the form of HV personnel, payment of salaries, training, and equipment.⁶⁴²⁴

1900. Regarding Praljak's first argument on the HV's assignment to the HVO, the Appeals Chamber notes that it considered his previous argument that HV troops were permitted to volunteer for either the HVO or the ABiH,⁶⁴²⁵ and concluded that this did not preclude the HV from also reinforcing and assisting the HVO in its fight against the ABiH and thus the Trial Chamber's conclusion on this issue was not undermined.⁶⁴²⁶ Similarly, the Appeals Chamber finds that Praljak

⁶⁴¹⁷ Trial Judgement, Vol. 4, paras 524-527.

⁶⁴¹⁸ Praljak's Appeal Brief, para. 448.

⁶⁴¹⁹ Praljak's Appeal Brief, para. 446, referring to Trial Judgement, Vol. 4, para. 542, Praljak's Appeal Brief, para. 18.

⁶⁴²⁰ Praljak's Appeal Brief, para. 446, referring to Exs. P00345, P00927.

⁶⁴²¹ Praljak's Appeal Brief, para. 447, referring to Trial Judgement, Vol. 4, para. 543.

⁶⁴²² Praljak's Appeal Brief, para. 447, referring to Exs. P00734, P00891.

⁶⁴²³ Praljak's Appeal Brief, para. 447.

⁶⁴²⁴ Prosecution's Response Brief (Praljak), para. 78, referring to Slobodan Praljak, T. 41445-41446 (15 June 2009), T. 43038, 43070-43071 (14 July 2009), Exs. P03957, 3D02082, P06157, P06009. The Prosecution also asserts that it was within the Trial Chamber's discretion to rely on Praljak's pre-JCE conduct. Prosecution's Response Brief (Praljak), para. 78.

⁶⁴²⁵ See *supra*, paras 254, 270, 275.

⁶⁴²⁶ See *supra*, paras 254, 270, 275.

fails to show how any possible assignment of HV troops to the ABiH would affect the Trial Chamber's finding that he "personally and directly contributed to posting HV members to the HVO armed forces".⁶⁴²⁷ Praljak's argument is dismissed.

1901. The Trial Chamber also considered that the evidence showed that Praljak personally and directly contributed to the posting of HV members to the HVO, including the appointment of Primorac in the spring of 1992.⁶⁴²⁸ Praljak asserts that many of the appointments were not linked to the conflict, but cites only to Primorac's appointment. However, the Appeals Chamber notes that the Trial Chamber considered evidence showing that Praljak's involvement in the posting and discharging of HV soldiers continued in 1993.⁶⁴²⁹ The Trial Chamber also found that HV troops were directly involved alongside the HVO troops in the conflict with the ABiH at all times relevant to the Indictment, including during 1993, after evaluating various pieces of evidence.⁶⁴³⁰ The Appeals Chamber therefore finds that Praljak's mere assertion is not sufficient to call into question the Trial Chamber's findings. Further, to the extent that Praljak argues that pre-JCE appointments are irrelevant to his responsibility, the Appeals Chamber also dismisses this argument as unpersuasive since his involvement in securing military support from Croatia continued into 1993.⁶⁴³¹ Praljak's contention is dismissed.

1902. The Appeals Chamber now turns to Praljak's challenges to the Trial Chamber's finding that, at his request, the Croatian government continued paying salaries to the HV soldiers authorised by that government to join the HVO.⁶⁴³² The evidence explicitly relied on by the Trial Chamber clearly shows that Praljak requested the payment of salaries to HV soldiers in November and December 1992.⁶⁴³³ Although these requests occurred prior to the time when the JCE was found to be in existence, the Trial Chamber did refer to evidence showing that the salaries of some HV soldiers were paid by the Croatian government in 1993.⁶⁴³⁴ The Appeals Chamber notes that the evidence cited by the Trial Chamber concerning the payment of salaries in 1993 does not explicitly

⁶⁴²⁷ Trial Judgement, Vol. 4, para. 542.

⁶⁴²⁸ Trial Judgement, Vol. 4, para. 542. See Trial Judgement, Vol. 3, para. 548.

⁶⁴²⁹ Trial Judgement, Vol. 4, para. 542, referring to Exs. P03957, P06118.

⁶⁴³⁰ Trial Judgement, Vol. 1, para. 775, Vol. 3, paras 530-544, Vol. 4, para. 542. See Trial Judgement, Vol. 3, paras 546-552.

⁶⁴³¹ See *supra*, para. 1891.

⁶⁴³² Trial Judgement, Vol. 4, para. 543, referring to Exs. P00734 (dated 4 August 1993), P00891 (dated 27 October 1993).

⁶⁴³³ See Ex. P00734 (request dated 12 November 1992 concerning the salary of Željko Šiljeg, an HV colonel appointed as commanding officer of the North-West OZ, see Trial Judgement, Vol. 3, para. 548); Ex. P00891 (request dated 10 December 1992 concerning daily allowances for various HV soldiers).

⁶⁴³⁴ Trial Judgement, Vol. 3, paras 529 (referring to Exhibit P06157, a request dated 27 January 1993 for the payment of wartime supplements to HV soldiers temporarily assigned to the Southern Front following an order from Praljak), 555 (referring to testimony of Witness Marijan Biškić that he arrived in BiH on 8 November 1993 and was paid by the Croatian government (see Marijan Biškić, T. 15042-15044 (5 Mar 2007) and Exhibit P07173, an order dated 14 December 1993 from the Croatian Defence Minister, Gojko Šušak, for the allocation of funds to the HR Herceg-Bosna (see Ex. P07173, pp. 1-2)).

show that these payments were made at the request of Praljak. Thus to the extent the Trial Chamber relied on Praljak requesting that the Croatian government continued paying salaries to the HV soldiers who joined the HVO, it erred. However, Praljak fails to show how this error affects the Trial Chamber's overall finding that he facilitated securing military support from Croatia between the spring of 1992 and October 1993, which was also based on his contribution to the posting of HV members to the HVO.⁶⁴³⁵

(iv) Whether Praljak's link to the Croatian government furthered the CCP

1903. In addition to his overall submission that his link to the Croatian government did not further the JCE, Praljak also argues that the Trial Chamber erroneously considered his role as a conduit as a contribution to the JCE as it is unclear whether this role was aimed at furthering "the project to establish Croatian control" over BiH territories or the CCP.⁶⁴³⁶ The Prosecution responds that his submission that the Trial Chamber's findings regarding his role as a conduit are unclear is unsupported and undeveloped.⁶⁴³⁷

1904. Having failed to demonstrate an error in the Trial Chamber's assessment and consideration of the evidence which could have an impact on its overall conclusion, Praljak only makes general arguments that the Trial Chamber failed to establish how his link with the Croatian government, his knowledge of the Croatian policies, and his efforts to obtain logistical support from Croatia furthered the CCP.⁶⁴³⁸ Notably, the Trial Chamber expressly found that "Praljak served as a conduit between Croatia and the HZ(R) H-B to further the common criminal purpose of the JCE".⁶⁴³⁹ In this regard, the Trial Chamber considered, in addition to the evidence and findings addressed above,⁶⁴⁴⁰ that: (1) Praljak received a salary from the Croatian Ministry of Defence while he was in Gornji Vakuf in January to February 1993 and continued to be remunerated by this ministry when he was the Commander of the Main Staff;⁶⁴⁴¹ (2) Croatia's policy in BiH was discussed and defined during the relevant meetings in which Praljak participated "with a view to furthering the common criminal purpose";⁶⁴⁴² (3) Praljak himself testified that he was implementing the "policy of the Croatian

⁶⁴³⁵ Trial Judgement, Vol. 4, para. 544. See *supra*, para. 1885.

⁶⁴³⁶ Praljak's Appeal Brief, para. 423, referring to Trial Judgement, Vol. 4, para. 545 ("as part of a project to establish Croatian control over the HZ(R) H-B territories, Slobodan Praljak served as a conduit between Croatia and the HZ(R) H-B to further the common criminal purpose of the JCE"). Praljak also argues that it is unclear whether the project to establish Croatian control over BiH territories was a part of the CCP. Praljak's Appeal Brief, para. 423.

⁶⁴³⁷ Prosecution's Response Brief (Praljak), para. 70.

⁶⁴³⁸ See *supra*, paras 1892-1893, 1898.

⁶⁴³⁹ Trial Judgement, Vol. 4, para. 545.

⁶⁴⁴⁰ See *supra*, paras 1885, 1895-1897, 1900-1901.

⁶⁴⁴¹ Trial Judgement, Vol. 4, para. 520.

⁶⁴⁴² Trial Judgement, Vol. 4, para. 522.

state” while he was in BiH;⁶⁴⁴³ and (4) Praljak’s advice and assessments regarding the conflict in BiH was relied on to make decisions on Croatia’s involvement in BiH.⁶⁴⁴⁴

1905. Considering the above, the Appeals Chamber finds that Praljak fails to demonstrate that no reasonable trier of fact could have concluded, as the Trial Chamber did, that his serving as a link between Croatia and the HZ(R) H-B was aimed at furthering the CCP of the JCE, and in fact did so by facilitating the commission of the JCE crimes.⁶⁴⁴⁵ Additionally, the Appeals Chamber finds that Praljak fails to show how the Trial Chamber’s finding is unclear regarding whether his actions furthered the CCP⁶⁴⁴⁶ and his argument is dismissed as undeveloped. The Appeals Chamber thus dismisses Praljak’s sub-grounds of appeal 40.1 in part, 40.4, 40.5, and 40.6 as discussed above.

(v) Conclusion

1906. In sum, Praljak’s ground of appeal 40 is dismissed.

5. Praljak’s mens rea and related challenges

1907. As recalled above with regard to Praljak’s *mens rea* under JCE I liability, the Trial Chamber concluded that he: (1) intended the crimes committed in the various municipalities,⁶⁴⁴⁷ at times inferring his intent from his failure to make any serious efforts to stop the HVO and the Military Police from committing crimes;⁶⁴⁴⁸ (2) shared the intent to expel the Muslim population from the territory of Herceg-Bosna with other JCE members;⁶⁴⁴⁹ and (3) intended to discriminate against Muslims in order to facilitate their eviction from the territory of Herceg-Bosna.⁶⁴⁵⁰ Notably, the Trial Chamber inferred his intent from its findings that Praljak was informed of crimes committed by the HVO and the Military Police “primarily through HVO internal communication channels”,⁶⁴⁵¹ continued to exercise “effective control” over the armed forces until the end of his functions as Commander of the Main Staff,⁶⁴⁵² and did not make any serious efforts to stop crimes.⁶⁴⁵³ In fact, the Trial Chamber concluded that Praljak denied that crimes had been committed and facilitated the failure to prosecute the perpetrators.⁶⁴⁵⁴ In relation to Praljak’s membership in the JCE, the Trial

⁶⁴⁴³ Trial Judgement, Vol. 4, para. 527, referring to Slobodan Praljak, T(F). 43001-43002 (13 July 2009).

⁶⁴⁴⁴ Trial Judgement, Vol. 4, para. 528.

⁶⁴⁴⁵ See Trial Judgement, Vol. 4, paras 545, 624, 628.

⁶⁴⁴⁶ See *supra*, para. 1903.

⁶⁴⁴⁷ Trial Judgement, Vol. 4, para. 625. See *supra*, para. 1809.

⁶⁴⁴⁸ Trial Judgement, Vol. 4, paras 626-627. See *supra*, para. 1809.

⁶⁴⁴⁹ Trial Judgement, Vol. 4, para. 627. See Trial Judgement, Vol. 4, para. 628. See also *supra*, para. 1809.

⁶⁴⁵⁰ Trial Judgement, Vol. 4, para. 628. See *supra*, para. 1809.

⁶⁴⁵¹ Trial Judgement, Vol. 4, para. 625.

⁶⁴⁵² Trial Judgement, Vol. 4, para. 625.

⁶⁴⁵³ Trial Judgement, Vol. 4, para. 626.

⁶⁴⁵⁴ Trial Judgement, Vol. 4, para. 626.

Chamber found that “a plurality of persons consulted each other to devise and implement the common criminal purpose”, including all the Appellants, Tuđman, Šušak, and Bobetko.⁶⁴⁵⁵

(a) Alleged errors in finding that Praljak was a member of the JCE (Praljak’s Ground 39 and Sub-ground 5.4 in part)

(i) Whether Croatian officials participated in the JCE (Praljak’s Sub-ground 5.4 in part)

1908. Praljak submits that the Trial Chamber failed to provide a reasoned opinion by “satisfy[ing] itself with [a] general statement that certain Croatian leaders, including Tuđman, were members of the JCE”.⁶⁴⁵⁶ Specifically, he argues that the involvement of the Croatian leaders in the CCP should have been established,⁶⁴⁵⁷ and that the Trial Chamber only referred to the HVO/ HZ(R) H-B leaders in its analysis of the CCP.⁶⁴⁵⁸ Praljak also argues that the Trial Chamber referred to Tuđman only twice, but not in the context of the JCE, and did not mention Janko Bobetko and Šušak.⁶⁴⁵⁹ Praljak submits that the evidence does not implicate the Croatian leaders in the CCP⁶⁴⁶⁰ and that they did not intend any criminal acts but rather had legitimate political aims.⁶⁴⁶¹ He also submits that it was “problematic” to find that the Croatian leaders were JCE members as they could not defend themselves and their participation implied State involvement.⁶⁴⁶²

1909. The Prosecution responds that Praljak selectively cites the Trial Judgement out of context, ignores the detailed analysis of the JCE, and offers his own assessment on matters that do not affect the Trial Chamber’s findings.⁶⁴⁶³ It also argues that Praljak’s JCE I crimes are attributable to him directly or via his co-accused, and do not depend on JCE members who were not accused.⁶⁴⁶⁴

1910. The Appeals Chamber notes that the Trial Chamber found that “a plurality of persons consulted each other to devise and implement the common criminal purpose”, including all the

⁶⁴⁵⁵ Trial Judgement, Vol. 4, para. 1231.

⁶⁴⁵⁶ Praljak’s Appeal Brief, para. 99. See Praljak’s Reply Brief, para. 22. See also Appeal Hearing, AT. 385 (22 Mar 2017).

⁶⁴⁵⁷ Praljak’s Appeal Brief, paras 95-96. See Praljak’s Reply Brief, para. 21.

⁶⁴⁵⁸ Praljak’s Appeal Brief, para. 96, referring to Trial Judgement, Vol. 4, paras 43-70.

⁶⁴⁵⁹ Praljak’s Appeal Brief, para. 97, referring to Trial Judgement, Vol. 4, paras 43-70. See also Appeal Hearing, AT. 387-388 (22 Mar 2017).

⁶⁴⁶⁰ Praljak’s Appeal Brief, para. 99. Praljak replies that the Trial Chamber did not identify any key moment of collaboration and considered any contact between the Croatian and HZ(R) H-B authorities as JCE contribution. Praljak’s Reply Brief, para. 20. Further, Praljak contends that the Trial Chamber excluded the Croatian leaders from the CCP by finding, *inter alia*, that the crimes were committed based on a plan established by the HZ(R) H-B leaders. Praljak’s Appeal Brief, para. 98, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 65.

⁶⁴⁶¹ Praljak’s Appeal Brief, para. 98. See Appeal Hearing, AT. 388 (22 Mar 2017).

⁶⁴⁶² Praljak’s Appeal Brief, para. 99. See Appeal Hearing, AT. 389 (22 Mar 2017).

⁶⁴⁶³ Prosecution’s Response Brief (Praljak), para. 34. The Prosecution also responds that the Croatian leadership collaborated with the HZ(R) H-B leadership at key moments in the JCE and lent their support to crimes which were part of the CCP. Prosecution’s Response Brief (Praljak), para. 33.

Appellants, Tuđman, Šušak, and Bobetko.⁶⁴⁶⁵ The Trial Chamber also found that: (1) “key moments of the JCE were made possible by the collaboration of the HZ(R) H-B leadership and authorities, both with each other and with the Croatian leadership”;⁶⁴⁶⁶ (2) Croatian leaders Tuđman, Šušak, and Bobetko directly collaborated with the HVO leaders and authorities to further the JCE;⁶⁴⁶⁷ and (3) there was a privileged and continuous link between Praljak and the Croatian authorities, including Tuđman, Šušak, and Bobetko, on subjects regarding BiH, notably Croatia’s engagement in BiH.⁶⁴⁶⁸

1911. The Appeals Chamber observes that the Trial Chamber elaborated in detail on Praljak’s contribution to the CCP and his JCE I liability.⁶⁴⁶⁹ The Trial Chamber found that JCE I crimes were attributable to Praljak, and that he and his co-accused used the members and structures of the HVO and the Military Police to commit crimes forming part of the CCP.⁶⁴⁷⁰ Before arriving at this conclusion, the Trial Chamber identified a link between the principal perpetrators of each crime and Praljak or one of his co-accused, who were all found to be JCE members.⁶⁴⁷¹ In this respect, the Appeals Chamber notes that the Trial Chamber provided a detailed analysis of how Praljak and the other Appellants collaborated with each other in order to implement the CCP, independent of the involvement of Tuđman, Šušak, and Bobetko.⁶⁴⁷² Accordingly, Praljak fails to show how any alleged error regarding the JCE membership of Tuđman, Šušak, and Bobetko would affect the findings that Praljak and the other Appellants: (1) formed a plurality of persons who collaborated to implement the CCP; (2) significantly contributed to the JCE; (3) used the principal perpetrators to commit crimes; and (4) shared the intent to carry out the crimes forming part of the common purpose.⁶⁴⁷³ Moreover, Praljak does not argue that the principal perpetrators were linked only, or even linked at all, to the Croatian leaders Tuđman, Šušak, or Bobetko in committing crimes furthering the CCP.⁶⁴⁷⁴ Thus, Praljak does not show that his responsibility under JCE I liability is dependent on the membership, contribution or intent of Croatian leaders, in particular Tuđman, Šušak, and Bobetko, in the JCE. Based on the above, the Appeals Chamber dismisses all arguments

⁶⁴⁶⁴ Prosecution’s Response Brief (Praljak), para. 35, referring to Trial Judgement, Vol. 4, para. 1232. The Prosecution asserts that nothing precludes the reliance on evidence relating to a deceased JCE member. Prosecution’s Response Brief (Praljak), para. 35, referring to *Šainović et al.* Appeal Judgement, paras 1262-1264.

⁶⁴⁶⁵ Trial Judgement, Vol. 4, para. 1231.

⁶⁴⁶⁶ Trial Judgement, Vol. 4, para. 1219.

⁶⁴⁶⁷ Trial Judgement, Vol. 4, para. 1222.

⁶⁴⁶⁸ Trial Judgement, Vol. 4, para. 1223.

⁶⁴⁶⁹ Trial Judgement, Vol. 4, paras 512-631.

⁶⁴⁷⁰ Trial Judgement, Vol. 4, para. 1232. See Trial Judgement, Vol. 4, para. 628.

⁶⁴⁷¹ See, e.g., Trial Judgement, Vol. 4, paras 329, 558, 562, 694, 699, 711-724, 928, 1147, 1220.

⁶⁴⁷² Trial Judgement, Vol. 4, paras 1219-1221.

⁶⁴⁷³ Trial Judgement, Vol. 4, paras 275-276, 428-429, 627-628, 817-818, 1004, 1208-1209, 1231-1232. See *Brdanin* Appeal Judgement, paras 427, 430; *Kvočka et al.* Appeal Judgement, paras 96-97; *Tadić* Appeal Judgement, paras 227-228.

⁶⁴⁷⁴ *Šainović et al.* Appeal Judgement, para. 1256; *Krajišnik* Appeal Judgement, para. 225; *Martić* Appeal Judgement, paras 168, 172; *Brdanin* Appeal Judgement, paras 413, 430.

submitted by Praljak as irrelevant and finds that he fails to show that any alleged error would impact on his convictions.⁶⁴⁷⁵ In sum, Praljak's sub-ground of appeal 5.4 is dismissed in part.

(ii) Praljak's awareness of the CCP (Praljak's Sub-ground 39.1)

a. Arguments of the Parties

1912. Praljak contends that the Trial Chamber erred in concluding that he was aware of the CCP, which led to an erroneous finding that he participated in the JCE. In particular, he argues that there is no evidence that he had knowledge of the CCP in January 1993 or at any moment during its existence.⁶⁴⁷⁶ Praljak submits that the Trial Chamber should not have relied on his participation at meetings with senior Croatian leaders because: (1) it found that crimes were committed as a result of a plan established by the HZ(R) H-B leaders, not the Croatian leaders, whereas no HVO or HZ(R) H-B representative attended the meetings;⁶⁴⁷⁷ and (2) the objectives of the two relevant meetings which occurred in September and November 1993 were to put an end to fighting and his intervention was limited to describing the situation in the field.⁶⁴⁷⁸ Praljak also asserts that the Trial Chamber distorted his testimony and erred in relying on a finding that he implemented Croatia's policies in BiH before taking command of the Main Staff because it "could not find any criminal element" in those policies⁶⁴⁷⁹ and he testified that he implemented "above all the BiH policy".⁶⁴⁸⁰ He argues that the Trial Chamber erroneously relied on his role in negotiations that pre-dated the JCE, the evidence of which was admitted in "violation of basic rules of a fair trial".⁶⁴⁸¹

1913. The Prosecution responds that: (1) Croatian leaders played an essential role in the conception and implementation of the JCE, thus Praljak's participation at their meetings and his role in implementing Croatia's policies in BiH are directly relevant to establishing his awareness of the CCP and his JCE membership;⁶⁴⁸² (2) the absence of HVO and HZ(R) H-B representatives at meetings highlights Praljak's importance as a conduit between Croatia and the HZ(R) H-B;⁶⁴⁸³ (3) the Trial Chamber properly assessed Praljak's testimony regarding his role in implementing

⁶⁴⁷⁵ See *supra*, paras 19, 21.

⁶⁴⁷⁶ Praljak's Appeal Brief, paras 407-408. See also Appeal Hearing, AT. 389-391 (22 Mar 2017).

⁶⁴⁷⁷ Praljak's Appeal Brief, para. 403, referring to Trial Judgement, Vol. 4, para. 65; Praljak's Reply Brief, para. 45. See Appeal Hearing, AT. 389-390 (22 Mar 2017).

⁶⁴⁷⁸ Praljak's Appeal Brief, para. 406, referring to Exs. P05080, pp. 2, 11-23, P06454, pp. 3, 49-55. See Appeal Hearing, AT. 389-390 (22 Mar 2017). Praljak argues that all but two of the meetings were held prior to the date the Trial Chamber found that the JCE was established, and are thus irrelevant to determining his participation in the JCE. Praljak's Appeal Brief, paras 403, 406, referring to Trial Judgement, Vol. 4, paras 522-523, 538. See Appeal Hearing, AT. 390 (22 Mar 2017).

⁶⁴⁷⁹ Praljak's Appeal Brief, paras 403-404; Praljak's Reply Brief, para. 46.

⁶⁴⁸⁰ Praljak's Appeal Brief, para. 404.

⁶⁴⁸¹ Praljak's Appeal Brief, para. 405, referring to Trial Judgement, Vol. 4, para. 525, Praljak's Appeal Brief, paras 547-553 (Praljak's Ground 50.1).

⁶⁴⁸² Prosecution's Response Brief (Praljak), paras 82-83. See also Appeal Hearing, AT. 423-428 (22 Mar 2017).

⁶⁴⁸³ Prosecution's Response Brief (Praljak), para. 83.

Croatia's policies within the context of his role as a conduit;⁶⁴⁸⁴ and (4) there is ample evidence supporting the Trial Chamber's finding that Praljak shared the CCP.⁶⁴⁸⁵

b. Analysis

1914. The Appeals Chamber recalls that, after a detailed analysis of the evidence, the Trial Chamber concluded that Praljak not only learned of the Croatian government's policies regarding Herceg-Bosna, but also demonstrated his willingness to implement these policies and found that "as part of a project to establish Croatian control over [BiH] territories, Slobodan Praljak served as a conduit between Croatia and the HZ(R) H-B to further the [CCP]".⁶⁴⁸⁶ Contrary to Praljak's assertion that Croatian leaders did not participate in the conception of the CCP, the Appeals Chamber further notes that the Trial Chamber found that Croatian leaders such as Tuđman, Šušak, and Bobetko were members of the JCE,⁶⁴⁸⁷ and it specifically found that Croatia's policies in BiH were discussed at these meetings *with a view to furthering the CCP*.⁶⁴⁸⁸ Praljak's challenges related to these findings of the Trial Chamber made elsewhere have been considered and dismissed.⁶⁴⁸⁹ Moreover, by asserting that no representative of the HVO or HZ(R) H-B attended the meetings, Praljak ignores the Trial Chamber's finding that by attending these meetings he was acting as a conduit between Croatia and HZ(R) H-B to further the CCP.⁶⁴⁹⁰ Thus, Praljak fails to show that the Trial Chamber erred by relying on these meetings to assess his knowledge of the CCP and his participation in the JCE as of mid-January 1993.

1915. Additionally, Praljak does not demonstrate that the Trial Chamber erred in relying on the evidence of two meetings which occurred on 15 September 1993 and 5 November 1993. The Trial Chamber noted that Praljak participated in these meetings by, *inter alia*: (1) recommending that "territorial discontinuity in Herceg-Bosna not be allowed and for Muslim access to the sea to be denied – particularly because of the reaction by the Serbian military that would ensue";⁶⁴⁹¹ (2) calling on Croatia to provide logistical support;⁶⁴⁹² and (3) providing logistical recommendations for changes to be made in the HVO's civilian and military departments, such as

⁶⁴⁸⁴ Prosecution's Response Brief (Praljak), para. 86.

⁶⁴⁸⁵ Prosecution's Response Brief (Praljak), paras 84-85. The Prosecution asserts that the Trial Chamber was permitted to rely on evidence of Praljak's participation at meetings and negotiations leading up to the establishment of the JCE to infer that, as of mid-January 1993, he was aware of and shared the CCP as well as his role in the JCE. Prosecution's Response Brief (Praljak), paras 82, 84. See also Appeal Hearing, AT. 423-428 (22 Mar 2017).

⁶⁴⁸⁶ Trial Judgement, Vol. 4, paras 530, 545. See *supra*, para. 1885.

⁶⁴⁸⁷ Trial Judgement, Vol. 4, para. 1231.

⁶⁴⁸⁸ Trial Judgement, Vol. 4, para. 522.

⁶⁴⁸⁹ See *supra*, paras 1904, 1910.

⁶⁴⁹⁰ Trial Judgement, Vol. 4, paras 540, 545. See *supra*, paras 1885, 1891.

⁶⁴⁹¹ Trial Judgement, Vol. 4, para. 523.

⁶⁴⁹² Trial Judgement, Vol. 4, para. 523.

replacing officers in the Main Staff.⁶⁴⁹³ In this regard, the Trial Chamber considered that Praljak “advised the Croatian leadership about Croatian policy and operations in BiH”.⁶⁴⁹⁴ By asserting that the objectives of the meetings were to put an end to fighting and that his intervention was limited to describing the situation in the field, Praljak merely offers his own interpretation of the evidence without showing an error on the part of the Trial Chamber.

1916. Turning to Praljak’s assertion that the Trial Chamber erred in considering that he implemented the policy of the Croatian state while he was in BiH, the Appeals Chamber notes that the Trial Chamber relied on Praljak’s testimony that he “was implementing the ‘policy of the Croatian state’ while he was in BiH”.⁶⁴⁹⁵ While the Appeals Chamber notes that Praljak also testified that he “was implementing the policies of Bosnia and Herzegovina, above all”,⁶⁴⁹⁶ Praljak does not explain how this contradicts his statement, or the Trial Chamber’s finding, that he implemented Croatia’s policies while in BiH.⁶⁴⁹⁷ Notably, the Trial Chamber found that Croatian and HZ(R) H-B leaders collaborated in order to further the CCP.⁶⁴⁹⁸ Moreover, as Praljak himself submits,⁶⁴⁹⁹ the Trial Chamber found that crimes were committed as the result of a plan established by HZ(R) H-B leaders. Therefore, Praljak fails to show that the Trial Chamber erred in considering that he implemented the policies of BiH as support for its finding that he served as a conduit between Croatia and the HZ(R) H-B.

1917. Regarding Praljak’s pre-JCE conduct, the Appeals Chamber dismisses elsewhere his challenges to the meetings and negotiations that took place before mid-January 1993,⁶⁵⁰⁰ and thus he fails to show that this conduct is irrelevant. Moreover, the Appeals Chamber has already rejected Praljak’s assertion that the evidence relied on by the Trial Chamber in this regard was admitted in “violation of basic rules of a fair trial”.⁶⁵⁰¹ Thus, Praljak’s arguments are dismissed. Based on the above, as well as findings discussed elsewhere, the Appeals Chamber also rejects Praljak’s assertion that there is no evidence of his knowledge of the CCP.⁶⁵⁰²

⁶⁴⁹³ Trial Judgement, Vol. 4, para. 523.

⁶⁴⁹⁴ Trial Judgement, Vol. 4, para. 523.

⁶⁴⁹⁵ Trial Judgement, Vol. 4, para. 527, referring to Slobodan Praljak, T(F). 43001-43002 (13 July 2009).

⁶⁴⁹⁶ Slobodan Praljak, T. 43001-43002 (13 July 2009). Praljak continued to testify that “[m]y policies were parallel to the policies of the Republic of Croatia and the policies of Franjo Tudjman, Gojko [Šušak], Bruno [Stojić], Jadranko [Prlić], and all the others”. Slobodan Praljak, T. 43002 (13 July 2009).

⁶⁴⁹⁷ See *supra*, para. 1904.

⁶⁴⁹⁸ Trial Judgement, Vol. 4, paras 1219, 1222, 1231.

⁶⁴⁹⁹ Praljak’s Appeal Brief, para. 403.

⁶⁵⁰⁰ See *supra*, para. 1891.

⁶⁵⁰¹ Praljak’s Appeal Brief, para. 405, referring to Praljak’s Appeal Brief, paras 547-553. See *supra*, paras 108-113, 119-138, fn. 338.

⁶⁵⁰² See *infra*, paras 1921, 1928-1929, 1933, 1936-1942, 1940-1942.

1918. In conclusion, Praljak has failed to show any error by the Trial Chamber concerning his awareness of the CCP in January 1993 or at any moment during its existence. His sub-ground of appeal 39.1 is dismissed.

(iii) Alleged failure to establish Praljak's shared criminal intent with all members of the JCE (Praljak's Sub-ground 39.2)

1919. Praljak contends that the Trial Chamber's "statement" that he shared the intention to expel the Muslim population from BiH with other JCE members is not sufficient to find that he was a JCE member.⁶⁵⁰³ Praljak argues that the Trial Chamber was required to establish not only that he shared the intent to commit the same crime as the other JCE members, but also that he shared their intent to further the CCP.⁶⁵⁰⁴ Specifically, he argues that "some kind of interaction" between the JCE's principal members aimed at the CCP's furtherance should have been established.⁶⁵⁰⁵ Praljak asserts that because the Trial Chamber found that the composition of the group forming the JCE fluctuated over time, it was required to establish with whom he entered into an agreement in January 1993 and with whom he remained in agreement throughout the period he was found to have contributed to the JCE.⁶⁵⁰⁶

1920. The Prosecution responds that the Trial Chamber did not merely find that the Appellants shared the intent to commit the same crime, but that they intended to commit a range of crimes to further the CCP.⁶⁵⁰⁷ The Prosecution asserts that the Trial Chamber made precise findings regarding the period during which the Appellants formed part of the group, but "was not required to make explicit findings as to the exact period of each non-Accused JCE member's participation" or the exact date that they reached an agreement with Praljak.⁶⁵⁰⁸ The Prosecution further contends that the Trial Chamber arrived at reasonable conclusions on the JCE members.⁶⁵⁰⁹

1921. The Appeals Chamber recalls that the Trial Chamber found that, as of mid-January 1993, a JCE was established with the common criminal purpose being the ethnic cleansing of the Muslim population, and that to accomplish this purpose, the members of the JCE, including the Appellants,

⁶⁵⁰³ Praljak's Appeal Brief, paras 412-413, referring to Trial Judgement, Vol. 4, para. 627. Praljak further asserts that he never intended to expel the Muslim population from BiH. Praljak's Appeal Brief, para. 412.

⁶⁵⁰⁴ Praljak's Appeal Brief, paras 411-412.

⁶⁵⁰⁵ Praljak's Appeal Brief, para. 411; Praljak's Reply Brief, para. 47.

⁶⁵⁰⁶ Praljak's Appeal Brief, para. 413. See also Appeal Hearing, AT. 383 (22 Mar 2017). Praljak also argues that the Trial Chamber erred by establishing only the periods during which the Appellants participated in the JCE without also specifying when the other JCE members, in particular Tudman, Šušak, and Bobetko, participated. Praljak's Appeal Brief, paras 409-410.

⁶⁵⁰⁷ Prosecution's Response Brief (Praljak), para. 87. See also Appeal Hearing, AT. 428-429 (22 Mar 2017).

⁶⁵⁰⁸ Prosecution's Response Brief (Praljak), para. 88.

⁶⁵⁰⁹ Prosecution's Response Brief (Praljak), para. 89.

made use of the political and military apparatus of the HZ(R) H-B.⁶⁵¹⁰ The Trial Chamber also found that Praljak and the other Appellants, as JCE members, intended that the relevant crimes be committed in order to further the CCP.⁶⁵¹¹ Moreover, the Trial Chamber concluded that: (1) key moments of the JCE were made possible through the collaboration of the HZ(R) H-B leadership and authorities,⁶⁵¹² including Praljak;⁶⁵¹³ (2) Praljak consulted with other JCE members to devise and implement the CCP;⁶⁵¹⁴ and (3) Praljak intended to expel the Muslim population from the BiH and shared this intention with the other JCE members.⁶⁵¹⁵ The Appeals Chamber therefore is not persuaded by Praljak's assertion that "some kind of interaction" should have been established. The Trial Chamber's findings make it clear that Praljak formed a plurality of persons sharing the CCP from January 1993 to November 1993 with Prlić, Petković, Čorić, and Stojić, as well as with Pušić as of April 1993.⁶⁵¹⁶ Additionally, Praljak provides no support for his assertion that the Trial Chamber was required to establish with whom he entered into agreement in January 1993 and with whom he subsequently remained in agreement.⁶⁵¹⁷ Thus, the requirement that a plurality of individuals shared the CCP was met and the Appeals Chamber dismisses Praljak's arguments, discussed above, in support of his contention that the Trial Chamber erred by failing to establish that he shared with JCE members the intent to further the CCP. Praljak's sub-ground of appeal 39.2 is dismissed.

(iv) Alleged errors in finding that Praljak shared the criminal intent of the JCE members (Praljak's Sub-ground 39.3)

1922. Praljak asserts that the Trial Chamber misinterpreted the evidence and failed to apply the standard of beyond reasonable doubt when it found that the only reasonable inference was that he shared the intent to expel the Muslim population from BiH.⁶⁵¹⁸ He argues that: (1) a proper analysis of the evidence shows that he did not have any criminal intent;⁶⁵¹⁹ (2) the Trial Chamber incorrectly inferred his intent from his position in Croatia and evidence that he was fulfilling his functions

⁶⁵¹⁰ Trial Judgement, Vol. 4, paras 41, 43-44. See *supra*, paras 789-790. See also *supra*, paras 1759-1760.

⁶⁵¹¹ Trial Judgement, Vol. 4, paras 67, 625. See Trial Judgement, Vol. 4, paras 66, 68.

⁶⁵¹² Trial Judgement, Vol. 4, para. 1219.

⁶⁵¹³ Trial Judgement, Vol. 4, paras 1220, 1223, 1230.

⁶⁵¹⁴ Trial Judgement, Vol. 4, para. 1231.

⁶⁵¹⁵ Trial Judgement, Vol. 4, para. 627.

⁶⁵¹⁶ Trial Judgement, Vol. 4, para. 1230. See Trial Judgement, Vol. 4, paras 469-628 (findings on Praljak's involvement in the JCE including his collaboration with other JCE members).

⁶⁵¹⁷ Likewise, the Appeals Chamber finds that the details of the JCE membership of Tudman, Šušak, and Bobetko were not necessary to establish Praljak's shared intent. See *supra*, paras 1910-1911.

⁶⁵¹⁸ Praljak's Appeal Brief, paras 415-417.

⁶⁵¹⁹ Praljak's Appeal Brief, para. 415, referring to Praljak's Appeal Brief, paras 458-460 (Praljak's Ground 41.4).

whereas there is no evidence of his criminal intent;⁶⁵²⁰ and (3) the Trial Chamber did not take into consideration other possible explanations that could have been drawn from the evidence.⁶⁵²¹

1923. The Prosecution responds that Praljak's assertions are unsupported, undeveloped, and should be summarily dismissed.⁶⁵²²

1924. The Appeals Chamber considers that Praljak has failed to substantiate his arguments under this sub-ground of appeal, particularly as the Trial Chamber's findings on his shared intent were not based only on his fulfilment of his functions⁶⁵²³ and he has offered no other reasonable inference. Praljak's sub-ground of appeal 39.3 is therefore dismissed.

(b) Alleged errors in finding that Praljak had the necessary *mens rea* (Praljak's Ground 41)

(i) Alleged errors in finding that Praljak knew that the HVO committed crimes (Praljak's Sub-ground 41.1)

1925. Praljak contends that the Trial Chamber erred in concluding that he knew that HVO soldiers committed crimes as there is no evidence to support its finding that he was informed of such crimes through HVO internal communication channels.⁶⁵²⁴ Praljak asserts that: (1) it is unclear which crimes the Trial Chamber found he had been informed of because it refers to his knowledge of crimes in "other municipalities";⁶⁵²⁵ (2) he could not have been informed through HVO internal communication channels before he was part of the HVO structure as of 24 July 1993;⁶⁵²⁶ and (3) for the period after 24 July 1993, it should have been established that he was informed of the crimes as his position alone was insufficient to presume actual or constructive knowledge.⁶⁵²⁷

1926. The Prosecution responds that the Trial Chamber's finding was "amply supported" by evidence and factual findings regarding the functioning of HVO internal communication channels, Praljak's involvement in military operations, and Praljak's regular field presence.⁶⁵²⁸ It also asserts that, for JCE I liability, it was unnecessary to determine "exactly 'when, how and by whom'" Praljak was informed of each crime.⁶⁵²⁹

⁶⁵²⁰ Praljak's Appeal Brief, para. 416.

⁶⁵²¹ Praljak's Appeal Brief, para. 417.

⁶⁵²² Prosecution's Response Brief (Praljak), para. 92.

⁶⁵²³ See *infra*, para. 1933.

⁶⁵²⁴ Praljak's Appeal Brief, para. 451; Praljak's Reply Brief, para. 50.

⁶⁵²⁵ Praljak's Appeal Brief, para. 451, referring to Trial Judgement, Vol. 4, para. 625.

⁶⁵²⁶ Praljak's Appeal Brief, para. 451.

⁶⁵²⁷ Praljak's Appeal Brief, paras 451-452, referring to *Orić* Trial Judgement, para. 319; Praljak's Reply Brief, para. 49.

See also Praljak's Appeal Brief, para. 450.

⁶⁵²⁸ Prosecution's Response Brief (Praljak), paras 94-97.

⁶⁵²⁹ Prosecution's Response Brief (Praljak), para. 93.

1927. In reply, Praljak asserts that his knowledge about the military and political situation does not mean that he had knowledge about crimes being committed.⁶⁵³⁰

1928. In its concluding section concerning Praljak's JCE I responsibility, the Trial Chamber noted that – as established in the previous section of the Trial Judgement – Praljak “was informed of the crimes committed by the members of the HZ(R) H-B armed forces primarily through HVO internal communication channels”.⁶⁵³¹ Bearing in mind the Trial Chamber's findings made elsewhere in the Trial Judgement, the Appeals Chamber notes that the Trial Chamber considered that HVO internal communication channels “worked relatively well and in any case sufficiently well for the chief/commander of the Main Staff or his deputy to be informed regarding the situation prevailing in the field”.⁶⁵³² Further, the Appeals Chamber observes that before his appointment as Commander of the Main Staff on 24 July 1993, the Trial Chamber considered evidence that between January and June 1993, Praljak was present in BiH, particularly in the municipalities of Gornji Vakuf, Ljubuški, Prozor, Jablanica, and Mostar,⁶⁵³³ was involved in certain operations,⁶⁵³⁴ and concluded that he received reports from commanders in the field.⁶⁵³⁵ In specific instances, the Trial Chamber considered that because crimes were committed on a systematic basis, the only reasonable inference from evidence that Praljak planned and directed HVO military operations and was aware of the situation in the field was that he also knew that crimes were committed.⁶⁵³⁶ Thus, based on these Trial Chamber findings, the Appeals Chamber is satisfied that the conclusion that Praljak was informed of the HVO's crimes primarily through HVO internal communication channels is sufficiently supported. Praljak, by only challenging the Trial Chamber's paragraph on his knowledge while ignoring the analysis of the evidence provided elsewhere in the Trial Judgement, fails to show an error.

1929. Moreover, the Appeals Chamber considers that the Trial Chamber did not only rely on Praljak's knowledge of crimes it found he obtained through HVO internal communication channels, but also inferred his knowledge of crimes based on his involvement in the military operations in the various municipalities. In this regard, the Trial Chamber considered that: (1) for Gornji Vakuf, Praljak planned, directed, facilitated, and was kept informed of the HVO military operations in Gornji Vakuf around 18 January 1993, and as the operations and crimes linked to them unfolded according to a preconceived plan, the only reasonable inference was that Praljak intended the

⁶⁵³⁰ Praljak's Reply Brief, para. 51.

⁶⁵³¹ Trial Judgement, Vol. 4, para. 625.

⁶⁵³² Trial Judgement, Vol. 1, para. 735. See Trial Judgement, Vol. 1, para. 742 (“the Main Staff and its Chief were kept routinely informed of the situation prevailing on the ground”).

⁶⁵³³ Trial Judgement, Vol. 4, para. 470.

⁶⁵³⁴ See *infra*, para. 1929.

⁶⁵³⁵ Trial Judgement, Vol. 4, para. 482. See Trial Judgement, Vol. 4, para. 473. See also *supra*, paras 1836, 1849, 1852.

⁶⁵³⁶ See, e.g., Trial Judgement, Vol. 4, paras 572-573. See also *infra*, para. 1929.

murders and destruction of property, as well as the arrests and removal of Muslims from the area;⁶⁵³⁷ (2) for Prozor, the crimes were carried out in an “organised and orchestrated manner” such that they did not “constitute random events but followed preconceived plans drawn up by the HVO leadership” and that because Praljak planned and directed the HVO military operations in Prozor Municipality as of 24 July 1993 and was informed of the situation on the ground before and after 24 July 1993, the only reasonable inference was that he must have known that members of the HVO were committing crimes;⁶⁵³⁸ (3) for Mostar, the crimes were committed “systematically and/or over a period of time” demonstrating that they were orchestrated by the HVO leadership and that because Praljak directed the HVO military operations in Mostar during some of the period, the only reasonable inference was that he knew that crimes would be committed;⁶⁵³⁹ (4) for Vareš, Praljak was made aware of crimes at a government meeting;⁶⁵⁴⁰ and (5) for Gabela Prison and Dretelj Prison, Praljak knew of the poor detention conditions and accepted the crimes committed in these locations.⁶⁵⁴¹

1930. Considering all the Trial Chamber’s findings set out in the preceding paragraphs and, in particular, those relating to the information channels, Praljak’s presence and participation in military operations as well as his *de facto* and subsequent *de facto* and *de jure* position within the military chain of command,⁶⁵⁴² the Appeals Chamber finds that the Trial Chamber reasonably concluded as the only inference available that Praljak knew of the crimes committed by the HVO and Military Police. Recalling that Praljak’s knowledge of crimes can be inferred from circumstantial evidence providing it is the only reasonable inference available,⁶⁵⁴³ Praljak fails to show error in this regard. Therefore, Praljak’s contention that the Trial Chamber erroneously found that he knew of crimes being committed by HVO soldiers is rejected. For the same reasons, Praljak’s assertion on the lack of clarity on which crimes he was found to be informed of is also dismissed. Thus, his sub-ground of appeal 41.1 is dismissed.

⁶⁵³⁷ Trial Judgement, Vol. 4, para. 562. See Trial Judgement, Vol. 4, paras 556, 558, 560. See also *infra*, paras 1954-1956. The Appeals Chamber recalls that it has reversed the Trial Chamber’s finding that the killing of the seven civilians in Duša amounted to murder and wilful killing, and thus has overturned the findings on these crimes in Gornji Vakuf Municipality and Praljak’s conviction thereof. See *supra*, paras 441-443.

⁶⁵³⁸ Trial Judgement, Vol. 4, paras 572-573. See also *infra*, paras 1963-1965, 1970.

⁶⁵³⁹ Trial Judgement, Vol. 4, para. 586. See also *infra*, para. 2014.

⁶⁵⁴⁰ Trial Judgement, Vol. 4, paras 595, 597.

⁶⁵⁴¹ Trial Judgement, Vol. 4, paras 611, 614. See also *infra*, paras 2074-2081.

⁶⁵⁴² See *supra*, paras 1928-1929.

⁶⁵⁴³ See *Stanišić and Župljanin* Appeal Judgement, para. 172; *Popović et al.* Appeal Judgement, paras 971, 1404; *Đorđević* Appeal Judgement, paras 348, 406; *Čelebići* Appeal Judgement, para. 458.

(ii) Alleged errors in deducing Praljak's intent from his military functions and activities (Praljak's Sub-ground 41.2)

1931. Praljak asserts that the Trial Chamber erroneously deduced that he possessed the requisite *mens rea* for crimes from his military functions and activities, namely his participation in planning HVO military operations which "do not in themselves involve the commission of crimes".⁶⁵⁴⁴

1932. The Prosecution responds that the Trial Chamber did not infer Praljak's intent from his mere involvement in military operations but from his use of the HVO and the Military Police to commit crimes forming part of the CCP.⁶⁵⁴⁵

1933. In analysing Praljak's intent, the Trial Chamber considered that he: (1) participated in planning the HVO military operations in the municipalities of Prozor, Mostar, and Vareš; (2) was informed of crimes being committed by the HVO and the Military Police; and (3) continued to exercise "effective control" over these forces while knowing that they were committing crimes.⁶⁵⁴⁶ Moreover, the Trial Chamber recalled its finding that, despite his authority over the HVO and the Military Police, Praljak did not make any serious efforts to stop the commission of crimes.⁶⁵⁴⁷ It concluded that the only reasonable inference it could draw was that Praljak intended to have the JCE crimes committed.⁶⁵⁴⁸ In its earlier discussions on Praljak's responsibility for events occurring at the various municipalities, the Trial Chamber detailed its reasoning for finding that Praljak planned, directed, or facilitated the military operations, knew of crimes, and thus accepted and intended the commission of the JCE crimes.⁶⁵⁴⁹ For the detention centres, Praljak – although not found to have planned the operations – knew of the crimes, did nothing to prevent or punish the crimes, and thus accepted and intended the commission of the JCE crimes.⁶⁵⁵⁰ Praljak therefore only challenges one factor, namely his participation in the planning of HVO military operations, which the Trial Chamber considered in inferring his *mens rea*. Regardless, Praljak fails to show any error in the Trial Chamber's approach of considering his fulfilment of his official functions or his military activities in planning military operations as a factor showing his intent, particularly as this

⁶⁵⁴⁴ Praljak's Appeal Brief, para. 453, referring to *Kordić and Čerkez* Appeal Judgement, para. 957. Praljak argues that "[l]eading military operations does not equate with involvement in crimes." Praljak's Appeal Brief, para. 453.

⁶⁵⁴⁵ Prosecution's Response Brief (Praljak), para. 90, referring to Trial Judgement, Vol. 4, paras 624, 628, 1342.

⁶⁵⁴⁶ Trial Judgement, Vol. 4, para. 625.

⁶⁵⁴⁷ Trial Judgement, Vol. 4, para. 626.

⁶⁵⁴⁸ Trial Judgement, Vol. 4, para. 625.

⁶⁵⁴⁹ Trial Judgement, Vol. 4, paras 558, 560, 562 (Gornji Vakuf), 573, 575 (Prozor), 586 (Mostar), 594, 597 (Vareš). See also *infra*, paras 1954-1956, 1963-1965, 1970, 2014.

⁶⁵⁵⁰ Trial Judgement, Vol. 4, paras 611 (Gabela Prison), 614 (Dretelj Prison). See also *infra*, paras 2074-2081.

factor was taken into account alongside his knowledge of the crimes being committed during these military operations.⁶⁵⁵¹ His sub-ground of appeal 41.2 is dismissed.

(iii) Alleged errors in finding that Praljak possessed discriminatory intent (Praljak's Sub-ground 41.3)

1934. Praljak contends that the Trial Chamber failed to properly establish that he possessed the discriminatory intent required for persecution.⁶⁵⁵² He asserts that because the Trial Chamber convicted him for persecution as a crime under JCE I, "discriminatory intent is [a] prerequisite for his participation in the JCE and it is therefore legally impossible to draw his discriminatory intent from his participation in the JCE".⁶⁵⁵³ Praljak also argues that evidence that he assisted Muslims on "numerous occasions" militates against a finding that he had discriminatory intent.⁶⁵⁵⁴

1935. The Prosecution responds that the Trial Chamber reasonably concluded that Praljak possessed discriminatory intent on the basis of his significant contribution to the JCE while knowing that crimes were being committed against Muslims.⁶⁵⁵⁵ It further argues that evidence of "limited or selective" assistance does not preclude a finding of discriminatory intent.⁶⁵⁵⁶

1936. After a detailed analysis of the evidence, the Trial Chamber found that the only reasonable inference was that Praljak intended to expel the Muslim population from BiH.⁶⁵⁵⁷ The Trial Chamber also concluded that Praljak knew that crimes were being committed against Muslims with the sole aim of forcing them to leave the territory, and thus by participating in the JCE he intended to discriminate against the Muslim population in order to facilitate their eviction.⁶⁵⁵⁸ Earlier in its analysis, the Trial Chamber specifically considered evidence that Praljak assisted humanitarian convoys to access East Mostar between 24 July 1993 and 9 November 1993 and found that it was unable to find that Praljak participated in hindering the arrival of humanitarian aid to Mostar or that he was aware that the HVO authorities were hindering its arrival.⁶⁵⁵⁹ The Trial Chamber was free to consider, however, that this did not negate its finding that Praljak's participation in the JCE demonstrated his intent to discriminate against Muslims. The Appeals Chamber recalls that

⁶⁵⁵¹ See *Popović et al.* Appeal Judgement, para. 1653, referring to *Blagojević and Jokić* Appeal Judgement, para. 189 (noting that "participation does not have to be in and of itself criminal, as long as the accused performs acts that in some way contribute to the furtherance of the common purpose" of the JCE and recalling that "the fact that the accused's participation amounted to no more than his or her 'routine duties' will not exculpate the accused"). Cf. *Kordić and Čerkez* Appeal Judgement, para. 957 (the Appeals Chamber found that leading a military attack which was not part of the persecutory campaign does not equate to involvement in crimes or the existence of the requisite *mens rea*).

⁶⁵⁵² Praljak's Appeal Brief, paras 454-457.

⁶⁵⁵³ Praljak's Appeal Brief, para. 455.

⁶⁵⁵⁴ Praljak's Appeal Brief, paras 456-457; Praljak's Reply Brief, paras 52-53.

⁶⁵⁵⁵ Prosecution's Response Brief (Praljak), para. 98.

⁶⁵⁵⁶ Prosecution's Response Brief (Praljak), para. 99.

⁶⁵⁵⁷ Trial Judgement, Vol. 4, para. 627.

⁶⁵⁵⁸ Trial Judgement, Vol. 4, para. 628. See *Popović et al.* Appeal Judgement, para. 1654.



evidence of limited and selective assistance towards a few individuals does not preclude a trier of fact from reasonably finding that the requisite intent to discriminate existed.⁶⁵⁶⁰ Therefore, neither Praljak's assertion that he assisted with humanitarian convoys, nor his assertion that he "personally assisted Muslims and accommodated a number of them in his house"⁶⁵⁶¹ satisfies the Appeals Chamber that the Trial Chamber erred in finding that he had discriminatory intent, in light of all the other findings of the Trial Chamber.

1937. Moreover, the Appeals Chamber is not persuaded by Praljak's assertion that the Trial Chamber erred by inferring his discriminatory intent from his participation in the JCE.⁶⁵⁶² As found by the Trial Chamber, the CCP: (1) was the ethnic cleansing of the Muslim population which entailed the expulsion of the Muslim population from the HZ(R) H-B territory through the commission of a range of crimes under the Statute;⁶⁵⁶³ (2) was accomplished by the JCE members, including Praljak, through the "use of the political and military apparatus of the HZ(R) H-B";⁶⁵⁶⁴ and (3) was intended by Praljak who shared that intent with the other JCE members.⁶⁵⁶⁵ Additionally, the Trial Chamber made numerous findings on Praljak's knowledge of or participation in the planning of the crimes in, *inter alia*, Gornji Vakuf, Prozor, and Mostar which targeted the Muslim population.⁶⁵⁶⁶ The Trial Chamber also found that Praljak condoned the crimes against the Muslims in Mostar.⁶⁵⁶⁷ Thus, the Trial Chamber found that Praljak knew of the crimes being committed against the Bosnian Muslims, and continued to participate in the JCE until 9 November 1993. Bearing in mind, moreover, that the essence of the JCE was inherently discriminatory as it consisted of the expulsion of the Muslim population from the HZ(R) H-B territory through a range of crimes under the Statute, the Appeals Chamber finds that the Trial Chamber did not err in concluding that the only reasonable inference was that Praljak also possessed the specific intent to discriminate against the Muslim population. Praljak's sub-ground of appeal 41.3 is therefore dismissed.

⁶⁵⁵⁹ Trial Judgement, Vol. 4, paras 588-590.

⁶⁵⁶⁰ See *Ndahimana* Appeal Judgement, para. 195; *Muhimana* Appeal Judgement, para. 32; *Rutaganda* Appeal Judgement, para. 537. See also *Kvočka et al.* Appeal Judgement, paras 232-233.

⁶⁵⁶¹ Praljak's Appeal Brief, para. 456.

⁶⁵⁶² Praljak's Appeal Brief, para. 455.

⁶⁵⁶³ Trial Judgement, Vol. 4, paras 41, 43-44, 66, 428. See *supra*, paras 789-790.

⁶⁵⁶⁴ Trial Judgement, Vol. 4, para. 41. See *supra*, paras 789-790.

⁶⁵⁶⁵ Trial Judgement, Vol. 4, para. 627. See *supra*, paras 1921, 1924, 1928-1929.

⁶⁵⁶⁶ Trial Judgement, Vol. 4, paras 558, 562 (Praljak facilitated and directed operations in Gornji Vakuf and intended to have Muslims arrested, and removed from the area as well as for houses to be destroyed), 570, 573 (Praljak planned and directed operations in Prozor as of 24 July 1993 and must have known that the HVO were removing and detaining the Muslim population), 575 (Praljak was aware that work being done by detainees in Prozor was often on the front line), 581, 586 (Praljak participated in directing and planning operations in Mostar between July and November 1993 and intended crimes including the destruction of mosques and the removal of women and children). See Trial Judgement, Vol. 3, paras 1694-1741 (findings on the various crimes committed by the HVO which specifically targeted Muslims and thereby the underlying crimes of persecution under Count 1).

⁶⁵⁶⁷ Trial Judgement, Vol. 4, para. 620.

(iv) Alleged errors in finding that Praljak had the necessary intent for each JCE crime (Praljak's Sub-ground 41.4)

1938. Praljak argues, under his sub-ground of appeal 41.4, that the Trial Chamber failed to establish that he possessed the requisite intent for each JCE crime.⁶⁵⁶⁸ He contends that because the Trial Chamber concluded only that he intended to expel the Muslim population from BiH, his liability is limited to "crimes implying the [expulsion] of the population".⁶⁵⁶⁹ Moreover, Praljak argues that the Trial Chamber erred in finding that he intended to expel the Muslim population from BiH because it failed to assess relevant evidence to the contrary.⁶⁵⁷⁰ He asserts that the Trial Chamber ignored evidence that: (1) he was not obliged, nor able, to initiate criminal proceedings;⁶⁵⁷¹ (2) he requested that competent bodies initiate criminal proceedings when he was informed of an illegal act as demonstrated by, *inter alia*, Exhibit P05530;⁶⁵⁷² and (3) he continuously warned soldiers that crimes cannot be justified by military necessity and took measures to inform HVO members of international humanitarian law.⁶⁵⁷³

1939. The Prosecution responds that the Trial Chamber considered Praljak's conduct "in light of the totality of the evidence" and found that he did not make any serious efforts to stop his subordinates from committing crimes.⁶⁵⁷⁴ It submits that: (1) the Trial Chamber reasonably found that Praljak had authority to discipline the HVO and the Military Police;⁶⁵⁷⁵ (2) Exhibit P05530 is a report condemning him for not taking measures to combat widespread looting by HVO and Military Police units;⁶⁵⁷⁶ (3) the evidence cited by Praljak to show that he continuously warned soldiers about committing crimes relates primarily to conduct unrelated to the CCP;⁶⁵⁷⁷ and (4) the Trial Chamber considered evidence that Praljak took measures to inform HVO members about international humanitarian law but concluded that he made no real efforts to enforce those rules.⁶⁵⁷⁸

1940. Contrary to Praljak's submission, the Trial Chamber did not conclude only that he intended to expel the Muslim population from BiH. Additionally, the Trial Chamber found the CCP was the

⁶⁵⁶⁸ Praljak's Appeal Brief, para. 458. See also Appeal Hearing, AT. 391 (22 Mar 2017).

⁶⁵⁶⁹ Praljak's Appeal Brief, para. 458, referring to Trial Judgement, Vol. 4, para. 627. See also Appeal Hearing, AT. 391 (22 Mar 2017). Praljak asserts that he could not be convicted for crimes other than deportation and inhumane acts (forcible transfer) as crimes against humanity or unlawful deportation/transfer as grave breaches of the Geneva Conventions. Praljak's Appeal Brief, para. 458.

⁶⁵⁷⁰ Praljak's Appeal Brief, paras 459-460.

⁶⁵⁷¹ Praljak's Appeal Brief, para. 459, referring to Exs. P00449, P01760, 1D00201, P09552, 4D00861.

⁶⁵⁷² Praljak's Appeal Brief, para. 459, referring to Exs. P05530, 3D03316; Praljak's Reply Brief, para. 48.

⁶⁵⁷³ Praljak's Appeal Brief, para. 459, referring to, *inter alia*, Exs. 3D03316, 3D01193; Praljak's Reply Brief, para. 48.

⁶⁵⁷⁴ Prosecution's Response Brief (Praljak), para. 91. The Prosecution argues that Praljak denied that crimes were being committed, condoned and facilitated those crimes, and actively contributed to concealing them from the international community. Prosecution's Response Brief (Praljak), para. 91.

⁶⁵⁷⁵ Prosecution's Response Brief (Praljak), para. 91, referring to Trial Judgement, Vol. 4, paras 495-496.

⁶⁵⁷⁶ Prosecution's Response Brief (Praljak), para. 91.

⁶⁵⁷⁷ Prosecution's Response Brief (Praljak), para. 91.

⁶⁵⁷⁸ Prosecution's Response Brief (Praljak), para. 91.

domination by the HR H-B Croats through ethnic cleansing of the Muslim population.⁶⁵⁷⁹ The Trial Chamber also found that Praljak and the other Appellants, as JCE members, intended that the relevant crimes be committed in order to further the CCP.⁶⁵⁸⁰ In this regard, the Trial Chamber found that JCE members “implemented an entire system for deporting the Muslim population of the HR H-B” which included the removal and placement in detention of civilians; murders and the destruction of property during attacks; mistreatment and devastation caused during eviction operations; mistreatment and poor conditions of confinement and the widespread use of detainees on the front lines for labour or as human shields, as well as murders and mistreatment related thereto; and the removal of detainees and their families outside of the territory of the BiH once they were released.⁶⁵⁸¹ Therefore, the Appeals Chamber finds that, in concluding that “Praljak intended to expel the Muslim population” and that he “shared this intention with other members of the JCE”,⁶⁵⁸² the Trial Chamber was referring to the shared intent for the commission of the crimes that formed part of the JCE by relying on its findings on Praljak’s intent for the commission of the crimes encompassed in that JCE made throughout the section of the Trial Judgement analysing the evidence with regard to his individual responsibility under JCE I.⁶⁵⁸³

1941. Importantly, after setting out the correct applicable law on the various crimes and JCE liability,⁶⁵⁸⁴ the Trial Chamber made extensive findings on the required *actus reus* and *mens rea* of the physical perpetrators for all crimes which it found were the means through which the CCP was achieved.⁶⁵⁸⁵ Thus, the Trial Chamber, applying the correct legal principles, found that the relevant elements of crimes were established. The Trial Chamber also found that JCE I crimes were attributable to Praljak, and that he and his co-accused used the members and structures of the HVO and the Military Police to commit crimes forming part of the CCP.⁶⁵⁸⁶ The Trial Chamber also explicitly concluded that “[e]veryone of the Accused, as members of the JCE, [...] intended that these crimes be committed in order to further the common plan”⁶⁵⁸⁷ before it listed these crimes.⁶⁵⁸⁸ Praljak does not address these findings under this ground of appeal. Thus, the Trial Chamber clearly identified the crimes which formed part of the CCP and found that Praljak shared the requisite

⁶⁵⁷⁹ Trial Judgement, Vol. 4, para. 41.

⁶⁵⁸⁰ Trial Judgement, Vol. 4, paras 67, 625. See Trial Judgement, Vol. 4, paras 66, 68.

⁶⁵⁸¹ Trial Judgement, Vol. 4, para. 66. The Appeals Chamber recalls its finding that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, para. 882. While this means that Praljak did not have the intent for murder and wilful killing from January 1993 until June 1993, this does not affect the Trial Chamber’s remaining findings concerning his contributions and intent for various crimes – including murder and wilful killing from June 1993 – particularly as only a few murders forming part of the CCP were found to have occurred prior to June 1993. See *supra*, para. 876.

⁶⁵⁸² Trial Judgement, Vol. 4, para. 627.

⁶⁵⁸³ Trial Judgement, Vol. 4, paras 625-626, 628. See *supra*, para. 1933.

⁶⁵⁸⁴ Trial Judgement, Vol. 1, paras 31-221.

⁶⁵⁸⁵ Trial Judgement, Vol. 3, paras 509-1741, Vol. 4, para. 68.

⁶⁵⁸⁶ Trial Judgement, Vol. 4, para. 1232. See Trial Judgement, Vol. 4, para. 628.

⁶⁵⁸⁷ Trial Judgement, Vol. 4, para. 67.

intent for these crimes.⁶⁵⁸⁹ Thus, Praljak's argument that his intent for each JCE crime was not established is dismissed as he fails to provide support for this argument.⁶⁵⁹⁰

1942. Moreover, Praljak does not show that the Trial Chamber failed to assess relevant evidence allegedly contradicting its finding that he intended to expel the Muslim population from BiH. In coming to this conclusion, the Trial Chamber considered that: (1) Praljak continued to participate in the planning of HVO military operations while knowing that HVO members were committing crimes; and (2) despite his authority over the HVO and the Military Police, Praljak did not make any serious efforts to stop them from committing crimes.⁶⁵⁹¹ With regard to the latter finding, the Trial Chamber considered evidence that Praljak condoned crimes by congratulating HVO troops deployed in Mostar while knowing of their crimes.⁶⁵⁹² Notably, the Trial Chamber found that Praljak had *de jure* and *de facto* authority over, *inter alia*, control and discipline of the HVO, including the Military Police.⁶⁵⁹³ In this regard, the Appeals Chamber notes the Trial Chamber's discussion of evidence showing that Praljak managed discipline with the HVO, including evidence that: (1) in August 1993 he ordered the commander of the Klis Battalion to file a report to him concerning a Main Staff order punishing HVO soldiers with disciplinary measures as that order had not been implemented;⁶⁵⁹⁴ and (2) on 22 September 1993, he took measures to organise the system of military justice in the HVO to resolve disciplinary problems.⁶⁵⁹⁵ In light of the finding that he controlled the discipline of the HVO including the Military Police, and considering that initiating criminal proceedings is only one measure which can be taken by a superior, Praljak fails to show that his alleged inability to initiate criminal proceedings calls into question the Trial Chamber's finding that he did not make any serious efforts to stop crimes from being committed.

1943. Additionally, the evidence cited by Praljak does not support his submission that he requested competent bodies to initiate criminal proceedings but merely shows that he ordered one convoy stopped on suspicion of looting, without showing that any disciplinary measures were taken, and that he issued a general warning against committing criminal offences.⁶⁵⁹⁶ Further, the Trial Chamber explicitly considered evidence that Praljak organised a conference on international humanitarian law and distributed pamphlets on the subject to HVO members.⁶⁵⁹⁷ Thus, contrary to

⁶⁵⁸⁸ Trial Judgement, Vol. 4, para. 68.

⁶⁵⁸⁹ See *Dordević* Appeal Judgement, para. 468. See also *supra*, paras 1770-1772.

⁶⁵⁹⁰ The Appeals Chamber will address Praljak's arguments on his intent regarding the crime of unlawful infliction of terror below. See *infra*, paras 2015-2024.

⁶⁵⁹¹ Trial Judgement, Vol. 4, paras 625-626. See Trial Judgement, Vol. 4, para. 620.

⁶⁵⁹² Trial Judgement, Vol. 4, para. 620, referring to Ex. P05365.

⁶⁵⁹³ Trial Judgement, Vol. 4, para. 495, referring to Exs. P03706, P03829, P04207, P04640, 3D02756, P06224, 3D02793, P06269, 3D02772. See Trial Judgement, Vol. 4, paras 482, 496, 498-501, 506, 624.

⁶⁵⁹⁴ Trial Judgement, Vol. 4, para. 496, referring to Ex. P04640.

⁶⁵⁹⁵ Trial Judgement, Vol. 4, para. 496.

⁶⁵⁹⁶ Ex. P05530; Ex. 3D03316.

⁶⁵⁹⁷ Trial Judgement, Vol. 4, para. 498. See also Trial Judgement, Vol. 4, paras 499-502.

Praljak's assertion, the Trial Chamber did not ignore this evidence. Praljak's arguments are rejected and his sub-ground of appeal 41.4 dismissed.

(c) Conclusion

1944. In sum, Praljak has failed to demonstrate any error by the Trial Chamber regarding his shared intent to further the CCP or his intent to commit the crimes encompassed within the CCP.⁶⁵⁹⁸ Praljak's grounds of appeal 39 and 41 are dismissed.

6. Alleged errors concerning Praljak's involvement in, knowledge of, and intent with regard to, crimes committed in the municipalities and detention centres

(a) Gornji Vakuf Municipality (Praljak's Ground 42)

1945. The Trial Chamber found that Praljak actively participated in drafting the 15 January 1993 Ultimatum, which demanded that ABiH forces present in Provinces 3, 8, and 10 of the Vance-Owen Plan subordinate themselves to the HVO within five days.⁶⁵⁹⁹ It noted that reports dated 16 January 1993 prove that Praljak was involved in implementing the ultimatum and, consequently, in planning the military operations in the Gornji Vakuf area in January 1993.⁶⁶⁰⁰ Notably, the Trial Chamber found that Praljak facilitated and directed the military operations in Gornji Vakuf Municipality around 18 January 1993 by issuing two orders that artillery be sent to Gornji Vakuf.⁶⁶⁰¹ It also held that Praljak was kept abreast of the situation in the field in January 1993.⁶⁶⁰² The Trial Chamber concluded that insofar as Praljak planned, directed, facilitated, and was kept informed of the military operations in Gornji Vakuf around 18 January 1993, and as the operations and the crimes directly linked to them unfolded according to a preconceived plan, the only reasonable inference it could draw was that he intended the murders and destruction of property, as well as the arrests of Muslims regardless of their status and removal of Muslims from the area.⁶⁶⁰³

1946. In arriving at its conclusions, the Trial Chamber recalled the manner in which the HVO launched an attack on Gornji Vakuf town and the villages of Duša, Hrasnica, Uzričje, and Ždrimci

⁶⁵⁹⁸ The Appeals Chamber will address Praljak's challenges concerning his intent to commit the crime of unlawful infliction of terror in section below discussing his involvement and intent regarding crimes committed in Mostar Municipality. See *infra*, paras 2015-2026.

⁶⁵⁹⁹ Trial Judgement, Vol. 4, para. 553.

⁶⁶⁰⁰ Trial Judgement, Vol. 4, para. 556, referring to Exs. P01162, 1D00816, Trial Judgement, Vol. 4, paras 534-537.

⁶⁶⁰¹ Trial Judgement, Vol. 4, para. 558.

⁶⁶⁰² Trial Judgement, Vol. 4, para. 560, referring to Ex. P01293.

⁶⁶⁰³ Trial Judgement, Vol. 4, para. 562. The Appeals Chamber recalls that it has reversed the Trial Chamber's finding that the killing of the seven civilians in Duša amounted to murder and wilful killing, and thus has overturned the findings on these crimes in Gornji Vakuf Municipality and Praljak's conviction thereof. On the same basis, the Appeals Chamber considers elsewhere that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. Thus, the following section will only focus on the remaining crimes committed in Gornji Vakuf. See *supra*, paras 441-443, 882.

and, noting the “total similarity in the way the operations unfolded and the crimes [were] committed in each of these villages”, found that they “corresponded to a preconceived plan”.⁶⁶⁰⁴ Notably, the Trial Chamber found that the HVO operations “unfolded in exactly the same way”, particularly in the four villages.⁶⁶⁰⁵ In this regard, it observed that the HVO first attacked the villages by shelling and destroying several Muslim houses, which killed several people, and then entered the villages, arrested all the population there, separated the men from the women, the children, and the elderly, detained all the Muslims in the villages at different locations in the municipality, and destroyed their houses.⁶⁶⁰⁶

(i) Praljak’s involvement in planning the events in Gornji Vakuf

1947. Praljak submits that the Trial Chamber erred in finding that he was involved in planning the HVO military operations in Gornji Vakuf.⁶⁶⁰⁷ He contends that as the HVO military actions in the area were not planned, but provoked by the ABiH, he could not have participated in the planning of these actions.⁶⁶⁰⁸ Praljak also asserts that there is no evidence suggesting that he participated in any plan regarding events in Gornji Vakuf.⁶⁶⁰⁹

1948. The Prosecution responds that the Trial Chamber’s findings were reasonable and that Praljak merely repeats his trial arguments or offers an alternative interpretation of the evidence.⁶⁶¹⁰

1949. As noted earlier, the Trial Chamber found that the military operations in Gornji Vakuf town, Duša, Hrasnica, Uzričje, and Ždrimci “unfolded in exactly the same way”, and that the similarity in these operations and in the crimes committed showed that the attacks corresponded to a preconceived plan.⁶⁶¹¹ In disputing the Trial Chamber’s findings, Praljak contends that the Gornji Vakuf operations were not planned. However, Praljak’s only support for his argument is a cross-reference to other arguments presented, which the Appeals Chamber dismisses elsewhere.⁶⁶¹²

⁶⁶⁰⁴ Trial Judgement, Vol. 4, para. 561.

⁶⁶⁰⁵ Trial Judgement, Vol. 4, para. 561.

⁶⁶⁰⁶ Trial Judgement, Vol. 4, para. 561. See also Trial Judgement, Vol. 2, paras 343-388.

⁶⁶⁰⁷ Praljak’s Appeal Brief, para. 465, referring to Trial Judgement, Vol. 4, para. 556. See Praljak’s Reply Brief, para. 59. Praljak also asserts that the events in Gornji Vakuf were not a part of the CCP. Praljak’s Appeal Brief, para. 461, referring to Praljak’s Appeal Brief, paras 234-245 (Praljak’s Ground 15).

⁶⁶⁰⁸ Praljak’s Appeal Brief, para. 465, referring to Praljak’s Appeal Brief, paras 234-245 (Praljak’s Ground 15). Praljak asserts that the fact that “both sides had extremists who did not obey [...] their respective commanders” militate in favour of a theory that the events were not planned. Praljak’s Appeal Brief, para. 465, referring to Ex. P01163, p. 3.

⁶⁶⁰⁹ Praljak’s Appeal Brief, para. 468.

⁶⁶¹⁰ Prosecution’s Response Brief (Praljak), paras 113, 115. See also Appeal Hearing, AT. 437-438 (22 Mar 2017). The Prosecution also argues that Praljak, *inter alia*: (1) actively participated in drafting the 15 January 1993 Ultimatum; and (2) travelled to Prozor to ensure the ultimatum was implemented on the ground. Prosecution’s Response Brief (Praljak), para. 113. See Prosecution’s Response Brief (Praljak), para. 116.

⁶⁶¹¹ See *supra*, para. 1946.

⁶⁶¹² See *supra*, paras 862-867 (dismissing Praljak’s arguments that an alternative reasonable inference was that HVO attacks occurred in response to military operations initiated by the ABiH and that the Gornji Vakuf events were not part of the CCP).

Notably, Praljak does not challenge the Trial Chamber's consideration of how the operations occurred in finding the existence of a preconceived plan.⁶⁶¹³ Thus, Praljak's argument that the Gornji Vakuf operations were not planned is unsubstantiated and he fails to show an error in this regard. Praljak also argues that there is no evidence of his participation in any plan. In this respect, the Appeals Chamber notes that the Trial Chamber considered evidence showing that Praljak: (1) was actively involved in drafting the 15 January 1993 Ultimatum;⁶⁶¹⁴ (2) was involved in implementing the ultimatum in Gornji Vakuf;⁶⁶¹⁵ (3) issued orders for artillery to be sent to Gornji Vakuf;⁶⁶¹⁶ and (4) was kept informed of the situation in the field.⁶⁶¹⁷ Praljak's contention is therefore without merit. His arguments on his involvement in the Gornji Vakuf operations are dismissed.

(ii) Praljak's knowledge of events in Gornji Vakuf and his intent

a. Arguments of the Parties

1950. Praljak submits that the Trial Chamber erroneously concluded that he had criminal intent based on the 15 January 1993 Ultimatum.⁶⁶¹⁸ He also submits that the Trial Chamber found that only the HVO leaders gave a criminal interpretation to the Vance-Owen Plan and that he was not a member of the HVO at that time.⁶⁶¹⁹ Praljak contends that the proper assessment of the ultimatum shows that he acted with the "intention to implement the peace agreement and calm down any tensions and conflicts".⁶⁶²⁰ Specifically, he submits that the 15 January 1993 Ultimatum was: (1) drafted in Zagreb, in the presence of both parties and international representatives, including Izetbegović, Vance, and Owen; (2) in line with the Vance-Owen Plan; and (3) aimed at preventing the conflict and the resulting crimes.⁶⁶²¹ Praljak argues that the Trial Chamber ignored the text and spirit of the ultimatum which treated HVO units and ABiH units equally, as illustrated by the call for the HVO to subordinate its units to the ABiH in Provinces 1, 5, and 9.⁶⁶²² He contends that he

⁶⁶¹³ Trial Judgement, Vol. 2, paras 344, 357-358, 369, 374, 381, Vol. 4, para. 561.

⁶⁶¹⁴ Trial Judgement, Vol. 4, paras 475, 553, referring to Slobodan Praljak, T(F). 40569, 40571 (21 May 2009).

⁶⁶¹⁵ Trial Judgement, Vol. 4, para. 556, referring to Exs. P01162, 1D00816.

⁶⁶¹⁶ Trial Judgement, Vol. 4, para. 558, referring to Exs. P01172, P01202, P01277.

⁶⁶¹⁷ Trial Judgement, Vol. 4, para. 560, referring to Ex. P01293.

⁶⁶¹⁸ Praljak's Appeal Brief, para. 464. See also Praljak's Reply Brief, para. 60.

⁶⁶¹⁹ Praljak's Reply Brief, para. 58, referring to Trial Judgement, Vol. 4, para. 44.

⁶⁶²⁰ Praljak's Appeal Brief, para. 464. See Praljak's Appeal Brief, para. 466. See also Appeal Hearing, AT. 391-392 (22 Mar 2017).

⁶⁶²¹ Praljak's Appeal Brief, para. 462, referring to, *inter alia*, Exs. P01158, p. 51, P01391, p. 33. See Praljak's Appeal Brief, para. 463. See also Appeal Hearing, AT. 414 (22 Mar 2017).

⁶⁶²² Praljak's Appeal Brief, para. 463, referring to, *inter alia*, Exs. P01150, P01155. See also Appeal Hearing, AT. 392 (22 Mar 2017). Praljak asserts that the implementation of the ultimatum ordered that ABiH officers be included in the HVO command. Praljak's Appeal Brief, para. 463, referring to Ex. P01139. See Praljak's Reply Brief, para. 58.

was sent to Gornji Vakuf Municipality pursuant to a request by Tuđman and Izetbegović in order to calm the tensions between the HVO and the ABiH.⁶⁶²³

1951. Praljak also contends that the Trial Chamber erred in finding that he was kept informed about the situation in Gornji Vakuf.⁶⁶²⁴ He contends that the Trial Chamber based this finding on Exhibit P01293, Petković's order instructing Željko Šiljeg to report urgently to "Brada" on the situation in Gornji Vakuf, which it interpreted erroneously.⁶⁶²⁵ Praljak submits that this report does not demonstrate that Šiljeg had to inform him about the situation in Gornji Vakuf and that it is not clear whether Šiljeg should have sent this report to him or to Petković.⁶⁶²⁶ He points out that the Trial Chamber recognised that it did not have specific information about the instructions he might have given to the local HVO units.⁶⁶²⁷ Praljak further contends that Exhibit P01293 concerned a cease-fire which confirms his own testimony that his intention was to calm the situation.⁶⁶²⁸

1952. The Prosecution responds that Praljak's claim that the 15 January 1993 Ultimatum was prepared in order to prevent the conflict should be rejected, and that he merely disagrees with the Trial Chamber's interpretation of the evidence.⁶⁶²⁹ It argues that the Trial Chamber properly assessed the ultimatum, including the manner in which it was implemented in Gornji Vakuf.⁶⁶³⁰ The Prosecution also contends that any subordination of HVO units to the ABiH in provinces not falling within HZ(R) H-B territory does not undermine the Trial Chamber's reasonable finding that the ultimatum was to be implemented with force to consolidate the HVO's control over Gornji Vakuf.⁶⁶³¹ The Prosecution further argues that, on 29 January 1993, while Muslim women, children, and elderly were being expelled from their homes in Gornji Vakuf, Praljak participated in a meeting with Ćorić and commanders of Military Police battalions deployed in Gornji Vakuf during which their activities were discussed and in which he explained how "Zagreb's position" should be implemented in the field.⁶⁶³²

⁶⁶²³ Praljak's Appeal Brief, para. 465, referring to, *inter alia*, Exs. P01739/3D00561, P00718/P00720. Praljak replies that no mention was made of the displacement of the Muslim population during the 29 January 1993 meeting and that there is no evidence that he was aware of this displacement. Praljak's Reply Brief, para. 61. See *infra*, para. 1952.

⁶⁶²⁴ Praljak's Appeal Brief, para. 467, referring to Trial Judgement, Vol. 4, para. 560.

⁶⁶²⁵ Praljak's Appeal Brief, para. 467, referring to Ex. P01293.

⁶⁶²⁶ Praljak's Appeal Brief, para. 467, referring to Ex. P01293.

⁶⁶²⁷ Praljak's Appeal Brief, para. 466, referring to Trial Judgement, Vol. 4, para. 559. See also Appeal Hearing, AT. 392 (22 Mar 2017).

⁶⁶²⁸ Praljak's Appeal Brief, para. 467, referring to Slobodan Praljak, T. 40568-40582 (21 May 2009).

⁶⁶²⁹ Prosecution's Response Brief (Praljak), para. 116. The Prosecution contends that the evidence Praljak cites to show that the ultimatum was drafted in accordance with an "international agreement" reveals an ongoing disagreement with the Vance-Owen Plan. Prosecution's Response Brief (Praljak), para. 116, referring to, *inter alia*, Herbert Okun, T. 16765-16770 (3 Apr 2007).

⁶⁶³⁰ Prosecution's Response Brief (Praljak), para. 116. The Prosecution also points to the same pattern of crimes in Jablanica and Prozor following the 4 April 1993 Ultimatum. Prosecution's Response Brief (Praljak), para. 116.

⁶⁶³¹ Prosecution's Response Brief (Praljak), para. 116.

⁶⁶³² Prosecution's Response Brief (Praljak), paras 113, 116, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 477, 527. See also Prosecution's Response Brief (Praljak), para. 114. The Prosecution contends that the Trial Chamber

1953. The Prosecution also responds that Praljak merely repeats his trial testimony regarding Exhibit P01293 and that he only offers a different interpretation of the evidence.⁶⁶³³ It also argues that by claiming that the cease-fire was meant to end the hostilities, Praljak ignores the Trial Chamber's finding that this was only ordered after the HVO had secured their control over the area.⁶⁶³⁴ The Prosecution submits that the Trial Chamber properly established Praljak's shared intent to carry out the crimes under JCE I liability to further the CCP.⁶⁶³⁵

b. Analysis

1954. The Appeals Chamber notes that, based on the Trial Chamber's findings, the ultimatum was in keeping with the Vance-Owen Plan.⁶⁶³⁶ However, the Appeals Chamber is not persuaded that any alleged error concerning the text and spirit of the 15 January 1993 Ultimatum could impact on the Trial Chamber's overall findings as Praljak misunderstands the Trial Chamber's reliance on the ultimatum. In this regard, the Trial Chamber found Praljak "was involved in *implementing* [the 15 January 1993 Ultimatum] in Gornji Vakuf and, consequently, in planning the HVO military operations in this area in January 1993".⁶⁶³⁷ Therefore, regardless of the alleged intention behind the ultimatum, the Appeals Chamber finds that the Trial Chamber also relied on the subsequent actions taken, in particular the orders for the use of force in implementing it, as well as the attacks launched on Gornji Vakuf Municipality to conclude that the JCE members involved intended to commit the relevant crimes in that municipality pursuant to the JCE.⁶⁶³⁸ Specifically, the Trial Chamber's finding that Praljak intended the crimes was based on: (1) his role in implementing the 15 January 1993 Ultimatum and thus his involvement in planning the Gornji Vakuf military operations;⁶⁶³⁹ (2) his role in facilitating and directing the Gornji Vakuf military operations;⁶⁶⁴⁰ and

reasonably found that Praljak's participation in the 29 January 1993 meeting is an example of his role in transmitting policies from Croatia with the aim of furthering the CCP. Prosecution's Response Brief (Praljak), para. 116, referring to Trial Judgement, Vol. 4, para. 540.

⁶⁶³³ Prosecution's Response Brief (Praljak), para. 116, referring to, *inter alia*, Slobodan Praljak, T. 44117-44119 (31 Aug 2009), Ex. P01293. The Prosecution contends that the Trial Chamber's interpretation of Exhibit P01293 is in keeping with the overall evidence regarding Praljak's awareness of the military situation on the ground due to his *de facto* authority over the HVO and his presence in the field. It also asserts that the Trial Chamber's acknowledgement that it lacked information on Praljak's instructions to Šiljeg and Miro Andrić does not undermine its conclusions. Prosecution's Response Brief (Praljak), para. 116, referring to Prosecution's Response Brief (Praljak), para. 51. See Appeal Hearing, AT. 439 (22 Mar 2017).

⁶⁶³⁴ Prosecution's Response Brief (Praljak), para. 116, referring to Prosecution's Response Brief (Praljak), para. 110, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 390-395, Vol. 4, para. 709.

⁶⁶³⁵ Prosecution's Response Brief (Praljak), para. 117.

⁶⁶³⁶ Trial Judgement, Vol. 1, paras 448-449, 452.

⁶⁶³⁷ Trial Judgement, Vol. 4, para. 556 (emphasis added). See Trial Judgement, Vol. 2, paras 338-341, Vol. 4, paras 554-555.

⁶⁶³⁸ Trial Judgement, Vol. 1, para. 453, Vol. 2, paras 338-342, Vol. 4, paras 44-45, 125-126, 330, 334, 553, 556, 702. The Appeals Chamber further notes that Praljak's argument, that only HVO leaders gave a criminal interpretation to the ultimatum and that he was not an HVO leader, ignores the Trial Chamber's finding that he did have *de facto* command authority over the HVO at this time. Trial Judgement, Vol. 4, para. 482.

⁶⁶³⁹ Trial Judgement, Vol. 4, para. 556. See Trial Judgement, Vol. 4, para. 553.

⁶⁶⁴⁰ Trial Judgement, Vol. 4, para. 558.

(3) him being kept informed of the military operations which together with the crimes directly linked to them unfolded according to a preconceived plan.⁶⁶⁴¹

1955. Moreover, the Appeals Chamber is not convinced by Praljak's overarching submission that his intention was to prevent conflict. The Trial Chamber was cognisant of the attempts to negotiate peace and meetings between the HVO and the ABiH to calm the situation on the ground, as well as Praljak's role as an envoy of Tuđman and Izetbegović,⁶⁶⁴² but nonetheless found that Praljak intended the crimes. Considering Praljak's actions, the Appeals Chamber finds that he only offers his own interpretation of the evidence without showing an error in the Trial Chamber's assessment of the evidence. Thus, Praljak, by only arguing that he acted with the intention to calm tensions in the area, fails to show that the Trial Chamber erred in finding that he intended the relevant crimes committed in Gornji Vakuf.⁶⁶⁴³

1956. Regarding Praljak's argument that the Trial Chamber erred in finding that he was kept informed about the Gornji Vakuf military operations, the Appeals Chamber notes that the Trial Chamber relied on Exhibit P01293 in reaching this conclusion.⁶⁶⁴⁴ As noted earlier, Exhibit P01293 is an order from Petković to Šiljeg that he "is to report urgently to Brada in Mostar and send a report on the situation in Gornji Vakuf directly".⁶⁶⁴⁵ Further, the Trial Chamber noted that "Brada" was the nickname given to Praljak, which Praljak does not challenge.⁶⁶⁴⁶ Thus, Praljak, by arguing that it was unclear who the report should have been sent to, merely offers an unpersuasive interpretation of this exhibit without showing that the Trial Chamber erred in relying on it as evidence that he was kept informed. Notably, the Trial Chamber also considered evidence that "Brada" was mentioned as being the person who issued orders in connection with the Gornji Vakuf military operations but concluded that it did not "have more specific information as to the nature of these orders".⁶⁶⁴⁷ In the Appeals Chamber's view, this consideration reasonably supports a finding that Praljak was aware of the events occurring in Gornji Vakuf. The Appeals Chamber thus finds that the reference to a cease-fire in Exhibit P01293 and the Trial Chamber's finding that it did not have specific information about the orders Praljak issued do not undermine the finding that he was

⁶⁶⁴¹ Trial Judgement, Vol. 4, paras 559-560, 562. See *infra*, para. 1956. See also Ex. P01293.

⁶⁶⁴² Trial Judgement, Vol. 2, para. 337, Vol. 4, paras 475, 534, 556.

⁶⁶⁴³ For the same reasons, the Appeals Chamber dismisses Praljak's connected argument under his sub-ground of appeal 40.7, namely that his participation in the military operations in Gornji Vakuf and Prozor is insufficient to conclude that his conduct was aimed at furthering the CCP because his activities in Gornji Vakuf were aimed at calming down the situation. See *supra*, paras 1877, 1882. The Appeals Chamber recalls that it has reversed the Trial Chamber's finding that the killing of the seven civilians in Duša amounted to murder and wilful killing, and thus has overturned the findings on these crimes in Gornji Vakuf Municipality and Praljak's conviction thereof. On the same basis, the Appeals Chamber considers elsewhere that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, paras 441-443, 882.

⁶⁶⁴⁴ Trial Judgement, Vol. 4, para. 560.

⁶⁶⁴⁵ Ex. P01293, para. 3. See *supra*, para. 1951.

⁶⁶⁴⁶ Trial Judgement, Vol. 4, fn. 1113.

kept informed about the situation in Gornji Vakuf. Bearing in mind his involvement in the military operations,⁶⁶⁴⁸ the Appeals Chamber finds that Praljak fails to demonstrate that no reasonable trier of fact could have concluded that he was kept informed about the military operations in Gornji Vakuf.

c. Conclusion

1957. In sum, the Appeals Chamber finds that Praljak has failed to show that the Trial Chamber erred in its findings on his participation in the Gornji Vakuf military operations and that he intended the relevant crimes committed during these operations.⁶⁶⁴⁹ Praljak's ground of appeal 42 is dismissed.

(b) Prozor Municipality (Praljak's Ground 43)

1958. The Trial Chamber found that Praljak planned and directed the Prozor operations as of 24 July 1993, and that he was familiar with the situation in the field even before he became commander of the Main Staff and subsequently remained informed.⁶⁶⁵⁰ The Trial Chamber found that insofar as the arrests and removals in Prozor Municipality were carried out in an organised manner, by different units and in different locations, they did not constitute random events but followed a preconceived plan drawn up by the HVO leadership.⁶⁶⁵¹ The Trial Chamber concluded that Praljak must have known that HVO members were removing and detaining the Muslim population from Prozor in July 1993 and August 1993.⁶⁶⁵² It found that as Praljak continued to exercise his functions, he accepted the detentions and removals.⁶⁶⁵³

1959. The Trial Chamber also found that between June 1993 and September 1993, the HVO frequently used detainees for work on the front line.⁶⁶⁵⁴ Based on an order that Praljak issued to the Prozor forward command post on 17 August 1993 ("Praljak's Order of 17 August 1993") for the withdrawal of all detainees used for labour,⁶⁶⁵⁵ the Trial Chamber held that he "knew that Muslim detainees were being used for labour in the zone of responsibility of the Prozor forward command

⁶⁶⁴⁷ Trial Judgement, Vol. 4, para. 559.

⁶⁶⁴⁸ See *supra*, para. 1949.

⁶⁶⁴⁹ See *supra*, fns 6603, 6643.

⁶⁶⁵⁰ Trial Judgement, Vol. 4, para. 573.

⁶⁶⁵¹ Trial Judgement, Vol. 4, para. 572. Regarding the events in Prozor Municipality, the Trial Chamber recalled its various findings, including: (1) the arrests of Muslim men in June 1993, July 1993, and August 1993 by the Military Police, assisted by the Kinder Vod and SIS soldiers; and (2) arrests and removal of Muslim women, children, and elderly in late July 1993 and early August 1993 by the HVO and the Military Police. Trial Judgement, Vol. 4, para. 571.

⁶⁶⁵² Trial Judgement, Vol. 4, para. 573.

⁶⁶⁵³ Trial Judgement, Vol. 4, para. 573.

⁶⁶⁵⁴ Trial Judgement, Vol. 4, para. 575. See also Trial Judgement, Vol. 2, paras 165-170, 173-177, 194-197, 207-210, 216-220.

⁶⁶⁵⁵ Trial Judgement, Vol. 4, para. 574, referring to Ex. P04260.

post”.⁶⁶⁵⁶ Further, the Trial Chamber held that insofar as Praljak had “command authority over the HVO armed forces throughout the period when this work was being done, and as he was informed of the military situation on the field”⁶⁶⁵⁷ the only inference it could reasonably draw was that Praljak “was aware that the work being done was often on the front line”.⁶⁶⁵⁸ It then found that he did not take any measures to prevent detainees from working on the front line prior to 17 August 1993, and thus accepted it.⁶⁶⁵⁹

(i) Whether Praljak knew that detainees were being used for unlawful labour (Praljak’s Sub-ground 43.1)

1960. Praljak submits that, contrary to the Trial Chamber’s finding, the cited evidence does not show that he had knowledge of detainees being used for unlawful labour prior to 17 August 1993.⁶⁶⁶⁰ He asserts that another reasonable conclusion that can be inferred from Praljak’s Order of 17 August 1993 is that he issued that order “as he got information that detainees might have been used for unlawful labour”.⁶⁶⁶¹ Praljak contends that, even though he was informed about the military situation in the field, this was not directly linked to the use of detainees for unlawful labour.⁶⁶⁶² Praljak further argues that the evidence relied on by the Trial Chamber does not indicate that detainees were being used for prohibited labour as “labour of prisoners is not forbidden *per se*”.⁶⁶⁶³ He submits that he “did not have any reason to suspect that war prisoners were used for unlawful labour”, since the HVO issued orders requesting that prisoners be treated in accordance with the Geneva Conventions and strictly forbidding the unlawful labour of detainees.⁶⁶⁶⁴

1961. The Prosecution responds that the Trial Chamber’s findings are reasonable, including Praljak’s acceptance of the use of detainees on the front line, and that Praljak ignores other key findings.⁶⁶⁶⁵ It contends that the Trial Chamber properly determined that the work performed by detainees was unlawful,⁶⁶⁶⁶ and linked to the military operations.⁶⁶⁶⁷ The Prosecution also submits

⁶⁶⁵⁶ Trial Judgement, Vol. 4, para. 574.

⁶⁶⁵⁷ Trial Judgement, Vol. 4, para. 575.

⁶⁶⁵⁸ Trial Judgement, Vol. 4, para. 575.

⁶⁶⁵⁹ Trial Judgement, Vol. 4, para. 575.

⁶⁶⁶⁰ Praljak’s Appeal Brief, paras 471-472. Praljak asserts that there is no evidence that proves when exactly he received information that detainees were being used for labour. Praljak’s Appeal Brief, para. 471.

⁶⁶⁶¹ Praljak’s Appeal Brief, para. 474. See Praljak’s Appeal Brief, para. 473.

⁶⁶⁶² Praljak’s Appeal Brief, para. 475. Praljak also argues that the issuance of the order shows his adherence to Geneva Convention III. Praljak’s Appeal Brief, para. 474.

⁶⁶⁶³ Praljak’s Appeal Brief, para. 472, referring to Geneva Convention III, Arts. 49-50. See Praljak’s Appeal Brief, para. 475. See also Appeal Hearing, AT. 392-393 (22 Mar 2017).

⁶⁶⁶⁴ Praljak’s Appeal Brief, para. 475.

⁶⁶⁶⁵ Prosecution’s Response Brief (Praljak), para. 154, referring to Trial Judgement, Vol. 4, paras 65-68, 575.

⁶⁶⁶⁶ Prosecution’s Response Brief (Praljak), para. 155, referring to Trial Judgement, Vol. 1, paras 151-164, Vol. 3, paras 1500, 1502-1506.

⁶⁶⁶⁷ Prosecution’s Response Brief (Praljak), para. 155, referring to Trial Judgement, Vol. 3, paras 1503, 1505-1506. The Prosecution submits that the use of detainees for unlawful labour continued after Praljak’s Order of 17 August 1993 as

that the Trial Chamber's finding on Praljak's awareness of the use of detainees on the front line was also based on his knowledge of the situation in the field before and after 24 July 1993,⁶⁶⁶⁸ his role in the operational command,⁶⁶⁶⁹ and his involvement in planning and directing the operations.⁶⁶⁷⁰ Thus, according to the Prosecution, neither the absence of a specific document explicitly informing Praljak of the use of detainees for unlawful labour prior to 17 August 1993 nor the absence of a direct link between the labour and military operations render the Trial Chamber's finding regarding Praljak's awareness unreasonable.⁶⁶⁷¹ The Prosecution asserts that the Trial Chamber's findings are not undermined by Praljak's remaining arguments.⁶⁶⁷²

1962. Praljak replies that a finding that he accepted the crimes in Prozor is insufficient for proving intent under JCE liability and that his "knowledge and intention to use detainees for unlawful labour" should have been established prior to any conclusion on the "JCE policy".⁶⁶⁷³

1963. Praljak essentially argues that the evidence relied on by the Trial Chamber does not show that he knew that the detainees were being used for labour prior to 17 August 1993 and that this labour was unlawful. The Appeals Chamber first notes that the Trial Chamber's finding on Praljak's knowledge of the detainees being used for labour was based on Praljak's Order of 17 August 1993 and a report from Ante Pavlović on the next day.⁶⁶⁷⁴ The Appeals Chamber is satisfied that these exhibits clearly support the Trial Chamber's finding that Praljak "knew that Muslim detainees were being used for labour in the zone of responsibility of the Prozor forward command post".⁶⁶⁷⁵ The Appeals Chamber notes that in discussing these two exhibits, the Trial Chamber did not explicitly conclude that Praljak knew of detained Muslims being used for labour prior to 17 August 1993.⁶⁶⁷⁶

1964. Further, contrary to Praljak's submission, the Trial Chamber did not rely only on these two exhibits to find that "he was aware that the work being done by the detainees was often on the front

shown by Željko Šiljeg's order dated 8 September 1993. Prosecution's Response Brief (Praljak), para. 155, referring to Ex. P04877.

⁶⁶⁶⁸ Prosecution's Response Brief (Praljak), para. 156, referring to Trial Judgement, Vol. 4, paras 566, 573.

⁶⁶⁶⁹ Prosecution's Response Brief (Praljak), para. 156, referring to Trial Judgement, Vol. 4, para. 472.

⁶⁶⁷⁰ Prosecution's Response Brief (Praljak), para. 156, referring to Trial Judgement, Vol. 4, paras 570, 572-573. The Prosecution also submits that "Praljak's conduct had a direct impact on the commission of crimes against Prozor's Muslim civilian population". Prosecution's Response Brief (Praljak), para. 156.

⁶⁶⁷¹ Prosecution's Response Brief (Praljak), para. 157.

⁶⁶⁷² Prosecution's Response Brief (Praljak), para. 157.

⁶⁶⁷³ Praljak's Reply Brief, para. 73. Praljak also replies that there is no evidence that he was informed of Šiljeg's order which was contradictory to his instructions. Praljak's Reply Brief, para. 74.

⁶⁶⁷⁴ Trial Judgement, Vol. 4, para. 574, referring to Exs. P04260, P04285. The Appeals Chamber notes that Ante Pavlović was the commander of the Prozor forward command post at the relevant time. Further, although the Trial Chamber cited Exhibit P04285 to find that Pavlović forwarded Praljak's Order of 17 August 1993, this exhibit in fact is a confirmation that Praljak's order was implemented. Trial Judgement, Vol. 4, para. 574; Ex. P04285 ("we hereby inform you that all prisoners have been withdrawn from the Rama Brigade's zone of responsibility within the deadline indicated").

⁶⁶⁷⁵ Trial Judgement, Vol. 4, para. 574.

⁶⁶⁷⁶ Trial Judgement, Vol. 4, para. 574.

line”.⁶⁶⁷⁷ Notably, the Trial Chamber also considered that the HVO frequently used detainees from Prozor for work on the front line between June and September 1993,⁶⁶⁷⁸ Praljak was informed of the military situation in the field,⁶⁶⁷⁹ and he had command authority over the HVO.⁶⁶⁸⁰ The Trial Chamber also referred to its earlier findings on the use of detainees for forced labour in Prozor which included that: (1) detainees from Prozor Secondary School worked on fortifications and dug trenches on the front lines, or near those lines for the HVO without pay,⁶⁶⁸¹ – these detainees were frightened, injured, routinely beaten, sexually abused, and wounded or killed by exposure to ABiH gunfire, and some never returned;⁶⁶⁸² and (2) from late June to July 1993, some Muslim HVO members or TO/ABiH members who were detained at Prozor Fire Station worked on the front line trenches.⁶⁶⁸³ The Trial Chamber found that this work on the front line was “clearly linked to the military operations”.⁶⁶⁸⁴

1965. Based on these findings,⁶⁶⁸⁵ the Appeals Chamber first considers that nothing prevented the Trial Chamber from taking account of Praljak’s knowledge of the military situation in the field in determining whether he knew that detainees were being used for labour on the front line, *i.e.* for building fortifications and digging trenches. Relevantly, the Appeals Chamber observes that the Trial Chamber considered that Praljak was “very present in the field”,⁶⁶⁸⁶ and “acquainted with the situation in Prozor ‘in detail’”⁶⁶⁸⁷ which he himself confirmed by testifying that “he was very familiar with the military situation [in that area] [...] because he had gone there several times, notably to the vicinity of Vakuf and Prozor”.⁶⁶⁸⁸ Praljak’s assertion that there is no direct link between the detainees being used for labour and the military situation is unpersuasive and dismissed as such. Similarly, the Appeals Chamber is not convinced by Praljak’s argument that he issued Praljak’s Order of 17 August 1993 as soon as he became aware of detainees being used for labour,

⁶⁶⁷⁷ Trial Judgement, Vol. 4, para. 575.

⁶⁶⁷⁸ Trial Judgement, Vol. 4, para. 575, referring to Trial Judgement, Vol. 2, paras 164-177, 189-197, 212-222.

⁶⁶⁷⁹ Trial Judgement, Vol. 4, para. 575. See Trial Judgement, Vol. 4, paras 566, 573. See also *infra*, para. 1965.

⁶⁶⁸⁰ Trial Judgement, Vol. 4, para. 575.

⁶⁶⁸¹ Trial Judgement, Vol. 2, paras 164-165. The Appeals Chamber notes that detainees from Prozor Secondary School worked for the HVO doing various tasks without pay, and that some volunteered if the task was not dangerous. Trial Judgement, Vol. 2, paras 164, 170.

⁶⁶⁸² Trial Judgement, Vol. 2, paras 168, 170.

⁶⁶⁸³ Trial Judgement, Vol. 2, paras 194-195, 197.

⁶⁶⁸⁴ Trial Judgement, Vol. 3, paras 1503, 1505.

⁶⁶⁸⁵ See *supra*, para. 1963.

⁶⁶⁸⁶ Trial Judgement, Vol. 4, para. 489.

⁶⁶⁸⁷ Trial Judgement, Vol. 4, para. 566, referring to Ex. P03516, pp. 4-5 (wherein Šiljeg reported to the Main Staff on 17 July 1993 that: (1) Praljak visited the area “for longer, and [...] is acquainted with the situation in detail”; and (2) “all reports on incidents, problems, about the situation are submitted daily” to the Department of Defence and the Main Staff).

⁶⁶⁸⁸ Trial Judgement, Vol. 4, para. 566, referring to Slobodan Praljak, T(F). 43766, 43770, 43772-43773 (25 Aug 2009).

particularly as he “was directly involved in the planning and directing of the HVO military operations between July and mid-September 1993”.⁶⁶⁸⁹

1966. Concerning Praljak’s arguments on the detainees being used for “prohibited” labour, the Appeals Chamber recalls that the inference drawn by the Trial Chamber was not based only on the exhibits to which it expressly referred.⁶⁶⁹⁰ Since the detainees were used for work on the front line, such as construction of military fortifications and digging trenches, the Trial Chamber found that this labour was unlawful.⁶⁶⁹¹ Praljak simply asserts that he was not informed and had no “reason to suspect” that the labour was unlawful, but does not address the findings on his involvement in the military operations. Taking into account Praljak’s role in and knowledge of events in Prozor, the Appeals Chamber finds that Praljak fails to show that the Trial Chamber erroneously concluded, as the only reasonable inference, that he knew that detainees were being used for labour on the front line prior to 17 August 1993, which was found to be unlawful labour in violation of Article 3 of the Statute. For the same reason, the Appeals Chamber dismisses Praljak’s argument that he did not have any reason to suspect that war prisoners were being used for unlawful labour given the HVO orders requesting that prisoners be treated in accordance with the Geneva Conventions. Praljak’s remaining contentions are dismissed as irrelevant and unpersuasive.

1967. Based on the foregoing, the Appeals Chamber finds that Praljak has failed to show that no reasonable trier of fact could have concluded that he knew about the use of detainees on the front line in Prozor.⁶⁶⁹² Therefore, Praljak’s sub-ground of appeal 43.1 is dismissed.

(ii) Whether Praljak had the required intent for crimes committed in Prozor (Praljak’s Sub-ground 43.2)

1968. Praljak submits that the Trial Chamber erred in law by convicting him for the Prozor crimes as it could not find that he had the requisite intent.⁶⁶⁹³ He argues that the Trial Chamber could only find that he knew of and accepted the crimes, which is insufficient to show his intent.⁶⁶⁹⁴

1969. The Prosecution responds that the Trial Chamber correctly assessed Praljak’s intent, including his shared intent which encompassed the Prozor crimes in furtherance of the CCP.⁶⁶⁹⁵

⁶⁶⁸⁹ Trial Judgement, Vol. 4, para. 570. See Trial Judgement, Vol. 4, paras 566-569.

⁶⁶⁹⁰ See Trial Judgement, paras 574-575; *supra*, paras 1960, 1963.

⁶⁶⁹¹ Trial Judgement, Vol. 3, paras 1503-1506.

⁶⁶⁹² The Appeals Chamber will address Praljak’s final argument that the Trial Chamber incorrectly inferred his intent based on his knowledge and acceptance of the crimes in the section below. See *infra*, para. 1970.

⁶⁶⁹³ Praljak’s Appeal Brief, paras 477, 479, referring to Trial Judgement, Vol. 4, paras 67, 573. See also Praljak’s Appeal Brief, para. 476. See also Appeal Hearing, AT. 392 (22 Mar 2017).

⁶⁶⁹⁴ Praljak’s Appeal Brief, para. 477; *supra*, para. 1962. See Praljak’s Reply Brief, para. 75. Praljak contends that “[t]he accused must both intend the commission of the crime and intend to participate in a [common criminal purpose] aimed at its commission”. Praljak’s Appeal Brief, para. 478.

1970. The Appeals Chamber first notes that it dismisses elsewhere Praljak's challenges to the Trial Chamber's finding that he shared the intent with the other JCE members to carry out the crimes forming part of the CCP – crimes which included those committed in Prozor in the summer of 1993.⁶⁶⁹⁶ As for Praljak's argument that the Trial Chamber incorrectly inferred his intent from his knowledge and acceptance of the crimes, as a preliminary matter, the Appeals Chamber recalls that the requisite *mens rea* for a conviction under JCE I can be inferred from a person's knowledge of the common plan involving the commission of the crime, combined with his continuous participation, if this is the only reasonable inference available on the evidence.⁶⁶⁹⁷ Thus, the Trial Chamber's findings regarding Praljak's knowledge of the CCP, in combination with its finding that he knew of and accepted the relevant crimes committed in Prozor Municipality, led the Trial Chamber to conclude that the only reasonable inference it could draw from the fact that he participated in the planning of the military operations in, *inter alia*, Prozor during the summer of 1993, and "that he continued to exercise control over the armed forces while knowing that its members were committing crimes in other municipalities [...], is that he intended to have these crimes committed".⁶⁶⁹⁸ Recalling that the Trial Judgement must be read as a whole,⁶⁶⁹⁹ the Appeals Chamber finds that Praljak does not present any other reasonable inference that can be drawn from the evidence. Moreover, Praljak fails to show an error of law and his arguments are thus dismissed.

1971. Therefore, the Appeals Chamber finds that Praljak has failed to show that no reasonable trier of fact could have concluded, as the only reasonable inference, that he had the requisite intent for the relevant crimes committed in Prozor Municipality. Consequently, Praljak's sub-ground of appeal 43.2 is dismissed.

(iii) Conclusion

1972. Based on the foregoing, Praljak's ground of appeal 43 is dismissed.

⁶⁶⁹⁵ Prosecution's Response Brief (Praljak), para. 158. The Prosecution asserts that it was unnecessary to find that Praljak was aware of each criminal incident once the shared intent related to "the *types* of crimes" to be committed in furtherance of the CCP. Prosecution's Response Brief (Praljak), para. 158, referring to *Šainović et al.* Appeal Judgement, para. 1491.

⁶⁶⁹⁶ See *supra*, para. 1921; Trial Judgement, Vol. 4, paras 41, 44-45, 65-68, 627. See also *supra*, paras 904-908. The Appeals Chamber recalls its finding that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, para. 882. Consequently, the Appeals Chamber also finds elsewhere that Praljak's convictions for murder and wilful killing in relation to two killings in Tošćanica, Prozor Municipality, should be overturned. See *supra*, paras 880-882.

⁶⁶⁹⁷ *Popović et al.* Appeal Judgement, para. 1652, referring to, *inter alia*, *Dorđević* Appeal Judgement, para. 512, *Krajišnik* Appeal Judgement, paras 202, 204, 697, *Brdanin* Appeal Judgement, paras 428-429.

⁶⁶⁹⁸ Trial Judgement, Vol. 4, para. 625.

⁶⁶⁹⁹ *Stanišić and Župljanin* Appeal Judgement, paras 138, 376, 705; *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

(c) Mostar Municipality (Praljak's Ground 44, Ground 21 in part, Ground 23 in part, and Sub-ground 40.7 in part)

1973. In assessing Praljak's responsibility, the Trial Chamber recalled its findings that the HVO military operations in Mostar Municipality resulted in, *inter alia*: (1) the shooting and shelling of East Mostar between early June 1993 and early March 1994, which killed and wounded many of its inhabitants;⁶⁷⁰⁰ (2) snipers in West Mostar opening fire at Muslims in East Mostar between May 1993 and February 1994;⁶⁷⁰¹ (3) the destruction of and damage to mosques in East Mostar in 1993;⁶⁷⁰² (4) the destruction of the Old Bridge on 8 November 1993;⁶⁷⁰³ (5) an attack on the Raštani village, the Mostar hydro-electric plant, and the Tihomir Mišić Barracks between 24 and 26 August 1993;⁶⁷⁰⁴ and (6) the killing of four Muslim men and the infliction of physical and mental abuse on women and children in Raštani village around 24 August 1993, and, due to the "particularly coercive atmosphere", the Muslim women and children had no choice but to flee the village to reach territory under ABiH control.⁶⁷⁰⁵ The Trial Chamber found that these crimes were committed systematically and "were not random acts or the actions of undisciplined soldiers but rather operations orchestrated by the HZ(R) H-B leadership".⁶⁷⁰⁶

1974. As for Praljak's role in these military operations, the Trial Chamber concluded that it did not have evidence that would allow it to determine Praljak's "precise role in the events of 9 May 1993 in Mostar, notably the extent to which he commanded the military operations or participated in them" and to support a finding on Praljak's "role in the criminal events in Mostar between 9 May 1993 and 24 July 1993".⁶⁷⁰⁷ The Trial Chamber, however, found that "Praljak participated in directing and planning the HVO operations"⁶⁷⁰⁸ in Mostar Municipality between 24 July 1993 and 9 November 1993.⁶⁷⁰⁹ The Trial Chamber concluded that, "[i]nsofar as Slobodan Praljak directed the HVO military operations in the Municipality of Mostar [during a part of the period the crimes were committed]",⁶⁷¹⁰ the only inference it could reasonably draw was that he knew that the crimes would be committed during the operations in Raštani and Mostar. It therefore found that he "intended to have buildings in East Mostar destroyed, including mosques and the Old Bridge, to deliberately target civilians, to have murders, wounding, physical and psychological

⁶⁷⁰⁰ Trial Judgement, Vol. 4, para. 582. See Trial Judgement, Vol. 2, paras 996-1018.

⁶⁷⁰¹ Trial Judgement, Vol. 4, para. 582. See Trial Judgement, Vol. 2, paras 1021-1194.

⁶⁷⁰² Trial Judgement, Vol. 4, para. 582. See Trial Judgement, Vol. 2, paras 1369-1377.

⁶⁷⁰³ Trial Judgement, Vol. 4, para. 583. See Trial Judgement, Vol. 2, paras 1300-1318, 1345. The Appeals Chamber recalls that it has reversed the Trial Chamber's findings on the Old Bridge.

⁶⁷⁰⁴ Trial Judgement, Vol. 2, para. 953, Vol. 4, para. 584. See Trial Judgement, Vol. 2, paras 948-952, 963.

⁶⁷⁰⁵ Trial Judgement, Vol. 4, para. 584. See Trial Judgement, Vol. 2, paras 968-969, 971-972.

⁶⁷⁰⁶ Trial Judgement, Vol. 4, para. 586.

⁶⁷⁰⁷ Trial Judgement, Vol. 4, paras 576-577.

⁶⁷⁰⁸ Trial Judgement, Vol. 4, para. 581. See Trial Judgement, Vol. 4, paras 579-580, 585-586.

⁶⁷⁰⁹ Trial Judgement, Vol. 4, paras 579, 581, 625.

⁶⁷¹⁰ Trial Judgement, Vol. 4, para. 586.

abuse and attacks on members of international organisations committed and lastly, to have women and children removed”.⁶⁷¹¹

(i) Praljak’s involvement in the events in Mostar (Praljak’s Ground 23, Sub-grounds 40.7 and 44.1 all in part)

a. Arguments of the Parties

1975. Praljak submits that he should be acquitted of all Mostar crimes committed before 24 July 1993 and after 9 November 1993, because the Trial Chamber could not find that he was involved in the implementation of the CCP in Mostar before 24 July 1993, and found that he ceased to be a member of the JCE on 9 November 1993.⁶⁷¹² For the period in between these two dates, Praljak claims that his orders cited by the Trial Chamber were lawful and justified militarily.⁶⁷¹³ In particular, he argues that the Trial Chamber: (1) “distorted” his order dated 12 August 1993, as he in fact ordered that “infiltrated Muslim Armed Forces terrorist groups” be eliminated and the civilian population was not the target;⁶⁷¹⁴ and (2) “omitted to specify”, in relation to his order issued on 7 October 1993, that his instructions were to target “exclusively and explicitly Muslim Armed Forces”.⁶⁷¹⁵ Under his sub-ground of appeal 40.7, Praljak further argues that the Trial Chamber relied on his official function without establishing that his acts concerning the Mostar military operations constituted a significant contribution.⁶⁷¹⁶

1976. Praljak contests the Trial Chamber’s finding that the military action resulting in the destruction of the Old Bridge was discussed in a meeting he attended on 7 November 1993.⁶⁷¹⁷ Under his ground of appeal 23, Praljak submits that it is unclear how the Trial Chamber made a link between the 7 November 1993 meeting and Petković’s order for an HVO offensive which was then implemented via an order by Miljenko Lasić, the commander of the Mostar ZP.⁶⁷¹⁸ Specifically, he argues that: (1) Petković’s order did not refer to the meeting; (2) while Lasić’s order mentions the

⁶⁷¹¹ Trial Judgement, Vol. 4, para. 586.

⁶⁷¹² Praljak’s Appeal Brief, paras 481, 483, referring to Trial Judgement, Vol. 4, paras 576-577, 1228. See Praljak’s Appeal Brief, para. 482, referring to *Brđanin* Appeal Judgement, paras 424, 427-428, *Vasiljević* Appeal Judgement, para. 100. See also Praljak’s Reply Brief, para. 81; Appeal Hearing, AT. 393 (22 Mar 2017).

⁶⁷¹³ Praljak’s Appeal Brief, para. 484, referring to Trial Judgement, Vol. 4, para. 579. See Appeal Hearing, AT. 393 (22 Mar 2017).

⁶⁷¹⁴ Praljak’s Appeal Brief, para. 484, referring to Ex. P04125; Praljak’s Reply Brief, para. 83.

⁶⁷¹⁵ Praljak’s Appeal Brief, para. 484, referring to Ex. P05692.

⁶⁷¹⁶ Praljak’s Appeal Brief, para. 428.

⁶⁷¹⁷ Praljak’s Appeal Brief, para. 485, referring to Praljak’s Appeal Brief, paras 281-282, 286-289 (Praljak’s Ground 23.1).

⁶⁷¹⁸ Praljak’s Appeal Brief, para. 282. See Praljak’s Appeal Brief, para. 281, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1305, Ex. P06534, pp. 1-2.

meeting, it only refers to an unknown 7 November 1993 order;⁶⁷¹⁹ and (3) the meeting's "conclusions" show that no concrete military actions were discussed.⁶⁷²⁰

1977. Praljak also argues that the Trial Chamber did not establish whether the shelling and sniping occurred during his command and whether he ordered them or knew about them.⁶⁷²¹ He adds that the Trial Chamber failed to establish the shelling incidents with sufficient detail as well as the incidents for which it held him liable.⁶⁷²² Praljak argues that he could not be held responsible for sniping incidents 1, 2, 3, 13, and 14, as they fell outside of the period of 24 July 1993 to 9 November 1993.⁶⁷²³ He further contends that as the Trial Chamber only established the destruction date of one mosque which occurred before 24 July 1993 and failed to determine when the other mosques were destroyed, he cannot be held responsible.⁶⁷²⁴

1978. The Prosecution responds that Praljak was properly convicted of crimes committed prior to 24 July 1993 as they formed part of the CCP and were committed during his JCE membership.⁶⁷²⁵ Further, it submits that Praljak was not convicted of crimes committed after 9 November 1993.⁶⁷²⁶ In relation to Praljak's orders, the Prosecution argues that they were neither lawful nor justified, and involved the commission of crimes designed to further the CCP.⁶⁷²⁷ According to the Prosecution, Praljak was appropriately held liable for all JCE I crimes committed in Mostar between May 1993 and 9 November 1993,⁶⁷²⁸ and in particular: (1) crimes resulting from the HVO's shelling and sniping campaigns, to the extent they occurred during Praljak's JCE membership; and (2) the HVO's destruction of mosques, which the Trial Chamber reasonably concluded occurred between June and December 1993.⁶⁷²⁹ It adds that the Trial Chamber was not required to establish Praljak's

⁶⁷¹⁹ Praljak's Appeal Brief, para. 281, referring to Trial Judgement, Vol. 2, para. 1305, Exs. P06524, P06534. Praljak submits, with regard to Petković's order, that: (1) its main objective was defence of Croatian territories in Lašva valley; and (2) it tasked the ZP Mostar with actions which should have been of low intensity. Praljak's Appeal Brief, para. 281, referring to, *inter alia*, Ex. P06534, pp. 1-2.

⁶⁷²⁰ Praljak's Appeal Brief, para. 282.

⁶⁷²¹ Praljak's Appeal Brief, para. 486, referring to Trial Judgement, Vol. 2, paras 996-1018. Praljak also contests the Trial Chamber's findings regarding the shelling and sniping of Mostar by cross-referencing other sections of his appeal brief. See Praljak's Appeal Brief, para. 486, referring to Praljak's Appeal Brief, paras 247-254 (Praljak's Ground 20), 256-273 (Praljak's Ground 21).

⁶⁷²² Praljak's Appeal Brief, para. 486, referring to Trial Judgement, Vol. 2, paras 996-1018, Vol. 4, para. 582.

⁶⁷²³ Praljak's Appeal Brief, para. 486, referring to Trial Judgement, Vol. 2, paras 1043-1070, 1152-1174.

⁶⁷²⁴ Praljak's Appeal Brief, para. 487.

⁶⁷²⁵ Prosecution's Response Brief (Praljak), para. 177, referring to Trial Judgement, Vol. 4, paras 1228, 1230, *Karemera and Ngirumpatse* Appeal Judgement, paras 109, 153. See Appeal Hearing, AT. 441-442 (22 Mar 2017).

⁶⁷²⁶ Prosecution's Response Brief (Praljak), para. 177, referring to Trial Judgement, Vol. 4, para. 1228. See Appeal Hearing, AT. 441 (22 Mar 2017).

⁶⁷²⁷ Prosecution's Response Brief (Praljak), para. 182, referring to Trial Judgement, Vol. 4, para. 586. The Prosecution also submits that the Trial Judgement neither distorted nor omitted details of these orders. Prosecution's Response Brief (Praljak), para. 183.

⁶⁷²⁸ Prosecution's Response Brief (Praljak), paras 178-179, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 449, Vol. 4, paras 41, 43-44, 49-59, 628, 1230, 1231-1232, *Brdanin* Appeal Judgement, para. 431.

⁶⁷²⁹ Prosecution's Response Brief (Praljak), para. 179. The Prosecution further argues that Praljak is appropriately held liable for the destruction of the Old Bridge and that his liability for the destruction of Baba Bešir Mosque in May 1993 should be analysed under JCE III. Prosecution's Response Brief (Praljak), para. 179.

responsibility for specific shelling incidents as he was convicted for the shelling campaign,⁶⁷³⁰ or that he ordered the shelling, given his shared intent for the shelling in Mostar to further the CCP.⁶⁷³¹

1979. The Prosecution also responds in relation to the 7 November 1993 meeting that while Praljak is correct that Petković's order did not specifically mention the meeting, Lasić's order did.⁶⁷³² It argues that the Trial Chamber's conclusion that the highest-ranking HVO commanders discussed the Mostar offensive during a meeting the previous evening is not undermined by its explicit acknowledgement that the meeting's conclusions did not mention an attack on Mostar.⁶⁷³³

1980. Further, the Prosecution argues that, given Praljak's level of control and involvement in the HVO's Mostar operations, it is "inconceivable" that the prolonged siege and attack in East Mostar could have occurred without Praljak's knowledge and approval.⁶⁷³⁴ Praljak's control and responsibility over the East Mostar crimes, it submits, was confirmed by evidence that, in a telephone call with Witness Galbraith, Gojko Šušak said he would contact Praljak to stop the heavy shelling in East Mostar.⁶⁷³⁵

1981. Praljak argues in reply that his conviction was not based on the shelling campaign, which cannot exist in a vacuum and must have been established in terms of the specific shelling incidents.⁶⁷³⁶

b. Analysis

i. Praljak's responsibility before 24 July and after 9 November 1993

1982. The Appeals Chamber recalls that the Trial Chamber found that it had no evidence to "support a finding on Slobodan Praljak's role in the criminal events in the Municipality of Mostar between 9 May [1993] and 24 July 1993".⁶⁷³⁷ As for Praljak's argument that he should therefore be acquitted of all crimes committed in Mostar Municipality before 24 July 1993, the Appeals Chamber recalls that "[f]or crimes committed as part of a joint criminal enterprise it is sufficient to prove not the participation of the accused in the commission of a specific crime but the

⁶⁷³⁰ Prosecution's Response Brief (Praljak), para. 179, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 996, 1000, 1003-1004, 1015-1016, 1018, Vol. 4, paras 174, 176, 272, 936-938, *Galić* Appeal Judgement, paras 217-219, 221-224.

⁶⁷³¹ Prosecution's Response Brief (Praljak), para. 179, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 59, 65-68.

⁶⁷³² Prosecution's Response Brief (Praljak), para. 206.

⁶⁷³³ Prosecution's Response Brief (Praljak), para. 206.

⁶⁷³⁴ Appeal Hearing, AT. 443-445 (22 Mar 2017). See also Appeal Hearing, AT. 442 (22 Mar 2017).

⁶⁷³⁵ Appeal Hearing, AT. 445 (22 Mar 2017), referring to Ex. P09506 (confidential).

⁶⁷³⁶ Praljak's Reply Brief, para. 82. Praljak argues that the Prosecution's reliance on the *Galić* Appeal Judgement is misplaced, as that case "was not linked to unspecified but to unscheduled incidents". Praljak's Reply Brief, para. 82, referring to *Galić* Appeal Judgement, paras 217-219.

⁶⁷³⁷ Trial Judgement, Vol. 4, para. 577. See Trial Judgement, Vol. 4, para. 576; *supra*, para. 1974.

responsibility of the accused in furthering the common criminal purpose”.⁶⁷³⁸ Notably, “[w]hat is required is that [the accused] voluntarily participated in at least one aspect of the common purpose”.⁶⁷³⁹ In this regard, the Trial Chamber found that Praljak was a member of the JCE from January 1993 to 9 November 1993, noting explicitly that he “contributed [to the JCE] from January 1993 to November 1993”,⁶⁷⁴⁰ but made no mention of any interruption to his JCE membership for the period between 9 May 1993 and 24 July 1993.⁶⁷⁴¹ Accordingly, even though the Trial Chamber concluded that the evidence was unable to support a finding on Praljak’s role in the criminal events in Mostar between 9 May 1993 and 24 July 1993, the Trial Chamber found that he was a contributing member of the JCE throughout that period. Further, the Appeals Chamber considers that Praljak’s responsibility for crimes committed in Mostar between 9 May 1993 and 24 July 1993 also stems from the contributions of other JCE members to these crimes.⁶⁷⁴² Thus, as Praljak was a member of the JCE during this time, the Trial Chamber did not err in finding Praljak responsible for the crimes committed during this period.

1983. In addition, the Trial Chamber also found that Praljak made a significant contribution to implementing the CCP,⁶⁷⁴³ which included his participation in directing and planning the HVO operations in Mostar Municipality between July and early November 1993.⁶⁷⁴⁴ The Appeals Chamber recalls its dismissal of Praljak’s arguments challenging that the Mostar crimes, of which he was convicted,⁶⁷⁴⁵ were committed pursuant to the CCP.⁶⁷⁴⁶ Further, the Appeals Chamber dismisses elsewhere Praljak’s arguments challenging the expansion of the JCE which encompassed crimes in East Mostar, including the crimes before 24 July 1993.⁶⁷⁴⁷ Bearing in mind the Trial Chamber’s finding that “insofar as” Praljak participated in the planning and directing of the Mostar military operations between 24 July 1993 and 9 November 1993, the only reasonable conclusion it

⁶⁷³⁸ *Kvočka et al.* Appeal Judgement, para. 263. See *Karemera and Ngirumpatse* Appeal Judgement, paras 109, 153. The Appeals Chamber also recalls that “contribution to a JCE ‘may take the form of assistance in, or contribution to, the execution of the common purpose,’ and [...] it is not required that the accused physically committed or participated in the *actus reus* of the perpetrated crime”. *Krajišnik* Appeal Judgement, para. 695 (internal references omitted). See *Popović et al.* Appeal Judgement, para. 1378; *Šainović et al.* Appeal Judgement, para. 987.

⁶⁷³⁹ *Šainović et al.* Appeal Judgement, para. 1510; *Vasiljević* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, para. 196.

⁶⁷⁴⁰ Trial Judgement, Vol. 4, para. 1230.

⁶⁷⁴¹ Trial Judgement, Vol. 4, paras 1220, 1228, 1230. See also Trial Judgement, Vol. 4, paras 44, 65-68.

⁶⁷⁴² See *Popović et al.* Appeal Judgement, para. 1050 (“The Appeals Chamber reiterates that JCE members can incur liability for crimes committed in furtherance of the common plan either where the principal perpetrator of the crime is a JCE member”, or “where the crime can be imputed to at least one JCE member and that this member – when using the principal perpetrators – acted in accordance with the common objective”). See also *Šainović et al.* Appeal Judgement, para. 1256.

⁶⁷⁴³ Trial Judgement, Vol. 4, paras 628, 1230.

⁶⁷⁴⁴ Trial Judgement, Vol. 4, paras 49-59, 63, 65-68. The Trial Chamber excluded the murders, thefts, and sexual abuse that occurred during the eviction campaigns and in detention centres. Trial Judgement, Vol. 4, paras 70, 72, 632, 636-638.

⁶⁷⁴⁵ See Trial Judgement, Vol. 4, para. 630.

⁶⁷⁴⁶ See *supra*, paras 931-934.

⁶⁷⁴⁷ See *supra*, paras 792-814.

could draw was that he intended the crimes that occurred during the operations in Mostar and Raštani,⁶⁷⁴⁸ the Appeals Chamber finds that Praljak fails to show that the Trial Chamber erred in finding him responsible for the JCE crimes committed in Mostar Municipality before 24 July 1993 to the extent that he argues that he was not involved in the implementation of the CCP in Mostar before that date. His argument is dismissed.

1984. As for Praljak's argument that he should be acquitted of all crimes after 9 November 1993, the Appeals Chamber recalls that the Trial Chamber found that, on 8 November 1993, Praljak "was relieved of his functions within the HVO Main Staff and relinquished them to Ante Roso on 9 November 1993".⁶⁷⁴⁹ It subsequently found that "by giving up his functions within the HVO Main Staff and returning to Croatia to become an advisor to the Croatian Minister of Defence for the ministry's archive facilities, [Praljak] ceased being a member of the [JCE] group".⁶⁷⁵⁰ While this finding by the Trial Chamber can be interpreted to mean that Praljak was not convicted of any crimes committed after 9 November 1993, the Appeals Chamber considers this interpretation to be inconsistent with the Trial Chamber's conclusion at the end of the section in the Trial Judgement assessing Praljak's responsibility pursuant to JCE I, namely that Praljak was held responsible "for all of the crimes forming part of the common criminal plan".⁶⁷⁵¹ As the Trial Chamber's findings are thus ambiguous on whether Praljak was convicted for any crimes committed pursuant to the CCP after his membership in the JCE ended, the Trial Chamber failed to provide a reasoned opinion on this issue.⁶⁷⁵²

1985. In this regard, the Appeals Chamber considers that, under JCE liability, an accused cannot be held responsible for crimes committed during a time when he was not a member of the JCE.⁶⁷⁵³ The Appeals Chamber thus finds that the Trial Chamber erred in law in holding Praljak liable for crimes forming part of the CCP which were committed after 9 November 1993, to the extent that it did so.⁶⁷⁵⁴ Accordingly, the Appeals Chamber will only consider the arguments presented as far as they relate to crimes committed in Mostar before 9 November 1993. In particular, the Appeals

⁶⁷⁴⁸ Trial Judgement, Vol. 4, paras 579, 581, 586. See Trial Judgement, Vol. 4, paras 580, 582-585. See *infra*, paras 2004-2014.

⁶⁷⁴⁹ Trial Judgement, Vol. 4, para. 1228.

⁶⁷⁵⁰ Trial Judgement, Vol. 4, para. 1228. See Trial Judgement, Vol. 4, para. 1230.

⁶⁷⁵¹ Trial Judgement, Vol. 4, para. 631.

⁶⁷⁵² See *Stanišić and Župljanin* Appeal Judgement, para. 356, referring to *Kordić and Čerkez* Appeal Judgement, paras 383-388, *Nyiramasuhuko et al.* Appeal Judgement, para. 977, *Bizimungu* Appeal Judgement, para. 23, *Ndindiliyimana et al.* Appeal Judgement, para. 293.

⁶⁷⁵³ Cf. *Karempera and Ngirumpatse* Appeal Judgement, fn. 25 (finding that Édouard Karempera could only be held responsible for crimes committed from the date when he joined a JCE).

⁶⁷⁵⁴ See *infra*, paras 1995, 2000-2003.

Chamber grants Praljak's argument on his responsibility for sniping incidents 13 and 14 which occurred in 1994,⁶⁷⁵⁵ and any shelling incident which occurred after 9 November 1993.⁶⁷⁵⁶

ii. Praljak's responsibility between 24 July 1993 and 9 November 1993

1986. With regard to Praljak's challenges concerning the period between 24 July 1993 and 9 November 1993, the Trial Chamber considered that Praljak played an important role in planning and directing the military operations in Mostar Municipality during that period,⁶⁷⁵⁷ relying on evidence that: (1) on 28 July 1993 he ordered the HVO brigades to prepare for combat;⁶⁷⁵⁸ (2) on 6 August 1993, Žarko Tole issued an order specifying that the Main Staff would take over the command of the defence of Mostar;⁶⁷⁵⁹ (3) on 12 August 1993, Praljak mobilised all the manpower and materiel of the HVO to "eliminate Muslim 'terrorists' from Mostar";⁶⁷⁶⁰ (4) on 25 August 1993, he appointed Colonel Milan Štampar as commander of combat operations in Raštani, specifying that all units should subordinate to Štampar;⁶⁷⁶¹ (5) on 1 September 1993, he issued an order organising the command structure and military operations in the Mostar sector;⁶⁷⁶² (6) on 24 September 1993, he sent a message to all HVO troops giving them an overview of the Mostar situation and congratulating them for their actions;⁶⁷⁶³ (7) on 7 October 1993, he issued an order for the defence of the Mostar region with the instruction to "inflict as many losses on them as possible";⁶⁷⁶⁴ (8) Praljak attended a meeting on 7 November 1993 at which Petković's order to launch an offensive that led to the destruction of the Old Bridge was discussed;⁶⁷⁶⁵ and (9) on 31 August 1993, Gojko Šušak indicated that he would contact Praljak to ask him to stop the heavy shelling of East Mostar on that day.⁶⁷⁶⁶

a- Orders issued by Praljak

1987. Praljak challenges the Trial Chamber's reliance on two of these orders, arguing that it distorted his 12 August 1993 order and omitted details from his 7 October 1993 order. However, on reviewing the evidence cited, the Appeals Chamber finds there to be little difference, if any,

⁶⁷⁵⁵ See Trial Judgement, Vol. 2, paras 1160-1163, 1171-1174. See also *supra*, para. 1976 (Praljak's argument on sniping incidents).

⁶⁷⁵⁶ See Trial Judgement, Vol. 2, paras 996-1018.

⁶⁷⁵⁷ Trial Judgement, Vol. 4, para. 579. See also Trial Judgement, Vol. 4, para. 581.

⁶⁷⁵⁸ Trial Judgement, Vol. 4, para. 579, referring to Ex. P03773.

⁶⁷⁵⁹ Trial Judgement, Vol. 4, para. 579, referring to Ex. P03983, item 5, Witness NO, T(F). 51182 (closed session) (22 Mar 2010). See *infra*, para. 2009.

⁶⁷⁶⁰ Trial Judgement, Vol. 4, para. 579, referring to Ex. P04125.

⁶⁷⁶¹ Trial Judgement, Vol. 4, para. 579.

⁶⁷⁶² Trial Judgement, Vol. 4, para. 579, referring to Ex. P04719.

⁶⁷⁶³ Trial Judgement, Vol. 4, para. 579, referring to, *inter alia*, Ex. P05365.

⁶⁷⁶⁴ Trial Judgement, Vol. 4, para. 579, quoting Ex. P05692, p. 1.

⁶⁷⁶⁵ Trial Judgement, Vol. 4, para. 580, referring to, *inter alia*, Exs. P06482, 3D00793.

⁶⁷⁶⁶ Trial Judgement, Vol. 4, para. 585, referring to Ex. P09506 (confidential), p. 1, Peter Galbraith, T(F). 6501-6502. (12 Sept 2006).

between the contents of these exhibits and how they are described by the Trial Chamber, and thus Praljak fails to substantiate his contention.⁶⁷⁶⁷ His arguments are therefore dismissed.

1988. Further, Praljak argues that his orders were lawful, but misinterprets the Trial Chamber's reliance on these orders. The Appeals Chamber notes that Praljak's orders, in addition to his other conduct, were considered by the Trial Chamber as demonstrating his participation in directing and planning the Mostar military operations. These operations were accompanied by crimes "committed systematically and/or over a period of time"⁶⁷⁶⁸ pursuant to the CCP.⁶⁷⁶⁹ Recalling that "participation does not have to be in and of itself criminal, as long as the accused performs acts that in some way contribute to the furtherance of the common purpose of the JCE",⁶⁷⁷⁰ and provided that he shares the intent to implement the common purpose by criminal means, the Appeals Chamber finds that whether the orders were lawful or militarily justified is irrelevant and dismisses Praljak's argument. Moreover, based on Praljak's conduct considered by the Trial Chamber,⁶⁷⁷¹ the Appeals Chamber finds that Praljak fails to substantiate his contention that the Trial Chamber relied only on his official function and did not establish that his acts constituted a significant contribution. His argument is therefore dismissed.

b- Praljak's attendance at the 7 November 1993 meeting

1989. The Appeals Chamber recalls that it has reversed the Trial Chamber's findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and has therefore acquitted the Appellants of these charges insofar as they concern the Old Bridge.⁶⁷⁷² As such, insofar as Praljak's challenges regarding his attendance at the 7 November 1993 meeting are directed at impugning the Trial Chamber's findings as to his contribution to the destruction of the Old Bridge, they are moot.

1990. The Appeals Chamber notes, however, that the Trial Chamber found this meeting was concerned with an offensive on the old town of Mostar and not solely the attack on the Old

⁶⁷⁶⁷ The Appeals Chamber notes that the Trial Chamber's description that the 12 August 1993 order was to "eliminate Muslim 'terrorists'" is a reasonable summary of the order, which was for the "uncompromisable liquidation of the infiltrated [Muslim Armed Forces] terrorist groups". Compare Trial Judgement, Vol. 4, para. 579 with Ex. P04125. Similarly, in selectively quoting the 7 October 1993 order as to "inflict as many losses on them as possible", there is no indication that the Trial Chamber disregarded that this meant to target Muslim Armed Forces. Compare Trial Judgement, Vol. 4, para. 579 with Ex. P05692, p. 1.

⁶⁷⁶⁸ Trial Judgement, Vol. 4, para. 586.

⁶⁷⁶⁹ See Trial Judgement, Vol. 4, paras 49-51, 54-59, 65-68, 586, 625, 627-628.

⁶⁷⁷⁰ *Popović et al.* Appeal Judgement, para. 1653. See *Šainović et al.* Appeal Judgement, para. 985; *Krajišnik* Appeal Judgement, paras 215, 695-696.

⁶⁷⁷¹ See *supra*, para. 1986.

Bridge.⁶⁷⁷³ It further relied on Praljak's participation in the meeting as support for its overarching finding that he participated in directing and planning HVO operations in Mostar between July and early November 1993.⁶⁷⁷⁴ The Appeals Chamber will accordingly address Praljak's arguments regarding his attendance at the 7 November 1993 meeting as his participation therein remains relevant to his JCE liability, notwithstanding the Appeals Chamber's findings in relation to the Old Bridge.

1991. The Appeals Chamber first notes that the Trial Chamber found that on the evening of 7 November 1993, the highest-ranking commanders of the HVO armed forces, including Praljak, met in Tomislavgrad and discussed an offensive that would begin the next day.⁶⁷⁷⁵ It found that on 8 November 1993, Petković issued an order for an HVO offensive, which was then implemented via an order by Miljenko Lasić, the commander of the Mostar ZP.⁶⁷⁷⁶

1992. The Appeals Chamber turns first to Praljak's submission that it is unclear how the Trial Chamber linked the 7 November 1993 meeting and Petković's 8 November 1993 order. While Praljak is correct that Petković's order did not refer to the meeting, the Trial Chamber also considered Lasić's order, which implemented Petković's order, and which *did* refer to the 7 November 1993 meeting.⁶⁷⁷⁷ Thus, Praljak merely disagrees with the Trial Chamber's assessment of the evidence without demonstrating that no reasonable trier of fact could have found that the offensive ordered by Petković on 8 November 1993 was discussed the evening before at a meeting among the highest-ranking commanders of the HVO.⁶⁷⁷⁸ His argument is therefore dismissed.

1993. With regard to Praljak's corresponding argument that the meeting's "conclusions" show that no concrete military actions were discussed, the Appeals Chamber considers that after having

⁶⁷⁷² See *supra*, para. 426. The Appeals Chamber also reversed the Trial Chamber's conclusion that the destruction of the Old Bridge constituted wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or customs of war. See *supra*, paras 411, 414.

⁶⁷⁷³ Trial Judgement, Vol. 2, para. 1305, Vol. 4, para. 580. With regard to the shelling of the old town – as distinct from the Old Bridge – the Trial Chamber referred to evidence indicating that on 8 November 1993, the HVO launched 52 projectiles at the old town. By contrast, it referred to testimony that only ten shells were fired at the Old Bridge. Trial Judgement, Vol. 2, paras 1312-1314. It is therefore clear that the offensive was not limited to the attack on the Old Bridge. Moreover, this shelling fell within the timeframe of the Trial Chamber's finding that East Mostar was subjected to shelling from June 1993 to March 1994, which directly affected the population there, and which was relied on in its legal findings on, *inter alia*, the commission of the crimes of unlawful attack on civilians (Count 24) and unlawful infliction of terror on civilians (Count 25) as violations of the laws or customs of war. Trial Judgement, Vol. 2, para. 1018, Vol. 3, paras 1684-1686, 1689, 1692.

⁶⁷⁷⁴ Trial Judgement, Vol. 4, para. 581.

⁶⁷⁷⁵ Trial Judgement, Vol. 2, para. 1305. See Trial Judgement, Vol. 2, para. 1304.

⁶⁷⁷⁶ Trial Judgement, Vol. 2, paras 1301-1302. See Trial Judgement, Vol. 2, paras 1315, 1343, 1345, 1366, Vol. 3, para. 1581.

⁶⁷⁷⁷ Trial Judgement, Vol. 2, paras 1301, 1311, 1315 & fns 3262-3263, 3295-3296, referring to, *inter alia*, Ex. P06524. See *supra*, para. 1991. When noting that Item 3 of the "order of 8 November 1993" referred to the meeting, the Trial Chamber specifically cited to Petković's order. The Appeals Chamber notes, however, that the statement quoted by the Trial Chamber was in fact derived from Lasić's order. See Trial Judgement, Vol. 2, para. 1304, referring to Ex. P06534, p. 2. Cf. Ex. P06524, p. 2.

noted that Lasić's order referred to the meeting, the Trial Chamber expressly noted that Exhibit 3D00793 shows that the subjects discussed "were general and chiefly concerned mobilisation, the structure of the chain of command and the general organisation of the armed forces".⁶⁷⁷⁹ The Trial Chamber was satisfied, nevertheless, that the offensive of 8 November 1993 was also discussed at the meeting the evening before the attack.⁶⁷⁸⁰ It provided no express rationale for this conclusion. The Trial Chamber did, however, make a number of relevant findings which preceded its conclusion. The chronology of the relevant Trial Chamber findings – and the evidence on which it relied – proceeds as follows: (1) on 7 November 1993, a meeting in which Praljak and the main commanders of the HVO units in Herzegovina, including Lasić, the commander of the Mostar ZP participated, took place in Tomislavgrad;⁶⁷⁸¹ (2) a matter of hours later on 8 November 1993, Petković, at the time Praljak's deputy,⁶⁷⁸² ordered an offensive on Mostar, an order which was sent to Lasić,⁶⁷⁸³ and (3) also on 8 November 1993, Lasić transmitted Petković's order through the chain of command, to Sector North, Sector South, to the Mostar Defence sector, and to the 2nd Light Infantry Battalion, referring to an order issued by Praljak at the meeting in Tomislavgrad on 7 November 1993.⁶⁷⁸⁴

1994. Where a trial chamber draws an inference from circumstantial evidence alone, this must be the only reasonable inference available from that evidence.⁶⁷⁸⁵ The Appeals Chamber notes the confluence of circumstances outlined above, including: (1) the concentration of senior HVO military officers at the 7 November 1993 meeting in Tomislavgrad, in particular the presence of Praljak and Lasić; (2) the fact that Petković's order to Lasić was issued shortly after the meeting; and (3) the fact that Lasić's order referred to an order issued by Praljak at the meeting in Tomislavgrad. On this basis, the Appeals Chamber considers that a reasonable trier of fact could conclude, as the only reasonable inference, that the offensive must have been discussed at the meeting, notwithstanding the fact that the offensive is not referred to in the text of

⁶⁷⁷⁸ See Trial Judgement, Vol. 2, paras 1301, 1305; *supra*, para. 1991.

⁶⁷⁷⁹ Trial Judgement, Vol. 2, para. 1305 & fn. 3272. See Trial Judgement, Vol. 2, para. 1304.

⁶⁷⁸⁰ Trial Judgement, Vol. 2, para. 1305.

⁶⁷⁸¹ Trial Judgement, Vol. 2, paras 1301, 1305, referring to, *inter alia*, Ex. 3D00793 (indicating that Lasić was present and that the meeting took place from 6:00 p.m. to 7:00 p.m.). The Appeals Chamber notes that Miljenko Lasić's name is incorrectly transcribed as "Miljenko Lanić" in the English version of this exhibit.

⁶⁷⁸² Trial Judgement, Vol. 2, para. 1301, Vol. 4, para. 652.

⁶⁷⁸³ Trial Judgement, Vol. 2, paras 1300-1302, 1304, referring to, *inter alia*, Ex. P06534 (indicating that Petković's order was transmitted at 00:30 a.m.).

⁶⁷⁸⁴ Trial Judgement, Vol. 2, para. 1301, referring to, *inter alia*, Ex. P06524. See *supra*, fn. 6777.

⁶⁷⁸⁵ *Stanišić and Župljanin* Appeal Judgement, para. 375; *Popović et al.* Appeal Judgement, paras 1277-1278; *Stakić* Appeal Judgement, para. 219.

Exhibit 3D00793.⁶⁷⁸⁶ Praljak has accordingly failed to demonstrate an error of fact in the Trial Chamber's finding.⁶⁷⁸⁷ His argument is therefore dismissed.

c- Praljak's responsibility for the shelling and sniping campaigns in East Mostar

1995. As for the sniping in East Mostar, the Appeals Chamber recalls its finding that Praljak cannot be held responsible for sniping incidents 13 and 14, which occurred in 1994, thus after his membership in the JCE ended.⁶⁷⁸⁸ The Appeals Chamber also recalls that Praljak fails to show that the Trial Chamber erred in finding him responsible for JCE crimes committed in Mostar Municipality before 24 July 1993.⁶⁷⁸⁹ Thus, Praljak fails to demonstrate that the Trial Chamber erred in holding him responsible for the sniping incidents 1, 2, and 3.⁶⁷⁹⁰

1996. In relation to Praljak's argument that the Trial Chamber failed to establish specific shelling incidents with sufficient detail, the Appeals Chamber notes that the Trial Chamber found that East Mostar was subjected to "intense and uninterrupted" HVO firing and shelling between June 1993 and March 1994.⁶⁷⁹¹ It arrived at this conclusion having considered a wide range of evidence that the HVO shelled East Mostar "daily, intensely, and closely",⁶⁷⁹² as well as evidence from Witness DW that East Mostar received on average between 20 and 100 impacts from HVO firing per day.⁶⁷⁹³ This shelling "affected all of East Mostar"⁶⁷⁹⁴ and the Trial Chamber considered evidence that "there was hardly a building or a vehicle that had not been damaged by [it]".⁶⁷⁹⁵ The Trial Chamber also considered that the siege of East Mostar – including the "prolonged military attack comprised of intensive, continuous heavy shelling and rifle fire"⁶⁷⁹⁶ amounted to a widespread attack.⁶⁷⁹⁷ Notably, in determining the factual narrative of the shelling, the Trial Chamber rejected evidence and arguments that the shelling was selective, minimal, and aimed at

⁶⁷⁸⁶ Trial Judgement, Vol. 2, para. 1305. The Appeals Chamber also notes in this regard that a plain reading of the exhibit shows that it is in fact a numbered list of "[c]onclusions from the meeting of ZGS HVO with commanders of ZP and brigades", and that, as indicated in the authoritative French version of the Trial Judgement, it comprises minutes of the meeting, rather than a *verbatim* record. The Appeals Chamber further considers that it is clear that the Trial Chamber considered that discussion of the offensive had been omitted from these minutes. See Trial Judgement, Vol. 2, paras 1304-1305.

⁶⁷⁸⁷ See Trial Judgement, Vol. 2, para. 1305; *supra*, para. 1991.

⁶⁷⁸⁸ See *supra*, paras 1984-1985.

⁶⁷⁸⁹ See *supra*, para. 1982.

⁶⁷⁹⁰ See *supra*, para. 1976.

⁶⁷⁹¹ Trial Judgement, Vol. 2, para. 1018, Vol. 3, para. 1689. See Trial Judgement, Vol. 2, para. 996, Vol. 3, para. 1684.

⁶⁷⁹² Trial Judgement, Vol. 2, para. 1000 (internal references omitted), and evidence cited therein. See Trial Judgement, Vol. 3, paras 1684, 1689.

⁶⁷⁹³ Trial Judgement, Vol. 2, para. 1000, referring to, *inter alia*, Witness DW, T(F). 23081 (private session) (3 Oct 2007), Ex. P10287 (confidential), para. 78.

⁶⁷⁹⁴ Trial Judgement, Vol. 2, para. 1004, and evidence cited therein.

⁶⁷⁹⁵ Trial Judgement, Vol. 2, para. 1004, referring to Larry Forbes, T(F). 21293, 21302-21303 (16 Aug 2007), Ex. P05009, p. 2.

⁶⁷⁹⁶ Trial Judgement, Vol. 3, para. 642.

legitimate military targets.⁶⁷⁹⁸ The Appeals Chamber notes that the Trial Chamber described the acts above as amounting to an “HVO campaign of fire and shelling against East Mostar”.⁶⁷⁹⁹ Thus, the Appeals Chamber finds that the Trial Chamber clearly considered that the “uninterrupted”, “widespread”, and “daily” manifestation of the shelling of civilians in East Mostar established a pattern of conduct that equated to a campaign of shelling.⁶⁸⁰⁰

1997. The Appeals Chamber notes that the Trial Chamber did not err in its approach of relying on circumstantial evidence to make a finding on the existence of a shelling campaign.⁶⁸⁰¹ Thus, Praljak fails to demonstrate that the Trial Chamber was required to establish specific shelling incidents, as it found that the campaign of fire and shelling clearly persisted from June 1993 until and beyond the time his membership in the JCE ended in 9 November 1993. Notably, the Trial Chamber considered evidence identifying shelling incidents that occurred, by the latest, in August or September 1993,⁶⁸⁰² when Praljak was a JCE member. Although Praljak cannot be held responsible for the shelling which occurred after he ceased to be a JCE member, this has no impact on his convictions for crimes committed prior to 9 November 1993.⁶⁸⁰³ Thus, Praljak’s argument is dismissed.

1998. Concerning Praljak’s argument that it was not established that he ordered the shelling and sniping or that they occurred during his command, the Trial Chamber did not find that Praljak ordered the shelling and sniping of Mostar. However, the Appeals Chamber recalls that the Trial Chamber was not required to find that Praljak personally contributed or ordered each JCE crime or every underlying act.⁶⁸⁰⁴ To the extent that Praljak argues that his link to the physical perpetrators of the shelling and sniping was not established, the Appeals Chamber recalls that “JCE members may be held responsible for crimes carried out by principal perpetrators who were non-JCE members, provided that it has been shown that the crimes can be imputed to at least one JCE member and that the latter – when using the principal perpetrators – acted in accordance with the common objective”.⁶⁸⁰⁵ This link can be inferred from various factors, including “evidence that the JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or

⁶⁷⁹⁷ Trial Judgement, Vol. 3, para. 646.

⁶⁷⁹⁸ Trial Judgement, Vol. 2, paras 1002-1018.

⁶⁷⁹⁹ Trial Judgement, Vol. 4, paras 174, 176, 272, 936, 938.

⁶⁸⁰⁰ Cf. *Galić Appeal* Judgement, para. 205.

⁶⁸⁰¹ See *Galić Appeal* Judgement, paras 205, 217-219, 222, 224 (The Appeals Chamber in the *Galić* case concluded that the *Galić* trial chamber properly used evidence regarding the general situation in Sarajevo, among other factors, to support conclusions on the existence of a pattern of conduct, *i.e.* the campaign of shelling and sniping attacks against civilians). In considering the *Galić* case, the Appeals Chamber is not persuaded by Praljak’s argument that this case is not applicable. The Appeals Chamber also notes that the Trial Chamber assessed evidence on shelling in specific locations to determine that the firing and shelling were launched in residential zones and the population was directly affected. Trial Judgement, Vol. 2, paras 1002-1018, Vol. 3, 1684, 1689.

⁶⁸⁰² See Trial Judgement, Vol. 2, paras 1004, 1006, 1012-1013, 1016.

⁶⁸⁰³ See *supra*, fn. 6752.

⁶⁸⁰⁴ See *supra*, para. 1982.

instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit the crime".⁶⁸⁰⁶ In this case, the Trial Chamber found that Praljak himself participated in directing and planning the HVO military operations in Mostar Municipality during the relevant shelling and sniping period,⁶⁸⁰⁷ and that he acted in accordance with the CCP in doing so.⁶⁸⁰⁸ Thus, it was found that shelling and sniping occurred during Praljak's command of the Mostar operations. In participating in directing and planning these operations, a reasonable trier of fact could have concluded that Praljak encouraged or availed himself of the physical perpetrators of the shelling and sniping.

1999. In any event, the Appeals Chamber recalls that the Trial Chamber's findings that Stojić controlled the snipers⁶⁸⁰⁹ in West Mostar and that Petković ordered and contributed to planning the shelling of East Mostar are upheld.⁶⁸¹⁰ Thus, the Appeals Chamber considers that the Trial Chamber's findings show that a link existed between the HVO and the Military Police units involved in the shelling and sniping and at least one of the JCE members. The Appeals Chamber finds that Praljak fails to show that the Trial Chamber erred in holding him responsible for the crimes arising from the shelling and sniping which occurred during his JCE membership.⁶⁸¹¹

d- Praljak's responsibility for the destruction of or severe damage to the ten mosques in East Mostar

2000. With regard to Praljak's convictions for the destruction of or severe damage to the ten mosques in East Mostar in 1993,⁶⁸¹² the Appeals Chamber recalls that the Trial Chamber found that these mosques were destroyed or significantly damaged by the HVO between June and December 1993, without specifying the specific date on which each mosque was destroyed or significantly damaged.⁶⁸¹³ The Appeals Chamber recalls, however, that Praljak cannot be held liable

⁶⁸⁰⁵ *Šainović et al.* Appeal Judgement, para. 1256. See *Šainović et al.* Appeal Judgement, para. 1520; *Krajišnik* Appeal Judgement, para. 225; *Martić* Appeal Judgement, para. 168.

⁶⁸⁰⁶ *Popović et al.* Appeal Judgement, para. 1050, quoting *Krajišnik* Appeal Judgement, para. 226. See *Šainović et al.* Appeal Judgement, paras 1257, 1259.

⁶⁸⁰⁷ Trial Judgement, Vol. 4, paras 581, 586. See Trial Judgement, Vol. 4, paras 579-580, 585, 1232.

⁶⁸⁰⁸ Trial Judgement, Vol. 4, paras 66-67, 586, 625, 627-628, 631.

⁶⁸⁰⁹ Trial Judgement, Vol. 4, para. 368. See *supra*, paras 1662-1667.

⁶⁸¹⁰ Trial Judgement, Vol. 4, para. 750. See *infra*, para. 2247-2249.

⁶⁸¹¹ With regard to Praljak's arguments contesting the Trial Chamber's findings regarding the shelling and sniping that cross-reference to another section of his appeal brief, the Appeals Chamber dismisses these arguments elsewhere. See *supra*, paras 540-565.

⁶⁸¹² See Trial Judgement, Vol. 2, para. 1377, Vol. 4, paras 59, 582, 586. The Appeals Chamber recalls that the ten mosques concerned were: (1) Sultan Selim Javuz Mosque; (2) Hadži Mehmed-Beg Karadoz Mosque; (3) Koski Mehmed-Paša Mosque; (4) Nesuh Aga Vučjaković Mosque; (5) Čejvan Čehaja Mosque; (6) Hadži Ahmed Aga Lakišić Mosque; (7) Roznamedžija Ibrahim Efendija Mosque; (8) Čosa Jahja Hodža Mosque; (9) Hadži Korto or Tabačica Mosque; and (10) Hadži Memija Cernica Mosque. Indictment, para. 116. See Trial Judgement, Vol. 2, para. 1367. See also Trial Judgement, Vol. 2, paras 1373-1374, 1377.

⁶⁸¹³ Trial Judgement, Vol. 2, para. 1377. See Trial Judgement, Vol. 2, paras 1372-1376, Vol. 3, paras 1609-1610, 1690, Vol. 4, para. 582. Regarding the Prosecution's contention that Praljak's liability for the destruction of Baba Bešir

for crimes that occurred after he ceased being a member of the JCE on 9 November 1993.⁶⁸¹⁴ Since the Trial Chamber's findings leave open the possibility that the ten mosques were damaged or destroyed after Praljak's membership in the JCE ended on 9 November 1993, the Appeals Chamber finds that the Trial Chamber failed to provide a reasoned opinion on Praljak's responsibility in relation to these ten mosques, which constitutes an error of law. The Appeals Chamber will therefore assess, on the basis of the Trial Chamber's findings and the relevant evidence relied upon by the Trial Chamber and identified by the Parties, whether no reasonable trier of fact could have concluded beyond reasonable doubt that the mosques were severely damaged or destroyed while Praljak was still a JCE member.⁶⁸¹⁵

2001. The Appeals Chamber considers that a reasonable trier of fact could conclude beyond reasonable doubt that three of the ten mosques were destroyed or severely damaged prior to 9 November 1993.⁶⁸¹⁶ Specifically, the Appeals Chamber observes that Witness Suad Čupina said in his witness statement that he saw the shelling of "the mosque in Cernica, the mosque at the end of Cernica, and Karadoz Bey Mosque", which occurred before he left Mostar on 29 September 1993.⁶⁸¹⁷ He clarified in his testimony that the "mosque at the beginning of Cernica", the other mosque in Cernica, and "Karadoz-bey mosque" were targeted by the HVO throughout May and June 1993,⁶⁸¹⁸ and marked the locations of these mosques on a map of Mostar.⁶⁸¹⁹ The Appeals Chamber notes that the Trial Chamber understood that the witness was referring to Hadži Ahmed Aga Lakišić Mosque,⁶⁸²⁰ Hadži Memija Cernica Mosque,⁶⁸²¹ and Hadži Mehmed-Beg Karadoz Mosque.⁶⁸²² Thus, the Appeals Chamber finds that Praljak fails to show that the Trial

Mosque should be analysed under JCE III, the Appeals Chamber considers this issue elsewhere. See *infra*, paras 3111, 3132. See also *supra*, paras 566-569.

⁶⁸¹⁴ Trial Judgement, Vol. 4, para. 1228. See Trial Judgement, Vol. 4, para. 1230. See also *supra*, para. 1984.

⁶⁸¹⁵ See *Stanišić and Župljanin* Appeal Judgement, para. 356, referring to *Kordić and Čerkez* Appeal Judgement, paras 383-388, *Nyiramasuhuko et al.* Appeal Judgement, para. 977, *Bizimungu* Appeal Judgement, para. 23, *Ndindiliyimana et al.* Appeal Judgement, para. 293.

⁶⁸¹⁶ Trial Judgement, Vol. 2, paras 1369-1377, and evidence cited therein. See Prosecution's Response Brief (Praljak), para. 179, referring to, *inter alia*, Suad Čupina, T. 4859, 4861-4864 (10 July 2006), T. 4890 (11 July 2006), Exs. 1D00527, paras 25-26, IC00026. The Appeals Chamber notes that: (1) Sultan Selim Javuz Mosque was located directly on the Old Bridge and served as the Old Bridge's minaret; and (2) the Old Bridge was destroyed on 8 November 1993. Trial Judgement, Vol. 2, para. 1374 & fn. 3456, referring to, *inter alia*, Ex. P08939, p. 2. However, as the Trial Chamber's finding that the destruction of the Old Bridge amounted to crimes under Counts 1, 20, and 25 has been reversed, and thus that destruction did not amount to a crime. Therefore, the Appeals Chamber declines to consider whether the Sultan Selim Javuz Mosque was destroyed on or before 8 November 1993.

⁶⁸¹⁷ Ex. 1D00527, paras 25-26. See also Suad Čupina, T. 4861-4862 (10 July 2006).

⁶⁸¹⁸ Suad Čupina, T. 4861-4864 (10 July 2006).

⁶⁸¹⁹ Ex. IC00026. See Suad Čupina, T. 4861-4864 (10 July 2006). See also Trial Judgement, Vol. 5, pp. 72-73.

⁶⁸²⁰ See Trial Judgement, Vol. 5, p. 73 & fn. 258, referring to Suad Čupina, T(F). 4861 (10 July 2006) (the Trial Chamber stated that the cited testimony concerned Hadži Ahmed Aga Lakišić Mosque in particular). See also Ex. IC00026.

⁶⁸²¹ See Trial Judgement, Vol. 5, p. 73 & fn. 262, referring to Suad Čupina, T(F). 4862 (10 July 2006) (the Trial Chamber stated that the cited testimony concerned Hadži Memija Cernica Mosque in particular). See also Ex. IC00026.

⁶⁸²² See Trial Judgement, Vol. 5, p. 73 & fn. 254, referring to Suad Čupina, T(F). 4863 (10 July 2006) (the Trial Chamber stated that the cited testimony concerned Hadži Mehmed-Beg Karadoz Mosque in particular). See also Ex. IC00026.

Chamber erred in holding him responsible for the destruction of or severe damage to Hadži Mehmed-Beg Karadoz Mosque, Ahmed Aga Lakišić Mosque, and Hadži Memija Cernica Mosque.⁶⁸²³

2002. With regard to the remaining seven mosques, the Appeals Chamber considers that no reasonable trier of fact could have concluded beyond reasonable doubt that they were severely damaged or destroyed before 9 November 1993, thus before Praljak's membership in the JCE ended. The Appeals Chamber observes that the evidence the Trial Chamber relied on only speaks of the relevant mosques being severely damaged or destroyed in broad terms sometime in 1993.⁶⁸²⁴ Therefore, the Appeals Chamber finds that Praljak cannot be held responsible for the destruction of or severe damage to Sultan Selim Javuz Mosque, Koski Mehmed-Paša Mosque, Nesuh Aga Vučjaković Mosque, Čejvan Čehaja Mosque, Roznamedžija Ibrahim Efendija Mosque, Čosa Jahja Hodža Mosque, and Hadži Korto or Tabačica Mosque.

iii. Conclusion

2003. For the above reasons, the Appeals Chamber grants Praljak's sub-ground of appeal 44.1 in part to the extent it concerns sniping incidents 13 and 14 as well as the destruction of or severe damage to the seven relevant mosques which occurred in Mostar Municipality.⁶⁸²⁵ The remainder of Praljak's sub-ground of appeal 44.1, ground of appeal 23 in part, and his sub-ground of appeal 40.7 as discussed in this section are dismissed.

(ii) Praljak's knowledge of the crimes committed in Mostar (Praljak's Sub-grounds 44.1 in part, 44.2)

a. Arguments of the Parties

2004. Praljak submits that the Trial Chamber erred in finding that he had knowledge of crimes in Mostar based on his involvement in military operations.⁶⁸²⁶ With regard to the events in East Mostar, Praljak argues that the Trial Chamber failed to establish that he knew about the shelling.⁶⁸²⁷ As for the events in Raštani, Praljak argues that there was no evidence that he was informed about

⁶⁸²³ The Trial Chamber attributed the destruction of or severe damage to these mosques to Praljak under Counts 1, 21, and 25. See Trial Judgement, Vol. 3, paras 1609-1610, 1690, 1692, 1711, 1713. Vol. 4, p. 430. See also *supra*, para. 399.

⁶⁸²⁴ See Trial Judgement, Vol. 2, paras 1372-1377, referring to, *inter alia*, Seid Smajkić, T(F). 2553-2554, 2558-2559 (24 May 2006) (in the "summer and fall of 1993", all the buildings that belonged to the Islamic community in Mostar town, including all the mosques, were being targeted and destroyed such that, by 1994, there were no mosques left where Muslims could pray), Ratko Pejanović, T(F). 1276, 1280-1281 (4 May 2006) (the relevant mosques were destroyed or damaged "in 1993"). See also Exs. P08939, IC00002, IC 00020, IC00026.

⁶⁸²⁵ See *supra*, paras 1984-1985, 1995, 2000-2003.

⁶⁸²⁶ Praljak's Appeal Brief, heading before para. 481.

⁶⁸²⁷ Praljak's Appeal Brief, para. 486.

these events or that he had any knowledge about them, claiming to have been in Prozor and Čitluk when they happened.⁶⁸²⁸ He contends that his act of appointing Štampar a day after the combat commenced in Raštani demonstrated his ignorance of the conflict in the area.⁶⁸²⁹ Moreover, he submits that the HVO only ordered defensive actions in Raštani as opposed to offensive ones.⁶⁸³⁰ Praljak also contends that the Trial Chamber gave insufficient reasons for its finding that he knew that crimes would be committed.⁶⁸³¹ He argues that the Trial Chamber based this finding solely on his role as a commander without any evidence that he was informed about any crime or “that he actually knew what happened”.⁶⁸³²

2005. Praljak also submits that the Trial Chamber incorrectly applied the knowledge standard in assessing whether he had intent for the crimes.⁶⁸³³ Specifically, he argues that as knowledge and intent are two separate elements of *mens rea*, mere knowledge of crimes is insufficient to establish the required intent.⁶⁸³⁴

2006. The Prosecution responds that the Trial Chamber was not required to find that he had specific knowledge of the unlawful shelling, given his shared intent that the shelling furthered the CCP.⁶⁸³⁵ It submits that: (1) Praljak’s whereabouts are irrelevant as is the defensive nature of the HVO attacks in light of the crimes which accompanied them,⁶⁸³⁶ and (2) his liability is not dependent on him being informed of specific crimes.⁶⁸³⁷ The Prosecution also argues that Praljak gave Štampar control of further combat activities,⁶⁸³⁸ and that fighting continued throughout September and October 1993.⁶⁸³⁹ With regard to his knowledge of crimes, the Prosecution argues that the Trial Chamber’s conclusion was properly reasoned, and that it did not rely solely on

⁶⁸²⁸ Praljak’s Appeal Brief, para. 488, referring to Trial Judgement, Vol. 4, para. 588, Ex. 3D00366, Witness BJ, T. 5721-5724 (29 Aug 2006).

⁶⁸²⁹ Praljak’s Appeal Brief, para. 488, referring to, *inter alia*, Ex. P04508. As for the fighting that continued through September and October 1993 in Raštani, Praljak replies that the inexact information the Main Staff received demonstrated the difficulties he encountered in exercising his functions. Praljak’s Reply Brief, para. 83.

⁶⁸³⁰ Praljak’s Appeal Brief, para. 488, referring to Ex. P04476.

⁶⁸³¹ Praljak’s Appeal Brief, para. 489, referring to Trial Judgement, Vol. 4, para. 586. See Praljak’s Appeal Brief, para. 490.

⁶⁸³² Praljak’s Appeal Brief, para. 489. Further, Praljak argues that as he was not in the Mostar area during the operation in Raštani, the Trial Chamber failed to find supplemental indicia to establish his actual knowledge. Praljak’s Appeal Brief, para. 489, referring to Trial Judgement, Vol. 1, para. 248.

⁶⁸³³ Praljak’s Appeal Brief, para. 490.

⁶⁸³⁴ Praljak’s Appeal Brief, para. 490. Praljak contends that the most that can be concluded from “mere knowledge” is that an accused accepted that crimes would be committed, but that this is insufficient for JCE I liability. Praljak’s Appeal Brief, para. 490. See Praljak’s Appeal Brief, para. 428.

⁶⁸³⁵ Prosecution’s Response Brief (Praljak), para. 179, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 59, 65-68.

⁶⁸³⁶ Prosecution’s Response Brief (Praljak), para. 184.

⁶⁸³⁷ Prosecution’s Response Brief (Praljak), para. 184, referring to *Karemera and Ngirumpatse* Appeal Judgement, para. 153, *Šainović et al.* Appeal Judgement, para. 1491, *Kvočka et al.* Appeal Judgement, para. 112.

⁶⁸³⁸ Prosecution’s Response Brief (Praljak), para. 184, referring to Ex. P04508.

⁶⁸³⁹ Prosecution’s Response Brief (Praljak), para. 184, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 949, Ex. P05692.

Praljak's position.⁶⁸⁴⁰ It also submits that the Trial Chamber correctly assessed Praljak's shared intent, which encompassed crimes in Mostar and Raštani.⁶⁸⁴¹

2007. Praljak replies that, while an accused's awareness of each individual incident is not required, he must still be shown to be "familiar with [the] general line of behavior" aimed at furthering the CCP.⁶⁸⁴² Praljak argues that his behaviour was contrary to the HVO's policy.⁶⁸⁴³

b. Analysis

2008. The Appeals Chamber recalls that "the *mens rea* required for liability under the first category of joint criminal enterprise is that the accused shares the intent with the other participants to carry out the crimes forming part of the common purpose".⁶⁸⁴⁴ Praljak contends that his knowledge of the shelling in East Mostar and the events in Raštani should have been established, but the Appeals Chamber observes that it is not necessary for a participant in a JCE to know of each crime committed in order to be criminally liable.⁶⁸⁴⁵ The Appeals Chamber recalls that it "suffices that he shared the intent for the commission of these crimes and acted in furtherance of the common purpose".⁶⁸⁴⁶ In this regard, the Appeals Chamber notes that the Trial Chamber found that Praljak shared the intent with the other JCE members to carry out the crimes forming part of the CCP, which encompassed the crimes committed in Mostar and Raštani.⁶⁸⁴⁷ The Appeals Chamber dismisses elsewhere Praljak's arguments that he did not share this intent with other JCE members to carry out crimes forming part of the CCP.⁶⁸⁴⁸ Similarly, the Appeals Chamber dismisses Praljak's argument in reply that he must also be shown to be "familiar with the general line of behavior" aimed at furthering the CCP, particularly as this argument is not supported by any legal authority nor does Praljak elaborate on the meaning of that phrase.⁶⁸⁴⁹ Further, Praljak does not substantiate his argument with any reference to evidence which could call into question the Trial Chamber's

⁶⁸⁴⁰ Prosecution's Response Brief (Praljak), para. 181. The Prosecution argues the Trial Chamber reached its conclusion on the basis of the important role Praljak played in planning and directing HVO military operations in Raštani and Mostar which is supported by the evidence. Prosecution's Response Brief (Praljak), para. 181, and evidence cited therein.

⁶⁸⁴¹ Prosecution's Response Brief (Praljak), para. 180, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 41, 44-45, 49-59, 65-68, 579-581, 586.

⁶⁸⁴² Praljak's Reply Brief, para. 80.

⁶⁸⁴³ Praljak's Reply Brief, para. 81, referring to Trial Judgement, Vol. 4, paras 588, 590.

⁶⁸⁴⁴ *Dorđević* Appeal Judgement, para. 468, referring to *Tadić* Appeal Judgement, paras 220, 228, *Krajišnik* Appeal Judgement, para. 707.

⁶⁸⁴⁵ *Šainović et al.* Appeal Judgement, para. 1491.

⁶⁸⁴⁶ *Šainović et al.* Appeal Judgement, para. 1491.

⁶⁸⁴⁷ Trial Judgement, Vol. 4, paras 41, 44-45, 49-59, 65-68.

⁶⁸⁴⁸ See *supra*, para. 1921. See also *supra*, paras 792-814.

⁶⁸⁴⁹ See *supra*, para. 2007.

finding that he planned and directed the military operations that were accompanied by the commission of the crimes.⁶⁸⁵⁰ Praljak's arguments are thus dismissed.

2009. Moreover, Praljak's contention that the facts demonstrate his lack of knowledge of the Raštani events is not borne out by the evidence. The Appeals Chamber notes that Praljak was held responsible for the killings, the physical and mental abuse inflicted, and the forcible transfer committed by the HVO in Raštani village on 24 August 1993.⁶⁸⁵¹ While he argues that the date he appointed Štampar as commander, 25 August 1993,⁶⁸⁵² was a day after the events in Raštani, the Trial Chamber found that the HVO attack on the Raštani area, including an attack on the hydro-electric plant, occurred between 24 and 26 August 1993.⁶⁸⁵³ Praljak's order itself stated that Štampar was to "control further combat activities as well as the hydro-electric dam water flow",⁶⁸⁵⁴ which would allow a reasonable trier of fact to conclude that Praljak had an awareness of the events on the ground at that time.⁶⁸⁵⁵ Indeed, indicating further the level of Praljak's involvement and awareness of events in Raštani, the Trial Chamber also found that on 6 August 1993, that is, prior to the attack on Raštani and Praljak's order regarding Štampar, Žarko Tole issued an order specifying that the Main Staff would take over the command of the defence of Mostar.⁶⁸⁵⁶ The Trial Chamber also noted that Tole's order was followed by Praljak's order of 12 August 1993, mobilising all the HVO manpower to "eliminate Muslim 'terrorists' from Mostar."⁶⁸⁵⁷ Further, with regard to Praljak's assertion that he was not in Raštani, the Appeals Chamber recalls that participants in a JCE are not required to be physically present when and where the crimes are being committed.⁶⁸⁵⁸ Last, Praljak does not show that the one piece of evidence he relies on, an order to secure a defence line along Raštani,⁶⁸⁵⁹ has any impact on the Trial Chamber's findings that the Raštani operations resulted in a "coercive climate"⁶⁸⁶⁰ and the commission of crimes.⁶⁸⁶¹ Based on the above, Praljak's more specific arguments are dismissed.

2010. The Appeals Chamber now turns to Praljak's general challenges against the conclusion that he had knowledge of the crimes in Raštani and Mostar. The Trial Chamber found that Praljak knew

⁶⁸⁵⁰ Trial Judgement, Vol. 4, paras 579, 581, 586, 625.

⁶⁸⁵¹ Trial Judgement, Vol. 4, paras 584, 586, 630. See Trial Judgement, Vol. 2, paras 948-972.

⁶⁸⁵² Praljak's Appeal Brief, para. 488, referring to Ex. P04508.

⁶⁸⁵³ Trial Judgement, Vol. 2, paras 948-949, 953.

⁶⁸⁵⁴ Ex. P04508.

⁶⁸⁵⁵ See, e.g., Trial Judgement, Vol. 2, para. 949 (the HVO forces took over the dam and the hydro-electric plant on 24 August 1993 or in the night of 25 to 26 August 1993).

⁶⁸⁵⁶ Trial Judgement, Vol. 4, para. 579.

⁶⁸⁵⁷ Trial Judgement, Vol. 4, para. 579.

⁶⁸⁵⁸ *Popović et al.* Appeal Judgement, para. 1653; *Kvočka et al.* Appeal Judgement, para. 112; *Karemera and Ngirumpatse* Appeal Judgement, para. 153.

⁶⁸⁵⁹ Ex. P04476.

⁶⁸⁶⁰ Trial Judgement, Vol. 3, para. 858.

⁶⁸⁶¹ See Trial Judgement, Vol. 2, paras 971-972, Vol. 3, paras 858-861, 916-918.

that the crimes would be committed during the operations in Raštani and Mostar.⁶⁸⁶² In arriving at this conclusion, the Trial Chamber considered that: (1) the crimes were committed systematically and/or over a period of time by “operations orchestrated by the HZ(R) H-B leadership”;⁶⁸⁶³ and (2) Praljak directed the Mostar military operations during a part of the period.⁶⁸⁶⁴ Praljak contends that this conclusion was reached solely based on his position without any further reasoning or evidence. However, Praljak ignores the relevant Trial Chamber’s findings, and in particular, that he played an “important role” in planning and directing the HVO’s military operations in Mostar Municipality.⁶⁸⁶⁵ Notably, the Trial Chamber relied on various pieces of evidence, including evidence showing that Praljak issued orders to organise the command structure and military operations in the Mostar sector and sent a message to all the HVO troops giving them an overview of the situation in Mostar and congratulating them for their actions.⁶⁸⁶⁶ The Trial Chamber also considered evidence that, on 31 August 1993, Gojko Šušak indicated that he would contact Praljak to ask him to stop the heavy shelling of East Mostar on that day.⁶⁸⁶⁷ Additionally, there is evidence of Praljak attending a meeting on 7 November 1993 during which the HVO offensive on 8 November 1993 was discussed.⁶⁸⁶⁸

2011. The Appeals Chamber further notes that the Trial Chamber found that Praljak “was informed of the crimes committed by the members of the HZ(R) H-B armed forces primarily through HVO internal communication channels”.⁶⁸⁶⁹ This is supported by findings regarding Praljak’s authority over those armed forces as Commander of the Main Staff during the 24 July 1993 to 9 November 1993 period,⁶⁸⁷⁰ including in particular authority over communication within the HVO.⁶⁸⁷¹ In addition, the Trial Chamber made detailed findings concerning the flow of information to and from the Main Staff, and concluded that “the Main Staff and its Chief were kept routinely informed of the situation prevailing on the ground.”⁶⁸⁷² In light of the above,⁶⁸⁷³ the Appeals Chamber finds that Praljak fails to substantiate his assertion that the Trial Chamber only

⁶⁸⁶² Trial Judgement, Vol. 4, para. 586.

⁶⁸⁶³ Trial Judgement, Vol. 4, para. 586.

⁶⁸⁶⁴ Trial Judgement, Vol. 4, para. 586.

⁶⁸⁶⁵ Trial Judgement, Vol. 4, paras 579-581, 586.

⁶⁸⁶⁶ Trial Judgement, Vol. 4, para. 579. See *supra*, para. 1986.

⁶⁸⁶⁷ Trial Judgement, Vol. 4, para. 585, referring to Ex. P09506 (confidential), p. 1, Peter Galbraith, T(F). 6501-6502 (12 Sept 2006).

⁶⁸⁶⁸ Trial Judgement, Vol. 4, para. 580. See Trial Judgement, Vol. 2, paras 1304-1305; *supra*, paras 1989-1994 (noting that Praljak’s attendance at the 7 November 1993 meeting remains relevant to his JCE contribution despite the reversal of findings concerning the Old Bridge). The Appeals Chamber notes that the Trial Chamber erroneously referred to the date of the meeting as 8 November 1993 in paragraph 580 of Volume 4 of the Trial Judgement.

⁶⁸⁶⁹ Trial Judgement, Vol. 4, para. 625. See *supra*, paras 1928-1929.

⁶⁸⁷⁰ See Trial Judgement, Vol. 4, paras 483-506.

⁶⁸⁷¹ See Trial Judgement, Vol. 4, para. 495.

⁶⁸⁷² Trial Judgement, Vol. 1, paras 736-742.

⁶⁸⁷³ See *supra*, paras 1986-1988.

relied on his position and gave insufficient reasons in arriving at its conclusion.⁶⁸⁷⁴ Thus, Praljak fails to show that no reasonable trier of fact could have concluded, as the only reasonable inference available from the evidence, that he knew that the relevant crimes would be committed in Mostar Municipality.

2012. As for Praljak's final argument that the Trial Chamber incorrectly inferred his intent based on his knowledge that crimes would be committed, the Appeals Chamber recalls that the requisite *mens rea* for a conviction under JCE I can be inferred from a person's knowledge of the common plan involving the commission of the crime, combined with his continuous participation, if this is the only reasonable inference available on the evidence.⁶⁸⁷⁵ In this case, the Trial Chamber found that Praljak knew that the crimes in Mostar Municipality would be committed, based on the fact that the crimes that accompanied the HVO operations that he directed were neither random acts nor acts of undisciplined soldiers but, rather, were committed systematically and over a period of time. The Appeals Chamber notes that, on that basis, the Trial Chamber found that Praljak therefore intended that the relevant crimes in Mostar Municipality be committed.⁶⁸⁷⁶

2013. Additionally, in its ultimate conclusion regarding Praljak's overall intent for crimes charged, the Trial Chamber concluded that the only reasonable inference it could draw from the fact that Praljak participated in the planning of the HVO military operations in, *inter alia*, Mostar during the summer of 1993, and "that he continued to exercise control over the armed forces while knowing that its members were committing crimes in other municipalities [...], is that he intended to have these crimes committed".⁶⁸⁷⁷ The Appeals Chamber considers that Praljak does not present any other reasonable inference that can be drawn from the evidence. Thus, Praljak fails to show that the Trial Chamber erred in inferring, from his involvement in the military operations in Mostar from 24 July 1993 to 9 November 1993 and his knowledge that crimes would be committed, that he intended the crimes that were committed in Mostar and Raštani and that he possessed the required shared intent.⁶⁸⁷⁸ His argument is dismissed.

2014. Based on the foregoing, the Appeals Chamber finds that Praljak has failed to show that no reasonable trier of fact could have concluded, as the only reasonable inferences, that he knew the

⁶⁸⁷⁴ The Appeals Chamber further considers that Praljak's argument that the Trial Chamber required supplemental indicia of his knowledge is inapposite, given that the Trial Chamber outlined this requirement in the context of superior responsibility and not JCE liability. See Trial Judgement, Vol. 1, para. 248.

⁶⁸⁷⁵ *Popović et al.* Appeal Judgement, para. 1652, referring to *Dorđević* Appeal Judgement, para. 512, *Krajišnik* Appeal Judgement, paras 202, 204, 697, *Brđanin* Appeal Judgement, paras 428-429, *Vasiljević* Appeal Judgement, para. 120.

⁶⁸⁷⁶ Trial Judgement, Vol. 4, para. 586. The Appeals Chamber recalls its finding that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP from January 1993 until June 1993. See *supra*, para. 882.

⁶⁸⁷⁷ Trial Judgement, Vol. 4, para. 625.

⁶⁸⁷⁸ See *supra*, paras 1921, 1940-1944.

crimes in Mostar and Raštani would be committed, and that he therefore intended them. Praljak's sub-grounds of appeal 44.1, in part, and 44.2 are dismissed.

(iii) Praljak's intent for the crime of unlawful infliction of terror on civilians under Article 3 of the Statute (Count 25) (Ground 21 (in part))

a. Arguments of the Parties

2015. Praljak submits that the Trial Chamber failed to establish that the Appellants had the specific intent to spread terror and that there is no evidence of such intent, and thus it erred in convicting him of the crime of unlawful infliction of terror through the shelling of the population of East Mostar.⁶⁸⁷⁹ In the Appeal Hearing, Praljak argues that the Trial Chamber found that the HVO's activities were directed at military objectives, and that this sufficiently excludes the crime of terror.⁶⁸⁸⁰ Praljak concludes that the impact of either the failure to establish the crime or provide a reasoned opinion is that the conviction must be invalidated.⁶⁸⁸¹

2016. The Prosecution responds that the Trial Chamber properly concluded that the HVO acted with the specific intent to spread terror among the civilian population and that Praljak shared the intent to commit the crimes forming part of the JCE which included the crime of terror.⁶⁸⁸² In the Appeal Hearing, the Prosecution concedes that the Trial Chamber made no explicit finding on Praljak's specific intent to spread terror.⁶⁸⁸³ Nonetheless, the Prosecution argues that the only reasonable interpretation of the Trial Chamber's findings is that Praljak possessed this specific intent.⁶⁸⁸⁴ It contends that: (1) the Trial Chamber correctly set out the elements of the crime, and made the appropriate factual findings that the crime was committed, including the finding that the HVO intended to spread terror among the civilian population,⁶⁸⁸⁵ and (2) "if the HVO was anyone, it was Slobodan Praljak between the 24th of July and the 9th of November, 1993", given that he contributed to and intended the JCE I crimes that were used to spread terror in East Mostar.⁶⁸⁸⁶ The Prosecution also responds that, if there was a failure to provide a reasoned opinion on this issue, the

⁶⁸⁷⁹ Praljak's Appeal Brief, paras 277-279. See also Appeal Hearing, AT. 377 (22 Mar 2017). Praljak argues in reply that the Trial Chamber's finding that he shared the intent to commit crimes under the JCE is insufficient as the required intent for each crime should have been established. Praljak's Reply Brief, para. 88.

⁶⁸⁸⁰ Appeal Hearing, AT. 380-381 (22 Mar 2017), referring to Trial Judgement, Vol. 2, paras 1003, 1009, 1013-1014.

⁶⁸⁸¹ Appeal Hearing, AT. 381 (22 Mar 2017).

⁶⁸⁸² Prosecution's Response Brief (Praljak), para. 198.

⁶⁸⁸³ Appeal Hearing, AT. 446 (22 Mar 2017).

⁶⁸⁸⁴ Appeal Hearing, AT. 446-448 (22 Mar 2017).

⁶⁸⁸⁵ Appeal Hearing, AT. 446-447 (22 Mar 2017), referring to Trial Judgement, Vol. 1, paras 195-197, Vol. 3, paras 1689-1692.

⁶⁸⁸⁶ Appeal Hearing, AT. 446-448 (22 Mar 2017), referring to Trial Judgement, Vol. 4, paras 68, 586, 625, 630.

Appeals Chamber's own examination of the evidence and underlying factual findings would lead to the same result that Praljak intended to spread terror.⁶⁸⁸⁷

b. Analysis

2017. The Appeals Chamber recalls that the *mens rea* for the crime of unlawful infliction of terror requires the general intent to make the civilian population or individual civilians not taking direct part in hostilities the object of the acts of violence or threats thereof and the "specific intent to spread terror among the civilian population".⁶⁸⁸⁸ While spreading terror must be the primary purpose of the acts or threats of violence, it need not be the only one and can be inferred from the "nature, manner, timing, and duration" of the acts or threats.⁶⁸⁸⁹

2018. The Appeals Chamber recalls that, in the section on Praljak's individual responsibility pursuant to JCE I, the Trial Chamber found that the only reasonable inference it could draw from Praljak's participation in planning the HVO military operations in Mostar during the summer of 1993 was that he intended to have certain crimes committed.⁶⁸⁹⁰ Specifically, the Trial Chamber found that Praljak "intended to have buildings in East Mostar destroyed, including mosques [...], to deliberately target civilians, to have murders, wounding, physical and psychological abuse and attacks on members of international organisations committed and lastly, to have women and children removed".⁶⁸⁹¹ It further found that Praljak intended to expel the Muslim population from the HZ(R) H-B, and that he shared this intention with other JCE members.⁶⁸⁹² The Appeals Chamber recalls that the Trial Chamber subsequently found Praljak responsible for committing the crime of unlawful infliction of terror on civilians in Mostar Municipality.⁶⁸⁹³

⁶⁸⁸⁷ Appeal Hearing, AT. 448 (22 Mar 2017).

⁶⁸⁸⁸ *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104. See *supra*, para. 1774. The *actus reus* of the crime of unlawful infliction of terror consists of "[a]cts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population". *D. Milošević* Appeal Judgement, para. 31. See *Galić* Appeal Judgement, para. 100.

⁶⁸⁸⁹ *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104. See *supra*, para. 1774. The Appeals Chamber dismisses elsewhere Praljak's argument that the Trial Chamber failed to establish that the purpose of the shelling of East Mostar was to spread terror and that any HVO member had the specific intent to spread terror. See *supra*, paras 546-565. In the present section, the Appeals Chamber will limit its analysis on whether the Trial Chamber properly found that Praljak had the required intent for the crime of unlawful infliction of terror. To the extent that Praljak argues that the Trial Chamber failed to make the relevant findings in respect of the other Appellants, the Appeals Chamber considers that he fails to develop his argument in order to demonstrate how this would impact on his own conviction. See Praljak's Appeal Brief, paras 275-279. See also Praljak's Appeal Brief, para. 255.

⁶⁸⁹⁰ Trial Judgement, Vol. 4, para. 625. See *supra*, paras 1809, 1921, 1933, 1940, 2012-2014.

⁶⁸⁹¹ Trial Judgement, Vol. 4, para. 586. See *supra*, paras 1974, 1982, 2012-2014. See also Trial Judgement, Vol. 4, para. 625; *supra*, paras 1809, 1921, 1933, 1940, 2012-2014. The Appeals Chamber recalls that it has reversed the Trial Chamber's conclusion that the destruction of the Old Bridge constituted wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or customs of war. See *supra*, paras 411-414, *infra*, para. 2021.

⁶⁸⁹² Trial Judgement, Vol. 4, para. 627. See *supra*, paras 1809, 1921, 1924, 1936-1797, 1940-1942.

⁶⁸⁹³ Trial Judgement, Vol. 4, para. 630. See *supra*, para. 1810 & fn. 6021.

2019. The Appeals Chamber finds that, in making the intent findings above and holding Praljak responsible for the crime of unlawful infliction of terror on civilians, the Trial Chamber considered that he had the required *mens rea* for this crime. However, the Appeals Chamber finds that the Trial Chamber's approach falls short of what is required under its obligation to give a reasoned opinion in writing.⁶⁸⁹⁴ Although the Appeals Chamber considers that the intent findings for Praljak provided by the Trial Chamber satisfy the general intent requirement that he intended to make the civilian population or individual civilians not taking direct part in hostilities the object of the acts of violence, they do not satisfy the specific intent requirement, namely, whether he committed the offence with the primary purpose of spreading terror among the civilian population.⁶⁸⁹⁵ In this regard, the Appeals Chamber notes that the Trial Chamber found that the HVO had "the specific intention [...] to spread terror among the civilian population of East Mostar"⁶⁸⁹⁶ and "committed acts of violence, the main aim of which was to inflict terror on the population".⁶⁸⁹⁷ However, no findings were made on whether Praljak shared this specific intent.

2020. In these circumstances, the Appeals Chamber finds that the Trial Chamber failed to provide a reasoned opinion by neglecting to set out in a clear and articulate manner the factual and legal *mens rea* findings on the basis of which it convicted Praljak for the crime of unlawful infliction of terror.⁶⁸⁹⁸ The Appeals Chamber will therefore determine whether this error of law invalidates the Trial Chamber's decision to convict Praljak for this crime.⁶⁸⁹⁹

2021. The Appeals Chamber notes that, in the portion of the Trial Judgement relating to the legal findings on the crime of unlawful infliction of terror, the Trial Chamber described the "appalling living conditions" in East Mostar.⁶⁹⁰⁰ It reached this conclusion, having considered, *inter alia*, that: (1) between June 1993 and March 1994, the HVO subjected the civilian population of East Mostar to intense, daily, and frequent shelling and firing which resulted in the death and injury of a large number of Muslim civilians;⁶⁹⁰¹ (2) these attacks were indiscriminate;⁶⁹⁰² (3) the civilian inhabitants were subjected to a campaign of HVO sniper fire involving the targeting of women, children, and

⁶⁸⁹⁴ *Kordić and Čerkez* Appeal Judgement, para. 383. See *supra*, para. 1778. See also *Kordić and Čerkez* Appeal Judgement, para. 385.

⁶⁸⁹⁵ See *supra*, para. 2017.

⁶⁸⁹⁶ Trial Judgement, Vol. 3, para. 1691. See *supra*, paras 546-565. See also *supra*, para. 1778.

⁶⁸⁹⁷ Trial Judgement, Vol. 3, para. 1692. See *supra*, paras 546-565. See also *supra*, para. 1778.

⁶⁸⁹⁸ See *Bizimungu* Appeal Judgement, para. 18, referring to *Hadžihasanović and Kubura* Appeal Judgement, para. 13. See also *supra*, para. 1779.

⁶⁸⁹⁹ See *Stanišić and Župljanin* Appeal Judgement, para. 356, referring to *Kordić and Čerkez* Appeal Judgement, paras 383-388, *Nyiramasuhuko et al.* Appeal Judgement, para. 977, *Bizimungu* Appeal Judgement, para. 23, *Ndindiliyimana et al.* Appeal Judgement, para. 293; *supra*, para. 20. See also *supra*, para. 1779.

⁶⁹⁰⁰ Trial Judgement, Vol. 3, para. 1691. See *supra*, para. 1780.

⁶⁹⁰¹ Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 546-565. See also *supra*, para. 1781.

⁶⁹⁰² Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 546-565. See also *supra*, para. 1781.

elderly people who were going about their daily business;⁶⁹⁰³ (4) the constant and intense shelling and fire – including sniper fire – had the effect of terrifying the East Mostar population;⁶⁹⁰⁴ (5) between June 1993 and December 1993, the HVO deliberately destroyed ten mosques as well as the Old Bridge, whose destruction had a major psychological impact on the morale of the population and the HVO had to be aware of that impact;⁶⁹⁰⁵ (6) the HVO aggravated the appalling living conditions to which the Muslim inhabitants of East Mostar were subjected, *inter alia*, by blocking or hindering the regular provision of humanitarian aid, and by deliberately keeping the civilian population in the small and overcrowded enclave from June 1993 to April 1994.⁶⁹⁰⁶ The Appeals Chamber recalls its dismissal elsewhere of the challenges presented to the Trial Chamber’s finding that the HVO committed the crime of unlawful infliction of terror on the population of East Mostar, with the exception of the challenges to the Old Bridge. Specifically, the Appeals Chamber recalls that it has found the Trial Chamber’s conclusion that the destruction of the Old Bridge was unlawful to be erroneous.⁶⁹⁰⁷ Thus, the Trial Chamber’s findings on the Old Bridge will not be considered in determining whether Praljak had the specific intent to terrorise.

2022. The Appeals Chamber considers that, to the extent that Praljak had knowledge of and contributed to the appalling living conditions in East Mostar caused by the HVO, the Trial Chamber’s reasoning outlined above is relevant for the assessment of Praljak’s specific intent for the crime of unlawful infliction of terror. Thus, the Appeals Chamber recalls that the Trial Chamber found that Praljak “participated in directing and planning the HVO operations in the Municipality of Mostar between July 1993 and early November 1993”.⁶⁹⁰⁸ It reached this finding, having considered that he “played an important role in planning and directing the military operations in the Municipality of Mostar” during that period.⁶⁹⁰⁹ Notably, the Trial Chamber relied on various pieces of evidence, including evidence showing that Praljak issued orders to organise the command structure and military operations in the Mostar sector, as well as evidence of the Main Staff taking

⁶⁹⁰³ Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 540-545. See also *supra*, para. 1781.

⁶⁹⁰⁴ Trial Judgement, Vol. 3, para. 1689. See *supra*, paras 546-565. See also *supra*, para. 1781.

⁶⁹⁰⁵ Trial Judgement, Vol. 3, para. 1690. See *supra*, paras 405-426. See also *supra*, para. 1781.

⁶⁹⁰⁶ Trial Judgement, Vol. 3, para. 1691. See *supra*, paras 536-539. See also *supra*, para. 1781.

⁶⁹⁰⁷ The Appeals Chamber recalls that it has reversed the Trial Chamber’s conclusion that the destruction of the Old Bridge constituted wanton destruction not justified by military necessity. The Appeals Chamber has also reversed the Trial Chamber’s findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and has therefore acquitted the Appellants of these charges insofar as they concern the Old Bridge. See *supra*, paras 411-414, 426. See also *supra*, para. 1781.

⁶⁹⁰⁸ Trial Judgement, Vol. 4, para. 581. See *supra*, paras 1974, 1982, 1986-1988.

⁶⁹⁰⁹ Trial Judgement, Vol. 4, para. 579. See *supra*, paras 1986, 2010.

over command of the defence of Mostar, and of Praljak's attendance at a meeting on 7 November 1993 at which the HVO offensive on 8 November 1993 was discussed.⁶⁹¹⁰

2023. Turning to Praljak's knowledge and intent, the Trial Chamber then concluded that, insofar as Praljak directed the HVO military operations in Mostar, he knew about the crimes committed in those operations and "intended to have buildings destroyed, including mosques [...], to deliberately target civilians, to have murders, wounding, physical and psychological abuse and attacks on members of international organisations committed and lastly, to have women and children removed".⁶⁹¹¹ Having made this intent finding, the Trial Chamber separately analysed Praljak's involvement in hindering the arrival of humanitarian aid to Mostar. However, the Trial Chamber then concluded that it could not find that Praljak participated in hindering the arrival of humanitarian aid to Mostar or that he was aware that the HVO was hindering its arrival.⁶⁹¹² However, the Appeals Chamber notes that the Trial Chamber nevertheless found that Praljak intended attacks on members of international organisations.⁶⁹¹³

2024. In light of the above, the Appeals Chamber observes that the Trial Chamber found that Praljak had knowledge of and intended nearly all the underlying acts the Trial Chamber had earlier considered demonstrated the HVO's specific intent to spread terror. The Appeals Chamber notes, in particular, that Praljak participated in planning and directing the HVO operations for a substantial portion of the nine-month period that the HVO subjected the civilian population of East Mostar to intense, daily, and frequent shelling and firing,⁶⁹¹⁴ which it found to be indiscriminate attacks,⁶⁹¹⁵ and "had the effect of terrifying the population of East Mostar".⁶⁹¹⁶ The Appeals Chamber also notes the Trial Chamber's findings that Praljak intended to deliberately target civilians, and have physical and psychological abuse committed, and that he intended the destruction of the mosques.⁶⁹¹⁷ In light of these intent findings and the Trial Chamber's findings that the HVO had to be aware of the psychological impact that the destruction of these buildings would have had on the

⁶⁹¹⁰ See *supra*, paras 1986, 1989-1994 (noting that Praljak's attendance at the 7 November 1993 meeting remains relevant to his JCE contribution despite the reversal of findings concerning the Old Bridge). See also *supra*, para. 2010.

⁶⁹¹¹ Trial Judgement, Vol. 4, para. 586. See also Trial Judgement, Vol. 4, paras 579-585; *supra*, paras 1982-2003, 2008-2014. The Appeals Chamber finds elsewhere that Praljak cannot be held responsible for sniping incidents 13 and 14, as well as the destruction of or severe damage to seven mosques in East Mostar. See *supra*, paras 1984-1985, 2000-2003. The Appeals Chamber notes, however, that as the Trial Chamber's findings holding him responsible for the remaining sniping incidents, as well as the destruction of or severe damage to the other three mosques in East Mostar have been upheld, the Appeals Chamber's findings have no impact on the Appeals Chamber's analysis in the present section.

⁶⁹¹² Trial Judgement, Vol. 4, para. 590. See *supra*, para. 1936.

⁶⁹¹³ Trial Judgement, Vol. 4, para. 586. See *supra*, paras 1974, 2018, 2023.

⁶⁹¹⁴ Trial Judgement, Vol. 3, para. 1689, Vol. 4, paras 581-582, 586. See *supra*, paras 1974, 1982, 1986-1988, 2022.

⁶⁹¹⁵ See Trial Judgement, Vol. 3, para. 1689, Vol. 4, paras 581-582, 586. See also Trial Judgement, Vol. 2, paras 1004-1008; *supra*, paras 546-565.

⁶⁹¹⁶ Trial Judgement, Vol. 2, para. 1015. See Trial Judgement, Vol. 3, paras 1689-1692. See also *supra*, paras 546-565.

⁶⁹¹⁷ Trial Judgement, Vol. 4, para. 586. See *supra*, paras 1974, 1982, 2012-2014, 2018.

morale of the population in view of their great symbolic, cultural, and historical value,⁶⁹¹⁸ the Appeals Chamber considers that a reasonable trier of fact could conclude that Praljak must have been similarly aware.

2025. The Appeals Chamber thus concludes in the specific circumstances of this case, and given Praljak's prominent position within the HVO,⁶⁹¹⁹ that a reasonable trier of fact could be satisfied beyond reasonable doubt – and as the only reasonable inference available – that Praljak intended that the acts of violence be committed with the primary purpose of spreading terror among the civilian population. Accordingly, the Appeals Chamber finds that Praljak has failed to show that the Trial Chamber's failure to provide a reasoned opinion invalidates his conviction for the crime of unlawful infliction of terror on civilians. Praljak's argument is therefore dismissed.

c. Conclusion

2026. In sum, the Appeals Chamber grants Praljak's sub-ground of appeal 44.1 in part, and finds that he cannot be held responsible for sniping incidents 13 and 14, as well as the destruction of or severe damage to the seven relevant mosques in Mostar Municipality. The impact of these findings, if any, will be discussed in the sentencing section below.⁶⁹²⁰ The Appeals Chamber also finds, in relation to Praljak's ground of appeal 21 in part, that the Trial Chamber failed to provide a reasoned opinion in convicting him for the crime of unlawful infliction of terror on civilians but concludes, however, that he has failed to show how this error invalidates his conviction for the crime. The Appeals Chamber dismisses Praljak's grounds of appeal 21, 23, sub-ground of appeal 40.7 in relevant parts, and the remainder of Praljak's ground of appeal 44.

(d) Vareš Municipality (Praljak's Grounds 45 and 54)

2027. With regard to Vareš Municipality, the Trial Chamber found that the HVO and the Military Police: (1) arrested, detained, and mistreated Muslim civilians and ABiH members in the town of Vareš between 23 October 1993 and 3-4 November 1993;⁶⁹²¹ and (2) attacked the village of Stupni Do on 23 October 1993 which resulted in murders and destruction of property.⁶⁹²² In assessing Praljak's involvement in the events in Vareš Municipality, the Trial Chamber considered an order he issued on 23 October 1993 ("Praljak's Order of 23 October 1993") to, *inter alios*, Petković and Ivica Rajić "to sort out the situation in Vareš showing no mercy to anyone" with men who were "up

⁶⁹¹⁸ See Trial Judgement, Vol. 3, para. 1690.

⁶⁹¹⁹ See *supra*, paras 1808, 1861, 1870, 1942.

⁶⁹²⁰ See *infra*, para. 3362.

⁶⁹²¹ Trial Judgement, Vol. 3, paras 339-340, 342-348, 352-399. The Trial Chamber also found that thefts and sexual abuse occurred during the events in Vareš town. Trial Judgement, Vol. 3, paras 401-404.

⁶⁹²² Trial Judgement, Vol. 3, paras 417, 421-422, 464, 466-467. The Trial Chamber also found that thefts and sexual abuse occurred during the attack on Stupni Do. Trial Judgement, Vol. 3, paras 429, 465, 467.

[...] to the tasks”.⁶⁹²³ The Trial Chamber, relying on Praljak’s Order of 23 October 1993 and an order he issued on 5 November 1993 concerning the defence of Vareš, found that Praljak participated in planning and directing the HVO operations in Vareš in October 1993.⁶⁹²⁴ In this respect, it concluded that Praljak’s Order of 23 October 1993 was leaked to HVO troops who interpreted it as allowing them to act with brutality.⁶⁹²⁵ In arriving at this latter finding, the Trial Chamber relied on the evidence of Witness EA.⁶⁹²⁶

2028. The Trial Chamber also found that, no later than 5 November 1993, Praljak was informed of murders and destruction of property committed in Stupni Do as he attended a meeting at that time during which: (1) the possible consequences of the events in Stupni Do were analysed, including the involvement of Rajić and his troops; and (2) Petković had requested that an investigation be launched.⁶⁹²⁷ Further, the Trial Chamber concluded that Praljak contributed to the HVO’s efforts to conceal their responsibility for the Stupni Do crimes by signing an order dated 8 November 1993.⁶⁹²⁸ Recalling its findings that Praljak contributed to planning and directing the HVO operations in Vareš, was later informed of the commission of the murder and destruction of property, and contributed to the HVO’s efforts to conceal these crimes, the Trial Chamber found that Praljak contributed to the murders and destruction of property in Stupni Do by facilitating these crimes.⁶⁹²⁹ The Trial Chamber also found that the only reasonable inference it could draw from: (1) Praljak’s participation in planning HVO military operations in, *inter alia*, Vareš; and (2) his continued exercise of control over the HVO and the Military Police while knowing of their crimes, is that he intended these crimes.⁶⁹³⁰

(i) Alleged errors regarding the credibility of Witness EA (Praljak’s Ground 54)

a. Arguments of the Parties

2029. Praljak submits that the Trial Chamber erred by failing to properly assess Witness EA’s testimony and to provide a reasoned opinion for finding him credible, taking into account that he was an accomplice witness.⁶⁹³¹ Specifically, Praljak submits that the Trial Chamber: (1) failed to assess Witness EA’s evidence on Praljak’s Order of 23 October 1993, to “deal with the situation in

⁶⁹²³ Trial Judgement, Vol. 4, para. 591, referring to, *inter alia*, Ex. P06028.

⁶⁹²⁴ Trial Judgement, Vol. 4, paras 591-594, 597. See *supra*, para. 820.

⁶⁹²⁵ Trial Judgement, Vol. 3, paras 318, 325, Vol. 4, para. 591.

⁶⁹²⁶ Trial Judgement, Vol. 3, para. 326. See Trial Judgement, Vol. 3, para. 325.

⁶⁹²⁷ Trial Judgement, Vol. 4, paras 595, 597. The Trial Chamber also concluded that it did not have evidence to support a finding that Praljak was informed of crimes committed in Vareš town such as mistreatment. See Trial Judgement, Vol. 4, para. 598.

⁶⁹²⁸ Trial Judgement, Vol. 4, paras 596-597.

⁶⁹²⁹ Trial Judgement, Vol. 4, para. 597. See *supra*, para. 820.

⁶⁹³⁰ Trial Judgement, Vol. 4, para. 625.

⁶⁹³¹ Praljak’s Appeal Brief, paras 586-591; Praljak’s Reply Brief, paras 122-123.

Vareš without mercy towards anyone”,⁶⁹³² in the context of the totality of the evidence; (2) ignored the contradictions in Witness EA’s evidence as well as his possible motives [Redacted, see Annex C – Confidential Annex]; and (3) wrongly relied on his testimony to draw conclusions on Praljak’s intentions regarding UNPROFOR’s access to Stupni Do.⁶⁹³³ Praljak concludes that, as a result, the Trial Chamber reached erroneous conclusions regarding his responsibility for the events in Vareš and calls for setting aside his convictions on the charges relating to Vareš under Counts 1-3, 10-13, 15-16, and 19.⁶⁹³⁴

2030. The Prosecution responds that Praljak fails to show that the Trial Chamber erred in assessing and explaining its assessment of Witness EA’s testimony.⁶⁹³⁵ The Prosecution submits that the Trial Chamber “adequately reasoned” its witness credibility assessments throughout the Judgement, revealing its particularly cautious approach to evidence prone to be unreliable.⁶⁹³⁶ The Prosecution further contends that: (1) the Trial Chamber assessed Witness EA’s testimony in light of the totality of the evidence; (2) Praljak fails to establish that Witness EA contradicted himself or had any motives to lie; and (3) the Trial Chamber carefully assessed his testimony regarding Praljak’s Order of 23 October 1993 to sort out the situation in Vareš.⁶⁹³⁷ Finally, the Prosecution disputes that the Trial Chamber reached any unreasonable factual conclusion based on Witness EA’s testimony.⁶⁹³⁸

b. Analysis

2031. The Appeals Chamber has previously held that: [Redacted, see Annex C – Confidential Annex].⁶⁹³⁹

2032. The Appeals Chamber turns first to Praljak’s argument that the Trial Chamber failed to assess Witness EA’s testimony regarding Praljak’s Order of 23 October 1993 to deal with the situation in Vareš without mercy towards anyone, in the context of the totality of the evidence. The Appeals Chamber notes that Praljak provides only one example in support of this argument, namely that Witness EA expressed some hesitation as to the meaning of Praljak’s order.⁶⁹⁴⁰ However, the Appeals Chamber considers that this evidence on the lack of clarity of the order is not inconsistent

⁶⁹³² See Praljak’s Appeal Brief, para. 588 & fn. 1331, referring to Ex. 3D00823, p. 8.

⁶⁹³³ Praljak’s Appeal Brief, paras 587-590, referring to, *inter alia*, Ex. 3D00823, p. 8. Praljak submits that the Trial Chamber considered that Witness EA’s intentions could be attributed to Praljak. Praljak’s Appeal Brief, para. 590.

⁶⁹³⁴ Praljak’s Appeal Brief, para. 591.

⁶⁹³⁵ Prosecution’s Response Brief (Praljak), paras 324-325, 327. See Prosecution’s Response Brief (Praljak), para. 326.

⁶⁹³⁶ Prosecution’s Response Brief (Praljak), para. 325.

⁶⁹³⁷ Prosecution’s Response Brief (Praljak), paras 327-328, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 318.

⁶⁹³⁸ Prosecution’s Response Brief (Praljak), para. 324.

⁶⁹³⁹ [Redacted, see Annex C – Confidential Annex]

⁶⁹⁴⁰ Praljak’s Appeal Brief, para. 588, referring to, *inter alia*, Witness EA, T. 24433 (closed session) (13 Nov 2007).

with the Trial Chamber's finding that the HVO forces interpreted it as giving permission to act violently.⁶⁹⁴¹ Thus, the Appeals Chamber dismisses Praljak's argument.

2033. The Appeals Chamber turns next to Praljak's argument that the Trial Chamber ignored the contradictions in Witness EA's evidence. Praljak provides only one alleged contradiction, which is that Witness EA testified in court that the content of Praljak's order leaked among the HVO soldiers, while in his written statement the witness only said that the order was known to the soldiers.⁶⁹⁴² The Appeals Chamber sees no contradiction between these two statements, which at most amount to a minor discrepancy.⁶⁹⁴³ Praljak's argument is therefore dismissed.

2034. The Appeals Chamber will now examine Praljak's argument that the Trial Chamber ignored Witness EA's possible motives [Redacted, see Annex C – Confidential Annex]. In its general assessment of *viva voce* witnesses, the Trial Chamber considered, *inter alia*, "their possible involvement in the events recounted, the fear of self-incrimination, the relationship of the witnesses to the Accused and the possibility of a motive which might, under certain circumstances, call into question the reliability of the testimony".⁶⁹⁴⁴ The Trial Chamber did not explicitly or specifically assess Witness EA according to this standard. [Redacted, see Annex C – Confidential Annex] the fact that it does not specifically refer to such motives or incentives does not mean that it failed to take them into consideration.⁶⁹⁴⁵ The Appeals Chamber observes that at the time of Witness EA's testimony in the present case, during which he was extensively cross-examined,⁶⁹⁴⁶ [Redacted, see Annex C – Confidential Annex].⁶⁹⁴⁷ The Appeals Chamber is not persuaded that the Trial Chamber disregarded any possible motive or incentive of Witness EA but considers that, given that the witness [Redacted, see Annex C – Confidential Annex], the Trial Chamber was satisfied that it could nevertheless rely on the evidence of Witness EA.⁶⁹⁴⁸ In these circumstances, the Appeals Chamber considers that Praljak has failed to demonstrate that the Trial Chamber ignored Witness EA's possible motives [Redacted, see Annex C – Confidential Annex]. His argument is therefore dismissed.

2035. The Appeals Chamber lastly turns to Praljak's argument that the Trial Chamber wrongly relied on Witness EA's testimony to draw conclusions on Praljak's intentions regarding

⁶⁹⁴¹ Trial Judgement, Vol. 3, para. 326. See Trial Judgement, Vol. 3, para. 325.

⁶⁹⁴² Praljak's Appeal Brief, para. 589, referring to Ex. P10329 (confidential), p. 21, para. 16, Witness EA, T. 24433 (closed session) (13 Nov 2007).

⁶⁹⁴³ See Trial Judgement, Vol. 1, para. 285 ("In general, the Chamber did not hold that minor discrepancies between the testimonies of the witnesses at trial and their prior statements vitiated the credibility of the witness testifying in court or the reliability of his statements."), referring to *Čelebići* Appeal Judgement, paras 496-498.

⁶⁹⁴⁴ Trial Judgement, Vol. 1, para. 284.

⁶⁹⁴⁵ [Redacted, see Annex C – Confidential Annex]

⁶⁹⁴⁶ Witness EA, T. 24302-24996 (closed session) (12-21 Nov 2007).

⁶⁹⁴⁷ [Redacted, see Annex C – Confidential Annex] See also Praljak's Appeal Brief, para. 587.

UNPROFOR's access to Stupni Do. The Appeals Chamber notes that the Trial Chamber relied on various sources of evidence, including Witness EA's testimony, in reaching the conclusion that Praljak sought to prevent UNPROFOR from uncovering the consequences of the HVO operations in Stupni Do.⁶⁹⁴⁹ The evidence on which it relied reflects efforts of the HVO to prevent UNPROFOR from gaining access to Stupni Do.⁶⁹⁵⁰ The Appeals Chamber recalls that "intent may normally be inferred from relevant facts and circumstances",⁶⁹⁵¹ and considers that that is what the Trial Chamber did in the present case. Thus, the Appeals Chamber can see no error in the Trial Chamber's approach to Witness EA's testimony and consequently dismisses Praljak's argument.⁶⁹⁵² However, Praljak's arguments that the Trial Chamber erred in its conclusions on his knowledge and intent concerning the attempts to prevent UNPROFOR from accessing Stupni Do will be addressed below.⁶⁹⁵³

2036. In light of the above, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber erred by failing to properly assess Witness EA's testimony or to provide a reasoned opinion for finding him credible. Consequently, the Appeals Chamber dismisses Praljak's ground of appeal 54.

(ii) Whether Praljak planned and/or directed the Vareš operations (Praljak's Sub-ground 45.1)

a. Arguments of the Parties

2037. Praljak submits that the Trial Chamber erroneously concluded that he participated in planning or directing the military operations in Vareš in October 1993.⁶⁹⁵⁴ He argues that it is unclear which of the operations he planned or directed,⁶⁹⁵⁵ and that there is no evidence that he did so concerning the Stupni Do attack.⁶⁹⁵⁶

2038. Praljak also challenges the Trial Chamber's classification of Praljak's Order of 23 October 1993 as it was not an order, was not addressed to the HVO soldiers, and was not

⁶⁹⁴⁸ [Redacted, see Annex C – Confidential Annex]

⁶⁹⁴⁹ Trial Judgement, Vol. 4, para. 621 and references cited therein. See also Trial Judgement, Vol. 4, paras 596, 623.

⁶⁹⁵⁰ See Trial Judgement, Vol. 4, para. 621. At the relevant time, in October 1993, Praljak was the Commander of the Main Staff. Trial Judgement, Vol. 4, para. 459.

⁶⁹⁵¹ *Kayishema and Ruzindana* Appeal Judgement, para. 159.

⁶⁹⁵² The Appeals Chamber can see no indication that the Trial Chamber considered that Witness EA's intentions could be attributed to Praljak. See Trial Judgement, Vol. 4, paras 596, 621, 623.

⁶⁹⁵³ See *infra*, paras 2055-2059.

⁶⁹⁵⁴ Praljak's Appeal Brief, para. 502. See also Appeal Hearing, AT. 393-394 (22 Mar 2017).

⁶⁹⁵⁵ Praljak's Appeal Brief, para. 492.

⁶⁹⁵⁶ Praljak's Appeal Brief, para. 493, referring to Trial Judgement, Vol. 4, para. 61 (finding that Praljak did not take part in the decision to attack Stupni Do).

intended to be distributed.⁶⁹⁵⁷ He further submits that the Trial Chamber's interpretation of Praljak's Order of 23 October 1993 was erroneous and was without evidentiary basis⁶⁹⁵⁸ as: (1) at the time the HVO was principally concerned with internal chaos and his "instruction" was aimed at restoring order in the HVO;⁶⁹⁵⁹ and (2) the HVO attempted to "place the situation under control" after receiving information that ethnic cleansing might have occurred.⁶⁹⁶⁰ Praljak also submits that the Trial Chamber erred in its assessment of his and Petković's concordant testimonies.⁶⁹⁶¹ In this regard, he argues that his testimony explaining the "instruction" was consistent and not contradictory as found by the Trial Chamber,⁶⁹⁶² and that Petković's testimony confirmed in substance his evidence.⁶⁹⁶³ Praljak further asserts that criminal responsibility cannot be established from the HVO troops' interpretation of his intentions, particularly in light of direct evidence – testimony from Petković and himself – on the meaning of his conduct.⁶⁹⁶⁴ He adds that the Trial Chamber's conclusions are in contradiction to its findings that "violent and brutal acts were mostly committed" on 23 October 1993, before his "instruction" reached the local HVO soldiers in Vareš.⁶⁹⁶⁵ In addition, as checkpoints existed in Vareš prior to Ilica Rajić's order of 25 October 1993, Praljak argues that checkpoints were not established pursuant to his "instruction".⁶⁹⁶⁶

2039. Praljak also submits that his order dated 5 November 1993 was: (1) issued after the ABiH launched an attack on Vareš, thus "it was logical for the [Main Staff] Commander to issue an order

⁶⁹⁵⁷ Praljak's Appeal Brief, para. 498, referring to Ex. 3D00823, p. 8, Slobodan Praljak, T. 43727 (24 Aug 2009). Praljak asserts that the fact that the document was leaked shows the lack of discipline within the local HVO brigade. Praljak's Appeal Brief, para. 498.

⁶⁹⁵⁸ Praljak's Appeal Brief, paras 494, 497, referring to Praljak's Appeal Brief, paras 586-591 (challenging the Trial Chamber's reliance on evidence from Witness EA) (Praljak's Ground 54). See Praljak's Reply Brief, para. 101.

⁶⁹⁵⁹ Praljak's Appeal Brief, para. 494, referring to, *inter alia*, Exs. P06291, P06069, 3D00808, Slobodan Praljak, T. 41904 (24 June 2009).

⁶⁹⁶⁰ Praljak's Appeal Brief, para. 494, referring to Ex. P06022.

⁶⁹⁶¹ Praljak's Appeal Brief, para. 497, referring to Trial Judgement, Vol. 3, para. 324. See Praljak's Reply Brief, para. 100. See also Appeal Hearing, AT. 393-394 (22 Mar 2017).

⁶⁹⁶² Praljak's Appeal Brief, para. 495, referring to Trial Judgement, Vol. 3, para. 322, Slobodan Praljak, T. 41902-41903 (24 June 2009), T. 43727-43730 (24 Aug 2009), Exs. 3D00823, p. 8, P06291, p. 3. Praljak asserts that "he never said that the words 'show no mercy to anyone' concerned three HVO soldiers responsible for problems in Stupni Do", but that he "testified that these words concerned three persons in isolation". Praljak's Appeal Brief, para. 495. Praljak further asserts that during cross-examination he stated that he wrote the instruction after receiving reports of smuggling and that it only concerned Croats. Praljak's Appeal Brief, para. 495.

⁶⁹⁶³ Praljak's Appeal Brief, para. 496, referring to Milivoj Petković, T. 49615-49616 (closed session) (17 Feb 2010), Trial Judgement, Vol. 3, para. 323.

⁶⁹⁶⁴ Praljak's Appeal Brief, para. 498, referring to, *inter alia*, Slobodan Praljak, T. 41902-41903 (24 June 2009), T. 43727-43730 (24 Aug 2009), Milivoj Petković, T. 49615-49616 (closed session) (17 Feb 2010).

⁶⁹⁶⁵ Praljak's Appeal Brief, para. 499, referring to Trial Judgement, Vol. 3, paras 333-348.

⁶⁹⁶⁶ Praljak's Appeal Brief, para. 500, referring to Trial Judgement, Vol. 4, para. 592, Ex. 3D00803.

to put up resistance”;⁶⁹⁶⁷ and (2) a regular military order completely disconnected from the Vareš events in October 1993.⁶⁹⁶⁸

2040. The Prosecution responds that Praljak repeats arguments rejected at trial concerning the classification of Praljak’s Order of 23 October 1993, the chaotic situation, the HVO’s internal problems, and the commission of crimes before this order was received.⁶⁹⁶⁹ It also argues that Praljak misconstrues the evidence and the Trial Chamber’s findings on Praljak’s Order of 23 October 1993 as: (1) the Trial Chamber did not make findings on the order’s intended meaning but focussed instead on its impact, thus Praljak’s and Petković’s evidence would have no effect;⁶⁹⁷⁰ (2) his assertion that the order was not intended for HVO soldiers is undermined by the events of 23-24 October 1993;⁶⁹⁷¹ and (3) crimes were also committed after this order was received.⁶⁹⁷²

2041. Regarding Praljak’s order of 5 November 1993, the Prosecution responds that the Trial Chamber correctly considered this order as it was directly linked to an order from Petković on 22 October 1993 for the deployment of Rajić to Vareš to establish a defence line, and was closely connected to the HVO’s efforts as of June 1993 to move Vareš’s Croat population.⁶⁹⁷³ It argues that this order “cannot be divorced from HVO operations throughout October 1993”, and that it is irrelevant that no criminal acts flowed from it.⁶⁹⁷⁴

b. Analysis

2042. The Appeals Chamber first dismisses Praljak’s contention that it is unclear which HVO operations he planned and directed. In this respect, the Trial Chamber found that Praljak participated in planning and directing the HVO operations in Vareš in October 1993.⁶⁹⁷⁵ Based on the context of the Trial Chamber’s finding,⁶⁹⁷⁶ the Appeals Chamber is satisfied that the impugned

⁶⁹⁶⁷ Praljak’s Appeal Brief, para. 501, referring to Trial Judgement, Vol. 3, para. 507, Ex. P06440.

⁶⁹⁶⁸ Praljak’s Appeal Brief, para. 501. Praljak replies that “it would be consistent to consider that the HVO October operations cannot be divorced from [the] ABiH offensive to which they responded”. Praljak’s Reply Brief, para. 102.

⁶⁹⁶⁹ Prosecution’s Response Brief (Praljak), para. 243. See Prosecution’s Response Brief (Praljak), para. 242.

⁶⁹⁷⁰ Prosecution’s Response Brief (Praljak), para. 243.

⁶⁹⁷¹ Prosecution’s Response Brief (Praljak), para. 243. The Prosecution asserts that the following events of 23-24 October 1993 undermine the argument that Praljak’s Order of 23 October 1993 was not intended for the HVO soldiers: (1) Praljak’s initial handwritten order was typed and distributed by packet communication to five individuals, including Rajić; (2) Praljak’s exhortation to “show no mercy” was repeated in two further packet communications; and (3) Praljak’s words had spread by the morning of 24 October 1993. Prosecution’s Response Brief (Praljak), para. 243, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 318, Exs. P06028, P06026, p. 3, P06051, P09813. See Appeal Hearing, AT. 460-461 (22 Mar 2017),

⁶⁹⁷² Prosecution’s Response Brief (Praljak), para. 243.

⁶⁹⁷³ Prosecution’s Response Brief (Praljak), para. 244, referring to, *inter alia*, Ex. P06440.

⁶⁹⁷⁴ Prosecution’s Response Brief (Praljak), para. 244.

⁶⁹⁷⁵ Trial Judgement, Vol. 4, paras 594, 597.

⁶⁹⁷⁶ See Trial Judgement, Vol. 4, paras 591 (finding that Praljak’s Order of 23 October 1993 was interpreted by the HVO present in the “Municipality of Vareš” as allowing them to act with brutality), 592 (referring to the control of checkpoints in Vareš as well as the obstruction of access for UNPROFOR to Stupni Do), 593 (referring to Praljak’s

finding relates to Vareš Municipality.⁶⁹⁷⁷ The Trial Chamber's finding that the HVO leaders did not order the attack on Stupni Do⁶⁹⁷⁸ does not stand in contradiction to Praljak's contribution to the planning and directing of the military operation in Vareš Municipality in general. Notably, the Trial Chamber's findings on Praljak's specific involvement with regard to the attack on Stupni Do was limited to his facilitation of the crimes by contributing to efforts to conceal those crimes and to the planning and directing of the HVO military operation in Vareš Municipality in general.⁶⁹⁷⁹ Therefore, Praljak's argument on the lack of evidence of his planning or directing the Stupni Do attack is dismissed.

2043. With regard to Praljak's Order of 23 October 1993, the Appeals Chamber recalls that the Trial Chamber summarised this order as stating that Petković and Rajić, among others, were to “sort out the situation in Vareš showing no mercy to anyone” with men who [were] ‘up [...] to the tasks’.⁶⁹⁸⁰ After considering related trial arguments,⁶⁹⁸¹ the Trial Chamber rejected the testimonies of Praljak and Petković – that the words “show no mercy [to] anyone” were directed at Croats and not Muslims – as contradictory.⁶⁹⁸² On reviewing the testimonies and the Trial Chamber's summary of the same,⁶⁹⁸³ the Appeals Chamber considers that, contrary to the Trial Chamber's finding, these testimonies are compatible on the issue that Muslims were not the target of the order.⁶⁹⁸⁴ Thus, the Appeals Chamber finds that the Trial Chamber erred in concluding that Praljak's and Petković's testimonies on the goal of Praljak's Order of 23 October 1993 were contradictory. However, the Appeals Chamber notes that the Trial Chamber expressly discussed the general credibility of both Praljak's and Petković's testimonies before concluding that they were “hardly credible” when they “testified seeking to limit their responsibility in respect of certain allegations”.⁶⁹⁸⁵ As the Trial Chamber concluded that it would not accept their testimonies on these occasions, the Appeals Chamber considers that the Trial Chamber would have given little or no weight to Praljak's and Petković's testimonies, even though compatible. Moreover, Praljak failed to show an error in the

order of 5 November 1993 for the defence of Vareš), 594 (concluding that Praljak participated in planning and directing HVO operations in Vareš).

⁶⁹⁷⁷ See *supra*, para. 820.

⁶⁹⁷⁸ Trial Judgement, Vol. 4, para. 61.

⁶⁹⁷⁹ Trial Judgement, Vol. 4, paras 61, 596-597.

⁶⁹⁸⁰ Trial Judgement, Vol. 3, para. 318, Vol. 4, para. 591. See *supra*, para. 2027. Notably, Praljak's Order of 23 October 1993 states that “[s]ort out the situation in Vareš showing no mercy towards anyone” and “[f]ind people who are up to both the times and tasks”. Ex. P06028.

⁶⁹⁸¹ Trial Judgement, Vol. 3, paras 319-321.

⁶⁹⁸² Trial Judgement, Vol. 3, paras 322-324.

⁶⁹⁸³ Trial Judgement, Vol. 3, paras 322 (Praljak testified that his order referred to Croat HVO soldiers engaged in criminal activities, such as smuggling), 323 (Petković testified that the order referred to people in command and those around the command who clashed with the command and not to Muslims); Slobodan Praljak, T. 43727-43731 (24 Aug 2009); Milivoj Petković, T. 49614 (17 Feb 2010).

⁶⁹⁸⁴ See *Gatete* Appeal Judgement, para. 125 (“two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts”); *Nahimana et al.* Appeal Judgement, para. 428.

⁶⁹⁸⁵ Trial Judgement, Vol. 1, para. 399.

Trial Chamber's assessment of his credibility.⁶⁹⁸⁶ Thus, the Trial Chamber's erroneous finding that Praljak's and Petković's testimonies were contradictory has no impact on the Trial Chamber's ultimate conclusions.

2044. Nonetheless, the Appeals Chamber observes that the Trial Chamber did not make any finding on the reason behind the issuance of the order or the goal it sought to achieve. Rather, in finding that he contributed to the planning and directing of the HVO operations, the Trial Chamber considered that Praljak issued this order and that it was interpreted by the HVO soldiers as allowing them to act with brutality.⁶⁹⁸⁷ Thus, to the extent that Praljak argues that Praljak's Order of 23 October 1993 was not directed at Muslims, he misunderstands the Trial Chamber's reliance on the order and there is no merit in his contention that the Trial Chamber erroneously interpreted it. The Appeals Chamber therefore dismisses Praljak's contentions.

2045. Turning to the Trial Chamber's use of Praljak's Order of 23 October 1993 to determine his involvement in the Vareš operations, the Appeals Chamber notes that the Trial Chamber classified this document as an order⁶⁹⁸⁸ after considering Praljak's trial arguments that it was in fact "a piece of advice"⁶⁹⁸⁹ and not an order.⁶⁹⁹⁰ Even if this document was not intended to be distributed to the HVO soldiers, it was clearly addressed to the HVO commanders in the area, thus, Praljak's arguments in this respect do not undermine the Trial Chamber's classification of the order or show an error.⁶⁹⁹¹ Concerning the interpretation of the order by the HVO soldiers to act with brutality and Praljak's argument that their violent actions began before the order was leaked,⁶⁹⁹² the Appeals Chamber finds that the Trial Chamber considered that the events following the leaking of the order showed the impact that this order had on the Vareš operations. Specifically, the Trial Chamber concluded that the aggressive attitude of the HVO soldiers towards Bosnian Muslims increased, and they considered the order as permission to act violently, from at least the time the order was leaked around 2:00 a.m. or 3:00 a.m. on 24 October 1993.⁶⁹⁹³ Praljak's assertion that the violent acts were "mostly committed" on 23 October 1993 is insufficient to call into question the Trial Chamber's

⁶⁹⁸⁶ See *supra*, paras 2031-2036.

⁶⁹⁸⁷ Trial Judgement, Vol. 3, paras 325-326, Vol. 4, paras 591, 594. See Witness EA, T. 24433 (closed session) (13 Nov 2007). See also Trial Judgement, Vol. 4, para. 642 (where the Trial Chamber referred to the "vague nature" of Praljak's Order of 23 October 1993 in assessing his JCE III responsibility).

⁶⁹⁸⁸ Trial Judgement, Vol. 3, paras 318, 325-326, Vol. 4, paras 591-592.

⁶⁹⁸⁹ Trial Judgement, Vol. 3, para. 320.

⁶⁹⁹⁰ Trial Judgement, Vol. 3, para. 320. See Praljak's Final Brief, para. 406 (Praljak argued at trial that he sent a "message to Petković advising him to settle down the situation in Vareš" and he merely offered advice).

⁶⁹⁹¹ See Ex. P06028, p. 1 (addressed to the Deputy Commander of the HVO Main Staff (Petković), the Commander of the Ban Josip Jelačić Brigade, the Commander of Operations Group-2 (Rajić), the Vice-President of the HR H-B, and the Commander of the Central Bosnia Military District).

⁶⁹⁹² See *supra*, para. 2037.

⁶⁹⁹³ Trial Judgement, Vol. 3, paras 325-326, Vol. 4, para. 591, referring to Witness EA, T(F). 24428, 24432-24434 (closed session) (14 Nov 2007), Ex. P10330 (confidential), para. 16.

conclusion, particularly as the military operation in Vareš town continued until 3-4 November 1993.⁶⁹⁹⁴

2046. Regarding the Trial Chamber's conclusion that Rajić ordered the Bobovac Brigade to control checkpoints in Vareš in execution of Praljak's Order of 23 October 1993,⁶⁹⁹⁵ the Appeals Chamber notes that Praljak does not challenge the evidence cited by the Trial Chamber.⁶⁹⁹⁶ He instead argues that these checkpoints existed prior to his order, which again does not undermine the Trial Chamber's conclusion concerning Rajić's order for the Bobovac Brigade to take control of the checkpoints. Thus, the Appeals Chamber dismisses Praljak's arguments on these issues. In light of the above, the Appeals Chamber finds that Praljak does not show an error in the Trial Chamber's approach in considering that he issued an order regarding the Vareš operations and the impact that order had on the ensuing events, to determine whether he planned and directed the operation in Vareš Municipality.

2047. Regarding Praljak's order of 5 November 1993, the Trial Chamber considered that the purpose of this order was the organisation of the defence of Vareš.⁶⁹⁹⁷ Praljak argues that this order was not linked to the Vareš operations which resulted in the relevant crimes. Notably, as found by the Trial Chamber, the detainees in Vareš were freed, escaped, or released between 2 and 4 November 1993,⁶⁹⁹⁸ and all the HVO troops withdrew from Vareš town on 3 November 1993.⁶⁹⁹⁹ The Trial Chamber also found that Vareš town was attacked by the ABiH on 2 November 1993, surrounded by those forces on 4 November 1993, and fell into the hands of the ABiH on 5 November 1993.⁷⁰⁰⁰ Based on these events, the Appeals Chamber finds that no reasonable trier of fact could have concluded that Praljak's order of 5 November 1993 related directly to the HVO military operations which resulted in crimes being committed against the Muslim population in Vareš town. Nonetheless, the Appeals Chamber considers that the Trial Chamber reasonably referred to Praljak's order of 5 November 1993 to show that he was involved in directing the actions of the HVO in Vareš Municipality. Therefore, considering this order in conjunction with Praljak's Order of 23 October 1993, the Appeals Chamber finds that Praljak has failed to show an error in the Trial Chamber's finding that he participated in planning and directing the military operations in Vareš Municipality in October 1993. Praljak's arguments are rejected and his sub-ground of appeal 45.1 is thus dismissed.

⁶⁹⁹⁴ See *supra*, para. 2027.

⁶⁹⁹⁵ Trial Judgement, Vol. 4, para. 592, referring to, *inter alia*, Witness EA, T(F). 24577-24578 (closed session) (14 Nov 2007), T(F). 24608-24610 (closed session) (15 Nov 2007), Ex. P06114.

⁶⁹⁹⁶ Witness EA, T(F). 24608-24609 (closed session) (15 Nov 2007), Ex. P06114. The Appeals Chamber dismisses Praljak's challenges to the evidence of Witness EA elsewhere. See *supra*, paras 2031-2036.

⁶⁹⁹⁷ Trial Judgement, Vol. 4, para. 593.

⁶⁹⁹⁸ Trial Judgement, Vol. 3, paras 397-399.

(iii) Praljak's role in and knowledge of crimes committed in Stupni Do (Praljak's Sub-ground 45.2 and 45.3)

2048. Praljak argues that it is evident that he had no knowledge of the Stupni Do crimes before their commission⁷⁰⁰¹ and therefore he could not have intended them.⁷⁰⁰² Praljak contends that he was found to have concealed the crimes, which is insufficient as his contribution "must form a link in the chain of causation" and he must have intended to conceal them before their commission.⁷⁰⁰³ He submits that the Trial Chamber could not find a link between his acts and the Stupni Do crimes, thus it failed to properly establish his contribution and *mens rea*.⁷⁰⁰⁴

2049. The Prosecution responds that as Praljak's shared intent encompassed crimes committed in Stupni Do, the fact that he learned of the crimes after they were committed is irrelevant, and points to his efforts to conceal them.⁷⁰⁰⁵ It also responds that: (1) a finding that Praljak's conduct formed "a link in the chain of causation" with respect to each criminal act is not required;⁷⁰⁰⁶ and (2) Praljak fails to support his "novel claim" that concealing crimes can only constitute a JCE contribution where the accused intended to conceal them before their commission.⁷⁰⁰⁷

2050. Turning first to Praljak's arguments concerning his intent, the Trial Chamber found that he was informed of some of the crimes committed in Stupni Do, namely murders and destruction of property, no later than 5 November 1993.⁷⁰⁰⁸ In its discussion on his JCE III liability for thefts and sexual assaults committed during the Vareš operations, the Trial Chamber concluded that "the vague nature of [Praljak's Order of 23 October 1993] and [Praljak's] lack of knowledge about any crime committed in the town of Vareš and in Stupni Do on the date of the thefts and the sexual abuse" did not allow it to find that Praljak "had knowledge of the atmosphere of violence in the

⁶⁹⁹⁹ Trial Judgement, Vol. 3, paras 397, 399.

⁷⁰⁰⁰ Trial Judgement, Vol. 3, paras 397, 504, 507.

⁷⁰⁰¹ Praljak's Appeal Brief, paras 503-504, referring to Trial Judgement, Vol. 4, paras 61, 595, 597. Praljak argues, in reply, that the Prosecution did not appeal the Trial Chamber's findings on when he became aware of the crimes. Praljak's Reply Brief, para. 103.

⁷⁰⁰² Praljak's Appeal Brief, para. 504, referring to *Brdanin* Appeal Judgement, para. 365.

⁷⁰⁰³ Praljak's Appeal Brief, para. 505, referring to *Milutinović et al.* Trial Judgement, Vol. 1, para. 105.

⁷⁰⁰⁴ Praljak's Appeal Brief, para. 505.

⁷⁰⁰⁵ Prosecution's Response Brief (Praljak), para. 245. The Prosecution also argues that the evidence shows that Praljak was aware of the crimes in both Vareš town and Stupni Do on the evening of 23 October 1993 and asserts that, in the following days, the details of the crimes reached the other JCE members and the public. Prosecution's Response Brief (Praljak), paras 246-248.

⁷⁰⁰⁶ Prosecution's Response Brief (Praljak), para. 258, referring to *Karemera and Ngirumpatse* Appeal Judgement, paras 109, 153. The Prosecution asserts that in any event Praljak facilitated the Stupni Do crimes. Prosecution's Response Brief (Praljak), para. 258.

⁷⁰⁰⁷ Prosecution's Response Brief (Praljak), para. 259. The Prosecution asserts that Praljak's pre-existing intention to conceal crimes is demonstrated by the Trial Chamber's findings. Prosecution's Response Brief (Praljak), para. 259, referring to Trial Judgement, Vol. 4, paras 620, 625-626.

⁷⁰⁰⁸ Trial Judgement, Vol. 4, paras 595, 597, 641.

town of Vareš and in Stupni Do”.⁷⁰⁰⁹ Therefore, the Appeals Chamber concludes that, although not explicitly stated by the Trial Chamber, its findings indicate that it considered that Praljak was not aware of the specific criminal incidents committed in Stupni Do before or at the time of their occurrence.

2051. However, the Appeals Chamber notes that the Trial Chamber did not discuss Praljak’s intent to commit the Stupni Do crimes before, or at the time of, their commission but rather limited its analysis on his responsibility to his facilitation of the crimes through his contribution to the HVO’s efforts to conceal them as well as his involvement in planning and directing the Vareš operations.⁷⁰¹⁰ In this regard, the Appeals Chamber considers that Praljak misinterprets the findings as the Trial Chamber did not find that he intended the specific incidents in Stupni Do which resulted in murders and destruction of property. Rather, it considered that he intended that the JCE be furthered through the commission of, *inter alia*, murders committed during attacks on villages and towns and destruction of property in the various municipalities.⁷⁰¹¹ The Appeals Chamber recalls that “the *mens rea* required for liability under the first category of joint criminal enterprise is that the accused shares the intent with the other participants to carry out the crimes forming part of the common purpose”.⁷⁰¹² As the crimes forming part of the CCP encompassed murders committed during attacks and destruction of property,⁷⁰¹³ and he shared the intent with other JCE members to carry out crimes forming part of the CCP,⁷⁰¹⁴ Praljak fails to show an error regarding his *mens rea* as it concerns the Stupni Do crimes.

2052. Regarding Praljak’s legal arguments concerning his contribution to the crimes, the Appeals Chamber dismisses the assertion that Praljak’s contribution “must form a link in the chain of causation” to the extent he argues that there must be a link between his conduct and the specific crimes of murder and destruction of property committed in Stupni Do. While the case-law cited in support by Praljak does state that “the accused’s acts or omissions ‘must form a link in the chain of causation’, and the significance of his contribution is relevant for determining whether such a link existed”,⁷⁰¹⁵ this was clarified by a prior statement that “[t]his means that the Prosecution must at

⁷⁰⁰⁹ Trial Judgement, Vol. 4, para. 642.

⁷⁰¹⁰ Trial Judgement, Vol. 4, paras 595-597.

⁷⁰¹¹ Trial Judgement, Vol. 4, paras 66-67, 625. See *Tolimir* Appeal Judgement, para. 474 (“the Appeals Chamber recalls that a participant in a JCE need not know of each crime committed in order to be criminally liable”); *Šainović et al.* Appeal Judgement, para. 1491.

⁷⁰¹² *Dorđević* Appeal Judgement, para. 468, referring to *Tadić* Appeal Judgement, paras 220, 228, *Krajišnik* Appeal Judgement, para. 707. See *Šainović et al.* Appeal Judgement, para. 1491 (it “suffices that he shared the intent for the commission of these crimes and acted in furtherance of the common purpose”).

⁷⁰¹³ See Trial Judgement, Vol. 4, para. 70 (excluding murders committed in the municipalities of Čapljina, Mostar, Stolac, and Prozor from the CCP). See also *supra*, para. 824.

⁷⁰¹⁴ See *supra*, paras 1918, 1921.

⁷⁰¹⁵ *Milutinović et al.* Trial Judgement, Vol. 1, para. 105, referring to *Blagojević and Jokić* Trial Judgement, para. 702 (citing *Brdanin* Trial Judgement, para. 263).

least establish that the accused took action in furtherance of the criminal plan”.⁷⁰¹⁶ In this respect, the Appeals Chamber recalls that for JCE I liability “it is sufficient for the participant to perform acts that in some way are directed to the furthering” of the common criminal plan or purpose.⁷⁰¹⁷ Thus, to the extent that the Trial Chamber considered that Praljak’s contribution to the concealment of the Stupni Do crimes – he “facilitated the failure to prosecute the perpetrators” of the Stupni Do crimes⁷⁰¹⁸ – was directed at furthering the CCP, Praljak fails to show an error.

2053. However, as far as the Trial Chamber concluded that Praljak facilitated the Stupni Do crimes *after* they were committed by attempting to conceal them, the Appeals Chamber finds that the Trial Chamber erred. In this regard, the Appeals Chamber notes that, prior to the events in Stupni Do, there is no discussion or finding in the Trial Judgement which speaks to the CCP including a plan to conceal crimes or that Praljak was previously involved in attempts to conceal crimes during the JCE.⁷⁰¹⁹

2054. The Appeals Chamber also considers that the Trial Chamber’s finding that Praljak facilitated the murders and destruction of property in Stupni Do was not based only on his concealment of the crimes but also on his contribution to the planning and directing of the HVO military operations in Vareš Municipality in general.⁷⁰²⁰ However, the Appeals Chamber notes that Praljak did not take part in the decision to attack Stupni Do,⁷⁰²¹ and that the evidence of his participation in planning and directing the Vareš operations all post-dates the attack on Stupni Do. Therefore, in these circumstances, the Appeals Chamber is not convinced that a reasonable trier of fact could have concluded that Praljak contributed to or facilitated the commission of the Stupni Do crimes. Nonetheless, to the extent that the Trial Chamber found that Praljak was informed of the murders and destruction of property in Stupni Do, continued to exercise control over the armed

⁷⁰¹⁶ *Brđanin* Trial Judgement, para. 263.

⁷⁰¹⁷ *Tadić* Appeal Judgement, para. 229. See *Popović et al.* Appeal Judgement, paras 1378, 1653; *Šainović et al.* Appeal Judgement, para. 1445; *Krajišnik* Appeal Judgement, para. 695 (“It is sufficient that the accused ‘perform acts that in some way are directed to the furthering’ of the JCE in the sense that he significantly contributes to the commission of the crimes involved in the JCE”). See also *Karemera and Ngirumpatse* Appeal Judgement, paras 109 (“the Trial Chamber was not required to find that he personally contributed to each criminal act, but rather that he made a significant contribution to the common purpose and that each of the criminal acts for which he was held responsible formed part of that purpose”), 153.

⁷⁰¹⁸ Trial Judgement, Vol. 4, para. 626.

⁷⁰¹⁹ Cf. *Đorđević* Appeal Judgement, paras 372-384 (The Appeals Chamber dismissed Vlastimir Đorđević’s argument that his role in concealing bodies could not be considered as a contribution to the joint criminal enterprise as it was done *ex post facto*. In dismissing this argument, the Appeals Chamber considered, *inter alia*, that: (1) there was a plan to conceal crimes before the crimes in question occurred; (2) there was a shared purpose of the JCE members to commit crimes and conceal evidence of such; (3) that the failure to investigate crimes was indicative of a plan to conceal killings; and (4) Đorđević’s involvement in concealing crimes occurred contemporaneously with or prior to the commission of the crimes in question.).

⁷⁰²⁰ Trial Judgement, Vol. 4, para. 597. See *supra*, para. 2047.

⁷⁰²¹ Trial Judgement Vol. 4, para. 61.

forces, and “facilitated the failure to prosecute the perpetrators”,⁷⁰²² Praljak’s arguments are rejected. Thus, Praljak’s sub-grounds of appeal 45.2 and 45.3 are dismissed.

(iv) Praljak’s participation in concealing the crimes committed in Stupni Do (Praljak’s Sub-ground 45.4)

2055. In concluding that Praljak contributed to the HVO’s efforts to conceal their responsibility for the Stupni Do crimes, the Trial Chamber considered that Praljak: (1) obstructed UNPROFOR’s attempts at accessing Stupni Do between 23 and 25 October 1993 in order to investigate the crimes; (2) sent a letter to the commander of UNPROFOR on 6 November 1993 explaining that the HVO would do its best to identify the perpetrators of the crimes in Stupni Do but that it was difficult; and (3) signed an order of 8 November 1993⁷⁰²³ requesting reports on an HVO investigation into the events – an investigation that the Trial Chamber found was a sham based on, *inter alia*, Witness EA’s evidence that the reports served the sole purpose of having the international community believe that the HVO was investigating the crimes in Stupni Do.⁷⁰²⁴

a. Arguments of the Parties

2056. Praljak submits that the Trial Chamber’s finding that he obstructed UNPROFOR’s access to Stupni Do is “illogical” as at the relevant time he had no knowledge of the Stupni Do events.⁷⁰²⁵ Praljak also argues that the Trial Chamber’s reliance on Praljak’s Order of 23 October 1993 to conclude that he sought to prevent UNPROFOR’s access to Stupni Do is untenable.⁷⁰²⁶ He asserts that the Trial Chamber failed to properly assess the evidence as Exhibits P06066, P06067, and P06114 do not concern access to Stupni Do or UNPROFOR.⁷⁰²⁷ Praljak further submits that there is no evidence that the HVO’s request for reports in order to initiate investigations was not genuine or that he had no real will to investigate.⁷⁰²⁸ Praljak avers that Rajić “might” have written his reports with the aim of concealing his own responsibility but that this does not mean he or the HVO sought

⁷⁰²² Trial Judgement, Vol. 4, para. 626. See Trial Judgement, Vol. 4, paras 597, 621-623, 625.

⁷⁰²³ The Appeals Chamber notes that the Trial Chamber erroneously referred to Petković signing the order of 8 November 1993 in paragraph 596 of Volume 4 of the Trial Judgement, where in other parts it correctly refers to Praljak signing the order. See Trial Judgement, Vol. 3, paras 489, Vol. 4, para. 623, referring to Ex. 4D00834.

⁷⁰²⁴ Trial Judgement, Vol. 3, paras 480-484, 489, 492, Vol. 4, paras 596-597, 621-623.

⁷⁰²⁵ Praljak’s Appeal Brief, para. 507. See Praljak’s Reply Brief, para. 104. See also Appeal Hearing, AT. 406 (closed session), 409 (22 Mar 2017).

⁷⁰²⁶ Appeal Hearing, AT. 406 (closed session) (22 Mar 2017).

⁷⁰²⁷ Praljak’s Appeal Brief, para. 508, referring to Trial Judgement, Vol. 3, para. 471, Vol. 4, para. 621, Witness EA, T. 24500-24501 (closed session) (14 Nov 2007). See Appeal Hearing, AT. 406 (closed session) (22 Mar 2017). Praljak asserts that the Trial Chamber accepted the Prosecution’s interpretation of the evidence cited without a proper assessment of the same. Praljak’s Appeal Brief, para. 508, referring to Trial Judgement, Vol. 3, fn. 1018. See Praljak’s Reply Brief, para. 105. Praljak also argues that although the local HVO obstructed UNPROFOR’s access to Stupni Do, this cannot be attributed to him or the Main Staff as “they were not obeying [the Main Staff’s] command”. Praljak’s Appeal Brief, para. 509, referring to Exs. P06144, p. 1, P06140, p. 4.

⁷⁰²⁸ Praljak’s Appeal Brief, para. 512. See Praljak’s Appeal Brief, paras 510-511.

to conceal their responsibility.⁷⁰²⁹ Praljak also contends that: (1) he was informed of the Stupni Do crimes on 5 November 1993;⁷⁰³⁰ (2) he had no reason to believe that the investigations would not be properly conducted;⁷⁰³¹ and (3) there is no evidence that he knew of the further conduct of the investigations as he “left the JCE” a few days after being informed of the crimes in Stupni Do.⁷⁰³² Praljak concludes that there is no evidence that he concealed the Stupni Do crimes or that he had any intention of doing so.⁷⁰³³

2057. The Prosecution responds that the Trial Chamber’s findings were reasonable.⁷⁰³⁴ It argues that the evidence established that Praljak facilitated Rajić’s efforts to prevent UNPROFOR’s access to Stupni Do,⁷⁰³⁵ and that the Trial Chamber found that Praljak knew that UNPROFOR was seeking access following allegations of crimes and not that he knew of the crimes at that time.⁷⁰³⁶ Specifically, the Prosecution contends that: (1) Rajić sent a report to the Main Staff addressed to Praljak on 24 October 1993 asking that UNPROFOR be warned to withdraw;⁷⁰³⁷ and (2) Praljak directed Petković “to do what ever it [took]” to conceal the fact that Rajić’s forces had driven away UNPROFOR from Vareš.⁷⁰³⁸ The Prosecution submits that Praljak ignores the Trial Chamber’s detailed analysis in arguing that there is no evidence that the steps taken to investigate were not genuine.⁷⁰³⁹ It asserts that the Trial Chamber properly relied on Witness EA’s evidence which was corroborated by other evidence.⁷⁰⁴⁰ Regarding the investigations, the Prosecution also argues that: (1) Praljak’s role in planning and directing the Vareš operation in October 1993 and in preventing UNPROFOR’s access to Stupni Do provides context to the finding that he contributed to concealing

⁷⁰²⁹ Praljak’s Appeal Brief, para. 512.

⁷⁰³⁰ Praljak’s Appeal Brief, para. 513, referring to Ex. 4D00834. See Praljak’s Reply Brief, para. 104. Praljak also argues that he attended the meeting on 5 November 1993 as the Commander of the Main Staff and not as a member of the Government. Praljak’s Appeal Brief, para. 513.

⁷⁰³¹ Praljak’s Appeal Brief, para. 513.

⁷⁰³² Praljak’s Appeal Brief, para. 514, referring to Trial Judgement, Vol. 4, paras 497, 1228.

⁷⁰³³ Praljak’s Appeal Brief, para. 515.

⁷⁰³⁴ Prosecution’s Response Brief (Praljak), paras 249, 253. The Prosecution argues that the Trial Chamber was entitled to accept a party’s position, given that it was supported by the evidence. Prosecution’s Response Brief (Praljak), para. 252.

⁷⁰³⁵ Prosecution’s Response Brief (Praljak), para. 250. The Prosecution contends that Praljak: (1) allowed Rajić to remain in command in Vareš despite knowing of crimes; (2) signaled his approval of operations in Vareš town by issuing Praljak’s Order of 23 October 1993; and (3) sanctioned, through Žarko Tole, the use of force, if necessary, by Rajić against UNPROFOR on 24 October 1993. Prosecution’s Response Brief (Praljak), para. 250, referring to, *inter alia*, Exs. P06026, P06028, P06066, P06067 (confidential). See Appeal Hearing, AT. 456-462 (22 Mar 2017). The Prosecution argues that it is “inconceivable” that Tole, Praljak’s Chief of Staff, would have given his order to use force against UNPROFOR (Exhibit P06066) without Praljak’s approval. Appeal Hearing, AT. 454-460 (22 Mar 2017).

⁷⁰³⁶ Prosecution’s Response Brief (Praljak), para. 251, referring to Trial Judgement, Vol. 4, para. 621. See Appeal Hearing, AT. 457 (22 Mar 2017). The Prosecution asserts that, in any event, Praljak knew about the crimes from the evening of 23 October 1993 and that Praljak admitted that he received Exhibit P06026 in the night of 23 October 1993. Prosecution’s Response Brief (Praljak), paras 246, 251; Appeal Hearing, AT. 457, 460 (22 Mar 2017), referring to Ex. P06026, Slobodan Praljak, T. 41900 (24 June 2009).

⁷⁰³⁷ Appeal Hearing, AT. 459 (22 Mar 2017), referring to Ex. P06067. See *supra*, fn. 7035.

⁷⁰³⁸ Prosecution’s Response Brief (Praljak), para. 250, referring to Exs. P06068, P06073, p. 2, Witness EA, T. 24572 (closed session) (14 Nov 2007); Appeal Hearing, AT. 459-460 (22 Mar 2017).

⁷⁰³⁹ Prosecution’s Response Brief (Praljak), para. 253.

⁷⁰⁴⁰ Prosecution’s Response Brief (Praljak), paras 254-255.

the Stupni Do crimes;⁷⁰⁴¹ and (2) the end of Praljak's JCE membership on 9 November 1993 does not relieve him of responsibility for concealing crimes committed between 23 October 1993 and 8 November 1993.⁷⁰⁴²

2058. Praljak argues that he only learned from Exhibit P06073 – dated 25 October 1993 – that the UN was requesting the transfer of explosives and not that UNPROFOR was seeking access to Stupni Do.⁷⁰⁴³ He also argues that Exhibits P06073 and P06068 do not mention Stupni Do or that UNPROFOR was seeking access to Stupni Do.⁷⁰⁴⁴ Praljak also argues that he “evidently approved the actions of Petković directed at rectifying the situation in relation to UNPROFOR” referring to Exhibit P06063, an order dated 24 October 1993 for UNPROFOR to be given unimpeded access and movement.⁷⁰⁴⁵

b. Analysis

i. Alleged errors in finding that Praljak sought to prevent UNPROFOR from accessing Stupni Do

2059. Concerning Praljak's contribution to the concealment of the Stupni Do crimes, the Trial Chamber, in the section discussing Praljak's failure to prevent or punish crimes, recalled that the HVO prevented UNPROFOR from entering Stupni Do between 23 and 25 October 1993 and found that “although Slobodan Praljak knew UNPROFOR was seeking access to Stupni Do following the allegations of crimes, he ordered that such access be prevented”.⁷⁰⁴⁶ The Trial Chamber relied on various pieces of evidence showing that UNPROFOR was prevented from accessing Stupni Do,⁷⁰⁴⁷ but only referred to Praljak's involvement by noting that “on 25 October 1993, in implementing an order dated 23 October 1993 sent by Slobodan Praljak [...], Ivica Rajić ordered the *Bobovac* Brigade to take control of the points of entry and exit checkpoints in Vareš”.⁷⁰⁴⁸ The Trial Chamber

⁷⁰⁴¹ Prosecution's Response Brief (Praljak), para. 256.

⁷⁰⁴² Prosecution's Response Brief (Praljak), para. 257. The Prosecution also responds that Praljak's arguments on his attendance at the meeting on 5 November 1993 has no impact and that he ignores that the HVO leaders ensured that the investigation came to nothing. Prosecution's Response Brief (Praljak), para. 257.

⁷⁰⁴³ Appeal Hearing, AT. 408 (22 Mar 2017). Praljak also argues that Exhibit P06078, an order dated 25 October 1993 from Petković to Rajić asking for information on the events in Stupni Do, shows that he did not know of the Stupni Do events or that UNPROFOR was seeking access to Stupni Do. Appeal Hearing, AT. 409 (22 Mar 2017).

⁷⁰⁴⁴ Appeal Hearing, AT. 408-409 (22 Mar 2017).

⁷⁰⁴⁵ Appeal Hearing, AT. 409 (22 Mar 2017). Praljak argues that Exhibit P06063 shows that “there is no possibility here, either by Praljak or Petković, to restrict movement by UNPROFOR”. Appeal Hearing, AT. 409 (22 Mar 2017).

⁷⁰⁴⁶ Trial Judgement, Vol. 4, para. 621. See Trial Judgement, Vol. 3, paras 470-475.

⁷⁰⁴⁷ See Trial Judgement, Vol. 3, fns 1013-1021, Vol. 4, fns 1216-1219.

⁷⁰⁴⁸ Trial Judgement, Vol. 4, para. 621, referring to, *inter alia*, Exs. P06114 (confidential), P06028. See Trial Judgement, Vol. 3, para. 472. In its discussion, the Trial Chamber noted that following a report from Rajić sent on the evening of 24 October 1993 to the Main Staff stating that if UNPROFOR did not withdraw, his forces would intervene, “Žarko Tole, the head of the Main Staff, ordered [Rajić...] to deploy HVO anti-tank weapons around the UNPROFOR vehicles and warn them” that they would be destroyed if they rendered HVO operations against the ABiH inoperative. Trial Judgement, Vol. 4, para. 621, referring to Prosecution Pre-Trial Brief, para. 214.1 (referring to Ex. P06067

considered: (1) Exhibit P06114 – Rajić’s order to the Bobovac Brigade – which was given on the basis of Praljak’s Order of 23 October 1993;⁷⁰⁴⁹ and (2) Witness EA’s testimony [Redacted, see Annex C – Confidential Annex].⁷⁰⁵⁰ However, bearing in mind that the Trial Chamber only relied on Praljak’s Order of 23 October 1993 for its impact and how it was interpreted by the HVO troops, and that it considered the order to be vague,⁷⁰⁵¹ the Appeals Chamber finds that the evidence cited by the Trial Chamber does not support a conclusion that Praljak knew that UNPROFOR was seeking access to Stupni Do and that he prevented such access. This evidence also does not reasonably support a finding that Praljak knew of allegations concerning the Stupni Do crimes before the meeting he attended on 5 November 1993. Thus, the Appeals Chamber finds that the Trial Chamber erred as no reasonable trier of fact could have arrived at the Trial Chamber’s conclusion based on the evidence it cited.

ii. Alleged errors in finding that Praljak intended to conceal the crimes in Stupni Do by signing the order of 8 November 1993

2060. Further, the Appeals Chamber notes that in concluding that Praljak contributed to the HVO’s efforts to conceal their responsibility for the Stupni Do crimes, the Trial Chamber primarily relied on the order Praljak signed on 8 November 1993.⁷⁰⁵² Pursuant to this order, which Praljak signed on behalf of Petković,⁷⁰⁵³ Rajić submitted two reports that, according to Witness EA, had the sole purpose of making the international community believe that the HVO was investigating the Stupni Do crimes.⁷⁰⁵⁴ In this respect, the Appeals Chamber considers that Praljak’s argument that Rajić may have written his reports to conceal his responsibility is speculative and unpersuasive; particularly as [Redacted, see Annex C – Confidential Annex].⁷⁰⁵⁵ With regard to Praljak’s arguments on his knowledge of the investigations, the Appeals Chamber notes that at the time Praljak signed the order of 8 November 1993, he knew of the crimes committed at Stupni Do,⁷⁰⁵⁶ he sent a letter to UNPROFOR on 6 November 1993 explaining that the HVO would do its best to

(confidential)). See Trial Judgement, Vol. 3, para. 471, referring to Prosecution Pre-Trial Brief, para. 214.1 (referring to Exs. P06067 (confidential), P06066). However, the Appeals Chamber notes that Exhibit P06067 is a report dated 24 October 1993 from Rajić to the Main Staff and the attention of Praljak stating that UNPROFOR located in Vareš “have deployed the armoured carriers with crews [...] with the possible aim to prevent a communication between the [Bobovac Brigade] and the logistical support to the units in case the Army of BiH [...] launch offensive combat operations on the Vareš HVO” and that UNPROFOR should be warned to withdraw. The Appeals Chamber considers that no reasonable trier of fact could have inferred from this exhibit alone that UNPROFOR was seeking access to Stupni Do to investigate allegations of crimes. Moreover, the Trial Chamber did not cite directly to the exhibits in question but to the Prosecution’s Pre-Trial Brief to conclude that the HVO prevented UNPROFOR from entering Stupni Do. Notably, the Trial Chamber did not make a finding on whether Praljak knew of Tole’s order to Rajić (Exhibit P06066) or Rajić’s report (Exhibit P06067 (confidential)). Trial Judgement, Vol. 3, para. 471, Vol. 4, para. 621.

⁷⁰⁴⁹ Ex. P06114, p. 1. See Trial Judgement, Vol. 3, para. 472 & fn. 1019, Vol. 4, para. 621 & fn. 1219.

⁷⁰⁵⁰ Witness EA, T. 24609-24610 (closed session) (15 Nov 2007). See Trial Judgement, Vol. 3, para. 472 & fn. 1019, Vol. 4, para. 621 & fn. 1219.

⁷⁰⁵¹ See *supra*, paras 2043-2045, 2050.

identify the perpetrators,⁷⁰⁵⁷ and the Trial Chamber found that Petković had begun the cover-up of the crimes.⁷⁰⁵⁸

2061. However, as the Trial Chamber's findings do not explicitly speak to Praljak's knowledge that the investigations were a sham or intended to mislead the international community,⁷⁰⁵⁹ and bearing in mind that Praljak's JCE membership ended on 9 November 1993, the Appeals Chamber finds that no reasonable trier of fact could have concluded – as the only reasonable inference – that Praljak intended to conceal the crimes in Stupni Do by signing the order of 8 November 1993. Therefore, the Trial Chamber erred in finding that Praljak contributed to the HVO's efforts to conceal the crimes committed in Stupni Do.

iii. Conclusion

2062. Based on the foregoing, the Appeals Chamber finds that the Trial Chamber erred in concluding that Praljak facilitated the crimes committed in Stupni Do on 23 October 1993: (1) by contributing to their concealment; and (2) as he participated in planning and directing the operations in Vareš Municipality. Thus, Praljak's sub-ground of appeal 45.4 is granted and the impact of this error, if any, will be discussed in the sentencing section below.⁷⁰⁶⁰ As such, it is unnecessary to address Praljak's remaining arguments on this issue. However, the Appeals Chamber recalls that Praljak has not demonstrated an error in the Trial Chamber's finding that he participated in planning and directing the operations in Vareš Municipality in October 1993. Therefore, Praljak's contribution to furthering the CCP through his involvement in the operations in Vareš Municipality in general is maintained.⁷⁰⁶¹

(v) Conclusion

2063. In light of the foregoing, Praljak's ground of appeal 45 is granted to the extent it concerns his contribution to the concealment and facilitation of the Stupni Do crimes; the remainder of his ground of appeal 45 as well as his ground of appeal 54 are dismissed.

⁷⁰⁵² Trial Judgement, Vol. 4, paras 596-597, 623, referring to Ex. 4D00834, Slobodan Praljak, T(F). 42211 (30 June 2009). The Appeals Chamber notes that the order of 8 November 1993 says “[s]end me urgently a brief report for Stupni Do” and “[s]ubmit the names of two persons for initiating investigative procedure”. Ex. 4D00834.

⁷⁰⁵³ Trial Judgement, Vol. 3, para. 489, Vol. 4, paras 596-597, 623, referring to Ex. 4D00834.

⁷⁰⁵⁴ Trial Judgement, Vol. 3, para. 489, Vol. 4, paras 596-597, 623, referring to, *inter alia*, Exs. P06519, P06671.

⁷⁰⁵⁵ Trial Judgement, Vol. 3, para. 489, Vol. 4, para. 596. See *supra*, fn. 6996. See also *supra*, paras 2031-2036.

⁷⁰⁵⁶ Trial Judgement, Vol. 4, para. 595.

⁷⁰⁵⁷ Trial Judgement, Vol. 4, para. 622, referring to Ex. P06481.

⁷⁰⁵⁸ Trial Judgement, Vol. 3, paras 480, 484, Vol. 4, paras 769-777.

⁷⁰⁵⁹ Trial Judgement, Vol. 3, paras 480-498, Vol. 4, paras 596-597. See Trial Judgement, Vol. 4, paras 769-777.

⁷⁰⁶⁰ See *infra*, para. 3362.

⁷⁰⁶¹ See *supra*, para. 820.

(e) Dretelj Prison and Gabela Prison (Praljak's Ground 46)

2064. The Trial Chamber found that from at least September 1993 Praljak “had to have known” that the conditions of confinement in Gabela Prison were “problematic enough to elicit a reaction from the international community and bring about the direct intervention of Franjo Tuđman”.⁷⁰⁶² It further found that Praljak “was at least aware that” the conditions in Dretelj Prison were poor.⁷⁰⁶³ In reaching these conclusions the Trial Chamber relied on the fact that Praljak himself acknowledged, in an interview he gave to a Croatian newspaper in 1997, that when he joined the HVO Main Staff command he knew that HVO detention centres existed and that the conditions of confinement in those centres did not conform to international standards.⁷⁰⁶⁴ The Trial Chamber also relied on the fact that, on 19 September 1993, Praljak forwarded Boban’s order of 15 September 1993, “calling on all components of the HZ H-B armed forces to adhere to the Geneva Conventions in HVO prisons and detention centres” and to allow the ICRC access to detention centres holding POWs.⁷⁰⁶⁵

2065. With respect to Gabela Prison specifically, the Trial Chamber referred to Praljak’s interview in the undated documentary “The Death of Yugoslavia” in which he, in the context of the discussion on detention centres generally, stated that he personally issued orders for reorganisation of Gabela Prison so that the detainees would receive water, food, mattresses, and would be able to wash.⁷⁰⁶⁶ The Trial Chamber also relied on evidence concerning Praljak’s involvement with Gabela Prison, starting in early September 1993, including the access he granted to journalists to visit the prison, the subsequent publication of photographs of emaciated detainees from Gabela Prison which caused international condemnation, and Tuđman’s open letter to Boban regarding the application of international law and the Geneva Conventions in the camps.⁷⁰⁶⁷ The Trial Chamber noted that these events led to Boban’s order of 15 September 1993.⁷⁰⁶⁸ Regarding Dretelj Prison, the Trial Chamber supported its findings on Praljak’s responsibility for the conditions there by the fact that he stated to the ECMM on 24 September 1993 that he was aware that this prison was a “bad thing”.⁷⁰⁶⁹ The

⁷⁰⁶² Trial Judgement, Vol. 4, para. 609.

⁷⁰⁶³ Trial Judgement, Vol. 4, para. 614.

⁷⁰⁶⁴ Trial Judgement, Vol. 4, para. 599, referring to Ex. P08765, p. 9 (wherein Praljak stated “the camps are certainly not something we can boast about” and that “[t]he conditions in those camps were not as prescribed by the international community, but I think that, apart from one, there were no killings.”).

⁷⁰⁶⁵ Trial Judgement, Vol. 4, para. 600, referring to Exs. 3D00915, pp. 3-5, P05188.

⁷⁰⁶⁶ Trial Judgement, Vol. 4, para. 602, referring to Ex. P09470 (wherein Praljak also recounts that Stojić promised that, as far as the Heliodrom was concerned, he would do everything to “avoid any ugly things” but that despite of Stojić’s promise “it was clear that there would be ugly things”), Slobodan Praljak, T(F). 44337 (3 Sept 2009).

⁷⁰⁶⁷ Trial Judgement, Vol. 4, paras 603-608, 611, referring to, *inter alia*, Ex. P09507 (confidential), Slobodan Praljak, T(F). 40917-40919 (28 May 2009), T(F). 44327-44333 (3 Sept 2009).

⁷⁰⁶⁸ Trial Judgement, Vol. 4, paras 607-608.

⁷⁰⁶⁹ Trial Judgement, Vol. 4, para. 613, referring to Ex. P05356 (confidential), p. 3.

Trial Chamber also relied on Praljak's testimony that in September 1993 he asked that mattresses be sent to Dretelj Prison as he read that the detainees were sleeping on the floor.⁷⁰⁷⁰

2066. Having established Praljak's knowledge of detention conditions in Gabela Prison and Dretelj Prison, the Trial Chamber concluded that his actions, namely his facilitation of access to Gabela Prison for journalists and the fact that he forwarded Boban's order of 15 September 1993, did not constitute a "real effort" to remedy the poor conditions in these prisons since they continued to exist.⁷⁰⁷¹ It also concluded that the fact that he continued to carry out his functions within the HVO while knowing about these bad conditions showed that he accepted these crimes.⁷⁰⁷² In that regard, the Trial Chamber referred to Praljak's own testimony that he did nothing to implement Boban's order because its implementation fell under the jurisdiction of other authorities and because he did not have the means to act.⁷⁰⁷³

(i) Arguments of the Parties

2067. Praljak contends that the Trial Chamber erred in finding that he did not make any real effort to remedy the detention conditions.⁷⁰⁷⁴ Praljak argues that he took various steps to improve the detention conditions as he: (1) authorised access to Gabela Prison and Dretelj Prison but that these orders were not always respected;⁷⁰⁷⁵ (2) ordered that mattresses be sent to Dretelj Prison;⁷⁰⁷⁶ (3) ordered Gabela Prison to be reorganised in accordance with the laws of war;⁷⁰⁷⁷ (4) forwarded orders requesting that the Geneva Conventions be respected;⁷⁰⁷⁸ and (5) organised at least one conference on international humanitarian law and distributed pamphlets to the HVO.⁷⁰⁷⁹

2068. Praljak further submits that the Trial Chamber did not attempt to establish whether he had a legal duty to act, and emphasises that "criminal responsibility may be engaged only if the omission constitutes a [wilful] failure to discharge such a duty".⁷⁰⁸⁰ Praljak also contends that the *mens rea* attributed to him by the Trial Chamber is not sufficient for a conviction under JCE I.⁷⁰⁸¹ He asserts that the Trial Chamber could not find that he had the required *mens rea* for the crimes in the detention centres as it could only conclude that he "had to have known" about the conditions in

⁷⁰⁷⁰ Trial Judgement, Vol. 4, para. 613, referring to Slobodan Praljak, T(F). 40920 (28 May 2009).

⁷⁰⁷¹ Trial Judgement, Vol. 4, paras 611, 614.

⁷⁰⁷² Trial Judgement, Vol. 4, paras 611, 614.

⁷⁰⁷³ Trial Judgement, Vol. 4, para. 606, referring to Slobodan Praljak, T(F). 44330 (3 Sept 2009).

⁷⁰⁷⁴ Praljak's Appeal Brief, para. 517. See also Appeal Hearing, AT. 394 (22 Mar 2017).

⁷⁰⁷⁵ Praljak's Appeal Brief, para. 516, referring to Trial Judgement, Vol. 4, paras 603, 611-612.

⁷⁰⁷⁶ Praljak's Appeal Brief, para. 516.

⁷⁰⁷⁷ Praljak's Appeal Brief, para. 516, referring to Trial Judgement, Vol. 4, para. 602.

⁷⁰⁷⁸ Praljak's Appeal Brief, para. 516, referring to Trial Judgement, Vol. 4, paras 607-608.

⁷⁰⁷⁹ Praljak's Appeal Brief, para. 516, referring to Trial Judgement, Vol. 4, para. 498.

⁷⁰⁸⁰ Praljak's Appeal Brief, paras 518-519, referring to *Galić* Appeal Judgement, para. 175, *Blaškić* Appeal Judgement, para. 663, *Ntagerura et al.* Appeal Judgement, para. 334.

⁷⁰⁸¹ Praljak's Appeal Brief, para. 520, referring to Trial Judgement, Vol. 4, paras 609, 611, 614.

Gabela Prison and Dretelj Prison and therefore accepted these crimes.⁷⁰⁸² Praljak argues that the words “poor” and “problematic” are not indicative that crimes were committed, and as the Trial Chamber failed to establish whether he was aware of these crimes, it failed to establish his intent.⁷⁰⁸³

2069. With regard to Praljak’s claim that he tried to improve the detention conditions and implement the Geneva Conventions, the Prosecution responds that the Trial Chamber carefully analysed and rejected these arguments.⁷⁰⁸⁴ The Prosecution further responds that Praljak possessed the shared intent which included the intent for the crimes committed in the detention centres, in furtherance of the CCP.⁷⁰⁸⁵ It argues that the Trial Chamber reasonably concluded that Praljak “‘accepted’ the detention-related crimes” which confirms its findings regarding his shared intent.⁷⁰⁸⁶

2070. The Prosecution also responds that Praljak went beyond the scope of his Notice of Appeal in his argument on his omissions as contributions to the CCP.⁷⁰⁸⁷ It argues that Praljak was properly convicted of JCE I crimes committed in the detention centres, including Gabela Prison and Dretelj Prison,⁷⁰⁸⁸ and that was not based only on his omissions but also on his “active” significant contribution to the CCP.⁷⁰⁸⁹ The Prosecution further argues that Praljak had control over the HVO members deployed at the detention centres,⁷⁰⁹⁰ which is demonstrated by the fact that he issued orders concerning Gabela Prison and Dretelj Prison.⁷⁰⁹¹ It asserts that “Praljak did not merely omit to improve conditions in the detention centres” but used his resources to maintain the detention centres which was essential to the system of deportation.⁷⁰⁹² The Prosecution also contends that,

⁷⁰⁸² Praljak’s Appeal Brief, paras 520-521, referring to Trial Judgement, Vol. 4, paras 609, 611, 614.

⁷⁰⁸³ Praljak’s Appeal Brief, para. 520. See Praljak’s Appeal Brief, para. 521. See also Appeal Hearing, AT. 411 (22 Mar 2017).

⁷⁰⁸⁴ Prosecution’s Response Brief (Praljak), para. 267, referring to Trial Judgement, Vol. 4, paras 602-606. The Prosecution maintains that Praljak made no serious effort to improve the detention conditions. Prosecution’s Response Brief (Praljak), para. 269, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 604, 606-611, 613-614. See Appeal Hearing, AT. 470 (22 Mar 2017).

⁷⁰⁸⁵ Prosecution’s Response Brief (Praljak), para. 270, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 41, 43-45, 48, 57, 64-68, 1219-1221.

⁷⁰⁸⁶ Prosecution’s Response Brief (Praljak), para. 270, referring to Trial Judgement, Vol. 4, paras 609, 611, 614. See Appeal Hearing, AT. 462-470 (22 Mar 2017).

⁷⁰⁸⁷ Prosecution’s Response Brief (Praljak), para. 263.

⁷⁰⁸⁸ Prosecution’s Response Brief (Praljak), para. 261.

⁷⁰⁸⁹ Prosecution’s Response Brief (Praljak), paras 264-265, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 628, 1232, 1342.

⁷⁰⁹⁰ Prosecution’s Response Brief (Praljak), para. 266, referring to, *inter alia*, Trial Judgement, Vol. 3, paras 15-36, 163-192, Vol. 4, paras 397, 484, 495-496, 502, 506, 624-626.

⁷⁰⁹¹ Prosecution’s Response Brief (Praljak), para. 266. The Prosecution highlights that Praljak ordered that Gabela Prison be “properly organised”, that several journalists have access to Gabela Prison and Dretelj Prison, that Dretelj Prison be turned into a military prison for the HVO, as well as forwarded Boban’s 15 September 1993 order. Prosecution’s Response Brief (Praljak), para. 266.

⁷⁰⁹² Prosecution’s Response Brief (Praljak), para. 266. The Prosecution argues that the Trial Chamber reasonably found that the JCE members implemented a system for deporting the Muslim population through, *inter alia*, detention in harsh

even if the Trial Chamber had based its finding solely on Praljak's omissions, this would not constitute a legal error as Praljak had the duty to prevent and punish crimes of his subordinates as well as protect the people who were under his subordinates' control.⁷⁰⁹³ According to the Prosecution, Praljak was in a position to fulfil these duties as the Trial Chamber found that he had "broad authority" over the HVO, including discipline, which extended to detention centres.⁷⁰⁹⁴

2071. Praljak replies that no link was established between his contribution and the events in the detention centres, nor did the Trial Chamber properly establish that he had any knowledge that the crimes committed in the detention centres were part of the CCP.⁷⁰⁹⁵ He further submits that the argument relating to "omissions" is closely connected to his *mens rea* as the Trial Chamber drew inferences on his intent based on these omissions.⁷⁰⁹⁶

(ii) Analysis

2072. The Appeals Chamber notes that the Trial Chamber explicitly considered the same actions undertaken by Praljak which he now asserts are evidence of his efforts to improve the conditions in the detention centres⁷⁰⁹⁷ but concluded that he did not make any real effort to remedy the conditions.⁷⁰⁹⁸ Notably, the Trial Chamber observed that, for Gabela Prison, the conditions continued to exist.⁷⁰⁹⁹

2073. While Praljak contends that the Trial Chamber admitted that his orders granting access for journalists to detention centres "were not always respected",⁷¹⁰⁰ he relies on the finding of the Trial Chamber concerning one such authorisation. Specifically, the Trial Chamber recounted that a Croatian journalist from Globus Magazine, having been authorised by Praljak to visit Gabela Prison, was stopped from accessing it by the guards.⁷¹⁰¹ He was eventually able to obtain access,

conditions and the use of detainees on the front lines. Prosecution's Response Brief (Praljak), para. 262, referring to *inter alia*, Trial Judgement, Vol. 4, paras 64, 66, 999.

⁷⁰⁹³ Prosecution's Response Brief (Praljak), para. 268, referring to *Blaškić* Appeal Judgement, para. 663, *Mrkšić and Šljivančanin* Appeal Judgement, para. 150.

⁷⁰⁹⁴ Prosecution's Response Brief (Praljak), para. 269, referring to Trial Judgement, Vol. 4, paras 495-496, *Mrkšić and Šljivančanin* Appeal Judgement, para. 154. The Prosecution also contends that the Main Staff was responsible for implementing Boban's order of 15 September 1993. Prosecution's Response Brief (Praljak), para. 268, referring to Ex. P05104, paras 3, 7.

⁷⁰⁹⁵ Praljak's Reply Brief, para. 107, referring to Trial Judgement, Vol. 4, para. 631. See Praljak's Reply Brief, para. 110, referring to, *inter alia*, *Tadić* Appeal Judgement, para. 228, *Brdanin* Appeal Judgement, para. 365.

⁷⁰⁹⁶ Praljak's Reply Brief, para. 109, referring to Trial Judgement, Vol. 4, paras 611, 614.

⁷⁰⁹⁷ Trial Judgement, Vol. 4, paras 600, 602-603, 607-609, 612-613. The Trial Chamber also considered that although Praljak organised at least one conference on international humanitarian law and distributed pamphlets, it could not find that there was any real institutionalised HVO training on this subject. Trial Judgement, Vol. 4, para. 498.

⁷⁰⁹⁸ Trial Judgement, Vol. 4, paras 611, 614.

⁷⁰⁹⁹ Trial Judgement, Vol. 4, paras 610-611.

⁷¹⁰⁰ Praljak's Appeal Brief, para. 516.

⁷¹⁰¹ Trial Judgement, Vol. 4, para. 603. The Appeals Chamber notes that the Trial Chamber found that this was Praljak's second authorisation as he had earlier authorised the same access for the ZDF television crew, which was duly complied

after having gone back to the Main Staff and receiving an entry permit from Žarko Tole, the Chief of the Main Staff.⁷¹⁰² Thus, the fact that one of Praljak's two orders, granting access to one journalist was not immediately carried out does not diminish his role or capability to make more efforts to improve the conditions of detention, particularly given that he was the Commander of the Main Staff at the time and that he was, on his own admission, able to issue orders to reorganise Gabela Prison and provide its detainees with food, water, and mattresses.⁷¹⁰³ The Appeals Chamber therefore considers that Praljak only recites the Trial Chamber's findings on his actions without showing how it erred in concluding that he made no real effort to improve detention conditions. Indeed, as recalled earlier, with respect to his failure to act, the Trial Chamber also relied on Praljak's own testimony that he did nothing to implement Boban's order of 15 September 1993 in finding that he made no real effort to improve the conditions of detention.⁷¹⁰⁴ As Praljak merely offers his own interpretation of the evidence and his actions, his argument is dismissed.

2074. With regard to Praljak's argument that his knowledge of the crimes committed in the detention centres was not properly established, the Appeals Chamber recalls the Trial Chamber's conclusions that Praljak "had to have known" and that he "was at least aware" that the detention conditions in Gabela Prison and Dretelj Prison were problematic, bad, and poor.⁷¹⁰⁵ Notably, Praljak does not contest these conclusions or that crimes were committed but argues that the findings do not show that he had knowledge of any crime committed or that these crimes formed part of the CCP. While the Trial Chamber could have been more explicit regarding the specific crimes in its analysis, this does not show an error⁷¹⁰⁶ and the Appeals Chamber is not convinced by Praljak's assertion that his knowledge of crimes was not sufficiently determined.

2075. In respect of Praljak's first argument, namely that the Trial Chamber's findings do not show his knowledge of crimes, the Appeals Chamber notes that, in the section of the Trial Judgement discussing his responsibility for the detention centres, the Trial Chamber did not explicitly list specific crimes of which Praljak was found to have been aware.⁷¹⁰⁷ However, the Trial Chamber considered evidence that Praljak: (1) knew that the detention conditions "did not conform to international standards";⁷¹⁰⁸ (2) stated that he issued orders for Gabela Prison to be reorganised so

with. Indeed, it was the ZDF footage that "caused quite a scandal" and led to "other international representatives" requesting access to detention centres in the HR H-B territory. See Trial Judgement, Vol. 4, paras 603-604.

⁷¹⁰² Trial Judgement, Vol. 4, para. 603.

⁷¹⁰³ Trial Judgement, Vol. 4, para. 602, referring to Ex: P09470, p. 2.

⁷¹⁰⁴ See *supra*, para. 2066.

⁷¹⁰⁵ Trial Judgement, Vol. 4, paras 609, 611, 614. See *supra*, para. 2064.

⁷¹⁰⁶ The Appeals Chamber considers that a JCE member does not need to have knowledge or intended the specific incidents or crime as long as he shares the intent to commit the JCE I crimes. Cf. *Stanišić and Župljanin* Appeal Judgement, para. 917; *Tolimir* Appeal Judgement, para. 474.

⁷¹⁰⁷ See Trial Judgement, Vol. 4, paras 599-614.

⁷¹⁰⁸ Trial Judgement, Vol. 4, para. 599. See Trial Judgement, Vol. 4, paras 600, 606-607, 609. See also *supra*, para. 2064 & fn. 7064. The Appeals Chamber notes that Praljak does not challenge the Trial Chamber's reliance on his

that “detainees would receive water, food, mattresses and be able to wash, in accordance with the laws of war”;⁷¹⁰⁹ (3) knew that detention conditions were “bad enough to elicit a strong reaction from the international community and bring about the direct intervention of Franjo Tuđman”;⁷¹¹⁰ (4) was aware of Boban’s order of 15 September 1993 requiring that the HVO forces respect international humanitarian law in the detention centres;⁷¹¹¹ and (5) stated on 24 September 1993 to the ECMM that he was aware that Dretelj Prison was a “bad thing”.⁷¹¹²

2076. In addition, the Trial Chamber noted Praljak’s own evidence that in September 1993, subsequent to authorising the Globus journalist’s visit to Gabela Prison, he saw photographs published in the media of thin-looking Gabela Prison detainees who had lost a significant amount of weight; however, he testified that he had not considered this situation to be “very serious”.⁷¹¹³ The Trial Chamber also noted that Praljak admitted during his testimony that the footage filmed by the ZDF crew “caused quite a scandal” such that Mate Granić had to be dispatched to BiH by Tuđman in order to convene meetings regarding the situation.⁷¹¹⁴ Reading the Trial Judgement as a whole,⁷¹¹⁵ the Appeals Chamber is satisfied that the Trial Chamber – by concluding that Praljak knew of the bad detention conditions, including specifically: (1) the lack of food and water, as publicised through disturbing images in the media; (2) at least one killing, as admitted by Praljak in a subsequent interview; and (3) that the conditions of detention in camps in general violated international humanitarian law to such an extent that they eventually required an intervention of the international community and Tuđman – found that Praljak knew of the crimes committed at Dretelj Prison and Gabela Prison.

2077. Concerning Praljak’s knowledge that the crimes committed in the detention centres formed part of the CCP, the Appeals Chamber first notes that the Trial Chamber found that the detention centres were part of a system set up and implemented by the JCE members to further the CCP.⁷¹¹⁶ The Trial Chamber found that the detention centres were an integral part of the entire system set up by the JCE members for deporting the Muslim population of the HR H-B which consisted of, *inter*

1997 interview nor its finding that he knew, when he joined the HVO Main Staff, that the conditions of detention did not conform to international standards. The Appeals Chamber also notes that while not mentioned specifically by the Trial Chamber in its finding, during the same interview Praljak also acknowledged at least one killing in the detention centres. See *supra*, para. 2064 & fn. 7064.

⁷¹⁰⁹ Trial Judgement, Vol. 4, para. 602.

⁷¹¹⁰ Trial Judgement, Vol. 4, para. 611. See Trial Judgement, Vol. 4, para. 609.

⁷¹¹¹ Trial Judgement, Vol. 4, paras 600, 607-608.

⁷¹¹² Trial Judgement, Vol. 4, para. 613, referring to Ex. P05356 (confidential), p. 3.

⁷¹¹³ Trial Judgement, Vol. 4, para. 603, referring to Slobodan Praljak, T(F). 40919 (28 May 2009).

⁷¹¹⁴ Trial Judgement, Vol. 4, para. 604, referring to Slobodan Praljak, T(F). 443327-44333 (3 Sept 2009), Peter Galbraith, T(F). 6537-6540 (13 Sept 2006) (testifying that it was no surprise that Praljak authorised the ZDF crew to enter Gabela Prison on 1 September 1993 given the enormous pressure Tuđman, Granić, and Šušak were receiving during summer of 1993 from Galbraith and other members of the international community to allow the international community to access the detention centres).

⁷¹¹⁵ *Popović et al.* Appeal Judgement, para. 2006; *Mrkšić and Šljivančanin* Appeal Judgement, para. 379.

alia, placement of civilians in detention centres and mistreatment and poor conditions of confinement.⁷¹¹⁷ The Trial Chamber found that Praljak: (1) was one of the most important members of the JCE;⁷¹¹⁸ (2) had “effective control” and command authority over the HVO and Military Police;⁷¹¹⁹ and (3) shared the intent of the CCP with the other JCE members.⁷¹²⁰ In light of these findings, Praljak fails to show any error in the Trial Chamber’s conclusion that he “knew that [the crimes committed by the HVO and the Military Police, including the crimes committed in the Gabela and Dretelj Prisons] were being committed against the Muslims with the sole aim of forcing them to leave the territory of Herceg-Bosna”.⁷¹²¹ By simply asserting that his knowledge was not established, Praljak fails to substantiate his argument, which is thus dismissed.

2078. Moreover, the Appeals Chamber recalls that “the *mens rea* required for liability under the first category of joint criminal enterprise is that the accused shares the intent with the other participants to carry out the crimes forming part of the common purpose”.⁷¹²² It also recalls that the requisite *mens rea* can be inferred from a person’s knowledge of the common plan involving the commission of the crime, combined with his continuous participation, if this is the only reasonable inference available on the evidence.⁷¹²³ In this respect, the Appeals Chamber recalls that Praljak: (1) knew of the CCP which included the detention-related crimes;⁷¹²⁴ (2) knew by at least September 1993 that crimes were being committed in Dretelj Prison and Gabela Prison in furtherance of the CCP;⁷¹²⁵ (3) continued to carry out his functions thus accepting the crimes committed in Dretelj Prison and Gabela Prison;⁷¹²⁶ and (4) continuously contributed to the implementation of the CCP from January 1993 to November 1993.⁷¹²⁷ Thus, Praljak fails to demonstrate how the Trial Chamber erred in finding that he had the requisite *mens rea*.

2079. Concerning Praljak’s submission relating to “omissions”, the Appeals Chamber takes note of the Prosecution’s challenge to the permissibility of this submission. While the question of whether the Trial Chamber erred with regard to its consideration of Praljak’s failure to act in order to improve the detention conditions is relevant to his contribution to the crimes, the Appeals

⁷¹¹⁶ Trial Judgement, Vol. 4, paras 64, 66. See also *supra*, paras 817-818, 952, 958.

⁷¹¹⁷ Trial Judgement, Vol. 4, paras 64, 66. See Trial Judgement, Vol. 4, paras 69-73 (setting out the crimes that did not fall within the CCP because they lacked a systematic or widespread nature or lacked the common intent of all the Appellants).

⁷¹¹⁸ Trial Judgement, Vol. 4, para. 628.

⁷¹¹⁹ Trial Judgement, Vol. 4, paras 482, 506, 624. See *supra*, paras 1853-1870.

⁷¹²⁰ Trial Judgement, Vol. 4, para. 627. See *supra*, para. 1921.

⁷¹²¹ Trial Judgement, Vol. 4, para. 628.

⁷¹²² *Dorđević* Appeal Judgement, para. 468, referring to *Tadić* Appeal Judgement, paras 220, 228, *Krajišnik* Appeal Judgement, para. 707.

⁷¹²³ *Popović et al.* Appeal Judgement, para. 1652, referring to *Dorđević* Appeal Judgement, para. 512, *Krajišnik* Appeal Judgement, paras 202, 204, 697, *Brđanin* Appeal Judgement, paras 428-429, *Vasiljević* Appeal Judgement, para. 120.

⁷¹²⁴ See *supra*, paras 1918, 1940, 2077.

⁷¹²⁵ See *supra*, para. 2077. See also Trial Judgement, Vol. 4, paras 609-611, 612-614.

⁷¹²⁶ Trial Judgement, Vol. 4, paras 611, 614.

Chamber notes that the Trial Chamber also inferred Praljak's intent from his failure to act, among other factors.⁷¹²⁸ In his Notice of Appeal, Praljak alleges that the Trial Chamber erred in law in convicting him of the relevant crimes "without having established that he had [the] required intent" in relation to his ground of appeal 46.⁷¹²⁹ Thus, the Appeals Chamber is not convinced that Praljak has exceeded the scope of his Notice of Appeal. Moreover, the Prosecution will not suffer any prejudice if Praljak's argument is considered on its merits as it responded to this argument and the matter is fully litigated in the briefs.⁷¹³⁰

2080. The Appeals Chamber notes, with regard to Praljak's argument on his legal duty to act, that he had command authority and "effective control" over the HVO soldiers, as well as members of the Military Police, deployed to Dretelj Prison and Gabela Prison.⁷¹³¹ Notably, the Appeals Chamber recalls that "when establishing an accused's participation in a joint criminal enterprise through his failure to act, the existence of a legal duty to act derived from *a rule of criminal law* is not required".⁷¹³² The nature of the accused's duty is instead a question of evidence and not determinative of joint criminal enterprise liability.⁷¹³³ Praljak's argument to the extent it concerns his contribution is dismissed.

2081. Moreover, the Appeals Chamber notes that the Trial Chamber concluded that as Praljak continued to carry out his functions without making any real effort to remedy the detention conditions, he accepted the crimes committed in Dretelj Prison and Gabela Prison.⁷¹³⁴ Subsequently, in its findings on Praljak's responsibility under JCE I liability, the Trial Chamber inferred that he intended to have the crimes committed against the Muslim population on several bases, including his failure to make any serious efforts to stop the HVO and the Military Police from committing crimes.⁷¹³⁵ Therefore, Praljak's failure to act in this regard was also considered when establishing his *mens rea*. In these circumstances, the Appeals Chamber considers that the Trial Chamber was not required to determine, in addition, that Praljak had the right or the obligation to prevent or punish crimes as he was not convicted as a superior pursuant to Article 7(3) of the

⁷¹²⁷ Trial Judgement, Vol. 4, para. 1230.

⁷¹²⁸ Trial Judgement, Vol. 4, paras 625-627.

⁷¹²⁹ Praljak's Notice of Appeal, para. 265.

⁷¹³⁰ Cf. *Popović et al.* Appeal Judgement, para. 489; *Nizeyimana* Appeal Judgement, paras 352-354. The Appeals Chamber recalls that it is unnecessary for the notice of appeal to detail the arguments that the parties intend to use in support of the grounds of appeal, but the purpose of listing all the grounds of appeal is to focus the mind of the respondent on the arguments which will be developed subsequently in the appeal brief. *Popović et al.* Appeal Judgement, para. 500, referring to *Boškoski and Tarčulovski* Appeal Judgement, para. 246.

⁷¹³¹ Trial Judgement, Vol. 4, paras 482, 490, 506, 608, 624, 626. See Trial Judgement, Vol. 4, paras 619-623.

⁷¹³² *Stanišić and Župljanin* Appeal Judgement, para. 110 (emphasis added). See *Stanišić and Župljanin* Appeal Judgement, para. 111.

⁷¹³³ *Stanišić and Župljanin* Appeal Judgement, para. 110 and references cited therein.

⁷¹³⁴ Trial Judgement, Vol. 4, paras 611, 614.

⁷¹³⁵ Trial Judgement, Vol. 4, paras 625-627.

Statute.⁷¹³⁶ For the purposes of establishing the *mens rea* element of commission through participation in a JCE pursuant to Article 7(1) of the Statute, it was within the Trial Chamber's discretion to consider, among other factors, whether Praljak used his command authority to undertake measures which could have prevented or punished the commission of crimes.⁷¹³⁷ Thus, the Appeals Chamber finds that Praljak fails to show that the Trial Chamber erred in this respect. Praljak's argument to the extent it concerns his *mens rea* is dismissed.

2082. In light of the foregoing, the Appeals Chamber finds that Praljak has failed to demonstrate that the Trial Chamber erred in determining his responsibility for crimes committed at Dretelj Prison and Gabela Prison. Praljak's ground of appeal 46 is therefore dismissed.

7. Conclusion

2083. Based on the above sections addressing his challenges to the findings on his JCE contribution and *mens rea*, the Appeals Chamber concludes that Praljak has failed to demonstrate any error which has an impact on the Trial Chamber's findings that: (1) a plurality of persons, including Praljak, consulted with each other to devise and implement the CCP; (2) Praljak continuously contributed to the JCE between January 1993 and 9 November 1993; (3) Praljak's contribution, which included the use of the HVO and the Military Police to commit crimes, was significant and furthered the CCP; (4) Praljak shared the intent to expel the Muslim population from the territory of Herceg-Bosna with other JCE members; (5) Praljak shared the intent to carry out the crimes forming part of the CCP; and (6) Praljak intended to discriminate against Muslims in order to facilitate their eviction from the territory of Herceg-Bosna.⁷¹³⁸ Therefore, the Appeals Chamber upholds the majority of Praljak's convictions under JCE I for the various crimes forming part of the CCP and committed prior to the end of his JCE membership on 9 November 1993.

2084. Additionally, the Appeals Chamber recalls that it has: (1) found that Praljak cannot be held responsible for crimes occurring after 15 November 1993, including certain incidents of sniping and destruction of mosques in Mostar Municipality;⁷¹³⁹ and (2) reversed the findings concerning Praljak's contribution to the concealment and facilitation of the crimes committed in Stupni Do.⁷¹⁴⁰ Thus, the Appeals Chamber will address the impact that these findings and reversal may have on his sentence, if any, in the relevant section below.⁷¹⁴¹

⁷¹³⁶ See *Šainović et al.* Appeal Judgement, para. 1045. See also *Popović et al.* Appeal Judgement, paras 1368-1369.

⁷¹³⁷ See *Šainović et al.* Appeal Judgement, para. 1045.

⁷¹³⁸ Trial Judgement, Vol. 4, paras 624-628, 1220, 1228, 1230-1232.

⁷¹³⁹ See *supra*, paras 1973, 2003, 2026.

⁷¹⁴⁰ See *supra*, paras 2062-2063.

⁷¹⁴¹ See *infra*, para. 3362.

H. Alleged Errors in Relation to Milivoj Petković's Participation in the JCE⁷¹⁴²

1. Introduction

2085. Milivoj Petković was appointed Chief of the HVO Main Staff on 14 April 1992 and remained in that position until 24 July 1993, when he became deputy commander of the Main Staff to Slobodan Praljak.⁷¹⁴³ He acted as Praljak's deputy until 8 November 1993 and thereafter was deputy to Ante Roso until 26 April 1994, when he was again appointed Chief of the HVO Main Staff, a position he held until August 1994.⁷¹⁴⁴ The Trial Chamber found that Petković contributed to the JCE from January 1993 to April 1994,⁷¹⁴⁵ and concluded that this contribution was significant.⁷¹⁴⁶ It concluded that Petković was one of the most important JCE members as he directed and controlled the HVO, negotiated with the ABiH authorities, and implemented the policies and decisions of the HVO/Government of the HZ(R) H-B in the field.⁷¹⁴⁷ The Trial Chamber also found that Petković used the HVO to commit crimes that formed part of the CCP and the actions of HVO members and the Military Police were attributable to him.⁷¹⁴⁸ It made several findings concerning Petković's contributions including, *inter alia*, that: (1) he had command authority over the HVO and that he exercised this authority;⁷¹⁴⁹ (2) he made decisions regarding military operations, which he had the HVO carry out;⁷¹⁵⁰ (3) he forwarded the decisions of "the HVO government" to the HVO and had them implement these decisions;⁷¹⁵¹ (4) he participated in the directing, planning, and facilitating of several HVO military operations;⁷¹⁵² and (5) despite his authority over the HVO and the Military Police, he did not make serious efforts to put an end to the commission of crimes by HVO members.⁷¹⁵³

⁷¹⁴² The Appeals Chamber recalls that Petković uses Roman numerals to number his grounds of appeal and Arabic numerals to number the sub-headings pertaining thereto. See *supra*, fn. 55. For ease of reference, the Appeals Chamber will follow the numbering of the sub-headings throughout this section of the Judgement.

⁷¹⁴³ Trial Judgement, Vol. 4, paras 651-652, 814. See also Trial Judgement, Vol. 1, paras 715-717, 727-728.

⁷¹⁴⁴ Trial Judgement, Vol. 4, para. 652.

⁷¹⁴⁵ Trial Judgement, Vol. 4, para. 1225.

⁷¹⁴⁶ Trial Judgement, Vol. 4, para. 818.

⁷¹⁴⁷ Trial Judgement, Vol. 4, para. 818.

⁷¹⁴⁸ Trial Judgement, Vol. 4, para. 818. The Appeals Chamber recalls that it has reversed the Trial Chamber's finding that the seven killings in Duša constituted murder and wilful killing. See *supra*, paras 441-443. Consequently, the Appeals Chamber has found that murder and willful killings were not part of the CCP in the period from January 1993 until June 1993, the impact of which will be discussed elsewhere in this chapter where relevant. See *supra*, paras 882, 886.

⁷¹⁴⁹ Trial Judgement, Vol. 4, paras 653-679, 803, 814. The Trial Chamber also found that the Military Police units were subordinated to Petković. Trial Judgement, Vol. 4, paras 661-663, 816.

⁷¹⁵⁰ Trial Judgement, Vol. 4, para. 814.

⁷¹⁵¹ Trial Judgement, Vol. 4, para. 814.

⁷¹⁵² Trial Judgement, Vol. 4, para. 815.

⁷¹⁵³ Trial Judgement, Vol. 4, paras 815-816.

2086. Regarding Petković's *mens rea* under JCE I liability, the Trial Chamber concluded that he: (1) intended the crimes committed in various municipalities,⁷¹⁵⁴ at times inferring his intent from his failure to make any serious efforts to put an end to the commission of crimes by HVO members;⁷¹⁵⁵ (2) shared the intent to expel the Muslim population from the territory of Herceg-Bosna with other JCE members;⁷¹⁵⁶ and (3) intended to discriminate against Muslims in order to facilitate their eviction from the territory of Herceg-Bosna.⁷¹⁵⁷

2087. The Trial Chamber thus convicted Petković under Article 7(1) of the Statute of committing, pursuant to JCE I liability, various crimes amounting to grave breaches of the Geneva Conventions, violations of the laws or customs of war, and/or crimes against humanity under Articles 2, 3, and 5 of the Statute, respectively.⁷¹⁵⁸ Petković was sentenced to a single sentence of 20 years of imprisonment.⁷¹⁵⁹

2088. Petković challenges the Trial Chamber's findings concerning: (1) his functions and powers; (2) his contribution to the JCE; (3) his *mens rea*; and (4) his participation in the CCP.⁷¹⁶⁰ Petković also submits that the Trial Chamber erred in finding that a plurality of persons, including himself, shared the CCP.⁷¹⁶¹ These challenges will be addressed below.

⁷¹⁵⁴ Trial Judgement, Vol. 4, para. 815.

⁷¹⁵⁵ Trial Judgement, Vol. 4, paras 815-817.

⁷¹⁵⁶ Trial Judgement, Vol. 4, para. 817. See Trial Judgement, Vol. 4, para. 818.

⁷¹⁵⁷ Trial Judgement, Vol. 4, para. 818.

⁷¹⁵⁸ Trial Judgement, Vol. 4, paras 68, 820-821, Disposition, p. 431. These crimes are: persecution as a crime against humanity (Count 1); murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva Conventions (Count 3); deportation as a crime against humanity (Count 6); unlawful deportation of a civilian as a grave breach of the Geneva Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9); imprisonment as a crime against humanity (Count 10); unlawful confinement of a civilian as a grave breach of the Geneva Conventions (Count 11); inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); unlawful labour as a violation of the laws or customs of war (Count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 19); destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); unlawful attack on civilians as a violation of the laws or customs of war (Count 24); and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). The Trial Chamber found that the following crimes also fell within the framework of the JCE, meaning that Petković was also responsible for them, but did not enter convictions for them based on the principles relating to cumulative convictions: cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); cruel treatment as a violation of the laws or customs of war (Count 17); and wanton destruction of cities, towns, or villages, or devastation not justified by military necessity (Count 20). See also *infra*, paras 2443-2455.

⁷¹⁵⁹ Trial Judgement, Vol. 4, Disposition, p. 431.

⁷¹⁶⁰ Petković's Appeal Brief, paras 86-123, 128-133, 137-171, 214-217, 219-251, 256-268, 270-276, 279-284, 287-346, 348-361, 363-364.

⁷¹⁶¹ Petković's Appeal Brief, para. 362.

2. Alleged errors regarding Petković's powers and functions (Sub-grounds 5.1 and 5.2 both in part)

2089. In assessing Petković's *de jure* and *de facto* command authority over the HVO, the Trial Chamber concluded that, as the chief of the Main Staff, subsequently the deputy commander and later the deputy chief of the Main Staff, he had effective command and control over the HVO.⁷¹⁶²

2090. Petković submits that the Trial Chamber committed errors in assessing his powers and functions over the HVO and in drawing conclusions regarding these powers.⁷¹⁶³ The Appeals Chamber will address these contentions in turn.

(a) Alleged errors regarding Petković's *de jure* command authority over the HVO

2091. The Trial Chamber found that Petković held the office of "Chief of the [HVO] Main Staff" from 14 April 1992 until 24 July 1993, when Praljak succeeded him by being appointed "Commander of the Main Staff" during a reorganisation at the top levels of the Main Staff, which entailed a change of name in the title of the office heading that organ.⁷¹⁶⁴ It found that Petković held the post of Deputy Commander to Praljak from 24 July 1993 until 8 November 1993 and, subsequently, Deputy Commander, and thereafter, Deputy Chief to Ante Roso until 26 April 1994.⁷¹⁶⁵ The Trial Chamber further found that the Main Staff was subordinate to the Supreme Commander of the HVO, Mate Boban, who had powers with respect to, *inter alia*, the appointment of commanders and the overall organisation of the HVO.⁷¹⁶⁶ It also found that the Main Staff, which had direct authority over the four OZs, conducted military operations and commanded the HVO, including the KB and its ATGs.⁷¹⁶⁷ The Trial Chamber found that Petković, in his roles as Chief and Deputy Commander/Chief of the Main Staff, had *de jure* command and control authority over the HVO, including its professional units.⁷¹⁶⁸

2092. Petković submits that the Trial Chamber erred in: (1) concluding that he had *de jure* command and control authority over the HVO as Deputy Commander/Chief of the Main Staff;⁷¹⁶⁹

⁷¹⁶² Trial Judgement, Vol. 4, paras 653-679, 803, 814.

⁷¹⁶³ Petković's Appeal Brief, paras 140-160, 171, 332.

⁷¹⁶⁴ Trial Judgement, Vol. 1, paras 715-717, Vol. 4, paras 651-652.

⁷¹⁶⁵ Trial Judgement, Vol. 1, paras 716-717, 724-727, Vol. 4, para. 652. In this regard, the Trial Chamber specified that on 9 December 1993, Boban "did away with the offices of Commander and Deputy Commander of the Main Staff" and, thereafter, Petković was "Deputy Chief". Trial Judgement, Vol. 1, paras 726-727. The Appeals Chamber notes that the Trial Chamber found that Petković was once again appointed Chief of the HVO Main Staff from 26 April 1994 to 5 August 1994. Trial Judgement, Vol. 1, para. 728, Vol. 4, para. 652.

⁷¹⁶⁶ Trial Judgement, Vol. 1, paras 694-695, 747, 790. See generally Trial Judgement, Vol. 1, paras 701-708.

⁷¹⁶⁷ Trial Judgement, Vol. 1, paras 747, 791, 829. See also Trial Judgement, Vol. 1, para. 709.

⁷¹⁶⁸ Trial Judgement, Vol. 1, para. 755, Vol. 4, paras 655-657, 663, 679.

⁷¹⁶⁹ Petković's Appeal Brief, paras 142-146.



(2) inferring his competences as Chief of the Main Staff on the basis of the competences of the Commander;⁷¹⁷⁰ (3) finding that the HVO was headed by the Chief of the Main Staff and not by the Supreme Commander;⁷¹⁷¹ and (4) concluding that he had *de jure* command and control authority over the KB and its ATGs as Deputy Commander/Chief of the Main Staff.⁷¹⁷² The Appeals Chamber will address these submissions below.

(i) Alleged errors regarding *de jure* command and control (Petković's Sub-ground 5.1.1.1)

2093. Petković submits that the Trial Chamber erred when it established that “as [D]eputy Commander/Chief of the HVO Main Staff”, he had *de jure* command authority over the HVO and that the HVO units were subordinated to his command.⁷¹⁷³ In this regard, Petković argues that the Trial Chamber failed to establish that he lost *de jure* command authority and a position in the direct chain of command when he was removed from the position of Chief and appointed to that of Deputy Commander.⁷¹⁷⁴ Moreover, Petković submits that the Trial Chamber erred when asserting that the Main Staff “as a kind of [...] collective body” controlled, commanded, or gave orders, implying that not only the Chief or Commander of the Main Staff had such *de jure* competence.⁷¹⁷⁵

2094. The Prosecution responds that even after Praljak assumed command of the Main Staff, Petković continued to issue orders directly to the OZs as well as negotiate on behalf of and exercise effective control over the HVO.⁷¹⁷⁶ It further submits that Petković fails to explain how a distinction between orders of the Main Staff as a “collective body” and the leading person thereof has any impact on the Trial Chamber’s analysis.⁷¹⁷⁷

2095. When arguing that the Trial Chamber failed to establish that he lost *de jure* command authority and a position in the direct chain of command when he was removed from the position of Chief and appointed to Deputy Commander, Petković further contends that the Trial Chamber erroneously inferred that he “moved up” from the rank of Chief to Deputy Commander/Chief.⁷¹⁷⁸ The Appeals Chamber considers this phrase to be a mistranslation of the authoritative French text of

⁷¹⁷⁰ Petković’s Appeal Brief, paras 147-148.

⁷¹⁷¹ Petković’s Appeal Brief, paras 149-151.

⁷¹⁷² Petković’s Appeal Brief, paras 152-153.

⁷¹⁷³ Petković’s Appeal Brief, para. 144 (emphasis in original). See also Petković’s Appeal Brief, para. 146.

⁷¹⁷⁴ Petković’s Appeal Brief, para. 145. See also Petković’s Reply Brief, para. 27.

⁷¹⁷⁵ Petković’s Appeal Brief, para. 143. See also Petković’s Appeal Brief, para. 142.

⁷¹⁷⁶ Prosecution’s Response Brief (Petković), para. 108.

⁷¹⁷⁷ Prosecution’s Response Brief (Petković), para. 111. The Prosecution argues that the Trial Chamber was reasonable to characterise orders issued by the Deputy or Chief/Commander of the Main Staff as being issued by the “Main Staff”. Prosecution’s Response Brief (Petković), para. 111.

⁷¹⁷⁸ Petković’s Appeal Brief, fn. 184, referring to Trial Judgement, Vol. 1, para. 748.

the Trial Judgement.⁷¹⁷⁹ Indeed, the French text is consistent with the Trial Chamber's finding that the Deputy Chief/Commander was subordinate to the Chief/Commander.⁷¹⁸⁰ The Appeals Chamber considers, in any case, that the Trial Chamber expressly found that as Deputy, Petković retained command and control authority over the HVO⁷¹⁸¹ and that in his exercise of his authority, he issued orders to the OZs and brigade commanders.⁷¹⁸² The Appeals Chamber dismisses Petković's unsubstantiated claim that he lost *de jure* command authority and a position in the direct chain of command as he fails to show any error in the Trial Chamber's finding. As to his contention that the Trial Chamber erred when asserting that the Main Staff as a collective body controlled, commanded, or gave orders, implying that not only the Chief or Commander of the Main Staff had such *de jure* competence, the Appeals Chamber notes that when examining "orders from the Main Staff",⁷¹⁸³ the Trial Chamber expressly addressed and/or relied upon orders issued by Praljak or Petković in their respective roles.⁷¹⁸⁴ The Appeals Chamber dismisses Petković's submission as he has failed to demonstrate an error in the Trial Chamber's approach. Petković's sub-ground of appeal 5.1.1.1 is dismissed.

(ii) Alleged errors in respect of changes of competences of the Commander of the Main Staff (Petković's Sub-ground 5.1.1.2)

2096. Petković submits that the Trial Chamber erred when drawing conclusions on his competences as Chief of the Main Staff on the basis of evidence relating to the competences of the Commander as of August 1993 or the Chief in December 1993.⁷¹⁸⁵ Specifically, Petković submits that the Trial Chamber acknowledged that the competences of the Commander were broadened in August 1993 but erroneously failed to logically conclude that competences of the Commander/Chief had previously been narrower.⁷¹⁸⁶

⁷¹⁷⁹ Trial Judgement, Vol. 1, para. 748 ("*La Chambre relève en outre que lorsque Milivoj Petković est passé du rang de chef de l'État-major principal à celui de commandant adjoint de l'État-major principal [...]*") (emphasis added).

⁷¹⁸⁰ See, e.g., Trial Judgement, Vol. 1, paras 713, 717, referring to, *inter alia*, Witness EA, T(F). 24741 (closed session) (19 Nov 2007) (finding that the Chief/Commander was at the head of the Main Staff and assisted by a deputy and considering evidence that Petković's position was second to Praljak's).

⁷¹⁸¹ Trial Judgement, Vol. 1, paras 748, 755, Vol. 4, paras 655-663.

⁷¹⁸² Trial Judgement, Vol. 1, para. 755, Vol. 4, paras 664-679. See also Trial Judgement, Vol. 1, para. 720 & fn. 1693, para. 741.

⁷¹⁸³ Trial Judgement, Vol. 1, para. 751. See Trial Judgement, Vol. 1, paras 750, 752.

⁷¹⁸⁴ See Trial Judgement, Vol. 1, paras 750-755.

⁷¹⁸⁵ Petković's Appeal Brief, para. 147; Petković's Reply Brief, paras 23-24. See also Petković's Appeal Brief, para. 148. Petković argues, by way of example, that the Trial Chamber's conclusion about his power to organise the HVO is based on orders issued by the Commander in September 1993. Petković's Appeal Brief, para. 147, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 695 & fn. 1624, para. 750.

⁷¹⁸⁶ Petković's Reply Brief, para. 23. See Petković's Appeal Brief, para. 147.

2097. The Prosecution responds that the Trial Chamber reasonably examined the functioning of the Main Staff throughout the JCE period when determining Petković's authority.⁷¹⁸⁷

2098. When submitting that the Trial Chamber acknowledged that the competences of the Commander were broadened in August 1993, Petković points to the Trial Chamber's findings and its consideration of evidence demonstrating that four specific units, which were responsible for providing support to the HVO, were placed under the direct command of the Main Staff pursuant to orders on or after August 1993.⁷¹⁸⁸ The Appeals Chamber considers that Petković fails to demonstrate how the placement of these units under the direct command of the Main Staff after Praljak succeeded him as Commander impacts the Trial Chamber's finding that, as Chief of the Main Staff, Petković had command and control authority over the HVO.⁷¹⁸⁹ Further, when arguing that the Trial Chamber erred when drawing conclusions on his competences as Chief of the Main Staff on the basis of evidence relating to the competences of the Commander as of August 1993 or the Chief in December 1993, the Appeals Chamber notes that Petković ignores the Trial Chamber's express reliance on orders he issued prior to August 1993 when finding that he had command and control authority over the HVO.⁷¹⁹⁰ Accordingly, Petković's sub-ground of appeal 5.1.1.2 is dismissed.

(iii) Alleged errors regarding the role of the HVO Supreme Commander (Petković's Sub-ground 5.1.1.3)

a. Arguments of the Parties

2099. Petković submits that no reasonable trier of fact could have concluded that the HVO was headed by the Chief of the Main Staff rather than by the Supreme Commander.⁷¹⁹¹ In this regard, he contends that the Trial Chamber erred when failing to establish that: (1) the Supreme Commander,

⁷¹⁸⁷ Prosecution's Response Brief (Petković), para. 108. See Appeal Hearing, AT. 528 (23 Mar 2017).

⁷¹⁸⁸ Petković's Reply Brief, fn. 34, referring to, *inter alia*, Trial Judgement, Vol. 1, paras 801, 805-806 (the Široki Brijeg Artillery Regiment and an "Air Force Group"), 826-827 ("Tuta's ATG" and an ATG unit formed out of KB units). See also Trial Judgement, Vol. 1, para. 797.

⁷¹⁸⁹ Trial Judgement, Vol. 1, para. 755. See also Trial Judgement, Vol. 4, paras 655, 657, 663. Moreover, Petković fails to show that when finding that he had command and control authority over the HVO, the Trial Chamber relied upon orders pertaining to these units specifically. Further, the Appeals Chamber notes that the Trial Chamber found that the artillery units, when not under the direct command of the Main Staff, were at least indirectly under the command of the Main Staff by virtue of it exercising command directly over the OZs. Trial Judgement, Vol. 1, para. 805, Vol. 4, para. 659.

⁷¹⁹⁰ Trial Judgement, Vol. 1, paras 752-755, Vol. 4, paras 657, 663. Moreover, the Appeals Chamber notes that with respect to his submission, in reply, that the Trial Chamber drew conclusions on his competences as Chief on the basis of Roso's competences in December 1993, Petković does not cite to any portion of the Trial Judgement demonstrating that the Trial Chamber made such findings. See Petković's Reply Brief, para. 23 and references cited therein. See also Petković's Appeal Brief, para. 147 and references cited therein.

⁷¹⁹¹ Petković's Appeal Brief, para. 151. See also Petković's Appeal Brief, para. 149. Petković contends that the Trial Chamber incorrectly interpreted his testimony when it inferred that he stated that the command of military operations

not the Chief of the Main Staff, led and commanded the HVO – according to the 3 July 1992 Decree on the Armed Forces – and had disciplinary power;⁷¹⁹² (2) the Main Staff was organised in order to provide the Supreme Commander with staff and other specialised services;⁷¹⁹³ (3) the Chief of the Main Staff did not have “origin power and authority”, but rather exercised superior authority pursuant to the Decision on the Basic Principles of Organisation of the Defence Department “within the scope of general and specific powers vested on him by the President”;⁷¹⁹⁴ (4) the Chief of the Main Staff had no power to award ranks or appoint and/or relieve of duty any commander;⁷¹⁹⁵ and (5) Petković’s ceasefire orders were issued on the basis of a decision, order, and/or agreement of the Supreme Commander or President.⁷¹⁹⁶

2100. The Prosecution responds that the Trial Chamber properly characterised the role of the Main Staff and Petković, as its Chief, vis-à-vis the President and Supreme Commander.⁷¹⁹⁷ It submits that, contrary to Petković’s assertion, he and the Main Staff directly controlled the HVO on the ground and possessed the authority to discipline troops and appoint commanders.⁷¹⁹⁸ The Prosecution contends that these conclusions were reasonable in light of the Decision on the Basic Principles of Organisation of the Defence Department.⁷¹⁹⁹ Lastly, it submits that the fact that Boban may have enjoyed other powers not shared by the Main Staff does not diminish: (1) the Main Staff’s direct authority over operations on the ground; or (2) Petković’s responsibility for the crimes committed.⁷²⁰⁰

b. Analysis

2101. As a preliminary matter, the Appeals Chamber considers that Petković fails to demonstrate how powers exclusively held and/or shared by the Supreme Commander, some of which, as noted below, were expressly considered by the Trial Chamber, invalidate its finding that the Chief of the

fell to the HVO Main Staff “alone”. Petković’s Appeal Brief, fn. 189, referring to Trial Judgement, Vol. 1, para. 747, Vol. 4, para. 654, Milivoj Petković, T. 49768-49771 (22 Feb 2010).

⁷¹⁹² Petković’s Appeal Brief, paras 150(i) (referring to Exs. P00289, Art. 29, P00588, Art. 29 (amended version)), 150(vii); Petković’s Reply Brief, para. 26.

⁷¹⁹³ Petković’s Appeal Brief, para. 150(ii).

⁷¹⁹⁴ Petković’s Appeal Brief, para. 150(iii), citing Ex. P00586, section (B)(IX) (emphasis omitted).

⁷¹⁹⁵ Petković’s Appeal Brief, paras 150(iv)-150(v). See also Petković’s Reply Brief, para. 26. Petković argues that the authority to appoint and award ranks was vested in the President/Supreme Commander or commander of units. Petković’s Appeal Brief, paras 150(iv)-150(v).

⁷¹⁹⁶ Petković’s Appeal Brief, para. 150(vi).

⁷¹⁹⁷ Prosecution’s Response Brief (Petković), para. 109 & fns 436, 440, referring to, *inter alia*, Petković’s Appeal Brief, paras 150-151. See also Appeal Hearing, AT. 527 (23 Mar 2017). It submits that the Trial Chamber reasonably relied on Petković’s testimony to support the finding that he had command and control authority over the HVO. Prosecution’s Response Brief (Petković), para. 110, referring to, *inter alia*, Petković’s Appeal Brief, para. 149 & fn. 189.

⁷¹⁹⁸ Prosecution’s Response Brief (Petković), para. 109. See also Prosecution’s Response Brief (Petković), paras 104, 106.

⁷¹⁹⁹ Prosecution’s Response Brief (Petković), para. 109.

⁷²⁰⁰ Prosecution’s Response Brief (Petković), para. 109.

Main Staff, as a subordinate to the Supreme Commander,⁷²⁰¹ nevertheless controlled and commanded the HVO.⁷²⁰² In this respect, the Appeals Chamber notes the Trial Chamber's finding that the commanding officers at each level of the HVO hierarchy had the authority to supervise, coordinate, and command the units placed under their responsibility.⁷²⁰³ With particular regard to Petković's contention that the Trial Chamber failed to establish that the Supreme Commander, not the Chief of the Main Staff, led and commanded the HVO, the Appeals Chamber notes that the Trial Chamber referred to Article 29 of the 3 July 1992 Decree on the Armed Forces, which Petković relies upon as support, when determining the powers vested in the Supreme Commander⁷²⁰⁴ and his role in guiding the HVO in order to better understand the distribution of powers between him and the Chief of the Main Staff.⁷²⁰⁵ In so doing, it found, *inter alia*, that certain powers were not exclusively vested in the Supreme Commander⁷²⁰⁶ and that the OZ commanders remained subject to the Chief of the Main Staff.⁷²⁰⁷ As Petković merely disagrees with the Trial Chamber's conclusion without showing an error, his argument is dismissed.

2102. Further, in support of his contention that the Trial Chamber erred in failing to establish that the Supreme Commander, not the Chief of the Main Staff, had disciplinary power, Petković cites an exhibit, the content of which does not support his assertion.⁷²⁰⁸ In any event, the Trial Chamber found that Petković, as either the Chief or Deputy Commander of the Main Staff: (1) had the power to order investigations of the conduct of HVO members;⁷²⁰⁹ and (2) occasionally ordered the arrest or revoked the suspension of HVO members.⁷²¹⁰ Petković fails to show how these findings are inconsistent with the finding that he had command and control authority over the HVO. His argument is dismissed.

2103. In support of his argument that the Trial Chamber erred when failing to establish that the Main Staff was organised in order to provide the Supreme Commander with staff and other specialised services, Petković alleges that the 3 July 1992 Decree on the Armed Forces differentiated between "command"/"command headquarters" and "staff".⁷²¹¹ The Appeals Chamber

⁷²⁰¹ See Trial Judgement, Vol. 1, paras 747, 790.

⁷²⁰² See, e.g., Trial Judgement, Vol. 1, para. 755, Vol. 4, paras 655-657, 663, 679. For the same reason, the Appeals Chamber dismisses Petković's contention that the Trial Chamber incorrectly interpreted his testimony when it inferred that he stated that the command of military operations fell to the HVO Main Staff "alone".

⁷²⁰³ Trial Judgement, Vol. 1, para. 790. See also Trial Judgement, Vol. 1, para. 791.

⁷²⁰⁴ Trial Judgement, Vol. 1, paras 691, 695. See Trial Judgement, Vol. 1, para. 690.

⁷²⁰⁵ Trial Judgement, Vol. 1, para. 704 & fn. 1651. See Trial Judgement, Vol. 1, para. 690.

⁷²⁰⁶ Trial Judgement, Vol. 1, para. 695.

⁷²⁰⁷ Trial Judgement, Vol. 1, para. 704.

⁷²⁰⁸ See Petković's Appeal Brief, para. 150(vii), referring to Ex. P00425, Art. 67(1) (vesting "the commander of the Armed Forces" with the authority to bring offenders – only those of a certain rank – before a military disciplinary court).

⁷²⁰⁹ Trial Judgement, Vol. 4, paras 664, 675-679.

⁷²¹⁰ Trial Judgement, Vol. 4, paras 664, 676-677.

⁷²¹¹ Petković's Appeal Brief, para. 150(ii), referring to Exs. P00289, Art. 17, P00588, Art. 17 (amended version).

considers that Petković misrepresents the exhibit, particularly its generic use of these terms,⁷²¹² and fails to demonstrate how his claim impacts the Trial Chamber's findings. With respect to his argument that the Trial Chamber failed to establish that the Chief of the Main Staff did not have "origin power and authority", but rather exercised superior authority "within the scope of general and specific powers vested on him by the President",⁷²¹³ Petković merely repeats arguments made and rejected at trial without demonstrating error in the Trial Chamber's findings.⁷²¹⁴ His arguments are therefore dismissed.

2104. Turning to Petković's submission that the Chief of the Main Staff had no appointment power, the Appeals Chamber considers that the Trial Chamber expressly acknowledged that appointment constituted one of the stated powers wielded directly by Boban but could not conclude, on this basis, that he "bypassed" the Main Staff regularly and whenever it suited him; rather, the Trial Chamber found that the Main Staff was the pivotal link in the chain of command.⁷²¹⁵ Petković fails to show how the Trial Chamber erred in making this finding. Further, he does not show how a lack of authority to relieve of duty any commander or award ranks invalidates the Trial Chamber's finding that the Chief of the Main Staff maintained command and control authority over the HVO.⁷²¹⁶ His arguments are therefore dismissed. Lastly, the Appeals Chamber dismisses Petković's argument that his ceasefire orders were issued on the basis of a decision, order, and/or agreement of the Supreme Commander or President as he does not point to any findings or evidence in support of this assertion.

2105. Petković's sub-ground of appeal 5.1.1.3 is dismissed.

(iv) Alleged errors regarding Petković's *de jure* command authority over the KB and its ATGs as Chief and Deputy Commander of the HVO Main Staff (Petković's Sub-ground 5.1.1.4)

a. Arguments of the Parties

2106. Petković submits that the Trial Chamber erred in fact when it inferred that he had *de jure* command and control over the KB and its ATGs.⁷²¹⁷ In particular, he argues that by referring only to orders issued by Praljak and Roso when determining whether the KB and its ATGs were

⁷²¹² See Ex. P00289, Art. 17 ("The combat readiness of the commands, staffs, units and institutions of the Armed Forces shall be monitored and evaluated by the Defence Department and the authorised commands and staffs of the Armed Forces", and "[t]he Head of the Defence Department shall designate the commands and staffs of the Armed Forces [...]"). See also Ex. P00588, Art. 17 (amended version).

⁷²¹³ Petković's Appeal Brief, para. 150(iii), citing Ex. P00586, section (B)(IX) (emphasis omitted).

⁷²¹⁴ See Trial Judgement, Vol. 1, paras 745-746.

⁷²¹⁵ Trial Judgement, Vol. 1, paras 704, 708. See also Trial Judgement, Vol. 1, paras 694, 788 (noting that the power and authority to appoint brigade commanders belonged to Mate Boban).

⁷²¹⁶ See, e.g., Trial Judgement, Vol. 1, para. 755, Vol. 4, paras 655, 657, 663.

⁷²¹⁷ Petković's Appeal Brief, para. 153. See also Petković's Appeal Brief, para. 152.

integrated into the overall Main Staff chain of command, the Trial Chamber actually acknowledged that Petković did not issue orders to the KB and its ATGs.⁷²¹⁸ Moreover, he submits that the Trial Chamber concluded that the HVO Supreme Commander did not have direct command and control over the KB and its ATGs on the basis that there was no written order from him proving such; however, despite the fact that Petković, as Chief, also did not issue orders to the KB and its ATGs, the Trial Chamber nevertheless inferred that he had *de jure* command and control.⁷²¹⁹ Petković further contends that the Trial Chamber: (1) failed to establish that, as the Deputy Commander/Chief of the Main Staff, he was in the direct chain of command and could have *de jure* command and control over any unit;⁷²²⁰ and (2) failed to evaluate evidence demonstrating that the Chief was not superior to commanders of the KB and/or its ATGs.⁷²²¹ Lastly, Petković submits that the only reasonable conclusion that could be drawn from an order, which was issued by Roso, for an ATG unit to be formed out of the KB and placed under the command of the Main Staff, was that on 23 December 1993 the KB was not yet, but was to be placed, under the command of the Chief of the Main Staff.⁷²²²

2107. The Prosecution responds that Petković's arguments were already raised and rejected at trial and that he shows no error in the Trial Chamber's findings.⁷²²³ It submits that, contrary to Petković's claims: (1) the Trial Chamber cited orders he issued both as Chief and as Deputy Commander concerning the KB;⁷²²⁴ (2) when he became Deputy Commander, he retained significant authority over the HVO, including the KB;⁷²²⁵ (3) the Trial Chamber explicitly considered his arguments and evidence but reached a different conclusion with respect to whether the Chief of the HVO Main Staff was superior to the commanders of the KB and/or its ATGs;⁷²²⁶ and (4) Roso's 23 December 1993 order reinforced the fact that the Main Staff controlled the KB and its ATGs.⁷²²⁷

⁷²¹⁸ Petković's Appeal Brief, para. 153(ii). See Petković's Appeal Brief, paras 152(ii)-152(iii), referring to Trial Judgement, Vol. 1, paras 826-827; Petković's Reply Brief, paras 24, 31. See also Trial Judgement, Vol. 1, para. 829.

⁷²¹⁹ Petković's Appeal Brief, para. 153(i). See Petković's Appeal Brief, para. 152(i).

⁷²²⁰ Petković's Appeal Brief, para. 153(iii). See also Appeal Hearing, AT. 574 (23 Mar 2017).

⁷²²¹ Petković's Appeal Brief, para. 153(iv).

⁷²²² Petković's Appeal Brief, paras 152(iii), 153(v) (citing Ex. P07315, p. 1).

⁷²²³ Prosecution's Response Brief (Petković), paras 124, 126. Further, the Prosecution avers that insofar as Petković focuses his arguments on these isolated units, he fails to recognize the full extent of his authority over "his many other troops". Prosecution's Response Brief (Petković), para. 124.

⁷²²⁴ Prosecution's Response Brief (Petković), para. 126(i). See Prosecution's Response Brief (Petković), para. 125; Appeal Hearing, AT. 545-546 (23 Mar 2017).

⁷²²⁵ Prosecution's Response Brief (Petković), para. 126(ii).

⁷²²⁶ Prosecution's Response Brief (Petković), para. 126(iii), referring to, *inter alia*, Petković's Appeal Brief, para. 153(iv).

⁷²²⁷ Prosecution's Response Brief (Petković), para. 126(iv), referring to, *inter alia*, Ex. P07315. See also Prosecution's Response Brief (Petković), para. 125.

b. Analysis

2108. With regard to Petković's argument that by referring only to orders issued by Praljak and Roso when determining whether the KB and its ATGs were integrated into the overall chain of command of the Main Staff, the Appeals Chamber observes that the Trial Chamber actually acknowledged that Petković did not issue orders to those units. The Appeals Chamber observes that the Trial Chamber considered several orders and reports referring to deployments of the KB and its ATGs, including ones issued by Petković as Chief of the Main Staff.⁷²²⁸ Petković supports his submission by arguing that the only order from him was co-signed by Stojić as Head of the Defence Department because it related to units not subordinated to the Chief of the Main Staff and, in further support, he cites to testimony concerning whether the ATG Tuta was subordinated to the Main Staff.⁷²²⁹ The Appeals Chamber dismisses this argument as the Trial Chamber found this testimony to have little credibility and Petković alleges no error in this regard.⁷²³⁰ In light of the orders concerning deployments of the KB and its ATGs that were issued by Petković and the Trial Chamber's reliance thereon, his submission – that despite the fact that he, as Chief, did not issue orders to the KB and its ATGs, the Trial Chamber nevertheless inferred that he had *de jure* command and control – must necessarily fail. The Appeals Chamber notes, in any case, that insofar as the KB and its ATGs were integrated into the overall chain of command and reported directly to the Main Staff,⁷²³¹ Petković had command and control authority over them due to his position within the direct chain of command, regardless of whether he issued orders to them. His argument is therefore dismissed.

2109. The Appeals Chamber dismisses Petković's related contention that the Trial Chamber failed to establish that, as the Deputy Commander/Chief of the Main Staff, he was not in the direct chain of command and could not have *de jure* command and control over any unit, as this argument was dismissed above.⁷²³² The Appeals Chamber also dismisses Petković's argument that the Trial Chamber failed to evaluate evidence demonstrating that the Chief was not superior to commanders of the KB and/or its ATGs as he merely refers to evidence that the Trial Chamber did in fact

⁷²²⁸ Trial Judgement, Vol. 1, paras 828 (referring to, *inter alia*, Exs. P03128, P03466), 829. The Appeals Chamber also observes that when examining Petković's exercise of his command authority, the Trial Chamber took into account an order concerning, *inter alia*, the KB and its ATGs. See Trial Judgement, Vol. 4, para. 666 & fn. 1270, referring to, *inter alia*, Ex. P01787.

⁷²²⁹ Petković's Appeal Brief, fn. 200, referring to Ex. P03128, Witness 4D-AA, T. 49237-49238 (closed session) (9 Feb 2010). See also Petković's Reply Brief, fn. 56.

⁷²³⁰ See Trial Judgement, Vol. 1, para. 284 (finding that the testimony of, *inter alios*, Defence Witness 4D-AA had little credibility in view of the witness's relationship to the events or to one of the Accused and accordingly assigning it limited weight). See also *infra*, fn. 7233.

⁷²³¹ Trial Judgement, Vol. 1, para. 829.

⁷²³² See *supra*, para. 2095.

consider in arriving at the opposite conclusion.⁷²³³ Turning to Petković's submission that the only reasonable inference that could be drawn from an order issued by Roso was that on 23 December 1993 the KB was not yet, but was to be placed, under the command of the Chief of the Main Staff, he specifically argues that the order states that "an ATG unit shall be formed out of the units of 'Kažnjenicka bojna'. The ATG *shall be* under the command of the Main Staff of the HVO".⁷²³⁴ The Appeals Chamber considers that Petković merely asserts that the Trial Chamber failed to interpret the evidence in a particular manner and ignores the Trial Chamber's finding that there were several Main Staff orders and reports concerning the deployment of the KB and its ATGs as early as 15 July 1993.⁷²³⁵

2110. For the foregoing reasons, Petković's sub-ground of appeal 5.1.1.4 is dismissed.

(v) Conclusion

2111. In sum, the Appeals Chamber finds that Petković has failed to show an error regarding the Trial Chamber's finding on his *de jure* command authority over the HVO as Chief and Deputy Commander of the HVO Main Staff.

(b) Alleged errors regarding Petković's powers within the Command of the HVO (Petković's Sub-grounds 5.1.1.6, 5.2.3.1 in part, and 5.1.1.5)

2112. In assessing Petković's powers within the command of the HVO, the Trial Chamber took into account the orders that he issued to the HVO units as Chief or Deputy Commander of the Main Staff.⁷²³⁶ In this regard, the Trial Chamber found that Petković exercised "command and control authority and effective control" over the HVO, which included the KB and its ATGs and the Bruno Bušić Regiment, with respect to their organisation, deployment, combat readiness, and offensive operations.⁷²³⁷ The Trial Chamber also found that Petković exercised command and control authority over the HVO by prohibiting its units from attacking international forces and organisations as well as by requiring that they and humanitarian convoys be allowed freedom of movement.⁷²³⁸ According to the Trial Chamber, the orders issued by Petković all reflected that he had at least *de facto* authority to order the HVO units to conduct themselves in accordance with the

⁷²³³ Petković's Appeal Brief, fn. 201 and references cited therein. Cf. Trial Judgement, Vol. 1, para. 825 & fn. 1945. See also Petković's Appeal Brief, fn. 201, referring to, *inter alia*, Petković's Final Brief, fn. 991. Cf. Trial Judgement, Vol. 1, fn. 1943. The Appeals Chamber considers that Petković also refers to testimony that the Trial Chamber found to have little credibility. Petković's Appeal Brief, fn. 201, referring to, *inter alia*, Witness 4D-AA, T. 49096-49097 (closed session) (8 Feb 2010). Cf. Trial Judgement, Vol. 1, para. 284. See also *supra*, para. 2108.

⁷²³⁴ Petković's Appeal Brief, para. 153(v) (emphasis in original), citing Ex. P07315, p. 1.

⁷²³⁵ Trial Judgement, Vol. 1, paras 828-829, referring to, *inter alia*, Ex. P03466.

⁷²³⁶ Trial Judgement, Vol. 4, paras 664-679. See also Trial Judgement, Vol. 4, paras 655-656.

⁷²³⁷ Trial Judgement, Vol. 4, paras 679, 803.

⁷²³⁸ Trial Judgement, Vol. 4, para. 679.



international conventions and the principles of international humanitarian law.⁷²³⁹ Moreover, the Trial Chamber concluded that Petković had the power to order investigations into the conduct of HVO members.⁷²⁴⁰

2113. Petković submits that the Trial Chamber erred in concluding that: (1) he had command and control authority and effective control over the HVO;⁷²⁴¹ (2) he had effective control over the KB and its ATGs as well as the Bruno Bušić Regiment;⁷²⁴² and (3) he issued orders to launch offensive operations.⁷²⁴³ The Appeals Chamber will deal with these contentions in turn.

(i) Alleged errors regarding Petković’s “command and control authority and effective control” over the HVO (Petković’s Sub-ground 5.1.1.6)

a. Arguments of the Parties

2114. Petković submits that the Trial Chamber erred in establishing that he had effective control over the HVO when assessing his contribution to the JCE.⁷²⁴⁴ He argues that: (1) the notion of “effective control” is an impermissible import from the law of “command responsibility”;⁷²⁴⁵ and (2) the Trial Chamber misapplied the concept of effective control, “understood as the material ability to prevent [and] punish”, since that notion requires a link with the perpetrators, rather than with the HVO as a whole, at the time of the crimes.⁷²⁴⁶ Petković further submits that the Trial Chamber failed to find that, at the time the crimes were committed, he had the material ability to prevent and punish the perpetrators.⁷²⁴⁷ Moreover, he avers that the Trial Chamber erred in inferring that he had effective control based on the orders he issued, arguing that evidence demonstrating a *de jure* authority to issue orders or their issuance is insufficient to establish that a superior had effective control over a subordinate.⁷²⁴⁸

⁷²³⁹ Trial Judgement, Vol. 4, para. 679.

⁷²⁴⁰ Trial Judgement, Vol. 4, para. 679.

⁷²⁴¹ Petković’s Appeal Brief, paras 158-160.

⁷²⁴² Petković’s Appeal Brief, paras 331-332, 339-340.

⁷²⁴³ Petković’s Appeal Brief, paras 154, 157.

⁷²⁴⁴ Petković’s Appeal Brief, paras 158-160. Specifically, Petković argues that “[t]he finding about effective control is made to suggest that [he] could control those troops and could, for instance, prevent and punish their crimes and that he culpably failed to do so”. Petković’s Appeal Brief, para. 159. See also Petković’s Reply Brief, para. 28.

⁷²⁴⁵ Petković’s Appeal Brief, para. 159(i).

⁷²⁴⁶ Petković’s Appeal Brief, para. 159(iii). The Appeals Chamber also understands Petković to argue that he did not receive notice of this allegation as it was not part of the Indictment. Petković’s Appeal Brief, para. 159(ii) (“Such an allegation did not form a valid part of the Prosecution’s JCE case against Petković.”) (emphasis in original).

⁷²⁴⁷ Petković’s Appeal Brief, para. 159(iv). Petković also claims that according to Judge Antonetti, he never had actual control over the troops. Petković’s Appeal Brief, para. 159(iv), referring to Judge Antonetti Dissent, pp. 251, 439-444.

⁷²⁴⁸ Petković’s Appeal Brief, para. 159(v).

2115. The Prosecution responds that the Trial Chamber properly found that Petković had effective control over the HVO and that he used such authority to contribute to the JCE.⁷²⁴⁹ In this regard, the Prosecution argues that a commander's use of subordinates and his failure to punish their crimes reflect "well-established" means of contributing to a JCE.⁷²⁵⁰ The Prosecution also contends that the Trial Chamber correctly established Petković's control over the perpetrators of the crimes before, during, and after the commission of such crimes.⁷²⁵¹

b. Analysis

2116. At the outset, the Appeals Chamber observes that while Petković limits his challenges to the Trial Chamber's finding that he had "command and control authority and effective control over the armed forces" in matters of organisation, deployment, and combat readiness of the HVO units, this was not the only factor considered by the Trial Chamber in assessing the extent of his powers over the HVO. Indeed, the Trial Chamber's analysis concerning his *de facto* command authority also took into account: (1) Petković's command and control authority, which he exercised by prohibiting HVO units from attacking international forces and organisations and by requiring that humanitarian convoys be allowed freedom of movement; (2) his *de facto* authority to order HVO units to abide by international conventions and principles of international law; and (3) his power to order investigations into the conduct of HVO members.⁷²⁵² The Appeals Chamber observes that Petković does not challenge these findings.

2117. Turning to the merits of Petković's argument, the Appeals Chamber observes that, in reaching the impugned conclusion, the Trial Chamber took into account various types of orders issued by Petković, including the following: (1) orders originating from the Main Staff concerning the overall structure of the HVO;⁷²⁵³ (2) orders for inspections, citing as examples Petković's orders to the South-East, North-West and Central Bosnia OZs to assess their combat readiness,⁷²⁵⁴ and (3) Petković's orders for deployment and combat readiness, which were directed to the OZs and the

⁷²⁴⁹ Prosecution's Response Brief (Petković), para. 105.

⁷²⁵⁰ Prosecution's Response Brief (Petković), para. 105, referring to *Šainović et al.* Appeal Judgement, paras 1226-1227, 1240, *Đorđević* Appeal Judgement, paras 355, 457. The Prosecution also contends that the Indictment provided Petković with notice that he contributed to the JCE by using the HVO. Prosecution's Response Brief (Petković), para. 105, referring to Indictment, paras 17.4(a), 17.4(n).

⁷²⁵¹ Prosecution's Response Brief (Petković), para. 106. See also Appeal Hearing, AT. 527 (23 Mar 2017). The Prosecution also contends that Petković's reference to Judge Antonetti Dissent is inapposite as Judge Antonetti actually recognised Petković's command authority. Prosecution's Response Brief (Petković), para. 106, referring to Judge Antonetti Dissent, pp. 251, 439-444, 453.

⁷²⁵² Trial Judgement, Vol. 4, para. 679.

⁷²⁵³ Trial Judgement, Vol. 4, para. 665.

⁷²⁵⁴ Trial Judgement, Vol. 4, para. 666, referring to, *inter alia*, Exs. P01787, P01807, P01864.

brigades, the professional units, and the Military Police.⁷²⁵⁵ In this specific context, the Trial Chamber made direct reference to Petković's 15 January 1993 order to all HVO units to prepare fully for combat and to the North-West OZ to send between 500 and 600 men and two or three tanks towards the municipalities of Prozor and Gornji Vakuf.⁷²⁵⁶ Lastly, the Trial Chamber also relied on Petković's orders to launch offensive operations, citing as an example his order of 8 November 1993 to the Mostar ZP to start offensive operations in the towns of Bijelo Polje, Blagaj, and Mostar, shelling the latter "selectively at various intervals".⁷²⁵⁷

2118. Based on the Trial Chamber's analysis and the specific nature of these orders, the Appeals Chamber is not persuaded that the Trial Chamber's reference to the term "effective control" constitutes "an impermissible import from the law of 'command responsibility'".⁷²⁵⁸ Rather, the specific consideration of orders concerning the HVO's organisation, deployment, combat readiness, and offensive operations indicates that the Trial Chamber used the term "command and control authority and effective control" over the HVO to refer to Petković's power, through his orders, to direct and use the HVO members, and not to denote his material ability to prevent or punish their conduct within the meaning of Article 7(3) of the Statute.⁷²⁵⁹

2119. Accordingly, the Appeals Chamber finds no error in the Trial Chamber's consideration of Petković's orders issued to various units of the HVO in its assessment of his link with non-JCE members and, ultimately, to find that their conduct could be imputed to him. In this regard, the Appeals Chamber recalls that JCE members may be held responsible for crimes carried out by principal perpetrators who were non-JCE members, provided that it has been shown that the crimes can be imputed to at least one JCE member and that the latter – when using the principal perpetrators – acted in accordance with the common objective.⁷²⁶⁰ The existence of this link between the crimes in question and a JCE member is to be assessed on a case-by-case basis.⁷²⁶¹

2120. Based on the foregoing, the Appeals Chamber rejects the rest of Petković's challenges to the Trial Chamber's reliance on the term "effective control", as these arguments rest on a

⁷²⁵⁵ Trial Judgement, Vol. 4, para. 667 & fn. 1271, referring to Exs. P00602, P00622, 4D01553, P01087, 4D00416, P01135, p. 2, P01292, 4D01048, P01487, P01736, 4D00874, P02040, P02209, P02526, P02599, 4D00948, P02911, P03019, P03082, P03128, P03384, 3D02582, P02209, 4D00623, P01064, P01896, 4D00923, P00377.

⁷²⁵⁶ Trial Judgement, Vol. 4, para. 667, referring to Ex. P01135, p. 2.

⁷²⁵⁷ Trial Judgement, Vol. 4, para. 668, referring to, *inter alia*, Ex. P06534.

⁷²⁵⁸ Petković's Appeal Brief, para. 159(i).

⁷²⁵⁹ Trial Judgement, Vol. 4, para. 679. See also Trial Judgement, Vol. 4, paras 673-678. The Appeals Chamber also rejects Petković's argument that the Indictment did not provide him with notice about such allegation. A plain reading of the Indictment shows that it unambiguously pleads that Petković participated in the JCE by exercising *de facto* command and control over "the Herceg-Bosna/HVO armed forces". See Indictment, para. 17.4(a). Accordingly, this argument is dismissed.

⁷²⁶⁰ See, e.g., *Šainović et al.* Appeal Judgement, para. 1256.

⁷²⁶¹ *Tolimir* Appeal Judgement, para. 432; *Popović et al.* Appeal Judgement, para. 1053; *Dorđević* Appeal Judgement, para. 165; *Šainović et al.* Appeal Judgement, para. 1256; *Krajišnik* Appeal Judgement, para. 226.

misrepresentation of the impugned finding, namely that the Trial Chamber used this phrase to refer to Petković's material ability to prevent and punish the conduct of HVO members.⁷²⁶²

2121. The Appeals Chamber, therefore, finds that Petković has failed to show any error in the Trial Chamber's conclusion regarding his "command and control authority and effective control" over the HVO and dismisses his sub-ground of appeal 5.1.1.6.

(ii) Alleged errors regarding Petković's effective control over the KB and its ATGs as well as the Bruno Bušić Regiment (Petković's Sub-ground 5.2.3.1 in part)

2122. In assessing Petković's contribution to the JCE through the conduct of the KB and its ATGs as well as the Bruno Bušić Regiment, the Trial Chamber recalled that, as Chief of the Main Staff and subsequently as Deputy Commander of the Main Staff, he had effective command and control over these units.⁷²⁶³

a. Arguments of the Parties

2123. Petković submits that the Trial Chamber failed to provide a reasoned opinion that he had effective command and control over the KB and its ATGs as well as the Bruno Bušić Regiment.⁷²⁶⁴ According to Petković, the Trial Chamber did not refer to any evidence in support of this conclusion.⁷²⁶⁵

2124. The Prosecution responds that the Trial Chamber reasonably found that Petković had effective control over the KB and its ATGs or the Bruno Bušić Regiment.⁷²⁶⁶ Moreover, with respect to Petković's contention concerning the Bruno Bušić Regiment, the Prosecution refers to Trial Chamber's findings that, once deployed, the unit was subordinated to the respective OZ commander, who, in turn, received orders from the Main Staff.⁷²⁶⁷ Finally, the Prosecution contends that Petković retained authority over the HVO, including the Bruno Bušić Regiment, after being appointed Deputy Commander.⁷²⁶⁸

⁷²⁶² Further, the Appeals Chamber finds no merit in Petković's reliance on the Judge Antonetti Dissent since the mere existence of a dissent does not render the majority's conclusion unreasonable. See, e.g., *Galić* Appeal Judgement, para. 226.

⁷²⁶³ Trial Judgement, Vol. 4, para. 803, referring to Trial Judgement, Vol. 1, paras 811-814, 822-825, 829.

⁷²⁶⁴ Petković's Appeal Brief, paras 331-332, 339-340.

⁷²⁶⁵ Petković's Appeal Brief, paras 332, 339-340. With respect to the Bruno Bušić Regiment specifically, Petković argues that in reaching such conclusion, the Trial Chamber merely referred to its previous findings where it had not analysed effective control, but simply established that the Bruno Bušić Regiment was under the *de jure* command of the Main Staff and that, once deployed, it was subordinated to the commander of the relevant OZ. Petković's Appeal Brief, para. 339, fn. 450.

⁷²⁶⁶ Prosecution's Response Brief (Petković), paras 125, 132.

⁷²⁶⁷ Prosecution's Response Brief (Petković), para. 132, referring to Trial Judgement, Vol. 1, paras 791, 814, 828.

⁷²⁶⁸ Prosecution's Response Brief (Petković), para. 132, referring to Prosecution's Response Brief (Petković), para. 108.

b. Analysis

2125. The Appeals Chamber considers that Petković misrepresents the Trial Judgement when claiming that it failed to provide a reasoned opinion on Petković's effective control over the KB and its ATGs as well as the Bruno Bušić Regiment. In this regard, his argument appears to rest on the premise that the Trial Chamber addressed Petković's links with the KB and its ATGs as well as the Bruno Bušić Regiment exclusively in the specific finding he impugns.⁷²⁶⁹ By contrast, the Appeals Chamber observes that this sentence simply serves to recall the Trial Chamber's previous conclusions that: (1) the KB and its ATGs as well as the Bruno Bušić Regiment were part of the HVO;⁷²⁷⁰ and (2) Petković had "command and control authority and effective control" over the HVO.⁷²⁷¹

2126. Specifically, Petković ignores that, earlier in its analysis of his powers, in the section of the Trial Judgement entitled "Milivoj Petković's Powers Within the Command of the Armed Forces", the Trial Chamber considered evidence of his control over these units.⁷²⁷² For instance, with respect to the KB and its ATGs, the Trial Chamber referred to two distinct orders issued by Petković to this unit, namely: (1) an inspection order dated 2 April 1993;⁷²⁷³ and (2) a subordination order dated 2 July 1993.⁷²⁷⁴ As to the Bruno Bušić Regiment, the Trial Chamber relied upon Petković's order concerning combat readiness dated 6 January 1993 ("6 January 1993 Order"),⁷²⁷⁵ as well as the inspection order of 2 April 1993.⁷²⁷⁶ The Appeals Chamber considers that the Trial Chamber's direct reliance on such orders, which Petković does not challenge, shows that the Trial Chamber's finding that Petković had "command and control authority and effective control" over the HVO included the professional units thereof, such as the KB, its ATGs, and the Bruno Bušić Regiment.⁷²⁷⁷ Accordingly, Petković's argument is dismissed.

⁷²⁶⁹ See Trial Judgement, Vol. 4, para. 803.

⁷²⁷⁰ Trial Judgement, Vol. 1, paras 811-814, 822-829, Vol. 4, paras 667, 803.

⁷²⁷¹ Trial Judgement, Vol. 4, paras 664-679, 803.

⁷²⁷² See Trial Judgement, Vol. 4, paras 664-679.

⁷²⁷³ See Trial Judgement, Vol. 4, para. 666, fn. 1270, referring to Ex. P01787. The Appeals Chamber notes that Exhibit P01787 refers to the KB as the "Convicts Battalion". Ex. P01787, p. 2. See Trial Judgement, Vol. 1, para. 808.

⁷²⁷⁴ See Trial Judgement, Vol. 4, para. 667, fn. 1271, referring to Ex. P03128.

⁷²⁷⁵ See Trial Judgement, Vol. 4, para. 667, fn. 1271, referring to Ex. P01064.

⁷²⁷⁶ See Trial Judgement, Vol. 4, para. 666, fn. 1270, referring to Ex. P01787.

⁷²⁷⁷ As to Petković's argument that with respect to the Bruno Bušić Regiment, the Trial Chamber merely recalled its previous conclusion that this unit was under the *de jure* command of the Main Staff and that, once deployed, it was subordinated to the commander of the relevant OZ, the Appeals Chamber observes that this contention appears to be based on the fact that the impugned finding is supported only by a footnote referring to a section of Volume 1 of the Trial Judgement concerning the formal placement of this unit in the HVO. See Trial Judgement, Vol. 4, para. 803, referring to Trial Judgement, Vol. 1, paras 811-814. However, the Appeals Chamber reiterates that the relevant analysis of Petković's control over this unit is reflected earlier in its analysis of his powers, in the portion of the Trial Judgement entitled "Milivoj Petković's Powers Within the Command of the Armed Forces". See Trial Judgement, Vol. 4, para. 666, fn. 1270, referring to Ex. P01787.



2127. Based on the foregoing, the Appeals Chamber finds that Petković has failed to show that the Trial Chamber did not provide a reasoned opinion or refer to any evidence in support of its conclusion that he had effective command and control over the KB and its ATGs as well as the Bruno Bušić Regiment. The Appeals Chamber, therefore, dismisses Petković's sub-ground of appeal 5.2.3.1 in part.

(iii) Alleged errors regarding Petković's use of the HVO in military operations to commit crimes (Petković's Sub-ground 5.1.1.5)

2128. In assessing Petković's powers within the command of the HVO, the Trial Chamber found that Petković issued orders to commanders of the ZPs concerning the launching of offensive operations.⁷²⁷⁸ In this regard, it observed that on 8 November 1993, he ordered the Mostar ZP to launch offensive operations in the towns of Bijelo Polje, Blagaj and Mostar as well as to shell Mostar ("8 November 1993 Order").⁷²⁷⁹ Moreover, the Trial Chamber referred to another order issued by Petković dated 6 November 1992 ("6 November 1992 Order") concerning the launching of an offensive operation in the area of Podveležje.⁷²⁸⁰

a. Arguments of the Parties

2129. Petković submits that the Trial Chamber erred in finding that he used the HVO to commit crimes as no reasonable trier of fact could have concluded that he issued orders to launch offensive operations on the basis of the 6 November 1992 Order and the 8 November 1993 Order, respectively.⁷²⁸¹ Petković contends that the 6 November 1992 Order "was related to joint HVO and ABiH comba[t] against the VRS", thus it does not support the Trial Chamber finding that he used the HVO to commit crimes against the Muslim population.⁷²⁸² As to the 8 November 1993 Order, he avers that the document is not signed and that he did not issue it.⁷²⁸³ According to Petković, the Trial Chamber's alleged error caused a miscarriage of justice since its conclusion that he significantly contributed to the JCE was based on the premise that he issued orders to launch offensive operations against ABiH and used the HVO to commit crimes.⁷²⁸⁴

2130. The Prosecution responds that the Trial Chamber correctly concluded that Petković ordered HVO commanders to launch offensive operations and that these orders reflected his authority over

⁷²⁷⁸ Trial Judgement, Vol. 4, para. 668.

⁷²⁷⁹ Trial Judgement, Vol. 4, para. 668, referring to Ex. P06534.

⁷²⁸⁰ Trial Judgement, Vol. 4, para. 668, referring to Ex. 2D03057.

⁷²⁸¹ Petković's Appeal Brief, paras 154, 157, referring to Trial Judgement, Vol. 4, paras 668, 818, Exs. 2D03057, P06534. See also Appeal Hearing, AT. 574-575 (23 Mar 2017).

⁷²⁸² Petković's Appeal Brief, para. 155.

⁷²⁸³ Petković's Appeal Brief, para. 156, referring to Petković's Appeal Brief, paras 279-280.

⁷²⁸⁴ Petković's Appeal Brief, para. 157.

the HVO.⁷²⁸⁵ It submits that Petković's challenges vis-à-vis the 6 November 1992 Order and the 8 November 1993 Order ignore other evidence reflecting that he directed HVO attacks on a regular basis.⁷²⁸⁶ Moreover, the Prosecution contends that the Trial Chamber reasonably relied on the 6 November 1992 Order and 8 November 1993 Order in support of its conclusion that Petković had the power to order the HVO to launch offensive operations.⁷²⁸⁷

b. Analysis

2131. As a preliminary matter, the Appeals Chamber finds that, contrary to Petković's arguments, the Trial Chamber did not rely on the 6 November 1992 Order to assess his contribution to the JCE, but rather to analyse his powers within the command of the HVO.⁷²⁸⁸ Specifically, the Trial Chamber relied on the 6 November 1992 Order in reaching its conclusion that Petković had "command and control authority and effective control" over the HVO, which he exercised in matters of organisation, deployment, and combat readiness.⁷²⁸⁹ This is consistent with the Trial Chamber's finding that the JCE, of which Petković was a member, was established only as of mid-January 1993;⁷²⁹⁰ in other words, the 6 November 1992 Order fell outside the temporal scope of the JCE.

2132. The Appeals Chamber observes that the Trial Chamber's conclusion that he used the HVO to commit crimes is supported by various findings, namely that Petković: (1) ordered, planned, facilitated, encouraged, and concealed the crimes committed by the HVO in numerous locations; and (2) failed to take any measures to prevent the commission of new crimes, thus encouraging such crimes.⁷²⁹¹ Accordingly, insofar as Petković's arguments concerning the 6 November 1992 Order and the 8 November 1993 Order challenge the Trial Chamber's conclusion that he used the HVO to commit crimes, they do not show any error in the Trial Judgement's reasoning to that effect.

2133. In any event, the Appeals Chamber finds no error in the Trial Chamber's assessment of the 6 November 1992 Order and the 8 November 1993 Order. Specifically, in claiming that the 6 November 1992 Order does not support the conclusion that Petković used the HVO to commit crimes, Petković fails to appreciate that the Trial Chamber relied on this evidence only to assess his

⁷²⁸⁵ Prosecution's Response Brief (Petković), para. 112.

⁷²⁸⁶ Prosecution's Response Brief (Petković), para. 112.

⁷²⁸⁷ Prosecution's Response Brief (Petković), paras 113-114.

⁷²⁸⁸ See Trial Judgement, Vol. 4, para. 668 & fn. 1274. See also Trial Judgement, Vol. 4, paras 655-656, 664-667, 669-679.

⁷²⁸⁹ Trial Judgement, Vol. 4, para. 679.

⁷²⁹⁰ Trial Judgement, Vol. 4, paras 44-45, 65, 815, 1218-1220, 1225, 1230-1232.

⁷²⁹¹ Trial Judgement, Vol. 4, paras 815-816. See also Trial Judgement, Vol. 4, paras 687-813.

powers over the HVO and whether he could launch offensive operations.⁷²⁹² Additionally, the Appeals Chamber fails to see how the fact that this evidence reflects that Petković's order was directed "to joint HVO and ABiH comba[t] against the VRS" could impact the Trial Chamber's conclusion in the impugned finding. As to Petković's challenge concerning the 8 November 1993 Order, the Appeals Chamber observes that the Trial Chamber did consider it as a contribution⁷²⁹³ and it addresses and dismisses his arguments that he did not issue this order elsewhere in the Judgement.⁷²⁹⁴ Accordingly, these arguments are dismissed.

2134. Based on the foregoing, the Appeals Chamber dismisses Petković's sub-ground of appeal 5.1.1.5.

(c) Conclusion

2135. For the foregoing reasons, Petković has failed to demonstrate any error in the Trial Chamber's findings concerning his powers and functions.

3. Alleged errors regarding Petković's involvement in, knowledge of, and intent with regard to crimes committed in the municipalities and detention centres (Petković's Sub-ground 5.2.2 in part)

2136. The Trial Chamber analysed the evidence regarding Petković's contribution to the crimes committed by the HVO in the municipalities of Prozor, Gornji Vakuf, Jablanica, Mostar, Stolac, Čapljina, and Vareš, as well as in HVO detention centres.⁷²⁹⁵ It found that he ordered, planned, facilitated, encouraged, and concealed crimes committed by members of the HVO.⁷²⁹⁶ Additionally, the Trial Chamber found that Petković was informed of the crimes committed and, despite this knowledge, continued to exercise effective control over the HVO until April 1994.⁷²⁹⁷ The Trial Chamber concluded that the only reasonable inference it could draw from the fact that Petković participated in the military operations in the municipalities of Prozor, Gornji Vakuf, Jablanica, Mostar, Stolac, Čapljina, and Vareš; ordered and authorised labour by detainees from the Heliodrom and Vitina-Otok Camp on the front line; and continued to exercise control over the HVO while knowing that its members had committed and were committing crimes, was that he intended these crimes to be committed.⁷²⁹⁸

⁷²⁹² Trial Judgement, Vol. 4, para. 668.

⁷²⁹³ Trial Judgement, Vol. 4, paras 746-747, 756, 815. See *infra*, paras 2228-2229.

⁷²⁹⁴ See *infra*, para. 2242.

⁷²⁹⁵ Trial Judgement, Vol. 4, paras 688, 691-802.

⁷²⁹⁶ Trial Judgement, Vol. 4, para. 815.

⁷²⁹⁷ Trial Judgement, Vol. 4, para. 815.

⁷²⁹⁸ Trial Judgement, Vol. 4, para. 815.

2137. Petković challenges the Trial Chamber's findings on his responsibility for the crimes committed in the aforementioned locations.⁷²⁹⁹

(a) Prozor Municipality (Petković's Sub-ground 5.2.2.1 in part)

2138. The Trial Chamber found that insofar as Petković directed the military operations in Prozor Municipality in April and June 1993 and planned the operations in July and August 1993, he intended to have crimes – namely, the destruction of Muslim property and detention of civilians – committed.⁷³⁰⁰

2139. Petković submits that the Trial Chamber erred in law when it failed to give a reasoned opinion about his criminal responsibility for the crimes under Counts 15, 16, and 17 that it found were committed in Prozor Municipality until mid-July 1993.⁷³⁰¹ In support of this contention, Petković argues that when analysing his responsibility under JCE I, the Trial Chamber did not refer to, *inter alia*, his alleged contribution to the commission of the crimes and evidence relevant thereto.⁷³⁰² Particularly, he submits that the Trial Chamber erred when it inferred that he contributed to the commission of destruction and detention crimes by planning certain military activities.⁷³⁰³

(i) Alleged errors regarding crimes committed in April 1993

2140. The Trial Chamber found that Petković directed the military operations in the villages of Parcani, Lizoperci, and Tošćanica in April 1993 and that the only inference it could reasonably draw was that Petković intended to have the crimes involved – namely, the destruction of Muslim property – committed.⁷³⁰⁴ In particular, it found, on the basis of Petković's issuance of an 18 April 1993 order for urgent reinforcements and a consolidated report, that he directed the operations in Parcani.⁷³⁰⁵ The Trial Chamber found that because, *inter alia*, the HVO operations in

⁷²⁹⁹ See generally Petković's Appeal Brief, paras 214-326. With respect to the municipalities of Stolac and Čapljina, Petković merely submits that the Trial Chamber made numerous errors of fact and law in inferring that, on 30 June 1993, he ordered the detention of civilians protected by Geneva Convention IV. The Appeals Chamber notes that he only supports this contention by referring to his sub-ground of appeal 5.2.1, which is dismissed elsewhere. See Petković's Appeal Brief, para. 283; *supra*, para. 382.

⁷³⁰⁰ Trial Judgement, Vol. 4, paras 691, 693-695, 697, 699, 815.

⁷³⁰¹ Petković's Appeal Brief, paras 214, 227. See also Petković's Appeal Brief, para. 229. The Appeals Chamber addresses elsewhere Petković's submissions pertaining to crimes committed in May 1993 in Prozor Municipality. See *supra*, para. 68.

⁷³⁰² Petković's Appeal Brief, para. 214, referring to Trial Judgement, Vol. 4, paras 691-699, 820.

⁷³⁰³ Petković's Appeal Brief, para. 228. Petković submits, in reply, that if the JCE, the CCP of which was "ethnic cleansing", could be interpreted as the criminal plan to deport/transfer the Muslim population, and he was acquitted of these crimes, no reasonable trial chamber could conclude that he significantly contributed to the commission of other crimes with the purpose to further the JCE. Petković's Reply Brief, para. 45.

⁷³⁰⁴ Trial Judgement, Vol. 4, para. 693.

⁷³⁰⁵ Trial Judgement, Vol. 4, para. 691. See also Trial Judgement, Vol. 4, para. 694.

the three villages were conducted exactly the same way, they were part of a previously defined plan which involved the destruction of Muslim houses.⁷³⁰⁶

a. Arguments of the Parties

2141. Petković submits that the Trial Chamber erred in fact when it concluded that he directed the HVO operations in the villages of Parcani, Lizoperci, and Tošćanica in April 1993.⁷³⁰⁷ He argues that the Trial Chamber: (1) inferred on the basis of one piece of evidence, his 18 April 1993 order to Željko Šiljeg to launch an offensive towards Klis,⁷³⁰⁸ that he “directed the HVO attacks in Par[c]jani”;⁷³⁰⁹ and (2) subsequently found, without any further evidence, that he “directed operations in April 1993 in the villages of Par[c]jani, Lizoperci and Tošćanica”.⁷³¹⁰ Petković submits that no reasonable trier of fact could have come to such conclusion as the only reasonable inference because: (1) it is impossible that the 17 April 1993 attack on Parcani could have been directed by Petković’s order issued the following day; and (2) there is no evidence that the three villages were located “towards Klis”, but rather the order mentions three other villages: Here, Kute, and Šćipe.⁷³¹¹

2142. The Prosecution responds that the Trial Chamber reasonably found that Petković directed the April 1993 HVO operations in Parcani, Lizoperci, and Tošćanica.⁷³¹² It submits that Petković’s arguments that he did not contribute to these attacks are primarily founded on misreadings of the Trial Judgement.⁷³¹³ In this regard, the Prosecution submits that: (1) the Trial Chamber’s finding that he directed the operations did not rest solely on his 18 April 1993 reinforcement order to Šiljeg;⁷³¹⁴ and (2) the Trial Chamber reasonably relied on the order to show that he controlled ongoing, multi-day operations in Prozor.⁷³¹⁵

b. Analysis

2143. The Appeals Chamber rejects Petković’s submission that the Trial Chamber inferred on the basis of one piece of evidence that he directed the HVO attacks in Parcani. In addition to the 18 April 1993 order to Šiljeg, the Trial Chamber considered that Petković sent a consolidated report

⁷³⁰⁶ Trial Judgement, Vol. 4, para. 692.

⁷³⁰⁷ Petković’s Appeal Brief, para. 217.

⁷³⁰⁸ Petković’s Appeal Brief, para. 215, referring to, *inter alia*, Ex. P01949.

⁷³⁰⁹ Petković’s Appeal Brief, para. 215, citing Trial Judgement, Vol. 4, para. 691.

⁷³¹⁰ Petković’s Appeal Brief, para. 215, citing Trial Judgement, Vol. 4, para. 693.

⁷³¹¹ Petković’s Appeal Brief, para. 216.

⁷³¹² Prosecution’s Response Brief (Petković), para. 155. See also Appeal Hearing, AT. 529-530 (23 Mar 2017).

⁷³¹³ Prosecution’s Response Brief (Petković), para. 156. See also Prosecution’s Response Brief (Petković), paras 154, 163.

⁷³¹⁴ Prosecution’s Response Brief (Petković), para. 156. The Prosecution submits that the Trial Chamber’s finding also rested upon several reports to and from the Main Staff as well as evidence of the fact that the attacks followed an obvious premeditated pattern. Prosecution’s Response Brief (Petković), para. 156. See also Prosecution’s Response Brief (Petković), para. 155.

⁷³¹⁵ Prosecution’s Response Brief (Petković), para. 156.

regarding the HVO's activities on 17 April 1993 in which he described the ongoing operations in Prozor Municipality.⁷³¹⁶ With respect to Petković's submission that it is impossible that the 17 April 1993 attack on Parcani could have been directed by his order issued the following day, the Appeals Chamber considers that the Trial Chamber noted that Petković ordered "urgent reinforcements" to the troops responsible for launching the offensive.⁷³¹⁷ Petković's submission misrepresents the evidence. It is therefore dismissed.

2144. The Appeals Chamber now turns to Petković's arguments that there is no evidence that Parcani, Lizoperci, and Tošćanica were located "towards Klis" – but rather that his 18 April 1993 order mentions the villages of Here, Kute, and Šćipe – and that the Trial Chamber found, without any further evidence, that he directed the operations in the three villages.⁷³¹⁸ The Appeals Chamber observes that the Trial Chamber found that: (1) according to a report from Šiljeg, the attacks on the villages occurred pursuant to a plan; and (2) the HVO operations were conducted identically in the three villages.⁷³¹⁹ The Appeals Chamber considers that, despite Petković's contention, the villages of Here, Kute, and Šćipe were mentioned in a separate context in his 18 April 1993 order and thus have no bearing on the Trial Chamber's findings with respect to the villages of Parcani, Lizoperci, and Tošćanica. Specifically, Exhibit P01949 reflects that Petković ordered the reinforcement of troops carrying out offensive operations towards Klis and then separately ordered an assessment of whether forces were available for an attack on Here, Kute, and Šćipe. In light of the Trial Chamber's findings and its consideration of Petković's orders for reinforcements of troops in Prozor in April 1993,⁷³²⁰ the Appeals Chamber considers that Petković fails to demonstrate that the Trial Chamber erred in finding that he directed operations in Parcani, Lizoperci, and Tošćanica. His arguments are dismissed.

(ii) Alleged errors regarding crimes committed in June 1993

2145. The Trial Chamber found that insofar as HVO soldiers systematically destroyed Muslim property during the HVO attack on the village of Skrobućani in May or June 1993 and the village of Lug in late June 1993, this destruction was part of a preconceived plan.⁷³²¹ It found that, between 23 April and 22 June 1993, Petković ordered the reinforcement of troops in Prozor and the deployment of tanks, and thus participated in directing military operations in the Prozor area during

⁷³¹⁶ Trial Judgement, Vol. 4, para. 691, referring to Ex. P01954, p. 6.

⁷³¹⁷ Trial Judgement, Vol. 4, para. 691, referring to Ex. P01949 (emphasis added).

⁷³¹⁸ Petković's Appeal Brief, para. 216.

⁷³¹⁹ Trial Judgement, Vol. 4, para. 692 & fn. 1333 and references cited therein. See also Trial Judgement, Vol. 2, para. 84, Vol. 4, paras 142, 146, 1220.

⁷³²⁰ See Trial Judgement, Vol. 4, paras 691, 694.

⁷³²¹ Trial Judgement, Vol. 4, para. 695.

that period.⁷³²² The Trial Chamber concluded that Petković intended to have the property in these two villages destroyed.⁷³²³

a. Arguments of the Parties

2146. Petković submits that the Trial Chamber erred in fact when it inferred that crimes in the villages of Skrobućani and Lug were committed in June 1993 during the HVO operations and that he took part in directing these operations.⁷³²⁴ He contends that the evidence “clearly proves” – and that the Trial Chamber established elsewhere in the Trial Judgement – that the crimes were criminal acts of particular soldiers and/or individual criminal incidents with no connection to planned HVO military operations.⁷³²⁵ According to Petković, his orders issued between 23 April and 22 June 1993 about the reinforcement of troops and deployment of tanks were not related to these criminal incidents and cannot support the Trial Chamber’s “thesis” that he took part in directing operations in these villages.⁷³²⁶ Petković submits that no reasonable trier of fact could have come to the conclusion, as the only reasonable inference, that he had any connection with the crimes committed.⁷³²⁷

2147. The Prosecution responds that the Trial Chamber’s findings were reasonable in light of, *inter alia*, the systematic fashion in which Petković’s forces destroyed Muslim property in these villages,⁷³²⁸ which led the Trial Chamber to conclude that the destruction was pursuant to a plan that was preconceived and directed by Petković.⁷³²⁹ It submits that, throughout this period, Petković deployed tanks, ordered reinforcements and troop rotations, and otherwise controlled Prozor operations.⁷³³⁰

b. Analysis

2148. Despite Petković’s claim, the Trial Chamber did not find that the crimes were criminal acts of particular soldiers and/or individual criminal incidents with no connection to planned HVO military operations. Rather, the Trial Chamber first referred to witness testimony in finding that

⁷³²² Trial Judgement, Vol. 4, para. 694.

⁷³²³ Trial Judgement, Vol. 4, para. 695.

⁷³²⁴ Petković’s Appeal Brief, para. 219, referring to Trial Judgement, Vol. 4, para. 695.

⁷³²⁵ Petković’s Appeal Brief, para. 219, referring to Trial Judgement, Vol. 2, paras 96-102.

⁷³²⁶ Petković’s Appeal Brief, para. 220, referring to Trial Judgement, Vol. 4, para. 694, Exs. P02040, P02055, P02526, P02911.

⁷³²⁷ Petković’s Appeal Brief, para. 221.

⁷³²⁸ Prosecution’s Response Brief (Petković), para. 157. See also Prosecution’s Response Brief (Petković), para. 154; Appeal Hearing, AT. 529-530 (23 Mar 2017).

⁷³²⁹ Prosecution’s Response Brief (Petković), para. 158.

⁷³³⁰ Prosecution’s Response Brief (Petković), para. 158, referring to, *inter alia*, Trial Judgement, Vol. 4, fn. 1334 and orders cited therein. See also Prosecution’s Response Brief (Petković), para. 157.

property in Skrobućani was burned down by members of the HVO.⁷³³¹ With respect to Lug, it then referred to an SIS report, which it found to have indicated that the perpetrators of the fires were “HVO soldiers and local troublemakers”, to conclude that the damage was “indeed caused by HVO soldiers”.⁷³³² When assessing Petković’s responsibility under JCE I with respect to crimes committed in Skrobućani and Lug in May or June 1993, the Trial Chamber found that insofar as the HVO soldiers systematically destroyed property belonging to Muslims, it deemed that the destruction was part of a preconceived plan and “not due to the actions of a few unruly soldiers”.⁷³³³ Petković’s submission is therefore dismissed. The Appeals Chamber also dismisses his related submission – that the evidence “clearly proves” that the crimes were criminal acts of particular soldiers and/or individual criminal incidents with no connection to planned HVO military operations – as he merely asserts that the Trial Chamber failed to interpret the evidence in a particular manner without showing an error.⁷³³⁴

2149. Lastly, the Appeals Chamber considers that Petković’s claim – that the orders he issued between 23 April and 22 June 1993 about the reinforcement of troops and deployment of tanks were not related to criminal incidents in Skrobućani and Lug in June 1993, and therefore cannot support the Trial Chamber’s “thesis” that he took part in directing operations in these villages – are both speculative and irrelevant. The Trial Chamber in fact relied upon these orders to conclude that he continued to participate in directing the HVO military operations in the Prozor area between 23 April and 22 June 1993.⁷³³⁵ When addressing the attacks in Skrobućani and Lug specifically, it found that the destruction in the two villages was part of a preconceived plan and that by directing the HVO operations in Prozor Municipality, he intended to have this property destroyed.⁷³³⁶ Petković fails to demonstrate an error in the Trial Chamber’s approach. Thus, the Appeals Chamber dismisses Petković’s submission that the Trial Chamber erred in fact when it inferred that crimes in the villages of Skrobućani and Lug were committed in June 1993 during the HVO operations and that he took part in directing these operations.

(iii) Alleged errors regarding crimes committed in July 1993

2150. The Trial Chamber found that in July and August 1993, Petković ordered the organisation of combat operations in Prozor Municipality and planned the operations.⁷³³⁷ It found, moreover, that he was informed that members of the Kinder Vod detained Muslims without justification in

⁷³³¹ Trial Judgement, Vol. 2, paras 96-97.

⁷³³² Trial Judgement, Vol. 2, para. 102.

⁷³³³ Trial Judgement, Vol. 4, para. 695.

⁷³³⁴ See Trial Judgement, Vol. 2, paras 96-97, 102 and references cited therein.

⁷³³⁵ Trial Judgement, Vol. 4, para. 694 & fn. 1334.

⁷³³⁶ Trial Judgement, Vol. 4, para. 695. See also Trial Judgement, Vol. 4, para. 694 & fn. 1334.

⁷³³⁷ Trial Judgement, Vol. 4, para. 696.

July 1993 in the Prozor area.⁷³³⁸ It concluded, on the basis of the foregoing, that he intended to have the crimes committed.⁷³³⁹ Further, the Trial Chamber relied on Šiljeg's Report of 13 July 1993 to find that Petković was informed that men who did not belong to any armed force were being detained at the Prozor Secondary School in July 1993 and that, because he continued to carry out his functions, Petković accepted these detentions.⁷³⁴⁰

a. Arguments of the Parties

2151. Petković first submits that the Trial Chamber's inference about his ordering and planning of military operations related to the Kinder Vod's detention of Muslim civilians in Prozor Municipality was based on three pieces of evidence, none of which had any reference to or effect on the internment of Muslim minors, elderly, and sick men on 11 July 1993.⁷³⁴¹ He argues that on the basis of this evidence, no reasonable trier of fact could have come to the Trial Chamber's conclusion, as the only reasonable inference, that he planned operations related to the detention of Muslim civilians by the Kinder Vod.⁷³⁴² Second, Petković submits that the Trial Chamber misinterpreted Šiljeg's Report of 13 July 1993, which, it concluded, informed Petković that men who did not belong to any armed forces were detained in the Prozor Secondary School in July 1993.⁷³⁴³

2152. The Prosecution responds that the fact that the arrests and removals across different locations in Prozor Municipality followed a preconceived plan and were carried out by members of several components of the HVO supports the finding that Petković planned and directed the operations.⁷³⁴⁴ The Prosecution further submits that Petković's argument that he did not specifically order the Kinder Vod's 11 July 1993 crimes has no bearing on the Trial Chamber's finding that he intended these crimes insofar as he continued to use the Kinder Vod.⁷³⁴⁵ Further, the Prosecution submits that the Trial Chamber reasonably found that the men referred to in Šiljeg's Report of 13

⁷³³⁸ Trial Judgement, Vol. 4, paras 696-697.

⁷³³⁹ Trial Judgement, Vol. 4, para. 697.

⁷³⁴⁰ Trial Judgement, Vol. 4, para. 698.

⁷³⁴¹ Petković's Appeal Brief, paras 223-224, referring to Trial Judgement, Vol. 4, fn. 1336, Exs. P03246, P03384, 3D02582.

⁷³⁴² Petković's Appeal Brief, para. 224. See also Petković's Appeal Brief, para. 222.

⁷³⁴³ Petković's Appeal Brief, paras 225-226, referring to Ex. P03418, p. 4.

⁷³⁴⁴ Prosecution's Response Brief (Petković), para. 158. See also Prosecution's Response Brief (Petković), paras 154, 157, 161; Appeal Hearing, AT. 529-530 (23 Mar 2017).

⁷³⁴⁵ Prosecution's Response Brief (Petković), para. 161. The Prosecution submits that Petković was aware that HVO operations in Prozor were conducted in a criminal manner and specifically points to an SIS report which, it claims, states that on 11 July 1993 HVO soldiers, possibly from the Kinder Vod, detained Muslims and publicly paraded them through Prozor while beating them. Prosecution's Response Brief (Petković), para. 160, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 125-132, Vol. 4, para. 696.

July 1993 did not belong to any armed force, given that another report expressly informed the Main Staff that the captives were “not prisoners of war”.⁷³⁴⁶

b. Analysis

2153. Concerning Petković’s submission that the Trial Chamber’s inference about his ordering and planning of military operations related to the detention of Muslim civilians in Prozor Municipality by the Kinder Vod was based on three pieces of evidence, none of which had any reference to or effect on the internment of Muslim minors, elderly, and sick men, the Appeals Chamber notes that the Trial Chamber in fact relied on this evidence to generally find that he planned and ordered the organisation of combat operations in Prozor Municipality in July and August 1993.⁷³⁴⁷ It then found that the SIS issued a document, which was to be delivered to Petković, reporting on the fact that members of the Kinder Vod arrested Muslim men.⁷³⁴⁸ The Trial Chamber concluded that by planning the HVO operations in Prozor Municipality during this time period while knowing soldiers from the Kinder Vod were detaining Muslims without justification, Petković intended to have these crimes committed.⁷³⁴⁹ Petković therefore misrepresents the Trial Chamber’s findings while failing to demonstrate any error in its approach. His argument – that no reasonable trier of fact could have come to the Trial Chamber’s conclusion, as the only reasonable inference and on the basis of this evidence, that he planned operations related to the detention of Muslim civilians by the Kinder Vod – is dismissed.

2154. In arguing that the Trial Chamber misinterpreted Šiljeg’s Report of 13 July 1993, which, it concluded, informed Petković that men who did not belong to any armed forces were detained in the Prozor Secondary School in July 1993, Petković submits that the report contains no indication of the detention of civilians and/or unlawful arrests; rather, Petković asserts that Šiljeg reported on the transfer of Muslims liable for military service, whom the HVO authorities considered to be non-combat members of the ABiH.⁷³⁵⁰ The Appeals Chamber observes that, when assessing Petković’s contribution to the crimes committed in Prozor Municipality, the Trial Chamber noted that Šiljeg informed Petković and Stojić that he had begun removing detainees who were “for the most part prisoners of war but also a few civilians” from the Prozor Secondary School to Ljubuški Prison.⁷³⁵¹ The Trial Chamber concluded that Petković was informed that men who did not belong to any armed force were being detained at the school in July 1993 and therefore accepted these detentions

⁷³⁴⁶ Prosecution’s Response Brief (Petković), para. 159, citing Trial Judgement, Vol. 2, para. 148.

⁷³⁴⁷ Trial Judgement, Vol. 4, para. 696.

⁷³⁴⁸ Trial Judgement, Vol. 4, para. 696.

⁷³⁴⁹ Trial Judgement, Vol. 4, para. 697.

⁷³⁵⁰ Petković’s Appeal Brief, para. 226.

⁷³⁵¹ Trial Judgement, Vol. 4, para. 698.

insofar as he continued to carry out his functions.⁷³⁵² However, in contrast, when subsequently assessing Petković's contribution to crimes committed in detention centres, the Trial Chamber again relied solely on Šiljeg's Report of 13 July 1993 concerning the removal of detainees from Prozor Secondary School to Ljubuški Prison to conclude that he was not informed that men who did not belong to any armed force were held in Ljubuški Prison "[i]nsofar as the report [...] mentions only men aged between 18 and 60".⁷³⁵³ The Appeals Chamber considers that Šiljeg's Report of 13 July 1993 merely refers to the relocation of Muslims "liable for military service", without any explicit indication that some or all of these Muslims were civilians.⁷³⁵⁴ Moreover, when making findings of fact on the arrival, transfer, and release of detainees of the Prozor Secondary School and Ljubuški Prison, the Trial Chamber did not refer to evidence indicating that Petković was informed that civilians were being detained.⁷³⁵⁵

2155. The Appeals Chamber notes Petković's role in planning and ordering the organisation of combat operations in Prozor Municipality in July 1993⁷³⁵⁶ as well as his position and authority within the Main Staff.⁷³⁵⁷ Nevertheless, it is not satisfied that a reasonable trier of fact could have concluded, as the only reasonable inference, that Petković knew that men who did not belong to any armed force were being detained at the Prozor Secondary School and were transferred to Ljubuški Prison in July 1993. Thus, the Appeals Chamber overturns the Trial Chamber's findings that "Petković was informed that men who did not belong to any armed force were being detained at the Prozor Secondary School in July 1993" and that "[b]ecause he continued to carry out his functions within the HZ(R) H-B armed forces, the [Trial] Chamber finds that Milivoj Petković accepted these detentions".⁷³⁵⁸ However, the Appeals Chamber considers that this error has no impact on the Trial Chamber's findings that Petković planned the operations in Prozor Municipality in July and August 1993, while knowing that soldiers from the Kinder Vod were detaining Muslims without justification, or that he intended these crimes as it relied on other evidence in drawing those conclusions.⁷³⁵⁹

⁷³⁵² Trial Judgement, Vol. 4, para. 698.

⁷³⁵³ Trial Judgement, Vol. 4, para. 799.

⁷³⁵⁴ See Ex. P03418, p. 4. Further, Petković's response to Šiljeg's report and *ex post facto* approval of the transfer of Muslims also does not explicitly indicate that he was informed that some or all of these Muslims were civilians. See Ex. P03455, p. 2, referred to in Trial Judgement, Vol. 2, para. 149.

⁷³⁵⁵ See Trial Judgement, Vol. 2, paras 145-156, 1813 and references cited therein. The Appeals Chamber observes that the Trial Chamber referred to an 11 July 1993 report by Luka Markešić stating that certain detainees were "not prisoners of war" but detained for security reasons. Trial Judgement, Vol. 2, para. 148 & fn. 357, para. 1813 & fn. 4508, referring to, *inter alia*, Ex. P03380. The Appeals Chamber notes, however, that there is no explicit indication that this report was sent to or received by Petković.

⁷³⁵⁶ Trial Judgement, Vol. 4, para. 696.

⁷³⁵⁷ See, e.g., Trial Judgement, Vol. 1, paras 715-717, 727, 755, Vol. 4, paras 651-652, 655-657, 663, 679.

⁷³⁵⁸ Trial Judgement, Vol. 4, para. 698.

⁷³⁵⁹ See Trial Judgement, Vol. 4, paras 696-697.

(iv) Conclusion

2156. Considering the findings as recalled above,⁷³⁶⁰ the Appeals Chamber finds that Petković has failed to show that the Trial Chamber failed to render a reasoned opinion about his criminal responsibility for crimes under Counts 15, 16, and 17.⁷³⁶¹ In light of the foregoing analysis, the Appeals Chamber finds that Petković has failed to show an error regarding the Trial Chamber's findings on his responsibility for crimes in Prozor Municipality. His sub-ground of appeal 5.2.2.1, in part, is dismissed.

(b) Gornji Vakuf Municipality (Petković's Sub-ground 5.2.2.2 in part)

2157. The Trial Chamber recalled that on 18 January 1993, the HVO, including the Bruno Bušić Regiment, launched an attack on the town of Gornji Vakuf and the villages of Duša, Hrasnica, Uzričje, and Ždrimci.⁷³⁶² It found, that by deploying the Bruno Bušić Regiment, by receiving and issuing reports on the HVO operations in the area, and by ordering a cessation of combat activities, Petković planned and facilitated the HVO operations in Gornji Vakuf Municipality in January 1993.⁷³⁶³ It further found that the crimes committed there were part of a preconceived plan of which Petković was aware insofar as he had participated in planning and facilitating the operations.⁷³⁶⁴ Moreover, it found that Petković did not genuinely intend to punish and put an end to the crimes.⁷³⁶⁵ It concluded that by planning and facilitating the military operations, while knowing that during the operations property belonging to Muslims was destroyed, Muslims not involved in combat and not members of any armed forces were killed, and the local population was arrested and removed, Petković intended to have these crimes committed.⁷³⁶⁶

2158. Petković submits that his convictions for crimes committed in Gornji Vakuf Municipality are based on the Trial Chamber's erroneous and unreasonable inferences that he: (1) planned and facilitated the HVO operations in Gornji Vakuf Municipality in January 1993; (2) was aware that

⁷³⁶⁰ See *supra*, paras 2140, 2143-2145, 2148-2150, 2153-2155. Although the Appeals Chamber found that the Trial Chamber erred in finding that Petković accepted the detentions of men who did not belong to any armed force at Prozor Secondary School in July 1993, it considered that that error had no impact on the Trial Chamber's findings that Petković planned the operations in Prozor Municipality in July and August 1993 while knowing that Kinder Vod soldiers were detaining Muslims without justification, or that he intended those crimes, since the Trial Chamber relied on other evidence in reaching those conclusions. See *supra*, para. 2155.

⁷³⁶¹ See Petković's Appeal Brief, paras 214, 227. With respect to Petković's submission, in reply – that if the JCE of "ethnic cleansing" could be interpreted as the criminal plan to deport/transfer the Muslim population, and he was acquitted of these crimes, no reasonable trial chamber could conclude that he significantly contributed to the commission of other crimes with the purpose of furthering the JCE – the Appeals Chamber notes that he repeats arguments made in his sub-ground of appeal 3.2.2, which is dismissed elsewhere. See Petković's Appeal Brief, paras 52-53; *supra*, para. 903. See also *infra*, fn. 7423.

⁷³⁶² Trial Judgement, Vol. 4, para. 704.

⁷³⁶³ Trial Judgement, Vol. 4, para. 708.

⁷³⁶⁴ Trial Judgement, Vol. 4, para. 708.

⁷³⁶⁵ Trial Judgement, Vol. 4, para. 709.

⁷³⁶⁶ Trial Judgement, Vol. 4, para. 710.

crimes were part of a preconceived plan; and (3) did not genuinely intend to punish and put an end to the crimes against the Muslims, thus intending to have the crimes committed.⁷³⁶⁷ He argues that no reasonable trier of fact could have concluded, as the only reasonable inference, that, *inter alia*, he culpably and intentionally contributed to these crimes or the furtherance of the JCE.⁷³⁶⁸ Petković submits that the Appeals Chamber should therefore reverse his convictions and enter a not guilty verdict in relation to crimes charged in Gornji Vakuf Municipality.⁷³⁶⁹

(i) Alleged errors regarding Petković's involvement in the HVO operations

2159. In finding that Petković planned and facilitated the HVO operations in Gornji Vakuf Municipality in January 1993, the Trial Chamber relied on a number of pieces of evidence, including: (1) Petković's 6 January 1993 Order to the Bruno Bušić Regiment for full combat readiness;⁷³⁷⁰ (2) Petković's 18 January 1993 letter to the HVO in Bugojno, Travnik, Vitez, and Novi Travnik requesting that they call on the ABiH to calm the situation in Gornji Vakuf Municipality;⁷³⁷¹ and (3) Petković's 18 and 19 January 1993 consolidated reports pertaining to the situation in Gornji Vakuf Municipality.⁷³⁷² Moreover, the Trial Chamber found that Petković received reports on how the HVO operations were unfolding, including:⁷³⁷³ (1) Željko Šiljeg's 21 January 1993 report stating that villages had been "cleansed" and his 29 January 1993 report mentioning the death of civilians in Duša;⁷³⁷⁴ and (2) a 24 January 1993 VOS report indicating that Gornji Vakuf Municipality was under HVO control.⁷³⁷⁵ Finally, the Trial Chamber found that Petković ordered combat to cease only after the HVO had taken control of the area.⁷³⁷⁶

a. Arguments of the Parties

2160. Petković submits that the Trial Chamber erred in inferring from the evidence that: (1) he planned and facilitated the HVO operations on 18 January 1993 in Gornji Vakuf Municipality; and

⁷³⁶⁷ Petković's Appeal Brief, para. 230.

⁷³⁶⁸ Petković's Appeal Brief, para. 235. Petković asserts, in reply, that since the "ethnic cleansing" of the Muslim population was established by the Trial Chamber as the "only one, single common criminal purpose", crimes committed in Gornji Vakuf that were not committed with the result of "ethnic cleansing" cannot be correctly and reasonably considered as committed with the intent to further the JCE. Petković's Reply Brief, para. 47. See Petković's Reply Brief, para. 46.

⁷³⁶⁹ Petković's Appeal Brief, para. 236.

⁷³⁷⁰ Trial Judgement, Vol. 4, para. 701.

⁷³⁷¹ Trial Judgement, Vol. 4, para. 703.

⁷³⁷² Trial Judgement, Vol. 4, paras 704-705.

⁷³⁷³ Trial Judgement, Vol. 4, para. 708.

⁷³⁷⁴ Trial Judgement, Vol. 4, para. 705. The Appeals Chamber notes that although in the section of the Trial Judgement concerning Petković's JCE I responsibility, the Trial Chamber referred to the date of this report as 28 January 1993, the Trial Chamber adopted the date of 29 January 1993 elsewhere in the Trial Judgement. As it is more favourable to the Appellants and is not disputed by the Parties, the Appeals Chamber will use the date of 29 January 1993. See *supra*, fn. 3703.

⁷³⁷⁵ Trial Judgement, Vol. 4, para. 706.

⁷³⁷⁶ Trial Judgement, Vol. 4, para. 709.

(2) the commission of these crimes was planned.⁷³⁷⁷ According to Petković, therefore, the Trial Chamber erroneously concluded that he was aware of the plan containing crimes.⁷³⁷⁸ Specifically, Petković submits that: (1) the 6 January 1993 Order to the Bruno Bušić Regiment could not be viewed as his contribution to the JCE as it predated the establishment of the JCE and because it was unrelated to combat in Gornji Vakuf Municipality launched on 18 January 1993;⁷³⁷⁹ (2) his 18 January 1993 letter was also not related to the attack of the same day;⁷³⁸⁰ and (3) despite its acknowledgement that Petković did not write and/or issue consolidated reports, the Trial Chamber nevertheless attributed authorship of the reports of 18 and 19 January 1993 to him and thus found that he knew about and confirmed certain events.⁷³⁸¹ Petković further takes issue with the Trial Chamber's assessment of Šiljeg's reports of 21 and 29 January 1993 and the 24 January 1993 VOS report.⁷³⁸² In particular, he contends that Šiljeg's 21 January 1993 report did not state that villages were "cleansed" in the sense of ethnic cleansing, but that villages were "mo[p]ped-up in the military sense",⁷³⁸³ whereas Šiljeg's 29 January 1993 report referred to civilians "who were killed as a result of shelling" [...], not about killing of civilians, as implied by the [Trial] Chamber".⁷³⁸⁴ As to the 24 January 1993 VOS report, Petković argues that it indicated that the town of Gornji Vakuf came under the HVO's control "in the sense of communication", not that the HVO captured the town.⁷³⁸⁵

2161. Lastly, Petković argues that the Trial Chamber erred when inferring that he ordered combat to cease "only after the HVO had taken control of the area", on 24 January 1993, as it "failed to notice" that:⁷³⁸⁶ (1) on 19 January 1993, Boban issued the ceasefire order on the basis of which Petković agreed to a ceasefire with the ABiH and issued an order the next day;⁷³⁸⁷ and (2) Boban and Petković were informed while in Geneva between 22 and 26 January 1993 that combat in Gornji Vakuf Municipality did not cease, thus prompting Petković to issue a further ceasefire

⁷³⁷⁷ Petković's Appeal Brief, paras 231-232. See also Petković's Reply Brief, fn. 70.

⁷³⁷⁸ Petković's Appeal Brief, para. 232.

⁷³⁷⁹ Petković's Appeal Brief, para. 231(i), referring to, *inter alia*, Ex. P01064.

⁷³⁸⁰ Petković's Appeal Brief, para. 231(ii), referring to Ex. P01190.

⁷³⁸¹ Petković's Appeal Brief, para. 231(iii), referring to, *inter alia*, Exs. P01193, P01220, Trial Judgement, Vol. 1, para. 740.

⁷³⁸² Petković's Appeal Brief, paras 231(iv)-(vi), referring to, *inter alia*, Exs. P01249, P01351, 3D02530. While Petković refers to the date of Šiljeg's report (Exhibit P01351) as 28 January 1993, for the reasons stated elsewhere, the Appeals Chamber understands the date of this report to be 29 January 1993. See *supra*, fn. 3703.

⁷³⁸³ Petković's Appeal Brief, para. 231(iv).

⁷³⁸⁴ Petković's Appeal Brief, para. 231(v) (emphasis omitted).

⁷³⁸⁵ Petković's Appeal Brief, para. 231(vi) (emphasis omitted).

⁷³⁸⁶ Petković's Appeal Brief, para. 231(vii), citing Trial Judgement, Vol. 4, para. 709.

⁷³⁸⁷ Petković's Appeal Brief, paras 231(vii)(a)-(c), 235; Appeal Hearing, AT. 523 (23 Mar 2017).

order.⁷³⁸⁸ Petković contends that the Trial Chamber “failed to establish” that combat did not stop then, but only after Šiljeg issued a ceasefire order on 25 January 1993.⁷³⁸⁹

2162. The Prosecution responds that Petković’s arguments consist of little more than disagreements with the Trial Chamber’s interpretation of the evidence without showing an error.⁷³⁹⁰ The Prosecution submits that although the 6 January 1993 Order to the Bruno Bušić Regiment did not specifically mention Gornji Vakuf Municipality by name, it directed the regiment to await further instructions, after which they attacked the municipality.⁷³⁹¹ The Prosecution further relies on Petković’s 18 January 1993 letter to argue that, contrary to his assertion, he facilitated operations in Gornji Vakuf Municipality on the day of the attack.⁷³⁹² Additionally, it contends that Petković’s submission concerning the 18 January 1993 report reflect a mere attempt to shift responsibility since such “report was sent out above Petković’s name and title”.⁷³⁹³ Moreover, the Prosecution asserts that: (1) Petković’s unpersuasive and semantic challenges to Šiljeg’s reports are undeveloped and should be summarily dismissed;⁷³⁹⁴ and (2) the VOS report did not, as Petković “implausibly argues”, refer to communications control.⁷³⁹⁵

2163. Finally, the Prosecution submits that Petković’s argument that combat operations stopped after he issued a 24 January 1993 ceasefire order is consistent with the Trial Chamber’s findings and contends that he identifies no error.⁷³⁹⁶

b. Analysis

2164. At the outset, the Appeals Chamber recalls that it has overturned the finding that the killings of the civilians in Duša constituted the crimes of murder and wilful killing,⁷³⁹⁷ and as a result, has vacated Petković’s convictions for the crimes of murder and wilful killing in Gornji Vakuf

⁷³⁸⁸ Petković’s Appeal Brief, para. 231(vii)(d) & fn. 307; Appeal Hearing, AT. 523-524 (23 Mar 2017).

⁷³⁸⁹ Petković’s Appeal Brief, para. 231(vii)(d), referring to, *inter alia*, Ex. P01300; Appeal Hearing, AT. 524 (23 Mar 2017). He further submits that the fact that his ceasefire orders were not respected “clearly proves” that he did not have effective control over the HVO units in Gornji Vakuf Municipality in January 1993. Petković’s Appeal Brief, para. 232.

⁷³⁹⁰ Prosecution’s Response Brief (Petković), paras 166, 172. See also Prosecution’s Response Brief (Petković), paras 164-165, 179; Appeal Hearing, AT. 529-530, 544 (23 Mar 2017).

⁷³⁹¹ Prosecution’s Response Brief (Petković), para. 167. The Prosecution submits that, contrary to Petković’s contention, the Trial Chamber did not consider this “pre-JCE” order as a “contribution” to the JCE. Prosecution’s Response Brief (Petković), para. 167.

⁷³⁹² Prosecution’s Response Brief (Petković), para. 168, referring to, *inter alia*, Ex. P01190.

⁷³⁹³ Prosecution’s Response Brief (Petković), para. 169, referring to, *inter alia*, Petković’s Appeal Brief, para. 231(iii).

⁷³⁹⁴ Prosecution’s Response Brief (Petković), para. 173. The Prosecution contends that, in any event, the Trial Chamber reasonably relied on other evidence, in addition to Šiljeg’s reports, to show that Petković knew that crimes were committed. Prosecution’s Response Brief (Petković), para. 173.

⁷³⁹⁵ Prosecution’s Response Brief (Petković), para. 174.

⁷³⁹⁶ Prosecution’s Response Brief (Petković), para. 170. The Prosecution argues that Petković’s expansive authority over the HVO is not undermined by some soldiers’ failure to follow a ceasefire. Prosecution’s Response Brief (Petković), para. 171, referring to, *inter alia*, Petković’s Appeal Brief, para. 232.

⁷³⁹⁷ See *supra*, paras 441-443.

Municipality in January 1993.⁷³⁹⁸ Consequently, the Appeals Chamber has found that murder and wilful killings were not part of the CCP in the period from January 1993 to June 1993,⁷³⁹⁹ As a result, the following analysis will focus only on the remaining crimes.⁷⁴⁰⁰

2165. With respect to Petković's submission that the 6 January 1993 Order to the Bruno Bušić Regiment could not be viewed as his contribution to the JCE as it predates the establishment of the JCE, the Appeals Chamber notes that the Trial Chamber indeed found that the JCE was established "at least as early as mid-January 1993".⁷⁴⁰¹ The Appeals Chamber finds that the Trial Chamber erred to the extent that it relied on the 6 January 1993 Order when finding that Petković planned and facilitated the HVO operations in Gornji Vakuf Municipality in January 1993 and considered it to underpin his contribution to the implementation of the JCE.⁷⁴⁰² However, Petković fails to show how such an error impacts the Trial Chamber's finding that he planned and facilitated the HVO operations as the Trial Chamber also relied on other actions by Petković when reaching this conclusion.⁷⁴⁰³ His argument is therefore dismissed. In light of the foregoing, Petković's further submission that the 6 January 1993 Order was unrelated to combat in Gornji Vakuf Municipality launched on 18 January 1993 is moot.

2166. In support of his submission that his 18 January 1993 letter was not related to the attack of the same day, Petković argues that it was not sent to the HVO in Gornji Vakuf Municipality, but to the HVO in municipalities allocated to Muslims by the Vance-Owen Plan.⁷⁴⁰⁴ However, the letter, as noted by the Trial Chamber, was sent to the HVO in Bugojno, Travnik, Vitez, and Novi Travnik,⁷⁴⁰⁵ which the Appeals Chamber observes were allocated to the Croats under the Vance-Owen Plan.⁷⁴⁰⁶ The Trial Chamber further noted that Petković's letter requested, *inter alia*, that the HVO units in those municipalities call on the ABiH to calm the situation in Gornji Vakuf.⁷⁴⁰⁷ In this

⁷³⁹⁸ See *supra*, para. 443.

⁷³⁹⁹ See *supra*, paras 882, 886.

⁷⁴⁰⁰ In this regard, the Appeals Chamber dismisses as moot Petković's submission regarding the Trial Chamber's interpretation of Šiljeg's 29 January 1993 report.

⁷⁴⁰¹ Trial Judgement, Vol. 4, para. 44.

⁷⁴⁰² See Trial Judgement, Vol. 4, paras 701 (referring to, *inter alia*, Ex. P01064), 708 ("[i]n light of the foregoing evidence, the [Trial] Chamber finds that by deploying the Bruno Bušić Regiment [...] Milivoj Petković planned and facilitated the HVO operations in Gornji Vakuf in January 1993"), 815, 818. See also Trial Judgement, Vol. 1, para. 814 & fn. 1917, referring to, *inter alia*, Ex. P01064 – the 6 January 1993 Order – when addressing the deployment of units. In this regard, the Appeals Chamber considers that the Trial Chamber's consideration of a deployment order, which constitutes a discrete and non-continuing action, as a contribution to the CCP is distinguishable from the Trial Chamber's consideration of other actions that pre-date the JCE and that are, by contrast, demonstrative of an Accused's official responsibilities. See *supra*, para. 1441.

⁷⁴⁰³ Trial Judgement, Vol. 4, para. 708.

⁷⁴⁰⁴ Petković's Appeal Brief, para. 231(ii).

⁷⁴⁰⁵ Ex. P01190, referred to in Trial Judgement, Vol. 4, para. 703. The Appeals Chamber notes that Petković conflates the location of the letter's recipients with the request therein that they inform the ABiH that a significant number of HVO forces were present "in the provinces allotted to the Muslim nation" and that these forces would not be withdrawn. Ex. P01190, referred to in Trial Judgement, Vol. 4, para. 703.

⁷⁴⁰⁶ See Ex. P09276, p. 12, referred to in Trial Judgement, Vol. 1, para. 447.

⁷⁴⁰⁷ Trial Judgement, Vol. 4, para. 703, referring to Ex. P01190.



regard, the Appeals Chamber considers that Petković misrepresents the evidence. The Appeals Chamber therefore dismisses his argument.

2167. Concerning Petković's submission that despite its acknowledgement that he did not write and/or issue consolidated reports, the Trial Chamber nevertheless attributed authorship of the 18 and 19 January 1993 reports to him and thus found that he knew about and confirmed certain events, Petković further asserts that such reports bore his name but were simply a collection of daily reports from the OZs.⁷⁴⁰⁸ The Appeals Chamber notes the Trial Chamber's observation that the Main Staff regularly received reports from the OZ and brigade commanders, from which the secretary of the Chief of the Main Staff produced consolidated reports that were forwarded to and received by the Chief of the Main Staff, who in turn "*drafted* daily [...] 'consolidated reports' or 'collective reports'".⁷⁴⁰⁹ In this regard, the Appeals Chamber considers that in suggesting that the Trial Chamber acknowledged that he did not write and/or issue consolidated reports, Petković misrepresents the Trial Judgement. His argument is therefore dismissed.

2168. The Appeals Chamber turns now to Petković's challenges to Šiljeg's reports of 21 and 29 January 1993, as well as the 24 January 1993 VOS Report. With respect to Šiljeg's 21 January 1993 report, the Appeals Chamber observes that Petković's contention appears to rest on the assumption that the Trial Chamber interpreted the reference to the villages as having been "cleansed" as suggestive of ethnic cleansing.⁷⁴¹⁰ The Appeals Chamber notes that the Trial Chamber quoted Šiljeg's 21 January 1993 report, in which the term "cleansed" was used when reporting on the military operations in Gornji Vakuf Municipality.⁷⁴¹¹ Moreover, in reaching its conclusion that Petković was informed of the movement of the population from Gornji Vakuf, the Trial Chamber considered this report together with a number of other reports.⁷⁴¹² In that regard, in its analysis of the aftermath of the operations, the Trial Chamber referred to Šiljeg's 30 January 1993 report, in which he reported that the entire Muslim civilian population of Gornja and Donja Hrasnica had left while part of the population had been detained in Trnovača.⁷⁴¹³ The Trial Chamber also referred to Šiljeg's 8 February 1993 report in which he described, among other things, the destruction in the villages of Uzričje, Ždrimci, and Duša, and reprisals against individuals, carried out by the HVO.⁷⁴¹⁴ It ultimately concluded, relying on all the reports before it,

⁷⁴⁰⁸ Petković's Appeal Brief, para. 231(iii).

⁷⁴⁰⁹ Trial Judgement, Vol. 1, para. 740 (emphasis added). In so finding, the Trial Chamber referred to, *inter alia*, the challenged reports of 18 and 19 January 1993. Trial Judgement, Vol. 1, fn. 1740, referring to, *inter alia*, Exs. P01193, P01220.

⁷⁴¹⁰ Petković's Appeal Brief, para. 231(iv).

⁷⁴¹¹ See Ex. P01249.

⁷⁴¹² Trial Judgement, Vol. 4, paras 707-708, 710.

⁷⁴¹³ Trial Judgement, Vol. 4, para. 707. The Trial Chamber specifically found that Petković received Šiljeg's 30 January 1993 report. See Trial Judgement, Vol. 4, para. 707.

⁷⁴¹⁴ Trial Judgement, Vol. 4, para. 707.

as well as other evidence, that Petković planned and facilitated the operations in Gornji Vakuf, that he was aware of the destruction, arrests, and removal of the Muslim population in Gornji Vakuf by HVO members, and that he therefore intended to have these crimes committed.⁷⁴¹⁵ Accordingly, the Appeals Chamber dismisses Petković's contention regarding the 21 January 1993 report.

2169. With respect to his submission that the Trial Chamber drew an erroneous inference from the 24 January 1993 VOS report, Petković claims that the report indicated that the town of Gornji Vakuf came under the HVO's control "in the sense of communication", not that the HVO captured the town.⁷⁴¹⁶ The Appeals Chamber observes that the Trial Chamber found that "because of communication difficulties [...] and continued ABiH sniper fire", the HVO captured the heights overlooking the town of Gornji Vakuf, and that the town fell under its control.⁷⁴¹⁷ The Appeals Chamber considers that Petković ignores the Trial Chamber's finding in this regard and misrepresents the evidence when claiming that the town only came under the HVO's control in the sense of communication.⁷⁴¹⁸ His argument is dismissed.

2170. Regarding Petković's submission that the Trial Chamber erred in fact when inferring that he ordered combat to cease "only after the HVO had taken control of the area", the Appeals Chamber considers that Petković ignores numerous findings of the Trial Chamber. When arguing that it "failed to notice" that, on 19 January 1993, Boban issued the ceasefire order on the basis of which Petković agreed to a ceasefire with the ABiH and issued an order the next day, Petković ignores that the Trial Chamber assessed attempts to arrange a ceasefire in the initial days following the attacks, taking into consideration these orders as well as the evidence concerning his agreement with the ABiH.⁷⁴¹⁹ As to his submission that the Trial Chamber "failed to notice" that Boban and Petković were informed while in Geneva between 22 and 26 January 1993 that combat in Gornji Vakuf Municipality did not cease, thus prompting Petković to issue a further ceasefire order, Petković ignores that the Trial Chamber found that on 22 January 1993, the HVO decided to capture the heights overlooking the town of Gornji Vakuf, thus Petković sent Šiljeg a second cessation order from Geneva, once the town was under HVO control on 24 January 1993.⁷⁴²⁰

⁷⁴¹⁵ Trial Judgement, Vol. 4, paras 708, 710.

⁷⁴¹⁶ Petković's Appeal Brief, para. 231(vi) (emphasis omitted).

⁷⁴¹⁷ Trial Judgement, Vol. 2, para. 392 (emphasis added). See Trial Judgement, Vol. 2, para. 393.

⁷⁴¹⁸ See Ex. 3D02530, p. 2 ("BH Army units were routed and demoralized"; "an offer was made for them to withdraw from the town with their weapons"), referred to in Trial Judgement, Vol. 2, para. 393, Vol. 4, para. 706; Trial Judgement, Vol. 2, fn. 951 (considering that a report confirmed that the town was surrounded by HVO troops, tanks and artillery and that the neighbouring villages were shelled).

⁷⁴¹⁹ Trial Judgement, Vol. 2, para. 390 & fns 944-945, referring to, *inter alia*, Exs. P01205, P01211, P01215, P01238/1D00819. See generally Trial Judgement, Vol. 2, paras 389-395, referred to in Trial Judgement, Vol. 4, para. 706. The Appeals Chamber notes that the HVO took control of four villages in Gornji Vakuf Municipality in the days following the attack. See Trial Judgement, Vol. 2, paras 365 (surrender of Duša), 369 (surrender of Hrasnica), 374, 378 (surrender of Uzričje), 384-386 (surrender of Ždrimci).

⁷⁴²⁰ Trial Judgement, Vol. 2, paras 392-393.

Moreover, Petković mischaracterises the Trial Judgement when contending that the Trial Chamber failed to establish that combat did not stop then, but only after Šiljeg issued a ceasefire order on 25 January 1993, as the Trial Chamber clearly found that Šiljeg's order implemented both Petković's 20 and 24 January 1993 orders.⁷⁴²¹ The Appeals Chamber thus dismisses Petković's challenge to the Trial Chamber's finding that he ordered combat to cease only after the HVO had taken control of the area.⁷⁴²²

2171. In light of the foregoing, the Appeals Chamber dismisses Petković's submissions that the Trial Chamber erred in concluding that: (1) he planned and facilitated the HVO operations on 18 January 1993 in Gornji Vakuf Municipality; (2) the relevant crimes committed were part of a preconceived plan of which he was aware.⁷⁴²³

(ii) Alleged errors regarding the finding that Petković had no genuine intention to punish perpetrators of crimes

2172. The Trial Chamber found that it was "effectively not until 24 January 1993" that Petković ordered HVO "extremists" to be arrested and requested that the HVO "insist" that soldiers not commit more crimes.⁷⁴²⁴ Moreover, it found that: (1) while having effective command and control over the HVO, Petković merely requested that Šiljeg "impress" upon HVO members not to cause any further damage; and (2) the Bruno Bušić Regiment was redeployed several times after January 1993 and again committed crimes.⁷⁴²⁵ On this basis, the Trial Chamber found that in "issuing his order on 24 January 1993", Petković did not genuinely intend to punish and put an end to crimes against Muslims.⁷⁴²⁶ The Trial Chamber concluded that by planning and facilitating the military operations in Gornji Vakuf Municipality in January 1993, all the while knowing that crimes occurred during these operations, he intended to have these crimes committed.⁷⁴²⁷

⁷⁴²¹ Trial Judgement, Vol. 2, paras 393-394.

⁷⁴²² See Trial Judgement, Vol. 4, para. 709. In light of the above, the Appeals Chamber also dismisses Petković's submission that the fact that his ceasefire orders were not respected "clearly proves" that he did not have effective control over the HVO units in Gornji Vakuf Municipality in January 1993.

⁷⁴²³ When asserting, in reply, that since the "ethnic cleansing" of the Muslim population was established by the Trial Chamber as the "only one, single common criminal purpose", crimes committed in Gornji Vakuf that did not result in "ethnic cleansing" cannot be correctly and reasonably considered as committed with the intent to further the JCE, Petković cross-references to his reply pertaining to his sub-ground of appeal 3.2. The Appeals Chamber dismisses this submission as it is dismissed elsewhere. See *supra*, para. 873.

⁷⁴²⁴ Trial Judgement, Vol. 4, para. 709. See also Trial Judgement, Vol. 4, para. 706.

⁷⁴²⁵ Trial Judgement, Vol. 4, para. 709.

⁷⁴²⁶ Trial Judgement, Vol. 4, para. 709.

⁷⁴²⁷ Trial Judgement, Vol. 4, para. 710.

a. Arguments of the Parties

2173. Petković submits that the Trial Chamber relied on incorrect premises to infer that he did not genuinely intend to punish and put an end to crimes against Muslims.⁷⁴²⁸ He first submits that he issued the order underpinning the Trial Chamber's finding – that “it was effectively not until 24 January 1993” that he ordered HVO “extremists” be arrested – not on 24 January 1993, but on 29 January 1993, when he first received an indication that crimes were committed.⁷⁴²⁹ Moreover, Petković submits that, contrary to the Trial Chamber's finding that this order “merely requested of Željko Šiljeg to ‘impress’ upon HVO members not to cause any further damage”,⁷⁴³⁰ it in fact ordered the arrest and imprisonment of “all our extremists”.⁷⁴³¹ Lastly, regarding the Trial Chamber's finding that the Bruno Bušić Regiment was redeployed several times after January 1993 although its soldiers committed crimes, Petković asserts that there is no evidence that he was informed that members of the regiment committed crimes in Gornji Vakuf Municipality in January 1993.⁷⁴³²

2174. The Prosecution responds that Petković incorrectly argues that he was not aware of his forces' crimes in Gornji Vakuf Municipality until 29 January 1993 and thereby ignores the Trial Chamber's finding that the crimes were planned in advance and were not acts of unruly soldiers.⁷⁴³³ It submits that the Trial Chamber misstated that Petković's 29 January 1993 order was issued on 24 January 1993,⁷⁴³⁴ but that this has no effect on the Trial Judgement as it repeatedly recognised elsewhere that the order was issued on 29 January.⁷⁴³⁵ The Prosecution further argues that the sincerity of the 29 January 1993 order should be considered in light of other facially unlawful orders which Petković issued subsequently.⁷⁴³⁶ Finally, it asserts that the Trial Chamber reasonably found that Petković knew of the crimes committed by the Bruno Bušić Regiment in Gornji Vakuf Municipality.⁷⁴³⁷

⁷⁴²⁸ Petković's Appeal Brief, paras 233-234. See also Petković's Appeal Brief, para. 235.

⁷⁴²⁹ Petković's Appeal Brief, para. 233(i). See Petković's Appeal Brief, para. 234(i), referring to, *inter alia*, Ex. P01344.

⁷⁴³⁰ Petković's Appeal Brief, para. 233, citing Trial Judgement, Vol. 4, para. 709.

⁷⁴³¹ Petković's Appeal Brief, para. 234(i), citing Ex. P01344; Appeal Hearing, AT. 523-524 (23 Mar 2017).

⁷⁴³² Petković's Appeal Brief, paras 233(iii), 234(ii). See also Appeal Hearing, AT. 573 (23 Mar 2017). Moreover, Petković challenges the Trial Chamber's findings that the Bruno Bušić Regiment committed crimes in Gornji Vakuf Municipality. Petković's Appeal Brief, para. 234(iii). The Appeals Chamber addresses and dismisses these submissions elsewhere. See *supra*, para. 501.

⁷⁴³³ Prosecution's Response Brief (Petković), para. 176. See also Prosecution's Response Brief (Petković), paras 164-165, 175. The Prosecution also submits that Petković received notice, on a number of occasions prior to 29 January 1993, of crimes committed by the HVO. Prosecution's Response Brief (Petković), para. 176.

⁷⁴³⁴ Prosecution's Response Brief (Petković), fn. 695, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 709.

⁷⁴³⁵ Prosecution's Response Brief (Petković), fn. 695, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 706, 709.

⁷⁴³⁶ Prosecution's Response Brief (Petković), para. 176. See also Prosecution's Response Brief (Petković), para. 177.

⁷⁴³⁷ Prosecution's Response Brief (Petković), para. 178. In this regard, the Prosecution submits, *inter alia*, that the regiment was under his direct command, he personally deployed it to Gornji Vakuf Municipality, and he was informed that the HVO as a whole – including the regiment – committed crimes in Gornji Vakuf Municipality. Prosecution's Response Brief (Petković), para. 178.

b. Analysis

2175. Concerning Petković's submission that he issued the order underpinning the Trial Chamber's finding – that “it was effectively not until 24 January 1993” that he ordered HVO “extremists” be arrested – not on 24 January 1993, but on 29 January 1993,⁷⁴³⁸ the Appeals Chamber considers that the Trial Chamber indeed referred to the incorrect date when making this finding and when concluding that “by issuing his order on 24 January 1993, [he] ultimately did not genuinely intend to punish and put an end to the crimes against the Muslims”.⁷⁴³⁹ However, given that Petković's issuance of the order five days later in fact lends support to the impugned finding, his argument is dismissed.⁷⁴⁴⁰ Relatedly, when submitting that 29 January 1993 was the date on which he first received an indication that crimes were committed, Petković does not articulate an error in the Trial Chamber's findings and, in any case, the Appeals Chamber notes that the Trial Chamber considered evidence dated as early as 18 January 1993 when inferring, as the only reasonable inference from the evidence, that Petković was aware of crimes committed as part of a preconceived plan.⁷⁴⁴¹ As to Petković's submission that, contrary to the Trial Chamber's finding that this 29 January 1993 order “merely requested of Željko Šiljeg to ‘impress’ upon HVO members not to cause any further damage”,⁷⁴⁴² it in fact ordered the arrest and imprisonment of “all our extremists”,⁷⁴⁴³ the Appeals Chamber notes that the Trial Chamber also repeatedly and expressly considered, *inter alia*, that he ordered that HVO extremists be arrested.⁷⁴⁴⁴ Moreover, the Trial Chamber also took into consideration the facts that Petković did not issue that order until 29 January,⁷⁴⁴⁵ after the HVO had taken control of the area, and that he merely requested Šiljeg to “impress” upon the remaining HVO members “not to cause any further damage”.⁷⁴⁴⁶ In light of these additional considerations, the Appeals Chamber finds that Petković has failed to show that the Trial Chamber's assessment was unreasonable. His aforementioned arguments are dismissed.

⁷⁴³⁸ Petković's Appeal Brief, para. 233(i). See Petković's Appeal Brief, para. 234(i), referring to, *inter alia*, Ex. P01344.

⁷⁴³⁹ Trial Judgement, Vol. 4, para. 709. Cf. Ex. P01344, dated 29 January 1993.

⁷⁴⁴⁰ The Appeals Chamber further notes that the Trial Chamber also referred to the order as having been issued on 29 January 1993 multiple times when addressing Petković's contribution to crimes in Gornji Vakuf Municipality. Trial Judgement, Vol. 4, paras 706, 709 (“Moreover, in his order of 29 January 1993, Milivoj Petković, while having effective command and control over the HVO armed forces, merely requested of Željko Šiljeg that he ‘impress’ upon HVO members not to cause any further damage.”).

⁷⁴⁴¹ See Trial Judgement, Vol. 4, paras 703-704; *supra*, para. 2168. See also Trial Judgement, Vol. 4, para. 701 (noting Petković's 6 January 1993 Order to the Bruno Bušić Regiment).

⁷⁴⁴² Petković's Appeal Brief, para. 233, citing Trial Judgement, Vol. 4, para. 709.

⁷⁴⁴³ Petković's Appeal Brief, para. 234(i), citing Ex. P01344.

⁷⁴⁴⁴ Trial Judgement, Vol. 4, paras 706 (referring to, *inter alia*, Ex. P01344, the 29 January 1993 order), 709. Although in one of these occasions, the Trial Chamber stated that Petković ordered the arrest of extremists on 24 January 1993 rather than 29 January 1993, the Appeals Chamber considers that this misstatement has no impact on the Trial Chamber's findings. See Trial Judgement, Vol. 4, para. 709.

⁷⁴⁴⁵ See *supra*, fn. 7444 (recalling that this order was issued on 29 January 1993).

⁷⁴⁴⁶ Trial Judgement, Vol. 4, para. 709.

2176. Lastly, as to Petković's assertion that there is no evidence that he was informed that members of the Bruno Bušić Regiment committed crimes in Gornji Vakuf Municipality in January 1993, the Appeals Chamber observes that the Trial Chamber found that despite Petković's knowledge that the Bruno Bušić Regiment committed crimes in Gornji Vakuf Municipality, this unit was redeployed several times after January 1993 and again committed crimes.⁷⁴⁴⁷ It relied on, *inter alia*, this redeployment in finding that he did not genuinely intend to punish and put an end to the crimes against Muslims.⁷⁴⁴⁸ The Appeals Chamber notes, however, that the Trial Chamber erred in concluding that Petković knew that the Bruno Bušić Regiment, specifically, committed crimes in Gornji Vakuf Municipality in January 1993 without referring to any evidence in support.⁷⁴⁴⁹ However, Petković has not shown how the impugned finding that he did not genuinely intend to punish and put an end to the crimes against Muslims impacts the Trial Chamber's conclusion that he intended to have crimes in Gornji Vakuf Municipality committed insofar as the Trial Chamber reached this conclusion by relying upon its finding that he planned and facilitated the military operations while knowing that during such operations crimes were being committed.⁷⁴⁵⁰ His argument is dismissed.

(iii) Conclusion

2177. For the foregoing reasons, the Appeals Chamber finds that Petković has failed to show an error in the Trial Chamber's findings regarding his involvement in the HVO operations in Gornji Vakuf Municipality as well as his lack of genuine intent to punish the perpetrators of the crimes committed there. Accordingly, Petković's sub-ground of appeal 5.2.2.2, in part, is dismissed.

(c) Jablanica Municipality (Petković's Sub-grounds 4.3.1 in part, 4.3.2.2, and 5.2.2.3)

2178. The Trial Chamber found that the HVO's military operations in Jablanica Municipality, namely the 17 April 1993 attack on the villages of Sovići and Doljani and the subsequent destruction of Muslim houses as well as the arrest of Muslim civilians therein, were part of a well-organised and orchestrated plan by the HVO leadership and that the crimes committed were integral parts of this plan.⁷⁴⁵¹ It found that Petković contributed to planning and directing these operations, thus he knew that the crimes were integral to the plan.⁷⁴⁵² The Trial Chamber found that, following the attack, Petković obstructed the passage of certain international observers and peace-keeping

⁷⁴⁴⁷ Trial Judgement, Vol. 4, paras 709, 809.

⁷⁴⁴⁸ Trial Judgement, Vol. 4, para. 709. See also Trial Judgement, Vol. 4, paras 809-810, 813.

⁷⁴⁴⁹ See Trial Judgement, Vol. 4, paras 700-710, 809-810, 813.

⁷⁴⁵⁰ See Trial Judgement, Vol. 4, para. 710.

⁷⁴⁵¹ Trial Judgement, Vol. 4, para. 717. See also Trial Judgement, Vol. 4, paras 714, 718, 721, 723.

⁷⁴⁵² Trial Judgement, Vol. 4, paras 716-717.

convoys and orchestrated the removal of Muslims who remained in Sovići and Doljani.⁷⁴⁵³ The Trial Chamber concluded that the only reasonable inference from Petković having, *inter alia*, planned and directed military operations in Jablanica Municipality, while he continued to exercise control over the HVO and knew that its members were committing crimes, was that he intended these crimes to be committed.⁷⁴⁵⁴

2179. Petković submits that no reasonable trier of fact could have concluded that the only reasonable inference was that he participated in the commission of crimes in the villages of Sovići and Doljani in April and May 1993 or that his contribution to the crimes for which he was found responsible was significant.⁷⁴⁵⁵ He also contends that the Trial Chamber failed to make a reasoned finding about his intent to commit certain crimes.⁷⁴⁵⁶ Petković argues that the Trial Chamber committed errors of fact and law that caused a miscarriage of justice and invalidate the judgement, and that the Appeals Chamber should therefore reverse his convictions and acquit him of the crimes charged in this location.⁷⁴⁵⁷

(i) Alleged errors regarding Petković's contribution to planning and directing the HVO operations

2180. The Trial Chamber found that Petković contributed to planning and directing the military operations in the town of Jablanica and the villages of Sovići and Doljani in Jablanica Municipality in April 1993.⁷⁴⁵⁸ In so finding, it relied upon: (1) his issuance of a 15 April 1993 order to the Bruno Bušić Regiment and Ludvig Pavlović Special Purposes Unit ("PPN") to raise combat readiness and his 22 April 1993 ceasefire order;⁷⁴⁵⁹ and (2) his receipt and issuance of reports on the military operations.⁷⁴⁶⁰

⁷⁴⁵³ Trial Judgement, Vol. 4, paras 721-723.

⁷⁴⁵⁴ Trial Judgement, Vol. 4, para. 815. In reaching this conclusion, however, the Trial Chamber specified that in light of the fact that Petković orchestrated the removal of the detainees from Sovići School on 5 May 1993, it was unable to find that he accepted the poor conditions of confinement. Trial Judgement, Vol. 4, para. 724. The Appeals Chamber recalls its reversal of the Trial Chamber's finding that murder and willful killing were part of the CCP in the period from January 1993 until June 1993. Since the Trial Chamber found that no Jablanica killings were in fact part of the CCP, the Appeals Chamber does not consider that the change in the scope of the CCP in the period from January 1993 until June 1993 affects in any way the Trial Chamber's findings related to Petković's responsibility in Jablanica Municipality. See *supra*, para. 895 & fn. 2854.

⁷⁴⁵⁵ Petković's Appeal Brief, para. 250. See also Petković's Appeal Brief, para. 237. See Trial Judgement, Vol. 4, para. 714.

⁷⁴⁵⁶ Petković's Appeal Brief, paras 112(iii), 127.

⁷⁴⁵⁷ Petković's Appeal Brief, paras 112, 127, 250. See also Petković's Appeal Brief, para. 237.

⁷⁴⁵⁸ Trial Judgement, Vol. 4, paras 713, 716-717.

⁷⁴⁵⁹ Trial Judgement, Vol. 4, paras 712, 715.

⁷⁴⁶⁰ Trial Judgement, Vol. 4, para. 714.

a. Arguments of the Parties

2181. Petković submits that the Trial Chamber relied on evidence that does not support its finding that he contributed to the planning and directing of the HVO attack on Sovići and Doljani.⁷⁴⁶¹ Specifically, he argues that: (1) his general order of 15 April 1993 to the Bruno Bušić Regiment and the Ludvig Pavlović PPN to raise combat readiness did not relate to Sovići and Doljani;⁷⁴⁶² (2) the reports regularly sent to the HVO Main Staff by the OZs do not demonstrate that Petković participated in the planning and directing of the military actions described therein;⁷⁴⁶³ and (3) Petković did not have effective control over the HVO units in the field as proven by the fact that his 22 April 1993 ceasefire order repeated his 20 April 1993 ceasefire order, which, he asserts, was not respected.⁷⁴⁶⁴ Petković submits that no reasonable trier of fact could have come to the Trial Chamber's conclusion, as the only reasonable inference, on the basis of this evidence.⁷⁴⁶⁵

2182. The Prosecution responds that Petković incorrectly states that the findings that he planned and directed operations in Jablanica Municipality were based solely on two orders and his receipt of reports.⁷⁴⁶⁶ It submits that the findings were based on "a great deal more evidence" and, in any event, the Trial Chamber reasonably found that he was kept informed of the progress of operations on the basis of, *inter alia*, his receipt of reports.⁷⁴⁶⁷ Specifically, the Prosecution contends that Petković's 15 April 1993 order to the Bruno Bušić Regiment demonstrated his contribution to the planning and directing of the HVO operations in Jablanica Municipality insofar as the order immediately preceded the HVO attacks and that regiment committed crimes in Doljani several days later.⁷⁴⁶⁸ Lastly, the Prosecution submits that, contrary to Petković's claim that HVO forces failed to obey the order he issued on 20 April 1993, the document to which Petković points was, in fact, a preliminary ceasefire agreement with the ABiH, while the actual order implementing this agreement was issued two days later.⁷⁴⁶⁹

⁷⁴⁶¹ Petković's Appeal Brief, para. 239. See also Petković's Appeal Brief, para. 238.

⁷⁴⁶² Petković's Appeal Brief, para. 239(i), referring to Ex. P01896. See also Petković's Appeal Brief, para. 238(i), referring to Trial Judgement, Vol. 4, para. 712.

⁷⁴⁶³ Petković's Appeal Brief, para. 239(ii). See also Petković's Appeal Brief, para. 238(ii), referring to Trial Judgement, Vol. 4, para. 714.

⁷⁴⁶⁴ Petković's Appeal Brief, para. 239(iii), referring to Exs. P01988, P02037. See also Petković's Appeal Brief, para. 238(iii), referring to Trial Judgement, Vol. 4, para. 715.

⁷⁴⁶⁵ Petković's Appeal Brief, para. 240.

⁷⁴⁶⁶ Prosecution's Response Brief (Petković), para. 183. See also Prosecution's Response Brief (Petković), para. 191.

⁷⁴⁶⁷ Prosecution's Response Brief (Petković), para. 183, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 714. See also Appeal Hearing, AT. 529-530 (23 Mar 2017).

⁷⁴⁶⁸ Prosecution's Response Brief (Petković), para. 181.

⁷⁴⁶⁹ Prosecution's Response Brief (Petković), para. 184 and references cited therein. The Prosecution further submits that even if troops failed to immediately heed his cease-fire, "isolated incidents of disobedience do not outweigh the mass of evidence showing Petković's extensive authority over the HVO". Prosecution's Response Brief (Petković), para. 184.

b. Analysis

2183. Concerning Petković's argument that his general order of 15 April 1993 to the Bruno Bušić Regiment and the Ludvig Pavlović PPN to raise combat readiness did not relate to Sovići and Doljani, the Appeals Chamber observes that the Trial Chamber found, and the order specified, that it was issued with the aim of reinforcing the HVO's defence lines in the Konjic and Jablanica area; the Trial Chamber also stated that, in the order, Petković specified that he would subsequently determine the time of departure and the destination of the units and that follow-up orders would be issued by telephone.⁷⁴⁷⁰ The Trial Chamber found that the HVO commenced shelling the town of Jablanica that day and the villages of Sovići and Doljani two days later,⁷⁴⁷¹ during and after which Petković received and issued reports about the progress of operations therein.⁷⁴⁷² The Appeals Chamber considers that Petković fails to show an error in the Trial Chamber's approach or its reliance on this order in determining that he planned and directed the military operations in Jablanica Municipality, which were part of an orchestrated plan that included the crimes committed in Sovići and Doljani.⁷⁴⁷³ Accordingly, his argument is dismissed.

2184. As to Petković's submission that the reports regularly sent to the HVO Main Staff by the OZs do not demonstrate that he participated in the planning and directing of the military actions described therein, the Appeals Chamber considers that the Trial Chamber relied on these reports in finding that the attacks were planned in advance and that Petković was kept informed of the progress of operations.⁷⁴⁷⁴ It considered his receipt of these reports as well as his issuance of orders and a report when finding that he contributed to the planning and directing of the military operations.⁷⁴⁷⁵ The fact that the reports that Petković received do not expressly assert that he planned or directed the specific operations described therein does not impact this finding. His argument is dismissed.

2185. Lastly, the Appeals Chamber rejects Petković's contention that he did not have effective control over the HVO units in the field on the basis that his 22 April 1993 ceasefire order repeated the alleged order he issued on 20 April 1993, which, he asserts, was not respected. The Appeals Chamber observes that, contrary to Petković's allegation, the 20 April 1993 document was not a ceasefire order but an agreement between Petković and Sefer Halilović to "implement a complete

⁷⁴⁷⁰ Trial Judgement, Vol. 4, para. 712, referring to Ex. P01896. See also Trial Judgement, Vol. 2, para. 527.

⁷⁴⁷¹ Trial Judgement, Vol. 4, paras 713, 717. See also Trial Judgement, Vol. 2, para. 528.

⁷⁴⁷² Trial Judgement, Vol. 4, para. 714.

⁷⁴⁷³ See Trial Judgement, Vol. 4, paras 716-717.

⁷⁴⁷⁴ Trial Judgement, Vol. 4, para. 714.

⁷⁴⁷⁵ Trial Judgement, Vol. 4, paras 712, 714 & fn. 1370, paras 716-717. See also Trial Judgement, Vol. 4, paras 718-723.

and immediate ceasefire”.⁷⁴⁷⁶ Thus, Petković’s assertion that the 22 April 1993 order repeated a previous ceasefire order is incorrect.⁷⁴⁷⁷ His argument is dismissed.

2186. In light of the above, the Appeals Chamber dismisses Petković’s submission that no reasonable trier of fact could have come to the Trial Chamber’s conclusion, as the only reasonable inference, that he participated in planning and directing the HVO attack on Sovići and Doljani on the basis of this evidence.

(ii) Alleged errors regarding the destruction of Muslim houses and mosques

2187. The Trial Chamber found that most of the fighting between the HVO and ABiH in the villages of Sovići and Doljani ended by the morning of 18 April 1993.⁷⁴⁷⁸ It found that subsequent to the attack, the HVO set fire to all Muslim houses and two mosques pursuant to the orders of “senior commanders”.⁷⁴⁷⁹ Lastly, the Trial Chamber found that insofar as the HVO operations were part of a plan by the HVO leadership, the destruction was an integral part of this plan, of which Petković was aware.⁷⁴⁸⁰

a. Arguments of the Parties

2188. Petković submits that the Trial Chamber inferred, on the one hand, that “insofar as he planned and directed the military operations”, he knew that the destruction of Muslim houses and two mosques in Sovići and Doljani were an integral part of the plan.⁷⁴⁸¹ He argues that it also found, however, that Muslim houses were set on fire “after all or most of the principal fighting had ended” – precisely, after the death of a KB commander – thus proving that these crimes were not part of the planned military action.⁷⁴⁸² Petković further submits that although the Trial Chamber correctly established that Muslim houses were set on fire pursuant to orders of “senior commanders”, it “failed to establish” that he was one of the specific senior commanders who ordered this destruction, and further, there was no evidence that could reasonably connect him to the destruction.⁷⁴⁸³

⁷⁴⁷⁶ Ex. P01988. See also Petković’s Appeal Brief, para. 239(iii) (“Petković and Halilović accordingly signed the agreement on 20 April 1993 to implement immediate and complete cease fire”).

⁷⁴⁷⁷ See Trial Judgement, Vol. 4, para. 715, referring to Ex. P02037, p. 1.

⁷⁴⁷⁸ Trial Judgement, Vol. 2, para. 640.

⁷⁴⁷⁹ Trial Judgement, Vol. 4, para. 717. See also Trial Judgement, Vol. 2, paras 641, 643.

⁷⁴⁸⁰ Trial Judgement, Vol. 4, para. 717.

⁷⁴⁸¹ Petković’s Appeal Brief, para. 241, citing Trial Judgement, Vol. 4, para. 717. See Petković’s Appeal Brief, para. 112(iii)(a).

⁷⁴⁸² Petković’s Appeal Brief, para. 242, citing Trial Judgement, Vol. 2, para. 638. See also Petković’s Appeal Brief, para. 112(iii)(a) & fns 144, 327.

⁷⁴⁸³ Petković’s Appeal Brief, paras 241, 243, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 717, Ex. P02063; Petković’s Reply Brief, para. 51. Petković contends that in the *Naletilić and Martinović* case, Mladen Naletilić was

2189. The Prosecution responds that the fact that HVO forces continued to raze Muslim houses shortly after a KB commander was killed does not prove that the destruction was not pre-planned.⁷⁴⁸⁴ It further submits that to the extent that he contends that the destruction was a spontaneous act of revenge, Petković's argument is undermined by the fact that the HVO destroyed the property pursuant to the "order of senior commanders".⁷⁴⁸⁵ The Prosecution contends that Petković's link to these crimes is demonstrated by the fact that the HVO attacks on Sovići and Doljani followed the same pattern in which Muslim property was destroyed in previous operations that he directed.⁷⁴⁸⁶

2190. Petković replies that no reasonable trial chamber could conclude on the basis of an alleged "pattern" that he was one of the senior commanders who ordered that the crimes be committed.⁷⁴⁸⁷

b. Analysis

2191. The Appeals Chamber finds that Petković fails to demonstrate how the Trial Chamber's findings that most of the fighting in Sovići and Doljani ended by the morning of 18 April 1993 and that soldiers set fire to Muslim houses on 21 April 1993 after the death of "Čikota", a KB commander,⁷⁴⁸⁸ impacts its finding that the destruction was part of a well-organised and orchestrated plan of which Petković was aware insofar as he planned and directed the military operations.⁷⁴⁸⁹ To the extent that he suggests that the burning of Muslim property was a defensive response to the death of the KB commander, the Appeals Chamber observes that the Trial Chamber found that the criminal events in Jablanica occurred as part of campaigns which followed a

found to have ordered the destruction of houses in Doljani. Petković's Appeal Brief, fn. 328, referring to *Naletilić and Martinović* Trial Judgement, para. 596, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006, 7 September 2006 (French original 7 September 2006), Adjudicated Fact No. 68.

⁷⁴⁸⁴ Prosecution's Response Brief (Petković), para. 186. See also Prosecution's Response Brief (Petković), para. 185. The Prosecution submits that Petković misquotes the Trial Judgement as "finding" that Muslim houses were set ablaze after the fighting ended when in fact this statement was simply a reference to the Indictment. Prosecution's Response Brief (Petković), fn. 745, referring to Trial Judgement, Vol. 2, para. 638, Petković's Appeal Brief, fn. 326.

⁷⁴⁸⁵ Prosecution's Response Brief (Petković), para. 186, citing Trial Judgement, Vol. 4, para. 717.

⁷⁴⁸⁶ Prosecution's Response Brief (Petković), para. 185, referring to, *inter alia*, Petković's Appeal Brief, para. 243. See also Prosecution's Response Brief (Petković), para. 186. The Prosecution submits that Mladen Naletilić was at least one of the senior commanders who ordered Muslim buildings to be burned. Prosecution's Response Brief (Petković), para. 185, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 829.

⁷⁴⁸⁷ Petković's Reply Brief, para. 51.

⁷⁴⁸⁸ Trial Judgement, Vol. 2, paras 640-643, Vol. 4, para. 717. Concerning the date(s) on which the destruction took place, the Appeals Chamber observes that although the Trial Chamber noted that KB soldiers set fire to houses on about 21 April 1993, it also considered that much evidence showed that HVO soldiers, including KB members, had destroyed Muslim houses as early as 18 April 1993 and that the houses had been burned down once the conflict ended. Trial Judgement, Vol. 2, paras 641, 643, referring to, *inter alia*, Ex. P02063.

⁷⁴⁸⁹ Trial Judgement, Vol. 4, paras 716-717. Although Petković makes brief mention of the destruction of two mosques, the Appeals Chamber observes that he does not actually challenge the inclusion of this destruction in the CCP. See Petković's Appeal Brief, paras 241-242. The Appeals Chamber notes that the Trial Chamber found that the destruction of the mosques was not part of the CCP in April 1993 and that it was addressed in the context of JCE III responsibility. See, *e.g.*, Trial Judgement, Vol. 4, paras 148, 718.

systematic course of action and “had to be the result of a preconceived HVO plan”.⁷⁴⁹⁰ It concluded, moreover, that the crimes formed part of a “clear pattern of conduct”.⁷⁴⁹¹ As Petković demonstrates no error in the Trial Chamber’s approach, his argument is dismissed.⁷⁴⁹²

2192. Additionally, in light of the Trial Chamber’s findings regarding the pattern of conduct and its determination that the destruction in Sovići and Doljani was part of a plan of which Petković was aware insofar as he planned and directed the military operations in Jablanica,⁷⁴⁹³ the Appeals Chamber dismisses his submission that the Trial Chamber “failed to establish” that he was not one of the senior commanders who ordered this destruction specifically, and further, there was no evidence that could reasonably connect him to the destruction.⁷⁴⁹⁴ As to Petković’s further assertion, in reply, that no reasonable trial chamber could conclude on the basis of an alleged “pattern” that he was one of the senior commanders who ordered that the crimes be committed, the Appeals Chamber considers that he fails to show an error in the Trial Chamber’s approach. His argument is dismissed.

(iii) Alleged errors concerning the obstruction of passage of international observers

2193. The Trial Chamber found that, following the HVO attack on Sovići and Doljani, HVO soldiers obstructed the passage of some international observers and peace-keeping convoys.⁷⁴⁹⁵ It found that a 24 April 1993 report showed that the Main Staff issued an oral order forbidding an UNPROFOR convoy from passing through Jablanica.⁷⁴⁹⁶ The Trial Chamber concluded that insofar as Petković was Chief of the Main Staff and was personally involved in planning and directing the operations in Jablanica Municipality in April 1993, it could reasonably find that the order came from him.⁷⁴⁹⁷ It further concluded that as Petković had been informed of crimes committed in Sovići and Doljani, it could reasonably find that he issued the order for the purpose of concealing these crimes.⁷⁴⁹⁸

⁷⁴⁹⁰ Trial Judgement, Vol. 4, para. 146. See Trial Judgement, Vol. 4, para. 717.

⁷⁴⁹¹ Trial Judgement, Vol. 4, para. 65. See also, *e.g.*, Trial Judgement, Vol. 4, paras 47-48, 693, 704, 710 (finding that HVO operations in the municipalities of Prozor and Gornji Vakuf also included the burning of Muslim houses following attacks).

⁷⁴⁹² The Appeals Chamber further notes that Petković makes a similar argument in his sub-ground of appeal 3.2.2.4, which the Appeals Chamber dismissed elsewhere. See *supra*, paras 998-1005.

⁷⁴⁹³ Trial Judgement, Vol. 4, para. 717.

⁷⁴⁹⁴ Insofar as Petković contends that Naletilić specifically was found to have ordered the destruction of houses in Doljani, the Appeals Chamber notes the Trial Chamber’s findings that the KB and its ATGs, which were under Naletilić’s command, were deployed in the OZs pursuant to orders issued by the Main Staff and that, once deployed, they were placed under the commander of an OZ. See Trial Judgement, Vol. 1, para. 829. Moreover, the Trial Chamber found that the KB and its ATGs were involved in numerous crimes committed in Jablanica Municipality in April and May 1993. See Trial Judgement, Vol. 4, para. 718.

⁷⁴⁹⁵ Trial Judgement, Vol. 4, para. 721.

⁷⁴⁹⁶ Trial Judgement, Vol. 4, para. 721.

⁷⁴⁹⁷ Trial Judgement, Vol. 4, para. 721.

⁷⁴⁹⁸ Trial Judgement, Vol. 4, para. 721.

a. Arguments of the Parties

2194. Petković submits that the Trial Chamber erred in fact when it inferred that he obstructed the passage of certain international observers and peace-keeping convoys for the purpose of concealing crimes committed in Sovići and Doljani.⁷⁴⁹⁹ Petković argues that this inference was based solely on a 24 April 1993 report by Šiljeg's deputy, which mentioned an "oral order" from the Main Staff to prevent a convoy from passing through Jablanica Municipality.⁷⁵⁰⁰ He submits that when concluding that the oral order came from Petković himself, the Trial Chamber failed to establish that he was the person "from the Main Staff" who issued the oral order as: (1) he was at a meeting in Zagreb that day, while the Main Staff was located in Mostar; and (2) if he gave an order, as Chief of the Main Staff, that order would not have been referred to as "an order received from the Main Staff".⁷⁵⁰¹ Petković asserts that no reasonable trier of fact could have found that the only reasonable inference was that he hindered access of the convoy for the purpose of concealing crimes.⁷⁵⁰²

2195. The Prosecution responds that the variety of evidence cited by the Trial Chamber disproves Petković's contention that the finding that he denied passage to aid convoys was based on only one exhibit.⁷⁵⁰³ Further, it submits that, in arguing that he could not have issued the oral order because he was in Zagreb at the time, Petković fails to acknowledge the existence of the HVO's communications capabilities.⁷⁵⁰⁴ Lastly, the Prosecution submits that it was reasonable for the Trial Chamber to conclude that an order from Petković would have simply been described as a directive from "the Main Staff".⁷⁵⁰⁵

b. Analysis

2196. Regarding Petković's submission that the Trial Chamber failed to establish that he could have been the person "from the Main Staff" who issued the oral order as he was at a meeting in Zagreb that day, while the Main Staff was located in Mostar, the Appeals Chamber considers that Petković ignores Trial Chamber findings on the existence of means of communication between the Main Staff and its Chief and OZ commanders.⁷⁵⁰⁶ As there is no indication in the Trial Judgement that this communication was disrupted or hindered, his argument is dismissed. Further, the Appeals Chamber finds no merit in Petković's unsubstantiated assertion that if he gave an order, as Chief of the Main Staff, that order would not have been referred to as "an order received from the Main

⁷⁴⁹⁹ Petković's Appeal Brief, paras 244, 246 & fn. 329, referring to Trial Judgement, Vol. 4, para. 721.

⁷⁵⁰⁰ Petković's Appeal Brief, para. 244, referring to Ex. P02066.

⁷⁵⁰¹ Petković's Appeal Brief, paras 244-245 (emphasis omitted).

⁷⁵⁰² Petković's Appeal Brief, para. 246.

⁷⁵⁰³ Prosecution's Response Brief (Petković), para. 187. See also Appeal Hearing, AT. 542-543 (23 Mar 2017).

⁷⁵⁰⁴ Prosecution's Response Brief (Petković), para. 188; Appeal Hearing, AT. 543 (23 Mar 2017).

⁷⁵⁰⁵ Prosecution's Response Brief (Petković), para. 188.

⁷⁵⁰⁶ See Trial Judgement, Vol. 1, paras 733-735. See also Trial Judgement, Vol. 1, paras 736-742.

Staff". The Trial Chamber was reasonable in finding that an order issued by the Chief of the Main Staff would be regarded as an order from the Main Staff.⁷⁵⁰⁷

2197. To the extent that Petković argues that the Trial Chamber relied solely on the 24 April 1993 report by Šiljeg's deputy, which mentioned the "oral order" that had been received from the Main Staff, the Appeals Chamber notes that the Trial Chamber considered this report in light of Petković's role as Chief of the Main Staff and his personal involvement in the planning and directing of HVO operations in Jablanica in April 1993.⁷⁵⁰⁸ On this basis, it concluded that the order hindering the access of the convoy came from Petković.⁷⁵⁰⁹ The Trial Chamber further determined that, insofar as Petković was informed of the destruction of Muslim houses and two mosques, as well as the detention of Muslim civilians, in Sovići and Doljani, he hindered the convoy's access for the purpose of concealing those crimes.⁷⁵¹⁰ Petković fails to demonstrate an error in the Trial Chamber's approach in reaching either of these conclusions. Accordingly, his argument is dismissed.

2198. The Appeals Chamber finds that Petković fails to demonstrate that no reasonable trier of fact could have found that the conclusion that he obstructed the passage of certain international observers and peace-keeping convoys for the purpose of concealing crimes committed in Sovići and Doljani was the only reasonable inference.

(iv) Alleged errors regarding the detention and relocation of Muslims from Sovići and Doljani

2199. The Trial Chamber found that after the 17 April 1993 attack on Jablanica Municipality, the HVO detained Muslim civilians and combatants in the villages of Sovići and Doljani.⁷⁵¹¹ It found that a delegation from the HVO and ABiH, including Petković and Halilović, visited the Sovići School on 4 May 1993, after which the two decided that detainees therein would be taken the following day by bus to Jablanica.⁷⁵¹² The Trial Chamber found that on 5 May 1993, approximately 450 women, children, and elderly people detained at the Sovići School and in houses in the hamlet of Junuzovići were removed by HVO soldiers in the direction of Gornji Vakuf, and not

⁷⁵⁰⁷ See, e.g., Trial Judgement, Vol. 1, paras 750-755. See also *supra*, para. 2095.

⁷⁵⁰⁸ Trial Judgement, Vol. 4, para. 721.

⁷⁵⁰⁹ Trial Judgement, Vol. 4, para. 721.

⁷⁵¹⁰ Trial Judgement, Vol. 4, para. 721. See also Trial Judgement, Vol. 4, paras 714, 717 (finding that Petković regularly received reports on the combat operations in Jablanica and that insofar as he planned and directed the military operations, Petković knew that the destructions of Muslim houses and mosques as well as the detention of Muslim civilians in Sovići and Doljani were an integral part of that plan).

⁷⁵¹¹ See, e.g., Trial Judgement, Vol. 4, para. 717.

⁷⁵¹² Trial Judgement, Vol. 2, paras 605-606.



Jablanica.⁷⁵¹³ It found, moreover, that it did not have sufficient evidence to establish what happened next in their removal.⁷⁵¹⁴ The Trial Chamber concluded that Petković orchestrated this removal.⁷⁵¹⁵ In so finding, it relied on the visit of the delegation as well as two orders: one issued by the Main Staff and another by Petković himself.⁷⁵¹⁶

a. Arguments of the Parties

2200. Petković submits that the Trial Chamber's "suggestion" that he orchestrated the removal of Muslim civilians from Sovići and Doljani to Gornji Vakuf, and thus culpably contributed to a crime, is misleading and unreasonable.⁷⁵¹⁷ He contends that his "sole contribution[s]" to the removal were: (1) his proposal that he and Halilović go to Doljani to handle the situation of trapped civilians; and (2) his acceptance of Halilović's request for assistance in the evacuation of civilians living in poor conditions.⁷⁵¹⁸ Petković argues that his decision to accept the ABiH's request to assist in this relocation under the umbrella of UNPROFOR could not reasonably be regarded as a culpable contribution to a JCE.⁷⁵¹⁹ Further, Petković submits that: (1) the Trial Chamber failed to establish that the civilians were transported to Gornji Vakuf, rather than Jablanica, due to obstacles on the road; and (2) the ethnic map of Jablanica Municipality remained unchanged given that these same civilians were then transferred back to Jablanica in June 1993, to which they agreed.⁷⁵²⁰

2201. Petković also makes separate yet related and specific arguments regarding his *mens rea* to commit the crimes of forcible and unlawful transfer of civilians.⁷⁵²¹ In particular, Petković argues that the Trial Chamber failed to make a reasoned finding regarding his intent to commit these crimes.⁷⁵²² Moreover, he submits that if he "erred in law with regard to [the] aspects of removal of civilians from Sovići" that are relevant for his *mens rea* to commit the crimes of forcible and unlawful transfer, such an error, if justified, would negate the mental element required for those

⁷⁵¹³ Trial Judgement, Vol. 2, para. 609.

⁷⁵¹⁴ Trial Judgement, Vol. 2, para. 613.

⁷⁵¹⁵ Trial Judgement, Vol. 2, para. 608, Vol. 4, para. 723.

⁷⁵¹⁶ Trial Judgement, Vol. 2, paras 607-608.

⁷⁵¹⁷ Petković's Appeal Brief, para. 248, referring to Trial Judgement, Vol. 4, para. 723. See also Petković's Appeal Brief, para. 247. Petković also submits that it demonstrates the Trial Chamber's failure to consider all relevant evidence. Petković's Appeal Brief, para. 248; Petković's Reply Brief, para. 50.

⁷⁵¹⁸ Petković's Appeal Brief, para. 248 & fns 333-335 and references cited therein. See also Appeal Hearing, AT. 496, 576 (23 Mar 2017). Petković further asserts that his own testimony on the matter is duly corroborated by Witness Filip Filipović. Petković's Appeal Brief, para. 248, referring to, *inter alia*, Filip Filipović, T. 47523 (1 Dec 2009).

⁷⁵¹⁹ Petković's Appeal Brief, para. 247, referring to Petković's Appeal Brief, paras 54-58.

⁷⁵²⁰ Petković's Appeal Brief, para. 249; Petković's Reply Brief, paras 48-50; Appeal Hearing, AT. 496-497 (23 Mar 2017). Petković further submits, in reply, that since "ethnic cleansing" was established by the Trial Chamber as the "only one, single common criminal purpose", crimes committed in Jablanica that did not result in ethnic cleansing cannot reasonably be considered as committed with the intent to further the JCE. Petković's Reply Brief, para. 52, citing Trial Judgement, Vol. 4, para. 41. See also Petković's Reply Brief, paras 48-50.

⁷⁵²¹ See generally Petković's Appeal Brief, paras 124-127.

⁷⁵²² Petković's Appeal Brief, paras 124, 127. See Petković's Appeal Brief, para. 112(iii)(b).



crimes.⁷⁵²³ Petković reiterates that “everyone involved agreed” that civilians be moved to mitigate the risk of harm during ongoing military activities and that no one thought this to be a crime.⁷⁵²⁴

2202. Lastly, Petković argues that the Trial Chamber erred by failing to make a finding regarding his *mens rea* to commit the crimes of imprisonment and unlawful confinement.⁷⁵²⁵

2203. The Prosecution responds that the Trial Chamber reasonably found that Petković ordered the HVO to dispatch buses to Sovići to remove the Muslim population, dismissing his trial arguments to the contrary.⁷⁵²⁶ Further, it submits that Petković attempts to revisit issues on appeal without showing an error, given that the Trial Chamber already rejected his arguments that poor road conditions prevented him from transporting civilians to Jablanica as he intended and that he was merely assisting civilians at Halilović’s request.⁷⁵²⁷ The Prosecution submits that Petković’s arguments based on alleged humanitarian grounds and the ethnic map of Jablanica Municipality were already raised in other grounds of appeal.⁷⁵²⁸

2204. According to the Prosecution, the Trial Chamber did in fact find that Petković intended that forcible displacement be committed.⁷⁵²⁹ It argues that Petković was aware of the illegality of his order to forcibly remove Muslim civilians from Sovići and Doljani in light of his knowledge of the pattern of crimes in other municipalities and the fact that he saw firsthand the dire conditions in Sovići.⁷⁵³⁰ The Prosecution submits that Petković ignores the relevant context, resulting in his implausible claim that his order was intended to prevent the risk of harm.⁷⁵³¹

b. Analysis

2205. First, with respect to Petković’s argument that the Trial Chamber failed to establish that the Muslim civilians were transported to Gornji Vakuf, rather than Jablanica, due to obstacles on the

⁷⁵²³ Petković’s Appeal Brief, para. 125. According to Petković, such aspects of the removal of civilians that are relevant for his *mens rea* consist of his: (1) knowledge about the legality of the evacuation; (2) “opinion” about the purpose of transporting civilians from Sovići; (3) contribution to the well-being of the Muslim civilians; and (4) intent to unlawfully transfer civilians from the two villages. Petković’s Appeal Brief, para. 125.

⁷⁵²⁴ Petković’s Appeal Brief, para. 126. See also Petković’s Reply Brief, para. 19(ii). Petković further submits that some wanted to leave Sovići voluntarily and that he “did his best to help protect them”. Petković’s Appeal Brief, para. 126.

⁷⁵²⁵ Petković’s Appeal Brief, para. 112(iii)(c).

⁷⁵²⁶ Prosecution’s Response Brief (Petković), para. 189, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 607, Vol. 4, para. 722. See also Prosecution’s Response Brief (Petković), para. 182.

⁷⁵²⁷ Prosecution’s Response Brief (Petković), para. 190, referring to Trial Judgement, Vol. 2, para. 609 & fns 1383, 1386, Vol. 4, fns 1387-1388.

⁷⁵²⁸ Prosecution’s Response Brief (Petković), para. 190. See also Appeal Hearing, AT. 531-532 (23 Mar 2017).

⁷⁵²⁹ Prosecution’s Response Brief (Petković), para. 67, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 723, 815. See also Prosecution’s Response Brief (Petković), para. 88.

⁷⁵³⁰ Prosecution’s Response Brief (Petković), paras 84-86, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 676, 705, 707-708, 710.

⁷⁵³¹ Prosecution’s Response Brief (Petković), para. 87. It further submits that, in any event, the removal of villagers away from a humanitarian crisis that was caused by Petković’s own criminal conduct could not justify his order. Prosecution’s Response Brief (Petković), para. 87. See also Prosecution’s Response Brief (Petković), fn. 765.

road, the Appeals Chamber considers that he fails to demonstrate how this assertion impacts the Trial Chamber's finding that these persons were forcibly and unlawfully transferred insofar as, *inter alia*, the relocation ultimately deprived them of their right to enjoy a normal, social, family, and cultural life.⁷⁵³² Concerning his related submission that the ethnic map of Jablanica Municipality remained unchanged given that these same civilians were then transferred back to Jablanica in June 1993, to which they agreed, Petković repeats arguments made in his sub-ground of appeal 3.2.2.1, which are dismissed elsewhere.⁷⁵³³

2206. The Appeals Chamber further observes that the Trial Chamber expressly considered Petković's submissions at trial that: (1) all the circumstances surrounding the evacuation of civilians from the Doljani-Sovići sector led him to believe that "this was a legal operation, in accordance with the wishes and well-being of the civilians, and organised by the civilians themselves and the ABiH commanders"; and (2) he did not issue an order requesting the release of all civilian detainees from Sovići.⁷⁵³⁴ The Appeals Chamber considers that the Trial Chamber implicitly rejected these submissions insofar as it subsequently concluded that: (1) he "orchestrated" the removal of people detained at the Sovići School to Gornji Vakuf,⁷⁵³⁵ and (2) by, *inter alia*, planning, directing and facilitating military operations, he intended the crimes committed by HVO members.⁷⁵³⁶ The Appeals Chamber further notes in this respect that the Trial Chamber subsequently found that Petković was criminally responsible, by virtue of his participation in the JCE, for unlawful transfer and inhumane acts (forcible transfer) under Articles 2 and 5 of the Statute, respectively, in Jablanica Municipality.⁷⁵³⁷ In light of a review of the Trial Judgement as a whole, the Appeals Chamber considers that the Trial Chamber's findings reflect that it was satisfied beyond reasonable doubt that Petković intended to commit the crimes of inhumane acts (forcible transfer) and unlawful transfer of civilians detained in Jablanica Municipality. In this regard, the Appeals Chamber notes that when concluding that Petković either did not contribute to certain other crimes or did not possess the

⁷⁵³² Trial Judgement, Vol. 3, paras 850, 852, 908, 910. See also *Naletilić and Martinović* Appeal Judgement, para. 153, citing *Krnojelac* Appeal Judgement, para. 218 (finding, in the context of the crime against humanity of persecution through forcible displacement, that "[t]he forced character of displacement and the forced uprooting of the inhabitants of a territory entail the criminal responsibility of the perpetrator, not the destination to which these inhabitants are sent"); Trial Judgement, Vol. 4, para. 1103.

⁷⁵³³ Moreover, Petković refers to the same evidence to which he referred in his ground of appeal 3. See *supra*, paras 891, 894, 896. Cf. Petković's Appeal Brief, paras 247 (referring to Petković's Appeal Brief, paras 54-58), 249; Petković's Reply Brief, paras 48, 50 (referring to Ex. P02825, Nihad Kovač, T. 10311 (16 Nov 2006), Witness CA, T. 10042 (13 Nov 2006)). For the same reason, the Appeals Chamber dismisses Petković's submission, in reply, that since "ethnic cleansing" was established by the Trial Chamber as the "only one, single common criminal purpose", crimes committed in Jablanica that did not result in ethnic cleansing cannot reasonably be considered as committed with the intent to further the JCE.

⁷⁵³⁴ Trial Judgement, Vol. 4, para. 722.

⁷⁵³⁵ Trial Judgement, Vol. 2, para. 608, Vol. 4, paras 722-723. See also Trial Judgement, Vol. 2, para. 607.

⁷⁵³⁶ Trial Judgement, Vol. 4, para. 815.

⁷⁵³⁷ Trial Judgement, Vol. 4, para. 820.



requisite *mens rea* to commit them, the Trial Chamber did so expressly.⁷⁵³⁸ The Appeals Chamber thus rejects Petković's contention that the Trial Chamber erred in failing to make a reasoned finding regarding his intent to commit these crimes.

2207. Moreover, when arguing that his proposal that he and Halilović go to Doljani and his decision to accept the ABiH's request to assist in this relocation were his sole contributions to the removal and that they could not reasonably be regarded as culpable contributions to a JCE, Petković repeats submissions considered and rejected at trial without demonstrating an error.⁷⁵³⁹ For the same reasons, the Appeals Chamber also rejects his argument – previously raised and rejected at trial – that if he justifiably erred with regard to the aspects of the civilians' removal that are relevant for his *mens rea* to commit forcible and unlawful transfer, such an error would negate the mental element required for those crimes.

2208. Concerning his assertion that everyone involved agreed that civilians be moved to mitigate the risk of harm during ongoing military activities and that no one thought this to be a crime, the Appeals Chamber notes that Petković provides no support for this assertion and, in any case, disregards that the Trial Chamber: (1) expressly considered the circumstances which led to the removal;⁷⁵⁴⁰ and (2) found that the transfer was on no account an evacuation carried out for security purposes nor was it justified for compelling military reasons.⁷⁵⁴¹ Petković merely disagrees with the Trial Chamber's conclusion regarding his *mens rea* for inhumane acts (forcible transfer) and unlawful transfer without showing an error.⁷⁵⁴²

2209. Turning, lastly, to Petković's argument that the Trial Chamber erred by making no inference about his *mens rea* to commit the crimes of imprisonment and unlawful confinement, the Appeals Chamber notes the Trial Chamber's finding that insofar as Petković planned and directed the

⁷⁵³⁸ See, e.g., Trial Judgement, Vol. 4, paras 724, 770, 787, 799.

⁷⁵³⁹ See *supra*, para. 2206; Trial Judgement, Vol. 4, paras 722-723. In pointing to further evidence in support of his argument, he merely asserts that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber did. See Petković's Appeal Brief, para. 248, referring to Ex. P02187, Filip Filipović, T. 47523 (1 Dec 2009), Milivoj Petković, T. 49487-49489 (16 Feb 2010), 49821-49822 (22 Feb 2010), 49909 (23 Feb 2010). The Appeals Chamber notes that, in any case, the Trial Chamber did expressly take into account Exhibit P02187 and considered the testimony of Petković and Filipović generally in the context of the removal of people from the Sovići School to Gornji Vakuf. See Trial Judgement, Vol. 2, paras 605-606 & fns 1379, 1381, 1383, 1386, 1388, 1390 and references cited therein.

⁷⁵⁴⁰ Trial Judgement, Vol. 2, paras 605-606, 608. See also *supra*, para. 2199; Trial Judgement, Vol. 4, para. 722.

⁷⁵⁴¹ Trial Judgement, Vol. 3, paras 849, 907.

⁷⁵⁴² See Trial Judgement, Vol. 3, paras 849, 907. In support of his submission that some wanted to leave Sovići voluntarily and that he did his best to help protect them, Petković points to his own testimony. See Petković's Appeal Brief, para. 126, referring to, *inter alia*, Milivoj Petković, T. 49487-49489 (16 Feb 2010). The Appeals Chamber notes that the Trial Chamber considered his testimony pertaining to the circumstances that led to the removal. See Trial Judgement, Vol. 2, fns 1379, 1381. Moreover, elsewhere in the Trial Judgement, the Trial Chamber explained that although it relied on his testimony in some instances, it considered the testimony hardly credible when Petković sought to limit his criminal responsibility. Trial Judgement, Vol. 1, para. 399. The Appeals Chamber notes that, in any case,



military operations, he knew that the arrests of Muslim civilians and combatants in Sovići and Doljani were an integral part of a plan by the HVO leadership.⁷⁵⁴³ The Trial Chamber subsequently concluded that by planning and directing the military operations in Jablanica in April 1993 and continuing to exercise control over the HVO all the while knowing that its members committed crimes, he intended for these crimes to be committed.⁷⁵⁴⁴ Petković does not identify an error in the Trial Chamber's approach, thereby warranting dismissal of his argument.

(v) Conclusion

2210. In light of the foregoing, the Appeals Chamber finds that Petković has failed to show an error in the Trial Chamber's findings that he: (1) participated in planning and directing the HVO attack on Sovići and Doljani; (2) knew that the destruction of Muslim houses and two mosques in Sovići and Doljani were an integral part of the plan; (3) obstructed the passage of international observers and peace-keeping convoys for the purpose of concealing crimes committed in Sovići and Doljani; and (4) orchestrated the removal of Muslim civilians from Sovići and Doljani to Gornji Vakuf, thus culpably contributing to the commission of a crime. Further, Petković has failed to show that the Trial Chamber erred in finding that he had the requisite *mens rea* for the crimes of inhumane acts (forcible transfer) and unlawful transfer of civilians, as well as imprisonment and unlawful confinement. Accordingly, Petković's sub-grounds of appeal 4.3.1 in part, 4.3.2.2, and 5.2.2.3 are dismissed.

(d) Mostar Municipality (Petković's Sub-ground 5.2.2.4)

2211. The Trial Chamber found that Petković contributed to crimes committed by the HVO in Mostar Municipality, including those crimes linked to: (1) the evictions and removal of the Muslim population of West Mostar from the second half of May 1993; and (2) the siege of East Mostar.⁷⁵⁴⁵

2212. Petković raises challenges pertaining to the Trial Chamber's findings regarding his contribution, knowledge, and intent for these crimes.⁷⁵⁴⁶ The Appeals Chamber will deal with these challenges in turn.

even if the Trial Chamber had accepted his testimony that *some* of those gathered at Sovići School wished to leave voluntarily, that would not invalidate the Trial Chamber's finding that other Muslim civilians were forcibly removed.

⁷⁵⁴³ Trial Judgement, Vol. 4, para. 717.

⁷⁵⁴⁴ Trial Judgement, Vol. 4, para. 815.

⁷⁵⁴⁵ Trial Judgement, Vol. 4, paras 725-756, 815, 818, 820.

⁷⁵⁴⁶ Petković's Appeal Brief, paras 251, 256-268, 270-277, 279-282.

(i) Alleged errors regarding the evictions and removal of the Muslim population of West Mostar

2213. With respect to Petković's contribution to the crimes linked to the evictions and removal of the Muslim population from West Mostar between May 1993 and February 1994, the Trial Chamber found that on 14 June 1993, the Main Staff was informed by the Military Police that the Vinko Škrobo ATG as well as the 4th Battalion of the 3rd HVO Brigade ("Tihomir Mišić Battalion") transported members of the Muslim population to the east side of the river and that this constituted "illegal ethnic cleansing".⁷⁵⁴⁷ It further held that on the same day, Petković, Stojić, and Žarko Keza, head of the VOS, received the CED Report mentioning that: (1) during the eviction operations which had occurred on 13 June 1993, members of the Tihomir Mišić Battalion as well as Vinko Martinović with members of his Vinko Škrobo ATG had raped several women and had beaten numerous people; and (2) there were "indications" that civilians had been murdered during these operations.⁷⁵⁴⁸

2214. In this context, the Trial Chamber recalled its previous findings that during the operations evicting Muslims from West Mostar between May 1993 and February 1994, HVO soldiers, including the Benko Penavić ATG in May 1993, the Tihomir Mišić Battalion, and members of the KB in June 1993, and members of the Vinko Škrobo and Benko Penavić ATGs in September 1993 threatened and beat the Muslims they were evicting, taking all the valuable items they had with them or from their apartments.⁷⁵⁴⁹

2215. Based on these considerations, the Trial Chamber found that Petković was directly informed of the eviction operations in June 1993 carried out by his subordinates and of the "atmosphere of violence surrounding these operations and that, at the very least, he allowed this to happen insofar as the [same] units continued operating in the same atmosphere of violence in

⁷⁵⁴⁷ Trial Judgement, Vol. 4, para. 732. The Appeals Chamber notes that the English translation of the Trial Judgement states that the Main Staff was informed by the Military Police that the Vinko Škrobo ATG and the 4th Battalion of the 3rd HVO Brigade were "involved in transporting the Muslims from the east side of the river". Trial Judgement, Vol. 4, para. 732 (emphasis added), referring to Ex. P02749, p. 2. However, the Appeals Chamber observes that the French original reflects the Trial Chamber's finding that the Trial Chamber considered that the Muslims were transferred to the east side of the river. Trial Judgement, Vol. 4, para. 732 ("*Le 14 juin 1993, l'État-major principal a été informé par la Police militaire du fait que l'ATG Vinko Škrobo ainsi que le 4^e bataillon dit «Tihomir Mišić» de la 3^e brigade du HVO, étaient impliqués dans le transport des Musulmans du côté est de la rivière et que cela constituait un «nettoyage ethnique illégal.»*") (emphasis added), referring to Ex. P02749, p. 2. Further, the Appeals Chamber observes that the Trial Chamber relied on Exhibit P02749 in support of its factual finding that HVO soldiers forced the Muslims of West Mostar to cross the confrontation line in the direction of Donja Mahala, i.e. East Mostar. See Trial Judgement, Vol. 2, fn. 2033, referring to Ex. P02749.

⁷⁵⁴⁸ Trial Judgement, Vol. 4, para. 732, referring to Ex. P02770.

⁷⁵⁴⁹ Trial Judgement, Vol. 4, para. 733, referring to Trial Judgement, Vol. 3, paras 782-785, 811-815, 853-862, 911-919, 1632-1641, 1664-1668.

evicting and removing the population of West Mostar until February 1994”.⁷⁵⁵⁰ Moreover, the Trial Chamber found that the only reasonable inference was that, having failed to take any measures to stop the evictions or punish the perpetrators, while at the same time exercising his functions within the HVO, “Petković accepted the evictions and the acts of violence accompanying them”.⁷⁵⁵¹

a. Arguments of the Parties

2216. Petković submits that the Trial Chamber erred in finding that he significantly contributed to the commission of the evictions from West Mostar.⁷⁵⁵² He argues that while the evidence shows that on 14 June 1993, he received information about the evictions of Muslims that had occurred on the previous day, the Trial Chamber erroneously inferred that he was informed about other eviction “operations” from West Mostar.⁷⁵⁵³

2217. Petković also contends that the Trial Chamber erred in concluding that he allowed the evictions to occur.⁷⁵⁵⁴ He submits that there is no evidence on the record that shows that he had any indication that the eviction operations would be launched on 13 June 1993, thus he was not in a position either to allow or prevent that action.⁷⁵⁵⁵ He also argues that the Trial Chamber concluded that the “same units” continued to remove the Muslim population, without providing a reasoned opinion with respect to his contribution to the commission of these crimes.⁷⁵⁵⁶

2218. Petković further avers that the Trial Chamber erred when it inferred that he failed to take any measures to stop the evictions or punish the perpetrators.⁷⁵⁵⁷ In this regard, Petković submits that he could not stop the evictions of 13 June 1993 since he was not informed about them in advance.⁷⁵⁵⁸ Similarly, he contends that the Trial Chamber did not provide a reasoned opinion concerning his failure to prevent the evictions occurring after 13 June 1993.⁷⁵⁵⁹ In particular, he

⁷⁵⁵⁰ Trial Judgement, Vol. 4, para. 734. The Appeals Chamber observes that the English translation does not reflect the original French version of the Judgement in its entirety; the Trial Chamber concluded that Petković was directly informed “*du climat de violence entourant ces opérations et qu’il a à tout le moins laisser faire, dans la mesure où ces mêmes unités ont continué à procéder dans le même climat de violence à des évictions et déplacements de la population de Mostar-ouest jusqu’en février 1994.*” Trial Judgement, Vol. 4, para. 734 (original French version) (emphasis added).

⁷⁵⁵¹ Trial Judgement, Vol. 4, para. 735.

⁷⁵⁵² Petković’s Appeal Brief, para. 264. See also Petković’s Appeal Brief, paras 256-263; Petković’s Reply Brief, paras 55-58.

⁷⁵⁵³ Petković’s Appeal Brief, para. 257, referring to Ex. P02770. Petković also argues that the Trial Chamber erred in inferring that Vinko Martinović and his ATGs were subordinated to him as they were directly subordinated to the Supreme Commander and not to the Chief of the Main Staff. Petković’s Appeal Brief, para. 258, referring to Petković’s Appeal Brief, paras 152-153 (Petković’s sub-ground 5.1.1.4).

⁷⁵⁵⁴ Petković’s Appeal Brief, para. 259.

⁷⁵⁵⁵ Petković’s Appeal Brief, para. 260. Specifically, he argues that the fact that he was informed about the evictions only the day after cannot be considered as permission for these crimes to be committed. Petković’s Appeal Brief, para. 260.

⁷⁵⁵⁶ Petković’s Appeal Brief, para. 261.

⁷⁵⁵⁷ Petković’s Appeal Brief, paras 262-263.

⁷⁵⁵⁸ Petković’s Appeal Brief, para. 262.

⁷⁵⁵⁹ Petković’s Appeal Brief, para. 262.

submits that: (1) as Chief of the Main Staff he did not have authority to punish commanders and soldiers from HVO units;⁷⁵⁶⁰ and (2) after he was removed from the position of Chief of Main Staff on 24 July 1993, as Deputy Chief of the Main Staff or Deputy Commander he was not “in the direct chain of command”.⁷⁵⁶¹

2219. The Prosecution responds that Petković fails to show any error in the Trial Chamber’s findings concerning his role in the violent evictions of the Muslim population carried out in West Mostar from May 1993 to February 1994.⁷⁵⁶² With respect to Petković’s argument that the Trial Chamber erred in finding that he was informed about the evictions in West Mostar, the Prosecution contends that Petković: (1) knew about these crimes as he was present in West Mostar from May until at least 18 July 1993;⁷⁵⁶³ and (2) was repeatedly informed about their occurrence.⁷⁵⁶⁴ Moreover, the Prosecution points to findings of the Trial Chamber that, it submits, show that Petković was informed that violent evictions occurred in Mostar prior to 14 June 1993;⁷⁵⁶⁵ and argues that he subsequently received the CED Report about the violent evictions conducted by Vinko Martinović and other HVO troops, and yet did nothing to stop these crimes.⁷⁵⁶⁶

2220. The Prosecution further contends that the Trial Chamber reasonably found that Petković’s failure to take measures to stop the evictions or punish the perpetrators contributed to these crimes.⁷⁵⁶⁷ It submits that he had effective control over the HVO, including the KB and its ATGs, which he continued to exercise when he became Deputy Commander, thus he had the ability to intervene to stop these crimes.⁷⁵⁶⁸ According to the Prosecution, Petković’s arguments fail to appreciate the Trial Chamber’s finding that the KB, including members of the Vinko Škrobo ATG, was involved in the subsequent evictions in Mostar.⁷⁵⁶⁹ In this context, the Prosecution contends that the fact that Petković did not receive additional information about the KB’s involvement in further evictions does not excuse his failure to “take action in response to the [CED Report]”.⁷⁵⁷⁰

⁷⁵⁶⁰ Petković’s Appeal Brief, para. 263(i), referring to Petković’s Appeal Brief, para. 150 (Petković’s Sub-Ground 5.1.1.3).

⁷⁵⁶¹ Petković’s Appeal Brief, para. 263(iii). Petković also reiterates that he was not the superior of Vinko Martinović or his ATG, nor of the KB or other ATGs. Petković’s Appeal Brief, para. 263(ii).

⁷⁵⁶² Prosecution’s Response Brief (Petković), paras 194, 196-199. See also Prosecution’s Response Brief (Petković), paras 192-193.

⁷⁵⁶³ Prosecution’s Response Brief (Petković), para. 196, referring to Božo Perić, T. 47872-47873, 47882 (8 Dec 2009), Raymond Lanè, T. 23712-23713 (15 Oct 2007).

⁷⁵⁶⁴ Prosecution’s Response Brief (Petković), para. 196, referring to Trial Judgement, Vol. 4, paras 58, 676, 727, 732, 734, 788-789, 807, 828, 843.

⁷⁵⁶⁵ Prosecution’s Response Brief (Petković), para. 197, referring to Trial Judgement, Vol. 2, paras 727, 788-789, 805, 812-818, 864-876, 1429, Vol. 4, paras 56-58, 676.

⁷⁵⁶⁶ Prosecution’s Response Brief (Petković), para. 197.

⁷⁵⁶⁷ Prosecution’s Response Brief (Petković), para. 198.

⁷⁵⁶⁸ Prosecution’s Response Brief (Petković), para. 198.

⁷⁵⁶⁹ Prosecution’s Response Brief (Petković), para. 199.

⁷⁵⁷⁰ Prosecution’s Response Brief (Petković), para. 199.

b. Analysis

2221. With respect to Petković's claim that the Trial Chamber erred in finding that he was informed about other eviction "operations" besides the one that occurred on 13 June 1993, the Appeals Chamber finds that he misrepresents the Trial Judgement. The Trial Chamber found that he was directly informed "of the operations to evict Muslims from West Mostar in *June 1993* by HVO units".⁷⁵⁷¹ However, Petković ignores that the Trial Chamber found that, while the eviction operations lasted between May 1993 and February 1994,⁷⁵⁷² the only operation "in June 1993" was the one which took place on 13 June 1993.⁷⁵⁷³ Reading the Trial Judgement as a whole, the Appeals Chamber understands that the Trial Chamber found that Petković received information only with respect to the operation that occurred on 13 June 1993, rather than that he was informed of other eviction operations that occurred in West Mostar. Accordingly, Petković's arguments are dismissed.⁷⁵⁷⁴

2222. The Appeals Chamber also considers that Petković's argument that he could not have contributed to the eviction operation that occurred on 13 June 1993 is again based on a misrepresentation of the Trial Chamber's findings. The Trial Chamber found that, being informed of the violent eviction operation that occurred on 13 June 1993, Petković allowed such operations to occur "insofar as the [same] units *continued* operating in the same atmosphere of violence in evicting and removing the population of West Mostar until February 1994".⁷⁵⁷⁵ In the view of the Appeals Chamber, a plain reading of the Trial Judgement clearly shows that, on the basis of his knowledge of the violent removal of the Muslim population on 13 June 1993 combined with his failure to punish the direct perpetrators thereof, the Trial Chamber found that Petković contributed to subsequent violent eviction operations. Moreover, in reaching its conclusion regarding Petković's contribution to subsequent eviction operations, the Trial Chamber expressly recalled its previous factual findings and the underlying evidence that members of the KB, its ATGs, and the Tihomir Mišić Battalion carried out these eviction operations in different stages between May 1993 and February 1994.⁷⁵⁷⁶ In particular, it noted that the Benko Penavić ATG and Vinko Škrobo ATG repeatedly evicted Muslims from West Mostar both in May and September 1993 and in June and September 1993, respectively.⁷⁵⁷⁷ Accordingly, Petković does not show any error in the Trial

⁷⁵⁷¹ Trial Judgement, Vol. 4, para. 734 (emphasis added).

⁷⁵⁷² See Trial Judgement, Vol. 2, paras 805, 815, 818, 827-828, 864, 876, 900, 920, 985-987.

⁷⁵⁷³ See Trial Judgement, Vol. 2, paras 860-864, 876, Vol. 3, paras 782, 811, 853, 911.

⁷⁵⁷⁴ The Appeals Chamber also notes that Petković's argument that the Trial Chamber erred in inferring that Vinko Martinović and his ATGs were subordinated to him as they were directly subordinated to the Supreme Commander, rather than the Chief of the Main Staff, is based entirely on a cross-reference to his sub-ground of appeal 5.1.1.4, which the Appeals Chamber dismisses elsewhere. See *supra*, paras 2108-2110.

⁷⁵⁷⁵ Trial Judgement, Vol. 4, para. 734 (emphasis added).

⁷⁵⁷⁶ Trial Judgement, Vol. 4, para. 733.

⁷⁵⁷⁷ Trial Judgement, Vol. 4, para. 733.

Chamber's reasoning and his arguments that the Trial Chamber failed to refer to any evidence or provide a reasoned opinion are dismissed.

2223. Turning to Petković's challenge that the Trial Chamber erred in finding that he failed to stop the perpetrators of the eviction operations in West Mostar, the Appeals Chamber finds no merit in his argument that he could not stop the eviction operation that occurred on 13 June 1993. In this regard, the Appeals Chamber reiterates that the Trial Chamber found that Petković contributed to the eviction operations *following* the one that occurred on 13 June 1993.⁷⁵⁷⁸ Moreover, Petković's unsubstantiated argument that the Trial Chamber failed to provide a reasoned opinion with respect to the evictions which occurred after 13 June 1993 is directly contradicted by the express finding that his failure to take any measure against the perpetrators of the removals contributed to the repetition of these crimes until February 1994.⁷⁵⁷⁹ Based on these considerations, the Appeals Chamber finds that in making this undeveloped assertion, Petković fails to articulate any error in the Trial Chamber's finding concerning his contribution to these subsequent operations.

2224. As to his contentions that, as Chief of the Main Staff, and subsequently as both Deputy Chief of the Main Staff and Deputy Commander, he had no ability to punish the perpetrators of the crimes, the Appeals Chamber observes that Petković repeats arguments from other grounds of appeal, which the Appeals Chamber dismisses elsewhere.⁷⁵⁸⁰

2225. Accordingly, Petković's challenges concerning his responsibility for the eviction operations of Muslims from West Mostar that occurred between June 1993 and February 1994 are dismissed.

(ii) Alleged errors regarding the siege of East Mostar

2226. The Trial Chamber found that during the siege of East Mostar from June 1993 to April 1994, Petković contributed to a number of crimes including, *inter alia*, those resulting from: (1) the shelling of East Mostar; and (2) the blocking of access of humanitarian aid and international organisations to East Mostar.⁷⁵⁸¹

⁷⁵⁷⁸ See *supra*, para. 2222.

⁷⁵⁷⁹ Trial Judgement, Vol. 4, paras 734-735.

⁷⁵⁸⁰ See *supra*, paras 2108-2109. In this regard, the Appeals Chamber reiterates that it has dismissed Petković's argument that the Trial Chamber erred in inferring that Vinko Martinović and his ATG were subordinated to him rather than the Supreme Commander. See *supra*, paras 2108-2110.

⁷⁵⁸¹ Trial Judgement, Vol. 4, paras 739-755. The Trial Chamber also found that Petković contributed to the destruction of Baba Bešir Mosque and the arrest of Muslim men as of 30 June 1993. See Trial Judgement, Vol. 4, paras 728-730, 737-738. See also Trial Judgement, Vol. 4, para. 820.

2227. Petković raises challenges regarding the Trial Chamber's findings vis-à-vis his contribution to these crimes.⁷⁵⁸² The Appeals Chamber will deal with these challenges in turn.

a. Shelling of East Mostar

2228. The Trial Chamber found that Petković contributed to crimes resulting from the shelling of East Mostar.⁷⁵⁸³ Specifically, it relied on: (1) the fact that the HVO artillery was under the control of the Main Staff, including the direct subordination of the Široki Brijeg artillery regiment to the Main Staff between 12 August and 1 December 1993,⁷⁵⁸⁴ and (2) orders issued by Petković on 27 March 1993 and 8 November 1993, respectively.⁷⁵⁸⁵ With respect to the 8 November 1993 Order, which ordered offensive operations in the towns of Bijelo Polje, Blagaj, and Mostar, as well as the shelling of Mostar,⁷⁵⁸⁶ the Trial Chamber considered and rejected Petković's arguments that he did not sign or issue it.⁷⁵⁸⁷

2229. Petković submits that the Trial Chamber unreasonably concluded that he contributed to the shelling of East Mostar in light of the evidence on the record.⁷⁵⁸⁸ In support of this contention, Petković also avers that the Trial Chamber erred in rejecting his arguments that he did not issue the 8 November 1993 Order.⁷⁵⁸⁹ The Appeals Chamber will first address Petković's submissions concerning the 8 November 1993 Order before turning to his contentions regarding the Trial Chamber's conclusions on his contribution to the shelling of East Mostar.

i. Petković's issuance of the 8 November 1993 Order

2230. In rejecting Petković's claim that he did not issue the 8 November 1993 Order, the Trial Chamber observed that: (1) the fact that he was not present in Čitluk did not prevent him from issuing this order from a distance; (2) the evidence on the record does not establish that Petković did not issue the order; and (3) the order was sent through the chain of command.⁷⁵⁹⁰

⁷⁵⁸² Petković's Appeal Brief, paras 266-268, 270-277, 279-280. Petković also challenges his convictions for the arrest of Muslim men as of 30 June 1993. Petković's Appeal Brief, para. 265, referring to Petković's Appeal Brief, paras 174-213. The Appeals Chamber notes that in this context, Petković refers to his submissions in his sub-ground of appeal 5.2.1, which the Appeals Chamber dismisses elsewhere in this Judgement. See *supra*, para. 382.

⁷⁵⁸³ Trial Judgement, Vol. 4, paras 747, 815.

⁷⁵⁸⁴ Trial Judgement, Vol. 4, para. 744, referring to Trial Judgement, Vol. 1, paras 798-806.

⁷⁵⁸⁵ Trial Judgement, Vol. 4, paras 745-746.

⁷⁵⁸⁶ Trial Judgement, Vol. 4, paras 668, 746, referring to Ex. P06534.

⁷⁵⁸⁷ Trial Judgement, Vol. 2, para. 1301.

⁷⁵⁸⁸ Petković's Appeal Brief, paras 268, 270-271, referring to Petković's Appeal Brief, para. 279.

⁷⁵⁸⁹ Petković's Appeal Brief, para. 279.

⁷⁵⁹⁰ Trial Judgement, Vol. 2, para. 1301.

a- Arguments of the Parties

2231. Petković submits that the Trial Chamber erred in determining that he issued the 8 November 1993 Order.⁷⁵⁹¹ Specifically, Petković argues that the order does not contain his signature or “some other proof that it was issued by [him]”.⁷⁵⁹²

2232. Moreover, Petković contends that the Trial Chamber erred in finding that he issued the 8 November 1993 Order on the basis of “the lack of evidence that [he] did not issue the order ‘from a distance’”.⁷⁵⁹³ In support of his argument, Petković highlights that the Trial Chamber reached its conclusion based on the considerations that: (1) despite the fact that he was not in Čitluk, where the order was issued, on 8 November 1993, nothing would have prevented him from issuing the order remotely; and (2) there was no evidence that he did not issue the order.⁷⁵⁹⁴

2233. Petković also avers that there is no evidence that he signed the order remotely.⁷⁵⁹⁵ Rather, he points to evidence reflecting that a different order, which was issued on the same day, also bore Petković’s name despite being signed by Praljak.⁷⁵⁹⁶ According to Petković, the evidence “proves that [he] was not in Čitluk on 8 November 1993 and that Praljak signed th[at] order”.⁷⁵⁹⁷

2234. Finally, Petković submits that the Trial Chamber erred in fact when finding that the Old Bridge was shelled throughout the day of 8 November 1993 on the basis of his order, as implemented by the order issued by Miljenko Lasić.⁷⁵⁹⁸ Petković argues that this is impossible, as Lasić’s order was received in the artillery battalion in Čitluk as late as 5:00 p.m. that day and that it was received by all recipients at the same time because it was sent via “package-radio”.⁷⁵⁹⁹

2235. The Prosecution responds that the Trial Chamber reasonably found that he issued the 8 November 1993 Order.⁷⁶⁰⁰ It contends that the absence of Petković’s signature on the

⁷⁵⁹¹ Petković’s Appeal Brief, paras 270(ii), 279(i), 279(iii)-(v), 280, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1301. See also Petković’s Reply Brief, paras 62-63. According to Petković, the Prosecution set forth the allegation that he ordered the destruction of the Old Bridge for the first time in its final brief. Petković’s Appeal Brief, para. 279(ii), referring to Prosecution’s Final Brief, paras 825-826, 831, 953.

⁷⁵⁹² Petković’s Appeal Brief, para. 279(i). See also Petković’s Reply Brief, paras 62-63.

⁷⁵⁹³ Petković’s Appeal Brief, para. 279(iii).

⁷⁵⁹⁴ Petković’s Appeal Brief, para. 279(iii), referring to Trial Judgement, Vol. 2, para. 1301. See also Appeal Hearing, AT. 571 (23 Mar 2017).

⁷⁵⁹⁵ Petković’s Appeal Brief, para. 279(v).

⁷⁵⁹⁶ Petković’s Appeal Brief, para. 279(iv), referring to Ex. 4D00834, Slobodan Praljak, T. 41270 (8 June 2009). See also Appeal Hearing, AT. 570-571 (23 Mar 2017).

⁷⁵⁹⁷ Petković’s Appeal Brief, para. 279(iv).

⁷⁵⁹⁸ Petković’s Appeal Brief, para. 278(iv).

⁷⁵⁹⁹ Petković’s Appeal Brief, para. 278(iv).

⁷⁶⁰⁰ Prosecution’s Response Brief (Petković), paras 206-208; Appeal Hearing, AT. 538 (23 Mar 2017). With respect to Petković’s contention that the Indictment did not provide him with notice that he ordered the destruction of the Old Bridge, the Prosecution responds that Petković’s responsibility for the destruction of the Old Bridge was described sufficiently in the Indictment. Prosecution’s Response Brief (Petković), paras 216-217, referring to Indictment, paras 17.4(a), (c), (d), (h), 39(c), 116, 118, 229, Trial Judgement, Vol. 3, paras 1587, 1684-1692. Additionally, the

8 November 1993 Order reflects the fact that it was sent by packet communication.⁷⁶⁰¹ In this regard, the Prosecution refers to the Trial Chamber's finding that documents transmitted by packet communication "by their very nature did not contain the sender's signature".⁷⁶⁰² The Prosecution also refers to the Trial Chamber's findings that the Main Staff previously issued an order in Petković's name when he was not physically present and that the Chief of the Main Staff or Deputy Chief were easily reachable by their subordinates.⁷⁶⁰³

2236. Moreover, the Prosecution highlights that the Trial Chamber's conclusion that Petković issued the 8 November 1993 Order, was also supported by its finding that the order was passed down the chain of command and implemented.⁷⁶⁰⁴ Finally, it submits that the fact that the other order of 8 November 1993, which was signed by Praljak, was implemented confirms the Trial Chamber's finding regarding the 8 November Order.⁷⁶⁰⁵

2237. The Prosecution responds that Petković fails to show an error and ignores relevant findings which show that his and Lasić's orders were implemented as of the early morning on 8 November 1993.⁷⁶⁰⁶ The Prosecution further argues that Petković focuses on the only available version of Lasić's order – one that was received by the artillery battalion at 5:00 p.m. – and that his argument that the order was sent simultaneously to all recipients via packet communication is speculative.⁷⁶⁰⁷

b- Analysis

2238. Regarding Petković's argument that the order does not contain his signature or any other evidence that it was issued by him, the Appeals Chamber observes that the order bears his name but no signature,⁷⁶⁰⁸ and that, in another portion of the Trial Judgement, the Trial Chamber explicitly considered that documents transmitted by packet communication, such as the 8 November 1993 Order,⁷⁶⁰⁹ by their very nature did not contain the sender's signature.⁷⁶¹⁰ Reading the Trial

Prosecution contends that during the trial Petković was on notice of the Prosecution's intention to rely on the 8 November 1993 Order and he did not raise any objection with respect to his ability to prepare his case. Prosecution's Response Brief (Petković), para. 218.

⁷⁶⁰¹ Prosecution's Response Brief (Petković), para. 207; Appeal Hearing, AT. 538 (23 Mar 2017).

⁷⁶⁰² Prosecution's Response Brief (Petković), para. 207, referring to Slobodan Praljak T. 44461 (7 Sept 2009), Trial Judgement, Vol. 1, fn. 1712; Appeal Hearing, AT. 538 (23 Mar 2017).

⁷⁶⁰³ Prosecution's Response Brief (Petković), para. 208, referring to Trial Judgement, Vol. 1, paras 733-735, Vol. 2, para. 607.

⁷⁶⁰⁴ Prosecution's Response Brief (Petković), para. 208, referring to Trial Judgement, Vol. 2, para. 1301; Appeal Hearing, AT. 538 (23 Mar 2017).

⁷⁶⁰⁵ Prosecution's Response Brief (Petković), para. 208; Appeal Hearing, AT. 538 (23 Mar 2017).

⁷⁶⁰⁶ Prosecution's Response Brief (Petković), paras 209-210. See also Appeal Hearing, AT. 538 (23 Mar 2017).

⁷⁶⁰⁷ Prosecution's Response Brief (Petković), para. 210.

⁷⁶⁰⁸ Ex. P06534.

⁷⁶⁰⁹ Slobodan Praljak, T. 44461 (7 Sept 2009), referred to in Trial Judgement, Vol. 2, para. 1301 & fn. 3259.

⁷⁶¹⁰ Trial Judgement, Vol. 1, fn. 1712.

Judgement as a whole, the Appeals Chamber finds that Petković's unsubstantiated challenge reflects a mere attempt to substitute his assessment of the evidence for that of the Trial Chamber.

2239. Further, the Appeals Chamber rejects Petković's assertion that the Trial Chamber's conclusion that he issued the 8 November 1993 Order was based on the lack of evidence to the contrary. Petković fails to appreciate that the Trial Chamber's conclusion in this regard was also based on the considerations that the order was sent via packet communication, as well as through the chain of command.⁷⁶¹¹ Accordingly, this argument is dismissed.

2240. Likewise, the Appeals Chamber further rejects Petković's undeveloped argument that there is no evidence that he signed the order remotely as he simply shows disagreement with the Trial Chamber's assessment of evidence.⁷⁶¹² Moreover, he fails to show how the evidence reflecting that an order bearing the name of Petković and signed by Praljak was issued the same day could disturb the impugned finding.

2241. The Appeals Chamber now turns to Petković's argument that it is impossible that the Old Bridge was shelled throughout the day of 8 November 1993 on the basis of his order, as implemented by the order issued by Lasić. It recalls that it has reversed the Trial Chamber's findings that the destruction of the Old Bridge constituted persecution as a crime against humanity (Count 1) and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25) and has therefore acquitted the Appellants of these charges insofar as they concern the Old Bridge.⁷⁶¹³ Notwithstanding this, as Petković's argument concerning the chronology of events could equally impugn the Trial Chamber's conclusion that he issued the 8 November 1993 Order in the first instance, the Appeals Chamber will address it on its merits. Lasić's order is indeed marked as having been received by a light artillery battalion in Čitluk at 5:00 p.m. on 8 November 1993.⁷⁶¹⁴ Petković's argument that the order was received by all recipients at the same time is, however, premised on his unsupported assertion that Lasić's order was exclusively conveyed via "package-radio". The Appeals Chamber recalls in this regard that the Trial Chamber also concluded that the offensive must have been discussed in a meeting on 7 November 1993; at which Lasić was

⁷⁶¹¹ Trial Judgement, Vol. 2, para. 1301, referring to, *inter alia*, Exs. P06534, P06524, Slobodan Praljak, T(F). 44461-44463 (7 Sept 2009). The Appeals Chamber notes, in this regard, that at trial, Petković's counsel acknowledged that the document was sent via packet communication. See T. 44461 (7 Sept 2009).

⁷⁶¹² The Appeals Chamber recalls its conclusion above that the Trial Chamber erred in finding that the destruction of the Old Bridge constituted a crime under Counts 1, 20, and 25. See *supra*, paras 414, 426. Accordingly, the Appeals Chamber dismisses Petković's argument that the Indictment did not plead that he was alleged to have ordered the destruction of the Old Bridge as moot.

⁷⁶¹³ See *supra*, para. 426. The Appeals Chamber also reversed the Trial Chamber's conclusion that the destruction of the Old Bridge constituted wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or customs of war. See *supra*, para. 414.

⁷⁶¹⁴ Ex. P06524.

present.⁷⁶¹⁵ On these bases, the Appeals Chamber finds that Petković's argument fails to demonstrate an error of fact occasioning a miscarriage of justice. It is dismissed.

2242. Accordingly, Petković's challenges that the Trial Chamber erred in determining that he issued the 8 November 1993 Order are dismissed. Thus, Petković has failed to show that the Trial Chamber erred in finding that he issued the 8 November 1993 Order.

ii. Petković's planning of the shelling of East Mostar

2243. With respect to the shelling of East Mostar, the Trial Chamber recalled that: (1) from June 1993 to March 1994, East Mostar was under continuous intense firing and shelling from the HVO which was also carried out in residential areas affecting the population directly;⁷⁶¹⁶ and (2) the Široki Brijeg Artillery Regiment based in the South-East OZ was under the direct command of the Main Staff between 12 August and 1 December 1993.⁷⁶¹⁷

2244. As to Petković's contribution to the shelling of East Mostar, the Trial Chamber found that "as of 27 March 1993", he instructed Miljenko Lasić, the Commander of the South-East OZ, that "for firing at the populated areas it is obligatory to seek approval of the Main Staff" ("27 March 1993 Order").⁷⁶¹⁸ The Trial Chamber also found that Lasić then passed this order to the units under his command.⁷⁶¹⁹ Similarly, the Trial Chamber determined that in the 8 November 1993 Order, Petković directed the Mostar ZP to launch offensive operations in the towns of Bijelo Polje, Blagaj, and Mostar, specifically instructing the units to "[s]hell the town of Mostar selectively at various intervals [...]" and stressing that "[t]he HVO Main Staff will take the most stringent measures against all levels of command that fail to fulfil this order".⁷⁶²⁰ Accordingly, the Trial Chamber concluded that Petković planned the shelling during the siege of East Mostar.⁷⁶²¹ The Trial Chamber further concluded that, insofar as he ordered and contributed to planning this shelling, while knowing that it would lead to murder, injuries, and the destruction of property, including mosques, Petković intended to have these crimes committed.⁷⁶²²

⁷⁶¹⁵ Trial Judgement, Vol. 2, paras 1301-1305, referring to, *inter alia*, Ex. 3D00793 (indicating that Lasić was present and that the meeting took place from 6:00 p.m. to 7:00 p.m.). The Appeals Chamber notes that Miljenko Lasić's name is incorrectly transcribed as "Miljenko Lanić" in the English version of this exhibit. See *supra*, para. 1993 & fn. 6781.

⁷⁶¹⁶ Trial Judgement, Vol. 4, para. 743, referring to Trial Judgement, Vol. 2, paras 994-1018.

⁷⁶¹⁷ Trial Judgement, Vol. 4, para. 744, referring to Trial Judgement, Vol. 1, paras 798-806.

⁷⁶¹⁸ Trial Judgement, Vol. 4, para. 745, referring to Ex. P01736.

⁷⁶¹⁹ Trial Judgement, Vol. 4, para. 745, referring to Ex. P01736.

⁷⁶²⁰ Trial Judgement, Vol. 4, para. 746, citing Ex. P06534.

⁷⁶²¹ Trial Judgement, Vol. 4, para. 747.

⁷⁶²² Trial Judgement, Vol. 4, para. 750.

a- Arguments of the Parties

2245. Petković submits that the Trial Chamber erred in fact by concluding that he planned the shelling during the siege of East Mostar and intentionally contributed “to the commission of murders, injuries to civilians and unlawful destruction of property”.⁷⁶²³ Specifically, he argues that the 27 March 1993 Order was not issued during the siege of East Mostar.⁷⁶²⁴ Further, he reiterates that he did not issue the 8 November 1993 Order.⁷⁶²⁵ In the alternative, Petković submits that the 8 November 1993 Order does not show that he directed the shelling before the order was issued.⁷⁶²⁶

2246. The Prosecution responds that the Trial Chamber correctly concluded that Petković planned and ordered the illegal shelling of East Mostar and that Petković’s arguments should be dismissed.⁷⁶²⁷ Specifically, it highlights the Trial Chamber’s findings that Petković had command over the HVO artillery and HVO military operations in Mostar during the shelling of East Mostar and that he exercised his authority by directing the HVO artillery as reflected in the 27 March 1993 Order and 8 November 1993 Order.⁷⁶²⁸

b- Analysis

2247. With respect to Petković’s argument that the Trial Chamber unreasonably inferred that he planned the shelling during the siege of East Mostar, the Appeals Chamber recalls that a Trial Chamber may rely on either direct or circumstantial evidence to underpin its findings.⁷⁶²⁹ In this regard, the Appeals Chamber finds that Petković fails to show how the Trial Chamber unreasonably relied on the 27 March 1993 Order to the commander of the South-East OZ, as the mere fact that the order was issued prior to the commencement of the shelling does not establish that it was unreasonable to consider this evidence as demonstrative of Petković’s link with the HVO artillery. In this regard, the Appeals Chamber notes that, in support of its conclusion, the Trial Chamber also recalled its previous factual findings that the Široki Brijeg Artillery Regiment, which was based in

⁷⁶²³ Petković’s Appeal Brief, para. 271. See also Petković’s Appeal Brief, para. 270. Petković also argues that the Trial Chamber’s finding concerning the Main Staff’s control over the HVO artillery as well as the Široki Brijeg Artillery Regiment was legally and factually erroneous. See Petković’s Appeal Brief, para. 268, referring to Petković’s Appeal Brief, paras 147-148. See also Petković’s Reply Brief, para. 61.

⁷⁶²⁴ Petković’s Appeal Brief, para. 270(i).

⁷⁶²⁵ Petković’s Appeal Brief, para. 270(ii).

⁷⁶²⁶ Petković’s Appeal Brief, para. 270(ii).

⁷⁶²⁷ Prosecution’s Response Brief (Petković), paras 194, 203-204. See also Appeal Hearing, AT. 529-530, 537 (23 Mar 2017).

⁷⁶²⁸ Prosecution’s Response Brief (Petković), para. 204, referring to Trial Judgement, Vol. 1, paras 799-805, Vol. 2, paras 703-705, Vol. 4, paras 579, 659, 744-747; Appeal Hearing, AT. 537-538 (23 Mar 2017).

⁷⁶²⁹ See, e.g., *Popović et al.* Appeal Judgement, para. 971; *Dorđević* Appeal Judgement, para. 348. With regard to circumstantial evidence, the Appeals Chamber recalls that a trial chamber may draw inferences to establish a fact on which a conviction relies so long as it is the only reasonable inference that could be drawn from the evidence presented. *Stanišić and Župljanin* Appeal Judgement, para. 375; *Popović et al.* Appeal Judgement, para. 1277-1278; *Stakić* Appeal Judgement, para. 219.

the South-East OZ, was placed under the direct command of the Main Staff between 12 August and 1 December 1993.⁷⁶³⁰ This argument therefore fails.

2248. With respect to the 8 November 1993 Order, as a preliminary matter, the Appeals Chamber reiterates its previous finding that Petković failed to show any error in the Trial Chamber's finding that he issued such order.⁷⁶³¹ Moreover, the Appeals Chamber finds no merit in Petković's argument that the Trial Chamber unreasonably relied on this evidence in order to conclude that he planned the shelling of East Mostar between June 1993 and March 1994. Specifically, while he argues that the 8 November 1993 Order cannot show that he ordered the shelling of East Mostar before that date, he fails to appreciate that the Trial Chamber relied on the 8 November 1993 Order along with other relevant evidence on the record in order to infer that he planned the shelling during the siege.⁷⁶³² Specifically, in reaching its conclusion, the Trial Chamber also took into account that: (1) the Široki Brijeg Artillery Regiment based in the South-East OZ was under the direct command of the Main Staff from 12 August to 1 December 1993; and (2) Petković instructed the Commander of the South-East OZ, Miljenko Lasić, that "for firing at the populated areas it is obligatory to seek approval of the Main Staff".⁷⁶³³ In this context, Petković does not explain how it was unreasonable for the Trial Chamber to rely on these factors as circumstantial evidence in support of its conclusion, thus his argument is dismissed.

2249. In light of the foregoing, the Appeals Chamber finds that Petković fails to show that it was unreasonable for the Trial Chamber to conclude that he planned the shelling of East Mostar between June 1993 and March 1994 based on circumstantial evidence.

b. Blocking of access of humanitarian aid and international organisations to East Mostar

2250. In concluding that Petković contributed to the continuation of harsh living conditions of the Muslim population in East Mostar, the Trial Chamber observed that he had the power to allow the passage of humanitarian convoys and international organisations to East Mostar.⁷⁶³⁴ The Trial Chamber also noted that, following a meeting attended by Petković and Stojić, a humanitarian convoy was organised to go to East Mostar on 21 August 1993 and that Petković had the

⁷⁶³⁰ Trial Judgement, Vol. 4, para. 744, referring to Trial Judgement, Vol. 1, paras 798-806.

⁷⁶³¹ See *supra*, para. 2242.

⁷⁶³² Trial Judgement, Vol. 4, paras 743-747 and evidence cited therein. In this regard, the Appeals Chamber observes that the Trial Chamber found that the 8 November 1993 Order resulted in the shelling of the Old Town neighborhood. See Trial Judgement, Vol. 2, paras 1312-1313, 1315. See also Trial Judgement, Vol. 2, para. 996 & fn. 2282 (referring to the 8 November 1993 Order).

⁷⁶³³ Trial Judgement, Vol. 4, paras 743-745.

⁷⁶³⁴ Trial Judgement, Vol. 4, paras 752 (referring to, *inter alia*, Trial Judgement, Vol. 4, paras 653-686), 755.

responsibility to arrange the technical details allowing the convoy to pass unobstructed.⁷⁶³⁵ Moreover, the Trial Chamber found that: (1) international organisations regularly informed Petković of the humanitarian situation in East Mostar; and (2) on 18 May 1993, during a meeting attended by Mate Boban, Alija Izetbegović, Franjo Tuđman, Sefer Halilović, and Petković, Halilović insisted on the need to resolve “the problem of humanitarian convoys passing through BiH”.⁷⁶³⁶ Recalling that Petković had the power to allow humanitarian convoys to pass through and reach East Mostar and occasionally facilitated the access of humanitarian convoys to Mostar, the Trial Chamber concluded that when Petković failed to grant such access, “he intended to facilitate the hindering of the humanitarian convoys from reaching the Muslim population of East Mostar, thereby contributing to the continuation of the harsh living conditions of the Muslim population in East Mostar”.⁷⁶³⁷

i. Arguments of the Parties

2251. Petković submits that the Trial Chamber unreasonably concluded that he “(intentionally and) culpably” failed to allow the access of humanitarian convoys to East Mostar.⁷⁶³⁸ With respect to the Trial Chamber’s finding that he had the power to allow humanitarian convoys access, Petković contends that the Trial Chamber relied on evidence showing that he did not have the competence to approve the departure of humanitarian convoys, but merely the authority to order the HVO commanders to allow such convoys free passage if fighting was ongoing in the area under such commanders’ control.⁷⁶³⁹ Moreover, he argues that the Trial Chamber failed to identify the specific incidents where he hindered the passage of humanitarian convoys, thereby failing to provide a reasoned opinion in this regard.⁷⁶⁴⁰ Finally, Petković highlights that no evidence on the record shows that he did not comply with a request concerning the access of humanitarian aid or international organisations to East Mostar or that he denied such access where security conditions allowed it.⁷⁶⁴¹

2252. The Prosecution responds that the Trial Chamber reasonably found that Petković contributed to the blocking of humanitarian access.⁷⁶⁴² Specifically, it contends that Petković ignores the Trial Chamber’s findings that from June to December 1993, the HVO impeded the

⁷⁶³⁵ Trial Judgement, Vol. 4, para. 753. The Trial Chamber also noted that the specific humanitarian convoy was the first to access East Mostar in two months. See Trial Judgement, Vol. 4, para. 753, referring to Trial Judgement, Vol. 2, paras 1224-1244.

⁷⁶³⁶ Trial Judgement, Vol. 4, para. 754.

⁷⁶³⁷ Trial Judgement, Vol. 4, para. 755.

⁷⁶³⁸ Petković’s Appeal Brief, para. 276. See also Petković’s Appeal Brief, paras 272-275.

⁷⁶³⁹ Petković’s Appeal Brief, para. 273.

⁷⁶⁴⁰ Petković’s Appeal Brief, para. 274.

⁷⁶⁴¹ Petković’s Appeal Brief, para. 275.

⁷⁶⁴² Prosecution’s Response Brief (Petković), para. 201.

delivery of humanitarian aid into East Mostar and that Petković had the power to approve such convoys, but refused to grant them access despite his knowledge of the need for them in East Mostar.⁷⁶⁴³ With respect to Petković's contention that he lacked the authority to grant the convoys access, the Prosecution submits that the evidence relied on by the Trial Chamber reflects that Petković's approval was sought in advance for convoys departing for Mostar and that Petković issued orders to the HVO to regulate the passage of humanitarian aid and international organisations.⁷⁶⁴⁴

2253. In his reply, Petković maintains that there is no evidence on the record that Petković blocked any humanitarian convoy to East Mostar.⁷⁶⁴⁵

ii. Analysis

2254. With respect to Petković's challenge that the Trial Chamber erred in concluding that he had the power to grant humanitarian convoys and international organisations access to East Mostar, the Appeals Chamber notes that, in support of its conclusion, the Trial Chamber referred to evidence that he was involved in regulating and allowing humanitarian convoys between May 1993 and February 1994.⁷⁶⁴⁶ For instance, the Trial Chamber relied on evidence reflecting that he: (1) ensured the security of humanitarian convoys in Mostar in May 1993;⁷⁶⁴⁷ (2) ordered that the Mostar Military District be responsible for the passage of a humanitarian convoy in the area in November 1993;⁷⁶⁴⁸ (3) received requests from international organisations in June 1993 to guarantee the passage of humanitarian aid blocked at one checkpoint;⁷⁶⁴⁹ (4) did not give a guarantee for the passage of humanitarian aid from BiH to Split in July 1993;⁷⁶⁵⁰ and (5) regulated access to East Mostar for personnel of international organisations.⁷⁶⁵¹ The Trial Chamber further considered a number of Petković's orders to the OZs or brigades prohibiting attacks on international forces or humanitarian convoys and demanding that they be allowed unobstructed access.⁷⁶⁵² In the

⁷⁶⁴³ Prosecution's Response Brief (Petković), para. 201, referring to Trial Judgement, Vol. 2, paras 1233, 1244, Vol. 4, paras 752-755, 815.

⁷⁶⁴⁴ Prosecution's Response Brief (Petković), para. 202, referring to Trial Judgement, Vol. 4, paras 752-753, fn. 1437, Exs. P02421, P03923, P02746, Witness BA, T. 7168, 7198-7199 (closed session) (25 Sept 2006). The Prosecution also contends that Petković's contention should be summarily dismissed as he repeats an argument already raised at trial. Prosecution's Response Brief (Petković), para. 202.

⁷⁶⁴⁵ Petković's Reply Brief, para. 60. The Appeals Chamber also understands Petković to raise in his reply a new argument that the Indictment did not charge him for controlling, regulating, and facilitating the movement and access to humanitarian aid. Petković's Reply Brief, para. 60, referring to Indictment, paras 17.1(t), 17.2(o), 17.3(i), 17.5(l).

⁷⁶⁴⁶ See Trial Judgement, Vol. 4, para. 752 & fn. 1437, referring to Exs. P02421, p. 1, P03923, P06825, P02746, P10013, p. 1, P07915, p. 1, Witness BD, T(F). 20691 (closed session) (3 July 2007), Witness BA, T(F). 7166-7168, 7199-7200 (closed session) (25 Sept 2006).

⁷⁶⁴⁷ Ex. P02421. See Witness BD, T. 20691 (closed session) (3 July 2007).

⁷⁶⁴⁸ Ex. P06825.

⁷⁶⁴⁹ Ex. P02746. See Witness BA, T. 7199-7200 (closed session) (25 Sept 2006).

⁷⁶⁵⁰ Ex. P03923. See Witness BA, T. 7168 (closed session) (25 Sept 2006).

⁷⁶⁵¹ See Ex. P10013. See also Ex. P07915.

⁷⁶⁵² See Trial Judgement, Vol. 4, para. 669 & fns 1276-1279.

Appeals Chamber's view, a review of this evidence plainly shows that Petković had the ability to control the access of humanitarian convoys and international organisations to areas under HVO control. In this respect, the Appeals Chamber fails to see how Petković's contention that he did not have the authority to approve the departure of a convoy, but rather to order the HVO to allow free passage of humanitarian aid when fighting was ongoing contradicts the impugned finding. Accordingly, the Appeals Chamber finds that Petković fails to show that no reasonable trier of fact could have concluded, based on this evidence, that he had the power to grant humanitarian convoys and international organisations access to East Mostar.

2255. The Appeals Chamber now turns to Petković's arguments that the Trial Chamber failed to provide a reasoned opinion when concluding that he contributed to the blocking of the passage of humanitarian convoys to East Mostar. In this regard, Petković argues that the Trial Chamber failed to refer to any specific incident where Petković actually did not grant the access of humanitarian convoys to Mostar. By contrast, Petković does not appreciate that, rather than relying on direct evidence concerning specific incidents, the Trial Chamber inferred his contribution based on a number of factors, namely that he: (1) had the power to allow humanitarian convoys into East Mostar;⁷⁶⁵³ (2) had the responsibility to organise the unhindered passage of the first humanitarian convoy in East Mostar in two months, on 21 August 1993;⁷⁶⁵⁴ (3) was regularly informed by international organisations of the situation in East Mostar;⁷⁶⁵⁵ and (4) participated in a meeting with Boban, Izetbegović, Tuđman, and Halilović, where the latter insisted on resolving the problem of the access for humanitarian aid convoys.⁷⁶⁵⁶ In this context, the Trial Chamber referred to evidence demonstrating that Petković was directly involved in the negotiations on 20 August 1993,⁷⁶⁵⁷ which resulted in an UNPROFOR convoy bearing medical supplies being allowed to enter East Mostar on 21 August 1993.⁷⁶⁵⁸ Further, in its factual findings regarding the blocking of international organisations and humanitarian aid from East Mostar, the Trial Chamber determined that, *inter alios*, Petković could take the decision whether to grant access to international organisations.⁷⁶⁵⁹ Accordingly, the Appeals Chamber is not persuaded that the Trial Chamber was required to articulate in its reasoning the specific incidents concerning the obstruction of convoys:

⁷⁶⁵³ Trial Judgement, Vol. 4, para. 752.

⁷⁶⁵⁴ Trial Judgement, Vol. 4, para. 753, referring to Exs. P02590, P03858, P09495, Witness DZ, T. 26598-26600 (closed session) (23 Jan 2008).

⁷⁶⁵⁵ Trial Judgement, Vol. 4, para. 754.

⁷⁶⁵⁶ Trial Judgement, Vol. 4, para. 754.

⁷⁶⁵⁷ Ex. P03858, p. 14; Ex. P09495.

⁷⁶⁵⁸ P03858, p. 6; Witness DZ, T 26598-26600 (23 Jan 2008); Ex. P02590. See Trial Judgement, Vol. 3, para. 753, referring to Trial Judgement, Vol. 3, paras 1224-1244. See also Trial Judgement, Vol. 3, paras 1231, 1233, 1239-1241.

⁷⁶⁵⁹ Trial Judgement, Vol. 3, para. 1231.

2256. Moreover, Petković claims that there is no evidence that he received a request for access for humanitarian aid with which he did not comply.⁷⁶⁶⁰ However, he fails to explain why it was unreasonable for the Trial Chamber to reach its conclusion on the basis of its finding that humanitarian convoys were unable to enter East Mostar as well as evidence of Petković's direct involvement in granting access on other occasions.⁷⁶⁶¹ Accordingly, recalling that a trial chamber may rely on circumstantial evidence to underpin its findings so long as it is the only reasonable inference that could be drawn from the evidence presented,⁷⁶⁶² the Appeals Chamber finds that Petković has not shown that the Trial Chamber's reliance on the mentioned factors was unreasonable or that the Trial Chamber's conclusion was not the only reasonable inference it could make. Accordingly, this argument is dismissed.

2257. Therefore, Petković's challenges concerning his contribution to the blocking of humanitarian aid to and international organisations from East Mostar fail.⁷⁶⁶³

c. Conclusion

2258. The Appeals Chamber finds that Petković's challenges have failed to show any error impacting the Trial Chamber's findings concerning his contribution to the crimes linked to the siege of East Mostar. His arguments are therefore dismissed.

(iii) Failure to provide a reasoned opinion with respect to Petković's convictions under Counts 2 and 3

2259. Based on its findings concerning the crimes committed in Mostar Municipality, the Trial Chamber found Petković responsible for several crimes, including murder as a crime against humanity pursuant to Article 5 of the Statute, charged under Count 2, and wilful killing as a grave breach of the Geneva Conventions under Article 2 of the Statute, charged under Count 3.⁷⁶⁶⁴

⁷⁶⁶⁰ Petković's Appeal Brief, para. 275.

⁷⁶⁶¹ See *supra*, para. 2255.

⁷⁶⁶² *Stanišić and Župljanin* Appeal Judgement, para. 375; *Popović et al.* Appeal Judgement, para. 1277-1278; *Stakić* Appeal Judgement, para. 219.

⁷⁶⁶³ Moreover, insofar as Petković raises arguments concerning his notice, the Appeals Chamber observes that in his appeal brief, Petković did not claim any defect in the Indictment concerning the blocking of access of humanitarian aid and international organisations. See Petković's Appeal Brief, paras 272-276. Recalling that a brief in reply must be "limited to arguments in reply to the Respondent's Brief" and therefore that it should not contain new allegations of error, the Appeals Chamber dismisses Petković's contention in this regard. See Practice Direction on Formal Requirements, para. 6; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Prosecution's Motion to Strike and on Appellant's Motion for Leave to File Response to Prosecution Oral Arguments, 5 March 2007, para. 13 and references cited therein.

⁷⁶⁶⁴ Trial Judgement, Vol. 4, para. 820.

a. Arguments of the Parties

2260. Petković submits that the Trial Chamber did not provide a reasoned opinion with respect to “which crimes or murder/wilful killing Petković was alleged to have culpably contributed to and for which he was found guilty”.⁷⁶⁶⁵

2261. The Prosecution responds that the Trial Chamber specified the killings for which Petković was convicted in relation to Mostar Municipality, including those resulting from the sniping incidents and the Raštani attack.⁷⁶⁶⁶ Additionally, the Prosecution submits that Petković was convicted for all JCE I crimes.⁷⁶⁶⁷

2262. Petković replies that he does not claim that the Trial Chamber failed to make “factual findings” vis-à-vis the murders in Mostar, but rather failed to “make a reasoned opinion as to which crimes of murder/wilful killing he was found guilty of”.⁷⁶⁶⁸ Petković also contends that the Prosecution is incorrect in its assertion that he was convicted of all JCE I crimes.⁷⁶⁶⁹

b. Analysis

2263. With respect to Petković’s argument that the Trial Chamber failed to provide a reasoned opinion concerning his convictions under Counts 2 and 3 in Mostar Municipality, the Appeals Chamber observes that when convicting Petković for murder as a crime against humanity under Count 2 and wilful killing as a grave breach of the Geneva Conventions under Count 3, the Trial Chamber did expressly discuss the crimes which he intended and to which he contributed.⁷⁶⁷⁰

2264. In this context, the Appeals Chamber observes that the only incidents for which Petković was convicted, pursuant to JCE I, under Counts 2 and 3 in Mostar Municipality are: (1) the killing of Muslim civilians in connection with the sniping campaign between June 1993 and March 1994 in East Mostar;⁷⁶⁷¹ and (2) the killing of four Muslim men by HVO soldiers in the village of Raštani on 24 August 1993.⁷⁶⁷² As to the shelling campaign in East Mostar, the Appeals Chamber observes that rather than being considered under Counts 2 or 3,⁷⁶⁷³ such killings were instead only considered under Counts 24 and 25 as an unlawful attack on civilians and unlawful infliction of terror on

⁷⁶⁶⁵ Petković’s Appeal Brief, para. 281.

⁷⁶⁶⁶ Prosecution’s Response Brief (Petković), paras 219-220, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 963, 1070, 1163, 1171, 1174, Vol. 3, paras 671-673, 720-722.

⁷⁶⁶⁷ Prosecution’s Response Brief (Petković), para. 219, referring to Trial Judgement, Vol. 4, paras 820-821.

⁷⁶⁶⁸ Petković’s Reply Brief, para. 69 (emphasis omitted).

⁷⁶⁶⁹ Petković’s Reply Brief, para. 68, referring to Trial Judgement, Vol. 4, para. 820.

⁷⁶⁷⁰ Trial Judgement, Vol. 4, paras 749-750.

⁷⁶⁷¹ See Trial Judgement, Vol. 3, paras 672-673, 721-722.

⁷⁶⁷² See Trial Judgement, Vol. 3, paras 671, 720.

⁷⁶⁷³ Trial Judgement, Vol. 3, paras 672-673, 721-722.

civilians by killing as a grave breach of the Geneva Conventions under Article 3 of the Statute.⁷⁶⁷⁴ The remaining incidents which the Trial Chamber found to constitute Counts 2 and 3 in Mostar Municipality were only considered, if at all, as JCE III crimes.⁷⁶⁷⁵

2265. With respect to Petković's convictions under Counts 2 and 3, pursuant to JCE I, in Mostar Municipality, the Appeals Chamber observes that the Trial Chamber found that he contributed to and intended those killings.⁷⁶⁷⁶ Specifically, the Trial Chamber found that Petković was informed that Spabat personnel and civilian buildings were targeted by HVO snipers⁷⁶⁷⁷ and that he knew that the HVO forces were "firing on East Mostar [...] causing deaths".⁷⁶⁷⁸ Additionally, the Trial Chamber found, as the only reasonable inference, that because Petković "ordered and contributed to planning this shelling, while knowing that it would lead to murder [...] Petković intended to have these crimes committed".⁷⁶⁷⁹ Accordingly, the Appeals Chamber finds that Petković has failed to demonstrate that the Trial Chamber failed to provide a reasoned opinion with respect to "which crimes or murder/wilful killing Petković was alleged to have culpably contributed to and for which he was found guilty", thus, his arguments are dismissed.

(iv) Conclusions

2266. In light of the foregoing, the Appeals Chamber dismisses Petković's sub-ground of appeal 5.2.2.4 in part.

(e) Vareš Municipality (Petković's Sub-ground 5.2.2.6 in part)

2267. The Trial Chamber found that Petković: (1) was directly involved in planning the HVO military operations in Vareš Municipality and received information on the crimes committed in

⁷⁶⁷⁴ Trial Judgement, Vol. 3, paras 1684, 1688-1689, 1692.

⁷⁶⁷⁵ The Trial Chamber found that the following incidents constituted murder under Count 2 and wilful killing under Count 3: (1) the killing of ten ABiH members held prisoner by the HVO at the Faculty of Mechanical Engineering on the night of 10 May 1993 (see Trial Judgement, Vol. 3, paras 668, 717); (2) the death of two Muslim men held at the Faculty of Mechanical Engineering who died as a result of severe beating during interrogations by HVO soldiers between 8 and 11 July 1993 (see Trial Judgement, Vol. 3, paras 669, 718); and (3) the death of one of two Muslim civilians shot by the Military Police on 14 July 1993 in Buna (see Trial Judgement, Vol. 3, paras 670, 719). While it did not convict Petković for these killings pursuant to JCE I, the Trial Chamber found that murders and wilful killings committed during evictions (or closely linked thereto) or as a result of mistreatment or poor conditions of confinement during detention – such as these killings – were not part of the CCP, and stated that it would consider them in relation to the Appellants' responsibility under JCE III. Trial Judgement, Vol. 4, paras 70, 72, 281, 433, 632, 822, 1008, 1213. See also *infra*, para. 3097. Additionally, the Appeals Chamber notes that with respect to the eviction of the Muslim population of West Mostar, the Trial Chamber stated that it would consider murders committed during the 13 June 1993 eviction operations in West Mostar only in relation to Petković's responsibility under JCE III. See Trial Judgement, Vol. 4, paras 732, 736. However, the Appeals Chamber notes that no mention is made of these murders in the Trial Chamber's legal findings concerning murder under Count 2 or wilful killing under Count 3, or in the Trial Chamber's findings concerning Petković's responsibility under JCE III. See Trial Judgement, Vol. 3, paras 669-673, 717-722, Vol. 4, paras 823-825.

⁷⁶⁷⁶ Trial Judgement, Vol. 4, paras 749-750.

⁷⁶⁷⁷ Trial Judgement, Vol. 4, para. 749.

⁷⁶⁷⁸ Trial Judgement, Vol. 4, para. 750.

Vareš town and in Stupni Do, although he was not involved in the decision to attack that village;⁷⁶⁸⁰ and (2) participated in launching a fake investigation into the events in Stupni Do in order to deceive the international community.⁷⁶⁸¹ The Trial Chamber also found that Petković was informed of: (1) the operations to arrest and detain Muslims who did not belong to any armed force in Vareš town, and that during those arrests, HVO soldiers mistreated Muslims and stole Muslim money and property; and (2) the destruction of property and the death of people who did not belong to any armed force in Stupni Do.⁷⁶⁸²

2268. Based on the above, the Trial Chamber concluded that Petković “by being aware of these crimes and failing to take any measures against the perpetrators, and by concealing the crimes in Stupni Do with his contribution to the fake investigation and to the change of Ivica Rajić’s identity, accepted these crimes”.⁷⁶⁸³

2269. Petković submits that the Trial Chamber erred in finding that he: (1) contributed to the crimes committed in the town of Vareš and Stupni Do;⁷⁶⁸⁴ (2) participated in launching a fake investigation into the crimes committed in Stupni Do;⁷⁶⁸⁵ and (3) was informed about the crimes.⁷⁶⁸⁶ The Appeals Chamber will deal with these challenges in turn.

(i) Alleged errors regarding Petković’s contribution, and knowledge of crimes related to the operations in Vareš Municipality

2270. With respect to the crimes committed by the HVO in Vareš Municipality, the Trial Chamber found that Petković planned the military operations and, even if he was not involved in making the decision to attack the village of Stupni Do, he was subsequently informed as of 23 October 1993 of it and of the crimes committed there by the HVO under the command of Ivica Rajić.⁷⁶⁸⁷ In reaching this conclusion, the Trial Chamber recalled that on 22 October 1993, Petković deployed Rajić “to Vareš” with soldiers from the Maturice and Apostoli units as well as from the Ban Josip Jelačić Brigade in response to the ABiH attack on the village of Kopjari that had occurred the day before.⁷⁶⁸⁸ It also considered that in a report sent to Boban on 31 October 1993 (“31 October 1993

⁷⁶⁷⁹ Trial Judgement, Vol. 4, para. 750.

⁷⁶⁸⁰ Trial Judgement, Vol. 4, paras 761-767.

⁷⁶⁸¹ Trial Judgement, Vol. 4, paras 772, 775-776.

⁷⁶⁸² Trial Judgement, Vol. 4, para. 776.

⁷⁶⁸³ Trial Judgement, Vol. 4, para. 777.

⁷⁶⁸⁴ Petković’s Appeal Brief, paras 287-289, 293-294.

⁷⁶⁸⁵ Petković’s Appeal Brief, paras 290-294.

⁷⁶⁸⁶ Petković’s Appeal Brief, para. 289, referring to Ex. P06026.

⁷⁶⁸⁷ Trial Judgement, Vol. 4, para. 767. See also Trial Judgement, Vol. 4, paras 761, 763-765.

⁷⁶⁸⁸ Trial Judgement, Vol. 4, para. 764.

Report”), Rajić stated that all activities and operations carried out “in Vareš” were consistent with the instructions of Tihomir Blaškić, Petković, and Praljak.⁷⁶⁸⁹

2271. In finding that Petković was informed of the arrests, detentions, mistreatment, and thefts committed in Vareš town, the Trial Chamber relied on a report sent to Petković from Ivica Rajić on 23 October 1993 (“Rajić’s Report”), as well as evidence from Witness EA.⁷⁶⁹⁰ With respect to the information received about the crimes committed in Stupni Do, the Trial Chamber found that Rajić’s Report informed Petković about Rajić’s decision to attack Stupni Do and that some civilians had been killed during this action.⁷⁶⁹¹ The Trial Chamber rejected Petković’s contention that he could not have received this report as he was in Kiseljak.⁷⁶⁹²

a. Arguments of the Parties

2272. Petković submits that the Trial Chamber erred in concluding that he planned the operations in Vareš Municipality, arguing that, by contrast, the evidence shows that he did not take part in the planning of any HVO action in this municipality.⁷⁶⁹³ In this regard, Petković relies on the Trial Chamber’s finding that Rajić did not receive specific orders from him on the actions to be carried out in Vareš, other than to establish a defence line in Vareš.⁷⁶⁹⁴ According to Petković, since the evidence shows that Rajić acted independently with respect to the operations launched in the town of Vareš and in the village of Stupni Do, no reasonable trier of fact could have come to the conclusion that he significantly contributed to the commission of crimes in Vareš Municipality by planning any HVO action.⁷⁶⁹⁵

2273. Additionally, Petković argues that the Trial Chamber erroneously found that he was informed about the crimes and acts of violence through Rajić’s Report.⁷⁶⁹⁶ Specifically, Petković takes issue with the Trial Chamber’s finding that while he was in Kiseljak, the report could have been forwarded to him by the duty officer of the Main Staff in Mostar, arguing that no evidence supports this conclusion.⁷⁶⁹⁷

2274. The Prosecution responds that the Trial Chamber reasonably found that Petković planned the operations in Vareš and was immediately informed about the crimes committed in Vareš town

⁷⁶⁸⁹ Trial Judgement, Vol. 4, para. 765, referring to Ex. P06291, p. 4.

⁷⁶⁹⁰ Trial Judgement, Vol. 3, paras 340-342, 348, Vol. 4, paras 762-763, referring to Ex. P06026, p. 3, Witness EA, T(F). 24422-24423 (closed session) (13 Nov 2007), 24731-24732 (closed session) (19 Nov 2007), 24963 (closed session) (21 Nov 2007).

⁷⁶⁹¹ Trial Judgement, Vol. 4, para. 765, referring to, *inter alia*, Ex. P06026, p. 2.

⁷⁶⁹² Trial Judgement, Vol. 4, para. 761.

⁷⁶⁹³ Petković’s Appeal Brief, para. 288. See also Petković’s Reply Brief, para. 71.

⁷⁶⁹⁴ Petković’s Appeal Brief, para. 288, referring to Trial Judgement, Vol. 3, paras 314-316.

⁷⁶⁹⁵ Petković’s Appeal Brief, para. 288.

⁷⁶⁹⁶ Petković’s Appeal Brief, para. 289, referring to Ex. P06026.

and Stupni Do on 23 October 1993.⁷⁶⁹⁸ In support of its contention, the Prosecution points to the Trial Chamber's findings that: (1) on 22 October 1993, Petković ordered Rajić to deploy to Vareš with approximately 200 HVO soldiers;⁷⁶⁹⁹ (2) subsequently, the troops under Rajić's command committed crimes in Stupni Do;⁷⁷⁰⁰ and (3) in the 31 October 1993 Report, Rajić confirmed that the operations in Vareš Municipality were carried out in accordance with the instructions of Petković and Praljak.⁷⁷⁰¹ It also contends that Petković's arguments that he was not informed about the crimes in Stupni Do are based on contentions already raised at trial.⁷⁷⁰²

b. Analysis

i. Contribution to the crimes in Vareš Municipality

2275. As to Petković's contention that the Trial Chamber erred in finding that he contributed to the commission of crimes in Vareš Municipality by planning the military operations, the Appeals Chamber observes that while the Trial Chamber clearly found that Petković ordered Rajić and HVO soldiers to deploy to Vareš,⁷⁷⁰³ the Trial Judgement contains a number of discrepancies with respect to its conclusion concerning Petković's participation in the crimes committed in Vareš town and Stupni Do. For instance, in one part of the Trial Judgement, relying on the 31 October 1993 Report, the Trial Chamber found that:

Milivoj Petković was directly involved in the planning of the HVO military operations in Vareš in October 1993. Nevertheless, the [Trial] Chamber also established that Ivica Rajić informed Milivoj Petković of the attack on Stupni Do only after it had taken place and that, consequently, Milivoj Petković had not been involved in the decision-making to attack this village. However, Milivoj Petković was informed of Ivica Rajić's decision in a report that he sent him on the day of the attack itself, 23 October 1993.⁷⁷⁰⁴

In another portion of the Trial Judgement, the Trial Chamber concluded that:

Milivoj Petković planned the operations [i]n the *Municipality of Vareš* and that even if he was not involved in making the decision to attack the village of Stupni Do, he was informed of the acts of violence committed by the men under the command of Ivica Rajić as of 23 October 1993, that is, of the murders of Muslims and the destructions of their property.⁷⁷⁰⁵

At the end of its analysis concerning Petković's contribution to the crimes committed in Vareš Municipality, the Trial Chamber noted that:

⁷⁶⁹⁷ Petković's Appeal Brief, para. 289, referring to Trial Judgement, Vol. 3, para. 341.

⁷⁶⁹⁸ Prosecution's Response Brief (Petković), paras 223-224. See also Prosecution's Response Brief (Petković), para. 222; Appeal Hearing, AT. 529-530 (23 Mar 2017).

⁷⁶⁹⁹ Prosecution's Response Brief (Petković), para. 223, referring to, *inter alia*, Trial Judgement, Vol. 3, para. 313.

⁷⁷⁰⁰ Prosecution's Response Brief (Petković), para. 223, referring to Trial Judgement, Vol. 3, paras 411-412, 423-424, 494.

⁷⁷⁰¹ Prosecution's Response Brief (Petković), para. 223, referring to Trial Judgement, Vol. 4, para. 765.

⁷⁷⁰² Prosecution's Response Brief (Petković), para. 224.

⁷⁷⁰³ Trial Judgement, Vol. 4, para. 764.

Milivoj Petković planned to send Ivica Rajić and his troops to *Vareš* on 22 October 1993; that he was informed of the operations to arrest and detain Muslims in the town of *Vareš* who did not belong to any armed force and of the fact that during the arrests, the HVO soldiers, including members of the Maturice special unit, insulted, threatened and beat the Muslim men who were arrested and stole money and other property belonging to the Muslim inhabitants of the town of *Vareš*; that although he was not involved in the decision to attack the village of Stupni Do, he was aware of it as of 23 October 1993; that he was also informed as of 25 October 1993 of the destruction, the death of people who did not belong to any armed force and of the aftermath of the attack [...].⁷⁷⁰⁶

Finally, in its summary of findings concerning Petković's contribution to the JCE, the Trial Chamber held that Petković "planned the military operations in the *town of Vareš* and participated in the launching of a fake investigation into the events in Stupni Do and fictitious sanctions against Ivica Rajić".⁷⁷⁰⁷

2276. In light of these discrepancies, the Appeals Chamber finds that the Trial Chamber's findings are unclear with regard to the precise factual basis underpinning Petković's contribution to the crime with respect to the extent and the geographical scope of Petković's "planning". The Trial Chamber did not clarify whether it used the term "planning" only to denote the deployment of HVO units to *Vareš Municipality* or also to encompass the design of the specific operations carried out in the field.⁷⁷⁰⁸ In relation to the latter possibility, the Trial Judgement is unclear as to whether the Trial Chamber's determination pertained to the operations in *Vareš town* and *Stupni Do*, with the express exception of the actual decision to attack that village, or was limited only to the arrests of Muslim men carried out in *Vareš town*.⁷⁷⁰⁹

2277. Against this background, the Appeals Chamber observes that in the factual findings on the crimes in *Vareš Municipality*, the Trial Chamber concluded that Petković instructed Rajić "to go to *Vareš* with about 210 soldiers to establish a defence line in order to defend the town of *Vareš* against the advance of ABiH forces".⁷⁷¹⁰ In making this finding, the Trial Chamber noted Witness EA's direct evidence that Rajić did not receive any written order or instructions from Petković on the actions to be carried out and that Rajić enjoyed a considerable scope for manoeuvre with regard to the specific actions to be taken on the ground.⁷⁷¹¹ Recalling that a Trial Judgement has to be read as a whole,⁷⁷¹² the Appeals Chamber understands that, rather than including the

⁷⁷⁰⁴ Trial Judgement, Vol. 4, para. 765 (emphasis added), referring to Trial Judgement, Vol. 3, paras 409-467.

⁷⁷⁰⁵ Trial Judgement, Vol. 4, para. 767 (emphasis added).

⁷⁷⁰⁶ Trial Judgement, Vol. 4, para. 776 (emphasis added).

⁷⁷⁰⁷ Trial Judgement, Vol. 4, para. 815 (emphasis added).

⁷⁷⁰⁸ Compare Trial Judgement, Vol. 4, para. 776 with Trial Judgement, Vol. 4, paras 765, 767, 815.

⁷⁷⁰⁹ Compare Trial Judgement, Vol. 4, para. 765 (referring simply to "*Vareš*") with Trial Judgement, Vol. 4, paras 767 (referring to *Vareš Municipality*), 815 (referring to *Vareš town*).

⁷⁷¹⁰ Trial Judgement, Vol. 3, para. 316. See also Trial Judgement, Vol. 3, paras 314-315.

⁷⁷¹¹ Trial Judgement, Vol. 3, paras 314-315, referring to Witness EA, T(F). 24385-24389 (13 Nov 2007) (closed session). The Appeals Chamber observes that the portion of the French transcript referred to by the Trial Chamber is reflected in Witness EA, T. 24385-24390 (13 Nov 2007) (closed session).

⁷⁷¹² *Stanišić and Župljanin* Appeal Judgement, paras 138, 202; *Šainović et al.* Appeal Judgement, paras 306, 321.

arrests of Muslim men in Vareš town or the attack of Stupni Do, the Trial Chamber's conclusion that Petković was directly involved in planning the HVO military operations pertained to his order to deploy and establish a defence line in Vareš town. In this regard, the Appeals Chamber notes that in concluding that "Petković was directly involved in the HVO military operations in Vareš in October 1993", the Trial Chamber relied on the 31 October 1993 Report where Rajić stated that "[a]ll activities and operation[s] which have been carried out in Vareš are in keeping with instructions issued by [...] Petković".⁷⁷¹³ However, in light of the Trial Chamber's conclusion in the factual findings on Vareš Municipality that, based on the evidence of Witness EA,⁷⁷¹⁴ Petković's order to Rajić pertained to the establishment of a defence line, the Appeals Chamber understands that the Trial Chamber's finding based on the 31 October 1993 Report is not irreconcilable with its previous conclusion in the factual findings on Vareš Municipality.

2278. Accordingly, the question before the Appeals Chamber is whether, in light of this conclusion, a reasonable trier of fact could have found that Petković contributed to the crimes in Vareš town and Stupni Do. The Appeals Chamber observes that the Trial Chamber found that Petković's contribution to the JCE stemmed from his use of the HVO to commit the crimes that were part of the JCE.⁷⁷¹⁵ The mere fact that Petković ordered Rajić to establish a defence line in Vareš town,⁷⁷¹⁶ however, does not support the conclusion that he used the HVO to commit the crimes which occurred there and in Stupni Do.⁷⁷¹⁷ In these circumstances, the Appeals Chamber observes that the evidence demonstrating that Petković received concurrent information about the arrests in Vareš town as well as the murders and destructions in Stupni Do or that he subsequently launched a fake investigation cannot, by itself, show that he contributed to the commission of such crimes.⁷⁷¹⁸ In the view of the Appeals Chamber, in the absence of any evidence showing that Petković's conduct had an effect on the commission of these crimes, it was unreasonable for the Trial Chamber to find that he contributed to them.

2279. The Appeals Chamber finds no merit in the Prosecution's argument that the Trial Chamber reasonably concluded that Petković planned the operations in Vareš. Particularly, the Appeals Chamber observes that, in support of its submissions, the Prosecution merely points to portions of the Trial Judgement concerning the Trial Chamber's factual findings on the crimes in Vareš Municipality and its analysis of Petković's responsibility therefore, without providing any

⁷⁷¹³ See Trial Judgement, Vol. 4, para. 765, referring to Ex. P06291, p. 4.

⁷⁷¹⁴ See Trial Judgement, Vol. 3, paras 314, 316.

⁷⁷¹⁵ See Trial Judgement, Vol. 4, para. 818.

⁷⁷¹⁶ See Trial Judgement, Vol. 3, para. 316, Vol. 4, para. 815.

⁷⁷¹⁷ See Trial Judgement, Vol. 4, para. 818.

⁷⁷¹⁸ See Trial Judgement, Vol. 4, paras 762, 765-767, 771-777.

indication on how these findings could show that he used the HVO to commit the crimes in Vareš town and Stupni Do.

2280. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in concluding that Petković directly contributed to the crimes linked to the arrests of Muslim men in Vareš town and the attack on the village of Stupni Do on 23 October 1993. The Appeals Chamber will analyse the impact of this error, if any, in the appropriate section below.⁷⁷¹⁹

ii. Knowledge of crimes committed during the operations in Vareš Municipality

2281. Regarding Petković's knowledge of the events and crimes committed, the Appeals Chamber notes that the Trial Chamber relied on, *inter alia*, Rajić's Report to find that he was informed of crimes in both Vareš town and Stupni Do.⁷⁷²⁰ However, even though Petković does not clearly articulate whether he is challenging the findings on his knowledge as it concerns both locations based on Rajić's Report, the Appeals Chamber notes that he does not contest the information contained in this report, but rather whether he received it.⁷⁷²¹

2282. The Appeals Chamber now turns to Petković's challenge that the Trial Chamber erred in finding that he received Rajić's Report informing him about the development of the military operations in Vareš Municipality as well as the crimes committed. In this regard, a review of the relevant portion of the Trial Judgement shows that in reaching this conclusion, the Trial Chamber expressly considered Petković's argument that he could not have received Rajić's Report or the other report sent by Rajić on the same day, as he was in Kiseljak, while the reports were sent to the Main Staff in Mostar/Čitluk.⁷⁷²² The Trial Chamber acknowledged that Petković was in Kiseljak on that date,⁷⁷²³ but relied on its previous findings that the means of communication within the HVO "operated [...] sufficiently well to ensure that the chief/commander of the Main Staff or his deputy was informed of the prevailing situation on the ground".⁷⁷²⁴ In reaching that conclusion, the Trial Chamber considered a body of evidence, including from Petković and Prosecution Witness EA, indicating that: (1) the Main Staff had a Department of Communication with assistants responsible for conveying the information through the packet communication system; (2) between May and November 1993, packet communication between Kiseljak and the Main Staff worked "most of the time"; (3) the commanding officers of the HVO could reach the Chief of the Main Staff or his

⁷⁷¹⁹ See *infra*, paras 2468, 3363.

⁷⁷²⁰ Trial Judgement, Vol. 3, paras 340-342, 348, 485-486, Vol. 4, paras 761-763, 765.

⁷⁷²¹ Petković's Appeal Brief, para. 289, referring to Ex. P06026. See *supra*, para. 2273.

⁷⁷²² Trial Judgement, Vol. 3, paras 340-342, Vol. 4, para. 761.

⁷⁷²³ Trial Judgement, Vol. 3, paras 340-341, Vol. 4, para. 761.

⁷⁷²⁴ Trial Judgement, Vol. 3, para. 342, referring to Trial Judgement, Vol. 1, paras 732-735.

deputy by telephone; and (4) the Chief of the Main Staff could be reached at any moment by the Main Staff even if physically absent.⁷⁷²⁵ In this regard, the Appeals Chamber observes that Rajić's Report was addressed directly to Petković.⁷⁷²⁶

2283. In light of the above,⁷⁷²⁷ the Trial Chamber rejected Petković's argument at trial that he did not receive Rajić's Report as the packet communication system would not have allowed the report to be directed to any other destination than the one it had been sent to, *i.e.* Mostar.⁷⁷²⁸ In this respect, Petković presents no new argument and only states that the Trial Chamber asserted that Rajić's Report "could be" forwarded to him. However, Petković ignores the fact that this assertion that the report "could be" forwarded was made by the Prosecution,⁷⁷²⁹ while the Trial Chamber concluded that telephone and packet communication operated "sufficiently well to ensure that the chief/commander of the Main Staff or his deputy was informed of the prevailing situation on the ground".⁷⁷³⁰ Against this background, Petković's contention that the evidence on the record does not show that a duty officer forwarded the report from Mostar to Kiseljak merely reiterates arguments already raised at trial without showing why the evidence assessed by the Trial Chamber was insufficient to support its conclusion.⁷⁷³¹ Thus, the Appeals Chamber finds that Petković fails to show an error in the Trial Chamber's finding that he was informed of the arrests and detentions committed in Vareš town.⁷⁷³²

2284. For the same reasons as discussed above,⁷⁷³³ the Appeals Chamber finds that Petković fails to show an error in the Trial Chamber's finding that he was informed of the murders and destruction of property committed in Stupni Do.⁷⁷³⁴ Moreover, Petković ignores that the Trial Chamber also took into consideration that: (1) on 24 October 1993, Rajić sent a report to the Main Staff indicating that the HVO had full control over the village of Stupni Do;⁷⁷³⁵ (2) Petković testified that he was informed of the HVO attack on Stupni Do following a conversation with Žarko Tole on 23 October 1993;⁷⁷³⁶ and (3) during a meeting held on 4 November 1993 with Prlić, Praljak, Boban, and Tudman, Petković stated that on 25 October 1993, he had received a report from the HVO

⁷⁷²⁵ Trial Judgement, Vol. 1, paras 732-734.

⁷⁷²⁶ See Ex. P06026.

⁷⁷²⁷ See *supra*, para. 2282.

⁷⁷²⁸ Trial Judgement, Vol. 3, para. 341, Vol. 4, para. 761.

⁷⁷²⁹ Trial Judgement, Vol. 3, para. 341, referring to Prosecution's Final Brief, para. 900.

⁷⁷³⁰ Trial Judgement, Vol. 3, para. 342.

⁷⁷³¹ Compare Petković's Appeal Brief, para. 289 with Petković's Final Brief, para. 425.

⁷⁷³² Trial Judgement, Vol. 4, paras 762-763. The Appeals Chamber notes that it finds elsewhere that Rajić's Report does not provide information that HVO soldiers insulted, threatened or beat arrested Muslim men or that they stole property and money from the Muslim inhabitants of Vareš town. See *infra*, paras 2924-2925.

⁷⁷³³ See *supra*, paras 2282-2283.

⁷⁷³⁴ Trial Judgement, Vol. 4, paras 761, 767.

⁷⁷³⁵ Trial Judgement, Vol. 4, para. 765, referring to Ex. P06047.

⁷⁷³⁶ Trial Judgement, Vol. 4, para. 761, referring to Milivoj Petković, T(F). 50577-50578 (8 Mar 2010).

detailing the crimes committed in Stupni Do on 23 October 1993.⁷⁷³⁷ The Trial Chamber then considered Petković was informed of the events concerning the attack on Stupni Do around the evening of 23 October 1993 and at least by 25 October 1993.⁷⁷³⁸ Petković's arguments on his knowledge of crimes in Stupni Do are thus dismissed.

(ii) Alleged errors regarding Petković's contribution to the launch of a fake investigation into the crimes in Stupni Do

2285. The Trial Chamber found that Petković participated in launching a fake investigation into the crimes committed during the attack on Stupni Do only to make the international community believe that the HVO was conducting an investigation.⁷⁷³⁹ Specifically, it recalled its previous findings that: (1) when ordering Rajić to start the investigation, Petković sent him a handwritten note, confirmed by a telephone conversation, that his order was not to be carried out as its aim was to deceive UNPROFOR;⁷⁷⁴⁰ (2) the reports signed by Rajić on 8 and 15 November 1993 were in fact submitted to him to sign for the sole purpose of pretending that the HVO had carried out an investigation;⁷⁷⁴¹ and (3) Petković knew that Rajić was never investigated or punished for his involvement in the crimes in Stupni Do and that the latter continued to exercise his functions in the HVO under the pseudonym of Victor Andrić.⁷⁷⁴² Based on these considerations, the Trial Chamber found that Petković, "by concealing the crimes in Stupni Do with his contribution to the fake investigation and to the change of Rajić's identity, accepted these crimes".⁷⁷⁴³

a. Arguments of the Parties

2286. Petković submits that the Trial Chamber erred in concluding that he participated in a fake investigation into the crimes that occurred during the attack of Stupni Do and in imposing fake sanctions against Rajić.⁷⁷⁴⁴ Petković argues that: (1) he could not prevent or obstruct any investigation of the HVO's crimes since, once the representatives of the international community had access to Stupni Do, UNPROFOR, UNMO, and, subsequently, the ABiH took possession of all evidence related to these crimes;⁷⁷⁴⁵ (2) as Deputy Commander of the HVO Main Staff and, later, Deputy Chief, he had neither the authority nor the power to suspend, punish, or sanction HVO

⁷⁷³⁷ Trial Judgement, Vol. 4, para. 761, referring to Ex. P06454, pp. 59-60.

⁷⁷³⁸ Trial Judgement, Vol. 4, para. 761.

⁷⁷³⁹ Trial Judgement, Vol. 4, paras 771-777. The Trial Chamber also found that, between 23 and 25 October 1993, the HVO prevented UNPROFOR from entering in Stupni Do. Trial Judgement, Vol. 4, paras 768-770. However, it did not find that Petković was involved in blocking such access. Trial Judgement, Vol. 4, para. 770.

⁷⁷⁴⁰ Trial Judgement, Vol. 4, para. 772, referring to Trial Judgement, Vol. 3, paras 480-492.

⁷⁷⁴¹ Trial Judgement, Vol. 4, para. 772, referring to Trial Judgement, Vol. 3, paras 480-492.

⁷⁷⁴² Trial Judgement, Vol. 4, para. 774, referring to Trial Judgement, Vol. 3, paras 493-498. See also Trial Judgement, Vol. 4, para. 773.

⁷⁷⁴³ Trial Judgement, Vol. 4, para. 777. See also Trial Judgement, Vol. 4, paras 775-776.

⁷⁷⁴⁴ Petković's Appeal Brief, paras 290-292.



commanders or to independently launch an investigation into their conduct;⁷⁷⁴⁶ (3) the evidence on the record shows that an investigation was initiated by the military prosecutor and that Boban and the Minister of Defence were involved, thus, he had no reason to be part of this exercise;⁷⁷⁴⁷ (4) he informed Praljak about everything he knew regarding the crimes committed in Stupni Do, thus “fulfilling his obligation to notify his superior”;⁷⁷⁴⁸ and (5) the SIS was involved in the investigation and he had no authority or ability to interfere in its work, nor did he have reason to do so.⁷⁷⁴⁹

2287. Finally, Petković challenges the Trial Chamber’s conclusion that the handwritten message received by Rajić was an authentic document emanating from him.⁷⁷⁵⁰ In this context, Petković asserts that: (1) Witness EA, who testified that Petković dictated the message to Vinko Lučić, was not an eyewitness and during cross-examination could not say who informed Rajić about the handwritten message;⁷⁷⁵¹ (2) the date on the document, “around 25 October 1993”, was appended to it by Rajić in 2002 and does not have a stamp of an archive;⁷⁷⁵² (3) the Prosecution did not call Vinko Lučić to testify even though “it interviewed him during the trial”;⁷⁷⁵³ (4) during his testimony, he, Petković, denied having dictated the document;⁷⁷⁵⁴ (5) the Trial Chamber failed to provide a reasoned opinion as to why it accepted Witness EA’s testimony over his evidence;⁷⁷⁵⁵ and (6) Rajić sent three reports on the crimes committed in Stupni Do, thereby showing that the order for an investigation was not derogated from by the “written message”.⁷⁷⁵⁶

2288. The Prosecution responds that Petković’s contentions should be rejected.⁷⁷⁵⁷ With respect to the Trial Chamber’s findings concerning Petković’s participation in the fake investigation of the crimes in Stupni Do, the Prosecution contends that Petković’s challenges have no merit, repeat contentions already raised at trial, and ignore the Trial Chamber’s findings.⁷⁷⁵⁸ As to the challenges concerning the handwritten message received by Rajić, the Prosecution submits that Petković

⁷⁷⁴⁵ Petković’s Appeal Brief, para. 291(ii). See also Appeal Hearing, AT. 571-572 (23 Mar 2017).

⁷⁷⁴⁶ Petković’s Appeal Brief, para. 291(iii). See Petković’s Reply Brief, paras 73-74.

⁷⁷⁴⁷ Petković’s Appeal Brief, para. 291(iv); Appeal Hearing, AT. 572 (23 Mar 2017). Additionally, Petković argues that to the extent that his superiors declined or refused to punish Rajić, there was nothing he could do. Petković’s Appeal Brief, para. 292.

⁷⁷⁴⁸ Petković’s Appeal Brief, para. 291(v). See Petković’s Reply Brief, para. 71.

⁷⁷⁴⁹ Petković’s Appeal Brief, para. 291(vi). See also Appeal Hearing, AT. 572 (23 Mar 2017).

⁷⁷⁵⁰ Petković’s Appeal Brief, para. 291(vii), referring to Trial Judgement, Vol. 3, paras 480-484.

⁷⁷⁵¹ Petković’s Appeal Brief, paras 291(vii)(a)-(b).

⁷⁷⁵² Petković’s Appeal Brief, paras 291(vii)(c)-(d).

⁷⁷⁵³ Petković’s Appeal Brief, para. 291(vii)(e).

⁷⁷⁵⁴ Petković’s Appeal Brief, para. 291(vii)(f). See also Appeal Hearing, AT. 541-542 (23 Mar 2017).

⁷⁷⁵⁵ Petković’s Appeal Brief, para. 291(vii)(g).

⁷⁷⁵⁶ Petković’s Appeal Brief, para. 291(vii)(h). Moreover Petković argues that he was not aware of Tole’s and Blaškić’s orders to block UNPROFOR’s access to Stupni Do. Petković’s Appeal Brief, para. 291(i).

⁷⁷⁵⁷ Prosecution’s Response Brief (Petković), paras 223-229.

⁷⁷⁵⁸ Prosecution’s Response Brief (Petković), para. 228. Moreover, the Prosecution argues that Petković’s contention that he was unaware that the HVO blocked UNPROFOR’s access to Stupni Do does not impact on the Trial Chamber’s finding that he participated in a fake investigation. Prosecution’s Response Brief (Petković), para. 228.

repeats arguments already raised at trial and that the Trial Chamber reasonably assessed this piece of evidence.⁷⁷⁵⁹

b. Analysis

2289. With respect to the Trial Chamber's conclusion that Petković participated in a fake investigation into the crimes that occurred during the attack on Stupni Do and in imposing fake sanctions against Rajić, the Appeals Chamber observes that Petković merely cites specific pieces of evidence on the record in an attempt to substitute his assessment thereof for that of the Trial Chamber. Petković fails to articulate any error with respect to the Trial Chamber's conclusion.

2290. The Appeals Chamber now turns to Petković's claim that the Trial Chamber erred in concluding that the handwritten message received by Rajić was an authentic document emanating from Petković. In particular, Petković takes issue with the Trial Chamber's conclusion in its factual findings that Petković was the author of this message in light of the evidence of Witness EA,⁷⁷⁶⁰ who testified that, after having discussed its content with Petković, Rajić had no doubt that the document originated from him.⁷⁷⁶¹ In this regard, the Appeals Chamber observes that most of Petković's allegations of error merely repeat arguments already raised at trial without demonstrating that their rejection constituted an error warranting the intervention of the Appeals Chamber.⁷⁷⁶² Accordingly, these contentions are dismissed.

2291. As to Petković's assertion that the Trial Chamber failed to provide a reasoned opinion on why it preferred Witness EA's testimony over his evidence, the Appeals Chamber notes the Trial Chamber's express consideration of Petković's testimony that he had never seen the handwritten message in light of the contrary testimony given by Witness EA.⁷⁷⁶³ Additionally, in another portion of the Trial Judgement, the Trial Chamber explicitly found that Petković's testimony was "hardly credible" specifically when he tried to limit his responsibility in respect of certain allegations.⁷⁷⁶⁴ In light of these considerations and recalling that a trial chamber is not required to articulate every step of its reasoning, as long as it indicated clearly the factual and legal

⁷⁷⁵⁹ Prosecution's Response Brief (Petković), para. 227.

⁷⁷⁶⁰ Petković's Appeal Brief, para. 291(vii), referring to Trial Judgement, Vol. 3, paras 480-484.

⁷⁷⁶¹ Trial Judgement, Vol. 3, paras 483-484. See Trial Judgement, Vol. 3, paras 480-482, referring to, *inter alia*, Witness EA, T(F). 24470-24473 (closed session) (13 Nov 2007).

⁷⁷⁶² Compare Petković's Appeal Brief, para. 291(vii)(a) with Petković's Final Brief, para. 491; compare Petković's Appeal Brief, para. 291 (vii) (b) with Petković's Final Brief, fn. 903; compare Petković's Appeal Brief, para. 291(vii)(c)-(d) with Petković's Final Brief, para. 495; compare Petković's Appeal Brief, para. 291(vii)(e) with Petković's Final Brief, para. 493; compare Petković's Appeal Brief, para. 291(vii)(f) with Petković's Final Brief, para. 493.

⁷⁷⁶³ See Trial Judgement, Vol. 3, paras 482-484.

⁷⁷⁶⁴ See Trial Judgement, Vol. 1, para. 399.

findings on the basis of which it reached the decision to either convict or acquit an individual,⁷⁷⁶⁵ the Appeals Chamber finds that Petković fails to show any error in the Trial Chamber's reasoning. Accordingly, this contention fails.

2292. Lastly, the Appeals Chamber sees no merit in Petković's claim that the fact that Rajić sent three reports about the Stupni Do investigation shows that the order for an investigation was not derogated from by the "written message". Petković merely refers to specific pieces of evidence on the record without showing how the failure to take into account these elements occasioned a miscarriage of justice. Therefore, this argument is summarily dismissed.

2293. Based on the foregoing, the Appeals Chamber dismisses Petković's allegations of error concerning the Trial Chamber's conclusion that he participated in launching a fake investigation into the crimes committed during the attack on Stupni Do to deceive the international community.

(iii) Conclusion

2294. In light of the above, the Appeals Chamber partially grants the relevant portion of Petković's sub-ground of appeal 5.2.2.6 as it concerns his contribution to the crimes linked to the arrests of Muslim men in Vareš town and the attack on the village of Stupni Do. However, the following Trial Chamber findings are maintained: (1) that Petković was informed of the operations to arrest and detain Muslims in Vareš town and failed to take measures against the perpetrators, and thus accepted the crimes; and (2) that Petković was informed of the murders and destruction of property committed in Stupni Do, failed to take measures against the perpetrators, and concealed the crimes in Stupni Do by contributing to the fake investigation and to the change of Ivica Rajić's identity, and thus accepted these crimes.⁷⁷⁶⁶

(f) Gabela Prison (Petković's Sub-ground 5.2.2.7.1)

2295. The Trial Chamber found, as the only reasonable inference, that Petković was aware, as of at least September 1993, that the conditions of confinement in Gabela Prison between April and December 1993 were extremely poor.⁷⁷⁶⁷ In so finding, the Trial Chamber considered that: (1) the Main Staff received two reports from the Department of Defence dated 29 September and 19 October 1993 describing the poor conditions;⁷⁷⁶⁸ (2) Petković was alerted to the conditions when

⁷⁷⁶⁵ *Stanišić and Župljanin* Appeal Judgement, paras 137, 378, 1063; *Popović et al.* Appeal Judgement, paras 972, 1906; *Šainović et al.* Appeal Judgement, paras 325, 378, 392, 461, 490; *Kvočka et al.* Appeal Judgement, para. 398; *Stanišić and Simatović* Appeal Judgement, para. 78; *Hadžihasanović and Kubura* Appeal Judgement, para. 13. See also *Kvočka et al.* Appeal Judgement, para. 23 *Nyiramasuhuko et al.* Appeal Judgement, para. 105.

⁷⁷⁶⁶ See Trial Judgement, Vol. 4, paras 767-777.

⁷⁷⁶⁷ Trial Judgement, Vol. 4, paras 779, 782.

⁷⁷⁶⁸ Trial Judgement, Vol. 4, paras 778, 782.



he visited the villages of Sovići and Doljani in May 1993;⁷⁷⁶⁹ and (3) the poor conditions became public knowledge as of at least September 1993.⁷⁷⁷⁰ The Trial Chamber found that by continuing to exercise his functions within the Main Staff despite this knowledge, Petković accepted these conditions.⁷⁷⁷¹

(i) Arguments of the Parties

2296. Petković submits that the Trial Chamber erred when it convicted him for crimes relating to the conditions of confinement in Gabela Prison.⁷⁷⁷² First, he submits that no reasonable trier of fact could have reached the conclusion that he was aware of the conditions in Gabela Prison.⁷⁷⁷³ In this regard, he argues that the Trial Chamber did not: (1) establish when the poor conditions became public knowledge and failed to refer to evidence proving if and when he became aware of this fact;⁷⁷⁷⁴ and (2) find that the 29 September and 19 October 1993 reports were sent to or received by him or that there was evidence that he was informed about the conditions.⁷⁷⁷⁵ Second, Petković argues that since neither he nor any other member of the Main Staff had authority over Gabela Prison his continued exercise of his functions could not reasonably be regarded as any contribution to the commission of crimes therein.⁷⁷⁷⁶ Thus, he argues that there is no evidence that he contributed to the commission of these crimes.⁷⁷⁷⁷ Petković requests that the Appeals Chamber reverse his convictions and acquit him of these crimes.⁷⁷⁷⁸

2297. The Prosecution responds that Petković's piecemeal approach in arguing that he did not know of particular crimes is legally and factually flawed and ignores the unified system of detention centres staffed by his subordinates and his awareness of crimes committed in this network.⁷⁷⁷⁹ It submits that Petković shows no error in light of the fact that it was reasonable for the Trial Chamber to conclude that he: (1) knew of extremely poor conditions in Gabela Prison by at least September 1993 when the conditions became public knowledge; and (2) received, as Deputy Commander, the 29 September and 19 October 1993 reports since they were sent to the Main Staff.⁷⁷⁸⁰ Lastly, the

⁷⁷⁶⁹ Trial Judgement, Vol. 4, paras 780, 782.

⁷⁷⁷⁰ Trial Judgement, Vol. 4, paras 781-782.

⁷⁷⁷¹ Trial Judgement, Vol. 4, para. 782.

⁷⁷⁷² Petković's Appeal Brief, para. 300. See also Petković's Appeal Brief, para. 295.

⁷⁷⁷³ Petković's Appeal Brief, para. 298.

⁷⁷⁷⁴ Petković's Appeal Brief, para. 297.

⁷⁷⁷⁵ Petković's Appeal Brief, para. 296.

⁷⁷⁷⁶ Petković's Appeal Brief, para. 299. See Petković's Reply Brief, para. 78.

⁷⁷⁷⁷ Petković's Appeal Brief, para. 295.

⁷⁷⁷⁸ Petković's Appeal Brief, para. 300.

⁷⁷⁷⁹ Prosecution's Response Brief (Petković), paras 230-231. See also Prosecution's Response Brief (Petković), paras 232-233. It argues that, regardless of whether Petković learned of a particular criminal incident, he was criminally responsible for the crimes he intended in furtherance of the CCP that could be attributed to him or another JCE member. Prosecution's Response Brief (Petković), para. 231.

⁷⁷⁸⁰ Prosecution's Response Brief (Petković), para. 236, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 778, 781-782. See also Prosecution's Response Brief (Petković), para. 235.

Prosecution contends that Petković takes an artificially narrow view of the evidence and improperly minimises his role in the detention network by wrongly claiming that he lacked authority over it and could not address crimes committed therein.⁷⁷⁸¹

2298. In his reply, Petković maintains that the Trial Chamber should have correctly established whether he was informed about poor conditions and had competence to interfere.⁷⁷⁸²

(ii) Analysis

2299. The Appeals Chamber rejects Petković's argument that the Trial Chamber did not establish when the poor conditions became public knowledge and failed to refer to evidence proving if and when he became aware of this fact. The Trial Chamber expressly found that the conditions of confinement became public knowledge in September 1993.⁷⁷⁸³ Moreover, the Appeals Chamber finds that Petković has failed to demonstrate that the Trial Chamber was unreasonable in inferring on the basis of, *inter alia*, the fact that the conditions became public knowledge, that Petković was made aware of those conditions. In this regard, the Appeals Chamber observes the Trial Chamber's consideration of Praljak's statement that the international broadcast of footage taken in Gabela Prison caused a scandal and led to international representatives requesting access to detention centres, as well as the intervention of Franjo Tudman.⁷⁷⁸⁴ Petković's argument is therefore dismissed.

2300. When submitting that the Trial Chamber did not "assert" that the 29 September and 19 October 1993 reports were sent to or received by him or that there was evidence that he was informed about the conditions, Petković contends that the "inference" that he was aware of the conditions is based on the incorrect assumption that, as Deputy Commander, he was informed about all reports sent to the Main Staff.⁷⁷⁸⁵ The Appeals Chamber observes that, as noted by the Trial Chamber, the reports were addressed to the Main Staff and Žarko Tole, Chief of Staff of the Main Staff, respectively.⁷⁷⁸⁶ The Appeals Chamber considers that there is no indication in the Trial Judgement that the flow of information was interrupted, thus preventing Petković's receipt of the

⁷⁷⁸¹ Prosecution's Response Brief (Petković), para. 237. See also Appeal Hearing, AT. 536-537 (23 March 2017).

⁷⁷⁸² Petković's Reply Brief, paras 76-77, 79. Specifically, he submits that, contrary to the Prosecution's position that regardless of whether he learned of a particular incident, he was criminally responsible for the crimes that could be attributed to him or another JCE member, the Trial Chamber found that the requisite element for JCE I is the intent to commit a specific crime, an intent that must be shared by all co-participants; he argues that it correctly considered that personal knowledge of the system of ill-treatment is a relevant JCE *mens rea* element. Petković's Reply Brief, para. 76, referring to Prosecution's Response Brief (Petković), para. 231, Trial Judgement, Vol. 1, paras 214-215.

⁷⁷⁸³ Trial Judgement, Vol. 4, paras 781-782.

⁷⁷⁸⁴ Trial Judgement, Vol. 4, paras 781-782. See also Trial Judgement, Vol. 3, paras 562-563 and evidence cited therein (noting that events elicited a response from the UN Security Council and the General Assembly), Vol. 4, paras 607, 609.

⁷⁷⁸⁵ Petković's Appeal Brief, para. 296.

reports.⁷⁷⁸⁷ In any event, as noted above, in support of its conclusion that Petković was informed of the poor conditions of confinement in Gabela Prison, the Trial Chamber also relied on the fact that such conditions became public knowledge in September 1993.⁷⁷⁸⁸ Against this background, Petković does not show that his allegation of error concerning the Trial Chamber's reliance on these reports could impact the impugned finding.⁷⁷⁸⁹

2301. Further, Petković misrepresents the Trial Judgement when alleging that the Trial Chamber did not "assert" that there was evidence that he was informed about the conditions. The Trial Chamber expressly relied on the fact that the conditions became public knowledge as of at least September 1993, the issuance of the above-mentioned reports, and his awareness that the HVO had detained Muslims under poor conditions in Jablanica in April 1993.⁷⁷⁹⁰ He fails to show that no reasonable trier of fact, in light of the evidence, could have reached the conclusion that he was aware of the extremely poor conditions in Gabela Prison. His argument is dismissed.⁷⁷⁹¹

2302. Concerning Petković's submission that since neither he nor any other member of the Main Staff had authority over Gabela Prison, his continued exercise of his functions could not reasonably be regarded as any contribution to the commission of crimes therein, the Appeals Chamber considers that Petković ignores a number of findings. The Trial Chamber found that Gabela Prison was effectively a military prison⁷⁷⁹² and that several HVO units, as well as the Military Police, were involved in its operation.⁷⁷⁹³ Thus, it found that the harsh conditions were imposed by the HVO.⁷⁷⁹⁴ The Appeals Chamber considers that the Trial Chamber found that these units were integrated into the Main Staff and its chain of command and that Petković had command and control authority and

⁷⁷⁸⁶ Trial Judgement, Vol. 4, paras 778 & fn. 1487 (referring to Exs. P05485, P05948), 782. See Trial Judgement, Vol. 1, para. 717.

⁷⁷⁸⁷ See generally Trial Judgement, Vol. 1, paras 735-737, 742.

⁷⁷⁸⁸ Trial Judgement, Vol. 4, paras 781-782.

⁷⁷⁸⁹ See Trial Judgement, Vol. 1, paras 717 (considering evidence explaining that at the head of the Main Staff, "Slobodan Praljak was number 1, Milivoj Petković number 2 and Žarko Tole number 3"), 727, Vol. 4, para. 652 (finding that Petković held the post of Deputy Commander of the Main Staff from 24 July until 8 November 1993).

⁷⁷⁹⁰ See, e.g., Trial Judgement, Vol. 4, para. 782.

⁷⁷⁹¹ Accordingly, the Appeals Chamber dismisses as moot Petković's submission in reply that, contrary to the Prosecution's position that regardless of whether he learned of particular incidents, he was criminally responsible for the crimes that could be attributed to him or another JCE member, the Trial Chamber found that the requisite element for JCE I is the intent to commit a specific crime and it correctly considered that personal knowledge of the system of ill-treatment is a relevant JCE *mens rea* element.

⁷⁷⁹² Trial Judgement, Vol. 4, para. 397. See *supra*, para. 1744.

⁷⁷⁹³ Trial Judgement, Vol. 3, paras 167, 173-175 (finding that HVO units, particularly the Domobrani unit and possibly the "Klis Battalion", guarded the prison), 184, 192. See also Trial Judgement, Vol. 3, paras 168-171, 180, 189-190, 1097, 1149, 1201.

⁷⁷⁹⁴ Trial Judgement, Vol. 3, paras 1097-1098, 1149-1150, 1201-1202.

effective control over them.⁷⁷⁹⁵ As Petković shows no error in these findings or the Trial Chamber's reliance on the continued exercise of his functions,⁷⁷⁹⁶ his argument is dismissed.

2303. In light of the foregoing, his sub-ground of appeal 5.2.2.7.1 is dismissed.

(g) Dretelj Prison (Petković's Sub-ground 5.2.2.7.2)

2304. The Trial Chamber determined that Petković was aware of the harsh conditions of detention at Dretelj Prison at least as of January 1994.⁷⁷⁹⁷ In addition, the Trial Chamber found that by continuing to exercise his functions as the "[D]eputy [C]hief" of the Main Staff and by failing to take measures against the perpetrators of crimes, Petković accepted the mistreatment of prisoners and the harsh conditions of detention.⁷⁷⁹⁸

(i) Arguments of the Parties

2305. Petković submits that the Trial Chamber erred when it held him responsible for the crimes stemming from the conditions of confinement and mistreatment of prisoners at Dretelj Prison during the summer of 1993.⁷⁷⁹⁹ In particular, he argues that no reasonable trier of fact could have found that he contributed to the commission of these crimes on the basis that he was informed about them in January 1994, six months after they occurred and three months after the prison was closed.⁷⁸⁰⁰

2306. In response, the Prosecution submits that the Trial Chamber reasonably concluded that Petković contributed to detention-related crimes throughout the HVO network of detention centres in furtherance of the JCE.⁷⁸⁰¹ The Prosecution also contends that, as a matter of law, and regardless of his knowledge of specific crimes, Petković remains criminally accountable for the crimes he intended in furtherance of the JCE and that can be attributed to him or to any JCE member.⁷⁸⁰² The Prosecution also argues that Petković's express orders pertaining to forced labour suffice to

⁷⁷⁹⁵ Trial Judgement, Vol. 1, paras 842-843 (finding that the Domobrani units were integrated into the Main Staff), Vol. 2, paras 2055-2056, Vol. 3, paras 173 (finding that the 1st Knez Domagoj Brigade was a unit within the HVO), 175 (that the "Klis Battalion" was part of the HVO), Vol. 4, paras 657, 661-662 (finding that Petković had authority over the Military Police), 663, 679. With respect to Petković's authority over detention centres generally, see, e.g., Trial Judgement, Vol. 2, paras 1449 (rejecting Petković's assertion that he did not have competence in the release of prisoners), 1473-1474, 1866, Vol. 4, paras 670-671 (noting that Petković issued orders pertaining to the treatment of prisoners), 791-793, 796, 801-802 (finding that Petković issued orders regarding the use of detainees for forced labour). See also *supra*, para. 2121.

⁷⁷⁹⁶ See Trial Judgement, Vol. 4, paras 782, 815, 1225.

⁷⁷⁹⁷ Trial Judgement, Vol. 4, para. 785.

⁷⁷⁹⁸ Trial Judgement, Vol. 4, paras 783, 785. See also Trial Judgement, Vol. 4, paras 651-652.

⁷⁷⁹⁹ Petković's Appeal Brief, para. 303.

⁷⁸⁰⁰ Petković's Appeal Brief, para. 302, referring to Trial Judgement, Vol. 3, para. 137, Vol. 4, para. 785.

⁷⁸⁰¹ Prosecution's Response Brief (Petković), para. 230, referring to Trial Judgement, Vol. 4, paras 782-783, 785, 789, 793, 796, 798, 801-802, 980, 982, 1209. See also Prosecution's Response Brief (Petković), paras 232-233.

prove Petković's intent.⁷⁸⁰³ The Prosecution contends that by adopting a "piecemeal approach", Petković ignores the unified system of detention centres staffed by HVO subordinates under his authority.⁷⁸⁰⁴ The Prosecution submits that Petković contributed to detention-related crimes by using his authority as Chief or Deputy Commander of the HVO Main Staff and devoting HVO resources to further these crimes.⁷⁸⁰⁵

2307. Petković replies that, contrary to the Prosecution's submission, the Trial Chamber was legally required to determine that the JCE members shared the intent "to commit a specific crime".⁷⁸⁰⁶

(ii) Analysis

2308. The Appeals Chamber finds that Petković's challenges rest on the erroneous assumption that the Trial Chamber found that he directly contributed to the crimes related to the mistreatment of the detainees of Dretelj Prison. By contrast, a plain reading of the Trial Judgement shows that the Trial Chamber's conclusion regarding Dretelj Prison concerned only its determination that Petković "accepted" the conditions to which the detainees were subjected.⁷⁸⁰⁷ Significantly, rather than finding that he contributed to the relevant crimes, the Trial Chamber relied on the ICRC protest letter dated 20 January 1994 sent to Marijan Biškić, Petković, Prlić and Vladislav Pogarčić about the mistreatment of detainees ("ICRC Letter"), Petković's failure to take measures against the perpetrators, and the fact that he continued to exercise his functions as the Deputy Chief of the Main Staff only in order to conclude that he was aware of the harsh conditions of detention "as of at least January 1994" and that he accepted them.⁷⁸⁰⁸ Accordingly, the Appeals Chamber understands the Trial Chamber's finding only to be illustrative of Petković's *mens rea* with respect to the relevant crimes as well as the CCP.⁷⁸⁰⁹ In light of the above, the Appeals Chamber dismisses these arguments.

2309. Likewise, the Appeals Chamber dismisses Petković's further contention that the Trial Chamber was legally required to determine that the JCE members shared the intent "to commit a

⁷⁸⁰² Prosecution's Response Brief (Petković), para. 231, citing *Karemera and Ngirumpatse* Appeal Judgement, paras 109, 153. See also Prosecution's Response Brief (Petković), para. 101.

⁷⁸⁰³ Prosecution's Response Brief (Petković), para. 231. See also Prosecution's Response Brief (Petković), paras 234-236 and references therein.

⁷⁸⁰⁴ Prosecution's Response Brief (Petković), para. 231. The Prosecution further submits that once aware of the crimes committed in one detention facility, Petković was on notice that similar crimes could be committed by the same forces elsewhere in the HVO network. Prosecution's Response Brief (Petković), paras 231-233.

⁷⁸⁰⁵ Prosecution's Response Brief (Petković), para. 231.

⁷⁸⁰⁶ Petković's Reply Brief, para. 76 (emphasis omitted).

⁷⁸⁰⁷ See Trial Judgement, Vol. 4, paras 783-785.

⁷⁸⁰⁸ See Trial Judgement, Vol. 4, paras 783-785.

specific crime”.⁷⁸¹⁰ In this regard, the Appeals Chamber recalls that a JCE member does not need to have knowledge or have intended the specific incidents as long as he shares the intent to commit the JCE I crimes.⁷⁸¹¹ Accordingly, this argument is dismissed.

2310. In light of the foregoing, Petković’s sub-ground of appeal 5.2.2.7.2 is dismissed

(h) The Heliodrom (Petković’s Sub-ground 5.2.2.7.3 in part)

2311. The Trial Chamber concluded that “by having ordered and authorised the work of Heliodrom detainees on the front line, Milivoj Petković ordered and facilitated this crime”.⁷⁸¹² In reaching this conclusion, the Trial Chamber observed that: (1) Petković knew that civilians were being held in detention at the Heliodrom as of May 1993;⁷⁸¹³ (2) on 15 and 20 July 1993, he ordered all brigade commanders, the Bruno Bušić Regiment, and the Ludvig Pavlović PPN to use detainees to fortify the defence lines;⁷⁸¹⁴ and (3) he authorised the use of detainees to perform labour on several occasions as of 14 October 1993.⁷⁸¹⁵

2312. The Trial Chamber also found that Petković accepted the death and the injuries of the detainees used on the front line.⁷⁸¹⁶ In this context, the Trial Chamber recalled that the detainees used to perform forced labour were regularly killed and injured, and that with the ICRC Letter, the ICRC informed *inter alios* Petković, on 20 January 1994, that several detainees were killed after being taken to the front line while dressed in military uniforms and carrying fake wooden weapons.⁷⁸¹⁷ Accordingly, the Trial Chamber concluded that by having ordered and facilitated the use of Heliodrom detainees on the front line “while being aware of at least one incident where the detainees had been used as human shields by HVO members, Milivoj Petković must have been aware that many of them would certainly be killed or wounded while performing these activities”.⁷⁸¹⁸

⁷⁸⁰⁹ These considerations are further supported by the fact that in its conclusion concerning Petković’s JCE I liability, the Trial Chamber does not make mention of Petković’s involvement in the crimes which took place in Dretelj Prison. See Trial Judgement, Vol. 4, para. 815.

⁷⁸¹⁰ Petković’s Reply Brief, para. 76.

⁷⁸¹¹ Cf. *Stanišić and Župljanin* Appeal Judgement, para. 917; *Tolimir* Appeal Judgement, para. 474.

⁷⁸¹² Trial Judgement, Vol. 4, para. 793.

⁷⁸¹³ Trial Judgement, Vol. 4, para. 789. See also Trial Judgement, Vol. 4, paras 787-788.

⁷⁸¹⁴ Trial Judgement, Vol. 4, para. 790.

⁷⁸¹⁵ Trial Judgement, Vol. 4, paras 791-792.

⁷⁸¹⁶ Trial Judgement, Vol. 4, para. 796.

⁷⁸¹⁷ Trial Judgement, Vol. 4, paras 794-795.

⁷⁸¹⁸ Trial Judgement, Vol. 4, para. 796.

(i) Arguments of the Parties

2313. Petković submits that the Trial Chamber erred in failing “to establish through a reasoned opinion that the elements of ‘ordering’ liability were met”.⁷⁸¹⁹ The Appeals Chamber understands Petković to further argue that he issued mere authorisations, rather than orders, while the detaining authorities had the power to decide when to use the detainees and to apply the measures to protect them in implementing such authorisations.⁷⁸²⁰ In his view, the evidence on the record does not show that he ordered the commission of unlawful labour.⁷⁸²¹ He also submits that the Trial Chamber did not establish that, as a result of his orders, the detainees were used as forced labour in dangerous locations and that he was aware of that.⁷⁸²² In his view, the Trial Chamber failed to take into account that his orders were not carried out.⁷⁸²³ He also contends that the Trial Chamber erred in concluding that the use of detainees for forced labour contributed to or was otherwise linked to the JCE, arguing that: (1) the evidence on the record does not show that this crime contributed to its implementation; and (2) the Trial Chamber failed to provide a reasoned opinion in this regard.⁷⁸²⁴

2314. Further, Petković avers that the Trial Chamber erred in finding that he accepted the murders and the injuries of detainees used as forced labour.⁷⁸²⁵ In particular, the Appeals Chamber understands Petković to argue that the Trial Chamber erred in finding that he authorised the HVO to use detainees as forced labour since this conclusion is based on evidence including a “report” which was not sent to him.⁷⁸²⁶ He also claims that the Trial Chamber unreasonably relied on the ICRC Letter, arguing that, as the letter pertained to the situation in August and September 1993, it “could not provide him *retroactive* knowledge of something he had not known” when the crimes were committed.⁷⁸²⁷

2315. The Prosecution responds that Petković’s arguments are unsupported by the evidence, immaterial vis-à-vis the Trial Chamber’s conclusion, and based on a misrepresentation of the Trial

⁷⁸¹⁹ Petković’s Appeal Brief, para. 307. See Petković’s Appeal Brief, paras 306, 308-309. See also Petković’s Appeal Brief, paras 304, 315-316. Petković also argues that the Trial Chamber erred in convicting him “for detention crimes committed by detention of ‘people who were not members of any armed force’”. Petković’s Appeal Brief, para. 305, referring to Petković’s Appeal Brief, paras 174-213 (Petković’s sub-ground of appeal 5.2.1).

⁷⁸²⁰ Petković’s Appeal Brief, para. 307. The Appeals Chamber also understands Petković to contend that he was not aware that the implementation of his orders involved the commission of crimes. Petković’s Appeal Brief, para. 307.

⁷⁸²¹ Petković’s Appeal Brief, para. 307.

⁷⁸²² Petković’s Appeal Brief, paras 308-309. Petković also raises unclear challenges that the Trial Chamber erred in concluding that his orders were unlawful and that he was not convicted for issuing unlawful orders but for issuing orders that resulted in unlawful forced labour. Petković’s Appeal Brief, para. 308.

⁷⁸²³ Petković’s Appeal Brief, para. 308, referring to Exs. P03474, P03592, Petković’s Final Brief, paras 369-370.

⁷⁸²⁴ Petković’s Appeal Brief, para. 310.

⁷⁸²⁵ Petković’s Appeal Brief, paras 311-315.

⁷⁸²⁶ Petković’s Appeal Brief, para. 313, referring to Ex. P06133.

⁷⁸²⁷ Petković’s Appeal Brief, para. 314 (emphasis in original), referring to Ex. P07636. Petković also highlights that the letter was received by the HVO authorities on 9 February 1994. Petković’s Appeal Brief, para. 314.

Judgement.⁷⁸²⁸ It also argues that the Trial Chamber reasonably concluded that by ordering and facilitating the use of detainees for forced labour he contributed to the JCE.⁷⁸²⁹

(ii) Analysis

2316. The Appeals Chamber finds no merit in Petković's argument that the Trial Chamber failed to provide a reasoned opinion with respect to "the elements of 'ordering' liability", as the Appeals Chamber recalls that Petković's convictions were based on his contribution to the JCE, rather than through ordering under Article 7(1) of the Statute.⁷⁸³⁰ Accordingly, the Appeals Chamber dismisses this contention. Moreover, Petković's argument that he issued mere authorisations, rather than orders, while the detaining authorities were to have the responsibility to decide when and how to use the detainees, repeats arguments already raised at trial and shows mere disagreement with respect to the Trial Chamber's assessment of the evidence, thus failing to articulate any error in this regard.⁷⁸³¹

2317. Likewise, in arguing that the Trial Chamber could not find that, as a result of his orders, the detainees were used for forced labour in dangerous locations and that he was aware of that, Petković fails to appreciate that the Trial Chamber relied on numerous pieces of evidence including his own orders to use prisoners and detainees to fortify the defence lines between July and October 1993.⁷⁸³² Accordingly, the Appeals Chamber dismisses his argument that the Trial Chamber failed to consider that Petković's orders were not carried out.⁷⁸³³

2318. As to his contention that the Trial Chamber erred in concluding that the use of detainees for forced labour contributed to the JCE, the Appeals Chamber finds no merit in Petković's blanket assertion that the evidence on the record does not show that this crime contributed to the implementation of the JCE. Moreover, the Appeals Chamber observes that the Trial Chamber concluded that the use of detainees on the front lines or as human shields was part of an "entire

⁷⁸²⁸ Prosecution's Response Brief (Petković), paras 242-247, 250-251. See also Prosecution's Response Brief (Petković), paras 237, 240, 248-249; Appeal Hearing, AT. 539-540 (23 Mar 2017).

⁷⁸²⁹ Prosecution's Response Brief (Petković), para. 247.

⁷⁸³⁰ See, e.g., Trial Judgement, Vol. 4, para. 820. The Appeals Chamber also notes that in arguing that the Trial Chamber erred in convicting him "for detention crimes committed by detention of 'people who were not members of any armed force'", Petković refers to his submissions in his sub-ground of appeal 5.2.1, which the Appeals Chamber dismisses elsewhere in the Judgement. See *supra*, para. 382.

⁷⁸³¹ Petković's Final Brief, paras 373-375. Similarly, the Appeals Chamber finds that Petković's unsupported claim that he was not aware that the implementation of these orders led to crimes reflects a mere attempt to substitute an alternative conclusion for that of the Trial Chamber.

⁷⁸³² Trial Judgement, Vol. 4, paras 790-792. The Appeals Chamber also dismisses Petković's unclear and obscure challenges that: (1) the Trial Chamber erred in concluding that his orders were unlawful; and (2) he was not convicted for issuing unlawful orders but for issuing orders that resulted in unlawful forced labour.

⁷⁸³³ The Appeals Chamber further notes that in support of his contention, Petković simply reiterates arguments already unsuccessfully raised at trial without showing that their rejection constituted an error warranting the intervention of the Appeals Chamber. Petković's Appeal Brief, para. 308, referring to, *inter alia*, Petković's Final Brief, paras 369-370.

system for deporting the Muslim population of the HR H-B".⁷⁸³⁴ Accordingly, his argument related to the lack of reasoned opinion fails.

2319. The Appeals Chamber now turns to Petković's argument that the Trial Chamber erred in finding that he accepted the murders and the injuries of detainees used for forced labour. In this regard, the Appeals Chamber finds no merit in his claim that the Trial Chamber's conclusion is based on a "report" which was not sent to him, as Petković simply refers to evidence on the record without explaining how the Trial Chamber erred in reaching its conclusion.⁷⁸³⁵

2320. With respect to Petković's arguments concerning the ICRC Letter dated 20 January 1994 sent to, *inter alios*, Petković, about the mistreatment of detainees, the Appeals Chamber understands Petković to contend that the Trial Chamber erred in considering this evidence in determining his responsibility retroactively for crimes of which he was not aware at the time they were committed.⁷⁸³⁶ In this regard, the Appeals Chamber notes that the Trial Chamber's reliance on this exhibit appears to be limited to Petković's convictions related to the death and the injuries of Heliodrom detainees who were used for forced labour.⁷⁸³⁷ Specifically, the Appeals Chamber observes that, in its legal findings, the Trial Chamber recalled that the Heliodrom detainees working on the front line were killed between May 1993 and March 1994.⁷⁸³⁸ Accordingly, reading the Trial Judgement as a whole, the Appeals Chamber understands that in concluding that Petković "accepted" the murders and injuries of the Heliodrom detainees by, *inter alia*, being aware of one incident where they were used as human shields, the Trial Chamber was referring only to the death and injuries which occurred after receipt of the ICRC Letter, namely in February and March 1994, rather than to the specific incidents mentioned therein. Accordingly, Petković's argument is dismissed.

2321. Accordingly, the Appeals Chamber dismisses Petković's sub-ground of appeal 5.2.2.7.3 in relevant part.

(i) Vojno Detention Centre (Petković's Sub-ground 5.2.2.7.4 in part)

2322. The Trial Chamber found that, by the ICRC Letter of 20 January 1994 and another letter from the ICRC dated 24 January 1994 ("24 January 1994 Letter"), Petković was informed of

⁷⁸³⁴ Trial Judgement, Vol. 4, para. 66.

⁷⁸³⁵ See Petković's Appeal Brief, para. 313, referring to Ex. P06133.

⁷⁸³⁶ See Petković's Appeal Brief, para. 314.

⁷⁸³⁷ See Trial Judgement, Vol. 4, para. 820 (listing Counts 2, 3, 15, 16, and 17 in relation to the Heliodrom). See also Trial Judgement, Vol. 3, paras 674, 676 (concerning Count 2), 724, 726 (concerning Count 3), 1259-1261 (concerning Count 15), 1354-1355 (concerning Count 16), 1457-1458 (concerning Count 17).

prisoners from “Mostar, Vojno, or Vrđi” being mistreated and forced to work on the front line, and being wounded or killed by shelling or rifle fire while working on the front line.⁷⁸³⁹ On this basis, the Trial Chamber found that in January 1994, Petković was aware that detainees from the Vojno Detention Centre were being forced to work on the front line, where some were injured or even killed, and held that, as he continued to exercise his functions and failed to take measures to stop these crimes, Petković accepted the unlawful use of detainees on the front line as well as the death and injuries resulting therefrom.⁷⁸⁴⁰

(i) Arguments of the Parties

2323. Petković submits that the Trial Chamber erred in holding that he contributed to the crimes committed in the Vojno Detention Centre.⁷⁸⁴¹ Petković argues that, in light of the Trial Chamber’s finding that the Vojno Detention Centre was “not in operation after January 1994”,⁷⁸⁴² it was unreasonable to hold him responsible for failing to take measures to stop the crimes committed there, when the Trial Chamber also found that he was only informed of such crimes by the ICRC Letter, which he argues he received in February 1994.⁷⁸⁴³ Petković further submits that the Trial Chamber failed to give a reasoned opinion as to why it found him, as Deputy Commander of the Main Staff, competent and responsible to take such measures.⁷⁸⁴⁴

2324. The Prosecution responds that the Trial Chamber reasonably concluded that Petković knew about the conditions at the Vojno Detention Centre before January 1994, even if the ICRC only formally informed him then.⁷⁸⁴⁵ The Prosecution argues that Petković’s knowledge of crimes committed in other HVO detention facilities, as well as his personal observation of the appalling detention conditions at the Sovići School, put him on notice vis-à-vis crimes perpetrated at the Vojno Detention Centre.⁷⁸⁴⁶ Further, the Prosecution contends that HVO detention facilities were

⁷⁸³⁸ See Trial Judgement, Vol. 3, paras 674, 676, 724, 726, 1515. See also Trial Judgement, Vol. 3, paras 1259-1260, 1354-1355. The Appeals Chamber recalls that it has overturned the Trial Chamber’s finding that the Heliodrom detainees were killed in May 1993. See *supra*, para. 876.

⁷⁸³⁹ Trial Judgement, Vol. 4, para. 797, referring to Exs. P07636, p. 1, P07660, p. 1. See also Trial Judgement, Vol. 2, para. 1685.

⁷⁸⁴⁰ Trial Judgement, Vol. 4, para. 798.

⁷⁸⁴¹ Petković’s Appeal Brief, para. 322.

⁷⁸⁴² Petković’s Appeal Brief, para. 319, referring to Trial Judgement, Vol. 2, para. 1669.

⁷⁸⁴³ Petković’s Appeal Brief, para. 319 & fn. 431.

⁷⁸⁴⁴ Petković’s Appeal Brief, para. 320. Petković also contends that the Trial Chamber failed to make reasoned findings regarding the elements of omission liability. Petković’s Appeal Brief, para. 320.

⁷⁸⁴⁵ Prosecution’s Response Brief (Petković), para. 236, referring to Trial Judgement, Vol. 4, paras 797-798. See also Prosecution’s Response Brief (Petković), paras 230, 233, 241; Appeal Hearing, AT. 539-540 (23 Mar 2017). The Prosecution further contends that as early as June 1993, Petković was informed about detention-related crimes as he regularly received letters from the ICRC describing various detention-related crimes. Prosecution’s Response Brief (Petković), para. 233, referring to Exs. P02950, P05308, P05967.

⁷⁸⁴⁶ Prosecution’s Response Brief (Petković), paras 232-234 and references cited therein.

run by HVO units subordinated to Petković and that his detainee-related orders demonstrate his authority over them.⁷⁸⁴⁷

(ii) Analysis

2325. The Appeals Chamber notes that the Trial Chamber analysed Petković's involvement with detention-related crimes in each location separately.⁷⁸⁴⁸ With respect to Petković's submission that, as Deputy Commander of the Main Staff, he lacked authority over detention centres and thus could not reasonably be considered as having contributed to the commission of crimes in Vojno Detention Centre in particular, Petković disregards numerous findings of the Trial Chamber. The Trial Chamber found that Vojno Detention Centre fell under the authority of the 2nd HVO Brigade.⁷⁸⁴⁹ It also determined that the 2nd HVO Brigade was integrated into the chain of command emanating from the Main Staff, over which Petković had command and control authority and effective control.⁷⁸⁵⁰ Petković's contention is therefore dismissed.

2326. With regard to Petković's claim that it was unreasonable to hold him responsible for failing to take measures to stop the crimes in Vojno Detention Centre when the Trial Chamber also found that he was only informed of such crimes by the ICRC Letter dated 20 January 1994 regarding the mistreatment of detainees, the Appeals Chamber considers Petković's contention that he only received such letter in February 1994 to be a mere assertion unsupported by any evidence. Further, the Appeals Chamber notes that in reaching the conclusion that Petković became aware "in January 1994" of detainees being used to do work on the front line, the Trial Chamber also took into consideration Petković's receipt of the 24 January 1994 Letter.⁷⁸⁵¹ Moreover, the Trial Chamber found that the crimes committed at Vojno Detention Centre "continued until the end of January

⁷⁸⁴⁷ Prosecution's Response Brief (Petković), paras 234, 237, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 1677-1686, Vol. 4, paras 661-662, 670-671, 679. The Prosecution avers that, given Petković's powers and authority as Deputy Commander, it was his duty under international humanitarian law to prevent and punish perpetrators of crimes in HVO detention centres. Prosecution's Response Brief (Petković), para. 238. According to the Prosecution, the Trial Chamber made relevant findings relating to Petković's ability to act, failure to take measures, and nexus between his omissions and the commission of crimes. Prosecution's Response Brief (Petković), para. 238. See also Prosecution's Response Brief (Petković), para. 232.

⁷⁸⁴⁸ See Trial Judgement, Vol. 4, paras 778-802.

⁷⁸⁴⁹ Trial Judgement, Vol. 2, para. 1682.

⁷⁸⁵⁰ Trial Judgement, Vol. 1, paras 779 (Main Staff had command over HVO OZs which in turn commanded the brigades), 783 (2nd Brigade was part of the South-East OZ), Vol. 4, paras 657, 663, 679. With respect to Petković's authority over detention centres generally, see *supra*, fn. 7795. Further, in analysing and ultimately concluding that he had command authority and effective control over the HVO, the Trial Chamber expressly considered an authorisation issued by Petković directly to the 2nd HVO Brigade. Trial Judgement, Vol. 4, paras 672, 679.

⁷⁸⁵¹ Trial Judgement, Vol. 4, paras 797-798.

1994”.⁷⁸⁵² Petković thus fails to show how no reasonable trier of fact could have concluded that he was informed of the crimes committed at Vojno Detention Centre in January 1994.⁷⁸⁵³

2327. On the basis of the foregoing, the Appeals Chamber dismisses Petković’s sub-ground of appeal 5.2.2.7.4 in part.

(j) Ljubuški Prison and Vitina-Otok Camp (Petković’s Sub-ground 5.2.2.7.5)

2328. The Trial Chamber found that on 8 August 1993, Petković ordered the HVO commanders of Posušje, Široki Brijeg, and Grude brigades to obtain permission from the Military Police Administration to fortify the front line at Ljubuški by using “Muslim prisoners and detainees”.⁷⁸⁵⁴ The Trial Chamber further found that on the same day, the commander of the Posušje Brigade asked Ćorić to provide him with 100 Muslim detainees explicitly referring to Petković’s order and that on 10 or 11 August 1993, 100 detainees from the Vitina-Otok Camp were relocated to a school in Posušje Municipality, where they fell under the responsibility of the Military Police platoon of the Posušje Brigade.⁷⁸⁵⁵ The Trial Chamber therefore concluded that, on 8 August 1993, Petković ordered the use of Muslim detainees from Vitina-Otok Camp to perform forced labour on the front line and that Ćorić executed that order.⁷⁸⁵⁶

(i) Arguments of the Parties

2329. Petković first argues that the HVO differentiated between “prisoners” and “detainees”; he seems to assert that the former term referred to POWs, who were to be kept at the rear, while the latter term denoted detained HVO soldiers, who could be sent to work both on the front line and at the rear.⁷⁸⁵⁷ Petković contends that although his 8 August 1993 order related to both “prisoners” and “detainees”, the commanders in charge of implementing his orders knew, or were supposed to know, the distinction between the two categories of persons and the rules attached to it.⁷⁸⁵⁸ Petković

⁷⁸⁵² Trial Judgement, Vol. 4, para. 238. See also Trial Judgement, Vol. 2, para. 1757 (finding that “detainees from the Heliodrom and from Vojno [...] were killed between 2 September 1993 and 31 January 1994 while working in the Vojno area”), Vol. 4, para. 237.

⁷⁸⁵³ As to Petković’s contention concerning the Trial Chamber’s alleged failure to outline the elements of omission liability, the Appeals Chamber recalls that it is necessary for an appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments that the appellant submits the trial chamber omitted to address and to explain why this omission invalidates the decision. See *supra*, para. 19. In this regard, besides claiming that the Trial Chamber failed to provide a reasoned opinion concerning the elements for omission under JCE doctrine, Petković fails to explain how this alleged error would impact his conviction under JCE I liability.

⁷⁸⁵⁴ Trial Judgement, Vol. 4, para. 800, referring to Ex. P04020.

⁷⁸⁵⁵ Trial Judgement, Vol. 2, paras 1860, 1866, Vol. 4, para. 800.

⁷⁸⁵⁶ Trial Judgement, Vol. 4, paras 801-802. See also Trial Judgement, Vol. 4, paras 908 (referring to Ex. P04030, p. 1) (finding that Petković’s 8 August 1993 order was put into effect), 977.

⁷⁸⁵⁷ Petković’s Appeal Brief, para. 324, referring to, *inter alia*, to Petković’s Final Brief, para. 373. Petković also submits that this differentiation is reflected in other HVO documents. Petković’s Reply Brief, para. 79.

⁷⁸⁵⁸ Petković’s Appeal Brief, para. 324.



submits that the Trial Chamber unreasonably held him responsible for contributing to the crimes of unlawful labour and persecution of prisoners at Vitina-Otok Camp as there is no evidence that prisoners were taken and forced to work on the front line as a result of his 8 August 1993 order.⁷⁸⁵⁹

2330. The Prosecution responds that the Trial Chamber's finding was reasonable, as Petković repeatedly ordered and authorised forced labour.⁷⁸⁶⁰ The Prosecution also underlines that Petković's claim pertaining to the differentiation between "prisoners" and "detainees" is contradicted by the text of the order itself, which refers to both without distinction.⁷⁸⁶¹ Moreover, the Prosecution contends that by claiming that his order required only detained HVO soldiers to be used on the front line and did not result in prisoners being forced to work there, Petković only repeats arguments made at trial without showing an error.⁷⁸⁶² Lastly, the Prosecution argues that by speculating that his subordinates should have known the difference as to which type of forced labour "prisoners" or "detainees" could perform, Petković only attempts to rationalise the language of his 8 August 1993 order *post hoc*.⁷⁸⁶³ Here too, the Prosecution contends that Petković merely repeats an argument made at trial, without showing any error by the Trial Chamber.⁷⁸⁶⁴

(ii) Analysis

2331. With regard to Petković's contention that the HVO differentiated between Muslim "prisoners" of war and "detainees" who were HVO soldiers, the Appeals Chamber has already highlighted the Trial Chamber's conclusion that the HVO did not carry out an individualised risk assessment as required by law and found that Petković has not shown that conclusion to be erroneous.⁷⁸⁶⁵ His argument in this regard therefore fails.

2332. With respect to Petković's submission that his 8 August 1993 order related to both "prisoners" and "detainees" and that the recipient commanders knew or should have known the distinction between the treatment afforded regarding the two categories of persons, the Appeals Chamber observes that Petković merely disagrees with the Trial Chamber's interpretation of the evidence without showing any error in this regard. This warrants dismissal.

⁷⁸⁵⁹ Petković's Appeal Brief, paras 325-326.

⁷⁸⁶⁰ Prosecution's Response Brief (Petković), paras 239, 252, referring to, *inter alia*, Trial Judgement, Vol. 2, para. 1866. See also Prosecution's Response Brief (Petković), para. 234; Appeal Hearing, AT. 539-540 (23 Mar 2017).

⁷⁸⁶¹ Prosecution's Response Brief (Petković), para. 254, referring to Ex. P04020, p. 1. The Prosecution also indicates that the Trial Chamber specifically found that the HVO failed to properly classify prisoners and detainees with regard to their status. Prosecution's Response Brief (Petković), para. 254, referring to Trial Judgement, Vol. 2, para. 1509, Vol. 4, para. 1134.

⁷⁸⁶² Prosecution's Response Brief (Petković), paras 253 & fn. 1047, 254 & fn. 1051.

⁷⁸⁶³ Prosecution's Response Brief (Petković), para. 254.

⁷⁸⁶⁴ Prosecution's Response Brief (Petković), para. 254 & fn. 1051.

⁷⁸⁶⁵ See *supra*, paras 379, 382.

2333. Turning to Petković's argument that there is no evidence that his order was actually carried out, the Appeals Chamber notes that the Trial Chamber expressly addressed this question and found that contrary to Petković's argument, his order of 8 August 1993 on the use of Muslim detainees to fortify the front line was in effect executed by Ćorić and concerned forced labour.⁷⁸⁶⁶ In that sense, the Appeals Chamber finds that Petković merely repeats unsuccessful arguments made at trial, without demonstrating that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber.⁷⁸⁶⁷

2334. The Appeals Chamber finds that Petković has failed to demonstrate any error in the Trial Chamber's conclusion and therefore dismisses Petković's sub-ground 5.2.2.7.5 of appeal.

(k) Conclusion

2335. For the foregoing reasons, the Appeals Chamber finds that Petković has failed to demonstrate any error in the Trial Chamber's conclusions concerning his responsibility with regard to the crimes committed by the HVO in the municipalities of Prozor, Gornji Vakuf, Jablanica, and Mostar, as well as in Gabela and Dretelj Prisons, the Heliodrom, Vojno Detention Centre, Ljubuški Prison, and Vitina-Otok Camp. The Appeals Chamber grants Petković's arguments concerning Vareš Municipality and will assess the impact of the relevant errors, if any, in the appropriate section below.⁷⁸⁶⁸

4. Alleged errors concerning Petković's responsibility for crimes committed by the KB, its ATGs, and the Bruno Bušić Regiment

2336. The Trial Chamber found that, despite having been informed of the crimes committed by the KB, its ATGs, and the Bruno Bušić Regiment, Petković kept deploying these units on the battlefield where they continued to commit crimes.⁷⁸⁶⁹ Accordingly, the Trial Chamber found that by continuing to use these units, Petković failed to punish or prevent the crimes committed by them and was therefore responsible for those crimes.⁷⁸⁷⁰ Further, the Trial Chamber held that by continuing to deploy these units to the battlefield, or, at least, by failing to take any measures to prevent the commission of new crimes, he encouraged the commission of subsequent crimes.⁷⁸⁷¹

⁷⁸⁶⁶ Trial Judgement, Vol. 4, para. 801, referring to Petković's Final Brief, paras 503-504, Petković Closing Arguments, T(F). 52614-52615 (22 Feb 2011).

⁷⁸⁶⁷ Compare Petković's Appeal Brief, para. 325 with Petković's Final Brief, para. 504.

⁷⁸⁶⁸ See *infra*, paras 2468, 3363.

⁷⁸⁶⁹ Trial Judgement, Vol. 4, paras 804-813.

⁷⁸⁷⁰ Trial Judgement, Vol. 4, paras 808, 813.

⁷⁸⁷¹ Trial Judgement, Vol. 4, para. 816.

2337. Petković raises challenges concerning the Trial Chamber's findings regarding his responsibility for the crimes of these units.⁷⁸⁷²

(a) Alleged errors regarding Petković's failure to punish or prevent the crimes of the KB and its ATGs (Petković's Sub-ground 5.2.3.1 in part)

2338. The Trial Chamber found that, despite having been informed of the crimes committed by the KB and its ATGs since April 1993, Petković kept deploying these units "on the battlefield where HVO military operations were taking place and that these units once again committed numerous crimes".⁷⁸⁷³ Accordingly, the Trial Chamber found that "by continuing to use these units, Milivoj Petković failed to punish or prevent the crimes committed against the Muslims".⁷⁸⁷⁴

2339. In support of its conclusion, the Trial Chamber observed that, after the crimes committed by the Vinko Škrobo and Benko Penavić ATGs in the Jablanica Municipality in April 1993, Petković discussed with Boban the possibility of taking measures against their commanders, Mladen Naletilić and Ivan Andabak.⁷⁸⁷⁵ In this context, the Trial Chamber found that not only was no measure taken against the members of these units, but rather, they took part in numerous military operations during which "many crimes were committed".⁷⁸⁷⁶ Specifically, the Trial Chamber noted that, after April 1993, members of the KB and its ATGs committed a number of crimes, specifically in West Mostar, where they: (1) physically abused Muslims in September 1993; (2) participated in operations to arrest Muslims in June 1993; and (3) removed Muslims from their homes between June 1993 and February 1994, while raping and mistreating them.⁷⁸⁷⁷ The Trial Chamber further observed that members of the KB and its ATGs also physically abused detainees at the Heliodrom while they carried out forced labour.⁷⁸⁷⁸

(i) Arguments of the Parties

2340. Petković submits that the Trial Chamber erred in finding that he was responsible for the crimes committed by the members of the KB and its ATGs, unreasonably concluding that: (1) he was aware of the crimes committed by these units since January 1993; and (2) he contributed to their crimes by continuing to deploy them in military actions.⁷⁸⁷⁹

⁷⁸⁷² Petković's Appeal Brief, paras 327-331, 333-351.

⁷⁸⁷³ Trial Judgement, Vol. 4, para. 808. See Trial Judgement, Vol. 4, para. 816.

⁷⁸⁷⁴ Trial Judgement, Vol. 4, para. 808. See Trial Judgement, Vol. 4, para. 816.

⁷⁸⁷⁵ Trial Judgement, Vol. 4, para. 806.

⁷⁸⁷⁶ Trial Judgement, Vol. 4, para. 806.

⁷⁸⁷⁷ Trial Judgement, Vol. 4, para. 807.

⁷⁸⁷⁸ Trial Judgement, Vol. 4, para. 807.

⁷⁸⁷⁹ Petković's Appeal Brief, paras 331, 333-338. See also Petković's Appeal Brief, paras 327, 329-330, 351.

2341. As to his awareness of the crimes, Petković argues that the Trial Chamber made contradictory findings concerning the date that he was informed of the crimes committed by these units.⁷⁸⁸⁰ He highlights that in some portions of the Trial Judgement, the Trial Chamber found that he received this information in April 1993,⁷⁸⁸¹ while elsewhere, it found that he was already aware of the crimes on January 1993, albeit without referring to any evidence.⁷⁸⁸²

2342. Petković also argues that the Trial Chamber did not provide a reasoned opinion when concluding that he continued deploying the KB and its ATGs on the battlefield as it failed to mention the specific instances when he actually did so.⁷⁸⁸³ Petković further takes issue with the Trial Chamber's finding that the KB and its ATGs committed crimes during the evictions of the Muslim population from West Mostar between June 1993 and February 1994 as well as at the Heliodrom.⁷⁸⁸⁴ In this regard, he argues that: (1) these crimes were not committed during military operations on the battlefield; and (2) no evidence supports the conclusion that he was informed about the criminal conduct of the members of the KB and its ATGs or that he contributed to it.⁷⁸⁸⁵

2343. The Prosecution responds that the Trial Chamber reasonably found that Petković contributed to the crimes committed by the KB and its ATGs, as well as to the JCE, and that his arguments should be dismissed.⁷⁸⁸⁶ With respect to Petković's argument that the Trial Chamber entered contradictory findings concerning the date he was informed about the crimes of the KB and its ATGs, the Prosecution avers that the Trial Chamber's single "mistaken reference" that he was informed in January rather than April 1993 does not amount to a miscarriage of justice.⁷⁸⁸⁷ Similarly, the Prosecution submits that Petković fails to show the relevance of his argument that the crimes committed in West Mostar or at the Heliodrom by the KB and its ATGs did not take place on the battlefield.⁷⁸⁸⁸

⁷⁸⁸⁰ Petković's Appeal Brief, paras 334-335. Petković also submits that the Trial Chamber erred in concluding that all ATGs had disciplinary problems. Petković's Appeal Brief, para. 333. In support of this contention, he stresses that the Trial Chamber established that out of ten ATG Units, only three of them were reported to have committed crimes namely, the Benko Penavić, Vinko Škrobo, and Baja Kraljević units. Petković's Appeal Brief, para. 333, referring to Trial Judgement, Vol. 1, paras 818-819, Exs. P07009, P01531.

⁷⁸⁸¹ Petković's Appeal Brief, para. 334, referring to Trial Judgement, Vol. 4, para. 808.

⁷⁸⁸² Petković's Appeal Brief, para. 334, referring to Trial Judgement, Vol. 4, para. 804.

⁷⁸⁸³ Petković's Appeal Brief, paras 336, 338.

⁷⁸⁸⁴ Petković's Appeal Brief, para. 337.

⁷⁸⁸⁵ Petković's Appeal Brief, para. 337. Petković also argues that, since the Trial Chamber's analysis addressed only the crimes of the KB, its ATGs, and the Bruno Bušić Regiment, "the Trial Chamber failed to give a reasoned opinion about Petković's alleged culpable acts and/or omissions regarding crimes committed by other HVO units". Petković's Appeal Brief, para. 328.

⁷⁸⁸⁶ Prosecution's Response Brief (Petković), paras 127-131. See Appeal Hearing, AT. 545-546 (23 Mar 2017).

⁷⁸⁸⁷ Prosecution's Response Brief (Petković), para. 131. As to Petković's argument that the Trial Chamber erroneously concluded that all the ATGs had serious disciplinary problems, the Prosecution avers that Petković fails to identify the impugned finding and show how this allegation of error impacts the verdict. See Prosecution's Response Brief (Petković), para. 131.

⁷⁸⁸⁸ Prosecution's Response Brief (Petković), para. 131.

2344. Petković replies that the Prosecution fails to point to any evidence showing that he ordered the deployment of the KB and its ATGs or reflecting that he was “using” these units.⁷⁸⁸⁹

(ii) Analysis

2345. With respect to Petković’s contention that the Trial Chamber erred in finding that he was aware of the crimes committed by the KB and its ATGs since January 1993, the Appeals Chamber observes that the Trial Chamber consistently found that Petković knew about the crimes of these units since April 1993.⁷⁸⁹⁰ Moreover, a review of this specific section of the Trial Judgement shows that the Trial Chamber expressly framed Petković’s responsibility in terms of the crimes committed by the KB and its ATGs after April 1993, namely between June 1993 and February 1994 in West Mostar and at the Heliodrom.⁷⁸⁹¹ In this context, the Appeals Chamber finds that the fact that, in one singular instance,⁷⁸⁹² the Trial Chamber stated that Petković was aware of the crimes committed by the KB and its ATGs in January 1993, rather than April 1993, to be a minor inconsistency which has no impact on his conviction.⁷⁸⁹³ Accordingly, this argument is dismissed.

2346. As to Petković’s claim that the Trial Chamber did not provide a reasoned opinion when concluding that he continued deploying the KB and its ATGs,⁷⁸⁹⁴ the Appeals Chamber notes that, indeed, the Trial Chamber did not explicitly refer to the specific instances when he actually deployed these units. However, in other portions of the Trial Judgement, the Trial Chamber considered numerous examples of Petković having deployed the KB and its ATGs to Mostar.⁷⁸⁹⁵ Specifically, it referred to Petković’s 2 July 1993 order to the Mostar ATG, consisting of members of the KB, deploying and re-subordinating it to the South-East OZ.⁷⁸⁹⁶ The Trial Chamber also relied on a number of pieces of evidence showing that the KB and its ATGs remained deployed in the field and, specifically, in Mostar.⁷⁸⁹⁷ This evidence reflects Petković’s continued use of these

⁷⁸⁸⁹ Petković’s Reply Brief, para. 32. Petković also submits that the fact that the Trial Chamber erred in finding that he was aware of the crimes committed by the KB and its ATGs is relevant as it formed the basis for the Trial Chamber’s conclusion that he contributed to their crimes. Petković’s Reply Brief, para. 33, referring to Trial Judgement, Vol. 4, para. 804.

⁷⁸⁹⁰ Trial Judgement, Vol. 4, paras 714, 718-719, 806, 808. See also Trial Judgement, Vol. 4, para. 829.

⁷⁸⁹¹ Trial Judgement, Vol. 4, para. 807.

⁷⁸⁹² Trial Judgement, Vol. 4, para. 804.

⁷⁸⁹³ The Appeals Chamber also dismisses Petković’s undeveloped arguments that the Trial Chamber erroneously concluded that all the ATGs had serious disciplinary problems. Specifically, Petković fails to show how the fact that only three of these units were reported to have committed crimes could impact the Trial Chamber’s conclusion in relation to his conviction.

⁷⁸⁹⁴ Petković’s Appeal Brief, paras 336, 338.

⁷⁸⁹⁵ See Trial Judgement, Vol. 1, para. 828 & fn. 1948, Vol. 4, para. 667 & fn. 1271.

⁷⁸⁹⁶ Trial Judgement, Vol. 1, para. 828 & fn. 1948 (referring to Ex. P03128), Vol. 4, para. 667 & fn. 1271 (referring to Ex. P03128). In this regard, the Appeals Chamber observes that the Trial Chamber found that the KB and its ATGs were under the direct command of the Chief of Main Staff and that, once deployed in the field, they were re-subordinated to the commander of the OZ where they were deployed. See Trial Judgement, Vol. 1, para. 814.

⁷⁸⁹⁷ Trial Judgement, Vol. 1, para. 828, referring to, *inter alia*, Exs. P03466, p. 2, P03260, P04401 (confidential), p. 4, P04498.

units.⁷⁸⁹⁸ Accordingly, although it would have been preferable for the Trial Chamber to include specific express references in this section, reading the Trial Judgement as a whole, the Appeals Chamber finds that Petković does not demonstrate that the Trial Chamber failed to provide a reasoned opinion in this regard.

2347. The Appeals Chamber now turns to Petković's assertion that the crimes resulting from the arrests, evictions, and mistreatment of Muslims in West Mostar as well as the forced labour of the Heliodrom detainees were not committed during a "military operation on the battlefield".⁷⁸⁹⁹ In this regard, the Appeals Chamber notes that, in arriving at the impugned finding, the Trial Chamber: (1) first considered that the KB and its ATGs took part in numerous HVO military operations during which many crimes were committed;⁷⁹⁰⁰ (2) then noted its findings that these units committed crimes "even after April 1993" and these crimes resulted from the mistreatment, arrests, and evictions of Muslims in West Mostar between June 1993 and February 1994 as well as the forced labour of the Heliodrom detainees;⁷⁹⁰¹ and (3) concluded that Petković continued deploying the KB and its ATGs "on the battlefield where HVO military operations were taking place and that these units once again committed numerous crimes".⁷⁹⁰² Notably, the Trial Chamber also made findings elsewhere that the Heliodrom detainees were used to perform forced labour on the front lines.⁷⁹⁰³ Thus, the Appeals Chamber concludes that the Trial Chamber considered that the relevant crimes were committed during military operations.⁷⁹⁰⁴ On this issue, Petković does not substantiate his assertion that these crimes were not committed during military operations as he presents no further argument nor cites any evidence.⁷⁹⁰⁵ Therefore, Petković fails to demonstrate an error by the Trial Chamber and his assertion is dismissed.

2348. Finally, the Appeals Chamber finds that in arguing that no evidence supports the conclusion that he was informed about all the criminal conduct of the members of the KB and its ATGs in West Mostar or that he contributed to it, Petković misrepresents the Trial Judgement. In particular, in finding that, despite the information received, Petković used these units in the field, the Trial Chamber relied primarily on evidence demonstrating that Petković learned of the crimes committed by the members of the KB and its ATGs in Jablanica Municipality in April 1993.⁷⁹⁰⁶ In light of these circumstances, the Appeals Chamber is not persuaded that the Trial Chamber was obliged to

⁷⁸⁹⁸ See Trial Judgement, Vol. 3, paras 782-785, 811-815, 853-862, 911-919, 1243-1256, 1335-1350; Trial Judgement, Vol. 4, paras 807-808.

⁷⁸⁹⁹ Petković's Appeal Brief, para. 337. See *supra*, para. 2342.

⁷⁹⁰⁰ Trial Judgement, Vol. 4, para. 806.

⁷⁹⁰¹ Trial Judgement, Vol. 4, para. 807.

⁷⁹⁰² Trial Judgement, Vol. 4, para. 808.

⁷⁹⁰³ Trial Judgement, Vol. 2, paras 1596, 1598-1600, Vol. 4, paras 793, 796.

⁷⁹⁰⁴ See also *supra*, para. 1001 & fn. 3223.

⁷⁹⁰⁵ See Petković's Appeal Brief, paras 336-338.

⁷⁹⁰⁶ Trial Judgement, Vol. 4, paras 806, 808.

find that Petković was informed of *all* crimes committed by the KB and its ATGs in order to find him liable for their crimes.⁷⁹⁰⁷ Additionally, in generically claiming that no evidence on the record shows that he contributed to these crimes, Petković does not take into account that in support of its conclusion that he contributed to the criminal conduct of the KB and its ATGs, the Trial Chamber relied on his use of these units as well as his knowledge of the crimes they had committed.⁷⁹⁰⁸ Therefore, the Appeals Chamber dismisses these arguments.⁷⁹⁰⁹

2349. In light of the foregoing, the Appeals Chamber finds that Petković has failed to show any error in the Trial Chamber's conclusion concerning his responsibility for the crimes committed by the members of the KB and its ATGs and, thus, dismisses his sub-ground of appeal 5.2.3.1 in part.

(b) Alleged errors regarding Petković's deployment and use of the Bruno Bušić Regiment (Petković's Sub-ground 5.2.3.1 in part)

2350. The Trial Chamber found that, although Petković had been receiving information since January 1993 about the crimes committed by members of the Bruno Bušić Regiment, he kept deploying these units in military operations where they continued to commit crimes and ordered them to commit crimes such as the use of detainees to fortify the defence lines.⁷⁹¹⁰ Accordingly, the Trial Chamber found that "by continuing to use these units, while being aware of their criminal conduct and by personally ordering them to use Muslim detainees on the front line, Milivoj Petković failed to punish or prevent the crimes committed against the Muslims by this regiment".⁷⁹¹¹

2351. In support of its conclusion, the Trial Chamber relied on its previous findings related to the crimes committed by the members of the Bruno Bušić Regiment: (1) in Gornji Vakuf Municipality;⁷⁹¹² (2) in Jablanica Municipality, including at the Fish Farm;⁷⁹¹³ and (3) at the Heliodrom.⁷⁹¹⁴

⁷⁹⁰⁷ In any event, the Appeals Chamber observes that in another section of the Trial Judgement, the Trial Chamber specifically found that, on 14 June 1993, Petković was informed that: (1) on the previous day, members of the HVO, including, Vinko Martinović and members of Vinko Škrobo ATG, carried out operations evicting Muslims from West Mostar and that this amounted to "illegal ethnic cleansing"; (2) during these operations, Vinko Martinović and members of Vinko Škrobo ATG raped several women and beat numerous people; and (3) there was information that civilians had been murdered. Trial Judgement, Vol. 4, para. 732, referring to, *inter alia*, Exs. P02749, P02770.

⁷⁹⁰⁸ See Trial Judgement, Vol. 4, paras 806-808. See also Trial Judgement, Vol. 4, para. 816.

⁷⁹⁰⁹ The Appeals Chamber also dismisses Petković's contention that by addressing only the crimes of the KB, its ATGs, and the Bruno Bušić Regiment, the Trial Chamber failed to provide a reasoned opinion on the crimes committed by other HVO units, as Petković's responsibility for the latter crimes is amply addressed throughout the Trial Chamber's analysis of his contribution to the JCE. See Trial Judgement, Vol. 4, paras 691-802.

⁷⁹¹⁰ Trial Judgement, Vol. 4, para. 813. The Trial Chamber further observed that when deployed in the field, members of the Bruno Bušić Regiment again committed crimes. See Trial Judgement, Vol. 4, paras 813, 816.

⁷⁹¹¹ Trial Judgement, Vol. 4, para. 813. See Trial Judgement, Vol. 4, para. 816.

⁷⁹¹² Trial Judgement, Vol. 4, para. 809.

2352. Petković submits that the Trial Chamber erred in finding him responsible for the crimes committed by the members of the Bruno Bušić Regiment in these three locations.⁷⁹¹⁵ The Appeals Chamber will deal with these contentions in turn.

(i) Crimes committed by members of the Bruno Bušić Regiment in Gornji Vakuf Municipality

2353. The Trial Chamber recalled its previous findings that, in January 1993, after having personally ordered the Bruno Bušić Regiment to deploy to Gornji Vakuf, Petković was informed that its members committed a number of crimes causing destruction as well as the arrest, detention, and murder of Muslims.⁷⁹¹⁶

a. Arguments of the Parties

2354. Petković submits that the Trial Chamber erred in relying on the 6 January 1993 Order when concluding that he ordered the Bruno Bušić Regiment to deploy to Gornji Vakuf in connection with the attack launched on 18 January 1993.⁷⁹¹⁷ He also argues that the Trial Chamber failed to refer to any evidence demonstrating that he knew about the criminal behaviour of the members of the Bruno Bušić Regiment in Gornji Vakuf since January 1993.⁷⁹¹⁸

2355. The Prosecution responds that Petković's arguments should be dismissed as he personally deployed this regiment and became aware of the crimes committed by its members.⁷⁹¹⁹ Specifically, it highlights the Trial Chamber's finding that Petković deployed the Bruno Bušić Regiment to Gornji Vakuf and was informed that its members committed crimes there.⁷⁹²⁰

b. Analysis

2356. The Appeals Chamber observes that the Trial Chamber's conclusion concerning Petković's responsibility in relation to the crimes committed by the members of the Bruno Bušić Regiment is not based on his deployment of this regiment in Gornji Vakuf, but rather on the fact that, being

⁷⁹¹³ Trial Judgement, Vol. 4, paras 810, 812. This refers to the fish farm near Doljani in Jablanica Municipality ("Fish Farm").

⁷⁹¹⁴ Trial Judgement, Vol. 4, para. 812. In this regard the Trial Chamber recalled that on 15 July 1993, Petković sent an order to all brigade commanders and to the Bruno Bušić Regiment requesting, *inter alia*, to use prisoners and detainees to fortify the defence lines. Trial Judgement, Vol. 4, para. 811.

⁷⁹¹⁵ Petković's Appeal Brief, paras 341-350. See also Petković's Appeal Brief, paras 327, 329-330, 351.

⁷⁹¹⁶ Trial Judgement, Vol. 4, para. 809.

⁷⁹¹⁷ Petković's Appeal Brief, para. 341(i).

⁷⁹¹⁸ Petković's Appeal Brief, paras 341(ii)-344; Appeal Hearing, AT. 573 (23 Mar 2017).

⁷⁹¹⁹ Prosecution's Response Brief (Petković), paras 133-134. See also Prosecution's Response Brief (Petković), paras 177-178; Appeal Hearing, AT. 543-544 (23 Mar 2017).

aware of the crimes committed there as of January 1993, he continued to use this unit.⁷⁹²¹ As such, in arguing that the Trial Chamber erred in finding that he deployed the Bruno Bušić Regiment in Gornji Vakuf, Petković fails to show how this alleged error could disturb the Trial Chamber's conclusion concerning his responsibility in this regard.

2357. As to Petković's argument that the Trial Chamber erred in finding that he was informed that the members of the Bruno Bušić Regiment had committed crimes in Gornji Vakuf, the Appeals Chamber recalls its previous findings that the Trial Chamber erred in concluding that Petković knew that the Bruno Bušić Regiment, specifically, committed crimes in Gornji Vakuf Municipality in January 1993.⁷⁹²²

(ii) Crimes committed by members of the Bruno Bušić Regiment in Jablanica Municipality

2358. The Trial Chamber found that:

[d]espite the information he had since January 1993 about their criminal conduct, Milivoj Petković again ordered the deployment of the *Bruno Bušić* Regiment to the Municipality of Jablanica on 15 April 1993, following which Milivoj Petković was again informed about the destruction of Muslim houses in the villages of Sovići and Doljani and the detention of Muslims on 23 April 1993 by members of this regiment.⁷⁹²³

The Trial Chamber also noted that members of the Bruno Bušić Regiment detained members of the ABiH, who were beaten by HVO soldiers including Mladen Naletilić on 20 April 1993, at the Fish Farm.⁷⁹²⁴

a. Arguments of the Parties

2359. Petković submits that the Trial Chamber erred in finding him responsible for ordering the deployment of the Bruno Bušić Regiment in Jablanica Municipality based on the fact that he was aware of the crimes committed by that unit in January 1993.⁷⁹²⁵ He reiterates that the evidence on the record does not show that the Bruno Bušić Regiment was involved in crimes in January 1993 or that he received any information in this respect.⁷⁹²⁶ Petković also argues that the Trial Chamber did not establish that the Bruno Bušić Regiment was involved in any crime in Sovići or Doljani.⁷⁹²⁷ Similarly, he contends that the Trial Chamber did not find that the members of this unit were

⁷⁹²⁰ Prosecution's Response Brief (Petković), para. 134, referring to Trial Judgement, Vol. 1, paras 741-742, Vol. 4, paras 709, 809.

⁷⁹²¹ Trial Judgement, Vol. 4, paras 809-813.

⁷⁹²² See *supra*, para. 2176.

⁷⁹²³ Trial Judgement, Vol. 4, para. 810.

⁷⁹²⁴ Trial Judgement, Vol. 4, para. 812.

⁷⁹²⁵ Petković's Appeal Brief, para. 345.

⁷⁹²⁶ Petković's Appeal Brief, para. 345.

involved in the mistreatment of the detainees at the Fish Farm or that he was informed about these crimes.⁷⁹²⁸

2360. The Prosecution responds that Petković's argument should be dismissed.⁷⁹²⁹ In particular, it points to the Trial Chamber's findings and relevant evidence that: (1) in April 1993, Petković encouraged further crimes by personally deploying the Bruno Bušić Regiment to Jablanica Municipality;⁷⁹³⁰ and (2) one week after the deployment, members of the Bruno Bušić Regiment helped encircle a small group of ABiH detainees at the Fish Farm and did nothing as the detainees were severely beaten by HVO soldiers, including Naletilić.⁷⁹³¹ The Prosecution also contends that the Trial Chamber reasonably concluded that Petković was responsible for the crimes committed at the Fish Farm and that it is immaterial whether or not he learned of these crimes.⁷⁹³²

b. Analysis

2361. With respect to Petković's submission that the Trial Chamber erred in finding that he was responsible for the crimes committed by the members of the Bruno Bušić Regiment in Jablanica Municipality, the Appeals Chamber reiterates that the Trial Chamber erred in concluding that Petković knew that the specific unit had committed crimes in Gornji Vakuf Municipality in January 1993.⁷⁹³³ Accordingly, to the extent the Trial Chamber found that Petković contributed to the crimes committed by the Bruno Bušić Regiment in Jablanica Municipality based on the fact that he deployed this regiment there despite having been aware of the past criminal behaviour of its members, the Trial Chamber committed an error. The same principle applies to Petković's contribution to the crimes committed by the members of the Bruno Bušić Regiment at the Fish Farm on 20 April 1993, three days after the attack on Sovići and Doljani in Jablanica Municipality.⁷⁹³⁴ The Appeals Chamber, thus, grants this argument, and declines to consider Petković's remaining challenges.

(iii) Crimes committed by members of the Bruno Bušić Regiment at the Heliodrom

⁷⁹²⁷ Petković's Appeal Brief, para. 346.

⁷⁹²⁸ Petković's Appeal Brief, para. 346. See also Appeal Hearing, AT. 573-574 (23 Mar 2017).

⁷⁹²⁹ Prosecution's Response Brief (Petković), paras 135, 138. See also Prosecution's Response Brief (Petković), para. 133; Appeal Hearing, AT. 543-544 (23 Mar 2017).

⁷⁹³⁰ Prosecution's Response Brief (Petković), para. 135, referring to Trial Judgement, Vol. 2, para. 527, Vol. 4, para. 712.

⁷⁹³¹ Prosecution's Response Brief (Petković), para. 135, referring to Trial Judgement, Vol. 2, para. 626, Vol. 3, paras 1238, 1330, 1432, Vol. 4, para. 812, Ex. P09872 (confidential).

⁷⁹³² Prosecution's Response Brief (Petković), paras 135, 138.

⁷⁹³³ See *supra*, para. 2176.

⁷⁹³⁴ With respect to the crimes committed at the Fish Farm, the Appeals Chamber observes that the Trial Chamber found that in connection with the 17 April 1993 attack on Sovići and Doljani HVO members were involved in a number of crimes. Trial Judgement, Vol. 2, paras 566-655. In this regard, the Trial Chamber found that members of the Bruno Bušić Regiment detained ABiH soldiers, who were beaten by HVO soldiers on 20 April 1993, at the Fish Farm. See Trial Judgement, Vol. 2, paras 616-627.

2362. The Trial Chamber found that members of the Bruno Bušić Regiment administered beatings to detainees at the Heliodrom after January 1993.⁷⁹³⁵ It also found that on 15 July 1993, Petković sent an order to all the brigade commanders and the Bruno Bušić Regiment requesting them to, *inter alia*, fortify the defence lines by using prisoners and detainees.⁷⁹³⁶

a. Arguments of the Parties

2363. Petković submits that the Trial Chamber erred in finding him responsible for the crimes committed by the members of the Bruno Bušić Regiment at the Heliodrom, arguing that it “did not infer that [he] was informed about beatings and mistreatment of the detained persons at the Heliodrom”.⁷⁹³⁷ Petković contends that the Trial Chamber failed to reasonably assess his order concerning the use of prisoners and detainees to fortify the defence lines.⁷⁹³⁸ In his view, such order reflects that detainees, *i.e.* detained members of the HVO, were supposed to work on the defence line, while prisoners, namely the active reserve members of the ABiH, had to be employed in the rear.⁷⁹³⁹ Moreover, Petković alleges that he had no reason to assume that this order would not be carried out “in a lawful manner”, therefore, putting at risk the safety of the detainees and prisoners employed there.⁷⁹⁴⁰

2364. The Prosecution responds that whether Petković was informed about the specific crimes committed at the Heliodrom by the members of the Bruno Bušić Regiment is irrelevant, as he encouraged these crimes by: (1) failing to take measures with respect to the crimes that the unit had previously committed; and (2) ordering and permitting the continued use of the Bruno Bušić Regiment.⁷⁹⁴¹ The Prosecution also contends that Petković’s arguments concerning the use of prisoners and detainees for forced labour should be dismissed arguing that: (1) he not only encouraged crimes, but affirmatively ordered them;⁷⁹⁴² and (2) these orders were illegal *per se*.⁷⁹⁴³

b. Analysis

2365. With respect to Petković’s argument that the Trial Chamber “did not infer that [he] was informed about beatings and mistreatment of the detained persons at the Heliodrom”, the Appeals Chamber observes that the Trial Chamber found that Petković was responsible for continuing to

⁷⁹³⁵ Trial Judgement, Vol. 4, para. 812.

⁷⁹³⁶ Trial Judgement, Vol. 4, para. 811.

⁷⁹³⁷ Petković’s Appeal Brief, para. 348.

⁷⁹³⁸ Petković’s Appeal Brief, para. 349, referring to Ex. P03474.

⁷⁹³⁹ Petković’s Appeal Brief, para. 349.

⁷⁹⁴⁰ Petković’s Appeal Brief, para. 349.

⁷⁹⁴¹ Prosecution’s Response Brief (Petković), para. 138.

⁷⁹⁴² Prosecution’s Response Brief (Petković), para. 137, referring to Prosecution’s Response Brief (Petković), paras 241-247. See also Prosecution’s Response Brief (Petković), para. 133; Appeal Hearing, AT. 543-544 (23 Mar 2017).

deploy the Bruno Bušić Regiment despite being aware of their past criminal behaviour.⁷⁹⁴⁴ Accordingly, with respect to Petković's awareness of the crimes, the question is not whether he was informed about the crimes committed by the members of the Bruno Bušić Regiment at the Heliodrom, but if, *at the time these crimes were committed*, Petković was already acquainted with their past criminal behaviour. In this context, the Appeals Chamber recalls its finding that the Trial Chamber erred in holding Petković responsible for the crimes of the Bruno Bušić Regiment based on the fact that he deployed this regiment to Jablanica despite having been aware of the past criminal behaviour of its members since January 1993.⁷⁹⁴⁵ However, the Appeals Chamber emphasises, the Trial Chamber's related finding that *following* his deployment of the Bruno Bušić Regiment on 15 April 1993, "Petković was *again* informed about the destruction of Muslim houses in the villages of Sovići and Doljani and the detention of Muslims on 23 April 1993 by members of this regiment",⁷⁹⁴⁶ meaning that Petković did, in fact, have knowledge of past criminal conduct of the Bruno Bušić Regiment before the crimes were committed at the Heliodrom. For these reasons, Petković's argument that the Trial Chamber did not find that he was informed about the specific crimes that occurred at the Heliodrom does not show an error in the Trial Chamber's reasoning.

2366. Likewise, the Appeals Chamber dismisses Petković's contention that the Trial Chamber erred in assessing his orders concerning the use of prisoners and detainees to fortify the defence lines. Specifically, the Appeals Chamber observes that, in arguing that these orders reflect Petković's intention that detainees were supposed to work on the defence line, while prisoners had to be employed in the rear, Petković merely disagrees with the Trial Chamber's interpretation of the evidence without showing any error in this regard. Accordingly, this contention is dismissed.

(iv) Conclusion

2367. Based on the foregoing, the Appeals Chamber finds that the Trial Chamber erred in concluding that Petković contributed to the commission of the crimes committed by the Bruno Bušić Regiment in Jablanica Municipality, including at the Fish Farm, to the extent that it found that, having been aware of the criminal behaviour of its members since January 1993, he deployed this unit to Jablanica Municipality in April 1993. Nevertheless, the Appeals Chamber finds that Petković has failed to show an error in the Trial Chamber's conclusion with respect to his responsibility for the crimes committed by the members of the Bruno Bušić Regiment at the Heliodrom. Accordingly, the Appeals Chamber grants Petković's sub-ground of appeal 5.2.3.1 in

⁷⁹⁴³ Prosecution's Response Brief (Petković), para. 243, referred to in Prosecution's Response Brief (Petković), para. 137.

⁷⁹⁴⁴ See Trial Judgement, Vol. 4, paras 812-813.

⁷⁹⁴⁵ See *supra*, para. 2361.

⁷⁹⁴⁶ Trial Judgement, Vol. 4, para. 810 (emphasis added).

part. The Appeals Chamber will consider the impact of this error, if any, in the appropriate section below.

(c) Conclusion

2368. On the basis of the foregoing, the Appeals Chamber dismisses those parts of Petković's sub-ground of appeal 5.2.3.1 in part insofar as they concern his responsibility for the crimes of the KB and its ATGs, as well as the crimes of the Bruno Bušić Regiment at the Heliodrom. The Appeals Chamber grants Petković's sub-ground of appeal 5.2.3.1 in part concerning his responsibility for the Bruno Bušić Regiment's crimes at the Fish Farm in Jablanica Municipality. It will consider the impact of this error, if any, in the appropriate section below.⁷⁹⁴⁷

5. General challenges regarding mens rea

2369. Petković submits that the Trial Chamber: (1) improperly applied the *mens rea* standard for JCE I; (2) failed to consider his submissions concerning a mistake of law; and (3) failed to assess the *mens rea* requirements for certain crimes.⁷⁹⁴⁸ These challenges will be addressed below.

(a) Alleged errors concerning the application of the mens rea standard (Petković's Sub-ground 4.3.1)

(i) Arguments of the Parties

2370. Petković submits that the Trial Chamber erred in determining his *mens rea* by applying a "lower, legally erroneous and ultimately irrelevant standard".⁷⁹⁴⁹ In support of this contention, he argues that, with respect to the crimes for which he was found responsible, the Trial Chamber relied on the notions of "acceptance",⁷⁹⁵⁰ "knowledge",⁷⁹⁵¹ or "intention that a crime be committed",⁷⁹⁵²

⁷⁹⁴⁷ See *infra*, paras 2468, 3363.

⁷⁹⁴⁸ Petković's Appeal Brief, paras 86-123, 128-133, 137-139.

⁷⁹⁴⁹ Petković's Appeal Brief, para. 112. See also Petković's Appeal Brief, para. 88.

⁷⁹⁵⁰ Petković's Appeal Brief, para. 112 (emphasis omitted). See also Petković's Appeal Brief, para. 112(i)(b), (iv)-(v), (vii)-(ix). Specifically, Petković refers to the Trial Chamber's findings concerning the crimes linked to: (1) the detention of men who did not belong to any armed force in Prozor (Petković's Appeal Brief, para. 112(i)(b), referring to, *inter alia*, Trial Judgement, Vol. 4, para. 698); (2) the destruction of the Baba Bešir Mosque (Petković's Appeal Brief, para. 112(iv)(a), referring to Trial Judgement, Vol. 4, para. 730); (3) the evictions of Muslim men in West Mostar in June 1993 (Petković's Appeal Brief, para. 112(iv)(b), referring to Trial Judgement, Vol. 4, para. 735); (4) the arrests of Muslim men in Vareš Municipality (Petković's Appeal Brief, para. 112(v), referring to Trial Judgement, Vol. 4, para. 777); (5) the conditions of confinement at Gabela and Dretelj Prisons as well as the mistreatment at the latter (Petković's Appeal Brief, para. 112(vii), referring to Trial Judgement, Vol. 4, paras 782-783, 785); (6) the murders and injuries of detainees at the Heliodrom (Petković's Appeal Brief, para. 112(viii), referring to Trial Judgement, Vol. 4, para. 796); and (7) the forced labour of detainees from Vojno Detention Centre and the resulting deaths and injuries (Petković's Appeal Brief, para. 112(ix), referring to Trial Judgement, Vol. 4, para. 798).

⁷⁹⁵¹ Petković's Appeal Brief, para. 112 (emphasis omitted). Specifically, Petković refers to the Trial Chamber's findings concerning the crimes committed in Sovići and Doljani. See Petković's Appeal Brief, para. 112(iii)(a). Petković also seems to challenge the Trial Chamber's reference to the concept of "awareness". Petković's Appeal Brief, para. 112

which, in his view, are insufficient to show that he intended the relevant crimes.⁷⁹⁵³ Petković also claims that the Trial Chamber failed to find “through a reasoned opinion and beyond reasonable doubt” that he intended these crimes.⁷⁹⁵⁴

2371. The Prosecution responds that the Trial Chamber properly applied the legal standard of *mens rea* required for JCE I and reasonably relied on Petković’s “acceptance”, “allowance”, “knowledge” or “awareness of” crimes committed in specific locations in order to infer his “shared intent”.⁷⁹⁵⁵ It further contends that “shared intent” may be inferred from knowledge of the crimes combined with continued participation in a JCE and that, in the present case, the Trial Chamber reasonably relied on these findings in concluding that Petković intended the commission of crimes in furtherance of the CCP.⁷⁹⁵⁶ Lastly, the Prosecution posits that the Trial Chamber did not find that Petković’s intent materialised after the commission of the crimes.⁷⁹⁵⁷

(iv)(c),(x) referring to Trial Judgement, Vol. 4, para. 750 (holding that Petković must have been aware of the situation of terror in Mostar).

⁷⁹⁵² Petković’s Appeal Brief, para. 112 (emphasis omitted). See also Petković’s Appeal Brief, para. 112(i)-(ii), (iv)(d). Specifically, Petković refers to the Trial Chamber’s findings concerning the crimes committed: (1) in Prozor Municipality (Petković’s Appeal Brief, para. 112(i), referring to Trial Judgement, Vol. 4, paras 693, 695, 697-699); (2) in Gornji Vakuf (Petković’s Appeal Brief, para. 112(ii), referring to Trial Judgement, Vol. 4, para. 710); and (3) during the shelling of East Mostar (Petković’s Appeal Brief, para. 112(iv)(d), referring to Trial Judgement, Vol. 4, para. 750).

⁷⁹⁵³ Petković’s Appeal Brief, paras 88, 112. Petković also argues that the Trial Chamber erred in relying on the notion of “allowance” in order to establish his *mens rea* for certain crimes. Petković’s Appeal Brief, para. 112 (emphasis omitted). Moreover, Petković argues that the Trial Chamber found that he ordered the arrest of “men who did not belong to any armed force”, but failed to consider the “cognitive and volitional components of intent” with respect to the status of the persons who were to be arrested upon his orders. Petković’s Appeal Brief, para. 112(vi).

⁷⁹⁵⁴ Petković’s Appeal Brief, para. 88. Petković further avers that the intent to commit JCE crimes must be shown to precede the actual commission of the crimes. Petković’s Appeal Brief, para. 88.

⁷⁹⁵⁵ Prosecution’s Response Brief (Petković), paras 65, 69. See Prosecution’s Response Brief, paras 66-67. See also Appeal Hearing, AT. 529-531 (23 Mar 2017).

⁷⁹⁵⁶ Prosecution’s Response Brief (Petković), para. 69, referring to *Dorđević* Appeal Judgement, paras 512-513, *Krajišnik* Appeal Judgement, para. 697.

⁷⁹⁵⁷ Prosecution’s Response Brief (Petković), para. 69.

(ii) Analysis

2372. As to the *mens rea* standard for the first category of JCE, the Appeals Chamber recalls that the accused must share the intent to commit the crimes that form part of the common purpose and the intent to participate in a common plan aimed at their commission.⁷⁹⁵⁸ In this regard, the Appeals Chamber observes that when recalling the law applicable to the different forms of JCE, the Trial Chamber correctly articulated that standard, stating that “[a]s concerns JCE Form 1, the requisite element is the intent to commit a specific crime, an intent that must be shared by all co-participants”.⁷⁹⁵⁹

2373. Turning to the Trial Chamber’s application of that standard to the facts of the case, the Appeals Chamber considers that Petković’s allegation of error concerning its use of the expression “intention that a crime be committed” fails to show how it could be interpreted as a departure from the proper *mens rea* standard, which was correctly recalled by the Trial Chamber.⁷⁹⁶⁰ Accordingly, the Appeals Chamber dismisses this argument.

2374. As to the Trial Chamber’s purported reliance on the notion of “acceptance”, the Appeals Chamber observes that the Trial Chamber indeed found that Petković “accepted” crimes committed by the HVO forces, namely in the context of: (1) the detention of men in Prozor Municipality; (2) the evictions in Mostar in June 1993; (3) crimes committed in Vareš and Stupni Do; (4) the conditions of confinement at Dretelj Prison; (5) the conditions of confinement at Gabela Prison; (6) the murders and injuries of detainees at the Heliodrom; and (7) the forced labour by detainees from Vojno Detention Centre as well as the deaths and injuries resulting therefrom.⁷⁹⁶¹ However, in its conclusions concerning Petković’s JCE I responsibility,⁷⁹⁶² the Trial Chamber clearly recalled that Petković ordered, planned, facilitated, encouraged, and concealed the crimes perpetrated by HVO members addressed in the preceding analysis and found that he “intended for these crimes to

⁷⁹⁵⁸ *Popović et al.* Appeal Judgement, para. 1369; *Brdanin* Appeal Judgement, para. 365; *Kvočka et al.* Appeal Judgement, para. 82.

⁷⁹⁵⁹ Trial Judgement, Vol. 1, para. 214, referring to *Vasiljević* Appeal Judgement, para. 101, *Tadić* Appeal Judgement, paras 196, 228.

⁷⁹⁶⁰ See *supra*, para. 2372. In this regard, the Appeals Chamber observes that in light of the specific circumstances of the case, namely where Petković was found to have used the HVO to commit crimes within the scope of the JCE, the expression “intention that a crime be committed” effectively reflects the Trial Chamber’s conclusion that Petković intended to commit a crime. See Trial Judgement, Vol. 4, paras 815, 818. In this regard, the Appeals Chamber observes that in the relevant portion of the original French version of the Trial Judgement, the Trial Chamber stated that “*Petković avait l’intention de faire commettre ces crimes*” which simply indicates that Petković intended the HVO to commit the relevant crimes. See Trial Judgement, Vol. 4, paras 693, 695, 697, 699, 710, 750. See also Trial Judgement, Vol. 4, paras 695 (“*Petković avait l’intention de faire détruire ces biens*”), 699 (“*Petković [...] avait l’intention de faire commettre les destructions dans les villages de la municipalité de Prozor*”).

⁷⁹⁶¹ Trial Judgement, Vol. 4, paras 698, 735, 776-777, 782, 785, 789, 796, 798. The Appeals Chamber also observes that Petković refers to the Trial Chamber’s findings concerning the destruction of Baba Bešir Mosque. Petković’s Appeal Brief, paras 112(iv)(a), referring to Trial Judgement, Vol. 4, para. 730. However, the Appeals Chamber will address Petković’s submissions regarding Baba Bešir Mosque below. See *infra*, paras 2443-2450.

⁷⁹⁶² Trial Judgement, Vol. 4, paras 814-821.

be committed”.⁷⁹⁶³ Accordingly, reading the Trial Judgement as a whole, the Appeals Chamber is not convinced that the Trial Chamber applied a less stringent *mens rea* standard when evaluating Petković’s responsibility for the crimes committed in Prozor Municipality, Vareš Municipality, and at Dretelj Prison, Gabela Prison, the Heliodrom, and Vojno Detention Centre.⁷⁹⁶⁴

2375. Lastly, the Appeals Chamber rejects Petković’s contention that the Trial Chamber improperly relied on the notion of “knowledge” in determining his *mens rea*, as he misrepresents the Trial Judgement. Petković refers to the Trial Chamber’s conclusions that the destructions and arrests carried out by the HVO during the 17 April 1993 attack in Jablanica Municipality were an integral part of a well-organised and orchestrated plan and that, insofar as he planned the attack and directed the military operations, Petković knew that these crimes were part of that attack.⁷⁹⁶⁵ However, as the Appeals Chamber noted above,⁷⁹⁶⁶ the Trial Chamber further found that by planning and directing the military operations in Jablanica Municipality in April 1993 and continuing to exercise control over the HVO, while knowing that its members had committed and were committing crimes, Petković intended the crimes to be committed.⁷⁹⁶⁷ Based on this consideration, the Appeals Chamber finds that Petković has failed to show any error in the Trial Chamber’s reasoning.⁷⁹⁶⁸

2376. Finally, the Appeals Chamber rejects Petković’s unsupported argument that the Trial Chamber failed to provide a reasoned opinion and to find beyond reasonable doubt that he intended the crimes he was held responsible for.⁷⁹⁶⁹ By contrast, the Trial Chamber expressly stated that Petković intended the crimes committed by members of the HVO, relying on his contribution and the fact that he continued to exercise control over the HVO despite being aware of such crimes.⁷⁹⁷⁰

⁷⁹⁶³ Trial Judgement, Vol. 4, para. 815, referring to Trial Judgement, Vol. 4, paras 687-814.

⁷⁹⁶⁴ The Appeals Chamber notes that although when inferring Petković’s intent for the crimes committed by HVO members, the Trial Chamber did not expressly refer to his contributions to the crimes in Gabela and Dretelj Prisons, its conclusion regarding his *mens rea* nevertheless pertained to such crimes, as it referred to “the crimes committed by the members of the HZ(R) H-B armed forces as described above”. See Trial Judgement, Vol. 4, para. 815.

⁷⁹⁶⁵ See Petković’s Appeal Brief, para. 112(iii)(a).

⁷⁹⁶⁶ See *supra*, para. 2374.

⁷⁹⁶⁷ See *supra*, para. 2206. With respect to Petković’s argument concerning the Trial Chamber’s reference to the concept of “awareness”, the Appeals Chamber observes that he refers to the Trial Chamber’s *mens rea* findings concerning the shelling of East Mostar, where it held that Petković had to be aware of the situation of terror under which the Muslim population was living. Petković’s Appeal Brief, paras 112 (iv)(d), (x) referring to Trial Judgement, Vol. 4, para. 750. However, the Appeals Chamber considers that this finding, rather than showing a departure from the required legal standard, does not reflect the Trial Chamber’s conclusion concerning Petković’s *mens rea* concerning the crime of terror. See *infra*, para. 2401. Accordingly, the Appeals Chamber dismisses this argument.

⁷⁹⁶⁸ The Appeals Chamber also notes that in arguing that the Trial Chamber’s reliance on the notion of “allowance” is inapposite, Petković fails to provide any reference to the Trial Judgement. Petković’s Appeal Brief, para. 112. His argument is therefore dismissed. Moreover, the Appeals Chamber dismisses Petković’s obscure assertion that the Trial Chamber found that he ordered the arrest of “men who did not belong to any armed force”, but failed to consider the “cognitive and volitional components of intent” as he fails to articulate any error in the Trial Chamber’s reasoning. See *supra*, fn. 7953.

⁷⁹⁶⁹ Petković’s Appeal Brief, para. 88.

⁷⁹⁷⁰ Trial Judgement, Vol. 4, para. 815.

Likewise, Petković does not provide any argument in support of his assertion that the Trial Chamber's conclusion is inconsistent with the beyond reasonable doubt standard.⁷⁹⁷¹ Accordingly, these arguments fail.

2377. On the basis of the foregoing, the Appeals Chamber finds that Petković has failed to show that the Trial Chamber improperly applied the *mens rea* standard for JCE I or did not provide a reasoned opinion in this regard and dismisses his sub-ground of appeal 4.3.1.

(b) Alleged errors concerning Petković's alleged mistakes of law (Petković's Sub-grounds 4.3.2.1 and 4.3.2.3)

2378. In concluding that Petković ordered the arrest of "men who did not belong to any armed force",⁷⁹⁷² the Trial Chamber relied upon his 30 June 1993 Order to the South-East OZ that all Muslim HVO members and able-bodied Muslim men within the unit's area of responsibility should be "isolate[d]".⁷⁹⁷³ The Trial Chamber also found that Petković ordered and authorised the use of detainees from the Heliudrom and Vitina-Otok Camp to perform forced labour on the front line.⁷⁹⁷⁴ The Trial Chamber relied on both of these findings when concluding that Petković intended the crimes committed by HVO members.⁷⁹⁷⁵

(i) Arguments of the Parties

2379. Petković submits that the Trial Chamber erroneously relied on the 30 June 1993 Order and his forced labour orders when drawing an inference regarding his *mens rea* and convicting him for the crimes relating thereto, as it failed to consider whether he made a mistake of law with respect to the legality of these orders.⁷⁹⁷⁶ As to the 30 June 1993 Order, Petković asserts that the evidence on the record establishes that he considered it to be "legal and justified" because the HVO authorities did not consider either Muslim HVO members or military-aged Muslim men to be "men not belonging to any armed force".⁷⁹⁷⁷ Petković adds that he issued the 30 June 1993 Order pursuant to an order from Mate Boban and he had no reason to believe that he was acting unlawfully by

⁷⁹⁷¹ The Appeals Chamber also dismisses Petković's assertion that the intent to commit JCE crimes must be shown to precede the actual commission of the crimes as he fails to articulate any error in the Trial Chamber's approach.

⁷⁹⁷² Trial Judgement, Vol. 4, para. 738 (Mostar Municipality). See Trial Judgement, Vol. 4, paras 757-758 (Stolac Municipality), 759 (Čapljina Municipality), 815.

⁷⁹⁷³ Trial Judgement, Vol. 4, para. 737, referring to Ex. P03019.

⁷⁹⁷⁴ Trial Judgement, Vol. 4, paras 793, 802.

⁷⁹⁷⁵ Trial Judgement, Vol. 4, para. 815.

⁷⁹⁷⁶ Petković's Appeal Brief, paras 114-123, 128-133. See also Petković's Appeal Brief, para. 113.

⁷⁹⁷⁷ Petković's Appeal Brief, para. 116. See also Appeal Hearing, AT. 518 (23 Mar 2017). Petković argues that at trial he "extensively explained" the circumstances under which he issued the 30 June 1993 Order as well as his understanding thereof. Petković's Appeal Brief, para. 116, referring to Petković's Final Brief, paras 241-297; Appeal Hearing, AT. 518 (23 Mar 2017). Moreover, he contends that he gave instructions that Muslim women and children be allowed to remain in their houses and that this reflects that he only ordered the isolation of men whom he considered to be members of the armed forces. Petković's Appeal Brief, para. 117; Appeal Hearing, AT. 518 (23 Mar 2017).

implementing it as Boban's order was consistent with relevant domestic laws and not manifestly unlawful.⁷⁹⁷⁸

2380. Concerning the forced labour orders, Petković points to his own testimony at trial which, he asserts, demonstrates that he understood them to be lawful.⁷⁹⁷⁹ He also highlights that he had no information that: (1) the implementation of these orders resulted in harm or injury to any individual; (2) no precautions were taken to protect the workers in implementing his orders.⁷⁹⁸⁰

2381. The Prosecution responds that, in addition to being a repetition of his trial arguments, Petković's claims that his orders were excusable due to a possible mistake of law or because he was following his superior's orders are both legally unsound and factually incorrect.⁷⁹⁸¹ According to the Prosecution, the plain language of his orders, as well as their context and his status as a professional soldier and former JNA officer, all contradict Petković's contention that he did not know that such orders were illegal.⁷⁹⁸² Finally, the Prosecution submits that neither a mistake of law nor a belief that he was following a lawful order from a superior would negate Petković's criminal responsibility and that, in any case, he fails to establish either.⁷⁹⁸³

2382. Petković replies that with respect to the 30 June 1993 Order "his defence was not, and is not, 'mistake of law' and 'following superiors' orders'".⁷⁹⁸⁴ According to Petković, in evaluating his *mens rea*, the Trial Chamber was required to consider evidence that he contends reflects a mistake of law and provide a reasoned opinion accordingly.⁷⁹⁸⁵ Moreover, Petković clarifies that he did not raise a "'superior order' defence", but rather claims that Boban's order reinforced his belief that he was acting lawfully.⁷⁹⁸⁶

(ii) Analysis

2383. As a preliminary matter, the Appeals Chamber observes that Petković's appeal and reply briefs, considered collectively, are unclear regarding his contention as to the legal effect of his

⁷⁹⁷⁸ Petković's Appeal Brief, paras 120-121; Appeal Hearing, AT. 518-519 (23 Mar 2017). See also Petković's Appeal Brief, para. 119.

⁷⁹⁷⁹ Petković's Appeal Brief, para. 129. Petković also argues that the Trial Chamber erred in concluding that the forced labour orders were unlawful. Petković's Appeal Brief, para. 129. According to Petković, his labour orders "were not such that a reasonable commander could not have regarded them – rightly or mistakenly – as lawful in the circumstances". Petković's Appeal Brief, para. 130. See also Petković's Appeal Brief, para. 131.

⁷⁹⁸⁰ Petković's Appeal Brief, para. 131.

⁷⁹⁸¹ Prosecution's Response Brief (Petković), para. 79. See also Appeal Hearing, AT. 534, 539 (23 Mar 2017).

⁷⁹⁸² Prosecution's Response Brief (Petković), paras 78-80, 83, 89-91. See also Prosecution's Response Brief (Petković), paras 81-82; Appeal Hearing, AT. 536, 539 (23 Mar 2017). The Prosecution further submits that the orders themselves were indeed unlawful. Prosecution's Response Brief (Petković), paras 78, 91.

⁷⁹⁸³ Prosecution's Response Brief (Petković), paras 92-95.

⁷⁹⁸⁴ Petković's Reply Brief, para. 20. See also Petković's Reply Brief, para. 19.

⁷⁹⁸⁵ Petković's Reply Brief, para. 20.

⁷⁹⁸⁶ Petković's Reply Brief, para. 21.

alleged mistake of law. The Appeals Chamber interprets his submissions to advance a claim that his subjective belief in the legality of his orders negated his *mens rea*. For the purposes of the present ground of appeal, the Appeals Chamber does not consider it necessary to address the legal effect of a mistake of law,⁷⁹⁸⁷ because, as will be elaborated below, the evidence to which Petković points does not establish his contention.

2384. To the extent that Petković argues that the Trial Chamber did not consider his submissions at trial, the Appeals Chamber notes that the Trial Chamber did refer to the evidence Petković gave concerning the 30 June 1993 Order, including portions of the testimony in which he stated that he considered the order to have been lawful.⁷⁹⁸⁸ Further, it expressly considered and dismissed Petković's submission – referring to some of the evidence he provides in support of this ground of appeal – that the detentions on 30 June 1993 were legal due to the status of the detained men.⁷⁹⁸⁹ Thus, the Trial Chamber was aware of the arguments put forward by Petković concerning both the legality of detentions and his own personal view on the legality of his orders. It did not, however, explicitly discuss this testimony and Petković's submissions regarding his alleged mistake of law when discussing his *mens rea* for the relevant crimes.⁷⁹⁹⁰ Notwithstanding this, the Appeals Chamber considers, in light of the nature of the evidence presented by Petković in support of his argument, that this omission does not invalidate the Trial Chamber's decision.

2385. In this regard, Petković points to a variety of evidence, including the testimony of two expert witnesses and their respective reports.⁷⁹⁹¹ This evidence indicates, according to him, that “Muslim soldiers were considered by the HVO authorities like all other HVO *soldiers* and ABiH military conscripts as non-combatant *members of the ABiH*”⁷⁹⁹² and that Boban's order was not unlawful on its face.⁷⁹⁹³ However, this type of evidence pertains to the reasonableness of the HVO's assessments regarding military-aged Muslim males and Muslim HVO members as a supposed security threat, rather than to Petković's own *mens rea* for the relevant crime.⁷⁹⁹⁴ Accordingly,

⁷⁹⁸⁷ Cf. *Karadžić Hostage-Taking Decision*, para. 22.

⁷⁹⁸⁸ Trial Judgement, Vol. 2, paras 890, 894 & fns 2079, 2093, referring to Milivoj Petković, T(F) 49574-49581 (17 Feb 2010), T(F). 50747 (10 Mar 2010), Vol. 3, para. 609 & fn. 1218, referring to Milivoj Petković, T(F) 49574-49580 (17 Feb 2010).

⁷⁹⁸⁹ Trial Judgement, Vol. 3, paras 591-621 & fns 1218, 1221, referring to, *inter alia*, Ex. 4D01731, para. 138, Milan Gorjanc, T(F). 46118-46119 (27 Oct 2009), T(F). 46126, 46132 (28 Oct 2009).

⁷⁹⁹⁰ Trial Judgement, Vol. 4, paras 738, 758-759, 793, 802, 815. Cf. Trial Judgement, Vol. 4, paras 722, 801.

⁷⁹⁹¹ Petković's Appeal Brief, paras 116 (referring to, *inter alia*, Exs. 4D01731, paras 53-62, 4D01470), 120 (referring to, *inter alia*, Milan Gorjanc, T. 46118 (27 Oct 2009), T. 46127, 46132-46133 (28 Oct 2009), Andrew Pringle, T. 24265 (7 Nov 2007), Exs. 4D01731, para. 138, P09549, para. 78). See also Appeal Hearing, AT. 518 (23 Mar 2017) (referring to the testimonies of Gorjanc and Pringle).

⁷⁹⁹² Petković's Appeal Brief, para. 116 (emphasis in the original).

⁷⁹⁹³ Petković's Appeal Brief, para. 120.

⁷⁹⁹⁴ See Ex. 4D01470 (containing the FRY Law on All-People's Defence); Ex. 4D01731, paras 53-62 (explaining the concept of “all-people's defence”), 138 (analysing the reasonableness of the HVO's perception of its Muslim members as a security threat and permissible steps to mitigate such threat); Milan Gorjanc, T. 46118 (27 Oct 2009), T. 46127, 46132-46133 (28 Oct 2009) (same); Ex. P09549, para. 78 (explaining the reasonableness of the detention of civilians

Petković fails to explain why this evidence – which indicates legal circumstances for the detention of military-aged Muslim males and Muslim HVO members and some of which the Trial Chamber considered in that context – could be probative in establishing his state of mind and therefore should have been expressly considered in analysing his *mens rea* for the relevant crime.⁷⁹⁹⁵ This argument is therefore dismissed.

2386. Petković also relies on his own testimony to support his argument regarding the Trial Chamber's failure to consider his mistake of law when considering his *mens rea*.⁷⁹⁹⁶ As noted above, the Trial Chamber was cognisant of Petković's testimony about his belief that the 30 June 1993 Order was lawful.⁷⁹⁹⁷ However, the Appeals Chamber observes that the Trial Chamber explained that although it found Petković credible on certain points, it found him "hardly credible on others", particularly where he sought to "limit [his] responsibility in respect of certain allegations".⁷⁹⁹⁸ The Trial Chamber stated that it had not accepted his testimony in the latter instances.⁷⁹⁹⁹ In that context, the Appeals Chamber recalls that a trial chamber need not refer to every witness testimony or every piece of evidence on the record and that there is a presumption that the trial chamber evaluated all evidence presented to it, as long as there is no indication that the trial chamber completely disregarded evidence which is clearly relevant.⁸⁰⁰⁰ Therefore, as set out earlier in the Trial Judgement, the Trial Chamber simply did not accept Petković's testimony as to his state of mind regarding his 30 June 1993 Order. As Petković shows no error in this approach, his argument in this regard is dismissed.

2387. Likewise, the Appeals Chamber dismisses Petković's contention concerning his state of mind regarding his forced labour orders, which is entirely reliant on his testimony at trial.⁸⁰⁰¹ Moreover, the Appeals Chamber finds no merit in Petković's unreferenced arguments that he had

deemed a threat to security). See also Andrew Pringle, T. 24265 (7 Nov 2007) (suggesting that an HVO commander would have perceived Muslim HVO members as a security threat).

⁷⁹⁹⁵ The Appeals Chamber also dismisses Petković's argument that he "extensively explained" the circumstances under which he issued the 30 June 1993 Order as well as his understanding thereof. The Appeals Chamber observes that he relies on a portion of his final brief which mainly concerns the objective legality of this order. Petković's Appeal Brief, para. 116, referring to Petković's Final Brief, paras 241-297. Likewise, the Appeals Chamber sees no merit in his argument that he gave instructions that Muslim women and children be allowed to remain in their houses, as he fails to articulate any error warranting appellate intervention. Petković's Appeal Brief, para. 117.

⁷⁹⁹⁶ Petković's Appeal Brief, paras 116 (referring to Milivoj Petković, T. 49594 (17 Feb 2010)), 120 (referring to Milivoj Petković, T. 49577, 49594-49596 (17 Feb 2010)).

⁷⁹⁹⁷ See *supra*, para. 2383.

⁷⁹⁹⁸ Trial Judgement, Vol. 1, para. 399.

⁷⁹⁹⁹ Trial Judgement, Vol. 1, para. 399.

⁸⁰⁰⁰ *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.

⁸⁰⁰¹ Petković's Appeal Brief, para. 129, referring to Milivoj Petković, T. 49817-49818 (22 Feb 2010), T. 50678 (9 Mar 2010). See also Petković's Appeal Brief, paras 128, 130-133. Although Petković only specifically identifies one forced labour order, Exhibit P04020, he seemingly impugns the conclusion drawn by the Trial Chamber on the basis of multiple "forced labour orders". See Petković's Appeal Brief, paras 129-132.

no information that these orders resulted in harm and that no precautions were taken to protect the workers, as he fails to articulate any error warranting appellate intervention.⁸⁰⁰²

2388. Accordingly, the Appeals Chamber finds that Petković has failed to point to evidence or factual findings which the Trial Chamber omitted to expressly address that would in turn invalidate its decision. The Appeals Chamber therefore rejects Petković's contention that the Trial Chamber failed to render a reasoned opinion.

2389. Accordingly, Petković's sub-grounds of appeal 4.3.2.1 and 4.3.2.3 are dismissed.

(c) Alleged errors concerning Petković's knowledge of the international armed conflict (Petković's Sub-ground 7.1.6)

(i) Arguments of the Parties

2390. Petković submits that in order to establish liability under Article 2 of the Statute, the Prosecution must prove beyond reasonable doubt that the accused knew of all of the factual circumstances rendering the conflict international.⁸⁰⁰³ Petković contends that the Trial Chamber erred in law and fact by failing to establish his knowledge of the international nature of the conflict between the ABiH and the HVO beyond reasonable doubt.⁸⁰⁰⁴ According to Petković, despite the findings that he was aware of and facilitated Croatia's and the HV's participation in the HVO-ABiH conflict, the Trial Chamber failed to find that he was cognizant of all the facts proving the HV's overall control over the HVO, especially facts other than the provision of financial and logistical support.⁸⁰⁰⁵

2391. The Prosecution responds that the Trial Chamber reasonably concluded that Petković was aware of the international nature of the conflict as Petković himself facilitated Croatia's participation in the conflict.⁸⁰⁰⁶

⁸⁰⁰² To the extent that Petković claims that his forced labour orders were in fact lawful, the Appeals Chamber notes that the Trial Chamber expressly rejected Petković's contention regarding Exhibit P04020. Trial Judgement, Vol. 4, para. 801. In this regard, he merely repeats his unsuccessful argument without demonstrating an error. Insofar as Petković also challenges the legality of the other forced labour orders, which he failed to expressly identify, the Appeals Chamber dismisses this unsubstantiated assertion. Similarly, the Appeals Chamber rejects Petković's broad argument that his forced labour orders "were not such that a reasonable commander could not have regarded them – rightly or mistakenly – as lawful in the circumstances". See *supra*, fn. 7979.

⁸⁰⁰³ Petković's Appeal Brief, para. 430, citing *Naletilić and Martinović* Appeal Judgement, para. 121; Petković's Reply Brief, para. 84.

⁸⁰⁰⁴ Petković's Appeal Brief, paras 430-431.

⁸⁰⁰⁵ Petković's Appeal Brief, paras 430-431. In his Reply Brief, Petković likewise maintains that the Prosecution did not prove that he knew of the factual circumstances that made the HVO-ABiH conflict international. See Petković's Reply Brief, para. 84.

⁸⁰⁰⁶ Prosecution's Response Brief (Petković), para. 294.

(ii) Analysis

2392. The Appeals Chamber recalls that for liability to be established under Article 2 of the Statute, “the principle of individual guilt requires that the accused’s awareness of factual circumstances establishing the armed conflict’s international character must be proven by the Prosecution”.⁸⁰⁰⁷ The *mens rea* requirement may be satisfied even though the accused lacked knowledge of the legal significance of the factual circumstances at hand.⁸⁰⁰⁸ As held by the Appeals Chamber in the *Naletilić and Martinović* case, the defendant must be aware of the factual circumstances that qualify the conflict as international but the *mens rea* requirement does not necessitate that the accused correctly applies a particular legal label to known facts.⁸⁰⁰⁹ All that is required is that the accused be aware of the factual circumstances that lead to the judicial characterisation of the conflict as international.⁸⁰¹⁰

2393. In this case, the Appeals Chamber observes that, according to the Trial Chamber’s findings, Petković was undoubtedly cognizant of his own role as a facilitator of the close relationship between the HV and the HVO and of Croatia’s involvement in the Bosnian conflict.⁸⁰¹¹ A reasonable fact-finder could thus have concluded that Petković knew of the international character of the conflict, given that it was his own activities and those of, *inter alia*, the other Appellants that contributed to Croatia’s control over the HVO and thus rendered the conflict international.⁸⁰¹² Indeed, as Petković admits, he simultaneously and knowingly held positions in both the HV and HVO.⁸⁰¹³ The Trial Chamber further found that Croatia paid the salaries of HVO officers, including Petković’s, who at the same time were serving as officers within the HV.⁸⁰¹⁴ On the basis of the evidence on the record, a reasonable trier of fact could indeed have concluded that Petković knew of the factual circumstances amounting to the existence of an international armed conflict. This is indeed what the Trial Chamber found, despite not articulating its finding explicitly, given Petković’s obvious knowledge of his own role in facilitating Croatia’s involvement in the HVO-ABiH conflict.

2394. In light of the above, the Appeals Chamber dismisses Petković’s sub-ground of appeal 7.1.6.

⁸⁰⁰⁷ *Naletilić and Martinović* Appeal Judgement, para. 121.

⁸⁰⁰⁸ *Karadžić* Hostage-Taking Decision, para. 22.

⁸⁰⁰⁹ *Naletilić and Martinović* Appeal Judgement, paras 116-121.

⁸⁰¹⁰ *Naletilić and Martinović* Appeal Judgement, para. 118.

⁸⁰¹¹ See Trial Judgement, Vol. 3, paras 547, 564.

⁸⁰¹² Trial Judgement, Vol. 3, para. 547.

⁸⁰¹³ See Petković’s Appeal Brief, para. 425.

⁸⁰¹⁴ Trial Judgement, Vol. 3, paras 546-548, 555.

(d) Alleged errors regarding Petković's *mens rea* with respect to certain crimes (Petković's Sub-grounds 4.1 and 4.4 both in part)

2395. The Trial Chamber convicted Petković for grave breaches of the Geneva Conventions pursuant to Article 2 of the Statute, including, *inter alia*: (1) wilful killing; (2) unlawful deportation of a civilian; (3) unlawful transfer of a civilian; (4) unlawful confinement of a civilian; (5) extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly; and (6) appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.⁸⁰¹⁵ It also found him responsible for violations of the laws or customs of war pursuant to Article 3 of the Statute, including, *inter alia*: (1) unlawful labour; (2) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (3) destruction or wilful damage done to institutions dedicated to religion or education; (4) unlawful attack on civilians; and (5) unlawful infliction of terror on civilians.⁸⁰¹⁶

2396. Petković submits that the Trial Chamber failed to provide a reasoned opinion concerning the *mens rea* elements of the crime of terror as well as the crimes which include the notions of "wilful, unlawful, wanton" among their elements and that it erred in convicting him for these crimes.⁸⁰¹⁷ The Appeals Chamber will deal with these contentions in turn.

(i) Unlawful infliction of terror on civilians under Article 3 of the Statute (Count 25)

2397. With respect to the shelling of East Mostar, the Trial Chamber convicted Petković for, *inter alia*, the crime of terror.⁸⁰¹⁸ In concluding that Petković possessed the relevant *mens rea* for the crimes resulting from the shelling of East Mostar, the Trial Chamber found that:

Milivoj Petković knew that the HVO forces were shelling and firing on East Mostar, a densely-populated urban zone, causing deaths, injuries and the destruction of property, including mosques. He also knew that the members of the international organisations were also affected by the HVO shelling. Furthermore, under these circumstances and bearing in mind the long period during which East Mostar was regularly the target of HVO shooting, Milivoj Petković must have been aware of the terror under which the Muslim population of East Mostar was living. Insofar as he ordered and contributed to planning this shelling, while knowing that it would lead to murder, injuries and the destruction of property, including mosques, the [Trial] Chamber infers that Milivoj Petković intended to have these crimes committed.⁸⁰¹⁹

2398. Petković submits that the Trial Chamber failed to provide a reasoned opinion with respect to his specific intent to spread terror among the civilian population, arguing that the Trial Chamber

⁸⁰¹⁵ Trial Judgement, Vol. 4, paras 820-821, Disposition, p. 431.

⁸⁰¹⁶ Trial Judgement, Vol. 4, paras 820-821, Disposition, p. 431.

⁸⁰¹⁷ Petković's Appeal Brief, paras 87, 90(i), 137-138.

⁸⁰¹⁸ Trial Judgement, Vol. 4, paras 743-750, 820.

⁸⁰¹⁹ Trial Judgement, Vol. 4, para. 750.

merely stated that he “must have been aware of the terror under which [the] Muslim population of East Mostar was living”.⁸⁰²⁰

2399. The Prosecution responds that the Trial Chamber provided a reasoned opinion with respect to Petković’s *mens rea* concerning this offence.⁸⁰²¹ According to the Prosecution, in any event, the Trial Chamber was satisfied beyond a reasonable doubt that Petković specifically intended to inflict terror on civilians.⁸⁰²²

2400. The Appeals Chamber recalls that the *mens rea* for the crime of terror consists of the intent to make the civilian population or individual civilians not taking direct part in hostilities the object of the acts of violence or threats thereof, and of the specific intent to spread terror among the civilian population.⁸⁰²³ While spreading terror must be the primary purpose of the acts or threats of violence, it need not be the only one and can be inferred from the “nature, manner, timing, and duration” of the acts or threats.⁸⁰²⁴

2401. Turning to the merit of Petković’s challenge, the Appeals Chamber observes that a plain reading of the Trial Judgement reveals a certain ambiguity as to the scope of the Trial Chamber’s findings concerning Petković’s *mens rea* for this crime. In particular, the Trial Chamber concluded that insofar as Petković ordered and contributed to planning the shelling of East Mostar, he intended the murders, injuries, and destruction of property.⁸⁰²⁵ However, it did not specify whether the primary purpose underpinning his conduct was the specific intent to spread terror among the civilian population. The only reference to such intent appears to be reflected in the broad consideration that Petković had to be aware of the situation of terror affecting the Muslim population of East Mostar.⁸⁰²⁶ Nevertheless, this finding alone does not explain the Trial Chamber’s reasoning underpinning its conclusion that Petković possessed the *mens rea* required for such offence.⁸⁰²⁷

2402. The Appeals Chamber notes that in the portion of the Trial Judgement concerning the legal findings on the crimes, the Trial Chamber concluded that “the HVO” had the specific intent to

⁸⁰²⁰ Petković’s Appeal Brief, para. 137 (emphasis omitted), referring to Trial Judgement, Vol. 4, para. 750. See also Petković’s Appeal Brief, paras 87, 90(i); Appeal Hearing, AT. 525 (23 Mar 2017).

⁸⁰²¹ Prosecution’s Response Brief (Petković), para. 68. See also Appeal Hearing, AT. 560-562, 566 (23 Mar 2017), referring to, *inter alia*, Trial Judgement, Vol. 3, paras 1691-1692, Vol. 4, para. 820.

⁸⁰²² Appeal Hearing, AT. 560-566 (23 Mar 2017), referring to Trial Judgement, Vol. 2, paras 1000, 1005-1006, 1015, 1060, 1154, 1163, 1199-1200, Vol. 3, paras 1689-1692, Vol. 4, paras 745-756, 814-816, 820.

⁸⁰²³ *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104.

⁸⁰²⁴ *D. Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104.

⁸⁰²⁵ Trial Judgement, Vol. 4, para. 750.

⁸⁰²⁶ Trial Judgement, Vol. 4, para. 750.

⁸⁰²⁷ The Appeals Chamber observes that in another portion of the Trial Judgement, the Trial Chamber found that Petković intended the crimes committed by the HVO between January 1993 and April 1994, yet did not specify whether he possessed the relevant *mens rea* for the crime of terror. See Trial Judgement, Vol. 4, para. 815.

spread terror among the civilian population of East Mostar.⁸⁰²⁸ However, in the absence of an express consideration of whether the primary purpose underpinning Petković's conduct was to spread terror among the civilian population, the Appeals Chamber finds that the Trial Chamber failed to provide a reasoned opinion with respect to Petković's conviction for this offence. The Appeals Chamber will assess, on the basis of the Trial Chamber's findings as well as evidence referred to by the Trial Chamber and/or contained in the trial record and identified by the Parties, whether no reasonable trier of fact could have reached the same conclusion as the Trial Chamber did.⁸⁰²⁹ In this regard, the Appeals Chamber recalls that the significance and the scope of an individual's material contribution to a JCE may be relevant in determining whether that individual had the requisite *mens rea*.⁸⁰³⁰ In this context, the Trial Chamber found that Petković was directly involved in these actions by ordering and planning the shelling of East Mostar and by hindering the access of humanitarian convoys to that part of the city.⁸⁰³¹ The Appeals Chamber further observes that the portion of the Trial Judgement related to the legal findings on the crime of terror may be relevant to an assessment of Petković's *mens rea* for that crime.⁸⁰³² Specifically, the Trial Chamber found that:

[T]he deliberate isolation of a population in an area as small as East Mostar for several months – and doing so after forcibly transferring a large part of the population there – and thus the exacerbation of their distress and difficult living conditions is part of the same plan and demonstrates the specific intention of the HVO to spread terror among the civilian population of East Mostar.⁸⁰³³

In reaching this conclusion, the Trial Chamber considered, *inter alia*, that: (1) the shelling, including sniper fire, terrified the population of East Mostar;⁸⁰³⁴ (2) the destruction of ten mosques, and the Old Bridge which had a psychological impact on the morale of the population – of which the HVO had to have been aware;⁸⁰³⁵ and (3) the blocking or hindering of humanitarian aid or international organisations' access to East Mostar “aggravated and heightened the appalling living conditions to which the Muslim inhabitants of East Mostar were subjected”.⁸⁰³⁶ The Appeals Chamber recalls that it has reversed the Trial Chamber's findings that the destruction of the Old Bridge constituted any of the charged crimes in this case, and has therefore acquitted the Appellants of the charges under Counts 1 and 25 insofar as they concern the destruction of the Old

⁸⁰²⁸ Trial Judgement, Vol. 3, para. 1691.

⁸⁰²⁹ See *Stanišić and Župljanin* Appeal Judgement, para. 142, referring to *Kordić and Čerkez* Appeal Judgement, paras 383-388, *Nyiramasuhuko et al.* Appeal Judgement, para. 977, *Bizimungu* Appeal Judgement, para. 23, *Ndindiliyimana et al.* Appeal Judgement, para. 293.

⁸⁰³⁰ *Kvočka et al.* Appeal Judgement, paras 97, 188. The Appeals Chamber considers that even though the above finding was not made in the context of the specific intent to commit terror, it is nevertheless applicable by analogy.

⁸⁰³¹ Trial Judgement, Vol. 4, paras 743-756.

⁸⁰³² Trial Judgement, Vol. 3, paras 1689-1691.

⁸⁰³³ Trial Judgement, Vol. 3, para. 1691.

⁸⁰³⁴ Trial Judgement, Vol. 3, para. 1689.

⁸⁰³⁵ Trial Judgement, Vol. 3, para. 1690.

⁸⁰³⁶ Trial Judgement, Vol. 3, para. 1691.

Bridge.⁸⁰³⁷ Accordingly, the above Trial Chamber finding concerning Petković's contribution to the destruction of the Old Bridge has been disregarded by the Appeals Chamber when making a determination on this ground of appeal. Having done so, the Appeals Chamber nevertheless considers that reading the Trial Judgement as a whole and especially the legal findings together with the Trial Chamber's conclusion regarding Petković's remaining contribution to the crimes during the siege of East Mostar could lead a reasonable trier of fact to conclude that he possessed the required *mens rea* for the crime of terror. Accordingly, the Appeals Chamber finds that Petković fails to show that the Trial Chamber's failure to provide a reasoned opinion resulted in an error invalidating the verdict and dismisses his contention.

(ii) Crimes including the notions of "wilful, unlawful, and wanton"

2403. Petković submits that the Trial Chamber made no findings concerning the *mens rea* requirements "for crimes which elements are wilful, unlawful, [or] wanton and therefore require stronger subjective gradations than 'ordinary' intent".⁸⁰³⁸

2404. The Prosecution does not respond to this argument.

2405. The Appeals Chamber notes that Petković's extremely broad argument fails to provide any references to either the Trial Judgement or the exact convictions he challenges.⁸⁰³⁹ In any event, the Appeals Chamber finds that he does not explain why the notions of wilful, unlawful, or wanton reflect a more stringent *mens rea* requirement than "ordinary" intent. Accordingly, the Appeals Chamber dismisses this unsubstantiated argument.

(iii) Conclusion

2406. On the basis of the foregoing, the Appeals Chamber dismisses Petković's argument concerning the crime of terror, as he has failed to show that the Trial Chamber's failure to provide a reasoned opinion invalidates its decision to that effect. The Appeals Chamber further dismisses the remaining challenges concerning the Trial Chamber's findings regarding Petković's *mens rea* for crimes including the notions of "wilful, unlawful, and wanton". Accordingly, the Appeals Chamber dismisses the relevant parts of Petković's sub-grounds of appeal 4.1 and 4.4.

⁸⁰³⁷ See *supra*, para. 426. The Appeals Chamber also reversed the Trial Chamber's conclusion that the destruction of the Old Bridge constituted wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or customs of war. See *supra*, para. 414.

⁸⁰³⁸ Petković's Appeal Brief, para. 137 (emphasis omitted). See also Petković's Appeal Brief, paras 87, 90(i).

⁸⁰³⁹ See Petković's Appeal Brief, para. 137 (emphasis omitted). See also Petković's Appeal Brief, paras 87, 90(i).

(e) Conclusion

2407. For the foregoing reasons, Petković has failed to demonstrate any errors in the Trial Chamber's conclusions concerning the application of the *mens rea* standard for JCE I liability. The Appeals Chamber finds that Petković has failed to show that the Trial Chamber was required to expressly address allegations concerning a mistake of law or that its failure to provide a reasoned opinion invalidated the verdict concerning the *mens rea* elements of the crimes for which he was convicted.

6. Alleged errors regarding the Trial Chamber's conclusions on Petković's responsibility under JCE I (Petković's Sub-grounds 4.1.2, 4.2, 5.1.2, 5.1.3, and 5.2.3.2)

2408. In finding Petković responsible for the crimes within the scope of the JCE,⁸⁰⁴⁰ the Trial Chamber found that: (1) he had effective control over the HVO from 14 April 1992 to 26 April 1994, first as Chief and later as Deputy Commander/Deputy Chief of the Main Staff;⁸⁰⁴¹ (2) he ordered, planned, facilitated, encouraged, and concealed the crimes committed by the members of the HVO;⁸⁰⁴² and (3) he intended these crimes to be committed.⁸⁰⁴³ In light of these considerations, the Trial Chamber concluded that Petković intended the CCP, namely to expel the Muslim population from the HZ(R) H-B and that he significantly contributed to the JCE.⁸⁰⁴⁴

2409. Petković challenges the Trial Chamber's findings that he: (1) ordered, planned, facilitated, encouraged, and concealed the crimes committed by the members of the HVO; (2) intended to expel the Muslim population from the HZ(R) H-B; and (3) significantly contributed to the JCE.⁸⁰⁴⁵

(a) Petković's direct contribution to the crimes committed by the HVO

2410. The Trial Chamber concluded that Petković ordered, planned, facilitated, encouraged, and concealed the crimes committed by HVO members.⁸⁰⁴⁶ It also found that, despite his power over the

⁸⁰⁴⁰ Trial Judgement, Vol. 4, paras 820-821.

⁸⁰⁴¹ Trial Judgement, Vol. 4, para. 814.

⁸⁰⁴² Trial Judgement, Vol. 4, paras 815-816.

⁸⁰⁴³ Trial Judgement, Vol. 4, para. 815.

⁸⁰⁴⁴ Trial Judgement, Vol. 4, paras 817-818.

⁸⁰⁴⁵ Petković's Appeal Brief, paras 91-111, 140, 161-171, 353-356, 358-360. Petković also reiterates arguments from previous sub-grounds of appeal, contending that the Trial Chamber: (1) erred in finding that he had effective control over the HVO; and (2) failed to consider that from 24 July 1993 he was relieved as Chief of the Main Staff and, as Deputy Commander and Deputy Chief of Main Staff, he did not have "*de jure* and effective control" over the HVO. Petković's Appeal Brief, paras 352, 357. The Appeals Chamber notes that these arguments have been addressed and dismissed elsewhere in the Judgement. See *supra*, paras 2095, 2121 2121. Petković further submits that the Trial Chamber erred in concluding that he was aware of the international nature of the conflict between the HVO and the BiH. Petković's Appeal Brief, para. 361, referring to Petković's Appeal Brief, paras 410-444. The Appeals Chamber observes that in support of his contention he entirely refers to another sub-ground of appeal which is addressed and dismissed elsewhere in the Judgement. See *supra*, para. 249.

⁸⁰⁴⁶ Trial Judgement, Vol. 4, paras 815-816.

HVO, Petković did not make “serious efforts” to end their commission of crimes, but rather concealed the HVO authorities’ responsibility from international representatives.⁸⁰⁴⁷

2411. Petković submits that the Trial Chamber erred in inferring that he ordered, planned, facilitated, encouraged, and concealed the crimes committed by HVO members by: (1) having effective command and control over the HVO; (2) “making decision[s] on military operations”; and (3) forwarding Government decisions to the HVO and implementing them.⁸⁰⁴⁸ According to Petković, the Trial Chamber “impermissibly equated” the rights and duties of a military commander with criminal conduct.⁸⁰⁴⁹

2412. Petković also claims that the Trial Chamber erred in making a “general assertion” that he ordered and planned the crimes committed by the HVO.⁸⁰⁵⁰ He highlights that, with the exception of unlawful labour under Count 18, the Trial Chamber did not make a finding that he ordered or planned any specific crime.⁸⁰⁵¹ Finally, with respect to the Trial Chamber’s finding that he did not make “serious efforts” to put an end to the HVO’s commission of crimes, Petković claims that it “failed to explain whether it evaluated Petković’s efforts on the basis of his intention or results of his efforts”.⁸⁰⁵² In this regard, he submits that, while he does not dispute that the results of his efforts were not “fruitful enough”, he does challenge the conclusion that he did not seriously intend to end the commission of these crimes.⁸⁰⁵³

2413. The Prosecution responds that Petković’s arguments should be dismissed.⁸⁰⁵⁴

2414. The Appeals Chamber considers that Petković’s argument that the Trial Chamber erred in finding that he ordered, planned, facilitated, encouraged, and concealed the crimes committed by HVO members on the basis of his rights and duties as a military commander is based on a misrepresentation of the Trial Judgement. The Appeals Chamber observes that in concluding that Petković was responsible for the crimes within the scope of the JCE, the Trial Chamber first recalled his functions and duties at the relevant time,⁸⁰⁵⁵ and subsequently found that “in light of the foregoing” he ordered, planned, facilitated, encouraged, and concealed the crimes committed by HVO members.⁸⁰⁵⁶ However, the Appeals Chamber is not persuaded that the Trial Chamber relied

⁸⁰⁴⁷ Trial Judgement, Vol. 4, para. 816.

⁸⁰⁴⁸ Petković’s Appeal Brief, para. 353.

⁸⁰⁴⁹ Petković’s Appeal Brief, para. 353.

⁸⁰⁵⁰ Petković’s Appeal Brief, paras 354-355.

⁸⁰⁵¹ Petković’s Appeal Brief, paras 354-355.

⁸⁰⁵² Petković’s Appeal Brief, para. 356 (emphasis omitted).

⁸⁰⁵³ Petković’s Appeal Brief, para. 356.

⁸⁰⁵⁴ Prosecution’s Response Brief (Petković), paras 97, 107. See also Appeal Hearing, AT. 540 (23 Mar 2017).

⁸⁰⁵⁵ Trial Judgement, Vol. 4, para. 814.

⁸⁰⁵⁶ Trial Judgement, Vol. 4, para. 815. The Appeals Chamber recalls its reversal of the Trial Chamber’s finding that murder and willful killing were part of the CCP in the period from January 1993 until June 1993. However, for the

exclusively on Petković's duties and functions to support its conclusion that he contributed to these crimes. Rather, a reading of the Trial Judgement as a whole suggests that the term "in light of the foregoing" referred not only to the previous paragraph, but also to the conclusions drawn by the Trial Chamber throughout the previous sections describing Petković's contribution to the HVO's crimes in specific locations where it expressly found that Petković ordered, planned, facilitated, encouraged, and concealed them.⁸⁰⁵⁷ This consideration is further supported by the fact that, in reaching this conclusion, the Trial Chamber referred to the crimes of the HVO as described in the previous sections.⁸⁰⁵⁸ Accordingly, this contention is dismissed.

2415. The Appeals Chamber also finds no merit in Petković's challenge that the Trial Chamber erred in making a "general assertion" that he ordered and planned the HVO's crimes as he fails to show how this alleged error would impact on the Trial Chamber's conclusion. In any event, contrary to Petković's submission, the Appeals Chamber observes that, in addition to finding that he ordered unlawful labour, the Trial Chamber did in fact find that Petković repeatedly ordered and planned the other crimes committed by the HVO during the relevant period.⁸⁰⁵⁹ Therefore, this contention fails.

2416. Lastly, the Appeals Chamber dismisses Petković's broad claim concerning the Trial Chamber's conclusion that he did not make "serious efforts" to put an end to the HVO's commission of crimes. Specifically, besides making a general assertion that he challenges the Trial Chamber's finding that he did not seriously intend to end the commission of these crimes, Petković

reasons discussed in detail below, the Appeals Chamber observes that this change in the scope of the CCP has no impact on the challenges discussed herein, particularly in light of the fact that the Appeals Chamber has overturned Petković's convictions for the two murders in Tošćanica, Prozor Municipality. See *infra*, paras 2415-2416, fn. 8057. See also *supra*, para. 886.

⁸⁰⁵⁷ Trial Judgement, Vol. 4, paras 692-693 (concluding that the crimes that occurred during the military operations in Prozor Municipality were part of the "attack plan" and that Petković directed such operations), 708 (finding that the crimes committed during the military operations in Gornji Vakuf Municipality on 18 January 1993 were part of a preconceived plan and that Petković participated in planning and facilitating the operations therein), 714-717 (concluding that the crimes that occurred during the military operations in Sovići and Doljani were an "integral part" of a well-organised and orchestrated plan which envisaged the HVO operations therein, which were planned and directed by Petković), 723 (finding that Petković "orchestrated" the removal to Gornji Vakuf of around 450 women, children, and elderly people detained at the Sovići School and in houses in the hamlet of Junuzovići on 5 May 1993), 738 (finding that, on 30 June 1993, Petković ordered the arrest of Muslims who did not belong to the armed forces), 747 (finding that Petković ordered the shelling during the siege of East Mostar), 755 (concluding that Petković facilitated the hindering of humanitarian convoys from reaching the Muslim population of East Mostar), 756 (concluding that, on 8 November 1993, Petković ordered and planned the offensive on Mostar and that as part of the offensive the Old Bridge was destroyed), 758 (finding that Petković ordered the detention of people who were not members of any armed force in Stolac Municipality after 30 June 1993), 759 (finding that Petković ordered the detention of people who were not members of any armed force in Čapljina Municipality after 30 June 1993), 793 (finding that Petković ordered and authorised the work of the Heliobrom detainees on the front line), 802 (finding that Petković ordered the use of detainees from Vitina-Otok Camp as forced labour). See also Trial Judgement, Vol. 4, paras 808, 813, 816 (finding that Petković encouraged the crimes committed by the KB, its ATGs, and the Bruno Bušić Regiment by continuing to deploy them despite receiving information about the crimes already committed by the members of these units).

⁸⁰⁵⁸ Trial Judgement, Vol. 4, para. 815 ("the [Trial] Chamber finds that Milivoj Petković ordered, planned, facilitated, encouraged, and concealed the crimes committed by the members of the HZ(R) H-B armed forces *as described above*") (emphasis added).

does not explain nor does he substantiate how the Trial Chamber erred in reaching this finding. Accordingly, the Appeals Chamber rejects this argument.

(b) Petković's intention to expel the Muslim population from the HZ(R) H-B

2417. The Trial Chamber found that:

[i]n view of all the evidence analysed above, the [Trial] Chamber deems that the only possible inference it can reasonably draw is that Milivoj Petković intended to expel the Muslim population from the HZ(R) H-B. As the [Trial] Chamber will specify below, Milivoj Petković shared this intention with other members of the JCE, notably members of the HVO/HZ(R) H B government and the HVO Main Staff command.⁸⁰⁶⁰

2418. Petković submits that the Trial Chamber: (1) unreasonably inferred that he intended to expel the Muslim population since it did not convict him for their expulsion in various locations of the HZ(R) H-B; (2) failed to provide a reasoned opinion in support of its conclusion; and (3) failed to consider exculpatory evidence.⁸⁰⁶¹ The Appeals Chamber will deal with these contentions in turn.

(i) The Trial Chamber's alleged unreasonable inference

2419. Petković submits that the Trial Chamber erred in inferring that he intended to expel the Muslim population from the HZ(R) H-B since it did not convict him for the expulsion of Muslims from the municipalities of Prozor, Stolac, or Čapljina, or from the Heliodrom, Dretelj or Gabela Prisons.⁸⁰⁶²

2420. The Prosecution responds that Petković's arguments should be dismissed.⁸⁰⁶³

2421. As a preliminary matter, the Appeals Chamber observes that Petković's argument rests on the erroneous assumption that he was convicted only for the crimes to which he contributed directly. By contrast, the Appeals Chamber reiterates that the Trial Chamber found Petković responsible not only for those crimes, but also for the crimes forming part of the JCE which were imputed to other members.⁸⁰⁶⁴ In this regard, the Appeals Chamber reiterates that the Trial Chamber convicted Petković for crimes related to the expulsion of Muslims, namely deportation under Count 6; unlawful deportation of a civilian under Count 7; forcible transfer as an inhumane act under Count 8; unlawful transfer of a civilian under Count 9, which occurred in the municipalities of Prozor, Ljubuški, and Čapljina, in the Heliodrom, Dretelj, Gabela, and Ljubuški Prisons and in

⁸⁰⁵⁹ Trial Judgement, Vol. 4, paras 692-693, 708, 716-717, 723, 738, 747, 756, 758-759, 793, 802.

⁸⁰⁶⁰ Trial Judgement, Vol. 4, para. 817. See also Trial Judgement, Vol. 4, paras 43, 44, 67, 1217-1232.

⁸⁰⁶¹ Petković's Appeal Brief, paras 91-111, 359. See also Petković's Reply Brief, paras 17-18; Appeal Hearing, AT. 512-517 (23 Mar 2017).

⁸⁰⁶² Petković's Appeal Brief, para. 359. See also Appeal Hearing, AT. 521-522 (23 Mar 2017).

⁸⁰⁶³ Prosecution's Response Brief (Petković), para. 97, fn. 1065. See also Appeal Hearing, AT. 531-532, 546 (23 Mar 2017).

Vitina-Otok Camp, insofar as these crimes were imputed to Prlić,⁸⁰⁶⁵ Praljak,⁸⁰⁶⁶ Stojić,⁸⁰⁶⁷ Ćorić,⁸⁰⁶⁸ and Pušić,⁸⁰⁶⁹ in light of their respective contributions. The Appeals Chamber further notes that, in light of his contribution, Petković was also found responsible for Counts 8 and 9 in relation to the municipalities of Gornji Vakuf and Jablanica as well as Counts 6 through 9 with respect to Mostar Municipality.⁸⁰⁷⁰

2422. Turning to the merit of Petković's contention, the Appeals Chamber recalls that, in relation to the *mens rea* requirements for JCE I, "the accused must both intend the commission of the crime and intend to participate in a common plan aimed at its commission".⁸⁰⁷¹ Further, according to the consistent jurisprudence of the Tribunal, the requisite *mens rea* for a conviction under JCE I can be inferred from a person's knowledge of the common plan involving the commission of the crime combined with his continuous participation.⁸⁰⁷² Accordingly, insofar as the Trial Chamber specifically found that Petković had knowledge of the CCP and significantly contributed to it,⁸⁰⁷³ the Appeals Chamber fails to see how the mere fact that he was not directly involved in the expulsion of Muslims from the specific municipalities of Prozor, Stolac, and Čapljina; the Heliodrom; or Dretelj or Gabela Prisons could disturb the Trial Chamber's conclusion that he shared the intent to carry out the CCP. Accordingly, this argument is dismissed.

(ii) The Trial Chamber's alleged failure to render a reasoned opinion

2423. Petković submits that the Trial Chamber erred in finding "implicitly" that he shared the goal of the CCP, namely to ethnically cleanse Muslims from Herceg-Bosna,⁸⁰⁷⁴ arguing that it failed to

⁸⁰⁶⁴ Trial Judgement, Vol. 4, para. 821.

⁸⁰⁶⁵ Trial Judgement, Vol. 4, para. 278 (finding Prlić responsible for Counts 6-9 in relation to the Heliodrom; finding Prlić responsible for Counts 6 and 7 in relation to Dretelj Prison).

⁸⁰⁶⁶ Trial Judgement, Vol. 4, para. 630 (finding Praljak responsible for Counts 8 and 9 in relation to Prozor Municipality).

⁸⁰⁶⁷ Trial Judgement, Vol. 4, para. 431 (finding Stojić responsible for Counts 6-9 in relation to Čapljina Municipality).

⁸⁰⁶⁸ Trial Judgement, Vol. 4, para. 1006 (finding Ćorić responsible for Counts 6-9 in relation to Ljubuški Municipality; finding Ćorić responsible for Counts 6-9 in relation to the Heliodrom; finding Ćorić responsible for Counts 6-9 in relation to Ljubuški Prison and Vitina-Otok Camp).

⁸⁰⁶⁹ Trial Judgement, Vol. 4, para. 1211 (finding Pušić responsible for Counts 6-9 in relation to Čapljina Municipality; finding Pušić responsible for Counts 6-9 in relation to the Heliodrom; finding Pušić responsible for Counts 6-9 in relation to Gabela Prison; finding Pušić responsible for Counts 6-9 in relation to Ljubuški Municipality).

⁸⁰⁷⁰ Trial Judgement, Vol. 4, para. 820. Moreover, the Appeals Chamber recalls that it has already addressed and dismissed Petković's challenges related to these convictions. See *supra*, paras 2177, 2210.

⁸⁰⁷¹ *Popović et al.* Appeal Judgement, para. 1652, citing *Brđanin* Appeal Judgement, para. 365. See also *Kvočka et al.* Appeal Judgement, para. 82.

⁸⁰⁷² *Popović et al.* Appeal Judgement, para. 1652; *Dorđević* Appeal Judgement, para. 512; *Krajišnik* Appeal Judgement, paras 202, 204, 697.

⁸⁰⁷³ Trial Judgement, Vol. 4, paras 43-44, 69, 815-818.

⁸⁰⁷⁴ Petković's Appeal Brief, para. 92. See also Petković's Appeal Brief, paras 91, 110-111.



provide a reasoned opinion as to the circumstances in which Petković learned of and came to share such criminal plan.⁸⁰⁷⁵

2424. The Prosecution responds that the Trial Chamber provided a reasoned opinion in concluding that Petković was a member of the JCE as of mid-January 1993.⁸⁰⁷⁶ Specifically, it points to the Trial Chamber's findings that: (1) in October 1992, Petković met Mladić to discuss the division of BiH and the establishment of the Banovina; (2) since October 1992, Petković was aware that the implementation of the Ultimate Purpose of the JCE required moving the Muslim population from HZ(R) H-B; (3) from mid-January 1993, after Mate Boban signed the Vance-Owen Peace Plan, the JCE members took steps to consolidate their control over the provinces defined as Croatian under this plan; and (4) Petković, with other JCE members, used the HVO to implement the 15 January 1993 Ultimatum.⁸⁰⁷⁷

2425. The Appeals Chamber is not convinced that the Trial Chamber found "implicitly" that Petković shared the intent to carry out the CCP. By contrast, the Appeals Chamber notes that in the portion of the Trial Judgement devoted to the CCP, the Trial Chamber specifically found that, by October 1992, Petković was aware that implementing the Ultimate Purpose of the JCE would involve the Muslim population moving outside the territory of the HZ H-B.⁸⁰⁷⁸ In that same section, the Trial Chamber concluded that, from mid-January 1993, the HVO leaders aimed to, *inter alia*, ethnically cleanse the Muslim population from the provinces allocated to the BiH Croats under the Vance-Owen Peace Plan, referring specifically to its previous finding that on 15 January 1993 Petković issued a subordination order to the 1st Mostar Brigade.⁸⁰⁷⁹ In addition, a plain reading of the Trial Judgement reveals that when concluding that Petković shared the intent to carry out the CCP, the Trial Chamber recalled the evidence regarding Petković's contributions to the commission of specific crimes within that plan,⁸⁰⁸⁰ and highlighted that he shared such purpose with other JCE members.⁸⁰⁸¹

⁸⁰⁷⁵ Petković's Appeal Brief, paras 91-92. Specifically, Petković argues that the Trial Chamber's failure to provide a reasoned opinion concerning the circumstances in which Petković shared the CCP "is all the more serious" since it did not accept the Prosecution's case in this regard and "distorted and moulded it entirely". Petković's Appeal Brief, para. 91.

⁸⁰⁷⁶ Prosecution's Response Brief (Petković), para. 73. The Prosecution also contends that the Trial Chamber did not "distort" the Prosecution's case. Prosecution's Response Brief (Petković), para. 73.

⁸⁰⁷⁷ Prosecution's Response Brief (Petković), para. 73, referring to Trial Judgement, Vol. 4, paras 18, 43-44, 65, fn. 122.

⁸⁰⁷⁸ Trial Judgement, Vol. 4, para. 43.

⁸⁰⁷⁹ Trial Judgement, Vol. 4, para. 44, referring to, *inter alia*, Trial Judgement, Vol. 1, para. 454.

⁸⁰⁸⁰ Trial Judgement, Vol. 4, para. 817 ("In view of all the evidence analysed above, the [Trial] Chamber deems that the only possible inference it can reasonably draw is that Milivoj Petković intended to expel the Muslim population from the HZ(R) H-B.>").

⁸⁰⁸¹ Trial Judgement, Vol. 4, para. 817 ("As the [Trial] Chamber will specify below, Milivoj Petković shared this intention with other members of the JCE.>"). See also Trial Judgement, Vol. 4, paras 1217-1232.

2426. Based on these considerations, the Appeals Chamber finds that a reading of the Trial Judgement as a whole reflects ample reasoning in support of the Trial Chamber's conclusion that Petković shared the intent to further the CCP. Against this background, the Appeals Chamber considers that Petković fails to show that the Trial Chamber was obliged to expressly address the circumstances in which he learned of and came to share such criminal plan.⁸⁰⁸² Accordingly, this argument fails.

(iii) The Trial Chamber's alleged failure to consider exculpatory evidence

2427. Petković submits that the Trial Chamber failed to consider exculpatory evidence that is inconsistent with its conclusion that he shared the CCP.⁸⁰⁸³ Specifically, he points to evidence which, in his view, reflects that he: (1) did not share the Ultimate Purpose of the JCE;⁸⁰⁸⁴ (2) favoured peaceful negotiations over war;⁸⁰⁸⁵ (3) tried to protect civilians regardless of their ethnicity;⁸⁰⁸⁶ and (4) did not possess either the intent to expel Muslims from the HZ(R) H-B or the intent to discriminate against them.⁸⁰⁸⁷

2428. The Prosecution responds that Petković's arguments should be dismissed as the Trial Chamber expressly considered and reasonably rejected exculpatory evidence referred to by Petković in support of his case.⁸⁰⁸⁸

2429. The Appeals Chamber recalls that a trial chamber need not refer to every witness testimony or every piece of evidence on the record and that there is a presumption that the trial chamber

⁸⁰⁸² In this regard, the Appeals Chamber fails to see why the mere fact that the Trial Chamber did not accept part of the Prosecution's case would impose any more stringent requirement vis-à-vis its obligation to provide a reasoned opinion. See *supra*, fn. 8075.

⁸⁰⁸³ Petković's Appeal Brief, paras 93-109. See also Petković's Appeal Brief, paras 110-111; Appeal Hearing, AT. 512-517 (23 Mar 2017).

⁸⁰⁸⁴ Petković's Appeal Brief, paras 95 (referring to Milivoj Petković, T. 49687 (18 Feb 2010), T. 49746-49747 (22 Feb 2010), T. 50439, 50458-50459 (4 Mar 2010), Ex. P02019), 96 (referring to Milivoj Petković, T. 49748-49749, 49751, 49764, 49782-49783, 49790-49791, 49799-49800, 49803 (22 Feb 2010), T. 49836-49839 (23 Feb 2010)). See also Petković's Appeal Brief, paras 97-98; Appeal Hearing, AT. 517 (23 Mar 2017) (referring to Milivoj Petković, T. 49414, 49458 (15 Feb 2010)). Moreover, Petković avers that this part of his testimony was not challenged by the Prosecution. Petković's Appeal Brief, paras 95, 97.

⁸⁰⁸⁵ Petković's Appeal Brief, para. 100, referring to Petković's Appeal Brief, Annexes 2, 4, Milivoj Petković, T. 49416 (15 Feb 2010). See also Appeal Hearing, AT. 513-517 (23 Mar 2017) (referring to Exs. P01322, P02002, P02091).

⁸⁰⁸⁶ Petković's Appeal Brief, para. 99, referring to Petković's Appeal Brief, Annex 3, Milivoj Petković, T. 49579-49580 (17 Feb 2010). See also Petković's Appeal Brief, paras 108-109.

⁸⁰⁸⁷ Petković's Appeal Brief, paras 101 (referring to Exs. P01959, P01445, P02344, P03584, P02036, P02089, 4D01078), 102 (referring to Petković's Appeal Brief, Annex 2), 105 (referring to Milivoj Petković, T. 49337 (11 Feb 2010)), 106 (referring to Milivoj Petković, T. 49369-49370 (11 Feb 2010), T. 49417-49418 (15 Feb 2010)), 107 (referring to Petković's Appeal Brief, Annex 2). See also Petković's Appeal Brief, paras 103-104. Petković highlights that "the Trial Chamber's JCE theory" hinges on the "proposition" that Petković had "discriminatory/persecutory *mens rea*". Petković's Appeal Brief, para. 104.

⁸⁰⁸⁸ Prosecution's Response Brief (Petković), paras 74-77. The Prosecution also responds that, in fact, it did challenge Petković's evidence in this regard. Prosecution's Response Brief (Petković), para. 75.

evaluated all the evidence presented to it, as long as there is no indication that the trial chamber completely disregarded evidence which is clearly relevant.⁸⁰⁸⁹

2430. As to Petković's submission that the Trial Chamber disregarded evidence that he did not share the Ultimate Purpose of the JCE, the Appeals Chamber observes that he points exclusively to excerpts from his testimony at trial.⁸⁰⁹⁰ In this regard, the Appeals Chamber reiterates that the Trial Chamber expressly explained its approach to Petković's testimony, namely that it did not accept it when he attempted to limit his responsibility.⁸⁰⁹¹ Moreover, the Appeals Chamber notes that the Trial Chamber referred to Petković's testimony when analysing the Ultimate Purpose of the JCE and acknowledged the same extensively when considering his responsibility under JCE I.⁸⁰⁹² The Appeals Chamber is therefore not convinced that the Trial Chamber did not take into account Petković's testimony that he did not share the Ultimate Purpose of the JCE. Rather, the Appeals Chamber considers that, given its self-serving nature, the Trial Chamber found that this evidence did not prevent it from reaching the conclusion that he shared the CCP.⁸⁰⁹³

2431. Likewise, the Appeals Chamber finds no indication that the Trial Chamber disregarded evidence that Petković favoured peaceful negotiations over war. In support of this contention, Petković relies on evidence reflecting a number of orders he issued that pertained to co-operation with the ABiH,⁸⁰⁹⁴ as well as to ceasefires.⁸⁰⁹⁵ The Appeals Chamber observes that the Trial Chamber expressly considered his submissions at trial that he sought to negotiate and co-operate with ABiH authorities in analysing his responsibility under JCE I as well as in determining his sentence.⁸⁰⁹⁶ Moreover, a number of exhibits referred to by Petković were explicitly addressed by the Trial Chamber in assessing: (1) his *de facto* power over the HVO;⁸⁰⁹⁷ (2) his powers to negotiate

⁸⁰⁸⁹ *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.

⁸⁰⁹⁰ Petković's Appeal Brief, paras 95 (referring to Milivoj Petković, T. 49687 (18 Feb 2010), T. 49746-49747 (22 Feb 2010), T. 50439, 50458-50459 (4 Mar 2010), Ex. P02019), 96 (referring to Milivoj Petković, T. 49748-49749, 49751, 49764, 49782-49783, 49790-49791, 49799-49800, 49803 (22 Feb 2010), T. 49836-49839 (23 Feb 2010)). See also Petković's Appeal Brief, paras 97-98; Appeal Hearing, AT. 517 (23 Mar 2017) (referring to Milivoj Petković, T. 49414, 49458 (15 Feb 2010)).

⁸⁰⁹¹ See *supra*, para. 2386.

⁸⁰⁹² Trial Judgement, Vol. 4, paras 15, 21, 650-652, 654, 680-681, 700, 711, 718, 720, 726, 737, 761, 806.

⁸⁰⁹³ In this regard, the Appeals Chamber dismisses Petković's argument that his own evidence was not challenged by the Prosecution. Indeed, the mere fact that a specific piece of evidence is not challenged by the opposing party does not have an impact on its reliability.

⁸⁰⁹⁴ See Petković's Appeal Brief, Annex 2, citing Exs. 4D00397, 4D00901, 4D00399, 4D00389, 4D00354, P01115, P01190, 4D00433, 4D00019, 4D01048, 4D00075, P01709, P01959, P02599. See also Appeal Hearing, AT. 514-517 (23 Mar 2017) (referring to Exs. P01322, P02002, P02091).

⁸⁰⁹⁵ See Petković's Appeal Brief, Annex 4, citing Exs. P00625, P00644, P01059, P01238, P01286, P01467, P01959, P02037, P02084, P11213, P02577, P03584, P05138, P08188.

⁸⁰⁹⁶ See Trial Judgement, Vol. 4, paras 647 (referring to Petković's Final Brief, para. 537(iv)-537(ix)), 1361 (referring to Petković's Final Brief, paras 672 (ix), 672 (xii)).

⁸⁰⁹⁷ Trial Judgement, Vol. 4, paras 667 (referring to Ex. 4D01048), 675 (referring to Exs. 4D00901, P01959), 678 (referring to Exs. P00625, P11213), 680 (referring to Ex. P02084).

with ABiH and issue ceasefire orders,⁸⁰⁹⁸ and (3) the crimes committed by the HVO in the municipalities Gornji Vakuf and Jablanica.⁸⁰⁹⁹ Therefore, the Appeals Chamber finds that Petković fails to show that the Trial Chamber did not consider this evidence.

2432. As to the remaining pieces of evidence relied upon by Petković, the Appeals Chamber considers them to be of a similar nature to the evidence mentioned by the Trial Chamber.⁸¹⁰⁰ Accordingly, the Appeals Chamber is not persuaded that the Trial Chamber disregarded this evidence, but rather considers that the Trial Chamber assessed it and concluded that it did not prevent the Trial Chamber from reaching its conclusion. Petković's arguments in this regard are thus dismissed.

2433. The Appeals Chamber now turns to Petković's assertion that the Trial Chamber failed to consider evidence showing that he tried to protect civilians regardless of their ethnicity. In particular, Petković refers mainly to evidence reflecting orders that he issued to the HVO regarding compliance with international humanitarian law and to enable the operations of international organisations.⁸¹⁰¹ However, the Appeals Chamber observes that, in the context of its analysis concerning Petković's responsibility under JCE I, the Trial Chamber in fact referred to Petković's submissions at trial that he used his authority to remind troops of their obligations to abide by the laws of war and protect civilians.⁸¹⁰² Indeed, the Trial Chamber mentioned specific paragraphs of Petković's final brief that, in turn, refer to the same evidence which Petković claims that the Trial Chamber disregarded, including orders enabling the operations of international organisations.⁸¹⁰³

⁸⁰⁹⁸ Trial Judgement, Vol. 4, paras 680 (referring to Ex. P05138), 681 (referring to Ex. P01286), 682 (referring to Exs. P02599, P00644, P01059, P01286, P01959, P02037, P02577, P01959, P00625), 683 (referring to Exs. P01322, P02002, P02084, P02091).

⁸⁰⁹⁹ Trial Judgement, Vol. 4, paras 703 (referring to Ex. P01190), 715 (referring to Ex. P02037).

⁸¹⁰⁰ Exs. 4D00397 (a 20 June 1992 HVO document from Petković urging co-operation with the ABiH), 4D00399 (a 16 November HVO order from Petković urging co-operation with the ABiH), 4D00389 (a 16 December 1992 HVO order from Petković urging co-operation with the ABiH), 4D00354 (an 11 January 1993 HVO order from Petković requesting a report on the situation in Gornji Vakuf and information regarding the deployment of ABiH units in the area), P01115 (a 13 January 1993 HVO order from Petković urging co-operation with the ABiH), 4D00433 (a 20 January 1993 HVO order from Petković urging co-operation with the ABiH), 4D00019 (a 27 January 1993 HVO order from Petković banning HVO units from carrying out offensives against the ABiH and ordering that conflicts with the ABiH be resolved through negotiations), P01709 (a 23 March 1993 ceasefire agreement signed by Petković and, for the ABiH, Pašalić), P01238, P01709 (a 20 January 1993 ceasefire agreement signed by Petković and, for the ABiH, Pašalić), P03584 (a 20 July 1993 decision of Alija Izetbegović bearing a remark by Petković stating "make known to all units", requesting regular submission of reports on the conduct of ABiH units, and ordering full combat readiness of the HVO), P08188 (a 12 April 1994 order from Petković regarding the disengagement of military units in the Mostar ZP), 4D00075 (a 9 February 1993 letter from Petković to Sefer Halilović regarding negotiations with the ABiH).

⁸¹⁰¹ Petković's Appeal Brief, para. 99, referring to Petković's Appeal Brief, Annex 3. The Appeals Chamber observes that Petković also points to excerpts of his own testimony. See Petković's Appeal Brief, para. 99, referring to Milivoj Petković, T. 49579-49580 (17 Feb 2010). In this regard, as stated above, the Appeals Chamber is not persuaded that the Trial Chamber failed to consider Petković's testimony, but rather that it did not accept this evidence. See *supra*, para. 2386.

⁸¹⁰² See Trial Judgement, Vol. 4, para. 647, referring to, *inter alia*, Petković's Final Brief, para. 537(vi), (viii), (ix).

⁸¹⁰³ Specifically, the Appeals Chamber observes that paragraph 537(viii) of Petković's final brief refers to its Annex 7, which is identical to Annex 3 of his appeal brief. See Petković's Final Brief, para. 537(viii), referring to Annex 7. Compare Petković's Appeal Brief, Annex 3 with Petković's Final Brief, Annex 7.

Accordingly, the Appeals Chamber finds that Petković fails to show that the Trial Chamber did not take this evidence into account.

2434. With respect to Petković's intent to expel Muslims from the HZ(R) H-B and to discriminate against them, the Appeals Chamber observes that the Trial Chamber reached these conclusions based on numerous pieces of evidence establishing his intentional contribution to the crimes within the scope of the JCE.⁸¹⁰⁴ The Trial Chamber also expressly considered Petković's submissions at trial that he did not possess the relevant *mens rea*.⁸¹⁰⁵ Against this background, the Appeals Chamber observes that Petković merely claims that the evidence he refers to is inconsistent with the Trial Chamber's findings concerning his *mens rea*, but fails to show why no reasonable trier of fact, based on this evidence, could have reached the same conclusion as the Trial Chamber.⁸¹⁰⁶ Accordingly, the Appeals Chamber dismisses this argument.

(iv) Conclusion

2435. In light of the foregoing, the Appeals Chamber finds that Petković has failed to show that the Trial Chamber erred in concluding that he intended to expel the Muslim population from the HZ(R) H-B.

(c) Petković's significant contribution to the JCE

2436. The Trial Chamber found that

[W]ith regard to his role in implementing the common criminal purpose, the Chamber deems that the evidence shows beyond reasonable doubt that it was significant. By directing and controlling the HVO armed forces, by negotiating with the ABiH authorities and by implementing the policies and decisions of the government in the field, Milivoj Petković was one of the most important members of the JCE. As a member of this JCE, he used the armed forces of the HZ(R) H-B to commit crimes that were part of the common criminal purpose and the actions of the members of the armed forces and the Military Police are attributable to him.⁸¹⁰⁷

⁸¹⁰⁴ Trial Judgement, Vol. 4, paras 817 (“*In view of all the evidence analysed above, the [Trial] Chamber deems that the only possible inference it can reasonably draw is that Milivoj Petković intended to expel the Muslim population from the HZ(R) H-B.*”) (emphasis added), 818 (“The Chamber deems that, by participating in the JCE, Milivoj Petković had the intention of discriminating against the Muslims in order to facilitate their eviction from these territories.”).

⁸¹⁰⁵ Trial Judgement, Vol. 4, para. 647.

⁸¹⁰⁶ Moreover, the Appeals Chamber notes that numerous pieces of evidence on which Petković relies were, in fact, expressly considered by the Trial Chamber. Compare Petković's Appeal Brief, para. 101 (referring to, *inter alia*, Exs. P01959, P01445, P02036) with Trial Judgement, Vol. 4, para. 669 (referring to Ex. P02036), 676 (referring to Ex. P01445), 682 (referring to Ex. P01959). Petković also points to his own evidence at trial. Petković's Appeal Brief, paras 105 (referring to Milivoj Petković, T. 49337 (11 Feb 2010)), 106 (referring to Milivoj Petković, T. 49369-49370 (11 Feb 2010), T. 49417-49418 (15 Feb 2010)). As stated above, the Appeals Chamber is not convinced that the Trial Chamber disregarded this evidence. See *supra*, para. 2386.

⁸¹⁰⁷ Trial Judgement, Vol. 4, para. 818.

2437. Petković argues that the Trial Chamber erred in finding that he significantly contributed to the JCE on the basis of his position and duties, rather than relying on his acts and omissions.⁸¹⁰⁸ Specifically, he submits that the Trial Chamber erred in finding that he contributed to the JCE in light of his position and by participating in negotiations and ordering ceasefires as well as implementing Government decisions and policies.⁸¹⁰⁹ He asserts that there is no evidence on the record that shows that his involvement in these tasks was a contribution to the JCE.⁸¹¹⁰ Further, Petković adds that, since he was not found responsible for crimes linked to the deportation or transfer of Muslims “in most municipalities and locations”, the evidence on the record does not show that he contributed to the ethnic cleansing in such areas.⁸¹¹¹

2438. The Prosecution responds that Petković’s arguments should be dismissed.⁸¹¹² It also contends that the Trial Chamber reasonably concluded that Petković contributed to the JCE through his negotiations with the ABiH as well as by implementing Government decisions and policies.⁸¹¹³

2439. The Appeals Chamber considers that Petković’s arguments are based on a misrepresentation of the Trial Chamber’s findings.⁸¹¹⁴ While Petković’s control over the HVO and his involvement in negotiations with the ABiH as well as the implementation of Government policies and decisions were mentioned in the same portion of the analysis concerning his contribution to the JCE, a careful review of the Trial Judgement shows that these factors did not *per se* form the basis of the Trial Chamber’s conclusion in this regard.⁸¹¹⁵ Specifically, the Appeals Chamber observes that the Trial

⁸¹⁰⁸ Petković’s Appeal Brief, para. 360. Petković also takes issue with the Trial Chamber’s finding that he used the HVO to commit crimes, arguing that “[t]his inference implies that [he] actively participated in the commission of crimes by using armed forces and directly (*dolus directus*) intended to commit crimes. However, the [Trial] Chamber did not establish Petković’s *dolus directus* with regard to particular crimes.” Petković’s Appeal Brief, para. 358 (emphasis in original), referring to Petković’s Appeal Brief, para. 112.

⁸¹⁰⁹ Petković’s Appeal Brief, paras 140, 162-165, 167-170, 360. Petković also contends that the Trial Chamber erred in considering his implementation of Government policies as “an indication” of his membership in the JCE. Petković’s Appeal Brief, para. 167. Further, Petković asserts that he lacked adequate and timely notice of the allegation that he contributed to the JCE by participating in negotiations with the ABiH and implementing government policies in the field. Petković’s Appeal Brief, paras 161, 166.

⁸¹¹⁰ Petković’s Appeal Brief, paras 162-163. Specifically, Petković contends that: (1) the Trial Chamber acknowledged that the negotiations were carried out in good faith; and (2) his involvement in negotiations and the cease fire orders were part of his lawful duties and that the Trial Chamber was required to establish that when carrying them out, he intended to further the JCE, which it failed to do. Petković’s Appeal Brief, paras 162(i), 164. Likewise, with respect to his role in implementing Government decisions and policies, Petković argues that: (1) as a military commander it was his duty to obey the directives of civilian superiors and that as a matter of law, this can only result in criminal responsibility if such orders were patently unlawful; (2) none of the policies referred to by the Trial Chamber were patently unlawful; and (3) none of his actions in carrying out these policies were shown to have been intended to further the JCE or to have contributed to it. Petković’s Appeal Brief, paras 167-169.

⁸¹¹¹ Petković’s Appeal Brief, para. 360.

⁸¹¹² Prosecution’s Response Brief (Petković), paras 97, 107, fn. 1065. See also Appeal Hearing, AT. 526 (23 Mar 2017).

⁸¹¹³ Prosecution’s Response Brief (Petković), paras 115-123.

⁸¹¹⁴ With respect to Petković’s challenge to the Trial Chamber’s finding that he used the HVO to commit crimes, the Appeals Chamber observes that he supports his contention by expressly referring to his sub-ground of appeal 4.3.1, which is dismissed elsewhere in the Judgement. Petković’s Appeal Brief, para. 358 (emphasis in original), referring to Petković’s Appeal Brief, para. 112. See *supra*, para. 2210.

⁸¹¹⁵ Trial Judgement, Vol. 4, para. 818. Moreover, the Appeals Chamber finds that in arguing that the Trial Chamber erred in considering his implementation of Government policies as “an indication” of his membership in the JCE,

Chamber based its findings regarding Petković's contribution to the JCE on his use of the HVO to commit crimes that were part of the CCP.⁸¹¹⁶ In that sense, the Trial Chamber simply relied on Petković's control over the HVO as well as his involvement in negotiations with the ABiH as well as the implementation of Government policies and decisions to attest that "Petković was one of the most important members of the JCE".⁸¹¹⁷

2440. These considerations find further support in the fact that the impugned finding appears to recall the introductory portion of the section of the Trial Judgement concerning Petković's responsibility, which was dedicated to examining his functions and powers.⁸¹¹⁸ This section describes his command over the HVO, his role in representing the HVO during negotiations, and his power to transmit decisions from the HZ(R) H-B Government to the HVO.⁸¹¹⁹ Indeed, that section does not portray Petković's control over the HVO, his involvement in negotiations with the ABiH, or his implementation of the Government's decisions in the field as forms of contribution to the JCE in and of themselves.⁸¹²⁰ Accordingly, the Appeals Chamber rejects Petković's contention that he was convicted merely on the basis of his powers and functions.⁸¹²¹

2441. As to Petković's argument that the evidence on the record does not show that he contributed to the ethnic cleansing in most locations, the Appeals Chamber reiterates that the Trial Chamber found Petković responsible for all the crimes forming part of the JCE, including the deportation and forcible transfer of Muslims imputed to other JCE members by virtue of their contribution to the JCE.⁸¹²² In any event, contrary to Petković's contention, it was not necessary for the Trial Chamber to find that he was directly involved in each incident of deportation or forcible transfer within the scope of the JCE in order to conclude that he significantly contributed to it.⁸¹²³ Accordingly, this contention is dismissed.⁸¹²⁴

Petković misrepresents the impugned finding as it does not reflect such conclusion. See Trial Judgement, Vol. 4, para. 818. Accordingly, this contention is dismissed.

⁸¹¹⁶ Trial Judgement, Vol. 4, para. 818.

⁸¹¹⁷ Trial Judgement, Vol. 4, para. 818. The Appeals Chamber further notes that this finding does not refer to Petković's power to issue ceasefire orders. Trial Judgement, Vol. 4, para. 818. Accordingly, insofar as Petković's challenges concerning such orders pertain to this conclusion, they are dismissed. Petković's Appeal Brief, paras 140, 162-165.

⁸¹¹⁸ Trial Judgement, Vol. 4, paras 650-686.

⁸¹¹⁹ Trial Judgement, Vol. 4, paras 653-684.

⁸¹²⁰ Trial Judgement, Vol. 4, paras 653-686.

⁸¹²¹ Based on these considerations, Petković's claim that he lacked adequate and timely notice that he was alleged to have contributed to the JCE by participating in negotiations with the ABiH and implementing Government policies in the field are moot.

⁸¹²² See *supra*, para. 2263.

⁸¹²³ See *Sainović et al.* Appeal Judgement, para. 1510; *Vasiljević* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, paras 196, 227.

⁸¹²⁴ The Appeals Chamber also notes that it has: (1) vacated Petković's conviction for murder and willful killing in Gornji Vakuf Municipality; and (2) reversed the Trial Chamber's findings concerning his direct contribution to the crimes committed in Vareš Municipality. See *supra*, para. 443, 2280. However, in light of the Trial Chamber's undisturbed findings concerning his contributions to crimes in the municipalities of Prozor, Gornji Vakuf, Jablanica,

(d) Conclusion

2442. Based on the foregoing, the Appeals Chamber finds that Petković has failed to show any error in the Trial Chamber's conclusions related to his responsibility under JCE I and thus dismisses his sub-grounds of appeal 4.1.2, 4.2, 5.1.2, 5.1.3, and 5.2.3.2.

7. Alleged errors regarding Petković's responsibility for the destruction of mosques (Petković's Sub-ground 5.2.2.4 in part and Prosecution's Ground 1 in part)

2443. In assessing Petković's contribution to the destruction of Baba Bešir Mosque in West Mostar, the Trial Chamber recalled its previous findings that, on or around 10 May 1993 and on the orders of Miljenko Lasić, the HVO destroyed Baba Bešir Mosque.⁸¹²⁵ The Trial Chamber further found that Petković, having failed to punish Lasić, accepted its destruction.⁸¹²⁶

(a) Arguments of the Parties

2444. Petković submits that the Trial Chamber erred in fact when concluding that he "failed to punish Lasić and thus contributed to the commission of the crime".⁸¹²⁷ Accordingly, Petković asserts that his conviction for the destruction of Baba Bešir Mosque should be reversed.⁸¹²⁸

2445. The Prosecution responds that Petković's conviction for the destruction of Baba Bešir Mosque, pursuant to JCE I, should be "replaced" with a conviction, pursuant to JCE III, because the destruction of mosques did not become a JCE I crime until June 1993.⁸¹²⁹

2446. Petković replies that he agrees with the Prosecution that the Appeals Chamber must acquit him for the destruction of Baba Bešir Mosque pursuant to JCE I.⁸¹³⁰

Mostar, Stolac, and Čapljina, as well as Gabela Prison, Vojno Detention Centre, the Heliodrom, Ljubuški Prison and Vitina-Otok Camp, the Appeals Chamber finds that these errors do not affect the Trial Chamber's conclusion that Petković's contribution to the JCE was significant.

⁸¹²⁵ Trial Judgement, Vol. 4, para. 729, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 791-792. See also Trial Judgement, Vol. 2, para. 789, Vol. 3, para. 1608.

⁸¹²⁶ Trial Judgement, Vol. 4, paras 729-730, 820.

⁸¹²⁷ Petković's Appeal Brief, para. 255. In this respect, Petković contends that there is no evidence that he was informed of Lasić's order to destroy Baba Bešir Mosque or that he was aware of who perpetrated this crime. Petković's Appeal Brief, paras 252-255, referring to Ex. P02264, Ex. P08287. In particular, Petković submits that because he did not know that Lasić ordered the mosque's destruction, there is no evidence to support the inference that he "failed to take any measures against the perpetrator of the crime". Petković's Appeal Brief, para. 252.

⁸¹²⁸ Petković's Appeal Brief, para. 255.

⁸¹²⁹ Prosecution's Response Brief (Petković), para. 195. In this context, the Prosecution argues that the Trial Chamber's finding that Petković intended the mosque's destruction encompasses the conclusion that Petković could foresee it and willingly took that risk. Prosecution's Response Brief (Petković), para. 195. The Appeals Chamber notes that the Prosecution makes similar arguments in its appeal brief, which are discussed below. See *infra*, paras 2452, 2453-2454.

⁸¹³⁰ Petković's Reply Brief, para. 54. See also Appeal Hearing, AT. 823-824 (28 Mar 2017).

(b) Analysis(i) Alleged errors concerning Petković's responsibility under JCE I for the destruction of the Baba Bešir and Skrobućani mosques

2447. At the outset, the Appeals Chamber notes that the Trial Chamber's conclusion that Petković accepted the destruction of Baba Bešir Mosque, which was predicated on its findings that despite being informed of the mosque's destruction on the day it occurred, Petković failed to take any measures against Lasić, is part of the section concerning Petković's responsibility under JCE I, and, more specifically, his contribution to the crimes in Mostar Municipality.⁸¹³¹ Further, the Appeals Chamber observes that the Trial Chamber neither expressly excluded the destruction of Baba Bešir Mosque from its determinations under JCE I,⁸¹³² nor did it mention that crime in the section concerning Petković's JCE III liability.⁸¹³³ On the basis of all of these considerations,⁸¹³⁴ the Appeals Chamber considers that Petković was indeed held responsible for the destruction of Baba Bešir Mosque, pursuant to JCE I liability.

2448. The Appeals Chamber recalls, however, that the Trial Chamber unequivocally found that the crime of destruction or wilful damage to institutions dedicated to religion as a violation of the laws or customs of war (Count 21) was not a part of the CCP *before June 1993*.⁸¹³⁵ The Appeals Chamber further recalls that what matters for JCE I liability is "whether the crime in question forms part of the common purpose",⁸¹³⁶ whereas under JCE III liability, an accused can be convicted of a crime falling outside the common criminal purpose.⁸¹³⁷ Accordingly, the Appeals Chamber finds

⁸¹³¹ Trial Judgement, Vol. 4, paras 725, 729-730. See also Trial Judgement, Vol. 4, para. 688 (stating that within the section entitled "Milivoj Petković's Responsibility Under JCE I", the Trial Chamber would analyse the extent to which Petković contributed to the crimes committed by the HVO in furtherance of the CCP).

⁸¹³² See Trial Judgement, Vol. 4, paras 710 (expressly excluding thefts in Gornji Vakuf from consideration of Petković's responsibility under JCE I), 718 (expressly excluding destruction of mosques in Jablanica from consideration of Petković's responsibility under JCE I), 736 (expressly excluding murders, sexual abuse, and thefts committed as of June 1993 in West Mostar from consideration of Petković's responsibility under JCE I), 763 (expressly excluding thefts in Vareš town from consideration of Petković's responsibility under JCE I), 783 (expressly excluding murders in Dretelj Prison from consideration of Petković's responsibility under JCE I).

⁸¹³³ Trial Judgement, Vol. 4, paras 822-853.

⁸¹³⁴ In the view of the Appeals Chamber, the inclusion of the crime of destruction or wilful damage to institutions dedicated to religion (Count 21) under the heading "Municipality of Mostar" in paragraph 820 of Volume 4 of the Trial Judgement is not necessarily determinative in this instance, which concerns the destruction of Baba Bešir Mosque in West Mostar, as the Trial Chamber also found that: (1) through the shelling of East Mostar, the HVO destroyed or severely damaged ten mosques; and (2) that Petković planned the shelling during the siege of East Mostar. Trial Judgement, Vol. 4, paras 59 (referring to Trial Judgement, Vol. 2, paras 1367-1377), 730, 747, 750.

⁸¹³⁵ Trial Judgement, Vol. 4, paras 342, 433, 1213. See also *supra*, para. 799.

⁸¹³⁶ *Brdanin* Appeal Judgement, para. 410. See also *Brdanin* Appeal Judgement, paras 418-419.

⁸¹³⁷ *Brdanin* Appeal Judgement, para. 411. Under JCE III, an accused can be held responsible for a crime outside the common criminal purpose if, under the circumstances of the case: (1) it was foreseeable to the accused that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common criminal purpose; and (2) the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise. *Stanišić and Župljanin* Appeal Judgement, paras 595, 614; *Šainović et al.* Appeal Judgement, paras 1061, 1272, 1525, 1557. See *Popović et al.* Appeal Judgement, para. 1431; *Dorđević* Appeal Judgement, para. 906; *Brdanin* Appeal Judgement, paras 365, 411.

that the Trial Chamber erred in finding Petković responsible, pursuant to JCE I liability, for the destruction of Baba Bešir Mosque, as this crime occurred on or about 10 May 1993, prior to the point at which the Trial Chamber found that this crime became a part of the CCP.⁸¹³⁸ On this basis, the Appeals Chamber dismisses the remainder of Petković's alleged errors of fact as moot.⁸¹³⁹

2449. The Appeals Chamber further observes that the Trial Chamber also found Petković responsible for the destruction of the Skrobućani mosque, pursuant to JCE I, contrary to its unequivocal finding that Count 21 did not become a part of the CCP *before June 1993*.⁸¹⁴⁰ Specifically, the Trial Chamber found that Petković intended the destruction of the Skrobućani mosque in Prozor Municipality, which the Trial Chamber found to have occurred in "May or June 1993".⁸¹⁴¹ In light of the error identified above,⁸¹⁴² the Appeals Chamber further considers that the Trial Chamber also erred in finding Petković responsible, pursuant to JCE I liability, for the destruction of the Skrobućani mosque.⁸¹⁴³

2450. Having identified these two errors, the Appeals Chamber will address the impact of these errors below.

(ii) Alternative Modes of Liability

2451. In light of the analysis above, the question now before the Appeals Chamber is whether, on the basis of the findings of the Trial Chamber, Petković's convictions for the above-mentioned incidents can be affirmed under an alternative mode of liability. In this regard, the Prosecution submits that, given that the Trial Chamber found that Petković: (1) could have foreseen the destruction of the mosques in Sovići and Doljani in April 1993; and (2) intended the destruction of the Skrobućani mosque and Baba Bešir Mosque, the Appeals Chamber should revise Petković's

See also *Tadić* Appeal Judgement, para. 228. The Appeals Chamber also recalls that, under the third category of JCE, an accused may incur criminal responsibility for crimes committed by non-members of the JCE "provided that it had been shown that the crimes could be imputed to at least one member of the JCE and that this member, when using a principal perpetrator, acted in accordance with the common plan". *Stanišić and Župljanin* Appeal Judgement, para. 994; *Popović et al.* Appeal Judgement, para. 1679; *Đorđević* Appeal Judgement, para. 911; *Brdanin* Appeal Judgement, paras 413, 430.

⁸¹³⁸ To the extent that the Prosecution argues that this conviction, pursuant to JCE I liability, should be replaced by a conviction, pursuant to JCE III liability, these arguments will be addressed below. See *infra*, paras 2452-2454.

⁸¹³⁹ Specifically, the Appeals Chamber observes that none of the findings of the Trial Chamber impugned by Petković – namely that he: (1) was informed of the destruction of Baba Bešir Mosque; (2) failed to take any measures against Lasić, *after the destruction of the mosque occurred*; and (3) thereby accepted the mosque's destruction – can be considered as indications that this incident was foreseeable to Petković and he willingly took that risk, *before* this destruction occurred, as will be analysed further below. Trial Judgement, Vol. 4, paras 729-730, referring to, *inter alia*, Ex. P02264. See *infra*, paras 2452-2454.

⁸¹⁴⁰ Trial Judgement, Vol. 4, paras 342, 433, 695, 699, 820, 1213. See also Trial Judgement, Vol. 4, Disposition, p. 431. See also *supra*, para. 799.

⁸¹⁴¹ Trial Judgement, Vol. 2, paras 95-96, Vol. 4, paras 695, 699, 820.

⁸¹⁴² See *supra*, para. 2448.

⁸¹⁴³ See Prosecution's Appeal Brief, paras 196-197 where the Prosecution submits that the Trial Chamber erred in convicting Petković of these crimes, pursuant to JCE I.

related convictions and instead hold him responsible for the latter two incidents pursuant to JCE III liability.⁸¹⁴⁴ Petković responds that although the Trial Chamber erroneously convicted him pursuant to JCE I for these crimes, he should be acquitted as the Trial Chamber's findings "do not contain sufficient elements" for a conviction under JCE III liability.⁸¹⁴⁵

2452. The Appeals Chamber recalls that the *mens rea* requirements of JCE I and JCE III differ.⁸¹⁴⁶ Specifically, the *mens rea* for JCE I requires that an accused share the intent to commit the crimes that form part of the common purpose and the intent to participate in a common plan aimed at their commission.⁸¹⁴⁷ By contrast, the *mens rea* for JCE III requires that:

under the circumstances of the case: (i) it was foreseeable that such a crime might be perpetrated by one or [more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose] and (ii) the accused willingly took that risk (*dolus eventualis*). The crime must be shown to have been foreseeable to the accused in particular.⁸¹⁴⁸

2453. Concerning Petković's ability to foresee the destruction of both the Baba Bešir Mosque and the Skrobućani mosque, the Appeals Chamber recalls the Trial Chamber's finding that Petković could foresee the destruction of mosques in Sovići and Doljani already in April 1993 and willingly took the risk that such crimes might occur.⁸¹⁴⁹ In reaching this conclusion, the Trial Chamber noted that the HVO set fire to all Muslim houses and two mosques on orders from "senior commanders" and that Petković was regularly informed of the combat operations in Jablanica Municipality between 16 and 17 April 1993.⁸¹⁵⁰ The Appeals Chamber further observes that the Trial Chamber found that Petković intended the destruction of Muslim property in the municipalities of Gornji Vakuf and Jablanica between January and May 1993.⁸¹⁵¹ In addition, concerning the Skrobućani mosque, the Appeals Chamber recalls the Trial Chamber's findings that: (1) in April 1993, following an attack by the HVO, Muslim property was destroyed in two other villages in the Prozor Municipality, and that, given the similarities between the operations conducted in those villages, destruction of Muslim property was part of the plan;⁸¹⁵² (2) Petković directed the operations in

⁸¹⁴⁴ Prosecution's Appeal Brief, paras 196-197.

⁸¹⁴⁵ Petković's Response Brief, para. 94. See also Petković's Response Brief, paras 92-93.

⁸¹⁴⁶ See *Tadić* Appeal Judgement, para. 228; *Kvočka et al.* Appeal Judgement, paras 82-86.

⁸¹⁴⁷ *Stanišić and Župljanin* Appeal Judgement, para. 386; *Popović et al.* Appeal Judgement, para. 1369; *Brđanin* Appeal Judgement, para. 365. See *supra*, para. 2372.

⁸¹⁴⁸ *Popović et al.* Appeal Judgement, para. 1431, quoting *Brđanin* Appeal Judgement, para. 365. See *Stanišić and Župljanin* Appeal Judgement, paras 595, 614, 688, 958, 1055. See also *Tolimir* Appeal Judgement, para. 514 (recalling that the possibility that a crime committed be "reasonably foreseeable to the accused"). See also *infra*, para. 2836.

⁸¹⁴⁹ Trial Judgement, Vol. 4, para. 852. The Appeals Chamber further notes that this conviction is affirmed on appeal below. See *infra*, para. 2966.

⁸¹⁵⁰ Trial Judgement, Vol. 4, para. 850. See Trial Judgement, Vol. 4, para. 851, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 565, 641, 643, 646-650, Ex. P02063.

⁸¹⁵¹ Trial Judgement, Vol. 4, paras 704, 707-708, 710, 716-718. See *supra*, para. 2191.

⁸¹⁵² Trial Judgement, Vol. 4, para. 692.

Prozor between April and 22 June 1993, and in July and August 1993;⁸¹⁵³ and (3) he intended that the Skrobućani mosque be destroyed.⁸¹⁵⁴ The Appeals Chamber notes that this finding on Petković's intent remains undisturbed on appeal.⁸¹⁵⁵ In particular, the Trial Chamber found that during the attack on the Skrobućani village, the HVO destroyed property belonging to Muslims and that "destruction was part of a preconceived plan" that included the destruction of the Skrobućani mosque.⁸¹⁵⁶ In light of these findings of the Trial Chamber, the Appeals Chamber considers that the only reasonable inference is that it was foreseeable to Petković that both the Skrobućani mosque and Baba Bešir Mosque might be destroyed and that he willingly took that risk.⁸¹⁵⁷

2454. The Appeals Chamber finds that on the basis of the Trial Chamber's findings a reasonable trier of fact would be satisfied beyond reasonable doubt that Petković is responsible for destruction of these mosques, pursuant to JCE III. Accordingly, the Appeals Chamber reverses the Trial Chamber's finding that Petković is responsible for these incidents pursuant to JCE I, and instead finds him responsible pursuant to JCE III.

(c) Conclusion

2455. Based on the foregoing, the Appeals Chamber grants Petković's sub-ground of appeal 5.2.2.4 in part and the Prosecution's ground of appeal 1 in part. The Appeals Chamber also finds him responsible, under JCE III, for the crimes of destruction or wilful damage done to institutions dedicated to religion or education, in relation to the destruction of Baba Bešir Mosque and the Skrobućani mosque. The Appeals Chamber will consider the impact of these findings, if any, in the appropriate section below.⁸¹⁵⁸

8. Alleged errors regarding the Trial Chamber's findings on the plurality of persons sharing the CCP (Petković's Sub-ground 5.2.3.3)

2456. The Appeals Chamber recalls that the Trial Chamber concluded that a plurality of persons, including Petković, consulted each other to devise and implement the CCP.⁸¹⁵⁹ In so concluding, the Trial Chamber found that Petković and other JCE members: (1) participated in the planning and/or conducting of military operations in Gornji Vakuf Municipality; (2) planned the attacks in the

⁸¹⁵³ Trial Judgement, Vol. 4, paras 691-694, 696-697.

⁸¹⁵⁴ Trial Judgement, Vol. 4, paras 695, 699.

⁸¹⁵⁵ See *supra*, para. 2449.

⁸¹⁵⁶ Trial Judgement, Vol. 4, para. 695.

⁸¹⁵⁷ In this respect, the Appeals Chamber recalls that "[k]nowledge of factors such as the nature of the conflict, the means by which a joint criminal enterprise is to be achieved, and how the joint criminal enterprise is implemented on the ground may make the possibility that such a crime might occur sufficiently substantial as to be foreseeable" to JCE members. *Stanišić and Župljanin* Appeal Judgement, para. 627.

⁸¹⁵⁸ See *infra*, paras 2468, 3363.

⁸¹⁵⁹ Trial Judgement, Vol. 4, para. 1231.

municipalities of Prozor and Jablanica in April 1993 pursuant to the 4 April 1993 Ultimatum; (3) planned the campaign of arrests and mass detentions of Muslims who did not belong to any armed force; and (4) planned and/or facilitated the military operations in Vareš Municipality in October 1993 and attempted to conceal crimes committed during the attack on Stupni Do.⁸¹⁶⁰ Moreover, the Trial Chamber noted that: (1) Prlić, Čorić, and Pušić contributed to the forced departure of detained Muslims to third countries,⁸¹⁶¹ and (2) Prlić, Praljak, Petković, and Mate Boban attended several presidential meetings in the presence of Franjo Tuđman between September 1992 and March 1994.⁸¹⁶² Additionally, the Trial Chamber noted that by performing their respective functions from January 1993 to April 1994, Prlić, Petković, and Čorić continuously contributed to the JCE.⁸¹⁶³ The Trial Chamber concluded that because JCE members used the members and structures of the HVO to commit crimes that were part of the CCP, the HVO's crimes were attributable to the JCE members, including Petković.⁸¹⁶⁴

(a) Arguments of the Parties

2457. Petković submits that in finding that a plurality of persons, including himself, consulted with each other to devise and implement the CCP, the Trial Chamber relied on a number of incorrect assertions.⁸¹⁶⁵ In this regard, Petković argues that: (1) he did not participate in the planning or conducting of the military operation launched in Gornji Vakuf Municipality on 18 January 1993;⁸¹⁶⁶ (2) there is no evidence that he planned the attacks in the municipalities of Prozor and Jablanica;⁸¹⁶⁷ (3) the HVO did not detain Muslims “who did not belong to any armed force”;⁸¹⁶⁸ (4) the Trial Chamber's finding that Ivica Rajić made decisions about military actions in Vareš and Stupni Do “disproves the thesis” that Petković planned or facilitated these operations;⁸¹⁶⁹ (5) the Trial Chamber's finding that Petković attempted to conceal crimes is incorrect and unreasonable;⁸¹⁷⁰ and (6) the Trial Chamber's finding that he used members of the HVO to commit

⁸¹⁶⁰ Trial Judgement, Vol. 4, para. 1220.

⁸¹⁶¹ Trial Judgement, Vol. 4, paras 1220-1221.

⁸¹⁶² Trial Judgement, Vol. 4, para. 1223.

⁸¹⁶³ Trial Judgement, Vol. 4, para. 1225. See Trial Judgement, Vol. 4, para. 1230.

⁸¹⁶⁴ Trial Judgement, Vol. 4, para. 1232.

⁸¹⁶⁵ Petković's Appeal Brief, para. 362.

⁸¹⁶⁶ Petković's Appeal Brief, para. 362(i).

⁸¹⁶⁷ Petković's Appeal Brief, para. 362(ii). Petković further submits that the Trial Chamber failed to give a reasoned opinion when it found that he planned the military actions pursuant to the 4 April 1993 Ultimatum. Petković's Appeal Brief, para. 362(ii).

⁸¹⁶⁸ Petković's Appeal Brief, para. 362(iii).

⁸¹⁶⁹ Petković's Appeal Brief, para. 362(iv)(a), referring to Petković's Appeal Brief, para. 288. See Trial Judgement, Vol. 3, paras 314-316, referred to in Petković's Appeal Brief, para. 288. Additionally, Petković: (1) challenges the finding that Stojić and Praljak also planned or facilitated these operations; and (2) argues that the Trial Chamber failed to give a reasoned opinion as to how these military actions could contribute to the JCE. Petković's Appeal Brief, para. 362(iv).

⁸¹⁷⁰ Petković's Appeal Brief, para. 362(v). Petković also challenges the finding that Praljak attempted to conceal crimes during the attack on Stupni Do in October 1993. Petković's Appeal Brief, para. 362(v).

crimes that were part of the CCP “implies” direct intent to commit such crimes – an inference that, he asserts, is not supported by evidence.⁸¹⁷¹

2458. Further, Petković submits that: (1) there is no basis for the Trial Chamber’s finding that he “was the member of the JCE group who contributed” to the forced departure of detained Muslims to third countries as he was neither found to have contributed to nor convicted of these deportation crimes;⁸¹⁷² (2) the evidence “clearly proves” that Petković attended only one presidential meeting, not “several”;⁸¹⁷³ and (3) the Trial Chamber erred in law when it “asserted that performing functions is *per se* [a] contribution” to the JCE.⁸¹⁷⁴

2459. The Prosecution responds that Petković’s challenge to the reasonable finding that he planned the attacks on the municipalities of Prozor and Jablanica pursuant to the 4 April 1993 Ultimatum ignores relevant findings.⁸¹⁷⁵ It also submits that Petković incorrectly claims that he attended only one presidential meeting, when he in fact attended at least two.⁸¹⁷⁶ According to the Prosecution, the Trial Chamber’s finding that the CCP was implemented by a plurality of persons, including Petković, was reasonable in light of the evidence.⁸¹⁷⁷

2460. Petković replies that one of the meetings to which the Prosecution points was not a “presidential” meeting.⁸¹⁷⁸

(b) Analysis

2461. The Appeals Chamber first dismisses a number of Petković’s submissions pertaining to the commission of crimes in various municipalities and his contribution thereto as he expressly relies upon and repeats arguments in his other grounds of appeal, which were dismissed elsewhere.⁸¹⁷⁹

⁸¹⁷¹ Petković’s Appeal Brief, para. 362(ix).

⁸¹⁷² Petković’s Appeal Brief, para. 362(vi), referring to Trial Judgement, Vol. 4, para. 1221.

⁸¹⁷³ Petković’s Appeal Brief, para. 362(vii), referring to Trial Judgement, Vol. 4, para. 1223, Ex. P06454.

⁸¹⁷⁴ Petković’s Appeal Brief, para. 362(viii).

⁸¹⁷⁵ Prosecution’s Response Brief (Petković), para. 257.

⁸¹⁷⁶ Prosecution’s Response Brief (Petković), para. 258 & fn. 1062, referring to Trial Judgement, Vol. 4, paras 52, 191, 761.

⁸¹⁷⁷ Prosecution’s Response Brief (Petković), para. 256; Appeal Hearing, AT. 529, 545 (23 Mar 2017). The Prosecution asserts that Petković’s remaining challenges repeat arguments raised elsewhere in his appeal brief. Prosecution’s Response Brief (Petković), para. 259 & fn. 1065 and references cited therein.

⁸¹⁷⁸ Petković’s Reply Brief, para. 80, referring to Trial Judgement, Vol. 4, para. 52, Ex. P02059.

⁸¹⁷⁹ See Petković’s Appeal Brief, para. 362(i), referring to Petković’s Appeal Brief, para. 231. *Cf. supra*, para. 2171. See Petković’s Appeal Brief, para. 362(ii), referring to Petković’s Appeal Brief, paras 215-217, 238-240. *Cf. supra*, paras 2143-2144, 2186. See Petković’s Appeal Brief, para. 362(iii), referring to Petković’s Appeal Brief, paras 174-213. *Cf. supra*, para. 382. See Petković’s Appeal Brief, para. 362(v), referring to Petković’s Appeal Brief, para. 291. *Cf. supra*, para. 2293. See Petković’s Appeal Brief, para. 362(ix), referring to, *inter alia*, Petković’s Appeal Brief, paras 215-221, 231-232, 238-240, 270, 277-280. *Cf. supra*, paras 2144, 2149, 2171, 2186, 2242, 2249, 2258. Insofar as Petković challenges the Trial Chamber’s finding with respect to Praljak’s responsibility concerning the concealment of crimes during the attack on Stupni Do in October 1993, the Appeals Chamber recalls that it has reversed that finding elsewhere in the Judgement. See *supra*, paras 2059-2062. His argument is therefore dismissed as moot.

2462. The Appeals Chamber rejects Petković's submission that there is no evidence to support the Trial Chamber's finding that he planned the military actions in the municipalities of Prozor and Jablanica pursuant to the 4 April 1993 Ultimatum. In this respect, the Appeals Chamber considers that he disregards the evidence expressly relied upon by the Trial Chamber when reaching its conclusion that the HVO operations in these municipalities were the result of a preconceived plan to implement the 4 April 1993 Ultimatum,⁸¹⁸⁰ and that he participated in planning and directing the operations in Prozor and Jablanica.⁸¹⁸¹ For example, the Trial Chamber considered: (1) the meeting of HVO HZ H-B on 3 April 1993, which was attended by Prlić and Stojić, among others, where it was decided that if the Muslim authorities refused to sign a statement on the subordination of ABiH to the HVO in provinces 3, 8, and 10, by 15 April 1993, the HVO would do it unilaterally and by military means;⁸¹⁸² (2) the fact that on 15 April 1993 the HVO began shelling the town of Jablanica and on 17 April 1993 launched an attack on Jablanica valley, including the villages of Sovići and Doljani, following which the Muslim houses were set on fire and population arrested;⁸¹⁸³ (3) the fact that on 16 April 1993 Šiljeg drew up a plan for attack on several villages in the Prozor Municipality and sent it to the Main Staff, which was then followed by an attack on those villages on 17 April 1993, during which Muslim houses were set on fire;⁸¹⁸⁴ and (4) a number of documents leading it to the conclusion that Petković planned and directed the operations in Prozor and Jablanica.⁸¹⁸⁵

2463. The Appeals Chamber also considers that when arguing that the Trial Chamber's finding that Rajić made decisions about military actions in Vareš and Stupni Do "disproves the thesis" that he planned or facilitated these operations, Petković expressly relies upon similar arguments that the Appeals Chamber in fact grants elsewhere in the Judgement.⁸¹⁸⁶ However, he fails to show how this impacts the impugned finding that a plurality of persons, including Petković, consulted each other

⁸¹⁸⁰ See Trial Judgement, Vol. 4, paras 138-146, referred to in Trial Judgement, Vol. 4, para. 1220 & fn. 2282. See also *supra*, fn. 3762. To the extent that Petković argues, as a separate matter, that the Trial Chamber failed to give a reasoned opinion when reaching this conclusion, the Appeals Chamber dismisses this as an undeveloped assertion.

⁸¹⁸¹ See Trial Judgement, Vol. 4, paras 691-697, 699, 712-716, referred to in Trial Judgement, Vol. 4, para. 1220 & fn. 2281.

⁸¹⁸² Trial Judgement, Vol. 4, para. 138.

⁸¹⁸³ Trial Judgement, Vol. 4, paras 143-144.

⁸¹⁸⁴ Trial Judgement, Vol. 4, para. 141.

⁸¹⁸⁵ Trial Judgement, Vol. 4, paras 691-697, 712, 714-715 and references cited therein.

⁸¹⁸⁶ See Petković's Appeal Brief, para. 362(iv)(a), referring to Petković's Appeal Brief, para. 288. *Cf. supra*, paras 2275-2280. The Appeals Chamber dismisses Petković's argument that the Trial Chamber failed to give a reasoned opinion as to how these military actions could contribute to the common criminal purpose, as he repeats submissions dismissed elsewhere. See *supra*, para. 972.

to devise and implement the CCP.⁸¹⁸⁷ Specifically, this finding was supported by a number of other factors.⁸¹⁸⁸ Thus, his argument is dismissed.⁸¹⁸⁹

2464. When submitting that the Trial Chamber's finding that he used HVO members to commit crimes "implies" direct intent to commit such crimes, which is not supported by evidence, Petković again points to, *inter alia*, his submissions regarding his contribution to crimes committed in Vareš and Stupni Do, which were granted elsewhere.⁸¹⁹⁰ However, he fails to show, in this case, how an error with respect to the Trial Chamber's finding on his contribution to crimes committed in that location impacts the finding that Petković used HVO members and structures to commit crimes that were part of the CCP in light of the numerous other factors relied upon by the Trial Chamber in reaching that conclusion.⁸¹⁹¹ His argument is dismissed.

2465. The Appeals Chamber also observes that in claiming that the Trial Chamber erred in finding that he was "the member of the JCE group who contributed to" the forced departure of detained Muslims to third countries, Petković again fails to appreciate that he was convicted for all crimes forming part of the JCE, rather than only for those to which he directly contributed.⁸¹⁹² In any event, the Appeals Chamber recalls that the Trial Chamber was not required to find that Petković contributed to each incident in order to conclude that he was a member of the JCE.⁸¹⁹³ Accordingly, the Appeals Chamber rejects Petković's obscure and unsubstantiated argument that the Trial Chamber found that he "was the member of the JCE group who contributed to" the forced deportation crimes. He also fails to demonstrate how his submission that the evidence "clearly proves" that he attended only one presidential meeting, not "several", impacts the impugned finding.⁸¹⁹⁴ Accordingly, his arguments are dismissed.

⁸¹⁸⁷ See Trial Judgement, Vol. 4, para. 1231.

⁸¹⁸⁸ See Trial Judgement, Vol. 4, paras 1220-1223. See *supra*, para. 2461 & fn. 8179 (dismissing Petković's challenges to some of these factors).

⁸¹⁸⁹ To the extent that he makes similar arguments with respect to Stojić's and Praljak's responsibility concerning the crimes committed in Vareš and Stupni Do, the Appeals Chamber dismisses such arguments for the same reason.

⁸¹⁹⁰ See Petković's Appeal Brief, para. 362(ix), referring to, *inter alia*, Petković's Appeal Brief, paras 287-289. Cf. *supra*, paras 2275-2280. The Appeals Chamber notes that Petković also points to his submissions regarding crimes committed in other locations, which were dismissed elsewhere. See Petković Appeal Brief, para. 362(ix); *supra*, para. 2461 & fn. 8179.

⁸¹⁹¹ See Trial Judgement, Vol. 4, fn. 2303, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 687-819 (Petković's responsibility under JCE I). See also *supra*, para. 2461 & fn. 8179 (dismissing Petković's challenges to some of these factors).

⁸¹⁹² Specifically, Petković was convicted for all deportation-related incidents forming part of the CCP insofar as he significantly contributed to the JCE. Trial Judgement, Vol. 4, paras 820-821.

⁸¹⁹³ *Šainović et al.* Appeal Judgement, para. 1510; *Vasiljević* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, paras 196, 227.

⁸¹⁹⁴ See Trial Judgement, Vol. 4, paras 1222-1223, 1231. The Appeals Chamber notes, in any case, that Petković's submission, in reply, that one of the meetings to which the Prosecution points was not a "presidential" meeting, is incorrect. See Petković's Reply Brief, para. 80, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 52, Ex. P02059.

2466. The Appeals Chamber also finds that Petković misrepresents the Trial Judgement when he argues that the Trial Chamber “asserted that performing functions is *per se* [a] contribution” to the JCE.⁸¹⁹⁵ A plain reading of this portion of the Trial Judgement shows that the Trial Chamber did not rely on Prlić’s, Petković’s, and Čorić’s functions in abstract terms, but rather on the criminal manner in which such functions were concretely carried out.⁸¹⁹⁶ The Appeals Chamber therefore dismisses Petković’s argument.

2467. In light of the above, the Appeals Chamber dismisses Petković’s challenge to the finding that a plurality of persons, including himself, consulted with each other to devise and implement the CCP. His sub-ground of appeal 5.2.3.3 is therefore dismissed.

9. Conclusion

2468. The Appeals Chamber has granted Petković’s sub-grounds of appeal 5.2.2.6 and 5.2.2.7.2, both in part and has found that the Trial Chamber erred in finding that he directly contributed to the crimes committed in Vareš town and Stupni Do. The Appeals Chamber has also granted Petković’s sub-ground of appeal 5.2.2.4 and the Prosecution’s ground of appeal 1 in part and found that the Trial Chamber erred in finding Petković responsible, pursuant to JCE I liability, for the destruction of Baba Bešir Mosque and the Skrobućani mosque. However, the Appeals Chamber found Petković responsible, under JCE III for the crimes of destruction or wilful damage done to institutions dedicated to religion or education, in relation to the destruction of Baba Bešir Mosque and the Skrobućani mosque. The Appeals Chamber has also granted Petković’s sub-ground of appeal 5.2.3.1, in part and found that the Trial Chamber erred in concluding that Petković contributed to the commission of the crimes committed by the Bruno Bušić Regiment in Jablanica Municipality, including at the Fish Farm, to the extent that it found that, having been aware of the criminal behaviour of its members since January 1993, he deployed this unit to Jablanica Municipality in April 1993. However, in light of the remaining findings which have been upheld, the Appeals Chamber considers that Petković has not shown any error invalidating the verdict or resulting in a miscarriage of justice in relation to the Trial Chamber’s conclusions concerning his contribution to, and *mens rea* for, the JCE. The effect of the Appeals Chamber’s findings, including those

⁸¹⁹⁵ Petković’s Appeal Brief, para. 362(viii).

⁸¹⁹⁶ In this regard, the Appeals Chamber observes that in reaching its conclusion, the Trial Chamber expressly referred to the sections of the Trial Judgement concerning Prlić’s, Petković’s, and Čorić’s respective contributions to the JCE. See Trial Judgement, Vol. 4, fn. 2293, referring to Trial Judgement, Vol. 4, paras 122-279, 687-821, 1094-1212. Moreover, the Appeals Chamber recalls that “the law does not foresee specific types of conduct which *per se* could not be considered a contribution to the common purpose”. *Krajišnik* Appeal Judgement, para. 696. See also *Krajišnik* Appeal Judgement, para. 695.

concerning the Trial Chamber's erroneous findings, will be discussed in the section pertaining to sentencing below.⁸¹⁹⁷

⁸¹⁹⁷ See *infra*, para. 3363.



I. Alleged Errors in Relation to Valentin Ćorić's Participation in the JCE

1. Introduction

2469. The Trial Chamber found that in 1991 and early 1992, Valentin Ćorić held several positions in the HVO and Military Police, and that on 24 June 1992 at the latest, he took up the position of Chief of the Military Police Administration, a post he occupied until 10 November 1993, when he was appointed Minister of the Interior of the HR H-B.⁸¹⁹⁸ The Trial Chamber found that Ćorić contributed to the JCE from January 1993 to April 1994,⁸¹⁹⁹ and that his contribution was significant.⁸²⁰⁰

2470. The Trial Chamber made several findings concerning Ćorić's contributions, including, *inter alia*, that: (1) from January until 10 November 1993, Ćorić, as Chief of the Military Police Administration, had command and control power over the Military Police units, including the power to re-subordinate them to the HVO OZs;⁸²⁰¹ (2) he knowingly engaged Military Police units in the eviction operations in Gornji Vakuf Municipality in January 1993, in the municipalities of Stolac and Čapljina in the summer of 1993, and in Mostar Municipality from 9 May until at least October 1993, during which the CCP crimes were committed;⁸²⁰² (3) he personally participated in planning the operations to evict Muslims from Mostar on 9 May 1993 by organising the placing of Muslims in detention and holding them in detention the following days;⁸²⁰³ (4) in the summer of 1993, while he had the duty to fight crime in the territory of the HZ(R) H-B, he knowingly turned a blind eye to the crimes committed by HVO members against Muslims in West Mostar during the eviction operations;⁸²⁰⁴ (5) holding a key role in the operation of the network of HVO detention centres until 10 November 1993, he contributed to the arrest and detention of thousands of Muslims, keeping them detained in harsh conditions where they were mistreated, beaten, and abused, using them or allowing them to be used for work on the front line, transferring them from one detention centre to another, and releasing them on condition that they leave the territory of the HZ(R) H-B together with their families.⁸²⁰⁵ It further found that as Chief of the Military Police Administration and later Minister of the Interior, Ćorić: (1) had the power to control the freedom of movement of people and goods in the territory of the HZ(R) H-B, including the movement of humanitarian convoys, until April 1994 in particular by way of HVO checkpoints;⁸²⁰⁶ and

⁸¹⁹⁸ Trial Judgement, Vol. 4, para. 861.

⁸¹⁹⁹ Trial Judgement, Vol. 4, paras 1225-1226, 1230.

⁸²⁰⁰ Trial Judgement, Vol. 4, para. 1004.

⁸²⁰¹ Trial Judgement, Vol. 4, para. 1000.

⁸²⁰² Trial Judgement, Vol. 4, para. 1000.

⁸²⁰³ Trial Judgement, Vol. 4, para. 1000.

⁸²⁰⁴ Trial Judgement, Vol. 4, para. 1000.

⁸²⁰⁵ Trial Judgement, Vol. 4, para. 1001.

⁸²⁰⁶ Trial Judgement, Vol. 4, para. 1003.

(2) achieved part of the CCP by a blockade of the Muslim population of East Mostar and of humanitarian aid.⁸²⁰⁷

2471. Regarding Čorić's *mens rea* under JCE I liability, the Trial Chamber concluded that he: (1) intended that all the crimes that were part of the CCP be committed;⁸²⁰⁸ (2) shared the intent to expel the Muslim population from the territory of HZ(R) H-B with other JCE members;⁸²⁰⁹ and (3) intended to discriminate and persecute the Muslim population.⁸²¹⁰

2472. The Trial Chamber convicted Čorić pursuant to Article 7(1) of the Statute, for committing, pursuant to JCE I liability, various crimes amounting to grave breaches of the Geneva Conventions, violations of the laws or customs of war, and/or crimes against humanity under Articles 2, 3, and 5 of the Statute, respectively.⁸²¹¹ He was sentenced to a single sentence of 16 years of imprisonment.⁸²¹²

2473. Čorić challenges these and related findings of the Trial Chamber with regard to his JCE contribution and *mens rea*.⁸²¹³ These challenges will be addressed in the following sections. In this respect, the Appeals Chamber recalls its prior findings that the Prosecution failed to demonstrate that Čorić's defence was not materially impaired in relation to his role in the JCE as Minister of the Interior, and that it did not therefore meet its burden on appeal.⁸²¹⁴ The Appeals Chamber has thus granted Čorić's ground of appeal 11 in part and has reversed the Trial Chamber's findings on, and vacated his convictions in relation to, his role in the JCE as Minister of the Interior as of

⁸²⁰⁷ Trial Judgement, Vol. 4, para. 1003.

⁸²⁰⁸ Trial Judgement, Vol. 4, para. 1004.

⁸²⁰⁹ Trial Judgement, Vol. 4, para. 1004.

⁸²¹⁰ Trial Judgement, Vol. 4, para. 1004.

⁸²¹¹ Trial Judgement, Vol. 4, para. 1006, Disposition, p. 431. These crimes were: persecution as a crime against humanity (Count 1); murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva Conventions (Count 3); deportation as a crime against humanity (Count 6); unlawful deportation of a civilian as a grave breach of the Geneva Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9); imprisonment as a crime against humanity (Count 10); unlawful confinement of a civilian as a grave breach of the Geneva Conventions (Count 11); inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); unlawful labour as a violation of the laws or customs of war (Count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 19); destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); unlawful attack on civilians as a violation of the laws or customs of war (Count 24); and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). The Trial Chamber found that the following crimes also fell within the framework of the JCE, meaning Čorić was also responsible for them, but did not enter convictions for them based on the principles relating to cumulative convictions: cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); cruel treatment as a violation of the laws or customs of war (Count 17); and wanton destruction of cities, towns, or villages, or devastation not justified by military necessity as a violation of the laws or customs of war (Count 20). See Trial Judgement, Vol. 4, para. 68, Disposition, p. 431. See also Trial Judgement, Vol. 4, paras 1260-1266.

⁸²¹² Trial Judgement, Vol. 4, Disposition, p. 431.

⁸²¹³ Čorić's Appeal Brief, grounds of appeal 2, 6-7, 10-11 in part, 13-14. See also Čorić's Appeal Brief, paras 30-32.

⁸²¹⁴ See *supra*, para. 105.

10 November 1993.⁸²¹⁵ As a result, it need not consider Ćorić's arguments in relation to his role in the JCE as Minister of the Interior and dismisses them as moot.⁸²¹⁶

2. Preliminary issues

2474. At the outset, the Appeals Chamber recalls that it has inherent discretion to determine which of the parties' submissions merit a reasoned opinion in writing and that it may dismiss arguments which are evidently unfounded without providing detailed reasoning.⁸²¹⁷ In order for the Appeals Chamber to assess a party's arguments on appeal, the party is expected to present its case clearly, logically, and exhaustively.⁸²¹⁸ The standard of appellate review specifies the types of deficiencies in submissions on appeal that will lead to summary dismissal by the Appeals Chamber.⁸²¹⁹

2475. The Appeals Chamber observes that Ćorić's appeal brief deviates to an egregious extent and with striking regularity from the obligations of an appealing party pursuant to the standard of appellate review. Pre-eminent among these deficiencies is that, throughout his appeal brief, Ćorić repeats arguments that were unsuccessful at trial without any demonstration that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber. In so doing, Ćorić reproduces paragraphs and footnotes from his final brief – in many instances, verbatim.⁸²²⁰ The Appeals Chamber recalls in this regard that the *Mrkšić and Šljivančanin* Appeals Chamber stated that:

This practice is unacceptable; an appeal is not an opportunity for the parties to reargue their cases or, "for the Appeals Chamber to reconsider the evidence and factors submitted before the Trial Chamber". The Appeals Chamber emphasizes that an appellant cannot hope to see his appeal succeed by simply repeating or referring to arguments that did not succeed at trial, unless he can demonstrate that the Trial Chamber's rejection of them constituted such an error as to warrant the intervention of the Appeals Chamber.⁸²²¹

2476. An additional deficiency that permeates his appeal brief, and which is linked to his choice to advance trial arguments on appeal, is that Ćorić regularly fails to engage with the Trial Judgement. In so doing, he fails to identify the findings he purports to contest. Other common deficiencies in his submissions that are formally recognised as such under the standard of appellate review include that they: (1) misrepresent the challenged factual findings; (2) fail to articulate an

⁸²¹⁵ See *supra*, para. 105.

⁸²¹⁶ See Ćorić's Appeal Brief, paras 251, 259, 277.

⁸²¹⁷ See *supra*, para. 24.

⁸²¹⁸ See *supra*, para. 24. See also Practice Direction on Formal Requirements, para. 4.

⁸²¹⁹ See *supra*, para. 25.

⁸²²⁰ See *infra*, paras 2501, 2562, 2594.

⁸²²¹ *Mrkšić and Šljivančanin* Appeal Judgement, para. 214 (footnotes omitted).

error; and (3) are undeveloped, irrelevant, or obscure.⁸²²² These deficiencies are often found in combination in relation to the same submission.⁸²²³

2477. In view of the pervasive deficiencies in the argumentation of Ćorić's appeal brief, the Appeals Chamber has only considered those of his submissions that are, in its view, in accordance with the standard of appellate review. Submissions suffering from the above or other formally recognised deficiencies have been dismissed by the Appeals Chamber without detailed analysis in sections designated "summarily dismissed submissions".⁸²²⁴

3. Alleged errors related to Ćorić's powers regarding the command of the Military Police, his knowledge of the CCP crimes committed by the Military Police units, and his powers in fighting crime (Ćorić's Grounds 2, 7, 10, 11, 13, and 14, all in part)

(a) Ćorić's powers over the Military Police

2478. The Trial Chamber found that Ćorić had powers of command and control over the Military Police units, including the power to re-subordinate these units,⁸²²⁵ and to organise the Military Police and define the rules governing its operation, including responsibility for the recruitment and basic and advanced training of HVO military policemen.⁸²²⁶ It found that Military Police units were under dual command, with units being required to answer to the orders of both the HVO commander on the ground and, on occasion, to those of the Military Police Administration.⁸²²⁷ In particular, it found that: (1) from at least April 1992 to July 1993, Military Police units were subordinated to the commander of the HVO unit to which they were attached to carry out their "daily duties", but Ćorić retained some power of command at this time;⁸²²⁸ (2) from the second half of 1992 to roughly July 1993, the Military Police Administration exercised direct command over the Military Police units, but from July 1993, these powers weakened and were limited to defining the procedures that the Military Police were to follow and the deployment policy for that police force;⁸²²⁹ and (3) at least between July and October 1993, Ćorić had the power to re-subordinate the Military Police units, and even when re-subordination occurred, Ćorić did not completely lose his powers of command.⁸²³⁰ The Trial Chamber also found that the Military Police Administration in general, and Ćorić in particular, were responsible for the recruitment and the basic and advanced

⁸²²² See *infra*, paras 2501, 2562, 2594.

⁸²²³ See *infra*, paras 2501, 2562, 2594.

⁸²²⁴ See *infra*, paras 2501, 2562, 2594.

⁸²²⁵ Trial Judgement, Vol. 4, para. 915.

⁸²²⁶ Trial Judgement, Vol. 4, para. 915.

⁸²²⁷ Trial Judgement, Vol. 1, paras 945, 961, 971.

⁸²²⁸ Trial Judgement, Vol. 4, para. 867. See also Trial Judgement, Vol. 1, paras 959-961.

⁸²²⁹ Trial Judgement, Vol. 1, paras 962-963; Trial Judgement, Vol. 4, para. 868. See also Trial Judgement, Vol. 1, para. 964.

training of HVO military policemen, including courses on the international law of war and humanitarian law.⁸²³¹

(i) Arguments of the Parties

2479. Čorić submits that the Trial Chamber erred in its findings on the command authority of the Military Police Administration over the Military Police units.⁸²³² Specifically, he first argues that the Trial Chamber erred in concluding that there was a dual chain of command,⁸²³³ as it: (1) did not adequately consider the brigade Military Police units in its analysis;⁸²³⁴ and (2) reached its conclusions on the basis of Čorić's orders without considering their contents or whether they were actually performed, ignoring the evidence of Witness Zvonimir Skender.⁸²³⁵ Second, in relation to the Trial Chamber's findings on the reforms of the Military Police command structure in July and December 1993, Čorić asserts that the Trial Chamber disregarded the fact that "if you claim that after the new changes the [Military Police] units were commanded by the [Military Police Administration], it means that until these changes they were not".⁸²³⁶ He argues that although the Trial Chamber "conceded" that from 28 July 1993, the Military Police Administration ceased to perform even "the limited administrative logistical task of sending [Military Police] units to the terrain", it erroneously found, on the basis of two documents (Exhibits P05478 and P04947), that he still maintained command over Military Police battalions, without examining whether these documents were delivered to the recipients or enacted.⁸²³⁷

2480. Third, Čorić argues that the Trial Chamber erred in concluding that the dual chain of command generated confusion among Military Police unit commanders by, *inter alia*, disregarding the evidence of Witness NO.⁸²³⁸ Čorić further contends that the Trial Chamber erred when concluding that the aim of the Military Police reforms of July and December 1993 was to clarify the confused command chain, contradicting its prior finding that the reforms were intended to re-focus the activities of the Military Police around its original mandate following the deployment of Military Police units from the front lines.⁸²³⁹ Fourth, Čorić submits that the Trial Chamber cited his

⁸²³⁰ Trial Judgement, Vol. 4, paras 869-871. See also Trial Judgement, Vol. 1, paras 966-970.

⁸²³¹ Trial Judgement, Vol. 4, paras 875-876.

⁸²³² Čorić's Appeal Brief, paras 40, 229. See also Čorić's Appeal Brief, paras 58, 144. Čorić submits that the Trial Chamber acted "contrary to the caution contained in the jurisprudence against holding a police officer [responsible] for any crimes in his jurisdiction". Čorić's Appeal Brief, para. 41. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2501.

⁸²³³ Čorić's Appeal Brief, paras 50, 53-54, referring to Trial Judgement, Vol. 1, para. 974.

⁸²³⁴ Čorić's Appeal Brief, para. 43, referring to Trial Judgement, Vol. 1, para. 961.

⁸²³⁵ Čorić's Appeal Brief, paras 45, 50, referring to Trial Judgement, Vol. 1, paras 971, 973.

⁸²³⁶ Čorić's Appeal Brief, para. 57. See also Čorić's Appeal Brief, para. 289.

⁸²³⁷ Čorić's Appeal Brief, para. 58.

⁸²³⁸ Čorić's Appeal Brief, paras 44, 50. See Čorić's Appeal Brief, para. 306.

⁸²³⁹ Čorić's Appeal Brief, paras 55-56, 288-289, referring to Trial Judgement, Vol. 1, paras 885, 974.

powers of recruitment and appointment, but failed to establish how these powers established a significant contribution to the JCE.⁸²⁴⁰

2481. The Prosecution responds that the Trial Chamber reasonably found that the Military Police units operated under a dual chain of command, and submits that Ćorić simply attempts to assert his own view of the command chain.⁸²⁴¹ In particular, it responds that: (1) the Trial Chamber conducted an explicit analysis of the command chain in respect of the brigade Military Police units;⁸²⁴² and (2) the Trial Chamber considered Skender's testimony, and the argument that it relied on recommendations and orders without determining whether they were implemented is unsubstantiated.⁸²⁴³

2482. Further, the Prosecution submits that the Trial Chamber concluded, on the basis of the totality of the evidence, that Ćorić retained a measure of authority over the Military Police throughout each reorganisation.⁸²⁴⁴ As regards Ćorić's challenges to the finding that the dual command system led to confusion, the Prosecution responds that he fails to show that it was unreasonable for the Trial Chamber not to rely on Witness NO.⁸²⁴⁵ It also submits that Ćorić fails to demonstrate any contradictions in the Trial Chamber's findings as regards the conclusion that the reforms of the Military Police aimed to clarify the chain of command.⁸²⁴⁶

2483. The Prosecution finally responds that the Trial Chamber took account of Ćorić's powers of recruitment and appointment in order to establish the parameters of his authority over the Military Police, not to establish his contribution to the JCE.⁸²⁴⁷

(ii) Analysis

2484. The Appeals Chamber notes that Ćorić challenges, on a piecemeal basis, a number of the Trial Chamber's findings in the course of its analysis of the powers held by the Military Police Administration over the Military Police units,⁸²⁴⁸ without expressly addressing how his arguments undermine a finding that underpins his conviction. In this regard, the Appeals Chamber notes that the Trial Chamber found that: (1) as Chief of the Military Police Administration, Ćorić had

⁸²⁴⁰ Ćorić's Appeal Brief, paras 59, 273.

⁸²⁴¹ Prosecution's Response Brief (Ćorić), paras 45, 50; Appeal Hearing, AT. 632-633 (24 Mar 2017). See also Prosecution's Response Brief (Ćorić), para. 44.

⁸²⁴² Prosecution's Response Brief (Ćorić), para. 48; Appeal Hearing, AT. 633-635 (24 Mar 2017).

⁸²⁴³ Prosecution's Response Brief (Ćorić), paras 50-51.

⁸²⁴⁴ Prosecution's Response Brief (Ćorić), para. 53.

⁸²⁴⁵ Prosecution's Response Brief (Ćorić), para. 51.

⁸²⁴⁶ Prosecution's Response Brief (Ćorić), paras 52, 321. See also Prosecution's Response Brief (Ćorić), para. 322.

⁸²⁴⁷ Prosecution's Response Brief (Ćorić), para. 40. See also Appeal Hearing, AT. 634-635 (24 Mar 2017). The Prosecution also submits that Ćorić's authority to appoint Military Police officials was a clear indicator of his powers over the Military Police. Prosecution's Response Brief (Ćorić), para. 306.

⁸²⁴⁸ See generally Trial Judgement, Vol. 1, paras 959-974, Vol. 4, paras 867-876.

command and control power over the Military Police units, including the power to re-subordinate them to the OZs;⁸²⁴⁹ and (2) Ćorić's contribution to the JCE, and *mens rea*, rested upon, *inter alia*, the criminal activities of the Military Police units.⁸²⁵⁰ It considers that Ćorić's submissions, read together, amount to the argument that as Chief of the Military Police Administration, Ćorić did not exercise command and control over the Military Police units, and as such, that he himself did not bear responsibility for the crimes committed by the units. The Appeals Chamber will therefore consider the merits of his arguments to this end.

2485. As regards Ćorić's assertion that the Trial Chamber failed to adequately consider the brigade Military Police units in its analysis of the dual chain of command, the Appeals Chamber notes that in the finding pointed to by Ćorić, the Trial Chamber expressly considered the operation of the dual chain of command in relation to brigade units, finding that "the Military Police platoons embedded in the brigades were required to answer both to the orders of the brigade commander and on occasion to those of the Military Police Administration as well".⁸²⁵¹ Further, the Trial Chamber considered the contents of Ćorić's orders.⁸²⁵² Additionally, the Appeals Chamber observes that the Trial Chamber did not ignore the evidence of Skender that, from an administrative perspective, the military policemen were subordinated to the Military Police Administration, while from an "operational" standpoint, they fell under HVO commanders.⁸²⁵³ The Trial Chamber then stated that while it "embrac[ed] this logic in the broadest sense", it must consider Skender's evidence "in perspective", given other evidence demonstrating that the Military Police Administration issued orders whose substance was not merely administrative.⁸²⁵⁴ The Appeals Chamber finds that Ćorić has failed to show that the Trial Chamber erred and his submissions in this respect are thus dismissed.

2486. As for Ćorić's challenges to the finding that the Military Police Administration maintained powers over the Military Police battalions, the Appeals Chamber observes that the Trial Chamber "share[d] the Ćorić Defence's interpretation that the Military Police Administration's command authority over the Military Police units diminished as the conflict progressed between 1992 and 1994".⁸²⁵⁵ It concluded that "this reduction did not, however, lead to the complete renunciation of

⁸²⁴⁹ Trial Judgement, Vol. 4, para. 1000.

⁸²⁵⁰ Trial Judgement, Vol. 4, paras 1000-1004. See also Trial Judgement, Vol. 4, paras 919-999.

⁸²⁵¹ Trial Judgement, Vol. 1, para. 961.

⁸²⁵² Trial Judgement, Vol. 1, para. 970.

⁸²⁵³ Trial Judgement, Vol. 1, para. 973.

⁸²⁵⁴ Trial Judgement, Vol. 1, para. 973.

⁸²⁵⁵ Trial Judgement, Vol. 1, para. 964. The Trial Chamber also found that from the second half of 1992 until roughly July 1993, the Military Police Administration exercised direct command over the Military Police units, but "gradually relinquished its power to exercise direct command over the Military Police units". Trial Judgement, Vol. 1, para. 963. See Trial Judgement, Vol. 1, paras 962-963.

its prerogatives of command over the Military Police units”.⁸²⁵⁶ The Appeals Chamber notes that in reaching these conclusions, the Trial Chamber considered, *inter alia*, Exhibit P05478, an order by Ćorić of 13 August 1993 requiring that troops of the 4th Light Assault Battalion should go to Mostar to assist other HVO units fighting there, and Exhibit P04947 – a 11 September 1993 document signed by Ćorić reporting about a regular monthly meeting attended by commanding officers from the Military Police Administration and the commanders of Military Police Battalions – indicating that in the case of conflicting orders from the Department of Defence, the Main Staff, or the OZ Command, Military Police units were to stop carrying out the order and report to Ćorić personally.⁸²⁵⁷ The Appeals Chamber considers that Ćorić has failed both to substantiate his contention that the orders the Trial Chamber considered in reaching its conclusions were not acted upon or to otherwise explain why the Trial Chamber erred. These submissions are thus dismissed.

2487. With regard to Ćorić’s challenges to the Trial Chamber’s finding that the dual command system led to confusion among Military Police unit commanders, the Appeals Chamber notes that, contrary to Ćorić’s assertion, the Trial Chamber reached this conclusion having considered a range of evidence, including Witness NO’s evidence.⁸²⁵⁸ However, the Trial Chamber found that it did not share the opinion of Witness NO that the commander of the defence in Mostar did not receive complaints about the “fuzzy chain of command up which the Military Police units were required to report, signalling thereby that no problems existed in this area”.⁸²⁵⁹ The Appeals Chamber therefore dismisses Ćorić’s arguments in this respect.

2488. Turning to Ćorić’s challenges to the Trial Chamber’s finding on the aim of the reforms of the Military Police, the Appeals Chamber notes that the Trial Chamber found that the reasons for the reforms were to clarify the chain of command,⁸²⁶⁰ as the structure for oversight of the Military Police “was considered inefficient and non-functioning, and the prevailing system of command hindered the Military Police units from accomplishing their assignments in an effective manner”.⁸²⁶¹ The Trial Chamber also found that the reform initiated in December 1993 “would definitively focus the activities of the Military Police toward its original mandate”.⁸²⁶² The Appeals Chamber considers that there is no contradiction in these findings, as the clarification of

⁸²⁵⁶ Trial Judgement, Vol. 1, para. 964.

⁸²⁵⁷ Trial Judgement, Vol. 4, paras 869-870 & fns 1617-1618, referring to, *inter alia*, Exs. P05478, P04947. See also Trial Judgement, Vol. 1, para. 970.

⁸²⁵⁸ See Trial Judgement, Vol. 1, para. 961, referring to Witness E, T(F). 22160 (closed session) (12 Sept 2007), Witness C, T(F). 22323 (closed session) (17 Sept 2007), Exs. P02886, 5D05110 (confidential). See also Trial Judgement, Vol. 1, para. 961 & fn. 2401, referring to Ex. 5D05110.

⁸²⁵⁹ Trial Judgement, Vol. 1, para. 974, fn. 2452, referring to Witness NO, T(F). 51327 (closed session) (23 Mar 2010). The Appeals Chamber observes that the Trial Chamber reached this position specifically relying on documentary evidence. Trial Judgement, Vol. 1, para. 974, fn. 2452, referring to, Exs. 3D00796, 3D00793.

⁸²⁶⁰ Trial Judgement, Vol. 1, para. 974. See also Trial Judgement, Vol. 1, para. 879.

⁸²⁶¹ Trial Judgement, Vol. 1, para. 879.

⁸²⁶² Trial Judgement, Vol. 1, para. 885.

the chain of command simply formed part of the process of re-focusing the activities of the Military Police. These submissions are thus dismissed.

2489. With respect to Ćorić's challenges to the Trial Chamber's findings on his powers of recruitment, the Appeals Chamber notes that the Trial Chamber analysed Ćorić's powers of recruitment as part of its assessment of his role as Chief of the Military Police Administration.⁸²⁶³ However, it based its findings as to his criminal responsibility on the fact that in this role, he contributed to, and/or had intent in respect of, a number of specific criminal incidents,⁸²⁶⁴ and not on the fact that he possessed these powers *per se*. Ćorić's argument to the contrary is dismissed.

2490. In conclusion, the Appeals Chamber finds that Ćorić has failed to demonstrate an error in the Trial Chamber's conclusion that he exercised command and control authority over the Military Police units throughout the Indictment period. Ćorić's grounds of appeal 2, 7, 10, 11, 13, and 14 are therefore dismissed in relevant part.

(b) Ćorić's knowledge of the CCP crimes committed by the Military Police units

2491. Ćorić submits that the Trial Chamber erred in concluding that he was informed about the crimes committed by the Military Police or must have known about them.⁸²⁶⁵ He submits that the Trial Chamber erred in relying upon his position of authority to establish an "automatic presumption" that he knew of the crimes.⁸²⁶⁶

2492. The Prosecution responds that Ćorić ignores that the Trial Chamber detailed the evidentiary bases for its conclusions on his knowledge of crimes.⁸²⁶⁷

2493. The Appeals Chamber observes that the Trial Chamber found that from January 1993 until 10 November 1993, Ćorić had command and control powers over the Military Police units.⁸²⁶⁸ It then based its conclusion that Ćorić had knowledge of the crimes committed⁸²⁶⁹ on the fact that he, *inter alia*: (1) knowingly engaged Military Police units in the HVO operations in Gornji Vakuf in January 1993 and knew or must have been aware of crimes committed as a result of the military

⁸²⁶³ Trial Judgement, Vol. 4, paras 874-876.

⁸²⁶⁴ See generally Trial Judgement, Vol. 4, paras 1000-1004.

⁸²⁶⁵ Ćorić's Appeal Brief, paras 61, 160. See also Ćorić's Appeal Brief, para. 228; Ćorić's Reply Brief, paras 18-20, 64.

⁸²⁶⁶ Ćorić's Appeal Brief, para. 61. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2501.

⁸²⁶⁷ Prosecution's Response Brief (Ćorić), para. 55. See also Appeal Hearing, AT. 636-640 (24 Mar 2017).

⁸²⁶⁸ Trial Judgement, Vol. 4, para. 1000.

⁸²⁶⁹ The Appeals Chamber recalls that it has overturned the Trial Chamber's finding that the deaths of seven civilians in Duša in January 1993 constituted murder and wilful killing and consequently Ćorić's convictions related to those deaths. See *supra*, paras 441-443. It also recalls that it has determined that the Duša killings were not part of the CCP and that murder and wilful killing were not part of the CCP in the period from January 1993 until June 1993. See *supra*, paras 866, 880-882. See also *infra*, para. 2592.

campaigns;⁸²⁷⁰ (2) contributed to planning the arrest campaigns in West Mostar, thus he had direct knowledge of the crimes committed there;⁸²⁷¹ (3) had knowledge of the HVO campaign of fire and shelling against the population of East Mostar by virtue of his deployment of Military Police units to assist in the war efforts in East Mostar, and his investigation into the death of one civilian;⁸²⁷² (4) had responsibility for the security of detainees at the Heliodrom and Dretelj Prison, and had reason to believe that detainees were mistreated, including in some instances reports to that effect;⁸²⁷³ and (5) was regularly informed that Heliodrom detainees were being mistreated, wounded, or killed while working on the front line and did nothing to prevent the practice, thus intending that crimes were committed.⁸²⁷⁴ It is clear that the Trial Chamber based its conclusions on Ćorić's specific circumstances, and not on his position.⁸²⁷⁵ Considering that Ćorić has shown no error in the Trial Chamber's findings on his knowledge, the Appeals Chamber dismisses his submission that the Trial Chamber established an "automatic presumption" of knowledge on his part.

2494. The Appeals Chamber therefore finds that Ćorić has failed to show that the Trial Chamber erred in finding that he was informed about crimes committed by the Military Police or must have known about them, except for murder and wilful killing in Gornji Valuf Municipality.⁸²⁷⁶ Ćorić's grounds of appeal 2 and 7 are dismissed in relevant part.

(c) Ćorić's powers in fighting crime

2495. Ćorić argues that the Trial Chamber disregarded evidence as to his general law-enforcement activities, which demonstrates that he did not have criminal intent in respect of the CCP crimes.⁸²⁷⁷ In this regard, Ćorić specifically argues that the Trial Chamber found that poor co-ordination between the Military Police and the civilian police led to impunity, but failed to specify if he was responsible for this situation,⁸²⁷⁸ and disregarded evidence that he encouraged greater co-operation.⁸²⁷⁹ He also submits that the Trial Chamber disregarded Witness Zvonko Vidović's testimony that the Military Police's task ended when it submitted its reports to the prosecution, and

⁸²⁷⁰ Trial Judgement, Vol. 4, paras 921, 923, 1000.

⁸²⁷¹ Trial Judgement, Vol. 4, paras 930-934, 1000.

⁸²⁷² Trial Judgement, Vol. 4, paras 936-938.

⁸²⁷³ Trial Judgement, Vol. 4, paras 955-957, 971, 988, 990, 994, 1001.

⁸²⁷⁴ Trial Judgement, Vol. 4, paras 966, 971, 1001. See also Trial Judgement, Vol. 4, paras 977, 999.

⁸²⁷⁵ See Trial Judgement, Vol. 4, paras 883, 886-887, 917, 1002-1003.

⁸²⁷⁶ See *infra*, para. 2593.

⁸²⁷⁷ Ćorić's Appeal Brief, paras 35-36; Appeal Hearing, AT. 588-590 (24 Mar 2017). The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2501.

⁸²⁷⁸ Ćorić's Appeal Brief, para. 279.

⁸²⁷⁹ Ćorić's Appeal Brief, para. 35, referring to Ex. P07419; Appeal Hearing, AT. 589-590 (24 Mar 2017).



that the Crime Prevention Department lacked resources and was dependent on the civilian police.⁸²⁸⁰

2496. The Prosecution responds that Ćorić fails to demonstrate any error.⁸²⁸¹ It submits that the Trial Chamber found that there was little co-operation between the Military Police and civilian police to combat crime,⁸²⁸² and that Vidović's testimony bolsters the Trial Chamber's finding that Ćorić had the ability to participate in fighting crimes.⁸²⁸³

2497. While Ćorić does not specifically point to a particular finding when advancing his arguments, the Appeals Chamber understands him to be challenging the Trial Chamber's finding that the Military Police were forced to devote the major part of their forces and equipment to combat operations and that crime within the ranks of the HVO armed forces, including the Military Police, could not be effectively opposed, especially inasmuch as the civilian police forces and the military tribunals failed to operate in a satisfactory fashion.⁸²⁸⁴ The Appeals Chamber considers that this finding should be read in context. The Trial Chamber took account of specific steps that confirmed that investigatory actions were within Ćorić's powers, including: (1) instructions to commanders of Military Police battalions regarding discipline in their units; (2) an arrest warrant for a soldier suspected of having committed theft; and (3) the order to carry out an inquiry into the criminal events at Ljubuški Prison.⁸²⁸⁵ It also found that Ćorić had specific knowledge of the violent behaviour of Mladen Naletilić and his men in West Mostar,⁸²⁸⁶ and ordered Vidović not to investigate certain crimes in August 1993.⁸²⁸⁷

2498. The Appeals Chamber considers that it is clear that the Trial Chamber found that Ćorić was able to take certain steps towards effective law enforcement, and failed to do so. Ćorić fails to demonstrate how the evidence he cites, which simply indicates that he was on notice of organisational shortcomings as well as crimes being committed,⁸²⁸⁸ shows any error in this finding. The Appeals Chamber also considers that Ćorić misrepresents the Trial Judgement when asserting that the Trial Chamber erred in failing to find Ćorić responsible for the co-ordination issues. These arguments are therefore dismissed.

⁸²⁸⁰ Ćorić's Appeal Brief, paras 307-308. See also Appeal Hearing, AT. 589, 620 (24 Mar 2017).

⁸²⁸¹ Prosecution's Response Brief (Ćorić), para. 31, referring to Ćorić's Final Brief, para. 206. See also Prosecution's Response Brief (Ćorić), paras 33, 314.

⁸²⁸² Prosecution's Response Brief (Ćorić), para. 31.

⁸²⁸³ Prosecution's Response Brief (Ćorić), para. 342.

⁸²⁸⁴ Trial Judgement, Vol. 1, paras 881, 930, 933, 972.

⁸²⁸⁵ Trial Judgement, Vol. 4, para. 881.

⁸²⁸⁶ Trial Judgement, Vol. 4, para. 930.

⁸²⁸⁷ Trial Judgement, Vol. 4, para. 933.

⁸²⁸⁸ See Exs. 5D04110, P07419, 2D00138, 1D02577.

2499. Finally, the Appeals Chamber also dismisses Ćorić's submission that the Trial Chamber erred in disregarding Vidović's testimony when reaching its conclusions as to co-operation between the Military Police and the civilian police. Consistently with this witness's evidence, the Trial Chamber found that Ćorić's role was limited to the investigation of crimes,⁸²⁸⁹ and that there were some difficulties in co-operation.⁸²⁹⁰

2500. The Appeals Chamber therefore finds that Ćorić has failed to demonstrate an error in the Trial Chamber's findings in respect of his powers in fighting crime. Ćorić's grounds of appeal 2, 13, and 14 are dismissed in relevant part.

(d) Summarily dismissed submissions

2501. The Appeals Chamber notes that a number of Ćorić's submissions under various grounds of appeal, which challenge the Trial Chamber's findings on his powers regarding the command of the Military Police, fighting crime, and freedom of movement of people and goods, as well as on his knowledge of the CCP crimes the Military Police committed: (1) merely repeat trial arguments without any demonstration that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber;⁸²⁹¹ (2) fail to identify the challenged factual findings;⁸²⁹²

⁸²⁸⁹ Trial Judgement, Vol. 4, para. 882.

⁸²⁹⁰ See Trial Judgement, Vol. 1, para. 972; Zvonko Vidović, T. 51462, 51469-51470 (29 Mar 2010).

⁸²⁹¹ (1) Ćorić's Appeal Brief, paras 50, 302-303, 305, arguing that the Trial Chamber disregarded evidence that the battalions that were assigned to the OZs were exclusively subordinated to the OZ's operative command and brigade commanders. Cf. Ćorić's Final Brief, paras 80, 92, 103, 105, 109, 122, 248, 289; (2) Ćorić's Appeal Brief, para. 44, arguing that the Trial Chamber erred in concluding that the dual chain of command generated confusion among Military Police unit commanders, by relying upon a Prosecution witness. See also Ćorić's Appeal Brief, paras 43, 53; (3) Ćorić's Appeal Brief, paras 33, 59, 273, arguing that he neither had discriminatory intent nor exercised his authority to contribute to the JCE as evidence demonstrates that rather than discriminating against Muslims, he recruited them into the Military Police. Cf. Ćorić's Final Brief, para. 189; (4) Ćorić's Appeal Brief, paras 33-34, 274, arguing that he instituted training for the Military Police to ensure that their work was in accordance with international humanitarian law, and education courses were held on the same topics for the battalion command and individual companies. Cf. Ćorić's Final Brief, paras 190-196. See also Ćorić's Final Brief, paras 221-227; Trial Judgement, Vol. 4, para. 875, referring to Ćorić's Final Brief, paras 190-195, 221-227; (5) Ćorić's Appeal Brief, para. 51, arguing that the Trial Chamber adopted an erroneous interpretation of the evidence of Witness C. Cf. Ćorić's Final Brief, para. 83; (6) Ćorić's Appeal Brief, paras 62-63, arguing that the majority of reports received by the Military Police Administration from the Military Police were benign in nature and indicated that Military Police units were doing a proper job in terms of law enforcement. Cf. Ćorić's Final Brief, paras 44-45; (7) Ćorić's Appeal Brief, paras 35-37, 60-61, 253, 229, 278-280, 294, 305, 307-309, arguing that the Trial Chamber disregarded evidence as to his general law-enforcement activities, which demonstrates that he did not have criminal intent of the CCP crimes (see also Ćorić's Appeal Brief, para. 64). Cf. Ćorić's Final Brief, paras 103, 105, 206-212, 239, 246. See also Appeal Hearing, AT. 620-621 (24 Mar 2017); (8) Ćorić's Appeal Brief, paras 307-308, arguing that the Trial Chamber disregarded Zvonko Vidović's testimony that the Military Police's task ended when it submitted its reports to the prosecution, and that the Crime Prevention Department lacked resources and was dependent on the civilian police. Cf. Ćorić's Final Brief, paras 159, 283; and (9) Ćorić's Appeal Brief, paras 65, 275-276, arguing that the Trial Chamber erred in finding that: (i) he had the power to control the freedom of movement of people and goods; and (ii) the Military Police Administration played an important role in the distribution of humanitarian aid even though it concluded that there was no evidence indicating that the administration had authority to issue permits for passage of humanitarian convoys. Cf. Ćorić's Final Brief, paras 199-202.

⁸²⁹² Ćorić's Appeal Brief, paras 39, 102, 272, arguing that the Trial Chamber based its conclusions regarding his criminal responsibility on his *de jure*, as opposed to *de facto*, authority, as Chief of the Military Police Administration. See Appeal Hearing, AT. 621 (24 Mar 2017).

(3) misrepresent the challenged factual findings;⁸²⁹³ or (4) are undeveloped;⁸²⁹⁴ Consequently, these submissions are summarily dismissed.

4. Alleged errors related to Ćorić's involvement in HVO detention centres
(Ćorić's Grounds 6, 7, 10, and 14, all in part)

2502. The Trial Chamber found that it was satisfied beyond reasonable doubt that by his acts and omissions, Ćorić, as Chief of the Military Police Administration, occupied a key role in the operation of the network of HVO detention centres until 10 November 1993.⁸²⁹⁵ Through his acts and omissions related to these detention centres, the Trial Chamber found that Ćorić significantly contributed to the JCE.⁸²⁹⁶

(a) The Military Police Administration's and Ćorić's involvement in detainee labour outside detention centres

2503. The Trial Chamber found that Ćorić used detainees or allowed them to be used for work on the front line⁸²⁹⁷ and in this way, among other acts and omissions, he significantly contributed to the JCE.⁸²⁹⁸ Ćorić advances a number of arguments purporting to challenge the Trial Chamber's findings concerning his involvement in detainee labour outside of detention centres.

⁸²⁹³ (1) Ćorić's Appeal Brief, paras 40, 42, 52, 58, 229, arguing that the Trial Chamber erred in concluding that he had effective control over the Military Police following re-subordination as there is "only one commander in a combat situation" and that the Trial Chamber reached its conclusions as to the situation following re-subordination "on the basis of orders and transcripts of meetings, without questioning and analyzing the factual circumstances". The Appeals Chamber observes that paragraph 871 of Volume 4 of the Trial Judgement, to which Ćorić refers in paragraph 52 of his appeal brief, is a concluding paragraph, preceded by findings referring to other sections of the Trial Judgement, in which the Trial Chamber cites a wide range of evidence. See Trial Judgement, Vol. 1, para. 871, Vol. 4, para. 869, referring to Trial Judgement, Vol. 1, paras 966-974. See also Appeal Hearing, AT. 621-622 (24 Mar 2017); and (2) Ćorić's Appeal Brief, para. 61, arguing that the Trial Chamber's error in concluding that he was informed about the crimes by the Military Police or must have known about them is "compounded by" its admission that it was unable to conclude that all reports on crimes against Muslims were brought to his attention. The Appeals Chamber observes that the Trial Chamber found that "parts of the reports received by the Military Police Administration that were 'important' or of 'special interest' were put together and sent directly to Valentin Ćorić", but that in the absence of additional information as to what was considered an "important" part or a part of "special interest", it was "not in a position to find that all the reports on crimes against the Muslims sent to the Military Police Administration were necessarily brought to [his] attention". The Trial Chamber then concluded that, nevertheless, Ćorić was "sometimes directly informed of the activities of the Military Police units", by receiving reports for example, between June and October 1993, on the circumstances of the detainees in Ljubuški and Dretelj Prisons, as well as the Heliobrom. Trial Judgement, Vol. 4, para. 878.

⁸²⁹⁴ (1) Ćorić's Appeal Brief, para. 58, arguing that it was "impermissible/illogical" for the Trial Chamber to conclude that the reduction in the Military Police Administration's powers of command over the Military Police units "did not lead to the complete renunciation of its prerogatives of command"; and (2) Ćorić's Appeal Brief, para. 50, arguing that the Trial Chamber adopted an erroneous interpretation of the evidence of Marijan Biškić.

⁸²⁹⁵ Trial Judgement, Vol. 4, para. 1001.

⁸²⁹⁶ Trial Judgement, Vol. 4, paras 1001, 1004.

⁸²⁹⁷ Trial Judgement, Vol. 4, para. 1001.

⁸²⁹⁸ Trial Judgement, Vol. 4, paras 1000-1004.

(i) The Military Police Administration's role in authorising Heliodrom detainee labour

2504. Ćorić argues that the Trial Chamber erred in finding that the Military Police Administration had the power to authorise detainee labour outside of the Heliodrom.⁸²⁹⁹ He advances two arguments to this end. First, Ćorić submits that the Trial Chamber failed to take into consideration a portion of Vidović's testimony that he had the duty to conduct investigations into cases where detainees were wounded or killed after being taken from the Heliodrom for labour only in limited circumstances.⁸³⁰⁰ Second, Ćorić submits that the Trial Chamber erred in relying upon Exhibits P04020 and P04039, documents which he contends are contradictory and cannot be regarded as proof of the Military Police Administration's authority in August 1993 concerning detainee labour.⁸³⁰¹

2505. The Prosecution responds that Ćorić fails to explain the relevance of Vidović's testimony.⁸³⁰² It also submits that his argument regarding the purported contradiction between Exhibits P04020 and P04039 is without merit, as the discrepancy between the two documents, which are copies of the same order, results from a difference in the English translations.⁸³⁰³

2506. With regard to Ćorić's submission that the Trial Chamber failed to take into account part of Vidović's testimony in considering the role of the Military Police Administration in authorising detainee labour outside the Heliodrom,⁸³⁰⁴ the Appeals Chamber observes that the specific Trial Chamber's finding to which Ćorić refers relates to the Military Police Administration's knowledge of mistreatment of detainees and the scope of its investigative authority.⁸³⁰⁵ Ćorić has not attempted to explained how this portion of Vidović's testimony undermines the Trial Chamber's findings concerning the role of the Military Police Administration in authorising Heliodrom detainee labour. Accordingly, the Appeals Chamber dismisses this argument.

2507. With respect to the Trial Chamber's alleged error in relying upon Exhibits P04020 and P04039 which Ćorić submits contradict each other, the Appeals Chamber observes that the Trial Chamber found on the basis of these exhibits that Ćorić, as Chief of the Military Police

⁸²⁹⁹ Ćorić's Appeal Brief, para. 132. See also Ćorić's Appeal Brief, para. 135.

⁸³⁰⁰ Ćorić's Appeal Brief, para. 132. See Ćorić's Appeal Brief, para. 136.

⁸³⁰¹ Ćorić's Appeal Brief, para. 133; Ćorić's Reply Brief, para. 35. See also Ćorić's Appeal Brief, paras 129, 170. Specifically, Ćorić submits that the former indicates that prisoners may be used to fortify the lines upon authorisation of the Military Police Administration and that the latter refers to the approval of the Military Police Department. Ćorić's Appeal Brief, para. 133.

⁸³⁰² Prosecution's Response Brief (Ćorić), para. 128.

⁸³⁰³ Prosecution's Response Brief (Ćorić), para. 130.

⁸³⁰⁴ Ćorić's Appeal Brief, para. 132.

⁸³⁰⁵ Ćorić's Appeal Brief, para. 132, referring to Zvonko Vidović, T. 51664-51665 (31 Mar 2010). The Trial Chamber's finding to which Ćorić refers is that "[t]he Military Police and its Administration also had the power to authorise detainee labour outside of the detention facilities and were informed of the injuries to the detainees during such labour or of their deaths". See Ćorić's Appeal Brief, para. 132, referring to Trial Judgement, Vol. 1, para. 909.

Administration, continued to have authority to authorise the use of detainees for work in August 1993.⁸³⁰⁶ These exhibits are two versions of the same 8 August 1993 order authored by Milivoj Petković from the HVO Čitluk IZM/Forward Command Post to, among others, the Commander of the Posušje Brigade, indicating that detainees may be used to fortify the front line with the necessary approval.⁸³⁰⁷ The Trial Chamber, pointing to a slight difference in the respective English translations of this (BCS original) document, noted that Exhibit P04020 indicates that authorisation for the use of detainees on the front line should be sought through the “Military Police Administration”, while Exhibit P04039 indicates that such approval should be sought from the “Military Police Department”.⁸³⁰⁸ The Appeals Chamber notes that the original BCS versions of the two exhibits use the term “Uprave Vojne policije”, the official accepted translation of which is “Military Police Administration”.⁸³⁰⁹ Accordingly, the Appeals Chamber finds that Ćorić has failed to demonstrate a contradiction and thus dismisses this argument.

2508. In view of the above, the Appeals Chamber dismisses Ćorić’s arguments that the Trial Chamber erred in its findings concerning the role of the Military Police administration in authorising Heliodrom detainee labour. Ćorić’s grounds of appeal 6 and 7 are therefore dismissed in relevant part.

(ii) Ćorić’s power to authorise Heliodrom detainee labour

2509. Ćorić argues that the Trial Chamber erred in finding that he had the power to authorise labour by Heliodrom detainees from September 1992 to October 1993.⁸³¹⁰ First, he submits that the Trial Chamber ignored the fact that Exhibit P00514, a 22 September 1992 instruction issued by him concerning the Central Military Prison at Mostar, was overruled by Exhibit P01474, house rules

⁸³⁰⁶ Trial Judgement, Vol. 1, para. 910 & fn. 2228, referring to Ex. P04020/P04039. See also Trial Judgement, Vol. 4, para. 908.

⁸³⁰⁷ Exs. P04020, p. 1, P04039, p. 1. The Trial Chamber, pointing to a slight difference of the respective English translations of this (BCS original) document, noted that Exhibit P04020 indicates that authorisation for the use of detainees on the front line should be sought through the “Military Police Administration”, while Exhibit P04039 indicates that such approval should be sought from the “Military Police Department”. The Appeals Chamber observes that the only difference on its face is that Exhibit P04020 has a stamp and a few handwritten notes and Exhibit P04039 does not, but that otherwise, their BCS originals are verbatim identical.

⁸³⁰⁸ Trial Judgement, Vol. 1, fn. 2228. The Appeals Chamber also observes that in different instances, the Trial Chamber cites the two exhibits together or separately: (1) in its factual findings regarding crimes committed in Vitina-Otok Camp, the Trial Chamber, citing solely Exhibit P04039, states that in this 8 August 1993 order, Petković authorised the use of Muslim detainees to bolster the front line on the condition that the brigades secure the approval of the “Military Police Administration”. See Trial Judgement, Vol. 2, para. 1866 & fn. 4679; (2) in the context of Petković’s responsibility, the Trial Chamber refers to the same order and “Military Police Administration” but only cites Exhibit P04020. See Trial Judgement, Vol. 4, para. 800 & fn. 1516; and (3) in addressing Ćorić’s responsibility, the Trial Chamber refers to the same 8 August 1993 order and “Military Police Administration” and cites Exhibits P04020 and P04039. See Trial Judgement, Vol. 4, para. 908 & fn. 1710.

⁸³⁰⁹ The Appeals Chamber notes that the BCS version of the Indictment refers to “Uprave Vojne policije”, which is translated as “Military Police Administration” in the English version of the Indictment. See Indictment, paras 11, 17.5, in which Ćorić was described as Chief of the “Military Police Administration” or “Uprave Vojne policije”.

issued on 11 February 1993 by Bruno Stojić, the Head of the Department of Defence and, therefore, the former was not in force at the time of incidents involving detainees used for labour.⁸³¹¹ Second, Ćorić asserts that he did not “order/facilitate” Heliodrom detainee labour, arguing that: (1) Exhibit P00514 does not show that he authorised the labour of specific Heliodrom detainees;⁸³¹² (2) the Trial Chamber admitted that, beginning in October 1992, there was no evidence that Heliodrom detainees were sent to perform labour with his approval;⁸³¹³ (3) the Trial Chamber erred in its consideration of the August 1993 instructions issued by Josip Praljak, the *de facto* Heliodrom Warden;⁸³¹⁴ and (4) Ćorić was not among the individuals that the Trial Chamber found had authorised the labour of Heliodrom detainees between June and December 1993 and between December 1993 and March 1994.⁸³¹⁵

2510. The Prosecution responds that there is no basis for Ćorić’s assertion that the Trial Chamber misinterpreted Exhibits P00514 and P01474, as the latter overruled the former, or that the former relieved Ćorić of his responsibility for security of Heliodrom detainees.⁸³¹⁶ Additionally, it submits that Ćorić fails to show that the Trial Chamber was unreasonable in relying upon Exhibit P00514 in determining that he had authority to send Heliodrom detainees to work at the front line.⁸³¹⁷ As to Ćorić’s arguments that he did not “order/facilitate” the use of Heliodrom detainee labour, the Prosecution responds that the fact that Ćorić may not have personally exercised his power of authorisation with respect to the Heliodrom detainees is not incompatible with the Trial Chamber’s finding that he had such authority.⁸³¹⁸ In the Prosecution’s view, this is also not incompatible with the Trial Chamber’s ultimate finding on his contribution to the JCE.⁸³¹⁹

2511. Concerning Ćorić’s submission that the Trial Chamber erred in relying upon Exhibit P00514 because it was overruled by Exhibit P01474, the Appeals Chamber notes that Exhibit P00514, authored by Ćorić and specific to the Heliodrom, states that “[POWs] and military prisoners may be used for work during the day as necessary”.⁸³²⁰ Beyond this general authorisation, Exhibit P00514 does not identify any party specifically authorised to permit Heliodrom detainees to work. Exhibit P01474, house rules on detainees in general, not specifically for Heliodrom detainees,

⁸³¹⁰ See Ćorić’s Appeal Brief, paras 103, 129, 132 (referring to Exs. P00514, P01474), 165 (referring to Trial Judgement, Vol. 4, para. 964). See also Ćorić’s Appeal Brief, para. 136.

⁸³¹¹ Ćorić’s Appeal Brief, paras 132, 165.

⁸³¹² Ćorić’s Appeal Brief, para. 165.

⁸³¹³ Ćorić’s Appeal Brief, para. 165. See also Ćorić’s Reply Brief, para. 35.

⁸³¹⁴ Ćorić’s Appeal Brief, para. 166, referring to Trial Judgement, Vol. 2, para. 1468, referring to Exs. P04367, p. 2, P05457, p. 3.

⁸³¹⁵ Ćorić’s Appeal Brief, para. 166.

⁸³¹⁶ Prosecution’s Response Brief (Ćorić), paras 107, 129. See also Appeal Hearing, AT. 643 (24 Mar 2017).

⁸³¹⁷ Prosecution’s Response Brief (Ćorić), paras 126, 129. See also Appeal Hearing, AT. 642, 645 (24 Mar 2017).

⁸³¹⁸ Prosecution’s Response Brief (Ćorić), para. 175. See also Appeal Hearing, AT. 641-642 (24 Mar 2017).

⁸³¹⁹ Prosecution’s Response Brief (Ćorić), para. 175; Appeal Hearing, AT. 642-645 (24 Mar 2017).

⁸³²⁰ Ex. P00514, p. 8. See Trial Judgement, Vol. 1, para. 910, Vol. 2, para. 1469.

was authored by Stojić, and states that POWs may be assigned to various work.⁸³²¹ The Trial Chamber noted that these house rules did not specify upon whose authorisation prisoners could be used for work.⁸³²² In addition, neither document indicates that the house rules overrule Ćorić's instruction. The Appeals Chamber considers that Ćorić has failed to demonstrate that no reasonable trier of fact could have reached the conclusion, on the basis of Exhibit P00514, that Ćorić had the power to authorise the sending of Heliodrom detainees to do work from September 1992 to October 1993.⁸³²³ His argument is therefore dismissed in this respect.

2512. As to Ćorić's argument that he did not "order" Heliodrom detainee labour, the Appeals Chamber observes that the Trial Chamber found that apart from an official note by the SIS centre at Mostar which indicates that, on or about 27 October 1992, Ćorić decided that no unit could take prisoners from the Heliodrom to work without his signature, it had no evidence that Heliodrom detainees were sent to perform forced labour with Ćorić's approval.⁸³²⁴ Ćorić has failed to point to a Trial Chamber finding that he "ordered" Heliodrom detainee labour. Accordingly, this aspect of his argument is dismissed.

2513. As to his argument that he did not "facilitate" Heliodrom detainee labour, the Appeals Chamber observes that the Trial Chamber's ultimate conclusion, as regards Ćorić's involvement in Heliodrom detainee labour as a contribution to the JCE, is that since he did nothing to prevent Heliodrom detainee labour despite being informed of their mistreatment on the front lines, he facilitated the sending of detainees for work on the front lines.⁸³²⁵ Ćorić's remaining arguments pertain to whether he authorised detainee labour and he has not attempted to demonstrate a link between these arguments and the Trial Chamber's conclusion that he facilitated the sending of detainees for work on the front lines. Accordingly, Ćorić's remaining arguments are dismissed.

2514. In view of the above, the Appeals Chamber dismisses Ćorić's argument that the Trial Chamber erred in finding that he had the power to authorise the sending of Heliodrom detainees to do work from September 1992 to October 1993. Ćorić's grounds of appeal 6 and 7 are therefore dismissed in relevant part.

⁸³²¹ Ex. P01474, p. 7. See Trial Judgement, Vol. 2, para. 1469 & fn. 3701.

⁸³²² Trial Judgement, Vol. 2, fn. 3701.

⁸³²³ Trial Judgement, Vol. 4, para. 964 & fn. 1812, referring to Trial Judgement, Vol. 4, paras 907-910 (Heading: "Work Performed by Detainees").

⁸³²⁴ Trial Judgement, Vol. 2, para. 1470.

⁸³²⁵ Trial Judgement, Vol. 4, para. 966.



(iii) Ćorić's involvement in the work of detainees from Vitina-Otok Camp

2515. Ćorić argues that the Trial Chamber erred in finding that he was “involved in” the work of detainees taken out of Vitina-Otok Camp.⁸³²⁶ Specifically, he contends that the Trial Chamber erroneously based its finding on Exhibit P04030.⁸³²⁷ He submits that neither this exhibit nor Exhibit P04068 should have been given any weight by the Trial Chamber due to reliability issues with the latter.⁸³²⁸ He contends that the reliability of Exhibit P04068 is undermined by Vidović's testimony.⁸³²⁹

2516. The Prosecution responds that Ćorić does not identify the finding he challenges and, in support of his challenge, cites to an irrelevant piece of Vidović's testimony.⁸³³⁰ It submits that Ćorić's arguments are unsubstantiated and should be dismissed.⁸³³¹

2517. The Appeals Chamber observes that the Trial Chamber found that “Ćorić authorised the use of detainees from Vitina-Otok Camp on 8 August 1993 for work on the front line”.⁸³³² The Appeals Chamber notes that Exhibit P04030 is an 8 August 1993 “request for work-force” from the Posušje Brigade to Ćorić⁸³³³ and that Exhibit P04068 is an 11 August 1993 report from the Posušje Brigade Military Police to the Brigade Commander stating that, on 10 August 1993, 100 prisoners from Vitina-Otok Camp were taken and “delivered by Krešo Tolj”.⁸³³⁴ Ćorić submits that Vidović's testimony that Tolj worked in Ljubuški contradicts Exhibit P04068 as Vidović's testimony shows that Tolj was not affiliated with Vitina-Otok and therefore he did not have the power to deliver detainees held at that site as is suggested by Exhibit P04068.⁸³³⁵ The Appeals Chamber considers that Ćorić has not demonstrated that, even if Tolj worked in Ljubuški, the Trial Chamber incorrectly exercised its discretion in relying upon Exhibit P04030 in finding that Ćorić authorised the use of detainees from Vitina-Otok Camp on 8 August 1993 to work on the front line. Accordingly, the Appeals Chamber dismisses this aspect of his argument.

2518. In view of the above, the Appeals Chamber finds that Ćorić has failed to show that the Trial Chamber erred in finding that Ćorić authorised the use of detainees from Vitina-Otok Camp

⁸³²⁶ Ćorić's Appeal Brief, paras 103, 170. See Ćorić's Appeal Brief, para. 134.

⁸³²⁷ Ćorić's Appeal Brief, para. 170.

⁸³²⁸ Ćorić's Appeal Brief, paras 170-171. See also Ćorić's Appeal Brief, para. 134.

⁸³²⁹ Ćorić's Appeal Brief, para. 171.

⁸³³⁰ Prosecution's Response Brief (Ćorić), para. 131.

⁸³³¹ Prosecution's Response Brief (Ćorić), para. 131.

⁸³³² Trial Judgement, Vol. 4, para. 977, referring to Exs. P04020/P04039, P04030, P04068. See Trial Judgement, Vol. 2, para. 1866.

⁸³³³ Ex. P04030. See Trial Judgement, Vol. 4, para. 977.

⁸³³⁴ Ex. P04068. See Trial Judgement, Vol. 4, para. 977.

⁸³³⁵ Ćorić's Appeal Brief, para. 171.

on 8 August 1993 for work on the front line. Čorić's grounds of appeal 6 and 7 are therefore dismissed in relevant part.

(b) Čorić's power regarding security of detainees in Dretelj Prison⁸³³⁶

2519. In challenging the Trial Chamber's findings on his responsibility for the security of detainees at Dretelj Prison,⁸³³⁷ Čorić argues that: (1) the Trial Chamber misinterpreted Exhibit P03377 in light of Witness C's evidence, which indicates that the Assistant Chief of the Military Police Administration responsible for security, Branimir Tucak, was sent to Dretelj Prison twice to inspect the situation; and (2) this evidence does not show that the Military Police Administration had an overall authority to ensure the security of detainees there.⁸³³⁸

2520. The Prosecution responds that the Trial Chamber reasonably found that Čorić had power regarding security of Dretelj Prison detainees.⁸³³⁹ It avers that he merely attempts to substitute his own assessment of Exhibit P03377 for the Trial Chamber's without showing an error.⁸³⁴⁰

2521. Although Čorić does not identify a specific finding with which he takes issue, the Appeals Chamber understands Čorić to be challenging the Trial Chamber's finding that "[he] had power regarding the security of the detainees in Dretelj Prison".⁸³⁴¹ In reaching this conclusion, the Trial Chamber relied upon evidence which demonstrated that: (1) the Home Guards unit within the HVO ("Domobran"),⁸³⁴² as well as the 3rd Company of the 3rd (later the 5th) Military Police Battalion, were in charge of guarding Dretelj Prison detainees; (2) between July and August 1993, daily reports were sent to the Military Police Administration from the relevant commanders of the 3rd and 5th Military Police Battalion on the situation in Dretelj Prison; and (3) following an inspection visit to Dretelj Prison, Tucak indicated to Čorić that the number of military policemen maintaining security there needed to be urgently increased.⁸³⁴³

2522. The Appeals Chamber considers that when arguing that the Trial Chamber erred in relying upon Exhibit P03377, a report on Tucak's visit,⁸³⁴⁴ on the basis of Witness C's evidence that this visit was of an *ad hoc* nature, Čorić fails to demonstrate, in light of the above-mentioned findings,

⁸³³⁶ The Appeals Chamber notes that Čorić also challenges the Trial Chamber's findings concerning his role in security of detainees at the Helišćetno and Ljubuški Prison. Those arguments have been summarily dismissed. See *infra*, para. 2562.

⁸³³⁷ Čorić's Appeal Brief, paras 117-118, 125.

⁸³³⁸ Čorić's Appeal Brief, para. 117.

⁸³³⁹ Prosecution's Response Brief (Čorić), para. 111; Appeal Hearing, AT. 641 (24 Mar 2017).

⁸³⁴⁰ Prosecution's Response Brief (Čorić), para. 112.

⁸³⁴¹ See Trial Judgement, Vol. 4, para. 897.

⁸³⁴² See Trial Judgement, Vol. 2, para. 1983 & fn. 4873.

⁸³⁴³ See Trial Judgement, Vol. 4, para. 897.

⁸³⁴⁴ Čorić's Appeal Brief, para. 117. See also Trial Judgement, Vol. 4, para. 897 & fn. 1693, referring to Exs. P03377, p. 1, P03794.

how the *ad hoc* nature of the visit, even if it were to be established, would undermine the Trial Chamber's conclusion that he had power regarding security of the detainees in Dretelj Prison. Accordingly, the Appeals Chamber finds that Čorić has failed to demonstrate that the Trial Chamber erred in finding that he had power regarding security of the detainees in Dretelj Prison.⁸³⁴⁵ Čorić's ground of appeal 6 is therefore dismissed in relevant part.

(c) Čorić's power to grant detention centre access to representatives of international organisations and the HVO

2523. Čorić argues that the Trial Chamber erred in finding that he had the power to grant access to detention centres to representatives of international organisations.⁸³⁴⁶ He contends that: (1) the Trial Chamber was not in possession of evidence proving that he had the power to grant access; and (2) the available evidence shows that he did not restrict access when requested.⁸³⁴⁷

2524. The Prosecution responds that the Trial Chamber reasonably concluded that Čorić had the power to grant representatives of international organisations access to detention centres.⁸³⁴⁸

2525. The Appeals Chamber observes that the Trial Chamber found that Čorić: (1) contributed to the arrest and detention of thousands of Muslims; (2) knowingly contributed to keeping detainees in harsh conditions; (3) used detainees or allowed them to be used for work on the front line; and (4) transferred detainees from detention centre to detention centre, releasing them on condition that they leave HZ(R) H-B territory.⁸³⁴⁹ While the Trial Chamber found that Čorić had the power to grant access to the Heliodrom to representatives of international organisations,⁸³⁵⁰ it also stated that it could not find that Čorić obstructed access to the Heliodrom.⁸³⁵¹ The Appeals Chamber considers that Čorić has failed to show that his power to grant access to the Heliodrom was a basis for the Trial Chamber's finding that he significantly contributed to the JCE. Accordingly, the Appeals Chamber dismisses this argument.

2526. In view of the above, the Appeals Chamber finds that Čorić has failed to show that the Trial Chamber erred in finding that he had the power to grant access to detention centres to representatives of international organisations. Čorić's ground of appeal 6 is therefore dismissed in relevant part.

⁸³⁴⁵ See Trial Judgement, Vol. 4, para. 897.

⁸³⁴⁶ Čorić's Appeal Brief, para. 103; Čorić's Reply Brief, para. 35.

⁸³⁴⁷ Čorić's Appeal Brief, para. 126.

⁸³⁴⁸ Prosecution's Response Brief (Čorić), paras 122-125.

⁸³⁴⁹ Trial Judgement, Vol. 4, para. 1001.

⁸³⁵⁰ Trial Judgement, Vol. 4, para. 959. See also Trial Judgement, Vol. 2, para. 1441, Vol. 4, para. 905.

⁸³⁵¹ Trial Judgement, Vol. 4, para. 961. See also Trial Judgement, Vol. 4, paras 959-960.

(d) Ćorić's knowledge of detainees' mistreatment and poor conditions at the Heliodrom

2527. The Trial Chamber found that Ćorić knowingly contributed to keeping detainees in HVO detention centres in harsh conditions where they were mistreated, beaten, and abused.⁸³⁵²

2528. In challenging the Trial Chamber's findings as to his knowledge of the mistreatment of detainees and conditions of detention inside the Heliodrom,⁸³⁵³ Ćorić submits that the Trial Chamber erred in relying upon Exhibit P04186 in finding that he was informed about and must have been aware that detention conditions at the Heliodrom were bad.⁸³⁵⁴ He submits that it was sent to the Head of the Department of Defence and not to him.⁸³⁵⁵

2529. Ćorić also challenges the Trial Chamber's conclusions as to his knowledge of mistreatment of Heliodrom detainees working on the front line.⁸³⁵⁶ In this regard, he refers to a number of reports from the Heliodrom Warden, Stanko Božić, addressed to Ćorić, and contends that these reports should not have been relied upon because one such report, Exhibit P06552, indicates that it was sent to Ćorić after he left the Military Police Administration.⁸³⁵⁷

2530. The Prosecution responds that in attempting to undermine the Trial Chamber's findings regarding his knowledge of detainee mistreatment and bad conditions of detention, Ćorić mischaracterises the Trial Chamber's findings and the evidence and fails to show that the Trial Chamber was unreasonable.⁸³⁵⁸ It submits that the Trial Chamber relied upon numerous documents in establishing that Ćorić was informed of problems with security of detainees inside the Heliodrom.⁸³⁵⁹ Further, it submits that Exhibit P04186 was sent to Ćorić.⁸³⁶⁰

2531. Concerning Ćorić's arguments related to the Trial Chamber's finding on his knowledge of mistreatment of Heliodrom detainees working on the front line, the Prosecution responds that his argument that one report, Exhibit P06552, was sent after he left the Military Police Administration,

⁸³⁵² Trial Judgement, Vol. 4, para. 1001. See also Trial Judgement, Vol. 4, para. 962.

⁸³⁵³ See Ćorić's Appeal Brief, paras 161-164, 169. See also Ćorić's Reply Brief, paras 35, 43. The Appeals Chamber notes that Ćorić touches upon arguments made elsewhere in his appeal brief without adding to these arguments. See Ćorić's Appeal Brief, paras 161-163. These submissions have been summarily dismissed. See *infra*, para. 2562.

⁸³⁵⁴ See Ćorić's Appeal Brief, paras 163-164, referring to Trial Judgement, Vol. 4, para. 962. The Appeals Chamber notes that Ćorić also challenges the Trial Chamber's reliance on Exhibit P05563. This argument has been summarily dismissed. See *infra*, para. 2562.

⁸³⁵⁵ Ćorić's Appeal Brief, para. 163.

⁸³⁵⁶ Ćorić's Appeal Brief, paras 167-169.

⁸³⁵⁷ Ćorić's Appeal Brief, para. 168. The Appeals Chamber notes that his other arguments in this regard have been summarily dismissed. See *infra*, para. 2562.

⁸³⁵⁸ Prosecution's Response Brief (Ćorić), paras 170-171; Appeal Hearing, AT. 631 (24 Mar 2017).

⁸³⁵⁹ Prosecution's Response Brief (Ćorić), para. 171; Appeal Hearing, AT. 631 (24 Mar 2017).

⁸³⁶⁰ Prosecution's Response Brief (Ćorić), para. 171.

should be dismissed on the basis that Ćorić was Chief of the Military Police Administration until 10 November 1993.⁸³⁶¹

2532. The Appeals Chamber understands Ćorić to be arguing that the Trial Chamber erred in finding that “he must have been aware that detention conditions at the Heliodrom were bad” on the basis that it should not have relied upon Exhibit P04186,⁸³⁶² as it was sent to Stojić, the Head of the Defence Department, and not to him. It observes that this exhibit is a 14 August 1993 report from Božić notifying the recipients of the difficulty of procuring food for the, at the time, 2,100 detainees of the Heliodrom.⁸³⁶³ Ćorić is identified as one of the recipients of this report.⁸³⁶⁴ Bearing this latter fact in mind, the Appeals Chamber considers that Ćorić has not demonstrated why it was unreasonable for the Trial Chamber to conclude, in part on the basis of this exhibit, that he was aware of the bad conditions of detention at the Heliodrom. This argument is thus dismissed.

2533. Turning to Ćorić’s arguments regarding the Trial Chamber’s conclusions as to his knowledge of mistreatment of Heliodrom detainees working on the front line, the Appeals Chamber understands Ćorić to be contesting the Trial Chamber’s finding that “from July 1993 to at least October 1993, Valentin Ćorić was regularly informed that the Heliodrom detainees were being mistreated, wounded or killed while working on the front line”.⁸³⁶⁵ As to his argument that Exhibit P06552, one such report by Božić, should not have been relied upon because it would have been addressed to Ćorić after he had already left the Military Police Administration, the Appeals Chamber observes that this report was dated 9 November 1993.⁸³⁶⁶ It also observes that the Trial Chamber found that Ćorić remained Chief of the Military Police Administration until 10 November 1993.⁸³⁶⁷ Moreover, the Appeals Chamber observes that the Trial Chamber reached the contested finding on the basis of other reports in addition to Exhibit P06552.⁸³⁶⁸ The Appeals Chamber thus finds that Ćorić has not shown that no reasonable trier of fact could have reached the contested finding.

2534. In view of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber erred in its findings regarding his knowledge of the conditions of detention and mistreatment of detainees inside the Heliodrom or related to his knowledge of the mistreatment of

⁸³⁶¹ Prosecution’s Response Brief (Ćorić), para. 176.

⁸³⁶² Trial Judgement, Vol. 4, para. 962. See Ćorić’s Appeal Brief, paras 163-164.

⁸³⁶³ Ex. P04186, pp. 1-2.

⁸³⁶⁴ Ex. P04186, p. 2.

⁸³⁶⁵ Trial Judgement, Vol. 4, para. 955. See Ćorić’s Appeal Brief, para. 167.

⁸³⁶⁶ See Ex. P06552, p. 1.

⁸³⁶⁷ Trial Judgement, Vol. 4, para. 861.

⁸³⁶⁸ Trial Judgement, Vol. 4, para. 955 & fn. 1795, referring to Trial Judgement, Vol. 2, paras 1480-1492.

Heliodrom detainees working on the front line. Čorić's ground of appeal 7 is therefore dismissed in relevant part.

(e) Čorić's role in the release of detainees

2535. The Trial Chamber found that Čorić released detainees on condition that they leave the territory of the HZ(R) H-B together with their families.⁸³⁶⁹

(i) Čorić's order to release Muslims held in detention in Ljubuški Municipality

a. Arguments of the Parties

2536. Čorić argues that the Trial Chamber erred in finding that in August 1993, he ordered the release of all Muslims held in the HVO detention centres in Ljubuški Municipality and in possession of a letter of guarantee and a transit visa so that they could leave BiH with their families for third countries via Croatia.⁸³⁷⁰ First, he submits that the Trial Chamber erred in relying upon August 1993 reports when reaching its conclusion that the Military Police "assigned to the 4th Brigade" drafted numerous reports in August 1993 attesting to the release procedure.⁸³⁷¹ He refers to three exhibits in support of his argument and contends that when the Trial Chamber used the phrasing "assigned to [the] 4th Brigade", in his view, this meant "re-subordinated/excluded from [the] chain of command inside [the Military Police Administration]".⁸³⁷² Therefore, in Čorić's view, it was the Brigade and not the Military Police who dealt with the letter of guarantee aspect of the release procedure and Čorić could not issue orders to non-military police in this regard.⁸³⁷³

2537. Second, in arguing that the Trial Chamber erroneously interpreted the order of August 1993 that he allegedly gave to the Deputy Brigade Commander of the Military Police, Jure Herceg, concerning the release of Ljubuški Municipality detainees who were in possession of letters of guarantee,⁸³⁷⁴ Čorić submits that the Trial Chamber misinterpreted Witness E's testimony concerning this order.⁸³⁷⁵ He argues that, had it properly interpreted Witness E's testimony, the

⁸³⁶⁹ Trial Judgement, Vol. 4, para. 1001.

⁸³⁷⁰ See Čorić's Appeal Brief, paras 177 (referring to, *inter alia*, Trial Judgement, Vol. 4, paras 946, 948, 971), 183, 185. See also Čorić's Reply Brief, para. 35.

⁸³⁷¹ Čorić's Appeal Brief, para. 178 & fn. 459, referring to Trial Judgement, Vol. 2, paras 1872-1873. The Appeals Chamber notes that Čorić erroneously refers to Volume 4 of the Trial Judgement, whereas the finding to which he refers is located in Volume 2 of the Trial Judgement.

⁸³⁷² Čorić's Appeal Brief, para. 178, referring to Exs. P04752, P04262, P00990.

⁸³⁷³ Čorić's Appeal Brief, para. 178.

⁸³⁷⁴ Čorić's Appeal Brief, para. 179.

⁸³⁷⁵ Čorić's Appeal Brief, para. 179.

Trial Chamber would have concluded that it was not Ćorić but rather SIS Chief Petar Majić who gave an order that Muslim men be expelled in 24 hours.⁸³⁷⁶

2538. The Prosecution responds that Ćorić's argument that the 4th Brigade Military Police was subordinated to the 4th Brigade does not demonstrate that the Trial Chamber unreasonably relied upon evidence of Ćorić's orders, implemented by the 4th Brigade Military Police, regarding the process for releasing detainees and sending them to third countries.⁸³⁷⁷ It submits that none of the documents to which Ćorić refers demonstrate that the Trial Chamber erred.⁸³⁷⁸ The Prosecution further responds that Ćorić fails to show how the Trial Chamber's reliance upon SIS Chief Majić's orders giving detainees 24 hours to leave Ljubuški Municipality is inconsistent with or otherwise undermines the Trial Chamber's findings regarding Ćorić's orders.⁸³⁷⁹ Concerning Ćorić's challenges to the evidence of Witness E, the Prosecution responds that he distorts Witness E's testimony, which indicates that an order from Ćorić was received to the extent that all detainees in possession of a letter of guarantee could be released.⁸³⁸⁰

b. Analysis

2539. With respect to Ćorić's first argument that the Trial Chamber erred in relying upon certain August 1993 reports by the 4th Brigade Military Police, the Appeals Chamber observes that the Trial Chamber did not rely on the exhibits to which Ćorić refers when it concluded that the Military Police assigned to the 4th Brigade drafted numerous reports in August 1993 attesting to the release procedure for Muslim detainees in Ljubuški Municipality.⁸³⁸¹ Neither do these exhibits pertain to such a release procedure. Nonetheless, the Appeals Chamber understands him to be challenging the Trial Chamber's use of Exhibits P04299 and P04443, 19 and 23 August 1993 reports from the 4th Brigade Military Police, respectively, indicating that a certain number of prisoners who possessed letters of guarantee were released along with their families and left Ljubuški Municipality.⁸³⁸² Insofar as Ćorić asserts that the Trial Chamber erroneously relied upon these reports because the Military Police were not subordinated to the Military Police Administration but rather to the 4th Brigade, the Appeals Chamber observes that the Trial Chamber found that "the Military Police Administration was competent to order the release of people held by the HVO,

⁸³⁷⁶ Ćorić's Appeal Brief, para. 179. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2562.

⁸³⁷⁷ Prosecution's Response Brief (Ćorić), para. 188.

⁸³⁷⁸ Prosecution's Response Brief (Ćorić), para. 188.

⁸³⁷⁹ Prosecution's Response Brief (Ćorić), para. 187.

⁸³⁸⁰ Prosecution's Response Brief (Ćorić), para. 187.

⁸³⁸¹ See Ćorić's Appeal Brief, para. 178 & fn. 460, referring to Exs. P04752, P04262, P00990; Trial Judgement, Vol. 2, para. 1873.

⁸³⁸² Exs. P04299, P04443.

while observing that other HVO authorities also had the power to order the release of detainees”.⁸³⁸³ The Appeals Chamber therefore finds that even if Ćorić had shown that the Military Police, in the specific instances referred to in the above-mentioned reports, were acting on the orders of the HVO, this would not be inconsistent with the Trial Chamber’s finding that the HVO as well as the Military Police Administration had the power to order the release of detainees.

2540. Additionally, the Appeals Chamber considers that Ćorić has not demonstrated how the fact that the Military Police were responding to orders of the HVO in the specified instances, should that fact be established, would undermine the Trial Chamber’s finding that he ordered the removal of Muslim detainees in possession of a letter of guarantee and a transit visa from Ljubuški Municipality to a third country. Neither do Ćorić’s remaining submissions on this subject address this point.⁸³⁸⁴ Accordingly, this argument is dismissed.

2541. As to Ćorić’s second argument, the Appeals Chamber understands Ćorić to be challenging the Trial Chamber’s finding which is based in part on Witness E’s testimony, that “towards the middle of August 1993 [...] Jure Herceg, assistant commander of Ljubuški Prison [...] received an order from Valentin Ćorić, which stipulated that all persons with a letter of guarantee were to be released and promptly leave the territory of Ljubuški Municipality with their family”.⁸³⁸⁵ It observes that Witness E clearly distinguished between an order given to Herceg by Ćorić for the release of detainees with letters of guarantee, and the order given to Herceg by SIS Chief Majić.⁸³⁸⁶ Witness E clarified that once Ćorić’s order was acted upon, Majić’s order took effect, such that once the detainees were released from detention, within the space of 24 hours, they had to leave Ljubuški Municipality.⁸³⁸⁷ On this basis, the Appeals Chamber finds that Ćorić has failed to demonstrate how the Trial Chamber misinterpreted Witness E’s testimony concerning the August 1993 order. Ćorić’s argument is dismissed in this regard.

2542. In view of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber erred in finding that in August 1993, he ordered the release of all Muslims from Ljubuški Municipality held in HVO detention centres and in possession of a letter of guarantee and a transit visa so they could leave BiH with their families for third countries via Croatia. Ćorić’s ground of appeal 7 is therefore dismissed in relevant part.

⁸³⁸³ Trial Judgement, Vol. 2, para. 1445, referring to Trial Judgement, Vol. 1, paras 912-915.

⁸³⁸⁴ See Ćorić’s Appeal Brief, para. 178 & fns 460-461.

⁸³⁸⁵ Trial Judgement, Vol. 2, para. 1870 & fn. 4691.

⁸³⁸⁶ Witness E, T. 22091-22092 (closed session) (11 Sept 2007). See Trial Judgement, Vol. 2, para. 1870 & fn. 4691. The Appeals Chamber notes that while the Trial Chamber’s footnote references do not encompass T. 22902, it is clear that Witness E’s testimony on Ćorić’s order continues on to this page and that it is to this portion of the testimony that the Trial Chamber intends to refer.

⁸³⁸⁷ Witness E, T. 22092 (closed session) (11 Sept 2007).

(ii) Ćorić's planning and facilitation of the forced departure of Muslims from BiH territory by participating in establishing the procedure for the release of Heliodrom detainees

2543. Ćorić argues that the Trial Chamber erred in finding that he planned and facilitated the forced departure of Muslims from the territory of BiH by participating in establishing the procedure for the release of detainees from the Heliodrom in July 1993.⁸³⁸⁸ Specifically, he submits that this finding was erroneously based on Exhibit P03411, an instruction from the Department for Criminal Investigations, upon which the Trial Chamber relied, concerning the release procedure for Heliodrom detainees which was erroneously imputed to him.⁸³⁸⁹ Ćorić submits that the Trial Chamber's conclusion was "far from based on solid evidence" and that Vidović's testimony clearly demonstrates that the Department for Criminal Investigations only had administrative functions related to the release of prisoners.⁸³⁹⁰

2544. The Prosecution responds that Ćorić fails to show that the Trial Chamber's imputation of the instructions contained in Exhibit P03411 to him was unreasonable.⁸³⁹¹

2545. The Trial Chamber found that "[o]n 12 July 1993, Zvonko Vidović sent to Stanko Božić and Josip Praljak Valentin Ćorić's instructions setting out that any release from the Heliodrom was henceforth to be approved by Valentin Ćorić or his deputy, Radoslav Lavrić".⁸³⁹² This finding was based upon Exhibit P03411, a 12 July 1993 instruction from Vidović to the Warden and Deputy Warden of the Heliodrom conveying that the release of any detainee was forbidden except following the approval of Ćorić or his deputy.⁸³⁹³

2546. Ćorić submits that the Trial Chamber's attribution of the source of this instruction to him through its inference that the "we" in the document referred to him was "far from based on solid evidence".⁸³⁹⁴ The Appeals Chamber observes that in assessing the "we", the Trial Chamber considered that "[g]iven the superior-subordinate relationship between Zvonko Vidović and Valentin Ćorić, [it had] no doubt that the instructions came from Valentin Ćorić".⁸³⁹⁵ The Appeals Chamber further observes that the portion of Vidović's testimony to which Ćorić refers in asserting that the Trial Chamber reached an erroneous conclusion regarding Exhibit P03411 shows

⁸³⁸⁸ Ćorić's Appeal Brief, paras 177 (referring to, *inter alia*, Trial Judgement, Vol. 4, para. 970), 181, 185.

⁸³⁸⁹ Ćorić's Appeal Brief, para. 182, referring to Trial Judgement Vol. 4, para. 969.

⁸³⁹⁰ Ćorić's Appeal Brief, para. 182. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2562.

⁸³⁹¹ Prosecution's Response Brief (Ćorić), para. 195.

⁸³⁹² Trial Judgement, Vol. 4, para. 968.

⁸³⁹³ Ex. P03411.

⁸³⁹⁴ Ćorić's Appeal Brief, para. 182.

⁸³⁹⁵ Trial Judgement, Vol. 4, fn. 1822.

that Vidović was asked about documents other than Exhibit P03411.⁸³⁹⁶ The Appeals Chamber therefore finds that Čorić has not demonstrated that no reasonable trier of fact could have concluded, partly based on Exhibit P03411, that Čorić participated in establishing the procedure for the release of detainees from the Heliodrom in July 1993.⁸³⁹⁷ Accordingly, his argument is dismissed in this respect.

2547. In view of the above, the Appeals Chamber finds that Čorić has failed to demonstrate that the Trial Chamber erred in finding that Čorić planned and facilitated the forced departure of the Muslims from the territory of BiH in establishing the procedure for the release of detainees from the Heliodrom in July 1993.⁸³⁹⁸ Čorić's ground of appeal 7 is therefore dismissed in relevant part.

(iii) Violation of the principle of *non bis in idem* in relation to the findings on Čorić's involvement in the release of detainees

2548. Čorić contends that the Trial Chamber erred in "finding him guilty twice for the same act, under the same form of responsibility" and thus contravened the principle of *non bis in idem*.⁸³⁹⁹ In this regard, Čorić challenges the findings that he: (1) participated in the establishment of the procedure for the release of detainees from the Heliodrom in July 1993; and (2) ordered the release of all Muslims from Ljubuški Municipality held in the HVO detention centres with a view to their departure for third countries.⁸⁴⁰⁰

2549. The Prosecution responds that Čorić fails to explain his assertion that the Trial Chamber found him guilty twice for the same act in contravention of the principle of *non bis in idem*.⁸⁴⁰¹

2550. At the outset, the Appeals Chamber observes that the Trial Chamber's findings to which Čorić refers do not pertain to the same "acts". The Trial Chamber found that Čorić planned and facilitated the forced departure of Muslims from BiH territory through two means.⁸⁴⁰² In reaching this conclusion, it first found that he participated in establishing the procedure for the release of detainees from the Heliodrom. In this respect, the Trial Chamber discussed Čorić's involvement in July 1993 in determining who was authorised to release detainees.⁸⁴⁰³ Second, the Trial Chamber found that in August 1993, Čorić issued an order that resulted in the release of all Muslims from

⁸³⁹⁶ Čorić's Appeal Brief, para. 182 & fn. 468, referring to Zvonko Vidović, T. 51523-51524 (30 Mar 2010).

⁸³⁹⁷ The Appeals Chamber observes that the contested Trial Chamber finding was also based upon its sub-finding that on 3 July 1993, the Heliodrom Warden informed the *de facto* Deputy Warden that Čorić had informed him that the "chief" of the "Department for Criminal Investigations" Vidović, could release detainees with the approval of the SIS. Trial Judgement, Vol. 4, para. 968.

⁸³⁹⁸ Trial Judgement, Vol. 4, para. 970.

⁸³⁹⁹ Čorić's Appeal Brief, para. 177.

⁸⁴⁰⁰ Čorić's Appeal Brief, para. 177, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 946-948, 969-971.

⁸⁴⁰¹ Prosecution's Response Brief (Čorić), para. 193.

⁸⁴⁰² Trial Judgement, Vol. 4, para. 971. See also Trial Judgement, Vol. 4, paras 968-969.

Ljubuški Municipality held at the Heliodrom under certain conditions.⁸⁴⁰⁴ The former finding pertains to Ćorić's role in establishing procedures and the latter finding pertains to his issuing orders – both relating to the release of detainees from Ljubuški Municipality who were in possession of the necessary paperwork to depart to third countries.⁸⁴⁰⁵

2551. Moreover, these findings are among those ultimately supporting the Trial Chamber's conclusion that Ćorić, through occupying a key role in the operation of the network of HVO detention centres until 10 November 1993, significantly contributed to the JCE.⁸⁴⁰⁶ That is, the findings that Ćorić participated in establishing the procedure for the release of Heliodrom detainees and that he ordered the release of Muslim detainees in possession of the necessary paperwork from Ljubuški Municipality are findings on his participation, as an element of JCE I liability, thus not those on his guilt for crimes. The Appeals Chamber considers that Ćorić misapprehends the principle of *non bis in idem*. Accordingly, his argument is dismissed.

2552. In view of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber violated the principle of *non bis in idem* in relation to the findings on his involvement in the release of detainees. Ćorić's ground of appeal 7 is therefore dismissed in relevant part.

(f) Alleged errors concerning Ćorić's *mens rea* for JCE I in relation to his involvement in HVO detention centres

2553. The Trial Chamber found that, "while performing his functions, Valentin Ćorić was informed of many crimes committed by members of the HZ(R) H-B armed forces, including members of the Military Police, or, given his hierarchical position, must have been aware of them".⁸⁴⁰⁷ Having also found that Ćorić contributed to the JCE through, among other means, playing a key role in the operation of the network of HVO detention centres until 10 November 1993, the Trial Chamber concluded that he intended the commission of the CCP crimes.⁸⁴⁰⁸

(i) Ćorić's *mens rea* stemming from errors in findings related to conditions of detention

2554. In advancing arguments purporting to contest the Trial Chamber's JCE I *mens rea*-related findings, Ćorić argues that the Trial Chamber erred in its findings on his failure to intervene to

⁸⁴⁰³ See Trial Judgement, Vol. 4, para. 968.

⁸⁴⁰⁴ Trial Judgement, Vol. 4, paras 969, 971.

⁸⁴⁰⁵ See Trial Judgement, Vol. 4, paras 946-948, 968-971.

⁸⁴⁰⁶ Trial Judgement, Vol. 4, para. 1001.

⁸⁴⁰⁷ Trial Judgement, Vol. 4, para. 1002.

address bad conditions in detention facilities.⁸⁴⁰⁹ He contends that the Trial Chamber erred as it ignored its finding that he was not involved in health matters, “including its own finding that [he] was not involved in logistics for the prisons”.⁸⁴¹⁰

2555. The Prosecution responds that Ćorić has not shown that the Trial Chamber’s conclusion that he shared the intent concerning detention-related crimes was unreasonable.⁸⁴¹¹

2556. The Appeals Chamber observes that Ćorić refers to the Trial Chamber’s statement that it “cannot find that the logistical aspect of conditions of confinement at the HVO detention centres came under Valentin Ćorić’s authority”.⁸⁴¹² Ćorić has not advanced any arguments showing, on the basis of this statement, that no reasonable trier of fact could have reached the Trial Chamber’s findings concerning his intent for the commission of the CCP crimes.⁸⁴¹³ The Appeals Chamber therefore finds that Ćorić has failed to demonstrate an error in the Trial Chamber’s finding concerning his *mens rea* in relation to the conditions of detention. Ćorić’s ground of appeal 10 is dismissed in relevant part.

(ii) Ćorić’s *mens rea* stemming from errors in findings related to the mistreatment of detainees during detention

2557. Ćorić contends that the Trial Chamber erred in finding that he failed to intervene to address mistreatment in detention facilities. He asserts that this is inconsistent with the Trial Chamber’s previous conclusion that it could not find that he deliberately avoided intervening to stop abuse at Ljubuški Prison as there was no evidence that he had been informed.⁸⁴¹⁴ Further, Ćorić submits that he cannot be said to have had the requisite intent for crimes about which he had no knowledge.⁸⁴¹⁵

2558. The Prosecution submits that as Ćorić’s conviction is not based on what he learned of the abuse at Ljubuški Prison, his argument that the Trial Chamber reached its *mens rea* finding erroneously should be dismissed.⁸⁴¹⁶ It also responds that Ćorić’s proposition that he cannot be found to have the requisite intent for crimes about which he was not aware is incorrect as a matter

⁸⁴⁰⁸ Trial Judgement, Vol. 4, paras 1001-1004.

⁸⁴⁰⁹ Ćorić’s Appeal Brief, para. 242. See also Ćorić’s Appeal Brief, para. 239.

⁸⁴¹⁰ Ćorić’s Appeal Brief, para. 242. See also Ćorić’s Reply Brief, para. 35. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2562.

⁸⁴¹¹ Prosecution’s Response Brief (Ćorić), para. 264.

⁸⁴¹² Ćorić’s Appeal Brief, para. 242, referring to Trial Judgement, Vol. 4, para. 904.

⁸⁴¹³ See Trial Judgement, Vol. 4, para. 1004.

⁸⁴¹⁴ Ćorić’s Appeal Brief, para. 242.

⁸⁴¹⁵ Ćorić’s Appeal Brief, para. 242. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2562.

⁸⁴¹⁶ Prosecution’s Response Brief (Ćorić), para. 263.

of law, in that it suffices that a participant in a JCE shared the intent for the commission of the crimes of the JCE and acted in furtherance of the CCP.⁸⁴¹⁷

2559. As regards Ćorić's first argument that the Trial Chamber ignored its own finding that it could not conclude that he deliberately avoided intervening in relation to the mistreatment of detainees at Ljubuški Prison, the Appeals Chamber observes that while the Trial Chamber made this finding,⁸⁴¹⁸ Ćorić has not attempted to demonstrate how on the basis of this finding, no reasonable trier of fact could have reached the Trial Chamber's conclusion that he intended the commission of the CCP crimes.⁸⁴¹⁹ This argument is therefore dismissed.

2560. With regard to Ćorić's second argument, the Appeals Chamber finds that in submitting that he could not be found to have the requisite intent for crimes about which he was not aware, Ćorić misapprehends the applicable law. The Appeals Chamber has held that the attribution of criminal liability pursuant to JCE I is not premised on an accused's knowledge of each specific crime and that it suffices that the accused shared the intent for the commission of these crimes and acted in furtherance of the CCP.⁸⁴²⁰ Accordingly, this argument is dismissed.

2561. In view of the above, the Appeals Chamber finds that Ćorić has failed to demonstrate an error in the Trial Chamber's findings concerning his *mens rea* in relation to the mistreatment of detainees at detention centres. Ćorić's ground of appeal 10 is therefore dismissed in relevant part.

(g) Summarily dismissed submissions

2562. The Appeals Chamber notes that a number of arguments challenging the Trial Chamber's findings on his involvement in the HVO detention centres and his *mens rea* thereof: (1) merely repeat trial arguments without any demonstration that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber;⁸⁴²¹ (2) merely assert that

⁸⁴¹⁷ Prosecution's Response Brief (Ćorić), para. 267.

⁸⁴¹⁸ See Trial Judgement, Vol. 4, para. 974.

⁸⁴¹⁹ See Trial Judgement, Vol. 4, para. 1004.

⁸⁴²⁰ See, e.g., Šainović *et al.* Appeal Judgement, para. 1491.

⁸⁴²¹ (1) Ćorić's Appeal Brief, paras 103-105, 107-110, arguing that: (i) Exhibit P00452 shows that the Heliodrom was established by order of Stojić, thereby undermining the notion that it was established pursuant to Exhibit P00513, an order issued by Ćorić; and (ii) the Trial Chamber should not have placed any weight on Exhibit P00352. *Cf.* Ćorić's Final Brief, paras 432, 435-438, 731, 734. Ćorić reiterates the same reliability arguments regarding Exhibit P00352 when contesting other Trial Chamber findings. See Ćorić's Appeal Brief, paras 116, 127 (referring to Ćorić's Appeal Brief, paras 105, 112, 116), 135, 177, 181, 185; (2) Ćorić's Appeal Brief, para. 109, arguing that as of October 1992, Ljubuški Prison was used solely as a military prison and was "managed by the relevant brigade", and therefore he was not involved in either its establishment or its management. *Cf.* Ćorić's Final Brief, paras 440, 524; (3) Ćorić's Appeal Brief, paras 108, 122, arguing that the sole purpose of Ljubuški Prison was military detention. *Cf.* Ćorić's Final Brief, paras 342, 524; (4) Ćorić's Appeal Brief, paras 113, 168, arguing that the lack of a superior-subordinate relationship between the wardens of the Heliodrom and the Military Police Administration or Ćorić is demonstrated by the fact that reports prepared by Wardens Josip Praljak or Stanko Božić used different registration numbers from those used by the Military Police. *Cf.* Ćorić's Final Brief, paras 434, 504. The Appeals Chamber notes that, in challenging the

Trial Chamber's conclusions as to his knowledge of mistreatment of Heliodrom detainees working at the front line (Ćorić's Appeal Brief, paras 167-169), Ćorić makes similar arguments without advancing additional submissions; (5) Ćorić's Appeal Brief, para. 112, arguing that lacking any direct and credible evidence that "Ćorić appointed the warden of any detention centre", the Trial Chamber based "its conclusion" on the Praljak Log Book, as well as statements by Witness Josip Praljak, whose credibility he questions. Cf. Ćorić's Final Brief, paras 433-437, 724-734; (6) Ćorić's Appeal Brief, para. 131, discussing the military district court's authority to oversee and supervise prisons, including the appointment of wardens. Cf. Ćorić's Final Brief, paras 348-349; (7) Ćorić's Appeal Brief, para. 247, purporting to contest Trial Chamber findings concerning his responsibility for criminal acts committed in "Prozor Prison". Cf. Ćorić's Final Brief, paras 398, 407-408, 415-417, 420, 431; (8) Ćorić's Appeal Brief, paras 114, 304, arguing that the Trial Chamber erroneously found that there was a superior-subordinate relationship between himself and the Warden of Ljubuški Prison based on daily reports prepared by a Prosecution witness whose credibility and reliability he contests. Cf. Ćorić's Final Brief, paras 712-723. Ćorić repeats his claim regarding this witness's credibility without any additional argumentation when he contends that the Trial Chamber erred in relying upon orders and lists of detainees by Ante Prlić, Commander of Ljubuški Prison (Ćorić's Appeal Brief, para. 183); (9) Ćorić's Appeal Brief, paras 135, 166, arguing that evidence shows that: (i) the Main Staff had the power to authorise detainee labour outside of the Heliodrom; and (ii) detainees were taken for labour per orders of the competent HVO military commanders upon authorisation of the commanders of the respective OZ to whom they were subordinated. Cf. Ćorić's Final Brief, para. 476; (10) Ćorić's Appeal Brief, para. 135, arguing that evidence indicates that the Military Police Administration did not play any role in taking prisoners for labour outside of the Heliodrom. Cf. Ćorić's Final Brief, para. 494; (11) Ćorić's Appeal Brief, para. 304, challenging the Trial Chamber's reliance upon Exhibit P03613 in relation to its findings on his contribution to the JCE through his involvement with Vitina-Otok Camp. Cf. Ćorić's Final Brief, para. 527; (12) Ćorić's Appeal Brief, paras 123, 139-142, making submissions concerning his role in security at detention centres. Cf. Ćorić's Final Brief, paras 344, 382-383, 385-387, 389. Ćorić makes similar submissions in other parts of his appeal brief, but fails to advance a discernible argument engaging with specific Trial Chamber findings. See Ćorić's Appeal Brief, paras 119-120, 122-124; (13) Ćorić's Appeal Brief, para. 119, arguing that overwhelming evidence proves that the Ljubuški Warden was subordinated to the 4th Stjepan Radić Brigade. Cf. Ćorić's Final Brief, paras 529-531; (14) Ćorić's Appeal Brief, para. 115, arguing that the Trial Chamber erred in relying on Exhibit P00514. Cf. Ćorić's Final Brief, paras 463-464; (15) Ćorić's Appeal Brief, para. 116, arguing that the Trial Chamber erred in its findings on his involvement in security at the Heliodrom as the command over the Military Police involved in security and criminal investigations at this prison was through the prison warden or the HVO Command of the OZ. Cf. Ćorić's Final Brief, paras 453, 457; (16) Ćorić's Appeal Brief, para. 118, arguing that the house rules issued for Dretelj Prison by HVO Brigade Commander Nedjeljko Obradović show that the 1st Knez Domagoj Brigade had overall authority over Dretelj Prison. Cf. Ćorić's Final Brief, paras 564, 566; (17) Ćorić's Appeal Brief, para. 128, arguing that overwhelming evidence proves that visits to the Heliodrom, in general, were authorised by the relevant HVO OZ commanders. Cf. Ćorić's Final Brief, paras 460, 466, 533, 575; (18) Ćorić's Appeal Brief, para. 162, arguing that the Trial Chamber should not have relied upon reports by the Heliodrom Warden Božić as no evidence proved that Ćorić received these reports. Cf. Ćorić's Final Brief, para. 499. See also Appeal Hearing, AT. 640-642 (24 Mar 2017). The Appeals Chamber notes that Ćorić merely repeats similar arguments and refers to arguments raised elsewhere in his appeal brief when challenging the Trial Chamber's findings on his knowledge of mistreatment of Heliodrom detainees working on the front line. See Ćorić's Appeal Brief, paras 167-169; (19) Ćorić's Appeal Brief, para. 168, arguing that the only verified complaints of detainee mistreatment that could have potentially reached him were acted upon promptly by a subordinate of his at the Military Police Administration, thereby indicating that neither he nor the Military Police Administration condoned detainee mistreatment. Cf. Ćorić's Final Brief, para. 502; (20) Ćorić's Appeal Brief, para. 164, arguing that the Trial Chamber should not have relied on Exhibit P05563 because there was no indication proving that Ćorić received it and it was not shown to any witness at trial. Cf. Ćorić's Final Brief, para. 520; (21) Ćorić's Appeal Brief, para. 172, arguing that the Trial Chamber should not have relied upon Exhibit P03960 on the basis that overwhelming evidence proves that the Military Police Administration and Ćorić did not have authority over Dretelj Prison and that this exhibit is an example of an attempt to shift the blame onto the Military Police. Cf. Ćorić's Final Brief, para. 592. In addition, Ćorić only makes a reference to his ground of appeal 6 as support for this proposition; (22) Ćorić's Appeal Brief, para. 130, advancing an argument concerning his involvement in the transfer of detainees. Cf. Ćorić's Final Brief, para. 384; (23) Ćorić's Appeal Brief, paras 244-246, making submissions pertaining to the Trial Chamber's findings on Gabela and Dretelj Prisons and its "errors as to forced labor". Cf. Ćorić's Final Brief, paras 549, 560-561, 581-583. In relation to the latter, Ćorić merely refers to his ground of appeal 6 without advancing any distinct arguments; (24) Ćorić's Appeal Brief, para. 183, arguing that the Trial Chamber should not have relied upon the documents referring to a request allegedly submitted by him for the release of several detainees. Cf. Ćorić's Final Brief, para. 470; (25) Ćorić's Appeal Brief, paras 174-176, 184, arguing, in relation to his role in the forced departure of detainees of Ljubuški, Dretelj, and Gabela Prisons as well as Vitina-Otok Camp, that the Trial Chamber erred in relying upon evidence, including Exhibit P03220/P03216, the authenticity of which Ćorić contests. Cf. Ćorić's Final Brief, paras 471, 699-702, 717. Ćorić repeats his claim regarding the authenticity of Exhibit P03220/P03216 when challenging the Trial Chamber's finding that Ćorić ordered the release of Muslims held in detention in Ljubuški Municipality. See Ćorić's Appeal Brief, paras 175, 262-267, 296-297. This argument, which is raised under his ground of appeal 12, has already been dismissed. See *supra*, paras 160-163; (26) Ćorić's Appeal Brief, para. 242, making submissions

the Trial Chamber must have failed to consider relevant evidence without showing that no reasonable trier of fact, based on the evidence, could have reached the same conclusion as the Trial Chamber;⁸⁴²² (3) fail to identify relevant Trial Chamber findings;⁸⁴²³ (4) misrepresent the challenged factual findings or the evidence;⁸⁴²⁴ (5) fail to articulate an error;⁸⁴²⁵ (6) fail to explain

pertaining to who was in charge of medical care and to whom reports concerning medical care were addressed. Cf. Ćorić's Final Brief, para. 465; and (27) Ćorić's Appeal Brief, para. 243, arguing that the Trial Chamber ignored evidence that civilians were evacuated to the Heliodrom for their own safety. Cf. Ćorić's Final Brief, paras 444-448. Ćorić advances the same argument when challenging the Trial Chamber finding that he intended to have Muslims arrested in May 1993. See Ćorić's Appeal Brief, para. 152. In so doing, he merely repeats trial arguments. Cf. Ćorić's Final Brief, paras 380, 446-447.

⁸⁴²² Ćorić's Appeal Brief, para. 104, arguing that the Trial Chamber ignored Exhibit P00292, which indicates that the Head of the Department of Justice and Public Administration, together with the Heads of the Departments of Defence and Interior, would determine where detainees were to be kept. While the Trial Chamber did not refer to Exhibit P00292 in its discussion of the establishment of the Heliodrom, it did refer to this exhibit in its discussion of the functions of the Department of Justice and Administration, and found that "the Head of the Department of Justice and Administration, in conjunction with the Head of the Department of Defence and the Head of the Department of the Interior, was responsible for determining the detention sites for persons captured in combat". Trial Judgement, Vol. 1, para. 648 & fn. 1532. Ćorić has not attempted to show that the contents of Exhibit P00292 are inconsistent with or preclude the Trial Chamber's finding that he ordered, in his own capacity, the establishment of the Heliodrom.

⁸⁴²³ (1) Ćorić's Appeal Brief, paras 103, 138, arguing that the Trial Chamber erred in finding that he had the authority to order the transfer of detainees and advancing a number of arguments to this end. Although Ćorić refers to paragraphs 907-908 of Volume 1 of the Trial Judgement in this regard, he fails to identify specific factual findings in relation to which the Appeals Chamber could meaningfully address his arguments. Moreover, he broadly repeats trial arguments. Cf. Ćorić's Final Brief, paras 540-541, 544; and (2) Ćorić's Appeal Brief, para. 243, arguing that "[a]s to Stolac/Ljubuški, the detention of Muslim HVO members following their assisting a ABiH attack and detention of the reserve members of the ABiH armed forces following the attack of the ABiH are discussed elsewhere herein". In addition, Ćorić merely refers to submissions under his ground of appeal 7 without raising any distinct arguments.

⁸⁴²⁴ (1) Ćorić's Appeal Brief, paras 108-109, arguing that the Trial Chamber erred by only relying upon two documents (Exhibits P00128 and P00956), which show that Ljubuški Prison was used solely as a military prison and was "managed by the brigade". The Trial Chamber's conclusion that the Military Police Administration played a key role "in establishing, setting up and managing" Ljubuški Prison is based not only on the two documents but also on other evidence. Trial Judgement, Vol. 2, para. 1791 & fn. 4458. In addition, Ćorić's argument that these two documents show that the prison "served the sole purpose of military detention" is undeveloped as neither exhibit enables this contention. In fact, they both tend to support the Trial Chamber's findings; (2) Ćorić's Appeal Brief, para. 119, arguing that the Trial Chamber erroneously found that he "played a significant role in maintaining security" at Ljubuški Prison solely based on the erroneous finding that its warden was subordinated to him. The Appeals Chamber understands Ćorić to be challenging the Trial Chamber's finding that "from the establishment of Ljubuški Prison in June 1992 until 10 November 1993, the security of the detainees at that prison was ultimately the responsibility of Valentin Ćorić" (Trial Judgement, Vol. 4, para. 899). In this regard, the Trial Chamber did not reach this finding solely based on its prior finding that the Warden of Ljubuški Prison was subordinated to Ćorić. It also relied upon its finding that "at least between May and August 1993, the warden of Ljubuški Prison drew up daily reports for, among others, the Military Police Administration, on the activities of the Military Police platoon at Ljubuški Prison". Trial Judgement, Vol. 4, para. 899, referring to Trial Judgement, Vol. 2, para. 1797. See also Trial Judgement, Vol. 2, paras 1791-1796, 1798-1799; (3) Ćorić's Appeal Brief, para. 117, arguing that evidence demonstrates that it was the *Domobrani* unit rather than the Military Police Administration who were in charge of security at Dretelj Prison. Ćorić misrepresents the evidence in that it indicates that both Military Police and the *Domobrani* unit were deployed at Dretelj Prison for security purposes. See Witness C, T. 22369 (closed session) (17 Sept 2007); (4) Ćorić's Appeal Brief, para. 162, arguing that the Trial Chamber erred in only relying upon Exhibit P03209, a report about an incident of mistreatment at the Heliodrom. The Appeals Chamber observes that when concluding that Ćorić had reason to believe that some Heliodrom detainees were being mistreated, the Trial Chamber relied upon several pieces of evidence in addition to Exhibit P03209. See Trial Judgement, Vol. 4, paras 955-957, referring to, *inter alia*, Exs. P00285, p. 99, P03942, p. 2, P05008, p. 1, Josip Praljak, T(F). 14732-14735 (27 Feb 2007); (5) Ćorić's Appeal Brief, paras 172-173, arguing that: (i) the Trial Chamber should not have relied upon Exhibit P03794, a report by the Assistant Chief of the Military Police Administration responsible for security, Branimir Tucak, about a visit to Dretelj Prison, as it only refers to positive feedback on the conditions of detention there, and (ii) evidence indicated that the visit described in this report was of an *ad hoc* nature. Ćorić misrepresents the contents of the report. While it mentions that rooms were aired out every two hours and that prisoners were given fixed quantities of food and water, it also indicates "several incidents of scabies and lice" and that it "was necessary to disinfect the rooms as soon as possible". See Ex. P03794. In addition, the evidence which Ćorić refers to inadequately supports his argument, as it merely identifies the title of the Military Police

how the alleged errors have an effect on the conclusions of the Trial Chamber;⁸⁴²⁶ (7) ignore other relevant findings,⁸⁴²⁷ (8) are undeveloped;⁸⁴²⁸ (9) are irrelevant,⁸⁴²⁹ or (10) are unsubstantiated.⁸⁴³⁰ Consequently, these submissions are summarily dismissed.

Administration official who visited Dretelj Prison as the Assistant Chief of the Military Police Administration responsible for the security there. See Witness C, T. 22405 (closed session) (18 Sept 2007); (6) Ćorić's Appeal Brief, para. 179, arguing that the Trial Chamber erroneously interpreted an order of August 1993 that he allegedly issued to the Deputy Brigade Commander of the Military Police, Jure Herceg, about the release of Ljubuški Municipality detainees who were in possession of letters of guarantee, for the Trial Chamber only relied on Witness E's testimony pertaining to this order. Contrary to Ćorić's contention, the finding which he challenges (see Trial Judgement, Vol. 2, para. 1870 & fn. 4691) is not only based upon Witness E's testimony but also upon, *inter alia*, reports from August 1993 from the Commander of the 4th Brigade Military Police. See Trial Judgement, Vol. 2, para. 1870 & fn. 4691, referring to, *inter alia*, Exs. P10175, P04263, P04404, P10190; and (7) Ćorić's Appeal Brief, para. 242, arguing that the Trial Chamber's finding that he did not have access to reports on conditions of detention demonstrates that he lacked the requisite *mens rea*. The paragraphs of the Trial Judgement to which Ćorić refers contain no such finding. See Ćorić's Appeal Brief, para. 242 & fn. 628, referring to, *inter alia*, Trial Judgement, Vol. 4, paras 962, 985.

⁸⁴²⁵ Ćorić's Appeal Brief, para. 112, arguing that the Trial Chamber possessed evidence proving that Mile Pušić, the first Warden of the Heliodrom, was appointed by the Head of the Defence Department, Bruno Stojić.

⁸⁴²⁶ Ćorić's Appeal Brief, para. 121, arguing that the Trial Chamber failed to identify the documents upon which it based its conclusion that the regulations in effect at Ljubuški Prison point to the authority of the Military Police and the Military Police Administration over internal security. While the Trial Chamber did not identify which regulations it referred to (see Trial Judgement, Vol. 1, para. 901), Ćorić fails to explain the impact of this omission on the Trial Chamber's findings concerning his involvement in security at Ljubuški Prison.

⁸⁴²⁷ Ćorić's Appeal Brief, para. 242, arguing that the Trial Chamber erred in its findings on his failure to intervene to address mistreatment in detention facilities, despite previously concluding that he had no reason to believe that detainees were being mistreated at the Heliodrom. The Trial Chamber found that it received no evidence confirming that he was informed of incidents of mistreatment of Heliodrom detainees by the Military Police and the HVO between May 1993 and mid-April 1994. See Trial Judgement, Vol. 4, para. 955. However, in ultimately concluding that as of July 1993, Ćorić had reason to know that some detainees were being mistreated (see Trial Judgement, Vol. 4, para. 957), the Trial Chamber took into account its previous findings that he had reason to believe that detainees were being mistreated, and that at least in July, August, and September 1993, Ćorić was informed about problems with detainee security by the Heliodrom Warden, Stanko Božić. See Trial Judgement, Vol. 4, para. 955.

⁸⁴²⁸ (1) Ćorić's Appeal Brief, paras 106-107, arguing that no plan existed for the detention of a large number of detainees at the Heliodrom and that it was established to serve as a military detention centre. In addition, Ćorić repeats submissions advanced at trial. Cf. Ćorić's Final Brief, paras 340, 439-442; (2) Ćorić's Appeal Brief, para. 304, arguing that he was erroneously found guilty for offences by a unit of the Military Police brigade at Vitina-Otok Camp; (3) Ćorić's Appeal Brief, para. 115, arguing that the Trial Chamber erred in relying upon Exhibit P00514, 22 September 1992 instructions issued by Ćorić for the operation of the Heliodrom, on the basis that the Trial Chamber failed to properly weigh Exhibit P01474, 11 February 1993 house rules for detention centres for detainees, issued by Stojić. Ćorić implies that the latter provide a stronger basis for a conclusion on who had ultimate responsibility over security of Heliodrom detainees as compared to the former, but the Appeals Chamber finds this argument to be undeveloped. Ćorić has neither attempted to demonstrate how the Trial Chamber failed to properly weigh Exhibit P01474 nor how it provides a stronger basis than Exhibit P00514 for conclusions concerning who had authority over security at the Heliodrom; (4) Ćorić's Appeal Brief, para. 137, arguing that the Trial Chamber erred in concluding that "the [Military Police] and [Military Police Administration] were responsible for a prisoner exchange at least during the period from April 1992 to April in 1993". In support, he merely states that there was no mistreatment in prisons for which he has been found responsible during the April 1992-April 1993 period; (5) Ćorić's Appeal Brief, para. 178, arguing that the Trial Chamber erroneously found that the Muslims from Ljubuški Municipality held in HVO detention centres had, under SIS Chief Petar Majić's orders, 24 hours to leave the territory with their families. See Trial Judgement, Vol. 2, para. 1872. Ćorić submits that the SIS was "beyond the control of the [Military Police Administration]", but he fails to develop his assertion any further; and (6) Ćorić's Appeal Brief, paras 239-240, challenging the Trial Chamber's JCE I *mens rea*-related findings on the basis that it contradicted or ignored its own previous findings on his involvement in HVO detention centres. Ćorić has not engaged with the Trial Judgement in such a way as to either identify a contradiction or demonstrate that no reasonable trier of fact could have reached the Trial Chamber's ultimate *mens rea* finding on the basis of its findings on his involvement with HVO detention centres.

⁸⁴²⁹ (1) Ćorić's Appeal Brief, para. 108, arguing that the Trial Chamber chose not to rely upon the only document which the Prosecution tendered in support of its proposition that Ćorić was involved in the establishment of Ljubuški Prison. The Appeals Chamber understands him to be challenging the Trial Chamber's finding that "[t]he Military Police Administration, under Valentin Ćorić's direction, also set up Ljubuški Prison sometime in June 1992". Trial Judgement, Vol. 4, para. 894. This finding is supported by a reference to an earlier finding (see Trial Judgement, Vol. 4, para. 894,

5. Alleged errors related to Ćorić's involvement in crimes in municipalities
(Ćorić's Grounds 2, 7, 10, 11, 13, and 14, all in part)

(a) Mostar Municipality

(i) Ćorić's involvement in the HVO military operations in East Mostar

2563. The Trial Chamber concluded that Ćorić assisted in the HVO campaign of fire and shelling against East Mostar in particular by: (1) re-subordinating Military Police units, including light assault battalions, to the command of the Main Staff and/or the commanders of the OZs between July and at least October 1993; (2) sending part of the 4th Light Assault Battalion to Mostar on 13 August 1993; and (3) subordinating 100 military policemen to the Mostar Town Defence Commander on 5 October 1993.⁸⁴³¹ It also found that in view of Ćorić's participation in the war effort and the long duration and systematic nature of the military operations, he must have been aware of the HVO campaign of fire and shelling against East Mostar.⁸⁴³² The Trial Chamber further found that given the systematic nature of the HVO sniper campaign against East Mostar civilians between May 1993 and February 1994, and by personally participating in the investigation into the death of Francisco Aguilar Fernández, a Spanish lieutenant and a Spabat member, Ćorić must have been aware of the HVO snipers in West Mostar who were targeting East Mostar.⁸⁴³³ Bearing in mind these findings, the Trial Chamber was satisfied that Ćorić had knowledge of the HVO campaign of fire and shelling against East Mostar, and the crimes committed during that campaign.⁸⁴³⁴ The Trial Chamber also found that inasmuch as Ćorić lent his support to the campaigns, he intended to facilitate the crimes directly linked to the HVO military operations in East Mostar, namely murders and destruction of property, including mosques, resulting from the shelling.⁸⁴³⁵

a. Arguments of the Parties

2564. Ćorić argues that the Trial Chamber erred in finding that he intended to facilitate the crimes linked to the HVO campaigns in East Mostar, and that it disregarded evidence when concluding that

referring to Trial Judgement, Vol. 2, paras 1789-1799), which is in turn supported by ample witness and documentary evidence. Bearing in mind the evidentiary basis of the Trial Chamber's finding concerning Ćorić's role in the establishment of Ljubuški Prison, the Appeals Chamber considers that Ćorić's argument is irrelevant; and (2) Ćorić's Appeal Brief, para. 180, arguing that it erroneously relied upon Exhibit P04620. Ćorić has not attempted to demonstrate how the Trial Chamber's reliance upon Exhibit P04620 has any bearing on its finding that he ordered the removal of Muslim detainees from Ljubuški Municipality.

⁸⁴³⁰ Ćorić's Appeal Brief, para. 242, arguing that knowledge of conditions of detention cannot be attributed to him as anyone intending such a result would not complain of lack of resources to prevent it.

⁸⁴³¹ Trial Judgement, Vol. 4, para. 936.

⁸⁴³² Trial Judgement, Vol. 4, para. 938.

⁸⁴³³ Trial Judgement, Vol. 4, para. 938.

⁸⁴³⁴ Trial Judgement, Vol. 4, para. 938.

he must have been aware of these campaigns.⁸⁴³⁶ He submits that the Military Police Light Assault Battalions were re-subordinated before these crimes were committed, and that following re-subordination, he was unaware of the daily tasks of the Military Police units.⁸⁴³⁷ He further argues that although the Trial Chamber found that Ćorić was aware that the death of Fernández was caused by the HVO, it did not establish beyond reasonable doubt that Fernández was killed by the HVO, contrary to the principle of *in dubio pro reo*.⁸⁴³⁸

2565. In response, the Prosecution submits that Ćorić's argument concerning the Military Police re-subordination misrepresents the Trial Judgement as he did not subordinate the Military Police Light Assault Battalions before crimes were committed in East Mostar, but issued re-subordination orders in August 1993.⁸⁴³⁹ It also submits that Ćorić's submissions as regards the death of Fernández misrepresent the findings and evidence, and the Trial Chamber reasonably concluded, on the basis of the evidence as a whole, that an HVO sniper deliberately fired at and killed Fernández.⁸⁴⁴⁰

b. Analysis

2566. As regards Ćorić's argument that he did not exercise powers over the re-subordinated Military Police Light Assault Battalions, the Appeals Chamber notes that the finding that Ćorić assisted the East Mostar campaign was based not on his knowledge of their daily operations, but on the fact that he re-subordinated these units.⁸⁴⁴¹ The Trial Chamber found that on 28 July 1993, Ćorić ordered that the Military Police Light Assault Battalions be re-subordinated to the commander of the Main Staff and/or the OZ commanders.⁸⁴⁴² It further found that on that date, even the 1st Light Assault Battalion "passed under the effective command of Slobodan Praljak and/or the OZ commanders".⁸⁴⁴³ However, the Trial Chamber also considered, pursuant to two further orders which Ćorić issued on 7 and 13 August 1993, ordering that specific units of the Military Police Light Assault Battalions were to go to Mostar, that Ćorić "did not lose his authority over the

⁸⁴³⁵ Trial Judgement, Vol. 4, para. 938. See also Trial Judgement, Vol. 4, para. 945.

⁸⁴³⁶ Ćorić's Appeal Brief, paras 154-156; Appeal Hearing, AT. 597 (24 Mar 2017).

⁸⁴³⁷ Ćorić's Appeal Brief, para. 156; Appeal Hearing, AT. 597-598 (24 Mar 2017).

⁸⁴³⁸ Ćorić's Appeal Brief, para. 156, referring to Trial Judgement, Vol. 2, para. 1275. See also Ćorić's Appeal Brief, para. 30. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2594.

⁸⁴³⁹ Prosecution's Response Brief (Ćorić), para. 165. See also Prosecution's Response Brief (Ćorić), para. 164. The Prosecution also avers that Ćorić's assertion that he was not aware of the daily activities of the re-subordinated units is irrelevant as the Trial Chamber's findings were not premised upon information received directly from these units. Prosecution's Response Brief (Ćorić), para. 165.

⁸⁴⁴⁰ Prosecution's Response Brief (Ćorić), para. 167.

⁸⁴⁴¹ See Trial Judgement, Vol. 4, para. 936.

⁸⁴⁴² Trial Judgement, Vol. 1, para. 968.

⁸⁴⁴³ Trial Judgement, Vol. 1, para. 968.

light assault battalions entirely”.⁸⁴⁴⁴ The Appeals Chamber also recalls that it has summarily dismissed Ćorić’s other arguments as regards the effect of re-subordination on the control the Military Police Administration exercised over the units.⁸⁴⁴⁵ To the extent that Ćorić’s arguments amount to a challenge to the Trial Chamber’s findings concerning his continued exercise of control over the Military Police units in East Mostar following re-subordination, these arguments are dismissed.

2567. Turning to Ćorić’s arguments regarding the Trial Chamber’s findings on the death of Fernández, the Appeals Chamber notes the Trial Chamber’s finding that in the evening of 11 June 1993, Fernández was in an armoured vehicle escorting a medical convoy from West Mostar to East Mostar when he was killed by a single bullet.⁸⁴⁴⁶ The Trial Chamber found that several investigations were launched in co-operation with the HVO, specifically with Stojić, at the time of the events.⁸⁴⁴⁷ In this regard, it noted: (1) the investigations conducted by UNPROFOR and the United Nations Civilian Police (“UNCIVPOL”) showing that the shots came from an elevated location in West Mostar, probably the roof of the building known as the “Glass Bank”, also known as the Blue Bank, at Maršal Tito Street in West Mostar (“Glass Bank”), the highest building in Mostar, where HVO snipers were located,⁸⁴⁴⁸ but concluded that there was no material proof to support this hypothesis;⁸⁴⁴⁹ (2) the evidence showing that shots fired came from the west of the town, and that bullet cartridges found on the roof of the Glass Bank on 13 June 1993 were identical to the bullet found in Fernández’s body;⁸⁴⁵⁰ (3) the fact that on 14 June 1993, Stojić sent a letter to the Spanish Minister of Defence stating that an HVO investigation had concluded that Fernández was killed by the ABiH, and that the HVO subsequently concluded that ABiH forces were responsible;⁸⁴⁵¹ (4) the evidence of Larry Forbes, a policeman involved in the UNCIVPOL investigation, who stated that the HVO report was inaccurate;⁸⁴⁵² and (5) that it was not persuaded by the Petković Defence’s argument that the shot was accidentally fired by the HVO, given that there was no evidence that there was an exchange of fire between the HVO and the ABiH at that juncture.⁸⁴⁵³ Overall, the Trial Chamber concluded that “[i]n the absence of supporting evidence

⁸⁴⁴⁴ Trial Judgement, Vol. 1, para. 970.

⁸⁴⁴⁵ See *supra*, para. 2501.

⁸⁴⁴⁶ Trial Judgement, Vol. 2, para. 1273.

⁸⁴⁴⁷ Trial Judgement, Vol. 2, para. 1272.

⁸⁴⁴⁸ Trial Judgement, Vol. 2, para. 1274.

⁸⁴⁴⁹ Trial Judgement, Vol. 2, para. 1275.

⁸⁴⁵⁰ Trial Judgement, Vol. 2, para. 1276.

⁸⁴⁵¹ Trial Judgement, Vol. 2, para. 1277.

⁸⁴⁵² Trial Judgement, Vol. 2, para. 1277.

⁸⁴⁵³ Trial Judgement, Vol. 2, para. 1279.

other than from the HVO that the shots came from the ABiH”, it was satisfied that the shot came from West Mostar, the zone held by the HVO, and specifically from the Glass Bank building.⁸⁴⁵⁴

2568. The Appeals Chamber considers that in pointing to this overall finding, Ćorić misrepresents the Trial Chamber’s findings in relation to his criminal responsibility. It observes that the Trial Chamber concluded that given the systematic nature of the HVO sniper campaign against East Mostar civilians between May 1993 and February 1994, and his personal participation in the investigation into the death of Fernández, Ćorić must have been aware of the HVO snipers in West Mostar who were targeting East Mostar.⁸⁴⁵⁵ The Trial Chamber did not specifically conclude that Ćorić was aware that Fernández was killed by the HVO. In any event, the Appeals Chamber finds that Ćorić has not demonstrated that the Trial Chamber erred in its approach in finding that the shot that killed Fernández had come from West Mostar, the zone held by the HVO. In this regard, the Appeals Chamber takes particular note of the fact that the Trial Chamber balanced consistent evidence suggesting that the bullet came from HVO territory, which explains why it was unsatisfied by HVO evidence regarding the alternative inference that the bullet was part of an ABiH attack. Ćorić’s argument is thus dismissed.

2569. In light of the foregoing, the Appeals Chamber finds that Ćorić has failed to show that the Trial Chamber erred in its findings on Ćorić’s involvement in the HVO military operations in East Mostar. Ćorić’s ground of appeal 7 is thus dismissed in relevant part.

(ii) Ćorić’s responsibility for a killing incident in Buna (south of Mostar)

2570. The Trial Chamber found that Ćorić knowingly engaged the Military Police in eviction operations, *inter alia*, in Mostar, from 9 May until at least October 1993, during which CCP crimes were committed.⁸⁴⁵⁶ Additionally, it found that the only inference that it could reasonably draw from the fact that Ćorić personally participated in planning the operations to evict Muslims from Mostar – including through placing Muslims in detention and through knowingly turning a blind eye to the crimes perpetrated against Muslims by HVO members in the summer of 1993 while he had a duty to fight crime in the HZ(R) H-B – was that he intended to have these crimes committed.⁸⁴⁵⁷ Among the crimes for which Ćorić was found responsible were murder, wilful killing, inhumane acts, inhuman treatment, and cruel treatment in relation to a 14 July 1993 incident

⁸⁴⁵⁴ Trial Judgement, Vol. 2, para. 1278.

⁸⁴⁵⁵ Trial Judgement, Vol. 4, para. 938.

⁸⁴⁵⁶ Trial Judgement, Vol. 4, para. 1000.

⁸⁴⁵⁷ Trial Judgement, Vol. 4, para. 1000.

in Buna (south of Mostar) in which the Military Police detained two Muslims and later shot them with the intention of killing them, and indeed killed one.⁸⁴⁵⁸

2571. Ćorić contests, as a preliminary matter, the basis upon which the Trial Chamber concluded that the Military Police were responsible for the Buna killing,⁸⁴⁵⁹ namely, that the Trial Chamber did not take into account that Witness CY indicated that he had never before seen the particular Military Police involved in this incident.⁸⁴⁶⁰ Ćorić also argues that the Trial Chamber erred in finding him responsible for the Buna killing in that there was no evidence that he or any superior officer of the Military Police knew or could have known what happened.⁸⁴⁶¹

2572. Concerning Ćorić's preliminary challenge, the Prosecution responds that the fact that Witness CY did not recognise the specific perpetrators is irrelevant because he did identify the perpetrators as being members of the Military Police.⁸⁴⁶² It also contends that the incident was "foreseeable" to Ćorić in the execution of the CCP, that his connection to this crime arises out of his membership in the JCE, and that whether he later learned about the crime is beside the point.⁸⁴⁶³

2573. Ćorić replies that, contrary to the Prosecution's submission, in order to impute a crime to an accused, "it has to be a natural and foreseeable consequence, and it cannot have these characteristics if it did not happen before".⁸⁴⁶⁴

2574. The Appeals Chamber considers immaterial the fact that Witness CY did not specifically identify the specific members of the Military Police involved in the Buna killing for the purposes of the Trial Chamber's conclusion that the perpetrators of this incident were members of the Military Police. Ćorić's argument is dismissed in this regard.

2575. Regarding Ćorić's argument that the Trial Chamber erred in finding Ćorić responsible for the Buna killing due to lack of evidence that he knew about this incident, the Appeals Chamber recalls that a participant in a joint criminal enterprise would not need to know of each crime committed in order to be criminally liable and that it suffices that he or she shared the intent for the commission of these crimes and acted in furtherance of the CCP.⁸⁴⁶⁵ Ćorić's criminal responsibility therefore does not hinge on whether or not he knew about a specific incident. In this case, the

⁸⁴⁵⁸ Trial Judgement, Vol. 3, paras 670, 719, 1247-1248, 1341-1342, 1444-1445, Vol. 4, para. 1006. See Trial Judgement, Vol. 2, paras 940-944, Vol. 4, paras 1000-1004.

⁸⁴⁵⁹ See Ćorić's Appeal Brief, paras 309-310.

⁸⁴⁶⁰ Ćorić's Appeal Brief, para. 310, referring to Witness CY, T. 13056 (29 Jan 2007).

⁸⁴⁶¹ Ćorić's Appeal Brief, para. 310. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2594.

⁸⁴⁶² Prosecution's Response Brief (Ćorić), para. 344.

⁸⁴⁶³ Prosecution's Response Brief (Ćorić), para. 345.

⁸⁴⁶⁴ Ćorić's Reply Brief, para. 71.

⁸⁴⁶⁵ See, e.g., *Šainović et al.* Appeal Judgement, para. 1491.

Trial Chamber inferred from the evidence that in the summer of 1993, while Čorić had the duty to fight crime, he knowingly turned a blind eye to the crimes perpetrated by HVO members in West Mostar during the eviction operations and did so with the awareness that their conduct would result in criminal acts.⁸⁴⁶⁶ Based on this, the Trial Chamber concluded that he intended the commission of these crimes, including the Buna killing.⁸⁴⁶⁷ Čorić's argument that there is no evidence that he knew about the Buna killing simply ignores the Trial Chamber's reasoning. Accordingly, this argument is dismissed.

2576. In light of the foregoing, the Appeals Chamber finds that Čorić has failed to show that the Trial Chamber erred in holding him criminally responsible for the Buna killing. Čorić's ground of appeal 14 is therefore dismissed in relevant part.

(iii) Čorić's involvement in isolating the population of East Mostar and blocking humanitarian aid

2577. The Trial Chamber found that Čorić participated in blocking the Muslim population in East Mostar and the delivery of humanitarian aid there in the summer of 1993, thereby depriving its inhabitants of basic necessities, thus knowingly contributing to the siege of that part of the town of Mostar and to the creation of unbearable living conditions for the population of East Mostar.⁸⁴⁶⁸

a. Čorić's participation in the blockade of the Muslim population of East Mostar and impediment of the delivery of humanitarian aid

2578. Čorić argues that the Trial Chamber erred in finding that he participated in blockading the Muslim population in East Mostar and in blocking the delivery of humanitarian aid there.⁸⁴⁶⁹ Čorić submits that these findings were not based on facts and evidence.⁸⁴⁷⁰

2579. In response, the Prosecution submits that Čorić fails to show that the Trial Chamber was unreasonable in concluding that he participated in the JCE on the basis of the blockade of the Muslim population of East Mostar and impediment of the delivery of humanitarian aid to East Mostar.⁸⁴⁷¹

2580. The Appeals Chamber considers that when arguing that the Trial Chamber's findings with regard to the blockade and checkpoints in Mostar are not based on facts and evidence, Čorić

⁸⁴⁶⁶ Trial Judgement, Vol. 4, para. 1000. See also Trial Judgement, Vol. 4, paras 934, 945.

⁸⁴⁶⁷ Trial Judgement, Vol. 4, para. 1000.

⁸⁴⁶⁸ Trial Judgement, Vol. 4, paras 944-945.

⁸⁴⁶⁹ Čorić's Appeal Brief, paras 65, 157. See also Čorić's Appeal Brief, paras 151, 235.

⁸⁴⁷⁰ Čorić's Appeal Brief, para. 286.

disregards the Trial Chamber's consideration of evidence, *inter alia*, that: (1) on 1 June 1993, Ćorić knew about the humanitarian situation of the Muslim population in East Mostar, in particular the deteriorating sanitary conditions and the difficulties in getting food;⁸⁴⁷² (2) on 10 June 1993, he ordered that the transport and distribution of humanitarian aid in the territory of the HZ H-B be banned without a certificate of ODPR;⁸⁴⁷³ (3) on 13 August 1993, following a Main Staff order, Ćorić ordered the commander of the 5th Military Police Battalion to prohibit access to the town of Mostar other than for HVO members, including foreign journalists and television crews, until otherwise ordered;⁸⁴⁷⁴ and (4) on 26 August 1993, pursuant to a joint order by the Department of Defence and the Main Staff, Ćorić issued an order to the commanders of the 5th and 6th Military Police Battalions to allow foreign journalists and personnel of humanitarian organisations to move freely around the territory of the HZ H-B only if they had a special permit that could be signed by, among others, Stojić, Praljak, or Petković.⁸⁴⁷⁵ The Appeals Chamber finds that Ćorić has failed to show an error and dismisses this argument.

2581. In conclusion, the Appeals Chamber finds that Ćorić has failed to demonstrate that the Trial Chamber erred in finding that he participated in the blockade of the Muslim population of East Mostar and impeded the delivery of humanitarian aid to East Mostar in the summer of 1993, which deprived the population of basic necessities. Ćorić's grounds of appeal 2, 7, 10, and 13 are dismissed in relevant part.

b. Ćorić's involvement in crime-fighting in Mostar

2582. The Trial Chamber found that in the summer of 1993, when he had the duty to fight crime, Ćorić knowingly turned a blind eye to the crimes committed by HVO members against Muslims in West Mostar during the eviction operations, and did so with awareness that their conduct would result in criminal acts, which continued to be carried out with impunity until September 1993, thus intending to have those crimes committed.⁸⁴⁷⁶ It also took account of Ćorić's argument that the crime-fighting operation known as Operation "Spider" commenced with an order issued by Ćorić in August 1993 to collect information about the crimes committed by the soldiers of the Vinko Škrobo

⁸⁴⁷¹ Prosecution's Response Brief (Ćorić), para. 168, referring to Trial Judgement, Vol. 4, paras 939-944. See also Prosecution's Response Brief (Ćorić), para. 169.

⁸⁴⁷² Trial Judgement, Vol. 4, para. 940, referring to Ex. P02601.

⁸⁴⁷³ Trial Judgement, Vol. 4, para. 941, referring to Ex. P02706. See also Trial Judgement, Vol. 4, fn. 1658.

⁸⁴⁷⁴ Trial Judgement, Vol. 4, para. 942, referring to Ex. P04174. See also Trial Judgement, Vol. 2, para. 1234.

⁸⁴⁷⁵ Trial Judgement, Vol. 4, para. 943, referring to Ex. P04529, p. 1. See also Trial Judgement, Vol. 1, para. 635, referring to Ex. P04529. In addition, Ćorić merely seeks to offer his own interpretation of the evidence and has not shown that the Trial Chamber's findings as to his involvement in East Mostar were unreasonable. See Ćorić's Appeal Brief, para. 158, fns 392-397, referring to Exs. P04529, P00708, P02801, P00581, P01238, P01300, P01487, P01876, 5D02009, P02527, P03835, 3D00967, 4D00399, P04792, P00602, P01153, P02249, P03300, 5D04392, P03327 (confidential), P04527, P06332 (confidential), 2D01365, Slobodan Praljak, T. 40766 (26 May 2009), T. 42745

and Benko Penavić ATGs in Mostar.⁸⁴⁷⁷ However, it found that Operation “Spider” was launched only on 21 June 1994, with an order by Prlić to prosecute all persons, including HVO members, suspected of having committed criminal acts during or after the conflict, to initiate criminal investigations and proceedings against them, and to restore public order, which brought together key figures of the judicial system.⁸⁴⁷⁸

2583. Ćorić submits that the Trial Chamber erred when concluding that he had intent based on his knowledge of crimes in Mostar, and contributed to a climate of impunity there.⁸⁴⁷⁹ Specifically, he submits that powers over the KB units were not alleged in the Indictment, and it was accordingly inappropriate for the Trial Chamber to draw inferences based upon their activities.⁸⁴⁸⁰

2584. The Prosecution responds that Ćorić was convicted because of his failure to investigate the crimes committed by KB units, not on the basis that he controlled the units.⁸⁴⁸¹

2585. The Appeals Chamber observes that the Trial Chamber found that crimes were committed in West Mostar around mid-June 1993 by KB members under Mladen Naletilić’s command.⁸⁴⁸² The Trial Chamber also found that it would not consider the Prosecution’s submission that Ćorić had authority over these units, as the Indictment did not allege such a power of command.⁸⁴⁸³ Thus, contrary to Ćorić’s submission, the Trial Chamber did not base its findings as to his criminal responsibility in relation to crimes committed by the KB members in Mostar on the fact that he had authority or control over the KB units, but on the fact that in summer 1993, when he had the duty to fight crime, he knowingly turned a blind eye to the crimes perpetrated by HVO members against Muslims in West Mostar during the eviction operations, thus he contributed to creating a climate of impunity which undoubtedly favoured and encouraged the commission of other crimes.⁸⁴⁸⁴ As Ćorić mischaracterises the basis for his conviction, this argument is dismissed.

(8 July 2009), T. 44020 (27 Aug 2009), Witness DV, T. 22907-22908 (1 Oct 2007), Grant Finlayson, T. 18021 (7 May 2007), Witness BC, T. 18538 (closed session) (16 May 2007).

⁸⁴⁷⁶ Trial Judgement, Vol. 4, para. 1000. See also Trial Judgement, Vol. 4, para. 1004.

⁸⁴⁷⁷ Trial Judgement, Vol. 4, paras 931-932.

⁸⁴⁷⁸ Trial Judgement, Vol. 4, para. 932. The Appeals Chamber notes that according to the Trial Chamber, “the key figures of the judicial system” included Ćorić as Minister of the Interior. Trial Judgement, Vol. 4, para. 932. In this regard, the Appeals Chamber recalls that it has reversed the Trial Chamber’s findings on his role in the JCE as Minister of the Interior. See *supra*, para. 105.

⁸⁴⁷⁹ Ćorić’s Appeal Brief, para. 153. See also Ćorić’s Appeal Brief, paras 151, 230.

⁸⁴⁸⁰ See Ćorić’s Appeal Brief, para. 231. The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2594.

⁸⁴⁸¹ Prosecution’s Response Brief (Ćorić), fn. 942.

⁸⁴⁸² Trial Judgement, Vol. 4, paras 929-930.

⁸⁴⁸³ Trial Judgement, Vol. 4, para. 914. See also Trial Judgement, Vol. 4, para. 913.

⁸⁴⁸⁴ Trial Judgement, Vol. 4, paras 933, 1000.

2586. The Appeals Chamber finds that Ćorić has failed to demonstrate an error in the Trial Chamber's findings in respect of his involvement in crime-fighting in Mostar. Ćorić's grounds of appeal 7 and 10 are dismissed in relevant part.

(b) Gornji Vakuf Municipality

2587. The Trial Chamber considered that the evidence showed that Ćorić facilitated the HVO operations in Gornji Vakuf in January 1993, by sending Military Police units to take part in them.⁸⁴⁸⁵ It then found that inasmuch as Ćorić himself referred to this participation in his reports, he knew about the course of the HVO operations in Gornji Vakuf in January 1993 and must have been aware of the CCP crimes resulting from this campaign.⁸⁴⁸⁶ The Trial Chamber inferred that by having facilitated the operations in Gornji Vakuf, Ćorić intended to have these crimes committed.⁸⁴⁸⁷ Accordingly, it concluded that Ćorić knowingly engaged Military Police units in the eviction operations in Gornji Vakuf in January 1993.⁸⁴⁸⁸

2588. Ćorić challenges the above-mentioned Trial Chamber findings, arguing that the Trial Chamber erroneously found him responsible under JCE I based on "scant" evidence as it failed to explain the conclusion that "facilitating legitimate military operations automatically equates to knowledge of and shared intent for murders, and other crimes".⁸⁴⁸⁹ He also challenges the Trial Chamber's reliance on the two reports, Exhibits P01635 and P03090, which he sent following the combat in Gornji Vakuf in concluding that as he referred in these reports to the Military Police's participation in the Gornji Vakuf operations, he must have been aware of the crimes resulting from the campaign.⁸⁴⁹⁰ According to him, the two reports do not mention crimes or attacks on civilians, but merely the presence of Military Police units in Uzričje, the number of killed and injured military policemen in Gornji Vakuf, as well as fighting with the ABiH.⁸⁴⁹¹

2589. The Prosecution responds that Ćorić fails to show that the Trial Chamber's findings on his contribution to the JCE in relation to Gornji Vakuf are unreasonable and ignores the Trial Chamber's analysis of the criminal aspects of the Gornji Vakuf operations.⁸⁴⁹² The Prosecution argues that: (1) Ćorić's argument that the two reports demonstrate the legitimacy of the operations is misleading; (2) the fact that combat caused some deaths in the HVO does not

⁸⁴⁸⁵ Trial Judgement, Vol. 4, para. 921.

⁸⁴⁸⁶ Trial Judgement, Vol. 4, para. 921. See also Trial Judgement, Vol. 4, para. 923.

⁸⁴⁸⁷ Trial Judgement, Vol. 4, para. 923. See also Trial Judgement, Vol. 4, para. 922.

⁸⁴⁸⁸ Trial Judgement, Vol. 4, para. 1000.

⁸⁴⁸⁹ Ćorić's Appeal Brief, paras 147, 150. See also Ćorić's Appeal Brief, paras 144-145, 150; Appeal Hearing, AT. 590 (24 Mar 2017).

⁸⁴⁹⁰ Ćorić's Appeal Brief, paras 146, 149.

⁸⁴⁹¹ Ćorić's Appeal Brief, para. 149. See also Appeal Hearing, AT. 588 (24 Mar 2017). The Appeals Chamber notes that other relevant submissions have been summarily dismissed. See *infra*, para. 2594.

undermine the Trial Chamber's conclusion that the operations entailed crimes targeting the Muslim civilian population, which continued even after the end of the fighting;⁸⁴⁹³ and (3) the fact that Čorić did not report any crimes committed by Military Police units does not negate the evidence upon which the Trial Chamber reasonably found that the crimes formed part of the "preconceived plan" for the operations.⁸⁴⁹⁴

2590. With respect to Čorić's assertion that the Trial Chamber found him responsible for the crimes in Gornji Vakuf under JCE I based on "scant" evidence as it failed to explain how it came to the conclusion that "facilitating legitimate military operations automatically equates to knowledge of and shared intent for murders, and other crimes",⁸⁴⁹⁵ the Appeals Chamber observes that in terms of his participation, the Trial Chamber found that: (1) Stojić ordered the HVO Main Staff and the Military Police Administration, led by Čorić, to carry out the 15 January 1993 Ultimatum the same day;⁸⁴⁹⁶ (2) on 5 January 1993, Čorić reported to Stojić that the 1st Active Battalion, which was under Čorić's direct command, and 2nd Military Police Battalion units, were sent as reinforcements to Gornji Vakuf;⁸⁴⁹⁷ (3) Čorić's two reports – one dated 9 March 1993 and the other in July 1993 – indicated that between 11 and 22 January 1993, the units participated in combat missions in Gornji Vakuf Municipality and, in particular, in the capture of several villages, including Uzričje, on 18 January 1993;⁸⁴⁹⁸ and (4) the Military Police were present in the attack on Uzričje.⁸⁴⁹⁹ In relation to his knowledge, the Trial Chamber found that on the basis of his participation in, and knowledge of, the course of the Gornji Vakuf operations, he knew that the resulting crimes formed part of the military operations.⁸⁵⁰⁰ Based on these findings, the Trial Chamber inferred his intent for these crimes.⁸⁵⁰¹ The Appeals Chamber recalls that *mens rea* for participation in a joint criminal enterprise may be inferred from knowledge combined with continuing participation in the JCE.⁸⁵⁰² Accordingly, the Appeals Chamber finds that Čorić has failed to show that no reasonable trier of fact could have concluded his responsibility for the crimes in Gornji Vakuf pursuant to JCE I. This argument is thus dismissed.

⁸⁴⁹² Prosecution's Response Brief (Čorić), para. 146. See also Prosecution's Response Brief (Čorić), paras 141-145.

⁸⁴⁹³ Prosecution's Response Brief (Čorić), para. 147, referring to, *inter alia*, Trial Judgement, Vol. 2, paras 396-468, Vol. 4, paras 45, 923, 1000.

⁸⁴⁹⁴ Prosecution's Response Brief (Čorić), para. 147, referring to Trial Judgement, Vol. 4, para. 922.

⁸⁴⁹⁵ The Appeals Chamber notes that his argument on "legitimate" military operations has been summarily dismissed. See *infra*, fn. 8508.

⁸⁴⁹⁶ Trial Judgement, Vol. 4, para. 919.

⁸⁴⁹⁷ Trial Judgement, Vol. 4, para. 920, referring to Exs. P01053, P01635, p. 1, P03090, p. 6. See also Trial Judgement, Vol. 2, para. 322.

⁸⁴⁹⁸ Trial Judgement, Vol. 4, para. 920, referring to Exs. P01635, p. 1, P03090, pp. 6-7.

⁸⁴⁹⁹ Trial Judgement, Vol. 4, para. 920.

⁸⁵⁰⁰ Trial Judgement, Vol. 4, paras 920-921, 923,

⁸⁵⁰¹ Trial Judgement, Vol. 4, para. 923. See Trial Judgement, Vol. 4, para. 1004.

⁸⁵⁰² *Krajišnik* Appeal Judgement, para. 697; *Dorđević* Appeal Judgement, paras 512-513.

2591. As regards Ćorić's challenges to the Trial Chamber's reliance on his two reports, the Appeals Chamber considers that the fact that they make no reference to Military Police involvement in crimes or attacks on unarmed civilians does not cast doubt on the Trial Chamber's findings concerning his contribution to the CCP and the requisite intent. This argument is therefore dismissed.

2592. The Appeals Chamber recalls that it has overturned the Trial Chamber's finding that the deaths of seven civilians in Duša constituted murder and wilful killing, and consequently Ćorić's convictions related to those deaths.⁸⁵⁰³ It also recalls that it has determined that: (1) the Duša killings were not part of the CCP;⁸⁵⁰⁴ and (2) murder and wilful killing were not part of the CCP in the period from January 1993 until June 1993.⁸⁵⁰⁵ However, these conclusions have no impact on the Trial Chamber's findings on Ćorić's JCE I responsibility for the remaining crimes in Gornji Vakuf.

2593. For the foregoing reasons, the Appeals Chamber finds that Ćorić has failed to show that the Trial Chamber erred in finding that he facilitated the HVO operations in Gornji Vakuf in January 1993 and intended to have the crimes, except for murder and willful killing, committed during these operations. Ćorić's ground of appeal 7 is therefore dismissed in relevant part.

(c) Summarily dismissed submissions

2594. The Appeals Chamber notes that a number of Ćorić's arguments, challenging the Trial Chamber's findings on his involvement in crimes in the municipalities of Mostar and Gornji Vakuf: (1) merely repeat trial arguments without any demonstration that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber;⁸⁵⁰⁶

⁸⁵⁰³ See *supra*, paras 441-443.

⁸⁵⁰⁴ See *supra*, para. 866.

⁸⁵⁰⁵ See *supra*, paras 880-882.

⁸⁵⁰⁶ (1) Ćorić's Appeal Brief, paras 65, 157-158, 286, arguing, *inter alia*, that: (i) he could only issue implementing orders in light of decisions reached "at a higher authority", and neither the Military Police Administration nor he, but the "higher military structure, or political authorities, mostly local", could issue orders concerning checkpoints; (ii) OZ Commander Miljenko Lasić held the effective means to control the movement of people and the authority to directly command the Military Police for its deployment; (iii) Exhibit P01868 (a plan for intensified control over Mostar issued on 14 April 1993) shows that Ćorić was not "a key figure for checkpoints" in Mostar as he was excluded from the formulation of the plan, and was neither included as a recipient of nor listed among those with authority to implement the plan; and (iv) Ćorić took all measures to ensure that the Military Police's work at checkpoints was done properly. *Cf.* Ćorić's Final Brief, paras 303-304, 310, 313-314, 316-317, 322, 326-328, 642-643. The Appeals Chamber also notes that Ćorić repeats the same arguments elsewhere in his appeal brief that checkpoints were operated under the orders of military commanders rather than the Military Police Administration and that as Chief of the Military Police Administration, he exercised limited authority over checkpoints. See Ćorić's Appeal Brief, para. 158. See *supra*, para. 2501; (2) Ćorić's Appeal Brief, para. 310, arguing that the Trial Chamber did not take into account a Prosecution witness's testimony that the witness did not report the 14 July 1993 Buna Killing until 1996. *Cf.* Ćorić's Final Brief, para. 652; (3) Ćorić's Appeal Brief, paras 235-238, challenging the Trial Chamber's findings on his authority to control freedom of movement and the operation of checkpoints. *Cf.* Ćorić's Final Brief, paras 333-335, 642; (4) Ćorić's Appeal Brief, paras 38, 234, asserting that the Trial Chamber erred in its assessment of an order issued by Ćorić in

(2) do not contradict the Trial Chamber's findings;⁸⁵⁰⁷ (3) misrepresent the challenged factual findings;⁸⁵⁰⁸ (4) seek to substitute his interpretation of the evidence for that of the Trial Chamber without showing an error;⁸⁵⁰⁹ (5) are irrelevant;⁸⁵¹⁰ (6) are obscure;⁸⁵¹¹ or (7) are undeveloped.⁸⁵¹² Consequently, these submissions are summarily dismissed.

6. Conclusion

2595. In light of the foregoing, the Appeals Chamber dismisses all challenges to the Trial Chamber's findings related to Ćorić's contribution to, and his *mens rea* for, the JCE.

August 1993, by: (i) discounting the order when concluding that Operation "Spider" occurred only in June 1994; (ii) mischaracterising Vidović's testimony; and (iii) ignoring evidence that it took time to get manpower and resources in place for the operation to commence, as well as the impact of the deployment of troops to the front lines. Cf. Ćorić's Final Brief, para. 286. In addition, the Trial Chamber referred to Ćorić's trial arguments regarding the interpretation of Vidović's testimony in this respect. See Trial Judgement, Vol. 4, paras 931-932 & fn. 1748, referring to Ćorić's Final Brief, para. 286, Ćorić Closing Arguments, T. 52676-52677 (22 Feb 2011); and (5) Ćorić's Appeal Brief, paras 153, 232-233, 294, arguing that the Trial Chamber ignored the "bulk of evidence" as to the implementation of Operation "Spider", pointing to a number of exhibits, which allegedly demonstrate his pursuit of criminal investigations/procedures against HVO members in Mostar. Other than repeating his submissions on the evidence which are copied from his trial brief nearly verbatim (see Ćorić's Final Brief, paras 185, 217, 242, 249, 500, 644, 646-647), Ćorić fails to demonstrate how the remaining evidence such as Mostar military court registers shows an error in the relevant findings.

⁸⁵⁰⁷ Ćorić's Appeal Brief, para. 156, arguing that victims of the sniping incidents were all on the Muslim side of Mostar. See Trial Judgement, Vol. 2, paras 1188, 1194, Vol. 3, paras 672, 721, 1711.

⁸⁵⁰⁸ (1) Ćorić's Appeal Brief, paras 147-148, 300, arguing that the Trial Chamber: (i) concluded that Ćorić facilitated "legitimate military operations" in Gornji Vakuf; (ii) erroneously concluded that HVO military operations "by default involv[ed] crimes" and failed to consider the fighting between the ABiH and the HVO in this context; and (iii) "overstated" his contribution to the operations, as the evidence does not show that he was involved in planning these operations, but instead that he was not in BiH during the relevant time. Ćorić misrepresents the relevant findings on his JCE I responsibility for the crimes in Gornji Vakuf. See Trial Judgement, Vol. 2, paras 345, 348, 352, 359-364, 371, 377, 382, 385, 390, 392-394, 414, Vol. 4, paras 919-923, 1001.

⁸⁵⁰⁹ Ćorić's Appeal Brief, para. 148, arguing that on 5 January 1993, upon his superior's instruction he deployed Military Police units in Gornji Vakuf for security reasons and his report sent to Stojić on 5 January 1993 (Ex. P01053) does not mention that Military Police members were involved in crimes, although Military Police units were part of the HVO armed forces in combat in Uzričje and Ždrimci villages. See Trial Judgement, Vol. 2, para. 322, Vol. 4, para. 920, referring to Exs. P01053, P01635, P03090.

⁸⁵¹⁰ Ćorić's Appeal Brief, para. 156, arguing that: (1) the Trial Chamber did not find that the re-subordinated Military Police committed crimes, but that they were in Mostar where crimes were committed on all sides; and (2) although the Trial Chamber found that Ćorić was aware of snipers in the HVO, snipers are not illegal weapons. The Appeals Chamber additionally notes that insofar as Ćorić argues that crimes were committed on all sides, the Trial Chamber made findings that crimes were committed by HVO forces as part of the East Mostar siege. See Trial Judgement, Vol. 2, para. 1378, Vol. 4, para. 937. The evidence highlighted by Ćorić showing that international organisations sometimes came under attack from the ABiH was expressly considered by the Trial Chamber and does not affect the findings that the CCP crimes were committed by the HVO. See Trial Judgement, Vol. 2, para. 1262.

⁸⁵¹¹ Ćorić's Appeal Brief, para. 156, arguing that the fact that victims of the sniping incidents were all on the Muslim side of Mostar meant that they were "unreachable to [the Military Police]/Ćorić").

⁸⁵¹² (1) Ćorić's Appeal Brief, para. 151, making general submissions purporting to challenge findings regarding his contribution to the JCE through his involvement in the arrest campaign of Muslims in West Mostar in May 1993 and their subsequent detention, as well as findings on his involvement in the siege in East Mostar in the summer of 1993; (2) Ćorić's Appeal Brief, paras 151, 157, arguing that the Trial Chamber erred in finding that he knowingly contributed to the creation of unbearable living conditions for the population of East Mostar (see also Ćorić's Appeal Brief, paras 235, 237); (3) Ćorić's Appeal Brief, para. 236, arguing that his actions in East Mostar that the Trial Chamber relied upon "cannot reasonably give rise to an inference of [his] criminal intent [...] but rather demonstrate ordinary and normal efforts in legitimate activities"; and (4) Ćorić's Appeal Brief, para. 306, arguing that the Trial Chamber disregarded Witness NO's evidence and reached findings contrary to this evidence with regard to Gornji Vakuf. The Appeals Chamber also notes that Ćorić argues that the Trial Chamber erred in finding that he knowingly engaged Military Police in the eviction operations in Stolac and Čapljina in the summer of 1993. Ćorić's Appeal Brief, para. 144. He fails to provide any support for this assertion.

J. Alleged Errors In Relation to Berislav Pušić's Participation in the JCE

1. Introduction

2596. Berislav Pušić held various positions within the HVO military police between February and July 1993, including the position of “control officer” within the Department of Criminal Investigations of the Military Police Administration from at least February until 3 July 1993.⁸⁵¹³ He was subsequently appointed Head of the Exchange Service and President of the Detention Commission on 5 July and 6 August 1993, respectively.⁸⁵¹⁴ The Trial Chamber found that the Exchange Service was tasked with: (1) creating a database of prisoners and other persons relating to prisoner exchanges; (2) establishing relationships with “other parties” on the topic of prisoner exchange; and (3) preparing methods for exchange and co-operation with the international organisations and other authorities of the HZ H-B whose responsibilities involved the exchange of prisoners.⁸⁵¹⁵ The Trial Chamber found that the Detention Commission was responsible for: (1) resolving problems related to the detention centres and prisons in which “prisoners of war” were being held; (2) establishing a list of all the detainees; and (3) addressing issues relating to prisoner release and exchange.⁸⁵¹⁶ The Trial Chamber found that Pušić had various powers to act on behalf of the HVO in these areas and certain others, as discussed below, particularly in relation to the operation of the network of HVO detention centres.⁸⁵¹⁷ It further found that he shared – with the other members of the JCE – the intent to expel the Muslim population from the HZ(R) H-B⁸⁵¹⁸ and the intent for crimes associated with that expulsion,⁸⁵¹⁹ and that he significantly contributed to the CCP to that end.⁸⁵²⁰

2597. The Trial Chamber convicted Pušić pursuant to Article 7(1) of the Statute of committing, through participation in a JCE, the crimes charged in Counts 1 to 3, 6 to 13, 15, 16, 18, 19, 21, 24, and 25 of the Indictment.⁸⁵²¹ He was sentenced to a single sentence of ten years of imprisonment.⁸⁵²²

⁸⁵¹³ Trial Judgement, Vol. 4, paras 1028-1029, 1060. In addition to his functions within the Department of Criminal Investigations, the Trial Chamber found that Pušić represented the Military Police Administration or the HVO in negotiations for the exchange of detainees or bodies and that, as of October 1992 before the Exchange Service was created on 5 July 1993, he took part in organising several exchanges.

⁸⁵¹⁴ Trial Judgement, Vol. 4, paras 1030-1031, 1202.

⁸⁵¹⁵ Trial Judgement, Vol. 1, para. 659.

⁸⁵¹⁶ Trial Judgement, Vol. 1, para. 622. The Trial Chamber noted, however, that no evidence was adduced showing that the Commission carried out its assigned duties. Trial Judgement, Vol. 1, para. 625.

⁸⁵¹⁷ Trial Judgement, Vol. 4, paras 1033-1093, 1202-1207.

⁸⁵¹⁸ Trial Judgement, Vol. 4, para. 1208.

⁸⁵¹⁹ See, e.g., Trial Judgement, Vol. 4, paras 1203-1206.

⁸⁵²⁰ Trial Judgement, Vol. 4, para. 1209.

⁸⁵²¹ Trial Judgement, Vol. 4, Disposition, p. 431. These crimes were: persecution as a crime against humanity (Count 1); murder as a crime against humanity (Count 2); wilful killing as a grave breach of the Geneva Conventions (Count 3); deportation as a crime against humanity (Count 6); unlawful deportation of a civilian as a grave breach of the Geneva

2598. With regard to Pušić's participation in the JCE, the Trial Chamber found, in light of his contribution and interaction with other JCE members, that Pušić joined the JCE only as of April 1993 and that he remained in it until April 1994.⁸⁵²³ Pušić's grounds of appeal 1 and 6 challenge the Trial Chamber's findings on his powers to act on behalf of the HVO and his contribution, between April 1993 and April 1994,⁸⁵²⁴ to crimes committed pursuant to the JCE in the network of HVO detention centres and in the municipalities of Jablanica, Prozor, Čapljina, and Mostar.⁸⁵²⁵ Ground of appeal 5 challenges the Trial Chamber's finding that he possessed the requisite *mens rea* for JCE liability.⁸⁵²⁶ Under his ground of appeal 4, Pušić argues that the Trial Chamber erroneously concluded that he was a member of the JCE as it made an "over-inclusive application of JCE theory" in this case.⁸⁵²⁷ The Appeals Chamber will address each of these challenges, commencing with its analysis in relation to grounds of appeal 1 and 6.

2. Powers and contribution to the JCE (Pušić's Grounds 1 and 6)

(a) Overview of the arguments of the Parties

2599. Under ground of appeal 1, Pušić argues that the Trial Chamber erred in fact in its assessment of his powers within the HVO.⁸⁵²⁸ Specifically, he submits that the Trial Chamber's findings on his participation in the JCE are predicated on these errors, and that its errors therefore occasioned a miscarriage of justice warranting a reversal of his conviction.⁸⁵²⁹ He argues that no

Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9); imprisonment as a crime against humanity (Count 10); unlawful confinement of a civilian as a grave breach of the Geneva Conventions (Count 11); inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); unlawful labour as a violation of the laws or customs of war (Count 18); extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as a grave breach of the Geneva Conventions (Count 19); destruction or wilful damage done to institutions dedicated to religion or education as a violation of the laws or customs of war (Count 21); unlawful attack on civilians as a violation of the laws or customs of war (Count 24); and unlawful infliction of terror on civilians as a violation of the laws or customs of war (Count 25). The Trial Chamber found that the following crimes also fell within the framework of the JCE, meaning Pušić was also responsible for them, but did not enter convictions for them based on the principles relating to cumulative convictions: cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); cruel treatment as a violation of the laws or customs of war (Count 17); and wanton destruction of cities, towns, or villages, or devastation not justified by military necessity as a violation of the laws or customs of war (Count 20). See Trial Judgement, Vol. 4, para. 68, Disposition, p. 431. See also Trial Judgement, Vol. 4, paras 1260-1266.

⁸⁵²² Trial Judgement, Vol. 4, Disposition, p. 431.

⁸⁵²³ Trial Judgement, Vol. 4, para. 1229.

⁸⁵²⁴ Trial Judgement, Vol. 4, para. 1202.

⁸⁵²⁵ Pušić's Appeal Brief, paras 10-64, 141-227.

⁸⁵²⁶ Pušić's Appeal Brief, paras 112-140.

⁸⁵²⁷ Pušić's Appeal Brief, para. 110.

⁸⁵²⁸ Pušić's Appeal Brief, paras 10, 64.

⁸⁵²⁹ Pušić's Appeal Brief, paras 10-11.

reasonable trial chamber could have made the finding that he had any “significant” or “substantial” powers over any aspect of HVO operations and personnel.⁸⁵³⁰

2600. Under ground of appeal 6, Pušić argues that the Trial Chamber erred in law and fact when concluding that his acts, whether viewed individually or cumulatively, amounted to a significant contribution to the JCE.⁸⁵³¹ He further argues that the factors cited by the Trial Chamber as evidence of his participation were not linked to a CCP and that they instead reflect an erroneous premise that he had “effective control” over the perpetrators of crimes, a finding which he argues no reasonable trial chamber could have reached.⁸⁵³² In addition, he submits that the Trial Chamber did not consider the “normal criteria” for omission liability or whether a duty to prevent or punish existed between him and the physical perpetrators.⁸⁵³³ On this basis, he submits that his conviction should be quashed.⁸⁵³⁴

2601. Also under ground of appeal 6, but relying on ground of appeal 1, Pušić argues with regard to his participation in the operation of the network of HVO detention centres that, considering the Trial Chamber’s erroneous findings regarding his power and level of influence, he could not have made a significant contribution to the JCE by virtue of his conduct in relation to: (1) the implementation of a decision of Mate Boban, issued on 10 December 1993, ordering the closure of detention facilities on HR H-B territory by 17 December 1993 at the latest (“10 December 1993 Decision”);⁸⁵³⁵ (2) the registration and classification of detainees and the establishment of a database on them;⁸⁵³⁶ (3) the HVO’s overall detention and release policy;⁸⁵³⁷ (4) the transfer of detainees between detention centres;⁸⁵³⁸ (5) detention conditions in HVO facilities;⁸⁵³⁹ (6) his failure to denounce or report crimes and conditions of detention;⁸⁵⁴⁰ (7) forced labour assignments;⁸⁵⁴¹ (8) the release of detainees;⁸⁵⁴² and (9) international negotiations, including on

⁸⁵³⁰ Pušić’s Appeal Brief, para. 11. See also Appeal Hearing, AT. 697-698 (27 Mar 2017).

⁸⁵³¹ Pušić’s Appeal Brief, para. 141. See also Appeal Hearing, AT. 697-699 (27 Mar 2017).

⁸⁵³² Pušić’s Appeal Brief, para. 142.

⁸⁵³³ Pušić’s Appeal Brief, para. 154.

⁸⁵³⁴ Pušić’s Appeal Brief, para. 142.

⁸⁵³⁵ Pušić’s Appeal Brief, paras 173 (submitting that he played a minor administrative role in its implementation), 195(f)-(g). See Ex. P07096. See also Appeal Hearing, AT. 694 (27 Mar 2017).

⁸⁵³⁶ Pušić’s Appeal Brief, paras 177, 179, 212-213 (in relation to Gabela Prison), 217 (in relation to Ljubuški Prison).

⁸⁵³⁷ Pušić’s Appeal Brief, para. 178 (submitting that he had no hand in shaping the general contours of HVO detention and release policy). See also Pušić’s Appeal Brief, paras 195(e), 201.

⁸⁵³⁸ Pušić’s Appeal Brief, paras 184, 208-209 (in relation to Dretelj Prison), 215 (in relation to Gabela Prison), 219 (in relation to Ljubuški Prison). See also Pušić’s Appeal Brief, para. 180(f).

⁸⁵³⁹ Pušić’s Appeal Brief, paras 181, 186, 215 (in relation to Gabela Prison). See also Pušić’s Appeal Brief, paras 180(a)-(d).

⁸⁵⁴⁰ Pušić’s Appeal Brief, paras 180(g), 186, 210 (in relation to Dretelj Prison). See also Pušić’s Appeal Brief, para. 167 (in relation to crimes in Mostar Municipality). See also *infra*, paras 2745, 2752.

⁸⁵⁴¹ Pušić’s Appeal Brief, para. 189.

⁸⁵⁴² Pušić’s Appeal Brief, paras 199-200 (in relation to prisoner releases from July to 10 December 1993). Specifically, Pušić states that he did not have the power to release detainees without prior approval from his superiors. See also Pušić’s Appeal Brief, paras 195(a)-(c).

prisoner exchange.⁸⁵⁴³ Pušić submits that the Trial Chamber erred in fact and law when concluding that he made a significant contribution to any crimes committed in the Heliodrom or in Dretelj, Gabela, or Ljubuški Prisons pursuant to the JCE.⁸⁵⁴⁴ Pušić further argues that even taking the evidence relied upon by the Trial Chamber in respect of these issues “at its highest”, his conduct did not meet the threshold for participation in a JCE.⁸⁵⁴⁵

2602. With regard to Pušić’s ground of appeal 1, the Prosecution responds that Pušić fails to show any legal or factual errors in relation to the Trial Chamber’s findings on his powers and functions.⁸⁵⁴⁶ It submits that the Trial Chamber’s finding that Pušić held progressively increasing powers over HVO detainees between April 1993 and April 1994 is based on a broad range of evidence.⁸⁵⁴⁷ The Prosecution further submits that Pušić misunderstands the Trial Chamber’s analysis and the legal standards it applied to assess his responsibility.⁸⁵⁴⁸

2603. With regard to Pušić’s ground of appeal 6, the Prosecution responds that the Trial Chamber properly found that Pušić made a significant contribution to the CCP⁸⁵⁴⁹ and that a number of his arguments should be summarily dismissed.⁸⁵⁵⁰ It further argues that Pušić takes a piecemeal approach in challenging the Trial Chamber’s findings which misunderstands those findings and the governing law, on the basis of which the Trial Chamber concluded that together, his contributions to the JCE were significant.⁸⁵⁵¹ The Prosecution avers that Pušić’s factual challenges in relation to his contribution to crimes in various locations reveal his misunderstanding of the Trial Chamber’s findings.⁸⁵⁵² It submits that contrary to Pušić’s submissions, the Trial Chamber did not find, and did not need to find, that his contribution to crimes committed in each location amounted to a

⁸⁵⁴³ Pušić’s Appeal Brief, para. 203. Pušić specifies that he did not have the unilateral power to represent the HVO in international negotiations on prisoner exchange. See also Pušić’s Appeal Brief, paras 195(h)-(i).

⁸⁵⁴⁴ Pušić’s Appeal Brief, paras 180(e), 188, 192, 195(j), 205, 211, 216.

⁸⁵⁴⁵ Pušić’s Appeal Brief, paras 178-179 (in the context of the Trial Chamber’s finding that he accepted the unlawful detention of Muslims based on his powers to collate lists of those detained by the HVO), 186-187 (in the context of conditions of confinement and failure to denounce crimes), 190 (in the context of forced labour assignments), 194 (in the context of allegations that he obstructed efforts by representatives of the international community to visit detention centres), 201 (in the context of release and exchange of detainees), 204 (in the context of international negotiations, including on prisoner exchange).

⁸⁵⁴⁶ Prosecution’s Response Brief (Pušić), paras 8, 9, 55.

⁸⁵⁴⁷ Prosecution’s Response Brief (Pušić), para. 8. See also Appeal Hearing, AT. 701-703 (27 Mar 2017).

⁸⁵⁴⁸ Prosecution’s Response Brief (Pušić), para. 9.

⁸⁵⁴⁹ Prosecution’s Response Brief (Pušić), paras 140-142, 144, 176. See Appeal Hearing, AT. 701-703, 725 (27 Mar 2017).

⁸⁵⁵⁰ Prosecution’s Response Brief (Pušić), paras 177-178, 189 (in relation to Pušić’s argument with regard to failure to denounce crimes, arguing that the paragraphs of the Trial Judgement challenged by Pušić in fact relate to attempts to conceal HVO crimes), 192 (in relation to Pušić’s argument with regard to his role in granting or blocking access to the Heliodrom to international organisations, arguing that the Trial Chamber did not find that he prevented access to the Heliodrom), 196 (in relation to Pušić’s claim that his interactions with other JCE members are exaggerated, arguing that Pušić fails to connect this argument to exchange negotiations or substantiate his argument with accurate references to the Trial Judgement), 200 (in relation to Pušić’s argument with regard to failure to denounce crimes, arguing that Pušić fails to set forth an argument or identify any challenged factual findings).

⁸⁵⁵¹ Prosecution’s Response Brief (Pušić), paras 143, 152.

⁸⁵⁵² Prosecution’s Response Brief (Pušić), para. 152. See also Prosecution’s Response Brief (Pušić), para. 140.

significant contribution.⁸⁵⁵³ The Prosecution further responds that the Trial Chamber properly found, on the basis of a wide range of factual findings, that Pušić contributed to the CCP through the exercise of his powers, or his failure to exercise them, in relation to: (1) the implementation of the 10 December 1993 Decision;⁸⁵⁵⁴ (2) the registration and classification of detainees;⁸⁵⁵⁵ (3) the transfer of detainees between detention centres;⁸⁵⁵⁶ (4) detention conditions in HVO prison facilities;⁸⁵⁵⁷ (5) forced labour assignments;⁸⁵⁵⁸ and (6) the release and exchange of detainees, including international negotiations thereon.⁸⁵⁵⁹ The Prosecution submits that the Trial Chamber properly found that Pušić contributed to crimes committed at the Heliodrom⁸⁵⁶⁰ and at Dretelj,⁸⁵⁶¹ Gabela,⁸⁵⁶² and Ljubuški Prisons.⁸⁵⁶³

(b) Preliminary issues

2604. At the outset, the Appeals Chamber observes that the Trial Chamber relied upon its findings on Pušić's powers primarily for the purposes of providing the necessary context within which it evaluated his contribution to the JCE.⁸⁵⁶⁴ While the Trial Chamber made a number of findings on Pušić's involvement in a wide variety of crimes, it ultimately held:

With regard to his contribution to implementing the common criminal purpose, the Chamber holds that the evidence shows beyond reasonable doubt that it was significant. By virtue of his functions within the network of HVO detention centres, Berislav Pušić methodically organised the release of Muslims imprisoned by the HVO by ensuring their departure to ABiH-held territories or to third countries. By regularly informing the HVO government leadership about the progress of the implementation of Mate Boban's [10 December 1993 Decision], Berislav Pušić constituted the link between the workings of the network of HVO detention centres and the most important members of the JCE.⁸⁵⁶⁵

The Appeals Chamber notes that some of the findings impugned by Pušić in grounds 1 and 6 of his appeal, including, for example, findings as to his involvement in forced labour, spreading false

⁸⁵⁵³ Prosecution's Response Brief (Pušić), para. 152.

⁸⁵⁵⁴ Prosecution's Response Brief (Pušić), heading before para. 179, paras 176, 179 (referring to the Prosecution's response to ground of appeal 1). See Appeal Hearing, AT. 702, 708, 711-712, 714-720 (27 Mar 2017).

⁸⁵⁵⁵ Prosecution's Response Brief (Pušić), heading before para. 182, paras 176, 182, (referring to the Prosecution's response to ground of appeal 1).

⁸⁵⁵⁶ Prosecution's Response Brief (Pušić), heading before para. 187, paras 176, 187 (referring to the Prosecution's response to ground of appeal 1), 188.

⁸⁵⁵⁷ Prosecution's Response Brief (Pušić), heading before para. 185, paras 10, 176, 185 (referring to the Prosecution's response to ground of appeal 1).

⁸⁵⁵⁸ Prosecution's Response Brief (Pušić), heading before para. 190, paras 10, 176, 190 (referring to the Prosecution's response to ground of appeal 1). See Appeal Hearing, AT. 703, 711-714 (27 Mar 2017).

⁸⁵⁵⁹ Prosecution's Response Brief (Pušić), heading before para. 193, paras 10, 193 (in relation to the Heliodrom), heading before para. 194, para. 194 (referring to the Prosecution's response to ground of appeal 1), heading before para. 195, para. 195 (referring to the Prosecution's response to ground of appeal 1). See also Appeal Hearing, AT. 701-703, 711-712 (27 Mar 2017).

⁸⁵⁶⁰ Prosecution's Response Brief (Pušić), paras 180-181.

⁸⁵⁶¹ Prosecution's Response Brief (Pušić), paras 197-199 (referring to the Prosecution's response to ground of appeal 1).

⁸⁵⁶² Prosecution's Response Brief (Pušić), paras 201-202 (referring to the Prosecution's response to ground of appeal 1).

⁸⁵⁶³ Prosecution's Response Brief (Pušić), paras 204-205.

⁸⁵⁶⁴ See, e.g., Trial Judgement, Vol. 4, paras 1040-1041, 1093-1094, 1202. See also Trial Judgement, Vol. 4, paras 1023, 1036.

information, and in crimes committed in the municipalities (as distinct from the network of detention centres), do not strictly fall within the two categories of contribution outlined by the Trial Chamber, above. Notwithstanding this and recalling that a trial judgement must be read as a whole,⁸⁵⁶⁶ the Appeals Chamber considers that the Trial Chamber's finding that Pušić made a significant contribution to the JCE was premised not solely on these two stated factors, but instead on the totality of its findings under the heading "Berislav Pušić's Responsibility under JCE 1".⁸⁵⁶⁷ The Appeals Chamber will accordingly assess all of Pušić's challenges to the Trial Chamber's findings in these grounds of appeal on this basis.

2605. The Appeals Chamber also notes Pušić's argument that the Trial Chamber erred in law and fact when concluding that his acts, whether viewed individually or cumulatively, amounted to a significant contribution to the JCE. His arguments with regard to whether individual acts could constitute a significant contribution are addressed together with his legal arguments in relation to significant contribution, below.⁸⁵⁶⁸

2606. With regard to Pušić's submission that the Trial Chamber did not consider the "normal criteria" for omission liability, the Appeals Chamber first considers that this argument is best interpreted as alleging an error of law on the basis of a lack of reasoned opinion.⁸⁵⁶⁹ The Appeals Chamber further notes that the Trial Chamber referred on numerous occasions to Pušić's failure to take action in relation to certain crimes.⁸⁵⁷⁰ While these findings are generally framed in terms of Pušić's *mens rea*, the Appeals Chamber recalls that omissions may form part of an accused's contribution to a JCE,⁸⁵⁷¹ and notes that the Trial Chamber clearly considered Pušić's omissions in the context of his participation in the commission of crimes.⁸⁵⁷²

2607. The Appeals Chamber recalls, however, that it is necessary for an appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments that the appellant submits the trial chamber omitted to address and to explain

⁸⁵⁶⁵ Trial Judgement, Vol. 4, para. 1209.

⁸⁵⁶⁶ See *Stanišić and Župljanin* Appeal Judgement, paras 138, 202, 376, 705, 1107, 1115, 1148, 1155, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Šainović et al.* Appeal Judgement, paras 306, 321.

⁸⁵⁶⁷ Trial Judgement, Vol. 4, paras 1094-1212. See, in particular, Trial Judgement, Vol. 4, paras 1124-1125. See also Trial Judgement, Vol. 4, paras 1379-1380. The Appeals Chamber notes that this section of the Trial Judgement must be read together with, in particular, the sections titled "Functions of Berislav Pušić" and "Powers of Berislav Pušić". Trial Judgement, Vol. 4, paras 1027-1093.

⁸⁵⁶⁸ See *infra*, para. 2769.

⁸⁵⁶⁹ The Appeals Chamber notes in this regard that Pušić essentially argues that the Trial Chamber failed to consider whether a duty to prevent or punish existed between him and the physical perpetrators of this crime, submitting that this link is too tenuous for JCE liability to be incurred in this case. Pušić's Appeal Brief, para. 154.

⁸⁵⁷⁰ See Trial Judgement, Vol. 4, paras 1143, 1145, 1176, 1203, 1207.

⁸⁵⁷¹ *Kvočka et al.* Appeal Judgement, para. 187.

⁸⁵⁷² See Trial Judgement, Vol. 4, paras 1202-1203, 1207, 1379-1380.

why this omission invalidates the decision.⁸⁵⁷³ Pušić refers only to whether a duty to prevent or punish existed between him and the physical perpetrators; that is, he refers only to the duties imposed by the doctrine of superior responsibility.⁸⁵⁷⁴ The Appeals Chamber recalls that when establishing an accused's participation in a joint criminal enterprise through his failure to act, the existence of a legal duty to act deriving from a rule of criminal law is not required.⁸⁵⁷⁵ The nature of the accused's duty is instead a question of evidence and not determinative of joint criminal enterprise liability.⁸⁵⁷⁶ In the instant case, the Trial Chamber did in fact refer to Pušić's responsibilities in his various capacities: as an officer within the Military Police Administration,⁸⁵⁷⁷ as Head of the Exchange Service,⁸⁵⁷⁸ and as President of the Detention Commission.⁸⁵⁷⁹ The Appeals Chamber accordingly considers that Pušić has failed to demonstrate an oversight by the Trial Chamber which could invalidate its decision. His argument that the Trial Chamber failed to consider the "normal criteria" for omission liability is therefore dismissed.

2608. The Appeals Chamber will proceed by: (1) assessing Pušić's challenges to the Trial Chamber's findings as to his involvement, encompassing both his powers and contributions, in the HVO network of detention centres and in prisoner exchanges; (2) assessing Pušić's challenges to the Trial Chamber's findings as to his contribution to crimes in the municipalities; (3) assessing Pušić's challenges to the Trial Chamber's findings as to his spreading of false information in relation to HVO crimes; (4) addressing Pušić's submissions on the legal standard for determining what amounts to a "significant contribution"; and (5) applying this standard to Pušić's conduct in light of the outcome of his previous challenges in order to determine whether the Trial Chamber erred in finding that he made a significant contribution to the JCE.

⁸⁵⁷³ See *supra*, para. 19.

⁸⁵⁷⁴ See also *infra*, para. 2618.

⁸⁵⁷⁵ *Stanišić and Župljanin* Appeal Judgement, para. 110.

⁸⁵⁷⁶ *Stanišić and Župljanin* Appeal Judgement, para. 110 and references cited therein. The Appeals Chamber notes that insofar as Pušić's argument could be interpreted as an error of law by way of application of the wrong legal standard, it is premised on the misunderstanding that the duty in question must be that imposed by the doctrine of superior responsibility.

⁸⁵⁷⁷ See Trial Judgement, Vol. 4, paras 1029, 1081, 1204.

⁸⁵⁷⁸ See Trial Judgement, Vol. 4, paras 1061-1063, 1081, 1196, 1203. See also Trial Judgement, Vol. 1, paras 658-661.

⁸⁵⁷⁹ See Trial Judgement, Vol. 4, paras 1031, 1039, 1207. See also Trial Judgement, Vol. 1, para. 622.

(c) The network of HVO detention centres(i) Overall decision-making powersa. Arguments of the Parties

2609. Pušić argues that the Trial Chamber made contradictory findings with regard to his decision-making authority.⁸⁵⁸⁰ He specifies that in one section of the Trial Judgement, concerning his role in negotiations with the ABiH and international actors, it found that he depended on his superiors and therefore had “non-autonomous” decision-making powers, while in another section, dealing with his control over detention centres, it held that he had autonomous decision-making powers.⁸⁵⁸¹ Pušić claims that the Trial Chamber distinguished between these categories, with the former referred to as “significant” powers and the latter referred to as “substantial” powers.⁸⁵⁸² He describes this distinction as artificial and as a way for the Trial Chamber to avoid linking the evidence of international community witnesses to that of Witness Marijan Biškić on the question of Pušić’s involvement in the “internal, rather than external communication operations of the HVO”.⁸⁵⁸³ Pušić submits that by not addressing this “conundrum” with regard to his powers to make decisions, the Trial Chamber drew conclusions that are inconsistent with, or directly contradict, other findings.⁸⁵⁸⁴ Further to this argument, Pušić contrasts the Trial Chamber’s finding that he was a “mid-low ranking HVO official” who acted as the link between HVO detention centres and the HVO leadership because of his substantial powers in relation to those centres with its other findings that: (1) he was only in occasional direct contact with HVO leaders; (2) most of his communication with those leaders was through his written reports; and (3) there is little reference to directives, orders, or commands from the HVO leaders to Pušić, as could be expected if he were an important and influential HVO official.⁸⁵⁸⁵

2610. The Prosecution responds that the Trial Chamber did not need to find that Pušić had policy-making or decision-making powers as the level of authority of an accused is not, in and of itself, determinative of whether he made a significant contribution to a JCE.⁸⁵⁸⁶ It further argues that there is no legal relevance to the distinction between “significant” and “substantial” powers highlighted by Pušić as: (1) the authoritative French version of the Trial Judgement consistently refers to his powers as “important”; and (2) the Trial Chamber was not required to find that his

⁸⁵⁸⁰ Pušić’s Appeal Brief, paras 22, 24.

⁸⁵⁸¹ Pušić’s Appeal Brief, paras 22-24.

⁸⁵⁸² Pušić’s Appeal Brief, para. 24; Appeal Hearing, AT. 684, 698, 735-736 (27 Mar 2017). See also Pušić’s Appeal Brief, paras 10(d)-(e).

⁸⁵⁸³ Pušić’s Appeal Brief, para. 24.

⁸⁵⁸⁴ Pušić’s Appeal Brief, para. 27.

⁸⁵⁸⁵ Pušić’s Appeal Brief, para. 27(a). See also Pušić’s Appeal Brief, para. 62.

⁸⁵⁸⁶ Prosecution’s Response Brief (Pušić), para. 16. See also Appeal Hearing, AT. 710-711 (27 Mar 2017).

powers were “significant” or “substantial” to conclude that he significantly contributed to the JCE.⁸⁵⁸⁷ The Prosecution submits that this was not necessary because the Trial Chamber concluded that Pušić was the link between the detention centres and the most important members of the JCE, a finding that was not dependent on his possessing substantial powers.⁸⁵⁸⁸ The Prosecution avers that Pušić fulfilled this role by regularly informing the HVO leaders about the implementation of the 10 December 1993 Decision.⁸⁵⁸⁹

b. Analysis

2611. With regard to Pušić’s submission that the Trial Chamber drew an artificial distinction between “significant” and “substantial” powers, the Appeals Chamber notes that Pušić relies upon paragraphs which, in the authoritative French original of the Trial Judgement, consistently refer to his powers and role as “*important*”.⁸⁵⁹⁰ The varying use of the words “significant” and “substantial” in the English translation of the Trial Judgement is of no legal import. Pušić’s argument in this regard is accordingly dismissed. His contention that this distinction was a way for the Trial Chamber to avoid linking the evidence of international community witnesses to that of Biškić is therefore moot. Insofar as this argument may be parsed on its own terms, that is, insofar as Pušić argues that the Trial Chamber erred by failing to link these testimonies so as to arrive at his preferred conclusion that his authority over internal operations of the HVO was of the same “non-autonomous” nature as his involvement in the HVO’s external communications, the Appeals Chamber notes that the Trial Chamber relied upon a broad range of evidence in arriving at its conclusions as to his powers in different areas.⁸⁵⁹¹ Pušić simply seeks to substitute his own evaluation of the evidence for that of the Trial Chamber, without showing that the Trial Chamber erred. In any case, there is no legal requirement that an individual possess “autonomous” decision-making powers in order to make a significant contribution to a JCE, and it is not clear from Pušić’s argument how an error in this regard could have occasioned a miscarriage of justice. This argument is dismissed.

2612. As to Pušić’s argument that the Trial Chamber made generally contradictory findings on his decision-making authority, the Appeals Chamber considers that there is nothing inherently contradictory in the findings that he held differing levels of authority in different areas. The

⁸⁵⁸⁷ Prosecution’s Response Brief (Pušić), paras 17, 41.

⁸⁵⁸⁸ Prosecution’s Response Brief (Pušić), para. 18. See also Appeal Hearing, AT. 702-703, 711-712, 718 (27 Mar 2017).

⁸⁵⁸⁹ Prosecution’s Response Brief (Pušić), para. 18.

⁸⁵⁹⁰ Trial Judgement (F), Vol. 4, paras 1056, 1202-1203.

⁸⁵⁹¹ Trial Judgement, Vol. 4, paras 1044-1046, 1049-1050, 1052, 1054, 1056, 1059-1063, 1065-1067, 1070-1081, 1084-1093 and references cited therein.

Trial Chamber's statement that Pušić was in occasional direct contact with HVO leaders⁸⁵⁹² does not undermine its subsequent finding that he acted as the link between the workings of the network of HVO detention centres and the most important members of the JCE.⁸⁵⁹³ This characterisation of Pušić's role is clearly supported by the Trial Chamber's finding that there was regular interaction between Pušić and certain HVO leaders, including Jadranko Prlić, Perica Jukić, and Valentin Ćorić, as well as interaction from time to time with other HVO and Croatian leaders, including Biškić and Mate Granić.⁸⁵⁹⁴ The fact that this contact was mostly conducted in writing is irrelevant; the format of the communication between Pušić and the most important members of the JCE cannot show that no reasonable trier of fact could have reached the impugned finding.⁸⁵⁹⁵

2613. With regard to Pušić's argument that there is little reference to directives, orders, or commands from the HVO leaders to Pušić, as he submits could be expected if he were an important and influential HVO official, the Appeals Chamber recalls that the Trial Chamber made its findings on his interactions with the HVO leadership on the basis of a wide array of evidence, including his appointments, the tasks assigned to him, his contact with members of the HVO leadership, and his interaction with representatives of international organisations.⁸⁵⁹⁶ Pušić's counter-factual assertion is speculative in nature and ignores the Trial Chamber's relevant factual findings. It is dismissed on that basis. In view of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's findings as to his overall decision-making powers.

(ii) Identification of subordinates

a. Arguments of the Parties

2614. Pušić argues that in a "leadership case" such as this one, it was essential for the Trial Chamber to identify: (1) his subordinates; (2) his relationship with the HVO command structure vis-à-vis these subordinates; and (3) whether he had "effective control" over these subordinates' activities.⁸⁵⁹⁷ He adds that the Trial Chamber failed to identify his subordinates in relation to all three positions he held during the period covered by the Indictment: employee of the Military Police, Head of the Exchange Service, and President of the Detention Commission.⁸⁵⁹⁸ He submits that the Trial Chamber was unable to explain his position within the HVO chain of

⁸⁵⁹² Trial Judgement, Vol. 4, para. 1086. See also Trial Judgement, Vol. 4, paras 1087, 1089.

⁸⁵⁹³ Trial Judgement, Vol. 4, para. 1209.

⁸⁵⁹⁴ Trial Judgement, Vol. 4, para. 1093.

⁸⁵⁹⁵ Trial Judgement, Vol. 4, para. 1089.

⁸⁵⁹⁶ Trial Judgement, Vol. 4, paras 1084-1093 and references cited therein.

⁸⁵⁹⁷ Pušić's Appeal Brief, paras 17-18. See also Pušić's Appeal Brief, para. 16.

⁸⁵⁹⁸ Pušić's Appeal Brief, para. 18. See also Appeal Hearing, AT. 740-741 (27 Mar 2017).

command as a result of this failure.⁸⁵⁹⁹ Pušić further argues that he cannot be linked by way of a superior-subordinate relationship to the direct perpetrators of the relevant crimes through any of these positions, in particular considering that there is no clear evidence that the first two positions entailed any *de jure* powers over issues such as prisoner releases, conditions of detention, forced labour, or exchange negotiations.⁸⁶⁰⁰ According to Pušić, while the Detention Commission had some *de jure* authority over such issues, it was in fact entirely ineffective.⁸⁶⁰¹

2615. Pušić therefore submits that the Trial Chamber failed to establish his relationship with “the key personnel who occasioned the crimes that he has been convicted of” in the essential areas where he was found to have exercised “substantial” or “significant” powers, including his relationships with: (1) prison wardens and their staff; (2) military personnel who took prisoners on forced labour assignments; (3) military personnel manning checkpoints and controlling the movement of humanitarian aid and people; and (4) military personnel who committed crimes.⁸⁶⁰² He argues that the failure to identify his subordinates or his exact place in the HVO hierarchy raises the question of how he could have exercised substantial or significant powers over any aspect of the HVO.⁸⁶⁰³

2616. The Prosecution responds that it was not necessary for the Trial Chamber to find that Pušić had superior authority over the direct perpetrators of crimes and that Pušić conflates the legal requirements for responsibility under Articles 7(1) and 7(3) of the Statute.⁸⁶⁰⁴ It adds that none of Pušić’s contributions to the JCE rely on his position within the HVO chain of command or his effective control over physical perpetrators.⁸⁶⁰⁵ According to the Prosecution, Pušić’s furtherance of the JCE is established through his use of powers over HVO detainees.⁸⁶⁰⁶ It adds that he had sufficient power and influence over the members and structures of the HVO to make a significant contribution to the implementation of the JCE.⁸⁶⁰⁷

2617. Pušić submits in reply that he does not conflate elements of accountability under the doctrine of superior responsibility with JCE liability and argues that the failure to identify his

⁸⁵⁹⁹ Pušić’s Appeal Brief, para. 20. Pušić adds that the Exchange Service was answerable to “the HVO of the HZ(R) HB”, a fact which in his view “does not explain” how he had authority to issue orders to staff at the Heliodrom or to military personnel in Mostar.

⁸⁶⁰⁰ Pušić’s Appeal Brief, para. 19. See also Appeal Hearing, AT. 685-686, 691 (27 Mar 2017).

⁸⁶⁰¹ Pušić’s Appeal Brief, para. 19.

⁸⁶⁰² Pušić’s Appeal Brief, paras 20-21.

⁸⁶⁰³ Pušić’s Appeal Brief, paras 25-26.

⁸⁶⁰⁴ Prosecution’s Response Brief (Pušić), paras 9, 14, 28; Appeal Hearing, AT. 710 (27 Mar 2017). See also Prosecution’s Response Brief (Pušić), para. 148 (arguing that JCE members need not have “effective control” over direct perpetrators involved in the commission of crimes and that the Trial Chamber neither made nor was required to make findings on his effective control).

⁸⁶⁰⁵ Prosecution’s Response Brief (Pušić), paras 14-15.

⁸⁶⁰⁶ Prosecution’s Response Brief (Pušić), para. 15. See also Appeal Hearing, AT. 710.

⁸⁶⁰⁷ Prosecution’s Response Brief (Pušić), para. 15.

subordinates shows that he was unable to exercise any of the powers attributed to him by the Trial Chamber.⁸⁶⁰⁸

b. Analysis

2618. The Appeals Chamber first notes that the Trial Chamber did not engage in an explicit process of identifying any subordinates to Pušić in relation to his various positions during the relevant period. It considers, however, that the Trial Chamber was not required to do so. Pušić's argument inappositely refers to "effective control" over the activities of subordinates, a requirement for liability under Article 7(3) of the Statute, not under Article 7(1).⁸⁶⁰⁹

2619. With regard to his argument in reply that the failure to identify his subordinates shows that he was unable to exercise the powers attributed to him by the Trial Chamber, the Appeals Chamber first considers that possession of *de facto* powers is not necessarily dependent on having formally identified subordinates within a hierarchical structure. In this instance, for example, the Trial Chamber found that Pušić was appointed as Head of the Exchange Service by the HVO in a decision signed by Prlić, and President of the Detention Commission by Stojić in his capacity as Head of the Department of Defence.⁸⁶¹⁰ It further found that the Detention Commission came under the authority of the Department of Defence, while the Exchange Service was answerable to the HVO of the HZ H-B.⁸⁶¹¹ Pušić fails to demonstrate that no reasonable trier of fact could have relied on, *inter alia*, these mandates from the HVO leadership to determine that he had specified powers, regardless of whether those powers were exercised through formal superior-subordinate relationships. The Trial Chamber's approach finds further support in its reliance on a broad range of evidence in arriving at its conclusions as to his powers in different areas.⁸⁶¹² Its findings also make reference to "orders" issued by Pušić on numerous occasions,⁸⁶¹³ which substantiate its conclusions as to his powers in various areas. Pušić's argument is falsely premised and ignores these relevant factual findings, and is accordingly dismissed.⁸⁶¹⁴

⁸⁶⁰⁸ Pušić's Reply Brief, paras 7, 10.

⁸⁶⁰⁹ *Kvočka et al.* Appeal Judgement, para. 104.

⁸⁶¹⁰ Trial Judgement, Vol. 1, paras 622, 658, Vol. 4, paras 1030-1031.

⁸⁶¹¹ Trial Judgement, Vol. 1, paras 622, 665.

⁸⁶¹² Trial Judgement, Vol. 4, paras 1044-1046, 1049-1050, 1052, 1054, 1056, 1059-1063, 1065-1067, 1070-1081, 1084-1093 and references cited therein.

⁸⁶¹³ Trial Judgement, Vol. 4, paras 1056, 1088, 1109-1110, 1130, 1147, 1151, 1156-1157, 1163, 1178-1179, 1182.

⁸⁶¹⁴ So too is his argument, as the Appeals Chamber understands it, that the Trial Chamber contradicted itself by finding on the one hand that the Exchange Service was answerable to the "HVO of the HZ(R) HB" and on the other hand that Pušić had the authority to issue orders to staff at the Heliodrom or to military personnel in Mostar. The Appeals Chamber can see no irreconcilable contradiction between the finding that the Exchange Service was ultimately answerable to the "HVO of the HZ(R) HB" and a finding that Pušić had authority to issue orders to staff at the Heliodrom or to military personnel in Mostar.

2620. Finally, Pušić's argument that the Trial Chamber therefore failed to establish his relationship with "the key personnel who occasioned the crimes he has been convicted of" is also dismissed as it is wholly contingent on his prior argument with regard to the Trial Chamber's supposed failure to identify his subordinates. In any case, the Appeals Chamber recalls that close co-operation between a principal perpetrator and a JCE member is but one of various factors from which a trial chamber may infer that a crime formed part of the common purpose and is thus imputable to JCE members.⁸⁶¹⁵

(iii) Testimony of Witness Marijan Biškić

a. Arguments of the Parties

2621. Pušić submits that the Trial Chamber failed to address "the clear and obvious glaring contradiction" between the testimony of Witness Marijan Biškić, the HVO Assistant Minister for Security in the Department of Defence, and its own conclusions regarding Pušić's powers, thereby erring in law by failing to "provide sufficient reasons" for those conclusions.⁸⁶¹⁶ He further argues that when it made its findings regarding his powers, the Trial Chamber erred in fact by disregarding exculpatory evidence from Biškić.⁸⁶¹⁷ Specifically, Pušić contends that Biškić's evidence concerning Pušić, including his report on the work of the Military Police, SIS, and the operation and management of HVO detention centres, confirmed that Pušić had no powers over any aspect of HVO activity.⁸⁶¹⁸ According to Pušić, Biškić could not have been better placed to reach this conclusion as he occupied a far more influential position within the HVO than Pušić did and was one of the superiors Pušić had to approach when making any requests.⁸⁶¹⁹ He adds that if he "really" had decision-making powers, he would not have been issuing proposals and suggestions, but orders.⁸⁶²⁰

2622. The Prosecution submits that the Trial Chamber appropriately considered the testimony of Biškić and that his evidence does not undermine the findings on Pušić's powers.⁸⁶²¹ It adds that the Trial Chamber explicitly cited Biškić's evidence when it discussed Pušić's role in implementing the 10 December 1993 Decision, and that in instances where it did not explicitly cite this evidence it

⁸⁶¹⁵ See *Šainović et al.* Appeal Judgement, para. 1257; *Brdanin* Appeal Judgement, para. 410.

⁸⁶¹⁶ Pušić's Appeal Brief, paras 13-15, referring to, *inter alia*, Marijan Biškić, T. 15326 (8 Mar 2007). See also Pušić's Reply Brief, para. 4, where Pušić argues that Biškić's evidence on his influence in January 1994 is "completely at odds" with the Trial Chamber's findings on his powers. Pušić further submits that the Trial Chamber failed to explain why Biškić's evidence concerning his powers was unreliable, and that the single reference to his evidence made by the Trial Chamber in fact shows Pušić's limited powers. Pušić's Appeal Brief, para. 13.

⁸⁶¹⁷ Pušić's Appeal Brief, paras 12, 14.

⁸⁶¹⁸ Pušić's Appeal Brief, para. 12. See also Appeal Hearing, AT. 741 (27 Mar 2017).

⁸⁶¹⁹ Pušić's Appeal Brief, para. 13; Pušić's Reply Brief, para. 5.

⁸⁶²⁰ Pušić's Reply Brief, para. 4. See also Pušić's Reply Brief, para. 10.

⁸⁶²¹ Prosecution's Response Brief (Pušić), para. 11. See also Appeal Hearing, AT. 714 (27 Mar 2017).

was either unrelated to the relevant findings or merely corroborated other evidence on which the Trial Chamber relied.⁸⁶²² The Prosecution argues that the fact that the Trial Chamber did not refer to some of Biškić's evidence does not mean that it disregarded it, as a trial chamber is presumed to have evaluated all evidence unless it is shown that it completely disregarded evidence clearly relevant to the findings.⁸⁶²³ It further argues that Biškić's evidence is limited to Pušić's role in the dismantling of HVO detention centres, and that Biškić had only limited knowledge of Pušić's activities prior to 8 November 1993, when Biškić arrived to BiH.⁸⁶²⁴ The Prosecution further submits that Pušić misrepresents Biškić's statement that Pušić could not issue orders to Biškić or anyone else, as this statement was made in a specific context which supports the Trial Chamber's finding that Pušić had the ability to propose detainee transfers from the Heliodrom.⁸⁶²⁵

2623. Pušić replies that the Prosecution "distorts the true significance" of Biškić's evidence and stresses that it concerned Pušić's general authority.⁸⁶²⁶ He argues that the Prosecution fails to place Biškić's testimony in the proper context and challenges on this basis the Trial Chamber's finding that he was a "key player" in the closing of HVO detention centres.⁸⁶²⁷ In addition, Pušić submits that the fact that Biškić learned of Pušić only around the time of the 10 December 1993 Decision, when he had already acquainted himself with the operation of the HVO detention centres since November 1993, shows that the Trial Chamber's findings regarding Pušić's increasing powers in this period are inconsistent with Biškić's evidence.⁸⁶²⁸

b. Analysis

2624. With regard to Pušić's argument that the Trial Chamber erred in law by virtue of its failure to address "the clear and obvious glaring contradiction" between Biškić's testimony and its conclusions regarding Pušić's powers, the Appeals Chamber observes that the Trial Chamber did not refer to the portion of Biškić's testimony upon which Pušić relies in his appeal. The Appeals Chamber recalls that a trial chamber need not refer to every witness testimony or every piece of evidence on the record and that there is a presumption that the trial chamber evaluated all evidence presented to it, as long as there is no indication that the trial chamber completely

⁸⁶²² Prosecution's Response Brief (Pušić), para. 12.

⁸⁶²³ Prosecution's Response Brief (Pušić), para. 12, referring to *Krajišnik* Appeal Judgement, para. 19, *Kvočka et al.* Appeal Judgement, para. 23.

⁸⁶²⁴ Prosecution's Response Brief (Pušić), para. 13.

⁸⁶²⁵ Prosecution's Response Brief (Pušić), para. 13.

⁸⁶²⁶ Pušić's Reply Brief, para. 3, referring to Marijan Biškić, T. 15326 (8 Mar 2007).

⁸⁶²⁷ Pušić's Reply Brief, para. 4. Pušić also refers to the fact that the Trial Chamber could find no evidence that his proposal to Biškić to transfer detainees from the Heliodrom to Gabela Prison was acted on. Pušić's Reply Brief, paras 3-4.

⁸⁶²⁸ Pušić's Reply Brief, paras 5-6.

disregarded evidence which is clearly relevant.⁸⁶²⁹ In the instant case, the Appeals Chamber considers Biškić's testimony to be clearly relevant to Pušić's powers. However, a trial chamber's failure to explicitly refer to specific evidence on the record will often not amount to an error of law, especially when there is significant contrary evidence on the record.⁸⁶³⁰

2625. In the testimony in question, Counsel for Pušić put it to Biškić that Pušić could only issue him a proposal and not an order, to which Biškić responded: "He could not issue an order to me or to anybody else, I believe."⁸⁶³¹ This statement, which was not elaborated upon, followed an explanation by Biškić for his declining a proposal by Pušić to transfer detainees from the Heliodrom to Gabela Prison, in line with a policy that detainees should either continue to be held at the Heliodrom or, if they were to be transferred, be transferred to Ljubuški Prison.⁸⁶³² Having examined the relevant transcripts, it is unclear to the Appeals Chamber whether Biškić's statement was limited to the specific context within which the exchange took place or whether it was intended as a general statement on Pušić's authority, although the declarative terms in which the statement was made tend to support the latter interpretation. It is clear, however, that Biškić's knowledge of Pušić's role was limited by the fact that his first contact with him was subsequent to the 10 December 1993 Decision.⁸⁶³³ As such, Pušić's contention that Biškić could not have been better placed to reach a conclusion as to his powers is plainly inaccurate, notwithstanding his position or his reporting activities. The Appeals Chamber further notes the abundance of other evidence upon which the Trial Chamber relied in reaching its conclusions as to Pušić's powers and which Pušić again ignores,⁸⁶³⁴ including numerous instances of Pušić issuing or co-signing orders.⁸⁶³⁵ In light of this, the Appeals Chamber considers that while the evidence was clearly relevant, it is not convinced that even Pušić's favoured interpretation of Biškić's statement could demonstrate an error of law invalidating the Trial Judgement as it pertains to Pušić's powers, including the findings regarding his increasing powers in the period referred to in his reply. The Appeals Chamber therefore dismisses these arguments.

2626. The Appeals Chamber considers speculative Pušić's argument that if he "really" had decision-making powers, he would not have been issuing proposals and suggestions but orders. As

⁸⁶²⁹ *Kvočka et al.* Appeal Judgement, paras 23-24. See also *Tolimir* Appeal Judgement, paras 53, 161, 299; *Popović et al.* Appeal Judgement, paras 925, 1017.

⁸⁶³⁰ *Stanišić and Župljanin* Appeal Judgement, para. 537; *Tolimir* Appeal Judgement, para. 53; *Perišić* Appeal Judgement, para. 95.

⁸⁶³¹ Marijan Biškić, T. 15326 (8 Mar 2007).

⁸⁶³² Marijan Biškić, T(F). 15326 (8 Mar 2007). The English version of the transcript erroneously omits the reference to Ljubuški Prison. Marijan Biškić, T. 15326 (8 Mar 2007).

⁸⁶³³ Marijan Biškić, T. 15317-15318 (8 Mar 2007).

⁸⁶³⁴ Trial Judgement, Vol. 4, paras 1044-1046, 1049-1050, 1052, 1054, 1056, 1059-1063, 1065-1067, 1070-1081, 1084-1093 and references cited therein.

⁸⁶³⁵ Trial Judgement, Vol. 4, paras 1109, 1130, 1147, 1151, 1156-1157, 1163, 1178-1179, 1182 and references cited therein.

such, it constitutes an attempt to substitute his interpretation of the evidence for that of the Trial Chamber, without having shown an error in the Trial Chamber's assessment. In any event, as the Appeals Chamber has already noted, the Trial Chamber referred to Pušić issuing or co-signing orders on numerous occasions.⁸⁶³⁶ This argument is dismissed.

2627. In light of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error by the Trial Chamber in its consideration of the testimony of Marijan Biškić.

(iv) Role as an HVO representative before the international community, including in relation to prisoner exchange and release

2628. The Trial Chamber found, with regard to the extent to which Pušić had the authority to act directly on behalf of the HVO, that the evidence indicated that he depended on his superiors, whom he consulted and reported to when making a decision.⁸⁶³⁷ It then noted, however, that several items of evidence related to prisoner exchange and release indicated that he had significant and even decision-making powers of representation within the HVO in contacts with the international community.⁸⁶³⁸ On that basis, the Trial Chamber found that Pušić had the authority to represent the HVO before the international community on matters related to the exchange and release of Muslim detainees held in HVO prisons.⁸⁶³⁹ It further found that he was occasionally given responsibility for dealing with issues other than exchange and release of detainees, such as humanitarian evacuations, and did so in the presence of the international community.⁸⁶⁴⁰ In these cases it considered that Pušić had "broad authority" as an HVO representative before the international community, but not "autonomous decision-making powers".⁸⁶⁴¹

a. Arguments of the Parties

2629. Pušić submits that the Trial Chamber erred in fact when it found that he had "significant" powers to represent the HVO in any capacity.⁸⁶⁴² He adds that most of the meetings he attended were low-level direct negotiations with "the BiH" where he was part of a larger HVO delegation

⁸⁶³⁶ Trial Judgement, Vol. 4, paras 1109, 1130, 1147, 1151, 1156-1157, 1163, 1178-1179, 1182 and references cited therein.

⁸⁶³⁷ Trial Judgement, Vol. 4, para. 1079.

⁸⁶³⁸ Trial Judgement, Vol. 4, para. 1080.

⁸⁶³⁹ Trial Judgement, Vol. 4, para. 1081. This authority was *de facto* prior to 5 July 1993, and *de jure* subsequent to that date and his appointment to the post of Head of the Exchange Service. Trial Judgement, Vol. 4, para. 1081.

⁸⁶⁴⁰ Trial Judgement, Vol. 4, para. 1081.

⁸⁶⁴¹ Trial Judgement, Vol. 4, para. 1081.

⁸⁶⁴² Pušić's Appeal Brief, para. 44. See also Pušić's Appeal Brief, para. 63.



with HVO leaders attending higher-level gatherings.⁸⁶⁴³ He stresses that the Trial Chamber found that it had little information about his involvement in the higher-level meetings.⁸⁶⁴⁴

2630. Pušić contends that the Trial Chamber's findings on his dealings with the international community are also impermissibly vague.⁸⁶⁴⁵ Pušić submits that in light of the Trial Chamber's findings that he did not have any autonomous decision-making powers in this respect, it is logical to conclude that he only acted as a messenger or spokesperson for the HVO leadership.⁸⁶⁴⁶ Moreover, he argues that the Trial Chamber's findings regarding his lack of autonomous powers in his dealings with the representatives of the international community cannot be reconciled with its conclusions concerning his role in blocking humanitarian aid in Mostar.⁸⁶⁴⁷ In this regard, Pušić argues that whenever he made pronouncements which suggested that he had decision-making powers, he was overstating his influence.⁸⁶⁴⁸ Similarly, Pušić argues that when he signed or approved agreements in the presence of international representatives "it is fair to infer that this did not reflect the exercise of any autonomous powers on his part".⁸⁶⁴⁹

2631. Pušić argues that his interaction with the HVO leadership concerning the progress of exchange initiatives was largely one-sided and took the form of sending reports in writing, with little evidence of response.⁸⁶⁵⁰ With regard to the finding that Pušić had occasional or regular contact with the HVO leadership, Pušić refers to a statement by expert Witness William Tomljanovich indicating that he attended only one HVO HZ-HB session.⁸⁶⁵¹ He contends that the significance of this conduct has been exaggerated and that it does not meet the threshold for participation in a JCE as it did not have a significant impact on its execution.⁸⁶⁵² Moreover, he submits, there is no suggestion in the Trial Chamber's findings that an officer of his rank could have influenced the HVO policy on exchanges of prisoners, or that he played any role in shaping the 10 December 1993 Decision.⁸⁶⁵³

2632. Pušić also argues that the Trial Chamber applied an incorrect standard of proof when it concluded that "on occasions he may have had a 'decision-making power of representation' or

⁸⁶⁴³ Pušić's Appeal Brief, para. 44; Pušić's Reply Brief, para. 17.

⁸⁶⁴⁴ Pušić's Appeal Brief, para. 44; Pušić's Reply Brief, para. 17.

⁸⁶⁴⁵ Pušić's Appeal Brief, para. 27(b), referring to Trial Judgement, Vol. 4, para. 1081.

⁸⁶⁴⁶ Pušić's Appeal Brief, para. 44. On this issue, he also notes a Trial Chamber finding that "before making any pronouncements" he would have to consult with and report to HVO leaders.

⁸⁶⁴⁷ Pušić's Appeal Brief, para. 27(c); Pušić's Reply Brief, para. 18.

⁸⁶⁴⁸ Pušić's Appeal Brief, para. 45.

⁸⁶⁴⁹ Pušić's Appeal Brief, para. 45.

⁸⁶⁵⁰ Pušić's Appeal Brief, para. 202.

⁸⁶⁵¹ Pušić's Reply Brief, para. 9, referring to William Tomljanovich, T. 6402-6403 (11 Sept 2006).

⁸⁶⁵² Pušić's Appeal Brief, para. 202. See also Pušić's Appeal Brief, para. 195(d). Specifically, Pušić submits that the fact that his actions in relation to exchanges of prisoners required prior approval from the HVO leadership indicates that his role was limited. Pušić's Appeal Brief, para. 48.

⁸⁶⁵³ Pušić's Appeal Brief, para. 48.

significant power of representation and was thus a key player” in prisoner exchange negotiations.⁸⁶⁵⁴ He adds that these conclusions are impermissibly vague and imprecise.⁸⁶⁵⁵ He further argues that due to this inconsistency and ambiguity, the Trial Chamber erred in failing to provide a properly reasoned decision.⁸⁶⁵⁶

2633. The Prosecution submits in response that the Trial Chamber reasonably found that between October 1992 and April 1994, Pušić had the authority to choose which detainees would be exchanged, and to propose, negotiate, and organise the exchanges.⁸⁶⁵⁷ It further submits that his role in this field was a key one as he was a representative of the HVO before the international community and in interactions with representatives of BiH and Croatia.⁸⁶⁵⁸ According to the Prosecution, the Trial Chamber’s findings in this respect are based on ample evidence which shows that: (1) Pušić exercised *de facto* powers related to prisoner exchanges as early as October 1992 as a member of the Military Police, and by 1 April 1993, he was the Military Police officer responsible for co-operation with the “other side” with regard to prisoner exchanges; (2) from 22 April 1993, Pušić was charged by Ćorić to participate on behalf of the Military Police in the exchange of all detainees in Mostar; (3) in May 1993, Pušić “actively participated” as an HVO representative on prisoner exchanges in the negotiations with the ABiH, under the auspices of the international community; (4) as of May 1993, representatives of international organisations directly addressed Pušić on matters related to prisoner exchanges; (5) following his appointment as the Head of the Exchange Service, Pušić held *de jure* powers over the exchanges and played a role in them until 21 April 1994; and (6) he advocated the release of all detainees to ABiH-held territories or third countries and signed an agreement with his RBiH counterpart on releasing all detainees on the basis of an “all-for-all” exchange principle.⁸⁶⁵⁹

2634. The Prosecution submits that the Trial Chamber found that Pušić had decision-making powers as an HVO representative before the international community on matters related to the exchange and release of prisoners, but that he lacked autonomous decision-making powers concerning humanitarian evacuations.⁸⁶⁶⁰ Nonetheless, it contends that Pušić hindered humanitarian evacuations from Mostar by occasionally making his approvals of evacuation requests contingent on the evacuation of an equivalent number of Croats from a besieged enclave.⁸⁶⁶¹ The Prosecution submits that the finding regarding his lack of autonomous decision-making powers does not have a

⁸⁶⁵⁴ Pušić’s Appeal Brief, para. 46.

⁸⁶⁵⁵ Pušić’s Appeal Brief, para. 46.

⁸⁶⁵⁶ Pušić’s Appeal Brief, para. 47.

⁸⁶⁵⁷ Prosecution’s Response Brief (Pušić), para. 40.

⁸⁶⁵⁸ Prosecution’s Response Brief (Pušić), para. 40.

⁸⁶⁵⁹ Prosecution’s Response Brief (Pušić), para. 40.

⁸⁶⁶⁰ Prosecution’s Response Brief (Pušić), para. 41.

⁸⁶⁶¹ Prosecution’s Response Brief (Pušić), para. 42.

bearing on the finding that he hindered evacuations.⁸⁶⁶² It adds that Pušić's submissions in this regard that the Trial Chamber's findings are impermissibly vague should be summarily dismissed as he overlooks detailed findings.⁸⁶⁶³

2635. Pušić replies that the Prosecution's arguments concerning the period prior to April 1993 should be disregarded as the Trial Chamber found that he only joined the JCE as of that month.⁸⁶⁶⁴

b. Analysis

2636. With regard to Pušić's argument that the Trial Chamber erred in fact when it found that he had "significant" powers to represent the HVO in any capacity on the basis that most of the meetings he attended were low-level direct negotiations with "the BiH", the Appeals Chamber notes that the Trial Chamber in fact found that he participated in "high-level international meetings notably between August and November 1993".⁸⁶⁶⁵ These meetings took place in the presence of HVO leaders, including Prlić, representatives of the Croatian government, including the Minister of Foreign Affairs Mate Granić, and representatives of the international community.⁸⁶⁶⁶ While it did note that it had little information about the nature of his involvement and his degree of contribution during these meetings, the Trial Chamber nevertheless found that he was the HVO representative in charge of raising the matter of prisoner exchanges and releases.⁸⁶⁶⁷ It also found that during one such meeting, on 20 September 1993, he expressed his disagreement with any unilateral action by the HVO regarding the release of detainees, stipulating instead that the closure of Dretelj Prison should be followed by the release of Croatian detainees, notably in Konjic and Zenica.⁸⁶⁶⁸ Pušić's argument that the Trial Chamber erred in fact when it found that he had "significant" powers to represent the HVO in any capacity on the basis that most of the meetings he attended were low-level direct negotiations with "the BiH" misrepresents and ignores these relevant Trial Chamber findings and is accordingly dismissed.

2637. The Trial Chamber did not, as Pušić suggests, categorically find that he did not have autonomous decision-making powers in respect of his dealings with the international community. While it acknowledged in general terms that the evidence indicated that he depended on his

⁸⁶⁶² Prosecution's Response Brief (Pušić), para. 42.

⁸⁶⁶³ Prosecution's Response Brief (Pušić), para. 43.

⁸⁶⁶⁴ Pušić's Reply Brief, para. 16.

⁸⁶⁶⁵ Trial Judgement, Vol. 4, para. 1073.

⁸⁶⁶⁶ Trial Judgement, Vol. 4, para. 1073.

⁸⁶⁶⁷ Trial Judgement, Vol. 4, para. 1073.

⁸⁶⁶⁸ Trial Judgement, Vol. 4, para. 1073.

superiors, whom he consulted and reported to when making a decision,⁸⁶⁶⁹ it noted several items of evidence related to prisoner exchange and release which indicated that he had decision-making powers in representing the HVO in its contacts with the international community.⁸⁶⁷⁰ It referred specifically to: (1) a SpaBat report indicating that he had approved an agreement on prisoner exchanges; (2) a letter to Granić informing him of the HVO's refusal to grant an ICRC request to release 750 detainees from Gabela Prison in exchange for 350 Croats from Konjic; (3) his own statement that the Exchange Service had "all the powers to make decisions" in the context of negotiations with his ABiH counterparts; and (4) his signature on behalf of the HVO of an agreement on the release of detainees from the Heliodrom on 17 March 1994, following negotiations held under the auspices of international organisations.⁸⁶⁷¹ The Trial Chamber relied on this evidence in finding that Pušić had the authority to represent the HVO before the international community on matters related to prisoner exchange and release.⁸⁶⁷² It then noted that he had, on occasion, responsibility for dealing with other issues, including humanitarian evacuations, but that he did not have autonomous decision-making powers in this regard, instead characterising him as having "broad authority" in those areas.⁸⁶⁷³

2638. Pušić's argument that it was logical to conclude that he only acted as a messenger or spokesperson is contradicted by these findings. Specifically with regard to his statement that the Exchange Service had "all the powers to make decisions", the Appeals Chamber considers that Pušić's argument that he was overstating his influence is merely an alternative interpretation of the evidence to that of the Trial Chamber. The same applies to his claim that when he signed or approved agreements in the presence of international representatives, "it is fair to infer that this did not reflect the exercise of any autonomous powers on his part". Even in those areas other than prisoner exchange and release where the Trial Chamber found that Pušić did not have autonomous decision-making powers, his argument that he was therefore only a messenger or spokesperson elides all intermediate degrees of powers and contribution, something which was clearly contemplated by the Trial Chamber when it referred to his "broad authority".⁸⁶⁷⁴ These arguments are dismissed, as is the related argument that he could not have made a significant contribution to the JCE by virtue of his conduct in relation to international negotiations, including on prisoner

⁸⁶⁶⁹ Trial Judgement, Vol. 4, para. 1079. The Trial Chamber did not find that before making "any pronouncements" he would have to consult with and report to HVO leaders, nor did it find that his actions in relation to exchanges of prisoners required prior approval from HVO leadership. See Pušić's Appeal Brief, paras 44, 48.

⁸⁶⁷⁰ Trial Judgement, Vol. 4, para. 1080.

⁸⁶⁷¹ Trial Judgement, Vol. 4, para. 1080.

⁸⁶⁷² Trial Judgement, Vol. 4, para. 1081.

⁸⁶⁷³ Trial Judgement, Vol. 4, para. 1081.

⁸⁶⁷⁴ Trial Judgement, Vol. 4, para. 1081 (noting that he was given responsibility for dealing with issues other than the exchange and release of detainees, such as humanitarian evacuations, and did so in the presence of representatives of the international community).

exchange, due to the Trial Chamber's erroneous findings regarding his power and level of influence.⁸⁶⁷⁵

2639. With regard to Pušić's argument that his interaction with the HVO leadership concerning the progress of exchange initiatives was largely one-sided and took the form of sending reports in writing, the Appeals Chamber recalls that it has already dismissed this as irrelevant above.⁸⁶⁷⁶ Pušić's contention that there was little evidence of response to these reports and that Tomljanovich's testimony indicates that he attended only one HVO HZ-HB session do not undermine the Trial Chamber's finding that he constituted the link between the workings of the network of HVO detention centres and the most important members of the JCE,⁸⁶⁷⁷ the finding which the Appeals Chamber understands Pušić's argument as seeking to impugn.⁸⁶⁷⁸

2640. The Appeals Chamber notes Pušić's argument that the Trial Chamber's findings on his lack of autonomous powers in dealings with the representatives of the international community cannot be reconciled with its conclusions concerning his role in blocking humanitarian aid in Mostar. It considers, however, that there is no immediately apparent contradiction between these findings and notes that Pušić does not explain what he suggests this contradiction is. This argument is accordingly dismissed as an undeveloped assertion.

2641. Pušić accurately states that the Trial Chamber did not find that he played any role in shaping the 10 December 1993 Decision. It found rather that he organised and actively participated in implementing this decision, thereby playing a role in the removal of Muslim detainees to ABiH-held territories or third countries.⁸⁶⁷⁹ With regard to his contention that there is no suggestion that the Trial Chamber found that he influenced the HVO policy on exchanges of prisoners, the Appeals Chamber recalls that the Trial Chamber primarily relied upon his role as a "key player" in exchange negotiations and the movement of people and as "the link between the workings of the network of HVO detention centres and the most important members of the JCE" to assess his responsibility under JCE I.⁸⁶⁸⁰ As such, the question of how much influence he had over the broad contours of HVO policy was not of determinative significance in assessing his liability. Pušić's arguments fail to articulate an error by the Trial Chamber and are dismissed on that basis. So too is his argument that he could not have made a significant contribution to the JCE by virtue of his

⁸⁶⁷⁵ See *supra*, para. 2601.

⁸⁶⁷⁶ See *supra*, para. 2612.

⁸⁶⁷⁷ Trial Judgement, Vol. 4, para. 1209.

⁸⁶⁷⁸ See Pušić's Appeal Brief, para. 27(a); Pušić's Reply Brief, para. 9.

⁸⁶⁷⁹ Trial Judgement, Vol. 4, paras 1127-1133.

⁸⁶⁸⁰ Trial Judgement, Vol. 4, paras 1202, 1209.

conduct in relation to the HVO's overall detention and release policy due to the Trial Chamber's erroneous findings regarding his power and level of influence.⁸⁶⁸¹

2642. Finally, the Appeals Chamber notes that Pušić's argument that the Trial Chamber's findings on his role as an HVO representative, including before international actors, are impermissibly vague and imprecise appears to take issue solely with the phrasing of certain findings by the Trial Chamber, rather than the process by which it evaluated the evidence. Pušić does not indicate what ambiguity arises from the sections of the Trial Judgement to which he refers,⁸⁶⁸² nor does he substantiate his claim that the Trial Chamber applied an incorrect standard of proof. In light of the fact that the Appeals Chamber has already upheld the impugned findings underpinning the Trial Chamber's overall conclusions as to Pušić's authority to act on behalf of the HVO,⁸⁶⁸³ the Appeals Chamber dismisses this argument and his subsequent argument that the Trial Chamber therefore erred in failing to provide a properly reasoned decision as mere assertions.

2643. In view of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's findings as to his role as an HVO representative before the international community, including in relation to prisoner exchange and release.

(v) Role as President of the Detention Commission

a. Arguments of the Parties

2644. Pušić submits that the Trial Chamber erred in fact in attaching any weight to its finding that he had certain *de jure* or *de facto* powers arising from his appointment as the President of the Detention Commission on 6 August 1993.⁸⁶⁸⁴ He further submits that this position was one of the most important factors cited by the Trial Chamber as a reason for his conviction,⁸⁶⁸⁵ despite its findings that there was no evidence that the Detention Commission had ever met or accomplished

⁸⁶⁸¹ See *supra*, para. 2601.

⁸⁶⁸² Pušić cites specifically to a paragraph of the Trial Judgement in which the Trial Chamber found that his "significant power to represent the HVO [...] made him a key player in exchange negotiations and the movement of people". Pušić's Appeal Brief, fn. 89, referring to Trial Judgement, Vol. 4, para. 1202. This finding is part of the Trial Chamber's conclusion and overall assessment of Pušić's responsibility in light of the more specific findings made in the previous sections of the Trial Judgement. The Appeals Chamber nevertheless considers it clear from context that Pušić is also referring to the sections of the Trial Judgement concerning his powers to represent the HVO before the international community, specifically the paragraphs which address his authority to "act directly on behalf of the HVO". Trial Judgement, Vol. 4, paras 1079-1081.

⁸⁶⁸³ See *supra*, paras 2636-2641.

⁸⁶⁸⁴ Pušić's Appeal Brief, paras 28, 30. Pušić argues that from the evidence related to the work of the Detention Commission that the Trial Chamber examined, it erroneously found that, as President, Pušić: (1) had the role of compiling a list of all HVO detainees and categorising them; (2) had the power to organise the registration and classification of HVO detainees; (3) regulated and had a key role in the release of detainees; (4) took part in the functioning and security of detention centres and prisons; and (5) set the procedure for the release of detainees. According to Pušić, the Trial Chamber further erred in failing to specify whether these findings stem from his *de jure* or *de facto* powers. See also Appeal Hearing, AT. 686-687 (27 Mar 2017).

any tasks and that its effectiveness was limited.⁸⁶⁸⁶ Pušić also notes that in his communications with the HVO leadership there is almost no reference to the Detention Commission and that he is often referred to as the Head of the Exchange Service.⁸⁶⁸⁷ He claims that, in light of these findings, the Trial Chamber mistakenly placed far too much emphasis on a document labelled a “decision” dated 12 August 1993, which was never implemented, and a plan he prepared in response to the 10 December 1993 Decision.⁸⁶⁸⁸ According to Pušić, the Trial Chamber erred by relying even partially on evidence relating to the role of the Detention Commission to substantiate its finding that he had sufficient power and influence to make a contribution to the JCE.⁸⁶⁸⁹

2645. The Prosecution responds that the Trial Chamber reasonably relied on evidence concerning the Detention Commission to determine Pušić’s powers as its President.⁸⁶⁹⁰ It recalls an order issued by Stojić on 6 August 1993 which enumerated Pušić’s powers as President of the Detention Commission.⁸⁶⁹¹ The Prosecution adds that the Trial Chamber explicitly rejected Pušić’s argument that the Detention Commission existed on paper only by finding that the evidence confirmed that Pušić acted on issues concerning HVO detention centres and thus used the powers he was granted as the Commission’s President.⁸⁶⁹² The Prosecution makes further reference to Pušić’s decision of 12 August 1993 in which he ordered improvements in security and management of prisoners, organised the work of the Detention Commission, and regulated the procedures for detainee registration, classification, and release (the latter of which required his approval).⁸⁶⁹³ The Prosecution further argues that the Trial Chamber’s findings are not undermined by the fact that in Pušić’s correspondence with the HVO leadership there was almost no reference to the Detention Commission and that he was referred to as the Head of the Exchange Service, as he acted in dual capacity at this time, and as none of the findings are based solely on evidence related to the Detention Commission.⁸⁶⁹⁴

⁸⁶⁸⁵ Pušić’s Appeal Brief, para. 28, referring to Trial Judgement, Vol. 4, para. 1202.

⁸⁶⁸⁶ Pušić’s Appeal Brief, paras 29-31. See also Appeal Hearing, AT. 686-687 (27 Mar 2017).

⁸⁶⁸⁷ Pušić’s Appeal Brief, para. 29.

⁸⁶⁸⁸ Pušić’s Appeal Brief, para. 34, referring to Ex. P04141; Pušić’s Reply Brief, para. 11. Pušić claims that the Trial Chamber should have treated the decision of 12 August 1993 with “extreme caution” in light of the fact that his subordinates could not be identified, that his position in the HVO chain of command was opaque, and that other senior HVO figures, including Marijan Biškić, believed that Pušić did not have the powers to issue orders.

⁸⁶⁸⁹ Pušić’s Reply Brief, para. 10.

⁸⁶⁹⁰ Prosecution’s Response Brief (Pušić), para. 20. The Prosecution argues that the Trial Chamber was not legally required to clarify whether Pušić’s powers within the HVO were *de jure* or *de facto*, but that it nevertheless explicitly confirmed that, as President of the Detention Commission, he possessed and exercised powers related to the detention centres. Prosecution’s Response Brief (Pušić), para. 23.

⁸⁶⁹¹ Prosecution’s Response Brief (Pušić), para. 20, referring to Ex. P03995.

⁸⁶⁹² Prosecution’s Response Brief (Pušić), para. 21.

⁸⁶⁹³ Prosecution’s Response Brief (Pušić), para. 22, referring to Ex. P04141.

⁸⁶⁹⁴ Prosecution’s Response Brief (Pušić), para. 24.

b. Analysis

2646. The Appeals Chamber observes that the Trial Chamber stated that it was not aware of any evidence showing that the Detention Commission accomplished the tasks assigned to it.⁸⁶⁹⁵ The Trial Chamber then noted that it did, however, have several items of evidence which demonstrated that Pušić had acted on issues concerning HVO detention centres and which show that he had and exercised the powers conferred on him by virtue of his position as President of the Detention Commission, specifically in relation to: (1) registration and classification of detainees; (2) release of detainees; (3) access to detention centres; (4) forced labour; and (5) treatment of detainees.⁸⁶⁹⁶ In other words, the Trial Chamber relied on Pušić's position primarily as contextual information before engaging in more specific analysis of each of the enumerated areas of authority. In each of these areas, the Trial Chamber relied partially on Pušić's position as President of the Detention Commission in determining his powers, but also, crucially, on other evidence relating to his individual actions.⁸⁶⁹⁷ Pušić's arguments fail to show that no reasonable trier of fact could have taken this approach to the evidence, notwithstanding references in his correspondence with the HVO leadership to his role as Head of the Exchange Service rather than as President of the Detention Commission. Lastly, the Appeals Chamber considers Pušić's argument that the Trial Chamber mistakenly placed far too much emphasis on a "decision" dated 12 August 1993 and a plan he prepared in response to the 10 December 1993 Decision to be a mere assertion that the Trial Chamber failed to interpret evidence in a particular manner. It is dismissed as such.⁸⁶⁹⁸ In view of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's reliance on his role as President of the Detention Commission.

(vi) Registration and classification of detainees

2647. When considering Pušić's role in the registration and classification of detainees, the Trial Chamber recalled that the Exchange Service, headed by him, was tasked with setting up a database of detainees and other persons, and that the Detention Commission, of which Pušić was President, had the role of compiling a list of all HVO detainees and sorting them into categories.⁸⁶⁹⁹ It noted a decision by Pušić issued on 12 August 1993 and his regular receipt of lists of Muslims detained at various HVO detention centres, some of which mentioned categories of detainees,

⁸⁶⁹⁵ Trial Judgement, Vol. 4, para. 1039.

⁸⁶⁹⁶ Trial Judgement, Vol. 4, paras 1040-1041.

⁸⁶⁹⁷ Trial Judgement, Vol. 4, paras 1044-1046 (registration and classification of detainees), 1049 (release of detainees), 1052 (access to detention centres), 1054 (forced labour), 1056, 1143, 1170 (treatment of detainees) and references cited therein. The Appeals Chamber notes that the Trial Chamber was under no obligation to specify whether his powers were *de jure* or *de facto*. Pušić's argument in this regard is dismissed.

⁸⁶⁹⁸ Pušić's related argument that the Trial Chamber should have treated the decision of 12 August 1993 with "extreme caution" is contingent on arguments which the Appeals Chamber has already dismissed. See *supra*, paras 2618, 2625.

⁸⁶⁹⁹ Trial Judgement, Vol. 4, para. 1045.

including “detainees of war”, “civilians”, “women”, and “persons born before 1933”.⁸⁷⁰⁰ On this basis, it found that he had the power and responsibility to organise the registration and classification of detainees and that he exercised that power between August 1993 and April 1994.⁸⁷⁰¹ It further found that he exercised that power only when it proved useful to the HVO’s plans, notably when closing down the detention centres or undertaking prisoner exchanges.⁸⁷⁰²

a. Arguments of the Parties

2648. Pušić argues that the Trial Chamber erred in finding that he had the power and responsibility to register and classify detainees.⁸⁷⁰³ He submits that his positions in the Military Police and in the Exchange Service contained no such authority, even though the latter position did include an obligation to maintain a database of those held in custody.⁸⁷⁰⁴

2649. According to Pušić, the evidence merely shows that he made “intermittently successful” efforts to compile lists of detainees at various detention facilities.⁸⁷⁰⁵ When compiling these lists, however, Pušić stresses that he did not visit the detention facilities but that the information was sent to him by the relevant HVO officials, who were not his subordinates.⁸⁷⁰⁶ Pušić states that accurate records distinguishing civilians from ABiH personnel were never kept.⁸⁷⁰⁷ He adds that the lists he received were incomplete and that the Trial Chamber was correct to conclude that the HVO never fully completed the task of classifying and separating the detainees according to their status.⁸⁷⁰⁸

2650. Pušić submits that the Trial Chamber erred in fact and law when concluding that he made a significant contribution to the JCE by virtue of any responsibility or power he held to register and classify detainees and establish a database on them.⁸⁷⁰⁹ Specifically, Pušić argues that the Trial Chamber erred in finding on that basis that he accepted the unlawful detention of Muslim civilians and thus contributed to the JCE.⁸⁷¹⁰ He further argues that the Trial Chamber’s conclusion that his “culpable omission”, that is, his acceptance of those unlawful detentions, constituted a

⁸⁷⁰⁰ Trial Judgement, Vol. 4, paras 1045-1046.

⁸⁷⁰¹ Trial Judgement, Vol. 4, paras 1046, 1203.

⁸⁷⁰² Trial Judgement, Vol. 4, para. 1203.

⁸⁷⁰³ Pušić’s Appeal Brief, paras 32, 35.

⁸⁷⁰⁴ Pušić’s Appeal Brief, para. 33.

⁸⁷⁰⁵ Pušić’s Appeal Brief, paras 32, 35.

⁸⁷⁰⁶ Pušić’s Appeal Brief, paras 35, 177, 179; Pušić’s Reply Brief, para. 12.

⁸⁷⁰⁷ Pušić’s Appeal Brief, para. 178.

⁸⁷⁰⁸ Pušić’s Appeal Brief, paras 35, 177; Pušić’s Reply Brief, para. 12.

⁸⁷⁰⁹ Pušić’s Appeal Brief, paras 174-175, 177, 179, 212-213 (in relation to Gabela Prison), 217 (in relation to Ljubuški Prison).

⁸⁷¹⁰ Pušić’s Appeal Brief, paras 176, 179.

significant contribution to the JCE was an error of law as this omission did not contribute to the “single criminal purpose” of ethnic cleansing.⁸⁷¹¹

2651. The Prosecution responds that the Trial Chamber reasonably found that Pušić had the power and responsibility to organise the registration and classification of HVO detainees and that he exercised that power between August 1993 and April 1994.⁸⁷¹² It further submits that this finding was based on the evidence that: (1) as Head of the Exchange Service, Pušić was in charge of centralising the data on the number of detainees in each HVO detention centre; (2) the Exchange Service was in charge of setting up a database of detainees relevant for exchanges; (3) the Detention Commission was tasked with compiling a list of all detainees and categorising them; (4) as President of the Detention Commission, Pušić regulated the procedures for registration and classification of detainees; (5) Pušić regularly compiled or received lists of detainees at various detention centres, some of which indicated the status of detainees; and (6) Pušić implemented the 10 December 1993 Decision.⁸⁷¹³

2652. The Prosecution avers that Pušić furthered the CCP by failing to register and classify detainees or by doing so inconsistently, thereby permitting the HVO to maintain the detention of Muslim civilians in service of exchanges or releases intended to advance the goal of ethnic cleansing.⁸⁷¹⁴ Moreover, the Prosecution contends that as a result of his inconsistent registration of detainees, Pušić was aware that the HVO held civilians at the Heliodrom and at Gabela and Ljubuški Prisons, and that he contributed to the crimes of imprisonment and unlawful confinement by taking no measures or inadequate measures to ameliorate this problem.⁸⁷¹⁵ The Prosecution argues that as an agent of the detaining power – specifically as Head of the Exchange Service and President of the Detention Commission – Pušić was required by the Geneva Conventions to release detainees whom he knew not to pose a security risk or who had not been provided procedural guarantees to classify them in such a manner.⁸⁷¹⁶ It submits that Pušić cannot absolve his responsibility by claiming that records were never kept as this record-keeping was in fact his duty as an agent of the HZ(R) H-B.⁸⁷¹⁷ He further contributed to the displacement crimes, according to

⁸⁷¹¹ Pušić’s Appeal Brief, para. 178.

⁸⁷¹² Prosecution’s Response Brief (Pušić), paras 25-26; Appeal Hearing, AT. 721 (27 Mar 2017).

⁸⁷¹³ Prosecution’s Response Brief (Pušić), para. 26.

⁸⁷¹⁴ Prosecution’s Response Brief (Pušić), paras 180 (in relation to the Heliodrom), 184, 201-202 (in relation to Gabela Prison), 204 (in relation to Ljubuški Prison).

⁸⁷¹⁵ Prosecution’s Response Brief (Pušić), paras 184, 202, 204.

⁸⁷¹⁶ Prosecution’s Response Brief (Pušić), para. 183, referring to *Blaškić* Appeal Judgement, fn. 1385, *Čelebići* Appeal Judgement, paras 327, 378-379, Articles 42 and 43 of Geneva Convention IV.

⁸⁷¹⁷ Prosecution’s Response Brief (Pušić), para. 183.

the Prosecution, through his receipt or compilation of detainee lists for the purpose of releasing detainees to ABiH-held territories or third countries.⁸⁷¹⁸

b. Analysis

2653. With regard to Pušić's argument that the Trial Chamber erred in finding that he had the power and responsibility to register and classify detainees, the Appeals Chamber notes that in making this finding, the Trial Chamber relied on: (1) Pušić's mandate as Head of the Exchange Service to establish a database of detainees; and (2) Pušić's mandate as President of the Detention Commission to compile a list of all detainees and sort them into categories.⁸⁷¹⁹ It noted his practical implementation of these mandates by: (1) referring to his decision of 12 August 1993, which requested that the release of detainees from Dretelj and Gabela Prisons be suspended until the detainees had been correctly registered and classified; and (2) noting in general terms his receipt or compilation of categorised lists of Muslims detained at various HVO detention centres between August 1993 and April 1994.⁸⁷²⁰ It then further noted his role in registration and classification of detainees by specific reference to evidence indicating his involvement in the process at numerous detention centres, namely the Heliodrom,⁸⁷²¹ Dretelj Prison,⁸⁷²² Gabela Prison,⁸⁷²³ and Ljubuški Prison.⁸⁷²⁴ Pušić ignores this voluminous evidence upon which the Trial Chamber relied in reaching its conclusion that he had the power and responsibility to register and classify detainees. With regard to his argument that the HVO officials from whom he received the lists were not his subordinates, the Appeals Chamber recalls its previous finding that possession of *de facto* powers is not necessarily dependent on having formally identified subordinates within a hierarchical structure.⁸⁷²⁵ Pušić's arguments that the Trial Chamber erred in finding that he had the power and responsibility to register and classify detainees and that the HVO officials from whom he received the lists were not his subordinates are accordingly dismissed, as is the related argument that he could not have made a significant contribution to the JCE by virtue of his conduct in relation to registration and classification of detainees due to the Trial Chamber's erroneous findings regarding his power and level of influence.⁸⁷²⁶

⁸⁷¹⁸ Prosecution's Response Brief (Pušić), paras 184, 202, 204.

⁸⁷¹⁹ Trial Judgement, Vol. 4, para. 1045. See also Trial Judgement, Vol. 1, para. 659 and references cited therein, Vol. 4, para. 1128 (noting that the transcript of a meeting held on 11 December 1993 showed that Pušić was in charge of centralising the data concerning the number of detainees in each HVO detention centre).

⁸⁷²⁰ Trial Judgement, Vol. 4, paras 1045-1046 and references cited therein.

⁸⁷²¹ Trial Judgement, Vol. 4, paras 1134-1135 and references cited therein.

⁸⁷²² Trial Judgement, Vol. 4, para. 1168 and references cited therein.

⁸⁷²³ Trial Judgement, Vol. 4, paras 1171-1172 and references cited therein.

⁸⁷²⁴ Trial Judgement, Vol. 4, para. 1181 and references cited therein.

⁸⁷²⁵ See *supra*, para. 2618.

⁸⁷²⁶ See *supra*, para. 2601.

2654. The Trial Chamber found that the authorities did not classify and separate the detainees by their status at Gabela Prison⁸⁷²⁷ or do so correctly at the Heliodrom.⁸⁷²⁸ Pušić's contentions that his efforts were only "intermittently successful", that accurate records distinguishing civilians from ABiH personnel were never kept, that the lists were incomplete, and that he did not personally visit the detention facilities are therefore irrelevant insofar as they do not contradict the Trial Chamber's findings, including its finding that registration and classification of detainees was his responsibility.

2655. The Trial Chamber concluded that Pušić accepted that Muslims who were not part of any armed force were being held by the HVO due to the conjunction of his knowledge of their detention and his continued exercise of his functions within the HVO.⁸⁷²⁹ Pušić's argument that this "culpable omission" did not contribute to a "single criminal purpose" of ethnic cleansing is unsubstantiated and ignores the Trial Chamber's finding that he registered or classified detainees only when it proved useful to the HVO's plans, notably when closing the detention centres or undertaking exchanges.⁸⁷³⁰ This argument is dismissed.

2656. In view of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's findings as to his role in the registration and classification of detainees.

(vii) Access to detention centres

2657. In its findings on Pušić's powers in respect of access to detention centres, the Trial Chamber recalled that the Exchange Service, headed by Pušić, was tasked with co-operating with international organisations on all matters regarding the exchange of detainees.⁸⁷³¹ It noted that, using his powers as President of the Detention Commission, Pušić took part in the functioning and security of the HVO detention centres.⁸⁷³² It further noted that as of May 1993, he had the power to authorise or prevent visits to the detention centres and that he authorised numerous visits to the Heliodrom by members of international organisations and by family members of detainees until February 1994.⁸⁷³³ It concluded that he had control over access to the HVO detention centres and, between May 1993 and January 1994, used this power to prevent or authorise visits to them.⁸⁷³⁴ When discussing individual detention centres, it noted that the evidence did not enable it to

⁸⁷²⁷ Trial Judgement, Vol. 4, para. 1171.

⁸⁷²⁸ Trial Judgement, Vol. 4, para. 1134.

⁸⁷²⁹ Trial Judgement, Vol. 4, paras 1136 (in relation to the Heliodrom), 1173 (in relation to Gabela Prison).

⁸⁷³⁰ Trial Judgement, Vol. 4, para. 1203. See also Trial Judgement, Vol. 4, para. 1127 (noting a work plan for the Exchange Service where Pušić stated that the only interest his Service had in the detainees was to use them for exchanges).

⁸⁷³¹ Trial Judgement, Vol. 4, para. 1052.

⁸⁷³² Trial Judgement, Vol. 4, para. 1052.

⁸⁷³³ Trial Judgement, Vol. 4, para. 1052 and references cited therein.

⁸⁷³⁴ Trial Judgement, Vol. 4, para. 1052.



determine that he had denied international organisations access to the Heliodrom.⁸⁷³⁵ It did, however, find that he had called Željko Šiljeg so that he would not grant authorisation to the ICRC to visit a “prison” and Muslim villages in Prozor Municipality.⁸⁷³⁶

a. Arguments of the Parties

2658. Pušić submits that the Trial Chamber erred in finding that he had “unilateral powers” to grant access to detention centres.⁸⁷³⁷ He argues that this was not a reasonable inference as no evidence was presented at trial about the internal HZ(R) H-B procedures regarding this matter, and as other evidence suggests that he only had limited authority in this area.⁸⁷³⁸ Pušić adds that his argument is supported by the contradictory finding that, at times, when Pušić was uncertain as to the procedure to be followed to obtain permission for visits to be carried out by the ICRC to certain detention facilities, he sought information from more senior HVO officials.⁸⁷³⁹ In his view, the only reasonable inference is that he was “merely obtaining the necessary permissions and paperwork from the HVO hierarchy to authorise visits for external representatives rather than exercising any unilateral powers”.⁸⁷⁴⁰

2659. Pušić argues that the Trial Chamber erred in law in concluding that he made a significant contribution to the JCE by allowing or preventing members of the international community to visit and inspect HVO detention centres.⁸⁷⁴¹ He claims that the Trial Chamber found that, in general, he co-operated with international organisations in obtaining permission for them to visit detention centres, including by approving visits to the Heliodrom on a small number of occasions from May 1993 to January 1994.⁸⁷⁴² He further claims that the Trial Chamber found that there was no evidence that he denied international organisations access to the Heliodrom or hid detainees from them.⁸⁷⁴³

2660. The Prosecution responds that the Trial Chamber was correct to find that as of May 1993 until January or February 1994, Pušić had the authority to grant or prevent access to HVO detention centres.⁸⁷⁴⁴ The Prosecution refers to evidence relied upon by the Trial Chamber which, it submits, shows that: (1) as of May 1993, Pušić exercised this power, in particular with regard to the Heliodrom; (2) by virtue of his positions as Head of the Exchange Service and President of the

⁸⁷³⁵ Trial Judgement, Vol. 4, para. 1155.

⁸⁷³⁶ Trial Judgement, Vol. 4, para. 1097. See also Trial Judgement, Vol. 4, para. 1098.

⁸⁷³⁷ Pušić’s Appeal Brief, para. 36.

⁸⁷³⁸ Pušić’s Appeal Brief, para. 36.

⁸⁷³⁹ Pušić’s Appeal Brief, para. 36.

⁸⁷⁴⁰ Pušić’s Appeal Brief, para. 37.

⁸⁷⁴¹ Pušić’s Appeal Brief, paras 192-194.

⁸⁷⁴² Pušić’s Appeal Brief, para. 193

⁸⁷⁴³ Pušić’s Appeal Brief, para. 193.

Detention Commission, Pušić was vested with control over access to HVO detention centres and dealings with international organisations regarding prisoner exchange; (3) Stanko Božić confirmed that Pušić was among those approving visits to the Heliodrom in October 1993; and (4) he prevented an ICRC visit to a prison in Prozor in August 1993 and granted an ICRC visit to the Heliodrom in January 1994.⁸⁷⁴⁵ The Prosecution further submits that the Trial Chamber never referred to his power to grant access as “unilateral” and argues that its finding on this issue is not undermined by the fact that on one occasion Pušić consulted Marijan Biškić and Radoslav Lavrić on the procedure of granting access to the ICRC to visit HVO detention centres, considering instead that this confirms that it was Pušić who was granting access.⁸⁷⁴⁶

b. Analysis

2661. Concerning Pušić’s argument that the Trial Chamber erred in law in concluding that he made a significant contribution to the JCE by allowing or preventing members of the international community to visit and inspect HVO detention centres, the Appeals Chamber notes that the only occasion on which Pušić was found by the Trial Chamber to have hindered access to detention centres by international organisations was in Prozor Municipality in August 1993.⁸⁷⁴⁷ The Appeals Chamber dismisses Pušić’s specific argument in this regard below, which does not depend on the Trial Chamber’s findings as to his powers in relation to access to detention centres.⁸⁷⁴⁸ The Appeals Chamber notes the Trial Chamber’s finding that he authorised numerous visits to detainees in the Heliodrom, both by family members of detainees and members of international organisations,⁸⁷⁴⁹ but further notes that the Trial Chamber does not appear to have considered this conduct to have contributed to the implementation of the CCP.⁸⁷⁵⁰ Pušić’s arguments are directed at a Trial Chamber finding on which his conviction does not rely, and his arguments are dismissed on that basis. In light of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber’s findings as to his role in access to detention centres.

⁸⁷⁴⁴ Prosecution’s Response Brief (Pušić), paras 29, 180, referring to Trial Judgement, Vol. 4, paras 1052, 1152-1155.

⁸⁷⁴⁵ Prosecution’s Response Brief (Pušić), para. 29 and references cited therein.

⁸⁷⁴⁶ Prosecution’s Response Brief (Pušić), para. 31, referring to Trial Judgement, Vol. 4, para. 1154 (finding that Pušić consulted them on 23 December 1993).

⁸⁷⁴⁷ Trial Judgement, Vol. 4, para. 1097. See also Trial Judgement, Vol. 4, para. 1155 (stating that the evidence did not allow for a finding that Pušić denied international organisations access to the Heliodrom or that he hid detainees from the international community).

⁸⁷⁴⁸ Cf. *infra*, para. 2726 (upholding the Trial Chamber finding that Pušić called Željko Šiljeg before a scheduled visit by the ICRC to the “prison” in Prozor Municipality and to some Muslim villages so that he would not grant authorisation, arguing that the ICRC had not been effective in doing the same for Croatian detainees in Konjic, Bugojno, and other regions); Trial Judgement, Vol. 4, paras 1097-1098. The Appeals Chamber further notes that the Trial Chamber did not rely on this incident when determining that Pušić had control over access to HVO detention centres. Trial Judgement, Vol. 4, para. 1052.

⁸⁷⁴⁹ Trial Judgement, Vol. 4, paras 1052, 1153-1154.

⁸⁷⁵⁰ See Trial Judgement, Vol. 4, paras 1155, 1202-1209.

(viii) Release of detainees

2662. The Trial Chamber found that as of May 1993, Pušić had the power to release detainees and, as President of the Detention Commission, the role of regulating the release of detainees.⁸⁷⁵¹ It considered that the evidence demonstrated that up until December 1993, Pušić approved and organised the release of numerous detainees.⁸⁷⁵² It found that this power increased in December 1993, when Pušić actively participated in implementing Mate Boban's Decision of 10 January 1993 ordering the closure of all HVO detention facilities.⁸⁷⁵³ It referred in this regard to evidence that he regularly informed the HVO leadership of progress in implementing this decision, noting that one report stated that the Exchange Service was "fully in charge" of dismantling the network of detention centres.⁸⁷⁵⁴ The Trial Chamber further found that Pušić organised and actively participated in the closure of HVO detention centres and the removal of Muslim detainees to ABiH-held territories or third countries.⁸⁷⁵⁵ As noted above, the Trial Chamber expressly relied on Pušić's implementation of the Decision of 10 January 1993 in determining that he made a significant contribution to the JCE.⁸⁷⁵⁶

2663. Separately, in its findings on Pušić's role in the rounding up of Muslims in West Mostar and their placement in detention in May 1993, the Trial Chamber found that he ordered that some of these people be released and others not be released.⁸⁷⁵⁷ It accordingly found that he was informed of and took part in the mass arrest of Muslims in West Mostar between 9 and 11 May 1993.⁸⁷⁵⁸

a. Arguments of the Parties

2664. According to Pušić, the Trial Chamber erred in fact in finding that he had substantial powers to order the release of prisoners.⁸⁷⁵⁹ He submits that Tomljanovich described Pušić's role in the process of prisoner releases as "bureaucratic processing" and that the Trial Chamber itself recognised his role to be that of a facilitator with some limited scope to determine who was released once a decision had been taken at a higher level.⁸⁷⁶⁰ He further submits that his role was so limited in this respect that it would not justify the imputation of individual criminal liability.⁸⁷⁶¹ Pušić

⁸⁷⁵¹ Trial Judgement, Vol. 4, para. 1049. See also Trial Judgement, Vol. 4, para. 1202. The Trial Chamber also noted, however, that he was not the only person with the power to authorise the release of HVO detainees. Trial Judgement, Vol. 4, para. 1050.

⁸⁷⁵² Trial Judgement, Vol. 4, para. 1049.

⁸⁷⁵³ Trial Judgement, Vol. 4, paras 1050, 1126-1127, 1203-1204, 1209.

⁸⁷⁵⁴ Trial Judgement, Vol. 4, para. 1131.

⁸⁷⁵⁵ Trial Judgement, Vol. 4, paras 1130, 1132-1133.

⁸⁷⁵⁶ See *supra*, para. 2604; Trial Judgement, Vol. 4, para. 1209.

⁸⁷⁵⁷ Trial Judgement, Vol. 4, para. 1109.

⁸⁷⁵⁸ Trial Judgement, Vol. 4, para. 1110.

⁸⁷⁵⁹ Pušić's Appeal Brief, paras 38, 41, 43. See also Appeal Hearing, AT. 741-742 (27 Mar 2017).

⁸⁷⁶⁰ Pušić's Appeal Brief, para. 38, referring to William Tomljanovich, T. 6384-6385 (11 Sept 2006).

⁸⁷⁶¹ Pušić's Appeal Brief, para. 43.

stresses that the Trial Chamber did not find that he had played any role in the formulation of the HVO policy that conditioned the release of detainees on the guarantee that they would leave “for outside territory”.⁸⁷⁶² He argues that another reasonable inference that the Trial Chamber could have drawn is that he was merely implementing the decisions of the HVO leadership.⁸⁷⁶³

2665. Pušić emphasises that the Trial Chamber found that he was not the only HVO official who could order the release of HVO detainees and, moreover, that he had to obtain a certificate from the Department of Criminal Investigations and SIS stating that it did not object to any release that he would approve.⁸⁷⁶⁴ Pušić further argues that even if he may have had some discretion in the selection of prisoners to be released, the evidence indicates that he was simply issuing discharge papers based on orders from above that dictated the conditional release policy.⁸⁷⁶⁵ In his view, this is consistent with the Trial Chamber’s finding regarding his interaction with representatives of the international community in relation to which, he submits, it held that Pušić was simply implementing orders from higher political levels.⁸⁷⁶⁶

2666. Pušić argues that the evidence indicates that he was simply implementing the 10 December 1993 Decision based on orders from above that dictated the conditional release policy.⁸⁷⁶⁷ He adds that the Trial Chamber held that, as of that date, and in view of his efforts to implement this decision, Pušić’s powers increased, despite the fact that it also found that there was no evidence that he continued to authorise prisoner releases.⁸⁷⁶⁸

2667. In relation to the May 1993 releases from the Heliodrom, Pušić argues that the Trial Chamber erred in law in finding that his conduct met the threshold for participation in the JCE on the basis that the orders attributed to him mandated the unconditional release of all detainees.⁸⁷⁶⁹ Pušić avers that the Trial Chamber could not have reached a decision on this point beyond a reasonable doubt because it conceded that it did not know the motive behind the releases.⁸⁷⁷⁰ He claims that the official note said to have been written by him stated that the authorities should

⁸⁷⁶² Pušić’s Appeal Brief, para. 39.

⁸⁷⁶³ Pušić’s Appeal Brief, para. 39.

⁸⁷⁶⁴ Pušić’s Appeal Brief, para. 40; Pušić’s Reply Brief, para. 13.

⁸⁷⁶⁵ Pušić’s Appeal Brief, paras 38, 41.

⁸⁷⁶⁶ Pušić’s Appeal Brief, para. 41.

⁸⁷⁶⁷ Pušić’s Appeal Brief, para. 42. Pušić also argues in reply that Biškić’s evidence contradicts the Trial Chamber’s finding that he played a key role in the dismantling of the detention centres. Pušić’s Reply Brief, para. 14.

⁸⁷⁶⁸ Pušić’s Appeal Brief, para. 42, referring to Trial Judgement, Vol. 4, “para. 1450”. See *infra*, fn. 8795. See also Appeal Hearing, AT. 687 (27 Mar 2017).

⁸⁷⁶⁹ Pušić’s Appeal Brief, para. 196.

⁸⁷⁷⁰ Pušić’s Appeal Brief, para. 197.

“release those people, let them go home, back to their homes”, an indication that he was in fact trying to secure the release of unlawfully detained civilians.⁸⁷⁷¹

2668. The Prosecution argues in response that the Trial Chamber reasonably concluded that from May 1993 until April 1994, by virtue of his various functions, Pušić had substantial powers regarding the release of HVO detainees.⁸⁷⁷² According to the Prosecution, this conclusion was based on lists and orders for release made by Pušić and his key role in the release of Heliodrom detainees between 10 and 15 May 1993.⁸⁷⁷³ Moreover, the Prosecution submits that, on 12 August 1993, as the President of the Detention Commission, Pušić set out the procedure for release of detainees which, *inter alios*, required his approval.⁸⁷⁷⁴ It adds that this procedure was subsequently followed and Pušić also released many detainees without any involvement by the SIS or the Department of Criminal Investigations.⁸⁷⁷⁵

2669. The Prosecution submits that the Trial Chamber reasonably found that Pušić played a key role in the implementation of the 10 December 1993 Decision to close all HVO detention centres.⁸⁷⁷⁶ It refers to the Trial Chamber’s findings and to evidence that Pušić, through his participation in the working group tasked with implementing this decision, insisted on ensuring that detainees were released to third countries and regularly informed HVO leaders of progress in this regard.⁸⁷⁷⁷

2670. The Prosecution further submits that the Trial Chamber found that following the 10 December 1993 Decision, Pušić’s powers regarding detainee release increased.⁸⁷⁷⁸ According to the Prosecution, considering his role in the implementation of the 10 December 1993 Decision, the fact that his powers in this regard increased after that date is not undermined by the absence of

⁸⁷⁷¹ Pušić’s Appeal Brief, para. 198, referring to Ex. P02260.

⁸⁷⁷² Prosecution’s Response Brief (Pušić), para. 32; Appeal Hearing, AT. 715-720 (27 Mar 2017).

⁸⁷⁷³ Prosecution’s Response Brief (Pušić), para. 33.

⁸⁷⁷⁴ Prosecution’s Response Brief (Pušić), para. 34; Appeal Hearing, AT. 715 (27 Mar 2017).

⁸⁷⁷⁵ Prosecution’s Response Brief (Pušić), para. 34.

⁸⁷⁷⁶ Prosecution’s Response Brief (Pušić), para. 179; Appeal Hearing, AT. 714-720 (27 Mar 2017).

⁸⁷⁷⁷ Prosecution’s Response Brief (Pušić), para. 179.

⁸⁷⁷⁸ Prosecution’s Response Brief (Pušić), para. 35. The Prosecution further notes in this regard that the Trial Chamber held that immediately after the 10 December 1993 Decision was taken, Pušić tabled a plan to the HR-HB Government which included procedures for the release of detainees. It adds that the Trial Chamber found that Pušić insisted that all detainees should be expelled to ABiH-held territories or to third countries. Subsequently, it goes on, the Trial Chamber found that Pušić was involved in the releases, informed the HVO leadership about them, and also kept a number of people detained for future prisoner exchanges. The Prosecution points to the report of 31 December 1993 written by Pušić, relied on by the Trial Chamber, in which he emphasised that the Exchange Service was fully in charge of dismantling the detention centres and that 3,000 persons had been released by that date. It also notes the agreement Pušić signed with his RBiH counterpart on 10 February 1994, referred to by the Trial Chamber, pursuant to which all detainees were released. Prosecution’s Response Brief (Pušić), para. 35, referring to Exs. P07411, 6D00499.

evidence on whether he continued to approve individual requests for release from the Heliodrom as suggested by Pušić.⁸⁷⁷⁹

2671. The Prosecution argues that Pušić misrepresents Tomljanovich's evidence as the witness's use of the term "bureaucratic processing" referred to the role of the Military Police, the SIS, and the crime prevention service in processing detainees for forced labour assignments rather than to Pušić's role in the release of detainees.⁸⁷⁸⁰ The Prosecution also contends that Pušić re-argues his trial submissions by minimising his role in releases to that of a "facilitator" whose powers of release were dictated by the decisions and orders of the HVO leadership, when in fact they clearly went beyond this.⁸⁷⁸¹ It argues in this respect that even though Pušić may not have been involved in setting out the policy regarding prisoner releases, he participated in shaping it by insisting that the detainees be released only to ABiH-held territories or to third countries.⁸⁷⁸²

2672. In relation to the May 1993 releases from the Heliodrom, the Prosecution avers that whether or not the releases themselves advanced the CCP, they show the extent of Pušić's involvement and power in relation to release of detainees.⁸⁷⁸³ It refers in this regard to the fact that several hundred Muslims remained detained at the Heliodrom after the releases, a fact it considers consistent with the Trial Chamber's finding that Pušić contributed to the CCP by releasing but also by keeping detainees, including to use them for negotiating leverage.⁸⁷⁸⁴

b. Analysis

2673. With regard to Pušić's argument that the Trial Chamber erred in fact in finding that he had substantial powers to order the release of prisoners, the Appeals Chamber first notes that the statement by Tomljanovich relied upon by Pušić in fact refers to the general role of the Military Police, the SIS, and the "criminal service".⁸⁷⁸⁵ At no stage in the cited passage does Tomljanovich refer directly to Pušić.⁸⁷⁸⁶ Further, it is clear from Tomljanovich's testimony that he was unclear as to what exactly the "bureaucratic processing" in question entailed.⁸⁷⁸⁷ Pušić's reliance on it is therefore misplaced. The statement by the Trial Chamber which Pušić claims to be a recognition that his role was that of a "facilitator" is in fact a recapitulation of previous findings which indicate

⁸⁷⁷⁹ Prosecution's Response Brief (Pušić), para. 38.

⁸⁷⁸⁰ Prosecution's Response Brief (Pušić), para. 36.

⁸⁷⁸¹ Prosecution's Response Brief (Pušić), paras 36-37.

⁸⁷⁸² Prosecution's Response Brief (Pušić), para. 37.

⁸⁷⁸³ Prosecution's Response Brief (Pušić), para. 194.

⁸⁷⁸⁴ Prosecution's Response Brief (Pušić), para. 194.

⁸⁷⁸⁵ William Tomljanovich, T. 6384-6385 (11 Sept 2006).

⁸⁷⁸⁶ William Tomljanovich, T. 6384-6385 (11 Sept 2006).

⁸⁷⁸⁷ William Tomljanovich, T. 6385 (11 Sept 2006).

that he played a key role in enabling detainees to leave HR-HB territory,⁸⁷⁸⁸ which the Trial Chamber explicitly considered to be indicative of his significant contribution to the JCE.⁸⁷⁸⁹ His arguments misrepresent the Trial Chamber's factual findings and the evidence relied upon and are dismissed on that basis.

2674. Pušić advances a number of connected arguments that he did not play any role in the formulation of HVO policy, that he was merely implementing the decisions of the HVO leadership, and that he was simply issuing discharge papers based on orders from above, as he claims is indicated by his having to obtain a certificate from the Department of Criminal Investigations and the SIS stating that they did not object to any release that he would approve.⁸⁷⁹⁰ The Appeals Chamber recalls that the question of how much influence he had over the broad contours of HVO policy was not of determinative significance in assessing his liability.⁸⁷⁹¹ In this particular instance, the Appeals Chamber further notes the Trial Chamber's finding that he participated as the Head of the Exchange Service in meetings of the working group tasked with implementing the 10 December 1993 Decision, at which he stressed that Muslim detainees be sent to third countries.⁸⁷⁹² The Appeals Chamber considers that the Trial Chamber's findings as to his membership in this working group and his conduct therein suggest that it considered him to have a degree of influence over HVO policy on detainee releases. His view that this role is consistent with the Trial Chamber's findings regarding his interaction with representatives of the international community⁸⁷⁹³ is irrelevant. These connected arguments are therefore dismissed on the basis of his failure to articulate an error. The Appeals Chamber further dismisses Pušić's argument that he could not have made a significant contribution to the JCE by virtue of his conduct in relation to the implementation of the 10 December 1993 Decision due to the Trial Chamber's purportedly erroneous findings regarding his power and level of influence.⁸⁷⁹⁴

2675. The Appeals Chamber turns next to Pušić's reference to the Trial Chamber finding that there was no evidence that he continued to authorise prisoner releases after 10 December 1993. The Appeals Chamber notes the Trial Chamber's finding that it had no evidence that Pušić continued to authorise prisoner releases after the 10 December 1993 Decision made in Volume 2 of the Trial Judgement, wherein the Trial Chamber made factual findings pertaining to the underpinning

⁸⁷⁸⁸ Trial Judgement, Vol. 4, para. 1166.

⁸⁷⁸⁹ Trial Judgement, Vol. 4, para. 1209.

⁸⁷⁹⁰ Pušić's Appeal Brief, paras 38-41.

⁸⁷⁹¹ See *supra*, para. 2641.

⁸⁷⁹² Trial Judgement, Vol. 4, para. 1128.

⁸⁷⁹³ Pušić's Appeal Brief, para. 41.

⁸⁷⁹⁴ See *supra*, para. 2601. With regard to Pušić's reference in relation to Biškić's testimony, the Appeals Chamber recalls that it has addressed and dismissed this above. See *supra*, para. 2625.

crimes.⁸⁷⁹⁵ In Volume 4 of the Trial Judgement, however, the Trial Chamber identifies a number of releases to ABiH-held territories and third countries subsequent to that date in which Pušić played an active role.⁸⁷⁹⁶ Despite the apparent contradiction, the Appeals Chamber considers that the Trial Chamber's factual findings on this issue were pronounced in Volume 4 of the Trial Judgement. It is in that section that the Trial Chamber focused on individual criminal liability, engaging in a more detailed analysis of the roles of the Accused, including by reference to ample documentary evidence,⁸⁷⁹⁷ and by making specific findings in relation to Pušić's role in the implementation of the 10 December 1993 Decision.⁸⁷⁹⁸ As such, Pušić's submission that the Trial Chamber found that there was no evidence that he continued to authorise prisoner releases after 10 December 1993 is founded on a misreading of the Trial Judgement and does not demonstrate an error of fact occasioning a miscarriage of justice.

2676. In light of the above, the Appeals Chamber also dismisses Pušić's argument that he could not have made a significant contribution to the JCE by virtue of his conduct in relation to the release of detainees due to the Trial Chamber's erroneous findings regarding his power and level of influence.⁸⁷⁹⁹

2677. Finally, with regard to the May 1993 releases from the Heliodrom, the Appeals Chamber notes that the Trial Chamber relied on these events primarily in its assessment of Pušić's participation in the arrest campaigns in Mostar in May 1993.⁸⁸⁰⁰ Pušić's arguments in this respect are dismissed below.⁸⁸⁰¹ In relation to Pušić's argument that these releases could not have contributed to the expulsions of Muslims from HVO-held territory on the basis that the orders attributed to him mandated the unconditional release of all detainees,⁸⁸⁰² the Appeals Chamber notes that the Trial Chamber did not make any findings as to the final destination of the detainees released by Pušić in Mostar in May 1993.⁸⁸⁰³ As such, the Trial Chamber does not appear to have considered this conduct to have formed part of Pušić's contribution to the expulsions, that is, the specific crimes of deportation and forcible transfer as part of the CCP.

2678. In light of the foregoing, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's findings as to his role in the release of detainees.

⁸⁷⁹⁵ Trial Judgement, Vol. 2, para. 1451. The paragraph to which Pušić refers does not exist. See *supra*, fn. 8768; Pušić's Appeal Brief, fn. 80.

⁸⁷⁹⁶ Trial Judgement, Vol. 4, paras 1160, 1162-1165.

⁸⁷⁹⁷ Trial Judgement, Vol. 4, paras 1160, 1162-1165 and references cited therein.

⁸⁷⁹⁸ Trial Judgement, Vol. 4, paras 1050, 1126-1133.

⁸⁷⁹⁹ See *supra*, para. 2601.

⁸⁸⁰⁰ See Trial Judgement, Vol. 4, paras 1109-1112.

⁸⁸⁰¹ See *infra*, para. 2738.

⁸⁸⁰² Pušić's Appeal Brief, para. 196.

⁸⁸⁰³ See Trial Judgement, Vol. 4, paras 1109, 1156.

(ix) Forced labour

2679. The Trial Chamber found that Pušić had the power to use detainees to perform labour on the basis of: (1) his role as President of the Detention Commission; and (2) its prior finding that between June and December 1993, Pušić was among those who had the power to authorise the sending of Heliodrom detainees to perform labour.⁸⁸⁰⁴ The Trial Chamber elsewhere found that Pušić “authorised” or “verbally ordered” Heliodrom detainees to be sent for forced labour on at least 30 occasions between 17 February and 24 July 1993, and that two documents in evidence mention that detainees were sent to perform forced labour on the basis of a “general order” from Pušić on 20 and 22 July 1993.⁸⁸⁰⁵ The Trial Chamber relied for this finding on, *inter alia*, Military Police Administration logbooks of approvals for sending detainees to perform labour, taken together with testimony from Witness Josip Praljak, Deputy Warden at the Heliodrom, that Pušić never issued him a written order authorising the use of forced labour and that for the most part his orders and authorisations were issued over the telephone.⁸⁸⁰⁶ The Trial Chamber noted that the HVO authorities, as early as August and November 1993, and the ICRC, in August 1993 and January 1994, informed Pušić that detainees at the Heliodrom were being requisitioned to work on the front line.⁸⁸⁰⁷ It concluded that between May 1993 and January 1994, he authorised and ordered Heliodrom detainees to perform labour on the front line.⁸⁸⁰⁸

a. Arguments of the Parties

2680. Pušić submits that the Trial Chamber erred in fact when it found that he had any powers over the use of detainees for forced labour.⁸⁸⁰⁹ He contends that none of the posts he held at the relevant time were vested with *de jure* powers in this area.⁸⁸¹⁰ He argues that the Trial Chamber erred in relying on the evidence of Josip Praljak to find that he had *de facto* powers in this respect.⁸⁸¹¹ According to Pušić, it was “illogical” to conclude that he had such powers when he had no direct authority over the commanding officers and soldiers who escorted the detainees on forced labour assignments.⁸⁸¹² Pušić argues that the hierarchical relationship between him and the

⁸⁸⁰⁴ Trial Judgement, Vol. 4, para. 1054. See also Trial Judgement, Vol. 4, para. 1202.

⁸⁸⁰⁵ Trial Judgement, Vol. 2, para. 1472 & fn. 3711, Vol. 4, para. 1147, referring to Exs. P03583, P03633.

⁸⁸⁰⁶ Trial Judgement, Vol. 4, para. 1147 & fn. 2142, referring to, *inter alia*, Exs. P08043, P01765, Josip Praljak, T. 14750 (27 Feb 2007), T(F). 14978-14979 (1 Mar 2007).

⁸⁸⁰⁷ Trial Judgement, Vol. 4, para. 1148.

⁸⁸⁰⁸ Trial Judgement, Vol. 4, para. 1151. See also Trial Judgement, Vol. 4, paras 1203-1204; *infra*, paras 2791-2792.

⁸⁸⁰⁹ Pušić’s Appeal Brief, para. 49. See also Appeal Hearing, AT. 687-690, 697 (27 Mar 2017).

⁸⁸¹⁰ Pušić’s Appeal Brief, para. 49. See also Appeal Hearing, AT. 686 (27 Mar 2017).

⁸⁸¹¹ Pušić’s Appeal Brief, para. 50.

⁸⁸¹² Pušić’s Appeal Brief, para. 50. Pušić also argues in reply that the Trial Chamber’s finding that he approved or authorised forced labour assignments is flawed as none of his subordinates could be identified. Pušić’s Reply Brief, para. 19.

Heliodrom wardens Stanko Božić and Josip Praljak was unclear.⁸⁸¹³ This, he submits, casts doubt as to whether there was a link between him and the crimes.⁸⁸¹⁴

2681. Specifically with regard to Josip Praljak's credibility, Pušić points out that the Trial Chamber found him not to be credible in his claim that he had no knowledge of abuse of detainees under his watch at the Heliodrom.⁸⁸¹⁵ He submits that the Trial Chamber should have applied the same scepticism to Praljak's evidence on Pušić's role in the approval of forced labour assignments, as it was obvious that Praljak used him as a scapegoat in order to escape liability for his own responsibility for those assignments.⁸⁸¹⁶ As to the Trial Chamber's finding that Pušić failed to take steps to stop or prevent the use of detainees for forced labour, Pušić submits that he had no powers to do so and that this is corroborated by a report he sent to Marijan Biškić on 29 January 1994 in which he documented abuses at Vojno in what he characterises as an attempt to persuade the HVO leadership to rectify the situation.⁸⁸¹⁷

2682. Moreover, Pušić submits that the Trial Chamber ignored exculpatory evidence from Biškić, who explained that any request for forced labour would be sent from the HVO Main Staff to the Heliodrom warden.⁸⁸¹⁸ This evidence is important, Pušić suggests, as Biškić did not mention Pušić with regard to the relevant procedure for the approval of forced labour, and also as no other witness corroborated Josip Praljak's evidence on this issue, including two further witnesses who testified about forced labour.⁸⁸¹⁹

2683. Pušić submits that the Trial Chamber erred in fact and law in concluding that he made a significant contribution to the JCE by approving the use of detainees for forced labour assignments in HVO detention centres.⁸⁸²⁰ Pušić argues that as opposed to orders signed by him, the only evidence of his approvals of forced labour assignments relied on by the Prosecution are the notes made in the Praljak Log Book⁸⁸²¹ on the basis of conversations, mainly via telephone, between Josip Praljak and Pušić, in which Praljak requested the approval.⁸⁸²² Pušić contends that approval for forced labour assignments is criminal only if it can be shown that forced labour would not have

⁸⁸¹³ Pušić's Appeal Brief, para. 51. He also submits that while there is some evidence that he had contact with Josip Praljak in his capacity as a Military Police control officer prior to 5 July 1993, Praljak did not explain how Pušić's responsibilities expanded to include the approval of forced labour assignments after his appointment as the Head of the Exchange Service. Pušić's Appeal Brief, para. 51. See also Appeal Hearing, AT. 685-686 (27 Mar 2017).

⁸⁸¹⁴ Pušić's Appeal Brief, para. 52.

⁸⁸¹⁵ Pušić's Appeal Brief, para. 55; Appeal Hearing, AT. 684-685 (27 Mar 2017).

⁸⁸¹⁶ Pušić's Appeal Brief, para. 55.

⁸⁸¹⁷ Pušić's Appeal Brief, para. 56.

⁸⁸¹⁸ Pušić's Appeal Brief, para. 53; Appeal Hearing, AT. 689 (27 Mar 2017).

⁸⁸¹⁹ Pušić's Appeal Brief, paras 53-54. See Pušić's Appeal Brief, para. 50. See also Appeal Hearing, AT. 687-690 (27 Mar 2017).

⁸⁸²⁰ Pušić's Appeal Brief, para. 188.

⁸⁸²¹ Exhibit P00352, a log book by Josip Praljak, the *de facto* warden (21 September to 10 December 1993) and then the co-warden (10 December 1993 to 1 July 1994) of the Heliodrom detention facility.



taken place without such approval; in this instance there is doubt as to whether this was the case and his conduct therefore did not contribute to the CCP.⁸⁸²³ Pušić also submits that the Trial Chamber found that he issued forced labour approvals from January 1993 and erred by failing to clarify that it did not hold him liable for any crimes that occurred before April 1993, when he joined the JCE.⁸⁸²⁴

2684. According to the Prosecution, the Trial Chamber reasonably concluded that between at least June and December 1993, Pušić was among those who had the authority to approve the use of detainees at the Heliodrom for forced labour and that he often made use of this power.⁸⁸²⁵ The Prosecution argues that in reaching this conclusion, the Trial Chamber relied on evidence such as logbooks, reports, and requests which show that Pušić authorised the use of Heliodrom detainees for labour on at least 30 occasions between 17 February and 24 July 1993, upon requests received from the Military Police and the HVO.⁸⁸²⁶ The Prosecution further refers to the testimony of Josip Praljak, who stated that Pušić frequently issued him the required authorisations to use detainees to perform labour over the telephone.⁸⁸²⁷

2685. The Prosecution submits that in challenging the testimony of Josip Praljak, Pušić ignores ample corroborative documentary evidence.⁸⁸²⁸ As to Pušić's arguments concerning Biškić's evidence, the Prosecution argues that it neither contradicts Praljak's testimony nor does it undermine the Trial Chamber's findings on Pušić's powers and actions related to forced labour.⁸⁸²⁹ Moreover, it adds, Biškić's testimony concerned a different period from the one when Pušić authorised or approved the use of detainees from the Heliodrom.⁸⁸³⁰ With regard to the fact that on 29 January 1994, Pušić informed Biškić of the abuses of detainees from the Heliodrom during a labour assignment, the Prosecution submits that this actually shows Pušić's ability to raise issues related to detention centres to HVO officials.⁸⁸³¹

2686. The Prosecution argues that the Trial Chamber's findings regarding Pušić's powers over the use of Heliodrom detainees for forced labour are not undermined by the fact that Pušić was not a superior with effective control over the personnel who took the prisoners to forced labour assignments.⁸⁸³² Pušić's role was to approve the requests for forced labour, and not order the direct

⁸⁸²² Pušić's Appeal Brief, para. 51. See also Appeal Hearing, AT. 687-690, 737-739 (27 Mar 2017).

⁸⁸²³ Pušić's Appeal Brief, paras 52, 190.

⁸⁸²⁴ Pušić's Appeal Brief, para. 191.

⁸⁸²⁵ Prosecution's Response Brief (Pušić), paras 44, 46; Appeal Hearing, AT. 712 (27 Mar 2017).

⁸⁸²⁶ Prosecution's Response Brief (Pušić), para. 45; Appeal Hearing, AT. 713-714 (27 Mar 2017).

⁸⁸²⁷ Prosecution's Response Brief (Pušić), para. 45.

⁸⁸²⁸ Prosecution's Response Brief (Pušić), para. 48; Appeal Hearing, AT. 713 (27 Mar 2017).

⁸⁸²⁹ Prosecution's Response Brief (Pušić), para. 48; Appeal Hearing, AT. 714 (27 Mar 2017).

⁸⁸³⁰ Prosecution's Response Brief (Pušić), para. 48; Appeal Hearing, AT. 714 (27 Mar 2017).

⁸⁸³¹ Prosecution's Response Brief (Pušić), para. 49.

⁸⁸³² Prosecution's Response Brief (Pušić), para. 47.

perpetrators to take out the detainees.⁸⁸³³ The Prosecution further argues that for criminal responsibility to be established pursuant to JCE, it is not necessary to find that the crimes would not have occurred but for an accused's contribution.⁸⁸³⁴

2687. The Prosecution argues that Pušić frequently approved the use of Heliodrom detainees for forced labour, including on the front line, thereby contributing to unlawful labour, murder, and wilful killing.⁸⁸³⁵ It adds that the Trial Chamber did clarify that Pušić was not held liable for any forced labour approvals issued before April 1993.⁸⁸³⁶

b. Analysis

2688. The Appeals Chamber notes that the Trial Chamber found that Pušić possessed powers over the use of detainees for forced labour on the basis of his position as President of the Detention Commission and by reference to a wealth of documentary evidence that he was among those who had the power to authorise the sending of Heliodrom detainees to perform forced labour.⁸⁸³⁷ Pušić's argument that he had no *de jure* power to order forced labour, already considered at trial,⁸⁸³⁸ is of no relevance in light of this finding that he possessed the relevant *de facto* power. This argument is accordingly dismissed. The Appeals Chamber further considers the following arguments to be mere variations of his previously dismissed arguments in relation to the Trial Chamber's supposed failure to identify his subordinates: (1) it was "illogical" to conclude that he had such powers when he had no direct authority over the commanding officers and soldiers who escorted the detainees on forced labour assignments; and (2) the hierarchical relationship between him and the Heliodrom wardens was unclear.⁸⁸³⁹ They are dismissed on the same basis.

2689. Turning to Pušić's challenges to the evidence of Josip Praljak, the Appeals Chamber first recalls that a trial chamber can reasonably accept certain parts of a witness's testimony and reject others.⁸⁸⁴⁰ The Trial Chamber did not therefore err *per se* by failing to apply the same scepticism to Praljak's evidence on Pušić's role in the approval of forced labour assignments to that which it applied to his claim that he had no knowledge of abuse of detainees under his watch at the Heliodrom.⁸⁸⁴¹

⁸⁸³³ Prosecution's Response Brief (Pušić), para. 47.

⁸⁸³⁴ Prosecution's Response Brief (Pušić), para. 47.

⁸⁸³⁵ Prosecution's Response Brief (Pušić), paras 180, 190.

⁸⁸³⁶ Prosecution's Response Brief (Pušić), para. 191.

⁸⁸³⁷ Trial Judgement, Vol. 2, para. 1472 & fn. 3711, Vol. 4, para. 1054.

⁸⁸³⁸ See Trial Judgement, Vol. 4, paras 1053-1054.

⁸⁸³⁹ See *supra*, para. 2618.

⁸⁸⁴⁰ *Popović et al.* Appeal Judgement, para. 132 & fn. 373.

⁸⁸⁴¹ Trial Judgement, Vol. 2, para. 1589.

2690. With regard to Pušić's argument that it was obvious that Praljak used him as a scapegoat in order to escape liability for his own responsibility for those assignments, the Appeals Chamber recalls that a trial chamber has the discretion to rely upon evidence of accomplice witnesses. However, when weighing the probative value of such evidence, the trial chamber is bound to carefully consider the totality of the circumstances in which it was tendered. In particular, consideration should be given to circumstances showing that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal or to lie.⁸⁸⁴² The Appeals Chamber also recalls that evidence of witnesses who might have motives or incentives to implicate the accused is not *per se* unreliable, especially where such a witness may be thoroughly cross-examined; therefore, reliance upon this evidence does not, as such, constitute an error of law.⁸⁸⁴³ A trial chamber must, however, explain the reasons for accepting the evidence of such a witness.⁸⁸⁴⁴ In the instant case, the Trial Chamber acknowledged Pušić's calling into question of Praljak's testimony on Pušić's role in the HVO detention centres.⁸⁸⁴⁵ Despite this, it failed to provide reasons for accepting his evidence, instead providing reasons only on the occasions where it rejected his evidence.⁸⁸⁴⁶ Nevertheless, the Appeals Chamber notes that the Trial Chamber referred to copious documentary evidence corroborating Praljak's testimony on Pušić's role in the approval of forced labour assignments.⁸⁸⁴⁷ In light of this, the Appeals Chamber cannot conclude that the Trial Chamber's error in failing to provide reasons for accepting Josip Praljak's evidence on this occasion invalidated its decision. Pušić's argument with regard to Praljak's credibility is therefore dismissed.⁸⁸⁴⁸

2691. Pušić's argument that the only evidence of his approvals of forced labour assignments are the notes made in the Praljak Log Book on the basis of conversations between Josip Praljak and himself ignores relevant Trial Chamber findings. Specifically, the Appeals Chamber notes that the Trial Chamber referred to Pušić issuing "orders" relating to forced labour on numerous occasions,

⁸⁸⁴² *Popović et al.* Appeal Judgement, para. 134 and references cited therein.

⁸⁸⁴³ *Popović et al.* Appeal Judgement, para. 134 and references cited therein.

⁸⁸⁴⁴ *Popović et al.* Appeal Judgement, para. 134 and references cited therein.

⁸⁸⁴⁵ Trial Judgement, Vol. 4, para. 1038.

⁸⁸⁴⁶ Trial Judgement, Vol. 2, fn. 3845, para. 1589.

⁸⁸⁴⁷ Specifically, the Trial Chamber held that: "on at least 30 occasions between 17 February and 24 July 1993, Berislav Pušić 'authorised' or 'verbally ordered' that detainees be sent to perform labour, including labour on the front line. Detainees were also sent to perform labour on the front line pursuant to a 'general order' issued by Berislav Pušić on 20 and 22 July 1993. The evidence shows that Berislav Pušić gave these authorisations or orders further to requests from the Military Police – including the 1st and the 5th Battalions – and from the HVO armed forces –, most often, the 2nd Battalion of the 2nd Brigade and the *Benko Penavić* ATG." Trial Judgement, Vol. 4, para. 1147 (internal references omitted).

⁸⁸⁴⁸ Pušić's submission that Praljak did not explain how Pušić's responsibilities expanded to include the approval of forced labour on appointment as Head of the Exchange Service appears to imply that for Praljak's testimony to be considered probative, it would have to explicitly address Pušić's evolving mandate. This is not the case. This argument is accordingly dismissed as unsubstantiated.



including on the basis of documents other than the Praljak Log Book.⁸⁸⁴⁹ Pušić's argument also fails to articulate an error as his challenges to the credibility and probative value of Praljak's evidence have already been dismissed,⁸⁸⁵⁰ with the consequence that it was within the Trial Chamber's discretion to rely on Praljak's testimony as to the notes he made in the Praljak Log Book. It is accordingly dismissed.

2692. With regard to Pušić's argument that the Trial Chamber ignored exculpatory evidence from Biškić, the Appeals Chamber notes that the testimony in question refers to an order from Petković in October 1993 which stipulated that requests for detainees to perform labour required approval by the Main Staff,⁸⁸⁵¹ not, as Pušić argues, that any request for forced labour would be sent from the HVO Main Staff to the Heliudrom warden.⁸⁸⁵² The Appeals Chamber considers that Pušić does not demonstrate why a requirement of approval from the Main Staff would preclude his involvement in the process or its impact on the Trial Chamber's finding. The Appeals Chamber further notes that the documentary evidence relied upon by the Trial Chamber in finding that Pušić authorised forced labour is dated prior to Petković's order.⁸⁸⁵³ Moreover, Biškić explicitly caveated his testimony on the procedure for the approval of forced labour by stating that he was "guessing", before further noting that he did not see the documents which made the request.⁸⁸⁵⁴ As such, his testimony cannot possibly demonstrate that no reasonable trier of fact could have reached the relevant conclusion. Further, the mere fact that Biškić and the two other witnesses to whom Pušić refers omitted to mention his role in relation to forced labour does not directly contradict the Trial Chamber's findings; nor can it cast sufficient doubt to establish that no reasonable trier of fact could have made such findings. These arguments are accordingly dismissed.

2693. Pušić's claim that he documented abuses at Vojno in an attempt to persuade the HVO leadership to rectify the situation is not established by the evidence in question. He states in the report to which he refers that "Mario Mihalj [...] is abusing his position, abusing prisoners, killing them".⁸⁸⁵⁵ While this supports the contention that Pušić made efforts to alert the HVO leadership to the behaviour of Mario Mihalj described in the report, this report falls short of demonstrating that Pušić was thereby attempting to persuade the HVO leadership to rectify the situation.⁸⁸⁵⁶ The

⁸⁸⁴⁹ Trial Judgement, Vol. 2, para. 1472 & fn. 3711, Vol. 4, para. 1147 & fn. 2142 and references cited therein.

⁸⁸⁵⁰ See *supra*, para. 2690.

⁸⁸⁵¹ Marijan Biškić, T. 15245 (7 Mar 2007).

⁸⁸⁵² Pušić's Appeal Brief, para. 53.

⁸⁸⁵³ See Trial Judgement, Vol. 2, para. 1472 & fn. 3711 and references cited therein; Marijan Biškić, T. 15245 (7 Mar 2007).

⁸⁸⁵⁴ Marijan Biškić, T. 15245 (7 Mar 2007).

⁸⁸⁵⁵ Ex. P07722. See Trial Judgement, Vol. 2, para. 1737, Vol. 4, para. 1186.

⁸⁸⁵⁶ The Appeals Chamber notes, however, that the Trial Chamber did not consider that the murders at Vojno were part of the CCP and instead analysed Pušić's responsibility for them under JCE III, ultimately determining that he could not reasonably have foreseen them. Trial Judgement, Vol. 4, paras 1187, 1215.



Appeals Chamber further considers that the report does not demonstrate that he had no powers to take steps to stop or prevent the use of detainees for forced labour. Pušić's argument is accordingly dismissed.

2694. In light of the above, the Appeals Chamber also dismisses Pušić's argument that he could not have made a significant contribution to the JCE by virtue of his conduct in relation to forced labour assignments due to the Trial Chamber's erroneous findings regarding his power and level of influence.⁸⁸⁵⁷

2695. Pušić's argument that approval for forced labour assignments is criminal only if it can be shown that forced labour would not have taken place without such approval misstates the applicable law: the accused's participation in a JCE need not be a *sine qua non*, without which the crimes could not or would not have been committed.⁸⁸⁵⁸

2696. Finally, the Appeals Chamber recalls that the Trial Chamber found Pušić responsible, through his participation in a JCE, "for all of the crimes constituting the [CCP]".⁸⁸⁵⁹ The CCP included crimes related to forced labour.⁸⁸⁶⁰ It further found that Pušić joined the JCE as of April 1993 and remained a member until April 1994.⁸⁸⁶¹ As such, the Appeals Chamber considers it clear that Pušić was found guilty of crimes committed as part of the CCP during that period of time, including crimes related to forced labour.⁸⁸⁶² Pušić fails to explain why further clarification in relation to the scope of his participation in the JCE was necessary. The Appeals Chamber accordingly dismisses Pušić's argument that the Trial Chamber erred by failing to clarify that it did not hold him liable for any crimes that occurred before April 1993, when he joined the JCE.

2697. In light of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's findings as to his role in the use of detainees for forced labour.

(x) Conditions of detention, mistreatment, and transfer of detainees

2698. The Trial Chamber found that Pušić had the power to transfer detainees on the basis of, "among others", an order of 13 December 1993 issued by Pušić calling for the transfer of 17 detainees from Gabela Prison to Ljubuški Prison ("13 December 1993 Order") with a view to their departure to a third country, and a memo dated 6 January 1994 signed by Pušić proposing that

⁸⁸⁵⁷ See *supra*, para. 2601.

⁸⁸⁵⁸ *Kvočka et al.* Appeal Judgement, para. 98. See also *Popović et al.* Appeal Judgement, para. 1378; *Krajišnik* Appeal Judgement, paras 215, 695; *Brđanin* Appeal Judgement, para. 430.

⁸⁸⁵⁹ Trial Judgement, Vol. 4, para. 1212.

⁸⁸⁶⁰ See, e.g., Trial Judgement, Vol. 4, paras 66, 68.

⁸⁸⁶¹ Trial Judgement, Vol. 4, para. 1229. See also Trial Judgement, Vol. 1, para. 25.

⁸⁸⁶² See also *supra*, para. 886; *infra*, paras 2791-2792.

detainees be transferred from the Heliodrom to Gabela Prison due to overcrowding at the former facility (“6 January 1994 Memo”).⁸⁸⁶³ It also relied on Pušić’s position as Head of the Exchange Service and President of the Detention Commission, noting that he had the power to send detainees to work and to release them.⁸⁸⁶⁴ It consequently found that he had a role and significant powers in the detention centres, notably the power to transfer detainees from one detention centre to another to resolve problems related to conditions of confinement and mistreatment of detainees.⁸⁸⁶⁵

2699. With regard to individual detention centres, the Trial Chamber cited a number of pieces of evidence that Pušić was aware of conditions of confinement and mistreatment of detainees at the Heliodrom,⁸⁸⁶⁶ but found that he failed to take any measures to improve these conditions or remedy the mistreatment despite it being within his power to do so.⁸⁸⁶⁷ Referring to conditions of confinement, the Trial Chamber specifically recalled his power to transfer detainees as a potential measure which he failed to take.⁸⁸⁶⁸ It found that he was aware of poor conditions of confinement at Dretelj, Gabela, and Ljubuški Prisons, in particular the problem of overcrowding, but that he failed to take any or adequate measures to remedy them in relation to the latter two facilities.⁸⁸⁶⁹ Finally, the Trial Chamber found that, at least in January 1994, Pušić knew that detainees at Vojno Detention Centre were being forced to work on the front line and were being mistreated.⁸⁸⁷⁰

2700. In its overarching findings as to Pušić’s responsibility pursuant to JCE I, the Trial Chamber noted that Pušić was aware of harsh conditions of detention at the Heliodrom and in Dretelj, Gabela, and Ljubuški Prisons, and of mistreatment of detainees at the Heliodrom and at Vojno Detention Centre.⁸⁸⁷¹ It found that he never took the necessary measures to improve these conditions or put a stop to the mistreatment by moving detainees to other detention centres or notifying the relevant authorities.⁸⁸⁷²

a. Arguments of the Parties

2701. Pušić argues that the Trial Chamber erred in finding that he had “substantial” or “significant” powers over the conditions in HVO detention facilities, as there is no evidence that he had either *de jure* or *de facto* hierarchical powers over the personnel at such facilities.⁸⁸⁷³ According

⁸⁸⁶³ Trial Judgement, Vol. 4, para. 1056.

⁸⁸⁶⁴ Trial Judgement, Vol. 4, para. 1056.

⁸⁸⁶⁵ Trial Judgement, Vol. 4, para. 1056. See also Trial Judgement, Vol. 4, para. 1202.

⁸⁸⁶⁶ Trial Judgement, Vol. 4, paras 1137-1144 and references cited therein.

⁸⁸⁶⁷ Trial Judgement, Vol. 4, paras 1143, 1145.

⁸⁸⁶⁸ Trial Judgement, Vol. 4, para. 1143.

⁸⁸⁶⁹ Trial Judgement, Vol. 4, paras 1170, 1176, 1182.

⁸⁸⁷⁰ Trial Judgement, Vol. 4, para. 1187.

⁸⁸⁷¹ Trial Judgement, Vol. 4, para. 1203.

⁸⁸⁷² Trial Judgement, Vol. 4, para. 1203.

⁸⁸⁷³ Pušić’s Appeal Brief, paras 57-59. See also Appeal Hearing, AT. 697 (27 Mar 2017).

to Pušić, any influence he may have had in the transfer of prisoners between facilities does not justify the finding that he had those powers.⁸⁸⁷⁴ The transfer of detainees from one facility to another was undertaken “in accordance with broader dictates of HVO policy” over which he had no say.⁸⁸⁷⁵ He submits that “the suggestion” that by moving prisoners he could alleviate detention conditions is unsustainable, as any transfer depended on approval from higher authorities, as reflected by the 6 January 1994 Memo.⁸⁸⁷⁶

2702. Pušić submits that the Trial Chamber erred in its conclusion that his role in designating Gabela and Ljubuški Prisons as transit centres prior to the sending abroad of detainees amounted to a significant contribution to the JCE.⁸⁸⁷⁷ He contends that not every act that facilitates a broadly defined objective, namely ethnic cleansing, must necessarily constitute a significant contribution, and that if this were to be the case, criminal liability could potentially arise from every act carried out in office by a civil servant.⁸⁸⁷⁸

2703. Pušić argues that his participation in the working group despatched on 19 July 1993 to identify new sites to take detainees from overcrowded detention centres was as a junior member, that he did not report back to the HVO cabinet, and that the visit of the working group had no impact on the implementation of the JCE objective.⁸⁸⁷⁹ He further argues that it is unclear from the evidence that his proposals of 12 August 1993 to suspend releases were ever adopted and that this conduct also does not meet the threshold for participation in a JCE.⁸⁸⁸⁰ With regard to the information received by Pušić at a meeting with a representative of the ICRC on 20 September 1993 concerning prisoners exhibiting signs of malnutrition at Dretelj Prison, Pušić reiterates that he did not have the power to transfer detainees unilaterally.⁸⁸⁸¹ He adds that in any event, his receipt of this information and failure to act did not contribute to the JCE given his limited powers.⁸⁸⁸² Finally, he contends that his visits to Ljubuški Prison on at least two occasions between April and September 1993 do not meet the threshold for participation in a JCE as they did not constitute a significant contribution to or impact at all on the implementation of the CCP.⁸⁸⁸³

2704. The Prosecution responds that the Trial Chamber reasonably found that Pušić had significant powers in relation to HVO detention centres and had the capacity to solve problems

⁸⁸⁷⁴ Pušić’s Appeal Brief, para. 60.

⁸⁸⁷⁵ Pušić’s Appeal Brief, para. 60. See also Appeal Hearing, AT. 692, 696 (27 Mar 2017).

⁸⁸⁷⁶ Pušić’s Appeal Brief, para. 61; Pušić’s Reply Brief, para. 21. See also Appeal Hearing, AT. 692-693 (27 Mar 2017).

⁸⁸⁷⁷ Pušić’s Appeal Brief, paras 182-183, 185. See also Appeal Hearing, AT. 694-695 (27 Mar 2017).

⁸⁸⁷⁸ Pušić’s Appeal Brief, para. 183.

⁸⁸⁷⁹ Pušić’s Appeal Brief, paras 170, 206, 214; Pušić’s Reply Brief, para. 22.

⁸⁸⁸⁰ Pušić’s Appeal Brief, paras 207, 212.

⁸⁸⁸¹ Pušić’s Appeal Brief, paras 184, 208, referring to Trial Judgement, Vol. 4, para. 1169. See also Appeal Hearing, AT. 694 (27 Mar 2017).

⁸⁸⁸² Pušić’s Appeal Brief, para. 209.



regarding the treatment of detainees and the conditions of their confinement.⁸⁸⁸⁴ It further submits that Pušić had the power to transfer detainees between detention centres, as shown by a number of examples, but that Pušić generally failed to use this power in order to alleviate the conditions of detention.⁸⁸⁸⁵ On the other hand, the Prosecution argues that Pušić did use this instrument to manage issues, such as overcrowding within the detention system, but also failed to “follow through with prisoner transfers when necessary” and thereby contributed to the CCP.⁸⁸⁸⁶ It adds that nonetheless, throughout the conflict, Pušić was involved in transferring detainees between facilities, and argues that this was a process which often served as an integral step in removing Muslims from HZ(R) H-B territory that was directly connected to ethnic cleansing.⁸⁸⁸⁷ The Prosecution also submits that besides transferring detainees, Pušić could have notified the relevant authorities regarding the conditions of detention and mistreatment of detainees.⁸⁸⁸⁸

2705. The Prosecution submits that by virtue of his position as President of the Detention Commission, Pušić had powers which allowed him to resolve problems related to the functioning of all detention centres.⁸⁸⁸⁹ It further notes his prior participation in a working group tasked with inspecting detention sites in Čapljina and proposing measures to improve conditions in those sites.⁸⁸⁹⁰ The Prosecution argues that Pušić had the power to interact with HVO and Croatian officials and leaders in relation to detention conditions and notes that the Trial Chamber found that he was approached, in the same way as high-ranking HVO officials, by HVO members and representatives of international organisations on a number of matters, including detention conditions and access to detention centres for those international organisations.⁸⁸⁹¹ According to the Prosecution, Pušić, as an agent of the detaining power, had a duty under the Geneva Conventions to protect POWs and other protected persons in detention, including civilians, and that this included duties to treat prisoners humanely and protect them from death or serious dangers to their health.⁸⁸⁹²

2706. With regard to Pušić’s participation in the working group dispatched on 19 July 1993, the Prosecution argues that his visits to HVO detention centres were one factor considered by the Trial Chamber in establishing Pušić’s knowledge of the conditions in the detention centres and not a contribution *per se*, and that it was in fact his facilitation of the HVO prison system and his failure

⁸⁸⁸³ Pušić’s Appeal Brief, para. 218. See also Appeal Hearing, AT. 696 (27 Mar 2017).

⁸⁸⁸⁴ Prosecution’s Response Brief (Pušić), para. 50; Appeal Hearing, AT. 721-723 (27 Mar 2017).

⁸⁸⁸⁵ Prosecution’s Response Brief (Pušić), para. 51.

⁸⁸⁸⁶ Prosecution’s Response Brief (Pušić), para. 188.

⁸⁸⁸⁷ Prosecution’s Response Brief (Pušić), para. 187. See also Prosecution’s Response Brief (Pušić), paras 202, 204.

⁸⁸⁸⁸ Appeal Hearing, AT. 722-723 (27 Mar 2017). See also Appeal Hearing, AT. 724-725, 727-728 (27 Mar 2017).

⁸⁸⁸⁹ Prosecution’s Response Brief (Pušić), para. 52.

⁸⁸⁹⁰ Prosecution’s Response Brief (Pušić), para. 52.

⁸⁸⁹¹ Prosecution’s Response Brief (Pušić), para. 53.

⁸⁸⁹² Prosecution’s Response Brief (Pušić), para. 186, referring to *Mrkšić and Šljivančanin* Appeal Judgement, paras 70, 150-151, *Blaškić* Appeal Judgement, fn. 1385, Common Article 3, Article 13 of Geneva Convention III, Article 27 of Geneva Convention IV.

to take steps to improve conditions and end crimes in detention centres which represented a contribution to crimes.⁸⁸⁹³ The Prosecution also refers in this regard to a September 1993 meeting with a representative of the ICRC who informed Pušić of malnutrition among detainees at Dretelj Prison.⁸⁸⁹⁴

2707. The Prosecution also contends that Pušić was convicted for imprisonment and unlawful confinement at Dretelj Prison based on his membership of the JCE and his shared intent rather than by virtue of any direct participation in crimes committed there. It considers that his argument in relation to his proposal of 12 August 1993 to suspend releases is therefore moot with regard to Dretelj Prison.⁸⁸⁹⁵

b. Analysis

2708. With regard to the 6 January 1994 Memo,⁸⁸⁹⁶ which Pušić claims demonstrates that any transfer depended on approval from higher authorities, the Appeals Chamber notes that Pušić's proposal that detainees be transferred from the Heliodrom to Gabela Prison appears to have been, as noted above, overruled by Marijan Biškić.⁸⁸⁹⁷ The Appeals Chamber notes, however, that the Trial Chamber, when finding that he possessed the power to transfer detainees, also referred to the 13 December 1993 Order calling for the transfer of 17 detainees from Gabela Prison to Ljubuški Prison and his positions as Head of the Exchange Service and President of the Detention Commission, notably his power to send detainees to work and to release them.⁸⁸⁹⁸ Pušić's argument that there is no evidence that he had either *de jure* or *de facto* hierarchical powers over the personnel at HVO detention facilities ignores these relevant factual findings and is accordingly dismissed,⁸⁸⁹⁹ as is his argument that any influence he may have had in the transfer of prisoners between facilities does not justify the finding that he had those powers. By extension and on the same basis, so too is his argument that he could not have made a significant contribution to the JCE by virtue of his conduct in relation to the transfer of detainees between detention centres due to the Trial Chamber's erroneous findings regarding his power and level of influence.⁸⁹⁰⁰

⁸⁸⁹³ Prosecution's Response Brief (Pušić), paras 197 (in relation to Dretelj Prison), 203 (in relation to Gabela Prison), 205 (in relation to Ljubuški Prison).

⁸⁸⁹⁴ Prosecution's Response Brief (Pušić), para. 197.

⁸⁸⁹⁵ Prosecution's Response Brief (Pušić), para. 199 & fn. 816.

⁸⁸⁹⁶ See *supra*, para. 2698.

⁸⁸⁹⁷ See *supra*, para. 2625. See also Trial Judgement, Vol. 2, para. 1519, Vol. 4, para. 1142.

⁸⁸⁹⁸ Trial Judgement, Vol. 4, para. 1056.

⁸⁸⁹⁹ Insofar as Pušić's argument refers specifically to hierarchical considerations, the Appeals Chamber considers it to be a reiteration of his argument that the Trial Chamber erred by failing to identify his subordinates, which it has already dismissed. See *supra*, para. 2618.

⁸⁹⁰⁰ See *supra*, para. 2601.

2709. With regard to Pušić's argument that the transfer of detainees was undertaken "in accordance with broader dictates of HVO policy" over which he had no say, the Appeals Chamber recalls that the question of how much influence he had over the broad contours of HVO policy was not of determinative significance in assessing his liability and accordingly dismisses it also.⁸⁹⁰¹

2710. Turning to Pušić's argument that "the suggestion" that by moving prisoners he could alleviate detention conditions is unsustainable, the Appeals Chamber recalls that while it was within the Trial Chamber's discretion to find that Pušić had powers to transfer detainees, his proposal that detainees be transferred from the Heliodrom to Gabela Prison due to overcrowding was in fact overruled by Biškić.⁸⁹⁰² This raises significant doubt as to whether Pušić had *sufficient* powers to engage in prisoner transfers on such a scale as to reduce the problem of overcrowding in HVO detention facilities. The Trial Chamber did not engage in any analysis of whether overcrowding could have been resolved or ameliorated by transfers, despite finding that the Heliodrom,⁸⁹⁰³ Dretelj Prison,⁸⁹⁰⁴ Gabela Prison,⁸⁹⁰⁵ and Ljubuški Prison⁸⁹⁰⁶ all suffered from overcrowding. It is therefore unclear whether the Trial Chamber considered the possibility that overcrowding was the result of a limited overall holding capacity in the HVO detention centres, which would imply that transfers alone could not resolve or ameliorate the issue.

2711. The Trial Chamber also found, however, that Pušić could have notified the relevant authorities regarding the conditions of detention.⁸⁹⁰⁷ The Appeals Chamber considers, however, that this would in fact imply that Pušić did *not* have the power to resolve problems related to conditions of confinement and was reliant on others in that regard. In any event, the Appeals Chamber finds that the Trial Chamber merely mentioned this option as one of the actions Pušić could have undertaken in its concluding remarks on Pušić's responsibility without providing an explanation as to how Pušić's notification of "the relevant authorities" would have led to an improvement of the detention conditions.⁸⁹⁰⁸

2712. The Appeals Chamber therefore finds, even allowing for the Trial Chamber's consideration of Pušić's positions as Head of the Exchange Service and President of the Detention Commission, that no reasonable trier of fact could have found that he had the power to resolve problems related to conditions of confinement. This finding is reversed. In light of the fact that the Trial Chamber's

⁸⁹⁰¹ See *supra*, para. 2641.

⁸⁹⁰² See *supra*, para. 2625. See also Trial Judgement, Vol. 2, para. 1519, Vol. 4, para. 1142.

⁸⁹⁰³ Trial Judgement, Vol. 4, paras 1142-1143.

⁸⁹⁰⁴ Trial Judgement, Vol. 4, paras 1167, 1170.

⁸⁹⁰⁵ Trial Judgement, Vol. 4, paras 1174-1176.

⁸⁹⁰⁶ Trial Judgement, Vol. 4, para. 1182.

⁸⁹⁰⁷ Trial Judgement, Vol. 4, para. 1203; Appeal Hearing, AT. 722-723 (27 Mar 2017). See also Appeal Hearing, AT. 724-725, 727-728 (27 Mar 2017).

⁸⁹⁰⁸ Trial Judgement, Vol. 4, para. 1203.

finding that Pušić had the power to resolve problems related to mistreatment of detainees was underpinned by the same factors,⁸⁹⁰⁹ the Appeals Chamber reverses this finding also. Accordingly, the Appeals Chamber overturns the Trial Chamber's finding that Pušić contributed to the JCE by virtue of his failure to take measures to improve conditions of detention or to put a stop to mistreatment.

2713. With regard to Pušić's participation in the working group dispatched on 19 July 1993 to identify new sites to take detainees from overcrowded detention centres, the Appeals Chamber notes that the Trial Chamber found that the working group in question proposed identifying new detention sites in order to end the overcrowding problems at Dretelj Prison.⁸⁹¹⁰ There is no indication that the Trial Chamber considered this to have formed part of Pušić's contribution to the crimes relating to conditions of confinement which formed part of the CCP. The arguments of the Parties on this issue are therefore moot.⁸⁹¹¹ Neither does the Trial Chamber appear to have considered Pušić's mere receipt of information from an ICRC representative that detainees at Dretelj Prison were exhibiting signs of malnutrition⁸⁹¹² to have constituted a contribution.

2714. Finally, with regard to Pušić's argument that it is unclear from the evidence that his proposals of 12 August 1993 to suspend releases from Dretelj and Gabela Prisons in order to register and classify detainees were ever adopted, the Appeals Chamber notes that the Trial Chamber did not find that this decision was implemented, instead referring only to its issuance before noting that it was unable to establish whether the registration and classification took place.⁸⁹¹³ Pušić articulates no error in the Trial Chamber's reliance on this evidence. His argument is accordingly dismissed.

2715. In summary, the Appeals Chamber finds that the Trial Chamber erred in finding that Pušić had the power to take measures to resolve problems related to conditions of confinement and mistreatment of detainees and that he contributed to the JCE by failing to exercise such powers. What effect, if any, this finding has on his overall responsibility is discussed below.⁸⁹¹⁴ The remainder of Pušić's challenges under this heading are dismissed.

⁸⁹⁰⁹ See Trial Judgement, Vol. 4, paras 1056, 1202-1203. The Appeals Chamber notes in this regard that the Trial Chamber did not explain – nor is it apparent – how transferring detainees from one centre to another could stop or prevent mistreatment.

⁸⁹¹⁰ Trial Judgement, Vol. 4, para. 1167.

⁸⁹¹¹ Cf. *infra*, paras 2731-2733 (overturning the Trial Chamber's finding that Pušić, through his participation in the working group, denied the expulsions from Čapljina Municipality).

⁸⁹¹² Trial Judgement, Vol. 4, para. 1169.

⁸⁹¹³ See Trial Judgement, Vol. 4, para. 1168.

⁸⁹¹⁴ See *infra*, paras 2772-2773.

(d) Jablanica Municipality

2716. The Trial Chamber found that on 17 April 1993, the HVO attacked the villages of Sovići and Doljani in Jablanica Municipality and that, following the fighting, the HVO and the MUP arrested TO/ABiH soldiers and Muslim men of military age, as well as a number of women, children, and elderly people.⁸⁹¹⁵ Subsequent to the attack, negotiations between the HVO and the ABiH culminated in the creation of a joint delegation, of which Pušić was a member, tasked to go to Sovići and Doljani to “evaluate the situation”.⁸⁹¹⁶ According to the Trial Chamber, following the visit by the joint delegation and in light of the conditions of confinement in the Sovići School, an agreement was reached between Milivoj Petković and Sefer Halilović on 4 May 1993 to evacuate the population of Sovići and Doljani, including the detainees at the Sovići School, to Jablanica on the next day.⁸⁹¹⁷ The Trial Chamber also found that it was the HVO Main Staff that “issued the order complying with the decisions” taken subsequent to the visit.⁸⁹¹⁸ The Trial Chamber found that the Muslim inhabitants of Sovići and Doljani were ultimately moved in the direction of Gornji Vakuf by HVO soldiers on 5 May 1993.⁸⁹¹⁹ In light of his participation in the joint delegation, the Trial Chamber concluded that Pušić was informed of the removal on 5 May 1993 of the population of the villages of Sovići and Doljani and that therefore “Pušić facilitated the removal of the population of Sovići and Doljani towards ABiH-held territory, even if the final destination of the Muslims changed”.⁸⁹²⁰

(i) Arguments of the Parties

2717. Pušić submits that the Trial Chamber erred in fact and law by finding that he significantly contributed to any crimes committed in Jablanica Municipality as part of the JCE.⁸⁹²¹ Similarly, Pušić contends that his visit to Jablanica on 4 May 1993, and the fact that he remained in his HVO post thereafter, cannot be seen as a contribution to any crimes committed there.⁸⁹²² He submits that the Trial Chamber erred by drawing unwarranted inferences based on his visit to the villages of Sovići and Doljani on 4 May 1993 in concluding that: (1) he facilitated “the evacuation” of the residents of those villages on 5 May 1993; and (2) he accepted the crimes committed in the area

⁸⁹¹⁵ Trial Judgement, Vol. 2, paras 538, 550, Vol. 4, para. 1100.

⁸⁹¹⁶ Trial Judgement, Vol. 4, paras 1100-1101. See also Trial Judgement, Vol. 2, paras 605-607.

⁸⁹¹⁷ Trial Judgement, Vol. 4, para. 1103. See also Trial Judgement, Vol. 2, para. 606.

⁸⁹¹⁸ Trial Judgement, Vol. 2, para. 607.

⁸⁹¹⁹ Trial Judgement, Vol. 4, para. 1103.

⁸⁹²⁰ Trial Judgement, Vol. 4, para. 1103-1104. The Trial Chamber further found that as a result of his visit on 4 May 1993, Pušić was aware of the HVO attack on Sovići and Doljani, observed significant destruction in the villages, was fully informed of the arrests and detention of the population of these villages, and was aware of the harsh detention conditions inside the Sovići School. Trial Judgement, Vol. 4, para. 1102.

⁸⁹²¹ Pušić’s Appeal Brief, para. 152.

⁸⁹²² Pušić’s Appeal Brief, para. 152.

between 17 April and 4 May 1993.⁸⁹²³ Pušić adds that apart from his participation in the joint delegation,⁸⁹²⁴ no other evidence is presented to link him directly to the decision to evacuate the villagers, the crimes that followed, or the HVO attack on 17 April 1993.⁸⁹²⁵ He concludes that his conduct could not possibly have furthered or “facilitated” the CCP.⁸⁹²⁶

2718. The Prosecution submits in response that the Trial Chamber applied the correct law and reached a reasonable conclusion when it found that Pušić contributed to crimes committed in Sovići and Doljani.⁸⁹²⁷ Further, the Prosecution argues that the Trial Chamber reasonably found that through his participation in negotiations as part of the joint delegation, Pušić “facilitated the removal of the population of Sovići and Doljani”.⁸⁹²⁸ It argues that this finding should be considered in light of the Trial Chamber’s finding that Pušić had the primary responsibility for prisoner exchanges as of April 1993 and the fact that he continued to take actions to ensure that Sovići and Doljani remained free of Muslims months after his initial visit on 4 May 1993.⁸⁹²⁹

2719. The Prosecution argues that Pušić’s discriminatory intent and contribution to persecution is demonstrated by the Trial Chamber’s findings that Pušić was aware of the wholesale destruction of Muslim houses in Sovići and Doljani, while Croat houses were left unharmed, and that Muslim civilians were being detained in terrible conditions, and that despite this knowledge, Pušić continued to facilitate the removal of the Muslim population towards ABiH-held territory.⁸⁹³⁰ It further argues that Pušić’s discriminatory intent to ensure that Sovići and Doljani remained free of Muslims was further evidenced by his July 1993 order requiring Muslims from Buna who had arrived in Sovići and Doljani and were held at the Sovići School to be taken to a checkpoint and released to walk to Jablanica.⁸⁹³¹

⁸⁹²³ Pušić’s Appeal Brief, para. 153.

⁸⁹²⁴ See *supra*, para. 2716.

⁸⁹²⁵ Pušić’s Appeal Brief, paras 153-154. The Appeals Chamber notes that in the section of Pušić’s Appeal Brief concerning Jablanica, Pušić has made the argument that his failure to remedy or act on crimes, of which he became aware more than two weeks after they had taken place, does not in itself meet the threshold for contribution to the JCE. In this respect he further argues that the Trial Chamber failed to consider the normal criteria for omission liability and failed to consider whether a duty to prevent or punish existed between the Accused and the physical perpetrators of the crimes, and that no such duty arose in this case. The Appeals Chamber notes that it has dismissed this argument above. See *supra*, paras 2606-2607.

⁸⁹²⁶ Pušić’s Appeal Brief, para. 155.

⁸⁹²⁷ Prosecution’s Response Brief (Pušić), para. 157.

⁸⁹²⁸ Prosecution’s Response Brief (Pušić), para. 159. See also Appeal Hearing, AT. 702 (27 Mar 2017).

⁸⁹²⁹ Prosecution’s Response Brief (Pušić), para. 159. The Prosecution submits that in July 1993, Pušić issued orders to ensure that “persons released from detention at Sovići School were transported across to the line of separation”, and as late as December 1993, he was responsible for ordering continued detention of persons arrested in Sovići so that they could be used in exchanges to further the goal of populating that municipality with Croats. Prosecution’s Response Brief (Pušić), para. 159. In this respect, it further submits that by virtue of his functions in the network of detention facilities and as a “key player” in exchange negotiations and the movement of people, Pušić contributed to the crimes in Sovići and Doljani. Prosecution’s Response Brief (Pušić), para. 158.

⁸⁹³⁰ Prosecution’s Response Brief (Pušić), para. 160. See also Prosecution’s Response Brief (Pušić), para. 161.

⁸⁹³¹ Prosecution’s Response Brief (Pušić), para. 160.

(ii) Analysis

2720. With regard to Pušić's argument that the Trial Chamber drew unwarranted inferences based on his visit to Sovići and Doljani, the Appeals Chamber finds that the Trial Chamber failed to specify or elaborate on how Pušić's participation in the joint delegation during the visit to Sovići and Doljani amounted to facilitation of the removal of people from those villages. For example, the Trial Chamber failed to explain what authority, if any, Pušić had within the delegation, particularly in light of the fact that the delegation was headed by the military commanders of the HVO and ABiH, Petković and Halilović, respectively.⁸⁹³² It also failed to make findings as to how Pušić specifically facilitated the removal of the people from Sovići and Doljani, considering that it found that the removal was agreed by Petković and Halilović on 4 May 1993 and that it was the HVO Main Staff which issued the order complying with the decisions taken subsequent to the visit of the joint delegation.⁸⁹³³

2721. With regard to the Prosecution's argument that Pušić continued to take actions to ensure that Sovići and Doljani remained free of Muslims by issuing orders related to detainees from Sovići in July and December 1993,⁸⁹³⁴ the Appeals Chamber first observes that the Trial Chamber did not rely on the orders cited by the Prosecution when it made the finding that Pušić facilitated the removal.⁸⁹³⁵ It finds in any event that the Prosecution has failed to elaborate how those documents show that Pušić facilitated the removal of people on 5 May 1993.

2722. In light of the foregoing, the Appeals Chamber finds that no reasonable trier of fact could have concluded that Pušić facilitated the removal of the population from Sovići and Doljani on 5 May 1993. What effect, if any, this finding will have on his overall responsibility is discussed below.⁸⁹³⁶

⁸⁹³² See Trial Judgement, Vol. 4, paras 1100-1103. In this respect, the Appeals Chamber recalls that prior to and at the time of the visit, Pušić held several functions within the HVO. See *supra*, para. 2596 & fn. 8513. However, it is not clear in which capacity Pušić took part in the joint delegation that visited Sovići and Doljani on 4 May 1993. In the section of the Trial Judgement dealing with his functions in general, the Trial Chamber referred to the visit as an example of an instance where Pušić represented "the Military Police Administration or the HVO in negotiations for the exchange of detainees or bodies". In the section of the Trial Judgement addressing this visit, in particular, it considered Pušić to have taken part as an HVO representative and the "President of the Exchange Commission", a post which appears not to have existed at the time of the visit of the joint delegation to Jablanica. The Trial Chamber also noted, however, that the HVO component of the joint delegation consisted of two teams and that Pušić was a member of a team headed by Dr. Bagarić, which was in charge of dealing with the injured, the sick, and the dead. See Trial Judgement, Vol. 4, paras 1029-1030. See also Trial Judgement, Vol. 1, paras 656-658, 660-661, Vol. 4, fn. 2064.

⁸⁹³³ See Trial Judgement, Vol. 2, paras 606-607, Vol. 4, para. 1103.

⁸⁹³⁴ Prosecution's Response Brief (Pušić), para. 159, referring to Trial Judgement, Vol. 4, para. 1163, Exs. P03652, P03665.

⁸⁹³⁵ See Trial Judgement, Vol. 4, paras 1100-1104 and references cited therein.

⁸⁹³⁶ See *infra*, paras 2772-2773.

(e) Prozor Municipality

2723. The Trial Chamber found that the HVO conducted large-scale eviction operations in the summer of 1993 in Prozor Municipality, following which HVO forces detained villagers who did not belong to any armed force at the Prozor Secondary School, the Unis Building, the Tech School, in the villages of Lapsunj and Duge, and in the Podgrađe neighbourhood.⁸⁹³⁷ It further found that on 18 August 1993, Željko Šiljeg, the commander of the North-West OZ, reported to the HVO Main Staff that:

Berislav Pušić called him before a scheduled visit by the ICRC to the “prison” and to some Muslim villages in Prozor so that he would not grant authorisation to the ICRC to visit the prison and the villages, arguing that the ICRC had not been effective in doing the same for Croatian detainees in Konjic, Bugojno and other regions.⁸⁹³⁸

Based on this report, the Trial Chamber concluded that Pušić had a “very harsh attitude towards the ICRC and did not hesitate to hinder their work if he was not satisfied”.⁸⁹³⁹ The Trial Chamber further noted that Pušić’s attitude strongly influenced Šiljeg as he passed along Pušić’s instructions to the local authorities in Prozor that the ICRC planned to contact.⁸⁹⁴⁰ The Trial Chamber concluded that as Pušić was aware of detentions of Muslims in “a prison” and in villages in Prozor Municipality in August 1993, it had no doubt that he knew that Muslims who did not belong to any armed force were detained there and found that “[b]y continuing to exercise his functions within the HVO despite this knowledge”, Pušić accepted such detentions.⁸⁹⁴¹

(i) Arguments of the Parties

2724. Pušić submits that the Trial Chamber erred in fact and law by finding that he significantly contributed to any crimes committed in Prozor Municipality as part of the JCE by obstructing a visit by international community representatives to the area in August 1993 and by continuing in his post in the HVO thereafter.⁸⁹⁴² He argues that, even taking the evidence cited by the Trial Chamber “at its highest”, he could not have made a significant contribution to the JCE by obstructing the visit, or by remaining in his post thereafter despite his knowledge of crimes being committed in Prozor.⁸⁹⁴³ He maintains that this “is all the more so given that [his] knowledge is based on an episode that took place on 18 August 1993 some time after the crimes in question occurred”.⁸⁹⁴⁴

⁸⁹³⁷ Trial Judgement, Vol. 4, para. 1097.

⁸⁹³⁸ Trial Judgement, Vol. 4, para. 1097, referring to Ex. P04292, p. 3.

⁸⁹³⁹ Trial Judgement, Vol. 4, para. 1098.

⁸⁹⁴⁰ Trial Judgement, Vol. 4, para. 1098.

⁸⁹⁴¹ Trial Judgement, Vol. 4, para. 1099.

⁸⁹⁴² Pušić’s Appeal Brief, para. 149.

⁸⁹⁴³ Pušić’s Appeal Brief, paras 149-151.

⁸⁹⁴⁴ Pušić’s Appeal Brief, para. 150.

2725. The Prosecution responds that Pušić did not merely “accept” the detention of Muslim civilians but in fact took positive action by blocking ICRC access to detention centres and villages in the area, while continuing to facilitate the HVO detention network by remaining in his HVO positions despite his knowledge of the crimes.⁸⁹⁴⁵ It also argues that Pušić was aware of the illegal detention of Muslims in Prozor before 18 August 1993.⁸⁹⁴⁶ The Prosecution submits that, by that date, the detention of Muslim civilians in Prozor was ongoing as part of “large-scale eviction operations” that began in the spring and continued into the summer of 1993.⁸⁹⁴⁷ It adds that due to his service in various HVO detention- and prisoner exchange-related positions, Pušić received communications about detainees who had been arrested in Prozor, some of whom were civilians.⁸⁹⁴⁸ It concludes that the Trial Chamber properly found that Pušić made a contribution to the crimes of persecution, imprisonment, and unlawful confinement of civilians in Prozor.⁸⁹⁴⁹

(ii) Analysis

2726. Pušić does not substantiate why his obstruction of a visit by the ICRC to a prison and villages in Prozor in August 1993 could not constitute a contribution to the JCE. The Appeals Chamber thus dismisses this argument as an undeveloped assertion. With regard to his argument that his knowledge of crimes in Prozor was based on an episode that took place on 18 August 1993, some time after “the crimes in question” occurred, the Appeals Chamber first notes that he does not specify to which of the crimes found by the Trial Chamber to have occurred in Prozor Municipality he refers.⁸⁹⁵⁰ In any event, the Trial Chamber found that he knew that Muslims who did not belong to any armed force were detained in these various locations in Prozor, a finding which is not challenged by Pušić.⁸⁹⁵¹ In other words, the Trial Chamber found that Pušić was aware of *ongoing* unlawful detention when he obstructed the ICRC visit to the prison and villages in question. His argument fails to demonstrate how the Trial Chamber could have erred by considering this to be a contribution to the JCE and is accordingly dismissed.

(f) Čapljina Municipality

2727. The Trial Chamber found that between July and September 1993, Bosnian Muslim women, children, and elderly people were expelled by the HVO and the MUP from a number of locations in

⁸⁹⁴⁵ Prosecution’s Response Brief (Pušić), paras 154-155.

⁸⁹⁴⁶ Prosecution’s Response Brief (Pušić), para. 155.

⁸⁹⁴⁷ Prosecution’s Response Brief (Pušić), para. 155.

⁸⁹⁴⁸ Prosecution’s Response Brief (Pušić), para. 155.

⁸⁹⁴⁹ Prosecution’s Response Brief (Pušić), para. 156.

⁸⁹⁵⁰ Pušić’s Appeal Brief, para. 150.

⁸⁹⁵¹ Trial Judgement, Vol. 4, para. 1099.

Čapljina Municipality and forcibly transferred to ABiH-held territory.⁸⁹⁵² In addition, it also found that between 30 June and mid-July 1993, Muslim men from Čapljina Municipality were detained by the HVO in Dretelj and Gabela Prisons and at the Heliostrom.⁸⁹⁵³

2728. The Trial Chamber further found that Pušić was a member of a working group tasked by the HVO HZ H-B during a session on 19 July 1993 with visiting Čapljina Municipality to inspect the detention sites and propose measures to improve the conditions inside these sites.⁸⁹⁵⁴ The Trial Chamber further found that the working group established, among other things, that the media reports about the alleged “expulsion” of Muslims from the Municipality of Čapljina were false.⁸⁹⁵⁵ Taking into account that it found that the removal of Muslim civilians in Čapljina Municipality to ABiH-held territories was ongoing during Pušić’s visit to the municipality between 19 and 20 July 1993, the Trial Chamber concluded that:

[T]he only inference it can reasonably draw is that Berislav Pušić was informed of the expulsions, denied them in the report of the working group in which he participated and that, by retaining his position within the HVO, he accepted those crimes.⁸⁹⁵⁶

(i) Arguments of the Parties

2729. Pušić submits that the Trial Chamber erred in fact and law when it found that he significantly contributed to the crimes committed in Čapljina Municipality by visiting the area between 19 and 20 July 1993 as part of an “HVO delegation” and by subsequently continuing in his post with the HVO.⁸⁹⁵⁷ He argues that by taking part in a working group that was tasked with identifying new sites to house detainees from the overcrowded Dretelj Prison on 19 July 1993, he could not be considered to have made a significant contribution to the JCE.⁸⁹⁵⁸ He submits that he was a junior member of this delegation and was not one of the members who reported back to the HVO cabinet.⁸⁹⁵⁹ He adds that the visit had no impact on the implementation of the JCE.⁸⁹⁶⁰ Pušić submits that his “acceptance” of crimes committed in Čapljina, as found by the Trial Chamber, would not have amounted to a significant contribution to the JCE even if the relevant evidence cited by the Trial Chamber was taken “at its highest”.⁸⁹⁶¹

⁸⁹⁵² Trial Judgement, Vol. 3, paras 943-944. See also Trial Judgement, Vol. 2, paras 2097, 2104 (Domanovići), 2115 (Bivolje Brdo), 2131 (Počitelj), 2152 (Višići), 2161 (Čapljina town), 2191, Vol. 4, para. 1123 & fn. 2109.

⁸⁹⁵³ Trial Judgement, Vol. 2, paras 2082-2083. The persons arrested and held in these locations included Muslim members of the HVO and ABiH, as well as Muslim men who did not belong to any armed force.

⁸⁹⁵⁴ Trial Judgement, Vol. 4, paras 1123, 1167, 1174, referring to, *inter alia*, Exs. P03560, pp. 4-5, P03573.

⁸⁹⁵⁵ Trial Judgement, Vol. 4, para. 1123.

⁸⁹⁵⁶ Trial Judgement, Vol. 4, para. 1123.

⁸⁹⁵⁷ Pušić’s Appeal Brief, para. 169.

⁸⁹⁵⁸ Pušić’s Appeal Brief, paras 170, 206.

⁸⁹⁵⁹ Pušić’s Appeal Brief, paras 170, 206.

⁸⁹⁶⁰ Pušić’s Appeal Brief, paras 170, 206.

⁸⁹⁶¹ Pušić’s Appeal Brief, para. 171.

2730. The Prosecution submits that the Trial Chamber properly found that Pušić contributed to crimes committed in Čapljina Municipality.⁸⁹⁶² It argues that he not only accepted the expulsions of Muslims from Čapljina but that he contributed to them by falsely denying them in a report and by continuing to hold his HVO post thereafter.⁸⁹⁶³ It further submits that as part of the delegation tasked with inspecting detention sites in Čapljina Municipality in July 1993, Pušić visited Dretelj and Gabela Prisons which held Muslim men who were arrested during evictions from Čapljina at that time.⁸⁹⁶⁴ It adds that Pušić was informed of the removal of Muslims from Čapljina in July 1993, yet he denied it in an “official report to the Government”.⁸⁹⁶⁵ According to the Prosecution, the expulsions from Čapljina continued after that official report to the Government and, as a result, the Trial Chamber properly found that Pušić made a contribution to persecution and displacement crimes there.⁸⁹⁶⁶

(ii) Analysis

2731. The Appeals Chamber recalls that the Trial Chamber’s findings regarding Pušić’s role in expulsions from Čapljina Municipality are based on his visit to the municipality as a member of the working group on 19 or 20 July 1993, which subsequently resulted in the denial of expulsions in the report of the working group.⁸⁹⁶⁷

2732. As to Pušić’s argument that he played no role in the reporting of the working group, the Appeals Chamber first notes that the only reference to the report of the working group is found in the minutes of the meeting of the HVO HZ H-B held on 20 July 1993.⁸⁹⁶⁸ However, according to the minutes, only one member of the working group, Zoran Buntić, was present at this meeting.⁸⁹⁶⁹ In the absence of any evidence showing Pušić’s presence at the meeting, the Appeals Chamber finds that no reasonable trier of fact could have concluded that Pušić reported to the HVO HZ H-B. Finally, with respect to the denial of expulsions itself, the Appeals Chamber notes that the report of

⁸⁹⁶² Prosecution’s Response Brief (Pušić), para. 173.

⁸⁹⁶³ Prosecution’s Response Brief (Pušić), para. 173.

⁸⁹⁶⁴ Prosecution’s Response Brief (Pušić), para. 174. See also Appeal Hearing, AT. 702 (27 Mar 2017).

⁸⁹⁶⁵ Prosecution’s Response Brief (Pušić), para. 174, referring to Ex. P03573.

⁸⁹⁶⁶ Prosecution’s Response Brief (Pušić), para. 174.

⁸⁹⁶⁷ Trial Judgement, Vol. 4, para. 1123.

⁸⁹⁶⁸ Ex. P03573, pp. 1-2.

⁸⁹⁶⁹ Ex. P03573, p. 1. The Appeals Chamber notes that the minutes list all of the attendees of this meeting, including Jadranko Prlić and Bruno Stojić. In a different section of the Trial Judgement, the Trial Chamber found that Pušić was also present at this meeting. However, the Trial Chamber provided no support for this finding which is clearly contradicted by the minutes of the meeting. See Trial Judgement, Vol. 4, para. 1174.

the working group, as recorded in the minutes, only disputed that *all* Muslims were expelled from Čapljina Municipality and not necessarily that no expulsions had taken place.⁸⁹⁷⁰

2733. In light of the foregoing, the Appeals Chamber finds that the Trial Chamber erred in concluding that by virtue of his visit to Čapljina Municipality on 19 or 20 July 1993 as a member of the working group, Pušić denied the expulsions from Čapljina Municipality. The effect, if any, of this on his overall responsibility, also bearing in mind that the finding that he was informed of the expulsions in Čapljina Municipality and accepted those by retaining his position within the HVO remains undisturbed, is discussed below.⁸⁹⁷¹

(g) Mostar Municipality

(i) Pušić's role in the arrest, detention, and displacement of Muslims from West Mostar

2734. The Trial Chamber found that Pušić was informed of the mass arrest of Muslims in West Mostar between 9 and 11 May 1993 and of their detention at the Mostar Police Station and the Heliobrom.⁸⁹⁷² Based on his orders to release or keep the Muslims in detention, the Trial Chamber was satisfied that Pušić was not only aware of these arrests and detentions, but also that he took part in the arrest campaigns in West Mostar in May 1993.⁸⁹⁷³ It further found that Pušić took part in the operation to remove the Muslims from West Mostar to East Mostar in late May 1993 as well as in the system encouraging the permanent removal of Muslims from West Mostar to East Mostar as of late May 1993.⁸⁹⁷⁴

a. Arguments of the Parties

2735. Pušić submits that the Trial Chamber erred in fact and law when it concluded that he made a significant contribution to the JCE by participating in the expulsion of Muslims from West Mostar to East Mostar from May 1993 onwards.⁸⁹⁷⁵ Turning to more specific incidents, Pušić argues that his role in the “unconditional” release of Muslim civilians arrested on 11 May 1993 could not have advanced the CCP.⁸⁹⁷⁶ With regard to the “permanent removal of Muslims”, Pušić submits that the removal of at least 300 Muslims from West Mostar to East Mostar, witnessed by Witness Klaus Johann Nissen on 26 May 1993, was part of a pre-arranged transfer of civilians which was agreed

⁸⁹⁷⁰ Ex. P03573, pp. 1-2. The working group ascertained that “the reports in some media concerning the alleged expulsion of all Muslims from Čapljina municipality were not true” as it found that there were approximately 2,000 Muslims from eastern Herzegovina at various locations in the municipality.

⁸⁹⁷¹ See *infra*, paras 2772-2773.

⁸⁹⁷² Trial Judgement, Vol. 4, para. 1110.

⁸⁹⁷³ Trial Judgement, Vol. 4, para. 1110. See also Trial Judgement, Vol. 4, paras 1106-1109.

⁸⁹⁷⁴ Trial Judgement, Vol. 4, paras 1112, 1116. See also Trial Judgement, Vol. 4, paras 1111, 1113-1115.

⁸⁹⁷⁵ Pušić's Appeal Brief, para. 156.

⁸⁹⁷⁶ Pušić's Appeal Brief, paras 157, 196-198.

between the HVO and ABiH.⁸⁹⁷⁷ Pušić further submits that the statements he made on 16 June 1993 to ECMM representatives, and comments he made in the presence of Witness BC on 16 September 1993, had no impact on the measures adopted by the HVO in furtherance of the JCE.⁸⁹⁷⁸ According to Pušić, none of his conduct in relation to these events meets the required threshold for participation in the JCE.⁸⁹⁷⁹

2736. The Prosecution responds that Pušić directly participated in the expulsion of Muslims from West Mostar.⁸⁹⁸⁰ It submits that on the night of 25-26 May 1993, Nissen, an ECMM monitor, saw Pušić supervising the loading of Muslim women, children, and elderly people onto buses for removal from West Mostar to East Mostar.⁸⁹⁸¹ The Prosecution argues that this conduct, together with Pušić's attempts to conceal evictions from the ECMM, constitute his contribution to the JCE with respect to the arrest campaigns.⁸⁹⁸² It further argues that Pušić merely repeats the arguments he made at trial, that the incident observed by Nissen was a "pre-arranged transfer of civilians agreed by the HVO and ABiH", without demonstrating how the Trial Chamber erred in its assessment of this event.⁸⁹⁸³

2737. With regard to Pušić's 16 June 1993 statement denying evictions in Mostar, the Prosecution argues that such a statement assisted in concealing HVO crimes, impeding the operation of international organisations, and allowed crimes to continue.⁸⁹⁸⁴ It submits that the Trial Chamber reasonably found that Pušić participated in the "system encouraging the permanent removal of Muslims from West Mostar to East Mostar" on the basis of his overall contribution to "this system".⁸⁹⁸⁵ It further argues that, in this context, the Trial Chamber was entitled to also consider Pušić's false denials to international organisations.⁸⁹⁸⁶ According to the Prosecution, the Trial Chamber properly found that Pušić made a contribution to the displacement crimes in Mostar.⁸⁹⁸⁷

⁸⁹⁷⁷ Pušić's Appeal Brief, para. 158. See also Trial Judgement, Vol. 4, paras 1111-1112.

⁸⁹⁷⁸ Pušić's Appeal Brief, paras 159-160, 162, referring to Trial Judgement, Vol. 4, para. 1113. He adds that it is not clear who within the HVO was encouraged by his remarks and what constituted the "system encouraging the permanent removal of Muslims". Pušić's Appeal Brief, para. 160.

⁸⁹⁷⁹ Pušić's Appeal Brief, paras 157-159.

⁸⁹⁸⁰ Prosecution's Response Brief (Pušić), para. 165.

⁸⁹⁸¹ Prosecution's Response Brief (Pušić), para. 165.

⁸⁹⁸² Prosecution's Response Brief (Pušić), para. 165.

⁸⁹⁸³ Prosecution's Response Brief (Pušić), para. 166. Moreover, the Prosecution adds, it is irrelevant whether there was an agreement between the HVO and ABiH as the Trial Chamber held that transfers of civilians are unlawful unless there is consent from those being transferred, regardless of any agreement between political or military leaders. Prosecution's Response Brief (Pušić), para. 166.

⁸⁹⁸⁴ Prosecution's Response Brief (Pušić), para. 167.

⁸⁹⁸⁵ Prosecution's Response Brief (Pušić), para. 168, referring to Trial Judgement, Vol. 4, para. 1116.

⁸⁹⁸⁶ Prosecution's Response Brief (Pušić), para. 168.

⁸⁹⁸⁷ Prosecution's Response Brief (Pušić), paras 168-169.

b. Analysis

2738. With regard to Pušić's argument that his role in the "unconditional" release of Muslim civilians arrested on 11 May 1993 could not have advanced the CCP, the Appeals Chamber notes that the Trial Chamber's findings concerning the releases were part of its broader finding that Pušić took part in the arrest campaigns in West Mostar in May 1993. His ordering of the release of Muslims arrested on 11 May 1993 is thus only one component of his participation in the arrests. His role in the arrests also included, for example, the facts that on 11 May 1993, the Mostar MUP sent a letter to Pušić requesting him to "take charge" of 19 civilians detained at the Mostar Police Station, and that, on one occasion, Pušić ordered that certain people not be released.⁸⁹⁸⁸ In light of these additional factors, the Appeals Chamber finds that Pušić has not explained how his argument would affect the overall finding that he took part in the arrest campaigns in West Mostar in May 1993. This argument is therefore dismissed.⁸⁹⁸⁹

2739. Turning to the finding that Pušić participated in the removal of at least 300 Muslims from West Mostar on 26 May 1993, which the Trial Chamber reached relying on Nissen's evidence,⁸⁹⁹⁰ the Appeals Chamber notes that Pušić does not challenge the Trial Chamber's finding or Nissen's account, but merely repeats his argument made at trial that the transfer in question was pre-arranged and agreed upon between the HVO and ABiH without providing any support for this contention.⁸⁹⁹¹

2740. With regard to Pušić's statement on 16 June 1993 wherein he, according to the Trial Chamber, denied evictions brought to his and Ćorić's attention by ECMM representatives, and his statement on 16 September 1993 that the only suitable solution was to "send all the Muslims from West Herzegovina to East Mostar where they come from",⁸⁹⁹² the Appeals Chamber notes that Pušić does not challenge the finding that he made these statements. By merely arguing that these statements had no impact on the measures adopted by the HVO in furtherance of the JCE, Pušić fails to show why the Trial Chamber erred in concluding, on the basis of these statements, that he took part in the system encouraging the permanent removal of Muslims from West Mostar to East Mostar as of late May 1993.⁸⁹⁹³

⁸⁹⁸⁸ Trial Judgement, Vol. 4, paras 1108-1109.

⁸⁹⁸⁹ See also *supra*, para. 2677.

⁸⁹⁹⁰ Trial Judgement, Vol. 4, paras 1111-1112, referring to Klaus Johann Nissen, T(F). 20405-20407, 20429-20430 (25 June 2007).

⁸⁹⁹¹ Pušić's Appeal Brief, para. 158; Pušić's Final Brief, para. 138.

⁸⁹⁹² Trial Judgement, Vol. 4, para. 1115.

⁸⁹⁹³ Pušić's related argument that it is not clear who was encouraged by his remarks is also dismissed as it is not directed at a specific Trial Chamber finding. The Appeals Chamber further notes Pušić's argument that it is not clear what constituted the "system encouraging the permanent removal of Muslims", but considers it to be purely semantic and dismisses it accordingly. Pušić's Appeal Brief, para. 160.

2741. The Appeals Chamber thus finds that Pušić has failed to show any discernible error in the Trial Chamber's findings regarding his role in the arrest, detention, and displacement of Muslims from West Mostar.

(ii) Pušić's role in siege-related crimes

2742. The Trial Chamber found that Pušić knew about the difficulties international organisations were having in gaining access to East Mostar, and about the extremely harsh living conditions of the population, particularly the shortage of water and electricity.⁸⁹⁹⁴ It found that he "hindered and even paralysed the handling of humanitarian evacuation requests in East Mostar" and therefore considered that he participated in worsening the living conditions in East Mostar by obstructing humanitarian evacuations.⁸⁹⁹⁵

a. Arguments of the Parties

2743. Pušić submits that the Trial Chamber erred in fact and law when it concluded that he made a significant contribution to the JCE by blocking or obstructing access for international organisations and humanitarian evacuations in Mostar in May 1993.⁸⁹⁹⁶ As to the worsening of the living conditions in East Mostar specifically, Pušić argues that even by taking the evidence cited by the Trial Chamber "at its highest", namely the statements made by him on 16 September 1993, other statements by him recorded in an ECMM report of 28 November 1993, and a report he wrote on 24 February 1994, the threshold required for participation in a JCE has not been met.⁸⁹⁹⁷ He argues that no link can be established between these statements and his conduct having any influence on any HVO official or any impact on the execution of the CCP.⁸⁹⁹⁸

2744. Pušić submits that on the basis of the Trial Chamber's erroneous finding that he participated in worsening the living conditions in Mostar – combined with his knowledge of crimes committed during the siege of Mostar, and the fact that he continued to perform his HVO duties – the Trial Chamber erroneously found that he accepted the following crimes in Mostar: (1) destruction of property, including religious buildings; (2) murders of civilians; and (3) imposition of extremely harsh living conditions on the population of East Mostar.⁸⁹⁹⁹ In this respect, Pušić reiterates his argument from ground of appeal 1 that he did not have unilateral power to obstruct humanitarian evacuations and he therefore could not have made a significant contribution to the JCE.⁹⁰⁰⁰

⁸⁹⁹⁴ Trial Judgement, Vol. 4, para. 1122.

⁸⁹⁹⁵ Trial Judgement, Vol. 4, para. 1122.

⁸⁹⁹⁶ Pušić's Appeal Brief, para. 156.

⁸⁹⁹⁷ Pušić's Appeal Brief, paras 162-163, referring to Trial Judgement, Vol. 4, para. 1121.

⁸⁹⁹⁸ Pušić's Appeal Brief, para. 162. See also Pušić's Appeal Brief, para. 161.

⁸⁹⁹⁹ Pušić's Appeal Brief, para. 164.

⁹⁰⁰⁰ Pušić's Appeal Brief, para. 165, referring to Pušić's Appeal Brief, para. 44.

However, he argues that his acceptance of these crimes, even if the material relied on by the Trial Chamber were to be accepted at its highest, would not amount to a significant contribution to the implementation of the JCE.⁹⁰⁰¹ Pušić also argues that the absence of any links between the physical perpetrators and “the Accused” is so tenuous that the JCE liability for any crimes in Mostar is “wholly inappropriate”.⁹⁰⁰²

2745. Finally, Pušić makes a general argument that the Trial Chamber’s finding that he failed to denounce or report crimes in Mostar, or any omissions in this regard, would not have impacted on the execution of the JCE, since he was not a high-level HVO official, and did not have sufficient authority to influence others or influence events.⁹⁰⁰³

2746. The Prosecution responds that Pušić participated in the siege of Mostar by “paralysing the handling of humanitarian evacuation requests” and by deliberately holding the civilian population in a small and overcrowded enclave, thereby contributing to the harsh living conditions.⁹⁰⁰⁴ It further argues that he advocated restrictive one-for-one exchanges, rather than an all-for-all principle which would have released far more Muslims than Croats, and that he used Muslims as a “form of currency”.⁹⁰⁰⁵ The Prosecution submits that Pušić ignores the fact that on the basis of his authority to represent the HVO in international negotiations, the Trial Chamber considered his statements to international organisations as evidence that he hindered or paralysed humanitarian evacuations.⁹⁰⁰⁶ It further submits that Pušić thereby contributed to the crimes of inhumane acts, inhuman treatment, cruel treatment, unlawful attacks, terror, murders, and wilful killings.⁹⁰⁰⁷ Further, it avers that by worsening the living conditions and effectively trapping the population, he facilitated the conditions that allowed the murders in Mostar to occur and that the Trial Chamber reasonably found that he actively contributed to those murders.⁹⁰⁰⁸ Similarly, the Prosecution submits that the Trial Chamber reasonably found that Pušić contributed to property destruction in Mostar by perpetuating the conditions that facilitated the siege.⁹⁰⁰⁹

2747. With regard to Pušić’s general argument related to the Trial Chamber’s finding that he failed to denounce or report crimes in Mostar, the Prosecution responds that it should be dismissed

⁹⁰⁰¹ Pušić’s Appeal Brief, para. 166.

⁹⁰⁰² Pušić’s Appeal Brief, para. 168.

⁹⁰⁰³ Pušić’s Appeal Brief, para. 167.

⁹⁰⁰⁴ Prosecution’s Response Brief (Pušić), para. 170.

⁹⁰⁰⁵ Prosecution’s Response Brief (Pušić), para. 170. See also Appeal Hearing, AT. 707-708 (27 Mar 2017).

⁹⁰⁰⁶ Prosecution’s Response Brief (Pušić), para. 171.

⁹⁰⁰⁷ Prosecution’s Response Brief (Pušić), paras 171-172.

⁹⁰⁰⁸ Prosecution’s Response Brief (Pušić), para. 171.

⁹⁰⁰⁹ Prosecution’s Response Brief (Pušić), para. 172.

as the Trial Chamber did not find that Pušić had contributed to the crimes in Mostar in this manner and as he thus fails to identify which factual finding he is challenging.⁹⁰¹⁰

b. Analysis

2748. With regard to the events concerning the siege of Mostar, Pušić's arguments are a mix of the challenges he makes in relation to his powers under ground of appeal 1 and his contention that his statements and actions with regard to the siege do not meet the required threshold for JCE participation. In this respect, the Appeals Chamber will first address Pušić's argument that the Trial Chamber erred in finding that he contributed to the worsening of the living conditions in East Mostar.⁹⁰¹¹ This finding was based on the conclusion that Pušić obstructed humanitarian evacuation requests in East Mostar while being aware of the extremely harsh living conditions in East Mostar caused by the siege.⁹⁰¹² Pušić does not, however, substantiate his claim that the Trial Chamber erred in reaching this conclusion.

2749. With regard to Pušić's argument that he did not have a unilateral power to obstruct humanitarian evacuations, the Trial Chamber found that even if he was not the only person with this power, he was authorised to issue permits for the humanitarian evacuation of people from East Mostar, in accordance with the HVO exchange policy that one Muslim would be exchanged for one Croat.⁹⁰¹³ It summarised his position in this regard as one of "broad authority" as an HVO representative before the international community, contrasting this with his *de jure* and *de facto* roles in relation to the exchange and release of Muslim detainees held in HVO prisons.⁹⁰¹⁴ As such, insofar as Pušić presents an argument that he did not have a "unilateral" power to obstruct humanitarian evacuations, he does not contradict the findings of the Trial Chamber and accordingly fails to articulate an error. This argument is accordingly dismissed. Beyond this, Pušić merely refers to his argument raised under another sub-ground of appeal concerning his role as a representative of the HVO in negotiations on the exchange of prisoners, which has been dismissed above.⁹⁰¹⁵ The Appeals Chamber therefore finds that Pušić has failed to substantiate the argument about his power to obstruct humanitarian evacuations and dismisses it on this basis.

2750. Moreover, Pušić has failed to show how the Trial Chamber erred in its evaluation of his statements and the report he refers to on which the Trial Chamber relied to conclude that he

⁹⁰¹⁰ Prosecution's Response Brief (Pušić), para. 163.

⁹⁰¹¹ See Pušić's Appeal Brief, paras 163-164.

⁹⁰¹² Trial Judgement, Vol. 4, para. 1122.

⁹⁰¹³ Trial Judgement, Vol. 4, para. 1065. See also Trial Judgement, Vol. 4, paras 1066-1067, 1076-1077.

⁹⁰¹⁴ Trial Judgement, Vol. 4, para. 1081.

⁹⁰¹⁵ Pušić's Appeal Brief, para. 165, referring to Pušić's Appeal Brief, para. 44. See *supra*, para. 2641 (noting that the question of how much influence Pušić had over the broad contours of HVO policy was not of determinative significance in assessing his liability).

participated in the worsening of living conditions in East Mostar.⁹⁰¹⁶ In fact, Pušić ignores the Trial Chamber's findings and merely asserts that, even taken "at its highest", this evidence does not meet the threshold requirement for participation in a JCE without substantiating this assertion. His argument is thus dismissed.

2751. Turning to Pušić's argument that the Trial Chamber erred when it found that he accepted the murders of civilians, destruction of property (including religious buildings), and imposition of extremely harsh living conditions, the Appeals Chamber considers that it is more appropriate to deal with this argument under Pušić's ground of appeal 5 related to his challenges to the findings on his *mens rea*.⁹⁰¹⁷

2752. As to Pušić's argument that the Trial Chamber erred in finding that his failure to report the crimes committed in Mostar or to denounce them impacted the execution of the JCE,⁹⁰¹⁸ the Appeals Chamber notes that in its findings on Pušić's contribution to crimes committed in Mostar, the Trial Chamber made no reference to a failure on his part to report or denounce crimes.⁹⁰¹⁹ Pušić's argument misrepresents the findings and is accordingly dismissed. Similarly, Pušić's argument that the absence of a link between him and the physical perpetrators renders his liability for JCE crimes in Mostar inappropriate ignores applicable law in relation to JCE liability.⁹⁰²⁰

2753. The Appeals Chamber thus finds that Pušić has failed to show any discernible error in the Trial Chamber's findings regarding his role in the siege crimes in Mostar.

(h) False information

2754. The Trial Chamber found that between June 1993 and March 1994, Pušić denied information reported to him by representatives of international organisations which he knew to be

⁹⁰¹⁶ Trial Judgement, Vol. 4, paras 1121-1122. For example, the Trial Chamber noted that during a meeting with Witness BC on 16 September 1993, Pušić treated the Muslims as a "form of currency" and claimed that the Muslims held in HVO areas were valuable for use in exchanges for Croats detained by Muslim forces in Central Bosnia. See Trial Judgement, Vol. 4, para. 1121, referring to Witness BC, T(F). 25205 (28 Nov 2007) (closed session), Ex. P09848 (confidential), paras 1, 3. In this context, the Trial Chamber also considered an ECMM report of 28 November 1993 and a report written by Pušić on 24 February 1994. See Trial Judgement, Vol. 4, para. 1121, referring to Amor Mašović, T(F). 25023-25024 (26 Nov 2007), Exs. P06929 (confidential), P07942, P07481.

⁹⁰¹⁷ See *infra*, paras 2774-2826.

⁹⁰¹⁸ Pušić's Appeal Brief, para. 167. See also Pušić's Appeal Brief, paras 180, 186, 210; Trial Judgement, Vol. 4, para. 1207.

⁹⁰¹⁹ Trial Judgement, Vol. 4, paras 1105-1122.

⁹⁰²⁰ See *infra*, para. 2830. In this respect, the Appeals Chamber notes that Pušić made a similar argument in relation to Jablanica and Čapljina Municipalities. See Pušić's Appeal Brief, paras 154, 172. Since the Appeals Chamber has reversed the findings that Pušić contributed to the JCE by: (1) facilitating the removal of the population from Sovići and Doljani on 5 May 1993; and (2) denying the expulsions of the women, children, and elderly people from Čapljina Municipality, the Appeals Chamber did not consider these arguments in those sections as they were rendered moot. See *supra*, paras 2722, 2733.

accurate, and knowingly provided them with vague or inaccurate information.⁹⁰²¹ This, it found, amounted to an attempt to conceal the responsibility of the HVO for crimes committed in detention centres and during the removal of Muslims.⁹⁰²²

2755. Specifically, the Trial Chamber, having recalled its finding that ten of 12 ABiH soldiers who disappeared following their capture during the fall of the Vranica building complex located in West Mostar (“Vranica Building”) died on the night of 10-11 May 1993 following beatings by HVO soldiers, found that Pušić gave contradictory information as to their fate.⁹⁰²³ It also found that he sought to evade questions regarding the conditions of confinement at the Heliodrom when questioned by ECMM representatives,⁹⁰²⁴ and sought to conceal the poor conditions of confinement at Gabela Prison when responding to an inquiry from the ICRC about the fate of 98 detainees there.⁹⁰²⁵

(i) Arguments of the Parties

2756. Pušić submits that the Trial Chamber erred in fact and law when concluding that he made a significant contribution to the JCE by giving and spreading false information about crimes committed by the HVO and by trivialising crimes committed by the HVO.⁹⁰²⁶ Specifically, he argues that the Trial Chamber erred in law by failing to link this conduct to the aims of the JCE.⁹⁰²⁷ He cites by way of example his statements concerning the ABiH soldiers said to have been missing after the assault on the Vranica Building in Mostar in May 1993, asserting that these statements cannot be said to amount to participation in a JCE or to reflect intent to further a JCE.⁹⁰²⁸ Pušić claims that the examples of his conduct cited by the Trial Chamber fall below the minimum threshold requirement for participation in a JCE, and that his statements were often viewed with scepticism by representatives of the international community.⁹⁰²⁹ With regard to the Heliodrom, Pušić submits that the Trial Chamber erred in finding that his statements in June 1993 amounted to participation in the JCE, arguing that the Trial Chamber itself acknowledged that it could not establish if Pušić knew about the poor conditions at the Heliodrom at the time those statements were made.⁹⁰³⁰ He further considers that representatives of the international community would not have accepted his assertions and that these international organisations had their own information on

⁹⁰²¹ Trial Judgement, Vol. 4, paras 1201, 1207.

⁹⁰²² Trial Judgement, Vol. 4, paras 1201, 1207.

⁹⁰²³ Trial Judgement, Vol. 4, paras 1191-1192.

⁹⁰²⁴ Trial Judgement, Vol. 4, para. 1193.

⁹⁰²⁵ Trial Judgement, Vol. 4, para. 1196.

⁹⁰²⁶ Pušić’s Appeal Brief, para. 220.

⁹⁰²⁷ Pušić’s Appeal Brief, para. 221.

⁹⁰²⁸ Pušić’s Appeal Brief, para. 221.

⁹⁰²⁹ Pušić’s Appeal Brief, para. 222.

⁹⁰³⁰ Pušić’s Appeal Brief, para. 223.

detention conditions in the Heliodrom based on their visits, which he often facilitated.⁹⁰³¹ In that respect, he argues that there is no evidence that his statements were relied on by any individual, and on the basis of his limited status and influence within the HVO, that his conduct did not contribute in any way to the CCP.⁹⁰³² In relation to his reply to an ICRC request concerning 98 detainees at Gabela Prison, Pušić submits that the Trial Chamber assumed he had a level of power in relation to detention conditions which he did not in fact possess, and that he therefore could not have made a significant contribution to the JCE.⁹⁰³³ Finally, he asserts even taken “at its highest”, the evidence cited does not meet the required threshold for participation in a JCE.⁹⁰³⁴

2757. The Prosecution responds that the Trial Chamber properly found that Pušić contributed to the CCP by attempting to conceal HVO responsibility for and involvement in crimes related to the arrest, detention, and removal of the Muslim population.⁹⁰³⁵ Specifically, it argues that his actions furthered the CCP by creating conditions which made it easier for those crimes, including detention and displacement crimes, to continue.⁹⁰³⁶ The Prosecution refers to contradictory statements by Pušić in relation to the ABiH soldiers said to have been missing after the assault on the Vranica Building in May 1993 as an example of his obstructive behaviour.⁹⁰³⁷ The Prosecution also refers to Pušić’s statements to the ECMM in June 1993 in response to questions regarding conditions at the Heliodrom, and notes that the Trial Chamber explicitly considered that even if he may not have been aware of conditions at the time, he demonstrated little co-operation and sought to evade questions.⁹⁰³⁸ The Prosecution further refers to a Trial Chamber finding that Pušić “was aware of [the] problems regarding conditions of confinement at the Heliodrom during the entire time that the detention centre functioned”.⁹⁰³⁹ With regard to Pušić’s argument that his statements were not relied upon, the Prosecution asserts that the Trial Chamber did not find that he fully concealed crimes committed by HVO members, but rather sought to evade, minimise, or deny them.⁹⁰⁴⁰ Finally, with regard to Pušić’s reply to an ICRC request concerning the fate of 98 detainees at Gabela Prison, the Prosecution submits that the Trial Chamber reasonably found that Pušić possessed powers over

⁹⁰³¹ Pušić’s Appeal Brief, para. 224.

⁹⁰³² Pušić’s Appeal Brief, para. 224.

⁹⁰³³ Pušić’s Appeal Brief, para. 225.

⁹⁰³⁴ Pušić’s Appeal Brief, para. 226.

⁹⁰³⁵ Prosecution’s Response Brief (Pušić), paras 206, 211.

⁹⁰³⁶ Prosecution’s Response Brief (Pušić), paras 206-207. Specifically, the Prosecution refers to Pušić: (1) using his role as a HVO representative or contact point to evade questions, provide vague, contradictory, or inaccurate information, and falsely deny crimes to members of the international community, the press, and ABiH representatives; and (2) taking or proposing measures to hide crimes at detention centres.

⁹⁰³⁷ Prosecution’s Response Brief (Pušić), para. 207.

⁹⁰³⁸ Prosecution’s Response Brief (Pušić), paras 207-208.

⁹⁰³⁹ Prosecution’s Response Brief (Pušić), para. 208, referring to Trial Judgement, Vol. 4, para. 1143.

⁹⁰⁴⁰ Prosecution’s Response Brief (Pušić), para. 209.

detention conditions and the registration and classification of detainees, and that it was therefore reasonable to conclude that he withheld the requested information.⁹⁰⁴¹

(ii) Analysis

2758. With regard to Pušić's argument that the Trial Chamber erred in law by failing to link his giving and spreading of false information to the aims of the JCE, the Appeals Chamber first considers that this is a question of fact, not law. It notes that the Trial Chamber found that he sought to evade troublesome questions and gave vague or even false information to relevant interlocutors in an attempt to "deny or minimise the crimes committed by HVO members".⁹⁰⁴² The Appeals Chamber considers that a reasonable trier of fact could have relied on this finding to illustrate the link between Pušić's conduct and the aims of the JCE, that is, his intent to give or spread false information in order to further the CCP. His argument, including his undeveloped reference to the soldiers missing after the assault on the Vranica Building in Mostar in 1993, fails to substantiate an error in this finding and is accordingly dismissed.

2759. The Trial Chamber found that representatives of international organisations testified about Pušić's tendency to avoid co-operating fully and openly with them.⁹⁰⁴³ Pušić's contention that his statements were often viewed with scepticism by representatives of the international community is consistent with this. However, he has failed to articulate any error in how the Trial Chamber relied upon this finding other than a general assertion that this conduct could not meet the threshold for participation in a JCE, an argument which the Appeals Chamber addresses below.⁹⁰⁴⁴ Pušić's related arguments that representatives of the international community would not have accepted his assertions and in any case had their own information, and that there is no evidence that his conduct was relied on by any individual in light of his supposedly limited status and influence within the HVO, also suffer from the same defect: that is, Pušić fails to articulate any error in how the Trial Chamber interpreted the testimony of representatives of international organisations about his tendency to avoid co-operating fully and openly with them. Accordingly, the Appeals Chamber dismisses these arguments.

2760. Pušić's submission that the Trial Chamber erred in finding that his statements in June 1993 regarding conditions of confinement at the Heliodrom amounted to participation in the JCE misrepresents the Trial Chamber's factual findings. The Trial Chamber stated that it was unable to establish that he knew about the problems regarding conditions of confinement at the Heliodrom at

⁹⁰⁴¹ Prosecution's Response Brief (Pušić), para. 210.

⁹⁰⁴² Trial Judgement, Vol. 4, para. 1207.

⁹⁰⁴³ Trial Judgement, Vol. 4, para. 1201.

⁹⁰⁴⁴ See *infra*, para. 2769.

the relevant time but found that the peremptory manner in which he responded to the ECMM representatives constituted an attempt to evade their questions.⁹⁰⁴⁵ In other words, the Trial Chamber's finding was not dependent on his actual knowledge of conditions of confinement in the Heliodrom; rather, it was dependent on the manner in which he responded to a query from a representative of the international community regarding those conditions. This submission is therefore dismissed.

2761. The Appeals Chamber notes that Pušić's argument that his limited status and influence within the HVO meant that his conduct did not contribute in any way to the CCP is unaccompanied by references to the Trial Judgement or the evidence, or cross-references to his other arguments. In light of this deficiency, this argument is dismissed as an undeveloped assertion.⁹⁰⁴⁶

2762. Finally, in relation to Pušić's argument that the Trial Chamber assumed he had a level of power in relation to detention conditions which he did not possess when considering his reply to an ICRC request concerning 98 detainees at Gabela Prison, the Appeals Chamber notes that the request did not relate to detention conditions *per se*, but instead to the fate of the detainees.⁹⁰⁴⁷ The Trial Chamber relied on Pušić's powers in relation to the registration and classification of detainees and the release and/or exchange of detainees to find that his answer was intended to conceal the poor conditions at Gabela Prison,⁹⁰⁴⁸ not, as Pušić suggests, on his powers in relation to conditions of confinement. His argument misrepresents the findings of the Trial Chamber and is dismissed.

2763. In light of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's findings as to his role in spreading false information about HVO crimes.

(i) Significant contribution

2764. The Appeals Chamber recalls, as outlined above, that the Trial Chamber held that Pušić made a significant contribution to the CCP on the basis of two stated factors: (1) his role in organising the release of Muslim detainees to ABiH-held territories or to third countries; and (2) his role as the link between the workings of the network of HVO detention centres and the most important members of the JCE. It has further considered, however, that the Trial Chamber's finding that Pušić made a significant contribution to the JCE was premised not solely on these two stated

⁹⁰⁴⁵ Trial Judgement, Vol. 4, para. 1193.

⁹⁰⁴⁶ See also *supra*, para. 2641 (noting that the question of how much influence Pušić had over the broad contours of HVO policy was not of determinative significance in assessing his liability).

⁹⁰⁴⁷ Trial Judgement, Vol. 4, para. 1196.

⁹⁰⁴⁸ Trial Judgement, Vol. 4, para. 1196.

factors, but instead on the totality of its findings under the relevant headings in the Trial Judgement.⁹⁰⁴⁹

(i) Arguments of the Parties

2765. Pušić submits that in its jurisprudence, the Appeals Chamber has failed to define precisely the requirement for participation in a JCE.⁹⁰⁵⁰ He contends that it is arguable, on the basis of unclear case-law, that participation in a JCE requires a contribution which is more “significant and substantial” than that of an aider and abettor.⁹⁰⁵¹ On this basis, he claims that the Trial Chamber erred by setting the bar too low, including by finding that his conduct significantly contributed to the JCE when he claims there is no evidence that it had any real impact on the execution of the CCP.⁹⁰⁵² He submits that the Appeals Chamber should consider carefully the significance of his acts to determine if they were “directly related to the breadth of the purpose of the alleged JCE”.⁹⁰⁵³ He argues that where a JCE has been “extremely broadly defined”, as he considers to be the case here, it may be more difficult to prove that a specific act is directly related to that purpose, in this instance ethnic cleansing.⁹⁰⁵⁴ Lastly, he contends that in the context of this large-scale case where he has not been deemed to be either a direct perpetrator or a high-level official, the Trial Chamber erred in holding *de minimis* or insignificant conduct which was tenuously related to a broadly defined common purpose to constitute a significant contribution.⁹⁰⁵⁵

2766. The Prosecution responds that Pušić’s legal challenges are based on a misunderstanding of the legal requirements of a “significant contribution”.⁹⁰⁵⁶ Specifically, it contends that Pušić’s proposed test that a contribution must be “directly related to the breadth of the purpose of the [...] JCE” is not supported by the law of the Tribunal and that there is no requirement that a JCE member’s contribution directly impacts all aspects of the common criminal purpose.⁹⁰⁵⁷ The Prosecution further argues that JCE contributions are not limited to conduct that would fulfil the requirements of other modes of liability under Article 7(1) and that Pušić’s attempts to import these standards should be dismissed.⁹⁰⁵⁸ Specifically with regard to Pušić’s comparison between JCE and aiding and abetting, the Prosecution contends that the *actus reus* for JCE liability, that is, a

⁹⁰⁴⁹ See *supra*, para. 2604.

⁹⁰⁵⁰ Pušić’s Appeal Brief, paras 143(a)-(f).

⁹⁰⁵¹ Pušić’s Appeal Brief, para. 143(d). In particular, Pušić argues that the relevant jurisprudence provides little guidance in determining how the participation requirement should be assessed, except that the conduct of the accused should contribute in a significant way to the implementation of the CCP. Pušić’s Appeal Brief, para. 144.

⁹⁰⁵² Pušić’s Appeal Brief, para. 144.

⁹⁰⁵³ Pušić’s Appeal Brief, para. 145.

⁹⁰⁵⁴ Pušić’s Appeal Brief, para. 145.

⁹⁰⁵⁵ Pušić’s Appeal Brief, para. 146. See also Appeal Hearing, AT. 686 (27 Mar 2017).

⁹⁰⁵⁶ Prosecution’s Response Brief (Pušić), paras 140, 143, 145.

⁹⁰⁵⁷ Prosecution’s Response Brief (Pušić), para. 146.

⁹⁰⁵⁸ Prosecution’s Response Brief (Pušić), para. 147.

“significant contribution”, is accompanied by a heightened *mens rea* requirement of shared intent, which means that the relevant standard is not inconsistent with the Appeals Chamber’s statement that “aiding and abetting generally involves a *lesser* degree of individual criminal responsibility than co-perpetration in a joint criminal enterprise”.⁹⁰⁵⁹ The Prosecution further submits that an accused need not be a high-level official or a direct perpetrator to make a significant contribution to the common criminal purpose.⁹⁰⁶⁰ Finally, it interprets the law as stating that an accused who is “replaceable” or who plays a co-ordinating or monitoring role can significantly contribute to a JCE’s common criminal purpose.⁹⁰⁶¹

2767. Pušić disputes in reply that his challenges are based on a misunderstanding of the requirements of a “significant contribution”, and asserts that the factors which he cites are instead presented as considerations relevant in determining the sufficiency of contribution to the JCE.⁹⁰⁶²

(ii) Analysis

2768. In relation to Pušić’s argument that the Appeals Chamber has failed to precisely define the requirements for participation in a JCE, the Appeals Chamber recalls that participation in a JCE does not have to be necessary or substantial, but may take the form of at least a significant contribution to the execution of the common purpose.⁹⁰⁶³ Pušić’s contention that it is arguable that participation in a JCE requires a higher degree of contribution than that of an aider and abettor is inaccurate; the Appeals Chamber has previously clarified that the threshold for finding a “significant contribution” to a JCE is lower than the “substantial contribution” required to enter a conviction for aiding and abetting.⁹⁰⁶⁴ Beyond this, the Appeals Chamber considers it futile to attempt to define the threshold for participation in a JCE *in abstracto*; the assessment of an

⁹⁰⁵⁹ Prosecution’s Response Brief (Pušić), para. 150 (emphasis in original), referring to *Kvočka et al.* Appeal Judgement, para. 92.

⁹⁰⁶⁰ Prosecution’s Response Brief (Pušić), para. 149.

⁹⁰⁶¹ Prosecution’s Response Brief (Pušić), para. 149.

⁹⁰⁶² Pušić’s Reply Brief, para. 27.

⁹⁰⁶³ *Popović et al.* Appeal Judgement, para. 1378; *Brđanin* Appeal Judgement, para. 430. See also *Tadić* Appeal Judgement, para. 199.

⁹⁰⁶⁴ *Gotovina and Markač* Appeal Judgement, para. 149. See also *Popović et al.* Appeal Judgement, para. 1378; *Brđanin* Appeal Judgement, para. 430; *Tadić* Appeal Judgement, para. 199. With regard to Pušić’s argument that the relevant jurisprudence provides little guidance in determining how the participation requirement should be assessed, the Appeals Chamber notes that trial chambers have considered the size of the criminal enterprise, the seriousness and scope of the crimes committed, the function(s) performed by the accused, the accused’s position, physical perpetration of a crime or underlying offence by an accused, the amount of time spent participating after acquiring knowledge of the criminality of the system, efforts made to prevent criminal activity or to impede the efficient functioning of the system, and the efficiency, zealotry, or gratuitous cruelty exhibited by the accused in performing his/her function. *Tolimir* Trial Judgement, para. 893; *Milutinović et al.* Trial Judgement, Vol. 1, para. 105. The Appeals Chamber considers that the references to “the system” in the *Tolimir* Trial Judgement are better understood as references to the common criminal plan, as that case did not rely on the systemic form of JCE. *Tolimir* Trial Judgement, para. 888. This argument is accordingly dismissed.



accused's contribution to a JCE is a question of fact to be determined on a case-by-case basis.⁹⁰⁶⁵ This argument is accordingly dismissed.

2769. With regard to Pušić's argument that the Trial Chamber erred in holding *de minimis* or insignificant conduct to constitute a significant contribution, the Appeals Chamber observes that on numerous occasions,⁹⁰⁶⁶ he refers to individual examples of his conduct which he claims did not meet the threshold for participation in a JCE or did not constitute a significant contribution. These arguments artificially isolate the relevant findings. The question of whether an individual made a significant contribution to a common criminal purpose may be answered on the basis of a holistic examination of his or her conduct, which can acquire cumulative significance.⁹⁰⁶⁷ As such, where Pušić asserts that individual acts or omissions imputed to him did not meet the threshold for participation in a JCE, he misunderstands the significant contribution requirement. This includes his arguments that: (1) in relation to the designation of Gabela and Ljubuški Prisons as transit centres prior to the sending abroad of detainees, not every act that facilitates a broadly defined objective, namely ethnic cleansing, must necessarily constitute a significant contribution, and that if this were to be the case, criminal liability could potentially arise from every act carried out in office by a civil servant;⁹⁰⁶⁸ and (2) in relation to the release of detainees, that his role was so limited that it would not justify the imputation of individual criminal liability.⁹⁰⁶⁹ These arguments are dismissed.

2770. In relation to Pušić's argument that in cases where the JCE was "extremely broadly defined", the Appeals Chamber should consider whether the acts of an accused are "directly related to the breadth of the purpose of the alleged JCE",⁹⁰⁷⁰ the Appeals Chamber notes that there is no such requirement in the applicable law. Accordingly, this argument is dismissed.

2771. Pušić's remaining challenges under this heading dispute the Trial Chamber's finding that his contribution to the JCE was indeed significant. This is a fact-based determination which the Appeals Chamber will now consider with reference to the overall impact of Pušić's challenges.

(j) Impact of the Trial Chamber's errors with regard to Pušić's powers and contribution to the JCE

2772. The Appeals Chamber has overturned Trial Chamber findings that Pušić contributed to the JCE by: (1) failing to take measures to resolve problems related to conditions of confinement and

⁹⁰⁶⁵ *Krajišnik* Appeal Judgement, para. 696.

⁹⁰⁶⁶ See *supra*, paras 2600, 2631, 2650, 2659, 2667, 2683, 2703, 2717, 2724, 2729, 2735, 2743, 2745, 2756.

⁹⁰⁶⁷ See, e.g., *Popović et al.* Appeal Judgement, paras 1582, 1591, 1642 (affirming a trial chamber finding that Radivoje Miletić, *cumulatively*, made a significant contribution to the JCE to forcibly remove the Bosnian Muslim populations from Srebrenica and Žepa).

⁹⁰⁶⁸ See *supra*, para. 2702.

⁹⁰⁶⁹ See *supra*, para. 2664.

⁹⁰⁷⁰ Pušić's Appeal Brief, para. 145.



mistreatment of detainees;⁹⁰⁷¹ (2) facilitating the removal of the population from Sovići and Doljani on 5 May 1993;⁹⁰⁷² and (3) denying the expulsions of the women, children, and elderly people from Čapljina Municipality.⁹⁰⁷³ While these findings were undoubtedly of some import to the Trial Chamber's overall finding as to Pušić's contribution, the Appeals Chamber notes that it has upheld the majority of the Trial Chamber's findings impugned by Pušić in his grounds of appeal 1 and 6, including in particular those findings in relation to: (1) his role in organising the release of Muslims detainees to ABiH-held territories or to third countries; and (2) his role as the link between the workings of the network of HVO detention centres and the most important members of the JCE.⁹⁰⁷⁴ As explained above, these findings formed the bedrock for the Trial Chamber's overarching finding that his contribution was significant.⁹⁰⁷⁵ In addition, the Appeals Chamber notes the scope of the crimes to which Pušić contributed, his positions within the HVO as a military police officer and as Head of the Exchange Service and President of the Detention Commission, the duration of his participation in the JCE, and the absence of meaningful efforts on his part to prevent criminal activity. In light of all these factors, the Appeals Chamber cannot conclude that no reasonable trier of fact could have reached the Trial Chamber's conclusion on the basis of the remaining findings that Pušić's contribution to the JCE was significant.⁹⁰⁷⁶

2773. For these reasons, the Appeals Chamber finds that Pušić has not demonstrated any error in the Trial Chamber's finding that his contribution to the CCP was significant. His grounds of appeal 1 and 6 are accordingly dismissed in relevant part.

3. Mens rea (Pušić's Ground 5)

(a) Pušić's general challenges regarding mens rea

2774. The Trial Chamber found, on the basis of its findings with regard to his participation in the JCE and the evidence on which it relied, that the only inference it could reasonably draw was that Pušić intended to expel the Muslim population from the HŽ(R) H-B and that he shared this intent with other members of the JCE.⁹⁰⁷⁷ The Trial Chamber also found that in carrying out their *de jure*

⁹⁰⁷¹ See *supra*, para. 2712.

⁹⁰⁷² See *supra*, para. 2722; Trial Judgement, Vol. 4, paras 1103-1104.

⁹⁰⁷³ See *supra*, para. 2733; Trial Judgement, Vol. 4, para. 1123.

⁹⁰⁷⁴ Trial Judgement, Vol. 4, para. 1209.

⁹⁰⁷⁵ See *supra*, para. 2604; Trial Judgement, Vol. 4, para. 1209.

⁹⁰⁷⁶ The Appeals Chamber will, however, remain cognisant of the impact of the errors it has identified in the Trial Judgement in its assessment of Pušić's sentence. See *infra*, para. 3365.

⁹⁰⁷⁷ Trial Judgement, Vol. 4, para. 1208.

and *de facto* powers, Pušić and the other members of the JCE used the members and structures of the HVO to commit the crimes forming part of the CCP.⁹⁰⁷⁸

(i) Arguments of the Parties

2775. Pušić argues that the Trial Chamber erred in fact and law by finding that the only reasonable inference from the evidence was that he shared the intent to commit the criminal objective of the JCE, that is, to permanently remove the Muslim population from BiH, and that his conviction must therefore be reversed.⁹⁰⁷⁹ In this regard, he submits that “intent” should be interpreted to mean that a perpetrator has the desire to bring about a particular result from his conduct in the volitional sense.⁹⁰⁸⁰

2776. Pušić contends that the Trial Chamber engaged in impermissible double-counting by concluding that he shared the intent for the JCE crimes on the basis of the same conduct it relied on to find that he significantly contributed to the JCE.⁹⁰⁸¹ He describes this approach as circular reasoning, and argues that the Trial Chamber’s *mens rea* conclusions are impermissibly vague and unspecific, and rely on a generalised and wide-ranging review of all its findings to support its conclusion, thereby giving rise to a failure to provide a reasoned opinion.⁹⁰⁸²

2777. Pušić submits that in order to establish *mens rea* based on inferences drawn from an accused’s conduct where he is said not to have planned the JCE crimes but instead to have facilitated their implementation, there must be a link between his conduct and the perpetration of the crime.⁹⁰⁸³ He states that there is a paucity of evidence to link him to a JCE crime or their physical perpetrators and that any finding that he shared the intent for the JCE is therefore problematic.⁹⁰⁸⁴ In the instances where these links are weak, Pušić submits that the Trial Chamber applied the JCE principle in an “over-inclusive” manner and that it found him liable for JCE crimes based on his complicity with other accused persons rather than on the basis of his own conduct, thereby finding him “guilty by association”.⁹⁰⁸⁵

2778. The Prosecution responds that the Trial Chamber reasonably concluded that as of April 1993, Pušić shared the intent to expel the Muslim population from HZ(R) H-B, and intended

⁹⁰⁷⁸ Trial Judgement, Vol. 4, para. 1232.

⁹⁰⁷⁹ Pušić’s Appeal Brief, paras 112, 140. Pušić cites a statement by Antonio Cassese on the *Karemera and Ngirumpatse* Appeal Judgement that “it is difficult to imagine shared intent in the type of vast JCE imagined by the [...] Appeals Chamber” in that case, and submits that the present case is of a similar scale. See Pušić’s Appeal Brief, paras 119-120; Pušić’s Reply Brief, para. 24.

⁹⁰⁸⁰ Pušić’s Appeal Brief, para. 114. See also Pušić’s Appeal Brief, paras 113, 115-117.

⁹⁰⁸¹ Pušić’s Appeal Brief, para. 118.

⁹⁰⁸² Pušić’s Appeal Brief, para. 118.

⁹⁰⁸³ Pušić’s Appeal Brief, para. 121.

⁹⁰⁸⁴ Pušić’s Appeal Brief, para. 121; Pušić’s Reply Brief, para. 24.

that this expulsion be accomplished through the wide range of crimes forming part of the CCP.⁹⁰⁸⁶ In doing so, the Prosecution submits, the Trial Chamber properly inferred Pušić's intent from a holistic consideration of the evidence.⁹⁰⁸⁷ In this regard, it stresses Pušić's increasing responsibility over activities including the administration of the HVO prison network, detainee exchange and transfer as a means of removing Muslims from HZ(R) H-B territory, representational functions on behalf of the HVO in negotiations and interactions with the ABiH and the international community, and the use of detainees for forced labour.⁹⁰⁸⁸ This increased responsibility, the Prosecution contends, required an understanding of the HVO's strategic interests, which encompassed the CCP.⁹⁰⁸⁹ It also entailed knowledge and acceptance of illegal detention, poor conditions, and mistreatment in HVO prisons.⁹⁰⁹⁰

2779. The Prosecution further submits that the Trial Chamber correctly applied the law when taking Pušić's contribution into account in order to infer his shared intent.⁹⁰⁹¹ Regarding Pušić's argument that intent entails the desire to bring about a particular result, the Prosecution argues that personal satisfaction, enthusiasm, or personal initiative of an accused contributing to a JCE are not required to find the existence of a shared intent.⁹⁰⁹²

(ii) Analysis

2780. The Appeals Chamber has previously held that in practice, the significance of an accused's contribution to a JCE will be relevant to demonstrating that the accused shared the intent to pursue the common purpose.⁹⁰⁹³ Pušić's argument that the Trial Chamber engaged in impermissible double-counting by relying on the same conduct to find that he significantly contributed to the JCE and that he possessed the requisite *mens rea* is accordingly dismissed. His argument that the Trial Chamber's *mens rea* conclusions are impermissibly vague and unspecific, and rely on a

⁹⁰⁸⁵ Pušić's Appeal Brief, para. 121.

⁹⁰⁸⁶ Prosecution's Response Brief (Pušić), paras 95-96, 101, 103, 107-109. The Prosecution also submits that Pušić does not challenge the Trial Chamber's findings on his shared intent with regard to Counts 10 (imprisonment as a crime against humanity), 11 (unlawful confinement of a civilian as a grave breach of the Geneva Conventions), and 18 (unlawful labour as a violation of the laws or customs of war). Prosecution's Response Brief (Pušić), para. 109. See also Appeal Hearing, AT. 725-732 (27 Mar 2017).

⁹⁰⁸⁷ Prosecution's Response Brief (Pušić), paras 95-96, 101, 103.

⁹⁰⁸⁸ Prosecution's Response Brief (Pušić), para. 95.

⁹⁰⁸⁹ Prosecution's Response Brief (Pušić), para. 95.

⁹⁰⁹⁰ Prosecution's Response Brief (Pušić), para. 95.

⁹⁰⁹¹ Prosecution's Response Brief (Pušić), paras 103, 106. With regard to Pušić's reliance on Antonio Cassese's commentary on the *Karemera and Ngirumpatse* Appeal Judgement, the Prosecution submits that unlike in that case, which concerned the shared intent between physical perpetrators and the accused, in the present case the physical perpetrators were not necessarily members of the JCE. It argues that the JCE members in this case instead used the machinery and structures of the HVO and the perpetrators within those structures to commit the crimes, and that it was therefore not necessary to prove shared intent between the accused and the physical perpetrators. In addition, the Prosecution submits that JCE liability is not limited to small cases. See Prosecution's Response Brief (Pušić), paras 104-105.

⁹⁰⁹² Prosecution's Response Brief (Pušić), para. 102.



generalised and wide-ranging review of all its findings to support its conclusion, thereby giving rise to a failure to provide a reasoned opinion, fails to identify the specific issues, factual findings, or arguments that the Trial Chamber omitted to address or to explain why this omission invalidates the decision. This argument is also dismissed.

2781. Pušić's argument that there must be a link between his conduct and the perpetration of the crime to establish his *mens rea* is incorrect in law. The Appeals Chamber recalls that the requisite intent for a conviction under JCE liability can be inferred from circumstantial evidence, such as a person's knowledge of the common criminal purpose or the crime(s) it involves, combined with his or her continuing participation in the crimes or in the implementation of the common criminal purpose.⁹⁰⁹⁴ His connected arguments that the Trial Chamber applied the JCE mode of liability in an "over-inclusive" manner and found him "guilty by association" evince the same misunderstanding and are on their own terms so general as to fail to articulate any error.⁹⁰⁹⁵ They are dismissed.

2782. In light of the above, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's overall approach to determining his *mens rea*.

(b) Counts 2 (Murder) and 3 (Wilful killing)

2783. The Trial Chamber found that the members of the JCE, including Pušić, lent support and co-ordination to field operations for the purpose of the crimes forming part of the CCP and that they implemented a system for deporting the Muslim population by means of, among other crimes, murder and destruction of property during attacks, as well as murders related to the nearly systematic use of detainees on the front lines for labour or as human shields.⁹⁰⁹⁶ It found that between May 1993 and March 1994, the HVO sent Muslim men held at the Heliodrom to the front line in Mostar Municipality to perform labour such as repairing fortifications and shelters, and

⁹⁰⁹³ *Kvočka et al.* Appeal Judgement, para. 97.

⁹⁰⁹⁴ *Stanišić and Simatović* Appeal Judgement, para. 81; *Popović et al.* Appeal Judgement, para. 1369; *Đorđević* Appeal Judgement, para. 512.

⁹⁰⁹⁵ Pušić's comparison between the present case and the *Karemera and Ngirumpatse* Appeal Judgement is also inapposite, as, by extension, is his reliance on Antonio Cassese's commentary. His argument relates to the difficulty of proving shared intent in a JCE with many members, including physical perpetrators. In the present case, however, the Trial Chamber found that the members of the JCE used the machinery and structures of the HVO and the personnel within those structures to commit crimes. Trial Judgement, Vol. 4, para. 1232. The Appeals Chamber has previously found that in a case where the physical perpetrators are not JCE members, a trial chamber may still find an individual responsible under JCE liability where the crime can be imputed to at least one member of the JCE, and that member – when using a principal perpetrator – acted in accordance with the common plan. See *Šainović et al.* Appeal Judgement, para. 1256; *Krajišnik* Appeal Judgement, para. 225; *Brdanin* Appeal Judgement, paras 410, 413. As such, there was no requirement to establish shared intent on behalf of the physical perpetrators so long as these requirements were met. Pušić's argument fails to articulate an error that could invalidate the Trial Judgement and is accordingly dismissed.

⁹⁰⁹⁶ Trial Judgement, Vol. 4, para. 66.

collecting the bodies of soldiers.⁹⁰⁹⁷ The Trial Chamber noted that several dozen detainees who were exposed to the fighting were killed or wounded by firing both by the HVO and the ABiH.⁹⁰⁹⁸ It further found that on at least 30 occasions between 17 February and 24 July 1993, Pušić authorised or verbally ordered that detainees be sent to perform labour, including labour on the front line.⁹⁰⁹⁹ With regard to Heliodrom detainees specifically, the Trial Chamber also found that between May 1993 and January 1994, Pušić issued orders requiring the detainees to perform work on the front line.⁹¹⁰⁰ The Trial Chamber further found that having ordered and authorised the use of detainees to work on the front line, in the knowledge that some of them had been wounded or killed, as a result, he intended to have these crimes committed.⁹¹⁰¹

2784. With regard to Mostar, the Trial Chamber found that Pušić knew that East Mostar was being subjected to continuous shooting and shelling as part of the siege between June 1993 and April 1994 and that this was causing deaths among the population.⁹¹⁰² It further found that he knew about the extremely harsh conditions in which the population in that part of town was living, particularly the shortage of water and electricity, and that he hindered and even paralysed the handling of humanitarian evacuation requests in East Mostar.⁹¹⁰³ It concluded that by obstructing humanitarian evacuations, Pušić took part in worsening the living conditions in East Mostar.⁹¹⁰⁴ Based on its findings that Pušić was aware of the siege of East Mostar, the shelling, and the difficulties related to the siege of East Mostar, and continued to perform his functions within the HVO, the Trial Chamber concluded that the only inference it could reasonably draw was that he accepted and intended, *inter alia*, the murders of people who did not belong to any armed force.⁹¹⁰⁵

(i) Arguments of the Parties

2785. Pušić submits that the Trial Chamber erred in finding that he had the requisite intent for Counts 2 (murder as a crime against humanity) and 3 (wilful killing as a grave breach of the Geneva Conventions) in relation to Mostar and the Heliodrom.⁹¹⁰⁶ In this regard, he also adopts the reasoning of the Judge Antonetti Dissent, according to which “it is obvious” that he lacked the required intent for these crimes.⁹¹⁰⁷

⁹⁰⁹⁷ Trial Judgement, Vol. 4, para. 1146.

⁹⁰⁹⁸ Trial Judgement, Vol. 4, para. 1146.

⁹⁰⁹⁹ Trial Judgement, Vol. 4, para. 1147.

⁹¹⁰⁰ Trial Judgement, Vol. 4, para. 1151.

⁹¹⁰¹ Trial Judgement, Vol. 4, para. 1151.

⁹¹⁰² Trial Judgement, Vol. 4, para. 1122.

⁹¹⁰³ Trial Judgement, Vol. 4, para. 1122.

⁹¹⁰⁴ Trial Judgement, Vol. 4, para. 1122.

⁹¹⁰⁵ Trial Judgement, Vol. 4, paras 1122, 1206.

⁹¹⁰⁶ Pušić’s Appeal Brief, para. 122.

⁹¹⁰⁷ Pušić’s Appeal Brief, para. 130, referring to Judge Antonetti Dissent, p. 489.

2786. With regard to the Heliodrom, Pušić submits that the Prosecution failed to prove that he had notice that inmates sent on work assignments at the front line were killed in the period between 17 February and 24 July 1993, when, according to Pušić, the Trial Chamber found that he made the approvals.⁹¹⁰⁸ Pušić argues that even taken “at its highest”, evidence that he was informed of forced labour assignments and subsequent killings does not demonstrate that he intended to commit those crimes.⁹¹⁰⁹ He argues that the Trial Chamber could not have inferred that he intended the murder of detainees used for forced labour on the basis of inferences drawn from conduct relied on to prove the crime of forced labour.⁹¹¹⁰ Pušić also argues that the Trial Chamber erred by conflating the *mens rea* requirements for JCE I and JCE III by basing its findings on what it considered to be the reasonably foreseeable consequences of his conduct.⁹¹¹¹

2787. In relation to Mostar, Pušić argues that the factors relied upon by the Trial Chamber, namely: (1) evidence of statements unconnected to the crimes made by him; (2) his conduct in blocking humanitarian aid; and (3) his knowledge of the crimes committed, are not capable of establishing that he intended that civilians in Mostar be killed in HVO operations with which he had no connection.⁹¹¹²

2788. The Prosecution responds that the Trial Chamber properly inferred his intent for murder and wilful killing, both in relation to forced labour and the siege of Mostar.⁹¹¹³ With regard to the former, the Prosecution argues that the Trial Chamber did not infer Pušić’s intent for the killing of detainees sent to work on the front lines merely based on his authorisation and approval of forced labour.⁹¹¹⁴ Rather, it adds, the Trial Chamber relied on the fact that Pušić continued to send detainees to work on the front line despite knowing the dangerous nature of the work that the detainees performed and that some of them had been killed or wounded during that work.⁹¹¹⁵ It adds that the evidence shows that Pušić was on notice of detainee deaths at least as early as 5 March 1993 and was repeatedly informed that detainees sent to front line assignments had been wounded and taken to hospital for treatment.⁹¹¹⁶

2789. As to killings during attacks on East Mostar, the Prosecution argues that the Trial Chamber reasonably inferred Pušić’s intent from his awareness of the living conditions in East Mostar due to

⁹¹⁰⁸ Pušić’s Appeal Brief, para. 126.

⁹¹⁰⁹ Pušić’s Appeal Brief, para. 125.

⁹¹¹⁰ Pušić’s Appeal Brief, para. 125.

⁹¹¹¹ Pušić’s Appeal Brief, paras 124-125.

⁹¹¹² Pušić’s Appeal Brief, para. 123. Pušić also reiterates his argument that the Trial Chamber conflated the *mens rea* requirements for JCE I and JCE III in relation to Counts 24 and 25. Pušić’s Appeal Brief, para. 124.

⁹¹¹³ Prosecution’s Response Brief (Pušić), paras 110-112.

⁹¹¹⁴ Prosecution’s Response Brief (Pušić), para. 112.

⁹¹¹⁵ Prosecution’s Response Brief (Pušić), paras 112-113.

⁹¹¹⁶ Prosecution’s Response Brief (Pušić), para. 113.



the siege and his contribution to siege-related crimes by hindering humanitarian evacuations.⁹¹¹⁷ It argues that Pušić had first-hand knowledge of events on the ground based on the fact that his office was located in West Mostar and that he was “at the scene” every day of the siege.⁹¹¹⁸ In addition, the Prosecution submits that, despite this knowledge, Pušić continued to exercise his functions and, moreover, paralysed humanitarian evacuations and worsened living conditions in “an area subjected to shelling and sniper fire”.⁹¹¹⁹

2790. The Prosecution submits that Pušić’s argument that the Trial Chamber conflated the *mens rea* requirements of JCE I and JCE III with regard to murders and wilful killings is merely an undeveloped assertion which therefore warrants summary dismissal.⁹¹²⁰

(ii) Analysis

2791. The Appeals Chamber first turns to Pušić’s argument that it was not proven that he was on notice that detainees sent to perform forced labour were murdered or wilfully killed, in particular during the period of 17 February to 24 July 1993, which Pušić submits was the period during which the Trial Chamber found he made the approvals. The relevant Trial Chamber finding states that he authorised and ordered Heliodrom detainees to perform labour on the front line between May 1993 and January 1994.⁹¹²¹ The earliest-dated document expressly relied upon by the Trial Chamber to establish that Pušić authorised or ordered detainees to be sent to perform labour on the front line was, however, issued on 24 June 1993.⁹¹²² This undoubtedly reflects a certain ambiguity in the Trial Chamber’s findings.

2792. The Appeals Chamber recalls, however, that it has found above that no reasonable trier of fact could conclude that murder and wilful killing were part of the CCP in the period between January and June 1993, but that this error has no impact on the Trial Chamber’s conclusion that murder and wilful killing were part of the CCP as of June 1993.⁹¹²³ The Appeals Chamber also considered in this regard that the finding that Pušić intended murder and wilful killing as of May 1993 is irrelevant to the incorporation of murder and wilful killing in the CCP, as it alone cannot suffice to show that these crimes were intended by all JCE members, and were thus part of the CCP

⁹¹¹⁷ Prosecution’s Response Brief (Pušić), para. 111.

⁹¹¹⁸ Prosecution’s Response Brief (Pušić), para. 111, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 1120.

⁹¹¹⁹ Prosecution’s Response Brief (Pušić), para. 111, referring to, *inter alia*, Trial Judgement, Vol. 4, para. 1122.

⁹¹²⁰ Prosecution’s Response Brief (Pušić), para. 114.

⁹¹²¹ Trial Judgement, Vol. 4, para. 1151.

⁹¹²² Trial Judgement, Vol. 4, para. 1147 & fn. 2143, referring to Ex. P02921. See also Josip Praljak, T. 14749, 14753-14755 (27 Feb 2007). Josip Praljak testified that “Ričinoj Street”, the location referred to in Exhibit P02921, was the “separation line in the conflict”.

⁹¹²³ See *supra*, paras 882, 886.

prior to June 1993.⁹¹²⁴ The Trial Chamber's finding that Pušić possessed the *mens rea* for murder and wilful killing as of May 1993 is therefore irrelevant to his JCE liability. The question of whether the Trial Chamber committed an error of fact occasioning a miscarriage of justice instead turns on whether a reasonable trier of fact could have found that Pušić possessed the *mens rea* for murder and wilful killing as of June 1993.

2793. The Appeals Chamber recalls that the *mens rea* of murder requires that there was an act or omission, with the intention to kill or to inflict grievous bodily harm, in the reasonable knowledge that it might lead to death.⁹¹²⁵ The Appeals Chamber is satisfied that a reasonable trier of fact could conclude that Pušić met this standard as of June 1993, notably on the basis of Exhibit P02921, which indicates that he sent detainees to the front line to perform forced labour on 24 June 1993.⁹¹²⁶ The question of whether he was specifically on notice that deaths had arisen from that labour is therefore moot. Pušić's argument that it was not proven that he was on notice that detainees sent to perform forced labour were murdered or wilfully killed fails to demonstrate an error which could invalidate the Trial Judgement and is accordingly dismissed. By extension, his submission that the evidence does not demonstrate that he intended to commit those crimes is also dismissed. Lastly, Pušić's argument that the Trial Chamber conflated the *mens rea* requirements of JCE I and JCE III is dismissed as an undeveloped assertion.⁹¹²⁷ The Appeals Chamber accordingly concludes that Pušić has failed to show an error in respect of the Trial Chamber findings with regard to the Heliodrom that he intended murder and wilful killing by virtue of his role in forced labour assignments.

2794. As noted above, the Trial Chamber found Pušić's *mens rea* for the murders in Mostar on the basis of his knowledge that East Mostar was subjected to continuous shooting and shelling, his awareness of the extremely harsh living conditions for the population that was living in that part of town, his participation in the worsening of those living conditions, and his continued exercise of his functions within the HVO.⁹¹²⁸ The Appeals Chamber observes that Pušić fails to identify any "statements unconnected to these crimes" on which the Trial Chamber allegedly relied when it made its findings.⁹¹²⁹ As to the Trial Chamber's reliance on his conduct with respect to the siege of East Mostar and his knowledge of, *inter alia*, murders committed there, the Appeals Chamber finds that Pušić fails to articulate an error by the Trial Chamber in relying on these factors to infer his intent. In addition to his failure to develop his argument in this respect, Pušić ignores the relevant

⁹¹²⁴ See *supra*, fn. 2810.

⁹¹²⁵ *D. Milošević* Appeal Judgement, para. 108.

⁹¹²⁶ See *supra*, fn. 9122.

⁹¹²⁷ Pušić's reiteration of this argument in relation to Counts 24-25 is also dismissed.

⁹¹²⁸ Trial Judgement, Vol. 4, paras 1122, 1206.

⁹¹²⁹ See Pušić's Appeal Brief, para. 123.

Appeals Chamber jurisprudence, recalled above,⁹¹³⁰ which sets out that the requisite intent for a conviction under JCE liability can be inferred from circumstantial evidence, such as a person's knowledge of the common criminal purpose or the crime(s) it involves, combined with his or her continuing participation in the crimes or in the implementation of the common criminal purpose.⁹¹³¹

2795. Insofar as Pušić relies on the Judge Antonetti Dissent in respect of Counts 2 and 3, the Appeals Chamber notes that the passage in question merely states without elaboration that "it is obvious" that he lacked the intent for the commission of the crimes in question.⁹¹³² In the absence of any substantive argument, the Appeals Chamber recalls that the mere existence of a dissent does not render the majority's conclusion unreasonable,⁹¹³³ and therefore dismisses this argument.

2796. Accordingly, the Appeals Chamber finds that Pušić has failed to show a discernible error in the Trial Chamber's finding that the only inference it could reasonably draw is that Pušić intended the crimes under Counts 2 and 3.

(c) Counts 24 (Unlawful attack on civilians) and 25 (Unlawful infliction of terror on civilians)

2797. The Trial Chamber found that between June 1993 and March 1994, the HVO subjected the civilian population of East Mostar to intense, daily, and frequent indiscriminate shelling and firing which resulted in the death and injury of a large number of Muslim civilians.⁹¹³⁴ It further found that the HVO's specific intent to spread terror among the civilian population of East Mostar was demonstrated through the HVO's deliberate isolation of the population of East Mostar in a small and overcrowded enclave for several months and through aggravating its living conditions.⁹¹³⁵ With regard to Pušić specifically, the Trial Chamber found that he knew that East Mostar was being subjected to continuous shooting and shelling as part of a siege between June 1993 and April 1994 and that he knew that this was causing destruction, including the destruction of buildings dedicated to religion, and deaths among the population in that part of the town.⁹¹³⁶ It further found that Pušić knew about the extremely harsh living conditions in East Mostar and that he participated in worsening them by obstructing humanitarian evacuations.⁹¹³⁷ The Trial Chamber concluded that

⁹¹³⁰ See *supra*, para. 2781.

⁹¹³¹ *Stanišić and Simatović* Appeal Judgement, para. 81; *Popović et al.* Appeal Judgement, para. 1369; *Dordević* Appeal Judgement, para. 512.

⁹¹³² Judge Antonetti Dissent, p. 489.

⁹¹³³ *Galić* Appeal Judgement, paras 226-227.

⁹¹³⁴ Trial Judgement, Vol. 3, para. 1689.

⁹¹³⁵ Trial Judgement, Vol. 3, para. 1691.

⁹¹³⁶ Trial Judgement, Vol. 4, para. 1122.

⁹¹³⁷ Trial Judgement, Vol. 4, para. 1122.



Pušić accepted the destruction of property in East Mostar, including buildings dedicated to religion, and murders, and that he intended the siege-related crimes.⁹¹³⁸

(i) Arguments of the Parties

2798. Pušić submits that the Trial Chamber erred in finding that he had the requisite intent for Counts 24 (unlawful attack on civilians as a violation of the laws or customs of war) and 25 (unlawful infliction of terror on civilians as a violation of the laws or customs of war) in relation to Mostar.⁹¹³⁹ Pušić argues that the factors relied upon by the Trial Chamber, namely: (1) evidence of statements unconnected to the crimes made by him; (2) his conduct in blocking humanitarian aid; and (3) his knowledge of the crimes committed, are not capable of establishing that he intended that civilians in Mostar be attacked or terrorised in HVO operations with which he had no connection.⁹¹⁴⁰ Pušić again adopts the reasoning of the Judge Antonetti Dissent, according to which, “it is obvious” that he lacked the required intent for these crimes.⁹¹⁴¹

2799. The Prosecution responds that the Trial Chamber properly inferred his intent for unlawful attacks and unlawful infliction of terror on civilians.⁹¹⁴² It argues that Pušić’s challenge in relation to these crimes adopts the reasoning of the Judge Antonetti Dissent without any argument being made and thus warrants summary dismissal.⁹¹⁴³ The Prosecution nonetheless adds that Pušić was aware of the horrific environment caused by the siege in Mostar, including poor living conditions, continuous shooting and shelling, and murders, and that Pušić not only continued to perform his functions in the HVO but in fact contributed to worsening conditions by hindering humanitarian evacuations and by representing the HVO in negotiations.⁹¹⁴⁴

(ii) Analysis

2800. Similarly to his arguments in relation to his *mens rea* for murder and wilful killing in East Mostar, Pušić fails to identify the “statements unconnected to these crimes” the Trial Chamber allegedly relied on when it made its findings that he had the intent for the siege-related crimes.⁹¹⁴⁵ This argument is accordingly dismissed. As to the Trial Chamber’s reliance on his conduct with respect to the siege of East Mostar and his knowledge of crimes committed there, the

⁹¹³⁸ Trial Judgement, Vol. 4, paras 1122, 1206.

⁹¹³⁹ Pušić’s Appeal Brief, para. 122.

⁹¹⁴⁰ Pušić’s Appeal Brief, para. 123.

⁹¹⁴¹ Pušić’s Appeal Brief, para. 130, referring to Judge Antonetti Dissent, p. 489.

⁹¹⁴² Prosecution’s Response Brief (Pušić), para. 115.

⁹¹⁴³ Prosecution’s Response Brief (Pušić), para. 115.

⁹¹⁴⁴ Prosecution’s Response Brief (Pušić), para. 115.

⁹¹⁴⁵ See Pušić’s Appeal Brief, para. 123.

Appeals Chamber finds that Pušić again fails to articulate an error by the Trial Chamber in relying on these factors to infer his intent and dismisses his argument.⁹¹⁴⁶

2801. Insofar as Pušić relies on the Judge Antonetti Dissent in respect of Counts 24, and 25, the Appeals Chamber dismisses this argument for the same reasons as set out above.⁹¹⁴⁷

2802. The Appeals Chamber therefore finds that Pušić has failed to show a discernible error in the Trial Chamber's finding that the only inference it could reasonably draw is that Pušić intended the crimes under Counts 24 and 25 in relation to Mostar.

(d) Counts 19-21 (Destruction of property)

2803. The Trial Chamber found that Pušić was aware of and accepted the destruction of property in the villages of Sovići and Doljani in April 1993.⁹¹⁴⁸ It also found that he knew of and accepted the destruction of property in East Mostar, including buildings dedicated to religion.⁹¹⁴⁹ It concluded that as Pušić, knowing of the destruction, continued to perform his functions within the HVO, the only reasonable inference it could draw was that Pušić intended these crimes.⁹¹⁵⁰ The Trial Chamber made no findings as to Pušić's individual involvement in or intent for property destruction crimes in Prozor Municipality.⁹¹⁵¹

(i) Arguments of the Parties

2804. Pušić submits that the Trial Chamber erred in finding that he had the requisite intent for Counts 19 (extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly as a grave breach of the Geneva Conventions) and 20 (wanton destruction of cities, towns, or villages, or devastation not justified by military necessity as a violation of the laws or customs of war) in relation to Prozor Municipality, and Counts 20 and 21 (destruction or wilful damage to institutions dedicated to religion or education as a violation of the laws or customs of war) in Mostar.⁹¹⁵² With regard to Mostar, Pušić adopts his submissions in relation to Counts 2, 3, 24, and 25.⁹¹⁵³ In relation to Prozor, he submits that his mere knowledge of events in that municipality and continuation in his HVO role is not enough to establish intent.⁹¹⁵⁴ He adds that the Trial Chamber erred by failing to show that he had the required *mens rea* before or at the time the

⁹¹⁴⁶ See *supra*, para. 2794.

⁹¹⁴⁷ See *supra*, para. 2795.

⁹¹⁴⁸ Trial Judgement, Vol. 4, paras 1102, 1104, 1205.

⁹¹⁴⁹ Trial Judgement, Vol. 4, para. 1122.

⁹¹⁵⁰ Trial Judgement, Vol. 4, paras 1122, 1205-1206.

⁹¹⁵¹ Trial Judgement, Vol. 4, paras 1097-1099.

⁹¹⁵² Pušić's Appeal Brief, paras 127-129.

⁹¹⁵³ Pušić's Appeal Brief, para. 128. See *supra*, para. 2787.

⁹¹⁵⁴ Pušić's Appeal Brief, para. 129.

crimes took place, instead finding that he knew about the crimes on the basis of an episode that took place on 18 August 1993, some time after the crimes occurred.⁹¹⁵⁵

2805. The Prosecution argues that the Trial Chamber properly inferred that Pušić shared the intent for extensive destruction, wanton destruction, and from June 1993, damage to religious institutions.⁹¹⁵⁶ The Prosecution submits that the Trial Chamber did so based on Pušić's knowledge of destruction in Sovići and Doljani, including two mosques, his "acceptance of property destruction crimes in Prozor", his acceptance of siege-related destruction in Mostar, and his continued exercise of functions within the HVO.⁹¹⁵⁷ It argues that Pušić fails to show how the Trial Chamber's conclusion that he shared the intent for property destruction crimes based on his acceptance of siege-related destruction in Mostar and his ongoing contribution to siege conditions was unreasonable.⁹¹⁵⁸

(ii) Analysis

2806. Pušić's challenges in relation to the crimes under Counts 19-21 are made with reference to the municipalities of Prozor and Mostar. With regard to the latter, Pušić adopts his arguments in respect of Counts 2, 3, 24, and 25, which have already been dismissed.⁹¹⁵⁹ In relation to Pušić's challenge concerning Prozor Municipality, the Appeals Chamber observes that the section of the Trial Judgement to which he refers contains no findings regarding destruction in Prozor Municipality or any discussion of his personal involvement in destruction crimes in Prozor.⁹¹⁶⁰ Pušić was held responsible and convicted for these crimes because they formed part of the CCP to which he significantly contributed.⁹¹⁶¹ His arguments on this point are therefore confused and not directed at a specific Trial Chamber finding and are accordingly dismissed.⁹¹⁶² Insofar as Pušić relies on the Judge Antonetti Dissent in respect of Counts 19 and 21, the Appeals Chamber

⁹¹⁵⁵ Pušić's Appeal Brief, paras 129-130, referring to Trial Judgement, Vol. 4, paras 1097-1099. Pušić also reiterates his argument that the Trial Chamber erred by conflating the *mens rea* requirements for JCE I and JCE III by basing its findings on what it considered to be the reasonably foreseeable consequences of his conduct. Pušić further adopts the conclusion of the Judge Antonetti Dissent according to which "it is obvious" that he lacked the required intent for crimes under Counts 19 and 21. See Pušić's Appeal Brief, para. 130, referring to Judge Antonetti Dissent, p. 489.

⁹¹⁵⁶ Prosecution's Response Brief (Pušić), paras 116, 119.

⁹¹⁵⁷ Prosecution's Response Brief (Pušić), paras 116-118. The Prosecution argues that Pušić's claim that he only learned about "these crimes" in August 1993 is irrelevant and nonsensical since the 18 August 1993 report relates to an ICRC visit to a detention centre in Prozor. Prosecution's Response Brief (Pušić), para. 117 & fn. 454, referring to Trial Judgement, Vol. 4, paras 1097, 1099. It also reiterates its argument that Pušić's suggestion that the Trial Chamber conflated the *mens rea* requirements of JCE I and JCE III is an undeveloped assertion which warrants summary dismissal. Prosecution's Response Brief (Pušić), para. 117.

⁹¹⁵⁸ Prosecution's Response Brief (Pušić), paras 118-119.

⁹¹⁵⁹ See *supra*, paras 2796, 2802.

⁹¹⁶⁰ Pušić's Appeal Brief, para. 129, referring to Trial Judgement, Vol. 4, paras 1097-1099. See also Prosecution's Response Brief (Pušić), fn. 444.

⁹¹⁶¹ See Trial Judgement, Vol. 4, paras 1209, 1212, Disposition, p. 431.

⁹¹⁶² Pušić's argument that the Trial Chamber conflated JCE I and JCE III in relation to its findings on Counts 19-21 has already been dismissed. See *supra*, para. 2793 & fn. 9127.

dismisses this argument for the same reasons as set out above.⁹¹⁶³ In light of the foregoing, the Appeals Chamber finds that Pušić has failed to demonstrate any error in the Trial Chamber's findings as to his *mens rea* for the relevant property destruction crimes.

(e) Counts 12-17 (Inhumane acts, inhuman treatment, and cruel treatment)⁹¹⁶⁴

2807. The Trial Chamber found that in light of: (1) Pušić's continued exercise of functions within the HVO; (2) his participation in and facilitation of the system of detention of Muslims and their use for forced labour; (3) his tolerance of the deplorable conditions of confinement and mistreatment; (4) his acceptance of the death of detainees sent to work on the front line; and (5) his organisation and facilitation of the system by which HVO detainees were released or exchanged to ABiH-held territories and third countries, the only inference it could reasonably draw was that Pušić intended to have the crimes of inhumane acts, inhuman treatment, and cruel treatment committed.⁹¹⁶⁵ In relation to Mostar, the Trial Chamber found that Pušić participated in worsening the living conditions in East Mostar by obstructing humanitarian evacuations and concluded that the only reasonable inference it could draw was that Pušić accepted the crimes committed and the harsh living conditions imposed on the population of East Mostar due to the siege.⁹¹⁶⁶

(i) Arguments of the Parties

2808. Pušić submits that the Trial Chamber erred in finding that he had the *mens rea* for Counts 12-17.⁹¹⁶⁷ With regard to relevant crimes being committed during the siege of Mostar, Pušić adopts his submissions in relation to Counts 2, 3, 24, and 25.⁹¹⁶⁸ He further submits that the evidence of his conduct considered by the Trial Chamber does not show that he intended that Muslim detainees in HVO facilities be mistreated.⁹¹⁶⁹ Specifically, he argues that the Trial Chamber erred by inferring his intent on the basis of: (1) his knowledge of mistreatment garnered from reports sent to him; and (2) an erroneous assessment of his powers.⁹¹⁷⁰

2809. The Prosecution submits, with regard to the siege of Mostar and the HVO detention centres, that the Trial Chamber properly inferred that Pušić shared the intent for inhumane acts, inhuman

⁹¹⁶³ See *supra*, para. 2795.

⁹¹⁶⁴ The crimes concerned are: inhumane acts (conditions of confinement) as a crime against humanity (Count 12); inhuman treatment (conditions of confinement) as a grave breach of the Geneva Conventions (Count 13); cruel treatment (conditions of confinement) as a violation of the laws or customs of war (Count 14); inhumane acts as a crime against humanity (Count 15); inhuman treatment as a grave breach of the Geneva Conventions (Count 16); and cruel treatment as a violation of the laws or customs of war (Count 17).

⁹¹⁶⁵ Trial Judgement, Vol. 4, para. 1204.

⁹¹⁶⁶ Trial Judgement, Vol. 4, paras 1122, 1206.

⁹¹⁶⁷ Pušić's Appeal Brief, para. 131.

⁹¹⁶⁸ Pušić's Appeal Brief, para. 132. See *supra*, para. 2787.

⁹¹⁶⁹ Pušić's Appeal Brief, paras 131-133, referring to Pušić's Appeal Brief, para. 57. See also Pušić's Appeal Brief, paras 121-125; Pušić's Reply Brief, para. 26.

treatment, and cruel treatment, including in relation to conditions of confinement.⁹¹⁷¹ With regard to Mostar, the Prosecution submits that Pušić's challenge should be summarily dismissed as he fails to make an argument and only refers to unspecified submissions.⁹¹⁷² In any event, it argues that Pušić fails to show how the Trial Chamber's conclusion on his intent for these crimes in Mostar was unreasonable, submitting that it was properly based on: (1) his knowledge of the situation; (2) his continued performance of functions in the HVO; and (3) his participation in worsening the living conditions during the siege.⁹¹⁷³

2810. The Prosecution further submits that Pušić's arguments in relation to his shared intent for mistreatment of detainees in the HVO detention centres also fail.⁹¹⁷⁴ According to the Prosecution, a wide range of examples of Pušić's conduct show his knowledge of mistreatment.⁹¹⁷⁵ On the basis of these examples and in light of his lack of action to address mistreatment or poor conditions in the detention facilities while in positions of authority over them, the Prosecution submits that the Trial Chamber reasonably concluded that he possessed the requisite intent.⁹¹⁷⁶ Moreover, it submits that Pušić actively furthered these crimes as he authorised and approved the use of detainees to work on the front line knowing that they were being mistreated, wounded, or killed.⁹¹⁷⁷ The Prosecution also argues that Pušić's assertion that the assessment of his powers was wholly erroneous should be summarily dismissed as an undeveloped argument.⁹¹⁷⁸

(ii) Analysis

2811. With regard to the crimes under Counts 12-17 committed in the context of the siege of Mostar, Pušić adopts his arguments in respect of Counts 2, 3, 24, and 25, which have already been dismissed above.⁹¹⁷⁹ As to his remaining arguments, the Appeals Chamber notes that Pušić fails to identify the factual findings he seeks to challenge. His argument that the Trial Chamber's assessment of his powers was "wholly erroneous" is entirely unsupported except by cross-referencing arguments already dismissed by the Appeals Chamber.⁹¹⁸⁰ His argument that the Trial Chamber erred by inferring intent on the basis of his knowledge of mistreatment garnered from reports sent to him is an undeveloped assertion and ignores the jurisprudence of the Tribunal

⁹¹⁷⁰ Pušić's Appeal Brief, para. 133.

⁹¹⁷¹ Prosecution's Response Brief (Pušić), paras 120, 125.

⁹¹⁷² Prosecution's Response Brief (Pušić), para. 121.

⁹¹⁷³ Prosecution's Response Brief (Pušić), para. 121.

⁹¹⁷⁴ Prosecution's Response Brief (Pušić), para. 122.

⁹¹⁷⁵ Prosecution's Response Brief (Pušić), para. 122.

⁹¹⁷⁶ Prosecution's Response Brief (Pušić), para. 122.

⁹¹⁷⁷ Prosecution's Response Brief (Pušić), para. 123.

⁹¹⁷⁸ Prosecution's Response Brief (Pušić), para. 124. The Prosecution also refers to its arguments in response to Pušić's ground of appeal 1. See *supra*, paras 2704-2707.

⁹¹⁷⁹ See *supra*, paras 2796, 2802.

⁹¹⁸⁰ See *supra*, para. 2708.

according to which intent can be inferred on the basis of knowledge and continued participation of the accused in the JCE.⁹¹⁸¹ These arguments are dismissed. Pušić has accordingly failed to show that no reasonable trier of fact could have concluded that he shared the intent for crimes in relation to inhumane acts, inhuman treatment, and cruel treatment.

(f) Counts 6-9 (Displacement crimes)⁹¹⁸²

2812. The Trial Chamber found that in light of Pušić's role in organising and facilitating the system by which HVO detainees were released or exchanged in order for them to be sent to ABiH-held territories and third countries, he intended to have the displacement crimes forming part of the CCP committed.⁹¹⁸³

(i) Arguments of the Parties

2813. In challenging his convictions for displacement crimes, Pušić argues that the Trial Chamber erred by failing to consider the alternative reasonable inference that his actions were motivated by a need to "protect the civilian population and to offer them another more peaceful living environment by allowing them to take up residence in Croatia or a third country".⁹¹⁸⁴ He argues that this was a permissible measure pursuant to Article 49 of Geneva Convention IV, which states that a belligerent has the possibility of moving a civilian population where the security of the population or imperative military reasons so demand.⁹¹⁸⁵ Pušić adopts the reasoning of the Judge Antonetti Dissent that in this case the military justification for release or deportation could include the threat posed by imprisoned HVO soldiers who could have rejoined the ABiH.⁹¹⁸⁶

2814. The Prosecution responds that the Trial Chamber properly found that Pušić shared the intent for displacement crimes as it based this conclusion on its findings that Pušić: (1) facilitated removals from Sovići and Doljani toward ABiH-held territory; (2) took part in removals from West Mostar to East Mostar; (3) denied expulsions from Čapljina; (4) approved the release of detainees on the condition that they leave HZ(R) H-B territory; and (5) played a "key role" in organising the closure of HVO detention centres and ensuring released prisoners left for third countries.⁹¹⁸⁷ It argues that Pušić's conduct in relation to specific examples of expulsions of Muslims from HZ(R) H-B territory shows that his suggested alternative inference that deportations

⁹¹⁸¹ See *supra*, para. 2781.

⁹¹⁸² The crimes concerned are: deportation as a crime against humanity (Count 6); unlawful deportation of a civilian as a grave breach of the Geneva Conventions (Count 7); inhumane acts (forcible transfer) as a crime against humanity (Count 8); and unlawful transfer of a civilian as a grave breach of the Geneva Conventions (Count 9).

⁹¹⁸³ See, e.g., Trial Judgement, Vol. 4, paras 1204-1205, 1208-1209.

⁹¹⁸⁴ Pušić's Appeal Brief, para. 134, referring to Judge Antonetti Dissent, pp. 395-396.

⁹¹⁸⁵ Pušić's Appeal Brief, para. 134.

⁹¹⁸⁶ Pušić's Appeal Brief, para. 135, referring to Judge Antonetti Dissent, pp. 338-339.

and transfers had humanitarian motives is unreasonable.⁹¹⁸⁸ It adds that the Trial Chamber explicitly considered the relevance of Article 49 of Geneva Convention IV and noted that, in limited circumstances, humanitarian removal is permissible for protection but explained that this exception is not applicable if an accused's unlawful activity caused the crisis prompting the removals.⁹¹⁸⁹

2815. As to Pušić's proposed alternative inference, drawn from the Judge Antonetti Dissent, the Prosecution submits that the argument that released HVO prisoners could have rejoined the ABiH is only applicable to a very small number of the displaced persons.⁹¹⁹⁰

(ii) Analysis

2816. With regard to Pušić's argument that Article 49 of Geneva Convention IV allows for the possibility of moving a population where the security of the population or imperative military reasons so demand, the Appeals Chamber first observes that the Trial Chamber explicitly considered this provision and noted that neither total nor partial evacuation is prohibited "if the security of the population or imperative military reasons so demand".⁹¹⁹¹ It correctly held, however, that this exception does not apply if the humanitarian crisis that gave rise to the removal of the population is the result of the accused's unlawful activity.⁹¹⁹² Reading the Trial Judgement as a whole, it is abundantly clear that the Trial Chamber did not consider the exception embodied, *inter alia*, in Article 49 of Geneva Convention IV to apply in this context, based on its findings that the ethnic cleansing of the Muslim population was the core element of the CCP, accomplished by way of the crimes which fell within the framework of the CCP, including the displacement crimes *per se*.⁹¹⁹³ Further, the Appeals Chamber notes that the Trial Chamber systematically assessed whether alleged displacement crimes were evacuations carried out for security purposes, or whether

⁹¹⁸⁷ Prosecution's Response Brief (Pušić), paras 126-127.

⁹¹⁸⁸ Prosecution's Response Brief (Pušić), para. 127.

⁹¹⁸⁹ Prosecution's Response Brief (Pušić), para. 128.

⁹¹⁹⁰ Prosecution's Response Brief (Pušić), para. 129. The Prosecution also argues that the Trial Chamber excluded members of the ABiH and Muslim HVO members in determining Pušić's liability for unlawful deportation of a civilian and unlawful transfer of a civilian as grave breaches of the Geneva Conventions and that, therefore, Pušić has no conviction to challenge with respect to these crimes. It submits that members of the ABiH and Muslim HVO members were correctly included in the victim group for deportation and forcible transfer as crimes against humanity because these victims were expelled together with large numbers of Muslim civilians on the basis of their ethnicity, and without any distinction as to their military status. The crimes against them therefore formed part of the widespread and systematic attack against the civilian population. In addition, the Prosecution notes that even if these individuals could not have been classified as "civilians" at the time of the crimes, ABiH detainees and detained Muslim HVO members were no longer participating in hostilities and were therefore *hors de combat*. Prosecution's Response Brief (Pušić), para. 130.

⁹¹⁹¹ Trial Judgement, Vol. 1, para. 52.

⁹¹⁹² Trial Judgement, Vol. 1, para. 53, referring to *Stakić* Appeal Judgement, para. 287.

⁹¹⁹³ See, e.g., Trial Judgement, Vol. 4, paras 41, 65-66, 68.

they were justified for compelling military reasons.⁹¹⁹⁴ Rather than identifying an error in the Trial Chamber's analysis, Pušić merely seeks to substitute his own evaluation of the evidence for that of the Trial Chamber. His argument is thus dismissed.

2817. The Appeals Chamber recalls that motive must be distinguished from intent⁹¹⁹⁵ the former of which is not an element of any crime.⁹¹⁹⁶ As such, Pušić's argument that his actions were motivated by a desire to protect the civilian population and offer them a more peaceful living environment elsewhere is moot. Insofar as his argument can also be interpreted to mean that he believed at the relevant time that his actions were justified by virtue of humanitarian considerations, the Trial Chamber clearly found that he intended displacement crimes as part of the CCP,⁹¹⁹⁷ and he refers to no evidence or findings which could establish an alternative reasonable inference that he was in fact acting without the requisite intent. With regard to the argument, adopted from the Judge Antonetti Dissent, that a military justification for release or deportation could include the threat posed by imprisoned soldiers who could have rejoined the ABiH, the Appeals Chamber observes that the Trial Chamber found that Pušić was aware that people who did not belong to any armed force were among those held by the HVO at the Heliodrom,⁹¹⁹⁸ Gabela Prison,⁹¹⁹⁹ and Ljubuški Prison.⁹²⁰⁰ Specifically with regard to Gabela Prison, the Trial Chamber noted that during a meeting on 11 December 1993 on how to implement the 10 December 1993 Decision, Pušić stated that of the 1,256 people held there, only five detainees were members of the ABiH.⁹²⁰¹ In light of this, Pušić has not demonstrated how his participation in the displacement crimes could have had a military justification of a threat posed by imprisoned soldiers who could have rejoined the ABiH.⁹²⁰² Pušić has therefore failed to show that the Trial Chamber acted unreasonably in finding that he shared the intent for displacement crimes.

⁹¹⁹⁴ Trial Judgement, Vol. 3, paras 783, 787, 791, 794, 796, 798, 801, 805, 808, 813, 817, 821, 824, 826, 828, 831, 835, 838, 841, 845-847, 849, 854, 859, 864, 868, 872, 875, 878, 882, 884, 887, 890, 895, 900, 902, 904, 907, 913, 921, 925, 928, 931, 934, 939, 941, 944, 947.

⁹¹⁹⁵ *Popović et al.* Appeal Judgement, para. 1027; *Limaj et al.* Appeal Judgement, para. 109; *Kvočka et al.* Appeal Judgement, paras 367, 416.

⁹¹⁹⁶ *Limaj et al.* Appeal Judgement, para. 109; *Tadić* Appeal Judgement, paras 268-269; *Kanyarukiga* Appeal Judgement, para. 262.

⁹¹⁹⁷ See Trial Judgement, Vol. 4, paras 1104, 1111-1116, 1123, 1126-1133, 1158-1167, 1178-1180, 1183-1184, 1198-1199, 1201, 1204-1205, 1208-1209.

⁹¹⁹⁸ Trial Judgement, Vol. 4, paras 1135-1136.

⁹¹⁹⁹ Trial Judgement, Vol. 4, paras 1172-1173.

⁹²⁰⁰ Trial Judgement, Vol. 4, para. 1181

⁹²⁰¹ Trial Judgement, Vol. 4, para. 1172.

⁹²⁰² In light of Pušić's knowledge of the presence of civilians in these detention centres, the Appeals Chamber does not consider it necessary to further analyse the question of military justification for the displacement of detainees who were in fact imprisoned soldiers as it is clear that no error of the Trial Chamber in this regard could have occasioned a miscarriage of justice.

(g) Count 1 (Persecution)

2818. The Trial Chamber found that Pušić knew that crimes forming part of the CCP were being committed against Bosnian Muslims for the sole purpose of forcing them to leave the territory of the HZ(R) H-B, and that by participating in the JCE, Pušić intended to discriminate against Muslims for the purpose of facilitating their eviction from that territory.⁹²⁰³

(i) Arguments of the Parties

2819. With regard to Count 1 (persecution on political, racial, and religious grounds as a crime against humanity), Pušić argues that the Trial Chamber failed to make a specific and explicit finding of special discriminatory intent, thereby erring in law.⁹²⁰⁴ He also adopts the position of the Judge Antonetti Dissent that he did not possess the required special intent on the basis that “he was responsible only for taking care of Muslims”, which means he acted without discriminatory intent.⁹²⁰⁵

2820. The Prosecution responds that the Trial Chamber explicitly and properly found that Pušić possessed the discriminatory intent required for persecution.⁹²⁰⁶ It refers to the Trial Chamber finding that by participating in the JCE, Pušić intended to discriminate against Muslims for the purpose of facilitating their eviction and submits that Pušić fails to show that this finding was unreasonable.⁹²⁰⁷ It also argues that Pušić’s assertion based on the Judge Antonetti Dissent that he acted without discriminatory intent because he was “responsible only for taking care of Muslims” is unsupported and “cannot stand”.⁹²⁰⁸

(ii) Analysis

2821. The Appeals Chamber recalls that the crime of persecution requires a finding of discriminatory intent.⁹²⁰⁹ The Trial Chamber considered that Pušić knew that the crimes comprising

⁹²⁰³ Trial Judgement, Vol. 4, para. 1209.

⁹²⁰⁴ Pušić’s Appeal Brief, paras 136-137.

⁹²⁰⁵ Pušić’s Appeal Brief, para. 138, referring to Judge Antonetti Dissent, p. 489.

⁹²⁰⁶ Prosecution’s Response Brief (Pušić), paras 101, 132-133. The Prosecution specifies that the evidence demonstrates that Pušić: (1) was aware of attacks on and destruction of Muslim villages and the accompanying removal of Muslims to ABiH-held territory, yet continued serving in his HVO role; (2) knew of the mass arrests and detention of Muslims in the HVO detention facilities that he actively facilitated; (3) accepted poor conditions of confinement and mistreatment of detainees in that system and approved the use of Muslim detainees for forced labour; (4) played a key role in organising the closure of detention centres, insisting as part of that process that Muslim detainees be sent abroad; and (5) hindered humanitarian evacuation of Muslims from Mostar which contributed to dire living conditions for Muslim inhabitants.

⁹²⁰⁷ Prosecution’s Response Brief (Pušić), paras 132-133, referring to Trial Judgement, Vol. 4, para. 1209. See also *supra*, para. 2719.

⁹²⁰⁸ Prosecution’s Response Brief (Pušić), para. 134, referring to Judge Antonetti Dissent, p. 489.

⁹²⁰⁹ *Tolimir* Appeal Judgement, para. 522; *Popović et al.* Appeal Judgement, para. 711; *Dorđević* Appeal Judgement, para. 470. See also Trial Judgement, Vol. 1, para. 214. The *mens rea* for persecution requires an intent to discriminate

the JCE were being committed against Muslims “for the sole purpose of forcing them to leave the territory of Herceg-Bosna” and explicitly found on that basis that Pušić’s participation in the JCE demonstrated that he “intended to discriminate against [...] Muslims”.⁹²¹⁰ Pušić’s argument that the Trial Chamber failed to make a specific and explicit finding of discriminatory intent, thereby erring in law, is accordingly dismissed. The Appeals Chamber further considers that Pušić’s argument, adopted from the Judge Antonetti Dissent, that “he was responsible only for taking care of Muslims”, is irrelevant; the relevant question is whether Pušić possessed the requisite discriminatory intent. Pušić articulates no error in any of the Trial Chamber’s findings to this effect. This argument is also dismissed. Pušić has therefore failed to show that it was unreasonable for the Trial Chamber to find that he shared the intent for the crime of persecution.

(h) Knowledge of international armed conflict

2822. The Trial Chamber found, with regard to Pušić’s knowledge of the circumstances that enabled it to determine that there was an international armed conflict, that he had several direct contacts with Mate Granić, the Minister of Foreign Affairs and Deputy Prime Minister of Croatia, during negotiations on humanitarian aid and release of detainees, and therefore knew that the Croatian authorities were involved in the system of detention and deportation of Bosnian Muslims in the HZ(R) H-B.⁹²¹¹ It also found that he knew that soldiers belonging to the HV were present on HZ(R) H-B territory during the conflict.⁹²¹²

2823. Pušić maintains that the Trial Chamber erred in fact when it found that the armed conflict in BiH was of an international character and consequently erred in finding that Pušić must have known about the international armed conflict that existed in BiH at the time.⁹²¹³ He submits that the factors cited by the Trial Chamber, that is: (1) his contact with Granić in the course of negotiations concerning release of detainees and humanitarian aid arrangements; and (2) his knowledge of the presence of HV troops in the area, cannot show that he knew the Croatian government had overall control over the HVO.⁹²¹⁴

2824. The Prosecution responds that the Trial Chamber correctly found that Pušić was aware of the factual circumstances that allowed the Trial Chamber to conclude that the conflict was international in nature and that Pušić therefore had the requisite *mens rea* for Article 2 crimes.⁹²¹⁵

on political, racial, or religious grounds. *Dorđević* Appeal Judgement, para. 470; *Kordić and Čerkez* Appeal Judgement, para. 111; *Kvočka et al.* Appeal Judgement, paras 109-110.

⁹²¹⁰ Trial Judgement, Vol. 4, para. 1209.

⁹²¹¹ Trial Judgement, Vol. 4, para. 1210.

⁹²¹² Trial Judgement, Vol. 4, para. 1210, referring to Ex. P08431, p. 2.

⁹²¹³ Pušić’s Appeal Brief, para. 139. See also Pušić’s Appeal Brief, paras 228-235; *supra*, paras 275, 289.

⁹²¹⁴ Pušić’s Appeal Brief, para. 139.

⁹²¹⁵ Prosecution’s Response Brief (Pušić), paras 101, 135, 138.

The Prosecution submits that the Trial Chamber based its conclusion on the nature of the conflict on the direct involvement of armed troops from Croatia in BiH alongside the HVO and on Croatia's overall control of the HVO.⁹²¹⁶ With regard to Pušić's knowledge of these circumstances, it notes, in addition to the factors explicitly relied upon by the Trial Chamber, the testimony of a representative of an international organisation that the Croatian government had influence on Pušić and that often the only way to resolve difficult issues with him was by way of intervention from Zagreb, frequently via Granić.⁹²¹⁷

2825. The Appeals Chamber recalls that it has upheld the Trial Chamber's finding that the armed conflict in BiH was of an international character.⁹²¹⁸ The Appeals Chamber recalls further that as to Pušić's knowledge, what is required is that he was aware of the factual circumstances establishing the armed conflict's international character.⁹²¹⁹ The Trial Chamber found that the armed conflict was international in character "due both to the direct involvement of the HV in the conflict pitting the HVO and the ABiH against one another and to the overall control wielded by the HV and by Croatia over the HVO".⁹²²⁰ It found that Pušić knew the conflict was of an international character on the basis of: (1) his contacts with Granić and his concomitant knowledge that the Croatian authorities were involved in the system of detention and deportation of Bosnian Muslims in the HZ(R) H-B; and (2) his knowledge of the fact that HV soldiers were present on HZ(R) H-B territory.⁹²²¹ The Appeals Chamber notes that Pušić does not dispute his contact with Granić in the course of negotiations concerning the release of detainees and humanitarian aid arrangements, or his knowledge of the presence of HV troops in the area. The Appeals Chamber further notes the evidence cited by the Prosecution that representatives of an international organisation would seek intervention from Granić in order to secure transit papers from Pušić's office,⁹²²² which was relied upon by the Trial Chamber to establish, *inter alia*, that Pušić demonstrated little willingness to co-operate with representatives of international organisations.⁹²²³ In addition, it notes the Trial Chamber's finding that Pušić participated in "high-level international meetings notably between August and November 1993", which took place in the presence of senior HVO and Croatian leaders, including Prlić and Granić, as well as representatives of the international community.⁹²²⁴ Recalling that a trial judgement must be read as a whole,⁹²²⁵ Pušić's argument fails

⁹²¹⁶ Prosecution's Response Brief (Pušić), paras 136-137.

⁹²¹⁷ Prosecution's Response Brief (Pušić), paras 136-137, referring to Witness BC, T. 18405 (14 May 2007) (closed session), T. 18545 (16 May 2007) (closed session).

⁹²¹⁸ See *supra*, paras 275, 289.

⁹²¹⁹ *Naletilić and Martinović* Appeal Judgement, paras 116, 121.

⁹²²⁰ Trial Judgement, Vol. 3, para. 568.

⁹²²¹ Trial Judgement, Vol. 4, para. 1210.

⁹²²² Witness BC, T. 18405 (14 May 2007) (closed session), T. 18545 (16 May 2007) (closed session).

⁹²²³ Trial Judgement, Vol. 4, para. 1079 & fn. 2028, para. 1121 & fn. 2102, para. 1200 & fn. 2271.

⁹²²⁴ Trial Judgement, Vol. 4, para. 1073.

to demonstrate that no reasonable trier of fact could, on the basis of this range of findings and evidence, have reached the conclusion that he knew the conflict was of an international character. It is dismissed.

(i) Conclusion

2826. In light of the foregoing, the Appeals Chamber finds that Pušić has failed to show that the Trial Chamber erred in finding that he shared the *mens rea* for the crimes which were part of the JCE. Consequently, the Appeals Chamber dismisses Pušić's ground of appeal 5.

4. Alleged errors in concluding that Pušić was a member of the JCE (Pušić's Ground 4)

2827. The Trial Chamber found that: (1) Pušić "intended to expel the Muslim population from the HZ(R) H-B";⁹²²⁶ (2) he "shared this intention with other members of the JCE";⁹²²⁷ and (3) his contribution to implementing the CCP was "significant".⁹²²⁸

(a) Arguments of the Parties

2828. Pušić asserts that the Trial Chamber erred in finding that he was a JCE member by applying an "over-inclusive application of [the] JCE theory".⁹²²⁹ Specifically, Pušić argues that his convictions for crimes in Prozor, Čapljina, and Jablanica, and for crimes of violence and property destruction in Mostar, were in error because "he had no link with the physical perpetrators and played no role in planning these crimes".⁹²³⁰ Thus, he argues that his relationship with the physical perpetrators of these crimes is "too tenuous" to justify his JCE membership.⁹²³¹

2829. The Prosecution responds that the Trial Chamber properly found that Pušić was a JCE member.⁹²³² It also submits that Pušić was correctly convicted of the crimes specified because:

⁹²²⁵ See *Stanišić and Župljanin* Appeal Judgement, paras 138, 202, 376, 705, 1107, 1115, 1148, 1155, 1162, 1181; *Popović et al.* Appeal Judgement, para. 2006; *Šainović et al.* Appeal Judgement, paras 306, 321.

⁹²²⁶ Trial Judgement, Vol. 4, para. 1208. See also Trial Judgement, Vol. 4, paras 1203-1207.

⁹²²⁷ Trial Judgement, Vol. 4, para. 1208. See also Trial Judgement, Vol. 4, paras 1217-1232.

⁹²²⁸ Trial Judgement, Vol. 4, para. 1209.

⁹²²⁹ Pušić's Appeal Brief, para. 110, referring to *Brdanin* Appeal Judgement, para. 418, Declaration of Judge Van Den Wyngaert, pp. 164-165. Pušić also makes reference to alleged errors in the Trial Chamber's finding that he shared the requisite intent to prove his membership in the JCE. Pušić's Appeal Brief, para. 111, referring to Pušić's ground of appeal 5.

⁹²³⁰ Pušić's Appeal Brief, para. 110 (internal references omitted).

⁹²³¹ Pušić's Appeal Brief, para. 110.

⁹²³² Prosecution's Response Brief (Pušić), para. 97. The Prosecution also argues that Pušić made a significant contribution to the JCE and shared its common criminal purpose. Prosecution's Response Brief (Pušić), paras 93-96.

(1) the crimes formed part of the CCP; (2) Pušić shared the intent for the crimes; and (3) the crimes were committed by physical perpetrators being used by JCE members.⁹²³³

(b) Analysis

2830. The Appeals Chamber is satisfied that by making the findings summarised above,⁹²³⁴ the Trial Chamber made the requisite findings in order to conclude that Pušić was a member of the JCE.⁹²³⁵ In order to impute liability to Pušić for crimes committed by other persons, such as those in Prozor, Čapljina, Jablanica, and Mostar, it was not necessary for the Trial Chamber to establish that there was an understanding, an agreement, or a direct link between Pušić and the physical perpetrators who committed the crimes in question,⁹²³⁶ or that Pušić was involved in planning these crimes.⁹²³⁷ Rather, the Trial Chamber was required to establish that these crimes could be imputed to at least one member of the JCE, and that this member – when using the principal perpetrator – acted in accordance with the common plan.⁹²³⁸ The Trial Chamber correctly enunciated this requirement in its summary of the applicable law,⁹²³⁹ and with regard to crimes in Mostar, for example, found that Prlić endorsed the arrests and detentions as of 9 May 1993 and in the following days.⁹²⁴⁰ In any event, Pušić does not argue that the Trial Chamber erroneously established a link between a JCE member and the physical perpetrators of the crimes in Prozor, Čapljina, Jablanica, or Mostar.

2831. In light of the foregoing, the Appeals Chamber finds that Pušić has not demonstrated that the Trial Chamber erred in finding that he was a JCE member by employing an “over-inclusive application of [the] JCE theory”. Pušić’s ground of appeal 4 is thus dismissed.

5. Conclusion (Pušić’s Grounds 1, 4-6)

2832. The Appeals Chamber has dismissed Pušić’s grounds of appeal 4 and 5. As to grounds of appeal 1 and 6, the Appeals Chamber has reversed certain Trial Chamber findings as to Pušić’s

⁹²³³ Prosecution’s Response Brief (Pušić), paras 99-100. The Prosecution responds that Pušić’s liability does not depend on a direct link between him and the physical perpetrators or on his planning of the crimes. Prosecution’s Response Brief (Pušić), para. 97. See Prosecution’s Response Brief (Pušić), para. 98.

⁹²³⁴ See *supra*, para. 2827.

⁹²³⁵ See *Brdanin* Appeal Judgement, para. 430.

⁹²³⁶ See *Brdanin* Appeal Judgement, paras 418-419.

⁹²³⁷ See *Popović et al.* Appeal Judgement, para. 1378 (“The Appeals Chamber recalls that participation in a JCE need not involve the commission of a specific crime, and does not have to be necessary or substantial, but may take the form of at least a significant contribution to the execution of the common purpose. What is important is that the contribution furthers the execution of the common purpose.” (internal references omitted)).

⁹²³⁸ *Tolimir* Appeal Judgement, para. 432; *Popović et al.* Appeal Judgement, para. 1065; *Brdanin* Appeal Judgement, paras 413, 430. See also *supra*, paras 2618, 2752.

⁹²³⁹ Trial Judgement, Vol. 1, para. 212.

⁹²⁴⁰ Trial Judgement, Vol. 4, para. 272.



contribution, as outlined above.⁹²⁴¹ The remainder of his challenges under these grounds of appeal have been dismissed. The effect on sentencing, if any, of the Appeals Chamber's findings, including as a result of reversals, is discussed below.⁹²⁴²

⁹²⁴¹ See *supra*, para. 2772. See also *supra*, para. 2773.

⁹²⁴² See *infra*, para. 3365.

